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The Ought Norm from the Perspective of al-Ghazali's *Taklifi* Concept

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ABSTRACT

This article analyzes the ought norm using the comparative-philosophical analysis of Hans Kelsen's Pure Theory of Law and al-Ghazali's *taklīfī* concept in the Islamic legal theory. This research aims to analyze the epistemological normativity basis by confabulating two different thought traditions, i.e., modern legal positivism and the jurisprudence of classical Islam. The philosophical and conceptual approaches are used to analyze Kelsen's understanding of ought (*sollen*) as a transcendental-logical assumption that becomes the basis for legal norm validity without depending on moral and metaphysical claims. In Kelsen's framework, normativity emerges as a fundamental norm (*Grundnorm*) that is rationally presupposed, forming an autonomous system of norms from the theological authority. Next, the discussion is directed to al-Ghazali's *taklīfī* concept, where normativity is based on خطاب الشرع (divine legal greeting), which is directed to legal subjects with morality and responsibility. For al-Ghazali, the ought norm cannot be separated from revelation. It operates within a teleological-ethical framework, which aims to direct human beings to moral perfection and safety. Through a critical dialog between these two perspectives, this research shows that even though both view ought as a non-empirical normative category, there is a fundamental difference in the epistemological source and ontological assumption that become their bases. This article concludes that, with its theological and value-oriented characteristics, al-Ghazali's *taklīfī* concept offers an alternative normativity concept to Kelsen's rational-transcendental normativity model.

Keywords: the ought norm, *taklifi*, al-Ghazali, Hans Kelsen, normativity, legal philosophy.

INTRODUCTION

The existence of the Pure Theory of Law within the horizon of legal theory and philosophy reminds law students of legal scientists and legal philosophers' thoughts, that "the legal discipline so far has not had a special scientific characteristic that may differentiate it from other disciplines of knowledge." This predominantly happens due to the entrance of "foreign"

elements in legal theory, as shown in two "traditional" legal theories that were dominant at that time, i.e., the natural law theory and the empirical-positivist legal theory (Dimyati, 2018; Paulson, 1998b).

For Kelsen, legal science must be protected from two sides, i.e., from statements originating from the sociological perspective that use the causal science method, which assumes the law as part of nature, and from the natural law theory's statements that inserts legal studies into the field of political ethic postulate (Dimyati, 2018). According to Kelsen, these two things make legal studies become involved with misleading "foreign" elements. Therefore, there needs to be a "new" legal theory that is totally different from these two "traditional" legal theories, a "new" legal theory that may purify the law from foreign elements.

Even though it is described in a very concise manner, from Hans Kelsen's explanation of the core of his ideas on the "pure" theory, it can be known that in this case, Kelsen strives to carry out a legal "purification" in three aspects (Kelsen, 1967; Dimyati, 2018):

1. Purification of the legal theory object. According to Kelsen, the pure theory of law will give its own characteristic as a "pure" legal theory due to legal cognition. Apart from having a focus on the law itself, it also aims to eradicate anything from cognition that is not categorized as a cognition object (Kelsen, 1967). Thus, in legal cognition, the only legal cognition object is the norm. Kelsen controls the scope of his analysis to only legal norms. The main issue that Kelsen faces that the issue that needs to be resolved is: How can norms be used as norms? In other words, where can one find the quality that "should" become the special characteristic to be categorized as a norm?

   Even though Kelsen realizes that the law will always be linked to social phenomena, with physical phenomena, and values, etc., Kelsen strives to convince readers that it is not a study subject from legal theory but rather subjects of other disciplines. To complete his study subject, he introduces the "analytical" legal theory model (or method).
2. Kelsen's "Pure" Theory of Law strives to achieve its results merely through the analysis of the positive law. Every statement put forward by legal science must be based on the positive law order, or it must be based on a comparison of several legal orders' content (this statement means that legal science must obtain its concepts merely from the content of legal norms). By limiting legal studies to a structural analysis of positive law, legal studies are separated from legal sociology and justice philosophy. Therefore, legal studies may achieve the purity of its method. The most crucial difference between Hans

Kelsen's analytical method and other analytic legal studies lies in its consistent efforts, especially regarding fundamental concepts (Kelsen, 2017).

3. Purification of the objective and scope of Kelsen's theory. In this context, Kelsen aims to purify legal theory from the elements of other ideologies, namely from value consideration, as well as from political, religious, or moral values. As stated by Kelsen, the Pure Theory of Law has the tendency to be explicitly anti-ideological. This tendency is seen from:
    a. The fact that it places the positive law as law that is free from the interference of a correct or ideal law. The Pure Theory of Law desires to present the law as it is, not how it should be. The Pure Theory of Law seeks to find a real and possible law rather than a right or ideal law. In other words, the Pure Theory of Law is a radical legal theory that is realistic, i.e., the legal positivism theory.
    b. The Pure Theory of Law aims to illustrate the law as it is, without validating the law as just or nullifying the law if it is unjust. The Pure Theory of Law investigates the law that is possible and actual, rather than that which is right. This theory rejects serving the political interest of a person or a group of people by providing an ideological facility, as well as legitimizing or rejecting the existence of a social order. More precisely, through its anti-ideological stance, the pure theory of law proves itself as law. Ideology is rooted in intention, rather than cognition; ideology originates from certain interests, rather than from the interest of the truth (Kelsen, 1967).
    c. The purification of the legal theory methodology. In this case, Kelsen strives to avoid the existence of methodological synchretism, especially that between sociology and legal theories. This is because sociology is categorized as causal scientific knowledge (together with natural science and history), while legal theory is categorized is normative scientific knowledge (together with ethics, logics, and grammar). In this case, Kelsen places a basis of understanding that the division into causal scientific knowledge and normative scientific knowledge reflects a fundamental antithesis between "*sein*" and "*sollen*", or "is" and "ought" (Kelsen, 1967).
        1) It is just that, before having the ability to construct his theory, Kelsen is faced with one fundamental issue. Historically, the development of legal studies is

based on two mainstream legal theories, i.e., the natural law theory that is subject to moral boundaries, and the empirical-positivistic theory that regards the law as part of the factual or natural realm. Each of these two theories stands alone (they cannot be integrated) and both values are (already) equally complete. Such a condition leads several law experts to be faced with the impossibility of creating a "new" theory outside of these two mainstream theories. Legal experts are hit by the reality that these two theories – as they are both equally complete – have collectively set aside a third possibility (*tertium non datur*/the third is impossible). With such a condition, Kelsen is faced with two choices (Kelsen, 1967): (1) If Kelsen follows the existing opinions and understanding, Kelsen has no choice but to build a theory that only refers to one of these variants, and:

2) If Kelsen rejects this possibility, in the sense that he rejects the opinion that the two "traditional" legal theories are already complete, thus closing the possibility for the emergence of a new legal theory, Kelsen will face jurisprudential antinomy.

Based on these two conditions, Kelsen then chose to resolve the issue of jurisprudential antinomy (Dimyati, 2018), to build his legal theory. Therefore, the next step that Hans Kelsen carried out was striving to build an argument to show the weaknesses/disadvantages that exist within these two "traditional" legal theories. This opens the possibility for the emergence of a third alternative theory, or a middle road in legal theory. The Pure Theory of Law emerges with such a background. Thus, Kelsen argues for a rejection of – what Stanley L. Paulson has termed – the morality thesis or the separation thesis, and as a substitute, places a basis on (a combination of) – what Stanley L. Paulson termed – the normativity thesis (without the morality thesis) and the separation thesis (without the reductive thesis).

Through the theses that become the basis to his theory, Kelsen claims to have succeeded in resolving the jurisprudential antinomy, which is sourced from a traditional understanding of the juxtaposition (the placement of two objects side-by-side) of the natural law theory and the empirico-positivist theory of law. Thus, the Pure Theory of Law is viewed as a middle ground in legal philosophy (Dimyati, 2018).

To reconstruct the building of a theory that combines the normativity thesis and the separation thesis, Hans Kelsen refers to neo-Kantian arguments, which strive to resolve transcendental values by proposing its own transcendental issue, namely:

> "....The basic norm of hypothesis answers the question: how can the positive law reject the object of understanding, the juridical-scientific subject and its consequences, how can juridical-science become possible … legal studies as legal cognition, -- just like other cognitions, have a constitutive character – namely that which "creates" its object so long as it understands the object as a whole as a meaningful thing" (Kelsen, 1967; Khudzaifah Dimyati, 2018).

In line with that, Stanley L. Paulson, states that:

> "Kelsen understands the Pure Theory of Law as a legal cognition theory, a legal science theory. He repeatedly writes that the Pure Theory of Law's only objective is cognition or knowledge of the object, more precisely determined as the law itself. Specifically, in formulating the legal cognition theory, Kelsen's specific task is to prevent "foreign elements", as he believes that they often mislead the legal theory in the past. Jurisprudential or legal experts become involved with "foreign" disciplines of science – in the fields of ethics and theology, in the fields of psychology and biology. And by proposing these non-legal fields to answer legal issues, they are chasing a dream (Dimyati, 2018; Paulson, 1998a).

Kelsen needs to use the neo-Kantian transcendental argument to support the constitutive function of cognitive legal studies. In stating his transcendental issue*,* Kelsen does not question whether or not one knows some legal materials or whether or not one knows several correct legal prepositions. However, he asks how one can have them (Dimyati, 2018; Paulson, 1998a).

To answer his transcendental issue, Kelsen requires several assumed considerations. These assumptions were then formulated with basic norms of the highest norm, or the ulimate norm, or more specifically as a form of interpretation of intuitive ideas that leads to the emergence of basic norms.

The intuitive idea that exists behind these basic norms is the existence of an absolute difference between what is and what ought to be. It is a difference that is known from the dualism of the neo-Kantinian Heidelberg methodology, and a pseudonym of the normativity thesis (Dimyati, 2018). The difference between "what is" and "what ought" enforces all separate paths to assign successively: between the truth of empirical statements and the validity of legal norms.

As a prescription, ought as a norm has the characteristic of "requiring something to be done". Ought is a demand of necessity that must be complied with. Norms require the existence of a demand of necessity that human behavior must be based on. Therefore, the obligation to carry out compliance with norms will automatically "equalize the existence of norms and show their bindingness". When a command demand (ought) emerges, it will be followed by the existence of norms in the realm of ideals with norm values that are valid and binding. Their

applicability does not require a validation process and does not require moral legitimacy. Here, Kelsen seems to want to declare the difference between legal and non-legal norms, such as morals. The law needs compulsion and obligation to achieve its ideals. That is what Kelsen designate as norms, while morality only relies on hope and suggestions to achieve such ideals.

On the contrary, in Islam, the law is sourced from "revelation" or what can be called divine legal science that was revealed through messenger/prophets (prophetic). The scientific bases of prophetic legal studies are Al-Qur'an and Hadeeths, which are then described in the pillars of faith and pillars of Islam. The foundations of these two pillars are the bases of knowledge (the senses, the ability to structurize and symbolize, language, revelation, and the *Sunnah* of Prophet Muhammad [peace be upon him]), basic assumptions on material objects (origins, causes, and essence), basic assumptions on the examined symptoms (origins, causes, and essence), basic assumptions on scientific knowledge (goals, essence, and types), basic assumptions on socio-cultural/natural/prophetic studies (goals, essence, and types), as well as basic assumptions on the prophetic paradigm (goals, essence, and types).

A prominent *Ussuliyyun* (senior *ulama/*Islamic scholar) is Imam al-Ghazali, who suggest that legal studies are a divine greeting (Al-Ghazali, 2022), that is directed to the actions of legal subjects. Without this greeting, there is no Sharia law. This legal concept is deepened with the study of whether the independent ratio of human beings may find law. For this, the discussion is linked to three issues: (1) Can the ratio independently find good and bad values? (2) Can the ratio independently know obligations and express gratitude to the giver of blessings? (3) Is there law before the existence of legislation (*tasyri*) by Prophet Muhammad (pubh)? Al-Ghazali's discussions, which are fully based on Ash'ari's theological paradigm, brings him to the conclusion that the independent ratio of human beings cannot find divine law before the determination of the Sharia by the Prophet Muhammad (pubh). Further, before that, there was no law before Prophet Muhammad (pubh) was sent to become the messenger of God (Al-Ghazali, 2022).

Regarding legal sources, al-Ghazali states that there are four sources of Islamic law, namely: 1) *al-Kitab* (The Holy Book/Al-Qur'an), 2) the *Sunnah* of the Prophet Muhammad (pubh), 3) *ijma'* (consensus), and 4) argumentation of the ratio. The systematic description of this part is divided into four according to the number of sources above, but it is added with a closing (*khatimah*), where al-Ghazali describes four sources that he deemed questionable (*al-Usull al-mauhumah*), i.e., the laws of previous monotheistic religions (*syar'u man qablana*), the opinions of the companions of Prophet Muhammad (pubh), *istihsan* (juristic preference), and

istislah (seeking the best public interest) (Al-Ghazali, 2022). Meanwhile, Islamic law is divided into two types, namely *Taklifi* law and *Wad'iy* law. From the word *bil-iqtida',* there are the laws of *ijab* (obligatory [*wajib*], *nadb* [*Sunnah/*recommended but not obligatory], *tahrim* [*haram*/prohibited] and *karahah* [*mubah/*permitted, but doing so does not gain rewards or punishments]). These five laws are known as *taklifi,* which are also commonly called *al-ahkam alkhomsah* (the five laws) (Suratmaputra, 2002).

Thus, this research aims to analyze the basic epistemological normativity by confabulating two different thought traditions, namely the positivism of modern law and classical Islamic jurisprudence. This confabulation or dialog is carried out through norms with the ought quality in Hans Kelsen's Pure Theory of Law and Imam Ghazali's *Taklifi* concept.

RESEARCH METHOD

At the first stage, using a library study method, the authors take inventory of the data based on philosophical variables sourced from *a priori* logics by using the formulation of basic assumptions and ethics from the norm philosophy basis with the ought *taklifi* quality. The authors then interpret the data using the deconstruction requirement method on the ought *taklifi* concepts, i.e., the main concept, main ideas, and philosophical implications according to Derrida.

Interpretation results are then descriptively explained and critically confabulated with Kelsen's legal thought. At this stage, data analysis results are discussed using the heuristics and philosophical methods. The application of heuristic principles in this research starts with an observation of the identity element (Bakker & Zubair, 2007) on Kelsen's legal reasoning, which is placed as exemplary reasoning with the ought epistemological basis.

The next heuristic stage is the argumentative element, which is the end result of exploration on the ought concept in legal studies. The argumentative element not only sees the relationship between concepts, propositions, and argumentations in a philosophical manner, as this is a philosophical approach-based legal research aiming to explore basic assumptions on the epistemological basis of legal studies.

The main source of this research is literary materials that review and discuss thoughts on Hans Kelsen's Pure Theory of Law, theories on Jacques Derrida's Deconstruction Theory to uncover the basic assumptions on the Neo-Kantian transcendental epistemological basis, and

the building of al-Ghazali's taklifi concept. The authors also obtained data from supporting documents that are deemed to help the arrangement of this research.

The authors collected data required in this research using the literary study method, which is carried out through the following stages: At the first stage, the authors conducted literary studies by taking inventory of various main and supporting literary materials related to the research carried out. This aims to describe basic assumptions, frameworks, changes, and influences that are brought by legal philosophy to certain legal streams or schools of thought.

At the second stage, the authors conducted in-depth analyses on main literary materials, by comparing them with supporting literary materials to obtain clearer illustration on the thoughts and theoretical frameworks used as the research focus. Through this stage, the authors obtain knowledge on the differences of the elements that exist in each part of the focus of a certain issue.

The next stage is the argumentative element, which is the end result of exploration of the ought concept in legal studies. The argumentative element sees the relationship between concepts, propositions, and argumentations in a philosophical manner. At this stage, the analysis will result in a description of how the ideality consequences and the basic assumptions on the ought quality work in the *taklifi* norm of al-Ghazali.

RESULTS & DISCUSSION

As a system of rules on human behavior, the law thus does not refer to a single rule, but rather a set of rules with one unity. Thus, it can be understood as a system. As a consequence, it is impossible to understand the law by only paying attention to one rule.

The statement that the law is a regulatory order on human behavior does not mean that the legal order is only linked to human behavior, as it is also linked to certain conditions related to human behavior. This happens especially in social life, where there are various regulatory orders apart from law, such as religion and morality. If each of these regulations are different, the definition of law must be specific, so that it may be used to differentiate the law from other regulatory orders. Each of these social regulatory orders consists of norms with different characteristics.

From Kelsen's perspective, the object of legal studies is legal norms that regulates human behavior, both as conditions or as consequences of such conditions. The relationship between

human beings only becomes an object of legal studies so long as that relationship is regulated in legal norms (Kelsen, 1967; Asshiddiqie & Safa'at, 2006).

The issue of law as a science is a socio-technical issue, rather than a moral one. The aim of a legal system is to encourage human beings to act in ways that are determined by legal regulations using certain techniques (Kelsen, 1967; Asshiddiqie & Safa'at, 2006). However, the statement that (Kelsen, 1967; Asshiddiqie & Safa'at, 2006):

> "The regulatory order of a certain society that has legal character is a legal order, one cannot give an indication of moral assessment that such regulations are good or just. Law and justice are two different concepts."

The Pure Theory of Law, which has general characteristics (a general legal theory), has the main goal of knowing the "subject" as a foundation to answer the question, "What is the law and how is the law made?" Rather than the question, "What is the law ought to be and how is it ought to be made?" (Jelić, 1998; Kelsen, 1997). The law that is separated from justice is the positive law (Kelsen, 2017).

A system of values is not freely created by an individual, but it is always a result of an interaction process between individuals in a group. Every morality system and idea of justice is a social product which has differences according to the condition of society. The fact that there are values that are generally accepted by certain societies does not contradict with the subjective and relative characters of value justification. Likewise, many individual approvals of a justification do not mean that the justification is right (Kelsen, 2017).

Charles E. Rice states that the legal studies developed by Hans Kelsen depend on the philosophical relativism paradigm, which supports the empirical doctrine that reality exists within human knowledge and is an object of knowledge. What is absolute is the reality that exists beyond (inaccessible and unknowable). Kelsen believes that philosophical absolutism will lead to political absolutism, while philosophical relativism leads to political relativism, i.e., democracy. Because the law is separated from the value of right or wrong or absolute justice, the law is the fulfillment of equal individual interests and is formulated as the desire of the majority (Asshiddiqie & Safa'at, 2006; Rice, 2005). Almost all positivism schools of thought reject the ability of the human ratio to know what is right and wrong. The criteria of justice, just like the criteria of truth, do not depend on the frequency of the making of that justification. Because human beings are divided into many different nations, classes, religions, and

professions, there are thus different ideas on justice. Therefore, it would be too much to mention the various perspectives on "justice".

The rational justification of a postulate that is based on the justification of subjective value is self deception or it is an ideology. Typically, such an ideology places its emphasis on an end goal and the existence of a type of pre-determined (definite) regulation for human behavior as a natural process or a natural condition from the human mind or the will of God (Jelić, 1998). In the natural law doctrine, the will of God is identical with nature, as nature is created by God, and the natural law is a natural expression of God's will. The natural law is not created by human activity, it is not artificial, and it is not the free will of human beings. The natural law may and must be deduced from nature by the works of the mind (Jelić, 1998). However, the natural law is also deemed unable to determine the content of a just regulatory order, as justice is only formulated in an empty formula, such as *suun cuique* (meaningless tautology), just like Kant's imperative category, which states that one's actions must be determined only by the principles that will bind every person (Asshiddiqie & Safa'at, 2006).

Legal experts define justice with the formula, "You must do what is right and do no wrong." However, there is an adage that questions the meaning of "right" and "wrong." The positive law provides an answer to this adage (Paulson, 1998a). They intend to state that the positive law order is something that is just. However, perhaps a regulation from the positive law is unjust. The validity of natural law principles stands upon the justification of non-objective values. A critical analysis of the positive legal stream on natural law regards that the justice value that is shown by natural law is an expression of a certain social class' interest (Kelsen, 2017).

Justice is something that exceeds the ratio. Because of that, no matter how important it is for human actions, it is not a subject of knowledge. Regarding rational knowledge that exists within society, what exists are only interests and conflicts of interest. The solution can be given by regulatory orders that fulfill an interest by sacrificing other interests, or by making a compromise between contradictory interests. Between these two interests, knowledge cannot rationally determine which one is just. This knowledge may only emerge based on positive legal stipulations in the form of objectively determined laws. This regulatory order is called the positive law. This can be an object of knowledge, rather than law in a metaphysical sense. This theory is called "the pure theory of law", which represents the law as it is without defending it and without deeming it just (Kelsen, 2017). The theory that Hans Kelsen created was an effort to seek a real and possible law rather than a law that is right.

Then, Hans Kelsen attributes the law into an ideal framework that is clean from non-legal elements, such as the elements of ethics, sociology, politics, etc. The law must be freed from moral elements, as what is taught by the natural law stream (the ethical element), as well as the perception of habitual law (logical sociology), and the conceptions of justice (political elements). According to Kelsen, the law is categorized into the *sollen* category (the law as ought), not the *sein* category (law as reality). People comply with laws as they must do so, rather than due to a moral dimension (as stated by Fichte) and compliance (as stated by Hart), as the law is a stately order. Thus, the law can maintain its continuity, as neglecting a command will make that person deal with legal witnesses.

Apart from that, Kelsen's teachings on *Stufentheorie* states that in essence, the legal system is a hierarchic system that comprises the lowest hierarchy up to the highest one. Laws of a lower hierarchy must be based on and sourced from laws of a higher hierarchy, and they cannot contradict them. A lower-level law which contradicts higher-level laws will lead to the annulment of that lower-level law's applicability. On the contrary, higher-level laws are sources and bases of lower-level laws. The higher the position of a law in the hierarchy, the more abstract and general the characteristics of the norms it contains. Meanwhile, the lower the level of a law in the hierarchy, the more real and operational the characteristics of the norms it contains. According to the adherents of this paradigm, the essence of law is written law (legal regulations). Apart from that, there is no law. This perception is adhered to by Jellenick, Paul Laband, and other German legal experts (Poedjowijatna & Putra, 2003).

Based on the development of law that is based on two mainstream legal theories, i.e., the natural law theory that complies with moral boundaries and the empirical-positivist theory that deems law part of the factual and natural realm, each of these two theories stands alone. They cannot be integrated, and both are deemed to be (already) equally complete. Such a condition makes several legal experts face the impossible task of presenting a "new" theory outside of these two mainstream legal theories. They seem to be hit by a reality that both theories – as they are both equally complete – have jointly rule out a third possibility (*tertium non datur*/for the third, it is impossible). With such a condition, Kelsen is faced with two choices (Poedjowijatna & Putra, 2003):

1. If Kelsen follows the existing opinions and understanding, there is no choice but to choose a variant that will become the reference to the theory that he will build, and

2. If Kelsen rejects such a possibility, in the sense that he rejects the two "traditional" legal theories as complete theories, thus closing the possibility for the existence of a new legal theory, Kelsen will be faced with a jurisprudential antinomy.

Based on these two conditions, Kelsen then chose to resolve the issue of jurisprudential antinomy (Dimyati, 2018) to build his legal theory. Therefore, the next step that Hans Kelsen must carry out is striving to build an argument to show the weaknesses/disadvantages present in these two "traditional" legal theories, thus allowing the possibility to present a third alternative theory or a middle ground in legal theory. The Pure Theory of Law emerges with such a background. Therefore, Kelsen carries out a rejection of – what Stanley L. Paulson has termed – the morality thesis or the separation thesis, and as a substitute, places a basis on (a combination between) – what Stanley L. Paulson termed – the normativity thesis (without the morality thesis) and the separation thesis (without the reductive thesis).

Through the theses that become the basis to his theory, Kelsen claims to have succeeded in resolving the jurisprudential antinomy, which is sourced from a traditional understanding on the juxtaposition (the placement of two objects side-by-side) of the natural law theory and the empirico-positivist theory of law. The Pure Theory of Law is viewed as a middle ground in legal philosophy (Frew, 2013).

To reconstruct the building of a theory that combines the normativity thesis and the separation thesis, Hans Kelsen refers to neo-Kantian arguments, which strive to resolve transcendental values by proposing its own transcendental issue, namely:

> "....The basic norm of hypothesis answers the question: how can the positive law reject the object of understanding, the juridical-scientific subject and its consequences, how can juridical science become possible … legal studies as legal cognition, -- just like other cognitions, have a constitutive character – namely that which "creates" its object so long as it understands the object as a whole as a meaningful thing" (Kelsen, 1967; Khudzaifah Dimyati, 2018).

To answer his transcendental issues, Kelsen requires assumed considerations. These assumptions are then formulated with the name of the highest norm, or the ulimate norm, or more precisely, a form of interpretation of intuitive ideas that leads to the creation of basic norms.

The Basic Norm Thesis

The derivation of legal regulation order norms from basic norms was found by showing that particular norms have been made according to basic norms. Regarding the question of why

mandatory provisions are legal stipulations, the answer is that it is regulated in individual norms or a court decision. Next, regarding the question of why this individual norm is valid as the regulatory order of certain laws, the answer is that such norms have been made according to criminal laws. In the end, these laws obtain their validity from the constitution, as they are made by competent organs regulated in the constitution.

If one asks why the constitution is valid, one may refer to old constitutions. In the end, one will reach several constitutions up to the first constitution, which was determined by individuals or a type of council. The validity of the first constitution is the last presupposition, a final postulate, where the validity of all norms in the legal regulatory order depends on it. The document that is the first form of the constitution is the real constitution, a mandatory norm, only in a condition where the basic norm is presupposed as valid. This presupposition is what is called with the term transcendental-logical presupposition.

All legal norms are owned by the same legal regulatory order, as its validity can be traced back, either directly or not, to the first constitution. That the first constitution is a binding legal norm is something that is presupposed, and the formulation of that presupposition is the basic norm of a legal regulatory order.

The time for the validity of legal norms may be limited, and it is crucial to pay attention that the end – just like the start – of this validity is only determined by the regulatory order in which that norm exists. A norm is still valid so long as it has not been stated invalid through methods determined by that regulatory order itself. This is the principle of legitimacy. The legitimacy principle does not apply in revolution cases, or what is called a *coup d'etat*. A revolution happens when the legal order of a community is nullified and substituted by a new regulatory order that cannot be legitimized by the substituted regulatory order.

Legally, it is irrelevant whether or not that revolution causes bloodshed, or whether it was carried out by the masses or governmental elites. From the legal perspective, the main criteria of a revolution are that the applicable regulatory order is removed and substituted by a new regulatory order through methods that are not regulated in the first regulatory order. Usually, people who carry out the revolution only nullifies the constitution and certain laws which have a great significance in politics and exchange them with other norms. Meanwhile, the majority part of the old legal order is still valid within the framework of the new regulatory order. However, in reality, what stays the same is only the content of such norms, rather than the reason of their validity. These norms are no longer valid as they were made through methods

determined by the old constitution, but because their validity are given both explicitly or implicitly by the new constitution. This phenomenon is called reception, where the new regulatory order accepts or adopts norms from former regulatory orders. This means that the new regulatory order gives validity to norm orders whose content are norms from previous regulatory orders. Reception is an expanded procedure in creating law.

Because its validity is obtained from the new regulatory order, it is said that the revolution not only changes the constitution, as it also changes the whole legal order. This shows that the validity of the previous regulatory order has been removed, and it is no longer valid according to the legitimacy principle. This applies both in *de facto* and *de jure* manners. All legal experts will assume that the validity of the former legal order has been erased, and all valid norms in the new regulatory order obtain their validity exclusively from the new constitution.

Therefore, it can be said that the basic norm of a legal order is not an arbitrary product of legal imagination. The basic norm functions to make a normative interpretation of certain facts that may be carried out. This means that the interpretation of facts is the creation and implementation of valid norms. Legal norms, as what have been explained, are deemed valid if they contain applicable regulatory orders. Thus, the content of basic norms is determined by the fact of where that regulation is made or implemented.

The basic norm of every positive legal order gives a legal authority only based on facts where a regulation is made and implemented that is holistically effective. This does not require the fact that an individual's actual action is absolutely according to regulations. Even so, a normative regulation loses its validity when reality is no longer aligned with it, at least at a certain level. Thus, the validity of a legal regulation depends on its alignment with reality, i.e., on its applicability. The existing relationship between validity and the applicability of a legal order, which is also called ought and is, can be determined by the upper and lower boundary lines.

The intuitive idea behind that basic norm is the existence of an absolute difference between what is and what ought. It is a difference that is known from the dualism of the neo-Kantian Heidelberg methodology, and a pseudonym of the normativity thesis (Dimyati, 2018). The difference between "what is" and "what ought", establishes all separate lines to consecutively determine between the truth of an empirical statement and the validity of legal norms.

As a prescription, ought as a norm has the characteristic of "obliging something to be carried out". Ought is the demand of necessity (claims) that must be complied with. Norms

require the existence of a demand of necessity that human behavior must be according to that norm. Therefore, the obligation to comply with norms will automatically "equalize the existence of a norm and present its bindingness". When an order demand (ought) emerges, it will be followed by the existence of norms in the realm of ideals with valid and binding norm values. Its applicability does not require a validation process and does not need moral legitimacy.

Thesis: A Basic Assumption of Norms with the Ought Quality

In its most traditional definition of legal essence, in the system of laws, legal positivism is understood as a positive norm. The term "legal positivism" has a literal equivalent with the term "*Rechtspositivismus*" in German, which Aulis Aarnio (a Finnish legal expert) translated into English with the term "Juridical Positivism" that is not univocal. This term can refer to a theory on the origin of law that is called Legal Positivism if one suggests that the legal order is all positive law principles determined by the state. The theory of legal research is called Rule of Positivism if one suggests that the object of legal studies is merely positive law. Next, it is called Legal Empiricism if one suggests that the object of legal studies is behavior (authority in society) that can be empirically observed, or regarding the theory of the application of law, or encompassing the three.

Next, according to Kelik Wardiono, regarding the assumption from the ontological basis, there is the legal positivism school of thought, which encompasses (Dimyati, 2018): (a) Empirical reality (that is supported by transcendental reality), (b) Reality in the *Sollen* category (the law as an ought), whose norms contain the elements of commands and prohibitions (ought), and the *Sein* category (the law as reality) stands at a the same level, and (c) The *Sollen* normativity that is a condition of transcendental logics.

In line with that, Stanley L. Paulson states that (Dimyati, 2018; Kelsen, 1997): Kelsen understands the Pure Theory of Law as a theory of legal cognition, a theory of legal knowledge. He repeatedly writes that the only aim of the Pure Theory of Law is cognition or knowledge of the object, more specifically, it is determined as law itself. Specifically, in formulating the legal cognition theory, Kelsen's special task is to prevent "foreign elements" that he believes have frequently misled legal theories in the past. Jurisprudence experts and legal experts become involved in "foreign" scientific disciplines – at the ethical and theological sectors, and at the

psychological and biological sectors. By proposing these non-legal sectors to answer legal issues, they are chasing a dream.

Kelsen needed to use neo-Kantian transcendental arguments to support the constitutive function of cognitive legal studies. In stating his transcendental issue, Kelsen does not ask whether one knows some legal materials or whether one knows several correct legal prepositions, but rather, he asks how one can have them.

Norms with the Ought Quality According to al-Ghazali's Taklifi *Concept*

The Definition of Taklifi

Etymologically, the word "law" (*al-hukm*) means "preventing" or "deciding." Meanwhile, according to the *ushul fiqh* terminology, the law (*al-hukm*) is a revelation from God (Allah), which regulates the actions of people who have fulfilled the determined requirements (*mukallaf*). The law may be in the form of *Iqtidla* (command, prohibition, or suggestion to carry out or give up something), *Takhyir* (*mukallaf* are given the choice between doing something or giving up something), or *Wald* (stipulations that determine something as a cause, requirement, or hindrance) (Ḫallāf, 2003).

The *taklifi* is a type of law that contains the demands for a *mukallaf* to carry out or give up a certain action, or giving a *mukallaf* the freedom to choose between doing something or not doing that action. In other words, the *taklifi* law regulates the things that a *mukallaf* are obliged, prohibited, or recommended to carry out. This law also gives a choice for a *mukallaf,* whether he will carry out that command or prohibition, or will he be given the freedom to choose between doing and not doing a certain action. The *taklifi* law functions to direct the behavior of a *mukallaf* according to stipulations of the Sharia by determining obligations or choices in complying with Allah's commands (Al-Huḍarī, 2003).

The *taklifi* law is the word of God that is directly linked to the actions of a *mukallaf,* both in the form of guidance on what is permitted as well as that which determines something as a cause, requirement, or hindrance (*mani'*). This law regulates a *mukallaf*'s actions by giving commands or prohibitions that must be complied with, as well as giving freedom for a *mukallaf* to choose between doing and not doing a certain action that is permitted. Apart from that, the *taklifi* law can also determine the condition or requirement that must be fulfilled so that an action is deemed valid, or determine something as a hindrance that prevents an action from being conducted. As a whole, the *taklifi* law gives guidance for a *mukallaf* to live life according

to the regulations determined in the Sharia, by considering commands, prohibitions, permittance, as well as the existing condition.

The *taklifi* is divided into seven parts. This division is determined by classifying the words of God that command a certain action to be carried out into two categories, i.e., *fardhu* and *ijab*, based on the level of the argument's certainty. If a command is based on a *qath'i* (certain) argument, such as those in Al-Quran and *hadis mutawatir*, that command is called *fardhu*. On the contrary, if the command is based on a *zhanni* (uncertain) argument, that command is called *ijab*. As for prohibition, if that prohibition is based on a *zhanni* argument, it is called *karahah tanzih* (al-Riyāḍ: Maktabat al-Rushd Nāshirūn, 2008). With this division, the Hanafiah group then categorizes *taklifi* law into several parts, namely *fardhu, ijab, tahrim, karahah tanzih, nadb,* and *ibahah*. This division aims to provide a more detailed explanation on the level of obligation and leniency in carrying out God's commands and in staying away from God's prohibitions.

Even through the Hanafiah group divides the *taklifi* law into seven parts, in general, the *ulama* (Islamic legal experts) agree to divide the law into five parts, which are simpler and easier to understand. This division is more commonly accepted, as it is simpler for everyday practices and encompasses various actions that the *mukallaf* carry out. The Hanafiah group, with a more detailed division, strives to provide a deeper understanding of the levels of obligation and leniency in every action, but other *ulama* tend to choose five main categories to maintain simplicity in the *fiqh* practice. These five legal parts encompass all aspects relevant to human actions in daily life.

The five types of *taklifi* laws, that are termed *al-ahkam al-khamsah*, have a great influence on the actions of the *mukallaf* and becomes guidelines in living life according to the guidelines of the Islamic Sharia. Obligatory laws (*wajib*) are law that oblige a *mukallaf* to carry out certain actions without exception. If this command is not carried out, the *mukallaf* will be deemed to have dinned. Meanwhile, the *haram* law (prohibition) is a clear and strict prohibition against something. If one commits a prohibited action, he is deemed to have committed a great sin. These two become the two main parts in the division of the *taklifi* law, as both regard obligations with absolute characteristics that must be complied with by every *mukallaf*.

Apart from that, there is also the *mandub* law, which means suggestions or recommendations for a certain action to be carried out, even though there is no compulsion in doing so. Actions with *mandub* characteristics will bring rewards if they are carried out, but one

is not punished if it is not carried out. On the contrary, *makruh* is an action that should be avoided, as even though it is not haram, leaving it is better and brings rewards. Lastly, there is the *mubah* law, which is a permitted action, and there is no obligation to carry it out or to refrain from it. The *mubah* law gives full freedom to the *mukallaf* to choose whether or not he wants to conduct that action without obtaining rewards or punishments. These five laws give guidelines for the *mukallaf* to regulate their behavior in living daily life according to the stipulations of the Islamic Sharia.

Anti Thesis; al-Ghazali's Taklifi Concept

The *taklifi* concept of Imam al-Ghazali's thought has depth that is not only limited to the legal dimension, but also touches the moral and spiritual aspects. For al-Ghazali, *taklifi* is not merely an obligation that every Muslim individual must carry out, but is a test of Muslims' intention, sincerity, and level of moral awareness in complying with Allah's commands. As a great *ulama* who is famous for developing *tasawuf* studies, al-Ghazali's teachings show that every action that a Muslim carries out must be based on the right intention, rather than merely fulfilling legal obligations. From his perspective, the application of *taklifi* cannot be separated from the spiritual dimension, as every action must reflect the goal to become closer to Allah (Nandika, 2025).

Imam al-Ghazali views *taklifi* as an obligation that contains a high moral dimension. For him, *taklifi* does not merely contain regulations that must be complied with, as it is rather an invitation to cleanse the heart and fix the character. Every command comes from Allah, including obligations (*fardhu*), prohibitions (*haram*), or suggestions (*mandub*). According to al-Ghazali, one must comply with this with a sincere heart, which is rooted in the awareness that every action carried out must be done solely to please Allah. From this perspective, *taklifi* becomes a road to achieve spiritual perfection, which is more important than merely carrying out physical rituals or religious obligations (Fikri, 2022).

For al-Ghazali, *taklifi* is more than just the fulfilment of Allah's external commands. He emphasizes the importance of intention and motivation in every action of a Muslim. A Muslim must have good and sincere intentions in carrying out every religious obligation, such as *shalat* (obligatory daily prayers), *zakat* (almsgiving), fasting, and *hajj* (pilgrimage), which become determiners of whether or not that action is accepted by Allah. This is in line with the concept that al-Ghazali taught, that every action, no matter how small, will have value if it is carried out with correct intention and sincerity, with the aim of becoming closer to Allah. Because of that,

al-Ghazali's thought on *taklifi* not only regulates physical actions, but also focuses on the formation of pure intention in a Muslim's heart (Ismail et al., 2021).

Apart from that, al-Ghazali introduces the idea that *taklifi* also relates to character formation. For him, carrying out the *taklifi* order does not only regard fulfilling determined legal obligations, but also serves as a facility to form one's noble character. A Muslim who fulfilles the *taklifi* order with full earnestness will transform into a better person, not only from a physical sense, but also in the aspect of moral and spiritual awareness. *Taklifi* becomes a process that allows someone to internalize Islamic teachings in daily life, which will in turn create a better person who is more sensitive to goodnesss and closer to Allah (Humaidi, 2021).

In this case, al-Ghazali connects *taklifi* with the *tasawuf* concept, i.e., the road to achieve spiritual purity. One of the important aspects in *tasawuf* is the full awareness that every action, both those with obligatory or *Sunnah* characteristics, is a facility facilities to cleanse the heart from every type of despicable nature and become closer to Allah. *Taklifi* becomes one of the tools to achieve self-perfection that is more than merely conducting religious rituals, as it places a greater emphasis on the effort to make every action a form of worship that is based on a sincere intention. Al-Ghazali gives a teaching that a Muslim must have a sincere intention in carrying out every religious obligation, as sincere intention will bring rewards and make one closer to Allah (Rahman, 2021).

Taklifi, from Imam al-Ghazali's perspective, does not only involve the relationship between human beings and God, but also involves the relationship between one person and another. As part of more expansive Islamic teachings, *taklifi* regulates the social and ethical behavior of a Muslim in interacting with other people. Al-Ghazali teaches that every action that a Muslim carries out must consider the aspects of virtue, justice, and compassion to one another. This means that in carrying out *taklifi,* a Muslim is not only obliged to conduct individual obligations of worship, but also to show good character in their social relationships. In this case, *taklifi* becomes a basis to create a just and harmonious society that is full of compassion (Nisa & Bakar, 2025).

Further, al-Ghazali emphasizes that *taklifi* may become a facility to fix the spiritual and moral conditions of the Islamic ummah (community) collectively. When every individual strives to carry out *taklifi* obligations with sincerity and full awareness, the virtuous values will spread in society. Therefore, *taklifi* is no longer a personal obligation, as it also has wider social impacts, where every good action that an individual carries out will contribute towards the

creation of an environment that is full of virtue and peace. Imam al-Ghazali believes that when the Islamic *ummah* understands and practices *taklifi* correctly, the Muslim community will become strong, just, and full of God's mercy.

On the other hand, al-Ghazali also gives a reminder that *taklifi* cannot only be understood as a burden or a heavy obligation. On the contrary, it must be seen as a road to obtain happiness in the world and the hereafter. Every action that is carried out with the correct intention, even if it is hard, will bring great rewards and make a Muslim closer to Allah. From al-Ghazali's perspective, *taklifi* not only regulates external behavior, but is also part of a Muslim's spiritual journey to achieve inner peace and spiritual perfection. Therefore, a correct understanding of *taklifi* will bring a person to achieve true happiness, both in the world and in the hereafter. Therefore, Imam al-Ghazali's thoughts on *taklifi* give a very profound perspective on how a Muslim should understand religious obligations. *Taklifi* not only regards conducting obligations and avoiding prohibitions, but beyond that, it is a facility to achieve moral and spiritual perfection. As an *ulama* who introduces the integration between law and *tasawuf*, al-Ghazali gives a teaching that every action that is carried out with sincere intention and earnestness will become a facility to achieve closeness with Allah, and in the end will bring true peace and happiness.

According to Imam al-Ghazali, there are three main facilities that human beings may use to obtain knowledge, i.e., the five senses (*al-hawas al-khams*), followed by common sense (*khayal*) and estimation (*wahm*); ratio (‘*aql*); (Anwar, 2007) and intuition (*zauq*). The five senses work in their realms, i.e., the physical-sensual realm, and stop at the limits of the territory of reason (Anwar, 2007). Ratio works at the abstract territory by utilizing input from the five senses through *khayal* and *wahm*, and stops at the transcendental territory (that the ratio cannot reach), which acknowledges God and His prophets. Knowledge of this is passed through the prophet, and explanations of this may be obtained through *mukasyafah* (the uncovering of a barrier) and *musyahadah* (seeing God with the eyes of the heart). Things of transcendental nature are not part of an irrational territory. But rather, they are results of *kasyfy* that*,* according to the irrational mind, is merely fraud, while information on revelations that are irrational according to the mind must have interpretation (*takwil*) conducted on it, if it has been proven for certain that it originates from the prophets. The elements can be seen from the following scheme:

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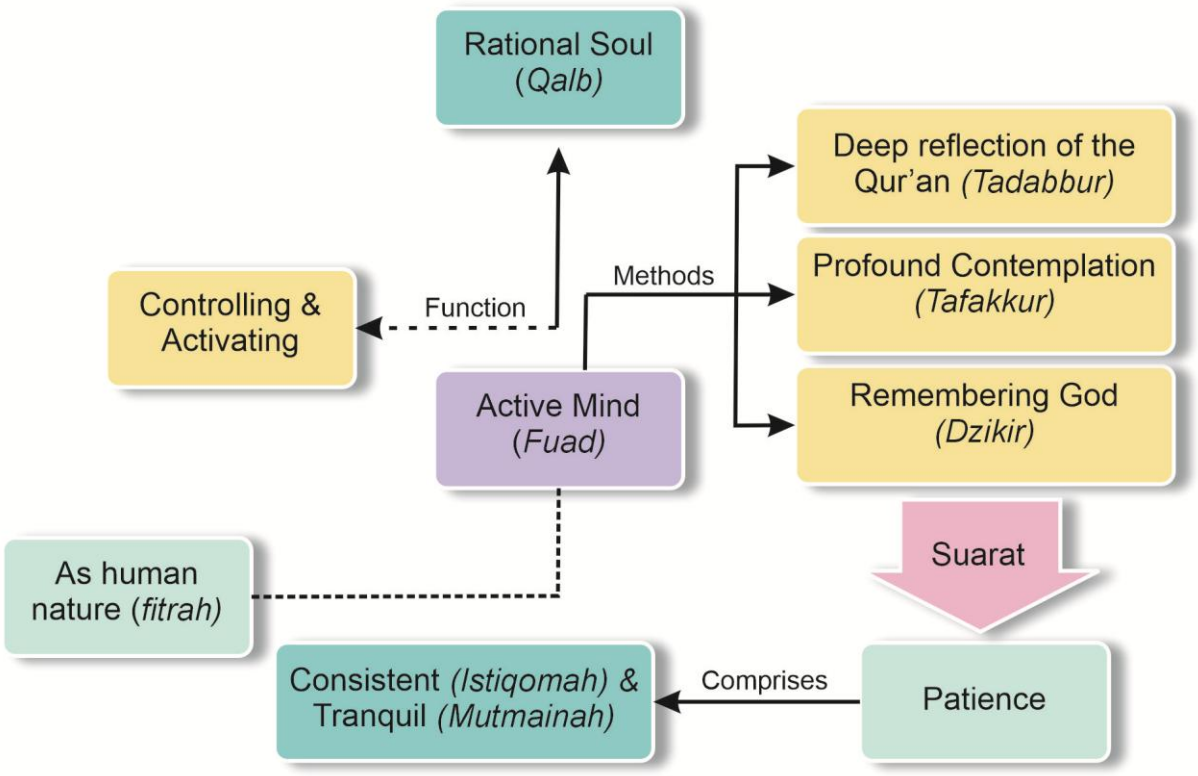

Figure 1. The Interpretation of the Rational Soul

According to al-Ghazali, human beings have three main facilities to obtain knowledge, including (Al-Ghazali, 2008):

1. Ratio (*aql*), which is part of the internal soul. It works in an abstract territory by utilizing input from the five senses through *khayal* and *wahm*, and stops at the limits of the transcendental territory (which is beyond the ratio). Al-Ghazali likens the ratio to a king, where all physical and spiritual potentials are its apparatus, and all bodily organs are its people.
2. From Al-Ghazali's perspective, the rational soul (*Qalb*) is likened to the power of sight, such as that of the eyes, which may see objective particulars. In the human self, if the human body is a parable to a kingdom, the *qalb* is its center (the palace).
3. The active mind in the form of the soul (*ruh*). In the physical sense, it is a type of delicate energy. In a metaphysical sense, it is a sole substance that is undivided, stands alone, and is not *jism* or occupies the *jism.* Neither does it take a certain room or direction. Its essential character functions as the controller of all five senses, the ratio, and the *qalb*. The soul spreads to all parts of the human body (the body, the ratio, and the *qalb*), just like how light spreads from a lamp to all parts of the house.

The three instruments above can be seen in al-Ghazali's concept of the structure and potentials of the human soul. In this concept, it can be seen that the theoretical ratio ('*Alimah*) is the core of human essence. On the one hand, knowledge which exists in that theoretical ratio creates motive (*iradah*), which, through the practical ratio ('*amaliah*), awakens the self-potential (*qudrah*), which leads to physical movement. On the other hand, knowledge emerges from two channels, namely the external channel, i.e., *wahm* and *khayal* (which are the potentials of the five senses), and from the inner channel, i.e., revelation or inspiration originating from God through Angels as the intermediary.

According to Al-Ghazali, the parameter of knowledge of sensual objects is the alignment between propositions or theories with the reality of sensual objects according to sensual empirical evidence controlled by the mind, i.e., internal experience, observation, other sensual empirical experience, and experiments (*tajribat*) (al-Ġazālī, 1904).

There is the proposition that empirical evidence is the parameter of the truth of empirical knowledge that the mind knows *a priori*. Then, the essence of material substance from the philosophical sense cannot be reached by the five senses that can only grasp external aspects, such as color, form, and size. However, it can only be understood by the mind. When the ratio can no longer acknowledge something of the physical world, except with the help of the five senses, it is impossible for the ratio to know the physical essence of a certain thing. However, what is meant by the statement that the ratio can know the physical essence of a certain thing is that it is not obtained through the five senses, but rather through the *kasyf* (Anwar, 2007).

Al-Ghazali sees that factual knowledge (particular) essentially has the characteristics of objective and neutral (value-free). However, knowledge is not the end goal, but rather an instrument for the advancement and happiness of humankind. There is nothing in the empirical reality that is context-free. Because of that, Al-Ghazali offers an axiological concept in the form of principles in applying knowledge in the praxis and strategies of its development. At the epistemological stage, Al-Ghazali offers a concept of correspondential truth as well as coherential truth limited to formal-rational truth, and rejects pragmatic truth and those which are alike in the epistemological dimension of facts (Samad, 2020).

Al-Ghazali believes that, in essence, the truth of interferential knowledge is probable, tentative, and testable, meaning that it must be critically examined based on certain criteria. Al-Ghazali indicates knowledge classification models: the epistemological model that orients towards the source of knowledge and the methods to obtain it, as well as the axiology that orients towards the functions and objectives of knowledge.

Regarding the source of knowledge, al-Ghazali states that there are four sources of Islamic law, namely: 1) *al-Kitab* (The Holy Book/Al-Qur'an), 2) *Sunnah* of the Prophet Muhammad (pubh), 3) *ijma'* (consensus), and 4) argumentation of the ratio. The systematic description of this part is divided into four according to the number of sources above, but is added with a closing (*khatimah*), where al-Ghazali describes four sources that he deemed questionable (*al-Usull al-mauhumah*), i.e., the laws of previous monotheistic religions (*syar'u man qablana*) (Samad, 2020), the opinions of the companions of Prophet Muhammad (pubh), *istihsan*, and *istislah* (Al-Ghazali, 2022). Meanwhile, the types of Islamic laws are divided into two, namely the *Taklifi* law and the *Wad'iy* law. From the word *bil-iqtida',* there are the laws of *ijab* (obligatory [*wajib*], *nadb* [*Sunnah/*recommended but not obligatory], *tahrim* [*haram*/prohibited] and *karahah* [*mubah/*permitted, but doing so does not gain rewards or punishments]). These five laws are known as *taklifi,* which are also commonly called *al-ahkam alkhomsah* (the five laws) (Munif, 2013).

According to al-Ghazali, there is actually only one source of Islamic law, namely Allah. It is just that human beings cannot directly know the law of Allah, except through His messengers as mediators. Then, *ijma'* refers to the Sunnah of Prophet Muhammad (pubh). Thus, the two of them are also used as legal sources in a more expanded definition. The ratio is not used as a source to determine law, but, on the contrary, it is rather used to determine the non-existence of a law in case there is no source from the *nas* (the Qur'an, Sunnah, and *Ijma'*).

The Ontological Basis of the Taklifi *Concept*

Taklifi is the word of Allah that regulates the actions of the *mukallaf* by giving commands or prohibitions that must be complied with, as well as giving the *mukallaf* the freedom to choose between doing and not doing a permissible action. Apart from that, the *taklifi* law may also determine the condition or requirements that must be met so that an action can be deemed valid, or determine something as a hindrance that prevents an action from being conducted.

As a *fiqh* and *tasawuf* expert, al-Ghazali divides the laws in Islam into several categories, and all of them are within the framework of *taklifi* obligation (Rofiq, 2025). This division gives the Muslim *ummah* (community) a clearer understanding of conducting their lives. The laws regulated in the *taklifi* concept include:

1. *Wajib* (obligatory): These are the obligations that Muslims must carry out, such as *shalat* (the obligatory five daily prayers), *zakat* (almsgiving), fasting in the month of Ramadan,

and other obligations with the fundamental and obligatory characteristics that must be carried out without exception. According to al-Ghazali, these obligations become the basis of the life of a pious Muslim.

2. *Haram* (prohibited): These are actions which Allah strictly prohibits, such as stealing, fornication, drinking alcoholic drinks, and other sinful actions. From al-Ghazali's perspective, these prohibitions not only aim to maintain social order, but more than that, they function to cleanse one's soul and prevent a person from the mental damage that may emerge as a result of such actions.
3. *Mandub*: These are actions that are recommended but not obligatory, such as giving charity that is more than the obligatory almsgiving (*zakat*), voluntary fasting, and carrying out additional forms of worship. Even though they are not obligatory, such actions are highly encouraged as they give great benefits for one's soul and social life.
4. *Makruh*: These are actions that should be avoided, even though they are not haram. This includes eating too much or carrying out worldly things excessively. Al-Ghazali perceives that even though such *makruh* actions do not directly endanger a person, they may damage the simplicity and balance of life that is highly encouraged in Islam.
5. *Mubah*: Actions that are not commanded nor prohibited, such as eating or drinking, that may be carried out or not carried out without sinning. According to al-Ghazali's perspective, anything with *mubah* characteristics must be carried out with good intention and without being excessive, as good intention may change something from *mubah* to a form of worship.

In his thoughts, Imam al-Ghazali always emphasizes that *taklifi* is not merely an external obligation that must be implemented, but is also part of a moral and ethical responsibility that every individual must maintain. Not only does he talk about outward actions, but he also talks about intention and inner quality in conducting such obligations. In his book *Ihya' Ulum al-Din*, al-Ghazali states that a person who conducts worship with full consciousness and sincerity of the heart will become closer to Allah, even though, physically, it may just seem that he is conducting the same obligations as other people. The quality of intention and the spiritual depth in carrying out such obligations will make a servant (i.e., human beings) nobler in the face of Allah.

Al-Ghazali also states that *taklifi* obligations can be carried out better when a person has reached a higher level of moral awareness. He believes that compliance with Allah's demands with the legal characteristics (such as *shalat* or *zakat*) must be accompanied by sincere

intentions, rather than from merely fearing punishments or due to habits. Without good intention and full consciousness, a person will only mechanically conduct worship without obtaining deep spiritual benefits.

However, Imam al-Ghazali also realizes that there are many factors that may inhibit a person from carrying out *taklifi* obligations. The most common factor is ignorance (*jahil*) of religious obligations. In this condition, a person may not realize his obligations or not have a good understanding of the applicable Islamic laws. Al-Ghazali highly emphasizes the importance of knowledge in a Muslim's life, as with knowledge, a person may understand the obligations that he must carry out and the sins that he must avoid.

Apart from that, al-Ghazali also states that laziness (*kasal*) and worldly desires are hindrances that often inhibit a person from conducting their *taklifi* obligations. Worldly desires may push someone to have the tendency to carry out worldly actions and neglect religious obligations. Because of that, in al-Ghazali's teaching, the spiritual purification process or *tazkiyah* becomes crucial to overcome the influence of laziness and worldly desires over a person.

As a whole, according to Imam al-Ghazali, the *taklifi* concept is more than legal obligations that must be fulfilled. It encompasses the moral and spiritual dimensions that must be carried out with sincere intention and high awareness. Every obligation that is fulfilled with sincerity, knowledge, and earnestness will bring people closer to Allah and increase their quality of life, both in their relationship with God and that with other human beings. By understanding and applying these *taklifi* obligations, a Muslim may achieve a more balanced, harmonious, and blessed life.

The Epistemological Basis of the Taklifi *Concept*

In the field of legal studies, al-Ghazali views the law as adivine greeting (al-Ġazālī, 1904) that is directed to actions of legal subjects, and without the existence of such greetings, there is no Sharia law. This legal concept is deepened by analyzing whether or not human beings' independent reason may find the law. For this, the discussion is linked with three issues, namely: (1) Can the ratio independently find good and bad values? (2) Can the ratio independently know its obligations and express gratitude to the Giver of Blessings? (3) Is there a law before the existence of legislation (*tasyri*) by Prophet Muhammad (pubh)? Al-Ghazali's discussions, which are fully based on paradigms of the Ash'ari theology, brings him to the conclusion that

the human independent reason cannot find divine laws before there was the determination of the sharia by Prophet Muhammad and because of that, there is no law before the Prophet's appointment as a messenger of God (al-Ġazālī, 1904).

According to Imam al-Ghazali, quality norms that are illustrated with the ought term in the *taklifi* concept relate to the moral and legal obligations that every Muslim individual must carry out according to the commands of Allah. These norms do not only involve formal obligations in worship, but also encompass the moral and ethical dimensions that become the basis for every action that a Muslim carries out. According to al-Ghazali, the ought norm orients towards obligations that not only have external characteristics that are linked to the Sharia law, but also internal ones as they contain the dimension of deep moral awareness (Yanto, 2021).

Imam al-Ghazali emphasizes that norms with the ought quality in *taklifi* must be carried out with earnestness, correct intentions, and sincere motivation. This means that the obligations that Allah commands to the Muslim *ummah* are not only to be carried out in a physical sense, but they must also be accompanied by a sincere intention of the heart. Every action that is carried out with correct intentions will bring rewards, even though such actions may seem small and invisible to other people. From al-Ghazali's perspective, the ought norm becomes a facility to cleanse the heart and become closer to Allah, where intention becomes the main key in every action that a Muslim carries out (Putro, 2023). Regarding the essence of intention, will and purpose are words that apply to describe one meaning, i.e., the condition and characteristic of the *qalb* that is surrounded by two things: knowledge and good deeds (Al-Ghazali, Ba'adillah, & Santosa, 2012).

CONCLUSION

This research shows that the ought norm is the epistemological core of both Hans Kelsen's Pure Theory of Law and Imam al-Ghazali's *taklīfī* concept. However, both rely on normative authority sources, which are fundamentally different. The main objective of this research is answered by showing that the ought norm in Kelsen's thought relies on rational-transcendental presuppositions that allow the application of the positive law without depending on moral, metaphysical, or theological claims. Through the *Grundnorm* concept, legal normativity is understood as a logical condition that allows the positive law to emerge as an autonomous normative system. Therefore, from Kelsen's perspective, compliance with the law is sourced from normative validity and sanction mechanisms, rather than from moral obligations.

The ought norm in the Islamic legal theory cannot be separated from خطاب الشرع (divine legal greeting) and the moral obligations of a legal subject (*mukallaf*). In this framework, the ought norm not only has formal-procedural characteristics, but is full of the ethical and teleological dimensions that orient towards the purification of the soul, moral awareness, and the end goal of human beings. Al-Ghazali places the law as an integral part in forming character and spirituality. Thus, legal obligations are not only understood as external demands, but also as a spiritual calling that must be based on good intention and sincerity.

A synthesis of these two perspectives states that even though Kelsen and al-Ghazali equally understand ought as a non-empirical normative category, an epistemological and ontological difference between the two is highly significant. These findings are crucial, as they dismantle the assumption of the universality of the secular normativity model in modern legal philosophy and open room for an alternative normativity model that is based on religious epistemology. This research recommends further research on the contribution of the *taklīfī* concept in contemporary discourse on legal legitimacy, moral obligation, and management of normative pluralism in modern societies, which meets the rationality of secular law and religious law.

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