PETITA: Jurnal Kajian Ilmu Hukum dan Syariah
Volume 5, Number 2, 2020
P-ISSN: 2502-8006 E-ISSN: 2549-8274
DOI: https://doi.org/10.22373/petita.v5i2.96

SHARIA CONTEXTUALISATION TO ESTABLISH THE INDONESIAN FIQH

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Abstract: The codifying of Islamic law through legislation is the right choice to realise the future of Islamic law in Indonesia. the role of the state is in the development and formulation of Islamic law. The state has played a very important role in supporting and equipping the development of the implementation of ijtihad. This can be realised through the state by way of provision of funds, facilities and educational institutions that can create a conducive environment to enhance the ability of ijtihad, advances of science, improving the quality and quantity of scholars and scientists. If the scholars can carry out their functions by providing fresh ideas and thoughts (ijtihad) that are appropriate in responding to contemporary problems. The state has obliged to form a consultative meeting to search and choose the most appropriate ideas and thoughts to be guided and used as legally applicable regulations and made as law. In this case, the state (government) must be very careful when it will determine the legislation that is binding on the people so that these regulations must be able to maximally meet the needs of the community while being able to solve their problems fairly. If not, then Muslims will again adhere to the opinion that only independent clerics and mujtahids can be trusted to formulate and develop laws that will govern people's lives through their ijtihad and fatwas. Therefore, the state must truly guarantee the freedom and independence of the activities of the legislative agency, while maintaining a collective role in determining and codifying correct opinions.
Keywords: Sharia Contextualisation, Indonesian *Fiqh*, Practical Law

Abstrak: Kodifikasi hukum Islam melalui peraturan perundang-undangan merupakan pilihan yang tepat untuk mewujudkan masa depan hukum Islam di Indonesia, khususnya dalam melihat peran negara dalam pengembangan dan perumusan hukum Islam. Negara berperan sangat penting dalam mendukung dan memperlengkapi perkembangan pelaksanaan ijtihad. Hal ini dapat diwujudkan oleh negara dengan cara penyediaan dana, fasilitas dan lembaga pendidikan yang dapat menciptakan lingkungan yang kondusif untuk meningkatkan kemampuan ijtihad, kemajuan ilmu pengetahuan, peningkatan kualitas dan kuantitas ulama dan ilmuwan. Jika para ulama dapat menjalankan fungsinya dengan maksimal, maka akan muncul ide dan pemikiran segar (ijtihad) yang tepat dalam menjawab permasalahan kontemporer. Negara berkewajiban membentuk permusyawaratan untuk mencari gagasan dan pemikiran yang paling tepat untuk dijadikan pedoman, dan dijadikan peraturan perundang-undangan. Dalam hal ini negara (pemerintah) harus sangat berhati-hati ketika akan menetapkan peraturan perundang-undangan yang mengikat rakyat, sehingga peraturan tersebut harus mampu secara maksimal memenuhi kebutuhan masyarakat, sekaligus mampu menyelesaikan permasalahan terbaru secara adil. Jika

tidak, maka umat Islam akan kembali berpegang pada ulama dan mujtahid independen yang dapat dipercaya untuk merumuskan dan mengembangkan hukum, untuk mengatur kehidupan masyarakat melalui ijtihad dan fatwa para ulama. Oleh karena itu, negara harus benar-benar menjamin kebebasan dan independensi kegiatan lembaga legislatif, dengan tetap menjaga peran kolektif dalam menentukan dan mengkodifikasikan pendapat yang benar.
Kata Kunci: Kontekstualisasi Syariah, Fiqh Indonesia, Hukum Praktis

Introduction

Muslims believe that Islamic Sharia has two fundamental characteristics. First, it is universal and the mission is mercy for all beings in the world. This characteristic is deduced from the Qur'anic explanation that the presence of the Prophet Muhammad PBUH with the Sharia Islam that he brought was a blessing for the universe[1]. Second, it is as the last mandate sent by Allah SWT, containing moral principles and norms for all humanity. This characteristic is understood from the Qur'anic explanation that Muhammad PBUH is the seal of Prophets[2].

The universality of Islamic sharia as its first characteristic is a rule covering all aspects of life, including the regulation of the relationships between humans and their God, human and human, and human and their environment. Mahmud Syaltout concluded that "Sharia (Islam) is a rule established by Allah or basic rule set by God, so it guides humans in managing their relationships with their God, their fellow Muslims, other humans, environment, life (source of life)[3]. Thus, Islamic Sharia applies to all groups of people. The second characteristic, namely as the last sharia, is as a refinement of the structure of the previous sharia built by the previous Prophets, and is valid for all time (everlasting).

Islamic Sharia is universal and everlasting. However, if it is observed, especially those related to *muamalah* (the relationship among humans) and social issues, it is not formulated straightforwardly and in detail in the Qur'an and Hadith (the sayings of the prophet Muhammad PBUH, or *Sunnah* (the ways of the prophet Muhammad PBUH). In this aspect, Islam only provides general guidelines. Therefore, it is necessary to further elaborate on the general and basic regulations, so they can be applied and guided.

The main purpose of the Sharia revealed by Allah SWT is to realise and guarantee the benefit of human's life[4]. The benefit of life develops and dynamically follows the development and dynamics of human's life. For this reason, the formulation of sharia contained in the Qur'an and Hadith as its main source is not entirely descended in detail to regulate all the needs and problems of human's life. So, there is room to respond to and accommodate various developments and changes that occur in the life of mankind.

The historical journey of sharia implementation shows the changes and developments in the formulation of sharia application from time to time in different regions. This situation can be seen in the application of Sharia during the Prophet Muhammad PBUH's time. During the *Tabi'in* (Companions of the Prophet) period, and even in the peak period in the 3rd and 4th century of the Hijri, during the formation of the madhhab, the formulation

1 This characteristic is based on QS 21, al-Anbiya': 107, stating: And We have not sent you, [O Muhammad], except as a mercy to the worlds.
2 Surah 33, al-Ahzab: 40 states: "Muhammad is not the father of a man in between you., But he is the Messenger of Allah and seal of prophets, and is Allah the Most Knowing of all things ."
3 Mahmud Syaltout, *Al-Islam: ' Aqidah Wa Shari'ah* (Dar al- Qalam 1966), 12.
4 Al- Ghazali, *Al- Mustashfa Min ' Ilm Al- Usul* (al- Maktabat al- Tijariyyah 1937), 251; Abdul Wahhab Khallaf, *Proposal Fiqh* (DDII 1972), 197.

and details underwent changes and developments. This is in the context of answering new problems which are not regulated in a strict and detailed manner in the *nash*, both the legal rules and the legal conditions have changed following the dynamics, needs and context of life.

In recent years, with various developments and context changes that occur in the lives of humankind, especially Muslims, various problems arise, including: How is the readiness of sharia in responding and meeting the needs of humans and maintaining their prosperity in the context of life that keeps on developing and changing? How is the possibility of implementing sharia in the context of the life of Muslims, in Indonesia specifically? These are the issues that will be discussed in this paper. Hopefully, it can contribute ideas to formulate a Sharia concept that is applicable and provide a solution for the life of Muslims in Indonesia in particular and the Indonesian in general.

Sharia and *Fiqh*

The words sharia and *fiqh* are sometimes interpreted equally or are considered to contain the same meaning (*muradif*, synonym). However, the two terms have clear meanings and are unbiased and interchangeable. The word sharia etymologically means "how the water comes out to drink". The word is connoted by "a straight path that must be obeyed"[5]. Sharia terminology was originally understood as follows: The meaning of sharia according to the jurists is the laws established by Allah on His servants, so they become people of faith (believers), who are associated with deeds that will make them happy in this world and the hereafter.[6] Syaltut also stated that the sharia is a rule set by Allah or the basic rules set by Him, so humans use it in managing their relationship with their God, with other Muslims, with humans, with the natural surroundings, and with life.[7] Zuhayli added that All the established rules of Allah for His servant (human) through the Qur'an or the Sunnah (Hadith), either in the form of the law of faith (al-ahkam al-I'tiqdiyah), which are specifically discussed in the Kalam Science or Monotheism, or practical laws (al-ahkam al-'amaliyah), which are specifically become the object of Fiqh study".[8]

However, in subsequent developments, the notion of Sharia narrowed, meaning only as "practical laws ('*amaliyyah*)." The narrowing of the meaning is to distinguish between sharia and religion, which includes in addition to the issue of practical laws (*al-ahkam al-'amaliyah*), the laws of the faith (*al-ahkam al-I'tiqdiyah*), and moral laws (*al-ahkam ahkam al-khuluqiyyah*). Jurisprudence or *al-fiqh* etymologically means *al-fahmu*, that is understanding. Whereas, terminologically, the Muslim scholars put forward various definitions, but what is considered the best and most popular in the *fiqh* scholar is: "Knowledge of *syara'* law is practical and formulated from the arguments of interpreted *syara'*." Or: "Collection of *syara'* laws which are practical, formulated from interpreted *syara'* propositions."[9]

The difference between sharia and *fiqh* is that the sharia is a law contained in the Qur'an and Hadith, or sharia is a systematic rule outlined by Allah in the form of basic rules that have been explained by Allah SWT so that humans can make them as guidelines. Whereas, *Fiqh* is the result of understanding and interpretation (*ijtihad* results) of *mujtahid* on the

5 Fathurrahman Djamil, *Filsafat Hukum Islam* (Logos Discourse of Science 1997), 7; See also, Abrar ZYM, 'Pemikiran Ibnu Khaldun Terhadap Filsafat Hukum Islam' (2017) 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Fanny Tasyfia Mahdy, 'Filsafat Hukum Ibnu Sina Dan Perluasan Pemikiran Plato' (2017) 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah.

6 Muhammad Ali Al- Sayis, *Date of Fiqh Islamiy* (Muhammad Ali Shubaih), 5.

7 Syaltout (n 3), 12.

8 Wahbah Al-Zuḥailī, *Al-Fiqh Al-Islāmī Wa Adillatuh* (Dār al-Fikr 1989), 18.

9 ibid, 16, 19.

texts of the Qur'an and Hadith and their ijtihad results on events which laws are not found in both (Al-Qur'an and Hadith).[10]

In the course of the history of Islamic law, there are known at least four kinds of Islamic legal thought products that are the result of the understanding and formulation of the Qur'an and Hadith as sources of law in Islam, namely (1) *Fiqh*, (2) Muslim scholars fatwa, (3) Religious courts decisions (*qada 'al-qadi*), and (4) Legislation (*qanun*) in Muslim countries[11]

(1) Fiqh or Jurisprudence is a legal product of *mujtahid* Muslim scholars, which is then collected in various *fiqh* books. The work of *fiqh*, by its authors at the time of writing, was not intended to be generally applied in a country even though in the course of history, certain *fiqh* books have been treated as statutory books. The jurisprudence books were also not intended by the authors to be used at certain times or periods. In the absence of this validity period, the *fiqh* books tend to be considered to be valid for all periods, which some consider being old-fashioned or defender and does not develop. Also, the Jurisprudence books generally discuss legal issues as a whole, so as a result, repairs or revisions towards some of the book contents are considered to disrupt the integrity of the entire contents of the Jurisprudence book. Thus, the *fiqh* books tend to become resistant to change.
(2) A fatwa is a legal opinion of a Muslim scholar (*mufti*) which is casuistic because the fatwa is an answer to the questions raised by the questioner (*mustafti*). A fatwa is a legal product which is not binding so that the requestor of the fatwa can accept and practice it, or reject and not practice it. As the fatwa is an answer to various questions arising at the times and situations that develop, the fatwa tends to be dynamic, although the answers given are not necessarily dynamic.
(3) Decisions of the religious court (*Qada 'al-Qadi*) are the decisions made by judges in the religious court, which are binding on the parties to the case. The decision of the religious court is also dynamic because the decision is made to resolve cases that occur in the community and are brought to court at certain times in which the nature of the cases develops and changes.
(4) Legislation (*qanun*) in Muslim countries. These laws and regulations are binding and have broader ties and even bind the people or residents who are citizens of the country. In the formulation of this legislation, not only the Muslim scholars (*mujtahid*) are involved, but also politicians and experts in various other fields.

The four products of Islamic legal thought are generally the results of the *ijtihad* process carried out by *mujtahid* scholars or experts in various fields, both individually and collectively, especially in the formulation of legislation. *Ijtihad*, a concept and method of formulating law, shows the dynamics of Islamic law. Matters that are not yet clear are stipulated based on *ijtihad*. Thus, through *ijtihad,* there are no legal problems that cannot be solved.

In the past, *ijtihad* was carried out individually by a certain *mujtahid*. At present, *ijtihad* is needed in legislative institutions as institutions that produce laws and regulations, as well as in executive and judiciary institutions, because these institutions are also institutions that have the power to formulate and establish laws that govern and control people's lives.

10 Masykuri Abdillah, 'Ilmu Fikih/Syariat' in Taufik Abdullah (ed), *Ensiklopedia Tematis Dunia Islam* (PT Ichtiar New Van Hoeve 2002), volume 1, 224-245; Juhaya S. Pradja, 'Fikih Dan Syariat' in Taufik Abdullah (ed), *Ensiklopedia Tematis Dunia Islam* (PT Ichtiar New Van Hoeve 2002), volume 4, 85.

11 Atho Mudzhar, 'Fikih Dan Reaktualisasi Ajaran Islam' in Budhy Munawar-Rachman (ed), *Kontekstualisasi Doktrin Islam Dalam Sejarah* (Paramadina Foundation 1995), 369.

The legal products born of these three institutions are binding and coercive in the lives of citizens.

Variation Of Understanding Of Sharia And *Fiqh*

Concerning the Islamic legal products, history has noted that there are variations among *mujtahid* scholars and Muslims in understanding and viewing sharia and Islamic legal products formulated from it. Several choice pairs can influence one's view of sharia, *fiqh* and other legal products[12]. The chosen couple is seen by Noel J. Coulson as opposed to the tension in Islamic legal thinking[13]. Among the selected pairs are; firstly is revelation and reason. There are two schools of legal thought that were born in the early history of Islamic law before the formation of the four jurisprudences. First is the group that prioritises the Hadith in understanding the verses of the Qur'an. This group was known as *Ahl al-Hadith* and developed in Medina with Imam Malik ibn Anas as the character. This group gives more places to the Hadiths, though sometimes weak, in formulating the laws as seen in their *fiqh* books. Second is the group that prioritises the use of reason in understanding and describing Islamic principles on the law. This group was known as *ahl al-ra'yi* and was centred in Kufa and Baghdad with Imam Abu Hanifah as its figures. This group produces rational books of *fiqh*.

Secondly is unity and diversity Islamic law. on the one hand, can be seen as a unity. The meaning is that Islamic law is God's law; therefore, there is only one type of Islamic law for all humanity. This view has dominated the minds of Muslims for centuries, so *fiqh* has always refused to change. On the other hand, Islamic law, which takes the form of *fiqh*, is diverse in fact. This can be seen through the existence of madhhabs in various *fiqh*. In formulating Jurisprudence or *fiqh*, the Muslim scholars used *ijtihad*. In the realisation of the use of *ijtihad*, especially in new cases, Muslim scholars sometimes differ in opinions. The difference in opinion is due to differences in experience or principles that are being held up in understanding the existing *nass*, especially if it is associated with different situations and conditions. A *mujtahid* can differ in his ijtihad results in the same case because of changes in circumstances and conditions related to the case. Imam Syafii, for example, when in Baghdad he produced some legal decisions known as *qawl qadim*, and after he moved to Egypt he updated the conclusions of a new law called *qawl jadid*. These changes indicate the possibility of setting different laws in the same case because of different places and conditions. Joseph Schacht, in this context, argued that there is a relationship between the variety or diversity of principles (laws) established by the imam of madhhab with the geographical differences they have.[14]

Thirdly is idealism and realism. another thing that influences the development of *fiqh* is the choice between idealism and realism, between ideals and the reality of *fiqh*. In history it is known that *fiqh* was generally written by *fukaha', jusrits* or jurists, who formulated it deductively behind the counter. Thus, legal theorists are more dominant in the formulation of law than practitioners, such as *qadis* or expert judges. The result is that the *fiqh* expresses ideals more than real ones. Another consequence is that Jurisprudence is gradually going further away from the reality of society.

12 ibid, 372.

13 Noel J.Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (The University of Chicago Press 1969), 118. Coulson in the book is to discuss the laws of Islam from the perspective of a conflict between Revelation and Reason, Unity and Diversity, Authoritarianism and Liberalism, Idealism and Realism, Law and Morality, and Stability and Change. Khaled Abou El Fadl, Ahmad Atif Ahmad and Said Fares Hassan, *Routledge Handbook of Islamic Law* (2019); NJ Coulson, *A History of Islamic Law* (Routledge 2017).

14 Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (The Claredon Press 1950), 7.

Lastly is stability and change. This choice of pair is between stability and change. This choice pair is a continuation of the previous choice pair. When Islamic law is seen as just one, conceptually it does not accept variations and diversity. Furthermore, it will make Islamic law must be stable, static and may not change. As a result, *fiqh* books are frozen and old. Concerning the previous choice pairs, Atho Mudzhar commented that the lack of thought in *fiqh* in the Islamic world so far has been due to the mistake in making choices by the pairs of choices, or at least in error in determining the portion of each choice. So far, *fiqh* has been seen as an expression of universal Islamic legal unity rather than as an expression of particular diversity. Jurisprudence has represented the law in the form of ideals rather than as a response or reflection in reality that exists in realism. Jurisprudence has also chosen stability over change. All of that has caused the impasse of *fiqh* thinking in the Islamic world so far.[15]

The Contextualisation Of Sharia And *Fiqh* In Indonesia

Sharia contextualisation can be realised through *fiqh* and various study programs of law as stated earlier. Besides, the effort to contextualise must also be made through renewing perceptions and understanding of the *fiqh* and various Islamic legal thought products in the form of combining and harmonising the several pairs of choices that have been previously mentioned, namely between revelation and reason, unity and diversity, idealism and realism, as well as stability and change.

The position of *fiqh* and *fiqh* books must be seen as part of one of the products of legal thought in Islam. The process is through *ijtihad* of the *mujtahid* scholars. In the implementation of *ijtihad*, the Muslim scholars adhere to and are guided by various sources, methods, and procedures for the formulation of the law that has been determined by the *mujtahid* scholars themselves, both of which has been agreed upon by the majority of *mujtahid* scholars (*al-adillat al-muttafaq 'alaiha*), such as the Qur'an, Hadith (Sunnah), *Ijma'* and *Qiyas*; or which is guided by some scholars and not used by some others, which is also called the arguments that dispute its use (*al-adillat al- mukhtalaf fiha*), such as *istihsan, istislah (al-maslahah al-mursalah), 'urf, syar 'man qablana, the al-Shahabi madhhab, istishab, and al-dzara'I' (sadd al-dzari'ah)*.

The results of the formulation of law (*fiqh*) born from the process of *ijtihad* have the opportunity to change, develop, and vary according to changes, developments and differences in time, place, circumstances, society and habits, as stated by Ibn Qayyim al-Jawziyyah.[16] Thus, the view of *fiqh* must be proportional as well as the treatment of it must also be proportional, namely:

(1) Jurisprudence is a form of product from several Islamic legal thought products.
(2) Because of its nature as a product of thought, so *fiqh* cannot be resistant to new thoughts that emerge later.
(3) Leaving *fiqh* as a collection of rules without an expiration date, it means perpetuating the product of human thought which should be temporal.[17]

With those, Hasan Turabi, a legal expert from Sudan,[18] believed that *tajdid* must be applied to the principles of Islam, especially *fiqh*. A radical reinterpretation of Islamic knowledge is needed. According to him, it is a mistake to assume that Islamic teachings do not change

15 Atho Mudzhar (n 11), 375.
16 Ibn Qayyim al- Jawziyyah, *I'lam Al- Muwaqqi'in ' a Rabb Al-' Alamin* (Muhammad Muhyi al-Din ' Abd al-Hamid ed, Juz 4, Dar al Fikr 1977), Juz 4, 14-70.
17 Atho Mudzhar (n 11), 370.
18 Olaf Köndgen, *The Codification of Islamic Criminal Law in the Sudan: Penal Codes and Supreme Court Case Law under Numayrī and Al-Bashīr* (Brill 2017).

and cannot be changed. Admittedly, he said that in Islam there are principles that are eternal and do not accept change, but that does not apply to *fiqh* which is the formulation of the Islamic law that was inherited by previous scholars, which in essence is the result of their *ijtihad* in understanding the religious texts and orders. Thus, understanding can only be re-evaluated and reviewed by scholars in modern times.[19]

Turabi confirmed that is a necessity in modern life to expand *ijtihad* field by allowing the use of conducive methods to the formulation of new laws. If the laws of Islam want to stay alive and applicable in modern society, the door must be opened for experts in various disciplines to participate and contribute to the discussion and formulation of new laws and regulations. In the case of Indonesia, this has been carried out by the Indonesian Muslim Scholars Council (*MUI*) and the Food and Drug Monitoring Agency (*POM*). Steps that can be taken in the implementation of *tajdid*, according to Turabi, is the way back to the basic principles of Islam, learn and understand the repertoire of the intellectual and the wealth of their religion with a critical attitude and not dogmatic, and then adapt them to the principles of eternal Islamic laws which is revealed by Allah SWT. Turabi revealed that each generation is obliged to contribute to this religious life to carry out the noble task.[20] In line with Turabi's thought, for the case of Indonesia, the birth of various laws and regulations taken from, or in the context of implementing Islamic laws, by the state in Indonesia today, both nationally and regionally, is a right decision.[21] Even the policies are also carried out most Muslim- majority countries, both in the Middle East region, as well as in Asia and Africa.[22] The policy is also in line with the thinking presented by Hazarin and other Islamic leaders.[23]

Based on the views, the jurisprudence prepared since several centuries ago needs to be revisited for its suitability and relevance to the current circumstance and the changing circumstances of human life to meet the needs of Muslims in the present. In the case of religious courts in Indonesia, for example, the judges were initially reluctant to conduct *ijtihad* in establishing the law in resolving various cases that were submitted to them. Generally, judges in religious courts, usually decide cases based on *fiqh* books in Indonesia, or in other words, besides referring to the *nass* Qur'an and Sunnah, they use the results of the *mujtahid ijtihad* in the past. Even if the judges did the ijtihad, the ijtihad that might be carried out was in *tarjih*, choosing the *fiqh* opinions or the ijtihad results of the older *mujtahids* which were stronger and more suitable for the resolution of the case.

At present, the formulation of Islamic law in Indonesia has been carried out in writing, which is called the Compilation of Islamic Law (CIL).[24] The CIL which was established by the instructions of President No.1 of 1991 on June 10, 1991, is a book of Islamic law (a compendium of Islamic law) consisting of three books. Book I about marriage law which contains 19 chapters and 170 articles; Book II about the Inheritance Law which contains six chapters and 44 articles; and Book III on the Law of the Representation which contains five chapters and 14 articles. The CIL together with several laws that had been born earlier, such as Law No.1 of 1974 concerning Marriage, Government Regulations No. 9 of 1975, and others, are seen as a step forward in the context of practising Islamic Law by Muslims

19 Haan Turabi, *Tajdid Usul Al-Fiqh* (Dar al- Jayl 1980), 7-8; Abdelwahab El- Affandi, *Turabi's Revolution: Islam and Power in Sudan* (Gray Seal 1991), 170.
20 Abdelwahab El- Affandi (n 18), 171-172.
21 Chris Chaplin, 'Islam, Politics and Change. The Indonesian Experience after the Fall of Suharto, Edited by Kees van Dijk and Nico J.G. Kaptein' (2016) 172 Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia 387.
22 Rifyal Kaaba, 'Kodifikasi Hukum Islam Melalui Perundang-Undangan Negara' (2004), 5.
23 Hazairin, *Tujuh Serangkai Tentang Hukum* (Bina Aksara 1985), 82-83, 127-128.
24 Kikue Hamayotsu, 'Islamic Law in Contemporary Indonesia: Ideas and Institutions' [2015] Indonesia.

in Indonesia.[25]

With the CIL, the tendency of the judges to do *tarjih* begins to decrease, maybe even none at all. The judges tend to use CIL instead of exploring the results of the *ijtihad* of the past jurists or conducting *ijtihad* themselves. This is an easier shortcut, but it is a worrying symptom of the development of *ijtihad* in the Religious Courts. The CIL is not a law but is still in the form of ordinary law books or biases referred to as the Indonesian madhhab of *fiqh* books formulated collectively by the Muslim scholars and those deemed to be eligible for it. Efforts to increase CIL into law are underway. One of the CIL books, book III on the Law of the Representation has now become law No.41 of 2004 concerning *Waqf* after several revisions.

Conclusion

Sharia contextualisation to Indonesia is possible. However, to realize it, it must be separated between the understanding of sharia and *fiqh* and various other Islamic legal thinking products. Sharia is the rules or basic rules established by Allah SWT and given to mankind as a guidance in managing relationships with God, with fellow humans and with the environment. The basic purpose of sharia delivery is for the benefit of mankind. Therefore, often the rules sent by Allah SWT are *ijmal* whose interpretation can be made by the *mujtahid*. Whereas, *fiqh* and others are the results of thinking and formulation of laws by the *mujtahid* on the propositions of *Sharia* to produce the laws needed by mankind at a certain time, a certain place and a certain condition, which always develops and changes.

In the formulation of practical law (*al-ahkam al-'amaliyyah*), the *mujtahid* can use various arguments, methods and available *ijtihad* procedures, such as *qiyas, istihsan, istislah, istishab, urf* and others mentioned in the books of *fiqh,* by considering the pair of *fiqh* choices, namely between the revelation and reason, unity and diversity, idealism and realism, as well as stability and change. Today, collective *ijtihad*, either through organisational institutions, such as MUI, or state institutions, such as legislative, executive and judicial institutions, is more effective and responsive, even expected to be anticipative, in meeting and protecting the needs of Muslims specifically, and the nation in general.

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