

The Study of Qiyas as a Legal Argument: Application and Limitations

Ammar Muhammad Jundy ^{a,1,*}, Fayiz Yan Avicena ^{a,2}

^{a1, a2} Universitas Muhammadiyah Surakarta, Pabelan, Indonesia

¹ G100229065@student.ums.ac.id; ² G1002200@student.ums.ac.id

* Corresponding Author

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ABSTRACT

This article aims to describe the position of qiyas in Islamic law. From this literature-based study, it is known that the fourth source of law, after the Qur'an, Sunnah, and ijma' (consensus), is qiyas. It is an essential tool for exploring the texts of the Qur'an and Sunnah (primary sources of Islamic law) that can be used to determine the legal basis for issues not explicitly addressed in the texts. By employing qiyas, various problems that cannot be resolved by the Qur'an, Sunnah, or ijma' can ultimately be addressed with solutions beneficial to society. Therefore, claiming that qiyas is merely a restrictive theory is incorrect. This is because most of the rules contained in the primary sources of Islamic law, particularly the Qur'an, are broad and global in scope. Since qiyas is an interpretation of the first two sources of law, it has a speculative (dzanni) nature. Consequently, there is a possibility of significant differences of opinion among Muslim scholars.

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1. Introduction

Usul al-Fiqh is a significant discipline in Islam that facilitates the understanding of Islamic law from its original sources, namely the Qur'an and Sunnah. By referring to the rules and general principles of Islamic law (Shari'ah), we can gain insights into its directives and the ways they can be applied in human life. Scholars of Usul al-Fiqh offer two approaches to understanding Shari'ah introduced by the Prophet Muhammad: Linguistic Method, this approach focuses on understanding general and specific arguments, absolute and conditional texts, ambiguous and explicit statements, definitive (muhkam) and interpretive (mufassar) texts, as well as concepts like abrogated (mansukh), command (amr), prohibition (nahi), and others. This linguistic method also helps resolve apparent contradictions within texts to facilitate proper understanding and application of the Qur'an and Sunnah. Maqasid al-Shari'ah (Shari'ah Objectives), this method emphasizes the broader objectives of Islamic law beyond the literal meanings of texts. The first approach is closely related to textual interpretation (nass)[1].

Qiyas is a method of ijtihad in Islamic law that seeks legal analogies for situations not directly addressed in the Qur'an or Sunnah[2]. This method examines similarities between cases explicitly covered in the Qur'an or Sunnah and new, unprecedented issues. The application of qiyas involves

the ability to identify analogies or commonalities between established rulings and the new situations at hand[3].

At the same time, qiyas has limitations that must be observed. These include ensuring the actual similarity between the old and new cases and preventing misuse of the method to create laws that contradict Islamic principles. Profound knowledge and caution are crucial in the application of qiyas[4].

With the rapid advancements in globalization and the exponential growth of knowledge and technology in various fields such as law, medicine, economics, and social sciences, new legal challenges have emerged. Although these developments have not significantly altered the foundations of Islamic law, they have introduced complex legal problems. Muslims, as part of the global community, face these contemporary challenges, particularly regarding the legal status of various issues[5].

New legal statuses clearly defined in the Qur'an and Hadith do not usually cause contention among Muslims. However, when these sources remain silent or when scholars (e.g., Salaf scholars) differ in opinion regarding contemporary issues, the need arises for religious leaders (ulama) to offer quick and accurate solutions. While the Qur'an and Hadith contain a finite number of verses, human events and advancements continue to evolve in complexity. Consequently, methods like ijma, qiyas, istihsan, and others play a significant role in determining the legal status of cases not explicitly addressed in the primary texts.

Although the Qur'an and the Sunnah are the primary sources of Islamic law, they often provide general and universal principles, necessitating detailed interpretation to derive legal rulings for contemporary issues. For instance, emerging issues in Islamic banking, such as professional zakat, insurance, electronic banking practices, stock market activities, and others, cannot be addressed explicitly by Qur'anic verses or the Prophet's hadith. While some of these issues were discussed by early scholars, the conditions and contexts have changed significantly.

To address such situations, scholars engage in ijhtihad, an interpretative effort to create legal rulings that respond to the demands of modernity. Qiyas serves as one of the methods in the Usul al-Fiqh framework for conducting legal ijhtihad. However, the use of qiyas as a source of law in Islamic jurisprudence remains a subject of debate among scholars due to the lack of explicit textual evidence that permits analogy as a source of law. In recent times, the relevance of qiyas has been a topic of interest among various groups, with some advocating for its continued use in addressing contemporary issues, while others reject its applicability altogether.

2. Method

In composing this journal, the type of research employed is library research, which is conducted through sources available in libraries by reading, studying, and analyzing various books and writings related to the issue under investigation. The process begins by collecting original data as the foundation of the research, which is then supported by the use of secondary data sourced from related materials that align with the research theme. From the perspective of the field of study, this type of research falls under the category of legal research[6]. The research process starts with gathering primary data or data obtained directly from the field, which is used to ensure the validity of the research. This is followed by the collection of relevant data sourced from secondary materials related to the research topic. From the viewpoint of its scope of study[7], this approach is preferred for exploring human experiences[8].

Qualitative methods are used to explore human experiences. Since the research object involves textual analysis and symbolic representations, content analysis is employed. This integrative analytical method helps uncover, identify, process, and analyze documents conceptually.

In this study, qiyas is analyzed as a legal methodology systematically developed by Al-Shafi'i. According to Al-Shafi'i, qiyas underwent significant changes in its meaning and function. Before its development in Al-Risalah (Al-Shafi'i's seminal work in Usul al-Fiqh), qiyas was considered a liberal reasoning method for determining laws. It was not confined by specific conditions, allowing for speculative and dynamic reasoning. This legal reasoning (ra'y) was commonly practiced during the Prophet's time and further elaborated during the era of Abu Hanifa, who led the Ahl al-Ra'y school. This liberal application of qiyas produced dynamic, accommodating, and progressive Islamic laws responsive to changing times. Unlike rigid adherence to the literal texts of the Qur'an and Sunnah, this approach emphasized broader interpretations to address emerging issues[9].

In the content analysis model, researchers must recognize both explicit and implicit messages within texts. This method integrates conceptual frameworks to examine and analyze documents, such as Al-Shafi'i's Qur'anic ethos. Al-Shafi'i emphasized aligning all legal reasoning with the Qur'an, making qiyas which relies on reasoning (ra'y) less independent compared to earlier periods[10]. The adoption of Aristotelian logic, especially syllogism principles, influenced the development of qiyas as an integral part of Islamic law. The Qur'an became the primary premise, while new laws served as secondary premises. Researchers must analyze trends within the "media" content based on its context, process, and emergence[11].

3. Results and Discussion

Linguistically, qiyas refers to comparing one thing to another or equating one thing with something similar[12]. Etymologically, qiyas is a verbal noun derived from the word *qâsa-yaqîsu*, which means "to measure" or "to determine the size of something." Amir Syarifuddin explains that qiyas means *qadara*, which translates to "to measure" or "compare one thing to another that is the same or similar." For example, "Fulan's shirt is measured (qiyas) by its sleeves," meaning comparing two items to see their respective sizes. Linguistically, it also means "equivalent," and there are expressions like "comparing ecstasy and alcohol," which equates the two[13].

Imam al-Shafi'i defines qiyas as an effort or attempt to derive legal rulings based on arguments provided in the Qur'an and Hadith[14]. Regarding this term, several definitions have been proposed by scholars of usul al-fiqh. Although their wordings differ, they convey similar meanings. For example, Sadr al-Shari'a (d. 747 AH/1346 CE, a prominent Hanafi scholar of usul) defines qiyas as "applying the principle of the original law to a derived law because of shared characteristics that cannot be deduced through linguistic approaches alone." [15]. Most Shafi'i scholars define qiyas as: "Connecting the unknown (legal ruling) to the known (legal ruling) to either establish or negate the same legal ruling, based on something that links the two be it a ruling or a characteristic." [16].

The application of qiyas requires the fulfillment of the following four components :

1. *al-ashl* (الصل) this is the source or precedent that is explicitly addressed in religious texts. It is referred to as *maqis 'alaih* (that which is used as a reference), *mahmul 'alaih* (that which is guaranteed), or *musyabbah bih* (that which is made analogous or compared).
2. *al-far'* (الفرع) this refers to the new issue not explicitly regulated in religious texts but is intended to be analogized with the original ruling (*asl*). It is also referred to as *maqis* (that which is compared), *mahmul* (that which is carried), or *musyabbah* (that which resembles).
3. *hukm al-ashl* (الصل حكم) This is the Islamic legal ruling derived from religious texts that serves as the foundation for applying the ruling to the secondary issue (*far'*).
4. *al-'illat* (العلة) This is the reasoning or underlying cause that links the ruling of the original issue (*asl*) to the new issue (*far'*). It forms the basis for analogizing the two cases[17].

While there are differences in the wording of definitions provided by classical and modern scholars of usul al-fiqh, they agree that the process of determining legal rulings through qiyas is not

about creating new rulings (ithbat al-hukm wa insya') but rather about uncovering and explaining existing rulings (al-kasyf wa al-izhhar li al-hukm) when such rulings are not yet clear[18].

Thus, qiyas can only be conducted when it is assumed that there is no explicit textual evidence to establish the legal ruling for a particular event or case. The first step for anyone wishing to perform qiyas is to determine whether or not there is a nass (explicit textual evidence) that supports the ruling of a particular case. If no such nass exists, qiyas becomes necessary. According to Imam al-Shafi'i, no one is permitted to perform qiyas unless they possess the tools and qualifications necessary to do so.

The laws of the Qur'an consist of various categories, such as fardhu (obligations), adab (etiquette), nasikh-mansukh (abrogating and abrogated verses), 'am-khas (general and specific rules), irshad (guidance), and nadb (recommendations)[19].

Imam al-Shafi'i equates ijtihaḍ with qiyas, arguing that the two terms share the same meaning[20]. Based on this perspective, Imam al-Shafi'i established methods like istihsan, masalih al-mursalah, and others.

In matters of shari'ah that cannot be fully comprehended by reason—such as analogical reasoning (qiyas) or understanding how to express gratitude to Allah—ijtihaḍ is required to discover rulings that serve the welfare of humanity (al-shalah) based on a strong assumption (ghalib al-zhann) by the mujtahid in interpreting revealed texts (al-sam'). Here, "welfare" refers to anything that brings individuals closer to obedience to Allah and away from disobedience.

According to Abd al-Jabbar, ijtihaḍ is a continuation of analogical reasoning (qiyas) that cannot be closed off or halted, as society continues to develop and evolve. His view aligns with that of Imam al-Shafi'i, who held that ijtihaḍ and qiyas are synonymous. Both Abd al-Jabbar and Imam al-Shafi'i extensively used qiyas in resolving shari'ah issues during their time. These issues were not explicitly addressed in the Qur'an and Sunnah. Through ijtihaḍ with the qiyas method, new rulings or obligations could be established, whether they required action or abstention, based on parallels found in the Qur'an and Sunnah[21]. As previously mentioned, qiyas is one of the methods of Islamic jurisprudence, making it the fourth source of law after the Qur'an, Sunnah, and ijma'. The process of deriving legal rulings (istinbat) through qiyas involves identifying the reasoning or cause ('illat) behind the legal ruling for a new issue that is not explicitly addressed in the texts. The 'illat of qiyas is used to determine whether the provisions applied to the cases explained in the texts also apply to other cases[22].

The 'illat in qiyas as a method for establishing rulings for new issues can be identified as follows:

'Illat derived from textual evidence

For example, Allah states in Surah Al-Hashr (59:7):

مَا آفَاءَ اللَّهِ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ۗ

Translation (Ministry of Religious Affairs, 2019):

“Whatever (wealth) Allah has granted to His Messenger from the people of the towns is for Allah, His Messenger, the kindred, the orphans, the needy, and the wayfarer so that it will not merely circulate among the rich among you. Whatever the Messenger gives you, take it, and whatever he forbids you, abstain from it. And fear Allah; indeed, Allah is severe in punishment.”

The 'illat here prohibits the monopoly of wealth by the rich so that the poor can also share in the wealth.

- 'Illat Derived from Indications in Text (Isyarat al-Nash).

An example of ‘illat derived from textual indications can be seen in the hadith of the Prophet Muhammad (peace be upon him):

عن ابي قتادة رضي الله عنه ان رسول الله صلى الله عليه وسلم قال في الهرة انها ليست بنجس انما هي من الطوافين عليكم. اخرجہ الاربعۃ وصححه الترمذی وابن خزيمة

"From Abu Qatadah, the Messenger of Allah (peace be upon him) said about cats: 'Cats are not impure because they are among those who serve you frequently.'" This hadith is narrated by four hadith transmitters and authenticated by al-Tirmidhi and Ibn Khuzaymah[23].

The ‘illat in this hadith indicates that cats are not impure due to their frequent interactions with humans, as they are considered "household companions." This principle is derived from the textual implication that frequent interaction with an object does not render it impure.

a. Example of Qiyas in Modern Issues: Bank Interest and Riba

The utility of qiyas is evident in the analysis of modern legal issues, such as bank interest, which has been classified as riba. From a legal-formal perspective, the understanding of bank interest is inductively derived from the prohibition of riba as stated in the texts, without necessarily linking it to the moral dimensions of the prohibition. This paradigm is based on the concept that any loan requiring additional repayment is considered riba, even if the interest rate is not excessive or compounded. Consequently, bank interest, regardless of how low the rate may be, is deemed prohibited (haram)[24]. In this case, riba serves as the asl (original case), and bank interest serves as the far' (new case). Both are united by the same ‘illat, which is the presence of an additional charge without reciprocal compensation. Thus, just as riba is prohibited, bank interest is also prohibited under Islamic law[25].

Scholars of usul al-fiqh differ in their opinions regarding the legitimacy of qiyas as a basis for Islamic law. The majority of usul al-fiqh scholars agree that qiyas can serve as a foundation for determining Islamic legal rulings and as a practical advisory tool in Islamic jurisprudence. However, groups such as the Nizamiyya, Zahiriyya, and some schools of Shi'a jurisprudence oppose this view, asserting that qiyas cannot be used as a legal basis[26].

The arguments supporting the majority's view are as follows:

1. Allah says in Surah An-Nisa (4:59):

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ٥٩

Translation (Ministry of Religious Affairs, 2019):

"O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger if you believe in Allah and the Last Day. That is the best [way] and best in result."

This verse indicates that when differences of opinion arise among scholars regarding the validity of an issue, the solution is to refer back to the Qur'an and the Sunnah of the Prophet Muhammad (peace be upon him). The methodology of returning to the primary sources includes the use of qiyas, as it is a tool to extend the application of legal rulings from explicit texts to analogous cases.

2. The Second Argument Presented by the Majority of Scholars: Ijma' (Consensus) of the Companions.

In practice, qiyas was used by the Companions of the Prophet. For example, Abu Bakr (may Allah be pleased with him) applied qiyas in the case of *kalalah* (a person who has neither parents nor children). Abu Bakr defined *kalalah* based on his rational reasoning, and qiyas was inherently part of this reasoning.

In a well-known incident, Umar ibn al-Khattab wrote a letter to Abu Musa al-Ash'ari when appointing him as a judge in Basra, Iraq. In this lengthy letter, Umar instructed Abu Musa to use qiyas when dealing with matters for which no explicit ruling could be found in the texts. According to the majority of usul al-fiqh scholars, none of the Companions objected to the use of qiyas whether it was Abu Bakr's opinion on *kalalah* or Umar's instructions to Abu Musa al-Ash'ari.

3. Logical Reasoning

The majority of usul al-fiqh scholars argue that Allah's laws contain benefits (*maslahah*) for humanity, which is why they are established. If a *mujtahid* (jurist) identifies a significant factor that serves as the 'illat (effective cause) in the ruling stated in the texts and finds the same 'illat in a new issue, the *mujtahid* is justified in applying the ruling of the text to the new issue. The foundation for this lies in the shared 'illat between the two.

Imam al-Shafi'i provides numerous arguments supporting the validity of qiyas, both from naqliyah (textual evidence) and aqliyah (rational evidence). Here are a few examples:

First, Everything that has occurred or will occur is subject to divine law because Islamic law is universal, not confined to specific times or places. The rulings of Allah are often explicitly stated in the Qur'an and Hadith. In *Al-Risalah*, Imam al-Shafi'i states: "Every issue faced by a Muslim must have a binding ruling or a reference. Implicitly, a Muslim must find the truth through ijtiḥad and through the use of qiyas."

Second, evidence from the Prophet Muhammad (peace be upon him). The Prophet said:

"If a judge makes a decision through ijtiḥad and his ijtiḥad is correct, he earns two rewards. If he makes a decision through ijtiḥad and his ijtiḥad is incorrect, he earns one reward." This hadith indicates that a *mujtahid* does not need to achieve absolute correctness in their ijtiḥad because ultimate correctness is known only to Allah. The *mujtahid* is only required to strive for external correctness to the best of their ability.

Third, Another strong argument for the legitimacy of qiyas comes from the story of the Prophet sending Mu'adh ibn Jabal to Yemen:

"A resident of Homs, a companion of Mu'adh ibn Jabal, reported that when the Prophet sent Mu'adh to Yemen, he asked him: 'If you are faced with a judgment, how will you decide?' Mu'adh replied: 'I will judge based on the Qur'an.' The Prophet asked: 'If you do not find it in the Qur'an?' Mu'adh answered: 'I will judge based on the Sunnah of the Prophet.' The Prophet asked again: 'If it is not in the Sunnah of the Prophet or the Qur'an?' Mu'adh responded: 'I will carefully exercise ijtiḥad.' The Prophet then patted Mu'adh on the chest and said: 'Praise be to Allah, who has guided the Messenger of His Messenger to that which He is pleased with.'" (Reported by Abu Dawud).

Based on the arguments above, it is evident that the legitimacy of qiyas is indisputable. Without qiyas, it would be impossible to make decisions on matters related to Islamic law, especially considering the continuous progression of time and the evolution of societal issues[18].

One of the prominent contemporary cases requiring qiyas is related to the banking system and interest (*riba*). Interest is the cost paid by borrowers on the funds they receive, typically expressed as a percentage[27].

In practice, individual communities often lend money with an expectation of earning additional income. The increase in repayment amounts is determined at the beginning of the transaction between the creditor (lender) and the debtor (borrower). For example, if Person A borrows IDR 1,000,000 from Person B, and Person B demands repayment with 10% interest, Person A will be obligated to repay IDR 1,100,000. The additional IDR 100,000 constitutes the interest charged. In practice, bank interest is categorized into two types: First, Savings Interest: Interest earned on bank savings products such as savings accounts, fixed deposits, and current accounts. Second, Loan Interest: Interest charged on credit transactions. Loan interest is always higher than savings interest, as the difference represents the bank's profit. In other words, the bank's profit comes from the margin between higher loan interest and lower savings interest.

According to Yusuf al-Qaradawi, the interest earned by depositors from bank savings products (savings accounts, fixed deposits, current accounts) is *riba* and is therefore prohibited under Islamic law. Interest refers to surplus capital obtained without trade or effort. Any addition or surplus derived from such activities is classified as *riba*. Yusuf al-Qaradawi further explains that interest constitutes surplus capital gained without commercial activity, risk, income variation, or trading activities[28]. Some argue that bank interest is permissible under certain conditions:

First, interest for consumption vs. production, they claim that interest is prohibited only for consumption loans and permissible for productive loans, as productive loans result in profits, making the interest justifiable. Second, low-interest loans, they argue that only compounded interest is prohibited, while low-interest loans are permissible. Third, necessity and public interest, interest may be allowed under conditions of necessity or public benefit. Fourth, voluntary participation, some people oppose interest but still save in traditional banks, provided they do not earn interest.

Several errors may arise in the application of *qiyas*: First, mistakes in the *Asl* (Original Case): If the original case used as the basis for analogy lacks similarities to the new case, the application of *qiyas* becomes invalid. Second, mistakes in the '*Illat* (Effective Cause): Errors occur if the '*illat* chosen as the basis for *qiyas* is incorrect or irrelevant to the case being analogized. Third, Unclear Boundaries: *Qiyas* must have clear boundaries in terms of similarities and differences between the original case and the new case. Failure to establish these boundaries can lead to incorrect conclusions. Fourth, Deviation from the Original Intent: *Qiyas* is invalid if it results in conclusions that contradict the original intent of Islamic law or its fundamental principles. The application of *qiyas* requires a deep understanding of existing Islamic laws and the new cases being analogized. It must not contradict the *nass* (explicit textual evidence from the Qur'an or Hadith) and should be conducted cautiously to avoid errors in interpreting Islamic law.

4. Conclusion

Qiyas is established as a source of formal legal reasoning that is theoretically and practically recognized as authoritative. Over time and in response to contemporary circumstances, jurists can rely on *qiyas* as a legal reference because many cases are not explicitly addressed in existing texts. *Qiyas* plays a critical role in addressing non-textual issues and resolving them rationally within the framework of Islamic law's completeness.

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