Volume: 9 Issues: 63 [June, 2024] pp. 549 - 561
Journal of Islamic, Social, Economics and Development (JISED)
eISSN: 0128-1755
Journal website: www.jised.com
DOI: 10.55573/JISED.096344

LEGAL ANALYSIS AND REGULATION OF MAJALLAT AL-AHKAM AL-ADLIYYAH IN ISLAMIC FINANCE

Zanirah Mustafa@Busu[1 *]
Noraini Junoh[2]
Mohd Miqdad Aswad Ahmad[3]

[1,2,4]Academy of Contemporary Islamic Studies (ACIS), Universiti Teknologi MARA Cawangan Kelantan.
[3]Department of Law, Faculty of Law, and International Relations, Universiti Sultan Zainal Abidin.
[*] Corresponding author: zanir126@uitm.edu.my

Article history
Received date : 13-5-2024
Revised date : 17-5-2024
Accepted date : 4-7-2024
Published date : 10-7-2024

To cite this document:
Mustafa@Busu, Z., Junoh, N., & Ahmad, M. M. A. (2024). Legal analysis and regulation of Majallat Al-Ahkam Al-Adliyyah in Islamic finance. *Journal of Islamic, Social, Economics and Development (JISED)*, 9 (63), 549 – 561.

Abstract: *The Majallat al-Ahkam al-Adliyyah or the Book of Justice covers the first Islamic civil law introduced in Islam, during the Ottoman Empire in the 19 th century. Majallat al-Ahkam al-Adliyyah covers many types and problems of fiqh al-muamalat (Islamic commercial legislation) which mostly depends on the opinions of the Hanafi Maddhab. This research also describes Majallat al-Ahkam al-Adliyyah from the aspect of the research on the understanding of Fiqh and the law as discussed in this article. This research aims to explain the rules of fiqh found in Majallat al-Ahkam al-Adliyyah as a form of reform that can be developed and implemented today. Researcher focused on the development of the method of fiqh through the works of bibliography before the formulation of the magazine, the record of the writing of the magazine itself and the aspects contained in it. The research method using qualitative design through analysis of text content on the book Majallat al-Ahkam al-Adliyyah. Data and information are obtained from documents, journals and references related to the scope of the research. The results of this study found that the jurisprudence of muamalat law from an Islamic perspective is very relevant in the context of the Islamic banking system today. In general, the collection of fiqh methods requires continuous effort because it is not limited to the aspects of reform brought in the formulation of Majallat al-Ahkam al-Adliyyah alone or even in line with the development of the times. Finally, it is our hope that this small contribution of writing will be able to help increase the knowledge of the Muslim community on Islamic law, especially in the chapter on the Islamic financial and banking system.*

Keywords: *fiqh, regulation, Islamic finance*

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Introduction

Shariah and Fiqh have a strong bond and are difficult to separate, but between the two there are fundamental differences. Although sharia and fiqh have a strong bond and are difficult to separate, but between the two there are fundamental differences. The word syariat (Ar: asy-syari'ah) etymologically means the source or flow of water used for drinking (Muhammed, M.N., & Ali, M.M. 2017). In its development, the word shariah is used by the Arabs to refer to the straight path of religion or at-tariqah al-mustaqimah, because the two meanings have a related meaning. The source or flow of water is the basic need of human beings to maintain the safety of their souls and bodies, while at-tariqah al-mustaqimah is the basic need that will save and bring good to mankind. From this root word, syariah is defined as the straight religion revealed by Allah SWT for mankind. In terminology, states that sharia is the same as religion (Kamali 2011).

Meanwhile, Manna al-Qattan (1982) a jurist from Egypt defines the Shariah as all the provisions of Allah SWT for His servants which include matters of faith, worship, morals, and the way of life of mankind to achieve their happiness in this world and the hereafter. Then Fathi al-Duraini (1979) stated that the Shariah is everything that Allah SWT revealed to the Prophet Muhammad SAW in the form of revelation, both contained in the Quran and in the sunnah of the Prophet SAW which is believed to be authentic. He further said that the Shariah is an-nusus al-muqaddasah its the holy texts contained in the Quran and the sunnah of the Prophet SAW. Based on the definition of the Shariah, the scholars of fiqh and the proposals of fiqh state that the Shariah is the source of fiqh. The reason, fiqh is a deep understanding of an-nusus al-muqaddasah and is an effort of the mujtahid in capturing the meaning and illat contained by the an-nusus al-muqaddasah.

Thus, fiqh is the result of scholar's ijtihad on the verses of the Quran or the sunnah of the Prophet SAW. Since these differences, fiqh scholars state that sharia and fiqh cannot be equated. The reason is that the Shariah originates from Allah SWT and His Messenger, while fiqh is the result of the thinking of a mujtahid in understanding the verses of the Quran or the hadith of the Prophet SAW. According to Fathi ad-Duraini (1979), before it was entered by human thought, the Shariah was always true. While fiqh, because it is the result of human thought, can be wrong and can be right. However, according to Muhammad Yusuf Musa (2009) a fiqh expert from Egypt, he thought sharia and fiqh have a close relationship, therefore fiqh cannot be separated from sharia.

Majallat al-Ahkam al-Adliyyah (1968) is an Islamic civil law which was first introduced in a country and an Islamic government during the Ottoman Empire in the nineteenth century. This law was set by a special institution that was assembled based on certain factors and requirements. Majallat al-Ahkam al-Adliyyah which is the first Islamic civil law, has its own characteristics compared with other laws created by human because this law is based on Islamic rules established from al-Quran and al-Sunnah. Majallat al-Ahkam al-Adliyyah literally means 'Justice Rule Book'. It is an Islamic civil law which truly follows the Islamic rules and jurisprudence as compared to other civil law existed at the time, such as the law created in the West. In fact, this law was enacted as the official law of the Ottoman Empire following the complete fiqh (Islamic jurisprudence) based on Hanafi madhhab. The Hanafi Madhhab followed by most people in Ottoman Empire. Among the features of Majallat al-Ahkam al-Adliyyah is its comprehensive nature which covers almost all types and forms of problems in the aspects of fiqh muamalat (Islamic jurisprudence on transaction) but does not involve other fiqh fields.

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Furthermore, the law uses the opinions of the Hanafi madhhab on the ground that it is the most popular madhhab with various views from different level of mujtahids (person with authority in Islamic law) (الطبقات) and with the most disputes in opinions (Majallat al-Ahkam al-Adliyyah, 1968). The most appropriate fiqh knowledge used in that period also conformed to the concepts expressed by the mujtahid from the Hanafi madhhab which could not be revised (التنقيه) unlike the Shafi'i madhhab. The custom and 'uruf (knowlege) of the society at the time also conformed to the concept of Hanafi which coincided with the demand and practice of the society. The Majallah al-Ahkam al-Adliyyah is a law book related to transactions such as buying and selling (Buyu'), leasing (Ijarah), suretyship (Kafalah), assignment of debt (Hiwalah), pawnbroking (Rahnu), reconciliation (Sulh), and so on. Originally written in the classical Ottoman language known as Osmanlıca, it was later translated into Arabic, Greek, and French (Samy Ayoub 2015). During the reign of Sultan Ibrahim (1895-1959) in the state of Johor, Majallah al-Ahkam al-Adliyyah was implemented in the legal system. This book was translated into Malay by Syed 'Abd Qadir bin Muhsin al-Attas, who was the Mufti of Johor. The translation aimed to make Majallah Ahkam Johor the official guide on Shariah law in the state of Johor in 1913 (Abd. Jalil 2002).

Establishment of Majallat Al-Ahkam Al-Adliyyah

In a report by a magazine board on Majallat in Muharram 1286 H, it was stated that that matters relating to world affairs are part of the fiqh. While, in general it is divided into two parts, namely matters relating to marriage (**المناكحات**) and matters relating to penalties (**عقوبات**) (Majallat al-Ahkam al-Adliyyah 1968). On the other hand, the shakhsiyah (personal) law (**الشخصية**) for civilized race is divided into three parts, two as above and the third is a law related to business or transaction. This report is written to illustrate the importance and relevance of Majallat al-Ahkam al-Adliyyah as a set of rules and regulations in the society.

Majallat al-Ahkam al-Adliyyah was compiled by a board chaired by the Justice Minister of the Ottoman Empire, Ahmad Jawdat, and certified by Sultan Mahmud II on 8 Dzulhijjah 1285 H (10th March 1868 M) (Md. Habibur Rahman & Noor Mohammad Osmani 2018). The original translation from Turkish into Arabic language was performed by Islamic scholars (ulama) in those days to use Majallat al-Ahkam al-Adliyyah as the main reference in the jurisprudence of some of the neighboring countries of Turkey, which was one of the effects of the establishment of Majallat al-Ahkam al-Adliyyah. The translation into English was also done by C.R Tyser (1967). After the birth of four great madhhabs in fiqh, namely Hanafi, Maliki, Shafi'i and Hanbali, from the second and fourth centuries, the composition of ijtihad (legal practice) was almost complete until after the fourth century hijrah, which some ulama stated that the gate of ijtihad has been closed.

In the middle of the seventh century of the Hijrah until the emergence of Majallat al-Ahkam al-Adliyyah in 1286 H, it was the period of resurrection towards ijtihad and the emergence of various fresh opinions which contributed to the development of fiqh. In the past, the weakness of ijtihad and development of taqlid and taasub (fanatical thinking) have been observed. Taqlid means uncritical and unqualified acceptance of an authoritarian code of a particular religious teacher. In fact, this jumud (old-fashioned) and fanatical characteristic lead to disability of exegesis and poor development (Mustafa Ahmad 1968). Among the phenomena that occurred during that period was limitation in the compilation of books on fiqh, therefore understanding one madhhab and learning only certain books alone were sufficient.

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In the days prior to the emergence of ilmiyyah (scholarly) thinking turning into a growing comodity, especially in mastering problems in fiqh, the ability to analyze (التخريج و الترجيح) the laws that makes it possible to apply Islamic law also grew (Gábor Ágoston & Bruce master's, 2009). Among the characteristics of the establishment of Islamic Fiqh includes the use of Majallat al-Ahkam al-Adliyyah as the law for general justice. Other characteristics include the emergence of thinkers and law experts who analyzed and produced the law, and the birth of current opinions consistent with the demands during the period.

Factors Leading to Formation of Majallat Al-Ahkam Al-Adliyyah

There are several key factors in the formation of Majallat al-Ahkam al-Adliyyah, among them are due to the weakness of existing laws, emergence of problems in the fiqh, and emergence of administrative problems and uniformity.

Weaknesses in the Existing Laws

The widespread trade involving various transactions that need to be exempted, such as bills of exchange and bankruptcy from the original law are some of the weaknesses in the existing laws. Examples of trade laws include the Commercial Code 1850 and the Code of Commercial Produce 1853 (Coulson C. J 1964). Furthermore, appearances of trade cases that are missing in trading laws such as mortgage, collateral and wakalah (representation) also add to the inadequacy of the existing law. In the trade of the Ottoman Empire, many laws like civil law had been made. However, these laws were unable to define all forms of transaction. In fact, there were many problems related to the part of mu'amalat (transactions) that only knowledge of fiqh (fiqh mu'amalat) was able to solve this related problem. As a necessary requirement in the field of commerce, new forms of legislation were used including tamyiz al-hukm (led by sharie judge) and knowledge on fiqh as the source of rules and primary law in the state known as the Code of State (Ramizah Wan Muhammad 2009). The Ottoman Empire Trade Law is a law that had been practiced in trade in the entire Ottoman Empire, however every case involving trade that had no regulation in the law would cause a great deal of trouble. The law was the Imperial Irade which was an incomplete law.

Issues In Fiqh

The opinions of fuqaha in the fiqh problems were unorganized although there were many opinions to be chosen from. It made it difficult for judges to make references to the law and opinions of fuqaha. The election of qawl that was the most rajih (concrete) was also difficult to do. This difficulty would cause the inability of the judge to execute punishment and decision in the fairest manner. The opposite opinion of fuqaha also created various problems in the decisions that have been made by judge. This caused the judge to take a long period of time for each case. So, the government wanted and urged the existence of a direct reference source that was able to resolve cases promptly and accurately.

Administrative Problems and Uniformity

The fiqh law which was to be implemented constitutes the official law of the state and all problems and cases were solved based on fiqh. Nonetheless, the members of the Council of Tamyiz al-Huquq and other judges were not well-informed about fiqh law. When the shara' judge decided according to the shara' member, members of Tamyiz disputed the decision which was made based on the rules and laws of the country. This inappropriate conjecture created a scorn to the justice and judicial system. For the judges of the Syariah court, if they did not find clear or sarih texts, ruling could not be made with just one method. This Methods that were applied are fiqh method from Madhhad Hanafi by Ibn Nujaim (Muhammad Yusuf Saleem

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2010). However, every method used was useful in solving problems, which is to examine each problem and its argument. Therefore, the administrative officer should refer to the judge for the correct and appropriate method and argument to solve a case.

Other Related Factors

Other factors include appearance of unresolved cases in trade deals in Turkey which is known as the international center of trade. In addition, communities and individuals did not accept and considered the existing trade laws as relevant and appropriate. They were more likely and interested in a more appropriate Islamic law which has a better impact on all parties in business and transactions. Furthermore, another factor is the wish of the rulers who wanted a transparent and meticulous government.

Fiqh Legislation of Majallat Al-Ahkam Al-Adliyyah

Majallat al-Ahkam al-Adliyyah emerged under the rule of successful Ottoman sultans. Starting from the 14th and the subsequent centuries until the emergence of Majallat under the sultans' reign from the time of Sultan Abdul Hamid I (1774-1789), Sultan Salim III until Sultan Mahmud II (Md. Habibur Rahman & Noor Mohammad Osmani 2018). The credibility of the sultans is manifested in terms of intelligence and dedication, and the capability in ruling the country with systematic legislation (Shaw & Shaw, 1997). Sultan Mahmud II had spearheaded the Turkish Government by initiating the reform and modernization of the Ottoman Empire and became an admired and respected ruler despite facing conflicts in political unrest, war with Russia, England, and Iran. The reform was done by creating posts from various ministries and hiring officials to handle domestic and foreign affairs, military and so on including the recognition and title of ministers such as the Minister of Home Affairs (Umuru-u Mulkiye Nezerati) in 1836. The planned reforms were carried out in the field of maritime education, administration and in the legal field (Shaw & Shaw 1997).

These reforms are the effects of the Westernization process received during his reign. It happened as Turkey was having political relations and economic cooperation with Western countries such as France and England. This reform is referred to as tanzimat (تنظيمات) which is the process of reform in the Ottoman government which dated from 1839 to 1876 AD. The legal field received the most extensive reform through the process of renewal and experienced the most tanzimat effects compared to other fields. Among the Islamic laws used in the reign of Ottoman Empire, is the principle of civil law which was applied according on the principle of Islamic law, in which was practiced in the law of self-status, family relationship, inheritance, contract and property acquisition. These principles were combined with local custom law in relation to agricultural land. Criminal law, penalties and fiqh regulations relating to individual misconduct were practiced in legislation. Rules and regulations were subjected to current developments based on changes made by the government.

The clash of two civilizations in the 19th century AD between the Islamic and Western laws, the Ottoman Empire still upheld Islamic civil law as a rule recognized in the law of the country. Ultimately, to achieve the ideals of establishing Islamic jurisprudence, meeting of the scholar institution under the Tanzimat Council (Legislative Council) was held and many problems were noted. Nonetheless, the record was imperfect, until the birth of mu'amalat law based on the fiqh method. After the meeting of the members of the al-Ahkam Board or known as the High Court which collected the opinions of the ulama from the Madhhab Hanafi, subsequently the regulations were compiled in books and chapters as a set of law that is just and accurate. Nevertheless, the law in terms of the arrangement was influenced by the style of arrangement

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of the Western civil law and contained 1,851 legal clauses (Mahmasami, 1961). The arrangement works of the Islamic civil legislation lasted for seven years from 1286 Hijrah (1869 AD) to 1292 AH (1876 AD). This law was endorsed by Sultan Mahmud II and is named Majallat al-Ahkam al-Adliyyah. Generally, this law is a modern law divided into several books, chapters, and clauses in which it contains 1,851 Maddah or clauses (Majallat al-Ahkam al-Adliyyah 1968). After completing the writing of muqaddimah (introduction), a book was given to Sheikh al-Islam to be reviewed as a skilled party in the field of fiqh. After being assessed, evaluated, and reviewed then a copy was written and submitted to the sultan. The translations into Arabic were directly made even though the construction of law was still in process (Samy Ayoub, 2015. The process of formulation of Majallat al-Ahkam al-Adliyyah was in stages beginning with muqaddimah until the last chapter. The formulation and establishment of Majallat al-Ahkam al-Adliyyah involved individuals who were partly different, for each chapter and topics of discussion.

Content of Majallat Al-Ahkam Al-Adliyyah

The Turkish civil law was adopted during the Ottoman Empire until the Second World War. Among the most important contents in it are:

1. The definition of fiqh, division and explanation of the methods used.
2. The presentation of issues through chapters related to each mu'amalat based on Islamic law with all relevant divisions.
3. The inclusion of 13 sections, the arrangement of the law in the form of simple articles and based on one opinion only.
4. The includion of arcticles amounting to 1851 maddah.
5. The formation of the law from the opinions of the Madhhab Hanafi (Manna' Qattan 1982).
6. The inclusion of 99 fiqh methods in this Majallat, based on the actual method which is five main methods. This is because the production of the 99 methods is the furu' method broken down from the five basic methods (قواعد كليات) compiled by Imām Abū Tāhir al-Dabbās in the 4th century of Hijrah (Siti Zalikha 1999).

Arrangement of Clause (Maddah) In Majallat Law

The law contains 1851 clauses, in 16 books which have chapters in each book. In clause 1, it introduces the arrangement of fiqh types, which explains the reasons for the necessity and the demand of society. In addition, the purpose of its implementation is to preserve justice from one systematic law. The law is derived from the knowledge of fiqh on the problem of shara' in the form of deeds or behavior. The discussed fiqh problems are covered in two parts, which are the affairs of the hereafter such as ibadat and other affairs including munakahat (marriage), business which is mu'amalat and punishment ('uqubat) or penalties. From point 2 to 100 explain about 99 fiqh methods which are used to clarify the method used in this law book in laying the concept and law of each mu'amalat. Each book in the law has its own separate muqaddimah, therefore for the 16 books compiled there are 16 muqaddimah given before discussing each chapter in the book (Mohd Akhir Yaacob 1990). In the statement in the beginning of Majallat states that judges can not to impose a law simply by relying on one of these fiqh rules, before they obtain a clear and accurate argument or information. Nonetheless, it has the advantage of determining or classifying the arising problems. Anyone who studies these rules will find that the problems are based on their arguments.

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The position of Majallat al-Ahkam al-Adliyyah in the aspect of fiqh

If assessed in terms of its position in the aspect of fiqh as mentioned in the introduction written in Majallat al-Ahkam al-Adliyyah, Allah requires the retention of the system of nature, maintenance of race or type of human. Retention of race or the human species will cease with the mixing of nasab (lineage). Meanwhile, working to make a living is human nature, like finding shelter and clothes to wear. Humans also need to stay dependent on one another and help each other as human being cannot possibly be alone on earth. Therefore, they need to cooperate, share with each other to maintain the justice and the system among them by caring for each other.

Thus, the emergence of Majallat al-Ahkam al-Adliyyah stops all matters that undermine the system of nature that Allah has arranged such as the progress of life, cooperation, partnership, and transactions controlled by fiqh mu'amalat. However, because Majallat is specific to fiqh mu'amalat then other matters and problems such as the mixing of men and women requires fiqh munakahat, and that life and behavior must be controlled by fiqh 'uqubat (criminal and penal law). With this assessment, the author finds that the Majallat only serves from one point of view of the fiqh method for mu'amalat and is only based on Hanafi's opinion without considering the opinion of the other madhhab. However, Hanafi's opinion can be considered precise because Imam Hanafi is a fully engaged person in the transaction during his life and the laws and opinions given are based on true and correct facts in the field. This madhhab often develops and does not necessarily consider the door of ijtihad compared to the more careful or conscientious (احتياط) Shafiyyah which assumes the doors of ijtihad have been closed. In general, the opinions of the madhhab Hanafi are rajih opinions in the field of mu'amalat, particularly in current issues.

The Fiqh Methods in Majallat al-Ahkam al-Adliyyah

Method and language mean the foundation that is the foundation of something whose origin can be seen with the senses as the foundation of the house and the foundation of something can't be seen as the foundation of religion. In terms of terminology, it is things that are practiced from basic things to furu' 'or fraction matters. It also means the principles of fiqh that are general in nature in the form of short texts that contain general laws that correspond to their parts. For example, Method: al-Dararutul Yuzal that is, the danger must be eliminated. Therefore, Qawaid fiqhiyyah is the method of fiqh in Islamic law which is the basis for understanding and developing Islamic fiqh on the rules of law. It took effect after the death of the Prophet and all laws are no longer repealed. These rules of fiqh require flexible legal paths to open opportunities for human beings to use their nas-guided intellect to perform ijtihad. Although all the laws have no repeal after the death of the prophet, but through the nas form another method. That is, the law changes according to the change of time. Based on that meaning, Maudu 'or the scope of the debate on the method of fiqh is about the actions of the mukallaf. While the object of the method of fiqh is Islamic law.

It has been said that all the methods used in this Majallat are from the madhhab Hanafi which has been taken from the book of al-Ashbah wa al-Naza'ir, authored by Ibn Nujaim. Although there are 99 methods, in essence they are based on the five kulliyah methods which all madhhabs believe in:

i. الأمور بمقاصدها
ii. اليقين لا يزال بالشك

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iii. المشقة تجلب التيسير
iv. الضرر يزال
v. العادة محكمة

The methods mentioned from Maddah 2 to 100 either bind (يقيد), concentrate (يخصص), or exclude these five basic principles.
Example of the fractions of Furu' Method from the original methods such as:

* The method of الأصل بقاء ما كان على ما كان is a fraction of the original method which is اليقين لا يزال بالشك as found in Majallat. (Maddah 5)
* The method of الأصل اضافة الحادث إلى أقرب أوقاته is a furu' of the original method which is اليقين لا يزال بالشك as found in Majallat. (Maddah 11)
* لا ضرر ولا ضرار method of branch for original stock which is الضرر يزال as found in Majallat. (Maddah 19)

Similarly, the rest of the methods contained in Majallat which guides them to carry out the law and constitute the basis of fiqh rules which are compiled in accordance with valid (qat'i) arguments.

Because the problems of fiqh and its fractions are too many, it is necessary to set certain rules. It is the duty of jurists to understand the method and know the propositions, because all the problems of jurisprudence depend on certain rules. Therefore, among the main methods of general jurisprudence will be discussed there are five:

1. Everything depends on its purpose (الامور بمقاصدها)
This method of every action and practice of an individual is considered on the factor of intention. As the words of the prophet which means, "indeed the practice is counted with intention".

According to al-Imam al-Sayuti, the role of intention is as a vehicle that will differentiate a practice whether it is a practice of worship or customary practice, and it is also important to distinguish the levels of worship from each other.
Among the practical examples included in this method are:
i. Ablution and bathing are sometimes intended to cool the body or cleanse the limbs and sometimes for the purpose of worship.
ii. Sitting in a mosque sometimes for the purpose of rest and sometimes for the purpose of iktikaf.

2. Belief cannot be removed by mere suspicion (اليقين لا يزال بالشك)
This method means that something that has been believed will not be lost with the coming of suspicion, but it can be lost with confidence as well. In other words, confidence will not be set aside by mere suspicion. For example, a person who has eaten someone else's property says, 'you have allowed me to eat', even though the food is denied by the owner. So, in such a situation, the words of the owner of the food must be accepted because originally a person's property was illegal to eat without the prior permission of the owner.

3. Difficulty is the reason for ease and relief (المشقة تجلب التيسير)
This difficulty carries the meaning of masyaqqah (difficulty) which is beyond the normal limits and cannot be borne by human beings so that it is necessary for convenience and even relief. For example, it is allowed to perform tayammum in the absence of water.

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4. Harm must be eliminated (الضرر يزال)
This method means that the harm encountered must be avoided first. For example, one should utter the word kufr when forced, in addition to the heart still believing in Allah and should eat carcasses when desperate.

5. Custom is used as a legal reference (العادة محكمة)
A custom is something that is done repeatedly that eventually becomes a habitual practice. Example of buying and selling without a contract when buying drinks at a beverage machine (vanding machine).

The Position of Qawaid Fiqhiyyah in Islamic Law

Indeed, the nature of this qawaid is "aqlabiyah" does not mean that it will reduce its scientific value or lower its high position in fiqh and its great impact in the understanding of fiqh. This is because there is in the rules an interesting description of the general principles of fiqh, building the foundations of those principles in terms of theory, then he establishes the practical laws of furuq with several methods that explain the unity of the place of attachment or god in each group of furuq laws and the aspect of following dengsn a follow that brings together the laws of furuq despite different titles and different chapters (Hassan Ahmad & Mohd Soleh Ahmad 2002). If this qawaid does not exist then the laws of fiqh will be separate laws of furuq and sometimes in appearance can give rise to contradictions with each other without the principles held in mind, which explains the reasons that determine the direction of legislation and provide ways to measure and compare them. This qawaid is very important in the study of fiqh and its great benefits. A faqih can be measured by his ability through the extent of his supervision over this qawaid fiqhiyah, because with this he can understand the methodology or how to issue fatwas. Anyone who takes and adheres to the branches of the problem ja'iyah alone without being guided by qawaid alqulliyah, there will inevitably arise furuq contradictions and require it to memorize detailed problems that do not end. Whoever masters fiqh and its rules does not need to memorize many jaz’iyah problems because it has already been included in the qawaid kulliah and can be reconciled with any that are contrary on the part of others.

The Use as A Law

The use of Majallat al-Ahkam al- ‘Adliyyah as a written law as the rules of evidence, in the Ottoman government replaced the Western civil law practiced as the official law of the Ottoman government in almost all jurisdictions. This coincides with what was explained by Farhet J. Zaideh (1979) who said that the royal declaration of Hatti Sherif on 3 November 1839 AD was not fully implemented. Therefore, after the Creole war in 1853-1856 AD, the European powers had urged the Ottoman government to carry out reforms. These measures lead to the increasingly widespread legal restrictions in the Islamic jurisprudence, covering constitutional, criminal and civil spheres.

Furthermore, before that the applicable law on the European people in West Asia was their own artificial laws and inventions. This situation accelerated the adoption of the Western legal system in Turkey (Farhet J. Zaideh 1979). In 1850 M, The Commercial Code was promulgated as founded on the French Commercial Code. Subsequently in 1858, the Land Code was copied from the French Code and modified with Italian law. Penalties are waived except for penalties for apostates (Anderson 1959). Then followed by the implementation of the Code of Commercial Procedure in 1853 AD, both of which were based on French law, to further smoothen the legal system's rendition, the court system was changed to what known as "Nizamiya". That is why Majallat al-Ahkam al- ‘Adliyyah emerged as the Islamic civil law and

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Journal website: www.jised.com
DOI: 10.55573/JISED.096344

as the Ottoman government's official law which proves that the reinstatement of an Islamic law in the goverment is inevitable. The continued use from its emergence until the end of the Second World War proves its position as a strong law.

The impact of its use spread to some provinces or territories of the Ottonan government including Jordan which remains using the law modified from this Majallat, and even many amendments took place to standardize the current laws and developments. It can even be said modern legislation in the field of muamalat as in Egypt is influenced by the compilation of Majallat (Smith 2022). The use of this Islamic law was not continued when the Ottoman Empire was converted into a republican state when controlled and led by Mustafa Kamal Attartuk in 1927. He had set aside Majallat al-Ahkam al- ‘Adliyyah which was the only Islamic law to be compiled and replaced it with Switzerland's Swiss Civil Code beginning in 1927 (Ernest Jackh 1994). During his reign, he had also altered other laws which are based on Italian and German laws. Nonetheless, Majallat al-Ahkam al- ‘Adliyyah is still applicable in several other countries such as Lebanon and West Asia (Ernest Jackh 1994). This suggest that the Turkish government is a government that is always concerned about legislation. This can be clearly seen from the efforts undertaken to produce Islamic laws through Majallat al-Ahkam al- ‘Adliyyah although it does not last long but the impression can be seen to this day (Smith 2022).

Impact of Majallat Al-Ahkam Al-Adliyyah

The Ottoman Empire is the pioneer in the use of law based on Islam. After being implemented in Turkey, most neighboring countries, and countries under the conquest of the Ottoman Empire apply the form of Islamic law as found in Majallat al-Ahkam al- ‘Adliyyah which they refer to.

Countries such as Jordan and Lebanon, and countries in West Asia use the Islamic legal system as embodied by the Ottoman government. Its implementation proves that the people are beginning to return to Islamic law despite having just return to the Islamic law on muamalat. If analyzed carefully, Malaysia today seems to repeat the history of the Ottoman Empire which used the Islamic law in muamalat, however the difference is, it is not enacted (Mohd Hafiz Othman & Ermy Azziaty Rozali 2020). Egypt, for example, enacted the rules on muamalat as part of its national law (Mohamed, M. S. 2021). In the 19th century, there were various ideas among scholars from various Islamic countries to take opinions from various madhhabs and weighed the most powerful arguments among all the opinions (المقارن). Opinions are made not only from the four madhhabs, but also from the companions and tabi’ins, provided that the opinions are more accurate and appropriate. Originated from various opinions with the strongest views from various madhhabs, in 1333 Hijrah the Ottoman government compiled family law books (al-Ahwal al-Shakhsiyyah) which is a combination of opinions from various madhhabs (Rahendra Maya 2017).

In al-Ahwal al-Shakhsiyyah there are various thought schools that are considered more appropriate to apply. From then on, there was codification of Islamic law in various fields of law. In 1920 and 1925, Egypt compiled a book of civil law and family law filtered from the opinions contained in various books of fiqh. Thus, the whole opinions in the madhhab fiqh are a collection of laws and can be chosen to be applied from various aspects according to current needs. According to Mustafa al-Zarqa`, in countries where the majority population is Muslim, the ability to apply Islamic law with some adjustments to local conditions has begun to grow. In most Islamic countries there have been Islamic family law taken from various madhhabds, such as Jordan, Syria, Sudan, Morocco, Afghanistan, Turkey, Iran, Pakistan, Malaysia, and Indonesia (Mohammad 2015).

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Islamic societies begin to open their eyes to the legal system which becomes a reference in punishing any form of their daily acts, because of the emergence of Majallat al-Ahkam al-'Adliyyah to Muslims and non-Muslims. The world community is aware of the greatness of Islam not only with criminal law, hudud, qisas and marriage but also involving economic law and human trafficking. Ali Hasballah (1986), a faqih from Egypt, said that the ability to apply Islamic law in most Islamic countries is clear. However, the formation and development of the Islamic law do not necessarily depend on the existing fiqh book, but ijtihad can be performed by returning to the original reference of al-Quran and al-Sunnah. According to him, ijtihad jama'iy (collective) should be developed by involving scholars from various disciplines, not only from fiqh knowledge but from all Islamic disciplines. Thus, the fiqh law becomes more in line with the current needs and demands that require change rather than the issues mentioned in the existing fiqh book. In terms of usage and implementation, it is accepted by the Turkish and foreign communities such as traders with the transparency of the implementation of this Islamic law with the economic improvement resulting from increased trade. Governments and rulers also survive despite implementing Islamic law. Thus, the history of Majallat al-Ahkam al- 'Adliyyah proves the use of Islamic civil law is possible as it has lasted more than a hundred years ago in Turkey under the Ottoman Empire.

Conclusion

Majallat al-Ahkam al-Adliyyah is an effort to uphold the Islamic law on this earth. Although basically the enactment of this law encompasses only one field of fiqh (fiqh mu'amalat), but it survived as recorded in history which proves how much the Islamic law is effectiveness and can be recognized as a comparable law or better compared to the civil law created by man. Changes and alterations had been made and adapted from Majallat al-Ahkam al-Adliyyah in which several countries or states began to open their eyes to practice Islamic law. Morevore, if observed closely, in this era, people are keen to apply and practice Islamic law especially in mu'amalat and marriage. Thus, history of Majallat al-Ahkam al-Adliyyah proves that the use of Islamic civil law is not impossible as it has lasted more than a hundred years ago in Turkey under the Ottoman Empire.

Acknowledgment

The authors are members of Special Interest Group (S.I.G) Muamalat Governance. We want to thank Universiti Teknologi MARA (UiTM) Kelantan Branch for support and encouragement to publish this paper. We thank to Allah for giving uspatience, motivation, and assistance to write this journal.

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