

## THE PRINCIPLE OF JUSTICE IN THE EXECUTORIAL TITLE OF COURT DECISIONS AND ITS RELEVANCE TO STRENGTHENING THE INTEGRITY OF JUDGES

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### Abstract

*This research is motivated by the lack of clarity in laws and regulations in detailing the principles of justice intended by the executorial title of court decisions. Although the executorial title represents the judge's oath and embodies the accountability of the decision to society, the state, and God, judicial corruption involving judges still occurs. Consequently, the executorial title appears perfect on paper but has not fully cultivated a collective consciousness among judges as systemic integrity. This study employs normative juridical legal research with a legal analysis focused on the application of interpretation methods and legal principles, utilizing legislative, historical, and comparative approaches. The theoretical framework integrates the theory of justice and Imam Ash-Syatibi's Maqashid Al-Syariah theory. The study finds that the principle of justice in the executorial title of court decisions arises from correct and fair formal procedures. Materially, the judicial process involves stages of scrutinizing, qualifying, and constituting, utilizing the thematic induction method, Istiqra' ma'nawi, and the principle of synergy of evidence (mabda' tadofur adillah). This results in decisions that meet criteria for legal and moral accountability. The ethical principles contained in the executorial title include divinity, fair conduct, honesty, wisdom, independence, high integrity, responsibility, self-respect, discipline, humility, and professionalism. These principles are closely related to efforts to combat judicial corruption, as they not only embody the spirit of realizing justice through decisions but also serve as ethical values that build strong character in judges. Thus, in their professional roles, judges are expected to demonstrate superior integrity and remain free from corrupt practices.*

**Keywords:** Judgment, Justice, Executorial Titles, Judges' Code of Ethics

### Abstrak

*Penelitian ini dilatarbelakangi oleh belum jelasnya peraturan perundang-undangan dalam merinci asas keadilan yang dimaksudkan oleh titel eksekutorial putusan pengadilan. Meskipun titel eksekutorial merupakan sumpah hakim dan merupakan perwujudan pertanggungjawaban putusan kepada masyarakat, negara, dan Tuhan, namun korupsi peradilan yang melibatkan hakim masih saja terjadi. Akibatnya, titel eksekutorial tersebut tampak sempurna di atas kertas tetapi belum sepenuhnya menumbuhkan kesadaran kolektif di kalangan hakim sebagai integritas sistemik. Penelitian ini menggunakan jenis penelitian hukum yuridis normatif dengan analisis hukum yang difokuskan pada penerapan metode interpretasi dan asas hukum, dengan memanfaatkan pendekatan legislatif, historis, dan komparatif. Kerangka teori yang digunakan memadukan teori keadilan dan teori Maqashid Al-Syariah Imam Ash-Syatibi. Penelitian ini menemukan bahwa asas keadilan dalam titel eksekutorial putusan pengadilan muncul dari prosedur formal yang benar dan adil. Secara material, proses peradilan melibatkan tahapan pemeriksaan, kualifikasi, dan penyusunan, dengan menggunakan metode induksi tematik, Istiqra' ma'nawi, dan asas sinergi pembuktian (mabda' tadofur adillah). Hal ini menghasilkan putusan yang memenuhi kriteria akuntabilitas hukum dan moral. Prinsip etika yang terkandung dalam gelar eksekutorial meliputi ketuhanan, perilaku adil, kejujuran, kebijaksanaan, kemandirian, integritas tinggi, tanggung jawab, harga diri, disiplin, kerendahan hati, dan profesionalisme. Prinsip-prinsip ini terkait erat dengan upaya pemberantasan korupsi peradilan, karena tidak hanya mewujudkan semangat mewujudkan keadilan melalui putusan tetapi juga berfungsi sebagai nilai-nilai etika yang membangun karakter yang kuat dalam diri hakim. Dengan demikian, dalam peran profesionalnya, hakim diharapkan menunjukkan integritas yang unggul dan tetap bebas dari praktik korupsi.*

**Kata Kunci:** Putusan, Keadilan, Gelar Eksekutorial, Kode Etik Hakim



## INTRODUCTION

The rule of law has multiple goals, but justice stands as its most substantive goal. The argument becomes a postulate that judges<sup>1</sup> must be able to explore and uncover the essence of justice within legal prescriptions. Decisions that lack the value of justice are nothing more than empty dogmatic statements and lose the respect of the community.<sup>2</sup>

According to the theory of justice in Islam,<sup>3</sup> Justice is the patron of law and the most important form of God's justice, so its degree is absolutely placed higher than the law.<sup>4</sup> Therefore, the judicial work of judges in revealing the veil of justice is not just deciding cases based on the outward sound of the legislation (*la bouche de la loi*), but also exploring the inherent values in the law as a law that grows and develops along with changes in society,<sup>5</sup> so that the three objectives of the law, namely legal certainty, justice, and the value of benefit, are reflected in a decision.<sup>6</sup>

The spirit of a just decision based on the divine principle of Belief in the one and only God epistemologically animates the formation and implementation of state law. Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power mandates that the judicial process in Indonesia is based on the principle of justice rooted in belief in Belief in the one and only God. The executorial title emphasizes that the executorial force of the court's decision remains in effect and cannot be ignored by the parties because the judge's decision has the value of executorial force and if it is not implemented based on its own will, it is possible to be executed through forced efforts.<sup>7</sup> The legal consequence is that the decision is considered to have no legal force to be enforced (non-

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<sup>1</sup> Based on Article 19 of Law Number 48 of 2009 concerning Judicial Power, Judges are state officials who exercise judicial power regulated by law. Abdullah Yusuf al-Juda'i implicitly describes the judge as God's representative in applying sharia fairly between people who are in dispute. The judge is a legal mujtahid who reveals the veil of law determined by God as the Most Judge. See... Abdullah Yusuf al-Juda'i, *Taysiir 'Ilm Ushul al-Fiqh* (Beirut: Muassasah ar-Rayyan, 1997), 71.

<sup>2</sup> Agus Santoso, *Hukum, Moral & Keadilan* (Prenada Media, 2015), 91.

<sup>3</sup> Justice here is interpreted in the Shari'ah context, which means positioning everything in its proper place (*al wadla'u syai'un fi syai'i*). It involves granting rights that are deserved according to the law. See... M. Quraish Shihab, *Wawasan Al-Quran: Tafsir Maudlu'i atas Pelbagai Persoalan Umat* (Mizan Pustaka, 1998), 112.

<sup>4</sup> Amran Suadi, *Trilogi Filsafat Hukum; Tentang Filosofi, Keadilan, Kebenaran, dan Hermeneutika Hukum* (Jakarta: Kencana, 2024), 7.

<sup>5</sup> Margono, *Asas Keadilan, Kemanfaatan & Kepastian Hukum dalam Putusan Hakim*, Cetakan Pertama (Rawamangun, Jakarta: Sinar Grafika, 2019), 3.

<sup>6</sup> Ernst Utrecht, *Pengantar dalam Hukum Indonesia* (Jakarta: Sinar Harapan, 1989), 17; Lihat pula konsep trigatra tujuan hukum Gustav Radbruch dalam... Bernard L. Tanya, *Politik hukum: agenda kepentingan bersama*, First edition (Yogyakarta: Genta Pub., 2011), 2.

<sup>7</sup> R Soepomo, *Hukum Acara Perdata Pengadilan Negeri* (Jakarta: Pradnya Paramita, 1993), 107.

executable) because in principle the executorial title is a fundamental element that ensures that the decision can be carried out and enforced in accordance with applicable law.<sup>8</sup> In fact, negligence in including the executorial title at the head of the decision results in the decision on behalf of the law being declared void.<sup>9</sup>

Thus, the principle of justice based on God, as far as its legal application is concerned, needs to be elaborated more rigidly and concretely so that it is easy to understand what kind of concept of justice is desired by the executorial title of the judge's decision. Thus, the conception can be absorbed into the law to be applied by judges through their decisions.<sup>10</sup> The executorial title of a court decision contains the philosophical meaning that the decision contains the value of emanations emanating from one substance (God). The standard of justice in a judge's decision is not only measured by how complete the *ratio decidendi* is. Judges must always link their inner energy and ask God for help so that in every decision they make they are under His guidance and guidance.<sup>11</sup>

The normative provision on the obligation to include the executorial title at the head of the decision should be supported and strengthened because it is a crystallization of the state of God<sup>12</sup> as conceptualized by legal experts. In fact, in the Religious Courts environment, before including the irah-irah 'For the Sake of Justice Based on Belief in the one and only God', the head of the decision is preceded by the memorization of *Bismillahirrahmanirrahim*.<sup>13</sup> The executorial title is the culmination of the concept of executorial title in this country because it explicitly affirms the name of God in a just decision. In fact, it can be said that irah-irah in Indonesia surpasses the conception of irah-irah in court decisions in Islamic countries in the Middle East, such as Egypt, Tunisia, Algeria, Morocco, and Saudi Arabia.<sup>14</sup>

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<sup>8</sup> Riduan Syahrani, *Buku Materi Dasar Hukum Acara Perdata*, Second edition (Bandung: Citra Aditya Bakti, 2000), 120.

<sup>9</sup> Article 197, paragraph (1), letter (a) of the *Kitab Undang-Undang Hukum Pidana* (n.d.)

<sup>10</sup> Article 197, paragraph (1), letter (a) *ibid*.

<sup>11</sup> M. Natsir Asnawi dan Muhammad Hilmy, "Hukum, Hakim, dan Keadilan Tuhan," Direktorat Jenderal Badan Peradilan Agama, accessed 6 Agustus 2024, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hukum-hakim-dan-keadilan-tuhan-oleh-m-natsir-asnawi-shi-dan-drs-muhammad-hilmy-2111>. Accessed August 9, 2024 at 05.05 WIB

<sup>12</sup> Article 29, paragraph (1) of the Fourth Amendment of the 1945 Constitution states that the State is based on belief in God Almighty. ("1945 Constitution and Amendments," n.d.). Accessed on August 5, 2024, at 04:12 WIB.

<sup>13</sup> Article 57, paragraph (2) of Law Number 7 of 1989, as last amended by Law Number 50 of 2009 concerning Religious Courts, mandates that a stipulation and decision must begin with the phrase "Bismillahirrahmanirrahim," followed by "For the Sake of Justice Based on the Beliefs in one and only God." ("Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 on Religious Courts," 2009).

<sup>14</sup> Mahmud Ridla Al Khudri, "يا قضاة مصر باسم الشعب تحكمون لا باسم الحكومة," Ikhwan Wiki, 2010, <https://www.ikhwanwiki.com/index.php?title>.

Although the executorial title of court decisions in Indonesia is considered complete because it relies on the concept of God's justice, the reality is that court decisions are often based on procedural justice and the application of legal formalities alone without maximum consideration of substantial justice, so that a sense of justice is lacking. One of the factors is due to the motive of judicial corruption involving judges by playing with the law for personal gain.<sup>15</sup> Check out the record of disciplinary punishment from the Supreme Court Supervisory Agency of the Republic of Indonesia from 2021-2023, the numbers are fantastic. A total of 817 judges and judicial apparatus received sanctions that varied from mild to severe. Some of the disciplinary violations were related to judicial corruption.<sup>16</sup>

This research topic has an academic problem in the aspect of legal substance, in this case there is no single rule that explains concretely what kind of justice decision is desired by the *irrah* 'For the sake of justice based on Belief in the one and only God'. There has been disparity in interpretation due to the unclear concept of a just decision in the law as desired by the executorial title of the judge's decision.

In addition, the verdict on the executorial title has so far been treated as a mere verdict *template*, only to avoid the verdict being null and void as a result if it is not contained in the head of the verdict. Although the executorial title of a judge's decision is an embodiment of the judge's oath, the crystallization of the responsibility of the decision to self, society, the state, and God, contains a guarantee that the decision is based on the value of God's justice, and contains the value of forced efforts for those who do not carry out the contents of the decision, in practice it is still common to find the irony of judicial corruption committed by a number of judges, supreme judges, and judicial apparatus, so that the principle of justice based on the Belief in the one and only God in the decision is transformed into Almighty Finance.

In fact, judges already have a code of ethics that must be obeyed. It contains 10 points of the code of ethics that serve as guidelines for judges in case handling and daily activities.<sup>17</sup> However, the fullness of the code of ethics has not been complemented by the article of divinity as a derivation and important principle of the executorial title of judges' decisions. The principle of divinity refers to the idea that law should reflect divine values or universal morality, which is often expressed in state foundations such as Pancasila.

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<sup>15</sup> Koesnoe dan Syamsudin, *Ilmu hukum profetik*, 264–65.

<sup>16</sup>The data is collected from the Supreme Court Supervisory Agency website, which is updated every three months. Details of the disciplinary punishments can be found at "Hukuman Disiplin," Supreme Court Supervisory Agency, available at, <https://bawas.mahkamahagung.go.id/blog/category/kumdis>. Accessed on August 6, 2024, at 07:15 WIB.

<sup>17</sup>"Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number 047/KMA/SKB/IV/2009-02/SKB/P.KY/IV/2009 on the Code of Ethics and Code of Conduct for Judges" (2009).

This research has originality value because it is different from previous research. This research examines the concept of justice in the executorial title from the perspective of Imam As-syatibi's Maqashid Al-Syariah theory. This study uses a different theoretical construction and novelty from previous studies because this study describes the principles of justice contained in the executorial title which are implemented since pre-trial, trial preparation, trial implementation, and decision execution stages as a series of processes to realize justice based on the Belief in the one and only God.

## RESEARCH METHODS

This research is a type of normative juridical legal research with legal analysis in the form of the application of interpretation methods and legal principles. To solve problems, legal issues are in two scopes, namely legal dogmatics and legal principles which are the level of legal philosophy. Approach using statuta aproach dang legal comparison. Primary materials include legislation and judges' decisions. Secondary legal materials include books, law journals, books, commentaries on court decisions, classical views of highly qualified scholars, and doctrine.

## RESULTS AND DISCUSSION

Indonesia ordains itself as a country that adheres to the principle of One God. This can be seen in the 1945 Constitution of the Republic of Indonesia, Article 29 paragraph (1). The legal consequence is that judges in exercising their authority must be based on Belief in the one and only God, not contrary to the basis of Belief in the one and only God, and can be divinely responsible to Belief in the one and only God for their decisions.<sup>18</sup>

According to Article 2 paragraph (1) of the Judicial Power Law, the judiciary is conducted "For the Sake of Justice Based on Belief in the one and only God." The irah-irah or executorial title must be contained in the head of every decision. Without the inclusion of irah-irah, the judge's decision is declared invalid and non-executable.

There are at least two main principles and the basis for the birth of Article 2 paragraph (1) of the Judicial Power Law, which mandates that the judicial process be carried out 'For the sake of justice based on Belief in the one and only God'. *First, the* principle of religiosity of decisions containing the irah-irah for the sake of justice based on Belief in the one and only God.<sup>19</sup> The principle underpins transcendental responsibility and reminds judges that their decisions are not only accountable to society and the legal system, but also divinely to God. The judge is obliged to

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<sup>18</sup>Mukti Arto, *Penemuan Hukum Islam Demi Mewujudkan Keadilan; Membangun Sistem Peradilan Berbasis Perlindungan Hukum dan Keadilan*, First Book (Yogyakarta: Pustaka Pelajar, 2020), 45.

<sup>19</sup> Sunarto, *Peran Aktif Hakim Dalam Perkara Perdata*, Ketiga (Jakarta: Prenadamedia Group, 2019), 25.

transcend his soul as God's messenger in the world, responding to the Divine call for the salvation of his soul.<sup>20</sup>

*Second*, the principle of *Ex Aquo et Bono* (Fair Decision). This principle is the main thing that underlies the birth of regulations related to fair decisions. The principle of *ex aquo et bono* is often used in the subsidiary petitum of a lawsuit. According to Harifin A. Tumpa, the petitum in a lawsuit can take the form of a single petitum detailing all claims. It can also take the form of primary and subsidiary claims that are detailed one by one, or the primary is detailed one by one but the subsidiary is not detailed and is simply summarized in the general sentence *ex aquo et bono* (asking for fair justice).<sup>21</sup>

Based on these two legal principles that form written legal regulations, all relevant statutory provisions need to be tested whether they are in accordance with these underlying principles, so that the results can be taken into consideration by researchers in determining the criteria for a just decision based on Belief in the one and only God as the purpose of the executorial title and subsequently applied by judges in examining and adjudicating cases.

### **Criteria for Just Verdicts Based on Belief in the one and only God**

#### **1. Decisions Born from Judges' Independence and Judicial Independence**

A decision is qualified as a decision based on justice from God if the decision in the process is free from various interventions. According to Article 24B paragraph (1) of the 1945 Constitution, judicial power is a free power to administer justice to uphold law and justice. One of the fundamental principles of a fair and efficient judicial system according to Article 3 paragraph (1) of the Judicial Power Law is that judges must ensure judicial independence while carrying out their duties and functions. Based on constitutional principles, the principles of popular sovereignty, the rule of law, and the division of powers are the basis of independent judicial power.<sup>22</sup> The meaning of the phrase 'free' reflects the release of a bond and not being subject to any authority.<sup>23</sup>

According to Bagir Manan, the independence of the judiciary is a prerequisite for the establishment of a democratic state based on law.<sup>24</sup> Franz Magnis-Suseno strengthened

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<sup>20</sup>Ibid, 25–29.

<sup>21</sup>Harifin A. Tumpa, "Pengkajian Beberapa Topik Hukum Acara Perdata. Makalah disampaikan pada Pelatihan Teknis Fungsional Hakim Peradilan Umum tahun 2002," in *A Compendium of Civil Procedure Papers* (Jakarta: Mahkamah Agung RI, 2005), 70.

<sup>22</sup>Ni'matul Huda, *Politik ketatanegaraan Indonesia: kajian terhadap dinamika perubahan UUD 1945*, First Printing. (Yogyakarta: FH UII Press, 2004), 218.

<sup>23</sup>Sofyan Jailani, "Independensi Kekuasaan Kehakiman Berdasar Undang-Undang Dasar 1945," *Fiat Justisia: Jurnal Ilmu Hukum* 6, no. 3 (2012), <https://doi.org/10.25041/fiatjustisia.v6no3.360>.

<sup>24</sup>Bagir Manan, *Suatu Tinjauan terhadap Kekuasaan Kehakiman Indonesia dalam Undang-Undang Nomor 4 Tahun 2004* (Jakarta: Mahkamah Agung RI, 2005), 12.

this opinion by stating that a country is said to be a state of law if there is a division of powers, and each power must have independence, especially the independence of judicial power.<sup>25</sup>

According to the perspective of *maqashid al-syariah* theory, the main purpose of Islamic law is to achieve benefit (goodness) and avoid damage (*mafsadah*). Justice is part of the forms of benefit that can be realized through independence, so that judges can ensure that their decisions reflect the values of true justice. The independence of judges and judicial independence can be understood in this context as part of the effort to achieve the objectives of Islamic law.

## 2. Verdicts Born from Judges' Impartiality

Article 4 paragraph (1) of the Judicial Power Law emphasizes that the court in exercising its authority to hear cases is carried out fairly and equalizes the position of every person before the law. Based on this provision, a decision is said to be just based on God if the judge is impartial, that is, impartial in carrying out his duties. This aims to maintain the commitment of judges in realizing the vision of a just decision and maintaining the honor and authority of the court so that it remains trusted by the public as a place to resolve cases.

According to the Code of Ethics and Code of Conduct for Judges,<sup>26</sup> One of the key principles contained in the judges' code of ethics is the prohibition of giving the impression that any particular party to a case has a higher position than another or influence that could affect the judge's decision. Judges must ensure that all parties, both plaintiffs and defendants, are treated equally regardless of social standing, influence, status or personal affinity. This includes avoiding actions or words that may give the impression that the judge has a preference or bias towards one of the parties. They should avoid statements or behavior that may give the impression of prejudice and discredit the parties involved.<sup>27</sup>

Impartial attitude in Islam is a matter that is strongly ordered to the judge in adjudicating cases. In the *treatise al-qadla* Sayyidina Umar ibn al-Khattab sent to Abu Musa al-Ash'ari when he became governor and judge in *Basrah*, called for equalizing the parties in your court, the look on your face, and your decision. Avoid getting angry when deciding cases, muddling your mind, feeling unhappy, speaking harshly to litigants.<sup>28</sup>

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<sup>25</sup>Franz Magnis-Suseno, *Pijar-pijar filsafat: dari Gatholoco ke filsafat perempuan, dari Adam Müller ke Postmodernisme* (Yogyakarta: Penerbit Kanisius, 2005), 50.

<sup>26</sup>Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number 047/KMA/SKB/IV/2009-02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges

<sup>27</sup> Ibid.

<sup>28</sup>Mohammad Ismail al-Sin'ani, *Subul al-Salam*, Juz 4 (Kairo: Mohammad Ismail al-Sin'ani, Subul al-Salam, Juz 4 (Kairo: Mathba'at Mustafa Al-Halabi, 1930), 119.

3. Decisions are Born from a Professional Judicial Process

A verdict based on justice on the basis of the Belief in the one and only God is a verdict that is born through a professional work process. Some of the legal footing that is used as the basis for determining the criteria for fair decisions born from professional judicial work can be seen in several legal provisions.

- a. Article 6, paragraph (2) of the Judicial Power Act mandates the principle of a fair and legitimate trial. In criminal cases, the court must reach a clear and convincing conviction that the defendant is indeed guilty of the charged act. In civil cases, the principle of a fair and legitimate trial includes several key elements to ensure that the court process and the outcome of the decision meet standards of justice and law. These elements are the right to seek justice, the opportunity to present arguments and evidence, and decisions based on law and facts.
- b. Article 5 paragraph (1) of the Judicial Power Law mandates that judges have a great responsibility in studying, following, and understanding the principles of law and the sense of justice that exists in society. This means that judges should not be imprisoned by the rigidity of the law on paper, if in applying the law to a concrete case it turns out that the law is outdated and does not provide a sense of justice, then the judge must prioritize justice over legal certainty.

4. Decisions Made by Judges with Integrity

Decisions that are fair and based on the Belief in the one and only God are the work of individual judges who have high integrity. Judges must be done with themselves and adjudicate cases purely for the sake of assuming supreme responsibility in the field of law. Therefore, Article 5 paragraph (2) mandates that judges must possess a number of important qualities and characteristics to perform their duties properly. By possessing integrity, commendable personality, honesty, fairness, professionalism, and experience in the field of law, judges can perform their duties effectively and ensure that the judicial system functions properly to serve justice. Furthermore, paragraph (3) also mandates that judges must comply with, understand, and implement the principles of the code of ethics and code of conduct for judges.

5. Verdicts are Born from a Transparent Judicial Process

Courts used to be synonymous with secrecy. In fact, closedness makes judges judged by the public when they are judging. Therefore, to give birth to a just decision based on Belief in the one and only God, the administration of justice is carried out in an open and accountable manner. Article 52 paragraph (1) of the Judicial Power Law mandates courts to increase transparency, accountability and public trust in the judicial system by



opening access to the public to obtain comprehensive information relating to decisions and case fees. Then, paragraph (2) states that the court is responsible for ensuring that copies of decisions are delivered correctly and on time to the parties.

Judicial transparency ensures that the legal process is open and can be monitored by the public, which in turn strengthens public confidence in the legal system. It also helps prevent abuse of power and ensures that justice is administered in a fair and unbiased manner, which is linear with the vision of a just verdict based on the Belief in the one and only God.

### **Application of the Principle of Justice in Verdicts**

Justice based on the Belief in the one and only God in the executorial title of court decisions is justice with the highest caste (*ultimate justice*) which is the divine will, so it does not contain inequality in it. Justice in Islam is the highest virtue as the main objective of a law which is directly under the caste of *tawhid*.<sup>29</sup> Law in this context is the external manifestation of justice and justice is the authentic internal and spirit of the legal form. The supremacy of law is the supremacy of justice and vice versa as a commutative entity.<sup>30</sup>

Judges upholding law and justice on earth absolutely embody God's justice in every decision. According to Purwoto S. Gandasubrata, a judge's decision should ideally fulfill the theoretical aspects (in accordance with legal theories that have been tested for validity) and practical aspects, namely according to practical needs in the field and can be implemented.<sup>31</sup> Basuki Rekso Wibowo complemented the idea that judges in preparing legal considerations should not simply implement legal rules mechanically and interpret articles textually without considering the context and substance of the case in depth, thus causing the decision to be too rigid and insensitive to justice. But also conduct a thorough analysis of facts, evidence, and legal principles, accompanied by clear and logical legal reasoning arguments. The judge's decision as an intellectual product must be based on a thorough analysis, provide logical arguments, and use adequate legal reasoning to ensure a decision that is philosophically fair and reflects rigor and intellectuality.<sup>32</sup>

In realizing justice based on the Belief in the one and only God, the courts are responsible for receiving and registering every case filed. Based on the theory of justice in Islam, the

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<sup>29</sup> Suadi, *Filsafat Keadilan; Biological Justice dan Praktiknya dalam Putusan Hakim*, 126.

<sup>30</sup> Sukarno Aburaera, Muhadar, dan Maskun, *Filsafat Hukum Teori dan Praktik* (Jakarta: Kencana Prenada Media Grup, 2013), 179.

<sup>31</sup> Purwoto S. Gandasubrata, "Putusan Yang Berkeadilan," *Bina Yustitia, Mahkamah Agung RI*, 1994, 5 Delivered again by Supreme Court Justice Busra in a speech entitled *Legal Rules in Just Decisions* at the Technical Guidance for the Improvement of Technical Personnel in the Religious Courts, held online on October 27, 2023.

<sup>32</sup> Basuki Rekso Wibowo, "Pembaruan Hukum yang Berwajah Keadilan," *Majalah Hukum Varia Peradilan* XXXVII, no. 313 (2011): 19.

implementation of the judicial process from the beginning to the end must be guided by the provisions of the Qur'an and Hadith. Several texts that become references and ethics of judges in the administration of justice, both related to formal law enforcement and material law enforcement, can at least be seen in Surah An-Nisa verse 58, Surah An-Nisa verse 135, Surah Shad verse 26.

Implementation of the principles of justice contained in the executorial title starting from pre-trial, trial preparation, trial implementation, to the execution of decisions whose processes are carried out fairly, effectively, transparently based on the criteria for fair decisions mentioned above in the framework of realizing justice based on the Belief in the one and only God.

#### 1. Pre-trial

This study compares Indonesia's pre-trial system with countries with low levels of judicial corruption such as Japan, which generally reflects a transparent and accountable legal system. Historically, in Japan judges have been considered free from corruption. Trying to bribe a judge by offering money or something else is considered a futile endeavor. It is not only because of its strong integrity, but also because of its structured and efficient system.<sup>33</sup> According to the report of the Supreme Court's visit to Japan, it was found that in Japan there were no judges who violated the code of ethics, let alone corrupt practices. The position of judge is a very noble profession and judges in Japan can fortify themselves against the temptation of bribery. The esoteric values contained in the ethical principles are held firmly even though there are no written rules related to the code of ethics for judges in Japan.<sup>34</sup>

Dory Reiling said there are three main complaints from the public about the judiciary in Indonesia, namely convoluted, expensive, and inaccessible.<sup>35</sup> In Japan, when a plaintiff files a lawsuit by submitting the lawsuit documents to the court, the court first examines the basis of the lawsuit, the legal grounds, the facts supporting the claim, and the demand for compensation or other remedies. The court then determines whether the lawsuit meets the formal requirements for further proceedings. These stages help the parties to obtain justice without delay and avoid the decision not being accepted by the judge because it does not meet the formal requirements, such as *plurium litis consortium*, *nebis in idem*, *actor sequitur forum rei sitae*, *forum rei sitae*, *obscur libel*, and others. In Indonesia, the

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<sup>33</sup>zaenal, "Penegakan Hukum di Jepang Korupsi Hakim Minim, Peradilan Jauh dari Masyarakat," [hukumonline.com](https://www.hukumonline.com/berita/a/font-size1-colorff0000bpenegakan-hukum-di-jepangbfontbrkorupsi-hakim-minim-peradilan-jauh-dari-masyarakat-hol4620/), accessed August 18, 2024, <https://www.hukumonline.com/berita/a/font-size1-colorff0000bpenegakan-hukum-di-jepangbfontbrkorupsi-hakim-minim-peradilan-jauh-dari-masyarakat-hol4620/>.

<sup>34</sup> Dewi Bunga, *Strategi dan Inovasi Masyarakat Sipil dalam Pengawasan Hakim* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2023), 136.

<sup>35</sup>Dory Reiling, *Technology for Justice: How Information Technology Can Support Judicial Reform* (Belanda: Amsterdam University Press, 2009), 145.

judicial system at the pre-trial stage still has problems with many cases containing formal defects. This is evidenced by the data on case decisions that were declared inadmissible due to formal defects. Based on the 2023 Annual Report of the Supreme Court, out of 42,999 civil cases received in the General Courts, 22% were declared inadmissible. Whereas in Religious Courts out of 432,089 civil cases received as many as (1.46%) could not be accepted.

In Indonesia, there is no preliminary examination stage in civil cases, except in simple lawsuits. In Japan, at the pre-trial stage, the plaintiff and defendant are required to exchange important documents, such as evidence and witness statements. This ensures that both parties have equal access to information relevant to the case.

## 2. Trial Preparation

In Japan, judges are appointed randomly or through a transparent rotation system to avoid conflicts of interest and ensure the independence of judges. Whereas in Indonesia, the appointment of the panel of judges is fixed through a Decree of the President of the Court. Ideally, in realizing a just decision based on the Belief in the one and only God, the formulation of the appointment of the panel of judges is carried out with a diverse composition, allowing for various perspectives that can enrich the decision-making process. This is important to ensure that all aspects and viewpoints in the case are carefully considered.

In Indonesia, the chairman of the court in determining the composition of the panel of judges, in addition to being guided by the decree of the chairman of the court on the composition of the panel of judges, also needs to consider the specialization of judges according to the type of case handled and the relationship of judges with litigants. The selection of judges who have experience and expertise in a particular field also greatly determines the quality of the decisions produced.

Certified judges with a specialization in sharia economics are preferred to hear sharia economic disputes over uncertified judges. Certified judges with a specialization in children are preferred to handle cases relating to children in conflict with the law. This is closely related to their professionalism and expertise, so that justice is more easily realized. In addition, the head of the court is obliged to ensure that the parties do not have any relationship with the trial judge as this will affect his or her independence. In cases where there is a potential conflict of interest, such as when a family member of the judge acts as a representative of one of the litigants or has a direct interest in the case, the judge is prohibited from hearing the case. The principle of a randomized or rotational system using *artificial intelligence* tools applied in Japan is a formula to be applied in the judicial system

in Indonesia in order to maintain the independence, objectivity and integrity of judges in carrying out their duties in order to avoid judicial corruption.<sup>36</sup>

### 3. Trial Implementation

Before reviewing the trial process, which is an important stage of the legal ideal of realizing a just decision based on Belief in the one and only God, it is necessary to first re-read and deeply understand the discourse on the principles of passive judges and active judges in the context of civil trials. A proper understanding of these two principles will assist judges in carrying out their duties properly and ensure that the resulting decisions reflect true justice. Sunarto in his inauguration of an honorary professor at Airlangga University Surabaya stated that the disagreement between the principles of passive or active judges in the settlement of civil disputes affects legal certainty and the authority of judges to act.<sup>37</sup>

The principle of passive judges in civil cases should be placed in the right position so that in practice it is not biased so as to interfere with the *due process of law*. The provisions regarding passive judges are actually only limited to matters that have been regulated in Article 178 (2) (3), Article 133, and Article 227 Herziene Indonesisch Reglement (HIR). The article regulates the basic principles regarding the limitation of the judge's authority in adjudicating civil cases on all parts of the lawsuit and is not allowed to impose a decision other than what has been claimed in the petitum, or give more than what is claimed. The provisions on passive judges can also be seen in Article 189 paragraphs (2) and (3) of the *Rechtreglement voor de Buitengewesten* (R.Bg). These provisions provide limitations for judges not to decide more than what is demanded, while the extent or narrowness of the object of dispute is determined by the parties. Article 206 of the *Reglement op de Rechtsvordering* (R.v) states that if the opposing party considers it necessary to add to its evidence, then the judge gives an additional period of time for proof. The judge's passivity is also related to the initiative to file a civil case. When the parties to a civil case reach an agreement on certain matters, and one party recognizes the truth of the matters raised by the other party, the judge no longer needs to investigate the truth of those matters. This relates to the principle of *judicial economy* or judicial efficiency, whereby the

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<sup>36</sup>The application of the code of ethics of Arif and Wise judges in ... Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number 047/KMA/SKB/IV/2009- 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges.

<sup>37</sup>Sunarto, "Makna Penegakan Hukum dan kedailan dalam Perkara Perdata" (Papers, Pengukuhan Jabatan Guru Besar Kehormatan dalam Bidang Ilmu Hukum, Fakultas Hukum Universitas Airlangga Surabaya, 10 Jun 2024), 3–4.

judicial process seeks to avoid wasting time and resources by not examining facts already agreed by the parties.<sup>38</sup>

The application of the principle of passive judges relates to the limitation of the authority of judges in adjudicating cases in accordance with the scope or subject matter of the dispute determined by the parties and not by the judge.<sup>39</sup> In civil cases, the passive judge principle refers to the principle that the judge may not determine or expand the scope of the dispute beyond what has been determined by the parties. the parties have the freedom to end their dispute at any time during the trial process, provided that all parties agree to do so and the judge only seeks the formal truth.<sup>40</sup>

In the trial of civil cases in court, the parties have fully submitted the disputed case to the judge in the hope of handing down the fairest possible decision. This is the reason why judges must be active.<sup>41</sup> The position of judges is not just a chimney of laws that only apply legal regulations textually, but state officials who are high in knowledge, dignity, and authority and become a place of complaint for justice seekers (*justitiabellen*).<sup>42</sup>

In the formulation of the stages of fairness proof, the al-maqashid theorization introduced by Imam Ash Syatibi is very relevant to be applied in Indonesia. Ash Syatibi introduced the inductive method of proof (*minhaj al-istiqr'o'i*) in the book *Al-Muwafaqat*. Inductive proof as a rational argument that produces definite conclusions. The certainty of the induction method because it is formed by a collection of specific principles (*juz'iyat*) which is a proposition that is *zanni* (uncertain). However, if the accumulation of arguments is analyzed it will give birth to a definite general statement (*al-kulli al-qath'i*). As-Syatibi put forward the argument that doctrinal evidence (*al-adillah al-sam'iah*) individually only gives birth to uncertain conclusions. However, all of these arguments collectively when processed through the inductive method will produce certain knowledge. The arguments that are recognized as true are the results of inductive proof of a number of *zanni* arguments that collectively contain the same meaning so as to produce definite conclusions.<sup>43</sup>

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<sup>38</sup>Syahrani, *Buku Materi Dasar Hukum Acara Perdata*, 18.

<sup>39</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, First Edision (Yogyakarta: Liberty Yogyakarta, 2006), 12–13.

<sup>40</sup>Sunarto, *Makna Penegakan Hukum dan kedailan dalam Perkara Perdata*, 13.

<sup>41</sup>Wijayanta dkk., “Penerapan Prinsip Hakim Pasif Dan Aktif Serta Relevansinya Terhadap Konsep Kebenaran Formal” As quoted in... ; Sunarto, “Makna Penegakan Hukum dan kedailan dalam Perkara Perdata.”

<sup>42</sup>Wijayanta dkk., “Penerapan Prinsip Hakim Pasif Dan Aktif Serta Relevansinya Terhadap Konsep Kebenaran Formal,” 583.

<sup>43</sup>Asmuni, “Perangkat Teoritik dan Metode Permusan Maqashid Al-Syariah Al-Syatibi,” dalam *Pribumisasi Hukum Islam; Pembacaan Kontemporer Hukum Islam di Indonesia* (Yogyakarta: PPs. FIAI UII bekerjasama dengan Penerbit Kaukaba, 2012), 51–52.

Evidence at trial has two purposes. First, as a forum for litigants' efforts to convince judges through evidence of the truth of the arguments put forward in a case that is being disputed before the court. Apart from being a forum for parties to corroborate arguments with evidence, evidence is also a forum for the panel of judges to explore facts. In accordance with the provisions of Article 164 HIR / Article 284 R.Bg. in civil cases there are 5 types of evidence, namely: letter evidence, witnesses, testimony, confessions, oaths. Evidence helps judges to assess the truth of events, so that judges have strong confidence in making decisions.

According to the Islamic theory of justice regarding the burden of proof, the rule *al-bayyinah 'ala al-mudda'i wa al-yaminu 'ala man ankara* applies.<sup>44</sup> This means that the *burden of proof* is the responsibility of the party making the claim (the plaintiff) to submit sufficient evidence to support their claim. If the defendant (the party accused or denied the claim) disputes the allegations made by the plaintiff, they are required to swear that the claim is not true.

The task of judges in adjudicating civil cases goes through several stages, namely the *constatir*, *qualifier*, and *constituir* stages.<sup>45</sup> *Constatir* means testing the truth of events through evidence. *Qualifying* means assessing events that have been deemed to have actually occurred and looking for legal relationships. And in the *constituent* stage the judge judges the case that is tried.<sup>46</sup> In the *constatir* stage, the judge's activities are logical. Mastery of evidentiary law is necessary for judges because it helps to find facts and becomes the basis for finding legal relationships and sentencing.

#### 4. Formulation of Just Legal Considerations

In the context of preparing legal considerations, judges have three functions in applying the law.<sup>47</sup> First, judges function to apply the law as it is written (*rechtstoepassing*). This kind of judicial work tends to be mechanical and judges are not like the mouthpiece of the law. The judge merely determines the legal event, then looks for the rules of the article. This practice is heavily influenced by legism. Montesque revealed that the judicial power is only authorized to apply all legal products made by the legislature.<sup>48</sup>

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<sup>44</sup>Labib Najid, *Al-Jawahir Al'Adniyyah Syarah Al-Durroh Al-Qudaimiyah* (Kairo: Dar Al-Sholih, 2019), 75.

<sup>45</sup>Ali, *Menguak Tabir Hukum*, 120.

<sup>46</sup>Mertokusumo, *Hukum Acara Perdata Indonesia*, 92.

<sup>47</sup>Wiarda Koopmans, "Hakim Sebagai Pembaharu Hukum," dalam *Himpunan makalah, artikel dan rubrik yang berhubungan dengan masalah hukum dan keadilan dalam Varia Peradilan, IKAHI Mahkamah Agung Republik Indonesia* (Jakarta: Mahkamah Agung RI, 2011), 309.

<sup>48</sup>E. Fernando M. Manullang, *Legisme, Legalitas, dan Kepastian Hukum*, Edisi Kedua, cetakan ke-3 (Rawamangun, Jakarta, Indonesia: Kencana, 2019), 132.

*Second*, judges function as actors who make legal discoveries. Judges always define and provide a broad perception so that a rule of law is more actual and able to answer the needs of the times. Legal discovery is carried out using methods of interpretation, analogy, legal refinement (*rechtsverfijning*), legal construction, and *argumentum a contrario*.

According to Imam Ash Syatibi, in interpreting the judge is bound by legal rules that use the general principle, namely paying attention to the area of circulation or alternation. This principle is divided into several rules: 1). Pay attention to the situation of the interpreter and the situation of the target being interpreted, 2). Interpretation in accordance with the demands of conditions and customs, 3). Consistency of the text with what it means by rejecting contradictions between texts and considering their dependence. Related to the first rule, As-Syatibi concluded four types, namely: texts that do not have to be interpreted are mutawatir texts but their textual meaning must be taken; texts that must be interpreted are texts whose textual meaning cannot be accepted such as forms of tasybih, isti'arah, and kinayah; texts that do not have to be interpreted are related to mutasyabih texts relatively; and texts that require interpretation because they are related to muhkam texts relatively.<sup>49</sup>

*Third*, the function of judges is to create law or form law. The task of creating law is carried out by judges when there is *alegal vacuum*. The three functions of the judge above have been outlined by scholars through three frameworks of reasoning, namely bayani reasoning, burhani reasoning, and irfani reasoning. The word bayan linguistically contains five meanings; 1). *al-washl*, 2). *al-fashl*, *al-bu'du* and *al-firaq*, 3). *al-zuhur* and *al-wuduh*, 4). *al-fashahah* and *al-qudrah* in conveying messages or intentions, 5). humans who have the ability to speak eloquently and impressively.<sup>50</sup> Bayânî in Arabic mean *explanation*, revealing, and explaining something, namely explaining the meaning of a conversation using the best *lafaz* (communicative).<sup>51</sup> Bayan is general (universal) which is then derivative in the form of oral or certain languages, and oral is used as a container by someone with his interlocutors in conversation.<sup>52</sup>

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<sup>49</sup>Asmuni, "Perangkat Teoritik dan Metode Permusan Maqashid Al-Syariah Al-Syatibi," 60.

<sup>50</sup>Muhammad Abid al-Jabiri, *Bunyah al-Aql al-Arabi: Dirasah Tahliliyah Naqdiyyah liNudhumi al-Ma'rifah fi al-Tsaqafah al-Arabiyyah* (Beirut: Markaz Dirasat al-Wihdah al-Arabiyyah, 1990), 16–19.

<sup>51</sup> Afifi Fauzi Abbas, "Integrasi Pendekatan Bayâni, Burhâni, Dan 'Irfâni Dalam Ijtihad Muhammadiyah," *AHKAM: Jurnal Ilmu Syariah* 12, no. 1 (February 7, 2012), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/979>.

<sup>52</sup>Syed Muhammad Dawilah al-Edrus, *Islamic Epistemology: An Introduction to the Theory of Knowledge in al-Qur'an* (Pulau Pinang: Universiti Sains Malaysia, 1992), 3–104.

Imam al-Shafi'i categorized Bayan in the Qur'an into five stratifications. 1). Bayan which is clear by itself so it does not require Bayan. 2). Bayan which is still vague in part so that it needs to be explained by the sunnah. 3). Bayan which is entirely ambiguous and is sometimes elucidated by the Sunnah. 4). Bayan sunnah as an obligation to follow it because Allah ordered to obey the Messenger of Allah. 5). Bayan which requires a process of ijtihad through qiyas against the provisions that already exist in the Qur'an and sunnah.<sup>53</sup>

Burhani reasoning in Islamic legal epistemology is a method that uses pure logic of reason to gain knowledge. Thus, the methodological model of the burhani method is not based on text or experience, but rather logical sequence, based on reason and empiricism.<sup>54</sup> The burhani method first entered the Arab-Islamic civilization brought by Al-Kindi through a writing, namely *al-Falsafah al-Ula* which contains his affirmation that philosophy is the highest position of human knowledge, because essentially everything can be known. Through this writing, Al-Kindi was able to dismiss the doubts of people who had rejected the existence of philosophy.<sup>55</sup>

'Irfani reasoning is the reasoning that occupies the highest degree because it delivers the truth to the Sufi perspective. Al-'Irfan in Arabic comes from the words *'arafa* and *ma'rifah*, one meaning with 'Irfan. The word 'Irfan emerged from Muslim Sufis who pointed to a high form of knowledge, embedded in the heart in the form of *kashf* or inspiration.<sup>56</sup> In language *al-irfan* means understanding something by thinking and studying deeply. While in terms, *irfani* unveils the veil of knowledge through the illumination of the essence of God to His servants after going through *riyadah*.<sup>57</sup> Irfani reasoning is needed for a judge in carrying out his judicial activities because the judge's work is not only intellectual work but also gnostic work. So, one method of extracting the essence of justice from legal prescriptions is by conducting legal discovery and law formation through hermeneutics. Through these tools, judges can interpret, adapt and apply the law effectively to reflect the principles of justice and propriety.<sup>58</sup>

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<sup>53</sup> al-Jabiri, *Bunyah al-Aql al-Arabi: Dirasah Tahliliyah Naqdiyyah liNudhumi al-Ma'rifah fi al-Tsaqafah al-Arabiyyah*.

<sup>54</sup> Mohammad Subhan Zamzami, "Pendekatan Burhani dalam Studi Al-Qur'an," *El-Furqania : Jurnal Ushuluddin Dan Ilmu-Ilmu Keislaman* 2, no. 01 (February 25, 2016): 1–16, <https://doi.org/10.54625/elfurqania.v2i01.1417>.

<sup>55</sup> Salim Rosyadi, "Model Nalar Burhânî dalam Madzhab Tafsir Teologi Mu'tazilah," *Al-Fath* 13, no. 1 (June 24, 2019): 22, <https://doi.org/10.32678/alfath.v13i1.2891>.

<sup>56</sup> Abd Aziz Saihu, "DESIGN OF ISLAMIC EDUCATION BASED ON LOCAL WISDOM:," *International Journal of Advanced Science and Technology* 29, no. 06 (April 26, 2020): 1278–93.

<sup>57</sup> Ahmad Idrus, "Epistimologi Bayani, Irfani Dan Burhani," *An-Nidhom : Jurnal Manajemen Pendidikan Islam* 4, no. 1 (June 30, 2019): 30–44, <https://doi.org/10.32678/annidhom.v4i1.4421>.

<sup>58</sup> Asmuni, "Perangkat Teoritik dan Metode Permusan Maqashid Al-Syariah Al-Syatibi," 128–29.



Legal considerations must analyze all evidence from each party in terms of formal and material requirements and sort out which evidence deserves further consideration and which evidence deserves to be ruled out. After the comparison of evidence is completed, the judge then formulates the facts of the trial. This process is called *constatir*.

The next stage is for the judge to qualify. The events that have been proven, the judge looks for legal relationships and precisely determines which laws are relevant to apply in the case. To borrow Kenneth J.'s opinion, at this stage the judge needs to introduce all relevant legal rules, including legislation, jurisprudence and legal doctrine. Ensure that the rules collected cover all relevant aspects of the legal issue under scrutiny. Ensure that the legal rules do not contradict each other and together create a coherent legal system, examine the facts, and apply the rule structure to the facts to ascertain the rights and obligations arising from the facts.<sup>59</sup> Through the process of *judicial activism*, the constituent stage of the judge in making a legal decision is truly based on justice based on Belief in the one and only God.

Judicial work of judges at the qualifying stage has been introduced a method by Imam Ash-Syatibi in his book *Al-Muwafaqat* as a way of determining the law. Ash-Syatibi introduced two approaches, namely *Istiqra' Ma'nawi* (thematic induction) and *mabda' tadofur adillah* (principle of synergy of evidence). Both methods are used in the qualification process of a judge will produce an objective and fair status in justifying the subject matter because it does not only rely on one evidence, but must be a lot of evidence (accumulation of partial evidence / *juz'iat*) so that the judge's belief reaches the degree of universal truth (*al-haqqu al-yaqin*).<sup>60</sup> Thematic induction is an effort to utilize legal texts integrally, both particular and universal, in order to maintain the unification of the basics of shari'ah.

*Mabda' tadofur al-adillah* is a method used in the process of determining the law by using the principle of synergy of evidence. In determining the purpose of the shari'i should seek and collect related arguments, whether they are *zhahir*, *mutlaq*, *muqayyad*, *kulliyah*, or *juz* "iyah in each chapter of fiqh law. Consideration of significant indications (*qara'in ahwal*) must be prioritized both those that are stated (*manquullah*) and those that are not stated (*ghairu manquulah*). Thus, through the synergy of evidence method, the legal conclusions obtained are certain.<sup>61</sup> The method of *istiqra' ma'nawi* (thematic induction) and

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<sup>59</sup>Kenneth J. Vandeveld, *Thinking Like a Lawyer: An Introduction to Legal Reasoning* (Colorado: Westview Press, 1996), 2.

<sup>60</sup>Asmuni, *Diktat Mata Kuliah Al-Maqasid* (Yogyakarta: Hukum Islam Program Doktor Fakultas Ilmu Agama Islam Universitas Islam Indonesia, 2024), 4.

<sup>61</sup>*Ibid.*

*mabda' tadofur al-adillah* (principle of synergy of evidence) as legal methods and objectives are methodological instruments to reveal justice from legal prescriptions.

Islamic law as a whole contains *maslahah* whose manifestation can take the form of the elimination of damage (*al-mafsadah*) and the realization of benefits. In short, there is no law that contains harm but is commanded to avoid it and there is no *maslahah* but is commanded to realize it.<sup>62</sup> The legal norms contained in the sharia texts must be able to realize *maslahah*, so there is no *maslahah* outside the guidance of the sharia texts. Therefore, the idea that *maslahah* must be prioritized if it contradicts the sacred texts of sharia is basically not true.<sup>63</sup>

According to Imam Syatibi's *maqashid al-syariah* theory regarding the stratification of the purpose of establishing a law, if it is relevant to the judge's decision, then the formulation of a just decision based on Belief in the one and only God must contain five elements of legal protection that are related to one another. *First*, the decision must be born from a correct and fair judicial process so that it has relevance to the main objectives of Islamic law, namely achieving benefit and avoiding damage in society. A judge who is professional and fair in carrying out his duties will ensure that his rulings do not contradict religious principles.

*Second*, decisions should contribute to the protection of life. Justice in law prevents individuals from being subjected to arbitrary actions that could jeopardize their lives or physical and mental well-being. *Third*, decisions that are based on careful and rational analysis show respect for reason and intellect. Professional judicial processes respect the principles of logic and sound reasoning, so preserving reason means promoting education and critical thinking in favor of justice and truth.

*Fourthly*, the decision ensures that the rights of family and descendants are protected. This includes protection of children's rights, inheritance, and other family rights. A judge who acts professionally will be mindful of the long-term implications of his or her ruling on the stability and well-being of the family.

*Fifth*, the judgment must ensure that the property rights of individuals and communities are fairly protected. This includes the resolution of property disputes and protection against fraud and corruption. According to *maqashid al-syariah* safeguarding property means protecting private and public property from unfair harm.

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<sup>62</sup> Izz al-Din bin 'Abd al-Salam, *Qawaid al-Ahkam fi Mashalih al-Anam* (Kairo: Maktabat al-Kulliyat al-Azhariyyah, 1994), 11.

<sup>63</sup> Husain Hamid Hisan, *Nazhariyyat al-Maslahah fi al-Fiqh al-Islami* (Beirut: Dar al-Nahdah al-'Arabiyyah, 1971), 607.

## 5. Implementation of Judgment/Execution

Shihabuddin Al-Qarafi emphasized that there are three stages carried out by the court in enforcing the law, namely 1) *al-tsubut* or the stage of the judge providing legal conclusions after going through the case examination process; 2). *al-hukm* or the stage of the judge handing down a verdict; 3) *al-tanfīdz* or the stage of the judge or court executing the decision that has been handed down.<sup>64</sup> Thus, the role of the court in realizing divine justice does not stop at the stage of issuing a decision, but up to the stage of execution. If the function of executing the decision is ignored, the court is considered to be delaying justice and contradicting *maqashid* (the purpose of establishing the law). The legal maxim states that *justice delay is justice denied*, which means that delaying *justice* is a form of injustice. This is in line with a passage sent by Sayyidina Umar bin al-Khattab to his judge, Abu Musa Al-Ash'ari. Umar mandated to hasten the implementation of the law (execution) when it is clear. Because there is no point in talking about the truth (handing down the correct verdict) but not (being able to) implement it.<sup>65</sup>

## Ethical Principles on Executorial Titles of Court Decisions

The ethics of the judge's profession (*adab al-qadhi*) is a noble and honorable behavior that must be practiced by judges in carrying out official duties and interacting with others.<sup>66</sup> The professional ethics of judges are then formulated in a code of ethics as noble values contained in the executorial title of the judge's decision.

The word “Demi” in the phrase *Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa* is actually an oath and determination of judges in realizing justice based on Belief in the one and only God, so that justice seekers succeed in achieving justice.<sup>67</sup> The judge's oath carries three major mandates in the administration of justice, namely that judges have an obligation to carry out their duties properly and fairly based on the principles of justice, integrity, and professionalism; to implement all applicable laws and regulations consistently in accordance with the provisions of the constitution; and to dedicate themselves to the country and nation.<sup>68</sup> The phrase *For the Sake of Justice Based on Belief in the one and only God* means that decisions must consider the principle

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<sup>64</sup> Syihabuddin Ahmad bin Idris al-Qarafi, *al-Ihkam fi Tamyiz al-Fatawa al-Ahkam wa Tasharrufat al-Qadhi wa al-Imam* (Beirut: Dar al-Basya'ir al-Islamiyah, 1995), 145.

<sup>65</sup> Ibn Syubbah, *Tarikh al-Madinah*, Jilid II (Beirut: Dar al-Kutub al-'Ilmiyyah, t.t.), 775.

<sup>66</sup> Amran Suadi, dkk., *Abdul Manan : Ilmuwan Dan Praktis Hukum Kenangan Sebuah Perjuangan* (Jakarta: Kencana, 2016), 123.

<sup>67</sup> Arto, *Penemuan Hukum Islam Demi Mewujudkan Keadilan; Membangun Sistem Peradilan Berbasis Perlindungan Hukum dan Keadilan*, 16.

<sup>68</sup> *Ibid.*, 50.

of justice based on the values of Belief in the one and only God, in accordance with the first principle of Pancasila.

Based on the Joint Decree of the Chairman of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia No.047/KMA/SKB/IV/2009 and 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges, judges are required to behave fairly, honestly, behave wisely and wisely, be independent, have high integrity, be responsible, uphold self-respect, have high discipline, behave humbly, be professional, and have a good reputation.

The ten ethical principles mentioned above need to be reconstructed by including a new element as the second novelty of this research, namely the principle of divinity into the regulatory points of the code of ethics and code of conduct for judges. The principle of divinity needs to be included in the judge's code of ethics because of several arguments:

1. Philosophical Aspects

From a philosophical aspect, judges are considered as “representatives of God” because judges have the highest power at the judicial table which is free from intervention from any party. Judges have a huge responsibility, both in terms of law and morals and ethics. These philosophical considerations are then crystallized in an irah-irah that reads For the Sake of Justice Based on Belief in the one and only God. Specifically regarding the principle of Belief in One God, Jimly Asshiddiqie argues that the Indonesian state has a state foundation and philosophy of Pancasila. The legal consequence is that all legal products are made based on the values of Pancasila and the principle of Belief in Belief in the one and only God becomes an integral part of the law.<sup>69</sup>

2. Ideological Aspects

Pancasila as the state ideology must be coherent with the legal system adopted because ideology is the beginning and end that must be achieved in the state. From an ideological aspect, the code of ethics and code of conduct for judges should include the point of divinity because Pancasila itself has affirmed itself in its first precept, which reads Belief in the one and only God. Although the following precepts are part of the values of divinity, the principle of divinity in Pancasila is still placed as the first precept.

3. Juridical Aspects

From the juridical aspect, according to Article 29 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Republic of Indonesia is based on the Belief in the one and only God. The principle of state religiosity in the constitution is then derived

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<sup>69</sup> Jimly Asshiddiqie, “Prinsip Negara Hukum,” Jimly Asshiddiqie, accessed August 1, 2024, [www.jimly.com/pemikiran/view/11](http://www.jimly.com/pemikiran/view/11).

in legislation, namely Article 2 paragraph (2) of the Power Act which basically states that the rule of law by the courts is carried out based on Pancasila. In fact, the principle of state religiosity that is derivative into the judicial system also colors the characteristics of the decisions of Religious Courts judges. The decision of the Religious Courts judge has a strong inner bond with the concept of divinity and ordains the concept of tawhid through the obligation to include the phrase “Bismillahirrahmanirrahim” (In the name of Allah, the Most Compassionate, the Most Merciful) at the head of the decision. The position of the basmalah sentence is above the irah-irah For the Sake of Justice Based on the One True God.<sup>70</sup> Lafadz basmalah is the substance of the Quran. If the Quran consists of 6666 verses, 114 letters, and 30 juz, then compacted, then the compacting is basmalah.<sup>71</sup> Therefore, it is appropriate that in the name of law, the principle of divinity becomes one of the points of the code of ethics and code of conduct for judges. Thus, when systematically ordered, the points of the code of ethics and code of conduct for judges are divinity, fair behavior, honesty, wise and prudent behavior, independence, high integrity, responsibility, upholding self-respect, high discipline, humble behavior, and professionalism.

### **The Relevance of Ethical Principles to Strengthening the Integrity of Judges**

The ethical principles contained in the executorial title of court decisions have a close relevance to systemic efforts to eradicate judicial corruption. The ethical principles contained in the irah-irah Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa are not only limited to standards in realizing the value of justice through decisions, but also as ethical principles that build strong character for judges so that in carrying out their duties and authorities they have attitudes and behaviors with superior integrity and are free from corrupt practices. Therefore, the ethical principles in the executorial title have a very strong relevance for the eradication of judicial corruption in the courts.

The code of ethics and judges' code of conduct function as a moral and professional guide for judges to carry out their professional duties with professionalism and integrity, so that judicial institutions gain public trust. The code of ethics aims to realize justice and truth not only in the context of law enforcement, but also in terms of social attitudes and behavior. Spiritual and ethical principles bind the judge's mind to always get closer to God while asking Him for guidance in carrying out his duties as a judge on earth.

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<sup>70</sup>Article 57, paragraph (2) of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts.

<sup>71</sup>Nasaruddin Umar, *Tasawuf Modern: Jalan Mengenal Dan Mendekatkan Diri Kepada Allah Swt.* (Jakarta: Republika, 2014), 161.

All of the ethical principles contained in the executorial title of court decisions are complementary to create a fair, transparent and corruption-free judicial environment. By consistently applying ethical principles, the judicial system ensures that legal processes and decisions contain high integrity and fairness, thus minimizing the risk of corrupt practices that can degrade public trust in the judicial institution.

## CONCLUSION

The principle of justice contained in the executorial title of court decisions is born from correct and fair formal procedures from the pre-trial stage, trial preparation, trial implementation, to the execution of decisions that better guarantee the implementation of the contents of the decision. Materially, the judicial process goes through the stages of *constatir*, *qualifier*, and *constituir* with the thematic induction method (*istiqra' ma'nawî*) and the principle of synergy of evidence (*mabda' tadofur adillah*), so that the process of drawing conclusions about *maqashid* (sharia objectives) based on evidence (*dalail*) which is conjectural (*zanni*) but interconnected will form a definite conclusion (*qath'i*). The ethical principles contained in the executorial title of the judge's decision have a very close relevance to efforts to strengthen the integrity of judges because they are not only limited to standards in realizing the value of justice through decisions, but also as ethical values that build strong character for judges so that in carrying out their duties and authorities they have attitudes and behaviors with superior integrity and are free from corrupt practices.

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