



Transcendental epistemology in court decisions Islamic legal perspective

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ABSTRACT

The reality of legal positivism in the context of reforming it has made various efforts to create an ideal law, including changing the mindset of law enforcers and using legal arguments that were previously very compartmentalized in the ideals of legal positivism. Judges as the last bastion of legal justice, all decisions are expected to be able to realize the work of judges' thoughts and not be dominated by positivistic thinking patterns, which are often focused on the foundations of legal books and not other norms that live and are recognized in the legal system law in Indonesia. Therefore, this study examines transcendental epistemology in the judge's decision. This research uses a qualitative empirical approach to collect data through observation, interviews and documentation. The analysis technique was done by data reduction, verification, and analysis. Checking the validity of the data is done by triangulation method. The results of this study are expected to contribute to realizing the transcendental meaning of judge's decisions, which are not dominated by epistemological positivistic thinking patterns in the perspective of Islamic law.

Keywords: Epistemology, transcendental; judge's decision, perspective; Islamic law

1. INTRODUCTION

Transcendental means something that goes beyond ordinary experience and explanation. According to Islamic law, the connection here is that the science of law cannot be separated from the revelation that comes from God. If reason and the five senses are used as a source of knowledge that can be proven or revealed as the truth of law, this is very much against a secularistic concept. Hierarchical sources of Islamic law are based on 1) Al-Qur'an, 2) Hadith/Sunnah, 3) Ijma, and 4) Qiyas. It can be understood from this hierarchy that the truth of revelation is the basis of Islamic law and is not reliant

on the relativism of reason, which often faces doubts and has a definite end point when viewed from the point of view of legal epistemology. Emphasizing substantive and transcendental matters is an attempt to study and understand the science of law, which should be prioritized based on social facts that cannot be separated from religious, ethical and moral values. Even so, the existence of a theory certainly cannot be ignored, which is offered as a human good intention.

In essence, the positivistic legal school contains excellent values, and there is legal certainty and guidelines for law enforcement officials, including judges, who will carry out their duties and authorities. However, apart from that, of course, we do not rely solely on positivistic schools, which only originate from the rules that have been established without looking directly at the social facts that occur in society. Therefore, as controllers of all this, a transcendental law is very much needed, reminding people that in carrying out their duties and authorities, one must always rely on each religion's morals, ethics and teachings, which are the basis of human life that believes in God.

In terminology, positivism means an understanding that in its "attainment of truth", originates and stems from events that occurred. Everything beyond that is not examined in positivism. Etymologically, positivism comes from the word positive, which in philosophy's language means an event that happened and can be experienced as a reality. This means that what is called positive is opposed to something that only exists in wishful thinking (dreams) or consists of something that is only a construction of the creation of the ability to think from the human mind. So, this positivism solely bases itself on achieving. The truth is sourced and rooted in events that happened. Then, regarding the meaning of transcendental means highlighting spiritual, elusive, magical, and abstract things. In principle, transcendental law is more holistic, humanist, prophetic and just than positivistic law, as previously explained.

According to Kuntowijaya, the Development and Enforcement of Transcendental Law in Indonesia has a transcendental meaning based on faith in Allah (Ali Imron: 110) by introducing prophetic knowledge in the form of humanization (ta'muruna bil ma'ruf), liberation (tanhauna anil munkar) and transcendence (tu'minunabillah) (2001: 364). In this case, transcendence must form the basis of other elements in developing science and human civilization.

With regard to positivistic and transcendental understanding, one of which can be seen in every court decision in Indonesia which requires a sentence entitled, "For the sake of Justice Based on Belief in One Almighty God". Such provisions apply to all judicial environments. The juridical basis is Article 2, paragraph (1) of Law Number 48 of 2009 concerning Judicial Powers, "Judgment is conducted for the sake of justice based on Belief in the one and only God". In line with that, Article 197 paragraph (1) sub a of Law Number 8 of 1981 concerning the Criminal Procedure Code states that the head of the written decision reads "For the sake of Justice Based on Belief in One Almighty God." Law enforcement in Indonesia will always be better if law enforcement officers carry out their

duties and authorities by existing rules, it is just that it will be excellent if we all always prioritize morals and ethics in carrying out our duties and authorities.

Concerning the description above, this writing intends to examine and study the Transcendental Epistemology in Court Decisions from the perspective of Islamic Law. This writing uses library research. Of course, there will be answers to the urgency of court decisions and the implications if they are not implemented for law enforcement in Indonesia.

2. METHODS

The research method uses qualitative research, namely research that produces descriptive data regarding spoken and written words and the observable behaviour of the humans who have been studied. The approach used is a descriptive qualitative approach, namely research that intends to understand the phenomenon of what is experienced by research subjects, for example, behaviour, perceptions, motivations, actions and others, in a holistic manner and by way of descriptions in the form of words and language in a particular natural context and by utilizing various methods. The data collection methods that the authors use include observation, interviews and documentation.

3. RESULTS AND DISCUSSION

The meaning of the word Transcendental comes from the Latin 'trancender', and in English, 'transcendent' is something that is not experienced but can be known, free from phenomena, but is in the cluster of one's knowledge. Transcendental, in religious terms, is a mystical or supernatural experience because it is beyond the reach of the material world or things that are metaphysical and supernatural experiences.

Transcendental law should have a relationship with specific individuals or entities with the authority to make law more effective. Law without this transcendental meaning, will not have the strength or efficiency that will live in society because law does not exist in a vacuum as from a sociological point of view. Transcendental and law have a relationship with specific individuals or entities with the authority to utilise or maximise the law. Pancasila, which consists of the five precepts in the fourth paragraph of the Preamble of the 1945 Constitution and Article 29 paragraph (1), is the recognition of Indonesia as the basis of the state which has power for the unitary state of the Republic of Indonesia, is the implementation of transcendentalism and law. The values of the precepts in Pancasila, especially the First precept, namely Belief in One Almighty God, are a consequence of the Indonesian people's recognition of Pancasila and Belief in One Almighty God as the basis of the state. Preferably, the values of the First Precepts of Pancasila must be present as the soul in every stipulated statutory regulation.

In the current reform era, we often find laws that have been enacted by the government and discussed jointly between the legislature, which is the representative of the people having a legislative function in conveying problems in parliament and the executive, which is the agency in charge of implementing laws, the content of the article

-The articles and verses in the regulations confuse the public. It is not carried out by law enforcers when violations occur which have the effect of being cancelled by the Constitutional Court of the Republic of Indonesia, even though laws that have a strong foundation because they contain transcendental meaning, of course, make it easier for judges to make decisions in every case.

The epistemology of the transcendental meaning in a judge's decision certainly cannot stand alone without being accompanied by the meaning of positivism and vice versa because the meaning of positivism which contains legal foundations both in articles and verses sometimes does not rule out the possibility of legal politics in it. The importance of both sides of positivism and transcendental law in the court's decision, in addition to facilitating judges in carrying out their functions and authorities, a judge certainly cannot work alone where there is involvement of judicial organisations, defendants and the litigation community. If positivism accompanied by transcendental law can run in harmony without dominating one of them, of course judges as state officials carry out their judicial power functions guaranteed by law to be free and independent in making decisions, including in conveying in writing and orally the arguments for the decisions they use.

The independence of judges, freedom from corrections and recommendations from other parties is very much needed and the existence of these conditions certainly depends on the personality of the judge. That said, the impact of the judge's decision does not only affect himself but also the court institution where the judge works and will become public consumption. The task of a judge is very heavy, especially when it comes to making a legal decision and for how long or how much the fine must be paid, including determining the legal status of a legal subject. When a judge's decision occurs, then that's when a judge's decision can be examined by anyone to measure how professional a judge is, his capability and integrity, including from a procedural point of view. In fact, starting from a court decision made by a judge, it can be analysed in terms of the content of the decision that the judge has made, which means that you can also see the legal thinking paradigm of the judges in the panel of judges who hear a case.

The correctness of the law taken by the judge will certainly bring justice as expected by justice seekers which will bring a sense of calm to the community. On the other hand, an error in a legal decision will certainly have a negative effect and a code of ethics hearing will not rule out the possibility of ending a judge's career. In addition, the *irah-irah* "For the sake of Justice based on Belief in the One and Only God", is not only absorbed as a mere ceremonial as its juridical basis is Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, "Justice is conducted for the sake of Justice Based on Godhead" the Almighty." This sentence is the spirit or derivative of Article 29 of the 1945 Constitution of the Republic of Indonesia (1945 Constitution). From the point of view of judges as state officials who carry out the function of judicial power guaranteed by law to be free and independent in making decisions, including in conveying in writing and verbally the arguments they use. From the point of view of judges as ordinary human

beings who have limitations in their personality, they cannot be separated from the various factors that influence them.

Then Article 197 paragraph (1) sub a of Law Number 8 of 1981 concerning Criminal Procedure Law states that the head of the written decision reads "For the sake of Justice Based on Belief in One Almighty God." What if these conditions are not met? This is answered in Article 197, paragraph (2), stating that non-fulfilment of the provisions in paragraph (1) results in null and void decisions. If that happens, it means that the validity of the existence of the court decision is not recognised. Then, specifically for judges in the religious court environment, who have the characteristic of spiritual ties in their decisions, these characteristics are labelled clearly and firmly based on Islamic monotheism by including, "Bismillahirrahmanirrahim" (In the Name of Allah, the Most Gracious, the Most Merciful). The basmalah sentence precedes the irah-irah, "For the sake of Justice Based on Belief in the One and Only God." These provisions emphasise that all judge decisions will be held accountable before Allah SWT. Of course, it becomes the main guideline for judges in making decisions based on the intention of upholding justice (QS. Al-Ma'idah, 5: 5- 8).

Realising that court decisions must be as fair as possible because judges are essential in making decisions that must be accountable to the general public, religion and God Almighty. We hope that our noble duty as a judge is to be able to make a fair decision based on Article 2, paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, which states, "For the sake of Justice Based on Belief in the One and Only God." Subjectively, judges cannot be separated from their fundamental nature as human beings hungry for power, the economy or other bad traits that can worsen the court's image and the judges themselves. Meanwhile, on the other hand, judges are also required to be able to manifest the law, not only as a focus on the law but also to be able to translate and act as a spokesperson for the law, so that in the end, the judge's decision does not bring physical and mental suffering to justice seekers throughout their lives.

CONCLUSION

Hopefully, the judge can defeat these bad traits. This is of course a challenge in itself for a judge in carrying out his duties and obligations in the midst of legal cases in Indonesia, which are currently numerous and very complex in the life of a multi-faceted society. However, we must continue hoping, praying and trying to obtain just law enforcement with legal certainty and laws that benefit society.

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