Transcendental Justice Law: The Relation of Law and Justice

Syaifuddin Zuhdi
Universitas Muhammadiyah Surakarta
sz123@ums.ac.id

ABSTRACT

The purpose of this article is to explain the relation between law and justice in order to realize a law that is transcendental justice. The method used is a normative method or literature study with a philosophical approach. The findings from this discussion are that justice is not only talking about benefits and harm such as the principles of justice according to Bentham and Rawls, a good law is a law that is able to represent the values of God's justice, such as equality (egalitarianism), balance, harmonization, ta'awun (helping each other), recognizing and respecting each other's rights and obligations, and so on, both in the text of the law, as well as in its application. On the other hand, bad law is a law that deviates(deviative) from the values of justice. This law is like a parasite that only causes damage to society. Justice and truth are not the main pattern, but power and worldly satisfaction are the pattern.

Keywords*: Transcendental Justice, God's Justice, Transcendental Law, Legal Relations*

INTRODUCTION

The discussion of law cannot be separated from the discussion of justice. This is a necessity, that justice must be guaranteed and contained in the law. In "Law and Justice" Yusuf explained that the law cannot be separated from the ultimate goal of state and community life, namely justice (Yusuf, 2015). With the law or rules, people can live with justice.

According to Yusuf (Yusuf, 2015), Justice law is a law that has regularity and respects human dignity, so it can be said that the ultimate goal of law is justice that supports the welfare of society.

This becomes interesting when discussing justice in supporting the welfare of society, as we know, the rational positivistic *mahdzab* (view), especially in Indonesia, prioritizes legal certainty and then the realm of justice.

Existing justice is often only based on ratios, so the question arises whether the justice mentioned above can support human welfare? The initial assumption of the author is that justice can prosper materially, but what about justice that prospers materially and spiritually or inwardly?

To get answers to the questions above, we need to first understand the meaning of justice and its development. Although in general justice has various meanings and multiple interpretations because of its abstract nature.

Historically, the concept of justice has been divided into several periods, including the classical, medieval, and modern periods, each period having different characteristics. The characteristics of justice in classical times have an emphasis on morality. This is because they assume that justice is part of morals and ethics (Briando, 2017). Aristoteles in Bertens (Bertens, 2007) states that justice can be interpreted by giving someone what is due or something that belongs to him. Meanwhile, Ulpianus stated that justice is a continuous will to give everyone what they should have (Yusuf, 2015).

The perspective of justice after the classical period ended began with the emergence of new figures of medieval European thinkers such as Jeremi Bentham. Bentham's thinking is generally influenced by the spirit of resistance to the shackles of human freedom (Ludigdo, 2005). Humans according to this view are shackled by destiny and religious myths. On this basis emerged a determination to save man from the slaves of destiny, his fear of the gods, and religious myths as have become part of the tradition of classical philosophers. Therefore, this thought is also known as adherents of freedom of will. With his freedom then human leads to happiness. It was at this time that the beginning of the separation of religion from the joints of community life. Happiness and individual freedom began to receive more attention, giving rise to a new understanding known later as utilitarianism (Chryssides & Kaler, 1993).

According to Putuhena (F. Putuhena, 2013) The big idea of happiness eventually gave rise to the concept of the welfare state. Putuhena further said that the basic idea of the welfare state dates back to the 18th century when Jeremy Bentham promoted the idea that the government has a responsibility to ensure the greatest happiness (or welfare) of the greatest number of their citizens.

In this idea Bentham uses the term 'utility' to explain the concept of happiness or well-being. The concept of 'utility' is what eventually gave rise to a theory which became

known as utilitarianism. The theory of utilitarianism argues that something that can lead to extra happiness is something good. On the other hand, something that causes suffering and pain is a bad thing. According to this concept, the merits of an action or action are only measured by the "results" obtained from the action (Triyuwono, 2011).

Bentham started his theory by taking the notion of psychological hedonism (Triyuwono, 2017). These understanding views that all humans in reality always try to get pleasure and avoid suffering (pain). Thus, it is not surprising that justice in Bentham's perspective sees that the main measure in assessing a case is the result or consequence of the action(Triyuwono, 2011). But on the way, Bentham's view was broken. As stated by Mangunsong N. (Mangunsong, 2011) that the justice which Bentham exalts from the value system of utilitarianism which measures the maximization of happiness from the quantitative majority who enjoys is in contrast to the minority. Minorities tend to be neglected or unable to enjoy their fair share of the happiness they seek. Minorities only get pseudo justice, because basically utilitarianism emphasizes that the purpose of law is to realize what is beneficial or useful *(doelmatig)* for people, namely realizing as much happiness as possible for as many people as possible.

But in practice, two theories above basically still have weaknesses. The weakness is an imbalance or too one-sided between one side to the other. Ethical theories that attach great importance to justice tend to ignore legal certainty *(rechtszekerheids)*. According to Yusuf (Yusuf, 2015) The tendency to ignore legal certainty needs to be observed considering that this can have a destructive effect because it will disrupt the aspect of order. In fact, justice must be realized properly in order. On the other hand, utility theory tends to ignore justice by attaching great importance to legal certainty. The tendency to neglect justice will also have a destructive effect, considering that law is synonymous with power. Besides that, the two theories have absolutely nothing to do with spiritual or inner aspects, because they are only based on materiality.

From the explanation above, it can be seen that there is a dichotomy towards the application of justice, in which the tendency that appears in a modern law is justice based on materialism alone.

Therefore, here the author tries to offer the concept of justice which is not only material but also spiritual in nature, namely transcendental justice. So, the problem to be

answered is how is the relation between law and justice in realizing transcendental justice?

DISCUSSION

1. The transcendental paradigm

The existence of inequality in the basis of modern science raises a new concept that is based on spiritual, moral, ethical and cross-border aspects. According to Absori (Absori, 2015), this is called the transcendental dimension, the transcendental dimension is not only understanding things based on theological/spiritual aspects, but also more than that, the issue of values can be dialogued with issues of scientific, social, cultural, economic, and legal development (Absori, 2015).

Humans are given sense by Allah with the aim of making humans think, there are many verses in the Qur'an that guide this, including: QS. Al-Baqarah verse 165; Q.S. Yusuf verse 109; QS. Al-Hashr verse 14: Q.S. Al-Hujurat verse 7; QS. Ali-Imran verse 7 and there are still many verses that show the function of reason, even threats against people who do not use their minds.

According to Absori (Absori, 2015) Spiritual intelligence is the human ability to understand the meaning of life activities (worship) through natural steps and thoughts, towards fully human beings *(hanif)*, and have an integralistic thought pattern (tawhid), and have the principle of "only because of Allah" they are active. A person interprets his life or profession as worship for the benefit of mankind and his God. Thinking monotheism understands all conditions, social, economic, and political situations in one (integral) unit. In it there is the freedom of an independent and independent soul solely because of *la ilaha illallah*, and what is done gives *rakhmat lil alamin*.

So that the ideal keyword to explain the transcendental paradigm is to interpret universally, holistically and thoroughly on a matter based on faith in God.

The discussion about this transcendental paradigm has an influence on the science of law, in the perspective of transcendental legal science, legal science is not only based on the truth at the level of *haqq alyakin*, which is compiled in the Qur'an and Hadith, but also based on the truth that is obtained by the ability of human potential through reflection, reasoning and discourse that develops in society.

Humans explore, process and formulate knowledge with the aim not only for knowledge but also for policy, benefit the wider community, with the pleasure and love of Allah (Absori, 2015).

Transcendental jurisprudence begins with the will of Allah to His creatures who were sent down through His prophets and messengers, the missionaries and saints who are always *istiqomah* and hold fast to the divine line *(sunnahtullah)*. Sunnahtullah is the basis of the philosophy of natural law spelled out through His verses both written (the Book and the Sunnah) and those that are described in the universe and the reality of life. Transcendental law is intended to guide human life to achieve happiness in this world and the hereafter (Absori, 2015).

Transcendental law can only be understood with a holistic approach that sees humans and their lives in a complete form, not only material but spiritual. Transcendental law can not be separated between the physical body (formal) and transcendental values. The justification for transcendental law that is being sought is for the sake of justice based on the truth of the power of God, the Almighty Essence, the determinant of life and human life. Transcendental law is oriented to the benefit of humans as a form of compassion for His creatures (Absori & Nugroho, 2019).

2. The Meaning of Law and Justice

The question of what law is, is a question of a concept of law. Concepts are realities contained in the realm of ideas as a product of the construction process in capturing empirical reality, in this case regarding legal matters (Wignjosoebroto, 2002). The concept of law as an answer to the question of the law has been put forward by many experts according to their respective points of view in capturing the empirical reality called the law. From some of these concepts in this discussion will be presented the concept of law whose substance is a rule or norm that regulates human behavior in living together in society.

The law in its concept as described above consists of (i) laws that occur naturally in the community, which is a crystallization of association between society as a legal subject, which is referred to as customary law; (ii) Laws that are sourced from God's revelation, Allah SWT, both directly and through His prophets and messengers, referred to as religious law, such as Islam with Islamic law; and The law formed intentionally (by design) by the state as a power organization, one

of its functions is about the field of legislation or court decisions, so that the last law is called to as the law formed by enacted law (Kelsen, 1957). Law in its first concept, namely the law of customary habits or customary law seen from the formation process from the bottom up. Law in its second and third concept, namely religious law, especially Islam with Islamic law and law in its concept as a law formed or promulgated the process of forming from top to bottom (top-down). The only difference is, for Islamic law the formation comes from the God, Allah SWT, while for the law of legislation the formation is a state institution whose main function is a legislative or by court (judicial power).

Statute law and court decisions occur when a society has become one with the state and by becoming one with the state, the community gives power to the state which overcomes other powers that exist in society, including in relation to legal matters. The power is given to the state to become capital for the state in achieving the goal of the state, which is essentially the common goal of the community. In the perspective of a democratic state, which is a state that is managed by the people (the state governed by the people), to achieve the goals of the state, state power is exercised by people elected by the community, including the power in the field of legislation, so that the most obvious thing is in the implementation of state power, it is the people themselves, either as individuals or people in the collective-collegial sense as a unitary state administrator.

In carrying out the life of society, nation and state, humans cannot be separated from the obligation to carry out the law. This is related to the notion of law as a set of biological instructions (commands and prohibitions) that regulate the order in a society. This understanding shows that the law aims to create peace, safety, and tranquility in society. The high role of law in regulating people's lives makes law a reference in the application of the rule of law. In the administration of a country's government, the law plays a crucial role in ensuring a just state administration. Justice is a measure in determining agreement regarding right and wrong that applies in society in a country. The law has full power in regulating the application of justice in the administration of the state. It means that a government in a country is based on law and upholds the law as the basis for behaving.

While John Rawls (Rawls, 1971) states that justice is basically a principle of rational policy which is applied to the conception of the sum of the welfare of all groups in society. To achieve this justice, it is rational if someone imposes the fulfillment of his wishes in accordance with the principle of usefulness, because it is carried out to increase the net profit from the satisfaction obtained by members of the community.

Inequality must be regulated in such a way as to benefit the most disadvantaged groups of society. This happens when two conditions are fulfilled. First, the situation of inequality guarantees a maximum minority for the weakest person. This means that the situation of society must be such that the highest possible profit is generated for the little people. Second, inequality is tied to positions open to all, this means that everyone has the same opportunity in life (Rawls, 1971).

Equality can lay down the principles of justice, because basically the law must be a guide so that people can take a fair position while still paying attention to their individual interests, and acting proportionally in accordance with their rights and not violating the applicable law. Thus, justice is closely related to the rights and obligations of the parties in carrying out the agreement as a form of responsibility.

There are two goals of the theory of justice according to John Rawls (Rawls, 1971), namely:

a. This theory wants to articulate a series of general principles of justice that underlie and explain various moral decisions that are really considered in our particular circumstances. By "moral decisions" he meant the series of moral evaluations we have made and if they lead to our social actions. Well-considered moral decisions refer to the moral evaluations we make reflexively.

b. Rawls wants to develop a theory of social justice that is superior to the theory of *utilitarianism*. Rawls means that it is "average" (average utilitarianism). The point is that social institutions are said to be fair if they are devoted to maximizing profit and utility. Meanwhile, the average utilitarianism contains the view that social institutions are said to be fair if they are only relied on to maximize the average profit per capita. For both versions of utilitarianism "profit" is defined as the satisfaction or gain that

occurs through choices. Rawls says that his theoretical basis for truth makes his views superior to the two versions of utilitarianism. The principles of justice that he put forward are superior in explaining ethical moral decisions over social justice.

Rawls' two principles of justice (Rawls, 1971) below is a solution to the main problem of justice.

a. The principle of equal freedom as much as possible (principle of greatest equal liberty). These principles include: 1) Freedom to participate in political life (right to vote, right to stand for election), 2) Freedom of speech (including freedom of the press), 3) Freedom of belief (including religious belief), 4) Freedom to be oneself (person), and 5) Right to maintain private property.

b. The second principle consists of two parts, namely the principle of difference (the difference principle) and the principle of fair equality of opportunity. The core of the first principle is that social and economic differences should be regulated so as to provide the greatest benefit to the most disadvantaged. The term socio-economic differences in the principle of difference refers to inequalities in one's prospects for obtaining the basic elements of welfare, income and authority. While the term most disadvantaged (most disadvantaged) refers to those who have the least opportunity to achieve prosperity, income and authority prospects.

Therefore, the difference demands setting up the structure of society so that the gap in prospects for getting the main things in welfare, income, authority is for the benefit of the less fortunate. This means that social justice must be fought for in two ways. First, make corrections and improvements to the inequality experienced by the weak by presenting empowering social, economic, and political institutions. Second, each regulation must position itself as a guide for developing policies to correct the injustice experienced by the weak.

3. Divine Justice in the Philosophy of Islamic Law

In the holy book Al-'Adl al-Ilahi, Mutahhari (Muthahhari, 1997) put forward four purposes of using "justice", namely (1) a state of balance, (2) equality and denial of all forms of discrimination, (3) maintenance of individual rights and granting rights to those entitled to receive them, and (4) maintenance of the right to

the continuation of existence or prevent the continuation of existence and the transition of grace when there is a possibility to exist and carry out transformation.

The first and fourth definitions of justice are related to the creation of the universe and the creatures in it. Allah creates this universe with perfect balance, every creature has the right to obtain bounties that will lead him to growth and development towards the perfection of his form, according to the level and potential he has. If in reality there are phenomena that outwardly show injustice, such as a bad appearance, physical defects and so on, then this must be seen in the context of the whole creation, not separately. For example, if we look at the shape of an organ which itself looks ugly and bad, but when viewed in relation to the overall system of the human body, it shows harmony and perfection (Muthahhari, 1997).

Therefore, divine justice according to the fourth sense of justice is that something that exists *(maujud)* takes manifestation and perfection in the degree to which it is entitled and in line with the possibilities that it can fulfill.

The second definition (equality and denial of all forms of discrimination), although not exactly the same, can be equated with the concept of "equality" or "egalitarian" in Western democratic thought, but it doesn't mean equal and equal taste, but equality in the right to have something when the right to own it is the same (Muthahhari, 1997).

As for the third understanding of justice (maintenance of individual rights and granting rights to everyone who is entitled to receive it), Mutahhari calls it social justice, namely justice that must be respected in human law and every individual is ordered to enforce it. According to Mutahhari, this understanding of justice is based on two things (Muthahhari, 1997), they are:

First, rights and preferences, meaning that when some individuals are analogous to others, then the individual has certain rights and preferences. For example, the rights that exist in someone who does something and the work causes something to be produced, then the worker becomes the owner of preference for the results of his work. The cause of this preference is the work and activities he does. Another example of a baby born to a mother; she has a preference for her mother's milk. The source of his preference is the will of creation in the form of the purpose of having milk for the baby.

Second, the essential specialty of humans, namely humans are created with patterns that in their activities use certain relative thoughts that are used as "work tools" to be able to achieve their goals. This seems to be related to the talents that each human has, which is innate from birth. In using or operating special talents, humans use their relative thinking in order to achieve their goals. An example of a special talent for being a thinker.

The opposite of justice which means maintaining individual rights and giving rights to everyone who is entitled to receive it is tyranny, which means destruction and violation of the rights of others (Mawardi Ahmad, 2006). With such an understanding of justice and tyranny, which from one side relies on the principle of preference and on the other side relies on the principle of the essential human specificity that requires a series of relative thoughts, then something "must" and "shouldn't" be created, so that something "good and bad" will emerge. Based on the understanding of justice and tyranny in the two principles above, justice and tyranny in this connection only specifically concern humans and do not reach issues that are divine in nature. Because Allah is the absolute owner of certain preferences and actions that He does, basically it is related to the perfection of His being (Muthahhari, 1997).

Based on the four definitions of justice above, it can be concluded that the meaning of justice according to Mutahhari is dealing with tyranny, namely the maintenance of ownership of rights, not with the meaning of balance and not with the meaning of equality. This means that of the four meanings of justice that he put forward, only two are included in the understanding of the concept of divine justice that he put forward, namely the meaning of justice contained in numbers three and four, while the meaning of justice contained in numbers one and two is beyond the understanding of the concept of divine justice that is discussed.

Accordingly, according to Mutahhari, divine justice (Muthahhari, 1997) is something that exists *(maujud)* takes its manifestation and perfection in the degree to which it is entitled and in line with the possibilities that it can fulfill. This means that divine justice is basically a mercy and goodness from Him, or divine justice is an expression of general grace and giving to all who have the probability of getting the value of perfection, without having to withhold it or make a distinction. In this

case, it is Allah who has the right to all that exists (*maujud*), while all that exists has nothing but responsibility and is active towards its creator, and they do not have any right to the One who created it. If the ownership of rights is attributed to fellow human beings and not to Allah, then the rights are not from one side only. Everyone who takes the rights of others, then this second person also takes the rights of the first person (Muthahhari, 1997).

Mutahhari's opinion about divine justice is based on the rational arguments put forward by the divine (Islamic) philosophers, as well as the Qur'anic propositions and the hadiths of the Prophet Muhammad, namely the hadiths that are popular among the view of Shi'ah, especially the Shi'ah of Itsna 'Asyariah ot Imamiah. Among the verses of the Qur'an which are used as a basis by Mutahhari in the thought of divine justice are Q.S Ali Imran: 18; Al-Rahman: 7; Al-Qamar: 49-50; Thaha: 50; Al-Mu'minun: 115; Fathir: 43; Al-Hadid: 25; Al-Ra'du: 11; Al-Nahl: 118; Al-Insyirah: 6; Al-Mulk: 2; Al-Bayyinah: 6-8 (Mawardi Ahmad, 2006).

Mutahhari's discussion about divine justice is related to Allah's actions in creating the universe and the system that applies in it. This discussion also includes the issue of differences, mortalities and non-existence, shortcomings and defects, and disasters found in nature. In addition, Mutahhari also relates his discussion to human actions and their fate in the hereafter, because both are also included in the natural system created by Allah.

From this description, it can be concluded that Mutahhari's thoughts on divine justice are a combination of rational and spiritual. This can be seen in the use of thinking methods and analytical approaches. The method of thinking he uses is a combination of spiritual insight with philosophical deduction methods, while in his analysis he uses *aqliyah* and *naqliyah* approaches.

Based on his analysis, divine justice is the preservation of the ownership of rights, something that exists *(maujud)* takes its manifestation and perfection in levels that are His rights and in line with the possibilities that can be fulfilled. Justice like this is an expression of Allah's general grace and at the same time a gift to all beings who have the possibility to get the value of perfection without having to make distinctions.

The concept of justice adopted by Mutahhari is the concept of justice that deals with tyranny, namely the destruction and violation of the rights of other people (creatures). This kind of tyranny also concerns on humans only. This divine justice is divided into two parts, *first,* with regard to the deeds of Allah and *second,* with regard to human actions and their fate in the hereafter. These two parts of the action are based on the law of cause and effect, and the *naqliyah* basis uses the verses of the Qur'an and the hadiths of the Prophet Muhammad.

4. Legal and Justice Relations

Issues of law and justice arise when the law becomes a state affair. This happens because the law is something that is deliberately formed (by design) by the power of the state, so that the law is an artificial substance. That's when there was a polarization between the state and its laws and society and its justice. Law, justice, so the question arises, whether the law has replaced justice. Therefore, is it still relevant to raise issues regarding both. Or if it is still relevant to ask questions about the two, what is the connection between the two. To answer the question as stated above, the following are theories regarding law and justice.

When, why and how the law becomes a state affair. An example, when humans reach a certain stage in the history of their development, the renaissance, humans see themselves as "individuals who have freedom". At that time a fundamental question arose, how to create order and security for himself so that each individual with his freedom can be guaranteed and not threaten his safety. That's when humans found the answer, namely "surrendering the right to freedom to a sovereign power, the state, through a social contract" so that with that power the state makes laws that guarantee order and security. The law as an answer to human needs as a "free individual" is still relevant when humans enter the next stage in the course of their history, *Aufklarung*. At that time humans saw themselves other than as "free individuals", also saw as rational humans, with rationality "humans know what is good and what is bad for him",so that the "requirement" arises for the law which is handed over to the state for its

formation to be: (i) rational and objective; (ii) reflect the aspirations of the people (Huijbers, 1986a).

Law as a state affair became stronger when in human history experienced an "industrial revolution" and the scientific world experienced a stage called "positive", which made empirical experience the sole measure of truth. Accordingly, the law inevitably becomes the answer to the challenges that have grown from its era. For what law was formed, the answer related to the industrial revolution is to ensure industrial security with individual property which is growing rapidly and that is what is believed to be prosperous, related to law, the empirical dimension becomes a measure of its legality. In it there is power as a former, namely a state with laws that govern, prohibit, and declare permits, and determine sanctions for violators. Meanwhile, there are also people who obey, and conversely there are also those who violate and are then subject to sanctions. By studying such empirical facts, by comparing one with the other and then by using, among other things, the most prominent, "analytical legal positivism" we get a general idea of law called the principle of law, which in turn forms a juridical system that is used as positive law. Such is the positive law whose formation is left to the "experts" and the state (Tanya et al., 2010).

In the course of the law as a product of experts and which gets its legality from the state, so that the law is artificial, gets a response as a result of the "far" of the law from what is the desire or interest of the community, including interests about justice, because of the nature of the process which is very complicated. Top down and at the same time it opens up opportunities for laws that serve the interests of the ruling regime (which formed it) through its instrumental function.

This response was pioneered by Von Savigny with his volksgeist theory which states, "*True law is not made, but is found in social interactions, because between true law and the soul of the people there is an organic relation. Legislation is only important as long as it has its declarative nature to true law*".

Law with such an understanding, namely "the law formed through the legislative process is law when its declarative nature is against true law", in the 20th century shifted a little, namely towards humanity and justice which then obtained a more concrete formulation into social justice.

The construction of Islamic reasoning about law and justice can be found in Qur'an and hadith. Quran contains several terms that are close to the term justice, namely *al-qisth, al-adl,* and *mizan*. The word *adl* refers to justice in the sense of equal retaliation or retribution. For example, if someone does not fast, then he must make up for it on another day. Meanwhile, the word *qisth* refers to equality in the sense of applying the rules to people who are not citizens. The definition of justice in the word *qisth* contains a conflict of interest, while *adl* contains a balance between interests between groups. Regarding the word *mizan* in Qur'an, it refers to the notion of balance (Shihab, 1996).

Muhammad Thahir Azary (Azhary, 1992) explains the meaning of justice in Qur'an in the political realm. His explanation of the verses of justice in Qur'an is based on the framework that justice is the third principle in nomocracy. Justice in Islam according to Azhary (Azhary, 1992) synonymous with truth. Truth in the context of Islamic teachings is associated with Allah as the source of truth, which in Qur'an is called *al-haqq*. According to Azhary, the word *adl* in Qur'an means the same language. The word *adl* denotes balance or middle position.

Quraish Shihab (Shihab, 1996) divides the notion of justice which is understood by the scholars with four meanings. First, justice which means the same which is based on surah An-Nisa verse 4. The word fair in justice in the first sense relates to the attitude of the judge in the decision-making process. Second, justice means balance, which is identical to proportional in all respects. Third, fair also means paying attention to individual rights and giving rights to their owners. Justice in the third sense is related to the social context. Justice in the fourth sense is attributed to Allah. Justice in the fourth sense means maintaining the fairness and continuity of existence.

Justice in Islamic law is always associated with the divine aspect, namely in the relationship between humans and God and between humans and humans in the perspective of revelation. Islamic jurisprudence produces a large concept of law that protects and provides understanding of the working pattern of Islamic law. The concept is *maslahah*. The term of *maslahah* in the study of Islamic law is used in two senses, namely *maslahah mursalah* and *maslahah* as *maqasid shari'ah*. *Maslahah* according to the first understanding (*maslahah mursalah)* is an effort to explore the law based on considerations of the general good. *Maslahah mursalah* as a method of extracting law was initially associated with Maliki view, but in its development the *maslahah* method is widely used to solve problems for which there are no explicit instructions from Qur'an and hadith.

The definition of *maslahah* as *maqasid shari'ah* was developed by al-Juwayni (Masud, 1997) which was then elaborated further by al-Ghazali and reached its limit in the thought of as-Syathibi. *Maslahah* in the sense of maqasid shari'ah emphasizes the essential goals to be achieved by Islamic law. The essential objectives of sharia'ah are classified into three, namely maintaining human interests which are primary *(dharury),* secondary *(hajjy)* and supplementary *(tahsiny).* Primary human interests are included in *al-kulliyah al-khamsah*, namely maintaining religion *(hifdzud diin)*, preserving the soul *(hifdzun nafs),* maintaining reason *(hifdzul 'aql)*, maintaining offspring/honor *(hifdzun nasl)* and maintaining property *(hifdzul mal).* The formulation is seen as derived from the values of Islamic law teachings (Masud, 1997).

The relation between *maslahah* and justice is indeed not easy to understand if it is not connected through the theological aspects that build the paradigm of Islamic law. The *Mu'tazilahs* proposed the general good as the core teachings of Islamic law, which contained the values of justice and *maslahah* at the same time. However, even though it is recognized as something contained in Islamic law, justice as a legal discussion will be difficult to find in ushul fiqh books. Usul fiqh (Islamic jurisprudence) provides clues about God's relation with humans, God's position as lawgiver and

various methods that describe how God's will in Qur'an and the Prophet's explanations are understood.

Justice in the explanation is included in the category of substantive law. Justice is defined from a theological point of view, God's relationship with humans is vertical. Allah as the Most Just and Most Right knows the truth and ultimate justice. Humans must always find justice and truth given by God through the process of *ijtihad*. The principle of justice requires the use of ratios to make comparisons between one case that is not explained by the Word of God or the words of the Prophet with another case that has legal legitimacy. In that way, Islamic law develops and reaches a wider range of legal cases based on the principle of equality.

Islamic legal theories do not choose explicitly between positive law and morality (Manzoor Ahmad, 1987). The construction of Islamic reasoning about law and justice represents a view that links justice with truth. To act justly is to act rightly. Seeking justice is the same as seeking truth. Truth is a representation of God's will to humans which is described through *al-ahkam al-khamsah*, namely obligatory, *sunnah,* permissible, *makruh*, and haram. Substantive justice in Islamic law is always associated with the will of the maker of *syara'* (Allah) towards humans, whether that will is understood through logical deduction *(lughawiyyah* rules), analogical deduction *(qiyas)*, or deduction from general *shari'ah* principles *(maqasid shariah)* (Khallaf, 2012).

In the end, justice refers to the judge's efforts to find the truth and give the law if there is a violation for which there is no formally stated rule. This is a form of procedural justice. Procedural justice is an external aspect of law, where substantive justice is realized. Without procedural justice, substantive justice will only become theories that are not about the reality of society. However, in addition to justice, the value of legal certainty and usefulness is also important to consider in law enforcement (Huijbers, 1986b).

As previously discussed, divine justice is identical to the benefit of mankind. The benefit of the *ushul-fiqh* ulemas is the basic argument for the revelation of shari'ah by Allah.

Transcendental law recognizes the existence of divine authority which is an inseparable part of the traces of modern Indonesian life, contained in the Preamble to the 1945 Constitution of the Republic of Indonesia which states that: "By the grace of God the Almighty and impelled by a noble desire to live a free national life, the Indonesian people hereby declare their independence." This concept of the blessing of God's grace is the reason for a nation that is free from all forms of colonialism and at the same time shows the existence of a transcendental postulate that accompanies the struggle for independence (Absori, 2018).

God's law and justice at the ideal level are two interrelated dimensions, in line with the development of the dynamics of community law. God's law and justice reach consensus on one vision, which is to create justice, certainty, and benefit in society. A good law is a law that is able to represent the values of God's justice, such as equality (egalitarianism), balance, harmonization, *ta'awun* (mutual help), recognition and respect for each other's rights and obligations, and so on, both in the text of the law, and in its application. On the other hand, bad law is a law that is far deviated (derivative) from the values of God's justice. This law is like a parasite that only causes *mafsadat* in the community. Justice and truth are not the main patrons, but power and worldly satisfaction are the patrons.

Therefore, in building a harmonious relationship between God's law and justice, one of them needs to be placed in a higher position than the others. God's justice as the highest and most essential justice, must be placed much higher than the law, but that does not mean it cannot be reached by law. God's justice as long as it is implemented by law, must be described in a more operational manner that makes it easier to be absorbed by law and implemented by judges through their decisions.

For example, one of the values of God's justice is equality (egalitarian) which is closely related to fairness, propriety (*billijkheid*), and justice (*redellijkheid*). This value must be more operationalized in its definition so that it can be implemented by law. The value of justice *(redellijkheid)* for example must be described as a meeting between individual rights and

obligations. Individual rights (nature, form, and magnitude) must be adjusted to the obligations and responsibilities they carry. Therefore, the law can implement it through "the theory of rights" which stipulates the rights of the litigants in accordance with the obligations and responsibilities they bear.

Therefore, it can be understood that God's justice provides a clear line in the form of values (principles) that must be considered by law. The law must not position itself differently with the intent of these values. Instead, the law must be able to capture the intended values embodied in the texts of legislation as well as the attitudes and behavior of jurists in enforcing the law.

The law, in this pattern of relations, is positioned as a servant of God's justice. The law was created to serve God's justice which aims to create social welfare in society. The law was created not for the benefit of lawmakers, but for the greatest welfare of society. God's justice has represented this and therefore God's justice has become a patron for the law.

Finally, it seems that it needs to be emphasized and fully realized that absolute justice is only God's justice, not human justice. God's justice is the ultimate justice which is the divine will, so there is no relation in it. Humans as representatives of God must absorb this justice and implement it in life. God's justice is purely for the benefit of mankind, is universal, and transcendental which is not bound by any particular perspective.

CONCLUSION

The concept of justice law so far is still oriented to the two main streams of justice itself, namely ethical and utilitarian theory. The two theoretical concepts are still only at the physical or psychological level.

In building the concept of law that is transcendental justice, it must still make faith as the basis in the formation of the law, transcendental justice can be represented by the concept of divine justice which is universal and multidimensional in nature. Aspects of faith in God's justice can be the basis for making a law able to have an inner spiritual value, not just a physical or material level.

God's justice and law have a top and down relation, God's Justice as the highest and most essential justice, must be placed much higher than the law, but that does not

mean it cannot be reached by law. God's justice as long as it is implemented by law, must be described in a more operational manner that makes it easier to be absorbed by law and implemented by judges through their decisions.

God's law and justice reach consensus on one vision, which is to create justice, certainty, and benefit in society

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