

## ISLAMIC LAW: BETWEEN REVELATION AND HUMAN THOUGHTS

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### Abstract

The revelation of religion teaches two ways to acquire knowledge. First, through revelation, which involves communication from God to humans; and second, through reason, which involves using impressions obtained by the five senses as food for thought to arrive at conclusions. Knowledge obtained through revelation is believed to be absolute, while knowledge obtained through reason is considered relative, requiring continuous testing and subject to being either true or false. In the pursuit of truth and enlightenment, a question arises in the age of scientific and technological advances: which form of knowledge is more trusted knowledge obtained through thought, knowledge obtained through revelation, or knowledge obtained through both? The focus of this research is to examine how revelation and human thought work together in establishing Islamic law. For example, when issuing contemporary fatwas for which there is no explicit argument from the Qur'an or Hadith, the *ulama'* use reason or their intellects in formulating fatwas, ensuring that these fatwas do not conflict with the Qur'an or Hadith. The research method involves a literature review or literature study that includes theories relevant to the research problem. The goal of

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this research is to determine the relationship between Islamic law and human thought.

**Keywords:** Islam; law; revelation; human thoughts.

### **Khulasah**

Ajaran agama mengajar dua cara untuk memperoleh pengetahuan. Pertama, melalui wahyu, yang melibatkan komunikasi dari Tuhan kepada manusia; dan kedua, melalui akal, yang melibatkan penggunaan dapatan yang diperoleh dari lima deria sebagai bahan pemikiran untuk mencapai kesimpulan. Pengetahuan yang diperoleh melalui wahyu dipercayai sebagai mutlak, sementara pengetahuan yang diperoleh melalui akal dianggap relatif, memerlukan ujian berterusan dan boleh menjadi benar atau salah. Dalam mencapai kebenaran dan pencerahan, timbul satu persoalan dalam era kemajuan sains dan teknologi: bentuk pengetahuan manakah yang lebih dipercayai—pengetahuan yang diperoleh melalui pemikiran, pengetahuan yang diperoleh melalui wahyu, atau pengetahuan yang diperoleh melalui kedua-duanya? Fokus kajian ini adalah untuk meneliti bagaimana wahyu dan pemikiran manusia bekerjasama dalam membentuk undang-undang Islam. Contohnya, apabila mengeluarkan fatwa kontemporari yang tiada hujah eksplisit dari al-Qur'an atau hadis, para ulama menggunakan akal atau intelek mereka dalam merumuskan fatwa, memastikan bahawa fatwa-fatwa ini tidak bercanggah dengan al-Qur'an atau hadis. Kaedah kajian ini melibatkan kajian literatur yang merangkumi teori-teori yang relevan dengan masalah kajian. Matlamat kajian ini adalah untuk menentukan hubungan antara undang-undang Islam dan pemikiran manusia.

**Kata kunci:** Islam; hukum; wahyu; pemikiran manusia.

### **Introduction**

Humans, although born separately from one another, cannot live in isolation; they inevitably live together in

groups or societies, a concept interpreted by philosophers as *al-insan madaniyyun bi al-tab'i* (Zoon Politicon).<sup>1</sup> It is within these groups or societies that humans find themselves, develop their lives over time, build civilizations, and cultivate diverse interests, thus becoming increasingly sophisticated and varied. Living in groups or communities with diverse interests can lead to conflicts of interest that may cause harm. To regulate and protect these interests and prevent harm, laws exist in society. Consequently, the law is a crucial factor in regulating and safeguarding the lives of the people.<sup>2</sup>

When considered from its sources, there are two types of laws: those derived from the human agency (*al-ahkam al-wad'i*), encompassing societal laws rooted in historical streams (historical theory) and laws established by public institutions such as those guided by sociological theory; and laws originating from divine revelation (*al-ahkam al-samawi*). Within this latter category lies Islamic law (*fiqh*, or *al-ahkam al-shar'iyah*).

In certain circles, Islamic law is perceived as a man-made law, not directly derived from the Qur'an and the Sunnah; some even suggest it originated from Roman law with adaptations to suit the social and political conditions of Islamic society. This perception is influenced by similarities, especially in the systematic aspects and legal norms, between Islamic civil law and Roman law. However, despite occasional instances where Islamic law may appear to deviate from its primary sources, the Qur'an and Hadith, it fundamentally remains rooted in them. Therefore, it is crucial to clarify that Islamic law is firmly grounded in both divine revelation and human intellect.

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<sup>1</sup> Osman Raliby, *Ibnu Chaldun tentang Masyarakat dan Negara*, 3<sup>rd</sup> ed. (Jakarta: Bulan Bintang, 1965), 153.

<sup>2</sup> J. van Kan & J. H. Beekhuis, *Inleiding Tot De RechtWetenschap (De Erven F. Bohn, N. V. Haarlem)* (Jakarta: PT. Pembangunan, 1972), 10.

Based on the description provided, the main problem to be examined in this paper is: What is the position of Islamic law between revelation and human thought? To ensure a coherent discussion leading to the desired focus, this main problem is further divided into sub-questions as follows:

1. What is the meaning of Islamic law and its sources?
2. What is the relationship between revelation and human thought in Islamic law?
3. What are the aspects of revelation and human thought in Islamic law?

### **Discussion: Understanding Islamic Law and its Sources**

Islamic law, as currently understood, is the culmination of juristic reasoning based on the Qur'an and Hadith, utilizing the principles of *fiqh* (jurisprudence) and the methodologies of *usul al-fiqh* (principles of jurisprudence).<sup>3</sup> The term Islamic law is composed of two components: 'law' and 'Islam'. The Arabic word for law, *qanun*, appears in the Qur'an. However, the term Islamic law itself is a construct found in the terminology of languages like English and Indonesian, not in Arabic, and it is not directly found in the Qur'an or classical Islamic texts. To grasp the true essence of Islamic law, it is essential to delve into the meanings of these two words separately.<sup>4</sup>

According to linguistics, the word 'law' originates from a root word meaning to refuse or reject. From this root, the word *al-hukm* is derived, which denotes rejecting injustice or oppression, and also means to establish or set something up.<sup>5</sup> When the term 'law' is combined with Islam, Islamic law is understood as a system of regulations

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<sup>3</sup> Muhammad Hasyim Kamali, *Principle of Islamic Jurisprudence (The Islamic Texts Society)* (Jakarta: Pustaka Pelajar Offset, 1996), 1.

<sup>4</sup> Amir Syarifuddin, *Ushul Fiqh* (Jakarta: PT Logos Wacana Ilmu, 1997), 4.

<sup>5</sup> Umar Syihab, *Al-Qur'an dan Kekenyalan Hukum* (Semarang: Dina Utama 1993), 30.

based on the revelation of Allah and the Sunnah (traditions) of the Prophet concerning the conduct of accountable individuals (*mukallaf*), which are acknowledged and considered obligatory for all Muslims.<sup>6</sup>

The word 'law' originates from the Arabic *al-hukm* (plural: *al-ahkam*), which in Dutch is called '*recht*' and in English, 'law'. Experts provide various definitions of law depending on their perspectives. Satjipto Raharjo, for instance, defines law as: "A set of legal norms that regulate a person's behavior in relation to societal life, establishing rights and obligations, and determining permissible and impermissible actions."<sup>7</sup> The expert in jurisprudence defines Shari'ah as concerned with the actions of Muslim believers, whether in the form of obligations, choices, or prohibitions.<sup>8</sup>

Islamic law, known among experts in Islamic jurisprudence (*fuqaha*) as *fiqh*, derives its name from the Arabic term meaning understanding or knowledge. *Fiqh* encompasses the legal rulings derived through scholarly efforts to interpret the Qur'an and Hadith (*ijtihad*). Mahmud Shaltut defines Shari'ah as divine rules revealed by Allah to guide humans in their relationship with their Lord, others, the environment, and life in general.<sup>9</sup> In everyday usage, the terms *fiqh* and Shari'ah are often used interchangeably without explicitly defining each term. This practice can be attributed to the close and inseparable

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<sup>6</sup> Ismail Muhammad Syah, *Filsafat Hukum Islam* (Jakarta: Bumi Karsa, 1992), 17.

<sup>7</sup> Satjipto Raharjo, *Ilmu Hukum*, 5<sup>th</sup> ed. (Bandung: Citra Aditya Bakti, 2000), 47.

<sup>8</sup> 'Abd al-Wahhab Khallaf, *Ilm Usul al-Fiqh* (Cairo: n.pb., 1956), 23.

<sup>9</sup> Mahmud Shaltut, *al-Islam 'Aqidah wa Shari'ah* (Cairo: Dar al-Qalam, 1966), 12.

relationship between the two. Shari'ah serves as the foundational legal framework.<sup>10</sup>

Ahmad Zaki Yamani formulated the definition of Islamic law in two senses: a) Broad meaning: "All laws systematically arranged by *fiqh* experts in their jurisprudential opinions regarding contemporary and anticipated future issues, derived directly from the Qur'an, Hadith, or other legal sources." Islamic Shari'ah, or Islamic law, originates from the Qur'an, the decree of Allah, and the Sunnah of the Prophet. Every legal provision derived from the Qur'an, Sunnah, *ijma'* (consensus), and *qiyas* (analogical reasoning), through valid *ijtihad*, represents Allah's law and Shari'ah, and is an indication from Prophet Muhammad, as each *mujtahid's* opinion is derived from one of these four sources; b) Narrow meaning: "... laws supported by definitive and strong evidence found in the Qur'an, authentic Hadith, or established through *ijma'*."<sup>11</sup>

Hasan Ahmad al-Khatib provides the following understanding of Islamic law: "... a collection of Shari'ah laws recorded from various schools, whether from the four major schools or others, sourced from the fatwas of the Companions and the Tabi'in."<sup>12</sup>

The norms of Islamic law derive from various sources. Hasbi Ash-Shiddieqy, a prominent figure in the development of *fiqh* and Hadith sciences in Indonesia, categorized these sources into three distinct categories, an unconventional approach among medieval scholars,

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<sup>10</sup> Yusuf Hamid al-'Alim, *al-Maqasid al-'Ammah li al-Shari'ah al-Islamiyyah* (Saudi Arabia: al-Dar al-'Alamiyyah li al-Kitab al-Islamiyyah, 1994), 19.

<sup>11</sup> Ahmad Zaki Yamani, *al-Shari'ah al-Khalidah wa Mushkilah al-'Asr*, translated by KMS Agustjik with the title, *Eternal Islamic Shari'at and Present Issues* (Jakarta: Institute for Social Studies Foundation Bhinneka Tunggal Ika Foundation, 1977), 14.

<sup>12</sup> Issa J. Boullata, *I'jaz al-Qur'an al-Karim 'Abra at-Tarikh*, Beirut, al-Muassasah al-'Arabiyyah li al-Dirasat wa al-Nashr.

particularly concerning the roles of revelation and human thought:

## 1. Resources revealed

### a. Al-Qur'an

The Qur'an serves as a comprehensive guide for human life, regulating relationships with God, fellow human beings, and the environment. It encompasses and regulates all aspects of human existence, categorically addressing *'aqidah* (faith), *shari'ah* (worship and *mu'amalah*), and *akhlak* (morality). Despite its revelation in the Arabic language to the Arabs, who were linguistic experts, the Qur'an remains unparalleled in its literary and rhetorical excellence. The challenge posed by the Messenger of Allah to produce something similar to even one of its chapters remains unmet, demonstrating the Qur'an's uniqueness and divine origin throughout history.<sup>13</sup>

Indeed, the Qur'an was revealed in a period of eloquent Arabic, known for its beauty and clarity. The Prophet's companions were familiar with its verses and their legal implications. They sought a deeper understanding of abstract verses through analysis, research, or direct consultation with the Prophet.<sup>14</sup> The Qur'an stands as an eternal miracle of Islam, continuously reinforced by scientific advancements. Revealed to Prophet Muhammad (PBUH), the Qur'an was meant to guide humanity from darkness into light. The Prophet conveyed it to his companions, the original Arabs, enabling them to comprehend its teachings intuitively.<sup>15</sup>

According to Quraish Shihab, "The Qur'an, which literally means 'perfect reading', is a name truly chosen by

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<sup>13</sup> T. M. Hasbi Ash-Shiddieqy, *Pengantar Ushul Fiqhi* (Jakarta: Bulan Bintang, 1978), 32.

<sup>14</sup> Badr al-Din al-Sharkazi, *al-Burhan fi 'Ulum al-Qur'an* (Cairo: Dar al-Turath, n.d.), 1:14

<sup>15</sup> Manna' Khalil al-Qattan, *Mabahith fi 'Ulum al-Qur'an* (n.p: Manshurat al-'Asr al-Hadith, 1973), 78.

God, as throughout the five thousand years since humanity learned literacy, there has never been a single reading that can rival the noble and perfect Qur'an al-Karim."<sup>16</sup> The Qur'an was neither diminished nor augmented upon its initial revelation; it has been directly preserved by Allah SWT.<sup>17</sup>

The scholars unanimously agree that the Qur'an is the primary and foundational source of Islamic law. The term 'source' in this context exclusively applies to the Qur'an and the Sunnah, as they are the definitive repositories from which Shari'ah law derives. The terms *ijma'* (consensus) and *qiyas* (analogy) cannot be categorized as sources in the same sense, as they serve as means to derive legal rulings rather than primary sources of law. *Ijma'* and *qiyas* are methodologies used to extrapolate legal rulings where explicit guidance is not found in the Qur'an or Sunnah.

The Qur'an provides comprehensive guidance on matters of creed ('*aqidah*), encompassing beliefs every Muslim must uphold concerning Allah, His angels, His scriptures, His messengers, and the Day of Judgment. Additionally, the Qur'an outlines moral conduct (*akhlaq*), defining virtues to be cultivated and vices to be avoided. It also addresses financial matters, ritual worship, interpersonal dealings (*muamalat*), and various other aspects of life that require regulatory frameworks.<sup>18</sup>

#### b. *Al-Sunnah*

According to Fazlur Rahman, the concept of *sunnah* extends beyond mere action. He argues that *sunnah* encompasses both physical and mental behaviors. *Sunnah* pertains not only to a singular action but to behaviors that are repeated or capable of repetition. In essence, *sunnah*

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<sup>16</sup> Quraish Shihab, *Wawasan al Quran: Tafsir Maudhu'i atas Pelbagai Persoalan Umat* (Jakarta: Penerbit Mizan, n.d.), 56

<sup>17</sup> Muhammad al-Ghazali, *Kayf Nata'amal ma'a al-Qur'an* (Virginia: al-Ma'had al-'Ali li al-Fikr al-Islami, 1993), 25.

<sup>18</sup> Khallaf, *Ilm Usul al-Fiqh*, 78.



embodies a normative behavioral pattern, reflecting the conduct of conscious agents capable of intentional actions. It is not merely a legal prescription but also a moral imperative integral to its definition. Western scholars largely concur that *sunnah* denotes established practices that, through their continuity across generations, acquire normative status.<sup>19</sup>

The behavior of subsequent generations after the Prophet Muhammad exemplified his own conduct, passed down through successive generations. *Sunnah*, as a living tradition, originated from the behavior of Muhammad (PBUH) and was faithfully followed by his companions, then by their followers, and so forth, thereby becoming institutionalized and deeply ingrained. Once internalized, this institutionalization of behavior fosters socio-cultural cohesion. Sociologically, there exists a compatibility between the value system, social structure, and cultural norms, resulting in a collective pattern of behavior.<sup>20</sup>

The Hadith of the Prophet is the second source of Islamic teachings after the Qur'an. This is because Hadith provides the interpretation of the Qur'an in the practical application of Islamic teachings, both in actual practice and in ideal form. It's important to remember that the Prophet's character embodies the Qur'an and elucidates the teachings of Islam through daily life. One way of expressing love for Allah is by obeying His commands while loving the Prophet entails following his *Sunnah* and abstaining from baseless actions.<sup>21</sup>

The fundamental understanding of the *Sunnah* is that it is accepted and inherited among people. Therefore, the

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<sup>19</sup> Fazlur Rahman, *Membuka Pintu Ijtihad*, trans. Anas Mahyudin (Bandung: Pustaka, 1995), 115.

<sup>20</sup> Muhammad Muslehuddin, *Filsafat Hukum Islam dan Pemikiran Orientalis* (Yogyakarta: PT. Tiara Wacana, 1997), 115.

<sup>21</sup> Muammad bin Jamil Zainu, *Sudah Benarkah Aqidahmu Wahai Saudaraku* (Sukoharjo: Maktabah al-Ghuroba', 2013), 83.

*Sunnah* represents a way of life that has been and continues to be followed by certain groups. As people naturally move from one situation to another, Muslims are expected to continuously evaluate their circumstances and adapt accordingly. This process lies at the heart of Islamic teachings, which aim to amend or modify outdated practices perceived as hindering societal progress.<sup>22</sup>

## 2. Resources that are not revealed

### a. *Ijma'*

*Ijma'* means consensus or agreement among scholars in a specific period regarding a Shari'ah issue after the Prophet's death.<sup>23</sup> According to Hasbi Ash-Shiddieqy, *ijma'* is "the consensus of *mujtahids* at a certain time after the era of prophetic revelation has ended." To establish *ijma'* as a source of law, it must fulfill the following conditions:

- i. Consensus among all *mujtahids*, even if they are few in number, provided there are no other *mujtahids* available to participate in the decision-making process.
- ii. Clear manifestation of consensus among *mujtahids*.
- iii. The subject of *ijma'* must pertain to Shari'ah law that can be derived through *ijtihad* (independent legal reasoning).
- iv. *Ijma'* is valid after the death of the Prophet.

Al-Shawkani mentions three elements of *ijma'*, which include:

- i. The agreement must involve *mujtahid* scholars from all corners of the Muslim world, leaving no one out.
- ii. The agreement must occur after the Prophet's death.

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<sup>22</sup> Akhmad Minhaji, *Islamic Law and Local Tradition: A Socio-Historical Approach* (Yogyakarta: Kurnia Semesta Alam Press, 2008), 338–339.

<sup>23</sup> Fahretin Atar, *Fikih Usulu* (Istanbul: MU Vakfi Yayinlari, 2013), 78.

- iii. The agreement must pertain to matters of religious law.<sup>24</sup>

- b. *Qawl al-Sahabi*

*Qawl al-Sahabi* is considered one of the sources of Islamic law in the field of *Usul al-Fiqh*, yet it is not universally accepted.<sup>25</sup> In Arabic, *Qawl al-Sahabi* comprises two words: *qawl*, which means speech, statement, or opinion. It can also pertain to words organized in a verbal clause or a conceptual proposition. *Sahabi* is derived from '*suhbah*', meaning companionship or association.<sup>26</sup>

To fully grasp the meaning of *Qawl al-Sahabi*, it's essential to delve deeply into understanding who the companions (*sahabah*) were. There are varying interpretations among scholars, jurists, and experts regarding who qualifies as a companion (*sahabi*). In *Usul al-Fiqh* (principles of jurisprudence), a companion (*sahabi*) typically refers to someone who met the Prophet Muhammad, had faith, and accompanied him for a significant period. However, in the context of Hadith experts, a companion (*sahabi*) is defined as a Muslim who met the Prophet, irrespective of the duration, and died in a state of Islam.<sup>27</sup>

According to Tarhib al-Dusiri, the renowned *Qawl al-Sahabi*, when aligned with the opinions of other companions, transforms into *Ijma' al-Sahabi*. Conversely, a *Qawl al-Sahabi* that diverges from the consensus of the companions requires additional supporting evidence to establish validity. This less-known *Qawl al-Sahabi*, which

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<sup>24</sup> Muhammad al-Shawkani, *Irshad al-Fuhul ila Tahqiq al-Haq min 'Ilm al-Usul* (Beirut: Dar al-Fikr, n.d.), 72.

<sup>25</sup> Ahmad Warson Munawwir, *Kamus Al Munawwir* (Surabaya: Pustaka Progressif, 1997), 1172

<sup>26</sup> Jaenal Aripin, *Kamus Ushul Fikh* (Jakarta: Kencana, 2012), 156.

<sup>27</sup> Wahbah al-Zuhayli, *Usul al Fiqh al-Islami* (Beirut: Dar al-Fikr, 1986), 850.

lacks widespread recognition, forms the substance of scholarly discussion among jurists.<sup>28</sup>

c. *Al-'Urf*

In terminology, *'urf* refers to a state that is established among people, rationalized by reason, and accepted as customary behavior. This definition clarifies that actions and utterances that are uncommon and not widely practiced by a community cannot be considered *'urf*. Similarly, practices that have become customary but originate from base desires, such as alcohol consumption and illicit sexual behavior, despite being prevalent in a group, do not qualify as *'urf*. In essence, *'urf* does not encompass habits that deviate from norms and regulations.<sup>29</sup> According to 'Abd al-Wahhab Khallaf, *'urf* denotes what is commonly known and practiced by a community consistently, whether through actions or refraining from prohibited activities.<sup>30</sup>

### 3. Resources based on reason

a. *Al-Qiyas*

There are various definitions of *qiyas* in scholarly terminology, though they generally share a common substance. The most widely accepted definition among scholars is: applying the ruling from an existing case with a known law to a new case that lacks a specific law, in order to establish or derive a ruling for the new case based on the similarity of the effective cause (*'illah*) or underlying nature between the two cases.<sup>31</sup> The definition above explains that the essence of *qiyas* involves comparing the

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<sup>28</sup> Tarhib al-Dusiri, *Hujjiyyah Qawl al-Sahabi 'ind al-Salaf* (Madinah: Jami'ah al-Madinah, n.d.), 23.

<sup>29</sup> Ahmad Fahmi Abu, *Sunnah, al-'Urf wa al-'Adah fi Ra'y al-Fuqaha'* (Cairo: Dar al-Basa'ir, 2004), 28.

<sup>30</sup> 'Abd al-Wahhab Khallaf, *Masadir al-Tashri' al-Islami fima La Nassa fih* (Kuwait: Dar al-Qalam li al-Nashr wa al-Tawzi', 1993), 147.

<sup>31</sup> Fakhr al-Din Muhammad ibn 'Umar ibn Husayn al-Razi, *al-Mahsul fi 'Ilm Usul al-Fiqh* (Saudi Arabia: Maktabah al-'Arabiyyah al-Sa'udiyyah, n.d.), 9.

law of a new case with the law of something specified in the text, based on a legal reason or underlying motive, whether explicitly mentioned in the text or not. Therefore, in the practice of *qiyas*, several elements must be considered:

- i. *Asl*: This refers to a law that is distant from the practical situation faced by society or individuals.
- ii. *Masl*: It denotes a law that is closer to the practical situation and is easier to apply.
- iii. *'Illah*: This is the underlying reason or cause of a law, explaining the rationale behind it.
- iv. Proof: It refers to the evidence or legal basis used to validate or establish the legality of a law.
- v. *Ijtihad*: This is the process of deducing legal rulings through interpretation and analysis of legal sources (such as the Qur'an, *ijma'*, *qiyas*, and *maslahah*) to resolve new legal issues for which no explicit solution is available in these sources.

The four essential elements required for the operation of *qiyas* are crucial for ensuring valid *ijtihad* in Islamic law:

- i. *Asl*: This refers to an established case that is clearly defined in the Qur'an and accepted Hadiths (*maqbul*) as a legal basis.<sup>32</sup>
- ii. *Far'u*: This denotes a new case where the legal ruling is not explicitly stated in the text.
- iii. *Qiyas*: This is the method used to extend the ruling from the *asl* to the *far'u*, based on their similarity in nature or underlying legal reasons. Some scholars refer to this as finding a 'parallel case'.<sup>33</sup>

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<sup>32</sup> Abu Hamid Muhammad bin Muhammad al-Ghazali, *al-Mustasfa fi Usul al-Fiqh* (Madinah: al-Jami'ah al-Islamiyyah al-Madinah, n.d.), 3:671.

<sup>33</sup> Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence* (Islamabad: Islamic Research Institute Press, 1986), 16.

- iv. *'Illah*: This is the legal reason underlying the ruling for the *asl*, which can be applied to the far due to their similarity in *'illah*.<sup>34</sup>

In summary, *qiyas* relies on these elements to derive legal rulings for new cases that are not explicitly covered by the Qur'an or Hadith, ensuring continuity and adaptation of Islamic law to contemporary situations.

- b. *Al-Istihsan*

*Istihsan* involves setting aside an established Shari'ah law and replacing it with another law because there is a stronger and more suitable argument according to the reasoning of the *mujtahid*. This may entail abandoning explicit analogical reasoning (*qiyas jali*) in favor of implicit reasoning (*qiyas khafi*), or establishing a law by deriving specific rulings from general principles. Thus, *istihsan* is based on robust arguments rather than mere preferences.

In contemporary literature, 'renewal' is synonymous with terms like reform, modernization, reactualization, deconstruction, *tarjih*, *islah*, and *tajdid*. Among these terms, reform originates from the English reformation, which means to shape or reorganize.<sup>35</sup>

- c. *Mashlahah Mursalah*

*Maslahah* and *mursalah* are words that were introduced from Arabic in the form of *mawsuf*, consisting of two words, namely *maslahah* and *mursalah*. Before delving into the specific definition of *maslahah*, it is crucial to grasp its general meaning. Etymologically, *maslahah* originates from the Arabic word *salaha*, which denotes goodness.<sup>36</sup>

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<sup>34</sup> Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Massachusetts: Harvard University, 1984), 373–376

<sup>35</sup> John M. Echol & Hassan Shadily, *Kamus Inggeris Indonesia* (Jakarta: Gramedia, 2000), 473.

<sup>36</sup> Louis Ma'luf, *al-Munjid fi al-Lughah wa al-A'lam* (Beirut: Dar al-Mashriq, 1986), 432.

Rationally, *maslahah* signifies a beneficial cause, method, or objective. *Maslahah* can also refer to a matter or aspect of business that yields benefits or something advantageous.<sup>37</sup> The plural form of *maslahah* is *masalih*, and it is often contrasted with the term *mafsadah* (plural *mafsadat*), which denotes harm or corruption, and occasionally juxtaposed with the term *sayyi'ah* (evil).<sup>38</sup>

Terminologically, Islamic legal scholars have proposed various formulations regarding the meaning of *maslahah*. Despite differences in expression, the substance and essence of these formulations remain meaningful. Fundamentally, *maslahah* involves pursuing benefit and avoiding harm or disobedience in order to uphold the objectives intended by the legislator.<sup>39</sup> Furthermore, considering the substance, existence, or form of benefit, Islamic legal scholars have categorized these benefits into three types: *maslahah mu'tabarah*, *maslahah mulghah*, and *maslahah mursalah*. The term *mursalah* is derived from the passive participle (*ism al-maf'ul*) of the verb '*arsala*', and its trilateral verb form (*fi'il thulathi*) is '*rasala*'.<sup>40</sup>

Etymologically, *mursalah* derives from *mutlaqah*, which means absolute or unrestricted.<sup>41</sup> Therefore, in some literature, *maslahah mursalah* is referred to as *mutlaqah maslahah*, while others may call it *mursal munasib*, and some use the term *istislah*.<sup>42</sup> Thus, when the term *maslahah mursalah* is used, it denotes something unrestricted or free

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<sup>37</sup> Khalid Mas'ud, *Filsafat Hukum Islam dan Perubahan Sosial*, trans. Yudian W. Asmin (Surabaya: al Ikhlas, 1995), 153.

<sup>38</sup> Majd al-Din Muhammad ibn Ya'qub al-Fayruzabadi, *al-Qamus al-Muhit* (n.p: n.pb., n.d.), 391; Raghīb al-Isfahani, *al-Mufradat fi al-Gharib al-Qur'an* (Karachi: Tijarat Kutub, 1961), 286.

<sup>39</sup> Al-Ghazali, *al-Mustasfa*, 286.

<sup>40</sup> Muhammad al-Sa'id 'Ali 'Abd al-Rabuh, *Buhuth fi 'Adillah al-Mukhtalaf fiha 'ind Usuliyyin* (Cairo: Matba'ah al-Sa'adah, 1980), 95.

<sup>41</sup> Ibrahim Uways, *al-Mu'jam al-Wasit*, 344.

<sup>42</sup> Ibn al-Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in*, III, Beirut: Dar al-Fikr, 1977, s. 14

from specific indications regarding its permissibility or prohibition.

d. *Istishhab*

In *Usul al-Fiqh* terminology, scholars have varied in their formulations of *istishhab*, though they generally refer to the same underlying meaning. Ibn al-Subki defines *istishhab* as establishing the ruling of a subsequent legal issue based on the ruling of the initial issue in the absence of evidence that alters it.<sup>43</sup> On the other hand, Ibn Qayyim al-Jawziyyah defines *istishhab* as the continuity of a ruling by applying new rulings based on existing ones or nullifying them due to the absence of prior rulings.<sup>44</sup>

e. *Dhari'ah*

*Dhari'ah* means an intermediary or means to something. Its purpose is to block and control pathways that might seem to alter the law but could lead to illicit outcomes, thereby preserving the reasons behind prohibitions and preventing unlawful situations.<sup>45</sup> Including *dhari'ah* as a legal argument, although its use is debated, suggests that even when Shari'ah law does not explicitly dictate the legality of an action, if the action is identified as a pathway to a clearly prohibited act, it serves as evidence or an argument that the law governing the principal action is determined by Shari'ah.<sup>46</sup>

### **The Relationship of Revelation and Human Thought in Islamic Law**

In the history of Islam, the Prophet and his companions first set the precedent for the use of reasoning, known as *ijtihad*.

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<sup>43</sup> Ibn al-Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in* (Beirut: Dar al-Jil, 1973), 339.

<sup>44</sup> 'Ali 'Abd al-Kafi al-Subki, *al-Ibhaj* (Beirut: Dar al-Kutub al-Ilmiyyah, 1404H), 173.

<sup>45</sup> Ibrahim bin Mahna bin 'Abdilah bin Mahanna, *Sadd Dhara'i' 'ind Shaykh al-Islam Ibn Taymiyyah* (Riyadh: Dar Fadilah, 2004), 26.

<sup>46</sup> Ibn al-Qayyim al-Jawzi, *Lam' al-Muqi'in*, 5:497.



‘Umar ibn Khattab practiced *ijtihad* when he did not find specific guidance in the Qur’an or the teachings of the Prophet Muhammad regarding the issues he faced, as did ‘Uthman and other companions.<sup>47</sup> In Islam, the Qur’an, as mentioned earlier, contains the words of God revealed to humanity through Prophet Muhammad. The Qur’an encompasses teachings on all aspects of human life, making it a comprehensive guide. Allah Almighty states in Surah al-An‘am (6:38): "... and We have not neglected anything in the Book..." This verse underscores the Qur’an’s completeness and its encompassing guidance for humanity.

As the primary source of Islamic law, the Qur’an contains fundamental teachings addressing the necessities of humanity.<sup>48</sup> Methodologically, the Qur’an extensively elaborates on matters related to faith, while it provides only outlines concerning law (worship and *muamalat*). Nonetheless, upon closer examination, verses concerning law also emerge with detailed and explicit provisions, ensuring they convey a singular meaning without room for alternative interpretations (*qat‘i al-dalalah*). Such verses are linguistically clear and convey definitive meanings that cannot be subject to varying interpretations or understood apart from their fundamental meanings.<sup>49</sup>

According to Khallaf, as cited by Said Ramadan, out of the 228 legal verses governing Muslim affairs, 70 falls into the category of *qat‘i al-dalalah*, specifically dealing with issues such as marriage, inheritance, and business.<sup>50</sup> Philosophically, the existence of verses that are *qat‘i al-*

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<sup>47</sup> Muhammad al-Khadery Bek, *Tarikh al-Tashri‘ al-Islami* (n.p: Matba‘ah al-Istiqamah, 1934), 128.

<sup>48</sup> Fathurrahman Djamil, *Filsafat Hukum Islam (Bagian Pertama)* (Jakarta: Logos Wacana Ilmu, 1977), 82.

<sup>49</sup> Al-Zuhayli, *Usul al-Fiqh al-Islami*, 3:1052; Noer Iskandar al-Barsaniy & Muh. Tahah Mansur, *Kaedah-Kaedah Hukum Islam (Ilmu Ushul Fiqh)* (Jakarta: PT. Raja Grafindo Persada, 1994), 45.

<sup>50</sup> Mohammad Daud Ali, *Hukum Islam dan Peradilan Agama* (Jakarta: Raja Grafindo Persada, 2002), 2.

*dalalah* like this shows that the problem is very important to pay attention to, other than because humans tend to forget or belittle it.<sup>51</sup>

Moreover, the legal verses in the Qur'an are structured concisely, often containing multiple possible interpretations (*zann al-dalalah*). These verses cannot be understood solely through literal interpretation but require analytical efforts employing various approaches to derive interpretations or laws relevant to the community's needs. This process is known as *ijtihad*, interpreted in *Usul al-Fiqh* as the method of deriving legal rulings from the general principles found in the Qur'an and Hadith. This is encapsulated in Allah's statement in Surah al-Nisa' (4:105):

Translation: "Indeed, We have sent down to you the Book in truth so you may judge between the people by that which Allah has shown you. And do not be for the deceitful an advocate."

This statement aims to establish laws based on Shari'ah legislation, which is derived from both revelation and reason, provided it remains within the bounds of revelation's principles.<sup>52</sup> According to this verse, reasoning holds a significant role in interpreting Qur'anic verses, as demonstrated by the Prophet Muhammad and his companions. The norms of Islamic law resulting from this *ijtihad* process, according to Hasbi Ash-Shiddieqy, are referred to as *tashri' wad'i*.

However, not all legal issues are addressed by texts in the Qur'an and Hadith. Many new legal matters lack direct guidance in Islamic scriptures, and without other legal reasoning (*ijtihad*) aligned with the spirit and objectives of

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<sup>51</sup> Nurcholish Madjid, *Masyarakat Religius* (Jakarta: Paramadina, 2004), 147; Kuntjoro Purbapranoto, *Hak-Hak Asasi Manusia dan Pancasila* (Jakarta: Pradnya Paramita, 1976), 138.

<sup>52</sup> Muhammad Anis 'Ubadah, *Tarikh al-Fiqh al-Islami* (Cairo: Dar al-Taba'at al-Hadithah, 1975), 171.

Shari'ah (*maqasid al-shari'ah*), Islamic law risks becoming outdated, obstructing progress, and eventually being disregarded. Considering that societal change outpaces legal adaptation—Ibn Khaldun observed societal changes every hundred years, while today they occur every six months—legal scholar Cicero aptly remarked that law must evolve with societal changes.<sup>53</sup> In this context, the role of human reason through the *ijtihad* mechanism becomes crucial in formulating laws that address contemporary needs, as Islam grants considerable space for human reasoning to shape new laws.<sup>54</sup>

One of the sayings of the Messenger of Allah is: "You know better about your worldly affairs." In the technical terminology of *Usul al-Fiqh*, there is a principle stating that acts of worship require specific textual authorization, whereas, in matters of *mu'amalah* (transactions and interactions), everything is permissible unless specifically prohibited by text. Based on this principle, Islam is considered a universal religion not bound by time or place. The Qur'an itself asserts that its teachings apply to all humanity. Therefore, Islam should be embraced by every human being without contradicting their circumstances and conditions. Islam should be capable of addressing the challenges of modern society just as effectively as it addresses those of traditional societies. However, there remains a question about whether Islam is adequately equipped to confront contemporary challenges, a topic often discussed by contemporary Muslim thinkers.<sup>55</sup>

In connection with the use of human reasoning to determine Islamic law, this practice has been employed

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<sup>53</sup> Abdoerraof, *Al-Qur'an dan Ilmu Hukum* (Jakarta: Bulan Bintang, 1970), 38.

<sup>54</sup> Wahbah al-Zuhayli, *al-Wasit fi Usul al-Fiqh al-Islami* (Damascus: Dar al-Kitab, 1978), 480.

<sup>55</sup> Harun Nasution, *Dasar Pemikiran Pembaharuan dalam Islam*, in *Cita dan Citra Muhammadiyah*, eds. M. Yunan Yusuf et al. (Jakarta: Pustaka Panjimas, 1985), 13–14.

since the establishment of Islamic knowledge. Building upon the spirit of the Hadith of the Prophet mentioned earlier, this extends not only to exploring laws derived from verses with multiple interpretations (*zann al-dalalah*) but also to addressing issues not explicitly covered in the Qur'an and Hadith, which may arise later in society. Methods to establish laws based on human reasoning, known in the science of *Usul al-Fiqh*, include *al-Qiyas*, *al-Istihsan*, *al-Maslahah al-Mursalah*, *al-Istishab*, and *Dhari'ah*. Hasbi Ash-Shiddieqy referred to these as legal sources based on reason. However, it is noteworthy that these methods are not extensively utilized by the five major schools of Islamic jurisprudence—the Hanafi, Maliki, Shafi'i, Hanbali, and Dhahiri schools.

To explain this, a comparative list can be presented as follows:

- i. The Hanafi Madhhab utilises *al-Qiyas*, uses *al-Istihsan* minimally, and does not employ *al-Maslahah*, *al-Mursalah*, *al-Istishab*, or *Dhari'ah*.
- ii. The Maliki Madhhab utilises *al-Qiyas*, uses *Maslahah al-Mursalah* sparingly, and does not employ *al-Istihsan*, *al-Istishab*, or *Dhari'ah*.
- iii. The Shafi'i Madhhab utilises *al-Qiyas* to a limited extent and does not employ *al-Istihsan*, *al-Maslahah*, *al-Mursalah*, *al-Istishab*, or *Dhari'ah*.
- iv. The Hanbali Madhhab utilises *al-Qiyas* minimally and does not employ *al-Istihsan*, *al-Maslahah*, *al-Mursalah*, *al-Istishab*, or *Dhari'ah*.
- v. The Dzahiri Madhhab utilises *al-Qiyas* to a limited extent and does not employ *al-Istihsan*, *al-Maslahah*, *al-Mursalah*, *al-Istishab*, or *Dhari'ah*.<sup>56</sup>

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<sup>56</sup> Mahmud Yunus, *Hukum Perkawinan dalam Islam menurut Mazhab Syafi'i, Hanafi, Maliki, Hambali* (Jakarta: PT. Hidakarya Agung, 1983), vii-xi.

Based on that comparison, it is reasonable to assume that there has been a decline in Islamic law since the end of the Abbasid Caliphate, which began in the 11<sup>th</sup> century Hijri (13<sup>th</sup> century AD) and continued into the 13<sup>th</sup> century Hijri (18<sup>th</sup> century AD), a period also known as *taqlid*. During this time, Islamic law could not meet the needs of Muslims, as Muslims no longer engaged in *ijtihad* but instead followed the results of previous *ijtihad*. This was due to their concern that deviating from the Qur'an and Hadith would no longer be the primary sources for establishing Islamic law, and that new laws might not align with the spirit and objectives of Islamic Shari'ah (*maqasid al-shari'ah*), influenced by political factors and external influences affecting the Muslim community.

Except for the second factor, scholars have indeed established criteria or conditions for the applicability of each method. For instance, in *al-Qiyas*, there are four essential elements: (1) the original or principal case (*maqis 'alayh*); (2) the derivative or secondary case (*maqis*); (3) the effective cause (*'illah*); and (4) the ruling or main law. In *al-Maslahah al-Mursalah*, there are three conditions: (1) it must promote benefit or prevent harm (*maslahah*); (2) it must be general rather than specific to individuals; and (3) it must not contradict any law established by textual evidence or consensus (*ijma'*). Similar criteria exist for other legal principles. Therefore, there should be no concern about their legitimate use when these conditions are met.

### **The Aspects of Revelation and Human Thought in Islamic Law**

The above discussion has elaborated that Islamic law comprises legal norms derived from both revelation and human reasoning through *ijtihad* processes. Although Islamic law does not strictly categorize itself, there are distinct features that arise from the process of its establishment. Firstly, there are Islamic laws rooted directly

in explicit Qur'anic texts, such as laws pertaining to worship and certain family matters, where the text provides unequivocal guidance (*qat'i al-dalalah*). Secondly, there are Islamic laws whose legal norms sometimes align with or diverge from Qur'anic texts, as seen in matters of commercial transactions (*al-ahwal al-shakhsiyyah*), where the textual evidence is open to interpretation (*zann al-dalalah*). Lastly, there are Islamic laws whose legal norms appear to have no explicit basis in Qur'anic texts but are in harmony with the broader objectives and principles of Shari'ah (*maqasid al-Shari'ah*), such as economic and financial matters (*al-ahkam al-iqtisadiyyah wa al-maliyyah*), as well as issues like inheritance of unborn children. Because Islamic law results from *ijtihad*, it inherently combines aspects of revelation and human reasoning:

#### 1. Aspects of revelation in *Islamic law*

Islamic law is fundamentally a divine law whose primary source is the word of God Almighty. Therefore, it always incorporates an aspect of revelation. According to Ahmad Zaki Yamani, this revelation carries a moral element not found in other legal systems. While Islamic law may not always exhibit overt religious symbols, it consistently avoids elements that contradict the essence and purpose of Shari'ah. The presence of revelation serves specific purposes. According to Ahmad Zaki Yamani: "... to instill respect for legal norms among Muslims, fostering their confidence and self-respect in adhering to these laws, even when they are geographically distant or beyond the immediate reach of legal authorities."

#### 2. Aspects of Human Thought in Islamic Law

Apart from the aspects of revelation, there are also aspects of human thought involved in Islamic law. What does this aspect of human thought entail? Harun Nasution explains: "These verses are presented in outline form without details. This opened the door for scholars to engage in *ijtihad*. Since

the Qur'an often lacks specifics for implementation, scholars elaborated on the details, resulting in extensive fiqh books. If these works are considered teachings of Islam, one might question whether the Qur'an's 8% or the content of these voluminous books hold more weight. According to al-Hudaibi's estimate of 500 legal verses, they likely represent less than 1%. This suggests that absolute teachings in Islam are scarce. Is Islam then static or dynamic? Clearly, Islam is dynamic."

Harun Nasution's perspective highlights those aspects of human thought in Islamic law are manifested in the detailed legal norms developed by scholars, which go beyond the general texts. Moreover, legal norms may vary from one place to another, adapting to local conditions. Human thought within Islamic law can evolve and flourish amidst societal changes, demonstrating its dynamic nature.

Furthermore, Nasution argues, "With aspects of revelation and human thought in Islamic law, individuals are guided to be obedient to legal norms, while Islamic law can effectively respond to contemporary challenges and even facilitate societal progress as a tool of social engineering." Thus, to advance Islamic law, maintaining aspects of revelation alongside expanding and developing human thought through the *ijtihad* mechanism is not only essential but imperative to meet the demands of the times.<sup>57</sup>

Yusuf al-Qaradawi elaborates in his book *'Awamil al-Sa'ah* on how Islamic Shari'ah can accommodate new phenomena across different centuries and under diverse environmental conditions. He also explains how Islamic Shari'ah can guide development and address new challenges with solutions that uphold the interests of individuals and fulfill the objectives of Shari'ah, all while

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<sup>57</sup> Subhi Mahashani, "Penyesuaian Fiqih Islam dengan Kebutuhan Masyarakat Modern," in *Islam dan Pembaharuan (Islam in Transition: Muslim Perspectives)* eds. John J. Donohue & John L. Esposito, trans. Machnun Husein (Jakarta: CV. Rajawali, 1984), 332.

remaining relevant to the era in question. "The laws that govern the evolution of human relations with their Creator, and the obligations of worship prescribed therein, serve to foster moral and social awareness among humans," al-Qaradawi asserts.<sup>58</sup>

In broad terms, Islamic law can be categorized into three domains:

Firstly, it encompasses instructions and guidance for acquiring accurate knowledge about Allah and the unseen realm, which cannot be perceived through human senses. This is referred to as *al-Ahkam al-Shar'iyah al-I'tiqadiyyah*, which is the subject of theological study (*kalam*).

Secondly, it includes instructions and regulations aimed at nurturing the inherent goodness within human beings, thereby transforming them into dignified individuals. This falls under *al-Ahkam al-Shar'iyah al-Khuluqiyyah*, which is the domain of ethics and morality (Sufism).

Thirdly, it comprises provisions and a comprehensive set of legal regulations to govern practical matters (*'amaliyyah*), including worshiping Allah, conducting daily social interactions with others, managing family relationships, and establishing societal order to ensure justice and peace within the community. This field is known as *al-Ahkam al-Shar'iyah al-'Amaliyyah* and constitutes the primary domain of *fiqh* (Islamic jurisprudence). Due to its direct relevance to practical actions in everyday life, this field predominantly defines what is commonly referred to as Islamic law.<sup>59</sup>

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<sup>58</sup> Ali Yafie, "Fungsi Hukum Islam dalam Kehidupan Umat," in *Dimensi Hukum Islam Dalam Sistem Hukum Nasional*, ed. Amrullah Ahmad (Jakarta: Gema Insani Press, 1996), 93-94.

<sup>59</sup> Ali Yafie, *Menggagas Fiqih Sosial: Dari Soal Lingkungan Hidup, Asuransi hingga Ukhuwah* (Bandung: Mizan, 1994), 113.



## Conclusion

From the description above, the following conclusions can be drawn: Islamic law comprises norms derived or inferred from legal sources such as the Qur'an, the Hadith, and other sources of law, using *ijtihad* procedures to address the issues faced by people. In Islamic law, there exists a close relationship between revelation and human thought. Revelation provides guidance in formulating laws that are the outcome of *ijtihad*, ensuring they align with the spirit and objectives of Shari'ah (*maqasid al-shari'ah*). Meanwhile, human thought shapes and evolves the law, enabling it to serve as a tool for societal change and social engineering.

Islamic law incorporates both aspects of revelation and human thought. The aspect of revelation is manifested in its moral elements, designed to foster obedience to Islamic law within the community. Conversely, aspects of human thought are reflected in the detailed legal norms addressing specific legal issues beyond general texts, as well as varying legal norms applied according to the unique conditions of different places. These aspects aim to facilitate the growth and development of Islamic law amidst contemporary challenges, such as rapid societal changes.

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