

RESEARCH METHODOLOGIES IN THE ISLAMIC CAPITAL MARKET



SOURCES AND RESEARCH *MANHAJ* IN THE ISLAMIC CAPITAL MARKET

RESOLUTION

At its third meeting on 30 October 1996, the Shariah Advisory Council (SAC) discussed Shariah research guidelines in the capital market and passed a resolution to accept all sources and *manhaj* (methodology) of the esteemed Islamic jurists. These sources of research consist of primary and secondary sources adopted in Islamic jurisprudence.

PRIMARY SOURCES

The primary sources used by the SAC in conducting research on the capital market are the Quran and the Sunnah. This is based on the fact that Islam urges its followers to refer to these sources in solving problems that occur in their daily lives as commanded by Allah s.w.t.

Allah s.w.t. said:

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا اطِيعُوْا اللّٰهَ وَاَطِيعُوْا الرَّسُوْلَ وَاُوْلِيَ الْاَمْرِ مِنْكُمْ
فَاِنْ نَنزَعْتُمْ فِيْ شَيْءٍ فَرُدُّوْهُ اِلَى اللّٰهِ وَالرَّسُوْلِ

Meaning: "O you who believe! Obey Allah s.w.t. and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah s.w.t. (Quran) and His Messenger (Sunnah)."

(Surah al-Nisa': 59)

Allah s.w.t. also said:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

Meaning: "So take what the Rasulullah s.a.w. (the Messenger) assigns to you, and deny yourselves that which he withholds from you."

(Surah al-Hasyr: 7)

SECONDARY SOURCES AND RESEARCH MANHAJ

Apart from the two primary sources i.e. the Quran and the Sunnah, the SAC also passed a resolution to use secondary sources and other Islamic jurisprudence *manhaj*, such as *ijmak*, *qiyas*, *maslahah*, *istishsan*, *istishab*, *sadd zari'ah*, *urf*, *maqasid syari'ah*, *siyasah syari'iyah*, *ta'wil*, *istiqra'*, *talfiq* and others which have already been applied in Islamic jurisprudence. This is based on a *hadith* (prophetic tradition) when the Prophet s.a.w. appointed Muaz as *qadhi* (judge) in Yaman. He had asked Muaz about certain important principles. He asked: "Muaz, what references do you use when you make a decision?". Muaz replied that he would refer to the Quran. The Prophet s.a.w. then asked further: "What if the matter in question is not found in the Quran?". To which Muaz replied that he would refer to any decision that had been made by the Prophet s.a.w. The Prophet s.a.w. asked again: "What if the matter had never been decided by me?". Muaz then replied that he would apply *ijtihad* (reasoning of qualified scholars) using his own thinking and wisdom to come to a decision. The way Muaz handled the questions on making judgement received the blessings of the Prophet s.a.w. He then said: "Praise be to Allah s.w.t. for giving guidance to the Prophet s.a.w. and his representative (Muaz)."⁸

Thus, all matters relating to secondary sources are included in *ijtihad*, as stated in the *hadith*.

Ijmak

Ijmak means unanimous agreement among the *mujtahidun* (see Glossary) of the Muslim community on Shariah rulings imposed during a particular period after the death of the Prophet s.a.w.⁹

8 *Hadith* as narrated by Abu Daud and Tirmizi.

9 Abu Zuhrah, *Usul al-Fiqh*, Dar al-Fikr, Cairo, p. 185.

Nevertheless, the extent of approval of a particular *hukm* (Shariah ruling) being categorised according to the *ijmak* is difficult to ascertain because of the wide territories covered by Islam and there are various trends of thoughts among Muslims. Thus, the majority of *ulama'* (Islamic scholars) believe that *ijmak* only occurred during the time of the companions of the Prophet s.a.w. before they moved to other territories and that the claim of *ijmak* after that period is quite difficult to accept.¹⁰

Qiyas

This refers to likening an original *hukm* having *nas* (explicit legal text) with a new matter having no *nas* but having the same *'illah* (cause). Thus, Imam Syafi'i considered *qiyas* as the basis for *ijtihad*.¹¹ It is regarded as a source of legislation which has significant contribution in solving new issues that have not been debated.¹²

Maslahah

This means making a judgement based on the principle of general benefits on matters that have no clear *nas* from the Quran or the Sunnah.¹³

In general, Islamic jurisprudence applies the *maslahah* (public interest) in the implementation of a ruling. As such, for anything that is beneficial and necessary to the general public, it would establish *dalil* (indicative legal text) in the form of directives. However, for anything that is detrimental to the general public, *Syara'* will establish *dalil* that prohibits its implementation.¹⁴

Istihsan

This refers to disregarding a *hukm* that is backed by *dalil* and applying another *hukm* that is more convincing and stronger than the former, based on *Syara' dalil* permitting the act in question.¹⁵

10 Abu Zuhrah, *Usul al-Fiqh*, pp. 188–189.

11 Abu Zuhrah, *Usul al-Fiqh*, p. 204.

12 Al-Zarqa', *Al-Madkhal al-Fiqhi al-Am*, Dar al-Fiqh, Beirut, 1968, vol. 1, p. 68.

13 Al-Zarqa', *Al-Madkhal-al-Fiqhi*, vol. 1, p. 90.

14 Izz al-Din bin Abd al-Salam, *Qawa'id al-Ahkam*, Dar al-Makrifah, Beirut, vol. 1, pp. 2–4.

15 Al-Zuhaili, *Usul al-Fiqh al-Islami*, Dar al-Fikr, Damascus, 1986, vol. 2, p. 738. Abu Zuhrah, *Usul al-Fiqh*, p. 245. Abdul Wahab Khallaf, *Masadir al-Tasyri' al-Islami fi ma la Nassa fihi*, Dar al-Qalam, Kuwait, 1982, p. 71.

Istishab

This refers to the maintenance of the previous *hukm* as long as there is no other *dalil* that can change that particular *hukm*.¹⁶

Sadd Zari`ah

This refers to the approach used to curtail anything that can cause a Muslim to do the forbidden. It is considered an early preventive measure to prevent a Muslim from doing what is forbidden by Allah s.w.t.¹⁷

`Urf

This refers to the norms of the majority of a society whether applied in speech or deed.¹⁸ It is considered as '*adat jama`iyah* (customs that are collectively acceptable) and can be used as a legal basis so long as it does not contradict the *Syara`*'.¹⁹ In the context of the Islamic capital market, '*urf tijari* refers to customary practices in business that are considered a basis for guidance and *hukm*.

Maqasid Shariah

This refers to the desired objectives of the Shariah when determining a *hukm* aimed at protecting human *maslahah*.²⁰

Siyasah Syar`iyah

This refers to the area in Islamic jurisprudence that explains rulings related to policies and approaches taken in organising the national administrative structure (and its people) in accordance with the spirit of the Shariah. It

16 Abu Zuhrah, *Usul al-Fiqh*, p. 276.

17 Abu Zuhrah, *Usul al-Fiqh*, p. 268.

18 Al-Zarqa', *Al-Madkhal al-Fiqhi*, vol. 1, p. 131.

19 Al-Zuhaili, *Usul al-Fiqh al-Islami*, vol. 2, p. 828.

20 Ahmad al-Raisuni, *Nazariyyah al-Maqasid 'inda al-Imam al-Syatibi*, The International Institute of Islamic Thought, Herndon, 1992, p. 7.

covers the issues of central and regional administration, economy, judiciary, peace, international relations, etc.²¹

Ta'wil

This refers to an effort to explain or interpret *Syara'* principles through a *dalil* without being restricted by its literal meaning. The implicit meaning will be accepted if it is solidly backed by other *dalil* which explain what *Syara'* requires the meaning to be.²² It is important because it touches on the extensive meaning of a *dalil* and understands the requirements of *Syara'* for the *dalil*, because a *dalil* sometimes requires more than its literal meaning. In this case, it requires proof that a particular *dalil* has a meaning different from the literal meaning.

Istiqra'

This refers to a thorough scrutiny of a matter before a conclusive *hukm* is made on the matter. This *manhaj* involves examining the applications of general *dalil* on the related branches of the *hukm* and subsequently making exceptions, if any.²³

Talfiq

This means introducing an approach that has never been used or discussed by past *mujtahid*.²⁴ This *manhaj* will combine two or more opinions of the *mazhab* (school of thought) and derive a different opinion that has never been discussed by the previous *mujtahid*.

21 Wizarah al-Auqaf wa al-Syu'un al-Islamiyyah, *Al-Mausu'ah al-Fiqhiyyah*, Kuwait, 1990, vol. 25, pp. 294–310. Ahmad al-Husary, *Al-Siyasah al-Iqtisodiyah wa al-Nuzum al-Maliyyah fi al-Fiqh al-Islami*, Maktabah al-Kulliyat al-Azhariyyah, Cairo, p. 12.

22 Al-Duraini, *Al-Manahij al-Usuliyah*, Muassasah al-Risalah, Damascus, p. 189.

23 *Al-Mausu'ah al-Fiqhiyyah*, vol. 4, p. 77. Al-Zuhaili, *Usul al-Fiqh al-Islami*, vol. 2, p. 916.

24 Al-Zuhaili, *Usul al-Fiqh al-Islami*, vol. 2, p. 1143.