

**CHAPTER FOUR**  
**METHOD OF PROBLEM SOLVING THROUGH THE PRACTICE OF**  
***IJTIHĀD***

**4.0. INTRODUCTION**

This chapter discusses the method of problem solving through *ijtihād*. This chapter begins with the topic of general principles of the method of problem solving through *ijtihād* from an Islamic context. After which, *ijtihād* as interpreted by SIS is presented, followed by an analysis from an Islamic thought perspective.

**4.1. GENERAL PRINCIPLES OF THE METHOD OF PROBLEM SOLVING**  
**THROUGH *IJTIHĀD***

The human mind is very important when it comes to guiding people to their destination. The mind is very essential in being human, and it is considered a gift to humans. In order to live a true, just and good life, people have to use their '*aql*' or mind to think, to reflect, and to observe a religious way of life.<sup>1</sup>

The people's needs are not endless, just as the agenda of human life is not endless. Yet, at the same time, disputes among people will continue to exist. This is why *ijtihād* is necessary. It is needed to find the answers we humans are constantly looking for.<sup>2</sup>

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<sup>1</sup> Muhammad Sayyid Tantawi, *Al-Ijtihād fī al- Ahkām al-Sharī'ah*, translated by Safri Mahayedine (Egypt: Dar Nahdah, t.t.), 2.

<sup>2</sup> *Ibid.*

#### 4.1.1. The Definition of *Ijtihād*

The following are literal and technical definitions of *ijtihād*:

##### (a) Literal Definition

*Ijtihād* is a *masdar* of the Arabic word “*ijtahada*” (اجتهد), which means to exert his best or utmost effort.<sup>3</sup> It is derived from the Arabic root word (ج ح د: *j-h-d*). الجهد بالفتح means hardship and energy, and الجهد بالضم means only energy.<sup>4</sup>

Allah s.w.t. says:

والذين لا يجدون إلا جهدهم

Al-Tawbah 9:79

Translation: and [criticize] the ones who find nothing [to spend] except their effort

Literally, *ijtihād* means the utmost effort<sup>5</sup> in doing something. Utmost effort here means with maximum and full energy. Hence, it is not called *ijtihād* if there is no hardship or maximum effort involved. Thus, *ijtihād* is not used to carry a seed, but it is used to carry a rock, as carrying rocks require great effort.<sup>6</sup> In other words, *ijtihād* literally is defined as the exertion of utmost effort on a matter that requires it.

<sup>3</sup> Muḥammad al-Ḥasan al-Shanqīṭī, *Sharḥ al-Waraqāt fī 'Usūl al-Fiqh* (t.tp.: Durūs Ṣawṭiyyah, t.t.), 26.

<sup>4</sup> *Ibid.*, 58.

<sup>5</sup> Ḥasan bin Muḥammad bin Maḥmūd al-‘Attār al-Shāfi‘ī, *Hāshiyah al-‘Attār ‘alā Sharḥ al-Jalāl alMaḥallī ‘alā Jam‘ al-Jawāmi‘* (t.t.p.: Dār al-Kutub al-‘Ilmiyyah, t.t.), 420.

<sup>6</sup> Abū ‘Abdullāh bin ‘Umar bin Musā‘id al-Ḥāzimī, *Al-Sharḥ al-Muyassar Liqawā‘id al-Usūl wa Mu‘āqid al-Fuṣūl* (t.tp.: Durūs Ṣawṭiyyah, t.t.), 25.

## (b) Terminology

Terminologically, *ijtihād* means:

1. To exert utmost effort to deduce (*idrāk*) *ḥukm Shar‘ī*.<sup>7</sup>
2. To exert utmost effort to discover evidence to reach *al-qaṭ‘ī* or *al-zannī* of *ḥukm Shar‘ī*.<sup>8</sup>
3. To exert utmost effort when considering *Shar‘iyyah* evidence to deduce *al-aḥkām al-Shar‘iyyah*.<sup>9</sup>
4. The utmost efforts of jurists in obtaining *ḥukm* from *zannī* evidence (*dalīl zannī*).<sup>10</sup>
5. To exert utmost effort to reach the goal.<sup>11</sup> Or: The jurist (*faqīh*) exerts his utmost effort to find out a legitimate rule of evidence. (*dalīl*)<sup>12</sup>
6. The *mujtahid* has spent so much effort in pursuit of the knowledge of *aḥkām al-Shar‘iyyah*.<sup>13</sup>
7. *Ijtihād* is also defined as,

The exertion of the utmost effort by a trained jurist, taking into account all the relevant texts of the Qur’an and Sunna as well as principles of jurisprudence, to discover, for a particular human situation, a rule or law. *Ijtihād* is the mechanism by which Islamic law, as revealed in the Qur’an and the Sunna, may be interpreted, developed and kept alive in line with the intellectual, political, economic, legal, technological and moral developments of a society.<sup>14</sup>

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<sup>7</sup> Muḥammad bin Šāliḥ bin Muḥammad al-‘Uthaymīn, *‘al-Usūl min ‘Ilm al-Usūl* (t.tp.: Dar Ibn alJawzī, 1426H), 85.

<sup>8</sup> Al-Jāmi‘ah al-Islamiyyah, *Mudhakkirah Usūl al-Fiqh* (Madīnah: Mawqī‘ al-Jāmi‘ah ‘alā al-Intarnit, t.t.), 58.

<sup>9</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *al-Sharḥ al-Mukhtaṣar Li Nuzum alWaraqāt* ((t.tp.: Durūs Šawṭiyyah, t.t.), 25.

<sup>10</sup> Muḥammad bin al-Ḥasan bin al-‘Arabī bin Muḥammad al-Ḥujuway al-Tha‘ālabī al-Ja‘farī al-Fāsī, *alFikr al-Samī Fi Tārīkh al-Fiqh al-Islāmī* (Bayrūt: Dār al-Kutub al-‘Ilmiyyah, 1995), 493.

<sup>11</sup> Jalāl al-Dīn Muḥammad bin Aḥmad bin Muḥammad bin Ibrāhīm al-Maḥallī al-Shāfi‘ī, *Sharḥ alWaraqāt Fi Usūl al-Fiqh* (Falasṭīn: Jāmi‘ah al-Qudus, 1999), 223.

<sup>12</sup> Muḥammad al-Ḥasan al-Shanqīṭī, *Sharḥ al-Waraqāt fi ‘Usūl al-Fiqh*, 26.

<sup>13</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *al-Sharḥ al-Mukhtaṣar Li Nuzum alWaraqāt*, 16.

<sup>14</sup> Abdullah Saeed, *Islamic Thought: an Introduction* (USA and Canada: Taylor & Francis, 2006), 52.

Terminologically, *Jumhūr Uṣūliyyin* defines *ijtihād* as the utmost effort of jurists to obtain *ḥukm* from *ẓannī* evidence (*dalīl ẓannī*). Thus, *ijtihād* is only acceptable if one exerts his utmost efforts in searching to the point where he feels that there is nothing left to search for.<sup>15</sup> It is the exertion of energy to the extent that the faculties of the jurist become incapable of making further effort. In the other words, *ijtihād* is the maximum effort expanded by the jurist to master and apply the principles and rules of *uṣūl al- fiqh* (legal theory) for the purpose of discovering God’s law.

#### 4.1.2. Method of *Ijtihād*

Generally, there are three methods or modes of *ijtihād* that can be exercised by qualified *mujtahid*:<sup>16</sup>

- i. The first method that is used by a jurist is through focusing closely on texts and by understanding their literal meanings. In this process, a jurist applies the rule of plain meaning, in which he attempts to discover descriptions for difficult words in the texts. Then, he finds the meaning of the words from other sources, for example, in literature. “*This also depends on whether the words have been used in the texts in their literal sense or their use is figurative (ḥaqīqah and majāz).*” The jurist needs to apply the technique of *dalālat* if the text may not show the required meaning through plain reading.
- ii. The jurist will turn to syllogism (*qiyās*) whenever he feels he has exhausted the method of literal construction. This method is limited to strict forms of analogy known as *qiyās al-ma’nā* and *qiyās al-’llah*.

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<sup>15</sup> Muḥammad al-Ḥasan al-Shanqīṭī, *Sharḥ al-Waraqāt fī ’Usūl al-Fiqh*, 26.

<sup>16</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Usul al-Fiqh)*, (New Delhi: Adam Publisher & Distributors, 2006), 268-269.

- iii. *The second mode of ijtihād is confined to the extension of the law from individual texts, while in the third mode the reliance is on all the texts considered collectively. This means that legal reasoning is undertaken more in line with the spirit of the law and its purposes rather than the confines of individual texts.*”

The spirit of the law and its purposes can be witnessed clearly in the general principles of the legal system. The principles are used by methods like istihsan and maslahah mursalah. The third mode of ijtiḥād provides the jurist with the opportunity to generate new principles provided he observes a prescribed methodology and fulfills the conditions imposed for such legal reasoning.<sup>17</sup>

#### **4.1.3. The Process of *Ijtiḥād***

Someone who wishes to exercise *ijtiḥād* must fulfill the requirements to qualify as a *mujtahid*. They must know and understand the various kinds of *bayān* or elaboration of the texts. They also must recognize the “*occasions on which such bayān is invoked.*” In their struggle to derive laws from the sources, they must apply all three methods or modes of *ijtiḥād*, if necessary. Besides that, they must know and understand abrogation (*naskh*). Lastly, they must “*exercise preference (tarjīḥ) and reconciliation (jam‘) among apparently conflicting sources.*”<sup>18</sup>

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<sup>17</sup> *Ibid.*, 269.

<sup>18</sup> *Ibid.*

#### 4.1.4. The Matters of *Ijtihād*

Legal problem-solving is needed because situations and problems are constantly changing. *Ijtihād* plays an important role in this context.<sup>19</sup> *Ijtihād* is a method to uphold truth and justice, and to explain the history of Islam. It is used for guidance, coaching, and for the shaping of ethics and laws practiced over time in each place.<sup>20</sup>

When discussing *ijtihād*, the main point that must be understood is the connotation of the words definitive (*qat'ī*) and probable (*ẓannī*). *Qat'ī al-thubūt* means “definitive with respect to its transmission”, and *qat'ī al-dalālah* means “definitive with respect to its meaning.” Thus, a text may be categorized as *qat'ī al-thubūt* and *qat'ī al-dalālah*. All Qur'anic verses and texts of the *mutawātir Sunnah* are categorized as *qat'ī al-thubūt*. Very few of these texts are classified under *qat'ī al-dalālah*.<sup>21</sup>

Matters that have been decided by *qat'ī* evidence (*dalil*) are categorized as *uṣūl*, while matters that have been not decided by *qat'ī* evidence (*dalil*) are categorized as *furū'*. *Ijtihād* can only be practiced for matters of *furū'*. Therefore, *ijtihād* cannot be applied for matters that have been decided by *qat'ī* evidence (*dalīl*), such as the matters pertaining to the obligation of *ṣalāh*, *zakāh* and etc., and the prohibition of adultery and drinking alcohol and etc. Thus, *Ijtihād* is not practiced in matters categorized as *uṣūl*.<sup>22</sup>

*Ijtihād* can be applied when solving problems related to *ẓannī* texts, or when the problems are not mentioned in any texts,<sup>23</sup> or when there is no evidence (*dalīl*) in any text (*naṣ*) regarding the matter at hand.<sup>24</sup>

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<sup>19</sup> Abdullah Saeed, *Islamic Thought: an Introduction*, (USA and Canada: Taylor & Francis, 2006), 52.

<sup>20</sup> Muhammad Sayyid Tantawi, *Al-Ijtihād*, ix

<sup>21</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 266.

<sup>22</sup> Muḥammad al-Ḥasan al-Shanqīṭī, *Sharḥ al-Waraqāt fī 'Usūl al-Fiqh*, 28.

<sup>23</sup> 'Abdullāh bin Yūsūf bin 'Isā bin al-Ya'qūb al-Judī' al-'Anzī, *Taysīr 'Ilm Usūl al-Fiqh*, (Bayrūt: Mu'assasah al-Rayyān, 1997), 379-380.

<sup>24</sup> Al-Zāhidī, Ḥāfīz Thanā' Allāh, *Talkhīṣ al-Uṣūl* (al-Kuwait: Markaz al-Makhṭūṭāt wa al-Turāth wa al-Wathā'iq, 1994), 379.

Thus, *ijtihād* can be applied when looking at texts (*naṣ*) that are *ẓannī al-dalālah*, such as some verses in the Qur'an or Hadith that can be interpreted in many different ways depending on the understanding of the language or Islamic evidences. An example of this kind of verse is verse 6: *Sūrah al-Mā'idah*. This verse is categorised as *qat'ī al-thubūt*, but differences of opinion among the *fuqahā'* occur because the understanding of particular words and phrases in the text vary.<sup>25</sup>

*Ijtihād* is usually applied for texts (*naṣ*) that are *ẓannī al-thubūt*. Texts that are considered *ẓannī* include some hadiths constantly discussed by *ahl hadith*. The main points of contention include the *sanad* (chain of narrators) and *matn*, and whether they are categorised as *ṣaḥīḥ*, *ḥasan*, *ḍa'īf*.<sup>26</sup>

Besides that, the *mujtahid* can also exercise *ijtihād* in cases where no evidence, direct or indirect, can be found for a problem.<sup>27</sup>

*Ijtihād* can be exercised in matters where there are differences in opinions (*ikhtilāf*) among the scholars, and in matters that have never been discussed by any *mujtahid* before.<sup>28</sup>

Not all texts need to be interpreted by *mujtahid*, as certain texts are universally acknowledged as authentic and have clear meanings. In other words, certain texts can be understood just by reading them.<sup>29</sup>

Even though *ijtihād* is very important, it does not mean that it can be done on everything. *Ijtihād* cannot be done on any *ḥukm* that has been established. Texts (*naṣ*) that are classified as being *qat'ī al-dalālah* cannot be reinterpreted through *ijtihād*. For example, the *naṣ* that commands people to worship Allah s.w.t. and to follow the Prophet s.a.w., to

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<sup>25</sup> Muhammad Sayyid Tantawi, *Al-Ijtihād*, 5.

<sup>26</sup> *Ibid.*

<sup>27</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 267.

<sup>28</sup> Al-Zāhidī, Ḥāfiẓ Thanā' Allāh, *Talkhīṣ al-Uṣūl*, 379.

<sup>29</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 266.

perform the duties as stipulated by Allah s.w.t. and to keep away from acts of adultery, acting as false witnesses, murder, *ribā*, consuming the property of orphans which is prohibited by Islam, etc., have been classified as *qat'ī al-dalālah*, and cannot be reinterpreted through *ijtihād*.<sup>30</sup>

*Qat'ī al-dalālah* indicates that a certain text has only one meaning. One example of *qat'ī al-dalālah* is the text regarding the punishment for those who commit *zinā*. This text states that those who commit *zinā* should be flogged with a hundred stripes. This text has definitive meaning—the punishment is specifically mentioned as flogging with a hundred stripes, no more and no less. The number of stripes is clearly stated, and so, *ijtihād* is not needed in this case. However, the meaning of “stripes” in the text is unclear, and so *mujtahids* need to interpret the definition of the word. *Mujtahids* must also determine how the flogging is to be carried out. Should they use a stick, a whip or something else? Which part of the body is involved?<sup>31</sup>

*Ijtihād* cannot be applied for texts that are considered *qat'ī al-thubūt* and *qat'ī al-dalālah*.<sup>32</sup> Under normal situations, an existing rule cannot be subject to the process of *ijtihād* if the rule is clearly and unambiguously affirmed in the Qur'an and *Sunnah*. As an example, the process of *ijtihād* cannot be done to decide whether theft should be prohibited or not because the prohibition of theft is clearly and unambiguously affirmed in the Qur'an.<sup>33</sup>

*Ijtihād* also cannot be exercised on texts have already been interpreted and agreed upon by *ijmā'*. Even though these texts may be ambiguous in their meanings, jurists have

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<sup>30</sup> Muhammad Sayyid Tantawi, *Al-Ijtihād*, 5.

<sup>31</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 266.

<sup>32</sup> *Ibid.*

<sup>33</sup> Abdullah Saeed, *Islamic Thought: an Introduction*, USA and Canada: Taylor & Francis, 2006), 52.

reached a consensus over them. A *mujtahid* must find out if there is *ijmā'* on the issue at hand before they attempt to interpret the text through *ijtihad*.<sup>34</sup>

According to Shaykh 'Isā Manūn, there are three types of Shariah law, and they are as follows:<sup>35</sup>

First: The Inevitable Law, which came by the way of *tawātur qat'ī*, inherited by *Khalaf* scholars from the *Salaf* scholars. Every Muslim, whether they are from public or specific groups, should know about this law. For example, all Muslims know that it their duty to pray 5 times a day, give alms, fast during *Ramaḍān*, make the pilgrimage to *Bayt al-Ḥarām*, etc. *Ijtihad* does not allow to be performed on these laws.<sup>36</sup>

Second: Islamic laws (*ḥukm Shar'*) that were unanimously agreed upon by *mujtahids*, without any opposition from other parties. These laws were established through a consensus. This type of law is only known to a particular group of people. It is not compulsory for the public to know about the laws that fall under this category. An example of rulings that fall under this type of law can be taken from the subject of inheritance. For instance, a daughter of the son (granddaughter) is entitled to 1/6 of an inheritance. The process of *ijtihad* cannot be done on this type of law, as the rulings have already been agreed upon by consensus (*ijmā'*). Rejecting the consensus is prohibited (*ḥarām*).<sup>37</sup>

Third: Islamic Laws (*ḥukm Shar'*) in which the *dalīl* are deep and hidden. *Mujtahids* have differences of opinion regarding laws that fall under this category. Differences of opinion do not give rise to any offense, and are thus allowed,<sup>38</sup> as long as their interpretations are in line with the Qur'an and *Sunnah*.

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<sup>34</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 267.

<sup>35</sup> Muhammad Sayyid Tantawi, *Al-Ijtihad*, 7.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

The matters of *ijtihād* are very important and need to be fully understood by those who wish to participate in exercising *ijtihād*. This is the reason why *ijtihād* can only be applied to certain matters only.

#### **4.1.5. The Qualifications of a *Mujtahid***

In the process of *ijtihād*, the first most important thing one must be concerned about is the person who wishes to exercise *ijtihād*. An unqualified *mujtahid* is not allowed to exercise *ijtihād*. This topic is very important, as in it, the researcher discusses what makes a qualified *mujtahid*, and what a *mujtahid* needs to know before attempting to exercise *ijtihād*. Mastering is the knowledge a *mujtahid* needs to master is essential so that the *mujtahid* can derive a ruling accurately from the sources.

A person who wishes to exercise *ijtihād* must be well-educated and have good intentions for want to exercise *ijtihād*. One cannot claim to have exercised *ijtihād* if they have not fulfilled the conditions to become a qualified *mujtahid*.<sup>39</sup> The characteristics of a *mujtahid* are as follow: <sup>40</sup>

##### **(a) A *Mujtahid* must be Muslim**

*Ijtihād* that is done by a non-Muslim cannot be accepted, even if he is extremely knowledgeable in the field of Shariah.<sup>41</sup>

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<sup>39</sup> *Ibid.*,

<sup>40</sup> *Ibid.*,

<sup>41</sup> ‘Ayāḍ bin Nāmī bin ‘Awaḍ al-Sullamay, *Usūl al-Fiqh alladhī Lā Yasa’ al-Faqīh Jahlah* (al-Riyāḍ: Dār al-Tadmuriyah, 2005), 451.

Allah s.w.t. says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِن تَطِيعُوا فَرِيقًا مِّنَ الَّذِينَ أُوتُوا الْكِتَابَ يَرُدُّوكُم بَعْدَ إِيمَانِكُمْ كَافِرِينَ

'Āl Imrān 3:100

Translation: O ye who believe! If ye listen to a faction among the People of the Book, they would (indeed) render you apostates after ye have believed!

**(b) A *Mujtahid* must be Mentally Healthy**

Any fatwas or *ijtihād* from a person who is mentally unstable cannot be accepted.<sup>42</sup>

**(c) A *Mujtahid* must have Reached Puberty<sup>43</sup>**

Narrated 'Alī ibn Abū Ṭālib: The Prophet (peace be upon him) said:

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمُبْتَلَى حَتَّى

يَبْرَأَ، وَعَنِ الصَّبِيِّ حَتَّى يَكْبُرَ

Translation: There are three (persons) whose actions are not recorded: a sleeper till he awakes, a lunatic till he comes to reason, and boy till he reaches puberty.<sup>44</sup>

**(d) A *Mujtahid* must be Master of the Arabic Language**

Arabic is the language of the Qur'an and the *Sunnah*.<sup>45</sup> Therefore, a *mujtahid* must know the original language of the Arabs as emphasized in *Kitāb Lisān al-'Arab* by Ibn Manẓūr. A *mujtahid* must have a firm grasp of Arabic grammar, morphology, *al-bayān*, etc. Without this knowledge, it is impossible to understand the Qur'an correctly and precisely.<sup>46</sup>

<sup>42</sup> *Ibid.*, 451.

<sup>43</sup> *Ibid.*

<sup>44</sup> Narrated by Abū Dawūd, *Kitāb al-Ḥudūd*, Bāb fī al-Majnūn Husriq aw Yuṣīb Haddā, number of Hadith 4398.

<sup>45</sup> Abū 'Abdullāh, Aḥmad bin 'Umar bin Musā'id al-Ḥāzimī, *Sharḥ Qawā'id al-Uṣūl Wa Ma'āqid alFuṣūl* (t.tp.: Durūs Ṣawṭiyah, t.t.), 21.

<sup>46</sup> *Ibid.*, 15.

A *mujtahid* who wants to study and derive *ḥukm* from the Qur'an and *Sunnah* is required to be a master of the Arabic language. Suyūṭī mentions that there is a consensus among jurists who say that only those who are highly knowledgeable in Arabic are allowed to interpret the word of God, as Arabic is the language of the Qur'an and *Sunnah*.<sup>47</sup>

The *mujtahid* must be skilled in Arabic language<sup>48</sup> because the fundamentals of jurisprudence (*uṣūl fiqh*) are within the Qur'an and is also its core.<sup>49</sup> Thus, a *mujtahid* must have enough knowledge of the Arabic language required to comprehend the Qur'an and *Sunnah*. In other words, he must be fluent in the Arabic language.<sup>50</sup>

A *mujtahid* must also know enough about the language to understand the circumstances of the Arabs how they use the language, so that he can distinguish textual indications (*dalālat al-alfāz*).<sup>51</sup>

Learning about the Arabic language and its grammar is a huge endeavour. However, a *mujtahid* must have sufficient knowledge of the Arabic language and grammar that is needed to guide him to understand the meaning of the Qur'an and *Sunnah* correctly and precisely. He must learn the Arabic language to the extent that is required. Knowledge of the Arabic language is a vital tool that can be used to enable him to explain the text in the Qur'an and *Sunnah*.<sup>52</sup>

The *mujtahid* must know the nuances of the language and be able to comprehend the sources accurately and deduce the *aḥkām* from them with a high level of competence.<sup>53</sup>

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<sup>47</sup> *Ibid.*, 21.

<sup>48</sup> Muḥammad Ḥasan 'Abd al-Ghaffār, *Taysīr Uṣūl al-Fiqh Li al-Mubtadi'īn* ((t.tp.: Durūs Ṣawṭiyyah, t.t.), 7.

<sup>49</sup> Abū 'Abdullāh, Aḥmad bin 'Umar bin Musā'id al-Ḥāzimī, *Sharḥ Mukhtaṣar al-Tahrīr Li al-Fatūḥī* ((t.tp.: Durūs Ṣawṭiyyah, t.t.), 6.

<sup>50</sup> 'Abdullāh bin Yūsūf bin 'Īsā bin al-Ya'qūb al-Judī' al-'Anzī, *Taysīr 'Ilm*, 381-382.

<sup>51</sup> Abū 'Abdullāh, Aḥmad bin 'Umar bin Musā'id al-Ḥāzimī, *Sharḥ Mukhtaṣar*, 7.

<sup>52</sup> *Ibid.*, 6.

<sup>53</sup> *Ibid.*, 7.

According to al-Ṭūfī in “*Sharḥ Mukhtaṣir al-Rawḍah*”, a *mujtahid* must have sufficient [كف] knowledge of the Arabic language and grammar. He must know enough by which he can comprehend the Qur’an and *Sunnah*.<sup>54</sup>

The *mujtahid* cannot recognize and understand the indications mentioned in the Qur’an unless he is sufficiently fluent in Arabic. He must be able to distinguish the differences between texts (*naṣ*). He must be able to interpret apparent meanings (*ẓāhir*), literal meanings (*haqīqah*) and metaphorical ones (*majāz*). He must understand what the Qur’an enjoins (*‘amr*) and forbids (*nahy*), and he must know what is general (*‘ām*) and what is particular (*khāṣ*). A *mujtahid* must also be able to tell what is excluded (*mustathnā*) and excluded of it (*mustathnā minh*), what is absolute (*muṭlāq*) and what is restricted (*muqayyad*).<sup>55</sup> He must be able to determine what is explicit (*ṣorīḥ al-kalām*), outward (*ẓāhir*) and *mujmal*,<sup>56</sup> *muḥkamah* and *mutashābihat*, and etc.<sup>57</sup>

He must be also knowledgeable about the linguistic jurisprudence (*fiqh al-lughah*), declaration statements (*al-bayān*),<sup>58</sup> morphology (*ṣaraf*), *‘ilm al-ḥurf*,<sup>59</sup> *al-tarākib*, vocabulary and its meanings,<sup>60</sup> rhetoric (بلاغه) texts (*naṣ*), content, operatives, and concept, etc.<sup>61</sup> It is essential for a *mujtahid* to master these essentials elements of the Arabic

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<sup>54</sup> Abū al-Mundhir Maḥmūd bin Muḥammad bin Muṣṭafā bin ‘Abd al-Laṭīf al-Maniyāwī, *al-Ma‘ataṣir min Sharḥ Mukhtaṣir al-Usūl min ‘Ilm al-Usūl* (Miṣr: al-Maktabah al-Shāmilah, 2011), 244;

Abū al-Mundhir Maḥmūd bin Muḥammad bin Muṣṭafā bin ‘Abd al-Laṭīf al-Maniyāwī, *al-Sharḥ al-Kabīr Li Mukhtaṣir al-Usūl min ‘Ilm al-Usūl* (Miṣr: al-Maktabah al-Shāmilah, 2011), 1:603; Abū al-Mundhir Maḥmūd bin Muḥammad bin Muṣṭafā bin ‘Abd al-Laṭīf al-Maniyāwī, *al-Tamhīd Sharḥ Mukhtaṣir al-Usūl min ‘Ilm al-Usūl* (Miṣr: al-Maktabah al-Shāmilah, 2011), 1:125.

<sup>55</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *Sharḥ Mukhtaṣar*, 7.

<sup>56</sup> ‘Abd al-Karīm bin ‘Alī bin Muḥammad al-Namilah, *Al-Jāmi‘ Li Masā’il Usūl al-Fiqh Wa Taṭbīqātihā ‘alā al-Madhab al-Rājiḥ* (Riyādh: Maktabah al-Rushd, 2000), 400.

<sup>57</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *Sharḥ Qawā‘id*, 22.

<sup>58</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *Sharḥ Mukhtaṣar*, 6.

<sup>59</sup> ‘Abdullāh bin Yūsūf bin ‘Isā bin al-Ya‘qūb al-Judī‘ al-‘Anzī, *Taysīr ‘Ilm*, 381-382.

<sup>60</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *Sharḥ Naẓm al-Waraqāt* (t.tp.: Durūs Ṣawṭīyyah, t.t.), 15.

<sup>61</sup> ‘Abd al-Karīm bin ‘Alī bin Muḥammad al-Namilah, *Al-Jāmi‘ Li Masā’il Usūl*, 400.

language.<sup>62</sup> Without this knowledge, a person will not be able to understand the words in both the Qur'an and *Sunnah*.<sup>63</sup>

(e) **A *Mujtahid* must have Sufficient Knowledge of the Qur'an and its Sciences.**

The Qur'an is the primary source of Islamic law. This means that it is a source for the law as well as the general principles of this law. The Qur'an is the source that validates all the other sources of the law.

A *mujtahid* must be knowledgeable of the sciences of the Qur'an.<sup>64</sup> However, the memorization of the Qur'an is not obligatory. A *mujtahid* only needs to know parts of the Qur'an that can relate to the rulings at hand.<sup>65</sup>

Some scholars have said that there are 500 verses in the Qur'an related to rulings. However, some scholars believe that there are 900. Others may state that there are a thousand verses. There are, however, many more verses in the Qur'an from which rulings can be extracted.<sup>66</sup>

The late Shaykh Muḥammad Nūr al-Ḥasan once said: "*In doing ijtiḥad, there are conditions that have been agreed upon by all people and there are also the conditions which are still disputable.*"<sup>67</sup>

One of the conditions that have been agreed upon is that a *mujtahid* has to know the texts related to the law. A *mujtahid* cannot do *ijtiḥād* if he does not know the texts related to the law he is dealing with.<sup>68</sup>

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<sup>62</sup> Abū 'Abdullāh, Aḥmad bin 'Umar bin Musā'id al-Ḥāzimī, *Sharḥ Qawā'id*, 22.

<sup>63</sup> 'Abd al-Karīm bin 'Alī bin Muḥammad al-Namīlah, *Al-Jāmi'*, 400.

<sup>64</sup> Muḥammad Ḥasan 'Abd al-Ghaffār, *Taysīr Uṣūl al-Fiqh*, 7.

<sup>65</sup> Abū 'Abdullāh, Aḥmad bin 'Umar bin Musā'id al-Ḥāzimī, *Sharḥ Naẓm*, 11.

<sup>66</sup> Muḥammad al-Amīn bin Muḥammad al-Mukhtār bin 'Abd al-Qādir al-Jikanī al-Shanqīṭī, *Mudhakkirah Fi Uṣūl al-Fiqh* (al-Madīnah al-Munawwarah: Maktabah al-'Ulūm Wa al-Hukum, 2001), 370.

<sup>67</sup> Muḥammad Sayyid Ṭanṭāwī, *Al-Ijtihād*, 8.

<sup>68</sup> *Ibid.*

Zarkashī said: "It is not a requirement to know all the contents of the Qur'an, it is enough to know the texts related to the law only."<sup>69</sup>

Imām al-Ghazalī and Ibn ‘Arabī said, "The verses that are needed to know is at the rate of 500 verses." Imām al-Mawardī agreed with this opinion.

But Ibn Daqīq al-‘Ayd said:

It is actually not limited to a specific number, but it varies according to the differences of their ‘aql, coupled with the award of Allah to His servants in doing istinbāṭ. It may be that the number is meant by the scholars above, are verses that show the law, through key indicators only, and not by the content or commitment (iltizām). This is because if a person is knowledgeable about the laws of the Qur’an, is he still required to memorize verses of the Qur’an.<sup>70</sup>

Ibn Daqīq adds, as he stated in his book *al-Qawātī*: "Most scholars view that a *mujtahid* must be a person who memorizes the Qur’an, because a *hafiz* can understand the deeper meaning of the Qur’an. According to the other opinion, a *mujtahid* does not necessarily have to memorize the Qur’an."<sup>71</sup>

During the earlier periods, some Muslim jurists required a *mujtahid* to memorize the Qur’an before they attempt to partake in the process of *ijtihad*. However there is a group who believes that the condition of memorising the Qur’an is secondary, mainly because times have changed. The Qur’an is so accessible nowadays.<sup>72</sup> Thus, it is sufficient for a jurist to just know where the related verses in the Qur’an are located.<sup>73</sup>

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<sup>69</sup> *Ibid.*, 9.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> Luthfi Assyaukanie, Institute of Southeast Asian Studies, *Islam and the Secular State in Indonesia*, (Singapore: Institute of Southeast Asian Studies Publications, 2009), 29.

<sup>73</sup> Abū ‘Abdullāh, Ahmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *Sharḥ Naẓm*, 11.

The Qur'an is the main source of religion. Thus, a *mujtahid* must generally know all about its contents, have more detailed knowledge of the verses related to the injunctions (*ahkām*) of jurisprudence (*fiqh*), and be acquainted with all their finer points.

Imām Al-Shāfi'ī said:

It is not allowed for anyone to issue a fatwa in the Religion of Allah, except for a man who knows the Book of Allah through its abrogating (texts) and its abrogated (texts) (*al-nāsikh* and *al-mansūkh*), its clear and its ambiguous (*muḥkamah* and *mutashābihah*), its interpretation and (the details of its) revelation (*ta'wīl* and *tartīl*), and its *makkī* and *madanī*, and what was intended by it.<sup>74</sup>

A *mujtahid* must be familiar with Arabic and Arabic poetry. He must also be familiar with everything else that could help him understand the Qur'an and the sayings of the Prophet Muḥammad s.a.w.. He must be absolutely well-acquainted with the Qur'an.<sup>75</sup>

*Asbāb al-nuzūl* is also very important. Failure to understand *asbāb al-nuzūl* can lead to many problems. *Asbāb al-nuzūl* is the knowledge that enables us to understand the situations in which the verses of the Qur'an were revealed, and many more.<sup>76</sup> A *mujtahid* must have knowledge of *asbāb al-nuzūl*, as without it, a *mujtahid* may create interpretations that can lead to the misunderstanding or omission of a part or even a whole injunction.

A *mujtahid* must be knowledgeable of the abolishing and abolished.<sup>77</sup> Some verses had rules that were then overridden by other verses revealed by Allah s.w.t. later on (there are reasons why Allah s.w.t. did this, and discussions on why He did this are part of the field of the science of the Qur'an).

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<sup>74</sup> Muḥammad bin al-Ḥasan bin al-'Arabī bin Muḥammad al-Ḥujuway al-Tha'ālabī al-Ja'farī al-Fāsī, *alFikr al-Samī*, 495.

<sup>75</sup> *Ibid.*, 495.

<sup>76</sup> 'Abdullāh bin Yūsūf bin 'Īsā bin al-Ya'qūb al-Judī' al-'Anzī, *Taysīr 'Ilm Usūl al-Fiqh*, d1, 384.

<sup>77</sup> 'Ayāḍ bin Nāmī bin 'Awaḍ al-Sullamay, *Usūl al-Fiqh*, 452.

A *mujtahid* must know about Shariah proofs, such as *āyah al-aḥkām* and the sayings of the Prophet Muḥammad s.a.w. pertaining to rulings.<sup>78</sup>

Thus, a *mujtahid* must be knowledgeable of the sciences of the Qur'an. Having knowledge in the science of the Qur'an enables a *mujtahid* to understand and identify evidence (*adillah*) contained in the texts and to deduce and extract judgments from them. He must have knowledge of *asbāb al-nuzūl* or the historical reasons why certain verses were revealed, and must have a firm grasp of its commentaries and of *ta'wīl*.

**(f) A *Mujtahid* must have Sufficient Knowledge of the Hadith or *Sunnah***

A *mujtahid* must know not only the content of the Hadiths, but also the degrees of their soundness.

According to Mawardī, there is opinion that states that a *mujtahid* needs to know 500 Hadiths. Ibn 'Arabī, on the other hand, said that a *mujtahid* needs to know 3000 Hadiths.<sup>79</sup>

However, Imām Aḥmād Ibn Ḥanbal said: "*What is required of a mujtahid is more than that.*" He believes that we must be cautious and make sure that a *mujtahid* is fully qualified before he is allowed to engage in the process of *ijtihād*.<sup>80</sup>

During the earlier periods, some Muslim jurists required a *mujtahid* to memorize 100,000 Hadiths. However there is now a group who believes that the condition to memorize 100,000 Hadiths is unnecessary, as times have changed and the Hadiths have become so accessible nowadays.<sup>81</sup>

In the book *Al-Ijtihād fī al- Aḥkām al-Sharī'ah*, it is mentioned that a *mujtahid* does not need to memorise all the Hadiths, because nowadays, the Hadiths have already been well-

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<sup>78</sup> Muḥammad bin Ṣāliḥ bin Muḥammad al-'Uthaymīn, *'al-Usūl*, 85.

<sup>79</sup> Muḥammad Sayyid Tantawi, *Al-Ijtihād*, 9.

<sup>80</sup> *Ibid.*

<sup>81</sup> Luthfi Assyaukanie, *Islam and the Secular State in Indonesia*, 29.

organized and compiled in books. It is so much easier now to refer to Hadiths, as they are arranged according to specific chapters and are accompanied by descriptions (*ṣahīḥ* or *da‘īf* etc.). In these books, there are also explanations from ‘*Ulamā‘ al-Rijāl*’ about the Hadith narrators, along with information on each one of the narrators. Whether the Hadiths are strong or weak is also stated in these books. So, a *mujtahid* just needs to refer to and read these books in order to derive laws from them. Memorizing all the different Hadiths would be much too difficult and complicated.<sup>82</sup>

A *mujtahid* merely needs to know the specific Hadiths related to the matter at hand. However, a *mujtahid* still needs to know all the evidences (*dalīl*) from the Qur’an and Hadith related to the laws he is dealing with. He must also be able to refer to verses of the Qur’an or Hadith whenever there is a problem, and be able to extract the information he needs from them.<sup>83</sup>

Al-Zarkashī said there are 3000 Hadiths that the *Shar‘ī* rulings are derived from. Someone had asked Aḥmad Ibn Ḥanbal, “*How many Hadiths are sufficient for a man to give a Fatwa? Is one hundred thousand sufficient for him? He said: No. That person said: two hundred thousand? He said: No. The person said: three hundred thousand? He said: No. The person said: four hundred thousand? He said: No. I said: Five hundred thousand? He said: I hope so.*”<sup>84</sup> When the scholars mention large numbers like this, what they actually mean is that issuing a fatwa is not something that should be taken lightly.

When a *mujtahid* seeks to find evidence (*dalīl*) for a new problem that has arisen, he must first have knowledge of the Qur’an and Hadith. Besides that, he must also have

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<sup>82</sup> Muhammad Sayyid Tantawi, *Al-Ijtihād*, 9-10.

<sup>83</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *Sharḥ Mukhtaṣar*, 4.

<sup>84</sup> Abū al-Mundhir Maḥmūd bin Muḥammad bin Muṣṭafā bin ‘Abd al-Laṭīf al-Maniyāwī, *al-Sharḥ alKabīr*, 598-599.

knowledge of *sanad* (chain of narrations), of how the Hadith was transmitted to us (*ṭarīq wuṣūluḥ ilaynā*) and the state of the man who narrated the Hadith (*al-rāwī*).<sup>85</sup>

A *mujtahid* must also be able to differentiate between the *ṣahīḥ* and the *ḍa‘īf*,<sup>86</sup> *mutawātir* or *aḥād*, and have knowledge of the six *ṣahīḥ* compilations of the Hadiths.<sup>87</sup>

Ibn al-Najar said in “*Sharḥ al-Kaukūb*” that a *mujtahid* is required to know about authentic Hadiths and weak Hadiths, its *sanad* (chain of narration) and *matn*. He must have knowledge of its narrators and know whether a Hadith is strong or weak. Besides that, he must also use a variety of ways to find out why the Hadiths are considered weak.<sup>88</sup> By being able to distinguish strong Hadiths from weak ones, a *mujtahid* can choose to ignore weak or fabricated Hadiths.

A *mujtahid* must be knowledgeable of the transmitters of Hadiths (*rijāl*), to the extent he is able to discern the validity of the Hadiths. He must be cognizant of the qualities and the circumstances of the narrators of Hadiths.<sup>89</sup>

If a scholar has not memorised all the related information about the Hadith narrators, he must, at the very least, be able to have access to the required books so that he can make the right judgment when interpreting the Hadiths and studying the chains of narration. Among the universally recognized and accepted books of Hadiths are the books of Bukhārī, Imām Mālik, Aḥmad, Abū Dāwud, al-Dār al-Qutnī, al-Tirmidhī, al-Ḥakīm and etc, as these scholars were experts in this field.<sup>90</sup> Besides that, a *mujtahid* must have sufficient understanding of the rules in this field, to the extent he is able to judge a Hadith when there

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<sup>85</sup> ‘Abd al-Karīm bin ‘Alī bin Muḥammad al-Namilah, *Al-Jāmi‘ Li Masā’il*, 399.

<sup>86</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *Sharḥ Mukhtaṣar*, 5.

<sup>87</sup> Abū ‘Abdullāh, Aḥmad bin ‘Umar bin Musā‘id al-Ḥāzimī, *Sharḥ Qawā‘id*, 21.

<sup>88</sup> Abū al-Mundhir Maḥmūd bin Muḥammad bin Muṣṭafā bin ‘Abd al-Laṭīf al-Maniyāwī, *al-Ma‘ataṣir*, 243.

<sup>89</sup> *Ibid.*, 23.

<sup>90</sup> *Ibid.*, 124.

is disagreement (*ikhtilāf*).<sup>91</sup> He must be knowledgeable of the *aḥādīth al-aḥkām*, or at least have a source to refer to that compiles Hadiths and their rulings. Books of the *aḥādīth al-aḥkām* include *Muntaqī al-Akḥbār* (مُنْتَقَى الْأَخْبَارِ) by Ibn Taymiyyah and *Bulūgh al-Marām* (بُلُوغُ الْمَرَامِ) by Ibn Ḥajr al-‘Asqalānī.<sup>92</sup>

Thus, a *mujtahid* must be well-versed in Prophetic traditions. He must be able to know which Hadiths are authentic and which are weak, and he must have knowledge of *isnād* and *rijāl al-Ḥadīth*. He must have knowledge on a hadith’s chain of transmitters.<sup>93</sup> A *mujtahid* must also have knowledge of *adillah* (evidence) of *al-ḥukm* from *al-Sunnah*. He must know its *matn* and *asānīd*, *al-maqbūl* and *al-mardūd*, and *almuḥtaj bih* and *ghayr al-muḥtaj bih*.<sup>94</sup>

**(g) A Mujtahid must have Knowledge of Ijmā‘**

A *mujtahid* must be knowledgeable of *ijmā‘*, so that he does not issue a *fatwā* that is contrary to what has been acknowledged through *ijmā‘*.<sup>95</sup> This means that a *mujtahid must have knowledge of cases where a consensus has been reached*.<sup>96</sup> A *mujtahid* should know what scholars have agreed on so that he doesn't violate those agreements or consensus<sup>97</sup> or issue a fatwa that is contrary to what the religious authorities have already agreed upon.<sup>98</sup> It is prohibited to oppose or question what has been decided on through consensus.<sup>99</sup> A *mujtahid* must also be aware of issues where differences of opinions are involved.<sup>100</sup>

<sup>91</sup> ‘Abdullāh bin Yūsūf bin ‘Īsā bin al-Ya‘qūb al-Judī‘ al-‘Anzī, *Taysīr ‘Ilm Usūl al-Fiqh*, 386.

<sup>92</sup> *Ibid.*, 386.

<sup>93</sup> Muḥammad bin Ṣāliḥ bin Muḥammad al-‘Uthaymīn, *‘al-Usūl min ‘Ilm al-Usūl*, 85.

<sup>94</sup> Muḥammad Ḥasan ‘Abd al-Ghaffār, *Taysīr Uṣūl al-Fiqh*, 7.

<sup>95</sup> *Ibid.*, 8.

<sup>96</sup> Abū al-Mundhir Maḥmūd bin Muḥammad bin Muṣṭafā bin ‘Abd al-Laṭīf al-Maniyāwī, *al-Tamhīd*, 124.

<sup>97</sup> ‘Abdullāh bin Yūsūf bin ‘Īsā bin al-Ya‘qūb al-Judī‘ al-‘Anzī, *Taysīr ‘Ilm Usūl al-Fiqh*, 387.

<sup>98</sup> Muḥammad bin Ṣāliḥ bin Muḥammad al-‘Uthaymīn, *‘al-Usūl min ‘Ilm al-Usūl*, 85.

<sup>99</sup> ‘Ayāḍ bin Nāmī bin ‘Awaḍ al-Sullamay, *Usūl al-Fiqh*, 452-453.

<sup>100</sup> ‘Abd al-Karīm bin ‘Alī bin Muḥammad al-Namīlah, *Al-Jāmi‘ Li Masā’il*, 400.

**(h) A *Mujtahid* must Possess the Knowledge of Analogical Reasoning (*Qiyās*)**

A *mujtahid* must possess the knowledge of analogical reasoning (*qiyās*). More than half of Islamic *fiqh* is deduced from *qiyās*. Al-Shāf'ī once said that a person who does not have the knowledge of *qiyās* is not a *faqīh*. Aḥmad Ibn Ḥanbal, on the other hand, has stated that *qiyās* cannot be ignored.<sup>101</sup>

A *mujtahid* should have a comprehensive knowledge of *qiyās* that covers its conditions, rules, division, 'illah and its oppositions, as *qiyās* is a platform for *ijtihād*. Knowledge of *qiyās* is very important for a *mujtahid* because the knowledge of *fiqh* is also growing from it and in certain cases, it is useful to *istinbāṭ* the *ḥukm* / law.<sup>102</sup>

**(i) A *Mujtahid* must be Knowledgeable of '*Ilm Uṣūl al-Fiqh***

A *mujtahid* must be knowledgeable of '*ilm uṣūl al-fiqh*, because it is the pillar upon which *ijtihād* stands on.<sup>103</sup> A *mujtahid* must have comprehensive knowledge of Islamic jurisprudence. (*uṣūl al-fiqh*)<sup>104</sup>

**(j) A *Mujtahid* must possess a Thorough Knowledge of the Objectives (*Maqāsid*) of the Shariah**

The *mujtahid* must possess a thorough knowledge of the objectives (*maqāsid*) of the Shariah. *This means he must* have an understanding of the aims and purposes of the Shariah.<sup>105</sup>

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<sup>101</sup> 'Abd al-Karīm bin 'Alī bin Muḥammad al-Namilah, *Al-Jāmi' Li Masā'il Usūl al-Fiqh Wa Taṭbīqātihā 'alā al-Madhab al-Rājiḥ* (Riyādh: Maktabah al-Rushd, 2000), 400.

<sup>102</sup> Muhammad Sayyid Tantawi, *Al-Ijtihād*, 10.

<sup>103</sup> Al-Jāmi'ah al-Islamiyyah, *Mudhakkirah*, 59.

<sup>104</sup> 'Abd al-Karīm bin 'Alī bin Muḥammad al-Namilah, *Al-Jāmi' Li Masā'il*, 400.

<sup>105</sup> *Ibid.*

**(k) A *Mujtahid* must have Knowledge of His People’s Problems, Conditions, Customs and Traditions.**<sup>106</sup>

**(l) He must have the Aptitude to Exercise *Ijtihād* and have the Ability to Extract Rulings from the Evidences (*Adillah*).**<sup>107</sup>

**(m) A *Mujtahid* must be an Upright (‘*Ādil*) Person**

A *mujtahid* must be an upright (‘*ādil*) person who refrains from committing sins and whose judgment his people can trust. His sincerity must be beyond question and untainted by self-seeking interests. For *ijtihād* is a sacred trust, and anyone who is tainted with heresy and self-indulgence is unworthy of it.<sup>108</sup>

Some scholars do not consider ‘*adālah* a condition, while some scholars insist on it as a basic requirement. This difference of opinion exists among scholars divide *ijtihād* into two categories. The first category of *ijtihād* is that which is exercised to determine *ḥukms* and issue fatwas. The second category of *ijtihād* is *ijtihād* that is exercised to gain knowledge for one’s own use. For the second category, a *mujtahid* is not required to be ‘*adālah*. However, for the first category, a *mujtahid* must be an upright person.<sup>109</sup>

In conclusion, our Muslim scholars have determined the requirements for those who wish to exercise *ijtihād*. Those who do not meet these requirements are not allowed to exercise *ijtihād*.

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<sup>106</sup> *Ibid.*, 401.

<sup>107</sup> Muḥammad bin Ṣāliḥ bin Muḥammad al-‘Uthaymīn, ‘*al-Usūl*, 86.

<sup>108</sup> ‘Abd al-Karīm bin ‘Alī bin Muḥammad al-Namīlah, *Al-Jāmi‘ Li Masā’il Usūl*, 401.

<sup>109</sup> Muhammad Sayyid Tantawi, *Al-Ijtihād*, 11.

#### 4.1.6. *Maşlahah*

Since the term “*maşlahah*” is often used by SIS in their discussions regarding problem solving, this topic is very important. In this topic, the writer seeks to understand the issues related to *maşlahah*.

Islamic law preserves the *maşlahah* or interest of humans. The classification of *maşlahah* is based upon the purposes of Islamic law (*maqāsid al-Sharī‘ah*) and their types.

Islamic law preserves human interests by fulfilling their *al-ḍarūriyyāt*, *al-ḥājiyyāt* and *al-taḥsiniyyāt* goals. All these are intended to preserve the benefits and interests of all mankind. *Al-ḍarūriyyāt* means the basic needs of human beings. Without these basic needs, a disruption in human lives will occur and cause damage. *Al-ḍarūriyyāt* involves five things, namely religion, life, intellect (*‘aql*), honour and property.<sup>110</sup>

All things that are a necessary for the everyday lives of human are categorised as *al-ḥājiyyāt*. There is a big difference between *al-ḍarūriyyāt* and *al-ḥājiyyāt*. If something that is categorized under *al-ḥājiyyāt* is missing, nothing is disrupted or gets damaged. Things that fall under the category of *al-ḥājiyyāt* are important because they exist to remove difficulties and ease our burdens so that we may live much easier lives with one another.<sup>111</sup>

Without *al-taḥsiniyyāt*, human beings can continue to live without trouble or inconvenience. However, living without *al-taḥsiniyyāt* can cause human being to live unhappy and uncomfortable.<sup>112</sup>

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<sup>110</sup> Abd. Jalil Borham, *Pengantar perundangan Islam*, (t.tp.: Penerbit Universiti Teknologi Malaysia, 2002), 27-28.

<sup>111</sup> *Ibid.*, 28.

<sup>112</sup> *Ibid.*

For example, one basic human need is the need for shelter to protect us from the heat and cold. Humans can take shelter in caves or on mountain, for example. This is the example of *al-ḍarūriyyāt*. Having a more comfortable home is an example of *al-ḥājīyyāt*. Having a clean, comfortable home with doors and windows makes living more easily. Then, *al-taḥsīniyyāt* is something that can make a person feels relaxed, comfortable and happy in their dwelling. In this case, *al-taḥsīniyyāt* would be decorations and furniture in the home. When a person has all three (*al-ḍarūriyyāt*, *al-ḥājīyyāt*, *al-taḥsīniyyāt*), they can live comfortably and happily.<sup>113</sup>

*Al-ḍarūriyyāt* is the most important element in the lives of human beings. It is followed by *al-ḥājīyyāt* and *al-taḥsīniyyāt*. *Al-ḍarūriyyāt* is the most important of all because the absence of it can result in disruptions in our lives. Without *al-ḍarūriyyāt*, human lives can be damaged.<sup>114</sup>

Some of the principles of Shariah specifically aim to remove hardships and difficulties in order to preserve human interests. However, preservation of human interests should be done according to priority. Thus, the preservation of matters that are *al-taḥsīniyyāt* (complementary) cannot be done if it threatens the preservation of matters that are related to the *al-ḥājīyyāt* (requirements). Similarly, matters that are *al-taḥsīniyyāt* and *al-ḥājīyyāt* in nature come second to matters of *al-ḍarūriyyāt*.<sup>115</sup>

*Manfa'ah* (benefit) or *mafsadah* (harm) is measured by referring to the purpose of Shariah (*maqāṣid al-Sharī'ah*), which is to protect religion (*ḥifẓ al-dīn*), protect the soul (*ḥifẓ al-nafs*), protect the 'aql (*ḥifẓ al-'aql*), protect our offspring (*ḥifẓ al-nasl*), and protect our property (*ḥifẓ al-māl*). All matters that contain elements of protection as mentioned above are called *maṣlahah*. Anything that denies *maṣlahah* is called *mafsadah*.

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<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*, 29.

<sup>115</sup> *Ibid.*

Thus, as stated by al-Ghazālī (W. 505 H), *manfa'ah* or *mafsadah* cannot be measured by human judgment because it is very susceptible to the influence of human desires.<sup>116</sup>

The book of *Islamic Accommodative* agrees with what was expressed by al-Ghazālī. By generalizing *maṣlahah* without a definite limitation, or by following only the desires when determining what is good or bad, someone will be misled.<sup>117</sup>

In conclusion, our great Muslim scholars have given clear explanations regarding *maṣlahah*. When making decisions, we must not contradict with the Qur'an and *Sunnah*.

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<sup>116</sup> Abu Yasid, *Islam Akomotif: Rekonstruksi Pemahaman Islam sebagai Agama Universal*, (Yogyakarta: LkiS, May, 2004), 77-78.

<sup>117</sup> *Ibid.*, 78.

#### 4.2. THE METHOD OF PROBLEM SOLVING THROUGH *IJTIHĀD* FROM SIS' POINT OF VIEW

According to Zainah, “*Since human affairs constantly evolve, there is always a need for new rulings that use new interpretations of the religious texts to bring outdated laws in line with the changing realities of time and place (zaman wa makan). This is the rationale for ijtiḥād.*”<sup>118</sup>

Zainah mentions that *ijtiḥād* literally means ‘endeavor’ or ‘self-exertion’. To her, *ijtiḥād* is a method used by jurists to solve new issues or problems faced by Muslims through the guidance of Islamic revelation<sup>119, 403</sup>.

According to Sisters In Islam, in order to ensure that justice is upheld in any society, the human agency should play its very significant function to interpret and deduce law from its sources in unprecedented cases by taking into consideration the public interest.<sup>120</sup>

Zainah, the founding members of SIS, explains that it is normal procedure in Muslim legal tradition to have reforms in certain laws and practices, as they are done to benefit society and public interest (*maṣlaḥah*).<sup>121</sup>

According to SIS, current Islamic family laws in many countries must be reformed, as some of these laws do not current views of marriage and personal relationships. Currently, the group believes that some of these laws seem to condone inequality and bias against women.<sup>122</sup>

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<sup>118</sup> Zainah , “Introduction: Why Equality,” 16.

<sup>119</sup> *Ibid.*

<sup>120</sup> Andrew Clinton Willford, Kenneth M. George, *Spirited Politics*, 110.

<sup>121</sup> Zainah Anwar, “Introduction: Why Equality,” 12.

<sup>122</sup> *Ibid.*

Thus, SIS explains that present-day Muslims should reformulate personal law. The group believes that Muslims have to follow the guidance provided in the Qur'an and ensure that their personal law fulfills the purposes of the Shariah (*maqāṣid alSharī'ah*) and public interest (*maṣlahah*), and, at the same time, they need to understand current socio-economic situations.<sup>123</sup> According to SIS, "*The ijma' (consensus) of how the shari'ah should be interpreted is different today than what it was five hundred or one thousand years ago.*"<sup>124</sup>

Zainah believes that Shariah is closer to ethics than law. She mentions that Shariah represents ethical values and principles that lead people towards justice and correct conduct.<sup>125</sup>

Zainah also believes that in order to deal with issues surrounding marriage, divorce and the sustainability of the family institution, a new interpretation of Islamic jurisprudence is necessary.<sup>126</sup>

She states that in this ever-changing modern world, Islam and Muslims cannot forever stay inflexible and secluded from the changes occurring around them. According to her, Muslims have to deal with the challenges around them when looking for solutions to new issues that arise in Muslim society, so that Islam and Muslims can continue to live, be guided and be inspired by knowledge and faith.<sup>127</sup>

According to Zainah, even after the formal schools of law were established, there was no uniformity of view or opinion in *fiqh*. She mentioned that this diversity of points of view is called '*ikhtilāf*'. Zainah said: "*The very existence of multiple schools of laws in different countries today, attests to the fact that no one person, group or country can*

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<sup>123</sup> Zainah Anwar, "Muslim Family Law", *Sisters in Islam* website, January 27, 2015, <http://www.sistersinislam.org.my/news.php?item.675.8>.

<sup>124</sup> *Ibid.*

<sup>125</sup> Zainah, "Introduction: Why Equality," 15.

<sup>126</sup> Zainah Anwar, "Opening Speech by Zainah Anwar", *Sisters in Islam* website, January 14, 2015, <http://www.sistersinislam.org.my/news.php?item.580.98>.

<sup>127</sup> *Ibid.*

*claim there is unified, monolithic, divine Islamic law over which they have ownership.”*

She believes this multiplicity of opinions and views must be recognized and engaged with for the interest of the public (*maṣlahah*) and to ensure that equality and justice can be implemented within the context of the modern state.<sup>128</sup>

Zainah said:

Thus, contemporary family laws, whether codified or uncodified, are not divine, but are based on centuries-old, human-made fiqh interpretations that were enacted into law by colonial powers and national governments. She believes that since these interpretations and laws are human-made and concern relations between humans, they can change within the framework of Islamic principles and in accordance with the challenging realities of time and place. She also states that the recent positive reforms in Muslim family laws and evolutions in practices provide support for this possibility of change.<sup>129</sup>

According to SIS, the Qur’an and the Sunnah calls for Muslims to practice justice and equality within the family and in other relationships. Zainah says that this is the reason why Muslim societies around the world are working hard to reform current laws, and are re-embracing the teachings of the Qur’an and the *Sunnah*.<sup>130</sup>

SIS mentions that the concepts of marriage and family life rooted in family law rules established 100-400 years after the time of the Prophet (s.a.w.) are based on actual experiences, and are thus influenced by socio-cultural conditions of the time and place. According to SIS, the major schools of Islamic law developed rules revolving around family and marriage for their own era and society.<sup>131</sup>

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<sup>128</sup> Zainah Anwar, “Introduction: Why Equality,” 16 – 17.

<sup>129</sup> *Ibid.*, 17

<sup>130</sup> Zainah Anwar, “Muslim Family Law”, *Sisters in Islam* website, January 27, 2015, <http://www.sistersinislam.org.my/news.php?item.675.8>.

<sup>131</sup> *Ibid.*

According to SIS,

When Muslims seek to understand the shari‘ah, regardless of how sincere they may be, their conclusions are no longer the same flawless, immutable, pure shari‘ah of the Qur’an but inevitably become human interpretations, or fiqh. Because it is man-made, fiqh can be and has been changed to conform better to the teachings in the Qur’an and the Sunnah and better reflect current Muslim societies.<sup>132</sup>

In Zainah’s opinion, there are present-day family laws that must be reformed to reflect the values of equality and justice in Islam, strengthen universal human rights standards and so that they can be relevant to the lives that Muslims families lead today. She believes that the values of equality, justice, love, compassion, and mutual respect among people should also be reflected in these laws.<sup>133</sup>

According to Zainah, Islam is just. However, she wonders why there are laws and policies codified and implemented in the name of Islam still contain elements of injustice and discrimination. She believes that laws and policies should aim to bring justice for all if it is to be considered ‘Islamic’.<sup>134</sup>

Zainah states that there are women’s groups fighting for equality and justice in Islam are not satisfied with some decisions made by those in authority, whether they are in religious, political, or social matters, as these decisions do not reflect gender equality. She says that there are also women’s groups who do not satisfied because the authorities who make the decisions claim that that their views are the only right ones.<sup>135</sup>

Zainah explains that “*every mujtahid is correct, or every mujtahid will be rewarded.*” According to her, there are several solutions to any issue. She believes that when interpreting the infinite message of the Qur’an, one should not only look at the

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<sup>132</sup> *Ibid.*

<sup>133</sup> Zainah Anwar, “Introduction: Why Equality,”<sup>17</sup>

<sup>134</sup> Zainah Anwar, “Opening Speech by Zainah Anwar”, *Sisters in Islam* website, January 14, 2015, <http://www.sistersinislam.org.my/news.php?item.580.98>.

<sup>135</sup> Zainah Anwar, “Silence Not the Women - The Star - Sharing the Nation”, *Sisters in Islam* website, January 27, 2015, <http://www.sistersinislam.org.my/news.php?item.337.6>.

opinion of just one *mujtahid*, as different *mujtahids* may have different opinions based on their learned understanding of the text.<sup>136</sup>

Zainah states that legal rulings can be classified into two major categories: “*ibadat*”, which means devotional or spiritual acts; and “*mu‘amalat*” which means transactional or contractual acts. She says that for the first category, which is “*ibadat*”, changes in rulings are restricted, as this category regulates relations between God and believer. Ruling for “*mu‘amalat*”, on the other hand, can change because it regulates relations between people.<sup>137</sup>

According to Zainah, there is always a need for new rulings for “*mu‘amalat*”, as human issues continuously change. She believes that Muslims have to apply new interpretations of Islamic texts, and these interpretations should be applicable to real life experiences of all contemporary societies throughout the world.<sup>138</sup>

Zainah emphasizes that the category of “*mu‘amalat*” also includes rulings pertaining to family and gender relations. Thus, she believes this means that Muslim jurists have always considered matters relating to family and gender relations open to rational deliberation and change, as its rulings regulate relations between humans and do require changes according to time and context.<sup>139</sup>

Hence, according to her, the rulings of “*mu‘amalat*” can change because it regulates relations between people. She believes that the matters of family and gender relations are open to rational consideration and change because its ruling regulates relations between humans and this requires changes according to the time and context.

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<sup>136</sup> Zainah Anwar, “Failing the Test of Public Reason - The Star - Sharing the Nation”, *Sisters In Islam* website, 27 January, 2015, <http://www.sistersinislam.org.my/news.php?item.332.6>.

<sup>137</sup> Zainah Anwar, “Introduction: Why Equality,” 15 – 16.

<sup>138</sup> *Ibid.*, 16.

<sup>139</sup> *Ibid.*

Zainah criticizes people who ask other groups with differing opinions to keep silent just because they think that they are most qualified to provide answers. According to her, these people always claim that Islam is a way of life, Islam is the solution, and that Islam has all the answers, but they continue to tell groups who disagree with them to keep quiet.<sup>140</sup>

Some women who claim to be Islamic feminists in Malaysia have argued that women should also engage in *ijtihad* to interpret Islamic texts for themselves, as they say Muslims should not settle with or rely only on interpretations made by men from patriarchal societies.<sup>141</sup>

SIS says that in societies where its members are taught to believe that religious matters should only be discussed by the *ulamā'*, anyone who disagrees with the opinion of the traditionalists, are often condemned because they 'do not have the rights to express their opinions when it comes to religious matters.' According to SIS, to a majority of the members of these societies, only the *ulamā'* have the right to give their opinions on religious matters.

Thus, Sisters In Islam believe that when it comes to Islam as a source of law and public policy, all members of a society have the right to talk about the subject, be they Muslims or non-Muslims, experts or non-experts.<sup>142</sup>

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<sup>140</sup> Zainah Anwar, "Silence Not the Women - The Star - Sharing the Nation", *Sisters in Islam* website, January 27, 2015, <http://www.sistersinislam.org.my/news.php?item.337.6>.

<sup>141</sup> Andrew Clinton Willford, Kenneth M. George, *Spirited Politics*, 109-110.

<sup>142</sup> Zainah Anwar, "Opening Speech by Zainah Anwar", *Sisters in Islam* website, January 14, 2015, <http://www.sistersinislam.org.my/news.php?item.580.98>.

### 4.3. AN ANALYSIS OF SIS'S UNDERSTANDING OF *IJTIHĀD* FROM AN ISLAMIC THOUGHT PERSPECTIVE

SIS do claim that *ijtihād* is needed because human affairs constantly evolve. Zainah says, "...there is always a need for new rulings that use new interpretations of the religious texts to bring outdated laws in line with the changing realities of time and place. This is the rationale of *ijtihād*..."<sup>143</sup>

Based on the above statement, SIS have to be aware that the interpretation of religious texts should be based on the Qur'an and *Sunnah*. *Ijihād* is important. However, to understand and derive Islamic laws from evidence, certain methods, rules and regulations must be followed. Thus, SIS must follow these proper methods that have been laid down by our Muslim scholars if they want to practice *ijtihād*.

As mentioned earlier, a *mujtahid* needs to try his utmost to discover proof and reasoning. A *mujtahid* is not free to say anything according to his own desires.<sup>144</sup>

SIS are not free from proper rules and regulations. Without proper rules, how can we determine what is right and what is wrong? How can we then determine if someone has "manipulated" religious texts?<sup>145</sup>

Any group who claims that "*there is no need for any condition to do ijtihād*" must be rejected. Groups who claim that *ijtihād* can be done without limitations or rules are part of what is called the transformation movement (*al-tagyir*). Groups in this movement are similar to the *bāṭiniyyah*. These people believe that they are free to interpret religious text as they please and without any limitations.<sup>146</sup>

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<sup>143</sup> Zainah Anwar, "Introduction: Why Equality," 16.

<sup>144</sup> Ahmad Al Raysuni, *Ijihād: Antara Teks, Maslahat, dan Realitas: Al-Ijihād: al-Nas, al-Waqi'i, alMaslahah*, translated by Ibnu Rusdi dan Hayyin Muhdzar (Indonesia: Erlangga, 2002), 5.

<sup>145</sup> *Ibid.*, 11

<sup>146</sup> *Ibid.*, 5-6.

Zainah states that “*as a concept, Shari’ah cannot be reduced to a set of laws—it is closer to ethics than law. It embodies ethical values and principles that guide humans in the direction of justice and correct conduct.*”<sup>147</sup>

This statement shows that Zainah does not understand some terms in her explanation of Islam. As the founding member of SIS, Zainah Anwar constantly gives ideas on how to solve problems that arise in society. However, she seems to have misunderstood and is confused about several basic terms often used in discussions pertaining to Islam. How she is going to give ideas on how to solve problems related to Muslim societies if she herself does not understand Islam well? Zainah seems confused about what Shariah is all about. How can she talk about matters pertaining to Shariah or Islamic laws? SIS should ensure that their members understand Islam very well before they give any ideas related to Islam. The group should not create more confusion regarding Islam amongst members of society.

Zainah says, “*Thus, contemporary family laws, whether codified or uncodified, are not divine, but are based on centuries-old, human-made fiqh interpretations that were enacted into laws by colonial powers and national governments.*”<sup>148</sup>

This statement is very dangerous and confusing. Interpretations made by Muslim scholars are not merely based on what is rational. Scholars interpret the texts based on Islamic sources and supporting evidence. It should be understood that even though *ijtihad* is done by humans (*mujtahid*), it doesn’t mean that the law or *hukm* comes from *mujtahids*. This is the reason why people who wish to exercise *ijtihad* must fulfill certain qualifications and follow the predetermined methods of *ijtihad*, to ensure the *hukm* that is derived is based on the Qur’an and *Sunnah*, and not based merely on what is considered rational.

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<sup>147</sup> Zainah Anwar, “Introduction: Why Equality,” 15.

<sup>148</sup> *Ibid.*, 17.

There is certain method of *ijtihād* that is applied by jurists when interpreting religious texts. This means that jurists do not interpret texts without any regulations. Interpretations are done by following the predetermined methods.<sup>149</sup> In the process of *ijtihād*, the *ḥukm* or laws are derived from the Qur'an and *Sunnah*.

A *ḥukm* decided upon by qualified jurists (*mujtahid*) must be obeyed,<sup>150</sup> because the *ḥukm* is always derived from the Qur'an and *Sunnah*, and not based merely on the opinion of a *mujtahid*.

A *mujtahid* should take his responsibility to derive *ḥukm* or laws from religious texts very seriously, as he deals with Allah's laws. The law or *ḥukm* derived by qualified *mujtahids* is considered to be discovered from authoritative sources of the law. In other words, the *mujtahid* or jurist does not make this law. Therefore, any tampering of the law by people who do not qualify as *mujtahids* should not be taken lightly. “*The validity of a source of law depends on the issue of whether the aḥkām of Allah can be proved through such a law.*”<sup>151</sup>

*Uṣūl Fiqh* is a methodology used to make sure that “*valid sources are used, in equally valid ways, to discover the law*”. It is “*a body of principles*” that jurists follow when interpreting religious texts.<sup>152</sup>

The *mujtahid* are not free to exercise *ijtihād* as they like. They are bound by specific rules. This is the reason why those who want to practice *ijtihād* must first fulfill all the conditions required in order to become a qualified *mujtahid*, and, once they become qualified *mujtahids*, they must follow proper methods of *ijtihād* in order to ensure that the *ḥukm* or law that has been deduced is based on the Qur'an and *Sunnah*.

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<sup>149</sup> Nyazee, Imran Ahsan Khan, *Theories of Islamic Law: The Methodology of Ijtihad*, (Kuala Lumpur: Islamic Book Trust, 2002), 287.

<sup>150</sup> *Ibid.*, 134.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

According to Zainah, “...*family laws must evolve to reflect the Islamic values of equality and justice reinforce universal human rights standards and address the lived realities of families in the twenty-first century.*”<sup>153</sup>

First of all, SIS must understand the meaning of equality and justice in Islam. They have to define the meaning of equality and justice according to the actual meaning in Islam, and not according to Western definitions or what they deem is rational. They have to look for definitions in the Qur’an and *Sunnah*.

The group also does not mention clearly what they mean by universal human rights standards. Islam has already given detailed explanations of what human rights are. So, which human rights were SIS referring to? Were they referring to Islamic or the Western definition of human rights? If they were referring to Western definitions, they will never find the right answers. Allah created us, so Allah knows best what our rights are. We need to refer to the Qur’an and *Sunnah* when discussing human rights.

SIS need to understand that current laws do consider the lived realities of contemporary societies. However, they also need to realize that laws do not always have to consider them. Instead, they must change their lives to readapt to the established laws. The laws can be altered to suit the context of the societies and contemporary needs, as long as they do not end up contradicting Islam.

Besides that, SIS need to understand that *fiqh* and Shariah cannot be taken from existing facts or circumstances. They should be taken from the evidences (*dalīl*) of the Qur’an, the *Sunnah*, the consensus of the *ṣaḥābah* and *Qiyās*. Even though society is constantly changing, it does not mean that *fiqh* and Shariah must be modified to adapt to these changes. Instead, society must change according to *fiqh* and Shariah, not the other way around.

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<sup>153</sup> Zainah Anwar, “Introduction: Why Equality,” 17.

According to Zainah, “*Diversity of opinion (ikhtilaf) is a basic concept that has always been a part of fiqh, even after the formal establishment of schools of law. There is not now, nor has there ever been, a single, unitary ‘Islamic law’.*”<sup>154</sup>

It should be highlighted here that any group cannot make this statement as the reason to be free in exercising *ijtihad*. Any group also cannot use this as an excuse to change existing established laws or to give their opinions using their ‘*aql*, without following the predetermined methods set by Muslim scholars. The diversity of opinions is a source of mercy and leniency. However, opinions that are unacceptable are a source of deviancy.

Muslim scholars only exercise *ijtihad* when it is allowed. They do not apply *ijtihad* on matters that are not open to *ijtihad*. The multiplicity of opinions and views are allowed if they follow the methods, rules and regulations determined by our Muslim scholars. All those opinions and views must be based on the Qur’an and *Sunnah*.

Then, Zainah says, “*The very existence of multiple schools of law, let alone the dozens of Muslim family laws in different countries today, attests to the fact that no one person, group or country can claim there is unified, monolithic, divine Islamic law over which they have ownership.*”<sup>155</sup>

Based on the above statement, she must understand that the jurists may differ in their interpretation of texts that are interpretable. The differences of opinion may be caused by the different rules of interpretation applied by the jurists in their *ijtihad*.<sup>156</sup> Even though they apply different rules of interpretation in their *ijtihad*, it doesn’t mean that just anybody can create their own rules and methods as they wish. There are certain general principles of acceptable methods and rules of interpretation that have been determined by Muslim scholars in exercising the *ijtihad*. Thus, *mujtahids* still have to

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<sup>154</sup> Zainah Anwar, “Introduction: Why Equality,” 16-17.

<sup>155</sup> *Ibid.*, 17.

<sup>156</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 267.

follow these general principles that have been agreed upon by Muslim scholars to ensure his or her *ijtihad* is acceptable.

Even there are differences of opinion in certain matters; scholars must make sure that all these differing opinions do not contradict the Qur'an and *Sunnah*. In other words, they have to make sure that all these opinions are based on the Qur'an and *Sunnah*. They cannot derive *hukm* or laws without following proper methods.

Any group cannot reject religious authorities. They have to understand that real experts exist in every field of knowledge. People must refer to these experts if they want to learn more. Sick people go to doctors because doctors are medical experts. Religious experts are called *ulamā'* (Muslim scholars) or religious authority. Those who want to learn more about Islam should go to *ulamā'*. The *ulamā'* do not claim ownership of the religion, but identify as experts of the religion. When it comes to handling religious matters in this country, we need to rely on them.

Muslims cannot be influenced by relativism. Relativism is a methodology that states that truth is relative and cannot be claimed by any party. Rejection of religious authority by any group is made by those who want to have freedom of opinion. These people do not want to be bound by the rules set by Muslims scholars.<sup>157</sup> This methodology of relativism is rejected because what is true and untrue in Islam is clear. *Mujtahids* are bound by rules and regulations, so they are not free to say whatever they want. Methods and rules play a very important role in protecting the original teachings of Islam.

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<sup>157</sup> Mazlan Ibrahim et al., "Pengajian Islam Di Ipt Malaysia Dalam Menangani Islam Liberal (Islamic Studies in Malaysia IPT in Addressing Liberal Islam)," *Jurnal Hadhari* 5 (1) (2013) 37 – 53, <http://www.ukm.my/jhadhari/makalah/V5n12013/makalah03.pdf>, (JAKIM & UKM: 2013), 40-41.

Zainah says,

There are two categories of legal rulings: ‘ibadat (devotional / spiritual acts) and mu’amalat (transactional / contractual acts). Rulings in the ‘ibadat category regulate relations between God and the believer, and therefore offer limited scope for change. Ruling in the mu’amalat category, however, regulate relations between humans, and therefore remain open to change.<sup>158</sup>

The above statement must be corrected because not all legal rulings categorized as *mu‘āmalah* are open to change. Only certain matters of *mu‘āmalah* are open to *ijtihād*. The categories stated in the above quote are also incorrect. Any group who wants to exercise *ijtihād* must have proper knowledge on the texts or *naṣ* which are categorized as *qat‘ī* and *ẓannī*. The matter of *ijtihād* is not based on ‘*ibādah* or *mu‘āmalah* categories. Thus, anyone who wants to talk about *ijtihād* must clearly understand what *ijtihād* involves. *Ijtihād* also cannot be done on matters already solved through *ijmā‘*.

Thus, SIS cannot say that rulings in the *mu‘āmalah* category remain open to change. There are rulings/matters in the *mu‘āmalah* that are categorized as *thawābit* (unchangeable) and there are ruling/matters in the *mu‘āmalah* which are *mutaghayyirāt* (changeable). Ruling/Matters that are categorized as *thawābit* are not open to *ijtihād*, while rulings matters that are categorized as *mutaghayyirāt* are open to *ijtihād*. Thus, in discussing the matter of *ijtihād*, SIS must understand the connotation of the word *thawābit* and *mutaghayyirāt* or definitive (*qat‘ī*) and probable (*ẓannī*).

Nowadays, more and more people like to criticise religion and express their controversial views and ideas. These people interpret religion in their own way. They feel that they are free to practice *ijtihād* and give their opinions even though they are not experts of religion, nor are they qualified *mujtahid*.<sup>159</sup> This is clearly not allowed.<sup>160</sup>

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<sup>158</sup> Zainah Anwar, “Introduction: Why Equality,” 16.

<sup>159</sup> Ahmad Al Raysuni, *Ijtihad*, 7.

<sup>160</sup> *Ibid.*, 9.

People who do not have enough knowledge of religion must refer to the *ulamā'* to solve any religious problems. Thus, in order to avoid wrong interpretations of Islam, our Muslim scholars have determined the criteria that must be met by those who wish to become *mujtahids*, so that those who do not have the qualifications as *mujtahid* are not allowed to engage in *ijtihād*.

Anyone can engage in *ijtihād* to interpret Islamic texts, but they must be fully qualified and they must follow the determined methods of *ijtihād* to ensure that Islamic laws or *ḥukm* remain in accordance with the teachings of Islam based on the Qur'an and *Sunnah*. Therefore, those who are involved in issuing Islamic laws must be qualified *mujtahids* and follow the predetermined methods and rules of *ijtihād*.

Another issue raised by SIS is related to *maṣlahah* or public interest. According to Zainah, “*Within the context of the modern state, it must recognize and engage with this diversity of opinions to determine how best to serve the public interest (maslahah) and meet the demands of equality and justice.*”<sup>161</sup>

In this matter, SIS need to understand that any *mujtahid* who wants to interpret and deduce the law from religious texts for unprecedented cases may take into consideration the public interest. However, at the same time, a *mujtahid* must understand what *maṣlahah* or public interest is from an Islamic point of view. Our understanding of ‘public interest’ should be based on the Qur'an and *Sunnah*. Coming up with conclusions without referring to these sources is dangerous as the capability of the human mind is very limited. We should always be guided by the Qur'an and *Sunnah*.

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<sup>161</sup> Zainah Anwar, “Introduction: Why Equality,” 17.

*Maṣlaḥah* must be genuine and general (*kuliyyah*). Besides that, it must also not be in conflict or contrast with clear *naṣ* (textual evidence).<sup>162</sup> *Maṣlaḥah* must be comprehensive and cover both interests in this world and in the hereafter. It must also take into account individuals as well as groups, and the present generation as well as future generations. The human mind is fickle, so we must refer to the Qur'an and *Sunnah* to determine what *maṣlaḥah* actually is.<sup>163</sup>

Only Allah s.w.t. knows what *maṣlaḥah* really is. Human beings will never be able to fully comprehend it. The only way for us to understand it is to refer to our primary sources—the Qur'an and *Sunnah*.<sup>164</sup>

Hence, SIS cannot just claim that something is of *maṣlaḥah* (public interest) without referring to the guidance of Allah s.w.t. and His Messenger beforehand. They must also ensure that the *maṣlaḥah* that they refer to is genuine, general (secures the interests of all parties) and do not conflict with clear *naṣ* (textual evidence).

The Shariah does not recognize any *maṣlaḥah* that clashes with the Qur'an or *Sunnah*. Thus, it will not be acknowledged if the provision recommended conflicts with what the Shariah has already provided.<sup>165</sup>

Laws and practices can be reformed if it is necessary, but these reforms should be done properly, according to the right methods by the right people, so that the reforms do not go against the Qur'an and Hadith. The process of reforming the laws should be done through the proper procedures.

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<sup>162</sup> Group of Muftis, "Public Interest (Maslahah)", *OnIslam* website, January 7, 2014, <http://www.onislam.net/english/ask-the-scholar/principles-of-islamic-jurisprudence-usul-ul-fiqh/sourcesof-legislation/174560.html>.

<sup>163</sup> Al-Qaradawy, *Madkhal li Dirasah al-Syari'ah al-Islamiyah* (Kairo: Wahbah, 1991), 53-57.

<sup>164</sup> Al-Syatibi, *al-Muwafaqat* (Beirut: Dar al-Fikr, t.t.), 1: 243.

<sup>165</sup> Nyazee, Imran Ahsan Khan, *Islamic Jurisprudence*, 198-199.

The majority of Muslim jurists agreed that Allah s.w.t. alone lays down the laws regarding the *maṣlaḥah* of human beings.<sup>166</sup> Muslims are not allowed to determine what their interests solely based on their own opinions. Muslims should know that Allah s.w.t. determines the *maṣlaḥah* of human beings. Muslim scholars and experts in this field have laid down methods and regulations so that not just anybody can create or change the laws. Muslims have to follow these methods and regulations so that the any new laws derived are still Allah's laws.<sup>167</sup>

If someone want to apply the concept of *maṣlaḥah* when solving problems that arise in society, they must have the knowledge on it. They have to follow the guidelines and principles determined by Muslim scholars to avoid misusing the term '*maṣlaḥah*'. They have to really understand and follow the regulations to identify *maṣlaḥah*. *Maṣlaḥah* cannot be determined from a mere logical perspective. It must be based on what is stated in the Qur'an and Hadith.

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<sup>166</sup> Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, 43.

<sup>167</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, 83.

#### 4.4. CONCLUSION

In conclusion, based on the above analysis, the analysis shows that the method of problem solving through *ijtihad* as interpreted by SIS do not run parallel with the method of problem solving through *ijtihad* as seen from the Islamic thought perspective. The group must refer to the general principles of *ijtihad* as determined by Muslim scholars in the field in order to understand the proper method of problem solving through *ijtihad* in Islam. SIS's understanding of the method of problem solving through *ijtihad* needs to be corrected to avoid the formation of irrelevant solutions to societal problems. Those who are involved in issuing Islamic laws must be qualified *mujtahids* and follow the predetermined rules and methods of *ijtihad*.

Based on the analysis, it is found that there are misunderstandings in terms of categorisation relating to the matter of *ijtihad* by Zainah, the founding member of SIS. Hence, any member of SIS who intends to talk about *ijtihad* must clearly understand what *ijtihad* involves.

With reference to the qualifications of a *mujtahid*, any individual, regardless whether male or female is allowed to engage in *ijtihad* with the condition that he or she must fulfil its qualifications as determined by Muslim scholars.

In the issue of *maṣlahah*, SIS does not fully comprehend its meaning. SIS has to understand that Muslims do not determine their *maṣlahah* solely based on human opinion. They must ensure that the *maṣlahah* that they refer to is genuine, general (secures the interests of all parties) and do not conflict with clear *naṣ* (textual evidence). *Maṣlahah* must be comprehensive and cover both interests of this world and in the hereafter. A *mujtahid* must understand what *maṣlahah* or public interest is from an Islamic point of view and the understanding of 'public interest' should be based on the Qur'an and *Sunnah*.