

# APPLICATION OF QOWAID FIQHIYYAH IN CONTEMPORARY ISLAMIC LAW

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## APPLICATION OF *QOWAID FIQHIIYAH* IN CONTEMPORARY ISLAMIC LAW

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### Abstract

*Qowaid fiqhiiyah* is a very important element in the contemporary application of Islamic law for the reason that values contained in the *fiqhiiyah qowaid* is a pulse in any *fiqh in-the-istinbath* of contemporary Islamic jurists. Not only that *qowaid fiqhiiyah* is a parameter benefit whether law is needed or not, but also its main role to ensure that any *fiqh in istinbathkan* does not contradict the texts, namely the Quran and Sunnah. By applying *qowaid fiqhiiyah* into every attempt of making or interpreting a law, it can be ascertained that law meets the standards to be applied in contemporary society, so it is not feared that the law would lead to new problems or a conflict of norms to apply. Islamic law and *qowaid fiqhiiyah* have interrelationship with one another, this is because the dynamism of Islamic law embodied in *fiqh* is very dependent on *qowaid fiqhiiyah*, in this case the characteristic of the generality or generality of the rules that make the Islamic law can be applied to

2) Conditions at all times and times.

**Keywords:** *Qowaid Fiqhiiyah*; *Fiqh*; Islamic Law.

### Abstrak

*Qowaid fiqhiiyah* merupakan hal yang sangat penting dalam pengaplikasian hukum Islam kontemporer, hal ini dikarenakan nilai-nilai yang terkandung dalam *qowaid fiqhiiyah* tersebut merupakan nadi dalam setiap *fiqh* yang di-istinbath-kan oleh para ahli hukum Islam kontemporer. Tidak hanya itu *qowaid fiqhiiyah* juga merupakan suatu parameter kemaslahatan perlu atau tidaknya suatu hukum, disamping peran utamanya untuk memastikan bahwa setiap *fiqh* yang di istinbathkan tidak bertentangan dengan nash yaitu Al-Quran dan Sunnah. Dengan mengaplikasikan *qowaid fiqhiiyah* kedalam setiap upaya pembuatan atau pun penafsiran suatu hukum, maka dapat dipastikan hukum tersebut telah memenuhi standar untuk di aplikasikan kedalam masyarakat kontemporer, sehingga tidak dikhawatirkan hukum tersebut akan menimbulkan persoalan baru a) 2) menimbulkan konflik norma dalam pengaplikasiannya. Hukum Islam dan *qowaid fiqhiiyah* mempunyai keterkaitan antara satu dengan yang lain, hal ini dikarenakan kedinamisan hukum Islam yang di wujudkan dalam *fiqh* amat bergantung pada *qowaid fiqhiiyah*, dalam hal ini karakteritik keumuman atau generalitas dari kaidah-kaidah tersebutlah yang menjadikan hukum Islam dapat diterapkan pada segala kondisi di setiap waktu dan zaman.

**Kata Kunci:** *Qowaid Fiqhiiyah*; *Fiqh*; Hukum Islam.

### Introduction

The discussion on *qowaid fiqhiiyah* (*fiqh* rules) is the most important thing in Islamic law discussion, it is due to the knowledge of *fiqh* will be a common thread to *fiqh* related problem that is adjusted to different places, times and habits

in the application of Islamic law, which would make Islamic law always flexible in responding to social, economic, political, cultural and legal issues. As for the definition of *qowaid fihiyyah*, it can be described as follows, *qowaid fihiyyah* consists of two words namely, *qowaid* and *fihiyyah*.

Etymologically, the word *qowaid* comes from Arabic Language *al-Aqidah* which means the foundation which then resulted to word *qaidah*. *Qaidah* means base, whereas *qowaid* is the plural of *qaidah*. Thus, it defined as basic meanings.<sup>1</sup> Meanwhile, terminologically the word *fihiyyah* comes from Arabic Language, *fiqh*, which taken from Q.S: *At-Taubah* verse 122, “*liyatafaqqahu fiddin*” means to deepen their knowledge of religion ... *tafaqqahu...* referred to *fiqh* as an *al-fahmu* or understanding. Therefore, *fiqh* can be defined as an understanding of sharia or science that understand sharia as the rules set by Allah SWT for his people.<sup>2</sup>

Based on the definition above, it can be concluded that *qowaid fihiyyah* has the meaning as general rules in understanding sharia as a set of rules set by Allah SWT for his people. In other words, *qowaid fihiyyah* can be a guide that allows Muslim jurists to conclude the law against legal problem. Clearly, this matter will allow *qowaid fihiyyah* as an outline in doing an *ijtihad* to a legal problem; recognizing *fiqh* cannot possibly stand without any basic foundation that makes *fiqh* stands firm and solving the problem. Hence, it shall be noted that *fiqh* is distinctive in nature; meanwhile, *qowaid fihiyyah* has a general characteristic.

The description of *fiqh* distinctiveness and *qowaid fihiyyah* general characteristic can be described as follows, that *fiqh* is a general understanding of the Islamic principles and the laws contained therein, the understanding of legal issues is divided specifically in accordance with the study of certain legal issues. For instance, marriage law that regulated in *fiqh munahakat*, inheritance law that regulated in *fiqh faraidh*, civil law that regulated in *fiqh muamalah*, and many other fields of law which arranged in different *fiqh*. Each branch of *fiqh* has its own separate discussion, for instance, *fiqh muamalah* that regulate civil matters only

<sup>1</sup> Ahmad Warson, *Kamus Al-Munawwir Arab-Indonesia* (Pustaka Progressif 1997). [1138].

<sup>2</sup> Prawitra Thalib, *Syariah: Konsep Dan Hermeneutika* (Lutfansyah Mediatama 2013). [22].

and *fiqh faraidh* that regulate inheritance matters only. This *fiqh* stands separately without interfering each other since the difference in its study and legal issues. Seeing this aspect, it is why *fiqh* was said to have a distinct characteristic.<sup>3</sup>

Meanwhile, *qowaid fiqhiyyah* was said to have a general characteristic, it is due to every *fiqh* – either it is *fiqh muamalah*, *fiqh faraidh* or *fiqh munakahat*; all stands on the same foundation. This foundation is also known as *qowaid fiqhiyyah*, the values contained in *qowaid fiqhiyyah* should be the basic foundation of every existing *fiqh*. Therefore, even though the understanding and discussion of each *fiqh* are different, this *fiqh* are stand in the same basic foundation. This is why *qowaid fiqhiyyah* is seen to have general characteristic. Additionally, as a link between *qowaid fiqhiyyah* and *fiqh* is *ushul fiqh*. For instance, when *qowaid fiqhiyyah* is a foundation to establish a *fiqh*, the attempt to create *fiqh* should use the method named *ushul fiqh*. Between *qowaid fiqhiyyah*, *ushul fiqh* and *fiqh*, each has a clear sequence and relation between each other. All of which is an understanding of Islamic law to be implemented into all aspects of life that are unfettered by time.

Islamic law and *qowaid fiqhiyyah* have a relation between one to another, this is under the reason of Islamic law dynamicity which embodied in *fiqh* is very dependent on *qowaid fiqhiyyah*. In this case, the characteristic of the generality from the rules enables the Islamic law to be applied to all conditions at all times. *qowaid fiqhiyyah* allows *fiqh* as a science with distinctive character, relative, and highly influenced by the condition of place and time (*qabil lin iqash, qabil lit taghyir*). The development of society, culture, science, and technology indirectly influence the development of Islamic law. *Sharia* in the other hand cannot be changed due to its eternal nature. Changing *sharia* means changing the existing provisions in the Qur'an and *Sunnah*. Nevertheless, the interpretation of *sharia* itself can be adapted to the development of era through the usage of *qowaid fiqhiyyah* as the parameter to understand the meaning contained in the Qur'an and *Sunnah* as outlined in *fiqh*, as a form of the application of contemporary Islamic law.

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<sup>3</sup> *ibid.*[23].

### Islamic Law

Islam originated from two main sources, namely the Qur'an and *Sunnah*, which are often said to be the main propositions of Islamic law. Beside Qur'an and *Sunnah*, there are also some supporting propositions in Islamic law, namely *ijma'*, *qiyas*, *istihsan*, *masalah mursalah*, *urf* and *syar'ín man qoblana*; which all of them are tools to understand the essential meaning contained in the Qur'an and *Sunnah*. Discussing Islamic law, there exist two forms which are *sharia* and *fiqh*. *Sharia* is a law in the broad meaning, which includes aspects of *aqidah*, *akhla*, and *amaliah*, which includes the norm in Islam. Therefore, *sharia* scope is broader. Meanwhile, *fiqh* is a practical Islamic law that derived from *tafshily* or detailed rules that specifically regulate a field of law alone,<sup>4</sup> In other words, it can be understood that the *sharia* is a rule that Allah provide for human to always be on the right side when answering to God, human and its environment. The science which discusses *sharia* is called *fiqh*.<sup>5</sup> Hence, *fiqh* can be defined as *sharia* in the narrow sense. As for the difference between *sharia* and *fiqh*, it can be described as follows:<sup>6</sup> 1) *sharia* has a wide scope covering all actions and deeds of human beings, while *fiqh* refers only to what is generally understood as human actions based on something that is legal and illegal; 2) *Sharia* is a study consisting of various provisions contained in the Qur'an and *Sunnah* which include three main components namely *aqidah*, *akhlaq* and *fiqh*, while *fiqh* is only one component of *sharia*; 3) *Sharia* has a perfect character and is immutable, whereas *fiqh* has a character that always changes with the changing of time, space, and place where the *fiqh* is applied; 4) *Sharia* is based on revelations and derived only from the Qur'an and *Sunnah*, while *fiqh* is the result of reasoning and deduction of jurists based on the development of knowledge that is constantly changing with the changing times; 5) *Sharia* has several levels of action that starts from something allowed to something that prohibited, while the *fiqh* only regulates legal and illegal actions only.

<sup>4</sup> Syarif Hidayatullah, *Qawa'id Fiqhiyyah Dan Penerapannya Dalam Transaksi Keuangan Syari'at Kontemporer (Mu'amalat, Maliyyah, Muashirah)* (Gramata Publishing 2012).[3].

<sup>5</sup> Abd. Shomad, *Hukum Islam: Penormaan Prinsip Syariah Dalam Hukum Indonesia* (Cetakan Pe, Kencana Prenada Media Group 2010).

<sup>6</sup> Prawitra Thalib. *Op.Cit.* [22-23].

Further, Yusuf Musa in his book <sup>2</sup> *al Madkhal li Dirasah al Fiqh al Islamy* asserts three differences of *sharia* and *fiqh* which are:<sup>7</sup> 1) For several matters, *sharia* has a broader scope than *fiqh*, this is because *sharia* covers all religious teachings namely *aqidah*, worship, and law, while *fiqh* only covering acts only; 2) Seeing from the subject, the subject of *sharia* is Allah SWT or *al Shari*, while *fiqh* subject is human or *al-faqih*, therefore *sharia* as a creation of Allah SWT that perfect and eternal, while *fiqh* can change in accordance with the understanding of the *faqih* and can be adapted to its socio-cultural and historical factors; 3) From the use of the term, *sharia* term has been used since the beginning of the history of Islamic development itself, while the use of the term *fiqh* is more recent, which is after the birth of other religious disciplines in Islam in the second century *Hijriyah*.

The phenomenon of contemporary Islamic legal thinking is actually a response to social conditions after the collapse of the Ottoman Empire, the emergence of Islamic reform movements such as *Tanzimat* and *Salafiyah* has brought its own color to the development of contemporary Islamic law, on top of it, the influence of secularism and colonialism. These factors directly and indirectly, influenced the development of Islamic law. Such factors strengthen by the defeat of Arab states from Israel in the six-day war of June 1967, which led to the signing of the Camp David treaty, caused the global Islamic world to lost its guard. Muslims have been dispersed; each living by its own way. This condition then gave rise to the urgency of Islamic law renewal, so as to break the skeptical view that Islamic law is out of date.

According to *Ashiddieqy*, Islamic law has three characters that are lasting, eternal and unchanged, namely: first, *takamul* which means perfect, solid and complete. It is understood that Islamic law constitutes the *ummah* in a unanimous provision, although they are coming from different nations and different tribes, but they are an inseparable unity. Second, *wasathiyat* (harmonious), this means that Islamic law is the middle way; a balanced path and not one-sided, not siding to the

<sup>2</sup> Renny Supriyatni, *Pengantar Hukum Islam Dasar-Dasar Dan Aktualisasinya Dalam Hukum Positif* (Widya Padjadjaran 2011).[12-14].

right with the emphasis of psychiatric and not siding to the left with emphasizing on differences. Islamic law always aligns between reality and fact with the ideal of willing. Third, *Harakah* (dynamic) means that Islamic law has the ability to move and develop, have the power to live in the society and can shape itself in accordance with the development and progress of the times. Islamic law is scattered from a broad and deep source, which gives human beings a number of positive laws that can be used at any place and time.<sup>8</sup>

The main problem of contemporary Islamic thought is basically related to the attitudes towards tradition (*turats*) on the one hand, and attitudes toward modernization (*hadatsah*) on the other side. If traditional thinking responds to modernization with a priori for the sake of conservation, modern thinking addresses tradition as something that must be eliminated for the sake of the realization of progress, since tradition is perceived as a rock that hinders the process of development itself, in which case the concept of contemporary Islamic law is caught in critical disputes between the tradition and modernization.

Secularization in the modern times has slowly affected contemporary culture today. Since the 18th century, when science and technology began to grow in the community, it has already made the human activity to be more effective and efficient. Technological developments that led to the discovery of steam engines by James Watt provides a very significant influence, especially in terms of technology. Rapid development in modern times generates personal things that made mankind separate them self from the public sphere. It has automatically developed the idea of secularization that separates personal affairs from public affairs. Secularization was initially pioneered by the separation between the powers of the Church and the State, which consequently resulted in State inability to govern its citizen religious life. It is true that partial secularization has had an impact on the development of contemporary Islamic law, but it must be noted that the development of Islamic law should not result in the loss of its true spirit as a divine revelation sourced from Allah SWT. The pureness of Islamic law that comes from the Islamic religion must

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<sup>8</sup> Hasbi Ash-Shiddiqy, *Filsafat Hukum Islam* (Pustaka Rizki Putra 2001).[105-108].

be maintained, the norms contained in the Qur'an and *Sunnah* should be applied to all aspects of Muslim life, anywhere and anytime. Extracting the contemporary meaning of the values within *nash* (Al-Quran and *Sunnah*) should be accommodated by *qowaid fihiyyah* so that Islamic law is still alive in the contemporary dimension without reducing the meaning and essence as a revelation.

### **Qowaid Fiqhiyyah**

*Qowaid fihiyyah* are the universal rules in which contained parts of the same problem, that can be grouped in one same outline producing various branches of fiqh. *Qowaid fihiyyah* has been set by the *jumhur ulama* as a foundation that is equally important with the principal and supporting rules in Islamic law, this is because *qowaid fihiyyah* can facilitate a *mujtahid* to interpret Islamic law. To conduct *ijtihad*, understanding the rules of *fiqh* is very necessary. The role of *ijtihad* is crucial in the renewal of Islamic law. Renewal is not possible without a qualified *mujtahid* to carry it out. Defining the renewal of Islamic law and *ijtihad* in Islamic law is like two sides of a coin that can not be separated from one another and complement each other. If the process of *ijtihad* can be implemented in the process of Islamic renewal correctly, then the laws resulting from the process of *ijtihad* will answer all the problems arising from the demands of the times.

The scope of *fiqh* is very broad, it is because of *fiqh* includes various branches (*furu`*) which cause the necessity of a main foundation that serves as the root that sustains the branches; the stronger the roots, the more solid the branches and it will produce leafy leaves, beautiful flowers and produce many fruits. In addition, the presence of a solid root will also secure tree and its branches from strong wind. Likewise with Islamic law, if the roots are strong, the *fiqh* branches will not have to worry about the storm growing in the era and technology, because the branches stand on a solid root, the *fiqh* branches will also be solid; in the other hand, if the roots are weak, regardless how good and beautiful these branches, it will surely collapse after the storm. Therefore, it is indeed correct when the *al Faraidh al Bahiyah* asserts that “actually the problem of *fiqh* branches can only be controlled



by *fiqh* rules. Thus, memorizing the rules is a very great function".<sup>9</sup> The phrase above illustrates that by understanding the rules of *fiqh*, a *mujtahid* can understand the law against contemporary problems that arise.

From the *fiqh* rules, it can be concluded that *qowaid fiqhiyyah* could accommodate the *syarak* laws of various problems that are different from one another. Nadawi further stated that the universal *fiqh* foundation contains *syarak* law which is general in characteristic to all events that are included in the scope of *qowaid fiqhiyyah*.<sup>10</sup> Therefore, it can be concluded that in the formation of Islamic law, *qowaid fiqhiyyah* have functions as follows:<sup>11</sup> 1) Deep understanding of the rules of *fiqh* will allow an Islamic jurist to be able to understand *fiqh* and able to analyze various contemporary problems, which then help him to determine the law; 2) Understanding *qowaid fiqhiyyah* could support the process of determining the law used for new emerging problem, by seeing the existence of *illat* and not contradicting the previous decay; 3) Understanding *qowaid fiqhiyyah* makes Islamic law always flexible since *qowaid fiqhiyyah* serves as a filter that ensures that contemporary *fiqh* made to solve contemporary problem, does not conflict with the regulation contained in the *nash* (Qur'an and *Sunnah*).

The importance of understanding of *qowaid fiqhiyyah* is very well realized by the Imams of Four *Mazhab* (Hanafi, Hambali, Maliki, and Syafi), this is because the rules of *fiqh* is one of the most important branches of *sharia*, when it studied by someone, it will allow that person to be *faqih* or understanding the *fiqh* rules well. Even according to the *jurh ulama*, the secret of *fiqh* is essentially lies in the rules within. Besides, understanding *qowaid fiqhiyyah* will ease *mujtahid* to issue a *fatwa*. Thus, it is undeniable that the main cause of the underdevelopment of Islamic law is lack of attention to the *qowaid fiqhiyyah*.<sup>12</sup>

Basically, the rules of *fiqh* established and agreed upon by the *ulama* are numerous, but in the practice, the *jumhur ulama* remain guided by the foundation

<sup>9</sup> Asjmuni Abd Rahman, *Kaidah-Kaidah Fiqh* (Bulan Bintang 1976).[17].

<sup>10</sup> Ali Ahmad al -Nadawi, *Al-Qawaid L Fiqhiyyah* (Dar al Qalam 2000).[43].

<sup>11</sup> Hidayatullah. *Op. Cit.*[37].

<sup>12</sup> *ibid.*

rules or known as *qawaid asasiyyah al khams*. These five basic rules then produce various *kaidah* which parts of *qowaid fihiyyah*. In its development, these five basic principles are compressed into the basic principles by Ibnu Nujaim, pronounced as *qawaid al kubra*, however, the use of five basic principles *qawaid asasiyyah al khams*, are more popular in comparison. The function of these rules is to be basic guidelines to ensure that the *fiqh* created by humans does not contradict with the rule of God. The values contained in the rules of *fiqh* are universal, which can be adjusted with all the developments of the times and problems attached to it. The rules crystallized within *fiqh* consist of:<sup>13</sup> 1) The first rule, “All matters depend on its meaning”; 2) The second rule, “Belief cannot be abolished or omitted with doubt”; 3) The third rule, “Every difficulty will bring forth an ease”; 4) The fourth rule “harm or danger should be eliminated”; 5) The Fifth Rule “traditional customs are strengthened”. The five points above are the rules promulgated in *qawaid asasiyyah al khams*, while the additional rules which are often referred to as the sixth rule are “no reward without any intention”, but the use of the sixth rule is rarely used, by the *mujtahids* that are still guided by the five basic rules above.

The application of the five rules of *fiqh* can be described below: 1) The first rule, “All matters depend on the meaning” – this rule emphasizes the importance of intention in doing all matters, if the intention is good then the result will be good as well. However, when the intention is not good then the result also will not be good. To carry out an *ijtihad* it is important to understand that the effort must be initiated with good intention so that the result of *ijtihad* will have good results, but if *ijtihad* is done without good intentions it can certainly bring bad impact. *Ijtihad* shall be done because of the need for a solution to a problem, not intended to facilitate the interests of a group that does not bring benefit to the majority of people. In applying this rule, the Author comes with example of electronic card transaction. On the process of *istinbath*, Qur’an dan *Sunnah* did not regulate such matter in detail. However, there is basic *muamalah* that can be used as *illat* in making new rules through *ijtihad*. In this instance, *ijtihad* is used in order to accommodate the interests of Muslims

<sup>13</sup> Ibnu Nujaim, *Al Asyabah Wa Al Nazhair* (Dar al Fikr).[115].

financial transactions using electronic card, due to the rapid development nowadays that allows payment using electronic card. This *ijtihad* is conducted solely for the benefit of Muslims, not because of other party interest; such as bank, sponsors, or other. Hence, seeing the will to ease Muslims' transaction and no similar *illat* within Qur'an and *Sunnah* and it conducted accordingly with these two main sources, *fiqh* on electronic transaction are not contrary to Islamic *sharia*; 2) The second principle, "Belief cannot be abolished or omitted with doubt", this rule is emphasized on the condition that everything that has been established will not change, this rule then produce the branch of "*al aslu makana la makana*" which can be interpreted as everything that already exists in its origin will not change.<sup>14</sup> 3) The third rule, "Every difficulty will bring forth an ease" – this rule is a clear proof that Islam does not aim to complicate the mankind, instead, Islam as *rahmatan lil alamin* intended to bring mankind to the utmost benefit. The law that exists is not complicated and burdensome, instead, it improves and adapted to human ability. The statement supra is as promulgated in QS *Al Baqarah* verse 286. This rule is used by *fuqaha* to solve various problems and determine the law used to solve it. Therefore, it is precise when *Asqolani* asserted that Islam is less complicated compare to previous *samawi* religion;<sup>15</sup> 4) The fourth rule "harm or danger should be eliminated" – this rule emphasizes on the prohibition for someone to harm others. Such rule is crystallized in Q.S. *Al A'Rof* verses 56 and Q.S. *Al Qashash* verses 77. Both verses contain the word "*wala tufsidu fil ardh*" which means prohibition to conduct mischief on earth. From the description, it can be understood that mankind is should destruct earth in any form. On the similar stance, in interpreting the meaning within Qur'an and *Sunnah*, we shall not cause any damage; either it is a physical damage or moral damage; 5) The fifth rule "traditional customs are strengthened" – customs in this sense is defined as habit or *urf* that can be accepted by the society and have been conducted repeatedly. In this case, when a traditional customs are not contrary to *nash* in Qur'an and *Sunnah*, the custom can be conducted and not be questioned

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<sup>14</sup> Hidayatullah. *Op.Cit.*[40].

<sup>15</sup> Ibnu Hajar Al Asqalani, *Fath Al Bary Syarh Shahih Al Bukhari* (Dar al Fikr).[164].

further. For this instance, the parameter of customs is the consistence and conformity of such custom with Qur'an and Sunnah. The contradiction between Qur'an and *Sunnah* automatically make custom cannot be practiced and cannot be used as a guideline in interpreting law. The stipulation of customs to be a living law in a society emphasizes two main things: First, the compliance with Qur'an and *Sunnah* and the second, creating benefit to mankind. Therefore, if an act is not prohibited in Qur'an and *Sunnah*, but causes no benefit to mankind, such conduct shall not be done, because it will only lead to waste and futility alone. On the other hand, it can also lead to the act of *syubhat*, which is an ambiguous conduct that unclear whether it is allowed or prohibited. It is suggested that in the event of someone facing *syubhat*, the person should then avoid the conduct. This is as pronounced by the Prophet SAW, "who is caught in the case *syubhat*, in fact he is caught in a forbidden matter".

Affirmed by the abovementioned explanation on *qowaid fihiyyah* and its application, the Author believes that the five basic rules are very much needed in the process of applying contemporary Islamic law, given the nature of universality and the generalities of the Qur'an and *Sunnah*. It required as a tool as to analyze and find the true meaning of two major sources of Islamic law. Additionally, with *qowaid fihiyyah*, Islamic law can adjust to changes and the development of the era through an instrument called *fiqh*. Nevertheless, the flexibility of Islamic law is only against problems in the world alone, because the problems that concern on *aqidah* and worship cannot be interpreted further since it will cause heresy and slander in understanding the true teachings of Islam.

### **Conclusion**

Basically, *qowaid fihiyyah* or *fiqh* rules serve as the parameters of *fiqh* formation in the contemporary Islamic law, in order to have a legal power and to be held accordingly to *nash*, thus the *fiqh* can be applied in everyday life. In detail, *qowaid fihiyyah* is a collection of guidance that contains the values that should be the base foundation of the formation of Islamic law. Therefore, *qowaid fihiyyah*

can be grouped into five main rules of Islamic law or known as *qowaid asassiyah al khams*. These five basic rules govern the basic things that must be obeyed in an effort to *isthinbath* a law which is reflected in *fiqh*.

Practically, it can be inferred that Islamic law is none other than *fiqh* that is an effort of the *fuqaha* in enforcing Islamic *sharia* according to the current needs of society. In the terms of adjustment to the Islamic legal period, it has a distinctive characteristic. The distinction of the Islamic law characteristic is *takamul* (perfect), *wasathiyah* (harmonious), and *harakah* (dynamic). Due to the fanaticism in the former *mazhab*, it resulted in the prolonged process of Islamic law reformation. The reformation itself intended to adjust Islamic law to fit the present situation and conditions. Recently, due to the increasing demand of the society and the awareness of Islamic scholars, there emerged Islamic law reformation with various thoughts. For the renewal of this Islamic law, the role of *ijtihad* and public awareness is crucially needed.

Efforts to understand the intrinsic meaning of Qur'an and *Sunnah* can be carried out through *qowaid fiqhiyyah*; this is because the values contained in the *fiqh* rule are an outline that must be followed when formulating *fiqh*. On the note that *ushul fiqh* is a method to formulate *fiqh*, *qowaid fiqhiyyah* is the approach used in the method. Thus, the *fiqh* produced can be ascertained to be in line with the Qur'an and *Sunnah* and can be used to answer all the problems that appear in every aspect of community life.

*Qowaid fiqhiyyah* should be used as guidelines in making a *fiqh* in Islamic law. This is not solely because *qowaid fiqhiyyah* is intended to make sure that the *fiqh* is not contrary to *nash* and in line with Qur'an and *Sunnah*. More than that, *qowaid fiqhiyyah* also establishes *illat* in every *fiqh* to distinguish between one *fiqh* to another. *Illat* arises as a result of the legal rationing which produces regulations in Islamic law. Such thing is very important considering the necessity of each law to have its *illat* because, without *illat*, the law is not perfect. Moreover, with the existence of *illat*, it allows laws in the *nash* to be flexible and dynamic, so it can answer and solve all problems in each era.

The application of contemporary Islamic law is very dependent on the application of *qowaid fihiyyah in ushul fiqh*. As the established standard rules, it should be a major concern when discussing matters of contemporary Islamic law. It also aims to break the prejudice about Qur'an and *Sunnah* which said to be out of date. Because Qur'an and *Sunnah* are provided by Allah SWT to answer every problem at all times as the revelation of the last prophet, Prophet Rasulullah SAW and will never be outdated. The problem lies in human thinking that sometimes unable to understand the hidden meaning of Qur'an and *Sunnah* which cause a negative stigma against it. Therefore, *qowaid fihiyyah* exists as a connection between divine perfection and human moral thinking in understanding the intent of the universe creator, Allah SWT.

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