

QAUL QADIM AND QAUL JADID: A SOCIOLOGICAL REVIEW ON THE EVOLUTION OF ISLAMIC LAW



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Abstract

Through an examination of the evolution of Imam Shafi'i's philosophy, this paper investigates the sociological distinctions between Qaul Qadim and Qaul Jadid in Islamic legal theory. Although Qaul Jadid is a modification of his views after he went to Egypt, Qaul Qadim refers to the legal opinions he presented while in Iraq. The purpose of this study is to identify the social, political, and cultural factors that shaped the change in Qaul Qadim to Qaul Jadid philosophy. This study analyzes the text and applies a historical approach as a qualitative technique. The findings indicated that in addition to regional variations, certain social and cultural shifts in Egypt necessitated amendments to the legislation to make it more relevant to the local population. The adaptability and flexibility of Islamic law in reaction to societal circumstances are highlighted by this research. It strengthens the debate on the evolution and dynamics of Islamic legal thinking and confirms the need for contextualization in the implementation of shari'ah law. Therefore, the knowledge of how Islamic law evolves and remains applicable in different social situations is greatly advanced by this study. Furthermore, a deep grasp of Qaul Jadid and Qaul Qadim supports Islamic law practices in addressing the issues of the modern world. It facilitates their guaranteeing the validity and relevance of sharia law in the many modern situations.

Abstrak

Melalui kajian terhadap evolusi filsafat Imam Shafi'i, tulisan ini mengkaji perbedaan sosiologis antara Qaul Qadim dan Qaul Jadid dalam teori hukum Islam. Beliau menyampaikan pendapat hukum di Irak yang dikenal dengan nama Qaul Qadim, dan versi revisi dari pendapat yang sama ketika beliau berangkat ke Mesir yang dikenal dengan nama Qaul Jadid. Menemukan faktor sosial, politik, dan budaya yang mempengaruhi transisi mental dari Qaul Qadim ke Qaul Jadid menjadi tujuan penelitian ini. Dalam penelitian ini, teks dianalisis dan perspektif sejarah digunakan dalam metodologi kualitatif. Temuan penelitian menunjukkan bahwa berbagai pergeseran sosial dan budaya yang terjadi di Mesir memerlukan modifikasi legislatif untuk menjadikan Qaul Qadim lebih relevan dengan budaya lokal selain variasi regional. Kapasitas hukum Islam dalam bereaksi terhadap dinamika masyarakat ditunjukkan dalam penelitian ini. Studi ini menyoroti perlunya kontekstualisasi dalam penerapan hukum syariah dan memajukan perdebatan mengenai evolusi dan dinamika pemikiran hukum dalam tradisi Islam. Oleh karena itu, pengetahuan tentang bagaimana hukum Islam berkembang dan tetap berlaku dalam berbagai situasi sosial akan sangat ditingkatkan melalui penelitian ini. Selain itu, para praktisi hukum Islam akan lebih mudah menangani permasalahan masa kini jika mereka memahami secara utuh Qaul Qadim dan Qaul Jadid. Dengan demikian, mereka dapat menjamin bahwa hukum syariah dapat diterapkan dan relevan dalam berbagai situasi modern.

INTRODUCTION

Overall, within the framework of Islamic law, it has evolved over thousands of years and continues to adapt in response to social and cultural changes. Among the key concepts in the development of Islamic law is the distinction between Qaul Qadim and Qaul Jadid. While Qaul Jadid represents a fresh perspective that emerges as a reaction



to changing circumstances, Qaul Qadim refers to the original viewpoints put forth by scholars in the early period of Islam. This metamorphosis illustrates the process of modifying Islamic law to align with the socio – economic changes occurring within Muslim culture.

The analytical framework that explains how social dynamics influence Islamic legal reform is presented using the perspective of Islamic legal sociology. According to Talcott Parsons, law is a social institution that reflects the ideals and conventions of society, as well as a set of rules that regulate behavior. Parsons emphasizes the importance of law to the broader social system, as law maintains harmony and order.¹ The transformation of Islamic law from *Qaul Qadim* to *Qaul Jadid* demonstrates an effort to modify the law in order to reflect societal developments.

Modernization, globalization, and demographic shifts are just a few of the reasons why new ideas about Islamic law have emerged in various Muslim countries. According to Wael B. Hallaq, Islamic law is dynamic and constantly capable of evolving in line with societal changes². This demonstrates the ability of Islamic law to adapt to the various issues arising from societal development.

Furthermore, the emphasis of the legal sociology approach lies in how the relationship between social reality and religious standards influences the legislative process and legal interpretation. Abdullah Ahmed an – Na'im underscores the necessity of considering the social and cultural background in the application of law through *ijtihad*, or the process of legal interpretation. Therefore, the shift in law from *Qaul Qadim* to *Qaul Jadid* can be viewed as an effort to realize substantive justice and social relevance within contemporary Muslim culture.³

The sociology of Islamic law asserts that law is more than merely a collection of regulations; it represents a depiction of social and cultural processes within society. Ibn Khaldun, in his theory of social change, states that law and other social institutions must continually evolve to meet the demands of an ever – changing society.⁴ Therefore, Islamic law must be continuously revised and modified to remain relevant and applicable within an ever – evolving society.

The aim of this study is to understand how social factors influence the development of Islamic law from Qaul Qadim to Qaul Jadid. This research will examine the social causes of this development and its impact on contemporary practices of Islamic law, employing the methodology of the sociology of law. Therefore, we can observe how Islamic law evolves as a response to shifts in legal traditions and as a reflection of its intricate interaction with broader societal transformations.

Important consequences for our understanding of the authority and legitimacy of law in Islam also arise from the shift in Islamic legal theory from Qaul Qadim to Qaul Jadid. It is difficult to imagine how law can remain authoritative and applicable in the face of constant changes in societal values and social institutions. The basic ideas of Islamic teaching, justice and social welfare, must always be taken into account in the revision of Islamic law, according to Fazlur Rahman.⁵ The process of legislation and legal

¹Talcott Parsons, *The Structure of Social Action* (The Free Press, 1937), 45.

²Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge University Press, 2009), 112.

³Abdullahi Ahmed An – Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (London: Harvard University Press, 2008), 27.

⁴Ibn Khaldun, *The Muqaddimah: An Introduction to History* (Inggris: Princeton University Press, 1967), 94.

⁵Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (University of Chicago Press, 1982), 52.

interpretation in Islam is influenced by social dynamics, as demonstrated in this study, highlighting how Islamic law can continuously evolve and adapt within an ever – changing social environment.

The development of society, including urbanization, has transformed the social structure in many Muslim – majority countries and, consequently, the application and interpretation of Islamic law. This study addresses these changes using the methodology of the sociology of law.⁶ By understanding the relationship between social dynamics and the evolution of Islamic law, it becomes evident that the complexity and adaptability of Islamic law in addressing modern challenges are more greatly appreciated.

METHOD

Examining secondary literature that discusses Qaul Qadim and Qaul Jadid within the framework of Islamic law, as well as writings by Imam Shafi'i, is an integral part of this research process. The historical method is employed to investigate the social, political, and cultural environment in Iraq and Egypt during Imam Shafi'i's era. Furthermore, this approach utilizes sociology to understand how societal elements influenced the development of Islamic legal theory. Additionally, it incorporates a contextual understanding of how Imam Shafi'i supported local communities in both regions. By highlighting the adaptability of Islamic law to changing periods and societal needs, the primary aim is to demonstrate how the philosophy of Islamic law evolved from Qaul Qadim to Qaul Jadid and how this philosophy remains relevant in a continuously changing social context.

RESULT AND DISCUSSION

Definisi Qaul Qadim dan Qaul Jadid

In Arabic, *Qaul Qadim* and *Qaul Jadid* each consist of two words, derived from the term *qaul*, which is an *ism masdar* of the verb (قَالَ-يَقُولُ-قَوْلًا), Meaning, thoughts, point of view.⁷ Although the term *Jadid* is also an adjective meaning "fresh" and "current," *Qadim* refers to the past, classical, or ancient times. The parts of Imam Shafi'i's *ijtihad*, namely the ancient (*qadim*) and the modern (*jadid*), are distinguished by the *fuqaha Shafi'iyyah*. The older perspective of Imam Shafi'i's *fiqh* is symbolized by the name *Qaul Qadim*, while the modern views are represented by *Qaul Jadid*.⁸ Although *qaul* is actually a singular word with the plural form *aqwal*, both the ancient and new *fatwas* of Imam Shafi'i are often explained using this name.⁹

As a scholar, hadith expert, and professor, Sheikh Muslim bin Khalid (Mecca) and Imam Malik (Madinah) granted him the authority to issue fatwas. Imam Shafi'i issued his first fatwa during his stay in Baghdad, Iraq (195 AH).¹⁰ Meanwhile, Imam Shafi'i revised

⁶Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (United Kingdom: Princeton University Press, 2000), 78.

⁷Syauci Dhaif, *Al-Mu'jam Al-Wasith* (Mesir: Maktabah Shuruq ad – Dauliyyah, 1932), 767.

⁸Andi Dian Ramadhani Febrianti, *Analisis Sosiologi Hukum Islam Terhadap Qaul Qadim Dan Qaul Jadid (Studi Pemikiran Imam Shafi'i)* (Makassar: UIN Alauddin Makassar, 2019), 25.

⁹[http://fiqh – imamsyafii.blogspot.com/](http://fiqh-imamsyafii.blogspot.com/).

¹⁰Febrianti, *Analisis Sosiologi Hukum Islam Terhadap Qaul Qadim Dan Qaul Jadid (Studi Pemikiran Imam Shafi'i)*, 26.

his previous views while in Iraq and presented Qaul Jadid during his time in Egypt, based on the social phenomena he observed in the society at that time.¹¹

Imam Shafi'i's views during his time in Iraq were primarily recorded in *al-Risalat al-Qadimah* and *al-Hujjah*, also referred to as *al-Kitab al-Qadim*. Among his many students and companions were Hasan ibn Ibrahim (170–260 AH), Husain ibn Ali al-Karabisi (d. 240 AH), Imam Ahmad ibn Hanbal (164–241 AH), Sulaiman ibn Daud al-Hashimi (d. 220 AH), and Abu Thur Ibrahim bin Khalid Yamani al-Kalabi (170–240 AH). Meanwhile, Imam Shafi'i documented the *Qaul Jadid* he developed during his residence in Egypt and its surroundings in several of his works, including *al-Risala al-Jadidah*, *al-Umm*, *al-'Amali*, and *al-Imla'*. Among his companions and students were Yusuf ibn Yahya al-Buwaiti (d. 231 AH), Yunus ibn 'Abd al-'A'la (170–264 AH), Abu Bakr al-Humaidi (d. 219 AH), al-Rabi bin Sulaiman al-Muradi (d. 270 AH), and Harmalah bin Yahya 'Abdullah al-Tujibi (166–243 AH).¹²

The Background of the Emergence of Qaul Qadim and Qaul Jadid

Imam Shafi'i was a scholar specializing in *fiqh* and *hadith* who lived in the second century of the Hijri calendar. His full name was Al-Imam Abu Abdullah Muhammad ibn Idris ibn 'Abbas ibn Uthman ibn Shafi'i ibn Sa'ib ibn 'Ubaid ibn Abu Yazid ibn Hashim ibn Abdul Muttalib ibn Abdul Manaf ibn Qushay.¹³ His lineage traces back to the grandfather of Prophet Muhammad ﷺ, Abdul Manaf. He was born in the year 150 AH in Gaza, Palestine, which coincided with the year of Abu Hanifah's passing. He passed away on the night of Thursday, 29th Rajab, 204 AH, in Fustat, Egypt.¹⁴

One of the factors that prompted the emergence of Imam Shafi'i's Qaul Qadim was the social, political, economic, and cultural conditions in Iraq. He was driven to develop fresh concepts for his fatwas, rooted deeply in his heart, even after attaining an advanced level of knowledge and sharp analytical skills that established him as an eminent mujtahid. This drove him to derive Shariah rulings directly from the Qur'an and Hadith, which he believed could be applied independently of the opinions or mazhab of thought of his teachers, Imam Hanafi and Imam Malik. His aspirations began to materialize in Baghdad in 198 AH, when he was 48 years old, as he took pride in the book he authored, *Ar-Risala*. Before Imam Shafi'i introduced his discussions on Islamic jurisprudence (*fiqh*), Muslims lacked comprehensive norms that could be employed to accept or reject evidence systematically rather than merely counter or cite it. Fakh al-Razi, in his book *al-Manaqib al-Shafi'i*, highlighted this point. The shift in Imam Shafi'i's views, which he referred to as variations in legal subject matter, stemmed from the cultural differences between Iraq and Egypt.

He conceived Qaul Jadid when confronted with new realities and challenges that differed from those he encountered in Baghdad. Ultimately, he had to return to research to adapt to these changing conditions. Having studied in various schools of jurisprudence, he possessed a deep understanding of each, enabling him to develop fresh perspectives. Interestingly, he did not regard these new views as a revision (abrogation) of his earlier opinions, except in cases explicitly addressed in the texts and under appropriate

¹¹Lahaji dan Nova Effenty Muhammad, "Qaul Qadim dan Qaul Jadid Imam Shafi'i: Telaah Faktor Sosiologisnya," *Jurnal Al-Mizan* Volume 11 Nomor 1 (2015): 122.

¹²Ainol Yaqin, "Evolusi Ijtihad Imam Shafi'i: Dari Qawl Qadim Ke Qawl Jadid," *Jurnal Al-Ahkam* Volume 26 Nomor 2, 147–48.

¹³Muhammad Abu Zuhrah, *Tarikh Al-Mazahib Al-Islamiyah* (Kairo: Dar al-Kitab al-'Arabi), 436–37.

¹⁴Majid Khadduri, *Translation of Al-Shafi'i's Risala – Treatise on the Foundations of Islamic Jurisprudence* (England: England: Islamic Texts Society, 2011), 8.

circumstances. Thus, when Imam Shafi'i delivered lectures in Baghdad, it can be said that he sought to reassess some of his fatwas. Consequently, certain books were affirmed while others were revised. This fact gave rise to the concepts of Qaul Qadim and Qaul Jadid—the former reflecting his views from Baghdad and the latter representing his opinions from Egypt. Imam Shafi'i's perspectives were often categorized into these two phases, as Ahmad Amin noted in his book *Dhuha al-Islam: Qaul Qadim* (narrated and written in Iraq) and *Qaul Jadid* (narrated and written in Egypt).¹⁵

Imam Shafi'i settled in Iraq in 195 AH during the reign of Al-Amin, as claimed by Sya'ban Muhammad Isma'il. He acquired much knowledge from the scholars of Iraq and various perspectives from members of the Ahl al-Ra'y sect. Among the scholars of Iraq who influenced and shaped Imam Shafi'i's views were Ahmad ibn Hanbal, al-Karabisi, al-Za'farani, and Abu Tsaur. Later, while in Egypt, Imam Shafi'i became acquainted with and learned from Egyptian scholars, many of whom were familiar with Imam Malik. Imam Malik was a proponent of the jurisprudence of hadith (*fiqh al-hadith*) in Madinah. Imam Shafi'i developed several of his views throughout his intellectual journey, which later became known as Qaul Qadim and Qaul Jadid. His views were grounded in Hadith, with Qaul Jadid being based more on *ra'y* (personal opinion).¹⁶

This supports Kamil Musa's view that Shafi'i traveled to the Hijaz, returned to Iraq in 198 AH, stayed there for a month, and then traveled to Egypt in 199 AH. The opinions of Shafi'i dictated and recorded in Iraq in 195 AH were later referred to as *Qaul Qadim*. Meanwhile, *Qaul Jadid* refers to the opinions of Shafi'i that he entrusted to his students and were written down in Egypt. It is said that the emergence of *Qaul Jadid* was due to Shafi'i's observation of various practices in *muamalah* (transactions) and the acquisition of a hadith that he had not encountered during his time in Iraq or the Hijaz.¹⁷ In many aspects, Qaul Jadid represents a revocation of his previous statements.

Islamic law, with all its benefits, is the will of Allah, aiming to provide ease and goodness for humanity. As a result, Islamic law differs from other laws in the world in several ways. Flexibility is one of its characteristics. This flexibility not only reflects the true humanity of Divine law but also assists humans in fulfilling God's commands.¹⁸ Research findings indicate that only 44 themes of *Qaul Jadid* are based on Hadith, while 72 themes are based on *ra'yi* (personal opinion). Although the reasoning for the other four main topics is unclear, the arguments based on Hadith are more frequently found in the domain of *thaharah* (purification) compared to those based on *ra'yi*. The four main topics in question are: the recitation of the verse of prostration during the sermon, the blood money for semi-intentional murder, the punishment for sexual intercourse before *tahallul* (after Hajj and Umrah), and issues related to marriage and inheritance for women who commit adultery and are abandoned by their husbands for four years.¹⁹

¹⁵Ahmad Amin, *Dhuha Al-Islam* (Kairo: Maktabah al-Nahdhah al-Mishriyyah, 1974), 231.

¹⁶Muhammad Isma'il Sya'ban, *Al-Tasyri' Al-Islami* (Kairo: Maktabah al-Nahdhah al-Mishriyyah, 1985), 337–38.

¹⁷Kamil Musa, *Madkhal Ila Al-Tasyri' Al-Islamy* (Beirut: Muassasah al-Risalah, 1998), 158.

¹⁸Muhammad, "Qaul Qadim dan Qaul Jadid Imam Shafi'i: Telaah Faktor Sosiologisnya," 119.

¹⁹Jaih Mubarak, *Modifikasi Hukum Islam Studi Tentang Qawl Qadim Dan Qawl Jadid* (Raja Grafindo Persada), 308–9.

The following are the factors that led to the emergence of *Qaul Qadim* and *Qaul Jadid*, including the following:²⁰

1. Social Factors

In general, social elements have an impact on the transformation process. The phenomenon of Imam Shafi'i's *Qaul Qadim* evolving into *Qaul Jadid* illustrates this. Specifically, since the early Abbasid dynasty, the interaction of the physical and spiritual, intellectual and philosophical, took place within the unified Islamic empires under the great canopy of the Islamic State during the reign of Imam Shafi'i. At that time, Baghdad became renowned as one of the leading centers of knowledge in the world. The characteristics of this period influenced the emergence of Islamic thought, the academic study of Greek philosophy, Persian culture, and the advancement of knowledge in India. Imam Shafi'i resided in Baghdad, where he wrote his work *al-Risala*, which became a cornerstone of his intellectual legacy. Baghdad, as the capital of the state, marked the peak of his fame, and it is certain that the socio – economic conditions under the Abbasid rule had an impact on his life. Therefore, this intellectual endeavor cannot be separated from the scholarly progress of Shafi'i.²¹

Imam Shafi'i sought to actualize and contextualize the laws that he had previously issued fatwas on, as the boundaries of the major jurisprudential mazhab in Egypt at that time had become clear. His mindset changed when he moved to Egypt, differing from the one he had previously expressed and written in Baghdad. This shift gave rise to the ideas of *Qaul Qadim* and *Qaul Jadid*, which were influenced in part by social factors. Therefore, Imam Shafi'i endeavored to position himself between two groups the *Ahl al-Hadith* and the *Ahl al-Ra'y*.

2. Political Factors

Particularly under the leadership of Imam Shafi'i, the early Abbasid government had internal politics that differed somewhat from the Umayyad dynasty. While the Umayyad monarchy largely relied on Arab components, the Abbasid government was primarily dependent on Persian components. By prioritizing politics, the Abbasid government treated scholars and academics with respect. Specifically, during Imam Shafi'i's leadership, the external politics of the Abbasid government saw little advancement or growth. The onset of the rebellion in Armenia demonstrated how the Abbasid government, located far from the capital city of Baghdad, had lost its influence. The rebellion thwarted Harun al – Rashid's plans to expand the Abbasid empire's territory.²²

The revolution was initiated by: a) the Abbasid government's indifference to issues threatening the nation's stability, distracted by luxury and trivialities; b) the growing influence of Persia, despite their sense of victory being smaller compared to the influence of the Arabs; c) the negligence of some caliphs towards external issues facing the government; and d) social jealousy arising from the government's unbalanced favoritism between the two dominant national elements, Persia and Arab.²³

²⁰Fathur Rohman, "Perkembangan Pemikiran Fiqh Imam Shafi'i dalam Qaul Qadim dan Qaul Jadid," *Jurnal Irtifaq* Volume 6 No. 2: 138 – 43.

²¹A. Salabi, *Sejarah Kebudayaan Islam 3* (Jakarta: Pustaka al – Husna, 1993), 112.

²²Roibin, *Sosiologi Hukum Islam: Tela'ah Sosio-Historis Pemikiran Imam Shafi'i* (Malang: UIN Maliki Press, 2008), 181 – 82.

²³Roibin, 184 – 85.

Imam Shafi'i was a Quraysh who was strongly anti – Arab, so when this political climate is associated with him, the two are closely linked. He could not disseminate his ideas because the Persian faction dominated the government at that time. He spent fourteen years in Mecca due to accusations that he promoted Shia beliefs. After that, he returned to Baghdad, believing that hostility toward Persia had diminished compared to before, and he aspired to become a mujtahid who would establish and spread his mazhab of thought. However, Shafi'i fled Baghdad and went to Egypt because Al – Ma'mun supported the Mu'tazilah philosophy and disapproved of the Ahl al – Sunnah and Hadith scholars. Imam Shafi'i found a fresh sense of comfort in Egypt, and the country proved ideal for establishing his new intellectual movement. Furthermore, this does not rule out the possibility that the laws formulated in Iraq had undergone significant changes, although these laws were initially superficial.

3. Economic Factors

Initially, the Abbasid dynasty wielded great power both in governance and religion. The local population experienced significant prosperity during this period. Two key factors emerged as the foundation of economic growth at that time: a) the expansion of Abbasid military settlements into districts north of the palace, known as *al-Harbiyah*; and b) the settlement of *al-Karkh*, inhabited by thousands of construction workers brought from Iraq, Syria, Egypt, and Iran. These two elements transformed cities in Iraq into hubs of commerce and creativity, resulting in metropolitan areas characterized by diverse regional, national, racial, and religious identities. With its centrally located capital, Iraq served as a local, regional, and even global economic and commercial center. This is why, for several centuries, Iraq was regarded as a city that effectively facilitated demographic, economic, and transitional shifts.

4. Cultural and traditional factors.

Customary and cultural factors have a significant influence on the evolution and dissemination of Islamic law. From the age of two, Imam Shafi'i spent eighteen years living in Mecca. Arabism in this city was well – known even before the advent of Islam, while the Persians held dominance over Abbasid power. Consequently, the frequent assimilation or blending of local cultures with Islamic culture further impacted Islamic law itself.

Fuqaha may exert a fresh impact even when civilization is influenced by other cultures. This is because the surrounding environment and the methods employed by the fuqaha in issuing legal rulings are two key elements that influence the evolution of law in the region. ²⁴ Both directly and indirectly, cultural diversity and complexity contributed to shaping the intellectual development of Imam Shafi'i. Throughout his life, he traveled extensively and interacted with numerous cultures, which sharpened his thinking and enhanced his critical and dynamic nature. Moreover, Imam Shafi'i's knowledge and expertise were refined by the legal developments occurring in Egypt and Iraq during his lifetime. Due to the cognitive cultural differences present in these regions, he discovered clearer evidence while in Egypt.

Because Iraq was never ruled by the Romans, while Egypt was once under their control and benefited from their more advanced culture and technology, Egypt developed a more progressive and contemporary culture and tradition

²⁴T. M. Hasbi Ash – Shiddieqy, *Pengantar Ilmu Fiqh*, Cet. 2 (Semarang: Pustaka Rezki Putra, 1997), 119.

compared to Iraq. Due to Iraq's lack of foreign rule, daily life there remained more conservative than in Egypt. In Egypt, with its open cultural environment, many women eagerly sought to study under Imam Shafi'i, joining male students in the same classrooms and learning as freely as men. This contrasted with Iraq's more restricted society, where women were only occasionally allowed to study, and even then, only with a spouse or mahram. Male and female students were always separated. Thus, it is evident that the *ijtihad* of a *mujtahid* is significantly influenced by the culture and traditions of their country. Imam Shafi'i exemplified this by replacing his earlier *ijtihad* formulated in Iraq with new *ijtihad* produced in Egypt.

5. Geographical Factors

Unsur Geographical elements play a crucial role in the evolution and development of Islamic law, including climate and geographical expansion. Imam Shafi'i issued distinct fatwas because, as is well known, the climate in Hijaz differs significantly from that of Iraq and Egypt. The differences between Qaul Qadim and Qaul Jadid illustrate the influence of varying climatic and geographical conditions. Scholars of Ahlu Hadith and Ahlu Ra'yi emerged from two distinct regions. Growing up in the metropolitan cities of Baghdad and Kufa, the scholars of Ahlu Ra'yi including Imam Abu Hanifah were confronted with numerous new challenges arising from the complexity of urban life. In contrast, Madinah, with its simpler society and abundance of circulating hadiths, led Imam Malik bin Anas to place greater reliance on hadith rather than logical reasoning.²⁵

Cities influenced by philosophers will have legal structures distinct from those influenced by Sufi scholars. The legal impact of a more complex city differs from that of a smaller, more insular one. In other words, the degree of urbanization in a region significantly shapes its legal system. Geographically, Egypt is more fertile than Iraq, as the Nile River flows continuously. Imam Shafi'i issued fatwas that differed from his earlier rulings on issues related to water (climate), such as wudhu, thaharah, and prayers during water scarcity, because access to water in Egypt was significantly easier than in Iraq. Fundamentally, the environment in which *mujtahid* imams operated had a substantial influence. Locations abundant in water differ from arid areas, just as hot regions differ from cold ones. Similarly, regulations in a city with diverse ethnic groups will be more contemporary than those in a city with a single ethnic group.

6. Science Factors.

The aspect of knowledge can influence the results of the *ijtihad* of *mujtahid* imams in investigating and defining the law. Imam Shafi'i was a scholar of ra'yi who learned from Imam Abu Yusuf and Imam Muhammad bin Hasan, both of whom were students of Imam Abu Hanifah in Iraq, and he was also a scholar of hadith who studied under Imam Malik bin Anas in Medina. He then integrated the views of both of his teachers into his own fatwas. Living in Egypt and exchanging ideas with Egyptian academics deepened Imam Shafi'i's experience. As a result, Imam Shafi'i found that his *ijtihad* yielded stronger and more authentic results compared to when he was in Iraq.

²⁵M. Atho Mudzhar, "Pengaruh Faktor Sosial Budaya Terhadap Produk Pemikiran Hukum Islam," *Jurnal Mimbar Hukum* No. 4 (1991): 23.

Imam Shafi'i was an extraordinary reformer, claims Noel J. Coulson. Rather than introducing entirely new ideas, he gave additional meaning or implications to the concepts he understood and methodically connected all these ideas.²⁶ Imam Shafi'i changed his way of thinking about law for two main reasons: first, he realized that there were stronger arguments when he moved to Egypt or when he revised his previous opinions; and second, he took into consideration the local conditions, circumstances, and environment. This second aspect may be broader, but it was still constrained, as evidenced by his position in voicing his disagreement with the creation of istihsan (Imam Hanafi), where he remained cautious.

The Application of Imam Shafi'i's Qaul Qadim and Qaul Jadid Fatwas in Society

Several examples of solving the problem of renewing Islamic legal thought in the context of Qaul Qadim and Qaul Jadid, including:

1. Maghrib Prayer Time.²⁷

Some examples of the resolution of issues related to the renewal of Islamic legal thought within the framework of Qaul Qadim and Qaul Jadid. including:

- a) Menurut a) According to his father, Muhammad bin Jubair bin Muth'im heard the Prophet ﷺ reciting Surah Al-Thur during the Maghrib prayer, while in the biography of Umm al-Fadhl binti al-Harits, the Prophet ﷺ recited Surah Al-Mursalat. (Narrated by Tirmidhi)²⁸ These two hadiths indicate that the Maghrib prayer should be performed within a sufficiently long period, until the large red hue disappears from the horizon.²⁹
- b) Just as the Zuhr prayer is combined with the Asr prayer, it is also permissible to combine the Maghrib and Isha prayers.³⁰

The Qaul Jadid states that the Maghrib prayer, which includes the adhan, washing, clothing, and the five rak'ahs, is only a short time. The basis for this is:

- a) "Did you not hear the Messenger of Allah ﷺ say?" Abu Ayyub rebuked 'Uqbah bin 'Amir, the governor of Egypt, when he was delayed in performing the Maghrib prayer due to being busy:

لَا تَزَالُ أُمَّتِي عَلَى الْفِطْرَةِ مَا لَمْ يُؤَخَّرُوا الْمَغْرِبَ حَتَّى تَشْتَبِكَ النُّجُومُ

Meaning : "As long as they continue to perform the Maghrib prayer until the stars appear, my Ummah will always be in harmony with my nature." (Ibn Majah, Hadith)³¹

Hadits This hadith explains that the time for Maghrib prayer is very short.

- b) "Jibril once led me in prayer on the first day of Maghrib, when it was time for those fasting to break their fast," narrated by the Prophet ﷺ in a hadith from Ibn Abbas.³²

²⁶Noel J. Coulson, *Conflicts and Tension in Islamic Jurisprudence* (Chicago: University of Chicago Press, 1987), 62 – 63.

²⁷Ahmad ibn Al-Husain Abi Syuja', *Syarh Fath Al-Qarib Al-Mujib* (Surabaya: Al-Hidayah, n.d.), 12.

²⁸Imam Abi al-Husain Muslim Ibn Al-Hajjaj, *Shahih Muslim*, Vol. 1 (Beirut: Dar al-Fikr, 2009), 213.

²⁹Imam Jalal al-Din 'Abd Rahman ibn Abi Bakr Al-Suyuthi, *Tanwir Al-Hawalik: Syarh "Ala Muwattha" Malik* (Beirut: Dar al-Kutub al-'Ilmiyah, 2002), 99 – 100.

³⁰Al-Mawardi, *Al-Hawi Al-Kabir*, 20.

³¹Abi Abdullah Muhammad Bin Yazid Al-Qazwini, *Sunan Ibn Majah*, Vol. 1 (Beirut: Dar al-Fikr, 1995), 222.

³²Mohammad Ismail al-Amir al-Yamani al-Shan'ani, *Subul Al-Salam: Syarh Bulugh Al-Maram Min Jami' Adillah Al-Ahkam*, Vol. 1 (Beirut: Dar al-Kutub al-'Arabi, 1997), 225.

The Maghrib prayer is only performed once, so the companions who were knowledgeable and the subsequent generation known as the Tabi'in, performed it at the earliest time. This implies that delaying it is disliked, in accordance with the above hadith.³³

This history explains why Imam Shafi'i viewed the time for the Maghrib prayer differently between Qaul Qadim and Qaul Jadid. Conversely, the developments in critical logic influenced his use and understanding of postulate texts. As mentioned, Imam Shafi'i reviewed the old fatwa regarding the Maghrib prayer. He explained that, compared to the reasoning behind Qaul Jadid, the view in Qaul Qadim was considered weak. As a result, his dynamic approach always aligned with sunnah and qiyas led him to logic, and he modified his fatwa accordingly.

For Imam Shafi'i and many scholars after him, who routinely verified the authenticity of hadith on this matter, this was considered a duty. Many hadith, after being investigated, support Qaul Qadim, and the historical material is of original quality. They argue that Qaul Qadim is stronger (azhar) than Qaul Jadid regarding the time limits for the Maghrib prayer, and Qaul Qadim ultimately accepted this fatwa due to Imam Shafi'i's guidance, which conflicted with the original hadith.³⁴

2. Dhuhr Prayer on Friday.

All men who meet the requirements being Muslim, adult, independent, healthy, and residing in their own country are obligated to perform the Friday prayer (Jumu'ah). "Whoever believes in Allah and the Last Day, it is obligatory for him to attend the Friday prayer, except for women, travelers (those on a journey), slaves, or those who are sick," as narrated in a hadith by Jabir. This hadith is found in the sources of Abu Dawud and Baihaqi.

Based on the above hadith, every individual who meets the requirements for performing the Friday prayer (Jumu'ah) is obligated to do so. One cannot conclude the Jumu'ah prayer before the time for the Dhuhr prayer has passed. However, if someone performs the Dhuhr prayer on Friday before the designated time has ended, are they still required to perform the Jumu'ah prayer?

The Qaul Qadim opinion holds that since the obligatory prayer is Dhuhr (with Jumu'ah serving as a substitute or replacement for Dhuhr), it is sufficient for a person to perform the Dhuhr prayer and there is no need to perform Jumu'ah. If Jumu'ah were considered an obligatory prayer, then someone who is pressed for time would still need to make up for the missed Jumu'ah prayer, just as with any other obligatory prayer.

On the other hand, according to Qaul Jadid, which states the opposite: Jumu'ah is not a replacement for Dhuhr prayer, so performing Dhuhr does not absolve one from the obligation of Jumu'ah. Just as it is not sinful to shift the obligation of fasting to freeing a slave (in the case of engaging in marital relations during the day in Ramadan), it is also permissible to shift the obligation of Jumu'ah to Dhuhr prayer if Jumu'ah were considered a substitute for Dhuhr.³⁵

³³Abi Isa Muhammad bin Isa bin Surah Al – Tirmidzi, *Sunan Al-Tirmidzi Wahuwa Al-Jami' Al-Shahih* (Beirut: Dar al – Kutub al – Ilmiyah, 2011), 56.

³⁴Imam Abi Zakariya Muhyi ad – Din ibn Syaraf An – Nawawi, *Kitab Al-Majmu' Syarh Al-Muhazzab Lisy Syirazi*, Jilid 3 (Jeddah: Maktabah al – Irsyad, n.d.), 33 – 34.

³⁵Jaih Mubarak, *Modifikasi Hukum Islam, Studi Tentang Qaul Qadim Dan Qaul Jadid*, Cet. 1 (Jakarta: Rajawali Pers, 2002), 163.

Qaul Qadim and Qaul Jadid of Imam Shafi'i: A Sociological Perspective on Islamic Law

The most unique and adaptable concept in Islamic legal philosophy among the various methods used in legal reasoning is the idea of Imam Shafi'i. Furthermore, this is reflected in one of the ushul principles which states, "taghayyur al – ahkam al – syariyyah bi taghayyur al – amkan wa azman wa al – ahwal," meaning that Sharia law evolves in accordance with changes in place, time, and circumstances. The explanation of the following conceptual frameworks may help clarify how this development of Islamic law occurs:

1. The paradigm of Islamic legal istinbath has shifted from absolutism to relativism.

The basis of Islamic legal istinbath in this situation must be the awareness that the relative anthropological and absolute theological dimensions are in conflict. The study of various aspects of Islamic legal istinbath should no longer be considered an absolute or historical study if different absolute theological elements begin to interact with relative anthropological values. Instead, a new approach to research as explained earlier should be used.

2. Shifting perspective on Islamic legal istinbath from text to context.

In this regard, the study of information directly connected to different contextual social events can be seen as istinbath Islamic law. Therefore, in order to engage dialectically with the various surrounding social phenomena, the inherent elements in its implementation cannot be limited to static texts.

3. The paradigm of Islamic legal istinbath changes from atomistic to systemic – comprehensive.

Istinbath Islamic law, therefore, can be viewed as a knowledge study that highlights the fact that its application is a phenomenon of scientific progress encompassing many systemic and comprehensive dimensional frameworks. Therefore, knowledge must be applied holistically and integratively, as atomistic understanding is highly varied and prone to misinterpretation.

4. Paradigm shift in Islamic legal istinbath from theological values to moral values.

Istinbath Islamic law, therefore, can be seen as a scientific study that highlights the fact that its application is a scientific phenomenon full of moral principles that, in essence, have shaped the social structure of the Muslim community. The application of moral values can influence the immanent value of ratio legis. However, the existence of ratio legis is questioned when its theological goals are prioritized first.³⁶

Furthermore, Imam Shafi'i's legal reasoning approach is particularly interesting because it directly applies the logic of the Qur'an. While this approach is highly applicable and universal, it hinders modern scholars from utilizing their best judgment, leading to the repetition of outdated concepts. Imam Shafi'i modified his ijtihad methodology during his lifetime, particularly in his attempt to base his legal rulings on Islamic law sources, especially when he moved from Iraq to Egypt. The reasons for this shift are varied:

- 1) various legal situations.

Egypt and Iraq had very different legal systems, customs, and civilizations. Imam Shafi'i lived in an environment rich in the knowledge of Hadith and legal analysis traditions when he was in Iraq. However, this occurred before he moved

³⁶Ilyas Supena, *Rekonstruksi Epistemologi Ilmu-Ilmu Keislaman*, (Yogyakarta: Penerbit Ombak, 2015), 156 – 57.

to Egypt. The distinct social and legal characteristics in Egypt may have shaped Imam Shafi'i's perspectives and legal strategies.

2) acceptance of ijthihad.

The style of ijthihad chosen in Iraq was more adaptable and receptive to personal interpretation. During this period, Imam Shafi'i may have participated more in various legal disputes and discussions, which could have influenced the outcomes of his ijthihad. Therefore, he believed that, considering the diversity of legal opinions in Egypt at the time, a more organized and uniform legal approach was necessary.

3) Availability of legal sources.

Imam Shafi'i had easier access to various hadith experts and other legal information when he was in Iraq. However, the legal materials available to him were not as abundant when he arrived in Egypt, and this influenced the way he drafted legal rulings.

4) consistency and purpose of law.

Given the increasingly complex and diverse legal environment in Egypt, Imam Shafi'i believed that a more uniform and organized legal system was necessary. This may have led him to alter the direction or modify his ijthihad to ensure that the laws he formulated were more in line with the values accepted in Egypt and relevant to the social context there.³⁷

Practically, this modification of Imam Shafi'i's ijthihad demonstrates his ability to adapt to various situations. This shift illustrates how numerous issues and environmental developments can influence a scholar's perspective and legal techniques. Below are some structural–functional theoretical frameworks by Talcott Parsons that are useful and can serve as theoretical references for understanding the sociological aspects in the Qaul Qadim and Qaul Jadid works of Imam Shafi'i:

1. Society is a collection of shared cultural values driven by the community and shaped into social norms. Therefore, the social behavior of each individual is actually motivated by the same principles as those of other individuals. Every social institutional structure within the system should function intentionally. All of this is based on the domain of alterego, or intersubjectivity, a phenomenological concept about the interaction between subject and object.
2. Social reality is a collection of relationships that form the social structure with two distinct qualities. The first is function, which is presumed to support stability and safety. This concept emphasizes that, without any aspect being isolated from the others, the components of a social system operate according to their interdependent roles. Secondly, the idea that every social structure must have key qualities that maintain balance. Assuming that dependency is an effort for equilibrium, this concept is the desired goal.
3. The interconnectedness of its components makes society a system. The whole system determines these components. In other words, unless one part remains connected to the larger system, which is one of the elements of these parts, that part cannot be understood separately or individually.
4. Every civilization is a system consisting of relatively strong and solid parts that work harmoniously. Society still prefers to collaborate rather than resist despite development. Society should be able to fulfill its responsibilities according to its

³⁷Nawirman et al., "Faktor Sosiologis Qaul Qadim Dan Qaul Jadid Imam Shafi'i," *Jurnal for Islamic Studies: Al-Afkar* Volume 6 No. 4 (2023): 329.

role so that the system built can function independently, even when facing changes due to order and discipline.³⁸

The different theoretical framework provided by Talcott Parson's structural – functional theory allows for the examination of the sociological aspects of Qaul Qadim and Qaul Jadid in the works of Imam Shafi'i. This idea further explains how the application of Islamic law, fiqh, or sharia has evolved into more than just a personal issue that merely connects the transcendental relationship between master and servant.

Considering the "appropriateness of the situation" seems to provide us with a certain awareness. First of all, it appears that the two variants of Qaul Qadim and Qaul Jadid by Imam Shafi'i are not merely quotes from books or something that appeared arbitrarily. Both variants of ijihad are influenced by socio – historical findings, meaning that the products of fiqh must be reevaluated. This essentially indicates the absence of uniform criteria for each product of fiqh. Discussing this is still widely welcomed. Second, when dalalah (legal object) is found, maslahah the additional factor that must be considered in the process of istidlal and istinbath must also be taken into account, even if only slightly. It was only two centuries after the death of Imam Shafi'i that scholars such as Shaykh Zakaria al – Anshari and Shaykh Muhyiddin Abu Yahya al – Nawawi acknowledged and adopted the theory of maslahah within the mazhab Shafi'i as a means of istidlal (deriving reasoning).

Third, what is even more intriguing is that Imam Shafi'i never defined his technique of istidlal using the phrase maqashid al – shari'ah (the objectives of Islamic law). After reaching an impasse with the evidences sourced from the Qur'an, Hadith, ijma' (consensus), and qiyas (analogy), he immediately considered the beneficial aspect. The use of qiyas in examining the law—which is all articulated in his work al – Risala—makes this approach to istidlal very tangible. Fourth, Qaul Jadid and Qaul Qadim are not mansukh (abrogated) and nasikh (abrogating). Therefore, both can be applied after confirming that the situation and environment of the jurist are appropriate.

Imam Shafi'i used his critical thinking to shift from Qaul Qadim to Qaul Jadid as a paradigm for both his knowledge and religious behavior. Furthermore, this triggered the development of a critical – transformative paradigm in the religious behavior and knowledge of Muslims. This also underpins the unique character of his entire legal thought, which is inherently dynamic, inclusive, and cooperative; this cannot be separated from history and thus does not need to be questioned (qabilun lin nuqash). It is clear how the social and cultural setting influences Islamic law through the emergence of Imam Shafi'i's two perspectives, Qaul Qadim and Qaul Jadid. The social, cultural, and physical characteristics that distinguished Egypt and Baghdad led to their differing views on the same matter.³⁹

Indeed, Islamic legal thought demonstrates a dynamic and creative strength in anticipating every historical development and issue. This is evident from the fact that the formation of various legal schools follows different patterns that align with the socio – cultural and political environments in which these schools developed. The development of their legal methodology is an extraordinary legacy that

³⁸Andik Wahyun Muqoyyidin, "Potret Konflik Benuansa Agama Di Indonesia: Signifikansi Model Resolusi Berbasis Teologi Transformatif," *Jurnal Analisis* Volume XII No. 2 (2012): 324 – 25.

³⁹M. Atho Muzdhar, *Membaca Gelombang Ijtihad Antara Tradisi Dan Liberasi* (Yogyakarta: Titian Ilahi Press, 1998), 107.

remains accurate and relevant to this day. By utilizing qiyas, maslahah mursalah, istihsan, istishab, and 'urf, one can approach and ensure the validity of a matter.⁴⁰

When this occurs, Islamic law will function as a social engineering tool to transform society. An understanding of the phenomena of the times and methodological innovation is necessary to place the law in an efficient position to handle every aspect of social development. Additional information that can assist in the formulation of laws includes tafsir, dates, and Arabic grammar. The formalism of Islamic law is predicted to be reduced with the convergent approach between the science of ushul fiqh and other disciplines.

CONCLUSION

From the title of this study, it is clear that the theological changes and responses to social, political, and cultural transformations in the two regions—Iraq and Egypt are evident in the shift in the perspective of Islamic law from Qaul Qadim to Qaul Jadid according to Imam Shafi'i. According to this study, the condition of society and the legal requirements at the time led Imam Shafi'i to initially view the law in Iraq as Qaul Qadim. The shift from his previous perspective, Qaul Jadid, adjusted to the uniqueness of Egyptian society.

The sociological approach used in this study illustrates how Imam Shafi'i's legal reasoning was influenced by the social system, cultural values, and societal expectations. This demonstrates the flexibility of Islamic law in relation to the social climate and time. Therefore, this study not only enhances our understanding of the historical background of the development of Islamic law but also validates its dynamic character. It highlights the importance of context in the application of Sharia law and presents contemporary interpretations of Islamic law on how to understand and apply religious principles in an increasingly complex society.

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⁴⁰Syamsul Arifin, dkk, *Spiritualisasi Islam Dan Peradaban Masa Depan* (Yogyakarta: Sypress, 1996), 72–73.

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