

## THE DISCOVERY OF ISLAMIC LAW WITH THE TURAS BOOKS: METHOD DEVELOPMENT

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ARTICLE INFO	ABSTRACT
<p><i>Article History</i>  <i>Recieved Maret 2023</i>  <i>Accepted Mei 2023</i>  <i>Available Agustus 2023</i></p>	<p>The dynamics of fiqh that occurred at 2nd H, gave rise to the process of transitioning Islamic law from the form of ijihad based on the the companions to a scientific and measurable process. Its maintained from Four Imams who codified the results of their legal thoughts in the books of fiqh. The Four Imams and their books could be define in turas books or classical books, have difference thought during determine an ijihad. This study aims to explain the development method of finding legal sources in turas books based on madzahib al arba'ah scholars. The researchers conducted a library study with a descriptive analysis approach, collected sources, verified, and interpreted in detail. The results showed that in determining the law, the scholars of the mahdhab put forward their textual and contextual method. The result of the textual law , determined by the Qur'an and hadith, but does not leave the contextually which is ar-rayu. The theory and methodology of the discovery of the law of madzahib scholars are broadly the same. Its using Qur'an, sunnah, ijma' and qiyas. However, in the practice of developing qiyas methodology, scholars of the madhhab have differing in opinion, such as use the method of istihsan, urf, masalahah mursalah, atsar ahlu medina and hadith mursal.</p>
<p><i>Keywords:</i>  <i>ijihad, madhhab, ushul fiqh.</i></p>	

## A. Introduction

Ijtihad is one of the important elements in the discovery of Islamic law. Through ijtihad, laws that cannot be defined precisely and also problems that have no solution in the Qur'an and hadith can be known. History records, the forerunner of ijtihad has been going on since the time of Prophet Muhammad SAW. This is because ijtihad is closely related to fiqh while fiqh is inseparable with *usul al-fiqh*. Both are analogous as two inseparable sides of a coin. The form of ijtihad was then followed by the Companions, *tabi'in*, *atba' tabi'in* and took its glory during the Four Imams or the 2nd-H. This was known by various ijtihad methodologies contained in the books of *usul al-fiqh*.<sup>1</sup>

The dynamics of fiqh that occurred at that time gave rise to the process of transitioning Islamic law from the form of ijtihad which was based on the the companions to a scientific and measurable process which maintained from imams who codified the results of their legal thoughts in the books of fiqh. The process that began the thought to the traditionalist (*ahl al-hadith*) on the one hand<sup>2</sup> and the rationalist thought (*ahl al-ra'y*) in the other one.<sup>3</sup> The traditionalists (*ahl al-hadith*) were pioneered by Imam Malik ibn Anas (d. 179 AH) based in the Hejaz. While, the rationalists (*ahl al-ra'y*) were represented by Imam Abu Haneefa (d. 150 AH) in Baghdad. Imam Malik was very attached to the fatwa of the Companions and the traditions of the people of Medina, while Imam Abu Haneefa who lived in the metropolis, was very rational and careful in choosing and sorting out hadith as a source of inspiration for the establishment of law. In his method of taking law, he often puts forward analogies (*qiyas*) rather than hadith whose validity is still debatable.<sup>4</sup>

However, many orientalist researchers still assume that ijtihad activity has stopped since the end of the 3 AH/9 AD. This process became known as "the closing of the door of ijtihad (*insidad bab alijtihad*)". This assumption does not present itself, but arises from the conclusions of classical Islamic orientalists, such as Joseph Schacht.<sup>5</sup> They mentioned that after the great scholars or known as the Four Imams such as Imam Abu Haneefah, Imam Malik, Imam Shafi'i and Imam Ahmad there were no more scholars who had ijtihad abilities like the four. During the Four Imam's time there were 2 famous thought namely *fuqaha* and *mutakalimin*. The *fuqaha* was pioneered by Imam

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<sup>1</sup> Abdul Muthalib, "Perkembangan Ilmu Ushul Fiqh Pasca Imam Madzhab Hingga Abad Modern (Kajian Terhadap Metode Ijtihad Dan Penerapannya) Abdul Muthalib," *Hikmah* 16, no. 2 (2019): 1–13.

<sup>2</sup> Fatkan Karim Atmaja, "Development of Ushul Fiqh From Time to Time," *Jurnal Ilmu Syariah* 5, no. 1 (2017): 23–38.

<sup>3</sup> Ahmad Sanusi, "Jurnal Syakhsia Vol. 19 No. 2, Juli - Desember 2018," *Syakhsia* 19, no. 2 (2018): 223–44.

<sup>4</sup> A Yasid, "Epistemologi Ushul Fiqh: Antara Pembaharuan Dan Pemberdayaan Mekanisme Istinbath Al-Ahkam," *Jurnal Asy-Syir'ah* 45, no. 1 (2011): 1015–36.

<sup>5</sup> Arifah Jauhari Syams, "Melacak Masa Keemasan Fikih Pada Masa Empat Imam Madzhab," *Al-Ahwal* 5, no. 1 (2013): 91–102.

Abu Haneefah, while the mutakalimin is from number of scholars consisting of Imam Malik, Imam Shafi'i, Imam Ahmad and then well known as shafi'iyah.<sup>6</sup>

## **B. Research Method**

This research is a library study with a descriptive analysis approach. This study aims to explain the development of the method of finding legal sources in turas books or classical islamic books based on madzhab al arba'ah scholars. Broadly speaking, both thought, fuqaha and mutakalimin have the same theory and methodology in the discovery of Islamic law (ijtihad). Both have uniqueness and character that characterize each madhhab. Those books were collected, verified then interpreted during this study.

## **C. Four Imams in Fiqh**

### **1. Imam Abu Haneefa (Mahdhab Hanafiyah)**

Imam Abu Haneefa known as Imam Hanafi whose real name is Abu Hanifa Nu'man bin Thabit Al Kufi, was born in Iraq in 80 H (699 AD), during the Umayyah caliphate, Abdul Malik bin Marwan. He was nicknamed Abu Haneefah, because one of his son was named Haneefah. According to another narration he was titled Abu Haneefah, because he was so obedient in worshiping Allah. There are also those who narrate because how close he is with handwriting.<sup>7</sup> The basics of Madhhab Hanafi are Qur'an, sunnah, ijma', qiyas and istihsan.<sup>8</sup> However, there were also those who argued that Imam Abu Haneefa used mashlahat mursalat, and 'urf during decided an Islamic law.<sup>9</sup>

Among Abu Haneefah's ijtihad which based on istihsan method featured in Islamic family law, for example is validity of marriage without a guardian. He argued that marriage without a guardian was valid, but not perfect. The marriage that Abu Haneefa emphasized was the concept of kafa'ah, where the concept of kafa'ah in marriage included six elements. There are heredity (nasab), religion (ad-din), independence (al-hurriyah), property (al-mal), moral strength (diyanah), and employment

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<sup>6</sup> Hanif Aidhil Alwana, "Aliran Pemikiran Ushul Fiqh Dan Pengaruhnya Terhadap Pendekatan Hukum Islam," *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (2020): 147, doi:10.31958/juris.v19i2.2375.

<sup>7</sup> M Ali Rusdi Bedong, "Metodologi Ijtihad Imam Mujtahidin (Corak Pemikiran Dan Aliran)," *Al-Adl* 11, no. 2 (2018): 130–48.

<sup>8</sup> Abdurrohman Kasdi, "MENYELAMI FIQH MADZHAB MALIKI (Karakteristik Pemikiran Imam Maliki Dalam Memadukan Hadits Dan Fiqih)," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 8, no. 2 (April 8, 2018): 315, doi:10.21043/yudisia.v8i2.3242.

<sup>9</sup> Atmaja, "Development of Ushul Fiqh From Time to Time."

(as-sina'ah). So that the concept of kafa'ah emerged as a response to social differences which then shifted into legal problem.<sup>10</sup>

Another example of Imam Abu Haneefa's *ijtihad* is when someone looking for qibla during prayer. He said that a person when in the dark night or at difficult time wants to determine the direction of Qibla, so his prayer law is valid, even it found that he is not facing the Qibla, but on condition that he has tried to find the direction of Qibla before.<sup>11</sup>

The *istihsan* method used by Imam Abu Haneefa was opposed by Imam Shafi'i. Imam Shafi'i actually argues that determine a law with *istihsan* means that he has followed his only will.<sup>12</sup> The argument of Imam Shafi'i's about *istihsan* quoted by Juwaini, one of the adherents of the Madhhab Shafi'iyah<sup>13</sup>:

قَالَ الشَّافِعِيُّ " مَنْ اسْتَحْسَنَ فَكَأَنَّمَا يَشْرَعُ فِي الدِّينِ ."

*It means: "Whoever argues with istihsan has established his own Sharia law in religion."*

Until the time of Imam Shafi'i, Imam Abu Haneefa did not have his own written manuscript in the field of islamic law because in his time his thoughts were never recorded. However, Imam Abu Haneefa had an important role in the development of *usul al-fiqh*. The awakening of his thoughts of *usul al-fiqh* was developed by his disciples and followers of the Madhhab Hanafiyah.<sup>14</sup>

Imam Abu Haneefah's famous disciples were four people, namely Abu Yusuf Ya'qub bin Ibrahim al-Auzi', Zufar bin al-Hazil bin Qais, Muhammad bin Hasan bin Farqad ash-Shaibani and Hasan bin Ziyad al-Lu'lu. It was these people who developed the Madhhab Hanafiyah. The famous books in this madhhab are Zabir al-Riwayah, al-Jamiu al-Katsir, al-Jamiu al-Shagir, al-Siyaru al-Kabirdan al-Ziyadat. All these books have been collected in one book, namely al-Kafi by Abu Fadat al-Marwazi, then directed

<sup>10</sup> M. Iqbal Juliansyahzen, "PEMIKIRAN HUKUM ISLAM ABU HANIFAH: Sebuah Kajian Sosio-Historis Seputar Hukum Keluarga," *Al-Mazaahib: Jurnal Perbandingan Hukum* 3, no. 1 (2015): 71–85, doi:10.14421/al-mazaahib.v3i1.1382.

<sup>11</sup> Islam Al, Mawaddah Warramah Kolaka, and Irwansyah Saputra, "Institut Agama PERKEMBANGAN USHUL FIQH," *Jurnal Syariah Hukum Islam* 1, no. 1 (2018): 38–49, doi:10.5281/zenodo.1242565.

<sup>12</sup> Eka Sakti Habibullah, "Pandangan Imam Abu Hanifah Dan Imam Syafi'i Tentang Al-Istihsan," *Al Mashlahah Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 7 (2016): 451–66.

<sup>13</sup> Abu al-Ma'ali Al-Juwaini, *Al-Taklis Fi Ushul Al-Fiqh*, ed. :Abdullah Zaulam (Bairut: Daarul Basair al-Islamiyah, 1993).

<sup>14</sup> Achmad Sopian, "Kitab Fiqh Al-Akbar Karya Imam Abu Hanifah," *An-Nawa : Jurnal Studi Islam* 3, no. 2 (2021): 76–88, doi:10.37758/annawa.v3i2.313.

by Muhammad bin Ahmad as-Sarkhasi in the book al-Mabsud as many as 30 volumes, which contains of results of ijtihad in form fatwa and fiqh.<sup>15</sup>

The work of ushul fiqh among the Madhhab Hanifiyah is quite widely known and referenced. The typical books of usul al-fiqh show the Hanafiyah method, among others<sup>16</sup>:

a. al-Fushul fi Ushul Fiqh by Imam Abu Bakr al-Jashshash (Ushul al-Jashshash)

In the book, when viewed from the method of taking the law, he uses a combination of nash and bi al-ra'y. For example in the issue of the livelihood in marriage or how husband giving his allowance to his wife which taken from Al-Baqarah verse 233<sup>17</sup> :

قَالَ اللَّهُ تَعَالَى: وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ (البقرة 233) ولا سبيل إلى إثبات المعروف من ذلك إلا من طريق الاجتهاد.

*From that verse we know that a duty of a father to feed and clothe the mothers in an accrued way. The meaning of providing in a ma'ruf way in Al-Baqarah verse 223 cannot be established except without ijtihad.*

In tafseer Ahkamul al-Qur'an from Abu Bakr al-Jashshash explains if a woman earns her right to provide is out of the ordinary way then a husband is not obliged to provide her. But on the other hand, if a husband does not provide for his wife as needed, then the husband must be forced to do it. In his opinion, it is also permit to hire a maid to do household if his wife needs it. Here are the words:

إذا اشتطت المرأة وجلبت من النفقة أكثر من المعتاد المتعارف مثلها لم تعط وكذلك إذا قصر الزوج عن مقدار نفقة مثلها في العرف والعادة لم يحل ذلك وأجبر على نفقة مثلها وفي هذه الآية دلالة على جواز استئجار الظئر بطعامها وكسوتها لأن ما أوجبه الله تعالى في هذه الآية للمطلقة.

b. Taqwim al-Adillah by Imam Abu Zayd al-Dabbusi

<sup>15</sup> Abdullah Basyir Mardjudo, "METODE IJTIHAD IMAM ABU HANIFAH Abd. Basyir Mardjudo Dosen Jurusan Tarbiyah STAIN Datokarama Palu," *Hunafa* 3 (2006): 328–36.

<sup>16</sup> Maman Suherman, "Aliran Ushul Fiqh Dan Maqashid Syari'ah," *Al Mashlahah: Jurnal Hukum Dan Pranata Sosial Islam*, 2017, 353–68.

<sup>17</sup> Abu Bakar Al-Jashshash, *Ahkam Al-Qur'an* (Beirut: Dar Ihya' Turath al-'Arabi, 1995).

In his book of *usul al-fiqh*, Imam al-Dabbusi has divided *istihsan* into four parts, namely *istihsan nash*, *istihsan dhorurah*, *istihsan ijma'* and *istihsan qiyas al-khofi*. The expression of Imam Abu Zayd al-Dabbusi regarding *istihsan* is written here<sup>18</sup> :

الاستحسان على أربعة أنواع: قد يكون نصاً، وقد يكون ضرورة، وقد يكون إجماعاً، وقد يكون قياساً خفياً .

c. *Kanz al-Wushul ila Ma'rifat al-Ushul* by Fakhr al-Islam al-Bazdawi.

d. *Usul al-Sharakhsi* by Imam al-Sarakhsi.<sup>19</sup>

In the development of *usul al-fiqh*, al-Sarakhsi's work deserves to be a reliable reference source for those who pursue Islamic law as the main focus. The reason is, first, the book's position in the time map of the development of Islamic law mediates two great traditions between the past and post-classical phases. Second, the book's core message engage for rationality in the establishment of law. The second one is the basic that has always been needed in the development of contemporary *fiqh*. And the third, this book is as an effort to dig back the progressive treasures inherited by inter-generational muslim scholars.<sup>20</sup>

## 2. Imam Malik (Mahdhab Malikiyah)

His full name is Anas bin Malik, the second of the Four Imam in Islam. He was born in the city of Medina, a region in the land of Hejaz. His death coincided on Sunday, 10 Rabi'ul Awwal 179 AH/798 AD in Medina during the Abbsiyah caliphate under the rule of Harun Ar-Rashid. Imam Malik got his education in the city of Medina during the reign of Caliph Sulayman bin Abdul Malik of Umayyah VII. At that time in the city lived several groups of Islam proponent, including the Companions of Ansar and Muhajireen, and there were so well as Islamic jurists. On that atmosphere, Imam Malik grew up and received education from some famous teachers. The first lesson he received was the Quran, sure how to read, understand its meaning and interpretation. He memorized of the Quran out of the head. Then he studied the hadith of the Prophet Muhammad SAW diligently and vigorously, so he got the nickname as a hadith expert.<sup>21</sup>

Imam Malik compiled the book of *Muwatha* which is a representation of his mastery of hadith and *fiqh*. In developing *ijtihad* and building his *madhhab*, Imam Malik determined from several sources, such *Qur'an*, *sunnah*, *ijma*, *qiyas*, *qaul shahabi*, deed of

<sup>18</sup> Abu Zayd Al-Dabbusi, *Taqwim Al-Adillah* (Beirut: Daarul Kutub al Ilmiyah, 2001).

<sup>19</sup> M Masyhadi, "Perkembangan Ushul Fiqh Di Era Modern," *SCHOLASTICA: Jurnal Pendidikan Dan ...* 3 (2021): 11–23.

<sup>20</sup> Imam Fawaid, "KONSEP SADD AL-DZARĪ'AH DALAM PERSPEKTIF IBNU AL-QAYYIM AL-JAUZIYAH," *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 13, no. 2 (2019): 323–40, doi:10.35316/lisanalhal.v13i2.599.

<sup>21</sup> Islam Al Mawaddah Warrahmah Kolaka et al., "Institut Agama METODE IJTIHAD IMAM HANAFI DAN IMAM MALIK," *Jurnal Syariah Hukum Islam* 1, no. 1 (2018): 16–37, doi:10.5281/zenodo.1242561.

Medina scholars<sup>22</sup>, *maslahah mursalah*, *istishab*, and *syaddudz dzari'ah*, and *syar'u man qablana* which are the foundation of Malik's *fiqh*.<sup>23</sup> Some interesting things that can be observed from the thoughts and basic of the *Mahdhab Maliki* in doing *ijtihad* are as follows<sup>24</sup>:

- a) Imam Malik put the people of Medina first before he carried out his *ijihad* thinking with *ra'yu* and *qiyas*.
- b) Imam Malik consider and use the *qaul* of Companions as the *shari'* argument which should take precedence over the use of *qiyas*.
- c) Imam Malik was very tolerant of the use of *ahad hadith*.
- d) A tendency to use of *al-maslahah mursalah*. This methodology was originally typical of Imam Malik's thought which is strongly suspected to be influenced by the thoughts of Companion figures such as Umar bin al-Khattab.

The theory of *al-maslahah mursalah* according to Imam Malik as stated by Imam Shatibi in *Al-Itisham* is a *maslahah* that is in accordance with the objective, principle, and postulate of *shari'*, which eliminate narrowness, both *dharuriyah* (primary) and *hajjiyah* (secondary).<sup>25</sup>

For example, in determinations such as about the size of the *mudd* and *sho'* to determine the amount of *zakah*. Or to determine of a place, such as the pulpit of the Prophet Muhammad, or the place where routine practices such as the *adhan* in a high place and others. Imam Malik prefers the *atsar* from scholar of Madinah rather than using *khbar ahad* or *qiyas*.<sup>26</sup>

Imam Malik had hundred student under his taught. Most of them whom are still famous names, such as<sup>27</sup>:

- a) Imam Muhammad bin Idris al-Shafi'i

<sup>22</sup> Dainori, "PEMIKIRAN HUKUM IMAM MALIK IBN ANAS (Kontekstualisasi Pemikiran Imam Malik Ibn Anas Dalam Khazanah Pemikiran Hukum Islam)" 4, no. 1 (2020): 9–24; Said Syaripuddin, "Maslahat as Considerations of Islamic Law in View Imam Malik" 4, no. 1 (2020): 1–23.

<sup>23</sup> Kasdi, "MENYELAMI FIQH MADZHAB MALIKI (Karakteristik Pemikiran Imam Maliki Dalam Memadukan Hadits Dan Fiqih)."

<sup>24</sup> Danu Aris Setiyanto, "Pemikiran Hukum Islam Imam Malik Bin Anas (Pendekatan Sejarah Sosial)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 2, no. 2 (2017), doi:10.22515/alahkam.v2i2.177.

<sup>25</sup> Andi Herawati, "Maslahat Menurut Imam Malik Dan Imam Al- Ghazali (Studi Perbandingan)," n.d., 42–54.

<sup>26</sup> Al Mawaddah Warrahmah Kolaka et al., "Institut Agama METODE IJTIHAD IMAM HANAFI DAN IMAM MALIK."

<sup>27</sup> Husnul Khatimah, "Metode Istinbat Imam Malik," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 1, no. 1 (2017): 29–37, doi:10.35316/istidlal.v1i1.97.

- b) Imam Ismail bin Hammad (grandson of Imam Abu Haneefa)
- c) Imam 'Abdullah bin Wahbin bin Muslim al-Qurasi
- d) Imam 'Abdur Rahman bin Qasim al-'Itqi
- e) Imam Ashhab bin 'Abdul Aziz al-Qaisi al-Asmiri
- f) Imam 'Abdullah bin 'Abdul Hakam bin 'Ayun bin Laits

Those who included Malikiyah or Mahdhab Maliki including Ibn al-Qishshar and Imam al-Maziri. The books written by Ibn al-Qishshar are al-Usul, Ijma' Ahli al-Madinah, Muqaddimah fi Usul al-Fiqh. While the works of Imam al-Maziri such as Idhah al-Mahshul min Burhan al-Usul, al-Mu'allim bi Fawaid Muslim, and al-Imla'ala al-Bukhary.<sup>28</sup>

### 3. Imam as-Shafi'i (Mahdhab Syafi'iyah)

Mentioned before, the first book of usul al-fiqh that is composed completely and separately from its books of fiqh is Ar-Risalah, written by as-Shafi'i. This book is considered by scholars as the highest book. In addition to the book of Ar-Risalah, in the 3rd AH, a number of other books of usul al-fiqh have also been compiled. However, please note that in general, the books of usul al-fiqh that existed in the 3rd AH do not reflect the thoughts of usul al-fiqh completely and reach all aspects except the book of Ar-Risalah itself. In this case, just Ar-Risalah that covered the problems of the ushuliyah which be attention of the fuqaha at that time.

Ijtihad methods of Imam as-Shafi'i contained in Ar-Risalah such as; return all matters to the Qur'an, hadith, ijma', argument of the Companions (al-Aṣar) and qiyas; determine laws by looking at the substance of a proposition; determine laws by looking at its 'illat and derive propositions only to visible matters, as for the essence then return to Allah SWT.<sup>29</sup> Imam as-Shafi'i said that ijma' is hujja. He placed ijma' after Qur'an and sunna, then before qiyas. If we look at what is mentioned in Ar-Risalah it is evident that Imam as-Shafi'i places ijma' before qiyas or ijma' come first before qiyas and aqwalus shahaba.<sup>30</sup>

According to Joseph Schacht as quoted by Shofiyullah in his research, according to him there are three important findings put forward by as-Shafi'i in his book Ar-Risalah. Joseph Schacht argues that Imam as-Shafi'i has developed a new theory

<sup>28</sup> R A Nugraha and H Sulfinadia, "Ushul Mazhab Hanafi Dan Maliki: Kehujahan Khabar Ahad Dan Qiyas Serta Impilkasinya Dalam Penetapan Hukum," *Ijtihad* 36, no. 1 (2020): 60–76.

<sup>29</sup> Muhammad Taufan Djafry, "Metode Ijtihād Imam Al-Syāfi'ī Dalam Kitab Al-Risālah," *NUKHBATUL 'ULUM, Jurnal Bidang Kajian Islam* vol 2 no 1 (2016): 1–19.

<sup>30</sup> Sanusi, "Jurnal Syakhsia Vol. 19 No. 2, Juli - Desember 2018."



regarding the use of interpretation of two sources of the law, which is Qur'an and hadith of the Prophet SAW. Imam as-Shafi'i has fully introduced the sunnah and hadith, which in later times became part of classical Islamic legal theory. Imam as-Shafi'i introduced a hierarchy of four sources of law including ijma' and qiyas.<sup>31</sup>

When Imam as-Shafii was asked about the different opinion, could aqwalus shahaba be the source of law? He replied:

نصير منها إلى ما وافق الكتاب، أو السنة، أو الإجماع، أو كان أصحَّ في القياس

The words from Companions deserve to be *hujja* if they do not differ to the Qur'an, sunnah, ijma' and qiyas.<sup>32</sup> And the existence of ijma and qiyas is weakened by the existence of *khobar*. For example is the permissibility of *tayamum* in *safar* because of the absence of water, and the invalidity of *tayamum* with the availability of water because the reason for the permissibility of *tayamum* is because there is no water. The following is Imam as-Shafi'i's word in the *Ar-Risalah* from example before<sup>33</sup>:

نحكم بالإجماع ثم القياس، وهو أضعف من هذا، ولكنها منزلة ضرورة، لأنه لا يحل القياس والخبر موجود، كما يكون التيمم طهارة في السفر عند الإعواز من الماء، ولا يكون طهارة إذا وجد الماء، إنما يكون طهارة في الإعواز.

Towards the end of the 5th century H, Abu al-Ma'ali al-Juwaini (d. 478 AH/1085 CE) through a manuscript entitled *al-Burhan fi Ushul al-Fiqh* began to promote the idea of a classification of priority which he asserted as *Usul al-Sharia*. Its classification into five level, *dlaruri* (essential needs), *hajjat al-'ammah* (public needs), *mukramat* (moral conduct), *mandub* (suggestions), and something not specifically listed in the categories above. The five from al-Juwaini known as *maqashid* of Islamic law or *maqasid as-shari'a*, which involve preservation (*'ishmah*) of faith, soul, reason, family and property.<sup>34</sup>

The theory of *maqashid* al-Juwaini was continued by his student named Abu Hamid al-Ghazali (d.505 AH / 1111 AD) through his manuscript, *al-Mustashfa*. Through this book, al-Ghazali sorted al-Juwaini's classification of *usul al-sharia* according to its level of urgency, which is as follows from religion, soul, reason, heredity, and then property. Al-Ghazali wrote the book of *al-Mustashfa fi Ushul Fiqh* and *Syifa al-Ghalil* .

<sup>31</sup> Moh. Sholehuddin, "Metode Ushul Fiqih Hasan Hanafi," *De Jure: Jurnal Hukum Dan Syar'iah* 3, no. 2 (2011): 165–77, doi:10.18860/j-fsh.v3i2.2148.

<sup>32</sup> Muhammad Idris Al-Syafi'i, *Al-Risalah* (Beirut: Dar al-Fikr, 1993.)

<sup>33</sup> *Ibid.*

<sup>34</sup> Abd Wahid, "Reformasi Maqashid Syariah Klasik Menuju Perspektif Kontemporer," *Syaikhuna: Jurnal Pendidikan Dan Pranata Islam* 9, no. 2 (2018): 219–30, doi:10.36835/syaikhuna.v9i2.3260.

On both of his books, he explained that in analyze of syaria case (masail ta'lil) is based what leads to terms of bringing benefit and preventing infamy.<sup>35</sup>

Al-Ghazali had a broad Islamic legal mind by developing his teacher's theory and methodology of legal discovery. One of the ijthihad methods that he developed was the concept of maslahah in the formation of law, by balancing between the textual and contextual islamic law.<sup>36</sup> He is considered to be the founder of the main foundations or framework of the science of maqashid al-shari'a. Al-Raysuni said, Al-Ghazali has a wide position and influence in the discussion of maqashid to this day, although the forerunner of maqashid already existed in the time of al-Juwaini, due to his thinking was more comprehensive and systematic.<sup>37</sup> He could be able to elaborating the classification of maqasid that he put into the category of mashalah mursalah. His thought beneficially for determine Islamic law that is not directly mentioned in nash of Qur'an or hadith.<sup>38</sup>

The glorious development of maqashid ideas in the range of the 5th to the 8th AH reached its peak after the emergence of Abu Ishaq as-Shathibi (d. 790 AH/1388 AD) with a work entitled al-Muwafaqat fi Usul al-Sharia. Al-Syatibi divides al-maslahah into three levels, namely the primary needs (dharuriyat), the secondary needs (hajiyat) and the tertiary needs (tahsiniyat).<sup>39</sup> With a terminology model similar to al-Juwaini and al-Ghazali, al-Shathibi promoted an important formulation for the position of maqasid shari'a in Islamic law. Before al-Shathibi's formulation, maqasid was only positioned as maslahah al-mursalah, a goodness which is unwritten in Qur'an dan hadith. Then the idea of al-Shathibi repositioned maqasid to be part of the foundation of Islamic law.<sup>40</sup>

#### 4. Imam Ahmad (Mahdhab Hanabillah)

Imam Ahmad bin Muhammad Ibn Hanbal Al-Shaibani was born in Baghdad (Iraq), precisely in the city of Maru / Merv, the mother's hometown, in the month of Robi'ul Awwal in 164 H or November 780 AD.<sup>41</sup> In 195 AH Ahmad studied fiqh with Imam Shafi'i who at that time was in the Hijaz. It was also in the Hijaz that he studied with Imam Malik and Imam al-Laits ibn Sa'ad al-Misri. In search of hadith he also went

<sup>35</sup> Hambari and Qurrah Ayuniyah, "Pemisahan Maqashid Syariah Dari Ilmu Ushul Fiqh Dan Pengaruhnya Pada Penetapan Hukum Islam Kontemporer\*," *Journal of Islamic Law* 5, no. 1 (2022): 17–28.

<sup>36</sup> Syamsul Anwar, "Teori Peningkatan Norma Dalam Usul Fikih," *Ilmu Syari'ah Dan Hukum* 50, no. 1 (2016): 142–67.

<sup>37</sup> Muthalib, "Perkembangan Ilmu Ushul Fiqh Pasca Imam Madzhab Hingga Abad Modern (Kajian Terhadap Metode Ijthihad Dan Penerapannya) Abdul Muthalib."

<sup>38</sup> Wahid, "Reformasi Maqashid Syariah Klasik Menuju Perspektif Kontemporer."

<sup>39</sup> Zulkarnain Abdurrahman, "Teori Maqasid Al-Syatibi Dan Kaitannya Dengan Kebutuhan Dasar Manusia Menurut Abraham Maslow," *Al-Fikr* 22, no. 1 (2020): 52–70; Inti Ulfi Sholichah, "Realization of Maqashid Syariah Index (MSI) In Evaluating the Performance of Islamic Banking in Indonesia," *Madani Syariah* 5, no. 2 (2022): 141–51.

<sup>40</sup> Wahid, "Reformasi Maqashid Syariah Klasik Menuju Perspektif Kontemporer."

<sup>41</sup> Mila Aziz, Muflihatul Habibah, and Muhammad Fikri Sonhaji, *Musnad Imam Ahmad Bin Hambal Studi Kitab Hadis: Dari Muwaththa' Imam Malik Hingga Mustadrak Al Hakim* (Malang: Ahlimedia Press, 2020).

to Yemen, to Abdurraziq bin Hammam, and to other areas such as Khurasan, Persia, and Tarsus.<sup>42</sup>

Although he was heavily influenced by Imam Shafi'i, there were also many Malikiyah colors in his fiqh. In his method he used textual form, but he did not mean to deny the method of contextual logic. The method of taking the law from Imam Ahmad used the Qur'an, sunnah, mursal hadith, qiyas, istihsan, istihsab, and also has a textualist tendency to returns the problem to hadith and atsar. Perhaps because of his inclination towards the hadith as well that he got the nickname as the head of the salaf scholars.<sup>43</sup> It is undeniable that the socio-political background was the forerunner of the growth and development of the Mahdhab Hambali. And people who following him, known as Hanabillah. Social background which influence it is theological disputes, political conditions, and the rapid development of science (dirasah Islamiyah) in his time, so that it indirectly implicated his views in the field of fiqh and usul al-fiqh.<sup>44</sup>

Among the characteristics of Imam Ahmad's legal ambialization is to use mursal hadith to determine a law. But the mursal hadith or dhoif hadith referred to here is hasan hadith, and it's not contradicting the Qur'an, sunna or qiyas.<sup>45</sup> And the transmission is not a person who deliberately lies and does not find an explanation of the problem in the hadith, both in the hadith shahih and in the hadith hasan(Hamang 2011) And here for example<sup>46</sup>:

عَنْ مَعْمَرٍ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ رَجُلٍ، مِنْ بَنِي حَنِيقَةَ قَالَ: إِنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لَا نَذْرَ فِي غَضَبٍ، وَلَا فِي مَعْصِيَةِ اللَّهِ، وَكَفَّارَتُهُ كَفَّارَةُ يَمِينٍ.»

*From Ma'mar from Yahya from Abi Kasir from a man Banu Haniqah said: verily the Holy Prophet SAW said: there can be no vow in anger and in ma'siyat to Allah, his kafarah is the kafarah oath.*

The following is an example of Ibn Qudamah's ijihad, adherents of the mahdhab hambaliyah, who is not obligatory doing for zakat on children and psychotic, kafir dzimmi, sahaya, and ghorim.<sup>47</sup> Ibn Qadamah in his book of usul al-fiqh explains among the sequence of postulates in the discovery of law from Qur'an, hadith, ijma' and

<sup>42</sup> Abdul Karim, "Manhaj Imam Ahmad Ibn Hanbal Dalam Kitab Musnadnya," *Riwayah* 1, no. 2 (2015): 351–70.

<sup>43</sup> Ibid.

<sup>44</sup> Rahmat Abd. Rahman, "Latar Belakang Sosial Lahirnya Mazhab Hambali," *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam* 1, no. 3 (2020): 505–15, doi:10.36701/bustanul.v1i3.204.

<sup>45</sup> Marzuki, "AHMAD BIN HANBAL (Pemikiran Fikih Dan Ushul Fikihnya) Oleh," 2005.

<sup>46</sup> Achmad Azis Abidin, "Kehujjahan Hadis Mursal Menurut Imam Mazhab" 22, no. 2 (2020).

<sup>47</sup> Ihsan Nul Hakim, "Pemikiran Ushul Fiqih Ibnu Qudamah," *Al Istinbath : Jurnal Hukum Islam* 1, no. 1 (2016): 81–102.

qiyas. However, there are still differences of opinion it the method taken from qaulu shahabi and syar'u man qablana, here is the statement<sup>48</sup>:

أدلة الأحكام الأصول أربعة : كتاب الله تعالى وسنه رسوله صلى الله عليه وسلم والإجماع ودليل العقل  
المبقي على النفي الأصلي واختلف في قول الصحابي، وشرع من قبلنا.

Another scholar of the Hanabillah, Ibn al-Qayyim al-Jauziyah, is one of the figures of the mahdhab hambali whose thoughts always adorn the pages of turas books. Among Ibn al-Qayyim's most prominent and distinctive thoughts of usul al-fiqh are method which determine from 'urf and sadd al-dzar'ah. He is known as the first person to formulate the rules of fiqh<sup>49</sup> :

تغير الأحكام بتغير الأزمنة والأمكنة والأحوال

"Changes in law according to changing times, places, and conditions".

#### D. Conclusion

In presenting the theory and methodology of legal discovery in the turas books, mahdhab scholars tend to explain theoretically, rationally, and philosophically. So that in formulating the method of usul al-fiqh, the scholars of mahdhab strongly prioritize textually and contextually. They determined by the Qur'an and hadith, and not abandon aqli that given by God. And this could be seen in the basic foundation of the madzahib al-arba'ah in determined the theory and methodology of his legal discovery. The theory and methodology of the discovery of the law of madzahi scholars were same, it was using the Qur'an, sunna, ijma' and qiyas. However, the practice of developed this qiyas methodology that madzahi scholars differ in opinion. For example, the mahdhab Hanafiyah is more visible by prioritizing the istihsan method, the mahdhab Malikiyah with the atsar ahlu madinah method, the mahdhab Shafi'i with the maslahah mursalah method and the mahdhab Hambali by prioritizing mursal hadith or dhoif hadith. The factors that influence the differences of scholars in determined the theory and methodology of legal discovery are loyalty in each of the disciples to their schoolar, differences in scholars in determining the illa' , the pull and hold of theory and methodology in each mahdhab, and due to changes in time and place conditions.

<sup>48</sup> Ibnu Qudamah, *Roudhah an Nazhir Wa Junnatul Al Manazhir* (Beirut: Daarul Kitab al Ilmiyah, 2002).

<sup>49</sup> Imam Fawaid, "KONSEP SADD AL-DZARĪ'AH DALAM PERSPEKTIF IBNU AL-QAYYIM AL-JAUZIYAH".

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