

CONTEMPORARY IJTIHAD METHOD IN DETERMINING SHARIA BUSINESS LAW: ADDRESSING LEGAL NEEDS IN AN ERA OF ECONOMIC AND TECHNOLOGICAL CHANGE

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Info Artikel

Article History:

Received: January 23, 2025

Accepted: March 14, 2025

Published: March 20, 2025

ISSN: 2656-1654

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e-ISSN: 2656-193X

Abstract

Purpose - Contemporary *ijtihad* methods have emerged in response to the need to update and adapt Sharia law to the times. An adaptive and innovative approach is required to ensure the applied law remains relevant and meets societal needs. This research explores the method of contemporary *ijtihad* in determining Sharia business law in depth.

Method - This research is library research with a descriptive normative approach. The research data were sourced from secondary data with documentation data collection techniques that were collected continuously until it reached saturation. The data analysis is studied through several steps, starting with data reduction and ending with data presentation and conclusion drawing.

Findings - The contemporary *ijtihad* method in determining Sharia business law is essential for addressing Muslims' legal challenges in the modern era. In this context, *ijtihad* relied on classical traditions and considered social changes, culture, and scientific developments. Various methods, such as *tarjihi*, *insya'i*, and integrative *ijtihad*, have been used to formulate laws that suit the needs of society. These methods allow *mujtahids* to explore and apply Sharia principles in contemporary business contexts such as e-commerce transactions, insurance, and investment. Thus, contemporary *ijtihad* plays a crucial role in ensuring that Sharia business law remains relevant, dynamic, and in tune with the people's interests while adhering to the basic principles of Sharia.

Research Contributions/Limitations - The research findings are essential to developing flexible and contextual Islamic legal thinking and highlighting Islamic business law issues that have not been explicitly regulated in classical texts to address the dynamic challenges of Islamic business. However, the research study is limited to Muslim-majority countries so that it can be different from countries with a more pluralistic legal system.

Originality/Value - This research connects contemporary *ijtihad* with the practical needs of Sharia business law in the modern world to offer theoretical solutions and real applications that are useful for practitioners and academics and contribute to the application of Sharia business law that is relevant and responsive to changing times.

Keywords: Contemporary *Ijtihad*, Legal Determination, Sharia Shariass, Modern Era.

Abstrak

Tujuan - Metode *ijtihad* kontemporer muncul sebagai respons terhadap kebutuhan untuk memperbarui dan menyesuaikan hukum syariah dengan perkembangan zaman. Di perlukan pendekatan yang adaptif dan inovatif untuk memastikan bahwa hukum yang diterapkan tetap relevan dan dapat memenuhi kebutuhan masyarakat. Penelitian ini bertujuan untuk mengeksplorasi secara mendalam metode *ijtihad* kontemporer dalam penetapan hukum bisnis syariah

Metode - Penelitian ini adalah penelitian pustaka dengan pendekatan normatif deskriptif. Data penelitian bersumber dari data sekunder dengan teknik pengumpulan data dokumentasi yang dikumpulkan secara terus-menerus sampai mencapai titik jenuh. Adapun analisis data dikaji melalui beberapa langkah yang dimulai dari reduksi data, diikuti penyajian data dan penarikan kesimpulan.

Temuan - Metode *ijtihad* kontemporer dalam penetapan hukum bisnis syariah merupakan pendekatan penting untuk menjawab tantangan hukum yang dihadapi umat Islam di era modern. Dalam konteks ini, *ijtihad* tidak hanya mengandalkan tradisi klasik, tetapi juga mempertimbangkan perubahan sosial, budaya, dan perkembangan ilmu pengetahuan. Berbagai metode, seperti *ijtihad tarjhi*, *insya'i*, dan integratif, digunakan untuk merumuskan hukum yang sesuai dengan kebutuhan masyarakat. Metode ini memungkinkan mujtahid untuk menggali dan menerapkan prinsip-prinsip syariah dalam konteks bisnis kontemporer, seperti transaksi e-commerce, asuransi, dan investasi. Dengan demikian, *ijtihad* kontemporer berperan krusial dalam memastikan bahwa hukum bisnis syariah tetap relevan, dinamis, dan selaras dengan kemaslahatan umat, sambil tetap berpegang pada prinsip-prinsip dasar syariah.

Kontribusi/ Keterbasatan Penelitian – Temuan penelitian memberikan kontribusi penting bagi pengembangan pemikiran hukum Islam yang fleksibel dan kontekstual dalam menyoroti permasalahan hukum bisnis syariah yang belum diatur secara eksplisit dalam teks-teks klasik, guna menjawab tantangan bisnis syariah yang dinamis. Namun kajian penelitian terbatas pada negara dengan mayoritas muslim sehingga dapat berbeda dengan negara yang memiliki sistem hukum yang lebih pluralistik.

Keaslian/Nilai – Penelitian menghubungkan *ijtihad* kontemporer dengan kebutuhan praktis hukum bisnis syariah di dunia modern, sehingga mampu menawarkan solusi teoretis dan aplikasi nyata yang bermanfaat bagi praktisi, akademisi, dan masyarakat dalam memahami aplikasi hukum bisnis syariah yang relevan dan responsif terhadap perubahan zaman.

Kata kunci: *Ijtihad* Kontemporer, Penetapan Hukum, Bisnis Syariah, Era Modern.

INTRODUCTION

Sharia business law is vital in regulating Muslims' economic activities, providing guidance per Sharia principles, and ensuring justice and welfare (Damanik, 2024; Maulida et al., 2024; Nabbila & Syakur, 2023). In the context of globalization and rapid technological advancements, the challenges faced by the business sector are increasingly complex (Sons, 2024). Therefore, an adaptive and innovative approach is needed to ensure the applied laws remain relevant and meet the community's needs.

As a method of digging and establishing law, *Ijtihad* has strong roots in the Islamic tradition. Etymologically, *ijtihad* comes from the word "*jahada*," which means trying hard (Suwandi et al., 2024). In practice, *ijtihad* includes various efforts to interpret legal sources from *The Qur'an* and Hadith and consider existing social and cultural contexts (Wijayanti & Meftahuddin, 2018). However, *ijtihad* carried out by classical scholars is often limited to the conditions and situations of their time; therefore, it cannot always be applied directly to contemporary problems.

Contemporary *ijtihad* methods emerged in response to the need to update and adjust the Sharia law to the development of the times (Turhan, 2017; Harasani, 2013). This approach includes a variety of methods, such as *ijtihad Tarjihi*, *United States*, who prioritize the election of opinions that are stronger than the legacy *fiqh*, and *ijtihad insya'i*, which focuses on developing new rules that are relevant to the current context. Through this method, mujtahid is expected to be able to explore and apply sharia principles in an increasingly dynamic business context, such as transactions, e-commerce, Fintech, and Insurance, which is not yet fully regulated in the classic texts. (Hassan, 2024; Fatarib et al., 2020; Al-Khatib, 2019)

Ijtihad has played a crucial role in Islamic law. According to Wahbah Al-Zuhaili, *ijtihad* is the breadth of Islamic law. Without *ijtihad*, the development of Islamic law, including in the Sharia business, will be stopped, and Muslims will be left behind by the dynamics of Community progress that continues to move forward (Ridwan, 2020).

Ijtihad is very important in bridging modern society's universal values with Islam's teachings, which are often understood conventionally (Alhayyani, 2024; Rafikov & Akhmetova, 2020; Sarkun, 2019). *Ijtihad* is one of the keys to solving various societal problems, including in the context of Sharia business, to produce legal products that

are under the needs of community dynamics (Manik et al., 2024; Has, 2013).

The importance of contemporary *ijtihad* lies in its ability to meet the needs of diverse societies (Kasdi, 2019). In an ever-changing world, Muslims are faced with a variety of new choices and challenges that require quick and appropriate legal solutions (Amin, 2021; R. W. Muhammad, 2011). For example, information and communication technology development has changed how people transact, so a deep understanding of Sharia law related to digital transactions is required.

Furthermore, contemporary *ijtihad* responded to changes and maintained Sharia's core values (Mustofa, 1970). By paying attention to the benefits of the ummah, *ijtihad* allows scholars to formulate laws that are not only by the text but also in line with the goals of sharia (*Maqasid al-Shariah*), namely providing welfare, justice, and protection to the community.

There are some previous studies related to this study, such as Bakar and Sahman (2024) those that investigated innovations in methods of *ushul fiqh* in Indonesia to expand legal sources and harmonize ways of interpreting Islamic law. Relevant research was also conducted Saputro et al. (2024), which reviewed Islamic economic laws such as *Fiqh Muamalah Iqtishadiyah*, which differs from conventional economics—explored Islamic Economic Law (IPR) in the context of modern economics by focusing on the basic concepts of *riba*

(interest) and *zakat* (alms). Other studies have expressed the importance of collective *ijtihad* (*jama'i*) in the field of *muamalah* in the modern era, especially those related to electronic trade. Rudiger Lohlker (2021) Attempting to discuss methodology in Islamic law. Rafikov and Akhmetova (2020) examined collective *ijtihad* as one of the steps in finding solutions to Islamic economic and financial problems in society and examined the *ijtihad* methodology used by the Fatwa Commission of the Indonesian Ulema Council (MUI) to issue fatwas. Riaz *et al.* (2017) reveal the importance of a more in-depth *ijtihad* related to product development in the Sharia sector, especially Islamic banking. On other occasions, Mu'allim and Syibly (2016) it showed the importance of economic *ijtihad* amid globalization.

This study seeks to fill this gap from a series of previous studies. In this context, this study aims to explore the contemporary *ijtihad* method in Determining Sharia business law in depth. This research discusses the various methods, challenges, and implications of applying contemporary *ijtihad* to Sharia business law. This research is vital to contribute to the development of Islamic legal thought. It is a reference for practitioners, academics, and the public to understand the application of Sharia business law that is relevant and responsive to changing times.

RESEARCH METHODS

This research uses the literature method to identify, evaluate, and interpret research problems based on evidence obtained from various relevant studies to answer research problems. The research approach used is descriptive normative; that is, the research will focus on the rules and norms written in the Qur'an, hadith, and fiqh (Islamic law), as well as a study of the views of scholars regarding *ijtihad* in the context of sharia business law.

The subject of this research is the contemporary *ijtihad* method of Sharia business law. This research procedure starts by identifying problems, collecting studies and theories relevant to the topic of study, and determining the research methods used. The data collection technique used documentation from various literature sources, such as books, journals, and other scientific research related to contemporary *ijtihad* methods in determining Sharia business law. Data was collected continuously until no new information could change the conclusion or until the collected data reached a saturation point. The data analysis in this study adopts the method proposed by Miles and Huberman, which has several stages, starting from data reduction, data presentation, and conclusion.

RESULTS AND DISCUSSION

The Concept of *Ijtihad* in the Determination of Sharia Business Law Judging from etymology, the word

ijtihad comes from the word *jahada*. Two forms of *masdar* can be formed from the word *jahada*: the first is the word *jahd*, which contains the meaning of seriousness. This meaning is in line with the words of Allah in Surah Al-An'am (6): 109

وَأَقْسَمُوا بِاللَّهِ جَمْدًا أَيْمَانِهِمْ

"They swear by the name of Allah with all earnestness."

Second, the word *juhd* refers to the existence of abilities that contain complex, heavy, and complicated meanings. This second understanding is in line with the words of Allah in Surah At-Taubah (9): 79.

"Those who reproach believers who give alms voluntarily and those who do not receive (to be alms) except for their ability, then the hypocrites insult them. Allah will repay their humiliation and for them a painful punishment."

The change in the word from *jahada* to *ijtihad* has several meanings, including *li al-mubalagah al-yamin* (excess in oath). That is, it emphasizes meaning. Thus, from the two forms of *masdar* above, *ijtihad* implies the mobilization of all abilities and strengths to obtain what is intended to the maximum limit.

Al-Zubaidi argues that the word *al-jahd* means strength and ability, while for Ibn Asir, *al-jahd* means complex, exaggerated, or objective. Said Al-Taftazani gave the meaning of *ijtihad* to *tahmilul iuhdi* or in a direction that requires seriousness). From these

meanings, *ijtihad* is the mobilization of all abilities and strengths to obtain what is intended to reach its peak limit (Al-Umari, 1981).

Based on the etymological definition, *ijtihad* has two main elements: (1) power or ability and (2) challenging and heavy objects. Power or ability can be applied in general, including physical, mental, spiritual, and intellectual power. As a scientific terminology in Islam, *Ijtihad* is inseparable from the abovementioned elements. However, because science relies more on scholarly activities, the definition of *ijtihad* refers more to the direction of intellectual ability in solving various difficulties faced by individuals and the ummah (Rusli, 1999). These definitions include the following.

1. According to Ibn As-Subki
Deployment of an expert's abilities *fiqh* to produce laws, ' which is *zhanni* (As-Subki, 2003).
2. According to Al-Amidi
The maximum deployment of capabilities in finding the law ' *zhanni* is so that they feel unable to produce more of these findings (Al-Amidi, 1984).
3. According to Ash-Syaukani
Deployment of the ability to achieve the law, which is *amaliyyah* by using the *istinbath* (Ash-Syaukani, 1994).
4. According to Muhammad Abu Zahrah
Deployment of an expert's abilities *fiqh* to explore the laws (*sharia* '), which is '*Amaliyyah* from detailed postulates (Zahrah, 1994).

Based on this definition, *ijtihad* is divided into two types: to form or enact the law from its postulates and *ijtihad* to apply it. According to Abu Zahrah (1994), the first form of *ijtihad* is specifically carried out by scholars who specialize in proclaiming the law from their postulates. According to most *Ushul* scholars *Fiqh*, there may be a vacuum of *ijtihad* at certain times. This is how the results of *ijtihad* in the past were still considered sufficient to answer the problems among Muslims. According to the Hanabilah community, no period should be removed from *ijtihad* activities because there are always many new problems that must be addressed.

Abdul Wahab Khallaf explained that *ijtihad* also includes the exercise of all abilities to obtain *sharia* law, which has no results, called (*al-ijtihad bi al-ra'yi*). *Ijtihad bi al-ra'yi* is a kind of *ijtihad* in a general sense, which includes the meaning:

- a. *Ijtihad* to obtain the desired law of his *nash*, *zanni dalalah*. The law obtained is in the form of a quality interpretation of the expression of the *Qur'an* and Hadith.
- b. *Ijtihad* to obtain *Sharia law of amali (furu'iyah)* by establishing the rules of *Sharia kulliyah*.
- c. *Ijtihad* to obtain practical *sharia* law on matters not indicated by a law *nash* called "*Ijtihad al-Ra'yi*" (Ampel, 2004).

From the four definitions quoted above, it can be understood that what is meant by *ijtihad* has several elements, namely the following.

Maximum deployment of reasoning abilities from people predicted as *mujtahid*.

- a. Using the *istinbat* method (legal excavation).
- b. The object of *ijtihad* is the detailed postulate of the *Shari'a*.
- c. The purpose of *ijtihad* is to find the law of *sharia* related to the problems of *'amaliyyah* (not those about matters of faith or morals).
- d. The found *sharia* law is *zanni* (strong suspicion; relative), not the *qat'i* (true; absolut).

Meanwhile, the above definition also explains that what is meant by *mujtahid* is a person who exerts his reasoning ability to the maximum to find the *sharia* laws from the postulates of the *shari'a* through the method of digging up specific rules related to the problems of *'amaliyyah*. In other words, the function of *mujtahid* is not to create or establish laws outside of *Sharia law (musbit li al-hukm)* but to reveal and shed light on *Sharia law (muzir li al-hukm)*, which in essence does exist but is still hidden.

So, it is known that *ijtihad* refers to the interpretation of Islamic law that is not only limited to classical texts but also seeks to adapt the law to social needs and contemporary conditions. The concept of *ijtihad* is expected to open space for legal reform, with a focus on women's rights, especially in the case of divorce. (Abbasi, 2017; Weiss, 2017). *Ijtihad* is seen as an ever-evolving intellectual practice influenced by social, political, and institutional dynamics

(Ibrahim, 2016; Gould & Shikhaliev, 2017).

Legal Basis of *Ijtihad* in Islam

The Qur'an

As one of the bases for determining *Sharia law*, the existence of *ijtihad* is supported by much evidence, both verses of the *Qur'an* and *sunnah* both directly and indirectly supporting it. From the *Qur'an*, among others, The Word of Allah in Surah An-Nisa (4): 59

يَأَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ
وَأُولَى الْأَمْرِ مِنْكُمْ فَإِن تَنَزَعْتُمْ فِي شَيْءٍ فَرده إِلَى اللَّهِ
وَالرَّسُولِ إِن كُنتُمْ تَوَّعِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ
وَأَحْسَنُ تَأْوِيلًا.

In the above verse, Allah commands us to return to the problem that is the object of disagreement with Allah and His messenger. The way to take it is undoubtedly by understanding the content of the meaning and principles of the law contained in the verses of the *Qur'an* and *Hadith*, then applying these meanings and principles to the problems that are being faced together.

Likewise, Allah said, in Surah An-Nisa (4), 105.

إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا
أَرَاكَ اللَّهُ وَلَا تَكُنَ لِلْخَائِنِينَ خَصِيمًا.

“Indeed, We have sent down the Book to you with the truth so that you may judge between men with what Allah has revealed to you.”

Word الله (with what has been revealed to you) in the paragraph it is

intended that the legal decision on every matter is based on the law (Qawanin) shara' whether it is determined by revelation or by reason (al-'AQL) that does not depart from the principles of revelation (Ubadah, 1997). This also means that the verse recognizes the determination of the law that uses the analogy method (qiyas) as one of the ways of *ijtihad* (T. Yanggo, 1997).

This verse indirectly contains the command to perform *ijtihad* through *qiyas*. In addition, many verses of the *Qur'an* command teach the use of reason and mind, all of which encourage the practice of *ijtihad*. For example:

إِن فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ

“Indeed, in such things, there are signs (of Allah's greatness) for those who think.” Surah Ar-Rad (13): 3, Ar-Rum (30): 21, Az-Zumar (39): 42.

Al-Hadits

As for the basis of *ijtihad* derived from *hadith*, for example, a narration illustrates the dialogue between the Prophet PBUH and Mu'az bin Jabal when the Prophet PBUH sent Mu'az to Yemen, as mentioned earlier (Dawud & Dawud, 1994).

عن معاذ بن جبل قال قال رسول الله
كيف اذا عرض لك قضاء؟ قال اقضى بكتاب الله. فإن
لم تجد في كتاب الله؟ قال, فبسنة رسول الله. قال فإن
لم تجد في كتاب الله ولا في سنة رسول الله؟ قال,
اجتهد رأيي ولا ألو, فضرب رسول الله صلى الله عليه
وسلم بيده على صدره وقال الحمد لله الذى وفق رسول
رسول الله لما يرضى الله.

Likewise, the hadith narrated by Abu Hurairah is as follows (An-Nasa'i, 1930).

عن أبي هريرة قال قال رسول الله صلى الله عليه وسلم إذا حكم الحاكم فاجتهد فأصاب فله أجران وإذا اجتهد فأخطأ فله أجر.

Abu Hurairah said: "The Prophet PBUH said: "If a judge wants to decide a case, then he makes *ijtihad* and the *ijtihad* is correct, then he gets two rewards. But if he makes *ijtihad*, then the result of his *ijtihad* is wrong, then he gets a reward."

Contemporary *Ijtihad* Methods: Finding Progressive Islamic Legal Solutions

Ijtihad is an intellectual effort to find a legal solution in Islam carried out by Islamic jurists using reason, critical thinking, and deep religious knowledge. Traditionally, *ijtihad* was used to solve problems that do not have a direct answer in *The Qur'an* or hadith. However, the world continues to develop rapidly over time, especially in the economic, technological, and social fields. This requires new thinking when applying Islamic principles to modern challenges. Thus, the concept of **Contemporary *ijtihad*** (Janah & Ummah, 2024)

There are various methods or types used in contemporary *ijtihad*.

Ijtihad Tarjihi Intiqai

Ijtihad chooses one of several opinions contained in the heritage of Islamic *fiqh*, which is full of fatwas and legal decisions or can also be called a selective method. However, what is meant is how

to consider the existing opinions and then refer to the evidence, both *the nash* and the results of *ijtihad*, so that the most potent law is taken under the validity of a law. Among other things, opinions must be by the times and people, be more familiar with the sharia, prioritize the use of the purposes of the shari'a and the public interest, and avoid the occurrence of damage.

In this case of *ijtihad*, it is permissible for a mujtahid to come out of the fourth madhhab to choose the opinions expressed by the companions, *tabi'in*, or *salaf* scholars; it is miserable if there is an expression that people such as Umar, Aisha, Ibn Mas'ud, Ibn Abbas, Ibn Umar, Zaid Bin Tsabit, Ibn Al-Musayyab Ibn Jubair, Thowus, 'Atho, Hasan, Ibn Sirin or other *tabi'in* scholars are not said to be the opinions of scholars who deserve to be followed. It can be taken as an example of *Rodlo* using his expression, Layst bin Sa'd, and *the scholar of Dzohiriah*, including Ibn Hazm. Likewise, as expressed by Syekh Abdullah bin Zaid Al-Mahmud, it is permissible to throw a jumrah before the sun shifts; this expression is the opinion of Atho and Thowus.

Several instruments that emerged in the modern century have strongly influenced the selection and seeking of the strongest opinions from the treasures of Islamic jurisprudence. *First*, national and international sociopolitical changes, such as the change of a woman who has the freedom to seek knowledge, which in the past was not allowed. *Second*,

modern knowledge and its sciences, such as khamr, are only made from grapes alone, and modern science determines that the substance that can cause drunkenness is alcohol, which is found in grapes, dates, apples, wheat, and brown rice. *Third*, the urges of the times allow women to travel without the participation of their *muhrim*s or the consent of their husbands.

1. Ijtihad Tarjihi Insya'i

Taking a new law in a problem that previous scholars did not initiate, whether the problem is old or new, in *ijtihad* like this, usually what becomes an obstacle for the mujtahid is the occurrence of *ikhtilaf* with other ulama. Although *ijtihad* is not a crime, *ikhtilaf* is a symbol of the flexibility of Islamic sharia and the fertility of the source. Imam Syafi'i once said: "*My opinion is correct but can contain errors; opinions other than mine are wrong but can contain truth.*" Therefore, there is no reason to stop *ijtihad* just for fear of disagreeing with other mujtahids because a matter that previous scholars disputed in two expressions, it is permissible for a mujtahid to reason on the third or fourth expression.

An example of the above argument is the *ijtihad* of contemporary jurists, who state that the results of rented houses, factories, and so on are obliged to issue zakat. His opinion above was expressed by Abu Zahra, Abdul Wahab Khalaf, Abdur Rahman Hasan, and Yusuf Al-Qardawi himself.

2. Integration between *intiqo'i* and *Insya'i*

That is the integrative *ijtihad* between *intiqo'i* and *insya'i*, namely, choosing various opinions of previous scholars that are seen as more relevant and substantial. New elements of *ijtihad* are added to these opinions. An example of an integrative *ijtihad* between *Intiqo' i ijtihad* and *ijtihad insya'i* is the compulsory testament law enacted in Egypt a few years ago.

3. Ijtihad Ilmi al-Ashri

A. Qodry Azizy offered this method, which is biased to be referred to as *Modern Scientific Ijtihad*. He provides 11 steps in this model (Azizy, 2003).

- a. Giving more importance to prioritizing primary sources in sectarian systems or determining references.
- b. Dare to study the thoughts of scholars or the results of Islamic law decisions by religious organizations in a critical study as a history of thought.
- c. All of the works of past scholars are positioned as knowledge.
- d. Have an open attitude toward the outside world and are willing to anticipate things that will happen.
- e. This should increase responsiveness and quickly address the problems that arise.
- f. Propose an active and progressive interpretation.
- g. The teachings of *al-ahkam al-khamsah* can be used as concepts or ethical teaching.
- h. Making *the fiqh* science part of legal science in general.

i. The topic of *fiqh* cannot be forgotten; it must also be oriented to inductive and empirical studies and deductive studies.

j. Making a *mashlahah* is an essential foundation for realizing Islamic law.

k. Making *nash* control over the things that will be produced in *ijtihad*.

Qodri Azizy offered a deconstruction by providing four things: *First*, Islamic law is the work of past jurists or *mujtahidin*, which should be placed in its actual position. For this reason, the term Humanization of Islamic law can be used so that doctrines considered sacred can be touched by human reason.

Second, looking at the results of *ijtihad* contextually, it becomes alive and has value. *Third*, it will be possible to carry out reactualization after being able to create contextualization. This must be based on the ability to interpret the results of the *ijtihad*, not its rejection, followed by reinterpretation; in time, there will be demands for reform or renewal of the teachings at a practical level, which is the *mujtahid's* understanding of time.

Fourth, research on Islamic law requires other disciplines. There is not only one discipline in some ways, so there is a multidisciplinary approach. In addition, several disciplines are needed when developing Islamic legal thought, especially in the social sciences and humanities (Azizy, 2003). What Qodri Azizy offers with the concept of deconstruction seems to be influenced by Jacques Derrida's approach, a well-

known post-structuralist figure in France. However, what Qodri Azizy has done is only rephrase what has been pioneered by previous scholars. He then said that this is historical connectedness because his thinking continues. Still, he tries to refresh the discourse of religious thought in a contemporary context that is easier to understand (Suyoto, 1994).

Thus, there is no genius thinking in Qodri Azizy, based on various thoughts of *Salaf* scholars and ideas for the renewal of contemporary scholars with the collective *ijtihad* model. He further studied academic scientific research methods. This discussion has been done a lot, such as by Yusuf Qardawi, with the model *ijtihad tarjih al-intiqaa'* and *ibda' insya'i*, so Qodri only develops intelligently with its contextual approach. However, Qodri initiated KH's *Isinbath* method using a contextual approach (Al-Qurtubi & Mahfudz, 2001). This made Qodri Azizy brave enough to go directly to Islamic boarding schools to socialize his thoughts because he has strong historical roots in the tradition of *Salaf* thought, which became the mecca of Islamic boarding schools.

Apart from the shortcomings of Qodri Azizy, who only rephrased *Salaf* scholars' thoughts, his thinking is very valuable in helping refresh the discursive nuances that build the intellectual tradition and religious discourse of the people, especially Islamic boarding schools. The *Nahdlatul Ulama* (NU) *Ulema* reminds us of the tradition of *Salaf* scholars who are

creatively and courageously different from their high priests. There is a discussion both directly and imagined through work that builds thoughts that can give birth to various legal formulations that are more realistic and grounded.

The difference between Qodri Aziri's *ijtihad* and other *ijtihad*, the author can conclude from the eleven things above, is a prerequisite for building a new formulation in *ijtihad*, a model of *ijtihad* that will be named *al-ijtihad al-'ilmi al-'ashri* or *modern scientific*. "*Ijtihad*" with the existing definition, but carried out on a thematic or case-by-case basis, does not necessarily mean performing *ijtihad* for all aspects of the people's lives, as has been done by *mujtahidin* scholars or the founders of the past madhhab. *Ijtihad* connotes that *ijtihad* for all life is also considered or understood by some groups, so if you have used the term *ijtihad*, you must be burdened to become a superhuman, like the school's founders. After all, the heavy *ijtihad* requirements never appeared until the end of the third-century *hijrah*.

"*Al-'ilmi*" (*academic, scholarly*) gives meaning by using scientific procedures (philosophy of science, critical studies, and the like) as happens in the academic world in every science internationally, including in the West. "*Al-'ilmi*" is also characterized by inductive and empirical use. This concept also provides for using science and technology's results or products (including procedures) in the process and methods of *ijtihad* or the

determination of Islamic law. At the same time, Islamic law, with its explanation of *al-akhkam al-khamsah*, should be able to become the spirit and foundation for the development of science and technology to realize the benefits of the ummah.

"*Al-'asri*" is intended to refer to the present and the future, not to be stopped and oriented to the past, and not to be stopped in the present. *Ijtihad* is not for the past or just hereafter. At the same time, Islamic law is for life now and in the future. The consequences of practicing Islamic law are fruit in the hereafter—a core difference from secular law.

In this framework, *ijtihad* is carried out as an effort to answer current problems with the aim of *Tahqiq al-Mashalih al-Nas* or realize *Benefits* for humans because the purpose of the derivation of the shari'a (*Maqasid as-Shari'ah*) be *Benefits* (Khalaf, 1977; As-Syatibi, 2005), As expressed by the US-Syatibi in *al-Muwafaqat* (As-Syatibi, 2005). Thus, Azizy's concept is expected to make Islamic law more dynamic and applicable for realizing benefits. Moreover, the debate around the closure of the *ijtihad* door is irrelevant because the most important thing now is the application of *ijtihad* itself by seeking the existence of *ijtihad* with the *manhaj* of previous scholars with a pattern of *Al-ijtihad al-'ilmy al-'asriy* (Rahman, 1984; Hasan, 1984).

Based on this, the *ijtihad* process must balance deductive and inductive. Thus

far, the emphasis has only been on deductive, while inductive is still very limited. In this *ijtihad* procedure, there is at least a balance between the two approaches or more empirically, when the basics of revelation are only in the form of the main points. Therefore, the combination of the primary source (*al-Qur'an and al-Hadith*) and branches (*fiqh books*) with the optimization of the role of reason in coming up with legal solutions is the best step for the two options that are equally counterproductive amid the escalation of social problems that require scholars to respond quickly and appropriately.

4. Ijtihad Jama'i

The mujtahid carries out every Ijtihad to unite their opinions on a problem. This is done by gathering mujtahids with cross-sectoral scientists in a deliberative forum to discuss the phenomena. One of the effective ways to carry out *ijtihad* in the current era, where it is difficult to find people who can collect a myriad of *ijtihad* requirements, is to do *Ijtihad Jama'i (Collective Ijtihad)*. In its application, *Jama'i ijtihad* covered two things.

First, ijtihad to solve the legal status of new problems that the Qur'an, al-Sunnah, and previous scholars have not mentioned.'

Second, ijtihad had to choose an opinion most aligned with the ideal of universal humanity as the spirit of Islamic teachings.

Undeniably, this *ijtihad* model is closely related to deliberation.

Deliberation is a novel means of reaching a common point on differences of opinion, bringing together various interests, combining ideologies, drawing conclusions from several views, and uniting goals. Three factors encourage the implementation of *ijtihad jama'i* or collective *ijtihad*, which are indeed very influential:

- a. Socio-Political and Cultural Change
- b. Development of Modern Knowledge
- c. The Needs and Demands of the Times.

According to An Na'im, *ijtihad* means hard work and perseverance. Technically, this means the independent use of legal reasoning to answer a problem when the *Qur'an* and the silent Sunnah do not answer. According to this concept, *ijma'* (*consensus*) emerged due to the *ijtihad* experiment. This means that *ijtihad* demanded that the pioneers conclude that the consensus of the community or scholars on a problem must be used as one of the sources of sharia. In addition, the contents of the *ijma'*, namely the principles and rules that are now accepted as part of the *shari'ah* through *ijma'*, may have been initially understood through *ijtihad* from a person or some or previous jurists. *Qiyas (analogy)* is also seen as one of the *ijtihad* techniques (An-Na'im, 1996).

Contemporary Muslims also can carry out the formation of *al-fiqh* and the right to perform *ijtihad* even when it concerning issues that have been regulated by the text of *the Qur'an* and

the Sunnah clearly and in detail, as long as the results of the *ijtihadh* follow the essence of the purpose of Islamic treatises.

Correlation between Ijtihad Fardi and Ijtihad Jama'i

Ijtihad Fardi is any *ijtihadh* carried out by an individual that other mujtahids have not agreed upon in a problem. *Ijtihad Jama'i* is every *ijtihadh* carried out by the mujtahid to unite their opinions on an issue. There is a correlation between the two: *Jama'i Ijtihad* can't occur if it was not carried out first, which is *Fardi ijtihaad* because *ijtihaad Jama'i* is a method of *ijtihaad* that is carried out to unite all opinions resulting from *Fardi's ijtihaad* and to find a common point of all these differences, as stated above.

It is undeniable that *ijtihaad* will produce a fatwa; Islamic scholars generally admit that individual *ijtihaad* produces individual fatwas as well. Individual *ijtihaad* is usually based on a more in-depth study of an issue that the fatwa will issue, so scholars assume that, in essence, the process of the birth of the collective fatwa begins with individual activities, fatwas produced through the individual *ijtihaad* are often used *Arguments* in the Islamic apology is used as the basis for establishing a collective fatwa (Qardhawi, 1995).

Implications in the Renewal of Contemporary Islamic Legal Thought If we focus on the concept of *ijtihaad* in the six methods as a whole and objectively,

we will find some implications for the renewal of Islamic legal thought. However, what is meant by Updates (Nasution & Azra, 1985) and Islamic law (Syarifudin, 1993) must first be re-examined.

The word renewal has a variety of meanings that sometimes contradict one another. Therefore, the right meaning placement will have the proper implications and vice versa. If renewal is interpreted as modernism, neo-modernism, or the like, then the concept of *ijtihaad* does not make an adequate contribution and even tends to hinder it; on the contrary, if renewal is interpreted as *tadjiid*, revivalism, and resurgence, which is in line with that, the concept of *ijtihaad* will make an essential contribution to the renewal of Islamic law (Altintas, 2016).

The second important thing to note is the meaning of Islamic law. Islamic law is sometimes interpreted as *fiqh* and *shari'ah*. Islamic law as *fiqh* must constantly be renewed, reconstructed, and reformed because *fiqh* is a product of the thinking of previous mujtahid scholars, which, of course, cannot be separated from the context of place and time. *تغيير الفتوى بتغيير الازمان* (change of place and time), Ibn Qayyim said, "will have implications for the change of law."

From the perspective of the renewal of contemporary Islamic legal thought, the construction of *ijtihaad*, among the six methods, contributes one of the other to interrelated, which is considered

relevant and significant to contemporary society's moral and social demands.

Causes of Contemporary *Ijtihad* Deviations

Mistakes can still occur in a mujtahid, even if the mujtahid adheres to the results of his *ijtihad*. An approach that ignores the sources of Islamic law inevitably goes against the principles of Islamic law. Science fiqh, which studies and analyzes the structure of Islamic law, focuses on finding and understanding the roots of these legal problems (Ayhan Ak, 2022).

Many problems cause deviations in *ijtihad*; *ijtihad* is carried out by mujtahid who are not experts, *ijtihad* for the sake of individual and group interests, and *ijtihad* is based on lust and others. Apart from individual or group causes, urgent factors that are the cause of errors in *ijtihad*, as highlighted by Dr. Yusuf Al-Qordhowi in his *bookal-ijtihad fi al-syari'ah al-Islamiyyah* and also in his book Drs. H. Rohadi Abdul Fatah, M.Ag. titled "Analysis of Religious Fatwa," among others, as follows:

1. Setting aside *nash* and prioritizing *ra'yu* Putting aside *nash* and prioritizing *ra'yu* is a factor that causes errors in *ijtihad*, *nash al-Qur'anul karim* as well as from the sunnah of the Prophet Muhammad PBUH as the Prophet. The *ijtihad* method carried out by *Salaf* scholars and contemporary scholars must always refer to *the Qur'an* and *al-hadith*; if there is a societal problem

that always needs a solution, a mujtahid must refer to *the Qur'an* if the correct answer is not found, turn to al-hadith if the right solution has not been found, and then use the following method. The order of the sources of the law like this is the order done by the companions of Sayyidina Abu Bakr (*ra*) and the companions of Sayyidina Umar bin Khattab (*ra*). By the hadith of the Prophet narrated by the companions of Mu'adz bin Jabal, some examples of *ijtihad* that exclude *the nash of the Qur'an*, al-Hadith include:

- a. Allowing the adoption of an outcast
 - b. Hair extensions or wigs
 - c. It allows a picture as a whole.
2. Misunderstanding of *nash* or deviation from its context Contemporary *ijtihad* errors are sometimes not caused by a lack of understanding of *nash* or ignoring it but can be caused by errors and mistakes in interpreting the *nash*; among these errors are:
 - a. Misunderstanding of *nash* or mistakes intake, such as assuming only general sentences
 - b. Considering *muqqayyad* an absolute word or vice versa
 - c. Separated from the context of the previous sentence or separated from what strengthens the postulates of *ijma'*, ' which is convincing and has never been violated by one of the scholars throughout the ages.
 3. The contra to the *ijma'* that has been confirmed in this study is the *ijma'* that has been believed, which has become the stipulation of *fiqh*, and

all Muslims have applied *ijma'*. In addition, it has been agreed upon by all schools of *fiqh* experts from among Muslims.

4. Qiyas are out of place. Such as qiyas *nash qat'iy* with *nash zanniy* in the case of the permissibility of *ijtihad* in the *nash* or qiyaskan matters that are pure *ta'abbudi* with customary matters and *mu'amalat* in terms of looking at the law and its intentions and in terms of concluding the *illat* with reason, where the *illat* is the cause of the law.
5. Forgetfulness of the reality of the times continues to develop from the second to the millennium, which makes the prehistoric era the present day, which is called the modern era. Mujtahids cannot be caught off guard by the reality of the times, culture, education, technology, and others. They try to justify (legitimize) this reality by providing legal support that they take from Islam through distortion and coercion.
6. Excessive consideration of benefits, even if *nash* sets it aside. Islam is a religion that holds the concept of *Rahmatan Lil Alamin*; it can be concluded that Islamic sharia contains everything for the good of humans, benefits in this life and the hereafter, covering everything that includes evil and damage that endangers humans, both individually and collectively For example, (a) *mashlahah* allows *riba*

(b) moving the Friday prayer on Sunday (Al-Qardhawi, 2000).

These findings are supported by Kusnadi's (2016) analysis of the factors behind Yusuf al-Qardhawi's reformulation of *ijtihad*, including excessive fanaticism towards madhhab *fiqh* and the influence of colonialism.

Application of Contemporary Ijtihad in the Treasures of Islamic Law

Ijtihad is not limited to the scope of new problems. Still, *ijtihad* had other interests related to the treasures of Islamic law, namely, by reviewing the issues that exist in it based on the conditions that occur in the present time and the needs of human beings to choose which opinion is the strongest and most suitable for realizing the goals of Sharia and the benefit of humankind. An effort based on the rule that "*the change of fatwa is caused by changes in the times, places, and people.*"

Indeed, *ijtihad* is echoed and called for with various restrictions, and Sharia, according to Sharia, is a necessity, even a necessity, for Islamic life. *Ijtihad* is a medium that solves all contemporary problems faced by society. The possibility of *ijtihad* can not only be carried out for rational reasons but also traditionally.

If the community dares to say that *ijtihad* can be sorted out, the problems faced will be easier because there is serious concern about *fiqh*. *Ahwal Asy Shakhshiyah* (Legal Private) pursues and masters it well and can penetrate very

deep (implied) problems; therefore, *ijtihad* in this field feels easy. One example of a scholar who pursues the muamalat jurisprudence field is economics in the review of Islamic law. Scholars pay great attention to everything related to it or specific aspects. Thus, scholars are more competent in performing *ijtihad* in this matter. This is, of course, based on the requirement of general scientific expertise that allows scholars to understand their scientific specifications deeply (Al-Qardhawi, 2000).

There is no doubt that today, there are many problems in the business world and new companies in economics and finance, which were never known to people who lived in the past. It has never been known by people who live closest to today. A significant change caused what was once a natural and right thing to turn hundred and eighty degrees. Thus, we need *ijtihad* in various forms and fields of modern business associations. It is good to pay attention to the opinion of Imam Sufyan Ats Tsauri, "Actually, *fiqh* is a relief (*rukhsah*) given by a person who is trusted in knowledge, while the attitude of making it difficult is carried out by every person."

The types of *muamalat* are divided into two (Haroen, 2007):

1. The kind of *muamalat* whose law is directly designated by *the nash* has certain restrictions. Among these problems is the issue of inheritance and prohibition of the *riba*. Laws like these are permanent, cannot be

changed, and are not subject to change.

2. The type of *muamalat* that is not directly appointed by *the nash* but is submitted to the results of the *ijtihad* of the scholars is by the creations of experts to meet the needs of humanity throughout the place and era, as well as by the situation and conditions of the community itself. For example, *Ba 'i al-Mu'athah* (buying and selling by handing over money to each other and taking goods without being accompanied by *ijab* and *qabul*)

The Sharia business law must meet the following characteristics:

- a. The original law of *muamalah* is permissible
- b. The goal was to benefit humans.
- c. The law of *muamalah* consists of a fixed (*sabbat*) and a changing law (*murunah*)
- d. The object must be halal and *tayyib*
- e. Avoid *gharar*.

The problem of contemporary business transactions in the classical era is unknown. This scope addresses any new transactions that emerged at this point. These include banknotes, stocks, bonds, mutual funds, multilevel marketing and insurance. One example of this scope is insurance, which is coverage (an agreement between two parties; one party is obliged to pay contributions, and the other party is obliged to provide full guarantees to the contributor if something happens to him or his property that is insured following

the agreement he made). This insurance contract transaction did not exist in classical times, although it is likened to the story of the effort to tie a camel before leaving it. This contract can be justified or allowed in Islamic Sharia as long as it is not in line with what is prohibited and meets the characteristics of Sharia business law described above.

Business transactions change due to the development or change of conditions, situations, traditions, or habits. The development of increasingly fast and sophisticated technology presents various facilities with various conveniences and businesses. Examples include receiving goods in a sale and purchase contract (*posesión/qabd*), *e-business transactions*, and SMS transactions.

Contemporary Business Transactions use new names even though the substance is the same as that of the classical era, for example, bank interest, which is the same as *riba*, buying, and selling foreign exchange. Although *riba* has been renamed as a more beautiful object, the substance is still the same where some are wronged, so the law of interest is the same as *riba*, which has been forbidden in *the Qur'an*.

Modern business transactions use multiple contracts, such as IMBT and *Murabahah Lil Amiri Bi Syira*. In this context, it is discussed that several contracts are modified in a business transaction in this contemporary period. This can be justified or allowed if it is not in line with what is prohibited and

meets the characteristics of Sharia business law described above.

The following are some modifications to the classic contract that occurred in the Contemporary Period (Tarmizi, 2021).

1. The right to *intifa'* (utilize), for example, *Wadi'ah yad Daman*.
2. Administrative Money, for. For example, *Qardul Hasan*
3. *Ujrah* (fee), e.g. L/C, transfer
4. Credit, e.g. *Murabahah*
5. *Muazzi* (parallel) + credit (*Muajjal/Taqsih*) *Salam*
6. Guarantee (*Rahn + Kafalah*), for instance, *Mudarabah*
7. Changes like the contract (for example, *Wadi'ah* (originally non-binding to binding))
8. Promise (*wa'ad*), for instance, *Ijarah Mutahiya bi Tamlik*
9. *Wakalah*

General rules in *Muamalat* (Haroen, 2007):

1. الاصل في معاملة الإباحة إلا أن يدل على تحريمها
: the practice of *muamalah* is permissible unless a postulate prohibits it. In addition, scholars adhere to the main principles of *muamalah*, such as the principle of free *riba*, free *gharar* (ambiguity or uncertainty) and *tadlis*, not *maysir* (speculative), free haram products, and the practice of *fasid/false* contracts. This principle should not be violated because it has become an axiom in *fiqh muamalah*. We can still apply the classic rules of *muamalat*, but not all of them can be used in current transactions. This is because of socioeconomic

changes in the community as the rules are known.

2. المحافظة بالتقديم الصالح والاخر بالجديد اصلاح

That is, to maintain the classical intellectual heritage that is still relevant and to allow the practice that has existed in modern times as long as no instruction prohibits it. With the above rule, it can be concluded that economic transactions in the classical period can still be carried out if they are relevant to the conditions, place, and time and do not contradict what is forbidden.

Concerning social changes and influences in this issue, *muamalah* seems to be accurate in the analysis put forward by Ibn Qayyim Al-Jauziyyah when he formulated a rule that is very relevant to be applied in modern times in anticipation of a type of *muamalah* that develops.

3. Changes and differences in fatwas according to changes in places, eras, social conditions, intentions, and customs

Several factors can be used as a reference for assessing the occurrence of change, namely place, era, social condition, intention, and customary factors (Latief, 2020). These factors are very influential in establishing a law for the mujtahid in the *muamalah* field. In the face of social changes caused by these five factors, what will be used as a reference in determining the law of a problem of *muamalah* is the achievement of *Maqashid Ash-Shari'ah* becomes *benefits*. On that basis, *Maqashid Ash-*

Shari'ah measures the validity of a *muamalah* contract or transaction.

The results of this study are supported by the scientific analysis of Muhammad *et al.* (2021), which applies rules for *Fiqh* in formulating e-commerce law and emphasizes the importance of contemporary *ijtihad* in adapting Islamic law to technological developments and the needs of the times. Previous research explained that Sharia business law must meet characteristics such as human benefits, halal, and freedom from *riba* and *Gharar* (unclear). This supports the idea that contemporary *ijtihad* is needed to determine laws by these principles amid new developments in the business world, which often involve new forms of transactions such as online trading, stocks, and even insurance. The research also shows that Sharia business law must be able to adapt to evolving social, cultural, and economic contexts. One of the aspects that supports the above research is the importance of flexibility in applying the *fiqh* law, as exemplified by the rules of *fiqh*, which can adjust to the development of the times, technology, and needs of people. This supports the view that contemporary *ijtihad* is necessary in the face of changes and developments in modern business and economy.

The Object of Contemporary Sharia Business Law Study

Fiqh Muamalat is a branch of *Amaliyah* (part of Sharia) with two parts: *Muamalat Maliyah* and *Muamalat Gairu Maliyah*.

This discussion focuses on *Muamalat Maliyah*, with scope (Anwar, 2007):

1. *Buyu'* (buying and selling) is the exchange of property for property in transferring property and ownership.
2. *Ijarah* (rent) is a form of *muamalah* activity that meets the needs of human life, such as rental, contracting, and selling hotel services.
3. *Shirkah* is a cooperation contract between two or more parties for a specific business in which each party contributes funds or charity with an agreement that profits and risk will be borne jointly following the agreement.
4. *Qirad (Mudarabah)* is a business cooperation contract between two parties, where the first party (*sahibul mal*) provides all the capital. In contrast, the second party (*mudarib*) acts as a manager, and the business profits are divided between them according to the agreement outlined in the contract.
5. *Rahn* is to hold one of the borrower's assets as collateral for the loan that he believes.
6. *Kafalah* is a guarantee given by the insurer (*kafil*) to a third party to fulfill the obligations of the second party or the insured.
7. *Hiwalah* is a contract of debt transfer from one party who owes a debt to another who is obliged to bear (pay). *Wakalah* is the transfer of power by one party to another party in matters that can be represented.
8. *Ariyah* (Borrow and Borrow), according to *Malikiyah* scholars and Imam *As-Syarakhsi* (Hanafi *fiqh* figures) *ariyah* is the possession of the benefits of something without compensation. According to Imam *Shari'iyah* and Hanabilah Aryyah, this means the ability to use other people's goods without compensation.
9. *Muzara'ah* is the handover of farmland to be cultivated, and the results are divided between two (farmers and landowners), with the seeds to be planted provided by landowners.
10. *Mukhabarah* is the handover of farmers' land to be cultivated, and the results are divided into two (farmers and landowners), with the seeds to be planted coming from the cultivators.
11. *Musaqatis* is a contract to give trees to farmers or cultivators to be managed or taken care of, and the proceeds are divided between the two following the agreement (Anwar 2007).

CONCLUSION

This research reveals the importance of updating contemporary Islamic legal thought through the concept of *ijtihad* and its application in modern *muamalah*. Islamic law can be renewed through *ijtihad*, which not only reviews new problems but also adapts existing laws

to society's changing times, places, and social needs. Contemporary *ijtihad* thinking contributes to responding to the legal challenges Muslims face today, especially in increasingly complex economic and business transaction fields. This can be seen in applying Sharia business law, which must pay attention to the principles of human benefit, halal, and freedom from prohibited practices, such as *riba* and *gharar*. The occurrence of deviations in contemporary *ijtihad* is often caused by various factors, such as errors in understanding *the nash*, neglect of context, and neglect of the reality of the times. Therefore, scholars and mujtahids must always prioritize references from *the Qur'an* and Hadith and pay attention to social and technological developments to produce relevant fatwas. Contemporary *ijtihad* is key to solving problems not known in the classical era, such as insurance, online transactions, and stocks. The success of *ijtihad* in overcoming these issues depends on the flexibility of Islamic law, which can keep up with the times without ignoring the basic principles of sharia. Therefore, contemporary *ijtihad* is an essential medium in maintaining harmony between Islamic law and the dynamics of modern life, as well as ensuring the benefit of humanity in all aspects of life, especially in the field of Sharia business.

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