

# FROM JUDGE'S DECISION TO JUSTICE: THE ROLE OF TRANSCENDENTAL LAW TO REINFORCE JUDICIAL INDEPENDENCE

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# FROM JUDGE'S DECISION TO JUSTICE: THE ROLE OF TRANSCENDENTAL LAW TO REINFORCE JUDICIAL INDEPENDENCE

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## ABSTRACT

Judges have freedom and independence in deciding cases. The judge's authority can have an impact on different interpretations in deciding cases with the same <sup>26</sup> source. Judges need to be equipped with transcendental values as a source of reasoning. The purpose of this research is to examine the concept of independence and freedom of judges in making decisions, and to examine the contribution of transcendental law as an effort towards a fair judge's verdict. This study uses a philosophical approach, which examines the future judge's decision from the ideal point of view. The data used are <sup>3</sup> secondary data with qualitative data analysis techniques. The research findings show that the judicial power is the power of an independent state to administer the judiciary in order to uphold law and justice for the implementation of a rule of law. Judge is <sup>16</sup> core element who exercises judicial power. The judicial power is obliged to maintain the independence of the judiciary through the integrity and the freedom of judges in examining and deciding cases. Judges must be equipped with the value of transcendental law. Traditional knowledge is the clearest gateway to confirming the Absolute Reality and getting out of materialism. Transcendental becomes a source of rational reasoning and empiricism as well as diversity and humanity with an inner awareness of God and the universe.

**Keywords:** Independent, Judge's Decision, Transcendental, Justice.

## INTRODUCTION

Disparity <sup>12</sup> the common problem that always appears in the verdicts of judges' decisions every year. The disparity in decisions is a serious problem because it involves the value of justice to be achieved from a punishment. In fact, the existence of criminal disparities implies that the <sup>12</sup> is an injustice in judges' decisions given to the defendants. Although disparities cannot be eliminated, the gaps that arise from punishment can be reduced or minimized.

The existence of differences in convictions or disparities in sentencing is common. It is caused by different characteristics of each case or is not the same as one another. The problems arise when a similar case or a case that has similarities or characteristics has a big different gap in the verdict, for example a case with the same state losses or the actors involved have the same position, and so on.

Eliminating disparity in punishment is impossible to do, but suppressing the disparity is also important to achieve because it will give a justice for perpetrators and victims of corruption itself. Based on finding of the research, it can be concluded that the average different decisions between the District Court and the High Court with the Supreme Court can indicate a more serious symptom, namely the existence of different views or standards among the judges in deciding corruption cases.

With the lightness of this imprisonment, it is very unfortunate because it means that convicts of corruption will not experience the deterrent effect expected. This is exacerbated by the lack of efforts to impoverish corruptors in the form of the use of the money laundering article to maximize the return of assets from corruption. This can be seen from the difference of imprisonment at each court level where the average imprisonment at the District Court level is only 2 years and 3 months; the High Court is 2 years and 8 months; and the Supreme Court gives the average imprisonment of 5 years and 9 months.

Harkrisnowo (2003) stated that the disparity in decisions is related to differences in the imposition of penalties for cases with similar or equal seriousness, without clear reasons or justifications. There are many factors that cause disparities in decisions but at the end, the judge is the one who determines the disparity. Criminal disparities have brought the law to a situation where it is no longer in accordance with the objectives of law enforcement. The law cannot adapt individual interests to the public interests as well as possible and tries to find a balance between giving freedom to individuals and protecting society against individual freedom (Hakim, 2017). In other words, law is no longer the guardian of justice, social benefit, and legal certainty because the elements of justice that society feel are no longer fulfilled or provided by judges anymore. Criminal disparities do not only occur in Indonesia, which belongs to the European continental legal family, which does not recognize the precedent system. Almost all countries in the world face this problem. The criminal disparity known as the disturbing disparity of sentencing invites the attention of legislative institutions and other institutions involved in the criminal law administration system to solve it (Ardiansyah, 2017).

Judges' independence and freedom as a principle that has been embedded in the constitution has led to various interpretations in its implementation in level of personal and social. If the word "freedom" is combined with the word "judge" will be a compound word "freedom of judge". Freedom of judge is not absolute because the judge's duty is to uphold law and justice. In making decisions, judges are bound by relevant facts and legal principles that form or become the legal basis for their decisions (Adonara, 2015).

Considering the aforesaid description, this paper examine the concept of independence and freedom of judges in making decisions, and examine the contribution of transcendental law as an effort towards a fair judge's verdict.

## LIRATURE REVIEW

### The Concept of Judges' Independence and Freedom

Based on the juridical and philosophical basis of judicial power as an independent institution and free from all forms of interference, as desired in Article 24 of the 1945 Constitution, judicial power is the power of an independent state to administer the judiciary to enforce law and justice based on Pancasila and the Constitution. 1945, for the sake of

implementing the constitutional state of the Republic of Indonesia. Judges as a core element in exercising judicial power in Indonesia, in carrying out the main tasks and functions of the judicial power, are obliged to maintain the independence of the judiciary through the integrity of the judges' freedom to examine and decide cases as regulated in Article 39 paragraph (4) of the Republic of Indonesia Law No. 48 of 2009 on Judicial Power, in which Article 1 states:

*"Judicial Power is the power of an independent State to carry out justice in order to uphold law and justice based on Pancasila, for the implementation of the State of Law of the Republic of Indonesia" (Rosadi, 2016).*

The judicial system in Indonesia provides freedom for judicial institutions (the independent judicial power), as well as for judges (freedom of judges) as the core apparatus of judicial power. The term "freedom of judges" as a principle that has been embedded in the constitution has led to various interpretations in its implementation in level of personal and social. If the word "freedom" is combined with the word "judge" will be a compound word "freedom of judge". Freedom of judge is not absolute because the judge's duty is to uphold law and justice which is based on Pancasila (Adonara, 2015).

The freedom of judges is not absolute and cannot be separated from the element of responsibility. The freedom of judges means that judges are trained to master the direction and objectives of jurisprudence within certain limits, and implement them impartially, even though they use from a certain perspective such as ideology or view (Gordon et al., 2015).

The freedom of judges is not absolute until this freedom must be limited in order not to lead to arbitrariness. According to Sudikno Mertokusumo in Anam (2019), judges are free to judge according to their conscience/belief without being influenced by anyone. Judges are free to examine, prove and decide cases based on their conscience. Besides that, they are also free from extra-judicial interference. All interference in judicial affairs by other parties is prohibited, except in the cases mentioned in the 1945 Constitution. In fact, these provisions are often violated, among others by taking shortcuts by using letters, telephones, bribes and others.

Hoentink said that judges should not judge solely according to their own personal sense of justice, but they are bound to values that apply objectively in society. Scholten said that judges are bound by the legal system that has been formed and developed in society. With each decision the judge declares and strengthens the life of unwritten legal norms. Thus, the nature of the freedom of judges in exercising their judicial authority is not absolute because the judge's duty is to uphold law and justice based on Pancasila and the 1945 Constitution so that the decisions reflect the sense of justice of the Indonesian people, not subjective justice according to the definition or the will of the judge it self (Anam, 2019).

In an effort to find and apply legal certainty, justice and benefit, court decisions must be in accordance with the basic objectives of a court decision. A court decision which is free and no interference is an indispensable condition. Free means there is no interference from the executive and legislative powers in carrying out judiciary functions. Although it must be admitted that it is clearly impossible to remove political pressure on the judiciary (Ginsburg, 2005).

Adonara, (2015) explained that basically the objectives of the court's decision are:

1. It must carry out an authoritative solution, meaning that it provides a way out of the legal problems faced by the parties (plaintiff vs defendant; defendant vs public prosecutor), and no other institution other than a higher level judicial body can confirm a court decision;

2. It must contain efficiency, namely fast, simple, low cost, because justice delayed is an injustice;
3. It must be in accordance with the objectives of the law on which the court's decision is based;
4. It must contain aspects of stability, namely social order and public order;
5. There must be fairness, which is to provide equal opportunities for parties.

Starting from that, judges do not have to be shackled by what is stipulated in the sound of the legal text (procedural justice). Judges should prefer the legal context rather than putting forward the sound of the legal text (Eka, 2016). Therefore, in making decisions in criminal cases judges can actually refer to several theories, such as:

### **Probability Theory Approach**

Probability Theory prioritizes Subjective Probability. Judges must have an initial Probability, or the initial degree of confidence in the case at hand. The initial probability is formed by the judge's belief in the observation of the work of the police, prosecutors and lawyers, as well as individual attitudes towards court or criminal law. They identify and understand the information that will affect the level of confidence. When the evidence is identified, the judge begins the process of updating the probability by combining the initial probability with new evidence to update the confidence (degree of guilt of the accused) to be considered. If there is new evidence, they will update the process to the next probability. The process will continue until there is no new evidence and the judge is asked to make a decision. In making decision, judges enters the stage of comparing the final probability with the criteria to give a sentence (Rahayu, 2005).

### **Algebra Approach**

Rahayu (2005) explained that the Algebra approach used in criminal decisions is a linear model equation or weighted average equation, which assumes that any evidence identified will be mediated by the degree of importance, relevance and reliability of the evidence, taking into account a testimony of the degree of importance. A reliable witness will be given an important weight compared to a witness who is not reliable. It also gives an attention into the impact of testimony, reliability, credibility, and relevance of testimony.

### **Story Model Approach**

In the story model approach, the judges will collect court information from the public prosecutor, witnesses, defendants, and evidence. Casper develops a story approach model using cognitive information processing theoretical bases to explain the judge's process in determining a criminal act. The story focuses on the judge's cognitive, by constructing the story starting from compiling the story, studying the elements of the articles charged by the public prosecutor, and making decisions through matching the story with the articles of the law used as the basis for the punishment (Rahayu, 2005).

## The Concept of Transcendental Law

Transcendental comes from metaphysical and abstract meanings. Transcendental means an epistemological work, for how to apply a system of knowledge as understood by Michel Foucault as an "*episteme*" at a time, a social condition that was born fifteen centuries ago in the present and here. Transcendental here means a way to answer problems, apply Islam and bridge the historical, geographical, and social gaps between Islam in the past and in Indonesia at this time. The embedding of the word transcendental means something that transcends boundaries and objects (Kuntowijoyo, 2004). The transcendental term of the word "*transcend*" (Latin. Transcendere: to climb on/up) has several meanings including "*abstract*", "*metaphysical*" and "*beyond*". Transcendent means beyond, sublime, and outside or not affected by space and time. Transcendental is an adjective of transcendence. It is used to show that the word "*transcendental*" after being juxtaposed with another noun will become something of highly important value and metaphysical and even mystical (Absori, 2018).

It can be understood that what is meant by transcendental is something that is beyond the limits of abilities and experiences that originate from the exploitation of human rational and sensory space. It is something high, great, holy, and superior, metaphysical and very possibly divine. Transcendental thinking attracts the attention of the initiators of science. It is considered an alternative future thought in the midst of a positivistic dialectic of rational understanding which is considered incapable of dealing with various problems of life and life. Furthermore, it is closely related to religious norms and/or values which are included in the law and become transcendental law. In short, transcendental law is the objectification of religious norms and/or values into law for humans. Transcendental law in the Indonesian context cannot be separated from the basic principles found in the state ideology in the form of Pancasila. The core of Pancasila consists of five principles: divinity, humanity, unity, democracy and justice (Spaltani, 2019).

Furthermore, from the development of this transcendental law, it continues to be disseminated to stakeholders for the upholding of the law which often looks increasingly erratic, often misses the rails of justice and is far from the sense of justice in society. The efforts to reform and to create the ideal law are continuously being pursued, including changing the mainset of law enforcers and using legal arguments that were previously very fragmented in legal positivism ideals. Especially the paradigm of judges' legal thinking as the last bastion of legal justice. So far, the majority of court decisions are the result of the thinking of the judges.

Transcendental law as a paradigm of Indonesian law can be placed in the framework of maintaining public trust and expectations in order to stick to their beliefs about the integrity of Indonesia. Reasoning rationality and inner connectedness possessed by man demands a rhythm of awareness of the truth of science. In this case the law is not only regulating and stipulated by the State but also concerning laws that live and develop from the behavior of society which is full of values. It takes a moral in law based on a transcendental paradigm based on divine values. (Dimiyati & Absori, 2017).

Kuntowijoyo, (2004) interpreted transcendental by basing faith in Allah by introducing prophetic knowledge, in the form of humanization (ta'muruna bil ma'ruf), liberation (tanhauna anil munkar) and transcendence (tu'minuna billah). In this case, the element of transcendence must be the basis for other elements in the development of science and human civilization. According to Kuntowijoyo, the method of developing science and religion is called prophetic,

based on the Al-Quran and Sunnah as the main basis for the overall development of science. Al-Quran and Sunnah are used as the basis for the entire building of prophetic knowledge, both natural science (Kauniyah verse) as the basis for natural laws, humanities (Ayat Nafsiyah) as the basis for meaning, value and awareness as well as divinity (Ayat Qauliyah) as the basis of law-God's law.

The understanding of this is directed at finding elements relevant to the development of science, supported by knowledge and understanding of the philosophy of science. In relation to human law as both the subject and the recipient of the mandate to carry out divine laws that are certain and established through revelation (Al-Quran) and apostolic tradition (sunnah) or hadith. Humans can reorient subjective thinking to an objective way of thinking, carry out theorization in addition to using doctrinal normativity, change an ahistorical understanding into a historical one and formulate general revelations into specific and empirical formulations.

## RESEARCH METHODS

The approach used in this research is philosophical. The philosophical approach in legal research is to examine law from an ideal point of view. This study uses a philosophical approach because it formulates laws that are still at the level they aspire to (ius constituendum), in the form of the judge's idea of providing transcendent values in deciding cases going forward. The data used in this research is secondary data. Secondary data is data that is obtained indirectly or has been provided by other parties. Secondary data used is in the form of legal documents which are used as the main reference for assessing the independence of judges in deciding cases. The data collection techniques used in this study were through offline and online searches. Offline library search is an activity to find library sources to data storage. Meanwhile, online search is an activity to find library sources in cyberspace through the internet network. Library research is conventionally carried out by finding library materials, book collections and personal journals, buying books and attending scientific activities (seminars). Meanwhile, online searching is done by searching the data in the internet. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories and basic description units so that themes can be found and presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive way, not in numerical form.

## DISCUSSION

### Judges Independence and Freedom in Making Decisions

Judicial power is the power of an independent state to administer the judiciary in order to uphold law and justice based on Pancasila, for the sake of implementing the constitutional state of the Republic of Indonesia as regulated in Article 1 of Law No. 4 of 2004 on Judicial Power. Judges in carrying out their duties may not be bound by anything and may not be pressured by anyone, but they have the freedom to do anything. The meaning of freedom is known as individual freedom or essential freedom. The principle of freedom of judges is an independence owned by the judiciary for the creation of a objective and impartial decision (Adonara, 2015).

Academically, the freedom of judges can be traced from the 1945 Constitution, the Law on the Principles of Judiciary Power and the Supreme Court which has undergone several amendments. For example, as stated in Article 32 paragraph (5) of Law No.14 on the Supreme Court (which is not amended by Law Number 5 of 2004), the word freedom of judges is not given a more detailed and more technical explanation by the law. Therefore, in interpreting and understanding the principles of freedom of judges, judges must be within the contextual framework of the principle of independence of judicial power. Because in an organizational manner, judges are part of the sub-system of the judiciary, namely as officials exercising judicial power, so that the freedom of judges must always be within the corridor of the independence of the judicial power institutions as stipulated in Article 3 of Law No.48 of 2009 which states that, in carrying out their duties and functions, judges are obliged to maintain the independence of the judiciary (Adonara, 2015).

The independence of the judiciary is very important to maintain the rule of law. Judges who are independent from political pressure or other pressures will adjudicate disputes brought up against him with due observance of development, legal principles without being influenced by any party. This independence plays an important role in protecting individual rights as regulated in the state constitution (Meron, 2005). As Pancasila and the 1945 Constitution are textually stated as the basic foundation of judicial power in law enforcement, the study of the freedom of judges as a material object must be viewed and interpreted from the perspective of the Pancasila philosophy as the nation's view of life, and the 1945 Constitution as its constitutional juridical basis. When it is related to the perceptions of Indonesian judges in interpreting the freedom of judges in carrying out their main duties, freedom of judges is a freedom with a responsibility and in accordance with the laws and regulations and a freedom in the control of the corridors of Pancasila and the 1945 Constitution.

According to Shidarta, ideal legal reasoning consists of three aspects:

1. Ontological. Law is interpreted as positive norms in legislation. It is at this level of understanding that the law is most explicitly recognized and can guarantee legal certainty.
2. Epistemology. It focuses on the process of legal formation in addition to controlling the implementation of positive norms in response to legal events. The pattern of reasoning at this stage of formation moves simultaneously from the intuitive and empirical dimensions at once. This movement pattern actualizes the ideals of Pancasila law in today's Indonesian context. Through this positive norm selection process, some of them are formulated into positive norms in the statutory system. This positive pattern is applied with a doctrinal-deductive pattern to concrete events. At the stage of simultaneous movement occurs, context of discovery takes place and at the next stage the reasoning is in the context of justification.
3. Axiology. The axiological aspect leads to the simultaneous attainment of the values of justice and benefit followed by legal certainty. The first two values are the objectives in the search process (context of discovery), while the last value is the goal in the context of justification (Abdurrahman & Nugraha, 2020), Pancasila as a basic value or fundamental value contains an abstract meaning, general, and universal for the Indonesian citizen in particular and the world in general. When studied in depth, this abstract, general, and universal understanding is ideal and allows it to be translated into the fields of philosophy, law, social, economy, and so on. Thus the philosophical values contained in Pancasila can be used as a tool to reflect the essential meaning of judge freedom in the context of law enforcement in Indonesia.

Each judge's decision radiates a high philosophical value consideration. It is concretely marked by the character of the decision which is godly, humane, unity, full of virtue, and is social justice for all Indonesian people. Philosophy must be included to help the judge's mind to

consider his decision, so that the judge's decision contains philosophical justice values. A good judge's decision must contain 3 (three) main considerations: philosophical justice considerations, sociological justice considerations, and juridical justice considerations. Philosophically, it must be understood that the verdict of a judge or panel of judges is initially an individual or panel decision, but when the judge's hammer is knocked as a sign of the verdict, at that time the judge's decision must be viewed as an institutional court decision, because after the judge's decision or the decision of the panel of judges is pronounced in a trial which is open to the public. A decision has been transformed into a judgment by a court institution and has become public property. As limits of responsibility and measure of freedom of responsible judges. For this reason, public support for the judiciary is a bastion of judicial independence, and erosion of support weakens the court's defense against potential attacks from outside that have the potential to weaken prosecution (Kelemen, 2012).<sup>3</sup>

Based on that, Pancasila must be the basis for the power of an independent state to administer the judiciary to uphold law and justice (Article 1 of Law No. 48 of 2009). Although it must be admitted that the independence of the judiciary is more of a relative concept than absolute.<sup>28</sup> All judicial institutions are to some extent independent and to some extent still in doubt. Regardless of whether they are popularly elected, appointed by a combination of the executive, legislative or judiciary, or elected through competitive hearings, judges tend to have belief systems that reflect the dominant political culture (Rosenn, 1987). When the ideals of law that have the philosophy of Pancasila become the spirit for law enforcement and the independence of judges, a sense of justice will surely satisfy the public. Pancasila as a basic value or fundamental value contains abstract, general and universal meanings. When studied in depth, the abstract, general, and universal understanding allows it to be translated into the fields of philosophy, law, social, economics, and so on. Thus, the philosophical value<sup>24</sup> contained in Pancasila can be used as a tool to reflect the essential meaning of judge freedom in the context of the rule of law in Indonesia. The principle of freedom of judges, by some judges, is understood as a freedom that is free without limits, so that the meaning of freedom is understood as arbitrariness, so that people are said to be free, if they can do or cannot do what they like. Here freedom is also understood as being free from all obligations and attachments, including attachments from the bondage of lust. In parallel, the freedom of judges can be understood as freedom that is free from all obligations and attachments to someone or anything (including lust) that can make judges not free. The measure is truth, and goodness radiates by conscience.

The relationship between law and morals is very closely related, because different norms do not need to appear separately in a concrete way. This illustration requires judges to examine and decide cases handled in accordance with moral principles. If in resolving disputes and deciding cases judges ignore<sup>17</sup> als, it will certainly result in a fair but false decision or result in a false justice. Moral norms for judges in carrying out their duties are regulated in t<sup>14</sup> Joint Decree of the Supreme Court of the Republic of Indonesia and the Chairman of the Judicial Commission of the Republic of Indonesia Number 077/KMA/SKB/IV/2009 and Number 02/SKB/P-KY/IV/2009 on the Code of Ethics and Judge Code of Conduct, which regulates judge behavior as follows: behave fairly, honestly, humbly, wisely, professionally and independently, have high integrity, be responsible, uphold self-respect, have high discipline. In a<sup>26</sup> tion, judicial independence cannot be separated from the concept of justice. Starting with the United Nations Universal Declaration of Human Rights (1948) (Article 19), there are many international

instruments proclaiming that no judicial process is proper if there is no independence from the judiciary and the independence of judges in it (Mahoney, 2008).

Transcendence is the key to save modern humans in the midst of advances in science and technology that failed to bring happiness, but it led to conflict, violence and control of production sectors (Kuntowijoyo, 2004).<sup>24</sup> In this context, the judge receives the responsibility that is born<sup>3</sup> by the existence of Article 2 paragraph (1) of Law no. 48 of 2009 on Judicial Power. It stated that the judiciary is carried out "*For the sake of Justice Based on the One Godhead*". The State Court implements and enforces law and justice based on Pancasila (Article 2 paragraph 2). There are two important things this article: first, the judge must consider the religious factors of the defendant and his own religion so that the verdict is colored with a transcendental spirit, namely the desire to have better quality and have a strong moral basis; second, the judge's decision must have id<sup>35</sup> logical foundations that are contained in the principles of Pancasila.

According to Anwar Abbas, (2010) in *Bung Hatta dan Ekonomi Islam*, when Indonesia got its independent, Hatta hoped that Indonesia have judges that represent God Almighty. This phrase is also a guarantee that the judges in deciding a case will work honestly, cleanly, and fairly because they acts on behalf of God Almighty, Humanity, Unity, Peop<sup>9</sup> and Social Justice.

The consequences of justice values that must be realized through distributive justice, a justice between the state and its citize<sup>9</sup>.

the state is obliged to fulfill justice in the form of sharing justice, welfare, assistance, subsidies and opportunities in living together based on ri<sup>9</sup>ts and obligation; Legal justice (obedient justice), a relationship of justice for citizens who are obliged to fulfill justice in the form of obeying the prevailing laws and regulations in the state; and commutative justice, a reciprocal relationship of justice between citizens and one another (Kaelan, 2016). The judge's decision always begins with Based on the Almighty Godhead. This phrase based on the one and only Godhead becomes a symbol. Later in the final court they have to take responsibility for actions and behavior before God almighty fair.

### The Contribution of Transcendental Law and Fair Law Enforcement Paradigm

<sup>4</sup> The paradigm of law enforcement in Indonesia is still hegemony by rationalistic modern philosophies. Leibniz, one of the famous fathers of modern logic, taught that natural science is the manifestation of a world that appears mathematically. This world that is clearly visible can only be identified by the application of the first foundations of thought. Without it one cannot carry out a scientific investigation. So scientific truth is divided into two, first, knowledge that pays attention to eternal truth or known as logical truth which in principle is something that is axiomatic. Second, knowledge that is based on observations or observations, the results of which are called contingent truth or factual truth (Muslih, 2005). Legal knowledge in the context of this philosophy of rationalism is placed as something logical-axiomatic, systemic and not related to anything factual and sociological.

Positive laws are made by sovereign rulers. The ruler is described as a superior human who is decisive. This ruler may be an individual, an institution, or a group of individuals. According to John Austin, the characteristics of the positive law lie in the imperative characteristics. Meaning that, law is understood as an order from the ruler. Such thinking was developed by Rudolf van Hearinga and George Jellinek, who emphasized the view of an

orientation to change the theories of the sovereign state as a storehouse and source of legal power (Muslehuddin, 2000).

Positivism influences the life of the state to strive for positivization of the norms of justice so that they become legislative norms to accelerate the realization of the idealized nation state. This understanding has a tightly integrated structure in a centralized manner and with a central authority that cannot be described. Legal positivisation always gets top priority in any legal development efforts in countries that grow modern and want unity and or to unite. Not only those who headed to the nation state, but also those who used to go to the colonial state. It is no doubt that legal positivization is always entitled as a process of nationalization and legalization towards the ability of the state and government to monopolize formal social control through the use of positive law (Kesuma, 2018). Law is an order to control the state. The essence of law according to John Austin lies in the element of command. Law is seen as a fixed, logical, and closed system. Therefore, it is the authorities who determine what is allowed and what is not. The power of the ruler can enforce the law in a fearful manner and direct the behavior of others in the desired direction.

John Austin, at first, distinguished two kinds of laws: laws from God to man and laws made by humans that can be distinguished from actual laws and laws that are not true. This actual law is what is known as positive law which includes laws made by the authorities and laws compiled by humans individually to exercise the rights given to them. Law that is not real is law that is not made by the authorities so that it does not meet the requirements as law. Law actually has four elements: command, sanction, duty, and sovereignty (Darmawati, 2018).

Meanwhile, according to Hans Kelsen, the law must be cleaned of non-juridical elements such as sociological, political, historical, and even ethical values. This thought is known as pure legal theory (*reine rechlehre*). So law is a category of necessity (*sollens kategorie*) not a factual category (*categorie science*). The law is a necessity which regulates human behavior as a rational being. In other words, law is a coercive order of human behavior (Sudiyana & Suswoto, 2018), which is accompanied by sanctions as a form of imposing suffering (White, 1999).

This positivistic paradigm tradition reads the behavior of law enforcers in Indonesia who are unable to move emancipally and progressively, but they are merely instrumentalist tools, mouthpieces of laws and hammer knockers of article texts formulated in the arena of power space. Social justice is simply measured by the rigid and dogmatic sounds of the articles. Meanwhile, law discovery breakthroughs that are responsive and progressive are suspended animation. Laws that live in society are marginalized and even eliminated. Even worse, in the midst of the logical paradigm of the sacredness of the articles of the texts, law enforcement officials in Indonesia have been accustomed to carrying out the practice of buying and selling articles to increase their pockets.

Deconstruction has dismantled positivism which has been considered the truth in the field of law by modern society. The conception of legal truth is a very important value showing a relative and obscure tendency. The value of truth is understood by using different views and leads to an understanding that truth is measured according to the perception of lawmakers. Lawmakers are based on the willingness of the ruling party who is supported by the majority political group by implementing it out in the form of laws. In fact, the political will and views of the majority group do not necessarily reflect the truth.

According to the Indonesian national legal system does not preclude efforts to apply transcendental law, in this case, Islamic law in Indonesia. Basically, historically, sociologically,

and philosophically, the Indonesian legal system is based on Islamic law, apart from Western (Dutch) law and also customary law. However, the struggle to include transcendental law in this case Islamic law is not easy. Fighting for transcendental law in the life of the state requires real action (such as drafting a bill) that is consistent with the principles of national law development. For this reason, Islamic-based political parties need to collect their promises to realize the implementation of transcendental law as a color in drafting the bill.

The legal system introduced by the West has actually failed, marked by a crisis that occurred in Western society and at the same time showing the failure of modern civilization because modern thought separates spiritualism from all its aspects in one unity of life and the development of human civilization (Absori, 2018). The existence of a paradigm crisis that was built by Western positivism has shaken human belief in the civilization of law as a representation of a complete reality. The paradigm crisis has even raised new anxieties about the nature of life, the relationship between humans and nature and the relationship between humans and the Creator (Nugroho, 2016). Starting from that anxiety, there was an awareness to abandon the reductionistic and atomistic viewpoints that are often identified with the scientific method, and along with the scientific method. Along with that, it is necessary to present a new paradigm like the view of Fritjof Capra, namely a holistic paradigm of thought or a holistic paradigm, so that Law science can appear as genuine science.

Starting from the failure of western civilization, it is important to look for alternative thoughts that combine the ratio with the heart by introducing spiritual thinking as seen by Danah Zohar and Ian Marshall by using a spiritual intelligence approach or spiritual quition. , which will be obtained ultimate intelligence (Absori, 2018). It is done by breaking through the lines of formalism or existing and transcendental rules, so that new thoughts will be obtained and closer to the ultimate truth. Humans need a spiritual quotient as a tool for humans to be able to build new perspectives on life, to find broad horizons in a narrow world and to feel God's presence without meeting God. Transcendental jurisprudence is rooted in the will of Allah to his creatures which was revealed through his prophets and messengers, mualim and aulia who are always istiqomah and stick to the divine line (sunnahullah).

Sunnahullah is the basis of philosophy of natural law described through His verses both written (Book and Sunnah) as well as those described in the universe and the reality of life. Transcendental law science is aimed at holding human life to achieve happiness in the world and the hereafter. Transcendental law can only be understood with a holistic approach which sees humans and their lives in a complete form, not only material but spiritual (immaterial). Transcendental law cannot be separated between physical bodies (formal) and transcendental values. The only justification of transcendental law that is pursued is for the sake of justice based on the truth of the power of Allah, the Supreme Being, the determinant of human life and life. Transcendental law science is oriented towards the benefit of humans as a form of compassion for their creatures (Elviandri, 2016).

Thus, the Judge as the holder of the Judge's Decision authority, must be equipped with values in Transcendental Law. Through traditional knowledge, it becomes the clearest gate to confirm the Absolute Reality (Allah) and get out of materialism. As Mulla Sadra said, *"through this gate, the infinite power of the cosmos is poured out into human existence"*. Transcendental becomes the solution to the problem of divinity. In the hands of Mulla Sadra, transcendental as the spirit of metaphysical philosophy becomes the gate to understand the greatness of Allah with all the existence created from Him. Transcendental becomes a source of rational reasoning and

empiricism as well as diversity and humanity with an inner awareness of God and the universe. Understanding the essence of absolute truth from relative truth. Seeing the universe not as an existence independent of its creator, but it creates a simple manifestation of unimagined matter (Elviandri, 2016).

## CONCLUSION

Based on the explanation above, it can be concluded that judicial power is the power of an independent state to administer the judiciary in order to uphold law and justice based on Pancasila and the 1945 Constitution, for the sake of implementing the constitutional state of the Republic of Indonesia. Judges is a core element in human resources who exercise judicial power in Indonesia. In carrying out the main duties and functions, the judicial power are obliged to maintain the independence of the judiciary through the integrity of the freedom of judges in examining and deciding cases. Judges as the authority for Judges' Decisions must be equipped with values in transcendental law. Traditional knowledge is the clearest gateway to affirming Absolute Reality and getting out of materialism. Transcendental becomes a source of rational reasoning and empiricism as well as diversity and humanity with an inner awareness of God and the universe.

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