

THE VALUE OF *QIYAS* IN ISLAMIC JURISPRUDENCE

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Abstract

It is believed that Al-Qur'ān and Hadith are primary sources of Islamic law in determining law but Al-Qur'ān and Hadith are not codified as law. So, in determining law sometimes needs exegesis and certain method in determining law especially in new issue (furu') that is not mentioned in Al-Qur'ān and Hadith. Qiyas is one of methodologies in determining or finding a new law besides both main sources of Islamic law. This article uses qualitative descriptive analysis. Majority of Ulama Scholars agree that Qiyas is one of some sources of Islamic law besides Al-Qur'ān, Hadith and Ijma' (consensus).

Key words: Al-Qur'ān, Hadith, Qiyas, Islamic Jurisprudence

INTRODUCTION

Islam is a name of religion that has been revealed to the last Prophet Muhammad (bless and peace upon him). It is a religion that ultimately covers all sphere of life in this life and hereafter. Islam is not only revealed as a religion of faith, but it is ordained together with divine Shāri'ah. Shāri'ah is derived from arabic word “al-Sharī'ah” which in literal sense, refers to “a way to the watering-place or a path apparently to seek felicity and salvation”⁵. The word al-Sharī'ah is used once in the Qur'ān, as stipulated in;

“Thus we put you on the rights way [sharī'atan] of religion. So follow it and follow not the whimsical desire (ḥawā) of those who have no knowledge”⁶.

Abdullah Yusuf Ali explains that the word sharī'atan in this verse can be best translated as ‘the right way of religion’⁷. Therefore, by referring to the explanation by Abdullah Yusuf Ali, Mohammad Hashim Kamali determined to say

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⁵ Mohammad Hashim Kamali, *SharĒ Nah Law: An Introduction*, (England:Oneworld Publications, 2008), p.2

⁶ Al-Qur'Ēn, 45:18

⁷ Mohammad Hashim Kamali, *SharĒ Nah Law: An Introduction*, (England:Oneworld Publications, 2008), p.2

that Shari'ah, in technical sense means, "a path to religion, which manifestly connected with the essential set of values of Islam and the best manner of their protection"⁸. Therefore, it is not wrong to say that Shari'ah is "the collective name for all the laws ordained by Allāh SWT for His servants through Prophet Muḥammad SAW including the Islamic systems of 'aqīdah, akhlāq, 'ibādah and mu'āmalah"⁹. In an opinion of IbnQayyim al-Jawziyyah (d.748 AH/1347 CE), he said:

"Shari'ah is based on wisdom and achieving people's welfare in this life and the afterlife. Shari'ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustices, mercy with opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Shari'ah, even if it is claimed to be according to some interpretation"¹⁰.

The main objective for the revelation of Shari'ah is "to enable man to forsake the dictates of ḥawā, (the untrammelled lust) and proclivity to evil; to lead him to righteousness and truth; to make him upright and worthy of assuming the divine trust of khilāfah, the vice regency of Allah in the earth"¹¹.

DISCUSSION AND FINDING

Sources of Islamic Law

Through all pains and struggles of Prophet Muhammad (bless and peace upon him), those companions of his, and those people who followed their footsteps, in our modern time, Shari'ah remains intact and similar as it is from the very first time of its revelation through the verses of Al-Qur'ān. Since, Shari'ah is revealed through Al-Qur'ān, it is understandable that all Muslim jurists indisputably regard it as one of primary sources of Shari'ah itself.

Beside the holy Qur'ān, Sunnah of Prophet Muhammad (bless and peace be upon him) is another primary sources of Shari'ah. At the beginning of 3rd to 4th Century AH, there was collision of opinions between *Ahl Ray'* and *Ahl Hadith* in the matter of interpretation of the law from Al-Qur'ān. In such serious dispute, through his Risalah, Imām Al-Shāfi'ī managed to secure the status of the Sunnah as the decisive authority for determine the meaning of the texts of Qur'ān; as compared to the opinion of a Companion¹². Such security is crucial especially in matter of

⁸ Ibid.,

⁹ Farid Sufian Shuaib, Tajul Aris Ahmad Bustami and Mohd Hisham Mohd Kamal, *Administration of Islamic Law in Malaysia (text and Material)*, (Kuala Lumpur: Malayan Law Journal, 2001), p. 319

¹⁰ Jasser Auda, *Maqā'id al-Sharī'ah: Philosophy of Islamic Laws: A Systems Approach*, (United Kingdom: The International Institute of Islamic Thought, 2008), p. 20

¹¹ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction*, (England: Oneworld Publications, 2008), p.15

¹² Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad*, (United Kingdom: The International Institute of Islamic Thought and Islamic Research Institute, 1994), 177-188

interpretation of divine Shāri'ah in legal context. *Ahl Ray'* and *Ahl Hadith* unanimously accepted the opinion of Imām Al-Shāfi'ī, and the dispute managed to be settled down.

Through Risalah that had been written by Al-Shāfi'ī, indirectly he successfully secured the position of Al-Qur'ān and Sunnah as the primary sources in the Islamic divine legal system and legal process. The needs to secure the position of Sunnah as propounded by Al-Shāfi'ī is very important, especially in understanding and determine what are the exact laws that have been ordained by the Lawgiver (Allah).

The rationale behind the preservation of the Hadith is rather understandable. Prophet Muhammad (bless and peace be upon him) is the Messenger of Allah, he (bless and peace be upon him) must certainly an expert in understanding of the interpretation and intention of the Lawgiver (Allah) through the entire texts (Qur'ān) that have been revealed to him (bless and peace be upon him) during 23 years of its divine revelations.

The Prophet (bless and peace be upon him) surely will never deviated from implementing the true interpretation of Qur'ān and the higher intention of Allāh the Exalted. Hadith is crucial since it is the practical aspects of Al-Qur'ān that has been practiced by Prophet Muhammad (bless and peace be upon him) himself. As such, Al-Shāfi'ī played the most important role in securing the position of Qur'ān and Hadith in the law making process.

This preservation is so crucial in order to avoid any excessive application of human intellect in the interpretation and application of Islamic divine law and law making process. If it is allowed for excessive application of human intellect in discovery of the interpretation of verses of Al-Qur'ān, the hukm and the higher intentions of the Lawgiver, without any appropriate guidelines, it can only lead to a very end only, which is corruptions and destructions of the law, as we already be warned by the holy Qur'ān;

“And if the Truth had followed their desires, verily the heavens and the earth and whosoever is therein had been corrupted.¹³”

After the security of Al-Qur'ān and Hadith as primary sources of Shāri'ah, the early Muslim jurists were taking careful methodologies in interpreting Shāri'ah from these two divine sources. And this leads us to the emergence of *Qiyas*.

Brief History of Qiyas

When we look at the history, from the beginning of Islamic law have been exposed to the process of development and socio-cultural changes that constantly move forward in line with the development of human thought, especially after the followers of Islam extends out of the Arabian Peninsula, around the Mediterranean Sea up to the area across the river, where people have different cultural backgrounds. Things like this always continue today, when advances in science and technology have development and social change.

Seeing this situation, it is natural when digging up the ideology of Islamic law, which include *al-Ra'y*, which adopted by Imam Abu Hanifah (150H/767 AD)

¹³Al-Qur'ān, 23:71.

is a scholar who is known most widely used ratio in *ijtihad*, in addition to still hold traditions. He is regarded as the founder of the Hanafi School of the most widely used ratio.

Ahl al-ra'y is an Arabic term meaning is people of opinion. *Ahl al-ra'y* (rationalists) is a school of law that formed aside to *ahl al-hadith* (traditionalists). It first appeared in Kufa, Iraq and was called that because its *Fuqaha* relied more on opinions and analogy in demonstrating legal positions, and they deviated from principle matters and suggested occurrences before they actually happened.¹⁴

Almost at the same time, attention to the tradition (*hadith*) remained visible to the inhabitants of Madina, the momentum is given by Imam Mālik ibn Anas (179 H/795 AD). Thus, Imam Mālik is seen as the leaders of the ideology (*Madhab*) scholar of *hadith*. And known *Al-Muwatta'* is his monumental work in the field of *Hadith*.

Between both the ideologies (*Ahl al-Ra'y* and *Ahl al-Hadith*) arose Imam Shāfi'ī (150-204 H / 767-812 AD), who once studied to the Imam Mālik and Abu Hanifah's student, al-Shaibani. The experience of study to the two scholars above inspired him to take the positives from the two different ideologies.

It is undoubtedly, the existence of *istinbath* method or excavation of law is used in those days, among other things, *Istihsan* popularly used by Abu Hanifah and *Istislah* popularly used by Imam Mālik, who are both give opportunities of liberal thinking without controls. Moreover the legal excavation method has not been recorded, so it is not known with certainty of the rules. At that time, Imam Shāfi'ī appears and suggests a method of in its *ijtihad* called *Qiyas*.

General Description of *Qiyas*

Literally, *qiyas* can be understood as “to measure or to ensure the length, the weight or the quality of something”¹⁵ or the word *qiyas* means measuring or estimating one thing in terms of another.¹⁶ *Qiyas* indicates a comparison to establish equality or similarity between two things. Technically, in *UshulFiqh*, *Qiyas* is an extension of the Shāri'ah ruling from the original case (*Asl*) to the new case (*Far'*) because both of them have the same effective cause (*'Illah*).

Technically, as defined by the majority of Scholars, it applies to “the assignment of the *hukm* of an existing case found in the texts of the Qur'an, the *Hadith*, or *Ijma'* to a new case whose *hukm* is not found in these sources on the basis of a common underlying attribute called the '*illah* of the *hukm*.”¹⁷

Qiyas also can be said as a method that can uncover, clarify and even define the law, where '*illat* is the main criterion in determining the law or the issues, and the object problem is something that does not have in the text (*nash*). Objective behind *qiyas* is to extend the established law (*hukm*) as can be found in textual

¹⁴Ahmed Akgunduz, *Islamic Law in Theory and Practice; Introduction to Islamic Law*. (Rotterdam: IUR Press, 2010), 141

¹⁵Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, (Kuala Lumpur: Ilmiah Publishers, 2000).

¹⁶ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Ushul al-Fiqh)*, (Kuala Lumpur: The Other Press, 2003). P. 214

¹⁷ *Ibid*.

injunction (*nash*) to the new legal problem or issue (*far'*) based on similarity of the effective cause (*'illah*).

There are several definitions of *qiyas* which have been raised by the scholars of UshulFiqh based on their own opinions and understanding of the concept of *Qiyas* itself. Even though such definitions are sometimes different in formulation, but their points are remain the same.

Wahbah al-Zuhaili defines *qiyas*:¹⁸

“Unite something that is not mentioned by the law in the *nash* with something that is mentioned by the law in the *nash*, due to union of *'illat* between both of the law”.

Abul-Husayn Al-Basri in his book of *Al-Mu'tamad*, where he defines *qiyas* as:

“Analogy is establishing a law concerning an incident based on a clear injunction passed on another previous incident, so long as they share the same effective cause”.¹⁹

Another definition of *qiyas* made by the efforts of Al-Ghazali; according to him:

“*Qiyas* is to accord a known case with a known case in establishing a law for (both of) them or negating it from them on the basis of a common link (between them), which link causes the establishment of the rule or the quality relating to them, or negating it from them”.

Methodology in *Qiyas*

In determining *Hukm Syarak* by way of *qiyas*, there must be four elements of *qiyas* that must be present; (i) the original case (*Asl*), which the legal ruling is given in the text and where *qiyas* is used to extend it to a new case. (ii) The new case (*far'*) in which in need of legal ruling. (iii) The effective cause (*'illah*), an attribute of the original case and it is found to be in common between the original and the new case. (iv) The last element is the legal ruling or *hukm*, which governs the original case and can be extended to the new case. These four elements have conditions, condition pertaining *Asl* for example, one condition of *Asl* is that the Qur'an and Hadith are the source the *Asl*. Conditions pertaining to *Hukm* are (i) it must be a practical Shar'i ruling, means *qiyas* does not operate in the area of belief. (ii) Shar'i ruling must not be an abrogated one. (iii) the *Hukm* must be amenable to understanding through human intellect. (iv) *Hukm* must not be limited to exceptional situations. Regarding new case (*far'*) there are three conditions before establishing of *qiyas*: Firstly, the *far'* which must not be covered by any text or *Ijma'*. Secondly, the *far'* must be applicable in the same way as to the original case. Thirdly, the *far'* must not result in altering the law of text. As for conditions of *'illah* are *'illah* must be constant, *'illah* must be evident, *'illah* must bear the proper

¹⁸WahbahAz-Zuhaili, *Al fiqhu al IslamywaadillatuhuJuz VII*, (Beirut: DarulFikr, 1985), p. 601.

¹⁹Muhammad Al-Mukhtar Al-Salami, *Al-Qiyas (Analogy) and Its Modern Applications*, (Islamic Development Bank, Islamic Research and Training Institute), Eminent Scholars Lecture Series No. 15. 17.

and reasonable relationship to the *hukm*, ‘illah must be transient and ‘illah must not be an attribute which seeks to alter to or counter to the law of the text (*hukm*).

For a simple example, application of analogy (*qiyas*) can be traced based on Qur’anic verse of prohibition of wine drinking;²⁰ where (i) the *Asl* is the action of drinking wine drinking, (ii) *Far’* is the action of taking drug, (iii) ‘*Illah* is intoxicating effect that can be identified from both actions, and (iv) the *Hukm* is haram (prohibited).²¹

The Legality of *Qiyas*

The legality of *Qiyas* is still controversial position among Ushul Fiqh scholars especially in matter of using *qiyas* as methodology in establishing Islamic law. Majority of Ulama Usul Fiqh hold that *qiyas* could be used as a method or means to determine Islamic law²². Opposite form them, according to Ulama of Mu’tazilah, they argue that *qiyas* must be practiced in two things only namely; (a) the ‘*Illat* must be *Manshush* (mentioned in the texts), either real or through *isyarah* and (b) the law of *Far’* must be greater than the law of *Asl*.

Wahbah al-Zuhaili in his book classifies the opinions of Ulama Ushul Fiqh on the legality of *qiyas* into two groups, namely (a) the group that received *qiyas* as *dalil* of law, who is taken by the majority of Ulama Usul Fiqh and (b) those who are rejected or against *qiyas* as *dalil* of law, which are Ulama of Shī’ī al-Nazaam, Dhahiriyyah and few of Ulama Mu’tazilah in Iraq.²³

Those who reject *qiyas* based their argument on the reason that the only authority in determining the *hukm syarak* is Allah, as stipulated in the holy Al-Qur’ān:

“O ye who believe! put not yourselves forward before Allah and His Messenger. but fear Allah. for Allah is He who hears and knows all things”²⁴

This verse according to them is a prohibition for doing something else that did not provided and mentioned in Al-Qur’ān and Sunnah of Prophet Muhammad (bless and peace upon him). So, in their view, the use of *qiyas* in extending the legal rules is an attitude that prescribed out of Al-Qur’ān and Sunnah and therefore it is prohibited. Furthermore, in the surah al-Isra’ verse: 36; Allah the Exalted said:

“And pursue not that of which Thou hast no knowledge; for every act of hearing, or of seeing or of (feeling in) the heart will be enquired into (on the Day of Reckoning)”.

From these two verses according to them, it is an indication for prohibition in practice with something that is not known with certainty. Therefore, based on

²⁰ Al-Qur’an 5: 90

²¹ For a Systematic explanation of the conditions related to the elements of *qiyas*, see al-Sarakhsī, *kitab al Usūl*, vol. 2, 149; al-Ghazalī, *al-Mustasfā*, vol. 2, 87-99; al-RĒzĒ, *al-MahsĒl*, vol. 5, 331; Sadr al-SharĒ’ah, *al-TawdĒh*, vol. 2, 539.

²² Tajuddin ‘Abdul Wahab al-Subki, *Jam’ulJawani*, (Beirut: Dar al-Fikr, 1974), 177. See also Ibn Qudamah, *Raudhah al-Nadzir waJannah al-Munadzir*, (Beirut: Mu’assasah al-Risalah, 1978), 234.

²³ The Qur’an, the Sunnah, the consensus of the ShĒ’ĒJurists (*ijmĒ*) and reason (*Aql*) are forms the sources of ShĒ’Ē law. It should be noted that these are sources of the predominant UsĒĒ School of ShĒ’Ē Law.

²⁴ Al-Qur’an, 49: 1

these verses, qiyas is considered prohibited to be practiced. Besides these verses, it is there a Hadith of Prophet that narrated by Daruquhthni about prohibition of qiyas.

Jumhur Ulama of Ushul Fiqh who allowed qiyas as a methodology in deriving Islamic legal ruling stand with their own arguments such as based on a verse of Al-Qur'an that mentioned:

“It is He who got out the unbelievers among the people of the Book from their homes at the first gathering (of the forces). Little did ye think that They would get out: and They thought that their fortresses would defend them from Allah. but the (Wrath of) Allah came to them from quarters from which They Little expected (it), and cast terror into their hearts, so that They destroyed their dwellings by their own hands and the hands of the believers, take warning, then, O ye with eyes (to see)!”²⁵.

This verse, according to Jumhur of Ushul Fiqh is talking about the judgment of Allah against the infidels of the bani Nadhir caused their bad attitude towards the Prophet (bless and peace upon him). At the end of the verse, Allah commands Muslims to make this story as *I'tibar* (lessons). Taking a lesson from an event according to Jumhur Ulama is including *qiyas*. Therefore, the determination of the law through *qiyas* that Allah called it with *al-I'tibar* is allowed, even al-Qur'an ordered it.

Other verses that allowed *qiyas* are all the verses that contain '*illah*' as causes which appears with law such as in surah al-Baqarah verses 222 and al-Maidah verse 6 and 91 and in the most popular hadith that narrated by Mu'az bin Jabal when he was sent to Yemen with an indication *qiyas* as a form of *ijtihad*.

In my opinion, *qiyas* is a source of law that allowed the deduction of issues that are not mentioned in the Qur'an and Hadith; whereas such new legal issues are in need for clear decisions and urgently order to find new law that not clearly stated in al-Qur'an and Hadith.

Qiyas is a method of using the analogy, a comparison to get a verdict of Islamic legal ruling for new developments²⁶. As mentioned above, *qiyas* can be defined as a set of decision-making Islamic Law and apply it to new cases, based on the fact that new cases share the same essential reason for the original ruling was applied. Therefore, *qiyas* is a method used by Islamic jurists to obtain a ruling for the new situation that is not described by the Qur'an and Sunnah. It is essential especially many new developments of our time and custom of people nowadays are dissimilar with what had been encountered in Arabia during the life period of the Prophet (bless and peace be upon him).

By way of *qiyas*, this problem can be referred back to those who are explicitly mentioned in the sacred texts. When one knows the reason why something in Islamic law is mandatory, preferred, permitted, disliked, and forbidden, then it is permissible for something else that shares same attribute or reason to be extended with same legal ruling.

²⁵ Al-Qur'an, 59: 2

²⁶Imran Ahsan Khan, *Islamic Jurisprudence (Ushul Fiqh)*, (Islamabad: The International Institute of Islamic Thought, 2000), 214.

General Rules for the Valid Application of *Qiyas*: There are a number of guidelines that must be observed for *qiyas* to be correctly applied. Firstly, *Qiyas* can never be used to establish a ruling that contravenes a ruling or legal principle established by direct scriptural evidence. This is because *qiyas* is not to be resorted to in a matter where we have a text that gives a ruling. Secondly, the person who engages in deriving a ruling through *qiyas* must have the qualifications to engage in independent juristic reasoning (*ijtihad*). Thirdly, the *qiyas* itself must be reasoned through properly. It must comply with all of the considerations that Islamic legal theorists have discussed in the books of Islamic jurisprudence. Otherwise, the *qiyas* will not be valid. It will be of the type that the earliest scholars condemned. However, they did not ever categorically condemn *qiyas*.

Al-Ghazali writes: “Whoever rejects *qiyas* in principle is certainly mistaken in his thinking, and should be deemed as sinful.”

In Malaysia, one of Muslim country that is applied *qiyas* as one source in deducing *hukm* in Malaysia, because there was no explicit provision in the law that allows the application of *qiyas* and neither the law prohibits such application. However, by virtue of Article 3 and item 1 of the State List of the Ninth Schedule of the Federal Constitution, thus we may infer that *qiyas* is allowed to be applied in Malaysia.

This is because apart from recognizing that Islam as the religion of Federation, such Constitutional Provisions also allow *Hukm Syarak* to be practiced, regulated and implemented by the Muslim in this country.

In reality, by way of inference, the principle of *qiyas* has already been widely accepted and applicable in enacting or deducing some laws, *hukm*, offences and fatwa in Malaysia, as following example; Rape, Section 376 Penal Code; (i) *Asl*, the action of rape is *zina*, (ii) *Far'*, the action of rape, (iii) 'Illah, is intoxicating effect that can be identified from both actions (destroy the lineage and dignity), (iv) *hukm*, the law is prohibition or haram.

Another example is Criminal misappropriation of property, Section 403 of Penal Code; *Asl* (theft), *Far'* (criminal misappropriation of property), 'Illah (take unlawful possession of one's property), *Hukm* (prohibition/haram). And also like Smoking in mosque, Fatwa by Selangor Fatwa Committee; the *Asl* is eating onion in mosque, *Far'*, the action is smoking in mosque, the 'Illah is causing bad smell to the mouth and the *Hukm* is prohibition or haram.

Last example; Divorce through SMS (short message service), Fatwa by National Fatwa Council; *Asl* is the action of divorce is *talaq*, clear or unclear, *kinayah*, the *Far'* is divorce via SMS, 'Illah is contain the words *talaq* and the *Hukm* is amount to *talaq kinayah* if followed with *niyyah*, intention.

From above examples can be understood that *qiyas* is still relevant in modern days. With the new development in a modern world, people cannot stop new issues from arising.

In my view the application of the principles of *qiyas* is one of the best solutions in deducing new *hukm* in Islamic law till now.

CONCLUSION

Majority of jurists recognized qiyas as one of the source of Islamic law, beside Al-Qur'an, Sunnah and Ijma'.

In applying of qiyas, four basic elements must be fulfilled; the *Asl* (original case), *far'* (new case), *illah* (cause effected) and hukm (new ruling). These elements must always be preserved and uphold and should not be the subject for reform.

In this modern and globalization era the application of qiyas is still relevant and feasible. This is due to the increased number of new shāri'ah related issues around the world. So, in deducing these new hukm, there is still a need to rely on qiyas besides the other three primary sources in Islamic law.

Qiyas can make sense only when based on the two primary sources (Al-Qur'ān and Hadith), as well as on the substantive law sanctioned by consensus. Finally, the latter can come into operation on the basis of the three other sources, always assuming that qiyas is textual supported.

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