

Reconstruction of Legal Subjects in Ushul Al-fiqh: Development and Interconnectivity Analysis in the Contemporary Era**Nur Sodik,¹ Rahmad Setyawan,² Khairuddin,³ Fahlul Ulum Ahmad Adnani⁴**¹STIS Kebumen, ²UIN Sunan Kalijaga Yogyakarta, ³STAI Syekh Abdur Rauf Singkil,⁴Bilad Al-Sham University, Syria¹nursodik082242@gmail.com, ²rahmads465@gmail.com, ³khairuddinazka15@gmail.com,⁴fahlulum@gmail.com[*rahmads465@gmail.com](mailto:rahmads465@gmail.com)DOI: [10.21154/syakhsiyyah.v5i2.7082](https://doi.org/10.21154/syakhsiyyah.v5i2.7082)

Submitted: 15 Juni, 2025; Revised: 18 November 2025; Accepted: 23 November, 2025

Abstract: In general, legal subjects refer to entities that have rights and obligations in the legal system. This study aims to reconstruct legal subjects in ushul fikih and their development in the contemporary era. Methodologically, this study is a library research with an interconnective approach. Data was collected from various literature sources, such as laws, court decisions, books, works of scholars, the Qur'an, hadith, encyclopedias, dictionaries, journals, magazines, and other relevant sources. The results of the study show that, in line with the times, the scope of legal subjects in ushul fikih has undergone development. Previously, legal subjects only included individuals who met the requirements of being *'aqil* and *baligh*, but now they also include legal entities. The reconstruction of legal subjects in ushul fikih and its development in the contemporary era shows the interconnection between ushul fikih and modern sciences, such as legal sociology, legal anthropology, legal philosophy, and modern legal science. This is reflected in a number of laws and regulations in Indonesia that recognize legal entities as legal subjects. Through an interconnective approach, it can be understood that ushul fikih as the epistemological foundation of Islamic law is capable of dialoguing with various modern fields of science in responding to social changes without losing its theological roots.

Keywords: *Legal Subjects; Mukallaf; Legal Entities; Ushul Fikih; Interconnectivity*

Abstrak: Pada umumnya, subjek hukum merujuk pada entitas yang memiliki hak dan kewajiban dalam sistem hukum. Penelitian ini bertujuan untuk merekonstruksi subjek hukum dalam ushul fikih dan pengembangannya di era kontemporer. Secara metodologi, penelitian ini merupakan penelitian kepustakaan (*library research*) dengan pendekatan interkonektif. Data dikumpulkan dari berbagai sumber literatur, seperti Undang-Undang, putusan pengadilan, buku, karya ulama, Al-Qur'an, hadis, ensiklopedi, kamus, jurnal, majalah, dan sumber relevan yang lainnya. Hasil penelitian menunjukkan bahwa seiring dengan perkembangan zaman, cakupan subjek hukum dalam ushul fikih mengalami pengembangan. Jika sebelumnya subjek hukum hanya mencakup individu manusia yang memenuhi syarat *'aqil* dan *baligh*, kini juga mencakup badan hukum. Rekonstruksi subjek hukum dalam ushul fikih dan pengembangannya di era kontemporer, menunjukkan adanya interkoneksi antara ushul fikih dengan ilmu-ilmu modern, seperti sosiologi hukum, antropologi hukum, filsafat hukum dan ilmu hukum modern. Hal ini tercermin dalam sejumlah peraturan perundang-undangan di Indonesia yang mengakui badan hukum sebagai subjek hukum. Melalui pendekatan interkonektif

dapat dipahami bahwa ushul fikih sebagai fondasi epistemologi hukum Islam mampu berdialog dengan berbagai bidang ilmu modern dalam merespons perubahan sosial tanpa kehilangan akar teologisnya.

Kata Kunci: *Subjek Hukum; Mukallaf; Badan Hukum; Ushul Fikih; Interkoneksi*

INTRODUCTION

Islamic law is a set of rules that serves as a guide for Muslims in their daily lives. It is comprehensive and universal, encompassing various aspects of human existence.¹ To apply it correctly, a deep understanding is needed, as misunderstanding Islamic law can distance the meaning and value of the law itself from human life, and even potentially eliminate its function in society. Therefore, serious attention is needed to the factors that enable Islamic law to adapt and move dynamically with the times. In this way, Islamic law will always remain alive, relevant, and contextual to the social changes that occur.²

Joseph Schacht viewed Islamic law as a symbol of the way Muslims think, the most characteristic reflection of the Islamic way of life, and the most fundamental core of Islamic teachings itself.³ This view suggests that any discussion about Islamic teachings cannot be separated from the realm of law, as Islamic law is the heart of that system of teachings. In this context, ushul al-fiqh serves as a branch of knowledge that studies the methods and steps for deriving rulings from the primary sources of Islamic teachings.⁴

It cannot be denied that Usul al-Fiqh is one of the most valuable intellectual treasures of Islam and plays an important role in enriching the religious diversity of every mukallaf. Without the existence of this science, the application of Islamic law derived from the Quran and hadith would be difficult to understand deeply, especially when faced with new issues that arise in the midst of modern life. This is because ushul al-fiqh serves as a guide and pathfinder for fiqh, which is the concrete form of legal answers to various issues faced by the community. The science of ushul fiqh is essentially a set of methods or a framework of thinking used to derive Islamic law from its sources, whether thru textual evidence in the form of revealed texts or thru rational evidence in the form of reason and scientific thought. As a discipline, ushul fikih has a system, steps, and rules that are arranged sequentially. It not only relies on sacred texts but also depends on the power of rational logic in the process of establishing laws. This is the uniqueness of ushul fiqh compared to other disciplines of knowledge; it is able to harmoniously bring together revelation and reason, making it a living, dynamic science that is relevant to the changing times.⁵

¹ Mohammad Mushfequr Rahman, "Islam : The Complete , Functional and Practical Guide to Life," *International Journal of Education, Culture and Society* 9, no. 3 (2024): 87–108, <https://doi.org/https://doi.org/10.11648/j.ijecs.20240903.11>.

² Ahmad Mukri Aji, "Dinamisasi Hukum Islam di Indonesia," *Mizan: Journal of Islamic Law* 4, no. 2 (2016): 253–70, <https://doi.org/10.32832/mizan.v4i2.20197>.

³ Joseph Schacht, *Pengantar Hukum Islam*, alih bahasa Moh. Said dkk. (Jakarta: Dibrinperta, 1985), 1.

⁴ Siti Rahmaayu Dwi Permatasari et al., "Sejarah Perkembangan Ushul Fiqih, Tokoh-Tokoh Ushuliyah, dan Kitab-Kitab Ushul Fiqih," *Akhlak: Jurnal Pendidikan Agama Islam dan Filsafat* 2, no. 2 (2025): 126–36, <https://doi.org/10.61132/akhlak.v2i2.649>.

⁵ Abu Yasid, *Ushul Fiqh Interelasi Nalar, Wahyu dan Maqashid Asy-Syariah* (Yogyakarta: IRCiSoD, 2019), 9.

Beside relying on revelation as the primary source, ushul fiqh also has an empirical basis grounded in knowledge. Within it, there is a certain simplification process that serves to formulate legal provisions in line with the social realities faced by society. This simplification is evident in the efforts to bridge the gap between the ideal norms of Sharia and the practical needs of human life. In order to achieve the desired goals, every discipline of knowledge, including ushul fikih, builds a number of initial assumptions and conjectures about the empirical objects it studies. These assumptions play an important role as direction and a foundation in the research process and scientific analysis. A new theory can only be scientifically recognized as true if its assumptions can be proven or accepted thru specific procedures and stages. This also applies to ushul al-fiqh as a science with a systematic structure of thought. It operates on the basis of assumptions that are sometimes explicitly stated (*al-Manthuq*), and sometimes implied behind a deeper meaning (*al-Mafhum*). Thus, ushul fiqh is not only normative, but also scientific and empirical in its efforts to interpret Islamic law contextually.⁶

The science of ushul fiqh starts from the basic assumption that every event or phenomenon that occurs in human life must have its legal provisions in the view of Islam. However, the problem arises when the revealed texts that serve as sources of law are often *dzanni*, meaning they have meanings that are not entirely clear or certain, thus allowing for diverse interpretations. This condition then prompted scholars to formulate a set of theories and rules as a tool to understand and establish laws from these sources, which is specifically known as the science of ushul al-fiqh.⁷

The primary function of the science of ushul fiqh is to provide the foundation and methods for answering various legal issues that arise in real life, especially regarding events not explicitly explained in the texts of revelation. Thru its approach and rules, ushul fiqh enables the discovery of law by linking these new events to the provisions found in the Quran and hadith, so that they can be applied accurately to the *mukallaf* as the subject of law. Thus, ushul fiqh becomes the heart of the Islamic legal reasoning process, bridging the gap between the texts of revelation and the needs of the *mukallaf* in navigating an ever-evolving life.⁸

In the context of applying Islamic law, the existence of the *mukallaf* as a legal subject plays a very fundamental role. In the theory of Islamic jurisprudence, the term *mukallaf* is referred to as *mahkum 'alaih*, which means an individual who has met certain conditions, such as being of sound mind and having reached puberty, and is therefore considered capable of understanding, accepting, and implementing the provisions of Islamic law. All legal obligations and responsibilities in Islam originate from the *mukallaf* himself, as he is the direct recipient of Allah's commands (*amr*) and prohibitions (*nahy*).⁹ Syakir Jamaluddin emphasized that the definition of a *mukallaf* is someone who is

⁶ Abu Yasid, *Ushul Fiqh Interelasi Nalar*, 9-10.

⁷ Abu Yasid, *Ushul Fiqh Interelasi Nalar*, 10-11.

⁸ Muhammad Miftahul Ikhsan and Yusuf Al Akhiri, "The Relevance of the Principles of Islamic Jurisprudence (*Ilmu Ushul Fiqh*) in the Contemporary Era," *ANWARUL : Jurnal Pendidikan Dan Dakwah* 4, no. 1 (2024): 337-45, <https://doi.org/10.58578/anwarul.v4i1.2582>.

⁹ Satria Efendi M. Zein, *Ushul Fiqh* (Jakarta: Prenadamedia, 2019), 71.

already burdened with responsibility because they are 'aqil and baligh.¹⁰ From the explanation, it can be understood that the mukallaf, as a legal subject who can be bound by Islamic law, is an individual human being who has met two conditions: being of sound mind ('aqil) and having reached puberty (baligh).

However, with the passage of time and the dynamics of modern life, the concept of mukallaf in ushul al-fiqh has undergone a significant expansion in scope. If in the classical era legal subjects were only understood as human individuals with consciousness and responsibility, then in the contemporary era this concept began to include other entities such as legal persons. In the positive legal system in Indonesia, for example, two types of legal subjects are recognized: individuals (natural persons) and legal entities (rechtspersoon).¹¹ The expansion of the scope of this legal subject is interesting to examine further, because theoretically, the principles of jurisprudence state that only humans who meet two main conditions, namely being 'aqil (sane) and baligh (of age), can be considered mukallaf (legally responsible). The emergence of non-human entities as legal subjects raises fundamental questions about their status within the framework of contemporary Islamic law. To answer this question, the author attempts to reconstruct the subject of law in ushul al-fiqh and analyze it thru an interconnected approach combined with modern legal theories to gain a more contextual and relevant understanding.

In various literature, one can find numerous studies discussing the issue of legal subjects from the perspective of ushul al-fiqh. This type of study has been conducted by many researchers previously with diverse focuses and approaches. Thank you, Faqih Maulana, for examining the position of persons with disabilities in financial institutions in Indonesia, focusing on legal subjects, capacity, and a review of the Compilation of Sharia Economic Law (KHES).¹² Wibisono Oedoyo, et al. conducted a study on the concept of legal subjects according to civil law and the Compilation of Islamic Economic Law (KHES).¹³ Beside research examining legal subjects thru the lens of Islamic economics, there is also research that examines them thru the lens of criminal jurisprudence. Abdur Rakib has conducted research focusing on the mukallaf as a legal subject in the context of criminal jurisprudence.¹⁴ In addition, there is also research conducted by Ahmad Mafaid, which examines legal subjects from the perspective of their capacity to receive rights and perform legal actions within the framework of ushul fiqh.¹⁵

¹⁰ Syakir Jamaluddin, *Kuliah Fiqh Ibadah* (Yogyakarta: LPPI UMY, 2015), 245.

¹¹ Ahmad Badrut Tamam, "Konsep Subyek Hukum dalam Hukum Islam, Hukum Positif dan Kompilasi Hukum Ekonomi Syariah," *Al-Musthofa* 1, no. 2 (2018): 107-17, <https://ejournal.iaitabrah.ac.id/musthofa/article/view/301>.

¹² Diky Faqih Maulana, "Kedudukan Penyandang Disabilitas pada Lembaga Keuangan di Indonesia : Subjek Hukum, Ahliyah dan Telaah KHES," *Muslim Heritage: Jurnal Dialog Islam dengan Realitas* 8, no. 2 (2023): 2023, <https://doi.org/10.21154/muslimheritage.v8i2.6924>.

¹³ Wibisono Oedoyo et al., *Konsep Subjek Hukum Menurut Hukum Perdata dan Kompilasi Hukum Ekonomi Syariah* (Penelitian Internal Dosen: Fakultas Hukum Universitas Pancasila, 2020), 1-58.

¹⁴ Abdur Rakib, "Mukallaf sebagai Subjek Hukum dalam Fiqih Jinayah," *Hakam: Jurnal Kajian Hukum Islam* 5, no. 2 (2021): 121-39, <https://doi.org/10.33650/jhi.v5i2.3585>.

¹⁵ Ahmad Mafaid, "Kecakapan Menerima Hak dan Melakukan Perbuatan Hukum dalam Tinjauan Ushul Fiqh," *El Ahli: Jurnal Hukum Keluarga Islam* 1, no. 1 (2020), <https://doi.org/10.56874/el-ahli.v1i1.66>.

From previous studies, it can be seen that this research has a different scope of study and attempts to fill a gap that has not been widely addressed before. This research is intended to complement previous findings by focusing on the reconstruction of legal subjects in ushul fiqh and its development in the context of contemporary life thru an inter-connective approach.

The interconnected approach is understood as a way of thinking that links different disciplines, perspectives, and aspects of life to achieve a more complete and comprehensive understanding. In this approach, a problem is not viewed partially or separately, but is analyzed thru the reciprocal relationships between elements, thus forming harmony and mutual complementarity. This kind of approach is commonly used in multidisciplinary research, especially to address complex issues that require the integration of diverse perspectives from social, educational, and religious domains.

Based on an interconnected approach, this research is expected not only to present new insights but also to make a tangible contribution to the development of the Islamic legal knowledge base, particularly in the field of ushul fiqh. This study aims to open a space for dialog between the normative principles of Islamic law and modern legal theories that are developing in the contemporary era. Thru an interconnected analysis, this research is expected to broaden the horizons of thinking in understanding the scope of legal subjects, which has traditionally tended to focus on individual human beings, toward recognizing collective entities such as legal persons. The significant contribution of this research lies in its attempt to bridge the conceptual gap between classical Islamic jurisprudence and the needs of modern law. With an interconnected approach, this research can enrich the methodology of Islamic law determination while strengthening its relevance in addressing the challenges of the times.

This research is a type of library research with an inter-connective approach. Library research is research where all data and information sources are obtained thru the study of literature relevant to the topic under discussion.¹⁶ Library research was chosen because its focus lies in the conceptual and theoretical analysis of legal subjects in ushul al-fiqh, and how this concept is reconstructed and developed thru an interconnected approach in the contemporary era. As for the data collection technique, it was carried out thru a documentation study, which involved tracing, identifying, and analyzing various written sources related to the research topic. Data sources include laws, court decisions, books, scholarly works, the Quran, hadiths, encyclopedias, dictionaries, journal articles, magazines, and other relevant sources. All collected data was then analyzed qualitatively, with an emphasis on interpretation and synthesis to identify relevant forms of legal subject scope development in ushul fiqh in the contemporary era.

DISCUSSION

Epistemology of Islamic Jurisprudence: A Historical Review

The study of ushul al-fiqh is not only related to the legal aspects and methodology

¹⁶ Mestika Zed, *Metodologi Penelitian Kepustakaan* (Jakarta: Yayasan Obor Nasiona, 2004), 3.

Reconstruction of Legal Subjects in Ushul Fikih: Development and Interconnectivity Analysis in the Contemporary Era

of Islamic law, but also touches upon the epistemological dimension that forms the basis for the development of the framework of Islamic legal thought. Epistemology in this context is important to understand because it explains how legal knowledge in Islam is constructed, verified, and developed from time to time. Thru an epistemological approach, ushul al-fiqh is not merely seen as a collection of legal rules, but as a system of knowledge that has its own structure, methods, and dynamics.

Epistemology in Arabic is known as nazariyyah al-Ma'rifah, which means the theory of knowledge. In the context of Islamic jurisprudence, epistemology can be understood as the scientific theory of Islamic law that serves to build, explain, and develop legal foundations in order to regulate human life in various aspects. In the early days of Islam, the principles of jurisprudence had not yet emerged as a complete epistemological system, as all legal issues were still resolved directly by the Prophet Muhammad (peace be upon him) based on the guidance of the revelation sent thru the angel Gabriel. After the Prophet Muhammad (peace be upon him) passed away, the responsibility for establishing laws shifted to the companions who lived during his time. They deeply understand the process of tasyri' (lawmaking), which is based on noble values and the main objectives of each Sharia provision. The principle of the secrets of the Sharia, which are the mysteries and wisdom behind the establishment of laws, they can grasp intuitively thru spiritual sharpness and a strong religious instinct. Based on that foundation, the companions were able to continue the spirit of Islamic law, which is not only legal and formal but also rich in moral values and public interest.¹⁷

The companions, in addition to receiving direct guidance from the Prophet Muhammad (peace be upon him), also possessed a pure and deep understanding of the Arabic language. This advantage allows them to understand revelatory texts with a high degree of clarity of meaning. Furthermore, the companions who were known for their extensive ijtihad in the field of Islamic law were those who constantly accompanied the Prophet Muhammad (peace be upon him), directly witnessed various legal events, and understood how he established a legal ruling. This direct experience enabled them to fully understand the context of the verses and grasp the meaning and purpose behind the formation of a law.¹⁸ Therefore, during the time of the companions, the process of istinbath al-Hukm (deriving rulings) did not require complex theories as it did in the form of epistemology that developed later. Understanding and establishing the law naturally occurs thru divine guidance, the example of the Prophet Muhammad (peace be upon him), and the linguistic sensitivity and religious intuition of the companions.

However, as the Islamic empire expanded and the population embracing the religion became more diverse, the Arab people began to interact and mingle with various other nations. This process of social interaction and cultural exchange caused the Arabic language to begin absorbing foreign elements, both in terms of vocabulary and grammatical structure. As a result, the purity and accuracy of the Arabic language that

¹⁷ Abu Yasid, *Metodologi Penafsiran Teks* (Jakarta: Erlangga, 2012), 26.

¹⁸ Satria Efendi M. Zein, *Ushul Fiqh*, 16.

were once characteristic of the early generations of Islam began to diminish. In such situations, their ability to directly understand revelatory texts can no longer be fully relied upon. Various interpretations and potential misunderstandings began to emerge, especially due to the similarity of meaning and differences in linguistic context. This condition prompted them to formulate systematic linguistic rules and guidelines so that the texts of the Quran and hadith could be understood correctly and consistently. This effort later became an important foundation in the formation of the methodology of ushul al-fiqh.¹⁹

After the arbitration incident leading up to the caliphate of Ali bin Abi Talib, various schools of thought emerged in Islam, which later developed into the foundation for the birth of the epistemology of Kalam and Aqidah. In its subsequent development, the discipline of ushul al-fiqh found its intellectual momentum during the emergence of the major schools of thought around the second century AH. During this period, there was a very strong intellectual dynamic in the field of Islamic law, marked by the emergence of two major schools of thought: the traditionalist group (ahl al-Hadis) and the rationalist group (ahl ar-Ra'y). The traditionalist group was pioneered by Imam Malik bin Anas (d. 179 AH), who was based in the Hijaz region.²⁰ Geographically, Hijaz holds a special position because it was the home of the Prophet's companions, ensuring that the Prophet's hadiths are well-preserved and easily accessible in abundance. Additionally, social and legal issues in the region are not overly complex, as the Hijaz community has long lived in an environment colored by Islamic values and traditions since the time of Prophet Muhammad (peace be upon him). Consequently, their religious mindset tends to adhere closely to established texts and traditions.²¹

As for the rationalist group, it was pioneered by Imam Abu Hanifah (d. 150 AH) and was centered in Kufa. This group is called Ahl ar-Ra'y because in the process of legal determination, they relied more on reason than on simply relying on text. This condition arises because the number of companions in this region is relatively small, so the hadiths circulating are also limited. Additionally, geographically and culturally, Kufa was a major city that served as a meeting point for various cultures, including the strong influence of Persian civilization.²² Therefore, in his practice of *ijtihad*, Imam Abu Hanifah more frequently used the method of *qiyas* (analogy) to establish rulings on new issues that were not explicitly explained in the hadith.

To summarize and bridge the differences in thinking between the two major schools of thought mentioned above, there arose a need for the emergence of the epistemology of ushul al-fiqh. The presence of this discipline became important so that the intellectual discourse that developed at that time could be documented, accessed, and systematically passed on to future generations. The urgency of the epistemology of

¹⁹ Abdul Wahab Khallaf, *Ilmu Ushul Fiqih*, alih bahasa Moh. Zuhri dan Ahmad Qarib (Semarang: Dina Utama, 2014), 11.

²⁰ Abu Yasid, *Metodologi Penafsiran Teks*, 26.

²¹ Ali Sodikin, *Fiqh Ushul Fiqh* (Yogyakarta: Beranda Publishing, 2013), 41-42.

²² Ali Sodikin, *Fiqh Ushul Fiqh*, 41.

Islamic jurisprudence is increasingly felt with the rapid development of time, the expansion of Islamic rule to various regions, and the influx of non-Arab cultural influences that have the potential to obscure the purity of interpretation of revelatory texts. In such situations, Muslims need a solid theory of legal science to guide mujtahids in performing *istinbath al-Ahkam*. With this epistemological foundation, the process of lawmaking can proceed proportionally, objectively, and with scientific and academic legitimacy that can be accounted for.²³

The science of *ushul fiqh* initially developed in a very simple form, like a newborn baby, and gradually evolved over time. As about two centuries passed, this discipline began to show maturity and experienced rapid development. The science of *ushul al-fiqh* then flourished, spread, and became an integral part of the discussion of *fiqh* law. This is evident from the practices of the mujtahids, whether from the four schools of thought or other scholars, who always strive to explain the legal basis and methods of reasoning (deriving evidence) they use. When differences of opinion arise among mujtahids, each side presents their arguments and evidence to support their views. From these diverse ways of using evidence and arguments, the principles and rules of *usuliyyah* were born, which then became the main foundation for the science of *ushul al-fiqh* as a systematic and scientific discipline.

The first person to attempt to compile the previously scattered principles of *ushul al-fiqh* into a structured whole was Imam Abu Yusuf, a student and close companion of Imam Abu Hanifah. This is as mentioned by Ibn al-Nadim in his work *al-Fihrasat*. However, unfortunately, Abu Yusuf's work did not reach our generation, so its contents cannot be fully known. As for the person who systematically compiled and documented the rules and discussions of this science into a standalone work, complete with evidence and analysis, it is Imam Muhammad bin Idris as-Syafi'i (d. 204 AH). In his monumental work, *ar-Risalah*, Imam as-Syafi'i comprehensively outlines the foundations and methodology of *ushul fiqh*. To this day, the book is recognized as the first work that successfully codified the discipline of *ushul al-fiqh* in its entirety and scientifically. Therefore, the majority of scholars consider Imam al-Shafi'i to be the founder and main pioneer of the emergence of the science of *ushul al-fiqh* in the Islamic scholarly tradition.²⁴

Historically, Imam al-Shafi'i's thoughts, as expressed in *ar-Risalah*, had a profound impact on the development of Islamic legal methodology in subsequent generations. This work became an important foundation for building a more integrated, structured, and rational Islamic legal system.²⁵ The intellectual legacy of al-Shafi'i was later followed by many great scholars who also wrote works on *ushul al-fiqh*, both in comprehensive discussions and in more concise versions. Some of the monumental works among them include *al-Mustashfa* by Imam Abu Hamid al-Ghazali (d. 505 AH),

²³ Abu Yasid, *Metodologi Penafsiran Teks*, 26.

²⁴ Abdul Wahab Khallaf, *Ilmu Ushul Fiqih*, 11.

²⁵ Rahmad Setyawan and Muslih, "Implementasi Konsep Qath'i dan Dzanni dalam Jarimah Pencurian: Relevansi Hukuman Potong Tangan di Era Modern," *Abdurrauf Law and Sharia* 1, no. 2 (2024): 164–89, <https://doi.org/10.70742/arlash.v1i2.82>.

al-Ahkam fi Ushul al-Ahkam by Abu Hasan al-Amidi as-Syafi'i (d. 631 AH), and al-Minhaj by al-Baidhawi as-Syafi'i (d. 685 AH). Among the many works that appeared after them, the commentary by al-Asnawi is known as one of the best explanations (syarh) of al-Minhaj, enriching the scientific treasure of ushul fiqh and demonstrating the great influence of Imam as-Syafi'i's intellectual legacy in the Islamic legal tradition.²⁶

Conceptual Framework of Islamic Law

The term Islamic law is a unique term that developed in Indonesia and often leads to ambiguity in its usage. In certain contexts, this term is used as an equivalent of Sharia, but on other occasions, it is also understood as an equivalent of Fiqh. Meanwhile, in Western literature, the term equivalent to Islamic law is known in two forms: Islamic Law, which refers to the translation of as-Syari'ah al-Islamiyyah, and Islamic Jurisprudence, which refers to the translation of al-Fiqh al-Islami. Interestingly, the term "Islamic law" itself is not found in the classical works of Islamic jurisprudence scholars.²⁷ According to Syamsul Anwar, the terms used to refer to Islamic law in various literature include several terms such as sharia, fiqh, qanun, and shari'i law. He explains that these diverse terms reflect an adaptive strategy in the development of Islamic law, namely the effort to continuously adapt to the dynamics of the times without losing its essence as a legal system sourced from divine values.²⁸

Before delving further into the concept of Islamic law, it is first important to understand the basic meaning of the term "law" itself. Etymologically, the word "law" comes from the Arabic language (al-Hukmu), which is the masdar form of the verb hakama-yahkumu-hukman, meaning to lead, govern, decide, establish, or judge. In practice, law can take two forms: it can be written, such as regulations and laws in modern (Western) legal systems, or unwritten, such as the norms that exist within indigenous communities.²⁹

As for the word Islam, it comes from the root words aslama-yuslimu-islaman, which have the basic meaning of safety, peace, tranquility, and complete surrender to the will of Allah swt.³⁰ This meaning aligns with the word of Allah SWT in Surah Ali 'Imran (3): 20, which emphasizes that the essence of Islam is submission and surrender to Allah SWT as a form of total obedience to His rules and laws.

فَإِنْ حَاجُّوكَ فَقُلْ أَسْلَمْتُ وَجْهِيَ لِلَّهِ وَمَنِ اتَّبَعَنِ وَقُلْ لِلَّذِينَ أُوتُوا الْكِتَابَ وَالْأُمِّيِّينَ ءَأَسْلَمْتُمْ فَإِنْ أَسْلَمُوا فَقَدِ اهْتَدَوْا وَإِنْ تَوَلَّوْا فَإِنَّمَا عَلَيْكَ الْبَلْغُ وَاللَّهُ بَصِيرٌ بِالْعِبَادِ

"Then if they dispute with you, [O Muhammad], say, 'I have submitted [myself] to Allah,

²⁶ Abdul Wahab Khallaf, *Ilmu Ushul Fiqih*, 13.

²⁷ Mutimatun Ni'ami, Syaifuddin Zuhdi, and M. Junaidi, *Pengantar Hukum Islam* (Surakarta: Muhammadiyah University Press, 2018), 9.

²⁸ Syamsul Anwar, "Legal Drafting Materi Hukum Islam: Perspektif Hukum Islam," dalam *Antologi Hukum Islam Indonesia antara Idealitas dan Realitas* (Yogyakarta: Syari'ah Press, 2008), 213–16.

²⁹ Marzuki, *Pengantar Studi Hukum Islam* (Yogyakarta: Ombak, 2013), 11.

³⁰ Mardani, *Hukum Islam Pengantar Ilmu Hukum Islam di Indonesia* (Yogyakarta: Pustaka Pelajar, 2018), 8-10.

Reconstruction of Legal Subjects in Ushul Fikih: Development and Interconnectivity Analysis in the Contemporary Era

and [so have] those who follow me." Then say to those who have been given the Book and to the illiterate, "Have you become Muslim?" If they become Muslim, it means they have been guided, but if they turn away, then your duty is only to convey the message. And Allah is Seeing of His servants."

When the two terms, law and Islam, are combined, Islamic law can be defined as a set of rules derived from divine revelation, which regulate human behavior in various aspects of life, and which are believed and must be obeyed by every Muslim. According to the scholars of Islamic jurisprudence, Islamic law is understood as Allah's (swt) address (call) concerning human actions that meet the conditions for being mukallaf (legally responsible). This address can take the form of a binding requirement (iqtidha'), freedom of choice (takhyir), or a fixed provision (wadh'i). Thus, Islamic law is not merely a system of rules, but also a manifestation of the Divine will that governs the entirety of human life.³¹

The elements outlined above serve as the main foundation for the division of Islamic law. The scholars then grouped Islamic law into two main forms. First, there are obligatory laws, which are Allah's decrees that contain demands for humans to do, refrain from, or be given the freedom to choose between the two. When the command is firm and certain, the resulting law is called ijab (obligatory). However, if the command is not firm and is more of a recommendation, the law is called nadb (sunnah). Conversely, if the demand is a firm prohibition against performing an action, the law of tahrim (haram) is born. But if the prohibition is not absolute and is only a recommendation to avoid it, then its legal status becomes karahah (makruh). Meanwhile, if a matter is left open for choice, can be done or left without any specific claim, then the applicable law is called ibahah (permissible).³²

Second, wadh'i law, which is a provision that determines whether or not a taklifi law is applicable. In other words, this law serves to determine the conditions or situations that make a law valid or invalid. Therefore, wadh'i law discusses matters related to the causes of the law's emergence, the conditions for its enforceability, and the obstacles that can invalidate or nullify its validity. Compared to each other, wadh'i law and taklifi law have a very close relationship. They are inseparable because they complement each other. In practice, every action performed by a mukallaf can only be considered valid if it meets the provisions set forth in wadh'i law. Thus, these two types of law harmonize within the Sharia legal system, which serves as a guide for every accountable person in fulfilling their obligations and living their lives according to the teachings of Islam.³³

On the other hand, although taklifi and wadh'i laws are interconnected, they have quite fundamental differences. First, in terms of substance, taklifi law contains demands to perform or refrain from an action, and it provides room for choice for the mukallaf (person obligated by law). As for wadh'i law, it explains the factors that determine the validity of that law, such as cause, condition, and mani' (obstacle). Second, in terms of

³¹ Ali Hasaballah, *Ushul Al-Tasyri' Al-Islamy* (Kairo: Dar al-Ma'arif, n.d.), 365.

³² Ali Sodikin, *Fiqh Ushul Fiqh*, 116.

³³ Ali Sodikin, *Fiqh Ushul Fiqh*, 124.

form, taklifi law is direct, meaning it consists of commands or prohibitions addressed to the mukallaf. Meanwhile, wadh'i law functions more as a framework or condition that enables the correct implementation of taklifi law. Third, from the perspective of its implementation, taklifi law applies within the limits of human capability as mukallaf, while some aspects of wadh'i law are beyond human capability, as they relate to decrees and destinies that fall within the domain of Allah SWT's power.³⁴

Definition of Legal Subject and its Conditions in Usul al-Fiqh

The term "subject of law" is understood differently by experts, but broadly refers to a party or entity that has rights and obligations within the legal system. According to Amir Syarifuddin's view, legal subjects are individuals who are required by Allah SWT to perform certain actions, and all their behavior is evaluated based on those requirements.³⁵ The forms of these demands include the obligation to perform religious practices such as prayer, fasting, almsgiving, and pilgrimage.³⁶

In the study of Islamic jurisprudence, the subject of law is known as mahkum 'alaih, which refers to the party to whom Islamic law is applied.³⁷ The scholars of legal theory agree that the mahkum 'alaih is someone whose actions are subject to the address of Allah SWT, whether in the form of taklifi or wadh'i rulings.³⁸ Based on this definition, the "mahkum 'alaih" is only understood as an individual human (person), and does not yet include collective entities such as legal entities.³⁹

The term "mahkum 'alaih" is also often referred to as "mukallaf," which means an individual who is legally responsible.⁴⁰ According to Abdul Hayy Abdul Al, the "mahkum 'alaih" (the subject of a ruling) is the action of a mukallaf (a person obligated to perform religious duties) viewed from the perspective of whether an action is accepted or not, and whether that action falls within the scope of a command or prohibition.⁴¹ Guidance on the legal burden for the mukallaf can be found in Surah al-Baqarah (2): 286, which states that Allah swt does not burden anyone beyond their capacity:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إَصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ وَاعْفُ عَنَّا وَارْحَمْنَا أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ^{٤٢}

"Allah does not burden a soul beyond its capacity. He will receive (reward) for the good

³⁴ Ali Sodikin, *Fiqh Ushul Fiqh*, 124.

³⁵ Amir Syarifuddin, *Ushul Fiqh* (Jakarta: Kencana, 2008), 424.

³⁶ Basiq Dhajil, *Ilmu Ushul Fiqh (Satu Dan Dua)* (Jakarta: Kencana, 2014), 40.

³⁷ Amir Syarifuddin, *Ushul Fiqh*, 424.

³⁸ Wahbah Az-Zuhaili, *Ushul Al-Fiqh Al-Islami* (Beirut: Dar al-Fikr, 1986), 158.

³⁹ Rachmat Syafe'i, *Ilmu Ushul Fiqh* (Bandung: Pustaka Setia, 2018), 334.

⁴⁰ Amir Syarifuddin, *Ushul Fiqh*, 424.

⁴¹ Abdul Hayy Abdul Al, *Pengantar Ushul Fikih*, alih bahasa Muhammad Misbah (Jakarta: Pustaka Al Kautsar, 2014), 202.

Reconstruction of Legal Subjects in Ushul Fikih: Development and Interconnectivity Analysis in the Contemporary Era

he does and he will receive (punishment) for the evil he commits. (They prayed), "Our Lord, do not punish us if we forget or make a mistake. Our Lord, do not burden us with a burden as heavy as the one You placed on those before us. Our Lord, do not impose on us what we cannot bear. Forgive us, have mercy on us, and grant us your grace. You are our protector, so help us against the disbelievers."

Every legal action taken by a mukallaf will be held accountable, both in this world and the hereafter. If he obeys Allah's commands, he will receive reward or recompense, while if he violates His prohibitions, he will bear the sin or punishment for his actions.⁴²

Scholars of Islamic jurisprudence explain that legal obligation (taklif) only applies to those who possess reason and the ability to understand. In other words, someone can only be subject to legal provisions if they are of sound mind and capable of realizing their responsibility for the obligations imposed upon them. Therefore, people who have lost their minds, like the insane, or those whose minds are not fully developed, like children, are not considered mukallaf. They cannot be held legally accountable because they have not yet developed the ability to distinguish between good and evil.⁴³ In general, the scholars then established a number of conditions that must be met for someone to be categorized as a mukallaf.⁴⁴

First, puberty is the state in which a person has the ability to understand the demands of Islamic law contained in the Quran and hadith. This ability can be acquired in two ways: a) directly, by understanding the meaning of verses and hadiths containing legal provisions on one's own. b) indirectly, thru the explanation of others who are more knowledgeable in understanding the legal address. In order for someone to be able to understand these legal proofs, they must have mental maturity. According to Zakiah Daradjat, mental perfection does not happen suddenly, but rather thru four developmental phases: a) the period in the womb, b) childhood (thufulah), c) the period of discernment (tamyiz), d) the period of adulthood (baligh).⁴⁵

Second, competence, which is the ability to perform legal actions to manage and be responsible for matters related to Islamic law. In this context, competence is divided into two forms of ability:

1. Ahliyyatul ada' is the complete capacity to be held accountable for one's actions. This measure of competence is formulated in the concepts of 'aqil, baligh, and tamyiz. A person who has met all three of these elements is considered capable of performing legal acts, such as entering into agreements or obligations that have legally binding consequences.⁴⁶ When measured by physical growth, the age of puberty for women is marked by the onset of menstruation, and for men, it begins with ihtilam (the first wet dream).⁴⁷ From an age perspective, the legal age of puberty varies between individuals, depending on environmental, geographical,

⁴² Rachmat Syafe'i, *Ilmu Ushul Fiqh*, 334.

⁴³ Nasrun Haroen, *Ilmu Ushul Fiqh* (Jakarta: Logos, 1996), 305.

⁴⁴ Ali Sodikin, *Fiqh Ushul Fiqh*, 141.

⁴⁵ Zakiah Daradjat, *Ushul Fiqh Jilid 2* (Yogyakarta: PT Dhana Bakti Wakaf, 1995), 1.

⁴⁶ Hasbiyallah, *Ushul Fiqh Metode Istinbath dan Istidlal* (Bandung: PT Remaja Rosdakarya, 2013), 43.

⁴⁷ Satria Efendi M. Zein, *Ushul Fiqh*, 71.

and other factors. Some say that a boy reaches puberty at the age of 12, while a girl does so at the age of 9.⁴⁸ However, if a woman does not menstruate by the age of 15 and a man has never experienced ihtilam (wet dream), then the age of 15 is considered the minimum age for puberty and reason.⁴⁹

2. Ahliyyatul wujub is a person's ability to possess legal rights, even if they are not yet fully capable of bearing obligations. In the Dictionary of Law and Jurisprudence, this term is defined as the capacity to be a subject entitled to own property or other real rights.⁵⁰ Capacity for obligation is divided into two forms: a) incomplete capacity for obligation, which is the ability possessed by a fetus in the womb. Although not yet born, the fetus is recognized as having certain rights such as the right to lineage, the right to inheritance, the right to receive a will, and the right to waqf. b) ahliyyatul wujub kamilah (perfect capacity), which is the ability possessed by a child who has been born alive into the world until they reach puberty and are of sound mind. At this stage, the child has the same rights as they have had since they were a fetus, but their legal responsibilities only arise after they have truly reached maturity.⁵¹

Legal Capacity Barriers to Action

A mukallaf, as a legal subject, can be completely exempt from legal obligations or at least experience a reduction in their legal responsibility if they are in certain circumstances that cause a loss or reduction in their legal capacity to act ('awarid ahliyyah). The conditions that act as obstacles are generally divided into two types:

1. 'Awarid samawiyyah, which are obstacles stemming from the will of Allah swt or natural factors beyond human control. Examples include mental illness (insanity), severe illness, or mental retardation.
2. 'Awarid mukhtasabah, which are obstacles that arise from human actions or choices, such as intoxication, coercion (ikrah), or intentional or unintentional mistakes.

These two obstacles can change a mukallaf's legal capacity and affect their legal actions. The change in capacity due to the two types of obstacles mentioned above has different consequences. In terms of its object, the consequences of the barrier can be divided as follows:

1. Obstacles that can completely eliminate the ability to perform, such as: insanity, forgetfulness, coercion. As a result, the legal capacity of the relevant mukallaf is completely lost, so all of their actions cannot be held accountable. A person who is insane, asleep, or forgetful is not sinful if they do not perform prayer, because they have 'awarid ahliyyah within them. However, there are differences in the law

⁴⁸ Teungku Muhammad Hasbi Ash-Shiddieqy, *Koleksi Hadits-Hadits Hukum I* (Jakarta: PT Magenta Bhakti Guna, 1994), 155.

⁴⁹ Satria Efendi M. Zein, *Ushul Fiqh*, 71

⁵⁰ Muhammad Fauzan Baharuddin Siagian, *Kamus Hukum dan Yurisprudensi* (Jakarta: Kencana, 2017), 30.

⁵¹ Ali Sodiqin, *Fiqh Ushul Fiqh*, 141-142.

regarding making up missed prayers. A mentally ill person is not required to make up for missed prayers during their illness, but a person who falls asleep and forgets must make up for the missed prayers when they wake up or remember.

2. Obstacles that reduce legal capacity, such as dementia. Consequently, legal capacity is not completely lost, but only limits one's ability. Actions beneficial to oneself are considered valid, while actions detrimental to oneself are considered invalid.
3. Obstacles that can partially alter legal actions, such as bankruptcy, default, or being under guardianship. The consequence is that there is a restriction on legal actions, but the capacity to act remains unchanged.⁵²

Development of Legal Subjects in Positive Law in Indonesia

As the pace of development in the times advances, the definition of legal subject is also expanding in scope. Within the framework of the science of Islamic jurisprudence (Ushul al-Fiqh), the legal subject known as the "mahkum 'alaih" or "mukallaf" essentially only includes humans who possess reason and legal responsibility. However, in the contemporary era, this meaning has undergone a transformation. Legal subjects are no longer limited to humans alone, but also include non-human entities, such as legal persons.

From the perspective of Indonesian positive law, the term "legal subject" refers to any party recognized by law as the holder of rights and obligations. Legal subjects can be individuals (natural persons) or legal entities (legal persons) that have the authority to act legally. In other words, a legal subject is any entity that legally has the capacity to possess rights and fulfill obligations. Therefore, in the development of modern law, in addition to humans, legal entities are also considered legitimate and authorized entities to perform legal acts and be held accountable for them.⁵³

A legal entity is an entity or organization formed by a group of people with a common goal. In its existence, a legal entity is considered a legal subject with rights and obligations just like a human being. This means that a legal entity can perform various legal actions, such as entering into agreements, owning property separate from the personal wealth of its members, and engaging in other legally recognized activities.⁵⁴ The fundamental difference between a legal entity and a human being is that a legal entity does not possess biological characteristics; it cannot marry, cannot be sentenced to imprisonment (except in the form of fines), and all its actions are carried out thru its representatives or managers.⁵⁵ Legal entities in positive law can be divided into two groups, namely:⁵⁶

⁵² Ali Sodikin, *Fiqh Ushul Fiqh*, 141-142.

⁵³ Hasanuddin AF. Dkk, *Pengantar Ilmu Hukum* (Jakarta: PT. Pustaka al Husna Baru, 2004), 71.

⁵⁴ Muhammad Sadi Is, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2017), 96-97.

⁵⁵ C. S. T Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989), 117.

⁵⁶ Agus Riyanto, *Hukum Bisnis Indonesia* (Batam: CV Batam Publisher, 2018), 8.

1. Public legal entity (public rechts person) is a legal entity formed based on legislation and whose primary function is to manage the interests of the general public. The existence of this legal entity is established by the state, and its implementation is under government control thru the executive branch or parties specifically authorized to manage it. Examples of public legal entities include the Unitary State of the Republic of Indonesia, provincial regional governments, district or city regional governments, and Bank Indonesia.
2. Private legal entities (privat rechts person) are legal entities established under civil law and focused on the interests of their members. This type of legal entity, also known as a private legal entity, is typically formed by individuals or a group of people to achieve specific goals, whether economic, social, educational, or humanitarian, while remaining grounded in applicable laws and regulations. Examples of private legal entities include limited companies (PT), cooperatives, foundations, and charities.

One concrete piece of evidence that the scope of legal subjects is no longer limited to humans, but also includes legal entities, can be found in various laws and regulations in Indonesia. First, the provisions on legal subjects in the Compilation of Islamic Economic Law (KHES). In Book I, which discusses legal subjects and property, it is stated in Article 1 paragraph (2) that legal subjects include individuals, partnerships, and business entities, both incorporated and unincorporated, as long as they have the legal capacity to bear rights and obligations. Furthermore, Article 2 paragraphs (1) and (2) explain that legal capacity is the main requirement for a person or entity to be considered a legal subject:⁵⁷

1. A person is considered to have the capacity to perform legal acts if they have reached the minimum age of 18 (eighteen) years or have been married.
2. Business entities, whether incorporated or unincorporated, may perform legal acts provided they have not been declared bankrupt by a court decision that has become final and binding.

Second, provisions regarding legal subjects can also be found in Law Number 23 of 2011 concerning Zakat Management. In Article 1 paragraph 5, it is explained that a muzakki is a Muslim or business entity that is obligated to pay zakat.⁵⁸ From these provisions, it can be understood that there are two categories of muzakki. 1) a Muslim as an individual who possesses personal wealth that has met the nisab and haul requirements, making it obligatory to pay zakat. 2) a business entity that is classified by law as a legal subject and is also subject to the obligation to pay zakat. In this context, a business entity is considered to possess wealth that makes it capable of bearing obligations just like an individual. That wealth is described in Article 4:

1. Zakat includes zakat mal and fitrah.
2. Zakat mal as referred to in paragraph (1) includes:
 - a. Gold, silver, other precious metals

⁵⁷ Kompilasi Hukum Ekonomi Syariah (KHES).

⁵⁸ Undang-undang No. 23 Tahun 2011 Tentang Pengelolaan Zakat.

- b. Money and other securities
 - c. Trade
 - d. Agriculture, plantations, and forestry
 - e. Animal husbandry and fisheries
 - f. Mining
 - g. Industry
 - h. Income and services
 - h. Rikaz (buried treasure)
3. Zakat mal as referred to in paragraph (2) is property owned by individual muzakkis or business entities.

Third, regulations regarding legal subjects are also included in Law Number 41 concerning Waqf. Article 7 states that the waqif can be an individual, organization, or legal entity. Meanwhile, Article 9 explains that the nazir can also be an individual, organization, or legal entity. From these two articles, it can be concluded that both the waqif and the nazir are no longer limited to human individuals, but have expanded to include other entities such as organizations and legal entities recognized as having the capacity to perform legal functions in waqf practice.

Reconstruction of Legal Subjects in Ushul Fiqh and Its Development in the Contemporary Era: An Interconnected Analysis

Discussion about the subject of law in ushul fiqh in the contemporary era is important to see how classical concepts in the Islamic legal tradition can engage with the ever-evolving modern reality. Usul al-fiqh, as the methodological foundation for establishing Islamic law, was essentially born within a unique social, political, and intellectual context during the classical period. However, as times change, various new legal issues that were previously unknown arise, both in the fields of economics, social, politics, and technology.⁵⁹

In the tradition of Islamic legal thought, especially in the study of ushul fiqh, the term "legal subject" (mahkum 'alaih or mukallaf) has long been understood as an individual human being who is rational, has reached puberty, and possesses the ability to understand and implement the provisions of Islamic law. This classical understanding asserts that only humans can bear legal responsibility because humans are endowed with consciousness, free will, and the moral capacity to choose between performing or refraining from an action according to the teachings of Islamic law. However, the dynamics of social and economic life and institutional development in modern times demand an expansion of the scope of who can be considered a legal subject. Therefore, the reconstruction of legal subjects in ushul al-fiqh and its development in the contemporary era is felt to be necessary and needed so that the scope of legal subjects can be relevant to the realities of contemporary society.

⁵⁹ Rahmad Setyawan et al., "Contemporary Ijtihad Deconstruction in The Supreme Court: Wasiat Wajibah as An Alternative for Non-Muslim Heirs in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (2024): 25–40, <https://doi.org/10.30984/jis.v22i1.2968>.

Reconstruction of Legal Subjects in Ushul Fikih: Development and Interconnectivity Analysis in the Contemporary Era

In the modern era, the emergence of various forms of social institutions such as companies, foundations, and community organizations necessitates legal recognition of these collective entities as parties with rights and obligations. Within the framework of positive law, the concept of a legal person (*rechtspersoon*) emerges, which is a non-human entity legally recognized as a bearer of rights and obligations. This concept serves as a meeting point between positive law and the ideas in *ushul fiqh* about legal subjects, which are now no longer limited to humans but extend to institutions that possess collective will and social responsibility.

Interconnected analysis is needed to understand this phenomenon more comprehensively. The interconnected approach combines insights from various disciplines such as Islamic law, legal sociology, legal anthropology, legal philosophy, and modern legal science to gain a comprehensive understanding of these changes.⁶⁰ From a legal sociological perspective, the recognition of legal entities reflects the adaptation of the legal system to the increasingly complex needs of society. From a legal anthropological perspective, the development of the meaning of legal subjects in Islamic jurisprudence can be understood as a form of response to cultural dynamics and changes in the social structure of society. Legal anthropology views law not merely as a collection of norms or rules, but also as the result of interaction between the values, belief systems, and social practices of a community. Meanwhile, from a legal philosophy perspective, the development of this legal subject concept demonstrates the dynamic between divine normative values in Islamic law and the ever-evolving social reality. From the perspective of modern legal science, the recognition of legal entities is a consequence of the legal system's need to regulate collective entities that play a role in social and economic life.

In the Indonesian context, the application of the legal entity concept as a legal subject can be seen in several regulations such as the Compilation of Islamic Economic Law (KHES), Law Number 23 of 2011 concerning Zakat Management, and Law Number 41 of 2004 concerning Waqf. These provisions explicitly place legal entities, in addition to humans, as parties with legal obligations and responsibilities. This is concrete evidence of the interconnection between classical *ushul al-fiqh* theory and the national legal system, which is influenced by modern principles and the needs of contemporary society.

Thus, an inter-connective analysis of the reconstruction of legal subjects in *ushul al-fiqh* and its development in the contemporary era shows that *ushul al-fiqh*, as an epistemological discipline, has proven capable of interacting with other sciences in responding to social changes without losing its theological roots. The transformation of the scope of legal subjects from individual human beings to collective entities such as legal entities is a reflection of the dynamic nature of Islamic legal thought, which is constantly moving toward relevance and sustainability in modern life.

Practically speaking, the development of the scope of legal subjects in the contemporary era aims to realize the welfare of human life, adapted to the evolving social

⁶⁰ Khoiruddin Nasution, *Pengantar Studi Islam Dilengkapi Pendekatan Integratif-Interkonektif (Multidisipliner)* (Depok: Rajawali Pers, 2018), 45-46.

Reconstruction of Legal Subjects in Ushul Fikih: Development and Interconnectivity Analysis in the Contemporary Era

realities within Indonesian society. Thus, it can be understood that the legality of a legal entity is a means (instrument) toward that benefit. Ibn Qayyim al-Jauziah in his book *I'lam al-Muwaqfi' in 'an ar-Rabb al-'Alamin* states that every means toward goodness is termed *fath ad-Dzari'ah* (opening the means toward good). When creating that benefit is obligatory, then the means to achieve that benefit are also obligatory. This is in line with the jurisprudential principle which states that:⁶¹

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

"If a necessity cannot be ideal without another, then that other element also becomes necessary)."

Meaning, an idealization must be pursued while considering other related factors (interconnectedness). Optimizing something automatically optimizes the supporting factors as well. Legal entities here serve as a means to realize the common good in the social reality of contemporary society. Thus, the development of the scope of legal subjects can be justified and accepted in the discipline of *ushul fiqh*, because the legality of legal entities here is a means used to realize the common good in human life in the world.

In addition, the expansion of the scope of these legal subjects shows that law is indeed dynamic and can adapt to changing times and the context of human life. Jalal ad-Din as-Suyuthi emphasized that changes in law can occur due to shifts in time, place, situation, and societal customs. Furthermore, he stated that the law always moves in accordance with human welfare, where there is welfare, there is the law of Allah SWT.⁶² Based on this, the social changes occurring in Indonesian society also influence the development of the scope of legal subjects in the modern era. Therefore, to maintain and guaranty the adaptability of Islamic law, which is a blessing to all mankind, *ijtihad* is needed so that its provisions can be contextualized and applied in every situation.

CONCLUSION

In the discipline of *ushul fiqh*, it is explained that the legal subject known as the *mahkum 'alaih* or *mukallaf* only applies to humans who meet the conditions of being sane and of age. As times become increasingly modern, the scope of legal subjects has expanded to include legal entities in addition to humans, as stipulated in the Compilation of Islamic Economic Law (KHES), Law Number 23 of 2011 concerning Zakat Management, and Law Number 41 of 2004 concerning Waqf. Legal entities are considered capable of performing legal acts in the same way as humans, such as zakat, waqf, contracts, buying and selling, debt and credit, and other actions carried out in the name of the legal entity. In carrying out legal acts, legal entities are represented by the officers or members within the legal entity.

⁶¹ A. Djazuli, *Kaidah-Kaidah Fikih (Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah yang Praktis)* (Jakarta: Prenada Media Group, 2006), 32.

⁶² Jalal ad-Din As-Suyuti, *Al-Asybah Wa an-Nazair* (Beirut: Dar al-Fikr, n.d.), 176.

Reconstruction of Legal Subjects in Ushul Fikih: Development and Interconnectivity Analysis in the Contemporary Era

The reconstruction of legal subjects in ushul al-fiqh and its development in the contemporary era is concrete evidence that legal subjects in ushul al-fiqh have an interconnectedness with new sciences such as legal sociology, legal anthropology, legal philosophy, and modern legal science. Therefore, some Indonesian laws and regulations include legal entities as legal subjects. Thru an interconnected approach, it can be understood that ushul fiqh, as the epistemological foundation of Islamic law, is capable of engaging in dialog with various fields of knowledge and adapting to social realities without losing its theological roots. The expansion of the scope of legal subjects from individual human beings to collective entities such as legal persons reflects the flexibility and maturity of Islamic legal thot in responding to the challenges of modernity. This also shows that Islamic law continues to move toward relevance, sustainability, and benefit in contemporary society.

REFERENCES

- A. Djazuli. *Kaidah-Kaidah Fikih (Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah yang Praktis)*. Jakarta: Prenada Media Group, 2006.
- Abdul Hayy Abdul Al. *Pengantar Ushul Fikih*. Jakarta: Pustaka Al Kautsar, 2014.
- Abdul Wahab Khallaf. *Ilmu Ushul Fiqih*. Semarang: Dina Utama, 2014.
- Abu Yasid. *Metodologi Penafsiran Teks*. Jakarta: Erlangga, 2012.
- — —. *Ushul Fiqh Interelasi Nalar, Wahyu dan Maqashid Asy-Syariah*. Yogyakarta: IRCiSoD, 2019.
- Aji, Ahmad Mukri. "Dinamisasi Hukum Islam di Indonesia." *Mizan: Journal of Islamic Law* 4, no. 2 (2016): 253–70. <https://doi.org/10.32832/mizan.v4i2.20197>.
- Amir Syarifuddin. *Ushul Fiqh*. Jakarta: Kencana, 2008.
- As-Suyuti, Jalal ad-Din. *Al-Asybah Wa an-Nazair*. Beirut: Dar al-Fikr, n.d.
- Ash-Shiddieqy, Teungku Muhammad Hasbi. *Koleksi Hadits-Hadits Hukum I*. Jakarta: PT Magenta Bhakti Guna, 1994.
- Az-Zuhaili, Wahbah. *Ushul al-Fiqh al-Islami*. Beirut: Dar al-Fikr, 1986.
- Basiq Dhajil. *Ilmu Ushul Fiqh (Satu dan Dua)*. Jakarta: Kencana, 2014.
- Dkk, Hasanuddin AF. *Pengantar Ilmu Hukum*. Jakarta: PT. Pustaka al Husna Baru, 2004.
- Fathurrahman. *Filsafat Hukum Islam*. Jakarta: Logos Wacana Ilmu, 1997.
- Hasaballah, Ali. *Ushul al-Tasyri' al-Islamy*. Kairo: Dar al-Ma'arif, n.d.
- Hasbiyallah. *Ushul Fiqh Metode Istibath dan Istidlal*. Bandung: PT Remaja Rosdakarya, 2013.
- Ikhsan, Muhammad Miftahul, and Yusuf Al Akhiri. "The Relevance of the Principles of Islamic Jurisprudence (Ilmu Ushul Fiqh) in the Contemporary Era." *ANWARUL : Jurnal Pendidikan Dan Dakwah* 4, no. 1 (2024): 337–45. <https://doi.org/10.58578/anwarul.v4i1.2582>.
- Jamaluddin, Syakir. *Kuliah Fiqh Ibadah*. Yogyakarta: LPPI UMY, 2015.
- Joseph Schacht. *Pengantar Hukum Islam*. Jakarta: Dibinperta, 1985.
- Kansil, C.S.T. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka, 1980.
- Mafaid, Ahmad. "Kecakapan Menerima Hak dan Melakukan Perbuatan Hukum dalam Tinjauan Ushul Fiqh." *El Ahli: Jurnal Hukum Keluarga Islam* 1, no. 1 (2020). <https://doi.org/10.56874/el-ahli.v1i1.66>.
- Mardani. *Hukum Islam Pengantar Ilmu Hukum Islam di Indonesia*. Yogyakarta: Pustaka Pelajar, 2018.

Reconstruction of Legal Subjects in Ushul Fikih: Development and Interconnectivity Analysis in the Contemporary Era

- Marzuki. *Pengantar Studi Hukum Islam*. Yogyakarta: Ombak, 2013.
- Maulana, Diky Faqih. "Kedudukan Penyandang Disabilitas pada Lembaga Keuangan di Indonesia: Subjek Hukum, Ahliyah dan Telaah KHES." *Muslim Heritage: Jurnal Dialog Islam dengan Realitas* 8, no. 2 (2023): 2023. <https://doi.org/10.21154/muslimheritage.v8i2.6924>.
- Muhammad Fauzan Baharuddin Siagian. *Kamus Hukum dan Yurisprudensi*. Jakarta: Kencana, 2017.
- Muhammad Sadi Is. *Pengantar Ilmu Hukum*. Jakarta: Kencana, 2017.
- Nasrun Haroen. *Ilmu Ushul Fiqih*. Jakarta: Logos, 1996.
- Nasution, Khoiruddin. *Pengantar Studi Islam Dilengkapi Pendekatan Integratif-Interkoneksi (Multidisipliner)*. Depok: Rajawali Pers, 2018.
- Ni'ami, Mutimatun, Syaifuddin Zuhdi, and M. Junaidi. *Pengantar Hukum Islam*. Surakarta: Muhammadiyah University Press, 2018.
- Oedoyo, Wibisono, Barkah, Mochammad Ridwan, Putri Ayu Maharani, and Clarissa Pamela. *Konsep Subjek Hukum Menurut Hukum Perdata dan Kompilasi Hukum Ekonomi Syariah*. Penelitian Internal Dosen: Fakultas Hukum Universitas Pancasila, 2020.
- Permatasari, Siti Rahmaayu Dwi, Riska Amalia Ramadani, Muhammad Imam Sejati, and Kurniati. "Sejarah Perkembangan Ushul Fiqih, Tokoh-Tokoh Ushuliyah, dan Kitab-Kitab Ushul Fiqih." *Akhlak: Jurnal Pendidikan Agama Islam Dan Filsafat* 2, no. 2 (2025): 126–36. <https://doi.org/10.61132/akhlak.v2i2.649>.
- Rahman, Mohammad Mushfequr. "Islam : The Complete , Functional and Practical Guide to Life." *International Journal of Education, Culture and Society* 9, no. 3 (2024): 87–108. <https://doi.org/https://doi.org/10.11648/j.ijecs.20240903.11>.
- Rakib, Abdur. "Mukallaf sebagai Subjek Hukum dalam Fiqih Jinayah." *Hakam: Jurnal Kajian Hukum Islam* 5, no. 2 (2021): 121–39. <https://doi.org/10.33650/jhi.v5i2.3585>.
- Riyanto, Agus. *Hukum Bisnis Indonesia*. Batam: CV Batam Publisher, 2018.
- Rofiq, Ahmad. *Pembaruan Hukum Islam di Indonesia*. Yogyakarta: Gama Media, 2001.
- Satria Efendi M. Zein. *Ushul Fiqh*. Jakarta: Prenadamedia, 2019.
- Setyawan, Rahmad, and Muslih. "Implementasi Konsep Qath'i dan Dzanni dalam Jarimah Pencurian: Relevansi Hukuman Potong Tangan di Era Modern." *Abdurrauf Law and Sharia* 1, no. 2 (2024): 164–89. <https://doi.org/10.70742/arlash.v1i2.82>.
- Setyawan, Rahmad, Doli Witro, Darti Busni, Muhamad Taufik Kustiawan, and Fatimatuz Zahro Mulia Syahbani. "Contemporary Ijtihad Deconstruction in The Supreme Court: Wasiat Wajibah as An Alternative for Non-Muslim Heirs in Indonesia." *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (2024): 25–40. <https://doi.org/10.30984/jis.v22i1.2968>.
- Sodiqin, Ali. *Fiqh Ushul Fiqh*. Yogyakarta: Beranda Publishing, 2013.
- Syafe'i, Rachmat. *Ilmu Ushul Fiqh*. Bandung: Pustaka Setia, 2018.
- Syamsul Anwar. "Legal Drafting Materi Hukum Islam: Perspektif Hukum Islam." In *Antologi Hukum Islam Indonesia Antara Idealitas Dan Realitas*, 213–16. Yogyakarta: Syari'ah Press, 2008.
- Tamam, Ahmad Badrut. "Konsep Subyek Hukum dalam Hukum Islam, Hukum Positif dan Kompilasi Hukum Ekonomi Syariah." *Al-Musthofa* 1, no. 2 (2018): 107–17. <https://ejournal.iai-tabah.ac.id/musthofa/article/view/301>.
- Zakiah Daradjat. *Ushul Fiqh Jilid 2*. Yogyakarta: PT Dhana Bakti Wakaf, 1995.
- Zed, Mestika. *Metodologi Penelitian Kepustakaan*. Jakarta: Yayasan Obor Nasional, 2004.



Copyright: © 2025 by author (s). This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/).