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CORRELATION OF NATURAL LAW THEORY WITH SHARIA ECONOMIC LAW STUDIES

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Abstract

In the study of a science there are many views related to the science because in human thought has its own truth based on what they believe and can be used as a reference to the foundation of science. Inseparable from the definition of legal science or legal theory, many philosophies express their opinions about legal theory taken from various scholarly figures from various countries with their own opinions. With this opinion, it is very cool to study from these various definitions to become the basis of science and also the theoretical basis for the study. In this research method, the author uses qualitative methods that are separated from texts, books, images, and others which are not numerical targets, where the results of the research are described in the form of writing that explains something. In conclusion, natural law is a law that applies to all nations because natural law exists everywhere based on human instinct and not because of announcement or promulgation by man. Andrew Altman examines "Traditional Natural Law Theory" and "Modern Natural Law Theory" in his book Arguing About Law: An Introduction to Legal Philosophy (2001), making diachronic classifications.

Keywords *:* ***correlation, natural law, sharia economic law***.

1. INTRODUCTION

In the study of a science there are many views related to the science because in human thought has its own truth based on what they believe and can be used as a reference to the foundation of science. Inseparable from the definition of legal science or legal theory, many philosophies express their opinions about legal theory taken from various scholarly figures from various countries with their own opinions. With this opinion, it is very cool to study from these various definitions to become the basis of science and also the theoretical basis for the study.

2. IMPLEMENTATION METHOD

In this research method, the author uses qualitative methods that are separated from texts, books, images, and others which are not numerical targets, where the results of the research are described in the form of writing that explains something. This time the author focuses on writing about Ibn Taymiyah in his economic field with literature studies and making reports or results in the form of journals or scientific papers. This methodology uses

qualitative methodology by using the literature review method which in writing refers to previous books, journals, or other written works to describe what is discussed and also more accurately.(Setiawan &; Anggito, 2018, p. 20)

3. RESULT AND DISCUSSION

3.1 Understanding Natural Law

Natural law is one of the main topics in jurisprudence. Since its inception, natural law has been the most important branch in legal philosophy. Natural law has been very important since Greek times, when Aristotle stated that natural law should apply, regardless of whether man has established it. According to Thomas Aquinas, "natural law does not require an official announcement, so an official announcement is not an essential component in law." When God implants the laws of nature in people's minds so that people know them naturally or on their own, He announces the laws of nature to them.

One of the universal principles derived from natural law is that promises must be fulfilled, that goods must have an owner, and that everyone must accept and retain what they have.

Among adherents of natural law, there is a debate about what natural law itself means. A.P. d'entreves said that different opinions about natural law are due to different opinions about nature. However, Friedrich Kessler stated that the philosophy of natural law has many similarities:

"All philosophies of natural law, whether they are considered to be a branch of theology, a branch of ethics, or an independent discipline, share one fundamental conviction: the conviction that there are some basic legal institutions and principles firmly rooted in the grand scheme of things and inherent in all ordered social existence. These rules defining unwavering justice norms are understandable to man."(Efen, 2022, p. 41)

All ethicists agree, according to Shalina Stilley, with Friedrich Kessler, that although there is debate about how best to give a precise definition of natural law, all experts agree that natural law consists of at least five essential elements. The relationship between human nature and the rules of what man should do is the main element of natural law. The second element is that human beings are naturally knowledgeable about what to do and what not to do. The third element is that man-made positive laws can only be binding if they are in harmony with the laws of nature. The fourth essential element of natural law is the law of nature itself, that is, the law of nature that cannot be changed by man. Natural law is the fifth essential element of natural law. It contains sanctions for both actions that are in accordance with the good and actions that are contrary to the good.

Philip Soper said that natural law as a moral theory discusses moral theory (a moral theory) and legal theory (a legal theory). Natural law as a moral theory addresses

what is right and wrong. However, as opposed to legal positivism, natural law appears to have a simpler nature. Legal positivists argue that there need be no connection between law and morals, while natural law rejects such ideas.

To find out the meaning of natural law according to Robert John Araujo, it must be traced the understanding of natural law itself since the beginning of the birth of natural law. In the Scholastic tradition, it is said *not a body of substantive law in itself*. It can be interpreted that it is human reason that formulates legal principles that can then be applied to govern certain jurisdictions.

Charles Rice defined natural law as a guide to individual conduct and serves as a standard for laws enacted by the state. Natural law becomes a code of conduct for individuals and establishes measures against laws made by the state. Gratian in the Decritum states, *"Natural law is common to all nations because it exists everywhere through instinct, not because of any enactment"*, Natural law is the law that applies to all nations because natural law exists everywhere based on human instinct and not because of announcement or promulgation by man.(Gede Atmadja &; Putu Budiartha, 2018, p. 41)

3.2 Division of Natural Law

The study of the understanding of legal theory at the philosophical level is focused on two schools of legal philosophy that are very influential in the world, especially in Indonesia, namely "Natural Law Theory" and "Legal Positivism Theory". Various versions of the Natural Law Theory have been developed by legal philosophers. The research is based on a copy of Andrew Altman's book, Arguing About Law: An Introduction to Legal Philosophy (2001), which examines "Traditional Natural Law Theory" and "Modern Natural Law Theory" which are respectively classified by historical period.(Kelsen, 2021, p. 56)

a. Traditional Natural Law Theory

St. Augustine and Thomas Aquinas are two key figures in this philosophy. Both agree that Natural Law is the ultimate principle in nature and can negate one's responsibility if it conflicts with morality or immorality(Imaningrum Susanti, 2019, p. 38). St. Augustine proposed three theses, which are as follows:

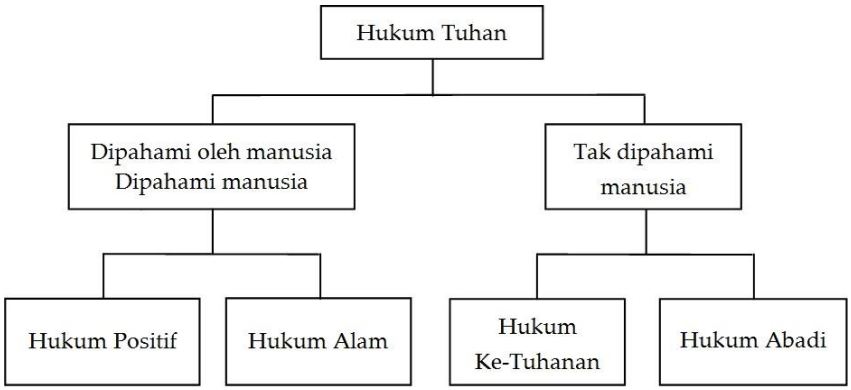
a) Natural Law is used as a basis for assessing state rules, called positive laws, good or bad.
b) Positive legal provisions that contradict the principles of Natural Law are considered invalid. This legal limitation does not apply in accordance with the law and does not impose any liability on anyone.
c) Saint Augustine presents an unusual point of view in conventional thought, namely that "an unjust law is not a law.".

Thomas Aquinas' Theory of Natural Law provides a systematic, complete, and constantly evolving explanation of the Philosophy of Law. Here is the main thesis of Thomas Aquinas:

a) The basic idea is that the cosmos is the product of a single entity, God, which is eternal and provides a set of rules.
b) The entire legal system is based on the instructions and authority of God, the lawmaker and the supreme judge.
c) This legal system has many levels, with Eternal Law, Divine Law, and Natural Law being the highest and Human Law being the lowest.
d) The Eternal Law is a set of principles established by God to control the activity and motion of all things, enabling each to perform the right purpose in the larger cosmic order.
e) Natural Law is a set of principles derived from the Eternal Law for the well-being of mankind. The human intellect can recognize this truth and guide the individual to what is good.
f) As a result, these principles lead humans to live happily in society, and consequently, the principles of Natural Law prohibit destructive activities such as murder and theft.
g) The principles of Natural Law help us achieve the good that is possible in our world. However, there is a higher virtue that man cannot achieve in this life, that is, eternal salvation. God's laws that are higher than natural laws serve as guidelines for us to gain virtue.

h) According to Aquinas, the phrase "human law" refers to positive law, which consists of laws formed by political authorities for the general welfare of citizens. Positive laws, such as the prohibition of murder, can be drawn logically from the principles of Natural Law in certain respects. For example, the rule against murder rationally comes from the principles of Natural Law which usually prohibits one from harming another person in this way.

i) According to Surya Prakash Sinha (1993), Thomas Aquinas established a hierarchy of laws in which God's law was at the top. According to



Aquinas, God shaped the world society in perfect knowledge.(Hidayat et al., 2022, p. 49) However, man cannot understand all parts of God's law. The part that man can understand is represented in the eternal law, which is the synthesis of God's knowledge, and this law of God can be found in Scripture. The principles of eternal law are then conveyed through natural law, and from this natural law are derived all human laws also called positive laws produced by state power. In summary, Thomas Aquinas' hierarchical system of law can be characterized as follows.:

The "Traditional Natural Law Theory" proposed by Thomas Aquinas (1225-1274) is known as the atomistic theory of natural law in Indonesian literature. This idea is the result of a fusion of elements of the Ancient Greek Philosophy of Natural Law, the Stoics, and the Theological Philosophy of the Catholic Church (Scholastic Philosophy).(Gede Atmadja &; Putu Budiartha, 2018, p. 46) This approach divides the law into four categories, in the following order:

1) The eternal law (lex aeterna) is a law based on the ratio of God that governs everything in the community of the universe. However, the human intellect finds it difficult to fully understand God's reasoning. Man can only understand a fraction of God's ratio through revelation.
2) The divine law (lex devina) is the law handed down by God that can be grasped by human reason. The eternal law (lex aeterna) is the source of several divine laws.
3) Natural law (lex naturalis) comes from a limited part of the divine order that man can understand through revelation. There are two types of law in natural law: (1) basic natural law, which consists of fundamental concepts such as the prohibition against breaking laws, and (2) secondary natural law, which elaborates on these fundamental ideas.
4) Human law (lex humana) is the true positive law. Human laws are classified into two types: (1) positive laws given to man by God and written in Scripture, and (2) positive laws produced by man based on his reasoning. There are two kinds of norms in secondary natural law: (1) norms created through logical inference, such as the prohibition of murder and theft, and (2) norms expressly called ius gentium, such as individual property rights.

This explanation shows how, in the opinion of Thomas Aquinas, the categories of natural law form the legal hierarchy in the classical "Theory of Natural Law". Natural laws take precedence over positive laws. As a result, natural law is used as a rule of judgment, which implies that if positive law

contradicts moral principles and justice, then positive law is not actual law, therefore it is legal to violate.

b. Modern Natural Law Theory

Andrew Altman highlights two key individuals in Modern Natural Law Theory, notably Lon Fuller and Donald Dworkin, both legal experts from the United States, despite their differences of opinion. These two opposing points of view are explained and examined as follows(Andri, 2021, p. 76):

First, Lon Fuller is recognized as the "Father of the Awakening of Natural Law" and is credited with popularizing the idea of "inner morality" in his theory. Fuller's key theses include:

1) Fuller refers to "inner morality" as the moral principles that bind the actual legal system.
2) Inner morality law, which consists of moral principles, is based on the premise that law serves as a tool to control human behavior as agents with the ability to think and choose.
3) Legal restrictions should apply to the future and should not apply retrospectively, as people as agents can only make behavioral choices if they apply to the future. Furthermore, to be followed, legal regulations must be generally explicit.
4) Fuller recognized that the fundamental premise of the Theory of Natural Law remained true, namely the necessity to link positive law with morality. Fuller, on the other hand, argues that this link is not as strong as classical natural law scholars claim. Positive rules that are unfair and contrary to morality, according to Fuller, do not need to be obeyed.
5) Fuller further emphasized that inner morality does not guarantee that the current legal system is fair. If a legal system is inherently morally reprehensible, the responsibility to follow it can be revoked.

One of the five fundamental theses of Fuller's "Theory of Inner Morality" is that any true legal system is always limited by certain moral standards known as "inner morality". These moral ideals serve as a foundation for upholding and upholding the rule of law. Nonetheless, Fuller recognized that not all positive legal outcomes conformed to the moral ideals embodied in the "inner morality" of law. Positive law retains its legitimacy even if such laws or regulations are morally unfavorable, as proponents of classical natural law theory believe. Fuller also suggested that legal items may not have moral validity but may be justified based on social goals.

As Hilare MacCobrey and Nigel D. White point out, the Theory of Inner Morality has a practical effect on the application of lawmaking. They argue that Fuller's key point is about the need for the development of norms within the necessary framework of morality. Fuller highlighted the importance of enacting ethically sound laws. Fuller's proposed legal product with eight negative criteria, which effectively establishes minimal conditions for the legislature or other known legal action. These eight negative criteria describe laws and regulations that must meet moral standards, such as the absence of errors in the formation of regulations that cause absolute uncertainty, making regulations public but not issuing them for those who must comply with them, and prohibiting the making of conflicting regulations. each other.(Efen, 2022, p. 49)

In the Indonesian context, negative requirements of Fuller's laws, such as retroactive passage or application of rules, are classified as human rights violations under the Indonesian Constitution. Article 28I paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 states that the right not to be convicted based on retroactive laws and regulations is a human right that cannot be reduced under any circumstances. This criterion is contained in human rights that absolutely cannot be reduced (non-derogated human rights). As a result, the "non-retroactive principle" states that legal limitations should apply prospectively rather than retroactively.

Secondly, Donald Dworkin's idea of "Interpretive Theory" consists of five important theses:

1) Every legal product, whether statutory, must be morally readable and enforceable.
2) Positive laws must be morally sound. This integrity does not guarantee the achievement of justice, but provides an acceptable level of morality so that every legislation as a product of law is not trapped in the political interests of the ruler.
3) Law is a manifestation of the thinking of government. This philosophy consists of moral concepts that control the basic objectives of government and its relationship with individuals or society.
4) These moral norms serve as a basis for justifying legal judgments as well as a guide for understanding the rule of law.

Andrew Altman argues that the arguments in Interpretive Theory are quite strong. He believed that it was very important and vital to link law with morality. However, in the context of its application, Altman rejected the

methodology of Aquinas and Fuller(Kelsen, 2021, p. 42). Andrew Altman, in his opinion, wrote:

Unlike Aquinas, who adheres to traditional types of natural law theory, Dworkin does not hold that unjust rules are not lawless. Unlike Fuller's version, Dworkin did not hold that the principles of legality by themselves were sufficient to carry out a major moral obligation to obey the rules of a positive legal system. Dworkin in fact agreed with Fuller that legal obligations have moral power: a moral alibi binds them to them. But Dworkin places the source of moral strength not only in the principles of legality, but in the integrity of the law. In other words, for Dworkin, the inner morality of law is broader than Fuller's: it consists not only of the principles of legality, but also of good moral principles based on the existence of the law itself.

According to Dworkin and Fuller, the relationship between natural law and positive law is still important today. This is evident in the application of modern versions of natural law theory to events such as the 1948 Universal Declaration of Human Rights, the 1959 Declaration of the Rule of Law at the International Conference of Jurists in New Delhi, and the Nuremberg Trials on World Crimes. War II, which brought to justice Nazi leaders, including Hermann Goering, who were deemed to have committed "gross human rights violations" classed as "extraordinary crimes". J.W. Harris observed in his work "Law and Legal Science: An Inquiry into the Concept of Legal Rule and Legal System" that the natural law school regards intuition as essential epistemological knowledge, emphasizing intuition-based reasoning over logic. In classical/ancient thought, intuition is fully used, but reason dominates contemporary reasoning as practiced in Legal Positivism. However, Legal Realism pioneered a new type of "intuition" known as "trained intuitive judgment". Legal theory of Legal Positivism will be discussed in the following exam.

Legal positivism contradicts the standard Natural Law Theory concept that "lawful law" is "just law," and "unjust law" is not law and therefore cannot be obeyed. Furthermore, Legal Positivism rejects the current concept of Natural Law Theory, which states that positive law is closely related to morals, as argued by Lon Fuller and Donald Dworkin.

According to L.B. Curzon, the word Legal Positivism is generally used to refer to man-made laws (sometimes known as "Divine positive laws" or laws given to mankind by God). Positivism is defined by this phrase, which implies the following:

1) The belief that a law is an order issued by a recognized ruler or ruler.

2) The claim that there is no clear or absolute relationship between law and morality.
3) The belief that rational reason cannot be used to support or reject moral decisions.

Furthermore, Curzon argues that Legal Positivism, in that sense, refers to a juridical analysis that incorporates a scientific examination of a set of principles known as "law" without considering elements other than law, such as the social, political, psychological environment. background, and ethical-moral (Efen, 2022, p. 78).

3.3 Correlation of Natural Law and Sharia Economic Law

In the study of natural law theory which explains that the theory of natural law is based on what God has ordained for the human mind, the concept is inseparable from belief in humans themselves because in their own lives have various understandings of Him. Muslims have a concept of natural law itself that what Allah Almighty has in mind, as well as other religions view natural law according to their own version.(Soemitra &; Soemitro, 2020, p. 49)

In the study of natural law theory and also sharia economic law has similarities in its study, namely in natural law using provisions to God, as well as in the study of sharia economic law based on Islamic sharia or Islamic law. With these similarities, natural law and sharia economic law are closely related when viewed in the theory of natural law according to Islamic sharia studies.

On the basis of sharia economic law, there is a study that it is based on the Qur'an and also the Hadith. As for the sharia of the Qur'an is a book that comes down from Allah SWT or from God and also in the Hadith is a word, action, or confession originating from the Prophet Muhammad SAW and it is inseparable from its relationship with God. If you look at the concept of natural law theory, journals or books suggest that the theory of

﴿ وَاِلٰى مَدْيَنَ اَخَاهُمْ شُعَيْبًاۗ قَالَ يٰقَوْمِ اعْبُدُوا اللّٰهَ مَا لَكُمْ مِّنْ اِلٰهٍ غَيْرُهٗۗ قَدْ جَاۤءَتْكُمْ بَيِّنَةٌ مِّنْ رَّبِّكُمْ فَاَوْفُوا الْكَيْلَ وَالْمِيْزَانَ وَلَا تَبْخَسُوا النَّاسَ اَشْيَاۤءَهُمْ وَلَا تُفْسِدُوْا فِى الْاَرْضِ بَعْدَ اِصْلَاحِهَاۗ ذٰلِكُمْ خَيْرٌ لَّكُمْ اِنْ كُنْتُمْ مُّؤْمِنِيْنَۚ ﴿٨٥﴾ ﴾ (الاعراف/7: 85)

natural law is a law from God that was revealed to humans. The concept of sharia economic law in the Quran is:

It means: *"To the inhabitants of Madyan, We (sent) their brother, Shu'aib. He said, "O my people, worship Allah. There is no god (worshipped) for you but Him. Truly, there has come to you the tangible evidence of your Lord. Therefore, perfect the measure*

and scale, and do not harm (the rights) of others in the least. Do not do mischief on the earth after its repair. That is better for you, if you have faith."

4 Conclusion

Natural law, according to Andrew Altman in his book entitled "Arguing About Law: An Introduction to Legal Philosophy" (2001), is a law that applies universally to all nations. This law of nature does not depend on announcements or invitations from humans, but exists inherently in human instincts everywhere. Altman conducted historical analyses over timescales, dividing natural law theories into two categories: "Traditional Natural Law Theory" and "Modern Natural Law Theory". Brian Bix also divides law into two similar categories, namely traditional natural law and modern natural law. In traditional natural law, it is taught that there is a higher law that is the basis for laws made by humans, so that laws made by humans are considered derivative of the higher law. Higher law is the law of nature.

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