



Legal reasoning in a prophetic frame: A change towards law in religious dimension

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Abstract

In its development, laws that are only forged in the realm of logic alone will become a problem because the norms set by them are only determined or based solely on human reason. Under these circumstances, there may be a risk that the norms to be developed will contradict the actual norms. Responding to this phenomenon, the author tries to examine the understanding of the conception of legal reasoning in the prophetic realm as an effort towards a change in God-based law, through a conceptual approach. Reason is a manifestation of rationalization in all perspectives, while exalting the law is part of the *amar ma'ruf nahi munkar* movement. Only people who have reason and high commitment in law are able to translate and transform what is right and what is wrong (right and wrong). As the meaning of "Prophecy" in prophetic or the nature of a prophet, who has the characteristics of being an ideal human being spiritually-individually, but also being a pioneer of change, guiding society towards improvement and carrying out a relentless struggle against oppression? It is this concept that must exist in interpreting laws that carry human values.

Keywords: legal reason, prophetic law, god-based

Introduction

The scientific change was not always as straight forward as the standard, the traditional view would have it. There was little by way of a carefully considered, theoretically explained account of scientific change. Since the standard view dovetailed with the dominant, positivist-influenced philosophy of science, a non-standard view would have important consequences for the philosophy of science (Kuhn 1996)^[1].

The movement of change in this life will always go on, nothing is stagnant, change is something that is certain to happen (part of *sunnatullah*). The character of nature and all that is in it is new-changed. These changes are not purely physical, but also non-physical such as changes in paradigms, theories, concepts, methods, approaches, definitions, insights and so on. Because the nature of nature is change, humans must be ready at any time to change.

It should be understood that law and social development sometimes become two parts that cannot be separated but at the same time between the two running on different rails (sections). Law seems to have its own world in addressing social developments in a society or in a country. On the one hand, the law requires changes in accordance with the ideals of the law, while on the other hand, the community requires changes that are different from the will of the law. Understanding law as a means of social change is also clearly different from understanding legal change itself.

In its development, the legal perspective formed by nature, law in the realm of logic, and law in the transcendent realm have greatly influenced social change in the direction that each thinker wants to achieve. It is the same with legal concepts that were born long before, in prophetic legal thinking, for example, requires a significant change in understanding the law so that it is inseparable from the values that must be upheld.

Bustanul Arifin, who conceptualizes law more in sharia, argues that he disagrees with the opinion of legal experts

who say that Islamic law in Indonesia is a sub-system of national law, because a sub-system is only a permanent part of a whole, whereas Islamic law in Indonesia is one of the laws that will be mixed into national law. What will then be questioned is only how the law is in Indonesia (Arifin 2012, 144)^[3].

It is realized that among the many problems discussed by humans as creative creatures, humans also discuss themselves. He was even able to discuss his own nature as a human. Until now we know that man is the only creature capable of discussing himself, because he has reason and free will. Even humans are able to question why he has reason and the ability to make choices (Kusumohamidjojo 2011, 106)^[13].

Religion, social interaction, politics, and culture in the context of social change give rise to movements that seem to have no end. Just like the logic or reasoning built by every change actor who wants the change to materialize. The desired pattern of change in achieving its goals doesn't seem to have any stability. So that in this space of change humans will never feel satisfied. Likewise, when we look at the law, there will always be a desired change in the law, or in other positions and contexts there will always be a change that the law wants to create.

Efforts to re-discuss intensely and in-depth issues of law, religion, ethics and morals will support the results of the development of the science of law, thus studying and understanding law must emphasize matters that are substantive and transcendental in nature based on social facts that cannot be separated from religious, ethical and moral values (Absori 2005)^[1].

The most of law provisions are determined by religious factor (Akhverdiev and Ponomarev 2018)^[2]. Humans use reason to think to put things in their place, humans use reason to distinguish between good and bad, and formulate positive things to achieve good. The reasoning used is a form of exploration of thoughts and beliefs in the

theological-normative realm. Because in fact, even in the legal tradition, it is necessary to appreciate spiritual values or religious values.

Reason is the development of the mind into each person/individual so that they are able to assess themselves "objectively", assessing ourselves from the perspective of other people/environment. Reason can be used to balance the mind. If we only use the mind, then those whose minds are good think that everyone is good, or conversely those whose minds are bad think that everyone is bad, with reason we can distinguish between good and bad people. Meanwhile, reason is the development of the mind into each person/individual in a "subjective" way, looking at ourselves from our own point of view. Those who use their minds tend to outsmart the environment for their own "interests", so they become "self-conscious". Reason is needed as a counterweight to reason, so that with reason one can judge character on the basis of observing (over a long period of time, not instantaneously) one's behavior/actions.

Reason tends to benefit oneself (in *psychology it is* called ego) while mind tends to benefit others (equivalent to super ego). Both a person's mind and mind can be felt by their influence on their environment, while reason and mind are only felt by the individual concerned, unless it has been reflected in his character.

Laws that are only forged in the realm of logic alone will become a problem because the norms set by them are only set or based solely on human reason. Under these circumstances, there may be a risk that the norms to be developed will contradict the actual norms. As the norms of justice conflict with positive legal norms, there will be differences between the actual values of justice and the legal values that are built. Because positive legal norms are formulated based solely on human reason, they cannot reflect the actual reality in full. So that it raises values in the realm of metaphysics and rational values (Kusumohamidjojo 2011, 143–44)^[13].

Even more than that, the law is attached to the entity of faith: belief in God, as at the beginning of a law, for example, the words "By the Grace of God Almighty" are always written, or in the Judge's Decision in Court it is stated "For the sake of Justice Based on Belief in the One and Only God", raises the perception that law is actually identical not only to justice but also to the sanctity of "Divinity". But in the end, we are trapped in a reality that we construct as a paradox when we see that the law does not represent justice or even divinity (Cahyadi 2009, 290)^[6].

Responding to this phenomenon, we need the universality of values that must underlie it. Values that are very basic in creating legal reasoning based on respect for human values. However, as human beings of faith, we believe that the end of all the logic that is to be built into the law is absolute truth as the estuary (Khaidir 2006, xvi)^[10]. Based on the description of the background above, the author is interested in studying the conception of legal reason in the prophetic realm as an effort to change the law that believes in God.

Research methods

In writing this paper, the author tries to examine the conception of legal reasoning in the prophetic realm by using a Conceptual Approach as a conception step towards the embodiment of justice and godly law. The subject of a brief research in this paper is regarding the concepts of thought in the philosophy of law related to the prophetic

mindset, especially those concerned with the orientation of truth as the manifestation of the values of justice that have faith in the realm of legal reasoning. The data or materials studied are library data. In order to be able to provide an accurate interpretation of the expert's or figure's thoughts, the concepts of thought in legal philosophy and legal reasoning are studied according to their harmony with one another. Furthermore, the basic thinking is determined in order to find the right concept to answer the problems studied in this paper or paper.

Results and discussion

It should not be forgotten that law is the protection of human interests, while human interests are always developing, dynamic, both in type and quantity. Thus, the law must also be dynamic so that it can keep up with the development of human interests, so that the ever-developing human interests are always protected (Mertokusumo 2014, 26)^[14].

As a working human being, we are often trapped by our desire to object to justice. Justice, because of the desire to feel the real, is captured as something that can be "objected" or concretized. Even though justice is a truly abstract thing, when it wants to be concretized, it must go through interpretation or interpretation which is not easy (Cahyadi 2009)^[6]. Therefore, tools are needed in constructing and conceptualizing godly justice.

This then brings the consequence that it is not enough to read and grasp divine messages if it is only done by using science that grows and develops by relying on the power of ratios and the five senses alone, but must also be based on sciences that can deliver humans to be able to know and understand himself better as a human being, which will then lead to his recognition and understanding of the creator and possessor of true knowledge (Wardiono 2016, 89)^[21].

Reason, means; certain considerations about good and bad, reason, activity that allows one to think logically, range of thought, power of thought. Basically, legal reasoning is an activity of problematic thinking (Shidarta 2006, 155), this thinking activity is in the area of practical reasoning. The Philosophy section of the legal sciences focuses on the ultimate analysis of legal abstraction and analysis of legal doctrine, and legal reasoning (Atmasasmita 2012, 1)^[5].

Reasoning is a process of thinking in drawing a conclusion in the form of knowledge. As an activity of thinking, reasoning has certain characteristics. The first feature is the process of logical thinking, where logical thinking is defined as the activity of thinking according to a certain pattern or in other words according to a certain logic. The second feature is the analytic nature of the thought process. This analytic nature is a consequence of the existence of a certain pattern of thinking. Analysis is essentially an activity of thinking based on certain steps.

In legal reasoning, it is often imposed by using two models of reasoning processes, namely deductive and inductive thinking. Deductive thinking is used if the conclusion is narrower than the premise, the reasoning is called deductive. The method used in thinking is starting from general to specific matters (major premise - minor premise - conclusion). In inductive reasoning, departing from specific things to general (*verificative hypothetical logic*). The law concluded in the phenomenon under investigation applies to similar phenomena that have not been studied.

More broadly than that, according to Shidarta, to bridge objective conditions (such as lawlessness and anarchism) on the one hand and the spirit of democracy on the other hand, the ideal model of legal reasoning is one which: (1) its ontological aspect: still interprets law as a norm-positive norms in the statutory system, bearing in mind that this meaning is the one that is explicitly the easiest to identify, in addition to the urgent need to provide more legal certainty. Weaknesses in the interpretation of such law must be overcome through the process of establishing the norm and then evaluating its application (the epistemological and axiological aspects); (2) the epistemological aspect: focusing not only on the application of positive norms to concrete cases, but also on the process of their formation. The pattern of reasoning at this stage of formation moves simultaneously from the intuitive and empirical dimensions as well. This pattern of movement also actualizes the legal ideals of Pancasila in today's Indonesian context. Through the selection process, some of these positive norms are then formulated to become positive norms in the statutory system. This positive norm is applied with a doctrinal-deductive pattern to concrete events. In the stage where simultaneous movement occurs, the *context of discovery takes place*, and in the next stage reasoning is in the *context of justification*; (3) the axiological aspect is that it leads to the attainment of the values of justice and expediency simultaneously, which are then followed by legal certainty. The first two values are the goal in the search process (*context of discovery*), while the last value is the goal in the *context of justification* (Shidarta 2006, 538).

Laws that are built with ideas or ideas that are only based on the logic of reason alone have proven to fail to bring good change. Reasoning and/or reasoning in law is needed to hone the ability to identify and analyze answers that have a truth value in a certain point of view, then map the logic (law) used in answering legal problems and social problems in general, as well as being part of the strategy development of thinking methodology or legal research. Legal constructions that use "good" reasoning will bring out the embodiment of human values.

As is the relationship between revelation and reason, that the Holy Book as revelation revealed to His messengers as a guide for human life can only be made possible if the human mind is in a dialogical relationship, so that the truth contained in the scriptures can be understood (Musya Asy'arie 2016, 17) ^[4, 15].

Revelation and reason are the main equipments of man with both of which he continues to explore values, seek new spaces and at the same time close the relative space that lies before him. Acknowledging the power of God (Allah *Subhanahu wa Ta'ala* as the Supreme Ruler over the universe and the souls of His creatures, will subdue greed as a human instinct (Musya Asy'arie 2016) ^[4, 15]. To dominate, to subdue, to rule over other human beings, the will for self-recognition is an instinct with which competition is sacrificed to war. So, the awareness of the acknowledgment of His power is expected to be able to subdue the instincts of affection and greed that infect human common sense. It is from this basic understanding that human reason should be born which must be built into law.

Reason guides humans in the process of change, even Allah *Subhanahu wa Ta'ala* himself asks humans to change themselves so that humans develop, process, change, determine new forms in their lives (Wasitaatmadja 2005,

26) ^[22]. In interpreting change, humans tend to forget that the soul and spirit are more important than things, humans must be reminded that thoughts are useless without spiritual foundations. A society will be strong if it has high spirituality, and its civilization will not collapse if its foundations are based on love and knowledge (Muthari 2016, 288) ^[16]. Legal reasoning should be built in order to achieve human reasoning. Leaving aside mere material goals in law will bring the law to always be pure from patterns of power that keep humanity away from entities. Jurists argued that all determinations of God's law must find expression, either directly or indirectly, from scripture. Extrascriptural indices, whether in the form of rational proofs or references to nature, do not provide a proper basis or foundation for asserting the divine law (Emon 2005) ^[7]. In understanding Islamic values, Allah *Subhanahu wa Ta'ala* is the axis that becomes the substance of truth, and the Prophet is the axis of universal morality. It is on that axis that all human dimensions return. Allah *Subhanahu wa Ta'ala* is the truth itself whose personification of morality is the Prophet. With this meaning, the right intention is needed as an acknowledgment to feel and be involved in the processes of substantialization of the manifestation of human values (Khaidir 2006, 4) ^[10]. It is in this context that the prophetic concept emerges which places more emphasis on the revelation that was revealed (delivered) to the Prophets and Messengers (prophecy). Etymologically the term prophetic comes from the English word *prophetic*, which means: (1) *of or pertaining to a prophet: prophetic inspiration* (from or relating to a prophet: prophetic inspiration). In the Big Indonesian Dictionary, the term "prophetic" is also defined as "prophecy". The word prophethood itself comes from the Arabic language *nubuwwah* as mentioned in Al-Qur'an Surat Al-Imran (3): 79, which means:

It is not appropriate for someone who Allah has blessed with the Scripture, wisdom, and prophethood to say to people, "Worship me instead of Allah." Rather, he would say, "Be devoted to the worship of your Lord 'alone'"—in accordance with what these prophets read in the Scripture and what they taught.

A virtually unquestioned assumption in modern Islam that theology and legal reasoning in Islam are permissible only to ascertain God's will expressed in the Qur'an and the Sunnah (Souaiaia 2005) ^[19]. As is the meaning of "Prophecy" or the nature of a prophet, who has the characteristics of being an ideal human being *spiritually-individually*, but also being a pioneer of change, guiding society towards improvement and carrying out a relentless struggle against oppression. It is this concept that actually must also exist in interpreting laws that carry human values. Prophetic thinking is thinking as taught by the prophets to their people about how thinking should be implemented and developed in human life which is complex and always changing (Asy'arie 2016, 112) ^[4, 15]. Prophethood is the highest degree and honor that humans get from God. Prophethood proves the superiority of one's inner aspect over others. A prophet is like a branch extending from the Divine to the human world. He has the highest intellect which penetrates into the reality of all things and events. Furthermore, he is an ideal being, very noble and active (Gulen 2002, 97) ^[8].

Thoughts that are balanced by dogmas are the basis of a universal Religious Spiritual, in accordance with the dogmas of each holy book. Reason balanced by the mind is reason developed through various scientific theories

(reasonable). Reason balanced by doctrine is the basis of Spiritual Science. The development of knowledge should be integrative, integrating between science and religion, between reason and faith.

Based on this theological awareness, humans develop their thinking ability, their reasoning ability to understand and unlock the secrets of life in the universe, to discover its laws as the basis for developing science and technology, including in developing laws. By thinking prophetically, humans will always keep science and technology patterns away from the domination of human desires and selfishness, which tend to only be selfish. the development of knowledge in prophetic thinking will always be under the control of morality in an effort to achieve prosperity, peace and safety of living together (Asy'arie 2016, 114)^[4, 15].

Kuntowijoyo suggests that to develop prophetic knowledge a synthetic analytical approach to the Al-Qur'an is used, which divides the contents of the Al-Qur'an into two, namely in the form of concepts; and historical tales and proverbs. This prophetic thinking is based on the belief in the existence of the Almighty God who created everything in the universe. In the concept section, terms or statements can be terms that are formed to support the *ethical-religious concept* that you want to introduce, it can be a new concept or a concept that already exists in the Al-Qur'an (authentic). In this concept, there are various specific normative meanings, ethical doctrines, legal rules, and religious concepts in general. The concept can be something abstract or concrete, such as the concepts of *Allah, malaikah, Akhirah*, and those most related to law are the concepts of *ma'ruf* and *munkar*. In a more real concept, it refers more to observable reality such as the concept of *fuqara, dhu'afa, mustadh'afin, zhalimun, aghniya, mustakbiru*, and so on. In this concept, various ideal types are introduced, especially regarding Islamic doctrine (Kuntowijoyo 2006, 12–14)^[12].

The transcendental aspect in the prophetic paradigm of jurisprudence is marked by the accommodation of revelation as a (material) source, revelation acting as a guide in the thoughts and actions of a person who is part of the constitutive element (Putra 2011, 43)^[17]. Thus revelation which is accommodated in the relative normative world is revelation which is already dialectical with the world of ideas (human ratios) and the empirical world, becomes a source for the substance of norms, becomes the basis for interpreting and enforcing norms, and explaining and transforming legal phenomena on the basis of ethical ideals. and prophetic (Wardiono 2016, 190)^[21]. It is in this case that human reason works as part of the interaction between revelation and reason.

The law of will is a law created by the will of the subject or actor. The perpetrator determines in which direction his will is directed, and with his will as well as the authority he has he creates the law. This law of will is owned by humans as intelligent beings, he creates laws as a form to regulate himself, but on the other hand Allah *Subhanahu wa Ta'ala* has absolute will over humans and the universe, because He is the Most Willing Essence (Wasitaatmadja 2005, 20)^[22].

The essence of law is the will, and the highest will whose truth is essential is the will of Allah *Subhanahu wa Ta'ala* which is intended for humans, to be able to achieve a noble degree as a representative of Allah *Subhanahu wa Ta'ala* on earth (Al-Qur'an Surah Al -Baqarah (2) verse 30). Therefore, in fact, the law is a means and vehicle for humans on the basis of their faith to obtain His pleasure (Syamsudin 2013)^[20].

Reason is a manifestation of rationalization in all perspectives, while exalting the law is part of the *amar ma'ruf nahi munkar* movement. Only people who have high reason and have a high commitment in law are able to translate and transform what is right and what is wrong (right and wrong). Laws that are built with the power of reason and divine conscience will be able to penetrate the point of a sense of social justice that is formulated in the regulations and decisions of law enforcers. Humans become perfect when he uses his mind in living life. Reason guides him to determine the truth with which humans experience processes of change. The expected change is a change that always leads to goodness.

Religion and prophetic epistemology have a close structure. Prophetic epistemology uses more ratios in interpreting the phenomena of *qauliyah* and *kauniyah* to function in real life. Ethically-normatively, the ratio is created, so it is responsible to its Creator. It is in this position that religion is reliant, especially on the dimensions of monotheism and (faith) which is elaborated and absorbed as prophetic epistemological ethics. In short, the developed theory of knowledge pivots on the relationship between humans and God, which manifests transcendental values and is in favor of the existence of life, as its responsibility towards the Causa Prima (Jamuin 1997, 35)^[9].

“Thinking” and “thinking-believing” are different things. Thinking only puts a solution to a problem in reason, but by “thinking-believing” you will always place religious (divinity) values in every problem you face. The space for awareness that is built must place religious values in the context of humans as decision makers in society. The mind that can be ensnared by the will of the lust for power needs to be controlled through cleaning it, namely of course by cleaning the human mind and heart, because law is not only logical but legal justice is more felt by the human heart.

Prophetic Intelligence is an alternative offer that is needed for legal students, law makers, policy makers, and law enforcers to broaden and hone their conscience and spiritual sensitivity at the same time. The concept of prophetic intelligence is a concept taken from psychology to measure the maturity level of a person's thinking (reasoning), especially those who are involved in solving human problems. *Prophetic Intelligence* as a holistic approach in psychology, is considered necessary in overcoming the decline in the morality of law enforcers (Syamsudin 2013, 261–62)^[20].

Humans are not slaves to capitalist industrial machines; they are the embodiment of His great existence. Humans work to make the earth a field and a stepping-stone to plant seeds of virtue. The law becomes a means to control and even reconstruct humans who have drifted away from divine will. Islam is not a form of teaching that closes space for reason, but instead provides a place for reason as a guide for humans. Revelation does not eliminate the role of reason, instead the use of reason is to realize human perfection in understanding the will of Allah *Subhanahu wa Ta'ala* for him (Wasitaatmadja 2005, 298)^[22].

Conclusion

Based on the discussion regarding the conception of legal reasoning in the prophetic realm as an effort to change the God-based law, it can be concluded that, reason is a manifestation of rationalization in all perspectives, while exalting the law is part of the *amar ma'ruf nahi munkar*

movement. Allah *Subhanahu wa Ta'ala* (God Almighty) is the axis that becomes the substance of truth, and the Messenger is the axis of universal morality. It is on that axis that all human dimensions return. Allah *Subhanahu wa Ta'ala* is the truth itself whose personification of morality is the Prophet. Only people who have reason and high commitment in law are able to translate and transform what is right and what is wrong (right and wrong). Laws that are built with the power of reason and divine conscience will be able to penetrate the point of a sense of social justice that is formulated in the regulations and decisions of law enforcers.

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