The Problems of the Independence of Judicial Power in Indonesia in a Review of Islamic Law

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Received: 03-11-2020	Revised: 09-12-2021	Accepted: 30-12-2021

Abstract

Article 24 paragraph 1 of the 1945 Constitution "Judicial power is an independent power to administer justice to uphold law and justice". Will However, Article 24A paragraph 3 makes a provision that candidates for Supreme Court judges are proposed by the Judicial Commission to the DPR for approval and subsequently appointed as Supreme Court justices by the president and the Supreme Court Law states that the appointment of Supreme Court Judges is carried out by the President at the proposal of the DPR or the dismissal of the Chair, Deputy Chairperson. , Junior Chairmen, and Member Judges of the Supreme Court are dismissed by the President at the suggestion of the Supreme Court, so that the President has loopholes that can later affect the psyche of judges in making decisions. This study aims to determine the independence of judicial power in Indonesia in the perspective of Islamic law. This study uses a normative and juridical approach. The authors conclude that the proposal for the appointment and dismissal of Supreme Court judges by the Judicial Commission, the DPR and the President may affect the psychology of a judge in making a decision so that This can eliminate the meaning of Article 24 paragraph 1 of the 1945 Constitution which shows the lack of independence of the judicial power in upholding justice in accordance with the ideals of the 1945 Constitution. Indeed, in the history of the Islamic judiciary, it is the Caliph (President) who has the authority to appoint and dismiss a judge/qhadi. judges have a fear of Allah so that judges decide cases based on Islamic law.

Keywords: **Islamic Law, Independence, Judicial Power, Prolematics**

INTRODUCTION

Amendment to the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) which states that the state of Indonesia is a state of law. (Agustian, 2017). It means that Indonesia is a constitutional state, after the Presidential Decree 5 July 1959 then the basis of the state returned to the 1945 Constitution. (Manan & Magnar, 1997). It is undeniable that the 1945 Constitution is based on kinship and this is realized by the existence of the highest state institution (MPR) which fully carries out the sovereignty of the people. (Dewi, 2017) In its state duties, the MPR does not only work alone as a people's mandate, but the MPR oversees five high state institutions that contribute to its performance, namely: the DPR as an institution or legislative body, the President and Vice President as an executive body, and the Supreme Court as a judicial body. , BPK as an auditive body and DPA as a consultative body (Sutiyoso & Hastuti, 2005). The existence of the principle of kinship does not mean that in carrying out state duties each must cooperate, especially for the judiciary. (Agustian, 2016) The Implications of Testing MPR Decisions in the

Constitutional System of the Republic of Indonesia After the Decision of the Constitutional Court No. 75/PUU-XII/2014, 2016). The Supreme Court, as a state institution and judicial body, has a special position, which is free from interference from other institutions. Given the heavy duty and responsibility in upholding justice (Sampara, 2017). Every living human being is nothing without problems. When people complain about their cases to a legal entity whose goal is of course to obtain justice, then each litigant will tend to defend themselves. With the establishment of a judicial institution that is free from other institutions, the law of the jungle can be avoided and equality before the law can be realized, thereby meaning that justice can be upheld. For this reason, the judicial power which in this case is the Supreme Court and the judicial bodies under it as well as the Constitutional Court is very urgent to be considered in order to create comprehensive justice for every citizen. (Permadi & Wisnaeni, 2020).

For Muslims, upholding justice is not only a call or an order to submit to the law, but it is deeper than that, namely that the Qur'an is the revelation of Allah SWT. also ordered the same thing to get justice. Islam does not explicitly state that in Islam there is judicial power as a forum for upholding justice for the community, but the order to uphold justice has indicated that judicial power exists in Islam. (Rosady, 2000) In the course of Islamic history, justice can be found at the time of the Prophet Muhammad by sending him to deliver the message of Allah, he also acted as a judge so that he was the first judge in Islam. He also sent several friends to become governors as well as judges in several areas, such as Muadz bin Jabal and Ali bin Abi Talib who were sent to Yemen. In a hadith of the Prophet, at that time Muadz was asked by the Messenger of Allah, "With what do you impose the law? Muadz replied, "With the book of Allah (the Qur'an) Muadz answered." The Prophet asked again, "What if you do not get information from the Qur'an? Muadz replied, “I dug it up from the Sunnah of the Prophet. The Messenger of Allah asked, "What if you do not find information in the Sunnah of the Messenger of Allah? Muadz replied, "I will ijtihad with my mind and will not give up hope and the Messenger of Allah patted Muadz bin Jabal on the shoulder praising him with the answer proposed by the Prophet Muhammad. From the excerpt of the dialogue between the Prophet and Mu'adh bin Jabal that when the Qur'an does not provide written texts that regulate something, and the hadith also does not regulate it, then ijtihadla is needed, in practice deciding something if the text does not provide clear instructions. (Nawawi, 2013)

Democracy in modern terms, has been trusted and gained trust as the best system almost universally as an idea in politics and has become an ideology. (Agustian, 2020). By formalizing or ratifying new regulations so that they are valid and applicable, including adjustments and

changes. In the legal field, formalization is often used in the sense of adjusting the law to the needs of the community. (Agustian, 2019).

The compilers found confusion when they saw the fact that it was the President who had the authority to appoint and dismiss judges as regulated in Law no. 3 of 2009 concerning the Supreme Court Article 8 (1) Supreme judges are appointed by the President from the names of candidates proposed by the House of Representatives. (2) The candidates for Supreme Court justices as referred to in paragraph (1) shall be selected by the House of Representatives from the names of candidates proposed by the Judicial Commission. (3) Candidates for Supreme Court justices proposed by the Judicial Commission as referred to in paragraph (2) shall be selected by the House of Representatives 1 (one) person from 3 (three) names of candidates for each vacancy. (4) The selection of candidates for Supreme Court justices as referred to in paragraph (3) shall be conducted no later than 30 (thirty) trial days as of the date the names of the candidates are received by the House of Representatives. (5) The nomination of candidates for chief justice by the House of Representatives to the President as referred to in paragraph (1) shall be made no later than 14 (fourteen) trial days as of the date the name of the candidate is approved in the Plenary Meeting. (6) The President shall determine the supreme judge from the names of the candidates proposed by the House of Representatives as referred to in paragraph (5) no later than 14 (fourteen) working days as of the date on which the candidate's name is received by the President. (7) The Chief Justice and Deputy Chief Justice of the Supreme Court are elected from and by the Supreme Court justices and determined by the President. (8) The Deputy Chief Justice of the Supreme Court is appointed by the President among the Supreme Court Justices proposed by the Chief Justice of the Supreme Court. (9) Presidential decisions regarding the determination of the Chairman, Deputy Chief Justice of the Supreme Court, and Deputy Chief Justice of the Supreme Court as referred to in paragraph (7) and paragraph (8) shall be made no later than 14 (fourteen) working days as of the date on which the candidate's name is received by the President. (Utami, Trinity, & Rachnani, 2010).

This will be a problem especially if this problem is juxtaposed with Article 1 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, (*Law on Judicial Power*). In this Law, what is meant by Judicial Power is the power of an independent state to administer the judiciary in order to enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the State of Law of the Republic of Indonesia. (Law, 2009) which is also in accordance with the breath of the 1945 Constitution, especially in the explanation of Article 24 which states that "The Judiciary or judicial power is an independent power." (Comp, 2014).

Judicial power and the Supreme Court are two things that cannot be separated, for that the essence of the law on judicial power and the law on the Supreme Court must not cause conflict. When the Judicial Institution (KY), Legislative Institution (DPR RI) and executive (President), in this case are still involved in the appointment and dismissal of Supreme Court Justices, Chairpersons, Deputy Chairmen, Junior Chairmen, and Member Judges of the Supreme Court, the meaning of Independence of Judicial Power be blurred. so that the great ideals of the 1945 Constitution which want the judiciary (especially the Supreme Court, as the highest judicial institution and the judiciary under it and the Constitutional Court to be fully independent without any other party interfering must continue to be fought for so that justice for every citizen can be achieved). fulfilled according to the theory of Montesqui *trias Politica* which divides state institutions into 3, *executive, judicial and legislative powers* (Kansil, 1993) So far, the existence of the independence of the judiciary still raises interesting debates and debates among academics and legal experts or observers in Indonesia. Indeed, there have been many writings or scientific works that contain the independence of the judiciary, the Supreme Court, the power of judges, the Islamic judiciary, and other related topics.

In line with this, the authors try to relate the theory of the Muslim thinker, Abul A'la al-Maududi who is usually called al-Maududi, y which adheres to the theory that the judiciary is completely independent or is outside the executive branch. (Azhar, 2005). The judiciary has the task or function of carrying out the laws of God and His fellow human beings who also delegate power to him on behalf of the Head of State.

In line with al-Maududi's thoughts, the authors also used the trias politica theory which was born from the Western thinker, Montesquieu (1689-1755). This theory is a follow-up to the power-sharing theory of John Locke (philosopher from England: 1632-1704). (Rosady, 2000)

In addition, M. Wahyudi's thesis, who also wrote about the independence of the judiciary. Brother Wahyudi only focuses on the independence of judges. Indeed, to achieve justice all depends on the judge (in casu judge) who is in charge of upholding justice, but a judge cannot be separated from the nature of the corps and *ewuh pakewuh* which are ingrained in Indonesian culture. With such a culture, nothing can affect the psyche of a judge. So it is very important to study the independence of judicial power from its peak, namely the Supreme Court so that it is easier to know the independence of the judicial powers below it.

Another scientific study that also discusses the independence of judicial power is the work of Mahfud MD., in the form of a paper contained in his book “The Struggle of Politics and Law in Indonesia. (MD, 1999). His work also does not highlight from the point of view of Islamic law. In addition, a scientific work that purely focuses on MA is the writing of A. Mukti Arto. (Arto,

2001) in his book entitled "The Ideal Conception of the Supreme Court." However, Mukti Arto did not compile it with the rules of Islamic law.

In terms of justice in Islamic law, there are actually several monumental works of Islamic scholars who try to describe justice in Islam because judicial power in Islam is an indication of the independence of judicial power, as previously mentioned (Syafi'ie, 2018).

Islamic scholars who also contributed to their contribution, for example al-Mawardi in his book *al-Ahkām as-Sulţāniyyah,* who launched various thoughts on justice (appointing judges and their requirements, jurisdiction of judges, and many other contributions he contributed). others, Salam Madkur and Hasbi ash-Shiddieqy. (Arto, 2001). both of which convey similar thoughts, namely the judiciary at the time of the Prophet, the court at the time of al-*Khulafā' ar-Rāsyidūn*, and the court during the dynasty. (Al-Kattani & Nurdin, 2000)

As far as the authors have observed, the authors of the many books, papers, and other scientific works that have been found by the authors describe more about the power of the judiciary or the freedom of judges, so that they do not specifically touch the careful study of the authors. Especially if it is associated with Islamic law. So it can be said that there is no scientific work that studies it.

Based on the introduction described above, it can be formulated that the main problem that is the focus of discussion that will be used as material for further study is How is the independence of the Supreme Court in Indonesia? How is the independence of the judiciary according to Islamic law?

RESEARCH METHODS

Types of Research This research includes *library research*, which is a research whose data sources are obtained through library sources, both legislation, books, and other scientific works that are relevant to the problems written by the authors. (Hidayat, 2019) The nature of this research is descriptive perspective. (Arliman S, 2018) by describing the judicial power and the Supreme Court in Indonesia as the highest institution in the judiciary, as well as the judiciary in Islam as an indication of the existence of judicial power in Islam, related to the opinions of legal observers and the perspective of Islamic law (*syara'*) which is then drawn with an analysis to find the importance of the independence of the judiciary in Indonesia (Mardjono, 1997) Research Approach In this study, the authors used two approaches, the normative approach This approach is used to examine a problem based on the Nas al-Qur'an and Hadith to determine whether something is appropriate or not which is then analyzed based on existing norms and juridical approaches. This approach is based on the applicable laws and regulations. The source of data that the compilers use in writing this journal is the documentation method, namely viewing and

researching library materials related to the compiler's discussion, both from the 1945 Constitution, Law no. 3 of 2009 concerning the Supreme Court, Law no. 48 of 2009 concerning Judicial Power, general books, dictionaries, papers, and other scientific works. Data analysis is a method used to process certain data from which conclusions can then be drawn that are relevant to the existing discussion. In this study, the authors used an inductive analysis method, which looked at the existence and position and authority of the judiciary in Indonesia, then linked it with the legal norms that exist in Islamic judicial institutions. Next, look at the suitability.

RESEARCH RESULTS AND DISCUSSION

Judicial power in Indonesia

Judicial institutions in Indonesia are the subject of judicial power whose end lies in the power of the Supreme Court. So that the discussion about the position of the judiciary in Indonesia is also described is the position of the Supreme Court. The position of the Supreme Court in the order of judicial power is equal to the position of the other four institutions DPA, BPK, President, and DPR, but BPK and the Supreme Court are institutions directly stipulated by the 1945 Constitution. independent, not influenced by any power or force in carrying out their duties. (Kansil, 1958).

For more details, it can be seen the position of the Supreme Court in relation to other institutions, for example:

1. **The position of judicial power (Supreme Court) is equal to the power of the President**

   Basically, the position of the Supreme Court as a State High Institution is equal to the position of the President as a high state institution and under the 1945 Constitution. But in practice, both juridically, politically and practically the Supreme Court is still under the President. (Arto, 2001). It is proven by the system of appointment and dismissal of a Supreme Court Justice by the Supreme Court Law no. 3 of 2009, in particular Article 8 paragraph (1) to paragraph (9) and Article 11 (1) regarding the procedure for proposing to appoint and until the dismissal of Supreme Court judges there is interference from various other state institutions, including the executive (President), legislative (DPR RI) and Judicial institutions (KY). So from this problem it can be read that in practical terms, juridically, politically, sociologically, and psychologically, the Supreme Court can still be regulated by other institutions both psychologically and automatically through a political process called the politics of reciprocation. indebted to the person who voted, then in terms of determining the proposal of a candidate for a Supreme Court judge, the appointment and dismissal of a Supreme Court Judge. (Utami, Trinity, & Rachnani, 2010). Thus, in fact, Law no. 3 of 2009 concerning the Supreme Court in particular

Article 8 paragraph (1) to paragraph (9) and Article 11 paragraph (1) must be reconsidered. Given that things like this will be able to influence the creation of a decision by a Supreme Court judge in the future, it will not be objective towards the individual or institution that chooses and appoints him as a judge of the Supreme Court.

2. The position of the Supreme Court towards the MPR

Based on the Indonesian constitutional system, there has never been a direct or indirect relationship between the Supreme Court and the MPR other than a protocol water relationship, namely the taking of oaths or promises of MPR membership. (Comp, 2014). However, neither in the 1945 Constitution nor in the MPR stipulations, there are no provisions governing the relationship between the MPR and the Supreme Court. When viewed structurally in the Indonesian state administration, the MPR is the highest state institution which is the mandate of the people. So that in fact the appointment and dismissal of judges is more appropriate if submitted by the MPR, not the President.

3. The position of the Supreme Court against DPA and BPK

The position between these institutions is the same, these three institutions have no special relationship other than taking oaths and giving legal considerations by the Supreme Court to other institutions, whether requested or not.

4. The position of the Supreme Court towards the DPR

"The Supreme Judge is appointed by the President from the names of the candidates proposed by the DPR". (Baharuddin, Aritonang, & Hutasuhut, 2004)

From the sound of this article, it shows that the position of the Supreme Court is an institution that is under the position of the DPR RI, considering that the DPR RI can choose whether or not candidates for Supreme Court justices are proposed by the judicial commission.

The Position and Authority of the Judicial Power in Indonesia

To make it easier to understand the position of the judiciary in Indonesia, it is first necessary to know the structure of state power in Indonesia, as follows: (Sutiyoso & Hastuti, 2005)

Given that the Supreme Court is the subject of that judicial power itself, and it should be noted that the meaning of judicial power has the same meaning and purpose as *judicial power*, namely the power that carries out the functions and authorities of the judiciary to enforce law and justice or the *rule of law* in the Republic of Indonesia. If observed, this description means that the meaning of the position of the judiciary is the same as the position of the Supreme Court as a judicial body. Thus, apart from the Supreme Court having a position as a high state institution, it also has a position as the highest judicial institution. (Sutiyoso & Hastuti, 2005)

The position of the judiciary in Indonesia (MA) is the same as that of the other three institutions, namely, the President, the DPR, and the BPK. However, it is emphasized in the 1945 Constitution that "Judicial power is an independent power to administer justice to uphold law and justice". From the sound of the article, it can be concluded that the meaning contained is:

Judicial power in question is a judicial institution with the Supreme Court, general courts, religious courts, military courts, and state administrative courts. (Law, 2009).

1) This judicial institution has the duty to uphold law and justice.
2) Judicial power is an independent power (independent).

So there is no denying that the judicial power is a body tasked and responsible for upholding justice and the law. With this heavy responsibility, everything that can hinder the realization of justice and the rule of law must be minimized.

Talking about the division of state power, it is always in sync when it is associated with the trias politica theory. However, it is necessary to know beforehand that Indonesia is not a country that adheres to the trias politica doctrine. It's just that the power conceptualized by the trias politica is also found in the division of power that exists in Indonesia, namely power (executive, legislative, judicial) indicating that the formulation in Indonesia is also influenced by that doctrine. It is said that it is not a trias politica adherent country because in addition to executive, legislative, and judicial powers, Indonesia also has the power of the Supreme Audit Agency (BPK), as well as the People's Consultative Assembly (MPR) as a supremacist institution (MD, 1999).

Apart from the problems above, the authors put more emphasis on the principle of trias politica which is also adopted by the State of Indonesia (Explanation of Articles 24 and 25 of the 1945 Constitution). Especially the principle of an independent and impartial judiciary as a feature and condition for the establishment of a rule of law. (*Ibid.*,275)

Apart from the problems above, the authors put more emphasis on the principle of trias politica which is also adopted by the State of Indonesia (Explanation of Articles 24 and 25 of the 1945 Constitution). Especially the principle of an independent and impartial judiciary as a feature and condition for the establishment of a rule of law.

1. **During the reformation**

   period, this is a period of breaking through to the rigidity of the government which has been tightly locked up until now. Judicial power which cannot be separated from the grip of the ruler or executive finally collapsed with its new policy, which can be shown by the issuance of Law on Judicial Power no. 4 of 2004 in conjunction with Law no. 48 of 2009 especially concerning:

   a) Article 1:

"Judicial power is the power of an independent state to administer the judiciary in order to enforce law and justice based on Pancasila, for the sake of the implementation of the State of Law of the Republic of Indonesia."

It turns out that the authors still find ambiguity which is also quite significant when it comes to the independence of the judiciary or judicial institutions. The confusion that the authors mean is when it is associated with Law no. 3 of 2009 concerning the Supreme Court. In essence, the Supreme Court is the highest judicial power implementing body, which means that the pinnacle of realizing justice is in the hands of the Supreme Court. So judicial power with the Supreme Court is like a coin that cannot be separated. Given the close relationship between judicial power and the Supreme Court, the two cannot adhere to a contradictory principle or provision. Like the following articles:

b) Article 8:

(1) Supreme Court Justices are appointed by the President from the names of candidates proposed by the House of Representatives.

(2) The candidates for Supreme Court justices as referred to in paragraph (1) shall be selected by the House of Representatives from the names of the candidates proposed by the Judicial Commission.

(3) (2) The selection of candidates for Supreme Court justices as referred to in paragraph (2) shall be carried out no later than 14 (fourteen) days after the name of the candidate is received by the House of Representatives.

(4) The Chairperson and Deputy Chairperson of the Supreme Court are elected from and by the Supreme Court Justices and appointed by the President.

(5) The Deputy Chief Justice of the Supreme Court is appointed by the President among the Supreme Court justices proposed by the Chief Justice of the Supreme Court.

(6) The Presidential Decree regarding the appointment of the Supreme Court Justices, the Chairman and Deputy Chairmen, and the Deputy Chief Justices of the Supreme Court as referred to in paragraph (1), paragraph (4), paragraph (5) shall be stipulated within a maximum period of 14 (fourteen) working days from the receipt of the nomination of candidates. President.

c) Article 11:

(1) The chairman, deputy chairman, and member judges of the Supreme Court are honorably dismissed from their positions by the president at the suggestion of the chairman of the Supreme Court because:

(2) passed away,

(3) has reached the age of 65 (sixty five) years,
(4) own request,
(5) persistent physical or mental illness, or
(6) turned out to be incompetent in carrying out their duties.
(7) In the event that the supreme judge is 65 (sixty five) years old, it can be extended to 67 (sixty seven) years, provided that he has extraordinary work performance and is physically and mentally healthy based on a doctor's statement.

From the two articles above, it turns out that it still needs to be reviewed so that an independent judicial power institution can actually be realized, considering that the intervention of the President or the executive is very strong and dominant. Of all the principles regarding the power and authority of the Supreme Court, both as a high institution and as the highest institution in the judiciary as long as it does not conflict with the 1945 Constitution, according to the compilers, it can be applied. Such as differences of opinion in terms of power to test laws and regulations. In this case, the authors agree with the opinion of legal experts based on the following reasons: (Arto, 2001)

1. The 1945 Constitution in no way prohibits or limits the powers of the judiciary in examining legislation. Something that is not prohibited of course can be done.
2. The 1945 Constitution stipulates that judicial power is a power that is free and independent in exercising its power, so it is illogical for lawmakers to limit it.
3. The function of judicial power is not only to enforce the law, but also to carry out the law. The definition of law is broader than the notion of law. It is not impossible that legislators have made mistakes when making laws (by violating the principles of the law), as is often the case.

The compilers adhere to the provisions that the power and authority of the Supreme Court are the same, on one condition that they do not conflict with the provisions of the 1945 Constitution.

2. Independence of Judicial Power in Indonesia

Judicial power in Indonesia is held by the Supreme Court as the highest judicial institution and the courts under it, namely:

a. Religious Courts
b. State Administrative Court
c. Military Court
d. General

Courts These courts are tasked with realizing justice and enforcing the law in society, so that all these judicial environments must be completely independent from the intervention

of other institutions including the President. It is not easy for judges when faced with a problem involving the executive (President). Especially if the President still has an important role in the appointment and dismissal of a judge as enshrined in Law no. 5 of 2004 concerning the Supreme Court.

The provisions for the appointment and dismissal of judges cannot be separated from the state government system that adheres to presidential aspects, including executive power which is in the hands of the President and the appointment and dismissal of ministers (as assistants to the President) by the president himself. In addition, the President is the head of state as well as the head of government. This means that the President has political power in running the government in real terms (B. Sagala, 1982).

Problems like these can affect the psyche of judges in making a decision, so that the realization of independent judicial power is hampered. After looking at the development of judicial power in these periods or periods, it is known that the results of the amendments to Law no. 4 of 2004 on the previous law has not achieved what the 1945 Constitution aspires to, especially the explanation of Articles 24 and 25, namely regarding the independence of judicial power in Indonesia. For this reason, it is necessary to review the Law on Judicial Power in the clause of the article regarding the mechanism for the appointment and dismissal of Supreme Court judges so that judicial power can be truly independent and free from any intervention.

With the independence of the judiciary, it does not mean that the power possessed by the judiciary is not limited, because basically this is also intended to prevent abuse of power by those in power. Meanwhile, what is meant by the compilers of the powers and authorities of the judiciary in Indonesia is the power and authority of the Supreme Court as the highest judicial institution and high institution of Indonesia. The power of the Supreme Court is an independent power so that intervention from any party is not justified, and everything that can influence judges in making decisions must be eliminated. Likewise, the system for the appointment of a Supreme Court Justice by the President and the dismissal of the Chair, Deputy Chairperson, Deputy Chairperson, and Member Judges of the Supreme Court are also carried out by the President. This is not in accordance with the breath of the 1945 Constitution, especially the explanation of Articles 24 and 25 which explicitly state that judicial power is a power that is independent and free from the influence of other institutions, but in the article above it can affect the psyche of judges of the Supreme Court in deciding a case. The litigants are members of the DPR, the President or the Judicial Commission who in fact play a major role in selecting, proposing and dismissing and even proposing candidates for Supreme Court Justices.

Meanwhile, in Article 24A paragraph (3), candidates for Supreme Court justices are proposed by the Judicial Commission to the House of Representatives for approval and subsequently appointed as Supreme Court Justices by the President and the appointment and dismissal of a judge by the President will of course limit the power and authority of such a judge. The nature of *the ewuh pekewuh*, and all the feelings that it was the Judicial Commission of the people's representative council and the President who gave birth to the Supreme Court justices as judges at the Supreme Court so that the Supreme Court judges who were elected were none other than through a political process of reciprocity and quite affected the judge's psyche. Therefore, when facing problems that confront them with the Judicial Commission, the DPR RI and the President, the firmness of a judge in deciding a case becomes a shock and is not independent in the enforcement of justice as in several cases involving the DPR as a defendant with a light decision that some were released in the Supreme Court's decision. the.

Such is the case in the Supreme Court Decision Number 3681K/PID.SUS/2019 which ensnared Idrus Marham, a politician from the Golkar Party, who was suspected of committing a criminal act of corruption to win witness Johanes Budisutrisno Kotjo in the procurement of the project. However, in the Supreme Court's cassation decision, the defendant received leniency from the previous decision and the judge's legal reasoning in the Supreme Court's decision Number 3681 K/Pid.Sus/2019 in the Corruption Crime case with the defendant Idrus Marham.

The Panel of Judges of the Central Jakarta District Court decided the corruption case against the Defendant Idrus Marham, stating that the Defendant Idrus Marham has been legally and convincingly proven guilty of committing a corruption crime which was carried out jointly as in the second indictment and therefore sentenced the Defendant Idrus Marham with imprisonment for 3 (three) years and a fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah). And several decisions of the Supreme Court that favor the candidates for legislative members as in the Supreme Court Decision Number 46 P/HUM /2018. The judicial review of the P-KPU removed the Corruption Case Phrase and did not delete the other Phrases. The Supreme Court's decision by removing the phrase Corruption Cases, then ex-convicts of Corruption cases may run for legislative members (Muzayanah, 2020).

The Supreme Court's decision Number 4263 K/Pid.Sus/2019, in its decision the panel of judges at the cassation level considered mitigating reasons for the Defendant so that the Supreme Court reduced the sentence of the Defendant for the crime of corruption. The Supreme Court's decision finally overturned the decision of the Corruption Court at the Medan High Court Number 3/Pid.Sus-TPK/2019/PT MDN dated July 10, 2019 which changed the

decision of the Corruption Court at the Medan District Court Number 93/Pid.Sus-TPK / 2018/PN.Mdn dated March 8, 2019. Based on the description above and connected with the decision of the Supreme Court Number 4263 K/Pid.Sus/2019, it is clear that the judex facti and judex juris opinions of the judges in providing legal considerations resulted in the decision with different sentences. This is what motivates the author to carry out this research further. (Choir, Mariayu, Poerwanto, Rusli, & sutrirubiyanto, 2021)

The decision of the Supreme Court that mitigated at least 10 (ten) mega corruption cases that had occurred in Indonesia, among others: 1. Scandal Case PT. Trans Pacific Petrochemical Indonesia, which is estimated to cause state financial losses of 37.8 Trillion Rupiah. 2. The case of Asuransi Jiwasraya which is estimated to have caused state financial losses to reach 17 Trillion Rupiah. 3. The case of the issuance of a Mining Business Permit in Kota Waringin Timur Regency which is estimated to have caused state financial losses to reach 5.8 trillion Rupiah and 711 US Dollars. 4. The case of the BLBI Scandal in the issuance of a Certificate of Settlement (SKL) which is alleged to have harmed state finances reaching 3.7 trillion Rupiah. 5. Cases of Procurement of E-KTP which are estimated to be detrimental to state finances reached 2.3 trillion Rupiah. 6. The case of the Hambalang Project for the Development of a National Education, Training, and Sports Facilities Center that cost the state finances 2.3 trillion Rupiah. 7. The case of Century Bank in the Provision of Short Term Funding Facility (FPJP) which resulted in the state experiencing a loss of 8 Trillion Rupiah. 8. The Bank Duta burglary case that harmed the state's finances amounting to 811 billion Rupiah by the Deputy Director of Bank Duta Dicky Iskandar Dinata who then again broke into BNI worth Rp 1.4 Trillion Rupiah. 9. The case of former President Suharto, who was suspected of causing state financial losses of 35 billion US dollars or the equivalent of 490 trillion rupiah. 10. The case of Bank Bapindo burglary by Edy Tansil which caused a loss to the state finances of 1.3 trillion Rupiah.

Such law enforcement practices give rise to the impression of favoritism/"selectiveness" from investigators. This has not only injured the sense of justice for the defendants who have been tried, but also created legal uncertainty and injured the sense of justice and public trust in law enforcement in Indonesia. Even further, the practice of law enforcement that seems selective will cause delays in efforts to complete or eradicate criminal acts of corruption in Indonesia, which mostly involve Party Politicians and the People's Representative Council. (Kosasih, Arlinandes, Aprizon, & Agustian, 2020)

The case of former President Suharto who is suspected of causing state losses of 35 billion US dollars or the equivalent of 490 trillion rupiah. This is of course not in accordance with the principles of *syara'* on justice. As Allah says as follows:

لَا لَا يُحَكِّمُوْكَ ا بَيْنَهُمْ لَا ا اَنْفُسِهِمْ ا

ا لِّمُوْا لِيْمًا

By your Lord, they will not believe until you (Prophet Muhammad) have judgment in the matter between them. Then, there is no objection in them to the decision that you give and they accept it with (RI, 2007).

In the past, at the time of the Prophet, it was the Caliph who had the authority to appoint and dismiss judges, but this never affected the psyche of judges in deciding cases. Because the judges at that time had a high fear of God. Seeing the culture that is developing in the midst of Indonesian society today, the application of the appointment and dismissal of a judge by the President as in the early days of the history of Islamic justice is certainly not appropriate.

As in a hadith of the Prophet, it is also explained that when Muadz bin Jabal was sent as governor in Yemen, he used to make ijtihad in deciding a case. At that time Muadz was asked by the Messenger of Allah, "With what did you pass the law?" Muadh replied, "With the book of Allah (the Qur'an) Muadh replied!" The Prophet asked again, "If you do not get information from the Qur'an?" Muadz replied, "I dug it from the Sunnah of the Prophet." The Messenger of Allah asked, "What if you do not find information in the Sunnah of the Prophet Muhammad? Muadz replied, “I will do ijtihad with my mind and will not give up. The Messenger of Allah patted Muadz bin Jabal on the shoulder indicating approval. From the dialogue above (between the Prophet and Mu'adh bin Jabal) it can be concluded that when the Qur'an does not provide texts that regulate something, and the hadith does the same, then ijtihad is needed, which in practice ijtihad is carried out if the text does not provide information. clear instructions. (Nawawi, Vol 2, No 2 (2013).

For this reason, all powers and authorities attached to the Supreme Court can be applied as long as it can encourage the realization of justice which is also in accordance with the breath of the 1945 Constitution. Seeing the condition of Indonesia today, it is for the common good (enforcement of law and justice) then Article 8 paragraph (1) to paragraph (9) and Article 11 paragraph (1) of Law No. 3 of 2009 concerning the Supreme Court need to be reconsidered Independence.

of Judicial Power in Indonesia Perspective of Islamic Law

Independence of institutions judiciary or judicial power as the ideals of the 1945 Constitution, especially Article 24 is a universal principle and a noble principle, so this must be fought for. Constitutionally, the independence of judges in Indonesia is strong enough, but the constitutional provisions and laws which states the independence of judicial power in its application, it is very possible to get pressure from the power or weakness another religion.

Many parameters can be used to assess the independence of a judicial institution, as stated by Bambang Sutiyoso and Sri Hastuti Puspitasari, including: (Sutiyoso & Hastuti, 2005)

1. The independence of the judiciary

   The independence of the judiciary can be seen from several things, namely, the institution does not have dependence on other institutions. If a judicial institution can be influenced by its integrity and independence, it means that the institution is not or is not independent. In addition, if the judicial institution has a formal upward hierarchical relationship and it is possible for the superior institution to intervene, then this indicates that the judiciary is not or lacks independence.

2. The independence of the judicial process

   If the process of examining cases, proving until the decision is handed down by the court and there is no or there is interference (intervention) from other institutions but does not affect the outcome of the decision, it means that the judicial process is independent. On the other hand, if there is intervention from other institutions and the judiciary is affected in making decisions, it means that the judicial process is not or less independent.

3. The independence of a judge

   If a judge in making a decision is not affected by a lot of psychological pressure and intervention from other institutions, it means that the judge is independent in making decisions. On the other hand, if the judge is affected, it means that the judge is less or not independent.

According to the authors, any issues that can affect the judicial process or judicial institutions and things that can affect judges must be minimized. Like the system of appointment and dismissal of a judge by the President. The principle of the independence of the judiciary is very relevant to the principles of Islamic law, which are both aimed at realizing justice for the entire Ummah for the benefit of the Ummah as the Messenger of Allah was sent, except as a blessing for the entire universe and a Qadhi decides a case using the Qur'an, Hadith, Ijma and Qias.(Hilal, 2013)

CONCLUSION

Based on the previous description, especially regarding the Judicial Power and the Supreme Court which is compiled with the judiciary in Islam, several conclusions can be drawn, namely:

a. Judicial power (judicial) is a power that is independent and free from interference from other institutions, including the executive (president), Legislative (DPR RI) and judicial institutions (KY). The independence of the judiciary is a significant requirement for realizing a truly fair and impartial judiciary. For this reason, this institution, both structurally and functionally, must not be bound by other institutions in order to avoid the influence and intervention of these institutions. This means that the appointment and dismissal of a judge by the executive or president is certainly not in accordance with the ideals of the 1945 Constitution, especially the explanation of Articles 24 and 25. The independence of judicial power is essentially aimed at upholding the law and realizing justice.

b. Although Allah's revelation (Al-Qur'an) does not explicitly explain the existence of judicial power in Islam, the history of Islamic courts proves that since the sending of the Messenger of Allah as caliph as well as qād in the history of Islamic courts, it is an indication of the existence of judicial power in Islam. In addition, the government of the Apostle at that time was sufficient to illustrate the existence of an independent judiciary, because the Apostle entrusted the decisions of his ummah to the qādī-qādī he appointed as when the Prophet appointed Muaz. Even though in the beginning it was the Caliph or the executive who had the authority to appoint and dismiss judges, this did not mean that it could be applied in Indonesia in an economic, social and cultural period that was far different from that time. At that time a judge had a high sense of fear of Allah, so that the appointment of judges by the caliph was not an obstacle to upholding a truly fair and impartial judiciary even when faced with the caliph who in fact had given birth to him as a judge. Especially if you look at the socio-cultural conditions that develop in Indonesia, such as the nature of the work corps (obedient to superiors) and *ewuh pekewuh* which is thick and ingrained in every citizen (especially in the judge's personality).

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