

THE TRANSCENDENTAL IDEOLOGY: THE REFLECTION OF JUST LAW CERTAINTY IN INDONESIAN ADJUDICATION

Sidik Sunaryo

Ph.D Student of Law, Post Graduate Program Brawijaya University Malang,
Jl. MT. Haryono No. 169 Malang, 65145, Indonesia

ABSTRACT: *Indonesian adjudication find a difficulty in establishing fair law certainty because it is hard for the judge to interpret the transcendental ideology concerning with law certainty and justice. This ideology has been within First Principle of Pancasila, "The Belief on One Supreme God" and also principle of adjudication stating that "adjudication shall favor of justice based on One Supreme God". Islamic Law offers the transcendental ideology as manifestation of the physicality and mentality of legality principles. These principles are: "law does not deteriorate at all; there is a presumption of innocence; the punishment with doubt is invalid; and God may not punish human without notification or warning through Prophets". The transcendental ideology for just adjudication has been justified by the Act of Judicial Power which requires the judge to explore, to follow and to understand the justice values advocated and developed within the community (spirituality) and also the unwritten laws (religion). The universality of the transcendental ideology for just adjudication in Indonesia, according to Islamic, is deriving from the attributes of God (al-hakam, al-adel, al-hakim) and also from the signification of universality of al'adl, al-qist and wasat.*

KEYWORDS: Ideology, Transcendental, Law Certainty, Justice, Adjudication

INTRODUCTION

Human spirituality is a source of sense of justice. This sense can overcome the rational truth of justice from positive law. The invulnerability of human spirituality can penetrate¹ the boundary of space, place and time when it attempts to provide the rationality significance of justice into positive law. Spiritual justice² can penetrate the wall of realms of positive rationality and critical rationality (God-based irrationality).

In understanding the transcendental justice value, it seems that the progressiveness of critical and positive rationalities is facing fundamentalism thought. Indeed, fundamentalism of context

¹ "Progressive thought and faith, although reflecting a courageous and hopeful conviction, is considered by fundamentalist as the representation of liberal because it involves Western approach that contravenes Islamic values". See Syamsudin Arief, 2008. *Orientalisme dan Diabolisme Pemikiran*, Jakarta. Gema Insani Press, Page 45.

² The order of values based on religion (theological values) is the basic character of justice values (spirituality) that underline the modes of thinking and action of every human in daily life. The spirituality of justice cannot escape from social reality encasing it. Dialogic process of the dynamically emerged theological values in the community is a method (epistemology) for the internalization or the acculturation toward transcendental truth and justice.

at which transcendental justice is to be seek, is still hard to integrate the poles of traditional and modern thoughts.³

The rationalization of justice value standard within positive law is aimed to meet the truth of law certainty, whereas the rationalization of truth value standard within unwritten law is designed to guarantee the justice. The truth of law certainty and justice is the center of all dimensions of transcendental values within the substance of adjudication. Adjudication must consider, or is required to consider the dimensions of positive and critical rationalities. Adjudication must accommodate, or is required to accommodate, normative standard ideology of positive laws and unwritten laws. Adjudication is also a center of catalyst for the dimensions of law certainty and justice in ideological manner.

Law certainty and justice that are developing doctrinally can still differentiate diametrically the meaning of rational justice and irrational justice. Rationality will provide the meaning of truth and the justice value of positive law which both can be measured methodically and procedurally. The irrationality of transcendental (prophetic) truth and justice value is always using submission and obedience⁴ measures from human to God because human is a merely God servant.⁵

Human as God servant who becomes Indonesian judge⁶ is appointed by God⁷ to be a leader (*khalifah*) on earth to preserve and to maintain the earth and content for their own welfare. Judge⁸ as a human entity or also as God's creature is to lead other human. Judge as the leader over other human is required to incur the responsibility⁹ to ascertain that their decision is a method to achieve the welfare of human and all creatures on the earth.

³ "Fundamentalism is divided into two, traditional fundamentalism and modern fundamentalism. Traditional fundamentalism believes that Al-Qur'an and Al-Sunnah are the prime sources of Islam teaching which is binding by nature and must be implemented in daily life. The product of religious thought in Classic and Medieval ages is not binding by reason that this product leads to the laziness of thinking. Several Moslem leaders have accommodated too many non-Islamic local traditions that may bring the cult of a person. The solution is to learn and to apply Al-Qur'an and Al-Sunnah and to eliminate blind obedience (*taqlid buta*). Fundamentalism is originally developed from Christianity where the manifestation of trust or religious practice is a response to religious values that are assumed as eroded by modernization and secularization but it only brings the community falls away from religious values". See Achmad Jainuri, *Orientasi Ideologi Gerakan Islam, Konservatisme, Fundamentalisme, Sekulerisme, dan Modernisme*. Surabaya, The Institution of Religion and Community Review, 2004, Page 69.

⁴ "Anyone who releases their hand from obedience will see God in judgment day without possessing hujjah, and anyone who is dead, while their shoulder is without baiat (to khalifah), will find that they are dead as the death of jahiliyah". Hadist of Tale of Moslem.

⁵ "They appoint good people among them and their monks as God other than Allah. They also worship Al Masih, son of Maryam, as God. They are only required to worship Allah because of no God other than Allah. God is Mighty of Holly from what they worshipped". QS. At-Taubah: 31.

⁶ "The majority of Indonesian is Moslem but Islamic movements still unable to answer the interest of Indonesian people". See Bahtiar Efendi, *Islam dan Negara: Transformasi Pemikiran dan Praktek Politik Islam di Indonesia*, Jakarta, Paramadina, 1998, Page 89.

⁷ "Whoever approves the oath of Imam/Khalifah and give up their hand and heart toward this oath, they shall obey this oath by the capacity. If there is other coming to arrogate the power of Imam/Khalifah, this arrogate must be cutoff". Hadist of Tale of Moslem.

⁸ "Imam/Khalifah is a shield where peoples take a war behind them and seek protection from them". Hadist of Tale of Moslem.

⁹ "The most important law in Islam is accountability law. It is related to the concept of judgment day where every person must be accountable to all good and bad deeds they have done". See Zafar,

The transcendental ideology as “A Process Toward “ and “A Process Being” within the Adjudication to Secure Just Law Certainty in Indonesia

Many scholars in law science are historically arguing the philosophy of law certainty and justice. Law science philosophy is a method to look for the essence of truth and justice. The philosophy may provide guarantee of freedom for law science¹⁰ and doctrine to show the way toward truth and justice. Philosophy and doctrine are considered as **a process toward** and **a process being** rather than **a process for justification**. Both a process toward and a process being are the justifying bases whether there is law certainty in the doctrine (law science).

Doctrine uncertainty to escort **a process toward** and **a process being** is the source of inspiration for Indonesian judges in disregarding their mandate or requirement to include within adjudication the transcendental ideology of justice as the base guide to produce the verdict that contains just law certainty. The construction of Indonesian adjudication is not comprised of the transcendental ideology of justice, and it becomes a main reason of inherent law uncertainty which is not relevant with the essence of adjudication as a concrete binding law.

Science as a method¹¹ (*epistemology*) shall provide reliable description and must stand nearby the way of life of the community where the science is explored. Bernet¹² described that traditional science (Greek) is always connected to the way of life of the community. Cultural and habitual behaviors are influencing modes of thinking and action among scientists at the time. Any sciences¹³, regardless truth substance, must be based on reality and life demand of the community (meaning that sciences must be earthed). Science that is not adapted with the way of life of the community (shall be sky high) will not benefiting and be utopian. If law is considered as a science, it must be explored¹⁴ from justice values that already exist or are

Accountability, Parlement, and Ijtihad, in Charles Kuzman, *Wacana Islam Liberal, Pemikiran Islam Kontemporer tentang Isu-isu Global*, Jakarta, Paramadina, 2003.

¹⁰ Hadist of Prophet Muhammad SAW has stated that “there are three types of science (main science). Beside those three, other is only additional. These three main sciences are clear verse, Sunnah from the Prophet, and just *faridhah* (faraidh science/ heir law)” (Hadist of Tale of Ahmad, An Nasa’i and Ad-Daruquthny).

¹¹ “Science law is philosophical doctrine which is used as the basic direction for the judges in making verdict. Law science is a method to explore, to follow, and to understand the origin of justice values professed by the community (unwritten law) that must provide law certainty. Law science is a main source of the judges to guarantee transcendental justice values that live and develop in the community such that the judges will guarantee the presence of just law certainty.”

¹² Bernet asserts that “It is an adequate description of science to say that it is thinking about the world in the Greek way”, in K. Bertens, *Sejarah Filsafat Yunani*, Kanisius, Yogyakarta, 1999, Page 23.

¹³ John Gilissen and Frits Gorle have declared that “Moslem sees the law as a tree. Islam values are the root holding the height of tree. National Constitution is the stem. The branches are the resolution of dispute”. See John Gilissen and Frits Gorle, *Sejarah Hukum Suatu Pengantar*, Refika Aditama, Bandung, 2007, Page 387.

¹⁴ The history when Islam comes to Nusantara has been similar length of age to the development of religion and other conviction in Nusantara. It is the important guidance for the judges to explore, to follow and to understand Islamic values as unwritten law source in settling adjudication against Indonesian corruption case. This source has contained the ideology of transcendence of justice. On August 17 of 1945, State of Indonesia Republic is born by the reading of Proclamation Text. On August 18 of 1945, National Constitution is made, and its Preamble says that *Independence is the right of any nations and by the gift of Allah of Mighty Power*. It is admitted that independence is by the permission of Allah and supported by noble aspiration of Indonesian peoples. It is shown that Indonesia nation is a nation with God. The original text for First Principle of Pancasila is containing wordswith the requirement to conduct Islamic devotion for the devotee. The history

needed by the community. If a law is founded, it is then formally addressed by State. Proper and regular law must lean toward justice values advocated in the community, including religious values¹⁵ and conviction.

The Limit of The transcendental ideology of Law Certainty and Justice at Indonesian Adjudication in Corruption Case

The transcendental ideology of justice, under the perspective of philosophy and doctrine, can touch uncertainty realm.¹⁶ The transcendental ideology of justice is a method to eliminate uncertainty within philosophy and doctrine. The submission and obedience of human onto

still cannot accommodate these words, but there is a red line that since the beginning of the independence, there is a systematic action to internalize Islam Law into the official rules and regulations of Indonesia State. Nowadays, there are Islam representatives within legislative, executive and judicative agencies. Two schools of thought are developed. Formality scholars expect that Islam Law must be included into State formal law with terms and nomenclatures. Other scholars require that Islam Law is State formal law in substantial manner.

¹⁵ “The history of Indonesian Islam law is closely related to the phase of Islam introduction to Nusantara. Historical classical books have shown that Islam enter Nusantara at first century of Hijriyah (year 7 Christian-Era). In several documents, during Seminar of Islam Entry to Indonesia through Medan, it is concluded that Islam enters Indonesia at seventh/eighth century of Christian-Era”. See Surahwadi K. Lubis and Komis Simanjutak, *Hukum Waris Islam*, Jakarta, Sinar Grafika, 1999, Page 6.

Syaifudin Zuhri also finds that “Ibnu Batutah has visited Samudera Pasai on year 1345 Christian-Era and he admires the capacity of Sultan Al-Malik Al-Zahir and have a discussion with Sultan about Islam matter and Fiqh Science. Ibnu Batutah has written that Sultan Al-Malik Al-Zahir is not only a King, but also an expert of Islam Law (*fuqaha*). Then, from Samudera Pasai, Islam magnificence is then distributed throughout Nusantara”. See Muhammad Daud Ali, *Asas-asas Hukum Islam (Hukum Islam I)*, Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia, Jakarta, Rajawali Press, 1991, Page 210.

Supomo has given historical proof that “the court agency has been developed by the Indies-Netherlands colonial for each group of population. Religion Court is established to accommodate Islam Law. This Court agency is accountable to the colonial government, although some equivalent agencies are founded by the initiative of Head of Swapraja and Head of Custom. On January 19 of 1882, through *Staatsblad* 1882 No.152, Religion Court Agency is officially validated. By the exception, Religion Court Agency of South Kalimantan is inaugurated through *Staatsblad* 1937 No.638 and No.639 for First-Round Court and for Great Qadhi Assembly in the case of appeal. The existence of Religion Court Assembly remains persistent during Japan colonial but the name is replaced to **Scorioo Hooiin** whereas High Islam Religion Court is renamed into **Kikoo Kootoo**, Opcit, Page 10-11. Hamkah has said that “the representatives of Arabian Land come to Java Island on year 675 Christian-Era and visit Kalingga, and return to Arabia after concluding that Hindu is quite developed in Java such that the spreading of Islam region to Malay countries is not by violence, but by the willingness of the religion itself, “There is no coercion for religion”. There is a colony of Arabian on year 684 Christian-Era in West Sumatera. Since ninth century, harbors in Malay countries are named, with **Kalah**, **Kra** (critical land), **Kedah** and **Klang**. See Hamkah, *Sejarah Umat Islam*, Jakarta, Bulan Bintang, 1981, Page 49-50.

¹⁶ “The ideology of transcendence of justice is a method to complete various thoughts of justice that source from theological values (Prophetic Divinity). The concept of transcendental justice is equal to the concept of justice during the age of development of the thought and justice of natural law. The justice of natural law emphasizes on the truth of human intelligence that is granted by God (rationality). Transcendental justice underscores the concept of justice based on the justification of human spirituality as the limited mirror of God attributes (prophetic). Human spirituality is an abstract but it is an active base of every feeling, intelligence, and action of human. Uncertainty within the concept of traditional justice is related to the fact that the values within the justification of spirituality are not yet accommodated within the existing positive law. The ideology of transcendence of justice in this dissertation is a method to complete the concept of justice within adjudication against corruption case. It is stated within Principle of Adjudication stating that “adjudication shall favor of justice based on One Supreme God”.

transcendental truth and justice (theology)¹⁷ may be the justifier base for law certainty and justice that sources from prophetic ideology.¹⁸

Conviction (piety) of human to be submissive and/or to be obedient to justice and truth values that emanate from God¹⁹ is also the base to restrain the freedom of philosophy and doctrine within law science. The transcendental ideology of justice must be the restrainer²⁰ of justifier against the conviction of Indonesian judges in their adjudication. Indonesian adjudication, based on the perspective of the transcendental ideology, is considered as a method to satisfy²¹ **a process toward** and **a process being** with the debate of philosophy and doctrine of justice.

Islam²² considers corruption as one of systemic and excessive sources of injustice. The essence of adjudication in the corruption case of Indonesia has similar degree to the doctrine that

¹⁷ According to Fathi Osman, "Islam has a concept that regulates the life comprehensively". See Fathi Osman, *Parameters of the Islamic State*, Arabia: the Islamic World Review, No. 17, January, 1983, Page 10.

¹⁸ "Prophetic ideology is the ideology of thought that follows the path of Prophet. Indeed, the Path of Prophet is a proper path shown by God through Holly Book. Syamsudin determines that prophetic law science is prophetic science that contains the spirit of local genius in law education. See M. Syamsudin (ed), *Ilmu Hukum Profetik, Gagasan Awal, Landasan Kefilsafatan dan Kemungkinan Pengembangannya di Era Postmodernisme*, Yogyakarta, Center of Law Study, FH UII-UII Press, 2005, Page 11-14.

¹⁹ "Shariah must be standing tall above national constitution where political sovereignty remains within God's hand". See James P. Piscatori, *Islam in a World of Nation States*, Cambridge, Cambridge University Press.

²⁰ "In consolidating the faith before making a verdict, the judges must explore, follow and understand theological values. Theological values must lean toward religion teaching and judge faith. Theological values from Holly Book are primary guides for the judges in manifesting the Principle of Adjudication stating that "adjudication shall favor of justice based on One Supreme God". Holly Book is revealed by God to Prophets, and this Book must be read by the judges in textual and contextual manner because the Book is revealed to Prophets and peoples not under vacuum (hollow). The culture of Arab, Persian and Rome is dramatically developing. Every culture has the supporting values that are highly respected by citizens and sympathizers". See M. Amin Abdullah, *Studi Agama Normativitas atau Historitas*, Yogyakarta, Pustaka Pelajar, 1999, Page 217.

²¹ "The concept of transcendental justice is seen as the effort to satisfy but there is a debate against the concept. Islam, in period of years 632-662 Christian-Era/11-41 Hijjriah, is glorious with the administration of Abu Bakar ash-Shiddiq, Umar bin al-Kathab, Utsman bin Affan, and Ali bin Abu Thalib. Fiqh (Law) is widely distributed throughout the world and advocated by Moslem until now. Many scholars are emerging such as Imam Ja'far Ash-Shadiq, Imam Abu Hanifah, Imam Malik bin Anas, Imam Asy-Syafi'i, and Imam Ahmad bin Hanbal. In this period, some Hadists of Prophet are compiled to become a book of reference in determining the law by basing on Al-Qur'an. At subsequent period, these schools of thought have developed into Islam Law that is then professed by the scholars, and also established into the Law that is practiced diametrically by the followers. The shape and content of these schools of thought have produced a tradition and practice of Fiqh Law. This fact shows that there is confusion with fiqh law tradition because it is often derived not from Al-Qur'an but from free interpretations by several schools of thought. See H. Juniarso Ridwan and Achmad Sodik, *Tokoh-Tokoh Ahli Pikir tentang Negara dan Hukum dari Yunani Kuno sampai Abad 20*, Bandung, Nuansa, 2010, Page 106-109.

²² According to Achmad Ali, "for them whom are ignorant about Islam, they are unfamiliar with the principle of Al-Qur'an, and based on apriori, they see Islam Law through bad image, and then they perceive that justice values in Islam are inappropriate. By emphasizing the focus on social context and wider culture of Islam Law, it is seen that Islam Law System is *Common Law System* where the justice is seek through deep and exact review, and thus, more than a review of facts. Justice is not about "similarity", but concerning with "equality". Once again, based on Islam Law, justice is not similarity, but equality. See Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Jakarta,

“against corruption is against justice”. Corruption can destroy the civilization of human race. An Islamic concept *Rahmatan Lil’Alamin* is designed to remove the corruption-induced injustice and to keep it from destructing human civilization. Indonesian judges are by certain degree to represent God on the world to make decision on corruption case to guarantee just law certainty in order to restore human civilization on the earth.

Justice is a peak of civilization on the earth. Corruption is the base of injustice on the earth. Islam law is not rising against²³ the values of equality and equity advocated by other religions, cultures²⁴ and customs.²⁵ It does not also contravene other substances professed by Indonesian peoples. Islam law must not only be understood from shape and symbol, but also from the comprehensive feature because Islam law is presented to be a fundamental direction to develop²⁶ law justice values within the frame of national formal law. Islam law does not require the usage of Islam symbols but the values within Islam law are guarantying the justice for the universe (*Rahmatan Lil’Alamin*).

Islam has a distinctive concept to explain law and justice for the universe. The universality of law and justice under Islam context must be seen as a dynamic²⁷ toward the firmness of law

Kencana Prenada Group, 2009, Page 240-241. See Bambang Sutyoso *Metode Penemuan Hukum Upaya Menemukan Hukum Yang Pasti dan Berkeadilan*, Yogyakarta, UII Press, 2009, Page 122. According to Bambang Sutyoso, “Islam Law or Islam Fiqh is a law that is based on stipulations revealed by God to Prophets to be applied by human until the end of the day”.

²³ H.L.A. Hart admits that “the characteristic of justice and its special relation with the law is shown up when we observe that most critics about just and unjust are using the word “fair” and “unfair”. See HLA Hart, *Konsep Hukum*, Bandung, Nusa Media, 2010, Page 245.

²⁴ “The process of acculturation of religious values is occurring dialogically between the order of values from Holly Book and the order of values professed by the community. Adjudication is the catalyst or the bridge between these two orders of values. The synthesis between both orders of values must be pursued to avoid the struggling for supremacy of one against another.”

²⁵ Peter de Cruz has reported that “it is hard to adapt with the climate in cultural ways”. In other words, it is difficult for to adapt a person with certain law system concerning with juridical style or its primary law sources. Hindu and Islam laws are unfamiliar concepts by the ear of western law practitioners. It is often happening when social and cultural environments are informing about certain law. If people disregard their local history, then the actual reasoning about foreign laws may be difficult. In such, their laws are considered as backward and eccentric. See Peter De Cruz, *Perbandingan Sistem Hukum*, Bandung, Nusa Media, 2010, Page 310-311.

²⁶ “The commands to make the law as just as possible is quoted in several verses, such as: QS 4 (An-Nisa): 58, stating that “If you shall determine law between humans, you must determine it with just”; in QS 6 (Al-An’am): 152, stating that “If you must decide, be just in your decision, even if they are your relatives”; in QS 2 (Al-Baqarah): 123, stating that “Be afraid of someday that none of you will replace other, and none of compensation and benefit or syafaat will help them”; in QS 6 (Al An’am): 1, stating that “The infidel is always to compare something with their God”. The commands within Al-Qur’an are not explicitly stating that the just law within Islam Law must use Islamic symbols. The law under Islam principle is about to guarantee a comprehensive justice to all humans and universes in manner of equality and proportionality, regardless religion, tribe, heredity, culture, custom, politic, social, economic, ideology, conviction and other aspects”.

²⁷ Moh. Mahfud MD says that “to apply Islam Law based on the current political system, any Moslems can struggle within legal politic framework such that Islamic values will color law material, law product, and field of private laws.” *Ushul Fiqh* norm has suggested that “if we take all, do not waste all”. See Moh. Mahfud MD, *Membangun Politik Hukum, Menegakan Konstitusi*, Jakarta, Rajawali Press, 2010, Page 281.

certainty and justice in transcendental manner. Indonesian adjudication is a concretely binding law²⁸ and therefore, it must have a spirit of universality of law and justice as that in Islam.

Adjudication against corruption case in Indonesian represents an entry gate to internalize²⁹ Islamic values into justice and equality to guarantee people welfare. Pursuant to Islam³⁰, the internalization of justice values into adjudication against Indonesian corruption case is a method (an epistemology) of processes searching for or going toward a concretely binding law which contains the transcendental ideology. The process to manifest the transcendental ideology of law certainty and justice in adjudication against Indonesian corruption case may start from internalizing Islamic justice values by the judges into their adjudication.

The internalization of Islamic justice values into adjudication is signaling the fact that the judges have intellectual maturity³¹, comprehensiveness, and flexible understanding³² of truth and justice values. Judges with comprehensiveness and flexibility will choose and sort the truth and justice values ideologically under the perspective of *fiqh* and *syar'i* (syari'ah).

The transcendental ideology of law certainty and justice within Indonesian adjudication has been secured by First Principle of Pancasila³³, **"The Belief of One Supreme God"**. Principle of Adjudication has also stated that **"Adjudication shall favor of justice based on One Supreme God"**. Adjudication against Indonesian corruption case to guarantee just law certainty is always containing the transcendental ideology of justice by which the judges must

²⁸ "On behalf of your God, they are unbeliever until they appoint you as the judge for the case they have disputed, and they do not feel objection to what you decide, and they accept it completely". QS. An-Nisa: 65.

²⁹ Mahfud explains that "a legal politic that is developed to improve law material in good and proper format and instrument is not consistent to the reality of legal enforcement in judicature agency. The problem of national legal politic is not on the arrangement of law material, but on the enforcement by legal officer". See Moh. Mahfud MD, *Membangun Politik Hukum, Menegakan Konstitusi*, Jakarta, Rajawali Press, 2010, Page 44.

³⁰ "Although the judges are appointed as God representative on the world to enforce the justice, it is not easy task to apply Islam Law as the source of universal truth and justice. According to Huntington, Islam is a source of its own strength and even considered as a threat for Westerners. See Samuel P. Huntington, *The Clash of Civilization and The Remaking The World Order*, New York, Simon and Schuster, 1996, Page 212, 240-241.

³¹ According to Ali Syariati, "if the peoples without religion and the fake intellects are successfully "destructing Islam", and if they can persuade the scholars, they must thank to "fake religion leaders" who invite youths away from Islam by abusing Islam teaching". See Ali Syariati *Membangun Masa Depan Islam*, Bandung, Mizan, 1992, Page 67.

³² Jimly asserts that "the inclination to understand the religion through legality aspect is growing fertile because of the influence of fiqh tradition that is sometimes legalistic and sometimes rigid. Such development has put fiqh to be seen as a religion and religion is considered as fiqh (Law). Therefore, it is not surprising if fiqh is considered as sacred because it is never submitting to the change of the age". See Jimly Ashiddiqy, *Pembaharuan Hukum Pidana Indonesia: Studi Tentang Bentuk-bentuk Pidana Dalam Tradisi Hukum Fiqh dan Relevansinya Bagi Usaha Pembaharuan KUHP Nasional*, Jakarta, Angkasa, 1995, Page 35.

³³ Mahfud MD implies that "any law renewal efforts must still use Pancasila as the source of paradigm because Pancasila is the image of law, or *staats*, or fundamental norm, which the values are obviously accepted by the community to be used as the base and reference for the living of nationalism and citizenship". Opcit. Page 58-59.

respond³⁴ theological values³⁵ of Indonesian nation. The response of Indonesian judges to the transcendental ideology of justice is manifested in their adjudication in exploring, following and understanding theological values of justice as stated in First Principle of Pancasila. Indonesian adjudication to guarantee transcendental law certainty may find the base at First Principle of Pancasila, **“The Belief of One Supreme God”**.

Corruption, everywhere in Indonesia and also with any reasons and excuses, is definitely contradicting with universal values of God because corruption is considered as despicable (*keji* and *munkar*). Adjudication against Indonesian corruption case can also be seen as *preaching* (*dakwah*)³⁶ to reflect God universal values. The universality³⁷ of God values has also reflected the universality of justice in universe. Theological base of adjudication against Indonesian corruption case must be reviewed on such context that “the crown” of Indonesian adjudication will not be a merely *decorative*.³⁸

The transcendental ideology as The Universality of Law Certainty and Justice Principles within Indonesian Adjudication

The history³⁹ through generations has produced an explicit interpretation about *illat* (main tenet) in understanding justice values stated from Holy Book. These values must be used by the judges in making adjudication which in turn, this adjudication may become jurisprudence. Some generations after Prophet age⁴⁰ have built a partition around transcendental justice concept to reflect pluralism. The plurality⁴¹ of transcendental justice concept has been granted

³⁴ According to Mahfud, “every effort to produce the laws with responsive/populist characters must start from the democratization of political live. The configuration of politic that is developed from a new format can distort the balance among political orders”. See Moh. Mahfud MD, *Politik Hukum di Indonesia*, Revision Edition, Jakarta, Rajawali Press, 2010, Page 368.

³⁵ QS.5 (Al-Maidah:44), “Anyone who decides by disregarding the revelation of Allah will be the infidel”.

³⁶ According to M. Amin Abdullah, “unconsciously, our way to solve our problem is similar to the judge who will take actions of “bringing to justice” and “passing he judgment” against the culprit but without efforts to understand the resolution of some pathological cases in real and empirical ways. It seems that after “preaching” (missionary endeavor), we jump to “judging” (passing the judgment) but minus “healing” (for recovery). The final phase is the heaviest way of missionary effort”. See M. Amin Abdullah, *Op cit*, 1999, Page 219.

³⁷ “Do you only follow parts of God way and reject the others? If such is true, the proportionate retribution is the abjection on the world and the poignant torture on the hereafter”. QS. Al-Baqarah: 85.

³⁸ “The unjust and uncertain adjudication against Indonesian corruption case is only denoted as “decorative” meaning that adjudication is only “the law wastes” that ornaments all layers of court buildings which only dishonor the sacred and dignity of court buildings”.

³⁹ Ather L. Corbin implies that “a judge who is ready to give a verdict on behalf of the justice and public welfare but without knowledge of jurisprudence history is called as egoist and ignorant”. See Fence M. Wantu, *Idee Des Recht* (Kepastian Hukum, Keadilan dan Kemanfaatan: Implementasi Dalam Proses Peradilan Perdata), Yogyakarta, Pustaka Pelajar, 2011, Page 40.

⁴⁰ Immanuel Kant has said that “the capacity of human reasoning is only usable to the edge of phenomenon boundary but it is unable to penetrate the boundary. Phenomenon boundary is called by Al-Ghazali as philosophy whereas phenomenon itself is called as mystic. It is the essence of transcendental dialectic in searching for truth and justice”. See M. Amin Abdullah, *Op cit*, 1999, Page 281-303.

⁴¹ Bernard L. Tanya, et al, have said that “the conception of the law is not singular. Every space and generation may signify the law differently based on the situational system of the space and generation”. See Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, *Teori Hukum : Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta, Genta Publishing, 2010, Page 219.

through generations at any spaces and times. The plurality⁴² of transcendental justice concept shall be seen as a process of abstraction and internalization⁴³ of religious teachings or dogmas through Holy Book to satisfy the self-tenet of a judge who will seek or go toward transcendental truth and justice.

A socio-historical⁴⁴ or empirical experience in applying *fiqh* law throughout Islam history and also in using this law based on the tradition⁴⁵ of Indonesian local peoples shall be reviewed by the judges through substantive internalization before making their adjudication. Indonesian adjudication⁴⁶ is a source of law and soon it becomes a law if it is followed by other judges (being jurisprudence). The denial has a consequence. Indonesian adjudication is substantially guarantying just law certainty if theological prophetic values are considered. The perfection of “crown” of Indonesian adjudication must be understood from *Ilahiah*⁴⁷ perspective not from transactional rationality.

⁴² Rashid Ridha has required us to accept the original source of Islam but still to welcome good things from West. See Stephane Lacroix, *Between Revolution and Apoliticism : Nasir al-Din Al-Albani and His Impact on the Shaping of Contemporary Salafism*, London, Hurst and Company, 2009, Page 62.

⁴³ According to Ishomuddin, “the understanding of religion and cultural tradition may produce, *first*, the internalization of culture into daily life behavior; *second*, the internalization of religion through Holy Book”. See Ishomuddin, *Islam Dialektika: Antara Pemahaman Budaya dan Sosial Ekonomi*, Malang, UMM Press, 1998, Page 43.

⁴⁴ Rahmat Rosyadi and Rais Ahmad declare that “Moslem obedience to the government and the law are the part of law arrangement or reflecting the principle of syariat. By this position, the obedience to the government that applies to positive law that derives from custom law and Western law shall be selective as long as the law materials are not contrasting with Islam syariat”. Opcit, Page 69.

⁴⁵ Otje Salman Soemadinigrat explains that “the contact of religions values and custom law is seen in three fields, mainly family law, marriage law and material law or heir law”. See H.R. Otje Salman Soemadinigrat, *Rekonseptualisasi Hukum Adat Kontemporer*, Alumni, Bandung, 2002, Page 18.

⁴⁶ “Alas! Daud, we inaugurate you as khalifah (the ruler) on the earth, then you must decide a verdict for the case between humans in just way and shall not you to follow your desire because it may mislead you from God way (QS.38, Shaad: 26); ”On behalf of your God, they are unbeliever until they appoint you as the judge for the case they have disputed, and they do not feel objection to what you decide, and they accept it completely” (QS. 6, An-Nisa: 65); “You shall decide a verdict for the case between them with what has been revealed by Allah, and do not you follow their desire” (QS.5, Al-Ma’idah: 49).

⁴⁷ Al-Zamakhshari asserts that the word “weights” or “al-mizan”, based on Allah decree, is metaphoric. The weights will reflect sense of justice within all life activities, either physical or mental. The decree of Allah requires us “to use the weights with honesty”. It is the command that compels us to shall respect the justice and the honesty in every case. If we disregard these attributes, hereby we interfere, deviate and dishonor the law of universe. It means that the reaction of objecting against unjust and dishonesty is not only coming from peoples who suffer from loss, but also from the universe. Justice is a law of cosmos”. See Nurcholis Madjid, *Pintu-pintu Menuju Tuhan*, Jakarta, Paramadina, PT. Dian Rakyat, 2008, Page 42. See also The Validation Committee of Al-Qur’an Mushaf in the Research & Development and Education & Training Agencies of The Minister of Religion, Republic of Indonesia, *Tafsir Al-Qur’an Tematik: Hukum, Keadilan dan Hak Asasi Manusia*, Jakarta, Aku Bisa Publishing, 2010, Page 175-176. It is strictly said that “justice is symbolized with the weights which point toward balance, not excess, and impartial that are reflecting the attitude of justice in the universe. It aligns with what is stated within Asy-Syu’araa/26:182: “Be weigh with proper weights”.

The construction⁴⁸ of Indonesian judges to understand⁴⁹ just law certainty in transcendental manner must accommodate values and thoughts of doctrines professed within the community.⁵⁰ Law positive of Indonesia has not yet given textual firmness which requires the judges to involve the transcendental ideology of justice⁵¹ within their adjudication. Principle of Adjudication stating that “adjudication shall favor of justice based on One Supreme God” is the substance of positive law⁵² which means that the judges must explore, follow and understand transcendental values in verdict.

Just law certainty⁵³ within Indonesian adjudication shall be acknowledged from right-wrong perspective, not from good-bad perspective.⁵⁴ The just adjudication is the right law whereas

⁴⁸ Ahmad Rifa'i has said that “law construction can be conducted if there are no stipulations of legislation that explain the legal problem to be solved, or if there is no such legislation or under the case of law vacuum (*recht vacuum*) or legislation vacuum (*wet vacuum*). See Ahmad Rifa'i, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Jakarta, Sinar Grafika, 2010, Page 136.

⁴⁹ Jimly Ashiddiqy has suggested that “understanding the law comprehensively is an integrated system that is very important to do. A law development strategy or a national development to materialize the idea of a law country shall not be trapped toward the orientation of law production or only considering one element or aspect of the law system total”. See Jimly Ashiddiqy, *Menuju Negara Hukum Yang Demokratis*, Jakarta, General Secretary and Registrar of MKRI, 2008, Page 61.

⁵⁰ Heri Tahir clarifies that “in legal enforcement, community participation plays very strategic role and also determines court process”. See Heri Tahir, *Proses Hukum Yang Adil Dalam Sistem Peradilan Pidana DI Indonesia*, Yogyakarta, LaksBang PRESSindo, 2010, Page 101.

⁵¹ “Al-Qur'an calls “being just” as *al-adl*, which also means straight (*istiqamah*), equality/compatible (*al-musawah*), comparable (*at-taswiyah*), balance or harmony; Being just is giving to the proper person something in the proper point between two extremes, that is consistent to the truth and avoiding anything prohibited by the religion; also something that is straight and good based on healthy reasoning; or something that matches with resolution and decision to relieve all burdens by emphasizing rightness”. See The Validation Committee of Al-Qur'an Mushaf in the Research & Development and Education & Training Agencies of The Minister of Religion, Republic of Indonesia, *Tafsir Al-Qur'an Tematik: Hukum, Keadilan dan Hak Asasi Manusia*, Jakarta, Aku Bisa Publishing, 2010, Page 161-162.

⁵² Saldi Isra has mentioned that “the increasing opportunity for community participation has stimulated legislators to be more cautious in making the legislation. Therefore, community participation is not only required to create *good law-making process* but also to anticipate that the substances of legislation will not harm the people. It must be noted that every law system is a product of the history, and thus, its political destiny is determined by the history. See Saldi Isra, *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlemen Dalam Sistem Presidensial Indonesia*, Jakarta, Raja Grafindo Persada, 2010, Page 286.

⁵³ Satjipto is teasing by saying that “law certainty must not be given up for other interest. Legislation is made by legislative agency, and the judges must not interfere with this process and shall only be the mouth of this legislation. Science and theory of law are only to ensure that what has been written has been implemented”. Ibid, Page 30.

⁵⁴ “Law is not a matter of good or bad, but law is a matter of right and wrong. Law justice cannot be seen as good or bad based on the perception of community and law enforcing officer. Law justice must be understood from the perception of right and wrong. Right or wrong perception is always coming from theological (transcendental) values, whereas good or bad perception is obtained from the glance at certain rational feeling at the moment. Such rational feeling distorts the law to miss one of God attributes, which is justice. For instance, if law is only understood from good and bad sides, then Indonesian corruptors are not bad after all and remain questionable whether they must be punished or not. None of corruptors have bad intention to their family when they commit a corruption. By the corruption, a corruptor can build up a noble aspiration or goal, among other to improve the wealth of the family.”

unjust adjudication is the wrong law. Right and wrong shall be the substance of adjudication, not good and bad.

The transcendental ideology of Indonesian adjudication to guarantee just law certainty⁵⁵ will tell whether the law is right or wrong, or whether it is good or bad. Good adjudication for human⁵⁶ (perspective of judges) may be “not right before God”⁵⁷, while bad adjudication for human may be “not wrong before God”. Indonesian judges can give light verdict for corruption criminal by consideration that the doer is showing a remorse (*taubat*), which may be seen by the eye of the judge and other human as **good**, but it is still **wrong** before God because only God (not Deities)⁵⁸ with the absolute knowledge beyond human.

“Save yourself and your family from the fire of hell”. This theological conception shall be understood properly by corruption criminal. Therefore, every Indonesian must have God. Corruption may be committed to save the doers and their family from poverty. Indeed, poverty is an entry gate of *khufur*. Anyone who is *khufur* will go to hell and be unsafe from God law in hell. Corruption is arranged by intention (*niat*) to avoid from becoming *khufur* and this intention is good on the eye of Indonesian corruptors. Adjudication against Indonesian corruption case must justify that such intention is wrong from any perspectives, especially transcendental perspective.

Islam has provided space for the application of values and principles of justice and law certainty. Justice has many dimensions depending on context.⁵⁹ The dimension of justice (Al–

⁵⁵ According to Nurcholis Madjid, “law certainty is a certainty of *Sunnatullah*, which is objective and immutable, because it is independent of the reason or intention of human, and is prevailed for eternal without interruption or connection with other person. Justice as *Sunnatullah* is also objective and immutable because everyone who enforces the law is the winner, whereas who defies the law is the looser. This perspective emanates from the decree of Allah, “*Sunatullah* is given to human through what has been prevailed before (in history). The decree (law) of Allah is a certainty as it shall be (QS. Al Ahzab/33:38). Ali ibn Abi Thalib has said that, “Allah may enforce a just country despite its infidelity, but will not enforce Islamic country due to its tyranny”. See Nurcholis Madjid, *Doors Toward God*, Jakarta, Paramadina, PT. Dian Rakyat, 2008, Page 44.

⁵⁶ Mahmud Kusuma says that “positive law paradigm is standing upon laws and regulations, whereas progressive law arranges behavioral factors upon legislation. These behavioral factors are human behaviors such as *compassion, empathy, sincerity, education, commitment, dare, and determination*. See Mahmud Kusuma, *Menyelami Semangat Hukum Progresif: Terapi Paradigmatik Bagi Lemahnya Hukum Indonesia*, Yogyakarta, Anthony-Lib-Indonesia, 2009, Page 53.

⁵⁷ Sutandyo has asserted that “the authority of the King or the national masters, and their officers, is nowadays no longer conceptualized as the reflection of God authority. The authority becomes unlimited”. See Sutandyo Wogjosubroto, *Toleransi Dalam Keberagaman: Visi Untuk Abad ke-21*, Surabaya, Pusham Ubaya-The Asia Foundation, 2003, Page 7.

⁵⁸ Ancient Egyptian worships *Ma’at*, the Justice Goddess. *Ma’at* is a personification of law, justice and truth. It is featured by a standing or sitting goddess holding crown pole (*schepture*) in one hand while the other hand is holding life symbol (*iankh*). Sometimes, the Goddess is configured with wings and feathers like bird. See Munir Fuady, *Sejarah Hukum*, Bogor, Ghalia Indonesia, 2009, Page 112.

⁵⁹ “The rise of community life and the falling of nation are depending on the enforcement of justice in the court. An-Nisa/3:58: “*If you shall determine law between humans, you must determine it with just. Allah is the best teacher. Allah is Mighty of Listening and Seeing*”.

Adl) may include law enforcement before court, polygamy⁶⁰, and conflict dissolution⁶¹. The dimension of justice (Al-Qist)⁶² includes orphan⁶³, allocation and weight⁶⁴, relationship across religions⁶⁵, and the repay of the deed in the judgment day.⁶⁶ The dimension of justice (Wasat) remains between two issues, or reflects the values of reasonable, regular, straight, just, and clean.⁶⁷

Law certainty in Islam is shown by legality principles⁶⁸ of Islam which not only imply human intelligence but also God will. Law certainty⁶⁹ in Islam is emphasizing on the submission and obedience of human to God revelation within the frame of spirituality. Guidance, notification and warning are sent through revelation and *sunnah Nabi*. These are tenets of Islamic legality

⁶⁰ “The justice in polygamy issue is closely related with the command of being just, treating equal in sharing the feeling, and being impartial. It is explained in An-Nisa/4:3: “If you are afraid of failing to be just onto orphan woman (if you marry her), you can marry other women you love, can be two, three or four of them. But, if you are afraid of failing to be just onto them, you shall marry one, or marry your female servant. This deed is closer to the avoidance of cruelty.”

⁶¹ “The command for being just is also found in the deed of resolving the dispute of many issues such as tribe, race, social status and witnessing (Al-An’am/6:152), divorce and debt (Al-Baqarah/2:282), association across religions (Asy-Syura/42)”. The meaning of being just is closely related to the validation of evidence in the court by the judge.

⁶² “Al-Qist is allocating with just, being just, treating with just, behaving with just, not deviating from rightness, not exceeding the limit, giving just verdict (qada’), keeping the agreement with God, giving right witness, giving honest witness, enforcing the law with just, being equal between self and other before the law, enforcing just in witnessing to avoid wrong verdict, and being just in action and speaking”. The Validation Committee of Al-Qur’an Mushaf in the Research & Development and Education & Training Agencies of The Minister of Religion, Republic of Indonesia, *Thematic Interpretation of Al-Qur’an : Law, Justice and Human Right*, Jakarta, Aku Bisa Publishing, 2010, Page 166-173.

⁶³ “Being just in this context is objective responsibility either physical or mental”. See An-Nisa/4:3.

⁶⁴ “Being just in this context is the manifestation of just attitude in favor of the perfection of weight and allocation to satisfy the right of other” (Al-An’am/6:152)”.

⁶⁵ “Being just in this context is the deed of just for all humans regardless the religion”. See Al-Mumtahanah/60:8.

⁶⁶ “Being just in this context is signifying that all good and just deeds, and all bad and unjust deeds, will be given retribution to all deeds as just as possible based on the decree of Allah. The judge must settle the verdict in just manner (*an tahkumu bil’adl*), and therefore, judge’s verdict must be proper as it shall be.”

⁶⁷ The Validation Committee of Al-Qur’an Mushaf in the Research & Development and Education & Training Agencies of The Minister of Religion, Republic of Indonesia, *Tafsir Al-Qur’an Tematik: Hukum, Keadilan dan Hak Asasi Manusia*, Jakarta, Aku Bisa Publishing, 2012, Page 173-175.

⁶⁸ “Legality principles of Islam imply that God will not punish humans before the notification is given to them through Prophets. Therefore, Al-Qur’an determines that Islam does not punish the crime without clear notification, and thus, there will be no crime without warning”. See Abd. Shomad in Syaiful Bahri, *Internalisasi Nilai Islam Dalam Pembaharuan Hukum Pidana*, A paper presented in Training of Criminal Law and Criminology at Second Mahupiki in Surabaya, from March, 9-11, 2015. Furthermore, Syaiful adds that fiqh norm has stipulated that there will be no law for human deeds if there are no rules or laws of origination which state that the deeds are prohibited. Basically, Islam syariat has determined clear punishment such that it is not possible to the judges to create a certain form of punishment. Therefore, legality principle within Islam includes various categories: *there will be no punishment for the deed of sensible person unless there are any stipulations of nash; there will not criminal deed and punishment unless it is stipulated within nash; and the origin of cases and deeds is tolerated unless there are any stipulations prohibiting the deeds.*

⁶⁹ “Law certainty in Islam is prohibiting against subside of a regulation. Islam recognizes presumption of innocence by which all deeds are still tolerated unless it is stated otherwise by a law nash. Law decree must be made with conviction, not hesitance”. Syaiful Bahri, *Ibid*.

principle, which “law does not deteriorate at all; there is a presumption of innocence; and the punishment with doubt is invalid”. Islam struggles for the equality before the law.

Indonesian adjudication with the transcendental ideology of justice can be understood from the perspective of God supreme attributes.⁷⁰ One of such theological attributes is justice. Indonesian adjudication which reflects God attributes and theological principle of justice⁷¹ is adjudication that guarantees just law certainty.

- a. The justification of the transcendental ideology of law certainty within Indonesian adjudication is derived from positive law ideology as embedded within First Principle of Pancasila, “The Belief on One Supreme God” and also Principle of Adjudication stating that “adjudication shall favor of justice based on One Supreme God”.
- b. The justification of the transcendental ideology of law certainty within Indonesian adjudication is consistent to the physicality and mentality of legality principles within Islam law, comprising of: “law does not deteriorate at all; there is a presumption of innocence; the punishment with doubt is invalid; and God may not punish human without notification or warning through Prophets”.
- c. The justification of the transcendental ideology of justice within Indonesian adjudication is found in positive law⁷² that requires the judges to explore, to follow and to understand the justice values that live and are advocated by the community (by spirituality) and that stated within unwritten law (religion).
- d. The justification of the universality of the transcendental ideology of justice within Indonesian adjudication is emanated from the order of values of God attributes (*al-*

⁷⁰ “Supreme attributes owned by God that relate with justice principle are elucidated as follows. *Al-Ahkam* (Deciding the Law) is preventing badness or difficulty or inviting rightness or easiness; breaking up the dispute and settling up the rightness instead of badness; determining who is pious and infidel; giving proper retribution to any efforts based on the certain stipulations; and law must be measurable for its consequence. QS. Al-Anam/6:14, *Am I sensible to look for the law beyond Allah while Allah has revealed Holy Book (Al-Qur'an) in details*. The attribute of *Al-Ahkam* is that before making the verdict, the judge must have reasonable knowledge of God law, and the judge shall listen to and watch over anything related to the case to keep away from personal interest and to develop objective adjudication”. Next is *Al-Adil* (Mighty of Justice). It is a matter of walking straight, using similar size, placing something in proper place, giving the right of other immediately, being just to the self and other. *Al-Hakim* (Mighty of Wisdom) is a matter of having wisdom, prioritizing the main substance of something, being a master of doing something, selecting the best and proper deed, and being leas hesitant. However, afraid to God is the peak of wisdom. See M. Quraish Shihab, *Menyikap Tabir Ilahi, Asmaul Husna dalam Perspektif Al-Qur'an*, Jakarta, Lentera Hati, 2001, Page 144-152 and Page 220-222.

⁷¹ “The principles of justice within Islam include equality of right (at-taswiyah), proportionality, and public good.” See The Validation Committee of Al-Qur'an Mushaf in the Research & Development and Education & Training Agencies of The Minister of Religion, Republic of Indonesia, Opcit, Page 176-186.

⁷² See Section 25 and 28 of Law No.4/2004 about Justice Power, adjunct to Section 5, 50, and 53 of Law No.48/2009 about Justice Power.

hakam, al-adel, al-hakim) and also from the signification of universality of *al'adl, al-qist* and *wasat*.

- e. The justification of the transcendental ideology of just law certainty within Indonesian adjudication is that Indonesian adjudication must contain the aspect of normative and history.

REFERENCES

- Abdullah, Amin, (1999), *Studi Agama Normativitas dan Historisitas*, Yogyakarta, Pustaka Pelajar.
- Ali, Daud, Muhammad, (1991), *Asas-Asas Hukum Islam (Hukum Islam I)*, Jakarta, Rajawali Press.
- Ali, Daud, Muhammad, (1991), *Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, Jakarta, Rajawali Press.
- Ali, Achmad, (2009), *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Juddicial Prudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Jakarta, Kencana Prenada Gorup.
- Arief, Syamsudin, (2015), *Orientalisme dan Diabolisme Pemikiran*, Jakarta, Gema Insani Press.
- Ashidiqy, Jimly, (1995), *Pembaharuan Hukum Pidana Indonesia: Studi Tentang Bentuk-Bentuk Pidana Dalam Tradisi Hukum Fiqh dan Relevansinya Bagi Usaha Pembaharuan KUHP Nasional*, Jakarta, Angkasa.
- Ashidiqy, Jimly, (2008), *Menuju Negara Hukum Yang Demokratis*, Jakarta, Sekjen dan Kepaniteraan MK-RI.
- Berten, K, (1999), *Sejarah Filsafat Yunani*, Yogyakarta, Kanisius.
- De Cruz, Peter, (2010), *Perbandingan Sistem Hukum*, Bandung, Nusa Media.
- Efendi, Bahtiar, (1998), *Islam dan Negara: Transformasi Pemikiran dan Praktek Politik Islam di Indonesia*, Jakarta, Paramadina.
- Fuady, Munir, (2009), *Sejarah Hukum*, Bogor, Ghalia Indonesia.
- Gilissen, John dan Gorle Fritz, (2007), *Sejarah Hukum Suatu Pengantar*, Bandung, Refika Aditama.
- Hamkah, (1981), *Sejarah Umat Islam*, Jakarta, Bulan Bintang.
- Hutington, P, Samuel, (1996), *The Clash of Civilization and The Remarking the World Order*, New York, Simon and Schluster.
- Hart, H.L.A, (2010), *Konsep Hukum*, Bandung, Nusa Media.
- Ishomuddin, (1998), *Islam Dialektika Antara Pemahaman Budaya dan Sosial Ekonomi*, Malang, UMM Press.
- Isra, Saldi, (2010), *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlementer Dalam Sistem Presidensial Indonesia*, Jakarta, Raja Grafindo.
- Jainuri, Achmad, (2004), *Orientasi Ideologi Gerakan Islam, Konservativisme, Fundamentalisme, Sekularisme, dan Modernisme*, Surabaya, Lembaga Pengkajian Agama dan Masyarakat.
- Kusuma, Mahmud, (2009), *Menyelami Semangat Hukum Progresif Terapi Paradigmatik Bagi Lemahnya Hukum Indonesia*, Yogyakarta, anthonyLib-Indonesia.
- Lacroic, Stephane, (2009), *Between Revolution and Apoliticism: Nasir al-Din al-Albani and his impact on the Shaping of Contemporary Salafism*, London, Hurst adn Company.

- Lajnah Pentashihan Mushaf Al-Qur'an, Badan Litbang dan Diklat, (2012), *Tafsir Al-Qur'an Tematik: Hukum, Keadilan, dan Hak Asasi Manusia*, Jakarta, Kemenag.
- Lubis, Suhrawadi, K, (1999), *Hukum Waris Islam*, Jakarta, Sinar Grafika.
- Mahfud, MD, Moh, (2010), *Membangun Politik Hukum, Menegakkan Konstitusi*, Jakarta, Rajawali Press.
- Mahfud, MD, Moh, (2010), *Politik Hukum di Indonesia*, Jakarta, Edisi Revisi, Rajawali Press.
- Madjid, Nurcholis, (2008), *Pintu-Pintu Menuju Tuhan*, Jakarta, Paramadina.
- Oman, Fathi, (1983), *Parameters of the Islamic State*, Arabia: The Islamic World Review.No.17, January.
- Piscatori, James,P, *Islam In a World od Nation State*, Cambridge, Cambridge University Press.
- Raharjo, Satjipto, (2010), *Penegakan Hukum Progresif*, Jakarta, PT. Kompas Media Nusantara.
- Ridwan, Juniarto, H dan Sodik, Achmad, (2010), *Tokoh-Tokoh Ahli Pikir tentang Negara dan Hukum dari Yunani Kuno sampai Abad 20*, Bandung, Nuansa.
- Rifai, Ahmad, (2010), *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Jakarta, Sinar Grafika.
- Shihab, M. Quraish, (2001), *Menyingkap Tabir Ilahi, Asmaul Husna dalam Perspektif Al-Qur'an*, Jakarta, Lentera Hati.
- Shomad, Abduh dan Bahri, Syaiful, (2015), *Internalisasi Nilai Islam dalam Pembaharuan Hukum Pidana*, Surabaya, Makalah Penataran dan Pelatihan MAHUPIKI ke II. March, 9-11.
- Soemodiningrat, H.R.,Otje, Salman, (2002), *Rekonseptualisasi Hukum Adat Kontemporer*, Bandung, Alumni.
- Sutiyoso, Bambang, (2009), *Metode Penemuan Hukum Upaya Mewujudkan Hukum yang Pasti dan Berkeadilan*, Yogyakarta, UII Press.
- Syamsudin, M, (2015), *Ilmu Hukum Profetik, Gagasan Awal, Landasan Kefilsafatan dan Kemungkinan Pengembannya di Era Psotmodernisme*, Yogyakarta, yayasan Pusat Studi Hukum FH-UII-UII Press.
- Syariati, Ali, (1992), *Membangun Masa Depan Islam*, Bandung, Mizan.
- Tahir, Heri, (2010), *Proses Hukum Yang Adil Dalam Sistem Peradilan Pidana di Indonesia*, Yogyakarta, Laksbang PRESSindo.
- Tanya, Bernard,L dan Simanjuntak, Yoan, N, and Hage, Y, Markus, (2010), *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta, Genta Publishing.
- Wantu, Frence,M, (2011), *Idee Des Recht, (Kepastian Hukum, Keadilan dan Kemanfaatan (Implementasi Dalam Proses Peradilan Perdata)*, Yogyakarta, Pustaka Pelajar.
- Wignjosubroto, Sutandyo, (2003), *Toleransi Dalam Keagamaan: Visi Untuk Abad ke-21*, Surabaya, Pusham Ubaya-The Asia Foundation.
- Zafar, (2003), *Pertanggungjawaban, Parlemen dan Ijtihad*", in Charles Kuzman, "Wacana Islam Liberal, Pemikiran Islam Kontemporer tentang Isu-Isu Global", Jakarta, Paramadina.
- Al-Qur'an, At-Taubah: 13.
- Al-Qur'an, Al-Baqarah:85, 282.
- Al-Qur'an, At-Maidah : 44.
- Al-Qur'an, Al-Sad: 26.
- Al-Qur'an, Al-An'am:65, 111, 152.
- Al-Qur'an, A-Ahzab:33-38.
- Al-Qur'an, An-Nisa':3,58.
- Al-Qur'an,

Hadits Riwayat Muslim.

Hadits Riwayat Ahmad, An-Nasai dan Ad-Duruquthny.

Undang-Undang Negara Republik Indonesia Nomor 8 tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana.

Undang-Undang Negara Republik Indonesia Nomor 4 tahun 2004 tentang Kekuasaan Kehakiman.

Undang-Undang Negara Republik Indonesia Nomor 48 tahun 2009 tentang Kekuasaan Kehakiman.