

## Encountering The Shariah Law in the Contemporary Era: The Concept of *Ijtihād Intiqā'iy* and *Ijtihād Insyā'iy*

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**Abstract:** This article elaborates on the role of *ijtihād* in addressing the many problems facing Muslims today. To find solutions, the Muslim community is naturally required to return to the texts of the Qur'an and Sunnah or to examine the results of the *ijtihād* of previous jurists. However, many of the problems that arise today cannot be solved within classical jurisprudence. Therefore, the door of *ijtihād* must always be open to realize Islamic law as a law appropriate for every era and place. This study shows that *ijtiḥād* is both an obligation that must be carried out and an unavoidable emergency. The author believes that, first, *ijtiḥād intiqā'iy* is a process of seeking legal certainty regarding a problem. Second, *ijtiḥād intiqā'iy* is carried out by weighing and comparing opinions from various schools of thought, then examining the basis of their evidence, whether based on the texts of the Qur'an or the Sunnah, or the *ijtiḥād* of the companions, and so on. Furthermore, *ijtiḥād* on newly emerging problems for which there is no legal determination yet and which are illuminated by syar'i arguments is called *ijtiḥād insyā'iy*. It may even be that *ijtiḥād insyā'iy* is carried out on problems that existed during the time of the imams of the sect and for which there were legal provisions. However, today's mujtahids can formulate new legal provisions that are more in line with the times, more useful for humans, and closer to realizing the *maqāshid al-sharīyah*.

**Keywords:** *Ijtihād*; *Intiqā'iy*; *Insyā'iy*; Shariah Law; Legal Certainty

## *Menghadapi Hukum Syariah di Era Kontemporer: Konsep Ijtihād Intiqā'iy dan Ijtihād Insyā'iy*

**Abstrak:** Artikel ini mengelaborasi peran *ijtiḥād* dalam menghadapi banyak permasalahan yang dihadapi umat Islam pada masa sekarang. Untuk mendapatkan solusinya, tentu umat dituntut untuk kembali kepada nash al-Qur'an dan Sunnah atau dengan melihat hasil *ijtiḥād* para fuqaha terdahulu. Hanya saja, banyak di antara masalah-masalah yang timbul pada masa sekarang ini tidak didapati solusinya pada khasanah fikih klasik. Oleh karena itu, pintu *ijtiḥād* harus senantiasa dibuka dalam rangka merealisasikan syariat Islam sebagai syariat yang sesuai untuk tiap zaman dan tempat. Studi ini menunjukkan bahwa *ijtiḥād* merupakan suatu keharusan yang mesti dilakukan sekaligus merupakan hal darurat yang tidak bisa dihindari. Penulis berpandangan bahwa, pertama, *ijtiḥād intiqā'iy* merupakan suatu

*proses dalam mencari kepastian hukum terhadap suatu masalah. Kedua, ijtihad intiqā'iy dilakukan dengan cara menimbang serta membandingkan pendapat-pendapat dari berbagai mazhab, kemudian meneliti sandaran dalilnya, baik itu sandarannya berupa nash al-Qur'an atau al-sunnah maupun berupa ijtihad para sahabat dan lain-lain sebagainya. Selanjutnya, ijtihad pada masalah-masalah yang baru muncul yang belum ada ketetapan hukumnya dan disinari oleh dalil-dalil syar'i disebut dengan ijtihad insyā'iy. Bahkan boleh jadi ijtihad insyā'iy dilakukan pada masalah-masalah yang telah ada pada masa imam-imam mazhab dan telah ada ketetapan hukumnya. Namun, oleh para mujtahid saat sekarang ini mampu merumuskan ketetapan hukum baru yang lebih sesuai dengan zaman, lebih bermanfaat buat manusia dan lebih dekat untuk merealisasikan maqāshid al-syar'iah.*

*Kata Kunci: Ijtihad; Intiqā'iy; Insyā'iy, Hukum Syariah; Kepastian Hukum*

## A. Introduction

Islamic law is a righteous law for all times and for all things (*shālih fī kullī zamān wa makān*) [صالح في كل زمان ومكان]. It means that Islamic law is not limited by time or place.<sup>1</sup> It is suitable for the West, North, South, and East. It can also be applied to the past, present, and future.<sup>2</sup> The expression "Islamic law is appropriate for every era and place" demonstrates the uniqueness of the law brought by the Prophet Muhammad (peace be upon him). Yet, each era and place faces challenges that differ from those faced in previous eras and other parts of the world.

These issues could arise in the economic sphere, such as bank interest and insurance rates. In the social sphere, such as the women's emancipation movement, which has had a significant impact on domestic life. In the political sphere, such as press freedom and the freedom to form parties and oppose the government. The problems mentioned are only a small part of the many problems that exist today. To get a solution, of course, the people are required to return to the Nash Al-Qur'an and Sunnah or to look at the results of the ijtihad of previous jurists. However,

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<sup>1</sup>Mirza Izzurohman et al., "Dasar Ijtihad, Syarat, Dan Hukum Ijtihad Dan Dinamikanya," *Journal of Sharia Banking* 5, no. 2 (December 26, 2024): 126–45, <https://doi.org/10.24952/jsb.v5i2.11612>.

<sup>2</sup>Fatma Taufiq Hidayat and Seli Septina, "Ijtihad Dan Ruang Lingkupnya," *Al-Furqan: Jurnal Agama, Sosial Dan Budaya* 4, no. 2 (2025): 382–88, <https://publisherqu.com/index.php/Al-Furqan/article/view/2090/1872>.

many of the problems that arise today do not find solutions in classical jurisprudence. The definition of *ijtihad* according to Ushuliyyin is the mobilization of all abilities carried out by a mujtahid to find out the laws of sharia using *istimbath*.<sup>3</sup> Therefore, the door to *ijtihad* must always be opened to realize Islamic law as a law that is appropriate for every time and place.<sup>4</sup>

In line with the previous explanation, a scholar stated that advances in science and technology indicate rapid progress for the world.<sup>5</sup> Therefore, Muslims today are faced with various global challenges and new problems never discussed by previous scholars. These challenges must be addressed through the *ijtihad* institute.<sup>6</sup> *Ijtihād* must be encouraged as a means of studying Islamic law.<sup>7</sup> Given this reality, *ijtihād* is both a necessity and an unavoidable emergency.<sup>8</sup> This necessity is based on texts such as Muaz ibn Jabal's response when asked by the Prophet Muhammad (peace be upon him) about his actions as a judge in Yemen during the early days of Islam. Likewise, *ijtihād* is an emergency based on the realities of the present day.

*Ijtihād intiqāīy* and *ijtihād insyāīy* are two approaches in contemporary *ijtihad*. *Ijtihād intiqāīy* (selective) involves selecting and choosing the opinions of previous scholars that are the strongest and most relevant to the current context,

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<sup>3</sup>Abdul Karim Zaedan, *Al-Wajīz fī Ushūl al-Fiqhī* (Beirut: Muassasah al-Risālah, 1987), p. 401.

<sup>4</sup>Nadiyah Syarif al-'Umry, *Al-Ijtihād fī al-Islām* (Beirut: Muassasah al-Risālah, 2001).

<sup>5</sup>Halimatus Adiah and Irwansyah, "Urgensi Ijtihad Di Era Kontemporer," *Jurnal Cerdas Humu* 2, no. 2 (2024): 26–33, <https://institutabdullahsaid.ac.id/e-journal/index.php/jurnal-cerdas-hukum/article/view/235>; Suaib, Riswan, and Hasnawati, "Dinamika Ijtihad Dalam Menjawab Tantangan Kontemporer Hukum Islam," *Jurnal Intelek Insan Cendikia* 2, no. 3 (2025): 4405–14, <https://jicnusantara.com/index.php/jiic/article/view/2699>; Ervina Suwandi et al., "Ijtihad Method as an Innovation in Exploring Islamic Law," *Al-Ahkam Addariyah* 1, no. 1 (2024): 89–103, <https://ejurnal.staiddimaros.ac.id/index.php/al-ahkam/article/view/139>.

<sup>6</sup>Minhajuddin, *Pengembangan Metode Ijtihad Dalam Persepektif Fiqih Islam* (Makassar, May 31, 2004), p 9.

<sup>7</sup>Muhammad Faraj Salim, *Al-Wajīz fī Ushul Al-Fiqhī* (Kairo: al-Iman, 1965).

<sup>8</sup>Bunga Aulia Humairoh et al., "Ijtihad Dalam Hukum Islam" 1, no. 2 (2023): 205–18, <https://doi.org/10.61930/sell.v1i2.43>; Mirza Izzurohman et al., "Dasar Ijtihad, Syarat, Dan Hukum Ijtihad Dan Dinamikanya.," Muhammad Sayyid Tantawi, *Konsep Ijtihad Dalam Hukum Syarak* (ITBM, 2008); Said Syarifuddin Abu Baedah and Zulkifli Wahab, "Ijtihad Dan Dinamika Hukum Islam," *Iqra: Jurnal Ilmu Kependidikan Dan Keislaman* 19, no. 2 (2024): 165–69, <https://doi.org/10.56338/iqra.v19i2.5322>.

while *ijtihād insyā'iy* (creative) creates new legal solutions to contemporary problems that do not yet have answers in classical literature.

Based on the description above, this article focuses on the issues of *ijtihād intiqā'iy* and *insyā'iy*. To further focus the discussion, the problem is formulated as follows. First, what is the meaning of *ijtihād intiqā'iy*? Second, what is the meaning of *ijtihād insyā'iy*? and how does the combination of these two models of *ijtihād* work?

## B. The Concept of *Ijtihād Intiqā'iy*

In Arabic, the word “*intiqay*” comes from the word “*naqay*”, which is composed of the letters *nun*, *qaf*, and *mu'tal*. Naqay means clean. Thus, the word *intiqā'iy* means to filter and take what is most important.<sup>9</sup> *Ijtihād intiqā'iy*, also called *ijtihād tarjih*, focuses on selecting the strongest opinion from among the opinions of previous scholars. A mujtahid (person conducting *ijtihād*) analyzes and compares the evidence from various opinions, then chooses the opinion that best suits current conditions and is supported by stronger evidence

The existence of various schools of jurisprudence (*mazhab*) within the Muslim community constitutes a unique treasure trove that has contributed to the world of Islamic jurisprudence to some extent.<sup>10</sup> The existence of these various schools of thought is a consequence of the differences among the Imams of each school of thought in their *ijtihād*. The results of their *ijtihād* were followed by their students and supporters, thus giving rise to various schools of thought within the world of Islamic jurisprudence. It is undeniable that these schools of thought, particularly the four schools of thought within the group of the *ahl al-sunnah wa al-jamaah*, still exist and are still needed today. However, the understandings of these schools of thought cannot be applied simultaneously to the same problem.

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<sup>9</sup>Abu Husain Ahmad ibn Faris ibn Zakaria, *Mu'jam Maqayis al-Lughah*, Ditahqiq Abd Salam Muhammad Harun (Beirut: Dar al Fikri, 1970).

<sup>10</sup>Mahmud Syaltut, *Al-Islam; Aqidah wa Syari'ah* (Beirut: Dar al-Syurūq, 1997).

Therefore, it is necessary to choose one school of thought that is considered the most sound among the various schools of thought.

The efforts to re-examine the treasures of classical *fiqh* in various schools of thought with their conclusive views to select the most rigorous opinions and be seen as closer to realizing *maqāshid al-shar'iah*, capable of recognizing the benefit of the people, and by the demands and conditions of the times are called *ijtihād intiqā'iy*.<sup>11</sup>

Therefore, *ijtihād intiqā'iy* is a process of seeking legal certainty regarding a problem. Yusuf al-Qardāwi stated that *ijtihād intiqā'iy* is carried out by weighing and comparing opinions from various schools of thought<sup>12</sup>, then examining the basis of their arguments, whether the support is in the form of texts from the Quran or al-Sunnah or the form of *ijtihād* from friends and so on.<sup>13</sup> In the end, we choose one school of thought opinion from various schools of thought which is considered to have the strongest evidence and the most solid arguments by *tarjih* standards which include: this opinion is by current conditions, is most beneficial for humans, provides more convenience, is most capable of realizing *maqāsid al-syar'ī*, can realize the *maslahah* of the people and can prevent damage to Muslims.<sup>14</sup>

Considering the workings of *ijtihād intiqā'iy*, anyone who adopts a single viewpoint from among the various existing schools of thought without undergoing a thorough filtering and research process cannot be categorized as a *mujtahid*. Such individuals are classified as *muqallid*. Furthermore, to become a *mujtahid*, certain criteria must be met. Khallaf argues the criteria for someone to be categorized as a *mujtahid*: (1) know and master the Arabic language and the sciences

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<sup>11</sup>Yusuf al-Qardāwi, *Syariah al Islamiyah Shālihah Litātbīq fī Kullī Zamān wa Makān* (Kairo: Maktabah Wahbah, 1997), p. 78.

<sup>12</sup>Yusuf al-Qardāwi, *Al-Ijtihad al-Ma'āsiri: Bayna al-Indibāt wa al-Infirāt* (Kairo: Dār al-Tawzi' wa al-Nasyr al-Islāmiyyah, 1994).

<sup>13</sup>al-Qardāwi, *Al-Ijtihad al Ma'āsiri: Bayna al-Indibāt wa al-Infirāt*, p. 20.

<sup>14</sup>al-Qardāwi, *Syariah al Islamiyah Shālihah Litātbīq fī Kullī Zamān wa Makān*.

related to it; (2) know the Koran and everything related to it; (3) know the sunnah (hadith) and everything related to it; and (4) know the *qias*.<sup>15</sup>

Furthermore, the *ijtihad intiqā'iy* uses a *tarjih* process; its object is a problem that various schools of jurisprudence have studied. In this case, it is permissible to adopt one of the schools of thought from the fourth school of thoughts (*arba'ah mazāhib*) or another school of thought outside of the *arba'ah mazāhib*. Even the views of a school of thought on an issue are considered the most persistent can change and become unstable if times, places, and conditions change. This is also not denied by the ulama, such as their famous expression in the Islamic world:

تَغَيَّرُ الْفَتَاوَى بِتَغْيِيرِ الزَّمَانِ وَالْمَكَانِ وَالْحَالِ

Meaning: Fatwas always change according to changing times, places, and circumstances.

In responding to the statements of these scholars, we are required to remain open when facing a problem. This attitude should always adhere to the principles of *ushul*, namely *al-muhafasatu ala qadimi as-shalihi wa al-akhsu bi al-jadidil ashlah* (maintaining a good opinion that already exists and taking a new, better opinion).

In this case, Yusuf al-Qardāwi set an example by adopting the opinions of Laits bin Saad, Daud ibn Ali, and his colleagues from the al-Zahiriah school, such as Ibn Hazm, on the issue of *radhaah*. According to the Zahiriah school of thought, what is meant by breastfeeding is sucking and tasting milk from the breast, not by pouring milk through the mouth into the throat (الوجور) or pouring milk up the nose and then into the throat (السعوط). This is different from *Jumhur*'s view, which includes *al-wajur* and *al-saūth* as part of *radhā'a* (breastfeeding), because according to *Jumhur* ulama on breastfeeding is the arrival of milk into the esophagus through or not through the breast.<sup>16</sup> The implications of the results of *tarjih* regarding

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<sup>15</sup>Abdul Wahab Khallaf, *Ilmu Ushul Al-Fiqhi* (Kairo: Maktabah al-Dakwah al-Islāmiyah Syabab al-Azhar, 1968).

<sup>16</sup>al-Qardāwi, *Al-Ijtihad al Ma'āsiri: Bayna al-Indibāt wa al-Infirāt*, p. 24.

az Zahirī's opinion allow for the establishment of a breast milk bank (*Bank ASI*) if it becomes a necessity, and for the sake of realizing public welfare.<sup>17</sup>

The necessity of actualizing *ijtihād intiqāiy* in these various issues is inseparable from several factors.<sup>18</sup> Among these factors are:

First, changes in social, economic, cultural, and political conditions; It must be acknowledged that the reality of human life is always experiencing changes in various aspects of life. This requires mujtahids living in this era to always re-examine the various opinions of Salaf scholars on one or various issues. Opinions that are no longer appropriate to current conditions should not be used and replaced with opinions of previous scholars that are appropriate to current conditions.<sup>19</sup>

Second, the development of science and technology; It must be acknowledged that as time goes by, science and technology are increasingly developing, so that it can be ascertained that many of these scientific and technological treasures did not exist in the era of previous jurisprudence. The development of science and technology can be seen very clearly in various fields, especially in the fields of medicine and natural sciences. With this progress, it helps fuqaha living in the present and future in assessing the opinions of previous mujtahids and selecting one of those opinions that is considered appropriate to the conditions of the times.<sup>20</sup>

Third, the demands and needs of the times; In line with the times and advances in science and technology, human needs are becoming increasingly diverse. Therefore, mujtahids living in this era must pay attention to this reality. Thus, the people, who are both objects and subjects of law, will not experience difficulties, but instead, will experience convenience in carrying out legal practices of a *furū'iyah* nature.<sup>21</sup>

These factors must be taken into consideration by mujtahids today in allowing women to travel without being accompanied by their mahram on

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<sup>17</sup>Yusuf al-Qardawi, *Fatāwa Ma'āsirah* (Kairo: Dar al-Wafa', 1997), p. 550-556.

<sup>18</sup>al-Qardāwī, *Al-Ijtihad al Ma'āsiri: Bayna al-Indibāt wa al-Infirāt*, p. 24.

<sup>19</sup>al-Qardawi, *Al-Ijtihad al Ma'āsiri: Bayna al-Indibāt wa al-Infirāt*, p. 25-26.

<sup>20</sup>al-Qardāwī, *Syariah al-Islamiyah Shālihah Litātbīq fī Kullī Zamān wa Makān*.

<sup>21</sup>al-Qardāwī, *Syariah al-Islamiyah Shālihah Litātbīq fī Kullī Zamān wa Makān*.

condition that their husband or guardian agrees. Likewise, travel conditions are safe and reassuring. This is one example among many cases in the reality of modern life that requires a reinterpretation of the views of previous mujtahids. The fundamental positive side of *ijtihad intiqā'iy* is the disappearance of madhhab fanaticism. In the *ijtihad intiqā'iy*, all schools of thought are considered to have the same position, have the same opportunity to become the school of thought that has the clearest view on a problem in a particular condition, era, and place.<sup>22</sup>

Furthermore, the existence of *ijtihad intiqā'iy* demonstrates the existence of the existing *madhāhib* as a means of connecting to understanding the treasury of Islamic law,<sup>23</sup> which is derived from and based on the texts of the Qur'an and the Sunnah.<sup>24</sup> Therefore, the existence of these *madhāhib* remains necessary for the community in understanding and practicing Islamic law.<sup>25</sup>

### C. The Concept of *Ijtihād Insyā'iy*

The word "*insyar*" essentially comes from the word "*nasyaa*." This word consists of three letters: "Nun," "Shin," and "Hamzah," which mean "to grow taller and grow."<sup>26</sup> Therefore, "*insyar*" signifies the emergence of something new that never existed before. Moreover, it is undeniable that modern developments have transformed humanity in terms of thought, behavior, and increasingly broad communication. This is due to the influence of increasingly advanced technology.<sup>27</sup> As a result, various new issues have emerged that were not encountered during the time of the Imams of previous schools of thought, such as breast milk banking, test tube babies, cloning, blood donation, body part donation, sperm banking, uterine

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<sup>22</sup>Mirza Izzurohman et al., "Dasar Ijtihad, Syarat, Dan Hukum Ijtihad Dan Dinamikanya."

<sup>23</sup>Fatma Taufiq Hidayat and Seli Septina, "Ijtihad Dan Ruang Lingkupnya."

<sup>24</sup>Rahmatullah, "Konseptualisasi Dan Dinamika Ijtihad: Telaah Atas Metodologi, Produk Hukum, Dan Implikasinya Terhadap Modernisasi Hukum Islam," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 3, no. 1 (2025): 615–22, doi:<https://doi.org/10.5281/zenodo.15872141>.

<sup>25</sup>Fatma Taufiq Hidayat and Seli Septina, "Ijtihad Dan Ruang Lingkupnya."

<sup>26</sup>Abu Husain Ahmad ibn Faris ibn Zakaria, *Mu'jam Maqayis al-Lughah*, p. 428-429.

<sup>27</sup>Rahmatullah, "Konseptualisasi Dan Dinamika Ijtihad: Telaah Atas Metodologi, Produk Hukum, Dan Implikasinya Terhadap Modernisasi Hukum Islam."



contracts, and various other issues in various areas of human life. These issues certainly require *ijtihad* (religious decision-making) from competent parties.

Furthermore, *ijtihad* on newly emerging problems for which there is no legal determination yet and which are illuminated by sharia arguments is called *ijtihād insyā'iy*.<sup>2829</sup> It may even be that *ijtihad insyā'iy* is carried out on problems that existed during the time of the imams of the sect and for which there were legal provisions.<sup>30</sup> However, today's mujtahids are able to formulate new legal provisions that are more in line with the times, more useful for humans, and closer to realizing the *maqāshid al-syar'iah* matters.<sup>31</sup>

Similarly, the prominent scholar, al-Qardawi stated that on issues of *ijtihad* disputed by previous jurists, resulting in two opinions, mujtahids today may combine these opinions into three. Whereas previous jurists differed on three opinions, today's differences have become four.<sup>32</sup> Al-Qardawi gave an example that according to him, a person who rents land for farming and gardening should pay *zakat* if he has planted his crops and his calculations are sufficient. Likewise, the land owner should pay *zakat* from the proceeds from renting the land if his calculation is sufficient. Thus, both are charged with paying *zakat*. This is certainly not found in classical *fiqh* treasures.

According to *Jumhur*, those who are obliged to pay *zakat* are people who rent land. Meanwhile, according to Abu Hanifah, the person who is obliged to pay *zakat* is the land owner. *Jumhur* and Abu Hanifah's differences of opinion were triggered by the essence of *zakat* on agricultural products themselves. Is *zakat* a right to land management or a right to the land itself, or both rights? However, in reality, no one states their rights, even though in essence they are both rights.

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<sup>28</sup>Yusuf al-Qardāwī, *Liqā'at wa Muhāwarāt Hawla Qadāya al-Islam wa al-'Ashri* (Kairo: Maktabah Wahbah, 1992), p. 81.

<sup>29</sup>al-Qardāwī, *Liqā'at wa Muhāwarāt Hawla Qadāya al-Islam wa al-'Ashri*.

<sup>30</sup>al-Qardāwī, *Syariah al-Islamiyah Shālihah Llitātibiq fī Kullī Zamān wa Makān*.

<sup>31</sup>Halimatus Adiah and Irwansyah, "Urgensi *Ijtihad* Di Era Kontemporer.," *Jurnal Cerdas Humu* 2, no. 2 (2024): 26–33, <https://institutabdullahsaid.ac.id/e-journal/index.php/jurnal-cerdas-hukum/article/view/235>.

<sup>32</sup>al-Qardāwī, *Al-Ijtihad al-Ma'āsiri: Bayna al-Indibāt wa al-Infirāt*.

Although the *insya'iy* ijtiḥad allows for the emergence of new opinions on previously existing problems, in reality, *insya'iy* ijtiḥad is often applied to new problems, unknown in the past or already known by previous jurists, but in a very small scope and did not cause problems at that time so that no new *ijtiḥād* is needed. However, due to technological advances, these problems have become bigger and new ijtiḥad is needed to find legal solutions. In this case, al-Qardāwī, citing the opinion of the Mufti of Egypt, Shaykh Muhammad Bahith al-Muthī'iy, in his treatise *al-qawl al-kāfiy fī ibāḥat al-taswīr al-fūturāpi*, gave the example that photographs are halal, because the *illat* (cause of law) that is forbidden is the likeness of Allah's creation. While photos do not include the likeness of God's creation, in fact the photo itself is God's creation reflected on paper in the same way as an image in a mirror.<sup>33</sup>

The most fundamental positive aspect of *ijtiḥād insyā'iy* is that it enables Islamic law to align with technological advances. This ensures that Muslims are not left behind and do not appear to be old-fashioned and resist the flow of modern development. *Ijtihād insyā'iy* also motivates Muslims to work towards realizing science and technology without being constrained by the rigidity that results from a narrow perspective on Islamic jurisprudence. Thus, ijtiḥad insyā'iy is one of the supporting factors of Islamic law, *shālih fī kullī zamān wa makān*.

#### D. Combination of *Ijtihād Intiqā'iy* and *Ijtihād Insyā'iy*

The two ijtiḥads discussed in this paper can be combined in the realities of modern life. This is done by selecting the opinion of previous jurists deemed most appropriate and prudent (*rājih*). Then, new ijtiḥad elements are added to this most prudent opinion.

Al-Qardāwī gave his example to the fatwa of the Kuwait Fatwa Lajnah on the issue of "abortion," which is permitted and prohibited. After the Fatwa Lajnah chose the opinion of the fuqaha which was the most appropriate and prudent (*rājih*)

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<sup>33</sup>al-Qardāwī, *Al-Ijtihad al-Ma'āsiri: Bayna al-Indibāt Wa al-Infirāt*.

on such an issue, it then added a new *ijtihād* based on advances in science and modern medicine, which was able to see the development of the fetus in the womb.<sup>34</sup>

Fatwa *Lajnah Fatwa* Kuwait stated on 29-9-1984, namely: Doctors are not permitted to perform abortions on pregnant women who are more than 120 days pregnant from conception, except to save the mother's life from danger posed by her pregnancy. Abortions are permitted with the consent of the couple if the pregnancy is less than 40 days old from conception. If the pregnancy is more than 40 days old and less than 120 days old, abortion is not permitted except in two cases: (1) If the pregnancy endangers the mother's health and is unlikely to survive until delivery; (2) If the fetus is known to be born with physical or mental disabilities that cannot be cured; Non-emergency abortions should be performed in government hospitals and should not be performed after 40 days of pregnancy unless based on the decision of a scientific committee consisting of three specialist doctors, at least one of whom must be a specialist in women's and gynecological diseases.<sup>35</sup>

It is possible that the practices of *ijtihād intiqā'iy*, *ijtihād insyā'iy*, and a combination of the two could be implemented in Indonesia. This is based on the consideration that Indonesia, with its cluster of islands, diverse ethnicities, and customs, is part of this part of the world. This background can give rise to problems that certainly require *ijtihād* in order to find legal solutions that have an Indonesian perspective and remain within the light of divine light (*nūr Ilāhī*).

## E. Conclusion

Based on the formulation of the problem that has been determined and the description that has been presented in the previous sections, the following

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<sup>34</sup>al-Qardāwī, *Al-Ijtihād al-Ma'āsiri: Bayna al-Indibāt Wa al-Infirāt*, p. 39-40.

<sup>35</sup>al-Qardāwī, *Al-Ijtihād al-Ma'āsiri: Bayna al-Indibāt Wa al-Infirāt*, p. 39-40.

conclusions can be drawn. First, *ijtihād intiqā'iy* is *ijtihād* by selecting opinions from the classical *fiqh* treasury that are considered the most appropriate and prudent (*rājih*), the strongest argument (*hujjah*), and the closest to realizing the *maqāshid al-syarī'ah*.

Second, *ijtihād insyā'iy* is *ijtihād* to formulate and establish new laws on issues for which there are already legal provisions in the classical *fiqh* treasury, but which are no longer appropriate to the place, time, and conditions of the community, so that new legal provisions are needed. Likewise, *ijtihād insyā'iy* is *ijtihād* to establish laws on new issues that are the result of progress, changes in place, and societal conditions.

Finally, a combination of *ijtihād intiqā'iy* and *ijtihād insyā'iy* can be done by selecting the opinion of the previous fuqaha, which is considered the most *rājih*, and then adding new *ijtihād* elements to it.

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