

BASIC CONSTRUCTION OF SHARIA ECONOMIC LAW BASED ON USHUL FIQH ASY-SYAFI'I (*Critical Analysis of the Book of Ar-Risalah*)

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ABSTRACT

Imam Shafi'i was the first to have the latest ideas and ideas of his time regarding the method of extracting Islamic law (Takhrij al-Ahkam), which was systematically poured into a paper entitled Ar-Risalah (letter). This bookkeeping effort was in line with the development of Islamic science at that time. The development of this science occurred during the time of Harun Al-Rashid and culminated in the time of Al-Ma'mun. The birth of the book of Ar-Risalah was the initial phase of the development of ushul fiqh science as a scientific discipline. So this book became the main reference for USHUL experts in the later period in compiling similar works. In the book ar-Risalah, it is found that ash-Shafi'i does not mention the name of his book, and does not even give its own theme to a number of important studies that came to be known as ushul fiqh, he wrote in a broader framework, namely: Kehujjahan as-Sunnah. Ar-Risale is just a treatise written by ash-Shafi'i at the request of al-Mahdi. This Ar-Risale still contains material that is not actually ushul Fiqh, the discussion of ushul fiqh is concentrated on As-Sunnah, Ijma', and Qiya which are solely to deny istihsan. The style of thinking and the factors that intervene in the method of istinbat ash-Shafi'i are commensurate with his educational background, he is one of the Imams of Ahlu as-Sunnah wa al-Jama'ah, who in his fiqhiyyah branch sided with two groups, namely ahlu al-Hadith and ahlu ar-Ra'yi (tawasuth). These two capacities of moderate thinking are what make Ash-Syafi'i so beloved and accepted by the majority of the world's Muslims, especially in Indonesia.

Keywords: *Asy-Shafi'i, writer, Usul Fiqh, ar-Risalah*

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INTRODUCTION

As a *basic construction*, ushul fiqh is in a central position and is very strategic in order to encourage and realize the identity of the Islamic doctrine of *rahmatan lil alamin*. The pattern and characteristics of Islamic teachings and their performance is largely determined by the construction of ushul fiqh. As the engine of the production of Islamic law, ushul fiqh is on the axis and core of Islamic shari'a and becomes a medium for the transformation of Islamic law through deepening and examining the boundaries, dynamics, and meaning of human interaction with the Khaliq.

Based on its role and function, the ushul fiqh instrument is actually dynamic and inclusive of various complementary endeavors. The dynamic nature and inclusivity of a change (*attagirl*), is a logical consequence of the capability of ushul fiqh which constantly seeks to harmonize the increasingly accelerative problems of humanity with its two main sources of reference, A l-Qur'an and As-Sunnah, which have been final since fourteen centuries ago but remain *adaptable* with the character of Islamic law practically within the corridors of the theory of legal elasticity. Therefore, the progress of the endeavor that Imam asy-Shafi'i has pioneered (150-204/767-820), should be appreciated and developed for wider benefit by the next generation of Islamic ummah, by always prioritizing the contextualization and renewal of ushul fiqh, both on the epistemological, methodological, and subject matter or legal topics are renewable and up-to-date.

In other words, ushul fiqh not only contains an analysis of legal arguments and reasoning, but also contains studies and discussions of formal logic, dialectical theology, linguistic theory and legal epistemology. Even Arkoun expressly argues that ushul fiqh has touched contemporary epistemology. Epistemology is a branch of philosophy that examines the nature and various limitations of knowledge. Epistemology tests the structure, origin, and criteria of knowledge. Epistemology also deals with a number of problems related to, among others: sense Muhammad Arkoun (1994) *perception*, a relationship between the *knower* and the *object known*, a type of possibility about knowledge, and the level of certainty for each type of knowledge, the nature of truth, and the justification of various inferences (Barnes, 1991).

According to Khaled Masud the terms *mashallah* and *maqasid al-shari'ah* as terms used by al-Syatibi in al-Muwafaqat alternately, while *istislahi* is synonymous with *maslahah*. *Istislahi* can be expressed in two forms, namely *qasd al-Shaari'* and *qasd al-mukallaf*. In this case, the author argues, if these three methods can be well deciphered according to the language of the times, then it will provide many benefits, especially for seekers of Islamic law. So far, Islamic law has been imposed by certain methods without going through sufficient rationality of approach. Therefore, it is not uncommon to give birth to legal products that are not grounded, even ineffective and irrelevant.

Accurate reference references, however, are absolutely necessary especially in Indonesian, in addition to foreign languages, in order to make it easier for *al'ilm Talibs* to explore study as an intro to foreign language studies. The reason for using the Bayani, ta'lili and istislahi methods in the description of the *arisalah*, is because *Burhani* is an integral part of ta'lili, while *'irfani* is part of istislahi. The terminology used by the Usuliyyun scholars certainly does not mean to be ambiguous from the existing term, but can be categorized in the rules *اختلاف اللفظ واتهاد المعنى*.

METHOD

One method of knowing the nature of something includes a reasoning approach. This reasoning is a thought process that departs from sensory observation (empirical observation) that generates a number of certain concepts and definitions. Based on similar observations will also form similar propositions, from a number of propositions that are known or considered correct, one will infer a new proposition that was previously unknown. This process is called reasoning. Philosophy, through one of its branches, provides its solution with the term logic which is also widely known in the Islamic world as *mantic*, which also has a branch of sequential thinking tools known as *sylogisms*. For scientific circles, this syllogism becomes a mindset that undoubtedly, so that the object of reasoning can provide benefits in the lives of many people.

The method is a necessity in reaching *out put* laws that have universal values revealed in the term *rahmatan li al-lamin*. As one of the important instruments in a scientific product, after the data *is* output, the method should not be ruled out in the discussion. Because the wrong method will result in erroneous output. Legal products that have been supposed to calm the public, are often troubling and cause problems of unhealthy and endless pros and cons.

Methodological problems with Islamic law have actually been born since the law appeared, which later crystallized with the development of the *school of law*, especially the

four famous madhabs, namely: Hanafi, Maliki, Shafi and Hanbali. Imam Shafi'i was the *pioneer* of the school that was later dedicated to him, and had a very large number of adherents, especially in the Asian region, including Indonesia and several countries in the Middle East. According to some opinions, Imam Shafi'i was the one who first introduced the methodology of Islamic law through his magnum opus *Ar-Risalah*. Fiqh, which later became an independent field of science, experienced a dynamic growth and development process in line with the changing times. The flexibility (softness) of this fiqh can be referred to the rule *الحكم يدرم مع عداما* (the law is bound by *illat* (legismic ratio) either related to the existence or non-existence of the law).

There are three methods of fiqh that appear and are talked about in various discourses, namely: *Bayani*, *Burhani*, and *irfani*. While on the other hand, Usuli introduces three methods: *Bayani*, *ta'lili*, and *istislahi*. *Bayani*'s approach places more emphasis on the semantic level. This first approach often usually plays on mahdhah worship. However, this approach is certainly no longer adequate when touching on social problems and universal problems. To pass it on to this side of the analysis there are those who use *ta'lili* and *istislahi* and there are also *burhani* and *'irfani*. *Ta'lili* is an approach that emphasizes the role of *'illat* (legislative ratio) in determining a law. Nash in this approach will provide legal tsar as long as the *illat* is still working in the context of the law being studied. If *illat* is no longer found, then it is considered that there is nothing to be ta'thir al-law. Thus, the law is very flexible and changes when its legislative ratio changes. This approach shows how flexible Islamic law is in responding to contemporary issues. This is certainly considering *منتھية والوقاء لا تنتھى النصوص* (*limited nash* while events continue to emerge).

RESULTS AND DISCUSSIONS

Background of Asy-Shafi'i Life

At the end of the second century and at the beginning of the third century, Muhammad ibn Idris al-Shafi'i (150-204 H) was present proactively performing *tajdid al-ahkam*, concocting, systematizing, and codifying the science of *ushul fiqh*. This endeavor of *bookkeeping ushul fiqh*, as Abd. al-Wahhab Abu Sulaiman put it, was in line with the growth of Islamic science at that time. The rapid development of Islamic sciences rose to start from the reign of Harun al-Rasyid (145-193 H), the fifth caliph of the Abbasid Dynasty who ruled for 23 years (170-193 H). It was then continued in even more rapid development during the time of his son, al-Ma'mun (170-218H), the seventh caliph who ruled for 20 years (198-218 H). This period was marked by the skyrocketing development of Islamic science, even known as the golden age of Islam (Abu Sulaiman, 1983).

With the establishment of *Baitul Hikmah*, the largest library of its time, the city of Baghdad became a tower of knowledge visited from various parts of the Islamic region. This institution, in addition to being a library also serves as a hall for translating books of Greek origin into Arabic. The rapid development of Islamic sciences, in discipline, wants a separation between fields of science.

In the phenomenon of the rapid development of Islamic sciences, *ushul iqh* appears as a discipline of its own. As a later scholar, Imam Shafi'i knew a lot about the *istinbat* methodology of the previous mujtahid imams, such as Imam Abu Hanifah, Imam Malik, and the *istinbat* method of the companions, and knew where his weaknesses and advantages were. For this

reason, *ushul fiqh* was formulated in addition to aiming at realizing a method of *istinbat* that is firm and can be practiced by enthusiasts of Islamic law, also by itself he builds his school of jurisprudence, and measures the correctness of the results of *ijtihad* in the past. So then Imam Shafi'i wrote a book called *the Bible* known as *Al-Risalah* which means a letter. It is known because the book was originally sheets of letters he sent to his close friend named 'Abdurrahman al-Mahdi (d.198 H), an official and hadith expert at that time. Thus the emergence of the book *Al-Risalah* was the initial phase of the development of *ushul fiqh* as a discipline he pioneered (Abu Hamid Muhammad al-Tusi al-Gazali, 1327).

Muhammad bin Idris bin Al-Abbas bin Uthman bin Shafi'i bin Ubaid bin Abdi Yazid bin Hashim bin Al-Muttalib (Abdul Muttaib's father grandfather of the Messenger of Allaah 'alaihi wa Salam) bin Abdi Manaf. He met his nasab with the Prophet Saw on Abdi Manaf. He has the title Nashirul hadith (defender of hadith), because of his tenacity in defending the hadith and his commitment to following the sunnah of Prophet Muhammad Saw (Abdul Aziz Asy-Syinawi, 2013).

Imam Al-Baihaqi said that Imam Asy-Shafi'i was born in the city of Ghazzah, then taken to Asqalan, then taken to Mecca. Ibn Hajar added that Imam Asy-Shafi'i was born in a place called Ghazzah in the city of Asqalan. When he was two years old his mother took him to the Hijaz and lived with people of Yemeni descent because his mother was from the Azdiyah tribe. At the age of 10, Ibn Hajar added, Imam Asy-Shafi'i was born in a place called Ghazzah in the city of Asqalan. When he was two years old his mother took him to the Hijaz and lived with people of Yemeni descent because his mother was from the Azdiyah tribe. At the age of 10, he was taken to Mecca for fear that his glorious nasab would be lost.

Imam Asy-Shafi'i had already memorized the Qur'an at a very early age while still in Gaza while he was in Mecca, he began to learn hadith from several hadith teachers. Imam Asy-Shafi'i was also very diligent in memorizing and writing the sunnah of the Messenger of Allah, then he went to remote villages to hone the language acumen of the Hudzail kabilah, memorize verses and kabilah stories, while studying Arabic, and he also learned archery. Since he was there, many benefits have been obtained, namely in the form of mastery of language, verses that can help him in understanding the Qur'an, and often he postulates with verses to determine the meaning of recitation.

Then Imam Shafi'i returned to Mecca to study religious studies. He learned fiqh and hadith from his teachers and when he heard that in Medina there was Imam Malik bin Anas, he wanted to go to see him immediately. He went to Medina, and after he had memorized the book of *Al-Muwaththa'* by imam Malik, he met and studied with Imam Malik. After that, he went to Yemen to make a living. There he met Umar ibn Abi Salamah, a fiqh expert disciple of Imam Al-Auza'i, so indirectly he had taken his fiqh.

In 184 A.D., Imam Shafi'i was brought to Baghdad on charges of opposing the Abbasid Dynasty. However, these allegations were ultimately not proven and it turned out that his arrival in Baghdad was a blessing in itself, because it turned out that there he met the *fuqahas*. Imam Shafi'i also learned the knowledge of fiqh from Muhammad ibn Al-Hasan Asy-Shaibani, a friend of Imam Abu Hanifah, so that he could combine the Hijaz and Iraqi fiqh (Imam Syafii, n.d.).

1. Teachers and Disciples of Imam Shafi'i

Imam Shafi'i has traveled to many cities and countries in order to gain knowledge and expand and also expand knowledge about the sciences of the Islamic religion. The first teacher of Imam Shafi'i was Muslim Khalid Az-Zinji and others of the imams of Makkah.

Among the teachers of Imam Shafi'i were:

- a. His teachers who were in Makkah: Muslim bin Khalid Az-Zinji, Sufyan bin Uyainah, Said bin al-kudah, Daud Abdurrahman Al-Attar, and Abdul Hamid bin Abdul Aziz bin Abi Daud.
- b. His teachers who were in Medina: Malik bin Anas, Ibrahim bin Sa'ada al-Ansari, Abdul Aziz bin Muhammad Ad-Daudi, Ibrahim bin Yahya Al-Usmani, Muhammad Said bin Abi Fudaik and Abdullah bin Nafi' As-Saigh.
- c. His teachers who were in Yemen: Maatraf bin Mazin, Hisham bin Yusuf Umar bin Abi Maslamah, and Latih bin Sa'ad.
- d. His teachers who were in Iraq: Muhammad bin Al-Hasan Waqi' bin Al-Jarrah Al-Kufi, Abu Usamah Hamad bin Usamah Al-Kufi, Ismail bin Attatiah Al-Basri and Abdul wahab bin Abdul Majid Al- Basri.

Imam Shafi'i has also studied with imams who prioritize hadith and some who prioritize thoughts (*Ar-Ra'yi*). Among them are also from the mu'tazilah and also shi'ah, and with the different circumstances of his teachers can help him in expanding his fiqh knowledge.

2. Works of As-shafi'i

As a distinguished and also great priest, Imam Shafi'i certainly has composed and compiled many books. He did so through two methods of writing himself from the first books, he dictated to his disciples and they wrote them. Among his works are, Al-um, Arisalah, Al-Hujjah, Al-Wasaya, Al- Kabirah, Ikhtilaf Ahli Iraq, Wassiyyatu As-Shafi'i jami'al Ilmi, Ibtal Al- Istihsan, Jami'al mizan As-Saghir Al-Amali, Mukhtasar Ar-Rabi', Al-Imla (Imam Syafi'i, n.d.).

a. Kitab Al-Hujjah

The Book of Al-Hujjah is a book containing the qaul qadim of Imam Asy-Shafi'i (his fatwa while in Baghdad). He taught this book to some of his muribs who were in Iraq such as Az-Za'farani and Al-Karabisi. The chronology of the writing of the book of Al-Hujjah is that one day some hadith expert visited Imam Asy-Shafi'i and asked him to write a book to refute the book of Abu Hanifah whose notable is a ra'yi expert.

Imam Asy-Shafi'i said, "I don't know their opinion before I read the book directly". Then it was given to him the book written by Muhammad Hasan As-Syaibani. He said, "I studied the book for a year until I memorized it, then I wrote the book of Al-Hujjah" (Ahmad Nahrawi Abdus Salam al-Indunisi, n.d.-a).

b. Kitab Al-um

Etymologically, Al-um means mother. Indeed, Imam Asy-Shafi'i intended to write this Al-um as a mother book that explains in detail the science of fiqh. In this book, before going any further into the specific chapters on the issues of fiqh, Imam Asy-Shafi'i reaffirms the method as an Islamic thinker. He considers Al-um the final result of his research during his wandering to various places. Unmitigated, this five-volume book has until now become the main authentic source of the Assy-Shafi'i school. Even one of his disciples, Al-Muzani summarized the book known as the book of *Mukhtashar Al-Muzani*.

The composition of the chapters or chapters in the book of Al-um is somewhat similar to other books of fiqh, ranging from the chapter of Thaharah (sanctification), the requirement of water in ablution, the ordinance of ablution and the things that cancel it, the ordinance of bathing junub, tayammum, problems for menstruating women and so on to other chapters. A total of 128 legal issues are discussed in Al-um. He explored many issues of fiqh hadith which were then followed by his own opinions. In addition, in Al-um, Imam Asy-Shafi'i also presents various opinions in the schools. For example, the book contains topics such as the differences between Ali and Ibn Masud r.a., the incompatibility between Imam Asy-Shafi'i and Imam Malik and Muhammad al-Shaibani's rejection of a number of doctrines of the Medina school, the dispute between Abû Yusuf and Ibn Abi Laila (Ahmad Nahrawi Abdus Salam al-indunisi, n.d.).

c. The Book of Ar-Risalah

In the past, this book was not called Ar-Risalah. Dr. Ahmad Muhammad asy-Syakir the editor of the book of Ar-Risalah in his introduction said that Imam Asy-Shafi'i did not name his book *Ar-Risalah* but after the Bible.

Many times in his work, Imam Asy-Shafi'i mentions the word al-Kitab, whether it is *the word kitabî*, or *kitâbunâ*. Likewise, in the book of Al-um, Imam Asy-Shafi'i always associated his first work with the word Al-Kitab. The Book of Ar-Risalah is a monumental work of Imam Asy-Shafi'i known as the first book in Ushul Fiqih, in which many discuss formulations related to the science of hadith. This book is the work of Imam Asy-Shafi'i at the request of Abdurrahman ibn Mahdi which deals with the explanation of the meanings of the Quran, and collects some khabar, ijma, and explanations about nasikh and mansukh in the Quran and sunnah (Ahmad Nahrawi Abdus Salam al-Indunisi, n.d.-b).

In addition, it was also at the instigation of Ali ibn al-Madani that Imam Asy-Shafi'i complied with Abdurrahman ibn al-Mahdi's request. It was at that request and encouragement that Imam Asy-Shafi'i wrote this book of Ar-Risalah. According to the superior opinion chosen by Ahmad Muhammad Syakir, this book of Ar-Risalah was written by Imam Asy-Shafi'i while he was in Mecca. according to Fakhrurrazi in Manâqib Asy-Syâfii, this book of Ar-Risalah was written at the time when Imam Asy-Shafi'i was in Baghdad. Although it is not certain where Imam Asy-Shafi'i wrote this book, both contain extensive knowledge.

Muhammad Abu Zahrah (d.1394 H/1974 A.D.) an Egyptian Islamic jurist, stated that the book (Ar-Risalah) was compiled when Imam Shafi'i was in Baghdad, while Abdurrahman ibn Mahdi was in Mecca. Imam Shafi'i referred to his book as al-Kitâb (Book or Book) or *Kitabî* (My Book), which later became better known as "*Ar-Risalah*" which means "a letter." because it was Imam Shafi'i's letter to Abdurrahman ibn Mahdi. It was the book of Ar-Risâ that he first compiled known as Ar-Risalah al-Qadimah (Old Treatise). It is so named because it contains the fruits of Imam Shafi'i's mind before moving to Egypt. Jumhur scholars of Ushul Fiqih agreed that the book of Ar-Risalah by Imam Shafi'i was the first book to contain the problems of ushul fiqh completely and systematically.

B. Study of the Book of *Ar-Treatise of Asy-Shafi'i*

Although not all agree, but the majority state that asy-Shafi'i is the Father of Ushul Fiqh and the book of ar-Risalah is the first book of ushul fiqh. Therefore, following the opinion of the majority, this book was chosen as the subject of study of the early materials that developed in Ushul Fiqh. The edition to be used is ar-Risalah published by Dar al-Fikr and the tahqiq of

Ahmad Muhammad Syakir which is said to be the best muhaqqiq kitab *ar-Risalah* compared to other *muhaqqiq*.

Since the categorization of *ar-Risalah* as a book of ushul fiqh is the categorization of scholars post asy-Shafi'i and asy-Shafi'i itself does not refer to his book as the book of ushul fiqh, it is understandable that there will not be a definition of ushul fiqh in this book. Therefore, if the science of ushul fiqh and *ar-Risalah* is considered to be the book of ushul fiqh, of course, because the materials contained in *ar-Risalah* are materials that in the third century were known as ushul fiqh materials. Although in the same way, the book of *ar-Risalah* can also be considered a book of Ushul Hadith, because its materials are similar to what came to be known as hadith science.

From the description of *iftitah ar-Risalah*, it turns out that asy-Shafi'i is not writing ushul fiqh, but is facing two groups similar to the two groups that the Prophet had to face when he first delivered the Islamic treatise: *ahl al-Kitab* and *ahl al-Kufr*. The first group denied the book of God; whereas the second group considers good by arbitrarily (*istahsana*) idolatry, if it is considered good to be worshipped, if it is bored and considered unkind, then it is abandoned. Asy-Shafi'i also seems to face groups that are like those who reject the as-Sunnah, and those who rely on *istihsan*.

Therefore, when asy-Shafi'i talks about the materials that were later known as ushul fiqh, what was actually done was to strengthen the position of as-Sunnah as a source of law after the Qur'an. In addition to the materials that directly talk about as-Sunnah, when talking about other things like lafazh-lafazh 'am in the Qur'an, then asy-Shafi'i does so in terms of wanting to show the role of as-Sunnah in *me nakhshish*; when talking about *an-nasakh*, he also talks about the role of the Sunnah in showing which one is *in mansukh* and which ones don't; likewise, when *fiqhiyyah* materials (which are not included in the ushul fiqh material) are discussed such as inheritance, hajj, zakat, iddah and so on, it is the position of as-Sunnah that he describes.

Related to the asy-Shafi'i rejection of *istihsan* according to Noel J. Coulson, it is inseparable from the purpose and purpose of asy-Shafi'i to minimize divisions among the people while also unification in the field of law even though it is completely unsuccessful for asy-Shafi'i to do. Coulson further stated:

Ash-Shafi'i's theory of law has established a compromise between the command of the divine will and the use of human reason in law. But his hope that such mediation would resolve existing conflicts and introduce uniformity into jurisprudence became frustrating (Noel J. Coulson, 1990).

(Asy-Shafi'i's legal theory has established a compromise between the command of the *Divine* will and the use of human reason in law. But his hope that such mediation would resolve existing conflicts and introduce uniformity in jurisprudence failed).

So, almost all of the *ar-Treatise* pages contain discussions conducted within the framework of explanations of the position of as-Sunnah. Other chapters that at a later time were referred to as ushul fiqh material, such as *al-Ijma'*, *al-Qiyas*, *Istihsan*, and *Ijtihad*, are discussed in a scattered manner and discussed briefly at the end of the book of *ar-Risalah*. Perhaps it will be more emphatic to look at the content and systematics of the discussion of *the ar-Treatise* to obtain a clearer picture.

CONCLUSION

Based on the above, it can be concluded that some of the following understandings:

1. That the *Book of Ar-Risalah* still contains non-Ushul Fiqh materials and its discussion of ushul fiqh is centered on Sunnah, Ijma' and Qiyas discussed to reject *istihsan*. The pattern of thought and the factors influencing the istinbat method of the shafi'i imam as well as his educational background and thinking, include one of the ranks of imams adherents of Ahlu as-Sunnah wa al-Jama'ah, who in his fiqhyyah branch side with two groups, namely ahlu *al-Hadith and ahlu ar-Ra'yi* or as a synthesis of middle thought.
2. The relevance of the presence of ar-Risalah as the basis for the development of ushul fiqh studies, strongly supports the development of Islamic law through actual methodologies to the still vague methodologies offered by asy-shafi'i in ar-treatises need to be developed systematically, methodologically and adaptable.

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