

PARADIGM METHODOLOGY OF LEGAL INSTRUCTIONS IMAM AL-SYAFTI VERSION (Analytic Study of the Book "al-Risalah")

Zarul Arifin³³

Abstract

"Istinbat" in terms of fiqh refers to the process of extracting law from legal sources (Qur'an, hadith, ijma', and qiyas) by using certain methods of reasoning. Imam Shafii is one of the most important figures in the history of Islamic fiqh, and one of the four Sunni madhhab imams. The Book of Ar-Risalah is an important work by Imam Syafii which contains the main points of the teachings of the Shafii school of thought. In this book, Imam Syafii explains the various methods of istinbat used in the Shafii school, including: Ijma' (consensus): Law can be drawn from the consensus of scholars on a particular issue. Qiyas (analogy): Law can be drawn from cases that are similar to the case being discussed. Istihsan (wisdom): In the case of unclear or ambiguous cases, it is better to choose the most reasonable and fair approach. Maslahah mursalah (public interest): Laws can be determined based on public interests. Urf (customs): Laws can be drawn from local community habits. In the book Ar-Risalah, Imam Syafii also provides guidance on the use of these methods in solving legal problems. However, it should be remembered that the use of these istinbat methods must be carried out by scholars who are trained and skilled in the field of fiqh, as they require in-depth knowledge of the sources of Islamic law.

Keywords. *Paradigm, Legal Institute, Methodology, Al Risalah.*

³³ Dosen Fakultas Syariah Institut Agama Islam Sultan Muhammad Syafiuddin Sambas Email. zarularifin89@gmail.com

Introduction

Modern scholars agree that Imam Shafi'i has the merit of being *the founding father* of Ushul Fiqh, and his book al-Risâlah is now considered not only as the first work to address this subject, but also as a model for Islamic jurists and theorists who came later. . Even an orientalist, NJ Coulson, said that Imam Syafi'i was the architect of Fiqh.³⁴

The presence of Imam Syafi'i in formulating the paradigm of the legal istinbat methodology does not mean that he pioneered and developed this science. Long before that, friends, tabiin, even among later mujtahidin imams such as Abu Hanifah, Imam Malik and also from among the Shias, for example Ja'far al-Sadiq and Muhammad Baqir al-Shadr have discovered and used methodology in the formulation of fiqh, but they have not compiled this knowledge in a comprehensive way. systematically so that it can be called an independent scientific discipline.³⁵

Imam Syafi'i's ability to produce and formulate Ushul Fiqh was supported by several factors that existed in him and his experience. His long experience in the Arab countryside enabled him to gain knowledge of the Arabic language. ³⁶With this knowledge, he has a high ability in formulating principles to issue *syara' laws* from the texts of the Koran and al-Sunnah, both of which are in original Arabic. ³⁷Likewise, during his existence in Mecca, Imam Shafi'i inherited the Knowledge of the Qur'an from Abdullah bin Abbas which enabled him to know *nasikh mansukh*, mastery of al-Sunnah and his mastery of traditionalist fiqhi (Hijaz) and rationalist fiqh (Iraq) are the basic capitals in compiling *qiyas rules* .³⁸

Imam Syafi'i -especially the Science of Usul Fiqh-, then he poured his knowledge into a monumental work entitled "Al-Risâlah" with the hope that it would be used as a benchmark and balance sheet by the mujtahidin in his era and later in carrying out istinbath law.³⁹

Based on the foregoing, this paper attempts to elaborate further on the chronology of the preparation of the Al-Risâlah, the contents of the Al-Risâlah, the method of instituting law and the legal sources of Imam Shafi'i's version.

Discussion

1. Chronology of Compilation of the Book "Al-Risâlah".

As previously mentioned, the first person to compose Usul Fiqh was Imam Syafi'i. ⁴⁰At that time he discovered the treasures of fiqh thought left by the companions of the Prophet

³⁴ Amir Syarifuddin, *Ushul Fiqh*, Jilid I (Cet. I; Jakarta: Logos Wacana Ilmu, 1997), h. 38.

³⁵Al-Shafi'i, Muhammad ibn Idris, tt, Al-Umm. Beirut: Dar al Fikr. 78

³⁶Syaukany, Muhammad ibn 'Ali al-, 1414 H., Ersyad al-Fuhul ila Tahqiq al-Haq min 'Ilm al-Usul, Beirut. : Dar al-Kutub al'Ilmiyyah . 90

³⁷Al-Asnawy, 'Abd al-Rahim ibn Hasan al-Syafi'i, tt, Nihayah alSaul fi Syarh Minhaj al-Ushul..Cairo: Al-Mathba'ah alSalafiyah. 134

³⁸ *Ibid.*, 39.

³⁹Syuhud, K. dan H. (2021). Interelasi Akal dan Wahyu: Analisis Pemikiran Ulama Mutakallimin dalam Pembentukan Hukum Islam. JIL: Journal of Islamic Law, 2(1), 43–61

⁴⁰Ahmad Al-Syurbasi, Sejarah dan Biografi 4 ImamMazhab, Hanafi, Maliki, Syafi'i, Hanbali, Cet. V(Jakarta: Amzah, 2008), 89.

Muhammad.⁴¹ and tabi'in and he was not able to study in depth all of this treasure except by formulating the Usul Fiqh rule to serve as a basic reference in instituting law.⁴² Laying out the basic principles of Usul Fiqhi which were formulated by Imam Syafi'i to be used in two ways, namely: *first*, to serve as a barometer (*mizan*) in measuring and knowing the correct opinion of the jurists (jurists of Islam), *second*, to serve as a *qanunan kulliyān* (universal laws) that must be considered and guided in instituting new laws.⁴³

Badran Abu al-Aynain Badran – an Egyptian expert on Usul Fiqh - stated that there were several factors that prompted Imam Shafi'i to codify Usul Fiqh, including the following:

1. Imam Shafi'i lived during a period of incessant debate and polemic between the two major camps, namely the *Medina fuqaha* and *Iraqi fuqaha* in matters of fiqh. This factor is the main driving force for codifying Usul Fiqh with the aim that mujtahids know the best path to take in doing ijihad so that they are not mistaken in taking their intention.⁴⁴
2. The weak understanding of the Arabic language and the lack of understanding of *maqasid al-shariah* is due to the mixing of Arabs with people other than Arabs (*Ajam*) who converted to Islam which is the main cause of the difficulty in instituting law from its original source.
3. Many fake hadiths are circulating due to the intense debate and prolonged polemic between *madrasa al-ra'y* (rationalist school) and *madrasah al-hadith* (traditionalist school). and the emergence of *ta'arud* (contradictions between the hadiths of the prophet). So a mujtahid must be clear on the basic rules that explain ways to accept and reject hadith and methods of studying, when to compromise and when to recite.
4. The emergence of several events and cases for which no direct evidence was found from the Al-Qur'an and Hadith so that *qiyas is needed* to know the law of these events.⁴⁵

Of these four factors that motivated Imam Shafi'i to compile a book known as "Al-Risālah". It is this book -from a series of books written by Imam Syafi'i- that compiles ways to properly conduct legal istinbath which can be used as a basic reference so that the results of istinbath are valid, accurate and their validity can be accounted for.⁴⁶

As for naming the title of his book "Al-Risālah" in fact it is not the name of Imam Syafi'i - because Imam Syafi'i himself did not name his book Al-Risālah, he only named it "al-Kitab",

⁴¹Zukhdi, M. (2017). Dinamika Perbedaan Madzhab Dalam Islam (Studi Pengamalan Madzhab di Aceh). 17(1), 136

⁴²Alwana, H. A. (2020). Aliran Pemikiran Ushul Fiqh Dan Pengaruhnya Terhadap Pendekatan Hukum Islam. Jurnal Ilmiah Syari'Ah, 19(2), 45–46

⁴³Muhammad Abu Zahrah, *Tarikh al-Mazahib al-Islamiyah fi al-Siyasah wa al-Aqaid wa Tarikh al-Mazahib al-Islamiyah* (Cairo: Dar al-Fikr al-Araby, t.th.), . 461.

⁴⁴Yahya bin Abil Khair al-Yamani, *Al-Bayaan fi Madzhab Imam Asy-Syafi'i*, Juz 1(Surabaya: Darul Minhaj, 2014), 5.

⁴⁵Badran Abu al-Ainain Badran, *Usul Fiqh al-Islamiy*, (Iskandariyah: Muassasah Syabab al-Jamiah, t.th.), 12-13.

⁴⁶Salmah Intan, "Kitab Al-Risalah Imam Syafi'i," *Jurnal Al-Hikmah* Vol. XII, no. 1 (2011), 85

"Kitaby" or "Kitabuna" ⁴⁷ – but the naming is due to the fact that the book was sent to Abdul Rahman bin Mahdi.⁴⁸

2. Contents and Contents of the Book of Al-Risâlah.

The Book of Al-Risâlah is one of Imam Syafi'i's *magnum opus works* and is also the first written work on legal theory known as Usul Fiqh. In this book, Imam Shafi'i tries to construct a theory which describes, and actually defines, the methods by which laws can be formulated. As previously predicted, this work is a reaction to the currents and movements prevailing in jurisprudence of the 2nd century H.

To understand the purpose of the work, we will examine it according to the same method and rules given by Imam Shafi'i in formulating the patterns and methodology of *istinbat* contained in the book Al-Risâlah.⁴⁹

Imam Syafi'i began his description in the book Al-Risâlah about the condition of society when Rasulullah saw. ⁵⁰sent, he explained that they were divided into two groups:⁵¹

- a. People of the book who change and deny God's law and then mix up right and wrong that were sent down by God.
- b. Musyrik is a person who takes worship as God besides Allah swt.

Then he explained that Allah swt. save mankind by sending the Messenger of Allah. and Allah also sent down the Qur'an to bring them out of disbelief and blindness towards the path of light and guidance as contained in his words:

وَإِنَّهُ لَكِتَابٌ عَزِيزٌ. لَا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ وَلَا مِنْ خَلْفِهِ تَنْزِيلٌ مِنْ حَكِيمٍ حَمِيدٍ .

Translated:

*And verily the Qur'an is a noble book. That which does not come to him (the Qur'an) falsehood either from in front of him or from behind him, which was sent down from God, the Most Wise, the Most Praised. (QS. Fusshilat: 43-44)*⁵²

Then he explained the position of the Qur'an in Islam and he also explained that the Qur'an is included in it regarding explanations of what is permitted and what is forbidden, rewards for those who obey, rewards for those who commit immorality and lessons to be learned from the ancient people.⁵³

⁴⁷See: *Al-Risalah* number 96, 418, 420, 573, 625, 709, 953.

⁴⁸See: *Al-Risalah*, p. 12. See also: Sya'ban Muhammad Ismail, *Usul Fiqh : Târikhuhu wa Rijaluhu* (Cet. II; Cairo: Dar al-Salam, 1998), 30.

⁴⁹Nabil Ghonayam, *al-Risalah li Imam al-Shafi'i*, (Qohiroh: Markazul Ahrom, 1988), p. 17

⁵⁰Jaih Mubarak, *Modifikasi Hukum Islam Studi tentang Qaul Qadim dan Qaul Jadid*, (Jakarta: PT. Raja Grafindo Persada, 2002), 30.

⁵¹Muhammad Idris Al-Shafi'i, *Al-Risalah*,. 8-10.

⁵²Al-Qur'an and Its Translation (Al-Madinah al-Munawwarah: Majma al-Malik Fahd li Tibaah al-Mushaf al-Sharif, 1418 H.), 779.

⁵³Umam, K. (2017). *Penyerapan Fiqh Madzhab Syafi ' i dalam Penyusunan Kompilasi Hukum Islam*. *De Jure : Jurnal Hukum Dan Syari'ah*, 9(2), 117–127.

On the other hand, Imam Syafi'i elaborated further on the importance for a student of knowledge to broaden and deepen his knowledge of the Qur'an and the need to have sincere intentions in seeking knowledge both in text and *istinbath*.⁵⁴

Then in the *Al-Risâlah* it is stated in the conclusion of the *muqaddimah* that: "There is no event that is discovered by the *mujtahids* unless there is evidence that mentions it in the Qur'an".⁵⁵

After explaining several things in his *muqaddimah* –as mentioned earlier- he formulates several chapters including in the first chapter he talks about "*Al-Bayan/Explanation* ", then he explains the levels of *al-Bayan* contained in the Qur'an, namely as follows.

1. Something explained by Allah in the Qur'an, namely in the form of clear texts and no need for commentary.
2. Something explained in the Qur'an which has several interpretations is then explained in the *hadith* the intent and purpose of the text.
3. Something that is explained in the Qur'an about his *fardhu*, then the Messenger of Allah explained how his *fardhu* was, to whom it was *fardhu* and when it disappeared and that *fardhu* remained.
4. Something explained by Rasulullah saw. and there is nothing in the Koran regarding the law and Allah obliges in the Koran to obey His messenger.
5. Something that is required by Allah to his servant to do *ijtihad*, namely *Qiyas*.⁵⁶

After commenting globally on the five levels of *al-Bayan* he explains and gives examples in five chapters.⁵⁷ And the structure of the chapters is as follows:

- a. The explanatory chapter on what is contained in the Qur'an is of the *Am model* and its meaning as well and can be entered *specifically*
- b. An explanatory chapter on *Am al-Dhashir*, however, combines general and special.
- c. The chapter is about *Am al-Dhasir* however the intent is distinctive
- d. The chapter on properties that explains the wording is its meaning.
- e. The chapter on the format of verses whose pronunciation shows the implied meaning, not the actual meaning.
- f. The chapter on the format of verses that are *am* then *sunnah* explains that what is intended is typical. And in this chapter it is explained about the profanity of the *sunnah* and its position in religion. Therefore, this chapter explains several things, namely the following:

⁵⁴Imam Fahrudin al-Razi, *Manaqib Imam Syafi'i*(Jakarta: Pustaka al-Kautsar, 2017), 156

⁵⁵ *Ibid.*, 20.

⁵⁶ *Ibid.*, h. 21-53.

⁵⁷Abi Muhammad Abdurrahman bin Abi Hatim al-Razi, *Adabu al-Shafi'i wa Manaqibah*, (Beirut: Dar al-Kutub al-Ilmiyah, 2003), 235-236

- a. The chapter on Allah's commands to follow the sunnah of His messenger.
- b. Chapter about Allah's order to obey His messenger
- c. The chapter on God's commands to his creatures to follow what God revealed to His messengers.

Then he composed a sub-discussion about –Al-Nasikh wa Al-Mansukh- and he mentioned that Allah swt. made the texts for lightening and flexibility and he also explained that the Qur'an can only be codified with al-Qur'an as well as al-Sunnah can only be codified with al-Sunnah.⁵⁸

At the next point, he talks about the obligation to pray which is mentioned in the Qur'an and hadith, besides that also in the same chapter he explains again about nasikh wal mansukh which is indicated by sunnah and ijma.⁵⁹

Then he spoke about " *Al-Ilal fi al-Ahadis / defects in hadith*" and explained about the pattern of differences that occur among scholars who are caused by texts and errors in understanding hadith.

In the next chapter he talks about al-Nahyu/prohibition and its classification. And after establishing the authority and relationship between textual sources, Imam Shafi'i moved to another analysis, namely something that is principled and epistemological in nature.⁶⁰ According to him, knowledge (*ilm'*) consists of two types, the first is generally owned by the majority of society, and the second is owned by special people, namely the scholars. The first type, because of its textual nature, is spread among the people and transmitted from one generation to another. The fact that knowledge of this type is transmitted in such a way we must understand, guarantee its authenticity and avoid possible differences in substance and transmission.⁶¹

The second type of knowledge is not found in the Qur'an nor are most of this type attested in the Sunnah. Whatever Sunnah supports this type of knowledge, it is always transmitted in a lesser way than the first type. To distinguish it, the knowledge of the second kind is transmitted by a few people from a few people too, and they are special people. This kind of knowledge, due to different interpretations and achieved by means of *qiyas* only generates possibilities. This kind of thing is known as "*khobar wahid*".

In the sub-discussion "*khobar wahid*" he explained the intent and terms and then moved on about his religiousness and refuted all the questions raised by people who denied the wisdom of *khobar wahid*.

⁵⁸Abu Abdillah Badruddin al-Zarkasyi, *Al-Bahrul Muhith Fii Ushulil Fiqh*, cet.1 Juz.8 (tt: Dar al-Kutubi, 1994), 60

⁵⁹Rozi, F. (2016). Sejarah Pemikiran Mazhab Fiqh Imam Syafi'i. *Jurnal Putih*, 1(1), 133–153.

⁶⁰ Sandimula, NS (2019). The Status And Rights Of An Illegitimate Child According To Madzhab Asy-Syafi'i Perspective And Development Of Islamic Family Law In Indonesia. *Jurnal Ilmiah Al-Syir'ah*, 1(2), 121–130.

⁶¹Muhammad Abu Zahrah, *Al-Shafi'i: Hayatuhu, wa 'Ashruhu, Araauhu al-Fiqhiyah*, (Cairo: Dar al-Fikr al-Arabi), 283

Then he moved to the chapter "Ijma" and he explained about the substance of ijma and why it can be used as evidence. And after that he talked about "al- *Qiyas* " he explained the definition, substance and its kinds as well as something that can be *qiyas* and what can't be *qiyas* right

Then telling about *Istihsan* he explained that a person may not make *ishistan* that contradicts the hadith and he also emphasized that a person may not establish a law unless it comes from the Qur'an , hadith, ijma and *qiyas* .⁶²This chapter explains the difference between *qiyas* and *istihsan* .

In the next chapter, he arranges a sub-language about patterns of differences that occur among scholars. He explained that there are two patterns of differences among scholars, namely: *first*, differences that are forbidden, *second* , differences that are allowed, namely differences that arise due to differences in perception and can be known through *qiyas* . And in this subject he also explained about *qawl al-shahabah* if they were scattered

Then he closed his book in the sub-discussion of "*Maratib al-Adillah*"⁶³he said:

نحكم بالكتاب والسنة المجتمع عليها التي لا اختلاف فيها ، فنقول : لهذا حكمنا في الظاهر والباطن . "

It means;

We decide the law based on the Al-Qur'an and al-Sunnah which have been mutually agreed upon and there is no difference in them. Then we said that this is how we decide both physically and mentally.

It is a generally accepted view that Al-Risâlah represents an early attempt to synthesize the scientific experience of human thought and the complete assimilation of revelation as a basis for law. Since Islamic law has finally accepted this synthesis, we have long been led to believe that Usul Fiqh as we know it was started by Imam Shafi'i however, the theory that propounded this synthesis, emerged at a time when not as many people wanted to do it as Imam Shafi's theory. 'i in order to take effect immediately after its publication, it is imperative that both traditionalist and rationalist schools abandon their doctrines once and for all.⁶⁴However, this really didn't happen. In fact, traditionalists reject his *qiyas* and rationalists are reluctant to say, at least to accept his thesis, that revelation is the first and final judge of human affairs. It was only towards the end of the 3rd century AD that a genuine synthesis between rationalism and traditionalism actually took place. With the emergence of this synthesis, finally the road to Usul Fiqh has been paved. Once this science developed due to the services of Shayrafi, Qaffal and their like, the basic synthesis that was created by Imam Shafi'i a century ago became relevant and became young again in the form of comments on Al-Risâlah. By attributing all the branches of synthesis to Imam Syafi'i, his successors made him *ex post facto* , as the founder of Usul Fiqh.⁶⁵

⁶²Asni, F. (2019). The Development of Islam and Mazhab Al-Shafi 'i during the Post-Arrival of Islam in the Malay Archipelago. *International Journal of Academic Research in Business and Social Sciences*, 9(3), 1196–1209.

⁶³Thaha Jabir al-Ulwany, *Ushul Fiqh al-Islamiy: Manhaj Bahts wa Ma'rifah* (Cet. II; Virginia, USA.: The International Institute of Islamic Thought, 1995), 47-51.

⁶⁴Fazli, T. K. (2018). *Ushul Fiqih Madzhab Syafi'i*. Rumah Fiqih Publishing.

⁶⁵Wael B. Hallaq, *A History of Islamic Legal Theory*, translated by: E. Kusnadiningrat and Abdul Haris bin Walid with the title, *History of Islamic Legal Theory* (Cet. II; Jakarta: RajaGrafindo Persada, 2001), 51.

3. Imam Syafi'i's version of the Istinbath method

In an effort to instigate law, Imam Syafi'i offers a paradigm and basic concept that the Qur'an and Sunnah are the main foundation.⁶⁶ And if there is an event or case and no legal evidence is found in the Qur'an and al-Sunnah, a mujtahid must refer to *qiyas*.⁶⁷ What Imam Syafi'i did was the same as what Muadz bin Jabal did when he was sent by Rasulullah saw. to Yemen, as stated in the hadith, namely:

كيف تقضي إذا عرض لك قضاء؟ أفضي بكتاب الله، قال: فإن لم تجد؟ فيسنة رسول الله، قال: فإن لم تجد؟ أجتهد رأيي ولا آلوا، قال: الحمد لله وفق رسول رسول الله فيما يرضي الله ورسوله.⁶⁸

It means;

How can you decide the law if you are presented with a legal issue? I decided based on the Koran. And if you don't find it in the Koran? With the sunnah of Rasulullah saw. If you do not find it in al-Sunnah? I make ijthihad with my reason according to the ability that I have. The Messenger of Allah said: Praise be to Allah who gave taufik to the messenger of the Messenger of Allah from things that please Allah and His Messenger.

Regarding the use of al-Sunnah in istinbat, a hadith must be transmitted continuously and the sanad must be authentic. If a hadith contains several meanings, what must be taken and guided by is the literal meaning of the hadith, and if the hadith is the same –both in terms of the content of the meaning and the continuity of the sanad- then what is taken is the most valid sanad and may not take *munqathi hadith* as evidence except for *the munqathi hadith of Ibn Musayyib*.⁶⁹ In the same matter, he did not require such a requirement as put forward by Imam Abu Hanifah that the hadith must be well-known among the companions and nor as required by Imam Malik that the hadith does not contradict the *aml ahl al-Madinah* (behavior of the people of Medina) , but the main requirement for him is that the hadith must be authentic and its transmission continuous. He also did not use *the mursal hadiths* as evidence except for *the mursal hadiths of Ibn Musayyib* which had been agreed to be authentic as well as *the aqwal al-Shahabah* because of the possibility of mistakes and mistakes because it was the result of the creations of the ijthihad of the companions. On the other hand, Imam Syafi'i did not make *istihsan* a proof, in fact he said: "Whoever is *istihsan* then he makes a new shari'a", as well as *qiyas* if the illat is *ghair mundabithah*, *masalih mursalah* and *amal ahl al-Madinah*.⁷⁰

⁶⁶Ahmad bin Mustafa al-Farran, Tafsir al-Imam al-Syafi'i, cet.1 juz 1 (Riyadh: Dar al-Tadmuriyah, 2006), 83.

⁶⁷Sandimula, NS (2019). THE STATUS AND RIGHTS OF AN ILLEGITIMATE CHILD ACCORDING TO MADZHAB ASYSYAFI'I PERSPECTIVE AND DEVELOPMENT OF ISLAMIC FAMILY LAW IN INDONESIA. Jurnal Ilmiah Al-Syir'ah, 1(2), 121–130

⁶⁸Abu Dawud Ibn Sulaiman al-Sijistany, *Sunan Abu Dawud* (Beirut: Dar al-Fikr, t.th.), 302.

⁶⁹Abi Bakr Ahmad bin al-Husain al-Baihaqi, *Manaqib al-Shafi'i*, juz. 1, (Cairo: Maktabah Dar al-Turats, 1996), 153-164.

⁷⁰Sha'ban Muhammad Ismail, *Al-Tasyri' al-Islamiy: Mashadiruhu wa Athwaruhu* (Cet. II; Cairo: Maktabah al-Nahdah al-Misriyah, 1985), 338-339.

4. Source of Law according to Imam Syafi'i's version.

Imam Shafi'i stated in the book *of al-Umm* that :

" العلم طبقات شتى ، الأولي الكتاب والسنة إذا ثبتت ، ثم الثانية الإجماع فيما ليس فيه كتاب ولا سنة ، والثالثة أن يقول بعض أصحاب رسول الله صلى الله عليه وسلم قولاً ولا نعلم له مخالفاً له ، والرابعة اختلاف أصحاب النبي صلى الله عليه وسلم في ذلك ،⁷¹ God bless you

It means;

Science has several levels. The first is the Al-Qur'an and al-Sunnah, then the second is the result of the ijma'(consensus) of scholars which is not found in the Al-Qur'an and al-Sunnah, then the third is the words of friends and in it we do not know that there are those who deny it and the fourth is the difference between the companions of the Prophet Muhammad and the fifth is qiyas and it is forbidden to turn to anything except the Qur'an and al-Sunnah as long as both of them still exist. And the best is to take knowledge from the highest degree (ie the Qur'an).

By looking at what was stated by Imam Syafi'i in the book *al-Umm*, it can be concluded that there are five kinds of sources of law according to Imam Syafi'i's version, namely as follows:⁷²

a. Al-Qur'an

Al-Qur'an is the holy book of Muslims which serves as a guide, not only for Muslims but also for all mankind.⁷³

In its capacity as a guide, the Qur'an contains rules and teachings covering various dimensions of life. Scholars state that the contents of the Qur'an are issues of aqidah (I'tiqadiyah issues) and practical issues which include worship and muamalah.⁷⁴

By looking at its content and contents, the Qur'an must be used as the main reference in instituting law.

b. Al-Sunnah

Muslims agree that hadith is the second source of teaching after the Qur'an. Their agreement is based on texts, both contained in the Qur'an and hadith.

The existence of hadith as the second source after the Qur'an, besides Allah's decree -which is understood from its implied verses - is also *ijma* (consensus) as seen in the behavior of friends.

The function of Hadith is to detail and interpret the mujmal (global) verses of the Qur'an and provide requirements (taqyid) for the absolute verses. In addition, it also functions to specialize in verses that are general in nature. This function refers to the bayan tafshil version of Imam

⁷¹Muhammad bin Idris al-Shafi'i, *al-Umm*, Juz V, Editor: Muhammad Zuhri Najjar (Cet. I; Egypt: Maktabah al-Kulliyah al-Azhariyah, 1961), 246.

⁷² As-Syafi'I, Abi Abdullah Muhammad bin Idris, *Al-Umm*, volume I, (Bairut: Dar al-Fikr, 1983), 13

⁷³A ḥ mad Mu ḥ ammad Sy ā kir, Muqaddimah al-Ris ālah in al-Ris ālah (Beirut: al-Maktabah al-'Ilmiyah, T.Th), 72-73.

⁷⁴.Atang Abdul Hakim, *Metodologi Studi Islam* (Cet. VI; Bandung: PT. Remaja Rosdakarya, 2003) 77.

Malik and Imam Shafi'i, as well as *the bayan takhsisy* version of Imam Ahmad as well as *the bayan tafsir*.

On the other hand, hadith functions to establish rules or laws that are not found in the Qur'an. This function refers to *the bayan tasyrii* versions of Imam Malik, Imam Syafi'i and Ahmad bin Hanbal. An example of a hadith that explains that it is not permissible to mix between aunts and nephews.

By looking at the functions of hadith on the Koran, it can be concluded that hadith is the second source after the Koran.

c. Ijma (Consensus)

Imam Syafi'i argues that ijma can be used as evidence or as a source of law in Islam. Ijma that can be used as evidence according to Imam Syafi'i is only *ijma al-shahabah* and here needs to be straightened out in three ways:

1. Imam Syafi'i positioned ijma after the Qur'an and al-Sunnah. And if there is a consensus issue that is contrary to the Al-Qur'an and Sunnah, then this consensus cannot be used as a legal basis.⁷⁵ And it needs to be underlined that ijma is divided into two parts, namely: *first, Ijma ala al-Nushush*, namely a consensus that is included in the framework of Islam or what is often referred to by scholars as *ma ulima mina al-din bi al-dharurat* such as the obligation to perform prayers five times and the number of cycles of prayer, the obligation to perform the pilgrimage and zakat. *Second, Ijma ala al-ahkam* is like the consensus on Umar's opinion, namely the prohibition on the distribution of spoils of war. This Ijma is based on the texts and is not considered infidel for those who deny it.
2. Imam Shafi'i did not consider *the ahl al-Madinah consensus* as ijma.
3. Imam Syafi'i, if he is in polemic and has a difference of opinion with other people and he says that this issue has been agreed upon, then he denies the existence of that ijma.

d. Qawl al-Shahabah (Fatwas of Companions)

Companions are people who immediately see Rasulullah saw. and received the treatise brought by Rasulullah saw. they are also among those who listen to the Messenger of Allah. explanation of the law. For this reason, the scholars decided that the words of a friend (*qawl al-shahabah*) could be used as evidence.⁷⁶

However, there are a handful of Usul Fiqh experts who say that Imam Syafi'i did not make *qawl al-shahabah* a proof, but this was refuted by itself as stated in Al-Risâlah and al-Umm. Imam Syafi'i said in Al-Risâlah:

⁷⁵ Muhibul Anam 'Aly, *Mengenal Istilah dan Rumus Fuqaha*, (Kediri: Pon. Pes. Lirboyo, 2002), 95

⁷⁶ Mann ā' al-Qa ṭṭ ā n, T ā r ī kh al-Tasyr ī al-Isl ā m ī (Cet. I; Riy ā d}: Maktabah al-Ma' ārif, 1992), p. 376

" ولقد وجدنا أهل العلم يأخذون بقول واحد منهم مرة ويتركونه آخري ويتفرقوا في بعض مأخذوا به منهم ، قال: فإلي أي شيء صرت من هذا ؟ قلت : إلي اتباع قول واحد ، إذا لم أجد كتابا ولا سنة ولا إجماعا ولا شيئا في معناه يحكم له بحكمه ، أو وجد معه قياس "

It means;

We found that the scholars took the words of one of the Companions and left the other and they differed on what they took from them. Said: where do you turn from this? I replied: I follow one saying if we do not find it in the Qur'an and al-Sunnah or Ijma or qiyas.

In the book *al-Umm* it is also said that:

“إن لم يكن في الكتاب والسنة صرنا إلي أقاويل أصحاب رسول الله أو واحد منهم ، ثم كان قول أبي بكر وعمر وعثمان إذا صرنا فيه إلي التقليد أحب إلينا ، وذلك إذا لم نجد دلالة في الاختلاف تدل علي أقرب الاختلاف من الكتاب والسنة ، لنتبع قول الذي معه الدلالة.”⁷⁷

It means;

If we do not find it in the Qur'an and al-Sunnah, we turn and refer to the words of the Companions or one of them then to the words of Abu Bakr, Umar, Usman if we follow the taklid method. And we do this if we do not find evidence when there are differences of opinion that point to the closest differences between the Qur'an and the Sunnah, then we follow the words that have strong arguments.

e. Qiyas (Analogy)

Qiyas –the version of Imam Shafi'i- is the fifth source of law in Islam after the Qur'an, al-Sunnah, Ijma and Qawl al-Shabah. Imam Syafi'i acknowledged the existence of *qiyas* as a source of law by expressing two reasons, namely as follows.

1. Every law that exists is general in nature and is not bound by an event and time. And if it is like that then every event that happens to humans must be explained by law. And to determine the law, sometimes it is directly by using a sharia text and sometimes by using *qiyas* if no sharia argument is found from the text. He said in *Al-Risâlah*:

" كل ما نزل بمسلم ففيه حكم لازم ، وعلي الحق فيه دلالة موجودة ، وعليه إذا كان فيه بعينه حكم وجب اتباعه ، وإذا لم يكن فيه بعينه طلب الدلالة علي سبيل الحق فيه بالاجتهاد ، والاجتهاد هو القياس"⁷⁸

It means;

Everything that happens to a Muslim, there must be a law that regulates it and actually there must be a reason for it. Therefore, if there is an implicit argument in it, then he must follow it and if there is not, then he must look for it by means of ijihad. And ijihad is qiyas

2. Shari'a knowledge which has a correlation with law can be classified in two ways, namely: *first, the science of qath'I* which is determined by the texts of qathi and the

⁷⁷See: *Al-Umm*, Juz VII 247.

⁷⁸See: *Al-Risalah*, 477.

explanation of qathi, *secondly, the science of dhanny* which is only sufficiently known by *al-dhann al-raajih* and is included in it is khabar ahad and *qiyas*.⁷⁹

Imam Shafi'i was not the first to make *qiyas* a source of law. Even though he was not the first person, he was the one who compiled the rules and procedures that could keep a mujtahid away from mistakes in instituting law from original sources.⁸⁰

In using *qiyas* as a source of law, Imam Shafi'i was neutral, not as extreme as Imam Malik and did not overly broaden the scope of *qiyas* as was done by Imam Abu Hanifah.⁸¹ He said in *Al-Risalah*:

"وجهة العلم الكتاب والسنة والإجماع والآثار وما وصفت من القياس عليها... ولا يقيس إلا من جمع الآلة التي له القياس بها، وهي العلم بأحكام كتاب الله عز وجل، فرضه وأدبه وناسخه ومنسوخه، وعامه وخاصه.... ولا يجوز لأحد أن يقيس حتى يكون عالما بما مضى قبله من السنن وأقوال السلف، وإجماع الناس علي اختلافهم، ولسان العرب، ولا يكون له أن يقيس حتى يكون صحيح العقل، وحتى يفرق بين المشتبه، ولا يعجل بالقول به دون التثبت، ولا يمتنع من الاستماع ممن خالفه لأنه قد يتنبه بالاستماع لترك الغفلة، ويزداد به تثبتا فيما اعتقد من الصواب، فيه في تلك بل بل بلا غأ هذه⁸²ked

There is an interesting thing about Imam Shafi'i in formulating sources of law that must be used as a basic reference in uncovering the secrets of *tasyri divine*, that is, he does not include *ishsan*⁸³-like Imam Abu Hanifah- and *maslahah mursalah* -as formulated by Imam Malik- as sources of law, he even criticizes all-out scholars who berhujjah with *istihsan* and *maslahah mursalah*.

However, it turns out that -after further investigation- Imam Syafi'i misunderstood the two terms in the sense that they were different as understood by Imam Abu Hanifah and Imam Malik.⁸⁴ It's important to note that Islamic jurisprudence, known as *fiqh*, can have varying interpretations and differences among the different schools of thought within Sunni Islam. Imam Syafi'i, Imam Abu Hanifah, and Imam Malik were all prominent scholars and founders of their respective Sunni schools of thought (*madhabs*), and they had different methodologies and approaches to understanding Islamic law.

If there was a misunderstanding or difference in interpretation between Imam Syafi'i and the other two scholars regarding certain terms or concepts in Islamic jurisprudence, it is not uncommon within the context of Islamic scholarship. These differences in interpretation and understanding are often the result of varying approaches to sources of Islamic law, such as the

⁷⁹See: Muhammad Abu Zahrah, *Tarikh al-Mazahib al-Islamiyah*, *op.cit.*, p.455-466.

⁸⁰ Ainol Yaqin, *Evolusi ijthad imam syafi'i: dari qawl qadim ke qawl jadid* Jurnal AL-AHKAM, Volume 26, Nomor 2, Oktober 2016, 147-148

⁸¹Ahmad Amin, *Dhuha al-Islam*, Juz II (Cairo: Mahrajan al-Qiraat li al-Jami'/Maktabah al-Usrah, 1998), 225.

⁸²See: *Al-Risalah*, *op. cit.*, h. 508-511.

⁸³ الاستحسان هو أن يعدل المجتهد عن أن يحكم في المسألة بمثل ما حكم به في نظائرها إلي خلافه لوجه يقتضي العدول عن الأول . مثل : سؤر سباع الطير فإن سباع الطير كالنسر تشبه سباع البهائم في كونها لحمها نجسا لا يؤكل وكونها تنغذي من الحيوانات ، وبما أن سؤر سباع البهائم كالسبع نجس فكذلك يكون سؤر سباع الطير نجسا ، وذلك قياس ظاهر ، ولكن الاستحسان ينتج لقياس خفي وبيانه أن سؤر سباع البهائم كان نجسا لوجود لعابها في الماء واللحاح متصل باللحم فهو نجس بنجاسته ، أما سباع الطير فهي تشرب بمناقيرها فلا تلقي الماء في لعابها ، ومناقيرها عظام لا تترك في الماء أي أثر فلا يصيب الماء نجاسة بشرط سباع الطير فلا يكون السؤر نجسا (انظر : أصول الفقه ، محمد أبوزهرة ، دار الفكر العربي) ص : 245 - 248 .

⁸⁴For details, see: Abdul Wahhab Ibrahim Abu Sulaiman, *al-Fikr al-Ushuliy: Dirasah Tahliliyah Naqdiyah* (Cet. I; Jeddah: Dar el-Syuruq, 1983), 147-158.

Quran, Hadith, consensus (ijma), and analogical reasoning (qiyas), as well as the cultural and regional influences on these scholars. Scholars within each madhab may have differences in their legal rulings, and this is why there are multiple Sunni madhabs in the first place. Followers of each madhab generally adhere to the teachings and interpretations of their respective founder, and they may consider the interpretations of other scholars to be different or even incorrect in some cases. It's essential to approach these differences in interpretation and understanding with respect for the diversity of thought within Sunni Islam and to recognize that these differences have been a part of Islamic jurisprudence for centuries. Muslim scholars have engaged in debates and discussions on these matters throughout history, contributing to the rich tradition of Islamic scholarship.

Conclusion

With reference to the subject matter that has been stated above, several conclusions can be drawn, namely: Imam Shafi'i was the first scholar to lay the foundations for the methodology of legal istinbath. *Al-Risâlah* is the first book in the field of Usul Fiqh which contains procedures for instituting law from its original source. In an effort to instigate law, a mujtahid must refer to legal sources that have been agreed upon by taking into account all the instruments that must be elaborated in making legal decisions. The sources of law according to Imam Syafi'i's version are: Al-Qur'an, Sunnah, Ijma, Qawl al-Shahabah and *Qiyas*.

References

- Al-Qur'an dan Terjemahnya (Al-Madinah al-Munawwarah: Majma al-Malik Fahd li Tibaah al-Mushaf al-Syarif, 1418 H.),
- Abdul Wahhab Ibrahim Abu Sulaiman, *al-Fikr al-Ushuliy: Dirasah Tahliliyah Naqdiyah* (Cet. I; Jeddah: Dar el-Syuruq, 1983)
- Abi Bakr Ahmad bin al-Husain al-Baihaqi, *Manaqib al-Syafi'i*, juz. 1, (Kairo: Maktabah Dar al-Turats, 1996)
- Abi Muhammad Abdurrahman bin Abi Hatim al-Razi, *Adabu al-Syafi'i wa Manaqibah*, (Beirut: Dar al-Kutub al-Ilmiyah, 2003).
- Abu Abdillah Badruddin al-Zarkasyi, *Al-Bahrul Muhith Fii Ushulil Fiqh*, cet.1 Juz.8 (tt: Dar al-Kutubi, 1994)
- Abu Dawud Ibnu Sulaiman al-Sijistany, *Sunan Abu Dawud* (Beirut: Dar al-Fikr, t.th.),
- Ahmad Al-Syurbasi, *Sejarah dan Biografi 4 ImamMazhab, Hanafi, Maliki, Syafi'i, Hanbali*, Cet. V(Jakarta: Amzah, 2008)
- Ahmad Amin, *Dhuha al-Islam*, Juz II (Cairo: Mahrajan al-Qiraat li al-Jami'/Maktabah al-Ussrah, 1998)
- Ahmad bin Musthafa al-Farran, *Tafsir al-Imam al-Syafi'i*, cet.1 juz 1 (Riyadh: Dar al-Tadmuriyah, 2006)
- Ahmad Muhammad Syakir, *Muqaddimah al-Risalah dalamal-Risalah* (Beirut: al-Maktabah al-Ilmiyah, T.Th)
- Ainol Yaqin, *Evolusi ijtihad imam syafi'i: dari qawl qadim ke qawl jadid* Jurnal AL-AHKAM, Volume 26, Nomor 2, Oktober 2016.
- Al-Asnawy, 'Abd al-Rahim ibn Hasan al-Syafi'i, t.t., *Nihayah alSaul fi Syarh Minhaj al-Ushul*.Kairo : Al-Mathba'ah alSalafiyah.
- Al-Syafi'i, Muhammad ibn Idris, t.t., *Al-Umm*. Beirut : Dar alFikr.
- Alwana, H. A.. *Aliran Pemikiran Ushul Fiqh Dan Pengaruhnya Terhadap Pendekatan Hukum Islam*. Jurnal Ilmiah Syari'Ah, 19(2) 2020
- Amir Syarifuddin, *Ushul Fiqh*, Jilid I (Cet. I; Jakarta: Logos Wacana Ilmu, 1997)
- Asni, F. *The Development of Islam and Mazhab Al-Syafi ' i during the Post-Arrival of Islam in the Malay Archipelago*. International Journal of Academic Research in Business and Social Scienses, 9(3), 2019
- As-Syafi'I, Abi Abdullah Muhammad bin Idris, *Al-Umm, jilid I*, (Bairut: Dar al-Fikr, 1983)
- Atang Abdul Hakim, *Metodologi Studi Islam* (Cet. VI; Bandung: PT. Remaja Rosdakarya, 2003)

- Badran Abu al-Ainain Badran, *Ushul Fiqh al-Islamiy*, (Iskandariyah: Muassasah Syabab al-Jamiah, t.th.)
- Fazli, T. K. (2018). *Ushul Fiqih Madzhab Syafi'i*. Rumah Fiqih Publishing.
- Imam Fahrudin al-Razi, *Manaqib Imam Syafi'i* (Jakarta: Pustaka al-Kautsar, 2017).
- Jaih Mubarak, *Modifikasi Hukum Islam Studi tentang Qaul Qadim dan Qaul Jadid*, (Jakarta: PT. Raja Grafindo Persada, 2002)
- Mannā' al-Qaṭṭān, *Tārīkh al-Tasyrī' al-Islāmī* (Cet. I; Riyād}: Maktabah al-Ma'ārif, 1992), h. 376
- Muhammad Abu Zahrah, *Al-Syafi'i: Hayatuhu, wa 'Ashruhu, Araahu al-Fiqhiyah*, (Kairo: Dar al-Fikr al-Arabi)
- Muhammad Abu Zahrah, *Tarikh al-Mazahib al-Islamiyah fi al-Siyasah wa al-Aqaid wa Tarikh al-Mazahib al-Islamiyah* (Kairo: Dar al-Fikr al-Araby, t.th.).
- Muhammad bin Idris al-Syafi'i, *al-Umm*, Juz V, Editor: Muhammad Zuhri Najjar (Cet. I; Mesir: Maktabah al-Kulliyah al-Azhariyah, 1961)
- Muhibul Anam 'Aly, *Mengenal Istilah dan Rumus Fuqaha'*, (Kediri: Pon. Pes. Lirboyo, 2002)
- Nabil Ghonayam, *al-Risalah li Imam al-Syafi'I*, (Qohiroh: Markazul Ahrom, 1988).
- Rozi, F. Sejarah Pemikiran Mazhab Fiqh Imam Syafi'i. *Jurnal Putih*, 1(1), 2016
- Salmah Intan, "Kitab Al-Risalah Imam Syafi'i," *Jurnal Al-Hikmah* Vol. XII, no. 1 (2011)
- Sandimula, N. S. (The Status And Rights Of An Illegitimate Child According To Madzhab Asy-Syafi'i Persepective And Development Of Islamic Family Law In Indonesia. *Jurnal Ilmiah Al-Syir'ah*, 1(2), 2019
- Sya'ban Muhammad Ismail, *Al-Tasyri' al-Islamiy: Mashadiruhu wa Athwaruhu* (Cet. II; Cairo: Maktabah al-Nahdah al-Misriyah, 1985)
- Sya'ban Muhammad Ismail, *Ushul Fiqh: Târikhuhu wa Rijaluhu* (Cet. II; Cairo: Dar al-Salam, 1998)
- Syaukany, Muhammad ibn 'Ali al-, 1414 H., *Irsyad al-Fuhul ila Tahqiq al-Haq min 'Ilm al-Ushul*, Beirut. : Dar al-Kutub al'Ilmiyyah. H. 90
- Syuhud, K. Interelasi Akal dan Wahyu: Analisis Pemikiran Ulama Mutakallimin dalam Pembentukan Hukum Islam. *JIL: Journal of Islamic Law*, 2(1), 2021
- Thaha Jabir al-Ulwany, *Ushul Fiqh al-Islamiy: Manhaj Bahts wa Ma'rifah* (Cet. II; Virginia, USA.: The International Institute of Islamic Thought, 1995)
- Umam, K. Penyerapan Fiqh Madzhab Syafi' i dalam Penyusunan Kompilasi Hukum Islam. *De Jure : Jurnal Hukum Dan Syari'ah*, 9(2), 2017

Wael B. Hallaq, *A History of Islamic Legal Theory*, diterjemahkan oleh : E. Kusnadinigrat dan Abdul Haris bin Walid dengan judul, *Sejarah Teori Hukum Islam* (Cet. II; Jakarta: RajaGrafindo Persada, 2001)

Yahya bin Abil Khair al-Yamani, *Al-Bayaan fi Madzhab Imam Asy-Syafi'i*, Juz 1 (Surabaya: Darul Minhaj, 2014)

Zukhdi, M. *Dinamika Perbedaan Madzhab Dalam Islam (Studi Pengamalan Madzhab di Aceh)*. 17(1) 2017