

# TRANSCENDENTAL JUSTICE

## Legal Ideology of Indonesian Terrorism

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### Abstract

The terrorism legal law in Indonesia has not yet been able to interpret a transcendental justice in first principle of *Pancasila*, “*Ketuhanan Yang Maha Esa*” (Belief in the one and only God) as basic spirit in creating and enforcing the Indonesian terrorism legal law.

Islam offers a concept of transcendental ideology in controlling terrorism, which is “*The law is not retroactive, has the presumption of innocence and punishment nullities because of doubts for God will not punish human without any notice. Rather, He warns through His messenger (Rasulullah pbuh.)*”. This Islamic concept is indeed in line with first principle of *Pancasila* “*Ketuhanan Yang Maha Esa*”.

The transcendental ideology guides both law-making and law enforcement agencies about terrorism to explore, follow, and understand justice values that live and thrive in community (conscience) as well as unwritten law (religion).

The universality of transcendental justice in Indonesian terrorism legal law can be found in the values derived from the God’s attributes (*al-hakam, al-adel, al-hakim*) and the universality of *al’adl, al-qist, and wasat*.

The transcendental justice in terrorism legal law embodies the values of both normativity and historicity as a method to achieve the seeking and leading process to the ideology of terrorism legal law in Indonesia.

**Key words:** *justice, transcendence, ideology, terrorism.*

### INTRODUCTION

Conscience is a limited reflection of God’s attributes possessed by human as the basic source of justice, which transcends the truth of justice rationality in *ius positum* (positive laws). The power of man’s conscience can transcend<sup>2</sup> spatio-temporal sphere in defining the justice

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<sup>2</sup> “Belief and progressive thoughts, in spite of reflecting brave and hopeful thoughts, are considered liberalists by many fundamentalists due to the tendency to use Western thinking frameworks (approach) that are presumably judged misleading the Islamic values.” See Syamsuddin Arief. 2008. *Orientalisme dan Diabolisme Pemikiran*. Jakarta. Gema Insani Press. Page. 45.

rationality of positive laws. The conscience justice<sup>3</sup> is able to transcend the limits of both positive and critical rationale (Divine irrational).

Critical and positive rationality in perceiving the values of transcendental justice and its progressivity will always vis-à-vis the fundamentalism which in the context of seeking the truth of transcendental justice will hardly moderate two distinct mindsets: traditionalism and modernism<sup>4</sup>.

The rationality on standard value of justice existed in terrorism legal law is often intended to meet the legal certainty of terrorism eradication law. Meanwhile, the rationality on standard sense of justice in unwritten laws is intended to ensure the justice in preventing terrorism. The truth of law certainty and justice becomes a center of all dimensions of transcendental values in the terrorism substantive law. The terrorism legal law embodies the dimension of positive and critical rationality. Terrorism comprises the ideology of normative standard on both positive and unwritten laws. The terrorism legal law becomes a center of catalyst dimension on ideologically preventing and eradicating terrorism.

Terrorism legal law which is developed doctrinally remains diametrically distinguishing between rationale and irrational justice. The rationality gives meaning to truth and justice values of positive laws measured procedural methodically. Truth of irrationality and transcendental (prophetic) justice values exerts a measure of human's resignation and acquiescence<sup>5</sup> as God's servant<sup>6</sup>.

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<sup>3</sup> Set of values under the theological (religion) basis as a nature of justice (conscience) underlying both mindset and ethics of each human in the daily life. The values of conscience justice could not be separated from surrounding social reality. Dialogical process of theological values existed dynamically in community is a method (epistemology) of internalization and empowerment in seeking for the truth and justice transcendently.

<sup>4</sup> "Fundamentalism is divided into two: traditional and modern fundamentalism. Traditional fundamentalism perceives that Al-Quran and Al-Sunnah are the major and tied sources of Islamic teachings that must be implemented in the daily life. Classical and Mid-era religion thoughts do not bind and thus creating dullness in Islamic thoughts. Many caliphs over accommodated the local non-Islamic tradition, over-idolizing figures. The solution is that Muslims must learn and implement Al-Qur'an and Al-Sunnah, and eliminate blind *taqlid* (over-relying on particular thoughts). Fundamentalism was born in Christianity in which beliefs and religion practices emerge as response of both modernization and secularization eroding the religion values in community". See Achmad Jainuri, *Orientasi Ideologi Gerakan Islam, Konservatisme, Fundamentalisme, Sekularisme, dan Modernisme*. Surabaya. The Institute of Religion and Community Studies, 2004, p. 69.

<sup>5</sup> "Those who ever let go off the acquiescence, they will meet Allah in Judgement Day without *hujjah* (reasons), and whoever dies while in his shoulder there is no *baiat* (promise on caliph), he will die in *jahiliyah* (stupidity)". Muslim Hadith.

<sup>6</sup> "They have taken their scholars and monks as lords besides Allah, and [also] the Messiah, the son of Mary. And they were not commanded except to worship one God; there is no deity except Him. Exalted is He above whatever they associate with Him". Qs. At-Taubah verse 31.

Human<sup>7</sup> as God's servant has been assigned<sup>8</sup> to role as a leader (caliph) in this world, maintaining and taking care the world for its welfare. Law-making and law enforcement agencies<sup>9</sup> as entity of this concept should lead others. They, in terms of terrorism issues, have obligations and responsibility<sup>10</sup> to ensure laws and enforce them as an aid to achieve the ultimate goal, creating welfare for the world<sup>11</sup>.

Judge, as the top leader of law enforcement agencies for terrorism in Indonesia, has obligations<sup>12</sup> as the provision of Article 25: "*Any verdicts, besides containing reasons and basis of decision, must comprise particular articles from related laws or unwritten law sources that are used as basis for prosecuting,*" and of Article 28: "*1. Judge must explore, follow, and comprehend the values of law and justice in community. 2. In considering the severity of criminal law<sup>13</sup>, judge must also consider the nature of good and evil of the defendant<sup>14</sup>.*"

## **2. The Philosophy of Transcendental Justice as "Ideology" of Terrorism Legal Law**

The ideology of terrorism legal law argues the philosophical course about the certainty of law and justice. Law philosophy is applied as a method to find out the nature of the truth of

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<sup>7</sup> "In Indonesia with the upmost dominant Muslims in the world, many Islamic movements have failed to fulfill the communal necessities". See Bahtiar Efendi, *Islam dan Negara: Transformasi Pemikiran dan Praktek Politik Islam di Indonesia*, Jakarta. Paramadina, 1998, p. 89.

<sup>8</sup> "Those having *baiat* (promised) upon an Imam/Caliph while wholeheartedly holding it, they should then obey him with their whole capacities. If there is someone coming for the caliph's power (fighting against the current government), then kill him". Muslim Hadith.

<sup>9</sup> "Indeed, an Imam/Caliph is like a shield upon which those are fighting and being sheltered". Muslim Hadith.

<sup>10</sup> "The most salient law in Islam is the law of responsibility. It relates to the concept of Judgement Day in which everyone should be responsible for what he has done, either goods or evils." See Zafar, *Pertanggungjawaban, Parelemen, dan Ijtihad*, in Charles Kuzman, *Wacana Islam Liberal, Pemikiran Islam Kontemporer tentang Isu-Isu Global*, Jakarta, Paramadina, 2003.

<sup>11</sup> The concept of transcendental justice consists of "*rahmatan lil' alamin*", a justice comprising and protecting the universe. Terrorism is any destructing actions that might harm the universe. So is the terrorism law which does not embody the concept of transcendental justice. It also might harm the universe.

<sup>12</sup> The Indonesian judge's obligations in making a decision have been obviously set in Regulation no. 48 Year 2009 about The Amendment of Regulation no. 4 Year 2004 about Judicial Power as follows: Article 5 (1) Judge and constitutional judge must explore, follow, and comprehend the values of law and justice in community.

Article 50 (1) Any verdicts, besides containing reasons and basis of decision, must comprise particular articles from related laws or unwritten law sources that are used as basis for prosecuting. (2) Every verdict must be signed by the chief and judge who are making the decision and the court clerks who are following the court.

Article 53 (1) In examining and making verdict, judge must be responsible for the decision. (2) The verdict as mentioned in the section (1) must comprise legal consideration based on proper reasons and legal basis.

<sup>13</sup> The terrorist's awareness realized through his confession and regret in court must be used as judge's consideration to the severity of criminal penalty. This awareness must be regarded as integral portion of holistic process of criminal law and therefore must be concerned as the determinant factor of judge's consideration in prosecution.

<sup>14</sup> Yusti Probowati says that judge does not understand the defendant's psychology and thus never appraises the psychological factors in considering the severity of criminal penalty in his decision. See Yusti Probowati, *Requisitur Jaksa Penuntut Umum dan Kepribadian Otoritarian Hakim Dalam Proses Pemidanaan di Indonesia*. Dissertation, Yogyakarta, PDIH University of Gajahmada, 2001.

transcendental justice. Philosophy guarantees the freedom for the discipline<sup>15</sup> of law and doctrines in pointing out the direction of finding the truth path of transcendental justice. Philosophy and doctrines should be perceived as the process of ‘moving to’ and ‘turning into’ in finding out the the truth of transcendental justice, not as the process to justify violence as the basis of eradicating and preventing terrorism. These processes become the justification of urgency on transcendental justice as the ideology of terrorism legal law.

The uncertainty of doctrines in initiating the process of ‘moving to’ and ‘turning into’ rather becomes the source of inspiration in finding out the ideology of transcendental justice as the basic instruction for the law-making and law enforcement agencies in stipulating Indonesian terrorism legal law. The substantial construction and enforcement on terrorism legal law without the transcendental justice ideology become the main reason of inherent uncertainty of terrorism legal law, in which it eventually could raise the basic problems on eradicating and preventing terrorism in Indonesia.

Knowledge as the method<sup>16</sup> (epistemology) should be able to provide adequate description and should be brought closer to the idea of society’s way of living where the knowledge is being gained. Bernet<sup>17</sup> provides the description expressing that epistemology has always linked to the people’s way of living at that time (Greece). The cultural behavior and habit have strong influence on the mindset and action of the scientists that are in accordance with the era. All epistemologies<sup>18</sup>, no matter what the truth is, should be based on the social needs and reality (sensible). Epistemology that is not attached to the society’s way of living (insensible) will undoubtedly be useless and utopian. If law is perceived as an epistemology, it should be gained<sup>19</sup> from the the existing justice values<sup>19</sup> needed by the society in which the law

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<sup>15</sup> The Prophet Muhammad (pbuh) said that: “There are three kinds of knowledge (main knowledge), and others beside those three are additional. The three knowledge are: Clear verse, *Sunnah* from the Prophet, and equitable *Faridhah* (Islamic inheritance jurisprudence)” (*HR. Ahmad, An Nasa’i and Ad-Daruquthny*).

<sup>16</sup>“As philosophical doctrine, the epistemology should be considered as the basic guidance for law-making and law-enforcement agencies. As the method used to gain, to follow, and to understand the origin of justice values among society, the epistemology of law should shoul provides certainty. It should be the the main source for the law-making and law-enforcement agencies in assuring the developing values of transcendental justice in society, and thus the certainty of equitable law can be guaranteed. “

<sup>17</sup> Benet states “It is an adequate description of epistemology to say that it is thinking about the world in the Greek way”, in K. Bertens, *Sejarah Filsafat Yunani*, Kanisius, Yogyakarta, 1999, p.23.

<sup>18</sup>John Gilissen and Frits Gorle explain that “Muslims perceive the epistemology of law as a tree. The four sources are roots, the constitution derived from them is trunk, and the solutions of dispute are the branches, derived from the constitution. See John Gilissen and Frits Gorle, *Sejarah Hukum Suatu Pengantar*, Refika Aditama, Bandung, 2007, p. 387.

<sup>19</sup> “The history of Islamic dissemination in Indonesia is as old as the other religions. This is an important reference for the law-making and law-enforcement agencies in gaining, understanding, and following the Islamic values as the unwritten source of law in issuing the Indonesian terrorism legal laws which contain the ideology of transcendental justice. On August 17 1945, the Republic of Indonesia was born and marked by the recitation of Proclamation Text. On August 18 1945, the 1945 Constitution was set and in the Preamble, it is stated “Whereas

itself is discovered to be issued by the state. Well-organized law should be based on the justice values existing in the society in which the aspects of religion<sup>20</sup> and faith are also considered.

### 3. The Limit of Transcendental Justice Ideology in Indonesian Terrorism Legal Law

The transcendental justice ideology in the philosophical and doctrinal perspectives also touches the realm of uncertainty<sup>21</sup>. The transcendental justice ideology is meant to be used as

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independence is a genuine right of all nations . . . and by the Grace of God Almighty . . . the averment of declaration that the independence gained by the blessings of Allah besides motivated by the noble desire of the Indonesian predecessors implies that Indonesia is a self-declared religion country, as stated in the first principle of Pancasila, added with . . . *dengan kewajiban menjalankan syariat Islam bagi pemeluknya* (with the obligation to practice the sharia for its believers). Eventhough the history has not able yet to accomodate the formalization of the clause, it is inferred that since the beginning of the independence, there has been an systematic attempt to internalize transcendental values into the regulation and state's official law. Such attempt still relatively exists nowadays through religion representatives in the *Trias Politica* (the separation of power: legislative, executive, judicial). In its development, there are two streams: 1) one that supports the idea in which religion law completely becomes the value of official state regulations with its terms and nomenclature; 2) one that supports the idea that in which religion law substantially becomes the value of the official state regulations.

<sup>20</sup> "The history of Islamic law always being tightly related to the phase of Islam encounter in Indonesia. Classical history books provide information that Islam was introduced in Indonesia in the first century of Hijri (7 AD). In traceable documents, of the Seminar about Islam Encounter in Indonesia held in Medan, it is concluded that Islam was introduced in Indonesia in the seventh/eighth century". See *Suhrawadi K. Lubis and Komis Simanjatak, Hukum Waris Islam. Jakarta, Sinar Grafika, 1999, p. 6.*

Syaifudin Zuhri states "Ibnu Batutah stopped by in Samudera Pasai in 1345 AD. He admired the competence of Sultan Al-Malik Al-Zahir in discussing Islamic issues and Fiqh. Ibn Batutah also explained that Al-Malik Al-Zahir is not only a Sultan, but also an Islamic scholar (*fuqaha*). From Samudera Pasai, Islamic teachings began to spread throughout Indonesia." See *Muhammad Daud Ali, Asas-Asas Hukum Islam (Hukum Islam I), Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia, Jakarta, Rajawali Press, 1991, p.210.*

Supomo historically proved that "The judicial environment that applied by every stratum of society has been formed since the era of Dutch East Indies. Regarding the recognition of Islamic law, Religious Court is formed. This judiciary is both regulated by Dutch Colonial Government and the Tribal Leaders. On January 19, 1882, referring the *Staatsblad* 1882 Number 152, Religious Court was officially formed. Especially for South Borneo, referring the *Staatsblad* 1937 Number 638 and Number 639, the First Instance Court and the Density of Chief Judges for Appeal Level. The existence of religious judiciary was still preserved in Japanese colonial era which was known as *Scorioo Hooin* and Supreme Islamic Courts that was known as *Kikoo Kootoo*". *Opcit*, p. 10-11.

Hamkah states "there came the representatives from Arab entering Java Island in 675 AD and visiting the land of Kalingga. After learning how strong the influence of Hinduism in the land, they returned to their homeland. As the result, they applied non-violent strategy of spreading the Islamic teachings; "There shall be no compulsion [in acceptance] of the religion. It is clear that the Arabian colony has existed in West Sumatra in 684 AD. And it is clear that since the ninth century, there has been mentioned the names of seaports in Malay, *Kalah*. Some called it "*Tanah Genting Kra*", some called it "*Kedah*", and some other called it "*Klang*". *Hamkah, Sejarah Umat Islam, Jakarta, Bulan Bintang, 1981, p.49-50.*

<sup>21</sup> The ideology of transcendental justice is indeed meant to be used as the method to complete various thoughts on justice sourced from the theological values (Divine-Prophetic). The concept of transcendental justice is similar to the concept of justice in the era of the development of legal thoughts and justice nature law. The thoughts of nature law focus on the truth that the God-given human mind is limited in interpreting justice (rational). The transcendental justice focuses on the concept of justice based on the truth of human conscience as limited reflection of God's attributes (prophetic), which perceiving justice not only restricted on rational interest and human sense, but rather it refers to the maintenance of universe (*rahmatan lil 'alamin*). Human conscience is rather abstract yet becoming the basic motive of all feelings, minds, and acts of human. The uncertainty in the concept of transcendental justice is more readily meaningful on the yet-accommodated conscience truth in the values existing in positive law. The ideology of transcendental justice described here is meant to be used as the method of completing the concept of justice in terrorism law without referring to the principle *Ketuhanan yang Maha Esa* (Believing in the One and Only God).

the method to eliminate the philosophical and doctrinal uncertainty. Human's obedience and resignation towards the transcendental truth and justice (theological<sup>22</sup>) become the justification for the certainty of law and justice sourced from the prophetic ideology<sup>23</sup>.

The faith (piety) of a man in obeying the truth and justice values sourced from God<sup>24</sup> is meant to be the basic consideration in limiting the philosophical and doctrinal freedom in the epistemology of law. The transcendental justice ideology should become the constraint<sup>25</sup> on justification of the Indonesian law-making and law enforcement agencies in issuing and enforcing the law. In the perspective of the transcendental justice ideology, Indonesian terrorism legal law is applied as the method to fulfill<sup>26</sup> the process of 'moving to' and 'turning into' in the principle of the philosophical and doctrinal argument over the ideas of justice. The paradigm of terrorism legal law contains rationale dimension (philosophy) and sense dimension (conscious). Terrorism refers to an act devised to destroy human civilization at one side (sense) and the cosmic on the other side (rationale).

Islam<sup>27</sup> perceives terrorism as the result of systemic and excessive injustice. The nature of terrorism has the same degree as the doctrine "Opposing the injustice of the authority's

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<sup>22</sup> According to Fathi Osman, Islam has the concept of regulating life comprehensively. See *Fathi Osman, Parameters of the Islamic State, Arabia: The Islamic World Review, No. 17, January 1983, p. 10.*

<sup>23</sup> "The prophetic ideology is the ideology of thoughts emulating the prophetic path. Prophetic path is the straight path shown by God in the scriptures. According to Syamsudin, the prophetic law science holds the spirit of 'local genius' in legal education." See *M. Syamsudin (ed), Ilmu Hukum Profetik, Gagasan Awal, Landasan Kefilsafatan dan Kemungkinan Pengembangannya didi Era Postmodernisme, Yogyakarta, Pusat Studi Hukum FH UII-UII Press, 2015, p.11-14.*

<sup>24</sup> "Sharia should be enforced upon state's constitution in which the sovereignty is on God's provision". See *James P. Piscatori, Islam in a World of Nation States, Cambridge, Cambridge University Press.*

<sup>25</sup> "In constructing the faith as the basis of making decision, a Judge should gain, follow, and understand the theological values. Theological values should be based on the judge's religion. The theological values gained from the scriptures become the main reference for the judge in manifesting the basic concept *Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa* (For the Justice in the Basis of the Belief in the One and Only God). The scriptures handed over by God to all His prophets should be read by the judge both textually and contextually since the scripture are meant to be used to prevent the society from hiatus. M. Amin Abdullah explains "when Al-Qur'an handed over to Prophet Muhammad pbuh., the world is not in hiatus. The civilization of Arab, Persia, and Rome has been rapidly developed before. Every civilization has supporting set of values upheld by the citizen and the sympathizers. See *M. Amin Abdullah, Studi Agama Normativitas atau Historisitas, Yogyakarta, Pustaka Pelajar, 1999, p. 217.*

<sup>26</sup> "The concept of transcendental justice perceived as the fulfilling effort still raises arguments. For example, during the classical era (632-662 AD/11-41H), from Abu Bakar ash-Shiddiq, Umar bin al-Kathab, Utsman bin Affan, Ali bin abi Thalib, *mazhabs* in *fiqh* (law) were spread throughout many countries and followed by the Muslims nowadays throughout the world. The *mazhabs* are: Imam Ja'far ash-Shadiq, Imam Abu Hanifah, Imam Malik bin Anas, Imam asy-Syafi'i, Imam Ahmad bin Hanbal. In this period, there were attempts to compile the hadith as the reference of stipulating the law after the Holy Qur'an. In certain period of time, these *mazhabs* became the Islamic law in which the law was practiced diametrically different by the followers. The form and content of the *mazhab*'s stipulation turned into sects generating the tradition of *fiqh* in its practice. It is difficult to present a fact that the complexity emerged in the tradition of *fiqh* is often not derived from the Holy Qur'an but rather from open interpretation by the *mazhabs*." See *H. Juniarso Ridwan and Achmad Sodik, Tokoh-Tokoh Ahli Pikir tentang Negara dan Hukum dari Yunani Kuno sampai Abad 20, Bandung, Nuansa, 2010, p.106-109.*

<sup>27</sup> According to Achmad Ali, "Those who barely know Islam and see it as bad thing based on priori reasoning are indeed always having negative perception on the Islamic principles of justice. By focusing on wider social and

policy and law by terrorizing is not different from opposing the injustice of the universe.” Terrorism leads to the destruction of human civilization in this world. The Islamic concept of *Rahmatan Lil’Alamin* in Islam is meant to be used to oppose the injustice by terrorism that could destroy the human civilization on Earth. A Judge in Indonesia is considered as the representative of God in deciding on a verdict of terrorism that guarantees the certainty of justice law in building human civilization on earth.

Transcendental justice is the civilization peak on earth, while terrorism is the basis of injustice. Islamic law does not substantially violate<sup>28</sup>equality and justice of other religions, culture<sup>29</sup>and customs<sup>30</sup> among Indonesian community. Islamic law cannot be viewed merely based on its form and symbol but also as a whole, that its present has become fundamental guidance in forming<sup>31</sup>transcendental justice values in the State formal laws. Islamic law does not essentially require its formation to employ Islamic symbols. The values have been able to ensure justice for all (*Rahmatan Lil ’Alamiin*).

Islam has its own concept to define law and justice for the universe. The universality of law and justice in Islam must be viewed as the dynamics<sup>32</sup> to look for and toward the

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cultural context, it can be seen that Islamic law system is classified into Common Law system, where justice is sought through one equity. Once again I added, according to Islamic Law, justice is not about equality but equity. See Achmad Ali, *Menguak Teori Hukum (Legal Theory) and Teori Peradilan (Judicial Prudence) Including Interpretasi Undang-Undang (Legisprudence)*, Jakarta Kencana Prenada Group, 2009, p. 240-241. Also see Bambang Sutyoso, *Metode Penemuan Hukum Upaya Mewujudkan Hukum Yang Pasti dan Berkeadilan*, Yogyakarta, UII Press, 2009, p. 122. According to Bambang Sutyoso, “Islamic Law or also known as Islamic *Fiqh* is a law that is based on rules that had been handed down by Allah SWT to His prophets and Muhammad pbuh. designated to all human until the end of the world”.

<sup>28</sup> HLA. Hart stated that, “the nature of justice and its unique relation with law emerges when we observe that most critics in viewing the justice and injustice almost the same as the words “fair” and “unfair”. See HLA. Hart, *Konsep Hukum*, Nusa Media, Bandung, 2010, p. 245.

<sup>29</sup> “Civilization process of values taken from religions occurs dialogically between values according Scriptures and community. Terrorism legal law must act as the catalyst and stabilizer between Scriptures and community values. There should be no superiority between community values and of those that derived from Scriptures.

<sup>30</sup> Peter de Cruz said,” it is more difficult to be “adjusted” culturally with climate of one’s natural legal system in regards with the juridical style or its primary legal source. Hindu and Islamic laws are the example of laws that are based on unfamiliar concepts to the western legal practitioners. It often occurs that the social and culture environment inform certain laws. When one ignores local history, it results in the difficulty to truly understand foreign laws. Therefore, those laws will be alienated or become extrinsic. See Peter de Cruz, *Perbandingan Sistem Hukum*, Nusa Dua Media, Bandung, 2010, p. 310-31.

<sup>31</sup> Commands to produce fair law can be viewed in QS.6 (An Nisa) :58 *Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice.* QS.6 (Al-An’am: 152):*And when you testify, be just, even if [it concerns] a near relative.* QS. 2 (Al-Baqarah: 123) *And fear a Day when no soul will suffice for another soul at all, and no compensation will be accepted from it, nor will any intercession benefit it, nor will they be aided.* QS.1(Al-An’am: 1): *Then those who disbelieve equate [others] with their Lord.* The aforementioned Qur’anic commands do not affirm that a fair justice according to Islam must employ Islamic symbols. Therefore, law practice based on Islamic principle guarantee the equality and justice to all mankind and the universe proportionally, despite of religion, races, ethnicity, culture, custom, politic, social, economy, ideology, belief and others (transcendental justice”).

<sup>32</sup> According to Moh. Mahfud MD,” To impose Islamic Law based on current political system, Muslims must struggle within political law framework to be able to contribute or even become the material of Law product, especially the Private sector. The principle of *ushul fiqh* on this issue directs, “If we cannot adopt all, then do not

affirmation of law and justice certainty transcendently. Terrorism legal law enforcement process that ultimately leads to court verdict which is concrete and binding<sup>33</sup> must hold universality spirit on Islamic law and justice.

The set up and enforcement of terrorism legal law is the entrance for Islamic values internalization<sup>34</sup> process of justice and equality to ensure the welfare of mankind by maintaining the balance of universe. According to Islam<sup>35</sup>, justice internalization values on terrorism legal law (in Indonesia) is a method (epistemology) of seeking process and a pathway to the real-concrete and binding law which contains transcendental ideology. Transcendental justice ideology in Indonesian terrorism legal law can be initiated from the internalization process of justice values based on Islam by the law-making and law enforcement agencies.

The internalization process of Islamic justice in terrorism legal law requires intellectual maturity<sup>36</sup> and broad as well as the flexible understanding<sup>37</sup> of law-making and law enforcement agencies toward the justice and equality in Islam. By doing so, the law-making and law enforcement agencies are ideologically capable of choosing the value of truth and justice as seen through *fiqh* and *syar'i* (*syar'iah*) point of view.

Transcendental justice ideology in Indonesian terrorism legal law is guaranteed by the first principle of Indonesian philosophical foundation, Pancasila<sup>38</sup>, that is believe in the one and only God. The preamble of law enforcement final actualization in court verdict is “For

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leave the remaining.” See Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi*, Jakarta, Rajawali Press, 2010, p. 281.

<sup>33</sup> But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission. QS. An-Nisa: 65.

<sup>34</sup> Mahfud clarified that “there is a fact that political law leading to legal material improvement effort with strict format and instrument is not proper with the law enforcement in legal institution. Thus, the real issue in national politics does not lie on the material orientation but on the enforcement by the agency”. See Moh. Mahfud MD, *Membangun Politik Hukum Menegakkan Konstitusi*, Rajawali Pers, Jakarta, 2010, p. 44.

<sup>35</sup> Judges, despite their being chosen as vice-God for justice enforcement, it is not easy to apply Islamic law as the source of universal truth and justice (transcendental). According to Huntington, Islam is a distinct power and threat for western countries. See Samuel P. Huntington, *The Clash of Civilization and The Remaking the World Order*, New York. Simon and Schuster, 1996, p. 212, 240-241.

<sup>36</sup> According to Ali Syariati, “when non-believers and pseudo-intellectual have succeeded to “destroy Islam” and when they are able to lure most of our well-educated youth, then they owe those pseudo-intellectuals a large amount of favor. For those group of people are capable of separating our youth from Islam by religious misuse. See Ali Syariati, *Membangun Masa Depan Islam*, Bandung, Mizan, 1992, p. 67.

<sup>37</sup> Jimly stated that “the tendency of understanding of religious teaching legally has grown very well due to the influence of *fiqh* tradition which is not always flexible in practice. In further development this fact has lead *fiqh* itself to be viewed as religion and in contrary, the religion as *fiqh* (Law). Therefore, *fiqh* is often considered as sacred and does not change over time”. 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, p. 35.

<sup>38</sup> Mahfud MD stated that “the effort of law reformation must be based on Pancasila as the paradigm. Pancasila is a legal utopian, *staatsfundamentalnorm* whose norms are accepted by community as the fundamental principle in nation life. Opcit. p. 58-59.



justice by virtue of Almighty God<sup>39</sup>”.The process of making and enforcing the Indonesian terrorism legal law that ensures the legal certainty of justice must contain transcendental ideology of justice. This can be achieved by fulfilling the obligation and responsibility to respond<sup>40</sup> the Indonesian theological values<sup>41</sup>. Response to transcendental justice is hold by seeking, following and comprehending the theology of the first principle of Pancasila<sup>42</sup>. The ideology of transcendental justice meets its justification in the first principle of Pancasila, that is believing in the one and only God”.

Globally, terrorism (including in Indonesia) by any means and principles is against the value of universal Divinity that sees it as the act of violence. Terrorism legal law can be interpreted as *dakwah* (Islamic preach)<sup>43</sup> that must represent the universality of Divinity values. The universality<sup>44</sup> of Divinity values certainly represents the universality of justice. The theology of terrorism legal law should be placed and viewed in proper context so the “crown” of law is not merely worth of decorative<sup>45</sup>.

#### **4. Transcendental Ideology as the Universality of Justice Principal in Preventing Terrorism.**

The history<sup>46</sup> of generation, introduced an open-interpretation on *illat* (basic primary reason)in understanding the justice values coming from the Scripture that must and shall be used as the basis of the law-making and law enforcement agencies which later has the meaning

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<sup>39</sup>Article 197 of Indonesian Law of Criminal Procedure (1) *Criminal verdict that contains: a. the head of verdict that says: “FOR JUSTICE BY VIRTUE OF ALMIGHTY GOD”*

<sup>40</sup> According to Mahfud, “every effort to produce responsive/copulative laws must be based on political law democratization. The political configuration as a result of new format is produces a significant imbalance in political order. Moh. Mahfud MD, *Politik Hukum di Indonesia*, Edisi Revisi, Jakarta, Rajawali Press, 2010, p. 368.

<sup>41</sup> And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers”.

<sup>42</sup> Indonesian Law of Criminal Procedure preamble *consider: a. that the Republic of Indonesia is a constitutional state based on Pancasila and the Constitution of 1945 that upholds the human rights and ensures all citizen equalities on law and the government and shall abide to them without exception.*

<sup>43</sup> According to M. Amin Abdullah,” Without us knowing, our resolution on issues resemble a judge in adjudication and passing judgment on a defendant without any effort to overcome the issue in real and empiric toward the respected pathologic case. After preaching, we tend to go directly to judging and leave the healing part. Whereas the final phase is in fact the toughest in the process of thorough preaches See M. Amin Abdullah, *Opcit*, 1999, p. 219.

<sup>44</sup>“So do you believe in part of the Scripture and disbelieve in part? Then what is the recompense for those who do that among you except disgrace in worldly life; and on the Day of Resurrection they will be sent back to the severest of punishment”. (Qs. Al-Baqarah: 85).

<sup>45</sup> “The unfair Indonesian terrorism legal law will merely reflect the decorative meaning, which is the positive laws as “legal residue” decorating both legal and non-legal institutions in throughout levels. It indeed harms and colors these institutions”.

<sup>46</sup> Ather L. Corbin states ‘a judge who is ready to decide what is justice and for the public wealt without any knowledge of history and precedent is an egoist and ignorannus’. See Fence M. Wantu, *Idee Des Recht (Kepastian Hukum, Keadilan dan Kemanfaatan (Implementasi Dalam Proses Peradilan Perdata)*, Yogyakarta, Pustaka Pelajar, 2011, p. 40.

of understanding the justice values from the Scripture that must be obeyed as the historical discourse upon human civilization. Post-prophecy generation<sup>47</sup> has globally introduced the concept of transcendental justice. The plural<sup>48</sup> concept of transcendental justice generatively derives from the spatio-temporal dependency. It<sup>49</sup>, moreover, has to be perceived as the internalization<sup>50</sup> process of doctrines through Scripture which embodies basic attributes of the law-making and law enforcement agencies to seek for the truth and justice transcendently.

An experience of socio-historical<sup>51</sup> on *fiqh* implementation throughout Islam history and that of Indonesian local tradition<sup>52</sup> shall be studied as internalization process substantively. Positive laws<sup>53</sup> in Indonesia is one of major legal sources for law enforcement agencies in seeking for the justice. These such laws<sup>54</sup> will substantially<sup>55</sup> ensure the legal certainty once a fundamental of prophetic values is applied theologically. The perfect 'crown' of terrorism

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<sup>47</sup> Immanuel Kant states 'the human reasoning abilities are in phenomenon barriers which can not surpass neomena limits. Al-Ghazali considered the limitation of the phenomenon as philosophy and the neomena as a mystic. This is the mean of transcendental dialectic to seek the truth and justice'. See M. Amin Abdullah, *Opcit*, p. 281-303.

<sup>48</sup> Bernard L. Tanya etc, states 'the conception of law is not single. Each space and generation defines the law differently based on the system of space and generation circumstances'. See Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage, *Teori Hukum Strategi tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta, Genta Publishing, 2010, p. 219.

<sup>49</sup> Rashid Ridha states 'return to the original Islamic sources and accept the goodness even from the Western'. 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, p. 62.

<sup>50</sup> According to Ishomuddin, 'the understanding on religion and culture would create, 1) the internalization in social life must be emanated from those understandings, 2) the internalization of the religion understanding through its holy scripture'. Ishomuddin, *Islam Dialektika Antara Pemahaman Budaya dan Sosial Ekonomi*, Malang, UMM Press, 1998, p. 43.

<sup>51</sup> Rahmat Rosyadi and Rais Ahmad state 'the faithfulness of muslims towards the government in practicing their doctrine is kind of Islamic law principle too. In this position, the faithfulness towards the government in applying positive law which is emanated from traditional and modern (western) law, thus the muslims should act normally and selectively as long as does not against Islam syaria'. *Opcit*. p. 69.

<sup>52</sup> Otje Salman Soemadiningrat states 'the contact between the aspect of religion values and traditional law could be seen through family, matrimonial, Islamic inheritance jurisprudence'. See H.R. Otje Salman Soemodiningrat, *Rekonseptualisasi Hukum Adat Kontemporer*, Alumni, Bandung, 2002, p. 18.

<sup>53</sup> The terrorism issues in Indonesia is specially regulated in constitution of Republic Indonesia No.15 Year 2002 on terrorism eradication. This regulation during making process leads to controversy. The controversy associated with historical aspect, crushing retroactive principle, legaling the law enforcement agencies represively, the intelligence involvement to justification of crimes towards the behavior which is hard to measure for a terrorism 'performance'.

<sup>54</sup> 'O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah'. (QS. Sad:26).

But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission (QS. An-Nisa: 65).

And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations (QS. Al-Ma'idah: 49).

<sup>55</sup>The Indonesian terrorism legal law still emphasizes the paradigm of eradication by affirming the violence of law enforcement. This law substantially has not accommodated the theological values as a basis of paradigm in preventing terrorism issues.

legal laws in Indonesia shall be viewed from the divine nature<sup>56</sup> (*Ilahiah perspective*), not from a transactional rationale.

The construction<sup>57</sup> of Indonesian law-making and law enforcement agencies in understanding<sup>58</sup> the legal certainty fairly and transcendently must accommodate doctrinal values and thoughts in community<sup>59</sup>. Positive laws on terrorism in Indonesia has not yet provided textual averment that obligates law enforcement agencies to set the ideology of transcendental justice in every intervention<sup>60</sup>. The Indonesian head verdict expresses that for the sake of justice based on the belief in the one and only God regulated in positive laws<sup>61</sup>, it is necessary for judges to explore, to follow, and to comprehend the values of transcendental justice in making decisions.

The fair legal certainty<sup>62</sup> on terrorism cases in Indonesian verdict must be viewed from logical perspective rather than morale ones<sup>63</sup>. The fair verdicts on terrorism in Indonesia appear

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<sup>56</sup>Al-Zamakhsyari stated that the term of 'balance' in Allah saying could be interpreted metaphorically. It means that 'balance' refers to every sense of justice which covers every step in our life both physically and mentally. Allah said that to judge between the people in truth. It means that we should consider the sense of truth and justice. If we do not do that, we have unconsciously break, destroy, and harm the law of nature. The injustice and dishonest acts are not only derive from ourselves but also whole the world. Particularly, the justice is a cosmic law. In Nurcholis Madjid, *Pintu-Pintu Menuju Tuhan*, Jakarta. Paramadina, PT. Dian Rakyat, 2008, p.42. See also Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kemenag RI, *Tafsir Al-Qur'an Tematik: Hukum, Keadilan dan Hak Asasi Manusia*, Jakarta, Aku Bisa, 2010, p.175-176, asserted that the justice is symbolized by balance. As stated in Ash-Shu'ara (verse: 182), 'Weigh with the measure of those who are upon a direction (those who wish to reach Allah and have more merits than the sins)'.

<sup>57</sup> Ahmad Rifa'i states 'the construction of law would be executed, if there is no direct provision from the regulation regarding the law issues or occurred *recht vacuum*'. See Ahmad Rifa'i, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, 2010, p. 136.

<sup>58</sup>Jimly Ashiddiqy states 'it is important to consider the law comprehensively as an integrated system. The strategy of law or national establishment to implement the idea of legal state is not only concerned on the orientation of law making or the aspect of whole system of law. See Jimly Ashiddiqy, *Menuju Negara Hukum Yang Demokratis*, Jakarta, Sekjen dan Kepaniteraan MKRI, 2008, p. 61.

<sup>59</sup> Heri Tahir states 'the attempt of law enforcement and community roles could determine justice enforcement'. See Heri Tahir, *Proses Hukum Yang Adil Dalam Sistem Peradilan Pidana Di Indonesia*, LaksBang PRESSindo, Yogyakarta, 2010, p. 101.

<sup>60</sup>Al-Qur'an mentioned justice with *al-'adl*, it means go straight (istiqamah), equation (al-musawah), equalize (at-taswiyah), balance, indicating thing in between two extreme point, the consistency of truth, sacred soul, sake of people, the decision to say the truth'. See Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kemenag RI, *Tafsir Al-Qur'an Tematik: Hukum, Keadilan dan Hak Asasi Manusia*, Jakarta, Aku Bisa, 2010, p. 161-162.

<sup>61</sup> Saldi Isra states 'the experience showed the transparency of opportunity for community to participate in forming the regulation. Hence, the community participation is not only required in creating good law-making process but also in anticipating for the regulation substances to harm community. It is important considering each legal system emerged as historical and political product. See Saldi Isra, *Pergeseran Fungsi Legislasi Menguatnya Model Legislasi Parlementer Dalam Sistem Presidensial Indonesia*, Jakarta, Raja Grafindo Persada, 2010, p. 286.

<sup>62</sup> Satjipto criticizes 'the justice certainty should not be sacrificed for particular parties. The regulation has been made by legislative and justice, do not violate it. The epistemology of legal theories should merely ensure that what has been written must be done'. Opcit, p. 30.

<sup>63</sup> 'The law is not about good-bad matter but right-wrong. The justice of law must not be perceived as a good-bad matter from community and law enforcement perspectives, but also the justice of law must be perceived from right-wrong point of view. The good and bad perspectives are based on theological values (transcendental) while the right and wrong perspectives are based on certain rational measurement in interpreting the formulation of

to be a proper law; otherwise, they become improper one. The goods and evils shall be employed as the substance of verdicts beside its dimension.

The ideology of transcendental justice on Indonesian terrorism assuring the fair legal certainty<sup>64</sup> is capable of explaining the right or wrong and the good or bad of law. The verdicts on terrorism in terms of goods according to mankind (judge)<sup>65</sup> do not necessarily mean right before God<sup>66</sup>, and vice versa. Indonesian judges prosecuting light penalties upon terrorists due to the consideration of defendant's attitude: *taubat* (his regrets) might be right before judge's consideration as mankind yet it might be also wrong before God for He (not Dieties)<sup>67</sup> who knows all.

“*Save yourselves and your families from the hellfire*”. This theological conception may be well-understood by the terrorist in Indonesia (although all citizens shall believe in God) that terrorism is an attempt to save himself and his family from the abject life that does not reflect the concept of *khalifah fil 'ardl*. The abject life is a gateway for every mankind to become *khufur*. Those who are *khufur* shall be apart from God's save and go to hell, and terrorism is an act managed to elude the *khufur* status. Terrorism legal laws in Indonesia shall provide justification whether such intention is absolutely wrong in any perspective including transcendental one within the meaning of *jihad* according to the religion teachings.

Islam provides sufficient explanation regarding value and principal of justice and legal certainty. Justice (*al-'Adl*) in Islam is perceived as multidimensional concept based on the

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positive law. Thus, the law does not contain transcendental justice. For instance, if the law is review from good and bad aspects, then Indonesian terrorism perpetrators can not be punished and considered as bad action. Because no one of the terrorism perpetrator has bad intention referred to the interpretation of *jihad* based on the religion teachings. If so, by performing terrorism, a perpetrator has a good intention in order to get the highest degree of life in the world and afterlife'.

<sup>64</sup> Nurcholis Madjid states 'the certainty of law is a cosmic law which tend to be immutable. Without the human thought or willing, the law would be forever without interruption or connection. For those who understand and follow the religion law will be lucky. Otherwise, those who break it will be losers. The justice of cosmic law is absolute and objective judgment. This perspective view emanated from Allah which says '[This is] the established way of Allah with those [prophets] who have passed on before. And ever is the command of Allah a destiny decreed' (QS. Al-Ahzab/33:38). From Ali bin Abi Thalib, says 'sesungguhnya Allah akan menegakkan negeri yang adil meskipun kafir, dan tidak akan menegakkan negeri yang zhalim meskipun Islam'. See Nurcholis Madjid, *Pintu-Pintu Menuju Tuhan* Jakarta, Paramadina: PT. Dian Rakyat, 2008, p. 44.

<sup>65</sup> Mahmud Kusuma states 'the paradigm of positive law focused on constitutional regulation, thus the progressive law deeply emphasized on the factor of behaviors beyond the regulation. The human factor has emotional senses, such as compassion, empathy, sincerety, edication, commitment, dare, and determination. See Mahmud Kusuma, *Menyelami Semangat Hukum Progresif Terapi Paradigmatik Bagi Lemahnya Hukum Indonesia*. Yogyakarta, antony Lib-Indonesia, 2009, p. 53.

<sup>66</sup> Sutandyo states 'the authorities of president and apparatus is not considered as a reflection of the God authorities which surpass the limits'. See Sutandyo Wogjosubroto, *Toleransi Dalam Keragaman: Visi Untuk Abad ke-21*, Surabaya, Pusham Ubaya-The Asia Foundation, 2003, p. 7.

<sup>67</sup> According to ancient Egyptians, *Ma'at* is the justice Goddess for ancient Egypt. *Ma'at* is a personification of Law, justice, and turht truth symbolized by the Goddess standing or siting while holding *schepture* in one hand and *ankh* (the symbol of life). Sometimes, the Goddes is also symbolized having wings and feathers as a bird. See Munir Fuady, *Sejarah Hukum*. Bogor, Ghalia Indonesia, 2009, p. 112.

context. The dimension of justice (*al-‘Adl*) may include in-court law enforcement<sup>68</sup>, the issue of polygamy<sup>69</sup>, conflict resolution<sup>70</sup>. Justice (*al-Qist*<sup>71</sup>) has a dimension associated with the orphans<sup>72</sup>, measures and weights<sup>73</sup>, the issue of interfaith<sup>74</sup>, afterlife reward and punishment<sup>75</sup>. Justice (*wasat*) means being in the midst of two things, standard or normal, straight, fair, clean<sup>76</sup>.

Legal certainty in Islam is characterized by the principle of legality<sup>77</sup> based on mankind mind, but of God’s determination. Legal certainty<sup>78</sup> in Islam relies on obedience and submission to God’s revelation in the frame of mankind conscience. Instructions, notices, and warnings given through revelation and Prophet’s sayings become the basis of principle of legality, the absence of retroaction, presumption of innocence, punishment nullities because of doubts, and equality before the law in Islam.

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<sup>68</sup> “The establishment of social life and the rise and fall of a nation significantly depends on the justice establishment in court. An-Nisa’/3:58; *Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.*”

<sup>69</sup> “A command of polygamy issue is closely related to the command of being fair, treating the same, equitable sharing of feelings, and behaving impartially. This meaning can be seen in An-Nisa’/4:3; *And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice].*

<sup>70</sup> “The command to do justice in resolving disputes of different ethnicity, race, social status, fairness in witnessing (Al-An’am/6:152), divorce, debts (Al-Baqarah/2:282), interfaith interaction (asy-Syura/42), justice in all spheres”. The meaning of justice is closely associated to the trial process by the judges”.

<sup>71</sup> Al’Qist means a fair sharing, fair behavior, fair people, not deviating from the truth, not exceeding the limits, being fair in the judgement (*qada’*), fulfillment of agreement for the sake of Allah, a true witnessing, a fair law enforcement, an equal treat before law, justice enforcement in witnessing to avoid erroneous verdict, justice in action and speech”. See Lajnah Pentashihan Mushaf Al-Qur’an Badan Litbang dan Diklat Kemenag RI, *Tafsir Al-Qur’an Tematik: Hukum, Keadilan dan Hak Asasi Manusia*, Jakarta, Aku Bisa, 2010, p.166-173.

<sup>72</sup> “Justice in this context means objective responsibility in inner and outer perspective”. See An-Nisa’/4:3.

<sup>73</sup> “Justice in this context means a form of fairness in the perfection of scales and measures to fulfill the rights of others. (Al-An’am/6:152)”.

<sup>74</sup> “Justice in this context means being fair to all mankind beings regardless of their religions”. See Al\_Mumtahanah/60:8).

<sup>75</sup> “Justice in this context means all the good deeds and fairness, unkindness and the unfairness of decision, reward, reward and punishment of Allah, fair verdict (*an tahkumu bil-‘adl*), and the appropriateness of verdict”.

<sup>76</sup> Lajnah Pentashihan Mushaf Al-Qur’an Training and Development Agency of Religious Affairs, *Tafsir Al-Qur’an Tematik: Hukum, Keadilan dan Hak Asasi Manusia*, Jakarta, Aku Bisa, 2012, p.173-175.

<sup>77</sup> “The principle of legality in Islam asserts that God will not punish mankind before first warning them through His Prophet, so according to the texts of Al-Qur’an it is clear that there will be no crime without clear notice and no punishment without warning”. See Abd. Shomad in Syaiful Bahri, *Internalisasi Nilai Islam dalam Pembaharuan Hukum Pidana*, A Paper in Training of Criminal Law and Criminology Mahupiki II in Surabaya, March, 9-11, 2015. Furthermore, Syaiful stated that *fiqh* asserts the absence of punishment before formal law is regulated. Basically Islamic law determines the kinds of punishment clearly that makes it impossible for a judge to set punishment by his own. Thus, the principle of legality in Islam is as follows; *there is no punishment for normal people prior to the provision of the Al-qur’an text; no crimes and punishment unless it has been stipulated in the texts; basically all matter and acts are allowed to do until provisions prohibit such acts.*”.

<sup>78</sup> “Legal certainty in Islam also forbid the retroaction of a rule. In Islam, a presumption of innocence is also regulated, which means all acts are considered permissible unless regulated by a law text. A verdict shall also be given without doubts”. Syaiful Bahri, *ibid*.

The transcendental justice of terrorism legal laws in Indonesia shall be viewed in a perspective of attributes of God<sup>79</sup>, which contains justice principal<sup>80</sup> theologically. The substance of terrorism legal laws<sup>81</sup> in Indonesia which reflects the attributes of God and contains some principals of theological justice is the essence of transcendence justice in the establishment of terrorism legal laws construction in Indonesia.

## **5. The Justification of Transcendental Justice of Terrorism Legal Laws in Indonesia.**

- a. The Justification of transcendental justice of terrorism legal laws in Indonesia is found in the ideology of positive law<sup>82</sup> written in the first principle of Pancasila, “Belief in the one and only God” and The Head of Verdict ”For the sake of justice based on the one God”.
- b. The justification of transcendental justice of terrorism legal laws in Indonesia is in accordance with the teaching of Islam, in the form and meaning of principle of legality, “the absence of retroaction, presumption of innocence, punishment nullities because of doubts, for God will not punish mankind without warning through His prophets”.
- c. The justification of transcendental justice of terrorism legal laws in Indonesia is found in positive law<sup>83</sup> which obliges and requires the judge to explore, to follow and to comprehend the justice values applied by community (by conscience) as well as the unwritten laws (religion).

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<sup>79</sup> “The attributes of God related to justice principals are: *Al-Ahkam (Who Decides Law)* the onewhoeludes harm or difficulties and or causes benefits or conveniences, the one who intervenes and disconnects the truth and falsehood, the one who decides the obedient and disobedient, the one who decides the fair reward and punishment based on effort, a definite and longlasting provisions, a thorough law with its consequence. QS.al-An-am/6:114, *Shall I then seek a judge other than Allah? And He it is who has sent down to you the Book as explained (in detail)*. The basic meaning of this attribute is the one who create as well as the law enforcement agency should have sufficient knowledge of God’s law, and hear and see everything to keep away of personal interest so He can give verdict objectively”. The next attribute is *Al-‘Adel (The Most Fair)* which means to run straightly and to use the same size, to put things in place, to give the right of others immediately, to be fair to himself and others. Al-Hakim (The Wise) which means having wisdom, knowing the most important of all things, an expert of something, choosing the best and the most suitable act, having no hesitation, fearing Allah is the peak of Wisdom” See M. Quraish Shihab, *Menyingkap Tabir Ilahi, Asmaul Husna dalam Perspektif Al-Qur’an*, Jakarta, Lentera Hati, 2001, p. 144-152 and p. 220-222.

<sup>80</sup> “The principles of justice in Islam involve: equality of rights (*at-taswiyah*); proportional; public good”. Lajnah Pentashihan Mushaf Al-Qur’an Training and Development Agency of Religious Affairs, opcit, p.176-186.

<sup>81</sup> Facts show that the substance of Law number 15 year 2002 on Eradication of the Criminal Acts of Terrorism, as material and formal law, has not yet perceive transcendental justice as basis of the main value. Terrorism in this law is still perceived as an act of violence which has a wide-damaging impact and shall be eradicated also by an act of violence. This law has not been able to provide ideological significance of terrorists’ intentions and motives, which at the beginning was built on the basis of achieving the high degree of life and afterlife that was born of the meaning pluralism of *jihad* according to particular religion. The priority of this law is the repressive act through procedural formal law to eradicate the act of terrorism. Terrorism eradication in this law is implemented through repressive arbitrary acts by countering the principle of legality as the basis of eradication legal paradigm itself.

<sup>82</sup> Article 28D RI Constitution States Year 1945 *verse (1) Everyone has the right of recognition, security, protection, and fair legal certainty and equal treatment before the law. \*\**.

<sup>83</sup> See article 28 dan 28 Law Number 4 year 2004 on Judicial Power in conjunction with Article 5, 50, 53 Law Number 48 year 2009 on Judicial Power.

- d. The justification of universality of transcendental justice of terrorism legal laws in Indonesia is found in the values derived from the attributes of God (*al-hakam, al-adel, al-hakim*) and the meaning of universality of *al'adl, al-qist, and wasat*.
- e. The justification of transcendental justice of terrorism legal laws in Indonesia must contain the value of normativity (right or wrong) and historicity (good or bad).

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