Sharia Actualization: Realizing the Indonesian Islamic Jurisprudence

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Abstract
Sharia is intertwined with fiqh. In English terminology, Sharia is translated as “Islamic law based on the Quran.” In the context of reforming Islamic law in Indonesia, the method of talfiq is needed, selectively choosing opinions that align with the conditions in Indonesia. It is believed that the Islamic legal tradition, in terms of formation, reform, or legal development, is closer to the Anglo-Saxon legal system known as precedent law. This is because Muslims fully accept that all the dogma, principles, and Islamic sharia are already perfected in the Quran and the Sunnah of the Prophet. The question at hand is how these legal texts can be guaranteed to remain relevant and capable of meeting the needs of all times, places, cultural contexts, and social levels. This study delves deeper into the Sharia within the Contemporary Era, relating to the Typology of Islamic Legal Reform Actualization and the Application of Islamic Law in Indonesia. The research is a literature study, focusing on the examination of figures and the object of study, which is Sharia in a modern context. This study employed a qualitative approach to analyze the Typology of Islamic Legal Reform Actualization and the Application of Islamic Law in Indonesia. The dynamics of Islamic law in Indonesia are expected to continue evolving and innovating so that in the future, Islamic law with universal value will not only pertain to the realm of fiqh muamalat (transactions) and akhwal sakhsiah (personal matters) but will also contribute positively to the development of national law in Indonesia in various aspects.

Keywords: Indonesian Islamic Jurisprudence, Islamic Legal Reform, Sharia


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Introduction

Islamic law and the contemporary era are often perceived as two things that are in opposition. From one perspective, Islamic law is seen as something that cannot change because it is based on the eternal revelation of Allah. Anything eternal is static and unchanging. On the other hand, the era of globalization undergoes substantial and dynamic changes. Something dynamic cannot be associated with what is stable and static (Syarifuddin, 2002a).

The Islamic legal tradition, in terms of formation, reform, or legal development, is closer to the Anglo-Saxon legal system known as precedent law. This is because Muslims fully accept that all the dogma, principles, and Islamic sharia are already perfected in the Quran and the Sunnah of the Prophet. These are the legal books for Muslims. The question at hand is how these legal books can be guaranteed to remain relevant and capable of meeting the needs of all times, places, various cultural contexts, and social levels (B. Manan, 2006). The demands of the development and progress of our time, which are inevitable and spreading, necessitate a specific *ijtihad*, especially in our era, a rapidly changing one, with increasingly complex business transactions, and ever-emerging current issues (Az Zayidi, 2005).

The conclusion above indeed appears to be accurate when considering Allah's revelations solely from a linguistic perspective, not as the subject of istinbath al-ahkam methodology. As Al-Juwaini articulated in the matter of qiyas, "Indeed, the textual sources, whether from the Quran or Hadith, are quite limited, and the places agreed upon by scholars for legal rulings can be counted. Meanwhile, we know for certain that current issues continually arise without stopping, and we also believe that all these issues will never be without the laws of Allah. One of the sources of evidence that can address these issues is Qiyas." In every era, there are unique problems, current issues, and ever-changing needs; the Earth keeps spinning, stars keep moving, and the clock never stops (al-Qordhowi, 1994).

Therefore, *ijtihad* is one of the reasons that support the development of Islamic law materials to address new cases or issues that have never occurred before. It is also a crucial factor in the development of Islamic law, in line with the needs of various countries and the changing historical realities. Thus, it is evident that *ijtihad* has successfully driven the development of *fiqh* (Sirry, 1996).

From a linguistic perspective, Sharia is derived from the word "shara'a," which means the straight path. In terminology, it means the religious laws that Allah has given to His servants. In this sense, Sharia is synonymous with ad-din (religion) and al-millah (faith). Therefore, Islamic Sharia can be defined as the laws that Allah has ordained for His servants, whether based on the Quran or the Sunnah, encompassing matters of belief, ethics, worship, and transactions, and cannot be changed, replaced, renewed, abolished, or deactivated unless supported by evidence and accepted by Islamic law (sharia) (Athiyyah & Zuhaily, 2000).

From the above definition, it can be concluded that Sharia solely originates from Allah, leaving no room for human intervention. As the scholars say, ‘There is no ruler but Allah, the Lord of the Worlds’. The role of *ijtihad* is only utilized as a means to unlock the closed aspects of Islamic law by the process of istinbatul ahkam, considering both textual and contextual aspects (Athiyyah & Zuhaily, 2000).

Regarding the meaning of *fiqh*, from a linguistic perspective, it is al-fahmu (understanding). In terminology, it refers to understanding the sharia laws derived from
detailed evidence related to the actions of *mukallaf* (someone who is capable of making moral and legal decisions in accordance with Islamic principles). It can also be defined as the compilation of Sharia laws. After examining the two definitions of Sharia and *fiqh*, it can be understood that *fiqh* is a small part of Sharia, focusing solely on formal legal aspects and not encompassing other issues.

**Method**

This research is a literature review study (library research) focusing on the analysis of prominent figures in the context of Sharia in the Modern era. The research employs a qualitative approach to delve deeper into Sharia in the Contemporary Era, specifically concerning the Typology of Islamic Legal Reform Actualization and the Implementation of Islamic Law in Indonesia. Data collection techniques for this research involve gathering information from various primary sources, as well as academic works from previous studies related to the research topic.

**Result and Discussion**

**Sharia Contextualization Movement in the Contemporary Era**

The focal point of jurisprudence (*fiqh*) that is expected should be the understanding of specific Sharia texts within the broader context of global Sharia purposes. Thus, the particular operates within a global framework. Laws are also connected to their underlying purposes, not separated.

In the context of contextualizing Sharia jurisprudence in the social domain, Al-Qordhowi identifies three distinct trends, each with its perspective and approach. Firstly, there is a trend that heavily relies on specific texts, interpreting them in a literal manner and often detached from the broader Sharia purposes behind them. In contemporary times, this group can be referred to as "neo-Zahiriyyah," inheriting the literalism and rigidity of the Zahiriyyah school from the past. Secondly, there is a contrasting trend that claims to be more focused on the underlying purposes of Sharia and the spiritual essence of religion, often dismissing specific texts found in the Quran and Sunnah. They view religion as a substance, not a mere symbol, focusing on the essence rather than the form. When faced with clear-cut texts (*muḥkamāt*), they tend to turn away from them and reject authentic Hadith. This trend can also be labeled as "liberal" or "secular." Thirdly, there is a moderate trend that does not forget the specific texts from the Quran and Sunnah but simultaneously does not detach them from the universal purposes of those texts. These texts are understood within the framework of universal Sharia purposes. Looking at the categorization of these trends, it is evident that contemporary Sharia jurisprudence products exhibit diversity in forms, characteristics, and outcomes, each differing from the others (Al Qordhowi, 2008).

**Typology of Islamic Legal Reform Actualization**

Contemporary Islamic legal reform is experiencing rapid progress, primarily due to the productivity of *ijtihad* and the dissemination of its outcomes through scholarly and representative media channels, as follows.

Through the Compilation Project of Islamic Jurisprudence Encyclopaedia

The initial idea to compile an encyclopedia of jurisprudence (*fiqh*) first emerged during the International Islamic Fiqh Conference held in Paris in the year 1951 CE. The
results of this conference catalyzed presenting jurisprudence as Islamic law in a manner consistent with modern language and a lexicon suited to the contemporary era (Sulaiman Asqar, 1991).

In the year 1381 H (1961 CE), the Egyptian Ministry of Awqaf (Religious Endowments) began the compilation of the Encyclopaedia of Fiqh, and up to now, 15 volumes have been published. The Kuwaiti Ministry of Awqaf, in 1971, made efforts to compile an Encyclopedia of Fiqh to cover 50 titles on various legal issues.

Through the Legislative Formation Project

The modernization of Islamic law through the projection of a modern constitution began at the beginning of the 16th century when Sultan Selim I issued a royal decree (faramana) mandating that the muftis and judges must adhere strictly to the Hanafi school in their legal judgments. Later, during the reign of Suleiman I, he appointed Sheikh Abu Sa’ud to compile a legal codification that would be applied throughout the country. This effort led to the creation of the Islamic legal codification known as the "Qonun Namah Sultan Suleiman" (Sulaiman Asqar, 1991).

Through the Fatwa Projection

The modernization of Islamic law through the projection of fatwas encompasses a very broad and complex field. Therefore, Islamic legal fatwas in various areas have been issued by official bodies established by international organizations as well as by official bodies established by individual Islamic countries. In addition to these, there are also Islamic legal fatwas issued through mass media, electronic platforms, and magazines. Furthermore, there are fatwas issued by Islamic organizational bodies, higher education research institutions, and local organizations.

Through Scientific Research and Academic Studies

At the end of the 20th century, scholars were very active in establishing academic groups and Islamic study centers to disseminate the teachings of Islamic Sharia worldwide. One well-known group that focuses on the study of Islamic Law is the Islamic Studies Group at Al-Azhar University in Cairo, founded in 1960. This study group holds annual sessions, requiring its members to present contemporary Islamic legal studies, particularly in the fields of transactions (muamalah) and family law. The outcomes of these studies have been distributed to Islamic countries around the world.

The Actualization of Islamic Law in Indonesia

The implementation of Islamic law in Indonesia has gone through several phases in its development, starting with the establishment of Islamic judicial institutions during the colonial period and evolving to its current state.

The Growth Phase

The complex history of Islamic courts in Indonesia is evident from the numerous names and terms used over the past century in various regions of the country, such as Surambi Court, Priesterraad, Raad Agama, Penghulu Gerecht, Rapat Kadi, Pengadilan Agama, Mahkamah Syari’ah, Mahkamah Islam Tinggi, Kerapatan Kadi Besar, Mahkamah Syariah Propinsi, and Pengadilan Tinggi Agama. The mixed roots of these
terms reflect the subtle interaction of Islamic, pre-Islamic, and Dutch influences in the evolution of the judiciary.

In 1980, the Ministry of Religious Affairs finally standardized the nomenclature of religious legislation across Indonesia, resulting in "Pengadilan Agama" (Pengadilan = court, agama = religion) being chosen as the name for the first-level religious court, combining Arabic and Indian roots, rather than the Arabic and Islamic roots inherited from the term "Mahkamah Syari'ah." The appellate religious courts are now referred to as "Pengadilan Tinggi Agama." During this period, the primary legal reference used by the religious courts was the Shafi’i school of thought (fiqah) (Bosworth, 1991).

Unlike many other Islamic countries where religious courts are increasingly restricted, in Indonesia, they have grown significantly in both quantity and influence. Despite continuous efforts to limit or eliminate them, Indonesian Muslim politicians played a role in their development at every stage, even adding institutions. Legally, Islamic courts are under civil courts, subject to law enforcement decisions, but socially, they enjoy autonomy and authority guaranteed by Islamic committees and political power.

During the Dutch occupation and the early stages of the revolution (1945-1950) against the returning Dutch government, attempts to abolish Islamic courts completely failed in the face of Muslim communities' determination to preserve and expand public Islamic institutions. A political compromise under a guided democracy in 1946 led to the establishment of a new ministry, the Ministry of Religious Affairs, which soon absorbed various Islamic government elements, including existing religious courts, becoming a driving force behind their consolidation and expansion throughout independent Indonesia.

The Development Phase

Based on the provisions of Article 29 paragraph (2) of the 1945 Constitution, all Islamic law, especially those related to the fields of muamalat law, can essentially be carried out legally and formally by Muslims, both directly and indirectly, by adopting it into the national positive law (Mardjono, 1997). The Islamic family law and some parts within the scope of muamalat law, such as inheritance and endowments (wakaf), are recognized by the authorities in Indonesia as laws to be settled in the courts. Hence, special courts for Muslims called the Religious Courts (Pengadilan Agama), were established and continue to be in operation (Syarifuddin, 2002).

With the enactment of Law No. 1 of 1974 concerning Marriage, the implementation of Islamic law in Indonesia was further reinforced. At the same time, Islamic courts in Indonesia have evolved from being a critical symbol for the Islamic community to being progressively integrated into the state administration. The 1974 law transformed them into family relationship tribunals that deal with crucial issues in social life and state policies.

In the following years, the Compilation of Islamic Law was established, which resulted from a workshop held in Jakarta in 1988 and was later promulgated by the government in the form of Presidential Decree No. 1 of 1991 on June 10, 1991. Although legal experts in Indonesia do not consider this compilation as legally binding, as it is not part of the legal hierarchy in Indonesia, all levels of Islamic courts have recognized it as law and a guideline to be followed by the Muslim community.
Thus, as outlined by Abdul Manan, Islamic law in Indonesia can be found in three places: first, it is scattered throughout the *fiqh* books written by scholars hundreds of years ago; second, it is within state regulations that encompass Islamic law, such as Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, and so on; third, it can be found in various court judgments that have formed jurisprudence. In the implementation of these three sources of Islamic law, controversies often arise between *fiqh* and the prevailing legal regulations, between one *fiqh* school and another, and between judgments of the Religious Courts and legal regulations in force.

However, in recent developments, it can be observed that Muslims in Indonesia not only tend towards these three sources of Islamic law but there is also one fundamental and deeply rooted element that currently serves as the legal foundation for the actions and attitudes of Muslims in Indonesia, namely the fatwas issued by the Indonesian Ulama Council (*Majelis Ulama Indonesia*).

**Figure 1**
Indications of Changes in Islamic Law from Fiqh to Positive Law

<table>
<thead>
<tr>
<th>Fiqh</th>
<th>Positive Law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Marriage</strong></td>
<td><strong>Marriage</strong></td>
</tr>
<tr>
<td>1. Marriage does not need to be recorded</td>
<td>1. Marriage needs to be recorded</td>
</tr>
<tr>
<td>2. Divorce does not need to be in the presence of a court session</td>
<td>2. Divorce needs to be in the presence of a court session</td>
</tr>
<tr>
<td>3. Polygamy does not require permission from the Religious Court</td>
<td>3. Polygamy requires permission from the Religious Court</td>
</tr>
<tr>
<td>4. There is no age restriction for marriage</td>
<td>4. There is an age restriction for marriage</td>
</tr>
<tr>
<td>5. The pronouncement of triple divorce (talak tiga) in one instance is considered as three divorces</td>
<td>5. The pronouncement of triple divorce (talak tiga) at once is counted as one divorce</td>
</tr>
<tr>
<td>6. The joint property in marriage is not regulated</td>
<td>6. Joint property must be divided equally in the event of a divorce</td>
</tr>
<tr>
<td>7. There are no detailed regulations regarding the annulment of marriage</td>
<td>7. Detailed regulations are in place regarding the annulment of marriage</td>
</tr>
<tr>
<td>8. Renouncing the faith (murtad) results in the dissolution of the marriage bond</td>
<td>8. Renouncing the faith (murtad), the marriage bond is determined by the Religious Court</td>
</tr>
<tr>
<td>9. A Muslim man is allowed to marry a khitab women (Jewish and Christian faiths, either dhimmi or harbi)</td>
<td>9. Interfaith marriage is prohibited</td>
</tr>
<tr>
<td>10. The possibility of validating the pronouncement of divorce (itsbat talak) exists</td>
<td>10. There is no validation (itsbat) for the pronouncement of divorce</td>
</tr>
<tr>
<td>11. There are no regulations regarding the appointment of a guardian by the judge</td>
<td>11. The appointment of a guardian by the judge is fully regulated</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Inheritance</th>
<th><strong>Inheritance</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The obligatory will is not recognized</td>
<td>1. The obligatory will is recognized in the distribution of inheritance</td>
</tr>
<tr>
<td>2. The substitute heirs are not recognized</td>
<td>2. The substitute heirs are recognized</td>
</tr>
<tr>
<td>3. Heirs of a different religion are not recognized</td>
<td>3. The inheritance distribution for heirs of different religions is possible through an obligatory will</td>
</tr>
<tr>
<td>4. The division of 2:1 between males and females must be carried out</td>
<td>4. The division of 2:1 for males and females is not mandatory</td>
</tr>
<tr>
<td>5. There is no recognition of any limitation on testamentary assets</td>
<td>5. The will can only be executed for a maximum of 1/3 of the estate</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Waqf and Sadaqah</th>
<th><strong>Waqf and Sadaqah</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The transfer of the function of waqf assets is not permitted</td>
<td>1. The function of waqf assets can be transferred to a more beneficial purpose</td>
</tr>
<tr>
<td>2. The concept of productive waqf is not recognized</td>
<td>2. The concept of productive waqf is recognized</td>
</tr>
<tr>
<td>3. Registration of waqf is not recognized, a declaration (ijab) alone is sufficient</td>
<td>3. The registration of waqf assets with PPAIW (National Agency for State Administration on Waqf) is recognized</td>
</tr>
<tr>
<td>4. There are no regulations regarding the management of assets derived from sadaqah</td>
<td>4. There are regulations regarding the management of assets derived from sadaqah</td>
</tr>
</tbody>
</table>
The Renewal Phase

The renewal of Islamic law in Indonesia has progressed somewhat slowly compared to Islamic countries in the Middle East and North Africa. This delay can be attributed to several factors. First, there is a strong belief that taqlid (following the opinions of past scholars) is sufficient to address contemporary issues. Second, Islamic law in Indonesia, within the context of today's socio-political environment, is always at the center of a polemic between the religious paradigm and the state paradigm. When viewed as a state paradigm, Islamic law must be prepared to face a pluralistic society. Third, some members of the society perceive fiqh (Islamic jurisprudence) as the result of intellectual religious work, and its correctness is relative, while sharia is considered a product of Allah and is absolute (A. Manan, n.d.).

According to Nourrouzzaman, Hasbi ash-Shiddieqy was the first to propose that Islamic jurisprudence applied in Indonesia should have an Indonesian personality. He advocated the use of the method of talfiq, selectively choosing opinions that are in harmony with the Indonesian context. He also emphasized the importance of the comparative method, comparing one opinion with another from various legal schools, selecting the better and more closely aligned with the truth and supported by strong evidence.

In Indonesia, several figures have played a significant role in the renewal of Islamic law and the incorporation of Islamic legal values into national legislation. Prominent among these figures are Muhammad Daud Beureuh, Harun Nasution, Hazairin, Ibrahim Husen, Munawir Syadzali, Busthanul Arifin, and many more whose contributions might not have been widely publicized due to a lack of academic or institutional support. These scholars and their contributions have significantly influenced the development of Islamic law in Indonesia, particularly in terms of legalizing Islamic values in the national legal framework. Islamic organizations like the Indonesian Ulama Council, Muhammadiyah, Nahdlatul Ulama (NU), the Indonesian Association of Muslim Intellectuals (Ikatan Cendekiawan Muslim Indonesia/ICMI), and others have also made substantial contributions to the renewal of Islamic law in Indonesia, working diligently to ensure that Islamic law is integrated into national legal frameworks.

The Existence of Fatwa Institutions in Indonesia

In Indonesia, the tradition of an individual mufti issuing legal decisions has not become an institutionalized practice in shaping legal rulings. Instead, the prevailing institutional tradition in Indonesia revolves around religious organizations that issue fatwas, such as NU, Muhammadiyah, Persis, and MUI. This is mainly due to the difficulty of issuing fatwas as individuals from various fields of knowledge, not just Islamic law but also other areas that support the process of formulating legal opinions. In other places, there are also many fatwa institutions, such as Majma’ al-Buhuts al-Islami, Majma’ al-Fiqh al-Islami, and Rabithah al-A’lam al-Islami (Ahmad, 2016).

The authority to issue fatwas is consistently granted to scholars and ulama because they are considered to have the capacity for ijithad. The intellectual output of these scholars in the field of law is recognized as a source of legitimacy for addressing various issues in Indonesia, especially. It is not an exaggeration to say that Islamic mass organizations like Nahdlatul Ulama (NU) have their Bahtsul Masa’il, and Muhammadiyah has their Majelis Tarjih, both of which provide legal opinions on
contemporary issues. Not only Islamic organizations like NU and Muhammadiyah, but the Indonesian Ulama Council (MUI) also has a fatwa commission that issues legal opinions on current issues.

In recent years, MUI has sought to position itself as the most authoritative religious institution in Indonesia, particularly in issuing fatwas. This can be seen in the significant number of fatwas produced by the Fatwa Commission of this institution, which has attracted the attention of not only Muslims but also non-Muslims. On the other hand, large Islamic organizations like NU and Muhammadiyah, through their Bahtsul Masa’il and Majelis Tarjih, have not been as active in disseminating their fatwas to the public and have, to some extent, left this responsibility to MUI (Ahmad, 2016).

To gain a better understanding of the roles of fatwa institutions in Indonesia and their legal products, the following are three examples of popular fatwa institutions in Indonesia, each with a substantial following and a significant impact on society.

The Bahtsul Masail institution of Nahdlatul Ulama (NU)

Among the Nahdlatul Ulama community, Bahtsul Masail is an intellectual tradition that has been ongoing long before the formal organization of NU. Bahtsul Masail activities have been an established practice among the Muslim community in the Indonesian archipelago, especially within the pesantren (Islamic boarding schools). NU continued this tradition and adopted it as part of its organizational activities. The first formal Bahtsul Masail activities within the organization took place in 1926, a few months after NU’s establishment, during the First NU Congress held from September 21 to 23, 1926 (Lembaga Bahtsul Masail Nahdlatul Ulama, n.d.).

The Lajnah Bahtsul Masail al Diniyyah (hereinafter: LBM) can be considered synonymous with NU itself. From the beginning, LBM has been an integral part of all NU organizational levels, with the highest-level LBM being held concurrently with NU’s national congress (muktamar). Initially, LBM was not an independent entity but an inseparable part of the Syuriyah (the main controller of the NU organization). Since 1989, LBM has become a permanent committee to address Islamic legal issues faced by Muslims, especially NU members, and its name changed to Lajnah Bahtsul Masail al-Diniyyah (Wasik, 2014).

The decision-making process in Bahtsul Masail is done collectively. It begins with identifying the issues, followed by socializing them among the Syuriyah members. The Syuriyah members then seek solutions by referring to the mazhab (school of thought), primarily the Syafi’i mazhab, which is considered mu’tabar (reliable). Only after this, did they present the issues for debate in the Bahtsul Masail at the central level (Abshor, 2016).

The methodology or system for making legal decisions within NU’s Bahtsul Masail is based on adhering to one of the four agreed-upon mazhabs (schools of jurisprudence) (Abshor, 2016). It emphasizes adhering to a specific mazhab (qauli). Therefore, the procedure for addressing issues is structured as follows.

In the context of Islamic legal decision-making within the NU framework, a systematic approach is followed to address various situations. When a clear answer can be found in relevant Islamic texts with only one opinion available, that opinion is applied. However, in scenarios where multiple opinions are present in the texts, a collective decision-making process known as taqrir is employed to select and
implement a single opinion. In cases where none of the available opinions offer a satisfactory solution, a procedure called *ilhaqul masail bi nazha'irih* is initiated, involving the collective expertise of scholars to determine the most appropriate course of action. Lastly, if no single opinion is available, and *ilhaq* (finding a relevant opinion) is not feasible, a collective *istinbath* procedure is conducted with a methodological approach by the experts, ensuring a comprehensive and rigorous approach to legal decision-making (Wasik, 2014).

In the provided context, "*bermadzhab secara qauli*" refers to adopting the existing opinions within a specific school of thought (*madzhab*), while "*bermadzhab secara manhaji*" (methodologies) implies following the methodological approach or line of thought of that school of thought. "*Qaul*" refers to the opinions of the school's imam, and "*wajah*" refers to the opinions of scholars within the school. "*Taqrir jama'I*" involves the collective determination of a text from several available texts that are considered most suitable for addressing a specific issue. This determination is made through deliberation among participants in the *Bahtsul Masail* forum (Munjin, n.d.). On the other hand, "*ilhaq al-masail*" refers to drawing an analogy regarding an issue under examination with another text considered to have a compatible meaning. *Ilhaq* is employed when no text explicitly provides an answer to the issue in question (Munjin, n.d.). In resolving new problems, the NU's *Munas* (National Conference) decided to employ the "*istinbath jama'I*" method, which represents NU's opinions conveyed through the *Bahtsul Masail* forum (Munjin, n.d.).

These methods are used hierarchically, with a preference for the *qouly* method, followed by the *ilhaqy* method when necessary, and, if not possible, the *manhaji* method, all conducted with a *mazhab*-oriented (focusing on the four schools of thought) and collective "*ijtihad jama'i*" approach. The orientation of Lajnah *Bahtsul Masail* toward the Shafi‘i school of thought is significantly dominant compared to others. Furthermore, responses may involve direct reference to Quranic verses or specific hadith texts, while others may not refer to any specific evidence (Zahro, 2001).

**Figure 2**
The Process of Determining Law in LBM-NU (Munjin, n.d.)

*Muhammadiyah's Council of Fatwa (Majlis Tarjih)*

Institutionally, the *Majlis Tarjih* was established in 1927 CE. The establishment of this institution was driven by the increasing organizational development of Muhammadiyah, which resulted in a growing number of members. The increase in the number of members led to disputes over religious issues, particularly in matters related to *fiqh*. To anticipate the spread of these disputes and avoid division among Muhammadiyah members, the organization's leaders saw the need for an authoritative
institution in the field of law. Through a decision made at the 16th Congress in Pekalongan, this institution was established and named Majlis Tarjih Muhammadiyah.

The tasks of the Majlis Tarjih, as stated in the 1961 Qa'idah Majlis Tarjih and updated through the Central Leadership of Muhammadiyah's Decision No. 08/SKPP/L.A/8.c/2000, Chapter II, Article 4, are as follows: (1) Intensify the study and research of Islamic teachings in the context of renewal and anticipating societal developments; (2) Provide fatwas and considerations to the Central Leadership of the organization to determine policies in leadership and guide the community, especially members and Muhammadiyah families; (3) Accompany and assist the Central Leadership of the organization in guiding members in practicing Islamic teachings; (4) Assist the Central Leadership of the organization in preparing and enhancing the quality of scholars; (5) Direct differences of opinion/understanding in the field of religion towards a more beneficial direction.

In the effort to produce legally accountable outcomes through scholarly means, the Majlis Tarjih has established the following systematic procedure. The Majlis Tarjih follows a comprehensive approach to deriving Islamic law. It relies primarily on the Quran and authentic Sunnah for istidlal (legal reasoning). Ijtihad and istinbath are permitted for issues lacking direct textual evidence, excluding matters related to acts of worship. The collective ijtihad system is employed, diminishing the significance of individual opinions within the Majlis. The Majlis Tarjih does not align itself with a specific school of thought but considers opinions from various schools of thought. It emphasizes open-mindedness, tolerance, and the acceptance of ijtihad methods, including qiyas, for addressing legal questions. The Majlis employs a variety of principles, such as "Sadd-u 'l-dzara'I" to prevent discord and harm, and "al-taysir" to facilitate practicing Islam. While mutawatir evidence is used in creed matters, it remains open to various interpretations and approaches, especially in non-worship issues. In situations involving conflicting evidence, a reconciliation approach is adopted. The understanding of companions is acceptable for interpreting disputed texts, while the apparent meaning takes precedence over ta'wil in creed matters, and ta'wil by the companions is not obligatory (Kholidah, 2021).

The methodology employed by the Majlis Tarjih, as described, becomes evident in the formulation of fatwas to address questions posed by the community. The example is concerning the determination of the beginning of the month of Ramadan. In the matter of determining the beginning of the lunar month, the Majlis Tarjih tends to favor ilmu hisab (calculations) over rukyat (visual sighting) concerning acts of worship, such as the start of Ramadan and Eid al-Fitr. Consequently, it is not uncommon for the Majelis Tarjih's decision to differ from the official moon sighting announcements made by the Ministry of Religious Affairs regarding the start of Ramadan and Eid al-Fitr. This raises the question of whether the Majlis Tarjih is neglecting the hadith of the Prophet: "Begin fasting due to the sighting of the moon's crescent, and break your fast due to the sighting of the moon's crescent." The answer is "no." This hadith is still used, but the understanding of the word "rukyat" includes both seeing with the eyes and using reason or intellect (Rosyadi, n.d.), taking into account verse 5 of Surah Yunus.

In addition to the aforementioned Quranic verse, there is a hadith of the Prophet that says "faqdurullah," which indicates the use of hisab (calculation) method in determining the beginning of Ramadan (Rosyadi, n.d.). Majlis Tarjih's choice is based on the higher accuracy of the hisab method compared to rukyat (sighting).
From the example above, it can be understood that Majlis Tarjih Muhammadiyah, in issuing its fatwas, adheres to the established methodologies of istinbath and remains within the framework of the Quran and Sunnah. The differences in the fatwa rulings compared to the decisions of the Sighting Committee are mainly due to differences in the interpretation of Quranic verses and the Sunnah, as illustrated in the example.

Figure 3
The Process of Determining Laws in Muhammadiyah (Ahmad, 2016)

The Role of the Indonesian Ulama Council (Hereinafter: MUI)

According to M.B. Hooker, from the mid-1970s to the early 1990s, the main function of MUI was to support and, in some cases, justify government policies and programs (Hooker, 1997). Similar views were expressed by Mudzhar that since its establishment until the late 1980s, MUI was powerless to resist government pressure to legitimize government policies (M. A. Mudzhar, 1993). However, in contrast to the New Order period, where MUI seemed to be under government policy pressure, during the reform era, MUI's position underwent significant changes. It was no longer just a voice for government policies, but rather it gained independence, sometimes being on a different stage from the government. The government in some cases began to listen to and even request fatwas from MUI, although constitutionally MUI cannot influence the government. Sometimes, the government would even bend constitutional principles to serve political accommodation and the pressure on Islamic scholars who claimed to represent the majority religious community. This can be seen in the government's handling of cases related to religious freedom, such as the one involving Ahmadiyah and groups deemed deviant by MUI (Hasyim, 2015).

Looking at the methodological aspect of producing its fatwas, MUI's ijihad has evolved over the years. Initially, MUI's ijihad relied on the opinions of imams from the Islamic schools of thought (madhabs). However, over time, MUI began to perform independent ijihad. This ijihad was not just tarjih-based, but it moved toward independent or creative ijihad. This type of ijihad was carried out to address new issues arising from social changes and developments in science and technology. It was done collectively, involving individuals with expertise in various fields of knowledge. By doing so, MUI collectively fulfilled the requirements of ijihad as formulated by the experts in usul al-fiqh (the principles of Islamic jurisprudence) (Hasan, 2010).

To gain a better understanding of MUI's methodology and its impact on the socio-economic sphere, here are some examples of MUI fatwas spanning different periods. This will help illustrate that MUI's approach to issuing fatwas is not rigid and monotonous. It consistently strives to adapt to developments, ensuring that Islamic law remains relevant to its contemporary context.
The MUI Fatwas during the New Order Era

MUI's fatwa on frog farming is quite clear in its intention to support the government's policy of increasing export commodities. The conclusion of MUI's argument regarding this matter is that frog farming is *halal* (permissible), but consuming frogs is *haram* (forbidden). In this fatwa, MUI practiced *tafliq* by adopting the opinions of both Imam Shafi'i and Imam Malik. For frog farming, MUI followed the opinion of Imam Malik, which permits it, while for consumption, MUI followed the opinion of Imam Shafi'i, which prohibits it. During that time, this MUI fatwa was criticized by many for lacking integrity, as it seemed to imply that it was acceptable for others to consume frogs as long as MUI members did not. This fatwa demonstrates how social and cultural factors can influence Islamic legal products (A. Mudzhar, 2000).

MUI's fatwa is not a form of statutory regulation within the hierarchy of positive law that has binding force on all citizens. However, a fatwa can become binding after being transformed into various forms of statutory regulations according to the needs (Fariana, n.d.).

MUI's Fatwa in the Social-Religious Field

In 2016, the existence of MUI fatwas gained more prominence in the hearts of the public, particularly with the issuance of a fatwa related to blasphemy against religion by the Governor of DKI (Jakarta). This led to a series of pro-Islam movements and demonstrations, which saw a significant increase in participation and support from various regions. This was marked by the emergence of the National Movement for Safeguarding Fatwas (GNPF). Whether acknowledged or not, the issuance of this fatwa had a significant impact on the changing political landscape in the subsequent gubernatorial election in Jakarta. This was evident in the victory of Anies-Sandi, who won the election by a significant margin against the incumbent. Even Prabowo affirmed that the victory of Anies-Sandi was attributed to the support of the ulama gathered within GNPF MUI (Wibowo, n.d.).

MUI Fatwas in the Fields of Economics and Banking

In the field of economics and banking, the fatwas issued by National Sharia Council-Majelis Ulama Indonesia (hereinafter: DSN-MUI) are quite numerous, with approximately 107 fatwas, and have made a positive contribution to the regulation of the sharia economic legal system. With the growth of the sharia economy, the fatwas from DSN-MUI continue to be needed as they are an essential part of the sharia economic legal system. Therefore, it is essential to maintain a conducive environment for Islamic legal politics, which catalyzes transforming Islamic legal values, ultimately leading to a comprehensive Islamic economic legal system that can guide every sharia economic practitioner.

The sources requesting fatwas from DSN-MUI typically come from: 1) industry stakeholders, 2) associations, and 3) regulators. In general, fatwas are requested from DSN-MUI to develop products or enhance product competitiveness. Regarding fatwa number 81/DSN-MUI/III/2011 concerning the Return of *Tabarru* Funds for Insurance Participants Who Terminate Before the Agreement Period Ends, a harmonious dynamic exists among DSN-MUI, the regulator (the Insurance Bureau at the Ministry of Finance of the Republic of Indonesia, now OJK), and the association (and industry). Currently,
these three parties have reached an "agreement" on the fatwa concerning the return of tabarru’ funds (Mubarok, n.d.).

The evolution of time necessitates that MUI adapts its methodology and fatwa system. The author observes that MUI has shown consistency in using and applying the methodology of issuing fatwas, particularly in the production of DSN-MUI fatwa products. Below is an example of a DSN-MUI fatwa related to deposit accounts.

When creating a fatwa related to deposit accounts, DSN-MUI considers several factors before delving into the methodological assessment that results in a fatwa product that can serve as a guideline. Among these considerations are, in the current era, the demand for banking services, particularly in the realm of investment, is driven by society's desire to enhance their well-being. Among the various banking products offered, deposit accounts play a significant role. However, it’s essential to note that not all deposit activities align with Islamic law. To address this challenge, the Dewan Syariah Nasional (DSN) recognizes the need to provide clear guidelines and establish a fatwa outlining sharia-compliant transaction forms. This fatwa serves as a valuable reference for the implementation of deposit accounts in Islamic banks, ensuring that they adhere to Islamic principles and provide ethical financial solutions to the community (Dewan Syariah Nasional and Bank Indonesia, 2006).

When entering the arena of methodology for issuing fatwas, DSN conducted a serious and in-depth examination of several verses from the Quran and Hadith that speak about the fundamental principles of permissible banking transactions, which were subsequently used as their main references in the fatwa on deposit accounts. Among the verses raised by DSN as their fatwa references are as follows:

Allah’s statement in Surah Al-Nisa’ [4]: 29:
"O you who have believed, do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order [that they might aid] you [in the matter] and [then] a sin upon [the offense] while you know [it is unlawful]."

In this verse, Allah emphasizes the prohibition of unjust financial transactions and bribery, highlighting the significance of adhering to lawful and ethical dealings in financial matters. These scriptural references serve as the primary basis for DSN's methodology in issuing the fatwa on deposit accounts, ensuring that these transactions align with Islamic principles and values.

Allah's statement in Surah Al-Baqarah [2]: 283:
"And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken. And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allah, his Lord. And do not conceal testimony, for whoever conceals it - his heart is indeed sinful, and Allah is Knowing of what you do."

Here are the two hadiths that DSN-MUI used as primary sources for the fatwa on deposits:
Hadith narrated by Thabrani:

"Abbas bin Abdul Muthallib, when he gave his property as mudharabah, stipulated to the mudharib that he should not venture into the sea, go down into valleys, or buy any livestock. If these conditions are violated, he (the mudharib) is liable. When
these conditions were brought to the attention of the Prophet (peace be upon him), he approved them."

Hadith narrated by Ibn Majah:

"The Prophet (peace be upon him) said, 'There are three things that contain blessings: deferred payment in a sale, mudharabah, and mixing wheat with barley for the family's use, not for sale.'"

These hadiths provide guidance on permissible transactions and the concept of mudharabah in financial matters.

In addition to using the Quran and As-Sunnah, DSN-MUI also referred to the consensus of the Companions (ijma) in their fatwa on deposits. They cited that some Companions handed over the property of orphans as mudharabah, and no one disagreed with them. Therefore, this practice is considered ijma.

Furthermore, qiyas, the fourth source of Islamic law accepted by experts in usul al-fiqh, played a role in DSN’s fatwa related to deposits. In this context, DSN analogized mudharabah to musaqah transactions.

To conclude their fatwa study, DSN referred to a jurisprudential principle. "All forms of transactions are permissible unless there is evidence that prohibits them."

After examining various sources in their methodological study, DSN-MUI concluded that there are two types of deposits: deposits that are impermissible under Sharia, particularly those based on interest calculations, and permissible deposits, particularly those adhering to the mudharabah principle.

The general provisions for deposits based on mudharabah stipulate that in such transactions, the depositor (nasabah) is considered the owner of the funds (shahibul maal), while the bank acts as the fund manager (mudharib). The bank, in its capacity as mudharib, is permitted to engage in various lawful activities that align with Sharia principles, including mudharabah arrangements with other parties. Furthermore, the capital involved must be explicitly specified in terms of its amount and provided in the form of cash rather than debt. The sharing of profits should be articulated through a specified ratio (nisbah) and documented in the account opening agreement. To cover operational costs, the bank, acting as mudharib, can utilize a proportionate share of the profits it is entitled to. Importantly, the bank is not authorized to reduce the profit-sharing ratio of the depositor without obtaining their consent, ensuring transparency and fairness in the deposit agreement.

The emergence of Islamic banks in the past decade indicates the growing interest of the Indonesian Muslim community in Sharia-based economics. This shift is driven by several factors, including the realization that the conventional economic system falls short of expectations and an increasing awareness among Muslims to adhere comprehensively to Sharia principles in various aspects of life. This growing interest is closely linked to the challenges of updating Islamic law in the field of muamalah (commercial transactions). To address these challenges, the Majelis Ulama Indonesia (MUI) responded by establishing the Dewan Syari’ah Nasional MUI, which holds the authority to issue binding fatwas. These fatwas serve as the basis for legal actions taken by Sharia supervisory boards within various Islamic financial institutions. This development signifies the continuous evolution of Islamic finance and reflects the commitment of the Indonesian Muslim community to adhere to Sharia principles in their economic activities.
Conclusion

In the effort to apply the verses of Allah within the framework of Islamic law, the contribution of Islamic legal scholars is crucial. They play a vital role in continuously exploring verses that are open to interpretation (zhonni dilalah) to provide alternative solutions to contemporary issues. The concept that "fiqh is always relevant to the changing times and places" is not just rhetoric. Fiqh, with its flexible nature, serves as an appropriate and practical tool to bridge the gap between limited divine texts and the ever-evolving challenges of the modern world.

The dynamics of Islamic law in Indonesia are expected to continue evolving and innovating. In doing so, Islamic law, with its universal values, will not only address matters related to fiqh in transactions (muamalat) and personal status (akhwal al-syakhisiah) but will also contribute positively to the development of national law in Indonesia across various aspects. This holistic approach seeks to integrate Islamic principles into the broader legal framework, ensuring that Islamic values and principles are respected and recognized within the context of a pluralistic legal system.

References


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