

## Research Article

# Fiqh Siyasah Qodha'iyah Review of Judges' in PTUN Decision Number 56/G/SPPU/2018/PTUN-JKT Regarding the Determination of the United Indonesia Justice Party as an Election Participant.

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**Abstract.**

Court decisions are repressive because they exist after the problem has occurred. Related to the background of the problem in this thesis is regarding PTUN's decision. 56/G/SPPU/2018/PTUN-JKT. The Justice and Unity Party of Indonesia sued the General Election Commission of the Republic of Indonesia at the Jakarta State Administrative Court for the issuance of the Decree of the General Election Commission of the Republic of Indonesia Number 58/PL.01.1-Kpt/03/KPU/II/. This was regarding the provisions of the decree stipulating that the Indonesian Justice and Solidarity Party not meet the requirements to take part in the General Election. Based on the problems above, the objectives of this study are: To find out the judge's consideration of the decision Number 56/G/SPPU/2018/PTUN-JKT regarding the Determination of the PKPI Political Party as a Contestant for the 2019 Election. And, to find out the Fiqh siyasah qadhaiyyah regarding the judge's considerations in Decision Number 56/G/SPPU/2018/PTUN-JKT regarding the Determination of PKPI Political Parties as Participants in the 2019 Election. In this study, the library research method was used (Library Research) using various library literature in the form of books, laws, journals, manuscripts, and thesis. The data analysis technique used was qualitative by using the deductive thinking method, with the nature of analytic descriptive method. The results of this study were based on the PTUN judge's decision, which won PKPI for its lawsuit in PTUN court No. 56/G/SPPU/2018/PTUN-JKT. Second, from the point of view of Fiqh siyasah qadhaiyyah, the settlement of election process disputes at the State Administrative Court was included in At-taqodliala darojatain aw al-isti'naf (Appeals). Based on this principle, litigants had obtained a legal decision on a case at the lower-level court, first.

**Keywords:** Fiqh Siyasah Qodho'iyah, political parties, general election

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## 1. Introduction

Fiqh siyasah is one aspect of Islamic law that discusses the arrangement and management of human life in the state in order to achieve the benefit of the human being himself. In this siyasah fiqh, mujtahid scholars explore the sources of Islamic law, which are contained therein in relation to the life of the state and society. As a result of creative reasoning, the thoughts of the mujtahids are not immune to the times and are debatable and accept differences of opinion.[1]

Siyasah qadhā'iyyah, which is judicial politics. What is meant by the judiciary has the meaning of deciding or punishing between two people who are fighting, preventing and other meanings preventing or hindering. Based on this explanation that the judiciary is an attempt to resolve a dispute, thus it implies a process, namely the process of resolving a dispute guided by certain rules which in this context are the legal regulations of Allah SWT.[2]

Meanwhile, the fuqaha' (fiqh experts) define qadhā' as a legal (judicial) institution.[3] As explained above, the term qadhā'iyyah is a derivative form of the word qadhā', which can also be interpreted as a judicial institution. Therefore, it is not surprising that the word qadhā'iyyah is sometimes equated with Al-Sulṭah AlQadhā'iyyah (judicial power). As stated by Muhammad Iqbal in his book entitled fiqh Siyāsah. [4] When viewed in the context of Islamic law, siyāsah and al-qadhā'iyyah are included in one of the concepts contained therein. The combination of words between the two forms a new terminology, namely siyāsah qadhā'iyyah. Siyāsah qadhā'iyyah can be defined as a provision that has been regulated in Islam to carry out judicial functions.[5] The 1945 Constitution of the Republic of Indonesia stipulates that judicial power is an independent power exercised by a Supreme Court and judicial bodies under it within the General Courts, Religious Courts, Military Courts, and state administrative courts. Court decisions are one of many sources of law. In addition to the existing laws and regulations under it.

Court decisions are a source of law and certainty that determine who has the right and who violates. However, the existence of a court decision is repressive, because it occurs after the problem has occurred. However, court decisions that should be a solution for the parties to the dispute cannot immediately become an enforceable reference, because there are still legal remedies that can delay a court decision from being implemented. This also happened in PTUN decisions. 56/G/SPPU/2018/PTUN-JKT.

The Indonesian Justice and Unity Party sued the Republic of Indonesia General Election Commission or abbreviated as KPU RI at the Jakarta State Administrative Court

for the issuance of the Republic of Indonesia General Election Commission Decree Number 58/PL.011-Kpt/03/KPU/II/. 2018, February 17, 2018 Concerning the Determination of Political Parties as Members of the 2019 General Election of Members of the People's Legislative Assembly, Provincial Regional People's Representative Council and Regency/City Regional People's Representative Council, provided that the decree basically stipulates that the Indonesian Justice and Solidarity Party does not meet the requirements to take part in the 2019 General Election of the People's Representative Council, Provincial Regional People's Legislative Council, and Regency/City Regional People's Representative Council. The issuance of this decision is clearly unfair and detrimental to the participation of the Indonesian Justice and Unity Party in the general election (Pemilu). Based on this background, the researcher wants to examine how legal certainty is for the PKPI party as a participant in the 2019 Election and the judge's considerations regarding decision number 56/G/SPPU/2018/PTUN-JKT. So the writer is interested in researching the *siyasa fiqh* review of the judge's decision in Number 56/G/SPPU/2018/PTUN-JKT concerning the determination of the PKPI political party as a participant in the 2019 election.

Some previous research that discusses this issue the includes, first research, which was written by Dian Saputri in 2021, a student at the Islamic University of Sulthan Thaha Saifuddin Jambi, Faculty of Sharia, Study Program of Constitutional Law, entitled Authority of the State Administrative Court of Jambi Province in Settlement of Election Disputes for the Regional Head Election of Kerinci Regency in 2013. In this research discusses the authority of the state administrative court in examining the settlement of disputes over the election of the head of the Kerinci district area and also what are the factors that influence the trial process at the Administrative Court. [6]

The second study, written by Priyan Afandi 2017, a student at the University of Lampung at the Faculty of Law entitled Authority of the State Administrative Court in Administrative Regional Head Election Disputes. In this research, it discusses the efforts that can be made to reform the law in order to achieve legal certainty for every justice seeker as well as regarding the authority of the state administrative court in handling disputes over the general election of regional heads that are administrative in nature which are regulated in Law Number 5 of 1986 jo Law No. 51 of 2009 concerning State Administrative Courts.[7]

Journal written by Beni Kurnia Ilahi as a law student at Bengkulu University, faculty of law, Ikbal Gusri as the Center for Constitutional Law Faculty of Andalas University and Gianinda A. Sugianto as Bawaslu of Banten Province, where this journal was written in 2021, entitled "Legal Implications Expansion of PTUN Authority in Adjudicating

Election Legal Issues” in this journal discusses PTUN’s authority not only to adjudicate election process disputes but more broadly, Ptun which has authority in the realm of election administration law, namely PTUN decisions from DKPP decisions and includes examining decisions.[8]

Based on this background, the researcher wants to examine how legal certainty to the PKPI party as a 2019 Election participant and the judge’s consideration of decision number 56/G/SPPU/2018/PTUN-JKT. So that the author is interested in examining the fiqh siyasah review of the judge’s decision in Number 56/G/SPPU/2018/PTUN-JKT regarding the determination of the PKPI political party as a 2019 Election Participant.

## 2. Methods

The type of research is library research (*Library Reseach*), namely research using library literature in the form of books, notes, and the results of research reports and previous research. The nature of this research is through descriptive analytical research methods with methods that are methods used in examining an object with the aim of making descriptions, images or paintings systematically and objects about the facts, properties and characteristics as well as the relationship between existing elements and certain phenomena. Data collection methods are the means used by the author in collecting research data, namely by means of documentation by reading and reviewing books between sources that are related to research problems. in other words, techniques are used to collect data from primary, secondary and tertiary data sources. After the literature sources regarding the data have been collected as above, the next step is data processing which is processed according to the following steps: Data checking (editing) is the process of checking or correcting the data that has been collected, because it is possible that the data entered or collected is no longer logical and doubtful.

The purpose of editing is to eliminate errors contained in field notes and is corrective in nature, so that these deficiencies can be completed and corrected.[4] Data collection (coding) is to provide data records that state the type and source of data both from the Al-Qur’an and Hadith, or other literature books relevant to the research. And data systematization, namely placing data according to a systematic language framework based on problem matters [5].

The data analysis method that the author uses is qualitative analysis, which is a research procedure that produces descriptive data in the form of written words from the observed object.[6] With a deductive thinking approach, namely a way of thinking

based on general rules which are then drawn to be applied to a reality that thinks specifically, which in the end draws conclusions.

### 3. Results and Discussion

#### 3.1. Judge's Consideration of Decision Number 56/G/SPPU/2018/PTUN-JKT Regarding the Determination of PKPI Political Parties as Participants in the 2019 Election

From a normative perspective, the enactment of State Administrative Decisions is based on Article 53 (2) of Law Number 9 of 2004 concerning amendments to Law Number 5 of 1986 concerning State Administrative Courts, which states that the KTUN is based on laws and regulations that valid and in accordance with the laws and regulations. And in accordance with the general principles of good governance. KTUN is based on the interpretation of Article 53 (2) of Law Number 9 of 2004 concerning amendments to Law Number 5 of 1986 concerning State Administrative Courts regarding State Administrative Court, to the applicable laws and regulations that State Administrative Court is subject to laws and regulations, including: with laws and regulations that are formal and material in nature, and issued by an authorized agency/official.

In Article 53 paragraph (2) of Law Number 9 of 2004 concerning amendments to Law Number 5 of 1986 of the State Administrative Court namely the principle of public interest. The principle of prioritizing the general welfare in an aspirational, accommodative and selective manner. Verification must be carried out both old and new because the Constitutional Court Decision is final and binding. This means that the Constitutional Court's decision must be obeyed immediately because it has final and binding legal force for all Indonesian citizens, but its application cannot be applied retroactively to Indonesian PKP cases that have received official information.

With Administrative Research, to be further developed and implemented. Administrative Requirements for Checking the Facts of the 2019 Election Candidate Pairs based on Number 92/PL.01.BA/03/KPU/XII/2017 dated 22 December 2017, based on the official report on the final results of the 2019 Election candidates' research Number 24 of 2003 47 There is no phrase "retroactive" or retrospective in the Articles of the Constitutional Court and Constitutional Court Decisions.

It is clear that after the issuance of a Constitutional Court decision after PKPI's conditions passed the administrative test, PKPI cannot cancel PKPI's constitutional right to take part in elections. Therefore, the KPU RI's actions, namely issuing KPU regulations

regarding the validation of all political parties as candidates for the 2019 election, are in accordance with the principle of legal certainty, especially for decisions, however, the KPU RI must know and have implemented legality or have implemented Product Consequences or Legal Actions that have already been implemented. published. This is the Minutes of Final Research Administration Document Requirements for Political Parties Candidates for Election 2019 Number: 92/PL.01.1-BA/03/KPU/XII/2017 dated 22 December 2017 and Decree of the General Election Commission of the Republic of Indonesia Number: 232/ PL.01.1-Kpt/03/KPU/XII/2017 Dated 22 December 2017 Concerning Amendment to the General Election Commission Decision Number: 227/PL.01.1-Kpt/03/KPU/XII/2017 Concerning the Position of Political Parties Participating in the 2014 Election New Autonomous Region in Fulfilling Requirements for Political Parties Participating in the 2019 Election.

Therefore, there was no evidence in the trial that before the KPU RI issued the object of dispute in the form of an administrative lawsuit, the court had declared it invalid or revoked it according to KPU RI provisions. With the Contrarius Actus Principle, meaning that the principle means that the agency that issued the KTUN or the state administrative officials themselves, also has the right to cancel it, and not include it as inconsistent and violating the provisions of Article 3 letter d e . The rule of law, especially the KPU RI violates the principle of trust and fulfilling reasonable expectations, which requires that every action taken by the government must bring hope to citizens. If a hope has already been given to citizens, it may not be withdrawn even if it is not profitable for the government.

Violation of the Principle of Accuracy in the Minutes of National Recapitulation of Administration Research Results and Management Verification, Women's Representation, Domicile Office of Political Party Membership Candidates for Election Contestants Number: 21/PL.01.1-BA/KPU/II/2018 dated 17 February 2018, that in the minutes especially in the appendix for East Java Province, namely Jombang Regency in the written status column Not Qualified, this is inversely proportional to the actual legal facts, namely in the Minutes of Recapitulation of Administration Research results and Factual verification of management, women's representation, office domicile, and party membership political candidates participating in the election of East Java Province, Jombang Regency along with the attached Model where in the Minutes published based on the previous Minutes it is written clearly and unequivocally that the Indonesian PKP Meets the Requirements as a whole in Jombang Regency.

Minutes Number: 18/PL.01.1-BA/3203/KPUKab/II/2018 Minutes of recapitulation of the results of administration research and management verification, women's representation, office domicile, and membership of political parties as candidates for election contesting which in essence have stated as a whole that Indonesian PKP in Cianjur district Meets the Requirements and then in the Minutes Number: 19/PL.01.1-BA/3203/KPUKab/II/2018 Concerning Corrections to the recapitulation of administrative results and verification of membership of political parties as candidates for election contestants for the Indonesian Justice and Unity Party (PKP Indonesia), KPU RI changed/rectified to become Not eligible and submitted it to the Indonesian PKP which was received on 13 February 2018.

The change from what was previously declared to have met the requirements to become ineligible clearly violated the principle of accuracy that should have been carried out by the Indonesian KPU as a State Institution. So that the author hereby agrees with the PTUN decision which won the PKP Indonesia for its lawsuit in PTUN court No. 56/G/SPPU/2018/PTUN-JKT.

### **3.2. Analysis of Fiqh Siyasaḥ Qadhā'iyyah on the judge's considerations number 56/G/SPPU/2018/PTUN-JKT regarding the Determination of PKPI Political Parties as Participants in the 2019 Election**

Siyasaḥ Qadhā'iyyah is a judicial institution that aims to resolve cases using Islamic law. Al-Qadhā (Justice) is a matter prescribed in the Al-Quran and As-Sunnah. Allah SWT ordered to break the law or punish humans with what Allah has sent down. Rasulullah SAW. directly try and judge cases that arise in the midst of society with the laws of Allah SWT. Specifically for all issues regarding the decision-making mechanism, this can be seen in the fiqh study of Siyasaḥ Qadhā'iyyah which talks about the mechanism of judge's decision-making in a court. Of course, in making a decision, the judge is not arbitrary in adjudicating.

In the Siyasaḥ Qadhā'iyyah which specifically discusses justice, the Siyasaḥ Qadhā'iyyah study also provides a status or position as an element of the judiciary. Almost the same as the legal basis of the law in Siyasaḥ Qadhā'iyyah provides legality of position. Judicial power (as-sulṭoh al-qodlo'iyyah) which has the authority to apply laws to resolve disputes and uphold justice among humans. Judicial power is separate from the other two powers. This means that the other two powers/institutions are not allowed to intervene/interfere in cases or judicial matters. Judicial power or as-sulṭah

alqâḍ'iyyah which has the authority to apply laws to resolve disputes and uphold justice among humans.

We see that the judiciary or judiciary is separate from the other two powers. This means that the two powers or other institutions are not allowed to intervene or interfere in matters or judicial affairs. This theory of separation of powers raises important principles in Islamic justice, namely Istiqlal alqodlo (Independence of the Judiciary) in this case the Judicial Power is independent/standing as separate power agency. The aim is to keep the judiciary from being influenced or in other words to avoid the interference of two other powers; legislative and executive. This is a good and rational thing in the legal order. This principle has existed since the time of the Prophet Muhammad. life.

Furthermore, in deciding judges that judges must be fair and apply principles that have existed since jana prophet namely Al-Musawah amamal qodlo (Equality before the law) meaning that in this case most people think that the principles of independence, brotherhood, in adjudicating, Rasulullah SAW always behave the same among the parties to the dispute are the same in this case, never taking sides with any party. It is the same as the polemic that is being experienced by the PKPI party, in essence, judges must make fair decisions without looking at just one party.

The judiciary is running where the dispute resolution of the PKPI party as a participant in the 2019 election is carried out free of charge, namely without fees. In siyasah qodhaiyyah itself, there is the principle of Majjaniyatul qodlo (free justice) in an Islamic country, since long ago no one has ever been allowed to charge fees from litigants to court . This is to show generosity and lack of greed in a Judge.

Furthermore, At-taqodli'ala darojatain aw al-isti'naf (Appeals) Based on what is understood in this principle, a litigant who has obtained a legal decision on a case at the court of first instance, may submit the case again to the court higher alias appeal to get another legal decision on the case. It is the same with the PKPI party case which submitted a legal effort to the Administrative Court to obtain justice that could not harm the PKPI party as a candidate for the 2019 election.

As for legal remedies during the time of Rasulullah SAW. Which basically Islamic procedural law at the time of the Prophet developed very simply and was not familiar with legal remedies both in theory and in practice. Therefore, a writer, Martin Sapiro, argues that in the structure of Islamic justice, there is no legal remedy, because according to him, the judge's decision in Islamic justice is final and irrevocable. However, if one looks at the judicial cases handled by Ali bin Abi Talib at the time of Rasulullah SAW, at a glance it seems that there are signs of legal action that can be drawn from the case. This is as expressed by Muhammad Salam Madkur as follows:



*“I will decide the law between you then if you have accepted (my decision) then carry it out, but if you don’t want to accept it, then I will prevent some of you from doing something, until you yourself go to the Messenger of Allah so that he decides between you. Then after Ali decided the law between them, they refused and did not want to accept his decision, and they went to the Prophet during the pilgrimage season while he was at Maqam Ibrahim and told them about what had happened. Then the Holy Prophet confirmed Ali’s decision and said: that is what he has decided between you”*

Based on the events above, it shows that at the time of the Prophet SAW, it was known that there was a review of a legal decision that had been handed down and that was practically done, because what happened described a kind of decision from a lower level court before a higher court, so that the case is reviewed, then there is a possibility that the decision will be canceled, or confirmed, or replaced with a new decision. When the case was submitted by the parties who were dissatisfied with Ali’s decision to Rasulullah SAW, then he replied “that’s what has been decided between you” indicating that there was confirmation of the legal decision of the qadhi at the lower level court to a higher court.

Thus, according to the author, in simple terms, legal remedies existed at the time of Rasulullah SAW by looking at Ali’s statement ordering the parties to appear personally to Rasulullah SAW if the decision made by him did not satisfy the parties, and the Apostle justified the decision. This is the same as if it is interpreted as a problem in the author’s thesis, where the PKPI party continues legal efforts against the Administrative Court to obtain a decision that is not burdensome and detrimental to the PKPI party.

Furthermore, the principle of the judge in deciding cases is Alaniyatu majlisil qodlo (open trial) in this case means that the trial in court is carried out openly. As the Prophet held trials in the mosque at the time of his era. As for Hushulul ijro’at fi mumukaatil khushum (bringing together disputing parties) explains that a legal decision cannot be handed down before the two parties concerned are met (know each other and each opinion is heard) regarding litigants who are not present at trial, there are rules separately regulates it, so that the rights of each party are maintained. Based on the principles above, the author reads, observes and also concludes that the Administrative Court in the election process dispute based on Law No. 7 of 2017 concerning General Elections, if viewed from Siyasaḥ Qodha’iyyah, is included in the theory of separation of powers, important principles in Islamic justice, especially i.e. Attaqodli’ala darojatain aw al-isti’naf (Appeals) Based on this principle, a litigant who has obtained a legal decision on a case at the court of first instance, which has been explained in Article 471 paragraph 1 concerning procedures dispute resolution the election process through PTUN which

means that it is permissible to submit the case again to a higher court, aka an appeal to get another legal decision on the case. This higher court has the independence or freedom to determine whether the first decision on that case (the results of the previous court) is confirmed, replaced, or canceled. This principle is well known in all positive laws. This principle has important benefits. He encouraged the qodli/judge to be careful and exert maximum effort in handling the cases submitted to him. Because the judge knows that the law he has decided will probably be shown/shown again at a later date (in the court of appeal), if it turns out that there is an error in his decision.

In this case the judge tries the injustice committed by the authorities against the people, including in making policies in the election process that can be detrimental to the people or election participants and the decisions issued by the Administrative Court must also not cause harm and there is no element of injustice to people's rights. . Furthermore, based on what has been obtained, the judge's decision in deciding the PKPI party case as a participant in the 2019 election is appropriate and also does not contradict fiqh siyasah qodhaiyyah or justice in Islam. Which as a judge must behave fairly and impartially to one party and make decisions which do not harm any party.

#### 4. Conclusion

Based on the discussion that has been described, this study concludes that DPRD has a supervisory function towards local governments to run programs properly, including in preparing human resources, especially bureaucratic apparatus. However, the legislative role still needs to be optimized and strengthened in the era of Society 5.0. DPRD must maximize the supervision of local governments to prepare human resources that implement the use of technology to solve various problems of bureaucratic apparatus services that have implications for the benefit of the people in each region.

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