

Prophetic Paradigm as an Alternative Critique Toward Hart's Concept of Morality and Law

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Abstract

"Prophetic Paradigm" generally refers to a framework or approach that emphasizes the role of prophecy or prophetic figures in shaping religious, spiritual, or social understanding. This paradigm is often discussed in religious contexts, particularly within Christianity, Islam, and Judaism, where prophets are seen as key messengers of divine will, providing guidance, correction, and insight to communities. This article critiques the ethical principles of the epistemological basis of the relationship between law and morality in Herbert Leonel Adolphus Hart's (H.L.A. Hart) rational paradigm, which is founded on the prophetic paradigm via the lens of the Medina Charter. It employs a philosophical approach to investigate the fundamental assumptions of the epistemological foundation of legal science by connecting legal science to prophetic science. This study's data are collected from literature. This analysis shows that Hart's proposed separation of law and morality is inappropriate. Some rules are both legal and moral. Thus, the criticism of morality in the Medina Charter demonstrates that the distinction between law and morality established by Hart cannot be generally implemented and must be evaluated by taking into account social context and moral ideals considered significant by the society.

I. Introduction

The main issue in this context in Muslim countries such as Indonesia is whether secularism of law can be effectively applied in a country that has religion as one of the bases of law and a strong social value system like Indonesia, where the law is often related to religious teachings and strong moral values. Therefore, the separation of morality from law can create controversy and challenges in practice.

Legal positivism holds that the law must be seen in the provisions of the law because only then can the provisions of the law be verified. As for what is outside the law, it cannot be included as a law because it is outside the law (Efendi 2017). Law must be separated from morals, although positivists recognize that the focus on legal norms is closely related to the moral, theological, sociological and political disciplines that influence the development of legal systems. Morals can only be accepted in the legal system if they are recognized and validated by the ruling authority by enacting them as law (Dimiyati et al. 2021; Zuliyah et al. 2023)

Based on the literature review examining scientific works, there are several previous research results and studies on the Prophetic paradigm as an alternative critique to Hart's concept of morality and law. The literature review is research conducted by Wardiono (2019) entitled "Prophetic Paradigm in Legal Studies Teaching and Research." The results show that paradigms in social science and legal jurisprudence are essential to facilitate teaching and research in a more inclusive dimension. Therefore, it isn't possible to radically change legal thinking without considering the belief systems that inspire it to understand its concepts, methods, and analysis. Secondly, Islamic values consisting of faith, Islam, and Ihsan do not contradict the basic philosophy of Pancasila, so the academic goal of legal jurisprudence is not solely based on positivist theory. However, it is also essential to consider the ontology, epistemology, and axiology approaches accommodated into teaching and research development in Legal Jurisprudence. Finally, some partners of the prophetic paradigm in legal jurisprudence are very concerned about integrating good people and good law in the teaching and development process to carry out laws made by God and humans to obtain the concept of constructive law and unified justice.

Furthermore, research conducted by Jayanuarto et al. (2023) entitled "Law and Justice with a Prophetic Paradigm". In this study, it is explained that the prophetic paradigm of Law and justice is the concept of Law and justice that can be applied in which there is a balance between Law and justice. Justice can be used where it has a balance because it is based on the Quran and the prophet's sunnah. Suggestions Law and justice, in principle, are complementary and inseparable. Law and justice with a prophetic paradigm must be implemented and can always exist because they are things that come from God and the apostles. I

In this article, several issues will be examined, including: (1) How does the epistemological basis of moral/ethical values underlie the epistemological basis of the concept of legal morality, and how does the legal basis of the concept of H.L.A. Hart in the rational paradigm; compare to the moral and legal basis of the Medina Charter in the prophetic paradigm? and (2) what are the criticisms of the epistemological basis of ethics/values regarding the relationship between law and morality in the rational paradigm of H.L.A. Hart, based on the prophetic paradigm through the approach of the Medina Charter?

The significance of these questions is based on the assumption that the modern positivistic law that overrides the role of God ultimately causes problems in the legal world that are sometimes difficult to solve. Modern legal positivism is based on ratio and objective reality. In positivism, objective reality maintains facts external to humans and serves as the source of truth. Truth, in this context, relies on things that can be empirically demonstrated. On the contrary, religion posits that truth is exclusively the domain of God. It also encourages humans to utilize their reason and conscience to the fullest extent to perceive and draw closer to God's truth. Considering that religion constitutes a paramount aspect of most individuals' lives worldwide, implementing legal positivism, which disregards human subjectivity—particularly conscience—becomes challenging. This is because it implies a departure from the fundamental essence of humans as beings created by a higher power.

Furthermore, this research aims to find out (1) the epistemological basis of ethos/value of morality, which is the basis of the epistemological basis of the concept of legal morality and the basis of legal legality in the concept of H.L.A Hart in the rational paradigm and the Medina Charter in the prophetic paradigm of morals and law; (2) criticism of the epistemological basis of ethos/value about the relationship between law and morals in the rational paradigm of H.L.A Hart, based on the prophetic paradigm through the Medina Charter approach.

II. Research Methods

This research is based on a philosophical approach. It is intended to explore the basic assumptions of the epistemological basis of legal science, by linking legal science with religious science, as a critique of the philosophical foundations of the development of legal science, which is supported by H.L.A Hart's concept of legal morality in a rational paradigm (Langlinais and Leiter 2013; Sidharta 2009). Thus, there are two main activities to be carried out in this study. a) Exploring and describing the ethos/values from the epistemological basis of H.L.A Hart's concept of legal morality in the rational paradigm; and b) Reflect critically on the values/ethos from the epistemological basis of the concept of legal morality in H.L.A Hart works on the rational paradigm. Then the analysis will compare Hart's epistemological basis with the basic assumptions of the epistemological basis of prophetic law found in the Medina Charter. Thus, the

output of this research is to find the strengths and weaknesses of the values/ethos of the epistemological basis of the concept of Hart's legal morality.

III. Result and Discussion

3.1. Exclusion of Morality in Legal Positivism

The term positivism was first used by Saint Simon (1760-1825) from France as a method and a development in philosophical thinking. As quoted by Michael Curtis, Saint Simon stated: "The founder of new Christianity and leaders of the new church should be those who are most capable of contribution by their efforts to the improvement of the well-being of the forest class" (Paquette, Beauregard, and Gunter 2017; Piland 1991; Auguste 2002). Demands for the politicization of every legal norm according to history are made for the sake of the orderly life of a modern state that guarantees legal certainty and freedom for each citizen citizens. In the paradigm of positivism, the legal order is one of the social order that supports the realization of a society that is more or less orderly and organized.

In the years 1798 to 1857, this theory was also developed by August Comte, a French scholar who lived at that time. Auguste Comte stated that positivism was a scientific attitude that rejected a priori speculations and sought to build itself on experiential data (Comte 1975; Scharff 2010). In further development, Comte and Spencer's positivism became an inspiration for the emergence of the legal post-positivist school. This school believes that the only law that is accepted as law is the legal system, as only this law can be ensured and practiced. In its development, this school rejects the State legal system based on social life. Unlike Comte's opinion, the positivism paradigm is understanding law as a normative law.

The philosophical basis of rationalism and secularism as a process of massive separation of religion and politics, the ideal of human freedom and centrality is trapped in a pitiful condition where in modern society, humans become elements, automatons of the production process, and enslaved by machines. In capitalist society, humans become mere elements of the market, and even their quality as human beings is determined by the market (Gagnier 2000).

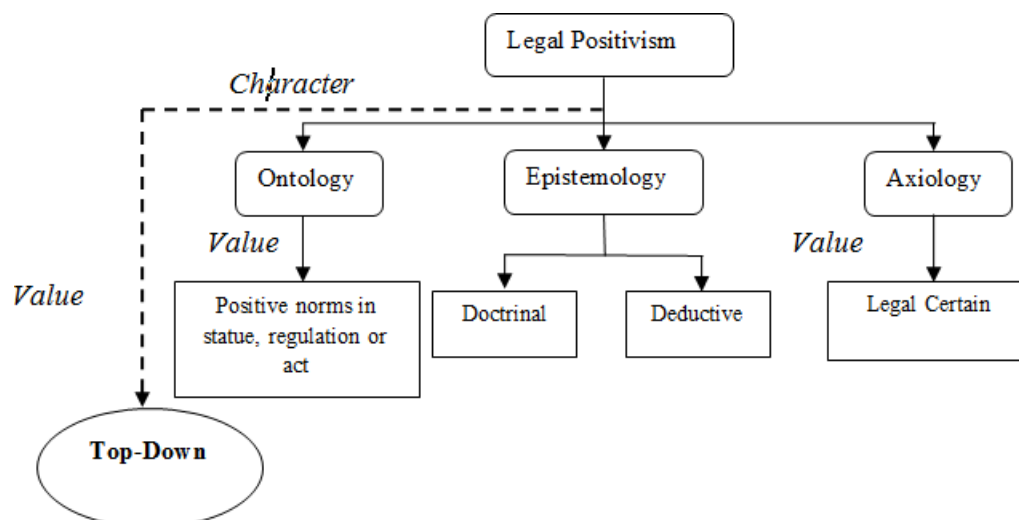
Through rationalism and empiricism, natural sciences try to develop the concept of pure theory. By taking a purely theoretical position, natural sciences can free themselves from human interests (subjective) and thus gain objective truth. Through this purification process, positivism claims to be knowledge that is free from interest (disinterested) so that the theories it produces are neutral. Similarly, philosophical elements in legal studies can also contain subjectivity, especially when dealing with a complex phenomenon like law. Therefore, several schools or madhabs in legal studies emerged according to the perspectives adopted by those who joined these schools. Thus, theories in legal studies developed by each adherent will contribute to the thinking about how to interpret law itself.

The birth of legal theory began with the development of Legalism, which took the form of *in optima forma*. According to Austin as quoted by Aris Prio Agus Santoso, law is a set of rules issued by humans as reasonable beings to guide the behavior of other humans under their authority. In this context, law is understood as an instrument used to regulate human behavior in society, to maintain security and collective well-being.

The positivist approach to law emphasizes the importance of written law, issued by the authorities or authorized legal bodies, and serves as the basis for all forms of legal action. This view also asserts that the law does not need to be connected to any particular moral or social values, but is merely established by authorities to regulate social life and provide rewards or sanctions for human actions in society. However, this view has also been criticized for tending to ignore the moral and ethical aspects inherent in the law and treating the law as a separate and independent entity from social reality. Critics of legal positivism argue that the law should be seen in the context of its relationship to society, culture, and the social values within it.

The positivist legal school is also known as the legalism school. This school always identifies law with the law itself; there is no law outside of the law, and the only source of law is the law itself. The legal positivist views are maintained by Paul Laband, Jellineck, Rudolf von Jherings, Hans Nawiasky, Hans Kelsen, and others. Legal positivism believes that the law must be seen in the provisions of the law, as only then can the legal provisions be verified. Anything outside the law cannot be included as a law because it is outside the law. Positivism has separated law from morality, making it difficult to deliver justice. Scholars have long been concerned with the role of morality in guiding people's behavior and maintaining the social order. In legal positivism, law must be separated from morality, although positivists recognize that the focus on legal norms is closely related to moral discipline, theology, sociology, and politics that influence the development of the legal system. Morality can only be accepted in the legal system if it is recognized and authorized by the authorities in charge by implementing it as law.

According to Shidarta, the philosophical basis of legal positivism is as follows:



Based on the diagrams, the philosophical basis of legal positivism can be outlined:

1. Epistemological basis: Legal knowledge is based on empirical observation and scientific methods. This means that legal rules can be discovered and verified through observation and analysis of legal sources such as statutes, case law, and legal precedents.
2. Ontological basis: The existence of legal rules and norms is not dependent on moral or ethical considerations, but rather on their formal recognition and acceptance by the relevant legal authorities. In other words, legal rules are created and enforced by human authorities, rather than being inherent in the natural world or divinely ordained.
3. Methodological basis: The interpretation and application of legal rules is based on the principle of formalism, which requires legal decision-makers to rely solely on the language and text of legal sources, rather than on extralegal considerations such as moral values, social norms, or personal preferences.

Legal positivism emphasizes the importance of clear and precise legal rules, as well as the authority of legal institutions and actors in creating and enforcing those rules. It also maintains a strict separation between law and morality, and advocates for a formalistic approach to legal reasoning and decision-making.

Hans Kelsen's Pure Theory of Law shares a fundamental similarity with H.L.A Hart's view of the law in that they both seek to answer the question "What is law?" rather than the normative question of "What law should be?" Specifically, in Hart's perspective on the "nature of law," the focus is on how law and legal obligations differ from and relate to commands supported by threats. H.L.A Hart also emphasizes the separation between law and morality, but this separation is not extreme since morality must be a precondition of law. This is due to two factors: a) humans have limitations in doing good to others and

b) the law has limitations in regulating the development of society. Hart acknowledged the limitations of positive law because it is always considered to be lagging behind events. Therefore, space is given for morality as a foundation that must be possessed by law implementers/subjects in the form of 'moral obligations' to take legal actions.

An adequate understanding of the law should not only be a set of rules and principles that regulate human life in society but should also include the institutions and processes necessary to realize the law in reality. Institutions are needed as a tool for legitimizing the law, meaning that the validity of the law can be a guide for society's acceptance of it. This is important as legitimacy concerns the trust of the public, which in turn will influence whether someone will violate or obey the law. This reality has led to the recognition of a legitimate space for the entry of political processes through political institutions in the formation of legal products. In this regard, two keywords that will be further examined for the influence of power in the law include the words "process" and "institutions" in realizing a legislative regulation as a political product. This influence becomes more apparent in the legislative products created by a political institution that is strongly influenced by powerful political forces within the institution.

Based on the validity of political institutions, Hart places morality within the framework of law as a minimum requirement, trying to overcome the rigidity that exists in the classical legal positivism of Austin, where law is placed as a morally insulated institution. However, on some occasions, Hart and Austin have points of agreement, especially regarding the separation between law and morality, but they reject absolute closure towards morality. Hart describes the relationship between law and morality in several aspects. First, although law and morality are different, they have some important similarities, for example: they have the same content. Second, law and morality have an important but not absolute relationship, even though absoluteness is a natural necessity, not a logical one.

According to Hart (2017), the relationship between law and morality is as follows: 1) law embodies moral aspirations, 2) morality and law have an independent relationship, 3) law must embody moral aspirations, 4) moral values influence law, 5) law by definition embodies morality, and 6) from the facts about the nature of humans and the world they live in, moral rules have the same minimum side. For Hart, the legal system is a system of social rules. Based on the rational paradigm assumes that reason is the only means to arrive at the goals and objectives in law. Therefore, a new paradigm is needed to balance this rational paradigm by developing a prophetic or transcendental. The morality-spirituality-religiosity and transcendence principles develop the formulation. The sources of Islamic law are divided into two main groups: primary sources and secondary sources. Primary sources (also known as "agreed-upon" sources) include the Qur'an, the Sunnah (tradition) of the Prophet, ijma' (legal literature representing a consensus), and qiyas (rules of analogy developed via deductive reasoning).

On the other hand, the Medina Charter is a moral concept that represents a

movement to uphold law, tolerance, and human rights, and a lesson to obey the agreed-upon laws. The most fundamental reflection of the Medina Charter is to show us that even though Muhammad was a Prophet who brought divine revelation, it further clarifies the spirit of democracy in Islamic teachings by encouraging community participation in formulating ethics and social laws based on the spirit of monotheism and humanity. This is reinforced by the preamble of the Medina Charter: "In the name of Allah, the Most Gracious, the Most Merciful. This is the written Charter of Prophet Muhammad among the believers and Muslims from Quraysh and Yathrib, and those who follow them, uniting and fighting alongside them."

The Medina Charter is an agreement established between Prophet Muhammad and various Arab and Jewish tribes in Medina, known as "*an-Nadhir*" and "*an-Quraizhah*". This charter united the Medina community, consisting of various ethnic, religious, and tribal groups, in a newly formed Islamic state. At the beginning of the Medina Charter, Prophet Muhammad called upon all people to unite under the banner of Islam, which sees all humans as brothers in faith and should respect each other. The Medina Charter emphasizes that Muslims must uphold justice and provide protection for all citizens, regardless of religion, ethnicity, or tribe. The charter also guarantees the rights of Arab and Jewish tribes in Medina and ensures peace and cooperation among all citizens.

The pattern of interaction established by Islam from the beginning is dynamic and emphasizes the pattern of *uswah hasanah*, which is based on morality and good role models. This moral approach demands that Muslims always be a good example or role model for their environment. It is no wonder that since its inception in Mecca, the Muslim community has been accommodative and creative. The *uswah al-hasanah* method is a religious movement that is soft power in nature, which upholds exemplary behavior, morality, defense of the disadvantaged, and the promotion of human rights.

The position of Medina Charter was the foundation of the government and the support of the governance of Prophet Muhammad and its relationship with the people consisting of various ethnicities and religions. The Medina Charter was implemented in the form of *siyasah* principles adapted to the needs of the heterogeneous population of Medina. Therefore, the moral concept in the Medina Charter is placed by researchers in the paradigm of prophetic ideology. In this context, Kuntowijoyo believes that the prophetic paradigm, which is the goal of knowledge, is the transformation of behavior that combines transcendence, liberation, humanization, and historical activism as an integral unity. This is a form of construction built by the Qur'an so that individuals or groups can have wisdom in line with the values of the Qur'an.

The researcher acknowledges the same concern felt by legal scholars in Indonesia regarding the determination of the positivist paradigm in law. Therefore, this study will conduct a comparison and critique of the concept of morality from H.L.A. Hart's perspective in the rational paradigm with the Medina Charter as the moral concept from the prophetic paradigm. The main topic of the separation of morality from law according

to H.L.A. Hart in Muslim countries like Indonesia is whether this separation can be effectively applied in a country with religion as the basis of law and a strong social value system.

H.L.A. Hart stated that law is not the same as morality, and that law should not rely on moral values to be effective. He argues that the law must have independent and objective authority, and be separable from the interests of certain individuals or groups. However, in Muslim countries like Indonesia, the law is often linked to religious teachings and strong moral values. Therefore, the separation of morality from law can cause controversy and challenges in practice.

3.2. Epistemological Basis of Paradigm Ethics/Values

Activities in the field of knowledge will always be based on certain criteria. Each criterion or guideline will always be used as a basis for measuring something (it can be a characteristic, function, or usefulness). These criteria are what Heddy refers to as ethics or values. Thus, based on these guidelines, a scientist will evaluate the research results of other scientists, their performance, or productivity.

Some disciplines of science prioritize the practical application of knowledge, although this may be implied rather than expressly stated in other branches. The values prioritized by a scientific community or organization may vary based on the cultural values of the society in which the scientists carry out their scientific endeavors. Biologists in the United States may prioritize specific values that hold less significance for biologists in other countries. While there are numerous values, only a small number are directly expressed in everyday life. This may explain why scientists frequently fail to recognize when their actions deviate from established scientific principles. Heddy asserts that the paradigm encompasses the following values:

"At least, it concerns (a) science, (b) social-cultural sciences; (c) scientific research; (d) scientific analysis; (e) research results. These values are always present in every branch of science, but their formulations, emphasis, and explicitness vary. There are branches of science whose values are more focused on the benefits of science, but are more implicit, while in other disciplines these values are made very explicit. This is greatly influenced by the cultural values of the society in which the scientists carry out their scientific activities.

To differentiate between Western science and Islamic science in terms of values, one of the elements used by Kuntowijoyo is ethics. The other four aspects are period, sources of knowledge, historical process, and nature of science. According to Kuntowijoyo, Western science is in the "Modern" period, while Islamic science is in the "Post-Modern" period. The source of knowledge for Western science is "reason," while the source of knowledge for Islamic science is "revelation and reason." The ethics of Western science is Humanism, while the ethics of Islamic science is Humanism-Theocentric. The historical process in Western science is differentiation, while in Islamic science it is dedifferentiation. Western

science is secular and autonomous, while Islamic science is integralist, which can be seen in the table below:

Aspects	Western Science	Islamic Science
Period	Modern	Post-Modern
Sources	Reason	Revelation and Reason
Ethics	Humanism	Humanism-Theocentric
Historical Process	Differentiation	Dedifferentiation
Nature	Secular and Autonomous	Integrality

Source : M Zainul Badar

Kuntowijoyo distinguishes between Western and Islamic knowledge based on the period, sources of knowledge, historical process, and the nature of knowledge. Western knowledge is in the Modern period, while Islamic knowledge is in the Post-Modern period (Inayati and Pratama 2022; Wijaya and Hidayat 2024). The source of Western knowledge is Reason, while the source of Islamic knowledge is Revelation and Reason. All of the fundamental values, ethics, and moral values that underlie each type of knowledge. Western knowledge's ethics is Humanism, which emphasizes human values as the moral and ethical foundation of human life. Islamic knowledge's ethics is Humanism-Theocentric, which emphasizes that humans are creatures created by God and have moral responsibilities in life.

3.3. Epistemological Basis of Morality by H.L.A. Hart in the Rational Paradigm

Hart's thoughts on law refer to Kant's system of society. For Hart, legal authority is social. The main criterion for validity in the legal system is not legal norms or something considered a norm, but rather social rules that exist only because they are practiced. Law ultimately relies on custom: custom about who has the authority to settle disputes and make legal decisions, what they should treat as reasons for binding decisions i.e., the sources of law, and how custom can be changed (which can only be done if it has been established by law as a procedure) (Absori and Nugroho 2019; Cynarski 2014).

If moral judgments are considered necessary, they should be based on factual evidence or rational arguments. This impression is particularly strong in Joseph Raz's view of the "myth of common morality," which posits that the unity of society is created by morality accepted by its members (Kim and Donaldson 2018; Leiter 2017). This view is known as sociological positivism, which emphasizes the scientific nature of law. The scientific object of legal studies, as explained by Hart, is the clarification of the meaning of law and the analysis of various fundamental concepts in law such as rights, obligations, ownership, and legal personality, including the term "law" itself. Therefore, in general, the emphasis of legal studies lies in the importance of analytical jurisprudence.

As a rational system, the dialectic between morality and law functions to protect individual freedoms and to prevent people from committing violence against others.

Therefore, whether the law is just or unjust, morally good or bad, rights and obligations need to be considered as focal points in the operation of the law which is very important for human beings and free from moral judgment. It is therefore incorrect to claim that legal rights and obligations have meaning in the real world only if their existence is supported by moral reasoning. For Hart, the most important thing is the rule in determining the source of recognition in determining the main criteria of validity in the legal system. It exists only because it is carried out by legal bodies, and not just from the existence of recognition rules or rules that are best to explain social practices, but also rules that they actually draw about what social system standards are bound to be applied (Valero Matas, Coca, and Miranda Castañeda 2011; Prendeville and Kinsella 2022)

It can be said that Hart's validity of law is based on the content of the rule of recognition, which is an external aspect (a common habit practiced by society). This is the basis for legal practitioners to describe legal products as a system. Hart places the rule of recognition as a 'social practice/action'. Although Hart acknowledges the separation of morality and law, he recognizes that there is a very close relationship between law and morality. The separation of law and morality exists in its validity. The validity of the law does not depend on morality but on whether the law is in accordance with the procedure or not.

IV. Conclusion

H.L.A. Hart's perspective posits that morality in law falls within the rational paradigm, which encompasses three fundamental principles: ontology, epistemology, and axiology. Hart's ontological ethos encompasses the ideals of autonomy, individualism, proceduralism, and relative morality. His epistemology is grounded in rational and objective principles, but his axiology ethos encompasses normative, relative, formalistic, and legal certainty values. The prophetic paradigm in moral law is evident in the values outlined in the Medina Charter. The ontological ethos, within the prophetic paradigm, encompasses participation ideals that were crucial in the creation of the Medina Charter. Prophet Muhammad, as a leader, played a pivotal role in uniting a heterogeneous society. The epistemological ethos is grounded on a moral framework that values proper conduct in reasoning and a morality that emerges from the harmonious interplay between contemplation and reverence for God. The axiology ethos places a high value on the promotion of unity, human dignity, peace, and justice. Within the prophetic paradigm, the concept of morality in law is not subjective, but rather based on objective principles and governed by religious teachings.

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