THE DIMENSION OF *TAWḤĪD* IN THE DEVELOPMENT OF ISLAMIC LAW INSTITUTION: Quranic Exegesis Perspective

Musahadi

Universitas Islam Negeri Walisongo, Semarang
e-mail: musahadi@walisongo@ac.id

Abstract

Tawḥīd is an essential vocabulary for Muslims. As the essence of belief in Allah, *tawḥīd* (monotheism) must be manifested in various aspects of Muslims life including the development of Islamic law institutions. The values of *tawḥīd* are regarded as the guarantors that the institution can represent the exact pattern for human relations in terms of being servants of God and of being fellow humans. That is why Muslims need to mobilize all intellectual potential in order to build legal institutions having benefits contextually and ethically without ignoring the faith. This paper tries to reconstruct how *tawḥīd* will be mobilized to fulfill these law expectations based on Qur'an.

[]

Tawḥīd adalah kosa kata penting bagi umat Islam. Sebagai esensi kepercayaan kepada Allah, tawhid (monoteisme) harus diwujudkan dalam berbagai aspek kehidupan umat Islam termasuk pengembangan institusi hukum Islam. Nilai *tawḥīd* dianggap sebagai penjamin bahwa institusi tersebut dapat mewakili pola pasti hubungan manusia dalam hal menjadi pelayan Tuhan dan sesama manusia. Itulah sebabnya umat Islam perlu memobilisasi semua potensi intelektual agar membangun institusi hukum yang memiliki manfaat secara kontekstual dan etis tanpa mengabaikan keimanan. Tulisan ini mencoba untuk merekonstruksi bagaimana *tawḥīd* dimobilisasi untuk memenuhi harapan-harapan hukum berdasarkan Qur'an.

Keywords: *tawḥīd*; Qur'anic perspective; Islamic law institution; transformation

Introduction

There should be a conscience of the presence of God in every human being. As hinted by Koran, it is the "nature" of man from the original creature (Qur'an, 30: 30). Each person has an instinct to believe in God and to worship Him. Belief in God for human, Nurcholish Madjid said, is something taken for granted. Therefore, an effort to encourage people to believe in God is an exaggeration since without the encouragement man had believed in God.[1] Prophets and Apostles came to earth in order to bring the same mission, keep the "nature" of man, introduce the God Almighty and call for *tawḥīd* (Qur'an, 7: 59; 73: 85).

In the scheme of doctrinal Islam, *tawḥīd* is considered to be the most central and essential thing. It is a foundation of Islamic teachings. Someone might recognize the existence of God in their natures, but an idea of God in their mind, attitude and activity, do not always reflect the principle of *tawhid*, and can even be in contrast with it. However, valid understanding of *tawḥīd* is something important regarding the formulation of the principles of anything that cover issues of law. The issues should be based upon it.

The Principle of *Tawḥīd* and Human Commitment

In the *al-Muḥīṭ* dictionary, *tawḥīd* etymologically means the Oneness of God.[2] The shortest formulation of *tawḥīd* is a virtuous sentence (*kalimat tayyibah)*: لا إله إلا الله (there is no god but Allah). When someone pledges the sentence, he should receive a set of consequences. By stating "there is no God but Allah", man of monotheism, borrowing a phrase from Amin Rais, absolutizes Allah Almighty as the Creator and relativizes besides Him as His creatures.

Tawḥīd, hereby, is a human commitment to God as the focus in overall respect, gratitude, and as the sole source of value. What God wills, Amin said,

---

[1] Nurcholish Madjid, *Islam Dokrtrin dan Peradaban* (Jakarta: Paramadina, edition IV, 2000), p. 2.

[2] Majduddīn al-Fayrūz Abādi, *al-Qāmūs al-Muḥīṭ* (Beirut: Dār al-Kutub al-Ilmiyah, edition IV, 1971), p. 349. Ibrahim Musthafa, *al-Mu'jam al-Wasīṭ* (Mesir: Majma' al-Lughah al-'Arabiyyah, section II, edition III, 1985), p. 1058.

will be a value for a monotheist (*muwaḥḥid*). Accordingly, the monotheist would not accept any authority and direction except God. The commitment is a totality, positive and sturdy, including love and devotion, obedience and resignation, as well as the will to carry out the God's will.[3] In this context, the commitment of monotheist is not only limited to a vertical relationship with God, but also includes a horizontal relationship with human beings and all beings. According to Fazlur Rahman the later relationship requires a law for man both as individuals and as collective or social existence.[4]

Fuad Abd al-Bāqī noted that the clause لا إله إلا الله is called once in the Koran (47: 19)[5], but the same concept, namely, disclaimer "no God but Allah" is revealed more than eighty times with different wordings. All of which negates the authority and the instructions that come from other than God. Then, the sentence of *ṭayyibah* is basically liberation from servitude to fellow human beings toward worshiping Allah (*taḥrīr al-nās min 'ibādat al-'ibād ilā 'ibādat Allāh*).[6]

Thus, the attitudes of humans to other humans are determined by logical reason and appreciation of *tawḥīd*. The consistency of *tawḥīd*'s attitude encourages the person to deal with another fellow person as if he faces himself in the mirror. The person wants to treat others as he would like to be treated. This principle allows the rule of law to find its vitality. If no man is higher or lower than others before God, so there is no human collectivity as nation or tribe that is higher or lower than others. All of them are equal and the difference among them is the level of their devotion to God (Qur'an, 49: 13).

In addition, the attitude of *tawḥīd* teaches liberation from bad values rooted in carnal lust, dominance and sexual pleasures. A life dedicated to bad things will in turn overshadow logical reasons and distort clear minds as well as encourage the degradation of "humanity" (Qur'an, 25: 43-44).[7] *Tawḥīd*

---

[3] M. Amien Rais, *Cakrawala Islam Antara Cita dan Fakta* (Bandung: Mizan, edition VI, 1995), p. 13.

[4] Fazlur Rahman, *Islam* (Chicago: The University of Chicago Press, edition II, 1979), p. 1.

[5] Muhammad Fuad Abd al-Bāqī, *Al-Mu'jam al-Mufahras li Alfādh al-Qur'an* (Mesir: Dar al-Hadis, 2001), p. 47.

[6] M. Amien Rais, *Cakrawala Islam Antara Cita dan Fakta*, p. 14.

[7] *Ibid.*, p. 15.

should always guide a Muslim, both psychologically and physically, to avoid everything contrary to His will.[8]

Quraish Shihab stated that a person who adheres *tawḥīd* principles in its correct sense, he will express a variety of activities that all of which are manifestations of worship to God in any sense of worship, i.e., God oriented (*ibadah maḥḍah)* or human and God-oriented.[9] However, *tawḥīd* is a complete principle for a human. In short, *tawḥīd* requires a total implementation of what is reflected in His words, "*Say, 'my prayer and my worship, and my life and my death, are devoted to God, the Lord of the Worlds'*" (Qur'an, 6: 162).

God, Man and the Law: an Attempt to Encounter Pattern of the Relations

Tawḥīd, as mentioned above, produces a commitment to establish a pattern of human relations in accordance with God's will, which is directed both to God and to the entire universe. Through interpreting Koran verses, Abd. Muin Salim concluded that the position of man can be seen from three perspectives in this relation.[10] First, man is regarded as a caliph which is defined in Qur'an هُوَ الَّذِي جَعَلَكُمْ خَلَائِفَ فِي الْأَرْضِ (*it is He who made you successors on earth*) (Qur'an, 35: 39). This position is closely linked with the function of law enforcement in public life on the right way. Al-Qurṭubi and al-Shawkānī testified that God raised David as a caliph for the law enforcement mission to man and the avoidance of lust that misled people from the path of Allah (Qur'an, 38: 26).[11]

Second, man is considerably a builder, هُوَ أَنشَأَكُم مِّنَ الأَرْضِ وَاسْتَعْمَرَكُمْ فِيهَا (*He initiated you from the earth, and settled you in it*) (Qur'an, 11: 61). To designate

---

[8] *Tawḥīd* became value in all of islamic aspect. See. Osman Bakar, *Tawḥīd* and Science: Essays on The History and Philosiphy of Islamic Science, in *The Muslim World*, Vol. LXXXIII No.3-4, July-October 1993. See. Joni Tamkin B. Borhan, The Tawhidic Paradigm in Islamic Banking, in *Jurnal Usuluddin*, Vol. 11, Julai 2000.

[9] M. Quraish Shihab, *Wawasan al-Qur'an, Tafsir Mawdhu'i Atas Pelbagai Persoalan Umat,* (Bandung: Mizan, edition VIII, 1998), p. 36.

[10] Abd. Muin Salim, *Konsepsi Kekuasaan Politik dalam al-Qur'an* (Jakarta: Raja Grafindo Persada, edition IV, 1999), p. 28.

[11] Muhammad ibn Ali Ibn Muhammad al-Shawkānī, *Fatḥ al-Qadīr* (Beirut: Dār al-Kutub al-Ilmiyah, section IV, edition I, 1994), p. 536. See al-Qurṭubī, *al-Jāmi' li Aḥkām al-Qur'ān* (Beirut: Dār al-Kutub al-Ilmiyah, Volume VIII), p.124.

the role of the builder, the verse uses the expression *ista'mara*. This verb is arranged from the letter *'ain, mim* and *ra* which it, according to Ibn Fāris, has a principal meaning "eternity, the long days and something rising".[12] From the word "*ista'mara*", it can also be formed another verb "*ya'mara ya'muru*". According to Ibrahim Mustafa, this word covers a lexical meaning "longevity, wealthy, inhabit, long life, build and take care of things well".[13]

Ibn Kathir explained that *ista'mara* means "to make human as a resident and a caliph". This concept includes the development of civilization and utilization of natural resources for prosperity. This understanding, according to Abd Muin Salim, can be referred as the concept of development, for it contains an attempt to achieve a better life.[14] *Ista'mara* is also associated with good deeds based on the principle of justice and harmony. It is also related to the concept of "commanding the good and forbidding the evil" (*amar ma'rūf nahyi munkar*) which reflects an effort to fulfill the will of the law.

This idea, Muin Salim continued, is closely related to human nature that has characteristics of curiosity and dynamics. Infinite desire is not only to be selected and synchronized with the divine laws, but also needs to be set out in the form of law that would be the basis or guidelines for developing and prospering the earth. Without the rule of law, prospering efforts of human (*isti'mār)* will be arbitrary and irregular which undermines orders life. If it happens, the function of *isti'mār* fails.[15]

Third, the human being as a man of God, وَمَا خَلَقْتُ الْجِنَّ وَالْأِنْسَ إِلاَّ لِيَعْبُدُونِ (*I did not create the jinn and the humans except to worship Me*) (Qur'an, 51: 56). The existence of human as a servant of God can be understood from clause *liya'budūnī* (*except to worship Me*). The clause derives from the verb *'abada ya'budu*, formed from the letter *'ain, ba* and *dal*, which according to the dictionary of *al-Mu'jam al-Wasīṭ,* means loyalty, degrading and insulting.[16] This verse confirms that human existence on earth is sole to worship God. Those

---

[12] Ibnu Fāris, *Mu'jam Maqāyis al-Lughah* (Beirut: Dār al-Fikr, edition I, 1994), p. 701.

[13] Ibrahim Musthafa, *al-Mu'jam al-Wasīṭ,* section II, p. 650.

[14] Abd. Muin Salim, *Konsepsi Kekuasaan Politik dalam al-Qur'an,* p. 44.

[15] *Ibid.,* p. 55.

[16] Ibrahim Muṣṭafā, *al-Mu'jam al-Wasīṭ,* section II, p. 600.

who do not serve and worship God can be mentioned as those who get dysfunction of humanity. It happens when people do not uphold God's laws and follow the passions and desires of the devil. Thus, a monotheist has a mission to enforce the laws of God and to build civilization and prosperity with good deeds in order to worship God. It is precisely the will of God that needs to be actualized in human life on earth.

Transformation of Tawḥīd Values in the Development of Islamic Law Institution

Law is an English word from the Arabic, "*al-ḥukm*". According to Ibn Fāris, this word etymologically means "to prevent"[17], while Ibrahim Mustafa defines it as "to settle or to decide a case, give the bridle or block a person".[18] Ibn Mandhūr said that *al-ḥukm* is "science and knowledge, or deciding something fairly", and in the Indonesian dictionary, the word *law* means "regulation, rule or decision".[19] In the Qur'an, the word *al-ḥukm* can be found in QS. 12: 40, 67 as well as QS. 6: 57. Based on the use of the word *al-ḥukm* in these three verses, it can be inferred that the word *al-ḥukm* includes *sharī'ah laws* as written in the Qur'an and Sunnah as well as the ones applied in the whole human life. When translated into Indonesian, the word *al-ḥukm* becomes the law of which the meaning has been distorted.

There are three perspectives in understanding legal concept through philosophical approach, i.e., *ontological*, *epistemological* and *axiological*. Through ontological perspective, someone can find the source of law and legal object. Through epistemological perspective, someone will comprehend methodology to get the law and its development. While through axiological perspective, someone will reveal the purpose of the institutionalization of law.

The first is an ontological perspective on the source of law. The question in this very point is: who is authorized to make law? According to the Koran, the only one authorized to make laws is Allah. It is recorded in QS. 12: 47 and 67 as

---

[17]Abd. Muin Salim, *Konsepsi Kekuasaan Politik dalam al-Qur'an*, p. 55; Ibnu Faris, *Mu'jam Maqayis al-Lughah*, p. 277.

[18]Ibrahim Muṣṭafā, *al-Mu'jam al-Wasīṭ*, section I, p. 196.

[19]Ibnu Mandhūr, *Lisān al-Arab* (Mesir: Dār al-Ma'ārif, section II), p. 951.

well as QS. 6: 57, إِنِ الْحُكْمُ إِلَّا لِلَّـهِ (*there is no rule but the rule of Allah*). Muin Salim analyzes that word حكم in the three verses has different contexts. In QS. 12: 40, the legal concept associated with religious affairs is made by God to organize human life. It is understood that all aspect related to human life as caliph is God's authority. Therefore, it entails that the word *al-ḥukm* in this verse regarding to the rules of human life is known as *sharī'a*. The information contained in that clause is that the authority of *tashrī'* (law-making) belongs only to God.

In QS. 12: 67, the legal term is related to creation (*amr takwīn*), not regulation, while in QS. 6: 57, the term *al-ḥukm* is related to the settlement of the case, namely the provision of truth or falsity for things (*amr qadlā'i*). This problem is essentially an application of the existing rules. It also includes a more general concept known as *amr tanfīdh*.

Hence, *al-ḥukm* in those verses covers three concepts, i.e., the authority related to the creation, the authority related to creating *sharī'a* and the authority related to the implementation of the rules (*sharī'a*). The last two authorities mentioned are clearly related to orders of human life. All of them belong only to God. From here, it can be concluded that the legal source is God. He expresses His laws in the Qur'an. In another word, the Qur'an is the legal source as stated in verse "*Thus We revealed it an Arabic code of law*" (Qur'an, 13: 37).

Then, what is any authority to define the law given by God to His servant? For this question, it can be considered QS. 4: 59:

يَاأَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ﴿٥٩﴾

O you who believe! Obey God and obey the Messenger and those in authority among you. And if you dispute over anything, refer it to God and the Messenger, if you believe in God and the Last Day. That is best, and a most excellent determination.

This verse explains that besides Allah who has the authority to make laws and have to be followed absolutely, God also gives the authority to His

prophets to establish a law which is also absolutely followed. Similarly, Allah gives the authority to *ulil amri* to establish law during his legal provisions in compliance with God and His Prophet rules. Thereby, beside Allah, His Prophet has authority to establish law, and the obedience of God law and Prophet's rules is a requirement for a faithful person.

Qur'an insists that someone has become a faithful person when he accepts Prophet as a judge (who gives legal decision) for disputed cases. Believers should accept fatefully and there is no objection to the decisions (QS. 4: 65) since the prophet orders are regulators of human life based on God's command in QS. 4: 105 and QS. 57: 25. For Muslims, *Sunna* is a legal source after the Qur'an.

The last is a legal authority given to *ulil amri* as mentioned in QS. 4: 59. Regarding to this context, the Islamic scholars opine differently opinions about who *ulil amri* is. Al-Suyūṭī mentioned *ulil amri* was *amīr* (*umarā*), al-Baiḍāwī argued *ulil amri* as judges (*al-ḥukkām*). Al-Ṣawi claimed as *khulafā' al-rāshidīn*, *mujtahid* and *judges* while Ibn Abbas referring to *al-Durr al-Manthūr Fī al-Tafsīr al-ma'thur* argued that *ulil amri* was Islamic law scholars/jurists (*faqīh*) and religious experts.[20]

On the other hand, Abd. Muin Salim, based his research on the term *ulil amri* from a semantic approach and its use in the Qur'an and Sunna as well as historical facts of Muslims, determined that *ulil amri* denotes an official government of Muslims.[21] Another interesting opinion came from Muhammad Abduh who stated that ulil amri is *ahl al ḥalli wa al-'aqdi*, which is a community consisted of community leaders, Islamic scholars, judges and emirs. They are in charge of giving legal decisions for social problems.[22]

Based on those various opinions, it is obvious that there are three sources of law, i.e, Allah (Qur'an), Prophet (*sunnah*) and legal decision by *ulil amri*. The

---

[20]al-Suyūṭī, *al-Durrul al-Manthūr fi al-Tafsīr bi al-Ma'thūr* (Beirut: Dār al-Kutub al-Ilmiyah, section II, edition I, 2000), p. 315.

[21]Salim, Abd. Muin, *Konsepsi Kekuasaan Politik dalam al-Qur'an*, p. 66.

[22] Muhammad Rasyid Ridha, *Tafsīr al-Qur'an al-Ḥakīm (Tafsīr al-Manār)* (Beirut: Dār al-Kutub al-Ilmiyah, section V, edition I, 1999), p. 147; see Quraish Shihab, *Wawasan al-Qur'an* (Jakarta: Mizan, edition VIII, 1998), p. 481.

first two are qualified as *waḥyi* (*naql*), and the last is *ijtihādi* (*'aql*). The most important thing that should be underlined from QS.4: 59 is the obedience to God's law statutes, the legal decisions of the prophets and legal provisions of *ulil amri* are absolute requirements of faithful person. Then, the establishment of legal institutions cannot be separated and is closely related to the theological dimension.

Besides, the ontological perspective reflects the object of law. According to scholars of *uṣūl fiqh*, the object of law called *maḥkūm fih* is the act of *mukallaf* provided that such acts are affordable by *mukallaf*. The scholars of *uṣūl fiqh* have agreed that something beyond Muslims' ability Muslims cannot burden them although the popular concept *mā lā yuṭāqu al-taklīf* in the theological discourses is still being debatable. The agreement of jurists is appropriate with QS. 2: 286 which mentions that God will not burden any person out of his/her ability.

Having discussed that, the next question is what the methodology to get legal decision is and what the way to develop law to make legal institutions built for real justice and social awareness. It is a question related to epistemological perspective of law.

For that purpose, the main thing to understand is the need of systematic mechanism required by law in order to understand the Qur'an and Sunnah popularly known as *ijtihād*. The term *ijtihad*, as described in *Lisān al-'Arab*, comes from the word *al-jahd* and *al-juhd* which etymologically means *al-ṭāqah* (energy, ability and power).[23] Other words, *al-ijtihād* and *al-tajāhud* mean "devoting all capabilities and power" (*badhl al-wus'i wa al-majhūd*).[24]

Al-Ghazali formulated the definition of *ijtihād* terminologically as "the use of all efforts and all energy to produce something heavy or difficult".[25] The meaning, by Iqbal, is as same as the word *mujāhadah*[26] expressed in QS. 29: 69 for both words have same etymological meaning i.e., *badhl al-wus'i* (devoting

---

[23]Ibnu Mandhūr, *Lisān al-Arab,* section I, p. 708.

[24]*Ibid.,* p. 710.

[25]al-Ghazali, *al-Mustaṣfā min 'Ilm al-Uṣūl* (Beirut: Muassasah ar-Risālah, section II, edition I, 1997), p. 382.

[26]Sir Mohammad Iqbal, *The Recontruction of Religious Thought in Islam* (New Delhi: Kitab Bhavan, 1981), p. 148.

all potencies), and in special meaning they are distinguishable. The devotion of all physical potencies is *jihād* and that of the intellectual potencies is called as *ijtihād*.

Based on the explanation it can be concluded that *ijtihād* is the mobilization of all intellectual potencies to settle legal decisions from Qur'an and Sunna as well as to apply these sources in human life. In this activity, according to Satria Efendi,[27] there are two focuses: first, an effort to decide laws from the source, and second, an endeavor to precisely implement laws for certain cases. The first activity is called as *ijtihād istinbāṭi*, and the second is called as *ijtihād taṭbīqi*.

In the context of *ijtihād taṭbīqi*, the central research is the sources of laws, either by linguistic approach or by the purpose of law approach (*maqāṣid al-sharī'ah*). Both approaches with set of rules are expected to lead *mujtahid* to dicover objective legal conclusions. Questions that will be answered by this model of *ijtihād* are primary ideas of the legal texts. It is also about the possibility of diverse interpretations, the philosophical foundation and the considerations to deciding that a text commands or forbids something. The exact information is a way to maximize the enforcement and the development of law.

Furthermore, *ijtihād taṭbīqi* with set of rules is a way to guide someone or moslem to finding appropriate legal decisions. In this activity, a *mujtahid* has to already know the material of law and the method. The object of this *ijtihad* model is everything covering human actions as subject of culture and its changes. The legal decisions of Khalifa Umar Ibn al-Khaṭṭāb on spoil goods, *muallaf*, slice of hand, and so on were the easiest samples of the operationalization of *ijtihād taṭbīqi*.

It could be said that *ijtihād* is an epistemological foundation of law. *Ijtihad* contains two concepts; first is *istinbāṭ* which means understanding and issuing legal decision from the source, and second is *taṭbīq* that implies applying law for actual case. *Taṭbīq* also contains the concept of development because the formulation of law should be able to adapt and accommodate social changes in human life.

―――――――――――

[27]Satria Effendi M. Zein, "Metodologi Hukum Islam" in Amrullah Ahmad SF. et.all. (ed), *Dimensi Hukum Islam dalam Sistem Hukum Nasional* (Jakarta: Gema Insani Press, 1996), p. 118.

The next is an axiological or legal purposes perspective described in QS. 4: 58, وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ (*and when you judge between people, judge with justice*). According to al-Marāghi, *al-'adl* means "to convey effectively the rights to their owners"[28] while al-Rāghib al-Isfahāni interprets "equal distribution".[29] In QS. 2: 90, the word *al-'adl* is the opposition of the word *al-fāḥishah*[30] which according to the *mu'jam al-Wasīṭ* meaning "an ugly act" and "beyond the limits",[31] while al-Shawkānī interprets as "disobedience".[32]

In this context, the analysis of Abd. Muin Salim is interesting to be observed. According to him *al-'adl* and *al-fāḥishah* are closely related to human nature. When a man is guided by his religion, it is actually he acts for his nature. It means he has done *al-'adl*. Conversely, when a man against the guidance of his religion, he has done *al-fāḥishah* and it means he only fulfill his animal desire.[33] It appears that the concept of *al-'adl* has a purpose to maintain human nature. Therefore, the institutionalization of law needs effort to give attention for human nature. It can be said that the purpose of law is to maintain and to preserve human nature as well as to spare human from deviations—so they keep the existence of "humanity".

According to as-Shāṭibi, the purpose of law (*maqāṣid al-sharīah*) lets human own liberation or freedom from their animal desires and subsequently they deliver benefit (*maṣlaḥat*) in both worldly and unworldly life.[34] Furthermore, al-Shāṭibī divides the benefit (*maṣlaḥat*) into three branches: First, *maṣlaḥat ḍarūriyyat* is something that should be there and its absence will threaten human existence. The *maṣlaḥat* covers five main things (*al-ḍarūriyāt al-khamsah*), namely the maintenance of religion, life, mind, descent

---

[28]Ahmad Muṣṭafā al-Marāghī, *Tafsīr al-Marāghī* (Beirut: Dār al- Fikr, section IV, edition III, 1974), p. 69.

[29]Rāghib al-Isfahāni, *al-Mufradāt fī Gharīb al-Qur'ān* (Mesir: Muṣṭafā al-Bāby al-Ḥalaby, 1961), p. 325

[30]Ibrahim Muṣṭafā, *al-Mu'jam al-Wasīṭ,* section II, p. 609.

[31]*Ibid.,* p. 701.

[32]al-Shawkāni, *Fatḥ al-Qadīr,* section IV, edition I (Beirut: Dar al-Kutub al-Ilmiyah, 1994), p. 607.

[33]Abd. Muin Salim, *Konsepsi Kekuasaan Politik dalam al-Qur'an,* p. 215.

[34]Abū Isḥāq al-Shāthībi, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Beirut: Dār al-Kutub al-Ilmiyah, Volume I), p. 3.

and property.[35] Second, *maṣlaḥat ḥājiyyat* through which *sharī'ah* eliminates *mashaqqat* (difficulty and trouble).[36] Third, *maṣlaḥat taḥsīniyyat* which is a complement to closely associated with glory, ethics and aesthetics required by good culture.[37]

With regard to the descriptions of the concept of law, it can be affirmed that the legal institutions and its implementations are closely linked to the *tawḥīd* dimension. By the concept of *tawḥīd* a man will be more motivated to obey law as a manifestation of God's will. In the *tawḥīd*, law is not only limited for realizing benefit and happiness in worldly life, but also using for the eternal life (QS, 16: 97 and QS. 24: 55). The truly concept of *tawḥīd* The Development of Law Institution

Human, characteristically, is a dynamic creature who has ratio given by God as a basis for his creativity to build history. By creativity human bring innovations that make a distinction of human life in different history, especially in social life. As one of the social institutions, the law must be dynamic. It means law should be able to put in appropriate social structure as well as to accommodate the dynamic of social life. Here, *ijtihād* finds the point of significance as an attempt to capture God's wills (*maqāṣid al-sharīah*) through formulating, developing and inquiring these secret sources with social justice in order to keep *tawḥīd* spirit in human life.

According to al-Shāṭibi, there are three approaches used by *mujtahids* in understanding *maqāṣid al-sharīah*; first, semantic-oriented approach on textual meanings (*ẓāhir al-naṣ*) by rejecting the logic and deductive reasoning (*qiyās*). This approach is used by a group of *ẓāhiriyah*. Second, the approach by the substantial meaning of behind the texts, not textual meaning. This model is used by two groups (1) *bāṭiniyah* group who interprets through the inner meaning of the texts as stated by expert priests (*ma'ṣūm*), and (2) group who interprets texts through *qiyās* and independent reasoning. The third approach is the mixing of those two approaches. It is done by two ways: understanding *maqāṣid shāri'* without ignoring the meaning, and paying attention to the

---

[35]Abū Isḥāq al-Shāthībi, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah,* Volume II, p. 7.

[36]*Ibid.,* p. 9.

[37]*Ibid.,* p. 9.

meaning without neglecting *lafadz*. For al-Shāṭibī, the last approach was the most widely used by *mujtahidīn*.[38]

In the context of the development of law institution, one thing to be noted is how the relationship between law and ethics are. Both entities are a set of norms that have a wide influence in creating human behavior. But unfortunately, according to Ihsan Ali Fauzi, the lawyers never made the clear and systematic distinction between those two things. It makes the imbalance and tension between law and ethics. Legal experts often see Qur'an as a legal document. They also saw that the purification of the rules of Islamic law as the fulfillment of God is will (*maqāshid al-shari'ah*).[39]

For the reason, Fazlur Rahman called for growing and revitalizing the spirit of ethics of al-Qur'an in Islamic law. Islamic law should be developed on a solid ethical foundation.[40] According to Rahman, every statement of law (*quasi legal*) is always accompanied by legal reason (*ratio legis*) for explaining why a law is declared.[41] In order to understand the *ratio legis*, it is needed an understanding of the socio-historical background.

Ratio legis, for Rahman, is the essence of the law, whereas the actual legislation is an embodiment as long as it realizes *ratio legis* fully and appropriately.[42] When human situation is changed and the law fails reflecting *ratio legis,* the law must be changed. This Rahman's statement is relevant to the principle of *al-ḥukm yadūru ma'a 'illatihī wujūdan wa 'adaman* (the creating of law is based on the presence or the absence of '*illat*). From here, it should be distinguished between the legal rules of al-Qur'an and the moral ideals, something that should be a point of serious concern because it is permanent and is not affected by spatial and temporal dimensions.

Through development framework above, the judicial procedures offered by Rahman may be considered. The procedure is finding *ratio legis* (legal

---

[38]*Ibid.*, p. 61. See. Mohammad Hashim Kamali, "*Maqāshid Sharī'ah*: The Objectives of Islamic Law," in *Islamic Studies,* Vol. 29, Issue.1, 1999.

[39]Ihsan Ali Fauzi, "Menuju Sistematisasi Etik al-Qur'an", in *al-Hikmah* No. 9, 1993, p. 41.

[40]Fazlur Rahman, *Islam,* p. 32.

[41]Fazlur Rahman, *Tema Pokok al-Qur'an* (translated from *The Major Themes of The Qur'an* by Anas Mahyuddin) (Bandung: Pustaka, edition I, 1983), p. 70.

[42]*Ibid.*

reasons), formulating general principles or values, and creating the law. Those procedures and frameworks are expected to develop law institution more ethics and theological spirit reflecting God's will.

As a manifestation of realizing the will of God, the development of legal institutions should be based on the principles of *tawḥīd*, ethical values, and human natures. The effort is to guarantee human welfare both in worldly and unworldly life.

Conclusion

Legal institutions are institutions that want to realize the enforcement of the law of God on earth. God's law aims to uphold justice and benefit for all mankind. this is where the importance of methodology and axiology is important to determine the institution to conform to the *maqāṣid.*

Tawḥīd as moral ethic is a determinant dimension of the achievement of legal institutional development in accordance with maqāsid shari'ah. law-making in an institution that makes *tawḥīd* ethical morals, approaches and legal goals will bring justice to God or to man.[a]

BIBLIOGRAPHY

Abadi, Majduddīn al-Fayrūz, *al-Qāmūs al-Muhīṭ,* Beirut: Dār al-Kutub al-Ilmiyah, edition IV, 1971.

Bakar, Osman, "Tawḥīd and Science: Essays on The History and Philosiphy of Islamic Science", in *The Muslim World*, Vol. LXXXIII No.3-4, July-October 1993.

Borhan, Joni Tamkin B., "The Tawhidic Paradigm in Islamic Banking", in *Jurnal Usuluddin*, Vol. 11, July 2000.

Fāris, Ibnu, *Mu'jam Maqāyis al-Lughah*, Beirut: Dār al-Fikr, edition I, 1994.

Fauzi, Ihsan Ali, "Menuju Sistematisasi Etik al-Qur'an*",* in *al-Hikmah* No. 9, 1993.

al-Ghazali, *al-Mustaṣfā min 'Ilm al-Uṣūl,* Beirut: Muassasah ar-Risalah, section II, edition I, 1997.

al-Isfahani, Raghib, *al-Mufradāt fī Gharīb al-Qur'ān,* Mesir: Musthafa al-Baby al-Halaby, 1961.

Iqbal, Sir Mohammad, *The Recontruction of Religious Thought in Islam*, New Delhi: Kitab Bhavan, 1981.

Kamali, Mohammad Hashim, "*Maqāshid Sharī'ah*:The Objectives of Islamic Law", in *Islamic Studies*, Vol. 29, Issue.1, 1999.

Madjid, Nurcholish, *Islam Dokrtrin dan Peradaban*, Jakarta: Paramadina, edition IV, 2000.

Mandhūr, Ibnu, *Lisān al-Arab,* Mesir: Dar al-Ma'arif, section II.

al-Maraghi, Ahmad Muṣṭafā, al-Marāghī, *Tafsīr al-Marāghī*, Beirut: Darul Fikr, section IV, edition III, 1974.

Muṣṭafā, Ibrahim, *al-Mu'jam al-Wasīṭ*, Mesir: Majma' al-Lughah al-'Arabiyyah, section II, edition III, 1985.

al-Qurthubi, *al-Jami' li Aḥkām al-Qur'ān*, Beirut: Dār al-Kutub al-'Ilmiyah, volume VIII.

Rahman, Fazlur, *Islam,* Section II, Chicago: University of Chicago Press, 1979.

Rahman, Fazlur, *Tema Pokok al-Qur'an (translated from The Major Themes of The Qur'an by Anas Mahyuddin)*, Bandung: Pustaka, edition I, 1983.

Rais, M. Amien, *Cakrawala Islam Antara Cita dan Fakta*, Mizan: Bandung, edition VI, 1995.

Ridha, Muhammad Rasyid, *Tafsīr al-Qur'ān al-Ḥakīm (Tafsīr al-Manār)*, Beirut: Dar al-Kutub al-Ilmiyah, section V, edition I, 1999.

Salim, Abd. Muin, *Konsepsi Kekuasaan Politik dalam al-Qur'an*, Jakarta: RajaGrafindo Persada, 1997.

Shihab, M. Quraish, *Wawasan al-Quran, Tafsir Mawdhu'i atas Pelbagai Persoalan Umat,* Bandung: Mizan, edition VIII, 1998.

al-Suyūṭī, *al-Durrul al-Manthūr fī al-Tafsīr bi al-Ma'thūr*, Beirut: Dār al-Kutub al-'Ilmiyah, section II, edition I, 2000.

al-Shāthībi, Abū Isḥāq„ *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, Beirut: Dār al-Kutub al-'Ilmiyah.

al-Shawkāni, Muhammad Ibn Ali Ibn Muhammad, *Fatḥ al-Qadīr*, Beirut: Dār al-Kutub al-'Ilmiyah, section IV, edition I, 1994.

Zein, Satria Effendi M., "Metodologi Hukum Islam" in Amrullah Ahmad SF. et.all. (ed), *Dimensi Hukum Islam dalam Sistem Hukum Nasional,* Jakarta: Gema Insani Press, 1996.