



## Measuring Islamic Legal Philosophy and Islamic Law: a Study of differences, typologies, and objects of study

History of Author	Abstract
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### A. Introduction

Talking about the philosophy of Islamic law and Islamic law is of course different, both in terms of definition, object, study, even the implementation is also different according to each typology. However, the two cannot be separated. That is, Islamic Law Philosophy examines Islamic law with a philosophical approach (philosophical approach) by addressing fundamental questions about Islamic law conceptually, methodically, systematically, radically, universally, comprehensively, and rationally. In this case, it is certainly different from Islamic law which is etymologically a collection of rules, both in the form of formal promulgation and from custom (*al-ādah*) in which a state or society claims to be bound as a member or subject.<sup>1</sup>

Islamic jurisprudence as a science which has characteristics and typologies, in addition to normative studies, it is also time to develop it within the framework of a philosophy of science which later gave birth to the philosophy of Islamic law.<sup>2</sup> Moreover, the emphasis is on epistemological studies of Islamic law.<sup>3</sup> Islamic law is divided into two. First, Fiqh of Worship which includes rules regarding prayer, fasting, pilgrimage, vows, and so on which aims to regulate the relationship between humans and their God. The provisions of this law of worship, originally regulated globally (*mujmal*) in the Al-Quran, are then explained by the Sunnah in the form of sayings, actions or stipulations, then formulated by the fuqaha (jurists) into the books of fiqh. Second, fiqh muamalat which regulates the relationship between humans and all, such as agreements, legal sanctions and other rules, so that

<sup>1</sup> Moh Dahlan and Abdullahi Ahmed An-Na'im, *Epistemologi Hukum Islam* (Yogyakarta: Pustaka Pelajar, 2009), 90.

<sup>2</sup> Taha Jabir al-Alwani, *Metodologi Hukum Islam Kontemporer*, ed. Yusdani (Yogyakarta: UII Press, 1994), xiii.

<sup>3</sup> Mustansyir Rizal and Misnal Munir, *Filsafat Ilmu* (Yogyakarta: Pustaka Pelajar, 2006), 16.

order and justice are realized, both individually and socially. Fiqh muamalat is in accordance with the aspects and objectives of each.<sup>4</sup>

Islamic law, believed by Muslims as a source that comes from God's revelation (divine law) which of course comes from the Koran and Sunnah, known as *al-Sayāri'* (law giver). Islamic law is also synonymous with (Islamic Legal Theory) or *ushul fiqh* which is considered by some Islamic law experts as an original Islamic philosophy and contains epistemology, so that Islamic law and Islamic legal philosophy are still closely related, even though their implications are different.<sup>5</sup> From this background, it can be used as a reference in studying this theme, namely a comparative study of the philosophy of Islamic law and Islamic law between typologies, differences, and objects of study.<sup>6</sup> How is the integration between Islamic law and Islamic Law Philosophy? What are the typologies and the differences between the two? And, what are the differences between the two objects of study?

The above questions become the author's analytical framework in framing the philosophy of Islamic Law and Islamic Law in terms of typological differences, and the object of study becomes a scientific framework as a contribution to Islamic legal thought that is more comprehensive, methodological, philosophical and rational. Therefore, this discussion uses a comparative study approach between Islamic legal philosophy and Islamic law between typologies, differences, and the object of study in the realm of Islamic legal thought.

## B. Literature Review

### *Philosophy of Islamic Law*

When talking about philosophical issues, it cannot be separated from the historical context that developed in Greece which was sparked by philosophers there in the VI-IV centuries BC; so that there was a marriage between Islamic philosophy and Greek philosophy.<sup>7</sup> In the VII century AD, works that smelled of Greek philosophy spread to the Islamic world in Arabic, such as those brought by al-Kindi, al-Farabi, ar-Razi and so on.<sup>8</sup> In that century, stood *Bait Al-Hikmah* which is the center of translation, the development of philosophy, and science (science), so that the schools of philosophy in Islam emerged. The development of this philosophical tradition originating from Greece sufficiently colored various Islamic sciences which gave birth to the philosophy of kalam, tasawuf, social, law, including the philosophy of Islamic law as well as part of the influence of the development of science (knowledge). The philosophy of Islamic law also has its own typology, as well as Islamic law which also has its own differences and characteristics.

In the area of Islamic legal philosophy, truth already exists and is absolute, here we only need justifying arguments, it cannot be criticized or annulled by new propositions, because this is something that is stated or comes from the Infinite Essence, the Transcendent. everything and created the universe and everything in it. So, it can be said that there will be no such thing as Islamic Law Philosophy from the perspective of humans (creatures), we will only know "Islamic Law Science"

<sup>4</sup> M Amin Abdullah, "Mazhab" *Jogja: Menggagas Paradigma Ushul Fiqh Kontemporer*, vol. 1 (Ar-Ruzz Press, 2002), 38.

<sup>5</sup> Abdullah, 38-45.

<sup>6</sup> Khurshid Iqbal, "Re-Conceptualising the Right to Development in Islamic Law," *The International Journal of Human Rights* 14, no. 7 (December 1, 2010): 1013-41, <https://doi.org/10.1080/13642980902933597>.

<sup>7</sup> Hasyimsyah Nasotion, *Filsafat Islam* (Jakarta: Gaya Media Pratama, 2005), 8-13.

<sup>8</sup> Nasotion, 15.

or “Dogmatics of Islamic Law”. The subject matter of Islamic Law Dogmatics is authoritative texts revealed by God in the holy book of the Koran, which regulates how humans as creatures of Allah SWT should behave. This scientific discipline has a starting point for interpretation of the texts.

Talking about the philosophy of Islamic law, it is very synonymous with philosophy and wisdom. One of the meanings of philosophy is *phila/al-itsār* and *Sophia/al-hikmah* (wisdom). Therefore, *Philosophia* is *itsār al-hikmah* (prioritizing wisdom) and *philosophos/almi'tsir al-hikmah* is people who prefer wisdom.<sup>9</sup> Actually Islamic legal philosophy is a new term. According to experts, its genealogy can be traced back to classical literature *al-Mustasfa* al-Ghazali until *al-Muwafaqat* al-Syatibi. In the works of these scholars the philosophy of Islamic law is termed *Maqasid al-Shari'ah*.<sup>10</sup> The Discussion about *maqasid al-shari'ah* is to intend to seek God's intention from the shari'ah law which was revealed through legal verses and legal hadiths.<sup>11</sup>

Assuming that God's goal of sending down his shari'ah is benefit (goodness/peace) for humans, not the other way around. Because it could be Shari'ah that is in a different time in wrong space will not bring benefit, even the opposite brings hazard. For this reason, the philosophy of Islamic law or *maqasid al-shari'ah* here aims to place shari'ah or Islamic law in the right space and time. Actually, *Maqasid al-Shari'ah* is part of *Uşūl al-Fiqh*, while Islamic law is the result of filtering in finding shari'ah values.<sup>12</sup> However, the philosophy of Islamic law which is synonymous with philosophy and *maqasid al-shari'ah*, Islamic law is the essence of the goals of *maqasid al-shari'ah* in the form of rules, laws, sanctions, and so on is the philosophy of Islamic law towards welfare. man.

The difference between the philosophical approach in Islamic law and legal philosophy in general lies in the difference in the substance of the law itself. Islamic law is the law of revelation, while law in general is the product of human thought alone.

Islamic law is a law that departs, runs and ends at the goal of revelation. He exists and has power based on revelation. He gave orders and prohibitions based on revelation. Thus, what is considered true is what revelation considers true. What is considered wrong, is what revelation blames. Reason is a supporting tool for understanding or thinking about legal operations. When Islamic law states that pork is haram, the reason is because the Qur'an as a set of revelations prohibits it. Likewise, when Islam states that adultery is haram, the reason is because the Qur'an prohibits it. Swine and adultery are forbidden anytime, anywhere, and by anyone according to Islamic law, even though pigs and adultery can actually bring many benefits to humans.

The Role of Islamic Legal Philosophy in Reasoning Islamic Law The studies discussed in Islamic Legal Philosophy so far have been personally very interesting to the author. He is not only able to provide additional knowledge. More than that, he succeeded in broadening the horizons of thinking for anyone who is willing to pursue it. Not only in the area of Islamic law, but also discussions in the philosophy of law which have so far been considered outside the reach of Islamic law. Islamic Law Philosophy is a Philosophical Study, especially in the epistemological sense by making *fiqh* a

<sup>9</sup> Fathurrahman Djamil, *Filsafat Hukum Islam* (Jakarta: Logos Wacana Ilmu, 1997), 2.

<sup>10</sup> Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law* (International Institute of Islamic Thought (IIIT), 2022).

<sup>11</sup> Yudian Wahyudi, *Maqashid Syari'ah Dalam Pergumulan Politik: Berfilsafat Hukum Islam Dari Harvard Ke Sunan Kalijaga* (Yogyakarta: Pesantren Nawesea Press, 2007).

<sup>12</sup> Yudian Wahyudi, *Maqashid Syari'ah Dalam Pergumulan Politik: Berfilsafat Hukum Islam Dari Harvard Ke Sunan Kalijaga* (Nawesea, Pesantren Nawesea Press, 2007), 8-9.

science.<sup>13</sup> That is, Islamic Law Philosophy is a branch of philosophy, so naturally, the entire content of Islamic Law Philosophy is discussed through a philosophical approach which is very identical to reason as its ingredients. Thus, the method or way of working of Islamic Law Philosophy is the method or way of working of reason. And in accordance with the eternal character of reason in the process of development, so is the case with all philosophical studies.

As mentioned above, that by studying Islamic Law Philosophy we will be delivered to a high awareness in living the meaning of religious commands and prohibitions. This is because he sees the commands and prohibitions not in terms of halal and haram, but in terms of the wisdom or philosophy contained in the orders and prohibitions. There is no mistake, this study of Islamic Law Philosophy is able to add to the stability of a Muslim in carrying out his religious law. However, it does not rule out the possibility that the study of Islamic Law Philosophy can also lead a Muslim to eternal doubts in carrying out religious orders and prohibitions, as we are witnessing more and more everywhere.

Islamic Legal Philosophy is a branch of Legal Philosophy in general. Therefore, a study of Western or Eastern Legal Philosophy is appropriate or should be carried out before entering the study of Islamic Legal Philosophy. So that we have basic knowledge of the position of Islamic Legal Philosophy among Legal Philosophy in general. Based on these facts, actually Islamic Law Philosophy since its emergence has been directed to bridge people who already have a mature understanding of legal philosophy in general, both academics and practitioners towards knowledge of Islamic Law, while still understanding it according to their original insight. The contents of the Philosophy of Law are studies that have been studied and developed by Muslims since thousands of years ago. Namely studies *Ushul Fiqh*, *Qawa'id Fiqhiyah*, *Qawa'id Usuliyah*, and other Islamic methodological sciences.

Islamic Law Philosophy is Islamic Studies. It means, Islamic Law Philosophy is one of the Islamic sciences, in which Islamic knowledge has grown and developed since more than fourteen centuries ago. As an Islamic study, it has a very wide area of study, as wide as the study of Islamic law itself. He not only discusses the law from the external side of humans, but also discusses the law from the other side of humans, namely the inner side (*ruhiyah*). In addition, people who study Islamic Law Philosophy are expected not only to understand the secrets behind legal orders and prohibitions, but also to be able to live up to these secrets when carrying out orders or avoiding these prohibitions.

### **Islamic Jurisprudence**

The term "Islamic law" is a uniquely Indonesian term, as a translation of *al-fiqh al-Islāmī* or in certain contexts of *al-syarī'ah al-Islāmiyyah*. This term in the discourse of western jurists uses Islamic Law or Islamic Jurisprudence which is known as Islamic legal thought and certainly cannot be separated from the philosophy of Islamic law as an epistemological basis within the framework of Islamic legal thinking.<sup>14</sup> In the Al-Quran and Sunnah, the term *al-hukm al-Islām* will not found. What is used is the word *Shari'a* in its elaboration. Then the term *Fiqh* was born. To obtain a clear picture of the meaning of sharia and *fiqh*.<sup>15</sup>

<sup>13</sup> Amir Mu'allim dan Yusdani, *Konfigurasi Pemikiran Hukum Islam* (Yogyakarta: UII Press, 1999), 30.

<sup>14</sup> Hujair A H Sanaky, "Gagasan Khaled Abou El Fadl Tentang Problem Otoritarianisme Tafsir Agama Pendekatan Hermeneutik Dalam Studi Fatwa-Fatwa Keagamaan," *Al-Mawarid Journal of Islamic Law*, no. 14 (2005): 26038.

<sup>15</sup> Firdaus Firdaus et al., "Various Methods of Establishing Contemporary Islamic Law," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 10, no. 1 (2020): 39–58.

To clarify the meaning of Islamic law itself, it is necessary to have some further explanation regarding shari'ah, fiqh, and ushul fiqh. All three are instruments of Islamic law. The word shari'ah and its derivations are used five times in the Quran (*al-Syura*, 42 :13, 21. *Al-A'raf*, 7 :163, *al-Maidah*, 5 :48, and *al-Jasiah*, 45 :18). Literally sharia means the way to a spring, or a place where river water passes. Its use in the Qur'an is interpreted as a clear path that leads to victory. In the terminology of ushul afiqh scholars, sharia is a commandment (khithāb) of Allah related to the actions of a mukallaf (muslim, mature, and sane), whether in the form of demands, choices, or intermediaries (causes, conditions, or obstacles). So, the context is laws that are practical ('amaliyah).

In the beginning the word sharia covered all aspects of religious teachings, namely creed, sharia (Islamic law) and morals. This can be seen in the sharia of every religion that was revealed before Islam. Because for every ummah, Allah gives sharia and a bright path (Q.S. Al-maidah, (5):48). However, because of the religions that were passed down before Muhammad SAW. The core of the creed is monotheism (unification of God), it can be understood that the scope of sharia is amaliyah as a consequence of the creed that every community believes in. However, when we use the word sharia, our understanding is directed to all aspects of Islamic teachings.

Mahmud Syaltut in his book *al-Islām 'Aqīdah wa Sya'ri'ah* defining sharia is the rules revealed by Allah to humans so that they are guided in dealing with their Lord, with their fellow humans, with their environment, and with life. As an elaboration of aqidah, sharia cannot be separated from aqidah. The two have a dependency relationship. Aqidah without sharia does not make the perpetrators a Muslim, as well as sharia without aqidah will go astray. Islamic Shari'a, was revealed gradually in the two periods of Mecca and Medina. The whole took 22 years 2 months 22 days. In connection with this, the technical term tasyri' (legislation or promulgation) appears. This term later became one of the important vocabulary terms in the study of fiqh (Islamic law). So, sharia is the product or legal material, tasyri is the inviter, and what produces it is called syari" (Allah).

The word fiqh which is used in the Qur'an in the form of work (fi'il) is mentioned 20 times. Its use in the Qur'an means to understand. "Pay attention, how we bring signs of greatness, we take turns, so that they understand it" (Q. S. Al-An'am, (6):65.). Etymologically, fiqh means understanding. But it is different from 'ilm which means to understand. Knowledge can be obtained by reason or revelation, fiqh emphasizes reasoning, even though its use later is tied to revelation. In terms of terminology, fiqh is practical (amaliyah) sharia laws derived from detailed arguments. For example, the obligatory law of prayer is taken from Allah's commandment in the verse aqīmū ash-shalāt (establish prayer). Because the Koran does not specify how to pray, it is explained through the words of the Prophet SAW. "Keep praying, as you see me doing it." (*Ṣallu kama raaitumuni usalli*). From this practice of the Prophet, his companions, tabi'in, and fuqaha' formulated the correct prayer rules with all the conditions and pillars.

The explanation above shows that between sharia and fiqh have a very close relationship. Because fiqh is a formula that is understood from sharia. Sharia cannot be implemented properly, without being understood through fiqh or adequate understanding, and formulated in a standard way. Fiqh as a result of efforts to understand, is strongly influenced by the demands of space and time that surround the faqih (fuqaha) who formulates it. Because of that, it is only natural that later, there are differences in their formulation. His crystallization was later recorded by history, there were Sunnī Fiqh (understanding of ahl *al-sunnah wa al-Jamā'ah*) and syi'ī fiqh (understanding of Shia,

who claimed to be followers of Ali Ibnu Abi Tholib). Among the Sunnis themselves, they are known as Fiqh Hanafī, Fiqh Malikī, Fiqh Syafi'i, Fiqh Hanbalī, and Fiqh Auza'i, the last of which is less popular in Indonesia.

Nevertheless, there are characteristic differences between sharia and fiqh, which, if not understood proportionally, can lead to confusion which is not impossible to give birth to a misguided attitude towards fiqh. Fiqh is identified with sharia. In order to clearly sit the problem, the following will set out these differences. First, sharia was revealed by Allah (*al-Syāri*), so its truth is absolute (absolute), while fiqh is a formula resulting from the study of fuqaha, and its truth is relative (relative). Because sharia is revelation while fiqh is human reasoning. Second, sharia is one (unity) and fiqh is diverse (diversity). Third, sharia is authoritative, so fiqh is liberal in character. Fourth, sharia is stable or does not change, fiqh changes according to the demands of space and time. Fifth, sharia is idealistic, fiqh is realistic. From these several definitions, then emerged in Indonesia which is called Islamic Law or *kalu* in the west Islamic Law (Islamic Jurisprudence).

Islamic law, according to Abdul Wahab Khalaf, breaks down Islamic law into several parts. First, Family Law (*ahwāl al-syakhsiyah*), namely laws relating to family affairs and their formation which aims to regulate the relationship between husband and wife and one's family with one another. There are about 70 verses of the Qur'an that discuss this issue. Second, Civil Law (*al-ahkām al-madāniyah*) which regulates the relationship between individuals and the forms of their relationship such as buying and selling, leasing, accounts payable, and others, in order to create harmonious relations in society. The verses of the Qur'an regulate it in 70 verses. Third, Criminal Law (*al-ahkām al-jinā'iyah*), namely the law that regulates the form of crime or violation and the provisions on sanctions for punishment. The aim is to preserve human life, property, honor, rights and limit the relationship between criminal acts and society. This provision is regulated in 30 paragraphs. Fourth, the procedural law (*al-ahkām al-murāfa'āt*), namely the law that regulates procedures for defending rights, and/or deciding who is proven guilty according to legal provisions. This law regulates how to proceed in court. The goal is that the verses of the Koran regulate this problem in 13 verses. Fifth, Constitutional Law (*al-ahkām ad-dustūriyah*) with regard to the legal system that aims to regulate the relationship between the ruler (government) and those who are controlled or their people, the rights and obligations of individuals and society, is regulated in 10 verses. Sixth, International Law (*al-ahkām ad-duwāliyah*) regulate relations between Islamic countries and other countries and relations with non-Muslims, both in times of peace or in times of war. The Qur'an regulates it in 25 verses. Seventh, Economic Law (*al-ahkām al-iqtishādiyyah wa al-māliyah*). This law regulates the rights of a worker and those who employ him, and regulates the state's financial resources and industry for the benefit of the people's welfare. Arranged in the Koran as many as 10 verses.

In Indonesia, Islamic law was fully implemented by the Islamic community. Although dominated by fiqh shafi'i. This, said Rahmat Djatnika, fiqh syafi'iyah more numerous and close to Indonesian personality. Local customary law often conforms to Islamic law. In Java, for example, Islamic law of inheritance and customary law are both united and the customary law conforms to Islamic law. The socialization of Islamic law at the time of Sultan Agung was so great that he called himself "Abdul Rahman Khalifatullah Sayidina Pantagama". This fact was acknowledged by the Dutch when they came to Indonesia. Below will be put forward the theories of the enactment of Islamic law in Indonesia.

First, the *Receptio in Complexu* theory, this theory was raised by Van denberg, based on the fact

that Islamic law is received (received) as a whole by the Muslim community. Second, the Receptie theory. The Receptie theory says that the laws that apply to Muslims are their respective customary laws. Islamic law can apply if it has been accepted by customary law. So, it is customary law that determines whether Islamic law exists or not. Third, Receptie Exit or Receptie a Contrario Theory, Receptie Exit Theory or Receptie a Contrario is a theory which says that customary law only applies if it does not conflict with Islamic law.<sup>16</sup> customs that are not in line with Islamic law must be expelled, resisted or rejected.<sup>17</sup>

### C. Result and Discussin

#### Typology and Object of Study of Islamic Law Philosophy and Islamic Law

Substantially, the typology of Islamic legal philosophy is a philosophy in the sources of Islamic law. The word philosophy in Arabic is absorbed from Greek, as is the case with the word philosophy in Indonesian. However, the equivalent according to experts is the word wisdom. So most Arab writers put the word wisdom in place of the word philosophy, put the word judge in place of the word philosopher, and vice versa. It seems that this is very much in line with the definition of wisdom given by al-Raghib, that wisdom is obtaining the truth by means of religious knowledge (*‘ulūm ad-Dīniyyah*) and rational science/reason (*ulūm al-‘Aqliyyah*).<sup>18</sup> From the above understanding, it can be concluded that the word philosophy is synonymous with wisdom. So if it is called the Philosophy of Islamic Law, then the Wisdom of Islamic Law will arise in the mind. Islamic philosophers named the historical books of philosophers *Akhbar al-Hukamā’*, like the name of the book compiled by al-Qaftani, and *Tārīkh Hukamā’ al-Islām* by al-Baihaqi.

However, what is meant by the word philosophy at that time by the word philosophy which is desired at the present time has experienced a narrowing of meaning. The word philosophy in the past had such a loose meaning, namely all the wisdom that could be obtained by using reason and knowledge. Meanwhile, the word philosophy that is desired at the present time is one of the disciplines that has been established. It is in this latter sense that the term philosophy is used in the phrase Philosophy of Islamic Law.

Departing from the above understanding, there are several definitions of Islamic Law Philosophy offered by the experts, including: as the approach of legal philosophy in general. Islamic Law Philosophy is the philosophy applied to Islamic law. It is a special philosophy and a certain object, namely Islamic law. Thus, the philosophy of Islamic law is a philosophy that analyzes Islamic law methodically and systematically so as to obtain basic information, or analyze Islamic law scientifically with philosophy as its tool. From the definitions above, the writer can conclude that Islamic Law Philosophy has several elements. First, Islamic Law Philosophy is the result of human thought. In other words, it departs from the human mind. Herein lies the fundamental difference between Islamic Law Philosophy and Methodological Sharia Sciences such as *Usul al-Fiqh* and *al-Qawa‘id al-Fiqhiyah*. Where the last two sciences depart from revelation. Second, all studies in Islamic Law Philosophy have never doubted

<sup>16</sup> Hariyanto Hariyanto, "Tradition of Besan Bali Marriage in the Muslim Community of Banjarnegara," *IBDA: Jurnal Kajian Islam Dan Budaya* 20, no. 1 (2022): 59–72.

<sup>17</sup> Mashood A Baderin, "A Comparative Analysis of the Right to a Fair Trial and Due Process under International Human Rights Law and Saudi Arabian Domestic Law," *The International Journal of Human Rights* 10, no. 3 (2006): 241–84.

<sup>18</sup> Imam Syaukani, "Rekonstruksi Epistemologi Hukum Islam Indonesia Dan Relevansinya Bagi Pengembangan Hukum Nasional," *Rajawali Pers*, 2006, 31.

the substance of the law established by Islamic Law. More explicitly, this is discussed in one of the studies of Islamic Law Philosophy, namely regarding the nature of Islamic law as God's Law which of course fulfills the purposes of law.

The typology of Islamic legal philosophy explains, among other things, the secrets, meaning, wisdom, and values contained in the science of fiqh. So that we carry out the provisions of Islam accompanied by understanding and high awareness. With the legal awareness of this community, high obedience and discipline will be achieved in implementing the law. A person who studies Fiqh at the same time as studying Islamic Law Philosophy, will understand more and more where the height and beauty of Islamic teachings lies, thereby creating a deep sense of love for the Highest Source of Law, namely Allah SWT, for fellow human beings, for nature, and for the environment in which they live. where does he live Thus, the aim of studying Islamic Law Philosophy is to further strengthen the Muslim community's belief in the majesty of Islamic Law.

### Object of Islamic Law Philosophy Study

This steady belief fosters a sense of obedience to the law that is almost without "coercion". Muslims obey the law not because they have to, but out of love, because it comes from a just and compassionate God. He obeys the law because of the belief that the law is made as a manifestation of God's love for His creatures. The ushul fiqh experts as well as Islamic law philosophers divide the philosophy of Islamic law into two parts. There are *Falsafar Tasyri'* and *Falsafat Syari'ah*.<sup>19</sup> *Falsafar Tasyri'*: philosophy that radiates Islamic law or strengthens it and maintains it. This philosophy discusses the essence and purpose of establishing Islamic law. *Filsafat tasyri'* consist of *Da'im Al-Ahkam* (the foundations of Islamic law), *Mabadi' Al-Ahkam* (Principles of Islamic Law), *Ushul/Mashadir Al-Ahkam* (principles/sources of Islamic Law), *Maqashid Al-Ahkam* (the objectives of Islamic Law), *Qawa'id Al-Ahkam* (Legal Maxims of Islamic Law).<sup>20</sup>

*Syari'ah philosophy is a philosophy expressed from Islamic legal materials, such as worship, mu'amalah, jinayah, 'uqubah, and so on. This philosophy is tasked with discovering the secrets and essence of Islamic law. This typology includes Asrar Al-Ahkam* (secrets of Islamic law), *Khasa'is Al-Ahkam* (characteristics of Islamic law), *Mahasin/Mazaya Al-Ahkam* (the virtues of Islamic law), and *Thawabi' Al-Ahkam* (characteristics of Islamic law.<sup>21</sup> Islamic Law Philosophy seeks to deal with fundamental questions in a strict, conceptual, methodical, coherent, systematic, radical, universal, comprehensive, rational, and responsible manner.<sup>22</sup> The meaning of this accountability is readiness to provide objective and argumentative answers to all questions, denials and criticisms of Islamic law. Thus, the Philosophy of Islamic Law is critical of these problems. The answers are not spared from further criticism, so that it is said to be an art of criticism, in the sense of never feeling satisfied in searching, not assuming an answer is complete, but willing and even happy to reopen the debate.

### Typology of Islamic Law Studies

In general, there are five important things related to the typology of Islamic law, namely Islamic law is perfect, elastic (flexible), universal and dynamic, systematic, ta'aqquli and ta'abbudi

<sup>19</sup> Djamil, *Filsafat Hukum Islam*.

<sup>20</sup> Amir Syarifuddin, *Pengertian Dan Sumber Hukum Islam* (Jakarta: Bumi Akasara, 1992), 7.

<sup>21</sup> Syarifuddin, 8.

<sup>22</sup> Louis O Kattsoff, *Pengantar Filsafat* (Yogyakarta: Tiara Wacana, 2004), 3.



in nature.<sup>23</sup> Of these several typologies of Islamic law stand on principles that must be defended absolutely and universally. These principles, as stated by Masdar F. Mas'udi, are qath'i teachings and serve as benchmarks for understanding and acceptance of Islamic law as a whole. These principles are identified.<sup>24</sup>

Masdar stated that the principle of individual freedom and responsibility, the principle of human equality before God, the principle of justice, the principle of human equality before the law, the principle of not harming oneself and others, the principle of criticism and social control, the principle of keeping promises and upholding agreements, the principle of mutual help for good, the strong principle protecting the weak, the principle of deliberation in joint affairs, the principle of equality between husband and wife in the family (Q. S. al-Baqarah/2: 187), and the principle of treating each other with ma'ruf between husband and wife (Q. S. al-Nisa'/4: 19). Therefore, Islamic law will always develop and keep up with the times that surround it.

One typology of Islamic law is revolutionary and egalitarian. Clearly, the Qur'an rejects the use of Jahiliyyah law which is considered to be full of considerations of lust and partiality towards certain groups in power in society. Furthermore, it was emphasized that Islamic law is the only law that must be adhered to by humans because it comes from Allah SWT and carries the principles of justice and social equality. (Q.S. al-Ma'idah: 48-49). In the early period of Islam, the Prophet Muhammad spread Islamic teachings universally to all mankind, under the guidance of Allah's revelation. W.M. Watt detailed the Islamic teachings taught by the Prophet Muhammad in the early period of Islam into 5 (five) main themes, namely; the goodness and power of God (God's Goodness and Power), God's judgment in the hereafter (the Return to God for Judgment), the human response to give thanks and worship God (Man's Response gratitude and worship), the human response before God for a benefactor (Man Response to God Generosity) and the prophetic treatise Muhammad saw (*Muhammad's own vocation*).<sup>25</sup>

The core of the early teachings of the Prophet Muhammad were the teachings of tawhid, namely the teachings to believe in Allah, the One and Only, the Almighty, the Creator of the universe and the Ruler of the hereafter who holds all of His creatures (including humans) accountable for all their actions. The logical consequence of this teaching is that there is an obligation to worship and give thanks to God and an obligation to be egalitarian and to love one another among creatures, especially fellow human beings. Meanwhile, in short it can be said that the basis of the teachings in this early period was piety in the hereafter, ethical dignity and prayer worship, as stated by Lapidus that *eschatological piety, ethical nobility and prayer formed the basis of early Islam*.

With regard to egalitarianism in Islam, al-Hujurat/49 verse 13 emphasizes that the most noble person before Allah SWT is the person who is the most pious, not the richest, smartest or most powerful person, whether male or female and whether they come from any ethnic group. It is stated at the beginning of the verse that humans are created from the same origin, namely from a man and a woman who then spread to various groups and ethnic groups. It was also emphasized that between human beings it is necessary to carry out communication and reciprocal interaction. The verse was told down regarding several events, including events that occurred at the time of fath al-Makkah. It is said that Bilal bin Rabah echoed the call to prayer and was judged by al-Harith bin

<sup>23</sup> Djamil, *Filsafat Hukum Islam*, 45.

<sup>24</sup> Masdar Farid Mas'udi, *Islam & Hak-Hak Reproduksi Perempuan: Dialog Fiqih Pemberdayaan* (Bandung: Mizan, 1997), 52-3.

<sup>25</sup> William Montgomery Watt, *Muhammad: Prophet and Statesman* (London: Oxford University Press, 1969), 23.

Hisham to be inappropriate because Bilal was a “former” black slave. Suhayl bin Amru responded to this assessment by stating that if Bilal’s actions were wrong, of course Allah SWT would change them and the verse would come down.

If then there are rules in Islamic law that seem inconsistent with egalitarian principles and other principles, then these rules must be understood in accordance with the context of the surrounding social reality and pay attention to their function as a legal counter to non-egalitarian legal rules which happened during the Jahiliyyah period. For example, the law of inheritance which divides inheritance between men and women in one to two parts as stated in the Qur’an, according to an egalitarian understanding, as expressed by Masdar for example, must be understood by taking into account two important things.

First, by giving a share of inheritance to women and placing men and women together as recipients of inheritance, it means that Islamic law has carried out quite revolutionary and radical reforms to the previously existing Jahiliyyah laws, namely not making women the recipient subjects. inheritance and can even become the inheritance itself. Second, the socio-economic setting in family life at the time the rule of law appeared was that the burden of family maintenance was borne by the men, so that the division of inheritance which divided men with a larger share of inheritance than the share of women’s inheritance was a fair distribution.<sup>26</sup> That way, the rules of Islamic law are legal rules that have an egalitarian character, are not racial, are not feudal and are not patriarchal.

The object of study of Islamic law is *muhkam alaih* through a set of rules such as *fiqh*, *ushul fiqh* or methodology of Islamic law and the most crucial object studied in Islamic law is the Koran, Sunnah, schools of thought, and also issues of worship and *muamalah*.<sup>27</sup> Including new issues that are developing such as Family Law (*ahwāl al-syakhsiyah*), Civil Law (*civics/al-ahkām al-madāniyah*), Criminal Law (*al-ahka-ām al-jināi’yah*), Procedural Law (*al- ahka-ām al-murāfa’āt*), Constitutional Law (*al-ahkām ad-dustūriyah*), International Law (*al-ahkām ad-duwāliyah*), and Economic Law (*al-ahkām al-iqtishādiyah wa al-māliyah*). As far as issues of human rights, gender, and social phenomena that develop are objects of study in Islamic law, which is flexible according to the demands of the times. Islamic law also does not eliminate the philosophical values contained in the philosophy of Islamic law, and even integrates with each other to achieve benefit and the ultimate goal of *maqashid ash-shari’ah*.

#### D. Conclusion

Differences in terms of definition and substance. Islamic Law Philosophy is studying Islamic law with a philosophical approach (philosophical approach) by addressing fundamental questions about Islamic law conceptually, methodically, systematically, radically, universally, comprehensively, and rationally. Meanwhile, Islamic law which is etymologically, is a collection of rules, both in the form of formal promulgation and from custom (*tradition/al-ādah*) in which a state or society claims to be bound as a member or subject.

The difference in terms of typology. It lies in the role of Islamic legal philosophy in reasoning Islamic law. The studies discussed in the Philosophy of Islamic Law have succeeded in broadening the horizons of thinking philosophically and epistemologically by making *fiqh* (Islamic law) a science,

<sup>26</sup> Mas’ udi, *Islam & Hak-Hak Reproduksi Perempuan: Dialog Fiqih Pemberdayaan*, 53.

<sup>27</sup> Djamil, *Filsafat Hukum Islam*, 30.

so that the philosophy of Islamic law is discussed through a philosophical approach which is very synonymous with reason (rational) as its medium. As for Islamic law, there needs to be some further explanation regarding shari'ah, fiqh, and ushul fiqh. All three are instruments of Islamic law which contain regulations and results of decisions such as laws, fatwas, and so on. Differences in terms of the object of study. The object of study of Islamic law is muhkam alaih through a set of rules such as fiqh, ushul fiqh or methodology of Islamic law and the most crucial object studied in Islamic law is the Koran, Sunnah, schools of thought, and also issues of worship and muamalah. Meanwhile, the objects and methods of Islamic legal philosophy are the philosophical values of Islamic law as the object of study to achieve benefit and the ultimate goal of maqashid asy-shari'ah and are analytical, epistemological, critical, rational, and comprehensive.

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