

Methodological And Applicative Ijtihad Yusuf Al-Qardhawi In Solving Contemporary Issues

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Abstract: Over time, with the issue of closing the door of ijtihad, it does not become a barrier for contemporary Islamic figures to come up with new ideas as alternative solutions to problems, as well as Yusuf al-Qardhawi. The purpose and objective of this research is to see the method and application of al-Qardhawi's ijtihad in solving contemporary issues. This research is included in the qualitative research method. The source of data used in this study is a secondary data source, because it will examine the literature or literature. Processing and data analysis in this study, namely editing, classifying, verifying, analyzing, and concluding. The results obtained in this study are that there are three kinds of methodologies and alternatives in ijtihad offered by al-Qardhawi, namely ijtihad Intiqā'i (selective ijtihad), ijtihad insyā'i (creative ijtihad), and integration ijtihad between Intiqā'i and insyā'i.

Keywords: Methodology, Application, Ijtihad, Yusuf Al-Qardhawi, Contemporary

Abstrak: Seiring berjalannya waktu, dengan selalu bergulirnya isu tertutupnya pintu ijtihad, tidak menjadi penghalang bagi tokoh-tokoh Islam kontemporer untuk memunculkan pemikiran-pemikiran baru sebagai alternatif pemecahan masalah, termasuk Yusuf Al-Qardhawi. Maksud dan tujuan penelitian ini adalah untuk melihat metode dan aplikasi ijtihad Yusuf Al-Qardhawi dalam memecahkan isu-isu kontemporer. Penelitian ini termasuk ke dalam metode penelitian kualitatif. Sumber data yang digunakan dalam penelitian ini adalah sumber data sekunder, karena akan mengkaji literatur atau kepustakaan. Pengolahan dan analisis data dalam penelitian ini, yaitu edit, klasifikasi, verifikasi, analisis, dan konklusi. Adapun hasil yang didapati dalam penelitian ini adalah ada tiga macam metodologi dan alternatif dalam

berijtihad yang ditawarkan oleh al-Qardhawi, yaitu ijtihad intiqā'i (ijtihad selektif), ijtihad insyā'i (ijtihad kreatif), dan ijtihad integrasi antara ijtihad intiqā'i dan insyā'i

Kata Kunci: *Metodologi, Aplikasi, Ijtihad, Yusuf Al-Qardhawi, Kontemporer*

Introduction

In the course of its history, Islamic law has become a dynamic and creative force. This can be seen from the message of the Messenger of Allah to his companions in dealing with the social realities of the people that occurred when the Prophet was still alive. However, when the ummah is faced with a methodological problem, then they do not need to do ijtihad, because at that time if they find it difficult to conclude the law and take a stand, then they can simply ask the Prophet directly.¹

But the situation turned around when the Rasulullah died. The companions were not only faced with new problems, but crucial especially the polemic about who should replace the Prophet to lead the ummah and other cases that have not received the legality of syara.² So the only option, which the Companions could not avoid, was to do ijtihad based on the Qur'an, hadith, and deeds related to the Rasulullah that they had witnessed.³

From there, the concept of ijtihad becomes fundamental and important in the formation of sharia. The concept of ijtihad is greatly helped when a problem occurs for which a solution has not been found from previous legal sources. Once the shari'ah is complete as a system of legislation and the development of various Islamic principles and rules, the space for ijtihad seems to fade and disappear towards the point of extinction. This phenomenon is known among Muslims as the closed door of ijtihad.⁴

¹ Josep Schatct, *Pengantar Hukum Islam* (Yogyakarta: Islamika, 2003), p. 27.

² Amir Muallim dan YUSDANI, *Ijtihad dan Legislasi Muslim Kontemporer* (Yogyakarta: UII Press, 2005), p. 3–4.

³ Amir Muallim and YUSDANI, *Ijtihad dan Legislasi Muslim Kontemporer*.

⁴ Abdullah Ahmad an-Na'im, *Dekontruksi Syariah* (Yogyakarta: Lkis, 2004), p. 46.

Fazlur Rahman is of the opinion that it is not known exactly when the door of ijtihad was closed and who closed it, although there are those who view that the door of ijtihad was closed by traders at a later date. This is based on state of affair at that time. Therefore, it can be concluded that formally there is no such thing as closing ijtihad by anyone or any high authority in Islam, but that state of affair slowly but surely prevailed in the thought of the Islamic world, its cessation as a general rule.⁵

Over time, with the issue of closing the door of ijtihad, it does not become a barrier for contemporary Islamic figures to come up with new ideas as alternative solutions to problems. This is greatly influenced by the social changes faced by Muslims which are always developing and dynamic, giving rise to a number of serious problems related to Islamic law. In the end, an effort to reform Islam was born as did Yusuf al-Qardhawi.

Al-Qardhawi in his books always emphasizes the urgency of ijtihad as an effort to face the challenges of Islamic law in contemporary era. Even through his ijtihad theory, he tries to solve legal problems that develop in contemporary times.⁶ He is not blind to taqlid to follow previous thinkers or stop in someone's opinion, but he tries to judge or select the opinions of fiqh experts and then he corrects them so that from his ijtihad it has relevance in accordance with current life and prioritizes the benefit of humans.⁷

Based on this adage, al-Qardhawi as one of the qualified scholars in the field of Islamic law offers a method of ijtihad to deal with contemporary problems that continue to attack Muslims all the time. Questions arise in the mind of the author, how the form of the method of ijtihad al-Qardhawi for contemporary problems. This has become

⁵ Fazlur Rahman, *Membuka Pintu Ijtihad* (Bandung: Pustaka Setia, 1995), p. 149.

⁶ Siti Aminah, "Pengaruh Pemikiran Fiqh Yusuf al-Qardhawi Di Indonesia," *Jurnal Ummul Qura* V, No. 1 (Maret 2015): p. 61.

⁷ Ahmad Gunawan, "Posisi Metode Ijtihad Yusuf al-Qardhawi Tentang Fisabilillah Sebagai Asnaf Mustahiq Zakat Dalam Perbandingan Empat Mazhab," *Tahkim, Jurnal Peradaban dan Hukum Islam* 2, No. 1 (Maret 2019): p. 71.

an interest in contemporary studies, the author took the initiative to conduct research on the results of al-Qardhawi's thinking which became an alternative in solving problems in his time.

Research Methods

The method used in this research is a qualitative method, which is a study to solve a problem which basically relies on a critical and in-depth study of relevant library materials. In other words, qualitative research methods are research that uncovers certain social situations by properly describing reality, formed by words based on relevant data obtained from natural situations.⁸

The source of data used in this study is a secondary data source, because it will examine the literature. Processing and analyzing data in this study, there are five stages, as follows: 1) editing, to find out how far the data that has been obtained, both from observations, interviews or documentation, is good enough and can be immediately prepared for purposes next process. 2) Classifying, the next process is grouping, where the data from the documentation is classified based on certain categories, namely based on, *first*, the life history of Yusuf al-Qardhawi in his works, *second*, the ijihad method used. 3). Verifying, as a further step the researcher re-examines the data obtained, for example with the adequacy of references, triangulation, namely checking through other sources, and colleagues. 4) Analyzing, while the analytical method that the researcher uses is comparative descriptive, namely collecting, sorting, classifying, synthesizing, and making an overview. 5) Concluding, the last step is the conclusion or drawing conclusions, namely by analyzing the data comprehensively and connecting the meaning of the existing data in relation to the research problem.⁹

⁸ Djam'an Satori dan Aan Komariah, *Metodologi Penelitian Kualitatif* (Bandung: Alfabeta, 2009), p. 25.

⁹ Nana Sudjana dan Ahwal Kusuma, *Proposal Penelitian di Perguruan Tinggi* (Bandung: Sinar Baru Aldasindo, 2000), p. 84-85.

Results

1. Biography of Yusuf Al-Qardhawi

Yusuf al-Qardhawi was born in the village of Safh Turab, Republic Arab of Egypt, on September 9, 1926.¹⁰ When he was only two years old, his father Abdullah left him. Then he was raised by his uncle with great affection, and he was treated by his uncle as his own son. Likewise he considers his uncle as his own father. He also got along with his uncle's sons and daughters as well as siblings.¹¹

At the age of five, al-Qardhawi began to learn to write and memorize the Qur'an, then at the age of seven he entered elementary school. He is very diligent in studying various sciences, both taught at school and given by his teacher. His perseverance in the learn is supported by his strong memorization, so at the age of about 10 years he has memorized the Qur'an 30 juz fluently and his recitation is perfect. Because of his prowess in reading the Qur'an at a young age, he was called Sheikh Qardhawi by the people of his village. Even with his proficiency in reading the Qur'an, he is often appointed as a prayer priest, especially prayers that are read aloud. Few people do not cry while praying behind al-Qardhawi.¹²

After completing elementary school, al-Qardhawi continued his education to *Ma'had Tanta* which he completed for four years, then continued to secondary level for five years until he obtained the Aliyah diploma in 1952/1953. In 1957, he continued again to *Ma'had al-Buhus wa al-Dirasat al-Arabiyyah al-Aliyah* so that he received a high diploma in Arabic language and literature. On the same occasion he also attended lectures at the Faculty of Ushuluddin, al-Azhar University, Cairo, taking the fields of study of faith, philosophy, interpretation, and hadith. This course was completed in 1960 through a difficult exam,

¹⁰ Ishom Talimah, *Manhaj Fikih Yusuf Al-Qaradawi* (Jakarta: Pustaka al-Kautsar, 2001), p. 3.

¹¹ Abdurrahman Ali Bauzir, *Fatwa Qardhawi: Permasalahan, Pemecahan dan Hikmah* (Surabaya: Risalah Gusti, 1994), p. 399.

¹² Abdurrahman Ali Bauzir, *Fatwa Qardhawi: Permasalahan, Pemecahan dan Hikmah*.

and in his class he was the only one who passed at that time. After completing his studies at this level, he followed a doctoral program at the same university by submitting a dissertation entitled “*al-Zakah wa Atharuha fi Hill al-Mashakil al-Ijtima’iyyah*” (zakat and its influence in overcoming social problems). His doctoral program was completed in 1973, and his dissertation was tested in front of the professors of al-Azhar by obtaining cumlaude predicate.¹³

Although a graduate of the ushuluddin faculty, al-Qardhawi is also diligent in studying the field of shari’ah. From his educational background and his perseverance in studying various sciences, al-Qardhawi not only has the knowledge he obtained from the ushuluddin faculty (namely akidah, philosophy, tafsir and hadith), but also masters the fields of fiqh, tarikh tasyri’, ushul fiqh, qawaidul al-fiqh, cultural and historical philosophy and Islamic culture.¹⁴ According to Abdurrahman Ali Bauzir, al-Qardhawi is known as an Islamic scholar and scholar who has far-sighted thinking. A number of his essays that have been published in print media illustrate how broad his thoughts are in the field of religion. It is very appropriate if he gets the title of a mufti of Islam to this day.

2. The Da’wah Movement and the Works of Yusuf Al-Qardhawi

Activities in the Islamic movement, da’wah, and the world of education are very dense, especially since al-Qardhawi moved to Qatar (1961) Egypt’s attitude at that time was not friendly to him. Even though al-Qardhawi lives in Qatar, he always visits Egypt, the country of his birth, especially during seminars, guest lectures, and da’wah. In 1961 he served as director of the high school religious ma’had. Then founded the Faculty of Tarbiyah at the University of Qatar, then in charge of the establishment of the program *Dirasah Islamiyah* and became its Dean (1973). In 1977-1989/1990 he served as Dean of Two Faculties, a) Syari’ah Islamiyah and b) *Dirasah Islamiyah*. A year later (1990/1991),

¹³ Abdurrahman Ali Bauzir. *Fatwa Qardhawi: Permasalahan, Pemecahan dan Hikmah*.

¹⁴ Abdurrahman Ali Bauzir. *Fatwa Qardhawi: Permasalahan, Pemecahan dan Hikmah*.

he was trusted as Director of *the Scientific Council* of the study center which had previously been led by al-Ghazali and the *Ma'had College of Islam at the University of al-Amir Abdul Qadir al-Jaziri al-Jazair*.

Al-Qardhawi's seriousness in da'wah Islamiyah is really proven, because until 2000/2001, he has produced scientific works, in addition to seminar papers, as many as 91 books in various Islamic dimensions and quality essays, such as problems; fiqh and ushul fiqh, Islamic economics, ulum al-Quran and al-Sunnah, aqidah and philosophy, fiqh behavior, da'wah and tarbiyah, Islamic movement and revival, unification of Islamic thought, general Islamic knowledge, series of Islamic figures, literature and others .. This is a remarkable achievement achieved by contemporary Muslim scholars.

Some of his works have been translated into various languages. Among al-Qardhawi's works are: a) *Al-Halal wa al-Haram fi al-Islam*, b) *Fiqh al-Zakat*, c) *Al-Ijtihad fi al-Shari'at al-Islamiah ma'a Nazharat Tahliliyah fi al-Ijtihadi al-Mu'ashir*, d) *Al-Sunnah Mashdaran li al-Ma'rifah wa al-Hadharah*, e) *Musykilat al-Faqr wa Kaifa 'Alajaha al-Islam Solve it*, f) *Hady al-Islam Fatawa Mu'ashirah*, g) *Madkhal li Dirasat al-Syari'at al-Islamiyah*, h) *Dirasah fiqh maqashid al-Syari'ah baina al-Maqashid al-Kulliyah wa al-Nushush al-Juz'iyah Schools*, i) *Fawa'id al-Bunuk Hiya al-Riba al-Haram*, j) *Dawr al-Qiyam wa al-Akhlaq fi al-Iqtisad al-Islami*, k) *Dur al-Zakat fi alaj al-Musykilat al-Iqtisadiyyah*, l) *Kayfa Nata'amal ma'a al-Sunnah al-Nabawiyyah*, m) *Al-Tarbiyah al-Islamiyah wa Madrasah Hasan al-Bana*.¹⁵

In addition to the above works, al-Qardhawi also wrote many books about Islamic figures such as al-Ghazali, The Faithful Women and Abu Hasan al-Nadwi. Al-Qardhawi also wrote books on Morals based on the Qur'an and al-Sunnah, Islamic Awakening, Literature and Sya'ir and many others.

Yusuf al-Qardhawi's contribution in the world of da'wah is very thick with the color of Hasan al-Banna. Al-Banna's struggle in raising the harakah has reached the stage of forming an organized harakah.

¹⁵ Muhammad Djakfar, *Agama, Etika, Dan Ekonomi Wacana Menuju Pengembangan Ekonomi Rabbaniyah* (Malang: UIN Press, 2007), p. 88–89.

After a long time of development, the emergence of al-Qardhawi in this movement is as a person who tries to fence off the harakah. Therefore, al-Qardhawi's main works in the field of harakah and Islamic da'wah are always directed at efforts to strengthen the movement. Among his works directed towards this goal are: a) *al-Shahwah al-Islamiyyah baina al-Juhud wa al-Tatharruf*, b) *al-Shahwah al-Islamiyyah baina al-Ikhtilaf al-Masyru' wa al-Tafarruqal-Madzmum*, c) *al-Shahwah al-Islamiyyah wa Humum al-Wathan*, d) *Aulawiyat al-Harakah al-Islamiyah fi al-Marhalah al-Qadimah*.

In these four works, al-Qardhawi strives to establish ethical boundaries that must be adhered to in carrying out harakah responsibilities and treating diseases that usually afflict harakah activists.

3. Factors Affecting Yusuf Al-Qardhawi's Thoughts

Many factors underlie and color Yusuf al-Qardhawi's thoughts, including:

a. Social Factors

Every intellectual activity that arises from an activity cannot be separated from the social problems that surround it. In other words, a thought construction that appears has a relationship with social reality as a response and dialectic of thought with various phenomena that develop in society.¹⁶ Likewise, what happened to al-Qardhawi, in the hometown where he was born and raised there are several phenomena that encourage his personality, namely the existence of schools of jurisprudence and traditions of tradition that have been adopted by the community for generations. Their tradition of extreme adherence to certain schools of thought has caused them to live a static and rigid life which often turns into a fanatical attitude that cannot be justified by Islam, so that in worshipping, they no longer follow the Koran and sunnah or argumentative and accountable words. This is because their

¹⁶ Abdurrahman Ali Bauzir, *Fatwa Qardhawi: Permasalahan, Pemecahan dan Hikmah*, p. 340.

obedience is solely an obedience to the individual and not to the strength of the evidence used.¹⁷

This condition raised al-Qardhawi. However, he is still very lucky, because even though he lives in the midst of a society-centric madzhab, he is not affected and has a different current from the people around him. Of course, al-Qardhawi's attitude cannot be separated from the role and assistance of his teachers. Since sitting at the Tsanawiyah level, al-Qardhawi has learned a lot so that he can live side by side with those who have different views. It is at this level that he begins to learn to follow the hujjah and not follow the figure, because he knows (according to the words of Imam Malik), that everyone has the same opportunity to get to the truth, even though on his journey, he accidentally makes mistakes. Therefore, since sitting at the Ibtidaiyah level, if he finds that his teacher does not have a clear argument from the Qur'an and Sunnah, he does not hesitate to criticize and refute his teacher's opinion. Seeing this little al-Qardhawi's critical attitude, there were teachers who were very proud but some felt hurt, until he left the class.

b. Political Factors

When the Muslims of Egypt experienced a decline, the European-Christian made very rapid progress in the fields of science and technology, thus making Europe strong in the political and military fields. Military power is used to intervene in the internal politics of Muslims which are declining and become exploitative imperialism and colonialism.¹⁸

Imperialism and colonialism not only threaten politics and the economy, but also threaten the missionary religion and culture of Islam. Christianity that accompanied colonialism tried to attract the attention of Muslims to Christ. According to Rodinson's Marxism, the decline of the Islamic world was the target of

¹⁷ Abdurrahman Ali Bauzir, *Fatwa Qardhawi: Permasalahan, Pemecahan dan Hikmah*.

¹⁸ John L. Esposito, *Islam dan Politik* (Jakarta: Bulan Bintang, 1990), p. 60.

missionaries who considered Europe's victory. Christians have accused the Muslim world of misfortune, because of Islam itself. The missionaries assumed that Christianity supported progress and vice versa Islam because it caused the cessation of culture and development.¹⁹

The attacks and criticisms carried out by Christian intellectuals and missionaries were a challenge for Egyptian reformers, including al-Qardhawi, to devote their intellectual abilities to defending Islamic doctrine and law from attacks and refuting their wrong perceptions of Islam. As a result of Egypt's modernist practices, the traditional Islamic basis of the Islamic State has changed. Laws and state institutions are no longer based on Islamic legitimacy, but have followed models imported from the west.²⁰

c. Intellectual Factors

This is one of the sunnah of Allah that no human life will reach perfection. There is no one whose ideas will always be accepted without criticism by various groups. Likewise with the efforts made by al-Qardhawi, because apart from the admirers who are always amazed by his brilliant ideas, and some even suspect all of his efforts. Basically, any criticism delivered by anyone and to anyone, will be very constructive if it is done in intelligent and civilized ways, so that future generations can learn a lot from them. However, all that will be bad for the future of the Ummah, if done emotionally and full of suspicion.

4. Definition of Ijtihad According to Yusuf Al-Qardhawi

In the Encyclopedia of Islamic Law it is stated that ijthad is a genuine effort by a mujtahid to reach a syara' decision (Islamic law) regarding cases whose settlement has not been stated in the Qur'an and the Sunnah of the Rasulullah. According to al-Qardhawi, Ijtihad is something that has legitimacy in Islam, therefore the opportunity for

¹⁹ John L. Esposito, *Islam dan Politik*.

²⁰ John L. Esposito. *Islam dan Politik*.

scholars to ijtihad is now a necessity and the law is *fardu kifayah*, in order to determine a law in a global and dynamic context.²¹

Technically, ijtihad is legal reasoning independently to provide an answer to a problem that occurs when there is no answer in the Qur'an and as-Sunnah. In other words, ijtihad is the mobilization of all abilities of a *faqih* to acquire knowledge of a law through the syara' argument.²² In addition, ijtihad can also be said as an effort in the study of Islamic law which is carried out with full sincerity by mobilizing all the capabilities possessed to produce a legal conclusion on something that is not yet clear in law.

Al-Qardhawi has the view that ijtihad has a very important role in exploring and developing Islamic law. However, ijtihad is a difficult and difficult job, especially in this day and age because of the many new problems that keep popping up caused by the rapid progress of science and technology in the contemporary era. So contemporary ijtihad is ijtihad in response to current developments. Therefore, in order for ijtihad in this day and age (contemporary ijtihad) to be implemented, there needs to be guidance and guidelines.

According to al-Qardhawi, ijtihad is not only limited to the scope of the latest problems, but ijtihad also has other interests related to the treasures of Islamic law, namely by conducting a review of the problems that exist in it based on the conditions that occurred in the past. today and the needs of Muslims to choose the strongest and most suitable opinion by realizing the objectives of the Shari'a as the goal of benefit and harmony of mankind.²³ Regarding this matter, al-Qardhawi has provided guidelines that can be seen from his views, including the implementation of contemporary ijtihad, the types of ijtihad that are needed now, the forms of ijtihad results in the modern age, deviations

²¹ Yusuf al-Qardhawi, *al-Ijtihad fi al-Syari'at al-Islamiyah ma'a Nazharat Tahliliyah fi al-al-Ijtihad al-Mua'shir* (Kuwait: Dar al-Qalam, 1985), p. 115.

²² A. Djazuli, *Ilmu Fiqh, Perkembangan dan Penerapan Hukum Islam* (Jakarta: Kencana, 2005), p. 71.

²³ Yusuf al-Qardhawi, "al-Ijtihad al-Mu'ashir Baina al-Indlibaath wa al-Infiraath", trans. Abu Barzani, *Ijtihad Kontemporer Kode Etik dan Berbagai Penyimpangan* (Surabaya: Risalah Gusti, 2010), p. 13–14.

and the location of the errors of contemporary ijtiḥad, characteristics and rules of straight contemporary ijtiḥad.

Thus, the ijtiḥad called for by al-Qardhawi provides convenience and prudence for qualified people to devote all thinking skills in exploring and formulating Islamic law based on *nash*. It is clear that with ijtiḥad, new events and happenings that are constantly popping up will be legalized. In other words, if ijtiḥad is activated effectively, it will be able to answer the challenges of the times in the field of law. Because Islam is a religion that has comprehensive legal institutions that are able to provide applicative therapies to various kinds of contemporary problems when these legal instruments are formulated by professional people.

5. Source of Ijtiḥad Yusuf Al-Qardhawi

Basically, the source of ijtiḥad is something to which ijtiḥad is carried out and on the basis of which legal products are formulated. Therefore, in essence, the source of ijtiḥad does not differ in meaning from the source of law or legal proposition which is defined as a guide that can be followed to formulate the law.

Yusuf al-Qardhawi uses several sources of ijtiḥad in formulating his fatwa opinion, both in the sense of something from which legal conclusions are drawn and in the sense of *al-adillah as-syar'iyah* (legal arguments). In the book *Min Hady al-Islam Fatawa Mu'asirah*, when studying the prohibition of smoking, al-Qardhawi mentions four sources or legal arguments in sequence, namely: a) Al-Qur'an, b) Sunnah, c) Ijmak, d) *Al-Qawa'id as-Syar'iyah al-Kulliyah* (universal Sharia principles). According to al-Qaradawi, the Qur'an and the Sunna are two sources of law that are both *ma'shum* (guarded from error), therefore it is impossible for them to contradict each other considering that they both come from one source. Therefore, what often happens according to al-Qardhawi is a misunderstanding or error in interpreting one of the two.²⁴

²⁴ Yusuf al-Qardhawi, *Hady al-Islam Fatawa al-Mu'asirah*, 1 (Kuwait: Dar al-Qalam, 2000), p. 645–646.

In addition to the four sources or legal arguments above, al-Qardhawi does not use other sources in ijtihad. Al-Qardhawi only mentions the legal arguments used in addition to the Qur'an, Sunnah and ijmak, only logic. As for Qiyas, regardless of the debate between his position as a source of law or a method of taking law, al-Qardhawi did not use it as a source of law. In the fatwas put forward by al-Qaradawi, there is no use of Qias as a source of law. So it can be concluded that al-Qardhawi is slightly different in terms of the hierarchy of legal sources used by mujtahids in general, namely: the Qur'an, Sunnah, Ijmak and Qiyas.²⁵

The sources or legal arguments used by al-Qardhawi in a hierarchical manner can be explained as follows:²⁶

a. Al-Qur'an

The Qur'an is the main source or legal proposition used by al-Qardhawi in formulating his fatwa. In almost all of his fatwas, al-Qardhawi uses verses from the Qur'an as a source of ijtihad or legal arguments. According to al-Qaradawi, the Qur'an is a source of law that is sacred, therefore it is impossible to use different words in its verses unless it shows a different meaning or purpose. He believes in the principle that the Qur'an must be free from repetition in its interpretation.

In interpreting the verse of the Qur'an, al-Qardhawi chose to use the substantive meaning of a verse or word in the verse of the Qur'an. Therefore, the interpretation of the Qur'anic verse by al-Qardhawi becomes wider than the meaning that can be directly understood from a single word in the Qur'an. For example, when interpreting the word *fi sabilillah* in formulating mustahik zakat, al-Qardhawi understands it with the meaning of its substance, namely defending Islam. Therefore, in his fatwa, al-Qardhawi mentions that the mustahik of zakat include preachers, mujtahids, Islamic study institutions and students. Because basically they struggle to defend Islam at the ideological level. Related to this

²⁵ Yusuf al-Qardhawi, p. 194.

²⁶ Yusuf al-Qardhawi, p. 284.

interpretation, al-Qardhawi admits to broaden the meaning of its scope.²⁷

b. Sunnah

Al-Qardhawi assumes that all general laws that need to be known by the people, must be explained by the Prophet, and everything that has happened in his time has been determined by the law by the Prophet. Because at that time it was the Prophet who had full authority to explain and establish laws for the Muslim community. In the case when the Apostle is silent about a matter, it can be considered that the Apostle's decision is to allow it. For example, there is no hadith about it, but history proves that this happened at the time of the Prophet, so it can be said that the law is permissible.

As an infallible source, al-Qardhawi almost always cites the sunnah as a source of law in every fatwa, although he does not always mention the hadiths related to it. When explaining the law of qunut, he stated that there is a hadith that the apostle performed qunut to pray for the destruction of the polytheists, but he did not quote the hadith.

Al-Qardhawi thought that the argument could not be relied on anyone except the Prophet Muhammad. Therefore, he does not accept arguments based on the words of his companions or later scholars. This is closely related to the two principles he holds in his fatwa, namely *ijtihad* and *non-taqlid*. The expression he uses about not being allowed to prostrate using anything other than the words of the Messenger of Allah is quoted from Malik's saying that it is permissible for anyone to take or reject his words except the words of the Rasulullah.²⁸

Al-Qardhawi also divides hadith based on its content, whether it contains law or not. This relates to the division of Muhammad's actions into his position as an ordinary human being with as an Apostle. In connection with this, he does not use

²⁷ Yusuf al-Qardhawi, *Hady al-Islam Fatawa al-Mu'asirah*.

²⁸ Yusuf al-Qardhawi.

traditions that do not clearly indicate the legal content, if there is a hadith that has a clearer meaning. In relation to the textuality and contextuality of hadith, sometimes al-Qardhawi uses the contextuality of hadith as a consideration for interpreting a hadith, and in other traditions he only sticks to the text of the hadith and does not describe the context.²⁹

c. Ijmak

One of the sources/legal arguments used by al-Qardhawi in addition to the Qur'an and sunnah is ijmak as mentioned earlier. According to al-Qardhawi, ijmak is the general agreement of Muslims on legal matters, and the agreement of the jurists in particular. Ijmak in a broad sense is of higher value than ijmak in a specific sense. Ijmak in a special sense is the agreement of the mujtahids on a legal case. In his fatwa on the law of covering hair for women, al-Qardhawi mentions the consensus of several groups of scholars, namely fiqh experts, hadith experts, tasawwuf experts, remembrance experts, zahir experts, ra'yu experts and atsar experts. Their agreement is considered as consensus.³⁰ Moreover, al-Qardhawi assumes that ijmak in a general sense is higher in hierarchy than hadith.³¹

Ijmak can occur when Muslims as a whole do a legal case. In ijmak also includes agreement on the validity of a hadith. Agreement in ijmak can also occur through a statement of opinion in the study, whether he intentionally says ijmak or the legal conclusion is the same as the conclusions of other jurists.

d. *al-Qawa'id as-Syar'iyah al-Kulliyah*

Al-Qardhawi stated that the universal principles of Islamic law have an important role in establishing law. These principles are very instrumental in determining the law on new problems that arise along with the development of human civilization.³² On

²⁹ Yusuf al-Qardhawi.

³⁰ Yusuf al-Qardhawi.

³¹ Yusuf al-Qardhawi.

32 Yusuf al-Qardhawi.

this basis, the universal principles of Islamic law are a source of law for Al-Qaradawi.

There are several universal principles of Islamic law used by al-Qaradhawi. Most of these principles are widely known rules of jurisprudence, but there are also principles that he formulated differently from the rules of jurisprudence that are known in general, namely:

- a. The law of the origin of something useful is permissible

As in the case of establishing the law of cigarettes. In berijtihad on the law of smoking, al-Qardhawi concluded that the law of smoking is haraam. Contrary to the opinion of some scholars who say that the law of smoking is permissible, because the rules of jurisprudence used is the law of origin of everything is halal unless there is evidence to the contrary. Al-Qardhawi did not accept this principle and formulated a new principle, namely: the law of the origin of something useful is permissible.

- b. *Maqasid as-Syar'iyah*

Yusuf al-Qardhawi is one of the figures who embraces, believes and considers the *maqasid as-syari'ah* in the formulation of Islamic law. For him, the existence of the *maqasid as-syari'ah* is very convincing considering that Allah will not establish a law that is useless in the sense that it does not have a specific purpose. Al-Qardhawi defines the *maqasid as-syari'ah* as the goal that is the target of the text and the particular laws to be realized in human life. Whether in the form of orders, prohibitions, permissions, whether for individuals, families, groups or people.

The term *maqasid as-syari'ah* can also be equated in meaning with the wisdom that is the purpose of the establishment of a law. All laws set by Allah and His Messenger always have wisdom or purpose, regardless of whether it is known or not. *maqasid as-syari'ah* cannot be equated with the *illat* of law used in *qiyas*. Therefore, the *maqasid as-syari'ah* islawful not a clear, fixed andnature, which is the definition of *illat*. Because although *illat* is in accordance with the law, it is not necessarily the object of the law.

- c. The interests of the living are given priority over the interests of the dead. The interpretation of this principle gives birth to another principle that the harm of the living is more important than the harm of the dead. Based on the principle of the interests of the living, al-Qardhawi concluded that it is permissible to dismantle a tomb or mosque located on someone else's land or it is not permissible to bury someone or build a mosque on someone else's land without the permission of the owner.
- d. Harm should be eliminated
- The elaboration of this principle gives rise to other principles, such as not harming oneself and others, choosing the lightest harm, danger cannot be eliminated by causing the emergence of other dangers, light dangers must be borne in order to avoid greater danger, specific hazards must be borne in order to avoid general hazards, and so on. This principle is very much used by al-Qardhawi especially when studying contemporary issues such as bank interest and the law of working in banks.

As for logic, whether used as a source or evidence of ijtiḥād, al-Qardhawi does not clearly mention the Qur'an, sunnah, and ijma' and *al-Qawa'id as-Syar'iyyah al-Kulliyah*. However, in various fatwas he used it as a source and legal evidence. In addition, *Urf* is also a source or legal evidence used by al-Qardhawi. However, its position is only as a source or proof of secondary law, not primary. *Urf* is used by al-Qardhawi to define the meaning of *safar* as *illat rukhsah* in fasting. Based on *urf*, al-Qardhawi interprets the meaning of *safar* with the meaning of traveling considering the Arabs use the word to indicate the meaning of traveling.

Analysis: Methodology and Applicability of Yusuf Al-Qardhawi's Ijtihad in Contemporary Issues

1. Yusuf Al-Qardhawi's Method Ijtihad

Ijtihad as mentioned by Yusuf al-Qardhawi, is something that

has gained legitimacy in Islam, therefore the opportunity for scholars to perform *ijtihadh* today is a must and the law is obligatory *kifayah*, in order to determine a law in a global and dynamic context. There are three types of methodologies and alternatives in *ijtihadh* offered by al-Qardhawi, namely *ijtihadh intiqa'i* (selective *ijtihadh*), *ijtihadh insya'i* (creative *ijtihadh*), and *ijtihadh* integration between *intiqa'i* and *insya'i*.³³

a. Pattern of *Ijtihad Intiqa'i*

Ijtihad Intiqa'i as done by Yusuf al-Qardhawi in his fatwa is to select some opinions and set the strongest opinion and follow it based on certain legal arguments. This *ijtihadh* is very much found in al-Qardhawi's contemporary fatwas from several treasures of Islamic *fiqh*, either in the formulation of fatwas or judges' decisions, by using explanatory instruments to extract some of these opinions.

This is due to the many problems asked to him that have been studied by previous *mujtahids*, such as the distance of travelers who can break their fast, *qunut* in the dawn prayer and so on. In *ijtihadh Intiqa'i*, examines al-Qardhawi the opinions of previous legal scholars on a problem by weighing the arguments used until he obtains the strongest opinion based on the strongest argumentation. In addition to the consideration of propositions, *intiqa'i* conducted by al-Qardhawi also considers the identification of problems and contemporary conditions, namely socio-political changes, the progress of modern science and technology, and the urgency of the development of the times.

In this context, when a *faqih* is confronted with several fatwas in an issue, then he must make a selection of those opinions, whether the formulation of the proposition used is derived from *nash* or an interpretation of *nash*. Then performed *tarjih* is by taking the strongest opinion in accordance with reality, within the framework

³³ Yusuf al-Qardhawi, *al-Ijtihad fi al-Syari'at al-Islamiyah ma'a Nazharat Tahliliah fi al-al-Ijtihad al-Mua'shir*, p. 115.

of *al-Maqashid al-Syar'iyyah*, while still considering the public interest and avoiding *Mafsadah*.³⁴

According to al-Qardhawi, the criteria used to perform *tarjih* are: a) have relevance to present life, b) prioritize more to realize the purposes of *yara'*, c) for human welfare, and d) reject danger. Furthermore, al-Qardhawi added that the activities of *tarjih* performed by *tarjih* experts during the revival of Islamic law were different from the activities of *tarjih* during the decline of Islamic law.

Furthermore, al-Qardhawi added that the activities of *tarjih* performed by experts *tarjih* during the revival of Islamic law were different from the activities of *tarjih* during the decline of Islamic law. In the latter period, *tarjih* is defined as an activity whose main task is to select the opinions of jurists in the internal environment of certain schools, such as hanafiyah, malikiyah, syafi'iyah and hanabilah. Meanwhile, in the period of the rise of Islam, *tarjih* means selecting the various opinions of the *ijtihad* of the Companions, Tabi'in and scholars from various schools of thought, Sunni (*ahli al-sunnah wa al-jama'ah*), and also examining the opinions of scholars *syi'ah al-zaidiyah* and *imamiyah*.³⁵ So it is cross-madhab, because all the results of *ijtihad* from the various previous madhabs occupy a parallel position.

b. Pattern of *Ijtihad Insya'i*

Ijtihad insya'i is an attempt to formulate the law of an issue that has never been raised by the Salaf jurists, either because the issue is new or because the legal opinion is different. *Ijtihad insya'i* is also mentioned as an attempt to establish a legal conclusion from a new issue that has never been raised by previous scholars, because it has not yet emerged at that time. It is also possible that when the previous jurists disagreed to the point of two opinions, then the current mujtahid came up with a third opinion.

³⁴ Yusuf al-Qardhawi, *al-Ijtihad fi al-Syari'at al-Islamiyah ma'a Nazharat Tahliliah fi al-al-Ijtihad al-Mua'shir*.

³⁵ Yusuf al-Qardhawi.

Ijtihad *insya'i* is generally performed by al-Qardhawi for issues that are relatively new and have not been known in the past. In performing ijtihad *insya'i*, al-Qardhawi often quotes the opinions of other jurists if any, examines the legal arguments used and draws legal conclusions. Meanwhile, if there is no opinion of other scholars on the issue, then al-Qardhawi presents his arguments and arguments and concludes his legal opinion.

Regarding this ijtihad *insya'i*, al-Qardhawi argues that after quoting the various opinions of the scholars, the next step is to review the various opinions, then draw conclusions in accordance with the *text* of the Qur'an and Hadith, the rules and *maqashid al-syar'iyah* while praying that Allah inspires the truth, does not block the veil of reward, and keeps from the shackles of fanaticism and taqlid as well as lust and prejudice against others.

c. Pattern of Ijtihad Integration between Ijtihad *Intiqa'i* and *Insya'i*.

Ijtihad integration is a combination of the previous two forms ijtihad, ijtihad is between *intiqa'i* and *insya'i*. This ijtihad is done by presenting the opinions of Salafi scholars on a legal issue, determining the strongest of them and explaining or adding new things that have not been explained or included by previous scholars.³⁶

Contemporary ijtihad is the integration between selective ijtihad and imaginative ijtihad, that is, by selecting the opinions of previous scholars that are considered relevant to the present and stronger, then adding in those opinions added with new elements of ijtihad.

2. Results of Yusuf Al-Qardhawi's Ijtihad

At the practical level, contemporary ijtihad can be realized in three forms, namely: the form of modern legislation, the form of fatwa, and the form of research, study or study. The existence of such ijtihad can also be an effective means to ground Islamic values in life. For al-

³⁶ Yusuf al-Qardhawi.

Qardhawi Islamic law has always been relevant in every time and place.³⁷ As for the rules of straightforward contemporary ijtiḥad, according to al-Qardhawi, that is, ijtiḥad must be done by devoting all one's abilities, there is no ijtiḥad in matters that are *qat'i* (there is no ijtiḥad in the lawevidence is *whoseqat'i* (certain), it is not allowed consider laws *Zanni* as the law *Qat'i* or assume things are actually still disputed expressed as a result of the consensus, linking studies of jurisprudence and hadith, keep yourself from falling under the pressure of the reality of the modern world, welcome new and useful invention, do not delay the circumstances of the times and needs, move on to ijtiḥad *jama'i* (collective), and an open mind to accept new ijtiḥad.

So, al-Qaradawi's views on the implementation of contemporary ijtiḥad, all kinds of ijtiḥad is needed now, form- the form of the result of ijtiḥad in the modern century and the straightforward rules of contemporary ijtiḥad is a guide and guideline in carrying out the ijtiḥad of the contemporary era.

For example, the results of al-Qardhawi's ijtiḥad include bank interest, usury and zakat law on banknotes, the use of menstrual pills in the month of Ramadan, the law of injections when fasting, suicide bombings, religious marriage surgery, the law of Muslim prayer in church, zakat on buying and selling land, naming children according to Islam, the law of correcting statues, the law of euthanasia (facilitating the process of death both actively and passively). The problem and law of transplantation (organ transplantation), and many more results of al-Qardhawi's ijtiḥad related to contemporary issues in his book.

How to set the law for these events? Of course by doing ijtiḥad continuously, as long as the new events and happenings continue to emerge. In this regard, Alkaf gives an opinion, we certainly realize that the consequences caused by human actions are constantly changing, especially in times of progress like today. However, as long as we want to do ijtiḥad, all the questions that arise will be easily answered.³⁸ Based

³⁷ Yusuf al-Qardhawi.

³⁸ Idrus Alkaf, *Ijtihad Menjawab Tantangan Zaman* (Surabaya: Risalah Gusti, 1998), p. 89.

on the above definition, *ijtihad* emphasizes the maximum effort of the *mujtahid*, so that when he performs *ijtihad* it is impossible to think more than what he produces. This aims to close the possibility of *ijtihad* in a hurry, so that it is wrong to take the rule of law, think freely without squeezing all his ability first, especially in researching the arguments, understand in depth and draw conclusions from the arguments and compare them. with other propositions which at first glance seem to contradict each other.³⁹

The actualization of the method of *ijtihad* used by al-Qardhawi in his *fiqh* thinking, can be seen from some contemporary issues that he poured in the book “*al-Fatawa al-Mu’ashirah*”, one of them in the field of worship, namely the issue of shaking hands with non-strangers.

An issue that remains a space of debate to this day is about the law of shaking hands between men and women who are not mahrams. In this case, al-Qardhawi put forward two opinions, namely: *First, the* opinion that says it is forbidden to shake hands between men and women when accompanied by lust and having fun (*taladzdzudz*) against one or both (men or women), or feared there will be slander.⁴⁰

This opinion, reinforced by scholars who say that skin contact of men with women (on the origin of the law is permissible) can turn into haram if accompanied by lust or fear of slander. *Second, it is* permissible to shake hands between men and older women who no longer have passion for men, or vice versa. Similarly, small children who do not have orgasm against the opposite sex, because it is believed to be spared from slander. This opinion is based on the narration from Abu Bakr ra that he shook hands with some old women, and Abdullah took the old woman’s maid to take care of him, so the woman wiped him with her hands and cleaned his head of lice.⁴¹

³⁹ Yusuf al-Qardhawi, *al-Ijtihad fi al-Syari’at al-Islamiyah ma’a Nazharat Tahliliyah fi al-al-Ijtihad al-Mua’shir*, p. 98.

⁴⁰ Yusuf al-Qardhawi, *Fatawa Mu’ashirah*, 8 ed., 2 (al-Qaherah: Dar al-Qalam, 2000), p. 291–302.

⁴¹ Yusuf al-Qardhawi, *Fatawa Mu’ashirah*.

According to al-Qardhawi, this ruling aims to close the door to slander and curb the turmoil of lust. As a method of saying:⁴²

ما حرم سد الزريعة أبيح للمصلحة الراجحة

Meaning: *Something that is forbidden because it closes the door of disobedience, then it is allowed because of the strong and definite benefits.*

This benefit is a very important consideration, because through this approach will close or stop an act that is forbidden by Allah swt., Such as adultery.

Conclusion

Yusuf Al-Qaradawi as one of the qualified scholars in the field of Islamic law offers a method of ijtiḥad to deal with contemporary problems that continue to attack Muslims at all times. Al-Qardhawi has the view that ijtiḥad has a very important role in exploring and developing Islamic law. However, ijtiḥad is a difficult and heavy work, especially in today's world because of the many new issues that continue to emerge caused by the rapid advancement of science and technology in the current era. Al-Qardhawi used several sources of ijtiḥad in formulating his fatwa opinion, al-Qardhawi mentioned four sources or legal arguments in sequence, namely: a) Al-Qurʾan, b) Sunnah, c) Ijmak, d) *Al-Qawa'id as-Syar'iyyah al-Kulliyah* (Universal Sharia Rules).

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