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Islam in a Formal Legal Approach (Law); A Study of Theory and Implementation*

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Abstract

This article explained Islam in a formal legal approach (law). The function was to know how far the standard legal Islamic perspective could be used as a reference to build Islam and answer the various new problems found in life, especially in Islamic society. Library research was used in this article. It was an approach that focused on the literature review and tried to provide an overview or description of the existing reality, what happened or the actual existence of the object under study. The results of this study showed that the Islamic studies approach was an interesting discourse in the Islamic sciences discourse. The formal legal process was one of the models of practice in Islamic studies, which examined various problems that arose in Islamic teachings and solved them from a traditional legal (law) perspective. In the Indonesian context, a formal legal approach was applied in the form of the legalization of Islamic law both formally and normatively. However, this step was highly dependent on the government's political will.

Keywords: Islamic Studies; Formal Legal Approach; Islamic Law; Sharia; *Fiqh*

Abstrak

Artikel ini membahas tentang Islam dalam pendekatan legal formal (hukum) dengan tujuan untuk mengetahui sejauh mana pendekatan legal formal dalam perspektif Islam dapat dijadikan rujukan dalam membangun Islam dan menjawab berbagai permasalahan-permasalahan baru yang ditemukan dalam kehidupan masyarakat Islam. Artikel ini menggunakan pendekatan kepustakaan (library reseach) yakni sebuah pendekatan yang fokus terhadap kajian literatur dan berusaha memberikan gambaran atau mendeskripsikan kenyataan yang ada atau apa yang terjadi atau kenyataan sebenarnya pada obyek yang diteliti. Hasil penelitian ini memperlihatkan bahwa pendekatan studi Islam adalah wacana yang menarik dalam diskursus ilmu-ilmu keislaman. Pendekatan legal formal (hukum) merupakan salah satu model pendekatan dalam studi Islam yang meneropong berbagai permasalahan-permasalahan yang muncul dalam ajaran Islam dan menyelesaikannya dalam perspektif legal formal (hukum). Dalam konteks keindonesiaan pendekatan legal formal diberlakukan dalam bentuk legalisasi hukum Islam baik secara yuridis formal maupun normatif, walaupun langkah tersebut sangat tergantung dengan political will dengan pemerintah.

Kata Kunci: Studi Islam; Pendekatan Legal formal; Hukum Islam; Syariah; Fikih

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A. INTRODUCTION

Islam is a complete (comprehensive) religion, so there are various instructions on how Muslims should respond to life, and life becomes more meaningful.⁴ Islam taught a dynamic and progressive life model, balanced in meeting multiple material and spiritual needs; continually developed social awareness; open, quality-oriented, egalitarian, partnership and love others, strengthening the brotherhood.⁵

As a complete teaching, Islamic studies were not only the domain of Muslims but were also carried out by people outside of Islam, such as orientalism.⁶ The enthusiasm lately to study Islam in the West was getting higher, which they called Islamic Studies. Then, Islamic Studies became one of the studies that received widespread attention among West and East scientists. In fact, many universities in the West have opened faculties or departments that specifically discuss Islamic studies and publish books and journals.⁷

In Islamic studies among Muslims, the main problem that was urgent to resolve was methodology. This was due to two reasons: First, the weakness among Muslims in comprehensively studying Islam, so they were not mastering the method. This weakness was increasingly felt when Muslims, especially in Indonesia, did not become producers of thoughts but consumers of ideas. So, the weakness of Muslims was not in the lack of mastery of the material but rather in the ways of presenting the material that was mastered. Second, the assumption that Islamic studies among scientists had spread to various areas.⁸

For this reason, it was essential to study Islam as people outside of Islam did, especially using various modern approaches. It was because the development of science and technology occurred so quickly that it provided many conveniences and multiple facilities for humans in various aspects of life with various positive and negative impacts. Moreover, there was a symptom of "scientism" in modern society, which has an excessive belief in products produced by science and technology without any filtration.⁹

⁴ Meguellati Achour and others, 'Measuring Religiosity and Its Effects on Personal Well-Being: A Case Study of Muslim Female Academicians in Malaysia', *Journal of Religion and Health*, 54 (2015), 984–997 <<https://doi.org/10.1007/s10943-014-9852-0>>.

⁵ Hammis Syafaq, 'Inward Experience and Outward Behavior Approach as a Model for Religious Studies', *Islamica: Journal of Islamic Studies*, 8.2 (2014), 368–91 <<https://doi.org/10.15642/islamica.2014.8.2.368-391>>.

⁶ Roksana Bahramitash, 'The War on Terror, Feminist Orientalism and Orientalist Feminism: Case Studies of Two North American Bestsellers', *Critique: Critical Middle Eastern Studies*, 14.2 (2005), 221–35 <<https://doi.org/10.1080/10669920500135512>>.

⁷ Yasir Suleiman and Ayman Shihadeh, 'Islam on Campus: Teaching Islamic Studies at Higher Education Institutions in the UK. Report of a Conference Held at the University of Edinburgh, 4 December 2006', *Journal of Beliefs & Values*, 28.3 (2007), 309–29 <<https://doi.org/10.1080/13617670701712497>>.

⁸ Siti Zulaiha, 'Methodological and Theological Approaches for the Development and Improvement of the Quality of Islamic Elementary Teachers', *Ar-Riayah; Journal of Basic Education*, 1.1 (2017), 46 <<http://dx.doi.org/10.29240/jpd.v1i1.220>>.

⁹ Amir Fauzi, 'Integration and Islamization of Knowledge in the Perspective of Islamic Education', *Journal of Islamic Education*, 8.1 (2017), 1–18 <<https://journal.uhamka.ac.id/jpi/article/view/297>>.

Research conducted by Agus Aditoni showed that Islam today faces challenges.¹⁰ Hasan Mahfudh said that the problems of Islamic studies were still too premature to be considered finished.¹¹ Islamic teachings, which were doctrinal legacies, have been swallowed up by the times and more modern digitalization developments.¹² So, religion was not only used as the identity of one's beliefs, but faith was also required to be able to answer increasingly complex human problems, including Islam.¹³

Based on the various above problems, this article tried to discuss Islam toward legal formal (law) approach, a study of theory and implementation. The function was to seek, analyze, and solve the problem by using the point of view and legal process. In addition, Islamic studies with a legal process were also aimed at broadening understanding, deepening beliefs, and drawing benefits for the interests of Islam as a whole.

B. METHODS

The type of this research was library research, where the data sources were obtained from a literature review, and it was appropriate to the problem. Primary sources were taken from works that discussed the theme. In contrast, secondary sources were obtained from library research, and related documents in books, scientific articles, papers, theses, and dissertations obtained both offline and online. After the data was collected, it was analyzed descriptively. First of all was collecting data, information, and general opinions. Then, drawing specific conclusions from these data. To accurately describe the problem under study, the data was analyzed beforehand. The descriptive analysis started from the stages of data collection, data reduction, and data presentation to drawing conclusions

C. DISCUSSION

1. Islam in Formal Legal Approach (Law)

Since the beginning of human history, religion has existed at all levels of society and culture. The presence of religion was increasingly demanded to be actively involved in solving various problems faced by humankind. Religion should

¹⁰ Agus Aditoni, 'Islamic Studies in Indonesia: Opportunities and Challenges', *Batusangkar International Conference*, Oktober, 2019, 5–16 <<https://ojs.iainbatusangkar.ac.id/ojs/index.php/proceedings/article/view/1532>>.

¹¹ Hasan Mahfudh, 'From Ibrahim M. Abu Rabi' About the Problems of Contemporary Islamic Studies', *Millati: Journal of Islamic Studies and Humanities*, 1.1 (2016), 23 <<https://doi.org/10.18326/mlt.v1i1.23-39>>.

¹² Muhammad Danil, 'The Importance of Understanding the Role of Islamic Studies Methodology in the Millennial Generation in the Digitalization Era', *Profetika: Journal of Islamic Studies*, 21.2 (2020), 223–30 <<https://doi.org/10.23917/profetika.v21i2.13082>>.

¹³ Hendri Hermawan Adinugraha and Ahmad Hasan Asy'ari Ulama'i, 'Understanding of Islamic Studies Through Textual and Contextual Approaches', *Farabi*, 17.1 (2020), 26–48 <<https://doi.org/10.30603/jf.v17i1.1281>>.

not be used as a mere symbol of purity or stop just being conveyed in sermons, but conceptually, it showed the most effective ways of solving problems. Because many findings prove that more religious people would be much better off in life.¹⁴

The Islamic study approach was an interesting discourse in the Islamic sciences discourse because it was directly related to the touch of divine values, which were fundamental values for Muslims; it was also associated with the reality of life as a nation, state and religion, which in it was vulnerable to societal values which sometimes understood to be separated even wholly separated.¹⁵ The formal legal approach was one of the process models in Islamic studies that examined various problems that arose in Islamic teachings and solved them from a traditional legal (law) perspective. Moreover, Islam had formed a common belief that society was built based on Allah's law. God's law laid down universal rules for human action. God's law was perfect and pure, versatile and for all time.¹⁶

The function of Allah's law was to build a society based on virtues, uphold righteousness, and renounce wrongdoing. Allah's law was conical in the form of the Islamic law that lived and developed and was implemented in the life of Islamic society. Therefore, Islamic law was interpreted as God's commands revealed to the Prophet Muhammad. Islamic law was a divine system that preceded and was not preceded by the Islamic state, controls Islamic society and was not influenced by it. Islamic law began with the advent of Islam. Muslim law was inseparable from integrating sharia objectives from revelation and application in human life. In Islamic law, the pattern of human behaviour at once and the highest authority of Allah's will cannot be clearly distinguished.¹⁷

For this reason, the existence of Islamic law should ideally apply universally and humanely and not be shackled in modern life. The overall goal of Islamic law was to improve the welfare (*masalih*) of mankind. This goal in broad general terms implies, among other things, ensuring growth (*tazkiyah*) and Justice (*qist*) and specifically terms related to *maqasid al-Shariah* indicate the protection of religion, life, mind, lineage and property. Therefore, the purpose of Allah in bringing down Islamic law was for the benefit of humans in this world and the hereafter. To achieve this, humans were prohibited from following their desires because following them was a way that would lead humans to despicable acts and damage even though, according to human reason, there were good elements in it.¹⁸

¹⁴ Ellen L. Idler and others, 'Measuring Multiple Dimensions of Religion and Spirituality for Health Research: Conceptual Background and Findings from the 1998 General Social Survey', *Research on Aging (ROA)*, 25.4 (2016) <<https://doi.org/10.1177/0164027503025004001>>.

¹⁵ Isnanita Noviya Andriyani, 'Approach in Islamic Studies (Richard C. Martin)', *Al-Manar*, 5.2 (2016), 77–88 <<https://doi.org/10.36668/jal.v5i2.35>>.

¹⁶ Muhammad Muslehuddin, *Philosophy of Islamic Law and The Orientalist; A Comparative Study of Islamic Legal System* (Lahore: Islamic Publications Ltd, 2000) <<https://philpapers.org/rec/MUSPOI-3>>.

¹⁷ Danu Aris Setiyanto, 'Islamic Law as Social Engineering and Its Implications in Marriage Law in Indonesia', *Ijtihad; Journal of Islamic Law and Humanity Discourse*, 17.2 (2017), 176 <<http://dx.doi.org/10.18326/ijtihad.v17i2.175-189>>.

¹⁸ Abu Ishaq Al-Syatibi, *Al-Muwafaaqat Fi Ushul Al-Syari'ah, Juz. II* (Beirut: Dar al-Ma'rifah, 1978).

According to Bassam Tibi, Islamic law was a part of the Sharia. The knowledge was related to human deeds taken from the texts of the Qur'an and al-Sunnah. If there were texts from the Qur'an or al-Sunnah related to these deeds, or those taken from other sources, if there were no texts or al-Sunnah, then a science called *fiqh* was formed.¹⁹

In principle, Islamic law was a uniquely Indonesian term that contained ambiguity in meaning in its daily use, as the equivalent of Sharia on the one hand and *fiqh* on the other. Sharia meant the way or path to the water source. Sharia etymologically pointed to "the way where the water came out for drinking", or the word sharia meant the highway to a good life. This word was then connoted by the Arabs with a straight path that must be followed. This was the path that led to Allah and all Muslims believed in, which was revealed through Allah's Last Messenger, Prophet Muhammad.²⁰ In subsequent developments, the word sharia was used to denote Islamic laws, both those set directly by the Qur'an and Sunnah, as well as those that had interacted with human thought through the process of *ijtihad*.²¹

As an Islamic term, Sharia was the legal or regulatory dimension of Islamic teachings. It is called Sharia because the rules were meant to provide a way or to regulate traffic for the journey of human life. Qur'an used the words *syir'ah* and Sharia in the sense of *din*, that was, in the meaning of the path God had ordained for humanity; the clear path God showed to man.²² At the time of the Prophet Muhammad, the term sharia was used to mean the main issues of Islam. Imam Abu Hanifah (700-765 AD) defined Sharia as everything taught by the Prophet Muhammad, which originated from revelation, all parts of Islamic teachings. Imam Shafi'i (767-820 AD) interpreted Sharia as birth regulations for Muslims that originated from revelation and conclusions (deductions) that could be drawn from revelation.²³

Sharia regulated the relationship between individuals and between individuals and Allah (God). Sharia was an integral part of social organization, not a separate branch of human activity that can be categorized as 'religion' that occurred in a modern secular-liberal state.²⁴ In the language of A.A Fyzee *Cannon Law of Islam*,

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¹⁹ Bassam Tibi, 'Islamic Law/Shari'a, Human Rights, Universal Morality and International Relations', *Human Rights Quarterly*, 16.2 (1994), 277-99 <<https://doi.org/10.2307/762448>>.

²⁰ Hyder Gulam, 'The Application of Shariah (Islamic Law) In Some Different Countries And Its Implications', *Shariah Journal*, 4.2 (2016), 322 <<https://ejournal.um.edu.my/index.php/JS/article/view/4350>>.

²¹ Arip Purkon, 'Hermeneutic Approach in the Study of Islamic Law', *Ahkam*, 13.2 (2013), 185 <<https://doi.org/10.15408/ajis.v13i2.930>>.

²² Dede Husni Mubarak and Alief Akbar Musaddad, 'Human Rights Concept in Islamic Legal Thought', *Istinbath | Journal of Islamic Legal Research*, 15.2 (2017), 167 <<https://doi.org/10.36667/istinbath.v15i2.25>>.

²³ Anies T Kuncoro and Muchamad Coirun Nizar, 'The Epistemology of Fiqh-Science and Its Implementation in Contemporary Fiqh in Indonesia', *Proceedings of the 2nd Southeast Asian Academic Forum on Sustainable Development (SEA-AFSID 2018)*, 168 (2021), 225-30 <<https://doi.org/10.2991/aebmr.k.210305.041>>.

²⁴ Ann Black and Kerrie Sadiq, 'Good and Bad Sharia: Australia's Mixed Response to Islamic Law', *U.N.S.W.L.J.*, 34.August 2010 (2011), 383.

*the totality of Allah's commandments.*²⁵ Sharia was *mabadai al-tasyri'*'s ideals, the primary basis for Islamic law. Sharia imposed on humans was not solely for the benefit of Allah himself, but Sharia was given for the use of human life. Therefore, human obedience and submission to Allah's Sharia would not increase His majesty and power, and human disobedience and turning away from His Sharia would not reduce His authority and sovereignty. Allah was Rich and Most Perfect and did not need anything from humans (*Surah Adz-Dzariyat* [51]: 56-58).²⁶

Ahmad Zaki Yamani stated that the characteristics of Islamic law generally were identical to those of Islamic law. This could be seen from the following: First, Islamic law was flexible and could be developed to deal with all the problems that were constantly evolving and changing. It was different from what had been described either by the enemies of Islam or by some of its adherents who deviated or the narrow and narrow one that Islamic law was a system. Third, this religion had become weathered and stupefied due to its longevity.

Second, in the treasury of Islamic law, there were solid foundations for solutions that could be carried out precisely and carefully for the most complex problems of the present time, both of which could not be solved by the Western system or by Eastern principles, even if to soften it up.

The science that studies Sharia is called *fiqh*. The term *fiqh*, according to etymology, means wise, intelligent, know, and understand. According to the terminology of *fiqh* was understanding and knowledge about something. Abdul Wahhab Khallaf defined *fiqh* as knowledge of Islamic sharia laws concerning human actions taken from their detailed postulates or collections of Islamic sharia law regarding human actions taken based on complex arguments.

Islamic law in the context of *fiqh* was one of the fields of Islamic studies which was very popular and inherent in the life of Muslims. Islamic law was the science that discussed sharia law which related to the actions of a *mukallaf* taken from detailed arguments. But, more than that, Islamic law reflected the application of Islamic teachings in various aspects of human life, from birth to the grave to waking up to going back to sleep when people relate to *fiqh*.

With such a function, it was not surprising that *fiqh* was one of the sciences that was taught to children for the first time from kindergarten to university. From the time one was a child, one had started to be taught to pray, perform ablutions, pray and so on, continuing up to the adult level in tertiary institutions. Therefore, *fiqh* was often referred to as the science of *al-hal* (knowledge related to human behaviour) in various aspects of life. Thus, according to Abuddin Nata, *fiqh* had the following characteristics: First, *fiqh* was a response or answer to multiple problems in human life from a legal perspective; secondly, *fiqh* was the result of the implementation of human functions as social beings, so meeting the needs of the community run in an

²⁵ A. A. Fyzee, *Outlines of Muhammedan Law* (London: Oxford University Press, 1995).

²⁶ Muhaimin, Abdul Mujib, and Jusuf Mudzakkir, *Islamic Study; In Various Dimensions And Approaches* (Jakarta: Kencana Prenada Media Group, 2018).

orderly, safe, peaceful and harmonious manner; third, *fiqh* was the result of reasoning that was free from control, that was, it was free to determine the thoughts that would be produced, but it must be controlled by various rules and principles that originated from the texts of Qur'an and *al-Sunnah*; fourth, *fiqh* is a very dynamic product of thought and experiences changes from time to time; fifth, that in these changes and dynamics, apart from being influenced by tendencies, intellectual skills, integrity and personality of jurists, *fiqh* was also influenced by tradition, culture, social situation, economy, politics, religious understanding, and others where *fiqh* was developed.²⁷

The existence of Islamic law, both in the form of Sharia and *fiqh*, was the result of the human condition as a social being or as a realization of life in human society, in which to obtain various necessities of life, one must interact with other people, so these interactions could take place in an orderly, peaceful manner, and away from conflict, then there needed to be a rule of the game that regulated it properly.

Islamic law was universal, which regulated the relationship between humans and their creators, humans and the society in which they lived, then humans and their natural environment, at all times and in all places, covering all aspects of human life and all problems. Starting from *ubudiah* affairs (*fiqh* of worship); *thaharah*, prayer, taking care of the corpse, *zakat*, *waqf*, pilgrimage, *aqikah*, vows, and oaths, to food, drink, medicine, clothing, slaughter, game; matters of muamalah, marriage, maintenance, and *hadlanah*, *thalaq*, *ruju'*, and *'iddah*; economic affairs (malah); sale and purchase, *salam*, *sharf*, *qardl*, *taflis*, *hajr*, transfer of debt, partnership, representation, acknowledgement, deposit of goods, confiscation, *sjuf'ah* and *qismah*, *mudarabah*, *muzara'ah* and *musaqah*, leasing, clearing land and *ji'alah*, finds, grants and gifts; matters of *jinayah* (crime), *hudud*, and *dhaman*; points of *qadliyah*, *imarah* and *khilafah*, to the issues of state defence and war.²⁸

Regarding Islam from a formal legal perspective (law), at least it could be seen from the following :

First: Islam as Revelation

Revelation was linguistically interpreted as a quick sign, it could also be interpreted as something that was revealed, disclosed or announced. Revelation was an enlightenment, a proof of reality and an affirmation of truth. It was a clear sign, a proof or indication, meaning or significance, for the observer, which must be observed, contemplated and understood. From the perspective of *fiqh* jurists, the position of revelation was as a means, although not the only way to obtain sharia law'.²⁹

²⁷ Abuddin Nata, *Comprehensive Islamic Studies* (Jakarta: PT. Prenada Media Group, 2018) <<https://books.google.co.id/books?id=ptYvDwAAQBAJ&>>.

²⁸ Wael B. Hallaq, *An Introduction to Islamic Law* (New York: Cambridge University Press, 2009) <<https://books.google.co.id/books?hl=id&lr=&id=3YvEt3PxmAcC&oi=fnd&pg=PA1&#v=onepage&q&f=false>>.

²⁹ Umi Salamah, 'Theory of Legal Knowledge in Ushul Fiqh; Natural Law Theory Study', *Scientific Journal of Law, Qistie*, 10.2 (2017), 125 <<https://publikasiilmiah.unwahas.ac.id/index.php/QISTIE/article/view/2075>>.

Positioning Islam as a revelation or Divine doctrine was usually defined by defining Islam as *al-Islam wahyun ilahiyun unzila ila nabiyyi Muhammaddin Shallallahu' alaihi wasallama lisa'adati al-dunya wa al-akhirah* (Islam is revelation revealed to the Prophet Muhammad as a guide for happy life in this world and the hereafter). The core of Islam was the revelation revealed to the Prophet Muhammad. It was believed that the revelation consisted of two kinds; revelation in the form of the Qur'an and revelation in the form of the *hadith/sunnah* of the Prophet. In other words, the revelation was, first and foremost, not anything else, including reason. Revelation sent down by Allah to His Messenger to be conveyed to all humankind at all times and every persada. A system of beliefs and rules governing all life and basic human livelihoods in various relationships: with God, fellow human beings, and other nature.

To be more convinced of the truth of the Qur'an as a revelation from Allah, not a creation of the Prophet Muhammad, it could also be seen from the condition of the Prophet Muhammad and he was not a person who was good at reading and writing (*Surah Al-Ankabut* [29]: 48). He also did not live among people who already knew civilization, such as Egypt, Persia or Rome. Besides that, what came out of the Prophet Muhammad consisted of the Hadith and the Qur'an language. The language of the Qur'an was known to have the highest literary value when compared to the wording of *Hadith*, so compiling it required a relatively long time to think and reflect.³⁰

Based on this conception, it had become a firm belief that Islam was the most legitimate religion compared to other religions. Therefore, the flow of thinking was deductive, starting from the premise that religion was believed to be accurate and absolute because it came from God, whose truth could not be questioned.

This understanding was also related to normativism by looking at Islam in terms of its primary and original teachings from Allah, in which there was no reasoning of human thought. Islam was seen as absolute truth from Allah, there was no shortage in the slightest, and it was an ideal brought by His prophets and messengers from the Prophet Adam to the treatise Muhammad (Qur'an *Surah Yunus* [10]: 72, *Al-Baqarah* [2]: 128, *Al-Baqarah* [2]: 132, *Yusuf* [12]: 101, *Yunus* [10]: 84, and *Ali Imran* [3]: 52).

Islam appears very prime with a unique set of characteristics. For example, normatively, Islam upholds noble values. However, in the social field, Islam seems to offer human discounts (Qur'an *Surah. An-Nisa* [4]: 1, *al-A'raaf* [7]: 12), togetherness (*al-Hujarat* [49]: 13), solidarity (*Al-Hujarat* [49]: 10, *Ali Imron* [3]: 103, *Al-Baqarah* [2]: 3, *Al-Maidah* [5]: 8, *An-Nisa* [4]: 58, helping each other (*Al-Maidah* [5]: 2, *Al-Kahf* [18]: 95-96, *Al-Qashash* [28]: 33-35, *Al-Fath* [48]: 29, *Al-Hujurat* [49]: 10), tolerance (*Al-An'am* [6]: 108, *Al-Hujarat* [49]: 12-13), equality (*Al-Hujurat* [49]: 13) and so on.

In the economic field, Islam appeared to offer Justice, togetherness, honesty and mutual benefit (Qur'an *Surah Al-Hasyr*: 7, *Al-Baqarah* [2]: 188, *Al-Baqarah* [2]: 261,

³⁰ Muhaimin, Mujib, and Mudzakkir, *Islamic Study*....., h. 91.

Al-Mulk [67]: 15, and *An-Nisa* [4]: 29). In the field of science, Islam seemed to encourage its adherents to have the highest knowledge and technology, master skills, expertise and so on (Qur'an *Surah An-Nahl* [16]: 79, *Al-Mulk* [67]: 1-5). Likewise, in the fields of health, environment, culture, politics and so on, Islam appeared to be ideal and built on arguments. So, it was very natural that Islam was known as a religion with many dimensions, starting from faith, reason, economy, politics, science and technology, environment, history, peace, household life and many more. Therefore, to understand the various dimensions of Islamic teachings, it was clear that different approaches were explored from multiple scientific disciplines.

Muslims believed that Islamic law was based on divine revelation. Therefore, it was called Sharia. It meant the path outlined by God for humankind. As a revelation from Allah, Islamic teachings in the field of law eliminate difficulties (*'adam al-haraj*) by eliminating all legal burdens (*taklif*) which were impossible for a mulatto to carry out. Thus, the practice of Islamic law was not burdened except to the extent of human ability (Qur'an *Surah al-Baqarah* [2]: 289). Therefore, in Islamic teachings the burden of law given is relevant to human nature, so the conditions for implementing the law must be common sense, old enough, conscious and not forced. By so facilitating and lightening the burden (Qur'an *Surah an-Nisa'* [4]: 28), there was supervision and selection of several alternatives in implementing the law so that other offers, for example, murder fines, fines for having intercourse during the fasting month of Ramadan, and so on (Qur'an *Surah al-A'raf* [7]: 157), gave rewards for the activities carried out, so that the implementation of *taklif* provides its own motivation (Qur'an *Surah al-Fushilat* [41]: 46).

Furthermore, Islamic teachings in law greatly simplified and reduced the burden (*taqlil al-takalif*) by removing all *taklif* that the *mukalaf* felt unable to carry out and replacing new laws that were easy to implement. Therefore, in this context, Islamic law prohibited asking questions whose answers would burden the implementation of the law (Qur'an *Surah al-Maidah* [5]: 101) such as the reckoning of the slaughter of cows for the people of the Prophet Musa (Qur'an *Surah al-Baqarah* [2]: 61-71)) simplification of the quality of *taklif*, for example simplifying the number of prayers which were originally 55 times a day and night to 5 times a day where the reward did not decrease at all, in fact the prize was multiplied up to 700 times (Qur'an *Surah al-Baqarah* [2]: 261), giving *taklif* to part of the face was not equated, and the reward was associated with the ability, conditions and circumstances that influence. For example, the obligation of *haki* was only imposed on those who were able and powerful (Qur'an *Surah Ali Imran* [3]: 97).³¹ Then, the law (*al-tadrij fi al-tasyri'*) that every face-to-face in Islam must carry out was revealed gradually or in stages with the aim that the law was easy to implement and work on. Ahmad Salabi in *Tarih Tasyri' al-Islam* mentioned the method of phasing: (1) Silence, by not punishing a case because the case was allowed temporarily even though it is subsequently banned—for example, the possibility of inheritance by the Arabs. (2) Explaining a global law (*mujmal*) and then giving an explanation (*tafshil*), for example

³¹ Muhaimin, Abdul Mujib, dan Jusuf Mudzakkir, *Islamic Study.....*, h. 290.

the permissibility of *jihad* because of being persecuted (Qur'an *Surah al-Hajj* [22]: 39) then there was an order to be prepared (Qur'an *Surah al-Anfaal* [8]: 60), the law of the captive (Qur'an *Surah Al-Anfaal* [8]: 67), and the provisions of *ghanimah's* property (Qur'an *Surah Al-Anfaal* [8]: 41). (3) Prohibiting something in stages, for example, the prohibition of alcohol, hierarchically stated, the first verse was a warning that did more harm than good (Qur'an *Surah al-Baqarah* [2]: 219). The second verse was restrictive in that it was not permissible to drink *khamr* before prayer (Qur'an *Surah An-Nisa'* [4]: 43), and the third verse sentences the prohibition of *khamr* (Qur'an *Surah al-Maidah* [5]: 90).³²

Islamic law was also in line with the benefit of the people (*muthabiq li mashalih al-ummah*), because Islamic law was not only for its own sake but to regulate human life to create universal benefit, sometimes even the benefit of the people could be used as a benchmark for the creation of a law in Islam. Therefore, Imam Malik always used *maslahah mursalah* in determining laws as a logical consequence of taking benefit as the main criterion in choosing a law and becomes one of the sources of Sharia.³³ In fact, the existence of *maslahah mursalah* was closely related to the objectives of Islamic law, which, besides determining the law to realize *maslahat* (goodness) and avoid *mafsadah* (damage). Thus, it could be used as evidence that Islamic law was in line with the benefit of the people so that what was considered good by a group of people means good in the Islamic view.³⁴

Islamic law required the realization of Justice (*tahqiq al-'ada*), which was determined evenly without classifying stratification of economic level, social status, ancestry, race, etc. Justice is the most fundamental value in the teachings of Islamic law. Upholding Justice and eradicating tyranny was the main goal of the treatise of His Apostles (Qur'an *Surah Al-Hadiid* [57]: 25). Justice was often placed on an equal footing with virtue and piety (Qur'an *Surah Al-Maidah* [5]: 8). In *surah Al-Maidah* [5]: 8 we were not asked to go to Justice. Still, He immediately asked us to do Justice because Justice was the character of those close to Allah. Justice in Islamic law was not based solely on principles developed by humans. The value of the call originated and was sourced from principles that were far more powerful and essential, so they came from God. Justice in Islamic law originated from Allah because it was His nature and was carried out to fellow human beings.

Second: Islam as Thought

Islam, as a product of thought, made various barriers of life. There was no single component of Islamic teachings that was not born from the results of human review. From the Prophet Muhammad, the companions, *tabi'in*, *tabi'in-tabi'in*, pious scholars to the community. One product of thought born of Islamic law was *ijtihad*. *Ijtihad* literally means trying, while technically, it meant that trying to find law from its source. *Ijtihad* was the opposite of *taklid*, which was to follow the opinions of

³² Muhaimin, Abdul Mujib, dan Jusuf Mudzakkir, *Islamic Study*....., h. 291.

³³ Muhammad Muslehuddin,, *Philosophy of Islamic*....., h. 156.

³⁴ Muhaimin, Abdul Mujib, dan Jusuf Mudzakkir, *Islamic Study*....., h. 291.

others without carefully examining the heads of the decision.³⁵ *Taklid* was strictly prohibited in Islam.

Ijtihad arisen because the laws of the Qur'an were limited and *Sunnah* were limited; the cases that arose were unlimited, where the eternal could never be covered by the little. In addition, the law contained some broad principles covering the vicissitudes of life and a wide range of actions and transactions. For example, "Allah justifies buying and selling and forbids *riba* (Qur'an *Surah al-Baqarah* [2]: 275) was a verse that contained the word "trade" in the general sense and may well be interpreted in terms of its meaning as well as the *hadiths* or *Sunnah* of the Prophet to include or explain various trade transactions.³⁶

At first, Islam looked good, especially at the beginning of its growth, along with the presence of the Prophet Muhammad. At this time, the originality of Islamic teachings was guaranteed, and Islam was really able to play a role in exploring the "frauds" of a civilization. However, gradually, the practice of religious life from time to time always experiences distortions of understanding, experience and teachings. Moreover, after the death of Rasulullah, there was no place to ask questions in solving various problems, while the problems that arose were increasingly diverse and complex. This of course, required the establishment of a new law.

For this reason, *ijtihad* was present as a solution to various problems that arised. The Companions carried out *ijtihad* based on the Qur'an and *Hadith*. The Companions first studied the text of the Qur'an and then the *Sunnah* of the Prophet. If the law was not found from these two sources, they did *ijtihad* either individually or in deliberation. However, *ijtihad* did not make law in the modern sense, because the law was already contained in the texts (al-Qur'an and *Sunnah*), and *ijtihad* that was carried out cannot be a personal opinion but must go through analogical inference, reasoning by analogy.

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In the current context, one's ability to analyze fiqh using the *ushul fiqh* methodology leads to knowledge about forming Islamic law. This matter was not only for the benefit of academic studies. Still, it was essential because with it, one could know which Islamic law was a pure revelation and which was the result of *ijtihad* (thought). Islamic law contained in classical fiqh books, it could be ascertained that not all of it was the result of *mujtahid ijtihad* in the past, some of it was Islamic

³⁵ Muhammad Muslehuddin,, *Philosophy of Islamic*, h. 125.

³⁶ Muhammad Muslehuddin,, *Philosophy of Islamic*, h. 126-127.

law which was expressly explained in the Qur'an and *Sunnah* Rasulullah.

The differences between these two categories of Islamic law should not be overlooked significantly when reforming Islamic law. Because methodologically, Islamic law, which had firmness in the Qur'an and *Sunnah* was not the field of *ijtihad*, so it was constant. The Islamic law which was to be reformed was the Islamic law which was the result of the *ijtihad* of the mujtahids of the past. This was done based on the paradigm that every result of *ijtihad* could be used as a field of *ijtihad* so that it was possible to produce different results.

From *ijtihad*, various schools of thought were born, such as the Hanafi, Maliki, Hambali, Shafi'i, Dzhahiri, to the Ja'fari, which were well-known among the Islamic community. These schools of thought then crystallized in various thoughts and behaviours of the entire Muslim community in multiple areas of life, including worship and muamalah. However, from *ijtihad*, different styles of schools of law were born in Muslim society. This proved that Islamic law applied according to circumstances, conditions, time and place.³⁷ At the same time, it was proof that although Islamic law was divine (sourced from God's revelation, which was permanent and absolute), it did not mean that it was impossible to examine the subject of law so that it gave rise to various thoughts in Islamic law that were useful in Islamic society.

Third: Islam as Experience

Prophet Muhammad is the best role model that Allah has ever created for humans. Obeying Rasulullah was a necessity. The life of Rasulullah was a mirror of an ideal life and remains relevant for the present and the future (*salih li kull Zaman wa Makan*). Therefore, all forms of experience and behaviour of the Prophet related to law, whether in the form of sayings (*sunnah qauliyah*), deeds (*sunnah fi'liyah*), or confessions (*sunnah taqririyah*), were something that all Muslims must follow. The Qur'an, in many of its letters commands Muslims to obey (Qur'an *Surah An-Nisa'* [4]: 59), because in him there was a good example (Qur'an *Surah al-Ahzab* [33]: 21), great morals (Qur'an *Surah al-Qalam* [68]: 4), and Allah judged that those who obeyed the Messenger were the same as obeying Allah (Qur'an *Surah An-Nisa'* [4]: 80). In fact, Allah considered that someone's faith was not ideal if he did not give in to the decision of the Messenger of Allah (Qur'an *Surah An-Nisa'* [4]: 65).

Thus, even though the principal authority for Islamic law was the Qur'an, the Qur'an says that the Prophet Muhammad was the interpreter of the verses of the Qur'an (Qur'an *Surah An-Nahl* [16]: 44). This verse explicitly showed that the obligation to follow the Prophet, which was none other than following his *sunnahs*. Based on these verses, the companions during the life of the Prophet and after his death agreed on the necessity of making the Sunnah of the Prophet a source of law. In the hands of the Prophet the power of law formation resided and put forward general principles in the formation of law, both those originating from the Qur'an and from

³⁷ Didi Kusnadi, 'Classical and Modern Islamic Legal Thought; Characteristics, Methods, Development, And Applicability', *Asy-Syari'ah*, 16.1 (2014), 1–10 <<https://doi.org/10.15575/as.v16i1.622>>.

His own *Sunnah* as practised by *al-Khulafa ar-Rasyidin*.

From the experience of Rasulullah to his companions, it later became the standard reference for formalizing laws that would regulate various interests of the Islamic community, both in the civil, *muamalah* and criminal fields, both written and unwritten.

2. Formal Legal Approach in the Indonesian Context

Islamic law was an integral part of Islamic teachings that could not be separated or separated from the lives of Muslims based on their Islamic beliefs. Therefore, as a source of applicable law in the Indonesian national legal system, Islamic law's position was crucial and essential in efforts to legislate Islamic law in Indonesia.³⁸ So, in the perspective of a formal (normative) approach, Islamic law must be applied to those who had recited two shahadah sentences or had converted to Islam and practised it or were forced to accept Islamic law in their daily lives.

Materials of the Islamic law that had been formally enacted through the legislative process in the form of laws, government regulations, and presidential instructions in the Indonesian context were as follows: a). Law No. 1 of 1974, concerning Marriage; b). Law No. 7 of 1989 concerning the Religious Courts and renewed by Law no. 3 of 2006; c). Presidential Instruction No. 1 of 1991, Concerning Compilation of Islamic Law (*KHI*); d). Indonesian Government Rule No.72/1992 concerning Bank Operations Based on Profit Sharing Principles; e). Law No. 10 of 1998 concerning Islamic Banking; f). Law No. 17 of 1999 concerning the Implementation of the Hajj; g). Law No. 38 of 1999 concerning Management of Zakat, Infaq and Sadaqah (Z.I.S.) and renewed by Law no. 23 of 2011; h. Law No. 44 of 1999 concerning implementing the Special Autonomy for Nangroe Aceh Darussalam; i). Law No. 41 of 2004 concerning *Waqf*; j). Law Number 21 of 2008 concerning Sharia Banking; k). Law No. 23 of 2011 concerning Management of Zakat; l). Law No. 33 of 2014 concerning Guarantee of Halal Products.

From the various legal materials above, it could be understood that the existence of Islamic law in a formal legal (normative) approach seemed to be getting stronger even though it was closely related to the political will of the government in placing Islamic law as positive law that applied to Indonesian Muslims.³⁹ More than that, various rules and regulations were not easy, but all of this had been done through a political process over a long history.⁴⁰ For this reason, in general, two Islamic laws apply to Muslims, the first was Islamic law that applied juridically, and

³⁸ Saidah, 'Classical and Modern Islamic Legal Thought; Characteristics, Methods, Development, And Applicability', *Journal of Dictum Law*, 11.2 (2013), 150 <<https://doi.org/10.28988/diktum.v11i2.164> >.

³⁹ Bani Syarif Maula, 'Legal Politics and Islamic Law Positivism in Indonesia; Study of Islamic Law Products in the Direction of State Legal Policy', *Istinbath; Journal of Islamic Law*, 13.2 (2014), 197 <<https://www.neliti.com/id/publications/162988/politik-hukum-dan-positivisasi-hukum-islam-di-indonesia-studi-tentang-produk-huk>>.

⁴⁰ Sumarni, 'The Position of Islamic Law in the Republic of Indonesia', *Adalah*, 10.4 (2014), 457 <<https://doi.org/10.24042/adalah.v10i2.298>>.

the second is Islamic law that applies normatively. So, Islamic law that applied formally juridically needed state administrators' help to run it perfectly through the judiciary. At the same time, normative Islamic law did not require the assistance of state administrators to carry it out, such as prayer, fasting and *zakat*.⁴¹

D. CONCLUSION

From the explanation above, it could be understood that the Islamic study approach was an interesting discourse in the Islamic sciences discourse. The formal legal approach was one of the models of process in Islamic studies that examined various problems that arose in Islamic teachings and solved them from a traditional legal (law) perspective. In the Indonesian context, Islamic law was a teaching that could not be separated from the life of Indonesian Muslims and was a source of national law. Therefore, Islamic law material that had been successfully implemented formally through the legislative process in the form of laws, government regulations, and presidential instructions had been widely used, although it was very much related to the political will of the government.

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⁴¹ Achmad Irwan Hamzani, *Kontribusi Hukum Islam Dalam Sistem Hukum Indonesia* (Bogor : RWTC Succes, 2017) <http://pdih.undip.ac.id/library/index.php?p=show_detail&id=2725>.

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