

***JĀWĪ* REFERENCE IN ISLAMIC LAW COMPILATION:  
An Introduction to *al-Qawânîn al-Syar‘iyyah* by Sayyid Usman**

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**Abstract:** This study describes the construction process that occurred in the formulation of Islamic law in the form of Islamic Law Compilation (*Kompilasi Hukum Islam/KHI*) by recognizing the use of *jāwī* reference, namely *al-Qawânîn al-Syar‘iyyah* by Sayyid Usman. This study focuses on answering two questions, i.e. how was the position of this compilation as a guide for judges in the late 19th and early 20th centuries, and what was the content of the law in it? Based on content-analysis approached by the social history of Islamic law, the writers find that the construction can be seen from the position of the *jāwī* reference as a guideline for Religious Court judges apart from being preserver of *jāwī* writings from the *ulama* in Archipelago, as well as affirming the robustness of the madhhab Shâfi‘î as the majority in Indonesian. The construction can also be seen from its content which discusses the needs of the community at that time for the order of Islamic law in Indonesia-as well as its structure in the form of legal material sourced from authoritative books which must also be put forward without denying the praiseworthy customs of the country or the strictness of local wisdom.

**Keywords:** *al-Qawânîn al-Syar‘iyyah*, Islamic law, history

## Introduction

This study aims to introduce the book *al-Qawânîn al-Syar‘iyyah* written by Sayyid Usman as the only *jâwî* reference of the Islamic Law Compilation. This is because apart from the problems of the position<sup>1</sup> and the materials in it,<sup>2</sup> this set of Islamic rules that was written and arranged systematically<sup>3</sup> was known to be the guideline used by judges in deciding civil cases in the Religious Courts.<sup>4</sup> At least based on Presidential Instruction No.1 of 1991, as well as the Decree of the Minister of Religion No. 154, 22 July 1991. Arifin called it fiqh in the language of law.<sup>5</sup> Hefni, from the aspect of the books referred to in its formulation, called it a cross-sectional fiqh.<sup>6</sup> Both the first and second terms shared a direction that Ash-Shiddieqi or Hazairin had previously initiated with Indonesian Fiqh and National/Indonesian mazhab, which as a whole intended to construct Islamic law to suit the characteristics of the Indonesian Republic.<sup>7</sup>

Such construction certainly needs to continue to be developed. This is not a novel effort if we examine the history of the formation of Republic of Indonesia, whose founding fathers included ‘*ulamâ*’. They, in formulating the foundation of the state named *Pancasila*, made *ijtihad* as the most real and concrete application of *maqâshid al-syarî‘ah* in the State after previously emerging the idea known as the *Piagam Jakarta*. Therefore the implementation of the sharia objectives appears to the surface and even goes beyond the realm under the authority of Islamic theoretical jurisprudence itself.<sup>8</sup> This flow, according to Latif, is an amalgamation of religious, nationalism and social spirits that are in line with Soekarno’s thoughts in Pancasila.<sup>9</sup> In short, it can be said that the embodiment of Islamic law in Indonesia which reflects the characteristics of society has been implemented and has been running for a long time.

After all, from a theoretical perspective, the *ta'rif* of law (*al-hukm*) itself actually places the deeds (*af'âl*) of the *mukallaf* as the object of the study. Zuhaili defines that law is a *khitâb* or word of Allah which is related to the actions of a sensible adult, whether it is imperative, facultative or placing something as a cause, condition and barrier.<sup>10</sup> This indicates that the establishment of laws will always develop as human actions and activities continue. The more advanced human life, the greater the intensity of their actions. Everything must be formulated in the form of rules or there must be a law that binds them. Such an Islamic law formation will place the position of Islamic law itself as the main goal, namely to answer the problems of each person.<sup>11</sup>

Referring to the Islamic Law Compilation (Kompilasi Hukum Islam/KHI) issue, the study of it as a judge's guide is still seen from the political side which calls it an aspect of the legality of sharia formalization, as was done by Harahap and Omara,<sup>12</sup> Mukri,<sup>13</sup> Cahyani,<sup>14</sup> Hermawan and Sumardjo,<sup>15</sup> or Taufiqurrahman.<sup>16</sup> In fact, KHI can be approached in terms of the suitability of its legal content with Indonesian characteristics so that it really accentuates the Islamic law construction process mentioned above. It is even more interesting to realize that in the historical narrative of its formulation,<sup>17</sup> the *jâwî* reference was embedded by the drafting team, which indicated that there was a strong intellectual background that was born in this country, which of course also included social factors that occurred at that time in the process of constructing Islamic law in the early days.

Although the only one that does not use Arabic, this reference explains that the author paid attention to the praiseworthy customs of the country, which means Indonesia is a consideration as the basis for opinions of Imam Mazhab quoted from the authoritative book (*mu'tamad*) in the field of fiqh.<sup>18</sup> This information is interesting to elaborate so that the formulation of Islamic

law construction which was composed of both doctrinal and socio-cultural aspects develops and then becomes a solution as well as a response to the problems that continue to emerge.<sup>19</sup>

The reference to *jâwî* written by Sayyid Usman, ulama who played an important role in the formation of Islam in Indonesia,<sup>20</sup> will be introduced in this article. The full title is *al-Qawânîn al-Syar‘iyyah li Ahli al-Majâlis al-Hukmiyah wa al-Iftâiyyah* and translated by Hurgronje as *Gids Voor de Priesterraden* (guide for religious courts) in journal *Verspreide Geschriften* (1924).<sup>21</sup> In this study, the work will just be written as *al-Qawânîn al-Syar‘iyyah*. It was published a year before the establishment of the religious court in 1882,<sup>22</sup> along with 12 arabic books of fiqh, namely *al-Bâjûrî*, *Fath al-Mu‘în*, *Syarqâwi ‘alâ al-Tahrîr*, *Qalyûbî/Mahallî*, *Fath al-Wahâb*, *Tuhfah*, *Targîb al-Musytâq*, *Qawânîn al-Syar‘iyyah li al-Sayyid Sudâqah Dahlân*, *Syamsûrî fî al-Farâ‘id*, *Bughyat al-Mustarsyidîn*, *Mughnî al-Muhtâj*, the reference to *jâwî* is stipulated as a guideline for judges within the scope of the Religious Court or *Mahkamah Syar‘iyyah*.<sup>23</sup>

## Methodology

*Al-Qawânîn al-Syar‘iyyah* which is introduced in this study focuses on answering two important questions, namely how was its position as a guide for judges in the late 19th and early 20th centuries, and what was the content of legal material in it? To obtain answers to these questions, the writers carried out a content-analysis with a social historical approach regarding the existence of Islamic law at that time. That way, this study can also be called normative with an approach that describes the results found in the library (library research) related to the discussion.

The findings are expected to complement studies on KHI which to date still tend to be in the style of article analysis,<sup>24</sup> legality review,<sup>25</sup> or only slightly discuss on the history of the formulation of law.<sup>26</sup> This study is also expected to be able to explore the thoughts of the Archipelago Ulama, especially Sayyid Usman, as has been done by Noupal,<sup>27</sup> Kaptein,<sup>28</sup> Burhanuddin,<sup>29</sup> Shoheh,<sup>30</sup> Ilyas,<sup>31</sup> or Harahap,<sup>32</sup> who actually have not touched the existence of this book specifically - only at the general level. It is just that, due to the limited resources obtained, *Al-Qawânîn al-Syar'iyah* which became the object of this study was published by al-Ma'mûr, Keramat 46 Batavia Centrum, consisting of 128 pages, 40 *fashl*, and printed by the son of Sayyid Usman (Sayyid Hamid bin Usman bin Yahya). This information needs to be conveyed as information that other readers or researchers may use the first edition or other printed versions that are different from the data revealed in this study.<sup>33</sup>

### **The Position of *al-Qawânîn al-Syar'iyah* in the History of Islamic Law in Indonesia**

This section explains the position of *al-Qawânîn al-Syar'iyah* in the History of Islamic Law in Indonesia. This is conducted by first looking at the position of the author's thought within the framework of Islamic discourse in Indonesia. Nihaya stated that there are three typologies of Islamic thought in Indonesia: (1) traditionalism which is still strongly tied to the thoughts of Ulama fiqh, hadîs, tasawuf, tafsîr, and tauhid that lived between the 7th and 13th centuries; (2) modernism which provides reasoning for Islam to immediately move forward in various fields, especially with reform movements in the social and moral fields, and (3) neo-modernism, which combines the first and second types.<sup>34</sup> In this case, Sayyid Usman's thoughts are in the first category with a puritanistic conservative revivalistic style

that has an orientation to vigorously revive and preserve the patterns of belief, understanding and religious practices that originate from the Qur'an-hadiths and the experiences of the *salaf* generation.

The pattern as mentioned above is certainly worth understanding as a link between one ulama's thought and another ulama's who came later to the archipelago. In the context of the latter, historical narrative has also informed that long before *al-Qawânîn al-Syar'iyah*, which was published in the late 19th century, in the 16th century (1663 AD), *Mir'ât al-Thullâb fî Tashîl Ma'rifat al-Ahkâm al-Syar'iyah li al-Mâlik al-Wahhâb* written by Abdurrauf bin Ali al-Jâwi al-Fanshûrî al-Sinkîlî was known which also spoke at the jurisprudence level of Islamic law. The book was also used as a reference for *qâdhî* during the Sultanate of Aceh, so it is suspected as the first jurisprudence written by the *Ulama Nusantara*. Indeed, at the same time - even before, *al-Sirâth al-Mustaqîm* written by Shaykh Nuruddin al-Rânirî was also known, which was also used as a guide for judges during the same Sultanate of Aceh. However, the last name was an Indian-born ulama, who became a mufti in Aceh, who later died in his homeland so that the placement of the work mentioned first is seen as more appropriate than the latter's work in the context of the work written by ulama in Archipelago.<sup>35</sup>

Likewise with *Sabîl al-Muhtadîn* by Shaykh Arsyad al-Banjârî, which has full title *Sabîl al-Muhtadîn li al-Tafaqquh fî al-Amri al-Dîn*. In its history, the book was written at the request of Sultan Tahmidullah bin Sultan Tamjidillah (1761-1801 AD), also known as Pangeran Nata Dilaga. Written in 1779, it was completed in 1780 (1193-1195 H), printed in 1882 (1300 H) in Mecca, Istanbul and Cairo simultaneously.<sup>36</sup> Through this book, according to Halidi, Shaykh al-Banjârî succeeded in providing guidance to the Banjar people to practice the Islamic teachings that were

newly institutionalized during his existence to accompany the Sultan.<sup>37</sup> So, the list of book names by ulama in Archipelago also has a connecting line up to *al-Qawânîn al-Syar‘iyyah* which is discussed in this article.

Apart from the level of thought, *al-Qawânîn al-Syar‘iyyah* along with the two previous works of ulama can also be understood as a preserver of works with *jâwî* writing; written by the *Ulama Nusantara*, and has a view of Islamic law which belong to madhhab Shâfi‘î. In short, it can be understood that if *Mir‘ât al-Thullâb* became the pioneering tradition of the *jâwî* literature so that it became the lingua franca and was popular in the archipelago,<sup>38</sup> then *Sabîl al-Muhtadîn* was the widest and most systematic format in the field of fiqh in Indonesian-Malay.<sup>39</sup> As for *al-Qawânîn al-Syar‘iyyah* - based on Noupal’s statement, it can be called an important part of the history of Islamic law, especially in the Religious Courts in Indonesia because it was used as a reference for judges in deciding cases until they were reviewed - along with other Arabic books, in the formulation of the Islamic Law Compilation.<sup>40</sup>

The last statement above is certainly interesting to examine more deeply. Especially when examining the position of Sayyid Usman who was an honorary advisor for Snouck Hurgronje who served as *De Adviseur voor Inlandse (en Arabische) Zaken* (Advisor for Indigenous and Arab Affairs) during the colonial period.<sup>41</sup> In historical data, the first edition of *al-Qawânîn al-Syar‘iyyah* was published a year before the establishment of the Religious Court in 1882. This means that there was a strong relevance to Sayyid Usman’s position as honorary advisor, *al-Qawânîn al-Syar‘iyyah* as a fiqh guide and was used by the Religious Court. Noupal quoted Hurgronje’s statement that Sayyid Usman had a lot of knowledge about the irregularities committed by judges or officials in various regions in deciding

cases. At that time, many judges or *penghulu* took advantage for themselves or appointed their family or relatives to become judges. Thus, this social fact became the background for him to write this work by including the request of *Hofd Jaksa* and *Komandan Mushanif* that this work should provide explanation of the rules in religious courts and legal references from authoritative fiqh books (*mu'tamad*). Finally, the first edition of *al-Qawânîn al-Syar'iyah* was born; 58 pages,<sup>42</sup> then rewritten into 128 pages which are used as the object of this study.

Another position that deserves attention from this work is its Shâfi'î view. On the cover page, Sayyid Usman introduced himself as, "... *al-Husaini nasaban wa al-Syâfi'î mazhaban*."<sup>43</sup> This position was getting stronger by looking at the legal reference sources that he discussed, which lead to *Tuhfah* by Ibn Hajar, and *Nihayah* by al-Ramli; two prominent Shâfi'iyah scholars in the XVI century.<sup>44</sup> In the case of the distribution of the late Sayyid Muhammad bin Shahab's inheritance, April 27, 1893, Sayyid Usman also supported the decision of the high court in accordance with the madhhab held by the majority of Indonesians. At that time, the Dutch Indies High Court brought Mr. C.W. Margandant as an expert on religion, government law, norms and customs of society and himself as an expert on Islamic law. They were both invited to provide statements that decided on disagreements about who was entitled to become guardians for the distribution of the inheritance. On the one hand there was the eldest son of the late Sayyid Muhammad Syihab, named Abdullah bin Syihab, who was declared to have the right to be the guardian of his younger siblings. On the other hand, there were those who claim that the right to become a guardian was the brother of the late Sayyid Muhammad bin Syihab or a person who had a will, if not fulfilled then the guardian should be the government.<sup>45</sup>



For Sayyid Usman, being guided by *madzhab* means following the words of the Ulama who are *mu'tamad* is an obligatory thing to do. In the first *fashl* of his work, he stated that all the statements of the ulama that he would quote were from the Quran, "Therefore, that person who obeys the things in this book, is actually obeying the Qur'an. He does not obey the author of this book as he thinks an ignorant person because the one who composed this book is essentially *khaddâm safarah*, a worker who carries strange things to pass on to those who like to receive it."<sup>46</sup>

To strengthen this statement, Sayyid Usman also quoted Imam al-Sya'rânî's statement from *Mizân al-Kubra*, which explained the beauty and goodness contained in the Qur'an or al-Sunnah, which could only be obtained from the explanations of *Imam Mujtahid*.<sup>47</sup> The full text of the Imam of Mazhab Shafi'i who lived in the 9th century was translated by Sayyid Usman as follows:<sup>48</sup>

If nothing has been stated by the Rasulullah for us the meaning of the Qur'an and Hadith, surely we will not have the power over that and again; if nothing has been revealed for us by Rasulullah with all of his hadiths in self-purifying behavior, surely we are not allowed to do that from the Qur'an. And, likewise it is said in each of those things in the Qur'an which has no meaning for us, then if there were no hadiths from Rasulullah that stated its meaning for us, we would not be able to know them. Then; for Allah there is also such a secret that cannot be known, only the great ulama are there.

The explanation regarding the use of the *Madzhab* is likely - although it must be explored specifically in other researches, related to historical data which states that in the 19th century, ideas of Islamic modernity (renewal) began to emerge along with European colonial expansion in the Archipelago.<sup>49</sup> In fact,

in Ellyya's research, the latter idea covers a large number of fields, so that prioritizing one area over another actually originates from the policy of the ruler at that time. Modernity in question will result the disorganization in society, especially when it comes to values and norms that are already believed and are not ready to be changed.<sup>50</sup> Modernity also has an impact on the level of Islamic legal thought as it has an impact on changes in social, political and economic aspects.<sup>51</sup>

The response to this as informed by Kaptein was carried out by the Cairo reformers with the main characteristic of inviting people to return to the original Islam as practiced by previous pious people (*al-Salaf al-Shâlih*). This response allegedly gave rise to an attitude of rejection of *taqlîd*, or blind acceptance of the traditional authority of four Mazhab.<sup>52</sup> It should also be noted, in a different area, in 1921-in East Sumatra; Shaykh Hasan Maksûm also wrote *Tanqîh al-Zunûn 'an Masâ'il al-Maimûn*, as an answer to the problematic emergence of groups that did not accept mazhab and only want to stick to the Qur'an and hadith.<sup>53</sup> It could be that, at that time, there was a trend of rejection of *Madzhab* in various regions in the archipelago. He criticized the groups who only want to adhere to the Qur'an and hadith and ignore *taqlîd*. According to him, *taqlîd* to previous ulama is very necessary, although for reformers, it is not absolute.<sup>54</sup>

Apart from that, the explanation above has sufficiently strengthened that there was a strong relationship in the intellectual side between the *Ulama Nusantara* and the global context - in the *Mazhab Shâfi'i*. If the Azra Ulama Network put more emphasis on the aspect of sufism,<sup>55</sup> then the description above frames it in the aspect of *sharia-fiqh*. The context of the Ulama's work mentioned earlier also concluded that if Al-Sinkili placed his *Mir'ât al-Thullâb* in the area of the Aceh Sultanate, al-Banjari placed his *Sabîl al-Muhtadîn* for the Banjar people, then Sayyid

Usman offered *al-Qawânîn al-Syar‘iyyah* on issues of Islamic law that are institutionalized in the religious court, in Java-Madura and in areas outside it.

Related to that, the Religious Courts Bureau Circular No. B/1/735 dated February 18, 1958 as a follow-up to PP. No. 45 of 1957 indeed stated that the judges should use *al-Qawânîn al-Syar‘iyyah* along with 12 other books of fiqh, namely *al-Bâjûrî*, *Fath al-Mu‘în*, *Syarqâwi ‘alâ al-Tahrîr*, *Qalyûbî/Mahallî*, *Fath al-Wahâb*, *Tuhfah*, *Targîb al-Musytâq*, *Qawânîn al-Syar‘iyyah Li al-Sayyid Sudâqah Dahlân*, *Syamsûrî fî al-Farâ‘id*, *Bughyat al-Mustarsyidîn* and *Mughnî al-Muhtâj* as a guide in examining and deciding cases within the scope of the Religious Courts or the *Syar‘iyah* Court. It aimed to obtain legal unity in the Religious Courts. However, Suma considered that the use of the 13 books of fiqh - which includes *al-Qawânîn al-Syar‘iyyah*, actually shackled the freedom of the judges of the Religious Courts so that they did not dare to carry out *ijtihad* and resulted in the lack of generosity of the Religious Courts at that time.<sup>56</sup> He assessed that this lack of compassion led to the idea of creating KHI.<sup>57</sup>

However, as a comparative data, it is better to write down Noupal’s analysis of the position of *al-Qawânîn al-Syar‘iyyah*; (1) it was the first judicial manual in Indonesia, (2) it was the first book to present legal decision steps that were indispensable for judges and rulers at that time. (3) It became an input for the government in its efforts to appoint good judges, rulers and members of the religious court.<sup>58</sup> From these three positions, it can be seen that it did have a special position along with the positions discussed earlier, namely accommodating the tradition of Islamic legal thought in a global context, preserving *jâwî* writings from the *Ulama Nusantara*, and enforcing *Mazhab Shâfi‘î* as the majority *mazhab* for Indonesia.

## The Content of *al-Qawânîn al-Syar'iyyah*

In Sayyid Usman's own explanation, this book had four uses, namely (1) making it easier for readers to get an understanding of religious rules, (2) showing the truth of religious matters by referring to *mu'tamad* books, (3) motivating (*raghib*) readers to obey the obligations of *syara'* for the pleasure of God, and (4) warning (frighten) those who read so they do not violate the intended *syara'* affirmation.<sup>59</sup> From this statement, it did not appear that its use was as a guide for judges. However, as stated in the full title of the work, it can be revealed that, *al-Qawânîn al-Syar'iyyah li Ahli al-Majâlis al-Hukmiyah wa al-Iftâiyyah*, "...This means that this is the book of all the rules of law for the expert of the *syara'* law council and the *syara'* fatwa council, which is what is said to be the religious raad."<sup>60</sup>

Even so, Sayyid Usman did not formulate a discussion of each article (*fashl*) like a law (*al-qawânîn*) in general. Each *fashl* discussed could raise several issues that were not written separately.<sup>61</sup> The second *fashl* for example, he divided the degree of major ulama consisting of *ahl ijtihâd al-muthlaq*, *ahl ijtihâd al-madzhab*, *ahl ijtihâd al-fatwa*, and *ahl al-tarjîh* with a description in the middle regarding *al-Adillah al-Syar'iyyah*; Quran, Sunnah, *Ijmâ'* and *Qiyâs*. In that case, the opinion of the Shâfi'iyyah Ulama was always a reference. At this point, the relevance of this book appeared to the Islamic Law Compilation, which had been researched by Umam, absorbing the views of the *madzhab* Shafi'i in its formulation as seen in the articles relating to the requirements and procedures for implementing marriage such as marriage proposals, marriage guardians, *ijab-qabul* and dowry.<sup>62</sup>

Regarding the writing of manuscripts, in several places, Sayyid Usman did not include the pages of the book he referred to. Elsewhere, however, he listed them. In translating the cited references, it was also not too textual and consistent because

some were found briefly and some were long and detailed. The language used was also different, of course, from the language used today, which was written in *jâwî*. Something that was interesting later was the discovery of some inconsistent word writing such as *sanya* written as *bahwasanya*, *makluk* written as *makhluk*, *meniadakan* written as *meniadaan*, *berlajar* written as *belajar*, and *memersihkan* written as *membersihkan*. Even so, the inconsistencies that were found were still at the level where the meaning could be understood at the time the manuscript was copied. The following are several forms of writing that can also be understood as the characteristics or uniqueness of the book.

Words Found	in <i>Jawi</i>	Meaning
<i>sanya</i>	سنڠ	<i>bahwasannya</i> (that is..)
<i>makluk</i>	مآلق	<i>makhluk</i> (creature)
<i>melankan</i>	ملنان	<i>melainkan</i> (but)
<i>bole</i>	بولي	<i>boleh</i> (may / might)
<i>baharu</i>	بهرو	<i>baru</i> (new)
<i>seupama</i>	سؤفما	<i>seumpama</i> (for instance)
<i>bepermulaan</i>	بفرملآن	<i>berpermulaan</i> (starting)
<i>berrenti-renti</i>	بررنتي <sup>۲</sup>	<i>berhenti-henti</i> (stagnating)
<i>seungguhnya</i>	سغكهڠ	<i>sesungguhnya</i> (actually)
<i>metiadakan</i>	متيداكن	<i>meniadakan</i> (eliminating)
<i>berlajar</i>	برلاجر	<i>belajar</i> (study)
<i>bodo</i>	بودو	<i>bodoh</i> (stupid)
<i>terbahagi</i>	تربهكي	<i>terbagi</i> (divided)
<i>bahagi</i>	بهكي	<i>bagi</i> (for)

<i>bersunggu-sunggu</i>	بسو غكو ٢	<i>bersungguh-sungguh</i> (really)
<i>mengsahkan</i>	مغصحن	<i>mengesahkan</i> (approve)
<i>berkepalah</i>	بركفاله	<i>berkepala</i> (have as a head)
<i>perkarah</i>	فركاره	<i>perkara</i> (case)
<i>upama</i>	افام	<i>umpama</i> (for example)
<i>dibole</i>	دبولي	<i>dibolehkan</i> (allowed)
<i>hinggah</i>	هغكه	<i>hingga</i> (until)
<i>di manah</i>	ديمانه	<i>di mana</i> (where)
<i>syurga</i>	شرك	<i>surga</i> (paradise)
<i>bagaimanah</i>	بكيهانه	<i>bagaimana</i> (how)
<i>seupamanya</i>	سوفمان	<i>seumpamanya</i> (for instance)
<i>memersihkan</i>	ممرسيهن	<i>membersihkan</i> (clean up)

In general, the following is the content of *al-Qawânîn al-Syar'iyah* which consists of 40 *fashl*. Long or concise descriptions of each *fashl* can be understood in order to make it easier for readers to understand them.

1. Knowledge that the books of *mu'tamad* come from the Qur'an.
2. The term regarding all the ranks of ulama who composed *mu'tamad* books.
3. A term which means *khilaf* among ulama.
4. Stating which books are *mu'tamad*.
5. The rules of knowing all the terms in the *Minhaj* and *Tuhfah* books.
6. Stating that getting knowledge usually by studying.
7. Rules in taking references from the scriptures.

8. The term regarding Qadhi and Mufti.
9. The terms of *hal-ahwal* Qâdhî.
10. The term about crimes that must be avoided.
11. The things that stipulate that people who are ignorant or wicked do not become Qadhi.
12. The terms about some immoral which can often be in the law.
13. Iman.
14. The days and the month.
15. Hibah.
16. Assets between husband and wife.
17. Testament.
18. Marriage with some problems in it.
19. *Kafâ'ah*.
20. Dowry.
21. A living, clothing and a place to live.
22. *Nusyûz*.
23. Conflict between husband and wife.
24. *Fasakh* of marriage with all its problems.
25. *Tâ'liq talaq*.
26. *Talâq tanjîz*.
27. Types of talaq.
28. *Talâq khal'i*.
29. Charged with canceling marriage for fear of wearing muhallil.
30. *'Iddah*.
31. *Qazaf and Li'ân*.

32. *Hadhânah*.
33. *Syara'* 'law council rules'.
34. Sharia law rules in the panel of judges.
35. *Muhkaman syara'* with *syara'* rules'.
36. The meaning of Arabic lafazh regarding the charge.
37. The terms of the charge.
38. *Ghâ'ib* Charge.
39. All legal documents and books.
40. Regarding the witness.

From the list above, it can be seen that *al-Qawânîn al-Syar'iyah* for legal discourse is not limited to providing direction regarding material law, which refers to the mu'tamad opinion of the ulama Shafi'i, but also discusses non-formal law issues such as the need to study to gain knowledge,<sup>63</sup> understand how to extract opinions from the books of *mu'tamad*, understand the rules of *Majlis*, even - for clerks, there are rules regarding correspondence and law books. To the government, Sayyid Usman also warned not to appoint judges or mufti who are stupid and wicked by quoting many holy texts or the opinions of ulama who prioritize fair judges and criticize those who are not good.<sup>64</sup>

Compared to the KHI, the articles detailed above look more diverse compared to the three books that discuss marriage (Book I: 170 articles); inheritance (Book II: 143 articles) and; waqf (Book III: 14 articles).<sup>65</sup> However, the variety of chapters may make the discussion less detailed as written specifically. At the very least, marriage remains the case that gets the most attention, because there are also inheritance problems<sup>66</sup> but no specific details for waqf are found.

What is interesting is Sayyid Usman's attention which was not only limited to the construction of Islamic law materially,



but also the construction of the Religious Courts which he explains based on the Tuhfah and Ibn Qasim. His explanation of that is found in *fashl* 33:<sup>67</sup>

Matters related to the rules of the *syara'* law council, starting from the fact that the Majlis should be broad in the midst of the country so that it can be controlled by the people of the country with the *gharib* people. And again, that the Majlis is bright and not hot and not cold, and there is no ashes or smoke and odor and that it should be made a place of law from its greatness and honor ....

Furthermore, reading the full version of *al-Qawânîn al-Syar'iyah* is certainly more recommended to get a complete understanding of it. It is just that the excerpts that are used as an introduction to this study are at least able to be an introduction to later justify Abubakar's arguments which state that the *jâwî* books written by the *Ulama Nusantara* have contributed greatly to Islamic discourse in the area, both in producing ulama figures and strengthen the Islamic network in the archipelago to maintain civilization and become historical evidence, apart from as references in Islamic studies itself.<sup>68</sup> In the case of *Al-Qawânîn al-Syar'iyah* in particular, its position as a *jâwî* book has even become the source of the formulation of applicable laws in the Religious Courts, which shows that the intellectual treasures of the *Ulama Nusantara* are rich in presenting the side of Islam that does not override the customs of a laudable country or strictly local wisdom.

## **Conclusion**

As a conclusion, the findings of this study are expected to be able to show that the construction of Islamic law in Indonesia has indeed been structured, even from the start, from the doctrinal and social aspects to suit the personality and characteristics of the Indonesian nation as commonly understood in the effort

to formulate the KHI. The things that support this statement can be seen from the use of Sayyid Usman's work as a guide for judges of the Religious Court in the late 19th and early 20th centuries, which confirms that the construction of Islamic law has indeed been carried out. Together with 12 Arabic books, *al-Qawânîn al-Syar'iyah* is the only *jâwî* reference that represents the personality and characteristics of society. Its position as a reference to *jâwî* can also be understood as a preserver of the *jâwî* writings of *Ulama Nusantara* in addition to affirming the robustness of the *madzhab* Shâfi'î embraced by the majority of Indonesians, and is relevant to legal materials available in KHI - even though it is not comprehensive.

Such construction can also be seen from the content of the *jâwî* reference, which is a discussion that touches the needs of the community at that time for the rules of Islamic law enforcement in Indonesia - so that the construction of the structure does not forget that legal material should be referred to by authoritative sources without forgetting the customs of a laudable country or the insistence of local wisdom. It is important to read further about the contents of the introduced *al-Qawânîn al-Syar'iyah* to follow up with research at the level of KHI articles which have relevance to the description given by Sayyid Usman. It is also possible to compare the findings obtained with other articles as mentioned in the methodology section, that the object used at this time is the second publication so that the first edition or other printed version can enrich and complement Sayyid Usman's thoughts.

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## Endnotes:

<sup>1</sup> Yulkarnain Harahap and Andy Omara, “Kompilasi Hukum Islam dalam Perspektif Hukum Perundang-Undangan”, in *Mimbar Hukum*, Vol. 22, No. III, 2010, pp. 625-644.

<sup>2</sup> Muhammad Amin Suma, “Studi Evaluatif Terhadap Materi dan Dasar Hukum Pemberlakuan Kompilasi Hukum Islam”, in *Unisia*, Vol. 26, No. 48, 2003, pp. 181-191.

<sup>3</sup> A. Hamid S. At-Tamimi, “Kedudukan Kompilasi Hukum Islam dalam Sistem Nasional: Suatu Tinjauan dari Sudut Teori Perundang-Undangan Indonesia”, in Amirul Ahmad, *Dimensi Hukum Islam Dalam Sistem Hukum Nasional* (Jakarta: Gema Insani Press, 1996), p. 152; Dadang Hermawan and Sumardjo, “Kompilasi Hukum Islam Sebagai Hukum Materil Pada Peradilan Agama”, in *Yudisia*, Vol. 6, No. 1, 2015, pp. 24-46.

<sup>4</sup> Bustanul Arifin, “Kompilasi: Fiqh Dalam Bahasa Undang-Undang”, in *Journal of Pesantren*, Vol. II, No. 2, 1985, pp. 25-30.

<sup>5</sup> Moh Hefni, “Fiqh Lintas Madzhab: Menimbang KHI Melalui Penelusuran Terhadap Kitab-Kitab Rujukannya”, in *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*, Vol. 1, No. 1, 2006, pp. 1-10.

<sup>6</sup> Ash-Shiddieqi’s idea regarding Indonesian Fiqh or Hazairin regarding the National/Indonesian Mazhab can be traced from Hasbi Ash-Shiddieqi, *Sjari’at Islam Mendjawab Tantangan Zaman* (Yogyakarta: IAIN, 1961); Hasbi Ash-Shiddieqi, ‘Me’moedah’kan Umat’, in *Panji Islam*, March, 1966; Hasbi Ash-Shiddieqi, “Tugas Para Ulama Dalam Memelihara dan Mengembangkan Qur’an, Hadits, dan Fiqh dalam Generasi yang Sedang Berkembang”, in *Panji Masyarakat*, March 1975; Hazairin, *Hukum Kekeluargaan Nasional* (Jakarta: Tinta Mas, 1982); Hazairin, *Tujuh Serangkai Tentang Hukum Islam* (Jakarta: Bina Aksara, 1985); Hazairin, *Hukum Islam Dan Masyarakat* (Jakarta: Bulan Bintang, 1985).

<sup>7</sup> Marybeth T Acac, “Pancasila: A Contemporary Application of Maqasid Al-Shari’ah?”, in *Journal of Indonesian Islam*, Vol. 9, No. 1, 2015, pp. 59-78.

<sup>8</sup> Yudi Latif, “The Religiosity, Nationality, and Sociality of Pancasila: Toward Pancasila Through Soekarno’s Way”, in *Studia Islamika*, Vol. 25, No. 2, 2018, pp. 207-45.

<sup>9</sup> Wahbah Zuhaili, *Usul al-Fiqh al-Islam* (Damaskus: Dar al-Fikr, 1988), pp. 27-28.

<sup>10</sup> Munawwir Sadzali, *Ijtihad Kemanusiaan* (Jakarta: Paramadina, 1997), p. 2; Hasbi Ash-Shiddieqi, *Sejarah Pertumbuhan Dan Perkembangan Hukum Islam* (Jakarta: Bulan Bintang, n.d.), p. 17.

<sup>11</sup> Harahap and Omara, “Kompilasi Hukum Islam dalam Perspektif Hukum Perundang-Undangan”.

<sup>12</sup> Barmawi Mukri, “Kedudukan dan Peranan Kompilasi Hukum Islam dalam Sistem Hukum Nasional”, in *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 8, No. 17, 2016, pp. 22-29.

<sup>13</sup> Intan Cahyani, “Pembaharuan Hukum Dalam Kompilasi Hukum Islam”, in *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan*, Vol. 5, 2016, pp. 301–313.

<sup>14</sup> Hermawan and Sumardjo, “Kompilasi Hukum Islam Sebagai Hukum Materil Pada Peradilan Agama”.

<sup>15</sup> Taufiqurrahman, “Kompilasi Hukum Islam: Suatu Formalisasi Syariat Islam di Indonesia”, in *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*, Vol. 1, No. 2, 2019, pp.145–154.

<sup>16</sup> This statement does not mean to neglect the process of (1) jurisprudential research, (2) interviews, (3) comparative studies, (4) Bahtsul mas’il, (5) Seminars, or (6) workshops. See further in Arifin, “Kompilasi: Fiqh dalam Bahasa Undang-Undang”; Ditbinbapera, *Kompilasi Hukum Islam* (Jakarta: Ditbinbapera, 1991); Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: RajaGrafindo Persada, 1997); Marzuki Wahid and Rumadi, *Fiqh Madzhab Negara: Kritik Atas Politik Hukum Islam Di Indonesia* (Yogyakarta: LKiS, 2001).

<sup>17</sup> Sayyid Usman, *Al-Qawânîn al-Syari’iyah* (Batavia: Makmur, 1881), cover.

<sup>18</sup> Ahmad Rajafi, “Islam dan Kearifan Lokal: Pembaruan Hukum Keluarga di Indonesia Model Inkulturasi Wahyu dan Budaya Lokal”, in *Akademika*, Vol. 21, No. 01, 2016, pp. 65–82.

<sup>19</sup> Nico JG Kaptein, *Islam, Kolonialisme Dan Zaman Modern Di Hindia Belanda: Biografi Sayid Usman (1822-1914)*, tr. M. Yuanda Zara (Yogyakarta: Suara Muhammadiyah, 2017), p.xv.

<sup>20</sup> Christiaan Snouck Hurgronje, “Sajjid Oethman’s Gids Voor de Priesterraden”, *Verspreide Geschriften* Vol. 4, No. 1, 1924, pp. 285–303.

<sup>21</sup> Muhammad Noupal, “Menelusuri Karya Intelektual Sayyid Usman Bin Yahya dalam Bidang Fiqh”, in *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, Vol. 11, No. 1, 2011, pp. 61–80.

<sup>22</sup> Abdurrahman, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademika Pressindo, 1992), pp. 39–41.

<sup>23</sup> Some of them conducted by Lia Murlisa, “Ahli Waris Penerima Radd Menurut Kompilasi Hukum Islam Pasal 193 dan Relevansinya dengan Sosial Kemasyarakatan”, in *Jurnal Ilmiah Islam Futura*, Vol. 14, No. 2, 2015, pp. 281–297; Abdul Malik Syafe’i, “Dekontruksi Pasal 25 Kompilasi Hukum Islam Tentang Kesaksian Perempuan dalam Perkawinan”, *Medina-Te: Jurnal Studi Islam*, Vol. 12, No. 2, 2016, pp. 195–210; Mahmud Huda, “Yurisprudensi Isbat Nikah dalam Pasal 7 Kompilasi Hukum Islam”, in *Religi: Jurnal Studi Islam*, Vol. 5, No. 1, 2014, pp. 43–71; Syaikhul Hakim, “Reaktualisasi Pembagian Harta Bersama dalam Mazhab Syafii dan Kompilasi Hukum Islam di Indonesia”, in *Akademika*, Vol. 9, No. 2, 2015.

<sup>24</sup> Some of them conducted by Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in The Indonesian Religious Courts*, Vol. 4 (Amsterdam University Press, 2010); Harahap and Omara, “Kompilasi Hukum Islam dalam Perspektif Hukum Perundang-Undangan”; Hermawan and Sumardjo, “Kompilasi Hukum Islam Sebagai Hukum Materil Pada Peradilan Agama”.

<sup>25</sup> Busthanul Arifin, *Pelebagaan Hukum Islam Di Indonesia: Akar Sejarah, Hambatan, Dan Prospeknya* (Jakarta: Gema Insani, 1996).

<sup>26</sup> Noupal, “Menelusuri Karya Intelektual Sayyid Usman Bin Yahya dalam Bidang Fikih”.

<sup>27</sup> Nico Kaptein, ‘The Sayyid and the Queen: Sayyid ‘Uthman on Queen Wilhelmina’s Inauguration on the Throne of the Netherlands in 1898’, in *Journal of Islamic Studies*, Vol. 9, No. 2, 1998, pp. 158–77.

<sup>28</sup> Jajat Burhanudin, ‘Islam dan Kolonialisme: Sayyid Usman dan Islam di Indonesia Masa Penjajahan’, in *Studia Islamika*, Vol. 22, No. 1, 2015, pp. 185–208.

<sup>29</sup> Muhamad Shoheh, ‘Cerita Perbantahan Dahulu Kala: Pembelaan dan Sanggahan Tuanku Nan Garang atas Kritik Sayyid ‘Uthman Bin Yahya Bin ‘Aqil Tahun 1885’, in *Jumantara: Jurnal Manuskrip Nusantara*, Vol. 4, No. 1, 2019, pp. 1–29.

<sup>30</sup> Ahmad Fauzi Ilyas, ‘Polemik Sayyid Usman Betawi dan Syekh Ahmad Khatib Minangkabau tentang Salat Jumat’, in *Journal of Contemporary Islam and Muslim Societies*, Vol. 2, No. 2, 2019, p. 239.

<sup>31</sup> Radinal Mukhtar Harahap, ‘Narasi Pendidikan dari Tanah Betawi: Pemikiran Sayyid Usman tentang Etika Akademik’, in *Journal of Contemporary Islam and Muslim Societies*, Vol. 2, No. 2, 2019, p. 174.

<sup>32</sup> Noupal version contains 182 pages Noupal, “Menelusuri Karya Intelektual Sayyid Usman Bin Yahya dalam Bidang Fikih”.

<sup>33</sup> M. Nihaya, H, ‘Tipologi Pemikiran Islam Indonesia Perspektif Nurcholish Madjid’, in *Jurnal Sulasena*, Vol. 6, No. 1, 2012; Dyah Siti Nura’ini, ‘Corak Pemikiran dan Gerakan Aktivistis Perempuan: Melacak Pandangan Keagamaan Aisyiyah Periode 1917–1945’, in *Profetika: Jurnal Studi Islam*, Vol. 14, No. 2, 2013, pp. 125–138.

<sup>34</sup> Rijal Mumazziq Zionis, ‘Al-Sinkili dan Mir’at al-Thullab Sebagai Kitab Yurisprudensi Islam Pertama Karya Ulama Nusantara’, in *Jurnal Pikir: Jurnal Studi Pendidikan dan Hukum Islam*, Vol. 4, No. 1, 2018, pp. 1–15; Compared with Hamka, *Antara Fakta Dan Khayal: “Tuanku Rao”* (Jakarta: Bulan Bintang, 1974), p. 323.

<sup>35</sup> M. Arsyad Al-Banjari, *Kitab Sabilal Muhtadin*, tr. M. Asywadie Syukur (Surabaya: Bina Ilmu, 1985), p. 2.

<sup>36</sup> Yusuf Halidi, *Syekh Muhammad Al-Banjari: Ulama Besar Kalimantan Selatan: Silsilah Raja-Raja Yang Berkuasa Pada Masa al-Banjari Dari Lahir Hingga Wafat* (Surabaya: Al-Ihsan, 1968), p. 25.

<sup>37</sup> Rijal, ‘Al-Sinkili dan Mir’at al-Thullab Sebagai Kitab Yurisprudensi Islam Pertama Karya Ulama Nusantara’, p. 14.

<sup>38</sup> Karel Andrian Steenbrink, *Beberapa Aspek Tentang Islam di Indonesia Abad Ke 19* (Jakarta: Bulan Bintang, 1980), p. 4.

<sup>39</sup> Noupal, “Menelusuri Karya Intelektual Sayyid Usman Bin Yahya dalam Bidang Fikih”, p. 70.

<sup>40</sup> Francien van Anrooij, *De Koloniale Staat (Negara Kolonial) 1854-1942*, trans. Nurwahyu W. Santoso and Susi Moeimam (Leiden: Nationaal Archief, 2014), p. 115.

<sup>41</sup> Noupal, “Menelusuri Karya Intelektual Sayyid Usman Bin Yahya dalam Bidang Fikih”.

<sup>42</sup> Usman, *Al-Qawwn al-Syari’iyah*.

<sup>43</sup> Kaptein, *Islam, Kolonialisme Dan Zaman Modern Di Hindia Belanda: Biografi Sayid Usman (1822-1914)*, p.111.

<sup>44</sup> See the letter of ‘Utsman bin Yahya to Governor General, 12 July 1893 in Emile Gobée, C Adriaanse, and Christiaan Snouck Hurgronje, *Nasihah-Nasihah C. Snouck Hurgronje Semasa Kepegawaiannya Kepada Pemerintah Hindia Belanda 1889-1936* (Indonesian-Netherlands Cooperation in Islamic Studies (INIS), 1990), p. 1637.

<sup>45</sup> Usman, *Al-Qawânîn al-Syari’iyah*, p. 3.

<sup>46</sup> Imam Sya’rani, *Al-Mizân al-Kubra al-Sya’râniyah: Al-Madkhal Li Jamî’i Aqwal al-A’immah al-Mujtahidîn Wa Muqallidihim Fi al-Syari’ah al-Muhammadiyah*, ed. Abdul Wâris Muhammad Ali, Vol. 1 (Libanon: Dâr al-Kutub al-‘Ilmiyah, 1971), p. 47.

<sup>47</sup> Usman, *Al-Qawânîn al-Syari’iyah*, p. 4.

<sup>48</sup> In fact, Islamic reform in Indonesia divided into two stages. The first stage was the entry of Wahhabi ideology which originated from Mecca and then flared up in Padri-Minangkabau. The second stage was the idea of renewal originating from the thoughts of Muhammad Abduh through al-Manar magazine. More details about this, see Afif Azhari and Mimien Maimunah Zarkasyi, *Muhammad Abduh Dan Pengaruhnya Di Indonesia* (Surabaya: Al-Ikhlâs, 1996).

<sup>49</sup> Ellya Rosana, “Modernisasi dan Perubahan Sosial”, in *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, Vol. 7, No. 1, 2011, pp. 46-62.

<sup>50</sup> Md Muddassir Quamar, “Islamic Modernism and Saudi Arabia: Confluence or Conflict?”, in *Contemporary Review of the Middle East*, Vol. 2, No. 1-2, 2015, pp.71-87.

<sup>51</sup> Kaptein, *Islam, Kolonialisme Dan Zaman Modern Di Hindia Belanda: Biografi Sayid Usman (1822-1914)*, p. 220.

<sup>52</sup> Hasanuddin bin Muhammad Maksum, *Tanqîh al-Zunûn ‘an Masâ’il al-Maimûn: Pada Menyatakan Wajib Percaya Dengan Ulama Dan Katanya Dan Hukum Nikah Tahlil Dan Berdiri Barzanji Dan Membaca al-Qur’an Dengan Tiada Tahu Bahasanya Dan Mengaji Sifat Dua Puluh Dan Talqin Dan Melafazkan Niat Pada Sembahyang* (Medan: Syarikat Tapanuli, 1352). See also, Ja’far Ja’far, “Tarekat Dan Gerakan Sosial Keagamaan Shaykh Hasan Maksum,” in *Teosofi: Jurnal Tasawuf dan Pemikiran Islam* Vol. 5, No. 2, 2015, pp. 269-293. For a study about it please refer to Radinal Mukhtar Harahap, “Hukum Islam Masa Kesultanan Deli”, in *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, dan Ekonomi Islam*, Vol. 12, No. 1, 2020, pp. 1-20. Shaykh Hasan Maksum is a prominent scholar in the Al Washliyah organization, as well as Al-Ittihadiyah. See also Dja’far Siddik and Ja’far Ja’far, *Al-Ittihadiyah: Delapan Dasawarsa Menerangi Nusantara* (Medan: Perdana Publishing, 2017); Ja’far Ja’far, “Peran Al Jam’iyatul Washliyah dalam Merevitalisasi Mazhab Shafi’i di Era Kontemporer”, in *Justicia Islamica: Jurnal Kajian Hukum dan Sosial*, Vol. 13, No. 1, 2016; Ja’far Ja’far,

“Al Jam‘iyatul Washliyah Dan Pelestarian Akidah Ahl Sunnah Wa Al-Jamâ‘ah Di Indonesia,” in *ISLAMICA: Jurnal Studi Keislaman*, Vol. 14, No. 1, 2019, pp. 54-81.

<sup>53</sup> Sayyid Usman, *Iqad al-Jumân Fî Adâb Tilâwah al-Qurân*, n.d., p. 122.

<sup>54</sup> Azyumardi Azra, *Jaringan Ulama: Timur Tengah Dan Kepulauan Nusantara Abad XVII & XVIII: Akar Pembaruan Islam Indonesia* (Jakarta: Kencana, 2004).

<sup>55</sup> Suma, “Studi Evaluatif Terhadap Materi dan Dasar Hukum Pemberlakuan Kompilasi Hukum Islam”, p. 183.

<sup>56</sup> Suma, pp. 182-83.

<sup>57</sup> Noupal, “Menelusuri Karya Intelektual Sayyid Usman Bin Yahya dalam Bidang Fikih”, p. 73.

<sup>58</sup> Usman, *Al-Qawânîn al-Syari‘iyah*, cover.

<sup>59</sup> Usman, p. 6-8.

<sup>60</sup> Khairul Umam, “Penyerapan Fiqh Madzhab Syafi’i dalam Penyusunan Kompilasi Hukum Islam”, in *De Jure: Jurnal Hukum Dan Syari’ah*, Vol. 9, No. 2, 2017, pp. 117-27.

<sup>61</sup> Regarding this, it can also be deepened from his other works Sayyid Usman, *Risâlah Dua Ilmu* (Batavia, n.d.).

<sup>62</sup> Usman, *Al-Qawânîn al-Syari‘iyah*, p. 34.

<sup>63</sup> “Kompilasi Hukum Islam” (Jakarta: Ichtiar Baru Van Hoeve, 2003).

<sup>64</sup> Resolving inheritance problems, can be referred to in other Sayyid Usman works: Sayyid Usman, *Kitâb ‘Ilm Farâ’idh* (Petamburan: n.p., 1973).

<sup>65</sup> Usman, *Al-Qawânîn al-Syari‘iyah*, p. 105.

<sup>66</sup> Marzuki Abubakar, “Kitab Jawi dan Kontribusinya dalam Kajian Islam di Kepulauan Nusantara”, in *Aricis*, Vol. 1, 2016, pp. 437-452.