

LAWS EXEGESIS VERSUS JURISPRUDENCE

(Comparative Studies in Understanding Religious Text
and the *Istinbath* Process of Law on *Mahar*)

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Abstract: Fiqh and *Tafsir Ahkam* are basic courses at the Faculty of *Usuluddin* and the Faculty of *Sharia*. These two disciplines of science are the products of ulama's legal thinking whose objects are different but inseparable from one another. Faqih (fiqh expert) and mufassir (interpreter) can sit together to solve the legal problems faced by people with their respective approaches and methods. In this paper, these two disciplines are discussed with various perspectives. Epistemologically has its own specifications, and axiologically has their respective roles in answering the problems of humanity.

Keywords: Laws Exegesis, *Istinbath*, *Mahar*

Introduction

The Qur'an is a celestial book which is a guide (hudan) for those who believe in it. In addition to revealing the history of the previous *ummah* (group of people), the Qur'an also includes three essential things namely the faith, sharia and morals.¹

¹Regardless of scholars' differences in the content of the Qur'an, such as the view of Abul Adil bin Burhan states that broadly the content

The Qur'an is the name of Allah Almighty, while not yet in touch with the world, its existence is still divine (the only God knows), and then descends to planet Earth in Arabic to His Prophet who then forms the *insaniyah* (form) in one of the human languages (Arabic), meaning that these verses can be understood and subsequently interpreted in human life.² In other words, the Word of God is the conversion of the Divine order to the text stored in the Mahfuz Law which was originally not in a particular language, from the order of which man could not comprehend to a form of utterance that could be understood by man.³

In the interpretation of these verses, the Prophet functions as a *mubayyin* (explanatory) who always explains to his friends about the meaning and content of the Qur'an, especially regarding verses that are difficult to understand. This situation lasted until the Prophet died.

After the death of the Prophet Muhammad, Muslims were only able to rely on their *ijtihad* in interpreting verses of the Koran which would subsequently be sure to develop that

of the Qur'an has three things namely the science of 'Allah' and His attributes, the science of prophecy and the things that strengthen his prophecies and the science of enlightenment (demands) and mihnah (exams). Other scholars argue that its content is divided into four; warnings and prohibitions, rumors and announcements, al-wa'du and al-waied. See Zarkasyi, *Al-Burban fi 'Ulum al-Qur'an*, (Beirut: Dar Ma'rifah, 1391), (I), p.17. See also Amin Suma, *Studi Ilmu-ilmu al-Qur'an*, (1), (Jakarta: Pustaka Firdaus, 2000), (1), p. 102.

²This view is one of the authors' essence in reading Hamid Abu Zaid's thoughts in his work *Naqd Al-Khithab al-Diniy*.

³See Muhammad Sharur, *Metodologi Fiqh Islam Kontemporer* (Yogyakarta: eLSAQ, 2004), p.186.

understanding in line with the progress of science and human civilization that influenced and colored the interpretation of the Koran.

The Qur'an itself gives infinite possibilities of meaning. Therefore, studying Tafsir is easy and difficult ('asir yasir). The location of the difficulty is because the Koran is a word whose Mutakallim is Allah, the meaning of the editor cannot be known directly from Him. It is different from other writings that can be understood from the writer himself or people who know and are closer to him. While those who know best and are close to Mutakallim are gone, so the interpretation of the Koran varies and is subjective, including in terms of verses that are classified as discussing the law which then becomes the object of Ahkam's Tafsir studies.

On the other hand, humans were created solely for the service of God, in this corridor of dedication that humans are burdened with *taklif* which is manifested in *shari'ah* which is applied in Fiqh as a step towards addressing religious texts.

Thus, the two sides of this discipline support one another. The legal verses that are followed up in the *Ahkam* Interpretation, and fiqh are directly related to the essence of human action. These two sides are interesting to discuss together in order to find common ground of differences and differences in terms of various aspects. The minimum objectives that can be obtained include positioning the ontological and axiological approaches of the two sciences as proportionally as possible, while the maximum objective is to help the *mukallaf* (mature people) in *tathbiq* Islamic *sharia*.

Results and Discussions

a. *Ahkam* exegesis

Etymologically, interpretation means bayan / Idhar (explanatory) and *kasyf* (disclosure). Since the emergence of this term is usually used in the medical field when a physician wants to check the patient's disease by checking the seminal water. Thus, according to the linguistic relation to the *mufasssir* al-Qur'an, if a physician exposes a patient's illness then the mufasssir wants to reveal the secrets contained in the Qur'an. According to the terminology, Tafsir as revealed by al-Jurjani (w.740 H) is to explain the meaning of the content of the verse with everything related to it including the story and the causes that lead to the decline of the verse with a concrete explanation.⁴

Another meaning expressed by al-Zarkasyi (745 A.D.), *Tafsir* is a discipline of knowledge through which the Book of God can be known or understood by His Prophet in both its content and law and its wisdom, which can be accomplished by mastery of the various languages his scholarly discipline as well as sufficient knowledge of ushul fiqh, nuzul asbab and mansukh.⁵

The definition raised by al-Zarkasyi also reveals the criteria for someone to become a mufasssir, among others must have expertise in grammar and related to it, have the

⁴See Al-Jurjani, *Al-Ta'rifat* (Beirut: Dar al-Kutub 'Arabiyyah, 1405), on *maddah tafsir*

⁵Al-Zarkasyi, *Manabil al-'Irfaq fi 'Ulum al-Qur'an*, (Beirut: Dar al-Fikr, 1996), (II), p. 38.

ability in the science of ushul fiqh, monotheism, asbab nuzul, Nasikh mansukh, hadiths that explain about mujmal and mubham verses, and the main thing must have mauhabah knowledge which is inspiration from God.⁶

As for the ahkam, broadly discussed by Abdul Wahab al-Khallaf, that there are three *ahkam* in the Qur'an. First, the *I'tiqadiyah ahkam* associated with the creed, and the second, the Ahkam Khulqiyah associated with morals. Third, Ahkam 'Amaliyah related to aqwal (speech), af'al (deed), 'uqud (transaction) and *tasharrufat* (interaction) of man. This third law is the so-called fiqh of the Qur'an in which the study area is covered by the discipline of science of fiqh.⁷

To explore further about this *ahkam 'amaliyah*, Abdul Wahab al-Khallaf divided into two things, namely: First, worship services such as fasting, praying, etc., and secondly, ahkam muamalah such as sale and purchase transactions, civil crime, state, legislation, economics and so on.⁸ Thus, "Interpretation of Ahkam" means an attempt to express the meaning of the verses related to the behavior ('amaliyah) of mukallaf.

As an example of what is described above Q.S. al-Maidah: 38 (and the thief and the thief shall be cut off). The verse only describes the cutting of the hands of those who committed the theft, while the terms of the deduction and the

⁶See Al-Zarkasyi, *Manabilul 'Irfan fi 'Ulum al-Qur'an*, p. 13.

⁷Abdul Wahab al-Khallaf, *Ilmu Ushul al-Fiqhi* (Jakarta: Majelis a'la Indonesia li al-da'wah al-Islamiyah, t.th.), p. 32.

⁸Abdul Wahab al-Khallaf, *Ilmu Ushul al-Fiqh*, p. 32.

conditions allow for the unspecified deduction (tafshil), to expose it, Tafsir Ahkam became a means of understanding correctly.

Methodologically, Manna al-Qathan shows several steps in interpreting the Qur'an among others; interpret verses with verses, interpret verses with hadiths, interpret verses with qaul sahabah, interpret verses with aqwal beside'in such as Mujahid bin Jabir, 'Ikrimah maula Ibn' Abbas, Atha bin Abi Rabah and so on, if not found then anyone can interpret with a record of mastering the Arabic language with all its related knowledge, all knowledge related to the Qur'anic ulama, and most importantly having a high degree of intelligence in understanding the Qur'an other than true and far-flung beliefs.⁹

Ahkam's interpretation discusses the normative arguments that come from revelation that includes the juridical foundation. This jurisprudence is based on the scope of legal issues that are macro (jig) and macro (juz'i). As for the foundation of the strength of his arguments include *qath'i al-dalalah* (definite proposition) and *dzanni al-dalalah* (vague proposition). Broadly the focus of Tafsir Ahkam's research is the text of the Qur'an which contains various verses that give indication of the law.

In more detail, the Qur'anic verses dealing with the substance of fiqh are grouped into several themes: faith, science, morals, worship, drinks and food, clothing and

⁹Manna' al-Qathan, *Mababis fi Ulum al-Qur'an* (Riyadh: Maktabah Ma'arif li Nasyr wa Tauzi', 1992), p. 24.

jewelry, Islamic jurisprudence, religion, justice and jihadist law.¹⁰

Abdul Wahab al-Khallaf elaborates on the verses of the Qur'an in the context of the law on: ahkam worship, *shamanship* of 70 verses, ahkam madaniyah of 70 verses, ahkam jinaiyyah of 30 verses, ahkam murafa'at of 13 verses, ahkam dusturiyah 10 verses, ahkam dauliyah 25 verses, ahkam iqtishadiyah wa al-maliyah 10 verses.¹¹

b. Fiqh (*Jurisprudence*)

Fiqh (fa-qa-ha) literally means understanding or knowledge.¹² Language experts argue that, fa-qa-ha (فقه) comes from the word fa-qa-a (فقا) which is synonymous with the words syaq and fath (both means to open).¹³ The consonant alif (a) with the haruf ha (one in the part of the same makhraj. It is said that "fiqh" is a deeper understanding of the problem, therefore, if it is known only in the form of Faqih (expert), Fiqh knows the problem with light-hearted, if a problem arises open-eyed to see it in its true form.¹⁴

¹⁰Cik Hasan Basri, *Model Penelitian Fiqh* (Jakarta Timur, Prenada Media, 2003), p. 348.

¹¹Abdul Wahab al-Khallaf, *Ilmu Ushul al-Fiqh*, p. 32

¹²Abu al-Fadhl Jamaluddin Ibn Manzur, *Lisan al-Lisan Tabzib Lisan al-'Arab* (Beirut: Dar al-Kutub al-'Ilmiyah, 1993), 1 : (2), p. 330.

¹³Muhamad Rawas Qal'ah, *Mu'jam Lughah al-Fuqaha* (Beirut: Dar an-Nafais, 1988) p. 348.

¹⁴Turmuzi, *Nawadir al-Ushul, tabqiq Mushthafa 'Abdu al-Qadir* (Beirut: Dar al-Kutub al-'Ilmiyah, 1992), p.77.

To further explore these words, the concept of maqlub¹⁵ in a linguistic review, it can be applied to the word "fa-qa-ha" (ف ق ه) which, if the letters are turned upside down, will appear as many as six words, each of which has a different meaning.¹⁶ Of the six words that have been mentioned, there are six words that emerge from the words ف ق ه three of which have meaning, respectively fa-qa-ha (knowing or understanding), fa-ha-qa (filled to the full) and qa-fa-ha (part). From the three meanings mentioned above, it is known that "fa-qa-ha" with all its derivations can mean to master, explore and have very broad insights in certain fields.

At the beginning of the use of the word, understanding fiqh means understanding and knowledge in general, not just limited to religious knowledge. In other words, a person is said to be faqih in the pre-Islamic era if he has a broad insight and knowledge (comprehend) and knows the depth of the problems he faces. Therefore, the nickname faqih is also addressed to experts in marrying camels, able to distinguish the female camel that is being lust with the camel who is pregnant. This person was nicknamed the fahlun faqih

¹⁵Maqlub is the alternation of letters in one word, linguists argue that basically all words in Arabic have isytiqaq akbar, a word consisting of letter components, and if the letters are flipped back and forth in a word-shaped arrangement, it still boils down to one meaning although each word form has a different meaning, as long as the word is used. See Abdul Munem al-Najjar, *Dirasah fi al-Lughah*, (Kairo: Dirasat al-Islamiyah, 1988), p.39.

¹⁶Louis Ma'luf, *Al-Munjid fi al-Lughah Wa al-A'lam*, (Beirut, Dar al-Masyriq, 1984) each at the beginning of a letter as below:

1. فقه : علم، فهم 2. فقه : امتلاء حتى صار يتصبب 3. فقه : ناحية
4. فقه : × 5. فقه : × 6. فقه : ×

(camel expert) which was popularly used among the Arabs of old.¹⁷

Further, the word "fiqh" suffers from distortions of meaning, limiting it to religious studies. The word fiqh is widely found in the Qur'an in its various forms. Of these many words, fiqh refers to knowledge of religious law, so the words "science" and "fiqh" are used together for a global understanding of Islam.¹⁸ There is a statement that says that the Prophet Muhammad (PBUH) once prayed for Ibn 'Abbas which means (yes, Allah gave him an understanding of Religion / faqqihhu fiddin). Another expression of the Prophet stated, Who is desired by Allah goodness, given the knowledge of religion (*yufaqqibhuh fiddin*). The two expressions above clearly do not classify knowledge in a particular field including an exclusive understanding of law, but religion in general.¹⁹

Fazlur Rahman as quoted by Qadri Azizy divides the development of fiqh in three phases, the first two phases are still in a more general sense, while the third phase is more exclusive in the legal sense. The two phases in question are; First, fiqh means understanding (understanding), a supplement to the term "science / science" (accepting

¹⁷Muhammad Amin, *Ijtihad Ibn Taymiyah Dalam Fiqh Islam* (Jakarta: INIS, 1991), p. 93.

¹⁸Ahmad Taha 'Abbas, *Syari'ah Islamiyah: Tarikhaha wa adillatuba* (Kairo: Maktabah Al-Azhar, 1994), p. 36.

¹⁹Muhammad Usman Syabir, *Takwin al-Malakah al-Fqhiyah* (Dauhah: Wizarah al-Awqaf wa asy-Syu'un al-Islamiyah bi ad-Daulah Qathr, 1999), (1), p.11.

lessons). Knowledge is meant by 'receiving lessons' because the process of acquiring knowledge through a history of acceptance, such as receiving the essence of the verses of the Koran or Hadith. In this stage fiqh is used to understand and make deductions from the meanings of the two Islamic sources above. Secondly, fiqh and science both refer to knowledge which means to be identical, therefore religious science and fiqh without any difference include religious material including kalam, tasawwuf and others as a book titled al-Fiqh al-Akbar was authored by Abu Hanifah (80-150 H) dominated the discussion of theology.²⁰

The next development of fiqh is more exclusive to discuss matters of nuance of the law. Fiqh means a type of Islamic discipline which is "Islamic jurisprudence". As a discipline means a product in this case fuqaha or mujtahid.²¹ Therefore, fiqh is a product of ulema's thought power (fuqaha), with its ijtihad trying to interpret the application of syariah principles systematically, the dissection of the Qur'an and Sunnah empirically used as applied law by Muslims in various regions.²²

Abu Zahrah (1377 H) defined the fiqh as follows: "The knowledge of the laws of Shari'ah which is' amaliyah as the application of its detailed arguments".²³ Two important

²⁰Qodri Azizy, *Elektisisme Hukum Nasional* (Yogyakarta: Gama Media, 2002), (1), p. 2-4.

²¹Qodri Azizy, *Elektisisme Hukum Nasional*, p. 2-4.

²²Cik Hasan Basri, *Model Penelitian Fiqh*, p. 4.

²³Abu Zahra, *Ushul al-Fiqhi*, (n.pp., Dar al-Fikr al-'Arabi, n.y.), p.

components are in the definition: First, knowing ('ilm) Shari'ah law which is practical, and second, knowing the detailed arguments for various issues that are developing in the community.

Abdu al-Wahhab al-Khallaf (1361 H) defines fiqh as "a collection of practical laws that are dug up from the details".²⁴ When fiqh is identified as knowledge, it is expressed descriptively. It is an intellectual discourse on the structuring of human life using a certain way of thinking. When identified as a legal entity, it is expressed prescriptively. It is a set of laws, or as one of the dimensions of Islamic law, a product of the fuqaha mind that has become one of the benchmarks in the formation of human life.²⁵

Fiqh is not just knowing and understanding the laws, but more than that it also studies the 'illah (cause), purpose (intended, intended) and footing of a law after going through the process of istinbath law. Thus al-Jurjani states that, Fiqh achieves targets that are not clear in meaning (al-ma'na al-khafy) related to law, knowledge which must go through thought and ijtihaad, requires in-depth observation.²⁶

Ibn Khaldun stated, "Fiqh is to know the laws of Allah relating to the activities (a'fal) of the mukallaf associated with wujub (necessity), hazr (warning), nadb (suggestion), karahah (reproach), ibahah (permissibility). These laws rely on

²⁴Abdu Al-Wahhab al-Khallaf, *Ilmu Ushul al-Fiqhi*, p. 11.

²⁵Cik Hasan Basti, *Model Penelitian Fiqh*, p.8.

²⁶Al-Jurjani, *Kitab at-Ta'rifat*, p. 175

the Book, Sunna and other sources permitted by the Shari'ah, if the law is produced from these sources then that is fiqh "²⁷

Starting from the description above, there are some things that need to be underlined. First, that fiqh is science, as well as other sciences which certainly have their own study objects. Second, that the area of study of this science is the laws of Shari'ah whose main sources are the Qur'an and Hadith. In other words, the arguments are not sourced from feelings, reason and so on, but religious texts relating to human actions in the form of commands or prohibitions, with various forms respectively in the field of muamalah and worship. Therefore, fiqh is a science of human creation (al-muktasab) and the object of study revolves around ahkam 'amaliyah related to the structuring of human actions and activities that are applicative rather than theoretical, on which the legal basis (hujjah) is the Qur'an and the Sunna.

Starting from the description above, fiqh is a logical product of mujtahid (ulama) when they try to explore the laws of 'amaliyah from the shari'ah texts. Through fiqh instruments, shari'ah laws that are 'amaliyah can be known and implemented by humans. Although the source of fiqh is the shari'ah text, the substance of fiqh itself is the ulama's ijtihad through a deep thought process.

Because fiqh is closely related to the power of human intelligence, the jurisprudent has certain qualifications in accordance with their respective capabilities. The qualification

²⁷Ibn Khaldun, *Muqaddimah Ibn Khladun*, (n.pp., Dar al-Fikr, n.y.), p. 445.

starts from; First, high integrity (bashirah, wisdom, ijtihad) on issues that demand legal study. Second, the ability (qudrah) to present the law when faced with problems, is characterized by its mastery of the principles and principles of fiqh. Third, the ability to istinbath law from and based on sources in the form of arguments, this ability is characterized by its mastery of the shari'a sciences and language. Fourth, the ability to takhrij (issue) furu '(branch) problems from their origin, in addition to their ability to choose (choose strong) opinions when differences occur (ikhtilaf). Fifth, the ability to express (ta'bir) the main ideas of fiqh.²⁸

Some scholars classify the two methods of interpreting the law that springs from the arguments: The first method, is the method of meaning which is the source of qiyas, istihsan, mhalahah mursalah and so on. Second, the lafziyah method is a source of footing derived from texts in various forms whether the text is' am, special, manthuq, mafhum and so on.²⁹ To find out the law, the mujtahid face two possibilities, namely maybe they can immediately know the law after examining a number of texts that can provide an inductive understanding of the law that was unearthed (*fiqh manshush*). It is also possible that the mujtahid can find out the law about an act after using more reason, because the object of law intended is not explicitly mentioned in texts (*fiqh ijtihady*).

²⁸Usman Syibayr, *Takwin al-Malkah al-Fiqhiyah*, p. 56-57.

²⁹Ahmad Husary, *Istinbath Ahkam min Nushush* (Beirut: Dar Jayl, 1997), p. 9.

The object of study of this science is human actions manifested in the dynamics and development of human life.³⁰ It is further justified by the religious proposition that the result is embodied in the taklifiyah ahkam such as compulsory, mandub, haram, makruh and mubah. Fiqh if it is related to ukhrawi charity then its discussion is about worship, and if it is related to worldly activity then its scope is in matters of *munakabat* (marriage), muamalah (social relation) and 'uqubah (sanction / criminal).³¹ According to this review, the classification of substance fiqh is broken down into two sectors, namely worship and worship. The grouping led to the consequence of the use of the rule of law: "al-ashl fi al-Ibadah al-buthlan hatta yaquma ad-proposition 'bad amrih" (the law of origin of worship is null and void where the rules dictate it). "al-ashl fi al-muamalah ashahah hatta yaquma al-dalil 'ala tahrimih".

Between Two Disciplines of Knowledge About Mahar

a. The Study of *Ahkam Tafsir*

QS. Al-Nisa/4:3 (Give the dowry to the woman [whom you marry] as a generous gift. Then if they willingly give you some of the masks, then eat [the] delicacy which is good as a result).

³⁰A Faqih in addition to the conditions that have been determined also he should be sensitive to the development and dynamics of human life. See Salim 'Awwa, *Fiqh Islam fi Thariq Tawjidi* (Beirut: Maktab Islami, 1998), p. 13

³¹See Ali Haidar, *Durarul hukkam Syarh Majallah Ahkam* (Beirut: Dar al-Kutub al-Ilmiyah, t.th), (I), p.15.

The above paragraph describes the obligation of a man to give a dowry to the woman he is married to, which is illustrated by the words "give" that indicate the command. In this case it is agreed that the fact of the order shows the obligation as long as there is no *qarinah* (indication) preventing it from the obligation.³²

The above verse, dowry is discussed with "shadaq", in another verse with "ajr" in this way is a gift that does not endorse or replace as the bond of a couple in a marriage bond. Sincere shadaq is legally owned by "annisa".

This verse goes back to the time of ignorance when the dowry was taken by the godmother. One of the wisdoms of the gift is that a woman feels overwhelmed by her husband so that she must submit to her husband as much as fasting should be to her husband.³³

About the existence of the dowry is that it can be inherited, regardless of the minimum level of difference that must be fulfilled in order to become dowry. The existence of matter is not a service (*manafi*), because of the word "اعطاء" and it cannot be realized except by material. The second reason is due to the subsequent explanation of the verse itself. This is reinforced by some authentic Hadiths that explain

³²Mustafa Said Khin, *Atsar Iktilaf fil Qawaid Ushuliyah fi Iktilafil Fuqaha* (Beirut: ar-Risalah, 1998), p.300.

³³An overview of ibn 'Arabi's interpretation, *Abkam al-Qur'an* (Beirut: Dar al-ma'rifah, n.y.), (I), p. 316-317 and Syafi'i, *Abkam al-Qur'an* (Beirut: Dar al-Kutub al-'Ilmiyah, n.y.), (I), p. 196

even dowry with a metal ring. About the hadith which states that with the verse of the Qur'an is a weak hadith (dhaif).³⁴

Thus, the dowry is the absolute provision of Allah when entering into a marriage, legitimately belongs to the wife and should not be disturbed by anyone including her parents. About the levels should be determined from the customs and culture that apply in one place.

b. The Study of Jurisprudence

In the language of dowry is also synonymous with Sadaq which means to spend property for the purpose of marriage. While in terms of the term means a material that is intended for women to be permitted halal (istimta') with the intention of living forever.³⁵

As for the dowry requirements as follows: The material given has value to be appreciated, so a grain of rice is not valid. The material provided is legitimate and can be used, therefore rewarding with khmar, pigs and similar is invalid. Mahar is not stolen or obtained in an illegal way. Mahar is not vague in existence.³⁶

The problem that arises then if the dowry is illegal, is it valid or not? To answer this, it is first known the methodology of the jurist of fiqh in the practice of law.

³⁴An overview of al-Jashash, *Abkam al-Qur'an* (Kairo: Dar Mushaf, t.th.), (III), p. 92.

³⁵Abdu Rahman al-Juzairy, *Al-fiqh 'ala al-Mazhabibi al-Arba'a* (Beirut: Dar al-Fikr, 1989), (4), p. 94.

³⁶Abdu Rahman al-Juzairy, *Al-fiqh 'ala al-Mazhabibi al-Arba'a*, p. 96-103

The interesting thing that theorists have been talking about is whether the ban is worth a facade (broken),³⁷ and resulted in cancellation of the practice. Proponents of different motions understand the circumstances.

The first condition, the prohibition itself explicitly contains malice, is divided into two types namely *a'f'al hisiyyah* (Acts known through its taste and existence are not influenced by Shari'ah, such as adultery, killing, drinking chambers and other despicable acts, since before Islam such acts are ugly and abominable). The second is the Shari'a *tasharrufat* (the bribe is known through Shari'ah) in this case the jurists of the *fiqh* disagree among themselves:

The Shafi'iyah and some *Mutakallimin* hold that the prohibition related to the Shari'a *tasharrufat* shows a cancellation and can be ascertained of the evils contained in the prohibition, to the extent that they are not allowed to exist in Sharia unless there is something to prevent it from being

³⁷There are several terms in the discourse of proposals, among others: legal in terms of worship that is when the deeds that have been carried out no longer require the existence of *qadha* (substitute), valid in terms of *muamalah* namely when the contract becomes a foothold or basis for achieving desired goals, for example in buying and selling which is legal when the buyer can use the goods he bought correctly in accordance with sharia, on the other hand the seller can take advantage of the payment given by the buyer. While the annulment of deeds in worship that is not yet released a demand in one practice. As for null and void in the case of *muamalah*, that is a matter with which it has not been entitled to use the object as a result of a transaction between two parties. The facade (broken) for *jumhur Fuqaha* is equated with *buthlan* (canceled), while Hanafi distinguishes it, the facade for him is justified (legal) in terms of matter but not in terms of its nature (other things), For further explanation, please see Mustafa Said al Khin, *Atsar al-ihktilaf fi al-Qawaid al-ushuliyah*, p. 341-349.

banned, based on the following. this; First of all, friends and other Muslims agree to cancel the practice and the treaty that there are things that are not allowed by the Shari'ah such as canceling marriage for marrying a Muslim woman, canceling the sale due to *riba* and so on. Second, if a practice is not a facade then there is wisdom to show that it is prohibited and vice versa, but this requirement is nullified by the fact that there are two different wisdom.

- The second opinion supported by Hanafiah, the Shafi'i friends and most of the *mutakallimin* states is not void.
- The third opinion stating the facade in worship is not in the worship.

The second circumstance, the prohibition is because it is motivated by the act itself or part of it, so *Jumhur Ulama* believes that it leads to the facade. Their reasons are as stated above.

The third condition, the prohibition is because there are things (properties) that definitely lead to damage (facade), which in this case can also be classified as invalid (*buthlan*) according to *Jumhur*, therefore the position is the same as *almanhi lizatih* (forbidden by itself) while Hanafi believes the prohibition is broken in nature alone, while the practice itself is still prescribed, for example the prohibition of *riba* because of the element of excess that cannot be justified by the Shari'ah, this can occur in the sale and purchase, even if it is outside of the rules.

Fourthly, the prohibition was caused by something unrelated to the practice, such as performing salat with stolen clothes, for such a Friday may still be legal but he was guilty of wearing clothes that did not belong to him; the loss of charity.

From a different point of view it will produce a variety of thought products as well, so that in this discussion, Syafl'iyah believes the contract is valid because the event is outside of the problem. Malikiyah is a valid contract if it has been superstitious (related to husband and wife) and if not valid yet. Meanwhile, David, before or after dukhul, his contract was still invalid.

Conclusion

The Ahkam Tafsir study and the Fiqh study are two disciplines of science that are ontologically, epistemologically and axiologically have their own discussion. If the commentary on Ahkam's discussion departs from the verses of the law then the study of Fiqh departs from human activities.

Ahkam Tafsir Study is the effort of the ulama (mufassir) in interpreting the verses of law, while Fiqh is the effort of the ulama (fuqaha) as a reaction and response to events experienced and will be experienced by humans in the corridors of the law ranging from compulsory, *haram*, *makruh* or *mubah* . In determining the law sometimes through the interpretation of several verses of the law. Thus, the main orientation in the study of the legal paragraph is not merely

the meaning of the verse, but more than that namely producing a law which memorandum bene is the purpose of fiqh.

The first and foremost foothold of Fiqh is the verse of the Koran, while the Ahkam commentary itself discusses that foothold. The existence of differences in scholars in fiqh is inseparable from their differences in responding to verses and hadith both in terms of ta'arudh (contradictions), isytirak lafdzi (multi-meaning), ikhtilaf qira'at (differences in reading) or because the problem itself is not revealed by religious texts. These two disciplines can help the mukallaf in practicing shari'ah as the implementation and form of obedience of a servant in carrying out his religion, then with these two sciences can lead humans to achieve world and hereafter happiness.

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