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ISTIḤSAN AS A FINDING METHOD OF PROGRESSIVE ISLAMIC LAW IN THE INDUSTRIAL REVOLUTION ERA 4.0

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ABSTRACT

The rapid development of generations and science raises various new problems that are not only solved by the legal sources of the Qur'an and Hadith. *Istiḥsan* is a way of finding Islamic law, which is used as a proposition (dalil) in Hanafi fiqh. The article examined the role of *istiḥsan* as a finding method of progressive Islamic law. The research was descriptive-analytical with a normative approach. *Istiḥsan* is another most decisive option in finding Islamic law, because many contemporary things in the era of the industrial revolution 4.0, such as eye transplant law, buying and selling without *qabul lafdzi* at mini markets, and transactions on vending machines and online shops have been completed using the *istiḥsan* method, as well as establishing the laws. The essential goal of *istiḥsan* is to eliminate *maḍorot* (harm) and achieve *maṣlahah* (benefits). While *maṣlahah* is the goal of value in the establishment of progressive Islamic law. *istiḥsan* is very possible to be developed and modified as a method of establishing the law that is dynamically and develops following the times.

Keywords: *Istiḥsan*; Progressive Islamic Law; and Industrial Revolution Era 4.0;

ABSTRAK

Pesatnya perkembangan generasi dan ilmu pengetahuan, menimbulkan berbagai problem baru yang tidak hanya diselesaikan dengan sumber hukum al-Qur'an dan Hadis. *Istiḥsan* adalah cara menemukan hukum Islam yang dijadikan dalil dalam fiqh Hanafi. Tulisan ini akan mengkaji peran *istiḥsan* sebagai metode menemukan hukum Islam yang progresif. Penelitian ini bersifat deskriptif analitis dengan pendekatan normatif. *Istiḥsan* menjadi opsi lain yang paling menentukan dalam menemukan hukum Islam, karena banyak hal kontemporer di era revolusi industri 4.0 seperti hukum pencangkokan mata, transaksi jual beli tanpa *ijab qabul lafdzi* pada mini market, transaksi pada vending machine dan transaksi online shop telah diselesaikan dengan metode *istiḥsan* dan hukum yang ditetapkan. Tujuan esensial dari *istiḥsan* adalah menghilangkan *maḍorot* dan mencapai *maṣlahah*. Sedangkan kemaslahatan adalah nilai yang ingin dicapai dalam pembentukan hukum Islam yang progresif. *istiḥsan* sangat memungkinkan untuk dilakukan pengembangan dan modifikasi sebagai metode penetapan hukum yang bergerak dinamis dan berkembang yang sinkron dengan perkembangan zaman.

Kata Kunci: *Istiḥsan*; Hukum Islam Progresif; dan Era Revolusi Industri 4.0;

Introduction

The sources of Islamic law and the basis for scholars are the Qur'an and Hadith. However, the times and technology development often raise various problems that are literally not stated in the source of the law. As the industrial revolution era 4.0 or known as disruption, is a situation where global industrial conditions are no longer one-way. This disruption requires scholars to conduct legal *istinbat* that is more innovative and disruptive.¹

The fact is a challenge for Muslims, especially for scholars who always do *ijtihad* to explore the law for the benefit and justice of the people in the industrial revolution era 4.0. The difference in this era is the use of comprehensive digital data analysis so the scholars need new studies. This fact is also touched Muslims in other parts of the world. Some Muslims have been able to take advantage and use digitalization in this era. And, they are successfully using digitalization as a fairly new object of activity by trying to make strategic decisions such as business and *da'wah* online, with the aim their lecturer is accessed widely and thoroughly.² Therefore, it needs a more progressive Islamic law.

Problems, that are not specifically regulated in both Qur'an and hadith, are related to worship and *mu'amalah*. Then, the *fuqahā* provide a way of finding the law in many ways. *Istihsan* is a method of establishing the law which aims to achieve benefits. It is needed to overcome contemporary problems. Because only referring to the Quran and the sunnah (textualist) without any interpretation toward modern context, new problems will continue to arise and the law will lose its relevance. The *istihsan* method is important to answer these problems while being guided by the sharia.

This article discussed *istihsan* as a more progressive way of finding an Islamic law. Noted that, the importance of *istihsan* in the industrial revolution era 4.0, requires new *ijtihad* in solving the contemporary problems. Because the essence of the text in the Qur'an and hadith has a beneficial value for the entire universe, especially humans. The basic reason for realizing human rights is justice. It is relevant to the principle of legal

¹ Saeful Anwar, "Revolusi Industri 4.0 Islam Dalam Merespon Tantangan Teknologi Digitalisasi," *At-Tuhfah* 8, no. 2 (2019), <http://ejournal.sunan-giri.ac.id/index.php/at-tuhfah/article/view/203>.

² Anwar.

progress in the form of law for humanity.³ The Islamic with justice is the manifestation of benefits.⁴

Many studies related to the *istihsan* method have been carried out, such as Kasjim Salenda⁵ that discussed the differences and similarities of Hanafi and Maliki versions of *istihsan*. The similarity is, that both of them approve the *istihsan* with 'urf and *istihsan* emergency and *hajat* (Hanafi) which can be identified with *maslahat* (Maliki). The difference is in terms of grouping, while this article focuses on the application of the *istihsan* method in the industrial revolution era 4.0.

Then, Maimun⁶ stated that theoretically-normatively Syafi'i rejected *istihsan*, but on applicative-implementative, Syafi'i actually used *istihsan* as a legal argument in the practice of *istihsan*. Meanwhile, the article focuses on Imam Hanafi's thoughts on *istihsan*, not Imam Shafi'i. Other research by Arbanur Rasyid et al,⁷ uses the *istihsan* Method as a Digital *Jihād* Method in Countering Negative Information, while the article uses the *istihsan* method in solving problems in the industrial revolution era 4.0.

The research lead to the industrial revolution era 4.0 carried out by Salimadin⁸ who focused on legal issues via vending machines. However, the article focuses more on the use of the *istihsan* method in the era of the industrial revolution 4.0 which is applied to the law of eye transplantation, online transactions, and working in conventional banks. Therefore, the purpose of the article is to explain the role of the *istihsan* concept as a method of finding an Islamic law as an epistemological offer in

³ Satjipto Rahardjo, "Hukum Progresif: Hukum Yang Membebaskan," *Hukum Progresif* 1, no. 1 (2005): 1–24, https://ejournal.undip.ac.id/index.php/hukum_progresif/article/view/1009.

⁴ Sarifudin, "Hukum Islam Progresif: Tawaran Teori Maslahat At-Tufi Sebagai Epistemologi Unutk Pembangunan Hukum Nasional Di Indonesia," *Wawasan Yuridika* 3, no. 2 (2019), <https://doi.org/10.25072/jwy.v3i2.269>.

⁵ Kasjim Salenda, "Kehujjahan Istihsan Dan Implikasinya Dalam Istibat Hukum," *Al-Daulah: Jurnal Hukum Pidana & Ketatanegaraan* 2, no. 1 (2013), http://journal.uin-alauddin.ac.id/index.php/al_daulah/article/view/1419.

⁶ Maimun, "Hakikat Penolakan Imam Syafi'i Terhadap Istihsan Dan Relevansinya Terhadap Pembaharuan Hukum Keluarga Islam," *Al-'Adalah* 12, no. 2 (2014), <http://ejournal.radenintan.ac.id/index.php/adalah/article/view/3017>.

⁷ Arbanur Rasyid, Musda Asmara, and Maulana Arafat Lubis, "Strategi Jihad Digital Sebagai Upaya Perlawanan Informasi Negatif: Studi Metode Istihsan Pada Akun Instagram," *Al Istibath* 6, no. 2 (2021), <https://doi.org/10.29240/jhi.v6i2.2797>.

⁸ Salimadin, "Analisis Penggunaan Istihsan Dalam Transaksi Jual Beli Via Vending Machine," *Profit: Jurnal Kajian Ekonomi Dan Perbankan Syariah* 4, no. 2 (2020), <https://ejournal.unuja.ac.id/index.php/profit/article/view/1646>.

progressive Islamic law reform that is justice and beneficial for humans in the industrial revolution era 4.0.

Method

The type of research was a normative law.⁹ Because the study of *istihsan* was in the written literature so that it needs to study and review various works of literature, such as the concept of *istihsan*, progressive Islamic law, and theories on the industrial revolution era 4.0 which sources in the books and articles. This research was descriptive analysis. The article firstly described the concept of *istihsan* as a finding of progressive Islamic law in the industrial revolution era 4.0 and then concludes. It used a normative approach to understand and examine actual problems by referring to texts, *fiqh* rules, *uṣul fiqh*, and legal findings by *madhab* scholars as a step to approach problems with the norms. Data were obtained through literature review from data sources through books, journals, scientific articles following the research theme of the article.

Findings and Discussion

The Concept and Historis of the *Istihsan* Method

istihsan linguistically is from *maṣḍar* استحسن which means to think something is good¹⁰ or assume something is good.¹¹ Imam Abu Hanifah also interprets *istihsan* as استحسن which means I consider it good.¹² *istihsan* also means following something that is considered good on the *syara'* command.¹³ Besides that, the scholar of Islamic law reform often uses *istihsan* as stated by Imam al-Shafi'i.¹⁴ In the case of gifts, such property of 30 dirhams after the divorce is considered good. Giving *stuf'ah rights* for Shafi'i thought up to 3 days is considered good.

There are different arguments in the formulation and essence of *istihsan*. From the previous linguistic perspective, it is clear that people obtained two good things, but take

⁹ Sabarudin Ahmad, Aris Sunandar Suradilaga, and Lisnawati Shaleh, "Zakat Model by Caliph 'Umar Ibn Khaṭṭāb: Innovations Towards the Country's Economic Problems," *International Conference of Zakat*, 2019, 75–86, <https://doi.org/10.37706/iconz.2019.161>.

¹⁰ Umar Hubeis and A Yazid, *Fiqh Al-Lughah Al-'Arabiyah* (Surabaya: Pustaka Progresif, 1985).

¹¹ Abu Al-'Ainaini Badran, *Ushul Fiqh Al-Islamiy* (Mesir: Mu'assasah Syabab Al-Iskandarriyah, n.d.).

¹² Abdul Syukur, *Imam Syafi'i: Biografi Dan Pemikirannya Dalam Masalah Akidah, Politik Dan Fiqh* (Jakarta: Lentera, 2005).

¹³ Amir Syarifuddin, *Ushul Fiqh* (Jakarta: Logos, 1999).

¹⁴ Abdurrahman Jaadullah Al-Banaani, *Hasyiyah Al-Banaani 'Ala Syarh Al-Mahalli 'Ala Jam'i Al-Jawami* (Beirut: Dar Al-Kutub, 2015).

the better one to practice, and leave the others one. On terminology, several definitions are explained by *Fiqh* scholars. Ibn Subki proposed two explanations, namely:

عدول عن قياس الى قياس اقوي منه

Switch to stronger *qiyās*. (first *qiyās*).

عدول عن الدليل الى العادة للمصلحة

Using a custom rather than an argument for the *maṣlaḥah*.

Ibn Subki argues that the first definition is not debated because it is logical. While the second definition is still debatable. The reason is, that today's customs are different from the time of the Prophet. If the customs were following sharia, the Prophet would justify, either in a *qauliyah* or his silence. *Istiḥsan* in the Hanafī *maḥḥab* quoted by al-Sarkhasi.¹⁵

العمل بالاجتهاد و غائب الراي في تقدير ما جعله الشرع موكو لا لنص الى ارائنا

Act with *ijtihād* and common arguments in ensuring the Sharia problems are left to the people.

الدليل الذي يكون معارضاً للقياس الظاهر الذي تسبق اليه الاوهام قبل انعام التامل في العادة حكم واشباهاها من الاصول يظهر هن الدليل الذي عارضه فوقيه في القوة فان العمل به هو الواجب

The texts that contradict to clear *qiyās* (*zahir*) begin with *zon* presumption before a study of the texts or legal fundamental, but after a more detailed observation of these arguments in positive law and the same foundation, it shows that the texts are stronger than *qiyās* must be followed and vice versa.

Istiḥsan definition, according to the follower of the Maliki *maḥḥab*, some of the definition is described by al-Syatibi.¹⁶

وهو في مذهب ما لك الاخذ بمصلحة جزئية قبي مقابلة دليل كلي

Istiḥsan on Malikiyyah uses the benefit of *juz'i* instead of the *kulli* argument. From this explanation, an Islamic law reformer uses common arguments in establishing the law. Then, the *kulli* argument is set aside first in establishing the law because it needs to consider the benefit of *juz'i*. Based on the previous various explanations, concluded that:¹⁷

¹⁵ Al-Banaani.

¹⁶ Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah* (Cairo: Darul Kutub Ilmiyah, n.d.).

¹⁷ Nasroen Harun, *Ushul Fiqh I* (Jakarta: Logos Wacana Ilmu, 1996).

- a. The supporting texts strengthen *qiyās khafī* than *qiyās jali*
- b. Prioritizing the benefit of *juz'i* from the argument of *kulli*

The conclusion of the definitions is that the *istiḥsan* is turning away from the *kulli* argument based on *syara'* and switching to *qiyās juz'i* due to greater benefits. The way is, by leaving *qiyās jali* and quoting *qiyās khafī* as the legal reference, or deciding a law by citing cases with *juz'i* character from cases with *kulli* character. Therefore, it is clear that *istiḥsan* is formed based on a strong foundation for the benefits of Islam, not by the impulse of worldly desires.

Istiḥsan is a method of finding the law that is used as a religious argument or evidence. In the Maliki and Hanafi *maḏhab*, the position of *istiḥsan* has an important role which assuming it can achieve the goals of sharia and is more guiding. Legal products can be gained through *istiḥsan*. Although the Shafi'i *maḏhab* does not agree with the *istiḥsan* used by the Hanafi and Maliki. The thing actually happened was the use of different terms, but the essence was similar. The Shafi'i has argued that the *istiḥsan* method has been represented through the arguments in *muttafaq 'alaih*. Even *istiḥsan* is not an independent argument, but it shows the path taken by *mujtahids* by applying the *syar'i* proposition and its rules when the arguments are no longer relevant to the development of today's society. This aims to achieve the benefits more quickly and leave a prolonged *maḏorot* based on the *syar'i* arguments and their sources.¹⁸

Abdul Karim Zaidan in *Al-Wajiz fī Uṣul Fiqh* divides *istiḥsan* into two. First, *istiḥsan* from the side of the transfer of the law. And, *istiḥsan* from the side of the argument.¹⁹ *Istiḥsan* from the side of the transfer of the law divided into two types, as follows:

- a. Change of law from *kulli* to *juz'i*. For example, the law of *kulli* is prohibited from buying and selling without the goods because it can break the contract. But, the law of *juz'i* is permitted to make a sale and purchase contract without goods when the contract has become a *salam* contract.

¹⁸ Eka Sakti Habibullah, "Pandangan Imam Abu Hanifah Dan Imam Syafi'i Tentang Al-Istihsan," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial Islam* 4, no. 7 (2017): 451–66, <https://jurnal.staialhidayahbogor.ac.id/index.php/am/article/view/156>.

¹⁹ Abdul Karim Zaidan, *Al-Wajiz Fi Ushul Fiqhi* (Beirut: Mu'assasah Risalah, 2002).

- b. The change from *qiyās jali* to *qiyās khafi* is caused by a strong argument that requires it. For example, in the view of the Hanafiyyah scholars, the left drinking from a bird of prey is sacred and drinkable. *Qiyās Jali* explains that it is forbidden to drink the drink of a wild animal because the wild animal drinks directly with its mouth. And, it is analogous to its flesh. From the perspective of *istiḥsan*, wild animals drink directly with their mouths, while birds of prey drink through their beaks, which is not *najis* (unclean). The difference between wild animals and birds of prey is determined by *qiyās jali* to *qiyās khafi*.

While the Hanafiyyah *maḏhab* grouped *istiḥsan* into 6 types. They are:²⁰

- a. *Istiḥsan bi al-naṣ* or *istiḥsan* based on the Quran and hadith. This means the difference between the Quran or hadith regarding the law of a case and the rule of law. For example, a will. *Qiyās* stated that a will is prohibited because the transfer of property rights to the received person is carried out when the person has died. However, this *qaidatul 'am* is excluded based on the letter an-Nisa' verse 11:

من بعد وصية يوصي بها أو دين

(The heritage for) after the will has been fulfilled or (and) after the debt has been paid. Based on this verse, the rule of law does not apply to the issue of wills.

- b. *Istiḥsan bi al-Ijma'* or *istiḥsan* based on *ijma'*. The terms of sale and purchase are clear. For example, the service of public bathing must be clear on the quantity of water and duration of time. But, the public bathing services referring to the *istiḥsan ijma'*, are allowed even regardless of the quantity of water and the duration of use.
- c. *Istiḥsan bi al-qiyās al-khafi* or *istiḥsan* based on hidden *qiyās*. For example, the case of agricultural *waqf*. Referring to *qiyās jali*, it assumes as a sale and purchase so that the activity of passing/flowing water over the land is not allowed. Meanwhile, according to *qiyās Khafi*, this activity is permissible because it assumes as a rental contract. Then, not only goods but also it can use the benefits.
- d. *Istiḥsan bi al-Mashlahah* or *istiḥsan* based on benefit. In general, the common rule of a man who is not a legal partner is prohibited to see a women's *aurat* (body

²⁰ Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah*.

parts is required by Islam to be covered). But, for the benefit, a professional gynecologist may see the patient's *aurat*.

- e. *Istihsan bi al-'urf* or *istihsan* based on generally accepted customs. For example, the permissibility of public bathing services to do a rental contract regardless of the duration and water discharge due to the custom.
- f. *Istihsan bi al-darurah* or *istihsan* based on an emergency or urgent situation. For example, when a well with a few amount of water is entered with *najis* (unclean), then the well is considered unclean. But, according to the Hanbali *mazhab*, it is enough to add gallons of water to remove the unclean. This aims to make it easier for people to take water from the well for worship purposes.

According to the scholars of the *mazhab*, *istihsan* is a strong provision for establishing Islamic law. The reason is, the difficult to achieve the benefits when using general provisions, *qiyās*, and the *kulli* argument. Here, *istihsan* is needed as another way given by Allah SWT to achieve benefits for humans.²¹ The reasons for the *istihsan* are:

- a. The verse explains about using the ease and eliminating difficulties is in Surah al-Baqarah verse 185:

يريد الله بكم اليسر ولا يريد بكم العسر

“... Allah wants ease for you and does not want difficulty for you...”

- b. The hadith narrated by 'Abdullah ibn Mas'ud stated:

ما رآه المسلمون حسنا فهو عند الله حسن²²

“Something that is seen as good by Muslims, then Allah would also see as good.”

Imam al-Syatibi stated the *istihsan* used by *mujtahids* is not based on logic and reason but rather on the contextual objectives of Islamic law following the *maqashid al-syari'ah*.²³ For example, a doctor who sees a patient's *aurat* for a diagnosis is permitted by *syara'* for reasons of benefits. Husain Hamid Hassan argued that *istihsan* conducted by Imam Malik refers to the text from two sides.²⁴ First, *istihsan* theory is derived from

²¹ Agah Gamadi, *Pintu Ijtihad Sebelum Tertutup* (Bandung: Pustaka, 1994).

²² Ahmad bin Hanbal, *Musnad Ahmad Bin Hanbal* (Beirut: Dar Al-Fikr, 1991).

²³ Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah*.

²⁴ Husain Hamid Hassan, *Nazriyat Al-Maslahah Fi Al-Fiqh Al-Islamiyah* (Mesir: Dar Al-Wahdat Al-'Arabiyah, n.d.).

qath'i which are interpreted according to the objectives of *syara* and not only logic and reason. Second, the rule of *istihsan mujtahid* always refers to the sharia arguments. Text of sharia has recognized the validity of *ijma'* and *'urf*.

Al-Bazdawi in *Kasyf al-Asrar* stated that "Imam Hanifah is too noble and virtuous to argue using on lust and advocate *istihsan* even though there are sharia arguments."²⁵ This is explained by Ibn as-Sam'ani and al-Qaffal who are from the Shafi'i school that:

If the definition of *istihsan* used is following the meaning of *istihsan* used by *Uṣul* scholars, then it has a strong fundamental for argument. *Shafi'iyah* did not deny it and also used it. But, if the definition of *istihsan* is to think that something is bad or good based on logic and without supporting evidence, then Syafi'iyah rejects it.²⁶

The argument shows that *istihsan* differs only at the editorial or definition level, not at the essential level. Al-Buthi stated that Imam Shafi'i did not deny *istihsan* as the use of independent arguments but denied the naming of *istihsan* itself.²⁷

Progressiveness of Islamic Law

Greek philosophy of natural law has initiated Satjipto Raharjo to teach progressive law in the development of law in Indonesia. Najmuddin at-Thufi with the theory of benefit has initiated progressive law in the study of Islamic law.²⁸ In recorded history, Islamic law with all its complexities certainly has its own philosophical basis. One of them is the benefits which is agreed by Imam Malik, al-Ghazali, and others. Various theories and rules of *maṣlaḥah* in Islamic law, such as *maṣlaḥah mursalah* formulated by Imam Malik, the formulation of *maṣlaḥah* from al-Gahzali and ash-Syatibi and *istihsan* from Imam Hanafi. Benefit in Islamic law is the key to the creation of a civil society legally.

Discussing progressive Islamic law, Abdullah Saeed categorizes it into 6 sections. First, The Legalist-Traditionalist is a Muslim group that emphasizes the development and learning of ancient Islamic law (*fiqh*). Second, The Theological Puritans is a Muslim group more emphasis ethical and religious doctrinal. Third, the political

²⁵ Al-Bazdawi, *Kasyf Al-Asrar* (Beirut: Darul Kutub Ilmiyah, n.d.).

²⁶ Muhammad Ali Asy-Syaukani, *Irsyad Al-Fuhul Fi Tahqiq Al-Haqq Min 'Ilm Al-Ushul* (Beirut: Darul Kutub Ilmiyah, 1994).

²⁷ Muhammad Sa'id Ramadan Al-Buthi, *Dawabit Al-Maslahah Fi Asy-Syari'ah Al-Islamiyyah* (Beirut: Mu'assasah Risalah, 2001).

²⁸ Sarifudin, "Hukum Islam Progresif: Tawaran Teori Maslahat At-Tufi Sebagai Epistemologi Untuk Pembangunan Hukum Nasional Di Indonesia."

Islamists are Muslim groups focused on the establishment of an Islamic state or political matters. After that, the Islamist extremists are Muslim groups more emphasis on violence and anarchism against groups of different religions and religious sects. Fifth, the secular Muslim is a group having assumed that religion is private. And, the progressive is a Muslim group that examines and researches in-depth the treasures of Islamic scholarship with contemporary methods and approaches such as social, sciences, and humanities, aiming it can be accepted by the times and today's society.²⁹

Adullah Saeed gives characteristics on the type of progressive Muslim. First, has the view that Islamic law reform will continue so that it is appropriate or relevant to the development of the times and modern Islamic society. Second, more likely to use new *ijtihad* and new methodologies in establishing Islamic rules on contemporary issues that have emerged recently. Third, a collaboration of thought between the classical scholars and the western people. Fourth, this person believes that changes relating to moral, intellectual, economic, legal, and technological order must follow Islamic law. Fifth, the person is not under *mazhab* or doctrine or legal discipline in establishing legal findings through modern approaches. The last, this person upholds the principles of social justice, gender, human rights, and harmonization between religious communities. The person is required to know the basic rules of Islamic jurisprudence and its branches of science, then use this knowledge in examining recent problems through a logical and comprehensive framework of thinking to obtain maximal answers. Therefore, Abdullah Saeed called it a progressive *ijtihadis*. The *ijtihad* process is based on the values of justice, benefit, and universality in the corridors of Islam and not based on lust.³⁰

Therefore, if a law is found which is not based on the principles of justice, benefit, and universality, then the law must be reformed to comply with the principles of justice, benefit, and universality in Islam. Through this way, Islam can always live and be a solution to contemporary problems, such as gender, pluralism, human rights, and so on. In essence, progressive *ijtihadis* do not try to create new provisions, teachings or

²⁹ Abdullah Saeed, *Islamic Thought: An Introduction* (London: Routledge, 2006).

³⁰ Abdul Gafur, "Pemikiran Abdullah Saeed Tentang Islam Progresif," *Ta'limuna* 8, no. 1 (2019), <https://e-journal.staima-alhikam.ac.id/index.php/talimuna/article/view/242>.

schools, but rather accommodate modern society's life by self-actualizing through traditional religious foundations.³¹

Abdullah Saeed as a contemporary scholar, in conducting *ijtihad*, differs from classical scholars, both in methodology and the results. The *ijtihad* process is dialogued with social, science, humanity, and philosophy. After that, it creates a new conclusion following the conditions of society and the times. Here, Abdullah Saed focuses on harmonization among religious communities, gender, and human rights. Abdullah Saeed uses the Qur'an as the first reference for establishing law but uses a different methodology from the salaf scholars. The steps conducted by Abdullah Saeed in interpreting the Qur'an are:

Chart 1: Al-Quran Interpretation Method by Abdullah Saeed

The details in Chart 1 are, first, the grouping of the Quran text according to the theme being studied (indexation). Second, analyze the Quran using an approach of linguistic, literal, textual, contextual, language, literary form, *balagah*, and grammatical or *nahwu*. Third, connecting the Quran with the socio-historical context by considering all aspects of political, social, cultural, and other histories. Identify the characters of the text in Quran, which includes law and ethics, and also find the implicit messages connected with the universal message of the Quran.

The fourth step adapts to the current context. This step is carried out by determining the relevant problems with current conditions. After that, it analyzes further the values of social, cultural, economic, and political that are currently developing. Then, it explores the current values that are relevant to the value of the texts of the Quran. And it continued to compare the today and the time when the Qur'an was revealed to find the differences and similarities. After finding them, it synergizes the text with current conditions based on the similarities and differences found. And, it identifies the general and specific messages contained in the Quran, whether it has a relationship with the purpose of the Qur'an or not. The steps are ways to interpret the

³¹ Gafur.

messages in the Quran to be applicable following the current context. For example, the time changing is the women are now able to be economically independent, more educated, and even become leaders in regional and central government and private organization.³²

Ibn Qayim al-Jauziyah stated, if sharia was established with the concept and emphasizes the benefit for humans (*maṣalih al-‘ibad*), then the concept could be created from justice, compassion, benefits, and wisdom. The *mafhum mukhalafah*, if the foundation does not consist of the those things, then it cannot be called the foundation of benefits. Due to the limitations of human reason, the benefit has not been achieved optimally.³³ *Istihsan*, as a method of establishing law in the Hanafi *mazhab*, needs to be developed in a progressive Islamic law. Islamic law in the industrial revolution era 4.0 leads to digitalization and the transformation of ways of conducting transactions in the economy. Islamic economics as the development of muamalat fiqh should use this method to solve contemporary problems in the industrial revolution era 4.0.³⁴

Sharia which regulates human life, especially the economic line, needs to be developed to always follow the times changes. For this reason, *istihsan* is needed in establishing progressive laws in following the times. With *Is istihsan tihsan*, legal rigidity can be more flexible to create an increasingly complicated economic development of the Muslim community. In this case, the scholars always try to reform the Islamic law related to contemporary problems that always bring benefit to the people.³⁵

***Istihsan* as a Finding Method of Progressive Islamic Law in the Industrial Revolution Era 4.0**

The development of science and technology, especially in the industrial era 4.0, causes changes in how people move in their daily lives. Science and technology have combined physical, biological, and digital into a new entity. This latest industry is a stage of technological change that has changed the pattern of human life in terms of

³² Abdullah Saeed, *Intepreting the Qur'an: Towards a Contemporary Approach* (London: Routledge, 2006).

³³ Ibn Qoyyim Al-Jauziyyah, *I'lam Al-Muwaqi'in 'An Rob Al-'Alamin* (Beirut: Darul Kutub Ilmiyah, 1993).

³⁴ Arif Nur'aini and Muttaqin Muhammad Ngizzul, "Istihsan Sebagai Metode Istinbath Hukum Imam Hanafi Dan Relevansinya Dalam Pengembangan Ekonomi Syariah," *Tribakti* 31, no. 1 (2020): 1–16, <https://doi.org/10.33367/tribakti.v31i1.957>.

³⁵ Nur'aini and Ngizzul.

scale, scope, complexity, and change in previous times. To survive in global uncertainty, a Muslim needs to use all his abilities, reason, and mind to adapt to the demands of the times. For example, running a business no longer in conventional ways but also using online marketing. Also, *da'wah* can be done online. IoT or the Internet of Things is a must in the industrial era 4.0.³⁶

The rapid development of science and technology has had an impact on Islamic law. Islamic law, in the term of *mu'āmalat*, continues to adapt to the times. Because, when the law does not adapt, surely, the law will not live in society. In short, in the process of developing Islamic law, it is impossible to ignore the development of the times. The first example, in the field of medicine, is a corneal transplant. The way to have an eye transplant is that the Eye Bank accepts and carries out the registration of potential donors.³⁷ The requirements for eye donors are, at least 21 years old, voluntarily, approved by family or heirs, registering to the Eye Bank secretariat, and filling out a complete statement letter. After registering, the prospective donor must complete a clinical examination and fill out a statement letter that states, if dies, the donor allows the eyes to be taken for transplantation to a person who is entitled to it. The statement letter must be known and signed by the husband/wife/children/heirs and another witness, also signed by the management of the Eye Bank. Then, give authorization to the management of the eye Bank to carry out the removal and transplantation after the donor is dead.³⁸

Basically, a person does not have the right to donate his organs to others as he is not the true owner of the organs. With the *istihsan* method, it is possible. First, to help others in need. In line with the word of Allah in the Quran on al-Maidah: 2. Second, there were no other medical attempts to cure (emergency). In medical science, today, no technology has been found that can create synthetic corneas. So, the only way to help patients with corneal damage is only through a corneal transplant.³⁹

³⁶ Anwar, "Revolusi Industri 4.0 Islam Dalam Merespon Tantangan Teknologi Digitalisasi."

³⁷ Sidarta Ilyas, *Ilmu Penyakit Mata* (Jakarta: Sagung Seto, 2002).

³⁸ AHmad Bashori, "Studi Analisis Keputusan Ijtima' Ulama Komisi Fatwa Majelis Ulama Indonesia Se-Indonesia III Tahun 2009 Di Padangpanjang Tentang Diperbolehkannya Wasiat Donor Kornea Mata Di Bank Mata" (UIN Walisongo Semarang, 2010), <http://eprints.walisongo.ac.id/id/eprint/3079/>.

³⁹ Ichwan Sam and Et.al, *Ijma' Ulama (Keputusan Ijtima' Ulama Komisi Fatwa Se-Indonesia III Tahun 2009)* (Jakarta: Majelis Ulama Indonesia, 2009).

Islam honors the adam race and the organ of the body as well. For example, in the prohibition to eat the flesh of others. In the medicine field, it is prohibited to take the organs of the dead body without medical procedures and illegally because this demeans or insults the dead person.⁴⁰

As a result of the development of this science and technology, new things, such as transplants for the dead body are assumed permissible.⁴¹ Corneal transplantation is permissible according to Islam because the dead don't need it anymore, while the live person needs it more. The eye cornea used by the blind will give a great benefit because the sense of sight is the main thing to humans in life. To be more perfect in worship to Allah, it needs a complete sense to achieve solemnity. Allah himself does not want difficulties for the people but wants ease.⁴²

Honoring the dead body is a tertiary *maṣlaḥat* while helping the visually impaired is a *ḥajjiyat maṣlaḥat*. So, the *ḥajjiyat maṣlaḥat* become priority. Then, the prohibition of taking the organs of a dead body change into permissible as there is a greater benefit or purpose. MUI has a *fatwa* that corneal wills are allowed as long as there are witnesses from the family and the operation must be carried out by experts in their fields.⁴³ This *fatwa* is based on the following rules:

الضرورات تبيح المحظورات⁴⁴

“An emergency allows something that is forbidden”

Another example is the practice of a *mu'atah* contract without saying a sell and buying contract at the supermarket.⁴⁵ In terms of general rules, the practice of trading without an acknowledgment of consent is not valid, but in supermarkets, it has become common to make it more efficient, then the law of *mu'atah* contracts is allowed. This form of contract often occurs in modern markets, such as minimarkets, supermarkets, hypermarkets, and so on. This kind of buying and selling contract is following *fiqhiyyah*

⁴⁰ Iskandar Usman, *Istihsan Dan Pembaharuan Hukum Islam* (Jakarta: RajaGrafindo Persada, 1994).

⁴¹ Abuddin Nata, *Masail Fiqhiyah* (Jakarta: Kencana, 2003).

⁴² Ahmad Azhar Basyir, *Refleksi Atas Persoalan Keislaman Seputar Filsafat, Hukum, Politik Dan Ekonomi* (Bandung: Mizan, 1996).

⁴³ Hasbi Umar, *Nalar Fiqh Kontemporer* (Jakarta: Gaung Persada, 2007).

⁴⁴ Ali Ahmad An-Nadwi, *Qawa'idul Fiqhiyah* (Damaskus: Darul Kalam, n.d.).

⁴⁵ Muhammad Syafi'i Antonio, *Bank Syariah Dari Teori Ke Praktik* (Jakarta: Gema Insani, 2001).

al-istihsanu bil ur'f, namely legal deviations from general provisions (*qiyās*) are allowed because they have been practiced in everyday people's habits.⁴⁶

Industrial era 4.0 is the rise of online transactions by implementing a *salam* (order) contract. In the general, the contract the intangible goods are invalid, but in the *salam* contract is still valid even though the goods are intangible. This form of buying and selling contract is allowed following the Quran text "O you who believe, if you do not *mu'āmalah* in cash for an indefinite period, then you should write it down...". The problems solving can be categorized into *istihsan bi al-naş*, namely *istihsan* based on the Quran and Hadith. This means that there are texts that show specific arguments for general provisions. Then, the mujtahids do not use general provisions but use the special (casuistic) texts.⁴⁷

Working in a conventional bank is considered permissible because there are no Islamic banks or halal jobs in the area. The case includes in *the istihsan bi al-dhoruroti* category, which is the use of *istihsan* of an urgent matter. The *mujtahids* do not use general provisions but use *istihsan* based on urgent needs.⁴⁸ *Istihsan* indirectly has fundamental values. This categorization contains human elements such as justice, humanity, safeguarding property, life, religion, and descendants which we generally refer to as *maqāsid syarī'ah* (the purpose of establishing sharia). These elements are very important and fundamental things in the content of the Quran. *Maqāsid syarī'ah*, according to contemporary scholars, is divided into five parts, but in the future, it may develop more or less.⁴⁹

Istihsan, as previously described, is the change of a scholar who is an expert in Islamic law from what was originally general law to specific law because of the greater benefit. So, the *istihsan* principle is the determination of law because to achieve the greater purpose of the Sharia by choosing a different path from the general provisions of the law. Then, using *istihsan* becomes a stronger fundamental than using general provisions or *qiyās*.⁵⁰ The application of *istihsan* from some of the previously discussed

⁴⁶ Achmad Lubabul Chadziq, "Istihsan Dan Implementasinya Dalam Penetapan Hukum Islam," *Miyah* 15, no. 2 (2019), <https://ejournal.inkafa.ac.id/index.php/miyah/article/view/192>.

⁴⁷ Chadziq.

⁴⁸ Chadziq.

⁴⁹ Jaser Auda, *Maqasid Al-Syariah A Beginner's Guide* (London: Cromwell Press, 2008).

⁵⁰ Usman, *Istihsan Dan Pembaharuan Hukum Islam*.

cases can be very relevant to the states and situations of the industrial revolution era 4.0. Progressive law based on *istihsan* in establishing law is, in fact, more able to answer the problems raised by the changes in information and technology that are increasingly extraordinary.

The necessity of Islamic law reform law is influenced by the underlying factors. In general, there are four things as reason. The first is to fill the legal vacuum because there are no rules in the classical fiqh books that explain contemporary phenomena, while the community's need for new laws in today's global problems is very urgent. Second, the rapid development of the economy, science, and technology, so the need for legal regulations, especially the important issues for which there are no written legal regulations yet. Third, the reforms have created an opportunity for Islamic law to enter national legislation. Fourth, the influence of Islamic law reformers from the international, national and regional levels is especially related to issues of science and technology.⁵¹

Conclusion

Istihsan is a finding method of Islamic law that is commonly used as evidence in the Hanafi *Mazhab*. *Istihsan* has the most important position because many contemporary issues in the industrial revolution era 4.0 have been resolved through *istihsan*, such as the law of buying and selling online, “all you can eat”, and transactions without *qabul* consent at supermarkets. The method of finding law through *istihsan* is more capable of achieving the goals of a more universal Sharia. In principle, *istihsan* correlates with progressive Islamic law. Its relevance is in *maqāṣid syarī'ah*. The progressive law tries to reach the benefit of humans in the world and the hereafter by being within the limits of sharia. This is caused by the differences in the needs of today's society affected by the rapid development of science and technology, compared to society in the past when the Quran was revealed. Therefore, it requires a new interpretation of the Quran and re-actualized contextually as a response to the socio-cultural changes in modern society. With a contextual approach that focuses on the socio-historical context, it is hoped able to provide new hope in dealing with increasingly complex changes in globalization. While benefit is a target of the legal

⁵¹ Farid Naya, “Mengurai Titik Temu Antara Istihsan Dan Pembaharuan Hukum Islam,” *Tahkim* 12, no. 1 (2017): 141–57, <https://doi.org/http://dx.doi.org/10.33477/thk.v12i1.34>.

reform process. The purpose of *istihsan* is to eliminate difficulties and reach a benefit. *Istihsan* includes the establishment of the progressive Islamic law that can still develop according to the demands of the times. So, it is possible to establish dynamic and relevant legal products.

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