

Understanding Terms and Meanings in Law (Analysis Study of Sharia Terms and Qanun)

Dwi Langgeng Jauhari

Pascasarjana Universitas Islam Indonesia

Email : wilang.wayang@gmail.com

Muhammad Alfreda Daib Insan Labib

Universitas Islam Negeri Sunan Kalijaga Yogyakarta

Email : 21105050042@student.uin-suka.ac.id

Abstract

Shari'ah are the rules prescribed by Allah and the commands of His Prophet. Therefore, Shari'ah is a complete law that includes spiritual aspects related to God and social aspects related to the relationship between humans and the environment. Rigid and inflexible laws will create negative impacts and conflicts in society, so it is important to treat laws that are acceptable and adaptable to the environment. One of the ideas of modern Islamic law is qanun. The purpose of this study is to provide an understanding of shari'ah and qanun along with the taqin of shari'ah, which is still a never-ending debate between groups that are against the existence of tannin Islamic law and groups that are against it. This research is library research. The type of research used in this paper is library research with a normative approach. The findings obtained from this research are; 1) shari'ah and qanun are different things but have interrelated relationships, 2) groups that support and do not support the existence of shari'ah tannin have their reasons

Keywords: *Syariah, Qanun, Taqin*

INTRODUCTION

Indonesia is a country that implements a legal system, where everything related to society, nation, and state, including government, must be based on laws that follow national law. The national-legal system is the law in force in Indonesia which consists of elements that support each other to overcome problems that arise in society, nation, and state under Pancasila and the 1945 Constitution of the Republic of Indonesia.¹

Religious law applied in Muslim society has two categories, the first is formal juridical and the second is normative. Normative religious law has become a system that has taken root in Muslim society in general, where this law can cause conflict

¹ Penjelasan Umum Undang-Undang No 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

between power holders and ulama and Muslims if religious law or sharia is not regulated properly and correctly by the country. This is because Sharia theoretically provides full rights to civil and political rights. For Muslims, it has become a deep belief that supreme authority lies in the hands of Allah.

The application of the rules in the Qur'an and Sunnah of the Prophet Muhammad was implemented by the companions, tabi'in, and subsequent scholars. In facing new legal problems that have not been explained in detail in the Qur'an and Sunnah, the ulama tried to find solutions through istinbath al-ahkam, and the results became known as fiqh. The existence of a diversity of opinion in fiqh has an impact on the practical application of law in society. In a state environment, the diversity of understanding of fiqh creates problems of legal uncertainty. Therefore, efforts are needed to unify various legal opinions and incorporate them into the national legislative system as binding national law. One way is to incorporate Islamic law into the national legislative system.²

The problem found by researchers is that there are fanatical beliefs about religion, especially fiqh, which exist in society, resulting in some people who are still unable to differentiate between Shari'ah and products resulting from the dialectic of Shari'ah with the conditions of the time and place in which it is implemented.³ Among the products are; fiqh, Islamic law, qanun, fatwa.

If society is unable to differentiate between sharia, fiqh, fatwa, Islamic law and qanun, it will tend to maintain classical fiqh so that this can result in fiqh not being able to develop according to the times and places where society lives. According to Fajar Kurnianto, this is quoted by Mahathir Muhammad Iqbal as one of the reasons for the stagnation of Islamic jurisprudence.⁴

In this research, the researcher formulated the existing problem with the following questions: first, what is the meaning of sharia and qanun? Second, how do ulama and intellectuals view the codification of sharia (taqnin)? Third, what is the difference between sharia and qanun?

The systematics of writing this research is as follows, starting with the definition of sharia and understanding several terms that are often equated with sharia; fiqh and Islamic law, the second, discusses the meaning of qanun by including the reasons of scholars and intellectuals who are for and against the

² Husni and Hasanuddin, 'Pelaksanaan taqnin al-ahkam di Negara Kesatuan Republik Indonesia', *SYARIAH: Journal of Islamic Law*, Vol. 3, No. 1 (2021): 2.

³ Armi Agustar, 'Perbedaan syariah sebagai wahyu dan syariah sebagai hasil pemikiran pada masyarakat era modernisasi', *el-Aqwal: Journal of Sharia and Comparative Law*, Vol. 1, No. 2 (2022): 122.

⁴ Mahathir Muhammad Iqbal, "Merumuskan Konsep Fiqh Islam Perspektif Indonesia," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 2, no. 1 (2017): 4.

formalization of Islamic law, the third discusses the basic differences between sharia and qanun.

RESULT AND DISCUSSION

1. Syari'ah

The term shari'ah is mentioned only once in the Quran, in the following verse:

ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيحَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

Then We made you above a Shari'a (rules) regarding (religious) matters, so follow that Shari'a and do not follow the desires of those who do not know. (Q.S. al-Jathiyah 45:18)

The term sharia in the verse above is still general in nature, and does not have a specific meaning as is widely understood today. Sharia in language according to Hasbi as-Shiddieqy is "The path where the spring comes out or the path through which the waterfall flows"⁵ and is also known by Arabs as at-tariqah al-mustaqimah, a straight path that leads humans to goodness, Shariah according to Yusuf Qardhawi in everyday conversation has two meanings⁶:

- a) Religion includes beliefs, worship, manners, behavior, law, and human relations. In other words, shari'ah includes matters of ushul and furu', belief and charity, theory and practice. Such things are collected and recorded in the Al-Qur'an and Hadith, then explained by scholars in the fields of aqidah, fiqh, and morals. In this case, Shari'ah also has a general meaning as a religion.
- b) Legal aspects of worship and human relations in religion. This second definition is used to differentiate between the terms aqidah and syari'at, as explained by Mahmud Syaltut in the book "al-Islam: aqidah wa shari'at".

In the faculties at Al-Azhar and many other Islamic universities, to separate the first and second meanings, the words ushuluddin faculty in the field of faith and sharia faculty in the field of worship and Muramasa were created. This division is very important, because in the word maqashid shari'ah "the purposes of shari'ah" cannot only be interpreted as practice law, but also i'tiqadi, therefore we will find that in kulliyat al-khams, religious protection occupies a very importance place.⁷

⁵ M. Hasbi As-Shiddieqy, *Pengantar Ilmu Fiqih* (Jakarta: Bulan Bintang, 1978), hlm. 20.

⁶ Yusuf Qardhawi, *Dirasat Fi Fiqh Maqashid Asy-Syari'ah*, 3rd ed. (Cairo: Dar Asy-Syuruq, 2008), hlm. 19-20.

⁷ Qardhawi, *Dirasat Fi Fiqh Maqashid Asy-Syari'ah*.

Meanwhile, sharia in its charitable meaning is God's rules and provisions aimed at humans to regulate their lives so that they can achieve happiness and goodness in this world and the hereafter. These rules are found in the word of Allah which was revealed both in the Al-Qur'an and the Sunnah of His Prophet. Understanding the word of God requires in-depth knowledge and understanding so that the word can be applied in everyday life. This conception is conveyed in detail through the science of jurisprudence. This conception has the nature of changing according to the situation and era and also has a dynamic nature. Fiqh is usually associated with the mujtahids who formulated it. Therefore, fiqh and sharia have a very close relationship. In general, sharia is Islamic law that comes from the Koran and Sunnah which has not been mixed with reason (ijtihad), while fiqh is Islamic law that comes from an understanding of sharia or understanding texts, both the Al-Quran and Sunnah, meaning that fiqh has mixed with reason.⁸

In the Islamic sciences, the word sharia is related to other terms, sometimes these terms are even equated with the word sharia, which is essentially different. Therefore, it is necessary to understand several terms that are related to the word sharia so that there are no overlapping meanings between existing terms. Words that are usually related to sharia are Islamic jurisprudence and law, although several words are also equated with it, such as Islamic teachings, and Sharia law.

The first term that is closely related to sharia is fiqh and the second is Islamic law. The term fiqh is very closely related to the term syari'ah, in fact in some reading books position syari'ah and fiqh have the same meaning. Moreover, when sharia and fiqh are translated into Indonesian into Islamic law, the two meanings become confused in their separation.

The current word of fiqh with its mashdar form is not contained in the Al-Qur'an or Hadith, except in the form of the verb (fi'il). The verb fikih is found in the Al-Qur'an surah An-Nisa' verse 78, At-Taubah verse 122 and Hud verse 91. However, the word fiqh does not refer to current fiqh which in terminology is the science of Islamic law resulting from understanding or interpretation taken from the Qur'an or Hadith in matters of worship, mu'amalah, family, society, state and so on, but it only refers to the general meaning which means understanding or comprehending. In a fairly well-known hadith, when the Prophet prayed for Ibn Abbas, there is a fiqh editorial using fi'il which reads: "May Allah grant him a deep understanding (faqqihhu) of religion."

The second is Islamic law, literally, Allah does not mention the word Islamic law (al-hukm al-Islamiy/hukm al-Islam) in the Qur'an, even if there is a word of law, it only

⁸ Desi Asmaret, 'Otonomi hukum Islam', *Jurnal Al-Himayah*, Vol. 2, No. 1 (2018): 69.

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*stands alone without being given to it. Islam. The word law is attributed to Allah twice and to ignorance once.*⁹

Islamic law has two very flexible meanings in the Indonesian context. Sometimes it is equated with the meaning of sharia and sometimes it is equated with the meaning of fiqh. Islamic law is an English translation of Islamic law which usually refers to Islamic sharia, and it includes a translation of Islamic jurisprudence which refers to al-Fiqh al-Islamiy.¹⁰

To make it easier to understand the differences between sharia and fiqh, the author presents it in the form of the following table:

ASPECT BEING COMPARED	SYARIAH	FIGH
Linguistic Meaning	The Road to The Water Source	Understanding
Source	Al-Qur'an dan Hadith	Ijtihad Ulama in understanding the Qur'an and Hadith
Truth Value	assuredly	Relative
Scope	All Islamic teachings; belief, worship, morals	Limited only to the actions of dzahir humans
Characteristic	Eternal and Universal	Temporary and Local

2. Qanun

a) Definition of Qanun

For some researchers, the words qanun and Taqin do not have different meanings, so the words qanun and Taqin have the same meaning. But sometimes the terms taqin and qanun have different meanings even though they are related. For those who differentiate, qanun is codified general or Islamic law, while taqin is defined as the process of forming qanun.¹¹ In this paper the author does not differentiate between the terms qanun and taqin.

Taqin al-ahkam or qanun if taken to its general meaning has the same meaning as the word tasyri', namely the establishment of law. So the existence of Qanun has been realized since the Prophet Muhammad sent him with his message. However, if the meaning of qanun is interpreted in the context of current law which is binding, and written systematically with good management

⁹ Lihat Q.S. *Al-Maidah* 5:50

¹⁰ Muhaimin, Abdul Mujib, and Jusuf Mudzakkir, *Studi Islam Dalam Ragam Dimensi Dan Pendekatan* (Jakarta: Kencana, 2013), hlm. 18.

¹¹ Syarif and Salman Paris Harahap, "Fatwa MUI Dalam Kerangka Taqin Dan Penerapan Hukum Islam Di Indonesia," *Jurnal Hukum Responsif* 6, no. 6 (2018): 111.

(well codified) then qanun in that context would not have been found in the time of the Prophet Muhammad.¹²

Meanwhile, the current definition of qanun is a set of rules or norms that regulate the behavior of people in a society, accompanied by sanctions that are imposed by force on violators.¹³ According to Yusuf Qardhawi, taqnin is an effort to formulate law with an arrangement consisting of chapters, verses and numbers.¹⁴

According to several fiqh scholars, taqnin can be translated as the ruler's determination of a number of legal regulations that hold control and compel them in managing life, relationships and human behavior in society. This term can also be understood specifically as a ruling by the authorities regarding a number of rules that discuss certain issues.¹⁵

Misnan quotes the definition of Muhammad Abu Zahrah Shaykh Al-Azhar in his journal, which provides the understanding that "taqnin" are Islamic laws contained in the form of books or codes of law that are arranged systematically, neatly and practically, then stipulated and promulgated. officially by the head of state such as the King or President, so that it has legal force that must be obeyed, binding, and implemented by all citizens.¹⁶

b) The views of ulama and intellectuals regarding qanun

The implementation of the codification of Islamic laws or sharia into a legal code can give rise to a polemic in society between those who support it and those who reject it. This is because some of those who support him see it from a positive side, while others see it from a negative side.

The groups that do not support the existence of taqnin are classical ulama from the Hanafi, Maliki, Syafi'i, and Hambali circles, while the contemporary group is represented by Liberal Muslims. The following are several points that are considered to be the negative side of codifying Islamic law:

- 1) The law that is applied becomes a rigid law¹⁷

¹² Miftahul Ulum, Moh. Mujibur Rohman, and Mohsi, "Taqnin Al-Ahkam (Telaah Sejarah Legislasi Hukum Perdata Islam Dalam Hukum Nasional Indonesia)," *Ulûmunâ: Jurnal Studi Keislaman* 6, no. 1 (2020): 91.

¹³ Zainal Fadri, "Pendekatan Sosial Terhadap Sistem Qanun Dalam Perwujudan Hak Asasi Manusia," *Istinarah: Riset Keagamaan, Sosial Dan Budaya* 4, no. 1 (2022): 46.

¹⁴ Jaih, *Taqnin Ahkam*, 1st ed. (Bandung: SAHIFA, 2014), hlm.39.

¹⁵ Misnan, "Sejarah Kodifikasi Hukum Islam (Taqnin) Di Negara Islam," *Al-Usrah: Jurnal Al-Ahwal As-Syakhsyah* 6, No. 1 (2021): 73.

¹⁶ Misnan, "Sejarah Kodifikasi Hukum Islam (Taqnin) Di Negara Islam."

¹⁷ Ibid.

Such a law is very contrary to the principles of the Islamic religion, where the application of some of its laws can adapt to changing times. Those who reject codification argue that enacting this will narrow and complicate people's choices in choosing opinions that they believe are stronger than codified Islamic law.¹⁸

Changing times and the inelasticity of Islamic law that has been promulgated by the state will make Qanun obsolete, dead and will not become a realistic law in society.

2) The decline in the *ijtihad* of judges in the use of reason

It cannot be denied that the existence of Qanun makes it easier for judges to make decisions on cases, without having to think too long. But on the other hand, it will cause the judges to be lazy in carrying out *ijtihad*. This would be a contradiction with the main task of a judge, namely *ijtihad*¹⁹, not just knocking the hammer in the competition room.

3) The emergence of a new *taqlid*.

The existence of Islamic law codified into a state regulation is an effort to reform Islamic law which is synonymous with progress in the legal field. But in reality, such matters can be included in efforts to return Islam to an era of decline where *taqlid* spread everywhere, so that many reformers emerged in the 18th century until now. Therefore, efforts to codify Islamic law will give birth to a new model of *taklid*.²⁰

In the Indonesian context, it can trigger horizontal conflict, damage diversity and threaten the integrity of the Republic of Indonesia²¹

Meanwhile, the classical *ulama* who allows *taqin* is Abu Hanifah and contemporary *ulama* who mostly support *taqin al-Ahkam*, including Muhammad Abu Zahrah, Yusuf al-Qardhawi, Wahbah Zuhaili and others. The following are the positive sides or reasons for the need for codification of Islamic laws:

1) Providing convenience for legal practitioners.

It is common knowledge that jurisprudential legal products produce many opinions, not only differences of opinion between schools of thought but also differences within the schools themselves. The existence of qanuns makes it easier for judges to decide cases without the need to try to strengthen various

¹⁸ Jaenudin, "Pandangan Ulama Tentang Taqin Ahkam," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 11, No. 1 (2017): 52.

¹⁹ Ulum, Rohman, and Mohsi, "Taqin Al-Ahkam (Telaah Sejarah Legislasi Hukum Perdata Islam Dalam Hukum Nasional Indonesia)."

²⁰ Misnan, "Sejarah Kodifikasi Hukum Islam (Taqin) Di Negara Islam."

²¹ Tantangan Manajemen et al., "Tantangan Manajemen Pendidikan Islam, Hukum Islam Dan Bahasa Melayu Di Era Revolusi 4.0," in *Jaringan Islam Liberal Dalam Pergumulan Reformasi Hukum Islam Di Indonesia*, ed. Ahmad Husen Ritonga et al. (Pattani and Perak: Pascasarjana Universitas Islam Negeri Sulthan Thaha Saifuddin Jambi, 2019), hlm. 528.

opinions, it is enough for judges to adopt qanuns that have been established by the state.²²

- 2) Strengthen jurisprudence by taking the strongest opinion.²³
- 1) Various madhhab opinions on one issue make judges confused, especially among the general public. These various opinions certainly have different postulate strengths, from strong to weak. One way to avoid weak opinions, the state exists to select the strongest opinions.
 - 2) Avoiding the submission of legal practitioners to certain schools of thought.²⁴
 - 3) Achieve legal uniformity for judicial institutions.²⁵

3. Differences With Syari'ah And Qanun

In the previous discussion several terms related to sharia were explained; fiqh, Islamic law, and qanun. Even though they have general similarities, these terms have very different meanings if examined in depth.

Sharia and qanun can be illustrated with a simple example. Sharia can be likened to a replica of a building that will be built, so people who see it will imagine how the building will stand. Meanwhile, qanun can be illustrated with the technical work of the building so that it can stand well and firmly.

Qanun which is purely a human product is very different from Sharia in several ways. *First*, the product of law or qanun is a product produced by human thought, just as fiqh is the result of the thought of ulama. Meanwhile, sharia is a rule set by Allah.²⁶

Second, the enactment of Qanun is very temporary.²⁷ The regulations set now will not necessarily apply for decades to come, because future human needs will always change. Meanwhile, Sharia rules are eternal and will never change with changing times.

Third, qanuns are made to regulate the affairs of people with people, people with society, and society with other communities (tandem al-Jama'ah). Meanwhile, the basic principle of Sharia is not intended to regulate community affairs alone, but

²² Misnan, "Sejarah Kodifikasi Hukum Islam (Taqnin) Di Negara Islam."

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Abdul Qadir 'Audah, *At-Tasyri' Al-Jinaiy Al-Islamiy* (Bairut: Dar al-Katib al-Arabiy, n.d.), hlm.17.

²⁷ 'Audah, *At-Tasyri' Al-Jinaiy Al-Islamiy*.

rather to guide individuals to become pious individuals and guide society to become a pious society.²⁸

Fourth, truly man-made laws only deal with religious matters if they are closely related to social and economic matters which form the basis of state authority. Meanwhile, Islamic law or sharia deals with belief in God, His Messenger, the bond of a servant with his God, moral behavior, and various systems of life.

The large differences between the syari'ah and qanun above will become close differences if substantive sharia values can color the qanun. Qanun can even be declared as Islamic law if Sharia or Islamic law is explicitly mentioned in the law.

CONCLUSION

The substance of sharia in the modern era is not only found in laws produced from fiqh alone, but these values also enter the realm of laws made by the state such as the 1945 Constitution, Laws, and others which are referred to as qanun.

Thus, the general understanding of shariah is the Islamic religion which includes belief, worship, manners, morals, law, and mu'amalah, specifically, shariah is the law of charity in the Islamic religion which includes worship and mu'amalah. Meanwhile, the definition of qanun is an effort to formulate law with a structure consisting of chapters, verses, and numbers.

In the issue of sharia taqin, some groups are against this and there are pro groups. The reasons why the group does not agree with this can be summarized as follows; 1) The law that is applied becomes a rigid law. 2) The decline in the *ijtihad* of judges in the use of reason. 3) The emergence of a new *taqlid*. 4) In the Indonesian context, it can trigger horizontal conflict, damage diversity, and threaten the integrity of the Republic of Indonesia.

Meanwhile, the reasons for the group that agreed were as follows; 1) Providing convenience for legal practitioners. 2) Strengthen jurisprudence by taking the strongest opinion. 3) Avoiding the submission of legal practitioners to certain schools of thought. 4) Achieve legal uniformity for judicial institutions.

Between sharia and qanun which are purely taken from human thought, there are fundamental differences, including: 1) Qanun is made by humans, sharia is made by Allah. 2) Qanun has a temporary period, while sharia does not 3) Qanun only regulates society (*tanzim al-Jama'ah*), while sharia, besides being a regulation, also guides individuals and society towards piety. 4) Qanaun only deals with religion if it is related to social and economic matters, while sharia is more than social and economic matters but also deals with matters of faith.

²⁸ *Ibid.*

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Then, such qanuns need to have the spirit of Islamic sharia so that the differences between the two can be accepted by many groups, especially by Muslims in particular.

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