

QIYAS ANALYSIS AS A LEGAL ISTINBATH METHOD AND ITS IMPLEMENTATION IN SHARIA ECONOMIC LAW

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Abstract

The purpose of this study was to analyze qiyas as a legal istinbath method and its relevance to Islamic economics. This study uses a qualitative method with a library research approach. The type of research data used is secondary data. The research data is presented qualitatively-descriptively. Based on the results of the study, it can be concluded that qiyas has four main pillars, namely ashl, far, 'illat, and original law. So in the development of Islamic economics, qiyas as a legal istinbath method has applications in various ways, including in leasing (ijarah) with buying and selling, qiyas Ajir (people who rent out their labor) with al-wakil bil ujarah (people who are given authority in exchange for wages), qiyas khiyar naqd with khiyar syarth, qiyas bank interest on the practice of usury, and qiyas the practice of money changer which is qiyas by buying and selling medium of exchange.

Keywords: *Analysis, Qiyas, Istinbath Law, Islamic Economics.*

A. INTRODUCTION

In the philosophy of science, a science can be assessed for its development and relevance to the development of science when viewed from the point of view of its epistemology first. This is based on the fact that the great achievements of science in the modern era were achieved thanks to the fierce debate about epistemology that has taken place in the West since the renaissance. This fact is even stronger, if we ask why in this modern age, science is held by the West, not Muslims, the answer is that because epistemological debates have indeed occurred in the West, Muslims have never taken a similar debate seriously (Ghulam, 2018).

The science of ushul fiqh is the most important methodology of Islamic thought. It presents the rational foundations for Islamic thought. Although the science of ushul fiqh was officially compiled by al-Syafi`î, this science as a separate discipline has been developed by tâbi`în and tâbi` al-tâbi`în. The science of ushul fiqh is also the most important methodological component used by the classical Islamic sciences. It is also referred to as the traditional Islamic methodology (Purnawati, 2017). Therefore, this knowledge is a unique product of Muslims, which is not owned by the West or any other civilization in the world. The epistemology of ushul has a discussion of sources, criteria for truth, the nature of knowledge that uses rules. In contrast to the epistemology of Islamic law, which talks about the sources of Islamic law. Elements of Aristotelian logic can be seen in the way words determine meaning, conceptual and definitive discussions, the validity of conclusions based on inductive reasoning, discussions about propositions, discussions about ta`ârud al-adillah, and others.

In the Shafi'iyah madzhab, there are four stages in the method used if there is a conflict between the arguments, you must go through the Al-Jam'u wa al-Taufiq stage. When it is possible to compromise, then both should be practiced and should not charge one of the two. Their argument is that applying two contradictory arguments is more important than disfunctioning one of the propositions as a whole. The next step can be taken if the first method does not work, then enter the Tarjih method (ie strengthen one of the arguments).

If the tarjih method does not work, then it must enter the Nasakh method, namely canceling the law contained in the previous argument and applying the law to the later evidence. The last step taken if a mujtahid finds it difficult to resolve the conflict between the arguments is Tasaqut al-dalilain. That is, leaving contradictory arguments and switching to lower-level arguments (Mufid, 2018).

In Islamic intellectual treasures, the science of ushul fiqh, which is the result of a combination of these various sciences, is considered a science of rules or discussions that lead to the process of taking practical syara' law from its detailed arguments. Or in other words, the science of the method of taking practical laws from their detailed postulates. Usually, the rules for taking practical syara` law are also referred to as general arguments to distinguish them from specific (detailed) arguments in the form of texts (nash). In fact, there is a narrowing of meaning, from the original knowledge of how to understand religion to knowledge of how to explore the law. Even though law is only a small part of religion (Qarib & Harahap, 2016). However, that is how the scholars behave with the science of ushul fiqh. As a result, this knowledge is considered only the property of the shari'ah. Ushul al-din scholars do not feel belonging, in addition to discussing the rules (general propositions), the science of ushul fiqh actually also discusses the procedures for using the rules (general arguments), and discusses people who use these rules (general arguments).

Based on this understanding, the scholars formulate that qiyas consists of four main elements that are used as references, namely as follows: a) Ashl (principal), which is an event that already has a text that is used as a place to say qiyas (maqis 'alaih); 2) Far'u (branch), which is an event for which there is no text. Far'u is what the law wants to equate with ashl (which is analogous); 3) Original law, namely syar'i law stipulated by the texts; and 4) Illat, which is a trait found in ashl, by its nature ashl has a law and with that there are many branches so that the branch law is equated with ashl. It can simply be described as follows:

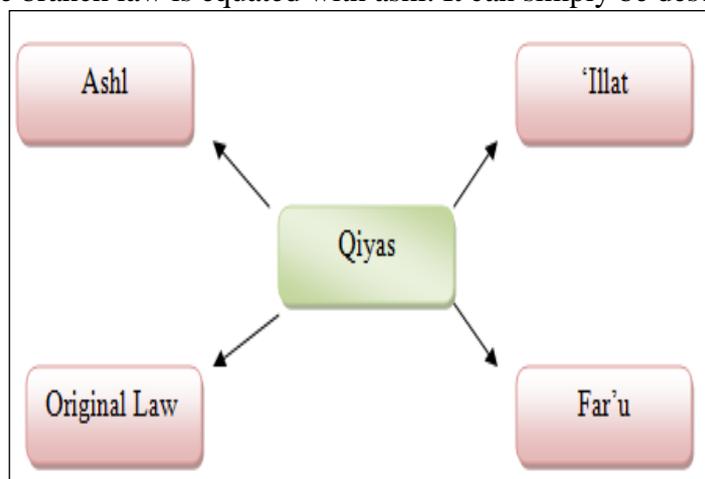


Figure 1. The Pillars of Qiyas According to the Ijtima' of Ushul Scholars

Scholars divide qiyas into three types, namely qiyas 'illat (which equates ashl with far'u because both have similarities), qiyas dalalah (which 'illat is not mentioned but is an indication that shows the existence of 'illat to establish a law from an event), and qiyas shibh (ie qiyas which is attributed to two and more ashl, but taken ashl which has more similarities with far'u). So in the development of modern science, many have similarities in their epistemology (Mujib, 2017). Epistemology in the literature and discussion of philosophy is often referred to as the philosophy of science—although according to Azhari (2015), this term is not appropriate because what is studied is not only science, but also knowledge itself, which today is distinguished between science and knowledge. As an alternative, this term can be changed to the philosophy of knowledge (Azhari, 2015).

The importance of the epistemology of ushul fiqh was increasingly felt at that time along with the increasingly rapid development of the times, the spread of Islam which was increasingly widespread in various regions, as well as the penetration of non-Arabic culture which more or less influenced the authenticity of the interpretation of the revealed text. In conditions like this, Muslims need a theory of legal science so that mujtahids can carry out *istinbath al-ahkam* activities proportionally and can be accounted for scientifically and academically (Maulana, 2018). The word 'source' in fiqh law is a translation of the *mashdar lafadz*, the *lafadz* is found in some contemporary literature as a substitute for the term *dalil* or in full "*adillah syar'iyah*". Whereas in classical literature, usually the word *dalil syar'iyah* is used, and never the word *mashadir al-ahkam al-syar'iyah*. Those who use the word *mashadir* instead of *al-adillah* assume that the two words have the same meaning (Al-Arif & Amalia, 2016; Tohari, 2016).

When viewed etymologically, it will be seen that the two words are not synonymous, at least when connected to 'sharia'. The word *mashdar*, or in its plural *mashadir*, can be interpreted as a container from which legal norms can be found or drawn. Whereas 'legal proposition' means something that gives instructions and guides us in finding God's law. The word "source" in this sense can only be used for the Qur'an and the sunnah, because both are vessels from which sharia law can draw. . *Ijma* and *qiyas* are both ways of finding the law. The word '*dalil*' can be used for the Qur'an and sunnah, it can also be used for *ijma* and *qiyas*, because indeed all of them lead to the discovery of God's law, applications like this are also widely applied in the economic field (Mutakin, 2017).

The concept of sharia-based economics and finance today has grown rapidly, is universally accepted and adopted not only by Islamic countries in the Middle East region, but also by various countries in Asia, Europe, and America. This was marked by the establishment of various Islamic financial institutions and the issuance of various sharia-based financial instruments. Sharia-based economic institutions were born and enliven the stage of the national economy due to a prolonged crisis as a result of the failure of the capitalist monetary system (Ariyadi, 2018). Since the establishment of Bank Muamalat as a pioneer bank that uses the sharia system in 1991 and followed by the issuance of Law (UU) Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking which allows banks to run a dual banking system, now many Islamic banks have emerged, both those that are purely using the system or are only at the stage of opening a Sharia Business Unit (UUS) or Sharia Business Division.

Then, the regulation was updated with the existence of Law 21 of 2008 concerning Islamic Banking which regulates all types of business, sharia implementation provisions, business feasibility, prohibitions for banks operating in the sharia corridor, distribution of funds, as well as sharia laws which are part of Commercial Banks. Conventional. The regulation also regulates business activities that do not conflict with sharia principles, such as usury, fraud, injustice, haram, and *gharar*. The existence of this latest regulation is to follow up on the implementation of the fatwa issued by the Indonesian Ulema Council in Bank Indonesia regulations, within Bank Indonesia a sharia banking committee is formed, the committee consists of representatives from Bank Indonesia, the Ministry of Religion and elements of society whose composition is balanced with each other.

In research conducted by Haan (2015), states that like other sciences, Islamic Economics has two objects of study, namely formal objects and material objects. The formal object of Islamic economics is the entire system of production and distribution of goods and services carried out by business actors both from the aspect of prediction about the profit and loss that will be generated as well as from the legal aspect of a transaction. While the material object is all knowledge related to Islamic economics. This will certainly become an

interesting discussion if we further examine the application of the Qiyas law *istinbath* method and its relevance to today's modern economic world.

B. METHOD

This study uses a qualitative method with a library research approach. The type of research data used is secondary data. The research data is presented qualitatively-descriptively. The plot in this study first explains how the position of qiyas in Islamic law *istinbath*, then analyzes how to determine 'illat in qiyas, then analyzes how the implementation of qiyas in sharia economic law in today's era.

C. RESULT AND DISCUSSION

1. Analysis of Qiyas Position in the Legal *Istinbath* Method

Qiyas is one of the methods of *istinbat* (excavating) law that is popular among the Shafi'i schools. In order, the Shafi'i school of thought places qiyas in fourth place after the Qur'an, hadith, and consensus. Imam Shafi'i as the pioneer of mujtahid who used qiyas as the only way to explore the law, said that what is called *ijtihad* is qiyas. He said that "*ijtihad*" and "qiyas" are two words that have the same meaning. That is, by means of qiyas, it means that the mujtahids have returned the legal provisions according to their sources: the Qur'an and hadith. This is because Islamic law is sometimes explicitly stated in the Qur'an or hadith, sometimes it is also implicitly implied (Nurliana, 2017). Islamic law can sometimes be known through the editorial of the texts, namely the laws that are explicitly stated in the Qur'an and hadith, sometimes it must be explored through careful understanding of the meaning and content of the text, which can be obtained through the qiyas approach.

Qiyas means bringing together something that does not have a legal text with other things that have a legal text because there are similarities in the legal *illat*. Thus, qiyas is the application of analogical law to the law of something similar because the principle of *illat* equality will give birth to the same law. Therefore, as stated by Abu Zahrah, the principle of qiyas is to connect two problems analogically based on the similarities of the causes and properties that form them. If the analogical approach finds a common point between the causes and the characteristics between the two problems, then the consequences must be the same as the law established (Habibah, 2015).

In contrast to the contemporary cleric, namely Abdul Wahab Khallaf who stated that the reason for taking the proposition in Surah An-Nisa verse (59) as a qiyas argument, namely that Allah SWT has ordered believers to return the problems that were disputed and contested between them to Allah and the Messenger of Allah if they do not find the law in the Qur'an and Sunnah. Meanwhile, returning and referring the problem to Allah and the Messenger includes all ways to return the problem. This means that equating an event that does not have a text with an event that already has a text due to the similarity of *illat*, then this is included in the category of returning the problem to Allah and His Messenger as stated in the verse above. In addition to al-Nisa(4): 59, the scholars also make surah al-Hasyr (59): 2 as one of the foundations for the proof of qiyas.

In analyzing legal *istinbath*, one must also analyze the various pillars of Qiyas before analyzing its implementation. The pillars are the basic elements that must be fulfilled for the validity or perfection of a thing, in other words, the pillars are the urgent elements with which a case becomes perfect. In all cases, harmony is the most important element because it plays a role as a determinant of whether it is legal or not; something legal or not. Including in this case, qiyas also has pillars that must be fulfilled. If these pillars cannot be fulfilled then automatically qiyas cannot be applied (Fuad, 2016). These pillars are explained as follows:

a. Al-Asl

Ashl is linguistically a musytarok lafadz which can be interpreted as a principle, basis, source, or base. As for what is meant in qiyas, this word means an object of similitude or a case for which there is a textual legal provision in the texts and ijma'. Ashl is often also referred to as musyabah bih or maqis 'alaih which is similar to or a place for qiyas. As one of the pillars of qiyas, al must also meet several requirements, namely: a) The law in al is permanent; b) Legal stipulations that exist in ashl, must be based on the sam'i syar'i path, not wisdom. Because what is determined through the logical and logical path (language) is not sharia law that can be used as a guide for qiyas; c) Ashl is not far'u for another ashl. That is, the legal provisions on ashl; d) not based on qiyas, but because there is a text or consensus; and e) The argument that stipulates illat on ashl, especially for that ashl, may not include far'u.

b. Al-Far'u

Far' is the second pillar of the pillars of qiyas. This word is also referred to by scholars as musyabbah or maqis (which is likened). Epistemologically, far'u means branch. Meanwhile, in the context of qiyas, far'u is defined as a case that will be likened to ashl because there is no text that clearly states the law. Therefore, far'u will be processed to be compared and equated with ashl. Substantially, far'u, whose legal status is not yet clear, is allegedly similar to aql, because of the meeting point between the two elements, which is called 'illat. Like ashl, far'u also has several conditions that must be met, namely: a) Far'u has not been determined by law based on text or consensus. Because, qiyas does not apply to laws that have clear texts. Because the principle of qiyas is to bring together a new law that does not yet have a text with an existing law; b) The presence of illat ashl in the far'u. The degree of similarity of this illat must be perfect. Both must be exactly the same in terms of substance (zatiyah) or type; c) The level of 'illat contained in far'u should not be less than the level of illat contained in al. That is, at least the illat contained in far'u is the same as the illat in ashl with no difference in the shortcomings. While the difference in terms of excess (ziyadah) has no effect, because sometimes the law in far'u is more important than the law in ashl; e) In far'u there is not found anything stronger or balanced that opposes or prevents it from being equated with the law of al; and f) The law on far'u does not precede legal provisions on ashl.

c. Al-'illat

Al-'illat or also called illat is the most important point among the other pillars, because illat is the meeting point between far'u and ashl. According to language, illat is a trait that forms the basis of ashl law, illat must be a clear and limitable trait. Because the consequence of illat is the stipulation of law, therefore it must be clear and understandable and its limitations known, but in some cases illat is also referred to as a cause.

Regarding this illat, the scholars are divided into several groups. The split is related to the issue of whether in every text, whether in the Qur'an or hadith, there is always illat in it or not. The scholars' controversy regarding the relationship between nas and illat is as follows: a) The first group says that every legal text must contain illat. Therefore, the law of ashl exists based on the existence of illat. Because it is illat who determines the law of a case. This opinion is followed by a number of scholars; b) The second group is of the opposite opinion, that in every legal text there is no illat, unless there is evidence that shows it; and c) The third group states that there is absolutely no illat in the text. This opinion is the opinion of scholars who reject or do not recognize the legality of qiyas.

d. Original Law

The next pillar is the law of al. These two words which are combined into one composition (idāfah), have the meaning: the syara law that exists in ashl is based on the legitimacy of the text. It is this al law that will have an impact on far'u which does not yet

have the legality of syara' law because of the absence of nas. The impact is legal equality, a law that is equally attached to both of them due to the similarity of illat. As for after the process of qiyasan, then the law is found for the far'u, then this far'u law is not one of the pillars of the pillars of qiyas. The far'u law is only the result (samrah) of the qiyas process. However, according to Imam al-Isnawi, far'u law is also one of the pillars of qiyas. Meanwhile, what is meant by the fruit of qiyas is the understanding of the far'u law.

The law of al has several conditions, including: a) It is in the form of syara law set by nas or ijmak. Regarding the legal provisions derived from the texts, the scholars have no difference of opinion. As for the laws set by ijmak, the scholars are still in disagreement; b) Must be a law that is ma'qul al-ma'na (rational / can be digested by reason). What is meant by rational law here is law which can be grasped by the causes and reasons for its stipulation, or at least contains a sign of those causes. On the other hand, irrational laws which reason cannot be grasped by reason, such as the law on tayammum and the number of rak'ahs of prayer, do not apply the law of qiyas.

2. How to Find 'Illat Law

Illat according to language means illness, disease. It can also mean cause or because. The Ushuliyyin provide an understanding of 'illat, which is the nature that exists in ashl whose nature is the basis for establishing the law of ashl and for knowing the law on far'u which has not been stipulated by law. The existence of 'illat law is very important and decisive, for the implementation of a qiyas. A conclusion cannot be drawn qiyas, if there is no similarity between 'illat in one case and another (Naya, 2017). To search for 'illat, there are several ways, namely:

- a. The text that shows, in this case the text shows the nature which is the 'illat law of a case, which is called 'illat manshush 'alaihi. There are two kinds of textual instructions regarding 'illat law, namely sharahah and isyarah. Dalalah sharahah, namely the designation of the lafazh contained in the text to Dalalah sharahah 'illat law is very clear, because the lafazh of the text itself shows the 'illat law clearly. In sharahah there is a qath'i (certain) and there is a zhanni (strong suspicion). Dalalah Isyarah is a guide that is understood from the nature that accompanies it. If the inclusion of the attribute cannot be understood, then there is no point in including the attribute.
- b. Ijma' which indicates, it means that 'illat is determined by ijma'. For example, when he has not reached puberty, he is controlled by the guardian of the property of a child who is not yet an adult. 'Illat is agreed upon by the scholars.
- c. By research/ijtihad, i.e. illat which is known through research or ijihad, is 'illat which is known in four ways, namely. First, al-Munasabah or takhrij al-Manath, Second, Tahqiq al-Manath, Third, tanqih al-Manath, and Fourth, al-Sabru wal al-Taqsim.

After going through the selection of 'illat above, the next process is tahqiq 'illat (confirmation of 'illat) by determining one thing that becomes 'illat after selecting things that are suspected to be 'illat, the selected must have all the characteristics: a) Is nature according to its nature and essence; b) Something that is real, clear and should not be vague or hidden; c) There is conformity, namely the nature of 'illat is relevant to the issue being discussed by law; and d) There are positions that are the most powerful among all things suspected of being illat.

Furthermore, illat is divided into several types, namely: a) Munasib mu'tsir, namely conformity expressed by syara' perfectly, or in other words that the creator of law (syari') has created law according to that nature; b) Munasib begins, namely the conformity that is revealed by the syara' in one way only. The point is that the conformity is not disclosed by syara as illat law and is mentioned in the texts on other problems similar to the law at hand; c) Mursal fate, that is, the fate that is neither stated nor disclosed by syara'. Mursal Munasib

is something that is seen by the mujtahid that establishing the law on the basis of bringing benefit, but there is no evidence stating that syara' allows or does not allow it; and d) Munasib mulghaa, which is a fate that is not revealed by the syara' at all, but there are instructions stating that determining on its basis it is suspected that it can bring about benefit. Meanwhile, syara' does not compose laws according to the nature or 'illat, even syara' gives instructions for the cancellation of these characteristics.

In determining 'illat, it must meet the following requirements: a) 'Illat contains legal motivation, not just signs or legal indications; b) 'Illat is measurable and applies to everyone; c) 'Illat is clear, real and can be grasped by the human senses, because 'illat is a sign of the existence of law; d) 'Illat is an attribute in accordance with the law. That is, the 'illat determined based on the analysis of the mujtahid in accordance with the law; e) 'Illat does not contradict the texts or ijma'; f) 'Illat is complete and applies reciprocally. It means that if there is 'illat, then the law is there; g) 'Illat does not come later from the law of ashl. That is, the law already exists, only comes the 'illat later; h) Laws containing 'illat do not include far'u law (which will be legalized through Qiyas; i) 'Illat is contained in sharia law'; j) 'Illat does not conflict with other 'illat whose position is stronger. if 'Illat is excluded from the text, then he does not add to the text itself; and k) 'Illat can be determined and applied to other legal cases.

3. Qiyas Implementation in Islamic Economist Law

As the Muslim community grew, new problems emerged, most of which had never had a legal status. Scholars and jurists try to solve this problem by using deductive analogies from the Qur'an and Sunnah. This deductive analogy is called qiyas. In principle, qiyas gives scholars an understanding that two different cases can be solved by referring to the same rules (Bay, 2012). Qiyas is one of the methods of *istinbāt* (digging) law that is popular among the *Shafi'i* schools. In order, the Shafi'i madzhab places qiyas in fourth place after the Qur'an, hadith, and consensus.

In social dynamics and changes in the economic sector, of course various things undergo changes that require carefulness in assessing and formulating epistemology. In this context, Islamic banking practitioners are trying to offer sharia contract products that are based on qiyas, including the following:

- a. Completing leases by buying and selling. According to Sahroni, scholars equate leasing (*ijarah*) with buying and selling. The similarity between the two is that they both sell. What is different is the object, but in terms of the contract it is the same. Buying and selling lies in the object is goods, while leasing objects are services/benefits. Thus, the provisions governing buying and selling also apply to leases.
- b. *Qiyas Ajir* (the person who rents out his labor) with *al-wakil bil ujah* (the person who is given authority in exchange for wages). Both of them receive wages even though both have different basic characteristics and both are called common contracts. Thus, the provision that it is permissible to take fee compensation applicable to the *ajir* also applies to *al-wakil bil ujah*, namely that people who are authorized may take wages as compensation for their services.
- c. *Qiyas khiyar naqd* with *khiyar syarth*. Both can be qiyas because they have the same *illat*, namely the conditions that allow to cancel the sale and purchase. In *fiqh* books, what is called *khiyar naqd* is that a seller requires the buyer to pay within a certain period of time as agreed. The seller said to the buyer, if the buyer could not pay as agreed, there would be no buying and selling. While *khiyar syarth* is a seller providing terms of payment period to the buyer if he intends to buy it. Both of them have something in common, namely they both provide an opportunity to think and

decide whether to buy or not. Therefore, the provisions that apply to *khiyar naqd* also apply to *khiyar syarth*.

- d. Qiyas bank interest against the practice of usury. Understanding bank interest from the legal and formal aspects and inductively, based on the violation of usury taken from the text of the text, and does not need to be related to the moral aspect of the prohibition. This paradigm adheres to the concept that every debt or receivable that requires additional or capital benefits is usury, even though it is not doubled. Therefore, no matter how small, bank interest rates are still illegal. Because based on the theory of qiyas, and in this case the practice of usury as *ashl* and bank interest as *furu'* both, are united in the same *illat*, namely the existence of additional or interest without compensation. Thus, bank interest is *haraam*, just as usury is forbidden.
- e. Qiyas in the money changer system, one form of application of Islamic sources of law in money changer transactions that are in accordance with *ushul fiqh* or known as *al-sharf*, this practice is confirmed by buying and selling payment instruments. However, it must have several requirements, including the nominal value must be the same if it is different, then it must be cash. In the case of a contract that can result in usury, if someone sells objects or currency, gold, or similar goods that do not meet the following requirements: a) the same value (*tamasul*); b) the same size; and c) both cash.

D. CONCLUSION

Based on the results of the study, it can be concluded that qiyas has four main pillars, namely *ashl*, *far*, *'illat*, and original law. So in the development of Islamic economics, qiyas as a legal *istinbath* method has applications in various ways, including in leasing (*ijarah*) with buying and selling, Qiyas Ajir (people who rent out their labor) with *al-wakil bil ujah* (people who are given authority in exchange for wages), Qiyas *khiyar naqd* with *khiyar syarth*, Qiyas bank interest on the practice of usury, and qiyas money changer practice which is based on buying and selling medium of exchange, but has two conditions, namely it must be the same nominal and must be in cash.

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