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# **JURNAL ILMU HUKUM KYADIREN**

*Pusat Penelitian & Pengabdian Masyarakat  
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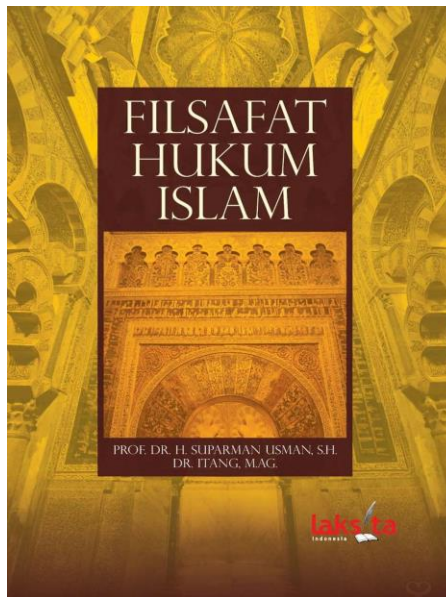




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## Book Review

### ANALYSIS

This book consists of 6 chapters and includes 2 up to 4 sub-topics in each chapter. The first chapter introduce the meaning and history of Islamic legal philosophy. To understand the philosophy and history of Islamic law, this book describes in detail both the linguistic understanding and terminology of the various thoughts of western philosophers and Islamic scholars. In addition, the idea of Islamic law has been born since the beginning of the history of Muslims, due to the encouragement of the Qur'an and al-Sunnah so that humans use their minds in dealing with life's issues, especially very fundamental issues, concerning Aqedah or belief. The Prophet's permission to Mu'adz (the prophet's close friend) to *ijtihad* (the outpouring of all abilities of a *fiqh* experts to get an understanding of sharia law)<sup>1</sup> was the beginning of the birth of Islamic legal philosophy

<sup>1</sup> Muntoha Muntoha, "Teori Dan Posisi Ijtihad Dalam Hukum Islam," *UNISLA: Jurnal Ilmu-Ilmu Sosial* 29, no. 1 (1996): 54–59, <https://journal.uin.ac.id/Unisia/article/view/5556/4919>.

during the Prophet era. All problems were solved by revelation and wrong philosophical thoughts were justified by revelation. When the Prophet died revelation was over. Thus, reason and philosophical thoughts played a role, according to either the provisions of the Qur'an (*Nash*) or outside the provisions of the Qur'an. Philosophical thoughts on textual Islamic law began during Rashidun Caliphate, especially Umar bin Khattab. *Ijtihad* by using reason, which is essentially a philosophical thought, was approved by the Prophet Muhammad, even Allah said that using reason and philosophical thought is very necessary to understand various issues.

Chapter two has the theme of the sources and propositions of Islamic legal philosophy which includes a definition of the sources and propositions of Islamic law, the sources of Islamic legal philosophy, and the arguments of Islamic legal philosophy. The proposition is used as the basis for correct thinking in obtaining or finding, obtaining the law (*syara'*), both *qoth'y* (definite) and *dhanny* (relative). These arguments, of course, must be sourced from the Qur'an and hadith, because the norms of Islamic law can be extracted from both of them.

Chapter three deals with topics on God's law and power. This chapter specifically discusses Islamic law and the challenges of modernity, the nature and characteristics of Islamic law, and Islamic law according to the ideas of positivism and idealism. The dialectic between law and society is a necessity. On the other hand, law is influenced by the dynamics of society and vice versa the law will affect the community. Changes in law can also affect changes in society, and conversely changes in society can affect changes in law. In fact, it is believed that the dynamics of society can affect the conception of law, for example, modernity that occurs in the midst of people's lives has influenced the view of Islamic law. In other words, modernity has had an impact on various aspects of human life, including the concept of law, especially Islamic law. In addition, it is also explained that Islamic law has its own characteristics, universal, elastic, perfect, dynamic, systematic, facilitating, realistic, certain, and compliant. Studying the nature and characteristics of Islamic law is aimed to find out Islamic law both in terms of the legal material and its application in society. The final discussion of this chapter focuses on positivism and law, and positivism and idealism in the perspective of Islamic law. Positivism is a philosophical school which states the natural sciences as the only true source of knowledge and rejects activities related to metaphysics.<sup>2</sup> Inspired by philosophical empiricism, 19<sup>th</sup> century legal philosophers tried to make law a scientific product. The strong emphasis on facts as the only basis for justification or accountability started the emergence of legal positivism. Law can only be accepted for its scientific approach. Law is a scientific work. Thus, law must be justified and fully supported by empirical facts.

Chapter four is organized into the theme of Islamic law Principles and Rules. This chapter discusses specifically the principles of Islamic law as the starting point for the implementation of Allah's decrees relating to *mukallaf* (someone whose actions are related to the Sharia)<sup>3</sup>, either in the form of orders, prohibitions or choices. The principles of Islamic law are categorized into the principle of knowledge, the principle of justice, the principle of *al-amr bil ma'ruf wa nahnay 'anil-munkar* (command to uphold the truth and prohibit disobedience)<sup>4</sup>, the principle of freedom/independence, the principle of equality/egalite, the principle of at-ta'awun (helping each

<sup>2</sup> Torben Spaak, "The Scope of Legal Positivism: Validity or Interpretation?," *Social Science Research Network*, 2019, 1–29, <https://doi.org/10.2139/ssrn.3431970>.

<sup>3</sup> Tihami Tihami, "Taklif Dan Mukallaf Menurut Al-Syeikh Muhammad Nawawi Al Bantani," *Al-Qalam* 74, no. 14 (1998): 75–108, <https://doi.org/10.32678/alqalam.v14i74.439>.

<sup>4</sup> Abdul Karim Syekh, "Rekonstruksi Makna Dan Metode Penerapan Amar Ma'ruf Nahi Munkar Berdasarkan Al-Qur'an," *Al-Idarah: Jurnal Manajemen Dan Administrasi Islam* 2, no. 2 (2018): 1–22, <https://doi.org/10.22373/al-idarah.v2i2.4009>.

other)<sup>5</sup>, and the principle of tolerance. In addition, it is also discussed related to the principles of Islamic law. Five basic rules of Islamic law as compiled by an Islamic priest, Imam Muhammad bin Muhammad ad-Dabbas, are distinguished into 17 rules. Other Islamic priests, Imam Abul Hasan and Abdullah bin al-Hasan (260-340 H) who was known as *Al-Karkhijy*, were also added to make 37 rules written in one book. A law was even drafted during the Ottoman Caliphate and became a book of *Fiqh* named *Majallatul Ahkamil Adliyah*. Articles 2 to 100 contain the rules of *Fiqh* (a field of science in Islamic law that specifically discusses legal issues that regulate various aspects of human life)<sup>6</sup> and many other rules. However, this book focuses on the rules of Islamic law according to the *Fiqh* scholars who stipulate five basic rules of Islamic law induced from various texts, giving rise to various other rules. The five basic rules are 1) *Al-Umuru bi Maqasidih* (Every matter depends on the intention), *Al-Yaqin la' Yuḥal bi ash-Syakek* (Faith cannot be eliminated by doubt), *Ad -Dararu yuḥal* (The harm must be eliminated), *Al-Masyaqqah Tajlib at-Taisiri* (Difficulty brings ease), and *Al-'adah Muhakamah* (Customs can be taken into account in establishing and applying the law).

In chapter five, the authors discuss the various schools of Islamic law, both the emergence of Islamic law schools and various schools of thought in Islamic law. The emergence cannot be separated from the development of Islamic *Fiqh*. Differences in the renewal of *fiqh* among contemporary scholars emerge in the periodization of *fiqh*. Muhammad Khudari Bek (a *fiqh* expert from Egypt) divides the periodization of *fiqh* into six periods. According to Mustafa Ahmad az-Zarqa, the six periods proposed by Muhammad Khudari Bek can actually be divided into two periods, because each period has its own characteristics. According to az-Zarqa, it is divided into the period of treatise (Sharia Determination), the Period of Rashidun Caliphate (Sharia Determination), the initial period of *fiqh* growth (Laying the Basis of *Fiqh*), Golden Period, the periods of *tabrir*, *takhrir* and *tarjih* in the school of *fiqh*, the period of *fiqh* decline, and the period of *fiqh* codification. The problem of *ikhtilaf* (differences, disputes and exchanges) always happens in the discussion of schools of thought. Different opinion in the legal field as a result of research (*ijtihad*), do not need to be considered as a factor that weakens the position of Islamic law, on the contrary it can provide concessions to many people. Thus, people are free to choose an opinion. *Ikhtilaf* actually existed in the time of the companions, this happened partly because of differences in understanding among people and the differences in the texts (sunnah). In addition, it is also caused by different knowledge of *hadith* and views on the basis for determining the law. As for in this book, various schools of Islamic law are explained, which can be divided into several major groups, the *Ahl al-Sunnah* schools, the *Shia* schools (*Al-Ja'Fariyah*, *Al-Zaidiyah* and *Al-Ismailiyah*), the *Khawarij* and the extinct schools of thought. (School of *al-Auza'i*, School of *al-Zhabiry*, School of *al-Thabary* and School of *al-Laitsi*).

The last chapter discusses the purpose of Islamic law. This chapter describes various sub-topics regarding the Definition of *Maqashid al-Shari'ah*, Priority Scale, Five Objectives of Islamic Law, and the Role of *Maqashid Syari'ah* in Legal Development. There exist various approaches of *Maqashid al-Shari'ah*, both the textual and contextual approach. In addition, the priority scale means the purpose of Allah and His Messenger in formulating Islamic laws (*Maqasid Shari'ah*). This purpose can be traced in the verses of the Qur'an and the Sunnah as a logical reason in the

<sup>5</sup> Galuh Widitya Qomaro and Armyza Oktasari, "Manifestasi Konsep Ta'awun Dalam Zaakwaarneming Perspektif Hukum Perikatan," *Et-Tijarie* 5, no. 1 (2018): 11–25, <https://journal.trunojoyo.ac.id/ettjarie/article/download/4594/3205>.

<sup>6</sup> Nurhayati, "Memahami Konsep Syariah, Fikih, Hukum Dan Ushul Fikih," *Jurnal Hukum Ekonomi Syariah* 2, no. 2 (2018): 124–34, <https://journal.unismuh.ac.id/index.php/jhes/article/view/1620>.

formulation of a law that is oriented to *maslahah* (the benefit for all mankind). The benefits are divided into three levels, *dharuriyat* needs, *hajiyat* needs, and *tahsiniyat* needs. Of course, the purpose of formulating Islamic law is to maintain religion, soul, mind, offspring, and property, which were agreed upon by other scholars of Islamic law. Therefore, knowledge of *Maqashid Shari'ah* is a very important as a tool to understand the release of the Qur'an and Sunnah, resolve conflicting arguments and, establish laws against unusual cases based on linguistic studies.

We can draw the conclusion: 1) The epistemology of Islamic law as the basis of *maslahah* is broadly divided into *bayani* as an epistemology that uses the texts of the Qur'an and al-Sunnah as sources of Islamic law, *burhani* as an epistemology that makes reason a source of knowledge and Islamic law, *istinbat* as an epistemology in exploring the evidences of Allah's revelation, *irfani* as an epistemology that uses heart, *kayfi* (revelation through reason), and *inspirasi* as sources of knowledge of Islamic law, 2) The reformulation of classical *maslahah* is creating new terms that are not explained by Al-Thûfi in the underlying concept of *maslahah*, so that the concept is more focused, such as *muamalah* (human relations in social interactions according to the Sharia) and *muqaddarah* (determination), reconstructing the terminology in Islamic law related to *maslahah*, such as *qath'i* (a certain meaning that must be understood from the text) and *dzanni* (argument that points to a meaning that contains another meaning), *ta'lil* (draw conclusions based on cause-and-effect relationships) and *ta'abbudi* (all the provisions of Islamic law that must be obeyed), the concept of texts, reason, and human values. 3) Reformulation of *istishlahi ijtihad* as a contemporary method of critical thinking combining theoretical *istishlahi ijtihad* and practical *istishlahi ijtihad*, has been exemplified by the Prophet Muhammad and the Companions and applied in the formation of laws among Muslim countries.

In sum, the author always gives an argument as a response to the material studied in each chapter. Their argument is always based on the opinion of an expert or scholar who first put forward an argument against the discussion material in the book. This book can provide a starting point for these efforts. The language used in this book is easy to understand. In addition, it does not only present the theories but also the opinions of experts, scholars, and the authors for each chapter which make this book more interesting for readers and strengthen and expand the theories in the book. In addition, a conclusion is drawn so that readers can better understand this book.

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