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AL-AMWAL

Legality of Qiyas in Legal Terms: The Implementation in Islamic Economics and Finance

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Abstract

This study seeks to analyze in more depth and specifics how al-Shafi'i's biography and the epistemology of his fiqh, ijihad and istinbath, how the development of qiyas and his thinking changed from qaul qodim to qaul jadid, and how his thought was implemented in the field of sharia economics and finance. The method used in this study is a descriptive qualitative approach using data collection methods in the form of librarianship or literature review. This type of research is research. The implementation of the Qiyas method in the field of sharia economics and finance is as in sharia law, which is very relevant to the concept of shirkah according to Indonesian law, the prohibition of selling and buying orders (salam) online with a mystery box, the legal validity of the legal agreement/transaction of buying and selling via digital messages or similar communication media, and the equalization of zakat distribution to asnaf zakat.

Keywords: *Imam Syafi'i, Islamic Economy, Islamic Sharia, Qaul Jadid, Qaul Qadim.*

Abstrak

Penelitian ini berupaya membedah lebih dalam dan spesifik tentang bagaimana biografi al-Syafi'i dan dasar epistemologi fiqihnya, ijihad dan istinbath-nya, bagaimana pengembangan *qiyas* dan perubahan pemikirannya dari *qaul qodim* menuju *qaul jadid*, dan bagaimana implementasi pemikiran beliau dalam bidang ekonomi dan keuangan syariah. Metode yang digunakan dalam penelitian ini adalah pendekatan kualitatif deskriptif dengan menggunakan metode pengumpulan data berupa kepustakaan atau *literature review*. Sedangkan jenis penelitian ini adalah penelitian. Implementasi metode Qiyas dalam bidang ekonomi dan keuangan syariah adalah seperti dalam akad syirkah yang sangat relevan dengan konsep syirkah sesuai UU di Indonesia, larangan jual beli pesanan (*salam*) secara online dengan *mystery box*, keabsahan hukum akad/transaksi wakalah jual beli melalui via pesan digital atau media komunikasi sejenisnya, dan penyamarataan pembagian zakat kepada asnaf zakat.

Kata kunci: *Ekonomi Islam, Imam Syafi'i, Qaul Jadid, Qaul Qadim, Syariah Islam.*

INTRODUCTION

Al-Syafi'i is a central figure in the development of Islamic sharia science, known as one of the four imams of the *ahlussunnah wal jama'ah* schools. He was born in the year 150 Hijriyah or 767 AD in the city of Gaza, Palestine. Then migrated to Mecca to deepen knowledge. His journey was phenomenal because he produced a lot of *ijtihad* which became the forerunner of the principles of fiqh and ushul fiqh. Starting from his preaching in Baghdad to writing his first *magna opus*, namely *Ar-Risalah* which is based on the *mazhab qodim*. And at the end of his life, he continued preaching and teaching in Egypt and recorded his second *magna opus*, namely *Al-Umm* which became the basis of his *qaul jadid*. His works have become the most important reference for 'alim 'ulama and Muslims in interpreting Islamic law and sharia (Majid et al, 2022).

The works of al-Syafi'i became very important in the history of the development of Islamic law, because he played an important role in compiling the principles of Islamic law which are still used today. His works also made a major contribution in advancing Islamic knowledge and became the main foundation and foothold in the development of the Syafi'i school of thought. Besides that, the author adds some understanding in interpreting al-Syafi'i's methodology in the method of *ijtihad* and law-making, as well as the dynamics of his journey and all aspects that influence the change from *qaul qodim* to *qaul Jadid*. So from all the conclusions above, the researcher wants to provide several examples of the application and implementation of his *ijtihad*s into contemporary *mu'amalah* or economic products (Ubaidillah, 2021).

In this study, the researcher also wants to dissect more deeply and specifically about how the biography of Imam al-Syafi'i and the epistemological basis of his fiqh, *ijtihad* and *istinbath*, how is the development of *qiyas* and his change of thought from *qaul qadim* to *qaul Jadid*, and how is the implementation of his thoughts in in the field of Islamic economics and finance, using literature research methods from various sources. This research is expected to enrich the knowledge of Islamic sharia law and Islamic economics which is associated with the thoughts of Islamic figures.

Al-Syafi'i's idea of *ijtihad* is very unique, but before understanding the characteristics of his *ijtihad*, the researcher presents several etymologies about the meaning of *ijtihad* in linguistic literature. (Al-'Umri, 2001) said *Ijtihad* according to language (taken from the sentence '*aljahdu*-with *jim fathah* or can be *dhammah*) which means distress. Like *kalamullah ta'ala* which means: "And they swear by (name) Allah with a solemn oath." Which is found in three verses, surah an-Nahl verse 38, surah an-Nuur verse 53, and surah Fathir verse 42. Which identifies as trying earnestly, or hyperbole in promises. (Aziz, 2021)

In other dialectics (Aabaadi, 2008) explained *Aljuhdu* (with *fathah/dhammah*) means to be serious. And according to Ibnul Atsir if with *fathah* (*aljahdu*) it means distress, or hyperbole (exaggerating a word/sentence), or a goal. But if with *dhammah* (*aljuhdu*) which means earnestly. And according to another (another opinion) this is a homonym or two words that have the same meaning, namely being serious. (Adnan, 2021)

Relating to the Syafi'iyah version of *ijtihad*, the Mujtahid in the Syafi'iyah school are divided into four (Husni, 2019): *Mujtahid mutlaq mutsaqqal* is the Syafi'i Imam himself. The lower level is the *mujtahid muntasib*: such as Al-Muzanni, Buwaithi, Abu Tsaur, Harmalah Yahya bin Abdullah At-Taujibi, Raba'i bin Abdul Jabbar Al-Muradi. Furthermore, *Mujtahid Fatwa*: An-Nawawi and Ar-Rafi'i. And finally the *mujtahid tarjih*: The figures are Ibn Hajar Al-Haitsami, Imam Ar-Rumli, Abu

Ishaq As-Syirazi, Imam Al-Haramain, Tajuddin As-Subkiy, Imam Al-Ghazali, Izzudin Abdussalam.(Bagir et al., 1988)

Quoted from Dr. Shaykh Qardawi' *Ijtihad* in Islamic law has three levels of criteria, namely *Dharuriyat* (primary), *Hajiyat* (secondary), *Tahsiniyyat* (tertiary).(Wahyudi, 2021) And the requirements to become a mujtahid are eight: Understanding the Qur'an and its derivatives, understanding hadith and its derivatives, fully understanding Arabic, understanding themes related to *ijma'*, understanding *ushul fiqh*, understanding the historical side, understanding sociology. , and including people who are just and pious. Although on the other hand there are also conditions that are still being debated in the requirements, namely understanding *ushuluddin*, understanding the science of *mantiq* and understanding the scientific branches of *fiqh*. So it is not easy for ordinary Muslims to make their own *ijtihad*, because these conditions and criteria can only be achieved by qualified scholars.(Kulsum, 2008)

In the book *Ijtihad Hermeneutis* it is explained that al-Syafi'i's *ijtihad* thought project is centered on the concept of his *qiyas*, which puts forward the concept of the Arabic language of the Qur'an, making inferences through the analogy deduction process in *istinbat al-hukm*, and the role of the subject/mujtahid in interpreting the text (Al-Qur'an and Sunnah). These three elements leave weaknesses that need to be addressed in an effort to find alternative methods for further development.

If borrowing the categorization used by Komaruddin Hidayat in photographing the tendency of interpretation of the al-Qur'an, then there are several different patterns. However, all of them are convinced that the al-Qur'an is the word of Allah SWT, about:

First, there is a more emphasis on the grammatical-textual approach. This approach is supported by the argument that the al-Qur'an as a holy text is perfect in itself, and is even believed to have a miracle of language, so that by mastering Arabic language one can grasp its basic content. This approach is quite prominent among *fiqh* and *kalam* experts (theologians).

Second, Allah SWT as its creator is beyond the reach of scientific-empirical analysis, so the role of the creator of the Qur'an is replaced by its carrier variable, namely the Prophet Muhammad SAW, who lived in a historical context. Then, this approach gave birth to a method of interpretation based on the prophetic tradition (*tafsir bi-l-ma'tsur*). This theory holds that the prophet Muhammad SAW has the authority to explain the basic message of the al-Qur'an.

Third, the mystical-philosophical approach is more concerned with the substance of meaning embodied in the propositions of language. However, the proposition is seen more as an entry point to reach messages that are beyond the outwardly proportional meaning.(Affandi, 2020)

Overall, that these three approaches reflect different ways of approaching the interpretation of the al-Qur'an. Each approach has its own value and relevance depending on the intended purpose and context of interpretation. It is important to understand that the interpretation of the al-Qur'an is a complex process and can be undertaken through a number of complementary approaches.(Damanhuri, 2016)

The purpose of this research is to promote an understanding of legal and legal aspects related to the development of *qiyas* which has been codified by al-Syafi'i through two *qauls*, *qaul qodim* and *qaul Jadid* and their implementation in the field of sharia economics and finance. Through various deductive approaches consisting of historical, psychological, geographical, and sociological aspects that influence the product of al-Syafi'i's thought.

METHODE

This study uses the paradigm of Islamic law to reveal, analyze and explain the value and basis of research problems that exist in these problems, namely the evolution of *ijthad*, legal *istinbath*, and the dynamics of development of *qiyas* al-Syafi'i and its implementation in Islamic economics and finance. This research is a descriptive qualitative research that discusses research topics using library research methods or literature review. Sources of data in this study are secondary data from scientific journal articles, books, and arguments from verses of the Qur'an and Hadith. The data collection method in this study was carried out by accessing national scientific journals, books and digital Al-Quran.

LITERATURE REVIEW

Biography of al-Syafi'i

In his book (Al-Rafi'i, 2007) described about him, he is the imam of knowledge, one of the largest schools of jurisprudence in Islam, namely: Abu Abdullah bin Idris bin Abbas bin Usman bin Syafi bin Saib bin Ubaid bin Abdu Yazid bin Hasyim bin Al-Mutholib bin Abdu Manaf bin Qushay bin Kilab bin Murah bin Ka 'ab bin Lu'ay bin Ghalib bin Fihir bin Malik bin Nadhor bin Kinanah bin Khuzaimah bin Mudrakah bin Ilyas bin Mudhor bin Nizar bin Ma'ad bin Adnan. (Khalifah & Rohman, 2022)

According to (Ibnu Katsir, 1992), he was born in Gaza, Palestine. Then he was taken to Mecca as a child, and migrated with his mother to Yemen, then grew up there, and learned to read (memorize) al-Qur'an and was sent to his native country, Mecca, then studied Fiqh. His birth is not disputed, namely in 150 Hijriyyah, the year when Imam Abu Hanifah RA passed away. (Ajib, 2018)

One day al-Syafi'i was confronted by the caliph Harun ar-Rashid, in Baghdad. Due to a political charge and trial there. (Hasanah, 2018) Then Imam Muhammad bin al-Hasan ash-Syaibani attended his trial and supported al-Syafi'i because of his intelligence in arguing, so Harun ar-Rashid also granted amnesty to al-Syafi'i and gave compensation of around fifty thousand dinars to be distributed by al-Syafi'i to the poor. (Fatmawati, 2008)

He studied with scientific experts in Baghdad, such as Imam Waki 'bin Jarrah, and al-Hafidz Hamad bin Abi Usamah al-Kufi, and al-Hafiz ats-Tsiqoh Abdul Wahab bin Abdul Majid al-Mashry. (Rohman, 2019)

Several years later, when al-Syafi'i was 45 years old, he returned to Mecca and met his disciple, Imam Ahmad bin Hanbal. There, he finished writing the book "*al-Hujjah*" (a book about the *qodim* al-Syafi'i school) and also wrote the book "*ar-Risalah al-Qodimah*". This book was later narrated by several of his students, such as Imam al-Karabisi, Imam Abu Thaur, Imam az-Za'farani, and Imam Ahmad bin Hambal.

According to his student, Imam al-Hasan bin Muhammad bin as-Shabah, al-Syafi'i came to Baghdad again in 195 AH and stayed there for a month before going to Egypt, where he continued his preaching until the end of his life. The caliph at that time finally sent al-Syafi'i to preach in Egypt because of the growing social conflict in Baghdad caused by the Mu'tazilah.

After arriving in Egypt, al-Syafi'i hypothesized that many Egyptians were fanatical towards the Imam Malik school of thought. He studied the new phenomena he discovered and finally wrote the book "*al-Umm*" (Book about *qaul Jadid* al-Syafi'i).

Then there he also continued to impart knowledge, and his students in Egypt included Imam Muzanni, Imam Buwaithi, Harmalah at-Tajibi, Muhammad bin Abdul Hakim, and ar-Rabi' bin Sulaiman al-Muradi, and ar-Rabi' bin Sulayman al-jiyzi.

Due to a serious illness, namely acute hemorrhoidal pain (inflammation of the blood vessels around the rectum area), he soon went to the al-Khaliq on the last Friday of the month of Rajab in 204 Hijriyah, when he was still relatively young, arounded 54 years. *Rahimahullahu ta'ala.*(Maghrabiyah, 2011)

RESULT AND DISCUSSION

Basic Epistemology of al-Syafi'i

In the book *Al-Umm* (Al-Syafi'i, 2001) it has been codified that his method of *istinbath* (deduction of legal rulings) is based on five fundamental principles, as explained by him in the book *Al-Umm*: "Knowledge has various levels. The first level consists of the preserved book and Sunnah (traditions of the Prophet Muhammad), the second level is consensus (*ijma'*) when a ruling is not found in the book and Sunnah, the third level is taking the opinions from the statements of the companions of the Prophet Muhammad, and we do not know who denies this foundation (*qoul sahabi*). The fourth level is the differences of opinion among the companions of the Prophet Muhammad in their various statements, and the fifth is *qiyas* (analogical reasoning). *Qiyas* is not considered a legal basis unless it is related to the Qur'an and Sunnah, which are the fundamental sources. Therefore, when establishing a ruling, one should refer to these two sources first (in an orderly manner, that is, starting from the Qur'an and Sunnah). In this regard, Al-Shafi'i has his own characteristic in the process of legal deduction (*ijtihad*), which does not involve *istihsan* (personal preference, as in the case of Abu Hanifah) or *maslahah mursalah* (consideration of public interest, as in the case of Imam Malik)."(Tunai, 2016)

In determining the law from the Sunnah, he still uses the ahad hadith to meet the specified conditions. If no reference is found in the Sunnah, he will look for it in the *ijma'* of companions. If he does not find legal provisions through *ijma'* and *qiyas*, then al-Syafi'i will use the *istidlal* method, namely establishing laws based on the general principles of Islam.(Aris, 2013) In an orderly and sustainable manner, this is of course in order to produce *ijtihad* that remains within the corridor permitted by Islamic law itself. And in its development, there will be many fiqh principles that continue to innovate according to circumstances, places, and time.

It is conceptualized that in *istinbath* al-Syafi'i's law uses five sources(Qatthan, 1996), that is:

1. *Nash*, Al-Qur'an and Sunnah

According to (Khalaf, 2002) the Qur'an is the word of Allah (etymologically it means based on the sentence read) which was sent down with him the spirit of *amiin* (Jibril) which was placed in the heart of Rasulullah SAW bin 'Abdullah, with Arabic pronunciations (letters) and their meanings which are *haqiqi* (revealing the truth). Which to be used as *hujjah* (proof) for him to be the Messenger of Allah. And as a legal guideline to guide his people to the straight path, and reading it is also classified as worship, and is written between the *Mushaf* (sheets), which begins with the letter Al-Fatihah, and ends with the letter An-Nas which was sent down from Allah directly. gradually and gradually also in writing, and maintained from generation to generation and protected from changes (amendments) and distortion. (Latif & Dkk, 2021)

As-Sunnah is something that is the foundation (basic) that comes from Rasulullah SAW from his words, his deeds, to what he determined. (Latif & Dkk, 2021) All the Imams of *mazhab* agree that the texts of the Qur'an and Sunnah are the main references that cannot be replaced, these two things are the main basis for making a decision to perform *ijtihad*.

2. *Ijma'*

Ijma' is the agreement of all *mujtahids* (*ulama*) of Muslims in a generation (time) after the death of Rasulullah SAW. *Ijma'* is the basis used as evidence by al-Syafi'i who ranks after the al-Qur'an and as-Sunnah. As for the first stage of *ijma'* used by al-Syafi'i was the *ijma'* of his companions, he stipulated that *ijma'* was ended by arguing after the Qur'an and as-Sunnah. And *ijma'* which is carried out outside the circle (friends) is then not used as proof (foundation of sharia law). (Taufiqurrohman, 2021) So, there are three things to watch out for:

1) al-Syafi'i (in making the decision to adopt sharia law) will end the *ijma'* after reviewing the Al-Qur'an and as-Sunnah. In essence in establishing law, there are two kinds of *ijma'*, *ijma'* by using (still linking) the *Nash* (al-Qur'an and Sunnah). And the second is *ijma'* with links to laws established through dialogue and discussion between scholars.

2) al-Syafi'i did not recognize the *ijma'* of the residents of Medina (not friends but more *tabi'in*-ed), which in taking this legal basis he did not follow his teacher, namely Imam Malik.

3) al-Syafi'i continues to examine (consider) an association (*ijma'*) until someone admits that his *ijma'* is cancelled, so al-Syafi'i cancels the result of the *ijma'* decision. (Abu Zahra, 2008)

3. The opinion of the companions (*Qaul Sahabi*)

(Abu Zahra, 2008) argued about al-Syafi'i divided the opinion of friends into three parts. First, something that has been agreed upon. Second, the opinion of a friend only and no one else in a matter, either agree or reject, then al-Syafi'i still take it. Third, the issue on which they disagree, in this case al-Syafi'i will choose the one that is closest to the Qur'an, sunnah or *ijma'*, or reinforce it with a stronger *qiyas* and he will not make a new opinion which contradicts existing opinion. (Nafil, 2022)

4. *Qiyas* (analogy)

Is connecting an event that does not have a text with a decision from another event so that one can find out the legal intent of the text (text) with the decision as a result. (Sakirman, 2018) In making this decision, there must be equality of 'illah (causation/law of causality) in the law. al-Syafi'i does not judge that the *qiyas* that is done to establish a law from a *mujtahid* is more than just explaining the shari'a law in a matter that is being explored by a *mujtahid*. (Abu Zahra, 2008)

al-Syafi'i emphasized that *qiyas* is the same as the form of *ijtihad*. And emphasizes that *qiyas* is one of the basic foundations in considering sharia law where *qiyas* originates from the Qur'an and Sunnah, where indeed there are no verses that explain it in a straightforward and detailed manner. Then implemented *qiyas* with two approaches:

1) Basically, sharia law is universal, not fixated on a phenomenon with phenomena or from time to time.

2) Sharia law is always based on two laws, the permanent law (*qathi'*) which has been determined directly by verses in the form of *qathi'* which produces *qathiyyah* (fundamental) laws. There are also laws in the form of *dzanni* (presumption/hypothesis),

which can still be selected and re-examined, such as *khobar ahad*, or *qiyas*.(Adhari et al., 2021)

5. *Istidlal*

(Qatthan, 1996) described al-Syafi'i uses this in determining the law, if he does not find the law from the previous rules above. Two sources of *istidlal* acknowledged by al-Syafi'i are customs (*'urf*) and religious laws that were revealed before Islam (*istishab*). However, these two sources do not include the general method used by al-Syafi'i as part of the legal *istinbath* used by Imam Syafi'i.(Anam, 2019)

Dynamics of Qiyas Development and Changes from *Qaul Qadim* to *Qaul Jadid*

It was explained that al-Syafi'i's ideas and opinions while in Baghdad (*qaul qodim*) were revised with his latest ideas while in Egypt (*qaul jadid*). And sometimes there are things that are already good in *qaul qodim* and then perfected again in *qaul jadid*. These two views are not dualisms that contradict each other until all are demolished with the most recent, but complement and evaluate the idea following *maqashid sharia* and certain principles.

In the book *al-qodim (ar-Risalah)* it is the same as that of *al-jadid (al-Umm)*, that is, he has many different ideas, and these ideas are also still in the realm of *qiyas*. Not until al-Syafi'i changes a final *ijtihad* which is already *muqayyad* (bound) with the texts of the Qur'an and as-sunnah including verses whose laws and orders (*'amr*) are clear.

When the *qaul qodim* does not conflict with the texts, it may be used in taking the law. It is also permissible for the mujtahid of the school to choose this *qaul qodim*. Because when al-Syafi'i has an idea or idea and records it and differs from his previous ideas it does not make the previous idea erased but instead becomes two *qaul* (opinions), becomes a treasury for *fiqh* scholarship, especially in the Syafi'i school, and the literature is still inherited through the work of the Syafi'iyah scholars in their books on the *qaul qodim*.

However, there are those who think that the *mujtahid* sect is not allowed to take laws from this *qaul qodim*, on the pretext that these *qaul qodim* and *jadid* contradict each other whose ideas cannot be unified in one opinion. Therefore they practice the latter (*qaul jadid*).

His existential persistence can be seen in adhering to the propositions of the Al-Qur'an in a *zhahir* text as long as there is no other meaning that changes it (*nasikh wa mansukh*), and still taking the *hadith ahad* as a reference even though it is not well-known (not strong enough in tradition) as the influence of his Shaikh, Imam Malik. In addition, he also uses a reasoning approach (logic-dialectics) in developing laws that are not clearly stated in the Qur'an and hadith, as the influence of his teachers from the Hanafiyah circle. In general, he combines the two poles, namely textualist and rationalist, thus finding a middle way and common ground between the two with the characteristic method of al-Syafi'i's *ijtihad*.

The term *Qaul Qadim*, is the opinion of al-Syafi'i which was said and written when he was in Iraq, apart from writing the book *ar-Risalah* and *al-Hujjah*, he also conveyed orally his fatwas before the general public, and *qaul jadid* is his opinion while in Egypt. The distinction in the use of these terms has no direct relation to the school of thought, but only to differentiate the place of writing and disclosing the fatwa.(Azmi, 2016)

One example in the context of the evolution of Islamic law *tajdid* in *qaul qadim* and *qaul Jadid*, as explained in the book *al-Imam al-Syafi'i fi Madzhabihil Qadim wal Jadid* page 29:

"The law of running water that is unclean, but its properties do not change."(Azmi, 2016)

Qaul Qadim: Running water will not become unclean. This is because, firstly, the driving force of the water, secondly, running water will clean water that is impure, and it will not be unclean if there is no change in its color and nature.(Al-Syafi'i, 1938)

Qaul Jadid: Running water is the same as still water. If the quantity is less than two *qullah* (a quarter cubit or 270 liters, according to KH. Afifuddin Muhajir-ed) then it becomes unclean.(Al-Syafi'i, 2001) Because if there is running water and there is uncleanness in it that flows like a carcass, then the water that was before is pure because it is not mixed with impurity, and the water that comes after it is also pure. If there are more than two *qullahs* and there is no change, but if there are not up to two *qullahs* and there are changes then the water will become unclean just like stagnant water.(Abdussalam, 2016)

Derived from this problem, al-Syafi'i explained that flowing water is absolutely and definitely not unclean, even though there are animal carcasses or dirt and other things that make the water impure, because with the flowing water, *jirm* or substances also flow. that unclean. And the phenomenon in the country of Baghdad at that time was that urban areas were in the midst of difficulties with clean water sources so that the inhabitants really appreciated and conserved the availability of water.

On the other hand, when he settled in Egypt, springs were abundant and the population was very self-sufficient in terms of water availability. So that as-Syafi'i saw this in the matter of water, he continued to put forward his opinion when he was in Baghdad with the previous argument, it was invalid, so he gave specificity regarding the purity of this water at a rate that he *ijtihad* right.

Turning to the problem of how the factors that cause the evolution of al-Syafi'i's *ijtihad*. The shift in the paradigm of religious understanding and religious behavior of al-Syafi'i from *qaul qadim* to *qaul jadid*, as a result of his critical reasoning has inspired the emergence of a model of religious understanding and religious behavior of Muslims with a critical-transformative pattern, and this also shows that the distinctive character of all legal thought is not devoid of historical space, therefore it is not immune to criticism (*qabilun lin nuqash*), and in essence Islamic legal thought is dynamic, inclusive and collaborative. Likewise with the imams of other sects, they make *ijtihad* with critical reasoning with their own style according to their backgrounds, conditions, places and times, so as to provide diverse dynamics.(Roibin, 2008)

(Hasanah, 2018) elucidated by detail about several factors that influence al-Syafi'i's thinking:

1. Social Factors

When al-Syafi'i stopped in Baghdad, there was a close mix of socio-cultural, ethnic diversity, traditions and customs of the Arabs, Persians, Indians, Zoroastrians, Eastern Orthodox Christians, Jews, Roman and Sassanid pagan influences, Byzantine influences, cultural nomadic Turkic tribes, and mainly Sunni, Shi'a, and others, also color the political map. And the caliph at that time really loved art and science, so that through his orders many books were translated. This is one of the influences of Imam Syafi'i in writing his book *Ar-Risalah*.

2. Political Factors

There are several variables that are minus indicators in the political developments of the Abbasid era, namely the lack of government attention to issues that threaten the stability of the country, the strengthening of the role of the Persians and the weakening

of the role of the Arabs, enthusiastic debates in discussion and teaching activities and the development of science that have neglected the problem of state stability.

This influenced the psychology of Al-Syafi'i when he was in Baghdad. So that he migrated to Egypt with the excuse of avoiding the caliph Al-Makmun who was pro against the Mu'tazilah movement, this movement of thought also influenced the caliph to oppose the teachings of *ahlussunnah*, and the caliph interrupted his people to believe that the Qur'an was a creature with acts of violence and repressive.

3. Economic Factors

Economic stability during the early Abbasid period became a variable for increasing intelligence and the value of its human resources. Two examples of policies built by the caliph at that time were building military housing to the north of the palace, and building settlements for thousands of construction workers who were brought in from all over the country to the south of the palace.

With the prosperity that exists in Baghdad, it is very disparate when compared to the economic situation in Egypt, which is dominated by rural communities that are more focused on the agrarian system (agriculture and plantations). And this became a factor in the emergence of *qaul qodim* in Baghdad and *qaul jadid* in Egypt according to their socio-economic conditions.

4. Cultural Factors

The acculturation of Persian culture during the Abbasid period also influenced the culture of the Arab people who lived there, with this phenomenon which made the Arabs more open and able to erode their bigotry so that the Abbasid dynasty developed rapidly and became a golden peak.

This diversity ultimately inspired al-Syafi'i to analyze critically in dealing with the problems of Muslims. Then he scrutinized and criticized a lot of fatwas that he had written and fatwaed while in Baghdad, and revised them into *qaul jadid* when he was in Egypt. This is none other than differences in social systems, conditions and different times. (Syarbini, n.d.)

Ijtihad of Imam As-Syafi'i and Its Implementation in the Sector of Sharia Economics and Finance

1. *Syirkah* concept

The concept of *syirkah* according to al-Syafi'i is based on several elements such as: the existence of a mixture of assets, work on the assets (business entity) and distribution of profits (*murabahah*). Then, in carrying out *syirkah* according to al-Syafi'i, several conditions must be met, such as: the type of assets of each party must be commensurate in nature, the assets of each party must be balanced in number, and profits from the collaboration must be divided according to the amount of capital invested. they give. (Ramona, 2022)

The concept of *syirkah* in the view of al-Syafi'i is applied and accommodated in Islamic banking which is now being carried out by Islamic banking because it can be seen that two of the three elements of the concept of *syirkah* according to al-Syafi'i are in accordance with the concept of *syirkah* in law no. 21 of 2008. The two appropriate elements include the existence of a business (level of work) and profit sharing, while there is one element that is not clearly stated in Law no. 21 of 2008, namely regarding the mixing of assets. Overall, the fulfillment of the two appropriate elements of the three *syirkah* elements according to al-Syafi'i with law no. 21 of 2008, it can be said that

the concept of *syirkah* according to al-Syafi'i is relevant to the concept of *syirkah* in law no. 21 of 2008.(Ngesti, 2018)

2. Prohibition of buying and selling orders (*salam*) online with a mystery box

In buying and selling orders (*salam*) according to the Syafi'i school, there are pillars and conditions. There is a seller in the form of the online shop and the buyer is the person who bought their mystery box, there is a consent *qabul* in the form of a buyer who presses the "buy now" button. And paid with physical money or e-money.

However, the terms of buying and selling orders or greetings have a number of things that are not fulfilled by online stores, namely, the mystery boxes that they sell do not include the size of the goods, the type of goods, the quantity of goods and the quantity (randomly randomized), and also mix each type of item with the goods which is different in each mystery box. It was explained again that the items being sold were not clear with the prices listed, but the buyer did not know what the item was or how much he would get from this purchase.

Furthermore, there are terms of buying and selling (*salam*) that are violated in this case, where Cash on Delivery (COD) payments are considered invalid because in the view of Syafi'iyah fiqh must be paid in cash. In this case the online store provides COD services. Which is where it resembles the sale of debt for debt (*ba'i dain bi dain*).

Finally, the seller forbids the return of goods, even though in the terms of buying and selling orders or greetings, returning orders or *khiyar* is permissible if the goods are not in accordance with the wishes of the buyer.(Finia & Ulpah, 2023)

So as a whole, according to the perspective of the Syafi'i school of thought, buying and selling mystery boxes at online stores is invalid (false) because even though they fulfill the pillars but they don't meet the requirements.(Swanty Maharani & Akhmad Yusup, 2022)

3. The legal validity of the *wakalah* buying and selling contract/transaction via SMS or similar communication media.

In the decision of the *Bahtsul Masail Diniyah* commission, it was decided that the law of buying and selling transactions through electronic media is considered valid if before the transaction both parties the seller and buyer have seen the *mabi'* (goods being traded) or have explained both the nature and type of *mabi'* and fulfill the conditions terms and conditions of sale and purchase.

Furthermore, the *Bahtsul Masail musyawwirin* tries to uncover the law of *wakalah* contracts/transactions from a prospective bride (intermediary) to someone who is present at the assembly. Musyawwirin's answer related to this problem also saw that it was legitimate to represent via SMS with limited conditions, namely that it was safe and in accordance with *al-amri's* desires (according to reality).

The decision of the *Bahtsul Masail* congress in considering the legal conception of the above transaction is based on several reference texts, such as from the book *Al-Syarwany Syarah Tuhfatul Muhtaj* (4/221) which means:

“(Legitimately) buying and selling except for a drunk person who is not aware, because he is not an expert on intention based on the saying that will be conveyed later about *thalaq* (figuratively) accompanied by intention. Writing is not on liquid or air, but rather as a symbol used to make agreement together with intentions. If anyone present knows, he or she must accept the deal immediately, and their choice must be made before the deal expires. The same applies to agreements made by letter such as the cable (communication link) used today, which is also considered a symbol used to conclude agreements.”

Summary of explanation: "A sentence written on something that is not liquid or air is included in the element of *kinayah*, and is valid if it is accompanied by an intention even though the writing is addressed to people present, it should be accepted immediately after knowing (the writing), but preferably the time *khiyar* both expanded due to the completion of the reception assembly.

His example is *khobar al-suluki al-muhaddits* (SMS) in this era, so transactions with him are examples of *kinayah* transactions."

The relevance of the results of this NU congress with the modern reality of the stock exchange and stock trading seems to find a correlation. The signs of *turats* fiqh view the legal standing of the contract to be in *al-amri* (according to reality) and transaction security.

It is safe if it is brought into the context of stock trading and stock exchanges, it may fall into the realm of corporate climate *urf* which views transaction documents as goods that can be used as evidence that a sale and purchase transaction has taken place between one company and another. As conveyed by *musyawwirin* by quoting the book *Hasyiyatu al-Bujairami* (10/147):

Meaning: "The marriage contract is not valid by way of *kinayah* except by way of *kitabah* or a written sign that can be understood by people who are smart/intelligent."

What focuses on the limitations for the validity of the transaction above, namely the existence of an element of intelligence of the parties involved. With reference to the quotation above, a contract is deemed valid by means of writing (notes) but with limitations that can be understood by intelligent people.

With this it is clear that the legal contract/*wakalah* buying and selling transaction via SMS or similar communication media is valid and correlates with the Syafi'iyah version of *wakalah*.(Sectariat General of PBNU, 2010)

Equal distribution of zakat to *Asnafu-l-zakat*

Imam Syafi'i's opinion regarding the equalization of the distribution of zakat to *asnaf* zakat is oriented towards the *bayani* approach (a philosophical study of knowledge building systems that places text (revelation) as an absolute truth-ed) that is in accordance with the will of the Al-Quran text (QS At-Taubah: 60):

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمَوْلَاةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَرْمِينَ وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ قَرْبَضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Meaning: "Indeed, the zakat is only for the needy, the poor, administrators of zakat, converts whose hearts are persuaded, to (liberate) slaves, people who are in debt, for the way of Allah and for those who are on their way, as a decree obligated by Allah, and Allah is All-Knowing, All-Wise."

So he said zakat must be given to eight groups if all of these groups exist. If not, zakat is only given to existing groups. As he gave an example in the book *Al-Umm*.

Istinbat Imam Syafi'i's law states that the equal distribution of zakat to *asnaf* zakat is based on the Al-Qur'an and hadith narrated by Abu Dawud from al-Sada'i. Which is understood from criticizing linguistics in surah At-Taubah verse 60.(Azizah, 2020) There is the use of the letter "*Lam*" which is used to express ownership, then each group has the same rights because it is associated with the letter "*wawu*" (one of the articles which means " and") denoting the similarity of actions. Therefore, all forms of zakat belong to all of these groups, with equal rights.(Hani, 2015)

In taking the theory of *istinbath/ijtihad*, al-Syafi'i made a breakthrough in collecting primary data by studying and observing the Qur'an and the Sunnah, the consensus of the

majority of the companions (*ijma'*), analogy (*qiyas*), and proof with specific evidence (*istidlal*), while disregarding the observations of his teacher, such as the theory of *istihsan* and *maslahah mursalah*. He had his own distinctive approach by taking a "pure" middle path that was suitable for the aspects influencing his understanding of *ijtihad*. This became an innovation in the flow of Islamic jurisprudence that differed from before.

The emergence of the duality in his understanding was not only based on the doctrines of his teachers but also resulted from his own thinking, which gave rise to two different ideas, namely *qaul qodim* and *qaul jadid*. These terms do not restore one idea to the other in the guidance of *fiqh*, but they are used to differentiate the realm of his written works and the dissemination of his fatwas and arguments. Additionally, the aspects that made al-Syafi'i's ideas dynamic were social, political, economic, and cultural factors.

This writing, adapted from qualitative research and secondary sources from several literatures, sufficiently answers some questions regarding the understanding of *ijtihad*'s meaning, the main foundation of al-Syafi'i's *ijtihad* method, the dynamics of the terms *qaul qodim* and *qaul jadid* in al-Syafi'i's works, and some of their implementations, such as the concept of *syirkah*, Cash on Delivery, trading using communication tools, and the distribution of *zakat* with a modernization paradigm. What sets apart other theories in this research is the stimulation of combining al-Syafi'i's analogical and historical approaches with the relevance in implementing contemporary Islamic economics.

CONCLUSION

In this research, the researcher summarizes that al-Syafi'i's epistemological basis in codifying his *ijtihad* applies the five basic legal texts (Al-Qur'an and sunnah), *ijma'*, the opinion of the companions, *qiyas* and *istidlal*. And in the phenomenon that al-Syafi'i went through during his lifetime, his ideas also evolved in taking legal *istinbat* to give rise to two phases, namely *qaul qodim* and *qaul jadid*.

The occurrence of this paradigm shift was influenced by various factors such as differences in social, political, economic and cultural factors which were in stark contrast when he was in Baghdad and moved to Egypt. Then, in the form of al-Syafi'i *ijtihad*, the researcher tries to collect several variables that can be implemented in the economic field such as the *syirkah* concept that is relevant to the *syirkah* concept according to Indonesian law, the prohibition of buying and selling orders (*salam*) online with mystery boxes and classified as illegal sale and purchase, the legal validity of the contract/ *wakalah* sale and purchase transaction via SMS or similar communication media with various variations as long as it is within the permissible rules, and equalization of the distribution of *zakat* to *asnafu-l-zakat*.

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