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RESEARCH / REVIEW ARTICLE

Theoretical Study of Islamic Jurisprudence (*Ushul Fiqh*) in the Era of Prophet

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Abstract: Since the early period of Islamic history, the behavior of Muslims in all its aspects has been regulated by Islamic laws. These rules are, in essence, religious. Therefore, in its development, several efforts are always made to be based on the Qur'an, as the final Divine revelation. These applications of which are largely exemplified and operationalized by the Sunnah of the Prophet. The science of Islamic Jurisprudence/*Ushûl Fiqh* discusses and investigates the circumstances of the Shar'i propositions and also investigates how these propositions demonstrate the laws relating to the actions of the legally responsible/*mukallaf*. Therefore, the topic discussed in *Ushûl Fiqh* are the postulates of Islamic legal evidences/*syaru'* in terms of their reference to the law for the actions of *mukallaf*. Related to the case of the Hajj vows, which unfulfilled due to death, The Prophet Muhammad established the law through analogical reasoning/*qiyas*. The Prophet Muhammad reminded people who made vows to obey Allah SWT more so that they fulfill their promises by obeying Allah SWT because in a hadith, it is explained that a vow is like a debt.

Keywords: *Ushul Fiqh, Nazar, Hajj*

1. INTRODUCTION

Understanding the history of *Ushûl Fiqh* has significant urgency for Muslims. Historical knowledge of this science provides clarity regarding its position in the Islamic religion in interpreting law (Al et al., 2018; Bahrudin, 2019; Nursaman, 2022; Said, 2019). *Ushûl Fiqh* is the main component in producing legal products known as *Fiqh* because these are the provisions or rules that must be used by *mujtahids* in producing *Fiqh*. However, in fact, the *Fiqh* preparation was carried out before the science of *Ushûl Fiqh* (Al et al., 2018; Nursaman, 2022; Said, 2019). Therefore, it is necessary to have a good understanding about the history of the growth and development in *Ushûl Fiqh* science, so that it is expected that there will be no difficulties in understanding the relationship between *Fiqh* and the science of *Ushûl Fiqh* (Bahrudin, 2019).

Ushul Fiqh as the spirit of Islamic law developed along with the development of the Muslim community (Abdulah Pakarti et al., 2023; Aminudin, 2016; Maman, 2017; Saputra, 2018). It becomes a tool to solve various problems that have never existed before. As a science of methods for determining law, it has a set of theories produced by scholars from the time of the Prophet until now (Atmaja, 2017; Badrud Tamam et al., 2022; Romli, 2019). *Ushûl Fiqh* is not a science fixed in one era, it develops along with the problems faced by humanity (Nursaman, 2022).

Such other religious sciences in Islam, the science of *Ushûl Fiqh* grows and develops, while remaining based on the Al-Quran and Sunnah, *Ushûl Fiqh* did not arise by itself, but its seeds have existed since the time of the Prophet and his companions (Hidayat, 2021; Mubarak, 2014a; Waluyo, 2018). The main problems that are part of *Ushûl Fiqh* are *Ijtihad, Qiyas, Nasakh*,



and *Takhsis*. These all were already practiced during the time of the Prophet and his Companions (Syafei, 2010).

Since the early period of Islamic history, the behavior of Muslims in all its aspects has been regulated by Islamic law. These rules are, in essence, religious. Therefore, in its development, several efforts are always made to be based on the Qur'an, as the final Divine revelation. The implementation of which is largely exemplified and operationalized by the Sunnah of the Prophet (Rahman, 1979).

At the time of the Prophet, there were only two sources of Islamic law, namely the Qur'an and the Sunnah. If a case occurred, the Prophet Muhammad would wait for a revelation to explain the law regarding the case. If no revelation was received, the Prophet would establish the law of the case through his sayings, which are subsequently known as hadiths or sunnah.

According to Abdul Wahab Khallaf, the purpose of studying *Ushûl Fiqh* is to apply these the rules and theories into the specific propositions to produce the sharia law desired by those propositions (Bahrudin, 2019).

The Prophet's methods of *ijtihad* became the seeds for the emergence of the science of *Ushûl Fiqh*. In resolving a problem, there is a signal to allow *ijtihad* in the form of *qiyas*. Therefore, this article discusses the study of *Ushûl Fiqh* in the era of the Prophet by referring to one case of a Hajj vow that unfulfilled due to death.

2. Research Method and Materials

In this research, the author used descriptive research or research methods library with qualitative data types. The data source used is the data source secondary in the form of notes, literature, books, documentation, as well as phenomena or events is around. The data analysis technique that the author uses is data analysis technique qualitative, the results of which are in the form of narratives.

3. Results and Discussion

3.1. *Ushûl Fiqh* in the Era of Prophet

In terms of language, *Ushûl Fiqh* derived from two words, namely *ushul* and *al-fiqh*. The word *ushul* is the plural form of the word *aslun*, which means source, origin, basis, rule or foundation. Meanwhile, the word *fiqh* means understanding. Thus, etymologically, *Ushûl Fiqh* means the basics of understanding. While in terms of terminology, *Ushûl Fiqh* is the science that studies the basis, rules, methods used to apply sharia law (Sodiqun, 2012).

The subject of discussion in the science of *Ushûl Fiqh* is the *syara'* arguments themselves, particularly in terms of how they are indicated in a law in a general sense/*ijmali* (outline) manner. For example, the Qur'an is the first Islamic proposition. The way it is designated in law is not only in one form, but sometimes in the form of command sentences (*sighat amar*), prohibitive sentences (*sighat nahi*), and sometimes using sentences that are general or absolute phrases, and so on (Nurhayati, 2019). Ushul experts discuss all this in order to derive legal provisions.

The science of *Ushûl Fiqh* discusses and investigates the circumstances of *syar'i* postulates and also investigates how these postulates show the laws related to the actions of *mukallaf*. Therefore, the topic discussed in Ushûl fiqh are the postulates of *syara'* in terms of their reference to the law for the actions of *mukallaf*.

In its development, *Ushûl Fiqh* since the time of the Prophet was not very visible because all kinds of problems were directly resolved by the Prophet Muhammad through revelations sent down by Allah SWT.

The growth of *Ushûl Fiqh* cannot be separated from the development of Islamic law since the time of the Prophet, until the time it was formed as a field of science in the 2nd century Hijriyah. At the time of the Prophet Muhammad, there were only two sources of Islamic law,

namely the Qur'an and the Sunnah. If a case occurred, the Prophet Muhammad would wait for a revelation to explain the law regarding the case. If no revelation was received, the Prophet would establish the law of the case through his sayings, which are subsequently known as hadiths or sunnah.

In determining the law from various cases during the time of the Prophet Muhammad for which there were no provisions in the Qur'an, *Ushul Fiqh* scholars concluded that there was a signal that the Prophet Muhammad determined it through *ijtihad* (Al-Mahârah al-Ushûliyyah wa Atsaruhâ fi An-Nadhji wa At-Tajdid al-Fiqhî, 2004).

This can be known, among other things, from the words of the Prophet as follows: Meaning: "Indeed, I give you decisions through my opinion in matters that have not been revealed to me by revelation." (HR. Abu Daud from Umm Salamah) (Mubarak, 2014b).

The results of the Prophet's *ijtihad* automatically became sunnah for the Muslim Ummah. The hadith regarding the appointment of Mu'az Ibn Jabal to Yemen as judge/*qadi*, shows widespread permission to carry out legal *ijtihad* during the time of the Prophet.

In this sending the Prophet said:

"How do you (*mu'az*) make a legal decision regarding a legal problem submitted to you? Mu'az answered, I will take a legal decision based on the book of Allah (Al-Quran). What if you don't find it in the book of Allah? Mu'az replied, I will make a decision based on a decision based on Raulullah's sunnah. Asked the Prophet, what if you don't find it in the Sunnah? Mu'az replied, I will make *ijtihad*, and I will not deviate. Then, the Prophet Muhammad patted Mu'az's chest and said everything Praise be to Allah who has given His Messenger's messenger *taufik* in something that Allah and His Messenger are pleased with."

This hadith does not explicitly show that there was an effort by the Prophet to develop the Science of *Ushul Fiqh*, but it is clearly implied that the Prophet had given him latitude in developing reason to establish laws that were not yet written down in the Al-Quran and Sunnah. This means that the Prophet's flexibility in solving *ijtihad* problems has provided strong legality for his friends.

3.2. *Ushul Fiqh* Study of the Case of the Nazar Hajj which Unfulfilled due to Death

In several cases, the Prophet Muhammad used the *qiyas* method when answering friends' questions or solving problems. One of them is the case of the Hajj vows:

حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ حَدَّثَنَا أَبُو عَوَانَةَ عَنْ أَبِي بَشِيرٍ عَنْ
سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ امْرَأَةً مِنْ
جُهَيْنَةَ
جَاءَتْ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ إِنَّ أُمِّي نَذَرَتْ أَنْ
تَحُجَّ فَلَمْ
تَحُجَّ حَتَّى مَاتَتْ أَفَأَحُجُّ عَنْهَا قَالَ نَعَمْ حُجِّي عَنْهَا أَرَأَيْتِ لَوْ كَانَ
عَلَى أُمِّكَ
دَيْنٌ أَكُنْتَ قَاضِيَةً أَفَضُوا اللَّهَ فَاللَّهُ أَحَقُّ بِالْوَفَاءِ

Musa bin Isma'il has told us Abu 'Awanah from Abu Bisyr from Sa'id bin Jubair from Ibn 'Abbas radhiallahu'anhuma that there was a woman from the Juhainah tribe who came to see the Prophet Muhammad ﷺ and said, "Indeed my mother has vowed to perform the Hajj, but he did not have time to fulfill it until he died, is it permissible for me to perform the Hajj?" He replied, "Perform the Hajj for him. What do you think, if your mother has a debt, are you obliged to pay it? Pay your debts to Allah because (debts) to Allah are more worthy to be paid." (HR. Bukhari No. 1720)

This hadith explains the obligation to fulfill the obligations of a person who has died, whether related to a will or not, because debt is something that must be fulfilled. Likewise, with other things related to property, such as paying *kaafarat*, *zakat* or vows. Similar opinions were

expressed by Ibn Abbas, Zaid bin Thabit, Abu Hurairah and Syafi'i. The above hadith also explains that heirs must prioritize debts related to others if the inheritance they leave behind is not enough to use to perform the Hajj and pay debts. This is based on the words of the Prophet Muhammad SAW, "Allah's rights are more worthy of being fulfilled." (Sabiq, 2008) Regarding vows, Allah SWT says in QS Al Hajj verse 29:

ثُمَّ لِيَقْضُوا تَفَثَهُمْ وَلْيُوفُوا نُذُورَهُمْ وَلْيَطَّوَّفُوا بِالْبَيْتِ الْعَتِيقِ

Then, let them remove the dirt [987] from their bodies and let them complete their vows [988] and let them perform Tawaf around the old house (Baitullah).

[987] What is meant by removing dirt here is cutting hair, trimming nails, and so on.

[988] What is meant by Nazar here are the good vows that will be carried out during the Hajj. Nazar is understood as a promise. In this case, the law of vowing is actually permitted in Islam, and can even be mandatory under certain provisions.

3.3. Qiyas

In related to the case above, the Prophet Muhammad established the law through *qiyas*. The Prophet Muhammad reminded people who made vows to obey Allah SWT more so that they fulfill their promises by obeying Allah SWT because in a hadith, it is explained that a vow is like a debt.

Qiyas is making an analogy of a problem for which there is no legal decision (*nash/dalil*) with a problem for which there is already a legal decision because of the similarity of 'illat (Sodiquin, 2012).

In its implementation, *qiyas* must fulfill the following pillars:

1. *Asbl*: a problem for which there is already a legal provision or already has a text.
2. *Furu'*: a problem for which legal determination is being sought
3. *Asbl Law*: legal issues that have been determined by the text
4. 'Illat: the properties contained in *asbl* (basis or origin)

If related to the case above, the Prophet Muhammad stated (likened or made an analogy) that basically fulfilling vows or paying off debts is the same, namely obligatory. The situation in the case above is that a person vowed to perform Hajj but failed to carry it out because he died. The Prophet Muhammad indicated for the heirs to carry it out.

The details of the *qiyas* for the above case are as follows:

1. *Asbl*: fulfill or pay a debt
2. *Furu'*: a vow that was not carried out (in this case the Hajj) because of death
3. *Hukm Asbl*: fulfilling or paying debts is obligatory
4. 'Illat: debt and vows have the same nature, namely they are both obligations that must be carried out.
5. *Natijah* (conclusion): such debts, the vows of a deceased person must be carried out by the heirs

Scholars from among the Companions and others stated that performing the Hajj vows for people who have died is permissible. The same thing was stated by Ats Tauri, Ibn Mubarak, Ahmad, Syafi'i, and Ishak (Sabiq, 2008). The obligation to replace the pilgrimage is imposed on his heirs. Regarding this matter, differences of opinion were found among the high priests of the *madhhab*.

One of them is the Imam of the Syafi'i School who does not allow *badal hajj* if it is carried out by people who have not performed the hajj for themselves. If he performs the Hajj, then the Hajj counts for himself.

The basis of the hadith is quoted from Bulughul Maram by Ibn Hajar Al-Asqalani which reads,

It was also reported by Ibnu Abbas RA that the Prophet SAW once heard someone say, "Laibaika from Shubrumah." He asked, "Who is Syubrumah?" He answered, "My brother." Then he said, "Have you performed Hajj for yourself?" He answered, "Not yet." He said, "Make Hajj for yourself, then make Hajj for Syubrumah." (HR Abu Dawud and Ibnu Majah).

Meanwhile, according to the Imam, the Hanaf Mahzab allows badal hajj to be carried out by people who have not yet completed the hajj. This relies on the hadith narrated from Ibn Abbas,

Meaning: *Hadith of Fadhal Ibn Abbas RA, that a woman from the Khas'am tribe asked the Prophet Muhammad, "O Rasulallah, the Hajj obligation that Allah has prescribed for his servants coincides with the condition of my father who is old enough to no longer be able to travel. May I do Hajj in his behalf?" The Prophet Muhammad responded, "Yes. The incident occurred on the Hajj Wada'."* (HR Muttafa'alah).

4. Conclusion

The growth of *Ushul Fiqih* cannot be separated from the development of Islamic law since the Prophet era, until the time *Ushul Fiqih* was formed as a field of science in the 2nd century Hijriyah. At the time of the Prophet Muhammad, there were only two sources of Islamic law, namely the Qur'an and the Sunnah. If a case arose, the Prophet Muhammad waited for a revelation to explain the case. If no revelation was received, the Prophet would establish the law of the case through his sayings, which are subsequently known as hadiths or sunnah.

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