

Multicultural Influence Of The Conceptual Value Of Civilization On Changes In Islamic Law

Zulbaidah

zulbaidah@uinsgd.ac.id

Universitas Islam Negeri Sunan Gunung Djati Bandung, Indonesia

Article Info

Received: 2024-08-20

Revised: 2024-10-21

Accepted: 2024-12-30

Keywords:

Islamic law;
multicultural;
Social and
cultural change

Abstract

Islamic law moves with the times, Islam does not deny ijtiḥad as a solution offered in the formation of Islamic law. This study aims to analyze that Islamic Law is inseparable from the conceptual values of civilization, where different laws do not have to be prohibited, so that the relationship of Islamic law with diverse cultures is not a rigid law but can change according to changes and human welfare at a certain time. Descriptive analysis became the method used in this study. This study concludes that, first: Culture is an important concept in understanding society, where culture has three layers, namely: basic values that can be maintained, behaviors consisting of rituals and certain symbols. Second, Islamic law is a dynamic and flexible law, where attention to this change is then used as one of the important reasons in extracting law by scholars in conducting ijtiḥad, because many laws change according to social and cultural changes while still paying attention to the demands of benefit, not about maḥdhah worship, the law is not qath'i, and that change must be based on the proposition of shari'i.

I. Introduction

Islamic law does not always offer a rigid standard concept. Islamic law always moves along with the times. Therefore, Islam does not deny that *ijtihad* is a solution offered in the formation of Islamic law. Until now, the door of *Ijtihad* is always open for Muslims in achieving their mission as a religion of *rahmatan lil alamin* and is still relevant to be done today.¹

The typology of social reconstruction based on *tawhid* is the right choice for Indonesian Muslims, given Indonesia's diversity in all cases. The Indonesian Muslim community must be fully aware that Muslims have transcendent responsibilities as a consequence of *tawhidic* humans, social responsibilities as social beings and national responsibilities as citizens of a nation full of diversity.² Based on the concept of Islam, a person holds full responsibility for himself in every step taken, because every individual must be responsible for what he has done before Allah SWT. Meanwhile, *habluminannas* has also become the main concept in social life for Muslims so that the balance between individual life towards God and social life in community life is a balance that must be upheld by all Muslims.³ Islamic law is an integral element that occupies an important position in the life of Muslims. Thus, it is no exaggeration to say that the internal dynamics that occur in this scientific discipline play a significant role in shaping the flow of fluctuations in the historical development of Islamic civilization. More than that, Islamic civilization can actually be identified with the civilization of Islamic law itself, just as the Greek civilization is identical to philosophy.⁴

The history of Islamic law starts from a very long time ago, precisely along with the revelation of the verses of the Qur'an and when Muhammad SAW was first appointed as a Messenger. This is because the law that was born in sharia science, especially in its early days, was nothing but a product of the derivation method (*istikhraj*, *istinbath*) from the verses of the Qur'an and the Sunnah of the Prophet. The method used in sharia science then entered development and became more structured after Imam Shafi'i (204 AH) with his monumental work *al-Risalah* officially declared the birth of the science of *ushul fiqh*.⁵ This also gave birth to new problems encountered in the lives of Muslims, which gave rise to various models and patterns in *ijtihad*, thus leading the history of Islamic law to accumulate in the formation of various *madhhabs*, each of which has a different style of thinking,

¹ Hannani. (2013). Hukum Islam Dan Multikulturalis Pluralitas Di Indonesia. *Jurnal Hukum Diktum*, 11(1), 32–46.

² Ali Ismunadi dan Moh. Faisal Khusni. (2021). Rekonstruksi Pendidikan Islam Multikultural Indonesia Perspektif Filsafat Pendidikan Islam. *Tribakti: Jurnal Pemikiran Keislaman*, 32(2), 353–366. <https://doi.org/10.33367/tribakti.v32i1.1742>

³ Uswatun Hasanah dan Ida Faridatul Hasanah. (2021). Internalisasi Pemahaman Moderasi Multikultural Dalam Pendidikan Islam Masa New Normal. *ATTANWIR: Jurnal Keislaman dan Pendidikan*, 12(1), 32–50.

⁴ Ecep Ishak Fariduddin. (2022). Kontekstualisasi Hukum Islam dalam Realitas Sosial-Budaya Perspektif Wael B. Hallaq. *The Indonesian Journal of Islamic Law and Civil Law*, 3(1), 17–38. <https://doi.org/10.51675/jaksya.v3i1.191>

⁵ E. Kusnadiningrat dan Abdul Haris bin Wahid. (2000). "Sejarah Teori Hukum Islam: Pengantar untuk Studi Usul Fiqh Mazhab Sunni." Raja Grafindo Persada.

thus giving birth to changes in Islamic law.

Changes in Islamic law are also influenced by progress and socio-cultural and political plurality in a society. If we look at the situation in the very early days, for example, taking the example of the regions that were also considered as madhhabs, namely Hijaz, Iraq and Syria, it is clear the role and influence of socio-cultural and political elements on fuqahā' in formulating Islamic law. Therefore, they often formulate interpretations of the Qur'an and Sunnah verses in a socio-cultural and political context. This shows that changes in the law occur due to changes in time and socio-culture of a society. This concept is in line with what was stated by Bakker SJ that culture continues to develop in line with changes in people's lives in a place, which is certainly influenced by factors of different situations and conditions in a society.⁶

The socio-cultural changes faced by Muslims in this modern era have raised a number of serious issues relating to Islamic law. On the other hand, the methods developed by the reformers in answering these problems have not been satisfactory.⁷

Similarly, the Companion Umar bin Khattab once refrained from implementing the punishment of cutting the hand for theft, even though the relevant verse in the Qur'an is explicit. Umar considered the social circumstances at that time, particularly the conditions of hardship, demonstrating the importance of understanding context in applying Islamic law.

Ijtihad can therefore be understood as a serious intellectual effort in the study of Islamic law, undertaken by exerting all available abilities to reach a legal conclusion on matters whose rulings are not explicitly clear. Islamic law is dynamic and responsive to changing circumstances; thus, Islam recognizes ijtihad as an essential mechanism in the development and application of legal rulings.

Until today, the door of ijtihad remains open for Muslims, allowing Islamic legal thought to adapt according to time, place, and social conditions. As a result, Muslim societies develop in ways that reflect their local contexts and cultural environments. This perspective is consistent with the well-known fiqh principle articulated by Ibn Qayyim al-Jawziyyah, which emphasizes that legal rulings may change in accordance with changes in time, place, circumstances, and customs (taghayyur al-ahkam bi taghayyur al-azman wa al-amkan wa al-ahwal).

⁶ A. Qodri Azizy. (2002). "Eklektisisme Hukum Nasional: Kompetisi antara Hukum Islam dan Hukum Umum." Gama Media.

⁷ Amir Mu'allim dan YUSDANI. (2001). "Konfigurasi Pemikiran Hukum Islam." UII Press.

⁸ Asni. (2013). Pemikiran Ijtihad Kontemporer Yusuf Qardhawi. Jurnal Al-'Adl, 6(1), 3.

al-Fatwa bi Tagyayyur al-Azminah wa al-Amkinah wa al- Ahwal". Furthermore, culture is an important concept in understanding society. Culture has three layers, namely: basic values that can be maintained, behaviors consisting of rituals and certain symbols. Great nations always accept culture, because culture is the basic value of life. The more open a community is, the easier it is for them to understand cultural acculturation. But in cultural acculturation, basic values must still be maintained. So is the unification of Islamic Law with local culture, with the aim of being easily accepted without sacrificing the basic values of the culture.⁹

The discourse on the contextualization of Islamic law in a multicultural nation like Indonesia has certainly become the concern and research of various parties. This is of particular concern considering that Islamic law, which deals with religious beliefs and the perfection of its teachings, is not only profane but also sacred. In addition, the context of Indonesia as a country where the majority of the population is Muslim, but constitutionally Indonesia is not an Islamic State. However, the existence of Islamic law has been grounded for some Indonesian people, and from historical, political, sociological and positive legal facts, Islamic law is part of the national legal system, some of which have been included in positive law, and will continue to play an important role as an important factor that contributes (contribution factor) in the development of national legal codification.¹⁰

Islamic legal regulations are inseparable from the conceptual values of civilization. Different laws do not have to be prohibited, because ijihad consists of several stages. Among other things, it begins with identifying problems from society, understanding reality (fiqh al-waqi'), followed by understanding the text of the Qur'an and al-hadith, understanding the purpose of sharia (fiqh al-maqashid) and predicting the future (fiqh al-Muwazanat). Islamic law has contributed legal norms and values that apply in the life of Indonesian society. It cannot be denied by any argument that Islamic law has an important and strategic position in the formation and preparation of Indonesian national law.¹¹ Research related to Ijtihad as a method of determining Islamic law is diverse and varied, as stated by Afiful Huda¹² that the process of developing Islamic law is certainly inseparable from scientific principles, where Islamic law must be developed scientifically. Therefore, the process of developing Islamic law cannot deny previous legal thinking. The development of Islamic law can be done

⁹ Abu Yasid. (2004). Islam Akomodatif; Rekonstruksi Pemahaman Islam Sebagai Agama Universal. LKIS Pelangi Aksara.

¹⁰ Mawardi, M., Netti, M., & Rizki, M. (2024). Tinjauan Sejarah: Transformasi Hukum Keluarga Islam Indonesia. Innovative: Journal Of Social Science Research, 4(2), 315–324. <https://doi.org/10.31004/innovative.v4i2.9457>

¹¹ M. Fahmi Al Amruzi. (2015). Membumikan Hukum Islam Di Indonesia. AL-BANJARI: Jurnal Ilmiah Ilmu-Ilmu Keislaman, 14(2), 172–184.

¹² Afiful Huda, Irma Nur Hidayati, I. H. (2022). Ijtihad Sebagai Model Pengembangan Hukum Islam. JAS MERAH: Jurnal Hukum dan Ahwal al-Syakhsiyyah, 1(2), 15–26.

through several *ijtihad* models such as *ijtihad jama'i* and *ijtihad fardi*, as well as *intiqā'i* and *insyā'i* *ijtihad*. Furthermore, Imam Mustofa's research¹³ explains that *Ijtihad* is one of the foundations of the establishment of *fiqh* in Islamic religion and life. Therefore, religious affairs, as well as world affairs, will not go on forever without *ijtihad*.

In contrast to the statement conveyed by Abd Wafi Has,¹⁴ that not all *ijtihad* results are updates to the old *ijtihad* because there are times when the results of the new *ijtihad* are the same as the results of the old *ijtihad*. Even if it is different, the results of the new *ijtihad* cannot change the status of the old *ijtihad*. Likewise with Darlis' research¹⁵ that Islamic Moderation crystallizes in all scientific disciplines in Islam, starting from the aspects of creed, sharia, tafsir, tasawuf and da'wah. The universal teachings implied by the scientific disciplines above are justice, equality, balance, flexibility, convenience and tolerance in carrying out religious teachings that were revealed for the benefit of humans. Moh Dahlan's research,¹⁶ argues that the diversity of the nation's life and religion requires a paradigm of multicultural opinions to create a social and national life that is calm, peaceful, tolerant and respectful and cooperative.

The difference between this research and previous research lies in the conceptual values of Islamic Law civilization, where different laws do not have to be prohibited, so that the relationship between Islamic law and diverse cultures is not a rigid law but can change according to changes and human welfare at a certain time.

2. Research Method

This research is a qualitative research with a normative juridical approach. The technique used is library research. Furthermore, the data that has been collected is compiled and then concluded objectively.¹⁷ This research is expected to provide an overview in examining the influence of multiculturalism on Islamic law.

¹³ Mustofa, I. (2011). Optimalisasi Perangkat Dan Metode *Ijtihad* Sebagai Upaya Modernisasi Hukum Islam (Studi Pemikiran Hassan Hanafi dalam Kitab *Min an-Nash Ilā al-Wāqī'*). *Jurnal Hukum Islam (JHI)*, 9(2), 155–169. <https://doi.org/10.28918/jhi.v9i1.585>

¹⁴ Has, A. W. (2013). *Ijtihad* Sebagai Alat Pemecahan Masalah Umat Islam. *Epistemé*, 8(1), 112–135. <https://doi.org/10.21274/epis.2013.8.1.89-112>

¹⁵ Darlis. (2017). Mengusung Moderasi Islam Di Tengah Masyarakat Multikultural. *Rausyan Fikr: Jurnal Ilmu Studi Ushuluddin Dan Filsafat*, 13(225–255). <https://doi.org/10.24239/rsy.v13i2.266>

¹⁶ Moh Dahlan. (2012). Paradigma Usul Fikih Multikultural Di Indonesia. *Ijtihad, Jurnal Wacana Hukum Islam dan Kemanusiaan*, 12(1), 1–19. <https://doi.org/10.18326/ijtihad.v12i1.1-19>

¹⁷ Suerjono Sukanto dan Sri Mamudji. (2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Cet. 11). PT. Raja Grafindo Persada.

3. Results and Discussion

Multicultural and Multiculturalism

Multiculturalism comes from two words: multi, which means many or diverse, and cultural, which means culture, which etymologically means cultural diversity. The culture that must be understood is not culture in the narrow sense, but must be understood as all human dialectics towards life. This dialectic will give birth to many faces, such as history, thought, verbal culture, language and so on. He sees multiculturalism as an enrichment to the concept of religious harmony developed nationally. The term multiculturalism has actually not long become an object of discussion in various circles, but quickly developed as an interesting object of debate to be studied and discussed. It is said to be interesting because debating ethnic and cultural diversity, as well as the acceptance of immigrants in a country, was originally only known as pluralism, which refers to ethnic and cultural diversity in a region or country.¹⁸

Indonesia is one of the largest multicultural countries in the world, because of its vast social, cultural and geographical conditions, therefore Indonesia is a country that has a variety of ethnicities, skin colors, religions or nations. Indonesian society is a society with a very complex level of diversity known as multicultural. Multicultural is defined as the diversity or difference of one culture with another culture, so that multicultural society can be interpreted as a group of people who live and live in a place that has its own culture and characteristics that can distinguish between one society and another. Each community will produce its own culture that will become the hallmark of the community. From here comes the term multiculturalism.

Multiculturalism can be understood as a worldview that is then realized in the "politics of recognition", where everyone is emphasized to appreciate and respect every culture in society. The form of a culture must be accepted by everyone without discriminating between one culture and another culture which is then framed within the framework of stability and differences and distinctiveness within the framework of common humanity.¹⁹ Multiculturalism simply means "cultural diversity". The term multicultural is often used to describe the condition of a society that consists of a diversity of religions, races, languages, and different cultures.²⁰ Furthermore, in the scholarly repertoire, the term multicultural is divided into several simpler expressions, such as plurality, which relies on the existence of more than one thing, diversity, which indicates that the existence of more than one is

¹⁸ N.A. Sustiono, M. M. dan S. S. (2022). Multikulturalisme Beragama Di Indonesia dalam Tinjauan Hukum Islam. *Prosiding Kajian Islam dan Integrasi Ilmu di Era Society 5.0 (KIIIES 5.0)*, 1, 509–513.

¹⁹ Muhammad Imarah. (1999). "Islam dan Pluralitas." Gema Insani.

²⁰ Tim Penyusun. (2008). "Kamus Besar Bahasa Indonesia." Pusat Bahasa Pendidikan Nasional.

different, heterogeneous, and even cannot be equated, and multicultural itself.

Multicultural societies have different characteristics from plural societies, because in

multicultural societies there is active interaction between people and plural cultures in daily life. There are nuances of equality and justice in these different cultural elements. The principles of diversity, difference, equality, equality, respect for democratic human rights and solidarity are the principles of multiculturalism.

Multiculturalism comes from the phrase multi (many), kultur (culture), then gets an -ism accent (flow, faham) which means a view that emphasizes interactive cultural diversity and culture against the background of racial and gender discrimination, as well as multi-ethnic migrant issues, and migrants of color. Multiculturalism is a philosophy sometimes interpreted as an ideology that calls for the unity of various groups with equal political rights and status in modern society.

The term multiculturalism is also often used to describe the unity of different ethnic communities within a country. For the Indonesian context, it is usually added with religious differences, which are social and cultural entities that often transcend the boundaries of class, gender and political ideology. In Indonesia, religious differences are added, which are social and cultural entities that often transcend the boundaries of class, gender and political ideology. The essence of multiculturalism, then, is about the acceptance and appreciation of a culture, both one's own and that of others.

The purpose of multiculturalism is for cooperation, simplicity and appreciation in an increasingly complex world. This definition invites us to be more wise in seeing differences and attempts to cooperate positively with those who are different. And continue to be aware of all forms of attitudes that can reduce multiculturalism itself.

Based on the multicultural concept above, it can be understood that the core of multiculturalism is the willingness to accept other groups equally as a whole, regardless of differences in culture, ethnicity, gender, language, or religion. Thus, multiculturalism affirms that with all their differences they are equal in the public sphere. Multiculturalism is a new policy response to diversity. Thus, the existence of different communities is not enough, because what is important is that these communities are treated equally by the State.

Basically, the multiculturalism formed in Indonesia is a result of the socio-cultural and geographical conditions that are so diverse and extensive. Indonesia has many islands where each island is inhabited by a group of people who form a society. From this society, a culture is formed about the community itself. Of course this has an impact on the existence of a very large and diverse culture.

Overview of Islamic Law

The term Islamic law is not found in the Qur'an, terminology that is often used as a word equivalent of Islamic law is al-syari'ah, al-fiqh, and al-hukm. In Western

studies the term commonly used is "Islamic Law" which means Islamic law. In the explanation of the word is often found the definition of the entire book of God that regulates every Muslim in all its aspects. From this definition it appears that Islamic law is more appropriate to the meaning of al-Shari'ah. So the word Islamic law in Indonesian terms is translated from English.

The definition of law is further defined as Islamic law, a system of rules based on the Qur'an and Sunnah of the Apostle regarding the behavior of mukallaf which is recognized and believed to be binding on all perpetrators.²¹ Amir Syarifuddin said that Islamic law is a set of rules based on the revelation of Allah and the Apostle regarding the behavior of mukallaf humans who are recognized and believed to be valid and binding for all those who are Muslim.²² Hasbi As-Shiddieqy defines Islamic law as a collection of efforts by jurists to establish sharia for the needs of society. This definition is closer to fiqh.

From the explanations above, it can be seen that Islamic law is closer to the notion of fiqh, which is a formulation of fuqaha that is flexible and therefore subject to change. However, in practice, what is referred to as Islamic law is sometimes nuanced with shari'ah so that in its use it often overlaps between shari'ah and fiqh.

M. Thahir Azhary believes that Islamic law has five basic characteristics, namely; first, dimensional. second, fair. third, individualistic and societal. fourth, comprehensive. fifth, dynamic. The five basic characteristics show how real Islamic law is. Comprehensive dimension covers all aspects of life.²³ Islamic law is also just in the sense that it is comprehensive. Individualistic and societal means that Islamic law has validity for both individuals and society.

Changes in Islamic Law

The presence of Islam in the archipelago was also accompanied by the teachings it brought, namely in the form of shari'ah and various results of the ijtihad of the scholars who had been packaged in fiqh. In accordance with the basic character of fiqh which is zhan-nishbi, making Islam more flexible and well received in the archipelago. In relation to the process of integrating Islamic law into Indonesian National Law, there are several theories that can be used as an analytical knife in examining the process of institutionalization of Islamic law.²⁴

Islam is a religion of rahmatalil'alam that upholds the survival of life in this world, including upholding human values. So it is not only beneficial to the religion of Islam, but its teachings are sustainable both with the world order of life, socially and naturally, so as not to cause damage or imbalance on earth. Islamic teachings are based on the Qur'an and as-Sunnah, the limitations of the Nash-nash of the Qur'an and Sunnah do not mean that they cannot accommodate any changes, because as it is known that the source of Islamic law is the revelation of God as outlined in the Qur'an which is qadim and the sunnah of the Apostle which is

²¹ Eva Iryani. (2017). Hukum Islam, Demokrasi dan Hak Asasi Manusia. Jurnal Ilmiah Universitas Batanghari Jambi, 17(2). <https://doi.org/10.33087/jiubj.v17i2.357>

²² Amir Syarifuddin. (1990). "Pembaharuan Pemikiran dalam Hukum Islam." Angkasa Raya.

²³ Azhary, M. T. (1987). "Negara Hukum; Suatu Study tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam dan Implementasinya pada Periode Negara Madinah dan Masa Kini." Bulan Bintang.

²⁴ Nasrudin, N. (2021). Kontribusi Ekonomi Syariah Dalam Pemulihan Ekonomi Indonesia Di Masa Pandemi Covid-19. Asy-Syari'ah, 23(2), 320. <https://doi.org/10.15575/as.v23i2.15552>

always under God's guidance, then Islamic law is stated to precede and control, so that to anticipate any changes the scholars formulate a method called *ijtihad*.²⁵ With this method, the law will be in accordance with changes in time and place. Various *ijtihad* models were then developed by scholars to answer and anticipate each of these changes, ranging from *ijtihad* methods initiated by previous scholars to *ijtihad* methods developed by contemporary scholars. Salam madzkur, for example, developed the *bayani*, *qiyasi* and *ishtilahi* *ijtihad* models. Yusuf al-Qardlawi developed the *intiqai* and *insya'i* Al-Qahtani *ijtihad* models²⁶ developed a model of *ijtihad* which he called *istinbat ahkam al-nawazil al-fiqhiyah al-mu'asirah*.²⁷ And several other scholars who developed the *maqashid ijtihad* method.²⁸

Indonesian scholars also took part in the development of these *ijtihad* models, for example developing what is called *social fiqh* which has 5 main characteristics, namely, first, reinterpretation is always sought in studying *fiqh* texts to find new context. Second, the meaning of *bermazhab* changes from textual *bermazhab* to methodological *bermazhab*. Third, the fundamental verification of which teachings are main and which are branches. Fourth, Jurisprudence is presented as social ethics. Fifth, the use of philosophical thinking methodology, especially in cultural and social issues.²⁹ Attention to this change is then used as one of the important factors in extracting the law by the scholars and even referred to as one of the conditions for *ijtihad*, because many laws change in accordance with social and cultural changes. This led the scholars to seriously consider what in the science of *ushul fiqh* is called '*urf*' as a supporting basis in determining the law.

Terminologically, it is something that is familiar to the community because it has become a habit and is integrated into their lives in the form of actions or words. In general, '*urf*' or customs are divided into two, namely '*urf sahih*' and '*urf fasid*'. It is said to be valid, if the '*urf*' that applies does not legalize something forbidden or forbid the *halal*. If the opposite happens, it becomes a *fasid 'urf*.³⁰ Therefore, jurists often refer to '*urf*' in determining *sharia* law on various issues. Imam Syafi'i as the Imam of the school of thought who took the middle way between rational and traditional has succeeded in compiling the science of *ushul fiqh* systematically with insight into local culture and the interests of the local community, so that he gave birth to a variety of *fiqh* legal fatwas which can generally be categorized into "*qaul qadim*" in Iraq and "*qaul jaded*" in Egypt. For example, in "*qaul qadim*" the ruling on running water that is impure, but its properties do not change. Whereas in "*qaul jaded*" running water is ruled the same as still water. If its quantity is less than two *kullah*, it becomes unclean.

²⁵ M. Syaltut. (2001). "*Al-Islam Aqidah wa Syari'ah*." Dar al-Syuruq.

²⁶ Y. Al-Qardlawi. (1996). "*Al-Ijtihad Fi al-Syari'ah al-Islamiyyah Ma'a Nazharat Tahliliyyah Fi al-Ijyihad al-Mu'asir*." Dar al-Qalam.

²⁷ Al-Qahtani. (2003). "*Manhaj Istinbath Ahkam al-Nawazil al-Fiqhiyyah al-Mu'ashirah*." Dar al-Andalus al-Khadra.

²⁸ Al-Khadimi. (1998). "*Al-Ijtihad al-Maqashidi Hujjiyatuh Dlawabituh Majalatuh*." Wizarah al-Awqaf Wa al-Syu'un al-Islamiyyah.

²⁹ Mahfudz. (2002). "*Nuansa Fiqh Sosial*." LKiS Group.

³⁰ Al-Zuhaili, W. (1996). "*Ushul al-Fiqh al-Islami (Juz I)*." Dar al-Fikr.

Egypt is geographically more fertile than Iraq, because of the Nile river that always overflows, and in Egypt water is more easily available when compared to Iraq. Therefore, in matters related to water, such as thaharah, wudhu', prayer in the absence of water and so on. Imam Shafi'i has issued a fatwa that is different from the previous fatwa when in Iraq. The emergence of "qaul qadim" and "qaul jaded" is clear evidence that Imam Syafi'i's ushul fiqh ideas are not just a series of developments in the maturity of his personal thinking, but also as a reflection of the diverse social life of his community. In general, Imam Syafi'i's ushul fiqh paradigm fits the culture of Indonesian society, because his fiqh insights have given examples of filling the local culture.

Based on the above information, it appears that Islamic law aims to provide goodness and convenience to humanity which has its own characteristics, namely dynamic and flexible. However, the development of Islamic law towards social life and budaha must fulfill several conditions, including: First, there is a demand for kemashlahatan to change. In principle, Islamic law aims to realize human welfare in the sense of attracting benefits and rejecting harm. The purpose of this kind of Islamic law is used as a foundation by the mujtahid, both in an effort to develop to answer new problems that are not found literally in revelation, as well as in the interest of knowing whether a case can still be applied because of shifting values due to changes in social structure and culture. The purpose of Islamic law is maqashid al-syariah.

Knowledge of maqashid al-syariah is the key to the success of a mujtahid in his ijtihaad, because it is on the basis of legal objectives that every issue of business can be developed, and the very limited revelation text needs to be developed. In such situations and conditions the companions began to explore the purpose of sharia or maqashid al-syariah to be used as a guide in trying to solve new problems and social and cultural changes. At the time of the Apostle of Allah there were already indications that maqashid al-syariah had an important role in the formation of Islamic law. For example, in a hadith narrated from Muslim, the Prophet at one time forbade the Muslims in Medina to store sacrificial meat, except for supplies for three days. A few years later, some of the Companions violated the Prophet's ruling by storing more than three days' worth of meat. The incident was brought to the Prophet's attention, but later the Prophet justified it and explained "I forbade you to

store the sacrificial meat because the guests from the Bedouin villages who came to Medina needed sacrificial meat. Now keep the meat, because there are no more guests who need it".

The above Hadith, when considered, shows the meaning and role of maqashid al-syariah in determining the law, namely the prohibition of storing sacrificial meat because by doing so the purpose of the Sharia can be realized, namely providing relief to the poor who come from Bedouin. But after that, the law had changed because the Bedouins no longer needed sacrificial meat, so the prohibition of storing sacrificial meat was no longer enforced by the Prophet. The wisdom exercised by the Prophet was seen as a law in the field of mu'amalat as a means of preserving the essential teachings, called maqashid al-syariah. It was also followed by the Companions after

the Prophet died in the context of the development and change of Islamic law to answer legal issues of his time ... so long as the legal objectives are known.

Secondly, the ruling does not concern the subject of mahdhah worship. Mahdhah worship is worship that does not have any changes from what has been outlined, either in the form of additions or subtractions. Ibadahah mahdhah is worship in a special sense, all human devotion to Allah directly in accordance with the provisions set by Allah and His Messenger such as prayer and fasting. Worship mahdhah is also called mu'amalah ma'a al-khaliq (worship in the sense of human relations with Allah) or worship ghairu ma'qulati al-ma'na (worship that cannot be understood its meaning).³¹

Third, the law is not Qath'i. The discussion of qath'i and zhanni can only be found among ushul fiqh experts when they analyze the truth of the source of a proposition. In terms of authenticity, the verses of the Qur'an all have Qath'i status because of the mutawatir narration, but in terms of indicating the meaning (dalalah) there are qath'i status and there are zhanni status. As for the Sunnah, except for the mutawatir, both its authenticity and its dalalah are zhanni. Of the two categories of evidence, these zhanni arguments are the areas of development of Islamic legal thought (majal al-ijtihad).

Legal products from these zhanni arguments are elastic and have the ability to respond to any changes / developments of the times. The terms qath'i and zhanni are used in the discussion of the Qur'an and al-Sunnah as sources and legal arguments, the strassing concerns two issues, namely in terms of its authenticity (tsubut, wurud) and in terms of the content of its meaning (dalalah). The Muslim Ummah agrees to believe that the editorial verses of the Qur'an documented in an Usmani mushaf and read by Muslims throughout the world are the same without the slightest difference with those received by the Prophet Muhammad Saw from Allah through the angel Gabriel. The terms qath'i and zhanni are used in the discussion of the Qur'an and al-Sunnah as sources and legal arguments, the strassing concerns two issues, namely in terms of its authenticity (tsubut, wurud) and in terms of the content of its meaning (dalalah). The Muslim Ummah agrees to believe that the editorial verses of the Qur'an documented in an Usmani mushaf and read by Muslims throughout the world are the same without the slightest difference with those received by the Prophet Muhammad Saw from Allah through the angel Gabriel.

According to Abdul Wahab Khallaf, what is called a proposition that has the status of qath'i al-dalalah is a proposition that only contains one sense, there is no opportunity for ta'wil to another sense. If the case to be known the law turns out to have a legal determination in the qath'I al-dalalah argument, then no more ijtihad can be done.³²

As for what is meant by the dalil which has zhanni status in terms of its dalalah

³¹ Hasan Saleh. (2008). "Kajian Fiqh Nabawi dan Fiqh Kontemporer." Rajawali Press.

according to Abdul Wahab Khallaf's explanation, it is still possible to do ta'wil which produces another understanding. This zhanni al-dalalah evidence is the area of ijtiḥad. If the event whose law is to be known turns out to have a shar'i law derived from a Nash that is clear and qath'i in terms of tsubut and dalalah, then in this case there is no way to do ijtiḥad. Thus, the Qur'anic text that has the status of Qath'I al-dalalah is a text that has one specific meaning which is certain. It is stated so because there is no other alternative understanding. As Allah says in Surah an-Nisa' (4) verse 12.

As for what is meant by the Nash which has the status of zhanni al-dalalah, which shows an understanding, but against the Nash it is still possible to do takwil which produces another understanding, the meaning of the Nash is relative and uncertain because there are still other alternative understandings. Against the Nash which has the status of zhanni al-dalalah, ijtiḥad applies. Like the Word of Allah in Surah al-Baqarah (2) verse 228.

The word (عورق) in the verse above is the plural of the word (عرق) which means musytarak, which has several meanings. Therefore, scholars differ in their understanding of the verse. The Shafi'iyah scholars say that the word (عورق) means pure, because looking at the form of the sentence (ثلاث) is muannas, and (عورق) is muzakar. Thus a woman who is divorced by her husband is obliged to do tiddah for three times pure. Unlike the Hanafiyah scholars who say that the word (عورق) means menstruation, because they see the wisdom of the prescribed iddah is to see the emptiness of the womb. The uterus can be confirmed empty if the woman does not menstruate for three times. Thus, a woman who is divorced by her husband must observe iddah for three menstrual cycles.

According to al-Syathibi, certainty of meaning (qath'i al-dalalah) is an understanding that is taken from a collection of zhanni arguments which all contain the possibility of the same meaning, the collection of the same meaning of the diverse arguments gives its own "power" and which is ultimately different from the situation when each argument stands alone. The strength of the collection makes it not zhanni, but has increased to a kind of mutawatir meaning, thus it is called qath'i al-dalalah.

Fourth, the new change in the law must be based on a shar'i argument as well. This means that the change must be in line with Islamic teachings. Thus Islamic law is not a rigid law but can change according to changes in human welfare at a certain time.

Ibn Qayyim al-Jauziyah argues in his book I'lam al-Muwaqqi'in:

دناو علاو تاينلاو لاوحلاو اوتكملاو اوتنمزلار يغتب بوتقلا ريغت

"Fatwas change according to changes in time, place, intention and need."

For example, the Minangkabau indigenous people in West Sumatra who embraced Islam based on the agreement of niniak mamak, alim ulama and clever people in Bukiak Marapalam which resulted in a philosophy of "Adat Basandi Syara', Syara' Basandi Kitabullah. Syara' Mangato Adat Mamakai". This means that Minangkabau

³² Abdul Wahab Khallaf. (1978). "Ilmu Ushul Fiqh." Dar al-Kuwait.

customs are based on Islam. But in reality, the marriage law of the Minangkabau people who adhere to the matrilineal kinship system uses an exogamy system, which requires a person to marry a partner from outside their tribe, meaning that they are prohibited from marrying within their tribe. Whereas in fiqh and the law, the prohibition is only due to nasab, marriage and breastfeeding.

The purpose of the Minangkabau indigenous people adhering to the matrilineal kinship system, with an exogamous marriage system (inter-tribal marriage), is to expand and perpetuate their kinship, heirloom property so that it does not become extinct. Those who violate are subject to customary sanctions. Judging from the mahram theory contained in QS An-Nisa (4) verses 22-23 where the prohibition of tribal marriage does not deviate but only expands the meaning of kinship contained in the verse to become tribal. Judging from the anthropological sociology theory of Incest, according to the words of the ulama, it will have an impact on the birth of disabled children, mental disorders and others. So the prohibition of tribal marriage in Minangkabau does not deviate from the teachings of fiqh and the law but is only seen as a uniqueness in the matrilineal kinship system on the basis of *raso jo pareso* in the family. Those who violate it will be subject to customary sanctions. In accordance with the fiqh rule *قدا علمكم قدا علم* (custom can be considered as the basis of law).

The norms governing the prohibition of tribal marriage in Minangkabau are based on custom, which is strengthened by Regional Regulation No.7/2018. 1945 Constitution Chapter I Article 18 B paragraph (2) and Article 28 I paragraph (3) after being amended. Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles. Thus the Minangkabau indigenous people adhere to three rules of law which are often called *Bapilin tigo*: Religion, Custom, and Government. If you violate one of them, it is the same as violating all three laws. However, the highest law is religious law, customary law and finally state law.

Minangkabau indigenous people are very concerned about their origins, to preserve their religion, descendants and property. Custom, religion and law are aligned (*bapilin tigo*) which contributes to the Minangkabau community, namely to the development of each tribal community. While the contribution to the Indonesian Muslim community is to be able to generate enthusiasm to be willing to look for prospective spouses with people of different tribes, different regions, cities and provinces and even islands, which in turn will strengthen the sense of unity and integrity of the Indonesian nation. Thus, the prohibition of tribal marriage has legal certainty in the traditional environment of the Minangkabau community. Which is called *Qath'i al-dilalah / Iltizam*. In accordance with the *fikihiyah* rules:

قحلصملا ب طونم هتيعار لا بلع ماملإا فرصت

“The actions of the leader towards the people must be based on considerations of *kemashlahatan* (good)”

4. Conclusion

The relationship between Islamic law and diverse cultures is that Islamic law is not a

rigid law but can change according to changes in human welfare at a certain time provided that there are demands for welfare, not about mahdhah worship, the law is not qath'i, and the change must be based on shar'i arguments. so Islamic law is a dynamic and flexible law.

References

- A. Qodri Azizy. (2002). *"Eklektisisme Hukum Nasional: Kompetisi antara Hukum Islam dan Hukum Umum."* Gama Media.
- Abdul Wahab Khallaf. (1978). *"Ilmu Ushul Fiqh."* Dar al-Kuwait.
- Abu Yasid. (2004). *Islam Akomodatif; Rekonstruksi Pemahaman Islam Sebagai Agama Universal.* LKIS Pelangi Aksara.
- Afiful Huda, Irma Nur Hidayati, I. H. (2022). Ijtihad Sebagai Model Pengembangan Hukum Islam. *JAS MERAH: Jurnal Hukum dan Ahwal al-Syakhsyiyah*, 1(2), 15–26.
- Ali Ismunadi dan Moh. Faisal Khusni. (2021). Rekonstruksi Pendidikan Islam Multikultural Indonesia Perspektif Filsafat Pendidikan Islam. *Tribakti: Jurnal Pemikiran Keislaman*, 32(2), 353–366. <https://doi.org/10.33367/tribakti.v32i1.1742>
- Al-Khadimi. (1998). *"Al-Ijtihad al-Maqashidi Hujjiyatuh Dlawabituh Majalatuh."* Wizarah al-Awqaf Wa al-Syu'un al-Islamiyyah.
- Al-Qahthani. (2003). *"Manhaj Istimbath Ahkam al-Nawazil al-Fiqhiyyah al-Mu'ashirah."* Dar al-Andalus al-Khadlra.
- Al-Zuhaili, W. (1996). *"Ushul al-Fiqh al-Islami (Juz I)."* Dar al-Fikr.
- Amir Mu'allim dan Yusdani. (2001). *"Konfigurasi Pemikiran Hukum Islam."* UII Press.
- Amir Syarifuddin. (1990). *"Pembaharuan Pemikiran dalam Hukum Islam."* Angkasa Raya.
- Asni. (2013). Pemikiran Ijtihad Kontemporer Yusuf Qardhawi. *Jurnal Al-'Adl*, 6(1), 3.
- Azhary, M. T. (1987). *"Negara Hukum; Suatu Study tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam dan Implementasinya pada Periode Negara Madinah dan Masa Kini."* Bulan Bintang.
- Darlis. (2017). Mengusung Moderasi Islam Di Tengah Masyarakat Multikultural. *Rausyan Fikr: Jurnal Ilmu Studi Ushuluddin Dan Filsafat*, 13(225–255). <https://doi.org/10.24239/rsy.v13i2.266>
- E. Kusnadiningrat dan Abdul Haris bin Wahid. (2000). *"Sejarah Teori Hukum Islam: Pengantar untuk Studi Usul Fiqh Mazhab Sunni."* Raja Grafindo Persada.
- Ecep Ishak Fariduddin. (2022). Kontekstualisasi Hukum Islam dalam Realitas Sosial-Budaya Perspektif Wael B. Hallaq. *The Indonesian Journal of Islamic Law and Civil Law*, 3(1), 17–38. <https://doi.org/10.51675/jaksya.v3i1.191>
- Eva Iryani. (2017). Hukum Islam, Demokrasi dan Hak Asasi Manusia. *Jurnal Ilmiah Universitas Batanghari Jambi*, 17(2). <https://doi.org/10.33087/jiubj.v17i2.357>
- Hannani. (2013). Hukum Islam Dan Multikulturalis Pluralitas Di Indonesia. *Jurnal Hukum Diktum*, 11(1), 32–46.
- Has, A. W. (2013). Ijtihad Sebagai Alat Pemecahan Masalah Umat Islam. *Epistemé*, 8(1), 112–135. <https://doi.org/10.21274/epis.2013.8.1.89-112>
- Hasan Saleh. (2008). *"Kajian Fiqh Nabawi dan Fiqh Kontemporer."* Rajawali Press.
- M. Fahmi Al Amruzi. (2015). Membumikan Hukum Islam Di Indonesia. *AL-BANJAR: Jurnal Ilmiah Ilmu-Ilmu Keislaman*, 14(2), 172–184.
- M. Syaltut. (2001). *"Al-Islam Aqidah wa Syari'ah."* Dar al-Syuruq.
- Mahfudz. (2002). *"Nuansa Fiqh Sosial."* LKiS Group.
- Mawardi, M., Netti, M., & Rizki, M. (2024). Tinjauan Sejarah: Transformasi Hukum Keluarga Islam Indonesia. *Innovative: Journal Of Social Science Research*, 4(2), 315–324. <https://doi.org/10.31004/innovative.v4i2.9457>
- Moh Dahlan. (2012). Paradigma Usul Fikih Multikultural Di Indonesia. *Ijtihad, Jurnal Wacana Hukum Islam dan Kemanusiaan*, 12(1), 1–19. <https://doi.org/10.18326/ijtihad.v12i1.1-19>
- Muhammad Imarah. (1999). *"Islam dan Pluralitas."* Gema Insani.

- Mustofa, I. (2011). Optimalisasi Perangkat Dan Metode Ijtihad Sebagai Upaya Modernisasi Hukum Islam (Studi Pemikiran Hassan Hanafi dalam Kitab Min an-Nash Ilā al-Wāqī'). *Jurnal Hukum Islam (JHI)*, 9(2), 155–169. <https://doi.org/10.28918/jhi.v9i1.585>
- N.A. Sustiono, M. M. dan S. S. (2022). Multikulturalisme Beragama Di Indonesia dalam Tinjauan Hukum Islam. *Prosiding Kajian Islam dan Integrasi Ilmu di Era Society 5.0 (KIHES 5.0)*, 1, 509–513.
- Nasrudin, N. (2021). Kontribusi Ekonomi Syariah Dalam Pemulihan Ekonomi Indonesia Di Masa Pandemi Covid-19. *Asy-Syari'ah*, 23(2), 320. <https://doi.org/10.15575/as.v23i2.15552>
- Suerjono Sukanto dan Sri Mamudji. (2009). *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Cet. 11). PT. Raja Grafindo Persada.
- Tim Penyusun. (2008). *"Kamus Besar Bahasa Indonesia."* Pusat Bahasa Pendidikan Nasional.
- Uswatun Hasanah dan Ida Faridatul Hasanah. (2021). Internalisasi Pemahaman Moderasi Multikultural Dalam Pendidikan Islam Masa New Normal. *ATTANWIR: Jurnal Keislaman dan Pendidikan*, 12(1), 32–50.
- Al-Qardlawi. (1996). *"Al-Ijtihad Fi al-Syari'ah al-Islamiyyah Ma'a Nazharat Tahliliyyah Fi al-Ijyihad al-Mu'asir."* Dar al-Qalam.