

Istihsan Qiyas Khafi Indication of Al-Bazdawi in Contemporary Fatwa in Indonesia

Amri Amir, Firdaus Siraj, Muchlis Bahar, Rahmi Wiza, Ibrahim bin Salem Al-Saedy

Universitas Islam Negeri Ar-Raniry Banda Aceh

amriamir0502@gmail.com, firdaus@uinib.ac.id, baharmuchlis27@gmail.com,
rahmiwiza@fis.unp.ac.id, ibrahim.alsaedi@iu.edu.sa

Received: 2023-12-12

Accepted: 2023-12-25

Published: 2023-12-31

Abstract

This research aims to analyze qiyas khafi (hidden illat) of al-Bazdawi in the context of his Istihsan as indicated in contemporary fatwa in Indonesia. What is the concept of qiyas khafi (hidden illat) of al-Bazdawi? And how is it relevant to contemporary fatwa in Indonesia? The research method used is descriptive analysis with a literature study approach sourced from journals, websites, and books by al-Bazdawi and his lecturer. The results of the research show that qiyas khafi (hidden illat) of al-Bazdawi in Istihsan context is a process of intifa' (taking benefits) on a legal object by using qiyas khafi (hidden illat) by removing qiyas jali (apparent illat), and hidden illats of al-Bazdawi are considered relevant to a number of contemporary fatwa of the Indonesian Ulema Council (MUI), among others: 1) the ease of cash waqf Sukuk, 2) the ease of Sukuk Mudharabah, Murabahah, Musyarakah, 3) the ease of Swab test when fasting, 4) the ease of Vaccine injection while fasting.

Keywords: *Qiyas khafi, al-Bazdawi, Contemporary fatwa.*

Abstrak

Penelitian ini bertujuan untuk menganalisis qiyas khafi (illat tersembunyi) al-Bazdawi dalam konteks Istihsan beliau sebagaimana tertuang dalam fatwa kontemporer di Indonesia. Bagaimana konsep qiyas khafi (illat tersembunyi) al-Bazdawi? Lalu bagaimana relevansinya dengan fatwa kontemporer di Indonesia? Metode penelitian yang digunakan adalah analisis deskriptif dengan pendekatan studi literatur yang bersumber dari jurnal, website, dan buku karya al-Bazdawi dan dosennya. Hasil penelitian menunjukkan bahwa qiyas khafi (illat tersembunyi) al-Bazdawi dalam konteks Istihsan merupakan proses intifa' (mengambil manfaat) terhadap suatu objek hukum dengan menggunakan qiyas khafi (illat tersembunyi) dengan menghilangkan qiyas jali (illat semu). , dan illat-illat tersembunyi al-Bazdawi dinilai relevan dengan sejumlah fatwa kontemporer Majelis Ulama Indonesia (MUI), antara lain: 1)



kemudahan Sukuk wakaf uang, 2) kemudahan Sukuk Mudharabah, Murabahah, Musyarakah, 3) kemudahan Swab test saat puasa, 4) kemudahan penyuntikan Vaksin saat puasa.

Kata kunci: Qiyas khafi, al-Bazdawi, fatwa kontemporer

INTRODUCTION

Qiyas is a characteristic of the Syafi'i scholars and majority ulema (*jumhur*) in implementing Sharia law, while the *Istihsan* method is a characteristic of Hanafi Scholars in implementing Sharia law compared to their other legal methods. This is because of the *ijtihad* method source is different between the two schools of thought. *Ushul of Hanafi Scholars* originates from Imam Abu Hanifah referred to as Imam of rational (Diab Salim Muhammad Umar 1997), and *Syafi'i scholars* originate from Imam Syafi'i as Imam of hadis. These differences in Islamic sects of Imams cause differences in legal *istinbath* methods in *qiyas* and *Istihsan*.

Despite the differences in naming and terms, if examined further, it is actually *Istihsan* of Hanafi is still at the level of *qiyas studies* of Syafi'i scholars and majority ulema with several differences in substance and application. Among examples of fatwas from the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI) on contemporary *fiqh* issues is the DSN MUI fatwa, No. 22/2002 concerning cash *waqf* (DSN MUI 2022).

The DSN defines cash *waqf* as *waqf* made by a person, group of people, institution or legal entity in the form of cash or securities (worth money). The DSN MUI fatwa regarding cash *waqf* above also mentions the name of Ibnu Syihab al-Zuhri (a hadis scholar) who allows cash *waqf* to be used as business capital, but does not mention the method of his *ijtihad*. But when the MUI mentioned the existence of Muhammad Syaibani, the classical Hanafi cleric, he issued a fatwa that allowed cash *waqf* based on the *Istihsan* with tradition. (Salqini, 1996), here the MUI mentions the *ijtihad* method of the Hanafi ulema.

Muhammad Syaibani (d 189 H) who was an al-Bazdawi teacher, allowing dinar *waqf* on the basis of *Istihsan bi al-'urf* namely *Istihsan* with traditions (Wahbah al-Zuhaili 2000), based on the *atsar* of Abdullah bin Mas'ud and one of the rules of Hanafi's *ushul* which prioritizes *qaul sahabi* rather than *qiyas*. This hadis is one of Al-Bazdawi's evidence for the implementation of the *Istihsan* method.

Muhammad Syaibani (d 189 H) was not only an Imam for al-Bazdawi in the preparation of his *ushul fiqh* work *Kanzu al-Wushul*, but also became the main reference besides the other Imams, such as Abu Hanifah, Abu Yusuf in the formulation of many *ushul* problems and also the formulation of law *istinbath* methods, including the *Istihsan*. In contemporary MUI fatwas, not few Hanafi ulema are used as references for fatwas, because contemporary fatwas adopt multiple schools of thought in legal derivation, especially in Sharia economic issues. In this article the author will discuss further the method of *Istihsan* with *qiyas Khafi* (hidden *illat*) of al-Bazdawi which is indicated in contemporary MUI fatwas.

This type of research is normative qualitative, using library research, by reviewing library materials (Ishaq 2020), data sources from journals, websites, the book by al-Bazdawi as a primary source entitled "*Kanzu al-Wushul*" and his lecturer's work "*Kasyfu al-Arsar*" which is a commentary/explanation (Soejono Soekanto, 2015) of *Kanzu al-Wushul*, includes other literature, data from materials such as dictionaries, encyclopedias, indexes including internet sites that can provide information to support the completeness of this article.

The steps taken to establish indications of Al-Bazdawi's *Istihsan* with *qiyas khafi* (*hidden illat*) in contemporary fatwa in Indonesia, using data collection techniques by searching for data on the figure of Al-Bazdawi and his *ushul* thoughts (Suharsimi Arikunto 2011), sorting and selecting relevant data with research, then proceed with data analysis techniques, namely **organizing** the data obtained, organizing it and analyzing (*content analysis*) the MUI fatwas that are relevant to Al-Bazdawi's *Istihsan* with *qiyas khafi* (*hidden illat*), then presenting the research results. (Samsu Sumadayo 2017)

DISCUSSION

Al-Bazdawi Biography

Al-Bazdawi's full name, Ali bin Muhammad bin Al-Husain bin Abdil Karim bin Musa bin Isa bin Mujahid Abul Hasan, is better known by the name: *Fakhrul Islam Al-Bazdawi*. (Al-Bazdawi, 2016; Al-Bukhari, 1997; Al-Qursyi, 1993) Al-Bazdawi (d 482 H) was a *Hanafi scholar* who came later, who Most prominent in formatting *ushul fiqh* of Imam Abu Hanifah, came from the country of Bukhara, minor Asia. He is the third generation of Hanafi *mujtahid* after the first generation, Abu Hanifah, Abu Yusuf, Muhammad Syaibani. (Al-Humaidi, 2005).

Among Al-Bazdawi's phenomenal works in the science of *ushul fiqh* is "*Kanzu al-Wushul ila Ma'rifati al-Ushul*" which has been presented by 16 Hanafi *ushul* lecturers. *Ushul al-Bazdawi*'s work received appreciation from Hanafi scholars who agreed that his work was the main *ushul fiqh* book for Hanafi scholars, even considered the work was as a reference book for all Hanafi scholars, recognized by classical school scholars and ulema who came later. (Al-Bazdawi, 2016; Al-Bukhari, 1997)

Ushul of al-Bazdawi emerged from disputes between Hanafi ulema, and differences between Hanafi Scholars and others, especially Shafi'i scholars, detailed debates explaining how to build *furu'* on *ushul*, and often closes the discussion by saying *alamtsilah aktsar min an tuhsha* means "there are many examples that can be analogous to the rules of his *ushul*". (Al-Bazdawi, 2016)

Al-Bazdawi deepened various fields of science, as he lived in a family that loves science, inherited it from his extended family for generations. Al-Maturidi, who was the teacher of his grandfather was known the Imam of the *mutakallimin scholars*, the purifier of the Islamic faith in his time and after, and had role in eradicating heretical beliefs,

especially *Jahamiyah*, *Mu'tazilah* beliefs. al-Maturidi (d 333 H) lived in Samarqand, was a figure of kalam science who shared the same creed with al-Asy'ari (d 359 H) in Basrah since the beginning of the fourth century *Hijriah*, this as if describes that Al-Bazdawi was a *mutakallim* scholar. (Khaznah 1998)

Despite a slight influence from the kalam science, but Al-Bazdawi is one of Hanafi scholars whose study is based on the Iraqi *madrasah* which is based on the strong connection between the *ushul* and *furū'*, which was led by Isa bin Abban, al-Karkhi in the third century *Hijriyah*, the method still adhered to the method of the time of the first generation of Imams, Abu Hanifah, Abu Yusuf, Muhammad Syaibani. He was different from his brother *Shadrul Islam* *wass a Hanafi ushul* ulema who follows the Samarqand *madrasah* because of his strong kalam knowledge, so that the study method of him does not involve *furū'*, *fiqh* like Iraqi *madrasah*, but presents global evidence like the *Mutakallimin method*.

In the development of *ushul science*, there are 3 stages of scientific development in Hanafi *ushul*, so Al-Bazdawi can be included in the *tadwin* (*ushul* writing) and *istiqrar* (stable period of Hanafi *ushul*) periods. He entered the *tadwin stage* the final phase with his phenomenal work "*Kanzu al-Wushul*". Apart from that, Al-Bazdawi can also be classified into the *istiqrar stage* (stability of Hanafi *ushul*), because *his ushul book* was considered a complete Hanafi *ushul book*, so it was used as a reference by Hanafi scholars and *fuqaha* in his time and after.

Ushul scholars have agreed that Al-Bazdawi's *ushul*, entitled *Kanzu al-Wushul*, was composed and compiled according to the *fuqaha method*, (Khaznah, 1998) and the *fuqaha method* is the *ushul method* of the Iraqi ulema. Al-Bazdawi is known to have many legal *Istinbath* methods which also act as legal propositions, (Al-Ramisyi, 2008) namely *al-Kitab*, *as-Sunnah*, *Aqwaal Sahabi*, *Ijma'*, *Qiyas*, *Istihsan*, *'Urf*. However, among these methods, *Istihsan* is al-Bazdawi's method which is quite prominent in *ijtihad* in legal formulation.

Contemporary Fatwa

Contemporary fatwa have different specifications from fatwa in general. Sheikh Qaradawi (Yusuf al-Qaradhawi 1997) defines fatwa according to sharia' as an explanation of sharia law on an issue, problem (law) as an answer to a *mustafti* (questioner) the person who has been already known or has not yet been known, whether the questioner is a person, congregation or group. (Al-Qaradawi, 1995).

Contemporary fatwa can be interpreted in two categories:

1. The first, completely new fatwas, not previously discussed, which are called *al-fatwa al-jadid*.

2. Second, fatwas that have actually been discussed before, but have become new again because conditions and times require the issue to reappear, called *al-fatwa al-mustajid*.

These categories of contemporary fatwa can be understood from the explanation and indication of the meaning of some data. Among other things, in the *Mu'jam dictionary al-Wasith* stated: 'ashr means the period, time that is attributed to or connected to a kingdom, state, natural, social developments of society. For example, it is said, the 'Abbasid era, the ancient era, the modern era and so on. (Al-Arabiyyah, 1980; Mu'jam al-Wasith, 2004)

From the information above, it can be understood that 'ashr, which means time and age, is connected to the natural/social developments of a particular society in a particular period. This is an indicator that everything related to social problems that develop at a certain time can be said 'ashry, which means current, contemporary problems, or in more popular called "contemporary". So that contemporary problems are more attached to the term "qadhaya 'ashriyyah/mu'aashirah", meaning problems that arise due to current needs that require fatwa (explanation) to anticipate them. The needs of the time can be in a new sense that has not been discussed by previous scholars, or it has already been discussed, but is once again being discussed by society because it appears in a different form due to current demands. KBBI also explained this in the same description. (KBBI, 2001)

Studying *Istihsan* according to Al-Bazdawi is studying two contradictory elements (*ta'arudh*) namely, *qiyas* and *istihsan* in detail simultaneously. It is different from studying *qiyas* alone without studying the conflict between these two elements, without being linked to *Istihsan*, and al-Bazdawi's *qiyas* law and its provisions are also different from *Istihsan*. Discussing *Istihsan* that al-Bazdawi referred to must discuss *atsar* (influence) of its *illat* as a legal pretext. From *atsar* (influence) of *illat* it is then known which *Istihsan* has a strong *illat* influence, and which one has a weak *illat* influence. Those with strong *atsar* (influence) *illats* are called *Istihsan* or *qiyas mustahsan* (better *qiyas*) and those with weak *atsar* (influence) *illats* are called just *qiyas* or *qiyas zhahir* or *qiyas jali* (clear or real reason). This is of course somewhat different from al-Karkhi Hanafi's understanding of *Istihsan*, which defines *Istihsan* as: "Qat'u al-problem 'an nazhairiha five hua aqw" means cutting off legal problems from comparative legal problems by adopting different laws because of stronger arguments." (Al-Syairazi, nd; Al-Asnawi, nd; Al-Ghazali, 1998; Abu Ishaq al-Syairazi, 1988)

According to al-Bazdawi there are 4 types of *Istihsan*, first *Istihsan* with *atsar/nash*, namely the strong influence of *illat* on the text, defeating the influence of *qiyas jali* (apparent *illat*), second *Istihsan* with *Ijma' Sukuti*, namely the strong influence of *illat* on *Ijma sukuti* defeated the *atsar*/influence of *qiyas jali* (apparent *illat*), third *Istihsan* with *Dhanurat*, namely the strong influence of *illat* in emergency conditions defeating the

influence of *qiyas jali*. fourth *Istihsan* with *Qiyas Khafi* (hidden *illat*) is the main topic of discussion in this research, namely the strong influence of *illat* on *qiyas khafi* (hidden *illat*) defeats *atsar*/influence of *illat* on *qiyas jali* (apparent *illat*). There are many examples and comparisons of these four forms of *Istihsan*, "*al-amtsilah aktsar min an tuhsha*".

***Qiyas Khafi* (Hidden *Illat*) of Al-Bazdawi**

Qiyas khafi (hidden *illat*) in Al-Bazdawi's *Istihsan* in this research, the emphasis on the strong influence of *illat* on *qiyas khafi* (hidden *illat*) causes the *atsar* (weak influence) of *qiyas jali* (apparent *illat*) to be excluded from legal assessment. This is what al-Bazdawi said "*maa qawiya atsaruhu wain kaana khafiyyan*" (Al-Bazdawi, 2016) where *Istihsan's* face *qiyas khafi* (hidden *illat*) is stronger than *qiyas jali* (apparent *illat*) in terms of its weak *atsar* (weak influence of its *illat*). This *Qiyas khafi*/ hidden *illat* was favored by al-Bazdawi as a proof and evidence, because the power of its influence to the *illat* can surpass *qiyas jali* (apparent *illat*) which the *atsar* (influence) of the *illat* is weak. (Al-Bazdawi, 2016)

Example of *Qiyas khafi* (Hidden *Illat*) of Al-Bazdawi:

"*Intifa'* (taking benefits) of the eagle-water case using the *Qiyas khafi*/hidden *illat* method, was used as proof by Al-Bazdawi because of its strong influence (*atsar*)."

According to *qiyas jali* (apparent *illat*), the drink used by wild birds (eagles) is unclean, because the drink used by wild animals is treated like the drink used by other wild animals. This is the meaning of weak *atsar* (weak influence) of *illat*, because both of them are the same in the prohibition of consuming it. Meanwhile, according to *Qiyas khafi* (hidden *illat*) of Al-Bazdawi, the drink used is sacred because the wild bird (eagle) is not unclean in its substance with the argument that it is allowed to take its benefits (*jawazu al-intifa' bi al-sab'i*) according to *Syar'i* (according to religion), and its uncleanness remains. it requires the prohibition of its flesh, then we can establish one law from two laws, namely the uncleanness that sticks to it, then the nature of its uncleanness is determined by its moisture and saliva, and the wild bird (eagle) drinks with its dry beak which is used to draw water and then swallow it, and the bone (beak) is clean, pure in substance, free from the attachment of uncleanness. (Al-Bazdawi, 2016)

From the description of al-Bazdawi's text above, it is understood that, Firstly, *The intifa'* (taking benefits) of the eagle's beak is required to be dry, because it is associated with water. (Because eagles are meat eaters/carnivores, it is feared that the mixture of blood/saliva will cause doubts, suspicions about the uncleanness of their beaks). Suspicion about its impurity in "*ruthubatuhu wa lu'aabuhu*" "*in its moisture and saliva*", if its beak is dry, then its impurity disappears, and it becomes pure. The moist beak of this carnivore is likened by the Al-Bazdawi lecturer to "a dead mouse falling into frozen oil", so the mouse carcass and its surroundings must be removed so that the remaining oil from it becomes pure.

Secondly, taking benefits from the eagle's body substances, does not have to be dry, if it is used to hunt halal prey. Here the condition is like a halal trained dog used for hunting, as stated in QS. al-Maidah verse 4: "*mukallibiina tu'allimunahunna mimmaa 'alamakumullah*". From this case, Al-Bazdawi's new *ushul* rule emerged: "*yajuuzu al-intifaa' bi alsab'i min ghair dharuurah*", meaning "it is allowed to take advantage of the "body substance of an eagle", without having to be in a state of emergency" (which means you can take advantage of the eagle's body even in normal conditions). In Arab countries, especially Gulf countries such as the Emirates, Oman, Qatar, Bahrain and some Asian countries such as Mongolia, it is customary for people to buy and sell eagles to use them for hunting. In fact, it is a habit of the Mongolian Kazakh tribe to use eagles as a means of hunting animals to meet their needs. The large number of countries that take advantage of the services of eagles for hunting has caused UNESCO to make the practice of hunting with eagles a world cultural heritage in 2010.

This is proof that eagles are not unclean in their body substances, so people take advantage of them for hunting under normal conditions. Here Al-Bazdawi does not say: "You may benefit from the "eagle's beak" under normal conditions, but Al-Bazdawi says "You may benefit from the eagle's body substances under normal conditions." (Al-Bukhari 1997) So it can be concluded that even if humans can use the body of a large eagle for hunting, especially if its small (dry) beak can certainly be used more, this is what is called as a strong *influence of illat on Qiyas khafi* / hidden *illat* of al- Bazdawi.

Author's note from the explanation of Al-Bazdawi and his lecturer:

1. Eagles as wild birds are not unclean in their substance. If the eagle's substance was unclean, it would not be sold by Arabs/Asians for *Intifa'* (taking its benefits) for hunting. The legal condition of eagles like this is almost the same as the condition of dogs, which are not unclean in their substances (other than their saliva), but are used by people for hunting.
2. Al-Bazdawi applied *qiyas* of the eagle's beak to the body of the eagle itself, with *atsar* (the influence of *illat*/ legal reason) that if the body of the large eagle itself is not unclean (pure) with the argument that it can be *intifa'* (benefited from it) by people for sale and purchase for hunting, including of course taking advantage of its dry beak.
3. Taking benefits or advantages in the study of *ushul fiqh* must be taken from the method of taking the law as *matbuu'*, (which is followed) not the benefits taken from the results of the law or *fiqh* (which is just following), so the *atsar* (influence) of *illat qiyas Khafi Al-Bazdawi* is always "strong" The status is because the benefits can be taken, on this basis Al-Bazdawi used this argument. Therefore, if the method (*ushul*) can provide benefits, surely the legal results (*fiqh*) can also provide benefits, this is called *qiyas Sahih*/ true *qiyas* or correct *illat*, and *vice versa*, if the method (*ushul*) cannot

- provide benefits, the legal results (*fiqh*) will certainly not provide benefits, this is *qiyas faasid*/ incorrect *qiyas* or incorrect *illat*.
4. While *the atsar* (influence) of *illat qiyas jali* is always "weak", because it cannot be taken advantage of, on this basis it is not used as a evidence by Al-Bazdawi, therefore, because of the method (*ushul*) *qiyas jali* cannot provide benefits, so it is certain that its legal results (*fiqh*) also cannot provide benefits, so it was removed by Al-Bazdawi. Therefore, if someone says *illat influence* of Al-Bazdawi's *hidden illat* is weak and his *illat influence of qiyas jali* is strong, this means reversing the rules of Al-Bazdawi's *ushul* itself in his *Istihsan method*.
 5. According to Al-Bazdawi, the logic of benefits and non-benefits is a consideration of whether something is halal or haram, whether something is pure or unclean. Everything that is halal/clean benefits the people, and everything that is haram/unclean does not benefit the people. Al-Bazdawi's *istihsan (qiyas khafi)* always aims at the target of achieving what is halal/ *permissible* and clean, and getting rid of what is haram/forbidden and unclean. In the midst of problems that appear to be haram, that's where *Istihsan* Al-Bazdawi takes a chance to take advantage of the interests of the people.
 6. From the context of the rules, the benefits of an eagle's body and its dry beak can be taken advantage of under normal conditions, then the water used to inhale it is pure from its dry and clean beak, it is the result (*fiqh*) of Al-Bazdawi's (*ushul* rules), and the result law/*fiqh*/fatwa from the use of the eagle's body and beak can be expanded according to Al-Bazdawi's assertion in every discussion of his *ushul*, including when discussing *Istihsan*, "*al-amtsilah aktsar min an tuhsha*" meaning "*many examples that can be included in the scope of his ushul rules*", outlined in various fatwas, both contemporary and non-contemporary in the context of *ushul* rules of Al-Bazdawi Hanafi has the characteristic of *taqrir* (determining) everything fatwa that falls within the scope of its *ushul rules*. Such *usul* typology certainly has the potential to support and strengthen fatwas issued by fatwa institutions in Indonesia.

Al-Bazdawi's *Istihsan* with *Qiyas Khafi* (hidden illat) with a number of contemporary fatwas in Indonesia

Although there is no direct relevance between the thoughts of Al-Bazdawi's *ushul*, who is in fact a classical Bukhara cleric, with contemporary fatwas that have contemporary and Indonesian nuances. However, an analogous-*qiyas* approach is attempted, to make analogies in order to find a common ground, because Al-Bazdawi's *ijtihad* method and style of thinking are dominated by the development of logic and ratio, dynamic reasoning in the context of *intifa'* (taking and developing benefits) and preventing loss. Benefits for the purpose of *taisir* (convenience) for the people (*ummah*) on a legal object from the facts of Muslim life as explained previously, which is the

characteristic of Al-Bazdawi *ushul*. Moreover, Al-Bazdawi's own assertions often close down any discussion of his *ushul* with the statement "*al-amtsilah actsar min an tuhsha*" means examples of parables from *furu'* and many fatwas can be included or analogized to the rules of his *ushul*.

The cotemporary fatwa to be analogized to Al-Bazdawi's legal method as *ushul fiqh* (not just belong to his *fiqh*), because his *ushul fiqh* is *ushul* category, while his *fiqh* or fatwa is *furu'* category. This is different from Ar-Ramli, Syarbaini al-Khatib, Ibnu Syihab az-Zuhri who tend to make contemporary fatwas relevant in the context of *fiqh* or *fiqh* or legal results only. (As-Syarbaini, 1997: Ar-Ramli, nd; Muhammad, 1997) In the *Hanafi* Scholar method, there is a close connection between *the ushul* and *the furu'* (*fatwa*) and vice versa a strong connection between *the furu'* and the *ushul*. The specialty of *ushul* thinking like this is not found on the *Mutakallimin* method.

1. DSN MUI Fatwa No. 131/MUI/VII/2019 concerning the ease of cash waqf Sukuk (securities).

- a. The relevance of Al-Bazdawi's *Istihsan* with *qiyas khafi* (hidden *illat*) with the fatwa on the ease of cash *waqf* Sukuk. The hidden *illat* was used as a proof by Al-Bazdawi:

It is allowed to take advantage (*Intifa'*) on money *Sukuk* (movable goods) by donating them as a strong *atsar* (*influence*) on the *illat* of money waqf *Sukuk* based on *Qiyas khafi* (hidden *illat*) of Al-Bazdawi, although Ibn Umar's hadith only touches on land or property *waqf*, it does not directly touch on cash *waqf*. However, both property *waqf* and cash *waqf* *Sukuk* have the same characteristics of *qiyas (illat)*, where both can be benefited from (*intifa'*) and both cannot be taken legal action upon them (*tasharruf*), in the meaning that they cannot be sold or rewarded, inherited. The difference is, property *waqf* is in the *qiyas jali* (apparent *illat*), while money waqf is in the *hidden illat* or *qiyas khafi*. This hidden *illat* was used as a proof by Al-Bazdawi. The Prophet's hadith regarding the *waqf* in question, Ibn Umar's hadith: "*In Syi'ta habbasta ashlah wa tashaddakta biha, 'ala allaa yubaa' walaa yuuhab walaa yuurats*, means "If you wish, please hold onto the source and donate the proceeds, provided that they are not sold, given away or rewarded, inherited" (Bukhari). *Istihsan* with hidden *illat* was used as proof by Al-Bazdawi, because the legal standard of *Istihsan* for Al-Bazdawi was the strength of the *atsar* means the influence of its *illat*, not just the appearance and clarity of the *atsar* (influence) of the *illat*."

- b. *Sukuk* (securities) for money *waqf* according to the *qiyas jali* (apparent *illat*) are not used as a proof, evidence by Al-Bazdawi:

It is not allowed to take benefits from movable goods, money *Sukuk*, because *intifa'* (taking benefits) is only allowed on immovable goods/property according to the hadith text of Ibn Umar above, such as land/property. Here the

atsar (influence) of the *illat* is weak, so the *zhahir* text indicates no taking advantage/ *intifa'* from money waqf Sukuk (movable objects), because Ibn Umar's hadith is related to the law of property waqf (immovable goods), is not a proof for cash waqf sukuk (movable goods)? So the apparent *qiyas* (*illat*) which shows the absence of a proof for this money waqf sukuk, is not used as a proof by Al-Bazdawi, but what is used as a proof is hidden *illat* such as mentioned above, namely the permissibility of cash *waqf* Sukuk based on *qiyas khafi* (hidden *illat*) in the hadith of Ibn Umar.

c. **The second proposition from Al-Bazdawi's eagle example:**

The substance of eagles is **haram** for consumption, this means that the benefits of eagles cannot be taken (*intifa'*), this is *qiyas jali* which is, but *the atsar/* effect of *illat* is weak because it cannot be benefited. If this is translated into *fiqh* such as "money sukuk (movable goods)" it cannot be benefited/donated, because the hadith text of Ibn Umar only relates to waqf of immovable goods, such as land, property, and does not touch on cash sukuk waqf. On the other hand, it is **permissible to use** the substance of the eagle for hunting, even though it is haram for consumption, this is *qiyas khafi* (hidden *illat*) on the eagle, but *the atsar/ illat* influence is strong because it can take advantage of the eagle, this is if it is *qiyas khafi* (in the context of true *qiyas*, does not contradict *the text*) such as "money sukuk (movable goods)" can be benefited by waqf, even though money sukuk is not mentioned in Ibn Umar's hadith, but has similarities in its *intifa'* (utilization), if land/property Benefits can be taken by donating them and cannot be sold, gifted by inheritance, so this criterion also exists for money sukuk, money sukuk can be donated (used, developed for their benefits) and cannot be sold, rewarded or inherited. The difference is that the position of waqf property is in *qiyas jali* (apparent *illat*) while the position of cash sukuk waqf is in *qiyas khafi* (hidden *illat*).

Thus, the permissibility of taking advantage of the eagle's substance for hunting according to al-Bazdawi based on true *qiyas/illat* (which does not contradict the text) can be used as the basis for *Istihsan* with hidden *illat* for his permissibility fatwa on cash *waqf sukuk* (movable goods), and also for *taisir* (convenience) for the people, according to al-Bazdawi's flow (in author's analysis). *Ushul Al-Bazdawi's* rule from the example of the eagle above "*Yajuuzu alintifa' bissab' min ghair dharurah*" You can take advantage (*intifa'*) with wild animals/birds under normal conditions, meaning that the law on the permissibility of cash waqf sukuk falls into the category of taking advantage under normal conditions (in the context of true *illat* that does not conflict with the texts), for example: no one says that the practice of people using eagles for hunting is something that contradict the texts of Quran or Sunnah. This shows that the

analogy of permissibility of cash *waqf* sukuk towards the permissibility of taking advantage to eagles for hunting is a true *qiyas/true illat*.

2. DSN MUI Fatwa No137/2020 concerning the ease of *Mudharabah, Musyarakah, Murabahah Sukuk*.

- a. Relevance *Qiyas khafi* (hidden *illat*) of Al-Bazdawi with a fatwa on the merits of *Sukuk* (securities) *Mudharabah, Musyarakah, Murabahah*. The hidden *illat* was used as an evidence by Al-Bazdawi:

It is allowed to take advantage (*intifa'*) on the *Sukuk* practices of *Mudharabah, Musyarakah, Murabahah* on the basis of profit sharing in the banking systems (Shari'ah or Conventional) as a strong *atsar* (influence) of *illat* on these economic practices based on *Istihsan* with *Qiyas Khafi* (hidden *illat*) of Al-Bazdawi. Because according to *qiyas jali* (apparent *illat*), these economic practices arouses the suspicion of *usury*, because the *nisbah/percentage* received by the parties involved is exactly like *usury*, interest in conventional banking practices, but after further investigation it turns out that the percentage is **profit sharing**, not *usury*, because according to the provisions of profit sharing, that profits are shared together and losses are shared together as well. The provisions like this exist too in Al-Bazdawi's hidden *illat* flow. This hidden *illat* was used as a proof by Al-Bazdawi.

- b. *Sukuk mudharabah, musyarakah, murabahah* according to the *qiyas jali* (apparent *illat*), are not used as an evidence by Al-Bazdawi:

It is not allowed to take advantage from the practices of *Sukuk mudharabah, musyarakah, murabahah* because of the percentage received by the parties involved arouses the suspicion of *usury/interest* in conventional banking practices as a weak *atsar* (influence) of *illat in these economic practices*, so they cannot benefit from this practice. This Apparent *illat was not used as a proof* by Al-Bazdawi, but what was used as a proof was the *qiyas khafi /hidden illat* as mentioned above.

- c. The second proof from Al-Bazdawi's eagle example:

A moist eagle's beak causes *impurity* (because it is a meat eater or carnivore) so the water used to drink it is also unclean and cannot be used (*intifa'*), so the moist eagle's beak is a *qiyas jali* (apparent *illat*), but the *atsar* (influence) of the *illat* is weak, so that taking advantage cannot be done.

The dry beak of an eagle (from moisture) is clean, so the water used to drink it is also clean, it is *permissible* to take advantage of it, so the dry and clean eagle's beak is a hidden *qiyas (hidden illat)*, the *atsar or illat* influence is strong, so taking advantage can be done. If this is translated into *fiqh* then "the moist eagle's beak becomes a *question of impurity*, like "usury" which must be removed

so that the beak can become dry and pure again. Therefore, the dry eagle's beak according to al-Bazdawi is based on the true *qiyas* or true *illat* (which does not contradict the text), this can be used as the basis for a strong hidden *qiyas* (hidden *illat*) for the fatwa on the permissibility of *sukuk mudharabah*, *musyarakah* and *murabahah* which are based on the principle of usury-free profit sharing, and also as *taisir* (convenience) for the people (*ummah*), according to Al-Bazdawi's flow of thought (in author's analysis). This is also based on **the principle** "*Yajuuzu alintifa' bissab' min ghair dharurah*" "*there is permissibility to take advantage with wild animals/birds under the normal conditions (azimah)*". The Understanding that can be taken from the example of an eagle's beak above is that if the eagle's body substance alone can be used by people for hunting, of course they can really benefit from its small beak, as long as the beak is dry it can provide benefits, but if it is damp, this causes the suspicion of uncleanness (as a meat eater or carnivore).

The definition of *Mudharabah* is: a business agreement between the capital owner (*shahib al-mal*) and the manager (*mudarib*) and the business profits are divided in half according to *the ratio* (percentage) agreed upon in the contract. (This is profit sharing, not usury). The definition of *Musyarakah* is: a certain business cooperation agreement between two or more parties, where each party contributes funds combined into joint business capital, with the provisions that profits are shared according to an agreed *nisbah* (percentage) or proportional *nisbah* (percentage), and losses are borne jointly proportional. (This is profit sharing, not usury). The definition of *Murabahah* is: an agreement to buy and sell goods by confirming the purchase price to the buyer, and the buyer pays the excess price as a profit. (This is profit sharing, not usury) (DSN MUI 2020)

3. MUI Fatwa No 23/2021 regarding the ease of the Swab test when fasting.
 - a. The relevance of *Qiyas khafi* (hidden *illat*) with a fatwa regarding the ease of the Swab test when fasting. Hidden *illat* used as a proof by Al-Bazdawi:

Intifa' or taking advantage of the Swab test *practice* when fasting on the basis that Swab test is not a category of eating and drinking that breaks the fast, because what happens during the Swab test is fluid entering the nasal cavity, not entering the throat of the Muslim who is fasting, thus the Swab test is not categorized as drinking or eating which breaks the fast. This is a strong hidden *atsar* (influence) on the Swab test *illat*, thus opening up the opportunity to take benefit from the Swab test based on *Istihsan* with *Qiyas Khafi* (hidden *illat*) of Al-Bazdawi. This hidden *illat* was used as an evidence by Al-Bazdawi in his fatwa regarding the ease of the Swab test when fasting.

- b. The Sweb test according to the *qiyas jali* (apparent illat) is not used as a proof by Al-Bazdawi:

It is not permissible to take advantage/*intifa'* in the practice of the Sweb test when fasting because the presence of a liquid entering the body through the nasal cavity gives *doubt* to the inclusion of a category of drinking which can break the fast, this is weak *atsar* (*weak influence*) on the *illat* of the Sweb test, so there is no taking advantage of the Sweb test while fasting. This apparent illat was not used as a proof by Al-Bazdawi, but what was used as an evidence by Al-Bazdawi in his fatwa on the ease of the Sweb test when fasting is the hidden *illat* above, namely "what happens during the Sweb test is the entry of fluid into the nasal cavity, not entry into the throats of fasting Muslims."

- c. Al-Bazdawi's second proposition:

The permissibility of the Sweb test falls into the category of taking advantage under normal conditions (in the context of true *qiyas* or true *illat* which does not contradict the text), no one says that the practice of people using the services of eagles for hunting is something that is contrary to the text, both Qoran and Sunnah. This shows that the *qiyas* or *illat* of the permissibility of the Sweb test attributed to the permissibility of taking advantage of eagles for hunting is a valid and true *qiyas*. So, the permissibility of taking advantage of the eagle's substance for hunting according to Al-Bazdawi's flow of thought based on true *qiyas* or *illat* (which does not contradict the text) can be used as a strong *qiyas khafi* (hidden *illat*) basis for the fatwa of permissibility of taking advantage of the Sweb test as a form of health check and also as a *taisir* (convenience) for the people (*ummah*), meaning that the Sweb test during fasting is attributed to *illat* on the use of eagles for hunting, not *illat* on the consumption of its meat, because consuming its meat is *qiyas (illat)* for drinking activities which can break the fast (in author's analysis).

4. MUI Fatwa No. 13/2021 concerning the ease of vaccine injections while fasting.

- a. The relevance of *Qiyas khafi* (hidden *illat*) with a fatwa on the ease of vaccine injections. Hidden *illat* used as a proof by Al-Bazdawi:

Intifa' (taking advantage) of vaccine injections during fasting are based on the fact that vaccine injections during fasting are not in the category of eating and drinking which breaks the fast, because the fluid that enters through the injection enters the muscles of the body, not into the fasting throat, this is a strong *atsar* (influence) on vaccine injection *illat*. The *atsar* of here The *illat* is strong, so you can benefit from vaccine injections based on *Istihsan* with *Qiyas Khafi* (hidden *illat*) of Al-Bazdawi. This hidden *illat* was used as an argument and proof by Al-Bazdawi.

- b. Vaccine injection according to the *qiyas jali* (apparent *illat*) is not used as a proof by Al-Bazdawi:

No *intifa'* (taking advantage) of vaccine injections during fasting due to the fluid entering the body through the muscles give *doubt* to the category of eating and drinking as a weak *atsar* (influence) on vaccine injections *illat*, so no taking benefit of vaccine injections while fasting. This apparent *illat* was not used as a proof by Al-Bazdawi, but what was used as a proof by Al-Bazdawi in the fatwa on the ease of the vaccine injection during fasting is the *qiyas khafi* (hidden *illat*) above, namely "vaccine injections during fasting are not a category of eating and drinking which breaks the fast, because what happens during the vaccine injections is fluid entering the nasal cavity, not entering the throat of the fasting Muslim."

- c. Al-Bazdawi's second evidence:

The law regarding the permissibility of injecting vaccines while fasting falls into the category of benefiting under normal conditions (in the context of true *qiyas* or *illat* which does not contradict the text of Quran and Sunnah). No one says that the practice of people using eagles for hunting is contrary to the texts of the Quran and Sunnah. This shows that the *qiyas* or *illat* that allows vaccine injection to take advantage of eagles for hunting is a valid and true *qiyas* (*illat*). So, it is permissible to take advantage of the eagle's substance for hunting according to Al-Bazdawi's flow based on true *qiyas* or *illat* (which does not contradict the text) It can also be used as a strong basis for *qiyas khafi* (hidden *illat*) for the fatwa on the permissibility of taking advantage of vaccine injections while fasting as an action to protect health, not eating and drinking activities that break the fast (in author's analysis) and also for *taisir* (convenience) for the people (*ummah*), meaning that injections of vaccination during fasting can also be attributed, analogized to the use of eagles for hunting, but not to the consumption of their meat, because consuming their meat is an analogy to eat and drink activities which breaks the fast (in author's analysis).

CONCLUSION

From the research above it is concluded that Al-Bazdawi's *Istihsan with qiyas khafi* (hidden *illat*) method is based on the strong influence of *illat*, so that it excels *atsar* (*illat* influence) on *qiyas jali* (apparent *illat*) which always leads to the target of achieving a fatwa in *halal*, *mubah*/permissible and clean which is in accordance with the text (Quran/Sunnah), and getting rid of all fatwas in the context of *haram*, forbidden and unclean which contradict the text (Quran/Sunnah). In the midst of problems that at first glance seem *haram*, forbidden, there is *qiyas khafi* (hidden *illat*) of Al-Bazdawi in the context of *Istihsan* took the opportunity to take advantage for the interests of the people (*ummah*). This method

is practically very significant for responding contemporary and conventional legal problems. In fact, many of Al-Bazdawi's *ushul* thoughts, especially in this case, his *qiyas khafi* (hidden *illat*) in context of *Istihsan*, are indicated to be relevant to contemporary MUI fatwas in Indonesia, even though Al-Bazdawi's name is not explicitly mentioned in the fatwa, but there is an *ijtihad* method by a number of *Hanafi* scholars is mentioned in the MUI fatwa, especially *Istihsan* of Muhammad Syaibani, Al-Bazdawi's teacher and reference in the formulation of his *ushul* work "*Kanzu al-Wushul*", this is quite an indicator of the existence of Al-Bazdawi and his *Istihsan* with hidden *illat* in contemporary fatwa in Indonesia.

BIBLIOGRAPHY

- Abu Ishaq al-Syairazi. 1988. *Syarah Al-Luma'u*. Beirut, Libanon: Dar al'Arab al-Islami.
- Al-Arabiyah, Majma' al-Lughatil. 1980. *Al-Mu'jam Al-Wajiz*. Kairo, Mesir: Majma' al-Buhuts.
- Al-Asnawi, Jamaluddin. n.d. *Nihayat Al-Suul*. Beirut, Libanon: Nasyr 'Aalam al-Kutub.
- Al-Bazdawi. 2016. *Kanzu Al-Wushul Ila Ma'rifati Al-Ushul*. Beirut, Libanon: Dar al-Basyair al-Islamiyah.
- Al-Bukhari, 'Alaiddin Abdu al'Aziz. 1997. *Kasyfu Al-Asrar 'an Ushul Al-Bazdzwi*. Beirut, Libanon: Dar al-Kutub al'Ilmiyah.
- Al-Ghazali, Abu Hamid. 1998. *Al-Mankhul Fi Ta'liiqaati Al-Ushul*. Damaskus, Syiria: Dar al-Fikr.
- Al-Humaidi, Alaiddin Ali bin Amrillah. 2005. *Thabaqat Al-Hanafiyah*. Baghdad, Iraq: Markaz al-Buhuts wa al-Dirasat al-Islamiyah.
- Al-Qaradhawi. 1995. *Al-Fatwa Baina Al-Indhibath Wa Al-Tasayyub*. Beirut, Libanon: Al-Maktab al-Islami.
- Al-Qursyi, 'Abd al-Qadir Muhammad. 1993. *Al-Jawahir Al-Mudiyyah Fi Thabaqat Al-Hanafiyah*. Riyadh, Saudi Arabia: Dar al'Ulum.
- Al-Ramisyi, Humaid 'Ali bin Muhammad. 2008. *Al-Fawaid 'ala Ushul Al-Bazdawi*. Makkah al-Mukarramah: Jami'ah Ummi al-Qura.
- Al-Syairazi, Aminuddin. n.d. "Tanqih Mahshul Ibni Al-Khathib Fi Ushul Al-Fiqh." Ummu al-Qura University.
- Ar-Ramli. n.d. *Nihayatu Al-Muhtaj*. Beirut, Libanon: Dar al-Fikr.
- As-Syarbaini, Al-Khathib. 1997. *Mughni Al-Muhtaj*. Beirut, Libanon: Dar al-Ma'rifah.
- Bukhari. n.d. *Shahih Bukhari*. Kairo, Mesir: Mathba'ah Isa al-Babi al-Halabi.
- Diab Salim Muhammad Umar. 1997. *Buhuts Fi Al-Ijtihad*. Kairo, Mesir: Dar al-Nahdhah al-Arabiyah.
- DSN MUI. 2020. "DSN MUI 137/2020." DSNMUI.
- DSN MUI. 2022. "Kumpulan Fatwa MUI." Retrieved (<https://dsnmui.or.id/kategori/fatwa/>).
- Ishaq. 2020. *Metode Penelitian Hukum*. Bandung: Alfabeta Bandung.
- KBBI. 2001. *Pusat Bahasa Pendiknas*. 3rd ed. Jakarta: Balai Pustaka.
- Khaznah, Haitsam Abdul Hamid 'Ali. 1998. "Tathawwur Al-Fikr Al-Ushuliy Al-Hanafi."

University of Jordan, Yordania.

Muhammad, Abu Su'ud. 1997. *Risalah Fi Jawazi Al-Waqfi 'an Nuqud*. Beirut, Libanon: Dar al-Kutub al-'Ilmiyah.

Salqini, Ibrahim Muhammad. 1996. *Al-Muyassar Fi Ushul Al-Fiqh Al-Islami*. 3rd ed. Damaskus, Syiria: Dar al-Fikr.

Samsu Sumadayo. 2017. *Teori Dan Aplikasi Penelitian Kualitatif Dan Kuantitatif*. Jambi: Jambi Pustaka.

Soejono Soekanto. 2015. *Penelitian Hukum Normatif*. Jakarta: PT Raja Grafindo Persada.

Suharsimi Arikunto. 2011. *Prosedur Penelitian Suatu Pendekatan Praktik*. Jakarta: Rineka Cipta.

Wahbah al-Zuhaili. 2000. *Al-Fiqh Al-Islami Wa Adillatuhu*. Beirut, Libanon: Dar al-Kutub al-'Ilmiyah.

Yusuf al-Qaradhawi. 1997. *Al-Fiqh Baina Al-Ashalah Wa Al-Tajdid*. al-Thab'ah. Kairo, Mesir: Maktabah Wahbah.