The Contemporary Ushul Fiqh in Indonesia: An Idea and Practice

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ABSTRACT

This research explains the theory of Ushul Fiqh, which must live and not stagnate for Indonesia's benefit. Many of the study sources used as references come from Arabic-language books. A scientific study is needed that is more specific and shows the specificity of the Indonesian Ushul Fiqh model. This research method is a literature review by studying Ushul Fiqh in the Indonesian context. The results found are that the primary materials in the theory of Ushul Fiqh in Indonesia are always alive and experiencing evolution, starting from the implementation of established Ushul Fiqh products during the time of classical scholars to the birth of new theories which expected to be able to become new alternatives that responsive in answering the problems of the people who are also constantly moving and experiencing change. The theory of Ushul Fiqh implemented in the field by Indonesian scholars, such as the actualization of *maqashid shariah* in the Indonesian context, the flow of inculturation of revelation and local culture *ilhaq al-masail bi nazhairiha*, practicing *qauli* and *manhaji* Schools, and also making ijtihad plural or collective as the right solution for Indonesia as a form of prudence (*ihtiyath*) of the clergy.

Keywords: Reformulation; Maqashid Sharia; Indonesian; Ushul Fiqh.

INTRODUCTION

Many sources of studies on the science of Ushul Fiqh are used as scientific references, especially for students at Islamic Religious Colleges. Some of these references come from Arabic books (classical or contemporary) and result from translations from Arabic books or the works of scholars in Indonesia. One of the popular books is Usul Fiqh 1 and 2 by Amir Syarifudin (2014), Professor at the Imam Bonjol State Islamic University Padang. Apart from that, many fiqh works are often used as a driving force to encourage the birth of Indonesian fiqh products, namely Hasbi Shiddiqi's (1997) work on Indonesian Fiqh, Hazairin (1990) with Gus Dur's Bilateral Inheritance theory and Islamic Indigenization (Wahid, 2006), Sulastomo (1995) with the contextualization of Islamic teachings.

Based on various existing references, the characterization of Ushul Fiqh in the Indonesian model seems to convey. So it gave birth to stagnation of thinking in realizing Islam that is *rahmatan li al-'alamin* with the production of laws that are *Shalih li Kulli Zaman wa Makan* (always a solution whenever and wherever Islam is at). Then, theoretical information regarding the progress of Ushul Fiqh in the Islamic world seems to neglect, especially Ushul Fiqh, which can characterize Islam in Indonesia.

At least as material for study, information was obtained about Indonesian Ushul Fiqh from scientific discussions and field experiences by Islamic law researchers in Indonesia, such as the study of Ramadhan et al. (2021), who discusses that Ushul Fiqh in Indonesia departs from the spirit of utilizing Fiqh in community activities that have certain customs. Utilizing the rules of *urf* Ushul Fiqh can be a reference in formulating Islamic law in Indonesia. Furthermore, Adelina Nasution (2018) explains that the reconstruction of Ushul Fiqh can be applied in Indonesia if there is the integration of various modern sciences with traditional Fiqh and Ahmad Edwar (2020) regarding the idea of reforming Islamic law in Indonesia and its figures, until the emergence of the term Fiqh which has nuances Indonesian.

Based on this rationalization, a more specific scientific enrichment is needed to show the specificity of the Indonesian model of Ushul Fiqh, which is structured and well implemented so that the spirit of religious moderation echoed by the Indonesian nation through the Ministry of Religion (even with the order to establish a House of Moderation of Religion) realized, because the foundation of thinking in interacting, does not only rely on fiqh products that have been well established in society and obtained from both traditional and contemporary fiqh books but furthermore, by knowing and understanding their way of thinking to form their fiqh products.

One of the essential foundations of thinking is understanding the Qur'an correctly as a revelation from Allah, both as a script and as a revelation from Allah, who is always alive. The polarization is that revelation and humans as forming culture do not run separately. However, they need and complement each other to form a more significant benefit for the world and the hereafter. For this reason, the

revelation which later became the Qur'an did not come down directly with the election of a strict language dialect and denied other dialects but gradually descended and accommodated other dialects or what is commonly known as the seven *qira'at* (reading models) (Rajafi, 2017).

This thinking pattern can negate the understanding that has been developing so far that the Shari'ah applies from the top down, where all orders from above and those below carry out the order without considering the implications. Even though the revelation that later became the Qur'an never denied reason as another holy resource, Allah SWT gave to read His holy words sent to this world. For this reason, it said that revelation would never come down unless the earth needs further guidance from Allah SWT, so that is when the will of the earth meets Divine guidance in the form of revelation and then becomes the Holy Scriptures. The process in which the earth needs this guidance is interpreted as a bottom-up process.

Apart from that, it is also necessary to explain the peculiarities of the use of several theories and actions by scholars in Indonesia, such as the theory of *Ilhaq al-masail bi nazhairiha* (to establish the law of something based on pre-existing law because there is a similarity in substance), rereading the theory of *maqashid al-syari'ah* (the purpose of establishing a shari'ah law) in the Indonesian dimension, the application of *jama'i* (collective) ijtihad. Through these discussions, efforts were made to synchronize the relationship between religious regulations and the local character of an area such as Indonesia. It is what will be the focus of the study in this article, the effort to reformulate the Indonesian theory of Ushul Fiqh which can be implemented in society so that laws that are righteous *li kulli wa Makan* are born.

METHODS

This research is a literature review with a normative approach (Gunawan, 2013). The analysis carried out was content analysis by looking at the standard of Indonesian sources of Ushul Fiqh and Fiqh. Ushul Fiqh is the most appropriate methodological system in the standard reference of Fiqh science and Islamic law. Ushul Fiqh can discuss fundamental issues related to the concept of Islamic law both from the source of its formation and acquisition as well as its level of validity (Izomiddin, 2023). Usul Fiqh can be linked to the Indonesian context if it fulfills locality, tradition, and cultural customs, which integrate into all scientific aspects by providing the mutual benefit (Junaedi, 2018).

RESULTS AND DISCUSSION

Understanding Islamic Law in Indonesia

As adherents of the majority religion in Indonesia, Muslims rely on Islamic law in their legal system. It is found in various meanings when linked to classical texts, such as Shariah or Fiqh. The term Islamic law is a phrase that belongs to the category of attributive phrases, namely phrases that function to characterize, where

the second word is the nature of the first word so that the term Islamic law is interpreted as the law that is Islamic or derived from Islamic values (Hallaq, 2009).

As for the meaning of Islamic law, which is associated with shari'ah, Fiqh, and qanun. First, Shari'ah. Ahmad Hasan (2000) concretely explains the word *al-shari'ah as al-nushush al-muqaddasah* (the holy script) of the Qur'an and Sunnah, which are mutawatir (which are not in doubt) and have not been interfered with by human thought at all. In this form, according to him, shari'ah is called *al-thariqah al-mustaqimah,* namely the straight way or teaching, with its discussion content covering issues of *aqidah (faith), 'amaliyah* (law of human actions) and *khuluqiyyah* (moral values born from heartstrings).

Second, Fiqh is definitively likened to science because Fiqh is a kind of science. A mujtahid can achieve Fiqh with his zhan (scientific prejudice), while knowledge is not *zhanni* like Fiqh (Safi, 2014). However, because zhan in Fiqh is strong, it approaches science. Therefore in this definition, science is also used for Fiqh. For this reason, when viewed from the universal nature of Islamic law, so that it can be actualized in all corners of the world to give birth to laws that implement anytime and anywhere, then the narration bi al-ahkam *al-'amaliyyah* (through laws dealing with human actions) in the definition of Fiqh it must be included, because the nature of *jami'* is really embodied in it due to the many laws of human behavior in this era and of course in the era to come and be more advanced than this era, which are not found textually in primary Islamic texts, such as dialogic contact between Islam drawn from beneficial values with various approaches including local culture, which then gives birth to new laws which are of course also Islamic. In addition, it must include in the narrative definition of Fiqh, namely min *al-thuruq al-ijtihadiyyah* (based on the ijtihad method), which has implications for how far Islamic law can dedicate itself to giving birth to values for the benefit of the people, and not how far the truth contained in it. Islamic primary texts only;

Qanun: Definitively, qanun (laws and regulations) are universal laws (*kulli*) that correspond to their part, and the law can be known (Al-Jarjani, n.d.). There are three divisions when viewed from the implementation side, namely; (1) al-qanun *al-duali*, namely a collection of rules and regulations made to regulate relations between (international) countries that every country must obey, and it also means national law; (2) *al-qanun al-dusturi*, namely the constitution or a collection of rules governing the basis of the state and cooperative relations between members of society, both unwritten (convention) and written (constitution); (3) *al-qanun al-jaza'i* namely public law to regulate the relationship between members of society and the state as the holder of power. Specifically, the qanun regulates criminal acts, or another term *al-qanun al-'uqubat* to protect members of the public from other people's crimes (Fadlia, 2018; Gayo, 2017).

Ushul Fiqh in the Indonesian Thinking Framework

In the Indonesian context, two patterns are recognized in the formulation of Islamic law. If no context or a different context find from the narrative in *nushush*

Shariah (Shariah script), namely, it is returned to the authority of the clergy within Islamic community organizations. to issue legal fatwas by way of ijtihad *jama'i* (collective legal formulation) (Saiin et al., 2021) and or submit legal concepts based on joint studies of experts (ulama, academics, practitioners, politicians) the results discussed in the House of Representatives to burned into law. The prevalent rules used in formulating laws are;

المحافظة على القديم الصالح والأخذ بالجديد الأصلح

Always maintain old traditional values, but also be open to innovating with new values that present better solutions (Al-Ghazali, 2005).

As for this matter, the urgency of the study is in the first context, where the people are present with the choice to follow a legal decision based on the decision of the Islamic community organization that follows or through the decision of the Indonesian Ulama Council in Qauli (legal decision product) or to withdraw the law collectively. Based on qualified legal knowledge and the manhaj (methodology) that previous scholars have taught.

The procedure is based on the concept of *manhaji* (methodological) carried out by *istinbath jama'i* (collective excavation and determination of law), and this is if there is no *aqwal* (products of legal decisions) from the imam of the four *madzhabs* or *aqwal* from the ulama of the four *madzhabs*, or by the experts. As for the case that the aqwal is found but is still different (*mukhtalaf fiha*), then the experts carry out the *taqrir jama'i* (collective determination).

This explanation emphasizes the attachment of the ulama in Indonesia to the explanations and methodology of thinking of the former ulama, especially from the originators of the Schools of thought. However, reform in realizing new Fiqh is a necessity. So that does not rule out the possibility of acceptance of new methods in Ushul Fiqh born from contemporary experts, including those born from scholars or experts in Indonesia.

Maqashid Al-Syari'ah of Indonesia

Maqashid al-syari'ah (the purpose of establishing a Shariah law) logically investigates Allah's purposes in establishing law. When these goals are known to the mujtahid (N. Hasan, 2020), it is on this basis that an understanding of Islamic law is carried out and then used in development in order to answer new problems. The main point of *maqasid al-Shariah* is benefit which is primarily limited to five things, namely; religion (*al-din*), soul (*al-nafs*), reason (*al-'aql*), offspring (*al-nasl*), and wealth (*al-mal*). Everything that contains safeguards for these five things is called *maslahah* (benefit), and everything that causes the loss of five things is called *mafsadah* (damage) (Auda, 2022).

As for the Indonesian context, it requires the re-actualization of *maqashid al-Shariah*. The term re-actualization borrows from the theory of re-actualization

of Islamic teachings, which initiate by Munawir Sjadzali (1988), a New Order Minister of Religion who served for two consecutive terms (1983-1993). Linguistically, the meaning of actualization is; updating with something that already existed before (reviving), updating something that is out of date (patchwork), or updating with completely new changes or innovative creations (Zakaria, 1979).

In the context of re-actualization, *maqashid al-Shariah* must be able to dismantle exclusive and radically oriented religious divisions and create terror towards moderate religious formulations, able to live in harmony and peace with those who differ from them, both in the aspects of faith and the practice of religious teachings, and being wise about plurality that is *Sunnatullah* in society.

For the Indonesian context, the method is to refer to the collective agreement (*mitsaqan ghalizan*) when establishing this country, namely Pancasila, and to interpret the national cultural philosophy embodied in the Garuda symbol, namely 'Bhinneka Tunggal Ika', where Indonesia is a country with various ethnic groups, customs, race, and religion. Indonesia is a plural and multicultural country. Only by accepting the differences that exist will this nation become great. On this side, the actualization of *maqashid al-Shariah* creates a sense of security and peace, especially for religious people with a spirit of religious moderation.

The illustration is if Allah as the Greatest God has created diversity, why then, as a human then, belittles God by excluding religious values, thus considering others as a failed product and has implications for sin and disbelief, then demeans them while mentioning names - His Majesty in demonstration actions.

An example is protecting offspring (*hifzh al-nasl*). Suppose the study of protecting offspring has focused more on the context of marriage. In that case, re-actualization is not only on the marriage process but on what must be colored so that the production of marriage contributes to religious moderation in Indonesia. At least the pattern that is done is; *First*, starting to select a qualified and anti-blaming partner, let alone considering people who are different from him as heretics, infidels, apostates, shirk. Because the nature and attitudes of children have a strong connection with their parents, even the Prophet Muhammad SAW made it clear with information that the tendency of a child's religious choices also depends on his parents (Anas, 1995) because, in essence, every person is born in his holy *fitrah* (Hudi & Qurtubi, 2020). For those who easily disbelieve other people who are different gradually, they will not hesitate to disbelieve their parents when they are different from them. In the end, their words and deeds easily justify the blood of different people, so they dare to carry out acts of terror and suicide bombings (Huda, 2020).

Second, provide proper education to children. Regarding this, Allah SWT in the Qur'an has given instructions that children as descendants have four categorizations, namely as calming hearts and soothing souls (QS.25:74), world jewelry (QS.18:46), slander and tests (QS.64:15), as well as being enemies

(QS.64:14). For this reason, maximum effort is needed by every parent so that they can make their children calm and soulful, so it is only natural that Allah informs this in the form of supplication that can use when praying to Him.

Providing friendly education about Islam must start from home. After that, it is mandatory to choose a place of education that does not trap children into becoming radicals and even terrorists because the Police, as the official security institution in Indonesia, has provided quite shocking information where terrorists currently targeting intelligent students as members (Yahya, 2020), even entering Islamic boarding Schools with the same vision as them (Wijaya, 2020). Based on these facts, the concept of re-actualization of protecting offspring is to make efforts to fortify oneself both before marriage and after being blessed with offspring from solicitations and persuasions as well as distorted understandings, especially if we frontally oppose the government and regard it as *thoghut*.

Inculturation of Revelation and Local Culture

It is difficult to determine the proper term through the approach of cultural anthropology to describe an accommodative encounter between the revelation that is sacred and non-material (mystical) that comes from God and is not bound by any cultural chart, with human creations in the form of culture, including such as the use of the term inculturation. However, (not as an apology) from various terms such as inculturation, acculturation, assimilation, integration, and others, the term that feels right to describe this perspective is inculturation. Its philosophical premise is based on indications that the intent and purpose of the term inculturation is an attempt to establish a dialogical contact between God's intentions contained in the Holy Scriptures, which are universal, and the culture of Indonesian society is plural but local.

The process is the same as the initial delivery of revelation to the Arab community through Muhammad's treatise and forming of a solid new culture in the world called Islam (Egger, 2016). This process inspired the early preachers of Islam in the Archipelago, such as using wayang as a propaganda medium. Suppose its validity is from the scripturalist-normative-juridical side of Islam. In that case, using wayang is a sin because it makes something that resembles a human and classifies it as an act of heresy. However, this use by several trustees who are members of Walisongo has a positive impact in the form of the fastest Islamization process in the world without the slightest bloodshed. As a *wali*, he was very familiar with these arguments. However, their way of reading differed from most scholars at that time, resulting in a more constructive product through a deep respect for local cultural wisdom in society.

The primary rationalization of history shows that the process of Islamization that occurred in the early days of Islam, including in the Archipelago, accumulated in the formation of a new culture called Islam, which had positive implications for the people in it. Its estuary is God as the owner of the revelation, where the revelation is originally voiceless, formless. It cannot feel, but when the order of the

sky descends to earth and makes contact with humans as bearers of God's Order, the form of revelation changes to sound and letter or writing.

The change from the abstract to the material in the revelation raises the essential question (*Al-ushul*), is the revelation in its current form the same as its abstract nature? The revelation has come down to the world, which is said to have a universal vision not bound by world space and time but local ones. These are questions that answer scientifically. Furthermore, when all of Allah's words had taken shape and sounded through the mouth of His messenger. Namely, Muhammad saw Arabic with seven different readings of the major tribes in the Arab Lands at that time and written above the *shuhuf* in Arabic font. Where is the nature of its universality? Isn't it that when revelation becomes Arabic, it becomes local?

This ontological problem produces a synthesis in which Islam, after the manifestation of the revelation from the mouth of the Prophet Muhammad in the form of Arabic and its cultural elements, can be categorized as part of the cultural evolution that occurred in the Arab Lands at that time. Moreover, when this revelation spreads to all corners of the world, there will inevitably be a cultural marriage between Arabic Islam and the new territories it occupies, such as Europe, Asia, and Africa, including the Archipelago. For this reason, it is ideal if we dare to see the universality of Islam through its primary basis, namely Allah directly, not by relying on Islam as a result of accommodation with the local Arab culture.

Nevertheless, the reasoning above needs to underline as an argumentative assumption. Its embodiment will be complicated considering that no one who lived after the death of the Prophet Muhammad saw has the same authority as the Apostle in accepting and understanding the universal and essential intentions of Allah's revelations. As for the title *Khalifatullah fi al-ardh* (representative of God on earth), it limits to the authority of *zhahiriyyah* (that which is visible), not *bathiniyyah* (which is secret and hidden). For this reason, as a human being and as an ummah, Muhammad must be able to accept the destiny of the existence of Allah's revelations which have been recorded and confined in only one variety of languages in the world today. Therefore, the process of inculturation referred to in reading Allah's revelation so that it is responsive must go through the historical reality above, where when the evolution of revelation from an abstract nature to material in the form of sound and the local Arabic language, then it needs to be understood as a form or part of the birth of a culture its new to this earth.

The above argument is *i'tiqadiyyah* (religious belief) still within the framework of *i'tiqad ahl al-sunnah wa al-jama'ah,* which beliefs in the existence of the Qur'an in two understandings, namely that it is *qadim* (eternal) in terms of content and is hadith (new) in terms of form. Further clarified and detailed in the above understanding, the substance of Allah's revelation classify as something that is *qadim,* and when it has evolved into writing, sound, and Arabic language, it must understand as something that is hadith and embodied in new cultural elements.

Therefore, to understand Allah's revelation, *qadim* in nature, it must first be followed from the hadith path, namely establishing intensive communication with other cultural elements, humans. As part of the culture, humans have a mind created by Allah SWT with its advantages and disadvantages, but it has a position that is as holy as the Qur'an. It is in line with Allah's intention to mandate mastery over the Qur'an to humans not because of physical strength but because of the possession of reason which did possess by other creatures.

Normatively, something sacred is processed by something sacred as well, for God's revelation, which is holy in terms of substance, must understand through the human mind, which is also created holy. The rationalization is that the reading of God's revelation, which has become part of the culture through communication with humans who are also part of the culture itself, should not be based on the will to dominate or control, influence or influence, sacred or profane, superior or inferior, but must take place naturally *(at-tadarruj)* by complementing and understanding each other equally.

In this concept, there is no longer the term culture that must follow the Qur'an when creating a new culture that benefits all, but both must go hand in hand with the basis of the benefit itself. The principle is that a pure mind will never base on lust, so it will be in tune with God's intention in the Qur'an, which also wants goodness *(jalb al-mashalih wa dar'u al-mafasid)*. Based on this principle, it becomes very natural when there are various interpretations of one verse of the Qur'an, because of the different mindsets and feelings developed by the commentators' minds.

Therefore, in synergizing reason and revelation, the process of inculturation of Allah's revelation (al-Shariah) with local culture in the formation of law in the early days of Islam – as described in chapter two – uses three approaches, namely *tahmil* (accept or continue the tradition), *tahrim* (prohibit the existence of a tradition) and *tagyir* (receive and reconstruct the tradition), and includes three stages, namely socialization in which revelation dialogues with society about the importance of values that are informed as truth, assimilation in which revelation begins to change traditions based on the values they contain, and integration, namely the combination of the values of the Koran and existing traditions (Sodiqin, 2007), must be optimally implemented in assessing God's current laws.

Madzhab Way of *Qauli* and *Manhaji*

In deciding laws, there are at least two approaches, namely using the Qauli School (following the legal products that have been born by the scholars) and *manhaji* (the method of producing laws used by the scholars) (Fadhilah, 2022). Operationally, the two approaches have different styles. Having a Qauli School requires mastery of the ability to trace and understand the texts of Fiqh codification that are mature, even though they are not final, but have been formulated by both previous and contemporary scholars. Practicing *madzhab* in Qauli is not as heavy as practicing *mandzhab* in *manhaji*. Having a Qauli School can only respond to

issues that have been responded to by the texts of the Qur'an and al-Hadith and which have been codified by scholars (Syafii & Irawan, 2018).

The Qauli School is the opinion, fatwa of a mujtahid or mufti in deciding *fiqhiyyah* law. It interprets that the Qauli School of Law is a legal product produced by a mujtahid, a guideline by his followers. For example, Imam Syafi'i's opinion regarding the obligation to recite intentions in ablution'. Imam Syafi'i's opinion refers to as the Syafi'i Madzhab.

As for practicing *madzhab,* according to *manhaji*, it is the way of thinking or method (*manhaj*) used by a mujtahid in understanding and establishing *fiqhiyyah* laws. Like the method used by Imam Abu Hanifah, Imam Malik, Imam Syafi'i, and Imam Ahmad Bin Hambal. One example is the *istihsan* argument used by Imam Hanifah, while Imam Shafi'i rejects it. Historically, Schools of thought emerged due to differences in legal products explored by mujtahid priests. Meanwhile, the differences regarding legal products cause differences in the *manhaj* (method) developed by each madhhab priest in carrying out ijtihad. Talking about *manhaj* cannot be separated from the discussion regarding the knowledge of ijtihad.

Ijtihad is an essential matter in the formation of law. Al-Qur'an and al-Sunnah will become inanimate objects that can never respond to human problems without the role of ijtihad. The position of ijtihad must continuously exist so that the legal products issued are always filled with *mashlahah* (benefits) and are in line with the pulse of the times. The end of this ijtihad is to produce Islamic law that brings benefit and rejects harm to humanity because ijtihad, from an etymological point of view, is exerting all capabilities to achieve something difficult (brutal), whether something difficult is in terms of mind or material or even both -both (mind and matter). On this basis, Imam Ghazali said that it would be inappropriate if the word *ijtihad* were used to do something easy and light.

At least in the Manhaji School, there are two applications of logic: inductive and deductive. Inductive logic is used to conclude individual cases with a particular range of general conclusions. Meanwhile, deductive logic is the opposite, used to conclude general things to individual cases (Syafii & Irawan, 2018).

In the tradition of Ushul Fiqh science, the use of inductive logic represents by the Ahnaf School of Jurisprudence. The method used has several characteristics. First, the relationship between Ushul Fiqh and the problems of fiqh branches use as the argument and the primary source of ushul rules. If ushul rules conflict with the ijtihad fiqh of the Hanafi priests and scholars, they replace them with the appropriate rules. Second, this method aims to collect the fiqh principles resulting from the ijtihad of the Imam Hanafi *madzhab* scholars in the ushul principles. Third, this method is more practical and detached from theoretical studies (Syafii & Irawan, 2018).

Meanwhile, deductive logic is used in the Mutakallimin School of Law, where Imam Shafi'i lives. It is called the *Mutakallimin madzhab* because most

scholars composing the book in this School come from various kalam scholars, such as the Syafi'iyah, Malikiyah, and Hanabilah. Imam Syafi'i, with his treatise, made a significant contribution to the field of Ushul Fiqh, which was equivalent to Aristotle in the field of logic. However, there is an opinion that before Imam Shafi'i, works in this field appeared, such as the works of Abu Yusuf and al-Syaibani. However, these works were not codified as established and have not reached us.

The *manhaji madhhab* model developed by Islamic scholars in Indonesia is the legal exploration to answer the problems faced by following the way of thinking and the rules of law-making compiled by *madzhab* priests, as explained above. This last method is an attempt to decide the law by directly returning to the Qur'an, al-Hadith by using the *qawa'id ushuliyyah* and *qawa'id fiqhiyyah* tools, and it is carried out in a *jama'i* (collective) manner and not personally (Syafii & Irawan, 2018).

Ilhaq al-Masail bi Nazhairiha

The word *Ilhaq* etymologically means to equate, connect. Meanwhile, in terminology, *Ilhaq* is given an understanding as a process of equalizing the legal status of a case, which has not been answered by the book, with cases whose legal status has been found in the book (*Al-mu'tabarah*) (PBNU, 2011). Mahfudh (2011) defines *Ilhaq*, with *tanzhir al-masa'il bi nazha'iriha*, namely establishing the law of something based on the law of the same thing, which already exists. At the same time, Masyhuri (n.d.) defines *Ilhaq*, as an effort to equate the law of a case or problem that did answer by the book with similar cases or problems which the book has answered. In other words, *Ilhaq* equates a problem with an opinion about a problem that has already been.

According to Abdul Mun'im (2009), the answer to fiqh issues through the *Ilhaq* mechanism is essentially the application of *al-qawa'id al-fiqhiyah*. He explained that this is a way to solve new problems by referring to *al-qawa'id al-fiqhiyah*. It calls legal development efforts (*takhrij*) using *Ilhaq al-masa'il bi nazha'iriha* (equating problems with their equivalents). That is, the pattern of *Ilhaq* is the equating of the law of a case or problem that did answer by the yellow book with case law or similar problems that the book has answered (equating it with opinions that have "become"), must be brought into the realm of *Ilhaq far' 'ala far' likawnihima taht qa'idah* (equating a new case with an old case because both are within the scope of the same rule).

The procedure for carrying out *Ilhaq* is the same as for qiyas. The mechanism and procedure of *qiyas* for answering new problems by imitating answers to existing old problems is the idea of the existence of *al-qawa'id al-fiqhiyah*. However, at the action level, it is undoubtedly different from qiyas, which is the competence of ushul al-fiqh, which has elements of *'illah* with strict requirements. Technical determination of law using the *Ilhaq* method "exactly" with qiyas, which has the central pillars, namely; *al-ashlu, al-far'u, hukmu al-ashl,* and *'illah*; the pillars of Ilhaq consist of; *mulhaq bih* (something that has no legal provisions), *mulhaq 'alaih* (something that already has legal provisions) and *wajh*

al-Ilhaq (the similarity factor between *mulhaq bih and mulhaq 'alaih*) by expert *mulhiq* (actors of *Ilhaq*). When Ilhaq cannot carry out because there is no *mulhaq* and *wajh al-Ilhaq* in the book, jama'i istinbath carry out with experts' procedure of studying the madzhab in a *manhaji* manner.

The expression of the humility of Islamic scholars in Indonesia is evident when they mention the word *istinbath* in their formulation, which interpret as *istikhraj al-hukm min Polar al-madzahib al-arba'ah* (to issue laws from books born from the four Schools of thought) as a form of avoiding the use of the word ijtihad which means *istikhraj al-hukm min mashadirihi al-ashliyyah* (taking out laws from primary sources, namely the Qur'an and Al-Sunnah).

Furthermore, in implementing the *Ilhaq al-masa'il bi nazhairiha* method, the following requirements must be met:

1. *Masa'il* (problems) studied must be *indiraj* (including) under *dhabith*.

2. There is no *fariq* (differentiation) between *mulhaq* and *mulhaq bih*.

3. *Mulhiq* (who does *Ilhaq*) is *al-faqih al-muqallid*, with sufficient knowledge of Fiqh to quickly discover other *fiqhiyyah* issues.

4. The tools are *al-qawa'id* and *al-dhawabith* issued by *ashhab* (students of Al-Syafi'i) from *nas al-Imam* (Al-Syafi'i) and it *ushul*.

The working procedure is as follows:

1. Correct understanding of a case (*tashawurul* problem) to be *mulhaqed (mulhaq alaih)*;

2. Looking for compatibility in the book to be *Ilhaq-i* (*mulhaq bih*);

3. Looking for similarities (*wajhul Ilhaq*) to the two problems, namely between *mulhaq alaih* and *mulhaq bih*;

4. Establish a law on *mulhaq alaih* like law *mulhaq bih*.

This explanation of *Ilhaq* is a means to broaden students' knowledge that scholars in Indonesia have qualified qualities so that they can formulate a legal method by displaying high humility over the knowledge entrusted by Allah swt.

Ijtihad *Jama'i* (Collective)

It is tough in this era to find a human with the perfect capacity as an absolute mujtahid like Imam al-Shafi'i or Imam Abu Hanifah. Never mind absolute mujtahids, the level of mujtahid *madzhab* experts on the complete Syafi'iyyah method - for example - is already challenging. Therefore, what attempt is to gather several experts to discuss in collective ijtihad or jama'i *ijtihad*? Collective ijtihad

(*ijtihad jama'i*) is the right solution to overcome the crisis of thought in the Muslim world because it allows for solving modern, contemporary, and complex problems. One of the reasons is that several Muslim scholars from various Schools of thought and various scientific disciplines can collectively sit together to carry out ijtihad. It differs from the early formation of *madzhab* when individual scholars interpreted the Scriptures.

This collective *ijtihad* procedure follows because Muslim scholars appreciate and understand that problems in the modern era are much more complex than in the prophetic period fifteen centuries ago. Therefore, today's Muslim community expects Muslim scholars to provide broad answers to their problems, not only from the point of view of Islamic law but also from other points of view. With *jama'i ijtihad*, all "experts or experts" in various disciplines, both scientific, social, and Islamic law, can come together to formulate a legal product that is progressive, wise, and just. In drafting the Disability fiqh, for example, NU and Muhammadiyah – with their respective working groups, NU with Bahtsul Masail and Muhammadiyah with the Tarjih Council – invited not only Islamic law experts but also disabled activists, including persons with disabilities.

Collective *ijtihad* carry out by a fatwa institution with full authority from the state and its people. In the Middle East, there is Dar al-Ifta' in Egypt, the oldest official fatwa institution in the world that still exists today. Meanwhile, there is The European Council For Fatwa and Research in Europe. This fatwa institution is independent and is a combination of many great scholars from various countries in the world (Caeiro, 2013). As for Indonesia, several Islamic fatwa institutions exist, including the Indonesian Ulema Council Fatwa Institute, the Bahtsul Masail Nahdlatul Ulama Institute, and the Tarjih and Tajdid Muhammadiyah Councils. Thus, collective (j*ama'i*) Islamic law decision-making by considering the condition of society is very relevant to the thinking of modern society.

CONCLUSION

The formulation of Ushul Fiqh in the Indonesian context must have three main concepts, namely the implementation of the actualization of *maqashid* al-Shariah in the Indonesian context, the inculturation of revelation and local culture, and practicing the Qauli and Manhaji Schools by applying Ilhaq *al-masail bi nazhairiha*, and collective or collective ijtihad as a solution. In this way, Ushul Fiqh can become a local product for the sake of global benefit, which was born from the spirit of reviving Islam that is *rahmatan li al-'alamin* with legal products that are *shalih li kulli zaman wa makan*.

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