Research Article

The Application of Ra'y in Seeking Progressive Sharia Economic Law: The Approach of 'Urf and Maqasid Al-Shari'ah

Maimun*

Universitas Islam Negeri Raden Intan

ORCID
Maimun: https://orcid.org/0009-0000-9435-654X

Abstract.
The era of digitalization and the advancement of modern information and communication technology is currently a challenge for Sharia economic law experts and legal practitioners to explore, find, and determine legal provisions in various new legal cases. Shari'ah economic law cases continue to surface indefinitely, while the *na□* al-Qur'an and sunnah are limited in quantity. In order to respond to the dynamics of such conditions, they must seek alternative solutions to methods of extracting and discovering laws by optimizing rational thinking (*ra'y*). *Ra'y* functions and plays an instrument in instituting unwritten, implied, and explicitly unspeakable laws (*mas□t 'anhu*). The problem is how to apply *ra'y* in seeking progressive Shari'ah economic law, and experts opinion on the application of *ra'y* in seeking progressive Shari'ah economic law. To answer this problem, it is advisable to use the *'urf* and *maq□□id al-Shari'ah* approaches.

Keywords: *Ra'y,* Islamic economic law*, 'urf,* and *maq□□id Shari'ah approach*

Corresponding Author: Maimun; email: maimun@radenintan.coid

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1. Introduction

In the current era of digitalization of science and technology in modern communication information, Sharia economic law experts are required to be able to answer various legal cases that occur, such as online go-jek transaction applications, go-car online, and many other examples of applications.

Ra'y is a source and critical word in tracking, extracting, and establishing laws revealed from the Qur'an and Sunnah texts. The existence and position of *ra'y* in *ijtihad* determine whether or not it is appropriate to decide and determine the law of various cases of shari'ah economic law that occur. From this point of view, legal experts in applying *ra'y* are not "happy" but must be careful so that the decisions and legal decisions they make are right on target and contextual. However, in the process of *ijtihad*, experts are found to use disproportionate and contextual approaches, such

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as the problems of *bai' al-salam* and *bai' al-istin'*. If these two order transaction models are approached and understood by analogical deductive thinking, then the transaction is not permissible because it includes *bai' al-ma'dm*. Therefore, in this era of digitalization, the problems of shari'ah economic law in their settlement can be approached with local wisdom (*'urf*)), and *maqāid al-shari'ah* (the highest goal of Islamic law) as the determining principle of progressive legal reformulation, which in the process can lead to on the reconstruction, and even the deconstruction of legal thought. It aimed at recontextualizing legal thought, which is seen as irrelevant to the present era. This paper tried to explore *ra'y* at the theoretical-normative and implementation levels in answering, deciding, and establishing legal provisions from various legal cases in the current contemporary era.

2. Methods

This research includes analytical descriptive research. This study aims to investigate the progressiveness of economic law based on the use of the perspective of 'urf, and maqā⊠id al-shari'ah. This research is library research with data sources from various literature related to the study, such as theories and opinions regarding ra'y, 'urf, and maqā⊠id al-shari'ah as well as economic law and progressive law.

3. Discussion

3.1. Definition of Ra'y

Etymologically (*lugatan*), *ra'y* or *ra'yu* is the infinitive (*masdar*) of the word *ra'a*, which means opinion to be considered. But the Arabs use it for their well-considered opinion and expertise in dealing with the problems.[1] Another definition, *ra'y,* is defined as something that is cared for and trusted by someone (*m ira'ah al-insn wa i'taqadah*).[2] In the tradition of the Arab people, the term *ra'y,* which comes from *madar ra'a,* is usually interpreted as “seeing with the eyes (*al-'ain*), seeing with the eyes of the heart (*al-qalb*), seeing in the sense of thinking (*at-tafkir*), and see in the sense of thinking by using reason (*al-'aql*).”[3]

From the perspective of the Qur'an, the word *ra'a* and its roots with that word is found in many Qur'anic texts, including the word *ra'y* in the sense of *ra'a,* which means to see with the eyes, Q.S. al-An'am (6), verse 78, Allah says: ”Then when he (Prophet Abraham) saw the sun rising, he said: ”This is my Lord”. The word *ra'a* in this text means to see, i.e., Prophet Abraham saw the sunrise with his eyes. Apart from seeing with your eyes, *ra'a* means seeing with your heart's eyes, as seen in Q.S. Luqman (31), verse 20: "Have you not seen that Allah has subjected to (interests) you what is in the heavens and what is on earth and perfected for you His favors physically and spiritually." The word *ra'yu* in the text above means to think deeply, which means the results of profound rational thoughts (*batinah*).

From some of the terms that are substantially related to the words *ra'y* or *ra'a* mentioned above, it can be seen that all of Allah's purposes are none other than to encourage humanity to use reason to think about all of His creation, including having *ijtihad* to instigate laws His which is documented in the Qur'an and the Sunnah of His Messenger. Therefore, *ra'y* is a general term that includes various ways of *ijtihad*. But in legal *istinbat*, *ra'y* can be used narrower than *ijtihad* because *ra'y* is considered an opinion or thought.

Whereas terminologically (*is□il□han*), Qutb Mustafa Sanu defines *ra'y*, namely a decision reached by a person after critical thinking and deep contemplation and trying to find the maximum which is right in a problem contained in him where the indications are mutual contradictions.[4] This definition of *ra'y* is almost the same as that put forward by Muhammad Ab□ Zahrah with more specifics that *ijtihad* with *ra'y* is paying attention and critical thinking in knowing something closer to the Qur'an and the Sunnah of the Prophet.[5]

Based on the two definitions above, it can be emphasized that the existence of *ra'y* in the context of *ijtihad* is a legal principle under the Qur'an and Sunnah in solving legal problems that occur. Therefore, Ibn Zakaria defines *ra'y* as something that shows sight and sight with eyes or skill. Therefore, *ra'y* is a considered opinion used by someone in solving a legal problem.[1]

According to the above explanation, opinion can be considered if it can be used to resolve legal cases if an opinion is expressed by someone criticizing these cases. Good, wise, and representative opinions can be considered in efforts to resolve legal cases. Farid Wajdi said that it is *Ra'y* in this sense that this opinion can be considered. Therefore, a person with mental perception and wise judgment is known as *□□u al-ra'y*. However, if several experts and capable people use the *ra'y* pattern, for that matter, then it is called *ahl ar-ra'y*, or another designation as *a□h□b al-ra'y*.[2]

3.2. The difference between Ra'y, Ijtihad, Istidlal, and Qiyās

As mentioned above, **ra'y** is a general term, but in legal practice, *ra'y* is used in a narrower sense than *ijtihad*. In other words, *ra'y* is one of the instruments of *ijtihad*. For this reason, *ra'y* will not be discussed in this sub-article because it has been described above.

Ijtihad, etymologically, comes from the root word *jahada*. In Arabic, adding *alif* and *ta* (*ijtahada*) means excess (*mubālagah*). If *jahada* means devoting energy and ability, then *ijtahada* means devoting all energy and ability. Therefore, the literal meaning is to devote energy (*bazl al-wus'i*). If the sentence has a complementary word or sentence, it will be "pour out/deploy all capabilities in looking for a matter in earnest (*bazl al-wus'i fi ṭalab al-amr*)".[6] Meanwhile, terminologically, Islamic legal methodological theorists have defined *ijtihad* with various editorials, but substantially the intent is the same. *Al-Syaukāni*, for example, defines *ijtihad* as "devoting all abilities to obtain syara' law which is operational by drawing legal conclusions".[7]

This definition of *ijtihad* is further explained by al-Syaukāni as follows: First, what is meant by *bazl al-wus'i* is to devote all abilities, except laws obtained without the outpouring of abilities, not included in the meaning of *bazl al-wus' i*. Meanwhile, the meaning of *bazl al-wus'i* is until he (*the mujtahid*) feels that he is no longer able to increase his maximum effort (*an yahussa min nafsih al-'ajzu 'an mazidi ṭalab*). Second, it is meant by *syar'iyyun* law, excluding linguistic law, reason, and sensory law. Therefore, a person who devotes his skills to the field of these laws is not called a *mujtahid* according to the terminology of *ushul fiqh*. Third, *biṭariqah al-istinbāṭ* is to exclude explicit taking of the law from the *naṣ* (Al-Qur'an and Sunnah) or to memorize some issues, or asking a *mufti*, or by searching for legal issues from books because such efforts are not included in the terminology of *ijtihad*, even though they are included in *ijtihad* etymologically.

Istidlal, etymologically, is looking for arguments or clues and proof on something both concrete and abstract.[8] Meanwhile, terminologically, the *ushul fiqh* scholars provide different editorial definitions but are substantially the same. Al-Kafi as-Subki (d. 756 H) put forward the terminological definition of *istidlāl* having two meanings: general and special. First, the general meaning, *istidlāl*, namely mentioning the arguments for *naṣ* (the Qur'an and sunnah), *ijmā'*, *qiyās*, or other arguments. The two special meanings, *istidlāl*, which is a proposition that is not *naṣ* (Al-Qur'an and Sunnah), not *ijmā'*, and *qiyās*.[9] Mustafa Sanu defines *istidlāl* by looking for syar'i arguments that can convey to syar'i law with correct reasoning, whether the argument is in the form of *naṣ* (al-Qur'an and sunnah) or arguments other than *naṣ*.[3]

The terminology of *istidl□l* put forward by al-Kafi as-Subki and Mustafa Sanu above, in principle, is the same, that *istidl□l* is looking for reasonable arguments from *na□*, *ijm□'* and *qiy□s*.

As for **Qiy□s** etymologically, it means measuring something with something else (*at-taqdir asy-syai bisyai'in □khar*).[10] Another literature defines measuring and equating (*at-taqdir wa al-mus□wah*).[11] For example, someone measures the parts of a shirt by equating each part of the shirt with a measuring device (*qasa al-□aub bi al-mitri iz□ qadrahu bih*). This person cannot be equated with that person in terms of priority and nobility (*fulan l□ yuq□s bi ful□n ai l□ yuswi bih fi al-fadl wa asy-syaraf*). Terminologically, the *Ulama Fiqh* scholars define *qiy□s* with different editorials, but essentially the essence is the same. Al-Gazali (d. 505 H) formulated *qiy□s*, namely bringing something that is already known to something that is also known in terms of establishing the law of both of them or abolishing the law of both because there is the same thing between the two in determining the law or the nature or abolition of the law and the nature of.[12]

This formulation shows that *qiy□s* can be known by determining (*isbat*) and negating (*nafy*). In terms of *isbat*, two things must be considered, namely determining the existence of legal similarities from two known issues and determining the existence of similarities in nature because there is something that unites the two known things. Therefore, it was determined because there were differences in the two known issues, both law and nature. From this understanding, as emphasized by al-Ghazali, it can be seen that if what unites (connects) the two known issues cause similarities, it is called *qiy□s □ahihah*. Conversely, if it is known that there are no similarities between the two, then it is *qiy□s f□sidah*.

3.3. The Historicity of The Ahl Ra'y Study Center

According to history, Islamic legal thinkers (*fuqaha*) with rational views (*ahl ar-ra'y*) were born and developed in Kufah, Iraq-Bagdad. When Umar bin Kha□□□□b served as *Caliph* (634-644 AD), he expanded to various regions while spreading Islam outside the Arabian peninsula. The most crucial region of which is Iraq. To this region, *Caliph* Umar sent a battalion of war troops under the command of Sa'ad ibn Abi Waqas. Al-Qadisiah, a city near al-Hirrah, fell in 637 AD, following the conquest of the al-Madain region as the capital of Persia. After the two areas of the city fell into the hands of the Islamic army, the new capital of Iraq was Kufah which was initially a military encampment area.[13]

Apart from Kufah, the Basrah region was also conquered. As new cities, Kufah and Basrah received special attention from the *Caliph* Umar. He delegated Abu Musa al-Asy’ari (44 H) and Abdullah bin Mas’⊠d (32 H) to Kufah. Continuously after that, many friends emigrated to Iraq, especially when Ali bin Abi ⊠⊠lib became the fourth *Caliph* (656-661 AD). Ali then moved the capital from Medina to Kufa for political reasons and a strategy to spread Islam to Central Asia. Kufah and Basrah are two twin cities that are centers of religious activity. These two cities gave birth to many great and influential scholars from the first *Hijri* century to the following centuries. Basrah is known as the ”Arab treasure”, the center of science and literature. At the same time, Kufah is a center for studying Arabic language and grammar. This city has a *madrasa* centered in a mosque called *Madrasah* Kufah, where experts from various sciences hold Islamic discussions (seminars).[14]

Since it was first built, the Kufah Mosque has become a meeting center for Islamic law experts (*fuqaha*) to present religious issues concerning the interests of the *Ummah*. After Abdullah bin Mas’ud died, Madrasah Kufah was led by Alqamah bin Qais an-Nakha’i al-Kufi al-Faqih (d. 62 H) and Masr⊠q ibn al-Ajda’ (d. 63 H) and Suraih ibn al- Haris (d. 78 H). In the following period, the *Madrasa* was led by Ibrahim bin Yazid an-Nakha’i (d. 96 H), who developed the Madrasa as a center for scientific studies. After Ibrahim an-Nakha’i died, the *Madrasa* was led by Hammad bin Abi Sulaiman al-Asy’ari (d. 120 H). Since 120 H after the death of Hammad, *Madrasah* Kufa was led by Ab⊠ Hanifah (d. 150 H).[15]

Ab⊠ Hanifah was born in Kufah in 80 H/699 AD and died in Baghdad in 150 H/676 AD. His full name is Ab⊠ Hanifah an-Nu’m⊠n bin ⊠⊠bit at-Taimi al-Kufi. Another history, an-Nu’man bin Sabit bin Zuta of Persian descent.[16] When Abu Hanifah was born, the Islamic government was led by Abdul Malik bin Marwan (65-86 H/685-705 AD) from the Umaiyah dynasty (*ad-daulah al-amawiyyah*). He lived in two eras, namely at the end of the Umayyad dynasty and the beginning of the Abbasid dynasty, specifically, during the 52 years of the Umayyad dynasty and 18 years of the Abbasids. The transfer of power from the Umayyad rulers, who collapsed, to the Abbasid rulers, who ascended the throne, took place in Kufa. Kufa even became the capital of the Abbasids before moving to Baghdad.[15] Ab⊠ Hanifah witnessed significant events in the city of Kufa. On one side, Kufa gave meaning to life for Abu Hanifah, leading him to become a great scholar; on the other hand, he felt Kufa’s condition as a city of terrorism. The cities of Kufah and Basrah in Iraq gave birth to many well-known scientists in various specifics of knowledge, such as literature, theology, interpretation, jurisprudence, *hadith*, and *tasawwuf*. These two historical cities colored the intellectual life of scientists, experienced socio-cultural and political transformations and traditional conflicts between North Arab, South Arab, and Persian tribes.

The existence of the Kufah Madrasah led by Abū Hanifah, in practice, its teaching activities ran neutrally so that it reached its peak of glory. He mastered many specifics of science, such as theology, interpretation, hadith, and jurisprudence, in addition to other supporting sciences. As a great scholar with the title al-Imam al-A'zam, he faced with trials that were experienced when the Umaiyah government was led by Yazid bin Umar bin Hubairah as the Governor of Iraq in Kufa, namely being sentenced to 110 lashes of the whip, for refusing to be appointed as a judge. The punishment was carried out ten lashes each day. Likewise, when the *Caliph* Abu Ja'far al-Manṣūr (754-775 AD) from the Abbasids came to power, Abu Hanifah was offered to be a judge, but he firmly refused. As a result, he was imprisoned and flogged by *caliph* al-Mansur.[17] There is an opinion that says Abū Hanifah died in prison. Another opinion says that he was also a judge for only three days, then fell ill and finally died.[18]

When Abū Hanifah led Madrasah Kufah, many of his students and followers codified his fatwas, so it became a dynamic and growing school of *ahl ar-ra'y* in the life of the wider community. Several names later knew this Madrasa, some called it the Hanafi *Madrasa*, and some called it the *Ahl ar-Ra'y Madrasa*.[19] It turns out that from this *Madrasa*, many students who are well-known in the world of science emerged because they were credited with codifying the fatwas of their teacher (Abu Hanifah). Among his students, namely: Abū Yūsuf Ya'kub bin Ibrahim al-Ansāry al-Kūfy (113-182 H), Muhammad bin al-Hasan ash-Syaibāny (132-189 H), Zufar bin al-Huzail bin Qais al-Kūfy (110-158 H), and Al-Hasan bin Ziyād al-Lu'lu'y (133-204 H).[20]

The scholars (*fuqaha*) of *ahl ar-ra'y* based in Kufa united to become one integrated school of *fiqh* after Abu Hanifah led the Kufah *Madrasah*. The flow of thought and religious understanding shows that *syara*' laws have a rational meaning and include human benefit. *Ahl ar-ra'y* has a pattern of legal understanding and development, making Iraq the most fertile and developed region using the *ra'y* method (*manhaj ar-ra'y*). At least, this dynamic is motivated by the implications of the teaching method developed by Ibn Mas'ud, which is consistent with Umar bin Khattab's legal views through *ra'y*. Second, *ahl ar-ra'y* argues that Iraq is the area most inhabited by the jurists of the Prophet's companions. Kufa and Basrah are two areas where the Islamic military headquarters. From these two cities, many large cities were conquered as far as Khurasan, and Kufah became the center of the *Caliph* Ali bin Abi Talib. Third, legal problems are more dominated by Iraq than the Hijaz because the Hijaz is still a simple village area (*al-badawah*). At the same time, Iraq has become a "metropolitan city" with advanced culture and civilization. In this context, the existence of the *hadith* at that time did not accommodate aspects that appeared to be happening in Iraq, so using *ra’y* was necessary.[21]

3.4. The Ra'y Doctrine According to Ushul Fiqh Scholars

Ra’y is not a method of thinking that changes the procedure for extracting law but a thought of originality that can be considered a means and opinion in finding law. *Ra’y* is likely to be interpreted as ”rational thinking or opinion that is considered alone”.[22] Excavation and discovery of laws based on *ra’y*, most scientists often identify with the Hanafi school as *the ahl ar-ra’y* school. In the reality of legal *istinbat*, almost all schools of *fiqh* cannot be separated from rational thinking (*ra’y*). Abu Zahrah argued that the doctrine of *ra’y* belonged to the Hanafi *fuqaha* and all *fuqaha*. Even the Hijaz *fuqaha*, considered a traditional school of thought, cannot be separated from *ra’y,* based on the *maslahat* method.[5]

The terms *ahl ar-ra’y* and *ahl al-hadith* in the Islamic world have become role models for humanity, and their existence is recognized by tending to be *ahl al-sunnah* and *jama’a*.[23] But, it is more important is to be criticized and researched. There is a possibility of misunderstanding about *ra’y*, with which standards are considered proper, which are wrong, and which are not recognized. Many scholars criticize *ahl al-ra’y* by refusing to be based on *ra’y* such as ash-Sya’bi (104 H), Ibn Taimiyyah (d. 728 H), and other scholars, but some of the opinions of scholars who others can accept in the context of legal institutions based on *ra’y*, including as-Sarakhsi (d. 490 H). The controversy of the *ushul fiqh* scholars regarding the existence of the *ra’y* doctrine can be seen in the description below.

Al-Shafi’i (d. 204 H), one of the great *mujtahid* (absolute *mujtahid*) and the founder of the Shafi’i school of thought, has written a book of proposals for *fiqh*, *ar-Risalah*, in the field of *fiqh*, *al-Umm*, and in the field of *hadith*, a book known as *ikhtilaf al-hadith*. He discusses the existence of *ra’y* in the context of the legal institute. This existence can be seen in his three works by describing the concepts of *ijtihad*, *qiyas*, and *ra’y*. Al-Shafi’i has specific terms when discussing the concept of *ijtihad*, with *ahl al-’ilm bi al-hadith wa ar-ra’y,* which shows a blend of concepts between *hadith* and *ra’y*. He rejects *ra’y,* used in *istinbat* law haphazardly. He recognizes the concept of *ijtihad* through the famous *hadith* as a dialogue between the Prophet and Mu’az bin Jabal.[24] He also criticizes scientists who use reason a lot (*ahl al’ilm wa ahl al-’uqūl*) but are not law experts, and on many occasions, he makes legal decisions.[25]

Al-Shafi'i, in his *al-Umm* stated that every mujtahid may adhere to his *ijtihad* and is not required to follow the opinions of others who differ from the results of his *ijtihad*. Suppose two people make *ijtihad* and reach different conclusions. In that case, both of them are still considered to have done their duty towards Allah, and the opinion of each is correct regarding his ijtihad. *Ra'y*, apart from the Qur'an and Sunnah, means practicing *Ra'y* only.[24]

Unlike al-Syafi'i, al-Sarakhsi al-Hanafi (d. 490 H), a Hanafi scholar who lived in the 5th H/11th century, consistently followed the mindset of Abū Hanifah, Abū Yūsuf, and al-Syaibāni in instigate law. If the *ra'y* method had developed a lot in the 2nd century Hijriah, then as-Sarakhsi constructed *ra'y* systematically, factually, and rationally. This construction is seen in his book, *Uṣūl al-Sarakhsi*. Even so, he does not mean legalizing *ra'y* to become a source of law equal to *nas*, but he tries to put *ra'y* in its place. According to him, the existence of *ra'y* does not have absolute value, as does *naṣ*. To support this opinion, he presented accurate evidence that prophets before Muhammad used *ra'y*.[26] For example, when faced with a dispute between two people, the Prophet Dawud and Prophet Sulayman.

One person owns the garden, and one person owns the goats. One day the goat entered the garden and killed all the plants. Prophet Dawud decided that the owner of the garden should take the goats. At the same time, Prophet Sulaiman argued that the goats should be lent to the garden owner, with the condition that, for a specific time, the garden owner would collect their milk, children, and fur. Meanwhile, the garden is handed over to the goat's owner so that he can plant crops back to normal. The assembly accepted this final decision. *Ra'y* turns out to have a place in Q.S. al-Anbiya' (21), verse 79: "*So We gave Sulaiman an understanding of the law (which is more precise), and We have given each of them wisdom and knowledge*." This decision was taken based on *ra'y* and not on revelation because a Prophet was assigned not only to receive revelations but also to teach how to deal with and solve the people's problems.[26]

Another example is Rasulullah once answered a friend's question based on *ra'y*. Companions ask: Is someone rewarded if he has sexual relations with his wife? Rasulullah did not immediately answer but asked in return: What do you think if a man has sexual relations with a woman who is not his wife, is he sinful? Friend: Yes, it must be sinful. Rasulullah: If one of you has sexual intercourse with a lawful wife, he will surely be rewarded. The Apostle's conclusion is seen to be based on *ra'y* or *ijtihad* and not based on revelation.[26] Before the Prophet took the legal decision, he already knew the law but did not immediately answer his companions. Rasulullah behaved like this and seemed to educate friends so that in dealing with a legal case, they could think critically and solve it correctly.

From the examples above, al-Sarakhsi, in his *ra'y* theory, prioritizes adhering to ra'y companions with the following considerations: First, a friend is seen as the person who best knows the Prophet's *istinbat* method in making legal decisions. Second, friends of people who know a lot about *sabab an-nuzul* verses and the secrets contained in the texts because they are the ones who can witness the revelation.[26]

Al-Sarakhsi prioritizes *ra'y* companions. His book of *Usul* presents several examples of legal conclusions based on *ra'y*. Among them, he takes *ra'y* Ali bin Abi Talib regarding the minimum size of a dowry of ten dirhams. According to *Ra'y* Anas bin Malik, the minimum time limit for the menstrual cycle is three days, and the maximum time limit is ten days. Following the opinion of Usman bin Abi al-'Ash about the most extended time limit for childbirth, which is 40 days, he also adheres to *Ra'y* Aisyah, who said that a woman's womb is no more than two years.[26] Based on the examples of the decisions of the Companions based on *ra'y,* it can be emphasized that as-Sarakhsi consistently adheres to *ra'y,* which is authentic and flexible. Still, ra'y is positioned not to stand alone. He even does not accept *ahl ar-ra'y,* which rules out the existence of *hadith*. Al-Sarakhsi's view refers to the statement of Muhammad bin al-Hasan al-Syaib⌧ni (122-198 H) as his foundation that charity with *hadith* does not stand alone without *ra'y*, and (conversely) charity with *ra'y* nor stand-alone except with the *hadith*.[26]

Unlike the jurists above, Ibn Hazm (d. 456 H), a scholar of the Zahiri school, rejected *ra'y*. His rejection of *ra'y* started around the existence of *istihsan* and *istinbat* with *ra'y*. According to him, the verses that command thinking and deliberation are not aimed at making new decisions outside the Qur'an and Sunnah. Therefore, the existence of *istihsan* is not a legal basis because the Qur'an does not allude to *istihsan,* but the *ahsan* (the best) is relevant to the instructions of the Qur'an and Sunnah.[27] Ibn Hazm's mindset shows that obeying *ra'y's* decision means the same as leaving the sources of shari'ah, namely the Qur'an and Sunnah; therefore, he rejects *ra'y*.

It seems that the arguments put forward by Ibn Hazm are an interpretation of his understanding of the concept of *ijtihad*. For example, Ibn Hazm said that under no circumstances should the Prophet submit to friends' decisions.[27] This statement is very different from the understanding of *ahl ar-ra'y*, which holds that the Prophet consulted with his companions when faced with problems surrounding society and humanity.

According to the explanation above, Muhammad Ab⌧ Zahrah, one of the contemporary *ushul fiqh* scholars, said that the *ulama* (*fuqaha*) who used *ra'y* belonged to the majority group and could even it is said that there has been a consensus (*ijm*□'

al-'ulamā'), declaring that *ijtihad* with *ra'y* is a necessity when the *qaṭ'i* texts (al-Qur'an and sunnah) cannot be found to be used as legal arguments. It is the differences that surfaced revolve around the method of use.[5] According to Zahrah, some scholars use the analogical method (*al-qiyās*), and some scholars go beyond the analogical method, using *istihsān*, *'urf/'adah*, and *istiṣlāḥ* methods. The scholars of the four schools of thought (Abū Hanifah, Malik, Shafi'i, and Ahmad bin Hanbal) cannot escape using *ra'y*, even though they are still based on *naṣ*. Whereas those who use *ra'y* but contradict the texts (al-Qur'an and Sunnah) are called Zahrah, an intellectual group who deliberately confuse religious teachings with lust and *bid'ah* behavior and deliberately turn away from religious truth (*ahl al-ahwā' wa al-bidā' wa al-munharifin*).[5]

3.5. Implementation of Ra'y in Law Enforcement

Implementing *ra'y* in law enforcement is significant in settling legal cases that occur during community life by the *mujtahids* when the legal cases are dug directly from legal sources sanctioned by the stipulation. The law, or found through implicit understanding (*al-isyarah*) of the instructions for the words of the source of the law, the legal provisions for the legal cases referred to, is indeed not found explicitly (*al-ẓāhir*) and implicitly (*al-isyārah*) from the literal pronunciation *naṣ*. Still, the provisions of these laws can be found in the spirit of the law (*ruh ash-shari'ah*) of the whole intentions of *al-Syāri'* stipulating His laws behind the pronunciation *naṣ*, which commonly referred to as *maqāṣid al-shari'ah*.

In almost all of the historical literature on the development of Islamic law, the technique of extracting and discovering such law has implications for the emergence of two groups of thought patterns and ijtihad creativity of the *mujtahids*, known as *ahl al-hadith* and *ahl ar-ra'y*. The two schools of *ijtihad* substantially actually become an integrated and inseparable unit. Still, the stressing mindset of *ijtihad* and the methodology of legal *istinbat* distinguishes the two. The *ahl al-hadith* school gives a more significant portion to *naṣ* in resolving new legal cases, while *ra'y* is used only in certain situations. In contrast, the *ahl ar-ra'y* school of thought gives a more significant portion to *ra'y* in determining new legal cases that occur after being examined casuistically (*al-istiqrā'i*) that the existence of *naṣ* cannot directly solve the problems that occur.[2] This fact shows that *ahl al-hadith* does not necessarily abandon the use of *ra'y*. Likewise, *ahl al-ra'y* is not entirely free from using *naṣ* in resolving legal cases that occur under any circumstances. Even among literalists (*ahl al-ẓāhir*), they still do not break away from the use of *ra'y* in the context of *istinbaṭ al-ahkām*, only the portion and intensity that distinguishes them.

There are three causative factors behind the *ahl al-hadith* using *ra'y* only under certain conditions (*li al-ḍarūrah*): **First**, the attitude of high consistency towards the methodology used by their predecessors (such as Abdullah bin Umar), which provides a smaller portion on *ra'y*. **Second**, there are still many possible practices of the friends in solving various problems and the few new legal cases they face. **Third**, the attitude of the simplicity of the Hijaz scholars, who generally are Muslims in the Hijaz area, do not ask for fatwas on various issues that have not yet occurred.[21]

Based on the three causal factors above, it can be emphasized that the attitude of the Hijaz scholars does not like discussing and predicting problems that have not yet happened because such an attitude will encourage them to carry out *ijtihad bi al-ra'y*, while they do not like it, in Apart from being worried that they would set aside the *hadiths* of the Prophet, it is known that *Hijaz* scholars consistently adhere to the *hadiths* of the Prophet. However, sometimes the quality of the *hadiths* they hold is poor (*ḍa'if hadith*).

Unlike the *ahl al-hadith*, the *ahl al-ra'y* school holds that Islamic law is prescribed for the benefit of humans. Therefore, the existence of Islamic law contained in the *naṣ* contains implicit meanings (*ma'qūl al- naṣ*), in addition to having a causal relationship that can be known using *'illah*, or legal causes. They continue to conduct investigations regarding legal causal relationships and the lessons in every *syari'atan* of a law.[28] This line of thinking of *ahl al-ra'y*, geographically and culturally, seems to be very much influenced by the social setting that requires it because the Iraq-Baghdad area is a country far from the Hijaz-Madinah. At the same time, various legal cases continue to occur, which sue the scholars to determine the legal provisions. From here, it is strongly suspected that they automatically use *ra'y* a lot to instigate law to determine the legal provisions of legal cases, "so that ahl *ar-ra'y* is often referred to as *aṣḥāb al-qiyās*".[2]

The mindset and creativity of the *ijtihad* of *ahl al-ra'y,* which gives a significant portion to the *ra'y* itself rather than *naṣ*, seems to be motivated by the following causal factors:

1.1.a They were influenced by the mindset of their teachers, such as Abdullah bin Mas'ud who was known among friends and were significantly influenced by Umar bin al-Khattab's *ijtihad* ideas and creativity. Ibn Mas'ūd himself once said: If people take a path in one valley, while Umar takes another, I will take the valley that Umar walked. It is known that Umar was the only companion who used *ra'y* a lot. And among the followers of Ibn Mas'ūd is 'Alqamah bin Qais al-Nakhā'i (teacher of Ibrahim an-Nakhā'i) who is called the flag bearer of *ahl al-ra'y* (*ḥāmil liwa' al-ra'yain*).

1.1.b Kufah and Basrah were the headquarters of the Islamic army (*al-juyūs al-Islāmiyyah*). Kufah was also the domicile during the time of the *Caliph* Ali bin Abi Talib which was visited by the majority of famous Muslim scholars, such as Abdullah bin Mas'ud, Sa'ad bin Abi Waqas, 'Ammar bin Yasir, Abu Musa al-Asy'ari, al-Mugirah bin Syu'bah, Anas ibn Malik, Khuzaifah bin al-Yamani, Imran bin Husain, and including the scholars who were friends of Ali's followers, such as Ibn abbot. They all narrated the *hadiths* of the Prophet. This condition caused the people of Iraq to feel satisfied with the *hadiths* narrated by friends who came to visit. On the other hand, Iraq is also the birthplace of the Shia group, the seat of the Khawarij group, and at the same time, the place for the emergence of slander riots (*dar al-fitnah*). It was in Iraq that many people dared to fabricate fake hadiths (*hadith maudhu'*), and it was under these conditions that the Iraqi clerics ultimately made strict requirements for the acceptance of a *hadith* history. The implication of this condition requires the Iraqi *mujtahids* to prioritize using *ra'y* in doing *ijtihad*.

1.1.c Iraq has become a metropolitan city and is developing advanced in terms of civilization and culture, much different from the condition of the Hijaz, which is still a simple and badawah city. Many legal cases have occurred due to the high rate of social interaction that requires immediate knowledge of legal provisions and provisions. This condition also required *ra'y* to be greater than the texts.

From the causal factors underlying the two schools of thought above, it can be identified and confirmed that if the *Hijaz* people (*mujtahidin*) use *ra'y* in a condition of *li al-ar rah*, or even they stop not using it (*tawaqqf*), then those who the Iraqis (*mujtahidin*) on the other hand, actually use *ra'y* too much, or give a more significant portion to *ra'y* than *na*, so they often make the term "if so", or "if this is like this" and so on, then the law also says " so" and "this". From this, it can be said it is only natural that one *mujtahid* and another *mujtahid* differ in the results of his legal *istinbat* due to differences in social settings, traditions, culture, scientific credibility he has, and the methodology of understanding he uses. This condition occurs not only in this modern era but also has occurred since the time of the Prophet, his companions, tabi'in, and subsequent generations of scholars.

3.6. The Legal Force of Ra'y Discretion in Legal Determination

The existence of *ra'y* is instrumental in extracting and determining law, both for explicit and implied laws and laws without solid law. Still, the *mujtahid* can stipulate them, so in principle, the law that is found and stipulated is the law of Allah. Likewise, the implied laws that are strongly suspected are hidden behind the *na*. It is suspected that the laws mentioned last exist only in what is explicit. Hence, the *mujtahid* can find and determine them; that is the law of Allah because the nature of the creator of Islamic law is *al-Syri'*, namely Allah. Therefore, any law that is found and managed to stipulate its provisions by the mujtahid through the power of his *ra'y* is the law of Allah.

Muslim scholars have developed a consensus that Allah SWT is the source of Islamic law for all actions of Muslims (*al-mukallafin*). Is it a direct legal statement from the texts revealed by Allah to His Messenger?, or which is a guide to the *mujtahids* regarding the laws of the act of a *mukallaf* through the mediation of arguments, and indications of the law prescribed by the *shari'ah* to determine the provisions -The legal provisions, according to the consensus they state regarding the terminology of Islamic law, are Allah's decrees relating to the actions of the *mukallaf* whether in the form of demands, choices, or the form of stipulations (because they are causes, conditions, and obstacles). Therefore, "there is no law but the law of Allah".[29]

From the statement of Khalaf's view, it can be understood and emphasized that the existence of the *mujtahid* imams in the context of *istinbat al-ahkam* do not have the authority right to establish a law. They are only diggers and inventors and give birth to the laws of Allah, which are hidden behind the texts of the Qur'an and Sunnah. In written law, ash-Syri' directly stipulates it, while the *mujtahidin* only conveys and formulates it in legal formulations. Therefore, in textual laws that have no basis (*fima la naa fih*) either implied or hidden behind the *na*, in the process of legal istinbat determined by the *mujtahidin* with his *ra'y*, then the power of the law is *anni*. Unlike the case with the legal force written in the *na*, indicated by the wordings, the legal force is *qa'i*, no doubt about it. In a context like this, *ra'y* does not play a significant role because the law is written down in the text, and the mujtahid, through his ra'y, only has to express what *ash-Syri'* means in the *na*. For example, Q.S. an-Nisa (4), verse 12, explains the portion of inheritance for a husband whose wife dies without children, so he gets half the property. This verse shows *na* whose authenticity is certain (qa'i al-ubt) and the implications of legal certainty (qa'i al-dillah). The quality of the verses in such na cannot be relativized because they contain legal certainty. So, a husband will get half or half of the tirkah left by his wife if he does not leave children from his household life. And technically, in the implementation, the husband's share of the half may not be reduced or increased.

Whereas *na*, which is *anni al-dillah*, is what shows the meaning, the meaning contains two or more highly interpretive meanings. In other words, one word/sentence contains two or more ambiguous meanings. The classic example often put forward by *mujtahids* regarding the waiting period for a wife who has been divorced by her husband (Q.S. al-Baqarah (2), verse 228: "Women who are divorced should refrain (wait) three times *quru*’”. It has the word “*qur*”’. In language, this pronunciation indicates *musytarak* (ambiguity), implies menstruation, and is holy (*al-uhr*). So, any woman divorced by her husband must wait for three menstruations or three times the sacred period. The *mujtahid* priests in this context have two different opinions: First, Imam Malik and Shafi’i believe that what is meant by the word *qur’* is holy. This opinion was also narrated by Ibn Umar, Aisyah, Zaid bin Sabit, and Ahmad bin Hanbal from one narration. Meanwhile, Imam Abu Hanifah and Ahmad (in one of the two narrations) argue that what is meant by the word *qur’* is menstruation. This opinion was also narrated by Umar, Ibn Mas ’d, Ab Musa, Abu Darda’, and others.[11]

The theories of *qa’i* and *anni* at the level of stressing discussion concern the issue of *al-ubt* (authenticity) or *al-wurd* (the arrival of source truth), and *al-dallah* (determination of meaning content). Therefore, there is no difference of opinion among Muslims regarding the truth of the source of the Qur’an. All agreed to believe that the editorial texts documented in an Ottoman manuscript and read by Muslims worldwide are the same without the slightest difference from those received by the Prophet Muhammad from Allah SWT. The Qur’an is *qa’iy al-ubt*; In essence, it is one of what is known as *ma’lm min al-din bi al-arrah*. For this reason, *qa’iy al-ubt* is not discussed in this context. The second part concerns the content of the editorial meaning of *na qa’iy al-dallah,* as examples have been presented in the description above. The theories of *qa’i* and *anni* among *usuliyyin* scholars in the classical, modern, and contemporary eras are interesting to study further, especially in legal istinbat.

In the era of contemporary *ushul fiqh scholars*, such as Hasan at-Turabi, Jasser Auda, and others, there is a tendency for the *qa’i* and *anni* theories to be reconstructed by the current understanding of the texts of the Al-Quran and Sunnah. What is meant by reconstruction here is rebuilding (of a bridge), summoning or gathering again,[30] repairing again,[31] and reordering regularly, sequentially, and logically so that it is easy to understand and interpret.[32] So the classical *qa’i* and *anni* theories are reconstructed so that in their application fields, they can find and produce new legal products relevant to the spirit of the times. These legal products include family law which has been seen as rigid, irrelevant, and not anticipatory to the times, even further Islamic law is seen to be ”stuttering” in following the rhythm of the times, so inevitably, Islamic law (including family law) reconstruction, reconception, reformulation, revitalization, redefinition, and even deconstruction if necessary.

3.7. The Implementation of Ra'y in Several Contemporary Sharia Economic Law Cases

The implementation is the form or nature used in applying several cases of practical shari'ah economic law about *ra'y* using the *'urf* and *maq□□id al-shari'ah* approaches. To describe the pattern of implementation of *ra'y* in several cases of contemporary Sharia economic law, the author will refer to the literature on *ushul fiqh al-Sarakhsi al-Hanafi*, with the consideration that this book theoretically seems more comprehensive and complete when describing the discussion of an issue by including the proposed principles, the opinions of scholars, and including examples, so that for the benefit of this article it can help and solve the problems it discusses. Among the legal cases that can be stated here, among others:

1.1.d *Bai' al-Salam*

In a contract of buying and selling orders (*bai' al-salam*)[33] between seller and buyer (*al-ba'i' wa al-musytari*), both of them must inevitably agree on the terms. For example, the buyer makes a condition that the seller must send the goods to the buyer's address at a predetermined time and other requirements. Buying and selling this order from the perspective of a *fiqh* proposal is prohibited because it is contrary to *qiy□s*. Bai' al-salam is not allowed because it is analogous to *bai' al-ma'd□m* (buying and selling where the goods are not available at the time of the transaction), which was prohibited by the Prophet, with 'God of law when there is a transaction the goods being traded are not available. The hadith narrated by five hadith narrators from Hakim bin Jazam, said: "I said: O Messenger of Allah, a man met me asking about buying and selling goods that were not in my hands that I sold to him, then I bought them at the market. The Prophet said: Do not sell things not in your hands. Based on the answers and statements of the Prophet, it is clear that *bai' al-salam* is prohibited. However, Ibn Nujem al-Hanafi, in this context, says that *al-h□jah* occupies a place of emergency both general and special (*al-h□jah tanzilu manzilah al-□ar□rah '□mmah k□nat aw kh□□□sah*). Therefore, *bai' al-salam* is permissible, contrary to *qiy□s*, because it is necessary.[34] Al-Sarakhsi sees *bai' al-salam* economically, the prospects for the future are more profitable with all the access and efficiency, saying that this particular type of order transaction is permissible based on *istihs□n*.[26]

Determination of the *istihs□n* rule based on *al-h□jah,* which occupies an emergency place like this *bai' al-salam* example, actually belongs to *istihs□an* with *na□* because there are already provisions in the *na□*, which are different from general rules. Therefore, al-Nawawi assumes that the form of al-salam is a valid transaction, but it must be understood that this kind of sale and purchase is based on *naṣ* and not on *istihsān*. In addition, the agreed terms regarding the material, shape, size, and condition of the goods must be clear.[35] In line with al-Nawawi's opinion, Ahmad al-Dardir al-Māliki added that in terms agreed upon by both parties, the length of time for the agreement was limited to three days. If what was agreed was more than three days, then the agreement of both parties must be renewed.[36] Unlike the case with Ibn Hazm, he responded to this around *bai' al-salam,* calling it a non-buying category. According to him, *al-salam* only applies to goods that can be weighed, and apart from that, it is not the same as *as-salam* because every sale and purchase of something, regardless of its form, but the substance is not clear, is invalid.

The scholars of the *ra'y* school tend to allow *bai' al-salam* with an *istihsān* approach because, after all, the seller will send the goods he sells to the buyer. *Bai' al-salam* is a business requirement in this contemporary era and is commonly practiced in the life of the general public. In this context, it is called istihsān *bi al-'urf*.[26]

In this context, the National Syari'ah Council of the Indonesian Ulema Council has technically issued a fatwa and stipulated provisions for *bai' al-salam*: **First**, the provisions regarding payment: (1) The amount and form of means of payment must be known, either in the form of money, goods or benefits. (2) Payment must be made when the contract is concluded. (3) Payment may not be in the form of debt relief. **Second**, provisions regarding goods: (a) The characteristics must be evident and can be recognized as debt. (b) The specifications must be explained. (c) Submission is made later. (d) The time and place of delivery of goods must be determined based on an agreement. (e) Buyers may not sell goods before receiving them, and (f) May not exchange goods, except for similar goods according to the agreement. **Third**, the provisions regarding parallel greetings (*al-salam al-mawazi*), namely that it is permissible to perform parallel greetings on condition that the second contract is separate from and unrelated to the first contract. **Fourth**, delivery of goods before or on time: (1) The seller must deliver the goods on time with the agreed quality and quantity. (2) If the seller delivers goods of higher quality, the seller may not ask for an additional price. (3) If the seller delivers goods of lower quality, and the buyer willingly accepts them, then he may not demand a price reduction (discount). (4) The seller may deliver the goods faster than the agreed time on the condition that the quality and quantity of the goods follow the agreement, and he may not demand an additional price. (5) If all or part of the goods are not available at the time of delivery or are of inferior quality and the buyer is unwilling to accept them, then he has two choices, namely canceling the contract and asking for his money back, or waiting until the goods are available. **Fifth**, cancellation of the contract.

Greetings can be canceled as long as it does not harm both parties. Sixth, disputes. If there is a dispute between the two parties, then the problem is resolved through the Shari'ah Arbitration Board after no agreement is reached through deliberation.[37]

1.1.e *Bai' al-Istin'*

Orders for manufacturing goods regarding *mu'amalah* fiqh are known as *al-istisn'*. What is meant by *al-istisn'* terminologically is a selling and buying contract in the form of ordering the manufacture of certain goods with specific criteria and conditions agreed between the buyer (*al-mustani'*) and the seller (*al-ni'*)[33] or a request (order) for someone from another person to make a tool (goods) with certain conditions.[38]

If scrutinized, this *al-istin'* terminology shows similarities to *bai' al-salam*, that is, both selling and buying contracts are made to order, and with certain conditions agreed upon between the buyer and the seller, only the difference is seen in terms of product ordered. If in *bai'al-salam* stressing the product has been made, whatever the various kinds of goods, the price is paid in advance. Whereas in '*aqd al-istin'*, namely the stress of ordering goods that have not yet been made by the buyer (*al-mustani'*) to the seller (*al-ni'*), by paying the price of the order in advance, or paying by way of receipt money first according to the agreement. But in principle, these two transaction contracts have developed in today's modern business world, and the banking sector has also collaborated with the DSN-MUI by establishing a *fatwa* as a guideline for transactions in a greeting and *istin'* manner.

This *istin'* transaction in the general rules of *mu'amalah* is not permissible because something that was agreed upon did not exist (*'aqd 'al ma'dm*) at the time the contract took place between the buyer and the seller (*al-muta'aqidain*). It is the prohibition on *istin'* transactions is invalidated because it uses the *istihsn* approach,[26] which in the opinion of 'Abd Rabbih, *istin'* transactions are categorized as *istihsn bi al-ijm'*.[38] Contrary to this opinion, Ibn Hazm az-Zahiri expressed his opinion that any sale and purchase transaction where the goods were not present at the time the agreement was executed, and the nature and substance of which were not explicit, was invalid (*al-bil*) because the Sunnah prohibits buying and selling transactions that it is not clear what goods will be transferred.[27]

Al-Sarakhsi argues for strengthening his view by showing that *istin'* transactions are commonly practiced by society occasionally. So, the community means that the people of Iraq-Baghdad and its surroundings are used to practicing this *istin'* transaction, and most scholars do not prohibit it. That is, with the *maqid* al-syari'ah approach, *mu’amalah isti□n□’* is justified/permitted in Islamic law because it has become a tradition in the business world of society in general.

Criticizing the argument put forward by as-Sarakhsi, it can be seen that the *istisna’* contract is, in fact, one of the alternatives to broaden the range of motion of economic activity and, at the same time, facilitate trade interactions between ethnic groups and countries, where at that time when looking at Iraq-Baghdad is a metropolitan international city, which known as the city of 1001 nights. In such a city condition, of course, there will be widespread social interaction and communication, including exchanging and ordering the goods they want. The permissibility of *istisna*’ transactions was a requirement of the conditions that developed then. In the current modern era of the Asian Economic Community (AEC), methods of transaction, as long as they do not conflict with the principles of Islamic economics, should be developed and become a reference in the context of doing business in an Islamic way, whether on behalf of individuals, institutions or world trade organizations. which seems to be growing.

In this context, the DSN-MUI has issued a *fatwa* on the permissibility of buying and selling *istisna*’ by setting operational provisions in its fatwa decisions, which are not substantially different from *bai’ as-salam*, as follows: First, provisions regarding payment: (1) Means payment must be known in amount and form, either in the form of money, goods, or benefits. (2) Payment is made following the agreement. (3) Payment may not be in the form of a cash release. Second, regarding goods: (a) The characteristics must be precise and can be identified as debt. (b) The specifications must be explained. (c) Submission is made later. (d) The time and place of delivery of goods must be determined based on an agreement. (e) Buyers (*mustasni’*) may not sell goods before receiving them. (f) Not allowed to exchange goods, except for similar goods, according to the agreement. (g) If there is a defect or the goods are not following the agreement, the customer has the right to choose (*khiyar*) to continue or cancel the contract. Third, other provisions: (1) The law is binding if the agreement has executed an order. (2) All provisions in buying and selling salam that are not mentioned above also apply to buying and selling istisna’. (3) If one of the parties does not fulfill its obligations, or there is a dispute between the two parties, then the settlement is carried out through the Sharia Arbitration Board after no agreement is reached through deliberation.[37]

4. Conclusion

Starting from the discussions above, in this closing, the following conclusions can be drawn:

1.1 The application of *ra'y* in seeking progressive Shari'ah economic law in the contemporary era with local wisdom approaches (*'urf*) and the highest goal of Islamic law (*maqāṣid al-shari'ah*) is a necessity that must be carried out by legal experts sharia economics.

1.2 *Ra'y* can be applied in the context of legal *istinbat* to answer various transactions by applying the shari'ah economy. Still, the area of *istinbat* law is limited to two situations: **First**, on issues that arise where there are no legal provisions at all in *naṣṣ* (*fimā lā naṣṣa fih*). Under these circumstances, the *mujtahid* performs *ijtihad* to find original laws that do not contradict existing legal provisions. Second, *ra'y* can be applied in matters where the legal provisions have been regulated in the *naṣṣ*. Still, the designation of the *lafaz* means *ẓanni al-dalālah* and is ambiguous (*al-musytarak*).

1.3 The views of legal experts and the methodology of Islamic law (*uṣūliyyin*) in implementing *ra'y* in instituting law for progressive Shari'ah economic law cases in this contemporary era by sorting out three forms of law. **(1)** Allah's law can be found literally in *'ibārah al-naṣṣ*, the law written in the *naṣṣ* al-Qur'an. **(2)** Allah's law cannot be found in the recitations of the Quran but can be found through *isyārah al-naṣṣ* or *dalālah isyārah*, which is called the implied law behind the text. **(3)** Allah's law cannot be found literally in the verses of the Qur'an, and implicitly from a verse of the Qur'an, but can be found in the spirit of *asy-shari'ah*, of course with the *'urf*, and *maqāṣid al-shari'ah* approaches.

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