

LAW AND ETHICAL PARADIGMS IN THE DISCOURSE ON WESTERN PHILOSOPHY AND ISLAMIC PHILOSOPHY

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Abstract: *There are differences in the approach to law and ethics in Western philosophy compared to law and ethics in Islamic philosophy. Western philosophy itself is divided into several schools, including natural law philosophy, legal realism or positivistic philosophy, historical philosophy of law, sociological philosophy of law, and utilitarianism. These schools have different views on the position of law and ethics. In the discourse of Islamic philosophy, Law and Ethics or Morality are seen as interrelated principles. While Western philosophy is divided into several schools and dichotomizes between Law and Ethics, in Islamic philosophy they are integrated into the view that law and ethics are a unity and represent the spirit of Islamic teachings. This research aims to explain the role of law and ethics in Western philosophical schools. This research will explain how Western philosophical thought relates to law and ethics, and how the integration of law and ethics occurs in the context of Islamic philosophy. This research is a type of literature review or bibliographic study. The method applied in this research is descriptive analysis using a comparative approach. In the issue of Law and ethics, Western philosophical schools are divided into two views: those that unite law and those that separate law and ethics. The view that unites law and ethics includes natural law philosophy and historical philosophy of law. The view that separates law and ethics includes legal realism, positivism, social jurisprudence, and utilitarianism. Meanwhile, in the context of Islamic philosophy, the relationship between law and ethics is considered an integrated dimension in human life that cannot be separated.*

Keywords: *Ethics, Islamic Philosophy, Law, Western Philosophy.*

Abstrak: *Ada perbedaan dalam pendekatan terhadap hukum dan etika dalam filsafat Barat dengan hukum dan etika dalam filsafat Islam. Filsafat Barat sendiri terbagi ke dalam*

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beberapa aliran, di antaranya adalah filsafat hukum alam, filsafat realisme hukum atau filsafat positifistik, filsafat hukum historis, filsafat hukum sosiologi, dan utilitarianisme. Aliran-aliran tersebut berbeda pandangan mengenai posisi hukum dan etika. Adapun dalam diskursus filsafat Islam, hukum, dan etika atau moral adalah suatu prinsip yang saling berkesinambungan. Manakala filsafat Barat terbagi ke dalam beberapa aliran dan mendikotomikan antara hukum dan etika, dalam filsafat Islam sendiri menyatu dalam pandangan bahwa hukum dan etika adalah suatu kesatuan dan merupakan spirit ajaran Islam. Penelitian ini berupaya menjelaskan peran hukum dan etika dalam aliran-aliran filsafat Barat. Penelitian ini akan menjelaskan bagaimana pemikiran filsafat Barat terkait hukum dan etika, serta bagaimana integrasi hukum dan etika terjadi dalam konteks filsafat Islam. Penelitian ini merupakan jenis penelitian kepustakaan atau studi pustaka. Metode yang diterapkan dalam penelitian ini adalah analisis deskriptif dengan menggunakan pendekatan komparatif. Dalam persoalan hukum dan etika, aliran filsafat Barat terbagi menjadi dua pandangan, yakni yang menyatukan hukum dan etika dan yang memisahkan hukum dan etika. Pandangan yang menyatukan hukum dan etika yakni filsafat hukum alam dan filsafat hukum sejarah. Pandangan yang memisahkan hukum dan etika yakni filsafat realisme hukum, positivisme, sosiologi yurisprudensi, dan utilitarianisme. Sementara dalam konteks filsafat Islam, hubungan antara hukum dan etika dianggap sebagai dimensi yang saling terpadu dalam kehidupan manusia, tidak dapat dipisahkan.

Kata-kata Kunci: *Etika, Filsafat Barat, Filsafat Islam, Hukum.*

Introduction

Western philosophy tends to emphasize the separation and distance between the subject (human) and the object (world), with rationality and criticism playing a central role in philosophical discourse. On the other hand, eastern philosophy recognizes the unity and harmony between subject and object. Aspects of listening, empathy, and tolerance have a high significance in the context of Eastern philosophy (Cahyadi 2021,4).

Islamic philosophy is characterized by two main features: its level of religiosity and its orientation towards understanding the purpose of human life, such as happiness, tranquility, and inner peace. Unlike Western philosophy, Islamic philosophy does not place the same emphasis on strict systematicity or the “rationalization” of its substance. A more contemplative, introspective, and practical approach becomes essential in responding to the substance of Eastern philosophy. While Western philosophy tends to regard philosophy as a science rather than a way of life (philosophy of life), Islamic philosophy sees it as a “philosophy of life” that serves as a path to achieving life’s goals (Cahyadi 2021, 5).

When discussing law and ethics in the discourse of Western philosophy, it is inevitable to encounter two perspectives: the view that unites law and ethics and the view that separates law and ethics. Essentially, both perspectives stem from the same mission of creating justice and humanizing humanity. The question that arises then is how to measure this justice. Hence, two approaches emerge: first, justice is measured based on norms outside of the law (ethics/morality). Second, justice is

measured based on the law itself. The difference in achieving justice is what creates the gap between several schools of Western philosophy, including natural law philosophy, legal realism, positivism, historical philosophy of law, sociological jurisprudence, and utilitarianism (Suseno 1994, 85).

Meanwhile, in the perspective of Islamic philosophy, law enforcement occurs simultaneously with the cultivation of morality or ethics stemming from belief or faith. Commands and prohibitions are norms found within the law, while goodness and evil are moral judgments of an action (Syarifuddin 2014, 37).

Several research studies have examined law and morality in the Western tradition alongside law and morality in Islam, aiming to seek strong foundations and formulas for the implementation of a law. These include works such as *“Islamic Ethics: A Comparative Study of Al-Ghazali and Kant”* by M. Amin Abdullah (Abdullah 2020, 10), which discusses the comparison between two ideologies, Al-Ghazali and Kant. Additionally, there’s *“Islamic Law as Islamic Ethics”* by A. Kevin Reinhart (Reinhart 1983, 186), *“Integrating Legal and Moral Aspects in Islamic Law”* by Isa Agus Amsori (Amsori 2016, 87), and *“Sharia: Between Law and Morality”* by Nur Taufiq (Taufiq 2020, 87).

As mentioned in the previous paragraph, in the discourse of Western philosophy, schools of legal philosophy are divided into two views: those that unite law and ethics and those that separate law and ethics. Conversely, in the discourse of Islamic philosophy, law and ethics are two integrated parts of the dimension of human life and cannot be separated. In this context, I will outline the position of law and ethics in various schools of Western philosophy, including natural law philosophy, legal realism, positivism, historical philosophy of law, sociological jurisprudence, and utilitarianism. We will discuss the dynamics of Western philosophical thought regarding the separation between law and ethics and how the integration of legal and ethical aspects occurs in Islamic philosophy.

Law and Ethics in Western Philosophical Discourse

1. Definition of Law

Studies on the definition of law are not narrow, as there are differences among schools of legal philosophy and theories developed by subsequent thinkers. Here are definitions of law according to some schools of thought.

Influential positivist thinkers, such as John Austin, assert that law consists of a series of commands, both direct and indirect, issued by authorities to the members of their community who are part of an independent political society, where the authority’s power is considered supreme. A similar definition was also articulated by Blackstone in the 18th century, who explained that law is a set of rules of conduct

established by those in authority to be obeyed by those subjects to their jurisdiction (Ali 1996, 40).

The thinkers of the historical school define law as something influenced by space and time, where law grows from the customs and consciousness of society over time. Thus, if the life of a nation ceases, so too will its law. Savigny, for instance, believes that law must be rooted in the customs and collective consciousness of society (Bodenheimer 1978, 71). The legal rules produced and applied should reflect the legal spirit possessed by the society itself. This is crucial because only through this approach can the rules be implemented and function effectively within society. Law evolves alongside the evolution of society and, ultimately, will disappear along with the end of civilization.

The thinkers of the sociological jurisprudence school believe that good law is a law that aligns with the norms prevailing in society. Suitability here indicates that the law reflects the values held by the community. Positive law found within the legal system will only succeed if it aligns with the norms present in societal life. This school regards law as concrete judicial decisions (Rasyidi 2001, 66).

Traditionally, law is considered to be both idealistic and ethical in nature. In the classical era (6th century BC to 5th century AD), law was considered a reflection of the rules of the universe; while in medieval times (5th century AD to 15th century AD), law was geared towards rules and regulations that came from God. Since the beginning of the modern era (15th century), many people have spontaneously equated law with state law, which is defined as laws enacted by the ruler. Because it is enforced by force, it is known as positive law (Sutan 2010, 15). History records that these three views continued to develop and produce various schools and schools of law, reflecting the conditions and development of society in their respective times.

2. Definition of Ethics and Morals

In the realm of philosophy's categorization or exploration, ethics falls within the domain of axiology, a philosophical field delving into values often referred to as value theory. Etymologically, the term "ethics" originates from the Greek language, specifically from "ethos," denoting nature, character, or habit. "*Ethicos*" signifies morality, virtue, and proper conduct. Ethics can further be elucidated as the patterns of human actions or conduct, and it encompasses the overall "character" of individuals manifested through their actions. Ethics concerns not only the essence of individuals but primarily their conduct and actions (Dewantara 2017,3).

Etymologically, the term "moral" traces back to the Dutch word "*moural*", signifying morality and character. In terminology, morals are delineated as the instruction regarding what constitutes good and bad actions and behavior (Sinaga 2004, 19). While ethics and morals are

frequently perceived as akin, a distinction exists between them. Ethics tends to lean toward theoretical aspects, whereas morals place greater emphasis on practical application. Ethics examines human behavior from a broad or universal perspective, whereas morals are more context-specific. Morals establish guidelines, whereas ethics provide explanations for those guidelines.

Furthermore, there is also a distinction between ethics and etiquette. Ethics refers to a set of principles related to morality, such as the doctor's code of ethics, and so on. Meanwhile, etiquette refers to behavioral norms, such as customs and manners, aimed at maintaining good relationships between individuals. Etiquette is also often referred to as a label written on a piece of paper and attached to an object. These three concepts, related to the essence of values, are morality and ethics. Ethics is often considered a moral philosophy, while etiquette does not have a direct connection with morality (Falah and Musoffa 2023, 248).

Discussions on ethical philosophies developed in the Western world can generally be grouped into three: Hedonism, Utilitarianism, and Deontology. Hedonism directs ethics towards the goal of producing as much pleasure as possible for humans. Utilitarianism complements this by emphasizing that the pleasure or happiness that comes from good ethics is happiness for as many people as possible, not just for certain individuals. Deontological ethics (derived from the word "*deon*" meaning obligation), meanwhile, views the source of ethical action as a sense of duty. This school also believes that ethical attitudes are instinctive, and at the same time not entirely rational (Sinaga 2004, 19). The various thoughts of the figures on ethics are derived from the three schools above (Hedonism, Utilitarianism, and Deontology). The thoughts of each figure do not rule out the possibility of containing the principles of more than one of these major schools.

Emmanuel Kant then divided ethical actions based on two things, namely actions that are in accordance with (moral) obligations and actions carried out for the sake of obligation (Hardiman 2007, 146). In the context of ethics, judging whether human behavior is good or bad is based on the consideration of reason or ratio. While in the moral context, the assessment is based on the norms that grow and develop in society.

Franz Magnis Suseno almost echoes Kant in that ethics involves a critical and fundamental analysis of moral precepts and views, while moral precepts contain instructions, rules, and regulations regarding the way of life that makes a person a good human being. Therefore, if moral precepts instruct us to follow a precept, ethics aims to understand the reasons behind adhering to that precept. While ethics does not have the authority to give orders, it has the advantage of giving people an understanding of why they should follow a particular precept (Syarifuddin 2014, 39).

The Position of Law and Ethics in Western philosophy

Legal scholars have different classifications of schools of legal theory. For example, Northop categorizes legal schools into five categories: (1) Legal positivism, (2) Pragmatism legal realism, (3) Neo-Kantian and Kelsenian legal ethics, (4) Functional anthropology and sociology of law, and (5) Natural law. Friedmann, meanwhile, divides the schools into (1) Natural law, which is based on considerations of justice; (2) Positivism, which is based on the influence of the development of society on the law; and (3) Schools based on the influence of utility and interests. Soerjono Soekanto classifies legal schools as (1) Formalist school, (2) Historical school, (3) utilitarianism school, (4) sociological jurisprudence school, and (5) legal realism school. Sacipto Raharjo discusses legal theories, including Greek and Roman legal theory, natural law theory, positivism and utilitarianism, pure law theory, as well as historical, anthropological, and sociological approaches. Although diverse, these classifications and schools can be unified into the five most influential schools, as proposed by Lili Rasyidi. These five schools include natural law, positive law, Utilitarianism, historical school, sociological jurisprudence, and legal realism (Sutan 2010, 10). In general, and in brief, however, there are two opposing perspectives on the essence of law. Broadly speaking, these views can be divided into the traditional view and the modern view. The traditional view includes the natural law view, while the modern view is known as the positive law view.

Western scholars have developed different classifications of schools of thought. Some of these figures, as explained by Nurasiah Fakhri Sutan, include Northrop, Friedman, Soerjono Soekanto, Sacipto Raharjo, and Lili Rasyidi. The following is presented in tabular form. (Sutan 2010, 10) the following is presented in the form of an image.

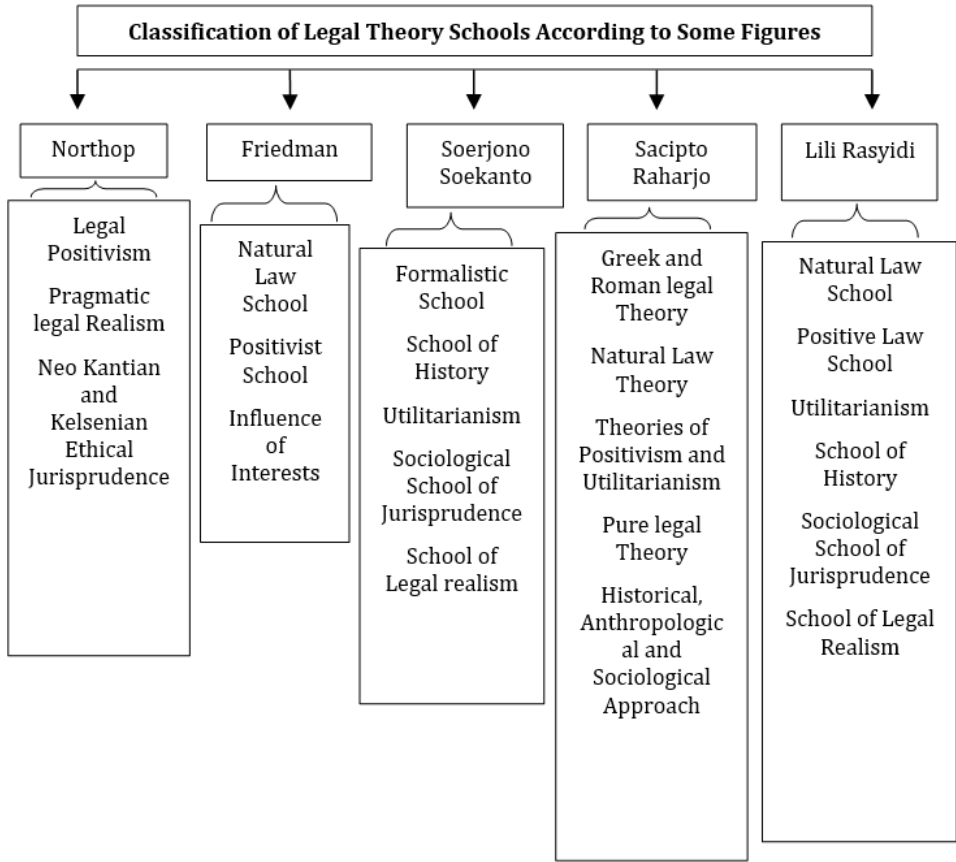


Figure 1. The Flow of Legal Theory

Here are the perspectives of each school regarding law and ethics:

1. Natural Law Philosophy

The viewpoint within the natural law school states that there is a significant relationship between law and morality, known as the morality thesis. This has two main implications: First, the validity of morality is logically required for law to be valid. Second, moral principles are considered integral parts of the natural order. However, another perspective within the natural law school is the normativity thesis, which asserts the separation between law and fact (Rappaport 2004, 73). Natural law does not solely refer to facts. It pertains to laws considered eternal, with its norms originating from God, the universe, and human will. As an eternal and immutable law, it is not bound by time and provides absolute justice to all mankind. This natural law is rooted in human or societal consciousness and is not bound by conventions, laws, or other institutions.

2. Legal Realism Philosophy

Within the framework of legal philosophical schools, legal realism refers to a viewpoint that separates law from morality and emphasizes social facts more. Realism, in this context, refers to its connection to actual reality, the world as it currently exists. Legal realism leads to an examination of the concrete implementation of the law, not just as a collection of rules in legislation but not implemented (Ali 2004, 41). If in the concept of natural law, there is a union between law and morality, the legal realism approach instead emphasizes their separation. Legal realism also rejects the separation between law and facts, which contradicts the viewpoint of natural law. For legal realism, law can be explained as social facts or as a result of social interactions.

3. Legal Positivism Philosophy

This viewpoint is known for being developed by Hans Kelsen through the theory of Pure Law. According to Kelsen, law must be separated from ethics and social facts, thus becoming pure (Hujibers 2012, 156). In other words, the law must be entirely autonomous. Therefore, every legal norm must exist in its objective realm as positive norms, which are affirmed as the result of concrete contractual agreements among members of society. From the explanation above, the law is no longer understood as abstract meta-legal moral principles about the nature of justice, but as *ius* that has undergone a process of politicization as *lege* or *lex*. This aims to ensure certainty about what is considered law and what should be declared as things not included in the legal domain.

4. The Philosophy of Historical Jurisprudence

The thesis developed by the historical school, pioneered by Savigny, shares some similarities and differences with natural law theory and bears resemblance to empirical positivism. Its similarity with natural law lies in the union between law and morality (morality thesis). Both natural law theory and the historical school acknowledge the close relationship between law and morality. However, the difference lies in the view of morality, where according to the historical school, morality is not universal as in natural law theory, but rather particular. Each law is seen as a reflection of the spirit or character of a nation (*volksgeist*), and the moral values it contains vary depending on the context of time and place in which the law applies (Ali 2017, 223).

The historical school considers that law and facts cannot be separated, unlike the approach of empirical positivism which tends to simplify. In this view, law is regarded as something that grows and evolves with society, not something created directly. Law is seen as an organic part of social behavior on a large scale, and research in the historical school requires

field data to observe how the legal practices of society change over time. Therefore, in this perspective, the law is a reflection of institutionalized behavioral patterns and cannot be separated from the observed facts in society (Ali 2017, 224).

5. Sociological Jurisprudence Philosophy

The perspective embraced by this school involves the separation of law and morality. Legal Historical Philosophy still utilizes positive norms in legislation as guidelines, but does not consider them as the true essence of law; rather, only guidelines for handling specific cases. On the other hand, this school also does not isolate law from facts because judicial decisions must align with the values prevailing in society. In other words, the basis of judicial decisions is not only based on positive norms in legislation but also values or realities recognized and acknowledged in society (Ali 2017, 223).

6. Utilitarianism Philosophy

The utilitarianism perspective and the positivism thesis share similarities in the ontological dimension because both view law as positive norms within the legal system. Thus, they both believe that law should be separated from morality (separability thesis). However, the difference between utilitarianism and positivism lies in the epistemological and axiological dimensions. Utilitarianism does not solely focus on the goal of legal certainty. If positive norms are directed only towards achieving certainty, then the task is considered complete once legal decisions are made. However, utilitarianism emphasizes that the utility dimension of legal decisions also needs to be considered to assess the sustainability of a positive norm (Sidharta 2006, 253).

In general, and briefly, there are four opposing perspectives regarding the essence of law. First, the perspective that unites law and ethics. Second, the perspective that separates law and ethics. Third, the perspective that unites law and facts. Fourth, is the perspective that separates law and facts. Below, I present them in table form.

The Western Philosophical Tradition	The Integration of Law and Ethics	The Separation of Law and Ethics	The Integration of Law and Facts	The Separation of Law and Facts
Natural Law Philosophy	√			√
Legal Realism Philosophy		√	√	

Legal Positivism Philosophy		√		√
The Philosophy of Historical Jurisprudence	√		√	
Sociological Jurisprudence Philosophy		√	√	
Utilitarianism		√	√	

Figure 2. Four opposing perspectives regarding the essence of law

Law and Ethics in Islamic Philosophy Discourse

1. Definition of Law

Etymologically, the term “law” (*al-ḥukm*) is related to the words “prevention” (*al-man‘u*) and “separation and decision” (*al-faṣl*). This is because a command to do something also implies a precaution against the opposite action (for example, a command to do good also implies a precaution against evil behavior). Law is also considered a dividing tool, as it functions as a standard that allows distinguishing between right and wrong. In addition, the law is also used as a tool to resolve disputes and make decisions. Practically speaking, in the context of a court of law, the law acts as a decider or decision-maker between the parties to a dispute. In addition, from a linguistic point of view, law is often considered equivalent to “the decree or decision of the Judge in Court” (*al-qaḍā’*), because law is the main instrument in the judicial context. Therefore, linguistically, the law implies decree or decision (*al-qaḍā’*), separation (*al-faṣl*), and prevention (*al-man‘u*) (Adam 2019, 1).

The term law as currently used in the Indonesian language comes from the word “*ḥukm*”, which implies norms or rules. It refers to regulations, standards, guidelines, or guidelines used to judge human behavior and objects. Etymologically, the word “law” comes from “*ha ka ma*” which means to resist. From this, the word “*al-ḥakamu*” is formed which refers to rejecting injustice or persecution. In terms of terminology, the law is a set of rules and criteria to direct actions to their proper ends (Poespoprojo 1999, 74).

Islamic law holds significant significance in the lives of its followers, serving as a dynamic and innovative influence. Discussions surrounding Islamic law constantly evolve, remaining pertinent in society’s ongoing development, particularly with the introduction of novel concepts. The term “Islamic law” can be understood as *al-fiqh al-Islāmī* or, in specific

contexts, *sharī'ah al-Islāmī*, and within the discourse of Western legal scholars, it is recognized as "Islamic law" (Amsori 2016, 391).

While sharia etymologically, means *al-'utbah* (the meanderings of the valley), *al-'atabah* (doorways and stairs), *mawrīd al-sharībah* (the way to find water), and *al-ṭarīqa al-mustaqīmah* (the straight path). The forms of the word *sharī'atin* in the Qur'an can be found in 5 (five) verses, namely Q.S. Al-Mā'idah [5]: 48 (*shir'ah*), Q.S. Al-Jāthiyah [45]: 18 (*sharī'ah*), Q.S. Al-'Arāf [7]: 163 (*shurra'a*), and Q.S. Ash-Shūrā [42]: 13 and 21 (*shara'a*, *shara'ū*). From these verses, it can be drawn that sharia means "a clear path that leads to victory". When taken from the words *sharī'ah* (Q.S. Ash-Shūrā [42]: 21) and *shir'ah* (Q.S. Al-Mā'idah [5]: 48), the meaning of *sharī'ah* becomes the religion outlined by Allah along with His commandments. (Amsori 2016, 391).

According to Dedi Supriadi, the terminology of sharia can be divided into two, namely sharia in a broad sense (the original meaning) and sharia in a specific sense. In *al-Mawsū'ah al-'Arabiyah al-Musyassarah*, it is mentioned that *sharī'ah* used to be *muṭlaq* interpreted as "Islamic teachings consisting of creeds and laws of practice", now the meaning of *sharī'ah* has been specialized (limited) with the term "a set of *shara' laws that are 'amaliyyah (practical) extracted from the Qur'an and al-sunnah or ra'yu and ijmā'*" (Naṣār et al. 2010, 2020). Therefore, what is meant by *sharī'ah* is a regulation that has been determined (revealed) by Allah to the Prophet Muhammad for humans which covers three fields, namely, beliefs, actions, and character. In other words, according to Wilfred Cantwell Smith as quoted by Supriyadi, sharia is the essence of Islamic law as an elaboration of God's commandments" (Supriyadi 2010,18).

Apart from the above opinion, there is also an opinion that states that *sharī'ah*: "all of Allah's commands relating to human behavior" because the object of study is human conduct, behavior, or actions. There is also a definition that reads that sharia is: "All the commands of Allah that relate to human attitudes and behavior, whether they are *'aqīdah* (called *uṣūlī*) or *'amaliyyah* (called *furū'ī*)". *Uṣūlī* (principal) is the subject of study of the science of creed which concerns matters of faith, such as faith in Allah, the messengers, angels, and is inward. While *'amaliyyah (furū'ī)* is human work that is outward (Sopyan 2010, 3).

The meaning of these terms comes from various schools of Islamic legal thought (*fiqh*) which have different nuances according to the socio-cultural and political context in which these ideas grew and developed. The use of the phrase "Islamic law" comes from the term sharia, which is based on wisdom and aims to achieve the welfare of society. In this context, it is linked to the principles of justice, empathy, wisdom, and benevolence.

Seeing that there are many views in finding the epistemology of Islamic Law, at least it can be captured that there are 4 (four) concepts in Islamic

Law, namely sharia, *fiqh*, *qānūn*, and sharia Law. These four concepts constitute the overall dimension of Islamic Law itself.

In simple terms, sharia is a collection of norms revealed in sharia (Al-Qur'an and Hadith). *Fiqh* or *al-fiqhu al-hukmuis* the study of law as a basis for regulating concrete behavior, thus *fiqh* can be said to be synonymous with sharia. *Qānūn* is a part of sharia that is legitimized by political rulers in a certain time and context. *Shara'* (*hukum shar'i*) is a unit of norms collected from the norms of sharia, *fiqh*, and *qānūn*. *Shara'* law covers various aspects of life, including worship, morality, economics, society, and politics. The basic principle of sharia Law is to carry out the will of Allah SWT and follow the guidance contained in Islamic teaching.

2. Definition of Ethics

In the tradition of Islamic thought, ethics, along with politics and economics, is often included in the category of practical philosophy (*al-hikmah al-'amaliyyah*). Practical philosophy deals with things as they ought to be. However, the foundation of this is theoretical philosophy (*al-hikmah al-nazariyyah*), which deals with things as they are, including the metaphysical aspects (Abdullah 2020, 7).

Ethics is commonly defined as an aspect of morality. While both are concerned with judging the goodness or badness of human behavior, ethics, and morals differ in their conceptions. Simply put, morals focus more on judging the "good and bad value of any human action," while ethics studies the concept of "good and bad" more generally. In other words, ethics serves as the theory of right or wrong behavior (known as ethics or *'ilm al-akhlāq*, while morality (*akhlāq*) is the practice. *Akhlāq* encompasses the praxis of Islamic teachings that govern human moral behavior. *Akhlāq* is also often defined as the science of virtues and how to achieve them, so that they can be applied in everyday life, as well as the science of bad things and how to avoid them (Hardiono 2020, 27).

Al-Ghazālī represents the Islamic scholars themselves as in *Ihyā' 'Ulūmuddīn* moral is paired with *akhlāq*. *Akhlāq* is an inner action that is capable of producing actions without requiring a complicated process of thinking and consideration. If this action produces some good and praiseworthy actions, either according to reason or religion, then this is referred to as good morals. However, if the resulting action is bad, then this is referred to as bad morals (Hardiono 2020,27).

For Muthahhari, *akhlāq*(morals), and ethics play an important role for humans. Muthahhari states the reason why humans need a system of morals or morality. He explains that when humans were created by God, they were in a weak state, but had great potential to achieve more perfection than other creatures. However, humans have weaknesses in their basic instincts and nature. These two aspects are very important. In simple terms, Muthahhari wants to state that initially human instincts

were formed in a rudimentary state. Then, the *akhlāqī* system came to overcome the weaknesses and shortcomings in man's basic nature, so that man could achieve perfection through the power of his mind and will (Muthahhari 2014, 52).

Efforts to formulate ethics in Islamic history were made by various thinkers from various branches of thought including legal scholars (sharia or exoteric), theologians, mystics, and philosophers. In general, there are four views on the meaning of ethics in Islamic philosophy: *First*, Islam favors a theory of ethics that is pharaonic, in which all humans essentially have a pharaonic knowledge of good and evil. *Second*, morality in Islam is based on justice, which is putting things in their proper proportion. *Third*, ethical action is believed to culminate in happiness for the perpetrator. *Fourth*, ethical action is rational (Muthahhari 2014, 14).

Majid Fakhri categorizes Islamic ethical schools into four categories. First, there is scriptural morality which refers to the type of ethics in which the relevant decisions are taken from the Qur'an and *sunnah* by using the abstractions and analyses of philosophers and theologians under the discursive methods and categories that developed in the 8th and 9th centuries. Second, there is theological ethics which means the type of ethics in which ethical decisions are taken entirely from the Qur'an and *sunnah*. The Muktaẓilah thought belongs to this type of ethics. Third, there is philosophical ethics. This is the type of ethics where ethical decisions are based entirely on the writings of Plato and Aristotle which have been interpreted by Neo-Platonic writers and Galen who combined the doctrines of the stoic, Platonic, Pythagorean, and Aristotelian schools. Figures like Ibn Mishkawayh and his successors belong to this group. Fourth, there is religious ethics, which is a type of ethics in which ethical decisions are based on the Qur'an and *sunnah*, theological conceptions, philosophical categories, and some Sufistic elements. The main elements of this ethics usually focus on the world and human beings. This type of ethical thinking is more complex and unique to Islam. Some figures who fall into this category include Ḥasan al-Baṣrī, al-Mawardi, al-Ghazālī, and Fakhruddīn al-Rāzī (Muthahhari 2014, 30).

Integration of Law (Legal) and Ethics in Islamic Law

Coulson argues that while the consensus among Islamic scholars is that law and ethics in Islam are interconnected, the distinction between them is not clearly defined, and there is no definitive classification between legal principles and moral values in Islam. He suggests that a clear separation exists between the effects of legal prohibitions based on moral principles. For instance, within society, there is a recognized division between standards that can be legally enforced by courts and moral standards tied to individual conscience. Human actions may fall into the category of permissible, meaning they hold neither positive nor

negative value from either a legal or moral standpoint. Alternatively, actions may be deemed obligatory, necessitating their performance. However, if these obligations pertain to religious duties such as prayer and fasting, courts do not compel individuals to fulfill them. Although sharia advises wrongdoers to repent, the consequence is merely divine displeasure rather than legal sanction (Sanusi 2020, 90).

As mentioned earlier, the epistemology of Islamic law is based on the value of ethics in the main source of Muslim philosophy, namely the Qur'an. Because the Qur'an itself contains general principles (guidelines) for Muslims on how to live life. Therefore, the Qur'an touches on various aspects of spiritual, intellectual, and emotional aspects. The Qur'an is the most fundamental reason why Law and Ethics go hand in hand in the context of Muslim life. This is because the Qur'an is the word of God in the form of a codification of Law and Ethics. In addition to this fundamental reason, three other reasons illustrate the integration of Law and Ethics in Islamic teachings.

1. Ethics as a Muslim Philosophy of Life

Islamic law, or sharia, constitutes an integral component of the moral principles within Islam's teachings, while Jewish law is a fundamental part of the moral values upheld in Judaism. Sharia encompasses various subsystems, including criminal law (*jināyah*), state law (*siyāsah*), civil law (*mu'āmalah*), marriage law (*munākaḥah*), and inheritance law (*farā'id*). In contrast, Jewish law is rooted in the Torah and Zabur, which constitute the Old Testament. This Old Testament was subsequently elaborated upon by Jewish rabbis, evolving into practical and contextual legal doctrines known as Talmudic law, which were later compiled into two works: the Babylonian Talmud and the Jerusalem Talmud. Christian law, originating from the Gospels, underwent development during medieval times through canon law (Luthan 2012, 511).

Transgressions against Islamic religious ethics are seen as transgressions against God's law, similar to how other transgressions can lead to judicial penalties. In sharia, Islam is perceived as a collection of legal and moral principles, providing a comprehensive structure for human conduct that stems from the supreme authority, the divine will. Consequently, the distinction between law and morals is not consistently well-defined, unlike in Western societies in general (Amsori 2016, 39).

Fazlur Rahman asserts that the fundamental essence of the Qur'an is its moral essence, grounded in monotheism to achieve social justice. The moral law, being divine command, is eternal and beyond human creation or alteration; thus, individuals are required to adhere to it. This adherence, termed Islam, entails the practice of worship or devotion to Allah in daily life. The Qur'an's emphasis on the moral law leads many to perceive God primarily as the deity of justice (Hardiono 2020, 31).

2. Ontology of Islamic Law is Ethics in Islam

The ethical basis of law is a crucial element in the legal system, guiding the formulation, interpretation, and implementation of law. Legal ethics involves the values, moral principles, and philosophical considerations on which the law is based. In the context of Islamic Law, an in-depth understanding of the role of ethical philosophy in shaping the basis of legal ethics has significant relevance. It not only influences the implementation of law in society but also reflects the values and justice upheld by Muslims.

'Aqīdah and morals are likened to the law of light reflection. Thus, the preliminary conclusion in analyzing the relationship between *'aqīdah* and morals in al-Rāzī's thought is that a person's morals, whether good or bad, heavily depend on the cleanliness or impurity of the soul. Research on the relationship between tawhid and morals is equally important as studying the source of activity itself. If the source is clean, then the result will also surely be clean because they are both integrated units. Until now, *'aqīdah* has played a very significant role in shaping human morality. This is because humans have two powers: the power of thought or perception and practical power. Both of these are strongly influenced by *'aqīdah*, while the practical power in action is an implication of morality (Has2023, 240).

If the source of Western ethics comes from the literature of ethical philosophy formed by the intellectual dialectic path of philosophical figures and legal experts, then the source of Islamic Ethics is the Qur'an al-Karim which contains the sentences of God that have been believed to be fundamentally and substantially perfect in truth and justice. The Qur'an contains multi-dimensional teachings, not only containing theological aspects but also anthropological and cosmological aspects. This is why Islam as a religion supports the revolution of monotheism (recognizing the Oneness of God) on the one hand and on the other hand the moral revolution (ethics) simultaneously. The ontology of Islamic ethics is based on the unity of these three aspects which then form the dimensions of Islamic Law. This relationship can be described with a vertical pattern of horizontal patterns.

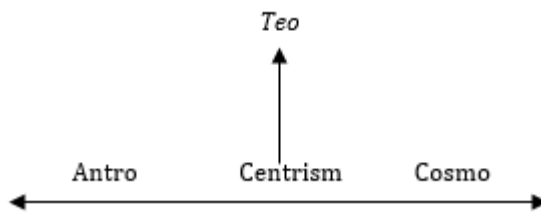


Figure 3. Dimensions of Islamic Teachings

The importance of the role of ethical philosophy in shaping the ethical basis of Islamic law lies in its contribution to enhancing the understanding

of how law can reflect moral values, justice, goodness, and divinity for Muslims. This is also related to efforts to ensure that Islamic law does not only function as a means of social control but also as an instrument that reflects the moral goals pursued by the teachings of Islam itself.

3. Law and Ethics is the Formulation of Islamic Law Itself

Hazairin argued that Islamic sharia represents a comprehensive legal and moral framework, serving as a broad blueprint for human conduct that originates from the supreme authority of God's will. Consequently, the demarcation between law and morality is not as clearly defined as in the Western tradition. Hence, scholars' involvement in decision-making processes becomes crucial. Although inseparable, Western positive law sometimes allows for a distinction between the two, where breaches of the law might incur punitive or social repercussions, while breaches of morality typically lead to social repercussions alone (Sanusi 2020, 95).

In the formulation of Islamic law, these four elements come from the same source but have different legal orientations and ultimately form an overall Islamic law formation.

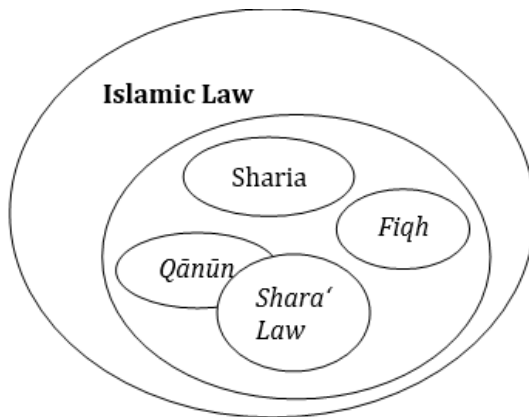


Figure 4. Formation of Islamic Law

Therefore, the existence of a strong moral influence in the determination of Islamic law and the non-separation of the two clearly, according to the author, is not a weakness of Islamic law but is part of its perfection. This is because the law not only includes the concept of right and wrong but also includes the values of good and bad, public interest or not, which are also found in morals. The values of truth and goodness possessed by morals, and peace and prosperity possessed by both, should go hand in hand in all aspects of human life.

Conclusion

The issue of law and ethics within the scope of Western philosophy presents two dominant perspectives: one that integrates law and ethics, and another that separates them. Fundamentally, both of these views stem from the same goal of creating justice and enhancing human dignity. The subsequent question then becomes how to measure this justice. As a result, two approaches emerge: first, justice is assessed based on norms outside of the law (ethics/morality). Second, justice is evaluated based on the law itself. The differences in approaches to the relationship between law and ethics create distinctions among several schools of Western philosophy. Those supporting the integration of law and ethics include natural law philosophy and historical philosophy of law. Meanwhile, those separating law and ethics include legal realism, positivism, sociological jurisprudence, and utilitarianism.

From the viewpoint of Islamic philosophy, the implementation of law coincides with the nurturing of ethical values derived from faith. Directives and restrictions are inherent in legal norms, whereas assessments of virtue and vice pertain to moral evaluations of conduct. The epistemology of Islamic law is based on the ethical values found in the primary source of Islamic philosophy, which is the Qur'an. Since the Qur'an contains general principles (guidance) for Muslims on how to live their lives, it addresses various aspects, including spiritual, intellectual, and emotional aspects. The Qur'an serves as the fundamental basis for why law and ethics go hand in hand in the context of Muslim life because it is the word of God that codifies law and ethics. In addition to this fundamental reason, three other reasons demonstrate the integration of law and ethics in Islamic teachings, including ethics as the philosophy of life for Muslims, the ontology of Islamic law as ethics in Islam, and law and ethics are formulations of Islamic law itself.

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