

QAWL QADIM AND QAWL JADID
(Study Of Ash-Shafi'i's Legal Synthesis Model on Zakat)

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ABSTRACT

One proof of the unique freedom of legal thought in the early days of Islam in the first Hijriah/7 AD and second Hijriah/8 AD centuries, was the emergence of a large collection of legal views that grew in various centers in Iraq, Hijaz, Syria and Egypt. One of them is the moderate Shafi'i school founded by Muhammad bin Idris Asy-Syafi'i. This research aims to describe the contextualization of Ash-Shafi'i legal events and thoughts regarding Qawl Qadim and Qawl Jadid, as well as to synthesize Ash-Shafi'i law when faced with different social conditions in society, while many legal cases have emerged that require solutions. law immediately. This research is in the form of qualitative descriptive research, using a literature review. The research objects of this research are writings and texts that describe and are related to this research using content analysis data processing methods from these writings. From the results of the analysis it was found that Ash-Shafi'i in carrying out legal synthesis, both in the context of Qawl Qadim and Qawl Jadid, did not only adhere to historical texts, but also used ra'yu, both of which were used in a balanced and parallel manner.

Keywords: *Qawl Qadim, Qawl Jadid, Asy-Shafi'i Legal Synthesis*

Introduction

According to Khairuddin Nasution,¹ there are three things that need to be understood when studying historical events or thoughts, namely (1) events or thoughts, (2) the causes for the emergence/ emergence of events or thoughts (historical background), and (3) the relevance of studying events or thoughts to present life. In other words, three things need to be described when studying historical events or thoughts, namely (1) describe the facts of historical events or their thoughts, (2) describe what underlies historical facts (context or historical background), and (3) do contextualization. based on context.

Contextualizing past events or thoughts, both historical, social, economic, political and legal aspects, based on context, is intended to: (1) seek relevance, (2) seek wisdom for now, or (3) evaluate target achievement. The achievement of the intended contextualization objective may be one or two of the three or three.

Evidence of freedom in Islamic legal thought that was typical in the early days that during the first century Hijriah/7 AD and the second Hijriah/8 AD, a large number of groups of legal views grew in various centers in Iraq, Hijaz, Syria, and Egypt. According to Fazlurrahman, these legal collections are centered on a prominent figure in the field of law.² In Iraq the

¹Khairuddin Nasution, Khairuddin, *Sejarah Pemikiran Dan Peradaban Islam: Dari Masa Klasik, Tengah, Hingga Modern*, (Yogyakarta: Qaulun Pustaka, 2014), h. v.

²Fazlurrahman, *Islam*, terj. Muhammad Ahsin, (Bandung: Pustaka, 1997), h. 31.

school associated with the name Abu Hanifah (80 H/649 AD – 150 H/767 AD) and is called the Hanafi's School, was developed and systematized by two of his friends, Abu Yusuf (181 H/797 AD) and Muhammad Ash-Shaibani (189 H/805 AD). In Syria, the Al-Auza'i's Mazhab (School) emerged, which relied more on the "Living Sunnah". In Medina, the Malik's School emerged, which was attributed to the name of its founder, Malik bin Anas (95 H-179 H/713 M-795 M).³ Furthermore, the third living stream is The Shafi'i's School, taking the name of its founder Muhammad bin Idris Ash-Shafi'i. The last is The Hambali's Sect, its founder Abu Abdillah Ahmad bin Hambal (164 H/780 AD-241 H/855 AD).

This paper tries to describe the contextualization of events and legal thoughts of Ash-Shafi'i regarding Qawl Qadim and Qawl Jadid, so that they can be valuable for the development of legal thought in the present. How did Ash-Shafi'i perform a legal synthesis when faced with different social conditions of society. Meanwhile, many legal cases have emerged that require immediate legal solutions. This condition was also triggered because Baghdad at that time became the center of government and knowledge of the Islamic world. Part of this also triggered the emergence of freedom of thought in Islam, including in the field of law, which gave birth to Abu Yusuf and Muhammad Ash-Shaibani, two of Abu Hanifah's best friends who were very famous at that time.

Regarding the literature review behind this research, the author found two articles that also discussed Qawl Qadim and Qawl Jadid. First, is an article written by Herdiansyah, M. Hasbis Umar, and Ramlah, by title "Qaul Qadim dan Qaul Jadid Asy-Syafi'i (Tinjauan Sejarah dan Sosiologi Hukum Islam)" in the

³*Ibid.*

Jurnal Indragiri Penelitian Multidisiplin from Indra Institute Research and Publication.⁴ The theory used in this research is library research using a historical and sociological approach to Islamic law. This research concludes that Imam Ash-Shafi'i's two forms of *ijtihad*, namely *Qawl Qadim* and *Qawl Jadid* were influenced by an understanding of developments in reality that were occurring at that time. Therefore, the legal policies made are very sociological in nature.

Second, the research entitled "Acceptance of Ashab Al-Shafii On The Changes of *Qaul Qadim* And *Qaul Jadid* of Imam Shafi'i" written by Ahmad Arif, Kurniati, and Musbahuddin, in the *Jurnal Hunafa: Jurnal Studia Islamika* published by Lembaga Penelitian dan Pengabdian kepada Masyarakat, Universitas Islam Negeri Datokarama Palu.⁵ The research focuses on how the differences between Shafi'i followers and their *madhhab* occurred during the transition from *Qawl Qadim* to *Qawl Jadid*. This research is library research with a content analysis approach from books written by adherents of the Syafi'i school of thought. This research concludes that there are three forms of acceptance responses carried out by adherents of the Shafi'i School, namely first, *Qawl Jadid* strengthens *Qawl Qadim*, second, accepts *Qawl Jadid* and abandons *Qawl Qadim*, and third, carries out *tarjih* to Asy-Shafi'i's opinion directly.

If we look at the research focus of the two previous studies, it can be seen that in the first study, the focus was on the

⁴Herdiansyah, M. Hasbi Umar, and Ramlah, "Qaul Qadim Dan Qaul Jadid Asy-Syafi'i: (Tinjauan Sejarah Dan Sosiologi Hukum Islam)," *Jurnal Indragiri Penelitian Multidisiplin*, Vol. 3, No. 1, January 25, 2023, h. 44-50. doi:10.58707/jipm.v3i1.412.

⁵Ahmad Arief, Kurniati Kurniati, and Misbahuddin Misbahuddin, "Acceptance of Ashab Al-Shafii on the Changes of *Qaul Qadim* and *Qaul Jadid* of Imam Shafi'i", *Hunafa: Jurnal Studia Islamika*, Vol. 19, No. 2, December 10, 2022, h. 175-91. doi:10.24239/jsi.v19i2.683.175-191.

relationship between social context and changes in Islamic legal fatwas delivered by Imam Asy-Shafi'i. In the second research, the focus was the response and acceptance of the ulama following Imam Asy-Shafi'i to changes in Imam Sha-Shafi'i's views. Meanwhile, the focus of this research is Imam Asy-Shafi'i's legal synthesis model in the context of zakat. So there is a gap that can be filled by this research. Namely, first, this research focuses on zakat while the two previous studies did not specifically discuss the zakat aspect in the context of Qaul Qadim and Qaul Jadid. Second, a legal synthesis approach was used in this research, whereas the two previous articles focused more on the influence of social conditions and the acceptance of ulama on changes in Imam Asy-Shafi'i's views. Third, this research complements the dynamics of fatwa changes that have occurred. Of these two studies, there has been no more in-depth study related to current modern phenomena. The research that is before the reader this time, attempts to explain Qawl Qadim and Qawl Jadid, and is then linked to zakat for the example to get the conclusion.

This research is in the form of a qualitative descriptive study, using a literature review. Information is sought through books, journals, newspapers, magazines, reference books, literature, encyclopedias, scientific articles, and other literature, both in writing and in digital format with respect to the object of research and its relevance, so that it can become a theoretical basis. Basically, qualitative research is a way that can be relied upon and has strong relevance to be able to find out about social phenomena that are happening, one of which is about buying and selling online. theory discovery. This form of research tries to describe and interpret data related to the current situation, current attitudes/views, a contrast between two or more states in a society, and so on. The research object of this research is in

the form of writings and texts. text that describes and has a relationship with this research.

Biography of Ash-Shafi'i

He is Abu Abdillah Muhammad bin Idris bin Abbas bin Uthman bin Shafi'i bin Saib bin 'Ubaid bin Abdul Yazid bin Hasyim bin Muthalib bin Abdul bin Manaf Al-Qarsy.⁶ He was born in Gaza⁷ in 150 H/767 AD, then from the age of two years he was taken by his mother to Mecca. In this country he grew up and was raised by his mother named Fatimah bin Abdullah bin al-Hasan bin Husain bin Ali bin Abi Talib. But according to Ahmad Amin there is a strong opinion that his mother's name is Azdiah⁸ comes from the Azd tribe in Yemen, in relation to this Azd tribe the Prophet said:

الأزد جرثومة العرب

“The Azd tribe is the origin (roots) of the Arab nation.”

From his father's lineage, Imam Ash-Shafi'i met the Prophet Muhammad PBUH in Abdul Manaf⁹, while from his mother's side he is the great-grandson of Ali bin Abi Talib. So both of his parents were descended from Quraysh Arab nobility.

⁶Ibnu Hajar Al 'Asqalani, *Tahdzib At-Tahdzib*, Vol. 9, (Pakistan: Dar Ash-Shadir, 1326), h. 23.

⁷Other authors say Shafi'i was born in Asqalan or in Yemen. See Ahmad Amin, *Dhuha Al Islam*, Vol. 2, (Kairo: Maktabah An-Nahdhah Al-Misriyah, 1974), h. 447.

⁸Al-Khatib Al- Baghdadi, *Tarikh Baghdad*, (Kairo: Dar Al-Fikr, n.d.), h. 217.

⁹Makhmud Mathruji, *Muqaddimah Al-Umm*, (Beirut: Dar Al-Kutub Al-'Ilmiyah, 1993), h. 7.

Ash-Shafi'i was born an orphan. He was cared for and raised by his mother in very simple conditions, even suffering from many hardships. He once said¹⁰:

كنت يتيما في حجر أمي ولم يكن مال.

Ash-Shafi'i is a smart kid, always keen to learn Islamic sciences. His education began with learning the Koran and finished memorizing it at the age of seven.¹¹ Then Ash-Shafi'i went to the Bedouin Hamlet, Banu Huzail who was known to be fluent and native in Arabic,¹² to study the native Arabic language, literature and customs. After successfully mastering these fields, Ash-Shafi'i returned to Mecca and studied jurisprudence with Imam Muslim bin Khalid Az-Zauji (d. 180 H), a major scholar and mufti in the city of Mecca, until he obtained a diploma and was entitled to teach and give fatwas. He also studied Hadith from Sufyan bin Uyainah (107 – 198 H) and knowledge of the Qur'an from Ismail bin Qasthanthin, both of whom were major scholars in Makkah. It was also informed that at the age of 10, Ash-Shafi'i had read and memorized the entire contents of the book "Al-Muwattha" by Imam Maliki and at the age of 15 he had given a fatwa in the city of Mecca, it was narrated that Ash-Shafi'i said:¹³

¹⁰Wan Zulkifli Wan Hassan et al., "The Thoughts of Imam Ash-Shafi'ie on Interpersonal Skills in Self Development: A Conceptual Analysis," 2013, h. 98-97.

¹¹Ari Kurniawati and M. Muthoifin, "Effective Qur'an Learning Strategies to Strengthen Children's Memorization with Zahrawain Method," *Solo Universal Journal of Islamic Education and Multiculturalism*, Vol. 2, No. 01, March 30, 2024, h. 37-48. doi:10.61455/sujiem.v2i01.104.

¹²Masbukin Rajab, "Pemikiran Imam Syafi'i Tentang Al-Hadits Dan Implikasinya Terhadap Metodologi Penetapan Hukum Islam," h. 191-202.

¹³Moh Makmun and Khoirur Rohman, "Pemikiran Imam Malik dan Imam Syafi'i tentang Saksi dalam Rujuk", *Jurnal Hukum Keluarga Islam*, Vol. 2, No. 1, October 11, 2017, h. 21-38.

حفظت القرآن وأنا ابن سبع سنين، وحفظت الموطأ وأنا ابن عشر سنين

After memorizing the contents of the book *Al-Muwattha'*, he was eager to meet its author, so he left Mecca for Medina to study under Imam Malik bin Anas, a renowned hadith scholar and jurist in the Hijaz at that time. He continued his studies under Imam Malik at the age of 20, until his teacher died in 179 AH/ 796 AD, by the time of Imam Malik's death, Ash-Shafi'i had already attained a reputation as a well-known jurist in the Hijaz and various other places.

After two years in Medina, namely at the age of 22, Imam Ash-Shafi'i left for Iraq, besides wanting to gain knowledge in matters of nations, he also met with the scholars of hadith and fiqh experts in Iraq.¹⁴

As is well known, Imam Ash-Shafi'i lived during the reign of the caliphs Harun Ar-Rasyid, Al-Amin, and Al-Ma'mun from the Abbasid Dynasty. During Harun Ar-Rashid's era, Baghdad was known as a center of knowledge, both knowledge that came from the West and from the East, which radiated to all corners of the world.¹⁵

Arriving in Kufah, Imam Ash-Shafi'i met the professors Abu Yusuf and Muhammad bin Hasan Ash-Shaibani,¹⁶ both of them were students of Imam Abu Hanifah, they often had

¹⁴Syarial Dedi and Sri Yuniarti, "Imam Ash-Shafi'i's Opinion on Hajj without a Mahram and Its Relevance to the Present Day", *Al-Istinbath: Jurnal Hukum Islam*, Vol. 8, no. 2 November 2023, h. 535. doi:10.29240/jhi.v8i2.7113.

¹⁵Nakhravi 'Abd As-Salam Al- Indunisi, *Asy-Syafi'i Fi Madzhabaihi Al-Qadim Wa Al-Jadid*, (Kairo: t.p., 1988), h. 101, Michal Biran, "Libraries, Books, and Transmission of Knowledge in Ilkhanid Baghdad," *Journal of the Economic and Social History of the Orient*, Vol. 62, No. 2-3, March 18, 2019, h. 464-502. doi:10.1163/15685209-12341485.

¹⁶Indunisi, *Asy-Syafi'i Fi Madzhabaihi Al-Qadim Wa Al-Jadid...*, h. 102.

dialogues about religious sciences. Thus, Ash-Shafi'i can know in depth about the Hanafi School which is far different from the Maliki School that he has studied. Thus, Ash-Shafi'i has accumulated the knowledge of Ahl Ar-Ra'yi and the knowledge of Ahl Al-Hadith, which of course greatly influenced the product of Ash-Shafi'i's legal thought in the process of forming his school of thought.¹⁷

After traveling to various countries, Ash-Shafi'i returned to Medina to his great teacher Imam Malik.¹⁸ Imam Malik grew more impressed with Ash-Shafi'i's knowledge and even gave permission for Ash-Shafi'i to give his own fatwa on Fiqh issues without being bound by the ways of the Maliki or Hanafi Schools which he had mastered.

Imam Ash-Shafi'i then started teaching in Medina as an assistant to Imam Malik, when he was around 29 years old. As a fiqh scholar his name began to be known, his students also came from all over the Islamic world.¹⁹ Aside from being a fiqh scholar, he is also an expert on hadith, exegesis, language, and Arabic literature, astronomy, ushul science, and dates. In addition, he also has special abilities in the science of Qira'at. He has also compiled a number of books in the field of these sciences.²⁰

¹⁷Ainol Yaqin, "Desain Kontruksi Ijtihad Ushuliyah Imam Al-Syafi'i", *Istinbath: Jurnal Hukum*, Vol. 17, No. 1, 2020, h. 243-68.

¹⁸Indunisi, *Asy-Syafi'i Fi Madzhabaihi Al-Qadim Wa Al-Jadid...*, h. 102.

¹⁹Atik Wartini, "Hak Pendidikan Anak Dalam Keluarga Dalam Pandangan Imam Syafi'i Dan Relevansinya Dengan Pendidikan Anak Usia Dini Di Indonesia", *Musāwa Jurnal Studi Gender Dan Islam*, Vol. 14, No. 1, January 7, 2015, h. 67-76. doi:10.14421/musawa.2015.141.67-76.

²⁰Several scholars have counted Ash-Shafi'i's works, including Imam al Marwadzi, according to whom Ash-Shafi'i has written 113 books, both in the fields of interpretation, jurisprudence, adab, and others. According to Yaqut al Hamawi, there are 147 books and these are followed by Ibn al Nadim, in "al Fihrisat", see Mathruji, *Muqaddimah Al-Umm...*, h. 24.

After his teacher, Imam Malik passed away, Ash-Shafi'i went to Yemen to fulfill the invitation of Abdullah bin Hasan, the Governor of Yemen. There he was appointed as an adviser in the field of law, in addition to continuing his career as a teacher. In this country, Ash-Shafi'i married Siti Hamidah bint Nafi' bin Uyaynah bin Amr bin Uthman bin Affan. This marriage was blessed with three children, the first named Muhammad bin Shafi'i who later became a great scholar and Qodli in Medina, the second named Fatimah, and the third named Zainab.²¹

At that time the Shia people in Yemen were carrying out their activities in earnest. Shia is considered as an opposition group that will bring down the official government in Baghdad. Imam Shafi'i was accused of being involved in Shia activities, he was arrested and taken to Baghdad to the Caliph Harun Ar-Rashid in a shackled state with chains.²² After being proven innocent, he was released even the caliph was in awe of him.

During his stay in Baghdad, which was his second arrival in this country, Imam Ash-Shafi'i was asked to teach and the people of Baghdad flocked to learn from him. After more or less two years in Baghdad (Iraq), Ash-Shafi'i returned to Mecca to spread religious knowledge to the Muslims who every year come to Mecca for the pilgrimage.²³ Besides teaching, he also wrote a lot, especially on fiqh issues.

Then in 198 H/813 AD, Ash-Shafi'i returned to Baghdad for the third time, namely during the Reign of Al-Ma'mun (198-218 H/813 AD-833 AD) Imam Shafi'i was welcomed by the scholars and Baghdad leaders who missed him. He was also given

²¹*Ibid*, h. 102.

²²Susanne Olsson, "Shia as Internal Others: A Salafi Rejection of the 'Rejecters'", *Islam and Christian-Muslim Relations*, Vol. 28, No. 4, October 2, 2017, h. 409–30. doi:10.1080/09596410.2017.1318545.

²³Dedi and Yuniarti, "Imam Ash-Shafi'i's Opinion on Hajj without a Mahram and Its Relevance to the Present Day".

a place to teach at the Baghdad Mosque. In the mosque there were 20 halaqahs, after Imam Ash-Shafi'i taught there, only three or four halaqahs remained because the others joined the halaqahs of Imam Ash-Shafi'i.²⁴

After only a few months of teaching in Baghdad, Ash-Shafi'i was asked by the guardian of Egypt, Abbas bin Musa, to move to Egypt and teach at the Amr bin Ash Mosque. In this country, besides teaching, Ash-Shafi'i is also active in writing. Imam Ash-Shafi'i is nicknamed "Nashir As-Sunnah"²⁵ means defender of the sunnah or hadith, because he highly upholds the sunnah of the Prophet PBUH. As a scholar whose place of teaching moved from place to place, Ash-Shafi'i had thousands of students. Among the well-known are Ar-Rabi' bin Sulaiman, Abdullah bin Hanbal, and others.

During the six years he lived in Egypt developing his schools of thought both orally and in writing and having also completed the book "Ar-Risala Al-Jadidah", he was struck by baulazir disease which made his body very weak. Finally on Friday night after the 'Isya prayer at the end of the month of Rajab in 204 H Imam Ash-Shafi'i passed away.

Qawl Qadim and Qawl Jadid: Socio Historical Studies

Actually the terms "qawl qadim" and "qawl jadid" did not originate from Ash-Shafi'i, the term was raised by followers of Ash-Shafi'i (often referred to as "Shafi'iyyah Scholars"). This happened after they saw that there were some differences in the products of Ash-Shafi'i's legal thought when he was in Baghdad

²⁴Rohidin Rohidin, "Historisitas Pemikiran Hukum Imam Asy-Syafi'i", *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 11, No. 27, 2004, h. 97-105. doi:10.20885/iustum.vol11.iss27.art9.

²⁵Fahrur Rozi, "Pemikiran Mazhab Fiqh Imam Syafi'i", *HAKAM: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam*, Vol. 5, No. 2, 2021, h. 90-101. doi:10.33650/jhi.v5i2.3502.

and the products of his thoughts when he was in Egypt. The product of thought when they were in Baghdad they called Qawl Qadim (Ar-Risalah Al-Qadimah), while their thoughts when they were in Egypt they called Qawl Jadid (Ar-Risalah Al-Jadidah).²⁶ As is well known, Ash-Shafi'i went to Baghdad three times, the first in 184 H, the second in 195 H, and the third in 198 H, after a few months later he just went to Egypt until his death.²⁷

Qawl Qadim or often referred to as the Qadim School (the first school) is a collection of several opinions of Ash-Shafi'i when he was in Iraq (Baghdad) as a mujtahid, regarding the Sharia laws' which were dictated from the postulates of Tafsili and the principles ushul which is built on it, which is interconnected between some of them with some of the others so that it becomes a coherent whole.²⁸ From this definition, what is meant by the old Shafi'i's School is its ushul and fiqh. His ushul is contained in the book "Ar-Risalah", while his fiqh is contained in the book "Al Hujjah".²⁹ But unfortunately these two books did not reach us, what we have now is "Ar-Risalah Al-Jadidah".

In Ar-Risalah Al-Qadimah, Imam Ash-Shafi'i explains the ethical system of the Qur'an, including general provisions and in particular, provisions regarding nasikh-mansukh and As-Sunnah

²⁶*Ibid.*

²⁷Moch Khoirul Anam, "Dasar-Dasar Istinbath Hukum Imam Syafi'i," *Al-Ihda' : Jurnal Pendidikan Dan Pemikiran*, Vol. 14, No. 1, May 1, 2019, h. 316. doi:10.55558/alihda.v14i1.25.

²⁸Lahaji Lahaji and Nova Effenty Muhammad, "Qaul Qadim dan Qaul Jadid Imam Syafi'i: Telaah Faktor Sosiologisnya", *Al-Mizan (e-Journal)*, Vol. 11, No. 1, December 1, 2015, h. 119–35. doi:10.30603/am.v11i1.993.

²⁹Jainuddin H. Tajudin, "Istihsan; Analisis Historis Pemikiran Imam as-Syafi'i", *SANGAJI : Jurnal Pemikiran Syariah Dan Hukum*, Vol. 1, No. 1, March 28, 2017, h. 71–84. doi:10.52266/sangaji.v1i1.65.; Nailur Rahmi, "A Characteristics of Ushul Fiqh Imam Shafi'i Thought in the Book of Ar Treatise", *El-Ahli : Jurnal Hukum Keluarga Islam*, Vol. 4, No. 1, June 30, 2023, h. 37–62. doi:10.56874/el-ahli.v4i1.1163.

as an authoritative source of Shari'ah. Besides also discussing Ijma' and Qiyas. It should be emphasized that between the Qadim School and the Jadid School, both of them have a direct relationship with Ash-Shafi'i's Fiqh, not with their ushul, because ushul has undergone very little change, ushul is related to general principles. As for Fiqh, it deals with the issue of Furu' and Furu' undergoes many changes because it relates to Ijtihad, while Ijtihad itself can change according to the times, place and people.³⁰

Furthermore, the product of Ash-Shafi'i's legal thinking is the result of a compromise between Fiqh Ahl Ar-Ra'yi and Fiqh Ahl Al-Hadith. He began to compose his school after studying Medinan Fiqh and Iraqi Fiqh. On the other hand, the people of Medina at that time strongly adhered to Arab harmony, which still applied a patrilineal system, namely prioritizing the male lineage. Even though it was once the center of an Islamic city during the time of the Prophet and the Ar-Rasyidin Khulafa, due to the strong tradition and style of thought that tends to follow (ittiba') not argue (jadal) and its position as Dar As-Sunnah,³¹ namely the place where the sunnah of the Prophet, both Qawly and 'Amaly, is preserved - through the legal practices of the Companions - so it is not surprising that Imam Malik is a traditionalist, who bases his legal thoughts on hadiths, and uses Ra'yu very little. Ash-Shafi'i himself was considered to be a Malik's supporter and defended his opinions from attacks by Ahl Ar-Ra'yi' before he studied Iraqi Fiqh.³²

³⁰Imam Asy-Syafi'i, *Ar-Risalah: Panduan Lengkap Fikih dan Ushul Fikih*, (Jakarta: Pustaka Al-Kautsar, 2018), h. 11.

³¹Abd Al-Halim Al- Jundi, *Asy-Syafi'i Nashir As-Sunnah Wa Wadh'i Al-Ushul*, (Kairo: Dar Al-Fikr, 1995), h. 123.

³²Farhatul Jannah, "Pendangan Imam Malik Dan Imam Asy-Syafi'i Tentang Talak Mudhaf", *Ulumul Syar'i : Jurnal Ilmu-Ilmu Hukum Dan Syariah*,

However, since moving to Yemen and then moving to Iraq, he began to come into contact with rational thinking that was very different from Medina in the Hijaz region, which was geographically barren and had an undeveloped economy and a society that was still primitive. While Iraq at that time became the capital of the Abbasid government, namely Baghdad. Geographically, Iraq is located between the valleys of the Dijlah and Euphrates rivers which are fertile, since 30 centuries before Prophet Isa many highly cultured nations have come to Iraq, such as Babylon, Greece (famous for its Philosophy), Persia, Assyria and Khaldan.³³

As the nation's capital, of course, in this case Baghdad is the center of government and economy, culture and civilization, as well as science. Coupled with a pluralistic style of society between Muslims and non-Muslims, as well as Arabs, Persians, Turks and Ajam, it makes it more possible for the acculturation of various cultures to occur. Likewise, the rapid development of science made Muslims absorb a lot of Greek culture, especially philosophy which was not only transferred as a mere science, but also influenced other sciences so that the discussion became systematic and logical.³⁴

In the previous section it was explained, Imam Shafi'i had studied the thoughts of Ahl Ar-Ra'yi through Abu Yusuf and Muhammad bin Hasan Ash-Shaibani. The debate between Ahl Ar-Ra'yi and Ahl Al-Hadith brought Imam Ash-Shafi'i to the

Vol. 7, No. 2, December 24, 2018, h. 80-98; Manna Al- Qaththan, *Tarikh At-Tasyri' Al-Islami*, (Riyadh: Maktabah Al-Ma'arif, 1992), h. 359.

³³Ahmad Amin, *Fajr Al-Islam*, (Kairo: Maktabah Al-Nahdhah Al-Misriyah, 1985), h. 205.

³⁴Nasreen Jawad Sharqi, "Requirements for Building the Curriculum Development and Modernization Center at The University of Baghdad", *INTJECSE: International Journal of Early Childhood Special Education*, Vol. 14, No. 6, June 2022, h. 23-30.

awareness of the weaknesses of the two schools of thought. Ahl Ar-Ra'yi is too free to use reason, while Ahl Al-Hadith does not touch the plains of reason. According to Ash-Shafi'i, between reason and Naql (nas) must be balanced and parallel. Departing from this reason, while in Baghdad Imam Ash-Shafi'i started formulating his ideas and conveying them to his students and writing them in a book entitled Ar-Risalah.³⁵ When he returned to Mecca, he also taught these ideas to the halaqah, a study group, at the Al-Haram Mosque. Likewise, when he returned to Baghdad in 195 H, Ash-Shafi'i had to spread his thoughts while continuing to write other Furu' issues. It was Ash-Shafi'i's thoughts when he was in Baghdad that was later referred to as Qawl Qadim.

According to Sya'ban Muhammad Ismail's comments that in 195 H Imam Ash-Shafi'i lived in Iraq during the reign of Al-Amin. In Iraq, Imam Ash-Shafi'i learned a lot from the Iraqi clerics who incidentally belonged to the same wing Ahl Ar-Ra'yi. After living for some time in Iraq, Imam Ash-Shafi'i traveled to and lived in Egypt. In Egypt, he met and studied with Egyptian scholars who were friends of Imam Malik who was Ahl Al-Hadith. His intellectual journey influenced some of his new legal views in Egypt, which were later called the Jadid School or Qawl Jadid. Qawl Qadim is the opinion of Imam Shafi'i which has a ra'yu style, while Qawl Jadid is his opinion which has a hadith style. According to Sha'ban, the formation of Qawl Qadim and Qawl Jadid was because Imam Ash-Shafi'i heard and found hadith and fiqh narrated by Egyptian scholars who belonged to Ahl Al-Hadith.³⁶

According to Kamil Musa, Imam Ash-Shafi'i arrived in Egypt in 199 H, after his third arrival in Iraq and stayed for one

³⁵Qaththan, *Tarikh At-Tasyri' Al-Islami...*, h. 360.

³⁶Muhammad Isma'il Sya'ban, *At-Tasyri' Al-Islami: Mashadiruhu Wa Athwaruhu*, (Kairo: Maktabah An-Nahdhah Al-Misriyah, 1985), h. 198.

month in 198 H According to Kamil, Qawl Jadid appeared beside Ash-Shafi'i to find hadiths that he did not get when he was in Iraq and the Hijaz, he also witnessed the customs and activities of muamalat which were different from those in Iraq. According to him, Ash-Shafi'i's Qawl Jadid is much contained in his book "Al-Umm".³⁷ Unlike Kamil Musa, as quoted by Jaih Mubarak, Mun'in concludes that the emergence of Qawl Jadid Ash-Shafi'i is a reflection of the different social life between Iraq and Egypt.³⁸

The author does not get enough data to describe how the situation in Egypt was when Imam Ash-Shafi'i entered the city. However, as previously explained Imam Ash-Shafi'i went to Egypt at the invitation of the governor at that time Abbas bin Musa, who was under the rule of Baghdad. And the one in power at that time in Baghdad was Al-Ma'mun (198-218 H). Under the reign of Al-Ma'mun, Baghdad reached its peak of extraordinary glory, Baghdad became the center of science, culture and civilization, as well as being a destination city for people from various nations.³⁹ Indeed, since its inception the city of Baghdad has become the center of civilization and the rise of knowledge in Islam. That is why Philip K. Hitti calls it an intellectual city. According to him, among the world's cities, Baghdad is the 'professor' of Islamic society.⁴⁰ It is strongly suspected that the condition of the city of Baghdad also influenced the progress of the areas under his control, including Egypt at that time. However, of course the progress achieved by the regions was still

³⁷Kamil Musa, *Al-Madkhal Ila At-Tasyri' Al-Islami*, (Kairo: Maktabah Al-Misriyah, 1985), h. 42.

³⁸Jaih Mubarak, *Modification of Islamic Law: Studied on Qael Wadim and Qawl Jadid*, (Jakarta: PT RajaGrafindo Persada, 2002), h. 187.

³⁹W. Montgomery Watt, *Kejayaan Islam: Kajian Kritis Dari Tokoh Orientalis*, (Yogyakarta: Tiara Wacana Yogya, 1990), h. 134.

⁴⁰Philip K. Hitti, *Capital Cities of Arab Islam*, (Minneapolis: University of Minnesota Press, 1973), h. 36.

far below that of Baghdad itself as the capital of the kingdom and the center of government of the Abbasids at that time. Egypt, a city located on the banks of the Nile⁴¹ This is a fertile area with quite developed agriculture and animal husbandry, as well as being a city of trade routes between regions at that time. When Imam Ash-Shafi'i arrived in Egypt in 199 H, he met and studied with Egyptian scholars who were generally friends of Imam Malik who are Ahl Al-Hadith and he had obtained hadiths that were not obtained while in Iraq/Baghdad, as well as teaching at the Amru bin Ash Mosque at the request of the Egyptian governor Abbas bin Musa.

Based on these data, it is strongly suspected that the legal thinking that developed in Egypt at that time tended to be more mainstream Ahl Al-Hadith, but that does not mean completely denying space for the development of ra'yu-based legal thought, due to the influence of Baghdad as the city center of Ahl Ar-Ra'yi.⁴² On the other hand, if drawn to the early history of Islam entering Egypt, it is recorded that the names of friends who contributed to the development of hadith in this country. Among them can be mentioned Abdullah ibn Amr, 'Uqbah ibn Amir, Kharijah ibn Khudzaifah, Abdullah ibn Sa'ad, Mahmiyah ibn Juz, Abdullah ibn Harith, Abu Basyrah, Abu Sa'ad al Khair, and Mu'azd ibn Anas Al-Juhary. Even according to Hasbi Ash-Shiddiq more

⁴¹Mohamed Shamrukh and Ahmed Abdel-Wahab, "Water Pollution and Riverbank Filtration for Water Supply Along River Nile, Egypt", in *Riverbank Filtration for Water Security in Desert Countries*, ed. Mohamed Shamrukh, (Dordrecht: Springer Netherlands, 2011), h. 5-28. doi:10.1007/978-94-007-0026-0_2.

⁴²Goloman Nasution, "Qawl Qadim Dan Qawil Jadid Tentang Haji Dan Umrah Dalam Mazhab Sy Syafi'iy", *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, Vol. 14, No. 1, 2014, h. 73-88. doi:https://doi.org/10.19109/nurani.v14i1.102.

than 140 friends who have developed hadith in Egypt.⁴³ Based on these data, it is strongly suspected that Egypt's history-based legal thinking (read: hadith) has developed more dominantly than Ra'yu-based thinking. And this situation has influenced the legal thinking of Imam Ash-Shafi'i, between when he was in Baghdad and when he was in Egypt.

Some Legal Thoughts: Qawl Qadim and Qawl Jadid Additional Sanctions for Those Who Do Not Pay Zakat Without Reason

Ahmad Nahrawi 'Abd As-Salam explained that there is no disagreement between Qawl Qadim and Qawl Jadid regarding the permissibility of terminating the payment of zakat for those who are obliged to pay it. If the payment of zakat is terminated without any reason, the culprit is guilty, because zakat is the right of the mustahik whose position is like a deposit (Al-Wadi'at).⁴⁴

In addition, Ahmad Nahrawi 'Abd As-Salam explained about the absence of ikhtilaf between Qawl Qadim and Qawl Jadid regarding sanctions for those who refuse to fulfill the obligation of zakat and argues that zakat is not obligatory, that is killed; because the person concerned is considered an infidel; kafir after muslim means apostate; and lawful apostates killed.⁴⁵ Whereas a person who refuses to pay zakat because he is stingy and he hides his wealth (zakat property) or his ability (zakat fitrah), is not considered an infidel. Therefore, zakat is taken by

⁴³Teungku Muhammad Hasbi Al Shiddieqy, *Sejarah Dan Pengantar Ilmu Hadits*, (Semarang: PT Pustaka Rizki Putra, 2009), h. 78; Lailiyatun Nafisah, "Jejak Penulisan Hadis di Mesir Abad ke 2-3 H (Kajian terhadap Kitab Musnad At- Thahawi)", *Tahdis: Jurnal Kajian Ilmu Al-Hadis*, Vol. 12, No. 2, 2021. doi:10.24252/tahdis.v12i2.23077.

⁴⁴Indunisi, *Asy-Syafi'i Fi Madzhabaihi Al-Qadim Wa Al-Jadid...*, h. 102.

⁴⁵*Ibid.*

force⁴⁶; However, is it necessary to carry out additional sanctions for the person concerned so that he does not repeat his actions?

In *Qawl Qadim*, Imam Ash-Shafi'i argues that a person who refuses to pay zakat because he is greedy and he hides his assets (zakat property) or his ability (zakat fitrah), in addition to forcibly taking zakat, is given additional sanctions, namely half of his property is taken (confiscated). The reason used by Imam Ash-Shafi'i is a hadith which states that the Prophet Muhammad PBUH said:

ومن منعها فأنا أخذها وشرط ماله عزمة من عزمات ربنا ليس لآل محمد فيها شيء

Imam An-Nasa'i narrated a hadith that is meaningful to the hadith above. He narrated that the Prophet Muhammad PBUH said:

ومن أبى فإننا آخذوها وشرط إبله عزمة من عزمات ربنا لا يحل لآل محمد فيها شيء

Whereas in *Qawl Jadid*, Imam Ash-Shafi'i argues that the sanction for a person who refuses to pay zakat because he is stingy and he hides his assets (zakat property) or his ability (zakat fitrah) is to take zakat by force, and there are no additional sanctions for him, because there is no sanction for him unless his zakat is taken by force.⁴⁷ The reason used by Imam Ash-Shafi'i in *Qawl Jadid* is a hadith which was later narrated by Imam Bukhari and Muslim who narrated from Abu Hurairah, he said:⁴⁸

⁴⁶*Ibid.*, h. 103.

⁴⁷*Ibid.*

⁴⁸*Ibid.*

إن أعرابيا أتى النبي صلى الله عليه وسلم فقال : دلى على عمل إذا عملته دخلت الجنة، قال : تعبد الله لا تشرك به شيئاً وتقيم الصلاة وتؤدى الزكاة المكتوبة وتصوم رمضان. والذى نفسي بيده لا أزيد على هذا .

After explaining the opinion of Imam Ash-Shafi'i above, Ahmad Nahrawi 'Abd As-Salam explained that the hadith used as the reason in Qawl Qadim, is a dha'if hadith so it is not valid to argue with it. Therefore, he (Imam Ash-Shafi'i) argued with the hadith narrated by Abu Hurairah because the hadith was considered authentic.⁴⁹

In determining and rejecting additional sanctions for those who do not fulfill their zakat obligations because of miserly, Imam Ash-Shafi'i uses the Sunnah as an argument. In Qawl Qadim, Imam Ash-Shafi'i prescribes additional sanctions based on the Sunnah; Likewise in Qawl Jadid, he eliminates additional sanctions for those who refuse to pay zakat because of miserly based on the Sunnah. Then the two narrations were assessed so that the hadith which was used as the reason in Qawl Qadim, was considered dha'if. Thus, the reason for the existence of Qawl Qadim and Qawl Jadid regarding additional sanctions for those who refuse to pay zakat because of miserly is hadith, not ra'yu.

Not Paying Zakat Due to Debt

A Muslim who has assets that are quantitatively already nisab, is required to issue zakat on his wealth. However, he has a number of debts to others where if the debt is paid, his property will no longer be nisab. Is the person concerned obligated to issue zakat on his wealth? This is what is stated in Qawl Qadim and Qawl Jadid.

⁴⁹*Ibid.*

In Qawl Qadim, Imam Ash-Shafi'i is of the opinion that people who have assets that reach the nisab (but not nisab if their assets are used to pay their debts), are not obliged to pay zakat; because, explained Imam Ash-Shafi'i, debt prevents the obligation of zakat.⁵⁰

Meanwhile in Qawl Jadid, Imam Ash-Shafi'i is of the opposite opinion, that is, people who have assets that reach the nisab (but not nisab if their wealth is used to pay off their debts), are obliged to pay zakat, because, emphasized by Imam Ash-Shafi'i, zakat is related to assets, whereas debt is related to liability. Therefore, one cannot prevent the other. (debt cannot prevent the obligation of zakat).⁵¹

Reason Qawl Qadim and Qawl Jadid regarding the obligation to pay zakat for those who have a number of assets that have reached the nisab (but do not reach the nisab if the assets are used to pay off all their debts) is logic.⁵² In Qawl Qadim, Imam Ash-Shafi'i uses logic as an argument, as well as in qawl Jadid, he uses logic as an argument. Thus, a modification of Imam Ash-Shafi'i's opinion regarding the obligation to pay zakat for those who have a number of assets that have reached the nisab (but do not reach the nisab if the assets are used to pay off their debts) is *ra'y*, nor a *hadith*.

Closure

As a mujtahid, Ash-Shafi'i in his activities has done rituals to various countries in order to deepen and broaden his knowledge. Which will be very influential in the process of

⁵⁰*Ibid.*

⁵¹*Ibid.*

⁵²Abdurrohman Kasdi, "Pembaruan Hukum Islam Dari Qawl Qadim Ke Qawl Jadid Dalam Madhhab Shafi'i", *Al-Tahrir: Jurnal Pemikiran Islam*, Vol. 13, No. 2, November, 2013. 321, doi:10.21154/al-tahrir.v13i2.19.

formation of his sect. There are two schools of thought raised by Ash-Shafi'i; firstly, the Qadim School, the ideas of its legal thought when it was in Iraq (Baghdad), and secondly, the Jadid School, namely its legal thought when it was in Egypt. The Qadim School is contained in *Ar-Risala Al-Qadimah*, in the field of *ushul*, and the book *Al-Hujjah* in the field of *Fiqh*. These two books have not come down to us except for a few chapters which were edited by his students. The socio-cultural environment in which Ash-Shafi'i lived became a consideration in the products of the legal thought of his two schools.

After paying attention to the discussion about *Qaul Qadim* and *Qaul Jadid* above regarding *zakat*, namely sanctions for those who do not want to pay *zakat* because they are stingy and cannot pay *zakat* because of debt, it is known that Imam Asy-Shafi'i stated sanctions for someone who does not want to pay *Zakat* due to stinginess is based on the hadith of the Prophet Muhammad SAW, while for someone who cannot pay *zakat* because of debt it is based on analogy or *ra'yu*.

Ash-Shafi'i in carrying out legal synthesis does not only adhere to the text/text of a history alone, but also uses *ra'yu*, both of which are used in a balanced and equal manner.

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