

## THE DYNAMICS OF QAWAID FIQHIYYAH: THE CONSTRUCTION AND APPLICATION IN ISLAMIC LAW

Ro'is Alfauzi

Graduate Student at UIN Sunan Kalijaga Yogyakarta

Email: [alfauzirois21@gmail.com](mailto:alfauzirois21@gmail.com)

### Abstract

Qawaid al-fiqhiyyah is a helping tool in solving Islamic law which is increasingly complex and continues to experience development. Fiqh principles cannot be put aside for jurisprudence reviewers so that they can understand their urgency and application in carrying out legal *istimbath*. This study is a normative theological study, which examines the substance of qawaid al-fiqhiyyah, from its development to its implementation. The data was collected by tracing both classical and contemporary books that study the normative jurisprudence rules and the construction of fiqh rules in the modern era. The finding in this study indicates that qawaid fiqhiyyah has existed since the time of the Prophet (pbuh), Khulafaur Rasyidin to the time of Tabi'in and the modern era. Qawaid fiqhiyyah never disappears or fades because the rules of fiqh are still stored in written form and in the memory of the jurists and are always used in making legal discoveries. In Indonesia, qawaid fiqhiyyah is gathered as a legal basis for deity fatwas in legal considerations. Among them is the National Sharia Council or *Dewan Syariah Nasional* (DSN) at the Indonesian Ulema Council or *Majelis Ulama Indonesia* (MUI), qawaid fiqhiyyah is used in legal discovery in various problems faced by society. The implication of this finding is that legal changes will continue to roll in line with the times, but this is not a cause for concern because qawaid fiqhiyyah will be able to provide legal answers.

Qawaid al-fiqhiyyah merupakan sebuah alat bantu dalam menyelesaikan hukum Islam yang semakin kompleks dan terus mengalami perkembangan. Kaidah fikih tidak dapat di kesampingkan begitu saja bagi para pengkaji fikih sehingga dapat memahami mengenai urgensinya dan pengaplikasiannya dalam melakukan *istimbath* hukum. Kajian ini merupakan kajian teologis normatif, yang menelaah substansi qawaid al-fiqhiyyah, mulai dari perkembangannya sampai pada implementasinya. Pengumpulan data dengan menelusuri buku-buku klasik maupun kontemporer yang mengkaji kaidah fikih secara normatif dan konstruksi kaidah fikih di era modern. Temuan dalam kajian ini menunjukkan bahwa qawaid fiqhiyyah sudah ada sejak zaman Nabi, Khulafaur Rasyidin hingga pada masa Tabi'in dan era modern. Qawaid fiqhiyyah tidak pernah hilang ataupun luntur karena kaidah fikih tersebut masih tersimpan dalam bentuk tulisan maupun dalam

ingatan para fuqaha dan senantiasa dipergunakan dalam melakukan penemuan hukum. Di Indonesia qawaid fiqhiyyah dikumpulkan dijadikan sebagai landasan hukum bagi dewan fatwa dalam pertimbangan hukum. Di antaranya Dewan Syariah Nasional (DSN) di lembaga Majelis Ulama Indonesia (MUI), qawaid fiqhiyyah dipergunakan dalam penemuan hukum dalam berbagai persoalan-persoalan yang dihadapi masyarakat. Implikasi dari temuan ini bahwa perubahan hukum akan terus bergulir seiring dengan perkembangan zaman, namun tidak perlu dikhawatirkan karena qawaid fiqhiyyah akan mampu memberikan jawaban hukum.

**Keywords:** *Dynamics; qawaid fiqhiyyah; construction; Islamic law.*

## INTRODUCTION

The discussion of qawaid fiqhiyyah is the most significant thing in discussing Islamic law, this is because mastery of fiqh principles will be a common thread in fiqh issues that are adjusted to the problems of different places, times, and habits in the application of Islamic Law. So that it will make Islamic law always flexible in responding to social, economic, political, cultural, and legal issues. Between qawaid fiqhiyyah, qawaid usuliyah, fiqh and usulfiqh cannot be separated from one another. The four sciences are interrelated with the dynamics of the development of fiqh, because basically what is one of the subjects of discussion is fiqh. These four are also tools for discussion in the study of fiqh law.<sup>1</sup>

Qowaid has a meaning as a general rule in understanding shari'ah as rules that have been established by Allah for its people, in other words qowaid fiqhiyyah can be a guideline that makes it easier for Islamic law experts to conclude law on a legal issue. This of course makes qowaid fiqhiyyah an outline in carrying out an ijtihad against a legal problem, because fiqh cannot stand without a basic foundation that makes this fiqh stand firmly, and so it can solve problems. In this case, it is necessary to understand that fiqh is special, while qowaid fiqhiyyah has a very general character.

The description of the specificity of fiqh and the generality of qowaid fiqhiyyah can be explained that fiqh is a general understanding of Islamic principles and the laws contained therein. Understanding of these legal issues which can be divided specifically according to the study of each particular legal issue, for example, marriage law regulated in fiqh munakah, inheritance law is regulated in Fiqh faraidh, civil law is included in the fiqh muamalah rules and there are still many again in other areas of law that are regulated in a different fiqh. Each branch of fiqh has its discussion that is different from one another, for example, Fiqih

---

<sup>1</sup>Teungku Riyandi Syafri, *Kedudukan Qowaid Fiqhiyyah dalam Mengistimbathkan Hukum Islam*, (Samalanga: IAI AL-Aziziyah), p. 1.

muamalah regulates only in terms of civilization, while Fiqih faraidh regulates inheritance issues, the two fiqhs stand-alone without mixing because the fields of understanding and discussion of legal issues are different. This is what fiqh says has a special character.<sup>2</sup>

Meanwhile, qowaid fiqhiyyah is said to have a general nature, this is because every existing fiqh, be it muamalah fiqh, faraidh fiqh or munakahat fiqh, each stands on the same foundation and each stands on the same principles, which are known with the term qowaid fiqhiyyah, and the values contained in qowaid fiqhiyyah must be the basic value of each existing fiqh. The link between qowaid fiqhiyyah and fiqh is ushulfiqh, so the effort to make fiqh must use a method or method called ushul fiqh. These three bases have a clear sequence and relationship with one another, all of which is an understanding of Islamic law so that it can be applied to all aspects of life that are not constrained by time and age.<sup>3</sup>

Islamic law and qowaid fiqhiyyah have a relationship between one another/because the dynamics of Islamic law embodied in fiqh are very dependent on qowaid fiqhiyyah, the general characteristics or generality of these rules make Islamic law applicable in all conditions at any time and age. Qowaid fiqhiyyah makes fiqh a special, relative, and highly influenced science by place and time. Why not the development of society, culture, science, technology, all these things indirectly also affect the development of Islamic law. Sharia cannot change because of its immutable nature, because changing the syari'ah is the same as changing the provisions in the Qur'an and Sunnah, but the interpretation of sharia can change according to the times, where it is bridged.

## DISCUSSION

### A. Definition of Qowaid Fiqhiyyah

In terms of qowaid fiqhiyyah, two terms need to be explained, namely qowaid and fiqhiyyah. the word qawaid is Jama 'from the word rules which according to the language means al-principle, which means the basic basis, meaning the foundation/ foundation of the establishment of something by qowaid fiqhiyyah, as a parameter to understand the meaning contained in the Qur'an and sunnah as outlined in fiqh as a form of application of Islamic law or the subject matter. Meanwhile, according to the meaning of the term, qowaid fiqhiyyah is

---

<sup>2</sup>Prawitra Thalib, *Syariah: Konsep dan Hermeneutika*, 1<sup>st</sup> Print (Surabaya: Lutfansyah Mediatama, 2013), p. 23.

<sup>3</sup>Prawitra Thalib, *Pengaplikasian Qowaid Fiqhiyyah dalam Hukum Islam Kontemporer*, (Yuridika: Fakultas Hukum Universitas Airlangga, Vol. 31 No. 1 (January-April, 2016), p. 56.

defined by fuqaha' with different editors using different editors, among which are<sup>4</sup> the terminology of fiqh means, according to al-Jurjani al-Harafi:

العلم بالاحكام الشرعية من ادلتها التفصيلية وهو علم مستنبط بالرأى والاختهاد فيها والتأمل والنظر

Meaning:

The science that explains the shara' laws which amaliyah which is taken from its arguments which are interpreted and imitated through ijtihad which requires analysis and reflection.<sup>5</sup>

1. Abu Zahrah defines it as follows:

Qowaid fiqhiyyah is a collection of several laws that are similar back to one qiyas that collected them or to one legal provision that binds them.

2. Al-Suyuti defines it as follows:

Qowaid fiqhiyyah is a universal provision whose existence can correspond to its many parts (in number) and the law can be understood in terms of what it says.

From the definition above, it can be seen that every fiqh-Qaida has arranged and collected various kinds of fiqh problems from various topics/ so that fuqaha 'can return all fiqh problems to their rules of practice. Therefore, qowa'id fiqhiyyah is the result or conclusion of a detailed legal law of fiqh (Juz'iyah) and is separated as the final result of their ijtihad, then the separate parts are tied into one bond or rule so that The relationship between qawa'id fiqhiyyah and fiqh in Islamic law can be compared between sharaf and the applicative of a conversation in Arabic.

According to Prof. Hasbi Ash Shiddiqy, the principles of fiqhiyyah are the principles of kulliy which are taken from kulliy's arguments and the intentions of syara 'stipulating law (maqasid us syar'iy) on mukallaf and from understanding the secrets of tasyri' and the wisdom of it.<sup>6</sup> Broadly speaking, scholars are divided into two groups in defining qawaid fiqhiyyah. This is based on the reality that some scholars define qawaid fiqhiyyah as one that is universal, and some others define it as something that is majority (aghlabiyyah) only.

This difference departs from different perceptions which argue that qawaid fiqhiyyah is universal based on the reality that the exceptions contained in qawaid fiqhiyyah are relatively few, besides that they adhere to the qaidah that exceptions have no law, so that they do not reduce the universal nature of qawaid fiqhiyyah, the scholars argue. that qawaid fiqhiyyah has exceptions, so the universal mention of qawaid fiqhiyyah is not quite right.<sup>7</sup>

---

<sup>4</sup>Dahlan Tamrin, *Kaidah-kaidah Hukum Islam, Kulliyah al-khamsah* (Malang: UIN Maliki Press, 2010), p. 4.

<sup>5</sup>Hasbi Ash-Shiddiqy, *Pengantar Hukum Islam* (Jakarta: Bulan Bintang, 1975), p. 25.

<sup>6</sup>Mu'in Umar dkk, *Ushul Fiqh* 2<sup>nd</sup> Ed. (Jakarta: Dhana Bakti Wakaf, 1993), p. 187.

<sup>7</sup>Ade Dedi Rohayana, *Ilmu Qawaid Fiqhiyyah* (Jakarta: Media Pratama, 2008), p. 12-13.

## B. Methods of Composing Qowaid Fiqhiyyah and Its Development

At the end of the era of Maqasid fiqhiyyah codification, we will find many in the books of the scholars, where they divide qowaid on assasiyah qaidah and assasiyah ghoiru. Assasiyah principles are the five main principles that are not disputed by the school's scholars without contradicting them, another opinion of the five principles is

1. All cases depend on the purpose, 2) Adversity must be eliminated, 3) Belief cannot be eliminated by doubt, 4) Difficulty can attract convenience, 5) Custom or habit can become law.

In addition to the assasiyah principles, there are also the assasiyah principles of ghoiru which are complementary in some qodiyah. In several references, some say the number is 40 for non-assasiyah principles that are not disputed and 20 for which are disputed. Another systematics in Qowaid Fiqhiyyah is that some scholars sort the rules of the alphabet according to the alphabet, with a capacity of 145 types of rules which are then synthesized into 99 rules, then some fuqoha also systematize the principles of fiqhiyyah with the classification of the chapter on fiqh discussion. For example, the class of worship, chapter if the rules based on chapter mua'amalah, chapter uqubatjinayah, and so forth.<sup>8</sup>

In general, the development of qawaid fiqhiyyah is divided into three periods, namely the Prophet's period, Khulafaur Rashidin, and the Tabi'in period, namely;

### 1. The Period of The Prophet

In this period, the highest authority in making the law was in the hands of the Prophet, all problems in the community could be answered perfectly by the Qur'an and the Prophet's Hadith. The presence of Islam in Mecca is to improve faith and fight against the idolatrous infidels. Meanwhile, the period of establishing the law only started when the Prophet was in Medina.<sup>9</sup>At this time there was no specific scientific specialty studied from the Qur'an and al-Hadith. The spirit of the friends is fully devoted to ijihad and applying what has been obtained from the Prophet in the form of the teachings of the Qur'an and Hadith. Science only revolves around applying and developing the laws set by the prophet when facing new problems. At the time of the prophet, the position of fiqh was in the practical rather than the theoretical realm.

Besides, the Prophet did not leave the knowledge of fiqh in the form of a ready-to-use book. He only left the principles of general principles and certain

---

<sup>8</sup>Firman Arifandi, *Qawaid Fiqhiyyah Sebagai Formulasi Hukum* (Jakarta: Lentera Islam, 2016), p. 23.

<sup>9</sup>Ahmad Sudirman Abbas, *Sejarah Qawa'id Fiqhiyyah* (Jakarta: Pedoman Ilmu Jaya, 2004), p. 1-2.

partial laws that had been stipulated by the Qur'an and al-Hadith. These principles can be used as a frame of mind for solving partial problems, with these principles fiqh will remain dynamic, flexible and will still have a wide area coverage. So in the author's opinion, at the time of the prophet, the rules of fiqh were not yet compiled and were still in the form of utterances from the prophet as a guideline for a framework of thinking in legal management for his people.

## **2. The Khulafaur Rashidin Period**

After the death of the prophet, to be precisely entering the period of khulafaurrashidin's leadership, the mindset of the companions slowly began to enter a new stage of development, previously the companions only focused on paying attention to what the apostle had given, but after the death of the prophet, the problem was different. The mindset of friends began to transform ijtihaad. This is due to new problems that never occurred at the time of the Prophet and forced them to perform ijtihaad. Their method of ijtihaad at that time was to seek information in the Qur'an first, if they did not find it then they would move to the Prophet's Sunnah, by deliberating and gathering friends who had heard the explanation from the prophet about the matter. If they still don't find any information, then they will use ra'yu and ijtihaad.<sup>10</sup>

The method of studying Islamic law at this time is no different from that at the time of the prophet, the existence of fiqh at this time still tends to be practical so that it can be seen in solving new problems that the law is sought after it occurs and then adjusted to the Qur'an and Hadith. In this period, the use of ra'yu and qiyas began to appear evident in punishing new issues of Ra'yu and ijtihaad during the time of the prophet and was never used except at certain times. The same language patterns as the rules of fiqh appeared during the khulafaurrashidin, namely the words of Umar: "the severance of rights depends on the conditions".

## **3. Tabi'in Period**

In this period, the foundation of the science of fiqh began, in this period the science of fiqh became a separate discipline, this was inseparable from the services of the tabi'in. The glorious achievement achieved in this period and at the same time, a sign of the solid foundations of fiqh is his success in rejecting slander and internal turmoil that was deliberately exhaled so that the epistemology that had been inherited from KhulafaurRasyidin was abandoned.

This grounding period was the beginning of the tendency of fiqh to be in the realm of theory. Many fiqh laws are produced from the results of reasoning towards theory rather than fiqh laws resulting from an understanding of cases that have occurred and then being equated with new cases, this period is the beginning

---

<sup>10</sup>Ahmad Sudirman Abbas, *Sejarah Qawa'idFihiyyah*, p. 10.

of the change of fiqh from its waqii'iyah (actual) nature, to becoming nazariyyah (theory). This period began with jurisprudence and ushulfiqh science to become a framework for thinking about the laws from the source, this method was the result of their reflection when understanding fiqh, and the book that discussed ushulfiqh which was first written was the ar-treatise by Imam Shafi'i.

Among the scholars who developed the principles of fiqh in the tabi'in generation was Abu Yusuf Ya'kub ibn Ibrahim, with his famous work *Al-Kharaj*, the rules that were compiled were: "The assets of every deceased who do not have an heir are handed over to Bait al-Mal. This rule concerns the distribution of the inheritance of Bitul Mal as one of the Islamic economic institutions to receive an inheritance (tirkah or muruts).

The rules of fiqh are not propositions, but a means for us to make it easier to find laws on the problems we encounter in society after we come across the compilation methods of the history of the Prophet, Friends, and Tabi'in, the scholars make a big investment so that they can understand the rules easily, therefore Ahmad Sarwal, in his work explains the formation process of the rule of fiqh, namely:<sup>11</sup>

- a. Sources of Islamic law of the Qur'an and Hadith;
- b. Then came ushulfiqh as a methodology in law withdrawal (istibath al-ahkara). With the ushulfiqh methodology that uses a deductive mindset to produce fiqh;
- c. This fiqh has a lot of material, from a lot of fiqh material, then by scholars who study the field of fiqh, the similarities are examined using a deductive mindset then grouped and each group is a collection of similar problems, finally concluded to be the rules of fiqh;
- d. Furthermore, these principles were criticized again by using many verses and many hadiths, especially to assess their suitability with the substance of the verses of the Al-Qur'an and the Prophet's Hadith;
- e. If it is deemed following the verses of the Qur'an and many prophet's Hadiths, only then will the rules of fiqh become established rules;
- f. If it becomes an established / accurate principle, then the scholars of fiqh use the above principle to answer the problems of society, both in the social, economic, political, and cultural fields, eventually giving rise to new fiqh laws;
- g. Therefore, it is not surprising that scholars give fatwas, especially in new practical matters always using fiqh principles, even the Ottoman Caliphate in

---

<sup>11</sup>Donald Qomaidiansyah Tungkagi, *Qowaid Fiqhiyyah, Telaah Perkembangan dan Contohnya* (Jakarta: Sekolah Pascasarjana UIN Syarif Hidayatullah), p. 7-8.

al-Ahkam al-Adiyah Magazine, using 99 rules in making laws regarding muamalah agreements with 185 articles;

- h. In the tabiin period until now many rules come from the ijtiḥad of the ulama, ijtiḥad brings mercy and has met the requirements to be carried out in the field, ijtiḥad is legalized and even highly recommended by Islam, in this case, based on determining Islamic law using ijtiḥad provisions will be flexible and can bring development and fulfillment of law based on the times. Ijtiḥad was needed after the prophet died because problems were always developing, since the second and third centuries of the Hijriyah Islamic law problems began to be formulated, including from al-madzahī bularba'ah both in worship and muamalah.

The principles of fiqhiyyah are the conclusions of many fiqh problems that already have the same laws so that a rule that represents these equations appears. Many scholars agree to make the position of fiqh rules as argument or evidence for jurisprudence law issues, so this means that the function of qowaid fikhiyyah in fiqh law occupies a very important position, especially in this modern era, where a mujtahid and mufti are faced with complex problems. And requires a review from various points of view, especially from fiqh as argument or evidence, especially rules whose editorial is the sharia text (Qur'an or Hadith directly such as the rule of "la dhararaw la dharar". Also, it can be agreed that Fiqh principles can be used as a support or reinforcement of the evidence or arguments of the sharia text, both Qur'an, Hadith, and Ijma ', especially in emerging problems.<sup>12</sup>

There is an exaggerated tendency of some people to make qowaid fiqhiyyah parallel to the text of the Qur'an or Hadith. Some of these people often confront a jurisprudence rule contradicting the text of the Qur'an and Hadith which has clear interpretation and meaning so that in the end they take al-Qawaid al-Fiqhiyyah and they openly leave the text of the Koran. and Hadith, this attitude is untrue or even irrational, because how can a text of the Qur'an and Hadith that have a clear meaning be contradicted and then defeated by a fiqh rule whose appearance is none other than the text of the Qur'an and the text Hadith too.

### **C. The Urgency of Qowaid Fiqhiyyah in Establishing Islamic Law**

Qowaid Fiqhiyyah is only a "dead-end science". The rules of fiqh cannot be put aside for fiqh reviewers. Qowaid fiqhiyyah is an inseparable part of the whole Islamic Law School. Without understanding the rules of fiqh, an understanding of Islamic law will certainly not be comprehensive.

---

<sup>12</sup>Pudjiharjo, *Kaidah-kaidah Fikih untuk Ekonomi Islam* (Malang: UB Press, 2017), p. 15.



Apart from that Qowaid fiqhiyyah has a significant position when viewed from at least two points of view:<sup>13</sup>

1. From a source point of view, qowaid is a medium for enthusiasts of Islamic jurisprudence to understand and master the maqasid al-sharia because by studying several texts, scholars can determine the essential issue of one problem;
2. From Istinbath al-ahkam, qowaidfiqhiyyah has covered several issues that have and have not occurred. Because of this, qowaid fiqhiyyah can be used as a tool in solving problems that occur for which there is no provision or legal certainty.

Nash-nashtasyri 'according to Abdul Wahab Khalaf, has implied various kinds of law regarding laws, both civil, criminal, economic, and so on. The law has been perfect with the existence of texts that have established general principles that are not limited to a branch of law. Because the scope of the fiqh field is very broad, it is necessary to have crystallization in the form of kulli rules which serve as a classification of the furu 'problem into several groups. By adhering to the principles of fiqhiyyah. From the mujtahid group, it can be easier to use law for a problem, namely by classifying a similar problem under one scope of rules.<sup>14</sup>

According to Ashiddiqy Islamic law is categorized into three characters which are eternal, eternal, and unchanging, namely *First*, takamul, namely perfect, round, and complete. It can be understood that Islamic law forms the ummah unanimously, even though they are different nations, tribes, but they are a unity that cannot be separated from one another. *Second*. Washatiyah is harmonious, namely Islamic law which implies a middle way, a balanced and impartial path, is not right-handed by prioritizing spirituality and not weighing to the left by emphasizing differences. Islamic law always harmonizes reality and facts with the idea of an ideal. *Third*, Harakah, which is dynamic, namely Islamic law can move and to develop, has the life force, and can shape itself according to the direction of development and progress of the times.<sup>15</sup>Islamic law emanates from vast and very deep sources, which will provide humans with some positive laws that can be used in any place and time.

The purity of Islamic law that comes from Islam must be maintained, the norms contained in the Qur'an and Sunnah must be applied to aspects of muslim life, in every place, time, and age, efforts to interpret the contemporary values contained in the text (Qur'an and Sunnah), this is what qowaidfiqhiyyah seeks to

---

<sup>13</sup>Adib Hamzawi, *Qawaid Ushuliyah dan Qawaid Fiqhiyyah (Melacak Kontruksi dan Itinbath al-Ahkam)* (Jurnal Inovatif, Vol. 2, No 2, September 2016), p. 105.

<sup>14</sup>Adib Hamzawi, *QawaidUshuliyah dan Qawaid Fiqhiyyah*, p. 106.

<sup>15</sup>Hasbi Ash-Shiddqy, *Filsafat Hukum* (Semarang: Pustaka Rizki Putra, 2001), p. 105-108.

bridge so that Islamic law continues to live in a contemporary dimension without reducing its meaning and essence as a revelation.<sup>16</sup> Islamic law does not contradict normative provisions in the holy text with the social reality of society. In Islamic law, there is a dialectic between legal texts and social reality formulated in the term Ijtihad.<sup>17</sup>

Qowaid fiqhiyah has been agreed upon by jumhur scholars as a foundation that is no less important than the main and supporting arguments in Islamic law, this is because qowaid fiqhiyyah can make it easier for a mujtahid to understand Islamic law. So that someone does not deserve to be called a mujtahid if he does not master qowaid fiqhiyyah, in short, to carry out ijtiha an understanding of the rules of fiqh is needed.

The role of ijtiha is very large in reforming Islamic law. The reforms cannot be carried out without the existence of a mujtahid who is qualified to carry it out, talking about the reform of Islamic law and ijtiha in Islamic law, like two sides of a coin that cannot be separated from one another, compliment and complement each other. If the ijtiha process can be carried out in the process of Islamic reform properly, then the laws resulting from the ijtiha process will answer all problems that arise as a result of the demands of the times.

In Islamic law, if the roots are strong then the branches of fiqh will not need to worry if they are hit by the storms of the times and technology, because the branches stand on solid roots, then the branches of fiqh will also become strong, but vice versa if the roots are weak as good and No matter how beautiful the branches were, they would collapse if hit by a storm, therefore it is very true that in the book al-Faraidh al Bahiyah it is stated that "actually the branches of the fiqh problem can only be controlled by the rules of fiqh, so memorize those rules. very large function."<sup>18</sup>

Qowaid fiqhiyyah must be used as a guide in making fiqh in Islamic law, this is because qowaidfiqhiyyah does not only try to ensure that the fiqh does not contradict the text, as contained in the Qur'an and Sunnah, but more than that qowaidfiqhiyyah. It also makes each fiqh have its illat that differentiates between one fiqh and another, where that illat appears as a result of the existence of legal rationing which gives birth to the law in Islamic law.<sup>19</sup>

---

<sup>16</sup>Prawitra Thalib, *Pemahaman Terhadap Pemberlakuan Hukum Islam di Indoneia* (Holrev: Vol 2, Issue 1, March 2018), p. 377.

<sup>17</sup>Sitti Rahmawati, "Paradigma Perubahan Hukum Islam (Eksplorasi Pemikiran Ibnu Qayyim al-Jauziyah)." *Al-Bayyinah* 1.2 (2017), p. 19.

<sup>18</sup>Asjmun Abd. Rahman, *Kaidah-Kaidah Fiqh* (Jakarta: Bulan Bintang), p. 17.

<sup>19</sup>Prawira Thalib, *Pengaplikasian Qowaid Fiqhiyyah dalam Hukum Islam Kontemporer* (Yuridika: Fkultas Hukum Universitas Airlangga, Vol. 31 No. 1 (January-April 2016), p. 63.

Al-Qarafi has broadly argued that the urgency of the Fiqhiyyah principle is threefold:<sup>20</sup>

1. The principle of fiqhiyyah has a special position in the realm of Islamic scholarship because the expertise of a faqih is closely related to the mastery of fiqhiyyah principles.

Thus, the position of this rule depends on how the expertise of a fiqh expert is, otherwise it will affect the result of his *ijtihad* which is contrary to the arguments of *kully*. So, by mastering the fields and classifications of *qawaid fiqhiyyah*, it will be easy to master the *furu'-furu'*. Because the faqih is a person who understands the commands and prohibitions of Allah and knows what He loves and what He hates, that is a person who is knowledgeable so that the expertise of faqih is very reliable but it also depends on how well a faqih understands these rules, if they do not have these characteristics it includes deceived person

2. Can be a foundation of a *fatwa*

The principles of fiqh as a supporter and reinforcement of the argument, by adhering to these fiqh principles, Islamic jurists will find it easier to add to the law of a problem by projecting the problems that will be determined by the law for the jurisprudence rules that accommodate it.

3. Making fiqh more organized so that it makes it easier for a person to identify a large number of fiqh.

With the existence of the rules of fiqh, the problems of fiqh can be tied up so that they can be used as a reference for legal experts or enthusiasts to make it easier for them to solve similar problems within the scope of one rule.

To ground the principles of fiqhiyyah for the wider community, including legal practitioners, regulators, stakeholders, and Islamic economic activists, the following is the urgency of the principles of fiqhiyyah which Ali Ahmad An-Nadwi said in his book *al-Qawaid al-Fiqhiyyah*:<sup>21</sup>

1. The rules of fiqhiyyah make it easier to master Islamic jurisprudence, collect scattered problems, by arranging the many *furu'-furu'* in one flow under one rule;
2. These principles help safeguard and control much-debated issues, by turning them into a way of presenting law;
3. Make it easier for fiqh experts to approach analogies (*ilhaq*) and *tahrij* to know laws, which have not been outlined in fiqh;

---

<sup>20</sup>Al-Qarafi, *al-Furuq*, Juz 3 (Bayrur: Dar al-Ma'rifat, 1990), p. 3.

<sup>21</sup>Hammam, *Urgensi Kaidah Fiqhiyyah Dalam Perumusan Hukum dan Implementasinya Fatwa DSN-MUI* (Et-Tijarie: Universitas Trunojoyo Madura, Vol. 4 No. 1 (January 2017), p. 61.

4. Make it easier for people to discuss fiqh in following (understanding) parts by removing from different themes and summarizing them in one particular proportion;
5. Summarize the issues in one bond which shows that the law is formed to enforce the benefits that are close to each other or to enforce the greater maslahat.

The elaboration of the urgency of the jurisprudence rules above with the development of creative thinking activities so that the fiqh formula, fatwa products, and legal products of state administering bodies reflect the value of benefit more. The argument for making qawaid fiqhiyah as a method of legal istimbat is found in two arguments, namely Qur'an and Hadith.

1. Al-Qur'an: That the argument is taken to solve a problem is taken directly from the Qur'an, as an example of the case in the word of Allah Swt in surah al-'Araf verse 199.<sup>22</sup>

خُذْ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ

Meaning:

Be forgiving and tell people to do the ma'ruf and turn away from the ignorant.

The sentence 'Khuz' which means an order to do an act of connecting kinship, and the sentence 'afwa' refers to forgiving the mistakes of others, while the sentence 'amarbil ma; ruf' in the above verse refers to connecting the bonds of brotherhood and increasing devotion to Allah Swt in the path that is haram and lawful, then the sentence 'wa'arid anil jahilina' refers to the command to prohibit committing injustice. In the above verse, if we look from the side of qawaidfiqhiyah, it is clear that this verse can be used as an argument for deciding the law in matters of Islamic law.

2. Al-Hadith: the argument of Qowaid Fiqhiyyah is also found in the hadith of the Prophet Muhammad as in the Hadith about "everything that is intoxicating is haram." Read more clearly the book Al-Qawaid Al-Fiqhiyah by Aly Ahmad Al-Nadhawy page 172.
3. Qawaidfiqhiyah also applies as evidence in the hadith of the Prophet Muhammad regarding the Niar issue. The rules used in the hadith are qaidah fiqhiyyah al-Amrru bimaqasidiha.

Thus, it can be concluded that qowaid al-fiqhiyyah is the most important supporting component for mujtahids. mufti, and faqih in carrying out the istinbathahkam method or interpretation of sharia law. And there is no doubt

---

<sup>22</sup>Ali Ahmad A-Nadhawy, *AlQawaid Fiqhiyyah* (4<sup>th</sup> Print; Dar Al-Basyar, Jedah t.t), p. 271.

about the mastery of this knowledge, and it is a measure of the maturity of the mujtahid's knowledge.<sup>23</sup>

#### D. Dynamics of Qowaid Fiqhiyyah

The dynamics of fiqh principles are the same as the dynamics of law, namely that they can provide interdisciplinary intellectual phenomena in various aspects of life today because they are always moving, developing and can adapt to the times. Qowaid fiqhiyyah is a complete principle but can be dynamic and develop due to stimuli from outside the law itself. So, for that qowaid fiqhiyyah requires non-legal science- which is multidisciplinary such as philosophy, sociology, and anthropology. In the approach to legal discovery, we need philosophy, in the history of law, we need historical science, in terms of law and society we need a branch of sociology, in terms of law and culture we need anthropology.<sup>24</sup> This qowaid fiqhiyyah is very necessary for explaining the use of Islamic law, it can be used as a consideration in solving phenomenal and modern legal problems, but before it is fully used it needs to be reviewed and studied by scholars and people who understand Islamic law.

Legal change is a closed system of internal legal dynamics if it follows the opinion of Kelsen, namely legal changes that take place based on the level of the legal hierarchy, besides that there are also changes that take place in society, for example concerning the community's obedience to the law. The last changes are in the form of values, attitudes, and behavior of the community towards the law and the last thing is the external dynamics of the law. From these two sides, it causes people to draw a sharp difference line so that one and the other will be released, so that the validity of the change is measured from different points of view to produce something contrary.<sup>25</sup> With the existence of qowaid fiqhiyyah as the basis for the establishment of a source of law, the rules that have been studied can enter into general law to be stabilized and as reference material, so that general law and Islamic law can move flexibly according to the demands of the times.

#### E. Examples of Qowaid Fiqhiyyah Applications in Settling Islamic Law

The relevance of fiqh principles in solving social problems and at the same time in Islamic law legislation has been proven in the ottoman era. The ottoman

---

<sup>23</sup>Firman Arifandi, *Qowaid Fiqhiyyah Sebagai Formulasi Hukum* (Jakarta: Lentera Islam, 2016), p. 31.

<sup>24</sup>Lukman Hakim, *Dinamika Hukum dan Kebudayaan Masyarakat*, retrieved from <http://syariah.uin-malang.ac.id/index.php/komunitas/blog-fakultas/entry/dinamika-hukum-dan-kebudayaan-masyarakat>, on 20 August 2020.

<sup>25</sup>Alex Chandra, *Dinamika Hukum*, retrieved from <https://www.metrokaltara.com/dinamika-hukum/#:~:text=Salah%20satu%20arti%20perkataan%20dinamika,tertutup%20dan%20Fatau%20sistem%20terbuka>. On 20 August 2020.

Caliphate between 1869-1878 issued a sharia law called Majallah al-ahkam al-adliyyah which was the application of Islamic law using 99 fiqh principles in the field of muamalah with 1851 articles. The law is enforced as a book of the law throughout the ottoman empire. It includes the five main jurisprudence rules that have been agreed by most scholars as arguments that are used as direct references for legal practice in the field of muamalah.<sup>26</sup> Many fiqh principles are found in the MUI fatwa agreement as their application into sharia economic law.

The DSN-MUI fatwas have a moderate character. The importance of a moderate fatwa is so that the results of the fatwa are not too free and not too rigidly binding, thus limiting creativity in the business of Islamic banking and finance. According to KH. Ma'ruf Amin, the correct attitude in the fatwa is a balanced attitude and takes the middle way, is not free (ifraty), and not reckless (tafrity). Because if you determine a fatwa only based on the need or benefit or understanding the essence of Islamic teachings, without adhering to al-Nusus al-Syar'iyah.

In essence, in the study of Ushul Fiqh, the function of a fatwa is only binding on those who give fatwas and those who ask for it. Since the original fatwa was a product of Ijtihad, then of course it is binding on people who do ijthad and who get fatwas. However, in the context of the state, when the fatwa's existence has been legitimized through statutory regulations by state institutions, for example, is OJK, then the public or financial institutions under it must automatically comply with it. Because it is impossible for the state to legitimize laws except for the benefit of the people, as this applies in the rules of *تصرفا لانما ما يالرعية منوط بالمصلحة*, all the things that have been determined by an imam for all his people are considering the benefit.<sup>27</sup> The DSN-MUI as state status is a manifestation of a leader or what is called Ulil Amri who must obey his orders after orders from Allah and his Messenger.

Among the duties and functions of the MUI DSN are issuing fatwas on sharia economics to serve as guidelines for practitioners and regulators and issuing recommendations, certification, and sharia approvals for Islamic financial institutions and businesses, with such duties and functions, the DSN-MUI has the authority to issue fatwas. which binds the sharia supervisory board in each shari'ah financial institution and provides recommendations and/or revokes

---

<sup>26</sup>Abbas, Arfan, 99 *Kaidah Fiqhiyyah Kulliyah Muamalah*(1<sup>st</sup> Print; Malang: UIN Maliki Press, 2014), p. 15.

<sup>27</sup>Hammam, *Urgensi Kaidah Fiqhiyyah dalam Perumusan Hukum dan Implementasinya Fatwa DSN-MUI*, p. 62.

recommendations for names who will sit as the Sharia Supervisory Board (DPS) in a sharia financial and business institution

Examples of the application of fiqhiyyah principles in the settlement of Islamic law, namely: Fatwa of the MUI National Sharia Council Number 116 / DSN-MUI / IX / 2017 concerning Sharia Electronic Money, this fatwa is related to the existence of Islamic electronic money that has developed in the community in various transactions and uses, especially in online buying and selling transactions. The electronic money is issued by Banks and institutions other than Banks. MUI deems electronic money as necessary to obtain a legal explanation in terms of its syariah. Therefore, what is meant by sharia electronic money is electronic money that is following Islamic law or Islamic syari'at, as the provisions and criteria are explained in the following fatwa:<sup>28</sup>

1. لأصليا المعاملة الإباحة إلا أن يدلل على تحريمها

"All forms of muamalah can be done unless there is an argument that forbids it"

2. لضرر يزال

"All dharar (harm/loss) must be eliminated"

3. الضرر يدفع بعبد الإمكان

"Dharar (harm/loss) must be prevented as much as possible"

4. الثابت بالعرف كالثابت بالشرع

"Something that applies based on customs is the same as something that applies based on the syara" (as long as it does not contradict the syari'at)"

5. أنا لا أحكام المترتبة على عوائد تدور معها كيفما دارت، وتبطل معها إذا بطلت النقود بالامعاملات

"Laws based on customs apply with the customs and are canceled (do not apply) with them when the customs are canceled, such as currency in muamalat"

6. من الذخيرة: قاعدة: كل حكم مرتب على عرف أو عادة يبطل عند زوال تلك العادة، فإذا تغير الحكم

"(Quoted) from the book al-Dzakhirah a rule: every law based on an 'urf (tradition) or custom (community habit) becomes invalid (does not apply) when the custom is lost. Therefore, if customs change, then the law changes.

7. تصر فالأمام عليا الراعية منوط بالمصلحة

"The leader's policy towards the people must follow the benefit (society)"

8. ينما وجدتا المصلحة فثم حكم الله

---

<sup>28</sup>MUI National Sharia Council Fatwa Number 116 / DSN-MUI / IX / 2017 concerning Sharia Electronic Money, p. 4-5.

"Where there is a benefit, there is Allah's law."

It can be seen that the fatwa regarding electronic money has several fiqh principles that support it so that the fatwa has a strong legal status, as for the provisions and limitations in the administration and use of electronic money, namely that it is mandatory to avoid transactions that are ribawi, gharar, maysir, radlis, risywah and transactions against level. objects that are haram and smell immoral, as well as special provisions, namely that the nominal amount of electronic haram money that is in receipt must be placed in a Syariah bank, if the card used as electronic money media is lost, the nominal amount of money in the issuer must not be lost.<sup>29</sup> Among the contracts that can be used by the issuer with the parties in the administration of electronic money (principal, acquirer, trader, organizer of the clearing, and organizer of the final settlement are the ijarah contract, contract ju'alah, and Akad wakalah bi al-ujrah.

Based on the provisions of the fatwa, several matters are less relevant in their use, for example, Go-Pay and Grab-Pay cards, DSN-MUI states that the three e-money cannot be used by considering several problems:

1. Go-Pay may not be used because the nominal amount of electronic money in the issuer is not placed in a Sharia Bank, Go-Pay puts the money in banking but not in a Syariah bank, the fatwa stipulates above that it is said to be placed in Syari'ah Bank, Go-Pay is conventional banking using the Al-Qardh contract, which is a loan agreement (payable) that we provide loans to Go-Pay, then Go-Pay puts our money into the Bank on behalf of the Go-Pay party. Problems arise because of discounts, giving points, giving bonuses, etc., and this is a benefit or benefit from a loan to the organizer, which in Islamic principles states "every loan that provides benefits is Riba", usury is something that is prohibited by the Shari'ah and Islam.
2. Grab-Pay The nominal amount of electronic money that is in the issuer is not placed in a Sharia Bank the same as Go-Pay, even though the fatwa states that it must be placed in a Sharia Bank. The nominal amount of Grab-Pay electronic money cannot be withdrawn by electronic money holders.

So based on the above analysis, electronic money is based on the DSN-MUI fatwa Number: 116 / DSN-MUI / IX / 2017 concerning Islamic Electronic Money, this is because it is not following the fatwa provisions. In accommodating the interests of easy transactions for Indonesians who are predominantly Muslim, MUI needs to encourage issuing companies to place their funds in sharia banks and encourage issuing companies to issue electronic money services following the DSN-

---

<sup>29</sup>Novia Ningsih, *Analisis Terhadap Fatwa Dewan Syariah* (Jurisdictie: Jurnal Hukum dan Syari'ah, Vol. 10. No. 1 2019, p. 71.



MUI fatwa Number: 116/DSN-MUI/IX/2017 concerning Electronic Money Sharia, apart from that there is also need for intervention from Bank Indonesia to accelerate the process of implementing sharia-based electronic money.<sup>30</sup>

## CONCLUSION

In this method of collecting qowaid fiqhiyyah, it is divided from several points of view, first, sorting the rules according to alphabetical order, with a capacity of 145 types of rules which are then synthesized into 99 rules, then some fuqoha also systematize the rules of fiqhiyyah by classifying the chapter on fiqh discussion, the two collection methods in the prophet era, the three Khulafaur Rashidin periods and the fourth tabi'in period. The urgency of qowaid fiqhiyyah in determining Islamic law is very much needed because the development of Islamic law has become a necessity along with the times. Then the scope of the fiqh field is so wide, it is necessary to have crystallization in the form of kulli rules which serve as a classification of furu' problems into several groups.

Qowaid fiqhiyyah as the basis for law-making rules can dynamically follow the times by taking into account the social environment which includes law and non-legal sciences such as philosophy, history, sociology, and anthropology. Qowaid fiqhiyyah contains a set of fiqh rules used as a tool for the settlement of Islamic law and most of these qawaid principles refer to the settlement of problems in the realm of muamalah or sharia economics, for example in the application of the DSN-MUI fatwa Number: 116 /DSN-MUI/IX/ 2017 concerning Sharia Electronic Money.

## REFERENCES

- Abbas, Ahmad Sudirman, *Sejarah Qawa'id Fiqhiyyah*. Jakarta: Pedoman Ilmu Jaya
- Abd Rahman, Asjmuni, *Kaidah-Kaidah Fiqh*, Jakarta: Bulan Bintang, 2004
- Al- Qarafi, *al-Furuq*. Juz 3. Bayrur: Dar al-Ma'rifat, 1990.
- A-Nadhawy, Ali Ahmad. *Al-Qawaid Fiqhiyyah*. 4<sup>th</sup> Print. Dar Al-Basyar, Jedah t.t.
- Arfan, Abbas, 99 *Kiadah Fiqhiyyah Kulliyah Muamalah*, 1<sup>st</sup> Print. Malang: UIN Maliki Press, 2014.
- Arifandi, Firman, *Qawaid Fiqhiyyah Sebagai Formulasi Hukum*. Jakarta: Lentera Islam, 2016.
- Ash-Shiddiqy, Hasbi, *Pengantar Hukum Islam*. Jakarta: Bulan Bintang, 1975.
- Ash-Shiddiqy, Hasbi, *Filsafat Hukum*. Semarang: Pustaka Rizki Putra, 2001.

---

<sup>30</sup>Novia Ningsih, *Analisis Terhadap Fatwa Dewan Syariah*, p. 73.

- Chandra, Alex, Dinamika Hukum, retrieved from <https://www.metrokaltara.com/dinamika-hukum/#:~:text=Salah%20satu%20arti%20perkataan%20dinamika,tertutup%20dan%20fatau%20sistem%20terbuka> on 20 August 2020
- Hakim, Lukman, *Dinamika Hukum dan Kebudayaan Masyarakat*, retrieved from <http://syariah.uin-malang.ac.id/index.php/komunitas/blog-fakultas/entry/dinamika-hukum-dan-kebudayaan-masyarakat>, on 20 August 2020.
- Hammam, "Urgensi Kaidah Fiqhiyyah Dalam Perumusan Hukum dan Implementasinya Fatwa DSN-MUI", Et-Tijarie, Universitas Trunojoyo Madura, Vol. 4 No. 1. January 2017
- Hamzawi, Adib, "Qawaid Ushuliyah dan Qawaid Fiqhiyyah (Melacak Kontruksi dan Itinbath al-Ahkam)", Jurnal Inovatif, Vol. 2, No 2, September 2016
- MUI National Sharia Council Fatwa Number 116 / DSN-MUI / IX / 2017 concerning Sharia Electronic Money
- Ningsih, Novia, 2019, "Analisis Terhadap Fatwa Dewan Syariah", Jurisdictie: Jurnal Hukum dan Syari'ah, Vol. 10. No. 1, 2019
- Pudjiharjo, *Kaidah-kaidah Fikih untuk Ekonomi Islam*, Malang: UB Press, 2017
- Rohayana, Ade Dedi, *Ilmu Qawaid Fiqhiyyah*. Jakarta: Media Pratama, 2008.
- Rahmawati, Sitti. "PARADIGMA PERUBAHAN HUKUM ISLAM (Eksplorasi Pemikiran Ibnu Qayyim al-Jauziyah)." *Al-Bayyinah* 1.2 (2017): 17-28.
- Syafri, Teungku Riyandi. *Kedudukan Qowaid Fiqhiyyah Dalam Mengistimbathkan Hukum Islam*. Samalanga: IAI AL-Aziziyah
- Tamrin, Dahlan, *Kaidah-kaidah Hukum Islam, Kulliyah al-khamsah*. Malang: UIN Maliki Press, 2010.
- Thalib, Prawitra, "Pemahaman Terhadap Pemberlakuan Hukum Islam di Indoneia", Holrev, Vol 2, Issue 1, March 2018
- Thalib, Prawitra, *Syariah: Konsep dan Hermeneutika*, 1<sup>st</sup> Print. Surabaya: Lutfansyah Mediatama, 2013.
- Thalib, Prawitra. "Pengaplikasian Qowaid Fiqhiyyah dalam Hukum Islam Kontemporer", *Yuridika*, Fakultas Hukum Universitas Airlangga, Vol. 31 No. 1, January-April 2016.
- Tungkagi, Donald Qomaidiansyah, *Qowaid Fiqhiyyah, Telaah perkembangan dan Contohnya*. Jakarta: Sekolah Pascasarjana UIN Syarif Hidayatullah Jakarta.
- Umar, Mu'in dkk, *Ushul Fiqh 2<sup>nd</sup> Ed.*, Jakarta: Dhana Bakti Wakaf, 1993.