

## A Brief Glance at the Diversity of Applications of Islamic Law in Society

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**Abstract:** This essay aims to elucidate and examine the intricacies of cognition and the wide range of implementations (*tathbîq*) of Islamic jurisprudence. The author's research concluded that the dynamics of Islamic legal thinking arise from the inherent limitations of human understanding in comprehending the intentions of Allah and His Messenger. Hence, the author advocates for the significance of engaging in ongoing dialogues to pursue the ultimate truth and obtain divine validation. This study aims to raise awareness among Muslims about the significant influence of social, political, economic, and cultural factors on the implementation of Islamic law in society.

**Abstrak:** Artikel ini berusaha memerikan dan menelusuri dinamika pemikiran dan keragaman penerapan (*tathbîq*) hukum Islam. Hasil penelusuran yang dilakukan oleh penulis menghasilkan kesimpulan bahwa dinamika pemikiran hukum Islam terjadi karena keterbatasan kemampuan manusia dalam menangkap maksud Allah dan rasul-Nya. Oleh karena itu, penulis menganjurkan pentingnya melakukan diskusi secara terus-menerus dalam rangka mendekati kebenaran yang hakiki dan mendapatkan rida-Nya. Kajian ini diharapkan menyadarkan setiap Muslim, bahwa implementasi hukum Islam sangat bergantung kepada berbagai situasi sosial, politik, ekonomi, dan budaya masyarakat.

**Keywords:** Implementation, diversity, *tathbîq*, *qath'î*, *zhannî*.

### Introduction

Dynamics was initially used in physics in order to explain the postulates and laws of motion (Lieb & Yngvason, 1999). It has become a tradition in the development and history of science that concepts, even theories, in certain fields of science are "borrowed" to explain other fields of science (Besedin, Volkov, Kuznetsov, Loginov, & Mertsalov, 2021). As an example, in biology, there is the concept of organs, both to explain human and animal body organs (Minelli, 2021). This theory about body organs is then used by social science

experts in order to explain the social functions of society as a unified organization; in an organization there is a structure, from the lowest to the highest; a structural theory was prepared; and each position has a role or function for the others; functional theories were built (King, 2011). Therefore, organizational and functional structural theories are basically social theories modified from the concept of organs in biology (Hughes & Lambert, 1984).

Similar to the concept of organs in biology, the concept of dynamics in physics was also "borrowed" by social science experts to explain human "motion" (Kim & Bearman, 1997). Therefore, the dynamics used are moved from material, physical elements to somewhat abstract elements; and the definite law of dynamics, even though it still contains the law of probability, leads to laws that are less certain because of their generality.

In general, the concept of dynamics in social science is explained in order to understand the law of stimulus-response as an action from the theory of relationships and interactions as a key concept in the science of social institutions. Implicitly, the dynamics of Islamic law must be positioned as a social institution. From a thinking perspective, the dynamics of Islamic law are possible because there are opportunities for *ijtihad*; *ijtihad* institutions in the Islamic world, including in Indonesia, have very diverse approaches and methods; and from the perspective of legal practice, the dynamics of Islamic law are possible because some Islamic legal institutions are directly related to legal events that occur in society. On the basis of this argument, the dynamics of thinking and application of Islamic law are interesting to discuss.

### **Concept of Islamic Law**

Islamic law is often understood as a translation of the terms *fiqh* (*al-fiqh*), *al-syarī'at*, *al-hukm al-Islāmī*, *Syarī'at* Law, and Islamic Law (Schacht, 1959). Each of these terms has its own framework of thought. Therefore, scholars in various forums have tried to participate in explaining these terms so that one can be distinguished from another and placed proportionally (Witro, Nuraeni, & Januri, 2021).

Ibrahim Hosen, former Professor of Islamic Law at UIN Syarif Hidayatullah Jakarta and former chairman of the Fatwa Commission of the Indonesian Ulema Council, explained that there are two types of Islamic law: first, Islamic law which is directly and firmly established by Allah through the proposition of *qath'ī*; and second, Islamic law which is determined in basic terms only and determined by Allah through the postulates of *zhannī* (Hosen, 2007). The first Islamic law is called *shari'ah* (*al-syarī'at*). Sharia is believed to be constant, perfect and remains universally applicable throughout the ages, knows no change and cannot be adapted to situations and conditions (An-Na'im, 1998). Meanwhile, the second Islamic law is called *fiqh*. Jurisprudence is dynamic (flexible), not universal, and can experience change (Madkour, 2001).

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Ibrahim Hosen's ideas regarding sharia and *fiqh* are a simplification of the confused understanding regarding the relationship between the basic teachings of religion, the Koran and hadith, with the ulama's understanding of the basic teachings of religion. In various literature, *fiqh* itself is understood differently, especially between the views of Hanafi scholars and other scholars (Malikiah and Syafi'iah) (Romli, 2019). Therefore, the explanation of *fiqh* and shari'ah is more of an attempt to gain clarity, not to solve it.

### **The Concept of Understanding in Islamic Law**

Syihab al-Din Abu al-'Abbas Ahmad Ibn Idris al-Qarafi (d. 684 H.) in his book, *Syarh Tanqîh al-Fushûl fî Ikhtishâr al-Mahshûl fî al-Ushûl*, explains three terms relating to ijtihad, namely al -wadh', al-isti'mâl, and al-haml (Al-Qarafi, 1994). Al-Wadh' in al-Qarafi's view is making a word (*lafazh*) have a certain meaning so that the name is famous (*ja'l al-lafzh dalîl[an] 'alâ al-ma'nâ*). For example, the word sunnah. For *muhadiâin*, *al-sunnah* are the words, actions and *taqrîr* attributed to the Prophet Muhammad (Hasyim, 1987). Meanwhile, according to fuqaha, sunnah is an action that is recommended to be carried out. Therefore, the sunnah for fuqaha is equivalent to the word *al-mandûb* (Gunn & Sabil, 2023). So, what makes the meaning of the sunnah something that is attributed to the Prophet Muhammad is *muhaddisin*; and what makes the sunnah something that is recommended to be done is fuqaha. In this context, hadith and fuqaha experts are called *wâdhi' al-lugat* (Al-Maliki, 2000).

*Al-isti'mâl* is the use of the word that was created by *wâdhi' al-lugaú*. Every word used, whether in spoken or written language, has two possibilities: perhaps what the speaker or user of the words means is the essential meaning (main or origin) and perhaps what is meant is the *majazi* meaning. Therefore, in understanding the words used by the speaker, the listener or reader is required to understand a series of words so that one word and another are interpreted consistently. The speaker or writer in this context is called *musta'mil al-lugaú*.

*Al-haml* is the belief of the listener or reader of a text about the speaker's or writer's intentions. For example, Allah says which means "women who are divorced by their husbands must wait (complete their iddah) for three times the qurû'. According to Imam Malik, what is meant by the word quru' in this verse is *al-thuhr* (holy). Meanwhile, Imam Abu Hanifah said that what Allah meant by the word *quru'* contained in this verse was *al-haydh* (Al-Nawawi, 2011).

That is al-Qarafi's view of *al-wadh'*, *al-isti'mal*, and *al-haml*. The next question is: whether Allah is positioned as *wâdhi' al-lugat* or as *musta'mil al-lugat*. 'Ali Hasab Allah has tried to explain several ideas or views in answering this question. In the Koran, Allah says which means "Indeed, We have sent it down in the form of a Koran in Arabic, so that you understand it." This verse was used as the basis by Abu Bakr al-Baqilani al-Syafi'i (d. 403 H.) who compiled

the book *I'jaz al-Qur'ân*, in determining his opinion which states that Allah uses Arabic in his speech. He (Allah) does not turn away from the meaning made by *wadhi al-lugat* unless Allah determines the conditions and *taqyid*. For example, Allah uses the word prayer. Linguistically, the meaning of prayer is prayer. He still uses this meaning except when he combines it with bowing and prostration. When combined with bowing and prostration, the prayer in question is the one performed by Muslims in general. Therefore, in the view of Abu Bakar al-Baqilani, Allah is *musta'mil al-lugat* (Al-Zarqa, 1999; Zaidan, 2012).

Meanwhile, scholars from the Khawarij, Muktazilah and some of the fuqaha believe that Allah created language and determined its meaning. He is the maker of words and the giver of the meaning of the words he created (*ana al-Syâri' yujarrid al-alfâzh min ma'ânihâ al-lugahwiyyat*). Thus, in the view of scholars from the Khawarij, Muktazilah and some *fuqaha*, Allah is *wâdhi' al-lugat*.

Even though there are differences of opinion in determining the position of Allah, whether as *wâdhi' al-lugat* or *musta'mil al-lugat*, ulama seem to agree in positioning mujtahid ulama. According to them, mujtahids have the position of *hamil al-lugat*, "guessers" or "guessers" of the word of Allah written in the Koran and the words of the Prophet Muhammad. written in various hadith books. Therefore, mujtahid scholars play the role of guessers, guessers, or "drawers" of the meaning of the words used by Allah and the Prophet Muhammad.

### **Product of Islamic Legal Thought**

M. Atho Mudzhar who has introduced types of Islamic legal thought products. There are at least four types of products of Islamic legal thought that are known in the history of Islamic law, namely *fiqh* books, religious court decisions, laws and regulations in Muslim countries, and ulama fatwas. Each product of Islamic legal thought has its own characteristics (Syadzali, 2004).

*Fiqh* books as a type of product of Islamic legal thought are comprehensive and cover all aspects of Islamic law, so that one of their characteristics is that they tend to be immune to change because revisions to some of them are considered to disturb the integrity of the overall content. Historically it has been proven that several books of jurisprudence have been treated as books of law, even though when the books of jurisprudence were written they were not intended to be generally enforced in a country. *Fiqh* books when written by their authors do not explicitly mention their validity period, so they tend to be considered valid for all time.

The products of Islamic legal thought, in the form of religious court decisions, tend to be dynamic because they are responses to real cases faced by society. A characteristic of religious court decisions is that they do not cover all aspects of Islamic legal thought as does *fiqh*. But in terms of legal force, it is more binding, especially for the parties concerned.

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The products of Islamic legal thought in the form of laws and regulations in Islamic countries are binding; even its binding power is broader in society (Mas'adi, 1997). The people involved in its formulation were not limited to ulama or jurists, but also politicians and other intellectuals. The validity period of statutory regulations is usually limited, either explicitly or implicitly.

The products of Islamic legal thought in the form of ulama fatwas, including the fatwas of the Indonesian Ulema Council, are casuistic in nature because they are responses or answers to questions asked by the fatwa requester. Fatwa has no binding force, in the sense that the fatwa requester does not have to follow the fatwa given to him. Likewise, the wider community does not have to be bound by the fatwa, because the fatwa of one ulama in one place may be different from the fatwa of other ulama in the same place. Fatwas tend to be dynamic because they are a response to new developments being faced by the community requesting the fatwa; although the content of the fatwa itself is not necessarily dynamic.

### **Dynamics of Islamic Legal Thought**

The dynamics of Islamic legal thought are possible for many reasons. One of the reasons can be seen in the concept of God's relationship with humans. Allah (in Muslim belief) is the Creator of all things; He is Omniscient; Most Just; and Most Clever. Man has the opposite nature of God; Allah is all-intelligent while humans are not all-powerful. In the Koran it is explained that the knowledge possessed by humans is very limited. According to logic, the Koran is the word of Allah that informs His will; Allah is infinite. Therefore, the content of the Quran is also unlimited. Meanwhile, on the other hand, human abilities are very limited. Based on these considerations, al-Qurafi's explanation regarding *wâdhi al-lugat*, *musta'mil al-lugat*, and *hâmil al-lugat* is very relevant to this logic.

Human abilities are limited so that they are unable to grasp God's message in the Koran in its totality. Therefore, the process of sharing among humans (ulama) in order to grasp God's intentions is a necessity. The process of sharing religious knowledge, including Islamic law, can be carried out by means of debate (*mujadâlat*), discussion, or writing opinions (*al-kitâbat*) among ulama (Syafei, 2017).

Historically, the dynamics of Islamic law are characterized by *ijtihâd* in schools (*madrasat*, school) which show certain beliefs and frameworks of thought. The emergence of the Khawarij, Madinah Madrasahs and Iraqi Madrasahs in the first phase of Islamic history is evidence that at that time there was a horizontal dynamic of Islamic legal thought.

In the Islamic world today, the dynamics of Islamic law are possible, marked by the emergence of various Islamic organizations, both international (such as the OIC), regional (such as SEASA), and national. In general, every Islamic organization has a special institution to conduct Islamic legal studies. In

Indonesia, there are a number of fatwa institutions that dynamically interact with each other.

The fatwa institutions that are developing in Indonesia are: (1) MUI fatwa commission; (2) National Sharia Council (DSN-MUI) which specifically prepares fatwas relating to the economy of the people; (3) *Bahtsul Masa'il Nahdlatul Ulama* (BM-NU); (4) Muhammadiyah Council for Tarjih and Development of Islamic Thought (MT-PPI); (5) Islamic Unity Hisbah Council; (6) Matla'ul Anwar Fatwa Council; and (7) Fatwa Commission within the Expert Council of the Islamic Community (PUI).

The diversity of these institutions allows for dynamics of Islamic legal thinking due to differences in the framework of thought and *ijtihad* methods used. Some time ago, there was a debate in this country regarding whether or not women should be president; Ajinomoto halal certificate; demonstration and *bugat* laws; as well as the MUI fatwa regarding the prohibition of bank interest.

### **Diversity of *Tathbîq* of Islamic Law**

The diversity of applications of Islamic law occurs because the Syri'ah has prepared a number of legal alternatives that can be used in certain circumstances (Kamal, 2017). The concepts of *'azimah* and *rukhsah* are proof that in the Shari'ah a number of ways have been prepared so that Muslims avoid difficulties in carrying out religious orders (Yanggo, 2007).

Differences in mainstream religious thought, including Islamic law, influence practices in carrying out religious teachings; Muslims' views about the Prophet's way of praying have an influence on the prayer practices carried out by those concerned. Differences regarding how to pray at night during the month of Ramadan (or *tarawih*), *qunut*, moving the index finger in *tasyahud*, *nikah* (debates regarding guardians, witnesses, and mut'ah marriages), the practice of *mubjadi*, and others (Mughniyyah, 2008). The diversity of Islamic legal practices also occurs through bilateral agreements in investment, trade and banking practices between Muslims from different countries (and/or sects).

The diversity of Islamic legal practices in the field of *siyasah* can be seen in the rules of the game (*al-qanûn al-dâkhilî*) of "Islamic" countries and "Islamic" political parties. The practice of Islamic law in Malaysia is different from Indonesia. For example, the case of gambling. In Malaysia, gambling is prohibited by the state. However, because some non-Muslim residents are used to gambling, the government finally handled gambling by localizing it (a special place) at Sky Way Genting Highland. In Indonesia, the Governor of DKI once offered the idea of localizing gambling, but most of the ulama (and people) rejected the idea.

In India, a unique case occurred. The majority of Indian Muslims adhere to the Hanafi school of thought. In the Hanafi school of thought, women do not have the right to divorce (*khulu*, talak ransom). Therefore, in the Indian Divorce

Law it is stipulated that women (wives) do not have the right to divorce at all. However, this rule is "gamed" by some wives in India for various reasons. Indian Muslim women change religions (apostasy) so they can divorce their husbands; because apostasy automatically causes the marriage to dissolve. After divorcing due to apostasy, the woman returned to Islam. This case prompted Indian clerics to change the Divorce Law so that it recognizes the right to divorce for wives.

Another interesting case to discuss is polygyny. In some Muslim countries, polygyny has a place of honor. In some regions, polygyny is considered normal. According to the Tunis Marriage Law, polygyny is a (legal) violation; The perpetrator can be charged with imprisonment (for one year) or a fine of 240,000 dinar. In Indonesia, polygyny is permitted with very strict conditions.

### **Conclusion**

The dynamics of Islamic legal thinking arise from the inherent limitations of human comprehension when it comes to discerning the purposes of Allah and His Messenger. Hence, it is imperative to engage in ongoing dialogue in order to pursue the ultimate truth and obtain divine endorsement. Throughout history, there have frequently been contentious discussions characterized by an unhealthy inclination towards believing one's own viewpoint is the most accurate and superior, as well as asserting that the opinions of one's faction or group are the most true. This phenomenon has manifested itself in many locations and generations. Our objective is to effectively manage divergent viewpoints by employing *mujjadi bi al-hasan*, with the ultimate aim of obtaining divine favor within the context of *tasamuh* (tolerance). The diversity of legal application is a result of the range of mainstream and internal viewpoints among Muslims.

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