

EXPLORING THE RELIGIOUS AND MORAL FOUNDATIONS OF INDONESIA'S LEGAL DEVELOPMENT

Hernawati Ras, Universitas Langlang Buana
Dani Durahman, Universitas Langlang Buana
Eni Dasuki Suhardini, Universitas Langlang Buana

ABSTRACT

Religion is a guide to worship of human to Allah SWT. This religion was created or established by God, then revealed to human through the Prophet, human have been equipped by Allah SWT with reason and conscience. So, human reason and conscience are causes human to believe and carry out the teachings and rules of religion in their daily lives. The meaning of religious rules is understood by human to the extent that can be grasped by the mind and conscience of each individual human being which may not be the same to one at each other, so, the way people carry out religious rules will depend on the results of their interpretation and understanding of what was revealed by Allah through the Prophet. The function of religious rules as the final aspect of our mortal reality provides guidance to all functions of our consciousness. From it arises an external relationship between trust and legal aspects. People's beliefs have a great influence on the development of law and legal institutions. Showing generosity towards others is ethically wrong if you do not fulfill your legal obligations to him first. The aspects of trust in human are directly related without the mediation of other aspects, with the human conscience. This is the radical religious center of mortal human existence, in which all the functions of life are bound to time as if united (converge) at one hotspot, from which radiate the paths of life.

Keywords: Religious Rules the Foundation of Legal Development.

INTRODUCTION

A religious principle is a set of rules which people believe as commands from Allah SWT revealed to humans through the Prophet. The main point, religious rules regulate the relationship between human and God, and some human relations. These religious rules that were created or established by Allah SWT, were later revealed to human through the Prophet, and acceptable to human because they were equipped by Allah SWT with reason and conscience (Chulwoo, 2014). So, it is the human reason and conscience that made them to believe and carry out the teachings and rules of religion in their daily lives. The meaning of religious rules is understood by human to the extent that can be captured by the ability of the reason and conscience of each individual which may not be the same to one at each other; so, the way people carry out religious rules will depend on the results of their interpretation and understanding of what is revealed by Allah through the Prophet. Therefore, it is possible the understanding among adherents of the same religion about the teachings and religious rules can be different. Because of that, the role of the cleric of each religion is very necessary to assist the people in gaining an understanding of what is commanded by Allah SWT. The role of the clerics to build, develop and improve the quality of the people is very important. It is

the main task of them to foster the guide of their people, in addition to teach the religious rules (Lev, 1965).

Several systematic study books on Islamic ethics emerged recently discuss the implications and consequences of adhering to a certain understanding of morality. In looking at the reality of social changing caused by the current of world globalization, it is better if we glance at the relationship between ethics and religion in the perspective of the Islam conception (Helmut, 1975). In the world of Islamic thought, the discussion of ethics involves controversy between various notions of the use limitations of reason in front of revelation.

George F. Hourani, an observer of Islamic ethics, made five classifications of understanding concerning the relationship between *`aql* and *naql* in Islamic ethics. First, revelation and independent reason.

Adhering to the Al-Qur'an, Shafi'i prefers and uses more Hadith as a source than legitimate law. Only then was expanded by involving the analogy methodology (*qiyas*). Because the use of *qiyas* implies that the use of reason must be under the guidance of revelation, it is stated that reason depends on revelation. Shafi'i is uncomfortable to accept *ijma'*, which is the agreement of the jurists (Rahardjo, 2006).

Revelation is considered the only guide to life for human behavior. Without guidance from God, human will lose their way and get lost. Ash'ari added ontological support to the epistemology of Islamic ethics by saying that right actions do not have 'meaning' if outside of God's command. Ash'ari believed that an objective standard of values in ethics, as stated by the Mu'tazilah, would rival or even limit the God's omnipotence.

The rules of law is a rule that regulates the behavior of members community, which at one time and in a certain place was felt as a demand for justice for the realization of orderly justice to open up opportunities for everyone to achieve happiness in living life in the world. The law aims to bring about justice that ensures the certainty and predictability in society. Compliance is not left entirely to the free will of every citizen (Lemaire, 1955), but can be forced by the community in an organized manner in accordance with the rules of law governing the law enforcement. At present, the majority of the rules of law are determined by the competent authority (public authority, government), which is implemented and enforced by the government, if necessary by using the instruments of state power in accordance with applicable procedural rules in the form of legal rules too (Rahardjo, 2009).

Legal Rules

The process of establishing legal rules can be explained as follows. The ability to distinguish right from wrong, good-bad, fair-unfair, inhumane-humanity, leads to the emergence in human consciousness the belief that in certain concrete situations people should behave in certain ways because it is fair (Aspan, 2020). The awareness that in certain situations people should behave or not behave in certain ways because the demands of justice are called personal legal awareness. Through interaction between people in society, over time a similar feeling is formed about what feels fair or unjust, about what should be done or not done in certain situations because it feels fair and needs to create order in the community, and with that formed public legal awareness or legal awareness of the people. So, in a long time the personal legal awareness through social interaction turned into people's legal awareness. If the awareness that in certain situations people should behave in a certain way, for the sake of justice and order, used as a guide to behave in the future in social relations, then that awareness becomes a rule of conduct or norms in society. If adherence to the behavior rules is not left entirely to the free will of individuals, but can be forced in an organized manner by the community as a unit for the realization and maintenance of justice, then the code of

conduct is called the legal rules. The rules which at one time and in a certain society are generally obeyed and enforced are called positive legal rules. The application of and generally adhering to these positive legal rules will lead to the establishment of fair order and predictability within the society (Mahy, 2013).

Legal Theory of Development in dealing with the challenges of change referred to relying on the law as a normative force that must be rooted in the community, but at the same time the law must be empowered to change the attitudes and behavior of the people more than the change in attitude and behavior of the bureaucracy in the government system of Indonesia. Progressive Legal Theory does not recognize the strengths of normative and written law or laws as a means of finding solutions in people's lives or even as a means of community renewal because all written legal products are seen as always reflecting the interests of power rather than the interests of the justice of the people (Khaeron, 2013).

Satjipto Rahardjo's (Rahardjo, 2006) views on the characteristics and functions as well as the role of law in development are distinguished in two ways, first, the law is always placed to look for the basis for ratification of an action that holds the procedural characteristics of the legal basis and the regulatory basis (Musa, 1963). The second characteristic of law in development is the instrumental nature which is seen by Satjipto has exchanged with the forces outside the law so that the law becomes a channel to carry out potential decisions or according to him, the law as a means of social engineering. He has detailed the following matters:

1. The law is intended to strengthen and secure the implementation of development and its results;
2. The law provides support and direction for development efforts to achieve fair and equitable prosperity;
3. The law grows and develops national discipline and a sense of social responsibility in every member of society;
4. The law creates a climate and environment that encourages creativity and community participation in development and supports healthy and dynamic national stability.

Religious Rules

Mentioning conscience as a source of morality raises the question of whether it is guaranteed that the voice of conscience can always be dominant in human life, so that it will always be obeyed. It is known that in the human soul (already mentioned in the previous chapter) there are two kinds of potential (strength): the power that attracts to good namely conscience (Atmasasmita, 2012), and the power that attracts to bad namely lust. The existence of these two kinds of strength is obtained by its confirmation in Quran *surah* ash-Shams verses 7-10: For soul which completes it; (Allah) inspired him (the way) evil and goodness; truly blessed are those who purify it and truly fail those who pollute it.

That verse above states that conscience to always live, that its voice is always loud, therefore people must always purify their souls, draw closer to God, choose a good environment, and often read the history of previous people to be able to consider the circumstances faced now (Damian, 1972).

If the conscience is not preserved, even though it is never dead at all, then the passions will be stronger, and finally the voice of conscience will sound even weaker.

Quran states that heretical people are people who live according to their own passions, ignoring the guidance of Allah Quran 28: 50. On the other hand, in another *surah*, Quran states that whoever feels fear when standing in front of his Lord, and refrains from his desires, then heaven is his residence someday Qs 79: 40-41. His Messenger Muhammad SAW, who possessed grandeur of moral. One thing is certain, what has been shown by the Messenger of Allah, in every behavior of his actions is the embodiment and manifestation of the treatise (Quran) carried from his Lord, Allah SWT.

The concept of Islam is the concept of faith which was revealed by Allah SWT and sourced from Him alone, without taking another source. This distinguishes it from philosophical concepts created by human thought about the nature of God, the nature of nature, or the nature of human beings and the caftan between these nature. It also distinguishes it from pagan religions or beliefs created by feelings, delusions, prejudice, and human concepts.

One can safely say that the concept of Islam is the only aqeedah concept that remains original rabbani and has the nature of rabbani. The celestial concepts brought by the previous religions have been mixed with deviations in certain forms as we see them today. It has been added to the basic contents of the book that was revealed, explanations, concepts, regional territories (Meuwissen, 2007), additions and human knowledge, integrated into it, so that change the rabbani's character. While Islam itself keeps its principles, its original source has not been polluted and its rights and vanity have not been mixed in it.

Islam is not entirely aimed to create a society consisting of saints although virtues of holiness are highly praised in the Quran as it creates a social environment consisting of balanced human beings', which unites their diverse activities within ethical boundaries predetermined by God (Nonet, 1978). While every effort must be devoted to heal people from their weaknesses, his natural tendency for self-satisfaction must not be totally ignored.

Legal Aspects and Aesthetic Aspects

Next we direct our attention to the aesthetic aspects as beautiful aspect and harmony. This aesthetic aspect is the research field from Aesthetics. This aspect occupies a special position in our example. The legal aspects of the example related with and rooted in aesthetic aspects. Between the two there is first external relationship. The law regulates the rights to works of art. Copyright is the right of the creator (maker) of scientific, literary and artistic works to announce and distribute (reproduce) the work in article of the Copyright Act of 1982.

Law also plays a role in works of art, a.l. in "Antigone" by Sophocles, "The Merchant of Venice" by Shakespeare, "Crime and Punishment" by Dovstojevski, "Les Gens de Justice," by Daumier and so on. Concrete objects such as the text of the law can have a certain beauty: Stendhal every morning reads a few paragraphs from the Civil Code, "pour prendre le ton". Compare to Gustav Radbruch, Rechtsphilosophie, par.14 (Aesthetics des Rechts).

Far more important is the internal organic relationship. This relationship shows that we in the capital structure from the legal aspect will deal with an element that points to the aesthetic aspect without entering into it. This element is a characteristic of the legal aspect itself (not derived from anything else), but shows an organic internal relationship with the aesthetic aspect. The element of this legal aspect is the element of juridical harmony or balance. The jurist will say, that there must be a juridical balance between criminal events and punishment, between unlawful acts and compensation. It is a fundamental legal principle, which must be taken into account in all areas of law See H.J. van Eikema Hommes, Elementaire Grondbegrippen Van Het Recht, Hoofdstuk XVIII.

Legal Aspects and Moral Aspects

Until now we have discussed the relationship between legal aspects and aspects which in reality we are bound by time lie on the basis of the legal aspects and underlying the latter. The legal aspect would not exist, if there is no cultural-historical aspects, than there would be no human culture and cultural development, and there would be no legal development as a

cultural phenomenon (Hourani, 2007). If there is no aspects of organic life, there would be no living things and a legal system, and so on.

DISCUSSION

This explains that the internal relations of the legal aspects and the underlying aspects are also not the last that can be absent. Nor can a legal system be imagined, in which there is no juridical unity, no area of validity of its legal rules, in which it does not give legal force to its legal rules, in which there are no organs laws that maintain the legal life, and so on. Now there are still two aspects, which in our reality are bound to time, not as a basis for legal aspects, but those that follow (relying) on them, namely moral aspects and trust aspects or pistic aspects. So, these aspects are rooted in legal aspects.

The moral aspect is the aspect of love that is bound to time. Research field from Ethics. We know the love of parents, love of children, love of marriage, friendship, solidarity of co-workers, love of the motherland, respect for fellow human, love of music and so on.

Kindness towards others is ethically wrong if you do not fulfill your legal obligations to him first. But there is also an internal relationship. These are the principles of fairness and judicial propriety, good faith, decency, juridical error, risk, and so on. These principles are in people's minds when people talk about justice in a juridical sense. The abuse of subjective rights is contrary to the principles of juridical morals.

Reason understanding and appreciation of conscience towards the structure and reality of its existence rise to the appreciation of what is fair and what is unjust (legal awareness). In essence, the law is a product of the assessment of reason that is rooted in human conscience about justice regarding human behavior and human life situations. The appreciation of justice raises the assessment that in certain social situations people should behave in certain ways, means that they should do or not do a certain action, because it is fair or fulfills a sense of justice (Berman, 1976). Such assessment is called a legal evaluation (*rechtsoordeel*). This legal evaluation is formed as a product of the understanding process of reason and conscience towards the results of human perceptions about certain social situations within the worldview framework, religious beliefs and ethical beliefs with various values. If this necessity in human consciousness is transformed through a dialectical process of social interaction that objectifies it into a guideline in determining the necessity to behave in a certain way in the future and the compliance is not entirely left to the beliefs and subjective desires of individuals, but can be forced by the community (which is represented by public authority) through a certain procedure, then that necessity becomes a legal rules, which can be in the form of written or unwritten.

The principles of juridical morality reach forward, anticipating moral principles in the true meaning of the word. But the principles of juridical morals have their own juridical structure which is not derived from something else, so that they should not be confused with morals in their original meaning.

That can be explained by HR December 2, 1938 (*Lentse schutting*). Building a courtyard fence based on what factually has been determined by Hof is not a misuse of property rights (meaning not use without reasonable interests with a clear purpose solely to the detriment of others). But it contradicts no doubt the moral rules that apply in the interaction between neighbors. It showed a morally improper attitude from the owner towards his neighbor.

Because the moral aspect follows the juridical aspect, it is possible to have a legal system, in which the principles of juridical morality have not been recognized. This is what happened to primitive undeveloped legal structures, such as the laws of ancient Germania or

ancient Roman *ius civile*. Principles of juridical morals emerge in developed legal orders, such as the Roman *ius gentium*.

The trust aspect or pistic aspect is an frontier aspect of our experience world. That is the aspect of the final certainty in time about an eternal divine truth that is revealed or proclaimed (in specific oral revelations from God or in general revelations in the form of the reality creation).

CONCLUSION

The religious rules created or established by Allah SWT, then revealed through the Prophet, and can be accepted by humans because humans are equipped reason and conscience by Allah SWT. That causes humans to believe and carry out the teachings and religious rules in their daily lives. The meaning of religious rules is understood by humans to the extent that can be captured by the ability of the reason and conscience of each individual which may not be the same to each other, so the way people carry out religious rules will depend on the results of interpretation and understanding of what is revealed by Allah SWT through the Prophet. The function of religious rules as the final aspect of our mortal reality provides guidance to all functions of our consciousness. From it arises an external relationship between trust aspects and legal aspects. People's beliefs held by people have a great influence on the law development.

The legal rules stipulates that if certain events or situations occur, then certain subjects in relation to certain other subjects or the community as a whole must behave in certain ways, because it is fair and directly related to the establishment of order in society that everyone needs to be able to live his life naturally in accordance with his dignity as a human being, without having to rely on strength. This means that the legal rules establishes a coercive relationship between conditions and what should happen if those conditions are met. Therefore, the law and its rules belong to the "das Sollen" world, and are not included but originate and lead back to the "das Sein" world.

SUGGESTION

There is a need for the application of religious rules as a basis in the formation of Indonesian law, so that the law leads to a better direction because religious rules more emphasize on goodness and justice

Moral aspects are very necessary in the law formation because in the conscience, humans are achieved by god's revelation. The function of human trust direction is determined by "the heart determination" (*de gegrepenheid van het hart*). So that the moral aspect has a role in the formation of better law.

REFERENCES

- Aspan, H. (2020). The Role of Legal History in the Creation of Aspirational Legislation in Indonesia. *International Journal of Research and Review (IJRR)*, 7(6), 40-47.
- Atmasasmita, R. (2012). Teori hukum integratif: rekonstruksi terhadap teori hukum pembangunan dan teori hukum progresif.
- Berman, H. J. (1976). The origins of Western legal science. *Harv. L. Rev.*, 90, 894.
- Chulwoo, L. E. E. (2014). Hegemony, contestation, and empowerment: The politics of law and society studies in South Korea. *Asian Journal of Law and Society*, 1(2), 275-304.
- Damian, E., & Hornick, R. N. (1972). Indonesia's formal legal system: An introduction. *The American Journal of Comparative Law*, 492-530.
- Helmut Coing (1975), *The Original Unity Of European Legal Science*, Law and State, Vol. 11, 1975.

- Hourani, G. F. (2007). Reason and tradition in Islamic ethics. *Cambridge University Press*. Khaeron, H. (2013). Etika Politik: Paradigma Politik Bersih, Cerdas, Santun Berbasis Nilai Islam. *Bandung: Nuansa Cendekia*. Lemaire W.L.G. (1955), *Het Recht In Indonesië, Hukum Indonesia*, W. Van Hoeve, s'Gravenhage, Bandung, 1955.
- Lev, D. S. (1965). The politics of judicial development in Indonesia. *Comparative Studies in Society and History*, 7(2), 173-199.
- Mahy, P. (2013). The evolution of company law in Indonesia: An exploration of legal innovation and stagnation. *The American Journal of Comparative Law*, 61(2), 377-432.
- Meuwissen D.H.M (2007). *tentang Pengembangan Hukum, Ilmu Hukum, Teori Hukum dan Filsafat Hukum*, Refika Aditama, 2007.
- Musa, M. Y. (1963). Falsafat al-akhlak fi al-Islam, terjemahan. *Jakarta: Gaya Media Pratama*.
- Nonet-Selznick (1978), *Law And Society In Transition*, 1978.
- Rahardjo, S. (2006). Hukum dalam Jagat Ketertiban (Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro). *UKI press*.
- Rahardjo, S. (2009). Pendidikan hukum sebagai pendidikan manusia.

Received: 23-Jul-2024 Manuscript No. JLERI-24-15176; **Editor assigned:** 25-Jul-2024 Pre QC No. JLERI-24-15176(PQ); **Reviewed:** 08-Aug-2024 QC No. JLERI-24-15176; **Revised:** 13-Aug-2024 Manuscript No. JLERI-24-15176(R); **Published:** 22-Aug-2024