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Review article

A Philosophical Note on the Conflict between Irrational and Rational Tendencies in Legal Thought: Western and Islam Experiences

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ABSTRACT

Rational and irrational tendencies have competed vigorously in legal thought in both Western and Islamic traditions. In Western tradition, the competition took place within the internal rational natural law school, as indicated by the split of this school into the irrational natural law school and the rational natural law school. In Islam, similar competition divided Muslim jurists into the traditionalists (*ahl al-hadith*) and rationalists (*ahl al-ra'y*). Within the Western tradition, the conflict continues and no compromise appears, while in Islam, irrational tendencies and rational tendencies have reached certain compromises. This article, using philosophical approach, seeks to find out the factors causing the failure of such compromises in the Western tradition and the achievement of such compromises in Islamic tradition. This article concludes that the conflict within natural law is more substantial and it denies any effort of compromises as it concerns with the very nature of law and its authoritative sources, whereas in Islam, basically, the disputes are merely about the methodological aspects, i.e. the methods of inferring the law from its shared sources.

Keywords: Ahl al-hadith, ahl al-ra'y, natural law, rational and irrational tendencies

INTRODUCTION

The long history of Western philosophy of law has produced several contradictory legal schools. They came out as a result of long process to search and discover the true meaning of law with the basic question: "what is law?" (Ali, 2010; Darmodiharjo & Shidarta, 2004). Since then, no consensus is reached about the true meaning of law

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and other related basic presumptions. This question is responded differently by legal experts depending on their beliefs and background (Ujan, 2013). There are at least seven schools of law; natural law, legal positivism, utilitarianism, historical school, sociological jurisprudence, pragmatism, and legal realism (Rasjidi & Rasjidi, 2002).

The earliest school is natural law. It originates from the teachings of Stoic philosophy, a thought from ancient Greek philosophy which flourished in 300-200 BC. Stoic philosophy believes that the universe, including human beings, is essentially inspired by divine mind (*logos*). Natural law theory is then developed systematically by Thomas Aquinas (1225-1274 CE), a great philosopher and theologian of the Middle Ages. He is the father of natural law theory (Ujan, 2013). Aquinas believes that the universe is under God's command which means God's law is the ultimate law. Because God's reason is perceived as something eternal, not temporary, His law is also considered eternal (*lex eterna*). This divine eternal law is revealed to human beings through His words as recorded in the holy books, which Aquinas calls as the Book of Life (Ujan, 2013). Therefore, law should be sought from nature which is inherently in order. This school later was challenged by legal positivism (Rasjidi & Rasjidi, 2002).

However, before the positivism challenge, natural law was challenged by a new tendency, that uniquely also called itself natural law. The emergence of this new tendency divided natural law into irrational natural law and rational natural law. While the former is exactly what has been explained before, the latter states that natural law originated from human reasoning. This latter opinion is championed by Hugo de Groot or Grotius (1583-1645). He asserted that the source of law is human reasoning and that any law which emerges from human nature cannot be altered, even by God (Rasjidi & Rasjidi, 2002).

Why did this rational natural law emerge and oppose irrational natural law? Firstly, there is a question concerning the means of finding that natural law which is eternal. Aquinas replied by stating that human beings have the capacity to know things, but not eternal things. Only blessed and selected human beings could understand the eternal things (Ujan, 2013). This very thought of Thomas Aquinas still influences the Church's thought until today (Ali, 2010).

Similar to what happened in Western history, the history of Islamic legal thought was once decorated by the tension between *ahl al-hadith* (lit: people of Prophet tradition) and *ahl al-ra'y* (lit: people of reason). The latter terminology refers to Muslim jurists who insert their personal opinion to Islamic law, which largely relies on revealed texts, with more emphasis on *Sunnah* (the Prophet's tradition). In Islamic history, the tension between *ahl al-hadith* and *ahl al-ra'y* is the only tension ever recorded in relation to Islamic jurisprudence. Both are "legitimate sons" of Islam (Nyazee, 1994). Simply put, both have the rights to be deemed as Islamic as it happens in the case of natural law theory in the Western legal perspective thought history.

This research compared both phenomena in relation to the search of the true meaning of law in the sense that Western tradition is essentially rational whereas Islamic tradition is basically text-heavy tradition (Nyazee, 1994). It employed the philosophical approach by borrowing the philosophy of knowledge's ontology, epistemology and axiology. Strictly speaking, this research compared the two traditions concerning the true meaning of law (ontology), methods of acquiring it (epistemology), and the purpose of law (axiology) (Anshari, 1987).

THEORETICAL FRAMEWORK

Schools of thought that are discussed in this article, whether they come from the Western or Islamic tradition, have one major theme of searching the true meaning of law. If it is scrutinized, Western tradition discusses it in the discourse of philosophy of law, whereas Islamic tradition discusses it in *usul al-fiqh* (Islamic legal theory). These two disciplines (philosophy of law and *usul al-fiqh*) basically discuss legal material, with their own distinction. While Western discipline discusses secular subjects, *usul al-fiqh* in essence deals with divine subjects (Nyazee, 1994). Therefore, the employment of ontology, epistemology and axiology to compare these two traditions with the object of the essence of law and its related subjects is fully and scientifically accounted for.

Ontology is a branch of philosophy of knowledge which deals with the essence of everything. Epistemology is the discussion method and underlying assumption of a discipline. Axiology is the one dealing with value and purpose of knowledge (Anshari, 1987). In this research, these three philosophical branches will be employed to compare the essence of law, its method and purpose as conceptualized by Western natural law and Islamic legal theory.

METHOD

This article employed the philosophical approach with its heuristic character, continuous thinking and actualization concerning the topic and avoiding routine and mechanical thinking. Instead, it opts reflective thinking to gain awareness about the urgency of the topic to reconstruct creative and dynamic thinking (Bakker & Zubair, 1990). In addition, this article employs symmetrical comparative between natural law (irrational and rational) and Islamic law (*ahl al-hadith* and *ahl al-ra'y*). It means that the two schools will be exposed after each opinion is thoroughly explained (Bakker & Zubair, 1990). Several other methods which correspond to philosophical approach will also be used in this article, namely interpretation, holistic interpretation, historical continuity, as well as comparison and description (Bakker & Zubair, 1990).

The exposition in this research will begin with discussion on the very nature of law according to natural law (irrational and rational) and Islamic law (*ahl al-hadith* and *ahl al-ra'y*) in the frame of ontology, epistemology and axiology. By doing so, similarities and differences will show up between them, which are the answers to the research enquiry. These answers will

discover why irrational and rational natural law in Western tradition have found no way to compromise yet, while the disputes between *ahl al-hadith* and *ahl al-ra'y* have arrived at shared juristic positions (Nyazee, 1994).

RESULTS

Ontological Perspective of Law

Natural law theories can be divided into authoritarian and individualistic, progressive and conservative, religious and rationalistic, as well as absolute and relative. For juristic consideration, the most important difference exists between natural law as the highest law which refuses the authority of any inconsistent positive law, and natural law as an ideal to which positive law must be in accordance with without influencing its legality (Bakker & Zubair, 1990). Natural law is a law which is suitable with the natural upbringing of rational human beings. The only quality of human beings is their rational capacity to reach and understand nature (Rasjidi & Rasjidi, 2002). A.P. d'Entreves (1902-1985 CE, as cited by Erwin, 2013) states that the idea of natural law is seen as a norm to determine right and wrong, as a pattern of good life, a life which is in line with nature. This idea gives a strong drive to reflection, postulates of existing institutions, and provides justification from conservation and revolution (Erwin, 2013). The idea about good and bad or right and wrong is the object of the philosophy of morality (Cahyadi & Manulang, 2007).

Concerning with the source of law, natural law is divided into two diametrically opposite positions; irrational natural law and rational natural law. Irrational natural law believes that the law is deemed to be universal and eternal and is originated directly from God. Rational natural law believes that the source of universal and eternal law is human reasoning. It is viewed as distinct from divine order, so natural law emerges from human intellect. The proponents of this idea are Hugo de Groot (1583-1645 CE), Samuel Pufendorf (1632-1694 CE), and Immanuel Kant (1724-1804 CE) (Darmodiharjo & Shidarta, 2004).

Obviously different from what has been described above, Muslim legal theorists agree that the essence of law is God's law, although they also differ in terms of legal methodology. This difference resulted in the emergence of *ahl al-hadith* and *ahl al-ra'y*. *Ahl al-hadith* states that law is what is captured textually from *zahir nass* (apparent meaning) of the *Quran* and the *Sunnah*. For them, law is what is taken for granted from the sacred texts. It is certainly not within human reasoning, nor can be replicated by human intellect, nor has certain propose with which Islamic law may be evolved. Islamic law is irrational for there is not much room for reasoning in it. Humans are only obliged to read and understand Islamic law through textual meaning of the sacred *nass* (the *Quran* and the *Sunnah*). Therefore, they are silent about any legal cases for which they could not locate their textual evidences in the *Quran* and/or the *Sunnah*. They also believe that *sharia* (Islamic law) is much more authoritative than mere human opinions. *Sharia* originates from

the words of God which are always correct and consistent. *Ra'y* (reasoning) is merely human thought which is bound to errors and controversies. Any controversy will result in conflict, which is forbidden. The law is God's law, so it is not sought from human reasoning without Divine guidance in form of the *Quran* and the *Sunnah*. The only role of human reasoning in Islamic legal theory is to textually interpret Islamic law from the *Quran* and/or the *Sunnah* (Bik, 1971).

In contrast, *ahl al-ra'y* insists that *sharia* and law are within the reach of human reasoning. It has principles and basic values. The *Quran* contains essences of Islamic law by deriving '*illat* (*ratio legis*) from the sacred texts which in turn are used to determine novel cases for which the sacred texts are silent. It is beyond dispute that Islamic law has been imprinted in the *Quran* and *Sunnah*, but its essence and underlying principles are within the reach of human reasoning. Therefore, in addition to ability to capture the essence and principles of Islamic law, human reasoning also plays a significant role in legal formation. Human reasoning detects *illat* which is the cause or motif underlying a law in Islam. This *illat*, based on the similarity of legal cases, then will be used as a platform to provide legality for novel cases for which the *Quran* and/or *Sunnah* are silent (Bik, 1971).

Epistemological Perspective of Law

Each school of natural law (both the irrational and the rational) has different legal methodology. Irrational theory argues that God is the source of law, therefore law is found in His revealed texts. The revelation as *a priory* should be accepted as the only truth without any truth test. Strictly speaking, law is derived by interpretation of the texts, and the only authority to interpret the sacred texts is the Church (Cahyadi & Manulang, 2007).

In contrast, rational natural law theory insists that the source of law is human reasoning. So, law is derived through rational exercise. Using certain methods, human reasoning will produce and create law suitable with human understanding of justice. Reason becomes the only source which facilitates just law. Law is no longer the authority of a certain institution such as the Church, but of every human being who is capable of reasoning. In details, the two schools employ numerous philosophical methods to arrive at their goal, such as intuitive, scholastic, inductive, empirical, transcendental and dialectic (Bakir, 2007).

Turning to Islamic tradition, both *ahl al-hadith* and *ahl al-ra'y* agree that the source of law is God as revealed to His Prophet, Muhammad, in the form of the *Quran* and *Sunna*. However, they disagree on how to interpret these sacred sources. While *ahl al-hadith* emphasizes on textual approach and *qiyas* (deductive analogy) in deriving law from the sources, *ahl al-ra'y* develops rational methods in the form of *istihsan* (juristic preference) or *maslahah* (interest). In addition, both schools agree upon the authority of a third source, which is *ijma'* (consensus of Muslim jurists) (Zaydan, 1994).

Axiological Perspective of Law

In terms of axiology, natural law of both leanings firmly maintains that law has purpose that is justice. Justice becomes a concept that evolved along the history of natural law in which law is always equated with justice. Concerning this, Plato's conception on justice highly influenced legal theorists, including those of natural law. He conceptualized justice into three aspects as follows (Bakir, 2007):

1. Justice is a characteristic given to every human being
2. Justice helps man to coordinate and control their emotions in the effort to adapt with the surrounding.
3. Justice helps the community to live within nature optimally.

Aristotle then refined this idea and pointed out that justice should be understood in terms of equality. However, Aristotle made a significant differentiation between numerical equality and proportional equality. Numerical equality puts the human being as a unit. This is referred to as equality before the law whereas propositional justice deals with what are the rights, capacity, achievement, and so on (Darmodiharjo & Shidarta, 2004).

Furthermore, Aristotle goes on to differentiate between distributive justice and corrective justice. While the former applies in public sphere, the latter applies in private and criminal matters. Distributive justice principally is applied in the distribution of dignity, welfare as well as asset distribution to all groups of human beings using equal or not equal means. Equalities should be treated equally. In contrast, inequalities should not be treated equally. Distributive justice will lead to proportion, which is in sharp opposition to unjust disproportion (Darmodiharjo & Shidarta, 2004).

Corrective justice is a concept in direct opposition to distributive justice. Corrective justice focuses on correcting a mistake. If in a contract mistakes are made, corrective justice tries to compensate for the victim. If a crime is committed, then the proper punishment should be applied to the perpetrator. Here, justice as in the previous case is in the middle of the two extremes. Injustice according to Aristotle's aforementioned classification has become intentional and non-intentional in modern sense when speaking about agreement and breach. Nonetheless, injustice will result in the disturbance of well-established equality. Corrective justice has the role to rebuild this equality and balance (Darmodiharjo & Shidarta, 2004).

What Aristotle says about justice is then adopted by Thomas Aquinas who later envisages two types of justice; general justice (*justitia generalis*) and specific justice. General justice is justice based on the written law which has to be obeyed for the sake of the public. This justice is also termed as legal justice, whereas specific justice is based on equality and proportionality (Darmodiharjo & Shidarta, 2004). Kusumohamidjojo (1999) divided this last type of justice into:

1. Punishing justice (*iustitia vindicativa*);
2. Distributive justice (*iustitia distributiva*);
3. Commutative justice, especially in trade (*iustitia commutativa*); and
4. Social justice in the politic of law (*iustitia socialis*).

Turning to the views of Islamic *ahl al-hadith* and *ahl al-ra'y,* initial observation does not clearly show their position on the purpose of law. Both schools seem not interested in discussing purposes of law. *Ahl al-hadith* argues that Islamic law is something irrational, beyond rationality, so human reasoning cannot capture the purpose of law. Thus, this school believes that there is no such thing as purpose of law. However, *ahl al-ra'y* asserts that there is something rational that can be captured by human reasoning. Likewise, the purpose of law can be traced. Still, *ahl al-ra'y* does not elaborate clearly about this purpose. In the history of Islamic legal thought, the concept of the purpose of law only emerges several centuries after the debates between *ahl al-hadith* and *ahl al-ra'y.* The two early proponents of the discussion are al-Juwayni (1028-1085 CE) and al-Ghazali (1058-1111 CE). They developed *maslahat* as the purpose of law. Al-Juwayni further made classification of *maqasid al-shari'ah* (purposes of Islamic law) to five levels: *daruriyat* (primary), *hajiyah* (secondary), *makramat* (tertiary), *mandub* (recommended), and *kulli* (universally attainable) (Al-Raysuni, 1999).

These five types of *maqasid al-shari'ah* can be briefed into three types. According to Ahmad Imam Mawardi, al-Juwayni is the Muslim legal theorist who established the foundations of *maqasid al-shari'ah* by classifying it into *daruriyat* (primary)*, hajiyat* (secondary), and *tahsiniyat* (tertiary) (Mawardi, 2010). Al-Ghazali refined his teacher's concept before the arrival of the celebrated al-Shatibi who elaborated *maqasid al-shari'ah* in great detail (Ibrahim, 2008). In his book, *al-Mustasfa*, al-Ghazali related between *maslahah* with *maqasid al-shari'ah* as he says that *maslahat* consist all the measures taken to preserve the purpose of Islamic law (*maqasid al-shari'ah*), that is preserving the religion, life, intellect, offspring (dignity), and property. On the contrary, anything that harms them is considered *mafsadat* (danger), and any measure to stop harm is also considered *maslahat* (Al-Ghazali, 1997).

DISCUSSION AND CONCLUSION

The essence of law according to natural law theory is, it is a norm that originated from the order of universe so that it becomes universal and eternal. This theory was criticized and divided into two because of dispute over the source of law. While irrational natural law states that revelation is the source of law, rational natural law points to human reasoning. Meanwhile, according to the Islamic legal tradition of *ahl al-hadith* and *ahl al-ra'y* the source is always revelation. It is the law that is revealed by God to His Prophet Muhammad and compiled in the form of the *Qur'an* and *Sunnah*.

In terms of legal methodology, irrational natural law views that the source of law is God which is located in the written revelation in the holy book. The revelation has to be accepted as *a priory* as undisputed truth and without any form of truth test. Law is sought by interpreting those revealed texts by the rightful authority of the Church. While according to the rational natural law, any law is the product of human reasoning. Using certain methods, human reasoning produces just law. Reasoning becomes the only source of law which leads someone to find a just law. So, law is no longer authority of the Church because any person who properly uses his/her reason may find the law. In the Islamic legal tradition of *ahl al-hadith* and *ahl al-ra'y,* the position of the *Quran* and *Sunnah* as the source of law is paramount, so the essence of law is God's law. God is the only legal authority as He has revealed His commands in the form of the *Quran* and *Sunnah*. The difference between *ahl al-hadith* and *ahl al-ra'y* simply concerns interpretation methods. While *ahl al-hadith* is restrained in interpretation, *ahl al-ra'y* is considerably liberal.

From the axiological perspective, the natural law is consistent in stating that law has the purpose of justice. Justice becomes a concept which keeps evolving along the history of the natural law that justice and law are inseparable. Meanwhile, discussion about justice seems absent in *ahl al-hadith* and *ahl al-ra'y.* There is no such thing as the purpose of law. The only lesson from *ahl al-ra'y* which is similar to the natural law discussion is that there is something rational in Islamic law and that the purpose of law is recognized.

It is apparent that the two leanings of natural law fail to agree on the authoritative source of law. This is a stark difference with Islamic legal tradition of both *ahl al-hadith* and *ahl al-ra'y* that agree with the revelation as the source of law. However, the two leanings of natural law agreed on the point that justice is the purpose of law as much as Islamic legal tradition of both *ahl al-hadith* and *ahl al-ra'y* agreed on the idea that *maslahat* is the goal of law. Surprisingly, a refined concept of *maslahat* actually is proposed by jurists with *ahl al-hadith* (read: irrational theory) leaning and it has been applied in Islamic legal development. However, *maslahat* is not everything, because revelation is the ultimate source of Islamic law. In principle, law originates from revelation and *maslahat* is used in such a way that revelation "tolerates".

The conflict between the two leanings of natural law seems to be more substantial because of concern about the essence and source. These factors have denied any effort of compromise or reconciliation, while more substantial reconciliation did take place between *ahl al-hadith* and *ahl al-ra'y,* that from the beginning have agreed that revelation is the source of law. It should also be noted that the tension between the two leanings of natural law is well-shadowed by the conflict between the Church and temporal authority, while the tension among schools in Islamic legal tradition occurred purely intellectual and not political.

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