

ISTIHSAN: Interconnection Of Traditional And Contemporary Thought

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Abstract

Istihsan, as one of the methods of legal interpretation in usul fiqh, has long been a focus of attention in the study of Islamic law. This research aims to compare the concept of istihsan across various sources of usul fiqh through the methodology of literature review. The results of this research is that the understanding of istihsan in different sources of usul fiqh exhibits variations but shares a common goal of applying legal flexibility in specific contexts. The research employs a literature review methodology to identify and analyze relevant literature on istihsan from various sources of usul fiqh. The initial step involves the identification of literature, including books, scholarly articles, and other reliable sources. Subsequently, a literature analysis is conducted to identify differing perspectives in understanding istihsan, including the approaches used by scholars from different schools of thought. This research provides deeper insights into how istihsan is applied in various contexts of usul fiqh, utilizing the literature review methodology. As a result, this study encourages a better understanding of the connection between traditional comprehension and the application of istihsan in responding to changes and complexities in modern society.

Keywords: Istihsan; Ushul Fiqh; Traditional And Contemporary Thought.

Abstrak

Istihsan sebagai salah satu metode penafsiran hukum dalam ushul fiqh telah lama menjadi fokus perhatian dalam kajian hukum Islam. Penelitian ini bertujuan untuk membandingkan konsep istihsan dari berbagai sumber ushul fiqh melalui metodologi kajian pustaka. Hasil penelitian ini adalah bahwa pemahaman istihsan dalam berbagai sumber ushul fiqh menunjukkan variasi namun memiliki tujuan yang sama yaitu menerapkan fleksibilitas hukum dalam konteks tertentu. Penelitian ini menggunakan metodologi tinjauan literatur untuk mengidentifikasi dan menganalisis literatur relevan tentang istihsan dari berbagai sumber ushul fiqh. Langkah awal melibatkan identifikasi literatur, termasuk buku, artikel ilmiah, dan sumber terpercaya lainnya. Selanjutnya, analisis literatur dilakukan untuk mengidentifikasi perbedaan perspektif dalam memahami istihsan, termasuk pendekatan yang digunakan oleh para ulama dari berbagai aliran pemikiran. Penelitian ini memberikan wawasan lebih dalam tentang bagaimana istihsan diterapkan dalam berbagai konteks ushul fiqh, dengan memanfaatkan metodologi tinjauan pustaka. Oleh karena itu, penelitian ini mendorong pemahaman yang

lebih baik tentang hubungan antara pemahaman tradisional dan penerapan istihsan dalam merespons perubahan dan kompleksitas masyarakat modern.

Kata Kunci: Istihsan; Ushul Fiqih; Pemikiran Tradisional dan Kontemporer.

A. Introduction

The realm of Islamic jurisprudence (fiqh) is marked by its rich tapestry of legal methodologies, each offering a unique lens through which scholars interpret and derive rulings from the Islamic sources. Among these methodologies, istihsan holds a prominent place, as a method that reflects the dynamism and adaptability of Islamic law to the evolving needs of society. Istihsan, often translated as "juridical preference" or "equitable preference," allows jurists to depart from the strict application of analogical reasoning (qiyas) and instead prioritize the consideration of justice, equity, and public welfare. Istihsan, rooted in the discipline of *usul fiqh* (principles of jurisprudence), introduces a distinctive dimension to the process of deriving legal rulings.¹ This method acknowledges that the rigidity of analogical reasoning may not always produce just outcomes, especially in cases where the analogical deduction contradicts the spirit of Islamic law or leads to impractical results.

Therefore, istihsan provides scholars with the prerogative to exercise their judgment and select a ruling that aligns with the underlying objectives (*maqasid*) of Islamic law. The exploration of istihsan within the framework of *usul fiqh* involves a comprehensive analysis of its principles, applications, and variations across different schools of thought (*madhahib*). This research embarks on a comparative journey to unravel the intricacies of istihsan and its significance within Islamic jurisprudence. With a focus on understanding how this method has been employed historically and its relevance in the contemporary legal landscape, this study seeks to contribute to a nuanced comprehension of the concept.

The historical development of istihsan traces back to the early days of Islamic jurisprudence, where scholars began to recognize the limitations of analogical reasoning in addressing novel situations. Eminent jurists, such as Imam

¹ Habibullah, E. S. (2017). Pandangan Imam Abu Hanifah Dan Imam Syafi'i Tentang Al-Istihsan. *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial*, 4(07).

Abu Hanifa, played a pivotal role in elaborating the theoretical foundation of istihsan.

His approach was underpinned by the conviction that justice and welfare are central to the objectives of Islamic law. Consequently, he advocated for the use of istihsan when applying qiyas would lead to unjust or unreasonable results. One of the captivating aspects of istihsan lies in its diverse interpretations across the various schools of thought.

While the principles of istihsan are rooted in justice and equity, the methods of its application differ among the Hanafi, Maliki, Shafi'i, and Hanbali madhahib. This research endeavors to dissect the distinct methodologies of istihsan within each school, exploring their respective criteria for its application, their stance on its scope of use, and the pivotal role it occupies in shaping their legal frameworks. Istihsan, like any legal methodology, is not devoid of challenges and controversies. Critics argue that its subjectivity could potentially lead to arbitrary judgments and undermine the stability of Islamic law.

Furthermore, debates emerge regarding the compatibility of istihsan with other methods of legal reasoning, such as qiyas and ijma (consensus). This research critically engages with these concerns, offering a balanced analysis of the strengths and limitations of istihsan.² In a rapidly changing world, the role of istihsan in addressing modern legal challenges becomes particularly relevant.

The complexities of contemporary issues, ranging from technological advancements to ethical dilemmas, demand a flexible approach to Islamic jurisprudence. By revisiting the principles of istihsan, scholars can navigate uncharted territories of legal interpretation and adapt established norms to the evolving needs of society.

This study employs a comprehensive literature review methodology to delve into the multifaceted concept of istihsan. By identifying and analyzing primary and secondary sources from various historical periods and schools of

² Chadziq, A. L. (2019). Istihsan dan Implementasinya dalam Pemetapan Hukum Islam. *MIYAH: Jurnal Studi Islam*, 15(2), 337-348.

thought, this research aims to synthesize a holistic understanding of istihsan's development, applications, and implications.

In conclusion, the exploration of istihsan within *usul fiqh* presents a captivating journey into the heart of Islamic legal reasoning. This research aims to illuminate the historical roots, theoretical foundations, variations across *madhahib*, challenges, and contemporary relevance of istihsan.

B. Research Method

This research uses qualitative methods with a literature review approach. A literature review is a systematic process for searching, evaluating, and synthesizing information from various sources relevant to a research topic. In this article, the researcher conducted a literature review on the concept of istihsan from various *ushul fiqh* sources. Istihsan is a principle of Islamic law that allows the law to be adapted to the circumstances and interests of the people. Researchers identified and analyzed literature that discussed istihsan from the perspective of various schools of thought and *ulama*. Researchers also compare and conclude the understanding of istihsan from these sources. This literature review aims to provide a comprehensive and critical overview of istihsan in *ushul fiqh*.

C. Discussion

The study of Islamic jurisprudence (*fiqh*) is a pursuit that is both intricate and profound, shaped by a mosaic of methodologies employed by scholars over centuries. Among these methodologies, istihsan stands as a testament to the dynamic nature of Islamic law, offering a means to navigate complex legal scenarios while upholding the principles of justice, equity, and public welfare.³ This discussion aims to embark on an extensive exploration of istihsan within the realm of *usul fiqh*, delving into its historical evolution, theoretical foundations, diverse applications across schools of thought, challenges, controversies, and its contemporary relevance. By undertaking a comparative analysis, this discourse seeks to enrich our understanding of the multifaceted concept of istihsan.

³ Salenda, K. (2013). Kehujjahan istihsan dan implikasinya dalam istimbat hukum. *Al Daulah: Jurnal Hukum Pidana dan Ketatanegaraan*, 2(1), 8-19.

Istihsan is a method of Islamic legal reasoning which means looking for goodness or benefit in establishing laws. Istihsan comes from the root word *hasana* which means good, beautiful or good. Istihsan can be interpreted as abandoning the law established by *qiyas* because there is a stronger argument or more in line with the benefit of the people.

The origins of *istihsan* can be traced back to the formation of the science of *fiqh*, when scholars realized the need for a method that transcended the limitations of *qiyas*. *Qiyas* is analogical reasoning based on the similarity of *illat* (legal causes) between two cases. *Qiyas* is one of the sources of Islamic law after the Al-Quran, As-Sunnah, and *Ijma'* (agreement of ulama). However, *qiyas* cannot always solve new problems that arise along with the times and social changes. Therefore, the ulama are looking for ways to accommodate these new needs by using *istihsan*.

One of the figures who was instrumental in developing the theory of *istihsan* was Imam Abu Hanifa, the founder of the Hanafi school of thought. Imam Abu Hanifa is known as a *mujtahid* (expert in *ijtihad*) who was brave and creative in establishing laws. He believes that the main goal of Islamic sharia is to realize justice and benefit for humans. Therefore, he advocates the use of *istihsan* as a mechanism to overcome the rigidity of *qiyas*, especially when *qiyas* results in laws that are unfair or unbeneficial.

Imam Abu Hanifa gave several examples of the application of *istihsan* in various *fiqh* issues, such as inheritance issues, buying and selling, marriage, divorce, and others. For example, in matters of inheritance, Imam Abu Hanifa used *istihsan* to give a portion of the inheritance to his paternal grandfather (*jadd al-ab*) if his father had died. According to *qiyas*, the grandfather is not entitled to inheritance because he is not a member of the *furudh* (close family who gets a fixed share) and is also not an *ashabul furudh* (close family who gets the remaining share). However, Imam Abu Hanifa believes that the grandfather should inherit because he has the same position as the father in terms of lineage and livelihood. This is an example of *istihsan* based on the arguments.

Another example is in the matter of buying and selling. Imam Abu Hanifa uses *istihsan* to allow buying and selling of goods that do not yet exist (*salam*) with certain conditions. According to *qiyas*, buying and selling goods that do not yet exist is *haram* because it contains elements of *gharar* (uncertainty) and can cause disputes. However, Imam Abu Hanifa is of the opinion that buying and selling goods that do not yet exist is *halal* because there is an argument from the *hadith* of the Prophet SAW. who allows it. Apart from that, buying and selling goods that don't yet exist is also beneficial for farmers and traders. This is an example of *istihsan* based on the *qiyas* argument (analogy).

From the examples above, it can be seen that *istihsan* is a flexible and dynamic method of Islamic legal reasoning. *Istihsan* allows *ulama* to adapt the law to different conditions and situations. *Istihsan* also shows that Islamic law is not rigid and monolithic, but is adaptive and pluralistic.

This understanding laid the groundwork for the method's application in addressing novel legal dilemmas. The diversity of Islamic legal thought is exemplified in the varying interpretations and applications of *istihsan* across the major schools of thought. A comparative study of *istihsan*'s utilization within the Hanafi, Maliki, Shafi'i, and Hanbali traditions reveals distinct nuances in its implementation. The Hanafi school, with its emphasis on equity and public welfare, champions the utilization of *istihsan* in cases where it promotes these objectives.

On the other hand, the Maliki tradition treads cautiously, limiting *istihsan*'s application to situations where there is a clear conflict with *qiyas* or other established principles. The Shafi'i and Hanbali schools, though differing in certain aspects, share a common commitment to the broader principles of justice and welfare in using *istihsan*. The incorporation of *istihsan* into Islamic jurisprudence does not come without challenges and controversies.

Critics argue that its subjectivity might lead to arbitrary judgments, thereby undermining the stability and predictability of Islamic law. Moreover, concerns arise about potential conflicts between *istihsan* and other methods, such

as qiyas or ijma (consensus). The potential for misuse and inconsistent application further fuels debates within the scholarly discourse.

In the modern era, the relevance of istihsan resonates with renewed vigor. The complexities of technological advancements, bioethics, and intricate financial transactions require a legal framework that can accommodate nuanced interpretation.⁴ The principles underpinning istihsan – justice, equity, and welfare – offer a dynamic lens through which scholars can respond to the unique challenges of our time.

The application of istihsan in these contemporary contexts necessitates a careful balance between adherence to tradition and responsiveness to evolving circumstances. The methodology employed in this discussion relies on an exhaustive literature review, which involves the identification, analysis, and synthesis of relevant sources from various historical periods and schools of thought. By examining primary and secondary texts, as well as scholarly commentaries and treatises, this approach seeks to paint a comprehensive picture of istihsan's trajectory, application, and influence.

In the ever-evolving landscape of Islamic jurisprudence, istihsan serves as a beacon of adaptability and justice. Its historical evolution from the early days of Islamic jurisprudence to its modern-day applications underscores its enduring significance. As scholars from different schools of thought continue to engage with istihsan, the method's resilience in accommodating diverse legal challenges and its capacity to uphold the moral compass of Islamic law remain commendable.

Through a comparative lens, this discussion enriches our understanding of istihsan's diverse manifestations, helping bridge the gap between tradition and contemporary necessity.⁵ In embracing the principles that underpin istihsan – principles of justice, equity, and welfare – scholars navigate the intricate labyrinth of Islamic jurisprudence, ensuring its relevance and responsiveness in a dynamic world.

⁴ Kayadibi, S. (2019). *Istihsan: The doctrine of juristic preference in Islamic law*. The Other Press.

⁵ Darliana, D., Sapriadi, S., & Nur, M. A. (2022). Pembaharuan Hukum Islam di Indonesia (Pendekatan Metode Istihsan). *Jurnal Al-Abkam: Jurnal Hukum Pidana Islam*, 4(1), 1-14.

D. Conclusion

The journey through the realm of istihsan in Islamic jurisprudence leads us to a multifaceted conclusion that reflects the rich tapestry of its significance, applications, challenges, and comparative perspectives. Istihsan, as a method of legal reasoning, epitomizes the adaptive nature of Islamic jurisprudence, evolving to meet the complexities of time and space while remaining anchored in the principles of justice, equity, and public welfare.

The historical journey of istihsan takes us back to its roots, where the pioneering scholars recognized the necessity for a method that would cater to the principles of justice and welfare in cases where strict analogy might falter. As demonstrated through the contributions of scholars like Imam Abu Hanifa, istihsan's theoretical foundations were laid upon the cornerstone of achieving justice and ensuring the greater welfare of the community.

This early formulation laid the groundwork for the method's application in addressing novel and unique legal scenarios. Delving into the various schools of thought, we observe how istihsan finds its unique place within each tradition while retaining its essence of promoting justice. The Hanafi school, for instance, embraces istihsan as a means to address the complexities of legal dilemmas in alignment with public welfare.

The Maliki tradition, while cautious, acknowledges istihsan as a tool to navigate conflicts with other established methods. The Shafi'i and Hanbali schools, though diverse in their approaches, both uphold the primacy of justice and welfare, underscoring the significance of istihsan's contribution. Acknowledging the challenges and debates surrounding istihsan is crucial.

Critics voice concerns about potential subjectivity and the risk of arbitrary judgments.⁶ The debates between proponents and opponents underscore the scholarly engagement with istihsan's place in the intricate framework of Islamic jurisprudence. It is this very scholarly discourse that refines and shapes the understanding and applications of istihsan, ensuring its relevance and authenticity.

⁶ Nabilah, W., & Warman, A. B. (2021). ISTIHSAN DALAM LITERATUR SYAFI'YAH (Telaah Istihsan dalam Kitab Al-Mustaşfa Al-Ghazali). *JURIS (Jurnal Ilmiah Syariah)*, 20(1), 77-89.

In the contemporary era, the relevance of istihsan is not diminished; rather, it is revitalized. The complexities of modern life, marked by technological advancements, intricate transactions, and evolving ethical dilemmas, necessitate legal approaches that are responsive and just. Istihsan's inherent flexibility and emphasis on justice make it an invaluable asset in addressing these challenges, without compromising the principles of Islamic law. By engaging in a comparative study, we have unearthed the unique manifestations of istihsan across various schools of thought. This approach has allowed us to discern both the shared principles and nuanced perspectives that shape its interpretation.

Such a synthesis broadens our perspective, providing a more holistic view of how istihsan serves as a bridge between tradition and contemporary exigencies. The journey through istihsan within Islamic jurisprudence culminates in the understanding that it is a method deeply rooted in the ethical and moral compass of Islamic teachings. Its historical evolution, diverse applications, challenges, and relevance demonstrate its enduring importance in addressing the multifaceted aspects of human life. As scholars continue to engage with istihsan, it is evident that this method epitomizes the spirit of Islamic jurisprudence adaptive, just, and relevant.

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