



PARA-FIQH:
Bridging Thematic *Fiqh* to *Uşūl*
and *Uşūl*'s Response to Specialization of *Fiqh*

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Abstract

The latest trend regarding the study of contemporary thematic Islamic jurisprudence (fiqh) is built upon a paradigm that fiqh, as a science developed in the Islamic tradition, is able to respond to every modern challenge. This paradigm seems to be incompatible with the study of the Islamic legal theory (Uşūl-fiqh) which is considered stagnant. However, the study of Uşū al-Fiqh is, the initial gate to the discussion of legal reasoning which enables those who master it come up with theoretically correct rulings and hopefully responsive to the needs of the times. Discussing the thematic Islamic jurisprudence (fiqh) without going through the Uşūl al-Fiqh thinking framework may lead to a serious gap to the product of the thematic Fiqh study. The thematic Fiqh studies such as Fiqh siyāsah (Islamic jurisprudence on constitution), Fiqh munākahat (Islamic jurisprudence on marriage), and Islamic jurisprudence on health issues are not infrequently distorted from the actual context. This article offers a way of dealing with the gaps. In this case, the terminology presented is para-fiqh. Para-Fiqh is a term to bridge the trend between the thematic Fiqh studies and the stagnancy of Uşū al-Fiqh study which, in turn, give birth to the antithesis in the form of thematic Uşū al-fiqh. This article employs the conceptual-doctrinal approach which seeks to present the problems of various

classical literatures of the Muslim scholars. By scrutinizing the concept para-fiqh, it is hoped that: first, this article presents a universal legal argument on some particular legal themes; second, it explains the principles of to understand the thematic Fiqh products. The findings emphasize that the para-Fiqh concept is important for enriching the intellectual tradition of Muslim communities, as well as being a bridge between the gaps created by the study of Islamic jurisprudence (fiqh) and the study of Islamic legal theory (Uṣūl-fiqh).

Keywords: *para-fiqh; thematic Uṣūl, thematic fiqh, Uṣū al-jināyat; Uṣū al-mu`āmalat.*

Abstrak

Trend terbaru mengenai kajian fikih tematik kontemporer saat ini membangun paradigma bahwa fikih adalah salah satu ilmu yang berkembang dalam tradisi Islam yang mampu merespon tantangan zaman. Paradigma ini seakan tidak sebangun dengan kajian Ushul Fiqh yang dianggap stagnan. Namun demikian, kajian Ushul Fiqh sebenarnya adalah gerbang awal pembahasan penalaran hukum sehingga melahirkan keputusan-keputusan hukum yang tepat. Membahas Fiqh tematik tanpa melalui kerangka berfikir ushuliy membawa gap yang serius terhadap produk kajian Fiqh tematik tersebut. kajian-kajian tematik seperti Fiqh siyāsah, fiqh, munākahat, fikih kontemporer dan kesehatan tidak jarang terserabut dari konteks yang sebenarnya. Artikel ini menawarkan sebuah jalan lintas mengenai gap yang terjadi. Dalam kasus ini, terminology yang dihadirkan adalah para-fiqh. Para-Fiqh adalah istilah untuk menjembatani antara trend kajian Fiqh tematik dengan stagnasi kajian ushual-fiqh; sehingga melahirkan antitesa berupa ushul Fiqh tematik. Kajian dalam artikel ini bersifat konseptual-doktrinal yang berusaha menyajikan persoalan dari berbagai pustaka klasik sarjana Muslim. Artikel ini menemukan ada 2 tujuan: pertama,

menghadirkan argumen hukum universal pada beberapa tema hukum yang partikular. Kedua, menjelaskan prinsip-prinsip Uşūl guna memahami produk fikih tematik. Hasil dari artikel ini menekankan bahwa para-Fiqh penting untuk memperkaya khazanah intelektual tradisi intelektual masyarakat Muslim, sekaligus menjadi jembatan penghubung dari gap yang terjadi karena persoalan Fiqh dan Uşū al-Fiqh .

Kata Kunci: *para-fiqh; Ushūl tematik, fikih tematik, Ushūl jināyat; Ushūl mu`āmalat.*

A. Introduction

In Islamic intellectual tradition, Islamic law exclusively studied by two different sciences, *Uşū al-Fiqh* and *Fiqh* (Islamic Jurisprudence). *Uşū al-Fiqh* defines Islamic law as the god's command related to *mukallaḥ* actions,¹ while *Fiqh* refers as the result of god's command, not the command its self.² Both terms emphasize in different field; *Uşūl* focuses on legal evidence, which is the god's command, while *Fiqh* focuses on legal action contained in legal evidences. *Uşūl* supposes to be the reference of *Fiqh*; therefore, the whole study of *Fiqh* must refer to *Uşūl* as its foundation. Its foundation is recognized from its name "*Uşū al-fiqh*" which means "the foundation of *Fiqh*". *Uşūl* provides principles for *Fiqh* to comprehend legal evidences and furthermore explains the legal action in detail to be implemented.

¹ See Khudhārī Bek, *Ushū al-Fiqh*, vol. 1 (Egypt: al-Maktabah al-Mishriyyah al-Kubrā, 1969), p. 20. Az-Zarkasyī, *al-Bahr al-Muhīth fī Ushūl al-Fiqh*, vol. 1 (Kuwait: Wizārah Awqāf wa as-Syu'ūn al-Islāmiyah, 2002), p. 117.

² Wahbah Zuhaili, *Ushūl al-Fiqh al-Islāmi*, vol. 1 (Beirut: Dār al-Fikr, 1986), p. 37.

Therefore, the development of *Fiqh*³ should be followed by *Uṣūl* and on contrary. But, in fact, the growth of *Fiqh* cannot be equalized by *Uṣūl*. The current trend of *Fiqh* are its specialization –some scholars showed particular studies in only one certain legal theme like *mu`āmalat*, *munākahat* of themes of *Fiqh* discussion and the emerging of contemporary issues like modernity and health. On the contrary, *Uṣūl* has been far more stagnant compared to *Fiqh*. The literatures of *Uṣūl* in its early period were not much different with the current literature. Despite its stagnancy, some growth of *Uṣūl* revealed only in aspect of systematization and definition. We could easily compare early *Uṣūl* literatures with modern literatures, such as: *Irsyād al-Fuhūl*,⁴ *Uṣūl al-Bazdawī*,⁵ *al-Mahṣūl*,⁶ *I'lām al-Muwaqqi'in*⁷, *al-Ihkām*⁸, *al-I'tiṣām*⁹, and *Uṣū al-Fiqh al-Islāmī*¹⁰, *Ushū al-Fiqh*,¹¹ *Uṣū al-Fiqih*¹², *al-Wādh fī Uṣū al-fiqh*¹³.

³ The development of *Fiqh* is described by Abu Ameenah Bilal Philips in six stages, refer to Abu Ameenah Bilal Philips, *The Evolution of Fiqh (Islamic Law and The Madhhabs)* (Riyadh: International Islamic Publishing House, 1990), p. ii-iii.

⁴ Muhammad `Alī al-Syawkānī, *Irsyād al-Fuhūl*, vol. 1 (Riyadh: Dār al-Fadhīlah, 2000), p. 615

⁵ `Alī bin Muhammad al-Bazdawī, *Ushūl al-Bazdawī*, (Mir Muhammad Kutb Khanah Markaz Ilm wa Adab), p. 388

⁶ Abū Bakar bin al-`Arabiy, *al-Mahshūl fī Ushūl al-Fiqh* (Oman: Dār al-Bayāriq, 1999), p. 173

⁷ Ibn Qayyim al-Jauziyyah, *I'lām al-Muwaqqi'in `an Rabb al-`Alamīn*, vol. 1-7 (Saudi Arabia: Dār Ibn Jauzi, 1423 H), p. 309,

⁸ Ibn Hazm, *al-Ihkām fī Ushūl al-Ahkām*, vol. 1 (Beirut: Dār al-Afaq al-Jadīdah, 1979), p. 151

⁹ Abū Ishāq as-Syathibī, *al-I'tiṣām*, vol. 2 (Beirut: Dār al-Kutub al-`Ilmiyyah, 1988), p. 520

¹⁰ Zuhaili, *Ushūl...*, p. 16

¹¹ Muhammad Khudhāri Bek, *Ushūl al-Fiqh*, vol. 1 (Egypt: Maktabah at-Tijāriyah al-Kubrā, 1969), p. 13.

¹² Mardani, *Ushul Fiqh* (Jakarta: Grapindo Persada, 2013), p. 2.

¹³ Muhammad Sulaiman Abdullah Al-Asyqar, *al-Wādhīh fī Ushūl al-Fiqh* (Oman: Dār as-Salām, 2004), p. 307,

The increase of *Fiqh* which is not followed by *Uṣūl* causes a gap between them. On legal source, for instance, *Uṣūl* listed *`urf* (custom) as a source, but all *Fiqh ibadat* rejected it as legal source by acclamation as stated “*al-aṣlu fī al-`ibādat al-tahrīm*” which means all worships were not legal except based on the practice of Muhammad. The new form of worship without example from The Rasul, called *bid`ah*, should be rejected. On contrary, *Fiqh mu`āmalat* listed *`urf* (custom) as legal source following “*al-ashlu fī al-mu`āmalat al-ibāhat* or *al-`adat muhakkamat*”. The gap also can be seen in legal subject, defined as *mukallaf*, a person by *Uṣūl*. *Uṣūl* never extent the meaning of *mukallaf* to be a corporation or institution, even though *Fiqh mu`āmalat* urgently need for it, because contemporary *mu`āmalat* has not only been acted by person, but also by corporation or institution.

To respond the *Fiqh* specialization and minimize the gap between *Uṣūl* and *Fiqh*, I try to locate this issue on a discussion of thematic *Uṣū al-Fiqh*, this discussion may be termed as *para-fiqh*. *Para-Fiqh* is a science connected *Uṣūl* to *Fiqh*, and the response of *Uṣūl* to specialization of *Fiqh*.

B. *Uṣū al-Fiqh* and Its Scope

The term of “*Uṣū al-Fiqh*” consists of two Arabic words: *Uṣūl* and *fiqh*. *Uṣūl* means the foundation or the origins.¹⁴The word *Uṣū* *lis* often interpreted as basis, or root.¹⁵ In its use, the word “*Uṣūl*” also means the general principle or the general legal status¹⁶, such as “*al-aṣlu fī al-*

¹⁴ Ibn Manzhūr, *Lisān al-`Arab* (Cairo: Dār al-Ma`ārif), p. 89. Louis Ma`lūf, *al-Munjid fī al-Lughah wa al-A`lām* (Beirut: Dār Ashwar, 1982), p. 12.

¹⁵ Wahbah Zuhaili, *Ushūl al-Fiqh al-Islāmi, vol. 1* (Beirut: Dār al-Fikr, 1986), p. 16.

¹⁶ Bek, *Ushūl...*, p. 13. Mardani, *Ushul...*, p. 2.

amr li al-wujūb,¹⁷ in which the word “*al-aşlu*” means general principle. Meanwhile, the word “*fiqh*” means understanding or knowledge. The word “*fiqh*” definitively means an understanding of jurist on Islamic law. However, the word *Fiqh* substantively means the result of *ijtihād* performed by jurist. *Fiqh* mostly defined as an Islamic science which explain Islamic law in detail in order to be practicable, based on detail legal evidences.¹⁸In other word, *Uşū al-Fiqh* could be simply defined as the foundation or the principles of *Fiqh*.

The core of *Uşū al-Fiqh* is the method or rule to understand legal evidences.¹⁹As a method, *Uşū al-Fiqh* is a procedure followed by *fuqahā'* in understanding a legal evidence in order to produce the proper understanding. That is why *Uşū al-Fiqh* contains textual and contextual principles needed in understanding the legal evidence. For instance, a legal evidence “*aqim al-shalāt*” supposedly states *wājib* as a legal status of prayer, because *Uşū al-Fiqh* stipulates “*al-aşlu fi al-amr li al-wujūb*”.²⁰ Another example, “*wa lā taqrabūz zinā*” must state *harām* as a legal status of *zinā* (sexual intercourse of unmarried couple), because *Uşūl* determines that “*al-aşl fi al-nahyi al-tahrīm*”.²¹

The Most of legal evidences are text, Qur'anic verse and hadith. Therefore, *Uşū al-Fiqh* is dominated by textual principles to understand textual legal evidences, like principle of *amr-nahy*, *`āmm -khāsh*, *muṭlaq-muqayyad*, *manṭūq-mafhūm* etc.²²

¹⁷ Abdul Hamid Hakim, *Mabādi' al-Awwaliyyah* (Jakarta: Sa'diyah Putra, 1996), p. 8.

¹⁸ Hakim, *Mabādi'...*, p. 6.

¹⁹ Bek, *Ushūl...*, p. 13.

²⁰ Hakim, *Mabādi'...*, p. 6.

²¹ Hakim, *Mabādi'...*, p. 8.

²² Bek, *Ushul...*, p. 119-122

Uṣū al-Fiqh is also defined as science of legal evidence to look at beyond the product of Islamic law. Several sources of *Uṣū al-Fiqh* are contain of some discussions on: law, law giver, legal reasoning, subject and object of law, hierarchy of legal source, legal evidence, finding legal question (*ijtihād*), method of *ijtihād*, principles to understand the legal evidences, the conflict of evidences, etc.²³ The contents of *Uṣūl* mainly refer to one object, namely legal evidence. The law has been discussed in *Uṣūl* because it is the purpose of legal evidence. The law giver has been discussed because He is the source of legal evidences. The *Uṣūliyyah* principle has been discussed because it is needed to understand the legal evidences.

However, some of *Uṣūl* literatures stated that the object of *Uṣūl* is stipulation of legal evidences toward a legal status of an action. Its mean that the object of *Uṣūl* is “law and its legal evidences”,²⁴ such as to determine “*aqim al-shalāt*” for obligation of prayer, or “*lā taqrabū al-zinā*” for prohibition of *zinā*. But, in my opinion, the real object of *Uṣū al-Fiqh* is no other than legal evidences, or what so called by some literatures as *al-dalīl al-sam’iy*.²⁵

Literatures of *Uṣū al-Fiqh* described various purposes of *Uṣū al-Fiqh*. Some Muslim scholars argued that the purpose is to determine legal status of action based on legal evidences, and other said to determine legal evidence for legal status of action, while other said to find law legal evidences by using proper principle. But, if the purpose is

²³ Abu Bakar, *al-Mahshūl...*, p. 173, al-Asyqar, *a-Wādhih...*, p. 307, Abū al-Hasan `Alī bin `Umar al-Baghdādī, *Muqaddimah Fi Ushūl al-Fiqh* (Riyadh: Dār al-Ma`lamah, 1999), p. 424, al-Bazdawi, *Ushūl...*, p. 388. Bek, *Ushul...*, p. 386, Muhammad Zakariyyah al-Bardīsī, *Ushūl al-Fiqh* (Cairo: Dār at-Tsaqafah, 1969), p. 478. Zuhaili, *Ushūl...*, p. 717, Wahbah Zuhaili, *Ushūl al-Fiqh al-Islāmī*, vol. 2 (Damascus: Dār al-Fikri, 1986), p. 1221.

²⁴ Zuhaili, *Ushūl...*, p. 8-9. Mardani, *Ushul...*, p. 7.

²⁵ Bek, *Ushūl...*, p. 15.

referred to its object, the substance of *Uṣūl*'s purposes is to understand legal evidence of Islamic law. In accordance with its purpose, *Uṣū al-Fiqh* constructs the necessary principles to understand the legal evidences.

Referring to its object (legal evidences) and purpose (to understand legal evidences), all scopes of discussion in *Uṣūl* are limited for: legal evidences and its understanding. Hence, the main scope of *Uṣū al-Fiqh* can be classified in to two classes: an introduction to Islamic law and a methodology. The classes could be seen as layers of *Uṣū al-Fiqh*. The first layer is the introduction to Islamic law, and the second is methodology in finding Islamic law.

As an introduction, the scope of *Uṣūl* comprises of definition of law, law giver, object and subject of law.²⁶ Mohammad Rifa'i, in his work entitled; *Fiqh*, started his book with discussion on legal source and method to find Islamic law before discussing *tahārah*(purity-purification), prayer, fasting and etc.²⁷ In general, in two volumes of Indonesian literatures of *Uṣūl*, introduction to Islamic law revealed in the first volume.²⁸

The second layer of *Uṣūl*, called the substantial *Uṣū al-Fiqh*, is methodology to find Islamic law. It focused on legal evidences and methods to understand them.²⁹Its scope consists of legal sources, legal evidences and its classification, principles of legal evidences such as *amar-nahy*, *manṭūq-mafhūm*, *`āmm-khāsh*, conflict of evidences,

²⁶ Ahmad Sholihin Siregar, *al-Madkhal fi Ushul al-Fiqh* (Takengon: Shakura, 2017), p. 3.

²⁷ H. Moh. Rifa'i, *Ilmu Fiqh Islam Lengkap* (Semarang: Karya Tohaputra, 1978), p. 7-45.

²⁸ Such as Beni Ahmad Saebani and H. Januri, *Fiqh Ushul Fiqh* (Bandung: Pustaka Setia, 2008), p. 9-etc Abdul Basiq Djalil, *Ilmu Ushul al-Fiqh Satu Dan Dua* (Jakarta: Kencana, 2010), p. vii-ix. Amir Syarifuddi, *Ushul Fiqh 1* (Jakarta: Kencana, 2008), ix. Chaerul Uman, *Ushul Fiqh 1* (Bandung: Pustaka Setia, 2000), p. 7-11.

²⁹ Siregar, *al-Madkhal...*, p. 3.

and *fiqhiyyah* principles. Mostly, Arabic Literatures of *Uṣūl al-Fiqh* has been considered as substantial *Uṣūl*.³⁰

C. *Fiqh* and Its Scope

*Fiqh*³¹ is defined as a science of practical Islamic law based on detailed legal evidences,³² of course as a result of *ijtihād*.³³ *Fiqh* can also be seen as a systematic understanding of *fuqahā* (jurists) on legal evidences.

³⁰ Refer for instance to: al-Syawkānī, *Irsyād...*, vol. 1, p. 615, Muhammad Ali al-Syawkānī, *Irsyād al-Fuhūl*, vol. 2 (Riyadh: Dār al-Fadhīlah, 2000), p. 1229, Ibn Qayyim al-Jauziyyah, *I'lām al-Muwaqqi'īn `an Rabb al-`Alamīn*, vol. 1-7 (Saudi Arabia: Dar Ibn Jauzi, 1423 H), p. 309, Ibn Qayyim al-Jauziyyah, *I'lām al-Muwaqqi'īn `an Rabb al-`Alamīn*, vol. 2 (Saudi Arabia: Dar Ibn Jauzi, 1423 H), p. 488. Ibn Qayyim al-Jauziyyah, *I'lām al-Muwaqqi'īn `an Rabb al-`Alamīn*, vol. 3 (Saudi Arabia: Dar Ibn Jauzi, 1423 H), p. 575. Ibn Qayyim al-Jauziyyah, *I'lām al-Muwaqqi'īn `an Rabb al-`Alamīn*, vol. 4 (Saudi Arabia: Dar Ibn Jauzi, 1423 H), p. 557. Ibn Hazm, *al-Ihkām fī Ushūl al-Ahkām*, vol. 1 (Beirut: Dār al-Afaq al-Jadīdah, 1979), p. 151. Ibn Hazm, *al-Ihkām fī Ushūl al-Ahkām*, vol. 2 (Beirut: Dār al-Afaq al-Jadīdah, 1979), p. 150. Ibn Hazm, *al-Ihkām fī Ushūl al-Ahkām*, vol. 3 (Beirut: Dār al-Afaq al-Jadīdah, 1979), p. 161. Ibn Hazm, *al-Ihkām fī Ushūl al-Ahkām*, vol. 4 (Beirut: Dār al-Afaq al-Jadīdah, 1979), p. 238. `Alī bin Muhammad al-Amidī, *al-Ihkām Fī Ushūl al-Ahkām*, vol. 1 (Riyadh: Dar as-Sham`i, 2003), p. 373, Alī bin Muhammad al-Amidī, *al-Ihkām fī Ushūl al-Ahkām*, vol. 2 (Riyadh: Dār as-Sham`i, 2003), p. 415, Abū al-Walid Sulaiman bin Khalf al-Bājī, *al-Isyārah fī Ma`rifat al-Ushūl* (Tunis:, 1344), p. 1-84. Al-Syathībī, *al-Itishām*, vol. 1, p. 517, al-Syathībī, *al-Itishām*, vol. 2, p. 520, az-Zarkasyī, *al-Bahr al-Muhīth*, vol. 1 (Kuwait: Dār as-Shafwah, 1992), p. 481. az-Zarkasyī, *al-Bahr al-Muhīth*, juz. 2 (Kuwait: Dār as-Shafwah, 1992), p. 457. az-Zarkasyī, *al-Bahr al-Muhīth*, vol. 3 (Kuwait: Dār as-Shafwah, 1992), p. 505. Al-Kalwadzani, *at-Tamhīd fī Ushūl al-Fiqh*, vol. 3 (Saudi Arabia: Dār al-Madani, 1958), p. 475, Al-Kalwadzani, *at-Tamhīd fī Ushūl al-Fiqh*, vol. 4 (Saudi Arabia: Dar al-Madani, 1958), p. 481 Abu al-Muzaffar Manshūr, *Qawāthi` al-Adillah fī Ushūl*, vol. 1 (Beirut: Dār al-Kutub al-Ilmiyyah, 1997), p. 491. Al-Bagdādī, *Muqaddimah...*, p. 424-431.

³¹ The arabic word "*al-fiqh*" means understanding. See Louis Ma'uf, *al-Munjid fī al-Lughah wa al-A'lām* (Beirut: Dār Aswar, 1982), p.

³²Manshūr, *Qawāthi`...*, p. 9. Sa`id Faudah, *Rūh al-Ushūl fī Ilm Ushūl al-Fiqh* (t.t), p. 4

³³*Ijtihad* means effort to unveil Islamic law. Mardani, *Ushūl...*, p. 353.

Numbers of evidences are crucial in its understanding. Single understanding of legal evidence can not be considered as *fiqh*, because to achieve a systematic understanding, one had to refer the whole legal evidences on certain theme. For example, “fasting is obligated for *mukallaf*” which merely derives from “*kutiba`alaikumus`siyām*” is not *fiqh*. Only a systematic comprehension on fasting consisted of *rukn*, *syart*, *mubtīl*, produced from whole legal evidences on fasting are called *fiqh*. The term “practical” refers to a detailed explanation on how to conduct a legal action. In another word, *Fiqh* is an instruction of how to practice legal action.

The object of *Fiqh* is *mukallaf*'s action in accordance with Islamic law.³⁴ The legal action forms various scope; an action in relation with god, humans, animals, plants, environment like land or ocean, or even with himself. The vastness scope of legal action leads *fuqahā'* to limit his *Fiqh* on certain theme. This later contributes to specialization of *Fiqh* or known as thematic *Fiqh*. Thematic *fiqh* focused on one theme of Islamic law such as worship, marriage, inheritance, modernity, environment, women, and minority.

The early tradition of scientific literature had started this specialization when *fuqahā'* divided his discussion into several chapters. In this period, the term of thematic *Fiqh* or *Fiqh* specialization had not been introduced. *Al-Umm*, for instance, explaining Islamic worship³⁵, marriage,³⁶ finance,³⁷ state matter, war and politics³⁸ was yet not

³⁴Zuhaili, *Ushūl...*, p. 8-9. Mardani, *Ushul...*, p. 7.

³⁵ Muhammad bin Idrīs al-Syāfi`ī, *al-Umm*, vol. 2 (Pakistan: Dār al-Wafā', 2001), p. 668-678.

³⁶ Muhammad bin Idrīs al-Syāfi`ī, *al-Umm*, vol. 6 (Pakistan: Dār al-Wafā', 2001), p. 753-762.

³⁷ Muhammad bin Idrīs al-Syāfi`ī, *al-Umm*, vol. 4 (Pakistan: Dār al-Wafā', 2001), p. 545-554.

considered as thematic *Fiqh* (*fiqh` ibādat, fiqh munākahat, fiqh mu`āmalat, fiqh siyāsat*). It is simply called *Fiqh* though each volume discussed special theme. Other examples such as *al-Hāwī al-Kabīr* explained special theme in each volume - like *ṭahārah* (purity),³⁹ *shalāt*,⁴⁰ *hajj*⁴¹ -or *Mughni al-Muhtāj* explained only worship in first volume⁴² and wealth in second volume⁴³ and so did *al-Dzakhīrah*⁴⁴.

Specialization of *Fiqh* was raised due to escalation of *Fiqh* after the period of the four great imams. Al-Mawardī, for instance, wrote *al-Ahkām as-Sulṭaniyat*, a *Fiqh* which explained only atheme of state.⁴⁵ Yusuf al-Qaradhawi published *Fiqh al-Zakāt*⁴⁶ focused on *zakāt*, and *Fiqh of minorities* on minority legal action. So was *al-Kunūz al-Māliyah*⁴⁷ or *al-Mawārits*⁴⁸ which can be considered as *Fiqh mawārits*. Musṭafā al-`Adawī wrote about *ṭahārah*-

³⁸ Muhammad bin Idrīs al-Syāfi`i, *al-Umm*, vol. 5 (Pakistan: Dār al-Wafā', 2001), p. 723-733.

³⁹ Abū al-Hasan `Alī al-Mawardī, *al-Hāwī al-Kabīr*, vol. 1 (Beirut: Dār al-Kutub al-`Ilmiyyah, 1994), p. 449-455.

⁴⁰ Abū al-Hasan `Alī al-Mawardī, *al-Hāwī al-Kabīr*, vol. 2 (Beirut: Dār al-Kutub al-`Ilmiyyah, 1994), p. 531-535.

⁴¹ Abū al-Hasan `Alī al-Mawardī, *al-Hāwī al-Kabīr*, vol. 4 (Beirut: Dār al-Kutub al-`Ilmiyyah, 1994), p. 385-392.

⁴² Syamsuddīn al-Syarbaynī, *Mughni al-Muhtāj*, vol. 1 (Beirut: Dār al-Ma`rifah, 1997), p. 781-782.

⁴³ Syamsuddīn al-Syarbaynī, *Mughni al-Muhtāj*, vol. 2 (Beirut: Dār al-Ma`rifah, 1997), p. 563-564.

⁴⁴ The first volume of the book only discussed *ṭahārah*. Syihābuddīn al-Qarāfi, *al-Dzakhīrah*, vol. 1 (Beirut: Dār al-Gharb al-Islāmī, 1994), p. 397-424. The second volume only discussed prayer and fasting. Syihābuddīn al-Qarāfi, *al-Dzakhīrah*, vol. 2 (Beirut: Dār al-Gharb al-Islāmī, 1994), p. 535-590.

⁴⁵ Abū al-Hasan `Alī al-Mawardī, *al-Ahkām al-Sulṭaniyah wal Wilāyat al-Diniyyah* (Kuwait: Maktbah Dār Ibn Qutaibah, 1989), p. 131.

⁴⁶ Yusuf al-Qaradhawi, *Hukum Zakat, terj. Fiqh az-Zakah* (Jakarta: Lintera Antar Nusa, 2017), p. iv.

⁴⁷ Abdul Azīz Muhammad as-Salmān, *al-Kunūz al-Māliyah* (Saudi Arabia:, 1421), p. 339-344

⁴⁸ Maryam Ahmad ad-Dāgīstānī, *al-Mawārist fī al-Syarī`ah* (Cairo: al-Mustahfā, 2001), p. 158-165.

corpse,⁴⁹sustenance-giving-*hajj*⁵⁰, marriage-divorce, ⁵¹trading-*qiṣāsh-jihād* ⁵²only in relation with women in *Ahkām al-Nisā'*.

D. Para-Fiqh: Ontology

As explained above, object of *Fiqh* is *mukallaḥ*'s legal action. Therefore, *Fiqh* has a vast scope as seen in encyclopedic literatures of *Fiqh* such as *al-Umm, al-Hāwī al-Kabīr*,⁵³ *Mughni al-Muhtāj*,⁵⁴ *Raudat al-Tālibīn*,⁵⁵*al-Wasīṭ fi al-Madzhab*⁵⁶ or *al-Sharḥ al-Kabīr* ⁵⁷or *al-Dzakhirah*⁵⁸ or *al-Muntaqā*⁵⁹or *al-Kāfi*⁶⁰ or *al-Mughni*⁶¹ or *Badā' al-Ṣanā'ī*⁶².

⁴⁹ Mushthafā Adawi, *Jāmi' Ahkām an-Nisā'*, vol. 1 (Saudi Arabia: Dār as-Sunnah, 1992), p. 585-599.

⁵⁰ Mushthafā Adawi, *Jāmi' Ahkām an-Nisā'*, vol. 2 (Saudi Arabia: Dār as-Sunnah, 1992), p. 599-616.

⁵¹ Mushthafā Adawi, *Jāmi' Ahkām an-Nisā'*, vol. 3 (Saudi Arabia: Dār as-Sunnah, 1992), p. 557-576.

⁵² Mushthafā Adawi, *Jāmi' Ahkām an-Nisā'*, vol. 4 (Saudi Arabia: Dār as-Sunnah, 1992), p. 685-716.

⁵³ Abū al-Hasan al-Mawardī, *al-Hāwī al-Kabīr*, vol. 18 (Beirut: Dār al-Kutub al-Ilmiyyah, 1994), p. 323-328. This book contains of 18 volumes.

⁵⁴ Al-Syarbaini, *Mughni...*, vol. 4, p. 721-722, this book contains of 8 volumes..

⁵⁵ Abū Zakariya an-Nawawī, *Raudhat at-Thālibīn*, vol. 8 (Saudi Arabia: Dār `Alam al-Kutub, 2003), p. 559-566. This book contains of 8 volumes.

⁵⁶ Muhammad bin Muhammad al-Ghazālī, *al-Wasīṭ fi al-Madzhab*, vol. 7 (Cairo: Dār as-Salām, 1997), p. 547-590. This book contains of 7 volumes.

⁵⁷ Abū al-Qāsim ar-Rafi'ī al-Qazwīnī, *as-Syarḥ al-Kabīr*, vol. 13 (Beirut: Dār al-Kutub al-Ilmiyyah, 1993), p. 597-598. This book contains of 13 volumes.

⁵⁸ Syihābuddīn al-Qarāfī, *al-Dzakhirah*, vol. 14 (Beirut: Dār al-Gharb al-Islāmī 1994), p. 1. This book contains of 14 volumes.

⁵⁹ Abū al-Walid Sulaimān al-Bājī, *al-Muntaqā Syarḥ Muwaththa' Mālik*, vol. 9 (Beirut: Dār al-Kutub al-Ilmiyyah, 1999), p. 523-527.

⁶⁰ Ibn Qudāmah, *al-Kāfi*, vol. 6 (Pakistan: Dār Hijr, 1997), p. 632-615. This book contains of 6 volumes..

⁶¹ Ibnu Qudāmah, *al-Mughni*, vol. 14 (Riyadh: Dar `Alam al-Kutub, 1997), p. 609-672. This book contains of 14 volumes.

This vastness led to specialization of *Fiqh* on certain legal theme like *Fiqh munākahat*, *mu`āmalat*, *mawārits*, *ibādat*, *zakāt*, *shalāt*, etc.

Fuqahā's limitedness in time and resources to cover whole *mukallaḥ* legal actions also contributed to this process. The various object of *Fiqh*, cannot possibly covered in 60 years of human life time. A scholar could begin his scientific writing in range 25-35 years of his age, while 6-25 years of his age used to attend formal elementary to postgraduate educations. This might be the reason behind the disappearance of encyclopedic literatures of *Fiqh* during the modern age. Other factors that might also affect this trend of *Fiqh* are such as linearism in Indonesian education system, and the economic level causing scholars spend his time not only to write *Fiqh*, but also to seek sustenance.

Each legal theme discussed in *Fiqh: mu`āmalat*, *jināyat*, *mawārits*, *siyāsah*, *ibādat* etc. refers to *Uṣū al-Fiqh*. Unfortunately, this *Uṣū al-Fiqh* had only a single model in which discussed the methods of understanding legal evidences and *fiqhiyyah* principles. This is the single model that has been taught generally for Indonesian Islamic students. This can be proofed by literatures of *Uṣū al-Fiqh* written by Indonesian scholars.⁶³ The same thing also can be found in Arabic literature of *Uṣū al-Fiqh*.⁶⁴ This means

⁶² Alauddin Abū Bakar al-Kasānī, *Badā'ī al-Sanā'ī*, vol. 10 (Beirut: Dār al-Kutub al-Ilmiyyah, 2002), p. 603-605. This book contains of 10 volumes.

⁶³ Compare with: Syaibani, *Fiqh...*, p. 9, Mardani, *Ushul...*, p. vii-ix, Abd Rahman Dahlan, *Ushul Fiqh* (Jakarta: Amzah, 2011) p. viii-xiii, A. Syafi'i Karim, *Fiqih Ushul Fiqih* (Bandung: Pustaka Setia, 2006), p. 7-9, Syarifuddin, *Ushul...*, p. ix-xiii, Uman, *Ushul...*, p. 5-11, Chaerul Uman, *Ushul Fiqh 2* (Bandung: Pustaka Setia, 1998), p. 7-10. Djalil, *Ilmu...*, p. vii-ix.

⁶⁴ Compare for instance with: Muhammad bin Shalih al-Utsaimin, *al-Ushūl min Ilmi al-Ushūl* (Saudi Arabia: Dar Ibn al-Jauzi, 1426), p. 101-103, Muhammad Husein Abdullah, *al-Wādhīh fū Ushul al-Fiqh* (Beirut: Dar al-Bayāriq, 1995), p. 405-416. Muhammad Sulaimān

that *Fiqh* specialization is not properly responded by *Uşū al-Fiqh*. Both *mu`āmalat* and *jināyat* scholars together refer to single model of *Uşū al-Fiqh*.

Uşū al-Fiqh itself never presents the legal evidences required by *Fiqh*.⁶⁵ *Uşū al-Fiqh* only provides slight description of legal evidences by determining the source both Quran and Sunnah, or other legal source debated by scholars. Each candidate of *fuqahā'* of *mu`āmalat*, *jināyah* and *siyāsah* has never revealed complete understanding about the amount of legal evidences related to their themes that they need to refer in their study.

In order to explain the *Uşūliyyah* principles, *Uşū al-Fiqh* ignored various legal themes. In explaining *al-amr*, for instance, it often used example “*aqīmūş şhalāt*”, or “*kuntu nahaytukum `an ziyāratil qabr, fazūrūhā*” to explain “*al-amr ba`da nahy yadullu al-ibāhah*”, even though both examples were completely irrelevant with *jināyat* or *mawārits*.

Besides, some discussions in *Uşū al-Fiqh* are irrelevant with other legal themes. The *urf* (custom), for instance, is rejected as legal source for *fiqh ibādah*, but undoubtedly accepted as legal source of *fiqh muāmalah*. Still, *urf* always appears in *Uşūl* discussion, either for *fiqh ibādah* or *mu`āmalat*. The same thing so did by some *fiqhīyyah* principles, such as “*al-aşlu fil ibādah al-buṭlān*”⁶⁶

Abdullāh al-Asyqar, *al-Wādhīh fi Uşūl al-Fiqh* (Kuwait: Dār as-Salām, 2004), p. 307-310, Bek, *Uşūl...*, p. 386-391. Al-Bardīsī, *Uşūl...*, p. 480-483, Zuhaili, *Uşūl...*, p. 1221-1230, Zuhaili, *Uşūl...*, p. 717-728, Wahbah Zuhaili, *al-Wajīz fi Uşūl al-Fiqh* (Beirut: Dar al-Fikr, 1999), p. 7-12, Muhammad bin Husain al-Jaizānī, *Ma`ālim Uşūl al-Fiqh* (Saudi Arabia: Dar Ibn al-Jauziy, 1996), p. 685-692.

⁶⁵ All *uşūl* literature cited in this paper, non of them presented whole thematic legal evidences.

⁶⁶ Muhammad bin Shalih al-Utsaimin, *al-Qawā'id al-Fiqhiyyah* (Iskandariyah: Dār al-Bashirah, t.t.), p. 27, Abdul Mujb, *Kaidah-Kaidah Ilmu Fiqh* (Jakarta: Kalam Mulia, 2005), p. 27, Hakim, *Mabadi'...*, p. 27.

which is irrelevant to *muāmalat*, or “*al-aşlu fi al-mu`āmalat al-ibāhat*”⁶⁷ which is irrelevant for *fiqh ibādah*. The candidate of *Fiqh* scholars wasted their time to learn *Uşū al-Fiqh* which is sometime irrelevant with their study. Those facts explained, lead us to conclude that *Uşū al-Fiqh* had to respond the specialization of *Fiqh*.

To link between *Uşūl* and *Fiqh*, it is necessary to construct new science to facilitate the candidates of *fuqahā'* in maximizing their potential. The new science studies legal evidences focused on a special legal theme and methods to understand them. Regarding the science studying the thematic legal evidences and methods, it can substantially be considered as part of *Uşū al-Fiqh*, but just more thematic. It only focused on one legal theme such as *jināyat*, *siyāsah mu`āmalat*, *mawārits*, *munākahat*, *ibādat* and other legal themes. Therefore, we may call the science as *Uşūl mu`āmalat* as it connects the *fiqh mu`āmalah* to *Uşū al-Fiqh*, or may call *Uşū al-jināyah* or *Uşū mawārits* or *Uşū ibādah*. Those are the science this article tries to propose as a new term called *para-fiqh*. It seems not appropriate to create another term “*Para-Uşūl*” for two reasons; its position which is located in the middle of *Uşūl* and *Fiqh*, and the contemporary of *Fiqh* which is more thematic than *Uşūl*.

The term “*para*” means beside or not same with, close to,⁶⁸ such as “*paramedic* or *paragliding*”. The term “*para-fiqh*” means beside *Fiqh* or near to *Fiqh* but not same with it. *Para-Fiqh* studies whole legal evidences on certain theme but it is only focused on methods to understand them, not to explain them to be practical as *Fiqh* does. Both *para-Fiqh* and *Fiqh* share similarities in their details on legal

⁶⁷ *Ibid.*

⁶⁸ Tim Penulis, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2005), p.

evidences. However, they are different in purpose; *Fiqh* studies legal evidences to explain legal action for implementation, while *para-Fiqh* explains methods to understand them.

To sum up, *para-Fiqh* can be defined as science of legal evidences on certain theme and methodology to understand them. The current trend indicates the emerge of this *para-fiqh* that can be seen in some new literatures, such as Muhammad Mufid who wrote *Uşū al-Fiqh Ekonomi*⁶⁹ or Abdiansyah Linge who wrote “*Ayat-Ayat Ekonomi*”⁷⁰ as small part of *para-fiqh mu`āmalat*, or Abdul-Azeem Badawi who wrote “*The Concise Presentation of Fiqh of the Sunnah and the Noble Book*”.⁷¹

E. *Para-Fiqh*: An Epistemology

1. Border of *Uşūl* and *Fiqh*

Para-Fiqh shares a same object of study with *Fiqh*, which is legal evidence on the same theme.⁷² Both *para-fiqh jināyat* (*Uşūljināyat*) and *fiqh jināyat* studied legal evidences of *jināyate* either from Qur’an or hadith, or other legal sources.⁷³ However, *para-Fiqh* presents only thematic legal evidences together with methodology to understand them. While *Fiqh*, on the contrary, explains its content in order to unveil Islamic law. *Fiqh* is not

⁶⁹ Mohammad Mufid, *Ushul Fiqh Ekonomi dan Keuangan Kontemporer*, Dari Teori ke Aplikasi (Jakarta: Kencana, 2016), p. vi-ix.

⁷⁰ Abdiansyah Linge, *Ayat-Ayat Ekonomi* (Tangerang: Mahara Publishing, 2017), p. iv.

⁷¹ Abdul-Azeem Badawi, *The Concise Presentation of The Fiqh of The Sunnah and the Noble Book*, translated by. Jamall Al-Din M. Zarabozo, (Riyadh: International Islamic Publishing House, 2007), p. 687-702.

⁷² There is no objection that the object of *ushūlfiqh* is legal evidences. All of *ushūl fiqh* literature which discussed the object of *ushūl* must listed legal evidences as object.

⁷³ See for instance Nurul Irfan and Masyrofa, *Fiqh Jinayat* (Jakarta: Amzah, 2014), p. 18-20.

obliged to explain its methods, because this explanation refers to *para-fiqh*.

While *para-fiqh* explicates the methodology used to understand legal evidences, *Fiqh* attempts to define the legal action contained in legal evidences presented by *para-fiqh*, either in *taklifi* or *wadh'i*. So, determining the legal status of *zina* (sexual intercourse of un marriage couple in Islam), classifying it in to two classes, explaining its proofing system, and implementing its penalty are the task of *Fiqh* and cannot be interfered by *para-Fiqh* (*Uṣū al-jināyat*).

Either *para-fiqh* or *Fiqh* possibly defines the legal theme they studied. Both *para-fiqh jināyat* and *fiqh jināyat*, could define "*jināyat*". Defining the legal theme either in *para-Fiqh* or in *Fiqh* is certainly required to establish definite equal perspective of *para-Fiqh* and *Fiqh*.

2. Object and Purpose

As we have mentioned, the object of *para-Fiqh* is thematic legal evidences, such as evidences of *jināyat* or *`āmalat*, etc and methods to understand these thematic legal evidences. These legal evidences may originate from Qur'an, hadith, community tradition, state constitution, the practice of *ṣahābat*, and etc. The sources of legal evidences may be different from a theme to other themes. Worship, for instance, its legal evidences only originated from Qur'an and hadith, no other sources. While legal evidences of *mu`āmalat* may be derived from Qur'an, Sunnah, custom or tradition and state constitution.

Para-fiqh has two main purposes: presenting whole thematic legal evidences and explaining the methods or principles needed to understand them.

However, the most challenging task of *para-Fiqh* lies in the first. Some scholars had begun the task, like Abdiansyah on “*Ayat-Ayat Ekonomi*” who presented legal evidences of *mu`āmalat* contained in Qur’an, Ahmad Sholihin Siregar on “*Āyāt al-Ahkām*”, a compilation of selected all legal evidences contained in Qur’an, classified them into legal themes.⁷⁴ Other than Qur’an, it seems *para-fiqh* required more time to classify whole legal evidences from hadith. Some efforts in presenting and classifying them had begun by *muhadditsīn* in their *Sunan*, just like what Abū Dāūd, al-Tirmīdzī, Ibnu Mājah, and al-Nasā’ī did. They had compiled whole hadith (legal evidences) and classified into several legal themes. However, modern legal theme of *fiqh* which had rapidly growth has more variation compared to legal themes found in these *Sunans*. Therefore, *para-Fiqh* needs to reclassify the hadith into new legal themes in responding to current themes of *Fiqh*. So did *Para-Fiqh* to other sources of legal evidences, such as community tradition, state constitution, the practice of *ṣahābat* and other sources.

The second purpose seems to be easier part to fulfill, because *Uṣū al-Fiqh* itself had contained methods like *amr-nahy*, *manthūq-mafhūm*, *‘āmm-khāsh*, the hierarchy of legal sources, the conflict of evidences, etc. In this case, *para-fiqh* necessitates an advanced effort to select and redirect the explanation in order to have more relevant theme, such as explaining *al-nahy* using “*lā taqrabūz zinā*” for *jināyah*, and “*lā taqrabū ṣalāt wa*

⁷⁴ Ahmad Sholihin Siregar, *Ayatul Ahkam, vol. 1: Dasar Seleksi dan Konstruksi* (Tangerang: Mahara Publishing, 2018), p. 431, or refer to Ahmad Sholihin Siregar “The Construction of Ayatul Ahkam: Constructing the Selection Bases of Ayatul Ahkam” in *Ahkam Jurnal Ilmu Syariah UIN Syarif Hidayatullah Jakarta*, vol. 18, no. 1, Januari 2018, p. 233-250.

antum sukāra” for worship. To explain the methods or principles in understanding legal evidences, *para-Fiqh* must use the thematic legal evidences presented earlier. *Para-fiqh* also should reselect the relevant principles and cast out the irrelevant one, mainly in aspect of *fiqhiyyah* principles. *Al-aşlu fi al-`ibādat*, for instance, is not relevant with *jināyat*, and should be put aside from *para-fiqh jināyat*, and so be “*al-itsāru fi al-ibādat madzmūm*”.

3. Scope of Study

Para-Fiqh studies more specific scope compared to *Uşul* or *Fiqh* in accordance with its definition, object and purpose. The scope of *para-Fiqh* must refer to its two purposes: presenting whole thematic legal evidences and explaining the methods to understand them. To fulfill the two purposes, the scope of *para-Fiqh* should consist:

1. Definition.

These comprises definitions of legal themes, such as *jināyat*, *mu`āmalat*, *munākahat*, etc., and definitions of other terms such as: *Uşul*, *fiqh*, and *Uşu al-Fiqh jināyat* or *para-fiqh jināyat*.

2. Legal source.

Legal sources required further discourse because the sources may be truly different among *para-fiqh* or legal themes. Due to these sources, *para-Fiqh* ought to explain the hierarchy of legal sources and the conflict of evidences.

3. Legal Evidence

Para-fiqh must provide whole thematic legal evidences, either from Qur'an or hadith or other sources. Most part of *para-fiqh* studies is these legal evidences. *Para-fiqh* has to select and compile

the thematic legal evidences from Qur'an, hadith, custom, state constitution, etc.

4. *Uşūliyyah* Principle

Uşū al-Fiqh has been explaining a lot of *Uşūliyyah* principles. The task of *para-fiqh*, in this case, is to explain the principles related to its theme using thematic legal evidences as its example. Besides, *para-Fiqh* also should construct a new *Uşūliyyah* principles related to new legal sources such as state constitution.

5. Relevant *Fiqhiyyah* Principle

Para-Fiqh selects and provides only relevant thematic *fiqhiyyah* principles, and ignores irrelevant ones. For example, *Al-ashl fī al-`ibādat al-tahrīm*” should be removed from *para-fiqh jināyat*, and listed in *para-fiqh `ibādat*. Some *para-fiqhes* may share same principles, like “*al-umūru bi maqāsidihā*” which is relevant to worship, *jināyat*, *munākahat* etc.

6. Other studies of *Uşul*

Para-Fiqh should discuss some studies of *Uşul* which are different from general *Uşū al-Fiqh*. The definition of Islamic law is certainly unnecessary, because the same definition may be applied for all legal themes. As well as the definition of law giver, which means no one of law giver except Allah. However, for certain themes, legal subject may be dissimilar, as the subject of *mu`āmalat* is not barely limited to *mukallaf* but also legal institution or corporation that is never been discussed by general *Uşū al-Fiqh*.

We might include the whole scope of *Uşū al-Fiqh* in *para-fiqh*, but it could later lead us to futility and disappearances of *Uşū al-Fiqh*. If this

situation occurred, we would had “an orphaned” para-*Fiqh* from the “mother science: *Uṣūl al-Fiqh*”.

F. Para-*fiqh*: An Axiology

Para-*fiqh* is constructed to help candidates of *fuqaha*’ focused on certain legal themes, especially in particular study program like *jināyat*, *mu`āmalat*, *ahwāl syakhshiyah*, etc. It eases *them* to explore and master *Uṣūl al-Fiqh* with their theme. Hence, the scholar of *mu`āmalat* would not be halted on general *Uṣūl* explaining general legal evidences and methods to understand them, which are occasionally irrelevant with their study. Therefore, all candidates shall have more opportunities to deepen their study. Scholar of *jināyat*, for instance, may refer to *Uṣūl jināyat* which provides him all *jināyat* legal evidences and methods, and then contribute to a new original thought. On the other hand, they would not be distressed from seeking thematic legal evidences and wasting times for classifying them.

Another advantage offered by para-*Fiqh* is the progress of *Uṣūl* and *Fiqh*, as *para-Fiqh* develops new principles of *Uṣūlīyyah* and *fiqhīyyah*. *Fiqhīyyah* principles of *jināyah* and *siyāsah* for instance, are faintly touched by *Uṣūl al-Fiqh* compared to *ibādat* or *munākahat*.

Para-Fiqh also may offer solutions for contemporary debate of Islamic law, which is *Uṣūl* cannot offer. Long Debate on *Qanun Jinayat*, for instance, whether it is part of Islamic law or Indonesian legal system; either complies to Islamic law or Indonesian constitution. Some scholars, such as Natangsa Surbakti,⁷⁵ Jum Anggraini,⁷⁶ and

⁷⁵ Natangsa Surbakti, “Penegakan Hukum Pidana Islam (*Jinayah*) Di Provinsi Nanggroe Aceh Darussalam” in *Jurnal Media Hukum*, vol. 17 Number 2nd December 2010, p. 200.

Amsori-Jailani⁷⁷ concluded that *Qanun Jinayat* is combination of Islamic law and Indonesian penal law. *Para-Fiqh* could affirm the conclusion in perspective of Islamic law as it stipulates state constitution as legal source of *jināyat* under Qur'an and Sunnah.

For theme of worship, *Para-Fiqh* also can settle the conflict on legal status of *wirid*⁷⁸ whether it is *bid'ah* or not, as *Para-Fiqh (Uṣūlibādat)* only legalizes Qur'an and Sunnah, and rejects *Urf* (custom) as legal source.

Recently, I myself have been asked “whether a legal institution like *Syariah Mandiri* bank could possibly carry Islamic immolation on behalf of its name or not” by chief of Immolation committee in STAIN Gajah Putih. The extension of legal subject to mukallaf (person) and legal institution, *Para-Fiqh* could easily answer the question.

G. Conclusion

The vastness of *Fiqh* scope, limitedness of lifespan, and stagnancy of *Uṣū al-Fiqh* create a gap between *Fiqh* and *Uṣūl*. Various thematic *Fiqh* refers to only one model of *Uṣū al-Fiqh*. This led to the need of science bridging thematic *Fiqh* to *Uṣūl*, namely *para-fiqh*.

Para-fiqh is science of whole thematic legal evidences and methods to understand them. Besides, I determined *para-Fiqh* here is a paradigm to understand the dynamic interplay between *Fiqh* and *Uṣū al-Fiqh* discussions.

⁷⁶ Jum Anggraini, “Kedudukan Qanun Dalam Sistem Pemerintahan Daerah dan Mekanisme Pengawasannya” in *Jurnal Hukum*, vol. 3, number 18th July 20011, p. 333-334.

⁷⁷ Amsori and Jailani, “Legislasi Qanun Jinayat Aceh Dalam Sistem Hukum Nasional” in *Jurnal Ar-Raniry*, vol. 4, Number. 2nd December 2017., p. 221-256.

⁷⁸ Refer for instance to Idham Hamid, *Tradisi Ma'bara Yasin di Makam Annangguru Maddapungan Santri Pondok Pesantren Salafiyah Parappe Kec. Campagian Kab. Polewalimandar*, (Makassar: UIN Alauddin Makassar, 2017), p. 103.

Because of para-*Fiqh* studies thematic legal evidences and its methods, therefore, it can be considered as part of *Uṣūl*, and not considered as *Fiqh*.

Para-*Fiqh* presents the thematic legal evidences together with methods to explain them. Para-*fiqh* does not discuss explanation of legal actions contained in legal evidences, as it is an authority of *Fiqh*.

The object of para-*Fiqh* is thematic legal evidences, such as *jināyat* or *mu`āmalat* or *munākahat* legal evidences. *Para- fiqh* has two main purposes: First, presenting the whole thematic legal evidences, and second, explaining methods to understand them.

The scope of *para-Fiqh* consisted of definition of terms (*Fiqh*, *Uṣū al-Fiqh*, *para-fiqh*, legal theme), legal sources, thematic legal evidences, *Uṣūliyyah* and *fiqhiyyah* thematic principles, and other different *Uṣūl* studies.

Para-Fiqh is urgently constructed to facilitate *fuqahā'* in developing *Uṣūl* and *Fiqh*, to deepen *Uṣūl* –mainly in *Uṣūliyyah* and *fiqhiyyah* thematic principles– and *Fiqh* studies.

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