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RESEARCH ARTICLE

APPEAL OF JUDICIAL RULINGS

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Abstract

The principle regarding judicial rulings issued by judges is that they must be respected and fully complied with, whether by both parties to the dispute: the plaintiff and the defendant, or by others; because this leads to stability and consistency in the legal positions regarding which the rulings were issued. However, the rulings issued by judges are rulings issued by human beings who are not infallible, and therefore the possibility of error in judicial rulings exists. There must be a way to correct errors that may occur in judicial rulings. This occurs through a request by one of the parties or their representative to reconsider the case subject to the ruling. This is known as an appeal of the ruling. This research paper examines the appeal of judicial rulings, its purpose, its legitimacy, the controls and conditions that must be met in order to appeal a judicial ruling, and the consequences thereof.

The researcher used the descriptive analytical approach, by tracing the scientific material from its original sources and modern references, collecting and classifying it, then analyzing the scientific material that was classified with a jurisprudential analysis, in order to achieve the research objectives and extract the expected results.

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Introduction:-

This paper examines the appeal of judicial rulings, its purpose, its legitimacy, its importance, the controls and conditions required for appealing a judicial ruling, and its implications.

Research Problem:

Some rulings issued by the judiciary may be tainted by errors due to the lack of information available to judges, due to fraud by one of the parties or their representatives, or the fact that some of them are more eloquent in their arguments than others, or due to the absence of an argument by one of the parties, or other reasons. This information or arguments may become available later, necessitating a reconsideration of the case by the same judge, court, or another judge.

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Importance of the Research: The importance of the research lies in its clarification of the provisions related to the appeal of judicial rulings, the consequences of appeals, and the distinction between cases in which appeals of rulings are permissible and cases in which they are not.

Research Questions:

The research problem results in several questions that we attempt to answer through this study, the most important of which are:

- What is meant by appealing court rulings?
- To what extent is the appeal of court rulings legitimate?
- What is the difference between cases in which appeals are permissible and cases in which they are not?
- What are the implications of appealing court rulings?

Research Objectives:

This research aims to achieve a set of objectives, including:

- Clarifying the meaning of appealing court rulings.
- Identifying the conditions required for appealing court rulings.
- Differentiating between cases in which appeals are permissible and cases in which they are not.
- Explaining the implications of appealing court rulings.

Research Methodology:

The methodology used to write this research is descriptive and analytical. This involves tracing the scientific material from its original sources and modern references, collecting and classifying it, and then analyzing the classified scientific material through a jurisprudential analysis. This is done to achieve the aforementioned research objectives and draw the expected results.

Research Plan:

This research includes an introduction, seven chapters, and a conclusion.

First Section: Definition of Resumption

Resumption in the language means beginning and resuming. Its root is to begin something from its beginning. He may have begun something and begun it, or it may have been said to have received it, so they are both "istif'al" and "ifta'al," from "anf" (the beginning of something), which is a metaphor. It is also said, "He resumed it with a promise" (al-Jawhari 4: 1333, Ibn Manzur 9: 15, al-Zubaidi 23: 47).

Resumption, technically, means a request to reconsider a ruling (Qal'aji and Qunaibi 57).

Appeal, in law, means a way to challenge a ruling by submitting it to a higher court than the one that issued it, to have it annulled or amended (Majma' 1: 30, Umar 1: 131).

The second requirement: The legitimacy of appealing judicial rulings. The legitimacy of appealing judicial rulings can be proven by the following:

1) God Almighty says:

[al'anbia'i: 78, *وَدَاوُدَ وَسُلَيْمَانَ إِذْ يَخْكُمَانِ فِي الْحَرْثِ إِذْ نَفَسَتْ فِيهِ غَنَمُ الْقَوْمِ وَكُنَّا لِحُكْمِهِمْ شَاهِدِينَ* (78) *فَفَهَّمْنَاهَا سُلَيْمَانَ وَكَلَّمْنَا حُكْمًا وَعِلْمًا* {79}],

The verse indicates that a judge may retract his ruling if it becomes clear to him that the truth lies elsewhere [Ibn al-Arabi 3: 266].

2) It was narrated on the authority of Amr ibn al-'As, may God be pleased with him, that the Messenger of God, may God bless him and grant him peace, said: "If a judge makes a judgment, exerting himself diligently and gets it right, he will have two rewards. If he makes a judgment, exerting himself diligently and gets it wrong, he will have one reward." [Al-Bukhari: 7352, Muslim: 1716] The hadith indicates that a judge may be right in his judgment or wrong, and that complete justice includes reconsidering the judgment, especially if it contains injustice or is based on false evidence or incorrect proof. [Al-Naddaf: 67]

3) It was narrated on the authority of Abdullah ibn al-Zubayr, may God be pleased with them both, that a man from the Ansar argued with al-Zubayr in the presence of the Prophet, may God bless him and grant him peace, regarding the watercourses of al-Harrah, from which they watered the palm trees. The Ansari said: "Let the water flow freely," but the Prophet refused. They argued before the Prophet, may God bless him and grant him peace. The Messenger of God, may God bless him and grant him peace, said to Zubayr: "Water, Zubayr, then send the water to your neighbor." The Ansari man became angry and said: "Is he your cousin?" The face of the Messenger of Allah (peace and blessings of Allah be upon him) changed color, and then he said: "O Zubayr, water [the land], then hold back

the water until it returns to the wall.” Zubayr said: “By Allah, I think that this verse was revealed concerning that: {But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves.} [Al-Bukhari: 2359, and Muslim: 2357], for the Prophet (peace and blessings of Allah be upon him) ordered Zubayr (may Allah be pleased with him) to water a small amount less than his due, then...” He sent water to his neighbor because he knew, may God bless him and grant him peace, that Al-Zubayr would be satisfied with that. When the neighbor objected to the Prophet’s ruling, may God bless him and grant him peace, the Prophet, may God bless him and grant him peace, overturned the first ruling and ordered Al-Zubayr to water until the water reached the base of the wall and to take all of his due [Al-Nawawi 15: 108].

4) What was reported on the authority of Abdullah bin Omar, may God be pleased with him, who said: The Prophet, may God bless him and grant him peace, sent Khalid bin Al-Walid to Banu Judhaymah, but they did not think it was appropriate to say, “We have become Muslims,” so they said, “We have become Sabians, we have become Sabians.” Khalid began killing and capturing, and he handed over to each of us his prisoner, so he ordered each of us to kill his prisoner, so I said, “By God, I will not kill.” My prisoner, and no man of my companions shall kill his prisoner. We mentioned that to the Prophet, may God bless him and grant him peace, and he said: “O God, I disavow before You what Khalid ibn al-Walid has done.” [Bukhari: 7189] Abdullah ibn Umar, may God be pleased with them both, was not satisfied with the ruling of Khalid ibn al-Walid, may God be pleased with him, and he brought that ruling to the Prophet, may God bless him and grant him peace, and he overturned it.

5) What was reported on the authority of Ali ibn Abi Talib, may God be pleased with him, who said: “The Messenger of God, may God bless him and grant him peace, sent me to Yemen. We came to a people who had built a den for a lion. While they were pushing each other, a man fell and clung to another, then a man clung to another, until there were four of them in it. The lion wounded them, so a man volunteered to attack it with a spear.” So he killed him, and they all died from their wounds. Then Ali, may God be pleased with him, came to them and said: Gather from the tribes of those who were present at the well a quarter of the blood money, a third of the blood money, and half of the blood money, and the full blood money. So the first gets a quarter because the one above him perished, and the second gets a third of the blood money, and the third gets half of the blood money. But they refused to be satisfied, so they came The Prophet, may God bless him and grant him peace, was at the Station of Abraham. They told him the story, and he said, “I will judge between you.” Then he covered himself. A man from the people said, “Ali has judged among us.” They told him the story, and the Messenger of God, may God bless him and grant him peace, approved it. [Ahmad: 573] The people were not satisfied with Ali’s judgment, may God be pleased with him, and they brought the case to the Prophet, may God bless him and grant him peace, and the Prophet, may God bless him and grant him peace, approved Ali’s judgment, may God be pleased with him.

6) It was reported on the authority of Omar bin Al-Khattab, may God be pleased with him, that he wrote to Abu Musa Al-Ash’ari, may God be pleased with him: Do not let a judgment you made yesterday, then you reconsidered it today, and you were guided to the right path, prevent you from reconsidering the truth; for returning to the truth is better than persisting in falsehood.

7) It was narrated that Shuraih ruled regarding two cousins, one of whom was a maternal brother, that the property belongs to the brother. This was reported to Ali (may Allah be pleased with him), who said: “Bring me the slave.” So he was brought to him. Shuraih asked: “In which Book of Allah did you find that?” He replied: “Allah the Most High said: {And those of kinship are nearer to one another in the ordinance of Allah} [Al-Anfal: 75]. Ali said to him: “Allah the Most High said: {And if a man or woman is to be inherited by ascendants or descendants, and he has a brother or a sister, for each one of them is a sixth} [An-Nisa’: 12].” And his ruling was overturned [Al-Mawardi 1: 91; Ibn Qudamah 10: 50-51].

8) The appeal request is consistent with the objectives of Sharia, which are to achieve justice, prevent injustice, and give each person his due. There may be an error in the ruling, evidence from one of the parties may be absent at the time of the ruling and may appear after the ruling, the person against whom the ruling was issued may be absent, but he may appear with a defense to the lawsuit, or other reasons that may be a reason to request an appeal of the ruling.

The Third Requirement: The Importance of Appeal in Judicial Rulings

Appealing judicial rulings has many benefits, the most important of which are:

1) It is a means of achieving justice between litigants by granting them the right to request a reconsideration of the case. One party's evidence may have been absent before the ruling was issued, or they may not have known about it beforehand.

2) It is a means of reviewing judicial rulings, establishing the truth thereof, and overturning and correcting erroneous judicial rulings.

3) It encourages judges to exercise greater due diligence and scrutiny in issuing rulings, so that they are not subject to appeals [Al-Naddaf: 55].

Fourth Requirement: Appeal Conditions

For a request to appeal a court ruling to be valid, the following conditions must be met:

- 1) The person requesting the appeal must meet the same conditions as the plaintiff: he must be an adult, sane, compliant with the rulings, and have standing to file the case. Because an appeal is a type of lawsuit, the same conditions must be met for the person requesting the appeal as for the plaintiff.
 - 2) The person requesting the appeal must state the reason for the appeal, such as if the defendant was absent and came forward after the ruling and challenged the integrity of the witnesses based on a matter they had before their testimony.
 - 3) The appeal request must not contradict a matter acknowledged by the plaintiff himself [Al-Naddaf: 62]. □ For the appeal to be valid, it is not required that it be filed with anyone other than the initial judge. The judge hearing the appeal may be the first judge who issued the ruling, or it may be a different judge, or it may be the Chief Justice.
- Fifth Requirement: Cases in which an appeal is permissible

One of the characteristics of the Islamic judicial system is its recognition of the possibility of error in a ruling. Therefore, Sharia gives those harmed by a ruling the right to demand a retrial, in line with the objectives of Sharia of establishing justice, eliminating injustice, and restoring rights to their rightful owners. However, Sharia has specified cases in which an appeal is permissible, including:

- 1) If the ruling is one in which *ijtihad* is not permissible, such as if the ruling contradicts a text from the Qur'an, the Sunnah, consensus, or clear analogy (*qiyas*), which is a matter in which the difference between the original and the original is decisively negated. This is because a condition for ruling based on *ijtihad* is that it must not contradict the text. If a ruling contradicts the text, it must be overturned. If a judge knows that he ruled based on the testimony of polytheists or unjust persons, he must reject the ruling and have someone else reject it. Because it contradicts the words of God Almighty: {And bring to witness two just men from among you and establish the testimony for God} [At-Talaq: 2]. If the judge rules that the *tahlil* marriage is valid, his ruling must be overturned because it contradicts the Sunnah. If the ruler rules that the *mut'ah* marriage is valid, his ruling must be overturned because of the appearance of reports that contradict his ruling and are far from interpretations and contradict the consensus.
 - 2) If the ruling is based on invalid discretion or conjecture and speculation, rather than on valid evidence, then the ruling must be overturned and annulled.
 - 3) If the judge does not meet the conditions for assuming the position of judge, all of his rulings must be annulled, even if he is correct, because they were issued by someone whose rulings are not enforceable. However, if the person who appointed him as a judge has influence and power, then his correct rulings are not annulled.
 - 4) If the case does not meet any of the pillars or conditions; As if the thing claimed was an unlawful right, such as the price of wine or pork, or the claim was to demand payment of a deferred debt before its due date [Al-Tarabulsi: 168, Al-Ansari 4: 303, Al-Omrani 13: 61, Al-Mawardi 20: 238, Ibn Qudamah 10: 50, Al-Naddaf: 115].
- Sixth Requirement: Cases in which resumption of a ruling is not permissible.

If the first ruling is one in which *ijtihad* is permissible, i.e., it does not contradict a text from the Qur'an or Sunnah, consensus, or clear analogy, then the person should not overrule it for himself or for others, because the Companions (may Allah be pleased with them) were unanimous in this regard. Abu Bakr ruled on issues based on his own *ijtihad*, but 'Umar disagreed with him, and he did not overrule his rulings. Abu Bakr treated people equally in giving, but 'Umar disagreed with him, so he differentiated between people, and none of them overruled the actions of the one before him. Also, because the second *ijtihad* is like the first, if the first were overruled by the second, it would result in the ruling not being established, because the second *ijtihad* might change to a different one. 2) If the judge's *ijtihad* changes without contradicting a clear text, consensus, or analogy, his ruling is not overturned, and he rules according to his new *ijtihad* in the future. This is because similar assumptions are not stable, and if they were to be contradicted by each other, the ruling would not be valid and the matter would be difficult for the people, as our master 'Umar ibn al-Khattab (may Allah be pleased with him) did. He divided the issue between full brothers and maternal brothers into partners after he had previously ruled that they were deprived, and he did not overturn his first ruling. He said: "That is according to what we ruled, and this is according to what we rule." [Al-Ansari 4: 303, Al-'Umrani 13: 61, Al-Mawardi 20: 238, Ibn Qudamah 10: 50]

Seventh Section: Consequences of Requesting an Appeal of Judgments

A request by one of the parties to appeal a judgment suspends the execution of the judgment until the judge reconsiders the case. This is because the appealed judgment may be overturned or amended after the case is reconsidered. Implementing the judgment in this eventuality would be detrimental to the defendant's rights, as it could result in irreparable harm [Abkar: 114-115].

Conclusion:

First: The most important findings of the research:

- An appeal is a request by one or both plaintiffs to reconsider the case.
- The principle is that an appeal is legitimate if its grounds are met.
- An appeal is a means of achieving justice between litigants and overturning and correcting erroneous rulings.
- The judge hearing the appeal may be the first judge who issued the ruling, or it may be another judge, or it may be the Chief Justice.
- A person harmed by a judge's ruling has the right to demand a retrial if there is an acceptable reason for doing so.
- There are cases in which appeals against judicial rulings are admissible and cases in which appeals are not.
- A request by one of the litigants to appeal a ruling suspends the execution of the ruling until the judge reconsiders the case.

Second: The most important recommendations:

- Judges should verify and scrutinize before issuing judicial rulings to avoid appeals.
- Judges should refrain from bias and overturning rulings that have been proven invalid.
- It is preferable for the judge who hears the appeal to be different from the first judge who issued the ruling, or a judge of a higher rank.

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