

**THE URGENCY OF ISLAMIC LAW SOURCES KNOWLEDGE
MAŠĀDIR AL-AḤKĀM AL-MUKHTALAF FĪHĀ: ISTIŠĀB,
SADD AL-DZARĪ'A, AND QAUL AL-ŠAḤĀBĪ**

Ahmad Maulidizen

Department of Sharia Business and Management
Tazkia University College of Islamic Economics. Jawa Barat Indonesia
Email: ahmadzen682@gmail.com

Khalel Mohammed Amar

Department of Sharia Business and Management
Tazkia University College of Islamic Economics. Jawa Barat Indonesia
Email: mohammedamar.khalel@gmail.com

Abstrak

Artikel ini merupakan hasil pemikiran tim penulis tentang pentingnya (urgensi) sumber-sumber hukum Islam atau syariat *Madasir al-Ahkam al-Mukhtalaf Fiha* (dalil hukum ijtihad yang diperselisihkan) yang berfokus pada *Istishhab*, *Sadd al-Dzari'ah*, dan *Qaul al-Sahabi*. Masih banyak masyarakat Indonesia yang kurang memahami atau bahkan tidak mengetahui sama sekali akan sumber-sumber hukum Islam berikut ini. Artikel ini menggunakan metode pengumpulan data obseravasi dan data literatur yang kemudian dianalisa dengan menggunakan metode induktif, deduktif, dan komparatif. Artikel ini bertujuan untuk memberi pengetahuan pada pembaca tentang *Istishhab*, *Sadd al-Dzari'a*, dan *Qaul al-Sahabi*, untuk kemudian dapat diaplikasikan dalam menjalani kehidupan sebagai seorang muslim.

Kata Kunci; *Islamic Law; Sadd al-Dzari'ah; Istiṣāb; Qaul Ṣaḥābī*

Abstract

This article is the writer's team thinking result about the importance (urgency) of Islamic law or sharia sources *Madasir al-Ahkam al-Mukhtalaf Fiha* (ijtihad postulates which are disputed) which focused on *Istishhab*, *Sadd al-Dzari'a*, and *Qaul al-Sahabi*. Nowadays, there are still many of Indonesian who are not understand well yet or even not understand at all about these Islamic law sources. This article uses data collection method by observation and library data which then analysed by using inductive, deductive, and comparative method. This article purposes to give knowledge to the readers about *Istishhab*, *Sadd al-Dzari'a*, and *Qaul al-Sahabi*, which then can be applied in living their life as a Moslem.

Kata Kunci; *Islamic Law; Sadd al-Dzari'ah; Istiṣāb; Qaul Ṣaḥābī*

INTRODUCTION

Islam is comprehensive way of life and created to bring human to the happiness, both in this world and in the hereafter (*falāḥ*) as it has been recorded in al-Quran and Hadith. Islam has provided regulations to regulate all aspects of human life.¹ Those aspects divided into two big group, *Ibadah* (human's ritual to reach Allah) and *Muamalah* (deed between human).² The emergence of the term *ijtihad* in the technical sense, in historical reviews usually refers to the case of Mu'az Ibn Jabal who was sent by the Prophet Muhammad to carry out the duties of justice in the City of Yemen.³ This history, justifies the embryo of the emergence of *ijtihad* in the time of the apostle. "Recommendation" The Apostle in this case, in the following period, turned out to have a major influence on the tradition of using reason (*ra'y*) in capturing the meaning of nash

In turn, names like Abū Bakar, Usman, Ali, Ibn Abbas, Ibn Mas'ūd, Ubay Ibn Ka'ab, Zaid Ibn Tsabit, Abū Mūsā al-Asy'arī dan Mu'az Ibn Jabāl⁴ questions that have not yet been answered in the Quran and Hadith. *Ijtihad* (*ra'y*) companions, according to Ali al-Sais,⁵ contains a very broad meaning (*bi ma'nahu al-wasī'*), which is not limited to the form which is later understood as *qiyās*, *istiḥsān*, and *maslaḥat*. It also includes *sad al-zarā'ī*, *'urf* dan *istiṣāb*. The word in this context, is understood as a product of reasoning (*al-qalb*) in the observation (*ta'āmmul*) and to dilute (*ṭalab*) to the truth of various seemingly opposite arguments. This article will explain about *istiṣab*, *Sadd al-Dzarī'ah* dan *Qaul Ṣaḥabī*. This article is a library research which focused on explaining about one of Islamic law, or sharia sources *Madasir al-Ahkam al-Mukhtalaf Fiha* especially about *Istishab*, *Sadd al-Dzari'a*, and *Qaul al-Sahabi*. This was chosen due to the less knowledge of society about these Islamic law sources. Writers use

¹ Ahmad Maulidizen and Joni Tamkin Borhan, 'Pelaksanaan Penjadualan Semula Pembiayaan Mikro Murabahah di Bank Syariah Mandiri Cawangan Dumai, Indonesia', *Shariah Journal*, Vol. 26, No. 2 (2018), p. 235-266.

² Ust. Abu Fahmi, Ir. Agus Siswanto, MEI, Ir. Muhammad Fahri Farid, MM, and Arijulmanan, S.S, MHI, 'Sharia Human Resource Development: Dari Konsep ke Implementasi', Chapter 1, page 18

³ Ahmad Ibn Hanbal, *Musnad al-Imam Ahmad Ibn Hanbal* (Beirut: Dar al-Kutub al-Islamiyyah, 1993), Vol. IV, p. 252

⁴ Muhammad Ali al-Sais, *Nasy'ah al-Fiqh al-Ijtihad wa Athwarih* (t.t.p: Mujma' al-Buḥūs al-Islāmiyyah, 1970), p. 36-75.

⁵ *Ibid*, p. 37

observation and library data in writing this article so there will be no population and sample.

METHODOLOGY OF RESEARCH

This research is a library research with descriptive approaches, which are describing or explaining the analysis of *hiwalah* contracts according to fiqh muamalah and Its application in Indonesia Islamic banks. The method of collecting data in this study is documentation, journals and books. Then analyzed using content analysis, which is by analyzing library data that is deskriptive or scientific analysis of the message premise. Data analysis methods are deductive, inductive and comparative.

THE DEFINITION OF LAW

Law is the most important system in implementation of institutional power. According to Online *Kamus Besar Bahasa Indonesia* (KBBI) which has been translated to English by writers English skill, law is (1) regulation or tradition which officially binding, confirmed by ruler or government, (2) constitution, regulation, etc. to regulate society life style, (3) directive (rules, provisions) regarding certain events (nature and else), and (4) decisions (considerations) determined by the judge (in court).⁶ Law has an important role for humans in living their lives. The existence of law can protect people from doing something or not to do something. Regulate humans to carry out their obligations and fulfil their rights.

Imagine if there were no law regulating this life. Like there is no law that regulates punishment for the perpetrators of criminal acts. Of course that perpetrators of criminal acts will freely act arbitrarily which lead to not achieving peace in society. Likewise in Islam, Islam as a comprehensive way of life has regulates humans in living their lives. Starting from he/she was born until he/she died, from waking up to sleeping again, and so on. This regulation was created by Allah Swt. so that humans could achieve success in living their lives on this mortal earth in order to prepare for their next eternal life in the hereafter.

⁶ <https://kbbi.web.id/hukum>

DEFINITION OF SHARIA

Sharia comes from Arabic word of Shara' which etymologically means "road that can be traversed by water",⁷ which means the path taken by humans (as the creature of Allah) to go to Allah (The Creator). Sharia is the law that regulate every single joint of Moslem's life, whether in this world (*Dunya*) or in the hereafter (*Akhira*). Sharia is laws that measure human connections with God (*Khaliq*), and relations between creatures (*makhluk*), which inside it consist of two elements *Ibada* and *Muamala*.⁸ According to Online *Kamus Besar Bahasa Indonesia* (KBBI) which has been translated to English by writers English skill, sharia is religion's law which set humans life's regulation, human connection with Allah Swt., relation between humans and nature environment based on al-Quran and Hadith.⁹ From the explanations above can be concluded that sharia is an exist law and used by Moslems in living their temporary life in this world, to achieve world and the hereafter happiness, in correspondence with commands and prohibitions which has been set bay Allah Swt.

DIVISION OF ISLAMIC LAW (SHARIA) SOURCES

The origins of sharia are sharia postulates (*al-Adillat al-Shar'iyah*). From these postulates, can be *istinbath*-ed sharia laws which in form of practice '*Amalia* and general, whether it is certain (*qat'i*) or it is relative (*zanni*).¹⁰ And the meaning of law *istinbath* is to determine, to find, or to set law status for a case/deed from a certain postulate. The sources of Islamic law is divided into two groups, those are (1) law sources that has been agreed (*maṣādir al-aḥkām al-muttafaq 'alayha*) or often said as main sources, those are al-Quran, Ḥadīth, Ijma', and Qiyās, and (2) law sources that are disputed (*maṣādir al-aḥkām al-mukhtalaf fihā*), those are

⁷ Abd. Rahman Dahlan, *Ushul Fiqh* (Jakarta: AMZAH, 2004), p.1.

⁸ Abu Fahmi, Agus Siswanto, Muhammad Fahri Farid, and Arijulmanan, 'Sharia Human Resource Development: *Dari Konsep ke Implementasi*', Chapter 1, page 12

⁹ <https://kbbi.web.id/syariat>

¹⁰ Achmad Yasin, *Ilmu Usul Fiqh (Dasar-Dasar Istinbath Hukum Islam)* (Surabaya: UIN Sunan Ampel Surabaya, 2014), p. 19; Ahmad Maulidizen And Mohammad Taqiuddin Bin Mohamad, 'A Critical Analysis Of Islamic Economic Opportunities And Challenges In Globalizational Era. *Share: Jurnal Ekonomi Dan Keuangan Islam*. Vol. 7, No. 2 (2018): p. 146.

*Istihsan, Istislah (al-maṣlahah al-mursalāh), dzara'i', 'urf, istiṣāb, Mazhab Ṣaḥābī (Qaul al-Ṣaḥābī), syar'un Man Qablanā, dan Dalalah al-Iqtiran.*¹¹

DEVELOPMENT OF LAW IN *USHUL FIQH*

Talk about development of law in *Ushul Fiqh* is called *Ijtihad*, it is related to transformations that happen in the society. Generally, *Ijtihad* can be defined as the effort of optimal thinking in *istinbath* law from a resource to obtain the answer about problems that appear on the society. It happens because there is no more prophet to be ask when new problems occur, and there is no exact explanation about the problems in Quran nor in Hadith.

According to Syahabuddin (2014) in a journal titled “Pandangan Al-Syatibi tentang Maqasid Al-Syariah”, in Islamic law perspective, the expert of *Ushul Fiqh* apply many methods in doing *Ijtihad*. Those methods are *Qiyas, Istishab, and 'Urf*.¹² *Ijtihad* postulates are postulates that are not come from *nass*, but come from *aqli* (human brain) postulates or we can say those are postulates that come from human. Those are: (1) *al-Ijma'*, (2) *al-Qiyas*, (3) *Istihsan*, (4) *al-Maslahah al-Mursalāh*, (5) *'Urf*, (6) *Shar'u man Qablana*, (7) *Istishab*, (8) *Sadd al-Dzari'a*, and (9) *Qaul al-Sahabi*.¹³

ISTISHAB

According to the opinion of the ulama, *Istishab* is included in the source of the Islamic law *Mukhtalaf*, the source of disputed Islamic law. Whereas according to Wahbah Zuhaili in his book *al-Wajiz fi Ushul Fiqh*, *Istishab* is included in the source of Islamic law, the source of Islamic law originating from the mind or human brain.¹⁴

DEFINITION OF **ISTISHAB**

In terms of etymological meaning, *Istishab* means asking for togetherness (*thalab al-mushahabah*), or continuing togetherness (*istimrar ash-shuhbah*). Whereas in

¹¹ Abdul Mughits, *Kompilasi Hukum Ekonomi Syari'ah dalam Tinjauan Hukum Islam*, Al-Mawarid Edisi XVIII Tahun 2008), p. 153.

¹² Syahabuddin, ‘Pandangan Al Syatibi tentang Maqasid Al Syariah’, *An Nisa'a*, Vol. 9, No. 2 (2014), p. 83.

¹³ Achmad Yasin, *Ilmu Usul Fiqh (Dasar-Dasar Istinbath Hukum Islam)* (Surabaya: UIN Sunan Ampel Surabaya, 2013), p. 61.

¹⁴ Sapiudin Shidiq, *Ushul Fiqh* (Jakarta: Kencana, 2011), p. 26.

terms of terminology, there are several definitions about *Istishab* that are proposed by scholars. Imam as-Syaukany in his book *Irsyad al-Fuhul* put forward the definition that *Istishab* is "a proposition that views a matter as long as nothing changes it". In the sense that the provisions in the past, based on the original law, continue to apply for the present and the future.

While Ibn Qayyim provides a definition that the *Istishab* is "preserving the positive and affirming the negative (not valid)". That is still true of the original law, both positive and negative, until there is a proposition that changes the quo status. In this case there is no need for legitimate arguments (*ijaby* propositions). The law continues to apply by itself as long as there is no argument that changes it.¹⁵

According to Ibn Hazm, *Istishab* means the validity of a law is based on the *nass*, until there is an argument that states the change in the law.¹⁶ It means that a law is declared to remain valid if the foundation is a *nass*. Thus Ibn Hamz wants to emphasize, that the stipulation of law is not enough just based on the principle of basic permits (*al-ibaha al-asliyya*), but must be confirmed by the arguments originating from the *nass*. From the *Istishab* understanding expressed by the scholars above, it is understood that the *Istishab* is: (1) all laws that have been established in the past, are declared to remain valid in the present, unless there is a law that changes them, (2) all laws that exist in the present, certainly have been set in the past.

Different from other legal sources, *Istishab* is based on "strong perceptions", that the quo status continuity requires legal continuity. Therefore the source of this law cannot be seen as a strong proposition for the legal system (*Istinbanth*). Imam al-Khawarizmi said: "the *Istishhab* is the last alternative for fatwas (after not being found in other sources). If a mufti is asked about a problem (incident), then he is sequentially looking for legal provisions from *al-Kitab* (the Quran), *Sunnah* (Hadith), *Ijma'*, then *Qiyas*. If there are no legal provisions from the four legal sources, then he has just applied the *Istishab* argument, both negative and positive. If what is doubtful is the change in the quo status, then

¹⁵ Muhammad Abu Zahrah, *Ushul Fiqih* (Jakarta: PT. Pustaka Firdaus, 2011), p. 450-464.

¹⁶ Abd. Rahman Dahlan, *Op.Cit*, p. 217-224.

according to the original law the quo status is not lasting".¹⁷ The essence of *Istishab* is to keep applying what has been valid before as long as no one has changed it. For example, someone who has ever lived will still be declared alive until there is evidence that he is dead.¹⁸

LEGAL BASIS OF *ISTISHAB*

Istishab is accepted as a source of law can be seen in terms of *shara'* and mind. In terms of *shara'*, it turns out that based on *istiqla'* (research) on these laws it still applies in accordance with the existing arguments until there are other arguments that change it. The intoxicating wine, based on the provisions of *shara'*, is an *haram* drink except when it has changed its nature, namely *iskar* (intoxicating), either by mixing water or changing itself into vinegar. The arguments which are pleasing to the examples of the *shar'iyah* problem indicate that the arguments are not valid or limited to certain times. Thus the provisions of Islamic law generally strengthen the use of *Istishab*.

In general, the *ushul fiqh* scholars put *Istishab* as a legal proposition, except in some *Istishab* forms. *Istishab aqli* is only recognized by *Mu'tazilah* scholars, in the case of *Istishab* the nature of the *Hanafia* cleric only enforces it to maintain the existing law and refuse it to establish a new law. While some scholars did not impose *Istishab* general propositions. The *Ulama* who practiced *Istishab* based their opinions on several traditions of the Prophet and added them to a rule of *fiqh* which sounds

اليقين لا يزال بالشك

(something that is believed to not be eliminated by a doubtful thing)

In terms of logic, common sense easily accepts and supports the use of *Istishab*. Here are some examples: (1) no one has the right to accuse someone else's blood is halal due to apostasy, unless there is a proposition that shows his apostasy. Because according to the original law, every person is illegitimate, (2) a fair person must not be accused of being *fasiq*, except if there is a proposition that shows his wickedness, because the nature is fair if it is in someone self, it

¹⁷ Muhammad Abu Zahrah, *Op.Cit*, p. 450-464.

¹⁸ Amir Syarifuddin, *Garis-Garis Besar Ushul Fiqh* (Jakarta: Kencana, 2014), p. 68.

becomes inherent as his identity, until the person concerned behaves by showing the opposite nature of justice, that is *fasiq*, (3) if a person is previously known to be alive, he cannot be considered dead unless there is evidence indicating his death, (4) if someone is clearly the official husband of a woman, then naturally it means that between the two people are married, until divorce occurs, and (5) if it is known that the *fulan* is the owner of an item, then the ownership right does not move to another person unless indicated by the evidence.

With those examples, it is easy to understand the validity of the *Istishab* argument. Likewise the existence of objects and the existence of the properties of things and humans take place following the law of *Istishab al-hal*. A student, for example, has the right to bear the title of a student if he is known to enter college. The predicate is still attached to it based on the *Istishab*, until there is a proposition that indicates a change in state (status). To get the title of the student, it does not need to be set every year or every month.

DIVISIONS OF ISTISHAB

Amir Syarifuddin wrote in his book titled “*Garis-Garis Besar Ushul Fiqh*” that there are seven kinds of *Istishab*:¹⁹ (1) no basic principle, (2) no responsibility principle, (3) postulate general principle, (4) law enforcement principle, (5) character or circumstances validity principle, (6) *aqli* law principle, and (7) *Ijma’* law principle.

1. No basic principle (*Istishab al-‘Adam al-Aslyi*), basically there is no something unless there is something else establish the existence of this something. In law aspect, basically there is no law until stated that it is exist. It is also called legality principle. For example, someone is not prosecuted before the law is established.
2. No responsibility principle (*Istishab Baraatu al-Dzima*), the basic principle is free from obligation until the existence is proven. This is also called the presumption of innocence. For example, someone is declared not doing wrong before being proven that he is guilty.

¹⁹ Amir Syarifuddin, *Op.Cit*, p. 68-70.

3. Postulate general principle (*Istishab al-Dalil al-Amam Qabla Warood al-Ma'arid*), practice of the general postulate while waiting for other postulate limiting it. For example, applying general provision that a child is an heir to his deceased father until there is a special argument which explains that the child is not entitled to be an heir.
4. Law enforcement principle (*Istishab al-Ahkam*), the old law is still apply until there is law cancels it. For example, the old law is still valid until there is a replacement.
5. Character or circumstances validity principle (*Istishab al-Wasaf*), the validity of a condition remains until something changes. For example, someone who is clearly married will still be considered as a husband and wife until it turns out later that the couple is divorced.
6. *Aqli* law principle (*Istishab al-Ahkam al-Aqli*), enforce the law that was determined by reason (*aqal*) until the revelation brought by the prophet
7. *Ijma'* law principle (*Istishab Hakam al-Ijma'*), enforce the law stipulated by *Ijma'* when the change occurs there is another *Ijma'* that determines it. For example, people who pray with *tayamum* then see water, do not cancel the prayer.

SADD AL-DZARI'A

The word *dzari'a* was originally used by camels owned by the Arabs for hunting purposes. The camel was then released by the owner to get close to his prey, then the owner hid behind the camels so that they were not seen by hunted animals. When the camel is close to the game, then the hunter releases the arrow. Then from that according to *al-A'rabi*, the word *al-dzari'a* is used as a metaphor for everything that is closer to something else.²⁰ *Dzari'a* is something that is a medium and a way to get to obedience or disobedience. *Dzari'a* is divided into two, namely: (1) *Sadd al-Dzari'a* and (2) *Fath al-Dzari'a*.

DEFINITION OS SADD AL-DZARI'A

Sadd al-Dzari'a is a form of phrase that consists of two words, namely *sadd* and *al-dhari'a*. Etymologically, the word *sadd* means closing or blocking, while

²⁰ Lalu Muhammad Nurul Wathoni, *Filsafat Pendidikan Islam* (Ponorogo: CV Uwais Inspirasi Indonesia, 2018), p 131.

ad-dzari'a means *wasilah* which conveys the cause of something.²¹ The plural form of *al-Dzari'a* itself is *al-dzara'i*, and therefore in some of us *ushul fiqh*, one of which is *Tanqih al-Fushul fi Ulum al-Ushul* by *al-Qarafi*, using the term *sadd al-dzara'i*. Terminologically, *Sadd al-dzari'a* according to *al-Qarafi* is cutting the path of damage (*Mafsada*) as a way to avoid the damage. Even if an action is free from the element of damage (*Mafsada*), but if the action is a path or suggestion of damage (*Mafsada*), then we must prevent these actions.²²

Al-Syatibi in his work *al-Muwafat* states that *sadd al-dzari'a* is “Carrying out all the work contains the benefit of leading to a damage (obedience)”. But it is different from what is stated by *Ibn al-Qayyim al-Jauziyyah*; “the road or intermediary can be either prohibited or permissible”.²³ From several definitions according to the experts above, it can be seen that *sadd al-dzari'a* is a method to explore Islamic law by prohibiting, preventing, or closing the road, or being aware of a job which is initially permissible, but because it can cause damage, then changing to not allowed or prohibited to do. For example, someone who has been subjected to the obligation of *zakat*, but before the haul (even a year) he gave his wealth to his brother so that he avoided the obligation of *zakat*. Grants (giving something to others, without any ties) in the Islamic law are good deeds that contain benefits. However, if the purpose is not good, such as to avoid the obligation of *zakat*, the law is prohibited. It is based on the *zakat* law there is a compulsory whereas the grant is a *sunnah*.

LEGAL BASIS OF SADD AL-DZARI'A

In general there is no argument and a clear text regarding the use of *sadd al-dzari'a*, but there are several texts that refer to the use of *sadd al-dzari'a*, both based on the Quran, Hadith, as well as the rules of *fiqh*, including:

1. *Al-Quran Sura al-An'am* [6]: 108

²¹ Muhammad bin Ali ash-Syaukani, *Ershad al-Fuhul fi Tahqiq al-Haqq min ' Ilm al-Ushul*. Beirut: Dar al-Kutub al-Ilmiyyah, 1994), p. 295.

²² *Al-Qarafi*, 'Tanqih al-Fushul fi Ilm al-Ushul'

²³ *Ibn al-Qayyim al-Jauziyyah*, 'A'lam al-Muqi'in (Beirut: Dar al-Kutub al-Ilmiyyah, 1996), p. 103.

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ
 عِلْمٍ ۗ كَذَلِكَ زَيْنًا لِكُلِّ أُمَّةٍ عَمَلُهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ
 فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ ﴿١٨﴾

“And do not insult their worship besides Allah, because they will later insult God with transgress without knowledge. Thus we make every people assume good work they then told their god they returned, then He preached to them who they were do it”.

The above verse explains about the prohibition of berating or cursing worship other than Allah because it will cause damage, berate or insulting worship other than Allah will trigger worshippers other than Allah reviling and insulting God can even transgress. But actually revile or insult other worship than Allah is allowed, even that contain benefit. But if it is done then it can make more damage large compared to the benefits it causes.²⁴

2. Al-Quran *Sura al-Nuur* [24]: 31

....وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ ۗ وَتُوبُوا إِلَىٰ
 اللَّهِ جَمِيعًا أَيُّهَ الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ ﴿٣١﴾

“And don't hit their feet so that they are known for jewellery that they hide, and repent you to God, O people that gives you luck”

The verse explains that there is a prohibition on activities that are which can cause stimulation to the opposite sex, even the sound of the bracelet feet are also prohibited if it can cause stimulation to the opposite sex. Actually stomping feet for women is permissible, but different the case if the beat of the foot to trigger stimulation to those who hear it, then it becomes prohibited.²⁵

3. Al-Quran *Sura al-Baqara* [2]: 104

²⁴ M. Abdul Ghoffar, ‘*Tafsir Ibnu Katsir*’, 2008, Jakarta: Pustaka Imam as-Syafi’I, page 272.

²⁵ Amir Syarifuddin, *Ushul Fiqh 2*, p. 401 and M. Quraish Shihab, *Pesan-Kesan dan Keserasian al-Quran* (Jakarta: Lentera Hati, 2002)p, 67

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا لَا تَقُوْلُوْا رَاعِنَا وَقُوْلُوْا اَنْظُرْنَا وَاَسْمَعُوْا

وَلِلْكَافِرِيْنَ عَذَابٌ اَلِيْمٌ ﴿١٤﴾

“O ye who believe, do not say (to Muhammad) “*Raa'ina*”, but say “*unzhurna*”, and “hear”. And for those who disbelieve painful torment”

It explains the prohibition against actions us, friends used this word to the Messenger of Allah, people the Jews also the Messenger of Allah. The Jews used the word *raa'inan* as a form of *isim fail* of *masdar saidru'unah* the meaning of the word is stupid or foolish. Then from that this verse is used with *unzhurna* which has the same meaning. *Al-Qurthubi* makes this verse the basis of *sadd al-dzari'a*.²⁶

4. Abu Daud's Hadith, Asma *bint* Abu Bakar had met the Prophet in slight clothes, so *Rasulullah* turned away from her and said: “O Asma, actually a woman when she has a period, is not worthy of her body except this and this (pointing face and palms)”. The above hadith explains that when a woman has gone, the usual part is the face and the two palms, as the scholars also explained. According to Ibn Taymiyah in *Nasrun Haroen*, this is one of the reasons for setting *syara'*, therefore the Prophet forbade it.²⁷
5. Bukhari, Muslim, and Abu Daud Hadith, Indeed, as big as a big sin is someone cursing his parents. Then the Messenger of Allah was asked, “O Messenger of Allah, how could someone cursed his two mothers?” The Messenger of Allah replied, “Someone berates another's father, so his father will also be berated by that person, and someone will berate the mother of another person, then the mother will also be berated by that person”. Imam Syathibi responded that this hadith is one of the legal bases of the concept of *sadd al-Dzari'a*. So from that this hadith can be included in the concept of *sadd al-Dzari'a*.²⁸

²⁶ Abu Abdillah Muhammad bin Umar ibn al-Hasan bin al-Husain at-Taimi ar-Razi, ‘*Tafsir ar-Razi*’, *Juz 2*, p. 261 (in digital book titled “al-Maktabah asy-Syammilah v.2.09”) and Muhammad bin Ahmad bin Abi Bakr bin Farh Al-Qurthubi, ‘*al-Jami'li Ahkam al-Qur'an*’, *Juz 2*, p. 56

²⁷ Nasrun Haroen, *Ushul Fiqh 1* (Jakarta: Logos, 1996), p. 164.

²⁸ Ash-Syathibi, *al-Muwafaqat*, *Juz 2*, p. 360.

6. Rule of *Fiqh*, “Refusing evil (*mafsadah*) takes precedence over achieving goodness (*maslahah*)”. This rule of *fiqh* explains that if there is a choice between damage and benefit that is found in an act, it is recommended that you leave the damage first because leaving damage is more important than benefit.²⁹

DIVISIONS OF *SADD AL-DZARI’A*

Islamic scholars have divided *Sadd al-Dzari’a* into several aspects. Abu Ishak al-Syatibi divided *Sadd al-Dzari’a* into four divisions in terms of the damage caused:³⁰

1. The action carried out triggered what had certainly happened. For example, digging a well in front of other people at night so that it will cause the homeowner to fall into the well. This makes the person concerned can be punished for carrying out the act intentionally,
2. Actions that are allowed because they do not often contain damage, such as selling food that does not contain damage,
3. The actions carried out have a great opportunity to bring damage. For example, selling weapons to an enemy, where there is a possibility that the enemy uses them to kill, and
4. Actions that are basically permissible due to neglect, but allow damage. such as *bai 'al-ajal* (buying and selling at a higher price than the original price because it is not cash).

Whereas Asy-Syatibi and Al-Qarafi divided *Sadd al-Dzari’a* into three divisions in terms of *ulama* agreement:³¹

1. Something that is agreed upon is not prohibited or allowed even though it can be a way or suggestion for an act that is forbidden. Like living next door even though there is the possibility of a dispute with neighbours, another example is growing grapes, even though it has the possibility to be made into liquor or *khamr*,

²⁹ M. Hassbi Ash-Shaddiqey, *Falsafah Hukum Islam* (Jakarta: PT Bulan Bintang, 1993), p. 322.

³⁰ Nasrun Haroen *Op.Cit.*, p. 109.

³¹ Al-Qarafi, *'Anwar al-Buruq fi Anwa 'al-Furuq'*, Juz 6, p. 319 (in digital book *al-Maktabah*) and Ash-Syathibi *'al-muwafat'*, Juz 2, p 390.

2. Something that has been agreed upon is not permitted, for example the prohibition of digging wells in the middle of the road which is a public place, another example is seeking idols for people who know or strongly suspect that these idol worshipers will avenge God, and
3. Something that still has debates between it is prohibited or permitted, For example, futures trading because of fear of an element of usury in it, another example is looking at women for fear of triggering adultery.

POSITION OF SADD AL-DZARI'A

In its application in Islamic law, there are differences of opinion regarding *Sadd AL-Dzari'a* among the experts of *fiqh* scholars, the *ulama Mailiki* himself uses QS. *An-Nur* verse 31 and QS *Al-An'am* verse 108 as the basis for allowing the application of *Sadd Al-Dzari'a* in Islamic law.³² Unlike the majority of *ulama*, considered the factors of *maslahah* and *mafsadat* in establishing Islamic law, not fully allowing the use of *Sadd Al-Dzari'a*. If *maslahah* is more dominant than *mafsadat*, then it is permissible, but if *mafsadat* is more dominant than *maslahah*, then it is not allowed. But different if the two are equally strong, then the rule applies, namely

درء المفسد مقدم على جلب المصالح

“Refusing damage is preferred over attracting benefit”

QAUL AL-SAHABI

Sahabi is an Arabic word means ‘companion’. In this context, *Sahabi* means Prophet Muhammad’s companions. Ibnu Hajar once said; “A *Sahabi* is a person who believed in Prophet Muhammad (PBUH), who came together with Him and who died as a Muslim”.³³ Those among the Sahabi are as follows:

1. People who have met and stayed with the Prophet whether for a while or for a long time, whether they are Rawi (those who narrated Hadits) or not, and whether they joined in wars with Him or not. Those who have seen Him even for a glimpse can be considered as Sahabi as well.

³² M. Quraish Shihab, *Op.Cit*, p. 237; Ahmad Maulidizen, A Critical Analysis of Islam, Economy, and Finance In The Early 21st Century. *Jurnal Hukum Islam* Vol. XVI, No2 (2018): p. 132-151

³³ <https://questionsonislam.com/question/what-definition-sahaba-who-called-sahabi>

2. Both Muhajirin (those who joined Him to Medina from Mecca) and Anshor (Medina local residents) are all considered Sahabi.
3. Both men and women, young and old, who are in criteria above are considered Sahabi

DEFINITION OF *QAUL AL-SAHABI*

When Prophet Muhammad was still alive, if people had any issues regarding their lives, they could ask Him directly. But, after He passed away, people had no other choice other than to ask His Companions (or *Sahabi*). In these times, new problems that seem too complicated to solve arose within the community and many *Sahabi* emerged to become problem solvers and decision makers. Their decisions later became what is known as *Qaul al-Sahabi* or *Sahabi's Fatwa*.³⁴

In *Usul Fiqh* terms, *Qaul al-Sahabi* means a companion's view on a matter and then their words spread among His Companions without anyone opposing it.³⁵ In its development, *Qaul al-Sahabi* has become an Islamic law source since the *Tabi'in* times. Despite that, many *ulama* still argue about its eligibility as a law source.

ULAMA PERSPECTIVE (OPINION) ON *QAUL AL-SAHABI*

Many *fiqh* scholars have argued that *Qaul al-Sahabi* is an eligible law source based on these reasonings:³⁶ (1) postulates (*Dalil Naqli*) and (2) logical propositions (*Dalil Aqli*).

1. Postulates (*Dalil Naqli*)
 - a. Al-Quran *Sura al-Tauba* [9]: 100

وَالسَّابِقُونَ الْأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالْأَنْصَارِ وَالَّذِينَ
اتَّبَعُوهُمْ بِإِحْسَانٍ رَضِيَ اللَّهُ عَنْهُمْ وَرَضُوا عَنْهُ وَأَعَدَّ لَهُمْ

³⁴ Muchamad Coirun Nizar, 'Qaul Shahabi dan Aplikasinya dalam Fiqh Kontemporer', *Jurnal Ulul Albab UNISSULA* (2017): p. 22.

³⁵ Jaenal Aripin, 'Kamus Ushul Fikh', 2012, Jakarta: Kencana, in Muchamad Coirun Nizar's journal: 'Qaul Shahabi...': p. 23.

³⁶ Muhammad Abu Zahra, *Op.Cit*, p. 328-330.

جَنَّتٍ تَجْرِي تَحْتَهَا الْأَنْهَارُ خَالِدِينَ فِيهَا أَبَدًا ذَلِكَ الْفَوْزُ

الْعَظِيمُ

“And the first forerunners [in the faith] among the Muhajireen and the Ansar and those who followed them with good conduct - Allah is pleased with them and they are pleased with Him, and He has prepared for them gardens beneath which rivers flow, wherein they will abide forever. That is the great attainment.” (*Sahih International*).

b. Hadith, “I am trustworthy among my Companions, and my Companions are trustworthy among my people.”

2. Logical propositions (*Dalil Aqli*)

- a. The Companions were so close in relationship with the Prophet himself. They had an utmost loyalty and faithfulness towards the Prophet and they were very obedient to His guidance.
- b. Their opinions were always based on hadith along with their own rational analogies (or *qiyas*).
- c. After the Companions times, *ulama* after them also used *qiyas*. But, since the Companions were much closer to the Prophet, their opinions and decisions should be prioritized first.

Despite this, there are some scholars who reject *Qaul al-Sahabi* i.e. scholars of *Mu'tazillah*, *Syi'ah*, and *asy-'Ariyah*. Their reasonings are:³⁷

1. Al-Quran *Sura al-Hashr* [59]: 2

هُوَ الَّذِي أَخْرَجَ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ مِنْ دِيَارِهِمْ
لِأَوَّلِ الْحَشْرِ مَا ظَنَنْتُمْ أَنْ يَخْرُجُوا^ط وَظَنُّوا أَنَّهُمْ مَانِعَتُهُمْ
حُصُونُهُمْ مِنَ اللَّهِ فَأَتَاهُمُ اللَّهُ مِنْ حَيْثُ لَمْ يَحْتَسِبُوا وَقَذَفَ^ط

³⁷ Muchamad Coirun Nizar, ‘*Qaul Shahabi dan Aplikasinya dalam Fiqh Kontemporer*’, 2017, Jurnal Ulul Albab UNISSULA, page 29-33.

فِي قُلُوبِهِمُ الرُّعْبَ تَخْرِبُونَ بُيُوتَهُمْ بِأَيْدِيهِمْ وَأَيْدِي الْمُؤْمِنِينَ
فَاعْتَبِرُوا يَا أُولِيَ الْأَبْصَارِ ﴿٢٠٠﴾

“It is He who expelled the ones who disbelieved among the People of the Scripture from their homes at the first gathering. You did not think they would leave, and they thought that their fortresses would protect them from Allah ; but [the decree of] Allah came upon them from where they had not expected, and He cast terror into their hearts [so] they destroyed their houses by their [own] hands and the hands of the believers. So take warning, O people of vision.”

(*Sahih International*)

2. *Ijma'*

It was once said that the Companions themselves have declared that there would be differences in their opinions. If that were the case, then their opinions and decisions could not be taken at face value.

3. *Dalil Aqli*

The Companions were also *Mujtahid*, which means they could make mistakes like any other human being. So *Mujtahid* from *Tabi'in* times all the way through the contemporaries were not obligated to use *Qaul al-Sahabi*.

4. Historical Fact

Once upon a time, someone asked Anas bin Malik (a Companion) about their problem. And Anas said, “Just ask about this matter to our leader, al-Hasan.” and al Hasan was a *Tabi'in*. This shows that sometimes the Companions relied on others and that *Qaul al-Sahabi* were not as obligatory as many scholars thought.

The Islamic scholars (*mazhab*) have their own opinion in accordance to *Qaul al-Sahabi*. According to Mustafa Said al-Khin in his book *Ushul Al Fikh Al Islami*, these are the opinions from the Islamic scholars:

1. *Hanbali*

They use *Qaul al-Sahabi* after the Quran and Hadith. Imam Ahmad even prioritized *Qaul al-Sahabi* over the *mursal* hadith (hadith that some of the *Rawi* (narrator) have gone lost after the *Tabi'in*), and *dhaif* hadith (hadith that are weak).

2. *Shafi'i*

They also use *Qaul al-Sahabi*, but the position is below the Quran, Hadith, *Ijma'*, *Qiyas*, and *Istishab*. Imam Shafi'i accepted *Qaul al-Sahabi* himself, if and only if they contain *Qiyas*.

3. *Maliki*

Just like *Hanbali*, they use *Qaul al-Sahabi* after the Quran and Hadith. And they clearly stated that they positioned *Qaul al-Sahabi* before *Ijma'* and *Qiyas*.

4. *Hanafi*

According to them, *Qaul al-Sahabi* can be used if there are problems that cannot be solved with *Qiyas*. And they prioritized *Qaul al-Sahabi* over *Qiyas*. But if there are *Qaul al-Sahabis* that contained *Qiyas*, there are some *Hanafi* scholars that still use that kind of *Qaul al-Sahabi* and there are some who oppose them.

5. *Shi'a*

In general, they reject *Qaul al-Sahabi* completely. But, to *Shi'a Zaidiya* and *Shi'a Imamiya*, *Qaul al-Sahabis* that were from *Ahlul Bait* (those who share family background with Prophet Muhammad (PBUH)) must be followed no matter what.

6. *Dzahiri*

They reject *Qaul al-Sahabi* as well. According to them, they must not follow anyone blindly even to the Companions.

7. *Mu'tazili*

Just like *Shi'a* and *Dzahiri*, they reject *Qaul al-Sahabi*. According to them, *Qaul al-Sahabis* are not on the same level as Hadith. Because the Companions are not prophets and this means their opinions and decisions may contain mistakes which could be fatal.

CONCLUSION

From what have been discussed above, it can be concluded that; (1) There are many Islamic law sources beside Quran and Hadith, (2) It is important to study about Islamic law sources in order to reach the *Kaffah* Islam, (3) The essence of *Istishab* is to keep applying what has been valid before as long as no one has changed it, (4) *Sadd al-Dzari'a* is a method to explore Islamic law by prohibiting, preventing, or closing the road, or being aware of a job which is initially permissible, but because it can cause damage, then changing to not allowed or prohibited to do, and (5) *Qaul al-Sahabi* means a Prophet Muhammad (PBUH) companion's view on a matter and then their words spread among His Companions without anyone opposing it.

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