STUDYING THE CONCEPT OF MAQASID AL-SHARI'AH AL-JUWAYNI IN THE BOOK OF AL-BURHAN FI USUL AL-FIQH

Nasiri[1]
Email: nasiri.abadi20@gmail.com

Abstract: *Abu al-Ma'ali al-Juwayni, a high-caliber jurist is well known as Imam al-Haramayn. His appearance brought forward a work on original usul al-fiqh which was different from the written style of the previous usul al-fiqh books as well as provided tremendous influence to the writing of the later books. His description about the law methodology, in his work namely al-Burhan fi Usul al-Fiqh, was a valuable original finding that differentiates him from the other authors of the usul books. One of his original ideas which was his first breakthrough in the field of usul al-fiqh was the concept of maqasid al-shari'ah, to which he divided it into two parts: "the unwritten maqasid" that was achieved through istiqra' way and "written maqasid" that was achieved through coherence (qarinah) which were divided into contextual coherence (qarinah haliyyah) and verbal coherence (qarinah maqaliyyah) through the ways of exception (istithna') and specialization (takhsis).*

Keywords: *al-Juwayni, maqasid al-shari'ah, fiqh*

---

[1] Sekolah Tinggi Agama Islam Taruna Surabaya

A. Introduction

The 5th-century Shafi'i school of thought produced extraordinary children, one of whom was Abu al-Ma'ali al-Juwayni, a high-caliber jurist known as Imam al-Haramayn. His emergence was a breath of fresh air in the Islamic intellectual tradition and in the discourse of usul al-fiqh, presenting an original work on usul al-fiqh that differed from the writing style of previous usul al-fiqh works. His work even exerted a tremendous influence on the writing of subsequent works.

How exactly did this phenomenal figure achieve such a mature level of scholarship, enabling him to achieve such outstanding achievements in all fields of Islam, particularly in usul al-fiqh, as reflected in one of his original works, al-Burhan fi Usul al-Fiqh. In addition to this book, he also wrote various works on the principles of Islamic jurisprudence, such as al-Waraqat and al-Irshad fi Usul al-Fiqh. Among these works, al-Waraqat is the most concise and widely taught in Islamic boarding schools (pesantren) in Indonesia to this day.

This article does not intend to discuss the full scope of this figure's ideas on the principles of Islamic jurisprudence, but rather to uncover the structure of al-Burhan and the themes it explores. Furthermore, a brief overview of the book's considered "important" elements will be reviewed, namely the concept of maqasid al-shari'ah, believed to be a pioneer in the field of maqasid theory. First, however, a brief overview of Abu al-Ma'ali al-Juwayni's biography will be provided.

This is important because examining the socio-historical context of an individual's intellectual growth and development can help understand the structure of a figure's thought. As Michel Foucault argued, ideas always exist within a context,

place, and conditions that serve as a platform for their emergence. The task of the archaeology of knowledge is to explore how the historical processes by which objects of knowledge are constructed. Archaeology examines the conditions that allow for the birth of an idea or concept, including questioning the traditional unity of the oeuvre, writing, and author, by examining the conditions under which the oeuvre is constructed and created.

B. Al-Juwayni: The Shafi'i Figure of Excellence
1. Biographical Sketch

The full name of this phenomenal Shafi'i figure is Imam Abu al-Ma'ali 'Abd al-Malik ibn 'Abd Allah ibn Yusuf ibn Muhammad al-Juwayni al-Nisaburi, an Arab descendant of the Banu Ta'i al-Sanbasi. He was born in 419 AH / 999, in Busytanikan, a village that is a cool recreational area. The century of his birth, namely the 5th century, reflects the peak of the division of the Islamic state into small states in the eastern and western regions. However, interestingly, this century was the most fertile period for the rise of high science that had been initiated by the early Islamic caliphs since Islam had a state. This century also witnessed the emergence of intellectuals-ulama in various scientific fields. It turns out that the political divisions and group conflicts that occurred in that century did not significantly hamper the development of science at that time. In fact, each small daulah had a great desire to have its own schools of thought, scholars, writers and poets.

The Khurasan region, if traced back, is the heir to a very rich civilization, philosophy and classical science. It is one of the most fertile regions in terms of producing intellectual scholars,

while the city of Nisabur, the birthplace of the Imam, is the most developed city in the region. The people were very interested in the remnants of existing beliefs, such as those from Persia, India, Greece and Syria. These beliefs hide behind various philosophies, schools of thought, sects and religious groups. There, the fire of upheaval and debate never goes out because it is the right environment for various kinds of science, civilization, energetic thoughts and competing opinions. All of this includes things that influenced al-Juwayni's personality, increased the sharpness of his talent and intelligence, and even sharpened his thoughts.

Al-Juwaynī's early education began in his own home environment by studying with his father, a large and influential cleric in the city of Nisabur. He studied various Islamic disciplines such as the Koran, Hadith, Arabic, fiqh, usūl, and the science of differences of opinion ('ilm al-khilāf). His father was named Abu Muhammad 'Abd Allah b. Yusuf b. 'Abd Allah b. Yusuf b. Muhammad b. Hayyuyah al-Ta'ī al-Sinbisī. He was a Nisabur priest in his time. He studied fiqh from Abū al-Tīb Sahl b. Muhammad al-Su'lukī and Abu Bakr b. 'Abd Allah b. Ahmad al-Qaffal al-Marwazi in Marwa, and deepening the literature of his own father Yusuf al-Adib in Juwayn. His other teachers were Abu 'Abd al-Rahmān al-Sulami, Abu Muhammad b. Babawayh al-Asbahanī, Abū al-Hasan Muhammad b. al-Husayn b. al-Fadal b. Nazīf al-Farra', and others. He was brilliant in the field of fiqh, and even authored various useful books and provided satisfactory sharah to the book al-Muzani and also the book al-Risala by al-Shafi'ī.

So, from the beginning, young al-Juwaynī studied with someone who had deep knowledge of religious sciences, namely

his own father. Because of the intelligence and talent inherited from his father, at a relatively young age, al-Juwaynī had memorized the Koran and mastered various other Islamic knowledge. His intelligence and critical attitude emerged when he was still young, because the geographical and cultural context provided space for the development of his critical thoughts and attitudes.

When al-Juwaynī's father died in 438 AH, he succeeded him in teaching at his father's science council, and at that time he was not yet 20 years old. Even though he has become a teacher, he still has a thirst for knowledge. He studied Shafi'i fiqh and Ash'arī theology from Abu al-Qasim al-Iskaf al-Isfarayinī. He studied the Koran from Abu 'Abd Allah al-Khabzī. He studied Hadith first from his father, then from Abu Hassan Muhammad ibn Ahmad al-Muzakkī, Abu Sa'ad 'Abd al-Rahman ibn Hamdan al-Nasrawī, Abu 'Abd Allah Muhammad ibn Ibrahīm ibn Yahya al-Muzakki, Abū Sa'ad 'Abd al-Rahman ibn al-Hasan ibn 'Aliyyak, Abu 'Abd al-Rahman Muhammad ibn 'Abd al-'Azīz al-Nīlī, Abu Nu'aym al-Asbahanī, and others.

When al-Kunduri's fitnah occurred (around 443 H and 447 H), al-Juwaynī left Nisabur for Mu'askar, Isfahan, Baghdad, Hijaz, and finally Mecca. In Baghdad he studied with Muhammad al-Jawharī, and there he also studied al-Baqilanī's books on theology. Al-Baqilanī greatly influenced al-Juwaynī's thoughts, therefore he quoted many of his opinions when writing the book al-Burhān which is the focus of the discussion in this article. In Isfahan, he studied with Abu al-Nu'aym al-Isfahanī. When he was 20 years old, around 450 AH, he went to the Hijaz. He lived in Mecca and Medina for 4 years, in both areas he was busy teaching, giving fatwas and composing.

Because of his activities, he was given the nickname "Imām al-Ha

After that, in 455/1063, Abu al-Ma'ali returned to his homeland in Nisabur, and taught for approximately 30 years at Madrasah al-Nizamiyyah, the largest school in Nisabur in the North Persian region which was founded by Nizām al-Mulk, a wazīr belonging to the Ash'arī and Shafi'i sects. Here he became the golden child of Nizam al-Mulk, and had extraordinary influence on many people, and always made touching and heart-wrenching speeches. He has enriched Islamic culture and research with a large number of thick volumes of books that he collected and authored himself, and his works cover several scientific fields in Islam. Below, some of his scientific works will be presented:

- **Tafsir:** *Tafsīr al-Qur'ān al-Karīm*
- **Hadis:** *al-Arab'ūn (Ahādīth Mukhtārah)*
- **Usūl al-Fiqh:**
    1. *Al-Burhān fī Usūl al-Fiqh*
    2. *Al-Irshād fī Usūl al-Fiqh*
    3. *Al-Waraqāt*
    4. *Kitāb al-Mujtahidīn*
    5. *Kitāb Mughīth al-Khalq fī Ikhtiyār al-Ahaqq*
    6. *Treatise of al-Taqlīd wa al-Ijtihad*
- **Kalam:**
    1. *Al-Irshad fī Qawati' al-Adillah wa Usūl al-I'tiqad.*
    2. *Shifa' al-'Alīl fī Bayan ma Waqa'a fī al-Tawrat wa al-Injīl min al-Tabdīl*
    3. *Luma' al-Adillah fī Qawati' 'Aqa'id Ahl al-Sunnah wa al-Jama'ah.*

4. *Masa'il al-Imam 'Abd al-Haqq al-Siqali wa Ajwibatuha li al-Imam Abu al-Ma'alī.*

5. *Al-Talkhīs fī al-Usūl*

6. *Al-Shamil fī Usul al-Dīn*

7. *Al-'Aqīdah al-Nizamiyyah fī al-Arkan al-Islamiyyah*

8. *Mukhtasar al-Irshad li al-Baqilanī Ikhtasarahu Imam al-Haramayn*

9. *Masā'il al-Imām 'Abd al-Haqqal-Siqilī wa Ajwibatuha li al-Imam Abī al-Ma'alī*

10. *Ghiyāth al-Umam fī Iltiyath al-Zulam* (tentang politik).

- **Fiqh:**
  1. *Nihāyat al-Matlab fī Dirāyat al-Madhhab*
  2. *Munāzarah fī al-Ijtihād fī al-Qiblah*
  3. *Fī Zawāj al-Bikr*
  4. *Al-Silsilah fī Ma'rifat al-Qawlayn wa al-Wajhayn 'alā Madhhab al-Shāfi'ī*
  5. *Risālah fī al-Fiqh*
  6. *Mukhtasar al-Nihāyah*

- **The science of differences between schools of thought ('ilm al-khilāf):**
  1. *Al-Durrah al-Mudī'ah fī mā Waqa'a min Khilāf Bayn al-Shāfi'iyyah wa al-Hanafiyyah*
  2. *Ghunyat al-Mustarshidīn fī al-Khilāf*

- **The science of debate ('ilm al-jadal):** *Kitab al-Kifayah fī al-Jadal*

- **Psychology:** *Kitab al-Nafs*

- **Rhetoric:** *Diwan Khutabihi al-Minbariyyah*

- **Advice:** Qasidah containing a will for his children.

Because of his comprehensive knowledge in the scientific field, coupled with the nobility of his character and personality,

many people flocked to learn from him. The number of his students exceeded 400 people, including brilliant and famous names in the Islamic world, such as al-Ghazalī, al-Farawī, al-Suhamī and al-Masjidī. Among his students, it was al-Ghazali who colored his next intellectual journey. In fact, several of the books he wrote were inspired by the works of al-Juwaynī, such as the book al-Mankhūl min Ta'liqāt al-Usūl.

Imam al-Haramayn al-Juwaynī throughout his life continued to strive in the path of Allah's religion and defended the Sunnah of His Prophet until Allah's destiny came that could not be rejected. He suffered from Yarqān disease (jaundice) and remained there for several days, then recovered and returned to teaching. He continued teaching until he fell ill again and developed a very high fever, and was then taken to Busytanikan. He died after the Isha prayer, on Tuesday, Wednesday night, 25 Rabi'ul Akhir 478 H, or August 20, 1085. He was moved to Nisapur that night, and was prayed over by his son Imam Abu al-Qasim and buried in his house. Al-Juwaynī's life lasted only 59 years, 3 months, and 7 days.

2. Scientific position and ideological position

Abu al-Ma'ali al-Juwaynī can be described as an encyclopedic scholar. He mastered nearly all the foundations of Islamic scholarship, and this is reflected in his works, which cover nearly every discipline in Islam. In the field of speculative theology, or kalam, he can be considered a staunch and staunch defender of the Ash'ari school of kalam, although he often differed from al-Ash'ari in some respects. Nevertheless, some of his kalam thoughts demonstrate that he was a staunch adherent of Ash'ari theology.

For example, he asserted that some forms of knowledge exist within humans like us, but that this knowledge itself is highly dependent on and must be distinguished from the kind of knowledge possessed by God. Although God is neither physical nor something situated in space and time, it is possible that he will be seen on the Day of Judgment. God is completely free, acting for no reason other than that which He Himself provides. Causal relationships are irrelevant, and the possibility of miracles is based on the fact that nothing in nature is certain. God is not only the creator of the universe, in the sense of being its first cause, but also the agent who causes its continued existence. The existence of the world in every state depends on God's will. God is the sole creator, and even our actions do not originate from us but are derived from God.

For al-Juwaynī, the path to understanding the Quran is through a deep grounding in Arabic. Al-Juwaynī distinguishes between different types of texts. Some verses are clear, some are precise, some are hidden, and still others are cryptic. These clear verses do not change their meaning regardless of context. Accurate verses have a meaning that clearly relates to the specific circumstances they describe and presents no difficulty in understanding them. Hidden verses have two types of meaning: one that requires interpretation by the Prophet and his followers, or one that can be explained by a group of readers who fully understand the difficulties they present. Similar verses require analogical interpretation, based on which the true meaning emerges accurately from the actual forms of the words used. This form of interpretation should only be used as a last resort, and it is fraught with dangers in that it can lead to a loose and loose approach to understanding the meaning of scripture.

Al-Juwayni presents his work in a highly structured system of interpretation designed to make scripture accessible, yet confined within certain theological boundaries.

Furthermore, al-Juwayni was a staunch defender of the Ash'ari view of the basis for value judgments, which is entirely scriptural. What is good is what the scriptures say is good, and what is bad is what the scriptures condemn. There is no other basis for such judgments. Any attempt to find a rational basis is flawed, and it can be assumed that al-Juwayni had in mind the Mu'tazilites at the time. He states that this group holds that there are fundamental rational moral truths, and if these were so, there would be no possibility of widespread moral disagreement, something that is quite clear. Similarly, the idea that particular forms of behavior are right or wrong is difficult to establish, given that we often base our judgments here on the contexts surrounding the actions and the character of the appropriate agent. For example, an adult and a child might perform the same action; the former's action might be called evil, but this would not be an accurate description of the child's actions.

Table 1

Issues on which al-Juwaynī differs from al-Ash'ari

No	Problem	No pragraf
1.	The nature of science and its limitations	40-41
2.	The action in the circumstances in which it occurred, was it commanded?	186-187
3.	In general, does it have a special pronunciation?	228-231

Source: Abd al-Azīm al-Dīb, *al-Burhān*, 1445

In the field of fiqh, he adhered to the Shafi'i school of thought, although in his writings on fiqh and usūl al-fiqh, especially in the book that will be reviewed here, he appears to differ from the Shafi'i usūl al-fiqh doctrine and includes new ideas that aroused opposition several centuries later. 'Abd al-Azīm al-Dīb collected 25 differences of opinion between al-Juwaynī and Imam al-Shafi'i, such as regarding the levels of bayan (mujmal and mubayyan), the meaning of the word wawu al-'atf ("and" as a conjunction), the word amr (commandment) and its consequences, mafhūm, shara' man qablanā (pre-Islamic law), the law of doing good deeds with mursal hadith, ijmā' and its arguments, the death penalty for those who leave prayer, the law regarding those who are forced to kill, the relationship between verses and hadiths, and the punishment for those who eat and drink intentionally during the day in the month of Ramadan. For more details, it is described in the following table.

Table 2
The problems that al-Juwayni differed from al-Shafi'i

No	Problems	No pragraf
1.	Levels of Bayan	72-76
2.	The meaning of wawu al-'atf	91-92
3.	Forms of amar and their provisions	128-137
4.	Possible expressions of mushtarak	246-273
5.	Expressions of God/Shari' that apply in describing situations	248-250
6.	Rulings on the words of God/Shari' when referring to specific causes	273-276

7.	Rules of istithna' that come after the last sentence of any number of sentences, can they be applied to the previous sentence?	287-293
8.	Understand, when does it become nass and when does it become dhahir?	378-381
9.	The ruling on the Prophet's actions that occurred in the context of proximity, and the determination of his right to advice, in our view, through methods other than the method of al-Shafi'i.	397-400
10.	The ruling on two historically different acts of the Prophet	405-406
11.	The ruling is based on the shari'a of the previous people.	411-416
12.	The interpretation of the Prophet's hadith "man malaka dha rahim muharram fa-huwa hurr"	463-465
13.	The ruling on determining defect (jarh) and justice (ta'dil) without explaining the reasons.	560-561
14.	The ruling on implementing mursal hadiths.	574-582
15.	If the shaykh denies the hadith narrated regarding "his difference with al-Shafi'i regarding the determination of evidence and its source"	595-599
16.	The determination of ijma' and its validity	624-628
17.		656-659
18.	The issue of whether one of the two groups refers to the opinion of the other group, or the scholars of ijma' agree on one of the two opinions during the second period.	933-934
19.	Conveying the words of Allah: "wa-ātū-hum min māl Allāh" to the obligatory	1207-1208
20.	What to do if we find legal decisions and practices of friends that contradict the news/hadith	1233-1235
21.	Discussion of the verses about food in Surah al-An'am	1279
22.	Regarding the killing of people who leave prayer	1280-1284
23.	Regarding the punishment of people who are forced to kill	1286-1288

| 24. | Hadd zina obligations towards a woman if she refrains from committing li'ān | 1374-1378 |
| 25. | The tendency of the Malik school of thought is to break the fast without performing jima' on purpose in the month of Ramadan. | 1440-1443 |

Source: 'Abd al-Azīm al-Dīb, *al-Burhan*, 1443-44

Al-Subkī, as quoted by Hallaq, included al-Juwaynī in the rank of mujtahid fī al-madhhab and put him ahead of his predecessors in mastery of ulus and furu'. Al-Subkī explains the difficulty and uniqueness of the kitab al-Burhan as a book of legal theory that, unlike others in the field, is not dictated by the doctrines of previous authorities, nor is it guided by the principles of Shafi'i doctrine, but instead by its own reasoning and ijtihad.

This last statement, according to Hallaq, should make al-Juwayni a mujtahid mutlaq (independent mujtahid) because he devised an independent legal system that appeared to differ from the Shafi'i school, at least as did al-Tabarī. Therefore, al-Subkī's statement that al-Juwayni was an original jurist and his claim that he had attained the status of mujtahid fī al-madhhab are contradictory, as it is often assumed that a mujtahid fī al-madhhab should not exceed the boundaries of his school. However, according to Abu al-Fida', al-Juwayni did claim to be a mujtahid mutlaq because he fulfilled the necessary requirements, but he ultimately decided to abandon that position and follow al-Shafi'i.

Thus, from the evidence above, it is clear that the two schools of thought adopted by al-Juwayni were Ash'ari in the field of kalam and Shafi'i in the field of fiqh, although in both areas, he differed significantly from the views of their founders. And these two schools in their historical reality owe a great debt to al-Juwayni who with his intellectual capacity par excellence became a defender and beacon for the Ash'arī-Syafi'i school.

C. Al-Burhan fi Usul al-Fiqh: The Combination of Kalam and Usul

Within the intellectual tradition of usul al-fiqh, al-Burhan holds a significant position, as it is the original work on legal theory compiled by al-Juwayni without the dictates of previous authorities, nor guided by the principles of the Shafi'i school of thought to which he belonged. Ibn Khaldun even said:

"*Among the best books compiled by the mutakallimun are al-Burhān by al-Juwayni and al-Mu'stasfa by al-Ghazzali, and both from the Ash'ariyyah kalam school, as well as the al-'Ahd book by 'Abd al-Jabbar and the al-Mu'tamad syarah by Abu al-Husayn al-Bisrī, and both from the Mu'tazilah kalam school. These four books are the foundation and basis for this science...*"

A compiler of biographies of al-Syafi'iyyah scholars, Taj al-Dīn al-Subkī, emphasized that the book al-Burhān compiled by al-Juwaynī uses a unique method and style that has never been followed and imitated by anyone. And this book is one of the prides of the Shafi'i school.

1. Outline of the contents of the book

The book al-Burhan begins with an introduction outlining a method that, according to al-Juwayni, should be followed by anyone wishing to study a scientific discipline. He states that:

It is obligatory for anyone seeking to deepen their knowledge to: (1) understand the purpose of studying it; (2) the materials of that knowledge; (3) its essence and limitations/definitions, and, if possible, a correct expression of these limitations. If this is difficult, they should attempt to obtain it through the method of its divisions.

Consistent with his words, al-Juwaynī applied this method in writing his usūl book. Therefore, he began the discussion by explaining the meaning of usūl al-fiqh, its sources and the purpose of studying it. The word fiqh is understood by al-Juwayni as al-'ilm bi-ahkam al-taklīf (the science of taklif laws) or al-'ilm bi al-ahkam al-shar'iyyah (the science of sharia laws), while usūl al-fiqh is the postulates of fiqh, namely the postulates of samawī, namely the Koran, Sunnah mutawatirah, Ijmā', all of which rests on the word of Allah.

The materials for building ulus al-fiqh according to al-Juwaynī are kalam, Arabic and fiqh. What is meant by kalam here is knowledge of nature, its divisions and essences; knowledge of the Being who created it and all of His attributes, which are obligatory, impossible, and permissible; knowledge of prophecy, and so on. Arabic is the second topic because it is related to discussions about the provisions of wording. Fiqh is the third topic because it is excluded from the usul evidence. It is unimaginable to know the evidence without knowing its meaning (madlul).

In addition to the introduction, this book consists of eight discussions with varying page numbers: (1) al-bayan; (2) al-ijma';

(3) al-qiyas; (4) al-istidlal; (5) al-tarjihat; (6) al-naskh; (7) ijtihad (an appendix to the book of al-Burhan); (8) al-fatwa. For more complete information, the explanation will be presented as follows:

First book: al-Bayan: al-Quran and Sunnah

This section is the longest discussion devoted by al-Juwayni in this book. And this discussion is influenced by the shadows of the book al-Risala by Imam al-Shafi'i. Discussions about bayan are divided into three discussions:

- The essence of bayan and its differences.
- The levels of bayan.
- The suspension of bayan from the place of origin of the word to the time of need..

The term bayan is understood by al-Juwaynī as dalīl. According to al-Juwayni:

> My opinion is that bayān is dalīl, and it is divided into 'aqlī and sam'ī. The proposition of 'aqlī precisely does not have a hierarchy in relation to its clarity and ambiguity. It differs from the two aspects only in its variety (number) and in its need for additional thought and reflection. Meanwhile, the premise that Sam'ī relies on is miracles and the knowledge of true words from Allah SWT. Therefore, everything that is closer to miracles takes precedence, and everything that is far from that level takes a backseat…"

Bayan, which is referred to the Koran and Sunnah for the reason that both have the same position, namely both from the side of Allah SWT, is divided into the following discussion:

1. Al-Awamir (command)

2. Al-Nawahi (prohibition)

3. Al-'General wa al-special

4. Af'al al-rasul (the actions of the apostle)

5. Al-Ta'alluq bi-shara'i' al-madiyyin (connection with previous religious laws).

Second book: Ijma'

In this chapter, al-Juwayni talks about the occurrence of ijma' and states its possibility, but in the current era, according to him, it is not possible, or not easy to happen. And according to him, ijma' cannot possibly be authoritative (hujjah) unless the basis is a qat'ī proposition. In this discussion, al-Juwaynī divides the issue of ijma' into three problems:

- A description of the occurrence of ijma'.
- *Ijma' as evidence and the differences within it.*
- Methods that indicate the state of ijma' as evidence.

The themes in this discussion are divided into four areas: (1) Characteristics of the people who carry out ijma' and their number. In al-Juwayni's view, the opinions of ordinary people cannot be considered in this matter. What can be considered is only the opinions of the muftis. Meanwhile, regarding the opinions of the ashab al-usul who know a little fiqh and the fuqaha' who know a little ulus, there are differences of opinion. According to al-Juwayni, it cannot be considered different from kadi. Regarding their number, there are also differences of opinion. However, according to al-Juwayni, the number may be smaller than the number of tawatur. (2) The time when ijma' is considered to occur. (3) The mechanism for ijma', with words or silence? Al-Juwayni explained the views of al-Shafi'i and Abu Hanifah. He then chose al-Shafi'i's opinion that ijma' sukutī cannot be considered or is not authoritative. "fa-inna-hu la yunsabu li-sakit qawlun." (Because words cannot be attributed to someone who is silent). (4) The thing that is the target of ijma'. Separate issues in ijma':

---

1. Ijma' to previous communities.

2. Malik's opinion regarding the practices of the people of Medina.

3. Ijmā' al-tabi'īn (agreement of the Tabi'in generation)

4. The amount that is considered the number of ijma' experts.

5. Regarding the thing that if the residents of a city make ijma', then an incident occurs and they violate it.

Book Three: Qiyas

This section covers the following topics:

- The essence of qiyas and the differences in its scope.
- Divisions of Islamic views (nass).
- Divisions of 'illat and asl.

Exceptions and their classification.

The fourth book: Istidlal (Search for Evidence)

This chapter discusses several topics, as follows:

- The definition of istidlal and its differences regarding the issue
- The rules regarding what istidlal can be applied to.
- Exceptions to istidlal..
- The continuation of a previous state (Istishāb al-hal)

Al-Juwayni explained his views regarding the adoption of the istihsan and masalih al-murlah methods. And he believes that on this issue there are three views:

1. The opposing view, namely al-Qādī and his mutakallimīn colleagues.

2. A view that allows following aspects of istidlal, whether they are close to or far from the fixed meanings of the propositions. This is Mālik's preferred opinion.

3. Opinions that allow following aspects of istidlal provided they are close to the meanings of fixed propositions. And this is al-Shafi'i's opinion. And this opinion was chosen by al-Juwaynī.

Fifth book: Tarjih

This chapter discusses the meaning of tarjih and ta'arud, the conflict between the zahir, pen-tarjih-an qiyas, and naskh (elimination). Regarding naskh, al-Juwayni rejected al-Qadī Abu al-Tīb's view that naskh is defined as "a phrase indicating the end of the period of worship." This understanding is incorrect because naskh is not specifically related to worship. Furthermore, he determined that naskh is something that is possible according to both sharia and logic. He held the view that it is permissible to abrogate the Qur'an against the Sunnah, and vice versa, the Sunnah against the Qur'an. Here, he differed from al-Shafi'i's view, who only emphasized abrogate only in equal positions, namely the Qur'an against the Qur'an, and the Sunnah against the Sunnah. Abrogate the Qur'an against the Sunnah is not permissible.

The Sixth Book: Ijtihad

It begins with a discussion of the justification for two individuals performing ijtihad (taswib al-mujtahidayn). It is then followed by two issues:

- What is the desired reality for a mujtahid?
- A mujtahid in the case where, if he performs ijtihad and practices it, it becomes clear to him that he is wrong based on the provisions of the text.

Seventh book: Fatwa

In this section the following themes are discussed:

- Characteristics of a mufti.
- The essence of taklid.
- Weakness of the Shari'a before Islam.
- jtihad Sahabah.
- The Prophet's ijtihad occurred.
- The law adheres to the words of the Sahabah.

According to al-Juwayni, the qualities that a mufti must have are (1) he must be someone who has reached puberty, because as a child, even though he has reached the level of ijtihad and it is easy for him to understand the laws, his views are not trusted. A mature person is someone whose words are relied upon; (2) know Arabic, because the Shari'a is in Arabic; (3) know Arabic grammar (nahw and i'rab) because sometimes it changes due to changes in the meanings of pronunciations and their purposes; (4) know the Koran because it is a source of law, and must also know the nasikh and mansukh verses; (5) know the science of ulus al-fiqh; (6) know history to know nasikh-mansukh; (7) know the science of Hadith; (8) know the science of fiqh; (9) a mufti must be fair.

2. Characteristics of the Book

According to 'Abd al-Azīm al-Dīb, al-Burhan is one of the most important books in the history of the development of usul al-fiqh, and even in the history of Islamic thought in general. Its uniqueness lies in the fact that this book expresses the various opinions of scholars of usul al-fiqh who lived before al-Juwayni. Many works on usul al-fiqh by earlier scholars are no longer available, but some of their opinions are expressed by al-

Juwayni in his book. For example, the main ideas of Abu Bakr al-Baqilani (d. 403/1013), Ibn Fawrak, al-Qadi 'Abd al-Jabbar, and Abu 'Alī al-Juba'ī.

While al-Juwayni's al-Waraqat examines the compatibility between schools of kalam and schools of fiqh (Islamic jurisprudence) in a strong manner, al-Burhan does the opposite. It elaborates in greater detail and at greater length on the differences than on the compatibility. He uses evidence to unravel the differences between schools of kalam and schools of fiqh, as evidence is a means of establishing differences, not a means of eliminating evidence. There appears to be a strong connection between the science of usul al-fiqh and the science of usul al-din.

This book has its own written principles. He references not only the book itself but also other works by al-Juwayni, demonstrating the unity of his project. He even mentions and refers to previous works on usul al-fiqh and kalam. For more details, see chart 1.

Table 3
The books that al-Juwayni refers to

No	Pengarang	Nama Kitab
1.	Al-Juwayni	*Al-Asalib; al-Istiqsa'; al-Takfīr wa al-Tabarru'; al-'Imad; al-Ghiyathī, al-Nazar fī al-Kalam.*
2.	Al-Baqilani	*al-Intisar fī 'Ulum al-Qur'an; al-Ta'wilat; al-Taqrib*
3.	Al-Qadi 'Abd al-Jabbar	*Sharh al-'Umad; al-Mughni*
4.	Al-Ash'ari	*Jawab al-Masa'il al-Basriyyah*
5.	Al-Shāfi'i	*Al-Risalah*
6.	Ibn Jani	*Sirr Sana'at al-A'rab*
7.	Ibn Fawrak	*Majmu'āt Ibn Fawruk*
8.	Al-Juba'i al-Hadhaliyyin	*Dawawin al-Hadhaliyyin, al-Abwab*

Source: Hasan Hanafi, *Min al-Nass ila al-Waqi',* 124

And what shows the connection between these two scientific disciplines together are the names of the mutakallimin and fuqaha' circles. For more details see the following list:

Table 4.

List of names appearing in the book al-Burhan in order of frequency

No.	Nama	Kutipan	No	Nama	Kutipan
1.	Al-Baqilani	159	30.	Al-Sayrafī	3
2.	Abu Hanifah	52	31.	ʿAbd al-Rahman b.ʿAwf	3
3.	Al-Isfirayinī	35	32.	ʿIsa *ʿalayhis salam*	3
4.	Malik b. Anas	32	33.	Ghaylan	3
5.	ʿUmar b. al-Khattab	18	34.	Ahmad b. Hanbal	3
6.	Al-Ashʿarī	17	35.	Usamah b. Zayd	2
7.	Abu al-Hashim al-Jubaʾī	16	36.	Al-Asmaʿi	2
8.	Sibawayhi	13	37.	Anas	2
9.	Abu Bakr al-Siddiq	13	38.	Abu Burdah	2
10.	ʿAli b. Abī Talib	13	39.	Bilal	2
11.	Muʿadh b. Jabal	10	40.	Jabir	2
12.	Ibn ʿAbbas	9	41.	Al-Jubaʾi	2
13.	Al-Kaʿbī	9	42.	Khalid b. al-Walīd	2
14.	Ibn Masʿūd	9	43.	Ibn Dawud al-Zahiri	2
15.	Al-Nazzam	9	44.	Al-Zujaj	2
16.	Ibn Fawrak	8	45.	Zayd b. Thabit	2
17.	Ibn Surayj	7	46.	Zayd b. Harithah	2
18.	ʿAbd Allah b. ʿUmar	7	47.	Saʿad b. Abī Waqqas	2
19.	Al-Daqqaq	6	48.	Talhah b. ʿUbayd Allah	2
20.	Musa *ʿalayhis salam*	6	49.	ʿUbadah b. Samit	2
21.	Ibrahim *ʿalayhis salam*	5	50.	ʿAmr b. al-Ass	2
22.	ʿAʾishah	5	51.	Al-Qasani	2
23.	ʿUthman	5	52.	Al-Tabari	2
24.	Al-Hulaimi	4	53.	Al-Qalanisi	2
25.	Ibn Fawat	4	54.	Maʿiz	2
26.	Zufar	4	55.	Al-Mughirah b. Shuʿbah	2
27.	Al-Qadī ʿAbd al-Jabbar	4	56.	Al-Nahrawanī	2

| 28. | Abu Hurayrah | 4 | | 57. | Ya'la b. Umayyah | 2 |
| 29. | Al-Bukhari | 3 | | 58. | 31 nama-nama lain | 1 |

Source: Hasan Hanafī, *Min al-Nass ila al-Waqi'*, 124

Due to the close relationship between kalam and usul and its purely theoretical orientation, the book al-Burhān is included in the category of usul books that follow the tendencies of tariqat al-mutakallimin, namely a school of usul al-fiqh that has the following characteristics: (1) purely theoretically oriented (ittijah nazri khalis), because their attention is limited only to the verification and testing of rules without paying attention to the approach of madhhab. They want to produce a strong rule regardless of whether the rule supports their madhhab or not; (2) Not fanatical about their madhhab; (3) The rules of usul are not used to provide justification for furu' issues. Instead, the rules of usul they learn are used to determine or regulate furu' issues.

D. Concept of Maqasid al-Shari'ah from al-Juwayni's perspective

In the hierarchy of postulates for the formation of law, al-Juwayni places the Koran at the top, which is then followed by the Sunnah, then ijma' and qiyas. This kind of position is commonplace in the books of ul-fiqh, as was also formulated by the master architect, Imam al-Syafi'i in the book al-Risala.

In relation to the fourth legal proposition, namely qiyas, one of the sub-discussions elaborated by al-Juwayni is the concept of maqasid which is discussed in detail in the third discussion on taqasim al-'ilal wa al-usul. From this fact, al-Hasani emphasized that it was al-Juwayni who was considered

the leading figure who gave rise to the idea of maqasid al-shari'ah before al-Ghazalī and al-Shatibi. One of his famous sayings was a rebuttal of al-Ka'bi's opinion, "Anyone who does not understand the maqasid (objectives) of commands and prohibitions has no understanding of the formulation of sharia." He then divided sharia principles into five categories:

1. Principles whose rational understanding is interpreted as essential matters that form the foundation of life, such as the principle of protecting life and prohibiting aggression against it. This is the basis for the obligation of qisas (retribution) in sharia.

2. Principles related to general life necessities, but not reaching the point of emergency. These principles serve as the basis for legal transactions.

3. Principles that do not fall into the primary (daruriyyat) or secondary (hajiyyat) categories, but fall within the definition of maqramah (obligatory requirements) and the avoidance of deficiencies.

4. Principles unrelated to the primary (daruriyyat) and secondary (hajiyyat) principles, but fall into the recommended category.

5. Principles whose meaning is not readily apparent and rarely illustrated. This means that the foundation of sharia laws is the rationality of their meaning, whether related to matters of worship, customs, or transactions.
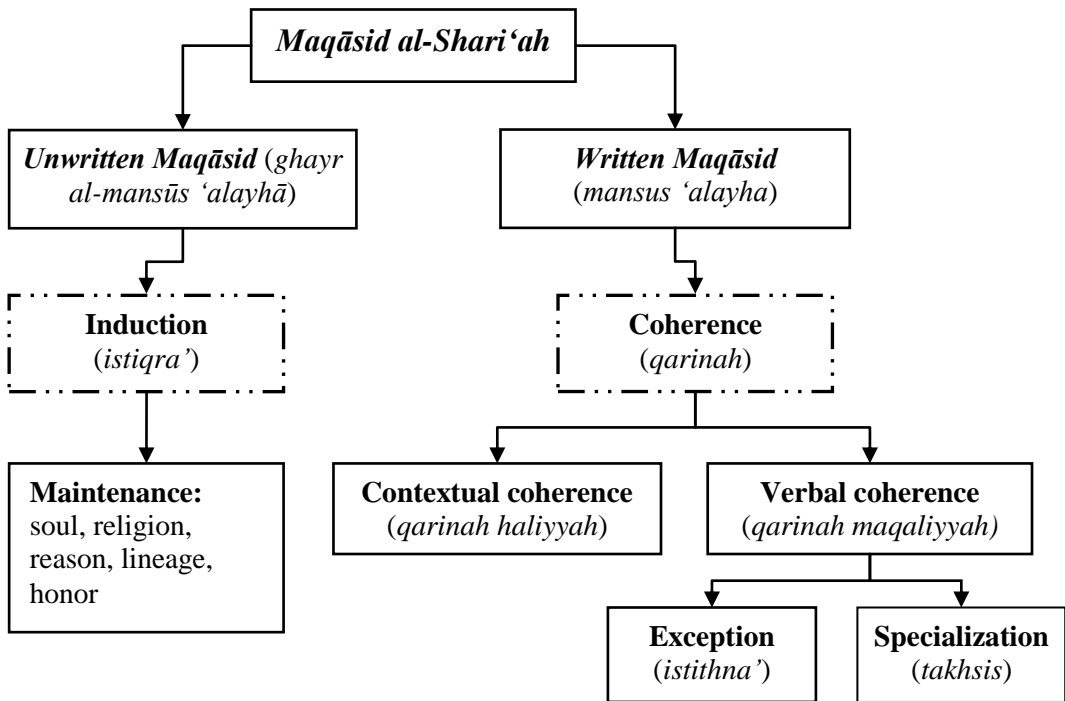
Al-Juwayni's method of formulating the five principles above was the istiqra' (inductive) method, which involves examining sharia laws in matters of worship and transactions and then concluding that these principles should not exceed five. The purpose of dividing these five principles is to clarify which principles are permissible to apply qiyas (equivalence) to and

which are not. These five principles represent the unwritten maqasid al-shari'ah. According to al-Juwayni, maqasid al-shari'ah is divided into "unwritten maqasid" (ghayr al-mansus 'alayha), namely the five principles mentioned previously which are determined through istiqra', and "written maqasid" (al-mansus 'alayha), which are determined through qarinah (coherence). This qarinah was divided by al-Juwayni into qarinah haliyyah (contextual coherence), for example, a red face is contextually related to shame, however it still does not apply generally, because it may be that a red face is not related to shame; and qarinah maqaliyyah (coherence of speech), which can be divided into two types, namely exception (istithsna') and specialization (takhsīs).

In conclusion, it can be said that maqasid al-shari'ah in al-Juwayni's view can be divided into two types, unwritten maqasid al-shari'ah which can be found through istiqra' and maqasid al-shari'ah which is taken from the qarinah embedded in religious texts.

Chart 1

Division of maqasid al-shari'ah al-Juwayni in al-Burhan

```
                        ┌─────────────────────────┐
                        │   Maqāsid al-Shari'ah   │
                        └─────────────────────────┘
```

Maqāsid al-Shari'ah

Unwritten Maqāsid (*ghayr al-mansūs 'alayhā*)

Written Maqāsid (*mansus 'alayha*)

Induction (*istiqra'*)

Coherence (*qarinah*)

Maintenance: soul, religion, reason, lineage, honor

Contextual coherence (*qarinah haliyyah*)

Verbal coherence (*qarinah maqaliyyah)*

Exception (*istithna'*)

Specialization (*takhsis*)

E. Conclusion

Al-Juwayni's mujtahid status, while remaining within the framework of fiqh (Islamic jurisprudence), is unquestionable. This is evidenced by his skill in constructing and reasoning about fiqh issues and his own set of legal methodologies. His descriptions of legal methodology, particularly those contained in his work *Al-Burhan fī Usul al-Fiqh*, constitute valuable

original findings that distinguish him from other authors of usul books. Although he adhered to the Shafi'i school of thought, he differed from it in many respects, totaling approximately 25 cases.

One of his original ideas which was the first breakthrough in the field of ulus al-fiqh was the concept of maqasid al-shari'ah, where he divided it into two parts: "unwritten maqasid" which was achieved through istiqra' and "written maqasid" which was achieved through coherence (qarinah) which was divided into contextual coherence (qarinah haliyyah) and verbal coherence (qarinah maqaliyyah) through exceptions. (istithna') and specialization (takhsis).

BIBLIOGRAPHY

Al-Hasani, Isma'il. 1995. *Nazariyyat al-Maqasid 'Inda al-Imam Muhammad Tahir bin 'Ashur*, Herndon, Virginia: International Institute of Islamic Thought.

Al-Juwayni, Abu al-Ma'ali. 1997. *al-Burhan fi Usul al-Fiqh*. Jilid 1, Tahqīq: Salah b. Muhammad b. 'Uwaydah. Beirut: Dar al-Kutub al-'Ilmiyyah.

--------, *al-Burhān fī Usūl al-Fiqh*. 1399 H. [Manuskrip] Tahqīq: Dr. 'Abd al-Azīm al-Dīb, Cet. Ke-1, Qatar: Matba'at al-Dawhah al-Hadīthah.

--------, tt. *Ghiyath al-Umam fī Iltiyath al-Zulam*. Tahqiq: Mustafa Hilmi dan Fu'ad 'Abd al-Mun'im, Iskandariyyah: Dar al-Da'wah.

Al-Subki, Taj al-Dīn 'Abd al-Wahhab b. 'Ali b. b. 'Abd al-Kafī. 1964. *Tabaqāt al-Shafi'iyyah al-Kubra*, Tahqiq: Mahmud Muhammad al-Tanahi dan 'Abd al-Fattah Muhammad, Jilid 3 & 5, Cet. ke-1, Mesir: Matba'ah 'Īsa al-Babi al-Halabi.

Dahlan, Abdul Aziz, et.al. 1996. *Ensiklopedi Hukum Islam*. Jilid 3, Cet. ke-1. Jakarta: Ichtiar Baru van Hoeve.

Foucault, Michel. 2002. *Arkeologi Pengetahuan*. Terj. Mochtar Zoerni, Yogyakarta: Qalam.

Hallaq, Wael B. 1994. "Was the Gate of Ijtihad Closed?" dalam *Law and Legal Theory in Classical and Medieval Islam*, Aldershot: Ashgate.

Hanafī, Hasan. 2004. *Min al-Nass ila al-Waqi'*, Cet. ke-1. Kairo: Markaz al-Kitab li al-Nashr.

Khaldun, Ibn. tt. *al-Muqaddimah*, Mesir: Matba'ah Mustafā Muhammad.

Kiswati, Tsuroya. 2005. *Al-Juwaini Peletak Dasar Teologi Rasional dalam Islam*, Jakarta: Erlangga.

Isma'īl, Sha'ban Muhammad. 1998. *Usul al-Fiqh: Tarikhuhu wa Rijaluhu*. Cet ke-2. Makkah al-Mukarramah: Dar al-Salam.

Sulayman, 'Abd al-Wahhab Ibrahim Abu. 1983. *al-Fikr al-Usuli: Dirasah Tahliliyyah Naqdiyyah*, Jeddah: Dar al-Shuruq.

Wajdī, Muhammad Farīd. 1971. *Da'irat Ma'arif al-Qarn al-'Ishrīn*. Jilid 3. Beirut: Dār al-Fik.