

Legal Transendence Theory: Traces and Efforts to Build Transendent Legal Paradigm

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ABSTRACT

This research will examine the most basic problems in building a transcendent legal epistemology in the form of a pyramid level to maintain the hierarchical vision of science as an intellectual tradition in order to maintain the continuity of science in responding to the needs of society, even though it experiences discontinuous turmoil. As the pyramid building illustrates, the strength of the transcendent law paradigm must be at its foundation and solid foundation. The power of the transcendent legal paradigm is taken from the pieces of knowledge that have existed and scattered in scattered pieces of history which are then put together and reconfigured in the order of ontology, epistemology and axiology. In fact, there is no single method used in science whose presence displaces and overrides other methods. In modern science itself, it has been recognized that there is a plurality of methodologies, especially among historians and philosophers of contemporary science. Even some of them have progressively broadened their views so that they openly accept the presence of the Bible as one of a plurality of methodologies. Through this pilot research, it is hoped that there will be a picture that can encourage the importance of tracing traces of legal transcendence to lay the foundation of the transcendental legal paradigm pyramid.

Keywords: Tracing traces, Transcendence, Pyramid, Transcendent Law Paradigm

INTRODUCTION

The discourse on building a transcendent legal epistemology seems to be starting to find a clearer form and getting positive responses from various circles. Reflections on the journey of legal philosophy thought have long started and have now reached a nadir point so that a more radical epistemological reconstruction is needed. The root of the problem that is currently happening is the birth of a new belief in the form of distrust of modern humans towards the concept of modernism in all aspects of life. Desacralization of science as a result of renaissance in the West has given birth to a materialistic paradigm, continuing in the era of positivism which considers everything to be measured based on empirical logical truths and can be tested through a verification process. Scientific activity then requires releasing the divine dimension on the object of study, both in materialism and naturalism. Humanistic spirituality which is taught and upheld by religion is deeply eroded by rational and materialistic thinking patterns. (1) Continuous development during the last

¹ Ach. Maimun Syamsudin. *Integrasi Multidimensi Agama & Sains*. Yogyakarta: IRCiSoD; 2012. P. 5



century gave birth to a new awareness for some circles about the importance of human dignity, (2) especially in the face of civilization and science.

The existence of a transcendental legal paradigm has become a turning point for hegemonic positivism which has been questioned so far because of its destructive impact on human life. (3) The most serious problem of positivism is its zeal to ensure the importance of law develops at its own pace by breaking the social system relations between the theological, metaphysical and positive phases. (4)

The journey of law science has gone through a long and winding road. The dialectic of legal thought develops so fast in terms of human civilization, but soon stops at a certain "saturation point". The science of law faithfully accompanies the strides of human history and then spells out each of its behavior the depth of postulates that are refined into theory. Disassembly is a necessity that always occurs in accordance with the rhythm of life. Therefore, the field of legal science is always in a position to shift from the frontier - often it has to break through the limit - so that it is known as the changing frontier of legal science, but it still leaves fluid boundaries in order to grow and dynamic developing. The quality of legal science can be measured from the challenges and historical temptations that follow it and legal philosophy provides space to always process to form its own image even though there is no guarantee of its perfection, so that law becomes a science that is always in a process of formation (legal science is always in the making). (5)

The chaos that has colored debates about the dynamics of legal science from time immemorial is in many ways caused by the loss of the hierarchical vision of science as an intellectual tradition that intends to maintain the continuity of science in responding to the needs of society, despite experiencing discontinuous change fluctuations. In fact, there is no single method used in science whose presence displaces and overrides other methods. In modern science itself, it has been recognized that there is a plurality of methodologies, especially among historians and philosophers of contemporary science. Even some of them have progressively broadened their views so that they openly accept the presence of the Bible as one of a plurality of methodologies. (6)

Tracing the traces of legal transcendence is important based on the assumption that the concept of transcendence with its various variants has been carried out by philosophers in different times

2 | Indonesian Journal of Legal Thought (IJLETH)

² Abdullah Saeed. *Interpreting The Qur'an : Toward a Contemporary Approach*. New York: Ny, Routledge.

³ Roger Garaudy. *Mencari Agama Abad XX, Wasiat Filsafat.* translated. H.M. Rasjidi. Jakarta: Penerbit Bulan Bintang; 1986. P. 61-62.

⁴ Auguste Comte (1798-1857) known as the inventor of positivism divides the three stages of community development (loi des trois etats). The first stage is the theological stage where humans still believe in a divine power behind natural phenomena. The second stage is metaphysical. In this stage, a critique of all thoughts begins, including replacing theological thoughts with abstract ideas from metaphysics. The third stage is positive, which is seeing a phenomenon that is no longer related to the abstract idea of nature. A symptom can only be explained by other symptoms to get constant symptoms. The laws are nothing but phenomena a constant relation between existing phenomena.

Satjipto Rahardjo. Hukum Progresif Sebagai Dasar Pembangunan Ilmu Hukum Indonesia dalam Menggagas Hukum Progresif Indonesia. IAIN Suka dan Porgram Doktor Ilmu Hukum UNDIP. Yogyakarta: Pustaka pelajar;

⁶ Osman Bakar. *Tauhid dan Sains (Esai-Esai Tentang Sejarah dan Filsafat Sains Islam*). Bandung: Pustaka Hidayah; 2004. Hal. 25. Lebih jauh Osman menyarankan untuk mendalami persoalan ini melalui karya P. Fereyabend. Against Method. Edition Verso; 1982. P. 30.



and places. Tracing the thought traces in question will be able to provide a number of information that can lead to conclusions about weaknesses, strengths and possible empty spaces that can be filled. The importance of tracing this trace in a broader context can be exemplified in the case of the emergence of various schools of law in which all continuity can be traced through legal epistemology. Hans Kelsen with his pure law theory (Reina Rechtslhre), when sequenced, will end in Neo-Kantianism. John Austin's legal analytic positivism is based on Logical Positivism. The Legal Positivism View of H.L.A. Hart is rooted in the teachings of Karl Popper's Critical Rationalism and Popper's own teachings have inspired Empirical law science.⁽⁷⁾

In this paper, a description of tracing traces of legal transcendence to build a pyramid of transcendent legal paradigm will take philosophical thoughts that represent the development of each period, namely the Scholastic period or the early Middle Ages represented by Augustine (354-430) an influential Christian philosopher and Al-Farabi (890-950) representation of the most prominent Muslim philosophers of his time. The Age of Rationalism was represented by Immanuel Kant (1724-1804) and the Age of Postmodernism was taken by Kuntowijoyo. The collection and classification of figures above are based on the concept of legal transcendence with all of its derivations that were conceived in his time, both as initial ideas that are still etymological and terminological boundaries and in a complete form in the form of philosophical views, concepts or theories. As a pioneering study written in a matter of days, this discussion will take the main ideas of the figure in question only limited to the concept of legal transcendence so that it is expected to be able to strengthen the pyramid structure in building a legal transcendence paradigm while keeping the hierarchy of science in order to build contemporary science come later not easily deterred.

From the description above, this research intends to answer a number of problems summarized in important questions, namely how is the traces of the transcendent concept according to Augustine, Al Farabi, Imanuel Kant and Kuntowijoyo and what is the shape of the transcendent law pyramid building.

RESEARCH METHODS

The research method in this journal is a normative juridical research method with a concept approach where the concept of legal transcendence in this paper refers to the approach of philosophers who base their thinking not to stop at the sensory ability to respond to reality as understood by positivism, but go beyond (*transcendent*) that can be found in the universe. Transcendence can also mean abstract or metaphysical thinking. (8) Thus legal transcendence is a method and way of thinking that is based on holistic sources including, among others, God's Revelation in the form of the Scriptures and other primary sources in religion.

⁷ Haedar Laudjeng & Rikardo Simarmat. *Pendekatan Madzhab Hukum Non-Positivistik dalam Bidang Hukum Sumber Daya Alam (Pengalaman di Sumbar, Kalbar, Sulteng, Maluku dan Papua)*. Jurnal Wacana Gerakan Studi Hukum Kritis. Edition VI. Yogyakarta: Insist Press. 2000; P. 121.

⁸ Kuntowijoyo. *Muslim Tanpa Masjid (Esai-esai Agama, Budaya dan Politik Dalam Bingkai Strukturalisme Transendental)*. Bandung: Penerbit Mizan; 2001. P. 16.



RESULT AND DISCUSSION

A. The Concept of Transcendence by Characters

This research is a pilot research that has never been done before, especially in the same theme and on the main variables. As for the problems discussed in this study according to Augustine (354-430) As an influential philosopher in the Middle Ages who put forward several things, including the opinion of this figure, became one of the research points because Augustine in his philosophical thinking used a transcendent "phrase" that was always confronted immanent. Besides that, his religious life was very strong as a Christian, which in some respects had the same understanding as the Islamic philosophers in the late Middle Ages period, especially in terms of philosophy and its position with the scriptures.

In addition to Augustus, the writer also took a reference from Al-Farabi (890-950). As a Muslim philosopher who was the same contemporary (*scholastic*) with Augustine, Al-Farabi was a central figure of the Peripatetic scientist and philosopher (*masysya'i*) who was known for making classification of science which greatly influenced the early period of Islamic history and much influenced medieval western philosophy. As a judge who later pursued philosophy, Al-Farabi was a Muslim philosopher who had in-depth knowledge of various sciences including law, although he did not receive a reasonable portion (very limited) compared to other scientific discussions. The primary source of the study of Al-Farabi's thoughts on legal transcendence is taken from Osman Bakar's book Hierarchy of Sciences to Build a Framework for Islamization of Science with the 1992 publisher of Mizan Bandung.Osmar Bakar himself is known as a scientist who is very passionate about realizing the idea of the Islamization of Science. One of Osmar's original works is the book.

Another idea that the author uses is Immanuel Kant (1724-1804), a character in the period of modern legal philosophy who is famous for successfully synthesizing two choices of philosophical schools in his time, namely rationalism and empiricism. Kant did not choose the two mainstream schools because he had his own thoughts. The choice of these two schools is considered unrealistic because they are trapped in the falsity of knowledge. To explore Kant's thoughts, he used a book that specifically discusses legal transcendence, namely the Critique of Pure Reason translated into English by JMD Miklejohn published in New Yotk by Promotheus Books Publisher in 1990. To help understanding it is assisted by a book by Reza A. Wattimena with the title Philosophy Immanuel Kant's Critical: Considering Immanuel Kant's Criticism of Metaphysics.

The author also makes Kuntowijoyo's thoughts (1943-2005) as a reference in this paper because even though the scientific category is history with social science clumps, it has a significant contribution to the development of transcendent law science in Indonesia. Even though there are still many misunderstandings, especially the big idea of prophetic science, at least it has provided a philosophical basis to be developed so as to get a more complete form of transcendence, spirituality and prophetics. So many scientific riches scattered everywhere, some have been recorded and some are still unclear. For the purposes of this research the authors use Kuntowidjo's own books among

⁹ Sayyed Hossein Nasr dalam pengantar buku Osman Bakar. *Hierarki Ilmu Membangun Rangka Pikir Islamisasi Ilmu*. Bandung: Penerbit Mizan; 1992. P. 13.

Roger Scruton. A History of The Philosophy from Descartes to Wittgenstein. London: Routledge & Kegan Paul; 1990. P. 133.



Muslims without mosques and Islam as a science: epistemology, methodology and ethics published in 2006.

The four philosophers above have pioneered the concept of legal transcendence from the scholastic, rational to postmodernism era today, namely Augustine, Al-Farabi, Immanuel Kant and Kuntowijoyo who represent their time. His contribution to the idea of the relationship between God, revelation, nature, reason, prophets and other metaphysical matters has actually provided sufficient capital to develop a transcendental legal paradigm pyramid. Every effort to develop any knowledge is appropriate so that the history of genealogy can be followed in order to know the weaknesses, advantages and empty spaces that may be filled.

1. Transcendence: Augustine's Perspective

The historical stages of legal philosophy recorded that in the middle ages it was enlivened by the bustle of the fall of the Roman empire which was followed by the birth of a new civilization which was marked by the existence of Christianity and Islam on the one hand with the emergence of new nations on the other, namely Europe and Arabia. Therefore the medieval period which lasted for a thousand years was very different from the previous period because there were many major events that influenced the development of human civilization until now. To explain the atmosphere that reflects the development of religion-based (Christian) science, this century is often known as the Scholastic Age (*scolasticus*) which means teacher, a servant of science.

The important figure of this school is Augustine whose thought was able to survive from the 5th to the XIII centuries, namely before the appearance of Thomas Aquinas who would perfect his legal theories. As a Christian thinker, Augustine believed that the most appropriate way to know God was through the Bible, while philosophy functions to explain and confirm the truth contained in faith.

Philosophy is made servant of theology (ancilla theologiae). Allah is not only Divine Budi but First Divine Will or Love. Through His Budi God created nature and kept Him because in Allah there is a plan for the running of the universe which is called the eternal law (lex aeterna). It was with this theory that Augustine accepted the views of the Stoics, although they differed in other respects. The Stoics saw "plan" as immanent in the world, while Augustine thought that he was transcendent towards the world because it lay in the Budi Allah himself. The eternal law lies also in the human soul so it is called the natural law (lex naturalist) which can be felt through justice, namely "do not do to others, something we do not want others to do to us". (11)

Augustine had an ambiguous and less clear view of positive law. Sometimes they argue that the law must be based on natural law, but on other occasions the validity of the law depends on ratification by the state. Augustine seems to have inherited a dilemma that will always arise throughout the history of legal philosophy, namely whether law must be fair to act as law, or is it sufficient that a rule comes from legitimate power?⁽¹²⁾

The transcendence of law according to Augustine is a plan for the running of the universe called the eternal law (lex aeterna) which is inherent in God (not immanent) so that it can only be approached transcendently.

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¹¹ Theo Huijbers. *Filsafat Hukum Dalam Lintasan Sejarah*. Yogyakarta: Penerbit Kanisius; 1982. P. 35.

¹² *Ibid*, P. 38-39.



2. Transcendence: Al-Farabi's Perspective

His full name is Abu nashr Muhammad Ibn Muhammad Ibn Muhammad ibn Tarkhan ibn Auzalagh Al-Farabi, a leading Muslim philosopher after al-Kindi from the Peripatetic philosophy school (masysyai). After completing his study of religious sciences, al-Farabi became a qadhi (judge) who was then tempted after meeting a philosophy teacher so that he left his worker as a judge and wandered into drowning in the search for philosophy.

The main reason for leaving the profession was due to his dissatisfaction with Aristotelian logic which he had received since his main course of mastering theological jurisprudential logic, namely Adab Al-Kalam or Adab Al-Jadal. Al-Kindi was not satisfied with the nature and scope of the study in the book. As a Muslim philosopher, Al-Farobi's ideas about legal transcendence are very clear, namely faith. The difference is in depth when examining this faith. In his book al-milat al fadhilah it is said that theoretical opinions in religion have evidence in theoretical philosophy, even though in the context of religion they are accepted without proof. (15)

Al-Farabi like Ibn Sina put reason in a strategic position to reach transcendent truths and use his logic to get out of the problem. Al-Farabi does not deny the fact that there is a negative aspect to reason when the mind is extinguished by the passions of the animal soul. The mind of the philosophers who strive to attain the transcendent truths found in revelation is not a mind covered by lust, but a healthy and safe mind (salim). This is Al-Farabi's most basic postulate that the power of thought becomes sharp when man cleanses the soul and directs his desires towards Truth, not towards sensual pleasures.⁽¹⁶⁾

3. Legal transcendence: Immanuel Kant's perspective

Immanuel Kant (1724-1804) who lived in the modern age in the history of philosophy inherited the traditional Greek logic which had been developed critically by philosophers afterwards. If in the Middle Ages logic was used as an instrument to strengthen religious teachings and did not criticize the logic it used, Kant criticized the building of logic from Greece, Descrates' extreme rationalism to Hume's Empiricism, initiated logic as a form of criticism of both knowledge and religion. (17)

Immanuel Kant is also known for his ability to marry between idealist and empirical traditions. (18) Kant was one of the productive philosophers who wrote many works which actually had the main goal of building a transcendental philosophy, a system that is generally applicable and absolute. For some philosophers, knowledge can be derived from experience, but in fact they are unable to obtain general and absolute knowledge. Therefore absolute and general knowledge should not be mixed with the elements of experience, but must be attached to reason to discover the basic principles for knowledge in all its forms. (19)

¹⁶ *Ibid.*, P. 214

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¹³ Sayyed Hossein Nasr. *World Spirituality Islamic, Spirituality, Manifestation*. New York: The Crossroad Publishing Company; 1991. Vol XX: P. 411.

¹⁴ Osman Bakar. *op.cit.*, P. 29-30.

¹⁵ *Ibid.*, P. 89.

¹⁷Alim Roswantoro. *Logika Transendental Kant Dan Implikasinya Bagi Kemungkinan Pengetahuan Islam.* Al-Jami'ah Journal of Islamic Studies. 2000; 38(2): P. 394.

¹⁸ Amin Abdullah. *Filsafat Kalam di Era Postmodernisme*. Yogyakarta: Pustaka Pelajar; 1995. P. 23.

¹⁹ Theo Huijber. *op.cit*. P. 94.



Kant divides his transcendental logic into two parts, namely transcendental analytics and transcendental dialectics. In transcendental analysis, Kant mentions that something that can be captured in the large category of space and time is "phenomenon", but phenomena become meaningful to discuss what is not a phenomenon, namely "things in themselves", the object itself or "noumena".

In Kant's logic, we cannot understand something as a transcendental object. The reality that we can intuit or perceive is actually a phenomenon that appears in time and space. (20) Kant's teaching in the field of law is found in his Metaphysik der Sitten (philosophy of decency) in 1797. Kan divides knowledge into two, namely theoretical and practical knowledge, law including the field of practical knowledge.

4. Legal transcendence: Kuntowidjoyo's perspective

Kuntowidjoyo (1943 - 2005) is an Indonesian historian who is widely known for trying to put down the process of Islamization of science which is epistemologically very complicated but presented with simple logic. Kunto called it a transcendental structuralism approach. The spirit that was built by Kuntowidjoyo was to find an appropriate method to be able to take the spirit of Islamic teachings, namely the Al-Qur'an and As-Sunah to be applied in the present with different time, place and social contexts. (21)

The choice of method with the choice of structuralism is not without reason but because of the strong influence of this school in almost all fields of social and humanities sciences, and also the purpose of using transcendental structuralism is not to seek understanding of the text of the Qur'an and hadith but to find a way to practice without changing Islamic teaching structure itself. (22)

Transcendental structuralism originates purely from the flow of structuralism as in social science with two main characteristics, namely first; his attention to wholeness and totality. Analytical structuralism studies the elements, but it is always placed under the web of the elements.

Elements can only be understood through interconnectedness between elements. Second, structuralism does not seek structure on the surface, at the level of observation but beyond empirical reality. What (deep structure) and down again are the innate structuring capacity. Third, at the empirical level, the linkages between elements can be in the form of binary opposition (conflict between two things). Fourth, structuralism pays attention to synchronous not diachronic elements. (23) Kuntowidjoyo elaborates transcendental structuralism by providing religious solutions with this approach in the muamalah field so that it is not outdated. The expansion of muamalah is built based on six kinds of awareness, namely (1) awareness of change (2) collective awareness (3) historical awareness (4) awareness of social facts (5) awareness of abstract society (6) awareness of the need for objectification. (24)

²³ *Ibid*., P. 14.

²⁰ Immanuel Kant. *Critique of Pure Reason.* Translate. J.M.D Miklejohn. New York Promotheus Books. 1990. P. 156-167.

²¹ Kuntowidjoyo, *op.cit.*, P. 9

²² *Ibid.*, P. 10.

²⁴ *Ibid.*, P. 21.



B. Transcendent Legal Paradigms and Perspectives

Not many scientific works have discussed the transcendent legal paradigm. However, the direction towards transcendence as an epistemological approach has been pioneered with various various studies. For example, in his inauguration as professor of Legal Theory Prof. Dr. Khuzaefah Dimyati explained about the Horizon of Legal Thought in Indonesia: A Dialectical Process Towards Postmodern Legal Thought (2005). The main thesis of Postmodernism as a philosophical school is to revive the values of spirituality (transcendence) that have been buried in the arrogance of modernism on the basis of the philosophy of positivism. Therefore, this writing can be an entry point to explore the transcendent legal paradigm.

Reflection on the journey of legal philosophy thought has long started and it seems that now it has reached a nadir point so that a more radical epistemological reconstruction is needed. Massive movement and directional acceleration are required in order to get a clearer shape. As the pyramid building illustrates, the strength of the transcendent law paradigm must be at its foundation and solid foundation. The power of the transcendent legal paradigm is taken from the pieces of knowledge that have existed and scattered in scattered pieces of history which are then put together and reconfigured in the order of ontology, epistemology and axiology.

Building transcendental legal epistemology is a necessity that must be developed continuously to raise the dignity of law in the midst of the vortex of scientific paradigm change. Some critical thinking provides a very possible opportunity to reconstruct the legal paradigm in order to dialogue with other scientific disciplines to provide mutual reinforcement because the common point is the spirit of developing transcendent values as human nature. Emergent philosophy offers new ways in which science, philosophy and theology can greet one another.

Cara which is done by discussing intensely and deeply to the conceptual level of the law type; namely the law of divine character, the law of revelation, the law of nature, the law of human nature and behavior, and moral law. Such activities can prove that in fact there is no need for tension between belief in God and science, but what needs to be built is a mutually reinforcing relationship. The development of god-based science will strengthen science because it answers many problems that have not been obtained from science.⁽²⁵⁾

Another possibility that describes the epithymology of transcendental law will have a strategic place is an important moment in the emergence of awareness in various contemporary sciences that have the same desire to explore transcendence into a new paradigm. Even in exact science these efforts have been done intensively and have shown encouraging results.

Taufik Pasiak's study of neuroscience as a branch of medical science illustrates that the exploration process of transcendence has shown more concrete results by finding an understanding of the mechanisms of consciousness, the mind-body relationship, the relationship of intelligence and life success. (26) Neoroscience research has uncovered the secret behind its success using only a single parameter of intelligence (IQ).

²⁵ Absori. Epistimologi Ilmu Hukum Transendental Dan Implementasinya Dalam Pengembangan Program Doktor Ilmu Hukum, Paper Presented at the National Seminar with Themes "Pengembangan Epistimologi Ilmu Hukum", 11 April 2015 in Universitas Muhammadiyah Surakarta.

²⁶ Taufik Pasiak. *Revolusi IQ/EQ/SQ: Menyingkap Rahasia Berdasarkan Al-Qur'an dan Neorosains Mutakhir*. Bandung: PT Mizan Pustaka; 2008.



The higher the IQ, the greater the chances of success in life. In the early 1990s Daniel Goleman showed that success also depended on emotional intelligence Emotional Quotient (EQ), namely the ability to empathize, compassionate, and understand the feelings of oneself and others. Entering 2000, Danah Zohar and Ian Marshall claim that there is another intelligence that must be considered, namely Spiritual Quotient (SQ) which is the highest intelligence, namely the ability to be creative, change rules, change situations, and grasp meaning.⁽²⁷⁾

In its future development, it is believed that the position of spiritual intelligence will be the key and capital (*Spiritual Capital*) in achieving success, especially meaningful life success, namely success that is beneficial to oneself and others. ⁽²⁸⁾ Furthermore, neoroscience has revealed the biological aspects of the transcendent platform in the work of the human brain.

Everyone has a biological circuit whose main function is to drive the activities of the transcendent dimension that every human being has, regardless of their religion. Trends related to spirituality have deep roots in the findings of neo-scientific research. Experts reveal that brain function is not only complex but is very rich in supporting not only rational activities that involve the senses (memory, perception and thinking) and emotional activities (feeling, expression etc.) but the brain is also an effective driving machine in carrying out activities. spiritual.

A number of chemical mechanisms will appear to work well, including a gene encoding a serotonin neorotransmitter carrier protein called VMAT (Vesicle Monoamine Transporter). If religion is passed down through a set of cultural doctrines called memes, then spirituality is passed down through genes. The neurotransmitter serotonin influences spirituality by changing consciousness which can be defined as the human taste or sensitivity to reality, awareness of oneself, the universe and including thoughts, memories and perceptions. (29)

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9 | Indonesian Journal of Legal Thought (IJLETH)

²⁷ Danah Zohar dan Ian Marshall. *SQ (Kecerdasan Spiritual).* translated. Bandung: Mizan; 2007. P. 103.

²⁸ Golleman Daniel. *Kecerdasan Emosi*. translated T. Hermaya. Jakarta: Gramedia, 1995. P. 150.

²⁹ Hamer Dean. *Gen Tuhan Iman Sudah Tertanam Dalam Gen Kita*. Jakarta: Gramedia; 2006. P. 13.



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