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Al-Tahkim Al-Tsawabit and Res Judicata Doctrine Reconciling Islamic Law Principles into Constitutional Court Decisions

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ABSTRACT :
This research aims to utilize the concepts of "al-tahkim" and "al-tsawabit" based on the Maqashidul Quran to examine the doctrine of res judicata as the primary argument for declaring the Constitutional Court's decisions as final and binding, thus preventing them from being contested. However, certain Constitutional Court decisions at the intersection of human rights and religious life may raise academic concerns, such as the recognition of Aliran Kebatinan as a religion, despite its ritual system resembling Islam. Using a qualitative approach, this study analyzes Islamic jurisprudence, constitutional law literature, and relevant legal cases where "tahkim" and "ats tsawabit" were invoked. It also delves into Islamic sources like the Quran, Sunnah, and scholarly consensus to identify foundational principles. The findings underscore how these concepts can guide the interpretation of legal principles, such as the Res Judicata doctrine, ensuring justice, fairness, and the preservation of rights while harmonizing Islamic jurisprudence with constitutional principles. This research contributes to the reconciliation of Islamic legal principles with constitutional law, offering insights for scholars, practitioners, and policymakers grappling with this intersection. It alleviates academic concerns and promotes justice and fairness in constitutional contexts.

Keywords: *essential or specific word (s) or phrase (s) of the article.*

INTRODUCTION

Mahkamah Konstitusi (Constitutional Court) is often faced with the important task of deciding problematic cases between prioritizing the recognition of human rights of minority groups or upholding the legal protection of the religious teachings of the majority. One of the Constitutional Court's decisions that is considered very controversial is Decision No. 97/PUU/XIV/2016 dated November 7, 2017, regarding the lawsuit of adherents of spiritual beliefs, which essentially states that the word "religion" in Article 61 paragraph (1) and Article 64 paragraph (1) of Law No. 23 of 2006 concerning Population Administration is declared contrary to the 1945 Constitution and has no binding legal force as long as it does not include "beliefs".[1]

The implication of the ruling is the recognition of kebatinan believers for their rights in the field of population administration. The Constitutional Court also affirmed that the legal term believers can replace the previously used discriminatory term "aliran kebatinan". The Constitutional Court ruling mentioned

[1] Guyanie, G. El (2021). The constitutional rights of indigenous beliefs adherents in minority fiqh perspective. Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan, 21(2), 155-175, ISSN 1411-9544, <https://doi.org/10.18326/ijtihad.v21i2.155-175>

above is seen as a foundation for starting recognition between official religions and followers of beliefs that were previously informal. This recognition aims to provide official religions and believers with equal and non-discriminatory population administration services. At first glance, this is natural because all citizens are entitled to state services which are their constitutional rights.[2]

The problem is that believers have a ritual system that is fashionable not to say imitating the ritual system practiced by the official religion. For example, followers of the "Sapto darmo" faith perform prayers with their backs to the Qibla / Kaaba.[3]

The Indonesian Ulema Council (MUI) is one of Indonesia's leading Islamic organizations that challenged the ruling because it equates formal religion with mysticism. Even the MUI proposes that believers be given special identity cards that show separate status from the official religion. Muhammadiyah also held a special meeting to review the Constitutional Court's ruling. The protest of the MUI and other Islamic mass organizations can be seen in the context of maintaining the distinction between religion and aliran kepercayaan (belief tradition) as hierarchical strata. The MUI's protest reflects the ongoing tension between the protection of legal interests in official religion on the one hand and believers on the other.[4]

The decision of the Constitutional Court is final and binding, so it cannot be challenged again as a consequence of the Indonesian constitutional justice system applying the doctrine of "res judicata". The above tension shows the importance of reviewing the application of res judicata to the Constitutional Court Decision, especially if a divergence is found between the sense of justice from the perspective of legal protection and the perspective of recognition of human rights.[5]

Therefore, academic unrest arises through a question of legal epistemology, namely whether the finality of the Constitutional Court Decision due to the application of the doctrine of res judicata is important to review and what are the conceptual and practical implications if the reconciliation is carried out through Islamic principles such as "al-tahkim" and "al-tsawabit" in the Maqashidul Quran. Given that tensions may arise between a final and binding Constitutional Court ruling and the religious sense of justice as in the above case, the Constitutional Court's decision in this context will not only affect individual rights but will also create an important precedent for similar cases in the future. Therefore, this article tries to offer the concepts of al-tahkim and al-tsawabit in the review of the maqashidul quran so that the conceptual basis for reconciling Islamic principles can be harmonized with the doctrine of "res judicata" that has been attached to every decision of the Constitutional Court.[6]

Research on "al-tahkim" and "al-tsawabit" has so far been uncorrelated with testing the doctrine of "res judicata", especially in cases involving conflicts between human rights and religious values. This research aims to fill this gap by analyzing the implications of "al-tahkim" and "al-tsawabit" with the concept of the doctrine of "res judicata". Thus, this research has great urgency in harmonizing Islamic principles with constitutional law and filling knowledge gaps that exist in the literature on this topic.

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[2] Nalle, V.I.W. (2021). The Politics of Intolerant Laws against Adherents of Indigenous Beliefs or Aliran Kepercayaan in Indonesia. *Asian Journal of Law and Society*, *8*(3), 558-576, ISSN 2052-9015, https://doi.org/10.1017/als.2020.54

[3] Viri, K, & Febriany, Z (2020). Dinamika Pengakuan Penghayat Kepercayaan di Indonesia. *Indonesian Journal of Religion and Society*, journal.lasigo.org, https://journal.lasigo.org/index.php/IJRS/article/view/119

[4] Maarif, S. (2022). Second Essay Toward a (More) Inclusive FORB: A Framework for the Advocacy for the Rights of Indigenous People. *Interreligious Studies and Intercultural Theology*, *6*(2), 205-212, ISSN 2397-3471, https://doi.org/10.1558/isit.24947

[5] Maarif, S. (2022). Second Essay Toward a (More) Inclusive FORB: A Framework for the Advocacy for the Rights of Indigenous People. *Interreligious Studies and Intercultural Theology*, *6*(2), 205-212, ISSN 2397-3471, https://doi.org/10.1558/isit.24947

[6] Muchimah (2020). Implementation of the Constitutional Court Decision on Constitutional Rights for Adherents of Belief in God Almighty. Volksgeist: Journal of Legal and Constitutional Sciences, 3(1), 53-67, ISSN 2615-174X, <https://doi.org/10.24090/volksgeist.v3i1.3723>

Methods

This research uses qualitative research methods with a document analysis approach. The qualitative approach was chosen because the study focused on a deep understanding of the concepts of al-tahkim and al-tsawabit and their implications for the application of the doctrine of "res judicata," in the Constitutional Court Decision. Document analysis is used to review legal texts, court rulings, and other relevant written sources. A qualitative approach is used to detail the two concepts and how they are compatible when integrated. Answers to these topics will serve as a basis for exploring their conceptual and practical implications.[7]

The source of this research data consists of legal texts, Constitutional Court rulings, constitutional law literature, and relevant interpretation literature. The main sources of data are Islamic legal texts, such as the Quran and hadith, Constitutional Court rulings, as well as relevant academic publications. Data collection is done through document search and analysis. The first step is to collect Islamic legal texts relating to the principles of "al-tahkim" and "al-tsawabit," as well as documents of Constitutional Court rulings relevant to the doctrine of "res judicata."[8] The data that has been collected will be analyzed qualitatively. The analysis will include the identification of the principles of "al-tahkim" and "al-tsawabit" from the perspective of the maqashid of the Qur'an, as well as a review of how the doctrine of "res judicata" is applied in Constitutional Court rulings. The results of the analysis will be used to formulate a conceptual framework that can be used to analyze how conceptual and practical implications of these two concepts are applied by the Constitutional Court to integrate the principles of religious protection with human rights and also allow to answer whether the doctrine of res judicata meets the elements as an absolute and final doctrine so that it is not possible to flex.[9]

Result and Discussion

This study explores unspoiled territory by examining the intersection between the "al-tahkim" and "al-tsawabit" of the Maqashid al-Quran with the doctrine of "res judicata." The aim is to fill important gaps in the existing literature where these concepts have not been correlated with the methods of interpretation of legal testing in the Constitutional Court, especially for problematic cases because it involves what priority scales need to be put forward, recognition of rights or legal protection. The significance of this study lies in the reconciliation of Islamic principles with constitutional law, offering a new perspective on the incorporation of "Res Judicata" and "Al-Tahkim, Al-Tsawabit" in constitutional court decisions in Indonesia.[10]

Res Judicata and Its Application in Abroad Constitutional Court

"Final and binding" judges' rulings essentially have roots in the legal system derived from the context of arbitration. In arbitration, the parties agree to submit their dispute to a neutral third party (arbitrator) who will make the final and binding decision on the matter. That is, the parties agree to abide by the arbitrator's decision and waive their right to appeal the decision in court. In its development, the concept of "final and binding" has also been adopted in the context of Constitutional Court Decisions, so this concept is important in the legal system because it provides certainty and conclusions to the parties involved in the implementation of judicial review.[11]

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[7] Thomas, D.R. (2006). A General Inductive Approach for Analyzing Qualitative Evaluation Data. *American Journal of Evaluation*, 27*(2), 237-246, ISSN 1098-2140,* https://doi.org/10.1177/1098214005283748

[8] Guest, G. (2020). A simple method to assess and report thematic saturation in qualitative research. *PLoS ONE,* 15*(5), ISSN 1932-6203,* https://doi.org/10.1371/journal.pone.0232076

[9] Corbin, J. (1990). Grounded theory research: Procedures, canons, and evaluative criteria. *Qualitative Sociology*, *13*(1), 3-21, ISSN 0162-0436, https://doi.org/10.1007/BF00988593

[10] Rodrigues, P.G. (2020). Redefining claim preclusion from verdict sovereignty: Partial res judicata in jury trials. *Revista Brasileira de Direito Processual Penal*, *6*(2), 873-910, ISSN 2359-3881, https://doi.org/10.22197/rbdpp.v6i2.301

[11] Kwak, K. (2004). Overlaps and Conflicts of Jurisdiction between the World Trade Organization and Regional Trade Agreements. Canadian Yearbook of International Law, 41, 83-109, https://doi.org/10.1017/S0069005800008274

Historically, the principle of "final and binding" was closely related to the concept of res judicata, meaning that a matter that has been decided by a court cannot be re-examined between the same parties. This principle is based on the idea that there must be an ultimate conclusion that ends the entire series of evidentiary processes in court so that the parties concerned are not allowed to constantly re-file the same issue.

Research by Xavier Groussot (2007) concludes that this doctrine is not without problems, because in the context of the European Union Judiciary (CJEU) there is also a tension between legal certainty and legality in the CJEU approach to implementing res judicata. Therefore, Groussot suggested that the CJEU adopt a more flexible approach to "res judicata" to balance the two principles such as the principle of proportionality.

Groussot reminded us that the doctrine of res judicata has advantages in terms of creating a balance in contesting legal interests, namely the efficiency of the judicial system, the certainty of decisions, and the certainty of the rights of related parties. However, this doctrine also has significant weaknesses, including in the contestation of legal interests in the constitutional judicial environment which involves contestation between legal protection and recognition of rights. This doctrine unequivocally eliminates the opportunity for the parties to file a lawsuit and obtain fair legal protection. Even if the relevant party has a strong constitutional legal argument or within a certain period there is a sufficient change in legal facts.

The application of the doctrine of "res judicata" also ignores changes in legal facts that arise in the future, while aggrieved parties have limited their right to correct the injustice. This is because the doctrine of res judicata prevents the re-examination of important legal issues. Especially in the context of social change or significant legal developments, the continuation of this doctrine may hinder greater change in the legal system.

According to Kwak (2004) through his research on "Overlaps and Conflicts of Jurisdiction between the World Trade Organization and Regional Trade Agreements" the doctrine of res judicata in domestic agreements and international agreements is more a matter of allocation of horizontal judicial jurisdiction between regional trade agreements (RTA) and the World Trade Organization (WTO). Therefore, res judicata can be relaxed through the selection of a dispute resolution forum chosen from the beginning by the parties to the agreement as an expression of the importance of a hierarchy of norm systems that can be enforced by dispute resolution mechanisms in the relevant country. The integration of universal values in a country's formal legal system can be a valuable alternative to conventional litigation that relies on the doctrine of res judicata, especially if it is linked to the hierarchy of norms in international law. [12]

Kwak's (2004) research does not directly highlight the application of res judicata, but the contribution of how res judicata is severely limited by legal territorial jurisdiction, even though the sense of justice is a major legal problem on a global scale, so this article is relevant because it proves "res judicata" is more a doctrine of territorial and jurisdictional law than a doctrine of justice, so it is incompatible if used as a basis to limit testing constitutional legal norms whose main basis is the recognition of legal rights and protection.[13]

Based on the description above, it can be concluded that the doctrine of "res judicata" has several weaknesses that need attention. *First*, in the context of the EU Judiciary (CJEU), there is a tension between legal certainty or legality and proportionality in the CJEU's approach to "res judicata."[14] Consequently, a more reconciliatory approach is needed so that these two principles are balanced. *Second*, the "doctrine of "res judicata" tends to be limited by legal territorial

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[12] MEDINA, D.E.L. (2021). Constitutional "res judicata" at thirty years of evolution: Flexibilization of the principle and a new balance between stability and change in the judicial review of statutes. *Revista Derecho del Estado*(50), 261-291, ISSN 0122-9893, https://doi.org/10.18601/01229893.N50.09

[13] Kwak, K. (2004). Overlaps and Conflicts of Jurisdiction between the World Trade Organization and Regional Trade Agreements. Canadian Yearbook of International Law, 41, 83-109, https://doi.org/10.1017/S0069005800008274

[14] Voulgarakis, K.D. (2020). Reflections on the scope of "EU res judicata" in the context of Regulation 1215/2012. *Journal of Private International Law*, 16*(3), 451-464, ISSN 1744-1048,* https://doi.org/10.1080/17441048.2020.1809768

jurisdiction. As a result, the doctrine of "res judicata" may hinder the integration of universal values in the formal legal system of a particular country. Third, the doctrine of "res judicata" is not following the sensitive dispute resolution process and creates tensions between religious communities, because the tribunal approach is very dominant so that it does not accommodate the cultural structure of Indonesian society which is indeed plural. It is worth considering a more flexible and culturally sensitive approach to the application of this doctrine.

Al-Tahkim Perspective Maqashidul Quran Ibn 'Assyria

One important concept in Islamic law that can be offered as theoretical optics to bridge the critical point of application of the doctrine of res judicata is the concept of maqashid al-Quran. According to Ibn 'Assyria there are two main purposes (Maqasid) of the laws of the Qur'an, namely *first*, introducing the Qur'an as a permanent shari'ah (final and binding) which requires interpretation and discovery of laws that depart from its texts. This means that the Qur'an has constant laws as well as dynamic laws (*ijtihady*). *Second*, educate scholars and fuqaha to examine and test whether the application of the *law of furu'* has realized the objectives of the Qur'an, especially in functionalizing the goals (Maqashid of the Qur'an) which are *ushuly* and *qath'iy*.[15]

Ibn Ashur supports his argument by presenting evidence from the Qur'an itself. One of the verses quoted is Surah Al-Maidah (5:44), in Ibn 'Assyria's view this verse emphasizes the role of the Qur'an in giving instructions "al-tahkim" which is a different function from "al-tasyri" (legislation). Another verse mentioned by Ibn 'Assyria is Surah Al-Maidah (5:45), which highlights the continuation and consistency of the Qur'an with the earlier books, further supporting the argument that its main purpose is not legislative "al-taqnin" and "al-tasyri' (legislation) but the development of law or "al-tahkim".[16]

Thus, "al-tahkim" is a legal development activity so that the final and strengthening "*shari'ah*" remains functional to achieve higher goals. The functionalization of *sharia* through the concept *of al-tahkim* is carried out through several requirements. *First*, ijtihad law must contain al-islah *(improvement) i.e. in achieving the objectives of Maqasihd al-Quran the law must reflect the improvement of faith, correct erroneous beliefs and provide actuality guidance in the face of changing times.*[17]

Second, legal ijtihad must contain improvements in public morals. The Quran stresses the importance of moral virtue and good character, thus including in the effort to influence and improve the behaviour of individuals and society. *Third*, legislation or *al-tasyri'* (legislation) must function as the first source. Fourth, *siyasah al-syar'iyyah* is the political maintenance of the ummah (ummatic polity). Legal ijtihad is required to maintain a legal political orientation that involves regulating community behaviour and various political aspects, such as justice, unity, and human rights.[18]

The concept of Maqashid al-Quran expounded by Ibn Assyria has several relevant conceptual and practical implications for the test of "res judicata". First, the concept of al-tahkim in the perspective of maqashid al-Quran emphasizes the importance of justice and legal certainty according to the standards of the functional objectives of the law. This means that the constitutionality aspect of the law as a legal product is not merely tested from its normative side but also tested by the implications of its functionality in realizing legal protection and recognition. Legal products that do not succeed in realizing the main legal objectives are final and binding in nature. This means that final and binding is placed on whether or not legal ijtihad is functional. As

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[15] Rohayana, A.D. (2021). Islamic Jurisprudence Implementation in Indonesia: Perspective of the Objectives of Islamic Law. *Global Jurist*, *21*(2), 403-415, https://doi.org/10.1515/gj-2020-0078

[16] Thabrani, A.M. (2018). Maqashid Revitalization in Global Era: Istidlal Study from Text to Context. *Al-Ihkam: Jurnal Hukum dan Pranata Sosial,* 13*(2), 310-333,* https://doi.org/10.19105/al-lhkam.v13i2.1814

[17] Ibrahim, Y.S. (2014). An Examination of the Modern Discourse on Maqāṣid al-Sharī'a. *Journal of the Middle East and Africa*, *5*(1), 39-60, https://doi.org/10.1080/21520844.2014.882676

[18] Elviandri (2018). The formulation of welfare state: The perspective of Maqāid al-Sharī'ah. *Indonesian Journal of Islam and Muslim Societies*, *8*(1), 117-146, ISSN 2089-1490, https://doi.org/10.18326/ijims.v8i1.117-146

in the example of Umar bin Khattab's decision, (ra) reallocated the distribution of zakat funds for *converts* to strengthen the economy of the poor.[19]

According to Ibn Assyria, to bridge the tension between the finality and flexibility of legal products, legal protection must be prioritized because law is a means to achieve equality between rights and obligations. While recognition is more of the domain of law enforcement. As long as law enforcement is carried out objectively, legal recognition can be accommodated through legal discretion or expansion of authority. Ibn Assyria is of the view that legal recognition is a person's recognition and acceptance of a particular legal system so the most important thing is to ensure that the character of the legal product can meet the expected goals and meet the needs of society, rather than just emphasizing recognition of the law.[20]

Thus the practical implications can be known that the product of the judge's decision is open to be tested with the principles of maqashid al-Quran, there is always room to revise or annul the judge's decision. This is important in maintaining fairness and a greater purpose in law. The consequences of the doctrine of "res judicata" are often used as the basis of argument for declaring the Constitutional Court's decision final and binding even if it changes legal practice from its original purpose. Whereas in the concept of Maqashid al-Quran, it is possible to rethink the practice of law which may no longer be in line with the more important and priority objectives of law.[21]

The importance of aligning legal products with Islamic values contained in the Maqashid al-Quran is an important issue in the study of maqashidul quran. This is to encourage changes in legal practice consistent with the higher goals and values of Islam. That is, the concept of Maqashid al-Quran can provide an important conceptual and practical framework in evaluating the doctrine of res judicata using the wealth of treasures about the concept of *al-tahkim* perspective maqashid al-Quran. This opens the door for judicial review and alignment of legal decisions with broader values and a greater goal of alignment of constitutional law with people's sense of justice especially in creating religious life.

Al-Tsawabit in the Maqashid al-Quran.

The concept of al-Tsawabit's law is an important and inseparable part of the scope of Islamic law in general. Ash-Shatibi as quoted by al-Qurthuby defines al-tsawabit, namely:[22]

> وهي القطعيات التي لا مجال للنظر فيه بعد وضوح الحق في النفي أو في الإثبات، وليس محل للاجتهاد
>
> Al-Tsawabit is qath'i problems that have no room for a reason because the content of truth is certain both in terms of the establishment of law and vice versa (abolition of law) and there is no room for ijtihad in it. (Al-Qurthubi, n.d.: 115)

According to Ibn Assyria, the concept of al-tsawabit is intended to strengthen al-hikmah (wisdom) and *al-bashirah* (insight) to solve various legal problems. Through this concept of al-tsawabit *further emerged the characteristics of derivative concepts such as* tawazun (proportionality), *tawasuth (*moderation), and avoiding the attitude *of al-ghuluw* (*transgression) and* tasahul *(* ease). Moreover, this fiqh al-tsawabit becomes urgent because it serves as a basis for understanding fiqh *al-awlawiyat* (fiqh of priority) and fiqh al-muwazanat (fiqh of *proportionality*) which assesses and compares various options and alternatives). Its application must comply with rules agreed upon by scholars (Islamic

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[19] Nafi, B.M. (2005). Tāhir ibn 'Āshūr: The Career and Thought of a Modern Reformist 'ālim, with Special Reference to His Work of tafsīr. *Journal of Qur'anic Studies, 7(1), 1-32, ISSN 1465-3591,* https://doi.org/10.3366/jqs.2005.7.1.1

[20] Opwis, F. (2017). New trends in islamic legal theory: Maqasid al-Shari'a as a new source of law?. *Welt des Islams*, *57*(1), 7-32, ISSN 0043-2539, https://doi.org/10.1163/15700607-00571p03

[21] Dali, N. (2018). Prioritization of the indicators and sub-indicators of Maqasid al-Shariah in measuring liveability of cities. *International Journal of the Analytic Hierarchy Process*, *10*(3), 348-371, https://doi.org/10.13033/ijahp.v10i3.597

[22] Elviandri (2018). The formulation of welfare state: The perspective of Maqāsid al-Sharī'ah. *Indonesian Journal of Islam and Muslim Societies*, 8*(1), 117-146,* https://doi.org/10.18326/ijims.v8i1.117-146

scholars) in general, such as not violating maqasid al-shar'i (the purpose of Islamic law) and not contradicting the qath'i text (definite text) of the Quran and Sunnah.[23]

The consequence of al-tsawabit's concept of Islamic law was the birth of strict requirements in the ijtihad process of establishing Islamic law. First, the legal product of ijtihadi does not violate *maqashid al-shar'I*, which is to maintain the five main pillars of legal protection (principle), namely religion (hifz al-din), soul (hifz al-nafs), reason (hifz al-'aql), property (hifz al-mal), and offspring (hifz al-nasal). When any of these five are ignored, damage will be done.[24] (Al-Amidy, 1402 AH: 10). Second, the legal product of ijtihadi does not violate the qath*'i text. namely* nash qath'i al-tsubut is a text attributed to its owner (Allah and Messenger) which includes the Quran and al-Sunnah al-mutawatirah and nash *qath'i al-dilalah* which is a legal text that may have a legal meaning as in the term *of ushul fiqh* called lafaz al-muhkam and *al-mufassar*. Third, the legal product of ijtihadi must not contradict ijma'. *Ijma*' is the law of shari'a after the Qur'an and al-hadith, the law that has been accepted is the law that qath'i is obliged to give alms with him and it is forbidden to set aside it as determined by the number of scholars such as in matters of worship, cases of predetermined levels, matters of adultery, and so on. (Al-Ghazli, n.d.: 124). Fourth, the legal product of ijtihadi must not violate qiyas. Qiyas is the source of law after ijma', which is also a Shar'i argument.

Reconciling Res Judicata and Al Tahkim, Al Tsawabit

The application of the doctrine of res judicata is seen in the Constitutional Court's legal considerations related to the principle of "expressio unius exclusio alterius", namely Decision Number 97/PUU-XIV/2016. Another example of the principle of "expressio unius exclusio" is that if the constitution mentions "chief justice and constitutional judge", then other judges do not fall into that category. This principle is often used in conjunction with *the principle ejusdem generis*, meaning that words or phrases in a sentence must be interpreted in the same context as other words or phrases in the same sentence.[25]

The Constitutional Court considered the government's refusal to recognize and protect the rights of believers, especially regarding the blank religion column on the Family Card and Identity Card, constituted direct discrimination. This discrimination is based on the interpretation of Article 61 paragraph (5) of the Population Administration Law which requires believers or adherents of unrecognized religions to leave the religion column blank on their identity documents.

The principle of "expressio unius exclusio alterius" has the consequence that if a legal term has been applied to a particular legal concept, it does not apply to anything else. The Constitutional Court argued that the government's refusal to recognize believers and other non-majority religions by leaving the religion column blank was a form of the government's reluctance to recognize the existence of adherents of these religions, leading to direct discrimination.[26]

The historical roots of Expressio Unius Exclusio Alterius along with two other principles of interpretation, the principle of Noscitur a Sociis (the meaning of a word must be interpreted the same as the association of that word) and the principle of ejusdem generis (things of the same kind) come from the common law legal tradition.[27] In this tradition, judges are bound by the precedent "doctrine of stare decisis" so its use has some drawbacks.[28]First, the doctrine of res

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[23] Wahidin (2020). Impact of covid-19 pandemic on the implementation of islamic fiqh al-tasawabit and al-mutaghayyirat approaches. *Systematic Reviews in Pharmacy, 11(12), 1102-1107,* https://doi.org/10.31838/srp.2020.5.160

[24] Jackson, S. (1993). From prophetic actions to constitutional theory: A novel chapter in medieval muslim jurisprudence. *International Journal of Middle East Studies*, *25*(1), 71-90, https://doi.org/10.1017/S0020743800058050

[25] al-Attar, M. (2017). Meta-ethics: A quest for an epistemological basis of morality in classical Islamic thought. *Journal of Islamic Ethics*, 1*(1), 29-50,* https://doi.org/10.1163/24685542-12340003

[26] Keyes, J.M. (1989). Expressio unius: The expression that proves the rule. *Statute Law Review,* 10*(1), 1-25, ISSN 0144-3593,* https://doi.org/10.1093/slr/10.1.1

[27] Chafetz, J. (2008). Leaving the house: The constitutional status of resignation from the house of representatives. *Duke Law Journal*, *58* (2), 177-236, ISSN 0012-7086

[28] George, T.E. (1992). On the Nature of Supreme Court Decision Making. *American Political Science Review*, *86*(2), 323-337, https://doi.org/10.2307/1964223

judicata and stare decisis requires consistency between legal products with one another, so the accuracy of the conclusions depends largely on the comprehensiveness of the data collected.[29] *Second*, control over the subjectivity of the interpreter in this case is very likely because the consistency between the statement and the previous statement can vary depending on the judge's point of view or beliefs. As a result, different conclusions will arise in the same case. *Fourth*, this doctrine of res judicata cannot be generalized from previous legal findings so its conclusions are incomplete in complex or multidimensional cases such as in the tension between prioritizing legal protection or giving precedence. Fifth, the unsuccess of the doctrine of res judicata bridging legal protection and recognition of rights proves that this doctrine has limitations in dealing with the factual world because more finality of legal products is judged based on internal relationships and similarities of events rather than on testing functions or relationships between norms and reality or facts.[30]

The implications of the above description can be proven by itself in the consideration of the Constitutional Court which states that when referring to previous decisions, such as Decision Number 2 / PUU-VI / 2008 and Decision Number 97 / PUU-X / 2012, the recognition of the rights of believers has been completed so that the government's refusal to implement these decisions is a violation of the principle of res judicata. This argument proves that the finality born from the three principles above needs to be doubted because contextualization is more about limiting interpretation rather than the implications of norms on equal rights.

Based on the description above, the Constitutional Court tends to use restrictions on legal terms about religion in population regulations because what is used is the principle of Expressio Unius Exclusio Alterius which aims to limit the scope of legal interpretation and ensure consistency in legal interpretation, so that it does not touch the substantial aspect, namely the balance between the recognition of the rights of believers and the protection of the official religious ritual system. Considering that believers have a ritual system that is syncretic with formal religion to gain followers, it causes unrest in society.

The dominance of the legal rights recognition approach applied by the Constitutional Court mentioned above is an important indicator that the Constitutional Court at least in this case emphasizes the social *order approach* rather than *social justice* which has implications for the loss of balance of legal interests in the Indonesian legal system.

To bridge this tipping point, the concepts of al-tahkim and al-tsawabit can be offered to modify the doctrine of res judicata, since al-tahkim and al-tsawabit *are needed to combine* fiqh al-awlawiyat (fiqh priority) and *fiqh al-muwazanat* (*fiqh* proportionality). In addition, there is *the fiqh al-Mutaghayyirat* which addresses issues that are subject to change, and renewal, and require ijtihad (independent reasoning). It is *zhanni* (probabilistic), so there are likely many interpretations of a particular issue, and rejecting it does not make a person leave Islam as long as they still believe in the qath'i Tsawabit.

The concept of al-tsawabit in Islamic law serves to maintain coherence, clarity and certainty of law. If applied to the doctrine of res judicata, then what occupies the final and binding position should be the product of law that cannot violate the universality of justice and proves compatible with the welfare model.

The concept of al-tsawabit also emphasizes the importance of maintaining a balance between various legal interests. In the context of the doctrine of res judicata, this means that legal protection for the majority must be balanced with the recognition of minority rights, not negating one of them by ignoring one of them as reflected in Decision Number 97/PUU-XIV/2016.

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[29] Groussot, X. (2007). Res judicata in the court of justice case-law: Balancing legal certainty with legality?. *European Constitutional Law Review*, 3*(3), 385-417,* https://doi.org/10.1017/S1574019607003859

[30] Shany, Y. (2009). Regulating Jurisdictional Relations Between National and International Courts. *Regulating Jurisdictional Relations Between National and International Courts*, 1-256, https://doi.org/10.1093/acprof:oso/9780199211791.001.0001

The concept of al-tsawabit emphasizes legal principles that are qath'i (certain) and must not violate established legal principles (qath'iy). In the doctrine of res judicata, this can lead to the need to respect established legal principles, such as court decisions that are final, as qath'i legal principles. Al-tsawabit's concept also stresses the importance of avoiding abuse of law to maintain a balance between the finality of rulings and the rights of individuals to access fair trials. In addition, this concept can also help avoid legal uncertainty and abuse of the justice system.

The implications of al-Tahkim and al-Tsawabit's concepts in bridging the critical point of the doctrine of res judicata centred on the dialogue between epistemological theories of truth coherence and correspondence. The concepts of al-Tahkim and al-Tsawabit point towards assessing the finality of legal products not only concerned with the internal coherence expressed by each existing legal concept but also the extent to which the legal product reflects the achievement of the lofty goals of law. This means that court decisions must not only be coherent with existing law but must also correspond with the principles of justice and universal legal objectives.

The next advantage of the concepts of al-tahkim and al-tsawabit is his reasoning model *fiqh al-Awlawiyat (*Priority Jurisprudence) and fiqh al-Muwazanat (jurisprudence of proportionality). This means that the assessment of the finality of the legal product must take into account the highest priority in the maintenance of Maqashid Shariah (the purposes of Islamic law), but also allow the adjustment of the law to the specific situation that requires ijtihad.

By adopting the concepts of Al-Tahkim and Al-Tsawabit in the doctrine of res judicata, the legal system can lead to a correspondence epistemology that considers the correspondence aspect of legal products with the principles of justice and the objectives of Islamic law. This will create a more balanced and fair legal system, which is not only coherent with existing laws but also corresponds with the values of justice in Islam. However, the application of this concept must take into account different legal contexts and follow the principles of Islamic law which are qath'i.

CONCLUSION

The concepts of Al-Tahkim and Al-Tsawabit help in blending fiqh al-awlawiyat (priority fiqh) and fiqh al-muwazanat (proportionality fiqh), as well as allowing legal adjustment to special situations that require ijtihad. It allows assessing the finality of legal products based not only on internal coherence but also correspondence with the principles of justice and the goals of Islamic law.

By applying this concept in the doctrine of res judicata, the legal system can become more balanced and fair, avoid legal uncertainty, and avoid abuse of the judicial system. However, the application of this concept must take into account different legal contexts and follow the principles of Islamic law which are qath'i.

The conceptual implication of the application of al-Tahkim, and al-Tsawabit in the perspective of the maqashidul quran is that the assessment of the finality of legal products is based not only on the internal coherence of law but also on correspondence with the principles of justice and the objectives of universal Islamic law. It expands the framework for assessing legal finality and better considers its impact on justice. The use of al-Tahkim and al-Tsawabit parameters on the doctrine of res judicata also allows a more comprehensive assessment of priority scales on legal protection and proportionality scales. Flexibility in dealing with changing situations or complex problems also becomes possible, allowing laws to remain relevant and adapt to the times.

However, the limitation of this research is that the concepts used are not always applicable and applied easily in testing the constitutionality of legal products, especially because they have different norm structures and legal event structures. The use of this concept requires meticulous application demands and high interpretive skills, which can require extra resources and time in the legal decision-making process.

The recommendation for future research is to conduct comparative legal studies to understand the application of the doctrine of res judicata in different countries and legal contexts. In addition, in-depth study case analysis can provide practical insights into how the concepts of Maqashid al-Quran, Al-Tahkim, and Al-Tsawabit can be used in legal decision-making. Further research within the framework of Islamic law on these concepts can also help deepen understanding of their practical application in the context of Islamic law. A comparative study between legal systems that adopt these concepts and those that do not can provide insight into the advantages and challenges of their application. With continued research and careful application, these concepts can help overcome the limitations of the doctrine of res judicata and result in more fair and relevant legal decisions.

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