

Annulment in Islamic Judiciary Decisions According to Fuqaha and Law

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Abstract

The annulment of the decision is the last stage after the approval of the Shariah Court is announced. An appeal allows a different judge to review a case and overturn an earlier decision to make the right decision. Nevertheless, there are some issues that arise and need to be seen such as the extent to which Islamic law and Fuqaha can be used to support the cancellation of this decision. In fact, this study tries to discuss the concept of canceling a decision according to the views of Fuqaha in Islamic law and regulations. This investigation uses a documentary descriptive analysis method. This study concludes that the annulment of a decision has a principle in shariah law and the Jurists agree that the annulment of a decision is an important part of the review process to correct a wrong decision. The study also found that shariah courts were guided by legal standards that gave reasons to overturn cases in the past. In fact, this study is useful as a reference for shariah law practitioners who control audit cases in the context of overturning decisions in the shariah courts in Malaysia.

Keyword: Annulment of Decision, Shariah Court, Shariah Law, Practice Guidelines, Cases of Decision Annulment.

Introduction

The court will make a judgment based on the law if it fulfills the stated parameters by the end of the court case. A decision has the power to be executed if all of the requirements provided by law or Shariah law are met. If the decision fails to fulfill all of the law or Shariah law's requirements, it is declared null and invalid. The decision that cannot be executed is regarded to have never occurred in the first place and does not have any exclusive force (Harahap, 2012).

Previous studies have examined the use of the revocation concept from theoretical and practical perspectives for use in criminal, civil, and national administrative matters (Santosa, 2015). The notion of judicial review in administrative law, where public officials have the authority to act (n Hingun, 1995). Meanwhile, judicial review is permitted under Islamic law. (Al-Omran et al., 2015) Furthermore, the primary legal constitutions of Islamic countries are founded on the Qur'an and the Sunnah. Any provision or order that is inconsistent with the sources are considered invalid and null. The Dalil and Islamic Fuqaha scholars' views that the

researcher intended to explore in this study are not particularly well-represented in the previous studies. Hence, the researcher concentrated on the current law of annulment in Shariah court decision-making. The researcher also addressed the group by analyzing the notion of abolishment concept in the Islamic judiciary according to Fuqaha and legislation. Therefore, this paper will guide the practitioners of Shariah law and detail the sources, particularly for the Shariah judges who review cases regarding the rules for annulment in Shariah courts.

This study contributes to the discovery of the Shariah foundations for the annulment of decisions in the court while identifying the scope of scholars' discourse regarding permissible annulment of decision within the Islamic judicial system. However, the practice in today's Shariah courts has evolved beyond the scope of appeals discussed by scholars. This shows that the system is progressive in accepting legal reforms to strengthen the Islamic justice system in Malaysia further. In this regard, it is hoped that this writing will provide exposure to Shariah legal practitioners, especially for judges who hear reviews that annulment of decision in Shariah courts at present should be based on legal sources and the views of Islamic jurists (fuqaha).

Research Methodology

This research is carried out using qualitative methods by analyzing documents to obtain the necessary data. The main source for this matter is from al-Quran or al-Hadith, kitabs and Shariah Court Practice Guidelines. Descriptive and thematic methods are used in analyzing data by expanding the understanding of data by presenting case report. Data is processed and analyzed based on a content analysis approach in accordance with the scope and theme of this writing.

Decision Revocation Concept According to Islamic Judiciary

Fuqaha have stated that it is obligatory to revoke a decision if it contradicts the Qur'an, the Sunnah, and Ijma' (Kuwait, 1983). If a decision opposes the text of the Qur'an, the Sunnah, Ijma', or contradicts with Qiyas Ma'na, Qiyas Jaly, Qiyas Syibh or Qiyas Tahqiq, the decisions are called to be cancelled (al-Mawardi, 1994). It can be argued that the evidence makes it obligatory to punish what was revealed by Allah SWT. If it is forbidden to contradict with Shariah law, it is safe to say that the conflicting decision is invalid and illegitimate. However, it is rejected by the original Shariah Muktabar's Nas to see falsity, which is common in Islamic Shariah, and not just a judicial decision. As a hadith of Saiditina Aisyah r.a. stated that Rasulullah SAW said "Whoever creates a new matter in our business that has no command, then the matter is rejected". The term rejected means "falsehood rejected," and it refers to the annulment punishment. Besides that, Imam Bukhari also stated that decisions that are unjust or contradict the scholars are null and void, citing Ibn Umar's hadith as follows:

عَنْ سَالِمٍ عَنْ أَبِيهِ قَالَ بَعَثَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ خَالِدَ بْنَ الْوَلِيدِ إِلَى بَنِي جَذِيمَةَ فَلَمَّ يُخْسِنُوا أَنْ يَقُولُوا أَسْلَمْنَا فَقَالُوا صَبَأْنَا صَبَأْنَا فَجَعَلَ خَالِدٌ يَقْتُلُ وَيَأْسِرُ وَدَفَعَ إِلَى كُلِّ رَجُلٍ مِمَّنْ أَسِيرَهُ فَأَمَرَ كُلَّ رَجُلٍ مِمَّنْ أَنْ يَقْتُلَ أَسِيرَهُ فَقُلْتُ وَاللَّهِ لَا أَقْتُلُ أَسِيرِي وَلَا يَقْتُلُ رَجُلٌ مِنْ أَصْحَابِي أَسِيرَهُ فَذَكَرْنَا ذَلِكَ لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ "اللَّهُمَّ إِنِّي أَبْرَأُ إِلَيْكَ مِمَّا صَنَعَ خَالِدُ بْنُ الْوَلِيدِ", مَرَّتَيْنِ

Translation

Prophet Muhammad (p.b.u.h.) sent (an army unit under the command of) Khalid bin al-Walid to fight against the tribe of Bani Jadhima and those people could not express themselves by saying, "Aslamna," but they said, "Saba'na! Saba'na!" Khalid kept on killing some of them and taking some others as captives, and he gave a captive to every one of us and ordered every one of us to kill his captive. I said, "By Allah, I shall not kill my captive and none of my companions shall kill his captive!" Then we mentioned that to Rasulullah SAW and he said, "O Allah! I am free from what Khalid bin al-Walid has done," and repeated it twice.

The hadith implied that Khalid have punished them for refusing to speak the word "Islam" firmly (Al-Asqalani, 1997). In this aspect, Khalid understood that they did so because they had to and did not want to entirely commit to Islam. As a result, he executed them on the charges of impeachment against their word. Furthermore, the hadith above showed that Khalid's action was invalid even if he Ijtihad on them because he did not ask what their word 'ashba'na' meant, and Ibn Umar's action was correct. So, the Prophet Muhammad (p.b.u.h.) withdrew from Khalid's actions because they were false (Al-Salam, 2000).

Moreover, anybody who desires a non-prescription Shariah Taklif is invalidated by the Shariah, and anything that invalidates the Shariah then his practice mutually cancels out the invalidity (Asy-Syatibi, 2004). Therefore, whoever rejects what is not recommended for him, then his practice is faulty. He reasoned from Allah SWT's words in Surah an-Nissa verse 115, which means:

And whoever defies the Messenger after guidance has become clear to them and follows a path other than that of the believers, We will let them pursue what they have chosen, then burn them in Hell—what an evil end!

Based on the interpretation of Ibn Kathir, this passage is used as proof by Imam Syafie to demonstrate that Ijma' is an argument (source of law) that cannot be contested, because it is utilized as a reference only after sufficient consideration (Ibn Kathir, 1988). Thus, disputing the method of the believers is defying Shariah, and this disagreement leads to hell as the outcome is solely on unprescribed and improper behaviors.

Circumstances of Decisions Annulment According to Islamic Judiciary and Fuqaha

One of the most significant purposes of Islamic jurisprudence is the preservation of justice and tyranny elimination. However, the judge's ruling may be inaccurate for whatever reason. As a result, where there are grounds for review, the Islamic judiciary chooses for the condemned individual to review the judgment given against him. By outlining the rationale for striking a balance between recognising the court's ruling and evaluating the decision, it is for the sake of assuring the fairness of this decision. If the court's ruling is disobeyed without restriction, perhaps the motive is merely discontent with the decision of the parties. As a result of the decision, he volunteered to cancel on his own and to escape the consequences he suffered.

Meanwhile, to judge the convicted person's review, there must be a legal explanation for the parties' opposition to the judgment and application for reconsideration. After extensive study, it is evident to the researcher that the arguments of the Fuqaha are connected to the reasons for objection in different scenarios that are classified under various terms. Thus, the researcher attempted to collect as many of Fuqaha's opinions as possible regarding this matter. The Fuqaha's rationale has specified the situations that are agreed upon and refuted, but the majority of what they have done, including specific circumstances in reversing their judgment, is as follows:

Decisions that are contrary to the arguments of the Qur'an, the Sunnah and Ijma'

Fuqaha have agreed and acknowledged that the judge is specialized in observing and punishing the prosecution if it is violating the Qur'an, the Sunnah of prophet Muhammad (p.b.u.h.), or the Ijma' of the scholars. In fact, if a judgment violates his principles or erroneous in punishment where he believed that the decision coincided with the Nas or Ijma', then the decision must be revoked and cannot be gazette. According to the Fuqaha, if the person being judged presents new evidence and defense after being convicted, the charges will still be resumed and re-examined based on the new evidence. If the validity of the charges is proven, the first decision will be immediately cancelled and the new decision will be convicted instead (al-Ghamidi, 1418H). Therefore, whenever a judge's ruling contradicts the text of the Qur'an, the decision should be annulled so that the error can be ascertained and another party can correct it. The individual who has been convicted has the right to appeal the judgment. Example as mentioned in Surah al-An'am verse 121, of penalizing halal for food slaughtered without mentioning the name of Allah SWT on purpose:

Do not eat what is not slaughtered in Allah's name. For that would certainly be an act of disobedience. Surely the devils whisper to their human associates to argue with you. If you were to obey them, then you too would be polytheists.

Slaughtered animals are not halal if the name of Allah SWT is not mentioned during slaughtering them, even if the slaughterer is a Muslim (Ibn Kathir, 1988). Furthermore, this verse bans consuming food that does not bear the name of God, and the prohibition leads to haram legislation. Therefore, by considering it halal defies God's word (Bukhari, 2009).

Meanwhile, if it is evident that the judge's verdict is against the Sunnah, the judgment will not be considered and is nullified (Ibn Abidin, 1979). As an example, punishing a lady who has been divorced three times by only marrying a 'Muhallil' (in Malay term, it is called "Cina Buta") without having intercourse contradicts the Sunnah, as mentioned by Saiditina Aisyah r.a. She stated:

عَنْ ابْنِ شَهَابٍ قَالَ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ أَنَّ عَائِشَةَ أَخْبَرَتْهُ أَنَّ امْرَأَةً رِفَاعَةَ الْقُرْظِيَّ جَاءَتْ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُولَ اللَّهِ إِنَّ رِفَاعَةَ طَلَّقَنِي فَبِتَّ طَلَاقِي وَإِنِّي نَكَحْتُ بَعْدَهُ عَبْدَ الرَّحْمَنِ بْنِ الزُّبَيْرِ الْقُرْظِيَّ وَإِنَّمَا مَعَهُ مِثْلُ الْهَدْبَةِ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَعَلَّكَ تُرِيدِينَ أَنْ تَرْجِعِي إِلَى رِفَاعَةَ لَا حَتَّى يَذُوقَ عُسَيْلَتِكَ وَتَذُوقِي عُسَيْلَتَهُ

Translation

The wife of Rifa'a al-Qurazi came to Prophet Muhammad (p.b.u.h.) and said, "O Prophet Muhammad! Rifa'a divorced me irrevocably. After him, I married 'Abdur-Rahman bin Az-Zubair al-Qurazi who proved to be impotent." Allah's Apostle said to her, "Perhaps you want to return to Rifa'a? Nay (you cannot return to Rifa'a) until you and 'Abdur-Rahman consummate your marriage." (al-Bukhariyy, Abu Abdullah Muhammad Ibn Isma'il, Sahih al-Bukhari, Book of al-Talaq, Chapter on Man Ajaju Talaq al-Thalasa)

The hadith explained that Khalid bin Said's disobedience to his wife Rifa'a who talked about such issues in front of the Prophet Muhammad (p.b.u.h.), even though he was barred from the woman since he was still behind the door, although the Prophet Muhammad (p.b.u.h.) did not disown him (Al-Asqalaniyy, 1997). According to the hadith above, if a judge rules that a woman who divorced her first husband is not having sex with her second husband has violated the Sunnah. Then, the judgment must be nullified (Al-Ghamidi, 1418H).

Meanwhile, ruling that goes against the Ijma' will be ignored and can be challenged. The convicted individual can request a review and ask the court to reconsider the judgment. This is because choices that contradict Ijma' are considered void (Al-Syarbini, 1988). In conclusion, the decision that breaches Ijma' should be reversed. For example, if the judge orders that all of the inheritance is for the brother without the grandfather, based on only two views of Fuqaha, (1) inheritance for the grandfather and no inheritance for the others, and (2) shared between the grandfather and the siblings. The details can be found in Fiqh books. Therefore, it is prohibited to inherit as a whole to the grandfather because the brother is precluded by the deceased's son while the grandfather is prevented by the deceased's father, as the son is prioritised over by the father. Hence, there is no view from Islamic jurisprudence. If it is being punished in this way by the judge, it must be annulled (Ibn Farqun, 1966).

In some other cases, if a court decides to impose Qisas punishment on someone after receiving forgiveness from one of the victim's family members, that ruling will not be taken. This decision is disputed because the Ijma' states that if the person convicted of murder is forgiven by one of the victim's family members, then the Qisas sentence is dropped. The Qisas punishment was amended to pay the Diyat (Al-Qurtubi, 1981). The convicted individual will be able to submit a review based on this. Furthermore, in some situations, if a court chooses to terminate a Mut'ah marriage, it will go against the wishes of the companions of r.a. (Ibn Abidin, 1979), where the convicted individual has the right to submit a review.

There is also a verdict issued by the court that contradicts the text of the Qur'an, the Sunnah, Ijma' or a decision that contradicts his belief. Then, the decision must be voided, and it makes no difference whether the decision is voided by the judge himself or by another judge (al-Ghamidi, 1418H). Fuqaha's arguments in respect to the above are based on the Qur'an, the Sunnah, and other rational reasons. As seen in Surah al-Saad verse 26:

i) **Qur'an**

We have surely made you an authority in the land, so judge between people with the truth.

Ibn Kathir explained that this is a command from Allah SWT to the rulers so that they decide conflicts between individuals based on the truth revealed from His side and do not deviate from it (Ibn Kathir, 1988). This would cause them to stray from Allah SWT's path. Furthermore, Allah SWT has issued a firm threat and severe punishment to those who deviate from His path and overlook the day of reckoning.

ii) Sunnah

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ فِيهِ فَهُوَ رَدٌّ رَوَاهُ

Translation

Aisyah RA stated that Prophet Muhammad (p.b.u.h.) said, "He who innovates something in this matter of ours (i.e., Islam) that is not of it will have it rejected (by Allah)." (al-Bukhariyy, Abu Abdullah Muhammad Ibn Isma'il, Sahih al-Bukhari, Book of al-Sulh, Chapter on l'idha Istalahuu A'laa Sulh Jawr Falsulh Mardud).

Based on the hadith above, this hadith of Aisyah is one of the fundamentals in Islam (al-Asqalaniy, 1977) This means that anyone who causes a religious matter that against one of Islam's principles is pointless and cannot be used as a guideline. Furthermore, he stated that even a judge's decision cannot alter the truth of a situation.

iii) Dalil Aqli

It is a deliberate mistake indeed, so it is necessary to withdraw and cancel it because restoring to the truth is preferable to going deeply into falsehood (Ibn al-Qayyim, 1996).

If this decision is overturned, the judges will need to give a justification for their decision-making process regarding the ruling. This is done to prevent greed and injustice from being blamed for the decision being overturned after being reviewed by the judge or other judges (al-Ghamidi, 1418H).

Qiyas-contradictory Choices

In Qiyas, if the decision clearly violates Qiyas, then the decision cannot be considered and can be revoked (al-Tarabulsi. t.th). As the convicted individuals are permitted to propose amendments. There is a discrepancy between two points of view among Fuqaha about the punishment for defying Qiyas in this aspect, which are as follows:

i) First point of view

If the judge renders a judgment that is contradictory to Qiyas Jali (clear), the decision will be voided; but, if it contradicts Qiyas Khafi (hidden), the decision is not nullified, as stated by most Fuqaha from Madhhab of Imam Hanafi, Imam Maliki, Imam Shafie, and Imam Hanbali in one of their narrations. A judge's ruling must be revoked if it contradicts with Qiyas since it is apparent and one of the authoritative Shariah evidence that is founded on the soundness of Shariah law. Regarding Qiyas Khafi, it is based on Zhan (conjecture) and presumptions of the same caliber; if they negate each other, the decision will go forward (will not come to an

end) and unavoidably worry the people. The Shariah has then established to lift the trouble from Mukallaf.

Islamic jurisprudence uses the conflicting law of Qiyas as an illustration. If the judge had denied the testimony of a Christian, the decision would have been overturned because Christians are unbelievers, and unbelievers are more terrible than Muslims who are Fasiq and much far qualified to testify on behalf of Muslims. This is because there is no sin (more terrible) after disbelieving. Therefore, there is no distinction between rejecting the testimony of Fasiq and Kafi because neither of them came from expert witnesses. Since the Kafir is a denier of Islam, rejecting their testimony is more significant than rejecting the testimony of a Fasiq person (al-Ghamidi, 1418H).

ii) Second point of view

Given that there are Shariah laws that go against Qiyas, such as those governing Hawalah, Salam, and other matters (types of Muamalat), a judge's decision that runs counter to Qiyas is not necessarily have to revoke. The Hanbali narrations support on the court's order that it should not be changed if it has been determined in accordance with Sharia that the conviction at issue never violates Qiyas. In this regard, the opinion of some Fuqaha of Imam Hanbali's Madhhab that there are laws in Shariah that do not coincide with Qiyas is invalid but it was refuted by Syeikh Islam Ibnu Taimiyah and his student, Ibnu Qaiyim al-Jauziah. They were both scholars of Tahqiq in Hanbali's school and they responded to the view, they clarified the term "contradicting the Qiyas" means that the law rejects the Qiyas Fasid, which is the basis for the Shariah and its methodology.

Some individuals (the Qiyas) are unaware that it will be disrupted since the Shariah is resistant to inconsistencies and dissent. People said: "Mudhrabah, Musaqah, and Muzara'ah are contrary to Qiyas because they think these contracts are similar to rental. It is because it begins with the exchange of goods and rental is not required to know the value of the rent and the price. Then, when they see that the work and profit in these contracts are not known, it is against Qiyas, and this is their mistake because these contracts are from the type of partnership (company) not from the type of transaction that requires knowing the value of goods and prices. As a partnership, it is not a type of transaction, even if there is a form of transaction in it."

Most Islamic jurisprudence (Jumhur) holds that it is compulsory to retract a decision that contradicts Qiyas Jali because Qiyas is an authorized of Shariah argumentation. Since Zakat and prayer are both foundations of Islam, the followers of r.a have been punished by employing Qiyas in various instances, such as Qiyas by Saidina Abu Bakar r.a on Zakat and prayer as to punish the death sentence for those who forsake Zakat. According to Ibn Taymiyyah, the authentic Qiyas is likewise true; certainly, Allah SWT has sent down the balance with the Qur'an, and the measure contains justice and it is unknown but for fair trials. Thus, Qiyas is one of the justices that come with the Shariah; it is compulsory to respect it when there is no Nas, and it is not permissible to penalize with a law that is opposed to Qiyas (Al-Ghamidi, 1418H).

Defining the characteristics of incompetent and prejudiced judges

People who are Fasiq, Jahil, and cruel liars should not be assigned as judges among Muslims. However, if they are appointed due to an emergency and make a judgment, are their decisions nullified or implemented? Fuqaha have three different points of view concerning this issue

a) First Point of View

Despite the judge's cruel and ignorant, if the decision coincides with and does not contradict the text of the Qur'an and the Sunnah or Ijma', then the ruling is sustained and does not need to be revoked. This is due to the fact that the decision's intended outcome (Maqasid), the right, has been granted to the legitimate. If there is an obvious mistake or unfairness, it is then dismissed and cannot be put into practice because it is invalid. These are the opinions of Imam Hanafi Fuqaha, one of Imam Maliki's Qawls, and Rajih in Imam Hanbali's Madhhab (al-Ghamidi, 1418H).

i) Second Point of View

The decision made by the judge who is ignorant and cruel must be immediately cancelled and rejected in its entirety, whereas it is not necessary to implement the decision made because the sentence issued by them is invalid. As if it never existed. This is because they are not people who have the expertise to judge, and this is seen in one of the Madhhab of Imam Maliki and Imam Syafie's Qawl and finalized in Imam Hanbali's Madhhab (al-Ghamidi, 1418H).

ii) Third Point of View

Their choices will not be executed directly, unless in emergencies due to that they are not decision-making experts. As a result, if the decision is valid under the law, it will be carried out because the right has been transferred to the owner. This is what the judgment intends (Maqasid), and what is wrong is cancelled because it is false, and falsehood cannot be done with, unless there is an emergency. As stated in Imam Shafie and Imam Hanbali's Madhhab. Furthermore, in Rajih perspective, the judgments of persons who are not members will be disclosed and examined; if they are valid, they will be executed rather than annulled. This is because there is no advantage in dismissing it. After all, the right has been granted to the legitimate person and the incorrect law has been cancelled and rejected. Therefore, untruth cannot be maintained or practised (al-Ghamidi, 1418H). In this case, a judge should be more pious and fair, as in a hadith narrated by Ibn Majjah:

بُرَيْدَةَ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْفُضَاءُ ثَلَاثَةٌ اثْنَانِ فِي النَّارِ وَوَاحِدٌ فِي الْجَنَّةِ
رَجُلٌ عَلِمَ الْحَقَّ فَقَضَى بِهِ فَهُوَ فِي الْجَنَّةِ وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ وَرَجُلٌ جَارٍ فِي
الْحُكْمِ فَهُوَ فِي النَّارِ لَقُلْنَا إِنَّ الْقَاضِيَ إِذَا اجْتَهَدَ فَهُوَ فِي الْجَنَّةِ

Translation

"Were it not for the Hadith of Ibn Buraidah from his father, from the Prophet Muhammad (p.b.u.h.) who said: 'Judges are of three types, two of whom will be in Hell and one will be in Paradise. The man who knows the truth and rules in accordance with it will be in Paradise. The man who passes judgment on the people in ignorance will be in Hell' - we would have said that if the judge does his best he will be in Paradise." (Ibn Majjah, Abu Abd Allah Mahmud Ibn Yazid al-Qazwayni,

Sunan Ibn Majah, Book of al-Ahkam, Chapter on al-Hakim Yajtahidu Fayasibu al-Haq).

Based on the hadith stated above the ruling is executed without understanding and that the judge's decision lacks fairness. Furthermore, since the judge recognizes the truth and Allah SWT is all-knowing, the judge is more likely to deceive (al-Sindi, 1997).

Moreover, Qadi l'yadh stated that one of the ten conditions for being a judge is to be fair and knowledgeable (Ibn Farqun, 1966). If a judge's criteria violate those conditions as described in the book of al-Mu'in, for example, when the accused requests that a decision be dismissed because the judge is oblivious or biased, the decision is revoked (al-Tarabulsi, t.th). A judge who is unfair in his decision-making and is recognised for his injustice would lose faith over time (Ibnu Farhun, 1966). Furthermore, the verdict can be overturned if the judge is unfair in sentencing and accepts bribes (Muhammad, 1984), or if it becomes apparent after the sentence that the witness is an infidel or a sinner (al-Qayyim, 1996).

Decisions made by the Judge using Ijtihad alone

Based on this issue, the judges' verdicts are governed by what is included in the Qur'an and the Sunnah of Prophet Muhammad (p.b.u.h.), where they assess the present circumstances and occurrences in accordance with the wording contained in the Qur'an and the Sunnah. If an event occurs that is not based on the sources, it should be rejected (al-Ghamidi, 1418H). As stated by Allah SWT in surah al-Maaidah, verse 49:

And judge between them 'O Prophet' by what Allah has revealed, and do not follow their desires. And beware, so they do not lure you away from some of what Allah has revealed to you. If they turn away 'from Allah's judgment', then know that it is Allah's will to repay them for some of their sins and that many people are indeed rebellious.

Based on the verse above, the interpreted of verse in such order to advocates doing what is prohibition of doing what is forbidden, which is to be wary of the enemies of the Jews and do not allow them to falsify what is right through various topics that they address to you. (Ibn Kathir, 1988). Do not be misled by them since they are liars, infidels, and traitors who turn away from what is right and which you have negotiated between them, and then they resist Allah SWT's Sharia. Therefore, be aware that the situation has been planned by Allah SWT in accordance with His knowledge toward them, and that He desires to divert them off the path of guidance as a result of their prior transgressions and the consequences of their deception and disobedience. Indeed, most individuals act in loyalty to their God by opposing the right thing.

In this situation, a court will decide based on Nas or Ijma'. If there is no Nas or Ijma', the decision will be taken on the basis of ijtihad from the mujtahid. The judge will then make a ruling based on the Mujtahid's evaluation (Ibn Farqun, 1966). As stated in a hadith recounted by Abi Dawood

عَنْ أَنَسٍ مِنْ أَهْلِ حِمَاصٍ مِنْ أَصْحَابِ مُعَاذِ بْنِ جَبَلٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمَّا أَرَادَ أَنْ يَبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ قَالَ أَقْضِي بِكِتَابِ اللَّهِ قَالَ فَإِنْ لَمْ تَجِدْ فِي كِتَابِ اللَّهِ قَالَ فَبِسُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمَّا أَرَادَ أَنْ يَبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ قَالَ أَقْضِي بِكِتَابِ اللَّهِ قَالَ فَإِنْ لَمْ تَجِدْ فِي كِتَابِ اللَّهِ قَالَ فَبِسُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

عَلَيْهِ وَسَلَّمَ وَلَا فِي كِتَابِ اللَّهِ قَالَ أَجْتَهُدُ رَأْيِي وَلَا أَلُو فَصَرَبَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَدْرَهُ وَقَالَ
الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ لِمَا يُرْضَى رَسُولُ اللَّهِ حَدَّثَنَا مُسَدَّدٌ حَدَّثَنَا يَحْيَى عَنْ شُعْبَةَ حَدَّثَنَا
أَبُو عَوْنٍ عَنْ الْحَارِثِ بْنِ عَمْرٍو عَنْ نَاسٍ مِنْ أَصْحَابِ مُعَاذِ بْنِ جَبَلٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ
عَلَيْهِ وَسَلَّمَ لَمَّا بَعَثَهُ إِلَى الْيَمَنِ فَذَكَرَ مَعْنَاهُ

Translation

From some of the people of Himsh who are the companions of Mu'adz bin Jabal. That Prophet Muhammad (p.b.u.h.) when he was going to send Mu'adz bin Jabal to Yemen, he said: "How do you give a decision when there is a trial before you?" Mu'adz replied, "I will decide to use the Book of God." He said: "Suppose you do not find in the Book of God?" Mu'adz replied, "I will return to the Sunnah of Prophet Muhammad (p.b.u.h.)." He said again: "Suppose you do not find in the Sunnah of Prophet Muhammad (p.b.u.h.) and in the Book of Allah?" Mu'adz replied, "I will Ijtihad using my opinion, and I will not reduce it." Then Prophet Muhammad (p.b.u.h.) patted his chest and said: "All praise be to Allah who has given instructions to the messenger of the Messenger of Allah to do what pleases the Messenger of Allah." Has told us Musaddad has told us Yahya from Syu'bah has told me Abu 'Aun from Al Harith bin 'Amru from some of Mu'adz's companions from Mu'adz bin Jabal that the Prophet Muhammad (p.b.u.h) when he sent him to Yemen... then he mentioned the meaning (Abu Dawud, Sulayman ibn al-Ash'ath al-Sajastaniyy al-Azdiyy, Sunan Abu Dawud, Book of al-Akdiyyah, Chapter on Ijtihad al-Rakyu fil Qada').

If a judge does not obey the system, the sentence is deemed invalid. If, however, a judge does follow the system but contradicts some of the Nas or uses Ijtihad to understand that the Nas do not coincide, the judge must revert the law to what is right and coherent with both from the law of God as revealed in Qur'an and the Sunnah of Prophet Muhammad (p.b.u.h.). As an instance, Saidina Umar r.a. wrote the following in his letter to Judge Abu Musa al-Ashari r.a.

There is no restriction against you trying to judge the choices you made today. Since you withdrew your opinions and followed your guidance to return to the right, which has existed from the beginning and cannot be eliminated by anything, returning to the right is better than delving deeply into falsehood (Nasir bin Muhamad Mashry al-Ghamidi, 1418H).

If a judge makes an Ijtihad in the government and then another judge makes an Ijtihad too, Ibnu al-Qayyim said that it is permissible to repeat the first Ijtihad if the second one has been revealed to be true (Ibnu al-Qayyim, 1996). This is because the facts of what is right is more worthy of being emphasized than the facts of what is false. Therefore, although there is a first Ijtihad (in its production) from the second Ijtihad which the second is right and the right precedes the first Ijtihad. This is due to it preceding other than it (right) and is not cancelled by the first Ijtihad, rather it returns to (the right second Ijtihad) is more important than in the first Ijtihad.

According to Fuqaha from the fourth Madhhab, a decision reached by a court using Ijtihad alone and in accordance with the Shariah cannot be changed by a subsequent Ijtihad,

whether it be from the same judge or another. This is because it is compulsory to cooperate with others, even if it is against individuals. Apart other that he is one of the people who have the competence to assess his thoughts on anything. Furthermore, some Ijtihad scholars hold the position that it is impossible to follow an opinion of other than the judge's. The right from Allah SWT outwardly is what leads Ijtihad to punishment, and anything other than his outer perspective is invalid. As a result, the Mujtahids (those who make Ijtihad) might be either correct or wrong in their reasoning and Shariah on the side of the Sunni Islam (al-Ghamidi, 1418H). The following are some of the sources that the Fuqaha have used to explain the Ijtihad problem:-

Syabi has stated that when Prophet Muhammad (p.b.u.h.) made a ruling with one judgment, then the Quran was revealed, which was not judged by Prophet Muhammad (p.b.u.h.), then Prophet Muhammad (p.b.u.h.) did not reject his judgment and kept it. According to al-Khussof, this is proof that if a judge rules using Ijtihad in a situation that is not mentioned in the Quran and Sunnah, then changes his mind about his impending ruling, the decision based on the original view will not be nullified.

Furthermore, the Fuqaha agree that the judge's verdict will not be overturned based on Ijtihad, even if it just claims that there is one valid answer. This is because it cannot be determined. If the judge has condemned his Ijtihad, then change with another Ijtihad, then the first one will not be invalidated, even if the second is more prominent. This is because the initial Ijtihad is based on judgment, which gives it power. In cases of Ijtihad, the judge's punishment is to bring the person who disagrees from his Madhhab to the judge's Madhhab and alter his Fatwa after the sentencing, from his view to the one from Islamic law. In this sense, not all judgments issued by judges from their own Ijtihad can be enforced and cannot be questioned. Therefore, the sentence resulting from a judge's Ijtihad can be imposed and rendered if the following requirements are met:

1. It does not contradict the text from the Qu'ran and Sunnah that is true by Prophet Muhammad (p.b.u.h.).
2. The penalty is not the result of Ijtihad in the absence of a valid justification.
3. The judge must be aware of the location (issue) that the Fuqaha are disputing.
4. If the judge is an expert in the field of argumentation or follows a certain Madhhab, he must make his decision by those beliefs (al-Ghamidi, 1418H)

Similarly, Abu Bakar r.a. has universalized the practise of donating and purchasing slaves as something distinctly human. It is also different from how Saidina Umar r.a honors fellow humans. Furthermore, Ali r.a does Ijtihad differently than Saidina Abu Bakar r.a and Saidina Umar r.a, where Ali r.a honors fellow human beings and prohibits slavery. One of the things they did was not to withdraw from the Ijma' or the companions. It is because the Ijtihad does not nullify the preceding subject (Ibn Qudmah, 1981).

This is because if it is permitted to cancel ijthad in this case, the court decision could be agitated and will not be resolved under any circumstances. As a result, he does not trust the judge's verdict since he has lost the capacity to bind and influence, and there is no question that the case is against the appointed judge's interests (Al-Amidi, 1996). Based on the

preceding, it is evident that the individual being punished is guilty. They have the right to file an appeal based on the difference in Ijtihad between the second and first Ijtihad, but it will not be accepted or forwarded to a higher party. If the judge's Ijtihad changes before the decision and the judge ascertains that it avoids and departs from the truth in the first Ijtihad, then he has to decide according to the decision that has been decided in his last Ijtihad (Ibn Qudamah, 1981). A decision reached through the first Ijtihad cannot be used by a court. If this occurs, the verdict is deemed null and invalid. It is because this is prohibited under Islamic law.

Furthermore, if the judge's decision is based on Ijtihad that contradicts the Nas or Ijma' of scholars, the person who is being penalised has the right to request a review of his decision (al-Syrazi, 1994). As a result, it is evident that the scope for presenting a review of decisions based on Ijtihad is a small one because the court is always involved in recognising the law as it is stated in Nas and Ijma'. In addition, a judge is required to reverse a previous ruling if he concludes that the ruling reached was the result of a genuine but mistaken assumption.

In this scenario, the individual who was sentenced does not have the right to file a complaint against the judge because the infraction was not deliberate and was not the result of his actions. Likewise, he is a sinner too. However, if the judge purposefully renders an unfavorable judgment which in case this unfairness is acknowledged, the verdict will be reviewed. As long as the evidence is shown, the judge will guarantee the victim's losses, and he will be pardoned or dismissed. To avert bad outcomes, the judge's unfairness must be fought. The defendant in this instance thus has the right to file a review of the judge's ruling. If the court does not certify it, proof must be provided if the decision is being carried out during the time allowed for its cancellation.

The verdict that violates the Shariah according to the view of Fuqaha

Some Fuqaha argued that if a court decides on a sentence that breaches Shariah law, the verdict can be questioned (Al-Tarabulsi, t.th). In this context, there are five arguments required in filing a review related to the judge's decision, in accordance with the viewpoints of the four sects. The following are the perspectives of the four Madhhab on Sharia-violating judgments:

1. Maddhab Hanafi: The contended decision contradicts the mainstream or consensus text of the Qur'an, the Sunnah or Ijma' (Ibn Farqun, 1966).
2. Madhhab Maliki: The contended decision violates any of the Qur'an verses, the Sunnah, or the overall Qiyas or Ijma' (Ibn Abidin, 1979).
3. Madhhab Syafie: The decision that needs to be contested is one that contradicts the text of the Qur'an, the Sunnah, Ijma' or Qiyas as a whole, which is a specific requirement in the text to the extent that it falsifies the assumption received or invalidates with a clear analogy (al-Qarafi, 1967).
4. Mazhab Hanbali: The choice that must be opposed is either against the text of the Qur'an, the Sunnah, or Ijma' (Umar, 1204H). However, many argue that the judge's ruling is uncontested until it contradicts the Mutawatir's hadith. (Ibnu Qudamah, 1981).

Furthermore, it is necessary to distinguish between final Ijma' (Ijma' Qath'i) and probable Ijma' (Ijma' Zhonni). Decisions that contradict the Ijma' Qath'i but not the Ijma' Zhonni can be challenged. There is also an opinion that the judgment can be challenged if it breaches Ijma' Zhonni. Furthermore, other opinions say the decision cannot be disputed if it goes against Qiyas. As some others say that it can be disputed if it goes against Qiyas as a whole. The Islamic jurisprudence's reason in this issue is that a ruling can be disputed when it goes against Qiyas, the Sunnah, or Ijma' as in matters of concerning Allah SWT's rights, such as divorce. Except at the desire of Allah SWT, the decision on human rights will not be questioned (Al-Mardawy, 1980).

Judges have the authority to reverse any verdicts that contain errors (Ibn Qudamah, 1981). Meanwhile, the rationale for rescinding this decision is not absolute. It is determined by the absence of alternative reasons that justify the conclusion. However, if there is a strong opposing argument, the decision cannot be revoked if it corresponds to Ijma' that supports the decision, such as revoking the legality of loan contracts, trades, money transfers, and so on. al-Sarkhasi stated that the verdict has to be challenged if the argument demonstrates that the judge misunderstood in making his decision because it conflicts with the Nas or Ijma' (cancelled). If the general public disagrees with a judge's ruling, the judge should not be ashamed because Allah SWT is overseeing all that is done. Therefore, it is not only for judges to employ; preachers and muftis are also permitted to administer the religious issues. If the decision made is erroneous, it is evident that he must reconsider it.

There is a belief that if an educated person makes a mistake in making a decision, then horrible things will befall him. This belief can spread through human slander. However, because it is connected to the judiciary, a judge must then use this right. There are however other viewpoints that contend that the right is an old one which was the one that was requested. This is because it is impossible to conceal or even prevent the fault. He will be wiser than the one who defends the untruth if he points out the error himself (al-Sarakhsi, 2000). Therefore, it could be concluded that reversing a court order must be against Shariah law's word. In addition, any judgment being reviewed by the applicant must be capable of being reversed or modified by the court considering the appeal.

Annulment of Decisions Made in Shariah Court According to The Current Law in Malaysia

In today's Shariah court setting, the review will be focusing on rulings that contain errors, whether they are property or criminal in nature. Those who are dissatisfied can file a review with the Shariah High Court or the Shariah Court of Appeal.

A Shariah Court has exclusive judicial review power. In a recent case, *A v Mahkamah Rayuan Syariah Wilayah Persekutuan & Ors* [2022] 11 MLJ 548, the crux of the matter is the application by the applicant for judicial review against the decision of the Shariah Courts which have dismissed her application to renounce Islam. The High Court of Malaya Kuala Lumpur also held that what power do the civil courts have to review a decision of the Shariah Courts which its original jurisdiction to determine the case (renunciation of Islam) is within the Shariah Courts. The answer is none, the civil courts have no power to review the decisions of the Shariah Courts in cases where the Shariah Courts are possessed with the jurisdiction to hear the case.

Subsequently, the power of shariah court for judicial review can be seen in the case of **Mohd Aruwa Mohd Amin v Daing Kelthom Daing Abu Bakar [2004] 1 MSLR 94**, whereof his Lordship Dato' Haji Muhamad Asri Haji Abdullah AJ in his judgment said that the provision of s 18(1) & (2) of the Shariah Court (Terengganu) Enactment 2001 clearly provides that the revisionary jurisdiction of the Terengganu Shariah Appeal Court is not only limited to pending cases but includes cases which have been decided or determined. It must be so as, according to the syarak, the Shariah Court is seised with jurisdiction to review any decision made either during a proceeding or otherwise which is found to be repugnant to the authorities of the Qur'an, the Sunnah or Ijma'. It may then be rectified by the presiding judge or some other judge. In this case, consonant with the procedure as applied in the Shariah Court system, it is rectifiable by a superior court.

In **Amanah Raya Berhad v Awg Damit Awang Tengah & Ors [2008] 1 MSLR 175**, the panel of Shariah Court of Appeal, Kota Kinabalu presides by Chief Shariah Judge, Ibrahim Lembut JCS and two other judges also held that the Shariah Appeal Court may not only exercise its review jurisdiction over a pending or decided case, but may also issue directives or orders to meet the ends of justice as are in line with its jurisdiction.

Aside from that, the applications for review of the case must be submitted by a notice of application and an oath in procedural manner. The court hearing the review has the option of revoking the decision if it meets the requirements outlined in the policy directive (No. 7 of 2014) as follows

1. Orders, rulings, or decisions made are considered to be in contradiction with the Qur'an, the Sunnah, Ijma', or Qias, such as the three holy Iddah times when the woman is pregnant, which should last until she gives birth.
2. Orders, rulings, or decisions made are considered to be in violation of existing legal laws, such as imposing a jail sentence for a longer time than that specified by the enactment of Shariah Criminal Offences.
3. Technical errors or mistakes made by the trial judge, such as errors in writing or recording the trial. Or inaccuracies in making references to procedural and evidentiary laws, such as the order to serve replacements in advertising executed by the defendant.
4. When a Shariah judge bases his judgment entirely on his knowledge without any additional proof, therefore the subject matter is unclear.
5. When it becomes evident to the Shariah court that the mistake was caused by both parties' evidence or confession.
6. If the case has been determined or the final judgment on an issue being raised during the case hearing processes and has been made (often through interlocutory or objection), the appeal process should be employed.
7. If it is alleged that there was a flaw in the trial process or that the judgment is in conflict with the law or Shariah law whereas the review procedure can be conducted.
8. If the case has not been settled and the resultant issue is associated with a management procedure case, trial procedural method, or evidence-related procedure, the review process can be carried out.
9. The trial judge will review his ruling if he believes that he made a mistake during the procedures of the case that he was handling.

In light of the above-mentioned court decisions and practice guidelines, it is possible to conclude that the law has provided criteria for Shariah law practitioners to overturn any verdict that contains errors. With these criteria, it is easier for the judge to evaluate the review to decide by referring to this practice instruction. A ruling can be reconsidered at the request of the defendants or the judge where it can be dismissed by the second judge if the first judge made an error.

Conclusion

The annulment of a decision is a space provided to the aggrieved party by the court's decision. Scholars generally specialize in canceling decisions that can be made against judges' rulings that violate Shariah and the law. The annulment of the decision has a basis in Shariah because there are several arguments stated in the Quran, the Sunnah and the precedent cases. Comparatively, the scholars' debate about the annulment of decisions is only applied in the practice of appeals in Shariah courts, particularly in cases where a judge's ruling contradicts with Shariah law. Nevertheless, the annulment of decisions in Shariah courts has currently incorporated procedural elements akin to those in civil courts. This writing is hoped to inform readers about the annulment of judgments within the context of Shariah courts in Malaysia.

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