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The Urgency of Arabic for Religious Court Judges in Indonesia

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ABSTRACT

As a judicial institution based on Islamic law, the religious court is a special court which is only authorized in certain areas of civil, not including the criminal field (except Aceh province) for Moslems. Therefore, Islamic law and Arabic language *should* become a daily routine for judges. This study was designed to gain an in-depth understanding of Arabic urgency for religious court judges in Indonesia and how those language skills affect the duties and responsibilities of religious court judges. This research was qualitative-descriptive research and the data was collected through interviews to the judges at Badung Religious Court, Bali Province by purposive sampling and document analysis. Arabic plays an important role in the religious court because Arabic is the language of the Holy Quran and other Islamic laws. The judges considered Arabic very high esteem with most of their duties and responsibilities were inseparable from Arabic. Governments have been offering scholarships and other opportunities for judges who are interested in Arabic studies and Islamic studies in the Middle East.

Arabic; judge; religious court

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مستخلص البحث

كالمحكمة الشرعية مؤسسة قضائية قائمة على الأحكام الإسلامية، وهي محكمة خاصة مسؤولة عن قضايا المسلمين المدنية دون الجنائية (إلا في إقليم آتشيه؛ لذلك أصبحت الأحكام الإسلامية واللغة العربية روتينية يومية للقضاة فيها). هذا البحث معد لفهم أهمية اللغة العربية لقضاة المحكمة الشرعية في إندونيسيا وكيف تؤثر المهارة اللغوية على واجباتهم ومسؤولياتهم. وهذا البحث قام على منهج نوعي وصفي جعل محكمة باندونج الشرعية نموذجاً لموضوع الدراسة بطريقة أخذ العينات purposive sampling. ومما أشارت إليه نتائج البحث أنّ اللغة العربية لعبت دوراً مهماً في المحكمة الشرعية لأنها لغة القرآن ومصادر الأحكام الإسلامية، حيث رأى القضاة أنّ اللغة العربية مهمة جداً لأن معظم واجباتهم ومسؤولياتهم لا يمكن فصلها عن اللغة العربية، وقد قدمت لهم الحكومة منحة دراسية لاستكمال الدراسة اللغة العربية والدراسات الإسلامية في الشرق الأوسط.

INTRODUCTION

Arabic isn't always an overseas language to Indonesians. Until now, the use of Arabic in Indonesia consists of Arabic as a language system, terms with inside the shape of sentences, Arabic terms, and the naming of people. In addition, Arabic language and expressions also are frequently used as a medium of communication, learning, spiritual language, and identification each religiously, legally, socially and politically.

Religious court is one of the law enforcement institutes which is carefully associated with the Arabic language. The religious court is the spearhead of the enforcement of Islamic regulation. This consists of the regulation of marriage, inheritance, wills, grants, *waqf*, *zakat*, *infaq*, *shadaqah*, and sharia economics, even with inside the Aceh vicinity there may be regulation enforcement on *jinayah*. Judges of religious courts additionally referred to as *Qadi*, have to take a look at and grasp Arabic, which will discuss with the primary reasserts of Islamic regulation, particularly the Qur'an and Al-Hadith, together with the evaluations of *madzhab* students in Islamic jurisprudence (AR, 2015).

Based on the provisions of the letter from the Head of the Administrative Affairs Agency of the Supreme Court of the Republic of Indonesia dated November 19, 2008 No. 054/Bua.2/F.001/XI/2008 concerning the registration requirements of candidates for religious judges and candidates for civil servants at the Supreme Court of the Republic of Indonesia and announcement of Selection for Admission of Candidates for Judges within the Supreme Court of the Republic of Indonesia for Fiscal Year 2017 Number: 01/Pansel/MA/ 07/2017 dated July 10 2017, judge candidates of religious courts must be able to read the Islamic classical book, called *turats* book. If it turns out that the participants in the selection of prospective judges cannot read the *turats* book, they will be declared void. This shows that the Supreme Court consider Arabic to be very important as a condition for judge candidate.

The interesting thing to convey is in the selection of the 2021 judge admission based on the letter of the Secretary of the Supreme Court Number 1462/SEK/Kp.00.2/7/2021 about the acceptance of judge candidate through the recruitment of civil servant candidate in the position of case analyst, there are 1540 vacancies of judicial case analyst positions allocated for the selection of judicial candidates, and if they do not pass as judge candidate, they will still be case analysts.

According to the published announcement, participants do not need to read *Turats* books early on, as the process of becoming a judge is still long. Even if the participant passes the selection, the participant must travel to become a civil servant and then register as a candidate judge. This acceptance, on the other hand, opens up many opportunities for non-Arabic participants, but in fact offers many benefits for Arabic-speaking participants.

The author sought to find a study related to the urgency of Arabic for judges, but no conclusions were reached. This investigation focuses on the urgency of Arabic as a judge in the Inquisition. There are two reasons why there is no study on this study. First, judges on the Arabian Peninsula use Arabic as a foreign language. For other civil law and common law judges, English is preferred over Arabic. Second, the Inquisition judges at the time learned a lot of Arabic because of the predominance of Islamic law scholars and

boarding school graduates. These are the reasons why this research is so interesting and important.

Although religious court judges are required to master Arabic, there is no requirement state that judge candidate must come from a degree in Islamic law or have graduated from a particular Islamic boarding school. Thus, general law scholars who have never studied Arabic formally can also become judges in religious courts as long as they can pass an acceptance test from beginning to end (reading the *turats* book). So, how important is Arabic language ability needed by religious court judges?

However, many studies have conducted the research about the urgency of Arabic, such as Muzdalifah Muhammadun (2015, STAIN Parepare), Agustiar (2015, UIN Syarif Kasim Riau), Mega Primaningtyas and Cahya Edi Setyawan (2019, STAI Masjid Syuhada Yogyakarta).

Muzdalifah Muhammadun conducted a research entitled “*Urgensi Bahasa Arab Dalam Mengatasi Terjadinya Bias Gender (Penafsiran Teks dan Konteks Bahasa dalam Wacana Keagamaan)*.” The point of this study that even though messages of the Qur’ān are universal and permanent, the verbalization of the messages is closely related to the situation of the Arabic community at the time Qur’ān was revealed. Therefore, we must carefully study in identifying these two dimensions of the messages. This research was not explained the research method (Muhammadun, 2015).

The second research has been conducted by Agustiar entitled “*Kaidah Bahasa Arab dan Urgensinya terhadap Penafsiran Alqur’an*.” The rules of interpretation of Qur’an are basic principle, syar’i rules and rules of language. Linguistic rules contain a discussion of various aspects including the rules of *Ism* and *Fi’il*. In the interpretation of the Koran use *Ism* (noun) is a different connotation with *fi’il* (verb). This research also was not explained the research method (Agustiar, 2018).

The last previous study by Mega Primaningtyas and Cahya Edi Setyawan entitled “*Urgensi Bahasa Arab dalam Pendidikan Islam di Era Revolusi Industri 4.0*.” Arabic, which has always been considered less important for some learners, has become an “Urgen” thing now, that is, as a door to enter the Islamic education space. The following will be explained about the influence of industrial revolution 4.0 in Islamic education and the aspects that become Urgency in Arabic as the entrance to the entry of Islamic education. This research also was not explained the research method (Primaningtyas & Setyawan, 2019).

The study aims to know the urgency of Arabic for religious court judges. Since the title equalization for graduates of Islamic religious colleges with public universities, the opportunity for graduates outside of Islamic degrees has become wide open to become judges in religious courts. Especially with the difference in the selection system for accepting prospective judges in 2021, where prospective judges will start their careers as civil servants.

Al-Mawardi in *al-Abkaam as-Sulthoniyah* explains that one of the conditions for choosing a judge candidate to be a judge is mastering the sources of Islamic law. The sources of law consist of Holy Qur’an, Sunnah, Ijma’ and Qiyas. These four things are inseparable from Arabic, so a judge should be chosen if he is able to master Arabic in order to carry out his duties properly.

This research with all its limitations were expected to provide motivation to legal scholars who will apply to become judges in religious courts to improve their Arabic

language skills and also motivate religious court judges to continue to hone their abilities by attending seminars, comparative studies and other activities that use Arabic.

METHOD

This research was a field research, namely research that uses field data as the main data source with the aim of discovering, developing, and testing a science. The design of this research was qualitative-descriptive research, which did not only describe single variables but can reveal the relationship between one variable and another (M. Sayuthi Ali, 2002).

Sources of data in this study are categorized into two major groups: First, primary data sources, namely data obtained directly from research subjects. Regarding the research data, the author conducted interviews through purposive sampling method with judges (Ummu Hafizhah, judge and vice chief of Badung Religious Court) at the religious courts who handled cases where the parties could only use Arabic for the last five years, namely at the Badung Religious Court, Bali Province. Second, secondary data sources, which were obtained by conducting literature studies. In this study, the literature used was books, journals, articles, annual reports of the Supreme Court and magazines both printed and electronic related to the urgency of the Arabic language in religious courts.

Data analysis was carried out simultaneously with the start of data collection by the researcher. Data analysis was carried out continuously until the end of data collection. Then the data was reanalyzed and triangulation was carried out from other subjects who were not the main subject of the study, such as people who were close to the subject. Furthermore, the results of data analysis were described in the discussion. The validity of obtained data assessed by checking how well the results correspond to established theories and other measures of the same concept.

Data analysis was carried out using the following steps: First, data collection, the researcher found and collected information sources relevant to the research. Second, data interpretation, the researcher compiled facts in a logical and harmonious framework, so that they became a unified whole. This preparation activity was also known as the synthesis or interpretation process. Third, writing, which was the stage when the interpretation results were written systematically, logically, harmoniously, and consistently, both in terms of words and the flow of discussion. Theoretically, data analysis was the process of compiling, categorizing, looking for patterns or themes from existing data with a view to understanding their meaning (Moleong, 2018).

Qualitative research consist of data reduction, data display, and drawing conclusions. The researcher collected data about the use of Arabic at Badung Religious Court through interview and documentation. The researcher then transcribed the data. The irrelevant data which were not related to research questions were discarded. The irrelevant data is the data no relation with the theme of the study but related to the research. Next, after collecting and reducing the data, the researcher displayed those data in the form of descriptive.

In the process of the reducing and displaying the data, it was based on the formulation of the research problem. This step is done by presenting a set of information that is structured and possibility of drawing conclusions, because the data obtained during the process of qualitative research usually in the form of narrative, thus requiring simplification without reducing its contents. After displaying the data, a conclusion is

drawn. The conclusion is analyzed continuously and verified the validity to get the perfect conclusion about the urgency of Arabic for religious court judges in Indonesia.

RESULTS & DISCUSSION

Qualifications to Become a Judge of Religious Courts in Indonesia

Judges are public officials given authority to hear, determine, and preside over legal matters in courts. In appointing judges, the government is guided by certain criteria. Among the criteria is that judges are appointed from people who have a lot of knowledge, who fear Allah, *wara*, fair, and intelligent.

By referring to these criteria, the judge who appointed by the president has high authority and gain the full trust of the community. Judges appointed by the authorities have the right to full autonomy and freedom. Its decisions are not influenced by the government.

In appointing a judge, the president must know about the perfection of the conditions attached to a judge candidate. If he does not know about the perfection of the conditions attached to the candidate for judge, then the head of state must ask and find out about it. If clear and strong information is obtained, then that information is sufficient used as the basis for appointing someone to be a judge, there is no need to bring witnesses to the perfection of the conditions attached to someone who wants to be appointed as a judge. However, if the president does not have information about a candidate for judge, then the candidate for judge must be tested before two witnesses who explain his perfection as a condition to become a judge and a test/exam is also carried out.

As it has been explained that judges have very heavy duties and responsibilities if it is not to be said that it is difficult to become a judge. For this reason, the person who deserves to be a judge is the person who fulfills the characteristics and conditions that have been determined.

Jurists and political thinkers of Islam like Ibn Abir'-Rabi, Nizam-ul-Mulk and Al-Ghazzali have very high vision of justice. According to Ibn Abir'-Rabi, justice is the correctness of all action and is based on the happy means between the thinking faculty and the animal nature in man. It consists in putting everything in its proper place and giving everyone his due. Administration of justice is a function of government which is on a higher plan than other functions. For qualifications of a Qadhi, Ibn Ab'r-Rabi says:

1. Judge should be God-fearing and at the same time should have a dignified manner;
2. He should have sound commonsense and be conversant with the best of judicial literature;
3. He should bear an absolutely irreproachable character;
4. He should not deliver judgments before he is satisfied that full proof has been laid before him nor err in his judgment when sufficient evidence has been produced;
5. He should be fearless in awarding what is right and due;
6. He should not accept any present nor hear any recommendation;
7. He should never see any party in private;
8. He should rarely smile, and speak little;
9. He should never ask any party to do him any favour; and
10. He should take great care to protect the property of the orphans (Malik, n.d.).

Regulations relating to the appointment of judges in Indonesia, regulated in Article 13 of Law Number 7 of 1989 amended by Law Number 3 of 2006 so that Article 13 contains the following:

“To be appointed as a candidate for a religious court judge, a person must meet the following requirements:”:

1. Indonesian citizens
2. Moslem
3. Fear God Almighty
4. Loyal to Pancasila and the 1945 Constitution
5. Shari'ah degree and/or law degree mastering Islamic law
6. physically and mentally healthy
7. authoritative, honest, fair and not disgraceful
8. not a former member of a banned organization, the Indonesian communist party including its mass organizations or not a person directly involved in the September 30th movement/the Indonesian communist party.

In general, the requirements for candidates for religious judges are the same as for prospective judges another court. The difference is only in the requirement of "Moslem" for candidates for religious judges. This requirement to be Moslem had become a polemic because some considered it a discriminatory requirement, namely only specifically for Moslems and closed to non-Moslems. This is reasonable because the religious courts in Law number 4 of 2004 concerning the main points of judicial power is declared as a state court. So, all citizens should be entitled to become judges in religious courts. However, M. Yahya Harahap (2005) refuted the notion that the requirement to be Moslem is discriminatory. He said there was a reason that Islamic conditions were appropriate. Harahap sees that there are special characteristics of religious courts, namely the Islamic personality factor and the applied legal factor, namely Islamic law. From an ethical point of view, it seems odd if the law applied is Islamic law and only specifically for Moslems but the judges are not Moslems. So, that this requirement of being Moslems should be applied specifically to prospective religious court judges.

Based on the provisions of the letter from the Head of the Administrative Affairs Agency of the Supreme Court of the Republic of Indonesia dated November 19, 2008 No. 054/Bua.2/F.001/XI/2008 concerning the registration requirements of candidates for religious judges and candidates for civil servants at the Supreme Court of the Republic of Indonesia and announcement of Selection for Admission of Candidates for Judges within the Supreme Court of the Republic of Indonesia for Fiscal Year 2017 Number: 01/Pansel/MA/07/2017 dated July 10, 2017 prospective judges of religious courts must be able to read the *turats* book. This shows that candidates for judges in religious courts must not only be Moslem, but also master Arabic, because in making decisions, judges in religious courts must also refer to Islamic law which is in Arabic.

The Urgency of Arabic for Religious Court Judges in Indonesia

As a judicial institution based on Islamic law, the Religious Court is called a special court. It is because the Religious Courts judge cases that are determined exclusively by the legislation, which is specifically authorized only to judge certain case matters or about specific group of people. In this case, the Religious Court is only authorized in certain areas of civil, not including the criminal field and also just for Moslems

in Indonesia, in cases of Islamic civil law (Djalil, 2006). It is because the majority of Indonesian people are Moslems.

Amendments of Law Number 7 Year 1989 by Law Number 3 Year 2006 and Law Number 50 Year 2009, is essentially to adapt to Law Number 48 Year 2009 on Judicial Power and Law Number 3 Year 2009 on the second amendment of Law Number 14 Year 1985 on the Supreme Court. The amendment means also that the basis of overall policy has been laid and hence all matters concerning the Religious Courts, whether related with the technical judicial or non judicial such as organization, administration and finance are under the authority of the Supreme Court. Besides, changes in Law Number 7 of 1989, will further strengthen the position and existence of the Religious Court itself in the system of law in Indonesia (Rahmi, 2013).

At article 49 section (1) point i the act No. 3 of 2006 clearly mentioned that religious court has authority to inspect, to decide and to settle cases at first level of court in Islamic economics. It consists of 1) Islamic Bank, 2) Islamic micro-financial Institution, 3) Islamic insurance, 4) reinsurance, 5) Islamic virtual fund, 6) Islamic bond, 7) Islamic secure fund, 8) Islamic funding, 9) Islamic pledge, 10) Pension fund of Islamic financial, 11) Islamic business.

In such changes expanded the authority of the Religious Courts. These expansion would include zakat, infaq, and object of disputes over property rights with the subject of legal between Moslems and also Shari'ah economic.

Although the absolute competence of religious courts is increasing, religious court judges will have no difficulty if they master Arabic. This is because religious court judges can directly refer to *fiqh* books in Arabic. That is why the ability to master the Arabic language is needed by religious court judges.

Based on interviews conducted with the vice chairman of the Badung Religious Court, Bali Province, Arabic language skills are not only needed in applying Islamic law in decisions, but also in the trial process. Bali is one of the provinces that handles many cases where the parties cannot use Indonesian, but can only use Arabic. So, if the judge handling the case does not master Arabic well, the religious court must wait for the translator to continue the trial process. Throughout 2021, there are at least 23 cases whose trial processes are almost entirely in Arabic because the litigants can only use Arabic.

At Badung Religious Court, Arabic is not only required by judges, but also by clerk, secretary, assistant's clerk, service personnel and security. It is also important to create room name, bulletin boards and information boards in Arabic and English.

Abu Hanifa required the *qadi* (judge) to be of high knowledge, though he allowed a *qadi* to be a *muqallid* in such cases where he could not be a mujtahid. The word *ijtihad* literally means exerting oneself. A person entitled to exercise *ijtihad* is called mujtahid, and a person bound to practise *taqlid*, is called *muqallid*. *Mujtahid* is the person qualified for independent derivation of *fiqh* rules from the sources, and *muqallid* is the person who practised *taqlid* 'the adoption of the utterances or actions of the authoritative, with faith in their correctness without investigating his reasoning' (Azad, 1984).

According to Al-Mawardi (1966), to be mujtahid, a candidate for the office of judge should have a necessary knowledge of Islamic Law by studying the legal decisions in al-Qur'an as the first source, and its precepts. He should be fully conversant with al-Qur'an that means to be in possession of knowledge of the following things; whether abrogating (*nasikh*) or abrogated (*mansukh*), whether verses that import clear orders (*muhkam*) or that

are allegorical and beyond the understanding of commoners (*mutashabihat*), whether words pertaining to specific members of the class (*kbass*) or words denoting and pertaining to all the homogeneous members of the class (*amm*) and whether verses imparting brief and precise commandments (*mujmal*) or verses where in the detail of brief commandment is given (*mufassir*).

He should know the ordinance of the Prophet as established by his words and deeds, and how transmitted, whether continuously by a large number of narrators (*tawatur*) or by only one or two narrators (*ahād*), whether genuine or doubtful, *ad hoc* or of general application.

He should know the interpretation by early Moslems (*salaf*), whether unanimously (*Ijma* or not, thus conforming to the consensus of opinion and arriving at a right opinion on points of difference. These were the bases of the judge's decisions. He was not to contradict them in any way. Lastly, he should know the power of deciding by analogy (*Qiyas*), or he should be able to express his own judgment by using analogy.

One important requirement was that the judge should also know the 'Arabic Language. Knowing 'Arabic will help the judge to understand al-Qur'an and Sunna better, whether in the aspect of '*amm* (general) or *kbass* (particular), whether in the aspect of *amr* (command) or *nahy* (prohibition), whether *ism* (noun), *fi'il* (verb) or *harf* (preposition). That is the judge has to know Nahwu and Saraf. Knowing 'Arabic Language is important because al-Qur'an and Hadith were revealed in 'Arabic. In conclusion, familiarity with the 'Arabic Language is a prerequisite. Without that, a judge cannot achieve a satisfactory level in his own judgment. Consequently a person who is not fully conversant with Qur'an, the Sunnah, *Ijma'*, *Qiyas*, and the 'Arabic language is not eligible for the post of *qadi*.

Al-Shafi'i (1961) argued that the judge had the authority to consult scholars to understand the law. The person to be consulted must have the ability to learn and judge opinions in the Qur'an, tradition (hadith). He must be smart enough to draw the right conclusions and not make mistakes or twist the truth. This feature can only be performed by someone who is fluent in Arabic. Therefore, the judge acts as an ulama in society.

In addition to being needed in the trial process, Arabic language skills are also absolutely needed by a religious court judge because there are lots of seminars, comparative studies and scholarships conducted in the Middle East. If the judges of the religious courts do not have adequate capabilities, the judges will be left behind.

Based on the 2021 Supreme Court's annual report, the number of judges in the first instance religious courts is 2701 people with a burden-to-case ratio of 1:249. As for the level of appeal, there are 361 judges with a load ratio of 1:8. Meanwhile, every year there are 805 judges who retire and die. This shows that religious court judges have a fairly high workload. So that if the judges of the religious courts do not master Arabic, of course it will have an indirect impact on the settlement of cases, especially complicated cases that require a lot of legal considerations from fiqh books.

Although religious court judges can look for references from book translations, translations of books are very limited. If the judge of the religious court has mastered Arabic, he will have no trouble finding book references. In addition, religious court judges can also compare the rules or judges' decisions in similar cases in other countries that use Islamic law as a reference (in Arabic).

Arabic provides many benefits to religious court officials, especially to judges. Therefore, before becoming a judge in a religious court, a candidate for a religious court

judge must master the Arabic language in its entirety, because apart from being required to refer to Islamic law, religious court judges may meet parties who can only use Arabic as happened in the Badung Religious Court. In order to speed up the settlement of cases, religious court judges do not need an interpreter if the judge has mastered Arabic.

CONCLUSIONS

Based on the research conducted, it can be seen that Arabic is in desperate need of a religious court judge. The judges need it not only for easy access to Islamic law references, but also as a language of communication and self-development. As the problems that arise in society are also evolving, judges can compare the rules and judgments of similar cases in other countries under Islamic law (Arabic).

This research is limited to the urgency of Arabic for religious court judges with limitations because it only involves religious courts whose parties are only able to use Arabic. The researcher hopes that there will be similar research with broader aspects and different methods and there will be research that discusses the urgency of Arabic in the selection model for hearing religious court judges from the standpoint of a case analyst.

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