

The *Uṣūl al-Fiqh* Approach on the Understanding of Islamic Law in Contemporary Era: Source and Contextualization

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Abstract: This article aims to analyze an understanding of Islamic legal theories (*uṣūl al-fiqh*), referred to as a source and logical framework of how to answer legal problems of humankind's response in the contemporary era. The paper employed library research to deal with Islamic principles as primary data sources. Findings that the development of *uṣūl al-fiqh* debate should be involved primary sources of the Islamic law, both independent sources (the Qur'an and *sunnah*) and dependent sources (*ijmā'*, *qiyās*, *istihsan*, *istiṣlah*, and others). In order to answer the contemporary problems, the development of the *uṣūl al-fiqh* method should be evidenced by the primary objectives of Islamic law (*maqāṣid al-syarī'ah*), namely, creating the public interest (*maṣlahah*) for the humanity. However, the contextualization of *uṣūl al-fiqh* is used by sorting out distinguishing primary sources (authentic) and derivatives sources. Such the proofs are understood to analyze for further discussion on deductive (*istidlāl al-istinbāṭi*) or inductive reasoning (*istidlāl al-istiqrā'i*). Indeed, jurists should be carried on emphasizing the objectives and the wisdom of Islamic law (*maqāṣid wa ḥikmah al-syarī'ah*) as their analysis.

Keywords: *uṣūl al-fiqh*; islamic law; *istidlāl*; *maqāṣid al-syarī'ah*.

Abstrak: Artikel ini bertujuan untuk menganalisis sumber dan logika operasional usul fikih dalam menjawab persoalan hukum dan kemanusiaan di era kontemporer. Tulisan ini merupakan penelitian kepustakaan dengan menjadikan kitab-kitab usul fikih sebagai sumber primer. Artikel ini menemukan bahwa pengembangan kajian usul fikih harus didasarkan pada sumber utamanya dalam hukum Islam, baik sumber-sumber independen (Al-Qur'an dan hadis) maupun sumber-sumber dependen (*ijmā'*, *qiyās*, *istihsan*, *istiṣlah*, dan sebagainya). Dalam rangka menjawab problematika kontemporer, pengembangan metodologi ushul fikih harus didasarkan pada tujuan utama syari'ah (*maqāṣid al-syarī'ah*), yakni menciptakan kemaslahatan bagi umat manusia. Sementara itu, kontekstualisasi usul fikih dapat dilakukan dengan memilah dan membedakan sumber primer (autentik) dan sumber turunan (derivatif). Dalil-dalil tersebut kemudian dipahami dan dianalisis lebih lanjut melalui penalaran

deduktif (*istidlāl al-istinbāṭi*) ataupun penalaran induktif (*istidlāl al-istiqrāʾi*). Pada pelaksanaan analisisnya, para ahli hukum Islam perlu memperhatikan dan menekankan pada aspek tujuan dan hikmah dari disyariatkannya hukum Islam (*maqāṣid wa ḥikmah al-syarīʿah*).

Kata kunci: *uṣūl al-fiqh*; hukum Islam; *istidlāl*, *maqāṣid al-syarīʿah*.

Introduction

The problems of the Islamic law that arise today are not comparable to the development of fiqh (Islamic jurisprudence) produced by the jurists. In Medical Science, for example, the Egyptian Judges refused to use the results of a Deoxyribonucleic Acid test to prove the identity of his wife's biological child from an illicit relationship with an extramarital partner.¹ In Indonesia, proving children through Deoxyribonucleic Acid testing is regulated in various decisions. In one of its verdicts, the Indonesian Constitutional Court accepted and acknowledged the legitimacy of biological children through Deoxyribonucleic Acid test evidence. The acceptance of biological children positively impacts the existence of a civil relationship between the child out of wedlock and his biological father and mother.² While the fatwa of the Majelis Permusyawaratan Ulama Aceh in 2015 decided otherwise.³ The latest case is the Majelis Ulama Indonesia unlawful fatwa regarding cryptocurrencies.⁴ This fatwa has been legalized in other Muslim countries, such as Saudi

¹ Ron Shaham, "Law versus Medical Science: Competition between Legal and Biological Paternity in an Egyptian Civil Court," *Islamic Law and Society* 18, no. 2 (January 1, 2011): 219–49, <https://doi.org/10.1163/156851910X537775>.

² Decision Nomor 46/PUU/-VIII/2010 Mahkamah Konstitusi Republik Indonesia. Read too "Keputusan MK Nomor 46/PUU-VIII/2000," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 1, no. 1 (July 17, 2017): 72–100, <https://doi.org/10.22373/sjhc.v1i1.1571>.

³ Nasaiy Aziz and Muksal Mina Muksal Mina, "Nasab Anak yang Lahir di luar Nikah: Analisis Fatwa MPU Aceh Nomor 18 Tahun 2015," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, vo: 1, no. 1 (2017), pp. 72-100.

⁴ Majelis Ulama Indonesia, "Keputusan Fatwa Hukum Uang Kripto atau Cryptocurrency," *Majelis Ulama Indonesia* (blog), November 12, 2021, <https://mui.or.id/berita/32209/keputusan-fatwa-hukum-uang-kripto-atau-cryptocurrency/>.

Arabia, the United Arab Emirates, and Bahrain.⁵ In these two cases, fiqh is less able to adapt to the progress of the times. Therefore, it is necessary to develop the *uṣūl al-fiqh* (Islamic legal theories) through contextualizing the study and understanding of the *Syari'ah* (the primary sources of Islamic law).

Scholars have conducted many studies on the *uṣūl al-fiqh* in Islamic law, both the *uṣūl al-fiqh* as a method or approach. Generally, the authors can classify these studies into three typologies. First, works that focus their studies on specific methods in the *uṣūl al-fiqh* to find a law, such as the works of Maizul Imran⁶ and Aidhil Alwana.⁷ Second, studies that examine the views of certain scholars and figures regarding *uṣūl al-fiqh*: such as Abu Bakar, who discusses the al-Ghazālī thoughts of *uṣūl al-fiqh*,⁸ Muhamamd Said, who discusses the opinions of Hassan Hanafi,⁹ and Ihsan Nul Hakim who studies the thoughts of Ibn Quḍāmāh.¹⁰ Third, works that use the *uṣūl al-fiqh* to analyze specific problems, such as LGBT (Lesbian, Gay, Bisexual, and Transgender),¹¹ compulsion in marriage (*ijbār*),¹² minimum marriage

⁵ Republika Online, “MUI Haramkan Kripto, Bagaimana di Arab Saudi?,” Republika Online, November 14, 2021, <https://republika.co.id/share/r2ihon430>.

⁶ Maizul Imran, “Qiyās dan Analogi Hukum (Suatu Telaah dan Perbandingannya dalam Penemuan Hukum),” *Al-Hurriyah: Jurnal Hukum Islam* 2, no. 1 (2017): 97–114.

⁷ Hanif Aidhil Alwana, “Aliran Pemikiran Ushul Fiqh dan Pengaruhnya terhadap Pendekatan Hukum Islam,” *JURIS (Jurnal Ilmiah Syari'ah)* 19, no. 2 (December 18, 2020): 147–62, <https://doi.org/10.31958/juris.v19i2.2375>.

⁸ Abu Bakar, “Konsep Pemahaman Pemikiran Hukum Islam Imam al-Ghazali (Kitab al-Mustashfa Bidang Sumber Hukum dalam Uṣūl al-fiqh),” *Syari'ah Darussalam: Jurnal Ilmiah Kesyar'ahan dan Sosial Masyarakat* 4, no. 2 (2019), <http://ojs.iai-darussalam.ac.id/index.php/syari'ahdrs/article/view/47>.

⁹ Muhammad Said, “Rekontekstualisasi Pemikiran Islam dalam Manhaj Ushul Fiqh Hassan Hanafi,” *MUHARRIK: Jurnal Dakwah dan Sosial* 2, no. 01 (July 16, 2019): 1–14, <https://doi.org/10.5281/zenodo.3544708>.

¹⁰ Ihsan Nul Hakim, “Pemikiran Uṣūl al-Fiqh Ibnu Qudamah: Kajian atas Beberapa Masalah Fiqih dalam Kitab *al-Kaḥfi fī Fiqh al-Imam Ahmad bin Hanbal*,” *AL-ISTINBATH: Jurnal Hukum Islam* 1, no. 1 (2016).

¹¹ Rustam DKA Harahap, “LGBT di Indonesia: Perspektif Hukum Islam, HAM, Psikologi dan Pendekatan Maṣlaḥah,” *Al-Ahkām* 26, no. 2 (October 2, 2016): 223–48, <https://doi.org/10.21580/ahkām.2016.26.2.991>.

age,¹³ halal certification,¹⁴ Covid-19 handling policies,¹⁵ and government systems.¹⁶

This paper is a complement to the works in the first typology. In contrast to previous studies, this paper focuses on efforts to contextualize the understanding of the *Syari'ah* from the perspective of *uṣūl al-fiqh*. There are two primary issues that the author discusses in this article. First, what is the source and scope of the *uṣūl al-fiqh* method? Second, how is the logical framework of the *uṣūl al-fiqh* and its contextualization in responding to recent issues that arise in the contemporary era?

This article bases its study on primary sources related to the *uṣūl al-fiqh*, widely distributed in various books. The author carefully reads these books to get a good understanding of the position of *uṣūl al-fiqh*. Further, the author proposes a suitable method to understand the *Syari'ah* proofs to solve legal problems in the contemporary era.

Sources and Scope of the *Uṣūl al-Fiqh*

In the period of the Prophet Muhammad, the sources of Islamic law were limited to the Qur'an and Sunnah. Using reason (*aqli*) is avoided because there is still the Prophet who can be an

¹² Muhammad Ngizzul Muttaqin and Nur Fadhilah, "Hak Ijbar Wali Tinjauan Maqashid Syari'ah dan Antropologi Hukum Islam," *Journal de Jure* 12, no. 1 (June 30, 2020): 102–19, <https://doi.org/10.18860/j-fsh.v12i1.7923>.

¹³ Ramdan Wagianto, "Reformasi Batas Minimal Usia Perkawinan dan Relevansinya dengan Hak-Hak Anak di Indonesia Perspektif Maqashid Asy-Syari'ah," *Asy-Syir'ab: Jurnal Ilmu Syari'ah dan Hukum* 51, no. 2 (November 11, 2017): 287–306, <https://doi.org/10.14421/asy-syir'ah.2017.512.287-306>.

¹⁴ Hatoli Hatoli, "Sertifikasi Halal Majelis Ulama Indonesia pada Produk Elektronik dan Non Konsumsi Perspektif Masalah," *JIL: Journal of Islamic Law* 1, no. 2 (August 15, 2020): 237–55, <https://doi.org/10.24260/jil.v1i2.45>.

¹⁵ Masykur Rozi, "Memetakan Skala Prioritas Kebijakan Penanganan Pandemi Covid-19 Perspektif Maqāshid al-Syari'ah: Analisis terhadap Peraturan Perundang-Undangan di Indonesia," *JIL: Journal of Islamic Law* 2, no. 1 (February 9, 2021): 62–93, <https://doi.org/10.24260/jil.v2i1.155>.

¹⁶ Ahmad Zayyadi, "Good Governance dalam Perspektif Hukum Islam Kontemporer (Tinjauan Uṣūl al-Fiqh dari Teori Peningkatan Norma)," *Al-Manabij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): 13–34, <https://doi.org/10.24090/mnh.v11i1.1265>.

authoritative person to ask questions and ask for fatwas. After the Prophet died, the reason was used to understand the texts of the Qur'an and *hadīth* that were useful for solving various problems faced by Muslims. However, the use of this reason is still minimal among particular companions, such as 'Umar ibn al-Khattab, Ibn Mas'ūd, and Mu'az ibn Jabāl. Some of the legal decisions made by 'Umar ibn al-Khattab were often considered contrary to the texts.¹⁷

Most of the *ṣahābah* (companions of the Prophet) still avoid using reason in understanding the texts. If there are legal issues that cannot be answered in the texts of the Qur'an and Sunnah, then they turn to the consensus of the companions.¹⁸ With the expansion of Islamic territory and the impact on the emergence of new problems faced by Muslims, the scholars of the generation of *ṭabī'in* (successors to the companions) and *ṭabī' al-ṭabī'in* (successors to the *ṭabī'in*) no longer set the law only on the Qur'an, *hadīth*, and consensus of the companions only. However, they developed rational thinking in understanding the texts of the Qur'an and Sunnah. Therefore, there were two well-known schools of Islamic legal thought, namely the traditionist (*Ahl al-Hadīth*) and the rationalists (*Ahl al-ra'y*).¹⁹

However, the *uṣūl al-fiqh* as a methodological tool for understanding legal texts in the Qur'an and *hadīth* only emerged at the end of the second century Hijrah.²⁰ The *uṣūl al-fiqh* is a set of knowledge that contains the rules and methods of finding the law from detailed arguments relating to human actions.²¹ Islamic jurists believe that Imām al-Syāfi'ī was a pioneer in laying the foundations of

¹⁷ Muhammad Yusron, "Penalaran Rasional dan Maslahah: Ijtihad Umar ibn al-Khattab pada Kasus-Kasus Kewarisan Islam," *JIL: Journal of Islamic Law* 2, no. 2 (August 5, 2021): 197, <https://doi.org/10.24260/jil.v2i2.327>.

¹⁸ Chairul Fahmi, "Konsep Ijmak Menurut Fazlur Rahman dan Pembaharuan Hukum Islam," *Jurnal Ilmiah Islam Futura* 11, no. 1 (February 3, 2017): 47, <https://doi.org/10.22373/jiif.v11i1.59>.

¹⁹ Nasruddin Yusuf, "Ahl al-Hadīth dan Ahl Ra'y (Dinamika Hukum Islam dari Masa Peralihan Sahabat ke Masa Para Imam Madzhab)," *Jurnal Ilmiah Al-Syir'ah* 5, no. 2 (August 31, 2016): 1–14, <https://doi.org/10.30984/as.v5i2.231>.

²⁰ Abuddin Nata, ed., *Masail al-Fiqhiyah*, Ed. 1 (Jakarta: Kencana, 2003), 35.

²¹ Abdul Wahhab Khalāf, *Ilmu Uṣūl al-Fiqh* (Maktabah al-Dakwah al-Islamiyyah, n.d.), 12.

uṣūl al-fiqh through his famous work, *al-Risālah*. In this book, al-Syāfiʿī lays down the basics of understanding Islamic law taken from the texts of the Qurʾan and Sunnah.²²

In Islamic literature, one of the essential discussions in the *uṣūl al-fiqh* is the method of legal reasoning. It is the use of logic to determine the legal status of the case. There are two seeking processes for the proof (*istidlāliyah*) in Islamic law, namely, *istinbātī* (deductive reasoning) and *istiqrāʿī* (inductive reasoning).²³ In this topic, the *uṣūl al-fiqh* provides instructions and directions for each model and approach to understanding the sharia proofs of a particular issue. It is taking and deciding on a case by interpreting the verses of the Qurʾan (*tafsīr āyāt al-Qurʾan*), semantic analogy (*bayān dilālah al-nuṣuṣ al-syarīyyah*), analogical deduction (*qiyās*), and enrichment of other dependent variables (*taʿlīl al-abkām*). These legal provisions are taken and interpreted from the clear textual authority that is clarified as *Syarīʿah* evidence, either through deductive or inductive analysis (*manābi al-istidlāl wa al-istinbāt*).²⁴

Determination of the various things above must be done with a precise measure. These things can be included in the category of arguments that have clarity on legal topics (*dilālah naṣ syarīʿah al-manṣuṣah*). The clarity in setting legal topics is essential to avoid ambiguity. It is because the determination of the legal topic is one pillar in the parameters of *Syarīʿah* (*al-maʿyir al-syarīyyah*). The laws that have been regulated in the Qurʾan and hadīth must be known for their causes and purposes. Therefore, the subject of legal reasoning is related to the discourse on defining the general objectives of Islamic law. Determining the purpose of the law can be known by examining the legal reasons (*taʿlīl al-abkām*), the power of interpretation, and the clarity of the main arguments. Meanwhile, a detailed explanation of

²² Abdul Haris Naim, “Moderasi Pemikiran Hukum Islam Imam Syafi’i,” *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam* 9, no. 1 (June 9, 2018): 175–96, <https://doi.org/10.21043/yudisia.v9i1.3679>.

²³ Umar Muhaimin, “Metode Istidlal dan Istishab (Formulasi Metodologi Ijtihād),” *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam* 8, no. 2 (April 8, 2018): 336, <https://doi.org/10.21043/yudisia.v8i2.3243>.

²⁴ *Ibid.*, 330-350.

the reality of the *Syari'ah* must be separated from other themes because it is related to the formation of law or legislation.

This method of legal reasoning in the *uṣūl al-fiqh* has become a strong tradition in Islamic legal thought. Determination of topics based on interpreting the texts of the Qur'an and Sunnah can be used as a barometer for testing the reliability of Islamic law and the whole law in every aspect of human life: social, political, economic, artistic, cultural, industrialization, and digitalization of technology to issues mythology. The same applies to dependent sources of Islamic law, such as *ijmā'* (consensus), *qiyās* (analogy), *istihsan* (the public interest), *istiṣlah* (consideration of public interest), and others. There is no difference of opinion among Islamic jurists in determining legal topics based on authentic and independent sources (the Qur'an and hadīth). Meanwhile, the determination of legal topics based on dependent sources must be clarified first with the two authentic sources.

Logical Framework of Contextualizing the *Uṣūl al-Fiqh*

Islamic law is formulated and taken from the texts of the Qur'an and hadīth. As the standard of sharia science in measuring and determining authentic proof, the *uṣūl al-fiqh* has become the infrastructure for determining the validity of the *Syari'ah* evidence. Besides clarification, understanding, interpretation, and interpretation, the determination of the validity of the *Syari'ah* evidence can be determined by using the legal maxim of *uṣūl al-fiqh* (*al-qawā'id al-uṣūl*) or one of the *uṣūl al-fiqh* methods: *istidlāl* (inference),²⁵ *istinbāt* (deduction),²⁶ or *ijtihād* (independent legal reasoning).²⁷

In the discourse of *uṣūl al-fiqh*, sources of Islamic law are divided into two, namely, primary or authentic sources and derived sources (*al-maṣādir al-tibā'iyyāt*). This last type of source of Islamic law comprises *ijmā'* and *qiyās*. While related to other sources, such as *qaul*

²⁵ Ali bin Abdul Aziz al-Amirini, *Al-Istidlāl Inda al-Ushūliyyūn*, 1st ed. (Riyadh: Perpustakaan Al-Tawbah, 1990), p. 4.

²⁶ Ibn al-Qayyim al-Jauziah, *I'lām al-Muwaqqi'in an Rabb al-'Alamin*, vol. 1 (Beirut: Dār al-Kutūb al-Ilmiyah, 1418), p. 172.

²⁷ Yusuf al-Qaradhawi, *Al-Ijtihād fī al-Syari'at al-Islamī*, 1st ed. (Kuwait: Dār al-Qalam, 1996), p. 11.

al-ṣahābah (opinion of the companions), *istihsān* (the public interest), *istiṣhāb* (presumption of continuity), *ṣadd al-ẓarāʿi* (eliminating pretexts), *ʿurf* (local custom), *al-maṣlahah al-mursalah* (unrestricted interests), and *syarʿu man qablana* (revealed laws before Islam), the Islamic jurists differ regarding their authenticity.²⁸

Traditional scholars have a close relationship with these primary sources of Islamic law. They adopt the model of accepting the *Syariʿah* from textual proofs that are still original. Thus, they have a broader knowledge of Islamic laws, which is obtained from their knowledge and understanding of textual sources based on narrations and other detailed evidence.²⁹ In addition, they also have adequate knowledge of the Qurʿan, hadīth, and knowledge to studying both: the occasions of revelation (*asbāb al-nuzūl*), the occasions of the hadīth (*asbāb al-wurūd*), *nāsikh* (abrogator) and *mansūkh* (abrogated), *muhkām* (perspicuous) and *mutasyābih* (ambiguous), *mujmal* (the obscure) and *muḥaṣṣal* (the obvious), both valid and invalid, especially from their *tābiʿin* and *tābiʿ al-tābiʿin*. Based on the understanding of this knowledge, the scholars produced two concepts regarding the absolute *Syariʿah* evidence (*dalīl an-nuṣūṣ al-syariʿah al-mutlaqāt*) and non-absolute *Syariʿah* evidence (*dalīl an-nuṣūṣ al-syariʿah ghair al-mutlaqāt*).

In formulating the *uṣūl al-fiqh* methodological framework, the Islamic legal theories scholars (*uṣūliyyūn*) examine the requirements of revelation that can be used as a legal basis. They also formulate the difference between valid and invalid evidence.³⁰ Here, al-Taftāzānī said that all studies and understandings of the *uṣūliyyūn* on the principles of Islamic law refer to legal arguments and evidence of legal decisions.³¹ It means that the law is extracted from the *Syariʿah* proof. It shows no law without evidence and no proof without law. Therefore, the relationship between the both is causal.

²⁸ Aiman binti Muhammad al-Qatsami, *Syurūth al-Mujtabid maʿa Namadzij min Ijtihadat al-Fuqahā* (Syabakah al-Alukah, 2018).

²⁹ Anonim, "Al_farq baina al-Faqih wa al-ʿAlim," *Islam Web* (2018).

³⁰ Ahmad bin Idris Al-Qurafi, *Syarh Tanqih al-Fushul fi Iktishār al-Mahsul fi al-Ushul*, vol. 1 (Dar al-Fikr, 2004), p. 454.

³¹ Taftazzani, *Syarh al-Tahwib ala al-Taudlib*, vol. 1 (Subeih, n.d.), p. 38.

Contextualization of understanding of the *Syarī'ah* through the *uṣūl al-fiqh* aims to achieve interest and perfection in all aspects of human life. About the objectives of Islamic law (*maqāsid al-syarī'ah*), al-Ghazālī and al-Syātībī divide it into five sorts, namely the protection of religion (*hifẓ al-dīn*), protection of life (*hifẓ al-nafs*), protection of reason (*hifẓ al-'aql*), protection of offspring (*hifẓ al-nasl*), and protection of property (*hifẓ al-māl*).³² Among the five objectives of Islamic law, al-Ghazālī argues that protecting religion is the most important.³³

First is the protection of religion or faith (*hifẓ al-dīn*).³⁴ The first objective of Islamic law implies that religion or belief is a fundamental principle in human life. Therefore, it must be guarded and maintained. This objective can be expanded to mean that it is imperative to maintain togetherness and harmony between religious communities. The trick is to respect and respect each other's beliefs between religious communities without degrading the *Syarī'ah* of other religions.³⁵

Second is the protection of life (*hifẓ al-nafs*). It means that every human being may live, and his life is guaranteed in religion. This maintenance and protection include all elements inherent in life, whether physical, mental, moral or dignity. Therefore, the *Syarī'ah* forbids killing and endangering someone's life without a reason that the *Syarī'ah* can justify.³⁶

The third is the protection of reason (*hifẓ al-'aql*). The objective of Islamic law means the *Syarī'ah* assigns reason to a high and vital

³² See Abu Hamid Muhammad al-Ghazali, *Al-Mustafā Min 'Ilm al-Uṣūl*, vol. 1 (Beirut: Dar al-Fikr, n.d.), 287 and Abu Ishaq asy-Syātībī, *Al-Muwafaqāt fi Uṣūl asy-Syarī'ah*, vol. 2 (Beirut: Dar Ibn Hazm, 2004), pp. 18–23.

³³ *Ibid.*, p. 287.

³⁴ *Ibid.*

³⁵ Fakhrudin Aziz, "Formula Pemeliharaan Agama (Hifz al-Dīn) pada Masyarakat Desa Dermolo Jepara: Implementasi Maqāṣid al-Sharī'ah dengan Pendekatan Antropologi," *Al-Abkam* 27, no. 1 (April 30, 2017), p. 107, <https://doi.org/10.21580/ahkam.2017.27.1.1315>.

³⁶ Aay Siti Raohatul Hayat, "Impelementasi Pemeliharaan Jiwa (Hifz al-Nafs) pada Pengasuhan Anak Berbasis Keluarga," *FOKUS Jurnal Kajian Keislaman dan Kemasyarakatan* 5, no. 2 (December 28, 2020), pp. 155–56, <https://doi.org/10.29240/jf.v5i2.1404>.

position in human life. Therefore, the existence of reason is highly protected and upheld. Every act that can harm or damage the mind, whether done by oneself (such as drinking wine) or others, is behavior that is prohibited by religion.³⁷ In its development, the *hifẓ al-'aql* can be interpreted as developing the mind's potential. It can be implemented by developing the quality of education, research, freedom of thought and opinion, and others.³⁸

Fourth is the protection of offspring (*hifẓ al-nasl*). It means that each individual must hold and maintain the lineage and purity of lineage under Islamic law principles. Therefore, the institution of marriage in Islam is essential because it is only through marriage that humans can get legal offspring and certainty of lineage. Maintenance of offspring also includes the obligation to cover the genital's prohibition of committing adultery or approaching adultery.³⁹

Fifth is the protection of property (*hifẓ al-māl*). The objective of Islamic law means that the assets and property legally gained by a person are assets whose existence is guaranteed by the *Syari'ah*. Therefore, it is not justified to take someone's property except in a way that the *Syari'ah* can justify. Islam teaches how to trade and get property properly, such as buying and selling, renting, debts, and others. Islamic law prohibits humans from obtaining wealth incorrectly, such as stealing, robbing, collusion, corruption, and others.⁴⁰

Contextualization of the *Uṣūl al-Fiqh* in the Contemporary Era

Currently, humanity is experiencing complex events and problems that require comprehensive thought and study to find

³⁷ *Ibid.*, p. 287.

³⁸ Mayola Andika, "Penafsiran Ayat-Ayat Hifz al-'Aql Perspektif Tafsir Maqāshidi", *Skrripsi*, UIN Sunan Kalijaga, Yogyakarta, 2020, pp. xxii–xxiii, <https://digilib.uin-suka.ac.id/id/eprint/39673/>.

³⁹ Basyir Mahdi Latif Al-Kubaisi, *Al-Maqāshid al-Syar'yyah wa Kaifiatu Ta'amul Ma'aha Inda al-Ta'arudl*, 2nd ed. (Iraq: Majalla Kulliyatul Imam al-Ādham al-Jami'ah, n.d.), pp. 33–87.

⁴⁰ Naerul Edwin Kiky Aprianto, "The Concept of Wealth in the View of Maqashid Al-Sharia," *Journal of Islamic Economics Lariba* 3 (December 22, 2017), p. 71, <https://journal.uii.ac.id/JIELariba/article/view/9655>.

solutions. It is a severe problem because few Muslims have adequate knowledge regarding modern reality and technology. In addition, they also often override the reality of the truth in God's law that governs the entirety of human life. Suppose the previous scholars have compiled, formulated, and qualified the *Syari'ah* as contained in the books of *uṣūl al-fiqh*. In that case, Islamic jurists in the contemporary era are to develop and contextualize the *uṣūl al-fiqh* in modern life. The *uṣūl al-fiqh* is a comprehensive set of scholarship in understanding the sources of Islamic teachings. It is a methodological tool to solve various legal problems. Therefore, it can be used as a scientific approach and method to face and solve various problems humankind faces in the contemporary era.

Several things cause the need for legal reform in dealing with contemporary problems: socio-political changes at the local and global levels, the development of the modern world with all its dynamics, and the development of science and technology, which has raised new problems in the Islamic law. These phenomena have given rise to several legal and humanitarian issues that require resolution from the perspective of Islamic law. Legal events include interfaith marriage and inheritance, abortion, IVF, heart transplant, brain death, and others.

These contemporary problems require responses and answers from Islamic jurists so that they can be resolved and have legal certainty. Here, the principles of understanding the *Syari'ah* evidence can be used as scientific methods and approaches to solve these problems. Therefore, Islamic law experts must have an adequate understanding of applying the *ijtihad* or how to absorb law from the primary sources (*istinbat*). Its method integrates the texts of the Qur'an and Sunnah with empirical reality and the development of science and technology. In this way, Islamic jurists can provide solutions and answers to legal problems in the contemporary era.

In practice, efforts to resolve these legal problems can be applied by understanding the *Syari'ah* evidence through legal reasoning or inference (*istidlal*), namely, a thought process that includes statements of facts or information in a structured manner so

that it leads to the achievement of a legal conclusion.⁴¹ This reasoning process or legal inference can be pursued in two ways, namely through deductive reasoning (*istidlāl al-istinbātī*) and inductive reasoning (*istidlāl al-istiqrāʾī*). Deductive reasoning comprises evidence and results, while evidence and information are presented so that a case can be proven true. Deductive reasoning is divided into four: cause-effect inference (*istidlāl al-syartī*), reasoning on facts or events (*istidlāl al-qaḍāʾa al-mutaqabbalah*), inference in equations (*istidlāl al-aʿmas wa al-mustawā*), and inference in nature or type (*istidlāl al-bamālī*).

Meanwhile, inductive reasoning (*istidlāl istiqrāʾī*) is the logic of thinking that utilizes general inference conclusions carefully and precisely based on the evidence or facts that have been found beforehand.⁴² It is an attempt to find or conclude something based on the facts in the field. Here, a person's experience can be correlated with observations of himself and others until he gets general facts. It allows a person to get general information from specific information and follow certain types of specificity to know the whole law.

To extract general law or special law, Islamic jurists need to examine the character and scope of the *Syariʿah* evidence from the aspect of their understanding of the texts of the Qur'an and hadīth. Thus, they will find the qualifications for the legal meaning of the *Syariʿah* proof, whether they include mutlāq or muqayyad. From the two characters of the evidence, they will find the interpretation of the argument, whether it is general evidence (*dalīl al-ijmalī*) or particular evidence (*dalīl al-taḥṣīlī*).⁴³ To reveal the principles and objectives of Islamic law, Islamic jurists need to explore the legal meanings in the sharia proofs, both clearly stated arguments (*mantuq al-dalālah*) and those that are not clearly stated (*mafḥūm al-dalālah*). Based on the main principles of the semantic aspects above, they can conclude the law from the *Syariʿah* proofs themselves. Thus, legal decision-making abstracted from the *Syariʿah* evidence must pass through several stages

⁴¹ أنواع الاستدلال وأمثلة عليها. وقواعد إستخدامها، "المرسال" (blog), accessed December 3, 2021, <https://www.almsal.com/post/1113588>.

⁴² Ahmad Zaki Zamani, "Istidlal Fatwa Dewan Syariah Nasional tentang Jual Beli Emas Tidak Tunai," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 15, no. 1 (May 15, 2016), p. 86, <https://doi.org/10.18592/al-banjari.v15i1.814>.

⁴³ Khalāf, *Ilmu Ushūl al-Fiqh*, p. 12.

and particular methods. It begins with knowing the word concerning the meaning and nature of using the verb word from that meaning. After that, they use the deduction method through semantic analysis to get legal conclusions. The result is known as normative law.⁴⁴

Because the legal texts are limited and new events and facts have emerged, Islamic jurists need to study and understand sharia evidence's elements, meanings, goals, and wisdom. This understanding aims to find and establish laws for various new problems that arise along with technological advances and the times. Formulation of the basic foundation and formation of law can be done by classifying the arguments of sharia into four types. First, word groups based on placing their meanings comprise general words (*lafẓ al-'āmm*), specific words (*lafẓ al-khaṣ*), and double-meaning words (*lafẓ al-musytarak*). Second, the group of words based on the use of their meaning which includes the truth words (*lafẓ al-haqīqah*), metaphorical words (*lafẓ al-majāz*), clear words (*lafẓ sarīh*), and parables words (*lafẓ al-kināyah*). Third, word groups based on textual and contextual meanings comprise clear words (*lafẓ al-waḍīh*), assumptive or predictive words (*lafẓ al-mubhamat*), and imperative words (*lafẓ al-muawwal*). Fourth, the word group is based on the designation of its meaning. It comprises the evidence of explicit expression (*dilālah al-'ibārah*), evidence of the expression of perception or designation (*dilālah al-isyarāh*), evidence of affirmation or legitimacy (*dilālah al-naṣ*), and evidence of justification (*dilālah al-iqtidā'*). Detailed explanations regarding the four propositions can be found in the *uṣūl al-fiqh* literature.⁴⁵

Besides the framework for taking *Syari'ah* evidence based on the *al-istidlāl*, there are three crucial frameworks of thought in the development of Islamic law, namely, the *maṣlahah mursalah* (unrestricted interests), *istihsan* (the public interest), and objectives of Islamic law (*maqāsid al-syari'ah*). The *maṣlahah mursalah* is a method of

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* See also: Manna Khalil Al-Qattan, *Studi Ilmu-Ilmu Qur'an = Mabāhis fi 'Ulumil Qur'an* (Jakarta: Pustaka Litera AntarNusa, 2004).

determining the law on a problem that is not specified in the texts.⁴⁶ The *istihsan* is a legal stipulation based on a consideration of whether something is good without being supported by specific textual arguments. Abū Hanīfah made *istihsan* a source of law after revelation, *qiyās*, and *ijmā'*.⁴⁷ Imām al-Syāfi'ī, Syafī'yah scholars, and Zahiriyyah scholars reject the *istihsan* as a source of law. They argue that the *istihsan* is a process of inferring the law based only on rational considerations.⁴⁷ The *maqāsid al-syarī'ah* is the objective of the Islamic law, namely, the benefit of humankind, both individually and collectively. This idea was raised by al-Juwainī and systematized and further developed by al-Ghazālī, Izzudīn bin Abdul Salām, Abū Ishāq al-Shātībī, and several other contemporary scholars.⁴⁸

To understand the purpose of Islamic law, Islamic jurists can study a series of frameworks oriented toward maintaining the five basic principles of Islamic law (*mabādi' usūl al-khamsah*): the protection of religion (*hifẓ al-dīn*), protection of life (*hifẓ al-naḥs*), protection of reason (*hifẓ al-'aql*), protection of offspring (*hifẓ al-nasl*), and protection of property (*hifẓ al-māl*).⁴⁹ The emphasis of the five objectives of Islamic law is on protection and protection. In developing the new theory of *maqāsid*, the emphasis is on

⁴⁶ In the *uṣūl al-fiqh* literature, the concept of *maṣlahah* is divided into three types: *maṣlahah mu'tabarah*, *maṣlahah mulghah*, and *maṣlahah mursalah*. The *maṣlahah al-mu'tabarah* is the interest to realise and obey the Islamic laws to maintain the objective of *syarī'ah*, namely, to bring benefits or reject harm and loss. The *maṣlahah al-mulghah* is the revocation of interests regarding the provisions contained therein and does not take them into account. It is the interest that seems to be hidden from the start. Scholars have agreed upon both of the *maṣlahah* because God revealed the *syarī'ah* to achieve the interests of each individual in carrying out social and spiritual life. The *maṣlahah al-mursalah* is a benefit that is not clearly stated in the text of the Qur'an and *Sunnah*. See Muhammad Said Ramdhan al-Buthi, *Dlawābit al-Maṣlahah fi al-Syarī'ah al-Islamiyah*, 2nd ed., vol. 1 (Lembaga al-Risalah, 1973), 329 dan Al-Ghazali, *Al-Mustasfā min 'Ilm al-Uṣūl*, 1:286.

⁴⁷ Achamad Lubabul Chadziq, "Istihsan dan Implementasinya dalam Pemetaan Hukum Islam," *MIYAH: Jurnal Studi Islam* 15, no. 2 (August 2, 2019), pp. 342–44.

⁴⁸ In this case, Ibn 'Āsyur considers the *maqāsid al-syarī'ah* as an independent science, not part of the *uṣūl al-fiqh*. See Muhammad Thahir Ibn Asyur, *Maqāshid al-Syarī'ah al-Islamiyah* (Beirut: Dar al-Kitab al-Libanon, 2011), p. 39.

⁴⁹ Asy-Syatibi, *Al-Muwafaqāt fi Uṣūl asy-Syarī'ah*, pp. 18–23.

development and rights.⁵⁰ The objectives of Islamic law (*maqāsid al-syarī'ah*) and the secrets of *Syarī'ah* (*asrār al-tasyri*), through a set of technical tools of knowledge, must be based on the affirmation of the five basic principles of Islamic law. Both must be kept away from the factors of distorting the five principles and avoiding the risks of harm through studies of the indicators and independent variables implied in each topic of Islamic legal evidence.

Thus, understanding the *Syarī'ah* must be based on the objectives of Islamic law. It follows the view of Ibn Taymiyyah, who said that there must be evidence of wisdom and interest in the rule of Islamic law.⁵¹ Every legal rule and provision, including statutory regulations, must be made to achieve the greatest goal of the *Syarī'ah* (*ghāyat syarī'ah al-kubra*). Thus, legislation that does not have a purpose cannot be interpreted as a principle in Islamic law legislation. It is because Islamic law applies to everyone. It comes with the goals and means under the mission brought by the Prophet Muhammad, namely to be a mercy for all nature (*rahmatan li al-'ālamīn*).

Several methodological tools were developed by the *uṣūl al-fiqh* scholars and further developed by the contemporary *uṣūl al-fiqh* scholars above, that legal issues and humanitarian issues can be immediately determined and their legal status resolved. It is part of the scientific treasures of the Islamic law that must be maintained and developed by Muslims.

Conclusion

The development of the *uṣūl al-fiqh* debate should be involved primary sources of the Islamic law, both independent sources (the Qur'an and the sunāah) and dependent sources (*ijmā'*, *qiyās*, *istihsan*, *istiṣlah*, and others). In order to answer the contemporary problems, the development of the *uṣūl al-fiqh* method should be evidenced by the primary objectives of Islamic law, namely, creating the public

⁵⁰ Muhammad Lutfi Hakim, "Pergeseran Paradigma Maqasid Al-Syarī'ah: Dari Klasik sampai Kontemporer," *Al-Manahij: Jurnal Kajian Hukum Islam* 10, no. 1 (2016), p. 12, <https://doi.org/10.24090/mnh.v10i1.913>.

⁵¹ Ibnu Taymiah, *Minhaj al-Sunnah al-Nabawī*, 2nd ed., vol. 1 (Madinah: Idarah al-Saqafah wa al-Nasyr, 1991), p. 77.

interest for humanity. However, the contextualization of *uṣūl al-fiḥ* is used by sorting out distinguishing primary sources (authentic) and derivatives sources. Such arguments are understood to analyze for further discussion on deductive (*istidlāl al-istinbātī*) or inductive reasoning (*istidlāl al-istiqrāʾī*). Indeed, jurists should be carried on emphasizing the objectives and the wisdom of Islamic law (*maqāṣid wa hikmah al-syarīʿah*) as their analysis.

The above methodological framework must be maintained and developed by Muslims to contextualize the understanding of the *Syarīʿah*. An aim is an approach and framework of thinking in dealing with and answering legal problems in the contemporary era. This article can be used as an essential complement to the understanding of Islamic law discourse to form advanced norms, theoretical legal principles, and values of Islamic sharia doctrine as the basis for establishing Islamic jurisprudence, re-codifying the compilation of Islamic law, and reforming the Islamic law.

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