



## THE URGENCY OF JURISPRUDENCE IN ACTUALIZATION ISLAMIC LAW

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### Abstract

*Human life that continues to develop in accordance with its human nature, makes many new cases appear without any legal provisions in both the Quran and hadith. The evolving dynamics of society are not in line with the static legal text. Based on these conditions, it is necessary to re-actualize Islamic law. Another problem that comes to the fore is that to re-actualize there must still be a mechanism or formula in finding the new law. The rules of jurisprudence apparently provide concrete solutions to the need for a method or method of finding the law (istinbath al-ahkam). With the rules of jurisprudence, it is hoped that contemporary problems can be found as an application to the reactualization of Islamic law.*

**Keywords:** *Rules of Jurisprudence, Reaktualization, Islamic Law.*

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### 1. INTRODUCTION

Islamic teachings are a normative rule that Allah desires as the Supreme Creator and All-Understanding Substance of His creatures' interests to build life in this world. Allah Almighty created man as caliph, His duty in the world to act according to the normative rules He wants. Allah Almighty makes laws both pertaining to the universe and those pertaining to human life both individually and socially. The universality of law in Islam means that Islamic teachings apply to all mankind in this world by breaking through the territorial boundaries of a country, breaking through tribal barriers, nationality, language, skin color, and so on.<sup>1</sup> However, in answering various new problems or problems in society that urgently need legal provisions, the Koran and Hadith seem unable to deal with them, in connection with the cessation of revelation and the death of the Prophet Muhammad SAW who acted as a mediator between revelation and the reality that lived at that time.

According to A. Athaillah, what is meant by the Koran explains everything, does not explain everything in detail, solves all cases in detail, and solves all problems that arise with observance. However, what is intended is to explain everything that is *al-qawanin al-'ammah* (general rules) and *al-mabadial-kulliyah* (universal principles) that can be applied to all cases

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<sup>1</sup> Siroj, A. Malthuf, "Universality And Locality Of Islamic Law " in Al-Ihkam, Vol. 10, No. 1, 2015, p. 1. 7.

and problems that arise in human life, both for those who live in the past and present and for those who live in the future.<sup>2</sup>

It has become sunnatullah, that man with all the advantages of his intellect given by Allah Almighty, is certainly dynamic. Many things that at the time of the Prophet Muhammad SAW were still alive did not exist, it turns out that today it happened in the field of law. Of course, Muslims need concrete answers related to legal problems that are contemporary in nature, while on the other hand, neither the Quran nor the Hadith, provide legal certainty to the dynamics that arise in society in the current context.

Actually, the anxiety of the Muslim community has been given its formula by the previous classical scholars through the science of ushul fiqh and also the science of jurisprudence. In *Islamic law istinbath*, there are 4 (four) important sciences that are interrelated. The first two sciences are the "principal" sciences, namely jurisprudence and ushul al-fiqh. The object of jurisprudence is the act of mukallaf in terms of which is then divided into compulsory, sunnah, haram, makruh, and mubah. On the other hand, ushul fiqh is a methodology of legal istinbath<sup>3</sup> and at the same time serves as a standard against the degree of truth of *istinbath*. Ushul fiqh plays a role in determining the *procedure of legal istinbath*. In the face of the modern world, many contemporary problems have emerged, which of course also require contemporary thinking to find the answer. In this case, the rules of jurisprudence as a discipline that can provide answers to various contemporary problems that arise. In this regard al-Qarafi says that the rules of jurisprudence serve as a binder to the varied and scattered *furu'* issues.<sup>4</sup>

## 2. IMPLEMENTATION METHOD

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<sup>2</sup> H. A. Athaillah, "Getting to Know Qawa'id Fiqhiyyah (Legal Maxim)", Paper, IAIN Antasari Banjarmasin Postgraduate Program, 2007, p. 2. See also H. A. Athaillah, History of the Koran: Verification of quranic authenticity, (Banjarmasin: Antasari Press Banjarmasin, 2006), 1st Cet., pp. 21-22.

<sup>3</sup> M. Ali Haidar, Nahdhatul Ulama and Islam in Indonesia: A Fiqh Approach in Politics, Jakart: PT Gramedia Pustaka Utama. 1994, p. 9.

<sup>4</sup> M. Ali Haidar, Nahdhatul Ulama and Islam in Indonesia: A Fiqh Approach in Politics, Jakart: PT Gramedia Pustaka Utama. 1994, p. 9.



### 3. RESULTS AND DISCUSSION

#### Understanding the Rules of Jurisprudence

Linguistically, the rules are taken from the Arabic *qa'idah* which means foundation or basis. While *qawwa'id* is the plural of *qa'idah*. As for terms, the rule of jurisprudence is a law or universal case that can understand some of the laws and problems that fall within the scope of its discussion. Meanwhile, *fiqh* is linguistically taken from the word *al-fiqh* which means understanding. Meanwhile, in terms it is to know the laws of *syar'i* related to the charity of servant deeds based on his arguments in detail. From this it can be concluded that the rules of jurisprudence are laws or foundations of a general nature that can be used to understand the problems of jurisprudence covered in its discussion.<sup>56</sup>

Rules are not actually monopolized or do not exist only in certain disciplines. Rules exist in various disciplines, such as interpretation, hadith, linguistics, and others. In legal science, *kaidah* as a term used by *fuqaha'* for the development of the scope of a law found two terms, namely<sup>7</sup> *qa'idah fiqhiyyah* and *qaidah ushuliyah*. Tajuddin Din al-Subki gives an understanding of the *fiqhiyyah* rule with a *kully* (general or comprehensive) legal case that can be applied to the entire *juz'i* (its parts) to know and understand the laws of the section. While Ali Ahmad al-Nadwi defines the *fiqhiyyah* rule on the basis of the general law of *syara'*, from this rule it is known the laws of something that is under its scope.<sup>8</sup>

The rules of jurisprudence begin with the identification of several legal facts that are similar and have inductively similar motives, and then create general rules of jurisprudence that can be applied to similar *juz'iyyah* problems that fall within its scope. This means that the *fiqhiyyah* rule is also sourced or absorbed from the Quran and Sunnah but not directly. Because the rules of jurisprudence are taken from *fiqh*, and *fiqh* is produced from *ushul fiqh* through the *ijtihad* process which is sourced from the Quran and Sunnah.

There are at least five basic rules in jurisprudence that have been generalized by jurisprudence scholars from various *furuiyah* problems that exist with inductive reasoning. These five rules almost govern the entire chapter of jurisprudence studies, both *worship* and *muamalah*. Then from these five rules gave birth to other branches of rules that are still in line with the main rules.

- 1) Segala sesuatu terantung tujuan (الأمور بمقاصدها).
- 2) Yakin tidak hilang karena adanya keraguan (الدُّبُونُ الِيزَالُ بِالشَّكِّ).
- 3) (المشقة تجلب التيسر) (Attractive Ease Difficulties)

<sup>5</sup> Shaikh Muhammad ibn Shalih Al-'Utsaimin, *Sharah Ushul min Ilmi Ushul*, p. 100. 14.

<sup>6</sup> Muhammad Shidqi Al-Burnu, *Al-Wajiz fi Idhohi Qawaid Al-Fiqh Al-Kulliyah*, p. 100. 13.

<sup>7</sup> Jaih Mubarak, *Fiqh Rules, History, and Asasi Rules*, Jakarta: PT RajaGrafindo Persada. 2002, p. 3.

<sup>8</sup> Ali Ahmad An Nadwi 1991, *alQawaid al Fiqhiyyah*. Beirut: Daar al Qalam. Thing. 41.

4) Instability should be eliminated (الضرار يزال).

5) Tradition/costums can become laws (العادة حكمية)

There are sources of jurisprudence whose texts are taken directly from the nash of the Qur'an and As-Sunnah. There are also those whose texts are not taken directly from the nash of the Qur'an and As-Sunnah, but whose content is based on the Qur'an and As-Sunnah. The rules of jurisprudence are composed based on the *ijtihad* of the scholars. And it is usually based on a *qiyas* or *ta'lil* (seeing the cause of a law) or by looking at the nature of *syar'i* law in general and looking at the *maqashid syar'iyah* (the purpose and purpose of a *syar'i* law) or something else.

The benefits of learning it and mastering it are twofold, namely:

1. A rule of jurisprudence can be used to find out many of the problems of jurisprudence covered in its discussion. And this will make it very easy for a claimant to know the laws of jurisprudence without having to memorize a problem one by one.
2. Mastery of the rules of jurisprudence will greatly help a person in providing a contemporary and unprecedented law in an easy way.

*Qawaid Fiqhiyyah* is different from *Qawaid Ushuliyyah*<sup>9</sup>. Because *Qawaid Ushuliyyah* is a universal rule that can be applied to all parts and scopes. While *qawaid fiqhiyyah* is a *qawaid aghlabiyyah* (majority rule) that can be applied to most of its branches. That is the first difference. Furthermore, *qawaid ushuliyyah* is a means of issuing amaliy sharia law. Whereas *qawaid fiqhiyyah* is a collection of similar laws with the same *illat*, collected with the aim of making it easier to find out. *Qawaid fiqhiyyah* comes after there are branches (*furu'*) because this rule will gather branches that have the same *illat* in a rule, while *qawaid ushuliyyah* the existence of seblum *furu'* occurs, because of this *ushul fiqh* rule by which a *mujtahid* will issue a law from this *furu'*. *Qawaid fiqih* are common laws, while *qawaid ushulilyyah* are general postulates.

In reality, it is well known that the study of jurisprudence is very extensive. In interpreting the law, the priests of the madzhab have a certain framework that can be used as a basic rule by which the results of their thoughts can be evaluated by their successors. Due to the unequal abilities that madzhab priests have against the background of their conditions and environment, madzhab priests try to make the points of their minds through basic rules. With these basic rules, you can find out the similarities between one *ijtihad* and another. This rule is hereinafter referred to as *qawaid fiqhiyyah*.

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<sup>9</sup> Ali Ahmad al-Nadawi, *al-qawaid al-fiqhiyyah* (Damascus: Dar al-Qalam, 1998), cet. 4, pp. 43-45. Also quoted by Ade Dedi Rohayana, *Ilmu Qawaid Fiqhiyyah* (Jakarta: Gaya Media Pratama, 2008), p. 68.



## History of Jurisprudence

The history of all shari'a sciences begins since the time of the Prophet Muhammad SAW because that was the time of the descent of revelation and tasyri'. The rules of jurisprudence are followed by the existence of several verses and hadiths of Prophet Muhammad SAW which can be regarded as a rule that covers many fiqh problems. The rule of jurisprudence is known as a discipline of its own around the fourth century hijri and then continued in the centuries that followed. According to al-Suyuthi (d. 911 H) and Ibn Nujaym (d. 970 H) in his kitab *al-Ashbah wa al-Nazhair*, it originated from al-Qadhi Abu Sa'd al-Harawi (d. 488 H) who received news from some scholars of the Hanafi school that Abu Thahir al-Dabbas 19 (d. 340 H) one of the great scholars of the Hanafi school in the 4th century Hijri had summarized all the problems of jurisprudence of the Hanafi school only on 17 rules. Finally, al-Harawi headed for the town where al-Dabbas lived. Finally, these seven rules reached the ears of al-Qadhi Husain ibn Muhammad ibn Ahmad al-Marwazi (d. 462 H), so he summarized all the problems of jurisprudence in the Shafii school to four rules only which were later added one more rule by some scholars of the Shafii school, namely the rule of "al- *al-Haqaiq* by al-Khadimi.<sup>10</sup>

They are very selective in choosing and sorting out the fiqh rules that will be included in the magazine. They compiled this majallah using a short and concise redaction like a statute. The existence of majallah can raise the position and popularity of the rules of jurisprudence. *Majallat al-Ahkam al-'Adliyah* contributed much to the development of jurisprudence and legislation. According to 'Ali Ahmad al-Nadwi, the development of *qawa'id fiqhiyah* can be divided into the following three phases: 1). growth and formation phases; 2). the phase of development and codification, and 3) the phase of strengthening and maturation. The fuqaha included the rules of jurisprudence in this magazine after first studying the sources of jurisprudence and several papers on the science of jurisprudence, such as *al-Ashbah wa al-Nazhair* by Ibn Nujaim and *Majami'*

## The Urgency of Jurisprudence in Islamic Law

The urgency of the rules of jurisprudence can be seen from Abu Zahrah's presentation of the limitations of ijtihaad: "The application of earnestness and the outpouring of effort, both in issuing the law of syara' and its application". Abu Zahrah divided the realm of ijtihaad on two fronts. First, the ijtihaad associated with the excavation of the law and its explanation and secondly, the ijtihaad relating to the application of the law. Abu Zahrah's version of the first model of Ijtihaad is a perfect and particular ijtihaad for a group of scholars who seek to know the

<sup>10</sup> Ibn Taimiyah, *Majmu' al-Fatawa* (Riyadh: Mathba' al-Riyahah, 1381 H), cet 1, vol. XXIX, p. 167.

practical branch laws of detailed postulates. According to jumhur ulama, such an *ijtihad* can be cut off at an age even though the Hanabilah people argue that an age cannot be empty of this *ijtihad*. *Ijtihad* the second model, scholars agree that an epoch cannot be empty of the second *ijtihad* model. They are *mujtahids* who *takhrij* and apply '*illat-illat*' law unearthed from branch issues that have been unearthed by earlier scholars. With this *tathbiq* (application) method, it will appear that the law of various problems that the first model *mujtahid* above does not yet know. This second model of *ijtihad* *mujtahid* pattern is commonly referred to as *tahqiq almanath* (determination and application of '*illat*').

Al-Qarafi broadly argues that the urgency of the rules of jurisprudence is threefold: First, the rules of jurisprudence have a special position in the Islamic scientific caliphate because the expertise of a *faqih* is closely related to the mastery of the rules of jurisprudence. Second, it can be a foundation for benefit. Third, make jurisprudence more organized so that it makes it easier for a person to identify a very large number of jurisprudence. Al- Zarkasyi argues that tying up matters that are scattered again (*fiqh*), in the rules that unite (the rules of jurisprudence) is easier to memorize and maintain. Mustafa al-Zarqa' argues that the urgency of the rules of jurisprudence clearly describes the general principles of jurisprudence, opening horizons and avenues of thought about jurisprudence. The rules of jurisprudence bind various practical branch laws with various *dhawabits*, which explains that each branch law has one *manat* ('*illat*/ legal reason) and a related aspect, although its object and theme Contemporary thinking about the rules of jurisprudence is closely related to the renewal that gives rise to modern and contemporary problems as well. Even the modern era and the issue of renewal can never be avoided from human life. As Din Syamsuddin said, at least one of the factors that made Islamic renewal emerge (precisely the renewal of understanding of Islam), which resulted in actualization in contemporary thought. Where these factors have been inherent and seen as Islamic dispositions. The factor is the disposition of Islamic universality.<sup>11</sup>

Based on the description above, the problems of contemporary jurisprudence in the future will be even more complex than today. This is due to the current development of the times which has an impact on the increasing disclosure of various problems of mankind, both relationships between fellow humans and with the surrounding natural life.

If you look closely, the scope of contemporary studies includes:

1. Aspects of family law, such as: division of inheritance, marriage contract via telephone, representation, pregnant marriage, birth control and others.

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<sup>11</sup> M. Din Syamsuddin, " Why the Renewal of Islam?, in the Journal of Ulumul Qur'an, Vol. IV, No. I, 1993, p. 1. 68.



2. Economic aspects, such as: interest system in banks, zakat mal and taxation, credit and social gatherings, professional zakat, insurance, and others.
3. Criminal aspects, such as: hand-cutting law, Islamic criminal law in the national legal system, and others.
4. Aspects of womanhood, such as hijab, career women, female leadership, and others.
5. Medical aspects, such as: grafting of body organs, dissection of corpses, contraception, euthanasia, cloning, IVF.
6. Technological aspects, such as: mechanical slaughter of animals, call to prayer with tapes, makmum to radio or television, greeting with a bell, and so on.
7. Political aspect (statehood), which is about the debate around the term "Islamic state", the process of selecting leaders, loyalty to the ruler (power and so on).

Aspects related to the implementation of worship, such as: hajj savings, qurban with money, withholding menstruation due to hajj, and others. Contemporary issues are generally related to muamalah, but it is possible that they are also related to worship. But in terms of worship, it is usually related to matters concerning the means for worship itself, such as the use of pills for menstrual delays in the implementation of the hajj. In terms of methodology, to answer contemporary problems, scholars look for cases discussed in the old books, or cases, analogous to them. Such decision-making is guided by a set of general principles, called ushul fiqh (the basics of jurisprudence) and the rules of jurisprudence. Among other things, there is the principle of consideration of the benefits and the ugliness of a decision; the principle of prioritizing the avoidance of vice; the principle that enormous benefits can overcome the inherent vices of the lesser; the principle of emergency (something that under normal circumstances is not allowed, but in an emergency is allowed); the principle of maslahah or public welfare; and so forth.

To answer contemporary problems for which there are no legal provisions, it can be resolved by the following rules of jurisprudence:

1. In the matter of muamalah can use the rule: "*al-Ashlu fi al-asy-yai al-ibahah hatta yadulla al-dalil 'ala tahrimi*", i.e. "The origin of something is permissible, so that there is a postulate/evidence that forbids it"
2. In the matter of worship: "*al-Ashlu fiiha tahrimi hatta yadulla al-dalil 'ala al-ibahah*", i.e. "The origin of something is haram, so there is a proposition that allows it".

Sterilization is one example of a contemporary event that can be completed using the rules of jurisprudence. Sterilization is to spay a male or female by surgical means (in general) so that they cannot produce offspring. Thus, sterilization is different from the method / contraceptive which in general only aims to avoid or reduce pregnancy for a while. Sterilization in men is called vasectomy or vasligation, which is the operation of breaking or binding channels or vessels that connect the testes (sperm factory) with the prostate gland (sperm shed), so that sperm cannot flow outside the penis (urethra). Sterilization for both men and for women according to Islam is basically (prohibited), because there are several things that are principled, namely: Sterilization (vasectomy / tubectomy) results in permanent sterility. This is contrary to the main purpose of marriage according to Islam, namely the marriage of a man and a woman in addition to aiming to obtain the happiness of the husband and wife in his life in the world and the hereafter, as well as to obtain legitimate offspring who are expected to become righteous children as the successors of his ideals. Although in terms of theory it is still possible to produce offspring if the bond is removed. Transforming God's creation by cutting and removing a portion of a healthy and functioning body (seminal/egg ducts). Looking at other people's aurat. In principle, Islam forbids people from seeing other people's aurat. But if seeing that aurat is necessary for medical purposes, then of course Islam allows, because such a situation has reached the level of emergency, as long as it is absolutely necessary for medical purposes and seeing only (as minimally as possible). This is based on the rules of Islamic law which states: "*Ma ubiiha li-al-dharurat biqadari ta'ziruha*". It means: "Something that is allowed because it is forced is according to the degree of its obstruction." But if the husband and wife are in a forced / emergency situation, such as to avoid a decrease in the disease of the father / mother to the offspring who will be born, or threatened the life of the mother if she conceives or gives birth to a baby, then sterilization is allowed in Islam. This is based on the rule of Islamic law which states: "*al-dharuraat tubihu al-mahzhurat*".

Based on the description above, it can be concluded that Islam does not justify birth control by means of sterilization (vasectomy / tubectomy) because it means that it has damaged the body's organs, and can also result in infertility forever, so that the person concerned cannot obtain offspring, except due to emergency, for example, because of the fear of decreasing the disease suffered by the father / mother towards the fetus they contain, or threatened the life safety of the mother if she conceives or gives birth to her baby.





#### 4. CONCLUSION

The rules of jurisprudence as a science are less well known and in demand by observers of Islamic law, which may be due to difficulties in learning them. Indeed, the rules of jurisprudence as a science have provided ways or methods of *istinbath-kan* law when *nash* does not provide concrete answers to the various contemporary dynamics faced by muslim societies. The rules of jurisprudence provide a kind of solution to formulate laws that can make it easier for people to solve legal cases. The rules of jurisprudence are the realm of *ijtihad* in applying the 'illat of law unearthed from the problems of branch law based on the results of absolute *ijtihad mujtahid*. With these rules of jurisprudence, the actualization of Islamic law can be implemented optimally.

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