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FACULTY OF SHARIA AND LAW

STATE ISLAMIC UNIVERSITY SUNAN GUNUNG DJATI BANDUNG-INDONESIA

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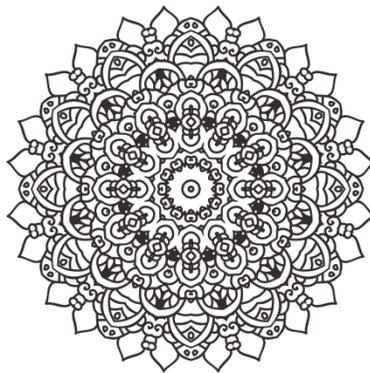
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THE CONCEPT OF JUSTICE IN QUR'AN AND HADITH

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Abstract: This paper tries to explain about the concept of justice both contained in al-Qur'an and hadith. As part of the implementation of Islamic law and the subsystem of national law, the role and position of the (Islamic) judiciary is very strategic and significant. The existence and position of the principles of justice not only lies in the theoretical development through academic studies, but also practically can provide its own color in the implementation of Islamic law in Indonesia. The implementation of the judicial principles is not only a normative individual obligation, but also a collective obligation involving both academics, legal practitioners and the government. Theoretically and practically, the principles of justice embodied in Qur'an and Hadith greatly affect the course of law and justice enforcement through religious court in Indonesia.

Keywords: *judiciary, judicial system, justice, al- Qur'an, Hadith*

Abstrak: Tulisan ini mencoba menjelaskan tentang konsep keadilan baik yang tertuang dalam Alquran maupun hadits. Sebagai bagian dari implementasi hukum Islam dan subsistem hukum nasional, peran dan kedudukan lembaga peradilan (Islam) sangat strategis dan signifikan. Keberadaan dan kedudukan asas keadilan tidak hanya terletak pada perkembangan teoritis melalui kajian akademis, tetapi juga secara praktis dapat memberikan warna tersendiri dalam penyelenggaraan syariat Islam di Indonesia. Pelaksanaan prinsip kehakiman bukan hanya kewajiban normatif individu, tetapi juga kewajiban kolektif yang melibatkan akademisi, praktisi hukum, dan pemerintah. Secara teoritis dan praktis, prinsip keadilan yang terkandung dalam Alquran dan Hadits sangat mempengaruhi perjalanan dan implementasi keadilan di Indonesia dalam upaya menegakkan hukum dan keadilan.

Kata-kata Kunci: pengadilan, sistem peradilan, keadilan, al-Qur'an, Hadits

Introduction

Al-Quran is the holy book of Islam which is a revelation of Allah SWT. which was revealed to the Prophet Muhammad SAW. brought by the Angel Jibril with the right word and meaning to be an argument for his apostleship, which is a guide for man in his life to realize the security, peace and well-being of his life in this world and the hereafter.¹ Ibn Khaldun, one of the Muslim sociologists, presented a statement that describes the concept of justice in social life that can be interpreted by putting something in its place, meaning to fulfill the rights of people who are entitled and perform duties or obligations in accordance with their functions and roles in society. Zainal Abidin Ahmad argued that the concept of justice according to Ibn Sina is one of the five principles of Islamic politics that must be upheld in social life.²

Islamic law (fiqh) uses the term al-qada for judiciary, *mahkamah al-qada* for courts, and qadi for judges. Etymologically, al-qada has several meanings (*musytarāk*). Muhammad Salam Madkur gave three meanings for *al-qada*. Firstly, *al-Farag* means off or finish. Secondly, *al-ada'a* means fulfilling or paying. The last one is *al-bukmu* which means preventing or hindering. According to fuqaha, as stated by Muhammad Salam Madkur, the term judicial or *al-qadā* is *al-Ikhhār 'an hukm syarī 'ala sabīl al-Izām*, which means conveying sharia law through stipulation.³ The word "judiciary", as a translation of "*qadā*", means to decide, implement and finish".⁴ Furthermore, T.M. Hasbi Ash Shiddeqy said that al-Qadā is known as "the power to adjudicate".⁵

In the Indonesian Encyclopedia volume 5, courts are "bodies or organizations organized by the state to administer and adjudicate legal disputes. All court decisions are taken on behalf of the Republic of Indonesia" or "in the name of justice". The encyclopedia does not enclose judiciary. Likewise, the word judiciary cannot be found in Indonesian Law Dictionary. The law dictionary only describes court as a council or body that is obliged to adjudicate cases by examining and giving decisions regarding legal disputes, violations of the law or laws and so on.⁶ Aah Tsamrotul Fuadah explained in her research that the principles of Islamic procedural law have been implemented in the Religious Courts except for the following matters: rule of evidence, oath, and witness requirement. Another difference can be found in witnesses requirement.⁷

¹ Abd. Wahab Khallaf, *Kaidah-Kaidah Hukum Islam (Ilmu Ushulul Fiqhi)*, Diterjemahkan Oleh Noer Iskandar Al-Barsany Dan Moh. Thalchah Mansoer (Jakarta: PT. Raja Grafindo Persada, 1996), 22.

² Zainal Abidin Ahmad, *Negara Adil Makmur Menurut Ibnu Siena* (Jakarta: Bulan Bintang, 1974), 88.

³ Muhammad Salam Madkur, *Al-Adha Fil Al-Islam* (Kairo: Dar An-Nadha Al-Arabiyyah, n.d.), 11.

⁴ Ahmad Warson MUnawir, *Al-Munawwir (Kamus Arab-Indonesia)*, 1 (Jakarta, 1996), 11.

⁵ Hasbi Ash-Shiddeqy, *Peradilan Dan Hukum Acara Islam* (Yogyakarta: PT. Ma'arif, 1994), 29.

⁶ Simorangkir, *Kamus Hukum*, IX (Jakarta: Sinar Grafika, 2005), 124.

⁷ Burden of proof in Islamic procedural law falls to the plaintiff, while the oath is charged to the defendant, whereas the civil procedural law regulates both burden of proof and oath fall equally to the both parties. Aah Tsamrotul Fuadah, "Penerapan Prinsip Hukum Acara Perdata Islam di Pengadilan Agama," *Journal of Chemical Information and Modeling* 53, no. 9 (1981): 1689–99.

The principles of upholding justice in Islam are the absolute freedom of soul and the perfect equality of humanity. Justice in Islam is based on the justice that has been determined in the al-Qur'an and supported by Hadith, since it is impossible for humans to comprehend justice in correct and precise manners.⁸

There is an opinion that justice is based on law provisions. This means that a fair punishment would be deemed as fair when the punishment is in accordance with law provisions. This view does not question whether the content of the provision is fair or not.⁹ The enactment of Law No. 50 of 2009 regarding Religious Court has changed the Religious Court's structure, legal culture, , and its approach to uphold justice.¹⁰

Based on the description above, it can be concluded that judiciary is a power of the state to receive, examine, adjudicate, decide, and resolve legal dispute in order to uphold law and justice. With regard to this definition, it can be said that a court is a judicial body that exercises judicial power to enforce law and justice. Thus, this paper emphasizes the aspects of judicial concept that may be used as a benchmark in the process of law and justice enforcement, both normative and distributive justice in all judicial bodies.

Method

This research applied descriptive analysis method and normative juridical approach to describe in detail how the principles of justice in the Qur'an and Hadith are applied in existing laws and regulations, especially regarding religious court. The primary and secondary data sources were traced through library research and focused discussions. The theory of justice and legal certainty were applied as the basic concept. This paper is expected to have an academic impact in the form of a conceptual exploration of judicial theory and principles based on Qu'ran and Hadith.

Result and Discussion

Judicial Concept in Koran

The principle of justice is the third principle in Islamic nomocracy. There are many verses in the Qur'an that describe justice, for example in surah an-Nisa: 135, the word al-Qist is synonymous with the word justice:

"O you who believe, be you who are the true enforcers of justice, be a witness Because of God even against yourself or your parents and relatives. if he is rich or poor, then God knows best its benefits. So do not follow your lusts because you want to deviate from the truth. And if you twist (words) or refuse to be witnesses, then surely Allah is All-Knowing of all that you do." (Q.S. an-Nisa: 135)

⁸ Fauzi Almubarak, "Keadilan Dalam Perspektif Islam," *Istighna* 1, no. 2 (2018): 115–43.

⁹ Yustinus Suhardi Ruman, "Keadilan Hukum Dan Penerapannya Dalam Pengadilan," *Humaniora* 3, no. 2 (2012): 345, <https://doi.org/10.21512/humaniora.v3i2.3327>.

¹⁰ Aden Rosadi, "Dinamika Dan Sistem Hukum Penyelenggaraan Peradilan Agama Di Indonesia," *Al Ahkam* 15, no. 1 (2019): 20–35.

In another verse, Allah repeats human obligation to uphold justice and be a just witness, as stated in the following verse:

"O you who believe, you should be the ones who always uphold (the truth) Because of Allah, be a witness with justice. And never let your hatred of a people, encourage you to be unjust. apply justice, because justice is closer to piety. And keep your duty to Allah. Lo! Allah is Aware of what ye do." (Q.S. al-Maidah: 8)

In the Qur'an, the theme of justice is something very important. Therefore, as stated in another verse on this theme, namely in surah an-Nahl/16: 90:

"Indeed, Allah commands (you) to be just and do good, give to relatives, and Allah forbids from abominable deeds, wickedness and enmity. He teaches you so that you can learn a lesson" (Q.S. an-Nahl: 90)

There are at least six lines of law that can be formed from the above verses, namely: the order to uphold justice, the order to do good, the order to help materially to their family or relatives, the prohibition to commit heinous and bad deeds, the prohibition of committing evil and the prohibition of being hostile. In fact, these lines of law are one unity centered in the theme of justice. Therefore, in this verse "the order to uphold justice is placed or outlined in the first order".¹¹ It can be understood that the order to uphold justice applies to every believer, especially for those who is entrusted with the mandate to hold some of the state power.

Human is the creature, of Allah, who dares to accept the trust placed by God, who before no other creatures dared to bear it. Human is a perfect being who is endowed with intellect and lust. With their intellect, human has freedom with to think of ways to understand and carry out the mandate as caliph in this earth,¹² Notice the words of Allah SWT:

"Indeed, Allah commands you to convey the message to those who are entitled to receive it, and (commands you) when setting the law among people so that you establish justice. Indeed, Allah gives you the best lesson. Indeed, Allah is All-Hearing, All-Seeing." (Q.S.an-Nisa ': 58)

If the verse is formulated using the method of forming a legal line as taught by Hazirin and developed by Sayuti Thalib, then two lines of law can be drawn from this verse, namely: firstly, humans are required to convey a mandate to those who are entitled to receive it. Secondly, uman is obliged to establish a fair law. The word *amanah* which in Indonesian is called "amanat" can be interpreted as "entrusted" or "message". In the context of "State power", the word mandate can be understood as a delegation of authority, therefore the power can be considered a "mandate" that comes from Allah. Power is a gift or a favor from Allah, a mandate for human to be maintained and

¹¹ M.Quraish Shihab, *Tafsir al-Mishbah Pesan, Kesan, dan keserasian al-Qur'an*, Volume 2, Cet 1, (Ciputat: Lentera Hati, 2000), 458..

¹²Bismar Siregar, *Hukum Hakim Dan Keadialan Tuhan* (Jakarta: Gema Insani, 1995), 14.

implemented as well as possible in accordance with the basic principles that have been established in the Quran and exemplified by the sunnah of the Prophet. Later, the power or mandate must be accountable before Allah.¹³

The transfer of mandate, in the context of power, has an implication that to prohibit the mandatory commits abuse of power. Upholding justice is an order of Allah. Whenever the mandated power is related to justice and judiciary, then in Islamic nomocracy, the implementation of State power through a fair government is an obligation of the authorities. Power must always be based on justice, because justice in Islam is very close to piety or *taqwa*.¹⁴

Taqwa is used as a measurement for human beings that distinguishes themselves before Allah. The above stated verse begins with a message that in upholding justice, human should not be tempted by hatred toward other human that might deviate them from justice. Indeed, the challenge in upholding justice is the sentiment to other human or group, and how the mandatory keep their judgment undistracted by these feelings.¹⁵ Therefore, justice must be prioritized due to the following reason: firstly, Allah is the infinite Justice and full of compassion for all of His creatures; secondly, in Islam, justice is truth. Truth is also one of Allah's names. He is the source of truth or *al-Haq* as stated in the Qur'an. Justice and truth are inseparable. The three derivative words of justice that come from the word *adl* (in Arabic), which are *keadilan* (justice), *peradilan* (judicial), and *pengadilan* (judiciary) in terms of etymology means the same. It shows a balance or in a middle position.¹⁶

Judicial Concept in Hadis

Along with the Qur'an, the Hadith requires human to uphold justice. For example: "When a judge performs *ijtihad* and his *ijtihad* is accurate, then he obtains two rewards, and when he performs *ijtihad* but his *ijtihad* is wrong, then he obtains one reward".¹⁷

From *Buraidah* RA, the Prophet SAW said that: "The judges are three, two judges are in hell and the other is in heaven. One who knows the truth and he decides with it, then he is in heaven; one who knows the truth, but he does not decide with it, then he is in hell; and one who does not know the truth and he decides for society with ignorance, then he is in hell." Narration of Four Imam. Sahih hadith according to the Hakim.

From Abu Hurairah RA, the Prophet SAW said that: "Whoever is appointed as a judge, he has been slaughtered with a knife." Narrated by Ahmad and Four Imam. Authentic hadith according to Ibn Khuzaimah and Ibn Hibban. "Abu Bakr RA said: I heard

¹³Muhammad Tahir, *Negara Hukum* (Jakarta: Kencana, 2004), 106.

¹⁴Tahir, 117–19.

¹⁵Nurcholis Madjid, *Pesan-Pesan Takwa* (Jakarta: Paramadina, 2000), 17.

¹⁶Tahir, *Negara Hukum*, 122.

¹⁷Tengku Muhammad Hasbi Ash-Shiddieqy, *Peradilan Dan Hukum Acara Islam* (Semarang: PT. Pustaka Rizki Putra, 2001), 36.

the Prophet SAW say: "Do not let anyone judge between two people in a state of anger." *Muttafaq Alaihi*. From Ali RA that the Prophet SAW said: "If two people ask you for a decision of the law, then, do not decide for the first person before you hear the testimony of the second person, so that you know how to decide the law." Ali said: After that, I have always been a good judge." Narrated by Ahmad, Abu Dawud and Tirmidhi.¹⁸

Judicial Concept in Islam

Doing justice is not only the responsibility of the judges or *qadli* who sits in the judiciary, but it is the obligation of personal people in doing and acting, not only to others, but also to themselves. Justice comes from the basic word just or fair, which is the Arabic word '*adl*'. In the Bahasa Indonesian called *adil*, means: (1) not biased or biased, (2) in favor of the truth, and (3) not arbitrary. The word *adil* is also an antonym of *dzalim* (tyrant).

In the Qur'an, the word justice (*adil*) is expressed with the words *al-adl*, *al-qisth* and *al-mizan*. The word *al-adl* means the same, giving the impression that there are two or more parties, because if only one party there will be no comparison. One of the Qur'an verses that are related to the word justice and impartiality is QS. Al-Nisa verse 58.

Al-qisth means the natural and proper part, this should not lead to the existence of equations, therefore the word *qisth* is more common than the word '*adl*'. The words *al-qisth* and *al-'adl* are often accompanied in one verse, speaking *al-qisth* first and then followed by the word *al-'adl*, as found in QS. Al-Nisa verse 3, QS. Al-Maidah verse 8.

Al-mizan comes from the word *wazn* which means scales, a tool to weigh but it also means justice. The word *al-mizan* is found in QS. Al-Rahman verses 8-9. In addition, there are verses in the Qur'an that contain all three words (*al-'adl*, *al-qisth* and *al-mizan*), for as well as in one of them QS. Al-Anam verse 152.

In Islam, the three words (*al-'adl*, *al-qisth* and *al-mizan*) become a command for human beings to do and uphold justice. Based on the Qur'an Surah Al-A'raf verse 29, Al-Nahl verse 90. and. Al-Rahman verses 7-8, Quraish Shihab describes the concept of justice in the Qur'an into four parts, namely:

Firstly, justice in the sense of equal. In this context, justice means treating everyone the same, equal, and without discrimination. QS. Al-Nisa verse 58 guides the judge to place the disputing parties in the same position, for example: seats, facial expression, how to call the parties' names and titles, n, seriousness in listening to the parties' claims and arguments. The Qur'an narrates of two litigants who came to the Prophet David *alayhi salaam* (a.s.) to seek justice. The first person has ninety-nine she-goats, while the second person has only one. The first person urges the other person to add the one goat into his possession to make

¹⁸ Al-Hafidh Imam Ibnu Hajar Al-Asqalany, *Bulughul Maram Min Adillatil Ahkam* (Tasikmalaya: Pustaka Al-Hidayah, 2008).

a herd of one hundred she-goats. In this case, Prophet David a.s. decided that the first owner had wronged the second owner (QS. Shad verses 21-24).

Secondly, justice in the sense of balance. Balance can be found in a group of people, whose members have various interest but have a same goal. Each member needs to adjust and meet certain conditions and levels. thus collectively can reach the stated goal. As stated in QS. Al-Infithar verses 6-7, here the word fair is synonymous with conformity, harmony, or proportionality. It should be noted that equilibrium does not require an equal condition of all parts of the unit. Some parts may be smaller than the others. It depends not on the size but on the function and role of each part. For example, the Qur'an differentiate between man and woman in some issues, such as inheritance rights and witness rules that must be seen in the context of balance, not equality.

Thirdly, justice is the attention to individual rights and gives those rights to the entitled. This definition is defined by placing something in its place or giving another party their rights through the nearest way. The opposite is unfairness or injustice, in the sense of violating the rights of other parties. Thus, in this term, watering plants is considered as justice.

Lastly, fairness is ordained to the divine. Fairness means maintaining the reasonable continuation of the existence, not preventing it and obtaining grace and mercy when there are many possibilities for them. All beings have no right upon Allah. The divine justice is basically God's mercy and grace. It has the consequence that Allah's grace cannot be held back and can be obtained by those who try to reach it. It is often stated that when A takes away rights from B, then at the same time B takes rights from A. This rule does not apply to Allah Almighty, because Allah has rights over everything, whereas everything that exists has nothing by Allah side. In this sense, it must be understood that Allah Almighty is *qaiman bilqisth which means* who upholds justice (QS Ali Imran verse 18) or His justice (QS. Fushilat verse 46).¹⁹

Another theory of justice came from Abdul Aziz Sachedina. He explained that justice is seen as a relative concept. If someone declares a justice circumstances, then it must be relevant to the established social order. Under this order, a certain scale of justice is recognized.

The scale of justice differ from one culture to another, which are defined and ultimately determined by each society based on its social order. However, it seems that they all have elements in common, the universal character of moral virtue. In the social order, there are two tendencies how the justice scale is comprehend by the society. A group of societies believe that human is capable to determine their individual and collective interests, therefore they believe that they have the intrinsic capacity, individually and collectively, to establish a social order with the appropriate scale of justice that is served by tacit as well as formal agreements. This justice is a result of interactions between social or individual expectations and existing social moral conditions, named as positive justice. The justice is not

¹⁹ Quraish Shihab, Muhammad, *Wawasan Al-Quran* (Bandung: Mizan, 1996), 113–17.

ideal but there is a continuous effort from the community to improve it. Ideal justice is imaginary, whereas the real and existing justice develops through improvisation from generation to generation.

The other group of societies states that human beings are basically weak and therefore unable to perform perfectly because they have personal deficiencies. The idea that fallible humans can define their common interests and set impartial standards of justice is almost unacceptable. In this society, a divine guidance is required to provide basic norms and principles of the society. This justice was brought and exercised by God's representatives on earth, namely the prophets. The divine justice that came from the prophets is honored, last, has powerful influence on society, and deemed to be applicable to all mankind. Likewise, the idea of Islamic justice falls into this second category, the divine justice.²⁰

The third theory of justice is given by Ibn Miskawaih (d. 1030 AD), an Aristotelian ethical philosopher, and author of the book *Tahzib al-Akhlak*. According to Ibn Miskawaih, justice is divided into three types, namely: (1) natural justice, (2) cultural justice, and (3) divine justice. Ibn Miskawaih describes his theory of justice in a complex philosophical way. Natural justice according to him is "if you imagine a straight line of a block or beam and divide it with a point into two equal parts, and then hang the beam at the given point on a hook, the beam will remain parallel to the horizon without changing its position and without one part is longer than the other. If the difference of matters are the same in quality to make a balance of it, then those objects will materialize and be congruent with wholeness and matters. For example, soil and water differ in substance, but if you take a certain amount at the same quantity then they will have a same weight and be equal and unite. If two objects differ in substance and quantity but have the same weight, then their substances within will maintain a balance between them, and this is the justice of nature".²¹

The next is cultural justice, is divided into two, namely general justice and particular justice. The general justice is something ongoing that everyone agrees upon, while the particular justice is justice that applies and is approved by different nations and in different countries. As well as those agreed upon in different cities, and different persons whom they perceive as a bond which gives them equal rights.²²

The last one is divine justice. It is metaphysical, constant, and eternal. The divine justice exists in something beyond matters and substances covered by natural justice. The Pythagoreans illustrates this sense with numbers, when a number is separated from its summation object that needed in itself, while the quality and order are not subject to various changes, and this is best to draw a desired conclusion. Of course, no one doubts the characteristics of a number which has undergone changes in various situations, so

²⁰ Abdulaziz A. Scachedina, *Penciptaan Tatahan Sosial Yang Adil Dalam Islam Dalam Mumtaz Ahmad Dalam Masalah-Masalah Teori Politik Islam Terjemahan Oleh Ena Hadi* (Bandung: Mizan, 1996), 154.

²¹ M.S. Khan, *Treatise of Miskawih on Justice, Terjemahan Oleh Jaenudin Dan Ahmad Jakia* (Bandung: Al-Manar Press, 2009), 25.

²² Khan, 27.

that perhaps, it is proposed that having a mate may change in the future and become different from the present, nor would someone say that it is it may have been different from the past from the present. This figure becomes very clear in arithmetic. Likewise, it is clear in the characteristics which form belongs to the separate dimensions of things. I mean, geometry makes possible for someone who specializes in the two sciences (Arithmetic and Geometry) to study great incidents, as well as those who have problems, also study problems, but are separated from them. This is the essence of divine justice.²³

The fourth theory of justice came from Aristotle (382-322 BC), an ancient Greek philosopher whose teachings greatly influenced Muslim philosophers. Aristotle taught that there are two kinds of justice, namely distributive justice and commutative justice. Distributive justice is justice that provides each part based on their services. He does not kneel so that each part gets an equal share, not based on equality but based on proportion. Meanwhile, commutative justice is justice that provides everyone equally disregard their individual services. It plays a role in trades, exchanges, in barbers of goods and services, where the exchanged objects must be equal both in term of quantity and quality. Commutative justice dominates the relationship between specific individuals, while distributive justice primarily controls the relationship between people and especially the state.²⁴

Conclusion

Falls in the category of the divine justice, the principles of justice that are contained in the al-Qur'an and al-Hadith can be used as general principles in the administration of justice in order to uphold law and justice. This is in accordance with the precepts contained in the concept of the treatise of al-qadha Umra r.a. that upholding the law and justice is *fardhu'aen* (individual obligations). As for judges, inherent in their position especially The Religious Court judges, they are expected to practice those principles to fulfill people's expectations and justice seekers.

References

- A. Scahedina, Abdulaziz. *Penciptaan Tatanan Sosial Yang Adil Dalam Islam Dalam Mumtaz Ahmad Dalam Masalah-Masalah Teori Politik Islam Terjemahan Oleh Ena Hadi*. Bandung: Mizan, 1996.
- Abidin Ahmad, Zainal. *Negara Adil Makmur Menurut Ibnu Siena*. Jakarta: Bulan Bintang, 1974.
- Almubarak, Fauzi. "Keadilan Dalam Perspektif Islam." *Istighna* 1, no. 2 (2018): 115-43.
- Ash-Shiddeqy, Hasbi. *Peradilan Dan Hukum Acara Islam*. Yogyakarta: PT. Ma'arif, 1994.

²³ M.S. Khan, *Treatise of Miskawaih on Justice*, terj. Jaenudin dan Ahmad Jakia, (Bandung: AlManar Press, 2009), 30

²⁴ Khan, 20.

- Burhanuddin, Ah Fathonih, Aden Rosadi, and Eneng Nuraeni. "Layanan Perkara Secara Elektronik (E-Court) Saat Pandemi Covid-19 Hubungannya Dengan Asas Kepastian Hukum" 53, no. 9 (2019): 1689–99.
- Fuadah, Aah Tsamrotul. "Penerapan Prinsip Hukum Acara Perdata Islam Di Pengadilan Agama." *Journal of Chemical Information and Modeling* 53, no. 9 (1981): 1689–99.
- Hasbi Ash-Shiddieqy, Tengku Muhammad. *Peradilan Dan Hukum Acara Islam*. Semarang: PT. Pustaka Rizki Putra, 2001.
- Ibnu Hajar Al-Asqalany, Al-Hafidh Imam. *Bulughul Maram Min Adillatil Ahkam*. Tasikmalaya: Pustaka Al-Hidayah, 2008.
- Khan, M.S. *Treatise of Miskawih on Justice*, Terjemahan Oleh Jaenudin Dan Ahmad Jakia. Bandung: Al-Manar Press, 2009.
- Madjid, Nurcholih. *Pesan-Pesan Takwa*. Jakarta: Paramadina, 2000.
- Quraish Shihab, Muhammad. *Wawasan Al-Quran*. Bandung: Mizan, 1996.
- Rosadi, Aden. "Dinamika Dan Sistem Hukum Penyelenggaraan Peradilan Agama Di Indonesia." *Al Ahkam* 15, no. 1 (2019): 20–35.
- Ruman, Yustinus Suhardi. "Keadilan Hukum Dan Penerapannya Dalam Pengadilan." *Humaniora* 3, no. 2 (2012): 345. <https://doi.org/10.21512/humaniora.v3i2.3327>.
- Salam Madkur, Muhammad. *Al-Adha Fil Al-Islam*. Kairo: Dar An-Nadha Al-Arabiyyah, n.d.
- Simorangkir. *Kamus Hukum*. IX. Jakarta: Sinar Grafika, 2005.
- Siregar, Bismar. *Hukum Hakim Dan Keadialan Tuhan*. Jakarta: Gema Insani, 1995.
- Tahir, Muhammad. *Negara Hukum*. Jakarta: Kencana, 2004.
- Wahab Khallaf, Abd. *Kaidah-Kaidah Hukum Islam (Ilmu Ushulul Fiqhi)*, Diterjemahkan Oleh Noer Iskandar Al-Barsany Dan Moh. Thalchah Mansoer. Jakarta: PT. Raja Grafindo Persada, 1996.
- Warson Munawir, Ahmad. *Al-Munawwir (Kamus Arab-Indonesia)*. 1. Jakarta, 1996.



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