

Shari'a, Fiqh, and Qānūn: A Portrait of the Cognitive Nature of Islamic Law in Indonesia

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Abstract: This article examines the cognitive nature of Islamic law in Indonesia, particularly regarding understanding and applying the terminology of *shari'a*, *fiqh*, and *qānūn* in several scientific works by Indonesian Muslim scholars and Regional Regulations Aceh Darussalam. Using the cognitive nature theory of Jasser Auda, it is concluded that there are significant differences between *shari'a*, *fiqh*, and *qānūn* from the creator, source, scope, nature, time, amount, and characteristics. However, some Indonesian Muslim academics, legislators, and scholars often use the terms *shari'a*, *fiqh*, and *qānūn* interchangeably and include them in the realm of absolute divine revelation. Therefore, the three terms are often used interchangeably and sometimes overlap. That matter can be seen in many articles from some Indonesian Muslim intellectuals and in the regional regulation on Islamic *shari'a* in Aceh, which legislators formulated. As a result, *fiqh* and *qānūn*, which are products of human thought from the effects of their understanding of the Qur'an and hadith as God's revelations, are considered to have absolute truth like the Qur'an and hadith itself.

Keywords: *Islamic law; fiqh; qānūn; shari'a; cognitive nature*

Abstrak: Artikel ini mengkaji watak kognitif hukum Islam Indonesia, khususnya terkait pemahaman dan penggunaan terminologi syari'ah, fikih dan kanun dalam sejumlah karya ilmiah para sarjana muslim Indonesia dan juga Peraturan Daerah di Aceh Darussalam. Dengan mempergunakan teori watak kognitif Jasser Auda, diperoleh kesimpulan bahwa terdapat perbedaan yang signifikan antara syariah, fikih, dan kanun dari aspek kreator, sumber, ruang lingkup, sifat, waktu, jumlah, dan karakteristiknya. Namun demikian, sebagian sarjana Muslim Indonesia, legislator dan para ulama sering menggunakan terma syari'ah, fikih dan kanun secara sama dan memasukannya ke dalam wilayah wahyu Tuhan yang bersifat absolut. Oleh karena itu, ketiga terma tersebut sering digunakan secara bergantian dan adakalanya juga tumpang tindih. Hal tersebut terlihat dalam sejumlah artikel dari sebagian sarjana Muslim Indonesia dan Perda Syari'ah Islam di Aceh yang dirumuskan oleh para legislator. Akibatnya, fikih dan kanun yang merupakan produk pemikiran manusia dari hasil pemahamannya atas Al-Qur'an dan as-Sunnah sebagai wahyu Tuhan dinilai memiliki kebenaran absolut layaknya Al-Qur'an dan as-Sunnah itu sendiri.

Kata Kunci: *bukum Islam; syari'ah; fikih; kanun; watak kognitif*

Introduction

The terminology of *shari'a*, *fiqh*, *qānūn* and Islamic law is prevalent among scholars of Islamic law in Indonesia. However, in practice, these terms are often confused, misinterpreted, and misused.¹ In addition, these terms have different meanings, positions, and implications from one another.² We can understand these problems because the relationship between *shari'a*, *fiqh*, and *qānūn* is almost similar and is often misunderstood so that the three terms are often confused. Therefore, it is essential to review the meaning of these terms so that there are no mistakes in understanding and using them.

Some examples of cases in Indonesia can illustrate misunderstandings in the use of these terminologies. One of them is the Regional Regulation (Perda), The Special Region of Aceh or later popularly known as *Qānūn* Aceh Number 5 of 2000 on the Implementation of Islamic *Shari'a*. The impact of the naming of this Regional Regulation is that everything that violates the *qānūn* stipulated by the Aceh government is considered to have violated Islamic law. Of course, the *shari'a* referred to here is Islamic teachings in all aspects of life.³ The material from the *qānūn* includes the prohibition of selling food during the day in the month of Ramadan,⁴ the ban on women working after 9 PM, the prohibition of riding a ride with the opposite sex, the prohibition of women from wearing flannels, the prohibition of men from wearing shorts,⁵ and so on, who are considered as violators of *shari'a*.

¹ Bowen criticizes the ambiguity in the use of *Shari'ah* terminology in practice. See: John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (New York: Cambridge University Press, 2003), p. 15.

² Jasser Auda, *Maqāsid Al-Shari'ah as Philosophy of Islamic Law: A System Approach* (London: The International Institute of Islamic Thought, 2008), pp. 56–59.

³ “Regional Regulation of the Province of the Special Region of Aceh Number 5 of 2000 Concerning the Implementation of Islamic Shari'ah,” n.d., Article 1.

⁴ Dinarsa Kurniawan, *Nah Lho, Jualan Makanan di Siang Hari Melanggar Syariat Islam*, <https://www.jawapos.com/jpg-today/02/05/2020/nah-lho-jualan-makanan-di-siang-hari-melanggar-syariat-islam/>, accessed 30 June 2020.

⁵ Eliyyil Akbar, “Kebijaksanaan Syari'at Islam dalam Berbusana Islami sebagai Pemenuhan Hak-Hak Anak Perempuan,” *Musāwa Jurnal Studi Gender dan*

In addition, the problems related to the hijab, including *shari'a* or not, can also be used as examples to strengthen the author's argument. For example, many online media in Indonesia assert that the headscarf (hijab) is part of *shari'a*.⁶ The hijab has its category; the *hijab syar'i* (hijab is judged to be following *shari'a*) and the ordinary hijab or the *hijab non-syar'i*⁷ though both types of hijabs are both covering the genitals. Furthermore, Muhammad Zaitun Rasmin, the leader of Wahdah Islamiyah, once stated that the veil and *cingkrang* pants are part of *shari'a*.⁸

Here the author, of course, does not intend to discuss the hijab, veil, and *cingkrang* pants specifically because these problems have been widely discussed by Muslim scholars, both in the form of research,⁹ theses,¹⁰ dissertations,¹¹ articles,¹² and other scientific works. Instead,

Islam 14, no. 2 (July 2015): p. 160, <https://doi.org/10.14421/musawa.2015.142.157-170>.

⁶ *Jilbab yang Sesuai Syariat - Ustadz Abdul Somad Lc MA*, <https://www.youtube.com/watch?v=DRjDNIMUNs4>, accessed 30 June 2020.

⁷ Aldinshah Vijayabwana, *Kerudung: Antara Kewajiban dan Sekedar Aksesoris*, <https://www.voa-islam.com/read/muslimah/2014/01/17/28702/kerudung-antara-kewajiban-dan-sekedar-aksesoris/>, accessed 30 June 2020.

⁸ Rustam Hafid, *Cadar Bagian dari Syariat Islam, UZR Tegaskan Tidak Boleh Ada Pelarangan di Indonesia*, <http://ahad.co.id/2019/11/10/cadar-bagian-dari-syariat-islam-uzr-tegaskan-tidak-boleh-ada-pelarangan-di-indonesia/>, accessed 30 June 2020.

⁹ See: Nailil Muna, "Jilbab Menurut Penafsiran Quraish Shihab dan Musthafa Al-Maraghi", *Thesis*, IAIN Purwokerto, (2019), <https://repository.iainpurwokerto.ac.id>, and Aulia Fikriani Dewi, "Analisis Isi Pemberitaan Pelarangan Cadar dan Celana Cingkrang di Tempo.co", *Thesis*, UIN Syarif Hidayatullah Jakarta (2020), <https://repository.uinjkt.ac.id/dspace/handle/123456789/54212>.

¹⁰ See: Heriyanti, "Aspek Hukum Penggunaan Jilbab dalam Perspektif Hukum Islam (Studi Pemikiran Wahdah Islamiyah)", *Thesis*, Univeritas Islam Negeri Alauddin Makassar (2017), <http://repositori.uin-alauddin.ac.id/1454/>, and Ahmad Dalihan, "Al-Qur'an dan Cadar: Studi Kasus Komunitas Niqab Squad Jakarta", *Thesis*, UIN Syarif Hidayatullah Jakarta (2020), <https://repository.uinjkt.ac.id/dspace/handle/123456789/53791>.

¹¹ See: Muhammad Basir, "Wawasan Hadis tentang Jilbab", *Dissertation*, UIN Alauddin Makassar (2017), <http://repositori.uin-alauddin.ac.id/10322/>.

¹² See: Mohamad Abdun Nasir, "The Veil at the Crossroads: Muḥammad Sa'īd al-'Ashmāwī and The Discourse on the Ḥijāb in Egypt," *Al-Jami'ah: Journal of Islamic Studies* 42, no. 1 (2004): pp. 89–131,

by explaining some of the examples above, the author would like to illustrate that some Muslim scholars in Indonesia are “inappropriate” in using the terminology of *shari'a*, *fiqh*, and *qānūn*. The use of double quotation marks in the inappropriate words that the author uses aims to state that some Muslim scholars may understand and know the difference between the three terms (*shari'a*, *fiqh*, and *qānūn*). Still, they tend to prefer to use *shari'a* terminology.

This issue is essential to be studied further because few studies criticize the cognitive nature of Islamic law in Indonesia. However, several studies have examined the importance of distinguishing between *shari'a*, *fiqh*, and *qānūn*. Among them was Syafaul Mudawam, who argued that there was serious confusion in narrowing *shari'a*, *fiqh*, and Islamic law.¹³ According to him, *shari'a* is the basic rule in determining Islamic legal norms, which are extracted from authentic sources, namely the Qur'an and the hadith of the Prophet. Thus, the relationship between *shari'a*, *fiqh*, and Islamic law lies in a similar ordinal point, but not with the same precision in constructing contemporary thought.¹⁴

In addition, Nurhayati also has paid attention to understanding the concepts of *shari'a*, *fiqh*, Islamic law, and *ushul fiqh*.¹⁵ She defined each of the four terms. According to her, *shari'a* is the decree of Allah and His messenger, while Islamic law is the rules that function to regulate human behavior in a society. As for *ushul fiqh*, it is defined as

<https://doi.org/10.14421/ajis.2004.421.89-131>; Hanif Cahyo Adi Kistoro et al., “Islamophobia in Education: Perceptions on the Use of Veil/Niqab in Higher Education”, *Indonesian Journal of Islam and Muslim Societies*, vol. 10, no. 2 (2020): pp. 227–46; Ali Tantowi, “The Quest of Indonesian Muslim Identity: Debates on Veiling from the 1920s to 1940s,” *Journal of Indonesian Islam* 4, no. 1 (June 1, 2010): pp. 62-90, <https://doi.org/10.15642/JIIS.2010.4.1.62-90>; and Irfan Yuhadi and Nurul Budi Murtini, “Fenomena Praktik Cingkrang Implementasi Larangan Isbal,” *Al-MAJALIS: Jurnal Dirasat Islamiyah* 7, no. 2 (May 20, 2020): 163–206, <https://doi.org/10.37397/almajalis.v7i2.143>.

¹³ Syafaul Mudawam, “Syari'ah-Fiqih-Hukum Islam: Studi tentang Konstruksi Pemikiran Kontemporer,” *Ay-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 46, no. 2 (2012): p. 403, <https://doi.org/10.14421/asy-syir'ah.2012.%25x>.

¹⁴ *Ibid.*

¹⁵ Nurhayati, “Memahami Konsep Syariah, Fiqh, Hukum dan Ushul Fiqh,” *Jurnal Hukum Ekonomi Syariah* 2, no. 2 (16 December 2018): p. 125, <https://doi.org/10.26618/j-hes.v2i2.1620>.

the origin of *fiqh*, while *fiqh* is a science that examines various provisions and rules for formulating Islamic law. In her writing, Nurhayati also distinguished between the terminology of *shari'a* and *fiqh*. According to her, *shari'a* is absolute law (*qath'ī*), fundamental, one, and derived from the Qur'an and hadith. At the same time, *fiqh* is relative, subject to change, diverse, and derived from the *ijtihad* of Islamic jurists.¹⁶

In contrast to Mudawam and Nurhayati, who tried to distinguish the terminological meaning of *shari'a*, *fiqh*, *qānūn*, and Islamic law, Abdul Wahab Abd Muhaimin was more focused on studying the nature and implementation of *shari'a* and *fiqh* to overcome various problems related to Islamic law.¹⁷ According to him, *shari'a* comes from the Qur'an and hadith, which have absolute and permanent truths. At the same time, *fiqh* can change according to changing society which is always dynamic in responding to the development of science and technology.¹⁸

This study had similarities with previous studies in that they both view the importance of making a distinction between the use of the terminology of *shari'a*, *fiqh*, and Islamic law. However, this article tries to criticize the understanding and use of the terminology of *shari'a*, *fiqh*, *qānūn*, and Islamic law in Indonesian society, which is often inaccurate. This study examines the cognitive nature of Indonesian Islamic law more profoundly and, at the same time, tries to offer a solution to get out of this cognitive nature in the treasury of Islamic legal thought in Indonesia.

This study focuses on answering the question: why do Muslim scholars and society often equate the use of the terminology of *shari'a*, *fiqh*, and *qānūn* in various writings and regional regulations in Indonesia? This study uses a normative-juridical approach by utilizing the cognitive nature system theory proposed by Jasser Auda. This theory is used to see and analyze the relationship between concepts and reality as a correlation of the cognition of Muslim scholars in expressing the terminology of *shari'a*, *fiqh*, and *qānūn* in their writings

¹⁶ *Ibid.*

¹⁷ Abdul Wahab Abd Muhaimin, "Aktualisasi Syariah dan Fiqh dalam Menyelesaikan Pelbagai Persoalan Hukum," *Abkam: Jurnal Ilmu Syariah* 15, no. 2 (2015): p. 241, <https://doi.org/10.15408/ajis.v15i2.2868>.

¹⁸ *Ibid.*

and legal products. The cognitive nature of Islamic law referred to here is the correlation between the concept and the understanding of Indonesian Muslim scholars using the terminology of *shari'a*, *fiqh*, and *qānūn*.¹⁹

This research is limited to Indonesian Muslim scholars published in scientific journals from 2010 to 2020 and several Regional Regulations issued by several Regional Governments and DPRD's in Indonesia, which often equate and exchange the terms *shari'a*, *fiqh*, and *qānūn*. To answer the above problem, the author first describes Islamic law's cognitive nature, often misunderstood by some Muslim scholars and local law legislators. The author then criticizes it and offers a solution to return to Islamic law's dynamic understanding and tradition. The way is to shift the position of *fiqh* and *qānūn*, which are included in God's revelation to be the result of the cognition of Islamic jurists (knowledge of God's revelation).

Shari'a, Fiqh, and Qānūn: Terminology and Differences

Islamic literature does not recognize the terminology of Islamic law (*al-bukm al-Islam*). This terminology in Islamic literature is used separately, namely *bukm* and *Islam*. To refer to Islamic law, the author finds two terms often used in Islamic literature: first, *al-fiqh al-Islam*, translated in Indonesian to 'Islamic *fiqh*,' and second, *al-Syari'ah al-Islamiyah*, which is translated into Indonesian become 'Islamic *shari'a*.' The terminology of the Islamic law that some Muslim scholars in Indonesia often use a translation of the English used by Western scholars, namely Islamic law.

Etymologically, the term Islamic law consists of two words, namely "law" and "Islam." The Big Indonesian Dictionary (KBBI) defined Islamic legal terminology into four meanings, namely (1) customary rules or official laws that are binding and determined by the authorities; (2) the decision is determined by the judge in the court (the verdict); (3) the legal basis for the incident; and (4) laws and regulations and so on which contain procedures for living behavior in the community.²⁰ Meanwhile, in terms of terminology, Josept Schacht

¹⁹ Jasser Auda, *Maqāsid Al-Shari'ah as Philosophy of Islamic Law: A System Approach*, p. 45.

²⁰ Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia*, 3 ed., 1 (Jakarta: Balai Pustaka, 2001), p. 410.

defined Islamic law as rules taken from Allah's commands that regulate the behavior of Muslims in all aspects of their lives.²¹ Meanwhile, Muhammad Daud Ali defined it as all norms or rules regulating all forms of behavior of a person in society, both in rules set by the government and laws that live in a community.²² In addition, the terminology of Islamic law contains *shari'a*, *fiqh*, and *qānūn*, which the author examines in this paper.

Before discussing the cognitive nature of Islamic law in Indonesia, it is crucial for the author first to explain the difference in terminology between *shari'a*, *fiqh*, and *qānūn* in this discussion. The first is *shari'a*. From etymology, *shari'a* is a word that comes from Arabic. Its meaning is 'the way to the spring,' but the Arabs also interpret it as 'the straight path' because the spring is the source of every life.²³ The word *shari'a* is a verb from *shara*. It means 'the clear path to the spring' and 'marking.' Regarding using the term in religion, the term *shari'a* is interpreted as a good way of life, namely values expressed in certain aspects and functions, and designed to guide human life.²⁴

In Islamic legal literature, *shari'a* has at least three meanings. First, *shari'a* can be interpreted as a rule that never changes. Second, *shari'a* does not change over time but can also be changed with the times. Third, *shari'a* is construed as a rule resulting from legal reasoning (*istinbāth*) sourced from the Qur'an and hadith, namely provisions interpreted and enforced by the companions of the Prophet, products of Islamic law, rules resulting from *istinbāth* of Islamic jurisprudence scholar using the *ijtihad* and *qiyās* methods.²⁵

Terminologically, *shari'a* is defined by scholars with various variations. Mahmud Shaltut, Professor of Islamic Law at Al-Azhar

²¹ Joseph Schacht, *An Introduction to Islamic Law* (London: Oxford University Press, 1971), p. 1.

²² Muhammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, 5 ed. (Jakarta: Rajawali Pers, 1996), p. 38.

²³ Yayan, *Tarikh Tasyri': Sejarah Pembentukan Hukum Islam* (Depok: Gramata Publishing, 2010), pp. 2-3.

²⁴ Fazlur Rahman, *Islam*, Terj. Ahsin Muhammad (Bandung: Pustaka, 1984), p. 140.

²⁵ Zainuddin Ali, *Hukum Islam: Pengantar Hukum Islam di Indonesia*, 2 ed. (Jakarta: Sinar Grafika, 2008), p. 3-4.

University in Cairo (Egypt), defines *shari'ah* as a provision created by God to be used to human relations with God, human relations with fellow Muslims, human relations with fellow humans, human relations with nature, and all aspects of life.²⁶ According to Hamim Ilyas, *shari'ah* is *din wa ni'mah*. *Shari'ah* is a religion and God's laws that give mercy to the whole world. As for what is meant by grace here, it includes natural goodness and the ideology of justice.²⁷

Muhammad Yusuf Musa defined *shari'ah* as all religious rules created by God for Muslims that are sourced from the Qur'an and hadith. Meanwhile, according to Muhammad Ali al-Tahanwy as quoted by Yusuf Musa, *shari'ah* was defined as rules created by God for His servants through the intermediary of the Messenger of Allah, which are not only related to detailed laws (*furū'*) and laws related to behavior (*aliyah*) which is codified in fiqh books, but also related to the provisions on faith and belief (*i'tiqād*) which are the main thing and are codified in the *'ilm kalam*.²⁸

The second is *fiqh*. Etymologically, the term "*fiqh*" is a word that comes from Arabic. It means 'to understand' or 'to know something.' In this case, the word "*fiqh*" is identical to the word "*fahm*," which has the same meaning. The definition of *fiqh*, according to some scholars, can be described as follows. Imam al-Shafi'i defines *fiqh* as a science that discusses practical *shari'ah* rules extracted from detailed texts.²⁹ In line with Imam al-Shafi'i, Abdul Wahab Khalaf also defined *fiqh* as a science that examines God's applicable decrees (*amaliyah*) obtained through explicit texts.³⁰ Slightly different from Imam al-Shafi'i and Khalaf, Hasby ash-Shiddieqy described *fiqh* as the

²⁶ Mahmud Syaltut, *Al-Islām Aqīdat wa Syari'at*, 3 ed. (Kairo: Dar al-Qalam, 1966), pp. 12-14.

²⁷ Hamim Ilyas, *Fiqh Akbar: Prinsip-Prinsip Teologis Islam Rahmatan Lil 'Alamin* (Jakarta: PT Pustaka Alvabet, 2019), pp. 245–51.

²⁸ Muhammad Yusuf Musa, *Al-Islam wa al-Hajat al-Insaniyyat Ilaib*, 1 ed., Terj. A. Malik Madani and Hamim Ilyas, "Islam Suatu Kajian Komprehensif" (Jakarta: Rajawali Pers, 1988), p. 131.

²⁹ "*Al-'ilm bi al-abkām al-syari'ah al-muktasab min adillatiba al-tafshiliyyah*." See: Wahbah Al-Zuhaili, *Al-Fiqhu al-Islamu wa Adillatuhu*, 2 ed., vol. 1 (Damaskus: Dar Al-Fikr, 1985), p. 16.

³⁰ "*Al-fiqh huwa al-'ilm bi al-abkām al-syari'ah al-'amaliyyah al-muktasab min adillatiba al-tafshiliyyah*." See: 'Abd al-Wahhāb Khallāf, *Ilm Ushul al-Fiqh*, vol. 7 (Kairo: Dār al-Qalām li al-Tibā'at wa al-Nasyr wa al-Tauzī', 1978), p. 11.

provisions of the legislators (*Syāri'*) that are required for contemplation, understanding, and *ijtihad*.³¹

From some of the definitions of *fiqh* above, there are at least four keywords on which to base it—first, *Syāri'*, meaning that *fiqh* contains provisions that come from God's will. Second, practical (*amaliyah*). The object of the study of *fiqh* is the observed behavior of *mukallaf*. Third, detailed arguments. It means that the results or products of these understandings are taken from explicit texts, namely the verses of the Qur'an and the traditions of the Prophet. Fourth, the reasoning of *fiqh* experts, in the sense that *fiqh* products are the result of the logic of mujtahids whose truth is relative and can change according to the development of humans who are always dynamic.³² Therefore, the role of reason has a place and is recognized within certain limits in *fiqh*.

As for the object of discussion of the *'ilm fiqh* is the actions of the *mukallaf*. In other words, the target of *fiqh* is humans, dynamics, and developments, all of which are actual pictures of the activities of the *mukallaf* who want to be patterned in a value system that guarantees the establishment of religious and social life. A comprehensive study conducted by experts in *fiqh*, such as al-Qadi Husein, Imam as-Subki, Imam Ibn' Abd al-Salam, and Imam al-Suyuthi, formulated the basic framework of *fiqh* is certainty (*ẓakerhijid*), convenience, and agreement with a solid one. The general pattern of *fiqh* is benefited (*i'tibār al-mashālih*).³³

The use of the terminology of *shari'ah* and *fiqh* by some Muslim scholars is often ambiguous. The two are often used in the same sense and are sometimes also used interchangeably. However, the two

³¹ Hasby ash-Shiddieqy, *Falsafah Hukum Islam* (Jakarta: Bulan Bintang, 1974), p. 35.

³² The following is an example of *fiqh* adapted to the development of society. Sukma Indra, Muhammad Lutfi Hakim, dan Roful Wahyudi, "In-Kind Model in Creative Productive Zakat Funds: Case Study on National Zakat Administrator Agency (Baznas) of West Kalimantan Province," *Justicia Islamica* 17, no. 1 (June 2020): p. 53, <https://doi.org/10.21154/justicia.v17i1.1720>. See: Bustami and Muhammad Lutfi Hakim, "Strategy of Cash Waqf Development on Gerakan Wakaf Produktif at Baitulmaal Munzalan Indonesia Foundations in Digital Era," *Al-Tabrir: Jurnal Pemikiran Islam* 20, no. 1 (2020), <https://doi.org/10.21154/altahrir.v20i1.1934>.

³³ Ali Yafie, *Menggagas Fiqh Sosial* (Bandung: Mizan, 1994), p. 108.

are very different. There are at least five essential differences between *shari'a* and *fiqh*.³⁴ First, the content of *shari'a* comes from the holy book of the Qur'an and the traditions of the Prophet. When an Islamic jurist uses the terminology of *shari'a*, he means the *khitāb* of God and the Prophet Muhammad's words. In contrast, *fiqh* is sourced or can be found in *fiqh* literature. When an Islamic jurist uses *fiqh* terminology, what he means is the result or product of his understanding of the *shari'a*. Second, *shari'a* is related to something fundamental and has a vast scope. In contrast, *fiqh* is related to something that is instrumental and is only limited to legal actions. Third, *shari'a* is the provisions and provisions of God and His Messenger that are valid forever. In contrast, *fiqh* is only the result of human understanding whose truth is relative and can change according to dynamic human development. Fourth, *shari'a* is singular while *fiqh* is usually multiple, more than one: numerous and varied, which can be proven by the existence of schools of *fiqh* experts. Fifth, *shari'a* is the same and uniform, while *fiqh* varies and sometimes varies from one another.

While *qānūn*, or what is often also called *qānūn-wadh'i*, is a law made to regulate humans.³⁵ Etymologically, *qānūn* can be interpreted as law, rich or law. In the West, the word "qānūn" is used in church law, taken from Arabic through Syriac. At first, the word was used in the sense of 'line,' and then it was used in 'rule.' In Arabic, the term "qānūn" means 'measurement.' It is from this meaning that the words health *qānūn*, character *qānūn*, and so on are taken. Very few Islamic jurists use this term. They more often use the word *shari'a* instead of *qānūn*.³⁶ Terminologically, *qānūn* is a positive law officially applied in a region or country, coercive and sanctioned for anyone who does not obey it. This *Qānūn* is a formal rule formulated through a legislative process and ratified by the legislature.³⁷ Examples of *qānūn* are Aceh Qanun Number 6 of 2014 concerning Jinayah Law, Aceh Qanun

³⁴ Ali, *Hukum Islam: Pengantar Hukum Islam di Indonesia*, p. 46.

³⁵ Hasby ash-Shiddieqy, *Pengantar Ilmu Fiqh*, 5 ed. (Jakarta: Bulan Bintang, 1967), p. 222.

³⁶ Ash-Shiddieqy, p. 7.

³⁷ Kamarusdiana, "Qānūn Jināyat Aceh dalam Perspektif Negara Hukum Indonesia," *AHKAM: Jurnal Ilmu Syariah* 16, no. 2 (11 December 2016): p. 154, <https://doi.org/10.15408/ajis.v16i2.4445>.

Number 10 of 2002 concerning Islamic *Shari'a* Courts.³⁸ Some Muslim countries also use the term *qānūn*, such as Jordan, which has *Qānūn Huquq al-'Ailab* (Law Number 92 of 1951 concerning Marriage) and Malaysia, which has a *qānūn* with the name *Qānūn Melaka*.

The differences in the terminology of *shari'a*, *fiqh*, and *qānūn* can be seen in Table 1 below.

Table 1: Differences in *Shari'a*, *Fiqh*, and *Qānūn*

No.	Difference	<i>Shari'a</i>	<i>Fiqh</i>	<i>Qānūn</i>
1.	Creator	God	Islamic jurists	Legislator
2.	Source	Qur'an and Hadith	<i>Fiqh</i> books	Law
3.	Scope	<i>Aqidab</i> , <i>shari'a</i> and morals	Mukallaf's legal actions	Mukallaf's legal actions
4.	Nature	Fundamental	Instrumental	Instrumental
5.	Time	Absolute	Relative	Relative
6.	Amount	Singular	Plural	Plural
7.	Characteristic	Similar/Equal	Diverse	Diverse

Table 1 above describes the primary differences between *shari'a*, *fiqh*, and *qānūn*. The author has explained the difference between *shari'a* and *fiqh* in five essential things, which the author details in table 1. The difference between *shari'a* and *qānūn* is almost the same as the difference between *shari'a* and *fiqh*. The difference between *shari'a*, *fiqh*, and *qānūn* lies in the maker and source of the three. Judging from the creator, the maker of *shari'a* is God, while the creator of *fiqh* is an expert in Islamic law (*fuqāba*), and the creator of *qānūn* is a legislator. While judging from the source, *shari'a* is sourced directly from the Qur'an and hadith, *fiqh* can be found in *fiqh* books, and *qānūn* literature in the legislation in a particular region or country.

From the explanation above, the three terms have quite crucial differences. However, there are still some Muslim communities in Indonesia that equate them. This matter, according to the author, for at least two reasons. First, the misunderstanding of some Muslim communities in distinguishing the three terms. Second, etymologically, the terms *shari'a*, *fiqh*, and *qānūn* have identical meanings, namely (Islamic) law, and because these three terms are

³⁸ For more complete data regarding the *qānūn* enforced in Aceh, you can access the following address:: <https://dsi.acehprov.go.id/perda-atau-qanun/>.

included in the terminology of Islamic law. These two arguments can at least answer why there is an inaccuracy in using the terminology of *shari'a*, *fiqh*, and *qānūn* by some Muslim communities in Indonesia.

Cognitive Nature of the Islamic Law System in Indonesia: Articles of Muslim Scholars and Aceh Regional Regulations

The Islamic legal terminology used by some Indonesian Muslim scholars includes *shari'a*, *fiqh*, and *qānūn*, as described in the previous discussion. In addition, the wording of Islamic law also contains products of thought, such as fatwas and court decisions (religion).³⁹ Therefore, using some of the terminology included in Islamic law in practice often occurs “overlapping.”

Studying the terminology of Islamic law with its cognitive nature is intended to see the correlation between the concept and the understanding of Indonesian Muslim scholars in using these terminologies. According to Jasser Auda, systems theory aims to know the relationship between ideas and reality as a correlation.⁴⁰ As the author explained in the previous discussion, the concept referred to here is *shari'a*, *fiqh*, and *qānūn*. At the same time, the object is the articles of Muslim scholars and the Aceh Regional Regulation, which is the author's focus in this discussion. So, the cognitive nature system in this paper is a conceptual construction that emerges from the cognition of Muslim scholars in expressing the terminology of *shari'a*, *fiqh*, and *qānūn* in their writings and legal products.

In addition to the linguistic aspect, Islamic law also has a theological part. Misunderstanding in understanding the theological dimension has given rise to the assumption that *fiqh* is a sacred rule

³⁹ Yayan Sopyan, *Tarikh Tasyri'; Sejarah Pembentukan Hukum Islam* (Depok: Gramata Publishing, 2010), pp. 7-8. Fatwa is the result of thoughts from a person or group of people on religious issues. The Indonesian Ulema Council (MUI), the most authoritative institution (being in authority) issuing fatwas in Indonesia, is one of the organizations that issue many fatwas. What is meant by court decisions are the results of the thoughts of judges in religious courts, which have legal force and bind the litigants. Muhammad Lutfi Hakim, “Hermeneutik-Negosiasi dalam Studi Fatwa-Fatwa Keagamaan: Analisis Kritik terhadap Pemikiran Khaled M. Abou El Fadl,” *Istinbath* 19, no. 1 (July 16, 2020): 34, <https://doi.org/10.20414/ijhi.v19i1.204>.

⁴⁰ Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law: A System Approach*, p. 45–46.

and must be accepted as it is. Some Muslim scholars in Indonesia think that all problems in human life have rules in *fiqh* books and are final, so there is no need for a new *ijtihad*. In addition, some Muslim scholars in Indonesia are also often “inappropriate” and seem “overlapping” in using the terminology of *shari'a*, *fiqh*, and *qānūn*. The authors found these two things in several scientific works written by Muslim scholars in Indonesia and published in scientific journals from 2010 to 2020.

Among the Muslim scholars who used the terminology of *shari'a*, *fiqh*, and or *qānūn* were Misbahuddin and Nasrullah. Both used *shari'a* terminology to explain the flexibility of Islamic law codified in *fiqh* or *qānūn*. In one of his writings, Misbahuddin discusses the flexibility of *shari'a*, which is taken based on the principle of tradition (*'urf*). According to him, practice is recognized by *shari'a* and is often used as the basis for establishing the law.⁴¹ According to the author, the purpose of using *shari'a* terminology by Misbahuddin is to explain that *fiqh* experts can *ijtihad* based on traditions that live in society, and *'urf* can be used as a basis for establishing law.

In contrast to Misbahuddin, Nasrullah uses *shari'a* terminology to explain *qānūn*. In his writings, Nasrullah argued that *shari'a* is an order in the values used by the Acehnese people as a social institution. With the implementation of *shari'a* in Aceh, especially those related to criminal offenses (*jarimah*), the community feels comfortable and at peace and can minimize criminal acts.⁴² According to the author, the purpose of Nasrullah's use of *shari'a* terminology is to explain *jarimah* or illegal actions in Islam contained in the Qanun Jinayah. With this *qānūn*, the number of criminal acts can be minimized and make the people of Aceh feel calm and peaceful.

The term *shari'a* is also misused to analyze the problem of the behavior of the *mukallaf*, which is the area of *fiqh*. M. Tamliqon Luqman Hakim and Hifdotul Munawwarah used the term *shari'a* to analyze the remissions given to corruptors. According to Hakim and Munawwarah, the remission granted by the government to convicts

⁴¹ Misbahuddin, “Fleksibilitas Penerapan Syariah Islam,” *AL-FIKR Jurnal Pemikiran Islam* 14, no. 3 (2010): p. 439.

⁴² Nasrullah, “Hukum Syariah di Aceh: Fleksibilitas dan Moderasi dalam Kehidupan Sosial Keagamaan,” *At-Ta'fikir* 10, no. 2 (2017): pp. 10-12.

of corruption crimes is contrary to *shari'a*.⁴³ According to the author, the results of the analysis of both development from their cognition of a legal event. The results of this cognition do not enter the area of *shari'a*, which is God's revelation, but rather the knowledge of God's revelation itself.

Meanwhile, Mariadi equated the terminology of *shari'a* with "Islamic *shari'a*," which is used as a Regional Regulation in Aceh. He concluded that the *shari'a*, which are rules established based on the teachings of Islam and sourced from the Qur'an, hadith, and *ijmā'* of the ulama, had been implemented in Aceh perfectly (*kaffah*). In addition, Mariadi also argued that *shari'a* is taken from classical *fiqh*. However, not all classical *fiqh* is used as *qānūn* in Aceh. The selection of classical *fiqh* is based on the interests and development of the Acehnese people and national law.⁴⁴ The terminology of *shari'a*, *fiqh*, and *qānūn* used by Mariadi is impressive and seems to overlap. Each of these terms has different meanings and implications.

In addition to several studies from some Indonesian Muslim scholars that have been published in scientific journals, the authors also found several legal products issued by the Regional Government and DPRD that are not appropriate in using the terms between *shari'a*, *fiqh*, and *qānūn*. The legal product that has become a national and even international concern is the Regional Regulation issued by the Province of the Special Region of Aceh Number 5 of 2000 concerning the Implementation of Islamic *shari'a*. The meaning of the term "Islamic *shari'a*" in the Regional Regulation is the demands of Islamic teachings covering all aspects of life, covering 13 fields. The thirteen fields are faith, worship, *muāmalah*, morals, education and da'wah, *baitul māl*, society, Islamic *shari'a*, defense of Islam, *qadhā*, *jināyah*, *munākabah*, and *mawāris*.⁴⁵

⁴³ M. Tamliqon Luqman Hakim dan Hifdotul Munawwarah, "Remisi Koruptor Perspektif Syariat Islam," *Journal of Indonesian Comparative of Law* 3, no. 1 (2020): p. 29.

⁴⁴ Mariadi, "Pelaksanaan Syariat Islam pada Qanun Nomor 11 Tahun 2002 Bidang Aqidah, Ibadah, dan Syiar Islam," *Legalite* 3, no. 2 (2018): pp. 115-116, <https://doi.org/10.32505/legalite.v1i11>.

⁴⁵ "Regional Regulation of the Province of the Special Region of Aceh Number 5 of 2000 Concerning the Implementation of Islamic Sharia," Article 1 and Article 5 paragraph (2).

Two crucial things need to be considered in this regulation. First, confusion in the use of the term “Islamic *shari'a*.” The inaccuracy in using this term can be traced from the word “Islamic *shari'a*,” which is used again in Article 5 paragraph (2) as part of *shari'a*.⁴⁶ In addition, the regional regulation also includes *shari'a* as part of the *qānūn*. These two clues indicate that Islamic *shari'a* (along with 12 other areas) and *qānūn* are part of *shari'a*. The use of this term seems odd because Islamic *shari'a* can't be part of *shari'a* itself. Moreover, *shari'a* is said to be part of *qānūn* because *shari'a* is general and shows uniformity. *Shari'a* cannot enter into something specific and shows diversity, namely *qānūn*.

Second, the derivative of the regional regulation uses the term “qanun.” There were 14 *qānūn* produced by the Aceh Islamic Shari'a Service in the 2002-2018 range.⁴⁷ This regional regulation and *qānūn* are the same⁴⁸ because both are products of the Provincial Government of Nanggroe Aceh Darussalam. In addition, the term “Islamic *shari'a*” is still used in the *qānūn*. This matter shows that the Provincial Government of Nanggroe Aceh Darussalam gives an equal position between the words “qanun” and “Islamic *Shari'a*.” *Qānūn* is a relative product of legislators, while *shari'a* is a final product of God. This matter indicates that the formulators and makers of these legal products are still confused in understanding and using the terminology between *shari'a*, *fiqh*, *qānūn*, and Islamic law.

Some of the writings of Indonesian Muslim scholars and several regional regulations that the authors use as data in this paper are not intended to justify that they do not know the different definitions and legal implications of the overlapping use of the terminology of *shari'a*, *fiqh*, and *qānūn*. Some of them have defined their *shari'a* terminology, which is sourced from the Qur'an and hadith. However, the author argues that these terms are often used “inconsistently” and seem

⁴⁶ “Regional Regulation of the Province of the Special Region of Aceh Number 5 of 2000 Concerning the Implementation of Islamic Sharia.”

⁴⁷ Dinas Syariat Islam Aceh, “Perda atau Qanun,” accessed November 26, 2020, <http://dsi.acehprov.go.id/perda-atau-qanun/>.

⁴⁸ Andi Muhammad Asrun, Abdu Rahmat Rosyadi, and Yennie K. Milono, “Mempertanyakan Legalitas Qanun Aceh: Sesuikah dengan Sistem Peraturan Perundang-Undangan,” *Qanun Jurnal Ilmu Hukum* 21, no. 2 (August 2019): p. 285, <https://doi.org/10.24815/qanun.v21i2.12632>.

“overlapping.” Some of the Muslim scholars may understand the differences between some of these terminologies but tend to prefer to use the language of *shari'a*.

Criticism of the Cognitive Nature of the Islamic Law System in Indonesia

Based on the author's search, some Muslim scholars in Indonesia are inaccurate and seem “overlapping” in using the terminology of *shari'a*, *fiqh*, and *qānūn*. This matter can be seen in the writings of Misbahuddin and Nasrullah,⁴⁹ Nasrullah,⁵⁰ Hakim and Munawwarah,⁵¹ and Mariadi,⁵² as explained above. Inaccuracies in using the terminology of *shari'a*, *fiqh*, and *qānūn* are also contained in the Regional Regulation of the Special Region of Aceh Number 5 of 2000 concerning the Implementation of Islamic *shari'a*. The regional regulation includes Islamic law as part of the *qānūn*. From this, it appears that the legislators and ulama (Ulama Consultative Council/MPU) who played a role in making the regional regulations in Aceh⁵³ were not right in using *shari'a* terminology to explain *qānūn* taken from their *fiqh* and *ijtihad*. In this case, Bowen criticizes the ambiguity in the use of the three terms of Islamic law. According to him, several actors have different interests in representing the term *shari'a*, such as the Governor of Aceh. He gave *shari'a* legitimacy as a term that can cover all purposes.⁵⁴ Thus, there are still misunderstandings in the expression of some Indonesian Muslim scholars in using different concepts from the terminology of *shari'a*, *fiqh*, and *qānūn* in their scientific works and legal products. For more details, see Picture 1.

⁴⁹ Misbahuddin, “Fleksibilitas Penerapan Syariah Islam,” 439.

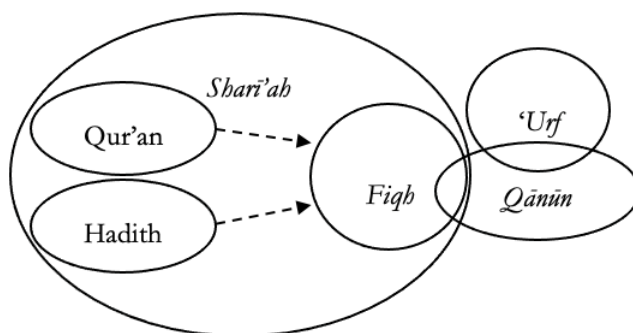
⁵⁰ Nasrullah, “Hukum Syariah di Aceh: Fleksibilitas dan Moderasi dalam Kehidupan Sosial Keagamaan,” 10–12 dan 3–4.

⁵¹ Hakim and Munawwarah, “Remisi Koruptor Perspektif Syariat Islam,” 29.

⁵² Mariadi, “Pelaksanaan Syariat Islam pada Qanun Nomor 11 Tahun 2002 Bidang Aqidah, Ibadah, dan Syiar Islam,” 115–16.

⁵³ Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawaii Press, 2008), p. 156.

⁵⁴ Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 15.

Picture 1: Cognitive Nature of Islamic Law in Indonesia

Picture 1 above describes the cognitive nature of Islamic law by some Muslim scholars in Indonesia using the terminology of *shari'ah*, *fiqh*, and *qānūn*. Based on the data above, we can understand that some Muslim scholars in Indonesia still understand *shari'ah*, *fiqh*, and some *qānūn* taken from *fiqh* as something that comes from divine revelation, not an understanding of revelation itself. The cognitive nature of Islamic law, such as in picture 1, can cause the dynamics of the development of Islamic law in Indonesia to become rigid and close again the doors of *ijtihad*, which have begun to open slightly. The overlap in the use of the terminology of *shari'ah*, *fiqh*, and *qānūn* in explaining the problems of Islamic law can also result in the emergence of the phenomenon of heresy and disbelief among fellow Muslims. I still feel this phenomenon until now and is overgrowing on social media. Not only in Indonesia, but several Muslim countries in the world have also begun to contract this disease.

Based on the data above, the writer believes that a clear distinction in using the three terms is fundamental, as also stated by Jasser Auda.⁵⁵ According to him, it is common knowledge that Islamic jurists interpret *fiqh* as a product, cognition, and human expertise through the *ijtihad* of scholars to reveal the meaning contained in the Qur'an and hadith. The implication is that *fiqh* and *qānūn*, which are the results of human cognition and the truth is relative, can change according to changes and developments in time

⁵⁵ Auda, *Maqāsid al-Shari'ah as Philosophy of Islamic Law: A System Approach*, p. 57.

and place.⁵⁶ This distinction is considered essential by Auda because the blurring of the signs that distinguish the two terms can result in the emergence of claims of “divinity” and “holiness” against the results of human cognition, which lead to the emergence of authoritarianism in Islamic law.⁵⁷

To anticipate the potential negative impact of the misuse of the terminology of *shari'a*, *fiqh*, and *qānūn* by Muslim scholars and legislators in Indonesia, the author argues that it is essential to distinguish between these terms, as explained in the previous discussion. In terms of its use, the terminology of *fiqh* must be excluded from God's single revelation. Likewise with *qānūn* or the cognitive products of other jurists. The use of these terminologies, which is the result of human thought, cannot be matched with the wording of *shari'a*, which is a manifestation of God's revelation.

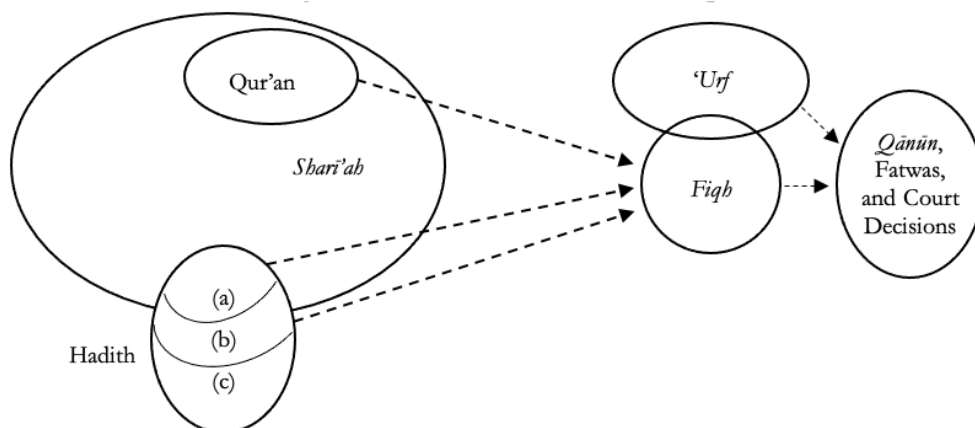
Giving clear boundaries and not confusing the terminology of *shari'a* with *fiqh* will impact the emergence of mutual respect and respect. No longer any claim that *fiqh* like *shari'a* must be true without considering the authenticity and impact of language, *ijmā'*, and *qiyās*. Likewise, no one else claims one of the opinions of Islamic jurists as the most correct, while the others are wrong. *Fiqh* must continually develop and change according to sweet human changes. Thus, the tradition of Islamic law in Indonesia has again become dynamic and can answer the problems of contemporary Islamic law, which is influenced by globalization. The cognitive nature of current Islamic law in Indonesia can be seen in Picture 2.⁵⁸

⁵⁶ Muhammad Lutfi Hakim, “Rekonstruksi Hak Ijbar Wali (Aplikasi Teori Perubahan Hukum dan Sosial Ibn al-Qayyim Al-Jawziyyah),” *Al-Manabih: Jurnal Kajian Hukum Islam* 8, no. 1 (2014): p. 59, <https://doi.org/10.24090/mnh.v8i1.401>.

⁵⁷ Khaled M. Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority, and Women* (Oxford: Oneworld Publications, 2001), p. 293.

⁵⁸ The author took this picture from Auda with slight modifications following contemporary Islamic legal thought products in Indonesia.

Picture 2: The Cognitive Nature of Contemporary Islamic Law in Indonesia



Picture 2 briefly describes the relationship between *shari'a*, *fiqh*, and *qānūn*. Picture 2 illustrates the cognitive nature of contemporary Islamic law experts in Indonesia. Picture 2 explains that *shari'a*, which is sourced from the Qur'an and hadith is God's revelation, while *fiqh*, *qānūn*, fatwas, and court decisions are included in the knowledge of God's revelation. Although both know God's revelation, *fiqh* results from the *ijtihād* of classical Islamic jurists by paying attention to the *'urf* that existed when the *fiqh* was made. While *qānūn*, fatwas, and court decisions are taken from some *fiqh* by considering the ever-dynamic developments of the condition of society and national law.

Picture 2 shows a new relationship between *shari'a*, *fiqh*, and *qānūn* from the cognitive nature of Islamic law in Indonesia. Muslim scholars should use the terms *shari'a*, *fiqh*, and *qānūn* according to their terminological meaning. Thus, there will be no overlap and inconsistency in using the three terminologies.

Conclusion

The cognitive nature of Islamic law in some Indonesian Muslim intellectuals, legislators, and scholars who play a role in making regional regulations often uses the terms *shari'a*, *fiqh*, and *qānūn* in the same way in the realm of God's absolute revelation. Therefore, the three terms are often used interchangeably and sometimes overlap.

The inappropriate use of these three terms can be seen from several Indonesian Muslim scholars and the Regional Regulation on Islamic *shari'a* in Aceh formulated by legislators. There are apparent differences between the terminology of *shari'a*, *fiqh*, and *qānūn* from the aspect of the creator, source, scope, nature, time, amount, and characteristics. The term *shari'a* is included in God's revelation, while *fiqh* and *qānūn* are the results of cognition from the *shari'a* itself. Thus, the character of Islamic legal understanding should be shifted out of God's revelation and contextualized so that the Islamic legal tradition remains relevant and dynamic.

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