

Vol. 10, Issue. 2,
May 2024

Article History

Received: 12 Jan 2024

Reviewed: 19 Apr 2024

Accepted: 24 Apr 2024

Published: 26 Apr 2024

Applying Justice Aspects as an Impact of Emergence of Judicial Review Decisions in Children's Cases Against the Law

A Wahid Ramdhan Dewanoto^{1*}, Natangsa Surbakti²

¹ Faculty of Law, Universitas Muhammadiyah Surakarta, Indonesia

Email : awahidramdhan@gmail.com

² Faculty of Law, Universitas Muhammadiyah Surakarta, Indonesia

Email : natangsasurbakti@gmail.com

*Correspondence email: awahidramdhan@gmail.com

Abstrak: Penelitian ini memiliki tujuan untuk mendeskripsikan munculnya aspek keadilan dalam perkara tindak pidana anak didalam putusan nomor 131/PK/Pid.Sus/2015. penelitian yang digunakan penulis adalah penelitian deskriptif menggunakan metode pendekatan yuridis normative. Sumber data yang digunakan dalam penelitian ini yaitu data sekunder yang berupa Putusan Peninjauan Kembali Nomor 131/PK/Pid.Sus/2015 dengan metode pengumpulan data kepustakaan yang kemudian dianalisis menggunakan metode kualitatif dengan logika deduktif. Berdasarkan dari pembahasan yang dilakukan dapat diketahui bahwa munculnya aspek keadilan terhadap anak berhadapan dengan hukum yang merupakan korban salah tangkap karena adanya bukti baru, sehingga proses persidangan dari awal tidak dapat memunculkan aspek keadilan distributive oleh negara sebelum munculnya putusan Peninjauan Kembali Nomor 131/PK/Pid.Sus/2015 yangmana majelis hakim terjadi kekeliruan dalam proses Tingkat pertama sehingga keadilan yang mestinya didapatkan oleh anak tersebut baru ada. Serta membuat dalam proses penegakan hukum pidana untuk memberikan keadilan distributive apabila terjadi salah tangkap perlu bukti baru yang muncul memakan waktu yang lama.

Kata Kunci : Salah Tangkap; Peradilan Anak; Penegakan Hukum.

Abstract: The study aims to describe the emergence of aspects of justice in juvenile crimes in decision number 131/PK/Pid.Sus/2015. This descriptive study uses a normative juridical approach. The data source is secondary data in the form of Judicial Review Decision Number 131/PK/Pid.Sus/2015 used library data collection methods, which were then analysed using qualitative methods with deductive logic. Based on the discussion carried out, it can be seen that the emergence of aspects of justice for children dealing with the law who are victims of wrongful arrest due to new evidence, so that the trial process from the beginning cannot bring up aspects of distributive justice by the state before the emergence of Judicial Review Decision Number 131/PK/Pid.Sus/2015, in which the panel of judges made mistakes in the first level process so that the justice that the child should have obtained is new. In addition, to provide distributive justice if there is a wrong arrest, new evidence that appears takes

time.

Keywords: Wrongful arrest; Juvenile justice; Law enforcement.

INTRODUCTION

Children are a gift from God Almighty in which they are attached to the dignity of a whole human being who is given to a married couple as a mandate in a marriage to be guarded and raised so that they become someone who can live life with the hope of making their parents happy¹. In addition, children are also a generation that has the potential to continue the struggle and realize the ideals of the nation and state, where a child has an important role in the future running of the nation and state. So that children are given the broadest possible opportunity to grow.

Furthermore, Article 1 Number 1 of Law Number 35 of 2014 on Child Protection states that the definition of a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb². In addition, in Indonesian positive law, what is known as children conflicts with the law³. The definition of children in conflict with the law based on Article 1 paragraph (2) of Law Number 11 of 2012 on the Juvenile Criminal Justice System is children in conflict with the law, children who are victims of crimes, and children who are witnesses to crimes⁴.

In current social conditions in Indonesia, many children are not living the life of a child as they should. As the example, in everyday life, many children are still neglected or roaming the streets doing activities that should not be done at their age. Many children beg on the street or work as street musicians, often called buskers. It happens due to several factors, including the economy or the impact of technological developments that cannot be accepted properly.

Conditions that occur, as described in the example above, can often cause problems in this group, considering that busking is an illegal profession. As happened in South Jakarta in 2013, a body was found under *Jembatan Kali Cipulir* by six buskers, four of whom are teenagers, while the other two are adults. Then, Polda Metro Jaya asked the six buskers to become witnesses, and they were eventually named suspects. As the case developed, which was examined separately due to age differences, the South Jakarta District Court sentenced the suspects to different prison terms. Four buskers who were underage were sentenced to

¹ Sulardi and Yohana Puspitasari Wardoyo, "Kepastian Hukum, Kemanfaatan, Dan Keadilan Terhadap Perkara Pidana Anak," *Jurnal Yudisial* 8, no. 3 (2015): 251–68.

² RI Kemensesneg, "Undang - Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *UU Perlindungan Anak*, 2014, 48.

³ Wahab Aznul Hidayat, "The Role of Witness and Victim Protection Agency for Imekko Tribe in Criminal Justice System in Sorong" 8, no. 2 (2023): 176–91, <https://doi.org/10.23917/laj.v8i2.2363>.

⁴ RI Kemensesneg, "Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," 2012.

prison for different periods of four years, three years, six months, and three years⁵. Appeals and cassations have been made but did not change the verdict, so the children are serving sentences in prison.

In this case, it is related to the law enforcement process by law enforcement officials who do not follow the principle of presumptions of innocence against people experiencing poverty as experienced by street buskers. It is like the inapplicability of this principle to people who are not able because of the vigilante treatment by law enforcement officials by threatening, coercing, and torturing to declare the defendant guilty before the court. It is to make the parties unable to want to undergo punishment, which is not all of the intended actions⁶. Then the occurrence of this can lead to the occurrence of perverted justice, known in Dutch (*Rechterlijke Dwaling*) because, in the history of justice in Indonesia itself, the emergence of justice comes from raw materials or legal facts reported by the police/investigators are not the absolute truth (*niet material waarheid*)⁷.

After serving a prison sentence of approximately two years, the four buskers who were underage turned out not to be murderers and were proven innocent of the discovery of a corpse in 2013 under jembatan Kali Cipulir in South Jakarta. It happened with a judicial review decision number 131/PK/Pid.Sus/2015 issued by the Supreme Court. However, during the sentencing process, these children have lost their rights, one of which is the right to grow and develop properly. Therefore, these children are entitled to their rights as a form of justice for children. As for some of the rights of children regulated in Law Number 35 of 2014 concerning Protection, including every child has the right to be able to live, grow, develop, and participate reasonably in accordance with the dignity of humanity, and receive Protection from violence and discrimination, every child has the right to a name as a self-identity and citizenship status, every child has the right to worship according to their religion, think, every child has the right to worship according to his/her religion, think, and express following his/her level of intelligence and age, in the guidance of parents, every child has the right to know his/her parents, to be raised, and to be cared for by his/her own parents, every child has the right to obtain health services and social security by physical, mental, spiritual, and social needs, every child has the right to obtain education and teaching in order to develop his/her personality and level of intelligence by his/her interests and talents.

The meaning of justice from the perspective of Islamic law is to put something in its place, charge something according to one is carrying capacity, and give something that is

⁵ Anastasia Aulia, "Kronologi Lengkap Kasus Pembunuhan Cipulir Hingga Salah Tangkap 6 Pengamen," 2019. (diakses pada 1 November 2023)

⁶ Kenny Ferris Ave and I Gede Artha, "Ketidakadilan Hukum Dalam Sistem Peradilan Pidana Indonesia Bagi Masyarakat Kurang Mampu," *Jurnal Kertha Desa* 11, no. 4 (2023): 2234–2243, <https://doi.org/https://ojs.unud.ac.id/index.php/kerthadesa/article/view/97519>.

⁷ Yuniar Kurniawaty, "Konsep Keadilan Terhadap Vonis Peradilan Sesat: Tinjauan Hukum," *Jurnal Legislasi Indonesia* 14, no. 4 (2017): 395–406, <https://doi.org/https://doi.org/10.54629/jli.v14i4.114>.

rightfully his with a balanced level. The implementation of justice in Islam is based on the Qur'an and the sovereignty of the people or the Muslim community, namely the Ummah; in Surah Ar-Rahman verse 7, Allah SWT says: "*Allah has raised the heavens, and He has set up a balance*". The verse is interpreted as follows: First, nature was created, and everything and every material with the proper amount and distances are measured carefully. Secondly, justice is equality that denies any difference. Justice means maintaining equality when the right to own is equal because justice requires and necessitates such equality. Thirdly, justice preserves the rights of individuals and gives rights to everyone who deserves them. This kind of social justice must be respected in human law, and every individual is commanded to uphold this justice. Fourth, justice is preserving the right to continued existence.

Then, by conveying the background above, that in law enforcement, especially against children dealing with the law, harmonization of the elements of law enforcement is needed. The urgency of this research is to describe the aspects of justice that arise in the case of children facing the law who are victims of wrongful arrest and have served their sentences. However, new aspects of justice have emerged for victims of wrongful arrest in the review decision Number 131/PK/Pid.Sus/2015.

METHOD

The current study is descriptive study. Here, the researcher described the application of justice related to children's rights, which must be protected as a form of justice for children. The approach method is a pattern of thought that exists in a study. The approach method is normative juridical. The data source used is secondary data in the form of Judicial Review Decision Number 131/PK/Pid.Sus/2015, using library study data collection methods, is then processed based on categories taken from legal norms related to the study object and analyzed using qualitative methods with deductive logic.

DISCUSSION

A. Consideration of the Panel of Judges in Judicial Review Decision Number 131/PK/Pid.Sus/2015

Judicial review is often called revision (English) and *herziening* (Dutch). Grammatically, judicial review consists of 2 (two) word elements, namely "review" and "return." Review comes from the word "review," which can be equated with seeing, observing, or examining. When connected with the whole review, it can be interpreted as seeing/observing/re-examining something that needs to be repeated. In the legal dictionary, what is meant by *herziening* is a review of a court decision that has permanent legal force; revision⁸.

Judicial review is a legal remedy that can be taken by a convicted person against a

⁸ Ramiyanto, *Upaya-Upaya Hukum Perkara Pidana Di Dalam Hukum Positif Dan Perkembangannya* (Bandung: Citra Aditya Bakti, 2019).

court decision that has permanent legal force. Court decisions with permanent legal force are district court decisions that are not appealed, high court decisions that are not appealed, and Supreme Court cassation decisions. Judicial review cannot be taken against a court decision with permanent legal force if the decision is in the form of a decision declaring the defendant free or released from all legal charges.

Juridically, the application for judicial review is an extraordinary legal effort, namely the provision of special procedural rights for justice seekers to fight for material rights that feel disadvantaged by the existence of a Judicial Decision from a Judicial Body that has Permanent Legal Force, as reported by the law in the principle of *Res Judicata Pro veritate Habetur*.⁹

Judicial review in crimes is an extraordinary legal remedy that a convicted person or his heirs can submit against a decision with permanent legal force where the verdict convicts the defendant. The limitation of this request for judicial review can be seen in Article 263 Paragraph (1) of criminal-law procedural code, which formulates:

"Against a court decision that has obtained permanent legal force, except for a verdict of acquittal or release from all legal charges, the convicted person or his heirs may submit a request for review to the Supreme Court."

As formulated in Article 263 Paragraph (1) of the Criminal Procedure Code, the main principle of judicial review consists of three solid foundations in an inseparable unity. The three foundations are:¹⁰ a. A petition for review may be filed only against a judgment of conviction; b. A petition for review may be filed only against a judgment that has become final; c. A petition for review may be filed only by the convicted person or his/her heirs.

The provision in Article 263 Paragraph (1) of the criminal law procedural code is apparent that judicial review is solely intended for the interests of the convicted person or his/her heirs so that if there is a deviation from this provision, it will bring problems because a decision that violates the principle of judicial review is a decision that clearly shows a judge's mistake or an explicit error as referred to in Article 263 Paragraph (2) letter c of criminal-law procedural code¹¹.

In this case, the researcher discusses considering the decision for judicial review Number 131/PK/Pid.Sus/2015 submitted by the defendants who are children facing the law who were victims of wrongful arrest by investigators. The defendants requested judicial review on April 6, 2015, through the South Jakarta District Court. The brief reason for this is the confession of one of the perpetrators, who gave testimony as the basis of new evidence (*novum*). From reading these reasons, the panel of judges examining the case for judicial review gave the following considerations:

"That the reasons for the request for reconsideration from the Petitioners for

⁹ Agus Kasiyanto, *Proses Penyelesaian Sengketa Pajak Di Indonesia (Pemeriksaan, Keberatan, Banding, Gugatan & Peninjauan Kembali)*. (Surabaya: CV. Jakad Media Publishing, 2020).

¹⁰ Adami Chazawi, *Lembaga Peninjauan Kembali (PK) Perkara Pidana: Penegakan Hukum Dalam Penyimpangan Dan Peradilan Sesat* (Jakarta: Sinar Grafika, 2011).

¹¹ *Ibid.*

Reconsideration/Convicted Persons that there was a mistake or obvious error can be justified because the testimony of the Convicted Persons in the Minutes of Examination (BAP) has been denied and revoked by the Convicted Persons at the trial because the Convicted Persons were under intimidation, torture and there was no assistance from Legal Counsel so that the testimony was forced to be made up and did not match the facts. This reason can be justified because the Convicts were children who were easily frightened and there were no other witnesses who heard, saw or felt the incident themselves. Therefore, there is insufficient evidence to declare the Convicts as the perpetrators of the crime of murder against the VICTIM. Moreover, in the case of Defendant Witness II and Defendant Witness I, who were tried in a separate case with the same charges as those of the Convicted Persons, namely jointly murdering the VICTIM, were found not proven and acquitted from the charges, due to, among others, the testimony of the witness Iyan Pribadi aka IP that it was not the Convicted Persons but Iyan Pribadi alias IP who committed the murder of the VICTIM, Brengos and Jubai and the real motive for the murder was not because of a fight over a busking stall or displeasure towards the victim as charged, but because Iyan Pribadi aka IP, Brengos and Jubai wanted to own a red Yamaha Mio Soul motorcycle belonging to the victim."

From these considerations, it is evident that the defendants, who are minors, were not assisted in the inspection report process, which caused mental pressure on the children who did not want to provide testimony following the directions of the investigators so that the defendants became victims of wrongful arrest in this case. Their rights to freedom have been deprived during the trial process at the first level up to cassation. Then, the next consideration related to the evidence submitted by the public prosecutor was that there was also no information explaining the existence of evidence from witnesses who explained that they directly saw the defendants commit criminal acts as in the following considerations:

"That because there is insufficient evidence and there is not a single witness who saw the Convicted Person murder the victim, the Convicted Person must be acquitted from both the Primary and Subsidiary charges of the Prosecutor/Public Prosecutor, and the Convicted Person must be rehabilitated by restoring his rights in his ability, position and dignity, and must be immediately expelled from the Correctional Institution (LAPAS)."

The conviction of the defendants in the Judgment of Review Number 131/PK/Pid.Sus/2015 has proven the injustice of law enforcement officials from investigators and public prosecutors that it causes harm to the defendants who are still minors. Considering the panel of judges in the Judicial Review Number 131/PK/Pid case.Sus/2015, they gave the following considerations

"Considering that based on the considerations above, the petition for review from the Petitioners for Review/Convicts has fulfilled the provisions of Article 263 paragraph (2) letter a of the Criminal Procedure Code, then based on Article 266 paragraph (2) letter b number 1 of the Criminal Procedure Code there are sufficient reasons to cancel the decision of the Supreme Court Number 188 K/Pid. Sus/2014, dated February 14, 2014, in conjunction with the decision of the Jakarta High Court Number 360/PID/2013/PT.DKI,

dated October 28, 2013, upheld the decision of the South Jakarta District Court Number 1131/Pid.An/2013/PN.Jkt.Sel dated October 1, 2013, and the Supreme Court will re-hear the case with the ruling as stated below."

Thus, the consideration of the panel of judges formed aspects of justice for the defendants, who were minors who had been intimidated by the investigators, so that in court, they were forced to admit this. However, the defendants were never at the scene of the crime.

B. Applying aspects of justice resulted from the emergence of judicial review decision number 131/PK/Pid.Sus/2015

Justice comes from the word 'fair'; according to the Indonesian Dictionary, fair is not arbitrary, impartial, or one-sided. Fairness primarily means that decisions and actions are based on objective norms. Justice is a relative concept; everyone is not the same, and one is not necessarily fair to another; when someone asserts that he is doing justice, it must be relevant to the public order where a scale of justice is recognized. Scales of justice vary significantly from place to place. Each scale is defined and entirely determined by society by the public order of the society¹².

In essence, justice is an adjective that has the meaning of fairness, not one-sided or not favoritism. This trait is one of human nature. Justice is a concept that indicates a sense of fairness in treatment (justice or fair treatment).¹³ The essence of justice is assessing a treatment or action by examining it with a norm that, according to subjective views (subjective to the interests of the group, group), exceeds other norms. In this case, two parties are involved: those who are treated and those who receive treatment. In general, justice is an assessment only seen by those receiving treatment¹⁴. Based on several definitions, it can be understood that the definition of justice is all matters relating to attitudes and actions in human relations. Justice is the demand that people treat each other according to their rights and obligations. The treatment is not indiscriminate or favoritism; instead, all people are treated equally, following their rights and obligations.

In the case of criminal law itself, there is an extraordinary legal remedy, namely judicial review, which previously, according to KUHAP Article 268 paragraph (3), could only be submitted once. However, now it has been canceled by the Constitutional Court in Decision No. 34/PUU-XI/2013. It is because the previous Criminal Procedure Code was based on the principle of lists finite oportet, namely that the case must have an end. However, Mahkamah argued that this was only referees in pursuit of material truth. However, this principle could not be rigidly applied at one time when new evidence was found (novum). So, the judicial review of criminal cases in implementing asa lists finite opportunities cannot be rigidly implemented, and this can limit the public's right to obtain

¹² M. Agus Santoso, *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*, 2nd ed. (Jakarta: Kencana, 2014).

¹³ Sigit Sapto Nugroho, *Sukma Hukum Keadilan Berhati Nurani*. (Ponorogo: Uwais Inspirasi Indonesia, 2019).

¹⁴ Nindyo Pramono, *Hukum Kepailitan Dan Keadilan Pancasila – Kajian Filsafat Hukum Atas Kepailitan Badan Hukum Perseroan Terbatas Di Indonesia* (Yogyakarta: Andi, 2017).

justice¹⁵. Therefore, judicial review is one of the legal efforts to fight for material justice for victims of wrongful convictions, as discussed in this study.

The emergence of aspects of justice in Judicial Review Decision Number 131/PK/Pid.Sus/2015 is based on the fact that the defendants in the decision were victims of disproportionate legal injustice¹⁶. It can be seen from the consideration that *"... the testimony of the Convicts in the BAP has been denied and revoked by the Convicts at trial because the Convicts were under intimidation, torture and no legal counsel assistance so that the testimony was forced to be made up and did not match the facts ..."* (vide consideration of the judging page 27 of 33 decision number 131/PK/Pid.Sus/2015)"

Then, from the legal considerations, the panel of judges in the case of judicial review found irregularities or distributive injustice by law enforcement officials in the previous level case. Where the judges made an error because the defendants in the review decision number 131/PK/Pid.Sus/2015 were minors whom legal counsel should have accompanied. Whereas in the previous examination, the defendants did not receive this, so in the judicial process from the first level to the cassation level, law enforcement officials, especially judges, did not consider Article 22 of Law Number 11 of 2012 on the Juvenile Criminal Justice System.

Then, considering the panel of judges, which states *"... The case of Defendant WITNESS II and Defendant WITNESS I, who were tried in separate cases with the exact charges as those of the Convicts, namely jointly murdering the VICTIM, were declared unproven and acquitted from the charges because, among others, there was testimony from the witness Iyan Pribadi aka IP that it was not the Convicts who murdered the VICTIM but Iyan Pribadi aka IP, Brengos and Jubai and the real motive for the murder was not because of a fight over a busking stall or displeasure with the victim as charged, but because Iyan Pribadi aka IP, Brengos and Jubai wanted to own the victim's red Yamaha Mio Soul motorcycle "*. From this consideration, there is procedural injustice. The Defendants in this judicial review decision remained guilty while the witness case was acquitted.

From these considerations, there is evidence that the witness testimony in the case was separated freely, but one of the witness's colleagues testified that the defendants in the Judgment of Reconsideration did not show new legal facts. The testimony strongly led the panel of judges to know and believe that the defendants in the review decision were innocent. It is also related to the "due process of law" in the investigation process until the court decision must apply this term because it relates to human rights as stipulated in the Constitution. However, in the practice of these cases, prior to the existence of new evidence, judges and investigators may need to correct their processing cases. The occurrence of the

¹⁵ M. Lutfi Chakim, "Mewujudkan Keadilan Melalui Upaya Hukum Peninjauan Kembali Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 12, no. 2 (2016): 328, <https://doi.org/https://doi.org/10.31078/jk1227>.

¹⁶ S Keadilan distributif, yaitu suatu hubungan keadilan antara negara terhadap warganya, dalam arti pihak negaralah yang wajib memenuhi keadilan dalam bentuk keadilan membagi, dalam bentuk kesejahteraan, bantuan, subsidi serta kesempatan dalam hidup bersama yang didasarkan atas hak dan kewajiban. Lihat M. Agus Santoso, *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*. Op.Cit P.92

case experienced by the Defendant is homework for law enforcement officials because it is too arbitrary or based solely on the power of law enforcement with the term "arbitrary process".

In this case, there are aspects of justice related to criminal cases of children dealing with the law in decision 131/PK/Pid.Sus/2015. It significantly proves the need for more accuracy in fair law enforcement. Previously, there had been a defense until new evidence, which became the basis for the defendants in the case not being guilty, so this aspect of justice arises only because of new evidence that must be fought for, namely the testimony of one of the actual perpetrators. What can be concluded from the decision 131/PK/Pid.Sus/2015 is that it only applies distributive justice from the state.

C. The view of Islamic law on justice related to the convicted person was not the guilty person in the judicial review decision number 131/PK/Pid.Sus/2015

The word justice is a derivative of *'adil'*, which comes from Arabic. The word fair is the mashdar form of the verb *'adala - ya'dilu - 'adlan - wa 'udulan - wa 'adalatan*. This verb is rooted in the letters *'ain, dal* and *lam*, whose main meanings are *'al-istiwa'* = the state of being straight) and *'al-i'wijaj'* = the state of deviating). So the series of letters contains contradictory meanings, namely 'straight' or 'equal' and 'crooked' or 'different'. The word means 'to set the law right' from the first meaning. So, a just person walks in a straight line, and his attitude is always to use the same measure, not multiple measures. This equality is the original meaning of the word fair, which makes the person "impartial" to one of the disputants. A just person "favours the right" because both the right and the wrong should get their due. Thus, he does what is appropriate and not arbitrary.

Justice, according to Islam, is not only the basis of an actual Muslim society, as it has been in the past and should be in the future. In Islam, faith and justice are inseparable; those whose faith is genuine and functioning correctly will always be fair to their fellow man. It is clearly illustrated in the Surah above. Justice is the most pious act or divine realization in human beings¹⁷. The Qur'an uses at least three terms to refer to justice: *al-adl*, *al-qist*, and *al-mizan*.¹⁸ *Al-adl* means "equal", suggesting two or more parties because there will be no "equality" if only one party exists. *Al-qist* means (fair and appropriate) share. It does not necessarily imply "equality". *Al-qist* is more general than *al-adl*; hence, when the Qur'an demands that a person be fair to himself. *Al-mizan* is derived from the root *wazn* (scales). *Al-mizan* can mean "justice". The Qur'ān asserts that the universe is established based on justice.

Justice in the history of the development of Islamic philosophical thought is inseparable from the issue of compulsion and freedom. Muslim theologians are divided into two groups: the Mu'tazilah, who defend justice and freedom, and the Asy'ari, who defend compulsion. The Ash'aris interpret justice with a unique interpretation that states that God is

¹⁷ Ali Nurudin, *Quranic Society* (Jakarta: Erlangga, 2006).

¹⁸ M. Quraish Shihab, *Wawasan Al-Qur'an* (Bandung: Mizan, 2003).

not that God follows pre-existing laws, namely the laws of justice, but that God is the secret for the emergence of justice. Everything done by God is just, and not every just thing must be done by God. Thus, justice is not the benchmark for God's actions, but God's actions are the benchmark for justice. The Mu'tazilahs who defend justice argue that justice has its essence, and as long as God is all-wise, God carries out his actions according to the criteria of justice.

Murtadha Muthahhari argues that the concept of justice is known in four ways; first, justice means balance in the sense that a society that wants to survive and be established, then the society must be in a state of balance, where everything in it must exist at its proper level and not at the same level. Social balance requires us to look at the balance of needs with a relative view by determining the relevant balance and applying the proper potential to the balance. Al-Qur'an Surah ar-Rahman verse 7 means: *"Allah SWT has exalted the heavens, and He has set a balance (of justice)"*¹⁹.

The commentators mentioned that what is meant by the verse is the state of nature that was created in balance. Nature is created, and everything and every material, with the proper amount and distances, is measured carefully; justice is equality that denies any difference. Justice means maintaining equality when the right to own is equal because justice requires and necessitates such equality. Thirdly, justice preserves the rights of individuals and gives rights to everyone who deserves them. This kind of social justice must be respected in human law, and every individual is commanded to uphold it. Fourth, justice is preserving the right to continued existence²⁰.

The meaning contained in the conception of Islamic justice is to put something in its place, charge something according to one is carrying capacity, and give something that is rightfully his with a balanced level. Madjid Khadduri describes the main principles of justice by categorizing them into two categories, namely substantive and procedural aspects, each of which includes a different aspect of justice. The substantive aspect is the elements of justice in the substance of sharia (substantive justice). In contrast, the procedural aspect is the elements of justice in the procedural law implemented (procedural justice)²¹.

CONCLUSION

It can be concluded that based on the discussion above regarding the emergence of Judicial Review, Decision Number 131/PK/Pid, Sus/2015 provides aspects of justice that the state has provided distributive justice. It shows from the consideration of the judicial review panel of judges giving an innocent verdict in the case because of the defendant's struggle with his legal counsel, who fought to obtain new evidence or novum from one of the actual

¹⁹ Muhammad Al Amin, *Filsafat Teori Akuntansi* (Magelang: Unimma Press, 2018).

²⁰ Hono Sejati, *Rekonstruksi Pemeriksaan Perkara Di Pengadilan Hubungan Industrial Berbasis Nilai Cepat, Adil, Dan Murah (Studi Kasus Di Pengadilan Hubungan Industrial Pada Pengadilan Negeri Yogyakarta)*. (Bandung: PT. Citra Aditya Bakti, 2018).

²¹ *Ibid.*

perpetrators. So, the emergence of this decision is expected in the law enforcement process to be more careful to avoid using arbitrary processes often just to pursue a simple perpetrator or arresting someone innocent. We hope that in the investigation process until the final verdict, due process of law still applies. Then, in Islam, looking at the case based on the conception of Islamic justice, it takes time to prove natural justice. If you look at the philosophy of the Mu'tazilah, which defends justice and freedom, explaining justice has its essence and as long as Allah SWT is Wise, then Allah SWT carries out his actions according to the criteria of justice so from these actions, according to the author, the emergence of aspects of justice from the view of Islamic law is more concerned with the separate nature of which Allah SWT is Wise and Just.

REFERENCE

- Amin, Muhammad Al. *Filsafat Teori Akuntansi*. Magelang: Unimma Press, 2018.
- Aulia, Anastasia. "Kronologi Lengkap Kasus Pembunuhan Cipulir Hingga Salah Tangkap 6 Pengamen," 2019.
- Chakim, M. Lutfi. "Mewujudkan Keadilan Melalui Upaya Hukum Peninjauan Kembali Pasca Putusan Mahkamah Konstitusi." *Jurnal Konstitusi* 12, no. 2 (2016): 328. <https://doi.org/https://doi.org/10.31078/jk1227>.
- Chazawi, Adami. *Lembaga Peninjauan Kembali (PK) Perkara Pidana: Penegakan Hukum Dalam Penyimpangan Dan Peradilan Sesat*. Jakarta: Sinar Grafika, 2011.
- Ferris Ave, Kenny, and I Gede Artha. "Ketidakadilan Hukum Dalam Sistem Peradilan Pidana Indonesia Bagi Masyarakat Kurang Mampu." *Jurnal Kertha Desa* 11, no. 4 (2023): 2234–43. <https://doi.org/https://ojs.unud.ac.id/index.php/kerthadesa/article/view/97519>
- Hewastoeti, and Nur Putri Hidayah. *Hukum Acara Peradilan Niaga Mengupas Sengketa Kepailitan, PKPU Dan Kekayaan Intelektual*. Malang: UMM Press, 2022.
- Hidaya, Wahab Aznul. "The Role of Witness and Victim Protection Agency for Imekko Tribe in Criminal Justice System in Sorong" 8, no. 2 (2023): 176–91. <https://doi.org/10.23917/laj.v8i2.2363>.
- Kasiyanto, Agus. *Proses Penyelesaian Sengketa Pajak Di Indonesia (Pemeriksaan, Keberatan, Banding, Gugatan & Peninjauan Kembali)*. Surabaya: CV. Jakad Media Publishing, 2020.
- Kemensesneg, RI. "Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak," 2012.
- . "Undang - Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang – Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak." *UU Perlindungan Anak*, 2014, 48.
- Kurniawaty, Yuniar. "Konsep Keadilan Terhadap Vonis Peradilan Sesat: Tinjauan Hukum." *Jurnal Legislasi Indonesia* 14, no. 4 (2017): 395–406. <https://doi.org/https://doi.org/10.54629/jli.v14i4.114>.
- Munawwir, Ahmad Warson. *Al-Munawwir: Kamus Arab Indonesia*. Yogyakarta: Pustaka Progresif, 2007.
- Nugroho, Sigit Saptu. *Sukma Hukum Keadilan Berhati Nurani*. Ponorogo: Uwais Inspirasi

- Indonesia, 2019.
- Nurudin, Agus. "Upholding the Impartiality of Judges in Judicial Systems." *Hasanuddin Law Review* 6, no. 1 (2020): 80–88. <https://doi.org/10.20956/halrev.v6i1.2268>.
- Nurudin, Ali. *Quranic Society*. Jakarta: Erlangga, 2006.
- Pramono, Nindyo. *Hukum Kepailitan Dan Keadilan Pancasila – Kajian Filsafat Hukum Atas Kepailitan Badan Hukum Perseroan Terbatas Di Indonesia*. Yogyakarta: Andi, 2017.
- Ramiyanto. *Upaya-Upaya Hukum Perkara Pidana Di Dalam Hukum Positif Dan Perkembangannya*. Bandung: Citra Aditya Bakti, 2019.
- Santoso, M. Agus. *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*. 2nd ed. Jakarta: Kencana, 2014.
- Sejati, Hono. *Rekonstruksi Pemeriksaan Perkara Di Pengadilan Hubungan Industrial Berbasis Nilai Cepat, Adil, Dan Murah (Studi Kasus Di Pengadilan Hubungan Industrial Pada Pengadilan Negeri Yogyakarta)*. Bandung: PT. Citra Aditya Bakti, 2018.
- Shihab, M. Quraish. *Wawasan Al-Qur'an*. Bandung: Mizan, 2003.
- . *Yang Hilang Dari Kita: Akhlak*. Tangerang: PT. Lentera Hati, 2019.
- Sulardi, and Yohana Puspitasari Wardoyo. "Kepastian Hukum, Kemanfaatan, Dan Keadilan Terhadap Perkara Pidana Anak." *Jurnal Yudisial* 8, no. 3 (2015): 251–68.
- Sutama. *Metode Penelitian Pendidikan Kuantitatif, Kualitatif, PTK, Mix Method, R&D*. Sukoharjo: CV. Jasmine, 2019.
- Zamakhsyari. *Teori-Teori Hukum Islam Dalam Fiqih Dan Ushul Fiqih*. Bandung: Citapusaka Media, 2013.