

Legal Basis of Judicial Existence in Islam Study of Nash and Logic

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ABSTRACT

The judicial institutions in a country are very strategic and determine because it is this institution that acts to resolve any disputes occurring in people's lives and punish persons who violate the law in accordance the prescribed law. With this judicial institution is expected that the community does not do the deeds that do not harm the other party by means of vigilante, but should all legal issues arising from the Association of society is resolved through the judicial institution.

Keywords: Law, Judiciary, Islam, Logic, Nash

INTRODUCTION

A country that is not concerned with the judicial institution is located, or discouraging its role, the state will have difficulty in running its wheel of government. The sociality of the community will experience turmoil and erratic, no justice, legal certainty, order, and no peace. Through the judiciary institutions the law is enforced indiscriminately and not discriminate people. Anywhere in the world, the judicial institutions in a country are expected to uphold the supremacy of the law, because with the firm's law in a country, then justice will be realized. If this last thing can be done well, then this judicial institution will certainly have the authority and respected by the community.

Islamic Sharia sees the problem of the judiciary is a fundamental task in enforcing justice and has a high position in the enforcement of law. The judicial body is

expected to be the place of the light of justice to the whole community. Justice itself is formulated by Allah SWT in the Qur'an with the word fair as many as 28 times and with the word of the qisth 25 times that has a meaning of no weight, impartiality, or likened something to the other. Justice is in the field of life, such as in the field of law, economics, social, and culture, politics, ideology, creed, and others which are a source of freedom and peace for mankind. Justice is the highest policy in all its diverse manifestations. In this regard, Islamic law puts the judicial institution in a very important place in the life of society, because it is hoped that the judicial institution is expected to be a tool to enforce legal justice, and the importance in life Nation and state (Abdul Manan, 2002).

At the beginning of the arrival of Islam, the judicial period has not been established with other governmental institutions. At that time, the prophet, in addition to continuing his claim to convey the sharia of Islam, he was also assigned to decide the law and resolve the dispute submitted to him. When the Prophet was in control of the government, very few things were asked to him and plumpness Muslims at the time only asked the fatwa of a problem he faced, his self-resolved case by Guidance to the fatwa given by the prophet. Likewise, the thing that is immediately decided by the prophet, they quickly execute the execution, no longer need to intervene the prophet in the matter, they are very obedient with the decisions established

by the Prophet because the decision was dropped by justice that was always guided by revelation.

When caliphate Umar Ibn Khattab became Amirul Mukminin, the Islamic government had begun to expand into various areas outside the city of Madinah. The work of the Government has begun many that were not resolved by Caliph Umar Ibn Khattab, as well as tasks to break many of the dormant. From that moment, caliphate Umar Ibn Khattab appointed officials who took care of the judicial affairs, in addition to the duties of the previously appointed General officers (governors). This condition continues until the reign of Islam ends with the development of the appropriate with Conditionai and the situation in place by guiding the principles that have been set in Al-Qadha fil Islam. After the Islamic countries declared its independence from the imperialists and colonialists, the judicial body remained a major majority in the development of the law in the country. The growth of the judiciary with the growth of jurisprudence in the Islamic negatives, although the growth does not always join the growth of Fiqh science because it has special features as a differentiator. The development of the judicial institutions of the Islamic States is difficult to determine certain boundaries that separate between the period of the one with the next period.

Hasbi Ash Shiddieqy divides the period of development of Islamic judiciary to three major periods namely: first, starting from the migration of Rasulullah Saw from Mecca to Madinah in 1 Hijri/662 M the last in 150 H 767 M, namely when the law of Islam has begun to collected the material and is recorded in various books of jurisprudence written by ijtiihad renowned experts; Second, beginning in 150 H 767 M after the city of Baghdad was made the center of the Government of Bani Abbas (Abbasid), then walked through the era of greatness of the power of Bani Abbas to its fall and the coming of the Turkiyah period ruled the Islamic states that were expired in

1255 H 1810 M; Third, starting from the year 1255 H 1810 M. In 1255 H 1810 M Sultan Abdul Madjid al-Utsmany, issued a decree of the government that contains orders to officers who work in the judicial environment in order to conduct an oerumenation and improvement in the institution in accordance with the development of the judicial institutions in the Western world. Sultan Abdul Madjid also commanded that the law applicable in the judicial institutions be adapted to the laws of the Western world (Hasby As-Siddieqy, 1970).

Although the Sultan Abdul Madjid of the Turkiyah government instructed that the Islamic judicial system be removed and incorporated into the secular civilization system, but many Islamic countries that remain guided to the Islamic judicial system, because the judicial problem for Muslims is obligatory al that are touched as the must. Nevertheless, due to the strong influence of the Common Law tradition and the Civil Law tradition in the development of world law, the Islamic judicial system becomes a retreat. So far, the laws relating to the family are still persisting in the Islamic judicial system, and the matters pertaining to criminal and trade laws are resolved by the laws of the Western judicial system.

The above conditions are also valid in Indonesia, although the judicial body of religion has a position equal to other judicial environment, but the authority is limited to the matters relating to marriage, inheritance, representatives, and charity for Muslims. Except the Sharia court of Nanggroe Aceh Darussalam which received the expansion of authority from the Court of religion, this is also a new level of commencement and still need further development.

RESULT AND DISCUSSION

The Concept of Judicial in Islam

According to Muhammad Salam Madkur The meaning of the judiciary (al-Qadha) According to language has several meanings, first: Al-Qadha that is

commensurate with the word *al-Faraaq* which means to break or finish, as mentioned in the letter *al-Ahzab* verse 37 "Then when Zaid decided The will of Zainab ITI, then we marry him ", second: *Al-Qadha* which has the same meaning as *al-Adaa* ' meaning to perform or pay, as Muhammad has paid the debt (*Qadha Muhammadun Dainahu*), the third: *al-Qadha* With the meaning of preventing. While the understanding of *al-Qadha* according to the jurisprudence is a decision of the government product, or convey the law of *Shar'i* with the path of determination (Muhammad Salam Madkur, 1993).

Hasbi Ash-Shiddieqy suggests that *al-Qadha* in the sense of the term is used in the meaning of (Hasby As-Siddieqy, 1970), first: *Al-Qadha* is interpreted as a judicial institution or authority to prosecute and break the matter, second: *al-Qadha* interpreted *Segai Place* to break the case only (*al-Qadha Alwilayatul Ma'rufatu*), or interpreted also *al-Qadha* is to solve the cause of quarrel to remove the dispute (the defendant sues), settle the dispute by applying the law *Syara* ' That is sourced from the Quran and *As-Sunnah* (*Al-Qadha-u huwal faslu chusumati hasman littada'i wa qath'an linniza'i bil ahkamisysyar'iyati Al mutalaqqati minal Kitabi was Sunnati*), third: *Al-Qadha* is all regulation which is a decree that must be followed, which is derived from the ruler who has the common power (*al-Qadha qaulun mulzimun shadara'an wilayatin dzi ammatin*).

Meanwhile, according to Rifyal Kaaba that in Islam has the meaning of binding speech that comes out of public power, or the word broke in the society based on the truth, or also interpreted with the appropriate decision that is derived Allah SWT and the proclamation on the provisions of the Law *Syara* ' (Islamic legitimately) binding.

According to Nasr Farid Muhammad Wasil *al-Qadha* meaning in terms of language has many meanings, including perfecting, fulfilling, obliging, injunction, and severing disputes (Nasr Farid

Muhammad Wasil, 1983). Muhammad Naim Abdul Salam Experts Islamic law gives *Ta'rif al-Qadha* to some understanding, namely the first: the nature of justice that obliged the law *Syara* ' implemented, second: resolve the case arising in the community and decide The dispute was fairly and correctly, thirdly: resolving all disputes and quarrels occurring in the association of the *Mesyarakat* with the laws established by Allah SWT and the *Sunnatur* of Rasulullah Saw (Muhammad Naim Abdul Salam, 1974).

Some other scholars of Islamic law said that the meaning of *al-Qadha* is to interfere with the affairs of the creature with his command, to convey his commandments and his laws to them by the *Qur'an* and *Al-Hadith*. Through this sense arises the understanding that *al-Qadha* is to decide the dispute between the two parties who are in dispute with the law that has been established by Allah SWT, correctly and fairly without favoring to one of them, placing them the same in Allah's Law (Muhammad Salam Madkur, 1993). Based on this tariff it is clear that *al-Qadha* is the process to settle the demands, reconciling the parties in accordance with the provisions that are sourced from the *Qur'an*, *Al-Hadith*, and *ijtihad* the *Mujtahid*. The decision is given by the judge and the ruling of this judge binding on the litigants shall be obliged to be implemented by the judge or another appointed officer.

Noting the understanding of *Al-Qadha* as mentioned above, it can be noted that, the judicial and court institutions are the most important institutions in law enforcement. In this institution always related elements such as, first: the Law (*Syara* ') which is used as the basis in deciding the case, the second: the person who is responsible for dropping the law, namely *Al-Qadhi* or judge, the third: competence and jurisdiction Judicial institutions that are the authority in resolving the case, the fourth: the plaintiff and the defendant, the fifth: there are cases that are disputed or that a party is harmed so

that it needs to be given punishment or decision of the judge, sixth: the ruling judge It binds the parties and is obliged to run, the seventh: The ultimate goal of the judicial institution is the enforcement of law and Justice for mankind.

Thus, it can be concluded that al-Qadha can mean "judiciary" and can also mean "judgment". The definition of al-Qadha in judicial sense is the authority of the State in accepting, examining, prosecute, and resolving certain things between Muslims to enforce laws and justice under the laws set by the Qur'an, Al-Hadith and ijthihad of the Mujtahid. While the understanding in the court is where the prosecute process is executed, it can be first-level courts, appeals, and casations or special courts that have been determined by the legislation as applicable in some countries Islam. Although the Islamic judicial institution was constructed based on provisions established by the Quran and Al-Hadith, the judiciary remains an ordinary judicial institution and a human judicial institution that does not escape from false and correct. Therefore, in the conduct of this trial it is necessary the faith and confidence of the divine justice in the hereafter.

The Basis of Judicial Law in Islam (Al-Nash)

Duty in the field of Islamic justice is a very noble task, because the tasks in this field is a very heavy task and demanded a big responsibility in doing it. Judging from the Islamic angle as explained in the Qur'an and As-Sunnah that the duties of the judiciary is an obligation for the judge and every human (person) who believes.

The legal basis for establishing Al-Qadha as found in the Qur'an (Ministry of Religious Affairs, 1980) and As-Sunnah (Abu Bakar Muhammad, 1996) are as follows:

a. Al-Qur'an Surah An-Nisa paragraph 58
"Indeed, Allah tells you to give amant to the right to receive it, and (to tell you) Apabi; a set the law between men so that you should set justly. Indeed, Allah is your most convenient teaching member. Indeed, Allah is hearing the almighty. "

- b. Al-Qur'an Surah An-Nisa paragraph 135
"O Those who believe, be ye the very people of justice, to be witnesses of God, even to yourself or your mother and kindreds. If it is rich or poor, then God will know more about it. Then do not follow lust for wanting to stray from the truth. And if you distort (words) or refuse to be witnesses, then indeed Allah is the Almighty God what you are doing. "
- c. Al-Qur'an letter Shad Verse 26
"O Daud, verily we make you a caliph in the face of the Earth, then give a decision (cause) among men justly and do not follow the lust, because he will mislead the way of Allah SWT. Indeed, those who stray from the way of God will have a heavy doom, because they forget the day of calculation. "
- d. Al-Qur'an Surah An-Nisa verse 105
"Surely we have lowered the book by bringing the truth, that ye should Judge man by what God has revealed to you, and you shall not be an opponent (innocent people), the people Who Treacherous. "
- e. Al-Qur'an Sura Al-Maidah verse 48
"And we have sent down to you Al-Qur'an by carrying the truth, confirming what was before, even the books (which were revealed before) and the test stone against the other books; Then decide their cause according to that which has been down and do not follow their lust by leaving the truth which has come unto you..... ".
- f. Al-Qur'an Sura Al-Maidah verse 47
"..... whoever does not decide the matter according to what God has revealed, they are the wicked ones".
- g. Narrated by Buraidah
That Rasulullah SAW. Once said as follows:
"The judges were divided into three groups, two in hell, and one in heaven. The incoming surge was the judge who knew the truth and condemned the fair. The other is a judge who knows the truth but is deliberately smudged from the

truth, so he will go to hell, and the other is the judge who breaks the thing with his stupidity (without science), they are ashamed to say I do not know, then they enter into hell. " narrated by Abu Dawood and Ibn Maajah.

- h. Narrated by Abu Hurayrah
That Rasulullah SAW never said as follows:

"Whoever is appointed as a judge among men is actually slaughtered (his neck) without a knife". HR. Ahmad, Tarmidhi, Abu Dawood, and Ibn Maajah).

- i. Narrated by Anas
That Rasulullah SAW never said as follows:

"Whoever among you begs or asks for the office of the judge, then the trust is insured on himself, but anyone among men is appointed as a judge without his application, then Allah SWT will send angels to Give him strength in carrying out duties ". HR. Tarmidhi, Abu Dawood, and Ibn Maajah).

- j. Narrated by Abdullah Ibn Amr and Abu Hurayrah

That Rasulullah SAW never said as follows:

"If a judge in the decision to impose stated, and his Ijtihadnya true then to him two reward and if he stated then his permission is wrong, then he can be a reward". HR. Of Abu Dawood and Ibn Maajah).

Basic Judicial Law According To Logic

The judiciary is a word derived from the fair Arabic and has been absorbed into the Indonesian language which means the process of prosecuting or an attempt to seek justice or legal dispute resolution before the judicial body according to regulations Apply. While the institution or agency that becomes a place to prosecute or settle a legal dispute, is known by the term Court (Gemala Dewi, 2006).

When talking about the judiciary, there is a fundamental aspect that is fought in relation to individual and collective interests. This aspect is the justice of the law, which is the justice that establishes everyone before the law and legislation in

the same position. Justice in this case does not distinguish the social status of a person nor the skin color and differences of the nation and religion, because in the presence of the law all is the same (Amiur Nuruddin, 2008).

Ibnul Qayyim once narrated that Umar wrote the letter to Abu Musa al-Ash'ari whose contents were: "Amma ba'du, actually setting punishment (Al-Qadha) is a definite obligation and included an authentic tradition. If there is a problem coming to you, then know that the correct greeting will not be beneficial when not followed by a real implementation. When people (with different social strata backgrounds) are in the Court assembly, do them the same, look at them with the same view and should the punishment you decide is also the same (no discrimination, fair), So that a glorious man will not hope ye shall commit yourselves, and that the weak shall not lose hope to obtain your justice (Muhammad Baltaji, 2005).

Evidence is an obligation that must be given by an accusing person, and an oath is an amplifier to the party who rejects the charge. The agreement to make peace made by Muslim sesame is permissible, unless the peace agreement causes things forbidden to be lawful or halal things become unlawful. Whoever claims that there is a neglected right, give him a time, if he is able to explain the sitting thing (with strong evidence), then give it to him, but if he fails to convince you, then the problem Resolved by itself. This is a great way to resolve disputes.

If you encounter a problem whose ruling is not explicitly alluded to in the Qur'an or Sunnah, then use the sense that is conferred upon you by means of this problem. The attitude of anger, confusion, hurt others and complicates when disputes occur (Khalid Muh. Khalid, 2006). In a logical perspective, the judiciary is essentially an implementation of the concept of justice and placing one's (individual's) rights proportionally. Therefore, logic also speaks that there must be an institution that

facilitates the achievement of both. Now, this is the fundamental basis of the judicial existence in Islam logically.

CONCLUSION

Looking at the legal bases of al-Qadha such as the above, it is obvious that the duties of the judiciary is a very great deed and has a very wide range of power concerning human souls, goods, and possessions Owned by them. Rasulullah is very worried if the position of Qadhi is held by people who are not responsible and do not have knowledge to solve legal problems, or while Qadhi diverge from the straight path. Therefore, Rasulullah SAW requires strictly in the case of the appointment of a court assembly.

According to Muhammad Salam Madkur, that factor is why many scholars and Fuqaha turned to occupy positions in the judicial environment, including to occupy the office of Kadi. In a history it was narrated that Abu Haneefah was appointed by Abu Hurayrah, the governor of Iraq from the Umayyad to occupy the position of Qadhi in Kuffah. Abu Hanifah rejected the post until he was imprisoned and whipped and beaten until his head was swollen.

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