

AN APPRAISAL OF THE STATUS OF QIYAS IN ISLAMIC JURISPRUDENCE

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ABSTRACT

In fact, qiyas is one of the methods of ijtiḥad (legal reasoning) and is not a source of law, nor is it an independent proof. This is not to point out inconsistencies. In classical Islamic legal theory, qiyas is indeed considered the fourth principle or source of law like other sources of law. However, if you look at the reality, it is actually more appropriate to position it as one of the ways of ijtiḥad in law making. Qiyas is a systematic process of ijtiḥad to uncover legal provisions. It relies entirely on other authorities, both the Qur'an and sunnah and even ijma'. The purpose of this research is to explain the position of Qiyas in Islamic law. The findings of this research are that Qiyas is one of the sources of Islamic law that is used as a basis for determining the law.

Keywords: *Qiyas, Istinbath Method*

INTRODUCTION

Based on the research, it is certain that the Sharia arguments that are the source of taking legal laws relating to human actions return to four sources, namely the Qur'an sunnah ijma' and qiyas. All four have been agreed upon by the majority of Muslim scholars to be used as evidence (Muhammad Abu Zahroh, t.t). They also agree that the arguments have an order according to their structure. So when an event occurs, the first thing to look at in the Koran. If the law is found in the Koran, then the law is implemented. But if the law is not found in it, then look at the Sunnah. If the law is not found in it, then look at the Sunnah, and if it is not found in Ijma', and if it is not found then someone must do ijtiḥad to produce the law, by making an analogy with the law that has been texted (Umar Maulud 'Abd al-Hamid, t.t).

One of the shar'i arguments that is a source of law making is qiyas. Qiyas is the use of ra'yu to take the law of shara' in matters where the texts of the Qur'an and Sunnah do not clearly establish the law (Amir Syarifudin, t.t). The rationale for qiyas is that there is a close connection between the law and the cause. In almost every ruling outside the field of worship, the rational reason for the ruling by Allah can be found. The rational reason for the law is called 'illat by ulama (Amir Syarifudin, t.t).

If we look at the actual level, we agree that the most basic sources of law in the early stages of Islam are the Quran and Sunnah. However, along with the social dynamics of society, new issues arise that are not clearly addressed by the nash. Thus, Islamic law continues to evolve in accordance with diverse environmental conditions. Finally, the process of rethinking and reinterpreting the law independently known as ijtiḥad cannot be denied. This is a natural condition due to social dynamics. Ra'yu (personal opinion) is the principal tool and Ijtiḥad is a generic term that precedes the growth of law in the more systematic principles of qiyas.

It appears that qiyas is actually a method of ijtiḥad (legal reasoning) and not a source of law, nor is it an independent proof (authority). I am not suggesting that this is inconsistent with the author's position on qiyas as a source of law. In classical Islamic legal theory qiyas is indeed considered a basic principle or the fourth source of law like other sources. However, if we look at the actual reality, in my opinion, it is more appropriate to position it as a way of ijtiḥad to make law. It is a systematic process of Ijtiḥad to uncover legal provisions. It is fully dependent on other authorities, both the Qur'an and sunnah and even ijma'. These sources are thus interrelated, and basically refer to the Qur'an (Ahmad Hasan, 1994).

The issue of qiyas is very broad. It is not possible to cover all of them in this simple article, but I think it is possible to use this article as an initial reference in discussing this issue. Hopefully we will all be able to build our frameworks systematically and rationally.

Qiyas in the Course of History

Qiyas is a systematic form of reasoning in law. Before it became complex in the post-Imam Ash-Shafi'i period, qiyas was only used to show similarities between two similar cases. It originated from the use of personal opinion (ra'y) in cases that were not revealed by a clear nashsh. The use of ra'yu is not something new in Islam. The Quran alludes to its use by the Prophet which shows the importance of qiyas in classical history. The Quran places great emphasis on the use of the rational faculty. Its repeated affirmation of reflective thinking and its sporadic mention of ratio (illat, reason) and the purpose of commandments, necessitates the use of ra'yu and ultimately qiyas in Islamic law (Ahmad Hasan, 2001).

The Prophet himself acted as the legal authority in Medina, and from his descriptions indicated a number of people as judges in different parts of Arabia. The resolution of disputes naturally required the use of reason and ra'y. The Prophet Muhammad deliberated with his companions when he was in doubtful circumstances. The Qur'anic enforcement of mutual deliberation in social matters, and its instructions to the Prophet to deliberate with his companions, indicate the important role of individual reasoning and judgment in society. The hadith of Mu'adz Bin Jabal, although much disputed, is more or less indicative of this general phenomenon.

Apparently, ra'y is a generic term that describes the reasoning often used by early legal schools before Imam Ash-Shafi'i (d. 204 AH) (Joseph Schacht, t.t). During the developmental phase, ra'yu evolved into several names, namely qiyas (analogy), istihsan, istishlah, (public interest) and istishab (making decisions based on accompanying conditions) and so on. In the latter period, emphasis was given to reasoning based on the text (nashsh). This movement, though earlier, was rigidly launched by Imam Ash-Shafi'i culminating in the emergence of the literalist schools of Daud Az Zahiri and Ibn Hazm. Ra'yu was rejected both because of the sharp criticism of the traditionalists (muhaddisin) and because of the stereotypical image of the classical fuqoha. The principle of qiyas eventually replaced ra'yu and became recognized as a form of ijtihaad.

Early qiyas was actually very simple and used in its most basic form. Qiyas literally means to measure compare and weigh. It probably comes from the word qaws (mound) used for measuring in Arabia. The Qur'an uses several texts using the words 'matsal', 'mitsal', 'ka' (like) to indicate similarities between things. These allusions cannot be called qiyas in the strict sense of the term. But it seems plausible that these Qur'anic expressions contributed greatly to the birth of the idea of qiyas. Reasoning based on the similarity of similar cases is also mentioned in the hadith literature. This indicates the frequent use of qiyas in the early phase of Islam. we find its rather technical use in the famous letter of 'Umar addressed to Abu Musa Al Ash'ari (Jaih mubaroah, 2000).

From the various examples of qiyas, it is clear that qiyas had developed in the early schools of law. It involves the rule of equivalence, precedent, reason or existing legal rulings. A slight similarity was considered sufficient for qiyas by the early authorities. There were no difficult or strict rules for its implementation. Gradually, it was replaced by logical qiyas in the later period, and Imam Ash-Shafi'i prioritized it in the early period.

Imam Ash-Shafi'i was of the opinion that one should first follow the Qur'an then the Sunnah and finally the consensus of previous authorities. He termed this as ittiba' (following). If a person fails to express an opinion based on these sources, he may resort to qiyas.

Qiyas and the Problems

Qiyas is one of the four sources of Islamic law agreed upon by scholars. In this case, qiyas occupies the fourth position, after the Quran, hadith, and ijma. In language, the word qiyas comes from the root qaasa-yaqishu-qiyaasan which means measurement (A. W. Munawwir, 1997). Its meaning is (to measure) or (to measure something else) (Umar Maulud 'Abd Hamid, t.t), meaning to measure something by comparing it with its equivalent, such as (I measured the garment with cubits) (Abd al-Wahhab Khallaf, 1991). Qiyas, according to the term used by the scholars of Ushul Fiqh, is equating a case for which there is no legal text with a case for which there is a legal text because of the similarity of the two cases in their legal illatum (Abd Razaq 'Afif, 1987).

Amir Syarifudin lists many terminological definitions in the opinion of several experts. He categorizes it into two views and finally he explains that the essence of qiyas according to the two versions of the view, are (Amir Syarifudin, 2018):

1. There are two that have the same illat.
2. One of the two cases has an established ruling based on the text, while the other case has no known ruling.
3. Based on the same illat, a mujtahid may apply the ruling to a case whose ruling has already been established by the text.

Qiyas according to etymology is taswiyah, which means equality. It means making an analogy between one thing and another or equating something with another. In terminology, it is to explain the similarity between the original law (a text that has a clear law) and another branch of the problem that does not yet have a law, it is done because of the similarity between the origin and the branch in terms of meaning ('illah). It can be understood that qiyas is a generalization of the original law to a branch (new problem) whose law is not yet clear due to the similarity of the illat between the original text and the branch of the problem (H.S. Addimasqy, 2014).

M. Arsyad Thalib Lubis in his fatwas always uses qiyas in answering questions addressed to him, including the use of qiyas in matters of worship. The limitations of qiyas in worship in general are as follows:

1. All scholars agree that it is not permissible to create additional or new acts of worship by means of qiyas, such as the establishment of a sixth obligatory prayer in addition to the five obligatory prayers based on qiyas. Because as we all know, qiyas is a generalization of the illah in a text and is not a tool for creating new acts of worship. Because the basic principle in worship is tauqifiyyah (only sourced from ash-shari').
2. Each act of worship has its own basis or evidence, because each act of worship is independent, such as prayer has a basis, zakat has a basis, fasting has a basis and so on. Therefore, it is not permissible to create new acts of worship based on qiyas (H.S. Addimasqy, 2014).

Qiyas according to the term is a process of revealing the similarity of the law of a case that is not mentioned in a text with a law that is mentioned in the text because there is a similarity in the illat. For example, Qiyas applies wine (nabiz) to alcohol because of the similarity of the illat between the two, namely intoxication. The prohibition of alcohol with the arrival of legal explanation as found in Q.S. Al-Maidah verse 90:

Meaning: O you who believe, Verily (drinking) wine, gambling, (sacrificing to) idols, casting lots with arrows are among the deeds of the devil. So avoid those deeds so that you may have good fortune. (Q.S. Al-Maidah, 5:90).

A change in the ruling based on qiyas may occur if the following indications are present;

- a. There is a change in the original ruling, as mentioned in the rulings based on the Qur'an and Hadith. If the original ruling changes, the far' will also change because the ruling is linked to the original ruling.
- b. There is a flaw in the qiyas. These include,
 1. It is flawed because it contradicts a stronger proof,
 2. Error in pointing out the 'illah or shahbah,
 3. A change in the ruling of the ashl.

The Pillars

Every qiyas consists of four pillars, so it is not valid if the qiyas does not fulfil these pillars. The four pillars are:

- a) Al-Ashlu is something for which there is a legal text. It is also called maqis 'alaih (what is compared to it), mahmul 'alaih (what is covered) and musyabbah bih (what is likened to it).
- b) Al-Far'u, which is something for which there is no text. Iya is also called: al-maqis (which is quoted), al-mahmul (which is insured) and al-musyabbah (which is likened).

- c) Ashl law, which is the law of shara' which has a nashnya on al-ashl (principal), and it is intended to be a law on al-far'u (branch).
- d) Al-illat, namely: an attribute that is used as a basis for forming the main law and based on the existence of this attribute in the branch (far'u), it is equated with the main in terms of its law.

For example, the minimum room is the ashl (principal), because it is the one for which there is a Nash law, namely the word of Allah SWT. فاختتبه "meaning then avoid him".

These words of Allah indicate the prohibition of drinking wine because of an illat, which is intoxication. Furthermore, date wine (nabidz) is an offshoot because there is no legal text on it. It is similar to wine in that each of them is intoxicating. Then date wine is equated with wine in terms of its being prohibited.

Requirements

Discussing the conditions that apply to kias means discussing the conditions that apply to each of the pillars or elements of qiyas, namely:

Ashal /maqis alaih (a place to make an analogy to something). The conditions:

- a) There must be a guiding evidence that permits making an analogy to it.
- b) There must be scholarly consensus that there is an illat in the ashl on the ashl maqis 'alaih.

The majority of scholars rejected these two conditions because there is no evidence or guidance that they are necessary. Far'u/maqis (something that will be equated with the ashl), the conditions of maqis are as follows:

- a) The 'illat found in the furu' is similar to the 'illat found in the ashal.
- b) The ruling on the furu' does not contradict qath'i evidence.
- c) The furu' (as maqis) does not precede the ashal (as maqis alaih) in its existence.
- d) The furu' has not been ruled upon in a specific text.

Ashal Law

The conditions are:

- a) The original ruling is a shar'i ruling, because the purpose of shar'i qiyas is to find out the shar'i ruling on furu'.
- b) The original ruling is established by text, not by qiyas.
- c) The original ruling is the ruling that remains in force, not the ruling that has been imputed.
- d) The original ruling does not deviate from the provisions of qiyas.
- e) The evidence for the establishment of the original ruling does not directly extend to the furu'.

'Illat

The conditions are:

- a) The 'illat must invite wisdom that encourages the implementation of a law, and can be used as a legal link.
- b) The 'illat is something that is clear and can be witnessed.
- c) The 'illat must be in the form of a measurable characteristic, which is clear and limited, so that it is not mixed with anything else.
- d) There must be a relationship of suitability and appropriateness between the ruling and the trait that will be the 'illat.

The Validity of Qiyas as a Method of Istimbath Law

According to the majority school of scholars, qiyas is a shar'iyah proof of the rulings on human actions (amaliah). It ranks fourth after the Qur'an, sunnah and ijma'. They use qiyas in matters for which there is no ruling in the Qur'an, sunnah and consensus. Scholars use it in moderation and do not exceed the limits of reasonableness. Whereas the Nazhamiyyah, Zhahiriyyah and some Shiite groups are of the opinion that qiyas is not a shari'i proof of the law (Abd Wahhab Khallaf, 1991).

Imam Ash-Shafi'i, who formulated the systematization of qiyas, said that qiyas is the only true teaching of reasoning. He stated this in order to counter those who use ra'yu arbitrarily. However, he considered qiyas as a secondary source that is merely supporting or weak when compared to the three sources.

Imam Ash-Shafi'i rejected arbitrary ra'yu to pave the way for qiyas. He divided knowledge into two types: ittiba' (obedience) and istimbath (decision-making). In ittiba', he said, one must first follow the Qur'an then the sunnah and finally there is what has been unanimously agreed upon by earlier generations. If in a given case ittiba' is not possible then it is permissible to use qiyas on the basis of the sunnah and finally on the basis of the consensus of the early generations. He considers qiyas to be the final basis of law and distinguishes it from ra'yu and other related terms (Ahmad Husin, 2001).

We know that the early madhhabs used qiyas in a more liberal manner and were closer to ra'yu than to the text. With the restrictions that Imam Ash-Shafi'i placed on qiyas, he wanted to bring systematic reasoning to the law and eliminate the chaos that resulted from the free use of ra'yu. That is why he justified the validity of qiyas by basing it on the Qur'an and considered its use as an obligation upon the Muslims (Ahmad Husin, 2001).

If we look at it in its truest form, we agree that the most basic sources of law in the early stages of Islam were the Quran and Sunnah. But often with the social dynamics of society, new issues arise that are not clearly addressed by the nash. Thus, Islamic law continues to evolve in accordance with diverse environmental conditions. Finally, the process of rethinking and reinterpreting the law independently known as ijihad cannot be denied. This is a natural condition due to social dynamics. Over time and the development of thought. The classical theory that considers Ijma' and Qiyas as agreed sources of law has begun to shift in the sense that the word source only applies to the Qur'an and Sunnah. Because only from both of them are extracted legal norms while Ijma', Qiyas, Istihsan, Istishab, Maslahah mursalah are not included in the category of sources of law but all of them include legal arguments.

So, arguments other than the Quran and Sunnah can be interpreted as one of the ijihad methods for deriving the law. They constitute a systematic process of ijihad to reveal legal rulings. It is entirely dependent on the authority of either the Quran or the Sunnah. Thus these arguments are interrelated and basically refer to the Qur'an. This statement is in line with the opinion of Ahmad Hasan who states that Qiyas is not a source of law but one of the ijihad methods to infer the law (Ahmad Husin, 2001).

However, regardless of the shift, what is clear is that the Quran, sunnah, Ijma' and Ijihad are the sources and arguments of Islamic Law. Abdur Rahman I. Doi there mentioned: "The primary sources of the Shari'ah, Islamic Legal System, are the Qur'an and the Sunnah' The secondary sources are al-Ijma" al-Qiyas, and alijihad which are derived from the legal injunctions of the holy Qur'an and the sunnah of The Prophet" (Abdurrahman I. Doi, 1992).

It is clear that the Qur'an and Hadith are the main sources while the others are supporting sources that must not be separated from the main source. Whatever the reason, everything will still be returned to the main source. That is the characteristic or style in Islamic law which adheres to the theocentric understanding.

It is clear that in Islamic law the main sources are the Qur'an and Sunnah. While the others are only postulates (ways of doing ijihad to infer the law). Which is not independent but always related to the main source. In later developments, the scholars divided the sources into those that had been agreed upon and the arguments that were still in dispute. Each Fiqh scholar differs in using the disputed arguments.

The theoretical style of Islamic Law makes everything must be based on revelation. In that sense, the dimension of revelation in Islamic Law is always related. Although the legal analysis is carried out by ijihad (using reason), but still the source of retrieval is the main source in Islamic law itself, namely the Koran and Sunnah. Unlike the case with Western law which has an anthropocentric

character where the universal human being is the main source absolutely, such as humans have an awareness of a sense of justice, the feeling is called the basic norm (grand norm) from which a legal theory / school is made, the result of the theoretical formulation is what becomes positive law.

In Islamic law, the validity of the law is clearly seen from the benchmark of the closeness of the regulation to God's purpose contained in revelation. In the sense of which is closer to the main source. Unlike the case with Western law, approaching the source of law depends on what terminology we see it in. Different perspectives will make different sources of law. But what is clear is that the general difference between the two legal systems is that Islamic Law has a revelatory dimension (God), while Western Law has a dominant human dimension that makes human thought its main source.

CONCLUSION

In classical Islamic legal theory, qiyas is indeed considered a basic principle or the fourth source of law like other sources. However, if we look at the reality, it is actually more appropriate if we position it as one of the ways (processes) of systematic ijihad to reveal legal provisions. Qiyas is fully dependent on other authorities such as the Qur'an, Sunnah and even ijma'. Thus these sources and arguments are interrelated and basically refer to the Qur'an.

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