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Taqnin Al-Hakam in the Traffic of History

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Abstract

Islamic law has undergone continuous development, in line with the advancement of contemporary legal knowledge. Initially, Islamic regulations were systematized through the ijtihad of jurists accumulated in fiqh books and through the decisions of court judges. Current legal developments, with the presence of systematic state regulations, require adjustments to the type of Islamic regulation organized through formal and binding state institutions. In the history of the Ottoman Caliphate, Sultan Sulaiman began to establish a law in the form of authority called qanun, so that Sultan Sulaiman of the Ottomans was known as Sulaiman al-Qanuni (1520-1560 CE). Where he diligently implemented the qanun or qanun name as an official regulation. The presence of qanun fiqh is seen as a necessity, while some view its presence as hindering the progress of ijtihad, which is one form of transformation towards Islamic law.

Keywords: *Taqnin al-Hakam; Across History.*

A. Introduction

The perspective developed is that Islamic law applies at all times in all situations. One effort to standardize sharia standards into regulations that are currently substantial, positive, and restrictive for all regions is through *taqnin*, specifically the codification of Islamic regulations as legal guidelines. The term "regulation" is often interpreted as a law, norm, decision, verdict, or other binding legal document, and the word "Islam" can be translated as submission, obedience, or in a broader sense because it refers to the teachings of the Prophet Muhammad, whose sources refer to the Qur'an and Sunnah. Therefore, Islamic law refers to the laws regulated by the Islamic religion, also known as Islamic law.

Islamic law is known as sharia, where the term *shari'ah* is more commonly used. Meanwhile, the term Islamic law itself is said to be another term used in Indonesian, as an interpretation of *al-hukm al-islami*. For Islam, the word *shari'ah*, or in Indonesian, syaeriat, comes from a word composed of the letters *syin, ra'*, and *'ain*. Etymologically, it means religion (*Al-Din*) or road (الملة), method or way (المنهاج), road or runway (الطريقة), *sunnah* or foundation (السنة). There are also those who interpret it as a path that is worth following, a path traversed by waterfalls, a smooth path, important issues in religion or a path that has been established by Allah SWT for humans.

Qanun al-Ahkam is essentially a means of selecting a more beneficial perspective on a law within a particular nation and time, one that is believed to be more beneficial for the general welfare of society. Therefore, the drafters of a state constitution, who are empowered to create *qanun*, act as the authorized party in this

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regard. Qanun is essentially a term commonly used within the framework of Islamic governance to refer to a legal product in the form of positive and restrictive legislation for society (Salsabiela dkk., 2025).

Qanun is a general rule that applies to all forms of societal behavior, for example *qanun jina'i* (criminal), *qanun madani* (*muamalah*), *qanun al-'alaqat al-dauliyyah* (inter-state relations), *qanun dusturi* (constitutional law), and *qanun murafa'at* (judicial). The application of law in society can lead to the formation of the types of qanun mentioned above. However, unlike the well-known and popular "Regional Regulations" (*Perda*) in Aceh Province, the word *qanun* does not have a narrow meaning. The term *qanun* as a *Perda* in Aceh is expressly stated in Article 1 number 21 Number 11 of 2006 concerning the Government of Aceh: "The Aceh *Qanun* is a statutory regulation similar to a provincial regulation that regulates the administration of government and the lives of the Acehnese people."

B. Methods

This research uses a qualitative method approach. *Taqnin* al-Hakam (codification of law) throughout history is a historical and analytical study approach to the process of formation, determination, and application of positive law from Islamic sources, which often uses historiographic methods to trace changes, criticism, and legal reform, as well as qualitative analysis to understand the logic and socio-political impact of legal codification, especially in the context of legislative modernization in Muslim countries, with the efforts of a ruler or legislative body to collect, compile, and establish Islamic law (from the *Qur'an*, *Sunnah*, and *ijtihad*) into written law that is generally applicable and binding (positive law).

C. Findings and Discussion

Definition of the Scope of *Taqnin*

Etymologically, the word *taqnin* is a type of *masdar* from *qannana* which means making laws. Roman is the origin of this word, but some say it comes from Persia. In line with *taqnin*, the word qanun also means path or road (*tariqah*) and means the measure of everything. *Taqnin* means legislation, lawmaking, codification (making regulations/laws, codification). In terms of terminology, *taqnin al-ahkam* refers to the process of compiling laws and rules for establishing *tasyri'* laws related to social relations issues, compiling them systematically, expressing them in clear, concise, and clear sentences, in the form of chapters, articles, and verses that are numbered sequentially, stipulated as laws or regulations, approved by the government, and given to law enforcement agencies.

In this sense, *taqnin* can be interpreted as an effort to collect rules and regulations related to certain regulations in the form of a written book or in the form of a codification carried out by experts. Meanwhile, qanun contains the meaning of rule, statute, code (regulation, statute, law). According to this definition, qanun is a set of rules that regulate human affairs that must be obeyed, respected, and implemented by individuals from the local area.as well aslaw enforcement can compel individuals to respect and uphold these rules.

Sobhi Mahmasani claims that the word "*qanun*" means a measuring tool or rule. In Europe, canon was used to refer to church regulations also called *canonic*, for example the corpus *iuris cononici* approved by Pope Gregory XIII in 1580, then the

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codex *iuris coninci* by Pope Benedict XV in 1919. Canonical law consists of the Bible, decisions made by church councils, fatwas issued by church authorities, and papal directives. By previous scholars, the term qanun was used to refer to various scientific information, for example a book in the field of medicine entitled *Qanun fi al-Tibb* compiled by Ibn Sina, *Qanun al-Mas'udi*, specifically information about space science compiled for Sultan al-Mas'ud (the ruler of Ghaznavid), which was summarized by al-Biruni.

Goldziher, Scheldon Amos, and Von Kremer, Western Orientalists, argued that the *Shariah* brought by Muhammad resembled the Roman (Canocic) regulations adopted in Arab regulations. They argued that Muhammad already knew about Roman law in countries under the rule of the Roman Empire at that time, before he became a Prophet. However, Muslim scholars strongly opposed this Orientalist view by stating that Muhammad was born in Mecca, which was not Roman territory, and that Muhammad only left Mecca twice before becoming a Prophet, at the age of 12, and some even said the Prophet travelled to *Syariah* with his uncle Abu Talib when he was 7 years old. Furthermore, when the Prophet was 25 years old to run Khadijah's business with Maisarah, his bodyguard, and it is known that the Prophet could not read and write. In addition to being based on history, Islamic researchers also expressed the opinion that it is difficult to combine Islamic law with Roman Qanun because Islamic law is based on revelation.

In comparison, the terms "law" and "statute" are commonly used in legal science. Legal science is a collection of guidelines (commands and prohibitions) that regulate social order and must be obeyed by its members. Violation of these regulations can result in action by the community's government. Regulations are generally understood as guidelines established by the state. Choices made by authorized authorities, containing rules of conduct, and generally restrictive are characteristics of laws. In the current writing of Islamic legitimacy, the terms and types of Islamic regulations are undergoing development. There is something called *fiqh*, specifically the ijtihad of scholars contained in *fiqh* books; fatwa, which is more specifically the opinions and decisions of scholars regarding a regulation; the choice of judges (*qadhi*), and *qanun*.

The qanun currently being challenged is seen as a formalization of Islamic law, namely, certain Sharia regulations systematized by public authorities that are restrictive and generally relevant. This legal system, which developed primarily due to the influence of European legal systems, led to the birth of qanun in the modern era. Therefore, some researchers argue that the formalization of Islamic law is important as a guideline for the validity of judges' choices in similar cases across various legal bases. Meanwhile, others disagree with the Qanun al-Ahkam, each with their own opinion. These differing views sometimes lead to fierce clashes between the two camps.

If the qanun is comprehensively explained, so that its implications are characterized by *tasyri'* (legal formation), then its existence can be traced back to the time of the Prophet. However, this qanun cannot be applied during the Prophet's time if interpreted according to the current legal concept, namely that written law is binding, temporary, and has sanctions. The existing reality confirms that during the time of the Prophet Muhammad (peace be upon him) there was a Medina Charter that contained the rights and obligations of Medina's residents, both Muslim and non-

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Muslim, to balance Medina's power. The Medina Charter, according to legal experts, is a written state constitution.

Likewise, during the time of the Companions, it is likely that the *qanun* had not yet been implemented. The creative idea that emerged was the translation of the Qur'an carried out by Abu Bakr under the leadership of Umar Khattab, and then completed during the Caliphate of Uthman ibn Affan. Similarly, during the Umayyad period, it is believed that Umar ibn Abdul Aziz, the eighth Umayyad caliph, was the first to compile the hadith. The possibility of a qanun only emerged during the Abbasid period. Ibn Muqaffa, a Persian-born secretary of state who died in 756 AH/140 AH, proposed the plan to Caliph al-Mansyur (the second Abbasid caliph) to survey the differing teachings, then at that time compile and state his own choice with the full aim of creating consistency that would bind the qadis. This regulation would also have to be revised by the succeeding caliph. Ibn Muqaffa argued that the caliph had the authority to determine his own policies. The Caliph was able to issue directives binding on both civil and military authorities and generally adhered to the Qur'an and Sunnah in all matters which had no precedent.

Regarding this situation, Ibn Muqaffa told al-Mansyur, "The important thing that the leaders of the faithful need to pay attention to is the widespread conflict between the decisions of the judges in various regions of the Abbasid Dynasty, despite the similarity of the cases they faced." These differing laws posed a serious threat to human life, property, and honour. In addressing this issue, the caliph had to be firm in compiling the most fundamental and significant *fiqh* opinions as regulations to be confirmed by all courts. The various regulations that had been compiled were then made into a single regulation and had the authority to limit all judges in the courts. Therefore, the caliph needed to appoint special officials in each region. These officials would create laws that were more appropriate to their region and its conditions and follow the rules to implement them. However, Ibn Muqaffa's suggestion was not realized, and the caliph even accused him of treason and punished him for a single incident.

On one occasion, the caliph al-Mansyur met Imam Malik (d. 795 CE/179 AH) while performing the Hajj and asked him to write a book on the topic of fiqh by selecting laws from original sources and keeping in mind the idea of ease of use. When al-Masyur met Imam Malik, he said, "Create a law book that avoids various challenges, such as those experienced in the various opinions regarding Abdullah ibn Umar and also not as light as those found in the results of the ijtihad of Abdullah ibn Abbas. However, reach conclusions that are straightforward, middle of the road, and agreed upon by the companions, so that this book can be used as a guide throughout the country. We will decide that the legal information in the book and the decisions taken by the judges cannot differ." However, Imam Malik did not agree with the caliph because he believed that each region had its own school of thought, such as the people of Iraq who could not possibly agree with Malik. Despite their disagreement, he eventually compiled a book entitled al-Muwaththa'.

Further refinements of the qanun became more concrete during the Ottoman period, specifically during the reign of Sultan Sulaiman (1520-1566 AD), where he diligently implemented the qanun or qanun name as an official regulation. Sulaiman *al-Qanuni* was awarded to Sultan Sulaiman in recognition of this effort. In the *qanun*, the salary rates of soldiers, non-Muslim police, police matters, criminal regulations,

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land regulations, and war regulations were thoroughly examined. During the Ottoman period, regulations governing agreements were also drafted, known as the al-Adliyah Magazine (Siswi dkk., 2025).

During the Mughal period in India, a legal code called Fatawa Alamghirriyah was also compiled. Alamghirriyah was the name given to the Mughal ruler Aurangzeb (1658-1707 CE). When the British took over India (1772 CE), there was a fusion of Islamic law in force in India with English common law, giving rise to the term Anglo-Muhammadan Law (English Islamic Law). In practice, British-appointed authorities joined forces with muftis to promulgate correct Islamic rulings to assist British judges.

Since the 15th-century Revolution, Indonesia has established numerous Islamic sultanates and adopted Islamic law as the state standard, although following many of their guidelines was challenging. When Indonesia was part of the Netherlands, Dutch laws largely overshadowed the general laws that had been in effect in Indonesia. In Indonesia, the spirit of the qanun has been present since the founding of the Indonesian state, which included a commitment to implementing Islamic law for adherents of the Islamic faith. During the New Order era, some Islamic laws were made mandatory by public authorities with the introduction of the Marriage Regulations (1974), the official Law on Waqf (1977), the Compilation of Islamic Law (1991), and the Religious Courts Law (1987). The push for Qanun al-Ahkam grew stronger during the reform era through regional laws and regulations. As a result, a number of laws and regional regulations related to Islamic law were enacted.

Scholarly Debate Regarding *Taqnin*

Taqnin is a new term, and classical scholars are still unfamiliar with its meaning. However, similar phenomena have long existed. This is because, despite having their own ijtihad, judges must adhere to established opinions when making decisions. A stipulated regulation obliges judges to adhere to its provisions, as it has become a positive sharia rule and cannot be ignored, regardless of whether they have their own ijtihad on the issues stipulated in the regulation. This has led to the division of scholars into two groups:

1. **Groups That Allow**

Qanun al-Ahkam is accepted by the majority of today's major ulama. Rasyid bin Khunain, Abdullah Khayyath, Rasyid bin Hunain, Muhammad bin Jabir, Abdullah bin Mani, and Abdul Majid bin Hasan are among them. Apart from them there were also Wahbah al-Zuhaili, Yusuf al-Qardhawi, Ali al-Khafif, Musthafa al-Zarqa, Muhammad Abu Zahrah, and others. The arguments used to clarify this view are:

a. QS. An-Nisa': 59

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْٓا اَطِيْعُوا اللّٰهَ وَاَطِيْعُوا الرَّسُوْلَ وَاُولِى الْاَمْرِ مِنْكُمْۚ فَاِنْ تَنَازَعْتُمْ فِيْ شَيْءٍ فَرُدُّوْهُ اِلَى اللّٰهِ وَالرَّسُوْلِ اِنْ كُنْتُمْ تُؤْمِنُوْنَ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِۗ ذٰلِكَ خَيْرٌ وَّاَحْسَنُ تَأْوِيْلًا

"O you who believe! Obey Allah and obey the Messenger (Muhammad), and Ulil Amri (the authority) among you. Then, if you differ in opinion about something, then return it to Allah (the Qur'an) and the Messenger (sunnah), if you believe in Allah and the Last Day. That is more important (for you) and the consequences are better." (Al-Nisa': 59)

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Remembering the verse above, if *ulul al-amr* does not call for immoral acts nor does it conflict with the *Shari'ah*, then at that point society is obliged to submit to it. Obedience to the government as intended in this paragraph is the obedient attitude of law enforcement officials who carry out the laws that are their obligations.

b. Uthman ibn Affan once called for the destruction of all manuscripts other than the official ones codified during his reign. This was done to support the community and ensure that the Quran had a single, authoritative copy, preventing divisions between individuals. Ultimately, this policy was accepted as truth.
c. Not all qadis possess extensive and in-depth information, thus preventing them from exercising *ijtihad* and determining the most substantial judgment among numerous sentiments and diverse ways of thinking. Sometimes, within a single organization, many sentiments differ. Furthermore, if the government fails to determine the most credible opinion that can be enacted into law to ensure legal certainty, this can lead to disagreements between judges and courts, or between courts. This, of course, will lead to legal uncertainty for the public.

2. Groups that don't allow it

This view is the view of most classical scholars, including Maliki, Shafi'i, and Hanbali scholars, as well as Abu Hanifah's two disciples, Muhammad ibn al-Hasan and Abu Yusuf. In the modern era, Ibn Qudamah argued that this view is no longer questionable. Ibn Taymiyyah also held a similar view. According to Ibn Taymiyyah, judges must judge based on the word of Allah SWT. He stated that judges cannot make decisions on a matter unless it is directly derived from Allah and His Messenger.

Later, several prominent Saudi scholars at the time were among those who rejected the qanun and the obligation to follow it. These included Sheikh Abdul Aziz bin Abdullah ar-Rajihi, Sheikh Abdullah bin Muhammad al-Ghunaiman, Sheikh Bakr bin Abdullah Abu Zaid, Sheikh Abdullah bin Abdurrahman al-Bassam, Sheikh Salih bin Fauzan al-Fauzan, Sheikh Abdullah bin Abdullah al-Ajlan, and Sheikh Abdullah bin Abdurrahman al-Jabirin. They based their views on the evidence of the Qur'an, Sunnah, Ijma', and rationality. The basis of their thinking is:

a. In QS. Shad: 26

يٰدَاوٗدُ اِنَّا جَعَلْنٰكَ خَلِيْفَةً فِى الْاَرْضِ فَاحْكُمْ بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوٰى فَيُضِلَّكَ عَنْ سَبِيْلِ اللّٰهِ ۗ اِنَّ الَّذِيْنَ يَضِلُّوْنَ عَنْ سَبِيْلِ اللّٰهِ لَهُمْ عَذَابٌ شَدِيْدٌ ۢ بِمَا نَسُوْا يَوْمَ الْحِسَابِ

"O Dawud! We have made you caliph (ruler) on earth, so judge (cases) between people fairly and do not follow your desires, because it will lead you astray from the path of Allah. Indeed, those who stray from the path of Allah will receive a heavy punishment, because they forgot the day of reckoning." (QS. Shad: 26)

This verse emphasizes that reality is not limited to a particular way of thinking and may exist outside the way of thinking followed by the appointed authority. In this way, public authorities have no choice but to prohibit individuals from fulfilling the consequences of their ijtihad, in order to facilitate and provide them with opportunities. Umar Abd al-Aziz once said, "I would not be happy to assume that the Companions of the Prophet Muhammad (peace be upon him) did not differ in their judgment and were considered astray.

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However, if they held opposing viewpoints, individuals might adopt one viewpoint, while others might adopt another. Therefore, there is an opportunity for choice."

b. QS. Al-Maidah: 42

سَمّٰعُوْنَ لِلْكَذِبِ اَكّٰلُوْنَ لِلسُّحْتِۗ فَاِنْ جَاۤءُوْكَ فَاحْكُمْ بَيْنَهُمْ اَوْ اَعْرِضْ عَنْهُمْۚ وَاِنْ تُعْرِضْ عَنْهُمْ فَلَنْ يَّضُرُّوْكَ شَيْـًٔاۗ وَاِنْ حَكَمْتَ فَاحْكُمْ بَيْنَهُمْ بِالْقِسْطِۗ اِنَّ اللّٰهَ يُحِبُّ الْمُقْسِطِيْنَ

"They really like to hear false news, eat a lot of haram (food). If they (the Jews) come to you (Muhammad to ask for a decision), then decide between them or turn away from them, and if you turn away from them then they will not harm you in the slightest. But if you decide (their case), then decide fairly. Indeed, Allah loves those who are just." (QS. Al-Maidah: 42)

The word qisth (القسط) refers to justice. Judges believe that a just decision is one that aligns with their beliefs after considering the evidence of sharia, not with the law they are obligated to obey.

c. In determining the law, the appointed judge must be guided by the principle of monotheism. In this situation, a commitment to obeying the law indicates an element of underestimating the demands of monotheism, specifically abandoning obedience to God's law. This is because the judge is considered to be subject to the law, indicating that he or she is focused on the opinions expressed by ordinary, infallible humans. Based on the evidence in QS. Al-Hujurat: 1.

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تُقَدِّمُوْا بَيْنَ يَدَيِ اللّٰهِ وَرَسُوْلِهٖ وَاتَّقُوا اللّٰهَۗ اِنَّ اللّٰهَ سَمِيْعٌ عَلِيْمٌ

"O you who believe! Do not go ahead of Allah and His Messenger and fear Allah. Indeed, Allah is All-Hearing, All-Knowing." (QS Al-Hujurat: 1)

d. The Prophet Muhammad (peace be upon him) said, "There are three types of judges; only one will enter Paradise, and the other two will enter Hell. First and foremost, the judge who ascends to Paradise is the one who understands the truth and makes decisions based on it. Second, the judge who is aware of reality but does not make decisions based on it will be punished. Third, the judge who decides cases between people, despite not knowing the truth, will also be punished." The above hadith is a threat to judges who conclude cases not based on the reality they believe in.

e. Expecting the judge to draw conclusions considering that the assessment of *rajih* which was not determined for them is something that is not in accordance with what happened during the time of the Prophet, *Khulafa al-Rasyidin*, and the Salaf, as Imam Malik rejected the proposal of the caliph Abu Ja'far al-Mansur when he asked Imam Malik.

f. Positive *fiqh* laws enforced by courts in various countries often contain errors and contradictions. Consequently, the regulatory framework and commitment to comply with it do not guarantee the prevention of errors and inconsistencies.

g. The obligation to create qanun will actually prevent society from freely determining legal actions that fall within the scope of certain *fiqh* rules.

h. During the era of the Rightly-Wise Caliphs and the Salaf, legal disputes were also common. Judges could sometimes reach two similar conclusions. The subsequent decision did not invalidate the previous one. This cannot be used

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as a justification for enforcing a qanun (law) and requiring judges to adhere to a single point of view. However, societies in the past were more careful than today in maintaining the freedom of dissent. These differences could not be used to question the competence of judges or to declare them incompetent.

i. There are many differences of opinion in various *fiqh* books. The ulama are obliged to carry out their respective ijtihad if they are competent. The results of their ijtihad will still be rewarded, no matter whether they are right or wrong, as said by the Prophet. If there is a deviant assessment, the ulama's commitment is to correct it and return it to the correct assessment. The ulama also hold the view that a judge's choice should not be contested unless it conflicts with Islamic law. Thus, the qanun's efforts will eliminate the opportunity for ijtihad by the ulama.

D. Conclusion

Etymologically, the word *taqnin* is a type of *masdar* from *qannana* which means making laws. Roman is the origin of this word. However, some say it comes from Persia. In line with *taqnin*, the word qanun also means a path or path (tariqah) and means the measure of all things. *Taqnin* means legislation, law-making, codification (making regulations/laws, codification). In terms of terminology, *taqnin al-ahkam* refers to the process of compiling laws and rules for establishing *tasyri'* laws related to social relations issues, compiling them systematically, expressing them in clear, concise, and clear sentences, in the form of chapters, articles, and verses that are numbered sequentially, stipulated as laws or regulations, approved by the government, and given to law enforcement agencies. In this sense, *taqnin* can be interpreted as an effort to collect regulatory rules related to certain regulations in the form of a written book or in the form of a codification carried out by experts.

In the history of the Ottoman Caliphate, Sultan Sulaiman began to establish a legal system in the form of an authority called the qanun, thus Sultan Sulaiman of the Ottomans was known as Sulaiman *al-Qanuni* (1520-1560 CE). He diligently implemented the qanun, or qanun name, as official regulations. The presence of the *qanun* on *fiqh* was seen as a necessity, while others viewed its presence as hindering the progress of ijtihad, which is a form of transformation towards Islamic law.

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