



The Steep Road to Renewal of Islamic Law through Maqasid Values

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Abstract

Islamic law is substantively derived from the teachings of Islam. As a religious teaching, Islamic law comes from Allah and is extracted directly from the Qur'an and al-Sunnah. This Islamic law is then considered as something sacred and cannot be changed. This thought then makes Islamic law rigid and even static and ultimately not ready to answer various problems, even though Islamic law in the reality of human life requires continuous dynamization and development. The dynamization of Islamic law will be achieved when there is a dialectic between text and reality, thus always finding new innovations in the context of legal discovery, the goal is to achieve benefit. Using an analytical study through library research based on primary and secondary data with a juridical normative approach. This research shows that there are still Muslims who consider the sacredness of classical Islamic law as an absolute truth that cannot be changed, the attitude of some of these circles makes Islam feel foreign to the environment that surrounds it. The situation is exacerbated when they do not fully accept the renewal of Islamic law such as the presence of contemporary maqashid concepts or values.

Keywords: *Renewal, Islamic Law, Maqasid*

Abstrak

Hukum Islam secara substantif berasal dari ajaran agama Islam. Sebagai ajaran agama, hukum Islam bersumber dari Allah yang digali langsung dari al-Qur'an dan al-Sunnah. Hukum Islam ini kemudian dinilai sebagai suatu yang sakral dan tidak dapat diubah. Pikiran inilah yang kemudian menjadikan hukum Islam itu menjadi kaku bahkan statis dan pada akhirnya tidak siap menjawab berbagai persoalan, padahal hukum Islam dalam realitas kehidupan manusia menuntut terjadinya dinamisasi dan perkembangan secara terus menerus. Dinamisasi hukum Islam akan tercapai manakala terjadi dialektika antara teks dan realitas, dengan begitu selalu menemukan inovasi baru dalam rangka penemuan hukum, tujuannya agar

meraih kemaslahatan. Artikel ini menggunakan studi analisis melalui penelitian pustaka berdasarkan data primer dan sekunder dengan pendekatan normatif yuridis. Hasil penelitian menunjukan bahwa masih terdapat kalangan umat Islam yang menganggap kesakralan hukum Islam klasik sebagai sebuah kebenaran absolut yang tidak dapat diubah, sikap sebagian kalangan tersebut menjadikan Islam terasa asing bagi lingkungan yang melingkupinya. Keadaan semakin diperparah ketika mereka tidak menerima sepenuhnya terhadap pembaharuan hukum Islam seperti hadirnya konsep atau nilai maqashid kontemporer.

Kata Kunci: Pembaharuan, Hukum Islam, Maqashid.

Introduction

Maqāṣid Shari'ah in the practical level of Islamic law in the modern era is still understood in the classical sense developed hundreds of years ago by Al-Juwaeny, Al-Ghazali, or their predecessors (Abdul Wahhab Khallaf, 2000). This then raises complicated issues, for example, groups that insist on maintaining classical values as the concept developed for the first time will object to the presence of new concepts in the discourse on the development of Islamic law.

In connection with the above assumption, Agus Moh Najib, a professor at UIN Sunan Kalijaga, classifies this problem (Agus Moh Najib, 2021), that according to him, the view of the excessive sacredness of Islamic law is still developing among Muslim communities. This view, whether realized or not, considers that the Islamic law they hold is something sacred and cannot change, and views other different opinions as wrong, even heretical. This view then, as is well known, gives birth to an exclusive, discriminatory, intolerant, and even violent attitude toward different groups. This exclusive and intolerant attitude due to "maintaining sacredness" is not only owned by individuals but also by community groups and even the state.

On the other hand, Muchlis Hanafi also said that the Muslim community in Indonesia faces two different groups which are influenced by the understanding of the interpretation of religious texts (Muchlis M. Hanafi, 2013). First, groups that understand religious texts in an extreme way and actualize this understanding to others in such a way, even by using violence. Second, groups that understand religion textually tend to view incoming foreign cultures negatively, so that the truth in their view is only what the religious texts say literally.

This then needs to be straightened out, so that efforts to develop Islamic law do not stop in the middle of the road, and also opposition by certain groups and even by Muslims themselves does not occur in the future, considering that law is not enough to understand in a literal context alone. Likewise, what the author is currently doing is also in the context of developing Islamic law so that it does not stop at classical understanding and is limited to reading the text.

In this case, the author departs from the opinion that Islamic law through the values of *maqāṣid syari'ah* namely maintaining religion, reason, soul, offspring, and property. Which is indirectly also contained in the values of positive law or what is known as state law. If the author's opinion is read by the group referred to above, namely those who think that what is written in the text of Islamic law in its

classical sense is an absolute truth, then this opinion may be considered heretical, or at least will be rejected because it is considered to equate Islamic law in the form of the Qur'an and Al-Hadith which come from Allah SWT with man-made legal products in the form of state law regulations.

One of the Muslim scholars who has seriously studied and developed contemporary maqāṣid syarī'ah concepts is Jasser Auda, according to him that law is not independent but must be able to integrate with other disciplines (Jasser Auda, 2008). In addition, according to him, maqāṣid shari'ah always evolves every time brought by its thinkers or initiators, maqāṣid shari'ah does not stay in place but is able to meet the needs of the times for its meaningful contribution in its position as a law. For this reason, this paper aims to introduce the values of maqāṣid shari'ah in its application in the contemporary context and also deals with the development of maqāṣid shari'ah values through reconstruction or legal discovery.

Literature Review

In the Al-Syrah Scientific Journal, written by Ridwan Jamal with the title Maqashid Al-Syariah and its Relevance in the Contemporary Context. The focus of study in this study is to examine related to the basic needs that must be owned by humans. Such as primary, secondary, and complementary needs, which Imam al-Ghazali called dharuriy, hajy and tahsiny. In principle, this research emphasizes that to understand the dynamics of Islamic law related to maqashid which contains worldly and ukhrawi benefits, where in essence these two aspects cannot be separated in Islamic law. Thus, the understanding of maqashid al-syari'ah in the context of ijtihad can then be developed, especially in dealing with various new problems that are not mentioned in the text to answer legal problems that arise in today's modern-era society.

In addition, this research confirms that the regulation of some problems in the social life of the community is with nash-nash where in the form of principles only, so that social problems then become the field of ijtihad. In this field, it can be seen later that the dynamics of Islamic law in anticipating developments and changes that occur in society. This reality is not then called that social problems do not contain dimensions of worship. In the teachings of Islam, for example, where all human activities are a form of worship to Allah. Therefore, the division above is more indicated to provide problems that do not accept change and development and problems that can accept change and development with various ijtihad methods and considerations applied.

The research conducted by Ridwan Jamal has similarities with the studies conducted by researchers, it's just that the difference lies in the focus of the study, where previous research tends to examine the fulfillment of the five basic human needs where the five needs should not be rigid, so that all the dynamics of Islamic law today must be able to solve the problem by doing ijtihad from classical legal texts. Meanwhile, the study in this research tends to discuss the practical level or the implementation of the values of the five basic human needs by initiating openness so that Islamic law does not become rigid and static.

Research Method

This research is categorized as library research with a qualitative approach. By using an analytical study through library research, the data sources in this research are obtained based on primary and secondary data with a juridical normative approach. Books or previous research studies and related legal documents are the materials for the literature review in this research.

Contemporary Maqāṣid Values in Positive Law

Whether we realize it or not, agree or disagree, that positive law is a representation of Islamic law in the values of maqāṣid syarī'ah, for example, the goal of protecting the soul, then at a practical level positive law also indirectly adopts these maqāṣid values. For example, the prohibition of running through traffic lights, the obligation to wear a helmet, and others are not merely prohibitions at the juridical level, but there are other objectives in the context of protecting the soul. This is much different from the classical maqāṣid definition of the provision of protecting the soul, which is identical to one provision only, namely protecting the soul through the fulfillment of basic human needs such as eating and drinking, as well as other classical maqāṣid definitions. The following section outlines the development of the classical definition of maqāṣid in the context of positive law:

1. Safeguarding (Hifz al-Nafs) the Soul Through the Fulfillment of Human Rights (Vincent R. J, 1986)

In the classical sense, protecting the soul means being seen based on the level of importance which is divided into three, including; maintaining the soul in the level of daruriyyat, in this case means meeting the basic needs in the form of food and drink in order to survive. In other words, if the need to eat and drink is not fulfilled in humans, it will threaten the existence of the human soul itself. Needs at this level are referred to as primary needs. Then the second level of Hajjiyyat, in maintaining the soul at this level humans are allowed to enjoy the basic needs of eating and drinking whose position is complementary, for example to enjoy various types of food then humans are allowed to hunt animals. But even though this hunting activity humans do not do provided that they still have other food reserves, namely the basic needs, it means that it will not threaten human existence itself. This level of hajjiyyat is also referred to as secondary needs.

While the third level of tahsiniyyat, in this case actually will not affect the maintenance of the human soul, in contrast to the fulfillment of the basic needs earlier, so in this context if it is related to the fulfillment of eating and drinking then this provision is only related to the context of manners in enjoying food, so there is no connection even threatening the human soul. This level is commonly referred to as tertiary needs.

If the classical understanding of maqāṣid related to the preservation of the soul is always synonymous with the fulfillment of basic needs (eating and drinking) as mentioned above, then the practical level of the modern era today no longer dwells on the aspect of fulfilling basic needs in the form of eating and drinking to preserve the human soul, but in this case the fulfillment of Human Rights (HAM) in all aspects, including the right to life, the right to determine

religion, getting security or safety guarantees from the state (Orien Effendi dan Rois Alfauzi, 2021), equality before the law, justice and others. In this context, we can no longer talk about levels as in the classical understanding of maqāṣid, that all aspects in order to preserve the soul are very important and not always categorized at the level of primary, secondary, and tertiary needs.

2. Preserving Religion (*Hifz al-Din*) Through Religious Tolerance

Just like preserving the soul as explained above, in the classical maqāṣid understanding of preserving religion is also categorized into three levels: daruriyyat, hajiyyat, and tahsiniyyat. Just like preserving the soul as explained above, the classical maqāṣid definition of preserving religion is also categorized into three levels: daruriyyat, hajiyyat, and tahsiniyyat. For example, in the classical understanding at the level of daruriyyat (primary need), preserving religion is always synonymous with performing compulsory worship such as the five daily prayers, so that in this sense, if one does not pray, the existence of religion can be threatened. While at the level of hajiyyat (secondary needs) that the context of maintaining religion in the classical sense, namely through prayer, can be facilitated because there are certain obstacles, for example, it is allowed to pray jama' and qasr prayers for someone who is traveling or on a long journey. If this is not done, there will be no threat to the existence of religion.

The classical definition of maqāṣid at the level of tahsiniyyat (tertiary needs) means maintaining religion in this context means completing the performance of obligations, such as covering the 'awrah, both inside and outside the prayer, cleaning the body, clothes, and place of prayer. Thus, when this is not done, it does not threaten the existence of religion. This means that if someone does not have clean clothes, they can still pray, the most important thing is not to leave the prayer because it is one of the basic needs of daruriyyat in protecting religion. While the context of keeping the 'awrah although included in the tahsiniyyat level, it is still important to pay attention to even though it will not threaten the existence of religion.

The classical definition of maqāṣid in preserving religion is identical to the preservation of the five daily prayers, while in the contemporary sense, the classical definition can be developed, one of which is tolerance in religion, as Thahir Ibn Ashur said that the wisdom of tolerance or al-samahah in Islam is because Allah made religion (Islam) a fitrah religion so that fitrah leads humans to the nature or condition where the human soul feels easy to accept this situation (Orien Effendi, 2020).

Allah wants Islam to be a religion that is easy to implement for mankind. Because of the nature of al-samahah in Islam, people are inclined to accept Islam and its sharia, because it is one of the ways to realize mercy and compassion in the universe (Chamim Tohari, 2017). Inductively, it can be seen that al-samahah and convenience are part of the maqāṣid of preserving religion. Ash-Syatibi mentioned that preserving religion in the classical sense is nothing but establishing the pillars of faith and Islam. This means that the general meaning is also the same as the meaning of tolerance itself because tolerance means accepting Islam. An example of Islam teaching to respect others according to the author's opinion is found in the provisions of the Qur'an;

"*Untukmu agamamu, dan untukku agamku.*"(QS. Al-Kafirun: 109) (Kemenag, 2022).

The meaning of the verse above is none other than to respect each other despite differences in beliefs. Although basically the revelation of the verse above was motivated by the fact that at that time the Prophet was invited to make peace by the Quraish pagans on the condition that the Prophet was invited to worship each other's beliefs. In the context of Indonesia, differences in beliefs with the principle of tolerance have a very positive impact and are not a problem, harmony is maintained in the midst of religious pluralism, culture, taste, and others. Concrete examples include mosque buildings adjacent to churches and places of worship of other religions, both Muslims and non-Muslims in the same settlement rarely or never have conflicts. This means that the attitude of tolerance as a development of maintaining religion is very appropriate.

3. Preserving the Intellect (Hifz al-'Aql) Through Education

If in the classical sense the context of maintaining the mind is always identical to the prohibition of drinking alcohol, which when this is not heeded, it results in the threat of the existence of one's mind. In this sense, it seems that the only thing that can damage the mind is the consumption of alcohol (Orien Effendi, 2023). In the contemporary maqāsid view, the only thing that can damage the mind is the consumption of alcohol, while other factors can also damage the mind.

The preservation of the intellect is a must, because with it humans can distinguish between good and bad, and can think about the universe around them. Therefore, the preservation and maintenance of the function of reason is a dharuriyyat need (a need that must exist) for humans. All things that support the maintenance of the mind are commanded, and all things that can damage the functioning of the mind are prohibited (Ali Sodikin, 2012). For example, education is aimed at preserving the human mind, so it is obligatory while drink alcohol and taking drugs that damage the mind is forbidden.

It can be concluded that in the context of maintaining the mind, there are many regulations or those that regulate this, especially at the level of state law, for example, restrictions or prohibitions on selling liquor, prohibitions on the circulation of Narcotics, etc., in this sense, it is not merely intended to maintain a healthy mind so that one's prayer can be said to be valid, for example, but in this context, it has a broader purpose, so it is not just to maintain the mind so that someone is able to worship. Another goal, for example, is for human resources to have a quality mind so that they have a wise and highly moral soul. That is why protecting this mind becomes very important, which is not enough with the prohibition of consuming alcohol but requiring education is also very important.

4. Maintaining Descent (Hifz al-Nasl) Through the Protection of Children's Rights

In the classical sense, preserving offspring is always associated with the prohibition of adultery, in other words, if a child is born outside of a legal marriage,

it is indirectly said to contribute to destroying human offspring. This understanding is certainly not wrong, even in the context of both religion and the state, extramarital relations, especially until there is a baby fetus born as a result of extramarital relations, will certainly harm the child who is born.

However, in another sense, children born in a legal marriage are certainly the object of the intention of preserving offspring, in this case, what is called the protection of children's rights, both children born out of wedlock and vice versa. As it is known that the nature of a child is a mandate and a gift from Allah Swt that must always be guarded because in him inherent human rights which are a gift from Allah Swt. This is also the mandate of Article 28B Paragraph (2) of the 1945 Constitution, which states that every child has the right to survival, growth, and development and the right to protection from violence and discrimination (Sista Noor Elvina, 2022).cThis means that both in a religious context and outside of it, protecting offspring is a necessity to achieve things that are considered good.

5. Preserving Property (*Hifz al-Mal*) with Appropriation

In the classical understanding of maqāsid shari'ah, safeguarding wealth is often associated with the prohibition of taking other people's wealth by unlawful means (stealing), (Andi Iswandi, 2014). If this is violated, it will result in the existence of one's property. While in the contemporary sense, guarding property is not merely related to guarding the property against being seized by others and so on. Rather, guarding property also includes how the property is obtained, managed, allocated, and others. For example, in the context of the state, where the state regulates with regard to the economy, business, and others, including sanctions for fraud, manipulation, and others.

This is the mandate of the legislation, that every person is entitled to the protection of self, family, honor, dignity, and property under his control, and is entitled to security and protection from threats of fear to do or not do something which is a human right.

The Danger of Literal Law and Rejecting Legal Renewal

Abdul Manan in his book *Islamic Law Reform in Indonesia* says that by looking at the conditions for the reform of Islamic law through legislation on Religious Courts (PA) and decisions of religious judicial institutions, it can be seen that the assumption that the community has not accepted the reform of Islamic law is not true. Therefore, according to him, there are people who still reject the renewal of Islamic law because they still adhere to the principle that the text of the Qur'an and al-Hadith must still be understood textually and are not allowed to understand it contextually (Abdul Manan, 2006).

Seeing this problem, Abdul Manan grouped the factors that inhibit the occurrence of Islamic law reform in the community, such as the fact that there is a lack of association between a group of people with other communities, the community is late to accept the latest science and technology, the attitude of people who tend to maintain local or traditional wisdom values, The influence of local cultural values is still strong, there is prejudice against new things that are brought in, customary values are still thick, legal changes that occur are considered contrary to the values or rules adopted by the community, people tend not to

understand the usefulness of the reforms that are brought in their lives, and there are usually obstacles that depart from the ideology in society itself.

Meanwhile, people who accept legal reform, adhere to the principle that it is an obligation of Muslims based on the word of Allah Swt in Surah An-Nisa' (4): 59 regarding the call to obey Allah, the Messenger and ulil amri (leaders), so that community groups consciously accept Islamic legal reform based on their beliefs as commanded by the Qur'an. Therefore, for people who have not accepted legal reforms, they need to be given continuous legal counseling so that they have a broad range of understanding.

This is based on the purpose of making law by making social change (law as a tool of direct social change), so that the law made must be based on and oriented to the future (forward-looking) which is not dwelled or oriented to the past (backward looking). In addition, it must also be in accordance with the basic values or norms that live in society, or in other words, legal values must be inherent in the values that develop in society.

Seeing the phenomenon of society related to its rejection of the presence of Islamic legal reform as described above, will certainly have a negative impact on the sustainability and existence of Islamic law itself and also other laws. This is quite worrying considering the very broad implications that can occur, for example, a vote of no confidence in the community towards the lawmakers and the legal products themselves. Whereas the community should be aware that the laws that have been used for decades and even hundreds of years, which are said to be obsolete, are certainly no longer relevant to the current context, but even so, the obsolete laws are not wrong and can even be used again one day provided that there is development or through Islamic legal reform.

It should be remembered that such legal reform occurs because the legal norms in the book of fiqh are often unable to provide solutions to various latest problems. It should also be remembered that legal reform is actually caused by several factors, namely aiming at a legal vacuum as said above, often classical legal norms are unable to provide answers to current problems, besides that legal reform also occurs due to the influence of globalization of science and technology, the influence of reform in various fields, and the influence of Islamic legal thought that occurs between mujtahids.

For this reason, it can be concluded that rejecting the concept of legal reform by adhering to literal or textual legal principles will have a very big impact at the practical level, the behavior of blaming others and even disbelieving those who are different from their principles will certainly adorn social life when fanaticism against the assumption that sacredness in the context of classical law or text is the absolute most correctly.

Because this attitude is a form of closing off a person or group of people with the arrival of legal reform, it is certain that this group will always feel that they are more correct because they think they always uphold God's law. Whereas in the context of Islamic legal reform does not mean tearing down the sacred value of Islamic law but rather developing so that what is not answered in the classical legal norms is able to provide solutions to current conditions.

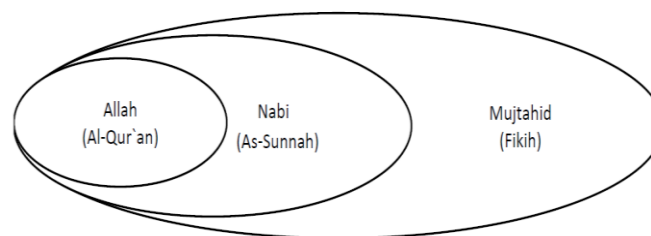
Even in the science of interpretation, it is stated that the hadith has a very important role as an explanation of the content of the Qur'anic verses, meaning

that there are many commands regarding obligations in it that are not mentioned in detail, for example regarding prayer procedures, in the Qur'an there will never be found verses that explain prayer movements and so on, there are only commands to pray in Surah Al-Baqarah (2): 43 and other verses. Thus, the hadith of the Prophet clarifies how the prayer is performed. For example, the following hadith:

قال رسول صلى الله عليه وسلم : صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي

“Rasulullah saw bersabda: Berdoalah sebagaimana kamu melihatku berdoa.”
(HR. Bukhari Muslim).

However, the above hadith also seems to have generated debate among fiqh scholars, it is based on the fact that Muslims have different madhhabs and madhhab imams and are said to have the right to follow their teachings in addition to the provisions of the above hadith. What this means is that the law that is understood literally or textually is apparently not enough, of course, there is human intervention as a provider of clarity which in this case is the scholars of fiqh (mujtahid), so the practice at the practical level of Muslims that is done today in it there is a role of scholars both in interpreting, renewing Islamic law and others.



The picture above shows that the real lawmaker (al-ḥākim al-ḥaqīqī) and the core of Islamic law are Allah Swt, whose words are found in the Qur'an (Agus Moh Najib, 2021). While the Prophet is an explanatory lawmaker (al-ḥākim al-mubayyin) of what God has said in the Qur'an. The Prophet's explanation is contained in the Sunnah of the Prophet. Then the mujtahid is a relative lawmaker (al-ḥākim an-nisbi) because the results of his ijtihad are the results of interpretation (fiqh) of the Qur'an and the Sunnah of the Prophet which is adjusted to the context at hand. Because the context ('urf) is dynamic and constantly evolving, the results of ijtihad from these mujtahids also experience continuous development according to the progress of human civilization. Therefore it is not right if we are allergic to efforts to reform Islamic law or hostile to differences as a result of legal reform.

Reconstruction of Legal Concepts and Islamic Law Discovery

Reconstruction can be interpreted as an act or process of rebuilding, recreating, or reorganizing something based on the original event, reconstruction is the act or process of rebuilding, recreating, or reorganizing something (Bryan A. Garner, 1999), where the reconstruction contains primary values that must remain in the activity of rebuilding something according to the original condition.

In the interest of rebuilding something, whether it is in the form of events, social phenomena, past history, to the conception of thoughts that have been

issued by previous thinking, the obligation of the reconstructors is to look at all sides so that something that is trying to be rebuilt is in accordance with the actual circumstances and avoid excessive subjectivity, which can later obscure the substance of something that wants to be built.

While the concept of law according to Radbruch's view is a constructive and systematic concept that is used to understand legal rules such as provisions on the concept of rights and obligations, legal relations between individuals, legal institutions, ties, marriage, inheritance, buying and selling, and others (Gustav Radbruch, 1950). Meanwhile, the subject of law (person or legal entity) means that it can be interpreted by the fulfillment of the rights emphasized in the provisions or rules of the legal concept above, meaning that the legal concept speaks of the fulfillment of the rights of the legal subject itself.

Thus reconstruction, legal concepts, and legal subjects have a relationship with legal discovery, either legal discovery in the realm of positive law (conventional) or legal discovery in Islamic legal studies (sharia). In other words, there is no legal reconstruction without going through legal discovery first, meaning that reconstruction departs from an idea or idea in finding a law through analysis or study of existing legal regulations by developing the law to meet legal needs in the context of the times as a guide to the law.

1. Does Islamic Law Need to be Reconstructed

It should be remembered first, that essentially the values of Islamic teachings in principle can be grouped into two types. First, Islamic teachings are absolute (absolute) and permanent. In this sense, Islamic teachings do not change and cannot be changed, Islamic teachings included in this type are Islamic teachings contained in the Qur'an and mutawatir Hadith with very clear designations. Second, the teachings of Islam are relative, meaning that the teachings of Islam are neither universal nor permanent so they can change and can also be changed. Islamic teachings that are included in this type are Islamic laws produced through the process of *ijtihad*. Thus, it can be concluded that there are actually Islamic teachings that are absolute and vice versa, namely relative.

In connection with the above, it can also be understood that Islamic law is a collection of religious regulations, the totality of Allah's commands which regulate the behavior of every aspect of Muslim life (Josept Schacht, 1971). This definition illustrates that Islamic law is a foundation that has been determined by Allah Swt for the overall activities of Muslims. This is in line with what is said by *ushul fiqh* experts, that Islamic law is the instructions contained in the book of Allah to His servants. Thus, mankind is only tasked with recognizing and finding it through the signs given by Allah SWT.

Therefore, it can be said that the law (*shari'at*) is a man-discovered law and not a man-made law (Syamsul Anwar, 2011). This can also be seen from Coulson's expression, that God planned it, and the rest of the humans formulated it. In other words, it can be understood that the law is not merely a ready-made item, but must also be sought and found. Therefore, reconstruction, discovery, renewal, or whatever the name is is something that cannot be separated in the existing legal system, including regarding Islamic law (Amin Abdullah dkk, 2000).

The statement above also answers the question "Why should reconstruct the concept of law" in the modern era today, of course, the effort was made because of the context of the times that developed so that the law in the past was sometimes unable to follow and provide answers to the challenges of the times coupled with the emergence of various complex problems. Legal reconstruction here is not intended to tear down existing legal buildings, but rather to renew the concept of law, which in the Indonesian context, for example, is often referred to as the direction of national legal development, while in Islamic legal terms, it can also be called the development or renewal of Islamic law either through *ijtihad* efforts and the like.

In another opinion, there also seems to be mutual support regarding the need to reconstruct and make legal discoveries, according to this circle, it considers that the need to find laws is closely related to the changes and developments in human civilization. Often there are some events that are not responded to clearly and in detail in the text which is a dialogue between God and humans. This is in accordance with the expression of Islamic jurists, *al-nusus mutanabiyah wa al-waqa'i ghairu mutanabiyah* (Abdul Wahhab Khallaf, 1976) (the texts of the Qur'an and sunnah are limited but technology and knowledge will continue to develop indefinitely) (Amin Abdullah, 2012). Thus, *ijtihad* which is the principle of movement in the structure of Islam must be carried out to find legal constructions of emerging realities (Muhammad Iqbal, 1983). This then encourages Islamic jurists to seek and formulate a method of legal discovery as previously described.

2. Methods of Law Finding

As previously explained above, Islamic law is the greeting of the book of Allah SWT. So, in this case the human position is only able to search and find it. This then led to the development of methods of finding Islamic law itself. In a historical context, several methods of legal discovery are known (Munawir Haris, 2012). These methods can be grouped into three models, namely the linguistic interpretation method, the causation method, and the harmonization method (Amin Abdullah dkk, 2000). The linguistic interpretation method is a method of legal discovery that works by interpreting the text of the Qur'an and hadith, in other words, this method works in the realm related to cases where there is already a legal text, but the legal text is still vague or (unclear) because there are legal verses that are *mutashābih* (Amin Abdullah dkk, 2000).

Meanwhile, the method of causation is an important method of legal discovery because it seeks to construct the law in cases where there is no legal text. This method seeks to trace the foundation on which Islamic law is based. In this case, the causation method can also be categorized into two models, namely those that base the existence of the law on *illat*, and those that base the existence of the law on *maqasid shari'ah*. Thus, this causation method seeks to explore the *causa legis* of parallel or similar legal cases to be applied to similar new cases. Therefore, what is done by judges or jurists here is basing the law on the *causa legis*, so that if there are no parallel cases, then basing the law on the *causa legis* cannot be done. Therefore, legal discovery can be done by basing the law on the

final causa of the law itself, namely maqasid shari'ah (Syamsul Anwar, 2012). In other words, ta'lil ahkam bil maqasid shari'ah is done.

The method of causation (ta'lili) is divided into two, namely: First, the qiyasi method, this method is carried out because there is no nass that directly regulates the problem at hand. Therefore, in order to extend the existing shari'ah provisions to similar cases, the mujtahid must determine the same 'illat between the original case and the new case. Without determining the common 'illat between the two cases, no analogy can be made. With the discovery of the 'illat, the law can be expanded to cover other types of issues that are not explicitly stated in the existing legal text. It can be said that what is done by jurists in this method is bina' al-ahkam 'ala al-'illah. Second, the teleological method, this second effort is made if there are no parallel cases that can be found 'illat (Bakhtiar, 2016).

Meanwhile, the harmonization method seeks to harmonize various legal propositions that may outwardly contradict each other. For this reason, in the harmonization method, the theory of nasakh and tarjih was developed. Simply put, the theory of nasakh is the theory of the abolition or replacement of a shariah provision by another provision on the condition that the latter appears later and the two provisions are stipulated separately (Muhammad Hashim Kamali, 1996). Meanwhile, tarjih is a method used when two nash appear that are outwardly contradictory.

3. Is There Something Wrong with Islamic Law

Law and Islamic law in particular are considered to have problematic gaps or problems when viewed from the perspective or way of looking at a law, for example when Islamic law is often focused and seeks to be limited to creating law in a book and then denying law in action (Syamsul Anwar, 2012). The impact can be seen at the empirical level, that a theory that is fully idealized often does not function and even fails at the application level. Coulson then argues that there are conflicts and tensions which stem from the theoretical and practical levels in the context of Islamic law. Although Coulson's assumption has been criticized by some, it seems that in the reality of life today, the conflict between idealism and realism of Islamic law is real.

For comparison, we can also look at the views of Jasser Auda in his book *Maqasid Al-Syariah As Philosophy of Islamic Law: A Systems Approach*, which provides an answer to the question "is there a problem with Islamic law" (Jasser Auda, 2015). Auda says that if what is meant by Islamic law is sharia, namely revelation given to the Prophet Saw, which was then practiced in his life and underwent a long process of educating, teaching and others, then according to him there is nothing wrong with Islamic law, because in this case the definition of Islamic law is a guideline that contains justice, compassion and so on. Likewise, if what is meant by Islamic law is fiqh, namely the treasures of the schools of fiqh, then there is nothing wrong. There is nothing wrong with the juridical reasoning put forward by the scholars in the context of the environment and time of their lives.

Thus, according to Auda, Islamic law will be problematic when the Islamic law is in the form of "fatwa", because fatwa is a manifestation of Islamic moral values, so that if a fatwa is copied literally from the classic books of Islamic law,

then according to him there is a possibility of "defects" in Islamic law in the form of fatwa, because the fatwa found in the classic text is aimed at the context of an environment that is different from the environment at the time of the emergence of a fatwa. In addition, Islamic law will cause problems if a fatwa is intended to meet the needs or political interests of the ruler, so that the fatwa is considered non-Islamic.

For this reason, as said earlier, that legal discovery can and is valid to do, as long as it avoids excessive subjectivity, because then the law found and formed is a law that is independent of the interests of individuals and even certain groups, thus the law that is born can meet legal needs in the context of the environment and time the law is located. Thus the question of whether there is something wrong with Islamic law, the answer depends on how the process of forming, reconstructing, or discovering the law is carried out.

However, regarding this matter, a new concern arises which is also accompanied by a new question "Then why do legal discovery, renewal, interpretation, or whatever it is called if it allows legal irregularities to occur by the maker", this assumption according to the author cannot be used as a consideration for not making legal discoveries, because legal needs in the context of providing answers to contemporary cases are far more important and urgent than making such analogies. After all, Islamic law itself, as has also been described previously above, is elastic, dynamic, and able to adapt to the times, so of course updating or interpreting and the like through the door of *ijtihad* will remain and can continue to be done in the following periods.

Conclusion

The fanaticism of some Muslims who consider the sacredness of (classical) Islamic law as an absolute truth that cannot be changed, indirectly contributes to making Islam feel alien to the environment that surrounds it. The most obvious negative impact of this situation is an exclusive, discriminatory, intolerant, and even violent attitude towards different groups. However, it should be remembered that the Islamic law in question is not the verses of the Qur'an, but the Islamic law that comes from the makers of explanatory laws, namely the *mujtahids* because the results of their *ijtihad* are the results of interpretation (*fiqh*) of the Qur'an and the *Sunnah* of the Prophet adapted to the context at hand.

Answering the question, "is there anything wrong with Islamic law", depends on which Islamic law first, if what is meant by Islamic law is the main source of law, namely the Al-Qur'an and al-hadis, then there is nothing wrong with Islamic law. When we mean Islamic law in the form of fatwas and other *ijtihad* results which are limited to copying the texts of classical legal sources to be applied in the context of different times, then there is a possibility that the legal products contain errors. Efforts to find law through *ijtihad* and the like do not mean that Islamic law is completely wrong, but the effort to find the law is a step to explore legal values that are not explicitly explained in the text of the Qur'an and al-hadis, also aims to develop Islamic law to be able to provide answers to events or concrete cases today.

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