



Determination of Islamic law on new phenomena (the struggle between textual and reasoning approaches)

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ABSTRACT

Islam is a complete and perfect religion. To maintain the perfection and finality of shari'ah, Islamic shari'ah must be able to respond to problems and developments in human life and civilization that are increasingly dynamic. An increasingly advanced human civilization demands many challenges faced by the *shari'ah*. Events that took place in the early era of the birth of Islam, or phenomena that occurred in the classical period and had been formulated by scholars, could be reviewed, or new cases emerged with new, more complicated dynamics, and no legal answers were found. For example, clothes or bodies stained with young boys' urine, marrying a mother or sister, online Friday prayers, and virtual Hajj in the Metaverse Virtual World. The scholars, since time immemorial, have been polarized on several *manhaj* and established Islamic law, namely the first group, which in determining the dominant law uses reason, and the second group, which is too fixated on what is contained in the *syar'i* text (Al-Qur'an – Hadith). The working pattern of these two understandings presents a challenge that is not simple because, from these two patterns, it is hoped that Islamic law must still appear as a law that is righteous and lawful during the time of eating.

Keywords: Islamic law; textual and reasoning approaches

1. INTRODUCTION

Islam, with all its *shari'ah* rules, is a way of life for all human beings in all dimensions of time and place (*salih li kulli zaman wa makan*). Allah explicitly says this in QS. Al-Ma'idah verse 3. Islam and its Shari'ah are in a perfect form, both physically and spiritually.¹

That perfection does not mean we have no activity related to the Shari'ah issue. Nevertheless, behind the perfection of the Shari'ah hides an important secret that has no end and endless activities, and finally, that perfection leads to a condition of increasing development of Islamic law.

One thing that must be answered to maintain the perfection and finality of shari'ah is the problem of the development of life and the increasingly dynamic human civilization. The increasingly advanced human civilization demands many challenges faced by Shari'ah. Events that occurred in the early era of the birth of Islam, or phenomena that occurred in classical times and had been formulated by scholars, turned out to be new cases with new dynamics that were more complicated, and no legal answers were found.

This condition, of course, must be responded to to maintain Islam's perfection. The Qur'an and Hadith, as the main reference to Islamic *shari'ah* have limited quantity and explicitly do not answer various legal problems that will occur in the future. Scholars later realized this condition. Among them, as expressed by Al-Shahrastani:

والنصوص متناهية والوقائع غير متناهية وما لا يتناهى لا يضبطه ما يتناهى

Translation;

That Texts (Al-Qur'an and Hadith) are limited things in nature while the problems of people's lives never stop, and limited things cannot be used as a solution for unlimited things.²

This expression indicates that there will be a need for a new reading of the *Shari'ah* text (Qur'an and Hadith); more than just reading the text of the religious nash is necessary. This inevitability can be found in the concept of revelation, that there are *mulazamah* concepts and paired, such as the concepts of *qhat'i* and *dzanni*, the concepts of *muhkamat* and *mutasyabihat*, the concepts of *tafsir* and *ta'wil*, *dzahir* and *batin*, including in this case between revelation and reason. When these paired concepts are used equally according to its portion, *shariah* or Islamic law will run well and maintain its finality and perfection.

¹Abdurrahman bin Nashir as-Sa'di, *Tafsir Al-Kariim ar-Rahman fi Tafsir Kalam al-Mannan*, Dar Ibn Hazm, p.197

²Al-Syahrastani. *al-Milal wa al-Nihal*, Dar Al-Ma'rifah:Bairut, 1404, accessed digitally at Islampost.com/w/aqd/Web/2603/122.htm

However, if the two are dichotomously separated without seeing a close relationship between the two, moreover by denying one of the two, then at that time, the *syar'i* texts (Al-Qur'an and Hadith) will be accused of "old", too "high", or even be accused as patsy for the emergence of conflict and tension in the Muslim community.

2. METHODS

This study uses literature research methods because the data source or the materials needed to complete the study were obtained from the library in books, encyclopedias, dictionaries, journals, documents, magazines, and so on. There are four steps taken, namely (1) Preparation supplies, supplies in the research library are only pencils or pens and note paper; (2) Compile a bibliography of works, a bibliography of works is a record of the primary source of materials to be used for research purposes. Most Bibliographic sources come from library collections that are displayed or not on display. (3) Managing time: In terms of managing this time, the researcher plans data collection time to process data to produce accurate data (4) Read and take research notes.

3. RESULTS AND DISCUSSION

Determining Islamic law can be interpreted as a way for legal *nash* (Qur'an and Hadis) to be implemented in human life related to private and public matters. This method of determination is contained in a separate discipline known as the science of *Ushul Fiqh*, which is a discipline that studies global legal propositions (*ijmali*), how to use them, and the requirements of those who use them (*mujtahid*).³ With this discipline identified as the queen of Islamic studies, Islamic laws can not only be born. However, they can also be right on target in order to realize the benefits of mankind (*li Tahqiq mashalih al-ibad*).⁴

In the literature of *Ushul Fiqh*, the discourse on establishing Islamic law is always associated with legal propositions (*adillah al-ahkam*). Wahbah Az-Zuhaili defines the postulate as something that can guide the sought.⁵ Al-Amidi mentioned that the postulate can give clues to a definite knowledge of the information sought.⁶ In a different

³ هو علم يبحث عن أدلة الفقه الإجمالية وكيفية الاستفادة منها وحال المستفيد *Syarh Mukhtashar Al-Ushul Min 'Ilmi Al-Ushul*, accessed digitally at <https://al-maktaba.org/book/32334/7>

⁴ M. Atho Mudzhar, *Approaches to Islamic Studies in Theory and Practice*, (Yogyakarta: Pusaka Pelajar, 1998), p 2

⁵ Wahbah Az-Zuhaili, *Ushul Al-Fiqh Al-Islami*, Volume I, (Beirut: Dar Al-Fikr, 1998), p. 417

⁶ Saifuddin Al-Amidi, *Al-Ihkam fi Ushul Al-Ahkam*, Volume 2, (Beirut: Dar Al-Kutub Al-Ilmiyah, 1983), p. 13

editorial, Hasan Ash-Syinqithi mentions that a postulate can point to the information sought with correct methodology and reasoning.⁷

The three formulations above differ from the aspects of redaction and emphasis, the first and second definitions emphasize the process, and the third to its status. Imam Ash-Shirazi distinguishes legal guidance from the definition of *Usul Fiqh* if the legal instruction that contains certainty is called a postulate. However, if the legal instruction is only at the level of solid conjecture, it is called *Amarah*.⁸ However, the division between postulate and anger does not seem to be used by the majority of *ulama ushul, jumhur ushuliyyun* argues that the term postulate itself already encompasses these two possibilities so that they divide the postulate into *qath'i* and *dzanni*, not into postulate and *Amarah*.⁹

Asy-Syatibi uses several different terms to discuss the proposition problem as legal guidance. Besides using the term *al-Adillah Asy-Syari'iyah*, As-Syatibi also uses the terms *Ushul Asy-Syari'ah*, *Mawarid Asy-Syari'ah*, *Mashadir al-Hukm*, *Mawarid Al-Hukm*, and *Syawahid Al-Hukm*.¹⁰ Nevertheless, Ash-Syatibi does not try to provide a different understanding of each term. Although the reasons and considerations are not mentioned, the speaker assumes that the basics of *shari'ah*, whether *manqulah* (revelation) or *ma'qulah* (reasoning), have the same position. There is no difference in the quality of law, whether stipulated based on textual instructions of revelation or stipulated based on contextualist thinking.

The author's assumption seems to be in line with Ash-Syatibi's expression.¹¹

الأدلة الشرعية ضربان: أحدهما ما يرجع إلى النقل المحض. والثاني: ما يرجع إلى الرأي المحض. وهذه القسمة هي بالنسبة إلى أصول الأدلة، وألا؛ فكل واحد من الضربين مفتقر إلى الآخر لأن الاستدلال بالمنقولات لا بد فيه من النظر، كما أن الرأي لا يُعتبر شرعاً إلا إذا استند إلى النقل

There are two groups of Syara's arguments: First, pure naqli. The second is pure reason (aqli). This grouping is only based on the source of the argument. Each of the two groups of propositions needs each other. Because the use of the *manqulah* argument requires reason (aqli), a reason (aqli) will not be considered unless it is based on naqli

⁷ Muhammad Hasan Asy-Syinqithi, *Syarh Al-Waraqat fi Ushul Al-Fiqh*, accessed digitally at [di https://al-maktaba.org/book/7689/7](https://al-maktaba.org/book/7689/7)

⁸ Abu Ishaq Ibrahim ibn Ali Asy-Syirazi, *Al-Luma' fi Ushul Al-Fiqh*, (Semarang: Toha Putra, tt), p. 3

⁹ Abdul Wahhab Khalaf, *Ilmu Ushul Al-Fiqh*, (Beirut: Dar Al-Fikr, 1998), p 20

¹⁰ Abu Ishaq Ibrahim ibn Musa Asy-Syatibi, *Al-Muwafaqat fi Ushul Asy-Syari'ah*, Volume 3, (Beirut: Dar Al-Kutub Al-Ilmiyah), p.3.

¹¹ Ibid, p. 29

However, in life implementation, we are often trapped in two poles of thought: the first, groups that are too dominant using the revelation approach (*naqli*), and second, groups that are too dominant using the reasoning approach (*aqli*).¹²

The group that is too dominant in using the revelation approach views that Islamic law is more purely theologically oriented, which means that all provisions can only be understood by looking at the revelation texts of the Al-Qur'an and the Hadith of the Prophet SAW. This group views that Islamic law can only be born from the text of revelation (*naqli*) and that textual legal provisions are superior and far above the authority of human thought and reason. Indirectly, this superiority relation plays a very minimal role in thinking and reasoning.

According to this understanding pioneered by al-*Ashari's* group, positioning revelation as superior to reason has several bases for argumentation, including remembering the limitations of human thought. On the other hand, human thought must also be in contact with empirical nature to recognize the object and purpose of something.

This argument can be analyzed from several facts; for example, human reason cannot directly understand some verses in the Qur'an. The time of Rasulullah *salla llahu alaihi wasallam* can undoubtedly be understood as a time when revelation dominated more than reason. At this time, Rasulullah *salla llahu alaihi wasallam* explains that the explanatory (*sharih*) of the law could freely establish the formation of law based on the text of revelation and did not require maximum thought and reason to understand khiṭāb al-hukm from revelation.

Unlike the first group, the second group insists that most Islamic law can be recognized by reason (independently) without the aid of revelation. This group believes that law is objective and has been embedded as part of the natural order. Because of God's Justice, God does not want evil; therefore, He only makes a clue, *maslahah*.¹³

The classic phenomenon that exemplifies the giving of the portion of the reason that is more dominant than revelation is when Umar bin Khattab closed the opportunity for *Mu'allaf* to receive the portion of zakat that Allah permitted in Surah At-Taubah: 59. Umar's refusal was based on the reasoning that the condition of the Muslims at that time was no longer in the same condition when the verse on the distribution of zakat was revealed, at that time the condition of the Muslims was stronger. They had even become

¹² Syamsul Anwar, *Epistemology of Islamic Law of Probability and Certainty*. In Yudian W. Amin (ed) *Towards Indonesian Fiqh: Remembering Prof. Dr. T.M. Hasbi Ashshiddieqy* (Yogyakarta: Islamic Law Study Forum, Faculty of Sharia, IAIN Sunan Kalijaga, 1994), p. 74

¹³ Ibid, p. 74

a superpower with a huge number of followers. The difference in conditions based on reason analysis made Umar go against the provisions of the group of eight, as in QS. Al-Taubah: 59

This action was taken by Umar bin Khattab, who tended to ignore revelations and, with his thoughts turned to other laws, did not make Umar demonstrated by his other friends. Nor should Umar be accused of damaging accusations such as being infidel, liberal, *sabilis*, or other accusations if actions similar to what Umar did occurred in this era. Accepting Umar bin Khattab to put his grave next to the Prophet's is enough to be the only proof that Umar's actions were not wrong, flawed, or despicable.

An example of a contemporary phenomenon that is determined by law with a pattern similar to what Umar bin Khattab did, like clothes or bodies that are exposed to the urine of young boys. Based on the revelation, "*the urine of baby girls is washed, and the urine of baby boys is just wet with water.*" However, the different treatment between male and female baby urine makes it easier to handle baby boy urine. Nowadays, this distinction is no longer relevant. Because it is common for babies nowadays, both boys and girls, to be given formula milk shortly after birth, the way to handle a baby boy's urine is not just to sprinkle it with water. However, it must be washed or drenched in water because formula milk contains milk and other ingredients.

However, it should be understood that giving a significant portion to reason does not impeach or dysfunctional revelation but still makes reason the primary tool for understanding revelation itself. At least, this is the basis on which *usul al-fiqh* scholars agree that the area of *ijtihad* as a derivative of reason can only be applied to matters that are not regulated in Revelation (Qur'an and al-Sunnah)

An example of this realm is the implementation of Friday Prayers online during the COVID-19 pandemic. This practice is permissible based on reason and the thought that the COVID-19 emergency makes everything permissible. However, the reasoning and logic of this phenomenon seemed to have closed the revelation space, namely when Prophet said that a person chosen to be a priest to follow his movements, starting from *qauliyah* aspects such as *takbir*, as well as *fi'liyah* aspects such as bowing and prostration. Imam Syafi'i understands this hadith as a necessity for the *ma'mum* and the priest to be in the same place (*ittihadul majlis*). Online Friday prayers are prohibited because there is no fundamental unity between *the ma'mum* and the priest, *ittihadul majlis* cannot be realized because the congregation and the priest are in different places and locations. Likewise, in position, it cannot be ascertained who is in front and behind.

In addition, it is a contemporary phenomenon in which human logic and thinking cannot determine the phenomenon of the virtual Hajj in the Metaverse Virtual World. In

brief, the author explains that at the end of December 2021, the Kingdom of Saudi Arabia is doing a project called the Virtual Black Stone Initiative equipped with the Kaaba in a metaverse. People from all over the world can visit the Kaaba metaverse with virtual reality. That is, with the virtual presence of the Kaaba, it will be possible to perform Hajj or Umrah virtually as well. This is important considering the high number of pilgrims performing Hajj in doing Tawaf, for example, which is not easy to do and can potentially cause danger due to jostling. If understood at a glance, it seems that intellect and thinking can accept arguments in favor of carrying out the virtual pilgrimage, especially technological developments that present the Kaaba in the metaverse are said to be one of the solutions to the crowds of people carrying out the pilgrimage or *umrah*.

However, this idea cannot be realized because one of the legal requirements for *thawaf* worship is the physical presence of worshippers within the perimeter of the Masjidil Haram. Likewise, with other pillars of Hajj such as *sa'i* and *wukuf* in Arafah. Madzhab Ash-Shafi'i argues that it is mandatory to be physically present in the field of Arafah when performing *wukuf*. Physical presence is a legal requirement for *wukuf* even if it only briefly. The bottom line is that the pilgrimage (at least according to the As-Shafi'i School) demands that the person performing the pilgrimage be physically present. Physical absence means the non-fulfillment of one of the pillars of *Hajj*, and it causes the invalidity of the worship performed. Thus, the virtual Hajj manasik is illegitimate because a large portion of reason has dysfunctional revelation.

An example of a domain that must prioritize the function of revelation over reason such as the prohibition of marrying a mother or sister, as in QS An-Nisa' verse 23

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ الَّتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضْعَةِ وَأُمَّهُتُ نِسَائِكُمْ وَرَبِّبَاتِكُمُ الَّتِي فِي حُجُورِكُمْ مِّن نِّسَائِكُمُ الَّتِي دَخَلْتُم بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَن تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا

This Nash talks about the prohibition of marrying a mother or sister, and textually, there is no opportunity to be understood in a different meaning because the legal designation is clear. Reasoners who try to understand differently the meaning of this verse become closed and are not considered because the purpose of the revelation above is obvious. Among them who ask the word *banatukum* (your daughters), which can mean daughters, whether born legally or illegitimately (adultery).

From the dialectics and examples of the phenomena, a common thread can be drawn that Islamic law admits the existence of reason or *aqal*. That recognition can be understood from several presupposition arguments. First, if Islamic law does not

recognize the role of reason, then the *nash syar'i* is not a legal instruction for the intelligent servant. However, the content of the postulates in *the nash syar'i* is in accordance with human reason. Second, if Islamic law does not admit the work of human reason, it will lead to the imposition of a law that man cannot implement. Even though the problem of the ability to act can only be known through reasoning.¹⁴

Imam Syaukani argues that the role of human reason will be seen in the following two issues: reason as the source of Islamic law, that is, human reason can function if there is no explicit legal provision from *nash syar'i (naql)*. The operational procedure of reason and mind will play a role by returning the problem with a legal vacuum to the original law. In the discipline of *Ushul Fiqh*, this method is commonly referred to as *Istishab*. That is to return a new problem that has no law to the original law that already has a law. Furthermore, restoring the original law is the product of the discovery of reason when it is not found in the *naql*. So, in this case, reason (reason) must perform three steps: determining the presence or absence of *naql*, perform *istihsab*, and applying the law of origin.¹⁵

In line with this, Ash-Shatibi views the domain of revelation and reason in Islamic law. According to him, in some cases, human reason can still be done against the *nash syar'i*, it can even be essential, but in some instances, human reason is unnecessary. This is because of new phenomena that arise in society. Sometimes, the rule of law has been in the *Nash* expressly and sometimes only mentioned in the outline¹⁶

CONCLUSION

Islamic law recognizes the existence of reason or reason. Even though it is understood that texts are God's absolute revelations, at the same time, reason and mind are human thinking processes that are relative. If reason is not played into understanding legal texts, their content will be difficult to understand or apply in human life. Likewise, reason is an instrument of thought; if texts do not guide it, it will become wild and uncontrollable.

¹⁴ Abu Ishaq Ibrahim ibn Musa Asy-Syatibi, *Al-Muwafaqat fi Ushul Asy-Syari'ah*, Volume 3, (Beirut: Dar Al-Kutub Al-Ilmiyah), p. 19.

¹⁵ Imam Syaukani, *Epistemological Reconstruction of Indonesian Islamic Law* (Jakarta: PT. Rajagrafindo Persada, 2006), p. 233

¹⁶ Abu Ishaq Ibrahim ibn Musa Asy-Syatibi, *Al-Muwafaqat fi Ushul Asy-Syari'ah*, Volume 3, (Beirut: Dar Al-Kutub Al-Ilmiyah), p. 88

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