

ALTERNATIVE FIKIH IN SHARIA ECONOMICS (AN OFFER OF TAKHAYUR FIKIH)

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ABSTRAK	
<i>Kajian fiqh muamalah memiliki peran penting dalam perkembangan ekonomi syariah, terutama dalam menetapkan aturan-aturan transaksi yang sesuai dengan prinsip Islam. Penelitian ini membahas konsep fiqh alternatif dalam ekonomi syariah melalui pendekatan fiqh takhayur, yaitu pemilihan pendapat hukum yang lebih relevan dan kontekstual dalam dinamika ekonomi modern. Kajian ini menyoroti bagaimana hukum Islam, khususnya dalam muamalah, bersifat dinamis dan mampu beradaptasi dengan perubahan sosial, ekonomi, dan teknologi. Dalam penelitian ini, metode yang digunakan adalah library research dengan pendekatan analisis terhadap berbagai sumber fiqh klasik dan kontemporer. Hasil penelitian menunjukkan bahwa penerapan fiqh yang lebih fleksibel dan sesuai dengan realitas ekonomi modern dapat meningkatkan daya saing lembaga keuangan syariah serta memberikan solusi terhadap tantangan regulasi. Selain itu, kajian ini mengungkap bahwa pendekatan fiqh takhayur dapat menjadi alternatif dalam merespons perubahan sosial tanpa mengabaikan prinsip-prinsip dasar syariah. Dengan demikian, diperlukan reaktualisasi hukum Islam dalam ekonomi syariah untuk menjembatani ketentuan fiqh klasik dengan kebutuhan ekonomi kontemporer.</i> <i>The study of muamalah fiqh has an important role in the development of sharia economics, especially in determining transaction rules that are in accordance with Islamic principles. This study discusses the concept of alternative fiqh in sharia economics through the takhayur fiqh approach, namely the selection of legal opinions that are more relevant and contextual in the dynamics of the modern economy. This study highlights how Islamic law, especially in muamalah, is dynamic and able to adapt to social, economic, and technological changes. In this study, the method used is library research with an analytical approach to various classical and contemporary fiqh sources. The results of the study show that the application of fiqh that is more flexible and in accordance with the realities of the modern economy can increase the competitiveness of sharia financial institutions and provide solutions to regulatory challenges. In addition, this study reveals that the takhayur fiqh approach can be an alternative in responding to social change without ignoring the basic principles of sharia. Thus, a reactualization of Islamic law in sharia economics is needed to bridge the provisions of classical fiqh with the needs of the contemporary economy.</i>	
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INTRODUCTION

As social beings, humans cannot be separated from relating to others in order to fulfill their life needs. Human needs are very diverse, so that sometimes they are personally unable to fulfill them, and must relate to others. The relationship between one human being and another in fulfilling their needs, there must be rules that explain the rights and obligations of both based on an agreement. The process of making an agreement in order to fulfill the needs of both is commonly referred to as the process of making a contract or making a contract. This relationship is a natural thing that has been destined by Allah. Therefore, it is a social need since humans began to understand the meaning of property rights. Islam as a comprehensive and universal religion provides rules that are clear enough in the contract to be implemented in every era.

The scope of fiqh muamalah covers all aspects of human life, such as social, economic, political, legal and so on. The economic aspect in the study of fiqh is often referred to in Arabic as iqtishady, which means a way for humans to fulfill their life needs by making choices between various uses of existing means of satisfying needs, so that unlimited human needs can be fulfilled by limited means of satisfying needs.

In the study of Islamic jurisprudence, the scope of muamalah is; property, ownership, function of money, buyu' (concerning buying and selling), ar-rahn (concerning pawnshops), hiwalah (transfer of debt), ash-shulhu (business peace), adh-dhaman (guarantee, insurance), syirkah (concerning partnership), wakalah (concerning representation), wadi'ah (concerning safekeeping), 'ariyah (concerning lending), mudharabah (capital and labor partnership), musaqat (partnership in garden irrigation), muzara'ah (agricultural cooperation), kafalah (guarantee), tafliis (going bankrupt), al-hajru (limitation of action), ji'alah (contest, giving of fees), qaradh (mortgage), foreign exchange transactions, 'urbun (down payment), ijarah (rent), usury, concept of money and monetary policy, shukuk (debt or obligation), faraidh (inheritance), luqthah (scattered goods), waqaf, hibah, washiat, iqrar, qismul fa'i wal ghanimah (division of fa'i and ghanimah), qismul shadaqat (about distribution of zakat), ibrak (debt relief), muqasah (discount), kharaj, jizyah, dharibah, ushur, baitul mal and jihbiz, Islamic fiscal policy, distributive justice, labor (relationship between workers and employers, wages of workers), monopoly, Islamic capital market and mutual funds, Islamic insurance, Islamic banks, pawnshops, MLM, and others.

Muamalah is one part of the discussion of fiqh, which according to the author has more variety than other fields. In the discussion of muamalah, there are many laws that are actually hidden that are not widely known by many people. So that what arises in society is the doctrine of one fiqh from a school of thought that is held in a region. However, when only adhering to the opinion of one school of thought, the law will run rigidly.

The classical fiqh theory regulates in general how to regulate muamalah simply in its time, but of course it cannot be applied simply to muamalah in this contemporary era. The theory of murabahah according to classical fiqh can be applied in buying and selling in general, but when applied in contemporary Islamic financial institutions, there are difficulties in applying the original theory.

Sharia economy cannot be separated from the real form of Sharia Financial Institutions which are the manifestation of the journey of the sharia economy. In our daily lives we cannot be separated from muamalah, whether in the form of buying and selling, renting, debts, pawning, and the like. Muamalah has a general rule, namely *al-ashlu fî al-Muâmalah al-Ibâhah hattâ yadullu ad-dalîlu 'alâ tahrîmihâ*, this is due to the broad scope of muamalah compared to the technicalities of worship. Also that muamalah concerns social life which is given flexibility in carrying it out, both in its law and in its practice.

However, the development of sharia economy in Indonesia has not run smoothly without "pressure" and trials here and there. The pressure is inseparable from the perception built by "individual" academics, who are "disappointed" with some LKS in their services, by building an opinion in the community that LKS is no different from a pig in sheep's clothing, 11-12, there is no difference only the term non-sharia is changed to the term sharia, and various other opinions, which have more or less influenced public trust in LKS itself. In fact, we can understand that LKS must compete with other Financial Institutions, where LKS must not only comply with the DSN-MUI fatwa, but also with laws and regulations concerning financial institutions in general, taxation, and others. It is also known that LKS is not a producer, not a seller as most people understand. LKS runs its products with the principles of buying and selling.

Another problem arises from various "accusations" that transaction practices in LKS consist of multiple contracts/dual contracts/hybrid contracts/*al-uqud al-murakkabah*, which in their view are haram and prohibited in buying and selling. It is true that the prohibition of multiple contracts in one transaction is taken from 3 main hadiths, namely: *nahâ Rasûlullah saw., 'an shafqatini fî shafqatin wâhidah*; *naha Rasulullah saw., 'an ba'itaini fî ba'iatin*; *naha Rasulullah saw., 'an ba'iatin wa salaf*. However, it should be noted that the hadith cannot be understood textually alone, but the opinions of Islamic jurisprudence scholars regarding the application of the hadiths must also be examined. It is common that the same problem faced by different mujtahids has the potential to produce different legal products. One Islam, various epistemologies, various laws produced. For example, until now there is no *ijmak* on the law of smoking, the law of secret marriage, the law of triple divorce, and so on that have been understood and understood that many laws were born from mujtahids who differ in their epistemology. Differences in *qiraah*, differences in responding to the authenticity of a hadith, are two of the reasons why different laws are produced on the same issue.

In the world of sharia economic development, it is appropriate to open oneself to differences in law and study the law of muamalah fiqh comprehensively through various classical and contemporary fiqh literature and take opinions that better fulfill the interests of the people. If only, LKS is the same as other LK, then Muslims should choose LKS which can certainly be evidence of the revival of Islam in the economic field. There is a fiqh rule: *mâ lâ yudraku kulluhu lâ yutrâku kulluhu*, (if only in practice LKS has shortcomings, of course it should not be abandoned at all), whether if a car has a problem with its engine, it requires the car to be thrown away. The next fiqh rule: If two damages are collected, then the one with the lowest level of damage is chosen. The next rule: "If there are two harms facing each other, then the lighter one is taken. Ibn Taimiyah said: An intelligent person is not one who knows which is good from which is bad. However, an intelligent person is one who knows which is the best of two good things and which is the worse of two evils.

In the matter of Islamic economics, Muslim scholars, academics, ulama and community figures should provide encouragement to revive and advance Islamic economics, by abandoning fanatic schools of thought. As the theory of legal flexibility echoed by Ibn al-Qayyim al-Jauziyah: Changes in law can occur due to changes in circumstances, time, intentions and customs that apply. LKS is not a pure seller as seen in society where there are transactions of buying and selling between sellers and buyers, here is the starting point for understanding contemporary Islamic economics proportionally. A fatwa in one place may not be suitable to be applied in another place. It can be seen from the contemporary fatwas of Yusuf al-Qardhawi when giving a fatwa in the Muslim minority in America about borrowing money from a public bank with usury, he issued a fatwa that it was permissible, even though in general he forbade usury on bank interest. See also the fatwa of Sheikh Ahmad Thayyib, who stated that it is permissible to borrow money from a general bank with usury, on the condition that the person concerned has tried to find a loan without interest and has not received it, he even categorized marrying a child, owning a building, owning a vehicle as an emergency element. Likewise in Indonesia, bai al-inah is prohibited in Indonesia, but not in Malaysia.

The community assumes that following opinions that are not well-known or not found in the books they study or are taught is forbidden. Talfiq, tatatab rukhsah are two things that are greatly hated by the majority of muqallids and even their fiqh scholars. Although it is known that every legal problem will certainly give rise to different legal products, because of the different epistemologies or manhaj in determining the law.

Usul fiqh is a new branch, in the past the Salaf generation did not need it, because their understanding of the texts of the sharia came from their linguistic skills. Moreover, most of the rules for understanding the texts of the sharia, which they then used to conclude the sharia law, they had mastered well.

The concept of tatabu' rukhsah is divided into two, some that prohibit it and those that allow it. So, in the author's opinion, in dealing with the problems of contemporary jurisprudence, an opinion should be presented that can better accommodate the current developments in contemporary jurisprudence. Even though the opinions of these jurisprudence scholars are weak or not well known in the view of other jurisprudence experts or in the jurisprudence books which are used as references by Muslims in Indonesia.

In this case, the author wants to collect and analyze the opinions of Islamic jurisprudence from various schools of thought that can be used as alternatives in answering traditional and contemporary muamalat issues. The author will give this research the title: Alternative Jurisprudence in Islamic Economics (A Study of the Construction of Usul Jurisprudence in Jurisprudence of Muamalah).

RESEARCH METHODS

This study uses a library research method with the type of book analysis research and analysis of the thoughts of figures in the field of Islamic economics. The data collection technique uses documentation techniques or collection of written sources which are then analyzed using content analysis techniques so that the research results can be presented in more detail and the results are described into a comprehensive research result.

RESULTS AND DISCUSSION

Superstition Theory in Determining Sharia Economic Law

According to Hasby Ash-Shiddieqie, the true Islamic law is none other than Islamic fiqh or Islamic law, namely the collection of efforts of the fuqaha in implementing Islamic law according to the needs of society.¹

مجموع محاولات الفقهاء لتطبيق الشريعة علي حاجات المجتمع

Meaning: The collective efforts of legal experts to establish sharia according to the needs of society.

The term Islamic law, although in Arabic, has been made into Indonesian, as a translation of Islamic Fiqh or Islamic law which is sourced from the Qur'an As-Sunnah and the Ijmak of the companions and tabi'in. Hasby further explained that Islamic law is a law that continues to live, in accordance with the laws of motion and fertility. It has a constant movement and continuous development.²

¹ Hasby ash Shiddieqy, *Falsafah Hukum Islam* (Jakarta: Bulan Bintang 1974), p. 44.

² Hasby ash Shiddieqy, *Falsafah Hukum Islam* ... p. 22.

Often people assume that Islamic law is fiqh itself.³This needs to be straightened out, because there are some differences between the two. Fiqh itself etymologically:

العلم بالأحكام الشرعية العملية المكتسب من ادلتها التفصيلية⁴

Meaning: Knowledge relating to practiced Sharia laws, which are taken from detailed postulates.

Sharia is divided into three: 1) I'tiqadiyah Law: Laws relating to faith/beliefs regarding the essence of Allah SWT, His names, attributes, which are called uluhiyah. Meanwhile, belief in anything related to the Prophet is called prophecy. Those related to belief in angels, books, the last day, reckoning, heaven, hell, the day of judgment are called al-ghaibiyat. 2) Khuluqiah Law: law relating to how to cleanse oneself of despicable morals, fill it with commendable morals, such as honesty, trustworthiness, fulfilling promises, forgiveness, patience, tawadhu. 3) Amaliah Law or also known as Jurisprudence: laws relating to the laws of worship, muamalah, siyasah, etc.⁵

In reality, although fiqh can be interpreted as Islamic law, it contains aspects other than law. In fiqh books with the concept of religious ethics, sometimes it also contains discussion of aqidah which means the area of study of theology. And in reality, although fiqh can be interpreted as Islamic law, the law here is not always identical to law or statutory regulations. Laws that have al-ahkam al-

³Look Jaseer Auda, *Maqasid Shariah as Philosophy of Islamic Law: A System Approach*, Translated by Rosidin and Ali Abd Al-Mun'im with the title: *Membumikan Hukum Islam Melalui Maqāṣid Syari' Ah*, vol. 136 (Bandung: PT Mizan Pustaka, 2015), pp. 24-25.

⁴ Imam at-Taj as-Subki, *Jam'u Al-Jawami'*, *Diterjemahkan Oleh Santri Salaf Team* (Lirboyo: Sanri Sala Press, 2014), Jilid 1, h. 6. Lihat juga Syaikh al-Islam Abi Yahya Zakariya al-Anshori, *Lubb Al-Ushul* (Lirboyo: Santri Salaf Press, 2014), h. 6. beliau mendefinisikan fikih:

علم بحكم شرعى عملى مكتسب من دليل تفصيلي

Abdul Hamid Hakim, *As-Sulam* (Jakarta: Maktabah Sa'diyah Putra, tth), h. 5.

العلم بالأحكام الشرعية التى طريقها الاجتهاد

Lebih lanjut dalam kitab beliau, Abdul Hamid Hakim, *Al-Bayan* (Jakarta: Maktabah Sa'diyah Putra, tth), h. 4. beliau mendefinisikan fikih lebih detail:

العلم بالأحكام الشرعية عن ادلتها التفصيلية بالاستدلال

Taj ad-Din Ibn al-Farkah Abd ar-Rahman bin Ibrahim bin Saba al-Mishri, *Syarh Al-Waraqat Fi Ushul Fikih* (Beirut: Dar al-Kutub al-Ilmiyah, 2008), h. 12. Beliau mendefinisikan fikih dengan:

معرفة الاحكام الشرعية التى طريقها الاجتهاد

Artinya: *Fiqh adalah mengenal hukum-hukum syariah yang jalan mendapatkan hukum tersebut adalah dengan ijtihad.*

⁵ Abdullah Muhammad As-Sholih, "Al-Madkhal Ila Dirasatu Al-Fiqh Al-Islami," (tt: ttp, 2005), p. 18-20.

تنقسم الأحكام التى جاءت بها الشريعة الإسلامية إلى الآتي : (1) الأحكام الاعتقادية: هي الأحكام المتعلقة بذات الله عزّ وجلّ وأسمائه وصفاته، ويُطلق عليها الإلهيات، وكذلك الأحكام المتعلقة بالإيمان بالأنبياء والرسل عليهم الصلاة والسلام، ويُطلق عليها النبوات، والأحكام المتعلقة بالإيمان بالملائكة، وبالكتب السماوية، وباليوم الآخر، والحساب والبعث، والجنة والنار، إلى غير ذلك من الأمور الغيبية. (2) الأحكام الخلقية: هي الأحكام التى تتعلق بتهديب النفس وتركيتها، والتى يتوجب على الإنسان التحلّي بها مثل: الصدق، والأمانة، والوفاء بالعهد، والعفو، والصبر، والتواضع، إلى غير ذلك من الأخلاق والفضائل، وأن يبتعد عن الرذائل مثل: الكذب، والخيانة، والتكبر. (3) الأحكام العملية أو ما يُسمّى بعلم الفقه: هي الأحكام العملية التى تُنظّم علاقة الإنسان برّبه مثل: العبادات، والأحكام التى تُنظّم علاقة الإنسان بغيره من الأفراد والجماعات، والأحكام التى تُنظّم علاقة الدولة بغيرها من الدول.

khamsah (obligatory, sunat, makruh haram, jaiz) in fiqh are more identical to the concept of religious ethics, in this case Islam, namely its main characteristic is the realization of the content of worship values that are full of rewards and punishments and have consequences in the afterlife. This is the main characteristic in things that are combined with fiqh.

Judging from its scope which is full of religious ethics, fiqh can be interpreted as the science of human behavior whose main basis is nash/revelation, or more briefly the Islamic science of human behavior. The term behavior is intended with al-amaliyah, namely by excluding theological discourse, feelings, and philosophy, so that the science of kalam and philosophy are not included here. While the predicate of Islam or its main basis is revelation distinguishes fiqh from non-Islamic science or concepts.

Social change is a change in new norms that are the core of efforts to maintain the unity of group life. Efforts to provide answers to something in community life are more in accordance with the needs of the new society where more appropriate norms can establish relationships from the new and wider society.⁶ So what is meant by social change is the changes that apply in the structure, function, outlook on life, and attitudes of humans in society that affect the social system, so that these changes produce new values, functions, norms and results to solve the problems faced by the community itself. According to the author, social change can occur due to changes in mindset, changes in advances in information technology and science and knowledge, and can also be caused by the leadership's policy on social control in its area of authority.

As is well known, Imam Syafii had two legal opinions in two different places. Qaul Qadim when he was in Iraq, and qaul jadid when he was in Egypt. Changes in society are a natural phenomenon, no society has a permanent state in following the flow of developments. Understanding changes in society is an important part of the renewal effort, which means thoughts, schools of thought, movements, and efforts to change old ideologies, customs, institutions and so on, to adapt to the new atmosphere caused by the progress of modern science and technology.⁷

Islamic law is a law that is closely related to this change. In addition to its role in changing society from bad to good, the law is also a product of change, the result of contextual ijtihad from scholars and legal practitioners from the time of the apostles until today.⁸ If in religious matters the apostle received revelation, in worldly matters he consulted. In the time of the companions, the texts were the reference, but the policies and decisions were the results of the consultation. Likewise in the present day, Islamic law has developed far from its initial inspiration which is still preserved in the

⁶ Ishomuddin, *Sosial Agama: Pluralisme Agama Dan Interpretasi Sosiologis* (Malang: UMM Press, 1996), h. 111.

⁷ Lihat Harun Nasution, *Pembaharuan Dalam Islam, Sejarah, Pemikiran Dan Gerakan* (Jakarta: Bulan Bintang: 1975), h. 11.

⁸ Muhammad Salim al-Awwa, *Al-Fiqh Al-Islami Fi Thariq Al-Tajdid* (Beirut: Maktabah al-Islami: 1988), h. 4.

Qur'an and the Sunnah. Thus, Islamic law is not an instant law given by God according to His will, but a law that develops step by step along with the development of Muslim society at that time through *ijtihad*, namely understanding the texts, referring new cases to cases for which there are already laws, and issuing new laws that are in line with the objectives of sharia.⁹

Thus, Islamic law is a dynamic law created by Muslims based on their understanding of the text. The basis is the hadith of Muadz bin Jabal:

مُعَاذُ بْنُ جَبَلٍ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمَّا أَرَادَ أَنْ يَبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ: «كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ؟» ، قَالَ: أَقْضِي بِكِتَابِ اللَّهِ، قَالَ: «إِنْ لَمْ يَجِدْ فِي كِتَابِ اللَّهِ؟» ، قَالَ: فَيَسْئَلُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: «إِنْ لَمْ يَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، وَلَا فِي كِتَابِ اللَّهِ؟» قَالَ: أَجْتَهِدُ رَأْيِي، وَلَا أَلُو فَضْرَبَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَدْرَهُ، وَقَالَ: «الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ اللَّهِ لِمَا يُرْضِي رَسُولَ اللَّهِ»¹⁰

Meaning: When the Messenger of Allah sent him (Muadz) to Yemen, he said: How will you decide a legal case? Muadz replied: I will decide based on the Koran. The Messenger of Allah, peace be upon him, said: If you don't find the law in the Koran? Muadz replied: (I will look for it and use the basis of) the sunnah of Rasulullah saw. Rasulullah saw., said: If you don't get the legal answer in the Sunnah of Rasulullah saw., and also in the Koran? Muadz answered: I will make *ijtihad* with my thoughts. So Rasulullah saw., patted Muadz's chest, and said: Praise be to Allah who has given *taufik* to the messenger of Rasulullah saw., as has been approved by Rasulullah saw. (HR Abu Daud).

The theories about the relationship between law and social change and the function of law as above, can also apply to Islamic law, although not completely. What distinguishes Islamic law from secular law is that the main sources of Islamic law are the Qur'an and the Hadith of the Prophet, both of which are revelations from Allah SWT. However, in both sources of law there are texts, some of which are *qath'i* (axiomatic) and others are *dhanni* (hypothetical). In these *dhanni* texts, human reason intervention is possible to make interpretations and adjust their meaning to the demands of social change through an activity called *ijtihad*. Not only *dhanni* texts, even *qath'i* texts, if the *illat* of the law can be known and undergo transformation, then the law contained in these texts can undergo change. This is where the relationship between Islamic law and social change lies reciprocally, meaning that Islamic law can influence social change, and vice versa social change can also influence changes in Islamic law. The relationship between Islamic law and social change has been actualized in the historical reality of the development of Islamic law since the conception phase until the latest development in the modern era today. In the conception phase in the time of the Prophet Muhammad, legal changes were known as *nasakh* (the elimination of law with a new text with a time gap). For example, in the early days of Islam, the Islam of Muslims was not yet so strong, so the custom of

⁹ Muhammad Salam Madkur, *Al-Ijtihad Fi Tasyri Al-Islami* (Mesir: Dar an-Nahdah al-Arabiah: 1983), h. 58-62.

¹⁰ Abu Daud as-Sijistani, *Sunan Abu Daud* (Beirut: Maktabah al-Ashriah: tth), jilid 3, h. 303.

visiting graves was strictly prohibited by Islam to avoid the possibility of shirk to Allah. However, in subsequent developments, when the Islam of society was considered strong in line with the increasing existence of Islam, the custom of visiting graves was permitted because the possibility of shirk to Allah was no longer there.

In addition, in establishing laws for society, Islam always considers their readiness to accept the burden of the law. Therefore, the method used is to use stages (*tadarruj*), meaning not simultaneously. For example, the determination of the prohibition of palm wine (*khamr*) was carried out in stages, because the Arabs at that time were considered not ready to accept the provisions of the law considering that the habit of drinking palm wine among them was ingrained and a source of pride for them. At first, Islam only forbade them from getting drunk when they were going to pray, then in the next stage, the text of the Qur'an explained that in palm wine (as well as gambling) there is a great sin, in addition to its many benefits and its sins which are greater than its benefits. Here, the prohibition of palm wine (and gambling) has not been explained explicitly. Finally, when the psychological condition of society was considered ready to accept the final decree prohibiting palm wine (and gambling), a verse was revealed stating that palm wine (gambling and others) are vile acts of Satan that must be avoided.

More than that, basically all the texts of the Qur'an and Hadith were revealed by Allah to the Prophet in stages as a response to every development that occurred in society. In this regard, we know *asbab-al-nuzul* (the causes of the revelation of the verses of the Qur'an) and *asbab al-wurud* (the causes of the emergence of the Hadith).

After the Prophet died, the revelations were cut off and the text was no longer valid. After the Prophet, caliphs emerged who also established laws, apart from being based on the Qur'an and Hadith, but also based on *ijtihad*, taking into account social developments that occurred in people's lives. An example is the decision of Caliph Umar ibn al-Khattab regarding war booty (*ghanimah*), especially immovable property. After Umar received information about the success of the Islamic army in liberating Syria, Iraq and the land of Khusru (Persia), he felt the need to make a controversial policy in order to maintain the monetary stability of the country which was currently experiencing a crisis. With regard to movable property, Umar fully implemented the provisions outlined in the Al-Qur'an, Surah Al-Anfal verse 41 and which were also put into practice by the Prophet Muhammad SAW during his lifetime. He took one-fifth for the country and distributed four-fifths to each soldier. However, regarding agricultural land, Umar has a different opinion. According to him, the land should be controlled by the state and not distributed to the soldiers by leaving it in the hands of its original owner but by imposing taxes (*kharaj*). The tax revenues were then budgeted for the general public, after

deducting the salaries of soldiers serving in defense posts in the liberated countries.¹¹ Another example, Caliph Umar ibn al-Khattab did not punish theft committed during an economic crisis.¹² Because according to him, the imposition of punishment for the crime during the economic crisis will not be able to realize the desired legal objectives, considering that the driving factor for the theft has a stronger influence than the punishment. Umar ibn al-Khattab also made a legal provision that a woman who marries during the 'iddah period becomes forever forbidden for a man who marries her, because according to him, a person who rushes to something before its time must be sanctioned with a prohibition. The examples above are representations of the many rational and seemingly controversial thoughts of Caliph Umar ibn al-Khattab, because in establishing the law, he paid close attention to the sociological conditions of society, and in his view, the law can change if social conditions change. The characteristics of Umar's thinking were also followed by other companions, for example Abdullah ibn Mas'ud, Zaid ibn Tsabit, and others.

After the companions, the *tabi'in* emerged. At this time there were two different trends in legal thought, namely the *hadith* school and the *ra'yu* (ratio) school. The *hadith* school, as the name suggests, in determining the law always uses textual sources and rarely uses *ra'yu* except in dire circumstances. This school is centered in Medina, which is famous as the center of *hadith*. While the *ra'yu* school often uses ratio in determining the law. This school is based on the principle that Islamic law can be rationalized and contains benefits for humanity. The law is determined based on its '*illat*', and therefore, the law can change in line with changes in '*illat*'. This school is centered in Iraq which is famous as the center of Islamic civilization.

In the following period, more personal figures of the school of thought emerged, among the famous ones are the school of Imam Abu Hanifah, the school of Imam Malik, the school of Imam Syafi'i, and the school of Imam Ahmad ibn Hanbal, and others. Each of these schools formulated the framework of thought and methodology of its school of thought. For example, Imam Abu Hanifah is famous for his *istihsan*, Imam Malik is famous for his *mashlahah mursalah*, and Imam Syafi'i is famous for his *qiyas*. All of these methods always consider the public interest, which means that if the public interest changes, the consequence is that the law will also change. In addition, Imam Syafi'i is also famous for his *qaul qadim* and *qaul jadid*, namely the change in his fatwa after migrating from Iraq to Egypt due to the differences in sociological conditions that he found in the two countries. After the period of the imams of this school of thought passed, scholars emerged who formulated legal theories, for example Ibn al-Qayyim al-Jauziyah, who stated that it is undeniable that changes in law occur due to changes in place, time, and environment. In addition, al-Syatibi, with his concept of *maqashid al-syari'ah*, also positioned *mashlahah* as the goal of Islamic law that must be the focus of a

¹¹ Lihat Nurcholish Madjid, *Islam, Doktrin dan Peradaban*, (Jakarta: Yayasan Wakaf Paramadina, 1995), h. 392.

¹² Ruwai'i al-Ruhaili, *Fiqh Umar Ibn al-Khattab*, (Beirut: Dar al-Gharb al-Islami, 1983), h. 290.

mujtahid in determining Islamic law. Also Najm al-Din al-Thufi al-Hanbali, who is famous for his concept of mashlahah, stated that if mashlahah contradicts the text or ijma', then what must be prioritized is mashlahah based on bayan.

In Indonesia, several Islamic mass organizations have emerged that often issue legal fatwas to respond to social developments in society, for example Nahdlatul Ulama (NU), an Islamic mass organization that has been given the title of a traditionalist mass organization, has set rules on the legal decision-making system based on the Decision of the NU Ulama Congress in Bandar Lampung in 1992, including that legal decision-making must use a problem-based framework consisting of problem analysis that includes the causes behind the case from economic, cultural, political and social aspects, as well as an impact analysis reviewed from these aspects. This NU legal decision-making system shows that sociological considerations must be the main basis for legal decision-making in the NU environment, so that the resulting legal fatwas can be accepted by society. In addition to NU, there is Muhammadiyah, an Islamic mass organization that has been called a rationalist-modernist mass organization, and claims not to be bound by a particular school of thought, in formulating its fatwas it certainly also pays close attention to sociological considerations.

In addition to Islamic mass organizations, in Indonesia there have also emerged Islamic legal thinkers who represent personal thinkers, among the famous ones are Hasbi Ash-Shiddiqi with the theme of Indonesian Fiqh, Hazairin with National School of Fiqh, Munawir Syadzali with the Reactualization of Islamic Teachings, Abdurrahman Wahid with the Indigenization of Islam, Sahal Mahfudz with Social Fiqh, and Masdar Farid Mas'udi with the Religion of Justice.¹³ The local themes of fiqh (Islamic law) raised by the figures above show that they want to design Islamic law to always be in synergy with the development of dynamic sociological conditions in society so that Islamic law can truly be experienced as law that is rahmatan li al-'alamin.

The relationship between legal theory and social change is one of the basic problems for legal philosophies. Law, which because of its relationship to physical laws is assumed to be unchanging, faces the challenge of social change that demands its ability to adapt. Often the impact of social change is so great that it affects legal concepts and institutions, which therefore gives rise to the need for Islamic legal philosophy.

The argument that the concept of Islamic law is absolute and authoritarian and therefore eternal, is developed from two perspectives. The first is regarding the source of Islamic law is the will of God, which is absolute and cannot change. So this approach is closer to the problem of the concept

¹³ Yudian W Asmin, "Reorientasi Fiqh Indonesia," dalam Sudarnoto Abdul Hakim (penyunting), *Islam Berbagai Perspektif*, Yogyakarta: Kurnia Kalam Semesta (1995). Yudian W. Asmin, "Reorientasi Fiqh Indonesia", dalam *Islam: Berbagai Perspektif*, (Yogyakarta: LPMI, 1995), h. 224. Lihat juga Mahsun Fuad, "Hukum Islam Indonesia," *Dari Nalar Partisipatoris Hingga Emansipatoris*, Yogyakarta: LkiS Pelangi Aksara, cet. I (2005): h. 236-38.

of law in relation to the difference between reason and revelation. Namely: (1) law and theology, (2) law and epistemology. The second perspective comes from the definition of Islamic law, that Islamic law cannot be identified as a system of ethical or moral rules. So this discusses the relationship between the difference between law and morality.

The arguments put forward by the supporters of the eternity of Islam are summarized in three general statements: 1) Islamic law is eternal because the concept of law which is authoritarian, divine and absolute in Islam does not receive changes in the concepts and institutions of law. As a logical consequence of this concept, the sanctions it gives are divine and therefore cannot change. 2) Islamic law is eternal because its original nature and development in the period of its formation distance it from legal institutions and social change, courts and the State. 3) Islamic law is eternal because it does not develop an adequate methodology for legal change.¹⁴

In contemporary Islamic legal literature, the word “renewal” is used interchangeably with the words reform, modernization, reactualization, deconstruction, reconstruction, tarjīd, islah and tajdīd. Among these words, the most widely used are the words islah, reform, and tajdīd. Islah can be interpreted as improvement or repair, reform means forming or restructuring, tajdīd means rebuilding, reviving, restructuring or repairing it so that it can be used as expected.¹⁵

Society is always changing, it can be in the form of changes in social order, culture, socio-economic and others. According to linguistic and semantic experts, language will change so that effort or ijtihad is needed. Of course, the condition of a society will affect the fatwa issued by a mufti. However, this means that the law will not change just like that, without considering the norms contained in the main sources of Islamic law, namely the Qur'an and Sunnah. History records that ijtihad has been carried out from time to time.¹⁶

There is an assumption that Islamic law has been perfected with the codification of fiqh laws, fatwas and legal views of judges. This has caused the desire to explore Islamic law to stagnate. Until now, this adage still applies in society, especially among traditionalists. They think and maintain their opinion that there is no need to tinker with existing Islamic law, because they assume that the requirements of a mujtahid cannot be mastered by them, and the answers to the problems raised today have been answered in fiqh books written by previous scholars.

This opinion is not entirely correct, because in accordance with the theory of ushul fiqh, ijtihad can only be carried out in certain fields, namely: 1) arguments that are qathi al-wurud but

¹⁴ Abu Bakar Utsman al-Masyhur bi as-Sayyid al-Bakri bin al-Arif billah asy-Sayyid Muhammad Zain al-Abidin Syathha ad-Dimyathi, I'anatu at-Tholibin 'Ala Alfazh Fath Al-Mu'in (Huwa Hasyiah 'Ala Fath Al-Mu'in Bi Syarh Qurratu Al-A'in Bi Muhimati Ad-Din (tth: Dar al-Fikr, 1997), h. 27.

¹⁵ Abu al-Hasan Ali bin Muhammad bin Muhammad bin Habib al-Bashri al-Baghdadi al-Mawardi, Al-Hawi Al-Kabir Fi Fiqh Mazhab Al-Imam Asy-Syafii Wa Huwa Syarh Mukhtasar Al-Muzani (Beirut: Dar al-Kutub al-Ilmiah, 1999), h. 218.

¹⁶ Miftahul Huda, Filsafat Hukum Islam: Menggali Hakikat Sumber Dan Tujuan Hukum Islam (Yogyakarta: STAIN Ponorogo Press: 2006), h. 139-40.

zhanni al-wurud but qath'I are in them, 3) postulates that are zhanni al-wurud and dalalah, 4) in cases where there are no the legal argument.¹⁷

However, there are scholars who are of the opinion that the door of ijtiḥad should not be closed, because it has been opened by the Prophet Muhammad, so no one else has the right to close it. These khalaf scholars are the ones who try to “dismantle” the structure of Islamic law that has been considered perfect and permanent. Opening the door of ijtiḥad is a continuation of the purification phase because the reformists believe that “closing the door of ijtiḥad” is a factor causing the stagnation of Islamic legal thought in the world.

Since the 4th century AH, Muslims have believed that the door of Ijtiḥad has been closed, this reality has continued for quite a long time, until the time of Muhammad Abduh. He realized that society from time to time will always develop in the world with the development of the times, of course he did not accept that the door of ijtiḥad was closed. Abduh said the door of ijtiḥad must always be open.¹⁸ Furthermore, according to 'Abduh, for people who have fulfilled the requirements of ijtiḥad in the field of muamalah and social law, it can be based directly on the Quran and hadith and adjusted to the times. While worship does not require changes according to the times.

Blind imitation of previous scholars does not need to be maintained, Abduh even fought it. Because imitation in the field of muamalah stops the mind and reason from rusting. Imitation hinders the development of Arabic, the development of the structure of Islamic society, the Islamic education system, and so on. His opinion about the opening of the door of ijtiḥad is not solely on the heart but on the mind. The Qur'an gives a high position to the mind. Islam, according to him, is a rational religion.¹⁹

The study of the relationship between law and social change includes two dimensions, namely the dimension of the influence of social change on law and the dimension of the influence (change) of law on social change. Social change clearly influences and brings about changes in law, because if social change occurs, the needs of society will also change both qualitatively and quantitatively, including the need for law will also change, both in positive legal norms and legal institutions. However, the process of adjusting law to social change is usually slow. Often the law must wait for the process of social change to reach a certain stage of crystallization and stability in order to be able to give rise to new legal norms, institutions, and institutions. This reality is what gives rise to the expression "the law walks unsteadily following events" (het recht hinkt achter de feiten aan).

¹⁷ A. Djazuli, Ilmu Fiqih, Penggalan, Perkembangan Dan Penerapan Hukum Islam (Jakarta: Kencana Prenada Media Group: 2005), h. 72.

¹⁸ Harun Nasution, Islam Rasional (Bandung: PT Mizan: 1995), h. 198.

¹⁹ Dalam al-Qur'an terdapat banyak ayat yang menggambarkan posisi akal yang tinggi dengan lafadz: afalâ ta'qilûn, afalâ yatadabbarûn, dll.

However, if social change occurs quickly and causes social upheaval, then what will be directly shaken is the law.²⁰

Revelation is the absolute truth from Allah SWT. However, His prophets and apostles were never allowed to impose their teachings (truth) on other people.²¹ Likewise, the habits of mujtahids are that they never force the results of their ijtiḥad on others to follow them, and even allow them to abandon their opinions when they obtain more valid ijtiḥad results. This reality is what then made creativity in developing Islamic law (fiqh) as a product of humans with the title of "mujtahid" at that time become passionate. However, in a not too long journey, namely when the crystallization of schools of thought occurred where the followers of the schools of thought made the opinions of their imams as standard and binding to be followed and even defended to the fullest, the passion and creativity of ijtiḥad became dim. At this time, there was stagnation of Islamic legal thought, which should not have happened. Because in accordance with the basic nature of Islamic law itself which is dynamic, it should not be standardized or even considered final. To show the dynamism of Islamic law, new innovations must always be studied and new innovations must be introduced in understanding Islamic law from its original sources both in its practical legal status (fiqh) and its methodology (ushul fiqh and qawaidul fiqhiyah). Especially in the modern era facing the global world with complex problems.

In modern times, Islam is truly under a very tough test, especially an epistemological test. The science of ushul fiqh which should be able to act as a standard methodology for all Islamic intellectual thought, plays a key role in building Indonesian civilization in the 21st century, this role has declined in its journey, even ushul fiqh tends to be narrowed down to its scope of work only limited to Islamic law, therefore it is natural that a stigma arises that the decline of Islamic fiqh is due to (although it still needs to be proven) the lack of relevance of the theoretical tools of ushul fiqh to solve contemporary problems. If we agree on this, then it is actually a big job for Islamic thinkers to formulate and provide intellectual solutions to these problems so that the stigma does not become a reality, the way is to reread classical texts and then reflect on current conditions by paying attention to the substance of the meaning contained in the text and seeing the context of the text itself with the social reality that surrounds it.

In the philosophical reasoning of science, modernity is an era of belief in progress, which is parallel to belief in values and new things (because the new is rewarded with greater value than the

²⁰ Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum* (Bandung: CV. Mandar Maju: 2000), pp. 25-26.

²¹ See Al-Baqarah verse 256.

لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ ۚ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِنْ بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ لَا انْفِصَامَ لَهَا ۗ وَاللَّهُ سَمِيعٌ عَلِيمٌ

Meaning: there is no compulsion to (enter) religion (Islam); Indeed, the right path is clearer than the wrong path. therefore whoever disbelieves in Thaghut and believes in Allah. So indeed he has held on to a very strong rope that will never break and Allah is All-Hearing, All-Knowing.

old). Changes in the character of society from an agrarian society to an industrial society have their own impacts on perspectives (paradigms), lifestyles and needs, thus having their own impacts on religious behavior. As a system of development and construction, modernity is an effort to increase the ability of a social system to overcome new challenges and problems it faces, by rationally using science and technology with all its sources of ability.²²

The characteristics of Indonesian fiqh are very much colored by the “Arab personality” (Arab Oriented). Indeed, many indigenous fiqh scholars wrote various fiqh works, but during that time the Arab personality was very close.²³

The extent to which Islamic law is adaptable to social change needs to be discussed. In Indonesia, there is Muhammadiyah with its Majelis Tarjih which discusses issues of the people within the scope of Muhammadiyah, while NU has the Bahtsul Masail institution to solve current problems, with their own characteristics and techniques. All are intended to answer legal issues resulting from social change that occurs on both a small and large scale.

In the field of sharia economics, legal certainty is requested for products that will be marketed by sharia financial institutions. To answer various problems that occur in the development of sharia economics in Indonesia, the MUI formed the DSN-MUI to conduct ijtihad and issue fatwas on sharia financial institution products. Sharia financial institutions, not only implement and comply with laws and regulations on conventional financial institutions, are also bound by the DSN-MUI fatwas in implementing their products. DSN-MUI as one of the spearheads of the development or not of sharia financial institutions in Indonesia, is required to issue legal products on contracts or products of sharia financial institutions. Because if the DSN-MUI is rigid and rigid with one method of istinbath law from a certain school of thought that has existed for centuries and does not want to accept the method of istinbath law from contemporary scholars, then it is certain that sharia financial institutions will not develop.

People always compare how the products and services of Islamic financial institutions are with conventional financial institutions. There is even an adage: a pig has goat hair, or the skin is different, the contents are the same, 11-12, and various terms, meaning that many people view Islamic financial institutions as no different from conventional financial institutions whose goal is profit with economic principles. Islamic financial institutions are required to be competitive with conventional financial institutions that have been much more advanced and structured. The financing process at Islamic financial institutions is considered by many people to be "slow" and long-winded, especially sometimes the amount of monthly installments is higher compared to conventional financial

²² Hakim, p. 18.

²³ Marzuki Wahid, *Fiqh Madzhab Negara: Kritik Atas Politik Hukum Islam Di Indonesia* (PT LKiS Pelangi Aksara, 2001), p. 128. See also Hasbi Ash-Shiddiqi, *Syariat Islam Menjawab Tantangan Zaman* (Jakarta: Bulan Bintang: 1966), p. 41-42.

institutions which are simple and fast. If this perception is not immediately ended with a change in the governance system of Islamic financial institutions for the better, Islamic financial institutions will certainly be acquired by conventional financial institutions and the "self-esteem" of Islam as the initiator of Islamic economics will fall.

In this situation, DSN-MUI is also required with its *ijtihad tajdid* not to be confined by the rules of its members' personal schools of thought, but also to pay attention to the sustainability of the sharia economy in Indonesia. Examples of DSN-MUI's *ijtihad* in this problem are Hajj Insurance, Sharia Card, Hawalah, IMBT, MMQ, Sharia Bonds, etc.

Some examples of Islamic responses to changes in the social conditions of society above show that an Islamic legal formulation is needed to answer problems that are always developing, knowledge that is increasingly developing, technology that is increasingly developing. This is where the reformers should no longer be "hostile" but given space to develop their knowledge, but still under social control, so that it does not go too far. For example, the permission of the imam or Friday preacher to be led by a woman, the permission of same-sex marriage, the legalization of alcohol, and the like which have a bad effect on social life.

لأن النصوص محدودة ولكن الحوادث والنوازل غير محدودة أو لأن النصوص تنتهى ولكن الحوادث والنوازل لا تنتهى²⁴
Meaning: "Indeed, the text is limited, while the problems that arise are not limited. Or because in fact the text has stopped while the problems will continue to arise and never stop"

Ibn Qayyim al-Jauziyah, put forward a rule that is often used as a postulate for the renewal of Islamic law. This rule is adopted by many Islamic legal experts today.

في تغيير الفتوى، واختلافها بحسب تغير الأزمنة والأمكنة والأحوال والبيئات والعوائد²⁵
Meaning: Changes and differences in fatwas are based on changes in time, place, conditions, intentions and customs.

He stated that sharia is intended for the welfare of the people. Sharia brings justice, mercy and welfare of the people, so that every problem that leads to the opposite (towards mafasadat, chaos), then that is not the purpose of sharia.

Fatwa not only functions as a legal reference by society, but also as historical evidence of a social condition in a certain era. Fatwa can change according to social conditions, because fatwa, in addition to bridging religious idealism and social realism, also becomes a driving force for social

²⁴ Ungkapan ini tidak penulis temukan dalam literatur ushul fikih yang penulis pelajari, namun ada istilah yang sama, dapat dilihat di Abd al-Wahhab al-Khalâf, *Mashâdir Al-Tasyrî' Al-Islâmi Fimâ Lâ Nasha Fihi* (Kuwait: Dâr al-Qalam: 1993), h. 35.

ان النصوص القرآن و السنة محدودة و متناهية ووقائع الناس و اقصيتهم غير محدودة و لا متناهية

²⁵ Ibnu al-Qayyim al-Jauziyah, *I'lam Al-Muwaqqin an Rabbi Al-Alamin* (Kairo: Dar al-Hadis: 1993), Jilid 3, h. 11. Lihat juga Abdullah bin Abdul Muhsin, *Ushul Al-Mazhab Al-Imam Ahmad* (Beirut: Dar al-Fikr: 1980), h. 164. Juga Musthafa Ahmad al-Zarqa, *Syarh Al-Qawaid Al-Fiqiyah* (Damaskus: Dar al-Qalam: 1989), h. 924.

change through the authority that the mufti has, both individually and as an institution. In Indonesia, the MUI plays an important role in providing legal certainty for problems raised in the social conditions of society in Indonesia. This collective (jama'i) ijtihad can change and is open to revision, making it an indication that fatwa (law) can change according to the social conditions of society.

In the problem of presenting the minority opinion of scholars in a legal issue is something that has been discussed in classical and contemporary books. As with fiqh, the law of presenting the minority opinion of scholars is also divided into several opinions. The legal theory that can be applied in this study is the theory of tahayyur, where the author assumes that in the problem of sharia economics, ijtihad in it is more flexible.

The message God ويوضح لك ذلك أن تعلم يا أخي أن الشريعة جاءت من حيث الأمر والنهي على مرتبتين تخفيف وتشديد لا إلى مرتبة واحدة كما سيأتي إيضاحه في الميزان فإن جميع المكلفين لا يخرجون عن قسمين قوي وضعيف من حيث إيمانه أو جسمه في كل عصر وزمان فمن قوي منهم خوطب بالتشديد والأخذ بالعزائم ومن ضعف خطب بالتخفيف والأخذ بالرخص وكل منهما حينئذ على شريعة من ربه وتبيان فلا يؤمر القوي بالنزول إلى الرخصة ولا يكلف الضعيف بالصعود للعزيمة وقد رفع الخلاف في جميع أدلة الشريعة وأقوال علمائها عند كل من عمل بهذه الميزان وقول بعضهم إن الخلاف الحقيقي بين طائفتين مثلاً لا يرتفع الحمل محمول علمن لم يعرف قواعد هذا الكتاب لأن الخلاف الذي لا يرتفع من بين أقوال أئمة الشريعة مستحيل عند صاحب هذه الميزان فامتحن يا أخي ما قلته لك في كل حديث ومقابله أو كل قول ومقابله تجد كل واحد منهما لا بد أن يكون مخففاً والآخر مشدداً ولكل منهما رجال في حال مباشرتهم الأعمال ومن المحال أن لا يوجد لنا قولان معا في حكم واحد مخففان أو مشددان وقد يكون في المسئلة الواحدة ثلاثة أقوال أو أكثر أو قول مفصل فالحاذاق يرد كل قول إلى ما يناسبه ويقاربه في التخفيف والتشديد حسب الإمكان وقد قال الإمام الشافعي وغيره إن أعمال الحديثين أو القولين أولى من إلغاء أحدهما وأن ذلك من كمال مقام الإيمان²⁶.

قال في الفوائد وكذا يجوز الأخذ والعمل لنفسه بالأقوال والطرق والوجوه الضعيفة إلا بمقابل الصحيح فإن الغالب فيه أنه فاسد ويجوز الإفتاء به للغير بمعنى الإرشاد به²⁷.

It is permissible to do good deeds (worship, mu'âmalah) and issue fatwas using qaul (opinions of scholars) dlo'if for oneself, except those that are classified as muqâbil shahîh (the opposite of sahih), then it is not permissible, because the majority of muqâbil shahîh are fâsid (damaged / cannot be used). Talfiq (collecting) in terms of worship according to the Maliki scholars is permissible.

الخامس عدم التلفيق بان لا يلفق في قضية واحدة ابتداء ولا دواما بين قولين يتولد منهما حقيقة لا يقول بها صاحبها واشترط عدم التلفيق هو المعتمد عندنا وعند الحنفية والحنابلة واما عند المالكية فيجوز التلفيق في العبادات فقط²⁸.

²⁶ al-Anshori, Volume 1, h. 320.

²⁷Muhammad Rasyid Ridha, *Tafsir Al-Manar* (Beirut: Dar al-Fikr, tth), h. 12.

²⁸Ishomuddin, h. 397 .

Both Syafi'iyah, Hanafiyah and Hanabilah agree that it is not permissible to have talfiq (combining two or more schools of thought), unlike the opinion of Malikiyah which allows it, but only in terms of worship. Talfiq is combining two or more schools of thought so as to conclude a law that is not stated by both schools of thought. Example: A person who has ablution touches the skin of another woman without a barrier (according to Imam Syafi'i it is invalid, and is not invalid according to Imam Hanafi) and bleeds from other than the qubul or anus (according to Imam Syafi'i it is not invalid, and is invalid according to Imam Hanafi). The ruling that the ablution is not invalid in this example is talfiq. Because according to both Imam Hanafi and Syafi'i it is concluded that the ablution is invalid.

In the explanation in another Syafi'iyah book, it is permissible to change schools of thought according to interests. As explained in the book Al-Allamah al-Fadhil wa al-Ustadz al-Kamil as-Sayyid Alwi ibnu Sayyid Ahmad as-Saqaf, Tarsyihu Al-Mustafsidin.

ويجوز الانتقال من مذهب الى مذهب من المذاهب المدونة ولو بمجرد التشهي سواء انتقل دوما او في بعض الحادثة او حكم او عمل بخلافه ما لم يلزم منه التلفيق²⁹

It is permissible to move from one madhhab to another from the madhhabs that are recognized as valid (written down), even if it is based on lustful desires only, as long as there is no talfiq. However, according to strong qaul, a person will become a wicked person if he only takes light qauls.

It is better for people who are anxious (doubtful) to take light qaul.

فائدة إذا تمسك العامي بمذهب لزمه موافقته وإلا لزمه التمهذب بمذهب معين من الأربعة لا غيرها ثم له وإن عمل بالأول الانتقال إلى غيره بالكلية أو في المسائل بشرط أن لا يتتبع الرخص بأن يأخذ من كل مذهب بالأسهل منه فيفسق به على الأوجه وفي الخادم عن بعض المحتاطين الأولى لمن إبتلي بوسواس الأخذ بالأخف والرخص لئلا يزداد فيخرج عن الشرع ولضده الأخذ بالأثقل لئلا يخرج عن الإباحة³⁰

It is recommended for people who are anxious to take the light opinion they need in order to eliminate their anxiety. On the other hand, for those who are not wary of taking the heavy things (if they can), so as not to do something according to their desires.

Even in an opinion that someone may imitate the Companions of RA. Even though this opinion has certainly been discussed and considered contrary to the opinion of most Shafi'i scholars.

وجوز العلماء تقليد الصحابة والتابعين لقول النبي صلى الله عليه وسلم خير الناس قرني ثم الذين يلونهم.³¹

Ulama allow taqlid to Sahabat and tabi'in based on the hadith of the Prophet SAW, namely: It is better for the Ummah to be the Ummah that accompanies My era.

Apart from the ability for someone to be taqlid to friends, there are also opinions that allow someone to be taqlid to other than the four schools of thought.

²⁹ As-Sholih, h. 4.

³⁰ ad-Dimyathi, Jilid 4, h. 218.

³¹ al-Mawardi, Volume 16, p. 52.

نقل ابن الصلاح الاجماع على أنه لا يجوز تقليد غير الأئمة الأربعة أى حتى العمل لنفسه فضلاً عن القضاء والفتوى لعدم الثقة بنسبتها لاربابها³²

اختلف العلماء فيه : فقال أكثر المتأخرين لا يجوز تقليد غير الأئمة الأربعة من المجتهدين.... وأجاز بعض العلماء تقليد غير الأئمة الأربعة في غير الإفتاء.... وقال العز بن عبد السلام أن المدار على ثبوت المذهب عند المقلد وغلبة الظن على صحته عنده فحيث ثبت عنده مذهب من المذاهب صح له أن يقلده ولو كان صاحب المذهب من غير الأئمة الأربعة³³

Imam Ibn Sholâh quoted the ijma' that taqlîd is not permitted from other than the four imams, even though it is done for oneself, let alone to be used as a decision or to issue a fatwa on the grounds that it is not valid (less accurate). However, some scholars allow it to be other than a fatwa (fatwa of a mujtahid). Even Imam 'Izzuddîn bin 'Abdus Salâm is of the opinion that what is important is that someone who taqlîd has a strong suspicion of the validity of the madzhab that is followed, then there is no problem (it is valid), even if it is from other than the four madzhabs.

For a layman, it is permissible for him to follow the actions of a pious person without explanation from him.

وليس للجاهل تقليد العالم في فعله شيئاً بمجرد كونه فاعلاً له قال الفزاري ورجح س م الى أن له ذلك. قيل والأحاديث الصحيحة تؤيده قال السيد عمر نقلاً عن ابن زياد أن العامي إذا وافق فعله مذهب إمام يصح تقليده صح فعله وإن لم يقلده توسعة على عباد الله تعالى³⁴

It is not permissible for an ignorant person to follow an 'alim person just by looking at his work, but there must be clarification first. This is different according to Imam Ibn Qasim who stated that it is permissible.

Moreover, there is an opinion that taqlîd after doing good deeds is permitted by some scholars. مسألة: ك : يجوز التقليد بعد العمل بشرطين أن لا يكون حال العمل عالماً بفساد ما عن له بعد العمل تقليده، بل عمل نسيان للمفسد أو جهل بفساده وعذر به، وأن يرى الإمام الذي يريد تقليده جواز التقليد بعد العمل، فمن أراد تقليد أبي حنيفة بعد العمل سأل الحنفية عن جواز ذلك، ولا يفيد سؤال الشافعية حينئذ، إذ هو يريد الدخول في مذهب الحنفي، ومعلوم أنه لا بد من شروط التقليد المعلومة زيادة على هذين اهـ. وفي ي نحوه، وزاد: ومن قلد من يصح تقليده في مسألة صحت صلاته في اعتقاده بل وفي اعتقادنا، لأننا لا نفسقه ولا نعدّه من تاركي الصلاة، فإن لم يقلده وعلمنا أن عمله وافق مذهباً معتبراً، فكذلك على القول بأن العامي لا مذهب له، وإن جهلنا هل وافقه أم لا لم يجز الإنكار عليه³⁵

³² ad-Dimyathi, Jilid 1, h. 17.

³³ Muhammad Musthafa az-Zuhaili, *Al-Wajiz Fi Ushul Al-Fiqh Al-Islami* (Dimsyah: Dar al-Khair, 2006), Jilid 2, h. 373.

³⁴ As-Sholih, h. 4.

³⁵ al-Mishri, h. 10.

It is permissible to imitate after the act of worship has taken place, if two conditions are met: 1) When the act is performed, the person does not know that something that is done will be damaged or because he forgot, 2) The Imam who is to be followed also allows imitation after the act.

In the author's research, there has been no discussion of alternative fiqh in the discussion of muamalah. However, there are several studies that discuss minority fiqh. Such as the Reactualization and Contextualization of Indonesian Muamalah Fiqh, Efforts to Innovate Islamic Banking and Financial Products³⁶, Muslim Minority Jurisprudence in Non-Muslim Majority³⁷, Designing Alternative Islamic Jurisprudence Principles (Usul),³⁸ Reconstruction of Islamic Jurisprudence Reasoning (Perspectives of Contemporary Scholars).³⁹

From the studies that the author has mentioned above, it has not accommodated the author's intention to contribute to Islamic economic law to facilitate regulations that will be formulated by the government regarding the sustainability of Islamic economics. The author tries to find Islamic jurisprudence opinions that may not be well-known in their schools, but it turns out that they can be applied in the concept of Islamic economic regulation. The application of these opinions in the author's assumptions can break the rigidity of legal fatwas that must be applied by Islamic financial institutions. So that the perception and paradigm of the community who still assume that Islamic economics or more specifically Islamic financial institutions are no different from conventional financial institutions can be eroded. Because by adopting opinions that are lighter and more reflective of the benefits in the development of Islamic economics, it is certainly very much hoped for.

If only, want to implement sharia economics textually nash or original, certainly not adopted in the current era and time. Suppose a sharia financial institution runs a product with a murabahah contract, certainly the murabahah applied is not the same as murabahah as regulated by classical fiqh. But murabahah modified with wakalah, which will certainly graze the forbidden conditions of the classical fiqh version which is considered muktabar, but there are classical and contemporary fiqh that have different opinions, which can be adopted in the development of contracts in sharia financial institutions.

³⁶ Agustianto, *Reaktualisasi Dan Kontekstualisasi Fikih Muamalah Ke-Indonesiaan Upaya Inovasi Produk Perbankan Dan Keuangan Syariah* (Jakarta: Iqtishad Publishing: 2014).

³⁷ ³⁷See also Miskari Miskari, " Fikih Muslim Minoritas Di Non-Muslim Mayoritas," *Al-Maslahah Journal of Sharia Sciences* 11, no. 1 (2015).

³⁸See also Abd Moqsith, " Merancang Kaidah (Ushul) Fikih Alternatif,," (Paramadina Jakarta).

Look Zain Zuhri Sholeh, " Rekonstruksi Nalar Fikih (Perspektif Para Sarjana Kontemporer)," *Al-Mabsut: Journal of Islamic and Social Studies* 8, no. 1 (2014).

CONCLUSION

The sharia economy, which is increasingly developing, is not accompanied by a significant change in the paradigm of the majority of Muslim society about sharia economics, who believe that there is no difference between sharia economics and conventional economics. Although many sharia economic experts have denied it, regardless of whether there are political interests or not, in reality there is a legal political agenda in it.

Changing the paradigm of society from against to for must certainly start from the legal regulations on Islamic economics. Starting from regulations that are directly related to practices or fatwas issued by related institutions. Taking lighter legal opinions in the concept of muamalah will encourage Islamic financial institutions to develop more rapidly, because in addition to having to follow the rules that bind conventional financial institutions, they must also obey the rules concerning the rules of Islamic financial institutions. The use of strict classical Islamic jurisprudence opinions will hinder the development of Islamic economics in the business world. Therefore, based on this, it is necessary to reactualize ushul fiqh in the field of Islamic economics, and also adopt Islamic jurisprudence opinions that are light and contain maslahah in the development of Islamic economics, especially in Indonesia.

The study of muamalah fiqh in sharia economics continues to develop to adapt to modern social and economic dynamics. Alternative fiqh, especially through the takhayyur fiqh approach, is a solution in bridging the provisions of classical fiqh with contemporary economic needs. This approach allows the selection of more relevant legal opinions while still considering sharia principles.

The results of the study indicate that flexibility in the application of fiqh can increase the competitiveness of Islamic financial institutions (LKS) and provide solutions to various regulatory challenges. However, there is still a negative perception of LKS which is considered no different from conventional financial institutions. To overcome this, innovation is needed in Islamic economic regulations and fatwas to be more adaptive to the development of the times.

Therefore, the reactualization of ushul fiqh in sharia economics is an urgent need to ensure the sustainability and relevance of Islamic economics in the global financial system. With a more inclusive approach to various schools of thought and a more progressive method of legal istinbath, sharia economics can continue to grow and increase public trust.

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