

Article

Legal System in the Perspectives of H.L.A Hart and Lawrence M. Friedman

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Abstract

This article presents an analysis of the views of H.L.A Hart and Lawrence Friedman on the legal system from different perspectives. Through a comparative approach, this article identifies key concepts introduced by both scholars and highlights points of convergence and divergence between them. The research methodology used is a literature review, where primary and secondary sources, including . written works, books, and scientific articles authored by Hart and Friedman, are collected and analysed.. The author then conducts a comparative analysis to gain a deeper understanding of their views. The research findings indicate that H.L.A Hart views the legal system as a combination of primary and secondary rules that play a role in maintaining social order. On the other hand, Lawrence M. Friedman considers it as a product shaped by contextual and historical factors. Their perspectives provide a comprehensive understanding of the nature and function of the legal system. This article has implications for legal theory and serves as a foundation for further research on the legal system within the context of Hart and Friedman's views.

Keyword

Legal System, H.L.A Hart, Lawrence M. Friedman

INTRODUCTION

The legal system serves as the backbone of modern society, serving as a regulatory framework for individual behavior and the maintenance of social order (Srilaksmi, 2020). Through its significance, the legal system ensures justice, security, and balance among citizens. However, the legal system is not static but constantly evolving with social, political, and economic changes. Prominent figures such as H.L.A Hart and Lawrence Friedman have offered distinct perspectives to comprehend the complexity of the legal system.

Hart's perspective emphasizes the concept of positive law in analyzing the legal system. Hart emphasizes the importance of valid and accepted rules by society as the primary basis for determining justice. According to Hart, the applicable legal norms must adhere to fundamental principles such as clarity, enforceability, and non-contradiction with individual morality (Oktaviani, Widia, & Sukadana, 2021). He also identifies the distinction between law and morality, where both are separate domains (Rusydi, 2021). According to Hart, the law should protect individual rights and freedoms without interfering in moral matters. On the other hand, Friedman presents a different perspective, emphasizing the importance of historical and sociological factors in understanding the legal system. He views law as a product of social processes and reflective of societal values and interests at a given time (Suadi 2005).. Friedman believes that law is not only concerned with formal written rules but also involves unwritten norms that shape human behavior (Friedman, 1975). In his view, the law should be adaptive and responsive to social changes occurring in society. .

This article aims to explore the thoughts of H.L.A Hart and Lawrence Friedman on the legal system, analyzing their perspectives to gain deeper insights into its nature, purpose, and role in society. It will also discuss the relevance and applicability of their ideas in the context of the modern legal system. To achieve a comprehensive understanding of the legal system, a research approach involving the analysis of the ideas proposed by Hart and Friedman is essential. By grasping the concepts they put forth, it becomes possible to strengthen the legal system, address its challenges, and bring positive changes to society.

RESEARCH METHODS

This research adopts a qualitative approach to analyze the perspectives of H.L.A Hart and Lawrence Friedman on the legal system. The qualitative approach is chosen because the research aims to understand the views and theories of both scholars within the context of the legal system. The primary sources related to the written works of Hart and Friedman will be collected, including books, articles, and other writings discussing their views on the legal system (Jonaedi Efendi

2018). These sources will be analyzed to gain an in-depth understanding of their conceptual and theoretical perspectives. Throughout the research process, the researcher will employ a comparative approach to compare the views and theories of both scholars. This comparison will identify similarities, differences, as well as areas of convergence or divergence in their thinking about the legal system (Sri Mamudji, Hang Rahardjo, Agus Supriyanto, Daly Erni, Dian Pudji Simatupang, 2005). Additionally, the researcher will critically analyze the views of Hart and Friedman, considering the relevance, strengths, and weaknesses of their theories in understanding the legal system. This analysis will enrich our understanding of their perspectives and aid in formulating strong conclusions.

BIOGRAPHY OF H.L.A HART

H.L.A. Hart (Herbert Lionel Adolphus Hart) was an English legal philosopher born on July 18, 1907, in Harrogate, England. He gained recognition for his significant contributions to legal positivism, a school of thought that emphasizes the separation of law from morality. Hart was raised in a middle-class Jewish family in Harrogate, England, and received a scholarship to attend the University of Oxford, where he pursued various branches of law. His academic career flourished, and he spent many years teaching at Oxford while also serving as the Head of Brasenose College (Lacey, 2004).

Apart from his academic pursuits, Hart actively engaged in politics and public affairs. He was a member of the British Labour Party and actively participated in debates on subjects such as capital punishment and civil disobedience. Hart's societal standing portrayed him as an educated and influential British figure with expertise in law, politics, and academia. Hart attended Bradford Grammar School and then continued his studies at the University of Oxford, where he obtained a Bachelor of Arts degree in 1929, and a Bachelor of Civil Law degree in 1932.

Some of Hart's most significant academic activities include: (1) Legal Philosophy Thinking: One of Hart's main activities was in the field of legal philosophy. He wrote several books and articles on this topic, including "The Concept of Law" (1961), which became a classic work in legal philosophy; (2) Teaching: Hart was a law teacher at the University of Oxford for over thirty years. He taught various topics in law, including civil law, criminal law, and legal philosophy; (3) Research: Hart conducted research in various fields, including legal philosophy, international law, and contract law. He also conducted research on legal theory and fundamental legal concepts; (4) Organizational Activities: Hart was a member of various legal organizations, including the American Bar Association and the International Association for Philosophy of Law and Social Philosophy. He also served as the editor of the Oxford Journal of Legal Studies;

(5) Consultation Activities: Hart was involved in consultancy activities and provided advice to the British government and international organizations on legal and constitutional issues; (6) Contribution to Legal Theory Development: Hart contributed to the development of legal theory by developing theories about law as a social system and our understanding of legal rules. He also discussed concepts such as sovereignty, human rights, and freedom of speech in the context of law (Schauer, 2006).

After completing his studies, Hart worked as a barrister and later served in the British Army during World War II. After the war, he returned to Oxford and joined the faculty at Balliol College. In 1952, he became a Professor of Law at the University of Oxford, a position he held until his retirement in 1968.

Hart gained fame for his work in legal philosophy, particularly his influential book "The Concept of Law," first published in 1961. In this book, Hart developed the theory of legal positivism, which argues that law is a social phenomenon created by humans and not by divine or natural forces. He also introduced the idea of "rules of recognition," which is the notion that a legal system is based on a set of rules accepted by the majority of people in a society. Other notable works by Hart include "The Morality of the Criminal Law," "Causation in the Law," and "Punishment and Responsibility." In addition to his work in legal philosophy, Hart was also involved in political and social issues, including civil liberties and the abolition of the death penalty. He received numerous awards throughout his career, including the Order of Merit in 1971 and the Balzan Prize for Jurisprudence in 1988. Hart passed away on December 19, 1992, in Oxford, England, at the age of 85 (Armstrong, 2005).

BIOGRAPHY OF LAWRENCE M. FRIEDMAN

Lawrence M. Friedman, an acclaimed legal historian, has emerged as a prominent figure in the internationally recognized history of American law (Lawrence M. Friedman, Robert A. Kagan & Cartwright, 1980). For a full generation, he has been a leading spokesperson, bringing an understanding of American legal history to various audiences, including lawyers and the general public. His presence has had a significant impact on the legal and societal movements.

One distinguishing characteristic of Friedman is his unique approach to treating legal history as an integral part of general social history (Friedman, 1969). He recognizes that law cannot be separated from the social, cultural, and political contexts in which it develops. This approach provides profound insights into how American law has evolved over time.

One of Friedman's notable works is his book titled "History of American Law," first published in 1973. The book not only received accolades but also became a classic guide in legal education and an important reference for scholars.

The work provides a comprehensive overview of the evolution of American law from colonial times to the modern era. Friedman depicts the changes in legal principles, the role of the judicial system, and the relationship between law and society.

Additionally, Friedman is also known for his work titled “American Law in the 20th Century,” published in 2003. The book offers in-depth explanations of the development of American law in the 20th century, including significant shifts in legal perspectives and the evolution of the legal system that have influenced everyday life.

Friedman’s works are not only recognized as textbooks but also serve as crucial references for legal practitioners, academics, and legal observers. He successfully conveys his ideas clearly and provides a profound understanding of how American law relates to its social history.

With a strong background as one of the most influential legal historians in American history, it is not surprising that Lawrence M. Friedman’s monumental works and innovative approach have made significant contributions to our understanding of the American legal system and how it relates to broader social developments (Friedman, 1985).

H.L.A. HART’S THOUGHTS ON THE LEGAL SYSTEM

Herbert Lionel Adolphus Hart studied fundamental concepts in law. According to Hart, the legal system has three main aspects: rules, customs, and case law (Hart, 2018). Firstly, legal rules are written regulations established by the government to govern societal behavior. These legal rules can take the form of laws, regulations, or agreements. Secondly, customs are the customary practices adopted by society in dealing with specific situations. Sometimes, these customs are recognized and applied by the legal system as part of legal norms. Thirdly, case law refers to the judgments of judges that serve as precedents or guides for future judicial decisions. Case law encompasses the understanding of how legal rules should be applied in specific cases, as well as how judges should make decisions (Yuliantini & Pramita, 2022).

According to Hart, the legal system is not just about legal rules but also about customs and case law (Hart, 1988). The legal system should acknowledge and consider the roles played by customs and case law in developing and applying legal rules. In this way, the legal system can effectively regulate societal behavior and ensure justice.

H.L.A. Hart argues that law is a system of norms. He presents this view in his famous work, “The Concept of Law” (1961). Hart contends that law is a system consisting of two types of norms: primary rules and secondary rules. Primary rules are rules that directly regulate human behavior, such as

prohibitions against theft or murder. On the other hand, secondary rules are rules that govern how primary rules are applied, such as rules regarding lawmaking or court procedures (Humiati, 2020).

Further explained, there are two types of law within the legal system: primary law and secondary law. Primary law refers to legal rules that govern actions that are prohibited or commanded. Primary law is directly applied to the actions or behavior of individuals (Yuliantini & Pramita, 2022). An example of primary law is criminal law, which regulates actions that violate the law and are subject to criminal sanctions.

Meanwhile, secondary law refers to legal rules that govern the creation, amendment, and repeal of primary law. Secondary law does not directly regulate an individual's behavior but governs the process of lawmaking (Yuliantini & Pramita, 2022). Examples of secondary law include constitutions, statutes, and government regulations that govern the process of creating, amending, or repealing laws.

According to Hart, primary and secondary law are interconnected in a legal system. Primary law requires secondary law to provide certainty and clarity in its application, while secondary law relies on primary law as the legal basis that must be enforced and protected (Dinar, Pencegahan, Hukum, Pidana, & Aditama, 1971).

Hart states that a legal system can function effectively only if there is agreement within society regarding the applicable legal norms, known as the "rule of recognition." The rule of recognition is a rule that determines when a norm is considered law within that legal system (Wahyuni, 2012). Hart also suggests that law can change and evolve over time, depending on changes in social norms and values held by society. Therefore, the legal system must be open to change and capable of adapting to the evolving social norms and values within society.

LAWRENCE M. FRIEDMAN'S THOUGHTS ON THE LEGAL SYSTEM

Lawrence M. Friedman's legal system thinking has made significant contributions to the understanding and analysis of the history and development of law in America. According to Friedman, law cannot be separated from the social, cultural, and political context in which it evolves. He emphasizes the importance of understanding how law is influenced by society and, at the same time, influences society in a particular time and place (Friedman, 1975).

One core aspect of Friedman's thinking is that law is the result of dynamic interactions among social forces (Aprita, 2021). He rejects the traditional view that sees law as a standalone entity and instead portrays it as a product shaped through a complex social process. Friedman argues that law not only

encompasses the rules applied authoritatively by the judicial system but also reflects the political, economic, and social forces present in society (Lawrence M. Friedman, 2019)

In his analysis of American legal history, Friedman identifies various factors that influence the development of the legal system. One of these factors is social change and shifts in societal values. He observes how changes in public attitudes toward issues such as human rights, gender equality, and environmental protection have influenced the interpretation and implementation of the law (Sudjana, 2019).

Furthermore, Friedman pays significant attention to the role played by social actors in shaping the law. He acknowledges that societal groups, including economic, political, and social interest groups, wield strong influence in policy-making. In his thinking, law is seen as a result of transactions among interacting stakeholders who strive to achieve their respective goals.

Within Friedman's framework of thinking, changes in the legal system often occur in response to social changes and the needs of society (Friedman, 1969). He emphasizes the importance of viewing law as an instrument that can shape and transform society, rather than merely a supporting tool. Friedman believes that law must be able to adapt to societal changes to meet the needs and demands of the time.

Moreover, Friedman also presents a critical view of the concept of legal authority and the judicial process (Friedman, 1972). He highlights the imperfections and biases present within the judicial system, as well as the role of political and economic powers in influencing legal decisions (Unand Limau Manis Padang, 2011). Friedman emphasizes the importance of transparency, integrity, and accountability in the legal system to uphold its integrity.

In conclusion, Lawrence M. Friedman's legal system thinking provides valuable insights into the complex relationship between law and society. His important contributions to the understanding of American legal history, the role of social actors in shaping the law, law's adaptation to social change, and criticism of legal authority and the judicial process all offer profound perspectives on a complex and dynamic legal system.

COMPARISON OF H.L.A HART AND LAWRENCE M. FRIEDMAN'S THOUGHTS ON THE LEGAL SYSTEM

The legal system is an integral part of social organization that governs the behavior of individuals and their relationships within society (Achmad Asfi Burhanudin, 2021). In examining the legal system, thinkers such as H.L.A Hart and Lawrence M. Friedman have provided different perspectives on understanding the nature, function, and evolution of law.

HLA Hart, a prominent legal philosopher, proposed the concept of a legal system consisting of two main components: primary rules and secondary rules. According to Hart, primary rules establish obligations and duties that individuals must abide by in society (Nurainun Mangunsong, 2011). Primary rules include criminal law, civil law, and administrative law that state the basic norms governing individuals' relationships with one another and with the state (Rusydi, 2021). Primary rules have consequences and sanctions for violating those rules.

On the other hand, Hart's secondary rules form a broader framework within the legal system. Secondary rules include constitutional law, procedural law, and administrative law that govern how primary rules are made, amended, and enforced. Secondary rules shape the legal process, which involves law-making by legislative bodies, legal interpretation by courts, and law enforcement by executive bodies. Hart emphasizes the importance of secondary rules in ensuring stability, certainty, and fairness in the legal system (Tampubolon & Simbolon, 2022).

Hart also acknowledges the role of rules in maintaining social order and coherence within society. The established rules provide clear guidance for individuals, enabling society to function effectively and avoid chaos. Hart argues that rules are not just tools for controlling individuals but also foundations that enable harmonious social life (Hariri, 2019).

On the other hand, Lawrence M. Friedman adopts a socio-legal approach in analyzing the legal system. Friedman considers contextual and historical factors that shape the legal system, such as social, cultural, and political influences. His approach focuses more on understanding the complexity of interactions between law and society. Friedman believes that the legal system is not just composed of formal written rules but is also influenced by broader social dynamics.

According to Friedman, to fully understand the legal system, it is important to look beyond the legal texts themselves. Social, cultural, and political influences play a crucial role in shaping the law and affecting how it is applied in everyday life. Friedman emphasizes the need to pay attention to social and historical contexts in analyzing the legal system, so that a more comprehensive understanding of the relationship between law and society can be achieved.

Although Hart and Friedman have different approaches to the legal system, both provide important insights into the role of law in society. Hart emphasizes the role of rules in maintaining social support for the legal system, while Friedman emphasizes the importance of understanding contextual factors that shape the legal system. Through a comparative analysis of these perspectives, we can gain a deeper understanding of the nature, function, and

evolution of the legal system as a whole. A holistic approach to studying law allows us to see the complexity of the relationship between law and society and recognize that the legal system is not an isolated entity but reflects broader social conditions and values.

CONCLUSION

This article has provided an in-depth analysis of the views of H.L.A Hart and Lawrence M. Friedman on the legal system. These two eminent scholars have made substantial contributions to legal theory and offered distinct viewpoints in comprehending the intricacies of the legal system. H.L.A Hart introduced the concept of a legal system as a combination of primary and secondary rules. Primary rules impose obligations and duties on individuals, while secondary rules establish a framework for creating, modifying, and enforcing primary rules. Hart emphasized the importance of rules in maintaining social order and coherence.

On the other hand, Lawrence M. Friedman adopted a socio-legal perspective to understanding the legal system, recognizing the profound influence of contextual and historical factors, including social, cultural, and political dynamics.. His approach focused on understanding the complexity of the interaction between law and society. Through a comparative analysis, it was found that Hart and Friedman have different views on the nature, function, and evolution of the legal system. However, both provide important insights into the role of law in society.

By considering these contrasting perspectives, this article provides a broader understanding of the legal system. Appreciating the viewpoints of Hart and Friedman can significantly contribute to the advancement of legal theory and serve as a solid foundation for further research in this domain. The incorporation of their ideas enriches the discourse surrounding the legal system, ultimately fostering a more nuanced and comprehensive understanding of its complexities and dynamics.

REFERENCE

- Achmad Asfi Burhanudin. (2021). Eksistensi Hukum Adat di Era Modernisasi. *Salimiya Jurnal Ilmu Keagamaan Islam*, 2(4), 96-113.
- Aprita, S. (2021). *Sosiologi Hukum (I)*. Kencana.
- Armstrong, K. (2005). Carlin Romano "A Philosopher's Humanity." *The Spiral Staircase*, Harper Collins: Chronicle of Higher Education, 51.
- Dinar, S. A., Pencegahan, S., Hukum, P., Pidana, T., & Aditama, R. (1971). Chaerudin, Syaiful Ahmad Dinar, dan Syarif Fadilah, *Strategi Pencegahan & Penegakan Hukum Tindak Pidana Korupsi*, Cet. Ke-2, Refika Aditama, Bandung, 2009, h.1. 1. 1-78.
- Friedman, L. M. (1969). *LEGAL CULTURE AND SOCIAL DEVELOPMENT*.

- Law & Society Review: JSTOR Collection, 4(1), 29–44.
- Friedman, L. M. (1972). *History of American Law*. New York: Simon and Schuster.
- Friedman, L. M. (1975). *The Legal system: A social science perspective (I)*. New York: Russell Sage Foundation.
- Friedman, L. M. (1985). *Total Justice (I)*. New York: Russell Sage Foundation.
- Hariri, A. (2019). Dekonstruksi Ideologi Pancasila sebagai Bentuk Sistem Hukum di Indonesia. *Ajudikasi : Jurnal Ilmu Hukum*, 3(1), 1. <https://doi.org/10.30656/ajudikasi.v3i1.1055>
- Hart, H. L. A. (1988). *The Concept of Law*. Oxford: Oxford at The Clarendon Press.
- Hart, H. L. A. (2018). *Konsep hukum (III)*. Bandung: Nusa Media.
- Humiati. (2020). Komentar Terhadap Hukum Dan Masyarakat DALAM PEMIKIRAN JOHN AUSTIN, H.L.A. HART DAN HANS Kelsen. YURIJAYA, *Jurnal Ilmiah Fakultas Hukum*, 160–185.
- Lacey, N. (2004). *A Life of H. L. A. Hart: The NightMare and the Noble Dream*. Oxford.
- Lawrence M. Friedman. (2019). *Sistem Hukum: Perspektif Ilmu Sosial*. Penerbit Nusa Media.
- Lawrence M. Friedman, Robert A. Kagan, B., & Cartwright, S. W. (1980). State Supreme Courts: A Century of Style and Citation. *Stanford Law Review*, 33.
- Nurainun Mangunsong, M. Khozim. (2011). H.L.A. Hart Konsep Hukum The Concept of Law. 1–10.
- Oktaviani, N. K., Widia, I. K., & Sukadana, I. K. (2021). Status Mewaris Terhadap Anak Yang Lahir Dari Perkawinan Beda Agama. *Jurnal Analogi Hukum*, 3(1), 27–31. <https://doi.org/10.22225/ah.3.1.2021.27-31>
- Rusydi, M. (2021). Hukum Dan Moral: Mengulik Ulang Perdebatan Positivisme Hukum Dan Teori Hukum Kodrat H.L.a Hart & Lon F. Fuller. *AL WASATH Jurnal Ilmu Hukum*, 2(1), 1–8. <https://doi.org/10.47776/alwasath.v2i1.134>
- Schauer, F. (2006). "(Re)Taking Hart." *Harv. L. Rev.* 852.
- Sri Mamudji, Hang Rahardjo, Agus Supriyanto, Daly Erni, Dian Pudji Simatupang. (2005). *Metode penelitian dan penulisan hukum*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia.
- Srilaksmi, N. T. (2020). Fungsi Kebijakan Dalam Negara Hukum. *Pariksa*, 6(1), 30–38.
- Sudjana, S. (2019). PENERAPAN SISTEM HUKUM MENURUT LAWRENCE W FRIEDMAN TERHADAP EFEKTIVITAS PERLINDUNGAN DESAIN TATA LETAK SIRKUIT TERPADU BERDASARKAN UNDANG-UNDANG NOMOR 32 TAHUN 2000. *AL AMWAL (HUKUM EKONOMI SYARIAH)*, (Vol. 2 No. 2 (2019): *Jurnal Al Amwal (Hukum Ekonomi Syariah)*), 78–94.
- Tampubolon, M., & Simbolon, P. G. M. (2022). Perbandingan Sistem Hukum Inggris Dengan Jerman (Refleksi Terhadap Sumber Hukum Dan

Penerapan Hukum Indonesia). *Yurispruden : Jurnal Fakultas Hukum Universitas Islam Malang*, 5(2), 141. <https://doi.org/10.33474/yur.v5i2.11114>

Unand Limau Manis Padang, K. (2011). Perbaikan Sistem Hukum Dalam Pembangunan Hukum Di Indonesia Azmi Fendri. *Jurnal Ilmu Hukum*, 2(1), 96-107.

Wahyuni, S. (2012). Pengaruh Positivisme Dalam Perkembangan Ilmu Hukum DanPembangunanHukumIndonesia. *Al-Mazaahib: Jurnal Perbandingan Hukum*, 1(1), 1-19. <https://doi.org/10.14421/al-mazaahib.v1i1.1342>

Yuliantini, N. P. R., & Pramita, K. D. (2022). Jurnal komunikasi hukum. *Jurnal Komunikasi Hukum*, Volume 7 Nomor 1 Februari 2021, 8(1), 469-480.