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# Analysis of Ibn Qudāmah's Comparative Fiqh Methodology in al-Mugnī and Its Relevance for Contemporary Ijtihad

Khairatun Hisan<sup>1\*</sup>, Dzulkifli Hadi Imawan<sup>2</sup>, Hannafa Haqqiya<sup>3</sup>

<sup>1</sup>Universitas Islam Indonesia, Yogyakarta, Indonesia. E-mail: [khisan5@gmail.com](mailto:khisan5@gmail.com)

<sup>2</sup>Universitas Islam Indonesia, Yogyakarta, Indonesia. E-mail: [dzulkifli.hadi.imawan@uii.ac.id](mailto:dzulkifli.hadi.imawan@uii.ac.id)

<sup>3</sup>University of Al-Azhar, Cairo, Egypt. E-mail: [haqqihaqqiya@gmail.com](mailto:haqqihaqqiya@gmail.com)

\*Corresponding Author

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## Abstract

This study investigates the methodology of *muqāranah al-mazāhib* (comparative of madhabs) as applied by Ibn Qudāmah in his seminal work, *Kitāb al-Mugnī*, a key reference in the landscape of Islamic jurisprudence in Indonesia. The primary purpose is to critically analyze Ibn Qudāmah's comparative legal approach and assess its relevance for contemporary *ijtihād*. Employing a qualitative method, the research utilizes content analysis and textual hermeneutics to examine selected chapters of *al-Mugnī*—specifically those related to acts of worship and *mu'āmalah* (social transactions). The findings reveal that Ibn Qudāmah's method systematically compares the legal views of the four major Sunni madhabs and includes perspectives from other jurists, presenting them with detailed argumentation and rational justification. His use of *tarjih* (preference) reflects a critical evaluative process that selects the most compelling legal opinion based on textual evidence and reasoning. The originality of this study lies in its focused analysis of Ibn Qudāmah's structured comparative technique, which balances scholarly objectivity with methodological rigor. The implications of this research are significant for contemporary Islamic legal scholarship, particularly in advancing the practice of collective *ijtihād*, refining fatwa formulation processes, and fostering a tolerant yet disciplined engagement with legal diversity. Furthermore, the integration of *maqāṣid al-sharī'ah* into this comparative framework enriches its applicability in addressing modern socio-legal issues.

**Keywords:** *Al-Mugnī*; Ibn Qudāmah; *Muqāranah al-Mazāhib*; Madhhab Comparative; Contemporary Ijtihad.

## Abstrak

Penelitian ini mengkaji metodologi *muqāranah al-mazāhib* (perbandingan mazhab) sebagaimana diterapkan oleh Ibn Qudāmah dalam karya monumentalnya, *Kitāb al-Mugnī*, yang menjadi rujukan penting dalam khazanah fikih Islam, khususnya di

Indonesia. Tujuan utama penelitian ini adalah menganalisis secara kritis pendekatan perbandingan hukum yang digunakan oleh Ibn Qudāmah serta mengevaluasi relevansinya terhadap praktik *ijtihad* kontemporer. Penelitian ini menggunakan metode kualitatif dengan pendekatan analisis isi dan hermeneutika teks terhadap beberapa bab terpilih dalam *al-Mugnī* yang mencakup persoalan ibadah dan *mu'amalah*. Hasil penelitian menunjukkan bahwa metode Ibn Qudāmah melibatkan perbandingan pandangan dari empat mazhab utama Sunni dan pendapat ulama lainnya, disertai argumentasi yang mendalam serta alasan rasional yang melatarbelakangi tiap pendapat. Proses *tarjih* (penguatan pendapat) yang diterapkan menunjukkan kemampuan evaluatif Ibn Qudāmah dalam memilih pendapat yang paling kuat berdasarkan dalil teks dan logika hukum. Kebaruan penelitian ini terletak pada fokus analisis terhadap sistematika perbandingan yang terstruktur dan berimbang dalam karya Ibn Qudāmah. Implikasi dari penelitian ini penting bagi perkembangan keilmuan fikih kontemporer, khususnya dalam mendukung praktik *ijtihad* kolektif, memperbaiki metodologi fatwa, serta mendorong pendekatan yang toleran namun metodologis terhadap keragaman pendapat fikih. Integrasi ilmu *maqāsid al-sharī'ah* dalam pendekatan ini juga memperkaya relevansi metode tersebut dalam menjawab persoalan hukum modern.

**Kata Kunci:** *Al-Mugnī*; Ibn Qudāmah; Fikih Perbandingan; Perbandingan Mazhab; Ijtihad Kontemporer.

## Introduction

The study of comparative fiqh (*fiqh al-muqāran*) is of great significance in the context of the diversity of fiqh in Indonesia (Najib, 2020). Controversies pertaining to *furū'iyah* (branch matters), which frequently give rise to contentious debates within the community, necessitate a profound comprehension of madhhab comparative (Noor, 2020). This is essential for fostering a sense of mutual respect for differing perspectives and for ensuring the preservation of harmony within the community (Ghazali & Djumadris, 1992). A pertinent illustration is the discord among mass organisations in Jambewangi Hamlet, Sempu Subdistrict, which emanated from discrepancies in ritual practices, the determination of Eid al-Fitr, and additional issues not associated with madhhab worship (Fanani, 2021). The existence of diversity of opinion is a natural consequence of the broad scope of Islamic law, and it is therefore a positive development for Muslims. The diversity of madhhabs that exist in Indonesia should give birth to unity, not just become a place of division because they think their group is the most correct and others are not correct. The differences that occur can be a source of intellectual treasures in the field of Islamic Law in order to understand Islam more comprehensively (Kurniawan et al., 2023).

Leading scholars from various madhhabs have formulated fiqh books that use a comparative madhhab approach in their writing (Daud, 2021). Among them are the book *al-Mabsūt* by Al-Sakhrasī from the Hanafi Madhhab, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtashid* from the Maliki Madhhab written by Ibn Rushd, a book written by Imam Nawawi entitled *Al-Majmū'* from the al-Shafi'i Madhhab, and *al-Mugnī* by Ibn Qudāmah from the Hanbali Madhhab. In accordance with these works, *al-Mugnī*, a treatise written

by Ibn Qudāmah al-Maqdisī (d. 620 AH) of the Hanbali madhhab, is frequently regarded as the zenith of comparative jurisprudence literature in his madhhab, even extending beyond the confines of the madhhab itself (Sharif et al., 2020).

One of the scholars who wrote about comparative fiqh was Ibn Qudāmah Al-Maqdisī. He was born in 541 AH in Jumma'il, a village in Palestine. *Al-Mugnī*, widely regarded as his magnum opus, has been lauded for its comprehensive examination of madhhab-related themes, the depth and intricacy of its argumentation, and its meticulous engagement with hadith-related contentions. However, it is noteworthy that his methodological approach and stylistic preferences diverge from those observed in other *muqaran* works, such as Ibn Rushd's in *Bidāyah*, which exhibits a more philosophical-analytical character. Ibn Qudāmah is a scholar of the Hanbali madhhab of thought known for his seminal work, *Al-Mugnī*, which will be the focus of discussion in this article. The good methodology in the preparation of *Al-Mugnī* made Ibn Qudāmah praised by scholars. The author of the book *al-Wafi bi al-Wafayat* said that Ibn Qudāmah was a master of various disciplines, such as the science of comparative madhhab, faraidh, ushul fiqh, fiqh, nahwu, hisab, necromancy, and also al-Manak (Qudamah, 2007). Analysing classical methodologies such as these is essential, not only to understand their history, but also to explore their relevance in the context of the ever-evolving discussion of contemporary Islamic legal methodologies.

In his book, *Al-Mugnī*, Ibn Qudāmah provides a comprehensive discussion of chapters of fiqh, presenting the opinions of scholars from various madhhabs alongside the evidence on which his legal decisions are based. This work represents an exemplary application of comparative madhhab methodology, a methodological approach that systematically collects, maps, and analyses the opinions of the madhhab imams with their underlying arguments on a contentious issue. It then compares these with the opinions of other madhhabs, offering a comprehensive and nuanced perspective on the subject.

In the domain of comparative fiqh, the term *tarjih* is closely associated with him (Morgan & bin Sulong, 2020). In his book, Romli posits the concept of *tarjih* as a method of resolving disputes or identifying the most compelling argument in the face of conflicting perspectives. In essence, the concept of *tarjih* can be understood as a method of resolving conflicting arguments by aligning with the stronger of the two (Romli SA, 2014). It can thus be concluded that *tarjih* is an integral component of the methodology of comparative madhhab, which is the result of a thorough analysis to ascertain the strongest opinion. While acknowledging the validity of diverse perspectives, Ibn Qudāmah did not hesitate to challenge opinions lacking substantial evidence, highlighting the rigorous evaluation of scholarly positions within the Islamic legal tradition. The book under scrutiny, *al-Mugnī*, has been collated through the utilisation of a comparative fiqh methodology. The book is

renowned for its sophisticated language and meticulous analysis, which have earned it a preeminent position as a reference work in the field of fiqh studies. The book, which is rich in Islamic scholarship, was written and published in 15 volumes in Arabic.

The comparative madhhab methodology used by Ibn Qudāmah in *Al-Mugnī* has relevance to the study of contemporary Islamic law. Muslim scholars and practitioners of Islamic law can use this method to address issues that require the views of various madhhabs to produce legal decisions that can be accepted in many circles. For example, in producing a fatwa, fatwa institutions such as the Indonesian Ulema Council use muqārin fiqh or comparative fiqh as one of the foundations in issuing their fatwas (Faikoh & Silahuddin, 2023).

Despite the existence of numerous studies on comparative methodology, research specifically addressing the methodology of madhhab comparison employed by Ibn Qudāmah in his magnum opus, *Al-Mugnī*, remains limited. Fathurrahman Azhari (2016) examines the method of legal istinbath used by Ibn Rushd in his monumental book, *Bidayatul Mujtahid*, one of the methods used is the method of comparison of madhhab which is the same as that studied by the author in this study (Azhari, 2016). Research on methodology was also conducted by (Mokhtar et al., 2018) who analyzed Ibn Qudāmah's *ta'līl ahkām* methodology in *Al-Mugnī*. Azhari examines Ibn Rushd's methodology of istinbath al ahkam in another book of madhhab comparison, *Bidayatul Mujtahid*, while Mokhtar only discusses Ibn Qudāmah's *ta'līl ahkām*, not examining the methodology applied as a whole. From several previous studies, this research can be said to be worthy of study considering that there has been no research that specifically discusses the methodology of comparing Ibn Qudāmah's madhhab in his famous book, *Al-Mugnī* (Mokhtar et al., 2018).

Based on the background of the research above, the author will further examine the methodology of madhhab comparison used by Ibn Qudāmah in *al-Mugnī* with a focus on the approaches, principles, and procedures applied. Beyond the historical aspects of Ibn Qudāmah's understanding, this study has clear theoretical and practical urgency in the context of Islamic law in the contemporary era. The essence of Ibn Qudāmah's method, the manner in which he navigated the diversity of views, and the criteria he applied, are particularly relevant in the contemporary context. This is because modern fatwa institutions are beginning to confront the phenomenon of complex new issues and must also prescribe integrated views among the sharia legal community. Consequently, an analysis of Ibn Qudāmah's rational method can provide a critical model for contemporary madhhab-based reasoning. This article makes a significant contribution to the field by offering a comprehensive understanding of the methodology employed by a seminal figure in Islamic jurisprudence in their magnum opus, and by providing a detailed analysis

of the relevance and adaptability of this methodology to address the challenges and needs of contemporary Islamic law.

## Methods

This research is qualitative research with a descriptive-analytical method. The data collection is a document study with various legal materials. The primary legal material used by researchers is the book *Al-Mugnī* by Ibn Qudāmah . While secondary legal materials are books with the theme of ushul fiqh and comparative madhhab and research journals that support the themes to be raised in this study. The data analysis technique that researchers use is content analysis.

The present research employs a qualitative methodology, adopting a desk study design. This approach is also classified as an analysis of classical Islamic legal documents, as previously stated. The research focuses on the authors' understanding of the legal methodology and reasoning process of their major works. The objective is to analyse the legal methods that reflect Ibn Qudāmah 's comparative legal thought. The primary data source of this research is *Kitab Al-Mugnī* by Ibn Qudāmah , which focuses on certain sections that are explicitly presented, compared, and evaluated the differences in fiqh opinions with purposive sampling techniques from the chapters of worship and muamalah. As for the secondary data used include classical and contemporary ushul fiqh books, other works of Ibn Qudāmah , as well as books and journals relevant to the theme. The documentation study is applied to the data collection method needed in the research.

The data analysis technique used is content analysis. Content analysis is one of the data analysis techniques in qualitative research that discusses the content of information in writing or in the mass media ([Rahman, 2022](#)). The data analysis procedure consists of several distinct stages. Initially, there is a reduction of the data, that is to say, a selection and organisation of data relevant to Ibn Qudāmah 's comparative madhhab methodology. Secondly, thematic coding involves labeling segments of data according to the analytical categories that have been established, such as comparative structure, types of arguments, patterns of argument analysis, application of ushul principles, rebuttal techniques, and evaluation/criteria for preference. Thirdly, interpretation and meaning-making entail analyzing the patterns derived from the coded data to reconstruct the characteristics and logical framework of Ibn Qudāmah's methodology. Fourthly, verification and triangulation involve checking the consistency of findings across different sections of *Al-Mugnī* and comparing them with secondary sources and ushul fiqh principles to enhance the validity of the interpretations. Lastly, synthesis and conclusion entail summarizing the analytical findings into a coherent description and evaluation of Ibn Qudāmah's methodology and its relevance.



The analysis of the data yields a result, which is then presented in the form of a descriptive-analytical narrative. Direct quotations from Al Mughni will be presented alongside the author's interpretative analysis.

## Result and Discussion

### Comparative Theory of Madhhabs and the Concept of *Tarjīh* in Islamic Law

Etymologically, the comparison of madhhabs is a translation of *muqāranah al-mazāhib*. In language, *muqaranah* comes from the Arabic '*qārana, yuqārinu, muqāranah*' which means to collect, compile, and compare. As for '*mazāhib*' is the plural form of *mazhab* which means the path, the place to go, or can be interpreted as belief. In terminology, a madhhab is a path that conveys a person to a certain goal in the life of this world. The majority of fiqh scholars define comparative fiqh madhhab as collecting the opinions of the mujtahid imams with their arguments on a matter that is in dispute with them, then comparing these arguments with each other so that after discussion it appears which opinion is stronger in evidence (Shidiq, 2021).

Differences in legal decisions are a common occurrence. According to Abdul Wahab Khallaf, these differences are caused by several things, such as differences in determining several sources of law, differences in the use of hadith and *ra'yu*, then differences in language in understanding the nash will also greatly affect the legal products produced (Rizka & Cahyono, 2023).

The scope of the discussion of comparative madhhabs includes law, the law of practice that is still in dispute between the mujtahids, by discussing their method of ijtihad and the sources of law used by them in determining the law. In addition, the arguments used by the mujtahids, both from the Qur'an, Sunnah, and other arguments recognized by shara'. Another scope is the laws that apply in the country where *muqarin* lives, both positive law and international law (Maradingin, 2020).

A *muqārin* (comparator) should have a broad knowledge and an objective outlook, along with a madhhab opinion that can be accounted for by the madhhab being compared. Therefore, a *muqarin* must fulfill several requirements. *Firstly*, he should be meticulous in taking madhhabs from books that are well known. Then he should take the opinion from that madhhab that has the strongest evidence. *Secondly*, having knowledge of the ushul and rules that are the basis of the madhhab faithful in determining the law. *Thirdly*, knowing the opinions of the scholars that are scattered in the various books of fiqh along with their arguments and the way they reasoned. *Fourth*, discussing the opinions of the madhhabs with the strongest arguments, mentarjīh one of them objectively without being influenced by the opinion of the madhhab they adhere to (Yanggo, 2003).

In language, *tarjih* means to strengthen. *Tarjih* in terms is to strengthen one of two contradictory arguments based on several indications that can support it. In another sense, *tarjih* is strengthening one of the indicators of *ẓanni* propositions over others to be practiced or applied (Jumantoro & Amin, 2019). Romli in his book states that *tarjih* is an attempt to find the strongest argument or reason because there is a conflict between one and another. In other words, the concept of *tarjih* stems from an attempt to adjust two opposing arguments, which are resolved through *tarjih* by adhering to the argument that is stronger than these arguments (Romli SA, 2014).

The conditions for performing *tarjih* are as follows. *Firstly*, the two opposing arguments must be of a strong degree, such as between the Qur'an and the Qur'an, mutawatir hadith with mutawatir hadith, and ahad hadith with ahad hadith. *Secondly*, there is a similarity in the ruling, time, subject, and predicate. To illustrate, it is permissible to engage in commercial activities such as buying and selling, with the proviso that it is not during the Friday call to prayer. This is not the same time, so *tarjih* is not applied between the two (Padil & Tharaba, 2017).

The scholars of *ushul* agree that there is no contradiction between the propositions of *the nash*. According to al-Syaukani and al-Ghazali, contradictions in the texts only occur in *ẓanni* propositions. If there is a contradiction in a *dzanni* proposition, then the way to resolve it is through *tarjih* by adhering to the strongest of the two and leaving the other. Although there are differences in the way of *tarjih* against conflicting texts, in principle the scholars of *ushul* agree that what is practiced is the more *rājih* (Romli SA, 2014).

### Biography of Ibn Qudāmah

Muwafaqudin Abu Muhammad Abdullah ibn Ahmad ibn Muhammad ibn Qudāmah al-Maqdisī al-ṣalihi or known as Ibn Qudāmah was born in the village of Jama'il, a village in the Nablus area of Palestine in 541 H. He is a scholar of the Hanbali Madhhab whose life is occupied with knowledge and writing books. During his life, Ibn Qudāmah has written many books in various disciplines. Among his famous books are *Al-Mugnī*, *Al-Muqni'*, *Umdah al-Fiqh*, *Raudhah al-Nazir*, *al-Burhān fī Mas'ālah al-Qur'ān*, and many other books. He died on Saturday which coincided with Eid al-Fitr in 620 AH and was buried in Safh Qasyun, Damascus (Qudāmah, 2020).

Ibn Qudāmah settled in Damascus as an adult while writing *al-Mugnī*. He organized a number of scholarly assemblies located in the Al-Muztraftari Mosque with the aim of propagating the Hanbali madhhab. Not a few scholars who came to his assembly and dialog about Islamic insights (Hendika & Armi, 2022).

During his lifetime, Ibn Qudāmah studied with many teachers whose knowledge was not in doubt. Among his teachers in Baghdad were Abu Zur'ah Tohir ibn Muhammad

Al-Maqṣisi and Abul Hasan Ali ibn Abdurrahman al Baghdadi. While his teachers in Damascus included Ahmd ibn Muhammad ibn Qudāmah al Maqḍisi and Abul Makarim Abdul Wahid ibn Muhammad al-Azdi adh-Dimasyqi (Alfian & Misbahuzzulam, 2023).

Islamic Shaykh Taqī al-Dīn Ahmad ibn Taimiyah stated: “No other scholar of jurisprudence came to the Levant after al-Auza’i, other than Shaykh al Muwaffiq (Qudāmah, 2020).” Abū Bakr Muhammad ibn aal-Ma’ālī ibn Ganīmah al-Bagdādī also stated: “I do not know of anyone in our time who has reached the level of a mujtahid other than al Muwaffiq.” Al-Hāfiz Umar ibn al Hajib also stated in his encyclopedia: “Ibn Qudāmah is the imam of the imams and the mufti of the ummah.” Not only did he excel in the sciences of naqli and aqli, but he was also versed in the science of hadith and fiqh (Al-Maraghi, 2001).

Ibn Qudāmah is a scholar of the Hanbali madhhab. The methods of *istinbāt al-ahkām* applied by this madhhab include: First, *Nash* from the Quran and Sahih Sunnah. The first basis for determining the law in this madhhab is the Quran and Sahih Hadith. If there is a fatwa of a companion that contradicts the two, then he ignores it. Secondly, the fatwas of the companions of the Prophet. If he does not find a clear text from the Qur’an or hadith, he uses the fatwas that have been known from the companions of the Prophet with agreement (there is no disagreement among them). The Hanbali scholars differed on this point. Some of them say that the fatwas of the companions cannot be used as proof, while others such as Ibn Taymiyyah and Ibnul Qayyim al Jauziyah argue that it can be used as proof (Yunta et al., 2023). *Ketiga*, fatwa sahabat yang masih dalam perselisihan. *Thirdly*, the fatwa of the companions which is still in dispute. If Imam Ahmad does not find the ruling in the three sources above, then he determines the ruling by choosing among the fatwas of the companions that are still in dispute which he thinks is the strongest and closest to the text. *Fourth*, *mursal* hadiths and *dhaif* hadiths. The *dhaif* hadeeth that he used was not the *munkar dhaif* hadeeth, nor was it a hadeeth in which there was a narrator who was accused of lying. However, the hadeeth used by him is a *dhaif* hadeeth that does not reach the level of *shahih* and falls into the category of *hasan* hadeeth. *Fifth*, *qiyās*. *Qiyās* is used when it is in a state of necessity, meaning not finding the law in the four foundations above (Chalil, 1994). Hasan Abu Talib added, Ibn Qudāmah’s *istidlāl* method after *qiyās* is *istishāb*, *mashālih mursalah*, *sadd al-ẓari’ah*, and *qaul al-shahabī* (Alfi Maghfiroh, 2022).

### Methodology of Kitāb Al-Mugnī

Al-Mugnī is Ibn Qudāmah’s monumental work consisting of 15 volumes. It discusses some 1479 fiqh issues containing 69 main topics. But these topics do not include the division of the issues into detailed discussions. The detailed discussion is estimated to be over one hundred thousand clauses covering every aspect of the main issues. Like most



fiqh books, *Al-Mugnī* begins with a discussion of purification, bathing, prayer, and so on (Sharif et al., 2020).

*Al-Mugnī* is a commentary on the book *Mukhtasar al-Kharaqi* which is very popular among scholars. *Mukhtasar al-Kharaqi* was written by Imam Umar ibn Husain al-Kharaqi. He is the son of a famous scholar named Abu Bakar al-Maruzi (Mokhtar et al., 2018). The book by al-Kharaqi is considered the main fiqh reference of the Hanbali madhhab. Therefore, the scholars tried to provide description (*syarh*). Shaykh Izzudin al-Mishri said that there are 300 books of sharh that explain al-Kharaqi's book, including *Al-Mugnī*, which is the largest and most complete book of sharh (Qudamah, 2007).

*Al-Mugnī* is one of the books that discusses fiqh in general in the form of comparative fiqh (*fiqh muqāran*). Ibn Qudāmah analyzes all the points relating to a problem discussed in the book in detail. In addition, he also explained the differences in history that developed in various madhhabs, including the madhhab he adhered to, the Hanbali Madhhab. These differences of opinion are discussed in detail along with the arguments that serve as their proof. Ibn Qudāmah not only presents the opinions of the four famous imams of the madhhab, but also mentions the madhhabs of some scholars who are no longer in existence, such as the madhhabs of Hasan Al-Basri, Sufyan Ats-Tsauri, Atha', and others (Qudamah, 2007).

Although the method used by Ibn Qudāmah is comparative fiqh, if there is a scholarly opinion that he thinks is incorrect, he still expresses it in his book accompanied by supporting arguments. For example, in discussing the prohibition of buying and selling during the Friday call to prayer, Al-Qadhi relates a narration from Ahmad: "*It is forbidden to buy and sell when the sun sets (on Friday), even if the imam (khatib) has not yet sat on the pulpit.*" Similar opinions were expressed by Adh-Dhahak, Al-Hasan and Atha' (Najah, 2019). Ibn Qudamah considered this opinion to be incorrect, because Allah associates the prohibition with the call to prayer, not with the time of day. Moreover, the purpose of this prohibition is to be able to attend the Friday prayer (Qudamah, 2007).

In *Al-Mugnī*, Ibn Qudāmah often not only presents the scholarly opinions and their proofs, but also states the strongest of them. In discussing the ruling on a man in ihram being a guardian in marriage for another person, there are two opinions in this book. The first opinion chosen by Al Kharqi, which is also the opinion of the al-Shafi'i Madhhab which states that the marriage is invalid (Ashidiqie, 2021). Meanwhile, the second opinion was chosen by Abu Bakr who stated the opposite. This is because marriage is forbidden for a man who is in ihram because it will provoke the desire for intercourse that will cancel the hajj. Of course, this does not happen if someone is the guardian of the marriage. However, according to Ibn Qudāmah, the first opinion is the more correct one, based on the words

of the Prophet: “It is not permissible for a man who is in *ihram* to marry, nor to give in marriage, nor to propose marriage.” (Qudāmah, 2012).

Ibn Qudāmah always supported his opinions with texts. This is shown when discussing *luqathah*. *Luqathah* or commonly called found goods is the property that is lost from its owner because of a fall or other, which is preserved property and has a valuable value (Roslan & Zuhri, 2023). Ibn Qudāmah argues that the discovery of *luqathah* must be announced. This opinion is based on the hadith of the Prophet who told Zaid ibn Khalid and Ubay ibn Ka’ab to announce *luqathah* and not to distinguish. If the *luqathah* remains in the hands of the finder without announcing it, it is an act of wasting it from its owner, so it is not allowed. Just as it is not permissible to return the *luqathah* to its original place or throw it somewhere else. If announcing it is not obligatory, then taking it is also not permissible, because leaving the *luqathah* where it is makes it easier for the owner to find it. If taking it is permissible, then announcing it is obligatory so that the owner of the item will not be harmed (Qudāmah, 2011).

### Methodology Implementation

To deepen the understanding of the comparative madhhab methodology in this book, the author will present a case study example regarding the right to *iddah* maintenance of a wife after being divorced *bain*. As explained by Ibn Qudāmah in *Al-Mugnī* Volume 11, the madhhab scholars differed in their opinions regarding this matter. The difference of opinion lies in the provision of maintenance and housing for divorced wives who are not pregnant (Qudāmah, 2013). This case analysis will illustrate how Ibn Qudāmah delineates opinions, presents arguments, evaluates evidence, and applies the criteria of *tarjīh* as an essential component of his comparative methodology.

This problem is a legal issue that is not found in the *qath’i* text, which causes differences of opinion among scholars in determining the law through *ijtihād*. The process of *ijtihād* requires *istinbat* according to the method used by each madhhab scholar. Different *istinbat* methods have implications for different legal products, including in the issue of providing *iddah* maintenance for wives after being divorced *bain* (Hasanah, 2020).

In essence, maintenance is an obligation of a husband to his wife as long as he is still carrying out his obligations in a marriage bond. This obligation still applies after the husband divorces his wife during the *iddah* period. The ex-wife still gets the right to maintenance from her husband because she cannot immediately marry someone else. However, the maintenance that the ex-wife gets is different from the maintenance during the marriage period. It also depends on the form of divorce experienced, whether divorce *raj’i* or divorce *bain* (Komalasari et al., 2022). The obligation to provide maintenance is based on three reasons, namely the existence of a wife because of marriage, relatives and

descendants (*nasb*), and servants or other people because they are under care (Afrinal & Darmawan, 2022).

The madhhab scholars differed in their opinions regarding the right of maintenance of the wife in the iddah period of bain divorce, as discussed by Ibn Qudāmah in Al-Mugnī. Ibn Qudāmah divides the issue into two criteria, namely if the divorcee is pregnant or not. If a husband divorces his wife with a bain divorce, whether bain by reason of triple divorce, *khulu'*, or by reason of *fasakh* when the wife is pregnant, then the husband still has an obligation to provide housing and maintenance for his wife. This is the consensus of the scholars, based on the words of Allah in QS al-Thalaq verse 6:

Allah says:

*“Settle them (the divorced wives) where you are able, and do not trouble them to constrain them. If they (the divorced wives) are pregnant, then give them their maintenance until they give birth, then if they suckle your (children) then give them their reward; and bargain among yourselves (everything) well; and if you both encounter difficulties (in the matter of breastfeeding), then another woman may suckle (the child) for her.” (QS.Ath-Thalaq (65): 6)*

A narration says that it was said to Fatimah ibnt Qais, “You are not obliged to spend unless you are pregnant.” Because if a wife is pregnant, it means that she is carrying her husband's child, so it is obligatory for the husband to spend on her. In this case, the way to provide for the child is through the mother, just as the husband is obliged to pay the child's breastfeeding wages (Qudāmah, 2013).

There are two narrations concerning the obligation to provide housing. Firstly, the husband is obliged to provide maintenance to his wife. This opinion was expressed by 'Umar, Ibn 'Umar, Ibn Mas'ud, 'Aishah, and the seven fuqaha of Madinah, Imam Malik, and Imam Ash-Shafi'i. The aforementioned verse constitutes the legal basis for this opinion. Conversely, the husband is not obligated to provide his wife with a place to live or to incur expenses on her behalf. This position aligns with the madhhab of Imam Ahmad. This opinion is also shared by Ali, Ibn Abbas, Jabir Thawus, Al Hasan, and Abu Tsaur (Qudāmah, 2013).

Regarding the second view, Ibn Qudāmah states in his book that the evidence for this is what was narrated by Fatimah ibnt Qais, that at that time her husband had divorced her in his absence. Then he sent his representative to see her with some grain, and she scolded him. He said, “By Allah, we have no obligation to you.” Then Fatimah went to the Messenger of Allah and told him about her condition. In response to Fatima, the Messenger of Allah said, “You are not obliged to provide maintenance and shelter by her.” This hadith was narrated by Bukhari and Muslim. Then he ordered Fatimah to stay at Umm Sukyari's house (Qudāmah, 2013).

The third opinion, which is the opinion expressed by most Iraqi scholars, Ibn Shubramah, Ibn Abi Laila, Imam Tsauri, Imam Abu Hanifah and his companions, is that the husband is obliged to provide maintenance and housing. This is because she is a woman who has been divorced by her husband, so he is obliged to provide for her and give her a place to live, just as he is obliged to do for a wife who has been divorced. They reject the report of Fatimah ibnt Qais about the report from 'Umar that he said, *"We will not reject the Book of our Lord and the Sunnah of our Messenger because of the statement of a woman."* This hadith was narrated by Abu Daud with a saheeh chain of transmission (Qudāmah, 2013).

Ibn Abdil Barr said that based on the narration, what Imam Ahmad and the scholars who followed him said (the second opinion) is the more valid opinion and has stronger evidence because it has been stated by the Prophet clearly (Qudāmah, 2013). As for the statement of 'Umar and the scholars who held the same opinion -women who are divorced when they are not pregnant are entitled to maintenance and housing-, this opinion was not agreed upon by 'Ali and Ibn Abbas. As for the above statement by 'Umar, *"We will not abandon the Book of our Lord and the Sunnah of our Messenger because of the words of a woman,"* it is an invalid narration, and Imam Ahmad rejected it. Umar's statement is against the consensus that accepts the statements of women in the field of narration (Qudāmah, 2013).

### Case Study Analysis

In discussing a fiqh problem, Ibn Qudāmah implements the methodology of comparing madhabs that has been discussed previously. The problem analyzed is the issue of the right to maintenance during the iddah period of the wife after being divorced *bain*, which is contained in *Al-Mugnī* Volume 11. Ibn Qudāmah identified the main difference of opinion, which is whether a wife who is divorced while not pregnant is entitled to maintenance and housing. Then Ibn Qudāmah mapped out the differences of opinion. Based on the description in the book, Ibn Qudāmah begins his discussion with an explanation of the issues raised along with the *textual* evidence that is the legal basis for the fiqh problem. In this case, Ibn Qudāmah cites the Qur'anic verse Surah al—Thalaq verse 6. Not only does he present the Qur'anic verse, he also includes hadith narrations related to the discussion.

Then he mentions the opinions of scholars who differ in their views on the right to iddah maintenance for wives who are divorced *bain*. Ibn Qudāmah does not only present the opinions of the scholars of the madhabs that still exist today but some other scholars are also mentioned. The *textual* evidence that underlies these opinions is also included in

the discussion. Ibn Qudāmah clearly states his opinion on this issue by basing his opinion on the texts that are considered saheeh (Qudāmah, 2013).

Following the presentation of the three opinions and their respective supporting evidence, Ibn Qudāmah's analysis and evaluation process is clearly demonstrated. Furthermore, Ibn Qudāmah delves into the underlying rationales behind the absence of substantiating evidence for the competing opinions. The hadith of Fatimah bint Qais is prioritised as the primary evidence in his argument due to its established authenticity. The hadith under scrutiny was narrated by Imam Muslim and has been deemed authentic by scholars. The Prophet explicitly and clearly states in the hadith the right of maintenance and residence for Fatimah.

In this case, Ibn Qudāmah challenged the evidence of the third group, who rejected the hadith narrated by Fatimah ibnt Qais above. He rejected 'Umar's narration of the hadith, as did Imam Ahmad, on the grounds that it contradicted the consensus of scholars who accept hadiths narrated by qualified female narrators.

Justification of the strength of the evidence on which some legal opinions are based is not merely the result of his own thoughts, but is reinforced by the opinions of other scholars who support (Qudāmah, 2013). This shows the attitude of Ibn Qudāmah who *tasamuh* with many opinions but will still reject ideas that are considered less precise legal basis and pay attention to the thoughts of scholars which shows that he is not a *self-centered* person.

### Relevance to Contemporary Ijtihad

The methodology employed by Ibn Qudāmah in determining Islamic law can serve as a paradigm for the formulation of contemporary fatwas. The utilisation of nash as the primary evidence, while still allowing for the examination of arguments for problems that already have a basis in the nash, is a commendable approach. His approach of *tasamuh* in presenting divergent opinions and their legal justifications prior to doing *tarjih* is essential for fostering a scientific dialogue in the context of contemporary diversity of opinion.

However, it is important to acknowledge that many contemporary issues are complex and evolve over time, and thus do not have a direct equivalent in the Quran or hadith. Ibn Qudāmah's textual methodology of madhhab comparison, while valuable, could be further enriched by integrating the principles of maqashid sharia to ensure its continued relevance and applicability within the contemporary social context.

In the context of evolving socio-cultural landscapes, the textual Quran has been found to lack comprehensive coverage of contemporary issues. In Islamic jurisprudence, the process of formulating legal principles in response to societal shifts and evolving times is known as *ijtihad*. However, it is imperative to recognise that this process must adhere to



specific criteria. Primarily, it is essential that the outcome of ijtihad is in alignment with *maqashid sharia*, signifying the overarching objectives and intentions that underpin legal principles. An illustration of the implementation of *maqashid sharia* can be observed in the application of the Quranic verse that prohibits theft and stipulates the mandatory amputation of the hands of thieves. The Quran instructs that individuals who commit theft should be punished by having their hands amputated, as outlined in QS. However, in instances where the implementation of such a punishment is not feasible, for instance, during prolonged periods of famine, scholars may consider the suspension of *maqashid sharia*. This approach aligns with the tenets of *maqashid sharia*, as evidenced by the actions of Umar ibn al-Khattab. In that particular instance, due to the prevailing conditions of a famine, Umar deemed it appropriate to exercise leniency towards a thief, acknowledging that the act of theft was undertaken for the purpose of survival. This action could be interpreted as aligning with the concept of *hifdh an-nafs*, which is recognised as an integral component of the *maqashid sharia* indicator (Bakri, 1996).

In al-Shatibi's *Al-Muwafaqat*, *maqashid sharia* is categorised into three levels. Firstly, *dharuriyat*. *Dharuriyat* is defined as that which is essential for human life. There is a general consensus that the protection of *dharuriyat* is 'the goal behind every law'. *Dharuriyat* is further categorised into five fundamental components: the preservation of religion (*hifdz al-dīn*), the safeguarding of body and soul (*hifdz al-nafs*), the protection of property (*hifdz al-māl*), the preservation of intellect (*hifdz al-'aql*), and the protection of offspring (*hifdz al-nasl*) (Al-Syatibi, 1997). In addition to these principles, some scholars of *ushul fiqh*, such as Al-Ghazali in *Al-Mustasfā*, have also identified the protection of honour (*hifdz al-'irdh*) as a fundamental aspect of Islamic law (Al-Gazali, 1993). For instance, the prohibition of alcohol consumption, along with its derivatives such as drugs, is regarded as a means of safeguarding the cognitive faculties. The consumption of these prescribed substances is believed to exert a detrimental effect on the human mind. Secondly, *hājiyat* is an essential component of human life, though it does not attain the level of *dharūri*. While the absence of *hājiyat* may not directly compromise human life, its fulfillment does offer tangible benefits to one's quality of life. For instance, the establishment of madhabs is conducive to the enhancement of cognitive faculties. While the establishment of madhabs is imperative, it should be noted that the pursuit of knowledge is not contingent upon institutionalised education. Indeed, the pursuit of knowledge can be achieved independently of a formal educational environment. The necessity for madhabs arises at the level of *hājiyat*. Thirdly, *tahsīniyyat* is a concept that should be present to enhance the aesthetic quality of life. The absence of *tahsīniyyat* does not necessarily result in a negative impact on life, nor does it necessarily lead to difficulties (Auda, 2008). This can be

illustrated by dressing appropriately, attending the mosque, engaging in commercial activities, and refraining from harming women and children in times of war.

## Conclusion

*Al-Mugnī* is considered a seminal text in the field of comparative fiqh, otherwise referred to as *muqaran fiqh*. It was authored by the jurist Ibn Qudāmah. A distinguished scholar of the Hanbali madhhab of thought, he was prolific in his writings. His magnum opus, *Al-Mugnī*, comprises 15 volumes and encompasses approximately 1400 fiqh issues. The methodology employed in *Al-Mugnī* is a comparative approach, wherein the various opinions of scholars on a particular legal issue are discussed in detail, accompanied by the underlying arguments of each madhhab of thought. In certain instances, he elucidates the predominant opinion among the divergent views. However, if an opinion is deemed erroneous by Ibn Qudāmah, he is also clear in expressing his disagreement, further strengthening his argument with evidence from the text. The employment of a comparative methodology between madhhabs in *Al-Mugnī* is indicative of Ibn Qudāmah's approach towards differing opinions within the context of fiqh, demonstrating a degree of tolerance. However, he remains steadfast in his rejection of opinions that contradict the evidence presented by the *nash*, which serves as his primary source of proof. Ibn Qudāmah's methodology of madhhab comparison, which focuses on the *nash*, provides a strong foundation for the formulation of fatwas in the modern era. However, in contemporary *ijtihad*, there is a necessity for consideration of *maqashid sharia* and the social context of society, given that many issues are not found directly in the *nash*. Consequently, there is a need for refinement of Ibn Qudāmah's methodology.

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