

Transcendent Islamic Law as a New Legal Criticism: A Case of Islamic Law Practices in Indonesia

Adi Nur Rohman*

Widya Romasindah Aidy**

Jantarda Mauli Hutagalung***

Rona Apriana Fajarwati****

Abstract: Law as a norm will always be present to regulate all aspects of human life. In its journey, the formation of laws in various countries will always be influenced by various factors, such as religions, politics, economics, socio-culture, and information technology. At the same time, the legal products that are born are inevitably subject to various kinds of intrigue and even tend to favour certain groups. In response to this, experts have developed a critical perspective on legal products so that they can be reinterpreted, and their application can be in line with the existing norms. This article aims to find a new paradigm in studying and criticising legal products based on transcendental values. The existence of transcendent Islamic law as raw material for the formation of law in Indonesia is seen as capable of filtering legal products that will emerge. This article concludes that law requires approaches that are based on divine values as well as other values such as morals and justice. Thus, the existence of transcendental legal criticism can provide a new perspective to the law that truly guarantees the realisation of the goals and ideals of the law itself. Most importantly, the article finds that the law will always side with human benefit so that transcendental values will always be relevant in producing current and future legal products.

Keywords: Legal Criticism; Transcendental Values; Law and Morality; Islamic Law

I. INTRODUCTION

Law is an institution that aims to lead humans to a just, prosperous life and make humans happy.¹ The ideal law according to the legal conception as a means of societal reform is a law that has legal certainty because it is determined by the State but at the same time also reflects

* Assistant Professor of Law, Universitas Bhayangkara Jakarta Raya, Jakarta, Indonesia. Email: adi.nur@dsn.ubharajaya.ac.id.

** Lecturer of Law, Universitas Bhayangkara Jakarta Raya, Jakarta, Indonesia. Email: widya.romasindah@dsn.ubharajaya.ac.id.

*** Lecturer of Law, Universitas Bhayangkara Jakarta Raya, Jakarta, Indonesia. Email: jm.hutagalung@dsn.ubharajaya.ac.id.

**** Universitas Islam Negeri Syarif Hidayatullah, Jakarta, Indonesia. Email: rona.apriana18@mhs.uinjkt.ac.id.

¹ According to Satjipto Rahardjo (a professor of legal sociology), this expression is the basis of the idea for the birth of the progressive law that he developed. Satjipto Rahardjo, *Hukum Progresif; Sebuah Sintesa Hukum Indonesia* (in Indonesian) [Progressive Law; A Synthesis of Indonesian Law] (Yogyakarta: Genta Publishing 2009) 2.

the values that live in the society so that it is functional because it is responsive and accommodates developments in society.²

The existence of a legal regulation certainly does not appear suddenly, but rather through a process of forming legislation which is expected to accommodate the aspirations of society and primarily the noble values of that society.³ However, in reality, anomalies often occur in the formation process so that they no longer reflect living aspirations and noble values but rather go through a process of generalisation and are abstracted by the prevailing legal positivism. In fact, quite a few elements from its followers, such as political, economic, and socio-cultural factors, also colour the legal products that are produced. This condition means that the interpretation and application of the law often feel ambiguous and artificial.

Responding to these conditions, experts began to develop a critical perspective on law.⁴ This perspective is carried out using a model of developing critical legal studies through a process of sharpening criticism of the legal objectivist view.⁵ Roberto M. Unger explains objectivism as follows, “Objectivism is the belief that the authoritative legal materials – the system of statutes, cases, and accepted legal ideas – embody and sustain a defensible scheme of human association.”⁶

The birth of Critical Legal Studies (CLS) was motivated by the perception of the failure of law to carry out its function in responding to all problems that arise in society.⁷ CLS rejects the distinction between theory and practice, while also rejecting the distinction between facts and values, both of which are characteristics of liberal understanding. So, it can be said that this school rejects the possibility of pure theory,⁸ but places more emphasis on theories that have the power to influence practical social transformation.⁹

CLS rejects the notion that law is separate from external elements of law such as economic, social, political, and cultural. CLS sees that it is impossible for law to be separated from the non-legal elements that accompany it.¹⁰ CLS thinks that law has sided with politics and has never been neutral. So that the legal doctrine that has developed has sided with those who have

² Hotma P. Sibuea, Wati Suwari Haryono, ‘Pengaruh Mazhab Hukum Sosiological Jurisprudence Terhadap Perkembangan Orde Baru’ (in Indonesian) [‘The Influence of the Sociological Jurisprudence School of Law on the Development of the New Order’] (2015) 1 (1) *Jurnal Filsafat Hukum* 78, 82.

³ Amir N. Licht, Chanan Goldschmidt, and Shalom H. Schwartz, ‘Culture, Law, and Corporate Governance’ (2005) 25 (2) *International Review of Law and Economics* 229, 230.

⁴ Andy Hermana Saputra, ‘Transcendental Legal Principles in Restorative Justice A Review of Critical Legal Theory Studies’ (2022) 4 (1) *Journal of Transcendental Law* 16, 18.

⁵ Indra Rahmatullah, ‘Filsafat Hukum Aliran Studi Hukum Kritis: Konsep dan Aktualisasinya dalam Hukum Indonesia’ (in Indonesian) [‘Legal Philosophy of the Critical Legal Studies School, Concept and Actualization in Indonesian Law’] (2021) 5 (3) ‘Adalah; *Buletin Hukum dan Keadilan* 1, 8.

⁶ Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (London: Harvard University Press, 1986) 2.

⁷ Nirej Sekhon, ‘Critical Legal Studies’ (2022) 43 *Cardozo Law Review and The Police* 1187, 1191.

⁸ Peter Techet, ‘Pure Theory of Law’ as Critical Legal Studies avant la lettre. Why Choose Kelsen’s Realist Theory of Interpretation over Schmitt’s Political Theory for the Left?’ (2023) 23 (1) *Analisi e Diritto* 147, 151.

⁹ Masnun Tahir, ‘Studi Hukum Kritis dalam Kajian Hukum Islam’ (in Indonesian) [‘Critical Legal Studies in Islamic Legal Studies’] (2014) 13 (2) *Jurnal Hukum Islam* 199, 203.

¹⁰ This assumption is a theory conceptualised by Hans Kelsen, namely the pure theory of law, which states that law must be free from non-legal factors such as political, economic, social and others. He stated, “it is called a “pure” theory of law, because it only describes the law and attempts to eliminate from the object of this description everything that is not strictly law; its aim is to free the science of law from alien elements. This is the methodological basis of the theory. Such an approach seems a matter of course. Yet, a glance upon the traditional science of law as it developed during the nineteenth and twentieth centuries clearly shows how far removed it is from the postulate of purity; uncritically the science of law has been mixed with elements of psychology, sociology, ethics and political theory.”

See Hans Kelsen, *Pure Theory of Law* (New Jersey: The Lawbook Exchange Ltd 2005) 1.

power, where in the process of its formation it has experienced political "battles" which tend to take sides in favour of the interests of certain groups.¹¹

In conducting critical studies of these legal products, CLS uses several methods, including trashing, deconstruction and genealogy. Trashing is a technique to break or reject established legal thinking. This method is used to show contradictions and one-sided conclusions based on doubtful assumptions. Deconstruction is a technique for dismantling legal thinking that has been formed. In this way, a reconstruction of legal thought can be carried out. Meanwhile, genealogy is the use of history in conveying arguments. Genealogy is used because historical interpretation is often dominated by those who have power. This technique is used to strengthen a legal construction that will be created.¹²

It needs to be understood that state legal products are not "*haram*"(prohibited) from criticising holy books with clear and constructive thinking. On the other hand, State legal products must be open to criticism so that they always receive constructive input and insight. The mechanism for criticising certain legal products is also a form of manifestation of a means of social control for society towards the state in realising the principle of checks and balances in the state. Sometimes a legal product must be seen from a different perspective so that it can add new colour to future legal improvements.

As it is known, the law in force in Indonesia is a national law with a prismatic character that can accommodate all universal good values from various material sources, including religious law.¹³ Bearing in mind that Indonesia is not a religious state, the religious law enforced in Indonesia, including Islamic law, cannot stand alone but rather covers the entirety of existing religious law in an eclectic way (combining its good values) with other legal values and formulated in national law.¹⁴

Islamic law, on the other hand, also functions to filter the legal norms that apply in Indonesia for their conformity with the values of divine transcendence (*ilahiyyat*) taught in the Islamic religion. The internalisation of transcendental values aims to ensure that all human behaviours and daily behaviours are in a more meaningful and valuable corridor of life.¹⁵ In the future, these divine values will lead humans to noble and dignified values in society.¹⁶ These transcendent values have actually long been present in the heart of the nation, as stated by

¹¹ Tahir (n 9) 215.

¹² Hikmahanto Juwana, 'Hukum Internasional Dalam Konflik Kepentingan Ekonomi Negara Berkembang dan Negara Maju' (in Indonesian) ['International Law in Conflicts of Economic Interests in Developing Countries and Developed Countries'] The Speech at the Inauguration Ceremony of Permanent Professor in International Law, Faculty of Law, University of Indonesia, November 10, 2001, 8.

¹³ Faisal, 'Membangun Politik Hukum Asas Legalitas dalam Sistem Hukum Pidana Indonesia' (in Indonesian) ['Building Legal Politics on the Principle of Legality in the Indonesian Criminal Law System'] (2014) 21 (1) *Ius Quia Iustum* Law Journal 81, 92.

¹⁴ Moh. Mahfud MD, 'Islam, Lingkungan Budaya dan Hukum Dalam Perspektif Ketatanegaraan Indonesia' (in Indonesian) ['Islam, Cultural Environment and Law in Indonesian Constitutional Perspective'] (2016) 24 (1) *Karsa: Jurnal Sosial dan Budaya Keislaman* 1, 7.

¹⁵ A. Azadikalkoshki and M. Hosseinabadi, 'Comparing Islamic International Law and Contemporary International Law with an Emphasis on Identification Principle and Human Rights Principle' (2018) 8 *Open Journal of Political Science* 139, 142.

¹⁶ Kuntowijoyo, *Islam Sebagai Ilmu: Epistemologi, Metodologi, dan Etika* (in Indonesian) [*Islam as a Science: Epistemology, Methodology, and Ethics*] (Yogyakarta: Tiara Wacana 2007) 44.

Deliar Noer, quoted by Nurul Hakim and Sumawaty, that the noble values that have long been embedded in the heart of the Indonesian nation are values coloured by Islamic teachings.¹⁷

II. THE IDEA OF TRANSCENDENTAL LEGAL CRITICISM THEORY

Transcendental comes from the Latin *transcendere* meaning to climb on/up. Transcendental also means "unseen", "abstract", "elusive", and "accentuating things that are spiritual".¹⁸ Transcendental thinking can be seen in religious, spiritual, ethical, and moral values which are full of dynamics and struggles of thought that were born over a long period of history. Modern science, which has been in the corridor of modernist-positivistic hegemony with its empirical, objectivist and rational doctrines, is starting to be challenged by transcendental thinkers who prioritise the values and meaning behind it, so that the building of science appears to be more open and complete in responding to life's problems.¹⁹

In legal and societal discourse, law is not understood only to be regulatory and determined by state authorities but also as values that live and develop in society. Furthermore, TLC requires the existence of morals in law that are based on divine values as well as other values such as justice, morals, and problems.²⁰ As the theory of legal criticism developed by Roberto M. Unger states that a law is not value-free or neutral because the law will always contain an element of partiality. Therefore, this theory criticises various legal thoughts and then reconstructs legal thought based on a certain perspective so that the resulting law can fulfil a sense of justice and be more accepted by society and become a living law in society.²¹

In the author's opinion, legal partiality in criticising legal products is in line with the concept of Shari'ah where law always has partiality. And in the context of Shari'ah,²² God's law is positioned as the basis for the alignment of that law, then it is God's law that rises as the position that becomes the basis of his alignment. God's law and the values that accompany it must be truly internalised in every existing legal product. On the other hand, the existence of transcendental values must be interpreted as a filter that can filter certain laws and legal products so that they can be reoriented towards the main goal of the Shari'ah, namely justice for humans. From here it will be seen how the relationship is built between transcendental values and a particular legal framework.

¹⁷ Nurul Hakim and Ike Sumawaty, 'Implementasi Hukum Transcendental Dalam Bentuk Aturan Perundang-Undangan di Indonesia' (in Indonesian) ['Implementation of Transcendental Law in the Form of Legislation in Indonesia'] (2018) Hukum Ransendental: Proceeding National Seminar 327, 330.

¹⁸ See: <<https://kbki.kemdikbud.go.id/entri/transcendental>> accessed March 24, 2024.

¹⁹ Absori, 'Pemikiran Hukum Transcendental dalam Konteks Pengembangan Ilmu Hukum Indonesia' (in Indonesian) ['Transcendental Legal Thought in the Context of the Development of Indonesian Legal Science'] (2017) Proceedings of the National Seminar on Legal Transcendence, Prospects and Implementation, 15.

²⁰ Kuntowijoyo (n 16) 49.

²¹ Roberto M. Unger, '*Gerakan Studi Hukum Kritis*' (in Indonesian) [*The Critic Legal Studies Movement*] (Bandung: Nusa Media 2012) 13.

²² Shari'ah is a set of rules outlined by Allah SWT regarding human behaviour, as explained by Abu Zahrah. The *titah* (commandments) of Allah SWT relating to the actions of *mukallaf* (mature and intelligent) through *iqtidā'*, *takhyir*, or *wad'i* (Requirement, choice or positivism). See: Muhammad Abu Zahrah, *Uṣūl al-Fiqh* (in Arabic) [*Principles of Jurisprudence*] (Beirut: Dār al-Fikr al-'Arabiyy 1958) 26.

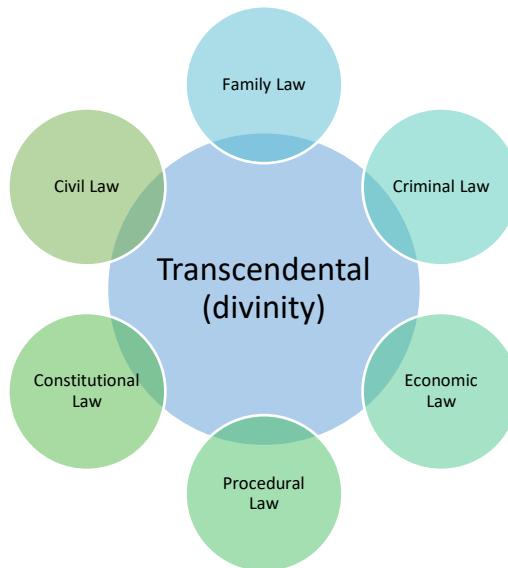


Figure 1. The Relation of Transcendental Values to Law

In Figure 1, it can be seen that the entire scope of law will always be connected to transcendental values. Shari'ah law which was revealed to humans is interpreted as God's will to be implemented by humans. God's will in the form of Shari'ah is intended for the benefit of humans in this world and the hereafter.

Imam ash-Shatibi considers that every human action that is characterised as a legal action (*al-ahkām al-khamsah*) will always be related to *maqāṣid* or intentions. Actions carried out by the *mukallaf* without any intention to do so are not considered legal actions unless there is an argument regarding the *wad'i's* (declaratory) actions.²³ Actions that deviate from the intentions of Allah SWT are considered deviant actions. This deviation will, of course, have its consequences. So, to avoid this, all human behaviour and activities must be returned to intentions that are in harmony with the intentions of Allah SWT.

In the legal context, a legal formulation is considered correct according to ash-Shatibi, if the thoughts are relevant to actions that are in accordance with the will of the Shari'ah. Likewise, reason will not fight for actions that contain *mafsadah* (damage). All this damage is, of course, the opposite of the intention of the Shari'ah itself. Thus, efforts to criticise the law must always be in the shadow of the Shari'ah as the main basis for seeing the goodness and truth of existing laws.

III. RATIONALE FOR TRANSCENDENTAL LEGAL CRITICISM

As explained previously, the CLS's view is that “(there) can be no meaningful legal theory without a social theory”.²⁴ Meanwhile, TLC theory in critical studies sees that law will be meaningless without the presence of divine transcendental values in it. By using Islamic scientific approaches to legal orders or products, efforts to criticise legal content material do not only focus on the formalistic level of objectivism but also emphasise transcendental divine values. This idea is a manifestation of efforts to restore the eclecticism of Islamic law into national law in a comprehensive manner so that it remains in the corridor of Islamic law. The

²³ *ibid* 208.

²⁴ Erfina Fuadatul Khilmi, ‘Pemanfaatan Critical Legal Studies (CLS) Dalam Pembentukan Peraturan Daerah (Studi Perda Yang Berfungsi Sebagai Otonomi Daerah)’ (in Indonesian) [‘Utilisation of Critical Legal Studies (CLS) in the Formation of Regional Regulations (Study of Regional Regulations that Function as Regional Autonomy)’] (2019) 1 (1) IJLIL: Indonesian Journal of Law and Islamic Law 74, 87.

development of TLC ideas is at least based on several foundations, including philosophical, sociological, and juridical foundations.

A. Philosophical Foundations

Islamic law is a law outlined by Allah SWT as the Most Perfect Substance. The perfection of Allah SWT is included in Islamic law which is determined by Him. If the opposite were the case, then it would be interesting to assume that the source of imperfection comes from Allah SWT and that is very unlikely to happen.²⁵ Islamic law is universal, and it is applied throughout time and even it is valuable not only in this world but also in the afterlife.²⁶

Islamic law (Shari'ah) is a collection of God's laws. Through His power, God is also the One who combines the law "as is" with the law "should be". Shari'ah is a positive law with justice as its ultimate goal. Therefore, Islamic law (Shari'ah) is an ideal legal system and is said to be "the positive law in ideal form".²⁷ Commenting on this, Charles Gide and Charles Rest spoke about God's Law as follows:²⁸

"We may say that the 'natural order' was that order which seemed the best, not to any individual whomsoever, but to rational, cultural, and liberal-minded men. It was not the product of observation of external facts; it was the revelation of the principle within. This order was supernatural and so raised above the contingencies of everyday life, with its double attributes of universality and immutability. It remained the same for all times and for all men. Its fiat was unique, eternal, it was universal in scope."

As a theory, TLC cannot be separated from the philosophical framework in criticising legal products. This philosophical framework in the form of ideas then became a basis for constructing the theory of Transcendental Legal Criticism. In philosophical studies, this can be seen from at least three aspects, namely ontology, epistemology, and axiology. Ontology will always be related to the nature of an object being studied. Epistemology will lead to processes that include sources, characteristics, nature, and truth. Meanwhile, axiology will always be concerned with the use value of an object being studied.²⁹

Ontology is the science or teaching of existence. This existence can be interpreted as an existence that is certain or possible.³⁰ Ontology is often identified with first philosophy or divine philosophy, the study of which is the nature of things, unity, communion, cause and effect, reality, or God with all his attributes.³¹ Thus, ontology is a branch of philosophy that studies the basic principles of everything that exists or may exist.

In ontological studies, philosophical thinking has succeeded in leading thinkers to a conclusion that states that there is a first cause (*causa prime*) for the existence of everything. However, philosophy does not explain what and how the prime cause is. However, this is in direct contrast

²⁵ Fathurrahman Djamil, *Filsafat Hukum Islam* (in Indonesian) [*Philosophy of Islamic Law*] (Jakarta: Logos Wacana Ilmu 1997) 63.

²⁶ M. Muslehuddin, *Philosophy of Islamic Law and the Orientalists* (Lahore: Islamic Publications Ltd 1980) 58.

²⁷ *ibid*.

²⁸ *ibid* 59.

²⁹ Jujun S. Suriasumantri, *Ilmu Dalam Perspektif: Sebuah Kumpulan Karangan Tentang Hakekat Ilmu* (in Indonesian) [*Science in Perspective: A Collection of Essays on the Nature of Science*] (Jakarta: Yayasan Obor Indonesia 2006) 35.

³⁰ Surajiyo, *Ilmu Filsafat Suatu Pengantar* (in Indonesian) [*Philosophy of Science an Introduction*] (Jakarta: Bumi Aksara 2005) 119.

³¹ Jalaluddin Abdullah Idi, *Filsafat Pendidikan Islam* (in Indonesian) [*Philosophy of Islamic Education*] (Jakarta: Gaya Media Pratama 1997) 105.

to the Islamic conception which emphasises that the prime cause is Allah SWT, the One who created the universe and everything in it.³² So if it is drawn into the conception of Islamic law, the study of ontology can never be separated from the Creator. Therefore, law is no longer absolutely an independent product of human engineering but must always refer to thoughts originating from revelation as a manifestation of God's will. By referring to this revelation, the legal conception will always be related to the term *hukm* which can be found in various verses in the Qur'an as in the following words of Allah SWT, "The decree (which is definitely true) belongs only to Allah."³³

The phrase in the verse above which states 'only belongs to Allah' is a sufficient basis to prove that the true law belongs to Allah SWT which cannot be created based on human desires alone. The principle of ownership in the verse above implies the existence of Allah's law as a basic value in determining everything.

In the conception of Islamic law, the legal theories of positivism and idealism are harmonious with each other. Islamic law combines laws that originate from God's revelation but at the same time also involves human reasoning in understanding that revelation. In this context, Allah SWT has stated in the Qur'an as follows:

"It is Allah who has sent down the Book in truth and [also] the balance. And what will make you perceive? Perhaps the Hour is near."³⁴

"And [by] the soul and He who proportioned it. And inspired it [with discernment of] its wickedness and its righteousness, He has succeeded who purifies it, and he has failed who instills it [with corruption]".³⁵

Thus, from an ontological perspective, the existence of the law of Allah SWT which is manifested in revelation cannot be negated in any legal product. Thus, the existence of the value of 'ownership of Allah SWT' should be positioned as an element of partiality in assessing and criticising certain legal products so that this can make the law return to the Essence Who owns everything. Law as a product of human reasoning will always be accompanied by law that originates from revelation.

Apart from the description from an ontological perspective, the existence of TLC as a theory of legal criticism is also presented from an epistemological perspective. In simple terms, epistemology is a branch of philosophy that studies whether knowledge is true or not.³⁶ Terminologically, epistemology is a theory or science about the methods and basics of knowledge, especially those related to the limits of knowledge and the validity or validity of that knowledge.³⁷

Syaifudin stated that epistemology includes questions that must be answered, what is knowledge? Where does it come from? What is its source? What is its essence? How to build appropriate and correct knowledge? What is truth? Is it possible for us to achieve true knowledge? What can we know and to what extent? All these questions can be summarised

³² ibid 123.

³³ Qur'an, Surat Yūsuf (Prophet Yousef) 12:40.

³⁴ Qur'an, Surat asy-Syūrā (Council) 42:17.

³⁵ Qur'an, Surat asy-Syams (The Sun) 91:7-10.

³⁶ Nina W. Syam, *Filsafat Sebagai Akar Ilmu Komunikasi* (in Indonesian) [*Philosophy as the Root of Communication Science*] (Bandung: Simbiosa Rekatama 2010) 229.

³⁷ Mujamil Qomar, *Epistemologi Pendidikan Islam: dari Metode Rasional Hingga Metode Kritik* (in Indonesian) [*Epistemology of Islamic Education: from Rational Methods to Critical Methods*] (Jakarta: Erlangga 2005), 2.

into two main problems, the problem of the source of knowledge and the problem of the truth of knowledge.³⁸

The concept of epistemology in Islam is essentially inseparable from its theological dimension which is based on monotheism. In the concept of Islamic epistemology which has the dimension of monotheism, it is reflected in the view that the sciences are essentially an extension of the verses of Allah SWT contained in all His creation, as well as the verses of Allah SWT which are written in the Qur'an. The verses of Allah SWT in the great world, including humans in nature, science, including technology. The verses of Allah SWT in humans and history are developed in the social sciences and humanities. Meanwhile, the verses of Allah SWT in the Qur'an were developed in religious science.³⁹

Epistemologically, the development of legal critical theory can be developed through various Islamic scientific methods. In Islamic legal discourse, the development of Islamic law cannot be separated from *ijtihād* (exertion) efforts as a form of development of Islamic law. Therefore, the existence of *ijtihād* (exertion) in the *istinbāt al-ahkām* (derivation of judgment) process in Islamic law is proof that human reasoning and analytical power have a fairly strong involvement in understanding God's law (divine law).⁴⁰ The harmonious relationship between law that originates from revelation and human reasoning shows that law, in the Islamic legal conception, does not only stop at being a product of human thought but also contains transcendental (divine) values.

At the axiological level, TLC is a form of critical theory construction that has value. Axiology is a form of investigation regarding the nature, criteria and metaphysical status of values.⁴¹ The values contained in Islamic legal norms must be maintained wherever possible in order to realise the goals of law enforcement itself. Every effort to enforce and develop the law must not be far from the values that originate from God. Thus, God's values must be used as a basis for efforts to assess and criticise man-made legal products so that we can easily measure which values are good and which are not good with clear parameters.

TLC axiology focuses more on the orientation, goals, and values of legal criticism. In the Islamic conception, the law is projected to realise justice where the role of humans as *khalīfatullāh fī al-ard* (God's vicegerents on earth) is quite significant. This orientation and goal can be realised when legal criticism is built on transcendental (divine) values and integrates them into legal products created by humans.

The universality of Islam will lead humans to the highest goal of implementing law, namely realising justice. Law without justice and morality cannot be said to be law. A legal system that does not have substantial roots in justice and morality will eventually disintegrate by itself. Historical records are clear evidence of this condition where the law will be marginalised due

³⁸ ibid 4.

³⁹ Musa Asy'arie, *Filsafat Islam tentang Kebudayaan* (in Indonesian) [Islamic Philosophy of Culture] (Yogyakarta: LESFI 1999) 93.

⁴⁰ In legal theory, positivism and idealism are described as opposing each other. This conflict can be seen in the principles of justice which the idealist school associates with 'the law as it should be'. Meanwhile, positivism sees that legal relationships exist based on a strict separation between reality (*das Sein*) and what is expected (*das Sollen*). Because of this, positivism separates justice and ethics. For positivism, natural law is an ideal and higher legal value to be used as a standard of justice. See: Djamil (n 25) 56.

⁴¹ Rizal Mustansyir, Misnal Munir, *Filsafat Ilmu* (in Indonesian) [Science philosophy] (Yogyakarta: Pustaka Pelajar 2001) 26.

to its lack of essential justice values.⁴² That is why Allah SWT has reminded humans to always act fairly towards everyone. In the words of Allah SWT:

“O you who believe, be you upholders of (the truth) for Allah (and) witnesses (who act) fairly. Don't let your hatred of a people encourage you to act unfairly. Be fair because (fair) is closer to piety. Have faith in Allah. Indeed, Allah is very careful about what you do.”⁴³

“O believers, be upholders of justice and witnesses for Allah, even if the testimony incriminates yourselves, your parents or your relatives. If he (who is weighed in the testimony) is rich or poor, Allah is more worthy of knowing (the benefits of) both. So, do not follow your desires because you want to deviate (from the truth). If you distort (words) or turn away (reluctant to be witnesses), verily Allah is All-Aware of everything you do.”⁴⁴

In contrast to the conception of Islamic law, Western law sees law as a man-made product. The existence of law in society is assumed to be the fulfilment of people's lives for security, order and justice by making the ideals of law a common goal.⁴⁵ The conception that makes human reasoning the main basis for forming law often results in differences in the perceptions of each party. That is why Jeremy Bentham initiated a utility theory that says: “the greatest happiness for the greatest number.”⁴⁶ This theory illustrates that legal justice will only be fulfilled if the majority feels the same happiness because of implementing the law.

Originally, laws originating from God's revelation should be used as a reference in looking at the applicable legal framework. This assumption is based on the view of the universality of Islamic law covering all aspects of human life. So that everything related to human needs must be aligned with the transcendental values that Allah SWT presents as a guide for humans.

Efforts to criticise legal products and systems should be seen from a transcendental perspective, which is the basic essence of the application of law. In Islamic law, transcendental perspective contains the highest goal of the application of law, namely justice accompanied by morality. The transcendental aspect of Islamic law has laid down the basic pillars that distinguish between right and wrong, good, and bad so that the identity of Islamic law continues to be maintained as perfection. In fact, Allah SWT has ordered humans to decide all existing matters based on the provisions of Allah SWT's law.

“Let followers of the Gospel decide (affairs) according to what Allah has revealed in it. Whoever does not decide (a matter) according to the provisions revealed by Allah, then they are the wicked.”⁴⁷

This verse explicitly orders humans to carry out the laws of Allah SWT (Shari'ah) as the basis for considering all human actions. Islamic law (Shari'ah) which has transcendental characters

⁴² Muslehuddin (n 26) 270.

⁴³ Qur'an, Surat al-Māidah (The Table Spread) 5:8.

⁴⁴ Qur'an, Surat an-Nisā' (The Women) 4:135.

⁴⁵ According to J.N.D. Anderson, the differences between Western law and Islamic law include: (1) Western law is basically secular while Islamic law is religious; (2) Western law is man-made law, which is partial in nature (only as law declared valid by judicial bodies) and can change, while Islamic law is comprehensive in nature (includes all human actions within its scope) and essentially cannot change. J. N. D. Anderson, *Hukum Islam di Dunia Modern* (in Indonesian) [*Islamic Law in The Modern World*] translated by Machnun Husain (Yogyakarta: Tiara Wacana 1994) 4.

⁴⁶ In connection with this theory, an adage appears which is also often sounded, “wherever is the maslaha, there is God's law”. See: Muslehuddin (n 26) xi.

⁴⁷ Qur'an, Surat al-Māidah (The Table Spread) 5:47.

must be used as a parameter in measuring its conformity with the commands of Allah SWT. In fact, in another verse, Allah SWT also gives a warning to anyone who goes outside the law of Allah SWT.

“Whoever does not decide (a matter) according to the provisions revealed by Allah, then they are disbelievers.”⁴⁸

In the Indonesian context, the Indonesian people have long had the universal values of Islam in their hearts. The legal ideals and mindset of the Indonesian people, as revealed by Abdul Gani Abdullah, have long been influenced by Islamic values.⁴⁹ Therefore, it would be appropriate if the presence of legal critical thinking based on transcendental values would be in line with the legal ideals of the Indonesian nation as a means of constructing laws that are in accordance with the will of Allah SWT, especially with regard to religious norms.

B. Sociological Foundations

Law can function as a means of social engineering (law as a tool of social engineering).⁵⁰ This function is very necessary in society, including societies that are experiencing upheaval and development, which includes all forces that create and maintain social ties that adhere to the imperative theory of the functions of law.⁵¹ Law as social engineering is closely related to the function and existence of law as a regulator and driver of change in society. Legal practitioners need to pay attention to this by interpreting analogies to realise the idea of law, namely balance.⁵²

Law and society have a very strong connection. In this regard, Cicero's adage is often expressed which is quite popular, namely: "There is no society without law and no law without society. Laws are established by society to regulate their lives."⁵³ From this, it can be understood that community participation has a very central position in the operation of law in society.

Sociologically, Indonesian people are often faced with juridical problems in resolving legal issues related to the implementation of their religious teachings, such as disputes in marriage, divorce, inheritance, waqf, Shari'ah economics, and so on.⁵⁴ Thus, people feel the need for Islamic legal institutions that help them in resolving all these problems.

In sociological discourse, there is a theory known as Structural Functional Theory (SFT). According to this theory, society is a social system consisting of parts or elements that are interrelated and unite each other in balance. Changes that occur in one part will also bring changes to other parts. On the other hand, if it is not functional, the structure will not exist or will disappear by itself. In fact, this theory assumes that all events and all structures are functional for a society.⁵⁵

⁴⁸ Qur'an, Surat al-Māidah (The Table Spread) 5:44.

⁴⁹ Sulaikin Lubis and Wismar Ain Marzuki, Gemala Dewi, *Hukum Acara Perdata Peradilan Agama di Indonesia* (in Indonesian) [*Civil Procedure Law for Religious Courts in Indonesia*] (Jakarta: Prenada 2019) 19.

⁵⁰ Roscoe Pound, *Filsafat Hukum* (in Indonesian) [*Philosophy of law*] (Mohammad Radjab (tr), Jakarta: Bhatara 1978) 7.

⁵¹ Amran Suadi, *Sosiologi Hukum: Penegakan, Realitas dan Nilai Moralitas Hukum* (in Indonesian) [*Sociology of Law: Enforcement, Reality and Value of Legal Morality*] (Jakarta: Kencana 2018) 20.

⁵² Zainuddin Ali, *Sosiologi Hukum* (in Indonesian) [*Sociology of Law*] (Jakarta: Sinar Grafika 2008) 22.

⁵³ Lili Rasjidi dan I.B. Wyasa Putra, *Hukum Sebagai Suatu Sistem* (in Indonesian) [*Law as a System*] (Bandung: Mandar Maju 2003) 183.

⁵⁴ Indonesian Religious Court Act (1989).

⁵⁵ This theory is one of several theories put forward by Ritzer which are incorporated into the social facts paradigm. Overall, the theories in question include: 1) functional structural theory, 2) conflict theory, 3) systems theory, and

In family relationships, this theory analogises the relationship between family members as a biological organism that can get sick. So, when one of them does not carry out its functions, the health of the family as a whole will be disrupted. So that each family member (the father, the mother and their children) influences each other, needs each other. However, if a divorce occurs, this will also have an impact on the family as a whole, including the children. Children who are victims of divorce often experience a life of suffering and a loss of their sense of security.⁵⁶

Legally, culture in society is often faced with the problem of religious practices that conflict with positive legal norms. Therefore, specifically in the field of family and marriage, the State participates in regulation by presenting regulations that accommodate various interests therein, including religious interests.

Efforts to formalise and process Islamic law into national law have actually been present in the Indonesian legal system for a long time. Even so, not all normative religious laws have been elevated to the status of laws that are imperative for all citizens. In fact, positive law that originates from religious law is often considered 'problematic' because it is at odds with religious values which are one of the basic values for the formation of state legislation.

Until now, Indonesian law is still characterised by laws left over from colonial rule. Even though it has undergone adjustments to the conditions and culture of Indonesian society, in several cases legal norms are still found that are not in line with religious values. The belief that Indonesian law still retains a secular colonial character⁵⁷ is considered by some groups as an opening to continue to be criticised so that it can be in line with culture and especially religious norms, including Islam.

On that basis, the need for efforts to critically examine the laws in force in Indonesia will continue to be encouraged in order to restore the main goal of law enforcement, namely justice. There are still many legal problems in society regarding Islamic legal issues that have not been accommodated by national law, which is a stepping stone for developing critical thinking about certain legal products. The spiritual values embedded in the heart of the Indonesian nation must be able to emerge in viewing and evaluating the law so that the law stands in harmony with religious values.

C. Juridical Foundations

In the Preamble to the 1945 Constitution, especially the fourth paragraph, contains the objectives of the State, which include, among other things, protecting the entire Indonesian nation and all of Indonesia's blood, and to promote general welfare, as well as make the life of the nation intelligent.⁵⁸ The founding fathers of the State conceptualised that the Republic of Indonesia is a state based on law, a democratic state (sovereignty of the people), based on the belief in one God, and social justice.⁵⁹ Thus, the concept of the Unitary State of the Republic of Indonesia according to the 1945 Constitution is the Pancasila Legal State. The concept

⁴) macro sociological theory. See: George Ritzer, *Sosiologi Ilmu Pengetahuan Beparadigma Ganda* (in Indonesian) [*Dual Paradigm Sociology of Science*] (Jakarta: Raja Grafindo 2013) 21.

⁵⁶ Zuly Qodir, *Sosiologi Agama: Esai-Esai Agama di Ruang Publik* (in Indonesian) [*Sociology of Religion: Essays on Religion in the Public Sphere*] (Yogyakarta: Pustaka Pelajar 2011) 86.

⁵⁷ Anderson (n 45) 2.

⁵⁸ Indonesian Constitution (1945).

⁵⁹ Zainuddin Ali, *Hukum Islam* (in Indonesian) [*Islamic law*] (Jakarta: Sinar Grafika 2015) 86.

requires to fulfil the criteria of a state of law (*rechtstaat*), which according to Friedrich Julius Stahl, contains four important elements, namely:⁶⁰

1. Protection of human rights;
2. Separation or division of power;
3. Government based on statutory regulations; and
4. State administrative court.

Muhammad Tahir Azhary, taking inspiration from the Islamic legal system, put forward the view that the characteristics of a good nomocracy or rule of law contain nine principles, namely:⁶¹

1. The principle of power as a mandate;
2. The principle of deliberation;
3. Principles of justice;
4. Principle of equality;
5. Principle of recognition and protection of human rights;
6. The principle of an independent judiciary;
7. Peace principles;
8. Welfare principle;
9. The principle of popular obedience.

Based on Article 7 paragraph (1) of Law no. 12 of 2011 concerning the Formation of Legislative Regulations states that the types and hierarchy of statutory regulations are as follows:⁶²

1. The 1945 Constitution of the Republic of Indonesia.
2. Law/Government Regulation in Lieu of Law.
3. Government regulations.
4. Presidential decree
5. Local regulation.

Regarding several principles contained in the sequence of statutory regulations, Bagir Manan said there are five principles contained in the teachings regarding the sequence of statutory regulations, namely.⁶³

⁶⁰ Jimly Asshiddiqie, *Cita Negara Hukum Indonesia Kontemporer* (in Indonesian) [*The Ideal of the Contemporary Indonesian Legal State*] (Scientific Oration at the Bachelor Graduation at the Faculty of Law, Sriwijaya University, Palembang, Indonesia 2004) 2.

⁶¹ Muhammad Tahir Azhary, *Negara Hukum: Suatu Studi tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam, Implementasinya pada Periode Negara Madinah dan Masa Kini* (in Indonesian) [*The Rule of Law: A Study of Its Principles from the Point of View of Islamic Law, Its Implementation in the Medina State Period and the Present*] (Jakarta: Bulan Bintang 1992) 76.

⁶² Indonesian Formation of Legislative Regulations Act (2011), Article 7 paragraph (1).

⁶³ Bagir Manan, *Teori dan Politik Konstitusi* (in Indonesian) [*Constitutional Theory and Politics*] (Yogyakarta: FH UII Press 2004) 133.

1. Legislation of a higher position can be used as a basis or legal basis for legislation that is lower or below it.
2. Lower-level legislation must be sourced or have a legal basis from a higher-level legislation.
3. The contents or content of lower-level laws and regulations must not deviate from or conflict with laws and regulations of a higher level.
4. A statutory regulation can only be revoked, replaced or amended by a higher or at least equivalent statutory regulation.
5. If similar legal regulations regulate the same material, the latest regulations must be applied, even though it is not explicitly stated that the old regulations are revoked. Apart from that, regulations governing more specific material must take precedence over more general statutory regulations.

From the principles contained in the sequence of statutory regulations as stated in Bagir Manan's opinion above, there are three legal principles, namely:⁶⁴

1. *Lex superiori derogate legi inferiori* which means that regulations of a lower level must not conflict with regulations of a higher level or regulations of a higher-level defeat regulations of a lower level;
2. *Lex posteriori derogate legi priori* means that newer legal regulations trump previously created regulations; and
3. *Lex Specialis derogate legi generalis* means that more specific regulations trump more general regulations.

In the Indonesian legal system, Islamic law has a very vital position. This means that juridically, the existence of Islamic law has long been recognised in the national legal system. However, it should be understood that law is a political product.⁶⁵ Therefore, it is reasonable to assume that the legal products that are produced will conflict with certain groups and vice versa.

As part of national law, Islamic law juridically contains norms and legal lines as regulated in the 1945 Constitution which states that the Republic of Indonesia is based on Belief in One Almighty God.⁶⁶ Commenting on the sound of the article, Hazairin then interpreted it into several points:⁶⁷

1. In the Republic of Indonesia, nothing may occur or apply that is contrary to the rules of Islamic law for Muslims, the rules of the Christianity, Hinduism, or Buddhism, as well as other religions and beliefs. This means that in the territory of the Republic of

⁶⁴ Abdul Manan, *Teori dan Politik Konstitusi* (in Indonesian) [*Constitutional Theory and Politics*] (Yogyakarta: FH UII Press 2004) 56.

⁶⁵ According to Mahfud MD, the concept "law is a political product" could be true but could also be false according to certain assumptions and concepts. This concept could be correct if it is based on das sein by conceptualising law as a statute. In fact, no one can argue that laws made by the legislative body are a form of crystallisation, formalisation, or legalisation of political will. However, the concept above could be wrong if the basic assumption is based on das sollen where law is not interpreted as law. So, it could be said that what should be "politics is a product of law". See: Moh. Mahfud MD, *Politik Hukum di Indonesia* (in Indonesian) [*Legal Politics in Indonesia*] (Jakarta: Rajawali Perss 2014) 5.

⁶⁶ Indonesian Constitution (1945), Article 29 paragraph (1).

⁶⁷ Ali (n 59) 86.

Indonesia, laws that are contrary to the religious norms and morals of the Indonesian nation may not apply and be enforced.

2. The Republic of Indonesia is obliged to implement Islamic religious law for Muslims, Christian religious teachings for followers of Christianity, as well as other religions and beliefs.
3. Shari'ah which does not require the assistance of State power to implement it can be implemented independently by each adherent of the religion concerned and this becomes a personal obligation towards God in accordance with the teachings of each religion.

As a positively recognised law, Islamic law, which is a manifestation of Islamic religious teachings, must be a parameter and indicator of compliance with religious teachings (Shari'ah compliance). This aspect of obedience is the basic essence of human diversity as religious believers who must present religious values in all their actions, including in terms of the laws they apply.

IV. PRINCIPLES OF TRANSCENDENTAL LEGAL CRITICISM

Efforts to construct TLC also depart from the critical thinking of Western society which has separated the values of spiritualism from the values of human life and civilisation. A National Research and Innovation Agency (BRIN) researcher, Suhirman, said that the Western view, which from the start separated spiritual values from all aspects of life, is considered a failure of modern civilisation.⁶⁸ On the contrary, the element of transcendence based on the Qur'an and hadith must be used as a basic element in the development of science and human civilisation.⁶⁹

TLC wants to reorient religious court's procedural law towards divine values as the basis for its development. Therefore, it should be seen that the procedural law of the Religious Courts in resolving Muslim's cases must refer to strong spiritual values, including the following principles.

A. Principle of Divinity

Divinity is a principal value in the theory of Transcendental Legal Criticism. This theory implies the existence of divine authority in every aspect of human life. Within the framework of Indonesia's legal order, in the preamble to the 1945 Constitution, it is stated, "By the grace of Almighty Allah and driven by a noble desire to live a free national life, the Indonesian people hereby declare their independence." The recognition of the presence of God's intervention in the struggle for Indonesian independence is concrete evidence of the contribution of divine values in the long history of the nation and at the same time confirms that Indonesia is a country that was born thanks to the grace of Allah SWT. Likewise, in the hierarchy of laws and regulations in Indonesia, divine values always accompany existing legal norms, both at the level of basic norms and other legal norms below them.

⁶⁸ Absori, 'Epistemologi dan Legalisasi Hukum Transendental' (in Indonesian) ['Epistemology and Legalisation of Transcendental Law'] in Suteki (ed), *Hukum Transendental: Pengembangan dan Penegakan Hukum di Indonesia* (in Indonesian) [Transcendental Law: Development and Enforcement of Law in Indonesia] (Yogyakarta: Genta Publishing 2018) 31.

⁶⁹ Kuntowijoyo (n 16) 27.

Pancasila⁷⁰ as the basic ideology of the Indonesian state places the principle of belief in one and only God as the first principle. Burhanuddin Salam interprets the principle of Belief in One God in the first principle of Pancasila as a symbol of the belief and confidence of the Indonesian nation and the State in the existence of the One and Only God.⁷¹ As a state ideology, Pancasila with its Godly principles is also present as a basic norm (*grundnorm*) in the legal hierarchy in Indonesia. Therefore, it should be noted that all applicable legal norms cannot be separated from divine values as the cornerstone of dignified law enforcement. This is in line with the words of Allah SWT:

“Let followers of the Gospel decide (affairs) according to what Allah has revealed in it. Whoever does not decide (a matter) according to the provisions revealed by Allah, then they are the wicked.”⁷²

The command to obey the law of Allah SWT is a necessity as stated in the verse. Commenting on this verse, Hamka in *Tafsir Al-Azhar* stated that obeying the law of Allah SWT for a Muslim is a necessity. However, of course, the application of Allah's law should be adjusted to the applicable legal system and not conflict with the spirit of 'bringing benefits and avoiding harm'.⁷³ Likewise with the threat to those who do not comply with the law of Allah SWT which places these people in the category of wicked people.

Thus, the agenda for development and renewal of national law, including procedural law for Religious Courts, must always be oriented towards realising the values of the Almighty God by exploring the values contained in religious teachings (Islam), which are then integrated into positive Indonesian law. Thus, the applicable laws will be in line with religious norms which always direct humans to the benefit and goodness of human life.

A. Principle of Justice

In legal philosophy discourse, justice will always be discussed as a universal legal goal in addition to other legal goals such as legal certainty and expediency. Often the discourse on justice leads to two schools of thought, namely John Rawls with his theory of justice, and Jurgen Habermas. Each of them attempted to find universal principles of justice, even though their critics later found this unacceptable considering the fundamental justice of the values that developed in their respective communities.⁷⁴

From the perspective of Islamic law, Ibnu Qayyim stated that Islamic law contains four elements, namely justice, mercy, benefit and wisdom.⁷⁵ Justice in Islamic law comes from God,

⁷⁰ Pancasila is the official, foundational philosophical theory of Indonesia. The name is made from two words originally derived from Sanskrit: "panca" (five) and "sila" ("principles", "precepts"). It is composed of five principles: 1) Ketuhanan yang Maha Esa (Belief in the one and only God), 2) Kemanusiaan yang adil dan beradab (Just and civilized humanity), 3) Persatuan Indonesia (The unity of Indonesia), 4) Kerakyatan yang dipimpin oleh hikmat kebijaksanaan dalam permusyawaratan/perwakilan (Democracy guided by the inner wisdom in the unanimity arising out of deliberations among representatives), 5) Keadilan sosial bagi seluruh rakyat Indonesia (Social justice for all the people of Indonesia).

⁷¹ Burhanuddin Salam, *Filsafat Pancasilaisme* (in Indonesian) [*Pancasilaism philosophy*] (Jakarta: Rineka Cipta 1987) 28.

⁷² Qur'an, Surat al-Māidah (The Table Spread) 5:47.

⁷³ Hamka, *Tafsir al-Azhar* (Jakarta: Gema Insani 2015) 234.

⁷⁴ Mahir Amin, 'Konsep Keadilan dalam Perspektif Filsafat Hukum Islam' (in Indonesian) ['The Concept of Justice from the Perspective of Islamic Legal Philosophy'] (2014) 4 (2) Al-Daulah: Jurnal Hukum dan Perundangan Islam 322, 333.

⁷⁵ Ibnu Qayyim al-Jauziyyah, *I'lām al-Muwaqqi 'in 'an Rabb al- 'ālamīn* (in Arabic) [*Informing the signatories about the Lord of the Worlds*] (Beirut: Dār al-Jayl n.d.) 3.

the Most Just, because it is Allah SWT who desires and upholds justice and Allah SWT never abuses His servants.⁷⁶ This is as stated by Allah SWT in the following verse:

“O you who believe, be your upholders of (the truth) for Allah (and) witnesses (who act) fairly. Don't let your hatred of a people encourage you to act unfairly. Be fair because (fair) is closer to piety. Have faith in Allah. Indeed, Allah is very careful about what you do.”⁷⁷

The verse above seems to explain that there is no law without justice. Even when someone has to uphold justice against someone, he is prohibited from being unjust because of his hatred towards that person. Moreover, in this verse it is emphasised that acting fairly is very close to piety. Therefore, enforcement of procedural law in the Religious Courts environment should also make the value of justice one of the main elements as a manifestation of a judge's devotion to God. So, in this way, he will decide all matters based on guidance from Allah SWT.

B. Principle of Morality and Ethics

From the start, the law has been explained as having noble legal goals and ideals. In the previous points, it was explained that transcendental legal criticism contains very high basic moral values, namely divinity and justice. The existence of law will be moral and ethical when these moral and ethical values are able to be implemented in the law enforcement process. So, it would not be wrong to say that the law enforcement process is a form of manifestation of abstract values, ideas, ideals and hopes which are the goal of the law itself. Soerjono Soekanto considers that the application of the law is a process of harmonising the values contained in rules/norms with behavioural attitudes as a form of elaboration of these values in the final phase.⁷⁸

In administering justice, a judge is also required to maintain the morals and ethics of the profession he carries out. Judges have a duty to maintain and uphold justice. Therefore, judges must distance themselves from things that cause them to deviate from upholding justice. They must avoid assumptions that arise from their personalities, such as dislike or hatred for one party so that it can make them more inclined to favour a particular party. This is confirmed in the Qur'an: “Don't let your hatred of a people encourage you to act unfairly.”⁷⁹

Actions that must be avoided by judges in administering justice according to the Islamic moral values are:⁸⁰

1. Prohibition of accepting gifts from parties in litigation;
2. Prohibition of giving fatwas on cases under investigation;
3. Prohibition of taking sides with one of the parties to the case;
4. The judge must be tolerant and patient in hearing complaints coming from the parties involved in the case.

⁷⁶ See Qur'an. Surat Yunus (Yunus) 10:449.

⁷⁷ Qur'an, Surat al-Māidah (The Table Spread) 5:8.

⁷⁸ Abdurrahman, *Perkembangan Pemikiran tentang Pembinaan Hukum Nasional* (in Indonesian) [Development of Thought on National Legal Development] (Jakarta: Akademika Presindo 1989) 35.

⁷⁹ Qur'an, Surat al-Māidah (The Table Spread) 5:8.

⁸⁰ Abdul Manan, *Etika Hakim Dalam Penyelenggaraan Peradilan* (in Indonesian) [Judge Ethics in the Administration of Justice] (Jakarta: Prenada Media 2004) 35.

C. Principle of Benefit

The word benefit comes from the Arabic word "*maslahah*" which means everything that has a lot of goodness and benefits.⁸¹ Terminologically, *maṣlahah* is defined as taking advantage and preventing evil (*sharr*) in order to safeguard and maintain the objectives of Islamic law (Shari'ah). The aim of Shari'ah is to protect religion, soul, reason, lineage, and property.⁸² All activities carried out by a person to maintain these five goals are called *maṣlahah*.

In the process of administering justice, the value of benefit is one of the pillars of law enforcement in addition to justice and legal certainty. Benefit is a value that is very close to the principle of legal benefit. The benefits of the law must of course be considered because everyone, especially the litigants, really hope for benefits in the law enforcement process. Often when discussing law, we tend to only look at the statutory aspects. In fact, these regulations are not necessarily perfect and do not accommodate the interests of the wider community.

Benefits are the rights and responsibilities of humans as a whole without being limited by certain groups or certain flags, because Allah SWT will not order something except for the benefit of His servants. Ash-Shatibi stated that "where there is benefit, there is Allah's law"⁸³. In the Qur'an, Allah SWT says: "So whoever believes and does good deeds, there is no fear of them, and they do not grieve."⁸⁴ It can be understood that the verse above gives the message that providing benefits is the duty and responsibility of anyone who claims to be a believer. So that in law enforcement efforts when it is about to lead to benefit, Allah SWT will bring him a sense of security without fear so that he is able to provide benefit and safeguard wider interests for the sake of just law enforcement.

V. CONCLUSION

Islamic law that applies in society is a law that originates from God's revelation and human reasoning in understanding that revelation. Thus, the existence of Allah's law cannot be ruled out in any legal product created and enforced by humans. The existence of transcendent divine values should be positioned as a filter element and a raw material in the formation of a law. So, it is not wrong to say that laws made by humans will always be accompanied by God's laws to create the highest goal of the law itself, namely justice accompanied by morality.

In the process of its formation, law will always be coloured by various elements that follow it, such as politics, economics, socio-culture, and so on. Therefore, it can be said that it is impossible for law to be separated from the non-legal elements that accompany it. Efforts to criticise legal products and legal systems should start from transcendental values, remembering that law is in principle a product of God. The theory of transcendental legal criticism (TLC) shows that Islamic law has laid the foundations for the implementation of everyday law so that humans are able to distinguish right from wrong, good, and bad. On the other hand, those who do not carry out the laws of Allah SWT are given a stern warning.

TLC considers that law is not value-free, but rather requires fundamental values such as divine morals in addition to the values of justice and benefit. On the other hand, the existence of

⁸¹ Ibnu Manzūr, *Lisān al-‘Arab* (in Arabic) [*The Tongue of the Arabs*] (Beirut: Dār al-Fikr 1386) 227; Louis Ma'luf, *al-Munjid fi al-Lugah wa al-A'lām* (in Arabic) [*al-Munjid in Language and Media*] (Beirut: Dar al-Masyriq 2002) 432.

⁸² al-Shatabdi, *al-Muwāfiqāt* (in Arabic) [*The Approvals*] (Qairo: Dār al-Faḍlalah 2010) 237.

⁸³ Juhaya S. Praja, *Teori-Teori Hukum; Suatu Telaah Perbandingan Dengan Pendekatan Filsafat* (in Indonesian) [*Legal Theories; A Comparative Study with Philosophical Approaches*] (Bandung: Post Graduate State Islamic University Bandung 2009) 97.

⁸⁴ Qur'an, Surat al-An'ām (The Cattle) 6:48.

transcendental values must be interpreted as a filter that can filter certain laws and legal products so that they can be reoriented towards the main goal of the Shari'ah, namely justice for humans and morality. By being guided by several principles, such as: 1) divinity, 2) justice, 3) morals and ethics, and 4) benefit, TLC using critical reasoning will construct a law that is closer to the principles of Islamic law.