

ABSTRACT

Lathif Nur Basith, Muhammad. 2013. *The Existence of Judge as Speaker of Law and Speaker of Justice*. (The Perspective of Positive Law and Islamic Law). Thesis. Department of Al-Ahwal Al-Syakhshiyah. Faculty of Sharia. Maulana Malik Ibrahim State Islamic University, Malang. Advisor : Dr. Zaenul Mahmudi, M.A.

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The dynamic of law always develops along with people's live development. Therefore, it is almost certain that written law is always left behind compared to society dynamic. It leads to the existence of counter-positivism theories. The effect of that strong concept, many judges apply juridical-dogmatic concept and act with laws tendency without considering values in the society. As a result, many judges' decisions get criticized because they cannot fulfill the social justice. This research focus is to find out the function of judge according to the perspective of positive law and Islamic law and to find out the judges' attitude toward the differences of laws norm and justice value.

This research is a normative laws or literature research. It employs a qualitative approach with normative juridical research; therefore the approach used is Statute Approach.

Based on the analysis result of the provided laws materials, the researcher concludes that basically, the function of judges, whether from the perspective of positive law or Islamic law, is to build justice and justification, create decision in society as media of education and correction. The judge's decision can project the future, punish the guilty and correct the innocence, and reconcile quarreling parties. The judges' role in the conflict between law norm and justice value of law enforcing in Indonesia must be full of ethic and moral. Law enforcer must be able to give benefits for society. On the other hand, the society also hopes for the law enforcement to achieve the justification.