The Complexity and Diversity Methods of Legal Discovery in Islam: In the Perspective Ulama of Mazhab al-Arba'ah

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Article Info

ABSTRACT

This article aims to detail the development of the method of finding sources of Islamic law concerning the perspectives of the scholars of the madhhab al-arba'ah, and explore its advantages and disadvantages based on the findings gathered. The research adopts a literature-based approach, a research method that relies on literature as the main source of information. Primary data sources are obtained from classical works, books, journals, and other related references related to the method of finding sources of Islamic law, especially in the perspective of the ulama mazhab al-arba'ah. Researchers use a qualitative approach with analytical descriptive methods to analyse primary data. The results show that the schools of Islamic law, such as Hanafi, Maliki, Shafi'i, and Hambali, show differences in the method of legal discovery and its implementation. Each school has distinctive characteristics based on its origin's sociocultural and political context. The thoughts of the leading figures in developing the science of usul fiqh, such as Abu Hanifah, Imam Malik, Imam Shafi'i, and Imam Ahmad, reflect the differences in ijtihad and law-making methods in these schools. Thus, this article provides an overview of the complexity and diversity of legal discovery methods in the Islamic context, illustrates the evolution of legal thought over time, and highlights the different approaches among the schools of Islamic law.

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1. INTRODUCTION

Ijtihad, as a central element in Islamic teachings, has an important role in resolving laws that are still mujmal in nature (Mujib, 2017) and also dealing with problems that do not have direct solutions in the Al-Quran and hadith (Mahfudin, 2021). Historical traces show that the practice of ijtihad began during the time of the Prophet Muhammad. (Susilo et al., 2023), Because ijtihad is closely related to fiqh, while fiqh itself cannot be separated from ushul fiqh (Bakar, 2012). Both can be likened to two sides of an interrelated coin. This practice of ijtihad was inherited by the companions, *tabi'in, and atba' tabi'in*, reached its peak during the time of the Imam Mazhab or the 2nd century H. This development was reflected in the birth of various ijtihad methodologies documented in the ushul fiqh books (Thohari, 2022).

However, this development is still controversial among Orientalist researchers, where some of them assume that ijtihad activities have been closed since the end of the 3rd AH/9th century AD, a phenomenon known as "the closing of the doors of ijtihad (*Insidad bab al-ijtihad*)". This assumption did not arise automatically, but rather came from the conclusions of classical Islamic orientalists, such as Joseph Schacht (Syams, 2013). They claimed that after the emergence of great scholars such as Imam Abu Hanifah, Imam Malik, Imam Syafi'i, and Imam Ahmad, no Again, scholars emerged who had ijtihad abilities comparable to those of the four imams. In the era of the four high priests, there were two well-known schools, namely the fuqaha which was pioneered by Imam Abu Hanifah, and the mutakalimin school which was a combination of scholars such as Imam Malik, Imam Shafi'i, and Imam Ahmad (Alwana, 2020).

Scholar *mazhab al-Arba'ah* above are not static in their approach, on the contrary, they are constantly adapting to the transformations of the times to ensure that Islamic law remains relevant and can provide fair guidance in facing the ever-evolving developments of society. Awareness of the importance of adaptation encourages them to continue to enrich legal interpretation with new contexts that emerge. Thus, a deep understanding of the ijtihad method or discovery of sources of Islamic law does not only involve theological aspects, but also highlights the active involvement of ulama in responding to social dynamics and changing times (Sugitanata et al., 2023).

In connection with the discovery of Islamic law, Munawir Haris in his writings emphasizes the need for continuous dialogue between Islamic law and the context of space and time to enable the emergence of various methods of discovery of Islamic law(Haris, 2012). . On the other hand, Nairi Saadah, et al., also argued that it is necessary to examine contextual Islamic law discovery methods. This serves to answer the challenges of the times and social dynamics (Saadah & Umar, 2023). Apart from that, Andrizal et al., explained that the discovery of Islamic law is known as a legal discovery method*Al-Bayan* includes efforts to understand the sources of legal guidance or tasyri', namely Al-Qur'an and As-Sunnah. These two main sources serve as a reference in setting the law. As the main source in the development of law, both must be understood well, so that legal problems can be overcome accurately. (Mawardi & Bustami, 2023).

From the explanation and elaboration of previous research above, this research seeks to outline the progress of methods for finding sources of Islamic law based on the views of ulama*mazhab al-arba'ah*. In general, the two schools have similar theories and methodologies in the discovery of Islamic law (*ijtihad*). Nevertheless, both of them still have uniqueness and characteristics that are characteristic of each school of thought.

2.   METHODS

This research adopts the library method, a research approach that relies on literature as the main source of information. Primary data sources were obtained from classical books, books, journals and other references related to the theme of methods for finding sources of Islamic law, especially from the perspective of ulama of the al-arba'ah school. In analyzing the primary data obtained, the researcher applied a qualitative approach with analytical descriptive methods. This approach allows researchers to detail and interpret information in depth, so as to gain a better understanding of the comparisons between *jurist* and *I'm talking* in the context of ijtihad. Through this approach, the research aims to provide substantial insight regarding the development of methods for finding sources of Islamic law, especially from the views of ulama*mazhab al-arba'ah*.

3.   RESULTS AND DISCUSSION

3. 1 Tracing the Construction of Legal Discovery Methods

The process of legal discovery involves taking general provisions and individualizing them by relating them to specific clinical events to answer the question of whether the law applies to those events (Al Hamid et al., n.d.). Legal research seeks legal analysis of social facts by examining their relationship to other social facts, which is the fundamental difference between legal discovery and legal research. Furthermore, legal research investigates law normatively to identify legal doctrine or principles, compile lists of legal decisions, assess the level of systematization and interconnectedness of law, and investigate the use of law to solve specific problems. Legal research basically includes legal discovery (Sugitanata et al., 2023).

The process of legal discovery is not limited to Islamic law, this process is also known in Western law, which is a more advanced legal system. However, the Western school of thought prefers to refer to what happens in the formation of law rather than the discovery of law (Wibowo & Sugitanata, 2023). A judge or other lawmaker in the West acts according to the law. However, in making decisions, judges can ignore these provisions, even though they have the authority to do so, but because the judge's position is outside the scope of legislative power, decisions made by judges do not have the legal force that other regulations have and only apply to members of the judiciary. parties involved in the court process (Haris, 2012).

The perspective of Islamic law as it develops is influenced by various patterns of thought and renewal in the Islamic order, both discursively and methodologically, therefore the process of renewing Islamic law is not a process that is broken down by intellectual renewal (Sulaiman, 2013). It is important to note that not all figures pay full attention to Islamic law (Setiawan, 2014). Islamic law has a creative and dynamic force in history. This claim is supported by the emergence of various schools of law, each of which has unique characteristics based on the sociocultural and political context of the area where the schools originate (Tohari, 2015). Specifically, there are three elements that influence the developments that occur: First, Religious Motivation: Because Islam is a normative religion and a source of rules that have shaped every aspect of Muslim behavior, Muslims are motivated to uphold religious norms and values, especially the law. Islam, which has emerged as their primary need. Second, the socio-cultural transformation brought about by the wider Islamic political domain during the reign of Umar bin Khattab has given rise to new issues which undoubtedly have an impact on

Islamic law. Third, the political influence of independent legal experts allows them to freely formulate their legal opinions that are free from outside influence and in accordance with their respective fields of expertise (Sholeh, 2003).

The emergence of schools of thought in this case, which crystallized previous legal experts, caused the space for carrying out ijtihad to be limited. In the end, people who submit too much to their great teachers have closed the door to ijtihad. The result is the emergence of a type of ijma' which makes it unacceptable for a person who declares himself to be qualified to perform ijtihad. Thus, the concept of ijtihad remains open, but the requirements for those who wish to carry out ijtihad are very complex (Amal, 1989).

3.2 Portrait of Islamic Law Discovery Methods Across Schools: Between Hanafi, Malik, Syafi'i and Hanbali

Starting this discussion with Imam Abu Hanifah, better known as Imam Hanafi, with the original name of Abu Hanifah Nu'man bin Thabit Al Kufi. He was born in Iraq in the year 80 Hijri (699 AD). The Hanafi School has certain principles, among which are the Book of God (Al-Qur'an), Sunnah, Ijma', Qiyas, and Istihsan (Kasdi, 2014). However, some opinions also state that Imam Abu Hanifah used other principles in obtaining the law, such as mashlahat mursalat and 'urf. This reflects the flexibility and wisdom of Imam Abu Hanifah in setting the law in the Hanafi School (Atmaja, 2017).

One of the results of Abu Hanifah's ijtihad that stands out using the istihsan method regarding Islamic family law is that marriages are valid without a guardian. Imam Hanafi believes that even though it is legal, a marriage without a guardian cannot be considered a perfect marriage. In Abu Hanifah's view, the marriage he emphasizes is the concept of kafa'ah, which includes six important elements, namely descent (*nasab*), religion (*ad-din*), independence (*al-hurriyah*), wealth (*al-mal*), moral strength (*diyanah*), and work (*as-sina'ah*). Therefore, the concept of kafa'ah emerged as a response to social differences which then developed into relevant legal issues (Juliansyahzen, 2015).

Apart from that, Imam Abu Hanifah, using the istihsan method, produces ijtihad regarding situations where someone faces difficulty in determining the direction of the Qibla on a dark night or in difficult conditions. In his view, prayers performed under these conditions are still considered valid, despite the fact that the individual may not be facing the Qibla. However, the condition is that the person has tried as optimally as possible to find the Qibla direction (Al et al., 2018).

Imam Abu Hanifah applied the istihsan method in his ijtihad, however, this approach was opposed by Imam Shafi'i. Imam Syafi'i considers that the use of istihsan as the basis of law shows that the followers follow their own desires more (Habibullah, 2016). Imam Shafi'i's view on istihsan is expressed in a quote quoted by Juwaini, a follower of the Shafi'iyah school,

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قَالَ الشَّافِعِي " من اسْتَحْسَنَ فَكَأَنَّمَا يشرع في الدِّين"
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Meaning:
"Whoever argues with istihsan means that he has established the shari'a law in religion." (Al-Juwaini, 1993)

During Imam Syafi'i's time, Abu Hanifah did not leave any written works of his own in the field of ushul fiqh, and his thoughts were not recorded directly during his time. Nevertheless, its role in the development of the science of ushul fiqh remains very significant. His legacy of thought and contribution to other sciences, especially the science of ushul fiqh, continues to be developed by his students and followers of the Hanafiyah school of thought (Sopian, 2021).

There are four famous students of Abu Hanifah, namely Abu Yusuf Ya'qub bin Ibrahim al-Auzi', Zufar bin al-Hazil bin Qais, Muhammad bin Hasan bin Farqad ash-Syaibani, and Hasan bin Ziyad al-Lu'lu. These four students played an important role in the development of the Hanafiyah sect. Some famous books in this sect include the Book of Zabir al-Riwayah such as al-Mabsud, al-Jamiu al-Katsir, al-Jamiu al-Shagir, al-Siyaru al-Kabir, and al-Ziyadat. All these books have been collected in one work, namely al-Kafi by Abu Fadat al-Marwazi. Later, this work was lectured by Muhammad bin Ahmad as-Sarkhasi in the 30-volume book al-Mabsud, in addition to other books containing fatwas and jurisprudence (Mardjudo, 2006).

Among the Hanafiyah, the works of ushul fiqh are well known and used as references (Suherman, 2017). One of the books that reflects the Hanafiyah method is "al-Fushul fi Ushul Fiqh" by Imam Abu Bakar al-Jashshash (Ushul al-Jashshash). In this book, if observed from the method of obtaining the law, it can be seen that he is more inclined to use a combination of nash (text) and bi al-ra'y (analogy). For example, the problem of a husband's support for his wife in Surat Al-Baqarah verse 233 (Suherman, 2017),

قَالَ اللَّهُ تَعَالَى: {وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ} [البقرة: 233] ولا سبيل إلى إثبات المعروف من ذلك إلا من طريق الاجتهاد.

The duty of a father to provide food and clothing to mothers should be done in a good and commendable way. The meaning of giving sustenance in a good way, as mentioned in Surat Al-Baqarah verse 223, cannot be established except through the process of ijtihad. In his commentary book "Ahkam al-Qur'an", Abu Bakar al-Jashshash explained that if a woman claims her right to alimony in an unusual manner, the husband is not obligated to provide alimony. However, on the other hand, if the husband does not meet the wife's needs as he should, then the husband must be forced to do so. According to his view, it is also allowed to hire a nurse if a wife really needs it. Here is the narration of the saying,

إذا اشتطت المرأة وجلبت من النفقة أكثر من المعتاد المتعارف لمثلها 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

After that, there is the book "Taqwim al-Adillah" by Imam Abu Zayd al-Dabbusi. In his work on ushul fiqh, Imam al-Dabbusi grouped istihsan into four types, namely istihsan nash, istihsan dharurah, istihsan ijma', and istihsan qiyas al-khafi. Imam Abu Zayd al-Dabbusi presented his views on istihsan as follows (Al-Dabbusi, 2001),

الاستحسان على أربعة أنواع: قد يكون نصا، وقد يكون ضرورة، وقد يكون إجماعا، وقد يكون قياسا خفيا.

Then, there is the book "Kanz al-Wushul ila Ma'rifat al-Ushul" by Fakhr al-Islam al-Bazdawi and the book "Ushul al-Syarakhsi" by Imam al-Sarakhsi (Masyhadi, 2021). In the context of developing ushul fiqh, al-Sarakhsi's work can be relied upon as a reference source for those who study Islamic law as their main focus. First, the position of this book in the midst of the development of Islamic law, bridging two major traditions between the ancient and post-classical. Second, the core message of this book calls for being rational in determining law, a choice that is always relevant in the development of contemporary fiqh. Third, this book's efforts to unearth progressive treasures passed down by intergenerational ulama are significant (Fawaid, 2019).

Furthermore, from the perspective of Imam Malik, whose full name is Anas bin Malik, he is the second imam of the four main imams in Islam in terms of age. His birth was recorded in the city of Medina, a region in the state of Hijaz. Imam Malik died on Sunday, 10 Rabi'ul Awwal 179 H/798 AD in Medina, during the Abbasid period under the rule of Harun Ar-Rashid. Imam Malik summarized his knowledge of hadith and jurisprudence in the book "Muwatha," a work that reflects his mastery of the material. In his efforts to develop ijtihad and form his school, Imam Malik took guidance from several

sources, such as the Qur'an, sunnah, ijma, qiyas, qaul shahabi, amal ahli Madinah (Dainori, 2020; Syaripuddin, 2020), maslahah mursalah, istishab, syadduz dzari'ah, and shar'u man qablana, which is the basis of Malik fiqh (Al et al., 2018). There are several interesting aspects that can be observed from the Maliki school of thought and foundation in implementing ijtihad.

Imam Malik put forward the opinion of the people of Medina before doing his ijtihad thinking using ra'yu and qiyas. The use of qaul sahabat is considered by Imam Malik as a syar'i proof that should be prioritized compared to qiyas. Imam Malik also showed a high tolerance towards the use of Sunday hadith. In addition, there is a strong tendency in the use of al-maṣlahah mursalah. This methodology, at the beginning, reflects the distinctive features of Imam Malik's thinking which is believed to be strongly influenced by the thinking of jurisprudents from among the Companions, such as Umar bin Khathtab (Setiyanto, 2017).

The theory of maslahah mursalah according to Imam Malik, as quoted by Imam Shatibi in the book al I'tisham, refers to a maslahah that is in accordance with the purposes, principles, and arguments of Sharia, with the main function of overcoming difficulties, both of a dharuriyah (main) nature and Hajjiyah (secondary). (Herawati et al., n.d.). For example, in the determination of mudd rate, sho`, and the determination of specific locations such as the Prophet Muhammad's pulpit, or the place where routine practices such as the call to prayer are performed in high places, and so on. Imam Malik focuses more on the atsar of the people of Madinah than using Sunday news or qiyas (Al Mawaddah Warrahmah Kolaka et al., 2018).

The disciples of Imam Malik numbered in the hundreds, and to this day, their names are still widely known. Some of them who are famous are Imam Muhammad bin Idris al-Syafi'i, Imam Ismail bin Hammad (grandson of Imam Hanafi), Imam Abdullah bin Wahb bin Muslim al-Qurasi, Imam AbdurRahman bin Qasim al-'Itqi, Imam Ashhab bin Abdul Aziz al-Qaisi al-Asmiri, Imam Abdullah bin Abdul Hakam bin 'Ayun bin Laits, and many more (Khatimah, 2017). Among the scholars who belong to the Maliki group are Ibnu al-Qishshar and Imam al-Maziri. Ibnu al-Qishshar has produced several works, such as the book of al-Ushul, ijma' ahli al-Madinah, and muqaddimah fi ushul al-Fiqh. Meanwhile, Imam al-Maziri also has several famous works, including idhah al-mahshul min burhan al-ushul, al-mu'allim bi fawaid muslim, and al-imla' 'ala al Bukhary (Nugraha & Sulfinadia, 2020).

Furthermore, from Imam Shafi'i, there is a method of ijtihad explained in the book al-Risalah. Imam al-Syafi'i developed the principles of ijtihad by referring to the Qur'an, hadith, ijma', the words of the companions (al-Aśar), and qiyās. In doing ijtihad, Imam al-Syafi'i issued the law by considering the substance of an argument, observing the 'illat of the law, and submitting arguments only on clear matters. The fact of ijtihad according to him returns to Allah SWT (Muhammad Taufan Djafry, 2016). Imam As-Shafi'i affirmed that *ijma'* (agreement) is a strong argument (proof). He placed ijma' after al-kitab and as-sunnah, before qiyas. In ar-Risalah, Imam al-Syafi'i stated clearly that ijma' should take precedence over qiyas, and the aqwalus of the companions should also be considered in the process of ijtihad (Sanusi, 2018).

According to Joseph Schacht, as quoted by Shofiyullah in his research, there were three important findings conveyed by Imam Syafi'i in the book al-Risala. Joseph Schacht believes that Imam Syafi'i has developed a new theory regarding the interpretation of two sources of revealed law, namely the Al-Qur'an and the hadith of the Prophet. Imam Syafi'i comprehensively introduced the concepts of sunnah and hadith, which later became an

integral part of classical Islamic legal theory in the following period. Imam Syafi'i also introduced a hierarchy of four sources of law, including ijma' (agreement) and qiyas (analogy) (Sholehuddin, 2011). When asked about differences of opinion regarding whether aqwalus shahabat can be used as a source of law or not, Imam Syafi'i gave the answer,

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

The opinions of the companions are a strong basis as long as they do not conflict with the teachings of the Qur'an, sunnah, ijma' and qiyas. The existence of ijma' and qiyas becomes crucial with the addition of khobar. For example, tayammum is permitted while traveling due to the absence of water, and tayammum is not valid if water is already available, because permission for tayamum is given due to the absence of water. Imam Syafi'i stated this in his book ar-Risalah (Al-Syafi'i, 1993),

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

At the end of the 5th century, Abu al-Ma'ali al-Juwaini (d. 478 AH/1085 AD) introduced the idea of classification of needs in the Ushul Fiqh treatise entitled "al-Burhan fi Ushul al-Fiqh". This idea categorizes the needs recognized as Ushul al-Shari'a into five levels, namely: daruri (basic needs), hajat al-'ammah (public needs), mukramat (moral behavior), mandub (recommendations), and everything which do not fall into the above categories. Al-Juwaini emphasized that the Maqashid of Islamic law is maintaining faith, soul, mind, family and property (Wahid, 2018).

The Maqashid theory introduced by Al-Juwaini was continued by his student, Abu Hamid al-Ghazali (d. 505 H/1111 AD), through his famous work, "al-Mustashfa". In this book, al-Ghazali reorganizes al-Juwaini's classification of ushul al-syariah based on the level of urgency, namely religion, soul, reason, lineage and wealth. In his works such as "al-Mustashfa fi Ushul Fiqh" and "Syifa al-Ghalil", al-Ghazali explains that in the ta'lil process, legal investigation is based on its legal basis, taking into account the achievement of benefit and the prevention of evil (Hambari & Ayuniyah, 2022).

Imam al-Ghazali has a broad view of Islamic law by developing the theory and methodology of legal discovery from his teacher. One of the ijtihad methods developed by him is the concept of maslahah in the formation of law, by balancing the functions of revelation and ra'yu (Anwar, 2016). Imam al-Ghazali is considered to be the main pioneer or basic framework of maqashid al-syari'ah science. According to al-Raysuni, Imam al-Ghazali has a broad position and influence in discussing the science of maqashid to this day, even though the concept of maqashid already existed during the time of Imam al-Juwaini. This is because his thinking is more comprehensive and systematic (Muthalib, 2019). As a result, he was able to elaborate on the classification of Maqasid which was included in the category of mursal benefits (al-mashalih murlah), namely benefits that are not directly mentioned in Islamic texts. (Wahid, 2018).

The emergence of Abu Ishaq al-Syatibi (d. 790 AH/1388 AD) with his work entitled "al-Muwafaqat fi Ushul al-Syariah" became an important milestone in the development of Maqasid ideas from the 5th century to the 8th century AH. Imam al-Syatibi grouping the benefits that will be realized into three levels, namely the need for dharuriyat, the need for pilgrimage, and the need for tahsiniyat (Abdurrahman, 2020; Sholichah, 2022). With a research terminological model almost similar to al-Juwaini and al-Ghazali, al-Syatibi promoted an important formulation for the position of Maqashid Shari'ah in Islamic law. Before al-Syatibi, Maqashid was only seen as mashalih almursalah (loose benefit;

irregular in the Qur'an and Hadith), but al-Syatibi's idea repositioned it as an integral part of the fundamentals of Islamic law. (Wahid, 2018).

Furthermore, Imam Ahmad, whose full name is Imam Ahmad bin Muhammad Ibn Hanbal Al-Syaibani, was born in Baghdad (Iraq) precisely in the city of Maru/Merv, the city of his mother's birth, in the month of Rabi'ul Awwal in the year 164 H or November 780 AD (Aziz et al., 2020). In the year 195 AH, Ahmad began his studies in Fiqh by following the teachings of Imam Shafi'i who was in Hijaz at the time. In Hijaz, he also deepened his knowledge of Fiqh by learning from Imam Malik and Imam al-Laits bin Sa'ad al-Misri. In search of hadith, he traveled to Yemen to learn from Abdurraziq bin Hammam, and visited other regions such as Khurasan, Persia, and Tarsus (Karim, 2015).

Although Imam Ahmad was heavily influenced by Imam Shafi'i, Maliki nuances can also be seen in his fiqh approach. In his method, Imam Ahmad uses deduction more, although he does not reject the use of the induction method. The method of taking law in his school includes the Qur'an, sunnah, hadith mursal, Qiyas, Istihsan, Istihsab, and shows a textualist tendency by prioritizing hadith and atsar in solving problems. Perhaps because of his preference for hadith, Imam Ahmad was given the nickname as the leader of the Salaf scholars (Karim, 2015). In fact, the socio-political background was the forerunner to the growth and development of the Hambali School. Factors such as theological disputes, political conditions, and the rapid progress of science (dirasah Islamiyah) during his time, indirectly influenced his views in the field of jurisprudence and jurisprudence proposals (Rahmat Abd. Rahman, 2020).

One of the distinctive features of Imam Ahmad's legal interpretation is the use of hadith mursal as the basis of law. However, it should be noted that the mursal hadith referred to here is a hasan hadith, which does not contradict the Qur'an, sunnah, or qiyas (Marzuki, 2005). Imam Ahmad made sure that the narrator of the hadith was not someone who deliberately lied, and the problem explained in the hadith did not contradict the existing knowledge, both in the authentic hadith and the hasan hadith (Nasri et al., 2011). For example (Abidin, 2020),

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

On the authority of Ma'mar on the authority of Yahya on the authority of Abi Kasir on the authority of a man from Bani Haniqah who said: verily the Prophet, may God bless him and grant him peace, said: there should be no vow in anger and in disobedience to God, the expiation is the expiation of an oath.

The following is an example of the ijtihad of Ibn Qudamah, a follower of the Hanbaliyah school, who stated that zakat is not obligatory on small children, insane people, infidels dhimmi, sahaya slaves, and people in debt (ghorim) (Hakim, 2016). In his ushul fiqh book, Ibn Qudamah explained the sequence of arguments in the discovery of law, namely the Qur'an, hadith, ijma', and qiyas. Despite this, there are differences of opinion in the use of the method of the word companion (qaul as-sahabat) and syar'u man qablana. Here is his statement (Qudamah, 2002),

أَدِلّة الأَحْكام الأُصُول أربعة : كتاب الله تعالى وسنه رسوله صلى الله عليه وسلم والإجماع ودليل العقل المبقي على النفي الأصلي واختلف في قول الصحابي، وشرع
من قبلنا

Then too, one of the scholars who adheres to the Hanbali school of thought is Ibnu al-Qayyim al-Jauziyah, who is famous as a Hanbali figure whose thoughts adorn many turats. In his ushul fiqh thinking, Ibn al-Qayyim had a very significant contribution, especially related to the concepts of 'urf and sadd al-dzarî'ah. He is known as the figure who first formulated the rules of fiqh (Imam Fawaid, 2019),

تغير الأحكام بتغير الأزمنة والأمكنة والأحوال

Meaning:
" Legal changes are in accordance with changes in times, places and conditions."

3.3. Analysis of the Concept of Ijtihad (Method for Discovering Islamic Law) from Four Schools in Responding to the Needs of the Times

In the analysis of the concept of ijtihad from the four madhhabs, it should be noted that each madhhab has its own complexity, which reflects its characteristics and legal views. Like Madhab Hanafi (Imam Abu Hanifah) stands out with flexibility in using legal principles, including mashlahat mursalat and 'urf (Gojali & Ali, 2021), which reflects the wisdom of Imam Abu Hanifah. The istihsan method is used to deal with specific situations, showing the adaptability of the Hanafi school. The concept of kafa'ah in family law also reflects attention to social aspects and justice (Nafisah & Khasanah, 2018). However, based on the analysis, there is a deficiency that lies in the opposition of the istihsan approach with Imam Shafi'i, who sees it as a form of self-determination in religion (Muhajirin, 2022).

From the side of the Maliki School (Imam Malik), the most prominent side is the preference for qaul shahabi as a source of law and the high acceptance of mursal hadith (Ghozali, 2021). This shows loyalty to the traditions of Medina and the expansion of legal sources. However, there is a dominant side of the deductive method that may make it less adaptive to changing times and situations. Then the Syafi'i school (Imam Syafi'i) emphasized consensus as a strong argument and gave priority to the qaul of the Companions in ijtihad (Khoiri, 2016). . The development of the Maqashid theory by al-Ghazali and al-Syatibi adds the dimension of benefit in Syafi'i ijtihad (Rohman, 2018). However, criticism of the use of istihsan by Imam Shafi'i, which is considered a subjective determination of law, and a strict hierarchy in legal sources that may make it less flexible.

In addition, the Hambali School (Imam Ahmad bin Hanbal) has the advantage of using mursal hadith as a legal basis, providing additional sources not found in other schools of thought (Fadillah et al., 2021). The preference for the text of the Qur'an and hadith shows the persistence of the text as the main source of law. However, disadvantages include a reluctance towards the use of the words of friends and syar'u man qablana, which can make ijtihad less accommodating to new contexts. The lack of flexibility in using deductive and inductive methods in a balanced manner is also a weakness. Overall, along with the development of the times, ijtihad, and the science of ushul fiqh, each school of thought shows continuity in responding to the needs of the times. By understanding the advantages and disadvantages of each school of thought, diversity and adaptation can be found in the views of Islamic law, which reflect the complexity and dynamics of the Islamic legal tradition.

4.   CONCLUSION

In exploring methods for discovering Islamic law, this research carefully examines the role of each of the Hanafi, Maliki, Syafi'i and Hambali schools of thought. Each school, with its unique characteristics, makes a valuable contribution to the formation of ijtihad and the establishment of Islamic law. Imam Abu Hanifah, as a representative of the Hanafi School, demonstrated skill in compiling the basics of law. By combining the Qur'an, Sunnah, Ijma', Qiyas, Istihsan, mashlahat mursalat, and 'urf, Imam Abu Hanifah brings a dimension of flexibility to legal discovery. The method, especially istihsan, has proven effective in overcoming special situations, dealing with issues of marriage without a guardian, or determining the direction of Qibla in difficult conditions. In addition, the

concept of kafa'ah, which is emphasized in family law, indicates concern for social aspects and justice.

Furthermore, Imam Malik, from the Maliki School, emphasized the Shahabi qaul and accepted the mursal hadith as a source of law. His more deductive approach, with an emphasis on the Medinan tradition, created a strong foundation, even if it could make him less responsive to changing times. Meanwhile, Imam Shafi'i emphasizes consensus as a strong argument and gives priority to the qaul of the Companions. Maqashid theory, introduced by al-Ghazali and al-Syatibi, provides a new dimension by integrating benefits in Shafi'i ijtihad, although istihsan is sometimes criticized as a subjective form of legal determination. Imam Ahmad, as a representative of the Hambali Sect, gave high preference to the text of the Qur'an and hadith, with a tendency towards mursal hadith as the basis of law. The method includes the Qur'an, sunnah, hadith mursal, Qiyas, Istihsan, and Istihsab, showing diligence towards the text as a source of law.

Thus, this research confirms that each school of thought has strengths and weaknesses in developing ijtihad and determining Islamic law. Criticism and differences of opinion between schools of thought reflect the complexity in the discovery of Islamic law. Maqashid ideas provide a significant beneficial dimension in ijtihad and the development of Islamic law, and this research aims to provide a comprehensive picture of the contributions and differences between schools of thought in the context of the discovery of Islamic law and highlight the relevance of Maqashid theory in the development of Islamic law.

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REFERENCES

A. Khudori Sholeh. (2003). *Pemikiran Islam Kontemporer*. Jendela.

Abdurrahman, Z. (2020). Teori Maqasid Al-Syatibi dan Kaitannya Dengan Kebutuhan Dasar Manusia Menurut Abraham Maslow. *Al-Fikr*, *22*(1), 52–70.

Abidin, A. A. (2020). *Kehujjahan Hadis Mursal Menurut Imam Mazhab. 22*(2).

Al Hamid, R., Sugitanata, A., & Karimullah, S. S. (n.d.). *Sinkronisasi Pendekatan Sosiologis Dengan Penemuan Hukum Islam Sui Generis Kum Empiris*.

Al, I., Kolaka, M. W., & Saputra, I. (2018). Institut Agama PERKEMBANGAN USHUL FIQH. *Jurnal Syariah Hukum Islam*, *1*(1), 38–49. https://doi.org/10.5281/zenodo.1242565

Al Mawaddah Warrahmah Kolaka, I., Saputra, A., Ahad, K., Shohabi, Q., Ahli Medina, A., AdDzarìah, S., & andSyarù Man Qoblanaa, I. (2018). Institut Agama METODE IJTIHAD IMAM HANAFI DAN IMAM MALIK. *Jurnal Syariah Hukum Islam*, *1*(1), 16–37. https://doi.org/10.5281/zenodo.1242561

Al-Dabbusi, A. Z. (2001). *Taqwim al-Adillah*. Daarul Kutub al Ilmiyah.

Al-Juwaini, A. al-M. (1993). *Al-Taklis fī Ushul al-Fiqh* (:Abdullah Zaulam, Ed.). Daarul Basair al-Islamiyah.

Al-Syafi'i, M. I. (1993). *Al-Risalah*. Dar al-Fikr.

Alwana, H. A. (2020). Aliran Pemikiran Ushul Fiqh Dan Pengaruhnya Terhadap Pendekatan Hukum Islam. *JURIS (Jurnal Ilmiah Syariah)*, *19*(2), 147. https://doi.org/10.31958/juris.v19i2.2375

Anwar, S. (2016). Teori Pertingkatan Norma dalam Usul Fikih. *Ilmu Syari'ah Dan Hukum*, *50*(1), 142–167.

Arif, F. M. (2013). Perbandingan Mazhab dalam Lintasan Sejarah. *Makasar: Indonesia Independent Publisher*.

Atmaja, F. K. (2017). Development of Ushul Fiqh From Time to Time. *Jurnal Ilmu Syariah*, *5*(1), 23–38.

Aziz, M., Habibah, M., & Sonhaji, M. F. (2020). *Musnad Imam Ahmad Bin Hambal Studi Kitab Hadis: Dari Muwaththa' Imam Malik hingga Mustadrak Al Hakim*. Ahlimedia Press.

Bakar, I. A. (2012). Bangunan Ijtihad Kontekstual. *Jurnal Al-Fikrah*, *1*(2), 31–42.

Basyir Mardjudo, A. (2006). METODE IJTIHAD IMAM ABU HANIFAH Abd. Basyir Mardjudo Dosen Jurusan Tarbiyah STAIN Datokarama Palu. *Hunafa*, *3*, 328–336.

Dainori. (2020). *PEMIKIRAN HUKUM IMAM MALIK IBN ANAS (Kontekstualisasi Pemikiran Imam Malik Ibn Anas dalam Khazanah Pemikiran Hukum Islam)*. *4*(1), 9–24.

Fadillah, J. A., Satriani, J., Badrus, M., & Nur, I. (2021). Mazhab dan Istimbath Hukum. *Al-Hikmah: Jurnal Studi Agama-Agama*, *7*(2), 235–245.

Ghozali, M. Y. A. (2021). POLEMIK DI KALANGAN ULAMA TERKAIT HADIS MURSAL. *Al Dhikra| Jurnal Studi Qur'an Dan Hadis*, *3*(2), 177–198.

Gojali, D., & Ali, H. (2021). STUDI ANALISIS METODE ISTINBATH HUKUM IMAM SYAFI'I DAN IMAM HANAFI TENTANG BA'I AL MU'ATHOH. *Jurnal Perspektif*, *5*(1), 33–56.

Habibullah, E. S. (2016). Pandangan Imam Abu Hanifah Dan Imam Syafi'i Tentang Al-Istihsan. *Al Mashlahah Jurnal Hukum Dan Pranata Sosial Islam*, *4*(7), 451–466.

Hakim, I. N. (2016). Pemikiran Ushul Fiqih Ibnu Qudamah. *Al Istinbath : Jurnal Hukum Islam*, *1*(1), 81–102.

Hambari, & Ayuniyah, Q. (2022). Pemisahan Maqashid Syariah dari Ilmu Ushul Fiqh dan Pengaruhnya Pada Penetapan Hukum Islam Kontemporer*. *Journal of Islamic Law*, *5*(1), 17–28.

Haris, M. (2012). Metodologi Penemuan Hukum Islam. *Ulumuna*, *16*(1), 1–20.

Herawati, A., Menurut Imam Malik dan, M., & Andi Herawati, H. (n.d.). *Maslahat Menurut Imam Malik Dan Imam Al- Ghazali (Studi Perbandingan)*. 42–54.

Ibrohim, B. (2018). Dimensi Keilmuan Ushul Fiqh. *Geneologi PAI: Jurnal Pendidikan Agama Islam*, *5*(2), 123–122.

Imam Fawaid. (2019). KONSEP SADD Al-DZARÎ'AH DALAM PERSPEKTIF IBNU AL-QAYYIM AL-JAUZIYAH. *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan*, *13*(2), 323–340. https://doi.org/10.35316/lisanalhal.v13i2.599

Juliansyahzen, M. I. (2015). PEMIKIRAN HUKUM ISLAM ABU HANIFAH: Sebuah Kajian Sosio-Hostoris Seputar Hukum Keluarga. *Al-Mazaahib: Jurnal Perbandingan Hukum*, *3*(1), 71–85. https://doi.org/10.14421/al-mazaahib.v3i1.1382

Karim, A. (2015). Manhaj Imam Ahmad Ibn Hanbal Dalam Kitab Musnadnya. *Riwayah*, *1*(2), 351–370.

Kasdi, A. (2014). Metode Ijtihad dan Karakteristik Fiqih Abu Hanifah. *Yudisia*, *5*(2), 216–235.

Khatimah, H. (2017). Metode Istinbat Imam Malik. *Istidlal: Jurnal Ekonomi Dan Hukum Islam*, *1*(1), 29–37. https://doi.org/10.35316/istidlal.v1i1.97

Khoiri, M. A. (2016). Kedudukan Qaul Sahabat Dalam Istinbat Hukum Islam Analisis Komparatif Pemikiran Ibnu Hazm Dan Wahbah Az-Zuhailī (The Position Of Qaul

Sahabat In Istinbat Of Islamic Law The Comparative Analysis Of Ibnu Hazm and Wahbah Az-Zuhaili's Thought). *Jurnal SMART (Studi Masyarakat, Religi, Dan Tradisi)*, *2*(2), 225–236.

Mahfudin, A. (2021). Metodologi Istinbath Hukum Lembaga Bahtsul Masail Nahdlatul Ulama. *Jurnal Hukum Keluarga Islam*, *6*(1), 1–17.

Marzuki. (2005). *AHMAD BIN HANBAL (Pemikiran Fikih dan Ushul Fikihnya) Oleh*.

Masyhadi, M. (2021). Perkembangan Ushul Fiqh di Era Modern. *SCHOLASTICA: Jurnal Pendidikan Dan ...*, *3*, 11–23.

Mawardi, M. M. S., & Bustami, Z. (2023). Ijtihad Bayani Sebagai Metode Penemuan Hukum Islam. *Jurnal Hukum Respublica*, *22*(2).

Muhajirin, M. (2022). MENIMBANG ISTIHSAN SEBAGAI DALIL LEGALITAS DALAM MUAMALAH. *Tatar Pasundan: Jurnal Diklat Keagamaan*, *16*(1), 90–102.

Muhammad Taufan Djafry. (2016). Metode Ijtihād Imam Al-Syāfi'Ī Dalam Kitab Al-Risālah. *NUKHBATUL 'ULUM,Jurnal Bidang Kajian Islam*, *vol 2 no 1*, 1–19.

Mujib, F. (2017). Perkembangan Fatwa di Indonesia. *Nizham: Jurnal Studi Keislaman*, *3*(1), 94–121.

Muthalib, A. (2019). Perkembangan Ilmu Ushul Fiqh Pasca Imam Madzhab Hingga Abad Modern (Kajian Terhadap Metode Ijtihad dan Penerapannya) Abdul Muthalib. *Hikmah*, *16*(2), 1–13.

Nafisah, Z., & Khasanah, U. (2018). Komparasi Konsep Kafa'ah Perspektif M. Quraish Shihab Dan Fiqh Empat Mazhab. *Istidal: Jurnal Studi Hukum Islam*, *5*(2), 126–140.

Nasri, M., Sekolah, H., Agama, T., & Negeri, I. (2011). *Kehujjahan Hadis Menurut Imam Mazhab Empat*. *9*(1), 93–98.

Nugraha, R. A., & Sulfinadia, H. (2020). Ushul Mazhab Hanafi dan Maliki: Kehujahan Khabar Ahad dan Qiyas serta Impilkasinya dalam Penetapan Hukum. *Ijtihad*, *36*(1), 60–76.

Qudamah, I. (2002). *Roudhah an Nazhir wa Junnatul al Manazhir*. Daarul Kitab al Ilmiyah.

Rahmat Abd. Rahman. (2020). Latar Belakang Sosial Lahirnya Mazhab Hambali. *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam*, *1*(3), 505–515. https://doi.org/10.36701/bustanul.v1i3.204

Rohman, H. (2018). Maqasid Al-Syari'ah Mazhab Syafi'i dan Urgensinya dalam Ijtihad Kontemporer. *Jurnal Hukum Islam IAIN Pekalongan*, *16*(2), 188–204.

Saadah, N., & Umar, M. H. (2023). HUKUM ISLAM DAN DINAMIKA SOSIAL:(Studi Analisis Metode Penemuan Hukum Islam Kontekstual). *Jurnal Indragiri Penelitian Multidisiplin*, *3*(1), 57–65.

Sanusi, A. (2018). Jurnal Syakhsia Vol. 19 No. 2, Juli—Desember 2018. *Syakhsia*, *19*(2), 223–244.

Setiawan, E. (2014). Dinamika Pembaharuan Hukum Keluarga Islam di Indonesia. *De Jure: Jurnal Hukum Dan Syar'iah*, *6*(2), 138–147.

Setiyanto, D. A. (2017). Pemikiran Hukum Islam Imam Malik Bin Anas (Pendekatan Sejarah Sosial). *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum*, *2*(2). https://doi.org/10.22515/alahkam.v2i2.177

Sholehuddin, Moh. (2011). Metode Ushul Fiqih Hasan Hanafi. *De Jure: Jurnal Hukum Dan Syar'iah*, *3*(2), 165–177. https://doi.org/10.18860/j-fsh.v3i2.2148

Sholichah, I. U. (2022). Realization of Maqashid Syariah Index (MSI) In Evaluating the Performance of Islamic Banking in Indonesia. *Madani Syariah*, *5*(2), 141–151.

Siregar, M. H. (2014). *Otoritarianisme Hukum Islam; Kritik atas Hierarki Teks Al-Kutub As-Sittah* (Vol. 1). LKIS PELANGI AKSARA.

Sopian, A. (2021). Kitab Fiqh Al-Akbar Karya Imam Abu Hanifah. *An-Nawa : Jurnal Studi Islam*, *3*(2), 76–88. https://doi.org/10.37758/annawa.v3i2.313

Sugitanata, A., Karimullah, S. S., & Al Hamid, R. (2023). Hukum Positif dan Hukum Islam: Analisis Tata Cara Menemukan Hukum dalam Kacamata Hukum Positif dan Hukum Islam. *JURISY: Jurnal Ilmiah Syariah*, *3*(1), 1–22.

Suherman, M. (2017). Aliran Ushul Fiqh dan Maqashid Syari'ah. *Al Mashlahah: Jurnal Hukum Dan Pranata Sosial Islam*, 353–368.

Sulaiman, M. S. (2013). PEMBARUAN HUKUM ISLAM (Esensi, Urgensi dan Kendala). *Islamika: Jurnal Ilmu-Ilmu Keislaman*, *13*(1).

Susilo, E., Aziz, Y., & Murtafi'ah, S. A. (2023). Potret Penyelesaian Masalah Hukum Era Sahabat Melalui Ijtihad. *Nizham: Jurnal Studi Keislaman*, *11*(01), 40–52.

Syams, A. J. (2013). Melacak masa keemasan fikih pada masa empat imam madzhab. *Al-Ahwal*, *5*(1), 91–102.

Syaripuddin, S. (2020). *Maslahat as Considerations of Islamic Law in View Imam Malik*. *4*(1), 1–23.

Taufiq Adnan Amal. (1989). *Islam dan Tantangan Modernitas: Studi Atas Pemikiran Hukum Fazlur Rahman*. Mizan.

Thohari, K. F. (2022). *Islam Perspektif Akidah dan Ibadah*. Jejak Pustaka.

Tohari, C. (2015). Fiqh Keindonesiaan: Transformasi hukum Islam dalam sistem tata hukum di Indonesia. *ANALISIS: Jurnal Studi Keislaman*, *15*(2), 403–432.

Wahid, A. (2018). Reformasi Maqashid Syariah Klasik Menuju Perspektif Kontemporer. *Syaikhuna: Jurnal Pendidikan Dan Pranata Islam*, *9*(2), 219–230. https://doi.org/10.36835/syaikhuna.v9i2.3260

Wibowo, A., & Sugitanata, A. (2023). Teori Pertingkatan Norma Dan Penemuan Hukum Islam (Pendalaman Dan Rekonstruksi Konsep). *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab*, *3*(1), 79–96.

Yasid, A. (2010). Paradigma Tradisionalisme dan Rasionalisme Hukum dalam Perspektif Filsafat Ilmu. *Jurnal Hukum Ius Quia Iustum*, *17*(4), 589–614.