The Strategic Role of Qiyās Theory on Elasticity of Islamic Law in Solving Contemporary Issues

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Abstract: This study highlights the role of qiyās in the elasticity of Islamic law in resolving contemporary issues of Muslims which do not have clear legal provisions in the nasṣ, both in al-Qur’an and al-Sunnah. This is a qualitative research and the data collected through documentary in the form of texts directly related to qiyās theory. Furthermore, the data was analyzed using content analysis technique. To parse this theme, there are several important points, namely: (1) Al-Qur’an and al-Sunnah as revealed shari‘ah; (2) Islamic law: between religious humanism and liberal humanism; (3) Qiyās in the lens of Ash’ariyyah and Mu’tazilah scholars; and (4) Qiyās and elasticity of Islamic law. The result of this study is that qiyās has enormous potential in proving and embodying the elastic character of Islamic law in providing answers to various contemporary problems of Muslims. However, the notes for qiyās, as offered by the madhhab scholars, currently need to continue to be developed, with an attitude of openness, to accept various scientific and technological developments that continue to experience very rapid leaps.

Keywords: Qiyās, elasticity of Islamic law, revealed shari‘ah, contemporary issues,

Introduction

In the midst of the swift current of change in various aspects of life at this time, Islamic law is dealing with increasingly complex problems, not only matters of worship but also problems of muamalah. Various thoughts to dilute Islamic law in a more real area continue to be initiated by contemporary Muslim scholars.1 They believe that Islamic law has a ħarakah (elastic) character.2 With this elastic nature, Islamic law actually has the ability to adapt to various social conditions and cultures wherein it exists. This character, at the same time, proves that Islam, with all of its doctrines, attaches itself to the predicate as rahmatan li al-‘ālamīn (as a mercy to the entire

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It is not here to complicate the problems that are being faced by humans, both in this world and in the hereafter, but to provide constructive solutions to the problems they face.

On the other hand, among contemporary Muslim scholars, such as Jasser Auda, Abdullah Ahmed al-Na’im, Hasyim Kamali, they highlight that the paradigm of Islamic law is often in a static and old-fashioned condition. They say that contemporary legal issues are increasingly complex, while the methodological tools for formulating Islamic law (usul al-fiqh, qawā'id al-fiqh, qiyaṣ, maslahah and others) have relatively not experienced significant development. This does not mean that there is no achievement but we are supposed to admit that the methodology of Islamic law has contributed a lot in solving various problems faced by Muslims both in the past and now. However, its adaptability currently needs to be updated in several aspects. It is only natural that many people are concerned, they are even skeptical of Islamic law in responding to the complexity of the phenomena of contemporary Islamic law issues.

Among the theories of Islamic law, that have contributed significantly to the development of Islamic law, especially at this sophisticated time, is the theory of qiyaṣ. With its various limitations. The theory coined by Imam al-Shafi’i 14 centuries ago continues to find its moments, especially when many Muslims around the world face complex legal difficulties. Therefore, among the many existing theories of Islamic law, qiyaṣ is the most productive in bringing forth Islamic legal materials, even today it is the core of ijtihad. In fact, al-Mawardi once quoted the expression of Imam al-Shafi’i anna ma’na al-ijtihad ma’na al-qiyaṣ (actually the meaning of ijtihad is synonymous with qiyaṣ). This shows that in the tradition of the Shafi’iyyah scholars, qiyaṣ occupies a strategic position.

Apart from the various advantages of qiyaṣ theory for adapting to new things, Abid al-Jabiri still gives some notes on things that need to be perfected. He said that the qiyaṣ theory was purely a product of the Arab mind tradition and had an epistemological flaw. Therefore, it cannot be used as an adequate methodical tool in the current formulation of Islamic law in different loci. This is because the epistemological basis of this theory is basically Arabic logic or reasoning for Arab society. While the Arabic language, whose raw materials are taken from the Bedouin community, has a reasoning system, which is epistemologically weak due to the character of the Arabic language itself is ahistorical.

Meanwhile, when viewed from the perspective of the mechanism and construction of qiyaṣ theory, al-Jabiri came to the conclusion that this theory only serves three authorities, original authority (sultat al-asl), terminological authority (sultat al-lafz) and the authority of versatility (sultat al-tajwīz), while the authority of reason (sultat al-ʿaql) becomes emasculated. As a solution, al-Jabiri offers the qiyaṣ theory which so far has only served the merging of the rational bayāni and burhāni epistemology. This ideal relationship is formulated in the theory of syllogism which is based on the formal logic

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5 Imam Shafi’i is the originator of the concept of qiyaṣ. According to him, various legal cases in Muslim societies that are not clearly regulated in al-Qur’an or al-Sunnah can be resolved through qiyaṣ, either in the form of qiyaṣ jali or qiyaṣ khafi.


axioms. It is these axioms that will reduce benefit as the ultimate goal of establishing Islamic law in particular cases.

On the other hand, philosophical thinking in Islamic law is an important study in the formulation and application of Islamic law, particularly in legal istinbath activities for mujtahids or for anyone who studies fiqh with all of its ins and outs. In terms of its importance in istinbath, qiyās does not occupy the top rank as the science of usūl al-fiqh, because it is more of a complement and assistant to the science of usūl al- fiqh as well as a science with a syllogistic philosophical thinking style in order to provide greater benefit value for human life.8

Apart from the pros and cons regarding the position of qiyās as an offer for the development of contemporary Islamic law, its existence is urgently needed at this time. Qiyās theory always offers philosophical syllogistic logical thinking. With this model of thinking, it will make it easier for a mujtahid to find answers to new problems arise. Given the importance of understanding qiyās theory, it becomes a necessity for Islamic law scholars to understand qiyās theory well in order to produce an effective and constructive product of Islamic law.

**Al-Qur’an and al-Sunnah as Revealed Shari’ah**

Lately, the heated debate about whether al-Qur’an and al-Sunnah are sources of divine law or as Islamic law itself has resurfaced. Some maqāsid experts emphasize that as revealed shari’ah, al-Qur’an and al-Sunnah have a very strategic position because apart from being shari’ah law, they are also sources of law from which all of Islamic laws boil down to. In contrast to the understanding in the classical tradition which held al-Qur’an and al-Sunnah as Islamic law itself and were practiced textually. So, in the current contemporary era, the emergence of various Islamic laws in all regions of the Islamic world further strengthens the hypothesis that there must be a clear distinction between which one is included as revealed shari’ah and which one is categorized as human cognition.9

Ibn ‘Ashur, as quoted by Auda, added that fiqh as a result of human understanding (human cognition) must still involve tradition (‘urf) in the form of universal values that are in line with the spirit of maqāsid al-shari’ah. In turn, the combination of fiqh and ‘urf will contribute to the formation of qānūn (laws). So, it must be strictly distinguished between the products of Allah SWT and His Messenger and those of human in the form of rules, norms, and legal provisions as a result of interpretations from the legal sources, namely al-Qur’an and al-Sunnah. To equate the two in a linear position is an intellectual abomination.10

Therefore, in order to arrive at the objectives of al-Qur’an and al-Sunnah for the benefit of mankind, proper knowledge and theory is needed. Included in this is a good

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8 Joseph Morrison Skelly, *Political Islam from Muhammad to Ahmadinejad: Defenders, Detractors and Definitions* (Corolado: Greenwood Publishing Group, 2009), 231.

9 Regarding the understanding of fiqh as a human cognitive product, we need to review K. Benda Beckman’s statement as follows: “The notion of law should not be limited to state, international and transnational law, but should be used to refer to all those objectified cognitive and normative conceptions for which validity for a certain social formation is authoritatively asserted. Law becomes manifest in many forms, and is comprised of a variety of social phenomena”. See: Franz von Benda-Beckmann dan Keebet von Benda-Beckmannn, “The Dynamics of Change and Continuity in Plural Legal Orders,” *The Journal of Legal Pluralism and Unofficial Law* 38, no. 53–54 (2006): ix.

understanding of al-Qur’an and al-Sunnah as the main sources of Islamic law. From these two sources, various interpretations from the Muslim scholars emerged in order to answer various problems arise in life both in this world and long-term life in the hereafter. This is very important because a low understanding of the source of Islamic law itself will certainly have implications for the low implementation of Islamic values, norms and laws in social life.

Discussing about the sources of Islamic law is indeed discussing about the validity Islamic law itself. In other words, the existence of the validity of a religion is largely determined by the validity and originality of the scriptures as the highest source of law in a particular religion. In this case, Gurvitch said “the question of the source of law is only one aspect of the general study of the validity of law”. The source of Islamic law is the estuary, foundation, and main basis in making Islamic law. Therefore, all provisions related to legal issues must refer to the source of the law, al-Qur’an and al-Sunnah. The sources of law in Islam are classified into two, namely al-Qur’an and al-Sunnah. Al-Qur’an is the highest source of Islamic law which contains guidelines for human life in the form of creed, morality, muamalah and law. And the position of al-Sunnah is the second source of Islamic law in the form of words, deeds and decrees of the Prophet Muhammad. As a consequence of one’s faith, every Muslim must adhere to these two sources of law so as not to go astray.

Philosophically, the source of Islamic law occupies the highest structure as rules that are directly made by the highest authority, namely Allah SWT and His Messenger. The term "source of Islamic law" comes from the Arabic al-maṣādir al-aḥkām which refers to words used as references in Islamic law in the form of aqidah (monotheism), tasawuf, muamalah, and fiqh law. Another name for al-maṣādir al-aḥkām is al-adillah al-shar‘iyyah. So that, many Islamic law scholars equate between al-maṣādir al-aḥkām and al-dillah al-shar‘iyyah.

Etymologically, the word al-maṣādir and the word al-adillah juxtaposed with the word al-shari‘ah have different meanings. The word al-maṣādir is the plural form of maṣdar means source. And al-adillah is the plural of the word dālil means guidance. Terminologically, the sources of Islamic law are the arguments from which shari‘ah laws are drawn. From this definition, we can see that there is a need for specialties in producing a law. The two sources of Islamic law as qat‘iyu al-dalālah and have the highest validity level are;

The first is al-Qur’an. Al-Qur’an is the first and highest source of Islamic law. Editorialy, al-Qur’an is a qat‘i al-wurūd holy book. That is, al-Qur’an, from the aspect of its pronunciation and meaning, has absolute authenticity and can be accounted for in terms of any scientific disciplines. In addition, al-Qur’an also has the character of qat‘iyu al-dalālah. That is, the position of al-Qur’an as the highest proposition or source of law has an absolute level of truth because it comes directly from Allah SWT. This is what distinguishes between the arguments originating from God directly and those originating from humans.

In contrast to the authenticity of al-Qur’an in the aspect of dalālah al-aḥkām (validity in the laws contained), there are verses of al-Qur’an that are qat‘iyu al-dalālah

12 Syed Z. Ahmad, Qur’an, the Universal Message Guides Mankind to Ways of Peace and Safety (USA: Christian Faith Publishing, 2021), 38.
(as the certain and firm proposition) and some are \textit{zanny al-dalalah} (uncertainty).\textsuperscript{15} \textit{Qaṭiy} verses are those of \textit{al-Qur’an} whose meanings can be understood clearly and only contain one meaning, such as the verses explain about concept of \textit{hudud} and \textit{kafarah}. Whereas, \textit{zanny} verses are specific verses that do not contain one meaning so that it opens up opportunities to give various interpretations, such as in the word \textit{quru’} in chapter \textit{al-Baqarah} verse 288. Some interpret the word \textit{quru’} as sacred from menstruation, there are also those who interpret the word \textit{quru’} with \textit{haidh}.\textsuperscript{16}

This difference arises because often the pronunciation used in \textit{al-Qur’an} is \textit{mujmal} (general) so that the interpreters differ in interpreting or extracting the law from the source. Among the general editorials of \textit{al-Qur’an} are the commands for prayer, charity and fasting. Thus, \textit{al-Qur’an’s} explanation of law has three characteristics, namely: (1) \textit{al-Qur’an} contains \textit{muḥkamāt} verses that explain law clearly and in detail without requiring explanation; (2) \textit{mujmal}, namely \textit{al-Qur’an} provides laws by mentioning only the outline and to implement them requires deep explanation and interpretation; (3) \textit{al-Qur’an} explains a law with \textit{ishārah} and \textit{‘ibārah}. Explanation like this is intended to understand the meaning and signs contained therein.\textsuperscript{17}

The second is \textit{al-Sunnah}. \textit{Al-Sunnah} (living tradition of the Prophet Muhammad SAW), or often called \textit{ḥadīth}, has a more complex meaning, namely everything that is based on the Prophet Muhammad SAW in the form of words, deeds and decrees. However, between the two terms, \textit{al-sunnah} and \textit{ḥadīth}, there is a slight difference. \textit{Al-Sunnah}, namely everything that is based on the Prophet Muhammad SAW in general in the form of words, deeds and decrees, while \textit{al-ḥadīth} is all sayings and news that are based not only on the Prophet Muhammad SAW but also on the companions of the Prophet who tell about something the Prophet SAW did.\textsuperscript{18}

From this understanding, \textit{al-Sunnah} can be divided into three: (1) \textit{sunnah qauliyyah} in the form of sayings of the Prophet, which were heard by his companions who then used these sayings as laws to be implemented; (2) \textit{sunnah fi’liyyah} in the form of all the deeds of the Prophet except those that are personal only for the Prophet; and (3) \textit{sunnah taqririyah} in the form of the Prophet’s determination and acknowledgment of other people’s statements and actions (letting/the Prophet not forbidding or ordering them).\textsuperscript{19}

\textbf{Islamic Law: Between Religious Humanism and Liberal Humanism}

Etymologically, humanism has two meanings; first, a system of thought that is rational in nature and more human-oriented (anthropo-centric) than that which is divine or supernatural (theo-centric). Second, humanism also refers to the culture of thinking of the Renaissance movement which has an interest in Greek and Roman thought traditions.\textsuperscript{20} “Humanism” in the context of the Renaissance is a spirit of thinking by using reason and human rationality as a standard of truth that must be followed, especially for those who live in the modern era. In many ways, the meaning of humanism in the context of the Renaissance tradition of thought tends to leave religion. Because

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\item \textsuperscript{15}Najmuddin Qadir Karim, \textit{al-Ijtihad fi Maurid al-Naṣṣ: Dirāsah Uṣūlīyyah Muqārānah} (Beirut: Dār al-Kutub al-‘Imīyyah, 2006), 96.
\item \textsuperscript{17}Zidan, 283.
\item \textsuperscript{18}Muhammad Abu Zahra, \textit{al-Ḥadīth wa al-Muḥaddithūn} (Riyad: al-Maktabah al-‘Arabīyyah, 2000), 9.
\item \textsuperscript{19}Suparman, \textit{Filsafat Hukum Islam} (Jakarta: Perpustakaan Nasional, 2015), 29.
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they think that religion, with its metaphysical doctrines, actually makes humans live in a pessimistic realm. In fact, some say that religion is a source of decline.\(^{21}\)

Departing from the etymological meaning above, it can be understood that humanism is a philosophical thought that prioritizes human values and positions and makes them a criterion in all things. Humanism has become an ethic-based doctrine whose scope is expanded to reach all human ethnicities consisting of social, political, scientific and legal aspects. Humanism in this complex sense contrasts with traditional ethical systems which only apply to certain ethnic groups and to certain objects of study.\(^{22}\)

At least, in modern humanism, there are two main currents: (1) religious humanism, rooted in the Renaissance-Enlightenment tradition and followed by many artists, midline Christians, and scholars in the free arts. Their views are usually focused on the dignity and ethics embedded in religious values as contained in the teachings of the holy book; (2) secular humanism, reflecting the rise of globalism, technology, and the fall of religious power. Secular humanism also believes in the dignity and value of a person is a self-awareness that boils down to the logic of common sense. This second group understands that humans, with their logical abilities and intelligence, are able to make rules without having to involve religious doctrines and norms.\(^{23}\)

Sociologically, liberal humanism, within the framework of modernity, gave birth to a view that wants to separate transcendent spiritual values. Because, according to them, religion in the perspective of modernity, is considered unable to solve various problems exist in society. Because of this, the internalization of values produced in the name of modernity seems to be a necessity and must be followed by everyone, so it is not surprising that today’s society is drifting in modernity trends and regarding religion as an obstacle to progress.\(^{24}\)

Liberal humanism emphasizes the role of man himself. It is a form of human’s responsibility towards him, so that, he can have meaning and value in his living. In addition to roles, which can also lead to responsibilities, liberal humanism believes in naturalistic metaphysics or an attitude towards the universe which regards all supernatural forms are as myths, regards nature as the totality of existence and as a constantly changing system of independently existing matter and energy.\(^{25}\)

Moving from liberal humanism, Bunge understands religious humanism is how to see humans based on moral values (ethics) as contained in religion. Religious humanism, as a result of the struggle between religious-based ethic values, is more based on the spirit of internalizing human values and religious ethics as a basis for action. According to Harjana, humanism is understood as a view that emphasizes human dignity, roles, responsibilities and abilities in solving their own problems.\(^{26}\) Then, the addition of "religious" means as an ethical thought that upholds human values, dignity, roles, and


\(^{25}\) Karotemprel, 169.

responsibilities developed from religious doctrine as a form of moral responsibility to God.

In *al-Qur’an*, there are many verses which talk about humanism (humanity). An example is in chapter *Ṣād* verses 71-72: "Remember, O Prophet’ when your Lord said to the angels, “I am going to create a human being from clay. So when I have fashioned him and had a spirit of My Own ‘creation’ breathed into him, fall down in prostration to him”. This verse explains that Allah has created humans in the best possible form, implanted in the minds of humans moral, emotional and feelings. Those who feel the position of the spirit, heart and feelings play a greater role in realizing the meaning of humanity whose system and noble values originate from Islam.

Whereas, in another verse, *al-Qur’an* chapter *al-Isra’* verse 70 states: "Indeed, We have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures". This verse explains how hard the Prophet Muhammad’s mission was at that time. The Prophet was not only tasked with purging paganism or the worship of idols, but also managing the morals of Arab society which was hit by an acute scarcity of humanity. About this mission, the Prophet once declared himself that he was sent by God to perfect morals.

The message of humanity was also very clearly conveyed by the Prophet in the pilgrimage of *Wada’* in the 10th year of the *Ḥijra*. The message of humanity is: "O people remember, in fact, your God is one, and your ancestor is also one. There is no advantage for the Arab nation over other nations. There is no advantage for other nations over the Arab nation. There is no advantage for people with red skin over people who black skin. There is no superiority for black people over red skin people, except for their fearness to God". (a *ḥadīth* narrated by Ahmad, al-Baihaqi, and al-Haitami).27 The Prophet’s speech contains a deep message on human values. He started with the exclamation "yā ayyuha al-nās" (O people). This indicates that the substance of the teachings he delivered are universal and applicable to all human beings.28

In the context of Islamic law, religious humanism is understood that Islamic law is purely sourced from the revelations of Allah SWT and *al-Sunnah* of the Prophet Muhammad SAW. This does not mean that Islamic law is textually and rigidly drawn from these two sources. From the aspect of *dalālah al-ahkām*, both are *qāṭ‘i* (absolutely have a valid standard of truth). Understanding the religious humanism of Islamic law means placing classical, medieval and modern human values at the level of the universal values of *shari‘ah* law itself. At a more practical level, understanding Islamic law is more oriented towards human needs and *maṣlahah* than the *maṣlahah* for *shari‘ah* makers (Allah SWT and His Messenger).

Concerning with the strategic role of *qiyaṣ* theory, another spirit to be the starting point for making Islamic law able to harmonize with various changes is because Islam is the religion of *raḥmatan li al-‘ālāmin* (as a mercy to the universe) and *al-Islām ša‘līh likulli zamān wa makan* (Islam is an adaptive religion to every period of time and place).

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28 This speech came out more than 14 centuries before the declaration of Human Rights (HAM) by the United Nations in 1948. The Prophet’s *ḥadīth* reaffirmed the principle of monotheism and the origin of one father (namely Prophet Adam), followed by a warning about the principle of human equality. Again, this confirms the logic that was conveyed earlier that departing from monotheism, recognition of human equality appears. Humans come from a single ancestor that is glorified by Allah so that no one may make claims to the privileges of their nation, race, physical form, region of origin, compared to other people. Regarding the degree of nobility, Islam provides special criteria, namely piety. See: Shamsuddin, 303.
Islam also highly upholds the values of justice (al-’adâlah), freedom (al-ḥurrîyyah), equality (al-musawâh), wisdom (al-ḥikmâh), and human goodness (maṣâliḥ al-’ibâd). Ibn al-Qâyûm (d. 751 H/1347 AD) said: “Shari’ah law is a rule based on wisdom and enthusiasm to achieve public welfare for life in this world and the hereafter. Shari’ah law must contain the values of justice, wisdom, and kindness. Therefore, any rule of law that replaces justice with injustice, compassion with hostility, public benefit with damage, wisdom with nonsense, then the rule of law cannot be categorized as a rule of shari’ah, even though this is justified based on an appropriate procedure of interpretation.”

Moving on from the above philosophical values, all different views on the dimensions of the religion of Islam starting from morals, creed, worship, and muamalâh which are partial (juziyyah) can be understood and integrated through universal values. It is this spirit of universality (kulliyyah) that inspires both classical and contemporary reforming scholars to maintain the elasticity of Islamic law so that they can continue to have dialogue with various social changes and the development of human civilization through the theory of qiyâs in Islamic law.

Qiyâṣ in the Lens of Ash’ariyyah and Mu’tazilah Scholars

In practice, the notion of ‘ilah contained in qiyâṣ is not devoid of pros and cons, particularly among the al-fiqh scholars. Some scholars do not want to accept and allow associating legal provisions with ‘ilah. They consist of the Ash’ariyyah and Zahiriyah scholars. For some Ash’ariyyah scholars and as theologian scholars view this issue from the perspective of God’s perfection, that the perfection and majesty of al-Qur’ân is a manifestation of God’s perfection and majesty. Therefore, all legal rules that have been stipulated in al-Qur’ân and al-hadîth have basically fulfilled this perfection so that they do not require human interpretation. In addition, excessive human interpretation will actually reduce the breadth and complexity of the meaning contained in al-Qur’ân itself.

Several Ash’ariyyah and Zahiriyah scholars rejected the Mu’tazilah’s opinion, saying that all God’s provisions have intentions and goals and those purposes are totally within human conception. For this, the Mu’tazilah group is of the view that Allah SWT is obliged to realize these aims and objectives. Theologically, the view that obliges God to do something according to Ash’ariyyah is a view which hinders or limits God’s actions. And this kind of understanding, in fact, negates the supreme perfection of God Himself. If only God could become perfect by doing this deed, then God’s perfection would certainly depend on something other than him and this would be impossible.

Based on the view of Ash’ariyyah scholars, it appears that they are more theocentric by placing God’s perfection above all else. They reject all views that have the potential to reduce and undermine God’s perfection, including in the realm of fiqh law. In their understanding, God does as He pleases without being limited by anything other than His own entity. Whether God’s actions will give birth to a good lesson or not, for them is not a problem because human beings are essentially objects of law and must always being obeying His decrees.

30 Malcolm H. Kerr said that the theory of maslahah contains the principles of tajdid/renewal in the works of several uşû al-fiqhî scholars for centuries and proves the dynamics of Islamic law, especially issues of humanism and social change. See: Malcolm H. Kerr, Islamic Reform: The Political and Legal Theories of Muhammad Abduh and Rashid Ridâ (California: University of California Press, 1966), 55.
 Basically, the theological argument put forward by the Ash'ariyah scholars is in order to stem the views of the Mu'tazilah who always see an act of God in a rational and deterministic way. And according to the Mu'tazilah, it is this rational reason that requires God to act. Apart from the theological arguments they believe to be true, at a practical level, especially in the area of fiqh law.

Actually, the Ash'ariyah scholars only questioned God in the theological area. In relation to the rules of determining fiqh law, they see a causal relationship between the determination of law and the logical reasoning behind it. Al-Ghazali, for example, in several of his works, discusses God in the context of usul al-fiqh. Although al-Ghazali’s concept of 'illah is quite close to Ash'ariyah theology, in principle, he admits that God is an important factor in establishing a law, especially in legal cases which do not have textual references from al-Qur'an and as-sunnah.

The difference in concept between the Ash'ariyah and the Mu'tazilah, indeed, did not affect the practice of using 'illah as a methodology in carrying out legal istimbat among the scholars. This can be proven in the span of the history of the development of Islamic law. The issue of 'illah remains an intensive study both during the Companions, tabi'in and ulema periods of the school of thought until today’s contemporary times. And 'illah in the theory of qiyaṣ increasingly proves that the elasticity of Islamic law is in solving various kinds of problems of Muslims in various parts of the world.

**Qiyaṣ and the Elasticity of Islamic Law**

Terminologically, the word qiyaṣ comes from the root word qāsa-yaqīsu-qiyaṣan means “measurement”. The scholars of usul al-fiqh define qiyaṣ in various editorials but they have the same meaning. Meanwhile, the definition of qiyaṣ is equating a law which does not have a textual argument in the nass with something which has a textual argument in nass based on the similarity of 'illah or benefit permitted by shari'ah. Qiyaṣ can also be interpreted as an activity of carrying out the equivalent of a law against another law. Al-Ghazali, in al-Mustashfa, defines qiyaṣ as entrusting the known thing to something else in establishing law or abolishing the law of both. This determination or elimination is made because of similarities between the two.

Amir Syarifudin explained that certain cases whose laws were determined by Allah SWT often had similarities with other cases whose laws were not stipulated in al-Qur'an. So, based on the similarity of these characteristics, the law that has been determined can be applied to other similar cases. In this case, Imam Shafi'i said that the position of qiyaṣ has a very important role to remain able to answer new problems even though there is no clear legal provision in al-Qur'an and as-sunnah. Thus, in the tradition of the Shafi'iyyah scholars, qiyaṣ occupies one level above istishāb and one level below qa'il al-shahābah (the opinion of the companions). In the book al-Risālah, Imam Shafi'i says that between qiyaṣ and ijtihad are two words with one meaning, anna ma'na al-ijtihad ma'na al-qiyaṣ (actually the meaning of ijtihad is synonymous with qiyaṣ).32

The majority of scholars of the Hanafi school, the Maliki school, the Shafi'i school, the Hambali school, the 'Ibadi school, the Mu'tazilah school, they use the qiyaṣ theory in their ijtihad. There are only two schools of thought who reject qiyaṣ as a means of carrying out legal istimbat. They are the Shi'ah and Dahiriyah schools. According to the majority of scholars, qiyaṣ includes taking lessons from an event. In al-Qur'an, qiyaṣ refers to chapter al-Nisa' verse 59, namely the command to return to Allah SWT and the His Messenger.

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32 Hosen, Research Handbook on Islamic Law and Society, 294.
Meaning: “O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger, if you ‘truly’ believe in Allah and the Last Day. This is the best and fairest resolution”.33 (Q.S. al-Nisa': 59)

According to the usūl al-fiqh scholars, qiyaṣ requires four main elements. These four elements are often also called the pillars of qiyaṣ, namely: (1) al-aṣlu. The jurists define al-aṣlu as a clear law based on a clear texts; (2) al-far’u. al-far’u is a branch, as opposed to the word al-aṣlu above. What is meant by al-far’u is a problem whose legal texts are not found in al-Quran or al-Sunnah explicitly;34 (3) al-ḥukmu. As for what is meant by al-ḥukmu is the shari’ah law contained in al-aṣlu; and (4) al-‘illah. Al-‘illah is the similarity in the nature of law contained in al-aṣlu (and also in al-far’u).35 The example above, ‘illah is the common thread that connects the law of the juice of grapes and dates and the juice of all other fruits, both of which are equally intoxicating.

In general, the shari’ah law has the goal of realizing benefit for humans in the worldly life and the hereafter. Thus, the existing rules in Islam are always directed to achieve the above goals. To achieve this maslahah, one of the means that can be used is to understand the ‘illah of the law itself. With the ‘illah of the law, Islamic law will always be able to answer various contemporary problems which are textually not mentioned in the nasṣ. So, understanding the ‘illah of the law is directly related to the benefit to be realized. The benefit is, at the same time, the general purpose of enactment of law. It is in this regard that the study of masālik al-‘illat (the procedures to obtain the argumentation of the law) is an important study to reveal maqāṣid al-shari’ah (the purposes of Islamic law).

Several scholars gave various concepts and formulations about ‘illah, such as: (1) Muhammad Abu Zahrah gave a clear and firm definition of ‘illah, namely al-waṣf al-dhāhir al-mundabiṭ li al-ḥukm (a clear characteristic or condition that is measurable and has similarities with the shari’ah law).36 (2) Abd al-Wahab Khalaf in the book Maṣādir al-Tashrī’ al-Islamiy fi mā lā Naṣṣa fih, reinforces the notion of ‘illah by relating it to law. According to him, the ‘illah of the law is a clear characteristic used by lawmakers (shari’) as a anchor for legal provisions with the intention to realize the wisdom contained in the law.

In order to determine a law through the theory of qiyaṣ, there are several steps that must be taken to be able to find the ‘illah of the law through a mechanism called masālik al-‘illah37 namely: (1) saṣṣ or al-maṣṣūs. According to Imam Taqiuddin Abdul Wahab Ibnu Subki, ‘illah, which is indicated by the nasṣ, is directly mentioned by the pronunciation of the texts such as the words kashā, sabab, ajli, kai and izhan. (2) al-ijmā’ which was carried out by the companions about the ‘illah of the law after the time of the

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33 In the book of Mafātih al-Ghayb, Fahrur Razi interprets that the intention of returning affairs to Allah SWT and the Prophet SAW in the verse is an order to use qiyaṣ. This opinion is reinforced by the use of al-Qur’an and al-Sunnah in qiyaṣ, although it is not explicitly stated.

34 In the case of khamr, what becomes al-far’u is al-nabidz, namely the juice from other than dates and intoxicating wine.


36 Abu Zahrah gave an example of prohibiting khamr with intoxicating ‘illah (iskar). The ‘illah intoxication is a clear characteristic, measurable and can be proven concretely and is indeed appropriate to be the reason for law enforcement.

Prophet Muhammad SAW. So, the agreement is held as the ‘illah of the law.38 (3) al-subru wa al-taqsim, namely testing and limiting the worthy characteristics to be made as ‘illah of the original law.39

The conditions agreed upon to make ‘illah of a law are as follows:40 (1) it must be in the form of clear, real characteristics and can be captured by the human senses, such as the drunken nature of al-khamr and this can also be found in drinks other than the intoxicating al-khamr; (2) it must be of a definite and measurable nature and apply universally to all people;41 (3) it must be of a nature relevant to the law;42 and (4) it must not be in the form of a nature which is limited to original law. So, the character of ‘illah must be manifested in other than the original law, because the purpose of giving ‘illah of the law is it can be transmitted to branch law (al-far’u).

Conclusion

From the description above, it can be concluded that qiyaşs has a significant role in efforts to realize the elastic character of Islamic law in resolving contemporary issues of Muslims which do not have clear legal provisions in nasṣ, both in al-Qur’an and al-Sunnah. Technically, this theory can be operationalized through the means of ‘illah (‘illah al-ḥukm/legal reasoning) contained in the nasṣ to find similarities with the ‘illah in new cases. Several points related to qiyaşs are: (1) as a theory of Islamic law, qiyaşs needs to be distinguished from the sources of Islamic law (maṣādir al-ahkām), namely al-Qur’an and al-Sunnah; (2) developing qiyaşs theory does not mean supporting liberal humanism that is sown from the renaissance and enlightenment traditions but rather religious humanism which leads to the universal values of al-Qur’an itself; (3) of the eight existing schools of fiqh law, there are six schools which use qiyaşs as a method of legal initiation and the other two reject it. This is evidence that the accuracy of qiyaşs is considered by the majority of the Muslim scholars.

References

38 An example is the ‘illah of the parents’ territorial rights over the assets of young children based on the nature of their children.
39 For example, there are texts which state that riba faḍl or nasī’ah is prohibited in buying and selling wheat for wheat. However, there are no texts or ijma’ that show the legal ‘illah, so, the mujtahid researched to find out the prohibition of buying and selling usury, whether the ‘illah is because wheat is the staple food, or because wheat is only a food. What is clear, wheat is a food that can be measured using measurements or scales.
41 For example is about qada’ prayer for travelers. According to the majority of the Muslim scholars, the only thing that allows travelers to make up prayers and break their fasting is the safar (having journey) itself, not mashaqqah (difficulties experienced during the trip). This is because traveling is a characteristic that can be measured and applies in general to all people, places and circumstances. In contrast to mashaqqah which cannot apply to all people, places and circumstances because of the various means of transportation and one’s condition, the level of mashaqqah experienced will also be different. For people who experience mashaqqah, of course they pray and break their fast, in contrast to people who do not experience mashaqqah, of course they are not allowed to do qaṣar prayer and break their fast because mashaqqah is a trait which cannot be measured and does not apply in general (consequently the law is different for each traveler). Then, it cannot be used as an ‘illah. Therefore, what is right according to the majority of the Muslim scholars is traveling, because this characteristic can make the law uniform for travelers, and that is what deserves to be an ‘illah.
42 For example, the nature of being drunk is in line with the prohibition of khamr because the prohibition of khamr is in order to protect the mind. Or killing on purpose is in line with the legal obligations of qiṣāṣ where qiṣāṣ law is carried out in order to preserve life.

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