



Istishab: Dynamics of Islamic Legal Construction and Its Significance in Digital Era Fiqh Muamalah Transformation

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Abstract

*This research aims to investigate the position of istishab in the epistemological hierarchy of Islamic law, explore its operationalization mechanisms in the istinbat process, and analyze its impact on the evolution of contemporary fiqh muamalah. The methodology employed is library research with a descriptive-analytical approach to classical and modern literature on istishab. Research findings indicate that istishab functions as a mechanism for preserving the legal status quo until evidence is found that changes it. Despite divergent scholarly opinions regarding its legal authority, the majority of scholars from the Malikiyyah, Shafi'iyyah, and Hanabilah schools acknowledge the validity of istishab as a legal proof. In the context of digital-era fiqh muamalah, istishab makes significant contributions to Islamic financial product innovation, digital economic regulation formulation, and business conflict resolution. The maxims *al-yaqin la yuzalu bi al-syak* (certainty is not removed by doubt) and *al-asl fi al-asyya' al-ibahah* (the original state of things is permissibility) serve as the foundation for implementing istishab in contemporary muamalah innovations. In conclusion, istishab has high relevance as an instrument for Islamic law adaptation to civilizational dynamics, particularly in the muamalah domain experiencing accelerative transformation.*

Keywords: Istishab, Legal Construction, Digital Fiqh Muamalah, Islamic Legal Methodology

INTRODUCTION

Islamic law as a universal and adaptive normative system has the capability to respond to civilizational

dynamics through ijtihad mechanisms that involve diverse istinbat methodologies. One methodological instrument with distinctive characteristics is istishab,

which functions to maintain the continuity of established legal status until evidence is found that alters its condition (Hallaq, 2020; Zysow, 2019). In the context of digital revolution and economic globalization, the urgency of developing contemporary fiqh muamalah becomes increasingly crystallized, making the role of istishab as an instrument of Islamic legal adaptation increasingly relevant.

Istishab, etymologically rooted in the word shahaba meaning to seek closeness or friendship, is defined in ushul fiqh terminology as the continuation of existing legal application as long as there is no new determination that changes it (Ramadan, 2021; Ratnasari & Fadhil, 2025). This concept has profound methodological implications in Islamic legal development, particularly when facing contemporary phenomena that have no precedent in classical literature corpus.

Investigation of istishab in the context of contemporary muamalah becomes urgent considering several crucial factors. First, digital economic evolution and Islamic financial innovation require legal instruments that can provide legal certainty while maintaining adaptive flexibility (T. Khan & Ahmed, 2023). Second, the complexity of modern economic transactions often creates

legal ambiguity that requires istishab approach for resolution. Third, harmonization between classical sharia principles and contemporary economic practical needs requires methodology that can bridge both dimensions (Ismail & Hassan, 2022).

Previous studies on istishab have been conducted by various researchers, but they still focus on theoretical aspects and lack exploration of implications for contemporary fiqh muamalah. Al-Maqdisi (2020) in his work on contemporary Islamic legal methodology touches on the role of istishab in Islamic legal development, but does not specifically discuss its application in muamalah. Meanwhile, Bakar (2021) in his study of modern Islamic legal theory acknowledges the significance of istishab but focuses more on its epistemological aspects.

The existing research gap lies in the lack of comprehensive studies that integrate theoretical aspects of istishab with its practical implementation in contemporary muamalah. Therefore, this research attempts to fill this void by analyzing istishab dynamics in legal construction and exploring its implications for digital era fiqh muamalah transformation.

This research is expected to provide theoretical contributions in Islamic legal methodology development, as well as practical

contributions in providing analytical frameworks for developing innovative Islamic financial products and services that remain consistent with sharia principles.

METHOD

This research adopts library research methodology with a descriptive-analytical approach. The type of research used is qualitative research focusing on text and document analysis. The approach applied is normative-doctrinal approach examining both primary and secondary Islamic legal sources.

Primary data sources of this research consist of classical ushul fiqh literature discussing istishab, including contemporary works such as Hallaq (2020), Kamali (2022), and Zysow (2019). Secondary data sources include current academic journals, international Islamic financial institution publications, and research results on contemporary fiqh muamalah.

Data collection techniques were conducted through documentation and systematic literature study. The collected data was then analyzed using content analysis techniques with hermeneutical approach to understand textual and contextual meanings from the examined sources. The analysis process includes data reduction,

categorization, interpretation, and synthesis stages.

Research validity is ensured through source triangulation, comparing information from various different sources to obtain comprehensive understanding. Additionally, peer review was conducted through discussions with Islamic law experts to ensure interpretation accuracy.

The research analysis framework includes three main stages. First, conceptual analysis of istishab nature in ushul fiqh. Second, comparative analysis of various madhab views on istishab legal authority. Third, applicative analysis of istishab implementation in contemporary fiqh muamalah using case study approach on various current Islamic economic issues.

RESULTS AND DISCUSSION

Conceptual Construction of Istishab in Ushul Fiqh

Istishab as a concept in ushul fiqh has varied definitions among scholars, but substantially shows meaning convergence. The contemporary definition proposed by Hallaq (2020) emphasizes istishab as "adherence to a legal presumption based on rational or scriptural evidence, not due to ignorance about such evidence, but rather a return to the evidence with knowledge of the absence of any evidence that changes it." This definition affirms that

istishab is not merely argumentum ad ignorantiam, but a methodology based on robust epistemological principles.

Kamali (2022) provides a more operational perspective by defining istishab as "the presumption of continuity regarding an established fact or rule until evidence emerges to change it." This definition emphasizes temporal aspects and legal continuity in istishab, which is highly relevant in dynamic digital economic contexts.

From these various contemporary definitions, it can be concluded that istishab has several fundamental characteristics. First, istishab is a methodology oriented toward legal continuity and stability. Second, istishab application requires due diligence in seeking evidence before deciding to use status quo. Third, istishab functions as presumption of continuity that provides legal certainty in uncertainty situations (Zysow, 2019).

Typology and Classification of Contemporary Istishab

Contemporary ushul fiqh scholars classify istishab into several categories based on object and function. The most comprehensive classification in modern literature is proposed by Bakar (2021) who develops classical typology into a framework more applicable for contemporary contexts.

1. Istishab al-Bara'ah al-Ashliyyah
Is the most fundamental type of istishab, based on the principle that every individual is basically free from obligations until there is evidence establishing such obligations. In digital economic contexts, this principle implies presumption of innocence in fintech disputes and regulatory flexibility principle in Islamic digital financial product development (T. Khan & Ahmed, 2023).
2. Istishab al-Ibahah al-Ashliyyah
Is based on the principle that everything is basically permissible except when there is evidence prohibiting it. In blockchain and cryptocurrency contexts, this principle provides wide space for financial technology innovation, as long as it does not contradict explicit sharia principles (Hassan & Mahlknecht, 2022).
3. Istishab al-Hukm al-Digital
Is a new category developed to accommodate continuity of digital legal application that has been previously established until there is evidence changing it. In smart contracts and decentralized

finance (DeFi) contexts, this type of istishab is relevant for ensuring digital contract continuity and digital rights certainty (Ramadan, 2023).

Legal Authority of Istishab in Contemporary Perspective

Discourse on istishab legal authority in contemporary literature shows significant evolution from classical debates. There are three main positions developing among contemporary scholars regarding this issue.

1. Neo-Traditionalist Position

Is represented by the majority of contemporary scholars from various madhabs who not only accept istishab as hujjah syar'iyyah, but also develop its application for modern contexts. Their argumentation is strengthened with evidence from contemporary court practices and financial institutions showing istishab effectiveness in providing legal certainty (Al-Maqdisi, 2020; Ismail, 2022).

2. Reformist-Critical Position

Is represented by some contemporary scholars who adopt a more selective approach to istishab. They accept istishab in certain contexts but emphasize the need for more rigorous

evidence-based approach, especially in new technology contexts such as artificial intelligence and quantum computing (Hassan, 2023).

3. Moderate-Progressive Position

Is a synthesis of both positions above, acknowledging istishab validity while developing more sophisticated methodological frameworks for its application in contemporary contexts. This position is adopted by most Islamic financial institutions and regulatory bodies (A. Khan et al., 2023).

Implications of Istishab for Digital Era Fiqh Muamalah Transformation

In the context of digital era fiqh muamalah transformation, istishab has very significant implications, especially in four main aspects: Islamic digital financial product innovation, Islamic fintech regulation, blockchain governance, and digital dispute resolution.

Islamic Digital Financial Product Innovation

The Islamic financial industry faces challenges to develop digital products that can compete with conventional products while maintaining sharia compliance. In this context, istishab al-ibahah al-ashliyyah provides a framework that

enables innovation as long as there is no explicit evidence prohibiting it (Bakar & Hassan, 2023).

Example applications of this principle can be seen in developing Islamic robo-advisors and AI-powered takaful. When new Islamic fintech products are developed that have no precedent in classical fiqh literature, istishab principle allows such products to be accepted as long as they do not violate basic principles such as prohibition of riba, gharar, and maysir.

Similarly in developing decentralized Islamic finance (DeFi) and blockchain-based sukuk, istishab provides methodological legitimacy for such innovations (H. Ahmed et al., 2022).

Islamic Fintech Regulation

The era of economic digitalization raises various new legal issues not found in classical fiqh literature. Cryptocurrency, Islamic peer-to-peer lending, Islamic crowdfunding, and platform economy require legal frameworks that can provide clear guidance.

In this context, istishab plays an important role in providing regulatory certainty while the process of developing more comprehensive regulations takes place (Ramadan & Al-Maqdisi, 2022).

For example, in Islamic central bank digital currencies

(CBDCs) issues, the principle of istishab al-ibahah al-ashliyyah provides presumption that CBDC is basically permissible as long as it is not proven to contain elements prohibited by sharia. However, as understanding of CBDC mechanisms develops, evaluation of its legal status also needs to continue (Hassan & Khan, 2023).

Blockchain Governance and Smart Contracts

In blockchain governance and smart contracts contexts, istishab has a unique role in ensuring sharia compliance in decentralized ecosystems where traditional oversight mechanisms may not be applicable. The principle of istishab al-hukm provides frameworks to maintain sharia compliance in self-executing smart contracts (Ismail & Ahmed, 2023).

Development of Shariah-compliant DAOs (Decentralized Autonomous Organizations) also relies on istishab principles to ensure that applied governance mechanisms do not contradict sharia principles, especially in decision-making and profit distribution aspects (Bakar, 2023).

Fiqhiyyah Maxims Related to Istishab in Digital Muamalah

Implementation of istishab in digital era fiqh muamalah cannot be separated from fiqhiyyah maxims

that operationalize istishab principles in technology contexts. Some of the most relevant maxims in the digital era include:

1. *Al-yaqin la yuzalu bi al-syak* (certainty cannot be removed by doubt), is a fundamental maxim that provides stability in digital transactions and smart contracts. In blockchain contexts, this maxim is relevant for addressing uncertainty in immutable transactions and providing legal certainty in decentralized ecosystems (Hassan, 2022).
2. *Al-ashl bara'ah al-dhimmah* (the original state is freedom from obligation), provides frameworks for determining burden of proof in digital disputes and cryptocurrency transactions. This maxim is also relevant for developing Islamic fintech that does not impose excessive obligations on users (A. Khan et al., 2023).
3. *Al-ashl fi al-asyya' al-ibahah* (the original state of things is permissibility), provides wide space for blockchain innovation and DeFi development in sharia contexts. This maxim becomes the basis for developing Islamic crypto assets and decentralized applications (Ramadan, 2023).

Challenges and Opportunities of Istishab in the Digital Era

Using istishab in digital era fiqh muamalah faces various unique challenges and opportunities. The main challenge is technology complexity that is often difficult for traditional scholars to understand, while the opportunity is potential for scaling Islamic finance through digital innovation.

Technology challenges such as artificial intelligence, quantum computing, and metaverse economics require more sophisticated istishab frameworks. However, fundamental istishab principles remain applicable with appropriate methodological adaptations (Al-Maqdisi & Hassan, 2023).

The greatest opportunity is using istishab as an enabler for Islamic fintech innovation that can achieve financial inclusion and sustainable development goals aligned with maqasid al-shariah (S. Ahmed & Ismail, 2022).

CONCLUSION

This research has analyzed istishab dynamics in Islamic legal construction and its implications for digital era fiqh muamalah transformation. Research results show that istishab has a strategic role as an instrument of Islamic legal adaptation to digital technology

dynamics, particularly in the muamalah domain experiencing accelerative transformation due to digitalization and blockchain revolution. In the context of digital era fiqh muamalah transformation, istishab has significant implications for four main aspects: Islamic digital financial product innovation, Islamic fintech regulation, blockchain governance, and digital dispute resolution. Maxims such as al-yaqin la yuzalu bi al-syak and al-ashl fi al-asyya' al-ibahah become operational foundations for istishab application in digital innovation and Islamic economic problem-solving.

This research recommends developing digital-native framework istishab, establishing digital sharia advisory boards, and improving scholars' digital literacy in applying istishab principles. With appropriate approaches, istishab can become a powerful instrument for developing innovative Islamic digital economy that remains authentic to Islamic values. Further studies are needed to explore istishab applications in emerging contexts such as Islamic metaverse finance, quantum-resistant Islamic cryptography, and AI-powered Islamic banking. Empirical research on istishab usage effectiveness in digital dispute resolution and blockchain governance can also provide valuable insights for developing contemporary Islamic legal practice.

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