



Various Methods of Establishing Contemporary Islamic Law

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Abstract: The first source of Islamic Law is al-Qur'an, after the new Al-Qur'an, the Hadith of the Prophet SAW. When searching for a law that not contained in the Al-Qur'an and al-Hadith, a way to do is using Ijtihad (*ra'yu*). This Ijtihad is the mobilization of all the abilities of a fuqaha 'to find sharia law,' and the person who discovered it was named Mujtahid. The scholars in using this *ra'yu* issued many methods as a tool to install the Law, such as *ijma* 'which is the *ahlul ilmi* agreement on the Law of an event with the condition that the scientists gather at the same time *Qiyas*, *istihsan*, *istishab*, 'urf. The purpose of this paper is to explain contemporary ijthad methods that can be used to perform *istinbath* Law. The discussion discussed in this paper is about the various ways of establishing modern Islamic Law. The methodology used in this paper is the type of library (library research), namely by referring to books relating to Fiqh and ushul Fiqh. From the author's analysis that the methods used to establish Islamic Law in the contemporary period are no different from the methods used previously, namely sourced from the Qur'an, Hadith, and Ijtihad of the scholars who have mujtahid criteria.

Keywords: Contemporary, Establishing Method, Islamic Law

Abstrak: Sumber hukum Islam yang pertama adalah al-Qur'an, setelah al-Qur'an baru Hadis Nabi SAW. Ketika mencari sebuah hukum yang tidak ada tercantum dalam al-Qur'an dan *al-Hadits*, maka jalan yang harus dilakukan adalah dengan berijtihad menggunakan akal (*ra'yu*), ijthad ini adalah pengerahan seluruh kemampuan seorang fuqaha' untuk menemukan hukum syara', dan orang yang menemukannya dinamakan dengan Mujtahid. Para ulama dalam mempergunakan *ra'yu* ini mengeluarkan banyak metode sebagai alat untuk mengistinbatkan hukum, seperti: *ijma*' yaitu kesepakatan *ahlul ilmi* tentang hukum suatu peristiwa dengan syarat para *ahli ilmi* tersebut berkumpul pada satu masa yang sama dan yang lainnya *Qiyas*, *istihsan*, *istishab*, 'urf. Adapun tujuan penulisan ini adalah menjelaskan metode ijthad kontemporer yang dapat digunakan untuk melakukan istinbath hukum. Adapun pembahasan yang di bahas dalam makalah ini adalah tentang ragam metode penetapan hukum Islam Kontemporer. Motodologi yang digunakan dalam makalah ini adalah jenis kepustakaan (*library research*) yaitu dengan merujuk

kepada buku-buku yang berkaitan dengan dengan fiqh dan ushul fiqh. Dari analisa penulis bahwasanya metode-metode yang digunakan untuk menetapkan hukum Islam pada masa kontemporer ini tidak berbeda dengan metode-metode yang digunakan sebelumnya, yaitu bersumber kepada al-Qur'an, *Hadits*, dan ijtihad para ulama yang memiliki kriteria mujtahid.

Kata kunci: Metode, Istinbath, Hukum Islam, Kontemporer

A. Introduction

As time goes by, the times become more sophisticated, changes so rapidly occur, and more and more things must be taken, including those who study the Holy Qur'an and the Sunnah, the more days new problems come. Therefore, our scholars have methods in dealing with the current era, especially in terms of establishing Islamic Law on new cases at this time. Thus, the author will try to explain the matters concerned with the method of determining contemporary Islamic Law. The question in this discussion is what is the understanding of present Islamic Law and what methods are used in establishing that Law. An opinion that says the door to Ijtihad has been closed will be disproved by the many methods used in interpreting new events related to Islamic Law.

B. Research Methods

The method used is the type of literature by referring to existing books discussing matters relating to Islamic Law by using content analysis and descriptive analysis approaches. This article aims to describe the pattern of Inference Law in Islam, how can this picture say that the door to Ijtihad is closed? And Islamic Law is a law that can no longer reflect on various circumstances and times? The author examines multiple works, including Islamic Law in Indonesia, a book written by Ahmad Rafiq, which discusses Islamic Law in Indonesia, specifically for students. Islamic Law Reform in Indonesia, by Abdul Manan, which contains about straightening the concept of Islamic Law, Islamic law reform, etc. Ushul Fiqh 1, by Nasrun Haroen, who discusses ushul Fiqh: the method of establishing Islamic rule. Contemporary Islamic Law, by Mustafa and Abdul Wahid, explains about the renewal of Islamic law discourse, the development of

Islamic civil Law. The author also examines the book entitled Islamic Law, author Mohammad Daud, who lays out Islamic law and inference methods used in contemporary Fiqh. *Hasyiyah ad-dimiyyathi 'ala syarh al-waraqat*, by Ahmad bin Muhammad al-Dimyathy, discusses Ushul Fiqh. by carrying out a qualitative approach, the author tries to interpret the preparation of the legal rules in this article. While the novelty of this paper is the pattern of development of inference steps, which were inspired by classical and contemporary scholars. That is hoped that this conversion can be useful in the understanding rule of inference patterns that describe Islamic Law following all places and conditions in various dimensions of space and time.

C. Understanding of Contemporary Islamic Law

The term Islamic law is a distinctive Indonesian term, as a translation of *al-fiqh al Islam* or in specific contexts of al-shariah al-Islam. This term, in the discourse of Western jurists, is used Islamic Law. In al-Qur'an and al-Sunnah, the name al-law al-Islam is not found. Which is used is the word shari'a, which in its translation, then the term Fiqh was born. To get a clear picture of the understanding of Islamic Law, the Shari'ah and Fiqh will first be explained.

The word Shari'ah and its derivation are used five times in the Koran (Q.S. al-Syu'ara, [42]:13, 21; Q.S. al-A'raf, [7]: 163; Q.S.al-Maidah, [5]:48; and al-Jasiyyah). Etymologically, Sharia is the way to the place of irrigation or the location of water flow in the river. In terminology, all the books of God that deal with human behavior outside of those regarding self-regulated morals. Thus, the shari'a is the name of *Amaliyah's* laws. Ahmad Zaki Yamani argues that the definition of Islamic Sharia is divided into two parts, namely the understanding of broad fields and knowledge in specialized or narrow fields. The philosophy of Shari'a in other areas includes laws that have been arranged regularly by fiqh experts in fiqh opinions it is about problems in their time, or they think they will occur later by taking the argument directly from the Qur'an and Hadith or other sources of Law, such as *qiyas, ijma', istihsan, istishlah, and mashlahah mursalah*. Whereas in the narrow sense, Islamic Law is limited to the laws

which have a definite and firm argument, which are stated in the Koran, authentic Hadith or established by *ijma'*. By looking at the subject of the Law, the scholars divided the *tasyri'* into two, namely the *tasyri' samawi* (divine Law/heavenly Law) and *tasyri' wadhi* (human-made Law), and this came from the product of Ijtihad called Fiqh. Both *Tasyri'* Divine and *Tasyri' Wadhi* play a role in showing humanity the excellent way of life, eliminating deviant traditions, and setting the people on the right path. The Shari'ah only acknowledges the good and beneficial to the human race.

While Fiqh, according to *al-fahmu* etymology, means understanding. Jurisprudence terminology is the Law of the Shari'ah, which runs according to the Ijtihad. According to Abu al-Hasan Ahmad Faris, systematically, the word Fiqh means knowing something and understanding it well. While in the sense of the term, Muhammad Abu Zahrah submitted that the purpose of the Fiqh is to know the laws of the Shari'ah as *amaliyah* which are studied from the detailed statements of the Qur'an and the Sunnah which indicate a particular event, or reference certain circumstances, such as the illegal usury of the Law as outlined in Q.S. al-Baqarah [2]: 279

So if you do not do it, then know that Allah and His Messenger will fight you. and if you repent (from taking your lap), then it is your property; you are not persecuted, and you are not abused.

Knowledge of Shariah law is based on the postulate of *tafsili*, and the Fiqh is explored and discovered through the reasoning of *Mujtahid*.¹

So, Fiqh is not just a matter of sharia law obtained from *istislah* (terminology), but the rules are often called Fiqh. At present, *fiqh* technology is no longer intended as a set of legal knowledge, but the rules of Fiqh itself are called Fiqh.²

From the definition of Jurisprudence and Sharia, as mentioned above, there appears to be a very close relationship between Jurisprudence

¹ Amran Suadi, *Abdul Manan: Ilmuwan Dan Praktisi Hukum: Kenangan Sebuah Perjuangan* (Jakarta: Kencana, 2016).

² Nasrun Haroen, *Ushul fiqh* (Jakarta: Logos, 1996), 44.

and Sharia. Sharia is defined by the provisions stipulated by God about human behavior in the world in achieving a good life in the world. The hereafter that is sourced from the Qur'an and the sunnah of the Prophet, to find out all of what God wants about human behavior, there must be a deep understanding of Sharia so that all shariah *amaliyah* can be applied in various situations and conditions.³ The results of detailed knowledge of the behavior of the *mukallaf* are formulated as a result of the understanding of Sharia. That is called "fiqh."⁴ According to Amir Syarifuddin, to understand the notion of Islamic Law, it is necessary to know in advance the word "law" in Indonesian. Then the word law rests with "Islam."⁵

The definition of Law is simply "a set of rules about human behavior that is recognized by a group of people, drawn up by people who are authorized by that community, applicable and binding for all members." If the word law is connected with the word Islam or Shara ', then Islamic Law will mean "a set of rules based on the revelations of Allah and the Sunnah of the Apostles about the behavior of Muslim men and women who are recognized and believed to be binding for all Muslims." If this understanding is connected with the meaning of Fiqh, then what is meant by Islamic Law is Fiqh in Islamic literature derived from Arabic. Thus, every Fiqh is also interpreted with Islamic Law, which has termed as it is today.⁶

The experts of Islamic Law in many of the literature they wrote has proven that Islamic Law is a law that can be used as a structure in modern life. The experts of Islamic Law define Islamic Law in two ways, namely Islamic Law as a science, and Islamic Law as a product of science that results from reasoning through thought *ijtihad*.⁷ Islamic Law, as a rule, is proven by scientific characteristics, namely, first, that Islamic Law is

³ Meirison Meirison, "Riba and Justification in Practice in Scholars' Views," *TRANSFORMATIF* 2, no. 1 (September 20, 2018): 348.

⁴ Haroen, *Ushul fiqh*, 48.

⁵ Amir Syarifuddin, *Ushul fiqh* (Jakarta: Logos Wacana Ilmu, 2008), 29.

⁶ Ibid.

⁷ Meirison Sali, "Tinjauan Islam Terhadap Kejahatan Ekonomi," *Al-Jinayah: Jurnal Hukum Pidana Islam* 5, no. 01 (August 14, 2019).

composed through certain principles; second, knowledge is netted in the unity of system and work; third, have specific methods in operation. From these characteristics, it shows that whatever is produced by Islamic Law is a product of thought and reasoning, which also means accepting the consequences as a science, that is, skeptical, willing to be tested and reviewed, certainly as a science not immune from criticism.⁸

Islamic Law as an order in modern Law and one of the legal systems that apply in this world that the substance covers all aspects of human life;⁹ First, includes elements of worship, namely the laws governing human relations with *al-Khaliq*; Secondly, it covers legal-family-related requirements (*al-Ahwal as-Syahsiyah*) such as marriage, talaq (divorce), *ruju'*(revocation), wills, inheritance and *hadhanah* (nursery); Third, aspects of *muamalah* (civil Law), namely requirements relating to humans, such as sale and purchase transactions, liens, grants, debts, loans, *mudharabah*, joint ventures,¹⁰ *luqathah*, and so on aimed at regulating the occurrence of harmony and order; fourth, covering economic aspects, such as matters relating to the development of wealth and its use, including zakat law, bait mal (House of Treasury),¹¹ *ghanimah* assets, fa'i (booty), taxes and prohibited things such as usury, hoarding property, and consuming the property of orphans whereas the understanding of Contemporary Islamic Law is fiqh laws at present.¹²

D. Methods of Determining Contemporary Islamic Law

a) Al-Qur'an

The primary source of Islamic Law is the Qur'an. The Quranic language is reading. According to the term, the Qur'an is a collection of the revelations that were revealed to the Prophet Muhammad. To be passed to

⁸ Syarifuddin, *Ushul fiqh*, 59.

⁹ M. Nurkholis Al Amin, "Mohammed Abid Jabiri, Reformasi Hukum Islam Dan Pembaruan Pengetahuan," *Ulumuddin: Jurnal Ilmu-ilmu Keislaman* 9, no. 2 (2020): 133–152.

¹⁰ F. Setiawan Santoso, "Pola Pembiayaan Modal Ventura Di Indonesia, Ekplorasi Bagi Upaya Pengembangannya Di Ekonomi Syariah," *Ulumuddin : Jurnal Ilmu-ilmu Keislaman* 5, no. 2 (2015): 38–50.

¹¹ F. Setiawan Santoso, "Peran Bait Mal Dalam Jaminan Sosial Di Era Fikih Klasik," *Ulumuddin: Jurnal Ilmu-ilmu Keislaman* 2, no. 2 (2017): 117–136.

¹² Meirison Meirison, "Legal Drafting in the Ottoman Period," *Jurnal Ilmiah Al-Syir'ah* 17, no. 1 (June 30, 2019): 39.

humankind as a guide for life to achieve happiness in life and the hereafter.¹³

The Qur'an is the pen of the Almighty. Which passed down by angel Gabriel to the Prophet Muhammad SAW with the Arabic language with the true meaning of being righteous in his declaration of being a prophet, and as a law that was a guide for humanity, as well as a religious act when he read it. He was married to two pieces of *mushaf* beginning with the letter of al-Fatihah and covered with surah Al-Nas.¹⁴

Since the position of the Qur'an is the primary source of law enforcement, if one wants to find a lawyer for a problem, then the first step is to find the answer in the Qur'an. As long as the Law can be fulfilled following the stipulation outlined in the al-Qur'an, then it cannot find its answer elsewhere outside the Qur'an, the method used must be following the Qur'anic guidelines and cannot be contrary to Qur'an. This means that the sources of the Qur'an's Law cannot violate what the Qur'an has set.¹⁵

b) Hadith

Al-Hadith, by language, is news or news. In terms of terms, Al-Hadith is all news directed to Prophet Muhammad. Includes the words, his deeds, the deeds of his companions in the sense of justifying them (*taqrir*). Tradition is also called Sunnah, or Sunnah of the Messenger of Allah. While according to the Sunnah, it means conduct, journey, occupation, or way.¹⁶ The position of Sunnah with the Qur'an in the review in terms of using justice and suppression of Shari'a laws is that as sunnah is a lower source of Law than the Qur'an. That is to say, a mujtahid in establishing the rule of an event should not seek it in the first instance, but must find it in the Qur'an first because it is the first and the primary source of Law.¹⁷

c) Ijma'

¹³ Mustofa and Abdul Wahid, *Hukum Islam Kontemporer* (Jakarta: Sinar Grafika, 2009).

¹⁴ Suadi, *Abdul Manan*.

¹⁵ *Ibid.*, 70

¹⁶ *Ibid.*; Wahid, *Hukum Islam*.

¹⁷ Suadi, *Abdul Manan*.

Etymologically means "agreement" or "consensus." The second understanding is the determination to do something. While in terms of scholars' differing opinions, including Imam al-Ghazali formulate *ijma'* with the agreement of the people of Muhammad specifically on a religious issue.¹⁸

*While al-Amidi and his followers of safi'iyah formulated ijma' as a form of agreement of several Ahlul Halli Wal' Aqd (experts who are competent to take care of the Ummah) of the people of Muhammad PBUH, at one time, the Law of a case.*¹⁹

Ijma' is the agreement or suitability of the opinions of experts on a problem at a place in time. Approval was obtained in a manner in the same place. However, it is difficult to find a way and means that it can be used to obtain the approval of all experts on a problem at a time in a different place.²⁰ This is due to the large part of the world inhabited by Muslims, the diversity of history, culture, and environment. Essential Ijma' is only possible during the second period of the Khullafaur Rashidin (Abu Bakr and Umar) and part of the reign of the third Caliph (Usman).²¹ Now ijma' only means agreement or conformity of opinion somewhere regarding the interpretation of certain verses (laws) in the Qur'an.²²

d) Qiyas

Etymologically means size, which is measuring or knowing the size of something by leaving it to another. *Qiyas* in terminology is commonly used by scholars of ushul Fiqh, namely connecting something that has not been determined by the provisions of the Law to something that has been

¹⁸ Haroen, *Ushul Fikih*, h.51

¹⁹ Suadi, *Abdul Manan*.

²⁰ Meirison Alizar and Qasim Muhammadi, "Islamic Sharia and Non-Muslim Citizens in Kanunname During Sultan Abdul Hamid II of the Ottoman Empire," *Walisono: Jurnal Penelitian Sosial Keagamaan* 27, no. 1 (July 30, 2019): 37–68.

²¹ Meirison Alizar Sali, "Distinction of Justice and Fairness during Umar Bin Abdul Azis Reign," *AJIS: Academic Journal of Islamic Studies* 4, no. 2 (December 9, 2019): 127.

²² Mohammad Daud Ali, *Asas-asas hukum Islam: hukum Islam I: pengantar ilmu hukum dan tata hukum Islam di Indonesia* (Jakarta: Rajawali Pers, 1991), 120.

declared legal requirements by the text because both have the security of legitimate reason (*illat*).²³

Qiyas can be said to be true if it meets four types of pillars. One of them, namely *Ashal* (Original), is an event that has been declared legal provisions by the text; second is *Furu* (Branch). The new event whose legal rules are unknown and which not explained by the version; third *Illat* (Reasoning). Which are properties that form the basis of the original statutory provisions; the four Law of *ashal*, namely the requirements of the Syariah law, 'which has been declared by text on the *ashal* (the origin) and wants be placed on the *furu*.²⁴

Islamic law scholars disagree about the use of Qiyas theory as a method of producing laws against an event. Those who challenge this theory propose that God has revealed the Qur'an intended for all humankind to serve as a guide for life and the hereafter²⁵.

A Muslim should seek resolution of all his problems in the Qur'an, Q.S. al-An'am [6]: 38, "That nothing is forgotten in the Qur'an, everything is there, it is left for Muslims to carry it out." For those who support Qiyas as a theory of legal *istinbat* say that in Q.S. Al-Hasyr [59]: 2

He was the one who expelled unbelievers among the scribes from their villages at the time of the first expulsion. You do not think that they will come out, and they will be sure that their strongholds will defend them from Allah. So Allah brought them (punishment) from the direction they did not expect. And God casts fear in their hearts; they destroyed their houses with their own hands and the hands of the believers. So take (That incident) to be a lesson, O people who have insight. "Allah SWT. Command to think profoundly is the basis for using Qiyas in establishing Law.

²³ Desmadi Saharuddin et al., "Capitulation and Siyasa Syar'iyah Al-Maliyah Impact on Economic Stability of the 18th & 19th Ottoman Turks," *QIJIS (Qudus International Journal of Islamic Studies)* 7, no. 2 (January 6, 2020): 329.

²⁴ Meirison Meirison, "Implementasi Tanqih Al-Manath Dalam Penerapan Hukum," *Nizham Journal of Islamic Studies; Vol 2 No 1 (2014): Mazhab Hukum Islam di Indonesia* (September 25, 2017).

²⁵ Haroen, *Ushul fiqh*, 332.

Islamic scholars have set the terms for accepting *Qiyas* as a theory of legal theory, namely:²⁶ *Qiyas* is only used if there is no such problem in the Qur'an and the Sunnah.

- 1) *Qiyas* must not go against the principles of Islamic teaching.
- 2) *Qiyas* cannot contradict the Qur'an's content nor allow it to oppose the Sunnah.
- 3) The *Qiyas* should be based entirely on the Qur'an, as-Sunnah, and *ijma'* of the scholars.

For example, a mujtahid wants to know the Law of beer or whiskey. The results of purification and careful study, both drinks contain intoxicating substances, such as those in the room.²⁷ This intoxicating substance is the reason why he banned the room. Q.S. al-Maidah (5): 90-91:

"O you who believe, indeed (drink) chambers, gamble, (sacrifice for) idols, vote for fate with arrows, are included in the works of Satan. So stay away from these things so that you can have good luck. Indeed, the devil intends to cause enmity and hatred among you for (drinking) the room and gambling, and preventing you from remembering Allah and praying; So stop you (from doing that work).

Thus, the Mujtahid has found a law for bird and whiskey, which is the same as *khamr's* Law (liquor), because *illat* both are the same, which is intoxicating.²⁸

e) Istihsan

The etymology of *Istihsan* means "to declare" and "to believe in something good." In the terminology of al-Bazdawi, the priest defined the *Istihsan* by, "Turn from the will of the *Qiyas* to the stronger *Qiyas* or specialization of *Qiyas* based on a stronger proposition." According to Imam al-Sarakhsi:

"That virtue means leaving the qiyas and practicing it stronger because there is a justification for it and more in keeping with the well-being of mankind."²⁹

²⁶ Abd-al-Wahhāb Ḥallāf, *Ilm uṣūl al-fiqh* (al-Qāhira: Dār al-ḥadīth, 2003), 220.

²⁷ Muḥammad al-Huḍarī, *Uṣūl al-fiqh* (Ṣaidā: al-Maktaba al-‘Aṣriya, 2003), 40.

²⁸ Haroen, *Ushul fiqh*, 64.

²⁹ *Ibid.*, 102–103.

Thus, the study of *istihsan* theory is within the scope of *qiyas* theory, only in the context of *qiyas* research is more comprehensive by looking at everything *illat* is not just returned to an institution. So it can raise two laws for further study by looking at sociological importance. Therefore, even though the traditional *qiyas* result does not seem to meet the needs of the people, Islamic lawmakers are turning to this principle. *Istihsan* theory as a method of legal theory widely used by Abu Hanifah and his followers. Imam Malik and Islamic jurists in Malikiyyah and also Islamic scholars in the Hanabilah sect used same method.³⁰ This theory turns to the will of the *nash* means it also turns to the will of the *syar'* i. Therefore, the lawyers in the Shaykh sect have criticized the application of the stanza theory by saying that the person who uses the Law means that he has created his own Law.³¹

Example: if someone has donated a piece of land, then the right of irrigation and traffic rights on the land are carried over because it is denounced as rent. This is based on the benefits of its purpose, although it is not clearly mentioned when it becomes *waqaf*.³²

f) *Istishab or legal prejudice*

When viewed in terms of the language, *Istishab* means *thalab al-mushahabah* or thought, which is trying to establish a legal provision that remains something. Equalizing the past and present case law, as long as no changes have occurred. In other words the term, meant by *Istishab* apply the Law by continuing to apply existing Law for now and in the future, following the Law in force in the previous period before there is a proposition that changes it. The definition of *Istishab*, it can be understood that *Istishab* is all the laws that have been established in the past are still declared to be valid in the present.³³ Unless there has been a change in the

³⁰ Meirison, "Implementasi Tanqih."

³¹ Suadi, *Abdul Manan*, 112.

³² Muhammad Fawzy Abdel Hay, *Usul al Fiqh Rise, Developments, Methodologies & Literature* (Cairo: Dar al-Salam, 2016), 113.

³³ Meirison, "Implementasi Tanqih."

existing laws must found in the past As a theory in terms of legislation. Istishab is formulated in several rules, namely:³⁴

- a) That everything that is not yet prohibited is permissible.
- b) All general provisions that still apply to its generality before there is a proposition that Customizes it.
- c) All general provisions that have been formed through a shar'i contract to remain valid as long as no other contract has been removed.
- d) Any legal provisions that have been formed before any event changes it.
- e) Every mukallaf is basically not burdened with various actions.³⁵

For example: from that, istishab grows the term or rule of Fiqh, which means "belief cannot be dispelled with confidence." As one has been convinced that he has performed ablution, then he doubts whether his ablution has been canceled or not. In that case, he must hold on to those who are sure, believe that he has performed ablution ', so he can immediately do the prayer without having to do whudu' again.³⁶

g) *Sadz Dzar'iah* or closing the road to destruction

Al-Dzar'iah means the path that connects something to something else. According to the term is something that will lead to illicit and provocative deeds, or will lead to good deeds and cause misery.

The purpose of applying the Law to *Sadz Dzar'iah* is to facilitate the realization of the extent or extent of the possibility of harm or to avoid the commission of evil.³⁷ There is no definite and definitive proposition in the form of qath'i or ijma 'that enables *Sadz Dzar'iah* to be or is not a legal source. Therefore, the recognition of his ability is merely a jihadist act by advocating cautious actions in practice so as not to commit acts of self-destruction. In contrast, the precautionary measures are a factor of good and evil, good and bad. *Jumhur ulema* put this nasty factor as part of the

³⁴ meirison, "Al-Fiqh Al-Islāmiy wa Āsāruhu 'alā al-Qānūn al-Ūrūbiy," *Pascasarjana UIN Walisongo Semarang* 2, no. Desember (2017): 193–217.

³⁵ Ḥallāf, *Ilm uṣūl al-fiqh*, 11.

³⁶ Sayyid Sabiq, *Fiqh Sunnah* (Jakarta: Pena Pundi Aksara, 2006), 11.

³⁷ meirison meirison, "The Political-Religious Relations between Kurds and the Ottoman Empire," *Progam Studi Filsafat Agama Fakultas Ushuluddin dan Filsafat Universitas Islam Negeri Sunan Ampel Surabaya*. Vol. 9 No. 1 (2019): June, no. 1 (2019): 131–151.

consideration in setting the Law. Example: the problem of friends or friends with bad people. Two possibilities can happen. First, the wrong people will become good people because they are friends with us, but secondly, the reverse might also happen we will become bad people due to that friendship, while the friendly problem is the change of Law.³⁸

h) Maslahah mursalah or also called Masalih al-mursalah

Maslahan mursalah means in the language, the good that is being delivered or the product that is in it. *Maslahah mursalah indicated by ushul fiqh scholars is:*³⁹

"That there is one reason that the provisions are under reason, while the argument agreed on that matter does not exist."

Example: in al-Qur'an and Hadith, no argument calls for and prohibits "the collection of the Qur'an." But because in that case there is a meaning that contains goodwill, according to reasoning, it is done. That is why it is called *maslahah mursalah*.⁴⁰

i) 'Urf or customs

One is known by the people and is a habit among them in the form of words or deeds. Some ulama ushul Fiqh, 'urf is also called adat, although, in terms of the term, there is no difference between urf and Custom. However, in common understanding, it means that the meaning of 'urf is more general than the knowledge of Custom because the community has known old habits and behavior. It also is done among them as if it is a written law so that there are sanctions against people who break them.⁴¹

Customs or 'urfs that are not contrary to Islamic Law can be enforced and continue to apply to the community concerned. These customs are, of

³⁸ Suadi, *Abdul Manan*.

³⁹ Meirison Meirison, "Sejarah Kepemimpinan Wanita Di Timur Tengah Dalam Tinjauan Hukum Islam (Analisa Terhadap Syajar al Durr)," *Kafa'ah: Journal of Gender Studies* 9, no. 1 (July 30, 2019): 50.

⁴⁰ Abū al-Wafā' 'Alī Ibn 'Aqīl and 'Abd al-Raḥmān ibn 'Abd al-'Azīz Sudays, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*, al-Ṭab'ah 1., Silsilat al-Rushd lil-rasā'il al-jāmi'iyah 222 (al-Riyāḍ: Maktabat al-Rushd Nāshirūn, 2008), 113.

⁴¹ Suadi, *Abdul Manan*.

course, pertaining to your matters.⁴² For example: during an engagement, a man gives a gift to a woman, and this gift is not considered a dowry.

j) *Syar' u man Qablana*

The Law of *man qablana* is the Law of the people or people before us. The Law of *man qablana* is a shari'a carried by the ancient apostles, before being sent by Prophet Muhammad. It is a guide to the people they are sent to, such as Abraham Law, the Law of Moses, prophet David, and so on. As Allah Almighty says:

He warned you of the religion which He had given to Noah and what We revealed to you and what We warned to Abraham, Moses, and Jesus: Strengthen the religion and do not divide it. It is very hard for the religious people you call upon them. Allah appeals to that religion whom He wills and guides to (His) religion those who return (to Him). (QS. As-Syura (42): 13)

The rules of *man qablana* are divided into three, namely:

- The Qur'an is intended for the people before us, but the Qur'an and the Hadith do not violate it, either canceling or declaring it applicable to the people of Muhammad SAW.
- The Shari'ah that was given to the people before we were later declared to be no longer applicable to the people of Prophet Muhammad.
- The Shari'ah that was given to the people before us, then the Qur'an and the Hadith explain it to us.⁴³

Example, "*Then be satisfied one day and one day at a time, for that is how it is for David.*" (HR. Bukhary). That is to say, such fasting has initially been the Law of the Prophet David but included in the Islamic Law.⁴⁴

k) *Qaul Sahabi*

"Qaul" means speech, word. "Sahaby" means the Prophet's best friend or his companions, a person who lived during the time of the

⁴² Ali, *Asas-asas hukum*, 77.

⁴³ Totok Jumanoro and Samsul Munir Amin, *Kamus ilmu ushul fikih* (Wonosobo: Amzah, 2005), 309.

⁴⁴ Hudari, *Uşūl al-fiqh*, 38.

Prophet or met the Prophet and died in Islam.⁴⁵ Qaul Sahabi in the science of jurisprudence is; "Fatwa bestow (Prophet) in the form of speech based on his (personal) opinion."

About the Qaulu Sahabi, there are things that scholars do not agree with:

- 1) What is agreed is that the companionship of the companions should not be the cause of the other prophet companions.
- 2) What is at stake is about whether or not the qaul sahabi is made righteous in this case. There are two points: qaul companions cannot be judged to impose the Law of shara 'either for the other companions or others, and this is the opinion majority of scholars. Some scholars also allow qaul (word of prophet companions) companions to do for the sake of others or the people after that on the condition that they do not conflict with qiyas.

Examples: Fatwa Anas bin Malik describes a woman's menstrual period, which is three days.⁴⁶

D) Maqashid Syari'ah

In the language, maqasid al shari'ah consists of two words, namely maqasid and shari'ah. Maqasid is a form of jama (plural) of maqsad, which means intention or purpose, and Shari'a reading means the road to a fountain which can be interpreted as the way to the ultimate source of life. In speaking of maqashid al-Syari'ah, al-Syatibi uses different meanings but has the same meaning as maqashid al-Syari'ah, namely al-Maqashid al-shariah fi al shari'ah, maqashid min Shari ' al-hukum, that is, the laws made for the benefit of humankind in the world and the hereafter.⁴⁷ Maqahsid al shari'a in the sense of al-syari 'contains four aspects, namely: first, the charitable purpose of the syri'at is the benefit of humans in the

⁴⁵ Meirison Alizar Sali, Desmadi Saharuddin, and Rosdialena Rosdialena, "Takhrij Fikih Dan Permasalahan Kontemporer," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 (2020)

⁴⁶ Alizar Meirison, "Islamic Sharia and Non-Muslim Citizens in Kanunname During Sultan Abdul Hamid II of the Ottoman Empire," *UIN Walisongo Vol 27*, no. No 1 (2019) (2019): 37–68.

⁴⁷ Amran Suadi, *Abdul Manan: Ilmuwan Dan Praktisi Hukum: Kenangan Sebuah Perjuangan*, Cetakan ke-1. (Rawamangun, Jakarta: Kencana, 2016), 105–106.

world and the hereafter. This relates to the content and nature of Maqashed as-Syari'ah (The Purpose of Islamic Law); second, Sharia as something that must be understood, and this refers to the dimensions of language. So that the Shari'ah can be realized with that benefits it contains; third, Sharia as *taklif* Law that must be done; fourth, the purpose of the Shari'a is to bring people under the auspices of the Law, and this relates to human obedience as a believer below and contained under God's Law. In a firmer term, the aspect of the purpose of Shari'a is to free humanity from the pressure of lust.⁴⁸ Al-Imam al-Haramain al-Juaini classifies maqashid al-Shari'at into three broad categories, namely dharuriah, hajjiah, tahsiniyyah.⁴⁹

m) Qawaid al-Lughawiyah

Qaidah ushuliyah is a combination of *qaidah* and *ushuliyah*, a rule in Arabic written with *qaidah*, which means benchmarks, guidelines, and points of decline. And some interpret it by the rules while the plural form of the *qaidah* is *qawa'id*. The word *ushuliyah* is derived from the phrase *al-ashl*, which means tree, base, or proposition as a foundation. So, the *Ushuliyah qaidah* is a guide to digging up the principles of Shari'ah', which is based on the taking of the arguments or rules that are the method of legalization, *Qaidah Ushuliyah* is also called the *Qaidah Istinbathiyah*, or some call it the *Qaidah Lughawiyah*.⁵⁰ The *Lughawiyah* base, style of language is named because it is used based on the meaning, order, style, and purpose of the expressions set by the Arabic scholars, after extensive research and Arabic literature.⁵¹

In the language in point of view, *qawaid al-lughawiyah* comes from two syllables: the *al-qawaid* / *Qaida* is the plural *lafadz al-qaidah*, which means building, rules, laws. And *al-Lughawiyah* is a definite form of the *Lughah* meaning language; addition of ratio serves to translate the

⁴⁸ Ghazzali and Fazlul Karim, *Essential Ihya' Ulum al-Din: The Revival of the Religious Sciences: Completely Revised Edition of Fazlul Karim's Translation*, vol. 2 (Kuala Lumpur: Islamic Book Trust, 2016), 34.

⁴⁹ Ibn 'Aqil and Sudays, *Al-Wāḍiḥ Fī Uṣūl*, 33.

⁵⁰ Abdul Karim Zaidan, *al-Wajiz fi Ushul al-Fiqh* (Beirut, Lebanon: Muasasah Risalah, 2011), 311.

⁵¹ *Ibid.*, 277.

word *Qaida* to the concept of language, which aims to distinguish it from other *Qaida*. What is meant by *Qaida al-Lughawiyah* is the *Qaida* formulated by the ulama relating to the intent and purpose of Arabic language expressions commonly used by the Arabs themselves because al-Qur'an and Hadith are Arabic. So to understand the laws contained in the two texts of the heritage well and correctly; therefore, the scholars felt the need to pay attention and conduct researches on the Arabic style and examine how to appoint *lafadz* (words) *nash* (text) that uses Arabic to the intended meaning.⁵² The meaning of *Qawaid Ushuliyah* is theorem So *qaidah ushuliyah* is a proposition of *syara* 'which is comprehensive, universal, and global. *Qaidah ushuliyah* is several words to dig up the Law. *Qaidah ushuliyah* is generally associated with the provisions of *lafadh* or holiness.⁵³ The *Qaidah ushuliyah* serves as a tool for interpreting the Law in the source language. Mastering the *Qaidah Ushuliyah* can facilitate the *faqih* to know Allah in every legal event he encounters.⁵⁴

E. Conclusion

There is no significant difference between the classical Islamic law-making methods, which are derived from the Qur'an, Hadith, and Islamic jurisprudence, such as using *ijma'*, *qiyas*, *istihsan*, *istishab*, *urf*, and more. The prediction of contemporary laws will continue to be based on the Qur'an, Hadith, *Ijma'*, *Qiyas*, *Istishab*, *Syar'u man Qablana*, *Istihsan*, *Qawaid al-Lughawiyah*, *Maslahah al-mursalah* and *Maqashid as-Syari'ah* itself. So that Islam and its laws are in keeping with the development of the times and wherever the Muslim community can refer to Islamic Law with a wide selection of statutes in a diverse and vibrant source of sources and rules of Law. By way of setting such a large amount of Law Muslims can reuse Islamic Law in various circumstances in various places in multiple spaces and dimensions.

⁵² Abbas Sofwan, "Interelasi Qawaid Usul Dan Fiqhiyah Sebagai Landasan Hukum Islam Yang Universal," *Jurnal:Legitima* 1, no. 1 (2018): 1–19.

⁵³Meirison Meirison, "Maslahah Dan Penerapannya Dalam Siyasa as Syar'iyah," *Ijtihad* 32, no. 1 (2019).

⁵⁴ Ibid.

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