MEDIA SYARI'AH: Wahana Kajian Hukum Islam dan Pranata Sosial
P-ISSN: 1411-2353, E-ISSN: 2579-5090
Volume 23, Number 2, Year 2021
DOI: 10.22373/jms.v23i2.10924

Investigating the Construction of *Ijma* in The Study of Islamic Law through Sociological and Historical Approach

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Received: 2021-09-26 Accepted: 2021-11-16 Published: 2021-12-30

Abstract
This paper aims to examine the construction of ijma in the study of Islamic law through sociological and historical approaches. The research methods applied in this paper are research that explore qualitative data through literature studies. In legal research methods, this research is categorized as normative legal research with a conceptual approach. The concept of ijma becomes the object of study in this paper. Furthermore, the concept of ijma is examined with socio-historical analysis. The results of the discussion show that the difference in views on the concept of ijma as the basis of Islamic law that must be obeyed was influenced by normative arguments (propositions of the Qur'an and sunnah), which are references and different interpretations of legal propositions held as a basis of opinion. The difference in looking at the concept of ijma that can be used as a syar'iyyah (legal) argument also begins from the difference in setting the standard of definition and criteria (principles and conditions) of the ijmak itself and considering the capacity of the ijma in the sense an opinion of "all" or "the majority" of the scholars. In addition, the development of conceptions and laws about ijma is inseparable from the social setting in each period.

Keywords: Ijma; Islamic Legal Theory; Islamic Law; Socio-Historical Study

Abstrak
Tulisan ini bertujuan untuk mengkaji konstruksi ijmak dalam kajian hukum Islam melalui pendekatan sosiologis dan historis. Metode penelitian yang digunakan dalam tulisan ini adalah penelitian yang menggali data kualitatif melalui studi kepustakaan. Dalam metode penelitian hukum, penelitian ini termasuk penelitian hukum normatif dengan pendekatan konseptual. Konsep ijmak menjadi objek kajian dalam tulisan ini. Selanjutnya, konsep ijmak dikaji dengan analisis sosio-historis. Hasil pembahasan menunjukkan bahwa perbedaan pandangan tentang konsep ijmak sebagai dasar hukum Islam yang harus dipatuhi, dipengaruhi oleh dalil-dalil normatif (dalil Al-Qur'an dan sunnah) yang menjadi rujukan dan perbedaan penafsiran dalil-dalil hukum. dijadikan sebagai dasar pendapat. Perbedaan dalam melihat konsep ijmak yang dapat dijadikan sebagai dalil syar'iyyah juga dimulai dari perbedaan dalam menetapkan standar definisi dan kriteria (pilar dan syarat) ijmak itu sendiri serta mempertimbangkan kapasitas ijmak apakah sebagai pendapat "semua" atau "mayoritas". Selain itu,

perkembangan konsepsi dan hukum tentang ijmak tidak terlepas dari setting sosial pada setiap periodenya.

Kata kunci: *Ijmak; teori hukum Islam; studi sosial-sejarah*

INTRODUCTION

The Islamic law that governs the aspect of ritual worship (*ibadat*) as well as commercial and civil dealings (*muamalat*) are products of the interpretation of the Quran and Sunnah as the main guidance with the goal of bringing about happiness in life and in the hereafter (Khaeruman, 2010). Over 14 centuries since it was first implemented, Islamic law has had its dynamics and been the subject of public discourse. There had been studies in the past about the ups and downs of the spirit to examine and resolve all problems that arose with the ever fast developing social changes, especially answers to the problems that are not explicitly discussed in the Quran and Sunnah. After the passing of Prophet Muhammad, it is impossible to refer to Sunnah to answer problems in situations that have changed. Therefore, other sources of law apart from the Quran and Sunnah were legitimized such as local customs, existing practices by the Muslim community, and laws passed by the political leaders in the early Islamic times, whether ones that came from the Prophet's Companions or collective consensus, which were then categorized as Ijma' (A. Hasan, 1985).

To continue to make Islamic law relevant to provide answers to contemporary problems, it is necessary for Islamic legal scholars/ jurists to perform *ijtihad* by adhering to the solid methodology of Islamic Jurisprudence (*Ushul Al-Fiqh)* and closely examining the context in which a problem occurs. This is important as to arrive at a good understanding of the problem and relevant circumstances and thus correct legal decisions (*fiqh al-waqi').* *Ijtihad* plays a crucial role in responding to novel problems that arise in the Muslim community and therefore greatly influence the progress and the development of the Muslim community themselves (Wardana, 2018). It is common to see differing views in resolving a problem or legal issue, especially one that is novel or contemporary. In fact, this is not a new phenomenon; legal scholars have had their shares of opinions that differ with each other's and this has been the subject of discourse in the comparative study of *madhab*.

The diversity of ways of understanding and perspectives in responding to an issue gives birth to different legal decisions. The difference is usually started from the methodology in use that have been formulated by scholars of Islamic Jurisprudence. In short, these differing views do not only exist in the context of Islamic legal products but also in the methodology, especially in its application for resolving contemporary issues. One of the sources of law that often becomes the subject of discussion among Islamic legal scholars is Ijma and how it fits in the hierarchy of sources of Islamic law.

Muslim (2020) in his scholarly work explained that when *Sunnah* was interpreted and linked to the *Sunnah* of the Prophet, then the life traditions of the companions and several generations afterwards were included and promoted as the third source of Islamic law, all of which referred to as *ijma* or consensus.

Ijma ranks third as the Islamic legal source after the Qur'an and Sunnah. Ijma is interpreted as an agreement or consensus on the legal provisions of a religious issue for which no clear arguments or provisions are found in the Qur'an and Sunnah. The consensus is reached by all *mujtahid* scholars after the time of the Prophet Muhammad and has certain criteria and conditions (Syaripudin & Kasim, 2020).

Khumaini (2018) said that in the early period of Islam, Muslims agreed for ijma to be *hujjah syar'iyyah* or legal evidence. Later there were debates over its legality among scholars after that period. However, most scholars argue that ijma can be used as *hujjah syar'iyyah.* Furthermore, Ahmad Zahid (2015), commenting on validity of *ijma*, maintained that it *is* considered a source of law because it is a meeting point of opinions (*ijtima 'al-ra'y*) .Ijma is positioned by scholars as a source of law with straight and mature thoughts and perceptions about the jurisprudence of reality and for the benefit of mankind from one generation to another. In Fauzi's description (2016) the acceptable benefits are ones that do not conflict with consensus, in addition to not contradicting the Qur'an, Sunna and *Qiyas Shahih* (correct analogy).

Dinata (2021) in his study also stated that in fact ijma ranked fourth in the hierarchy of sources of Islamic law in the early times of schools of Fiqh. It was during the period of Imam Shafi'i that there was a shift in its position to third and it was strengthened again in the classical period. In the early schools of Fiqh, ijma was seen as a justification principle to express the legality of various different legal views, in an attempt to find common grounds and to see eye to eye in establishing Sharia law. The *nash* or texts, both the Qur'an and the sunnah, are the arguments that create the law, while *Qiyas*, *Ijma* and other sources of law are the arguments that reveal the law.

Looking more deeply into epistemological study of ijma, although it has been agreed that ijma occupies the third position among sources of Islamic law after the Qur'an and sunnah, this research focuses on the type of ijma that can be used as a source of law since there is still debate among scholars who recognize ijma as *hujjah shari'iyyah* but had differences or disagreements in viewing it as such. Some consider the only type of legitimate ijma as a source of law is one that is agreed upon by the Prophet's companions (Syadzili, 2021; Zahrah, 1973). Others interpreted ijma as agreement/consensus from all *mujtahid* scholars from a particular period, so it is not in the local or regional sense but in a very broad capacity (Azhari, 2019; Djafry, 2016). There are also those who legitimize the consensus of *ahl al madinah* as *hujjah syar'iyyah* and legal sources that shows the nature of the locality of a certain area or place that has advantages or privileges compared to other regions or places (Hardiansyah Siregar, 2021), and in its development there are also those who have initiated reforms by formulating ijma in modern times as democratic ijma to be organized in the form of legislative institutions at national and international levels (Dinata, 2021).

The conception of ijma in Islamic law has been the subject of discussion in many scientific writings in the form of academic research and journal articles, both generally

discussed along with other sources of law (*mashadir al-ahkam)* and the *ijtihad* method or thoughts of *ushul fiqh* (theory of Islamic law) or a specific and separate discussion regarding the existence and substance of ijma in Islamic law. For example, studies on the position and concept of *ijma* in the epistemology of Islamic law by the Imams of the schools of jurisprudence, whether it is a study that summarizes the thoughts of all the four Imams of the schools of *fiqh* (Bedong, 2018; Fadli, 2020) or those who specialized in the thought of *ushul fiqh* of Imam Abu Hanifa (Kasdi, 2016; Saputra, 2018; Ihya', 2020), Imam Malik (Yusuf & Hasan, 2020; Hardiansyah Siregar, 2021), Imam Syafi'i (Rohidin, 2004; Djafry, 2016; Tunai, 2016; Sanusi, 2018), Imam Ahmad bin Hanbal (Marzuki, 2005; Khatimah, 2017; Nadia, 2020), Imam Dawud azh-Zhahiri (Sa, 2014) or even Imam Ja'far ash-Shadiq (Hamdi & Saputra, 2018). Then there is also the discussion of ijma across different time periods covering both classical and contemporary Islamic jurisprudence scholars such as ash-Syaukani (Kurniawan, 2011; Safri & Harahap, 2020), al-Ghazali (Bakar, 2019; Wahidah, 2020), Ibnu Rusyd (Azarkoni, 2015), Ibnu Hazm (Hadi, 2019; Syadzili, 2021), Ibnu Taimiyyah (Syaikhon, 2015) Taqiyuddin an-Nabhani (Salimadin, 2018), Wahbah az-Zuhaili (Ariyadi, 2017; Amiruddin, 2021), Yusuf al-Qaradhawi (Kasim, 2013) and Abdullah al-Bassam (Simbolon, 2020). Some Indonesian scholars also have contributed their works on the subject, such as Hasbi ash-Shiddieqy (Tahir, 2016) and Ibrahim Husen (Khatib, 2015). There was also studies on ijma in Islamic legal theory by contemporary Muslim intellectuals such as Muhammad Iqbal (K, 2015), Fazlur Rahman (Fahmi, 2017), Hassan Hanafi (Said, 2019), Muhammad Syahrur (Masduki, 2008; Arsal, 2018), Abdullah Ahmed an-Na'im (Thohari, 2011), Muhammad Hasyim Kamali (Jauhari, 2018; Rahmad, 2017) and Jasser Auda (Susanti, 2015; Mashuri, 2019). In addition, there are also researchers who examined the perspectives of western orientalists such as Thomas Kuhn (Mamnunah & Sauri, 2020), Joseph Schacht (N. A. Muslim, 2017; Syu'aib, 2017) and Wael B. Hallaq

Apart from the study of the legal position and the concept of ijma, on the other hand, the study of ijmk also extends to the discussion of its application in a legal product (fiqh) as in sharia economic law problems (Ghulam, 2018; Julia & Omar, 2017; Putra, 2021), Islamic criminal law (Halim, 2011), law implementation in a country (Muhammad et al., 2021), positive legal structure (Balya, 2019), public positions (Ashsubli, 2016), health (Kohari, 2021) and astronomy (Fadholi, 2020) and cannot be separated from being correlated with contemporary Islamic movements (Tohari, 2019).

Based on the description above, the study of ijma is dominated by a juridical point of view, whether it is examined from the perspective of ruling methodology or *ushul fiqh* or Islamic legal theory by looking at the position of ijma as a legal argument and the concept of ijma as to what can be used as legal arguments, as well as looking at the application of legal products/*fiqh*/Islamic Jurisprudence. Therefore, the focus of discussion in this article is clearly different from those in the previous studies. This article aims at presenting an overview of the social dynamics behind the existence of ijma. Therefore, looking at the existence of ijma in the history of the development of Islamic law and considering the social settings that have

influenced the construction of ijma in its development, it is important to review the topic through socio-historical lens in this article

DISCUSSION

Definition of Ijma

The word ijma is derived from يجمع-إجماع and is based on several verses of the Quran whose meaning is divided into two: first, the determination to do something or the decision to do something; secondly it means to agree on something (Syarifuddin, 2008). The first meaning (*al 'Azam 'ala al Syai`i*) is taken from Q.S. Yunus (10), which means, "... therefore make up your mind and (gather) your allies (to destroy me)...". Ijma as a consensus is understood from QS. 15 which means, "So when they took him [out] and agreed to put him into the bottom of the well...".

Ijma in the first sense indicates the existence of an individual's determination in realizing a certain plan, while in the second one, ijma requires mutual consensus in realizing the planned goals. (Maimun, 2018).

Ijma terminology is understood differently among scholars of Islamic Jurisprudence with each formulation depending on the person who agrees. Al-Ghazali considered Ijma as an agreement (especially) on a religious matter among Muslims after Muhammad period (Habib, 2006). In this case, Imam al-Ghazali thought of Ijmak as a Muslim consensus on a specific religious matter. This view is in line with the opinion of Imam Shafi'i who described it in his work *Ar Risalah* as "whoever says something upon which Jama'ah al-Muslimin agreed, it is obligatory for them to follow the consensus" (asy Syafi'î, 1979). Furthermore, az-Zarkasyi (1992) defined ijma as "the consensus reached by the *mujtahid* scholars after the Prophet period on a legal issue that occurs at a particular time". Similarly, Al Amidi (1982) limits Ijma to the definition "the consensus of certain people among the followers of the Prophet Muhammad, who bear the qualifications of *mujtahid* (*ahlul Halli wal 'Aqd*), thus excluding lay people. Although later on, al Amidi made a revised definition to include the possibility that lay people who are *mukallaf* (capable of practicing the law) could participate in exercising Ijma.

The terminology of Ijmak *ahl al-Madina*h also becomes the subject of discussion in regards to the conception of *ijma* as *syar'iyyah* evidence. In the structure of the legal propositions of the Shafi'i, Hanbali and Hanafi schools, the terminology of Ijma *ahl al-Madinah* is not found. Ijma *ahl al-Madinah* as a legal proposition is only found in the Maliki School and Ijma *ahl al-Madinah* is the Ijmak *ahl al-Madinah* in the past who witnessed the practices of the Prophet Muhammad SAW. Meanwhile, the practices of ijma *ahl al-Madinah* from the later times were not used as legal arguments (*hujjah*) at all by Imam Malik. The reason why Ijmak *ahl al-Madinah* can be used as a proof and legal argument in the perspective of Imam Malik's epistemology of Islamic law is because Medina is the place to which the Prophet emigrated. Many verses of the Koran were revealed in Medina, so it was assumed that everyone followed the traditions of the Medina. Imam Malik considers the general practice of the people of

Medina to be a very authentic form of Sunnah which is narrated in the form of actions, not words. The religious practices of the residents of Medina were considered stronger by Imam Malik because their actions were positioned as their narration from the Prophet and the narration of a group from another group takes precedence over the individual narration from another the individual (Kasdi, 2017). Among the Maliki School itself, Ijma *ahl al-Madinah* was prioritized over *khabar Ahad*, because Ijmak *ahl al-Madinah* was the narration by a group, whereas *khabar Ahad* came from individuals (Saputra, 2018).

Ijma *ahl al-Madinah* itself can be classified as follows: (a) Consensus of ahl al-Madinah whose source is *naql*; (b) The practices of *ahl al-Madinah* before the killing of Uthman bin Affan. Prior to the killing of Uthman, the practice of *ahl al-Madinah* became a legal argument for Imam Malik; (c) The practice of *ahl al-Madinah* is used as a supporting argument or a preference on two contradicting arguments. This means that if there are two arguments that contradict each other, and the fact that giving preference to one piece of argument over the other (*tarjih*) is the practice of *ahl al-Madinah*, then *tarjih* method prevails according to Imam Malik; (d) The practice of *ahl al-Madinah* after the period of the Prophet is not considered legal argument, either according to Imam Abu Hanifah, Shafi'i and Ahmad, as well as according to the scholars among the Maliki school itself (Saputra, 2018).

Imam Shafi'i criticizes local or regional-based Ijma such as the consensus of the residents of Medina and the consensus of the residents of Kuffah (Zulhamdi, 2018). Ijma in the perspective of Imam Shafi'i is the agreement of scholars or Muslim jurists across the populace at a particular period, so it excludes the local ijma' in a country and ijma' of certain people (Karim, 2013) . Therefore, in Imam Shafi'i's view, the consensus of the scholars of Medina or *ahl al-Madinah* is not one that can serve as legal argument as viewed by Imam Malik who argues that the consensus of *ahl al-Madinah* is already a consensus that can be used as evidence (M. Hasan, 2015). The concept of Ijma in Imam Shafi'i's epistemology of Islamic law is similar to the views of modern Fiqh scholars such as Muhammad al-Khudhari Bik, Muhammad Abu Zahrah, Fathi ad-Darayni, 'Abdul Wahhab Khallaf and Wahbah az-Zuhaili, that it might only happen during the period of the companions because they lived in the same area. In the later times, reaching a consensus was not possible (ijma in Imam Syafi'i's version of Usul Fiqh), given the vast area of Islam and it was impossible to gather all scholars in one place (As, 2014; Hidayatullah, 2020b).

According to Hasan (2001), the standard definition of ijma which was later agreed upon by the majority of scholars is "a unanimous consensus from Muslim jurists in a particular era and on certain issues." However, Hasan considers this definition to be only theoretical and does not represent the actual historical process of Ijma in Islam because it is impossible to reach a unanimous Ijma since differences of opinion are bound to happen.

Fazlur Rahman considers that the Ijma formulation developed by the majority of ushul fiqh scholars (especially the Shafi'i School) has caused the concept of Ijma to stagnate, and resulted in new problems that cannot be solved in their times. This is despite the goal is to eliminate differences of opinion on the practices that have been agreed upon at the time of

the Companions. Furthermore, Rahman formulated Ijma as "a consensus of the people through *ijtihad* or intellectual *jihad* by a community to understand the Qur'anic text or Sunna through the interaction of ideas that are relevant to situations and conditions that are not monolithic, local and regional and not *ma'shum* (infallible)." Rahman emphasized that in Ijma there are dynamics starting from differences in interpretation to general opinions which are democratically discussed through deliberation (*shura*). Thus, Rahman considers the concept of ijmak relevant to the development of the concept of a modern state in the form of legislative assemblies that exercise collective *ijtihad* (Fahmi, 2017).

In this case, Ash Shiddieqy is of the opinion that gathering experts (people's representatives) for deliberation by order/invitation of the head of state is a medium for consensus, which may be exercised throughout the ages, as had happened during the time of Abubakar and Umar (Ash Shiddieqy, 1983). Ash Shiddieqy, commenting on Islamic legal theory, also offered the idea of *ijtihad jama'i* (collective ijtihad) whose members were not limited to scholars, but also from various other Muslim scientists, such as economists, doctors, culturalists, and politicians who have views, competencies and adequate intellect in observing and analyzing the problems of the Muslim populace (Sufian, 2012).

Ash Shiddieqy's ideas can be understood because it is necessary to perpetuate *ijtihad* as an instrument of Islamic law. However, it must remain on the right foundation and the right standards according to sharia, especially given the rapid development of the times and the complexity that has occurred which ultimately presents various novel cases and thus not covered by the law. The existence of collective ijtihad is very important nowadays seeing the many emerging problems that are present around the lives of Muslims today which are related to fiqh and other scientific aspects, so in this case it is necessary to consult the opinions of those with relevant expertises, not only from fiqh perspectives (Hanna, 2012).

Based on the above formulations, a conclusion can be drawn that to exercise Ijma there are elements that must be considered, namely the consensus of all Muslim jurists without being limited by region or country, the consensus must be clearly stated, exercised by qualified jurists, carried out after the life of the Prophet Muhammad, and with the goal to give rulings for certain legal events that will always develop.

A substantially different definition put forward by Shia is that Ijma is positioned to be limited to finding the existence of a sunna, namely the words or actions of someone who is considered ma'*shum* or free from sin, which in this case according to their opinion is the Prophet Muhammad and *ahlul bait* (descendants of the Prophet from Fatimah and Hasan and Husein) (Syarifuddin, 2008). Shia scholars consider Ijma to only exist in their group exclusively. Any other is not considered Ijma.

Arguments for Ijma: A Socio-historical Study

The position of ijma as a source of Islamic law has attracted discussions among scholars. The difference of opinion stems from the use of the arguments of the Qur'an and Hadith as

legal arguments. The use of hadith as a basis for the Ijma doctrine was more dominant during the time of Imam Malik-Imam Shafi'i, while the use of the verses of the Qur'an was only explored in the period after Imam Shafi'i. The arguments of the Qur'an and Hadith will be described as follows, complemented by the social historical background which is the basis for them.

1. The argument from the Quran

   The use of Qur'anic verses as a legal argument about ijma occurred around the end of the third century of Hijri year after the Shafi'i period when the doctrine of ijma was proclaimed. Hasan found the Qur'anic justification for ijma for the first time in the work of Abu Bakr al Jashshash (d. 370 H) and was later quoted by jurists afterwards. The verses used by al Jashshash were QS. An-Nisa (4): 115, QS al-Baqarah (2): 143, QS. Ali 'Imran (3): 110, QS. At-Taubah (9): 16, and QS. Lukman (31):15. Al-Ghazali (d. 505 H) added several other verses which according to him the implicit meaning of these verses indicated the existence of ijma, namely QS. Ali 'Imran (3):103, QS. An-Nisa (4): 59, QS. Al-A'raf (7): 181, and QS. Ash-Shura (42): 10, and QS. An-Nisa (4): 115 which he considered the strongest evidence of all (A. Hasan, 1985).

   According to Quraish Shihab, this verse is a threat to the apostates, just like it is to the hypocrites, including Basyir Ibn Ubariq and the Jews who were the reason for the revelation of the previous verses. It was they who were meant in the statement "continue to oppose the truth even after it is clear to him" (Shihab, 2002). Ibn Kathir explains that the verse: wayattabi' ghaira sabiilil mu'miniin ("And follow other than the way of the believers.") is related to the verse mentioned earlier. However, the form of deviation is sometimes against the Quran and sometimes against the popular ijma because this verse contains a guarantee for their unmistakable consensus (ijma) as an honor for them and exaltation for the Prophet. This is as stated by Ibn Kathir, there are many authentic hadiths that explain this.

   Surah An-Nisa:4 also emphasizes the command to obey ulil amri (government), which is also interpreted as obeying ijma. This, of course, comes after obeying Allah and His Messenger. Ulil amri is defined as people who take care of the lives of the people, both worldly and religious affairs, in this case scholars who agree on a law (Syarifuddin, 2008). Shihab explained that the phrase obeying the Messenger means that he has the authority and the right to be obeyed even though there is no basis for it from the Quran. On the contrary, the word ulil amri is not preceded by the word athi'uu because they do not have the right to be obeyed if obedience to them is contrary to obedience to Allah SWT and His messenger (Shihab, 2002).

   Furthermore, other verses such as QS. Al-Baqarah (2):143, according to Al-Jashshash, characterizes Muslims as "wasath" meaning "fair", which shows that it can be used as evidence that binds people to accept their opinions, just as the words of the Prophet can serve as legal argument for his people. As for QS. Ali 'Imran (3): 110, according to Al-Jashshash, it implies that the Qur'an mentions three important virtues of

Muslim society, namely excellence, promotion of good and prohibition of evil. If the community agrees on error, then the Qur'an is unlikely to give praise to them with these qualities (A. Hasan, 1985).

Hasan, in his view, examines the verses of the Qur'an used above to justify the validity of ijma. In fact, these verses were not understood by the Messenger of Allah or the Companions as an argument in favor of consensus, but referred to the general behavior of the Muslims and their unity, and not to the consensus of the Muslims in regard to law (A. Hasan, 2001).

2. Arguments from Hadith

One of the argument from hadiths was narrated by Bashrah Al-Ghifari:

"From Abu Bashrah Al-Ghifari, a companion of the Prophet, reported that the Prophet said: "I asked my Lord Azza wa Jalla four things, then He granted me three things and refused one thing; I asked my Lord that my people would not agree on error and He granted them, then I asked Allah Almighty not to destroy you with famine as he destroyed the people before you then He granted it, and I asked Allah Almighty not to make warring sects, but He refused (asy Syaibânî, 2001a; al Haisyamî, 1994; ath Thabrânî, 1994)."

This hadith is almost similar in meaning to the following hadith narrated by Ibn Majah:

Anas bin Malik said, "I heard the Messenger of Allah (sallallahu 'alayhi wa sallam) say: "Allah Ta'ala will never allow my Ummah to unite upon misguidance. If you see a dispute then you must be in sawadul a'dzam (the largest group; meaning those who act according to the sunnah) (al Qazwînî, t.t.)."

In addition, there is also a hadith from Abdullah bin Mas'ud which translates as follows:

Zirr ibn Hubaysh reported: Abdullah ibn Mas'ud, may Allah be pleased with him, said, "Verily, Allah looked at the hearts of the servants and He found that the heart of Muhammad, peace and blessings be upon him, was the best among them, so He choose him for Himself and He sent him with His message. Then, He looked at the hearts of His servants after Muhammad, and He found that the hearts of his companions were the best among them. Thus, He made them into the ministers of His Prophet, fighting for the sake of His religion. Whatever the Muslims view as good is good to Allah, and whatever they view as evil is evil to Allah." (asy Syaibânî, 2001)".

According to Hasan, this hadith was reported as a statement from Abdullah bin Mas'ud and not a statement from the Prophet, which was later used as legal evidence for the truth of ijma by al-Syaibani (d.189 H). This hadith was also recorded by al-Sarakhsi (d. 490 H) in different contexts as the words of the Prophet to justify ijma, saying: "The Prophet was asked about the yeast (khamirah) that was exchanged among his people, he replied: 'Whatever the Muslims consider good is good in the eyes of Allah, and whatever they considered bad is bad in the eyes of Allah". Hasan considered the Hadith which he

called al-Sarakhsi to be more important because it showed the context in which the hadith was spoken, compared to the Hadith reported by Al-Syaibani above. It appears that with this Hadith there is an idea of infallibility (the impossibility of being wrong) at the time of Al-Syaibani around the second century of Hijri year, coinciding with the time of Imam Shafi'i who also used many of these hadiths in discussing matters relating to ijma. (A. Hasan, 1985).

There is also another hadith which is referred to as an argument against ijma: Jabir bin Abdullah said, "I have heard the Messenger of Allah say: "A group of people from my Umma will continue to fight in defence of truth and remain triumphant until the Day of judgment (an Naisabûri, t.t.)."

Furthermore, the hadith from 'Umar bin Khaththab which was judged to be authentic by Imam al Hakim, and Imam Nawawi said that this Hadith became the strongest basis in confirming that Ijma is legally valid, so that this hadith is considered the most authentic basis for Ijma (an Nawawî, 1392).

Umar bin Khaththab stood in Jabiyah and said, "May Allah have mercy on those who hear my words and then memorize them. Indeed, I once saw the Messenger of Allah standing in the midst of us as I was standing among you, then said, 'I instruct you to follow the example of my companions and those after them, then those after them (mentioned as many as three times). Then there will be many murders and lies will emerge, a man testifies without being asked to do so, someone swears without being asked to do so. Whoever among you likes to attain the best place in Paradise, let him stick to the established community, since Satan is always with the one (when he is alone), and farther from the two. Know that a man is not alone with a woman because the third is Satan. Whoever feels happy when he does good and sad when he does bad, then he is a believer (an Naisâbûrî, 1990).

In the aforementioned hadiths it is explained that the people in their position as people who both agree on something cannot go wrong. This means that ijma is protected from mistakes, so that the decision is a binding law for Muslims. Although it is different from the wording and narration of hadith ahad, the suitability of the intent and given it is coming from various narrations, all of the above hadiths are considered to be mutawatir. The arguments above show that Ijma is a qath'i (definite) argument. Because Ijma 'is a qath'i proposition like the Qur'an and Sunna, then the argument that shows that Ijma is a qath'i argument must be a qath'i argument too. The verses and hadiths above are qath'i arguments, so they can be used as evidence in making judgement on a novel issue in Islamic law. This opinion is agreed upon by all scholars with the exception of Shia scholars (Syarifuddin, 2008).

The Development of the Meaning of Ijma and the Social Settings That Affect It

The existence of Ijma in the development of Islamic law cannot be separated from the disagreement among *ushul fiqh* scholars, both among scholars belonging to the majority of

scholars themselves and with Shia and Khawarij scholars whose differences are very prominent. Each of them adheres to arguments based on the arguments of the Qur'an and Sunnah which are interpreted differently, so that the meaning of Ijma is not uniform in the context of *ijtihad* (original or independent interpretation of problems) and its position in the sources of Islamic law.

Ahmad Hasan has traced the development of the meaning of Ijma, which he subsequently divided into three periods, most of which have extracted and criticized Western orientalist thoughts such as the works of Joseph Schacht, Ignaz Goldziher, and NJ. Coulson, who later presented the development of the concept of Ijma in three periods, namely the early period of Islam (the period of the Companions), the period of Islamic jurisprudence (Shafi'i doctrine), and the classical period of Ijma (A. Hasan, 1985, 2001). It is also necessary to add to the discourse on Ijma from modern perspectives.

1. The Early Period of Islam

   The discussion of religious science in the early period of Islam (referred to as the period of the Companions) was not prominent; it is still global in nature and integrated on the main religious foundations namely theology, law (fiqh), and morality (khuluqiyyah). Right upon the passing of the Prophet Muhammad, and no more revelations came down, the concept of consensus began to emerge among the companions to answer questions that became social and political needs which were then followed in later times on the basis of the Qur'an and the Sunnah of the Prophet. This is unlike when the Prophet was still alive where all problems that arose got immediately solved and decided upon through revelations and words of the Prophet (Erwan, 2018). At the time of these companions, ijma started from the personal opinion (ijtihad) of the companions themselves, which was then accepted as their consensus. The example of Umar ibn Khaththab who nominated Abu Bakr as caliph after the death of the Prophet and was agreed upon by all the Muslims who were present at that time was followed by the next umma. With the acceptance of a companion's personal opinion, it is considered that universal agreement by the ummah is in place and this proves that that ijma can occur even though it is happening silently (A. Hasan, 2001).

   The formality of ijma was only adopted after the second century of Hijri, with the presence of various specifications and specializations of science such as Fiqh, ushul fiqh, Quranic exegesis, hadith, and so on. It was the period when ijma became a special focus in the discussion of the science of ushul fiqh and fiqh which cannot be separated from the results of the ijtihad process that the Prophet Muhammad had taught to his early generation companions, namely Abu Bakr, Umar bin Khaṭṭab, Uthman bin 'Affan, and 'Ali bin Abi Thalib, and was followed by other prominent companions, such as Ubay bin Ka'ab, and others (as Sâyis, 2008). This tradition of ijtihad of the Companions was also followed by the generations of tabi'un and tabi' tabi'in who were scattered in various areas

under the control of the Islamic government at that time, from Medina, Mecca, Kufa, Sham, Egypt, to Yemen (Maimun, 2018).

The tabi'it tabi'in period is referred to as "the phase of guidance and compilation of Islamic jurisprudence" (late first century to mid-fourth century Hijri / about 250 years) which is evidenced by the rapid progress of science and technology in the Islamic world when it reached the pinnacle of its success. At this time Ijma was a forward-looking process using analogical deductive thinking (qiyas)-Ijma as a living and dynamic instrument to reconstruct and create a new legal order in accordance with the demands of the times. One example is the difference of opinion between Imam Malik and the Iraqi Mujtahid Imam regarding funeral rituals on the martyrs. In this case Imam Malik uses Ijma ahl al-Madinah as a sunnah, that the martyrs should be buried immediately with their clothes on (not including those who had been treated and died later), without being bathed and without being offered funeral prayer. Meanwhile, the Iraqi mujtahid imams did not considere it a Sunna. They agreed that martyrs are not to be washed but to whom should be offered funeral prayer, according to what the Prophet had done to the martyrs during the Uhud war (A. Hasan, 2001).

It can be seen that there are different views on the conception of Ijma. Imam Malik assumed that Ijma was only possible during the time of the Companions, because their number was still small. Imam Malik in his work Al-Muwaththa' mentions "practices that we have agreed on" as ijma in three categories: 1. Practices of Ahl Al-Madinah; 2. Consensus reached by scholars in Medina city; and 3. Practices of political leaders at the time of the Companions (A. Hasan, 2001). Ijma that was meant by Imam Malik was not the opinion or action of the majority of the Companions, but it could be the opinion of one of the companions, say, on a hadith from the Messenger of Allah and where none of the companions refuted it, then it shows their unanimous silent agreement (ijmak sukuti).

There is a contrast of opinion between ahl al-hadith (Imam Malik) and ahl al-ra'y (Imam Hanifah), both of which were influenced by the culture and social structure of the community. Iraqi is known as ahl al-ra'y who were influenced by the thoughts of Abu Hanifah (90-150 H/699-767 AD) and became a rational school of jurisprudence. At the end of the Umayyad dynasty and the beginning of the Abbasid dynasty, Imam Hanifah lived in the socio-political conditions of the city of Iraq, which was more advanced in Islamic civilization and knowledge than Hijaz in Medina, which still used the traditional schools of jurisprudence under the influence of Malik bin Anas (93-179 H) which sufficiently relied on the Qur'an and hadith as well as the consensus of the Companions as a source of law in solving legal problems at that time so that they did not use qiyas and logic as methods of istinbath (Zaid, 1986).

2. The Period of Islamic Jurisprudence (Imam Shafi'i)

The conception of Ijma in this period underwent a change after the presence of Imam Shafi'i (150-204 H) who played a role in synthesizing and moderating the differences between Hanafi's rational thought and Maliki's conservative thought. His efforts to give

birth to a legal theory, namely to reconstruct the main sources of Islamic law in the form of the Qur'an, Sunna, Qiyas, and Ijma which are widely followed by Islamic jurists to be more systematic, namely al-Qur'an, Sunnah / hadith, ijma and qiyas or ijtihad (A. Hasan, 2001). With this systematic legal theory, Imam Syafe'i is called the Father of Islamic Jurisprudence, equivalent to the contribution of Aristotle in logic and al-Khalil bin Ahmad in poetry (ar Razi, 2017).

However, over time, the concept of ijma constructed by Imam Syafi'i was judged by Hasan to be still general in nature and not yet a clear theory since it only refers to the hadiths which mean that "Muslims will not agree on error" (A. Hasan, 2001). Imam Shafi'i is of the view that ijma are things that are practiced as the consensus of the people, but none of them relies on the verses of the Qur'an to legitimize Ijma, neither does al-Syaibani (ushul fiqh scholars during the time of Ash-Syāfi'i) (A. Hasan, 2m001). However, later the conception of ijma as a legal argument became stricter in its formulation, namely the unanimous agreement of the scholars at a certain time regarding certain Islamic laws which were constant in nature and there was no need for a new opinion if there was consensus on the same issue. (Maimun, 2018).

3. Ijma in Classical period (after Shafi'i)

The concept of ijma continued to experience a shift in its function and position in this classical period, where it was used as an instrument to defend an opinion by means of claiming that it had become an ijma. If there is a new legal problem, then in looking at the legal provisions, it is only necessary to rely on the results of the previous agreement, especially the consensus of the Companions. Therefore, the concept, function and position of ijma in Islamic legal theory became established and static until it entered the modern century (XIII H/XIX M centuries). This conception of ijma is in fact contrary to the history of ijma at first, which was natural, as the final solution to the development of emerging differences of opinion, informal, dynamic, flexible, able to answer the challenges of new issues that arose, prospective to the future, and more inclined to accept change in consensus by considering the changing situation and conditions of the times (Fahmi, 2011).

The middle of the fourth century H/XI AD saw the beginning of the decline and the stagnation of the legal thought movement until the fall of Baghdad to Hulagu Khan in 656 H/1258 AD (Tarigan, 2013; Zuhdi, 2014). During this period, the development of schools of Fiqh strengthened and the number of people who adopted taqlid increased, along with the attachment of the four schools of Fiqh in the community. With the existence of ijma as a source of law that has been agreed upon by the four influential schools of thought,, it was increasingly impossible for jurists to exercise ijtihad. It is sufficient for Muslim jurists to refer to the Fiqh literatures of their schools, some of which are no longer relevant in this modern era, rather than digging into the laws themselves. This is what makes ijma oriented to the past, static, rigid, formal, and not future-oriented.

This is also what causes the creativity of intellectual ijtihad to weaken. The courage of the ulama to dismantle the fiqh construction which is considered final is difficult to happen, and even the confirmation and fanaticism of ma'hab that continues throughout the ages, which inspires Rahman and other Islamic thinkers to reopen the "the closed door to ijtihad" which leads to the reconstruction of the concept of Ijma in the modern era.

4. Ijma in Modern Times

The dynamic development of our times accompanied by advances in the field of science and the development of the information technology sector which also gave rise to globalization also have implications for the study of Islamic law, especially discussions about ijtihad. Against the background of the assumption that the doors of ijtihad are closed, accompanied by weakness and rigidity, contemporary Muslim intellectuals (scholars) have come to challenge and question the problems associated with ijtihad, which in turn raises ideas of the need for reform or reformulation or reconstruction of the Islamic legal theory / methods of finding Islamic law / ushul fiqh that generally already exist. Among the Muslim intellectuals who were involved or participated in contributing ideas related to the notion of renewal, reformulation or reconstruction were Hasan at-Turabi with his reform of ushul fiqh, Abdullah Ahmed an-Na'im with his sharia deconstruction, Mahmoud Mohammed Taha with the construction of textual theory, Muhammad Syahrur with his limit theory (nazhariyyah al-hudud), Fazlur Rahman with his double movement theory and Muhammad Iqbal with his Islamic dynamism or principle of movement in structure of Islam. In addition to the Muslim intellectuals mentioned earlier, there are many more contemporary Muslim intellectuals who have come up with critical ideas and renewal ideas which are outlined in monumental works in the development of Islamic law studies.

Muhammad Iqbal as a Muslim intellectual who was involved in the idea of this renewal, through his thoughts, highly promoted the urgency of ijtihad in the present time (Solehah, 2020). On this basis, he then offered the concept of renewal in the form of collective ijtihad (ijtihad jama'i). According to Iqbal, who is known for his Muslim's dynamism, in his perspective, he revealed that in order to get rid of the results of the period of Islamic decline in the form of "Islamic legal rigidity", the only way forward is to revive ijtihad and formulate it in a context that is relevant to contemporary needs. Therefore, in his view, taking into account the urgency that is based on the interests of the people and general progress, Iqbal saw the need to transform the power of personal/individual ijtihad from certain schools or ideologies into collective ijtihad or interpreted as consensus in the present (Indrajaya, 2013; K, 2015). So in this formulation Iqbal offered an interpretation of ijma in modern times through the transformation of individual ijtihad to collective ijtihad which is manifested in the ijtihad of Muslim representative assemblies or Islamic legislative institutions as a means that is considered appropriate and representative for ijma (Turmudi, 2014). According to Iqbal, it is through this method that we can encourage and move the spirit in the Islamic legal system that

has faded among the Muslims' populace (Indrajaya, 2013; K, 2015). As for the perception of collective ijtihad in modern times as ijma as Iqbal's interpretation, there are those who criticize it and make a distinction between ijma and collective ijtihad because of the differences in nature between the two, because even though it is done collectively, the results of this ijtihad are only on a local scale (Solehah, 2020). However, this disagreement about collective ijma and ijtihad is also influenced by differences in meaning in viewing the nature of ijma itself, that is whether those who agree are the whole or the majority and also lead to differences in terms of definitions and criteria (integrals and conditions) (Fadilah, 2016; H. Muslim, 2020).

Almost the same as the ideas and thoughts of Muhammad Iqbal, Fazlur Rahman's supported this reform based on the relationship between ijma and taqnin as two shura institutions which are legally related to each other. Taqnin can be interpreted as the act of formulating or forming laws (legislation) (Yazid, 2017). The value of the unity of the people, besides promoting and seeking unity of thought and purpose, according to Rahman, is contained in the word "shura" in Q.S.al-Syuârâ [42]: 38 and this is what he uses as the basis to legalize ijma. The relation between ijma and taqnin in Fazlur Rahman's notion is by seeing that ijma is the process and product of community's deliberation (shura), while taqnin is the shura process of the legislature which processes the product of community ijma into juridical ijma (legislation) (Rahman, 1995).

Speaking of renewal of Islam, Abdullah Ahmed an-Na'im, a Muslim intellectual and modernist thinker from Sudan, offered a concept of renewal regarding ijma where he saw it from a different point of view compared to that of Muhammad Iqbal and Fazlur Rahman. An-Na'im in his reform formulation offered the establishment of a democratic ijma model in the modern era, where this model of thought departs from a critique of the concept of ijma and its authority among classical (traditional) scholars. An-Na'im's idea of the democratic ijma model is expected to bring a spirit of justice and constitutionality whose presence becomes the reconstruction of traditional ijmak (asy-Shafi'i and classical versions). This led to controversy and was considered to only serve the interests or needs of Muslims in various religious issues, deconstruct the views of the scholars who do not allow the results of the previous Ijma to be rejected or replaced by the Ijma that came after it, and at the same time reject the concept of Ijma which is considered by an-Na'im only based on individual authority and religious texts. In the context of the nation state, an-Na'im also further emphasized the need to build a democratic ijma that not only relies on the majority vote as a support and favors it, but it must also be able to protect and maintain the rights of the entire community. (Thohari, 2011).

In general, both Iqbal, Rahman and an-Na'im have presented a new concept of Ijma in order to reform or reconstruct or reformulate, especially the development of Islamic law from the aspect of the ijtihad methodology, which then influenced the passing of Islamic law on contemporary legal issues in various fields. The state through the legislature

or the fatwa (rulings) institution in its constitutional system, including in Indonesia (Bahardin, 2012; Bahruddin, 2018).

Debates over the Validity of Ijma

The assessment of the validity of Ijma as a source of Islamic law after the Qur'an and Hadith relates to the division of levels of Ijma quality, namely *Ijma sharih* and *Ijma sukuti.* The quality of such Ijma depends on whether or not the principles and conditions of Ijma are fulfilled according to the majority of scholars including: (a) The existence of a number of people who are qualified jurists (mujtahid) at the time a legal event occurs; if only one person decides on the issue it cannot be considered Ijma; (b) The consensus of all jurists on the ruling of a problem is comprehensive (total consensus) across countries, nations and groups; (c) The agreement is reached after each mujtahid expresses their opinion openly either through words or actions (making his own decisions/judgement) whose concept and results are the same as that of other mujtahids, even though they are not in the same assembly yet share the same opinion (Syarifuddin, 2008).

More specifically, Wahbah az-Zuhaily said that the pillars of Ijma according to *ushul fiqh* scholars consist of: (1) The parties taking part in the legal review are all *mujtahid* scholars; (2) The scholars who take part in the legal study are present at the time of the study of the law from various parts of the Islamic world; (3) the consensus begins with each mujtahid expressing their opinion; (4) the law that became the consensus is Islamic law (sharia) which is actual and is not contained in the law in the Qur'an and the hadith of the Prophet Muhammad (az Zuhailî, 1986). Furthermore, the conditions for ijma are stated in the following description by Wahbah az-Zuhaili: (1) the people who exercise ijma are people who are qualified to be mujtahid (people who practice ijtihad); (2) the consensus comes from mujtahid scholars who are fair in the sense of sticking to their religion; (3) Mujtahid scholars who take part in the study of the law are people who strive to stay away from heresy (both words and acts). These three conditions, according to Wahbah az-Zuhaili, were agreed upon by all scholars (az Zuhailî, 1986).

There are differences of opinion regarding the possibility of Ijma in the sense of the agreement of all mujtahids in a period after the death of the Prophet Muhammad regarding Islamic law (sharia) on certain issues (Djazuli, 2021). There are those who argued that ijma in this sense has occurred, for example, the cancellation of Muslim marriages with non-Muslims, determining the grandmother's share of 1/6 of the inheritance, the exclusion of the grandson by the son, the sibling having the status of replacing the sibling of one's mother, all of which are examples of the Ijmak at the time of the Companions (Djazuli & Aen, 2000). However, according to the majority of Fiqh scholars, it is impossible for the consensus agreed upon by all scholars to happen except for the ijma reached by the Companions (Fadholi, 2020; Fadilah, 2016). Even modern fiqh scholars such as Muhammad al-Khudhari Bik, Muhammad Abu Zahrah, Fathi ad-Darayni, 'Abdul Wahhab Khallaf and Wahbah az-Zuhaili also share the same view that this kind of consensus may only occur during the time of Companions. (As, 2014;

Hidayatullah, 2020b). However, in this case, Abdul Wahhab Khalaf further pointed out a gap in the attempt to exercise this ijmak by detailing his views on the impossibility by arguing that ijma in this sense is impossible to exercise if the problem is handed over to individuals, but it can happen if this problem is handed over to the government by providing strict requirements that must be met as a person qualified for *ijtihad* (a *mujtahid*) and then granting authority to a person who fulfills these requirements to exercise *ijtihad*. That way every government is aware of the qualification of a *mujtahid* and knows how to exercise *ijtihad*. If every government has known the opinion of its mujtahid scholars and there is a consensus with the mujtahid scholars from all governments in the Islamic world regarding the law on certain issues, then this is the true form of ijma that must be followed by Muslims (Khallâf, t.t.).

After the legal theory was structured, especially during the time of Imam Shafi'i, the sources and legal arguments were systematized and sorted into the Qur'an, sunna, ijma, and qiyas. This order of sources of law becomes a doctrine, which is agreed upon by the majority of scholars and must be followed in giving the rulings. As for the rest, such as *istihsan*, *mashlahah mursalah*, *sad adz-dzari'ah*, *istishhab*, *'urf*, *qaul shahabi*, and *syar'u man qablana* are arguments whose existence is still disputed among *ushuliyyin* or scholars of Islamic legal theory (Hidayatullah, 2020a, 2020c).

The ruling agreed upon by all Mujtahids is essentially Islamic law represented by their *mujtahids*. There are many hadiths and *athars* that show the protection of ijma from mistakes or misguidance such as the hadith that reads "it is impossible for my people to agree on error," then another hadith "Allh will not gather my people in error," and in another saying “whatever is seen by my people as good, then it is good to Allah." This is because the consensus of all *mujtahids* on a law regarding an event due to different views and the environment that surrounds them in addition to the perfection of several causes shows the unity of right and truth and eliminates the elements of differences that exist in them. If the *ijtihad* of a mujtahid must rely on Islamic legal arguments, then the consensus of all mujtahids on a law related to a problem is the argument that there is an Islamic legal basis that shows the law for that matter.

There are disagreements in the discussions about the existence and position of ijma as a source of law in the midst of studies by classical and contemporary *ushul fiqh* scholars. According to the majority of *ushul fiqh* scholars such as Ibn al-Hajib (d. 656 H), al-Amidi (d. 631 H) and others, they are of the view that ijma serves as legal evidence with *qath'i* characteristics, which must be practiced and it is prohibited to deny it for Muslims and those who deny it are considered infidels. That is the reason why the majority of *ushul fiqh* scholars considered ijma as the third source of law after the Qur'an and sunnah. Abu Ishaq Ibrahim bin Siyar who is known as an-Nazham al-Mu'tazili (w. 231 H), stated that some Shi'a and Khawarij scholars are of the opinion that Ijma cannot be used as legal evidence (Maimun, 2018).

The differences in opinion between the two groups were motivated by the arguments about the Qur'an and sunnah and *Ra'y* (reasoning) that are applied or used as references. Apart

from the Shia and Khawarij groups who rejected ijma, the Zhahiri school of thought itself such as Ibn Hazm (w. 456 H) criticizes the legal arguments that are used as the basis by the majority of *ushul fiqh* scholars related to ijma. Among the legal arguments held by the majority of scholars are Q.S. an-Nisa (4): 115. Responding to the use of this Qur'anic verse, according to Ibn Hazm, "the way of the believers" here means to obey Allah through the guidance of the Qur'an and obey His Messenger through the Sunna that undisputedly came from the Prophet Muhammad. Therefore, in this context, according to Ibn Hazm, there is no argument for ijma as legal evidence. In other words, according to him, this argument does not show the validity of ijma. This includes highlighting the hadits that are used as the normative basis by the majority of scholars regarding the validity of ijma. To Ibn Hazm, all of them fall into the category of hadiths that do not give certainty (qath'i) to be able to legitimize and strengthen the position of ijma as evidence. If these hadiths are not *qathi*, it means they are *mutawatir* in their meaning. If that is the understanding, then of course Muslims are protected from mistakes (*al-khata'*) and misguidance (*dhalalah*) by committing disbelief, or violating the *qath'i* arguments (Maimun, 2018).

According to Fadilah (2016) and Muslim (2020), this difference of opinion in legitimizing and conceptualizing ijma occurs because of differences in the definition of ijma by scholars. In addition, the difference in criteria for the terms and principles proposed also has their influences. Fadilah (2016) added that one of the key matters in looking at ijma is the difference in looking at the conception of the ijma itself, whether those who agree are all or only the majority of scholars.

Meanwhile, reformist, contemporary Muslim intellectuals such as Fazlur Rahman, view the validity of Ijma as to depend on the legal product resulting from the methodology and institution of shura' (ulil amri in QS. An-Nisa (4): 59) which is in accordance with *ijtihad* conditions. Fazlur Rahman views the existence of ijma in the normative argument of Islamic law as not an independent and absolute source of law (*qath*'i). Instead he thought of it as the method of passing laws that are not regulated in the Qur'an or hadith through *ijtihad* or *qiyas*. Rahman said that Ijma plays a very significant role in finding sources of law or sharia arguments', but in the sense that Ijma is a methodology in interpreting (ijtihad) on the sunnah to show the way in knowing the existence of Islamic law, which because historically the emergence of the concept of ijma is not directly based on the Qur'an or hadith, but through *ijtihad* on the Sunna which is the practice of the Prophet or his companions, and the Muslims in general. Therefore, the product of Islamic law as a result of *ijtihad* exercised by *ulil amri* is classified as Ijma, which is also mandatory for Muslims to obey. In this case, Sayyid Muhammad Rasyid Rida and Wahbah az-Zuhaili also consider that state law, whether Islamic or not, can be used as a source of Islamic law. For Rasyid Rida, the important condition is that it contains the values of benefit and justice, which are Islamic values that are included in the divine law, while Az Zuhaili requires that it must be sourced from divine revelation (Al Quran dan Hadis) (Yaqin, 2018).

CONCLUSION

Ijma has been agreed upon by the majority of *ahl sunnah* scholars as one of the sources of law in *istinbath* and legal judgement of an issue for which there is no legal provision. Although the position of ijma has been agreed upon as a *hujjah syar'iyyah* or legal proposition, there are differences of opinion in the formulation of ijma itself and the the extent to which ijma can serve as a legal basis that must be adhered to. This is inseparable from normative arguments in the form of the Quran and Sunnah propositions which are the basis of the law with the addition of references that have different interpretations of the arguments presented by each. The difference in viewing ijma that can be used as *syar'iyyah evidence* or Islamic legal arguments also leads to differences in views on the standard definition and criteria for the pillars and conditions of ijma itself and whether ijma is defined as the consensus of the "whole" or just "majority" of scholars. The development of the conception and evidence of ijma cannot be separated from the social setting of each period. This can be seen in the debate and use of ijma in the early days of Islam, during the jurisprudence of Islamic law, after the Imam Shafi'i period, and in modern times.

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