THE REASON FOR DISAGREEMENT ABOUT THE ESSENCE OF THE EVIDENCE: A STUDY IN ISLAMIC JURISPRUDENCE

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ABSTRACT

Objective: This study delves into the definition of evidence in both language and Islamic jurisprudence. It also provides an explanation of the reasons behind differences in Islamic jurisprudence.

Methods: I utilized the method of induction to gather scientific material by examining relevant books of principles and extracting pertinent information. The first section of the research outlines the opinions of scholars and their supporting evidence for each school of thought, after clarifying the point of contention in the issue. In the second section, the reasons for differences in Islamic jurisprudence are divided into four categories, including issues related to principles and fundamentals, such as whether every jurist is infallible, distinguishing between evidence and indication, and distinguishing between certainty and conjecture. The final reason relates to theological principles, specifically the issue of prioritizing reason over tradition.

Results: The significance of studying Usul al-Fiqh in comprehending the reasons behind disagreements and their influence on the various branches of Islamic jurisprudence. Furthermore, the interdependence of Usuli issues, leads scholars to become a source of Usuli disagreement.

Conclusion: One of the causes of Usuli disagreement in this matter is linked to theological issues, which sheds light on the connection between Usul al-Fiqh and the principles of religion.

Keywords: Islamic jurisprudence, principles of religion, disagreement.

A RAZÃO PARA A DISCORDÂNCIA SOBRE A ESSÊNCIA DA EVIDÊNCIA: UM ESTUDO NA JURISPRUDÊNCIA ISLÂMICA

RESUMO

Objetivo: Este estudo aprofunda-se na definição de evidência na linguagem e na jurisprudência islâmica. Também fornece uma explicação das razões por trás das diferenças na jurisprudência islâmica.

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Métodos: Utilizei o método de indução para reunir material científico examinando livros de princípios relevantes e extraíndo informações pertinentes. A primeira seção da pesquisa descreve as opiniões dos estudiosos e suas evidências de apoio para cada escola de pensamento, depois de esclarecer o ponto de contenção na questão. Na segunda seção, as razões para diferenças na jurisprudência islâmica são divididas em quatro categorias, incluindo questões relacionadas a princípios e fundamentos, tais como se cada jurista é infalível, distinguiendo entre evidência e indicação, e distinguiendo entre certeza e conjetura. A razão final diz respeito aos princípios teológicos, especificamente a questão de priorizar a razão em detrimento da tradição.

Resultados: O significado de estudar Usul al-Fiqh na compreensão das razões por trás de desentendimentos e sua influência sobre os vários ramos da jurisprudência islâmica. Além disso, a interdependência das questões de Usuli, leva os estudiosos a se tornarem uma fonte de desacordo de Usuli.

Conclusão: Uma das causas da discordância de Usuli nesta matéria está ligada a questões teológicas, o que lança luz sobre a conexão entre Usul al-Fiqh e os princípios da religião.

Palavras-chave: jurisprudência islâmica, princípios de religião, discordância.

1 INTRODUCTION

Understanding the reasons behind differences in Islamic jurisprudence is crucial for jurists, muftis, and judges. It is a necessary science that they must be knowledgeable about and understand its meanings and implications. Ignorance of these reasons cannot be excused. In fact, some scholars have even ranked the comprehension of the causes and effects of disagreements on the branches of jurisprudence and related issues as a prerequisite for being a jurist. As Al-Subki (1992) said that the jurist cannot underestimate the importance of understanding the strange aspects, unusual opinions, and peculiarities of disagreement. It is not enough for a person to limit himself to what he knows to answer a question. If a person does not know the science of disagreement and its principles, he will not be a jurist until he enters the camel into the needle's eye. He will only be a confused transmitter of knowledge to others, without the ability to deduce a legal ruling from a precedent, make an analogy between past and present situations, or connect evidence to an absent witness. The risk of error is high, and mistakes are abundant, making him far from being a true jurist. To shed light on the reasons behind differences in Islamic jurisprudence, I have written this scientific paper titled "the reason for disagreement in the essence of evidence: a foundational study." The research problem lies in the following points:
1.1 RESEARCH QUESTIONS

1. What is the true meaning of evidence in language and terminology?
2. What is the meaning of the reason for disagreement among Muslim jurisprudence?
3. What is the essence of evidence according to the scholars of Islamic jurisprudence, and what is the reason for their disagreement on this matter?

1.2 RESEARCH OBJECTIVES

The research objectives are as follows:
1. To recognize the essence of evidence,
2. To explain the concept of "the reason for disagreement between Muslim jurisprudence;"
3. To clarify the opinions of scholars on the essence of evidence according to the principles of Islamic jurisprudence, and the reason for their disagreement on this matter.

1.3 RESEARCH SIGNIFICANCE

The importance of this research is evident in the following:
1. Knowing the reasons behind differences in Islamic jurisprudence reveals to us the efforts of scholars to reach the truth, and that these efforts are not for personal desires, but rather to reveal the pure truth;
2. Understanding the opinions of scholars and their evidence, and how they derive their arguments from the evidence they use to affirm their point of view in controversial issues.
3. The novelty of the topic, as it is dedicated to studying the reasons for disagreement on foundational issues in Islamic jurisprudence.

2 LITERATURE REVIEW

2.1 THE OPINIONS OF SCHOLARS ON EVIDENCE

The Arabic term "dalil" has multiple meanings, such as being a guide to a desired objective, a reference or indication, and a sign that leads to a specific conclusion or goal. It can also refer to a symbol or mark that assists in comprehending the intended message. For instance, smoke is considered evidence of fire because it indicates the existence of

In Islamic jurisprudence, there are two definitions of evidence. The first definition is that it is something that, upon a correct examination, leads to a certain knowledge of a matter. This definition is broader and more general and is accepted by many scholars of Islamic jurisprudence (Ibn Al-Hajib, 1427AH). The term "imarah" is used to refer to evidence that leads to probable knowledge of a matter, as opposed to "dalil" which leads to certain knowledge. So the imarah comes out because it leads to suspicion (Al-Babarti, 2005; Al-Ba'li, 2002).

The second definition is that it is something that, upon a correct examination, leads to probable knowledge of a matter (Al-Ghazali, 1413AH; Al-Razi, 2007). This definition is narrower and is used by some scholars who distinguish between absolute certainty and probability. Evidence that leads to certain knowledge is called "dalil", while evidence that leads to probable knowledge is called "imarah."

2.2 CAUSES OF ISLAMIC JURISPRUDENCE SCHOLARS DIFFERENCES

The causes of differences among Islamic jurisprudence scholars are the factors that result in disagreements among them. Although there is no clear definition of this term in classical sources, one can comprehend these causes by examining the arguments and evidence presented by scholars when they express their opinions on contentious matters.

The causes of differences are considered a part of the broader field of the study of differences (ilm al-khilaf), which is a distinct discipline with its own books and treatises. The previous explanation provided a definition of differences in terms of its conception and occurrence. The concept of causes of differences refers in particularly to the relation between the principles (usul) of Islamic jurisprudence, encompasses the methods and approaches that give rise to disagreements among scholars in fundamental matters. To comprehend these causes, one must have an understanding of the different perspectives and reasons behind these differences (Al-Wadaan, 2008). Other scholars view it as a diagnosis or description of the reason for the disagreement (Al-Mughira, 2005). It is considered a part of the broader field of the study of differences (ilm al-khilaf) and requires knowledge of the various perspectives and reasons behind those differences. In my opinion, the definition that is most appropriate for the causes of scholarly differences in matters of Islamic jurisprudence is that it refers to the subject matter of the
disagreement in fundamental matters and the sources from which the scholars derived their opinions.

2.3 THE ESSENCE OF EVIDENCE (DALIL) AMONG SCHOLARS OF ISLAMIC JURISPRUDENCE

The clearance of the disagreement position has two aspects. The first aspect is to clarify the subject matter of the dispute, while the second aspect is to determine the nature of the proof itself. There is no disagreement among scholars that in the origin of linguistic usage, the evidence is a guide to what is sought, whether it is certain or probable. Ibn Al-Sabbagh stated that there is no difference among scholars that the term 'proof' is used in reference to the origin of linguistic usage (Al-Zarkashi, 1992). Similarly, there is no disagreement among scholars that the essence of evidence, in terms of its technical usage, refers to evidence that leads to a certain conclusion. However, there is a difference of opinion regarding the meaning and reality of proof in terms of its technical usage, specifically whether it can lead to a probable conclusion.

2.4 THE SCHOLARS DOCTRINES AND EVIDENCE ON THE ISSUE

 Scholars differed on this issue, with two opinions:

First doctrine: Scholars of Islamic jurisprudence have differed on the issue of whether the evidence (dalil) includes proof that leads to a certain conclusion or evidence that leads to a probable conclusion. One school of thought holds that proof encompasses both types of evidence without distinction, and this view has been adopted by many scholars (Al-Babarti, 2005; Al-Samarqandi, 2011; Al-Zarkashi, 1992; Ibn Al-Farra', 1414AH). It was also the opinion of Ibn Taymiyyah (2001), who chose this view as his own. They set the following evidences:

1. According to Ibn Al-Farra', (1414AH) a language expert, the term "evidence" is a linguistic term that does not differentiate between definite or indefinite requirements. Additionally, Al-Shirazi (1988) argues that the Arabs do not distinguish between what requires knowledge and what requires assumption when using the term "evidence." Therefore, it is necessary to differentiate between them to clarify the intended meaning.

2. What leads to assumption is considered a guide to what is required. Therefore, it must be an evidence, just like what confirms knowledge. Hence,
believing in both - definite and indefinite - and acting upon them is obligatory. There is no difference between them (Ibn Al-Farra', 1414AH).

3. The essence of an evidence is what directs you to something, whether it directs you to knowledge or assumption. Therefore, it deserves to be called a guide in both cases (Al-Shirazi, 1988).

**Second doctrine:** evidence includes what leads to certainty without doubt (Al-Juwayni, 1996; Al-Ghazali, 1413AH; Al-Razi, 2007; Ibin Aqil, 1999). Their evidence is as follows:

1. Evidence is used to reach what is required, and certain requirements cannot be reached through assumptions (Al-Hululu, 1420).
2. Evidence and proof are synonymous and they both indicate knowledge, whereas assumptions indicate doubt. Therefore, the path of evidence and assumption are in agreement because evidence is the path of knowledge, while assumption is the path of doubt (Al-Razi, 2007).

**3 METHODOLOGY**

I utilized the method of induction to gather scientific material by examining relevant books of principles and extracting pertinent information. I carefully documented the Hadiths, attributing them to their reliable sources such as Sahih Al-Bukhari or Sahih Muslim, and indicated their authenticity or weakness. I also provided definitions for scientific terminology when necessary. To maintain conciseness, I refrained from translating Al-A'lam. Lastly, I pray that this work is sincere for the sake of Allah and brings benefit in this world and the hereafter. May Allah's peace and blessings be upon the noble Prophet, his family, and his companions.

**4 RESULT AND DISCUSSION**

4.1 THE REASON FOR THE DISAGREEMENT IN THE ISSUE

4.1.1 *Whether every mujtahid is right*

The first reason for the disagreement regarding the issue of whether every mujtahid (Islamic scholar capable of deriving legal rulings from Islamic sources) is correct or not is related to the principles of Islamic jurisprudence. Those who believe that every mujtahid is correct, such as the Mu'tazilah and Ash'aris, may differentiate between the path that leads to certainty, which is evidence, and the path that leads to doubt, which
is assumption. On the other hand, those who believe that only one mujtahid can be correct may not differentiate between them, as evidence encompasses both certainty and doubt.

Therefore, we find that Ibn Taymiyyah (2001) referred to this reason in his manuscript after quoting Ibn 'Aqil's words, where he differentiated between certainty and doubt. Issues that lead to legal rulings are of two types: those that lead to knowledge of their reality, which are described as evidence and are considered proof by all proponents of this view, and those that lead to doubt and are described as assumption. The latter is given this name to distinguish it from what leads to knowledge and certainty. The second type leads to doubt and mostly doubt, and is described as an indication of judgment. This distinction is made to differentiate it from what leads to knowledge and certainty. The term "leads" is used here to indicate that it is a means of reaching doubt, not a path like the path of conclusive evidence, which is a means of reaching knowledge of its meaning. Therefore, we say that it leads and is a means of reaching doubt (Ibn Aqil, 1999).

Ibn Taymiyyah, after quoting Ibn 'Aqil, stated that this view is in agreement with the belief of those who think that every mujtahid is correct, such as the Mu'tazilah and Ash'aris. They argue that assumptions are not based on qualities that necessitate doubt, unlike knowledge-based assumptions. However, the majority disagrees with this view and considers it a matter of belief in the preponderance of evidence and belief (Ibn Taymiyyah, 2001).

Al-Zarkashi (1992) suggested that the reason why some people believe that assumptions do not require qualities that lead to doubt, unlike knowledge-based assumptions, is because assumptions are agreed upon. Consequently, they argue that assumptions do not follow any order, precedence, or delay, and there is no error in the same matter as what is correct.

4.2 THE ISSUE OF DISTINGUISHING BETWEEN EVIDENCE AND AMARA

It is the second reason for the disagreement among scholars which is related to the principles of jurisprudence.

Those who do not distinguish between "Dalil" and "Amara" may consider evidence to include both definitive and speculative evidence, while those who do distinguish between them may define evidence as being exclusively definitive. Al-Khatib al-Baghdadi (2000) referred to this distinction, saying that Jurists call the reports of individuals "Dalil" and "Qiyas" (analogical reasoning) whenever they lead to the
predominance of probability, they call it "Hujjah" (proof) and "Dalil" (evidence)."
However, some theologians criticize this approach and argue that true evidence is what
leads the argument and the one being argued to knowledge of the intended meaning with
certainty. As for what leads to the predominance of probability, it is not considered true
evidence, but rather an Amara.

Scholars such as al-Juwayni and al-Amidi have made reference to the distinction
between "Dalil" (evidence) and "Amara" (command). Al-Juwayni argued that evidence
is specialized for what leads to knowledge based on auditory and rational evidence, while
what does not entail knowledge is called "Amara". Similarly, al-Amidi stated that jurists
differentiate between what leads to knowledge and what leads to probability, assigning
the term "Dalil" to what leads to knowledge and "Amara" to what leads to probability.
This distinction indicates that evidence is what leads to knowledge, which is certainty,
while "Amara" is what leads to probability (Al-Juwayni, 1996, p. 131). Al-Amidi also
stated that the scholars of jurisprudence differentiate between what leads to knowledge
and what leads to probability, assigning the term "Dalil" to what leads to knowledge and
the term "Amara" to what leads to probability. This indicates that the scholars distinguish
between evidence and Amara. Evidence is what leads to knowledge, which is certainty,
while Amara is what leads to probability. Hence, this distinction appears to be based on
the level of certainty that each concept provides (Al-Amidi, 2003, p. 23).

I previously mentioned that the scholars distinguish between evidence and
command, where evidence leads to knowledge and certainty, while command leads to
probability. However, al-Juwayni does not completely separate evidence and command
in his response to the issue, as he refers to the essence of the language. This indicates that
the disagreement between scholars regarding this matter is related to language. Al-
Juwayni argued that the term "Dalil" is specialized for what entails knowledge based on
auditory and rational evidence, while "Amara" is used for what does not entail knowledge.
He also stated that if this distinction is based on the essence of the language, there would
be no difference between "Amara" and "Dalil" in this regard (Al-Juwayni, 1996). Al-
Juwayni also acknowledges the distinction made by scholars between "Dalil" and
"Amara" in terms of evidence and command. However, he argues that the two concepts
are not completely separate when it comes to the essence of the language. According to
him, "Dalil" is specialized for evidence that leads to knowledge based on auditory and
rational evidence, while "Amara" is used for what does not entail knowledge. He also
suggests that if this distinction is based on the essence of the language, there would be no difference between "Amara" and "Dalil" in this context. Therefore, the disagreement among scholars regarding this matter is related to language. Al-Juwayni's view indicates that the Arabic language does not distinguish between "Amara" and "Dalil" in this context (Al-Juwayni, 1996).

Al-Amidi noted that there are scholars who do not distinguish between "Dalil" and "Amara". These scholars believe that evidence is what can lead to the desired knowledge when examined correctly, without making a distinction between evidence and command. They consider evidence as what can be used to arrive at the required knowledge. This perspective is related to the principles of jurisprudence (Al-Amidi, 2003).

Al-Khatib al-Baghdadi did not take sides in the debate between the two groups regarding the distinction between "Dalil" and "Amara". He indicated this by stating that neither the jurists nor the theologians were mistaken in their views. The theologians spoke the truth about evidence and argument, while the jurists used the term "Dalil" for what they had to rely on to arrive at a conclusion, such as reports of individuals, analogy, and other methods that do not lead to certain knowledge but rather to probable evidence. This may lead to relying on conjecture as evidence, but Allah has obligated them to make judgments based on what is most likely correct. They called it "Hujjah" and "Dalil" to follow the rulings of Islamic law based on them (Al-Baghdadi, 2000).

4.3 DIFFERENTIATING BETWEEN QAT'I" AND "ZANNI"

This issue is considered the third reason for the disagreement over the distinction between definite "Qat'i" and presumed "Zanni" and is related to the principles of jurisprudence. Those who do not differentiate between the two paths may believe that evidence includes both "Qat'i" and "Zanni", while those who make a distinction between the two paths may consider evidence to include only "Qat'i" without "Zanni", and consider "Amara" as a path to "Zanni". This reason falls under the category of distinguishing terminologies. Some scholars have suggested that the disagreement over this issue is verbal, related to wording rather than meaning. Ibn al-Sabbagh stated that theologians disagreed on using the term "Dalil" for "Zanni", but their intention was to distinguish between what is certain and what is probable, and in reality, they did not differ in calling everything "Dalil" in essence.
Ibn al-Sabbagh stated that theologians disagreed on using the term "Dalil" for "Zanni", but their intention was to distinguish between what is certain and what is probable, and in reality, they did not differ in calling everything "Dalil" in essence (Al-Zarkashi, 1992).

Al-Juwayni suggested that if the distinction between "Dalil" and "Amara" is based on the essence of language, there would be no difference between the two in this context. The difference between the two groups is related to language and terminology rather than meaning (Al-Juwayni, 1996).

Al-Zarkashi (1992) reported that some scholars, including Ibn Barhan and Ibn al-Sam'ani, claimed that jurists do not distinguish between the two paths of evidence, namely what leads to certainty and what is probable. On the other hand, theologians make a distinction between them, but this distinction is related to wording rather than meaning.

4.4 PRIORITIZING MIND OVER OF TRANSPORTATION

The fourth reason for the disagreement over the distinction between "Qat'i" and "Zanni" is related to the issue of prioritizing intellect over tradition, and it is associated with the principles of theology. Those who prioritize intellect over tradition may argue that evidence is a path leading to certainty, while what is probable has another path besides evidence. Conversely, those who prioritize tradition over intellect may believe that evidence is a path leading to both certainty and probability. The debate over prioritizing intellect over tradition remains a contentious issue in Islamic thought and theology.

It is clear from the statements of the Mu'tazilites and those who agree with them in denying divine attributes that they do not accept the literal meanings and individual reports concerning matters related to Allah and the Hereafter. This is because these issues can only be proven through rational evidence. Since most attributes are established through reports, and many matters cannot be proven by reason alone, such as the punishment of the grave, intercession, the bridge (sirat), and the scales (mizan), they do not accept them because they contradict their flawed principle. Therefore, they coined the term "Amara" for reports because it is weaker than evidence. So, when there is a conflict between an Amara and rational evidence, they give preference to rational evidence (Al-Arousy, 2009).
5 CONCLUSION

Based on the research conducted, the following conclusions can be drawn:

1. The significance of studying Usul al-Fiqh in comprehending the reasons behind disagreements and their influence on the various branches of Islamic jurisprudence.

2. The interdependence of Usuli issues, leading them to become a source of Usuli disagreement.

3. One of the causes of Usuli disagreement in this matter is linked to theological issues, which sheds light on the connection between Usul al-Fiqh and the principles of religion.

4. And Allah knows best.

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