

De Jure: Jurnal Hukum dan Syar'iah

Vol. 15, No. 1, 2023, p. 1-20

ISSN (Print): 2085-1618, ISSN (Online): 2528-1658

DOI: <http://dx.doi.org/10.18860/j-fsh.v15i1.18442>

Available online at <http://ejournal.uin-malang.ac.id/index.php/syariah>

***Istihsān* Method and Its Relevance to Islamic Law Reform: Content Analysis of Fatwa of Majelis Ulama Indonesia on Corneal Transplant**

Johari

Universitas Islam Negeri Sultan Syarif Kasim, Indonesia

196403201991021001@uin-suska.ac.id

Maghfirah

Universitas Islam Negeri Sultan Syarif Kasim, Indonesia

maghfirah@uin-suska.ac.id

Ahmad Maulidizen

STIMIK ESQ, Indonesia

ahmad.maulidizen@esqbs.ac.id

Habiburrahman Rizapoor

Badakhshan University, Afghanistan

habibraghi@gmail.com

Received: 2022-12-08	Revised: 2023-06-11	Published: 2023-07-04
----------------------	---------------------	-----------------------

Abstract:

The progress of science in the field of medicine has brought immense advantages to human existence. Nonetheless, these advancements have both positive and negative consequences for humanity. They also give rise to deliberation and disagreement, particularly concerning Islamic jurisprudence, as not all medical technological breakthroughs can be embraced without reservation in society. This study is a descriptive, analytic, and comparative literature review. The *ushuliy* approach is employed to examine the methodology utilized by the two organizations in determining their stance on human corneal transplants. The primary source material used in this research is the fatwa issued by Majelis Ulama Indonesia in 2009 regarding Corneal Transplants. The data for this research was collected through a documentation method, which involves gathering information from various articles and books. The collected data was then analyzed using content analysis, which involves a descriptive

and scientific examination of the key messages. The findings of this study reveal that Majelis Ulama Indonesia holds the view that corneal transplants can be performed on individuals in need, with the intention of *Tabarru'* (acts of charity), if there are no alternative medical options available, based on the principle of *Maslahah* (benefit or public interest).

Keywords: *istihsān; islamic Law; Majelis Ulama Indonesia.*

Introduction

One of the challenges faced by society during the process of modernization is finding a balance between embracing rapid social changes and maintaining their religious and cultural values.¹ On one hand, individuals aspire to be part of the modernization movement, but they also desire to preserve their unique identity characterized by a diverse set of values.² This transition often leads to attempts to abandon old values perceived as obstacles to modernization. However, there is a struggle to establish new values that can serve as a guide for understanding and adopting the necessary perspectives and attitudes. As a result, this imbalance can lead to a distortion of individual personalities and create instability in social life.³ As a result, the Prophet Muḥammad endorsed Muadz Bin Jabal to employ independent reasoning (*Ijtihad*) in finding solutions for issues not explicitly addressed in the Qur'an and Ḥadīth. This led to the emergence of a legal reasoning method known as *Istihsān* in *ushul fiqh*. *Istihsān* is a method of deducing legal rulings (*Istinbāt Hukm*) that prioritizes the objectives of Islamic law (*Maqāṣid al-Sharī'a*).⁴ Nevertheless, its acceptance remains a subject of debate among jurists, with some rejecting this method as a valid proof in Islamic law, including the Shāfi'ī school, while others (Ḥanafī, Mālikī, and some Ḥanbalī scholars) continue to uphold it by recognizing its

¹ The Qur'an, as a divine source of Islamic teachings, provides guidance for humanity in navigating life in this world and the hereafter. It encompasses all aspects of human existence. However, the Qur'an does not present its discussions in a systematic and detailed manner, leaving room for interpretation as new questions and challenges arise over time. Islamic scholars engage in *ijtihād*, a process of independent reasoning, to address these emerging issues since there are no further revelations after the death of Prophet Muhammad. The results of their *ijtihād* are subject to individual judgment, making it difficult to ascertain their accuracy. Therefore, *Ijmā'*, or consensus among scholars, is sought as a collective agreement that carries greater weight than individual opinions in resolving matters. See Hamka Haq, *Dialog Pemikiran Ujung Pandang*, 1 ed. (Ujung Pandang: Yayasan Ahkam, 1997), 104.; Iskandar Usman, *Istihsān dan Pembaruan Hukum Islam* (Jakarta: PT. Raja Grafindo Persada, 1994), 5.

² Muhammad Tholhah Hasan, *Prospek Islam Dalam Menghadapi Tantangan Zaman* (Jakarta: Lantabora, 2005), xvii.

³ Islam, as a religion, is considered comprehensive and adaptable to various circumstances, regardless of time and place. It is believed to offer solutions to the challenges faced by individuals across different eras. This perspective emphasizes the importance of Muslims demonstrating and practicing Islamic values in their daily lives while respecting the boundaries of their faith. It discourages adopting extreme or irrational attitudes that marginalize cultural heritage or lead to wastefulness. Instead, Islam encourages a balanced approach that integrates religious teachings with the realities of life, allowing individuals to navigate their social and cultural environments while upholding their Islamic principles.

⁴ Mohammad Hashim Kamali, "Istihsān and the Renewal of Islamic Law," *Islamic Studies* 43, no. 4 (2004): 561–81.



benefits in addressing various contemporary issues.⁵ Due to differences in interpreting *ushul fiqh* (principles of Islamic jurisprudence), various schools of thought have emerged within Islamic law as a result of Mujtahids' divergent approaches to establishing Islamic rulings. This diversity is influenced by several factors, and some scholars have opted for a middle ground, seeking a compromise between opposing viewpoints. Their proposal suggests accepting *Istihsān* when it is rooted in Islamic legal sources while rejecting *Istihsān* that lacks supporting evidence. The disagreement over *Istihsān* has implications for the legal rulings adopted.⁶

In Indonesia, the regulation of organ transplantation is governed by Law Number 36 of 2009 on health.⁷ The implementation of this law is further detailed in Government Regulation No. 18 of 1981, which covers clinical and anatomical post-mortem procedures, as well as organ or tissue transplantation from the human body. It is worth noting that the government regulation was issued prior to the law, establishing a connection between the two regulations. According to Article 1, Paragraph 5 of Government Regulation No. 18 of 1981, “*Transplantation refers to a series of medical procedures involving the transfer of tools and/or human body tissues from one’s own body or another person’s body for the purpose of treatment, to replace dysfunctional tools and/or body tissues. From the perspective of organ transplantation’s functions and benefits, it can be categorized as a life-saving procedure*”. The term “*life-saving*” implies that the transplantation procedure aims to prolong an individual's survival in the face of a specific illness.⁸ The primary objective of organ transplantation is to alleviate suffering and enhance the patient’s quality of life. However, it also raises various ethical and legal concerns, as not all advancements in health sciences are universally accepted in society.⁹

Organs or tissues for transplantation can be obtained from either living donors or recently deceased individuals, with death defined as brain stem death.¹⁰ Organs such as skin, kidneys, bone marrow, and blood (for transfusion) can be sourced from living donors. Organs available from deceased individuals include the heart, liver, kidneys, cornea, pancreas, lungs, and brain cells. All endeavors related to organ

⁵ The science of *Uṣūl al-fiqh* is one of the essential tools of knowledge that Islamic jurists who wish to perform *istinbāt ḥukm* must have, in the sense of trying to find out what Allah means in the Qur’an. Al-Syātībī, *Al-Muwafaqāt fī Uṣūl al-Syarī’ah* (Beirut: Dār al-Ma’tifat, t.t.), 375.

⁶ Mohammad Fadel, “‘Istihsān Is Nine-Tenths of the Law’: The Puzzling Relationship of Uṣūl to Furū’ in the Mālikī Madhhab,” dalam *Studies in Islamic Legal Theory* (Brill, 2002), 161–76, https://doi.org/10.1163/9789047400851_010.

⁷ Hamdila Hasran dkk., “Health Law in Islam (Study Of Law About Organ Transplant Accoring to Fiqh),” *MILRev : Metro Islamic Law Review* 1, no. 1 (26 Desember 2022): 147–63, <https://doi.org/10.32332/milrev.v1i1.6196>.

⁸ Harriet Rosanne Etheredge, “Assessing Global Organ Donation Policies: Opt-In vs Opt-Out,” *Risk Management and Healthcare Policy* 14 (13 Mei 2021): 1985–98, <https://doi.org/10.2147/RMHP.S270234>.

⁹ Aasim I. Padela dan Jasser Auda, “The Moral Status of Organ Donation and Transplantation Within Islamic Law: The Fiqh Council of North America’s Position,” *Transplantation Direct* 6, no. 3 (18 Februari 2020): e536, <https://doi.org/10.1097/TXD.0000000000000980>.

¹⁰ Maeghan Toews dkk., “Legislation and Policy Recommendations on Organ and Tissue Donation and Transplantation From an International Consensus Forum,” *Transplantation Direct* 9, no. 5 (Mei 2023): e1395, <https://doi.org/10.1097/TXD.0000000000001395>.

transplantation require careful scrutiny from both legal and medical perspectives.¹¹ Grafting refers to the transplantation of organs with healthy vitality to replace malfunctioning and unhealthy organs, for which ordinary medical procedures do not offer hope for the client's survival.¹² In human-to-human transplantation (Allotransplantation),¹³ most cases of rejection can be mitigated through recipient-donor compatibility adjustments and the administration of immunosuppressive drugs. Xenotransplantation,¹⁴ on the other hand, poses a higher risk of rejection due to the greater differences between the donor and recipient. The issue of organ donation is a new matter that was not addressed by classical Islamic law experts in terms of its legal rulings. It arises from scientific advancements in the medical field, where modern doctors can achieve positive outcomes in assisting individuals who have lost limbs or whose organs are damaged due to accidents or congenital imperfections. These advancements enable the restoration of proper organ function. This progress has prompted individuals to seek various forms of treatment in pursuit of a healthy life, including modern medicine, which has shown promising results despite ongoing debates surrounding its legal status in Islam.¹⁵

Various factors can lead to a decrease in human vision, resulting in blindness. These factors include accidents and untreated eye diseases. Some cases of blindness can be reversed, while others are irreversible. If blindness is caused by retinal or optic nerve disorders, it is not possible to restore normal vision. However, certain types of blindness, such as cataracts or damage to the eye's lymphatic membrane, can be

¹¹ Mohammed Ali Al-Bar dan Hassan Chamsi-Pasha, "Organ Transplantation," dalam *Contemporary Bioethics: Islamic Perspective [Internet]* (Springer, 2015), https://doi.org/10.1007/978-3-319-18428-9_13.

¹² There are three types of organ donors; (1) Donors who are in a healthy state of life. This type requires careful selection through comprehensive medical examinations for both the donor and the recipient. This is done to prevent rejection by the recipient's body and minimize risks to the donor, (2) Donors who are in a coma or are at the verge of death. Organ retrieval from this type of donor necessitates life-supporting equipment, such as specialized breathing apparatus. The life-supporting devices are removed after the completion of organ harvesting, and (3) Deceased donors. This type is considered ideal, as it only requires waiting for the donor to be declared medically and legally dead.

¹³ Christina L. Kaufman dkk., "Current Status of Vascularized Composite Allotransplantation," *The American Surgeon* 85, no. 6 (1 Juni 2019): 631–37.

¹⁴ Megan Sykes dan David H. Sachs, "Progress in Xenotransplantation: Overcoming Immune Barriers," *Nature Reviews Nephrology* 18, no. 12 (Desember 2022): 745–61, <https://doi.org/10.1038/s41581-022-00624-6>.

¹⁵ In Islam, there are specific laws pertaining to organ transplantation and organ donors based on the condition of the donor. These laws can be summarized as follows: First, organ transplantation from a living donor. According to Islamic principles, it is permissible for an individual to donate their organs during their lifetime to those in need. Examples of donated organs under such a condition include kidneys. However, it is not permissible to donate a vital organ that could result in the donor's death, such as the heart, liver, or brain. This ruling is based on the principles outlined in the Quran, and, second, organ transplantation from a deceased person. Before utilizing organs from a deceased person, it is necessary to establish the legal clarity regarding organ donation. This involves ensuring that the donor explicitly expressed their intention to donate their organs after their death. This can be achieved through means such as a will, signing a donor card, or other appropriate methods. It is important to note that the specific legal rulings and requirements may vary depending on the interpretations of Islamic scholars and the specific context in which organ transplantation is being considered. Consulting with qualified scholars or authorities in Islamic jurisprudence is recommended to obtain accurate and detailed guidance in accordance with Islamic principles.



treated through surgery, including corneal transplantation. Majelis Ulama Indonesia (henceforth referred to as MUI) plays an important role in providing legal perspectives on prevalent societal phenomena, including the laws related to human eye corneal transplants. The MUI has addressed this issue through its fatwa commission during the 3rd Indonesian Fatwa Commission Ijtima' held in 2009 in Padang Panjang, West Sumatra. The fatwa states that performing corneal transplants on individuals in need is permissible if it is deemed urgent and there are no alternative medical treatments available.

The objectives of this study are twofold: (1) To elucidate the perspectives of the MUI regarding the legal aspects of corneal transplants. This involves examining the Council's stance on the permissibility or prohibition of corneal transplants according to Islamic law, and (2) To analyze the method of *istinbath* (deductive reasoning) employed by the MUI in formulating its position on the legality of corneal transplants. This entails exploring the Council's approach to deriving legal rulings from Islamic sources, such as the Qur'an, Hadith (Prophetic traditions), and scholarly consensus. The study aims to provide a comprehensive understanding of the MUI's views and the methodology it employs in determining the legal status of corneal transplants within the framework of Islamic law.

Method

This study employs a library research method with a descriptive analysis approach that incorporates a philosophical perspective, drawing on the research findings of scholars and other notable figures. The data collection process involves gathering information from diverse articles and books through the documentation method. Subsequently, the collected data is subjected to content analysis, which involves conducting a descriptive and scientific examination of the key messages contained within the data. This analytical approach aims to derive meaningful insights and interpretations from the gathered information.

Results and Discussion

Istihsān and Its Types

Istihsān, derived from the root word اسْتَحْسَنَ (*istahsana*), etymologically means considering something good or thinking that something is right.¹⁶ Abū Ḥanīfah adhered to the linguistic meaning of *Istihsān*, which is اسْتَحْسِنُ (*astahsin*) implying thinking well or favorably.¹⁷ Another meaning of *Istihsān* is to choose or follow something better or superior based on the order to do so.¹⁸ From the etymological understanding, it illustrates that when faced with two equally good options, one is inclined to choose the other because it is deemed better for practice. Regarding the terminological meaning of *Istihsān*, several definitions have been formulated by some experts, including: (1) Ibn Subkī: *Istihsān* involves shifting from the use of one

¹⁶ Badran Abū Al-'Ainaini, *Uṣūl al-fqh al-Islāmī* (Mesir: Mu'assasah Syabab al-Iskandariyah, t.t.), 263.; Mahmud Yunus, *Kamus Bahasa Arab-Indonesia*, 8 ed. (Jakarta: PT. Hidakarya Agung, 1990), 102.

¹⁷ Muḥammad Abū Zahrah, *Imām Syāfi ʿ: Hayātuhu Wa'asruhu wa fikroh al-Arā'uh wa fiqhuhu*, ed. Abdul Syukur (Jakarta: Lentera, 2005), 402.

¹⁸ Amir Syarifuddin, *Ushul Fiqh*, 2 ed. (Jakarta: Logos, 1999), 305. According to al-Kurkhi al-Ḥanafī, *Istihsān* is the legal decision of a *Mujtahid* on a problem is inversely proportional to the law of other similar problems, rather than from a stronger side that demands a change from the original law. Muḥammad Abū Zahrah, *Uṣūl al-fiqh* (Cairo: Dār al-Fikr al-'Arabī, 2004), 238.

analogy (*Qiyās*) to a stronger analogy and resorting to customs based on benefits,¹⁹ (2) Al-Sarkhasī (Ḥanafiyah scholar): *Istihṣān* entails performing righteous deeds with *ijtihad* (independent reasoning) and public opinion in determining matters that Islam has left open. In cases where propositions contradict the apparent analogy, preconceived notions are initially preferred. However, upon a thorough examination, it is found that the propositions contradicting the analogy are stronger and should therefore be practiced,²⁰ and (3) Al-Syātibī (Mālikiyah scholar): *Istihṣān* is utilizing specific benefits as substitutes for general arguments.²¹

‘Umar Sulaymān ‘Abdullah al-Asyqar asserts that *Istihṣān* is the prioritization of one argument over another.²² Muḥammad al-Khuḍārī, a Ḥanafiyah scholar, refutes the notion that *Istihṣān* is merely an opinion without arguments or a personal desire. He argues that *Istihṣān* is an analogy set against other analogies, relying on strong arguments.²³ Al-Syātibī further emphasizes that the person using *Istihṣān* does not rely on personal feelings or desires but rather on the established meaning of sharia.²⁴ From the above definitions, it can be inferred that a *Mujtahid* (Islamic jurist) should determine the law based on the prevailing general argument. However, in certain circumstances, if the *Mujtahid* recognizes specific benefits, they may deviate from the general argument and consider those benefits as a basis for legislation.

The essence of *Istihṣān*, as put forward by scholars, can be summarized as follows: (1) prioritizing subtle analogies over apparent analogies when supported by arguments, (2) making exceptions to specific laws rather than general rules based on specific arguments, and (3) considering human welfare. It was with this purpose that Abū Ḥanīfah conceptualized *Istihṣān* as a method of *Ijtihād*. Therefore, *Istihṣān* is

¹⁹ According to Ibn Subkī, there was no debate about the first definition of *Istihṣān*, which states that the stronger of the two analogical deductions (*Qiyās*) should take precedence. However, the second definition has been rejected. The reason for this rejection is that if it can be proven that a custom is good and valid based on its conformity with the time of Prophet Muhammad or subsequent periods, without any rejection from reputable scholars or authorities, there are supporting arguments in the form of textual evidence (texts from the Quran or Hadith) and consensus (*Ijmā’*). In this form, custom must be practiced with certainty. Zahrah, *Uṣūl al-fiqh*, 240.

²⁰ Ahmad Maulidizen dan Asphia Sahida, “An-Nahyu: Concept and Implementation in Islamic Law Determination,” *Khatulistiwa: Journal of Islamic Studies* 9, no. 1 (2019): 123.

²¹ Abī Iṣḥāq Al-Syātibī, *Al-Muwafaqāt fī Uṣūl al-Syarī’ah* (Cairo, t.t.), 30.

²² ‘Umar Sulaymān ‘Abdullah Al-Asyqar, *Nazāriyāt fī Uṣūl al-fiqh*, 2 ed. (Cairo: Dār Al-Nafā’is, 2004), 248.

²³ Muḥammad Al-Khuḍārī, *Uṣūl al-fiqh* (Cairo: Dār al-Ḥadīth, 2003), 329.

²⁴ “Divergent perspectives on *Istihṣān* arguments result in varying legal determinations. Regarding zakat, scholars unanimously agree that fulfilling the zakat obligation requires the intention to set aside the appropriate amount for zakat. However, they hold different stances regarding the donation of entire property without the intention of zakat. The question arises whether the zakat obligation remains in effect or is nullified until one intends to give zakat. Those opposing *Istihṣān*, like Al-Shāfi’ī and certain Ḥanbalī scholars, argue that the obligation persists even if a person donates or gives away all their property without the specific intention of fulfilling zakat. According to their viewpoint, the individual remains obliged to pay zakat. Conversely, Abū Ḥanīfah and his adherents, who employ *Istihṣān*, contend that the zakat obligation is deemed fulfilled in such cases. They maintain the belief that when a person donates or gives away all their property without the intention of zakat, the obligation to pay zakat is no longer applicable. These differing opinions on the application of *Istihṣān* in relation to zakat highlight the contrasting interpretations among Islamic scholars regarding the consequences and conditions for fulfilling the zakat obligation”. Rachmat Syafe’i, *Ilmu Ushul Fiqh*, 1 ed. (Bandung: Pustaka Setia, 1999), 114.



closely linked to *Qiyās* and *Maṣlahah* (public interest) in the majority of applications although some scholars associate *Istiḥsān* with other sources of law.²⁵ *Istiḥsān* can be categorized into different forms based on two factors: *First*, based on the strength of influence from the source of law, the influence of *Istiḥsān* is compared to the influence of *Qiyās* (analogy). *Qiyās* and *Istiḥsān* both have two subcategories. *Qiyās* is divided into *Qiyās jālī*, which has a weaker influence when compared to arguments against it, and *Qiyās Khāfī*, which carries a stronger influence on the law. *Istiḥsān* is divided into *Istiḥsān* with strong influence (*Khāfī*) and *Istiḥsān* with weak influence (*zāhir*). The prioritization between *Qiyās* and *Istiḥsān* is based on the strength of their influence, not on their clarity (*zāhir*) or obscurity (*Khāfī*). *Qiyās* takes precedence over *Istiḥsān* when its influence is stronger, and vice versa. This occurs when there is a conflict (*Ta'arud*) between *Istiḥsān* and *Qiyās*.²⁶

An example frequently cited by scholars in this context is the issue of the remaining water from carnivorous birds. Since carnivorous birds feed on carrion, their saliva is considered impure, similar to other wild animals such as lions and tigers. By applying *Qiyās*, the ruling on the remaining water is determined by the prohibition of consuming the meat of these animals. The impurity of the remaining water is attributed to the contaminated saliva. However, through the method of *Istiḥsān*, it indicates that the remaining water from carnivorous birds is pure, similar to the remaining water in a human's glass, which is also considered pure because the flesh of both the bird and the human is prohibited for consumption. In this case, *Istiḥsān* takes precedence over *Qiyās* due to its weak influence on *Qiyās*. The possibility of mixing the impure saliva of the carnivorous bird with water is not applicable, as is the case with other wild animals. Since meat-eating birds drink water with their beaks without mixing saliva, the remaining water does not become impure when it comes into contact with their beaks, similar to the remaining water in a human's glass. In this scenario, there is no underlying cause (*'illah*) to consider it impure.²⁷ This example illustrates that the influence of *Qiyās Khāfī* is stronger than that of *Qiyās Jālī*.

Another example pertains to the prostration of recitation in prayer and whether it can be substituted with the *Rukū'* (bowing). If *Qiyās* is applied, the prostration of recitation can be replaced with *Rukū'* because both actions serve the same purpose: to demonstrate reverence to God, the humility of the servant, and to avoid arrogance. However, according to the *Istiḥsān* method, the prostration of recitation is considered similar to other prostrations in prayer, which are essential pillars of the prayer. If other prostrations in worship cannot be substituted with *Rukū'*, the same applies to the prostration of recitation. Nevertheless, this method has a weakness (*Fasād*) despite its seemingly weak influence (*Khāfī*), which is equating two different actions. *Rukū'* and *sujūd* (prostration) in prayer are distinct actions performed with different intentions, and performing one in place of the other would render the prayer invalid.

²⁵ Muhtar Yahya dan Fatchurrahman, *Dasar-Dasar Pembinaan Hukum Fiqh Islami* (Bandung: PT. Al-Ma'arif, 1986), 100.

²⁶ Wahbah Al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī* (Damaskus: Dār al-Fikr, 1986), 739.; Ahmad Maulidizen dan Eka Pratiwi, "The Concept of Qat'I Dalalah: Definition, Laws and Perceived Conflict," *Khatulistiwa: Journal of Islamic Studies* 10, no. 1 (2020): 120.

²⁷ Al-Taftazanī, *Syarḥ al-Tawḥīd 'alā Tawḍīh* (Maṭba'ah Syubayh, 1958), 193.

This differs from the prostration of recitation, which primarily aims to glorify Allah, and this objective can still be achieved through *Rukū'*. Therefore, *Qiyās* takes precedence over *Istihṣān* in this case.²⁸

Second, Based on Backing Propositions. 'Abd al-Karīm Zaydān categorizes *Istihṣān* based on the foundation of its proposition, dividing it into several types; *Istihṣān* based on nash (al-Qur'an or Ḥadīth). In this case, nash refers to the Qur'an or Ḥadīth. This form of *Istihṣān* involves deviating from the ruling derived through *Qiyās* and instead following a different direction indicated by the Qur'an or Ḥadīth. For example, *Istihṣān* based on the Qur'an can be seen in the laws concerning wills. *Qiyās* does not allow for choices because the intention is to transfer ownership from the testator to the beneficiaries upon the testator's death. However, this rule is overridden (*Istihṣān*) by the verse in Surah al-Nisā' which states that male heirs receive a share equal to that of two female heirs. In cases where there are only daughters, two or more, they are entitled to two-thirds of the estate. If there is only one daughter, she receives half. The share for parents is one-sixth of the estate if the deceased left behind children. If there are no children and only the parents inherit, the mother receives one-third. If there are siblings, the mother's share is reduced to one-sixth after settling any bequests or debts. The verse emphasizes that one's parents or children may bring the most benefit, and these shares are obligations imposed by Allah. Another example from the Qur'an pertains to a situation where someone says, "I swear to donate my property" or "my property is for charity". According to *Qiyās*, the person would be required to donate their entire property. However, *Istihṣān* suggests that only the zakat on the property should be given.²⁹

On the other hand, *Istihṣān* based on Ḥadīth can be exemplified by the ruling on the transaction known as al-salam, which involves selling a specific item that is described but does not physically exist at the time of the contract, with the payment made in advance. This differs from the general trading model prescribed by Sharia, which requires the presence of goods during the contract. However, this particular buying and selling arrangement is allowed for specific fruits for one or two years. The supporting Ḥadīth states: "Whoever engages in the sale of dates in advance, then let it be done with clear measurements and scales, and for a specified period". In both examples, *Istihṣān* is applied based on the Qur'an or Ḥadīth, deviating from the ruling derived through *Qiyās* in favor of alternative directions provided by these sources.³⁰

In *Istihṣān* based on consensus (*Ijmā'*), *Istihṣān* relies on the consensus of scholars in deciding a ruling that deviates from the original principle (*Ijmā' ṣāriḥ*) or to acknowledge a prevalent practice in society without negating it (*Ijmā' sukūṭī*). An example is the consensus among scholars regarding the validity of the *istisnā'* contract. According to *Qiyās*, this type of contract would be invalid as the object of the contract does not exist at the time of contracting. However, *Istihṣān* allows for the

²⁸ Ahmad Maulidizen, "The Urgency of Islamic Law Sources Knowledge Masadir al-Ahkam al-Mukhtalaf fiha: Istisab, Sadd al-Dzariah and Qaul al-Sahabi," *Jurnal Hukum Islam* 18, no. 2 (2018): 53.

²⁹ Abdul Haris Muchtar, Ahmad Maulidizen, dan Amriatus Safaah, "Am and Khas Linguistic Method Concept and Implementation in Islamic Law Determination," *Al Mashalih-Journal Of Islamic Law* 3, no. 1 (2022): 1–26.

³⁰ 'Abd al-Karīm Zaydān, *Al-Wajīz fī Uṣūl al-fiqh* (Beirut: Penerbit Mu'assasah Risalah, 2002), 230.



Istisnā' contract to be valid because it has been practiced in society without opposition from scholars. This consensus (*Ijmā'*) takes precedence over *Qiyās* due to the societal need and to alleviate difficulties. For instance, collecting fees from individuals using public toilets can be considered permissible based on *Istihṣān*. According to the general rule, it is not allowed to charge such fees as it is impossible to determine how long each user has spent in the toilet. However, *Istihṣān* permits the collection of fees by the attendant because it helps alleviate people's difficulties, has become a customary practice, and does not face opposition from anyone, thus establishing a consensus (*Ijmā'*).

In terms of *Istihṣān* based on custom (*'Urf*), Some scholars allow the endowment (*Waqf*) of movable objects, such as books or cars, contrary to the general principle that restricts *Waqf* to immovable properties like land or buildings. This allowance is based on the prevailing custom (*'Urf*) in a particular society or environment; (4) *Istihṣān based on necessity (Dharūrah)* occurs when a scholar departs from *Qiyās* in order to achieve the benefit or prevent harm in emergencies. For example, when dealing with the purification of a contaminated well or pond, *Qiyās* does not provide a solution for making the water pure by removing a portion or all of it. Disposing of a certain amount does not render the remaining water pure while disposing of all the water will not make the newly filled water pure due to the impurities remaining at the bottom or on the walls of the well. In this difficult scenario, scholars deviate from *Qiyās* and use *Istihṣān* to purify the well or pond by disposing of the water;³¹ (5) *Istihṣān based on concealed analogy (Qiyās Khāfi)* occurs when there are two kinds of *Qiyās* in the problem at hand, namely, *Qiyās Khāfi* which has a strong influence with *Qiyās Jālī*, which has a weak effect, then the *Mujtahid* chooses to move from *Qiyās Jālī* to *Qiyās Khāfi*. An example other than those previously stated regarding carnivorous animal drinks remains about *Waqf* for agricultural land. There are two types of *Qiyās* that can apply in the *Waqf* contract for agricultural land. The first, *Qiyās Jālī*, is to *Waqf* by buying and selling, which makes the endowed goods no longer the owner's property. In this case, the right to drink, the right to flow water, and the right to make a path do not include those endowed unless pledged by *Wāqif* (the person who gives).

The second, *Qiyās Khāfi*, is to *Waqf* by renting a property in the sense of the ability to use *'Ain*, not own it, so it is also permissible to use *Waqf* property such as drinking water from existing water sources, making it a means to flow water and so on without any pledge from *Wāqif*; (6) *Istihṣān* that refers to *Maṣlahah* is based on benefit. This case can be related to, for example, workers' responsibility for damage to the products they make. The general rule states that workers in a factory are not responsible for the damage to the factory's commodities except for their negligence and deliberation. They are only workers who receive wages. However, for the benefit of maintaining other people's property from the irresponsibility of the workers and the difficulty of trusting some factory workers in product safety issues, the Ḥanafiyah uses *Istihṣān* by stating that workers must be responsible for the damage to every product of the factory, whether it is done intentionally or not.³² Another example is the authority of doctors to see a woman's genitals in treatment. According to the

³¹ Abū al-Muẓaffar Al-Sam'anī, *Qawaḥī' al-Adillah fī al-Uṣūl* (Beirut: Dār al- Kutub al-Ilmiyyah, t.t.), 343.

³² Nasrun Haroen, *Ushul Fiqh I* (Ciputat: Logos Wacana Ilmu, 1997), 107.

general rule (*Qiyās*), a person is prohibited from seeing other people's genitals. However, under certain circumstances, a person has to take off his clothes to be diagnosed with a disease, so for the benefit of that person, according to *Istih̄sān* rules, the doctor may see the genitals of the woman for medical reasons.³³

The Position of *Istih̄sān* as a Method of Islamic Law Determination

The essence of *Istih̄sān* is a subject of disagreement among scholars regarding its validity as the primary argument in legal decision-making. Ḥanafī scholars, along with some Mālikī and Ḥanbalī scholars, defend and practice *Istih̄sān* as a form of evidence. However, Shāfi'ī scholars hold differing views on the position of *Istih̄sān* as the main argument in legislation. There is no significant distinction between the perspectives of scholars who support and those who oppose *Istih̄sān*. They agree on the use of the term *Istih̄sān* because it contains the meaning of "good" (*ḥasan*) which is found in the Qur'an. The verse "*But those who have avoided Taghut, lest they worship it, and turned back to Allah - for them are good tidings. So give good tidings to My servants. Who listen to speech and follow the best of it. Those are the ones Allah has guided, and those are people of understanding*" [al-Zumar 39: 17-18],³⁴ supports this notion. Additionally, the Prophet Muhammad stated, "*Whatever Muslims perceive as good, it is also considered good in the sight of Allah*" [HR. Ahmad].

Ḥanafī scholars continue to adhere to *Istih̄sān*, but they utilize it based on strong arguments and are not swayed by base desires, as claimed by scholars who oppose *Istih̄sān*. They argue that in the hierarchy of legal reasoning, *Istih̄sān* holds a more significant position than *Qiyās* (analogy). This is because it is preferable to adopt stronger propositions over weaker recommendations. In practice, *Istih̄sān* is considered sufficient when there is a stronger proposition, thereby disregarding weaker ones, without introducing contradictory propositions. *Istih̄sān* is a controversial concept in Islamic law, leading to varying opinions among scholars. It can be broadly divided into two groups. The first group consists of scholars from the Ḥanafiyah, Mālikiyah, and some Ḥanābilah schools who employ *Istih̄sān*. Their rationale is based on the observation that certain legal situations and their provisions demonstrate the ongoing relevance of *Qiyās* (analogical reasoning). They argue that the application of *Qiyās*, the continuity of legal judgment, and the comprehensive nature of *Kullī* (general) rulings sometimes result in *Maṣlahah* and may lead to *Mafsadat* (harm).³⁵

According to al-Shāḥibī, the concept of *Istih̄sān* embraced by the imams of these schools is not solely based on personal desires or logical deductions. Instead, it is rooted in the overall objectives of Islamic law (*Maqāṣid al-Sharī'a*) and the contextual interpretation of relevant events. For example, the permissibility of examining one's genitals for health reasons constitutes an exception to the general prohibition. Ḥusayn Ḥāmid Ḥassan explains that Mālik's primary usage of *Istih̄sān* relies on *Nash* (textual

³³ Haroen, 108.

³⁴ Departemen Agama, *Al-Quran dan Terjemahnya* (Beirut: Penerbit Mu'assasah Risalah, 2002), 661.

³⁵ "Hence, it is a divine blessing that allows the *Mujtahid* to shift the legal ruling from *Qiyās*-based provisions to alternative criteria that promote the realization of *maṣlahah* (benefit) and prevent *mafsadah* (harm)". Felicitas Opwis, *Maṣlahah and the Purpose of the Law*, 31 ed. (Boston: Brill, 2010).



evidence) in two ways: *Firstly*, *Istihsān* serves as a rule derived from *dalil* (evidence) through inductive reasoning, which benefits *Qaṭ'ī* (definitive) cases rather than being a product of personal opinion or desires. *Secondly*, the law of *Istihsān* requires a Mujtahid to return to the *dalil* obtained through inductive reasoning. They recognize *Ijmā'* (consensus) and *'Urf* (custom) as valid sources of argument, prioritizing *maṣlahat* (public interest) over *Qiyās*.

Similarly, Ḥanafī scholars argue that *Istihsān* is not fundamentally different from Mālik's perspective. Al-Taftazanī asserts that *Istihsān* is an agreed-upon proposition among scholars, as it is based on *Nash*, *Ijmā' Darūrah* (necessity), or *Qiyās Khāfi* (analogical reasoning with hidden aspects). The use of *Qiyās Khāfi* is necessary to avoid the negative consequences that can arise from the application of *Qiyās Jāli* (obvious analogical reasoning). Thus, *Istihsān* is supported by two principles: (a) *Istihsān* backed by *al-'adah al-ṣaḥīḥah* (sound custom) and (b) *Istihsān* backed by *maṣlahah* (public interest). In conclusion, *Istihsān* is considered highly significant as it embodies the essence (*Rūḥ al-Hukm*) of Islamic law, reflecting the comprehensive objectives of sharia, *Maqāṣid al-Sharī'a*, and the rules of *Fiqh* principles. In other words, *Istihsān* serves as a means to apply the spirit of Islamic law to specific cases.

As for the textual evidence cited by Ḥanafī scholars to support the use of *Istihsān*, they refer to verses such as al-Zumar: 18 and 55 and Hadiths of the Prophet Muhammad stating that “*Whatever the Muslims consider good, then it is also good in the sight of Allah*”. According to these scholars, the first verse praises those who follow the best opinion, while the second verse encourages adherence to what God has revealed as the best course of action.³⁶ On the other hand, the second group of scholars, including Shāfi'ī, Zahiriyyah, Mu'tazilah, and Shiites, do not agree with the use of *Istihsān*. They view *Istihsān* as an uncertain method and even consider it invalid. Al-Shāfi'ī argues that there must be a clear path, such as determining the direction of the *Qibla* (the direction Muslims face in prayer). If someone is unaware of the *Qibla* direction, they should rely on a strong foundation rather than arbitrarily deciding what is considered good (*Istihsān*).

Al-Shāfi'ī likens *Istihsān* to abandoning a prescribed proposition by shari'a, which leads to specific laws, and attempting to reach a law through a different approach instead of that outlined by shari'a. He explicitly expresses his belief that *Istihsān* is invalid in his book “*Tbṭāl al-Istihsān*”. He states that (a) *Istihsān* can be used to support *nash* but is not obligatory; *Istihsān* without a basis in *nash* or beyond *nash* is not commendable, (b) *Istihsān* is not *nash* nor does it refer to *nash*; it is merely based on personal desires, (c) Prophet Muhammad did not offer opinions on many issues without a specific ruling. He did not issue fatwas based on what he considered good (*Istihsān*). If *Istihsān* were permitted, it would imply that the Prophet Muhammad could issue fatwas using *Istihsān* without awaiting divine revelation, (d) Prophet Muhammad rejected the opinions of some companions who used *Istihsān* in

³⁶ “If someone follows the most appropriate approach but lacks the strength of evidence, it is evident that God does not provide such guidance. This indicates that *Istihsān* is simply an effort to strive for the best understanding within one's religion. Alongside these verses, scholars also rely on *Ijmā'* (consensus) as the foundation for *Istihsān* arguments. For instance, it allows for the use of a communal pool without specifying pricing, replacing the water used, or determining its usage duration”. Émile Tyan, “*Méthodologie et sources du droit en Islam: (Istihsān, Istiṣlāḥ, Siyāsa ṣar'iyya)*,” *Studia Islamica* 10 (1959): 85.

certain matters. One such instance was when the Prophet prohibited a companion from killing a disbeliever. *Istih̄sān* does not hold any authority or guidance, and this has resulted in various fatwas on a matter without a predominant opinion. Consequently, divergent opinions arise, and (e) If *Istih̄sān* were permitted for *Mujtahids* (qualified scholars capable of independent reasoning) without textual evidence or *Qiyās*, it would allow them to issue laws based solely on their intellect, excluding the general public.³⁷

The author aims to analyze the strengths and weaknesses of *Istih̄sān* as a method of *Istinbāt al-Hukm* by presenting different definitions of *Istih̄sān* from various scholars of *Usul al-fiqh*. These definitions include the following perspectives: (1) Wahbah al-Zuhaylī defines *Istih̄sān* as “counting something and believing in its goodness”. According to him, scholars use *Istih̄sān* as a means to seek legal rulings, and there is no difference among them in its application.³⁸ (2) ‘Abd al-Karīm Ibn ‘Alī al-Annamlātī offers three approaches to understanding *Istih̄sān*. *Firstly*, it involves diverting the law from a problem by relying on more specific arguments from the Qur’an or Hadith. *Secondly*, it is a quality that a *Mujtahid* (a jurist) deems good through logical reasoning. *Lastly*, *Istih̄sān* encompasses propositions that may be reprehensible to a *Mujtahid* due to the lack of clarity in evidence.³⁹ (3) Muḥammad ‘Alī Ibn Muḥammad al-Shawkānī describes *Istih̄sān* as (a) transferring analogy (*Qiyās*) from a weaker argument to a stronger one, (b) replacing a legal argument with a customary practice that promotes human benefit, and (c) giving preference to stronger analogical reasoning over weaker analogical reasoning. This viewpoint is attributed to Abū Ḥanīfah, Mālik, and Aḥmad bin Ḥanbal.

In contrast, al-Shāfi’ī denies the existence of *Istih̄sān*, considering it an invalid argument in the field of law. He argues that *Istih̄sān* seeks convenience and simplicity, which undermines its validity.⁴⁰ Huḍarī Beik suggests that *Istih̄sān* is a form of analogy (*Qiyās*) with an unclear or weak *‘Illat* (reason), exemplified by the case of a crow drinking water. According to *Qiyās*, the water the crow drinks would be considered impure, but *Istih̄sān* deems it pure because the bird's pecks make its bones sacred, unlike a tiger's mouth.⁴¹ Ḥanafiyah asserts that *Istih̄sān* encompasses all logical

³⁷ Scholars who reject the use of *Istih̄sān* use al-Qiyāmah: 36 and al-Nisā’: 59. According to scholars who reject *Istih̄sān*, they consider it a law without proper evidence (*dalil*) and categorize it as an act that is neither commanded nor forbidden, or simply a futile act. In the mentioned verse, Allah and Prophet Muhammad explicitly prohibited following one's desires and instead instructed the believers to refer back to the Qur’an and Ḥadīth when faced with disputes or disagreements. Muḥammad bin Idrīs Al-Syāfi’ī, *Al-Umm*, 1 ed. (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2002), 267–77.; Noorwahidah, “Istih̄sān: Dalil Syara’ Yang Diperselisihkan,” *Syariah: Jurnal Hukum dan Pemikiran* 16, no. 13–24 (2016): 17.

³⁸ Zaydān, *Al-Wajīz fī Uṣūl al-fiqh*, 258.; Sujoko Winanto dkk., “Peranan Spiritual Quotient Terhadap Peningkatan Kinerja Perusahaan,” *Jurnal Ilmiah Wahana Pendidikan* 8, no. 14 (2022): 326–45, <https://doi.org/10.5281/zenodo.6994879>.; Osman Sahin, “Istih̄san Yönteminin Aklî Gereçekleri ve Bazı Uygulama Şekilleri,” *Dinbilimleri Akademik Arastırma Dergisi* 8, no. 1 (2008): 48.

³⁹ Wahbah Al-Zuhaylī, *Fiqh al-Islāmī* (Jakarta: Gema Insani Press, 2011), 735–36.

⁴⁰ ‘Abd al-Karīm Ibn ‘Alī Al-Annamlātī, *Rawḍah al-Manāzīr fī Uṣūl al-fiqh* (Beirut: Amlakah ‘Arabiyah al-Su‘ūdiyyah, 1998).

⁴¹ Abd al-Karīm Ibn ‘Alī Al-Syawkānī, *Irsyād al-Futūḥ* (Jakarta: PT. Mu’assasah Kutub al-Atsofoqiyah, 1993), 400–401.



arguments that contradict the apparent analogy (*Qiyās zāhir*). For instance, the law governing a *salam* contract (a contract for future delivery) permits the sale of goods that do not yet exist, contrary to the ruling based on *Qiyās*. Similarly, contract work for building bridges and roads, which is considered valid according to *Istihsān*, contradicts the ruling based on *Qiyās*.⁴²

However, the weaknesses of *Istihsān* can be attributed to 'Abu Ḥanīfah's failure to provide detailed foundational concepts and limitations for its application. These weaknesses include; *First*. Weakness in foundational concepts. The Qur'an does not explicitly command the performance of good deeds but rather states that those who follow good speech will be rewarded [al-Zumar: 55]. Additionally, the role of Ḥadīth in *Istihsān* has not been thoroughly explained, leaving a gap in understanding.⁴³ *Second*. Lack of limitations for Ḥadīth users. *Istihsān* originates from the realm of reason and contemplation, which requires intellect, depth, and careful thinking. However, not everyone possesses the capacity to engage in philosophical reasoning. Scholars like Ibn Ṣalāhī and al-Nawāwī prohibited the study of philosophy, while al-Ghazālī and others allowed it, as it can aid in understanding the Qur'an and Ḥadīth. Therefore, *Istihsān* should only be practiced by knowledgeable and virtuous individuals.⁴⁴

Despite these weaknesses, *Istihsān* remains a relevant method of legal inference that can adapt to different contexts and times. It can effectively respond to the challenges of life and foster progressiveness. This is evident in the behaviors of the *ṣaḥābah*, such as 'Abū Bakr, 'Umar, and Zayd bin Tsābit, who agreed to collect the Qur'an despite not receiving a direct command from Allah. Their actions

⁴² Ḥudārī Beik, *Uṣūl al-fiqh* (Beirut: Dār al-Fikr, 1988), 324–26.

⁴³ "Despite the presence of detailed Hadiths, such as the one narrated by Imam Ahmad in Kitab al-Sunnah but not included in the book of Musnad, the term "al-Muslimuna" is not explicitly elaborated. It leaves room for interpretation regarding who exactly is being referred to as "Muslims." Within the Muslim community, there are individuals with varying levels of understanding, knowledge, and righteousness. Some may be considered average Muslims (nakiroh), while others may be less knowledgeable (awwam) or more knowledgeable ('Ālim). Additionally, there are individuals who hold special positions or roles within the Muslim community. In relation to the Hadith mentioned, there is a more detailed Hadith that explains the definition of "al-Muslim" through the narration of Ibn 'Umar: "Muslims are those who safeguard others from their speech and actions." This Hadith highlights the importance of Muslims not only practicing their faith but also ensuring that their words and actions do not harm or negatively impact others. It emphasizes the significance of ethical conduct and responsibility within the Muslim community. See Jalal al-Dīn Ibn 'Abd al-Raḥmān Ibn Abī Bakr, *Jamū al-Ṣaḥārah* (Bandung: Al-Ma'ārif, t.t.), 187.. Al-Shāfi'ī's statement suggests that if *Istihsān* is considered a valid method in religious matters, then it implies that any intelligent being, regardless of their knowledge or expertise, can engage in *Istihsān*. However, it is important to note that *Istihsān* is not an arbitrary or subjective decision-making process. It is a legal reasoning method that requires deep knowledge and understanding of Islamic principles, sources, and objectives. In practice, *Istihsān* is typically performed by qualified individuals who possess the necessary knowledge and expertise in Islamic law, such as scholars, jurists, or those trained in Islamic legal sciences. These individuals have studied the Qur'an, Hadith, legal principles, and methodologies extensively. They possess the necessary character traits, including piety, wisdom, and sound judgment, to properly apply *Istihsān* in accordance with Islamic teachings. Therefore, while *Istihsān* can theoretically be performed by any intelligent being, its proper application and implementation in religious matters require the expertise and qualifications of individuals who have the necessary knowledge and character traits, particularly among Muslims who are well-versed in Islamic law and jurisprudence. Al-Syawkānī, *Irsyād al-fuḥūl ilā Taḥqīq al-Ḥāq min 'Ilmi al-Uṣūl* (Mesir: Maṭba'ah al-Bābī al-Ḥalabī, t.t.), 401.

⁴⁴ Harun Nasution, *Pebambaran Dalam Islam Sejarah Pemikiran dan Gerakan*, 10 ed. (Jakarta: Bulan Bintang, 1999), 12.

demonstrated goodness and beneficial outcomes that have endured and manifested in the contemporary world. From the time of the *ṣaḥābah*, *Istihṣān* has been practiced, highlighting its progressive nature. Therefore, it is crucial to further develop and refine thoughts and actions that embody values of excellence and urgency. Scholars who support the permissibility of *Istihṣān* as a legal argument emphasize that its principle is to alleviate difficulties and seek ease in legal matters.

MUI Fatwa on Corneal Transplant: Contents and Methods

To understand the relevance of *Istihṣān* in reforming Islamic law, it is important to emphasize that legal reform in Islam aims to address new problems and developments arising from scientific and technological advancements. This involves establishing laws that can effectively respond to these challenges and replace outdated provisions that no longer serve the welfare of society. Muhammad Rasyid Ridha argued that laws can vary due to differences in time, environment, situations, and conditions. If a law was initially necessary for a community but later becomes obsolete, a new law should be formulated based on the prevailing circumstances of that community.⁴⁵

Several factors contribute to the need for reforming Islamic law, including changes in the social order of Muslims, such as ideological, political, social, and cultural shifts. These factors present new challenges that must be addressed as an integral part of legal reform. To anticipate these challenges, *Ijtihad*, the process of independent legal reasoning, must not cease but should be continuously applied to find solutions to emerging legal issues faced by people.⁴⁶ An example of reforming Islamic law using the *Istihṣān* method can be seen in the case of corneal transplants. Islam highly values and respects human beings from birth to death, and it prohibits the mutilation or removal of human limbs, even after death. However, advancements in medical science have made it possible to perform corneal transplants from deceased donors to restore sight for blind individuals. This raises the question of whether Islamic law permits such procedures.

⁴⁵ Abdul Mannan, *Reformasi Hukum Islam di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2007), 146.

⁴⁶ “Advances in science and technology have indeed brought about new developments in various aspects of life, including the field of Islamic law. Islam recognizes the importance of knowledge and encourages its followers to seek knowledge and benefit from advancements in various fields. In the context of Islamic law, it is essential to consider new developments and their implications in order to address the evolving needs and challenges of society. This includes incorporating relevant scientific and technological advancements into the legal framework, where appropriate, to ensure the laws remain relevant and effective. However, it is important to clarify that the authority to establish and formulate Islamic laws ultimately rests with Allah. Islamic scholars and jurists, through their expertise and knowledge of Islamic principles, strive to interpret and apply the teachings of the Qur'an and Hadith in a manner that addresses contemporary issues while upholding the objectives and values of Islam. When a scholar or jurist engages in *Istihṣān*, they are employing a legal reasoning method that involves analyzing the context, objectives, and societal implications of a given issue to derive a legal ruling that aligns with the spirit and principles of Islamic law. While they may propose new legal provisions based on their understanding, it is important to acknowledge that the final authority and ultimate legislation reside with Allah. In summary, while individuals may engage in *Istihṣān* to interpret and apply Islamic law in response to new developments, it is ultimately Allah who has the ultimate authority to form and legislate Islamic laws. Islamic scholars and jurists play a vital role in utilizing their knowledge and expertise to address contemporary issues within the framework of Islamic principles and objectives”. Chaerul Umam, *Uṣūl al-Fiqh 1*, 2 ed. (Bandung: Pustaka Setia, 2000), 131.



The Islamic perspective on corneal grafting for the benefit of blind individuals can be justified based on the understanding that corneas no longer serve any purpose for the deceased donor. By allowing the use of corneas for transplantation, significant benefits can be realized for blind individuals, who can then lead more fulfilling lives and perform their duties effectively. Islam does not impose unnecessary restrictions on its followers, and in cases where necessity dictates, emergency measures can be taken to ensure the preservation of life.⁴⁷ While respecting the sanctity of the deceased's body is a matter of preference (*Tahsīniyāt*), it should not outweigh the greater benefits (*Maṣlahat*) that can be derived from corneal transplants. Due to advancements in medical science and technology, corneal transplants can now be performed on legally and medically deceased individuals. This raises the question of how Islam views the transplantation of corneas from a deceased donor to a blind person, enabling them to regain normal vision. From an Islamic perspective, this specific type of corneal transplantation is considered justifiable. It is based on the understanding that the corneas of a deceased donor no longer serve any function and are no longer beneficial to them. By allowing a blind individual to receive the corneas, significant benefits can be derived. Although blindness itself does not pose a risk of immediate death, vision is a vital aspect of life, enabling individuals to seize opportunities and fully engage in their daily functions. Allowing for another corneal transplant to restore sight in the blind person's eyes can greatly enhance their quality of life.⁴⁸

Islam teaches that Allah does not burden humans unnecessarily in matters of religion. In cases where the preservation of life is at stake, emergencies can warrant exceptions or allowances, whether on a case-by-case basis or more broadly. This recognition of the necessity to preserve life affirms the importance of granting priority to the well-being and functioning of individuals, even if it involves modifying traditional legal provisions.⁴⁹ In summary, Islam acknowledges the potential benefits of corneal transplantation for blind individuals from deceased donors, considering that the corneas no longer serve any purpose for the deceased. By allowing such transplants, Islam emphasizes the importance of enabling individuals to lead fulfilling lives and fulfill their responsibilities. The flexibility of Islamic law allows for adaptations to address pressing needs and safeguard human well-being. Regarding the issue of corneal donation, the MUI issued a fatwa on March 17, 1989, declaring that it is permissible (*Halāl*) for a Muslim to express their intention to donate their corneas after death, as long as this intention is approved and witnessed by close family members. The fatwa also states that corneal surgery should be performed by competent and authoritative surgeons.⁵⁰

⁴⁷ Iskandar Usman, *Istihsān dan Pembaharuan Hukum Islam*, 1 ed. (Jakarta: Raja Grafindo Persada, 1994, 1994), 180.

⁴⁸ Ahmad Azhar Basyir, *Refleksi Atas Persoalan Keislaman Seputar Filsafat Hukum Politik dan Ekonomi* (Bandung: Mizan, 1996), 156.

⁴⁹ Usman, *Istihsān dan Pembaharuan Hukum Islam*, 40.

⁵⁰ "This decision is based on the principle in Islamic jurisprudence (fiqh) that "necessities permit what is forbidden" or "emergencies can allow something that is normally prohibited." This principle recognizes that in exceptional circumstances or cases of genuine need, certain actions that would be typically prohibited may be permitted to avoid harm or fulfill a pressing necessity. In Islamic law, the well-being and preservation of life are considered essential objectives (maqāṣid al-sharī'a). Therefore, when faced with emergencies or situations where adhering strictly to the general rules may cause significant harm or hardship, flexibility is allowed to address the pressing need while still upholding the overall objectives and

According to Ibn Qayyim al-Jawziyyah, this ruling signifies a change in the form of legal provisions, which aligns with the objectives and guidelines of Islamic law, while considering the welfare of the people. Islamic law reform aims to establish legal frameworks that can address new challenges and developments brought about by science and technology. These new developments are taken into account when formulating legal considerations in order to achieve the objectives of Sharia. It is important to note that the reform of Islamic law does not imply a careless attempt to address new problems and developments without being guided by the fundamental principles and values of the Qur'an and Hadith. Instead, the reform seeks to establish legal provisions that align with the basic principles and values of Islam while incorporating an understanding of new developments as part of the legal reasoning process.⁵¹

In this context, the relevance of *Istihṣān* to the reform of Islamic law becomes evident. *Istihṣān* involves a *Mujtahid* (Islamic jurist) deviating from one legal ruling to another, based on a stronger legal reasoning that necessitates such a deviation. The principle of *Istihṣān* allows for the determination of legal provisions that may differ from the general rules, as it can produce legal provisions that are more aligned with the objectives of Sharia, thereby adhering to *Istihṣān* provides a more robust approach to legal reasoning compared to *Qiyās* (analogical reasoning). In summary, the fatwa issued by the MUI regarding corneal donation exemplifies the application of *Istihṣān* in the reform of Islamic law. This demonstrates the adaptability of Islamic legal principles to address new challenges and developments while upholding the fundamental principles and values of Islam.

Maqāṣid al-Sharī'a* in MUI's Fatwa on Corneal Transplant: *Hifdz Nafs

The concept of *Maqāṣid al-Sharī'a* (objectives of Islamic law) plays a significant role in the fatwa issued by MUI regarding corneal transplants. One of the primary objectives of Islamic law is the preservation and protection of human life, which is known as "*Hifdz Nafs*". In the context of corneal transplant, MUI recognizes the importance of preserving human life and preventing harm. They consider the procedure to be permissible if it is urgently needed to save a person's life or to significantly improve their quality of life. This aligns with the objective of *Hifdz Nafs*, which emphasizes the preservation and protection of human life. MUI acknowledges the suffering and difficulties faced by individuals who are blind or have impaired vision. They recognize that corneal transplants can offer a solution to these challenges and potentially restore or enhance a person's vision, thereby improving

principles of the religion. It is important to note that the application of this principle should be guided by a careful understanding of Islamic teachings and the principles of Islamic jurisprudence. Scholars and jurists, who possess deep knowledge and expertise in Islamic law, are responsible for interpreting and applying this principle in a manner that maintains the integrity and values of Islam. While emergencies or necessities may temporarily permit actions that are otherwise forbidden, it is crucial to approach such situations with wisdom, moderation, and a sincere intention to fulfill the higher objectives of Islamic law. The overarching aim is to strike a balance between addressing immediate needs and upholding the principles and values of Islam. Hasbi Umar, *Nalar Fiqh Kontemporer* (Jakarta: Gaung Persada, 2007), 185.

⁵¹ Usman, *Istihṣān dan Pembaruan Hukum Islam*, 186.; Ahmad Maulidizen, "Business Ethics: Analysis of al-Ghazali's Economic Thought With Sufism Approach," *Religia: Jurnal Ilmu-ilmu Keislaman* 22, no. 2 (2019): 160–77.



their overall well-being. This reflects the principle of *Hifdz Nafs*, as the procedure aims to safeguard and promote the health and welfare of individuals. However, it is important to note that the fatwa also emphasizes the need for ethical considerations and adherence to Islamic principles in conducting corneal transplants. The MUI emphasizes the importance of obtaining proper consent from the donor and ensuring that the procedure is carried out in a manner that upholds Islamic values and principles. By considering the objective of *Hifdz Nafs* in their fatwa on corneal transplant, MUI seeks to strike a balance between addressing the medical needs and well-being of individuals while adhering to the ethical and moral teachings of Islam. The preservation and protection of human life remain a fundamental consideration in their decision-making process.

In elaborating further on the MUI's fatwa regarding corneal transplant and its relation to the objective of *Hifdz Nafs*, it is important to understand the underlying principles and considerations involved. *First*, in the scope of Preservation of Life, *Hifdz Nafs* emphasizes the sanctity and preservation of human life as a paramount objective in Islamic law. A corneal transplant, being a medical intervention aimed at improving or restoring vision, aligns with this objective by enhancing the quality of life and well-being of individuals. By permitting the procedure under specific circumstances, MUI acknowledges the value of life and the importance of addressing health conditions that affect a person's vision. *Second*, in terms of Urgency and Necessity, The fatwa highlights the permissibility of corneal transplant in cases of urgent need and when other medical alternatives have been exhausted. This underscores the principle of *Hifdz Nafs*, as the procedure becomes justifiable when it is necessary to prevent further harm or alleviate the suffering caused by impaired vision. The emphasis is on weighing the benefits and risks, with the primary focus on the preservation and improvement of life.

Third, in terms of Ethical Considerations, while addressing the medical aspects, the fatwa also emphasizes the ethical considerations in corneal transplant. The MUI emphasizes the importance of obtaining proper consent from the donor and ensuring that the transplantation process adheres to Islamic principles. This includes respecting the dignity and rights of both the donor and the recipient, as well as adhering to Islamic guidelines regarding organ donation and transplantation. *Fourth*, in the evaluation of Individual Cases: The fatwa acknowledges that each case should be evaluated individually, considering the specific circumstances and medical needs of the person seeking the corneal transplant. This reflects the comprehensive approach of Maqasid Syariah, where the specific context and circumstances are taken into account to ensure the best possible outcome while upholding Islamic principles. Overall, the fatwa on corneal transplant by MUI, based on the objective of *Hifdz Nafs*, aims to strike a balance between addressing medical needs and adhering to the ethical and moral teachings of Islam. It acknowledges the significance of preserving and enhancing human life while ensuring that the procedure is conducted in accordance with Islamic values and principles.

Conclusion

The perspectives of Ḥanafī scholars regarding the utilization of *Istiḥsān* as a valid form of *Ijtihad* (legal reasoning) enjoy widespread support from Ḥanbalī and Mālikī scholars as well. *Istiḥsān* plays a pivotal role in resolving numerous matters, and

through this method, laws have been established. It appears that the legal provisions derived through *Istihṣān* are better equipped to fulfill the objectives of Sharia (*Maqāṣid al-Sharī'a*). While al-Shāfi'ī rejected this method due to differences in terminology and his belief that the *Muttafaq 'Alayha* (consensus) argument already encompasses the principles within *Istihṣān*, the Ḥanafī school has embraced and named this method as *Istihṣān*. *Istihṣān* bears relevance to the reform of Islamic law, as both concepts are grounded in the *Maqāṣid al-Sharī'a*, which strives to realize and preserve maximum benefits and uphold the values encapsulated within the objectives of Sharia. The MUI holds the view that eye corneal transplants can be performed on individuals in need, with the intention of *Tabarru'* (acts of charity), if there are no alternative medical options available, based on the principle of *Maslahah* (benefit or public interest).

Bibliography

- Agama, Departemen. *Al-Quran dan Terjemahnya*. Beirut: Penerbit Mu'assasah Risalah, 2002.
- Al-'Ainaini, Badran Abū. *Uṣūl al-fiqh al-Islāmī*. Mesir: Mu'assasah Syabab al-Iskandariyah, t.t.
- Al-Annamlātī, 'Abd al-Karīm Ibn 'Ālī. *Rawḍah al-Manāẓir fī Uṣūl al-fiqh*. Beirut: Amlakah 'Arabiyah al-Su'ūdiyyah, 1998.
- Al-Asyqar, 'Umar Sulaymān 'Abdullah. *Nazāriyāt fī Uṣūl al-fiqh*. 2 ed. Cairo: Dār Al-Nafā'is, 2004.
- Al-Bar, Mohammed Ali, dan Hassan Chamsi-Pasha. "Organ Transplantation." Dalam *Contemporary Bioethics: Islamic Perspective [Internet]*. Springer, 2015. https://doi.org/10.1007/978-3-319-18428-9_13.
- Al-Khuḍārī, Muḥammad. *Uṣūl al-fiqh*. Cairo: Dār al-Ḥadīth, 2003.
- Al-Sam'anī, Abū al-Muẓaffar. *Qawaṭī' al-Adillah fī al-Uṣūl*. Beirut: Dār al-Kutub al-Ilmiyyah, t.t.
- Al-Syāfi'ī, Muḥammad bin Idrīs. *Al-Umm*. 1 ed. Beirut: Dār al-Kutub al-'Ilmiyyah, 2002.
- Al-Syātibī. *Al-Muwafaqāt fī Uṣūl al-Syarī'ah*. Beirut: Dār al-Ma'tifat, t.t.
- Al-Syātibī, Abī Iṣḥāq. *Al-Muwafaqāt fī Uṣūl al-Syarī'ah*. Cairo, t.t.
- Al-Syawkānī. *Irsyād al-fuḥūl ilā Taḥqīq al-Ḥāq min 'Ilmi al-Uṣūl*. Mesir: Maṭba'ah al-Bābī al-Ḥalabī, t.t.
- Al-Syawkānī, Abd al-Karīm Ibn 'Ālī. *Irsyād al-Futūḥ*. Jakarta: PT. Mu'assasah Kutub al-Atsofoqiyah, 1993.
- Al-Taftazanī. *Syarḥ al-Talwīh 'alā Tawḍīh*. Maṭba'ah Syubayh, 1958.
- Al-Zuhaylī, Wahbah. *Fiqh al-Islāmī*. Jakarta: Gema Insani Press, 2011.
- . *Uṣūl al-Fiqh al-Islāmī*. Damaskus: Dār al-Fikr, 1986.
- Bakr, Jalal al-Dīn Ibn 'Abd al-Raḥmān Ibn Abī. *Jamū al-Ṣahār*. Bandung: Al-Ma'ārif, t.t.
- Basyir, Ahmad Azhar. *Refleksi Atas Persoalan Keislaman Seputar Fillsafat Hukum Politik dan Ekonomi*. Bandung: Mizan, 1996.
- Beik, Huḍārī. *Uṣūl al-fiqh*. Beirut: Dār al-Fikr, 1988.



- Etheredge, Harriet Rosanne. "Assessing Global Organ Donation Policies: Opt-In vs Opt-Out." *Risk Management and Healthcare Policy* 14 (13 Mei 2021): 1985–98. <https://doi.org/10.2147/RMHP.S270234>.
- Fadel, Mohammad. "'Istiḥsān Is Nine-Tenths of the Law': The Puzzling Relationship of Uṣūl to Furū' in the Mālikī Madhhab." Dalam *Studies in Islamic Legal Theory*, 161–76. Brill, 2002. https://doi.org/10.1163/9789047400851_010.
- Haq, Hamka. *Dialog Pemikiran Ujung Pandang*. 1 ed. Ujung Pandang: Yayasan Ahkam, 1997.
- Haroen, Nasrun. *Ushul Fiqh I*. Ciputat: Logos Wacana Ilmu, 1997.
- Hasan, Muhammad Tholhah. *Prospek Islam Dalam Menghadapi Tantangan Zaman*. Jakarta: Lantabora, 2005.
- Hasran, Hamdila, Cindy Firantika Nabila, Maya Fina, dan Yanti Wahyuni. "Health Law in Islam (Study Of Law About Organ Transplant Accoring to Fiqh)." *MILRev: Metro Islamic Law Review* 1, no. 1 (26 Desember 2022): 147–63. <https://doi.org/10.32332/milrev.v1i1.6196>.
- Kamali, Mohammad Hashim. "Istiḥsān and the Renewal of Islamic Law." *Islamic Studies* 43, no. 4 (2004): 561–81.
- Kaufman, Christina L., Neal Bhutiani, Allan Ramirez, Huey Y. Tien, Michelle D. Palazzo, Elkin Galvis, Scott Farner, Tuna Ozyurekolu, dan Christopher M. Jones. "Current Status of Vascularized Composite Allotransplantation." *The American Surgeon* 85, no. 6 (1 Juni 2019): 631–37.
- Mannan, Abdul. *Reformasi Hukum Islam di Indonesia*. Jakarta: PT. Raja Grafindo Persada, 2007.
- Maulidizen, Ahmad. "Business Ethics: Analysis of al-Ghazali's Economic Thought With Sufism Approach." *Religia: Jurnal Ilmu-ilmu Keislaman* 22, no. 2 (2019): 160–77.
- . "The Urgency of Islamic Law Sources Knowledge Masadir al-Ahkam al-Mukhtalaf fiha: Istisab, Sadd al-Dzariah and Qaul al-Sahabi." *Jurnal Hukum Islam* 18, no. 2 (2018): 49–68.
- Maulidizen, Ahmad, dan Eka Pratiwi. "The Concept of Qat'I Dalalah: Definition, Laws and Perceived Conflict." *Khatulistiwa: Journal of Islamic Studies* 10, no. 1 (2020): 115–31.
- Maulidizen, Ahmad, dan Asphia Sahida. "An-Nahyu: Consept and Implementation in Islamic Law Determination." *Khatulistiwa: Journal of Islamic Studies* 9, no. 1 (2019): 116–40.
- Muchtar, Abdul Haris, Ahmad Maulidizen, dan Amriatus Safaah. "'Am and Khas Linguistic Method Concept and Implementation in Islamic Law Determination." *Al Mashalih-Journal Of Islamic Law* 3, no. 1 (2022): 1–26.
- Nasution, Harun. *Pebambaran Dalam Islam Sejarah Pemikiran dan Gerakan*. 10 ed. Jakarta: Bulan Bintang, 1999.
- Noorwahidah. "Istiḥsān: Dalil Syara' Yang Diperselisihkan." *Syariah: Jurnal Hukum dan Pemikiran* 16, no. 13–24 (2016).
- Opwis, Felicitas. *Maṣlaḥa and the Purpose of the Law*. 31 ed. Boston: Brill, 2010.
- Padela, Aasim I., dan Jasser Auda. "The Moral Status of Organ Donation and Transplantation Within Islamic Law: The Fiqh Council of North America's

- Position.” *Transplantation Direct* 6, no. 3 (18 Februari 2020): e536. <https://doi.org/10.1097/TXD.0000000000000980>.
- Sahin, Osman. “Istihsan Yönteminin Akli Gereççeleri ve Bazı Uygulama Şekilleri.” *Dinbilimleri Akademik Arastirma Dergisi* 8, no. 1 (2008): 41–74.
- Syafe’i, Rachmat. *Ilmu Ushul Fiqh*. 1 ed. Bandung: Pustaka Setia, 1999.
- Syarifuddin, Amir. *Ushul Fiqh*. 2 ed. Jakarta: Logos, 1999.
- Sykes, Megan, dan David H. Sachs. “Progress in Xenotransplantation: Overcoming Immune Barriers.” *Nature Reviews Nephrology* 18, no. 12 (Desember 2022): 745–61. <https://doi.org/10.1038/s41581-022-00624-6>.
- Toews, Maeghan, Jennifer A. Chandler, Thaddeus Pope, Roger Pape, Matthew Weiss, dan Alberto Sandiumenge. “Legislation and Policy Recommendations on Organ and Tissue Donation and Transplantation From an International Consensus Forum.” *Transplantation Direct* 9, no. 5 (Mei 2023): e1395. <https://doi.org/10.1097/TXD.0000000000001395>.
- Tyan, Émile. “Méthodologie et sources du droit en Islam: (Istihṣān, Istiṣlāḥ, Siyāsa šar’iyya).” *Studia Islamica* 10 (1959): 79–109.
- Umam, Chaerul. *Uṣūl al-Fiqh 1*. 2 ed. Bandung: Pustaka Setia, 2000.
- Umar, Hasbi. *Nalar Fiqh Kontemporer*. Jakarta: Gaung Persada, 2007.
- Usman, Iskandar. *Istihṣān dan Pembaharuan Hukum Islam*. 1 ed. Jakarta: Raja Grafindo Persada, 1994, 1994.
- . *Istihṣān dan Pembaruan Hukum Islam*. Jakarta: PT. Raja Grafindo Persada, 1994.
- Winanto, Sujoko, Ahmad Maulidizen, Muhammad Rafi Thoriq, dan Amriatus Safaah. “Peranan Spiritual Quotient Terhadap Peningkatan Kinerja Perusahaan.” *Jurnal Ilmiah Wahana Pendidikan* 8, no. 14 (2022): 326–45. <https://doi.org/10.5281/zenodo.6994879>.
- Yahya, Muhtar, dan Fatchurrahman. *Dasar-Dasar Pembinaan Hukum Fiqh Islami*. Bandung: PT. Al-Ma’arif, 1986.
- Yunus, Mahmud. *Kamus Bahasa Arab-Indonesia*. 8 ed. Jakarta: PT. Hidakarya Agung, 1990.
- Zahrah, Muḥammad Abū. *Imām Syāfi’ī: Hayātuhu Wa’asruhu wa fikroh al-Arā’uh wa fiqhuhu*. Disunting oleh Abdul Syukur. Jakarta: Lentera, 2005.
- . *Uṣūl al-fiqh*. Cairo: Dār al-Fikr al-‘Arabī, 2004.
- Zaydān, ‘Abd al-Karīm. *Al-Wajīz fī Uṣūl al-fiqh*. Beirut: Penerbit Mu’assasah Risalah, 2002.

