Agus Moh. Najib's Project and Ushul Fiqh Redesign: Interlinking of Islamic Law and Legal Sciece

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Abstract:

This study devels into the transformational efforts of Agus Moh Najib, a prolific Muslim intellectual and professor of ushul fiqh at UIN Sunan Kalijaga Yogyakarta, in revitalizing and reforming the conceptual framework of ushul fiqh, which is the cornerstone of Islamic law in response to the complex challenges of modernity. The research conducted is a type of qualitative research with a descriptive-analytical review of various sources of literature that is equipped with a philosophical study through the data analysis method used is content analysis. The findings of this study highlight the ongoing process of redesigning ushul fiqh initiated by Agus Moh Najib is directed to bring closer and interconnect between Islamic law and legal science in general. He also sits the position of Islamic law in proportion between the sacred dimension and the profane dimension. Redesign of ushul fiqh as the foundation for jurisprudence and Islamic law is an urgent step to be done because the changing conditions and situations, time and place as a result of these factors, have invited a variety of serious problems related to jurisprudence and Islamic law. In contrast, the method of ijtihad developed by reformers of legal thinkers in answering various issues of modern times has not been satisfactory.

Abstrak:

Penelitian ini mengupas upaya transformasional Agus Moh Najib, seorang intelektual muslim yang produktif dan guru besar ushul fiqh di UIN Sunan Kalijaga Yogyakarta, dalam merevitalisasi dan mereformasi kerangka konseptual ushul fiqh, yang merupakan landasan hukum dalam Islam guna menjawab berbagai tantangan modernitas yang begitu kompleks. Penelitian yang dilakukan adalah jenis penelitian kualitatif dengan tinjauan deskriptif analitik terhadap berbagai sumber pustaka yang dilengkapi dengan kajian filosofis melalui metode analisis data yang digunakan adalah content analysis. Temuan penelitian ini menyoroti proses konsep redesain ushul fiqh yang digagas oleh Agus Moh Najib diarahkan untuk mendekatkan dan menginterkoneksikan antara hukum Islam dan keilmuan hukum pada umumnya. Dia juga mendudukkan posisi hukum Islam secara proporsional antara dimensi sakral dan dimensi profan. Redesain ushul fiqh sebagai fondasi bagi fiqh dan hukum Islam merupakan langkah yang urgen untuk dilakukan sebab terjadinya perubahan kondisi dan situasi, waktu dan tempat sebagai akibat dari faktor-faktor tersebut, telah mengundang berbagai masalah serius berkaitan dengan fiqh dan hukum Islam, sedangkan metode ijtihad yang dikembangkan para pembaharu pemikir hukum dalam menjawab berbagai problematika zaman modern saat ini belum juga memuaskan.

A. Introduction

Various circles of Muslim scholars have offered many ideas that were proposed to be used as alternatives in the current scientific development of ushul fiqh because many Muslim scholars considered that the existing ushul fiqh found many principal weaknesses. Muhammad Abduh, Rasyid Ridha, Hasan Turabi, Fazlur Rahman, Muhammad Arkoun, Muhammad Syahrur, Muhammad Abed al-Jabiri, and other Islamic thinkers are some of the names who are keen to fight for the dismantling of the classic ushul fiqh. They do not offer a new theory except to revitalize the maslahah principle offered by ash-Syathibi through his famous maqashid approach. Unfortunately, no one has provided a complete and comprehensive methodology.

Wael B. Hallaq categorizes them as reformers and adherents of religious utilitarianism. While those considered to offer new theories tend to discard old and liberal-style ushul fiqh theories, they are called religious liberalism. Still, according to Hallaq, this second group of reform efforts in the field of ushul fiqh to build a methodology that wants to connect the sacred texts and the reality of the modern world is more based on efforts to pass the explicit meaning of the text to capture the soul and broad intent of the text. Their solutions and suggestions are still too general and vague, not yet showing a concrete form.[1] There are only outbursts of criticism of the thoughts produced by classical scholars. Meanwhile, they have not been able to surpass the achievements of the scholars who were experts in ushul fiqh in the past because not one of them has been able to produce qualified ushul fiqh works.

The existing theories are still appropriate to be used as a framework for thinking in the *istinbath* of Islamic law in the past, present and future. However, this does not mean that no circles want to sue the renewal of the ushul fiqh building as a legal methodology that has been so established. Hasan Turabi, an Islamic thinker from Sudan, called for the reform of ushul fiqh.[2] Turabi can acknowledge the glories of classical ushul fiqh, which had been built painstakingly by the previous *ulama'*. However, along with the recent decline in religious life, the Muslim community could not produce a brilliant new fiqh after fiqh became a scientific

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[1] Wael B Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1999).

[2] Abdullahi Ali Ibrahim, "A Theology of Modernity: Hasan Al-Turabi and Islamic Renewal in Sudan," *Africa Today* 46, no. 3 (1999): 195–222, https://www.jstor.org/stable/4187290; Sean Hilhorst, "Use of Force in the Sudan: Between Islamic Law and International Law," *Muslim World Journal of Human Rights* 5, no. 1 (2009), https://doi.org/10.2202/1554-4419.1157.

discipline. From this fact, Turabi suspects there is stagnation in ushul fiqh, so reform steps are needed.

According to Nur Cahaya, the importance of the formulations of the methodology of contemporary Islamic law, which must be reformulated, is the moral and formal ideals.[3] This ideal ethical and legal methodological framework aims to maintain the integrity of the divine and human and benefit norms that provide the right direction for the development of life. This ideal will be realized if Islamic jurists dare to review the history of the development of Islamic law in the past and examine the sources of Islamic law to respond to the various challenges and problems in the current contemporary era. Therefore, the redesign of ushul fiqh as a scientific field which is the basis for the formation of fiqh, is urgently needed to find laws to answer all social problems in Muslim society.

Several studies have re-explored the concept of *ijtihad* (interpretation of Islamic law) in a modern context.[4] They discuss ways ijtihad can be applied more contextually and relevant to the social, economic, and political changes in Muslim societies. It helps in redesigning the *Ijtihad* method to keep it relevant. Later studies have identified criticisms of traditional forms of ushul fiqh and proposed changes to improve the relevance and inclusiveness of Islamic law.[5] This criticism can be a foundation for developing a more adaptive ushul fiqh. In addition, several studies have explored the concepts of legal pluralism in Islam, which include how Islamic law can coexist with secular and customary legal systems in a multicultural society.[6]

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[3] Nur Cahaya, *Hukum Islam Kontemporer,Tantangan Dan Pengembangan Metodologi, Dalam Kumpulan Karangan Syariat Islam Di Indonesia* (Medan: Fakultas Syari'ah IAIN-SU dan Misaka Galiza Medan, 2004).

[4] Rizal Al Hamid, Arif Sugitanata, and Suud Sarim Karimullah, "Sinkronisasi Pendekatan Sosiologis Dengan Penemuan Hukum Islam Sui Generis Kum Empiris," *Bertuah Jurnal Syariah Dan Ekonomi Islam* 4, no. 1 (2023): 48–60, https://doi.org/https://doi.org/10.56633/jsie.v4i1.553; Arif Sugitanata, Suud Sarim Karimullah, and Rizal Al Hamid, "Hukum Positif Dan Hukum Islam: Analisis Tata Cara Menemukan Hukum Dalam Kacamata Hukum Positif Dan Hukum Islam," *JURISY: Jurnal Ilmiah Syariah* 3, no. 1 (2023): 1–22, https://doi.org/10.37348/jurisy.v3i1.242; Muhammad Shahrul Ifwat Ishak and Fathullah Asni, "The Role of Maqasid Al-Shariʿah in Applying Fiqh Muamalat into Modern Islamic Banking in Malaysia," *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020): 2137–54, https://doi.org/10.1108/JIABR-12-2019-0224.

[5] Muhammad Said, "Rekontekstualisasi Pemikiran Islam Dalam Manhaj Ushul Fiqh Hassan Hanafi," *MUHARRIK: Jurnal Dakwah Dan Sosial* 2, no. 01 (2019): 1–14, https://doi.org/10.5281/zenodo.3544708; Muhammad Husni Abdulah Pakarti et al., "Perkembangan Ushul Fiqh Di Dunia Kontemporer," *Al-Syakhsiyyah: Journal of Law & Family Studies* 5, no. 1 (2023): 89, https://doi.org/10.21154/syakhsiyyah.v5i1.7065; Muhammad Syarif Hidayat, "Argumentasi Pembaruan Ushul Al-Fiqh: Problematika Dan Tantangannya," *Journal of Islamic Studies and Humanities* 6, no. 1 (2021): 1–22, https://doi.org/10.21580/jish.v6i1.8175.

[6] Ihsan Yilmaz, "Nation Building, Islamic Law and Unofficial Legal Pluralism: The Cases of Turkey and Pakistan," in *Legal Pluralism in Muslim Contexts* (Brill, 2019), 109–38, https://doi.org/10.1163/9789004398269_007; Ihsan Yilmaz, "Muslim Secularism by Conduct: Attitudes of Young Australian Muslims to Legal Pluralism and Sharia," *Journal of Intercultural Studies* 44, no. 2 (2023): 274–88, https://doi.org/10.1080/07256868.2022.2104826; K C Mujeebu Rahman and Anindita Chakrabarti, "Sharia, Legal Pluralism and Muslim Personal Law: Ethnographic Lessons from the Mahallu System of Malabar, India," *Journal of Muslim Minority Affairs* 42, no. 1 (2022): 160–75, https://doi.org/10.1080/13602004.2022.2051946.

This research discusses efforts to renew thinking in the field of ushul fiqh, which Agus Moh Najib offered in his inaugural speech as a professor of ushul fiqh at UIN Sunan Kalijaga Yogyakarta, Indonesia. Agus Moh Najib wants to make efforts to redesign, reform and renovate the building of ushul fiqh as a scientific field which is the basis for the formation of fiqh to answer various challenges of modernity without having to deconstruct it, by placing the position of Islamic law proportionally between the sacred and profane dimensions.[7] Ushul fiqh must be revived to become a torch for exploring Islamic laws in the contemporary era.

Agus Moh Najib is a professor in the field of ushul fiqh at UIN Sunan Kalijaga Yogyakarta and a prolific Muslim intellectual. He has persistence and a high concept of reconstructing Islamic legal thought. In this case, it can be seen from his involvement in every issue of Islamic legal opinion written in his various works. Agus Moh Najib also serves as director of analysis and harmonization of legislation in Pancasila Ideology Development Agency (BPIP-RI),[8] so this research is very interesting to study comprehensively as a contribution to thought in the development of Islamic law in the contemporary era.

B. Method

The study was qualitative research with a descriptive-analytical review of literature studies complemented by philosophical studies. So, in general, this study is a type of library research because it uses data sources presented in the literature that is in the library's collection. The data analysis method used is content analysis. This study seeks to understand data not as a collection of physical events but as a symptom symbolic in uncovering the meaning of a text and obtaining an understanding of the message represented. Then, the analysis is carried out on the schools of knowledge of Islamic law by determining the subject matter, carrying out methods of identification, classification, analysis, interpretation and formulating conclusions.

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[7] Muhajir Muhajir et al., "Agus Moh Najib's Thoughts on the Interconnection of Islamic Law and National Law," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 86–103, https://doi.org/10.30984/jis.v21i1.2321.

[8] Humas BPIP-RI, "Lantik JPT Pratama Sekretaris Utama BPIP Minta Bekerja Maksimal," 2022, https://bpip.go.id/berita/1035/1249/lantik-jpt-pratama-sekretaris-utama-bpip-minta-bekerja-maksimal.html; Niah Lubis, "Lantik JPT Pratama Sekretaris Utama BPIP Minta Bekerja Maksimal," Perwata.co, 2022, https://pewarta.co/news/sumut/terima-kunker-bpip-kakanwil-kanwil-sumut-pastikan-penyelarasan-nilai-pancasila-dengan-ranperda.

C. Result

Agus Moh Najib's visionary undertaking in the realm of ushul fiqh represents a pioneering endeavor of paramount significance, as it seeks to intricately weave the tapestry of Islamic law with the broader landscape of legal studies, thereby forging a profound connection between these two domains. This innovative endeavor goes beyond the surface and delves deep into the intricacies of Islamic law, with the primary aim of not only bridging the gap between Islamic law and general legal scholarship but also establishing a harmonious equilibrium that situates Islamic law propitiously within the duality of sacred reverence and pragmatic applicability.

In a world marked by the constant flux of time and place, where societal, cultural, and environmental dynamics are in constant motion, the urgency to reinvent ushul fiqh as the foundational cornerstone of Islamic law and legal theory is unmistakable. These ever-shifting factors have given rise to profound questions and challenges that demand rigorous examination and thoughtful responses within Islamic law and law. However, it is worth noting that while commendable efforts have been made to navigate these intricate waters, the existing methods of *ijtihad*, crafted by legal reformers and scholars, have not yet yielded entirely satisfying solutions to the complex questions posed by the evolving legal and social landscape. This underscores the pressing need for a comprehensive and transformative approach to ushul fiqh that reconciles tradition with modernity and charts a path toward a more cohesive and responsive legal framework in Islamic law.

D. Analysis and Discussion

1. The Development of Ushul Fiqh in the Study of Islamic Law

In the realm of Islamic intellectuals, the science of ushul fiqh is the most important methodology ever discovered by the world of Islamic thought and is not shared by other people. Ushul fiqh is a wealth of knowledge which directly or indirectly enriches the religious model in the Islamic world. The science of ushul fiqh is a discipline that emerged later than other religious sciences, whose function is to regulate social interaction and solve problems not explicitly mentioned in revelation by providing the final construct for Islamic epistemology. Revelation, in this case, is the Qur'an and Sunnah, which are positioned at the top level because both are sourced from the All-Knowing. The reason is set at a lower

hierarchical level than the two, implying that reason is subject to the truth of both. In this construct, revelation is the standard of truth.

The science of ushul fiqh is the most important methodology of Islamic thought discovered by the world of Islamic thought and is not owned by other people. Without having to refer to Islamic reformers, even the old ushul fiqh has an extraordinary sophistication of methods. This means that ushul fiqh, written for hundreds or even thousands of years, can still be used. The science of ushul fiqh displays the rational foundations for Islamic thought. Although the science of ushul fiqh was officially compiled by Imam al-Shafi`i, this science as a separate discipline has been developed by *tâbi`în* and *tibi` al-tâbi`în*.[9] Therefore, this knowledge has an irreplaceable position in the Muslim world.[10] The science of ushul fiqh is also the most important methodological component used by the classical Islamic sciences. The science of ushul fiqh is also known as traditional Islamic methodology. Therefore, this knowledge is a unique product of Muslims not owned by the west or any civilization in this world.[11]

The birth of the science of ushul fiqh was not sudden because its roots can be traced to the prophets and Companions. Looking at the history of its emergence, ushul fiqh is closely related to the development of ijtihad activities among early Muslims related to the events of the sending of Mu'adz bin Jabal to Yemen. Ijtihad activities developed rapidly, accompanying the rapid growth of the times and the spread of Islam to areas outside the Hijaz (Mecca and Medina). Just as fiqh emerged with the birth of Islam, so did ushul fiqh because the Prophet Muhammad performed ijtihad in response to social religion when he was still alive, and so did his companions. Friends sometimes also use *qiyas, istihsan*, and other methods, which are known as just. In addition, the Companions of the Prophet Muhammad and his followers also used the basic principles of ijtihad in exploring and discovering Islamic laws up to Imam Shafi'i.[12]

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[9] Abdul Hamîd Abû Sulaimân, *Crisis in the Muslim Mind* (Herndon-Virginia: International Institute of Islamic Thought (IIIT), 2004); Arip Purkon, "Historical Dynamics of Islamic Law Methodologhy (Ushul Fiqh)," *Mizan: Journal of Islamic Law* 2, no. 2 (2018): 117–26, https://doi.org/10.32507/mizan.v2i2.295.

[10] AbdulHamid AbuSulayman, *Towards an Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought* (Herndon-Virginia: The International Institute of Islamic Thought, 1993), 68.

[11] Ali Garisyah, *Metode Pemikiran Islam (Manhaj at-Tafkir Al-Islami)* (Jakarta: Gema Insani Press, 1989), 68; Tauseef Ahmad Parray, "The Legal Methodology of 'Fiqh Al-Aqalliyyat' and Its Critics: An Analytical Study," *Journal of Muslim Minority Affairs* 32, no. 1 (2012): 88–107, https://doi.org/10.1080/13602004.2012.665624.

[12] Ibn Khaldun, *The Muqaddimah: An Introduction to History, Terj. Franz Rosenthal* (New York: Pantheon Books, 1958); Firdaus Firdaus et al., "Various Methods of Establishing Contemporary Islamic Law," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 10, no. 1 (2020): 39–58, https://doi.org/10.47200/ulumuddin.v10i1.340.

The role of ushul fiqh in establishing Islamic laws cannot be separated from the character of Imam Shafi'i, who laid the foundations of this knowledge.[13] This knowledge is specifically designed as a methodological basis for understanding Islamic law. The similarity of ushul fiqh with logic can be read from the statement of Fakhruddin al-Razi, who equated Shafi'i with Aristotle.[14] Shafi'i's great merit lies in successfully transforming ushul fiqh into a scientific discipline. Some liken it to Descartes; if Descartes laid the epistemological basis of Western thought, Shafi'i laid the basic foundation of Islamic thought.

In general, the science of ushul fiqh was born and grew and developed almost simultaneously with the process of the emergence of rationalism in the development of science. The science of ushul fiqh has written its history through a long and impressive journey in determining the direction and dynamics of social change. The peak of the development of ushul fiqh occurred around the 5th century Hijriyah. At that time, famous scholars and works of ushul fiqh were born, which became references for later ushul fiqh books. Among the important books of ushul fiqh that were born in the 5th century include 1) *al-Ahd* by Qaḍhi Abd al-Jabbar al-Mu'tazili (d. 415 AH/1024 AD); 2) *al-Mu'tamad* by Abu Husayn al-Bashri al-Mu'tazili (d. 436 AH/1044 AD); 3) *al-'Uddah* by Abu Ya'la al-Hanbali (d. 458 AH/1065 AD); 4) *al-Ihkam fi 'Ushul al-Ahkam* by Ibn Hazm al-Dzahiri (d. 456 AH/1062 AD); 5) *al-Lumi'* by Abu Ishaq al-Syirazi al-Syafi'i (d. 467 AH/1083 AD); 6) al-Burhan by Al-Juwayni al-Shafi'i (d. 478 AH/1085 AD); 7) *Ushul Al-Sarakhsi* by Imam al-Sarakahsi al-Hanafi (d. 490 AH/1096 AD) and various other books on ushul fiqh.

Ushul fiqh is one of the Islamic disciplines that has contributed to laying the epistemological foundation of Islamic thought. Ushul fiqh contains an analysis of legal arguments and reasoning and a discussion of formal logic, dialectical theology, linguistic theory and legal epistemology. Even Muhammad Arkoun expressly argues that ushul fiqh has touched contemporary epistemology.[15] The importance of the epistemology of ushul fiqh was increasingly felt at that time along with the increasingly rapid development of the era, the spread of Islam, which was increasingly expanding to various regions, as well as the penetration of non-Arabic cultures, which more or less influenced the authenticity of the interpretation of the texts of revelation. In conditions like these, Muslims need a theory of law so that mujtahids

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[13] Suud Sarim Karimullah, "Shāfi'ī Literature in Indonesia: A Historical Account," *Islamica: Jurnal Studi Keislaman* 17, no. 1 (2022): 1–19, https://doi.org/10.15642/islamica.2022.17.1.1-19.

[14] Fakhr al-Din al-Razi, *Manaqib Al-Imam Al-Shafi'I* (Beirut: Dar al-Jil, 1993).

[15] Muhammad Arkoun, *Nalar Islami Dan Nalar Modern: Berbagai Tantangan Dan Jalan Baru, Alih Bahasa Rahayu S. Hidayat* (Jakarta: INIS, 1994), 52.

can carry out *istinbath al-ahkam* activities proportionally and can be accounted for scientifically and academically.

As a methodology in Islamic law, ushul fiqh, apart from having a revelation basis, is also based on empirical logical arguments to emerge various operational and legal provisions. The science of ushul fiqh was formulated not to freeze the products of fiqh thought, as many have accused. Ushul fiqh was prepared to provide legality guarantees for efforts to develop Islamic legal opinion, as desired by the reformers of Islamic thought. So it is not appropriate for reformers of Islamic thought to accuse ushul fiqh of being the cause of the stagnation of Islamic law.

Ushul fiqh always includes discussions about the Qur'an and Sunnah as the two main sources of Islamic law, which are called the main references in Islamic law (*al-Marja'iyah al-Ulya*) and other arguments that are supplementary to the Qur'an and Sunnah called the revealing proposition (*dalil Muzhir*). In other words, in forming it into an epistemology, ushul fiqh combines elements of normative texts in the form of verbal revelation on the one hand and formal logic on the other. With this combination of revelation and reason, not a few circles give special appreciation to the science of ushul fiqh. They consider that the science of ushul fiqh is a factual Islamic philosophy that functions to oversee human life as caliphs who are always active on earth. The aim is so that humans do not deviate, which causes them to be dragged into various imbalances, loss of nature, and confusion of reason when dealing with several opinions and *ijtihad* that require binding legal rules. On this basis, the science of ushul fiqh is a very important legal epistemology produced by Islamic civilization.

The scholarship of ushul fiqh began to grow along with the growth of ijtihad activities. Ushul fiqh lays the foundation of plural ijtihad of law so that when there is ijtihad of fiqh law and legal istinbath, there are also unwritten ushul rules. This knowledge has also provided a clear style for Islamic civilization in various aspects of life. An important factor in carrying out ijtihad is by carrying out programmed, regular and systematic practical steps, as well as integrating all potentials that arrange the information to be poured into a target so that it becomes effective and functional for legal reform. Many great minds have tried to explore the rules and principles of fiqh from various revealed texts. The Islamic Jurists led by Imam Shafi'i has been attempting to strengthen the science of ushul fiqh both in particular and universally so that Muslims feel confident that there is not a single gap that is not touched by this knowledge.

As the process progressed, several Muslim scholars, such as Hamid Thahir[16] and Seyyed Hossein Nasr,[17] revealed that ushul fiqh was methodologically similar to the science of kalam which discussed the basics of kalam, which is the area of study of kalam. Besides that, if prophetic philosophy is considered a characteristic of Islamic philosophy, then the science of ushul fiqh is a concrete form of prophetic philosophy in a correct and scientifically justifiable manner. In addition, if the Qur'an and Sunnah as inspiration for philosophical thought are characteristic of Islamic philosophy, then the science of ushul fiqh is a concrete manifestation of this Islamic philosophy.[18] This science places the Qur'an and Sunnah as the main sources of legal arguments. Even rational arguments cannot be separated from the umbrella or shade of the Qur'an and Sunnah. In other words, if an idea that the Qur'an and Sunnah do not sanction, the argument will be considered a product of outside Islam.

Ushul fiqh becomes an arena for studying the boundaries, dynamics and meaning of the relationship between God and humans. Seeing this function, the formulation of ushul fiqh should be dynamic and open to improvement efforts. Bernard Weiss sees that the elements of theology in ushul fiqh include two things, namely substantive theological matters and epistemological or methodological matters. The first problem relates to recognising the Most Holy *Dzât* as the only source of law.[19]

The second problem relates to the theory of knowledge, which strictly distinguishes between necessary knowledge, which is obtained solely as a gift from God without going through a process of reasoning or proof, and deduced knowledge, namely knowledge obtained from the process of reasoning and experimentation. In this reasoning process, a proposition is needed as a premise. Premises can be in the form of naqlî propositions or aqli propositions. The method of reasoning, which eventually gives rise to an opinion, plays a very important role in the science of ushul fiqh. However, the reasoning process in question is based on naqlî propositions, not purely aqli propositions. In addition, social change also becomes an instrument for the dynamics of ushul fiqh, thus making ushul fiqh not rigid, elastic and dynamic in accommodating various legal benefits in the social dynamics of people's lives.

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[16] Hamid Thahir, *Madkhal Li Dirasat Al-Falsafah Al-Islamiyyah* (Kairo: Hajar, 1985).

[17] Seyyed Hossein Nasr, "The Meaning and Role of 'Philosophy' in Islam," *Studia Islamica*, no. 37 (1973): 57–80, https://doi.org/10.2307/1595467.

[18] Seyyed Hossein Nasr, "The Qur'ān and Hadīth as Source and Inspiration of Islamic Philosophy," in *History of Islamic Philosophy* (Routledge, 2013), 27–39.

[19] Bernard Weiss, *The Search for God`s Law: Islamic Jurisprudence in The Writings of Saif Ad-Din Al-Amidi* (Salt Lake City: University of Utah Press, 1992), 34–36.

2. Concept of Redesigning Ushul Fiqh Perspective of Agus Moh Najib

Agus Moh Najib explained that an exaggerated view of the sacredness of Islamic law gave rise to exclusive, discriminatory and intolerant attitudes and even violence against different groups. In reality, this complete and intolerant attitude is owned by individuals, community groups, and even the state. To place Islamic law proportionally between its sacred and profane dimensions, it is not sufficient to only study the area of fiqh. But it also has to enter the realm of ushul fiqh as a scientific field which is the driving force for the pattern and basis for the formation of fiqh.

Two areas of fiqh production, namely nushush and maqashid, cannot exist without involving ushul fiqh and when it involves ushul fiqh, it means intensively involving reason. Exploration of the mind occurs at two levels at once: the level of understanding *mahkum fiih* (*ijtihad tahqiq al-manath*) and the level of finding, digging and getting results from *adillah al-ahkam*. Thus, the work of producing fiqh is challenging and full of dynamics. Therefore it is necessary to redesign, reformulate and renovate the ushul fiqh building without destroying the scientific study by reviewing existing concepts and theories so that the role of ushul fiqh can be more optimal in the development of contemporary Islamic law scholarship, including for the legislative process and legal practice in today's modern countries.

The redesigning ushul fiqh initiated by Agus Moh Najib is directed to bring closer and interconnect between Islamic law and legal scholarship. Besides, it also places the position of Islamic law proportionally between its sacred and profane dimensions. Islamic law has an elastic nature with several main drivers or foundations that continue to apply following changing times.[20] As is often said, the purpose of implementing the law in the broadest sense is for the benefit of humanity, contextual and must be by the principles of justice and togetherness.[21]

To redesign the ushul fiqh, Agus Moh Najib offers four things that must be done:[22] First, define and position Islamic law among the terms that exist in the classical fiqh scientific

[20] Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib* 21, no. 2 (December 27, 2022): 213–44, https://doi.org/10.21093/mj.v21i2.4800.

[21] Dahlan Tamrin, *Filsafat Hukum Islam* (Malang: UIN Malang Press, 2007), 25; Sugitanata, Karimullah, and Al Hamid, "Hukum Positif Dan Hukum Islam: Analisis Tata Cara Menemukan Hukum Dalam Kacamata Hukum Positif Dan Hukum Islam."

[22] Agus Moh Najib, "Urgensi Redesain Ushul Fiqh Bagi Pengembangan Ilmu Hukum Islam Kontemporer," in *Pidato Pengukuhan Guru Besar Dalam Bidang Ushul Fiqh Disampaikan Di Hadapan Sidang Senat Terbuka Universitas Islam Negeri (UIN) Sunan Kalijaga Yogyakarta Kamis, 28 Oktober 2021* (Yogyakarta: UIN Sunan Kalijaga, 2021); Tim Humas UIN Sunan Kalijaga, "Prof. Dr. H. Agus Moh Najib, M. Ag., Dikukuhkan Sebagai Guru Besar Bidang Ilmu Ushul Fiqh," 2001, https://uin-suka.ac.id/id/berita/detail/812/prof-dr-h-agus-moh-

tradition, namely, sharia, sharia law and the term fiqh itself. In contrast to these three terms, Islamic law is a legal dimension of fiqh, which results from a dialectic between ahkam verses and hadiths and shari'ah values on the one hand and *'urf* and empirical reality on the other. With an assessment like this, Islamic law approaches the meaning of law in general, so that dialogue, interconnection, and mutual contribution can be carried out.

The second stage is positioning the mujtahid as a lawmaker (*al-hakim*). In discussing the science of ushul fiqh, only Allah is referred to as the legislator. Even the Prophet Muhammad was not placed as a lawmaker (*al-hakim*). This causes the theological dimension of Islamic law more prominent than the professional dimension. Islamic law carries a large theological burden, so it is slow to develop following the pace of changing times. Even though the Prophet Muhammad and the mujtahids in the science of ushul fiqh had a very large role in forming Islamic law, on that basis, in discussing lawmakers (*al-hakim*), the lawmakers should need to be studied. Allah is the maker of the essential law (*al-hakim al-haqiqi*). At the same time, the Prophet Muhammad is the maker of explanatory law (*al-hakim al-mubayyin*), which describes and details the shari'ah that Allah has established. The mujtahids are relative lawmakers (*al-hakim al-nisbi*) who seek to ground sharia values in the changing context of space, time and civilization. Positioning the mujtahid as a lawmaker has implications for the view of the position of Islamic law, which is proportional between the sacred and profane dimensions.

In the third stage, they distinguish between sources and methods in discussing mashadir al-ahkam and adillah al-ahkam. The legal arguments amount to at least eleven pieces: Qur'an, Sunnah, *Ijma', Qiyas, Istislah, Istishab, Istihsan, saḍd az-Zari'ah, 'Urf, Qaul Shahabi,* and *Syar'u Man Qablana.* So far discussed as an inseparable unit. This has an indirect implication that the sacredness of the Qur'an and Sunnah seems to be no different from *Qiyas, saḍd az-Zari'ah* and others. Yet when viewed epistemologically, the eleven pieces of argument can be distinguished into sources, methods and products of legal thought. The origins of law are the Qur'an and Sunnah.[23] What must always be dialectical by the mujtahids with the advent of empirical reality (*'Urf*)[24] as the third source. While *Qiyas, Istislah, Istishab, Istihsan, saḍd az-Zari'ah* are methods of legal interpretation based on the rational meaning of texts (*'illah* and *maslahah*).

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[23] Agus Moh Najib, "As-Sunnah Sebagai Sumber Hukum Islam Dalam Pandangan Muhammad Syahrûr," *Jurnal Penelitian Agama* 11, no. 2 (2002).

[24] Agus Moh Najib, "Reestablishing Indonesian Madhhab:'Urf and the Contribution of Intellectualism," *Al-Jami'ah: Journal of Islamic Studies* 58, no. 1 (2020): 171–208, https://doi.org/10.14421/ajis.2020.581.171-208.

While *Ijma'* is an agreed-upon legal product, *Qaul Shahabi* is a legal product of the companions of the Prophet Muhammad. With this distinction, the results of the scholars' *ijtihad*, which are based on certain methods, taking into account the context of their respective *'urf*, do not have to be equated with the Qur'an and Sunnah themselves.

The fourth stage is formulating fiqh as a legal norm. Fiqh has a broader meaning than just law. Because fiqh has strong moral standards as well as legal norms. In preparing lawful Islamic means, the results of an internal dialectic between texts and maqashid are then dialectically based on the existing empirical reality. Thus the means of Islamic law can be said to be a set of rules resulting from the dialectic between sharia values and the traditional standards of society, formulated consciously and deliberately to create order in society. The affirmation of fiqh apart from mahdhah worship as a legal norm becomes important when Islamic law contributes to the formation of rules and regulations in the context of the state.

Philosophically, the law is built to manage the lives of individuals and society to create humane social institutions. In Islamic culture, the law is the main factor that gives it a form of social justice. The Muslim community should ideally comply with the book of the law so that no social changes disrupt or create an evil character in society. The presence of law aims to lead humanity to a maslahah and just life. In the tradition of Islamic legal thought, this goal is known as maqashid sharia, the ultimate goal of Islamic law.[25] With this aim, in legal discussions, the human element becomes very strategic as a target to pay attention to aspects of their happiness both in this world and in the hereafter. Because humans live in a very dynamic community space and environment, the process of law formation has escalated quite rapidly, even tending to be on a very progressive scale.

The development of legal thought in Islam has never stopped and has made a valuable contribution, especially in laying the methodological basis for ijtihad and istinbath al-ahkam. The role of ijtihad is very important because, without ijtihad, there will be many problems whose legal status is unknown, while the Qur'an and the hadiths of the Prophet Muhammad have come to a halt.[26] Meanwhile, human life continues to develop rapidly, and various life problems emerge. New cases that had never happened in ancient times are now coming one after another, and life's challenges are increasing. All of this requires a solution and must be positioned on the legal status in Islam. Meanwhile, several friends are famous for doing ijtihad

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[25] Ahmad al-Hajj al-Kurdi, *Al-Madkhal Al-Fiqhi: Al-Qawa'id Al-Kulliyah* (Damaskus: Dar al-Ma'arif, 1980), 186–88.
[26] Agus Mohammad Najib, "Persyaratan Melakukan Ijtihad Antar Ulama Klasik Dan Modern," *Himmah* 7, no. 20 (2006): 1–16.

in finding laws for social dynamics that developed after the Prophet Muhammad died, such as Abu Bakr, Umar bin Khaṭṭab, Zaid bin Thabit, Ubay bin Ka'ab, Muaḍz bin Jabal, Ibn Abbas, and Ibn Mas'ud.[27]

The provisions of the methodology in the Science of ushul fiqh, when carrying out the process of creating law in Islam, are very useful because it fosters noble morality, both individual morality and collective morality. So what is needed now is to revive the role of ushul fiqh as a basic foundation in solving new legal issues, according to the very rich ushul framework as determined by the previous scholars.

3. The Necessity of Redesigning Ushul Fiqh in Challenging Contemporary Issues

Redesigning ushul fiqh as the foundation for Islamic jurisprudence and law is an urgent step. Due to these factors, the change in condition, situation, time, and place have created serious problems related to fiqh and Islamic law. In contrast, the method of *ijtihad* developed by reformers and legal thinkers has not been satisfactory. Based on this, the step that must be taken is to explore the science of ushul fiqh by returning to the role of ushul fiqh as a methodological basis in istinbaṭh al-ahkam, which in the modern context is to produce legal products that are by the realities and challenges of modernity.

Restoring the vital role of ushul fiqh, as exemplified during the time of mujtahid imams and their students, is urgent and must be fought for. In this regard, Yusuf al-Qardhawi argued that by respecting and appreciating the results and works of previous scholars in various Islamic laws, ijtihad with new methods is urgently needed to solve multiple problems that did not exist before.[28] Against this, Joseph Schacht argued that contemporary Islamic law requires a new theoretical basis that is firmer and more comprehensive in various legal issues to find direction easily.[29] The purpose of legal discovery must be understood by legal thinkers to develop legal thinking in Islam in general and answer contemporary legal issues whose cases are not explicitly regulated by the Qur'an and the Sunnah of the Prophet Muhammad for which there is no lawful provision.

This redesign became the basis for developing Islamic law concepts, theories and methodologies. Islamic law, which is distinguished from fiqh, for example, will be positioned

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[27] Huzaemah Tahido Yanggo, *Pengantar Perbandingan Mazhab* (Ciputat: Logos Wacana Ilmu, 1999), 28.

[28] Yusuf al-Qardhawi, *Min Ajli Syahwatin Raasyidah Tajdiduddin, Terjemahan Nabhani Idris, Fiqh Tajdid Dan Shahwah Islamiyyah* (Jakarta: Islamuna Press, 1997).

[29] Joseph Schacht, "Problems of Modern Islamic Legislation," *Studia Islamica*, no. 12 (1960): 99–129, https://doi.org/10.2307/1595112.

proportionally between its sacred and profane dimensions and will also be brought closer to legal scholarship in general. Besides that, Islamic law, together with other traditional laws, will be able to contribute more to the formation of legal and statutory rules in the context of the state, especially in Indonesia, which is continuing to develop its national law. Apart from fiqh, Indonesia has at least three other Islamic legal products. Namely fatwas, court decisions (jurisprudence), and legislation. When Islamic law is understood only by fiqh, the impression that is obtained is that Islamic law has stagnated and is unable to respond to the challenges of social change in society.

Indonesian national law with an archipelago perspective will need the contribution of Islamic law because it, in its formulation, is not only based on the moral ideals of sharia but also takes into account the culture and empirical reality that exists in Indonesian society.[30] Islamic law must operate according to the principles of morality stated by Islam. Islamic law stipulates that the rules of decency must not conflict with the conditions outlined in the Qur'an and Sunnah because both discuss fundamental matters to distinguish what is right and what is wrong, good and bad, and what is proper and what is inappropriate.[31]

During the time of the Prophet Muhammad, the development of Islamic law was known to be the most creative because it was flexible and very adaptive to effects and changes in society at that time. This indicates that Islamic law was not rigid and applied as rigidly in the early days of Islam and later periods. Situations like this, of course, rely on a wide scope of differences of opinion.[32] Islamic law will always develop and change according to the development of space and time that surrounds it.[33] Islamic law was not born from a vacuum and in a vacuum but was born amid the dynamics of the struggle as a solutive answer to the actual problems that are happening.

Changes in Islamic law are natural and natural because the universality of Islamic law always demands relevance, adaptation and implementation in all situations and social conditions of people's lives. According to H.A.R. Gibb explained that Islamic law has the most

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[30] Haris Maiza Putra and Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2022): 68–90, https://doi.org/10.30984/jis.v20i1.1861; Al Hamid, Sugitanata, and Karimullah, "Sinkronisasi Pendekatan Sosiologis Dengan Penemuan Hukum Islam Sui Generis Kum Empiris."

[31] N.J. Coulson, *Conflict and Tensions in Islamic Jurisprudence*, Chicago (JSTOR, 1969), 12–15.

[32] Muhammad Amin Suma, *Ijtihad Ibn Taimiyyah* (Jakarta: Pustaka Firdaus, 2022), 76.

[33] Husnul Fatarib et al., "Sultan's Law and Islamic Sharia in The Ottoman Empire Court: An Analysis of The Existence of Secular Law," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 117–34, https://doi.org/10.29240/jhi.v8i1.4908.

far-reaching and effective tools in shaping the social order and life of Islamic society.[34] The moral authority of Islamic law forms an orderly and secure Islamic social structure through all the fluctuations of political fortunes. According to Rifyal Ka'bah, the spirit of change that belongs to Islamic law is the spirit of God's eternal decree, which animates all the new rules he stipulates. As human legislation, Islamic law is perfected and changed according to the nature of space and time changes.[35] Moreover, Islamic Law has ethical norms of good and bad, vices and virtues that society should ideally conform to. Therefore, Islamic law affects all social, cultural, political, economic and all other aspects of life.

The need to redesign ushul fiqh is based on the fact that the fiqh products put forward by various existing jurists are mostly representations of the social conditions of the Arab nation. At the same time, what is being faced here is the social reality of the world's Muslim community. Sociologically, social change is an inherent feature of society because society experiences social change due to the development of the times. Therefore, fiqh needs to respond to this change, which in turn, fiqh is expected to have the ability to function in social control and social engineering.

Fiqh products that are for the social life of the Arab nation are not necessarily suitable for Muslim communities in other countries, so a redesign of ushul fiqh is a possible thing to do. In addition, As is known that each era has its problems. There have been extraordinary changes due to the advancement of industry, science and technology, communication and transportation, which has caused this big world to become narrow, the boundaries of which are no longer clear. To address this problem, in the past, scholars had dared to state the existence of the principle of *"taghayyur al-ahkam bi taghayyur al-azminah wa al-amkinah wa al-ahwil wa al-niyat wa al-awaid"* of course, this principle must be adhered to and implemented in the context of efforts to redesign, reform and renovate ushul fiqh buildings in the development and renewal of the Islam law. In addition, finding law through ushul fiqh correlates with social change; the rules produced through ushul fiqh change according to developments and social changes because Islamic law always considers shifts to anticipate developments in the times in the social life of society.

The existence of ushul fiqh is quite important in formulating Islamic law; not only understanding the method of instituting rule but Islamic law will also be protected from misuse

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[34] Hamilton Alexander Rosskeen Gibb, *Modern Trends in Islam* (Chicago: University of Chicago Press, 2022).

[35] Rifyal Ka'bah, *Hukum Islam Di Indonesia Perspektif Muhammadiyah Dan NU* (Jakarta: Universitas Yasri, 1999), 84.

of argument in response to various legal cases. In this regard, JND Anderson has criticized by saying that Islamic jurists in dealing with contemporary problems tend to hold partial Islamic law studies; the method used is still based on an ad hoc and disaggregated approach using the principles of *takhayyur* and *talfiq*, so that unable to produce comprehensive Islamic law.[36] Due to the complexity of the problems that must be faced by Muslims today, *ijtihad* should not be carried out partially. Still, it should be carried out comprehensively by involving experts in related sciences. For this to be carried out properly, the door of *ijtihad* needs to be reopened and then it is necessary to carry out ijtihad with a new method by eliminating feelings of attachment to a particular school of thought and trying earnestly to unite the various schools of thought's opinions so that they can be used in responding to various legal issues that are so complex in the life of Muslims.

E. Conclusion

The redesigning ushul fiqh initiated by Agus Moh Najib is directed to bring closer and interconnect between Islamic law and legal scholarship. Besides, it also places the position of Islamic law proportionally between its sacred and profane dimensions. To redesign the ushul fiqh, Agus Moh Najib offers four things that must be done: First, define and position Islamic law among the terms that exist in the classical fiqh scientific tradition, namely, shari'a, shari'a law and the term fiqh itself. Second, placing the mujtahid as a lawmaker (*al-hakim*) and third, distinguishing between sources and methods in discussing *mashadir al-ahkam* and *adillah al-ahkam* and fourth, formulating fiqh as a legal norm. Redesigning ushul fiqh as the foundation for Islamic jurisprudence and law is an urgent step. Due to these factors, the change in condition, situation, time, and place have created serious problems related to fiqh and Islamic law.

In contrast, the method of ijtihad developed by reformers and legal thinkers has not been satisfactory. Based on this, the step that must be taken is to explore the science of ushul fiqh by returning to the role of ushul fiqh as a methodological basis in *istinbath al-ahkam,* which in the modern context is to produce legal products that are by the realities and challenges of modernity. This redesign became the basis for developing Islamic law concepts, theories and methodologies. Islamic law, which is distinguished from fiqh, for example, will be positioned

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[36] J Norman D Anderson, "Modern Trends in Islam: Legal Reform and Modernisation in the Middle East," *International & Comparative Law Quarterly* 20, no. 1 (1971): 1–21, https://doi.org/10.1093/iclqaj/20.1.1.

proportionally between its sacred and profane dimensions and will also be brought closer to legal scholarship in general. Besides that, Islamic law, together with other traditional laws, will be able to contribute more to the formation of legal and statutory rules in the context of the state, especially in Indonesia, which is continuing to develop its national law.

E. Conflict of Interest Statement

The authors declare that no conflicts of interest could influence the integrity or outcomes of the publication of this article. The writing of this article is based on independent research and analysis, and no external or commercial entities have had any influence or involvement in this article's writing or publication process.

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