

The Quran And Positive Law: A Philosophical Review In A Normative Legal Perspective

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Abstract

This study aims to examine the relationship between the Qur'an as a source of Islamic law and positive Indonesian law from a philosophical perspective. Specifically, this study aims to understand the position of legal values in the Qur'an towards the formation of positive law, as well as to examine the philosophical implications of the differences in the normative basis of the two. This title is important to study because in the practice of the national legal system, there is often a tug-of-war between legal values derived from religion and the modern legal system rooted in the secular Western tradition. Given that Indonesia is a country with a Muslim majority population, the relevance of the Qur'an in the formation of law cannot be ignored, both in terms of legal ethics, justice values, and the formation of written legal norms. This study is formulated through two main questions: (1) What is the position of the Qur'an as a source of legal values in the construction of positive law in Indonesia? and (2) What are the philosophical implications of the differences in the normative basis between the Qur'an and positive law towards the formation of legislation? To answer these questions, the method used is the normative legal research method with a legal philosophy approach and a legislative approach. The main data sources consist of primary legal materials in the form of laws and regulations and interpretations of legal verses in the Qur'an, as well as secondary legal materials such as Islamic legal literature and legal philosophy theories. The results of the study indicate that the Qur'an contains universal justice values that are in line with the basic principles of positive law, such as justice, welfare, and legal certainty. Although there are differences in the form and structure of law, philosophically, both can complement each other within the framework of developing a just national law. This study recommends an integrative approach in formulating positive law that is not only based on legal-formal rationality, but also considers transcendental values that originate from revelation. Keywords: Al-Qur'an, Positive Law, Legal Philosophy, Legal Values, Normative Method, Legal Integration, Transcendence.

A. Introduction

The relationship between the values in the Qur'an and positive law is an important issue in the development of national law in Indonesia. This research is important to be conducted because Indonesia as a country of law with a majority Muslim population faces challenges in integrating religious values, especially from the Qur'an, into a positive legal system that is secular and legalistic. In the context of developing a law that is just and rooted in the values of the nation's culture, the role of Islamic legal sources needs to be studied philosophically and contextually.¹

Legal problems arise when there is a clash between legal norms derived from revelation (the Qur'an) and positive law constructed through secular legislative mechanisms. For example, in issues of family law, public morality, and special criminal law, there is tension between formal legal certainty and the substantive values that live in society. This raises a normative problem, namely how national

¹ Hisam Ahyani, Asep Deni Adnan Bumaeri, dan Ahmad Hapidin, "Transformasi Nilai Hukum Islam terhadap Hukum Positif di Indonesia," *Amnesti: Jurnal Hukum* 3, no. 2 SE-Articles (25 Agustus 2021): 60–70, <https://doi.org/10.37729/amnesti.v3i2.1118>.

law can accept or accommodate the norms of the Qur'an without sacrificing the universal principle of the rule of law.²

In addition to normative problems, there are also sociological problems, namely the resistance of society to positive law which is considered to be contrary to their religious beliefs. This shows the distance between the law in the text and the law in context. Philosophically, the problem that arises is how to reconstruct positive law so that it is not disconnected from transcendental values, and how to harmonize the rationality of modern law with the spirituality of Islamic law.³

Several previous studies have focused more on the legal-formal aspects of the relationship between Islamic law and national law, or comparing articles of positive law with fiqh norms. This study is different because it uses a legal philosophy approach to explore the basic values of the Qur'an and positive law, and explains how the two can be integrated normatively.

This research uses a normative method, with a legal philosophy approach and a legislative approach, which emphasizes doctrinal analysis and interpretation of the universal legal values of the Qur'an in relation to the formation of positive law in Indonesia.⁴

B. Method

The method used in this study uses qualitative descriptive analysis, namely to analyze problems through several analyzes by presenting the problems descriptively and providing solutions in detail.

C. Result and Discussion

1. The Position of the Qur'an as a Source of Legal Values in the Construction of Positive Law in Indonesia

The Qur'an as the holy book of Muslims not only contains theological and spiritual teachings, but is also full of ethical and normative principles that reflect the legal order. It contains the values of justice, welfare, equality, social responsibility, and respect for human rights.⁵ In the context of Indonesia as a country with a Muslim majority population, the Qur'an has an important position, even though it is not explicitly placed as a formal source of law in the national legal system.⁶ However, the values contained in the Qur'an have become part of the living law in society and can act as a source of values in the process of forming positive law.⁷

In the national legal system, the position of legal sources is regulated in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law Number 13 of 2022. In the regulation, it is not mentioned that the Qur'an is a formal legal source.⁸ However, as part of the values that live in society, the teachings in the Qur'an can be used as a normative reference that inspires the formation of laws and regulations, as long as they do not contradict constitutional principles and the general principles of the rule of law.⁹

This shows that the Qur'an occupies a position as a source of legal values, not a source of law in the formal-positivistic sense. The source of value in this context means that the substance or content of the Qur'an, especially those that are normative and universal, can be adopted into positive law through legislative mechanisms, jurisprudence, and legal doctrine.¹⁰ In the legislative process, Islamic values from the Qur'an have been reflected in a number of regulations, for example in Law

² Agung Wibowo dan Arif Sugitanata, "Teori Peningkatan Norma Dan Penemuan Hukum Islam (Pendalaman Dan Rekonstruksi Konsep)," *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara dan Perbandingan Mazhab* 3, no. 1 (2023): 79–96, <https://doi.org/10.59259/jd.v3i1.50>.

³ Yogi Prasetyo, "Transformasi Nilai-Nilai Islam dalam Hukum Positif," *Al-Ahkam Jurnal Ilmu Syari'ah dan Hukum* 5, no. 1 (2020): 91–106, <https://doi.org/10.22515/alakhkam.v5i1.1943>.

⁴ Ralph Adolph, "METODE AL-QUR'AN DALAM MEMAPARKAN AYAT-AYAT HUKUM AL-QUR'AN METHOD IN PRESENTING LAWS," *Suloh* 7, no. 1 (2016): 1–23.

⁵ Nur Saniah Nur Saniah, "Prinsip-Prinsip Dasar Hukum Islam Perspektif Al-Quran," *Al-Kaumiyah* 3, no. 2 (2022): 1–17, <https://doi.org/10.56874/alkaumiyah.v3i2.1077>.

⁶ HS M. Alwi, "Relasi Kelesanan Al Qur'an dan Pancasila dalam Upaya Menjaga dan Menghubungkan Identitas Islam Indonesia," *International Ihyia Ulum Al Din* 21, no. 1 (n.d.): 17–38.

⁷ Ahyani, Bumaeri, dan Hapidin, "Transformasi Nilai Hukum Islam terhadap Hukum Positif di Indonesia."

⁸ Pratiwi Ayu Sri Daulat dan Universitas, "KEDUDUKAN YURISPRUDENSI DALAM SISTEM PERADILAN PIDANA," *New York University Law Review* 3, no. 1 (2022): 41–53.

⁹ Daulat dan Universitas.

¹⁰ Ekawati Hamzah, "Hukum Ideal Menurut Al Qur'an" 2, no. 2 (2018).

Number 23 of 2011 concerning Zakat Management, Law Number 41 of 2004 concerning Waqf, and Law Number 21 of 2008 concerning Islamic Banking. These regulations were born not merely from technocratic needs, but also as a form of recognition of Islamic values that originate from the Qur'an.¹¹

In the practice of law enforcement, especially in the religious court system, the values of the Qur'an even become the main source in the decisions of judges, especially in cases related to Islamic family law, inheritance, waqf, and grants. Outside the religious court environment, the Supreme Court and the Constitutional Court also often refer to Islamic values in their legal considerations, as part of a sociological and philosophical approach to the law that lives in society.¹²

The position of the Qur'an as a source of legal values can also be seen from the perspective of legal philosophy. In legal philosophy, there is a distinction between law in the positive sense (positive law), moral law, and natural law.¹³ The Qur'an as God's revelation contains aspects of moral law as well as natural law, which not only regulates the relationship between humans and God, but also the relationship between humans and their environment. Thus, the Qur'an contains universal principles of justice, such as honesty, prohibition of injustice, commandment to uphold justice (adl), uphold the benefit (mashlahah), and reject damage (fasad). These values are in line with the objectives of Indonesian national law as stated in the Preamble to the 1945 Constitution, namely to protect the entire Indonesian nation, advance public welfare, and improve the life of the nation.¹⁴

However, there are challenges when the values of the Qur'an are integrated into secular positive law. Indonesian positive law, as a result of the legacy of the Dutch legal system, places more emphasis on formal rationality, legal certainty, and procedural legality. Meanwhile, Islamic law, especially that derived from the Qur'an, places more emphasis on substantive values, such as justice, equality, and morality. These differences in approach create philosophical tensions that need to be bridged through an integrative and inclusive legal approach.¹⁵

In the context of a pluralistic Indonesian society, the integration of the values of the Qur'an and positive law must be carried out carefully and through democratic mechanisms. This means that every religious value that wants to be included in national law must go through a participatory legislative process and respect the diversity of religions, beliefs, and cultures. This is important so that the law does not become a tool for domination of certain groups, but truly becomes an instrument of social justice for all citizens.¹⁶

As a living law, the legal values in the Qur'an have high sociological power, especially among Indonesian Muslims. Many legal practices in society are based on the teachings of the Qur'an, such as inheritance, marriage, alms, and enforcement of moral norms. The strength of these values makes the Qur'an a moral reference in everyday life, although it is not always explicitly stated in written law. Therefore, the construction of positive Indonesian law should not deny the role of the Qur'an, but rather formulate a harmonizing approach between positive law and Islamic values.¹⁷

This effort is also in line with the basic principles of the state contained in Pancasila, especially the principles of Belief in the One Almighty God and Social Justice for All Indonesian People. In this case, the Qur'an as a divine revelation can provide a philosophical contribution to the formation

¹¹ Ahmad Bisri Musthafa dan Fitri sariningsih, "Legislasi Agama Dan Potensi Ekonomi: Analisis Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Indonesia," *IQTISHOD: Jurnal Pemikiran dan Hukum Ekonomi Syariah* 3, no. 1 (2024): 45–61, <https://doi.org/10.69768/ji.v3i1.47>.

¹² Supriadi Ady, "Unizar Law Review," *Kedudukan peraturan menteri di tinjau dari hierarki peraturan perundang undangan di indonesia* 4, no. 2 (2021).

¹³ Wendra Aprison Zaimir Syah, "Al- qur'an sebagai sumber tekstual filsafat islam," *Penelitian, Jurnal Pendidikan, Ilmu* 1 (2022): 210–14.

¹⁴ Muhammad Mukharom Ridho, "Supremasi Keadilan dalam Al-Qur'an," *Al Karima : Jurnal Studi Ilmu Al Quran dan Tafsir* 4, no. 1 SE-Articles (22 Oktober 2020): 82–104, <https://doi.org/10.58438/alkarima.v4i1.64>.

¹⁵ Indra dan Kurniati satriani, Marilang, "Konflik Dan Ketegangan Antara Moral Dan Hukum Dalam Hukum Islam," *HERMENEUTIKA: Jurnal Ilmu Hukum* 5, no. 2 (2021): 2021, <https://jurnal.ugj.ac.id/index.php/HERMENEUTIKA/article/view/5689>.

¹⁶ Bagir Manan, Ali Abdurahman, dan Mei Susanto, "PEMBANGUNAN HUKUM NASIONAL YANG RELIGIUS: KONSEPSI DAN TANTANGAN DALAM NEGARA BERDASARKAN PANCASILA," *Jurnal Bina Mulia Hukum* 5, no. 2 SE-Articles (26 Maret 2021): 176–95, <https://doi.org/10.23920/jbmh.v5i2.303>.

¹⁷ Umar Shofi dan Rina Septiani, "Eksistensi dan Penerapan Hukum Islam Dalam Hukum Positif Indonesia," *Jurnal Sosial Teknologi* 2, no. 8 SE-Articles (15 Agustus 2022): 660–69, <https://doi.org/10.59188/jurnalsostech.v2i8.391>.

of national law that is not only legalistic, but also has ethical and spiritual nuances. In other words, ideally, Indonesian national law does not only fulfill the legal-formal elements, but also reflects the noble values that live in society, including Islamic values from the Qur'an.¹⁸

This study normatively shows that although the Qur'an is not a formal source of law in the national legal hierarchy, it has the power as a source of values that can enrich the national legal treasury. With a legal philosophy approach, the integration between Qur'anic values and positive law can be realized through the principles of justice, welfare, and respect for human dignity.¹⁹ National law must not be separated from the cultural and spiritual roots of its nation, and in the Indonesian context, the Qur'an is a spiritual source that cannot be ignored.

Thus, the position of the Qur'an in the construction of positive law in Indonesia is not as a legal text that is adopted literally, but as an inspiration for normative values that play a role in the formation, interpretation, and enforcement of law. This approach provides space to build a national legal system that is more just, inclusive, and rooted in the nation's own identity.

2. Philosophical Implications of the Basic Normative Differences Between Qur'anic Law and Positive Law on the Formation of Legislation

The Qur'an as a source of Islamic law has normative characteristics that are fundamentally different from modern positive law. This difference is not only in the aspect of the source of law or its formal structure, but also includes the philosophical basis that is the foundation of each legal system. The Qur'an is rooted in divine revelation which is transcendental and sacred, while positive law is sourced from the products of human rationality through political and legislative mechanisms that are worldly, secular, and pragmatic. This difference gives rise to a number of philosophical implications in the context of the formation of legislation, especially in a pluralistic country like Indonesia.²⁰

From an epistemological perspective, the Qur'an positions law as the embodiment of God's will. The legal teachings in the Qur'an contain universal values such as justice, truth, wisdom, and moral responsibility. It not only regulates formal legal aspects, but also guides human morals and intentions. In contrast, positive law is a rational construction determined by the will of the legislator through democratic mechanisms. The truth of positive law is relative and can change along with socio-political developments and community values. This creates a normative contradiction between the provisions of Divine law which are considered absolute and eternal and positive law which is adaptive, flexible, and consensual.²¹

The first philosophical implication that arises from this difference is the question of legal validity. In the Islamic legal system, the validity of a legal norm is determined by its conformity with revelation and the principles of sharia, while in positive law, validity is determined by the formal procedure for its formation as regulated in the constitution and the hierarchy of laws and regulations. This raises a philosophical question: which law is considered more valid when there is a conflict between Islamic values and positive state law? In the context of the Pancasila legal state, this question is not answered absolutely, but is approached philosophically by seeking common ground between transcendental values and constitutional principles.²²

This basic normative difference also has implications in terms of the purpose of law. Law in the perspective of the Qur'an does not only aim to create social order, but also to form pious and noble human beings. The purpose of law (maqashid al-shariah) is directed at achieving the welfare of the people holistically, including protection of religion (al-din), soul (al-nafs), reason (al-'aql), descendants (al-nasl), and property (al-mal). In contrast, positive law is more oriented towards

¹⁸ Hamzah, "Hukum Ideal Menurut Al Qur'an."

¹⁹ dkk M. Alwi, HS, "KEMANUSIAAN DAN KEADILAN: MENGEKSPLORASI HAK ASASI MANUSIA DALAM KONTEKS HUKUM ISLAM," *Hakam* 7, no. 2 (2023): 40–50.

²⁰ Kms Novyar Satriawan Fikri Ali Azhar, "ANALISIS PERBANDINGAN SISTEM HUKUM ISLAM DAN SISTEM HUKUM POSITIF," *Riset Ilmiah* 1, no. 7 (2024): 565–70.

²¹ Fikri, "Transformation of the Value of Al-Islah in the Diversity of Conflict: Epistemology Islamic Law in the Qur'an," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 16, no. 2 (2016): 205.

²² Milthree Geofani Saragih, Margaretha, dan Viona, "Eksistensi Hukum Islam Dalam Paradigma Sistem Hukum Pancasila Di Indonesia," *Jurnal Esensi Hukum* 4, no. 2 (2022): 139–53.

regulating interpersonal relations within the framework of the state, based on the principles of legality, procedural justice, and social effectiveness.

The philosophical implication of this difference in purpose is that positive law is often considered too technocratic and far from the moral-spiritual values upheld by Islamic law. In the process of forming legislation, this difference requires an effort at legal reasoning that is not only logical, but also ethical and philosophical. Legislators are not sufficient to simply formulate norms based on social needs or political pressures, but must also consider the value system that lives in society, including values derived from the Qur'an. In this context, a philosophical approach to law becomes very important. This approach helps bridge the gap between law as a political product and law as an expression of higher moral values.

Without a philosophical approach, the formation of law can be trapped in legalistic positivism that ignores the substance of values. In addition, the difference in normative basis has implications in the hermeneutic dimension of law, namely how a norm is interpreted and understood. The legal verses in the Qur'an have a textual character that is highly semiotic, which demands in-depth interpretation, both in terms of language, historical context, and the spirit of the verse. In positive law, interpretation is usually stricter, more formal, and follows grammatical and systematic rules in the legal system. The philosophical implication is that legislation that intends to adopt the values of the Qur'an must be carried out with a contextual and philosophical approach, not just textual. Because if it is done literally, it will risk causing inconsistency with the universal principles of positive law such as justice, gender equality, or non-discrimination.

Furthermore, the differences between Qur'anic law and positive law also have an impact on the public's perception of the legitimacy of the law. In Muslim society, legal legitimacy is often not only determined by whether a rule has been formally enacted, but also whether the rule is in line with the religious values believed in. If not, then social resistance can occur, even leading to disobedience to positive law. In conditions like this, laws and regulations that are not sensitive to Islamic values will lose their sociological legitimacy. Therefore, lawmakers must realize that law cannot be separated from the culture and spirituality of its society.²³

legal pluralism. In Indonesia's multicultural and multi-religious society, the integration of Qur'anic values in the formation of laws and regulations cannot be done hegemonic or absolutist. State law must continue to guarantee religious freedom, respect minorities, and uphold the principle of non-discrimination. Thus, Islamic values derived from the Qur'an can only be incorporated into national law to the extent that these values are universal, rational, and acceptable to all components of society. Principles such as justice, welfare, prohibition of injustice, and recognition of human rights are examples of Qur'anic values that are compatible with the constitutional principles of the state.

The philosophical approach also questions whether it is possible for two fundamentally different normative systems to be united within a single national legal framework. In integrative legal philosophy, as developed by Gustav Radbruch and Hans Kelsen, the concept is known that positive law must be subject to the values of justice. In the Indonesian context, this means that positive law should not be closed off from transcendental moral values, including those derived from the Qur'an. However, this integration is not in the form of textual adoption of the verses of the Qur'an, but rather the sublimation of its values into democratic, inclusive, and pluralistic positive legal norms.

The next implication touches on the ontological dimension of law, namely the nature of the law itself. Quranic law views law as a manifestation of God's will to create order that leads humans to goodness. Law is not only about prohibitions and commands, but also about moral guidance to achieve a balanced life between the world and the hereafter. In contrast, positive law views law as a social product whose purpose is to avoid conflict and create public order. This ontological difference makes the approach to law in society layered: society will judge the law not only based on its legality, but also based on its suitability with religious values and morality. This strengthens the argument that the formation of legislation must pay attention to religious values as part of the value system of society, not merely as political accommodation, but as part of the ontological legitimacy of the law itself.

²³ Samin, "Hubungan Antara Hukum dan Teknologi," *Al-Qisthu* 06, no. 02 (2011): 1–18.

The final philosophical implication is the need for a new paradigm in legal and legislative education in Indonesia. Law can no longer be taught as a value-free system, but must be understood in the social, cultural, and spiritual context of its society. Legal education needs to encourage law students and prospective legislators to understand the plurality of sources of law, including religious law, as part of the richness of the national legal system. In this framework, the Qur'an is not only studied in the context of Islamic law, but also as a source of ethics and justice that can enrich national law.²⁴

From the entire description above, it can be concluded that the basic normative differences between the law of the Qur'an and positive law give rise to broad and profound philosophical implications for the formation of legislation. These differences challenge legislators to develop legislative methods that are not only legal-formal, but also contextual, philosophical, and spiritual. With this approach, Indonesian national law can become a legal system that is not only constitutionally valid, but also rooted in the noble values of the nation, including the values of the Qur'an that have become part of the collective identity of the Indonesian people.

D. Conclusion

The following are conclusions and suggestions based on the previous scientific description regarding the philosophical implications of the basic normative differences between Qur'anic law and positive law regarding the formation of statutory regulations.

1. The basic normative differences between transcendental Qur'anic law and rational-secular positive law have significant philosophical implications in the formation of legislation. Qur'anic law emphasizes moral values and substantive justice based on revelation, while positive law relies on formal procedures and social consensus as legitimacy.
2. In the context of the pluralistic Indonesian legal state, the integration of the values of the Qur'an in positive law can only be done through a philosophical and contextual approach. Legislation that accommodates Qur'anic values must pay attention to the principles of universal justice, non-discrimination, and diversity, so that national law remains normatively relevant, sociologically accepted, and legally valid.

The recommendations in this study:

1. Lawmakers should apply an integrative-philosophical approach in every legislative process, by exploring the universal ethical values contained in the Qur'an and aligning them with constitutional principles and the social realities of Indonesian society.
2. It is necessary to strengthen interdisciplinary legal education, especially in the fields of legal philosophy and Islamic law, so that the future legal generation has reflective and critical abilities in examining the relationship between transcendental value sources and adaptive and inclusive positive legal products.

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²⁴ Peter Mahmud Marzuki, "Reformasi Hukum Dan Pendidikan Hukum Di Indonesia," *Perspektif*, 1999, <https://doi.org/10.30742/perspektif.v4i1.202>.

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