Istiqra' al-ma'nāwī: a multicultural judicial reasoning

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This article offers the *istiqra' al-ma'nāwī* as multicultural-based judicial reasoning to answer the gap between the monocultural pattern of norms required by the codification of law and the multicultural based social-structure of Indonesian society. By using a legal philosophy approach, this study concludes that *istiqra' al-ma'nāwī* is oriented to balance the interests (*al-wasilah*) and the needs (*al-ghāyah*) as the basic framework for distinguishing relative and absolute values of law. The judicial reasoning style offered by *istiqra' al-ma'nāwī* can be operationalized through moderating ethical contestation and formulating justice and legal certainty based on multiculturality. The operationalization is carried out through three stages: The first is *konstatiring* stage, where the judges use social reintegration as an optic to see if there is disrupted social risk, like identity superiority motives. The second is separating the original from the derivative goals. The original legal goal is to protect the rights of marginalized communities and equality, while the derivative legal goal is access to welfare and the rights of impunity. The third is *konstituir* stage, by considering the significance of social control outside the legal aspect.

Artikel ini bertujuan untuk menawarkan metode penalaran istiqra' al-ma'nāwī sebagai penalaran yudisial berbasis multikulturalitas. Tawaran ini merupakan jawaban terhadap kesenjangan yang muncul dari kodifikasi hukum yang menghendaki corak norma yang monokultural sementara struktur sosial masyarakat Indonesia berbasis multikultural. Dengan menggunakan metodologi penelitian filsafat, penelitian ini menyimpulkan bahwa istiqra' al-ma'nāwī berorientasi pada keseimbangan

kepentingan (al-wasīlah) dan kebutuhan (al-ghāyah) sebagai kerangka dasar untuk membedakan nilai relatif dan nilai mutlak dalam hukum. Corak penalaran yudisial yang ditawarkan oleh istiqra' al-ma'nāwī tersebut dapat dioperasionalkan melalui memoderasi kontestasi etis dan merumuskan keadilan dan kepastian hukum berbasis multikulturalitas. Operasionalisasinya dilakukan melalui tiga tahap, pertama, tahap konstatir yakni hakim menggunakan reintegrasi sosial sebagai optik untuk melihat ada tidaknya resiko sosial yang terganggu, seperti motif-motif superioritas identitas. Kedua, memisahkan antara tujuan hukum asal (original goal) dengan tujuan hukum derivatif (derivative goal). Tujuan hukum asal adalah perlindungan terhadap hak masyarakat marjinal, relasi kesetaraan dan kesederajatan. Tujuan hukum derivatif yakni akses pada kesejahteraan dan hak-hak kekebalan hukum. Ketiga, tahap konstituir dengan cara mempertimbangkan signifikansi kontrol sosial di luar aspek hukum.

Keywords: *istiqra' al-ma'nāwī; judicial reasoning; multiculturality*

Introduction

In the colonial period, the law and the legal system became the most decisive social investments to create social integration and public order in various territories of imperialist countries, including the archipelago (Beckmann in Irianto, 2009, p.228). The transplantation of colonial law to the indigenous population aimed to overhaul social stratification and patterns of economic interaction between individuals, communities, and institutions to align them with the colonialist rulers' economic and political interests (Lukito, 2008, pp. 217-219).

In this constellation, the law was formed through codification (written law) to accelerate the submission of indigenous values and legal norms to the colonial legal system (Benton and Clulow, 1999, pp. 80-100). Codification grew asymmetrically with Islamic and customary laws, although sometimes there were social conventions between them. An example was the enforcement of the private law among Muslims, limited to marriage and inheritance law (Ahmad and Arifin, 1996, p. 31). In the colonial era, the Asian region, including Indonesia had several legal consensuses motivated by theologies such as Buddhism, Hinduism, and Islam. All the three, together with small traditions in customary law, formed a regionally connected level of legal plurality and cultural diversity in various regions of the archipelago (Dale, 2014, pp. 733–889).

This situation ended with the transplantation of colonial legal institutions through the codification of a single law by leaving a fragile legal cosmopolis trail because the

subordination of local values and norms to colonial law actually saved the potential for latent conflicts that aggregated directly with various other non-legal factors such as language, geographical location, and historical heritage (Lukito, 2017, pp. 15-16). From the colonial to the postcolonial era, this fragile legal cosmopolis has essentially reproduced chronic social anarchism coupled with law enforcement that tends to be procedural (Baidhawy, 2006, p. 34). The unequal distribution of development outcomes sharpened regional politics in symbolic and structural forms (Purnomo et al., 2019, p. 41).

The post-reform inter-ethnic conflict also proves the fragility of legal codification, followed by the failure of the legal transplant project to formulate social integration laws in the following several leadership eras. The phenomenon of ethnocentrism and xenophobia encourages legal thinkers to reformulate the meaning of legal interpretation and its reading model as a response to pluralism and diversity, oriented to social reintegration (Susanto, 2019, p. 231). Meanwhile, religious views and practices that should be a source of moral values and concepts are still difficult to break away from ritual orthodoxy to override multicultural piety, which is needed by religious people to avoid the contestation of monocultural interpretations (Mulkhan, 2003, p.95).

Ironically, studying the relationship between legal reasoning in *ushul fiqh* and multiculturality is still about theoretical studies with an anthropological approach. Therefore, the conclusion product from this kind of legal study is more suitable to answer questions that also require a theoretical solution. Meanwhile, the urgent problem faced is a practical answer to a real problem that occurs in the social life of the Indonesian people, namely how to formulate the concept of multicultural-based judicial reasoning in Islamic law.

Regarding the research positioning, it is necessary to put forward several relevant studies. *First*, Bowen's research, as quoted by Rémy Madinier (2004), states that the position of customary law as a counterweight to Islamic law creates a temporal contradiction. On the one hand, Islamic law is recognized as a living law. On the other hand, Islamic law must be considered a local custom to be applied through the judiciary (Madinier, 2004, pp.750–751). This finding strengthens the basic assumption about the importance of the encounter between *ushul fiqh* and law in Indonesia in the context of its multicultural society.

Second, the research topic of *maqāṣid al-syarī'ah* is a barometer or standard of primary

consideration in the formulation of laws regarding *maqāṣid* built on the principle of having to accept the concept of *ta'līl* (analytic) and distinguish between *waṣilah* (means) and goals in the application of fiqh law. Epistemological construction can be a reference for legal judicial reasoning when judges perform *tahqīqul-manāt* (Alimuddin, 2019, pp. 117–123).

Third, Sarrazin Martínez's research on the state of law and its encounter with pluralist ideology concludes that there is a close relationship between the ability of community structures to recognize multicultural realities and the double marginalization of ethnicity and religion. The necessity of a pluralist society to protect cultural diversity is closely related to new forms of exclusion (Sarrazin and Redondo's, 2022, pp.115-137).

From the three studies, it can be concluded that the position of this research is to offer a concept that can mediate the gap between legal structures that are codified in nature and tend to subjugate the structure of a multicultural society to a monocultural one with the reality of Indonesia as the largest Muslim community in the world.

Method

This study used a legal philosophy approach. The secondary data collection method was used in collecting data, including secondary data containing the rules of *istiqra al-ma'nāwī* reasoning to be further abstracted by articles about the thoughts and views regarding multiculturality (Auda, 2008, pp. 34-42). The data was processed with supporting documents such as primary legal sources, secondary legal sources, tertiary legal sources, and non-legal sources. The primary methods of data analysis were deductive and inductive logic. The data were collected, compared, and abstracted (Zahraa, 2003, pp. 215–249).

Paradoxical relations: multiculturality and social reintegration

Regarding the previous explanation, it can be concluded that there is a paradoxical relationship between the function of law as an instrument of social reintegration and multiculturality in Indonesia (Lukito, 2008, pp. 218-219). At least, it can be seen through two aspects: *first*, the demand for recognition of culture, race, and ethnicity, especially from minority groups. *Second*, marginalization in the dominant cultural-political domain requires dynamic and flexible legal policies, while the legal character of codification adopted in Indonesia involves the justification of politically ratified norms through a single and

monocultural legislation product (Nugroho, 2017, pp. 3-10).

This paradoxical relationship can be more precise when observing the dialectic in responding to the enforcement of the Anti-Pornography Law (Law No. 48 of 2008 concerning Pornography) and the Domestic Violence Law (Law No. 23 of 2004 concerning Elimination of Domestic Violence). The conflict between multiculturalist feminists and monoculturalist groups basically shows different assumptions and perspectives because the character of our legal reasoning in Indonesia still adheres to monocultural understanding, especially in the context of legislation (Simbolon, 2019, p.29).

In addition, the paradoxical relation of multiculturality and Law is also seen in the strengthening of identity culture in the political sphere in several regions. At the same time, the Law is formed to realize social reintegration that has to apply the standard norms referring to all cultural references. Therefore, legal certainty in the Law is multicultural-based because it guarantees national legal identity (Hefner and Hidayat, 2007, pp. 7-11). Moreover, legal relations and multiculturality intersect with the collective awareness that this nation has gone through a denial of legal plurality and multiculturality (Encyclopædia Britannica, 2020).

Undeniably, the dialogue between multiculturalism's perspectives, which requires non-monolithic legal norms, and the positive legal perspective, which requires certainty of norms, will not be accessible without bridging it with the context of legal reasoning with a multicultural character as well. In the Indonesian legal system context, the operationalization of legal reasoning with a multicultural character is more likely to be applied not to the realm of legislation or legal enforcement but to the sphere of legal application and concretization within the judiciary. Because judges have broad freedom and authority to explore the values of multicultural justice while protecting the infrastructure of social reintegration (Ali, 2015, p. 84).

The offer to formulate legal reasoning with multicultural characteristics is urgently needed to bridge what H.KMA.Usop calls the middle space for Indonesian cultural strategy to integrate religious and humanitarian values with local, national, and global dimensions (Alkadri, Supriyoko, and Usop, 2005, p.45). Usop implicitly directs that the "middle space of integration" needs to be mediated by legal reasoning instruments that

place multicultural values as legal interests that must be protected. Therefore, this offer should also gather scientific perspectives, including religious studies, humanities, and social sciences. Usop confidently offers that multicultural legal reasoning must be able to combine three fundamental values of truth, namely logical, aesthetic, and ethical truth (Alkadri, Supriyoko, and Usop, 2005, p.45).

It is challenging to realize the Usop's concept in Indonesia's legal system, which still adheres to the ideology of legal codification of the continental legal system version. Hence, the most realistic offer is to provide a series of legal reasoning concepts at the level of judicial activity. Because at this level, it is a means of applying concrete laws, at this stage, it is also essential to determine the views and reflections of judges on multicultural values, which can be transformed into premises or propositions in each of their legal considerations. Many studies of law and multiculturalism have been carried out, but the formulation of legal reasoning that can serve as a guide to the meaning of National Law based on social reintegration has not been widely carried out but is only limited to the use of legal exploration from the perspective of legal anthropology with a legal ethnographic approach as the basis of analysis (Lukito, 2008, pp.218-219).

The gateway to the application of multicultural legal reasoning that can be considered by judges is Article 5 paragraph (1) of Law no. 48 of 2009 concerning the Law on Judicial Power which emphasizes that judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society. This means that judges have two obligations: upholding the law and creating a sense of justice that lives amid society.

The description emphasizes that the model of judicial reasoning desired by the Indonesian legal system has a multiculturalistic dimension because judges are required to enforce law and justice equally so that all legal sources that live in society are integrated in a parallel manner in concrete cases. This includes Islamic law and customary law without looking at the temporal fragmentation between the two, as in the view of Snouck Horgronje (Stinchcombe, 1977, pp.127-131).

Equality between Islamic and customary law is also part of Lawrence Friedman's framework, which bases judicial reasoning on structure, legal substance, and culture. The

legal structure is an element that regulates the workings of legal institutions/organizations and their authorities. The substance of the law reflects the view of justice, the taste of the law, and the evidentiary procedure. Elements of legal culture represent values and attitudes that integrate the legal system and local communities. In legal pluralism, judicial reasoning requires identifying legal structures that align with the substance and legal culture. Friedman believes that the values and attitudes related to the law of society determine when, why and under what conditions society supports or turns away from positive law (Friedman, 2014, pp. 403-427).

More specifically, Friedman is very knowledgeable about legal reform efforts' limitations and unforeseen consequences. But surprisingly, he somehow seems to be able to break free from turning his healthy skepticism into cynicism. There has been much talk and a fair amount of scholarly criticism published, attacking groups of legal historians who either ignore or deny that categories of legal thought impact society or that certain qualities are subject to change in legal culture. Friedman introduces theoretical categories and perceptive analysis of legal reform and legal culture to legal history scholars. Friedman also assumes the strength of an essentially healthy society if temporarily beset by trouble (Soifer, 1988, pp. 995–1016).

Operationalization of multicultural-based judicial legal reasoning

Multicultural legal reasoning is needed to realize social reintegration. It necessitates Islamic insight, nationality, and cultural coexistence in a complete legal system (Saddam, 2018, pp. 164-165). The opportunity to realize it is even more excellent if the object of law research is directed to formulating the judge's reasoning. The main objective of offering multicultural legal reasoning is to develop a reasoning model that can explain social phenomena and guide judges to apply national law based on social reintegration with a multicultural spirit (Kuntowijoyo, 2006, p. 83).

Then, several questions appear: How the multicultural legal reasoning constructed, what basic structures form its foundation, and which epistemological schools of science philosophy need to be used. In answering them, it is essential to reconsider Robert Garaudy's explanation, as quoted by Kuntowijoyo, that the weakness of reasoning in critical

philosophy based on rationalism and materialism lies in the alienation of transcendental values so that critical philosophy oscillates between two extreme poles, namely the idealist and materialist camps without end (Ahimsa, 2022, p.7).

The structure of multicultural legal reasoning based on social reintegration is prepared by considering two operational frameworks of reasoning in general: the context of legal justification directed at social reintegration and the context of discovery based on the spirit of multiculturality (Artemov and Fitting, 2020).

Considering Robert Garaudy's opinion, objectively, to avoid the trap of epistemological oscillation, in this paper, *istiqra' al-ma'nāwī* reasoning will be used as a model to develop multicultural legal reasoning based on social reintegration. Objectively *istiqra' al-ma'nāwī* reasoning model is offered in this research because it has been widely used by *fuqaha* with various bases of Islamic law and linguistic approaches such as Ibn Taymīyyah (w.782 H) (Taymīyah, n.d., p.159). *Istiqra' al-ma'nāwī* reasoning is also used by Muslim scholars who build their analytical bases based on social and historical relations such as Fazlur Rahman (d. 1988 AD) (Rahman, 2007, pp. 21-22) and Jasser Auda (Auda, 2014, p.41).

As explained in the previous paragraph, efforts to formulate multicultural legal reasoning depart from the basic assumption that multicultural values in the framework of social reintegration are legal requirements for Indonesia that deserve legal protection. In the context of *istiqra' al-ma'nāwī* reasoning, the first step to formulating multicultural legal reasoning is to determine the balance between social reintegration as a legal goal and multicultural values as a legal substance.

In other words, social reintegration and multicultural values are two legal interests whose philosophical roots must be found so they can be reconciled with their universal values. Social reintegration and multicultural values are harmonized by a higher legal interest, namely justice. Justice must appear in every legal decision and bridge the formulation between justice in the social reintegration and multicultural perspective.

The balance of legal interests and needs, as referred to in this paragraph, is the basic framework of *istiqra' al-ma'nāwī* reasoning described by Al-Syâthibî as the primary initiator. According to Al-Syâthibî there is a fundamental difference between what is called the relative value in law (*al-wasīlah*) (Qardhawi, 2006, pp. 36-37) and the absolute value (*al-*

ghāyah) (Al-Amidi, 1981, p. 221). Only by distinguishing them, the contestation of legal interests can be brought to an end while avoiding exhausting and often endless ethical debates. Ending the contestation in legal reasoning is urgently needed so the public as justice seekers do not end up with the uncertainty of direction.

If so, the legal interests can be placed as relative legal interests and absolute legal interests. Justice is the substance of legal interests that applies universally and can be applied to all forms of social life. Al-Syâthibî introduced justice because it guarantees the existence of a transcendent legal interest, namely justice based on the benefit of the world and the hereafter (Ulwan, 1989, pp. 111-145). As for the value of justice based on multiculturality, social reintegration is equated with the intermediate value as initiated by Al-Syâthibî regarding the legal protection of religion, property, soul, and mind (Al-Syâthibî, Juz 2, pp. 393-410).

Therefore, the formulation of multicultural legal reasoning begins by determining the orientation of its reasoning. The central part of the reasoning is a serious effort to find a direction of thinking to reach a justifiable conclusion. The first step in offering the idea of multicultural legal reasoning is that the main goal is to uphold law and justice that restores social reintegration by considering the spirit of multiculturality as a constitutive basis in every legal consideration. The position of the social reintegration perspective and the multicultural spirit are placed as legal interests and needs that must be protected.

Legal concretization is carried out through the stages of the constituency; the judge will confirm whether or not the proposed event is correct by taking into account whether there are legal interests of social reintegration that have been harmed and whether there is a legal need and opportunity to apply multicultural values in it. In this case, the judge should be able to see the motives for the superiority of identity (Ali, 2015, p.173).

Furthermore, multicultural legal reasoning is operationalized by separating the objective of original law from the derivative law. In the context of multiculturality, social justice must be mapped as the goal of the original law. At the same time, legal protection of cultural plurality, the rights of marginalized communities, and the relation of equality are derivative law objectives that can be substituted through legal affirmations in other forms such as benefits and immunity rights. law (Barongan and Nagayama, 1995, pp. 195-207).

The following operational framework of multicultural legal reasoning is to harmonize the textual concept of multiculturality with the relevance of the subject and object of multicultural law. This is done to ensure the risk of legal losses incurred and to determine which of the three domains gets the most significant loss when the violations happen (Al-Syatibī, pp. 393-410).

Furthermore, the last operational framework in multicultural reasoning considers the significance of other social controls outside the legal aspect. This consideration is to find out particular social indications because these deviations do not stand alone but are born from macro legal deviations. This is necessary so as judicial reasoning gives birth to a proposition that does not simply deny the structural factors of global injustice in a case of law violation that causes harm to the values of multiculturality and social reintegration.

The three operational principles of multicultural-based judicial reasoning are then used to examine the diametrical position between fiqh arguments and positive law in responding to criminal acts of domestic violence. The classical fiqh treasures normatively give the husband the right to discipline his wife, marked by the affirmation of the application of varied sanctions on *nusyūz* behavior starting from the mildest such as *wāhjurūhunna fī* al-*maḍāji'i* (separating beds) to *wāḍribūhunna* (beating) to discipline. Meanwhile, positive law through the Domestic Violence Law (Law No.23 of 2004) does not provide the same rights. Criminal law policies in Indonesia explicitly do not recognize the husband's right to discipline *nusyūz* behavior as in classical fiqh, so the husband is seen as fully responsible for violence against his wife (Kadry and Kamel, 2019, pp. 53-94).

In response to the paradox mentioned above, *istiqra' al-ma'nāwī*, a conceptual source of multicultural-based judicial reasoning, remains guided by social reintegration as a constitutive element of its reasoning. In anthropological studies, the attitudes and behavior of most Muslims towards gender and women's issues are influenced by a patriarchal culture so the affirmation of nusyūz discipline in classical fiqh is considered a triggering factor for the birth of domestic violence. The above claim is wrong because what appears in the classical fiqh view of nusyūz is only one part that must be coordinated with the principles of justice, equality from *maqāṣid al-syarī'ah*, namely *maṣhāliḥ al-I'bād* (welfare). About 30 verses in the Qur'an support equality between women and men, including women's rights

in various aspects of life. Many of these female-friendly verses of the Qur'an are further supported by al-ḥadīṭs, traditionally associated with the Prophet Muhammad (Munir, 2005, pp.1-37).

Therefore, the next agenda of judicial reasoning is to open up opportunities for social reintegration against this paradoxical condition. The concept of *istiqra' al-ma'nāwī* offered by Abu Ishâq Ibrâhîm ibn Mûsâ al-Syâthibî states that the proposition of particular law *(juz'i)*, namely *nusyūz* discipline in the form of psychological punishment (separation of beds) and physical (beating) must be coordinated with universal law *(kullīyah)*. That is, punishment is a particular proposition that must be dialogued with universal legal offers *(kullīyah)* such as maintaining offspring and the integrity of the marriage bond, equality, justice, and welfare are found through comprehensive observations using the inductive method *(istiqra'i)* (Duski, 2013).

The *istiqra'* (induction) process will lead to conclusions in the form of an integrative legal structure because it has combined legal substance with legal culture from all legal sources relevant to the problem of nusyūz. The essence of the rules of *furū'* or *juz'i*, which have similarities with *illat* is then abstracted as a new legal proposition. When projected into a concrete case, there has been a consensus between punishment as a particular legal proposition and justice and equality as a universal proposition (Al-majdzūb, 2020).

The principle of induction in *istiqra'* reasoning is that a particular proposition corresponds between one *furū'* with another. However, this does not mean that observations of problems *(furū')* within the scope of universal law *(kulliyah)* must be observed. *Taḥqīq al-manāṭ* becomes a reasoning model to sort out particular legal propositions that have strong relevance values (Al-Andalusî, 1982, p.10).

Thus, a number of the *istiqra'* theorems of reasoning have three characteristics: synthesis, generalization, and a posteriori. Synthesis is a legal conclusion drawn from *fur'iyah* because it has *illat* suitability and synthesizes or combines propositions obtained from previous empirical cases relevant to *nusyūz*. Generalization is a process of inference outlined from the number of particular issues projected on the next concrete ones (Safriadi, 2018, pp. 93-108). While the a posteriori element is a consequence of the results of empirical observations to distinguish deductive conclusions born from hypothetical assumptions

(Al-Ghazâlî, 2000, p. 36).

Departing from the above framework, it can be concluded that the principles of justice and equality in Islam are limited to empirical and material meanings. But it also contains spiritual elements, welfare, guaranteed rights and obligations, aspects of mutual assistance, mutual support, and responsibility. Islam does not interpret men and women as separate and competing entities. Differences in rights, obligations, and *rukhṣah* in law cannot be interpreted as preferential treatment or discrimination (Shalahuddin, 2016, pp. 369-386).

The point of view above is further complemented by a conceptual correlation between domestic violence and disciplining *nusyūz* behavior in the household. This is important to find the scope and limits of this meaning and whether it has an *'illat* connection. The term domestic violence in Law no. 23 of 2004 is very different in Islamic law. The terminology of physical and psychological violence from the Act in Islamic law is a criminal act (*jarīmah*), meaning that domestic violence is included in *jarīmah ta'zīr*. Second, the terminology of marital rape in Law no. 23 of 2004 is different in principle; in Islam, sexual relations between husband and wife are sacred. While Law no. 23 of 2004 has negated this aspect, it tends to place criminal responsibility according to the point of view of individualistic subjectivism, which shows the loss of transcendence aspects.

In solving the problem, it is necessary to qualify the identity of facts in multicultural-based judicial legal reasoning by referring to the dialectical relationship between the world of ideas (abstract) and the world of concrete (empirical). This means there must be an interrelation between revelation and reason (abstract-deductive), then verified with concrete events as the social context (empirical-inductive). The premise product must be classified based on the standardization of factual hierarchies provided by the texts of the Qur'an and Sunnah. This means that the universality values of the Qur'an and *al-hadith* are placed as the basic framework for qualifying the identity of facts because in judicial reasoning, it is assumed that the highest reality is in conformity with universality with concrete reality (Sahri, 2014, pp. 23 -25).

It is important to note that the factual hierarchy above is not interpreted as subordinate to one another but is related more to the quality of certainty. If the legal propositions constructed by judges in solving religious and humanitarian problems have dialogued

between particular propositions such as physical and psychological punishment in the *nusyuz* case with the universal proposition of equality of rights and obligations, the quality of legal certainty can reach an absolute degree because it has gone through a perfect induction process (*istriqra' al-tamm*) and vice versa.

Multidimensionality is one crucial contribution of *istiqra al-ma'nāwī* to build judicial reasoning with multicultural dimensions in Indonesia. It can be used as an instrument to mediate tensions between universal legal propositions (equality of women in the public sphere) and particular legal propositions *(nusyūz)*. In this case, Jasser Auda offers two exciting readings of the theory of *maqāṣid al-syarī'ah* which is a new actualization of Ash-syatibī's thinking. Auda to mediate these tensions requires two main approaches: *First*, an approach closely related to the concept; *Second*, an approach closely related to the dimension of time or history (Auda, 2008, p. 253).

Combining *istiqra'* Al-syatibī's reasoning with Jasser Auda's system theory, he introduces six premise features, especially to actualize the rules of *Kulliyyat al-Khams; hifdz al-din, hifdz al-aql, hifdz al-nasl, hifdz al-irdh* and *hifdz al-maal*. Combining system theory with *istiqra' al-ma'nāwī* Auda views the meaning of these rules as not being able to describe literacy and education level, political and economic participation, as a translation of the legal proposition of universality (equality) towards women empowerment. This is called inclusion in applying legal propositions with factual identity, meaning that *nusyūz* does not stand alone as a particular legal norm. Physical and psychological punishment for wives in an unbalanced social structure, such as inadequate literacy skills and unequal economic and education participation, is a form of subordination as opposed to *Kulliyyat al-Khams*. Second, applying fiqh without considering historical aspects and society's social structure is a judicial reasoning model that reduces legal certainty only to literal legal certainty and not moral legal certainty. It also focuses more on multidimensionality. In addition, the values upheld are more black-and-white, deconstructive than traditional in reconstructive, and causality rather than teleologically oriented (Auda, 2008, pp. 180-191).

Auda's idea that integrates systems theory with *istiqra' al-ma'nāwī* in the formation of premise propositions in the multicultural-based judicial reasoning structure can be further explained through six main features, namely: Cognition (*al-Idrakiyah*), Wholenessal (*al-*

Kulliyah), Openness (*al-Infitāhiyah*), interrelated-hierarchy (*al-Harakiriyah al-Mu'tamadah Tabaduliyah*), Multidimensionality (*Ta'addud al-Ab'ad*), and Purposefulness (*al-Maqasidiyah*) (Auda, 2008, pp. 45-48).

First, cognition is a process in which all constructions of fiqh premises must be tested for validity. Such as equalizing ijma 'with the primary source of law (*Al-Qur'an* and *As-Sunnah*). According to Auda, *ijma'* is nothing but a consultation mechanism or multiple-participant decision-making, so it must be placed as mental cognition, which is likely to be retested for validity (Auda, 2008, p. 93).

In line with this, Alī al-Subkī also revealed that fiqh has a predictive side (*zhanny*) different from belief (*'ilm*). Auda uses this *zhanny* side of fiqh as the basis for re-examining the ontological features of all fiqh terms related to *nusyūz*, as the case analyzed in this paper (al-Subkī, 1983, p. 39). Auda is criticizing not only the classical *maqāṣid* concept but also the construction of fiqh terms which rely heavily on the deductive logic of fiqh books rather than the primary resources.

Therefore, to resolve the *nusyūz* dispute, the judge first compiles the major premise in two verses of the Qur'an, namely Surah an-Nisa: 34 and 128. From these two verses, the concept of the major premise of *nusyūz* is not only interpreted as a mere negative action of the wife but the actions of both parties, namely the husband and wife relationship that weakens the marriage bond, even the indifference shown by the husband. If the major premise is that the husband has the right to discipline his wife because of *nusyūz*, then the major universality premise is that husband and wife have the same right and authority to take disciplinary action against behavior that can injure the marriage bond. Therefore, the judge must find out which of the two parties did nusyūz first because every fact is intertwined and produces reactions to each other.

In addition to applying to both parties, the discipline of *nusyūz* behavior above is also hierarchically subject to the goal of universal law, namely the reintegration of the marriage bond, meaning that the discipline must be seen for its proportionality and suitability, whether the degree of discipline is directly proportional to the strengthening of the marriage bond if not then physical punishment. This must be seen as subordination to one party; even in specific escalations, it can become *al-jarīmah* (crime). In this context,

multicultural-based judicial reasoning is reasoning whose central premise is formed from the extraction and testing of many particular premises so that one universal premise will be extracted automatically from the process.

Second, through the rules of comprehensiveness/wholeness (*al-Kulliyah*), the construction of multicultural-based judicial reasoning expands *maqāṣid al-syari'ah,* which has an integrative pattern between individuals (particular) and collective (universal) legal interests so it can be accepted by people with multi-ethnic identities. Auda calls it *maqāṣid 'alamiyah*, such as justice and equality. Comprehensiveness is intended to link the idea of *maqāṣid* with human nature, giving birth to the value of human rights that must be respected by all parties (Auda, 2008, p. 55).

Auda's conception above shows that the major premise of judicial reasoning is universal utilitarianism because it is non-egocentric, non-hedonistic and rule-based or not action-based (El-Mesawi, 2020, pp. 263–295). The basic assumption of the legal premise that we want to build is realistic as well as normative utilitarianism because from this perspective, human biological needs not only legitimize their fulfillment but also sublimate them in the form of worship and gratitude to God. This legal premise of utilitarianism requires a non-reductionist and exclusive legal premise because the material and non-material (spiritual) dimensions need each other (El-Mesawi, 2020, pp. 263–295).

Therefore, in the context of the settlement of *nusyuz,* reconciliation to return to marriage commitments is a legal premise at the highest hierarchy as regulated by the Qur'an Surah an-Nisa': 128 for at least two reasons. *First*, reconciliation has a strong relationship with social reintegration. *Second*, reconciliation is the primary law source that reflects prosperity and the highest peak of obedience. Discipline in Surah an-Nisa': 34, both psychological and physical, is a particular form of punishment that can be carried out in the condition that all processes and stages have been passed and are needed to strengthen the marriage bond. At first glance, it seems paradoxical, for how could corporal punishment be affirmed as a way to re-establish marriage bonds. Therefore, physical punishment is not the best choice because it is emphasized in Surah an-Nisa': 128 that peace is far more secure in guaranteeing the reintegration of the tenuous marriage bond.

Third, openness (*al-Infitāhiyah*) means that if the major premise in traditional fiqh

reasoning is structured according to deontic logic, it is commonly known as "*māla yatimmu alwājib illā bihi fahuwa wājib*". This reasoning is trapped in binary classification, so it tends to be monolithic in responding to a human problem (Auda, 2008, p. 51). Thus, it can be said that without openness, deontic logic will only give birth to binary dynamics such as revolving around the law of positive coercion versus negative restriction and objective coercion versus subjective coercion. For this reason, judicial reasoning needs to present what Amin Abdullah mentioned as a modification of the Al-syatibī concept of philosophical, subjective, objective, and intersubjective optics. The subjective approach is generally based on *ulūm ad-dīn*, while the objective approach is based on the social sciences. The combination of the two, in this article, is called an intersubjective religious pattern. One of the peculiarities of this latter pattern is its sensitivity to the presence of other groups and its ability to accommodate these other groups as holders of rights that must also be guaranteed and respected (Abdullah, 2020, pp. 63–101).

Fourth, interrelated hierarchy (*al-Harakiriyah al-Mu'tamadah Tabaduliyan)*. In the linkage feature as something needed. According to Auda, the classification made by Cognitive science consists of two alternative theories about human categorization: categories based on feature similarity and categories based on mental concepts. One of the implications of the interrelated hierarchy feature is the classification of *daruriyyat, hajiyyat* and *tahsiniyyat*, which are equally important without distinction. Al-Syatibi is categorized as a follower of feature similarity, so the hierarchy is rigid. As the negative impact, *hajiyyat* and *tahsiniyyat* are subordinated to the *daruriyyat* element. For example, the Interrelated hierarchy features, namely prayer (*daruriyyat*), sports (*hajiyyat*) and recreation (*tahsiniyyat*) are considered equally important (Auda, 2008, pp.49-51).

By adopting the above concept, the judge solves legal problems by finding the identity of the legal anchor (*'llat al-ḥukm*). In Al-syatibi conception, legal basis are processed in such a way as to arrive at the extraction of legal basis known as *taḥqīq al-manāṭ*. The *taḥqīq al-manāṭ* must be clear (*ẓhāhir*), measurable (*munḍhabiṭ*) according to ratio measures (*ma'qūl*) and sensory measurements (*maḥsūs*) (Al-syatibī, vol.2 p. 223).

To extract particular premises as legal anchors to the structure of facts, Al-syatibī introduces the reasoning framework known in *uṣhūl al-fiqh* reasoning as *taḥqīq al-manāṭ*, with

several steps. First, determining legal anchors based on *asbāb al-nuzūl* and *asbāb al-wūrūd*, both of which are not only indicators that determine legal orientation but also determine the extent to which a norm can be applied to concrete events. Second, knowledge of *asbāb al-nuzūl* and *asbāb al-wūrūd* is further compiled based on the conceptual relation between norms and legal objectives. Third, the extraction process is carried out according to the rules of *al-sibrū wa al-taqsīm* by determining the legal basis ('*llat al-ḥukm*) according to the suitability of the legal reasoning and then negating the inappropriate legal anchors (Al-syatibī, vol.2 p. 136).

Fifth, multidimensionality (*ta'addud al-Ab'ad*) This feature wants all things to be viewed from various dimensions, not just one dimension. Through the multidimensionality feature, *ta'āruḍh al-ādillah* can be resolved because it prioritizes reconciliation of legal instructions (*jam'u baina al-adillah*) without the need to precede *Naskh* (abolition) or even negate texts as a method of resolving conflicts between propositions. Another reason is that each argument has its own purpose, so it is impossible to contradict the statements (Auda, 2008, pp. 49-51). Actualizing *jam'u baina al-adillah* is considered adequate to construct a multicultural-based judicial reasoning structure because the major premise structure consists of textual sources (*al-manqūl*), *maslahah mursalah* (social science) and *urf* (through *al-istiḥsān*).

Sixth, Purposefulness (*al-Maqasidiyah*) as the actualization of all the previous features. The five features are designed to support the purposefulness feature in the Islamic legal system, because this feature is the peak for the thinking system for judicial reasoning. This feature is a common link because it tests the relevance of the premises born from the five previous features. The suitability and validity of the premise are no longer measured based on deductive but inductive logic, as offered by *istiqra' al-ma'nāwī* because the application of the law is estimated based on the achievement level of its objectives (Auda, 2008, p.55).

Al-Syatibi places purposefulness as the last and decisive feature because this feature not only serves as the basis for rationality, validity, and authenticity of legal norms so that it remains in line with time and place and can adapt to different circumstances, but more than that, this feature also shows its basis continuity, stability, and universality (Jaghem, 1999, pp. 55-65).

The concept of intentionality has become one of the pillars of multicultural-based judicial reasoning as an effort to bridge the emerging conflicts of idealism and materialism.

It also draws a common thread from several sources of customary law and relevant social conventions in realizing legal goals as the highest principle of legal certainty introduced by Al-Syatibi. Judicial reasoning developed in the west tends to fail to reach a compromise. Suppose the tension between *ahl al-hadith* and *ahl al-ra'y* defines the concept of *al-maqasidiyyah* as purely intellectual. In that case, the tension between irrational and rational natural laws in the treasury of western thought has a political dimension because it argues for the existence of the church as the sole interpreter of revelation, so it becomes difficult to produce a permanent meeting point (Mun'im, 2019, pp. 1315–1323).

In terms of methodology, natural law developed in the west views that the source of law is God, located in the revealed text. The purpose of law must be accepted as a priori knowledge because it is dogmatic that cannot be denied. Law is sought by interpreting what is revealed (Mun'im, 2019, pp. 1315–1323). While the conception of purposefulness as an element of judicial reasoning in *istiqra' al-ma'nāwī* can compromise some particular premises originating from various legal sources as long as the ontological assumptions can be drawn to apply the law.

The conception of purposefulness shows the functionalization of Islamic law, because the emphasis on flexibility and legal changes is not solely aimed at apologetic arguments but its functionality. Therefore, this conception has an a posteriori dimension, so it does not reduce value disputes arising from diverse cultural identities (March, 2015, pp. 45–81).

Conclusion

Multicultural-based judicial legal reasoning integrates three fundamental values of truth: logical, aesthetic, and ethical. *Istiqra al-ma'nāwī* offers an epistemological structure compatible with the three fundamental values of truth compared to critical philosophy's epistemological structure. Through *istiqra al-ma'nāwī*, the mode of judicial reasoning is operationally carried out through three stages: *First*, the *konstatir* stage, where the judge uses social reintegration as an optic to see whether there is a disturbing social risk, such as identity superiority motives. *Second*, separating the original from derivative legal goals. The original legal goal is to protect marginalized communities' rights and equality, while the derivative legal goal is access to welfare and the rights of impunity. *Third*, the *konstituir* stage, by considering the significance of social control outside the legal aspect.

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