



ISTIDLĀL IMAM ḤANAFI AND IMAM SYĀFI'Ī: CHARACTERISTICS OF ISTIḤSĀN ḤANAFIYAH AND QIYĀS KHAFĪ SYĀFI'ĪYAH METHODS

Ahmad Fadholi^{1*}

¹Universitas Islam Bunga Bangsa Cirebon

Email : ¹afad.crb@gmail.com

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Abstract

Istḥsān is a secondary source of law as a reference for istinbāṭ min gairi al-nuṣūs (extracting laws from other than naṣ). The position of istḥsān as one of the considerations for ruling is a matter of khilāfiyah. The definition of istḥsān is very varied, each of the four schools of thought has a specific understanding. Among the four schools of thought that use istḥsān are the Baṣrah schools of Ḥanafī, Ḥanbalī and Mālīkī, while the followers of Mālīkī in Iraq reject istḥsān. Imam Abu Ḥanīfah was a popular school of thought and uṣūl fiqh scholar who used istḥsān, while Imam Shāfi'ī rejected and criticized istḥsān as stated in his works al-Risālah and al-Umm (kitab ibṭāl al-istḥsān). However, the followers of the Ḥanafī imam refute the understanding of istḥsān put forward by the Shāfi'ī imam and the Shāfi'ī scholars. Some say that the difference between the two lies in the lafaz or naming term, while others say it is different. Imam Shāfi'ī uses qiyās khafī which is not istḥsān according to the Hanafīs. Some say istḥsān is different from qiyās. Imam Ḥanafī and his supporters tried to find a legal solution through istiḥsān by rationalizing the 'illat' and considering the maṣlahah while staying within the shara'. On the other hand, Imām Shāfi'ī and his supporters focused more on authentic sources in deriving the 'illat', so they favored qiyās jalī over qiyās khafī by looking at the strength and weakness of the 'illat'. The Hanafīs also acknowledged that the qiyās adopted by Imam Shāfi'ī was safer because it was based on authentic sources.

Keywords: Ḥanafiyah, Shāfi'iyah, Istiḥsān, Qiyās Khafī



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INTRODUCTION

Historically, the science of *uṣūl fiqh* first emerged around the 2nd century Hijriyah, due to the emergence of various kinds of legal problems faced by the Sahābat for which there were no explicit *naṣ-naṣ* to explain. With the capital they had when they were with Rasulullah Saw., their correct mastery of the Arabic language, their understanding of the causes of the revelation of the verses and the coming of the *ḥadīṣ-ḥadīṣ*, as well as their understanding of the aims and principles of the Shari'a, they carried out *istinbāṭ* and *ijtihād* efforts. However, this effort is still natural, without the need for *manhāj* (methods) and theories that serve as a basis or guide in *istinbāṭ*.

The special features of *uṣūl fiqh* during the *sahābat* era were: (1) the emergence of new arguments for *tashrī'* (legal determination), namely *ijmā'* and *qiyās*; (2) the emergence of some *uṣūliyah* rules in *istinbāṭ* law such as the rule "*anna al-muta'akhar yansakhu al-mutaqaddam aw yukhaṣṣiṣuhu*" (the one who came last copied the previous one or specialized it); and (3) in line with the words of the friends who used *al-ra'yu* (opinion, reason), only that they did not express their opinion on something until something happened, nor did they provide latitude in determining the problem and answering it. They do not like to stick to *al-ra'yu* so that people do not dare to talk about religion without knowledge and attribute their opinions to themselves and not to the Shari'a. (Musa bin Muhammad bin Yahya al-Qarnī, 1414 AH)

During the *tābi'in* period, there was an expansion of *istinbāṭ* due to the many problems that emerged. Apart from that, quite a few *tābi'in* circles put forward fatwas such as Sa'id bin Musayyib and others in Medina, 'Alqamah and Ibrāhim al-Nakha'i in Iraq. Some of them adhere to the Koran, Sunnah and the fatwas of the Companions, while others use *maṣlaḥah* and *qiyās* methods when they cannot find *naṣ*. The variety of methods that led to Ibrāhim al-Nakha'i and others in Iraq led to efforts to find similarities in legal '*illats* (*qiyās*), limit them and issue new laws that build on them (*furū'*) by applying these '*illats*' to different *furū'* problems. From there, methodological polarization is created. The emergence of *fiqh* madrasas became a stepping stone for the emergence of differences in *istinbāṭ* methods and became characteristic of each madrasa. (Muhammad Abu Zahrah, n.th.)

The general views for *uṣūl fiqh* at this time are: (1) the addition of new *tashrī'* sources, namely the fatwas of the *sahābat*; (2) differences in views between *ahl al-ḥadīṣ* and *ahl al-ra'yi*; and (3) there are still no clear rules for *mujtahids*, in fact they generally follow one of the companions and quote their words as a basis for their fatwa. (Yahya al-Qarnī, 1414 AH)

Ḥuḍari Bik said that it is not easy for a fiqh expert who lives in one city to cover al-Sunnah found in different scholars in separate cities, so people who carry out fatwa extensions do not feel safe to give fatwa on what which is contrary to the sunnah that he did not memorize while others memorized it. Fiqh scholars understand this danger so they argue for limiting the area of al-ra'yu, then they provide requirements for a legal explorer (mustanbiṭ) who uses al-ra'yu as a measure and reference in his fatwa. The benchmark is sometimes in the form of the Koran or al-Sunnah. This is what is called al-qiyās which is considered by them to be the basis (aṣl) of the basics of tasyri' after al-Kitab and al-Sunnah.

Iraqi fiqh experts are among those who excel in using qiyās, however many of them abandon "qiyās" and switch to a concept called "al-istiḥsān". Muhammad bin al-Hasan often said "astahsin wa ada` al-qiyās" (I am istiḥsān and disable qiyās), sometimes istiḥsān is used to return to aṣar (influence) which violates the demands of qiyās, or returns to universal principles. This is what used to be called al-ra'yu. (Muhammad Ḥuḍari Bik, 2007)

Ahl al-ḥadīṣ is oriented towards al-Sunnah, because he considers it a complement to the Koran and also as naṣ-naṣ that can be used as worship by al-Syāri' (law makers) to followers of Islam regardless of the 'illat-'illat that is of concern to al-Shari' in establishing law (taṣrī') and not on universal grounds that mujtahids refer to, nor on specific grounds on different issues, they are "literalists". Therefore, we can see that when they do not find naṣ in a problem, they tend to remain silent and do not issue a fatwa. (Muhammad Ḥuḍari Bik, 2007).

During the time of al-Aimmaḥ al-Mujtahidūn (the time of the mujtahid imam), we find various methods with more concrete forms. Apart from the differences in methods, the rules of istinbāṭ-are also clear, as are the learning instructions. Through the language of the madhhab imams, this method is expressed in clear and profound expressions. We find Abu Ḥanifah for example, Abu Ḥanifah limits the basis of his istinbāṭ method to al-Kitāb, al-Sunnah, then the fatwas of the saḥābat. Abu Ḥanifah took what was agreed upon by the companions, on matters of dispute, Abu Ḥanifah chose from their opinion and did not depart from it. Nor do we take tābi'īn's opinion because they are still equivalent. We find Abu Ḥanifah implementing qiyās and istiḥsān with a clear method, until his student, Muhammad bin al-Ḥasan al-Syaibāni said, Abu Ḥanifah's friends contradicted him regarding qiyās, when he said "astahsin", no one immediately followed him. (Muhammad Abu Zahrah, n.d.)

Imam Mālik is popular for arguing with the deeds of ahl al-madīnah and al-masāliḥ al-murlah, while Imam Shāfi'i denies istiḥsān and istiṣlāḥ. Istiḥsān is a secondary legal source as a reference for istinbāṭ min gairi al-nuṣūṣ (excavating

law from other than naṣṣ). The position of isthṣān as one of the considerations for determining law is a khilāfiyah (controversial) issue. (M. Khafifuddin, 2001)

The definition of isthṣān is very varied, each of the four schools of thought has its own understanding. Among the four schools of thought that use isthṣān are the Ḥanafī, Ḥanbalī and Mālīkī schools of Baṣrah, while Mālīkī followers in Iraq reject isthṣān.

Imam Abu Ḥanīfah is a maẓhab imam and uṣūl fiqh figure who is popular for using isthṣān, while Imam Syāfi'ī rejects and criticizes isthṣān as stated in his works *al-Risālah* and *al-Umm* (book of *ibtāl al-isthṣān*). However, the followers of Imam Ḥanafī refuted the understanding of isthṣān expressed by Imam Syāfi'ī and Syāfi'iyah ulama. Some say the difference between the two lies in the lafaz or naming terms, others say differently. On the other hand, Imam Syāfi'ī uses *qiyās khafī* which is none other than isthṣān according to Ḥanafiyah. Apart from that, there are also those who say isthṣān is different from *qiyās*

METHOD

The focus of this research is to answer two problems: (1) How is the concept of isthṣān Ḥanafiyah and *qiyās khafī* Syāfi'iyah understood? and 2) How is isthṣān Ḥanafiyah and *qiyās khafī* Syāfi'iyah implemented in legal enactment?

This type of research is qualitative research in the form of library research. Therefore, the data is qualitative data and the data presentation is descriptive. The method used in this research is a comparative method (comparison) with a scientific approach and the rules of uṣūl fiqh (uṣūliyah). The data sources are primary data and secondary data. The data collection technique uses documentation techniques. Meanwhile, the technical analysis of the data uses descriptive analysis.

RESULTS AND DISCUSSION

The concept of Istiḥṣān Ḥanafiyah

The word *istiḥṣān* is taken from the word ḥasan. Ḥasan can be interpreted as something that is considered good in everything. *Istiḥṣān* is not much different in language, namely judging (thinking) something is good. Quṭb Mustāfa Sānu, 2000). Ḥasan can also be applied to every human tendency and desire from images and meanings, even though it is not considered good by others (Haisam Hilāl, 2003). This meaning revolves around the movement of the soul which is amazed at something that is seen as something good.

Al-Bazdawī in *Kaṣf al-Asrār* says that *istiḥṣān* is an adaptation of the word *al-ḥusn*, meaning assessing something and believing it to be good (Alauddin Abdul 'Aziz bin Ahmad al-Bukhāri, 1997). *Istiḥṣān* is the opposite of *istiqbāh*.

Istiḥsān also means looking for the best thing to follow what is commanded. In the Koran, Surah Az-Zumar (39) verse 18, it is stated, "Those who listen to words then follow what is best among them." In Surah Al-A'raf (07) verse 145 it is also stated, "And order your people to adhere to (his commandments) as best they can." Thus in the ḥadīṣ of the Prophet it is stated, "What Muslims think is good is good in the sight of Allah." (See Abu Abdillah al-Ḥakim, *al-Mustadrak 'ala al-Ṣaḥīḥain*, 1990).

The emergence of the word istiḥsān comes from the words of Imam Abu Ḥanifah (150 H). This word was repeatedly quoted by various groups so that it became popular that Imam Abu Ḥanifah was the main source who gave rise to the word istiḥsān. In general, the word istiḥsān is mentioned together with the word qiyās, as Imam Abu Ḥanifah said, "qiyās wanted it that way, but we thought it was good that way" or "we have determined that way with istiḥsān which is the opposite of qiyās." There are no clear provisions from Imam Abu Ḥanifah and his supporters regarding qiyās itself, as well as istiḥsān, in fact it only consists of general expressions which they use as indications for certain propositions, without explaining the nature of what is meant. (See Muhammad Mustāfa Ṣalbi, 1947). From there, Imam Syāfi'i (204 H) and Ibn Hazm (456 H) denied istiḥsān.

Istiḥsān quoted from the words of Imam Abu Ḥanifah contains two interpretations: First, "Dalīlun yanqadiḥu fi dzihn al-mujtahid ta'assara 'ibāratuhu", istiḥsān is a dalīl that is considered to have weaknesses (inaccuracies) in the mujtahid's view that are difficult to express. ('Aḍḍudīn Abdurrahmān al-Ījī, 2004, *Al-Āmidī*, 2003)

This definition was mentioned by al-Āmidī (631 H) from among the Syāfi'iyah, Ibn Hājib (646 H) from among the Mālikiyah and a group of other scholars. This definition is not attributed to those who say it, there are those who attribute it to some Mālikiyah scholars, namely Ibn Rushd al-Kabīr, because he said that istiḥsān is something that has weaknesses according to the heart of a fiqh expert without returning it to its origins. (Muhammad Abu Zahrah, 1954)

The majority of scholars reject this definition, al-Gazālī (505 H) characterizes it as madness and considers it to be a good judgment (istiḥsān) by a mujtahid with his intellect, because something that cannot be explained cannot be known whether it is conjecture, fantasy or reality, and it should be explained so that it can be recognized as a dalīl syara' because of its validity or otherwise. (Abu Hamid Muhammad bin Muhammad al-Gazālī, n.d.). In al-Āmidī's view, this definition still suffers from confusion between whether the existence of the dalīl is truly real or an inaccurate assumption. al-Āmidī said, the dispute does not lie in the prohibition or permissibility of using the dalīl, but rather lies in

specifying the *dalil* with the name *istihsan* when there are difficulties in explaining it, not in the possibility of doing so. According to him, the dispute around *lafaz* will not achieve results. (Al-*Amidi*, 2003)

'*Adhdudin* is of the opinion that if the *mujtahid* is in doubt regarding the proposition, then it is rejected, if the decision can be stated, then it can be implemented based on agreement. ('*Aḍḍudin al-Īji*, 2004). '*Aḍḍudin*'s words were confirmed by al-*Bāḥisīn*, al-*Bāḥisīn* wondered about the words "*yanqadihu*" and stated that there were two possibilities for him: (1) what is meant is a *dalil* which is clear in its provisions, so here it must be implemented in agreement and there is no influence completely about weakness in explaining, because for the *mujtahid* it is not problematic even if it is questioned by others; (2) what is meant is that the existence of the *dalil* is still in doubt, so this is rejected according to the consensus of the *ulama*, because *sharia* laws cannot be determined based only on possibility and doubt. (Ya'qub bin Abdul Wahāb al-*Bāḥisīn*, 2007).

It seems that this definition is still ambiguous and has attracted undue criticism, because it still requires an explanation from the *mujtahid* regarding the use of the words contained in the definition, so it still gives rise to many interpretations among the *ulama*.

Second, "*Ma yastaḥsinuhu al-mujtahid bi`aqlihi*", *istihsan* is what is considered good by the *mujtahid*'s mind. This definition is rejected and its attribution to Imam Ḥanafi is incorrect. Al-Ghazālī said, previous Salaf scholars agreed that a pious person does not judge according to his own desires and desires, without considering the *dalil-dalil* of the *syara'* (al-Gazālī, t.th.). Then came after that the definitions according to subsequent scholars from Ḥanafiyah and beyond.

Imam Abu Ḥanifah himself did not provide a clear definition of *istihsan*. This led to various kinds of interpretations, comments and sharp criticism so that the supporters of Imam Abu Ḥanifah created definitions that were understood from the words of Imam Abu Ḥanifah so that these definitions could be agreed upon and accepted according to law and reason, as well as to dismiss criticism directed at their imam, where the *istihsan* that came out of the words of imam Abu Ḥanifah was seen by other scholars as words that were without foundation and based on lust.

The definition that is popular among Ḥanafiyah is the definition issued by Abu al-Ḥasan al-Karakhī (340 AH):

"*Istihsan* is a transition in a problem from the law of an equivalent problem to an opposite one because there is a stronger reason that demands a transition from the first law:

In general, in the books of *uṣūl fiqh Ḥanafiyah* it is stated that there are several types of *istiḥsān*: (1) *istiḥsān* with *naṣṣ*; (2) *istiḥsān* with *ijmā'*; (3) *istiḥsān* with *ḍarūrah*; and (5) *istiḥsān* with *qiyās khafī*. (Abu Zaid Ubaidillah bin Umar bin Isa al-Dabūsī, 2001: 405).

Referring to several words of *Ḥanafiyah* scholars, there are those who give indications of the existence of a type of *istiḥsān*, namely *istiḥsān* with *'urf* or *'amal al-nās* (human deeds). *Isyarah* comes from the words of al-Jaṣāṣ, only that al-Jaṣāṣ interprets human actions closely to *Ijmā'*, namely human actions witnessed and determined by previous scholars from among the *Sahābat* and *Tābi'īn* because no one denied them. (Al-Jaṣāṣ, n.th.). Next, *istiḥsān* by following the *qaul saḥābi* (sayings of the *sahābat*), the instructions from the words of al-Karakhi which were quoted by al-Gazālī in *al-Manḥūl*. (Abu Hamid Muhammad bin Muhammad al-Ṭūsi al-Gazālī, 1970). This *istiḥsān* is based on the permissibility of arguing with the *qaul saḥābi* about what violates *qiyās* and this results in disputes. So when collected, the various types of *istiḥsān* according to *Ḥanafiyah* there are 6 (six) types of *istiḥsān*. Things to pay attention to here are:

First, that the *qiyās* used by scholars in *istiḥsān* places is more general than desired, namely *qiyās uṣūlī* which contains the pillars of *qiyās* and their conditions, even including *qiyās* and general rules taken from a collection of *dalīls* in a certain kind, so that some say that every *qiyās* is *istiḥsān* and every *istiḥsān* is not necessarily *qiyās*.

Second, looking at the general understanding of *qiyās* used by *Ḥanafiyah*, according to those who use it as a basis, *istiḥsān* is divided into two types: (1) *qiyās khafī*, namely a *qiyās* that is in conflict with *qiyās ḡāhir* because it looks at the strength of its influence, also called *istiḥsān al-qiyās*, or *istiḥsān al-tarjīh*, because it tends to explain one of the conflicting propositions; and (2) exclusion of *juz'iyah* issues from general origin because there are special arguments that require it. This division includes all kinds of *istiḥsān*, such as *istiḥsān* with *naṣṣ*, *ijma*, *ḍarūrah*, *'urf* and others.

Naming *istiḥsān* with *qiyās khafī* is a popular naming in the books of *uṣūl fiqh Ḥanafiyah*. Al-Bazdawī said, each of *qiyās* and *istiḥsān* has two types. In *qiyās*, there are those that have a weak influence and there are those whose weakness is obvious but there is a hidden strong influence. In *istiḥsān*, there are those who have a strong influence even though their existence is hidden and there are those whose influence is clear but there are hidden weaknesses. Al-Bazdawī emphasized that in our opinion *istiḥsān* is one of two types of *qiyās*, but it is called *istiḥsān* as an indication for the stronger side to be practiced and practicing the other side is permissible. (Ali bin Muhammad al-Bazdawī, n.d.).

Al-Sarkhasī also provides an illustration that istiḥsān is two qiyās; (1) clear qiyās (jalī) whose influence is weak; and (2) vague qiyās (khafī) which have a strong influence, so he called it istiḥsān, meaning qiyās which is considered good, while the consideration is to look at the influence, not the vagueness and clarity. (Al-Sarkhasī, 1326 H).

Qiyās jalī is qiyās that is easy to understand (its understanding is easily absorbed by reason), while qiyās khafī is the opposite, qiyās khafī is called istiḥsān but istiḥsān is more general than qiyās khafī, every qiyās khafī is istiḥsān but not every istiḥsān is qiyās khafī, because istiḥsān is sometimes used on apart from qiyās khafī, the meaning is that it is sometimes used for what has been determined by naṣ, ijma' and ḍarūrah, but what is common in usūl Ḥanafiyah kitābs, if it is mentioned istiḥsān that is desired is qiyās khafī, a dalīl that compares to qiyās jalī which is easy to understand, this is the interpretation of istiḥsān, some people experience confusion regarding the definition of istiḥsān and this is the correct definition, namely dalīl whose existence is a comparison of qiyās jalī. (See Ubaidillah bin Mas'ud al-Mahbūbi al-Bukharī al-Ḥanafī (Ṣadr al-Syarī'ah), 1996, Abu al-Baqā' Ayūb bin Mūsa al-Husainī al-Kafawī, 1998).

Implementation of Istiḥsān Al-Qiyās (Qiyās Khafī) Ḥanafiyah in Legal Determination

Istiḥsān bi al-qiyās al-khafī, namely turning in a matter from the immediately understandable law of qiyās ḡāhir to a different law using another qiyās that is more obscure than the first, but has stronger evidence, more precise views and results which is more correct. The examples are:

First, Ḥanafiyah stipulates that the person who donates agricultural land, includes irrigation rights, drinking rights and passing rights as things that accompany the waqf without mentioning it because of istiḥsān. In qiyās, these rights cannot be included except by naṣ such as buying and selling. The aspect that istiḥsān addresses is that the purpose of waqf is to take advantage of the goods donated, taking advantage of agricultural land is none other than taking drinking water, irrigation and roads, so these things are included in the waqf without having to mention them, because the purpose of the waqf will not be come true except for those things.

Qiyās ḡāhir: reconciles waqf in this problem with buying and selling, because each of waqf and buying and selling both issues ownership from the owner. Qiyās khafī combines waqf on this issue with ijārah (rental), because each of the two aims to gain benefits. (Abdul Wahāb Khalāf, n.d.)

Second, Ḥanafiyah stipulates that when a seller and buyer disagree about the price range before receiving the goods, then the seller claims that the price is

100 LE. (LE: Pont Egypt, Junaih) and the buyer claims the price is 90 LE. Ḥanafiyah stipulates that both of them swear to each other for the reason of istiḥṣān, even though qiyās states that the buyer does not need to swear, this is because the buyer claims that there is an additional 10 LE, while the buyer denies it. The rule states that proof is (addressed) to the person who claims it and an oath to the person who denies it, so there is no oath to the buyer.

Wajh al-istiḥṣān (the side that refers to istiḥṣān): the buyer is the person who clearly claims the additional price and denies the buyer's right to hand over the goods being sold after rejecting the price of 90 LE. Meanwhile, the buyer is the person who clearly denies the additional price raised by the buyer and claims to have the right to receive the goods after rejecting the price of 90 LE. Each of them confesses from one side and denies it from the other side, so both are determined to swear to each other.

Qiyās zāhir: brings this problem together with all the problems between people who confess and deny, then show evidence for people who confess and oaths for people who deny. Qiyās khafī: brings this problem together with all problems between two people who confess, each of them is considered at one time, both the person who confesses and the person who denies, then both make an oath. (Abdul Wahāb Khalāf, n.d.)

Third, they stipulate that the remains (food) of wild birds such as vultures, crows, eagles and eagles are pure in istiḥṣān and unclean in qiyās. The reference for qiyās is the food remains of animals that are forbidden, such as the food remains of wild animals such as panthers, leopards, lions and jackals (wolves). The law on the remains of food from these animals follows (the law of eating) their meat. Meanwhile, the reference to istiḥṣān: even though its meat is forbidden for wild birds, the saliva that comes out of its meat does not mix with the remains of its food because it drinks with its beak, the beak is a sacred bone, while wild animals drink with their tongues which are mixed with their saliva. . Therefore, the leftovers are unclean. (Abdul Wahāb Khalāf, n.th., Abu Zahrah, n.th.)

In each of the examples above there is a conflict in a problem, namely a conflict between two qiyās, one of which is qiyās jalī which can be immediately understood and qiyās khafī which is vaguely understood, then a mujtahid puts forward an argument that compromises qiyās khafī, then the mujtahid has turned away from qiyās jalī. This turning away is called istiḥṣān and the dalīl built on it is called wajh al-istiḥṣān.

Khafī Syāfi'iyah's concept of Qiyās

Syāfi'iyah makes qiyās khafī included in the division of qiyās 'illat. In the definition of qiyās khafī there are various editors whose meanings are not much different, namely:

Qiyās whose 'illat is determined by means of istinbāt and cannot be ensured in it the elimination of the influence that differentiates between asl and far'. (Muhammad bin Šālih Al-'Ušaimīn, t.th., Abu Ishāk Ibrāhīm al-Syaerājī, 1998, al-Syaerājī, 1995)

Al-Zuhaylī said, in qiyās khafī, nothing is included in it except qiyās adna. (Wahbah al-Zuhaylī, 1986). In qiyās khafī, sometimes the 'illat can be identified by the characteristics mentioned along with the law, such as the 'illat in the prohibition of usury, namely "food", based on ḥadīš Ma'mar bin Abdullah that the Prophet SAW. prohibits selling food for food unless it is equivalent. In ḡāhir the prohibition is due to its existence being food, because the nature is not mentioned in the law, then the food mentioned in the law becomes an attribute seen from the perspective of attaching the prohibition to food, so in ḡāhir the food is what is desired as 'illat.

Sometimes the 'illat is known for reasons stated in the law, as narrated by 'Aisyah r.a. Barirah was freed, while her husband was a slave, then Rasulallah Saw. make a choice (offer) to him. In ḡāhir, Rasulallah Saw. gave her a choice because her husband's position was still as a servant. This position is lower than the first, because the reason is sometimes stated in an understanding manner and sometimes in a ta'līl (explanation of reasons).

Likewise in qiyās khafī, sometimes the existence of 'illat can be known through influence or istinbāt, namely between eliminating and creating, such as a very strong influence and causing ecstasy (an extraordinary feeling of pleasure, beyond awareness). The result of pressing grapes before the strong influence and causing ecstasy is halal, then when this influence and other influences appear, it becomes haram, then the influence disappears again, then it becomes halal again. When the law has a reason for its existence and no reason for its non-existence, then the thing that becomes dependent is called 'illat.

The examples of qiyās above show a law based on possibility, because it allows for the prohibition of food to be forbidden back to wheat in ḥadīš Ma'mar, not to everything that is eaten, it is possible that it also goes back to everything that is eaten but the 'illat has another meaning. besides food. Likewise, it is also possible to prohibit khamr when it has a strong influence and causes ecstasy because of that influence, perhaps also because of the name of khamr itself, because the law there can also have a reason for its existence and there may not be a reason for its absence, even a law decided by a judge cannot cancel it. , this

law is a general and commonplace law. (al-Syaerājī, 1998: 804-806, al-Syaerājī, 1995: 207-208)

Qiyās khafī is identical to qiyās al-adnā or al-adwan, that is, the existence of far' is weaker than asl in 'illat law. This means that it has less connection with law than origin, as al-Zuhaylī said. This Qiyās is the qiyās used by fiqh experts in their discussions. Al-Shaerājī said, the weakness in qiyās adnā is seen from a legal perspective, not from an 'illa-t' perspective. Al-Isnāwī criticized al-Shaerājī's words regarding his words, because he had distributed qiyās to adwan and others. According to him, this is still being considered, because if what adwan wants is the weakness of 'illat, meaning because in 'illat there is a maṣlahah or mafsadah side, not what is in asl, then this requires that qiyās should not be carried out, because the condition for qiyās is the existence of 'illat is perfect in far', if something else is desired, of course it must be explained. However, this criticism was answered by al-Shaerājī, that what was desired with adwan was not that 'illat was not found perfectly, but rather that the existence of 'illat in the original was ḥammī (conjecture). Therefore, there is no objection to him regarding the distribution of qiyās over far' to aulā, musāwī and adwan. (Ibn Imam al-Kāmiliyah, 2002).

Implementation of Qiyās Khafī Syāfi'īyah in Legal Determination

We know that qiyās khafī is every qiyās whose 'illat is known by means of ijtihād or based on istinbāt from the original law, as stated by al-Syaeraji and al-Āmidī. In another sense, qiyās khafī is understood as qiyās in which it cannot be ascertained that the elimination of the influence that differentiates between asl and far', or the nature that brings the two together is still a matter of strong conjecture. In the Syāfi'īyah uṣūl fiqh books, there are not many examples of qiyās khafī, most of them present examples that are not much different. Here are some examples of qiyās khafī Syāfi'īyah that the author found:

First, qiyās murder with heavy instruments to murder with sharp tools, the 'illat that collects it is "intentional murder full of hatred" to determine the legal obligation of qiyās. The distinguishing status cannot be guaranteed to eliminate the influence of al-Syāri', in fact it still has the possibility of being influential. (Wahbah al-Zuhaylī, 1986, Al-Āmidī, 2003).

Second, the qiyās of the aunts of the father and mother in the law prohibits (marriage) from the mother, because of their union in the womb (blood ties). The Word of Allah SWT. In Surah An-Nisā (4) verse 23 it states, "It is forbidden for you (to marry) your mothers."

Third, qiyās for the support of both parents when they are weak in old age for the support of their children because they are still small. The Word of Allah

SWT. in Surah Al-Ṭalāq (65) verse 6 states, "And if they (wives who have been divorced) are pregnant, then give them their living until they give birth, then if they breastfeed your (children) for you then give to them their reward."

In the second and third examples, both are qiyās whose meaning is still vague and cannot be known with istidlāl and then the meaning becomes clear, sometimes the istidlāl is in the form of an agreed argument. (Al-Zarkashi, 1992)

Fourth, the qiyās of watermelon for wheat in the chapter on usury, the 'illat who collects it is food according to Shafi'iyah. The taking of 'illat with "food" is not specified in the naṣṣ and ijmā, and it cannot be ensured that there is no influence that differentiates between asl and far', because it is possible that the 'illat is a staple food (according to Mālikiyah), the measure (according to Ḥanafiyah), is not stated in watermelon is not food, then the legal provisions on it are weaker than the legal provisions on wheat which includes the three 'illat. (Ibn Imām al-Kāmiliyah, 2002)

It is also possible to determine 'illat riba on wheat that has been naṣṣ with 'illat al-qût (staple food) to be qiyāsed on all food. The meaning of Qiyās here is still vague or ambiguous, because the istidlāl is still disputed.

Fifth, the qiyās nabīẓ in the law prohibits drinking khamr (wine) with the 'illat that brings it together, namely al-iskār (intoxication). The exclusion of a differentiating influence here cannot be confirmed or is still a matter of strong suspicion, because it is possible that in khamr there are specificities that are recognized in its haraam, which is why this law is given. (Muhammad bin al-Hasan al-Badaḥsyī, n.th., Huḍari Bik, 2007).

CONCLUSION

Based on the results of research, analysis and discussion, the author can conclude that basically istiḥsān which is understood by Ḥanafiyah as qiyās khafī is a form of interpreting one of the qiyās from several qiyās when in a problem there are several points of view and conflicting, the interpreting is done by looking at the strength of influence. The position of qiyās khafī is stronger than qiyās jalī. Meanwhile, in the Syafi'iyah view, qiyās khafī does not have an element of interpretation, only the existence of 'illat in it is determined through conjecture or possibility, its position is weaker than qiyās jalī. Qiyās khafī according to Ḥanafiyah is actually more similar to qiyās ṣibh in the Shafi'iyah understanding, only in qiyās ṣibh there is no interpretation.

Istiḥsān referred to by Ḥanafiyah includes two understandings: (1) the existence of qiyās khafī (also called istiḥsān al-qiyāsi or istiḥsān al-tarjīh) is a form of qiyās that is the opposite of qiyās jalī and is carried out by pentarjihān to be

practiced as a side that is considered strong; and (2) there is a partial issue exception (juz'iyah) from the general basis because there is a special argument that requires this exception. In this case, it includes various types of istiḥsān other than qiyās khafī, namely istiḥsān with naṣ, ij mā', ḍarūrah, 'urf and others. Meanwhile, qiyās khafī in the Shafi'iyah understanding only has one understanding, namely qiyās whose 'illat is determined by means of istinbāth and it cannot be ensured that the elimination of the influence that differentiates between asl and far' cannot be achieved. Even though they both have similarities in terms of naming, they are different in understanding.

In the implementation of istiḥsān Ḥanafiyah, there is a turning away from qiyās ḡahir because the application of the law brings difficulties, then the law is turned to what can express convenience. Likewise with the exception of juz'ī law from kullī law, considering that there are ḍarūrah matters that must be considered. In an effort to issue laws through the istiḥsān method, they try to rationalize 'illat other than so that it can be recognized according to Sharia'. This is what they call al-i'tibār al-Syārī'. In the implementation of qiyās khafī Shafi'iyah, although it is comparable to qiyās jalī, there is no contradiction to it. The problem returns to the strengths and weaknesses of 'illat, where the elimination of the influence that differentiates between asl and far' cannot be confirmed, but rather is a strong guess that still contains possibilities. Based on these conclusions, aspects of the differences and similarities between istiḥsān Ḥanafiyah and qiyās khafī Syafi'iyah appear clearly. Even though there are similarities in naming, there are differences in understanding, viewpoints and methods between the two which are characteristic of each school of thought.

REFERENCES

- Al-Āmidī. (2003). *Al-Iḥkām fi Uṣūl al-Aḥkām*. Riyāḍ: Dar al-Ṣami'ī
- Al-Badaḥsyī, Muhammad bin al-Hasan. (t.th.). *Syarh al-Badaḥsyī*. Mesir: Maṭba'ah Muhammad Ali Sabīh wa Aulāduhu
- Al-Bāḥisīn, Ya'qub bin Abdul Wahāb. (2007). *Al-Istiḥsān*. Saudi Arabia: Maktabah al-Rushd
- Al-Bazdawī, 'Ali bin Muhammad. (t.th.). *Uṣūl al-Bazdawī*. Karachi: Mir Muhammad Kutub Ḥānah.