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Theory of Natural Law and Legal Positivism: A Comparative Review of Islamic Law and Conventional Law

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Abstract

This article analyzes the law's pattern and debate between the theory of natural law, positivism, Islamic law, and customary law associated with the construction of its source and hierarchy. Second, the comparative perspective between Islamic Law and Conventional Law uses The Theory of Natural Law and the Positivism Theory of Law as fundamental analysis. The study used a comparative approach to know the synthetic elements of the four regular patterns. The results of this study show that, first, the Theory of Law of nature has a substantial relevance with Islamic law in aspects of its highest source, legal relationship with morals, and recognition to ratio. Legal positivism develops regulations with empirical approaches and scientific methods. Still, this idea ignores the metaphysical aspects, moral aspects, and aspects of justice in law. Customary law is a modern legal theory that substantially has a logical connection with the idea of legal positivism. Second, the Theory of Legal Positivism adheres to analytical principles by prioritizing the law. Positivism separates the law from morals and justice. The law of nature as a classical theory requires the transformation of the law in the current era. Islamic law is a modern theory that confirms the legal character of the theory of natural law.

Keywords: Natural Law, Positivism Law, Islamic Law, Conventional Law.

1. Introduction

The search for human thought has been going on for a long time, and from the early centuries to the present period, it has created very complicated dynamics. On the other hand, they can produce remarkable change, especially in science and technology, through reason, culture, and human thinking that are continually undergoing renovation. Any discipline takes part in contributing to human life in the field of science. This progression is a prerequisite as a catalyst of the possible purpose God provides to humanity, which is not shared by any other being in this

world at the same time. What makes humanity a very phenomenal being is this "all-powerful" ability. Phenomenal will leap towards development, phenomenal. The human being himself still experiences rebirth and is more phenomenal because his mind has been a very troublesome creature in history.

Legal science is one aspect of science that is very complex and has a significant effect on human civilization's development. From long ago until now, legal problems have been fundamental to humanity's social life, especially with organic human achievement through what is called the nation-state in four (4) layers of space, which are interconnected and interact either directly or indirectly, in general, the research, debate, interpretation, and description of the dimensions of legal science, namely legal philosophy, legal theory, dogmatic science of law and law (in the meaning of the form). Both ontologically, epistemologically, and axiologically, these spaces have their respective attributes. In writing this article, the critical consideration is the scope of legal philosophy.

In explaining or evolving legal theory from time to time, the history of traditional theory thinking's growth and complexities explains the short mapping. Legal theory thought can be divided into two main currents: theoretical legal expertise, whether broken down from the early centuries or Ancient Greece (classical period), medieval times or generally referred to as the Renaissance, modern and contemporary era. Next, the idea of legal philosophy sees laws as a closed technical unit (rules) formal-legalistic. Second, the legal theory philosophy considers law as an interactive unit and touches the mosaic of social-humanity. The two main currents are important historical records that at the same time become a 'record' bearing the tale of human thought's attempts to articulate their more enormous desires for survival utilizing order.

Wolfgang Friedmann asserts that legal theory struggles with various antinomies, such as the universe and the individual, will, knowledge, reason and intuition, stability and change, positivism and idealism, collectivity and individualism, democracy and autocracy, universalism and nationalism (Friedmann, 1953). This paper addresses natural law philosophy, the theory of legal positivism, Islamic law, and customary law. The emphasis of the summary is on four (4) principal problems. Since the early centuries, the word Moral Law has been recognized, and in the Middle Ages, it rose in influence. This theory aims to counteract the effect of classical philosophical thought, which uses the concept of existence to establish order reasoning, namely the organization

of life-based on "strong-weak currents" so that moral order does not become the predominant concept of human life.

Natural laws arise as a consequence of humans' challenges changing so that the order strategy changes. The time introduced the conviction that there was a will to rule the world (gods and goddesses). Human beings arrange their lives according to the nomos order, which includes fairness in setting life, based on the logos logic. Athens' ancient thinkers put forward work on morality and justice as humans' order (Socrates, Plato, and Aristotle). St. Augustine and Thomas Aquinas (these two thinkers were regarded as the cornerstones of natural law thinking) gave birth to love in medieval times. They existed in harmony as responses to the divine interference of human life. The order of justice and morality in this sense is the primary essence of natural law.

A modern approach was born in the period of the industrial revolution and technological advances in different sciences at the beginning of the 19th century, which once again forced human beings to face environmental conditions. This modern approach is referred to as epistemic positivism. This current forum for thought gives rise to the thesis that the color of analytical. Positivism and empiricism are the central axes that change the law mainstream from abstraction to become the object of empirical study. John Austin, who later became one of the legal Positivism figures, stated law is a command of Lawgiver. Law is an order of a sovereign ruler (Rasjidi, 2004). John Austin, who later became one of the legal positivism figures, said the law was a Lawgiver's order. The statute is a sovereign ruler's decree. As well as the punishments for disobeying specific commands, the state's authority that gives orders and citizens who follow orders is the law and is rather scientific. The primary essence of legal positivism, thus, is the development of traditional, normative-legalistic structures to be applied as favorable rules. In the sense of this cosmology of legal positivism, the law is legislative legislation mandated by legal specialists and the authorities of state power.

At the poles of Asia and Africa also developed a dimension of human order that rests on divine scriptures' sanctity and power. The influence of the churches on the European pole also rests on the expertise of the evangelical religion. The holy book's foundation in question is the Alquran which in its subsequent development gave rise to a legal term in the world called Islamic law. Islamic law recognizes the extent of the law that is more comprehensive because in the subject matter, it involves reason and intuition at the same time, and its object crosses all space, time, and circumstances. Substantively, Islamic law does not recognize the separation of ethics and law. In

a normative context, Islamic legal norms include; religious norms, ethical norms/morals, social norms, and legal norms. In theocratic countries, such as Saudi Arabia, Iran, Egypt, Malaysia, Brunei Darussalam, and others, Islamic law is formally enforced to become the state's formal law. In Indonesia, Islamic law becomes part of law, but not the formal state law. As a law source, Islamic law requires a legal, political transformation to give meaning to national law.

The four features of the legal theory mentioned above have their dialectics in coloring human life from the early centuries to the contemporary era. The critical question posed the style and dialectic of law that occurs between these legal theories in the construction of human order is? Therefore, this paper focuses on a discussion that parses the Theory of Natural Law, the Urgency of Legal Positivism Thought, the Character of Islamic Law, and Conventional Law. In the core section, a comparative perspective on Islamic law and customary law is described using the theory of natural law and legal positivism theory as the fundamental analysis.

2. Understanding the Thoughts ff Natural Legal Theory

Natural law theory is also known in several terms, such as natural law, eternal law, and natural law. This naming is associated with the characteristics, nature, and substance of the thought promoted by this legal theory. Natural law is one of the main themes in traditional science (D'Amato, 1996). Its role and function as a result of the idea of legal theory in the early centuries and especially in the Middle Ages were powerful at that time, and an inspiration for new styles of the legal idea thought in later eras. The importance of natural law theory can be traced back to classical times. Aristoteles argued that laws should naturally apply, regardless of the fact whether humans have established them. Natural law theory does not place formal announcement as an essential component of the law (Sidharta, 2009). The most important thing is that God has implanted it in the human mind to know it naturally.

2.1 Understanding Natural Law

It is essential to know what the laws of nature are before further deciphering their meaning. In the Scholastic tradition, it is said *not a body of substantive law in itself* (Araujo, 2000). In this view, it is said that human reason plays a role in formulating legal principles, which can then be applied to regulate certain jurisdictions. OC. Macaulay, the natural law, can be seen in prescriptive and descriptive terms (Bix, 2010). In a rigid sense, natural law is An order or command intended by nature to regulate human behavior. That is, it is a natural injunction. Natural law is an order

that comes from nature to regulate human behavior, so natural law is an order of nature. In a descriptive sense, natural law is the physical laws of nature. Natural laws are laws about the physical universe.

According to Thomas Aquinas, natural law is the right reason or Appointed by reason, and natural law is the true reason or what is determined by reason (D'Amato, 1996). Furthermore, Aquinas stated that natural law is man's understanding of God's plans for him. The definition of natural law in more detail and conceptually was put forward by John Finnis, who defined natural law as 1). Natural law is a set of basic practical principles that show the primary form of human development as a good that must be pursued and achieved, which is everyone uses one way as a judgment about what to do. 2). Natural law is a set of methodological requirements for distinguishing between logical and illogical practical thinking activities and establishing the standards for determining between appropriate and unworthy actions, in other words, those actions that are morally right or wrong (Finnis, 1980).

Based on the above definitions, it can be understood that natural law is a traditional style that places theological aspects as the highest law and provides a derivative mirror as validation of rules made by humans. Because of its absolute nature, methodologically natural law constitutes a genuine dialogue, which characterizes the natural logic itself in realizing morality and justice.

2.2 The Meaning of Natural Law Theory

Natural law thinking occupies an essential historical space and a dark space because of its very thick abstract nature. Friedmann stated that the history of natural law is the history of humanity to find what is called absolute justice, in addition to the history of humanity's failure to seek justice (Sutikno, 1970). Understanding more substantive about natural law, although there are differences in defining it, all legal experts agree that there are at least five (5) essential elements in natural law. The five essential components will be explained below.

First, there is a relation between *human nature and what humans ought to do and ought to avoid. There is a relationship between human nature and what humans should and should not do. Second, is in some way, knowledge of human nature enables one to know or determine what ought to be done and avoided. By nature, humans know or can decide what to do and what not to do. Third, natural law's essential element is positive human law is only authentic, just, and binding when it is in harmony with natural law. Positive human-made laws will only be binding if they are in harmony with natural laws. Fourth, the next essential element of natural law is that natural law*

is universal, unchanging, and non-relativistic. Natural laws are universal, immutable, and absolute. The fifth element of the essence of natural law is that natural law has sanctions so far as to act in accordance with it, it leads to flourishing and acting against it, leading to a failure to flourish. Natural law contains sanctions in terms of actions that follow goodness and activities contrary to goodness (Efendi et al., 2004). *This description shows that the theory of natural law is based on moral theory and legal theory. The moral foundation is a measure of good or bad behavior and right and wrong. The legal basis on which the natural law is based is a controversial meaning of positivist legal law's characteristics.*

Natural law thinking variants show that ontologically the real law flow is at a very abstract level. This level's essential essence is that natural law is more properly interpreted as legal principles and not as a norm. Natural law recognizes the existence of positive law, but positive law can immediately be threatened if its presence does not meet the requirements of morality imposed by natural law (Sidharta, 2006). The phenomenological foundation of the theory of natural laws is a departure from the arguments of causality. The proposition is founded on building a syllogism that departs from premises - self-evident and suppositive premises. The law's meaning as principles of truth and justice in natural law theory is supported by idealism. Idealism states that the idea of truth and righteousness does not come from experience but precedes experience, which means that it is a priori, not posterior. The idea is both fundamental and original that its existence must be maintained in every form of law.

Natural law in its nature can be grouped into two (2) characteristics, namely irrational natural law and rational natural law. The ludicrous nature of the natural law is understood as a limit to the human capacity to maintain order and life necessities. Irrationality is a space of God's will as adopted by the scholastics who originated the theory of natural law in medieval times, such as Thomas van Aquino, Gratianus, Agustinus, Dante, John Salisbury, Pierre Dubois, and others. Aquinas mentioned the conception of natural law in 2 types because of natural law theory grouping, namely, Principia prima and Principia Secunda. Principia prima is none other than principles owned by humans from birth and are absolute because they cannot be isolated from them. Therefore it cannot change anywhere and under any circumstances. Unlike the prima principle, the second principle is a principle derived from the prime focus. Consequently, it does not apply absolutely and can change according to place and time.

Epistemologically, natural law theory places the intuitive aspect as an instrument to capture the meanings of morality and justice as the core of the law. In connection with those mentioned above irrational and rational nature, besides reasoning based on reason or ratio, there is a reasoning system that relies on intuition (the intuition method is the mainstay of natural law). According to Sidharta (2013), natural law reasoning patterns are intuitive. This law is in line with the legal meaning's characteristics in the form of universal truth and justice principles. The rules formulated in natural law demand, first of all, intuitive digestion. In the study of intuition, philosophy has several levels. Bagus (1996) puts it in two (2) types of intuition: sensible intuition and intellectual intuition. Practical intuition is sensory. Through this practical intuition, humans can perceive things directly. While intellectual intuition is not directly related to humans, only pure spirits have perfect intellectual intuition.

The main idea of natural law theory is that law is a reflection of the divine order. The legislation only has the function of clarifying and explaining that divine order. The judge must uphold justice through implementing the law about the enforcement of laws. The essence of Aquinas' thought can be understood cosmologically. Namely, rational reasoning can be allowed as long as the limits set by divine revelation are not violated. The application of positive law in real cases must be understood as the implementation of religious law. In describing justice, Thomas Aquinas divides it into three (3) categories, namely; 1. Iustitia distributiva, distributive justice, refers to the principle "to the same given equally," to the unequal given the unequal. This principle is called geometric equality (Tanya et al., 1953.). 2. Iustitia commutative (commutative justice) refers to judge based on the adjustments that must be made in the event of an act that is not following the law. This principle is called the arithmetic principle. 3. Iustitia legalize, legal justice which refers to obedience to the law. obeying the law means the same as being useful in all things, so legal justice is also called general justice, generalist institute.

2.3 Sources and Hierarchical Natural Law Theory

The main reference in discussing the theory of natural law cannot be separated from the thought of St. Augustine and Aquinas. The thoughts of the two philosophers, if identified in-depth, will arrive at conclusions about the nature of natural law theory in its source and hierarchical dimensions. The Greeks and Romans understood justice as a good life, not hurting anyone, and giving everyone his. For Augustine, that was not enough, which adds to that principle by knowing God and living a godly life. For him, the dimension of God and human piety in the system of life

is one of the important elements of justice (Tanya et al., 1953). As a religious figure, Augustine placed the divine aspect (divine law) as the ideal of all laws, including positive law. If the positive law violates the divine order, then it has lost its legal quality.

Thomas Aquinas was a church figure in medieval times, around 1225 - 1274. Aquinas based his legal theory on the moral context of Christianity. Laws are needed to uphold a righteous life in the world—righteousness as the basis of energy to achieve justice points to religion's parameters. Morals as a guide are intended to uphold humans' natural rights to maintain their life, love, and live in families, longing to know God and live in friendship. These moral imperatives directly affect the legal aspect. The rule of law must be built in a structure culminating in the will of God. On a practical level, obeying the law means just as much as being kind in everything.

Based on the natural law theory ideas above, it can be traced explicitly that the source of natural law consists of; 1). Divine sources, namely the provisions of God that must be guided by humans. 2). The basis of the ratio (reason), namely the human ability to capture and interpret natural meanings to obtain an order in life. In this context, from the source, natural law distinguishes between laws that come from revelation and those that are reached by human reason. Thomas Aquinas then mapped the law that comes from the revelation called ius divinum positivum or positive divine law. At the same time, the law that comes from human reason consists of several types, namely ius naturale (natural law), ius gentium (law of nations) and ius positivum humanum. (man-made positive law) (Tanya et al., (1953).

Mapping the source of law in the natural law perspective above affects the systemic formulation of the natural law itself. The systemic legal formulation is intended to provide legal symbolism in its hierarchical space. Based on his legal theory, Aquinas divides law into four levels (Rasjidi, 2017), namely, 1). Lex aeterna, namely the law, which is the ratio of God Himself, governs all things and is the source of all laws. This ratio can only be grasped by intellectual intuition and cannot be explored by sensible or sensory intuition. 2). Lex divina, namely the law derived from God's ratio that can be captured by humans based on the time they receive. This God ratio can be captured by sensible intuition. 3). Lex naturalist, namely natural law, which is the incarnation of divine law in human ratio. 4). Lex positivist, namely the applicable law, is the implementation of natural law by humans due to the special conditions required by the state of the world. This positive law consists of positive laws made by God as found in scripture and positive laws made by humans.

3. Views of Legal Positivism

3.1 Definition of Legal Positivism

Positivism emerges as a new term in explaining various scientific problems as a framework for human thought in fulfilling all life dynamics. At first, positivism as a school was developed by a French social philosopher, Auguste Comte. According to Comte, human thought's journey goes through several theological, metaphysical, and positive stages (Nef, 2003). According to Comte, positivism considers that what is valid or accurate is only a positive or real field of knowledge, namely when the scientific method is applied in that field of expertise (Peotevi, 2005). positivism is a new feature in epistemological logic by positioning science as a determining aspect in determining validity.

Positivism comes from the word positive, which means scientific or objective or empirical compared to speculative or religious or hypothetico-deductive modes of thought. Positive means factual that is, what is based on facts (Susanto, 2011). Positivism is the view of Susan Ellis Wild, which is a view that true knowledge comes from studying observable properties and actions and not through reasoning or speculation (Blackwell, 2006). Further to the notion of positivism put forward by Ami Hackney Blackwell, positivism is the belief that laws exist to run a society, and those laws are valid because humans establish them, and what is idealized or aspired to, or concerns about justice should not limit the implementation of the law (Blackwell, 2008).

Based on the definitions above, legal positivism was born with a new character both ontologically, epistemologically, and axiologically. Ontologically, legal positivism is oriented towards positive norms, whereas epistemologically, this meaningful content is derived from the idealism and materialism approaches. Since legal positivism explicitly eliminates the requirement for connectivity between law and morals, this realm's axiological domain is legal certainty.

3.2 Ideas of Legal Positivism Theory

Auguste Comte explained that at the theological stage, human thought is predominantly influenced by ideas - ideas that come from God that are not captured by the senses. At the metaphysical stage, the views of human thought originate from natural laws. At the positive phase, ideas of view that come from something that the senses cannot grasp have begun to be abandoned and are based on observable facts. Juridical positivism wants to capture the legal system as a sensual fact, just an empirical fact. This platform of thinking results in legal concerns only limited

to empirical facts. The law becomes a single object that only the sensual senses can grasp. This thinking then thickens an idea of a set of rules, which are factually made by the competent authority, and their enforceability can be enforced. Therefore, this theory focuses on the legal aspects of the formal regulations of the state.

Austin further assumes that the legal system is real and applicable, not because it has a factual basis in social life, nor because the law lives in society, or even because the law is not a mirror problem of justice and morals, but because the law takes a positive form. From the competent institution. The legal justification lies in its formal-legalism, both as a form of ruler's order as Austin's idea and because of the derivation of grundnorm as the core of Kelsen's teachings. The most important thing from this theory of legal positivism is studying the law in terms of its juridical form and not its material content. In the history of positivist thought, John Austin was a major follower of positivism, with his analytical legal positivism. It is starting from a basic idea that there is a power that gives orders.

On the other hand, some people generally obey these commands. The question of why the commandments were kept is not an important issue. According to Austin Austin (Tanya et al., 2004), to be called a law needs elements of belief, the existence of sovereign authority, an order, an obligation to obey duties, and sanctions for those who violate the embargo.

Positivism is born as an attempt to refute natural law theory. Positivism theory is a theory based on social facts and not moral claims. Positivism adheres to the principle that what qualifies as the law is only law based on social facts, which is then determined or expressly stated by those who have the authority, in this case, the head of state, judges, legislators, and others. Positivism also holds explicitly that law and morals are two different fields. Legal positivism is a stream that carries empirical legal theories, and there are several theoretical features in interpreting it. These theories include analytical legal positivism, analytical jurisprudence, pragmatic positivism, and Kelsen's pure theory.

This sharp theoretical dialectic, legal positivism, tries to shake the idea of justice, which is the central axis of natural law thought, and replace it with a ruler's order as the main subject of all law. This view is the answer to a human civilization that has begun to recognize the structures and forms of large organizations, namely the state. At first glance, this theory of positivism has a modern character, but relying absolutely on the authorities' orders in a formal, legalistic form shows the severe weakness of the law's main objectives. As justice becomes merely a formal rule,

the concept of law, the values of virtue which become the normative basis of law, is replaced by mere legality, actually having a very dangerous normative fragility. Natural law is a law that contains a substance, systematic and legal values. Therefore, regulations that do not include the substance of justice, benefits, and aspirations, are not appropriate to be called law.

Understand further about the ideas of legal positivism as previously mentioned a modern legal thinker Hart (1989), describes five main characteristics of positivism in law today, namely:

1. A statement that the law is a human command
2. A statement that there is no need for a legal relationship with morals
3. Statements of analysis of legal concepts are essential. They must be distinguished from historical investigations of the source of law, sociological studies of the relationship of law to other social phenomena, and form judgments based on morals, social objectives, legal functions, etc.
4. A statement that the legal system is a closed logical system, in which the correct legal decisions are obtained from rational means of established standard rules without being related to social objectives, policies, and measurements. Moral measure.
5. A statement that moral considerations cannot be established or proven by rational arguments and logical proofs.

These statements are the anti-thesis of the assumptions of natural law theory and the personification of the birth of views on power and the principles of legality. Formal mainstreaming is a necessity in force to ensure the goals of management are achieved. In this context, legal change occurs at a substantive level, but objectives have shifted to power goals in a negative sense.

As the main face of legal positivism, Austin and Kelsen's theory has a view that departs from different assumptions but has the same meaning and purpose. If Austin focuses his attention on the functional relationship between law and power, Kelsen sees the legal relationship as a normative derivation that he calls the grand norm. At first glance, Kelsen's idea has ideals, but the luxurious standard's spirit is not explained further. Grandnorm seems to be just an assumption, and the contents of the grand norm become blurred. If the grand norm's content or material of the grandnorm is to become the realm of power, then the two theories form the same strength and configuration. Kelsen's explanation is one of the characteristics of legal positivism: there is an ultimate normative basis in law. A rule must not conflict with the regulations that apply at a higher level and culminate in a grand norm. The substance content of the grand norm itself is not defined.

The sharp differences in interpreting the law, especially in the corridor of theoretical, natural law, and legal positivism, have contributed significantly to the civilization of human thought in its time until now. The views, patterns, characters, experiences, and legal problems presented by these two legal theory schools are important references in developing law in the future. Epistemologically, natural law theory is busy with the validation of human-made laws, while in positivism, the theory of law activities is derived from concrete problems. The validity of the rules is still given attention, but the regulatory standards that are used as a reference are also legal norms. The idea of legal positivism seems to fit the frame of the state and power because those positivism ideas are so deeply rooted in the state power system. Its formal legalistic and juridical normative aspects are the state's main tools in translating its power objectives, which have been mixed with legal purposes.

3.3 Sources and Legal Hierarchy

The existence of the theory of legal positivism in the jungle of human thought is part of intellectual existence, which makes reason the primary basis for behavior and order. This fact also clearly differentiates with the theory of natural law, which explicitly involves the divine dimension (God) and the natural dimension as the central platform in exploring human life on earth. The discussion on this matter has been going on for a long time, ever since the classical era. The intervention and role and influence of divine law on human life and the role, function, and progress of human reasoning are quite dichotomous, at least in philosophical logic.

Kelsen explained that law has a hierarchy, and the order is based on the norm level theory. This means that the norm very much determines the level of law. If the idea of natural law is observed in detail, it will be found that there are levels of law that are not determined by norms but rather based on the origin of the law. Natural law theory requires that the law be a priori and permanent. Legal positivism forms a hierarchy based on Kelsen's theory by placing the grand norm or by Nawiasky Staatsfundamentalnorm as the highest norm. The Grandnorm has a value derivation of the laws and regulations under it. This positivist theory of legal hierarchy is in fact, the same proportion between the normative levels and the form/type of regulation stipulated.

4. Islamic Law Character

4.1 Understanding Islamic Law

The meaning of Islamic law must begin with identifying the suitability of purpose with other terms in Islamic teachings. In the literature, several terms are identical in interpreting the law in Islam. Among these terms are Sharia, Fiqh, Qanun, fatwas, and Islamic law itself. This naming is often used inaccurately, or there is an incomplete understanding of the legal terms in Islam. In English literature, Jasser Auda explained the term Islamic Law (Islamic Law) generally refers to 4 different Arabic terms, namely fiqh, Sharia / Sharia, Qanun, and Urf' 9Auda, 2015).

Syari'at means 'way' or path to the water source, which means a straight path, the direction the waterfall takes (Shiddieqy, 1985). Roads to water sources or places where people drink, especially on footpaths leading to water troughs that are fixed and clearly marked with the eye, meaning a clearly visible road or highway to follow, water source or source of life source of water or source of life (Mansur,). Syekh Mahmout Syaltout defines shari'ah as rules that are created by Allah or which are created in essence so that humans adhere to them in their relationship with God, their fellow Muslims, their fellow human beings, and their relationship with nature as a whole and its relationship with life. Furthermore, a similar definition was reiterated by Jasser Auda, that Yusuf Ali translated Shari'ah as' way '(way), Picktall translated it as Divine Law' (divine law), Irving translated it as the Code of Law, meaning Jasser Auda himself translated Shari'ah as a way of live, a way of life (Syaltout, 1967).

The term fiqh etymologically means smart, intelligent (Razak, 1972). Meanwhile, in terms of terminology, the famous Muslim sociologist Ibn Khaldun (Somad, 2010) explains that fiqh is a science in which all the laws of Allah are related to all the work of mukalaf, both the obligatory, the haram, and the mubah-wajib taken from the Book and the Sunnah and from the propositions that the Shari'ah qiyas has firmly established for example. When the laws are issued by way of ijtihad from the recommendations, then what is issued is called fiqh. The meaning of fiqh in various experts' views is so diverse, but the substance is the same as the knowledge of the law - practical sharia law dug from its detailed propositions. In this context, fiqh is only limited to practical matters, although the evidence is based on the verses of the Qur'an and the history of the Hadith.

The third term is qanun which comes from the Persian language which is undergoing a process of Arabization. The word qanun means principal, and since the 19th century, it has developed into written law. In countries that legalize Islam as a source of legislation, written law

is derived directly from fiqh fatwas that are quoted verbatim (Auda, 2015). In the essence of Prof. Syamsul Anwar stated that qanuns in Indonesian law's hierarchy are the same as laws or regional regulations (Anwar, 2017). *Qanun* in the context of Law in Indonesia is a form of law produced by the Regional Government of Naggroe Aceh Darussalam.

Based on understanding the terminology of shari'ah, fiqh, and qanun, there are several differences, both hierarchically and substantially. This foundation of thought opens up a younger space for analysis to differentiate it from Islamic law. In the explanation, Abdul Mutholib stated that Islamic law is a specific legal system. Islamic law has specific characteristics that distinguish it from other legal systems in this world. These characteristics include; 1). Islamic law is Islamic religious law. 2). Islamic law contains a universal character. 3). Islamic law covers the field of Ubudiyah. 4). Islamic law covers the fields of muamalah, legal feelings, legal awareness of society can be developed according to the needs and views of society based on the Al Quran and As Sunah. In a general sense, Islamic law includes Sharia and Fiqh. However, if what is meant by Islamic law is in a specific sense, then Islamic law is in the Sharia space in the narrow sense, namely that which regulates concrete human behavior.

Normally, Sharia is more explicitly sourced directly from the Al Quran and As-Sunnah, while the understanding of Al Quran's argument in the sense of interpretation is called fiqh. Sharia and fiqh can be distinguished but cannot be separated. The formation of Islamic law can be seen in the spaces which are the main regulatory objects, namely the law in the field of worship and muamalah. The law of worship is the law that regulates the relationship between humans and their gods. Meanwhile, muamalah law regulates human relations with others.

4.2 The substance of Islamic law

Islamic law contains the meaning of law based on Islamic teachings or dinnul. The main foundation of Islamic Law is the Qur'an. The Qur'an contains messages - messages of truth and justice given by God through his revelation. As-Sunnah is the second foundation of values. The message - the message of revelation itself requires a direct interpretation of both the words, deeds, and actions of the Prophet Muhammad SAW. Therefore, the Hadith - the Hadith of the Prophet became the main tool in interpreting the meaning and form of the messages of revelation, both in the form of commands and prohibitions. Substantially Islamic law covers the entire space, time, place, and even dimensions of human life. Prof. Syamsul Anwar, Revealing that Islamic Law is a

derivative of the divine greeting, which was revealed by certain methods, that method is Islamic Legal, Theory or Usul Fiqh.

According to Islamic law, the definition of law is a divine greeting that contains demands, alternatives (options), and relationships. When viewed from the legal space, namely the space of worship and muamalah, then the substance of Islamic law focuses on obedience to the creator vertically with certain measurements and the horizontal harmonization of life both among humans and towards the universe. However, when viewed from its main aspects, according to Sjechul Hadi Purnomo, Islamic teachings contain three main teachings, namely the principle of Aqidah, the principle of Ahlak, and the principle of Sharia. From the perspective of Islamic law's objectives or known as maqasid Sharia, Jasser Audah made a classification into three levels, namely 1). The necessity or emergency, 2). Needs or Hajj, 3). Tahsiniat completeness. There are five main substances at the emergency level that must be protected or preserved, namely the soul, intellect, property, religion, and descent.

Maqasid Sharia is a basic human need that is always the parameter of goodness and truth. The aspect of the soul is a very basic right. Without a human soul will lose its existence. Therefore Islamic Law affirms the importance of integrity and protection of the soul. The second fundamental aspect is the reason. In all aspects of life, especially in the field of science, the reason is very central. The presence of theories, including legal theory, debate, conflict, and solutions are taken, is an activity that always requires reason. Islamic law always leads to the mind's awareness as the most powerful creature that makes the difference between humans and other creatures. Religious aspects have a role in guiding humans to the path of truth and justice. Religion makes humans believe in things - things that are metaphysical or transcendent. Religion provides a philosophical foundation for the happiness of human life. Religion has the magic power for its adherents to do or not do something, so Islamic law has always been fortifying religion in various forms in order to remain sustainable. Property and descent are empirical values that indicate ownership rights and responsibilities. Its existence is very vital in human life. So Islamic law provides a legal position on property and descendants so that life can take place in a good, orderly, and dynamic manner.

4.3 Sources and Hierarchy of Islamic Law

As a law that comes from religious values, Islamic law cannot escape from the divine dimension as the source of all laws. God is the owner of absolute power over what is in the heavens

and on earth, including humans. Apart from God, another form of Islamic law is based on reason. In the context of characteristics, Islamic law has several sources, namely :

1. The source of naqly, namely the source of law where the mujtahid did not play a role in its formation, the source of the law of the naqy is Al Quran and As Sunah.
2. The source of Aqly is a source of law where a mujtahid with his intellect can play a role and try to find law by prioritizing thought with a variety of methods.

The distinction of legal sources mentioned above actually implies differentiation between truly authentic and universal sources and sources that are influenced by ratio, time, space and place.

In the Islamic legal system, the sources and hierarchies have very strong relevance. The source of origin that produces a law will reflect the hierarchy of the law itself. The source can be interpreted as a container from which law is found. In Islamic law, apart from sources, there are terms that this term has a correlation with sources, according to Prof. Abd. Manan, The Islamic Law System is based on the Al Quran, which is the holy book of the Muslims, which is the revelation of Allah that was sent down by the angel Jibril to the Prophet Muhammad SAW. Second, the Hadith, namely the words, messages, deeds, and attitudes of the Prophet Muhammad, which are then used as guidelines by his followers. Third, Ijma 'is the agreement of the scholars regarding a law against something that has not been clearly regulated in the Al Quran and As Sunah. Fourth, Ijtihad para Mujtahid concerning the law of an issue that has no law. These sources have their respective levels, which indicate the position of these sources. The level of the source of this law is at the same time a reflection of the hierarchy of Islamic law in terms of its form. At the same time, the level in the legal sense is divided into five categories, namely, Mandatory, Sunnah, Makruh, Mubah, and Haram. This level of law is known as taklifi law.

5. Conventional Law

The word conventional comes from the phrase convention used to express or communicate everything based on an agreement. Some people divided an agreement, a number covering an institution, a particular area, or an international scale. Furthermore, the conventional designation is a word that shows properties. Namely, to state all (joint) activities or actions based on convention. This fact means that each concept that will be implemented must be based on agreed provisions or legislation.

Conventions in society aim to meet human needs, and their main functions are: first to guide members of society on how they should behave in society, second to maintain the integrity of society, third to give society hold on social control, meaning as a means of controlling behavior—the behavior of the community.

The term customary law is not known in western philosophical, theoretical, or legal discussions. Customary law is a term to indicate that there are significant differences in form, source, and substance with Islamic law. On the other hand, traditional law refers to legal practice based on the civil law legal system and the standard law legal system. The civil law legal system has grown and developed in the European continent since the 12th century. Adherents of this legal system refer to the Iuris Civilis corpus laws created during the Iustianus emperor's time in Germany. The development of the civil law legal system continues, penetrating in the western world and in the eastern world, even Indonesia.

According to Sunaryati Hartono (1991), the reception of Roman law into Western and Southeast European law was due to two factors; First, starting from the Middle Ages, many students from Western and Northern Europe studied at the Universities of Italy and Southern France, where only Roman law was studied. After returning to their homeland, they tried to use Roman law to solve the legal problems they faced in their country. Second, there is the belief in nature's fundamental laws, which are considered perfect laws that apply to every place and time. The spread of the influence of Roman law was increasingly widespread in countries whose laws were fundamentally problematic and required a legalistic solution.

The civil law legal system as part of customary law has special characteristics, and namely, first, the law is a legislative product. Second, the law is statutory regulation. Third, it was heavily influenced by the perception of Roman law. Fourth, all civil law legal systems are codified in legislation. Fifth, judges' decisions in court are not the primary source of law but information about

the law. Sixth, the law is not only about prosecution but mostly about its general function. Seventh, the civil law system differs in substance and procedure between civil law and administrative law (Friedmann, 1994). We can easily find these characteristics in countries that adhere to civil law. In subsequent developments after globalization and modernization in all fields, including law, legal reform in countries in this era is essential.

The standard law system originated from the custom in England around the 11th century. Common law is also known as Anglo Saxon and Anglo American. In the typical law legal system, its main characteristics are; first, the law results from the gradual growth of history. Second, court decisions are a significant source of law. Third, the dualism of customary law in terms of etiquette is still recognized. Fourth, common law does not accept the division of civil and administrative law as in the civil law tradition, and common law adheres to the theory at least on the principle of equal treatment before the law. All five courts have a special place. Sixth, to submit oneself based on habit.

Conventional law is closely related to legal positivism in the modern sense. Conventional law requires the involvement of the authorities in organizing the law. In Indonesian law, conventional law can be categorized into two conceptions, namely the concept of positive law and the concept of customary law. Conventional law has a single norm, namely legal norms. The conventional legal style consists of orders and prohibitions. When conventional law becomes written law, it will always experience changes. In conventional law, there is a separation of laws and norms. This is adjusted to the spirit of the formal law that governs it. In the Indonesian context, the hierarchy of legislation (for example) is regulated in Law no. 12 of 2011 Article 7 number (1) (UU No.12 Tahun 2011), namely:

1. UUD 1945
2. MPR Decree
3. Law / PERPPU
4. Government Regulations
5. Presidential Regulation
6. Provincial Regulations, and
7. District / City Regional Regulations

The legal division is based on the form above, at the same time reflecting the pattern and hierarchy of norms. The higher the legislation, the higher the norms contained therein, up to the most elevated norms.

6. Natural Legal Theory and Legal Positivism: A Comparative Review Between Islamic Law and Conventional Law

Based on the previous discussion's description, in this section, the writer compares Islamic Law and Conventional Law by using the analysis of natural law theory and legal positivism. Theoretically, the Theory of Natural Law and The Theory of Legal Positivism have opposing ideas. The differences between these two legal theories can be seen as follows:

1. Natural law theory views that law is closely related to morality, while legal positivism views law and ethics as strictly separate.
2. For the natural law, the law is not just what has become law. For the natural law, laws that do not contain morals are not laws and do not have binding power. Meanwhile, legal positivism affirms that law is a rule made by humans or stipulated by legislators. If the law is deemed to have no moral value, then the law remains valid until it is determined that the law does not apply.
3. Law that does not contain morals is unnatural, while legal positivism states that law is a system of rules - clear and firm rules and a system of social norms.
4. Natural law theory holds that law contains justice; otherwise, it is not law and does not need to be obeyed. Meanwhile, legal positivism emphasizes that law is an order by the sovereign supported by sanctions' threat.
5. Natural law believes that humans are bound by the highest law, namely God's law which is far more potent than human-made laws. Human-made laws are inferior or lower than natural laws. Whereas legal positivism states that rejecting everything that is metaphysical and speculative related to law, the law is empirical facts that the senses can grasp.
6. The theory of natural law is normative because it relates to idealized law (Ius Constituendum), while the theory of legal positivism is analytical because it relates to applicable law (Ius Constitutum)

The theory of natural law has substantial similarities with Islamic law. First, the existence of the highest law that comes from God and cannot change and applies universally. Although in teaching, natural law is influenced by the Church's doctrine and the Bible, whereas Islam is influenced by the Al Quran and As-Sunnah's revelations. Second, the law is related to morality and justice. Third, the law of the product of reason or human reason does not contradict the basic principles of divine law.

Legal positivism views in developing law with an empirical approach and using the scientific method are a significant breakthrough and progress. Still, its ideas that ignore metaphysical, moral, and justice aspects in law are an accident of thinking. On this idea, the law only means certainty without justice and benefit. These thought dimensions arguably make a sharp difference between the meaning of the substance of the theory of legal positivism and Islamic law.

7. Conclusion

Based on the explanation in the previous discussion about natural law theory and legal positivism theory in a comparative review between Islamic law and conventional law, it is concluded as follows:

1. Natural law theory has very strong relevance to Islamic law, especially in interpreting the law, both in terms of level and substance.
2. Legal Positivism theory adheres to analytical principles by prioritizing law, in fact, or the law that applies to the determination of the ruler. Positivism separates law from morals and justice. This positivist style of law has very sharp differences from the style of Islamic law.
3. If it is broken down more critically, then among these standard features can be qualified as follows: first, natural law is a classical theory that requires a legal transformation in the current era, and Islamic law is a modern theory that confirms the legal character of natural law theory. Second, legal positivism is a theory that emerged in medieval times, although it recognizes the scientific methods but still reflects its traditional character. Conventional law is a modern legal theory that is substantially related to legal positivism theory.

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