

The Historical Evolution of Qawaid Fiqhiyyah and Its Relevance as a Legal Maxim in the Perspective of General Law

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Info Articles	Abstract
<p>Article History Received : 2019-07-05 Revised: 2019-07-16 Published: 2019-07-30</p> <p>Keywords: <i>Jurisprudence Principles, Legal Maxims, History of Islamic Law, General Law.</i></p>	<p>The principles of Islamic jurisprudence (Qawa'id Fiqhiyyah) play a crucial role as guidelines for Islamic law in addressing various contemporary issues amidst the limited number of texts of the Qur'an and Sunnah quantitatively. This study aims to examine the period of formation and development of the principles of Islamic jurisprudence and analyze their relationship with the concept of *legal maxim in the context of general law. Through literature study, it was found that the development of the principles of Islamic jurisprudence is divided into three main periods: the birth period (the time of the Prophet, Companions, and Tabi'in), the codification period (4th century AH to the golden age in the 8th century AH), and the refinement period culminating in the compilation of Majallat Al-Ahkam Al-Adliyyah in the 13th century AH. The analysis shows a strong relevance between the basic principles of Islamic jurisprudence and general legal principles, such as the relationship between the principle of "Al-umur bi maqasidiha" and the concept of mens rea in criminal law, and the principle of "Al-yaqin la yuzal bi asy-syakk" with the principle of proof in court. The research results conclude that the rules of Islamic jurisprudence function as legal maxims that provide a universal framework for legal practitioners in resolving disputes and formulating legal norms.</p>

I. INTRODUCTION

The principles of Islamic jurisprudence (fiqh) are crucial as guidelines for Muslims in resolving legal issues they face in everyday life. Without these guidelines, humans cannot know the boundaries of what is permissible or not. Furthermore, they cannot determine which actions are more important to perform or which are more important to avoid. Essentially, humans' actions and behavior are bound by the guidelines and values they adhere to, both based on religious teachings and good traditions (Duski Ibrahim, 2000).

In Islam, the guidelines used as a reference in acting and behaving are the instructions of the Qur'an and the Sunnah of the Prophet. The Muslim Ummah is commanded to obey Allah SWT and His Messenger, and must not turn away from both of them, as can be understood from the imperative expression of Allah SWT in Surah Ali-Imran verse 32, which means: "Say by you (O Muhammad), obey Allah and His Messenger. If you turn away, indeed Allah does not like the disbelievers." To

this day, the Islamic Ummah continues to use the Qur'an and the Sunnah of the Prophet as its "umdah" or main support in behavior and action. Not only that, these two legal sources are used as the main reference in resolving various problems faced, both directly and indirectly, including legal problems (Abdurrahman Asymuni, 2002).

The Qur'an, as a way of life, contains perfect and complete teachings, even though it only implicitly explains the principles or basics. Perfection and completeness. This can be understood from the Qur'an, among others, Surah Al-Ma'idah verse 3, which means: "... This day I have perfected your religion for you, and I have completed My favor upon you, and I have approved Islam as your religion..." Then, in Surah Al-An'am verse 38, Allah says, which means: "We have not forgotten anything in the Book (Al-Qur'an)." With this brief expression it can be understood that there is no problem that does not have rules in the Qur'an, even if only in the form of hints or principles. This principle is further interpreted and detailed by the Sunnah of the

Prophet, both in the form of words, deeds and in the form of his approval of the deeds or behavior of the companions of the Prophet (Duski Ibrahim, 2004).

In order to gain knowledge about fiqh or Islamic law which comes from ash-Syari' (Allah and the Messenger), an expert in Islamic law (mujtahid or faqih) should first look at and take it from the Al-Qur'an (Book of Allah) and hadith (Sunnah of the Messenger) (Hanafi, 1997). The Al-Qur'an as the main source of Islamic law contains perfect (itmam) and complete (syumuli) teachings, even though most of them are only general in nature or principles, without providing practical explanations. This can be seen from the very limited number of legal texts in the Koran. Except for religious laws and some family laws, most of them still need interpretation in their implementation.

According to Imam Al-Ghazali's calculations, the legal texts in the Qur'an number 500 verses (Al-Ghazali). According to Ibn Mubarak, there are 900 verses. Ahmad Amin stated that there are 200 legal verses. Thanthawi Jauhari calculated no more than 150 verses. According to Abdul Wahhab Khallaf, the legal verses number 280. Of the small number of legal verses in the Qur'an, their reference to law can be divided into three forms: First, the Qur'an only mentions the basics and general principles. For example, regarding deliberation, justice, respect for others' property, mutual assistance in goodness, and others, the details, operational definitions, mechanisms and implementation are left to humans. Second, the Qur'an explains the laws in general (ijmali), without providing applicable details. For example, the command to pay zakat, qisas (equitable legal sanctions). The Holy Book does not specify the conditions that must be met in its practical implementation. Third, the Qur'an explains legal rules in detail. These provisions are very few, for example, regarding inheritance, hudud sanctions, and women who are forbidden to marry.

Furthermore, the number of legal hadiths, based on dilalah al-muthabaqah (the explicit reference to the meaning), is also limited, even though it serves as an interpreter of the Qur'an (Abdul Wahhab Khallaf).

According to Ibn Qayyim, the number of legal hadiths is around 4500. Meanwhile, Al-Mawardi, quoted by al-Khatib, only counted 500 legal hadiths. Thus, most of the legal verses revealed by the Shari'a are only general principles (Ibn Al-Qayyim). A more detailed description can be stated as follows: The problem of buying and selling, for example, is only stated that buying and selling is permissible (Q. Al-Baqarah: 275); in buying and selling there must be willingness from the seller and buyer (Q. al-Nisa: 29). If we examine the above facts, then the experts of ushul-al fiqh provide an analysis of the designation of verses to the law. According to experts, in terms of origin, all verses of the Qur'an are qath'i (qath'i atstsubut), that is, they definitely come from Allah SWT, there is no need to doubt, because they have been narrated mutawatir, so they can be fully trusted. But in terms of its reference to law (dilalatuha ala al-ahkam), some of the verses of the Qur'an are qath'i and some are zanni. Qoth'i means pronunciation which only contains one meaning. For example, the verses of the Qur'an which indicate numbers: one, two, half, a quarter, one hundred and so on. Zanni means words that contain the possibility of several meanings. For example, the word quru' which can mean holy or menstruation.

Meanwhile, according to the experts of ushul-al fiqh, hadiths, both in terms of their origin and in terms of their reference to the law, are included in the qath'i category and some are included in the zanni category. Based on this, the hadiths of the Prophet are qath'i al-wurud, which means they definitely came from the Prophet, such as hadiths with the degree of mutawatir, and there are also zanni al-wurud, which means there is still a strong suspicion that the hadith came from the

Messenger, such as the ahad hadiths. Likewise, in terms of their reference to the law (*dilalatuhi ala al-ahkam*), there are hadiths that are *qath'i ad-dilalah*, which means the legal reference is certain, and there are *zanni ad-dilalah*, which means the legal reference is still a strong suspicion, so that their meaning and implementation are still debated by experts.

Regardless, considering the quantity of verses of the Qur'an and the hadiths of the Prophet, it can be understood that the number of legal texts is limited, even though the issues that will arise are numerous, varied, and unlimited. Asy-Syahrastani in *Al-Milal wa an-Nihal* states that the texts are limited, while the cases that arise are unlimited. Something that is unlimited will not be covered by something that is limited (Ash-Syahrastani). Responding to the quantitative limitations of legal texts, in turn, the companions and prominent scholars interpreted these two limited sources of law, an action that can serve as a precedent in responding to various developments in contemporary legal issues.

According to Abu Zahrah, some of the Prophet's companions conducted *ijtihad* within the limits of understanding the Qur'an and Sunnah, while others used *Al-qiyas* and *Al-maslahah* (Abu Zahrah). Meanwhile, Salam Madkur is of the opinion that the *ijtihad* of the companions was summarized in three forms, namely (1) interpreting the texts, (2) using the *al-qiyas* method, and (3) using *maslahah mursalah* and *istihsan* (Salam Madkur). The creation of *ijtihad* was indeed permitted by the Prophet when the problem faced did not have a text in the Qur'an and Sunnah or clear guidance was not found.

Ijtihad by the ulama, from the time of the Prophet's companions until now, it is carried out using various methods that have been tested, both verbal methods (*at-thuruq al-lafzhiyah*), namely the interpretation of the texts by paying attention to the forms of pronunciation, such as *amm*, *khash*, *muthlaq muqayyad*, *mujmal mubayyan*,

etc., and substantial methods (*at-thuruq al-ma'nawiyah*), namely the interpretation of the texts using pay attention to aspects of the meaning contained in it, such as *qiyas*, *istihsan*, *maslahah murlah*, *urf*, and others which are still within the corridor of the spirit of *asy-syari'ah* or the spirit of *shari'ah*, especially what is known as *maqashid asy-syari'ah*. In addition to the methods above, there are legal guidelines that can also be used as references in resolving Islamic law, namely formulations in the form of certain propositions, which are called *fiqh* rules or *fiqh* generalizations (Ali Hasballah).

Imam Al-Qarafi, an Islamic jurist from the Maliki school of thought, has divided *ushul asy-syari'ah* (the basic principles of establishing Islamic law) into two parts, namely: First, called *ushul al-fiqh*, namely the rules used by scholars to establish Islamic laws, both those related to linguistic aspects, as well as those related to reasoning methods that are separate from linguistic elements directly. Second, called *qawa'id fiqhiyah*, namely the rules that cover most branches of *fiqh* problems that can be used as a guide in resolving the law of various events that continue to arise in society. Thus, considering that the disclosure of these legal texts is mostly only general principles, and its nature is of course very dynamic (*murunah*), it is necessary to carry out interpretations by communicating them to the needs and conditions of society that are always developing. One of the tools or media for interpreting them is the rules of *fiqh* (Al-Qarafi).

Islamic legal experts have from the beginning carried out studies on the meaning of the texts, both the Qur'an and the Sunnah of the Prophet. They explore the norms contained in these two sources of Islamic law, especially those relating to legal issues. Apart from that, they have also studied in depth the various legal rules and objectives revealed by *ash-Shari'*. In other words, Islamic legal experts have conducted various research on the principles and principles

contained in the texts of the Qur'an and Sunnah, in addition to conducting research on furu' laws.

From the results of this research, the scholars formulated the rules of fiqh (al-qawa'id al-fiqhiyah), namely general rules that are relevant to similar parts. In formulating the rules of fiqh, they of course use a certain method, which is called the method of forming the rules of fiqh. The method referred to in this context is the ways taken by fiqh experts in formulating the rules of fiqh until a general guideline is formed in the form of propositions, which from the aspect of Arabic grammar (grammar) reflect the number of mufidah and from the aspect of meaning contain generalizations of the laws of fiqh.

For example, rule products have been produced by Ushul al-Fiqh scholars using the formulation and formation methods above. For example, the rule: al-Umur bi Maqasidiha, which is extracted from the verse of the Qur'an, surah Al-Bayannah: 5, which means: "...Even though they were not ordered except to worship Allah by purifying (sincere) obedience to Him in religion straightly". Then the verse of the Qur'an, Surah Ali-Imran: 145, which means: "Whoever wants a reward in the afterlife, we will give that reward. And we will reward those who are grateful." Furthermore, the Prophet's hadith: Actions are only with intention. For each person only gets what he intends. Therefore, whoever migrates to Allah and His Messenger, his migration is to Allah and His Messenger. Then in another hadith: A believer's intentions are better than his deeds (which are empty of intentions). Likewise with the rules: al-yaqin la yuzal bi ash-Syakk, al-Masyaqqah Tajlib al-Taisir, adh-Dhararu yuzalu, and the rules of al-adah muhakkamah, which are formed based on the arguments of the Qur'an and Sunnah.

If examined closely, the rules of fiqh formulated by these scholars, when linked to the context of general law, have close similarities and relevance. In this context, studying general law

comprehensively is essentially inseparable from the study of legal sources, legal philosophy, legal history, legal doctrines as studied by previous legal experts, even giving rise to propositions or arguments that serve as guidelines as legal principles and principles. These legal principles and principles are the basic foundation and guideline in formulating a norm that is enforced. Likewise, legal principles and principles serve as references in solving legal problems faced. For example, if there is a conflict between one regulation and another, there is an adage or legal principle "Lex specialis derogate legi generalis" (special law overrides general law), Lex superiori derogate legi inferiori (higher regulation overrides lower regulation), and other relevant general legal principles.

Based on the background description above, it is the author's attention to study and discuss the Formation and Development Period of Qawaid Fiqhiyyah in relation to the concept of legal maxim in the context of general law.

II. METHODSTUDY

This study uses a qualitative approach with a library research method to explore data in depth through document and text searches. The main data sources in this study come from secondary data, including primary literature in the form of authoritative works of prominent Islamic jurisprudence and ushul scholars such as Imam Al-Qarafi, Abdul Wahhab Khallaf, and Ali Ahmad al-Nadwi, as well as secondary literature relevant to the development of legal maxims. The data collection technique is carried out by reviewing the historical facts of the formation of Islamic law from the era of the Prophet Muhammad SAW to the period of codification and refinement of the rules. The collected data are then analyzed using descriptive-analytical and comparative methods to explain the historical chronology while dissecting the relevance between the principles of qawaid fiqhiyyah and legal principles in the

context of general law. Through this method, the study aims to provide a comprehensive picture of how Islamic jurisprudence rules function as a foundation in solving contemporary legal problems.

III. RESULTS AND DISCUSSION

A. Development and Formation Period of Qawaid Fiqhiyyah

The importance of knowledge about the history of the development and growth of fiqh principles in general can be understood from three reasons: First, knowing the sincerity of the scholars in creating knowledge about fiqh principles as general guidelines that can be used as references in solving fiqh problems. Second, the sincerity of these scholars can be used as *i'tibar* or valuable lessons so as to encourage students of Islamic law to continue to be creative, continuing the hard work of previous scholars, by maintaining and developing fiqh principles in order to maintain the existence of Islamic law, especially in facing social dynamics and changes. Third, the fiqh principles that have been historically formulated by scholars in the past can be directly utilized in facing contemporary Islamic legal problems, without having to waste any more energy (Duski Ibrahim).

When tracing the history of the development and formation of Islamic law, including the principles of fiqh, it essentially begins with the time of the Prophet Muhammad (peace be upon him) and his companions, as the bearers of the religion and its rules, based on the Qur'an and Sunnah. During the Prophet's time, the ultimate authority in making decisions regarding Islamic law rested with the Prophet himself, and no one else. All legal issues that arose in society were resolved directly by the Prophet through divine guidance, as found in the Qur'an and the Prophet's Sunnah. At that time, there were no specialized disciplines, including fiqh and *ushul al-fiqh*, and there were no theories or principles of fiqh in

their practical form as we see in modern books. Whenever a legal issue arose in society, the Prophet immediately resolved it or his companions directly consulted the Prophet, rather than resolving it by following specific principles. Nevertheless, the Prophet left behind universal Islamic legal principles and general rules, in addition to specific laws found in the Qur'an and hadith. These general principles and rules can serve as a framework for thinking in resolving legal issues.

Abdul Wahhab Khallaf stated that the Prophet and his companions had left behind the principles of Islamic legal development, which became the principles to be followed in Islamic legal thought, namely:

- a) *Adam al-haraj*. Namely the principle of eliminating pettiness and not being burdensome. This principle is very much in line with human nature, which does not like burdens, especially heavy burdens. Many postulates explain the existence of this principle. Allah says in the Qur'an that: Allah does not burden a person, but is in his power (al-Baqarah: 286). Allah's Word: Allah desires relief for you and does not desire hardship (al-Baqarah: 185). God's Word: God does not want anything to be difficult for you. Furthermore, the words of the Apostle: Religion is easy. Make it easy and don't make it difficult. This principle is so important in the formulation of a law, the Prophet said: Do not bring harm and do not repay harm. To that extent, even what is prohibited is permissible in an emergency, according to the rule: harm allows things that are prohibited (Abdul Wahhab Khallaf).
- b) *Taqilil at-Takalif* This principle is a continuation of the principle above, namely the principle of reducing burdens. Allah forbids Muslims from asking too many questions about laws that do not yet exist, which will result in burdening themselves.

Allah says: O you who believe: Do not ask about things that, if explained to you, would cause you trouble. But if you ask about them when the verses of the Qur'an are revealed, they will be made clear to you. Allah will forgive you, and Allah is Oft-Forgiving and Merciful. This verse contains the meaning that Islam actually teaches its followers to strive for a realistic attitude. If something is not clearly explained, then it is sufficient to be guided by verses that are general in nature and do not impose many burdens that make things difficult for humans, either individually or socially. Because, Allah wants ease and lightness, not things that are burdensome. This is reinforced by the word of Allah: Allah wants relief for you and does not want hardship (al-Baqarah: 185) and the word of Allah: Allah wants to ease your objections, because humans were created in a weak state (Ali 'Imran: 28).

- c) *At-Tadrij fi at-Tasyri'*. This principle means that Islamic law was established in stages. In reality, every human being in society has traditions or customs, both good traditions and traditions that are not good, even dangerous. They are clearly used to practicing the traditions they adhere to, so it is very difficult to make a change from one (old) tradition to another (new) tradition. Ibn Khaldun once said: A society will oppose if there is something new or something that comes later in its life, especially if something new is contrary to existing traditions. There are several legal cases that the Apostle gave us examples of which were established in stages, including: an invitation to God Almighty (ad-da'wah ila at-tauhid); The legal rules for prayer, zakat, fasting, Hajj, the prohibition of usury and the prohibition of wine are all established in stages.
- d) *Musayarah bi mashalih an-nas*. This principle means that the enactment of a law must be in

line with human welfare, both individual and social. In other words, the enactment of law never leaves the societal element as a consideration. As an elaboration of this principle, there are at least three criteria for the enactment of law: First, the law that is enacted is truly for the benefit of humanity and they really need the legal rules, in order to realize welfare and prosperity. Second, the law is enacted by an authorized or authorized party, so it can bind society. In the rules of Islamic jurisprudence it is stated "Hukm al-hakim ilzam wa yarfa' al-khilaf". The decisions and rules of the ruler are binding and eliminate differences of opinion. Third, the law is enacted according to need.

According to Ali Ahmad al-Nadwi, a contemporary ushul scholar, explains that the history of the development and formation of qawaid fihiyah can be divided into 3 formation periods. First: birth period, Second, bookkeeping period. Third, the period of refinement (Ali Ahmad al-Nadwi, 1998).

1. Birth Period

The history of the development of Islamic jurisprudence (fiqh) is inseparable from earlier periods, namely the time of the Prophet Muhammad (peace be upon him), the Companions, and the Tabi'in (followers) (Sudirman Suparmin, 2013). During this period, the science was still in its standard form, derived from the Quran and the teachings of the Prophet Muhammad (peace be upon him), known as the Sunnah. The general scientific context in these first centuries lacked a specific systematization and methodology. This was because all the problems faced at that time were explained directly by the Prophet Muhammad (peace be upon him). Consequently, ijtihad, which still hovers between right and wrong, was unnecessary. However, the seeds of the principles had actually existed since the time of the Prophet (Ahmad Sudirman Abbas). He was the primary

explanator of the contents of the Quranic verses in addressing life's problems that required new laws. On the other hand, the Prophet Muhammad would explore the law by consulting with Quranic verses when their explanations were still global. This process subsequently gave rise to the formation of Islamic laws, including the principles of Islamic jurisprudence.

Based on the above explanation, it can be understood that the existence of Islamic jurisprudence in the early period or birth was still in its infancy. During the birth period, the process of the emergence of Islamic jurisprudence can be grouped into three phases, namely: First Phase, the era of the Prophet Muhammad SAW. During this period, there was no particular specialization of knowledge studied from the Qur'an and Hadith. The Companions' enthusiasm was fully devoted to jihad and applying what was obtained from the Prophet in the form of the teachings of the Qur'an and Hadith. Knowledge only revolved around the issue of qira'ah and listening to the Prophet's hadiths and applying and developing the laws that had been established by the Prophet when facing new problems. During the Prophet's era, whenever a problem arose, the Companions immediately asked the Prophet. The Prophet's hadiths that discuss law, often use a general principle pattern, meaning they can cover and cover all issues of Islamic jurisprudence (Mustafa Dziraq, 2000). The Prophet SAW. He has a specialty in his speech which is known as Jawami' Al-Kalim, namely his words are short but have a dense meaning. As the hadith says: You are not allowed to act madhorat towards yourself or others. (HR. Ad-Daruquthni, Al-Baihaqi and Hakim). He also said: 'Evidence is imposed on the accuser while the oath is imposed on the defendant. (HR. Al-Baihaqi). According to jurisprudence experts, the hadiths above are in the form of expressions patterned after the rules of jurisprudence. Even though this hadith was not

formally called a rule, it was still a hadith at that time.

Based on the explanation above, we can conclude that of the thousands of hadith, there are hadith that have the same characteristics as the rules of Islamic jurisprudence, whose existence is very important in the science of Islamic jurisprudence. The above words are connected with clear words or pronouns (dhamir), but this is not required (Ahmad Sudirman Abbas).

The second phase, the Companions' Era, saw a transformation in the way the Companions thought toward ijthad, where their legal decisions were based on the Qur'an and Sunnah. This shift was driven by the emergence of new issues that had never occurred during the time of the Prophet Muhammad (peace be upon him). This period also saw the emergence of the use of qiyas and ijma' (consensus). The Companions contributed to the development of Islamic jurisprudence (fiqh) through their participation in the development of Islamic jurisprudence. The Companions were able to develop these principles for at least two reasons: they were disciples of the Prophet Muhammad (peace be upon him), and they understood the circumstances that led to revelation, which sometimes affected them. Atsar (statements) of friends which can be categorized as jawami' al-kalim and fiqh rules include the following: The statement of Umar bin Khatab (d. 23 H) which was narrated by Al-Bukhari (d. 256 H) in his book Sahih al-Bukhari: "Acceptance of rights is based on conditions. Atsar Umar bin Khatab here is a rule in matters of conditions." Umar bin Khatab's statement has become a rule in terms of conditions. Furthermore, Ali bin Abi Talib ra's statement (d. 40 H) was narrated by Abd Al-Razaq (d. 211 H): "People who share profits do not have to bear losses." Ali bin Abi Talib's statement has become a fertile rule in the field of property issues, such as mudharabah and syirkah.

The Third Phase, the Tabi'in Period. Regarding the existence of fiqh principles during

the Tabi'in period, it can be said that this phase was the initial phase of fiqh development. A prominent aspect of this phase was the beginning of the foundation of fiqh knowledge. This period was also marked by the emergence of fiqh scholars, or leaders, and their students who provided guidance to community groups studying fiqh at that time. These study groups in each region were usually led by tabi'in, such as: Said ibn Musayyab in Medina, Atha ibn Abi Rabah in Mecca, An-Nakahi in Kufa, Hasan Al-Basri in Basrah, Mankhul in Syria, and Thawus in Yemen.

Unlike the era of the Caliphate of the Prophet (Khalifah Al-Rasyidin), during this period, the study of Islamic jurisprudence (fiqh) entered and became more theoretical. Many Islamic jurisprudence laws were produced through reasoning based on theory, rather than those derived from understanding previous cases and comparing them to new ones. Thus, Islamic jurisprudence was not only able to explain actual (waqi'iyah) issues, but also went beyond that.

Among the scholars who developed the principles of fiqh in the generation of the tabi'in: Abu Yusuf Ya'kub bin Ibrahim (113-182) His famous work, the book *Al-Kharaj*, the principles compiled are: "The property of every deceased who has no heirs is handed over to Baitul Mal". This principle concerns the distribution of inheritance. Baitul Mal as one of the economic institutions of Muslims can receive inheritance (tirkah), if the deceased has no heirs. The next scholar who developed fiqh was Imam Asy-Syafi'i. In the second century of Hijriah (150-204 H), one of the principles he formed, namely "Something that is permitted in a state of necessity is not permitted when not forced".

The next cleric was Imam Ahmad bin Hambal (d. 241 H). Among the rules established by Imam Ahmad bin Hambal which were narrated by Abu Daud in his book *Al-Masail*, namely: "Everything that is permitted to be sold, is permitted to be given away and pawned." The next cleric was

Muhammad bin Al-Hasan Al-Syaibani (d. 189 H). He stated that if a person performs ablution, then doubt arises in his heart, whether he has hadats (invalidated) or not, and this doubt is greater in his mind, it is better for him to repeat his ablution. If he does not repeat the ablution and prayer along with his doubts, according to him it is permissible, because he still has the ablution so he is sure that he has hadats (canceled). Al-Syaibani's statement above is like a rule: "Faith cannot eliminate doubt."

2. Codification Period

The beginning of the principles of Islamic jurisprudence as a separate discipline and being documented occurred in the 4th century AH and continued thereafter. This occurred when the tendency towards imitation began to emerge and the spirit of *ijtihad* had weakened. This was because at that time, Islamic jurisprudence was experiencing very rapid progress, and scholars were satisfied with the progress achieved by Islamic jurisprudence at that time. The compilation of Islamic jurisprudence, which included evidence and differences of opinion among the schools of thought, seemed to satisfy them, leaving subsequent generations with no choice but to refer to the opinions of these schools in deciding and answering new questions. As the laws of *furu'* and the fatwas of the scholars developed along with the increasing number of problems, the scholars took the initiative to create rules and *dhabit* that could maintain the laws of *furu'* and the fatwas of the scholars. This is what Abu Hasan al-Karkhi (d. 340 AH) did in his treatise (*Ushul al-Karkhi*) and Abu Zaid al-Dabbusi (d. 430 AH) in his book *Ta'sis An-Nadzor* by using the term *ushul*. If the *ushul* covers various fiqh issues, it is called a rule, whereas if it only covers one fiqh issue, it is called *dhabit*.

According to Ali An-Nadwi, the Hanafiyah group was the first to study the rules of fiqh. Some information stating this is contained in several literatures, including As-Suyuthi (d. 911 H) and

Ibn Nujaim (d. 970 H) who stated that Imam Ad-Dabbas in the 4th century Hijriah had collected several rules of the Hanafi School of thought totaling 17 rules. Imam Ad-Dabbas read these rules repeatedly every night in the mosque, which then Abu Said Al-Harawi quoted from Ad-Dabbas, several of these rules show that the rules of fiqh experienced rapid development in the 7th century H. The rules of fiqh in this century seemed closed but gradually began to expand.

In the 8th century H, the science of jurisprudence experienced a golden age, with the emergence of many books of jurisprudence. This development was limited only to perfecting the work of previous scholars, especially among the Shafi'iyah scholars. This can be seen, for example, in the books of Ibn al-Mulaqqin and Taqiyuddin Al-Hishni. In this case, the Shafi'iyyah scholars were among the most creative. Among the great works that appeared in this century are: *Qawaid Al-Ahkam Fi Mashalih Al-Anam* (Author: Izzuddin bin Abd Salam w. 660 H), *Al-Asybah Wa An-Nadzair* (Author: Taajuddin As-Subki w. 771 H), *Al-Asybah Wa An-Nadzair* (Author: As-Suyuti w. 911 H).

Major works examining the principles of Islamic jurisprudence, compiled in the 9th century AH, largely followed the methods of works from previous centuries. Among these works are: *Kitab Al-Qawa'id* by Ibn Al-Mulaqqin (d. 840 AH), *Asna Al-Maqashid Fi Tahrir Al-Qawa'id* by Muhammad ibn Muhammad al-Zubairi (d. 808 AH). Thus, the science of Islamic jurisprudence developed gradually.

In the 10th century AH, the codification of the Principles of Fiqh (Islamic Jurisprudence) was further developed. Imam As-Suyuthi (d. 911 AH) attempted to compile the most important Principles of Fiqh from the works of Al-'Alai, As-Subki, and Az-Zarkasyi. He compiled these principles in his book *Al-Ashbah wa An-Nadzair*. The works of these three scholars still cover the *qawaid ushuliyah* and the Principles of Fiqh,

except for the book by Al-Zarkasyi. Imam Al-Karkhi (d. 340 AH) compiled a note containing 37 principles. After that, Abi Laits Al-Samarqandi (d. 373 AH) appeared with his work *Ta'sis An-Nadzor* which is identical to the work of Abi Zaid Ad-Dibasi (d. 430 AH) with slight differences.

3. Refinement Period

The 10th century AH is considered a period of refinement of the principles of fiqh, although this does not mean that there were no further improvements to the principles of fiqh in the following era. One of the principles refined in the 13th century AH was "a person is not allowed to manage another person's property, unless with the permission of the owner." This principle was refined by changing the words *idznih* to *idzn*. Therefore, the principle of fiqh is "A person is not allowed to manage another person's property without permission. The codification of the principles of fiqh reached its peak when the *Majallat Al-Ahkam Al-'Adliyyah* was compiled by the Fuqaha during the reign of Sultan Al-Ghazi Abdul Aziz Khan Al-Utsmani (1861-1876 AD) at the end of the 13th century AH. This *Majallat Al-Ahkam Al-'Adliyyah* became a reference for judicial institutions at that time.

B. The Relationship Between Qawaid Fiqhiyyah and Maxim Legal Concepts in the General Legal Context

In general, legal maxims (jurisprudence maxims) can be defined as "general rules that apply to all related specific matters." In the history of the development of jurisprudence maxims, Imam As-Syafi'i was a pioneer in formulating systematic maxims in the sharia sciences through a theoretical framework in jurisprudence. This development continued until the birth of various literature on jurisprudence maxims, both general and specific, with tendencies towards certain schools of thought, such as Al-Karkhy from the Hanafi school, Al-Izz bin Abd Al-Salam from the Shafi'i school, and Ibn Taymiyyah from the Hambali school (Halima Boukerraucha, 2014).

Then Al-Qarafi from the Maliki school and other scholars offered Islamic legal problems with the approach of Fiqh Legal Maxim or fiqh rules because of the efficiency offered in finding Islamic legal solutions, as follows: First, fiqh rules have a special position in the treasury of Islamic knowledge because the expertise of a fakih is closely related to the mastery of fiqh rules. Second, it can be the basis for issuing fatwas. Third, it makes fiqh knowledge more organized so that it makes it easier for someone to identify the very large number of fiqh issues (Al-Qarafi, 1990). Fourth, it binds scattered and numerous matters in unifying rules so that it is easier to memorize (Ali Ahmad Al-Nadawi). Fifth, the urgency of fiqh rules clearly describes the general principles of fiqh, opening horizons and paths of thought about fiqh. Sixth, the rules of fiqh bind various branches of law which are practical in nature with various dhawabith, which explains that each branch of law has one manath (illat/legis ratio) and related aspects, even though the objects and themes are different (Mushthafa Ahmad Al-Zarqa, 1983).

The Islamic jurisprudence established by scholars is essentially based on five basic principles (qawaid asasiyyah al-khamsah). These five basic principles give rise to various branching principles. Some scholars refer to these five basic principles as qawaid al-kubra. The first principle is: "All matters depend on their purpose." This principle is derived from and abstracted from several texts of the Qur'an and hadith. For example, the word of Allah SWT in Surah Al-Imran: 145, Surah Az-zumar: 2, and Surah Al-bayyinah: 5. Then this rule is in line with the Hadith of Rasullullah SAW which states: "Indeed, all actions depend on what has been intended. For each person will only get what he intended. Therefore, whoever migrates to Allah and his Messenger, then his migration is to Allah and his Messenger. Whoever Who emigrates because of the world, what he will obtain or because of the woman he will marry, then his emigration is in

accordance with what he intended." From the main rule above, other rules emerge, for example the rule which reads: La tsawa ba illa binniyah (there is no reward except with intention). Thus it can be understood that every action is based on intention. When linked to the context of general law, especially criminal law, in terms of demanding accountability for perpetrators of crimes, the element of mens rea (mental attitude or evil intention of the perpetrator) must first be looked at.

The second rule, Al-yaqinu la yuzalu bisy' syakk ("Faith cannot be eliminated by doubt). This rule is taken from the hadith "If one of you gets something in his stomach, and the question arises as to whether the something has come out or not, then do not leave the mosque until he hears the sound or smells it." performing ablution'. This is because the state of ablution has been a belief (al-yaqin) from the beginning, while doubts (asy-syakk) only arise later. This existing belief cannot be erased by doubt. This rule is relevant to the general legal context regarding evidence in court.

The third principle, Al-musyaqqahu tajlibuttasir (Difficulty leads to ease). This principle is extracted from the Qur'an, Surah Al-Baqarah: 286 and the hadith which reads: "Make things easy and do not make them difficult, make them happy and do not frighten them." The verses of the Qur'an and the hadiths of the Prophet Muhammad (peace be upon them) mentioned above show that Islam always desires ease for humans. All laws contained in Islamic teachings do not exceed the limits of human capabilities, which are weak in nature. This principle is also relevant to the context of general law. For example, in the context of criminal procedure law, the principle of in dubio pro reo is known (if there is doubt in the judge's decision on a case, then the decision is made in a way that is beneficial to the defendant).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

First, the history of the development of Islamic jurisprudence can be divided into three periods. The first period is the period of the formation and growth of Islamic jurisprudence. This period has three phases: the period of the Prophet Muhammad (peace be upon him), the period of the Companions, and the period of the Followers. The second period is the period of the codification of Islamic jurisprudence. The third period is the period of the refinement of Islamic jurisprudence.

Second, legal maxims (jurisprudence maxims) are global or universal in nature and can encompass several particulars. A kulli (overall, general) law encompasses its parts. From this definition, it is clear that the maxim is comprehensive (general) and encompasses the particulars (its parts). In other words, it can be applied to those parts (juziyyaat). Furthermore, through the maxims of jurisprudence, laws related to jurisprudence can be understood. In the context of general law, these principles or maxims serve as the basis and guideline for resolving emerging legal issues.

B. Suggestions

Based on the findings of this study, it is recommended that the understanding and application of Islamic jurisprudence maxims (qowaid fiqhiyyah) be strengthened in both academic and practical legal contexts, considering their important role as universal principles in understanding and resolving various legal issues. Educational institutions are encouraged to deepen the study of the historical development of Islamic jurisprudence to provide a comprehensive understanding of the formation, codification, and refinement of Islamic legal thought. Furthermore, scholars, legal practitioners, and policymakers should optimize the use of jurisprudence maxims as guidelines in addressing contemporary legal problems to ensure that legal decisions remain relevant, adaptive, and aligned with Islamic principles. Future studies are also expected to further explore the implementation of Islamic jurisprudence maxims in responding to modern legal challenges and social developments.

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