

REVISITING KAHRUDIN YUNUS ON BERSAMAISM: A NATURAL LAW DESIGN FOR INDONESIA TODAY

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Abstract

At the beginning of the independence era, Kahrudin Yunus proposed a natural law-based economic law model, but it declined in recent years or discussion in scholarly communities. This article examines the trend toward relations between state, government, and the rule of economic law based on bersamaism. Interpretive analytic is the method employed. Bersamaism's basic assumptions are based on the universality of Quran truth, and the state must be positioned as an intermediary in legal and economic activities. Bersamaism is similar to the natural law school in terms of thought, but it also provides an understanding empirical considerations, actually has provided a prototype for the development of an economic system for Indonesia.

Keywords: *Economic justice, natural law, prophetic law*

A. Introduction

Regarding the Indonesian economy, at least some realities will be faced. First, the socio-economic gap in Indonesia is still vast, and unemployment is still Indonesia's primary problem and challenge. Second, the Transnational Corporation and Multinational Corporation's role and power should indeed be reinforced. This means Indonesia is a country rich in natural resources, which, ironically, has not been fully utilized for the people's prosperity and benefit. Third, the Indonesian economy is

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unintentionally supported by an underground economy: illegal economic activity, such as illicit goods trading or money laundering.²

Given the Indonesian government's economic development and history, particularly during the New Order era, Islamic economic thought has been unable to influence public life, particularly in the economic sphere. Without realizing it, the Indonesian financial system had fallen into the trap of a market economy or had become the best way for the neoliberal economic system to influence the Indonesian economic system through its passive attitude toward the New Order regime.³ As a response to the economic conditions of boost and boom,⁴ the New Order government launched rice self-sufficiency and agricultural empowerment project. However, this movement was infiltrated with the industrialization agenda by opening up as much opportunity as possible for foreign corporations to control critical economic resources. The excuse is simple because Indonesia's human resources are minimal. In the end, the Indonesian economy is moving towards economic disorientation and economic nihilization, a condition in which the economy begins to distance itself from spirituality and diversity.⁵

A country's economic model would be strongly intertwined with its history.⁶ The law of a state is an abstraction of the values that exist in the society (*volkgeist*); according to Ehrlich and von Savigny that each country has a model and system that is entirely different from others.⁷ The Dutch East Indies Government controlled the State and economic systems throughout the colonial period. It was in marked contradiction to the post-independence paradigm established in Indonesia. The Government in colonial period often played an active role in suppressing forms of production that could harm the home

² Muhammad Sholihin, 'Ekonomi Indonesia, Islamikah? Economy Islamicity Index Indonesia Dalam Perspektif Maqasid Syariah' (2020) 7 An-Nisbah: Jurnal Ekonomi Syari'ah 325.

³ Muhamad Ali, 'Islam and Economic Development in New Order's Indonesia (1967-1998)' (2004) 12 1-2.

⁴ A situation in which the economy grows at an astonishing rate over a long period. But it did not last long; an explosion occurred in the form of price increases, inflation, and currency weakness, as well as an increase in basic needs, causing economic panic. Sholihin (n 2) 349. This condition is caused by poor world commodity prices and crop failures, a state of rising world commodity prices and crop failure in many countries, causing many countries to fall during a crisis. Howard Dick et al, *Economy: An Economic History of Indonesia 1800-2000* (University of Hawaii Press 2002) 6.

⁵ Economic nihilism is a circumstance whereby the economy drifts away from spirituality and religion, Sholihin (n 2) 353.

⁶ Herberth Feith, 'Rezim-Rezim Developmentalis Di Asia: Kekuatan Lama, Kerawan Baru' (1980) XI Prisma 72-76.

⁷ Frederick Charles von Savigny, *Of The Vocation of Our Age for Legislation* (Abraham Hayward ed, Translated, Littlewood & Co Old Baily) 29-30; Frederick Charles von Savigny, *System of The Modern Roman Law Vol. 1* (William Holloway ed, Translated, J Hingginbotham Publisher 1867) 12-13; Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Walter L Moll ed, Reprinted, Routledge 2017) 171.

economy, in addition to protecting colonial entrepreneurs. The Dutch government, for example, began destroying surplus spices in the early eighteenth century, that is, the portion of the supply that might depress prices below the point in which they would maximize their return.⁸ Whereas, as stated in the constitution, the development of the economic system was aimed at achieving justice and social prosperity during the independence period.

According to historical records, Mohammad Hatta and Mochtar Kusuma-Atmaja were two economic thinkers who emerged in post-independence Indonesia. In addition to the two figures mentioned, Yunus had a different idea about the relation between state, law, and economics. Mochtar Kusuma-Atmaja's concept of development law emphasizes the functionalization of law as a tool of engineering by putting the focus on legislators as the primary actors in lawmaking. Law does not function conservatively enough just to maintain order in people's lives, it must also be empowered to direct change and development in a manner that is orderly.⁹ Yunus' idea shared the same ontology and basic assumptions as Hatta's democratic economy (*ekonomi kerakyatan*) concept. Hatta, on the other hand, concentrates on economic cooperation in the form of independent cooperatives that protect and preserve people's economic interests through efforts and programs aimed at empowering the people's economy.¹⁰ Yunus, on the other hand, concentrated on the fundamental concepts of economic as social activities.¹¹ Yunus encompassed colonialism and independence. In some of his works, the core idea is the economic theory of shared prosperity (*kemakmuran bersama*), known as Islamism, Pancasilaism,¹² or Bersamaism in late 1950 to early 1960. Bersamaism is a paradigm for establishing a Pancasila-based economic system. The basic assumptions are based on universal truths embedded in the Quran and hadith. Bersamaism emphasizes human resource improvement in terms of

⁸ Tri Widodo, 'From Dutch Mercantilism to Liberalism: Indonesian Historical Perspective' (2006) 21 *Jurnal Ekonomi dan Bisnis Indonesia* 323.

⁹ M. Zulfa Aulia, 'Hukum Pembangunan dari Mochtar Kusuma-Atmadja: Mengarahkan Pembangunan Atau Mengabdikan Pada Pembangunan?' (2018) 1 *Undang: Jurnal Hukum* 363.

¹⁰ Ibnu Asqori Pohan, Aylia Eka Krisdayanti and Dakka Bangun Simanjuntak, 'Rekonstruksi Pemikiran Ekonomi Kerakyatan Mohammad Hatta' (2018) 4 *Jurnal Ilmu Politik dan Pemerintahan* 21; Fariz Rahman Wardana, 'Pemikiran Ekonomi Kerakyatan Mohammad Hatta Ditinjau Dari Perspektif Ekonomi Islam' (Institut Agama Islam Negeri Jember 2016) 145–148.

¹¹ Addiarrahman, 'Ekonomi Kemakmuran Bersama: Indonesian Islamic Economic Thought of Kahrudin Yunus' (2018) 3 *Shirkah: Journal of Economics and Business* 283, 295.

¹² Kahrudin Yunus invented the term *Pancasilaism* to represent his ideas about universal truth, state theory, and economic paradigms based on a comprehensive understanding of Pancasila, in Kahrudin Yunus, *Pedoman Hidup Bernegara Menurut Islamisme, Pantjasilaisme, Atau Bersamaisme* (Penerbit Fikiran-Baru 1968) 7.

awareness of behaviors and viewpoints on roles. The role of government as an institution in the middle that counteracts people's economic activity is one of the important concepts in bersamaism.

This paradigm appeared earlier when compared to the paradigm of Iqtishaduna developed by Muhammad Baqir al-Sadr in 1960.¹³ As Islamic economic studies return their attention to the international arena, they tend to neglect and not look back at what already exists in the domestic area.¹⁴ When Dani Rodrik published scientific papers in 2011, several theories about bersamaism resurfaced.¹⁵ But there were no records that indicated Rodrik mentioned Yunus's works according to the query. Some of Yunus's thoughts, on the other hand, are symmetrical with Rodrik's idea. So far, the only theory that can be advanced is that Rodrik and Yunus shared an accidental similarity. Yunus was also listed as a figure of Islamic economic thinker established in the 1950-1960 period in the Country Reports¹⁶ compiled by Research Center for Islamic Economics in 2017.

While Yunus is best known as an economist, he has many ideas about positioning the State, law, and derivative institutions based on natural law's basic assumptions.¹⁷ The definition of the State is used to derive this theory deductively and systematically. These ideas and intentions are based on the reasons found in the Holy Qur'an. On the one hand, this principle is intimately connected to the natural law idea. On the other hand, Yunus pursued a holistic education that combined Islamic education in Egypt through western economic education in America. The American pragmatism was shown to have influenced the production of his perspective. Yunus uses "medium and mediate"¹⁸ to propose the paradigm of moderation and coexistence for his concept. Further investigation into the debate of his thoughts in the paradigm of bersamaism as the *volkgeist* manifestation of

¹³ Addiarrahman (n 11) 286.

¹⁴ Kuntowijoyo, *Paradigma Islam: Interpretasi untuk Aksi* (Mizan Publika 2018).

¹⁵ It can be seen in several of Rodrik's writings, which are contained in Dani Rodrik, *The Globalization Paradox: Why Global Markets, States, and Democracy Can't Coexist* (Oxford University Press 2011). This book was originally published in 1997 under the title *Has Globalization Gone Too Far?* This book has also been published under the title *The Globalization Paradox: Democracy and The Future of World Economy* in 2011.

¹⁶ Hafas Furqani, 'The Current Situation Of Islamic Economics in Indonesia' (2017) 6.

¹⁷ These concepts are spread upon for Life Guideline (*Pedoman Hidup*) series. The five titles throughout the book series are as follows: (1) Guidelines for International Living according to Islam/*Pedoman Hidup ber-Internasional menurut Islam*, (2) Guidelines for Family Life according to Islam/*Pedoman Hidup Berkeluarga menurut Islam*, (3) Guidelines for Living in a Society according to Islam/*Pedoman Hidup Bermasyarakat menurut Islam*, (4) Guidelines for Living in a State according to Islam/*Pedoman Hidup Bernegara menurut Islam*, and (5) Guidelines for Personal Life according to Islam/*Pedoman Hidup Berpribadi menurut Islam*. The entire book was published by *Pikiran Baru* in 1968.

¹⁸ Yunus (n 12).

Indonesian society is fascinating. Yunus has written many books about the peculiarities of *bersamaism*. This study will discuss the construction of Yunus's idea only in the book *Guidelines for Living in the State according to Islamism or Pantjasilaism or Bersamaism (Pedoman Hidup Bernegara menurut Islamisme atau Pantjasilaisme atau Bersamaisme)*, which was published in 1968.

B. Problem Formulation

To sharpen this research study's focus, the authors formulated the following two research questions: first, how can natural law be modeled from the perspective of *bersamaism* on relationship tendencies between the State, government, and the rule of law? Second, what functions and obligations do the State fulfill in ensuring economic stability?

C. Methodology

This paper is a qualitative research project that consists of a research library. The naturalistic paradigm, also known as the interpretive paradigm, is used. Documentation is the method used to collect data. The type of data used in this research is qualitative data consisting of secondary data source. *Pedoman Hidup Bernegara menurut Islamisme atau Pantjasilaisme atau Bersamaisme*, written by Yunus in 1968, is the main secondary source for this study. Books and journal articles containing Kahrudin Yunus's shared thoughts were used as secondary and tertiary sources. Analysis of data was conducted by organizing, sorting, systematizing, and interpreting to find patterns, categories, units of description, and meaning.

D. Discussion and Result

1. Universal Truth and State Assistance in Achieving Mutual Prosperity

Yunus's ideas were mainly associated with natural law, especially those developed by St. Thomas Aquinas. Yunus defines the terms universal truth to represent the teachings of the Islamic principles that embody the interpretation of Islamic teachings after engaging with a reason as the primary point,¹⁹ as he did in a paper he

¹⁹According to Yunus, the Koran Surat An-Nahl verse 89 proves that Allah SWT sent prophets to each of his people, but Allah SWT sent Muhammad SAW to bring the message of truth to all mankind, accompanied by the Koran as guidance, leadership, grace, and bearers of good news (optimistic direction) for Muslims. This is stated not only in Chapter 7 of the State Life Guidelines (*Pedoman Hidup Bernegara*), but also in the Guidelines for Personal Life According to Islam (*Pedoman Hidup Berpribadi Menurut Islam*).

presented at the UN International Seminar on Human Rights 1964.²⁰ These universal truth principles, which are linked to the state model and the conceptual model of an economic system, are based on a comprehensive understanding of Pancasila. It is why the theory is defined as Islamism, Pancasilaism, or even Bersamaism.

The conceptions of the State, government, and citizens are based on the premise that the truth of the Holy Qur'an is universal and comprehensive.²¹ This teaching is omnipresent in the sense that it is considered not only relevant to a nation but also essential for all countries. The term comprehensive relates to the fact that Islamic teachings cover aspects of worship and psychological and material relationships. Yunus prefers to use God's diction to define his perception of fundamental and detailed Islamic principles in this section.²²

By allowing progressivity, evolution, and revolution on interpreting these values of nature, Yunus's fundamental assertion of religious reality also considers the opportunities for relativism in religious understanding. According to Yunus, the universal and comprehensive values of Islamic teachings are absolute, but the knowledge of Islam developed through the interpretation of these values is relative.²³

The premises of this basic assumption are close to the idea mises of St. Thomas Aquinas with irrational natural law.²⁴ Before Aquinas, numerous figures such as

²⁰ The paper presented under the title Guided Economics being Guided by Universal Truth is Only a Way to Achieve the Human Rights.

²¹ It would be a significant difference from Natsir rejection of Pancasila as the state's philosophy and foundation at the beginning of independence. Yunus attempted to bridge the gap between Natsir as a symbol of Masjumi and the Indonesian Communist Party at the time by elevating Pancasila to a common value. It is symmetrical with the principle of natural law because of this. Robert Feener, *Sharia Islam in a Pancasila Nation: Muslim Legal Thought in Modern Indonesia* (Cambridge University Press 2007) 91–98; Joseph Liow, 'Indonesia: Contesting Principles of Nationhood', *Religion and Nationalism in Southeast Asia* (Cambridge University Press 2016) 184–194.

²² Yunus (n 12) 7–10.

²³ This claim can be found in Yunus's argument, which states that everything in the virtual realm, whether concrete or abstract, is relative; there is nothing that is absolute, absolute, or divine, except God. Yunus later claimed that the scholars's interpretation, understanding, and interpretation of the Qur'anic verses were relatively correct. *Ibid* 8; 42.

²⁴ Heinrich A Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy* (Thomas R Hanlev ed, Liberty Funds 1998) 36–37. The use of natural law terminology as a representation of St. Augustine and St. Thomas Aquinas was criticized by Huijbers. Huijbers argues that the term of natural law is a mistranslation of the Latin term on *lex naturalism*. The way everything that exists operates according to the laws of the universe is known as *Lex naturae*. These natural laws govern the lives of humans and other living beings that obey their physical nature's inclinations. Meanwhile, *lex natural* suggests that human existence has fundamental demands that express themselves in the form of a rational creature. Following the *lex natural* implies that man considers reason and common sense rather than his irrational instincts. However, it is also understood in *lex natural* that the laws followed are not simply fair practices. Law is a part of the universal laws of the cosmos (*natura*), which are a celestial whole full of

Aristotle, St. Augustine, Samuel Pufendorf, Cardozo, and many others laid the foundation for the natural law idea. In-depth, Aquinas defines law as regulations followed by reasons for the common good, issued by people who have a sense of community care, and promulgated by people who have a sense of community care.²⁵ The law is divided into four categories by Aquinas: *lex aeterna*, *lex divana*, *lex natura*, and *lex humana/positiva*.²⁶ Other literature suggests that the *ius constituendum* is also included in natural law as part of the fourth place. However, the objective of this study is not to seek out what's causing these disparities. According to Aquinas, *Lex aeterna* as eternity law is the highest law and the source of all laws.²⁷ Given the church's superiority²⁸ in the political, social, and economic spheres during the dark ages, the *lex aeterna* referred to here is God's law—which the human mind cannot reach any time—which was based on the Bible at the time.

Lex divana is a law discovered through reason or by revelation. In this area, the gap between classical/irrational natural law and modern/rational natural law is the new school of natural law avoids God as a lawmaker but instead considers reason—as a gift from God—to be the source of law itself. Then there's *lex natura*, or what's derived from natural law. The certainty of nature's mechanical motion is the law in dispute.

mysteries that are beyond human understanding. Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (VIII, Pustaka Kanisius 1995) 82.

²⁵ English translation in sections Treatise on Law (QQ 90-108) Question 90 Article 4 described that the definition of law may be gathered; and it is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated. Saint Thomas Aquinas, *Summa Theologica* (Christian Classics 1981) 1332 <<http://www.ccel.org/ccel/aquinas/summa.html>>; Mark C Murphy, 'Natural Law Theory' in Martin P Golding and William A Edmundson (eds), *The Blackwell Guide to the Philosophy of Law and Legal Theory* (3rd edn, Blackwell Publishing 2006) 18–58.

²⁶ Brian Bix, 'Natural Law Theory' in Dennis Patterson (ed), *A Companion to Philosophy of Law and Legal Theory* (2nd edn, Wiley-Blackwell Publishing 2010) 211–217.

²⁷ *Lex naturalis nihil aliud es test quam participation legis aeternae in rationali creatura*. There are laws that emerge from revelation and laws that are created by humans, according to St. Thomas Aquinas. Natural laws are legal norms, according to Aquinas, not because natural conditions can produce laws, but because God created them. The participation of the eternal rule that resides in God Himself is the rule of God's law (*lex aeterna*). Alexander Passerin d'Enterves, *Natural Law: An Introduction to Legal Philosophy* (5th edn, Hutchinson University Library 1961) 34; Frederick Charles Copleston, *A History of Philosophy Volume II: Medieval Philosophy* (Image Book, Doubleday Dell Publishing 1993) 314; Abdul Ghofur Anshori, *Filsafat Hukum: Sejarah, Aliran, Dan Pemaknaan* (Gadjah Mada University Press 2006) 16–17; Robert P George, 'Natural Law' (2005) 31 *Harvard Journal of Law and Public Policy* *Journal of Law and Public Policy* 171, 191.

²⁸ St. Thomas Aquinas is often known as a major figure in the Roman Catholic Church. Brian Duignan, *The 100 Most Influential Philosophers of All Time* (The Britannica Guide to the World's Most Influential People) (Brian Duignan and Jeanne Nagle eds, 1st edn, Britannica Educational Publishing & Rosen Educational Services 2010) 117. St. Thomas Aquinas is regarded as a great philosopher who succeeded in developing and elaborating Aristotle's principles in Christian philosophy. d'Enterves (n 27) 35; Copleston (n 27) 310–311.

This section addresses an entity's behaviors or roles, as well as its original causality.²⁹ Some of Yunus's suggestions and criticisms will be addressed in this field, particularly the return of money to its original function. A positive law system produced by humans and acting positively is known as *lex humana* or *lex positiva*.

Yunus's universal truth was built not only on the Qur'anic truth but also on reason's attempts to investigate and uncover the truth. The irrational (classical) and rational (modern) natural law schools are combined in this truth model. Hugo Grotius established the rational or modern school of natural law. Given the shift in ideas about the source of law in his two important works, Grotius himself is regarded as a kind of controversial. Grotius mentions God as the primary source of law in his first book, *De Jure Praedeae Commentarius*, which is written in the description in the section on *prolegomena*.³⁰ God's existence was still identified in the formal logic structure between the *regulae* and *leges* hierarchies at the point.

Meanwhile, he claims that the existence of God's will and mutual consent is not adequate sources of law in his second book, *De Jure Balle ac Pacis*. In the legal structure he established, Grotius added reason and logic as an intermediate between natural law and positive law. Rationality is no longer used to define divine reasoning but rather to emphasize the ability to think logically, to shift the power of law-making from God to humans gradually.³¹ Like Yunus, St. Thomas Aquinas did not eliminate the possibility of a change in religious doctrine.³² This is following Abdul Karim Soroush's evolutionary theory of religious interpretation,³³ which claims that faith is an

²⁹ Bix (n 26) 211–227.

³⁰ Since God created the creature and willed its existence, each part of it has been given a horn with certain natural qualities by which its existence can be preserved and each part can be driven for its own good, in accordance with the principles law inherent in its creation. Old poets and philosophers particular entity that love, whose main force and action is guided toward self-interest, is the first concept of the entire natural order based on this fact. Hugo Grotius, *Commentary on The Law of Prize and Booty* (Matine Julia van Ittersum ed, Digital, Liberty Fund 2012) 16.

³¹ Grotius began by humanizing natural law, then passed onto the secularization by reducing religion's influence throughout state power authorities. Aulia Rahmat, 'Rasionalisasi Hukum Alam Oleh Hugo Grotius: Dari Humanisasi Menuju Sekularisasi' (2020) 2 *Undang: Jurnal Hukum* 433, 464.

³² Natural law, according to Aquinas, can be modified, either by addition or subtraction, so it can be replaced by the concept of utility. d'Enterves (n 27) 43.

³³ This theory is based on five main postulates: (1) religion or revelation relating to it, is silent and static; (2) religious science is relative, because it is composed of presumptions; (3) religious understanding is bound by time, because of presumptions; (4) religion reveals its own truth, but not with religious understanding; (5) religion is perfect and comprehensive, while religious understanding is not; and, (6) religion is eternal and divine, while religious understanding is a human interpretation and is humane and flawed. Abdulkarim Soroush, 'Evolution and Devolution of Religious Knowledge' (1996) 9 *Journal of Islamic Research* 62, 63; Abdulkarim Soroush, 'The Evolution and Devolution of Religious Knowledge' in Charles Kurzman (ed), *Liberal Islam: A Source Book* (Oxford University Press 1998) 246.

eternal concept unaffected by space and time. This is in marked contrast to religious understanding, which involves the inclusion of space and time to be dynamic and vulnerable to change.

Starting with this universal truth, Yunus declared that the State consists of territorial aspects, citizens, and the government (in the form of government as the largest building ever built by humans).³⁴ Consequently, the State would be genuinely stable, fair, prosperous, and advanced if universal truth norms drive the country's foundation, trajectory, and goals. Yunus replied his argument on Qur'an Surah Al Maidah verses 44, 45, and 47. The three verses mention that the government must be run following Islamic teachings on truth values.³⁵ Yunus claimed that the first principle of Pancasila is the other four precepts' spirit,³⁶ as a golden stairway leading to a fundamentally fair and equal prosperous society, described as the existence of divine principles.

Yunus studied and criticized many ideologies that existed and evolved before presenting the model he proposed. Yunus concluded that even though there were contradictions and significant disparities between the various existing ideologies,³⁷ it was necessary to construct a state concept that was a synthesis of the doctrines. The suggested synthesis represents the Muslim perspective on reality. Bersamaism is the term given to the theoretical synthesis. Among capitalism and communism, Bersamaism encompasses universal goodness in all facets of moderate life. Bersamaism is based on Qur'an Al-Baqarah verse 143 as a synthesis between capitalism and communism. Furthermore, Yunus elaborated that justice and independence (freedom) are the whole pair that always go hand in hand and complement each other.³⁸

In the framework of bersamaism, the State is not a goal but rather a mechanism for achieving goals. A state's objective is to advance society by enforcing the law,

³⁴ Yunus (n 12) 12. It is more stated clearly that the state's goal necessitates a universal and practical conception of the basis, function, and form of government, which is based not only on correct academic analysis but also on the objective moral values of God Almighty's teachings. Rommen (n 24) 172.

³⁵ Yunus (n 12) 21. It is more specifically stated that the goal of a state necessitates an universal and rational conception of the basis, purpose, and governmental system, which is based not only on appropriate academic analysis, but also on the objective moral values of God Almighty's teachings. Rommen (n 24) 172.

³⁶ Pancasila is—in reality—a kind of theistic-nationalism ideology, according to some literature. Liow (n 21) 191.

³⁷ Yunus implied that capitalists really claimed that if economic liberalism was replaced by socialism, culture would be ruined. Socialists, on the other hand, claim that the only way to fully defend the society is to eradicate capitalism and replace it with communism/socialism. Liberalism, according to Yunus, is an extreme right ideology, while communism is an extreme left movement. Yunus (n 12) 19.

³⁸ Ibid 30–34.

preserving justice and equality, and proportionally distributing rights and obligations to obtain maximum prosperity in a just and equitable manner. The State's vision is to develop a state of being that represents a society that has evolved in its way of thinking and living to achieve a physically and mentally happy life in both the psychological and material spheres.

Most sustainable prosperity relatively and equitably becomes the aspect of the objection of statehood.³⁹ This is aligned with Richard A. Posner's concepts in the legal and economic relations discourse about both the economic conception of justice. Posner addresses human thought as rational beings to obtain personal happiness and fulfillment using an economic approach. As this is a type of economic activity, laws are necessary to preserve stability and shared values.⁴⁰ Posner positions humans as subjects of autonomy over their choices in this section. Nevertheless, he must take into consideration broader interests. Yunus did not fully accept the Posner doctrine, especially regarding the definition of human as *homo economicus* and the community's motivation for following the law.⁴¹ In every economic activity, Yunus highlights inter-subjective and trans-subjective relationships. This can also be seen in his opinions on market value instruments and trading principles.⁴²

This selection of fundamental principles is then related to Pancasila as Indonesia's basic norms and taken into consideration by Yunus. Religious values are the inspiration and main framework for every activity in the State's life, as seen by the

³⁹ Bersamaism relies on striving for sustainability rather than current capital or commodity productivity growth. Addiarrahman (n 11) 299.

⁴⁰ Richard A Posner, *Economic Analysis of Law* (7th edn, Aspern Publisher 2007) 3; Richard A Posner, *The Economics of Justice* (Harvard University Press 1981) 42.

⁴¹ Posner criticized Jeremy Bentham's utilitarianism model and proposed that humans, as *homo economicus*, always put economic considerations when deciding. In fact, it is claimed that humans will follow the law if the difference in benefit and loss from a decision is taken into consideration. Posner, *The Economics of Justice* (n 40) 249. The model of inter-subjective relationships combined with cognitive knowledge shapes humans into *homo islamicus*. Addiarrahman, 'The Fiqh Paradigm of Sustainable Development' (2019) 3 *Indonesian Journal of Interdisciplinary Islamic Studies* 47, 61–62.

⁴² The basic assumption that the State as a social system is formed with mutually agreed instead on objectives can be seen in Yunus' idea related to the significant conception of the economic system. Individual economic activity must be avoided in the face of *tabzir* and *israf* because it can negatively affect financial stability. This prohibition is based on a shared understanding as well as a control system. Individual freedom in carrying out economic activities is guaranteed by the State, as is the obligation to eliminate poverty, regulate markets, and formulate pro-people monetary and financial policies. Prices are determined based on the cost of production, as well as supply and demand conditions. The price is set both economically and realistically. The unit cost of income, transportation costs, profit desired by producers, and competition among producers of similar or alternative goods are essential factors in production costs. Yunus (n 12) 79–106.

first principles as the key idea and spirit for other principles.⁴³ Yunus also emphasized that Pancasila is like a space that must be filled, and the first precepts must fill in other precepts, as he reflected on the cases of capitalism and communism. If not, Pancasila will almost definitely be filled with different definitions or isms that refute the first principle.⁴⁴ This does not negate the influence or presence of the other principles. The national principle recognizes the second precept as a form of response to colonialism and imperialism. The sovereign act doctrine⁴⁵ is essentially embodied in these second precepts. It is stated in the Qur'an and hadith, and it is integrated through Islamic understanding. A distorted sense of nationalism can promote chauvinism and create disruption.⁴⁶ The basic principle of people's rights is the third precept. In a democracy, the concept of people's sovereignty aims to achieve a state of independence, equality, and brotherhood for and between all. The idea of power distribution in the legislative, executive, and judiciary systems is referred to as exercising people's sovereignty.

The State, according to Bersamaism, is a politically ordered society with such territory and a government. Citizens, territories, and governments are the components of the State, as previously mentioned. Power, Yunus assumed, was not a component of the State but rather an inherent government attribute.⁴⁷ The government should also have power and control, according to the statement. According to Yunus, the human element, as a citizen, is the most crucial aspect of the State. As conscious beings, humans place themselves at the core of determining the interrelationships they create. The assumption is that interpersonal relationships are regulated by the law of consciousness rather than mechanical causality.⁴⁸ Similarly, religion has an impact on

⁴³ First principle mentioned refers to first principle of Pancasila, Belief in the one and only God.

⁴⁴ Ibid 85.

⁴⁵ Every sovereign state is bound to respect the independence of every sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Robert L Bledsoe and Boleslaw A., *The International Law Dictionary* (Clio Press 1987) 3.

⁴⁶ Yunus (n 12) 88.

⁴⁷ Ibid 24. This differs from the provisions of Article 1 of the Montevideo Convention of 1933, which mandates that the state must consist of (a) the citizens, (b) a defined territory, (c) the government, and (d) the authority to operate international relations. According to Yunus, the state is composed of just three components. Meanwhile, since the power and ability to have relations with other countries are inherent characteristics of government elements, they are excluded from material requirements. In the concept of social systems theory, the subject's ability and power to carry out diplomacy are considered properties of the subject, but not identical to the subject. M Husni Muadz, *Sekolah Perjumpaan: Normalisasi Menuju Relasi Sosial Yang Terbuka, Toleran Dan Saling Berterima Pada Masyarakat Yang Heterogen* (1st edn, Gelar Hidup Publishing 2017) 23.

⁴⁸ Ibid 7.

each human being. People will work together to promote fairness and equality if humans can establish inter-subjective relationships in their lives.

This relates to Rudolf von Jhering's critique of Fredrick Carl von Savigny's ideas regarding Germany's dominant school of history. Jhering argues that law should be regarded as instruments used by individuals and groups to accomplish their objectives rather than interpret a shared community or a collection of abstract legal principles or concepts.⁴⁹ There are indicators of conflict between interests in the content of the laws and legal principles.⁵⁰ Jhering claims that societies have similar social objectives and cultural values and that a well-functioning legal system expresses and promotes these goals and objectives.⁵¹

A universal state of nomocracy, democracy, and republic,⁵² according to Yunus, is the ideal model of a state that is following universal truth and Islamic teachings. A state established on universal truths is known as a universal nomocratic state. A nomocratic state is the one where the government is set on moral or divine laws. The deliberation model is essential to Yunus as a way of making a state. This is based on the Islamic principle of *shura*.⁵³ Yunus emphasized the importance of establishing and filling positions in the People's Consultative Council based on this principle, guiding responsibility to humans and God.

According to this view, Yunus addresses the distance between the laws of irrational nature and the laws of rational nature, often at differences. Yunus saw St. Thomas Aquinas's natural law model as a holistic framework that often provides positive law as a moral principle. Though many later considered Grotius to have secularized natural law because he omitted religious sources from natural law sources with an anti-theistic hypothesis (*etiamsi daremus*),⁵⁴ many people consider him to have

⁴⁹ Piotr Szymaniec, 'Criticism of Rudolf von Jhering's Concepts in Leon Petrazycki's Philosophy of Law: Remarks on the Reception of Jhering's Work in the Polish Legal Thought in the Second Half of the Nineteenth and the Early Twentieth Centuries' (2017) 4 *Transformacje Prawa Prywatnego* 61.

⁵⁰ Brian Z Tamanaha, *Law as A Means to An End: Threat to The Rule of Law* (William Twining and Christopher McCrudden eds, Cambridge University Press 2006) 61.

⁵¹ William Seagle, 'Rudolf von Jhering: Or Law as a Means to an End' (1945) 13 *The University of Chicago Law Review* 71.

⁵² Yunus thought up the idea after examining and analyzing six different state models, including a theocratic state, a dictatorial state, an oligarchic state, a plutocratic state, a military state, and a monarchy / aristocracy. Yunus (n 12) 29.

⁵³ *Ibid* 35–36.

⁵⁴ This is expressed by the statement *etiamsi daremus non esse deum* (natural law will survive even though God does not exist). Hugo Grotius, *The Rights of War and Peace* (Richard Tuck and Jean Barbeyrac eds, Digital, Liberty Fund 2005) 1769. The full statement is as follows: a source of law other than a source in nature, namely God's free will, evaluated beyond all our common sense tells us that we must make

secularized natural law. However, the Grotius model is mainly based on Aquinas's concept of compiling positive law. God, according to Aquinas, is the primary source, while intent, according to Grotius. This can be seen in the understanding of scriptures and appreciation of reason in the pursuit of truth. The distinction of Grotius is authority. Yunus considers reason as a tool for discovering the facts, while Grotius sees reason as the primary source.

Yunus saw Indonesia as a state containing aspects of a universal nomocracy, in which the relationship and coexistence of State and religion are adequately considered. The first principle of Pancasila describes that the Indonesian recognizes and embraces One Godhead's concept, demonstrating this.⁵⁵ Indonesia is a democracy in the format of a republic, despite being a nomocratic state. A democratic state can only exist if citizens are aware of their equal rights and have a shared respect⁵⁶ and acceptance attitude.

Yunus emphasized that the principle of the rule of law, as described in the Qur'an Surah Al-Maidah verses 27 to 50, is an important aspect that becomes a foundation as a state. A state's highest sovereignty is law, according to the rule of law. Afterward, the legislation would delegate authority to specific entities. Yunus concluded that the State's original function was as an arbitrator/mediator for the abovementioned reasons. The law that Yunus refers to in this concept is not restricted to laws created by humans but also contains laws created by God.⁵⁷ As the primary source of all laws, the constitution must be based on the Koran and the Hadith. Because of the relative existence of comprehension, there would be prospects for constitutional reform at various times.

obedience. However, the principles of nature that we are discussing, which include what is connected with human's social life and what is referred to as nature in a wider context, as well as the intrinsic qualities instilled in man, may be rightfully attributed to God, by will.

⁵⁵ Yunus also provided three reasons to support up his claim. First, that Almighty God's teachings are universal, and also that the state that bases its activities on universal truth embraces God's teachings as truth. Second, God Almighty's teachings are all-encompassing, enveloping all aspects of life. Yunus (n 12) 30–33.

⁵⁶ Ronald Myles Dworkin, *Is Democracy Possible Here?: Principles For A New Political Debate* (3rd edn, Princeton University Press 2008) 160; Arthur Ripstein, 'Liberty and Equality' in Arthur Ripstein (ed), *Ronald Dworkin* (Cambridge University Press 2007) 82–108; Will Kymlicka, 'Dworkin on Freedom and Culture' in Justine Burley (ed), *Dworkin and His Critics: With Replies by Dworkin* (Blackwell Publishing 2004) 113–133. Dworkin's idea developed specifically from the observations of his study on American society. While the locus is different, this definition is similar to the normativity theory of inter-subjective relationships in a normal social system. The same thing could be found in John Rawls main idea in his concept of social justice, which claims that one of the characteristics of a democratic society is equality and mutual respect. John Rawls, *A Theory of Justice* (Revised, Harvard University Press 1999) 10–14; Catherine Audard, John Rawls (Acumen 2007) 25.

⁵⁷ Yunus (n 12) 32.

The justification for enacting the legislation would be much greater if universal truth principles govern a state. The existence of the law and the citizen's internal religion is derived from coercion and the system of punishments in law. This indicates that the model of citizen relations is not limited to inter-subjective relationships but also contains models of trans-subjective relationships.⁵⁸ Humans can have individual and subjective awareness as humans as subject relations based on common awareness, acknowledgment, and respect for each other's existence is necessary. Every subject has absolute control for himself and different hopes, needs, and desires, as well as decision-making capacity. This situation necessitates a consensual principle based on cognitive awareness⁵⁹ to promote cooperation and harmony within the State.

2. The Return to the Original Functioning of Economic Instruments and Relations

Yunus defines Government as an organization to maintain a system of harmony in a large or small society. From this definition, Yunus concluded that the government's main and original task is to act as an intermediary in maintaining harmony, justice, and progress, especially in maintaining the state as a complete system. The only characteristic that stands out in the paradigm of Bersamaism is the effort to live and animate. This means that this paradigm is to survive and puts forward the concept of sustainability development.⁶⁰

The state's duty as an intermediary in this constitutional relationship is based on verses from the Koran. Yunus found that there are at least 14 verses in the Koran—10 of which state directly and emphatically—that the state has the duty to mediate.⁶¹ This

⁵⁸ Inter-subjective relationship refers to a relationship in equality whereby all joint affairs must be conducted mutually (mutual agreement). The subject and God have a trans-subjective relationship in the form of acceptance, obedience, and subordination. This relationship requires trans-recognition consciousness, or consciousness that is not solely concerned with entity and human thoughts and memories. Spirit or soul is the faculty. M Husni Muadz, *Anatomi Sistem Sosial: Rekonstruksi Normalitas Relasi Intersubektivitas Dengan Pendekatan Sistem* (M Firdaus ed, Institut Pembelajaran Gelar Hidup 2013); Muadz (n 47) 13.

⁵⁹ Recognitive awareness is related to the awareness of the subject's relation to the subject. This awareness is related to the faculty—in the form of conscience—to build recognition, appreciation, empathy, and affection for fellow subjects. Muadz (n 47) 13.

⁶⁰ Sustainability development is a model of development that addresses today's needs while also taking into consideration the needs of future generations. Gro Harlem Brundtland, 'Our Common Future: Call For Action' (1987) 14 *Environmental Conservation* 291, 43; Gro Harlern Brundtland, 'Global Change and Our Common Future' (1989) 31 *Environment: Science and Policy for Sustainable Development* 16, 292. In the context of social systems, the concept of sustainable development is linked to the epistemic awareness of human and natural entities in their interactions. Addiarrahman, 'The Fiqh Paradigm of Sustainable Development' (n 41) 58.

⁶¹ It is concluded from Yunus search that the words *fahkum* or *uhkum* in the Qur'an are almost always accompanied by the sentence *baina* (in between), sometimes accompanied by the word 'ala (above) or *fauqa* (above). Yunus (n 12) 49.

basis then becomes the basis for determining qualifications and standards for filling positions in the state. Starting from a hadith of the Prophet Muhammad,⁶² Yunus concluded that government positions must be submitted to people who objectively have expertise in that field.⁶³

Facing the reality of a state with all the activities and various country citizens in building an economic system, Yunus views several postulates that must be understood together. First, politics cannot be separated from the economy⁶⁴ and vice versa. Yunus was aware of the assumption developed in society, especially during the early days of independence, that some people still separated politics from economics, either consciously or unconsciously. These two things are interrelated and are equally important, so one cannot be more concerned with one of them. Apart from his debates with Dworkin—regarding moral and legal theory—Posner presents an idea in looking at the relationship between law and economics.

Second, it returns the original function of each entity. The activities of citizens with various interests often change the main functions of an entity.⁶⁵ Meanwhile, stability, tranquility, glory, and progress can only be achieved if each entity is returned to its original function. Third, improvement of negative deviation in the trading system.⁶⁶ In this section, Yunus shows the existence of the lex naturalist to improve the existing economic system. Based on his academic experience, Yunus seems to have found that developing economic practices in superpowers have led to negative shifts in the function of money and the trading system. Yunus views that returning the functions of money and the trading system to their natural functions when they were first created

⁶² Refers to hadith Bukhari No. 6015

حَدَّثَنَا مُحَمَّدُ بْنُ سِنَانَ حَدَّثَنَا فُلَيْحُ بْنُ سُلَيْمَانَ حَدَّثَنَا هِلَالُ بْنُ عَلِيٍّ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا ضَلَّتْ الْأَمَانَةُ فَانْتَظِرِ السَّاعَةَ قَالَ كَيْفَ إِضَاعَتُهَا يَا رَسُولَ اللَّهِ قَالَ إِذَا أُسْنِدَ الْأَمْرُ إِلَى غَيْرِ أَهْلِهِ فَانْتَظِرِ السَّاعَةَ

Having told us Muhammad bin Sinan had told us Fulaih bin Sulaiman had told us Hilal bin Ali from ‘Atho’ bin Yasar from Abu Hurairah said, “If the message has been wasted, just wait for the destruction to occur.” “How do you mean the message is wasted?”, a friend questioned. “If the matter is left to the experts, then wait for the destruction” the Prophet replied.

⁶³ Ibid 49.

⁶⁴ The activity of legal positivism, which was based on the philosophy of law and the secularization of the sciences, represents a new understanding of complex construction that was divided into several categories. The expansion of social studies and the development of thought during the Renaissance era had implications for a legal perspective. Law encompasses not only moral and regulatory aspects, but also other areas such as economics. The utilitarian school was the first to propose this concept. David D Friedman, *Law’s Order: What Economics Has To Do With Law and Why It Matters* (Princeton University Press 2000) 8–17; Richard A Posner, *The Problematics of Moral and Legal Theory* (3rd edn, Harvard University Press 2002) 111.

⁶⁵ Yunus (n 12) 102.

⁶⁶ Ibid 56.

is a pragmatic and realistic choice to build a healthy economic system capable of providing welfare to its citizens.

Fourth, strengthening universal values in trade.⁶⁷ At least, there are three main conditions in the legality of trade: easing and mutual agreement, direct meetings between producers and consumers, and opening a space for meeting activities between producers and consumers that are owned collectively, not individually. Fifth, return the function of money and government to their original function. The original function of money is a medium of exchange for the means of buying and selling.⁶⁸ The original function of the government was as an arbitrator/mediator in all aspects of state life. Yunus also emphasized that the key to economic stability is gratitude. Gratitude is meant by returning economic principles to their original nature. The basic essence of economics is to produce, in the sense that only activities increase the use-value of something.

Yunus emphasized that the main key to economic stability begins with the government, which carries out its original function. Because it is believed that only the government can guarantee the implementation of the three main trade conditions.⁶⁹ Meanwhile, the existence of a private business is not given rights in the trading business. This will trigger the return of the function of money to its original function because citizens also work for something that produces in the form of adding value to the use of goods.

As an intermediary between producers and consumers, the government itself has the right and is even obliged to run the entire trade and distribute the products. In this context, the state exercises the function of controlling the meeting rooms between producers and consumers. The profits from that become the state treasury and are again used for the common interest. In this section, the Government has full rights to the market but does not fully control the market mechanism. This means that the price will be determined by the market mechanism itself, not by the government. Market mechanism refers to how prices are created based on the forces of supply and demand and can be said to be *sunnatullah*. The free-market system or neoliberalism is an economic and political economy framework and system formulated as an advanced form of capitalism. That a fair price in a perfect market should not be interfered with is

⁶⁷ Ibid 58–59.

⁶⁸ Ibid 62.

⁶⁹ Ibid 70–72.

the nature of that market.⁷⁰ This economic system is alleged to be able to eliminate tax liability for citizens. The stability of the state financial balance will prevent the country from printing new money to minimize inflation. This is possible because of the slowing of money circulation and the absence of inflation, and the exchange rate will be stable.

When the government has established such economic institutions, it will slowly minimize private agents' or institutions' role in the domestic economic system. This step must be accompanied by eliminating private trading institutions to reduce the urbanization rate because people will return to their respective areas of origin and carry out productive economic activities due to equal space and opportunity. This series of activities will ultimately shift the tendency of investment and distribution activities to production.

The simulation offered by Yunus is symmetrical with the realistic theory of law developed by Brian Z. Tamanaha.⁷¹ The realistic theory of law breaks down on three main levels. First is society's recognition of mutually agreed-upon rules that govern all aspects of life. The existence of conventional recognition and belief in these rules necessitates the existence of the rules themselves. At the second level, there is recognition that certain people or positions have the legal authority to formulate, enforce and apply legal norms. In this order, recognizing actors who occupy certain positions has an important role concerning the position itself. The position must be projected in an inter-subjective relationship, not in an objective relationship that necessitates the concept of ownership and control.

The chair will be positioned as a mandate appreciation to the inter-subjective relational approach. At the third level, there is official recognition of legal validity, which results in legal actions and institutional facts. This shows that the manifestation of the life of all the elements involved in it. Building a legal system as an instrument used to achieve collective goals must be in an inter-subjective relationship and partially in a trans-subjective relationship.

⁷⁰ The market, also known as the market mechanism, is a social interaction in which humans interact in order to meet their needs, such as by constructing a demand and supply for a product. Despite the fact that prices are determined by market mechanisms based on supply and demand, fairness remains a concern, for example, when it comes to fair prices. Addiarrahman, 'Adakah Sistem Pasar Bebas Islami?' (2014) 5 Muqtasid: Jurnal Ekonomi dan Perbankan Syariah 123, 129–130.

⁷¹ Brian Z Tamanaha, *A Realistic Theory of Law* (Cambridge University Press 2017) 194–198 <www.cambridge.org/9781107188426>.

The government's position, which only has authority in the distribution function, is that the government has no right to interfere in production and consumption activities. The government does not have the authority to set prices. This concurs with the thoughts of Ibn Taimiyya and several other scholars. The state is obliged to guarantee individual freedom in carrying out economic activities⁷² and the obligation to eliminate poverty, regulate markets, and formulate pro-citizen monetary and economic policies. Prices are set based on the cost of production, conditions of supply and demand.⁷³ Nevertheless, Yunus does not deny several conditions that affect these two factors, such as business competition, exchange rates, consumer knowledge, producers' knowledge of consumer trends, and market conditions. Bersamaism rejects an agreement model in bargaining in trade transactions because it wastes a lot of time and can cause unwanted things. Nonetheless, the government is obliged to establish an economic law to emphasize determining goods' price. The state itself does not determine the price but the existence of established laws.

Handing over the state's authority to form a positive law for the state is a task in the perspective of the positivism school of law developed by John Austin. Aquinas does not deny the existence of positive law—a synthesis of Aristotle and St. Augustine's views—in state life. However, the idea of forming a positive law in Yunus's view is different from Austin's. Austin stated that the law was an order made by the authorities. The authorities in this definition represent personal actors and suggest a different approach so that society obeys the law only because of fear of sanctions.⁷⁴ Meanwhile, Yunus positions the positive law as a code of moral values⁷⁵ that serves as the foundation for all social activities rather than as a result of subjective political activities. Power-based coercion is incompatible with the principles of individual autonomy and mutual recognition between subjects. This is due to the state's role as an objective mediator charged with safeguarding and promoting mutual prosperity.

⁷² Addiarrahman, 'Adakah Sistem Pasar Bebas Islami?' (n 70) 136.

⁷³ A product's price is determined both economically and realistically. Unit cost of income, transportation costs, profit desired by producers, and competition among producers of similar or alternative goods are all major elements in production costs. Yunus (n 12) 79–80, 106.

⁷⁴ Law created in the legal positivist paradigm will only lead to obedience to the law because it is a government-created instrument, not because an activity is considered good or bad. Widodo Dwi Putro, 'Mengkritisi Positivisme Hukum: Langkah Awal Memasuki Diskursus Metodologis Dalam Penelitian Hukum' in Sulistyowati Irianto and Shidarta (eds), *Metode Penelitian Hukum: Konstelasi dan Refleksi* (2nd edn, Yayasan Obor Indonesia 2011) 9.

⁷⁵ Rommen (n 24) 177. Aquinas stated that the law is a standard of rational behavior. John Finnis, 'Natural Law: The Classical Tradition' in Jules L Coleman, Kenneth Einar Himma and Scott J Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford University Press 2004) 6.

The state as a social system formed with mutually agreed objectives presupposes inter-subjective relations among its citizens. Inter-subjective relations are not limited to relationships in the realm of knowing and being known, nor are they mutually controlling.⁷⁶ This means that the formation of law by the state is not within the framework of objective relations but is seen as an inter-subjective relationship because the state is human-formed. Thus, the force of law—as an order from the authorities—is not an appropriate reason for building order. Ideally, compliance with the law is based on a cognitive awareness of equality between humans.

Meanwhile, Yunus' model suggests that market price laws must be considered practically. The existence of a law regulating market price formation standards fulfils the state's role as an intermediary between producers and consumers.⁷⁷ This is based on the pragmatic legal realism perspective, which holds that law, as a form of legal incarnation, must be viewed in terms of its function rather than as a collection of abstract rules, concepts, or principles. It is also stated that the law can only be understood and improved by paying close attention to legal officials' behaviour in regard to the rule of law, as well as public reactions to these legal actions.⁷⁸ This means that the laws established in determining the price will also be influenced by the legislators involved.

Yunus described economic problems from the perspective of social activities.⁷⁹ Economic problems and trade activities are directly related to the community as the actor. Therefore, bersamaism also pays special attention to the tendency of citizens' consumptive behaviour. Today's reality is that citizens are engaged in a variety of *tabzir* and *israf* activities. *Tabzir* is a consumption pattern in which anything is not placed based on its requirements. *Israf*, on the other hand, is a trend of excessive consumption that reaches the recommended cap. Both of these practices are bad deeds, both in terms of Islamic teachings and economics, and must be stopped. The government does not interfere in this. However, the living system's pattern of trans-subjective relations will automatically become a control mechanism for citizens' consumption habits. The series of grand designs proposed by Yunus rests on a common

⁷⁶ As an important feature of each subject's interiority, functional organization parallels in relationships based on mutual recognition and acceptance. Muadz (n 47) 9.

⁷⁷ Yunus (n 12) 62.

⁷⁸ Myres S McDougal, 'Fuller v. the American Legal Realists: An Intervention' (1941) 50 The Yale Law Journal 827, 827–840; Tamanaha (n 50) 66.

⁷⁹ Addiarrahman (n 11) 295.

awareness of citizens that each one must participate and be responsible for the implementation and maintenance of universal norms that live in society.

Implicitly—as expressed by Lawrence M. Friedman⁸⁰—the concept of bersamaism views law as an order of systems consisting of substance, structure, and culture. In contrast to Friedman—who hierarchically sequences the legal structure, legal substance, and legal culture—Yunus inductively uses Tamanaha’s realistic legal approach to build a legal system by starting from a legal culture. The legal culture of society—with cognitive awareness in inter-subjective relations collectively and trans-cognitive awareness in trans-subjective relations—will give birth to a good legal structure. The good substance will be formed by the legal structure and the actors inside it. This means that developing a state system and an economic system will only be successful if done from the ground up.

The goal of having a state accompanied by its system is to realise justice, benefit and legal certainty, as Gustav Radbruch.⁸¹ Fair in this context is distributive justice to place it according to its level. The visible embodiment of justice Yunus emphasises efforts to recover any entity and activity to its original function and avoid *tabzir* and *israf* activities. The benefits aspect can be seen from the state’s placement as an intermediary in the economic and trade system. This will provide benefits to producers and consumers, even to the state as a distributor at the same time. This structure is predicted to maintain economic stability because it can minimise inflation and the opportunity for tax write-offs. The profits that the state gets from economic activities will again be used for the common interest. Legal certainty can be seen from the regulations compiled by the state through the legislative body. The state forms the basic indicators used in determining the price of a good so that producers and consumers

⁸⁰ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Russel Sage Foundation 1975) 1–24; Lawrence M Friedman, ‘Legal Social Culture and Social Development’ (1969) 4 *Law & Society Review* 29, 34 <<https://www.jstor.org/stable/3052760>>.

⁸¹ Originally used *gerechtigheit* (distributive and reciprocal justice, fairness, equality), *zweckmässigkeit* (purposiveness, expediency, instrumentality), and *rechtssicherheit* (legal certainty, the positivity of law). Mireille Hildebrandt, ‘Radbruch’s Rechtsstaat and Schmitt’s Legal Order: Legalism, Legality, and the Institution of Law’ (2015) 2 *Critical Analysis of Law* 42, 49; Gustav Radbruch, ‘Statutory Lawlessness and Supra-Statutory Law (1946)’ (2006) 26 *Oxford Journal of Legal Studies* 1; Stanley L Paulson, ‘Lon L. Fuller, Gustav Radbruch, and the “Positivist” Theses’ (1994) 13 *Law and Philosophy* 313, 315–316 <<http://www.jstor.org/stable/3504918>>; Heather Leawoods, ‘Gustav Radbruch: An Extraordinary Legal Philosopher’ (2000) 2 *Washington University Journal of Law & Policy* 489, 510–511; Anton-Hermann Chorus, ‘The Philosophy of Law of Gustav Radbruch’ (1944) 53 *The Philosophical Review* 23, 23–45 <<https://www.jstor.org/stable/2181218>>.

alike will not feel disadvantaged. As a mediator, the state also guarantees legal certainty in macro terms for citizens through existing judicial institutions.

Yunus's main idea is very symmetrical with the irrational concept of natural law developed by St. Thomas Aquinas. The context of the relationship between law and morals in natural law is that the ethical system is in three different domains, namely, towards God, towards yourself, and towards others.⁸² All activities carried out by citizens and state official be separated from ratios and reasons. Every action taken has its motivations and implications. The concept of life as an inseparable part of the state necessitates a joint inter-subjective relationship and an individually trans-subjective relationship.

E. Conclusion

The bersamaism paradigm is similar to the natural law school paradigm introduced by St. Thomas Aquinas. Yunus established the Qur'an as the primary source of universal truth, as well as the existence of reason as a means of obtaining and discovering truth through academic institutions. The state is a tool for achieving justice, prosperity, and progress in all aspects of life, not a goal. State life is a social system that must be based on the collective principle of inter-subjective relations, with the motivation of trans-subjective relationships between individuals. The economic system places the state as arbitrator or mediator, fully conducting the distribution function between producers and consumers, and private institutions power in the realm of trade must be minimized, if not eliminated. The state is required to establish an institution that specifically organizes and manages meetings between producers and consumers as an intermediary, but it has no authority over prices or market mechanisms. On a technical level, the public's tendency toward *tabzir* and *israf* must be eliminated. Money must be restored to its original function as a means of payment and a metric for measuring production and service.

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⁸² Rommen (n 24) 179.

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