

## The Position Of Legal Philosophy From The Viewpoint Of Islamic Legal Science

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Info Article	Abstract
<b>Article History</b> Received : 2022-07-05 Revised: 2022-07-12 Published: 2022-07-30  <b>Keywords:</b> <i>Philosophy Of Law, Islamic Law, Legal Epistemology, Maqashid Sharia</i>	Legal philosophy is an important part of the legal scientific framework, serving to answer fundamental questions about the nature of law, its purpose, and its underlying values. From an Islamic perspective, legal philosophy holds a strategic position as a tool for understanding the sharia values that underlie God's laws. This study aims to outline the position of legal philosophy within the perspective of Islamic legal science. A qualitative approach using a literature review method was used in this paper. The results of the study indicate that Islamic legal philosophy occupies a fundamental position as a foundation for formulating and interpreting law, as well as a link between divine revelation and human rationality. Thus, Islamic legal philosophy addresses not only legality but also the morality and spirituality of law.

### I. INTRODUCTION

In modern legal science, the philosophy of law occupies a crucial position as a foundation for thinking that underlies the existence of law itself. It not only supports practical legal theories but also explains the nature of law from an ontological, epistemological, and axiological perspective. The philosophy of law answers fundamental questions such as: What is law? Where does law originate? What is the purpose of law? And what is the relationship between law and morality and justice? These questions are the foundation for building a legal system that is not only functional but also meaningful and valuable for human life.

In general, in the study of Western legal philosophy, there are various schools of thought that influence the development of law, such as legal positivism, natural law, legal realism, and others. These schools contain ideas that attempt to answer questions of justice, legal authority, and the relationship between law and ethics from different perspectives. However, these approaches are often limited to the rational-empirical aspect alone and do not include the transcendental dimension or revelation as a source of law. In contrast, in the context of Islamic law, legal philosophy cannot be separated from the

primary sources of Islamic teachings, namely the revelation of Allah SWT as contained in the Qur'an and the Sunnah of the Prophet Muhammad SAW, as well as common sense reasoning that is in harmony with the principles of sharia. Therefore, legal philosophy in Islam combines aspects of rationality and spirituality, between reason and revelation, thus giving birth to a legal system that is comprehensive (kaffah), holistic, and oriented towards the welfare of humanity. Law in the Islamic perspective is not only understood as a rigid and formal legalistic rule, but as a manifestation of God's grace that aims to bring justice, peace, and prosperity in this world and the hereafter. In this case, the concept of maqashid al-syariah becomes the main essence of Islamic legal philosophy. Maqashid provides a framework of values which is the main goal of all forms of legal formulation in Islam, such as protecting religion (ḥifẓ al-dīn), protecting the soul (ḥifẓ al-nafs), protecting reason (ḥifẓ al-'aql), protecting offspring (ḥifẓ al-nasl), and protecting property (ḥifẓ al-māl).

Thus, a discussion of legal philosophy from an Islamic perspective is not only theoretically important but also strategically

valuable for enriching the body of legal scholarship, particularly in the context of Islamic criminal law. This is because Islamic law touches on various aspects of human life, from worship and social interactions to criminal acts. (Auda, 2020).

To understand the depth and objectives of Islamic law as a whole, approach legal philosophy. This approach is relevant, because it helps reveal the divine values and morality contained behind every provision of Sharia law. By studying Islamic legal philosophy, academics and legal practitioners can better understand that law is not only intended to regulate human behavior externally, but also to shape character, foster moral awareness, and direct humans to the purpose of their creation, namely as caliphs on earth. Therefore, Islamic legal philosophy needs to continue to be developed as a living and dynamic discipline, so that it is able to respond to the challenges of the times without losing the essence and values of revelation on which it is based.

## II. LITERATURE REVIEW

The study of legal philosophy from the perspective of Islamic law is a topic that has attracted the attention of many classical and contemporary Muslim thinkers. Islamic legal philosophy is basically based on the divine paradigm which places law as the embodiment of Allah SWT's will to create order, justice and benefit in human life. Therefore, to understand the position of Islamic legal philosophy, it is necessary to explore the thoughts of the main figures who form the basis of scholarship in this field. (Azizy, 2019).

### Philosophy of Law: General Perspective

In legal literature, the philosophy of law is a branch of philosophy that examines the theoretical and conceptual foundations of law. According to Roscoe Pound, law is a tool of social engineering, where the role of law is not only to regulate but also to shape a just and orderly social structure. Meanwhile, Hans Kelsen, through his *Reine Rechtslehre* (Pure Legal Theory) theory, emphasized that law must be separated from morality and religion, focusing solely on its normative structure.

However, this secular approach is considered inadequate in explaining law in the Islamic tradition, as it ignores the transcendental dimension of the source of law derived from revelation.

### Philosophy of Islamic Law and Maqashid al-Shariah

In the Islamic tradition, legal philosophy is more theocentric, where the main source of law is revelation (the Qur'an and Hadith). One of the central figures in Islamic legal philosophy is Imam al-Ghazali, who emphasized that the main goal of Islamic law is to maintain the five basic principles of life (maqashid al-khamsah): religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), descent (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) (Hasbyi & Wahyuni, 2022).

Al-Ghazali, in his work *al-Mustashfa*, stated that sharia has wisdom and purpose, and all forms of legal *ijtihad* must lead to the achievement of these maqashid. This thought was later developed by other scholars such as Ibn 'Ashur and al-Syatibi, who made maqashid not only a complement to legal *istinbath*, but also as the main framework for exploring and formulating Islamic law. According to Jasser Auda in his book *Maqasid al-Shariah as Philosophy of Islamic Law*, Islamic legal philosophy not only seeks truth from texts, but also pays attention to context, values, and societal dynamics. He proposed a systems approach to maqashid that combines values, goals, and the social relevance of law.

### Epistemology of Islamic Legal Philosophy

Epistemologically, Islamic legal philosophy is based on revelation (*naqli*) and reason (*aqli*) as the two primary sources of legal knowledge. Fazlur Rahman, within the framework of his double movement theory, demonstrates that the text of the Qur'an must be read taking into account its historical context (the context of revelation) and then its values must be explored for application to the present context. This approach demonstrates that Islamic law possesses a high degree of philosophical flexibility while still maintaining its divine substance. This approach contrasts

with Western positive law, which tends to be legalistic and static. In Islamic law, legal philosophy serves as a bridge between text and reality, between revelation and reason, between law and true justice. (Lubis & Nurita, 2023).

### **Morality and Spirituality of Law**

One important aspect of Islamic legal philosophy is the emphasis on the ethics and spirituality of law. According to Ibn Qayyim al-Jawziyyah, all of God's laws aim to realize justice, compassion, wisdom, and welfare. If a law actually leads to injustice or harm, it must be re-evaluated. In this regard, Islamic legal philosophy is not only normative, but also evaluative, ethical, and spiritual. As emphasized by Muhammad Iqbal, the renewal of Islamic legal thought (ijtihad) must be based on the spirit of a living, dynamic legal philosophy, not frozen in the literalness of texts. Law is a reflection of life's ever-evolving ways, and legal philosophy is a crucial instrument for ensuring that law remains relevant and just in every era.

### **Contribution of Legal Philosophy to Islamic Legal Science**

Legal philosophy contributes significantly to deepening the study of Islamic law because it offers a critical and reflective framework for thinking. Through legal philosophy, scholars can reinterpret legal texts in the contemporary context without deviating from their underlying Islamic values. This is crucial in facing the challenges of modernity and globalization, which require Islamic law to remain solution-oriented and contextual. (Rahman & M. Khalifah, 2021) In other words, Islamic legal philosophy is a crucial tool in bridging the gap between text and context, between normativeness and reality, and between sharia and humanity. Without legal philosophy, Islamic legal science would tend to become dogmatic, rigid, and lose its vitality in society. (Maulana, 2023).

## **III. RESEARCH METHODS**

This research uses a descriptive qualitative approach with a library research

method. This approach was chosen because the research does not aim to empirically test hypotheses, but rather to describe and analyze theoretical thinking and basic principles of legal philosophy from an Islamic legal perspective. The primary focus of this research is to examine the concepts, theories, and views of Islamic scholars and legal thinkers regarding the position of legal philosophy as a foundation for understanding, formulating, and interpreting Islamic law.

### **Data source**

The data used in this research comes from primary and secondary library materials, including:

Primary sources include classical and contemporary works by Islamic scholars and legal thinkers such as al-Mustashfa by Imam al-Ghazali, al-Muwafaqat by al-Syatibi, I'lam al-Muwaqqi'in by Ibn Qayyim al-Jawziyyah, and the book Maqasid al-Shariah as Philosophy of Islamic Law by Jasser Auda.

Secondary sources, in the form of books, scientific journals, articles, and other academic publications that discuss the themes of legal philosophy, Islamic legal theory, maqashid sharia, and Islamic legal epistemology.

### **Data collection technique**

Data collection was conducted through a literature search relevant to the research topic, both from physical libraries and digital sources. This technique involved recording, classifying, and in-depth understanding of the literature's content.

### **Data Analysis Techniques**

The data was analyzed qualitatively and analytically by examining the collected literature and then examining the relationships between concepts, theories, and ideas developed within Islamic legal philosophy. The analysis was conducted using a normative-philosophical approach, examining law based on normative values (sharia) and philosophical dimensions (wisdom, purpose, rationality).

This analysis involves three stages:

- Data reduction: selecting and filtering important information that is in accordance with the focus of the study.
- Data presentation: arranging information in the form of a conceptual narrative.
- Drawing conclusions: formulating the main findings regarding the position of legal philosophy in Islamic legal science.

With this approach, it is hoped that research will be able to provide a conceptual contribution in enriching the treasury of Islamic legal philosophy, particularly in the context of contemporary Islamic criminal law. (Wahid, 2022).

#### IV. RESULTS AND DISCUSSION

##### A. Research result

Based on the results of literature review and analysis of various classical and contemporary literature on Islamic legal philosophy, several important findings were found which show that legal philosophy has a very central position in the development of Islamic legal science.

The findings are summarized as follows:

The philosophy of Islamic law is the basis for thinking in understanding and formulating sharia laws.

Legal philosophy acts as a bridge between revealed texts (the Quran and Hadith) and the ever-evolving social reality. This is reflected in the works of scholars such as al-Ghazali, al-Syatibi, and Ibn Qayyim, who argued that Islamic law is not only intended to formally regulate society but also to achieve divine goals (maqasid sharia).

##### **Maqashid al-Syariah is the essence of Islamic legal philosophy.**

The five primary objectives of Islamic law, which include the protection of religion, life, intellect, descendants, and property, form the philosophical basis for all forms of Islamic law. This demonstrates that Islamic law is built on a solid framework of values and is not merely legalistic or formalistic.

##### **The epistemology of Islamic law is integral between revelation and reason.**

In Islamic legal philosophy, revelation is the primary source, but its use is not merely textual. Human reason has room to explore law through the method of *ijtihad* while remaining grounded in the values of *maqasid* (the principle of righteousness). This differs from the positive legal approach, which tends to separate reason and morality.

##### **Legal philosophy contributed to the development of Islamic criminal law.**

In the context of Islamic criminal law, legal philosophy is an important basis for evaluating the application of *qisas*, *hudud*, and *ta'zir* laws. The values of justice, public welfare, and humanity are primary considerations in the implementation of criminal penalties in Islam.

##### B. Discussion

Based on the research findings presented, it is clear that Islamic legal philosophy plays a crucial role in developing a comprehensive framework for Islamic legal thought. Legal philosophy serves not only as a theoretical study but also as a foundation for understanding and formulating Islamic law in depth.

The role of legal philosophy as a bridge between revealed texts and social reality demonstrates that Islamic law is not rigid and static. Rather, it exhibits flexibility in responding to changing times. This is evident in the thinking of classical scholars such as al-Ghazali, al-Syatibi, and Ibn Qayyim al-Jawziyyah, who emphasized that Islamic law must align with the objectives of sharia (maqasid sharia). Thus, law is understood not only textually but also contextually.

The concept of *maqasid al-sharia* (the principles of Islamic law) is at the heart of Islamic legal philosophy. Five main principles—protecting religion, life, intellect, posterity, and property—form the basis for every legal formulation. These principles demonstrate that Islamic law is built on the values of public welfare and justice, not merely formal rules. Therefore, every application of

law must consider its impact on human welfare.

From an epistemological perspective, Islamic legal philosophy demonstrates an integration between revelation and reason. Revelation is the primary source, but reason plays a crucial role in interpreting and developing law through *ijtihad*. This approach allows Islamic law to continue to develop without losing its fundamental values. This also distinguishes Islamic law from positive law, which tends to separate the rational and moral aspects.

In the context of Islamic criminal law, legal philosophy makes a significant contribution. The application of laws such as *qisas*, *hudud*, and *ta'zir* cannot be separated from considerations of justice, public welfare, and humanity. With a philosophical approach, Islamic criminal law is understood not only as a form of punishment but also as a means to maintain order and achieve social justice.

Thus, this discussion confirms that Islamic legal philosophy has a strategic function in maintaining a balance between text and context, between norms and reality. Without a legal philosophical approach, Islamic law has the potential to be understood narrowly and formally, thus neglecting the primary purpose of *sharia* itself.

## V. CONCLUSION AND SUGGESTIONS

### A. Conclusion

Based on the results of the studies and discussions conducted, it can be concluded that legal philosophy holds a fundamental position in the structure and development of Islamic legal science. Islamic legal philosophy serves not only as a means of conceptual thought but also as a foundation for a deeper understanding of the nature of Islamic law, both from a normative and philosophical perspective.

Islamic legal philosophy integrates revelation and reason, norms and values, and text and context. It bridges the divine teachings contained in the Quran and Sunnah with the ever-evolving social reality. With this approach, legal philosophy goes beyond legality but also emphasizes the importance of

morality, spirituality, and the noble purpose (*maqasid sharia*) of every legal product.

Through the principles of *maqasid sharia*, Islamic legal philosophy asserts that law must aim to protect and benefit five primary aspects of life: religion, life, intellect, posterity, and property. This demonstrates that Islamic law is dynamic, humane, and oriented toward substantial justice.

Thus, understanding and strengthening legal philosophy in the study of Islamic law, especially in the field of Islamic criminal law, is very important to prevent a rigid legal-formalistic approach, as well as ensuring that every application of law is in harmony with divine values and the realities of human life. Islamic legal philosophy is not only a theoretical discipline, but also a path to true justice and mercy for the universe.

### B. Suggestion

This research is expected to serve as a reference for developing more in-depth and contextual studies of Islamic legal philosophy. Practitioners and academics are advised to understand Islamic law not only textually but also based on the values of the *maqasid sharia* (the principles of Islamic law). Furthermore, strengthening the study of legal philosophy in education is necessary to produce legal thinking that is critical, flexible, and relevant to current developments.

## LIST OF REFERENCES

- Auda, Jasser. (2020). *Maqashid Syariah sebagai Falsafah Hukum Islam: Pendekatan Sistem*. Terj. Agus Hasan Bashori. Jakarta: Kencana
- Azizy, A. Qodri. (2019). *Hukum Nasional: Eklektisisme Hukum Islam dan Hukum Umum*. Jakarta: Sinar Grafika.
- Hasbi, M. & Wahyuni, R. (2022). "Urgensi Maqashid Syariah dalam Pembaruan Hukum Islam di Era Modern." *Jurnal Hukum dan Syariah*, Vol. 11, No. 2

<https://doi.org/10.21580/ahkam.2023.24.1.1543>

<https://doi.org/10.24042/adalah.v11i2.2022>

Lubis, M. R. & Nurita, C. (2023). *Filsafat Hukum Islam: Pendekatan Filosofis terhadap Syariah dan Hukum Positif*. Bandung: Alfabeta,

Maulana, R. (2023). "Kedudukan Filsafat Hukum dalam Pengembangan Ilmu Hukum Islam." *Jurnal Al-Ahkam*, Vol. 24, No. 1

Rahman, F. & Khalifah, M. (2021). *Epistemologi Hukum Islam Kontemporer*. Yogyakarta: Deepublish,

Wahid, Abdul. (2022). *Reformulasi Hukum Pidana Islam: Perspektif Maqashid Syariah*. Surabaya: LKiS Pelangi Aksara