

Ade Dedi Rohayana\* and Ali Muhtarom

# Islamic Jurisprudence Implementation in Indonesia: Perspective of the Objectives of Islamic Law

<https://doi.org/10.1515/gj-2020-0078>

Published online April 16, 2021

**Abstract:** Islamic jurisprudence (*fiqh*) is flexible and open to respond to the dynamics of time. This paper aims to reveal the Indonesian Islamic jurisprudence implementation from the perspective of the objectives of Islamic law (*maqashid al-syari'ah*). Using historical and social analysis, this study finds that Indonesian Islamic jurisprudence has been adapted to the Indonesian people's cultural values. Here, *maqashid al-syari'ah* perspective is used to resolve seemingly conflicting arguments and establish laws for the cases which are linguistically not covered within Al-Qur'an and Hadith. The findings of this study imply that the Indonesian Islamic jurisprudence does not contradict the Islamic law sources.

**Keywords:** Islamic jurisprudence, Indonesia, Islamic law, law

## 1 Introduction

Islamic jurisprudence or *fiqh*<sup>1</sup> constitutes one of the legal systems which are well-known in today's world.<sup>2</sup> Although it has lived amid societies since the Prophet Muhammad's period until the current time, there is still a misconception about it. This misunderstanding comes due in part to the nature of the Qur'an and the Hadith, as the main sources of Islamic law, which are flexible and allow for

---

<sup>1</sup> The Arab word transcriptions in this paper have been adapted to the Indonesian alphabet.

<sup>2</sup> Achmad Ali, *Menguak Teori Hukum Dan Teori Peradilan (Revealing Legal Theory and Judicial Theory)* (Jakarta: Kencana, 2009); Raficq S Abdulla and Mohamed M Keshavjee, *Understanding Sharia: Islamic Law in a Globalised World* (Bloomsbury Publishing, 2018); Salim A Farrar, "Introduction: Law and Development in the Islamic World," *Law and Development Review* 13, no. 2 (2020): 335–44.

---

**\*Corresponding author: Ade Dedi Rohayana**, Islamic Family Law, State Islamic Institute (IAIN) of Pekalongan, Pekalongan, Central Java, Indonesia, E-mail: [adededirohayana@iainpekalongan.ac.id](mailto:adededirohayana@iainpekalongan.ac.id)  
**Ali Muhtarom**, Islamic Family Law, State Islamic Institute (IAIN) of Pekalongan, Pekalongan, Central Java, Indonesia

multiple interpretations. Al-Qur'an and Hadith are highly open to interpretation and various points of view.<sup>3</sup> This is proven in the emergence of many commentary books written by *mufassirin* (the Qur'an's commentators). The Qur'anic interpretations use diverse approaches and perspectives such as legal, *tasawwuf* (Islamic mysticism), science, language, politics, and so on.<sup>4</sup> These different approaches and perspectives in turn lead to the production of different interpretations or conclusions. Individual reasoning (*ijtihad*) also requires legal theologians to develop various techniques, such as hierarchies of sources, which ensure solutions to the problems not explicitly stated in the Qur'an or Hadith.<sup>5</sup>

Furthermore, the pattern of interpretations in understanding the sources of Islamic law does not have a single form. Some scholars prefer the perspective of the Qur'an, and some others prefer the perspective of the Hadith. This pattern of interpretation can give the impression that there seems to be a contradiction between the contents of the Qur'an and the Hadith.<sup>6</sup> Besides, the portion of the references to the secondary Islamic legal sources (other than the Qur'an and Hadith) among scholars is different from one another. Some scholars prefer the analogy approach (*qiyas*), and some other scholars use the welfare approach (*maslahah*).

The pros and cons of opinions on the discourse of the primary and secondary sources of Islamic law have positive impacts and negative impacts on Muslim people.<sup>7</sup> On the one side, Muslims have many alternative approaches and perspectives in referring to the source of Islamic law; on the other hand, that they do not have the same commanding approaches and perspectives, when not wisely treated, may lead to the potential to Muslims' split division. The characteristic of the Qur'an and the Hadith which is open to interpretation is very relevant to the status of Islam as the final divine religion. As the last divine religion, Islam is given the mandate to respond to and answer diverse problems and challenges of the times. Islam, as Muslims believed, is a religion that will be relevant and suitable for every time and place, which is well-known as *shalih likulli zaman wa makan* (صالح لكل زمان ومكان).

---

3 Wahbah Zuhaili, *Al Wajiz Fi Ushul Al Fiqh* (Beirut: Dar el-Fikr, 1999), p. 21.

4 Abdullah Saeed, *Al-Qur'an Abad 21 Tafsir Kontekstual (Trans.)* (Bandung: Mizan, 2016), p. 3.

5 Iyad Mohammad Jadalhaq and Mohammed El Hadi El Maknoui, "Reading UAE Contract Law through the Lens of Islamic Jurisprudence: A Case Study on the 'Extraneous Cause' Exception in the UAE Civil Code," *Global Jurist* 19, no. 2 (2019), <https://doi.org/10.1515/gj-2018-0045>; W. F. Menski, "Islamic Law: God's Law or Men's Law?," in *Comparative Law in a Global Context*, ed. W. F. Menski (Cambridge: Cambridge University Press, 2006), 279–379.

6 Jalal al-Din Abd al-Rahman Al-Suyuti, *Al-Itqan Fi 'Ulum Al-Qur'an* (Beirut: Dar el-Fikr, 2008), p. 306; Ata' bin Khalil, *Al-Taisir Fi Usul Al-Tafsir* (Beirut: Dar el-Ummah, 2006), p. 32.

7 Zuhaili, *Al Wajiz Fi Ushul Al Fiqh*, p. 22.

The statement *shalih likulli zaman wa makan* can be manifested in the context of a pluralistic Indonesian state as the most populous Muslim country in the world.<sup>8</sup> The founding fathers of Indonesia, with their good understanding of the Islamic teachings and the history of the birth of Indonesia, never forced Islam to be the state ideology. They did not adopt Islamic law to be the official state law. Instead, they looked for another alternative ideology that could accommodate the aspirations of Indonesian people who come from diverse religions and ethnicities. Finally, they agreed on *Pancasila* (literally means the five principles) as their accommodation point. With *Pancasila*, Muslim people in Indonesia can practice Islamic teaching without imposing them on non-Muslim people.

In its development, however, the application of Islamic law by Indonesia's Muslim people has its dynamics or problems. The problem that arises is not only regarding the pros and cons of opinions on the sources of Islamic law,<sup>9</sup> as previously revealed, but it also comes to the idea of when Islamic law is going to be formalized,<sup>10</sup> and juxtaposed with the other national legal systems.<sup>11,12,13</sup> The other problems of Islamic law in Indonesia arise when it involved the approach and perspective of Indonesian culture,<sup>14</sup> which then created the term of Indonesian Islamic jurisprudence (Indonesian *fiqh*).<sup>15</sup> Besides, misconceptions on the terms

---

**8** Yahya FR (Editor), "Data Populasi Penduduk Muslim 2020: Indonesia Terbesar Di Dunia (Muslim Population Data 2020: the largest Indonesia in the World). See – <https://Ibtimes.Id/Data-Populasi-Penduduk-Muslim-2020-Indonesia-Terbesar-Di-Dunia/>."

**9** Wahyudin Darmalaksana, "Kontroversi Hadis Sebagai Sumber Hukum Islam (The Controversy of Hadith as a Source of Islamic Law)" *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* Vol. 2, No. 2 (2017): 245–58, <https://doi.org/10.15575/jw.v2i2.1770>.

**10** Kurniawan, "Dinamika Formalisasi Syari'at Islam Di Indonesia (Dynamics of Islamic Sharia Formalization in Indonesia)" *Kanun: Jurnal Ilmu Hukum* Vol. 14, No. 3 (2012): 423–47, <http://www.jurnal.unsyiah.ac.id/kanun/article/view/6223>.

**11** Mohdar Yanlue, "Prospective Islamic Law In Indonesia (Prospective Islamic Law In Indonesia)" *Journal of Humanity* Vol. 3, No. 1 (2015): 14–21, <https://doi.org/10.14724/jh.v3i1.25>.

**12** Mahfudz Junaedi, "Fiqh Indonesia: Tinjauan Kritis Epistemologi (Indonesian Fiqh: Critical Review of Epistemology)" *Syariat* Vol. 1, No. 3 (2016): 367–90, <https://ojs.unsiq.ac.id/index.php/syariat/article/view/1121>.

**13** Mahathir Muhammad Iqbal, "Merumuskan Konsep Fiqh Islam Perspektif Indonesia (formulating the concept of Islamic fiqh in Indonesian perspectives)" *Al Ahkam* Vol. 2, No. 1 (2017): 1–20, <https://doi.org/10.22515/al-ahkam.v2i1.820>.

**14** M. Noor Harisudin, "'Urf Sebagai Sumber Hukum Islam (Fiqh) Nusantara (Ūrf as the source of Islamic Law)" *Al-Fikr* Vol. 20, No. 1 (2016): 66–86, <http://journal.uin-alauddin.ac.id/index.php/alfikr/article/view/2311>.

**15** Chamim Tohari, "Fiqh Keindonesiaan: Transformasi Hukum Islam Dalam Sistem Tata Hukum Di Indonesia (Indonesian Fiqh: Transformation of Islamic Law in the Legal System in Indonesia)" *Analisis: Jurnal Studi Keislaman* Vol. 15, No. 2 (2015): 403–32, <https://doi.org/10.24042/ajsk.v15i2.730>.

*syari'ah* dan *fiqh* also color the discourse of Islamic law in Indonesia. In this regard, *syari'ah* is the law of Allah which will not change over time; it is a top-down ruling. Meanwhile, *fiqh* is the “law of Allah” created by the *mujtahid* (the one who performs *ijtihad*). It tends to change due to the changes of time (*azminah* or الأمانة), place (*amkinah* or الأمكنة), conditions (*ahwal* or الأحوال), motivation (*niyyat* or النيات), and culture (‘*awaid* or العوائد). Thus, *fiqh* has a bottom-up characteristic.

To date, the Islamic jurisprudence or *fiqh* which is practiced in Indonesia is very distinctive with Middle Eastern nuances that are socially and culturally different from the social reality of the Indonesian people. The compilation of Indonesian *fiqh* is considered appropriate to respond to the problems of Indonesian people. By sociological-historical approaches, this literature research is aimed to elaborate on the implementation of Indonesian *fiqh* with the *maqashid al-syari'ah* perspectives. Besides, this article attempts to make a counter for the rejection of Indonesian *fiqh*. *Maqashid syari'ah* is a resume or *khulashoh* of the laws of the Qur'an and the Hadiths.

## 2 Methodology

This study applies a socio-historical approach as an understanding to consider the effect of local socio-cultural changes on religious thought.<sup>16</sup> This approach sees reality as the unity of time, culture, class, place, and environment that have an effect on the emergence of thought, belief, event, and teaching on people or society. The socio-historical approach is used to discuss the perspective of *maqashid syari'ah*, Islamic jurisprudence in Indonesia, and the implementation of Islamic jurisprudence in the country from the perspective of *maqashid syari'ah*.

## 3 Result and Discussion

### 3.1 Maqashid syari'ah

*Maqashid syari'ah* (مقاصد الشريعة) is believed to be one of the important concepts in the study of Islamic law. Islamic jurists (or *fuqaha*) consider *maqashid syari'ah* as

<sup>16</sup> Nurul Djazimah, “PENDEKATAN SOSIO-HISTORIS: Alternatif Dalam Memahami Perkembangan Ilmu Kalam (SOCIO-HISTORICAL APPROACH: Alternatives in Understanding the Development of theology Science)” *Jurnal Ilmiah Ilmu Ushuluddin* 11, no. 1 (2016): 43–60; Syamsul Bakri, “Pendekatan-Pendekatan Dalam Islamic Studies,” *Dalam DINIKA, Journal of Islamic Studies*, 2014; Umi Sumbulah and Wilda Al Aluf, *Fluktuasi Relasi Islam Kristen Di Indonesia: Pendekatan Sosio-Historis* (UIN Maliki Press, 2015).

something that a *mujtahid* must master and understand very well. The substance of *maqashid syari'ah* is to take *maslahat* (benefits) and avoid *mafsadat* (damage), or to realize good and avoid bad.<sup>17</sup> In this sense, the benefit becomes the final destination of the *maqashid syari'ah* which is also the main purpose of the revelation of Islam.

God created laws and rules with their own goals and purpose. According to Ibn Qayyim, the purpose of *syari'ah* is the benefit of Allah's servants in this world and the hereafter. All *syari'ah* covers fairness, mercy, benefit, and wisdom. Thus, everything that acts against fairness, mercy, benefit, and wisdom is not a provision of *syari'ah*. In the context of fast social changes and diverse challenges of times, the theory of *maqashid syari'ah* is seen to be an alternative solution in answering the problems of Islamic jurisprudence.<sup>18</sup> Therefore, it is necessary to have a broad and deep knowledge of *maqashid al-syari'ah* theory in the study of Islamic jurisprudence.

The terms *maqashid syari'ah* comprises two words, namely *maqashid* and *syariah*. The word *maqashid* (مقاصد) is a plural form of *maqshud* (مقصود) which means purpose and objective, as for *syari'ah* literally means the path to the water source.<sup>19</sup> Terminologically, the word *syari'ah* is defined as God's laws prescribed for human beings to follow to achieve happiness in this world and the hereafter.<sup>20</sup> Therefore, *maqashid syari'ah* means the goals or objectives for the establishment of Islamic law. According to Izzuddin bin Abdissalam, all legal *taklif* (تكليف) is always aimed at the welfare of the servant (humans) in this world life and the hereafter. God does not need one's worship because the obedience and disobedience of the servant (humans) do not affect the glory of God.<sup>21</sup> From this point, the targeted benefits in Islamic law are none other than the interests of humanity. Meanwhile, al-Syathibi explained that *syari'ah* is established for the sake of human welfare in this world and the hereafter. In principle, *syari'ah* is set to realize the happiness of individuals and groups, maintain order, and prosper the world with all means that will bring humans to perfection, goodness, culture, and noble civilization, because Islamic preaching is intended to give the blessing for all human beings.<sup>22</sup>

The theory of *maqashid al-syari'ah* has important and urgent roles in the development of Islamic law with the following rationale. First, Islamic law is

---

17 Abi Ishaq Ibrahim al-Lakhmi al-Gharnati Al-Syatibi, *Al-Muawafaqat Fi Ushul Al-Syari'ah Vol. 2* (Beirut: Dar el-Fikr, 2003), p. 4–5.

18 Ahmad Al-Raysuni, *Nazhriyat Al-Maqashid 'inda Al-Imam Al-Syathibi* (Riyadh: Dar el-Allamah li al-Kitab al-Islami, 1981), p. 360.

19 Ibnu Mandzur Jamaluddin, *Lisan Al-Arab Vol. X* (Beirut: Dar el-Fikr, 1972), p. 40.

20 Mahmud Syaltut, *Al-Islam Aqidah Wa Syari'ah* (Cairo: Dar el-Qalam, 1966), p. 12.

21 Izzuddin ibn Abd Al-Salam, *Qawaid Al-Ahkam* (Cairo: Dal el-Istiqlamah, n.d.), p. 9.

22 Al-Syatibi, *Al-Muawafaqat Fi Ushul Al-Syari'ah Vol. 2*, p. 4.

almost certain to always deal with social change which raises the question of whether or not Islamic law can adapt to social change. Second, historically, the attention to the theory of *maqashid al-syari'ah* has been carried out by Prophet Muhammad PBUH, his companions, and *mujtahids*. Third, in-depth knowledge of *maqashid al-syari'ah* is the key to the success of the *mujtahid* because *maqashid al-syari'ah* is the main objective of every issue of Islamic law.

Abdul Wahhab Khallaf, an expert in *ushul fiqh* (principles of Islamic jurisprudence), states that the texts of *syari'ah* cannot be correctly understood except by someone who understands *maqashid syari'ah*.<sup>23</sup> This opinion is in line with Wahbah al-Zuhaili who said that the knowledge of *maqashid syari'ah* is an urgent matter (*dharuri*) for *mujtahid* when understanding *nash* (sacred texts) and establishing a law, as well as for people who want to know the secrets of *syari'ah*.<sup>24</sup> Therefore, one important reference that can be used by the Muslim people to deal with whatever problem of Islamic law is the theory or method of *maqashid syari'ah*. *Maqashid syari'ah* is a parameter in revealing the suitability of Islamic law with its sources, namely the Qur'an and the Hadith. This is done by 'confirming' whether an act can maintain or, conversely, damage one of the five main purposes of Islamic law, namely religion (*hifz ad-din*), soul (*hifz an-nafs*), intellect (*hifz al-aql*), descendant (*hifz an-nasl*), and property (*hifz al-mal*). If the act can protect the five elements above, it is ordered or allowed; conversely, when it damages the five, it is forbidden.

Further, Abdul Wahhab Khallaf asserted that *maqashid syari'ah* serves as a tool to understand the text of the Qur'an and Hadith, resolve conflicting arguments, and most importantly to establish the law on cases that are not explicitly covered in the Qur'an and Hadith. *Istinbath* methods such as *qiyas*, *Istihsan*, and *maslahah mursalah* are the methods of developing Islamic law based on the *maqashid syari'ah*.

## 3.2 Indonesian Islamic Law

Theoretically, two Arabic words can represent the terms of Islamic law, *syari'ah* and *fiqh*. In Arabic language, there is a clear difference between the word *syari'ah* and *fiqh*.<sup>25</sup> *Syari'ah* refers to Islamic law which is universal, top-down, unchangeable, and beyond the process of *ijtihad*, so that Muslims have the same views regarding

<sup>23</sup> Abdul Wahab Khallaf, *Ilmu Ushul Al-Fiqh* (the science of Ushul Al-Fiqh) (Cairo: Maktabah Da'wah Islamiyah, 1968), p. 198.

<sup>24</sup> Wahbah Zuhaili, *Ushul Fiqh Al-Islami* (Beirut: Dar el-Fikr, 1986), p. 1017.

<sup>25</sup> Jasser Auda, *Membumikan Hukum Islam Melalui Maqashid Syari'ah* (grounding Islamic Law through Maqashid Syari'ah) (Transl.) (Bandung: PT. Mizan Pustaka, 2015), p. 24.

Islamic law or ‘syariah’. Examples of *syari’ah* include the obligation to pray five times a day, to pay *zakat al-mal* (*zakat* on wealth), to fast during the month of Ramadhan, the prohibition of usury, intoxication, adultery, and so on. Meanwhile, *fiqh* refers to the law which is local, detailed, button-up, changeable, and involving the process of *ijtihad*, so that Muslims tend to have different views regarding this kind of law or what is so-called Islamic jurisprudence (*fiqh*). Examples of *fiqh* include the practice of prayer, *thaharah* (purification), *zakat*, fasting, the prohibition of bank interest, food and drink that are not explicitly mentioned in the Qur’an and Hadith, the practice of marriage, the practice of *mawarith* (inheritance), *muamalat* (Islamic economic law), and so on are all included in the matters of Islamic jurisprudence (*fiqh*).

However, *syari’ah* (Islamic law) and *fiqh* (Islamic jurisprudence) are inseparable; they both are like two sides of a coin. *Syari’ah* in practice requires *fiqh* because the detailed practices of *syari’ah* are covered in *fiqh*, while *fiqh* requires *syari’ah* because the latter protects the former. The two are strongly related to one another, except in a few problems. Therefore, it is obvious that Muslims should not have different views on the matters of *syari’ah*, but they may have different opinions on the matters of *fiqh*. In the realm of Muslims, there are known the terms “*Fiqh Kufah*” and “*Fiqh Hijaz*”. *Fiqh Kufah* tends to use the rational approach, so it is called the rational expert group, while the *Hijaz Fiqh* tends to use the *nash* (sacred texts) approach, so it is called the hadith experts group. The embryo of these two schools of *fiqh* appeared since the time of the Prophet and the companions, and it found its momentum during the time of the *tabi’in* and the imam *mujtahid*. These two schools of *fiqh* have lived from the past until the present time, and they colored the discussions of the Islamic sciences fields. The two schools seem to have become a standard pattern in the way of Muslims’ thinking over time, past and present.

One concrete example of the discourse above is ‘Indonesian Islamic law’. It should be clear here that ‘Indonesian Islamic law’ refers to *fiqh*, not *syariah*; thus, what many people think about ‘Indonesian Islamic law’ is ‘Indonesian *fiqh*’ or Indonesian Islamic jurisprudence.<sup>26</sup> The naming of Indonesian *fiqh* is not something new and should not invite any debate. This is because *fiqh* has been recognized and agreed upon to be local and partial matters from the past until the present time. In terms of Islamic legal theory, there is a key principle that a *fiqh* scholar when establishing an Islamic law must consider, namely *al-‘adah muhakkamah* (محكمة العادة) meaning local culture is authoritative. Even in the Qur’an Allah commands

---

<sup>26</sup> Agus M. Najib, *Pengembangan Metodologi Fikih Indonesia Dan Kontribusinya Bagi Pengembangan Hukum Nasional (Development of Indonesian Jurisprudence Methodology and Its Contribution to National Law Development)* (Jakarta: Kementerian Agama, 2011), p. 7.

people to pronounce *ma'ruf* (commands the good) by considering *'urf* (tradition or culture) as mentioned in Surah al-A'raf verse 199.

Indonesia's Islamic jurisprudence is the one that has been adapted to the cultural values of the Indonesian people. T.M. Hasbi ash-Shiddieqy, an initiator of Indonesian *fiqh*, said that Indonesian *fiqh* is the *fiqh* which is defined in accordance with the Indonesian personality, *tabi'at*, and character.<sup>27</sup> According to Hasbi, until 1961, *fiqh* with an Indonesian personality had not yet been born. He added that one of the inhibiting factors was the strong emotional ties (fanatical, *ta'ashub*) to the mazhab that the Muslims adhered to. Realizing that it was hard for the conservative *ulama* circles to promote progressive thinking, Hasbi invited Islamic universities in Indonesia to create *mujtahid* cadres with distinctive characters who could continue the project of Indonesian *fiqh*.<sup>28</sup>

Due to the project's urgency, Hasbi ash-Shiddieqy stated that if the university circles did not run the development of the Indonesian *fiqh* project, introducing the Islamic law to society would fail. As a further consequence, Islamic law may only be recognized in the dimension of worship, which is not complete. Meanwhile, the other dimensions will disappear day by day. To form new Indonesian-style *fiqh*, many parties need to build high awareness and wisdom, especially when it comes to going through the first step of doing a historical reflection on the thought of Islamic law during its early development.

This perspective reveals that Islamic law can only run well when it works hand in hand with people's legal awareness, that is, the law formed by environmental conditions, or local culture and traditions, not by imposing Islamic law that came from a particular context to a new spatial and time context, which is far away different. Such a combination would get a failure, not due to the incomplete old thinking, but rather due to anachronistic nature. Considering the presence of local traditions (*adat* or *'urf*) as a reference is necessary to form Islamic legal thought.<sup>29</sup>

### 3.3 Implementation of Islamic Law in *Maqashid al-Syari'ah* Perspective

Although Indonesia has the largest Muslim population in the World, the teachings of Islam, particularly the Islamic law, do not certainly become the legal-formal

---

<sup>27</sup> T.M Hasbi Ash-Shiddieqy, *Syariat Islam Menjawab Tantangan Zaman* (Islamic Sharia Responds to the Challenges of the Time) (Yogyakarta: Djamaah Islamiyah Islamiyah, 1961), p. 42.

<sup>28</sup> Mahsun Fuad, *Hukum Islam Indonesia Dari Nalar Partisipatoris Hingga Emansipatoris* (Indonesian Islamic Law, From Participatory to Emancipatory Reason) (Yogyakarta: LKiS, 2005), p. 67.

<sup>29</sup> Ash-Shiddieqy, *Syariat Islam Menjawab Tantangan Zaman*, p. 35.



foundation of the country. The struggle to uphold Islamic law as a legal-formal foundation has started since the initial establishment of this country. To date, though the Muslim people worked hard to pass Islamic law, it is very difficult to formalize the Islamic law in Indonesia's state system.

Muslims should understand that Islam does not oblige them to establish an Islamic state or formalize Islamic law in the state system. It seems important to move Muslims free and not tied to the formalism of Islamic law. In other words, when the movement of Muslims is limited to formal labeling, they will get stuck and face ideological conflicts that drive Muslim people to get marginalized from national politics.

Moreover, Islam does not make clear instructions regarding the construction of an Islamic state or the method of enforcing Islamic law in a state system. The Qur'an and Sunnah provide more relevant ethical principles on how to organize society and its principles. They both often mention normative ideas about deliberation (*shura*), justice (*'adalah*), and equality or egalitarianism (*musawah*). These principles came in the early Islamic political tradition, especially during the time of the Prophet Muhammad. Thus, it is time for Muslims to no longer have a rigid vision in understanding the messages of the Qur'an and the Sunnah. Muslims must have the courage to translate both sources in a more rational context that will give a positive impact on Indonesian Muslims.

To compile Indonesian-style Islamic *fiqh* into the state's formal law, the government pays serious attention to the situation and culture of Muslims in Indonesia so that the resulting legislation does not contradict the customs of the Indonesian Muslims. For example, in preparing the Islamic Law Compilation (KHI), the compiled matters are intended to accommodate the values and legal norms that grow and develop in Indonesian society. To meet the goals, Muhammad Daud Ali,<sup>30</sup> stated that the committee took four paths in the compilation process:

1. Studying jurisprudence books of Shafi'i school;
2. Collecting the opinions of Indonesian scholars to become input and consideration in making the compilation;
3. Collecting jurisprudence from the decree of all the Religious Courts in Indonesia from the time of the Dutch occupation until the time of compilation; and
4. Making a comparative study on the implementation and enforcement of Islamic law in Muslim countries.

---

<sup>30</sup> Muhammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum Dan Hukum Islam Indonesia* (Islamic Law: Introduction to legal studies and Indonesian Islamic Law) (Jakarta: Raja Grafindo Persada, 2007), p. 235.

Furthermore, the implementation of Islamic law in Indonesia can be classified in several areas, namely marriage, inheritance, and endowment. In the field of marriage, for example, there are several reforms such as marriage registration, marital age, consent of the bride and groom, polygamy permit, divorce in court, and all legal actions that can realize marriage with all legal consequences.

Here are some state accommodations to Islam. First, the validation of the 1989 National Education Law, which includes Islamic teaching. Second, the validation of the Marriage Law No. 1, 1974. Third, the enactment of the Religious Courts law (UUPA) in 1989 and the Compilation of Islamic Law (KHI) in 1991. Fourth, the change of headscarves policy in 1991. Fifth, joint ministerial letter issuance regarding the Amil zakat body, donation, and sadaqah (BAZIS). Sixth, the elimination of the National Charity Lottery (SDSB) in 1993. Seventh, the formation of The Indonesian Association of Muslim Intellectuals (ICMI) and the establishment of Bank Muamalat Indonesia.

From the seven accommodations, there are some Islamic law thinking with an Indonesian perspective, for example (1) in the KHI Chapter II article 5 it is stated that marriage must be recorded, (2) in the Marriage Law No.1 of 1974 article 7 it is stated that the age limit of marriage is 19 years old for both man and woman, in which before the revision 19 years old for man and 16 years old for woman 16 years, (3) in KHI Chapter XVI Article 114 it is stated that divorce can only be done before a Religious Court hearing.

Moreover, it is a matter of fact that many 'Indonesian Islamic Laws (fiqh)' was initiated by Indonesian Islamic jurists, such as Hasbi ash-Shiddieqy,<sup>31</sup> Hazairin,<sup>32</sup> Munawir Sjadzali,<sup>33</sup> Busthanul Arifin,<sup>34</sup> A. Qodri Azizy,<sup>35</sup> and Yudian Wahyudi.<sup>36</sup> For some people, their thinkings of Islamic law seem to be very controversial, even considered not in accordance with Islamic teachings. For example, Hasbi's thoughts on the law of Friday prayers and zakat in the field of worship, about the law of men's handshake and the legal status of polygamy in the field of *muamalah* (Islamic economic law) and *munakahat* (the practice of marriage), as well as the

---

31 Ash-Shiddieqy, p. 43.

32 Hazairin, *Tujuh Serangkai Tentang Hukum* (Jakarta: Bina Aksara, 1981), p. 153.

33 Munawir Sjadzali, *Ijtihad Kemanusiaan* (humanity ijtihad) (Jakarta: Paramadina, 1997), p. 58.

34 Busthanul Arifin, *Pelebagaan Hukum Islam Di Indonesia* (Institutionalization of Islamic Law in Indonesia) (Jakarta: Gema Insani Press, 1996), p. 56.

35 A. Qodri Azizy, *Hukum Nasional: Eklektisisme Hukum Islam Dan Hukum Umum* (National Law: Eclecticism of Islamic Law and General Law) (Jakarta: Penerbit Teraju, 2004), p. 291.

36 Yudian Wahyudi, *Ushul Fiqh Versus Hermeneutika: Membaca Islam Dari Kanada Dan Amerika* (Ushul Fiqh Versus Hermeneutics: Reading Islam from Canada and America) (Yogyakarta: Pesantren Nawasea Press, 2006), p. 35.

cases of cutting off hands for thieves in the field of crime, and so is Munawir Sjadzali's thoughts on Islamic inheritance (*mawarith*).

Overall, the key point of the scholars who initiated Indonesian Islamic law (*fiqh*) is that they generally hold to benefit as the substance of *maqashid syari'ah*. The idea of Islamic law in Indonesian perspective is based solely on the strong will to implement Islam which is *rahmatan lil'alamiin*; Islamic law that can adapt and provide good and reject bad for particular Muslims and general human beings. Islamic law has a fundamental principle, namely *al-umur bimaqashidiha* (الأمر بمقاصدها) meaning "all matters depend on the intention."

Thus, regarding *maqashid syari'ah* which prioritizes benefit for human beings, the ideas of Islamic legal thinking that are promoted by Indonesian Islamic legal thinkers in ideas and implementation do not have a problem and conflict with Islamic legal sources. The problem that arises is how to make Indonesian Muslims aware of the adaptation and accommodation of Islamic law for the plurality and change according to the developing social and political context. It is said in Islamic law that law changes with the changes of time (*azminah*), place (*amkinah*), conditions (*ahwal*), motivation (*niyyat*), and culture or tradition (*'awaid*). In this way, Islamic law can offer solutions for national problems.

## 4 Conclusion

This study is primarily intended to reveal the implementation of Indonesian Islamic jurisprudence from the perspective of the objectives of Islamic law (*maqashid syari'ah*). It attempts to make a counter to the rejection of Indonesian Islamic jurisprudence (*fiqh*). Using historical and social analysis, the study concludes that (1) Indonesian *fiqh* is the law that has been adapted to the cultural values of Indonesia. (2) *Maqashid syari'ah* (مقاصد الشريعة) is applied to be a means to understand the text of the Al-Qur'an and the Hadiths, resolve seemingly conflicting arguments, and establish laws for the cases which are linguistically not covered within the two main sources of Islamic law. (3) Legal *istinbath* (استنباط الأحكام) methods, such as *qiyas* (القياس), *istihsan* (الاستحسان), and *maslahah mursalah* (مرسلة مصلحة), are the methods used to develop Islamic jurisprudence based on the *maqashid al-syari'ah*. The above conclusion implies that the ideas of Indonesian Islamic law scholars do not conflict with the sources of Islamic law, in ideas and implementation. It is unfortunate that this study does not discuss why Indonesian Muslims seem to be reluctant to practice the product of Islamic jurisprudence (*fiqh*) thoughts which have been adapted to social and cultural facts in Indonesia.

Therefore, the writers suggest that further research concerning the reasons for the immobility of Indonesian Muslims to practice the products of Indonesian *fiqh* should be carried out in order to establish a greater degree of comprehensiveness on this matter.

## References

- Abdulla, R. S., and M. M. Keshavjee. 2018. *Understanding Syari'ah: Islamic Law in a Globalised World*. Bloomsbury Publishing.
- Ali, M. D. 2007. *Hukum Islam: Pengantar Ilmu Hukum Dan Hukum Islam Indonesia*. Jakarta: Raja Grafindo Persada.
- Ali, A. 2009. *Menguak Teori Hukum Dan Teori Peradilan*. Jakarta: Kencana.
- Al-Raysuni, A. 1981. *Nazhriyat Al-Maqashid 'Inda Al-Imam Al-Syathibi*. Riyadh: Dar el-Allamah li al-Kitab al-Islami.
- Al-Salam, I. I. A. n.d. *Qawaid Al-Ahkam*. Cairo. Dal el-Istiqamah.
- Al-Suyuti, J. D. A. R. 2008. *Al-Itqan Fi "Ulum Al-Qur"an*. Beirut: Dar el-Fikr.
- Al-Syatibi, A. I. I. L. G. 2003. *Al-Muawafaqat Fi Ushul Al-Syari'ah*, Vol. 2. Beirut: Dar el-Fikr.
- Arifin, B. 1996. *Pelebagaan Hukum Islam Di Indonesia*. Jakarta: Gema Insani Press.
- Ash-Shiddieqy, T. M. H. 1961. *Syariat Islam Menjawab Tantangan Zaman*. Yogyakarta: Djarniah Islamiyah Islamiyah.
- Auda, J. 2015. *Membumikan Hukum Islam Melalui Maqashid Syari'ah(Transl.)*. Bandung: PT. Mizan Pustaka.
- Aziziy, A. 2004. *Qodri. Hukum Nasional: Eklektisisme Hukum Islam Dan Hukum Umum*. Jakarta: Penerbit Teraju.
- Bakri, S. 2014. "Pendekatan-Pendekatan Dalam Islamic Studies." *Dalam DINIKA, Journal of Islamic Studies* 12 (1): 7–16.
- Darmalaksana, W. 2017. "Kontroversi Hadis Sebagai Sumber Hukum Islam." *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* 2 (2): 245–58.
- Djazimah, N. 2016. "PENDEKATAN SOSIO-HISTORIS: Alternatif Dalam Memahami Perkembangan Ilmu Kalam." *Jurnal Ilmiah Ilmu Ushuluddin* 11 (1): 43–60.
- Farrar, S. A. 2020. "Introduction: Law and Development in the Islamic World." *Law and Development Review* 13 (2): 335–44.
- Fuad, M. 2005. *Hukum Islam Indonesia Dari Nalar Partisipatoris Hingga Emansipatoris*. Yogyakarta: LKiS.
- Harisudin, M. N. 2016. "Urf Sebagai Sumber Hukum Islam (Fiqh) Nusantara." *Al-Fikr* 20(1): 66–86.
- Hazairin. 1981. *Tujuh Serangkai Tentang Hukum*. Jakarta: Bina Aksara.
- Iqbal, M. M. 2017. "Merumuskan Konsep Fiqh Islam Perspektif Indonesia." *Al-Ahkam* 2 (1): 1–20.
- Jadalhaq, I. M., and M. E. H. E. Maknoui. 2019. "Reading UAE Contract Law through the Lens of Islamic Jurisprudence: A Case Study on the 'Extraneous Cause' Exception in the UAE Civil Code." *Global Jurist* 19 (2). <https://doi.org/10.1515/gj-2018-0045>.
- Jamaluddin, I. M. 1972. *Lisan Al-Arab*, Vol. X. Beirut: Dar el-Fikr.
- Junaedi, M. 2016. "Fiqh Indonesia: Tinjauan Kritis Epistemologi." *Syariat* 1 (3): 367–90.
- Khalil, A. 2006. *Al-Taisir Fi Usul Al-Tafsir*. Beirut: Dar el-Ummah.
- Khallaf, A. W. 1968. *Ilmu Ushul Al-Fiqh*. Cairo: Maktabah Da'wah Islamiyah.

- Kurniawan. 2012. "Dinamika Formalisasi *Syari'ah* Islam Di Indonesia." *Kanun: Jurnal Ilmu Hukum* 14 (3): 423–47.
- Menski, W. F. 2006. "Islamic Law: God's Law or Men's Law?" In *Comparative Law in a Global Context*, edited by W. F. Menski, 279–379. Cambridge: Cambridge University Press.
- Najib, A. M. 2011. *Pengembangan Metodologi Fikih Indonesia Dan Kontribusinya Bagi Pengembangan Hukum Nasional*. Jakarta: Kementerian Agama.
- Saeed, A. 2016. *Al-Qur'an Abad 21 Tafsir Kontekstual (trans.)*. Bandung: Mizan.
- Sjadzali, M. 1997. *Ijtihad Kemanusiaan*. Jakarta: Paramadina.
- Sumbulah, U., and W.A.I. Aluf. 2015. *Fluktuasi Relasi Islam Kristen Di Indonesia: Pendekatan Sosio-Historis*. UIN Maliki Press.
- Syaltut, M. 1966. *Al-Islam Aqidah Wa Syari'ah*. Cairo: Dar el-Qalam.
- Tohari, C. 2015. "Fiqh Keindonesiaan: Transformasi Hukum Islam Dalam Sistem Tata Hukum Di Indonesia." *Analisis: Jurnal Studi Keislaman* 15 (2): 403–32.
- Wahyudi, Y. 2006. *Ushul Fikih Versus Hermeneutika: Membaca Islam Dari Kanada Dan Amerika*. Yogyakarta: Pesantren Nawasea Press.
- Yahya, F. R., eds. 2020. *Data Populasi Penduduk Muslim 2020: Indonesia Terbesar Di Dunia*. Also available at <https://ibtimes.id/data-Populasi-Penduduk-Muslim-2020-Indonesia-Terbesar-Di-Dunia/>. ibtimes.id.
- Yanlua, M. 2015. "Prospective Islamic Law in Indonesia." *Journal of Humanity* 3 (1): 14–21.
- Zuhaili, W. 1986. *Ushul Fiqh Al-Islami*. Beirut: Dar el-Fikr.
- Zuhaili, W. 1999. *Al Wajiz Fi Ushul Al Fiqh*. Beirut: Dar el-Fikr.