



## The Law Between Secularism and Theology

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**Abstract.** This study aims to describe the legal nature between secularism and theology. The research method used is a literature study with a qualitative descriptive approach using content analytics. The results of the research are secularism and theology is part of the school of natural law (kodrati). Secularism i.e. the rejection of religious thought from life even denies the existence of God from the reality of life whereas the center of life through reason and even secularism can resemble a new religion, hence the law is secular based solely on the will of the people's reason alone. That the legal nature of the theological dimension in the Islamic perspective, namely the narrative based on the revelation of Allah and the Sunnah of the Apostle, shows that a set of rules is extracted from and based on the revelation of the Quran and Sunnah. Law in Islam is seen as having two dimensions, namely Shari'a and fiqh. Sharia is fundamental and absolute values, impossible to change, while jurisprudence is a special field formulated by fuqaha'. Secularism in the sense of rationalism in Islam has always been guided by nash which is like thinking of a mujtahid, so the result is not too far from the truth values that nash teaches. Western rationalism, on the other hand, relies solely on the ability of reason alone, so that it is often found that a law is finally amended again because it is incompatible with the values of justice, good and bad.

**Keywords:** Natural Law; Secularism; theological; Sharia; Fiqh.

## Introduction

In the opinion of modern societal experts, man is a social being, that is, a being who instinctively needs social life. Each other is intertwined and needs each other. Ibn Khaldun, as quoted by Subhi Mahmassani argues that social life is an absolute. A human being cannot stand alone to make ends meet. (Mahmassani t.th) Usually living in the midst of society, there will definitely be relationships and friendships with each other. In each relationship, it is necessary to have rules that become a reference for behavior to regulate their respective rights and obligations in order to create a sense of justice and order and there is no conflict and chaos in society. This rule is called the law. In simple terms, the law as a set of rules or norms that apply to a certain community environment, is binding and has sanctions if violated. At the level of knowledge studies that law is a field of science, namely legal science. Has many branches ranging from dogmatic science of law, legal history, comparison of political law of law, sociology of law, positive law science and philosophy of law.

Legal philosophy in foreign language designations such as English uses two terms, namely Legal Philosophy or Philosophy of Law, in contrast to the Dutch also popularized two terms, namely *Wijsbegeerte van het Recht* and *Rechts Filosofie*, while in Germany it uses the term *Filosofie des Rechts*, and Philosophy of Law in Indonesian is a translation of the Philosophy of Law or *Rechts Fofosofie* because this is the most appropriate equivalent according to Muchtar Kusumaatmadja instead of using the term Legal Philosophy which means the same as the Act or official things. The supporting argument is that the law is not just an Act and the law is not a mere official one. (Gede Atmadja 2013) Philosophy of law as a branch of philosophy includes the philosophy of behavior or ethics that studies the nature of law. This means that the philosophy of law is a science that studies law philosophically whose object of study is law and the object is thoroughly studied until its substance is called essence. (Darmodiharjo, Shidarta 1999) Furthermore, Satjipto Raharjo argues that the philosophy of law studies questions of a fundamental nature about law. The question in question includes the nature of the law and the basis of the binding force of the law. Based on this, legal philosophy can work on legal materials but each takes a different angle altogether. Legal philosophy is also part of the science of law with the discussion of problems, namely the nature of the law, the purpose of the law,

why the state can punish and what is the relationship of law to power.(Darmodiharjo, Shidarta 1999)

The nature of law is discussed specifically in schools in the philosophy of law, one of which is natural law also called natural law pioneered by Thomas Aquinas and Hart. The school of natural law (nature) gave birth to two perceptions, namely theological perception and secular perception.(Wirawan et al 2016) As for perception First, Theological Perception the concept is that nature is governed by God Almighty as his Creation. God has laid down eternal principles to govern life in the world, therefore all the rules that man makes must be based on an eternal God. Second, Secular Perception believes that man has the ability of reason that is the source of moral order in man and society. Moral primacy is not found in the word of God listed in the Scriptures. The principles of natural law (kodrat) are eternal and become the standard of validity of all norms achieved by proper and correct reasoning.(Cahyadi, E. Fernando M. Manullang 2010) Thus it is the fact of this school of natural law (nature) that prompted the author to examine the topic "The law between Secularism and Theology". The extent to which the formation of law is influenced by the tug-of-war between secularism (mere human reason) and theological (divine principles).

The author realizes that there have been several previous studies that have something to do with this theme, including: Dimas Prihambodo "Secularization and Secularism in China" that in China there are two forms of secularism, namely the elimination of religious authority from politics and the elimination of the sanctity and absoluteness of life values, both of which are seen in the policy of being a member of the communist party and religious organizations as well as the policy of religious education in schools.(Prihambodo 2021) Furthermore, Dian Agung Wicaksono in "Naming Islamic Law in the Legal System in Indonesia is reviewed from the Teachings of Thomas Aquinas' Legal Theology" that the substance of Islamic law and legislation is not transformed *lex aeterna* into *lex humana*. God's law does not automatically lose its sanctity and glory when it is poured into the laws of human creation (*lex humana*). The point of difference seen is only on the basis of its binding power *lex aeterna* binding to the natural man which is leaned on an intangible faith which is entirely the domain of the individual man and God, whereas *lex humana* has binding force against man in his position as a subject of law forced to submit to power.(Wicaksono 2021) in contrast to Andi Safriani's research "The Nature of Law and the Perspective of

Legal Comparison" in his conclusion in the formation of Islamic Law in society that they do not easily distinguish the rules of religion and law, their view is that the rules of religion are laws, in this concept science is difficult to separate from theology through the word contains prohibitions in essence in western concepts have nothing to do with law because the realm is religious and moral alone (a form of practice of western secularism). Whereas it is not so that the fundamental source of Islamic law comes from God through the Quran and from the Messenger stated in the hadith is considered the last and perfect law. At the practical level, it will be flexible according to the times and the interpretation of judges whose substance is justice or justice for man.(Safriani 2018)

Based on the author's explanation that what distinguishes this paper from previous research is that Prihambodo only discusses secularism in his description not related to theology, Wicaksono highlights the norms of legal formation from a theological side according to Thomas Aquinas alone and Safriani makes a comparison of law by not studying the nature of law philosophically. Meanwhile, the author's research traces the initial foothold of the existence of law whether it is based on reason purely human ratio (secularism) or is it departing from God's law (Theological) in the perspective of the study of the philosophy of a law.

### **Research methods**

The type of research used is library research (library research) applying literature data collection techniques, both data in the form of scientific papers, documents and other forms of data relevant to the discussion, then a review of books, literature, notes and reports that are related to the problem that is being solved. While the approach used is descriptive qualitative. by using a qualitative descriptive approach.(Nazir 2008)

Data analysis by analyzing content (content analizys) is to dig deeper into the content or information that is written and printed.(Klaus 1993) About the philosophical school that explains the theory of legal formation whether it is influenced by secularism or influenced by theology, then tracked and compared to which one is more dominant in what aspects of law and who are the figures of the school, then the author makes decisions in the form of tendencies or conclusions according to the tracking and ability of the author's point of view.

## Discussion

### 1. Secularism and Theology

Since the Renaissance, which took place between the 14th and 16th centuries, Europe has experienced many ups and downs. Today Europe feels reawakened in a more learned state, with an emphasis on human independence in thinking. According to Lorens Bagus, the emergence of the humanism movement, the rejection of Aristotle's tradition, the acceptance of the new sciences, and dissatisfaction with the existing religious establishment were some of the main manifestations of the Renaissance. Later, the Renaissance laid the foundation for the current development of Western civilization. Western civilization remains a superpower with significant influence on mankind to this day. Western domination over other countries has transcended the political and economic realms to the foundations of human civilization, in particular the worldview. The world now has a uniform appearance, dominated by Western values and culture, as a result of the rise of the Western worldview. Humanity today faces the challenge of world uniformity because it goes against the laws of nature that protect diversity within it.(Fata 2016)

Secularism and secularization come from the word *saeculum*, which means century, secular means century, for example secular game (a game that occurs once in a hundred years). Furthermore, secular means worldly or related to living in the present world, the opposite is *ukhrawi* or religious in nature. Secular education, for example, is an earthly education that has no religious nature. In Arabic the secular meaning translates to 'natural and mundane. The word 'natural is also used but in Syriac and Lebanese dialects.(Nasution 2000) But the real meaning to go is the occurrence of a dichotomy between the world and the hereafter, between religion and non-religion. The word secular means secular, then secularization means doctrine, policy or worldly state, that is, to release life from religious ties, and secularization is the process of secularization, that is, the process of releasing worldly life from religious control.(Nasution 2000) Likewise secular can mean otherwise giving up the world to merely pursue the afterlife (religion).

Syed Naquib al-Attas goes on to say that the word "*saeculum*" has two meanings: it means "related to time" (time) and "to be located". Related to the phrase "now (now)" or "current (now)" if it refers to time. While the term "secularism" or "secularism" refers to location, therefore, secular refers to "events that occur in this world" or "current events". Adnin Armas quotes Harvey Cox who says that *mundus*, or *mundane* in English, is another term that has the same meaning as

saeculum. Although the word "saeculum" has the connotation of time and place, the emphasis is on "time". While mundus puts more emphasis on what "space" means.(Fata 2016)

In fact, natural law is a concept that often combines theories. Views and responses often appear from time to time. This, in turn, gave rise to various interpretations of natural law from different points of view at various epochs. Rahardjo interprets the nature of the law by using ideal examples as a guide for the creation and application of law. In addition to natural law as a method of finding perfect laws, natural law serves as a foundation for the legal and moral nature, ensuring that there is no perfect separation between the "real" and the "supposed". The law of nature must exist for every law to exist because it is the content of a perfect law, which can be deduced through reason. Natural law can serve as a method and substance. The substance of the laws of nature contains norms. He hopes that in this case, individuals can create countless guidelines that flow from some direct standards, called the privilege of common freedom.(Kamarusdiana 2018)

Secularism in a very radical sense is an attempt to reject or expulsion of religion and religious thought from human life. It can even lead to attempts to deny God completely (atheist). The center of life is this world through human reason. Secularism emphasizes efforts that shift and even remove God from the realities of life. As a result, God is no longer seen as something that exists, God becomes an abstract and unattainable being, instead everything is considered to be born of a natural, natural process or as a process that takes place in this world, which can be understood rationally thanks to the ability of human reason that gave birth to science and technology.(Zaluchu 2018)

Harvey Cox, (hereinafter referred to as Cox), as quoted by Aaron Nasution, says that secularization is to bypass religion and step into something else, therefore secularization is an atheist practice.(Nasution 2000) Cox further explained the difference between secularization and secularism. According to Cox, secularism is an ideology that contains binding teachings so that secularism can resemble a new religion. If secularism as an ideology has a closed and binding nature, secularization has an open and free nature. In other words, if secularism as an ideology is static and does not undergo change, then secularization on the contrary, is dynamic and leads to change and renewal. However, secularism does not necessarily necessarily mean ideology.(Ismail 2014) But Juegensmeyer,

Elisabeth Nottingham considers secularism, atheism, and liberalism as secular religions, this opinion actually has some truth, because something that has been used as a handle on life or a direction of life can then be considered the religion of the person.

Secularization does not necessarily mean breaking away from teachings of a dogmatic nature, but also breaking away from traditions that have been considered dogma. This is seen from the form of renewal that entered the Islamic world together with Western culture. (Zaluchu 2018). According to Achmad Roestandi, secularism is not always synonymous with atheism, because a secularist may be an adherent of a religion. For example Grotius was a secularist, arguably even the father of modern legal secularism, but it is said that he remained a Christian. (Roestandi 1987) According to Ernest Renan, as quoted by Ahmad Roestandi, the secularism that grew up in the West was nothing other than the fruit of the Islamic mind that grew there. According to him, secularism was brought to the West among other things through the fruits of Ibn Rusyd's mind. Thus Islamic philosophers not only accepted secularism and even became the basis. On the contrary, Islamic clerics in the East (Baghdad) oppose secularism, as a result of al-Ghazali's influence that hates philosophy very much. (Roestandi 1987)

However, the above opinion needs to be clarified clearly, because the authors of the Islamic philosophers have never broken away from religious ties at all, including Ibn Rusyd. It's just that as a result of the Western modernism breaking away from religious ties, the development of philosophy there is also contaminated by the pattern of modernism. Likewise, al-Ghazali did not hate philosophy entirely, but sought to straighten out the thinking methods of philosophers who he thought were too much out of religious ties.

Nurcholis Madjid argues secular today or the world we experience today. Secularism is a secularism, whereas secularization is not intended as an application of secularism and transforms Muslims into secularists. So secularism is to worldview the supposed value of the world, and to release the Islamic ummah from the tendency to proclaim it, in conclusion he says secularism is contrary to religion. (Madjid 1987)

Yusuf al-Qardhawi cited the causes of the emergence of Western secularism due to several factors, namely; 1) religious factors, with regard to bible teachings. 2)

the thought factor of the conflict of Church doctrine and the science that developed at that time. 3) psychological factors, related to historical trauma where when the Western ruling Church was in decline, division and stagnation of science. 4) the reality factor of empirical life.(Ismail 2014) Nevertheless, the controversy between these two camps persists today, so that today among Muslims there is a class of people who are influenced by secularism, and others reject it on the grounds that Islamic teachings do not recognize the separation between spiritual life and earthly life.

The word "theology" comes from the Greek language and consists of two words: "theos" and "logos." Logos is Greek for science, discourse, or word, while theos is God. As a result, theology can be viewed as a branch of science that investigates everything related to God. very religious because they will be empowered with beliefs that are not easily influenced by the passage of time and are founded on a solid foundation.(Zaluchu 2018) In simple terms of theology as a divine understanding. The belief in supreme authority and power resting in God's hands has the consequence that complete submission to other laws and rules must be directed solely to God.

Hassan Hanafi proposed a more practical and scientific theological approach in Theological Studies. The goal is for theology to become the scientific foundation for solving social problems rather than rigid and meaningless religious doctrines. He believed that theology should really serve as a human motivation and an ethical foundation. The Theological Reformation by Hassan Hanafi was conceived for two main reasons: 1) Muslims need a clear theological and ideological conception to fight a global ideological war. 2) It is urgent to develop a new theological conception that is not only theoretical but also applicable and practical so as to influence the birth of the movement of change. Hanafi departed from here and reformulated the concept of theology, moving it from textual to contextual, from theory to action, and from deterministic submission to freedom of will. There are two kinds of analytical tools in this transition: language analysis and social reality analysis. the rational, empirical side, such as translating concepts such as faith and charity, or the historical, historical side, such as developing prophetic stories or conducting metaphysical reviews.(Rizky HK 2021)

In his book *Dhuha Islam*, Ahmad Amin said that in addition to external factors such as the spread of Islam and attacks from other religions, theology also has internal factors that exist in Islamic society itself. Ahmad Amin outlines three

internal reasons in his book *Dhûha Islam*. First of all, the Koran often understood the idea of monotheism (faith in one God) in religion, and tried to subvert the idea of polytheism (belief in many Divine beings) embraced by the Bedouins of the time. This shows that the Koran has a different theological spirit, and that this theology is explained not only through doctrine but also through logic. Secondly, Muslims began to find peace as a result of their success in obtaining abundant wealth from the spoils of war and expanding their territory. They began to consider their religion from then on and began to investigate the teachings contained in the Hadith and the Koran, especially those relating to divinity. The third factor that led to the development of kalam science was the political factor, and was perhaps the most obvious factor in the development of the Islamic theological school of thought. (Muh. Subhan Ashari 2020)

The role and nature of law according to the Islamic concept is one of the many models for building society so as not to lead to evil or sin. Yusuf Qaradhawi, an Islamic philosopher, argues that: Islam is more than just laws and regulations; Also akidah that explains life, worship that educates the soul, morals that sanctify the heart, science that clears perceptions, values that uphold human dignity, and ethics that make life beautiful. (Safriani 2018) hence the law according to Yusuf Al-Qaradhawi the manifestation of the complexity of human activities with the divine purpose of avoiding evil among others so as not to get sin from Allah Almighty. According to Ahmad Imam Mawardi, the reformulation of Islamic law is very important, and Islamic jurists in Indonesia must take the following steps: First, Islamic law must be rewritten to increase the effectiveness of its application and realize general benefit. In addition, a reordering is needed to affirm the existence and significance of Islamic law in Indonesia. Second, efforts to reformulate Islamic law in the reform era are very potential because in addition to demands, it is also supported by existing legal theories. Most of the obstacles are only normative in sociological terms and can be overcome gradually. Third, the current reformulation of Islamic law should not only highlight the determination of halal material, but should unequivocally emphasize the certainty of a legitimate istinbath philosophy. (Safriani 2018)

## **2. The Nature of the Law**

The views of Philipus M. Hadjon provide an epistemological perspective on the existence of legal science from the perspective of the philosophy of science. that Philipus M. Hadjon believed that the science of normative law has a very

particular character Science sees that as the reason for it. In the realm of the study of legal values such as justice, the rule of law, and the enforcement of the rule of law, legal science is more appropriate. (Sidik 2022) Legal science has two practical and theoretical aspects at the same time in practice. Application of practical legal knowledge to the resolution of legal problems Meanwhile, a normative approach to the development of knowledge is used at the theoretical level by law. Law, case law, comparative approaches, and conceptual approaches are examples of these approaches. (Sidik 2022)

Roscoe Pound in his book *An Introduction of the Law Philosophy*, as quoted by Achmad Roestandi, inventoried no less than 12 conceptions describing the nature of the law. If you look at the nature of the law formulated by Roscoe Pound, it turns out that it reflects the schools contained in the philosophy of law, among which as formulated by Austin, laws are rules that contain instructions intended for intelligent beings and are made by intelligent beings who have power over them. (Roestandi 1987). So Austin was the first to unequivocally separate law from morals and religion. According to him, the law only discusses positive law no matter whether he is good or bad, whether accepted by society or not. The essence of all laws is an order made by a sovereign ruler addressed to the governed with sanctions if the order is violated. (Roestandi 1987) This sense reflects the law in a secular form. If analyzed the nature of the law mentioned by Austin above does not conform to straight logic, because if a lawmaker, for example, the ruler makes a rule that he thinks the rule is not good, then of course he will not make the rule. Perhaps what Austin meant was, that good or bad grades need not be based on God's teachings, but simply based on good or bad according to the logic of the law-maker alone.

Legal development or *rechtsforming* is a cycle or movement of forming guidelines that apply as a whole to everyone. The term "perpetual perpetuation of injustice and inequality" refers to the formation of laws for example, the law itself that does not take into account, encompass, or represent all aspects of society. Blacks, women, natives, workers, people with special needs, and the poor are examples of "demos", as Ranciere called them, which do not belong to the social order. (Rahalus 2022) By destabilizing the dominant social order, the demos asserted its equality. Thereafter, the initial demos were not invented, no longer invented, and were not included or accommodated in any legal or statutory product formation. Disagreements (dissensuses) are always the result of Demos'

political actions. Ranciere called democratic politics a process of checking the daily social and political order (police). Equality is the cornerstone of democracy, which begins with equality and ends with emancipation. Natural principles last forever and serve as standards of validity of all established norms through sound reasoning. To achieve this universal principle, all positive laws that do not derive from the laws of nature must be abolished. The laws of nature are an important component of human society. The figures of the school of natural law are as follows: Aquinas, Thoman, and Hart, H.L.A. (Cahyadi, E. Fernando M. Manullang 2010). In Hart's opinion, the law consists of a system of rules, each of which needs to be understood before its involvement can be valued with certainty. This can be summed up as the difference between individual habits (personal habits) and social rules; the difference between being obliged and being under obligation; the difference between external and internal aspects of the rules; The difference between the rules of primary law and the rules of secondary law. (Dworkin, ed. 1977).

According to Amir Syarifuddin, there is difficulty in giving understanding to the law as it is difficult to give understanding to the word philosophy. From the difficulty of giving a perfect definition to the word law, he simply interprets the law with a set of regulations on acts or behaviors recognized by a state or society as applicable and binding to all its members. When connected with Islam, Islamic law is a set of rules based on revelation, the Qur'an and the Sunnah of the Apostle on the behavior of recognized and believed mukallaf human behavior that is binding for all muslims. (Muhammad Syah 1992) The phrase based on the revelation of Allah and the Sunnah of the Apostle, indicates that a set of rules is extracted from and based on the revelation of Allah and the Sunnah of the Apostle. The notion of law in this form describes the nature of the law from a theological dimension.

#### **4. Analysis of the Legal Nature Between Secularism and Theology.**

Mohammed Arkoun as quoted by M. Bakir reveals that in one of his reviews, he described secularism as "an understanding that destroys the capacity of divine acceptance and guidance", or "a program of cultural and political emancipation of theological thought and electotic domination", as the embodiment of the domination of nature to improve the human being. Power in the replacement of the public education system with the private education system. Laicite or laicism is the French term for secularism, which refers to militant opposition to the

religious vision of the world. This suggests that the concept emphasizes religious and humane conservatism: that religion is nothing more than a transcendental legacy that is not static, and to translate it back into every human life, a progressive and active attitude is needed. However, this attitude also emphasizes the conceptual practice of liberalism, which ultimately leads to attempts to "eliminate" or deny religious identity. Two fundamental understandings provide the most fundamental explanations for this statement at the sociological and historical level. First, Western thinkers legitimized the rebellion against church absolutism and the clergy system by coining the term "secularism". Second, the West, which is also more Catholic (Christian) than the rest of the world, agrees that secularization helps freedom of thought. John Locke's dualist empiricism and the theory of freedom of thought (liberalism) were the first to elevate this legitimacy. As a result, the desacralization of various sacred texts has always been associated with secularism. (Bakir 2018)

A very important secularism highlighted is the theory of secularization that occurs within the field of law. Law in Islam is seen as having two dimensions, namely shari'a and fiqh. Sharia is fundamental and absolute values, impossible to change, while jurisprudence is a special field formulated by fuqaha'. But in the course of history there have been changes. With the entry of the western democratic system into the political institutions of the Islamic world, this happened during the reign of the Usmani Turks which was dominated by western influence. At that time Islamic law was marginalized by western laws so that it was concentrated on family laws only. The fuqaha' was replaced with the House of Representatives as the lawmaker, and the source was no longer the Quran. In general, secularization that occurs in the field of Islamic law is seen as a self-liberation from the text of the Quran, and therefore the issue of shari'a is a very sensitive issue for Muslims.

According to al-Maududi, based on the verses of the Quran it can be affirmed that the highest authority and sovereignty rests with God. It is God who has the right to create the law. (Al-Maududi 1984) Man has no right to create laws, to determine what is permissible (halal) and what is forbidden (haram). The law here means the basic norms for the creation of a just and prosperous society, not administrative laws or traffic laws and so on. In this form, according to him, man may create laws. Al-Maududi affirmed that God alone has the right to legislate absolutely. Man may legislate as long as it does not contradict the basic legislation derived from revelation. Thus, man cannot make modifications to the laws

established by God.(Al-Maududi 1984) The author understands that what al-Maududi means by human limitations makes these modifications in terms of laws categorized as sharia instead of laws in the form of jurisprudence, because according to him, in the laws of mu'amalah in general such as traffic law and so on, it is possible to have a human role. In contrast to the West which teaches that the absolute power to legislate lies in the hands of the people. Even the determination of values and norms of behavior is also in the hands of the people. Lawmaking must be in accordance with public taste and opinion. It is not impossible that even if a piece of legislation is desired by the majority of the people even if it is contrary to moral and religious teachings, then it must go ahead. And vice versa.(Al-Maududi 1984)

Subhi Mahmassani explained that Islam as a religion and law. Muslims view the law from the side of creed and religion, while non-Muslims view it from the legal aspect only.(Mahmassani t.th) Islamic law has a dimension that in terms of the existence and actuality of the manusia and its problems will always refer to the truth on the basis of the authority of the revelation of Allah Almighty which is the highest criterion. In Islam, reason and revelation (nash) are two inseparable things. From this height of value Islam seeks to positively protect the salvation of reason and encourages that reason is more instrumental and functional for humanity insofar as it is inseparable from the basic lines established by revelation. Al-Gazali likens reason like the pondamen and religion (syara') to the buildings on it, inseparable. It's the same with the eyes and the radiance of light, or like a lamp with its oil.

For a Muslim, the culmination of submission to the law must be directed to Allah Almighty alone which is the Supreme and All-powerful form of this universe, hence Islamic law is theological. This does not mean that Islamic law is for the benefit of ukhrawi only. Islamic law, however, is universal and comprehensive, encompassing all dimensions of human life, both earthly and ukhrawi dimensions.

Theological law is derived and based on the provisions described by the Sunnah of His Apostle. Whereas secular law completely unties with divine provisions and rests solely on purely human reason. While the existence of human reason is very limited, it is very easily influenced by the subjectivity of the lawmaker, various interests and so on that will eventually give birth to laws that do not actually carry the values of justice, only benefit one or certain parties. If in the west people view

man only as a body with a brain or a body with reason, then in the east man has a body, reason, and conscience. It is this basic difference that makes westerners receptive to secularism. Secularism here is used in the sense of breaking away from religious ties.

One issue that arises is whether Islamic law is solely from God or can it also be touched by human reason. In Islam, the competence of human reason in formulating sharia law into fiqh law remains limited by nash signals, so in Islamic law there is no known legal reasoning freely or without restrictions. Herein lies the theological privilege of Islamic law. Islam asserts that reason is not capable of fully realizing human benefit without clear boundaries, because every human being has a very varied conception of benefit. Therefore revelation becomes very significant as the giver of a clear line of demarcation of the limits of benefit that must be achieved and established. Thus Islamic law is predominantly theological. The secularization of Islamic law can only be interpreted as the dynamism of jurisprudence towards change. It is not absolutely to give up its association with the text of the Qur'an and hadith.

In this case, ijihad requires optimal use of reason. This level of belief in the power of reason is as broad as western rationalism. But that does not mean that rationalism in Islam means exactly the same as western rationalism. If rationalism in Islam is always guided by nash which gives the basic lines that direct the way of thinking of a mujtahid, so that in drawing conclusions it is not too far from the truth values taught by Nash. Western rationalism, on the other hand, relies solely on the ability of reason alone, without any guide or direction, so that it is often found that a law is finally amended again because it is incompatible with the values of justice, good and bad.

Thus, Islamic law is a religious law of a theological nature, derived from revelations coming from Allah and His Messenger. In Islamic law, it is recognized that situations and conditions can change the law, regarding this Mahmassani stated: "Since absolute interests are the basis of all laws, the law must change in accordance with the changing times and changes in the environment of society. For this reason, Ibn Qayyim said that fatwas change and differ according to changes in times, places, situations, intentions, and customs."(Mahmassani t.th) Thus, the forms of development of Islamic law crystallized through human reasoning, as long as they are within the horizon of the nash range, cannot be said to be secularism. From the description above, it can be seen that Islamic law

is theological. By this nature it does not mean that Islamic law is solely concerned with the life of *ukhrawi* alone, but that Islamic law covers all dimensions of human life, both earthly and *ukhrawi*.

## Conclusion

Based on the description above, it can be concluded that one of the legal schools in the study of legal philosophy is natural law or also called natural law. In seeking the nature of law starting from the concept of legal formation, then the existence of secular law which is then called secularism and theological or theological law, then secularism in law is the separation of law from divine rules or religious norms, meaning that law is made solely based on the ability of human reason, as Arkoun expressions of understanding destroy the capacity of divine acceptance and guidance. Meanwhile, theological law that in the formation of law does not rely solely on the ability of reason but by using the guidance of revelation (Qur'an and hadith). Islamic teachings highly value the ability of reason, but their use must be directed with the basic values of *nash*. Islamic law is therefore universal and integral to both worldly and *ukhrawi* affairs. In general, the essence of law is to protect and justice for all, while specifically according to Islamic law thinkers that the essence of law gives birth to benefits in safeguarding their rights.

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