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# Mizan

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In The Dimensions of State Political Thought**

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**Historical Dynamics of Islamic Law Methodology (Ushul Fiqh)**

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*Yono*



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# Mizan

**Journal of Islamic Law**

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## Historical Dynamics of Islamic Law Methodology (*Ushul Fiqh*)\*

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### Abstract:

Ushul fiqh is one of the Islamic scholarly treasures passed down by the Muslim scholars from generation to generation. The embryo of ushul fiqh comes from the practice and methodology of the Prophet Muhammad SAW and his Companions in addressing a problem, especially with regard to the law. This science experienced a dynamic development from generation to generation. This is because the Muslim scholars give considerable attention and always do dialectics with the development of science in his time.

**Keywords:** *Ushul Fiqh, Fiqh, Development, Muslim Scholar*

### Abstrak:

Ushul fiqh merupakan salah satu khazanah keilmuan Islam yang diwariskan oleh para ulama dari generasi ke generasi. Cikal bakal ushul fiqh berasal dari praktek dan metodologi yang dilakukan oleh Rasulullah SAW dan para sahabat dalam menyikapi suatu permasalahan, khususnya yang berkaitan dengan hukum. Ilmu ini kemudian mengalami perkembangan yang dinamis dari generasi ke generasi. Hal ini disebabkan antara lain karena para ulama memberikan perhatian yang cukup besar serta senantiasa melakukan dialektika dengan perkembangan ilmu pengetahuan pada masanya.

**Kata Kunci:** *Ushul Fiqh, Fiqh, Perkembangan, Ulama*

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## Introduction

Ushul fiqh is a method of exploring and establishing Islamic law. In this context, the science of ushul fiqh has a very urgent role for mujtahids in concluding syariah law properly and accountable.

In Islamic law, there are some things that are essentially constant or unaffected by space and time. Only the interpretation of Muslims is ever changing, according to changes in socio-historical conditions, social mobility and the progress of the times. Islamic law can be interpreted to the extent that it does not conflict with the intent and purpose of Islamic law itself. This interpretation then becomes fiqh.<sup>2</sup>

One of the characteristics of Islamic law is very elastic in the face of social dynamics. Islamic law grows in various circumstances surrounding the Muslims.<sup>3</sup> The anthropological reality of Islamic law then gave birth to fiqh epistemology which is basically the result of the interaction of the muslim scholars with the social environment that surrounds it.<sup>4</sup> This historical fact shows that fiqh justifies the plurality of legal epistemological formulations due to the role of different social environments.

On the other side, the transformation of Islamic law has undergone many dynamics and developments for 15 centuries since it was descended to the world. Because Islamic law aims to regulate the human interest in achieving the benefit of life, then Islamic law will always evolve and run in accordance with the situation, condition and movement of the rate of development of Muslims. The dynamics of these developments are occasionally progress, but at times they can experience stagnation and degradation, so as to be displaced among Muslims themselves.

## First Period of Ushul Fiqh

In scientific terms, ushul fiqh appears with the emergence of the fiqh study, because *fiqh fatwas* is the result of studies that use certain methods.<sup>5</sup> But essentially, ushul fiqh appears before fiqh. This method of legal study is then called ushul fiqh. However, historical facts show that *fiqh fatwas* were codified earlier by muslim scholars because society in general, according to Mun'im A.

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<sup>2</sup> Amir Syarifuddin, *Pembaharuan Pemikiran dalam Hukum Islam*, (Padang: Angkasa Raya, 1990), p.18.

<sup>3</sup> Seyyed Hossein Nasr, *A Young Muslim's Guide to the Modern World*, terj. Hasti Tarekat (Bandung: Mizan, 1993), p.56.

<sup>4</sup> Ahmad Hasan, *The Early Development of Islamic Jurisprudence*, (Islamabad: Islamic Research Institute, 1988), p.24-25.

<sup>5</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh*, (Beirut: Dâr al-Fikr al-'Arabi, 1987), p.11.

Sirry's observations, is more interested in fiqh than ushul fiqh.<sup>6</sup> Thus, the compilation of ushul fiqh rules has begun to grow since the time of the Companions, because the muslim scholars of this early generation have given birth to *fiqih fatwas*. This opinion recognized by Musthafa Ahmad al-Maraghi. According to Mustafa Ahmad al-Maraghi, Umar ibn al-Khaththâb RA analogized the political leadership of the imam prayer, while strengthening his support to Abu Bakr al-Shiddîq RA as the first caliph, for he was the best friend appointed by the Prophet to be a imam prayer at the time he is sick.

Umar ibn al-Khattab RA also urged Abu Bakr al-Shiddîq RA to take the wisdom to collect the Quran spread in separate writings and in the memorization of the Companions, because of the destruction of the Qur'an in the wake of the death of their generation. According to Umar, for the benefit of future generations, then the Quran should be collected. And Abu Bakr accepted the idea, then pointed Zaid ibn Thabit to do it.<sup>7</sup> These two historical facts show that the use of *ushul's* principles in solving various social, political and religious problems has begun from the beginning.

But at this time, both the product of legal thought and methodology, not yet well codified, because their attention has not focused on this issue. The codification of the products of fiqh thought has only begun in the generation of muslim scholars, pioneered by Abu Hanîfah, in which his fiqh works were written by his disciples.<sup>8</sup> As for the *tabi'in* before the generation of Abu Hanîfah, the products of fiqh thought can not be separated expressly from the hadiths of the Prophet, because the muslim scholars of fiqh are also the transmitters of hadith, while the hadith has not been thoroughly codified.<sup>9</sup>

### Ushul Fiqh Codification

Abu Hanîfah is one of the ulama who is very productive in issuing *fiqih fatwas* result of his *ijtihad*. But he was a muslim scholar who rarely wrote down the results of *ijtihad* and his legal methodological formulations in one book making it easier for other scholars and later generations to study them. The move in this direction was only begun by his disciple Abu Yusuf with his monumental work entitled *al-Kharrâj*, which contained differences of reason among the muslim scholars in his various legal studies.<sup>10</sup>

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<sup>6</sup> Mun'im A. Sirry, *Sejarah Fiqih Islam; Sebuah Pengantar*, (Surabaya: Risalah Gusti, 1995), p.73-76.

<sup>7</sup> Ahmad Mushtafa al-Marâghi, *Al-Fath al-Mubin fi Thabaqât al-Ushuliyyin* (Kairo: Muhammad Amin Ramj, 1974), jilid I, p.15-16.

<sup>8</sup> Ahmad Mushtafa al-Marâghi, *Al-Fath al-Mubin fi ...*, p.105.

<sup>9</sup> Dede Rosyada, *Hukum Islam dan Pranata Sosial*, (Jakarta: PT. Raja Grafindo Persada, 1999), p.106.

<sup>10</sup> Ahmad Mushtafa al-Marâghi, *Al-Fath al-Mubin fi ...*, p.106.



But in his book, Abu Yusuf has not discussed the theory of *ushul fiqh* thoroughly and just focused on the differences of the muslim scholars in the study of rational *fiqh*. This is different from Muhammad ibn Idris al-Syafi'i, who in addition to diligently issuing *fatwas*, he also tried to write it in a separate book, so that born *al-Risâlah* written when he lived in Baghdad and perfected while living in Egypt. This book is considered as a book which is the embryo of *ushul fiqh* science. Therefore, Abdul Wahhab Khallaf states that the person who first set up the science of *ushul fiqh* is intact and comprehensive is al-Syafi'i.<sup>11</sup>

Modern scholars, as mentioned by Wael B. Hallaq, also mostly agree that Imam al-Syafi'i has a service as the founder of the science of *ushul fiqh*. And *al-Risâlah* is regarded not only as the first work to address the material, but also as a model for later jurists and theorists to try to follow it.<sup>12</sup>

His conception as a teacher and architect of *ushul fiqh* has implications for the emergence of an idea in which he elaborates his theories, so that the *ushul fiqh* comes to the surface and that the authors thereafter follow only the footsteps of his course. In other words, continuity is unbroken in the history of *ushul fiqh*, by assuming a correlation between *al-Risâlah* and other books about the same material that came later.<sup>13</sup>

Many muslim scholars of Islamic jurisprudence before al-Syafi'i have different styles of thought. The first pattern is represented by Abu Yusuf al-Hanafi. This stream is then usually called *Ushûl al-Hanafiyyah/al-Fuqaha*. And the second style of flow is represented by al-Malikiyyah, where then Imam al-Syafi'i and Hanâbilah are finally included in this group. This second stream is then commonly called *ushul al-syâfi'iyyah* or *al-mutakallimîn*.

### **The Pattern of *Ushûl al-Syâfi'iyyah* or *al-Mutakallimîn***

The *ushûl al-shâfi-iyyah* or *al-mutakallimîn* was developed by followers of Imam al-Syafi'i, like Muhammad ibn Muhammad ibn Ahmad al-Ghazâlî with his book *al-Mustashfâ*. Then Ali ibn Abi Ali Muhammad ibn Salim, born in Amid, was later popularly known al-Saifuddin al-Amidî. His great work in the field of *ushul fiqh* is *al-Ihkâm fî Usûl al-Ahkâm*. In addition to these two great figures, the *kalam* flow was also developed by Abdullah ibn Umar ibn Muhammad ibn Ali al-

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<sup>11</sup> Abd al-Wahhab Khallaf, *‘Ilm Ushûl al-Fiqh*, (Kuwait: Dâr al-Ilm, 1978), p.16-17.

<sup>12</sup> Wael B. Hallaq, *A History of Islamic Legal Theories*, (United Kingdom: Cambridge University Press, 1997), p.21.

<sup>13</sup> Imam Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia dan Relevansinya bagi Pembangunan Hukum Nasional*, (Jakarta: PT. Raja Grafindo Persada, 2006), p.125-126.

Baydhâwî, later popular under the name al-Baydhâwî, with his book entitled *Minhâj al-Wushûl ilâ 'Ilm al-Ushûl*.<sup>14</sup>

In general, they formulate the rules of *kulli* through inductive study of the verses of the Qur'an and Sunna, then deductively the rules are applied in the study of law, both in the context of *ijtihād lafzî* and *'aqli*. Besides, they also do a lot of *ta'lîl* especially for non-*ubûdiyyah* verses, with the intention that these verses can absorb *furû* as much as possible. This is the main way of the flow of *kalam*, that is, his legal studies are oriented more on the verses of the Qur'an and the sunna, as the implication of the premise that the *shâri* 'is only Allah and His Messenger. The task of *mujtahid*, according to them, is not to create law, but to find the law which has been expressed by the *syâri*.

That theory of legal studies is much absorbed by the muslim scholars who reared scholarly *kalam*, such as al-Juwaini and al-Ghazâlî from *Ash'ariyah*, and Husayn ibn Muhammad ibn Ali al-Bashri from *Mu'tazilah* with his book *al-Mu'tamad fî al-Ushûl*. Because of these two things then this stream is then famous by the name of the flow of *kalam* or *thariq al-mutakallimîn*.<sup>15</sup>

This flow builds the *ushul fiqh* theoretically, unaffected by *furu'* problems (*fiqh* issues). In constructing the theory, it establishes the rules with a strong reason, both from the *naqli* (the Qur'an and the sunna), as well as from the *'aqli* (mind), without being influenced by the *furu'* problems of various schools. Therefore, the theory is sometimes in accordance with the law of *furu'* but sometimes it is not appropriate. Any problem which is accepted and supported by the *naqli* argument can be used as a rule, whether in line with the *furu'* of school or not, in line with the rules set by their *imam* or not.<sup>16</sup>

As a result of attention focused only on theoretical problems, the theory constructed by this school is often felt to have no effect on practical necessities. As the name implies, the flow of *mutakallimin*, then the language aspects are very dominant in the discussion of their *ushul fiqh*. For example the problem *tahsîn* and *taqbîh*. This kind of discussion is usually expressed by *ushul fiqh* experts related to the discussion of *al-hâkim*. These two concepts are closely related to the problem of *kalam* science which is also influential in the determination of the *ushul fiqh* theory. Another consequence of this theory of flow is their stuck with problems that are sometimes impossible, such as the problem of *taklîf al-ma'dûm* (the imposition of the law on something that does not exist), or trapped in *aqidah*, such as the *ma'shum* for Prophet Muhammad.<sup>17</sup>

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<sup>14</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, hal. 18-21 dan Abd al-Wahhab Khallaf, *'Ilm Ushûl al-Fiqh...*, p.18-19.

<sup>15</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.18-21.

<sup>16</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.18-21.

<sup>17</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.18-21.

### The Pattern of *Ushul al-Hanafiyah* or *al-Fuqaha*

The flow of *ushûl al-Hanafiyah* or *al-fuqaha* was developed by followers of Imam Abû Hanîfah, such as Abdullah ibn Umar ibn Isa, better known as Abû Zayd al-Dabûsi with his book entitled *al-Ushûl wa al-Furu'* and *Ta' sîs al-Nadhar*. Then Ali ibn Muhammad ibn Husayn, popularly known as Fakhr al-Islam al-Bazdawi with his book entitled *Kanz al-Wushûl ilâ Ma'rifat al-Ushûl* and Abdullah ibn Ahmad ibn Muhammad al-Nasafi, popularly known as Hafizhuddin al-Nasafi with his book entitled *Manâr al-Anwâr fî Ushûl al-Fiqh*.<sup>18</sup>

In contrast to the traditional and idealistic flow of *kalam*, the Hanafi school gave rise to the formulation of rules that would pay more attention to the *furu'* characters, and take into account the interests of *mukallaf* life, by looking at the messages of the Qur'an and the sunna on the subject. This kind of approach allows the muslim scholars to create new rules that have not been raised by their own scholars. Nevertheless, the new rules are in fact not always related to the principles of the muslim scholars of the school.<sup>19</sup>

This flow is called the flow of *fuqaha* because in constructing the theory of *ushul fiqh* this flow is much influenced by *furu'* problems in their school. That is, they did not build a theory except after analyzing the *furu'* problems that exist in their schools. In defining the theory, if there is a conflict between existing rules and the law of *furu'*, then the rules are altered and adapted to the law of the *furu'*. Therefore, this school seeks to establish the rules that they compose in accordance with the laws of *furu'* which apply in the school, so that no single rule cannot be applied.<sup>20</sup>

Therefore, Abû Zahrah says that the principal difference between the flow of *kalam* and the flow of *hanafiyah* lies in the position of the imam school. Imam Syafi'i's rules as the main character of the *kalam* stream, for his followers are general rules that can be developed directly on the various *furu'* they face. While Abû Hanîfah's rules for his followers are widely used as references in the formulation of new rules. This is a consequence of the rationale in the process of formulating the rules that pay attention to the *furu'* character. This tendency, according to Abû Zahrah, also occurs among the Malikiyah and Hanâbilah. They use the rules of their muslim scholars of the school as long as it suits their needs. And if they think otherwise, they are not reluctant to formulate new rules, in accordance with the principles held by the muslim scholar of his school. In this case, the Hanâbilah scholars have a similar attitude to the Malikiyah.<sup>21</sup>

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<sup>18</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.23.

<sup>19</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.21-22.

<sup>20</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.21-22.

<sup>21</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.21-22.

### Convergence Pattern (*Tharîq al-Jam'i*)

In addition to the two streams above, there is also a pattern of *ushul fiqh* that conducts *ushul* studies by combining the two approaches above, which in the history of the study of science is commonly called *tharîqah al-jam'i* or convergence pattern. This pattern harmoniously combines the two modes of *ushul fiqh* study, namely in certain contexts they tend to follow *ushul al-mutakallimin*, while for the sake of others follow the trend of the pattern of *ushul al-hanafiyyah*.<sup>22</sup> Therefore, the scholars who developed this school are traditional but dynamic people.

According to Wael B. Hallaq, until the end of the 4th / 9th century AD the compromise between traditionalists and rationalists could not be articulated until the emergence of the famous jurists of the Syafi'i school, Ibn Surayj and his younger generation who lived at that time. Ibn Surayj is known as a great and loyal al-Syafi'i follower. In general, Ibn Surayj is considered the only Islamic jurist who defends the Syâfi'i school and appoints it as an important school. He and his students combine traditional and rational knowledge with the conceptualization of *ushul fiqh* as a synthesis of rationality and textual tradition.<sup>23</sup>

Ibn Surayj is credited with being a person who has paved the way for his students, who entered in this synthesis discourse and elaborated larger details. This can explain why the authors of the Syâfi'i school were first and foremost, those who wrote the works of the *ushul fiqh* were students of Ibn Surayj. At this time actually, the name and image of Imam Syâfi'i as an exponent and founder of *ushul fiqh* began to emerge. Other later major figures who use the convergence approach is Tâj al-Din al-Subki with his book *Jam'u al-Jawâmi*. Then Muhammad ibn Ali ibn Muhammad al-Syaukâni with his book entitled *Irsyâd al-Fuhâl ilâ Tathbîq al-Haq min 'ilm al-Usûl* and the final generation of the nineteenth century and early twentieth century, Shaykh Khudari Bik with his book *Ushul Fiqh*.<sup>24</sup>

If we viewed in the history of Islamic law, the fourth century has its own characteristics within the historical framework of *tasyri' Islam*. Islamic thought based on *ijtihad mutlaq* stopped in this century. At this time there was an assumption that their previous ulama were sacred from mistakes so that a *faqih* would no longer issue his typical thoughts, except in small matters. As a result, the existing schools of jurisprudence are increasingly stable in their existence, especially accompanied by fanaticism among their adherents. This is marked by the obligation to adhere to a particular school and the prohibition of the movement of schools at any time.<sup>25</sup>

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<sup>22</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.24.

<sup>23</sup> Wael B. Hallaq, *A History ...*, p.33.

<sup>24</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.24.

<sup>25</sup> Ahmad Amin, *Dhuha al-Islam*, (Mesir: Maktabah al-Nahdhah al-Mishriyyah, 1974), p.54-

This situation is different in the field of *ushul fiqh*. The cessation of *ijtihad* in *fiqh* and the efforts to examine the opinions of the previous ulama and his scholarship in fact play a very large role in the field of *ushul fiqh*. This is because in researching and analyzing the opinions of previous scholars it is necessary to trace the roots and evaluate the principles of *ushul* which are the basis. Thus, the science of *ushul fiqh* is increasingly developing which is the basis and by itself *ushul fiqh* is growing, moreover each school begins to compile the book of *ushul fiqh*.<sup>26</sup>

In commenting on the development of Islamic jurisprudence in the fourth century H, Muhammad Khudhari Beik stated that their attempt to explain the *illats* of the laws ordained by their priests cannot be realized if it turns out that of the many laws obtained from the priests it did not have *illat*. And the scholars also differ in determining or implementing this *illat*. Clarity *illat* opened the door to *fatwa* in terms of no texts from the priests concerned. If the *illat* which is the basis of the text has been known, they can realize what they called *ushul* which was made the basis of their priests in *istinbath* the law.<sup>27</sup>

It seems that the *fuqaha* obtain new fields for *ijtihad* in *ushul fiqh* rather than *ijtihad* in the field of jurisprudence (*fiqh*). They do independent and liberal thinking, and have characteristics and originality that they had never before. The thing that helped was their tendency towards the science of *aqliyah*, including philosophy, so that it also influenced the method of thinking of Islam at that time.<sup>28</sup>

In other words, the cessation of *ijtihad mutlaq* for most scholars when it did not reduce the development of the science of *ushul fiqh*, even an attempt was made to research and conduct in depth studies in the field of science of *ushul fiqh*. Although not doing legal *istinbath* which is contrary to the school, the muslim scholars can find arguments that can strengthen the establishment of the school in the *ushul fiqh*. Therefore, materially needed a kind of measure to compare different views which at that time became a heated debate. Then *ushul fiqh* becomes a measuring tool in solving disputes that occur.

A distinctive feature of the *ushul fiqh* development in the fourth century was the emergence of the books of *ushul fiqh* which discussed the issue of *ushul fiqh* in its entirety and comprehensively, unlike what had happened in the past. Even if there are those who discuss certain books, it is merely to reject or reinforce certain views on the issue. In addition, thought and writing material in these books differ from previous books and show a more perfect form.<sup>29</sup>

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<sup>26</sup> Rahmat Syafe'i, *Ilmu Ushul Fiqih*, (Bandung: Pustaka Setia, 1999), p.33-34.

<sup>27</sup> Al-Syaikh Muhammad al-Hudhari, *Târîkh al-Tasyri' al-Islâmi*, (Indonesia: Dâr Ihya al-Kutub al-'Arabiyah, 1981), p.200-201.

<sup>28</sup> Muhammad Abû Zahrah, *Ushûl al-Fiqh...*, p.17-18.

<sup>29</sup> Umar Sulaiman al-Asyqar, *Târîkh al-Fiqh al-Islâmi*, (Amman: Dâr al-Nafâis, 1991), p.162.

In the fourth century also began to appear the influence of philosophical thinking, especially the method of thinking according to science in the science of *ushul fiqh*. This can be seen in the problem of finding meaning and understanding of something, which in the science of *ushul fiqh*, *al-hudûd* is something that has never been found in the development of the previous books. The effect of this influence is at least two, namely:

1. The dependence of the author in the field of *ushul fiqh* on the reference patterns and criteria for *mantiq* in explaining the meanings of the *ushuliyah* terminology. This opens the way for them to establish criteria and validity of opinion, which in turn encourages further growth of the science of *ushul fiqh*.
2. The emergence of various essays in various new forms that are independent in providing definitions and understanding of terminology specifically used in the science of *ushul fiqh*.<sup>30</sup>

Entering the fifth century, the Islamic world experienced developments in the fields of science and civilization. This is partly because of the great attention of the authorities to the development of science and civilization.

One of the impacts of this development was progress in the field of *ushul fiqh* which caused some scholars give special attention in depth, among others: Al-Baqilani, al-Qâdhî Abdul Jabbar, Abd al-Wahhab al-Bagdâdî, Abû Zayd al-Dabûsî, Abû Husen al-Bashrî, Imam Haramain, Abdul Malik al-Juwainî, Abû Hamid al-Ghazâlî and others. They were the pioneers of Islamic scholarship at that time. Islamic scholars later followed their methods and traces to realize scientific activities in the field of *ushul fiqh* which had no equal in writing and Islamic studies. That is why many generations of Islam at this time became a reference for future generations of Muslims by showing their interest in *ushul fiqh* products and making them a source of thought.<sup>31</sup>

The books of *ushul fiqh* written in this era, in addition to reflecting the existence of the book of *ushul fiqh* for each school, also indicate the existence of two schools of *ushul fiqh*, namely the *Hanafiyah* school known as the pattern of *fuqaha* and the pattern of *mutakallimin* as explained. In the history of the development of the science of *ushul fiqh*, in the fifth and sixth centuries this was the fastest writing period of the book of *ushul fiqh*, which included books that became standard books in the study of the science of *ushul fiqh*.

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<sup>30</sup> Umar Sulaiman al-Asyqar, *Târîkh al-Fiqh al-Islâmi...*, p.164.

<sup>31</sup> Umar Sulaiman al-Asyqar, *Târîkh al-Fiqh al-Islâmi...*, p.168.

## Conclusion

From the explanation above, it can be concluded that the science of *ushul fiqh* is one of the dynamic sciences studied by *tabi'in* scholars and subsequent generations. History has proven that the muslim scholars are able to provide answers to the problems that occur in the social life of society from the perspective of Islamic law. This is partly due to the methodology of Islamic law that they use, namely *ushul fiqh*, which is studied dynamically.

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# Mizan

## Journal of Islamic Law

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