



# The decision of constitutional justices: Between juridical considerations and Islamic values in the Indonesian legal system

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## Abstract

Decisions of constitutional judges so far only use philosophical, judicial and sociological considerations. These three considerations become the main reference for the judge in the process of extracting legal sources before deciding the case. Post legal decisions often have an impact on injustice felt by the community. In the last 10 years, the decision of the constitutional judge has used the source of Islamic law, having a positive impact on the sense of justice and the level of public trust and the authority of the Constitutional Court. This paper aimed to examine the embodiment, the process of consideration, and legal decisions based on Islamic values that can guarantee justice. The search of the constitutional judge's decision document with content analysis conducted shows that the embodiment of Islamic values in the constitutional judge's decision was found explicitly or implicitly. The decision making process exploring Islamic values has not yet run optimally. This can be due to the reasons of consideration, relevance, and correlation of Islamic legal values to the case decided. The internalization of Islamic values in the decision of the constitutional judge has an impact on the sense of justice and affects the aspects of law enforcement. The process of considering constitutional judges who use philosophical, juridical, and sociological considerations has many weaknesses. Thus, the application of Islamic values can complement the considerations of constitutional judges so that they can be called integrative judges' decisions.

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## Introduction

Legal decisions in Indonesia are not only based on philosophical, juridical, and sociological considerations

but also in many decisions are based on Islamic religious values. This has been practiced in The Indonesian Constitutional Court. Its existence as an independent legal institution in the country has pivotal roles. Those have been institutionalized in Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that the Constitutional Court has entrusted powers and constitutional obligations. The provision is

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then emphasized in Article 10 Paragraph (1) letters a to d of Law No. 24 of 2003 concerning The Constitutional Court. In actual practice, legal decisions that use the values of Islamic law values often cause controversy in society. A decision is often judged to be contrary to the law when it has a load of Islamic legal values. The Indonesian Constitutional Court stated that in the last 10 years, legal decisions that have nuances of Islamic law have had a positive impact on a sense of legal certainty, justice, and the benefit of law for the community. National law itself originates from the uptake of the noble values of religion and customs that are rooted in a pluralistic Indonesian society (Mahfud MD, 2016). The Islamic law values applied in legal decisions have long been a source of law in Indonesia since the indicator of a good law is the one based on the condition of the state's society. Juridically, the transformation of Islamic law values gives colors to positive law and even to judges' decision such as The Constitutional Court (Saifullah et al., 2020). However, it is not widely known how many religious considerations can increase the rule of law.

So far, studies that discuss legal decisions in the consideration of judges in a case tend to use three perspectives. First, studies that examine philosophical considerations by analyzing the importance of Pancasila as the basis of the state and the 1945 Constitution of Indonesia in making legal considerations (Evans et al., 1993; Luber, 2009; Namboodiri et al., 2014). Second, juridical considerations that use applicable laws and regulations by evaluating the effectiveness of juridical considerations in a legal ruling (Araujo, 2000; McCrudden, 2008; Deakin, 2009). Third, sociological considerations that are based on evidence and facts in the community (Isnantiana, 2017). Of the three considerations, no attention is given to the consideration of Islamic religious values, whereas the legal ruling by considering religion is a legal ruling that can be accepted by society. Because the Indonesian people uphold religious values highly, community response will be positive when the legal ruling does not conflict with values in religion.

The purpose of this paper complements the shortcomings of the study of legal rulings which tend to only analyze philosophical, juridical, and sociological aspects. In line with that, three questions can be asked: (1) How are the values of Islamic law reflected in the decisions of constitutional justices?; (2) How are Islamic religious values used as the basis for consideration in the legal decision-making process?; and (3) How do legal decisions based on Islamic values guarantee justice in

legal decisions? The answers to these three questions explain how a legal ruling is based on complex considerations, even considerations that can be made in formal or informal principles.

This paper is based on three arguments. First, the judge's consideration in the decision only looks at the philosophical, juridical, and sociological viewpoints, not seeing the values of Islamic law contained in the legal sources of Islamic teachings. Second, the values of Islamic law contained in the decision of constitutional judges are manifestations of the recognition that the source of Islamic law is one of the sources of law whose existence is recognized in Indonesia. Third, the exploration of the Islamic law values as a source in the decisions of constitutional judges gave birth to an integrative format of legal rulings that is decisions based on values, norms, and behavior. Islamic values are not merely complementary to legal considerations but also form a religious configuration in the interpretation and practice of justice.

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## Literature Review

### *Legal Verdict*

The independence of the judiciary is one of the most important features of every democratic rule of law (Monteiro, 2007). Judges are the personification of the judiciary in making decisions on a case based on various considerations accepted by all parties and do not deviate from existing legal rules (legal reasoning) (Isnantiana, 2017). In essence, judges in issuing decisions can be influenced by two streams: (1) conservative, namely judges' decisions based solely on written legal provisions (statutory regulations); and (2) progressive, namely judges' decisions that are not based solely on written legal provisions but also based on empirical knowledge and experience (Monteiro, 2007). In the context of Islam, legal decisions are referred to as fatwas given by the *mufti* regarding an event. One of the characteristics of the fatwa is casuistic and partial because fatwa is the response of the scholars to the questions raised by the fatwa requesters. There are two fundamental differences in the fatwa model, namely, the methodological fatwa consumed by the elite (ulama), and the thematic fatwa consumed by the general public. Fatwas are often used as a form of solving the problems of the people collectively through fatwa institutions (Suhufi, 2010).

In making legal decisions, it is important to provide expert testimony to produce more critical evaluations

with evidence of recognition and increase the legitimacy of the evidence (Kim & Penrod, 2010). In addition, recent research shows that the relationship between brain function and criminal offenses appears in public media to understand criminal behavior. Neuroscience and neuroimaging can be powerful tools in describing relevant legal conditions and behavior if used effectively, especially in ambiguous or clinically complex factual cases in making legal decisions (LaDuke et al., 2018). In the prosecution of child sexual abuse cases in the United States, the decision making by the judge was strongly influenced by the caregiver's support and the availability of other evidence. The decision to file a case can be influenced by supportive strong investigative practices (Duron, 2018).

### Islamic Law

Many studies have discussed the application of Islamic law in various contexts (Aziz & Sholikah, 2014; Layish, 2014; Mokhtar & Md Tah, 2017; Shaharuddin, 2010). According to Bloom, the history of the formation of Islamic or sharia law/*qanun* was started by Abu Hanifah (699–767 AD) through the need for social reorganization, which should be based on the concept of solidarity and sympathy for the corrupted Umayyad government (661–750 AD) (Tzeferakos & Douzenis, 2017). Sodiq (2017) explained that the history of Islamic law has changed over time as a result of the expansion of Islam and the various needs of Muslim societies because change is a natural phenomenon and Muslims believe that what has not changed is God. Sodiq further classifies the history of Islamic law in the world based on a timeline including: (1) the apostolic period of Muhammad; (2) the time of the companions of the Apostle; (3) the period of recording and the application of legal theory; (4) the period between 1258–1900; and (5) the period of 1900 to the present (Sodiq, 2017).

Islamic law is widely applied in countries that have a majority Muslim population such as in Egypt, where Sharia controls certain areas of social life, such as marriage, inheritance, property rights, and applies to Muslims and non-Muslims (Tzeferakos & Douzenis, 2017). The sources of Islamic law are divided into two groups, namely: (1) primary sources (approved sources) including Al-Quran, Sunnah (Prophet's traditions), *Ijma* (Legal Literature that holds consensus opinions) and *Qiyas* (analogy rules developed through deductive reasons); and (2) Secondary sources (disputed sources), namely a number of legal methods to develop Islamic law in various order of authority, including *istihsan* (legal/

public preference), *maslahah mursalah* (public interest), *urf* (custom), *shar man qablana* (sharia religion before Islam), *madhhab al-salabi* (the opinion of the Prophet's Companions), *sadd al-dhara'i* (preventing the occurrence of something evil) and *istishab* (continuation of the application of the rules accepted in the past) (Al-Dawoody, 2017).

### Legal Justice

Legal justice is the name usually given for the moral good which is the foundation of legal institutions. According to the concept of legal justice, people are treated according to the law that is applied consistently by treating people fairly. The principle of justice reflects the essence of the law and the compromise between the state and citizens. The foundation of justice is the representation of good and evil or moral and immoral (Bredneva, 2014). Legal justice is a derivative of the idea of social justice. The law will never be better than the law itself, which means that if the law itself is unjust then the legal treatment of people will result in injustice (Luban, 2015). Such is seen in the case of transgender people in America facing many inequalities in the law and criminal justice system, where they are subjected to harassment, illegal termination from work, and harassment by law enforcement in the community because transvestites are considered sex workers (Stotzer, 2014).

There have been many studies conducted on legal justice (Dionigi & Kleidosty, 2017; Dwisvimiar, 2011; Nagin & Telep, 2017). Hart revealed that the general principle of justice in law is equality and inequality (Ruman, 2012). In line with that, according to Kelsen, justice in the context of law is related to legality in which regulations apply equal and similar without legal discrimination and are applied to all cases in accordance with applicable regulations. So, the emphasis in legal justice lies in the similarity in law enforcement although in practice justice is essentially abstract and relative. Justice has many aspects of manifestation of fragments in law, social norms, and individual moral principles. The thing that one person or group consider as the accepted norm, may be totally unacceptable for others. For example, in some African tribes, if there is a death or disease of someone in a family, there is a tradition to cast witches where a woman in that family is declared as a witch for that unfortunate event. This is considered just in their perspective without an attempt to reveal the truth (Bredneva, 2014).

## Methodology

This study employed a library research method. The study was carried out by collecting secondary data in the form of an in-depth review of the Constitutional Court judge's decision documents. This was in line with what was stated by Rapley and Jenkins (2010) as well as reviewing references related to the research objectives. Documentation research was done by selecting and sorting out the decisions of constitutional judges that contain Islamic values.

The documents of the constitutional judge's decision used as this study object were those from 2004 to 2014, which contained the applied Islamic values. The Islamic values contained in the judge's ruling can be categorized into two, namely: the impulse decision document and the decision document which explicitly contains the Islamic values.

After a review of the decision, documenting is carried out, and the next step is to analyze the document by content analysis (Roberts, 2015; Williamson et al., 2018). Analysis of the contents of the decision document synchronizes the literature used as a reference. This process is then carried out narratively by aligning it with the research objectives.

## Results

### *The Embodiment of Islamic Values in the Decision of Constitutional Justices*

Judges' decisions that use Islamic values are reflected in the judges' decisions which explicitly state the Quranic verses, hadiths, and fiqh rules that are quoted directly in the judge's judgment. Some decisions of constitutional judges explicitly implemented Islamic values (as seen in Table 1).

**Table 1** The explicit application of Islamic values in constitutional justice decisions (Period 2007–2014)

| Case Number             | Case Topic  | Source of Islamic Teachings  | Content of Islamic Values  |
|-------------------------|---|--|--|
| No. 12/PUU-V/2007       | Restrictions on polygamy  | The Court cites QS. Ar-Ruum: 21, QS. An-Nisa: 1, 3 and 129 as basis for consideration regarding the gradual issuance of polygamy in Islamic teachings.   | Islamic values allow polygamy. However, if the person cannot do it justly, then he can only marry one woman.   |
| No.46/PUU-VIII/2010     | The rights of children born out of legal marriages (religious marriage/ <i>Siri</i> ) | There is an expert statement that cites the Quranic verse as the basis that a child /a person is not entitled to bear the sins of his parents/others. QS. al-Isra: 15; QS. al-An'am: 164; QS. Fatir: 18; QS. az-Zumar: 7; and QS. an-Najm: 38; These verses state that a person cannot bear the burden of another's sin.   | Islamic law states that one does not bear another's sins.  |
| No. 38/PUU-IX/2011      | The reasons for divorce are due to ongoing disputes and quarrels                      | The decision included the opinion of the Court and one of the experts quoted by the principles of marriage in the Quran, namely <i>Sakinah, Mawaddah, wa Rahmah</i> . Then the Court cited QS. An-Nisa: 34–35 related to the word <i>syiqaq</i> and its meaning as well as in dissenting opinion. The dissenting opinion also cites the hadith about the law of divorce. One expert, Sinta Nuriya Abdurrahman Wahid, quoted QS. ar-Rum: 21 about the purpose of marriage   | If there is a dispute among spouses, Islam teaches to do deliberation through <i>hakam</i> .   |
| No. 30-74/PUU -XII/2014 | Age limit for early marriages   | In the opinion of the Court, the Quran verses and traditions relating to marriage are included.<br>1) QS. Ar-Rum: 21<br>2) Hadith about marriage from 'Abdullah bin Mas'ud Radhiyallahu anhu, Rasulullâh sallallaahu' alayhi wa sallam said to us, "O young people! Whoever among you has the ability to get married, then get married! Because marriage is more downward-looking, and more fortifying <i>farji</i> (pubic). And whoever is incapacitated, then he should <i>shaum</i> (fast) because <i>shaum</i> can fortify himself." | Islam teaches that marriage provides a sense of peace. If one is able to get married, then do so. However, if one is unable to do so, one should do fasting. |

Judges' decisions that contain Islamic values can also be implicitly assessed as Islamic values that internalize in the consideration of the Constitutional Court's decision. These Islamic values can be traced from each of the judge deliberations. These Islamic values can be implicit and internalized in the judge's decision. The decisions of Constitutional Justices which implicitly contain Islamic values can be seen in Table 2.

From the data of the decisions of the constitutional judges from 2004 to 2014, the types of consideration of Islamic values used by the constitutional judges include: (1) realizing the justice principles and eliminating discrimination; (2) the enactment of regulations is adjusted to the capabilities of each individual; (3) the benefits principles provide comfort in daily life; (4) consuming something forbidden (*haram*) only in case of emergency without crossing the line, or only to avoid dangers; and (5) every government's action guarantees benefits for its people.

From the three constructs of judges' decisions, it can be seen that between juridical values and Islamic values, there is a mutually complementary relationship. Not all legal issues can be resolved by legal considerations, but Islam can be a source of value in judges' decisions.

### *Consideration of Islamic Values in the Process of Making Legal Decisions*

The considerations of constitutional judges who decide cases by exploring values in Islam can be seen in three categories, namely, the reasons for judges'

consideration, the relevance of judges' decisions, and the correlation of Islamic legal values to the case being decided. These are explained in the following paragraphs.

First, the reason for the judge's consideration to use Islamic values as a source of law in legal decisions is based on several things: (1) Islamic values are very flexible and able to adapt to changing times. All legal problems encountered in life can be found in the solution of Islamic legal sources; (2) Islamic values are living values in the community (living law) so that the values are internalized in the culture of community life. Thus, there is no resistance found in the community if the decision already contains Islamic values; (3) Islamic values are one of the sources of law in Indonesia so that if a vacuum occurs (*vacuum recht*) then Islamic values become a source of reference. Because of the dynamic legal problems that develop along with social changes in society and not in line with regulatory readiness, many cases have not yet been found to refer to regulations. This really requires a new source of law as a reference and this can be found in the source of Islamic law which is conditional on values; and (4) Islamic values contained in the Quran, hadith, and fiqh rules are values that are abstract as well as global and can be used in all types of the settlement of legal cases. Abstract and macro values are sources of The Islamic law that can be applied in different places and times.

Next, the relevance of Islamic legal values is the basis for consideration of legal decisions. The contextualization of Islamic values in legal decisions is motivated by

**Table 2** The implicit application of Islamic values in constitutional court decisions (Period 2004–2009)

| Case Number          | Case Topic  | Source of Islamic Teachings   | Content of Islamic Values   |
|----------------------|---|---|---|
| No. 066/PUU-II/2004  | The authority of the Constitutional Court in examining laws that were passed before or after the amendment to the 1945 Constitution | Relevant to (QS. An-Nisa: 135); (QS. Al-Maidah: 42); (QS. Al-Maidah: 8); (QS. Al-Baqarah: 185); (QS. Al-Maidah: 6); (QS. Al-Hajj: 78).  | Islamic values uphold truth and justice and do not follow the lust to deviate from the truth. |
| No. 27/PUU-VII/2009  | Deadline for filing requests for a formal filing of the Act   | QS. Al-An'am: 119<br>QS. Al-Baqarah: 173<br>QS. Al-Maidah: 3<br>Fiqh Rule<br>"An emergency allows something that is forbidden."   | Islam teaches that even a forbidden thing is allowed in case of emergency.                    |
| No. 138/PUU-VII/2009 | The authority of the Constitutional Court in examining <i>Perppu</i> (The Government Regulation in Liew of Law).                    | <i>Siyasah</i> fiqh rules<br>"A leader's policy towards his people depends on the benefit"<br>" <i>Hajat</i> occupies an emergency status; both in the form of ( <i>hajat</i> which is) general or special"<br>Rule of fiqh<br>"Everywhere is found, there is the law of God" | Islam teaches that leaders should take actions that prioritize the principles of benefits.    |



Indonesian people who embrace the majority of Islam so that Islamic values are easily accepted in society because they are in accordance with the wishes and norms that develop in society. The response of the Muslim community, especially to legal decisions containing Islamic values, is certain to be accepted by the community. It is realized that what is done by the judge has responded to the values that grow and develop in society. Acceptance of the decision from the community indicates that the decision is a requirement with Islamic values.

The last category is correlation of Islamic legal values to the case decided. In deciding a legal decision, the constitutional judge not only reviews the evidence and facts in the trial presented by the applicant but also examines which legal sources used as a basis for consideration before the decision are delivered at the hearing. The ability of judges to correlate Islamic values with the substance of the case being handled requires critical thinking in giving consideration especially in the deliberations of judges before the verdict is read. Providing acceptable reasons and dialogical ability built on the facts of the trial and looking for a legal basis in applicable laws and regulations make Islamic values acceptable to all parties involved in the case. Reconstructing thinking by strengthening the legal basis derived from various sources obtained and interpreting the data collected is the work done by the judge before deciding the case.

### *Guaranteed Justice in Judges' Decisions Based on Islamic Values*

Every judge's decision that is read and enforced in the community certainly cannot be separated from the three elements of the objectives to be achieved, namely, legal certainty, legal usefulness, and legal justice. In this case, the judge's decision based on Islamic values will guarantee justice not only for the parties in the case concerned but also members of the wider community. To examine judges' decisions based on Islamic values, such can be examined in 3 perspectives as follows: the success indicators of legal decisions, the process of using values, and the implementation of justice values after the legal decision.

First are the success indicators of legal decisions in the community. Achieving the objectives of legal decisions accepted by the public can not be separated from the following three indicators: (1) Legal certainty. It is the main character in the state legal system that adheres to the civil law system or continental European legal system by prioritizing written legal characteristics

to guarantee the certainty of rights and obligations for all members of the community; (2) The usefulness of the law. It has a very significant value to determine whether the legal decisions carried out have a value of expediency. Definitely, the value of this benefit is felt directly by the parties as well as justice seekers in the Judiciary because the decision is not only useful for the present but also the future; and (3) Legal justice. It is the last link and is crucial for the quality of legal decisions. It is this justice that triggers the acceptance of legal decisions by the community. A sense of justice is something that is very abstract in nature and can be felt by everyone in accordance with the eyes of the beholder. The three indicators, namely, legal certainty, legal usefulness, and legal justice are the three indicators that are the main basis in the study of Islamic legal values.

The second perspective is the process of using Islamic legal values in legal decisions that guarantee the justice values. The ability of judges to apply Islamic values in the Quran, hadith, and the rule of Fiqh into the substance of the case is the ability to systemize logical thinking by using appropriate legal interpretation methods. Support from the substance of the case such as evidence or supporting facts and testimonies is one of the reinforcements for the judge to master the problem or case being examined. Mastery of the case substance determines the level of understanding of the case quality because this becomes the starting point for the next step. After mastering the substance, the no-less important issue is the mastery of Islamic values contained in the verses of the Quran, hadith, and fiqh rules. The accuracy of the Islamic values taken and the accuracy of using them in the case substance and the accuracy in choosing the method of interpreting the law are three indicators that influence the level of success of the quality of decisions that contain Islamic values. Therefore, the quality level of judges' decisions containing Islamic values is very much determined by the ability of each judge to master the sources of Islamic law, including the ability to translate books in Arabic.

The last is implementation of justice values after the legal ruling. Islamic values that are implemented in legal decisions are one of the efforts to internalize in legal documents that have a positive impact on law enforcement efforts. In the context of raising Islamic values used by judges in legal decisions, it can be examined in two ways of viewing justice, namely, formalistic justice and substantive justice: (1) Formal justice is based on procedural mechanisms. It measures the level of success of the stages that must be followed and fulfilled by the parties in dispute in accordance with the regulations that

govern them. It is also guaranteed in formalistic justice that found each mechanism does not overlap, which shows that the assurance of certainty can be measured and proven from valid and validated documents. In the teachings of schools of law, formalistic justice is a form of legal positivism that carries the written documents called justice because it can be ascertained who is entitled and who is not; and (2) Substantive justice can be felt directly by the parties who litigate. These values of justice are intrinsically or implicitly very psychologically influential, especially those who feel the effects of the post ruling. This substantive justice is what determines the quality of justice in a case. Substantive justice is the result of justice from a more sociological perspective, giving priority to the social context in studying a legal problem.

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## Discussion

### *Islamic Law as Enrichment of Philosophical, Juridical and Sociological Views in Legal Decisions*

Decisions of constitutional judges are basically judgments on judicial, philosophical, and sociological considerations. In practice, the values of Islamic law are used as a basis for decision making. In line with that, it can be reviewed how the significance of Islamic law in enriching decisions and in ensuring legal justice. Three aspects of the explanation of the relationship between juridical, philosophical, and sociological considerations with consideration of the Islamic law values can be described as follows.

First, the process of extracting legal sources and judges' consideration of juridical, philosophical and sociologist aspects. A judge must be able to explore and understand the legal values in society, maintain independence, apply legal norms with high morality, comply with professional ethics and codes of ethics, pay attention to the doctrines and views of legal experts in making decisions (Maggalatung, 2014). The ability to explore the legal values that are in the community is caused by (1) every case examined and decided by a judge is a case that comes from the scope of the local community so that the values taken must be sourced from the values that develop in the said community; and (2) the development of cases that go to court has different difficulty levels, so it requires many sources of law to be explored, one of which is the source of Islamic law.

The process of extracting legal sources that have been carried out by the judge is the applicable national law and

has not been revoked. This positive law becomes the main invitation to become the basis for the application of the right article for the right case. Before making a decision, the judge conducts a deliberation by giving considerations. These three types of considerations became the main reference for judges before the decision was handed down. The limitations of the existing legal resources by referring to these three types of considerations are often felt lacking. For this reason, a number of judges still see other legal sources used as references. It is from this point that the actual Islamic values contained in the source of Islamic law become a new spirit because Islamic values can be used as a source of law in the Constitutional Court decision, either direct or without quoting the spirit contained in it.

Second, the application of Islamic values as a source of legal rulings have not been maximized. The process of exploring Islamic values is an activity of thinking to connect the facts of the trial with the source of the Islamic law used as a reference. This activity is an ability that must be honed so that early methods can be found that are easy to carry out, the process of interpretation and decision formulation.

In addition to exploring the values that have been carried out such as philosophical values, a search for regulations is also done by applying appropriate articles and paragraphs as well as seeking facts in the evidentiary process at the court hearing. Three sources of law which are essential considerations that have so far been carried out are still inadequate. The Islamic values found in the sources of the existing Islamic law are still under-worked or are still not fully utilized due to several factors, for example, the limited access to Islamic legal sources, inability to translate reading sources, weakness of Arabic to refer to original sources, the piled up cases that must be resolved so that there is no specific time to examine the sources of Islamic law. Some of these reasons become the background why many constitutional judges have not yet worked on the sources of Islamic law. From the research notes, it was found that for the 9 (nine) constitutional judges who had the background of the standard capabilities that must be possessed for mastering the material sources of Islamic law, not all capabilities were met. It can be seen from the 9 (nine) judges that up to 50 percent of them in the constitutional court did not have qualified religious education background, for example, having studied Islamic education in stages, having lived in Islamic boarding schools and others as a minimum requirement to master the sources of Islamic law, which complete crystallization of Islamic values.

Third, the form of the application of Islamic values in formulating judges' decisions. In carrying out the activities of extracting the values of Islam from the source of Islamic law, such will appear in the form of the decision made. During this time, if the judge needs to apply the sources of Islamic law as a basis that must be made, it will emerge explosively. This explicit form can occur for several reasons, namely: (1) the verses quoted are from the applicant or expert witnesses brought in so that they are directly used to be quoted in the decision; (2) the process of taking verses in the source of Islamic law which directly quote because there are similarities in context which can be systematically analogous; (3) conducting a review in the form of discussions with expert research staff or the team formed to provide input to the judges' judgment; and (4) reviewing books or references that are relevant to the substance of the legal problem at hand as a paragraph of Islamic values in the judge's ruling. A process of quoting verses in the holy book is then used as a basis for justification of the argument to convince the parties to the litigation.

#### *Recognition of Islamic Law as a Source of Law in Indonesia*

Manifesting Islamic values in the legal system in Indonesia can be seen in several dimensions, namely: (1) the institutional dimension is a dimension which is by means of a platform made to take care of the problematic Muslims in terms of *muamalah* and *munakahah*. The form of this institution was formed based on the needs of Muslims in accordance with regulations; (2) regulatory dimension. The need for laws and regulations that are made in accordance with the wishes of Muslims who require positive legal regulation (positivation of Islamic law); and (3) the dimensions of legal culture. The legal culture adhered to greatly determines the level of compliance, obedience, and legal awareness of a country because it deals with attitudes and behavior that are directly seen by the public.

The position of Islamic values in the three domains can be seen in the regulations that can be studied implicitly or explicitly. Its form can be directly on the existence of institutions or compilation of laws and regulations. However, these two domains do not last long compared to legal culture because institutions and regulations can be changed at any time necessary, whereas the legal culture of natural activity is based on the people's creativity, taste, and initiative. which upholds the values they recognize and maintain as long as the community is alive. Thus, the legal culture in which there are preserved Islamic values is actually a picture of the existence of

Islamic values still used by the community today.

Recognition of the existence of Islamic values that are located in the sources of Islamic law has made many contributions to national law in Indonesia. Historically, the existence of these Islamic values lives and develops as a real need in law enforcement in Indonesia. The acceptance of Islamic values in various dimensions of national law is proof that Islamic values can be accepted not only by Muslim communities but also in non-Muslim societies. This indicates that tolerance in the way of law in Indonesia brings public space to accept differences in diversity. This attitude shows that Islamic values are very open and universal and can be accepted in various circles including those of different religions. This means that the Islamic values contained in the decision do not differ greatly from those of other religions so that they can be accepted by the religion.

#### *Decisions on Integrative Laws Based on Islamic Legal Values*

The process of extracting the values of Islamic law as a source of law for constitutional judges requires several stages which are systematically described as follows: (1) Stage of mastery of the substance of the case; (2) The synchronization stage of witnesses, evidence and facts; (3) The basic philosophical, juridical and sociological search stage; (4) The stage of searching for Islamic values in the source of Islamic law; (5) Stage of drafting the draft decision; and (6) Final stage of violence with the deliberation of judges.

Each stage carried out indicates several factors that are internally very influenced by the fundamental abilities contained in the judge's knowledge. This indicates that the effort to trace Islamic values that originated from Islamic law is the last work that gives legitimacy to the final decision making.

The values of Islam contained in the source of Islamic law used by the judge in preparing his decisions have had the following positive effects: (1) the value of the quality of the decision is much better because it uses an approach that is of a value of religiosity; (2) after, the decision is acceptable to all parties litigants and the community in general; (3) there is an increasingly high level of public trust in law enforcement; and (4) public satisfaction with decisions that accommodate Islamic values has a positive influence on the authority of judges and the spirit of justice in Indonesia.

Exploration of Islamic values in the constitutional judge's ruling is a form of recognition of Islamic law that is alive and developing in society. Judges' consideration



processes that have been carried out using philosophical considerations are the principles or opinions of experts, juridical considerations are based on legal norms, meanwhile, sociological considerations are sourced from actors. Therefore, by applying Islamic values, it will become a complete consideration made by constitutional judges, not only in philosophical, juridical and sociologist considerations but also Islamic values so that it can be called an integrative judge's decision.

## Conclusion and Recommendation

It turns out that Islamic values as a source of consideration in the decisions of constitutional judges have had a positive impact on people's sense of justice. The court gained public trust in line with the increasing *marwah* authority of the Constitutional Court. The values of Islamic law have not been used as a basic concept for judges in giving consideration, but informally Islamic legal considerations have become best practices in various decision-making processes of constitutional judges. As a country with a Muslim majority, Islamic legal values cannot be avoided to be used as a source and reference for making legal decisions in Indonesia. At the same time, the public feels justice in decisions based on Islamic legal considerations.

The use of the integrative judges' decision concept in this study has made it possible to understand in depth the importance of the values of Islamic law in the judge's decision on the one hand, and on the other hand, the guarantee of justice can be felt more deeply by the public. The Islamic approach in various legal matters seems to have high relevance, especially in the complexity of legal variables and the binding elements in the legal process of seeking justice. Justice acts as a legal objective in various cases where justice is needed by the public.

This study is limited to the analysis of Islamic values in the decisions of the constitutional justices, so it pays little attention to other aspects such as the interpretation method of constitutional judges on the Islamic values of a case. Thus, an in-depth study is needed specifically to discuss the mentioned topic in the decision-making process of judges. That way it can be sharply understood that the legal process can give more guarantee of justice for society.

## Conflict of Interest

The authors declare that there is no conflict of interest.

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