

THE INDEPENDENCE OF JUDGES AS THE ORGANIZER OF JUSTICE REVIEWED FROM THE PROFESSION ETHICS AND ISLAMIC LAW

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ABSTRACT

A judge has duty to uphold the law and justice impartially. When giving a justice, he must first examine on the truth of the case given then give appraisal and relate to the applicable law. Then, the judge may give decision on the case. A judge will be able to uphold the justice needed if he has absolute autonomy to decide based on his own thought and understanding. There should be any intervention from anyone in work or any influence in making decision in line with profession ethics, religion rule, and legislation.

Keywords: the independence of judges, profession ethics, and Islamic law.

INTRODUCTION

A judge is state justice official given authority by the law to adjudicate (Act 1 of item 8 KUHAP). The term of judge means someone who adjudicates a case in the court or supreme court; Judge also means court, when someone says, "the case has been given to the judge". The justice authority refers to independent state authority to conduct justice in order to uphold the law and justice based on Pancasila, for performing the legal state of Indonesian republic (Act 24 UUD 1945 and act 1 of the Law No.48 of 2009)

A judge is supposed to uphold the law and justice impartially. He, in giving a justice, must first examine the truth of the case being offered then give appraisal on it and relate the case to the applicable law. Then, the judge gives judgment to the case.

The followers of positivism law worry of the great role of the judges. The judge function only carries on the judicative authority. His working principle is to conduct what stated by judicative. The judge conducts use syllogism method. When he faces concrete case applied to the court, he must be able to contrastive the case firstly meaning that he must consider the core of the case from all points of views, mainly from the parties being involved in the case.

The judge must be able to confront the opinions of the parties, and able to decide the truth of concrete case. Therefore, the judge duty refers to eliminate irrelevant atmosphere in the case and keep the relevant once. Next, the judge continues to do law finding (rechtsvinding) that is correlate concrete events to its legal regulation. If the regulation available, the judge just apply the rule to the concrete events in making the decision. The judge is merely as funnel law.

The problem would be whether the judge profession is that mechanical. Has the judge freedom, responsibility and conscience showing his dignity and prestige humanity? Does that becoming a judge as the funnel law mean place the judge in the position against the humanity principle? Truly, the judge is humanity profession, it cannot fall to the dehumanizing process. The judge must continue sharpening his conscience.

A judge will be able to uphold justice if he has absolute autonomy to decide based on his own thought and understanding. There should be no intervene from anyone, whether in the work or in making the decision. When the judge in a society places under the authority or government, it would be difficult for him to uphold the justice in that society. As result, the result depends on the authority aspiration that often far from the reality than the legal rule applied.

RESEARCH METHOD

The research focuses or gives more concentration to normative legal study, that analyzing legal substance that firmly related to analysis normative method, stated from relevant regulation to the problem being discussed. The research materials use primary and secondary legal once. The study use statute approach. The primary materials refer to authoritative legal material, meaning that they have authority. These materials cover:

1. Al- Qur'an
2. Al- Hadits
3. The legal regulation

The analysis sampling of the research materials is conducted in the following steps: The first step, collecting the primary and secondary legal materials as long as the content relevant to the research main problem (topic). The second step, conduct systematizes and interprets on the primary legal materials and continues to analyze qualitative judicially, or legal analysis based on legal reasoning and legal argumentation systematically. The third step, make conclusion in form of argumentation to answer the Legal problems. The fourth step, give prescription (recipe / formula) based on the argumentation constructed in the conclusion.

RESULTS AND DISCUSSION

The profession ethic is part of social ethic that is rational critical philosophy or thought on human duty and responsibility as member of mankind.²³ The material objects of profession ethic refer to morality tied on a profession. The profession is a more specific concept than job, in other words, job has wider connotation than profession.

A profession is a job, however, not all job refer to profession. The definition of working must be interpreted widely, not only in the physical meaning but also psychic ones (thought). According to Thomas Aquinas, every work form has four goals:²⁴

- 1) By working, people can fulfill what become their daily needs.
- 2) With availability of working field, the unemployment can be eliminated /prevented. It means the absent of unemployment result in the appearance of criminal can be avoided.
- 3) With surplus of working result, people can do good thing for others.
- 4) By working, people may control or rule their lifestyle.

According to Al-Qur'an and As-Sunnah :

The legal fundamental to build *al-qadhi* as stated in the Al-Qur'an and Hadits are as follows :

- a. Al-Qur'an in Surah an-Nisa verse 58 :
"Allah doth command you to render back your Trusts to those to whom they are due; And when ye judge between people, that ye judge with justice: Verily how

²³ Franz Magnes Suseno, *Et.Al. Etika Dasar : Masalah-masalah Pokok Filsafat Moral*, Cet.ke-3 (Yogyakarta : Kanisius), hlm. 9

²⁴ E. Sumaryono, *Etika rofesi Hukum : Norma-norma bagi Penegak Hukum* (Yogyakarta :Kanisius, 1995), p. 25.

excellent is the teaching which He giveth you! For Allah is He Who heareth and seeth all things.”

b. Al-Qur’an in Surat an-Nisa verse 135 :

“O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it is (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well acquainted with all that ye do.”

According to legislation:

The strict guaranty in the constitution namely the Fundamental Constitution of 1945 post amendment in the Act 24 verse (1) of the Fundamental Constitution of 1945 stated:

“The judge authority refers to independent authority to conduct justice in order to uphold the law and justice.”

Moreover, Act 24 verses (2) of the Fundamental Constitution of 1945 order that:

The judge authority is not only conducted by Supreme Court, but also conducted by Constitution Court.

Even more a judge, Act 24 a verse (2) of the Fundamental Constitution of 1945 explicitly stated:

Supreme judge must have integrity and good personality, justice, professional, and experience in the law field.

Act 27 of the Law number 14 of 1970 on the Main Regulation of Judge Authority:

“The judge must search legal values living in the society.”

The legal values, such as society perception on the justice, legal certainty, and expediency, always develop from time to time. These values keep tugging that their pendulum may close to justice sometime, but in other time they may close to legal certainty or expediency.

In line with ethic of judge profession, there are some values that must be followed and respected by those who have judge profession in doing their job. Value defines as characteristic or beneficial quality for human life; it becomes fundamental, reason or motivation in behaving and conduct, whether realize or not.

Based on the Law number 14 of 1970 on the Principle of Justice Authority, the values cover:

a. Independent Values

The profession of judge refers to independent profession to uphold law and justice based on Pancasila for performing the legal country of Indonesian Republic (Act 1). They involve justice values.

The profession of judge means independent profession, that in conducting his job no one can influence. The judge makes decision based on his belief in line with honesty and equality, taken after hearing and examining information from all the parties.

b. Justice Values

The duty to uphold justice should be responsible not only horizontally to the people, but also to the Only Almighty God vertically. The justice values may be wider to the judge duty to respect someone right (although the person is a suspect) to get legal assistance, apply for

legal effort to the higher level of court, to get compensation and rehabilitation , because of mistake on someone or legal being decided.

c. Transparency Values

The judge cannot refuse to examine and adjudicate a case applied with reason that there is not related law yet or unclear law. The value of transparency cannot be argued, for example by decision “cannot be accepted” (*niet ontvankelijk verklaring*) that often used by the judge on a civic lawsuit, for the decision can be applied after the judge accept and examine the related case.

d. Cooperative Values

The judge must respect cooperation and dignity of corps. These cooperative values appear in assembly form, with at least three judges. The judges make decision by discussing secretly. Moreover, for the court interest, the court must give assistant being applied. Also, this cooperation is widen that covering cooperation with other state institutions asking for information, consideration or advise related to legal affairs.

e. Responsibility Values

The judge always responsible on all his behavior and action. This responsibility has vertical and horizontal dimension. Vertically, he has responsibility to the Only Almighty God. Horizontally, he has responsibility to mankind, whether to higher court institution or wider society. Based on horizontal responsibility, examination and hearing of court decision must be transparent for public.

Act 23 verse (1) stated :

“Any court decision must cover reasons and fundamental of the decision, as well as certain acts from related regulation or unwritten legal sources as the basic of adjudication”.

This act places the responsibility value of the judge toward decision he made, that the decision fulfill the legal goal in form of justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), and beneficial (*zweckmassigkeit*).

f. Objectivity Values

The judge must respect objectivity values. Act 28 of the Law number 14 of 1970 on the Law of Judge Authority Principles stated that the judge must resign in examination of a case if he has interest in the case.

CONCLUSION

A judge is able to uphold justice when he has absolute autonomy to make decision based on his own thought and understanding. There should not any intervenes in making the decision, in line with profession ethic available and always follow and obedient to the religious rules in this case Islamic religion and current regulation that relevant.

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LAW AND REGULATIONS

- [11] Al-Quran.
- [12] Al-Haadits
- [13] Constitution of the Republic of Indonesia 1945.
- [14] Post-amendment to the 1945 Constitution.
- [15] Law No. 14 of 1970 concerning the Principles of Judicial Power.
- [16] Law No. 48 of 2009 concerning Judicial Power.