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Norm-Value Relationship in Islamic and Western Law

İslam ve Batı Hukuk Düşüncesinde Norm-Değer İlişkisi

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Abstract

The law regulating interpersonal relations arises from society. In general terms, the law, which is the system of norms, uses both material and moral sanctions to force the individual to obey the norm. While the penalties and the administrative sanctions constitute the material sanctions, the world of values constitutes the spiritual dimension of obedience to the norm. Basically, it is not just punishments that lead the individual to obey to the norm but it is the response that what the order or prohibition of the norm finds in the world of values that exist in the inner world of the individual. In the philosophy of law, this situation is called the norm-value relationship.

This study examines the norm-value relationship in the context of the "human model" created by the western civilization after industrial revolution and enlightenment, and the meaning given to the human in Islamic civilization. The study also examines the two civilizations in the context of norms based on value patterns.

Keywords: Norm, Value, Islamic Law, Legitimacy, Individual, Society.

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Öz

İnsanlar arası ilişkileri düzenleyen hukuk toplumdan doğar. Genel bir ifadeyle normlar sistemi olan hukuk, bireyi norma itaate zorlarken hem maddi hem de manevi müeyyideler kullanır. Hukukun maddi müeyyidesini cezalar ve idari yaptırımlar oluştururken, norma itaatin manevi boyutunu değerler dünyası oluşturur. Temelde bireyi norma itaate götüren şey sadece cezalar değil, normun emrettiği ya da yasakladığı şeyin bireyin iç dünyasında var olan değerler dünyasında bulunduğu karşılıktır. Hukuk felsefesinde bu duruma norm-değer ilişkisi denmektedir.

Bu çalışmada özellikle sanayi devrimi ve aydınlanma sonrası Batı medeniyetinin “yarattığı” insan modeli ve İslam medeniyetinin insana yüklediği anlam çerçevesinde norm-değer ilişkisi ele alınmış ve normların dayandığı değerler dünyası mukayeseli olarak incelenmeye çalışılmıştır.

Anahtar kelimeler: Norm, Değer, Meşruiyet, Birey, Toplum.

Introduction

Law is a whole set of rules governing social relations. Acts of man form the subject of law in general. Every legal system has principles of understanding and interpreting life. The main factors affecting these principles are the view of the human in the culture and civilization that the legal system belongs to. This view of human and human being is shaped in the fields of religion, ethics, politics, and philosophy that constitute culture. The easiest way to understand any legal system is to understand its vision of the human.

Law is the most fundamental instrument of legitimacy in ensuring the trust and obedience of the state to the individual and society as well as the individual and society to the state. Therefore, the adoption of the law and its norms as a basis of legitimacy by society takes place at the highest level by relying on the values of the individual and society of the norms of the normative nature of the law. This situation is expressed as a norm-value relationship in law. Value is the spiritual component of the norm that corresponds to the individual and society. In other words, in the face of the positive and negative order of making or not making of the law, the question of why the individual should obey this norm is an intrinsic answer. What shapes this intrinsic value is the world of values of the individual and society. The more the norm corresponds to the world of values, the more the effectiveness of that norm. Therefore, norm-value relationship is vital both to the state and to the law, which is the instrument of legitimacy, and to the individual and society.

A- Human, Law, and Value

Among the many definitions and determinations made about human beings, the most striking thing is that he/she is an entity who makes culture and civilization. All of the norms governing social relations are regulated by law, and in particular, Islamic Law regulates human relations with God, nature, other people and other societies. In order to establish, organize and maintain these relations in a balanced and fair manner, man forms a world of values, which we call culture and civilization. Religion, language, art, technique, ethics, law, etc. create the fundamental ground of the values.

Throughout history, many civilizations have come and have contributed to a wide range of common heritage of humanity, from science to art, aesthetics; architecture to technology and law. Every civilization has been influenced and fed from each other for various reasons. In this respect, civilizations are not linear (linear civilization); but cyclical (cyclic civilization).² In other words, civilizations have been influenced and

² In the Islamic world, Ibn Khaldun should be mentioned for the concept of cyclical history and critical thinking. In this context, Ibn Khaldun says: No society can be naturally settled (civilized). This refers to the phenomenon

cultivated from each other, and they have tried to bring out new original ideas to be an alternative to it. This is an interesting situation that both influences and cultivates, as well as go back and forth between contrast and rejection. In other words, it is an actual situation that revolves between the understanding of linear and cyclical history.³

Civilizations are based on concepts. Undoubtedly, there are key concepts and determinations that define every civilization. Today when we say Western Civilization⁴, which can be described as Hellenic-Christian civilization, the first thing that comes to mind is science and technology. Science and technology demand both sophisticated, artistic, and economically connected slave markets to produce more, gain more and maintain this production and consumption chain and ensure sustainable economic growth. Continuous consumption is essential for the sustainability of production and protection of actuarial balance⁵. In other words, consumption is essential for the sustainability of production and economic activities related to production activities. In order to maintain the continuity of consumption, the goods produced must have a certain lifespan. In order to promote new production goods, many elements of chaining, such as the creation of advertising and competition markets, are becoming necessary. Since it is the human who will buy and use these products, then it is necessary to **"create"** a new type of human being. This human type is the **"homo economicus"**⁶ the human type that occurs gradually after the industrial revolution⁷. Homo economicus, that is to say, the outlook of the economic person to life is as follows: human life is finite and limited. This finite and limited life must be spent with maximum pleasure and happiness. According to this understanding, pleasure and happiness are largely achieved by economic power. However, although human needs⁸ are very/unlimited, resources are scarce. So, to meet unlimited needs with scarce resources, one must work hard and compete. This ambition of winning and gaining power leads people into a ruthless competition (Homo Homini Lupus)⁹.

The most fundamental value for Homo economicus which has **"created"** and imposed to the world by means of **enculturation and acculturation** by Helen-Christian civilization that we call Western is to win, to win and consume more. This human type of Western civilization which produced after 18. century naturally

of interaction and cyclicity. See (Haldun, 1988, p. 416); also for the philosophy of cyclic history (Özlem, Tarih Felsefesi, 1996, p. 19).

³ As an example for this situation, we see that Farabi, one of the outstanding thinkers of Islamic civilization have taught to not only the Muslim thinkers like Ibn Sina, Ibn Tufail, Ibn Bace, Ibn Rushd, but also to Christian students such as Yahya b. Adiy, Albertus Magnus, Hoger Bacon, Gundissalinus, St. Thomas from Aquino and Jewish students such as Ibn Maymon. See (Küyel, 1974).

⁴ For the distinction between East and West see (Ortaylı, 2008, p. 153).

⁵ Actuarial balance is the most common criterion used to evaluate the financial balances of social insurance institutions in premium social security systems; they are active and passive insured rates. For the healthy ground of social security, production and, accordingly, employment must be established. For more information see (Sayan, 2005).

⁶ Homo economicus is an insensitive entity that seeks to maximize its own benefits (Thaler, 2000, pp. 133-141).

⁷ The four phases of the industrial revolution: 1-The first industrial revolution began with the founding of mechanical worktops that used water and steam power at the end of the 18th century. 2-The second industrial revolution began when Henry Ford changed the history of the 20th century with its production line design. 3-The use of electricity in mass production and development of the production line triggered the third revolution. 4- the Fourth revolution has been realized with the introduction of programmable machines which cause mechanical and electronic technologies to be replaced by digital technology (Saygın).

⁸ There are needs on the basis of man's behavior, and meeting some needs is more important than others. In order to understand the behavior of people, they need to know what their needs are. Compare, (Eroglu, 1996, p. 258).

⁹ "A man is a wolf to another man". According to Thomas Hobbes, people are equal at birth. This equality generates equal hopes for achieving the goals. If every human desire that something they cannot have at the same time then conflict arises. Conflict results in hostility and suppresses or destroy the others. The person will do everything necessary to protect their own existence. See (Hobbes, 1998, p. 3).

matured his view from science to art; from law to philosophy in this center. If the man whose world of values is shaped like also holds political, economic, technological and military hegemonic power, can affect other societies through enculturation and acculturation.

Science and technology are the first things come to mind when talking about Western civilization while when we say Islamic civilization first thing comes to mind is that it is a **fiqh** civilization. Fiqh has directed the purpose of organizing life in the finest detail and has taken into account not only the worldly pleasure and happiness of man but also the spiritual and aethereal well-being. This situation has been expressed as being sure of the *Darayn's suffering and trouble* and the *happiness of the two worlds/jihân*. At this point, Western civilization, which has the codes of Hellenic-Christian, seems to have gained a relative superiority in the face of Islamic civilization. It can be said that in addition to economic, political and scientific superiority, civilization is producing science and technology which has a great contribution to that. It is obvious that the wealth and well-being of the western world do not have a claim to bring peace and happiness to all humanity, but it does not bring anything other than blood and tears to those outside of its own world.¹⁰ The Islamic world¹¹, which is the equivalent of the Western world, has literally turned into a place of destruction.

After the Enlightenment and the Industrial Revolution, the Western Civilization, which was seen as far ahead of the Islamic Civilization, began to discuss the idea of a **value qualified norm**, especially after the Second World War. Because, while offering material/form peace and welfare (welfare state)¹² to their people, on the other hand, it has caused serious collapses in the world of values and gave birth to an inquiry within itself. Well, what caused this?

When Western civilization was weak and backward in the face of Islamic civilization, for example, in the Middle Ages, popes and emperors' dual power (Cassirer, 1984, p. 141) struggles and the struggle of kings against the authority of the church was the matter. While the victorious kings, who had won the struggle, freed the society from the oppression of the church, they actually dragged them to an understanding that God did not exist or did not interfere with the world. It is necessary to admit that the last situation that Western civilization came to today is shaped around the understanding of exclusion of the belief in God or intervening God and neutralize God. Although the existence of God is accepted, his influence in human life has been reduced as much as possible, and the idea that it is only an intrinsic value has been drawn to the center. This conception of God has influenced all disciplines ranging from science to art and philosophy to law. This actual state is where God is not effective in the world, on the individual or social life; in other words, it has paved the way for the construction of a sybarite/hedonist and egoist society. It should be acknowledged that such a good description, "*beyond its fictional satisfaction, has no more practical meaning and value*" today (Öge, Allahtan Âleme İlahi Fiiller, 2009, s. p.7). Although this actual situation of the Western civilization, which was reflected by wealth and domination, brought relative happiness and

¹⁰ For more informatin about "Modernization and the Challenge of Islamic Culture" see (Yılmaz, pp 94-95)

¹¹ We refer to all the countries that claim that the concept of the Islamic world and the people who have adopted the Islamic religion are predominant and also have an Islamic state structure. According to the data, about 85% of the Muslim world are Sunnis and 15% of them are Shiites. According to the American Central Intelligence Agency (CIA) figures, approximately 1/4 of the world's population (24%) are Muslims. Muslims, who constitute the ¼ of the world's population, has many historical, political, economic and social reasons for their defeat against Western civilization. We are referring to its course. See. (CIA World Factbook, n.d.); See also (The World Almanac Book of Facts, 1997 , p. 654).

¹² The welfare state, whose foundation dates back to the 1880s, has emerged as a search for a solution as a result of the economic crisis that emerged in America in the 1930s, as a result of the unemployment and poverty spread to other countries' economies. It began to expand and continued to grow stronger until the mid-1970s. Compare, (Gosta, 1990, pp. 1-25).

prosperity to itself and brought more regular countries and a more organized social life, it could not bring an inner happiness to the people who touched other people, especially the people of its civilization.

The rule of law, which is a legitimate instrument in the government, and its norms have now gradually moved away from a structure in which people are subjugated by consent. Law is a means of legitimating the work and actions of the state as a fundamental function. In other words, the state uses the law as a legitimate tool in some of its tasks and actions (tax, education, health, punishment, etc.). The anti-legal order is the anomy¹³. This cannot be a case for any society. Because *ubi societas ibi jus/where there is society there is law*, is a saying which states the universal truth. Here the state benefits from some norms while regulating social relations. These norms are orders with abstract content. It usually has a triple image in the form of *doing it, not do it and whether you are free to do it or not*. In order for the law and its norms to be readily accepted by the society as a means of legitimizing the actions of the state (Berger, 1967, p. 29), these norms must rest on a world of values which we can call religious, moral and customary. Without a doubt, the norm which performs its best and its target at the highest level is the norm that finds its best value in the world of values. The norm that has no relation with value will definitely face the end where it will be violated at the first opportunity when there are no controllers. That is why every legal system rests on a world of values, although their appearance is different. These are the values that are sometimes approved by religious, sometimes customary, sometimes science and reason which express modern societies.

In this study, we will first try to address the stages of a norm-value relationship from the perspective of Western civilization, and then the norm-value relationship in Islamic law.

B- Norm and Value

The norm is a concept which has a wide range of uses in the subject of scientific disciplines such as sociology, mathematics, philosophy, a law being in the first place. This concept, expressed in French as *norme*, is defined as *a rule adopted in accordance with the established principle or the law* (Erdoğan, 2010, p. 458; TDK Dictionary). At the same time, it is expressed as the *rule, the law, clause* (Ulken, Sosyoloji Sözlüğü, 1969, p. 215). In legal language rather than *a rule, measure, base; the standards developed in a matter are in the form of rules* (Safak, 2002, p. 415).

Norm can also be defined as the code of conduct or standard adopted by members of society. Although norms are legally enforceable, they may be internalized by individuals. With this sentence, it is necessary to say that the rules of law are the norm. The Law of attraction is a law of attraction. The authors, who pointed out that the rule of law was of general and abstract quality, described it as an order with abstract content (Güriz, 1992, p. 17; Zevkliler, 1986, p. 7). In addition to the abstract content of the law rule, it is possible to say that it is "norm" and that the law is composed of norms (Aral, 1979, pp. 53-54) and that the norms of law are social forms of values. In this respect, the rule of law is concrete (Ulken, Bilgi ve Değer , 1956, p. 318).¹⁴ When we combine both definitions, we can say that **"law is a concrete norm with abstract content."** The concept of value refers to a more general meaning than the norm and includes the norm. The values that we can express as the generalized moral rules are seen in the thoughts, attitudes, and behaviors of individuals are the criteria of good and truth. Therefore, as a social norm, the rule of law depends on the system of these values and the more internalized these values, the easier it is to implement that norm or to ensure that it is in accordance with the norm.

¹³ Constitution-less disorder.

¹⁴ For norm and becoming a norm see, (Aydın M. , 1991, p. 175).

We can subject the norm types to a quaternary division such as law, customs (manners, customs, and traditions), religion and morality. These norms exist as written and non-written in social life. Written norms are also laws, regulations, and codes of conduct that express legal regulations. Non-written norms are morals, customs, traditions, **and religious rules**. However, in these norms, **religious values** are the most effective and common social norms. This is the case, however, that what sets the legal norms above other norm categories today is the realization of the sanction of legal norms in modern societies by the hands of the state and the relocation of people from the relative religion. In other words, the inability of non-written norms to be supported by powerful sanctions in practice and to maintain social order increased the importance and weight of legal norms. Therefore, by justifying the values more effective and powerful norms can be obtained. Moreover, it is often seen that many values, such as the *pacta sunt servanda* and *honesty* value, which are acceptable in people's history, constitute the main premise of the law of obligations and the birth of countless norms.

Norms can be imposed externally through punishment and reward, as well as by individuals such as religious, moral, customary, etc. may also be internalized by the motives. If the norm is based on religious moral and customary values, the individual adopts that norm and behaves appropriately when there is no external pressure, such as an inspector or a punitive control mechanism. The legal norms, however, express **what is supposed to happen (sollen)** to the individual and society. It is also possible to express this as **normativity**¹⁵ of the law. The rule of law actually directs three things to the individual. They are all in a sense an order with abstract content (Hirsch, 1949, pp. 222-223). It orders a certain thing to be done (positive order), orders a certain thing not to be done (negative order), and permits or authorizes a certain thing to be done. In this respect, the normativity of rule of law is that these rules always contain orders, prohibitions, permits or authorizations.

In general, every norm consists of material and spiritual elements. These are non-separable/needed elements. The material element refers to the real size of the norm in life. A word, behavior pattern, document, etc. constitutes the material element. Because something that does not have material assets cannot be subject to the law. The spiritual element is the meaning of this norm with material existence. In other words, the norm is an expression that takes the value of truth. Although every word and event have material existence, it is the spiritual bond that transforms it into the norm. The norm is a proposition; however, the statements that do not have the value of truth cannot be expressed as a proposition and hence as a norm. Norm is a proposition that is both meaningful and true or false (Gozler, 1998, p. 29). This situation can be expressed as the relationship between the norm and the language, which is a legal proposition¹⁶. This entity-relationship with language refers to the function of both declaration and specification of the language; also refers to the function of making. Therefore, the norm is not any rule. Norms are high-level rules that perform the task of measurement. In Islamic law, this situation is expressed as *musellamat*¹⁷. If the norm has found a right response in society, appropriate things are adopted, and the contrary is excluded and rejected. The most vital question to be asked at this point is: what brings the norm to social acceptance? The most accurate and precise answer to this question is **value**.

The concept of value¹⁸, like the concept of norm, is also a problem addressed by scientific disciplines. In this context, there are many direct or indirect material related to the nature and framework of value in the

¹⁵ For the normative structure of the norm see (Gozler, 1998, p. 28).

¹⁶ What qualifies norm as legal. See, (Gozler, 1998, p. 127).

¹⁷ *Musellamat*, impossible or very difficult to prove; and, however, the realities of every benevolent mind, that is, the rationalized customs, the minds of the superstitious minds, and the fact that people who cannot think of a certain idea and opinion or interest are not easily hesitating to think easily and with a little thought. See, (Belgesay, 1948, p. 564).

¹⁸ For this concept sees, (Ulken, Bilgi ve Değer, 1956).

fields of philosophy, sociology, psychology, anthropology and especially theology. In this context, it is possible to classify the values prevailing in Western thought as follows:

1. Scientific values: In the world of these values prioritizing reason and rationality, knowledge, reasoning and critical thought come to the fore.
2. Economic Values: Especially, starting from the 18th century, the basic values of the human type Homo economicus consisting of stages from the economic relations and success, winning, production, consumption etc. which has been formed around economic relations.
3. Aesthetic values: the values of fine arts related to art and beauty.
4. Social values: These are the values of some basic principles, such as loving others, helping others, and not being selfish. In this context, the values created around human love/ humanism, which are considered to be the highest values, have a different place in this classification.
5. Political values: refers to the principles that are formed around beliefs, values, and rules of conduct in a society in relation to politics and the political system.
6. Religious values: the system of values whose source is divine.¹⁹

Value is the principle of abstract and generalized behavior in which individuals are connected with a positive and very strong emotional bond.²⁰ In other words, the value is an intrinsic culture absorbed by the society; is an ethical/ moral based system. Value is also a measure of justice. We describe something that we have encountered, the word, the behavior and the rule as beautiful, ugly, right or wrong. It is our values that inspire us in the sense that they are right or wrong, beautiful and ugly. In this respect, it is the power to appeal to the beautiful from the ugly, the good from the bad (Çelikkaya, 1996, p. 18).²¹ In order for the measure of good and bad; beautiful and ugly, positive and negative to be valid in the public, the judgment criterion called value must be a real dimension. We can express this as an objective value. This objective value must be relative to an *entity/transcendental*.

When we look at the historical process of value, we can consider the Sophists as the starting point. The objectivity and subjectivity of value are discussed as a philosophical problem. In this context, Sophists argued that the values were relative, while the philosophers such as Socrates and Plato advocated the objectivity of the values (Mengüšoğlu, 1988, p. 97).²² According to Socrates and Plato, the values are objective; a behavioral pattern is independent and absolute true or false. Aristotle evaluates the value to be inherent to existence. In modern thought, Immanuel Kant is the first to present the value problem independently. In parallel with this philosophy, in general, the philosophy of law discusses the problem of value (axiology), a good-bad problem (moral philosophy) and a beautiful-ugly problem (art philosophy and aesthetics).

C- The Relationship between Norm and Value in the Thought of the Western World Law

It is possible to look at and evaluate the phenomenon of law from the perspective of history, philosophy, and sociology. From a historical point of view, the law means examining the existing law within the borders of a certain country with the methodology of historical science. Philosophically, the law is the embodiment of values and belief systems (Gozler, 1998, p. 1). In this respect, the examination of law from a philosophical point of view means that it is understood the nature of its essence and its true nature. From the sociology

¹⁹ For the classification of the values see, (Aydın A. , 2005, pp. 21-24).

²⁰ Compare (Theodorson & George, 1969).

²¹ For detailed information see, (Kılıç, 1992).

²² Other than that compare, (Özlem, Kavramlar ve Tarihleri, 2002).

window, law, survey etc. it refers to the empirical examination and systematization of the data obtained through the acquisition of information, and in this respect, to understand the legal and social aspects of the jurist, to be a leader and to produce practical solutions that can be used to legal issues.

A norm-value relationship requires philosophical consideration of the law. Because every legal system has its own general theory. In this sense, some of the concepts that dominate the Western world are legal positivism, legal normativism, historical law school, utilitarianism school, and sociological law school.

1. School Approach

1.a. Legal Positivism

This understanding was inspired by the Vienna circle²³. It rejects the propositions that cannot be formally and empirically confirmed (Gozler, 1998, p. 15). Within the context of the subject, this school rejects all forms of natural law. There is no unchanging order in nature. The human mind and the real / law do not have the good and bad of the world. Those who accept this theory say that even if they accept the values, they cannot be known. The basic principles that dominate this understanding are:

- i. *The principle of the unknowability of values:* value judgments are not the subject of science. Therefore, knowing them is not the duty of law.
- ii. *The subject of science is known objectively:* according to this principle, metaphysical concepts and principles cannot be a matter of knowing. This is the pure theory of law. Science and the subjects of science are different.
- iii. *The subject of science is different:* the subject of science is what is formed before itself. The world of values is not included in this.
- iv. *The task of science is to recognize only the laws:* according to this principle, the general theory of law should not seek to reform or change norms but should be based solely on the description.
- v. *Science must purify itself from foreign elements:* this principle, which we can describe as purity, should not be to justify and criticize the norms of the general theory of law. This understanding does not include the concept of value in the legal axis.²⁴

1.b. Legal Normativism

The aim of Legal Normativism is to make the norm which expresses the rules which are under the context of law unchanging and constant. The idea of achieving the best norm here is the principle of extracting it from the variable or temporary elements after reaching the best norm. In this approach, there is a definite distinction between law and morality. The law should not judge the value (Ayengin, 2015, pp. 101-104). The relationship between norm and value does not exist in this approach. Kelsen aims to adopt the logical positivist approach of his time in science to the law. Thus, it can be said that the purpose of Kelsen is to turn the law into a science. It is directly related to legal positivism.

1.c. Historian Law School

²³ For Vienna circle see (Burns, 1984, p. 518).

²⁴ Compare, (Gozler, 1998, pp. 15-23).

According to this understanding, the rule in force can only be perfected by taking historical facts, customs, and traditions into consideration. Morality, law, art, and religion constitute the mentality of the people. There is a soul/spirit of the mentality of the people. This spirit is transmitted from generation to generation. The mind of the jurist cannot find this spirit and the common mind of the people alone. Therefore, the jurist must make use of historical heritage and society. This spirit and mind may change over time. But the jurist must not interfere and must not intervene in the natural course (Ayengin, 2015, pp. 101-104). This emphasizes the concept of the value of school. Because the world of values in the historical heritage is also included.

1.d. Sociological Law School

Rather the opinion of the social contract dominates the politics and philosophy of the 18th century. The social contract is based on some natural rights. These are a priority metaphysical truths. However, metaphysical truths cannot be falsified and only apply to those who believe in the metaphysical phenomenon. The law should move away from it and feed more on objective and reliable facts. The sociological law school considers law as an obligation of social life. According to this school, the law must be deduced from society and social laws (Ayengin, 2015, pp. 101 -104). These five approaches shed light on the norm-value relationship of Western thought. When we consider the social laws, it is seen that man is in competition and conflict. The idea of supremacy in competition and conflict is in the foreground. Therefore, the norm-value relationship does not settle on a solid basis in this approach style.

The norm-value relationship in Western law thinking was also discussed around the concept of legal validity. Accordingly, it is possible to talk about three different legal validities. Validity refers to the legally binding law. However, in classical Turkish legal literature, it is possible to say that there has not been paid much attention to this subject and a term has not been produced (Gozler, 1998, p. 53).

There are three theories of legitimacy/validity, which are the foundations of the norm-value relationship in Western law thinking. These are axiological views, legal realism, and positivist views. These three views are noteworthy in the sense that how the idea of western law is looking at the norms of law and what theoretic behavior is when it reveals norms. These styles of approach are about the validity of the norm, especially justice, equality, etc. it also shows the role of concepts and the world of values they depend on.

2. Validity in Norm/Validity Approach

2.a. Axiological View

When the understanding of axiological validity is mentioned, the theory of natural law comes to mind. According to this view, for the legal validity of a norm, the realization of justice, the satisfaction of the common good, the protection of rights and freedoms, the increase of prosperity, such as the purpose of a set of legal objectives must be realized with the norm (Gozler, 1998, p. 58). According to this understanding, the validity of a norm is based on the *teleological* goal. This is determined by the compliance of the norm of law with the values adopted by the society or by some ethical, moral, religious meta-positive ideals.

It has three basic approaches to interpreting the natural legal norm. The first is the ancient natural law. The active element in this period is nature as being the creator and organizer of everything. Law is also a part of the order of nature. The dominant element in the second period is religion. Religion rules should be adopted as a rule of law because they are divine and eternal. The third is the human mind. It is possible to call it mental law. In the Middle Ages, the domination of religion was replaced by the idea of sovereignty in the modern era and the dominance of reason in the law increased even more (Sözer, 2013, p. 26).

2. b. Legal Realism

According to this understanding, the validity of the norm is evaluated by its *effectiveness*. Effectiveness is to evaluate the results of the norms of law and to what extent norms are suitable to realize and accrue the aims they want to realize. Thus, a norm can be said that the extent to which the goal is valid (Gozler, 1998, p. 65). The world of values does not find enough space in this understanding.

2.c. Legal Positivism

Legal Positivism can be expressed as the formal validity of the legal norm. More positivist lawyers have advocated this understanding. According to this understanding, the validity of the norm can be realized by the fact that it belongs to a certain legal order. The fact that it belongs to legal order refers to the normative order. There are two types of norms in normative order. These are the positive norms that are established around the basic norm and set in the basic norm. The validity of a norm takes place with its belonging to a legal order. Hans Kelsen is the most important representative of this thought. In this understanding, there is an absolute denial of the values. According to Kelsen, values do not even form the minimum common denominator (Gozler, 1998, pp. 18-19). As you can see, it is one of the approach styles in which norm-value relationship is the weakest. However, it is also important to it is one of the main approaches that influenced the idea of Western law.

3. Basic Parameters of Western Law

The issue of justice, good and evil, which is one of the problems that have persisted throughout the history of humanity, has always had an important place in the agenda of those who speak on behalf of law and justice since the first ages. First, injustice and inequity in the world have led some philosophers to question the existence of evil in the world. In this context, those who accept the existence of God, seek to understand the divine justice (theodise) (Yaran, 1997, p. 11), and seek the source of genuine knowledge, and those who deny God and thus the creation have expressed their views on good-bad beautiful-ugly justice and cruelty. The philosophers who accepted the supreme creator idea (Taylan, *Düşünce Tarihinde Tanrı Sorunu*, 1998, pp. 143-175) were also supported by names such as Plato, Saint Augustinus, Saint Thomas, Luther, Calvin and Leibniz, who claimed that God Himself was good and claimed that the things he created and organized were also good. In contrast to these philosophers, for example, some philosophers like Epicurus argued that the universe is full of evil, and philosophers like David Hume, who have been influenced by his views, have raised the problem of evil (Taylan, *Din Felsefesinde Kötülük Problemi*, 1993-1994, pp. 47-79).

The Western world has a more rational understanding that sees *value* as a metaphysical element and seeks to keep it out of the law in terms of its main approaches. However, it would not be the right approach to claim that there is no value in Western law. Because in Western law, there are three basic parameters that carry the law. These are; justice, legitimacy, and security.

3.a. Justice

The concept of Justice has always existed from Aristotle to today with a dual understanding, usually a distributor and equalizer. However, even though distributive justice is perceived as giving the state the right to which everyone deserves, the value judgments of fair sharing are different in the West. Because of the distribution of feudal state according to the master and slave; the capitalist state according to the

performance of all, and finally the socialist state, distribution of the limits of everyone according to the state determined by the state.²⁵ This is where Justice, which is the bearer of the norms of Islamic law and justice in Western law, is the point of separation.

Another concept that exists naturally in the semantics of the concept of Justice is equality. In the Constitutional sense, equality is perceived as a prohibition of arbitrary discrimination against reason, but this is not the case in practice. Ironically, the fact that *lying under the bridge, begging and stealing bread* are the same and equally forbidden to both the rich and the poor is one of the best indicators of this situation (Serozan, 2015). In this context, when legal cases are analyzed in depth, it is possible to encounter similar ironic situations such as equality between men and women, child rights, tax practices, etc.

Equalizing justice is in question for the Western law, for the mutual obligations/actions that the parties are obliged to fulfill in the contracts. Accordingly, it explains the nature of the balance between the actions and the mutual right exchange. This situation is also contradictory in its content. It is another ironic situation to say that unless the distribution of society's property is fair, other legal transactions based on commerce and property will be fair.²⁶

3.b. Legitimacy

This concept refers to the suitability of the legal norm for purpose, usefulness, and functionality. It is not enough for a legal norm to be just and fair. It also states that there must be a part of it that is not utopian/imaginary and that corresponds with the realities of life (Serozan, 2015). If a rule of law is out of the scope of practice and is detached from social reality, it is destined to turn into other unhealthy norms.

3.c. Legal Security

Although this concept largely coincides with the concept of legitimacy, it is not the same. This concept, which is tried to be explained by the values of clarity, goodwill, and awareness, refers to the security of all individuals subject to the legal order in the face of the law. Legal appearances are good intentions for trust (Serozan, 2015, p. 65). When the protection of the seniority is expressed as the stability, all the transactions subject to the form of qualifying and lowering periods in the law are legal security²⁷.

In the light of the law schools and the basic parameters, we are trying to summarize above, some of the values that dominate the Western thought are as follows:

- The principle of the State of Law
- The principle of Separation of Powers
- Principle of Secularism
- The principle of Freedom of Contract
- The principle of Honesty and Goodwill

²⁵ Compare (Serozan, 2015, pp. 59-60).

²⁶ Compare, (Serozan, 2015, pp. 64-65).

²⁷ Compare, (Günday, 2004, p. 44).

- The principle of Lawfulness in Crime and Punishment
- The principle of Defect Liability
- Presumption of Innocence
- Principle of Equality
- Right to Legal Remedies
- The principle of Two Punishments Cannot Be Imposed On An Offence
- The principle of Personal Responsibility
- The principle of Judicial Independence
- The principle of the Onus of Proof of Complainant
- Relativity Of Debts
- Ignorance of the Law Excuses No One
- The principle of Individualization of Penalty, etc.

These principles are not the principles produced by their culture and civilization in the process of Western law from Rome to the present day; it can be said that some of these were from Islamic law. We transfer the subject to the media on the grounds that it will exceed the limits of the notification.

D- The Relationship between Norms and Values in Islamic Law

1. Norms/Provisions in Islamic Law

In Islamic law methodology, it is possible to say that the rule of law is taken into consideration within the concept of judgment. In all fiqh-style books (Islamic jurisprudence books), the definition of the provision was made, and then the systematic expansions of this description were included. Located in the books of al-hâkim, al-mahkûm bih, al-mahkûmu fih, al-mahkûmu aleyh consists of the the rule of law or systematic expansions o the judgment (Ebu Zehra, 1958, p. 26; Razi, el-Mahsul fi Usûli'l-Fikh, 1988, p. 15; Zuhayli, 1986, p. 35). In general, Islamic jurists describe the rule of law as “the adjudicating appeal on the obligant’s actions” (Gazali, 1993, p. 55). While this is the general definition, the Hanafi and Shafi'i, the basic two schools of Islamic law, are divided into the definition of the provision. According to procedural scholars belonging to the Hanafi school, the rule of law is what is fixed by the ruler about the acts of the servants. According to the traders belonging to the school of Shafii (Mutakallim), the sovereign is the metaphor about the acts of the servants. It is understood from these statements that according to shafii, the rule of law is the work of the text or the appeal itself, and according to Hanafis it is the work and the result of the te (Atar, 1992, p. 114; Molla Hüsrev, 1895, p. 510; YerTutucu4) xt. It is clear that the Hanafi method is more functional in terms of Law and law-making.

As in all law systems, fundamental principles have been put in place in Islamic law to guide societies, especially human beings, to the truth and beauty. These principles are called the most general sense as a provision. The ultimate goal of the provisions contained in the Qur'an and Sunnah in Islamic law is to realize individual and social rights of people. In the context of the subject of the Qur'an and Sunnah, the provisions

of various aspects have been subject to different classification, but we are referring to the norms of law. So, what is provision?

The word "provision" refers to the state administration and political authority and the court decision. The provision also refers to the connection between two objects, the rule and the remark²⁸ in the knowledge of logic, which is the art of correct thinking. Therefore, in the fiqh science, the provision is used to express the legal value judgment, rule, association and qualification in a matter of both revelation and judgment and from this point of view, it is subjected to various differences. However, since the jurisprudence is concerned with the knowledge and practice of procedural provisions, the concept of judgment has a central importance and place in the jurisprudence, and in the classical literature it has generally gained meaning in this context (Beyanunî, 1998, p. 466).²⁹

In general, Islamic jurists describe the rule of law, provision as "the adjudicating appeal on the obligant's actions" (Gazali, 1993, p. 55). In addition, in the classical fiqh literature, the decision given in the context of explaining a matter is called a provision.

In that case, the prayer of the legislator, the provision, demand, and comes as promises and promises. Haram/forbidden are the acts which are wanted to be abandoned, obligatory (wajib), which are wanted to be done, which are unwanted to be abandoned, and permissible (mubah) are the acts which are released between both cases. If there is no such appeal from Shari/lawmaker, there is no provision. For this reason, in the history of Islamic thought, there were those who argued that reason could not rule that an act was good or bad; that it would not be necessary to give thanks to the blessing and that there was no provision for the actions before the date of the revelation. As good and bad are seen as provision, the meaning given in the fiqh procedure has been decisive in determining who can give the good-bad provision.

2. Debates on the Value of Norm in Islamic Law

It is possible to say that there is a material that is richer than the Western law literature in terms of the provision we have expressed as the norm in Islamic law and its value. In this regard, Islamic scholars are very rich in discussions about the subject of the significance of the acts and actions to Allah, the matter of (good and bad) husn-qubh, the fact that provisions contain reason and wisdom, whether or not the acts have a moral dimension. In the context of the value of the norm in Islamic law, we will consider the subject matter of good-bad (husn-qubh), wisdom-reason-purpose, forbidden (haram)-prohibition and judicial provision-religious provision.

2.a. In the Context of Norm, The Appropriation of Actions to Allah and the Matter of Good-Bad (Husn-Qubh)

Even though appropriation of the actions exist in the universe is not a problem in terms of theistical thought that accepts Allah, it is quite problematic when it comes to the actions in which man is involved. (Öge, Allahtan Âleme İlahi Fiiller, 2009, p. 38) Because it is not possible to appropriate all kinds of actions to Allah. The idea that Allah intervenes in the actions which we can express as the making of people who are seemingly in social and individual fields, especially in law, has been the basis of rich debates in Islamic

²⁸ See "hkm" in (Cürçani, 1997).

²⁹ Also see (Kurban, 2011, pp. 63-70) for the rules of Islamic Law.

history. In the acceptance and rejection of this idea, there were discussions about who the real perpetrator was. While Jabriyyah and followers of Sunnah, who understand the perpetrator as metaphorical, express the true perpetrator as Allah, Mu'tazila understood the relation to man as authentic. A scholar which belongs to Mu'tazila, Abdulcabbar, is relating the action to Allah in many perspectives but related to our topic the moral perspective is important. According to Abdüljabbar, the actions which have proven as bad belong to humans. Because Allah only does what is good. Therefore, the action which has proven to belong to Allah must be good in the absolute sense. According to this approach, *the fundamental value based on the norms of Islamic law, which are directly or indirectly based on revelation and reason, must be absolutely good.*

Imam Maturidi reveals the approach that we can call the middle way in this regard. Because rebellion and obedience is the case in preferential actions, Imam Maturidi says that the purity of the verb is permissible in a genuine sense. There may be objections as Allah appropriates some actions to itself. In this regard, Maturidi believes that such acts, such as searching for the right way, giving the blessing, and increase and decrease blessing, together with the contradictions described by them, are appropriated to Allah. In other words, the actions belong to the servants of God appropriate to Allah in people aspect, appropriation to servants of God in kasb aspect. In this way, Maturidi sees the appropriation of actions in real sense to Allah and to the servants of God as the truest way (Öge, Allahtan Âleme İlahi Fiiller, 2009, s. 39).

When it is permissible the relation to both the people and Allah to be considered as the basic idea, the interpreter of Islamic law (mujtahid), which produces the norm, finds a unique basis controlled by the main values. The true connection of the verb to man is clearly manifested by the fact that it will be held accountable while expressing the rules that it must follow in norm at the same time. In parallel, another dimension of the issue is the issue of good-bad.

This subject, which has a very rich basis of discussion, has attracted the attention of Islamic philosophers/scholars from the early times. In this respect, we can mention philosophers such as Kindi, Farabi, Ibn Sina. In the world, it is often accepted that the idea that good is the main, the evil is the later/accidental. In this context, those who interpret evil like Ibn Sina as being deprived of the maturity, and those philosophers like Farabi and Ibn Sina have argued that evil is relative. In connection with our subject, for example, while Ibn Rushd (Averroes), said that good-bad proper; Ghazali, argued that the world is the best and the perfect world by saying that goodness and evil in the world can be fully known only by its opposite (Çağrırcı, 2003, pp. 542-544).

As a problem of fiqh, husn-qubh has undergone the process of nomenclature in the context of the clarity and selectivity of the concepts, and in this regard has constituted one of the focal points of the Islamic history of the remarkable, philosophical and fiqh conflict. In the dictionary, the good (husn) is described as a beauty, good and being beautiful, and hasen is described as being good and beautiful, loved and in demand. Bad (qubh) means being ugly, and qabih means being bad and ugly, hated and disliked (el-Basrî, 1987, pp. 156-157). It is observed that the words husn-qubh/Hasen-qabih have different meanings by many beliefs or fiqh and are discussed with this aspect of the issue. We can summarize the terminological meanings of these concepts in the fiqh method as follows:

i. It is called **hasen** to provisions which are suitable to human nature, to the purpose and to business; the opposite of this is **qabih** which is contrary to one's nature. This meaning is the most common meaning, and it is called hasen to the adjectives which states word as science especially in the science of word; it is called

qabih to the adjectives which state absence like ignorance. Here, the things which are welcomed positively, and which are described as good, are hasen; while the bad ugly ones are described as qabih.

ii. One of the remarkable meanings of the words is that the things that relate to praise (madh) described as hasen; the things that relate to condemnation (dhamm) described as kabih. In this regard, the subject also covers the actions of Allah.

iii. The final meaning is subject to the actions of the servants of God (people). In this context, Hasen is the act of praising the world and good work in the Hereafter. The contrary, qabih is the act of condemnation in the world and the punishment in the Hereafter.

The first and second meanings are the meanings that Mu'tazila and Eshari schools agree when they are proven by reason (Sadruşşerîa, 1998, p. 375). The discussion in history is the third meaning. In this sense, the subject of which has been discussed among the sects is that an act is ordered because it is hasen or because it is ordered it is hasen (Tehanevî, 1996, pp. 666-670).

According to Mu'tazila, actions are divided into two parts, hasen and qabih (Gazali, 1993, pp. 55-56). In this context, actions are divided into three in terms of means of understanding. These are knowledge reached by reason, needfulness, and semiotics.

1. Because of the necessity of reason, the knowledge is in the first category. For example, this is the knowledge that it is good/hasen to save the person who is drowning.

2. Those who are known by methods of reasoning are categorized into this category. As a result of review and thinking, the truth that is damaging is hasen; the lie that is beneficial is qabih. In other words, it is good/hasen to tell the truth even if the harm is to be done; it is bad/kabih to like even though it has a matter of interest.

3. Without knowledge, they are things that we cannot know about their good and evil. It is like to know that worships like prayers, Hajj, etc are hasen. Mu'tazile claims that these actions have an attribute that distinguishes them from other actions. This attribute is a blessing in the form of putting away evil and directing it to obedience. But the mind is incapable of knowing it by itself. Then if you do not declare the bad, an act can be separated from the other only in terms of **compliance and inconsistency**. They change in proportion to the qualities and circumstances other than the person, and they can never be an adjective. Some of them in Mutazila say that husn and qubh can be known mentally because they are qualities of the individual (Gazali, 1993, p. 57). In this case, the things which are in essence qabih are forbidden to anyone who is wise before the announcement of the bad. For Mu'tazila, that has an objective understanding of morality, no thought that does not include good and bad can be true about Allah. Therefore, the **lawmaker who's the most important tool is the rationality** in the subject of mind should know what is good and order it; he has to forbid the evil one.

It must be said immediately that in the history of Islamic thought there is a general acceptance that beauty and ugliness are rational, in other words, they can be known with reason. However, in the third sense, the conflict constitutes the main point of the norm-value relationship. According to the Esharis, without religion or without revelation, the mind cannot have any knowledge of good and bad by itself (Cüveyni, 1985, p. 228). In this respect, we can say that there is no objective moral understanding of Esharis. This situation,

which we can call moral Voluntarism³⁰, has an understanding that accepts the essence of existence of things or being and therefore the good and bad, not the intellectual concepts and similar tendencies, but the irrational tendencies of will. Mu'tazila that opposes to this view says that the mind is fully functional in this regard (Razi, *el-Mahsul fi Usûli'l-Fikh*, 1988, p. 105). This is the last opinion that is accepted by the majority of the Hanafis and attributed to Imam Maturidi is the most reasonable one. Because, in this respect, it finds the middle way between Eshari and Mu'tazila, that have relatively merit. According to this understanding, the mind knows that things are good and evil without revelation, but it states that it cannot know praise and ridicule without revelation (Ibnul Hümam, 1929, pp. 90-106).

Here is what we draw attention to it is the matter of whether the jurist, who is in the position of the norm, can access the truth without the guidance of the Supreme Creator, in other words, without the guidance of the Creator. This question has been busy minds since the beginning of mankind. In the context of a norm-value relationship, this can be expressed as a relation of reason-revelation in a sense. Life with the law is intertwined. It is impossible to break the law from life and its events. However, the events of life are limited, and the events of the Qur'an and Sunnah are limited. In Islamic law, arranging an unlimited life with limited to the main norm on the legal plane is realized by means of methods such as jurisprudence and so on. Imam Malik, who says that nine out of ten of the fiqh are employed, considers the nine out of ten pieces as mental inferences, and understands the rest as fixed and unchanging principles that will protect the mind from mistakes and prevent it from making judgments according to the wishes and wishes, and solve the problems according to the *masahlâme*. Thus, a large area is left in the *mujtahid*, while at the same time, the Qur'an and Sunnah to keep it in the safe area of the universal nature of having to act with the values provided. Is it its pure intellect and science when linking the norm to value? or is it going to be based on the values that find the source in the real world? It is this Jihad to discuss the role and competence of the mind in establishing and establishing legal rulings. The understanding that dominates the idea of Islamic law is that the mind is undoubtedly functional, but that it is controlled by fundamental and unchanging universal principles based on revelation and Revelation. In this way, the mind has been taken away from being a sovereign entity by itself and the mind has been taken under control. The idea of pure intellect and science that dominates Western law; Islam leaves its place in the thought of law under the control of Revelation. Since the most important attribution of the revelation to people and therefore to societies is of value, we can say that the idea of norm based on Islamic jurisprudence is dominant. This is such an advanced stage that it is often expressed in Islamic jurisprudence that it is moral at the same time so that the legal man's words are binding and mutable. When doing the norm, the mind must find good and beautiful and must pass it through the filter of revelation and enjoin the evil that is oppositional. Here is the basic premise of the norm and the spiritual element is worth it.

The point we want to draw attention here is that there are two main approaches to Islamic law thinking about the underlying value of the norm. These are the will-centered approach and the good-bad approach. The natural result of these two approaches is that the will-centered approach takes the revelation to the center and pushes the mind to the secondary level. In the rational approach of good-bad, the mind comes to the fore and a mental activity takes place under the control of revelation. In the history of Islamic thought, this intellectual background has an understanding that today is not under the control of revelation in Western law, and even wants to exclude it as much as possible. This is one of the fundamental differences in the view of the two cultures and civilization basins.

³⁰ The doctrine that suggests that the values of good and right are subject to a free determination of the Divine will.

After all these statements, it can be said that the interpreter in Islamic Law who is making the norm in Islamic law, is not like the lawmaker in Western law. Because, while the Islamic jurist only sets out the norms of the law which employs nine out of ten, the basic values of the Islamic jurist do not take into account the basic values. These values are developed as basic values and are developed over time and some of them are really true. The Islamic jurist performs this process under the control of revelation. Because, according to Islamic law, a significant portion of the fundamental values underlying the norms are based on revelation, while the rest are based on the needs of social life and experience that are not contrary to the basic values of Islamic law. In other words, wisdom, modern science, and social experience are reflected in the life of law after it melts in the pot of revelation in Islamic law. Thus, an absolute good emerges in a sense. This reminds us of the “**absolute good**” theory (Öge, Allah'tan Aleme İlahi Fiiller, 2009, p. 109) of Mutazila about Allah. Because the description of Allah contains absolute goodness.

In relation to the subject, another issue is the content of the norm, the prohibition of order and the wisdom and the purpose on which authority-approval is based.

2.b. Reason, Wisdom and Purpose in the Norm

Another dimension of norm-value is the principle of intent/purpose in the norm. The idea that every being created by Allah is created³¹ in accordance with a purpose and that no event or act is beautiful is the common acceptance of all Heavenly religions.³² In Islamic thought tradition, this situation is expressed by wisdom. Those who accept wisdom and purpose in the divine acts are referred to as companions of wisdom and those who reject it as companions of will. In the first group there are Hanafis and Mutazilas, in the second group there are Esharis and Jehmiyyahs (Öge, Allah'tan Aleme İlahi Fiiller, 2009, p. 50). In the classical literature related to wisdom, reason, purpose, and intention are also mentioned.

The reason (illet) is defined in the dictionary as a *neighborhood, which changes the way it is*. (Ibn Kudame, 1998, p. 245) For example, the disease is called "illah" because it changes the state of the person. Is it permissible for Allah to create the best of the servants in the way of the fiqh (Islamic Law) question rejoiced in the argument and thus became the basis for the creation of a rich material? In the sense of fiqh, it is said that the provision should be with it. We are going to talk about another definition here. It is also the definition that the existence of something depends on it, except for that which is active in it. From this definition, we can create four views about the reason. Reason (illah): **stylistic, material, subject/actor and final cause**. In short, what makes something really exist is the stylistic reason; what makes it potentially exist is the material reason; what makes it possible for something to exist because of itself is the subject's reason; and finally, what makes it possible for something to exist for itself is final cause (Öge, Allah'tan Aleme İlahi Fiiller, 2009, p. 51). While scholars express their views on reason (illah), scholars also refer to the concept of "gharaz", which we can translate to Turkish as purpose/intention. Because of the legislator Shari Taala, while inserting a provision into a law the things that he is accrediting are considered as reason and public interest in Islamic Law. For example, the idea of protecting the mind, which is the basis of the proposal, can be easily evaluated as a consolation which the maxim of God in prohibitions is such as alcohol. This has given rise to a debate about whether or not the reason (illah) is bad/invalid.

³¹ For instance see, Al-Baqarah 2/26, 185; Ali 'Imran 3/108; Al-Mu'minun 40/3.

³² For purpose see, (Aydın H. , 2002).

In the history of Islamic thought, it is possible to talk about many scholars who approach the subject from a different point of view on the norm-value axis. The main ones that can be considered as mainstream are:

i. Ibn Hazm, considered to be the most important scholar of the Zahiris, says that reason is never inseparable from the thing associated with causal relation (*malul*). Because according to him, the reason is everything that makes a job obligatory. Fire's causal relation (illet) in terms of sociolinguistic terms evokes burning. The purpose/intention is what he means by reason's action. Therefore, according to the Zahiris, purpose comes after the action all the time (Öge, Allah'tan Aleme İlahi Fiiller, 2009, p. 53; Ibn Hazm, 1985, p. 99).

ii. According to Esharis, the actions of an immemorial person cannot be causally related to bad intentions (ğaraz). Because, according to Esharis, God does not do business for any purpose. The validity of the judgment of Allah is accrued by his rule (Razi, el-Mahsul fi Usûli'l-Fıkh, 1988, p. 527).

iii. The Maturidis have followed a reasonable path. According to them, the key concept is wisdom. Wisdom is fixed in the Divine acts and the truth of Allah is proved only with one wisdom. Those who are affected by this Act are praised and have beautiful results. Just like the emergence of power, distress and wealth in the creation of the evil; the emergence of favor and mercy in the creation of good (Öge, Allah'tan Aleme İlahi Fiiller, 2009, p. 62).

In conclusion, it can be said that the main value lying under the order and the prohibition as expressed in the law, is the "praised result" according to the Maturidis, is "benefit" according to Mu'tazila and "knowledge and willpower" according to Esharis.³³

It is a general principle in Islamic thought accepted by everyone that Allah will not do anything without wisdom. Because Allah is excluded from performing an action. The subject of discussion here is not whether Allah does the wise work or not. The controversial area is due to explaining the relationship between divine action and wisdom. Is it that Allah does his commandment and the good things because of his wisdom (Öge, 2009, pp. 50-74)? Or does wisdom do it, without guidance, and then wisdom includes in it? Here's what we can say briefly. In Allah's commands and prohibitions, it cannot be mentioned in the true sense of a wisdom that forces Allah to command and to norm. However, it is impossible for the man to ignore the basic values that underlie the orders and prohibitions of Allah. Esharis, who think otherwise, rely on the evidence that Allah makes whom he wills, and he rules whatever he wills. Esharis, who built their thoughts on it, had to verify the justified norms in the Qur'an, namely orders and prohibitions.

It should be noted that the concept of wisdom includes the concept of "purpose" for Maturidi and Mu'tazila, whereas it lacks this concept according to the Esharis. One of the concepts set forth in wisdom is a skill. The skill is to know. Then the opposite of skill is ignorance. Islam, which is based on people's happiness in the world and the hereafter, wanted the taxpayers to do or abandon some things in order to accomplish this purpose. We can easily say that the rules we define as the norm are intended for a purpose. It can be said that Allah is not able to do an absurd act. All of his actions are made up of a high purpose. This is precisely the meaning of the analysis of the clarity that we have achieved. Therefore, there is a provision with the existence of the reason and there is no provision in its absence.

In general terms, we can refer to the values that underlying the norms as public interest (maslahah). Let us express here that we specifically refer to the general public interests of Islamic law. Because there are two basic approaches in the thinking of public interests as a term of the procedure. These are compatibility and

³³ Compare, (Öge, Allah'tan Aleme İlahi Fiiller, 2009, p. 63).

convenience. According to Islamic Law, the public interest has two aspects facing Allah and the obligant. The public interest in the face of Allah is that something is in accordance with the purpose of the Shari, and the public interest in the face of the obligant is that something is in accordance with the purpose of the beholder.

The common point of the Methodist and Islamic jurist who dealt with the subject of public interest is to be sure of the suffering and hardship of the two worlds and the happiness of the two worlds. In this case, three different interpretations of public interest have developed. These:

- i. Understanding the idea of public interest in the interpretation of the Qur'an and Sunnah on which the norms are based (teleological interpretation),
- ii. The understanding that clarifies the pre-plan in deciding the issues that the main norm (nass) did not bring about a public interest (maslahah al-mursalah),
- iii. It is the approach that investigates the purpose of the provisions mentioned in the precision and issued by the case law.

It can be said that the norm-value relationship in Islamic law is based on the investigation of the point in which the Supreme Shari (al-Hakeem), who is the founder of the law, wants to lead society, especially individual. The approaches such as acceptance and gradual development of social reality, especially slavery, have a very rich structure in order to reveal the norm-value relationship.

2. c. The Distinction between Haram and Prohibition in the Context of Norm-Value Relationship

Another issue that needs to be mentioned about norm-value is the separation of the haram(bad)-prohibition in Islamic law. It can be said that it is not the same thing that the Qur'an prohibits with its revelation. In other words, when describing the forbidden things, it is necessary to separate the haram from prohibition. Because they are different in terms of worldly sanctions. The concept of prohibition is confused from time to time when it is translated into Turkish as forbidden, Haram and something to be avoided. When construing the prohibition words in Qur'an expressions like "...Bad/Unclean is forbidden..." "... Well-knowns were ordered, sins are also prohibited..." "...whatever the messenger gives you, take it, stay away from the things that he forbids" are found frequently. When all these statements are analyzed, the following result reveals. The prohibition tense as prose can be translated in Turkish both as haram and forbidden. It is a common practice for both Haram and Forbidden verbs to be translated into Turkish. If there is a worldly sanction in return for an act that is fixed by the order of prohibition, then what these tense means is forbidden. This is a normative structure. If we are not talking about a tense and worldly sanction, then it will be haram. It's just liked the cases of theft and waste. This is also the basis of the separation of the judicial-religious rule. However, Haram is a more full-fledged concept that includes prohibition. **Each haram is forbidden, but not every ban is haram.** In other words, a worldly punishment has not been imposed by the main norm (nass). It would not be wrong to say that there is a rich basis for haram and prohibition at the point of carrying Islamic law to a normative level. Because waste, although is haram, depends on the individual and relative. Therefore, it cannot be ruled, and it cannot be turned into law. Therefore, a ban cannot be brought under the name of waste by the state and managers.

"The prohibition tense is a compound used for Haram and prohibition. If it is placed in a worldly sanction it is forbidden. If it's not, it's just a Haram. Here, it is necessary to mention that the scholars of a community

*should be able to impose a worldly sanction for the community through consensus. **The word prohibition is different, and the tense of prohibition is different.** That's why they both don't do the same thing. Because the phrase where the form of prohibition is used means both haram and prohibition while the phrase where prohibition word is used may not mean haram and prohibition at the same time.”³⁴*

The Islamic jurist, who is authorized to make a norm here, considers the separation of haram-prohibition in order to make the public interest of society at the highest level, will provide a very broad basis for the normative structure of law.

2.d. The distinction between Judicial-Religious Rule in the Context of Norm-Value Relationship

When we look at the classical fiqh (Islamic jurisprudence) literature, we see that the provision is subject to dual classification, religious and judicial. In Islamic law, the provisions are divided into two parts: *religious, moral, conscientious and facultative* and *spiritual, legal, judicial and compulsory*. The provisions that are in the first section are left to the individual's own preference and the results should be folded with their consent. These are primarily personal concerns and the results of this behavior are not sanctioned when there is no direction reflected in public. However, it is obligatory to comply with the provisions in the second part. Although these provisions are an aspect of the individual, it is primarily public interest. In this respect, the sanction is handed over to the state.

As mentioned in the distinction between Haram-prohibition, for example, waste is the only haram, but it is not prohibited; its sanction is not earthly, but it is ethereal. This issue can be looked at in terms of protected interests. That is to say: “Haram is not preserved in the Islamic order even though halals are under the protection of the state and the law. For example, if a dispute arises in the treatment of a haram, and the matter is brought to court, the court does not accept and reject the case. The worldly sanctity of what is haram is thus it's not protected. The worldly sanction for what is being deprived is the punishment imposed for that prohibited act (Eskicioğlu, 2010).

The fact that the Islamic jurist, who is in the position of making the norm, takes this into consideration when determining the value, will provide a wide opportunity for establishing rules that are obeyed and obeyed with consent.

Conclusion

We're on the verge of a new civilization. From 18th century to today, there has been little development in the historical scene that can be said in favor of Muslims. Muslims have to heal the wounds of the Islamic world which became vulnerable after the collapse of Ottoman Empire, to revive the common language and cultural memory that has been destroyed, and to make serious preparations on the verge of a new civilization. The Western world has no intellectual wealth that will bring happiness to humanity. We, on the verge of a new civilization, have the potential to refer to our deep roots and say new original words about the moment. For the construction of a new world and a new civilization, we must update our fundamental concepts and offer a fresh spring to humanity. In this sense, the wealth embodied by Islamic law must be expressed in today's legal concepts and presented to the world.

³⁴ Prof. Dr. Osman Eskicioğlu expressed this thought, which is presented by Ali İhsan Pala “*İmam Şafiinin Yasak Yorumu*” in the context of the negation. For detailed information see, (Eskicioğlu, 2010).

Law is the area of legitimacy in which political power that governs the state or society and, most importantly, social consent is combined. Because the state can only legitimize itself by law. In this respect, the relationship between religion and law rests on the basis of realization of the problem of state acceptance of the state to society by law. No political state or government can exist without a source of legal legitimacy. Even if they exist, such structures are always faced with the problem of sustainability.

From the past to the present, every state and power, without saying that they manage the society on behalf of a principle such as justice, equality, fairness, etc. it could not get approval from society and could not be legitimate in society. In other words, no community will give consent to political power without respect for principles or complex of principles and will not want to be ruled by a state deprived of these principles and to the political power which is the means of governing it. That is why in history, all state and political authorities have always sought to create a basis of legitimacy. Although this situation is problematizing the causality of the law in a sense, it is also problematic in the way religion and the relationship between religion and the law as a means of legitimization. In other words, the most important element determining the relationship between religion and law is social consent. Religion is thus becoming a means of legitimization in a sense. The most important reason why religion is used as a means of legitimizing is that it is closely related to the world of values. Because if the law, which is the whole of norms, does not lean against the complex of values that have a positive effect on society, then the problem of the legitimacy of the law before the society emerges. For this reason, **another dimension of the relationship between religion and law is the norm-value relationship**. In the context of the norm-value relationship, it will be exaggeration to say that the western world is lack of value, but the western world of values is dominated by pure intellect and modern science. Therefore, in Western terms, the concepts like justice, equality, human rights, etc. have a ground where there is no God or no structure of the world of values. Therefore, these values pumped from the West to the world are **actually artificial values**. On the other hand, there are serious differences between values that belong to the Islamic world, **even if they are expressed by the same name**. That is precisely why the norm of value has come up in the Western world and there is serious debate about this issue. The values created by Islamic civilization are not artificial and experienced values; the values produced by the **revelation and mind under the control of revelation**. From this perspective, the norm-value relationship in the Islamic law, is original and has high potential in solving problems.

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