

## THE *MANĀSIK* OF ḤAJJ IN INDONESIA: Looking for Legal Certainty through the Reasonings of *Uṣūl al-Fiqh*

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**Abstract:** The paper aims to seek legal certainty of the *manāsik* in Indonesia from the perspective of *uṣūl al-fiqh*. In the classical fiqh, the *manāsik* has not received proper attention. Hence, the legal position of *manāsik* has thus far no definite (*qaṭ'ī*) answer. For today's Indonesia, although the *manāsik* is understood more as training for prospective pilgrims on how to perform the ḥajj correctly, yet it is different from what the Prophet Muhammad practiced, which was conducted directly within the ḥajj rituals. With that aim in mind, this paper uses the reasoning devices of *uṣūl al-fiqh* such as *bayānī*, *ta'līlī*, and *istiṣlāhī* toward the relevant literary sources in establishing a legal certainty of the *manāsik*. The *bayānī* method shows that the texts of the prophetic traditions contain imperative expression (*amr*), meaning that the *manāsik* is an obligatory practice. The *ta'līlī* points out that the *manāsik* stands as *'illa* for the perfection of ḥajj; the *manāsik* is necessary to make ḥajj ritual ideally conducted. The *istiṣlāhī* method reveals that the *manāsik* contains the value of *maṣlahah*, which is the validity of ḥajj based on sharia principles. Finally, from the perspective of *maqāṣid al-sharī'ah*, the necessity of the *manāsik* is classified into *darūriyyah* and *hājiyyah*. Hence, based on these arguments, this paper argues that the *manāsik* of ḥajj is obligatory for prospective pilgrims.

**Keywords:** The *Manāsik* of Ḥajj, Legal Certainty, *Uṣūl al-Fiqh*, Indonesia

**Abstrak:** Tulisan ini bertujuan untuk mencari kepastian hukum *manāsik* haji di Indonesia melalui penalaran *uṣūl al-Fiqh*. Dalam fiqh klasik, pembahasan *manāsik* belum mendapatkan perhatian yang memadai, sehingga kepastian hukumnya belum terjawab secara pasti (*qaṭ'ī*). Sementara dalam konteks Indonesia hari ini, walaupun *manāsik* lebih dimaknai sebagai pembekalan calon jama'ah haji mengenai ilmu dan praktik tata cara ibadah haji yang benar, namun ini berbeda dengan yang dipraktikkan Nabi yang dilaksanakan bersamaan dengan ibadah haji. Untuk itu, tulisan ini menggunakan perangkat-perangkat penalaran *uṣūl al-fiqh* seperti *bayānī*, *ta'līlī*, dan *istiṣlāhī* terhadap sumber-sumber pustaka yang relevan dalam menetapkan hukum *manāsik*. Melalui penalaran *bayānī*, tulisan ini

menunjukkan bahwa teks-teks ḥadīth berkenaan sebenarnya mengandung makna perintah (*amr*), sehingga *manāsik* wajib dilaksanakan. Sementara melalui penalaran *ta'līlī*, *manāsik* mengandung 'illat untuk kesempurnaan ibadah haji diperlukan ilmu *manāsik* agar hajinya lebih sempurna. Sedangkan melalui penalaran *istiṣlāhī*, pelaksanaan *manāsik* mengandung nilai maslahat, yaitu sahnya haji sesuai ketentuan *syara'*. Begitu pun berdasarkan *maqāṣid shari'ah*, *manāsik* dapat dikategorikan sebagai *darūriyyah* dan *ḥājīyyah*. Dengan demikian, tulisan ini berargumentasi, *manāsik* haji hukumnya wajib bagi calon jamaah haji.

**Kata Kunci:** *Manāsik* Haji, Kepastian Hukum, *Uṣūl al-Fiqh*, Indonesia

## Introduction

Explanations of fiqh literature on the ḥajj do not explain the position of *manāsik* in the view of the imams of madhhabs in minute detail, in contrast to other relevant principles, such as obligatory conditions of the ḥajj (being Muslim, of sound state of mind, adult, and having necessary power and ability)<sup>1</sup> and validity conditions of the ḥajj (being Muslim and adult). In other words, *manāsik* has yet to receive proper attention from classical fiqh literature. What is certain is that *manāsik* is explained based on its etymology, i.e. rituals, as mentioned in Q.S. Āli 'Imrān: 97, a ḥadīth by Ibn 'Umar [reported by al-Bukhārī and Muslim]<sup>2</sup> and by Ibn 'Abbās (reported by Ibn Mājjā).<sup>3</sup> Hence, the question of the legal position of *manāsik* has so far no definite (*qaṭ'ī*) answer, other than that – if the word is attributed to the ḥajj, i.e. *manāsik al-ḥajj* – it is “performing the ḥajj and the 'umra based on the guidance of the Prophet Muhammad peace be upon him.”

The *manāsik*, as the case for Indonesian, nowadays is performed before the departure

of the pilgrims to the noble city of Mecca. It is a different situation from the *manāsik* of the Prophet Muhammad, in that it was conducted directly within the ḥajj rituals, upon which his companions followed as he did. Therefore, the *manāsik* during the lifetime of Prophet Muhammad did not refer to a dedicatedly scheduled and independent practice of *manāsik*, but rather to the act of wholehearted and sincere following of the companions upon the ḥajj rituals of Prophet Muhammad, making their own conducted correctly.

In Indonesia, the *manāsik* means education and demonstration of the ḥajj and the 'umra practices based on the principles of sharia. It is a binding right of prospective pilgrims before their departure.<sup>4</sup> Ḥajj is an exceptionally noble ritual that makes a Muslim closer to Allah. Ḥajj, as an Arabic word, means an intention<sup>5</sup> to perform something.<sup>6</sup> As for the definition of the terminology, ḥajj is visiting the Ka'ba by performing a series of rituals in the Ḥaram mosque and the surrounding sites, either for the ḥajj or the 'umra.<sup>7</sup> The alternative definition says that ḥajj means to intend or make a plan of visit-

<sup>1</sup> Ahmad Warson Munawwir, *Kamus Al-Munawwir* (Yogyakarta: Yayasan Al-Munawwir, 1984).

<sup>2</sup> Abū 'Abdullāh Muḥammad ibn Ismā'il Al-Bukhārī, *Ṣaḥīḥ Bukhārī*, Vol. I (Bairūt: Dār al-Kutūb al-'Amaliyyah, 1991), p. 10.

<sup>3</sup> Muḥamad bin Ismā'il bin 'Amīr Al-Ṣan'anī, *Subūl as-Salām*, Vol. II, (Bairūt: Dār al-Kutūb al-'Amaliyyah, 1988), 374.; Abī Abdullāh bin Muḥammad bin Yazīd al-Qazwinī, *Sunan Ibn Mājjā*, Vol. II (Kairo: Dār al-Fikr, n.d.), p. 25.

<sup>4</sup> Jaferi, “Pengaruh Prediket Haji Mabur Terhadap Motivasi Manasik Calon Jamaah Haji,” *Maqdis* 2, no. 1 (2017): 113.

<sup>5</sup> Shams al-Dīn Muḥammad bin Muḥammad al-Khatīb Al-Sharbainī, *Mughnī Al-Muhtāj*, Vol. II (Libanon: Dār al-Fikr, n.d.), p. 113.

<sup>6</sup> Al-Sharwanī, *Hawashi Al-Sharwanī*, Vol. II dan IV (Bairūt: Dār al-Fikr, n.d.), p. 4.

<sup>7</sup> Al-Sharbainī, *Mughnī Al-Muhtāj*, p. 113.

ing the holy land to perform a series of religious rituals as performed by the Prophet Muhammad peace be upon him.<sup>8</sup> With an objective of being closer to God, a solid knowledge prepared through the *manāsik* stands as a *waṣīla* (instrument) by which the essence of His order could be fulfilled, namely the obligation of performing the ḥajj once in a lifetime.<sup>9</sup>

The purpose the government—through Directorate-General for Ḥajj and ‘Umra Affairs of the Ministry of Religious Affairs—organises the *manāsik* upon prospective pilgrims is to make them understand the knowledge of *manāsik* so that they can perform the ḥajj rituals correctly according to the sharia and achieve the value of ḥajj *mabrūr*.<sup>10</sup> It is the application of the law no. 13 the year 2008 that the government has an obligation to educate, serve, and protect the pilgrims. This law represents the participation and accommodation of the state upon the faith of its citizens as guaranteed by the constitution.<sup>11</sup>

Considering the importance of the *manāsik* in the current context, especially with regards to pilgrims’ awareness of specific laws and conducts in specific times and place with specific ways of ḥajj, it is highly necessary, or a binding right, for prospective pilgrims to have the *manāsik* before their departure to Mecca. Only with the *manāsik* can they get necessary proper knowledge with regards to the correct ways of performing ḥajj.

This article argues that even though *manāsik* does not get a significant portion of explanation within the laws of ḥajj such as obligatory conditions of ḥajj, the questions with regards to the *manāsik* could find answers from reasonings through contemporary *ijtihād*. This *ijtihād* is valid because Islamic law is not inflexible, firm and rigid, but instead has the potential to adopt the developing contexts. Likewise, there is no theoretical argumentation whatsoever that disputes the dynamics of the applicability of Islamic law; Islamic law, either its norms, principles and postulates, are flexible. This vision of law is recognised as the theory of the changes of law (*nazariyyāt al-taghayyur al-aḥkām*), as pointed out by Ibn Qayyim (of the Hanabilites): “*taghayyur al-aḥkām bi al-taghayyur al-azmina wa al amkina wa al-aḥwāl*.”<sup>12</sup> Therefore, the gate of *ijtihād* is not closed; contemporary problems that have no precedence could find answers from contemporary *ijtihād* through the discipline of Islamic jurisprudence (*uṣūl al-fiqh*),<sup>13</sup> i.e. a discipline which attempts at formulating Islamic laws/*fiqh* for the contemporary Muslims. Islamic law, in this context, refers to at least two components: as methodology and as the product.

The organisation of *manāsik* for prospective pilgrims is important, although classical *fiqh* does not explain the issue thoroughly. There is, however, disagreement on the issue between segments of Muslims societies; some view the *manāsik* is legal, some others consider it illegitimate; some are willing to join while some others do not. This disagreement requires a legal certainty so that people would share the common perception upon the issue.

<sup>8</sup> Al-Sharwānī, *Hawashi Al-Sharwānī*, p. 4.

<sup>9</sup> Abdul Choliq, “Esensi Program Bimbel Manasik Haji Upaya Pemberdayaan Masyarakat,” *Jurnal At-Taqaddum* 10, no. 1 (2018): 30.

<sup>10</sup> Kementerian Agama R.I. Direktorat Jenderal Penyelenggaraan Haji dan Umrah, *Tuntunan Manasik Haji Dan Umrah* (Jakarta: Kementerian Agama R.I. Direktorat Jenderal Penyelenggaraan Haji dan Umrah, 2016), p. ix.

<sup>11</sup> Achmad Irwan Hamzani, “Legal Protection for Hajj Pilgrims Through Regional Regulation,” *Journal Mazahib* 17, no. 2 (2018): 65.

<sup>12</sup> Ibn Qayyim Al-Jawziyyah, *I‘lām Al-Muwaqqi‘īn*, Vol. III (Bairūt: Dār al-Fikr, n.d.), p. 14.; Lili Rasjidi dan Arief Sidharta, *Filsafat Hukum Madzhab Dan Repleksinya* (Bandung: Rosda Karya, 1993), p. 13.

<sup>13</sup> Syafrudin Halimy Kamaludin, “Metode Ijtihad Kontemporer,” *Al Muqaranah* 4, no. 1 (2013): 90–92.

This article discusses the issue of the legal status of the *manāsik* in Indonesia through the lens of *uṣūl al-fiqh* reasoning, to formulate a legal certainty upon the issue. The research question is: how is the legal certainty of *manāsik* in Indonesia from the perspective of *uṣūl al-fiqh*?

This is library research that employs a normative approach.<sup>14</sup> The data are qualitative and gathered through documents compilation in libraries. The analysis technique upon relevant materials is deductive analysis.

There are two main topics this article deals with. Firstly, it discusses the definition of *manāsik* and the relevant reasoning theories of Islamic law, such as the theory of *naṣṣiyya* and theory of *uṣūl al-fiqh*. Secondly, it analyses the issue of legal certainty of the *manāsik* based on the *bayānī* (textual), the *ta'līlī* (causes) and the *istiṣlāḥī* (advantages) reasonings, before further coming into conclusion.

## **Manāsik of Ḥajj and the Relevant Theories**

To substantiate the issue of legal certainty the *manāsik* of ḥajj in Indonesia through the lens of *uṣūl al-fiqh* reasonings, a detail elaboration on theories that have a connection to the issue is necessary.

### **1. Manāsik of Ḥajj**

*Manāsik* is an Arabic word rooted from *nusuk* which means ritual or devotion to Allah.<sup>15</sup> In the KBBI (Kamus Besar Bahasa In-

donesia, the Big Dictionary of the Indonesian Language), the word *manāsik* means ibadah (worship, devotion).<sup>16</sup> Ḥajj, on the other hand, means affairs related to ḥajj rituals, such as *iḥrām*, *wuqūf*, *ṭawāf*, *sa'y*, and *taḥallul*. Whereas “*manāsik haji*” (*manāsik* of ḥajj) means the demonstration of ḥajj rituals based on its pillars (usually using an imitated ka'ba) before the departure of prospective pilgrims to the holy land.<sup>17</sup>

In Indonesia, *manāsik* is understood as education and training sessions of performing the ḥajj and the 'umra rituals following the procession of the actual ḥajj. Accordingly, the *manāsik* of ḥajj that is organised in Indonesia is a program that is intended to provide prospective pilgrims with necessary knowledge and horizon regarding the practices of the ḥajj and the 'umra. Not only does the *manāsik* provides prospective pilgrims with theories on the procession of the ḥajj and the 'umra rituals, but they can also simulate those rituals with imitative ka'ba, through which they could obtain a solid comprehension on the ḥajj and the 'umra procession.

The organisation of the *manāsik* is intended to provide the prospective pilgrims with a simulation of the actual procession of the ḥajj and the 'umra. Upon the simulation prospective pilgrims could have during the *manāsik* organised by the Ministry of Religious Affairs, they are expected to know clearly the procedures of the ḥajj, so they can perform it individually while they are in Mecca in the future.

<sup>14</sup> Bahder Johar Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: Mandar Maju, 2008), 86-88.; Cik Hasan Bisri, *Pilar-Pilar Penelitian Hukum Islam Dan Pranata Sosial* (Jakarta: PT. Raja Grafindo Persada, 2004), pp. 56-57.

<sup>15</sup> Mahmud Yunus, *Kamus Bahasa Arab-Indonesia* (Jakarta: Akbar Media, 1990), p. 450.

<sup>16</sup> Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia (KBBI)*, Ketiga (Jakarta: Balai Pustaka, 2007), p. 709.

<sup>17</sup> Departemen Pendidikan dan Kebudayaan, *Kamus Bahasa Indonesia* (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008), p. 624.

## 2. The Theory of *Naṣṣiyya*

Etymologically, *naṣṣ* means comes to sight or elevates to the supposed summit of something. From the perspective of *uṣūl al-fiqh*, the theory of *naṣṣ* refers to a concept contained in a word or text of a *naṣṣ* (the Qur'ān and ḥadīth). From the aspect of clarity of a text (*dalīl*), there are four types of concept: *zāhir*, *naṣṣ*, *mufassar* and *muḥkam*.<sup>18</sup> All of these four indicate that the text has precise meanings, or in other words, unambiguous references. For this reason, a law of sharia is sometimes derived from the *zāhir* of the Qur'ānic and Ḥadīth texts, which are texts that point to a meaning based on its general wording (*'umūm al-lafẓ*) or its general meaning (*'umūm al-ma'nā*). In the context of the general wording (*'umūm al-lafẓ*), a law is derived by seeing the meaning of the text, in the sense that a *dalīl* is understood to contain this or that meaning. As for *'umūm al-ma'nā*, a law is derived from analogy (*qiyās*).

In short, *zāhir* refers to something whose intention is definite, based on a *dalīl* independent from other external factors, yet has other possibilities due to the general sense of the wording and the general meaning the text could indicate.<sup>19</sup> The reason for this is that *zāhir* generally has two or more meanings. In this context, it is obligatory to follow the *zāhir* of a *dalīl*, unless with the existence of other *dalīl* that deviates it to other meanings, either as *takhṣīs*, *ta'wīl*, or *naskh*.<sup>20</sup>

Unlike *zāhir*, *naṣṣ* has a more definite meaning.<sup>21</sup> From the perspective of Shafi'iyya *uṣūl al-fiqh*, a text that is *naṣṣ* cannot have but one meaning (*iḥtimāl*), not like

*zāhir*. As for the Hānafiyya, a text that is *naṣṣ* concerning sharia laws becomes subject to *ta'wīl*, especially for *naṣṣ* and *zāhir*.<sup>22</sup> A text that is *naṣṣ* has a more reliable reference to meaning than that of *zāhir*, because, *naṣṣ* refers to the generic wording, making its reference more solid. In this context, a meaning that is directly referred to by a word is more natural to comprehend compared to that is indirect. As for the aspect of legal consequence, both *naṣṣ* and *zāhir* equally require obligation. If there is a contradiction between *naṣṣ* and *zāhir*, the former is preferred to the second, and the meaning of the second should be understood under the light of the first.

*Mufassar*, according to al-Sarakhsī, refers to a concept that refers to a transparent/opened word, whose intention/meaning is clear, which makes *ta'wīl* unnecessary.<sup>23</sup> On the other hand, Khalaf suggests that *mufassar* is a word whose formulation refers to a detailed meaning, so detailed that the possibility of the existence of another option is irrelevant.<sup>24</sup> For the aspect of its intention, *mufassar* contains a more precise meaning than *naṣṣ* and *zāhir*, because of the degree of clarity it has that makes the word impossible to be treated through *ta'wīl*. For this reason, the meaning of *mufassar* is stronger than *naṣṣ* and *zāhir*, which means if there is a contradiction between them, *mufassar* should be preferred.<sup>25</sup>

Accordingly, the reference (*dilāla*) of *mufassar* should be applied with certainty (*qaṭ'ī*) as long as there is no *dalīl* that abrogates (*naskh*) it. The meaning of *mufassar* stands solid and cannot be treated through *ta'wīl* and *takhṣīs*; it can only be abrogated (*mansūkh*) by the other *dalīl*, if any. As for the

<sup>18</sup> Amir Syarifuddin, *Ushul Fiqh*, Vol. II (Jakarta: Logos Wacana Ilmu, 2001), p. 3.

<sup>19</sup> 'Abdul Wahhab Khallaf, *Kaidah-Kaidah Hukum Islam: Ilmu Uṣūl Al-Fiqh*, Penerj. Noer Iskandar al-Barsany, I, Vol. II, (Jakarta: PT. Raja Grafindo Persada, 2002), p. 255.

<sup>20</sup> Rachmat Syafe'i, *Ilmu Uṣūl Fiqih* (Bandung: Pustaka Setia, 1999), p. 153.

<sup>21</sup> Ibid., p. 154.

<sup>22</sup> 'Abd al-'Aziz bin Aḥmad al-Bukhārī, *Kashf Al-Asrār 'an Uṣūl Fiqh Al-Islām Al-Bazdawī*, Vol. I, (Bairūt: Dār al-Kutūb al-'Ilmiyyah, 1997), p. 68.

<sup>23</sup> Rachmat Syafe'i, *Ilmu Uṣūl Fiqih*, p. 156.

<sup>24</sup> Amir Syarifuddin, *Ushul Fiqh*, p. 9.

<sup>25</sup> Ibid., p. 10.

aspect of legal consequence, *mufassar* indicates an absolute obligation (*qaṭ'ī*) as long as it is not abrogated (*mansūkh*).<sup>26</sup>

The last concept is *muḥkam*.<sup>27</sup> It is a text that shows meaning in a precisely clear way, making it impossible to be treated through *ta'wīl*, and, in the context of the teaching it contains, its meaning is universal and is unable to get *mansūkh* by Allah or His Prophet. This kind of text commonly contains the basic tenets of religion, such as the obligation to worship Allah, to believe in the Prophet and His scriptures, and to hold on the principle etiquettes, such as being humble to parents and obligation to implement justice. Texts concerning those issues refer to its meaning in a definite way (*qaṭ'ī*), has no possibility of receiving *ta'wīl* and becoming *mansūkh* during the lifetime of the Prophet.<sup>28</sup>

The legal consequence of *muḥkam* is an absolute obligation (*qaṭ'ī*), unambiguous, and cannot be abrogated (*mansūkh*) by other texts. The reference of *muḥkam* is the strongest compared to *zāhir*, *naṣṣ*, and *mufassar*. Consequently, if there is a contradiction between texts of those categories, *muḥkam* should be preferred to others.<sup>29</sup>

Besides these four concepts, the theory of *naṣṣiyya* also recognises the concepts of *'ibāra* (the formation of *naṣṣ*),<sup>30</sup> *ishāra* (the ordinary meaning of *naṣṣ*),<sup>31</sup> *dalāla* (the reference of *naṣṣ*),<sup>32</sup> and *iqtidā'* (the intention of *naṣṣ*).<sup>33</sup> Accordingly, a sharia text (*naṣṣ al-shar'iy*)

should be understood from the perspective of its *'ibāra* (formation of the wording), *ishāra*, *dalāla*, and *iqtidā'*. Everything we understand from a text through these four perspectives refers to *madlūl* (an object) of a *naṣṣ*. As for *naṣṣ* itself stands as the *ḥujja* (argument) above all of those.<sup>34</sup>

Concerning the organisation of the *manāsik* amid the law of hajj, the theory of *naṣṣiyya* (the Qur'ānic or the Ḥadīth text) plays as the primary foundation in understanding the issue. In addition to that, other disciplines, such as *tafsīr*, *uṣūl al-fiqh*, *ḥadīth*, and others, play as secondary sources whose role is the complementary instrument in understanding the issue at hand.

### 3. Theory of *Uṣūl al-Fiqh*

According to al-Bayḍawī, *uṣūl al-fiqh* is a discipline concerning general *dalīl* of fiqh, the method of employing the *dalīl*, and the conditions of people who can operate it.<sup>35</sup> *Jumhūr al-'ulamā*, on the other hand, as conveyed by Khudhari Beik, defines *uṣūl al-fiqh* as rules (*qawā'id*) that have to be followed by mujtahid in deducing law (*istinbāṭ*).<sup>36</sup> Both mentioned definitions have different stressing points. Shafi'iyya 'ulamā' emphasise on the objects of *uṣūl al-fiqh*, which are the general (*ijmāl*) *dalīl*, the methods of deducing law (*istinbāṭ*)<sup>37</sup> and the requirements that are needed to be fulfilled by a mujtahid.<sup>38</sup> On the other hand, the majority

<sup>26</sup> Rachmat Syafe'i, *Ilmu Uṣūl Fiqih*, p. 157.

<sup>27</sup> Ibid., p. 157.

<sup>28</sup> Satria Effendi, *Uṣūl Fiqh*, I, Vol. II (Jakarta: Kencana, 2008), p. 225.

<sup>29</sup> Ibid., p. 226.

<sup>30</sup> Wahbah al-Zuhaylī, *Uṣūl Al-Fiqh Al-Islāmī* (Bairūt: Dār al-Fikr, 1986), p. 349.; Quṭūb Mustafā Sanū, *Mu'jām Mustalahāt Uṣūl Al-Fiqh* (Damaskus-Suriah, 2000), p. 278.

<sup>31</sup> Zaky al-Dīn Sya'bān, *Uṣūl Al-Fiqh Al-Islāmī* (Mesir: Dār al-Ta'lif Lit-tiba'ah, 1965), pp. 363-364.

<sup>32</sup> Ibid., pp. 367-368.

<sup>33</sup> Ibid., p. 264.

<sup>34</sup> Khallaf, *Kaidah-Kaidah Hukum Islam: Ilmu Uṣūl Al-Fiqh*, p. 223.

<sup>35</sup> Al-Baidawī, *Sharh Al-Baidawī 'alā Minhāj Al-Uṣūl* (Bairūt: Dār al-Kutūb al-Islāmiyyah, 1982), p. 93.

<sup>36</sup> Muḥammad Khudārī Beik, *Tārikh Al-Tasyrī' Al-Islāmī* (Bairūt: Dār al-Fikr, 1988), p. 395.

<sup>37</sup> Haidar Bagir dan Syafiq Basri, *Ijtihad Dalam Sorotan* (Bandung: Mizan Anggota IKAPI, 1996), p. 25.; Totok Jumantoro dan Samsul Munir Amin, *Kamus Ilmu Ushul Fikih* (Jakarta: Gaya Media Pratama, 2010), p. 67.

<sup>38</sup> Muhammad Syukri Albani Nasution, *Filsafat Hukum Islam* (Jakarta: PT. Raja Grafindo Persada, 2012), p. 155.



of 'ulamā' (*jumhūr*) emphasises the aspect of operational and functional of *uṣūl al-fiqh*, which is how to use the rules of *uṣūl al-fiqh* in deducing sharia law.

*Uṣūl al-fiqh* is a discipline whose object is *dalīl* of law or the sources of law and all related matters, and methods used to derive laws from the *dalīl* by way of ordering them and assessing their strength. According to al-Zuhailī, the object of *uṣūl al-fiqh* are as follows:

- a. The sources of sharia law
- b. Issues of *ijtihād*
- c. Seeking for solutions for contradictive *dalīls*
- d. Issues of sharia law
- e. Issues of the ontology of law, subject of law, object of law, and so on.
- f. Issues on rules of deriving law and the ways of applying them.<sup>39</sup>

Any attempt at *istinbāt* (deriving law) would not be effective without a proper approach. Of course, approach in this context relates to the source of law. According to 'Āli Hasaballāh, as cited by Nasrun Rusli, scholars develop two approaches of *istinbāt*, namely linguistic rules and the intention of the sharia.<sup>40</sup> For this reason, the objective of *uṣūl al-fiqh* is to apply rules upon specific sharia *dalīl* through which the derivation of applicative sharia law that the *dalīl* might implies runs.

The rules of *uṣūl al-fiqh* and the discussion upon them could be understood through sharia texts (*naṣṣ*) and laws implied within. Likewise, it is through the rules an appropriate comprehension upon the product of laws derived by mujtahid and methods through which they derived them is possible.

<sup>39</sup> Wahbah al-Zuhaylī, *Uṣūl Al-Fiqh Al-Islāmī*, p. 362.

<sup>40</sup> Nasrun Rusli, *Konsep Ijtihad Asy-Syaukani Relevansinya Bagi Pembaruan Hukum Islam Di Indonesia* (Jakarta: Logos Wacana Ilmu, 1997), p. 110-118.

There are two objectives of comprehending *uṣūl al-fiqh*. The first objective is to find legal solutions for unprecedented issues that are not mentioned or discussed by earlier jurists and not found in classical fiqh literature. Having an adequate level of understanding upon the rules of *uṣūl al-fiqh* and the methods of implementing them formulated by the preceding 'ulamā' would lead to answers upon matters unmentioned in classical fiqh literature. The second objective is to understand the legal reasoning of earlier cases that were discussed by previous jurists as well as to develop new rules that are compatible with the current contexts. When one finds fiqh laws elaborated in previous literature and faces difficulties to understand them because the difference of historical contexts on which the laws were based on, *uṣūl al-fiqh* is an appropriate instrument by which one might find solutions. Additionally, these cases and rules would be the raw materials in formulating new rules that are compatible with the current context.

The 'ulamā' of *uṣūl al-fiqh* suggest that *uṣūl al-fiqh* is one of the instruments used to know the laws of Allah as He and Prophet Muhammad intend, either for matters related to 'aqīda, 'ibāda, mu'āmalah, 'uqūba, and akhlāq. *Uṣūl al-fiqh* gives an understanding of the methodology of deriving law (*istinbāt*) conducted by the previous 'ulamā'. Accordingly, *uṣūl al-fiqh* emphasises the importance of empirical factor that further becomes subject to rational deduction or probable.<sup>41</sup> Accordingly, *uṣūl al-fiqh* is a method of Islamic jurisprudence, i.e. the methodology of the Islamic law that produces Islamic laws, fatwas, and regulations.

Throughout history, *uṣūl al-fiqh* becomes even more meaningful and useful in solving social problems. Its meaning is even more felt when there is a belief that the opportuni-

<sup>41</sup> Amhar Rasyid, "Hermeneutika Dan Teks Ushul Fiqh," *Al-Risalah* 13, no. 1 (2013): 3-4.

ty of doing *ijtihād* is closed. If it is true that the opportunity of *ijtihād* is closed (based on the history of the development of Islamic law), it is intended to set *ijtihād*<sup>42</sup> away from non-competent people. While for individuals with adequate competences, the gate of *ijtihād* remains open, and no one has the right to close it.

### Seeking Legal Certainty for *Manāsik* through *Uṣūl al-Fiqh* Reasoning

Currently, *manāsik* is one of the crucial steps of performing the *hajj*. Nevertheless, there is no legal certainty for this matter, which makes it requires a comprehensive inquiry. The reason for this is that the word *manāsik* is mentioned in some places in the Qur'ān such as Q.S. al-Baqara: 200 (*manāsikakum*), Q.S. al-An'ām: 162 (*nusukī*), and the Ḥadīth of the Prophet Muhammad, such as that are reported by Muslim, Abū Dāwud, Nasā'ī, Ibn Mājjā (*manāsikakum*),<sup>43</sup> and a report from Abī Zubair reported by Muslim (*manāsikakum*).<sup>44</sup>

These *dalīls* indicates that *manāsik* could be classified as *ḥukm taklifī*, i.e. the obligation of *hajj*, and *ḥukm waḍ'ī* through *uṣūl al-fiqh* reasoning through which legal certainty in the context of *fiqh* structure upon the issue could be found. In the context of *uṣūl al-fiqh* reasoning, the methods of deriving laws (*turuq al-istinbāt*), such as *bayānī*, *ta'līlī*, and

*istiṣlāhī*<sup>45</sup> would work to derive the legal certainty of *manāsik* of *hajj*.

### 1. *Bayānī* (Textual) Reasoning

The theory of deriving law (*Istinbāt*) through semantic approach or *lughawī-bayānī* reasoning is a theory that concerns with the linguistic analysis that considers a text (*lafz*/word) of a *naṣṣ* (the Qur'ān or ḥadīth).<sup>46</sup> The theory of *qawā'id al-lughawī* is a theory that is often used by jurists in deriving the Islamic law (*fiqh*) through linguistic rules of the *dalīl* of the Qur'ān and ḥadīth. The divine revelation that manifests as the law is fixed in words/texts (*lafz*, *naṣṣ*) that was heard by the Prophet Muhammad peace be upon him. Those words are called *dalīl* that lead to law. For the reason of the importance of words as an instrument to understand the revelation, the theory of Islamic law (*uṣūl al-fiqh*) has a serious concern with textual and linguistic aspects. Accordingly, it is not wrong to consider that the field of Islamic law is a discipline of interpretation upon the text of the revelation in which the law is fixed. This is the reason why linguistic discussion in *uṣūl al-fiqh* starts with *al-mabāḥith al-lafẓiyya*.

Through the *bayānī* (textual) reasoning, the word *manāsik* as mentioned in Q.S. al-Baqara: 200 means 'your *hajj*'.<sup>47</sup> As for Q.S. al-An'ām: 162, the word *nusukī* means to worship. As for the ḥadīth, the word *manāsikakum* means 'you follow the ways of worship as conducted by the Prophet Muham-

<sup>42</sup> Ibn Al-Humām, *Al-Taḥrīr* (Mesir: Muṣṭafā al-Babī al-Halabī wa Awladuh, n.d.), p. 523.; Muḥammad Ibn Āli al-Syawkanī, *Irshād Al-Fuhūl Ilā Taḥqīq Al-Hāq Min 'Ilm Al-Uṣūl* (Bairūt: Dār al-Fikr, n.d.), p. 250.; 'Abd al-Wahhāb Khallāf, *'Ilm Uṣūl Al-Fiqh* (Kairo: Dār Kuwaitiyyah, 1968), p. 216.

<sup>43</sup> Al-Qazwinī, *Sunan Ibn Mājjah*, p. 1006.; Abū Zakariyā Al-Nawawī Muhyuddīn, *Ṣaḥīḥ Muslim Bi Sharh Al-Nawawī*, Vol. III (Kairo: Dār 'Aqīdah, n.d.), p. 419.; 'Abdul Muḥsin 'Abbad, *Sharah Sunan Abū Dāwud*, Vol. V (Bairūt: Dār al-Fikr, 2005), p. 30.; al-Hafiz Jalāluddīn al-Shuyūṭi al-Saidīn Al-Nasā'ī, *Sunan Al-Nasā'ī* (Bairūt: Dār al-Ma'rifah, n.d.), p. 310.

<sup>44</sup> Al-Nawawī, *Ṣaḥīḥ Muslim Bi Sharh Al-Nawawī*, p. 419.

<sup>45</sup> Al Yasa' Abubakar, "Beberapa Teori Penalaran Fiqh Dan Penerapannya," dalam *Hukum Islam Di Indonesia: Pemikiran Dan Praktek* (Bandung: Rosda Karya, 1991), p. 187.; Al Yasa' Abubakar, *Metode Istishlahiah: Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh*, ed. Ridwa Nuridin (Banda Aceh: Program Pascasarjana IAIN Ar-Raniry Darussalam dan Bandar Publishing, 2012), p. 17.

<sup>46</sup> Muḥammad Abū Zahrah, *Uṣūl Al-Fiqh* (Kairo: Dār al-Fikr al-'Arabī, 1958), p. 115.

<sup>47</sup> Abū Ja'far Muḥammad bin Jarīr At-Ṭabarī, *Tafsīr Al-Ṭabarī*, Vol. IV (Damaskus: Dār al-Qalam, 1997), p. 195.



mad.” According to al-Razī, *al-manāsik* is a plural form of the verbal noun *mansak*. Accordingly, in the linguistic structure of Q.S. al-Baqara: 200, a head noun (*mudāf*) is hidden, i.e. *‘amal*, making the verse means: “if you finish all deeds in ḥajj...” Some other commentators interpret the word *manāsik* in the verse as all ordered worships related to ḥajj. Whereas for *Mujāhid*, the meaning of conducting *manāsik* is to shed the blood of sacrificial animals.<sup>48</sup>

Beside the Qur’ānic verse, the ḥadīth “*khudhū ‘annī manāsikakum*” (take from me the way of conducting ḥajj), is a sound ḥadīth with some comparable matns.<sup>49</sup> Imām al-Nawāwī explains that in the ḥadīth “*lita khudhū manāsikakum* (follow the way of conducting ḥajj like what I did), the letter lam (li) stands as *lam al-amr* (imperative lam), which functions as imperative, making the meaning of the ḥadīth resembles *khudhū ‘annī manāsikakum*.<sup>50</sup> It is also true for the ḥadīth reported by Muslim that it is an order to follow what has been said and conducted by the Prophet Muhammad peace be upon him during ḥajj. Additionally, the position of this ḥadīth is the same as the other ḥadīth “*ṣallū kamā ra’aitumūnī uṣallī* (pray as you saw me praying). Using the same tone as this ḥadīth, al-Nasā’ī reported: “I saw the Prophet peace be upon him threw the jumra from above his mount, and he said: ‘O people, take from me the way of conducting ḥajj, I do not know whether I can perform ḥajj after this year’”.<sup>51</sup>

<sup>48</sup> Imām Fakhr Al-Razī, *Tafsīr Al-Razī*, Vol. V (Bairūt: Dār al-Fikr, 1990), p. 333.

<sup>49</sup> Al-Qazwinī, *Sunan Ibn Mājah*, 1006.; Abū Zakariyā Muhyiddīn al-Nawawī, *Ṣaḥīḥ Muslim Bi Sharh Al-Nawawī*, p. 419.; ‘Abbad, *Sharah Sunan Abū Dāwud*, p. 30.; al-Hafīz Jalāluddīn al-Shuyūti al-Saidīn Al-Nasā’ī, *Sunan Al-Nasā’ī*, p. 310.

<sup>50</sup> Abū Zakariyā Muhyiddīn al-Nawawī, *Ṣaḥīḥ Muslim Bi Sharh Al-Nawawī*, p. 419.

<sup>51</sup> Al-Hafīz Jalāluddīn al-Shuyūti al-Saidīn Al-Nasā’ī, *Sunan Al-Nasā’ī*, p. 27.

Both of the ḥadīths mentioned above are considered reliable because they are based on two binding bases, namely *qawli* (saying) and *fi’li* (action) of the Prophet Muhammad peace be upon him, making them stand in the same position as the ḥadīth on praying. Besides, both ḥadīths show that the way of conducting ḥajj belongs to a *tawqifi* matter, which refers to following what the Prophet Muhammad peace be upon him did. In this context, an act of worship would not be valid unless supported by the sharia *dalil*.

The *manāsik* of ḥajj as organised specially for prospective Indonesian pilgrims by *Kelompok Bimbingan Haji (KBH)*<sup>52</sup> is indeed different from what the Prophet Muhammad did, in that the Prophet did it simultaneously during his actual ḥajj. This is entirely understandable because he is the source of sharia. Nevertheless, in this current context, the prospective pilgrims whose knowledge is necessarily elementary about the ḥajj performance are in critical need of knowledge on the proper *manāsik* of ḥajj.

For the objective of the perfection of ḥajj, the above mentioned Qur’ānic verses and ḥadīths of the Prophet Muhammad peace be upon him through the *bayāni* reasoning point to the instruction (*amr*<sup>53</sup>) of *manāsik* for prospective pilgrims. Therefore, those texts order the prospective pilgrims to take or follow the way of performing ḥajj to what the

<sup>52</sup> Sulaiman, “Kepuasan Jamaah Haji Terhadap Pelayanan KBH Di Kabupaten Jepara,” *Analisa* 21 (2013): 52–53.

<sup>53</sup> Ahmad Warson Munawwir, *Kamus Al-Munawwir*, p. 38.; Amir Syarifuddin, *Ushul Fiqh*, p. 63.; Jalāl ad-Dīn Al-Suyūti, *Al-Itqān Fī ‘Ulūm Al-Qur’ān*, Vol. III (Bairūt: Maktabah ‘Aṣriyyah, 1998), p. 242.; Muḥammad Hasyim Kamali, *Principles of Islamic Jurisprudence; The Islamic Text Society*, Terj. Noorhaidi, (Yogyakarta: Pustaka Pelajar and Humanity Studies, 1996), p. 180.; Muḥammad Adib Ṣālih, *Tafsīr Nuṣūṣ Fī Fiqhi Al-Islāmī*, Vol. II (Maktabah al-Islāmī, n.d.), p. 232.; Khālib bin ‘Uthmān, *Qawā’id Tafsīr Jam’an Wa Dirāsatan*, Vol. II (Kairo: Dār ibn ‘Uthmān, n.d.), p. 478.

Prophet Muhammad peace be upon him did. The imperative expression (*amr*) from the perspective of *uṣūl al-fiqh* indicates obligation, following the rule: *al-aṣl fi al-amr li al-wujūb* (the basic meaning of an imperative text is an obligation).<sup>54</sup>

Scholars of *uṣūl al-fiqh* divide *wājib* into several approaches: from the side of time to apply the instruction (*wājib muṭlaq* and *wājib mu'aqqat*), from the side of individuals bound by the instruction (*wājib 'ain* and *wājib kafā'i*), from the side of the amount or degree of an object of instruction (*wājib muḥaddad* and *wājib ghair al-muḥaddad*), from the side of the form of activity instructed (*wājib mu'ayyan* and *wājib mukhayyar*).<sup>55</sup>

The first approach, *wājib mu'aqqat* is divided into three categories: *muwassa'*, *muḍayyaq*, and *dhū shabḥaini*. From this categorisation, *manāsik* for the perfection of hajj belongs to *dhū shabḥaini*, which means an obligation whose application timing is defined, on the one hand, as *muwassa'* (broad) and on the other hand as *muḍayyaq* (confined). It is called *muḍayyaq* (confined) because the hajj could only be performed in restricted months and only once in a year, and it is called *muwassa'* (broad) because the hajj does not spend the entire duration of the pilgrim months.

Through the *bayānī* reasoning over the available *dalīl*, the position of *manāsik* is, on the one hand, an obligation, unless there happens something that cancels it. On the other hand, the formulation of imperativeness of the text indicates its interrelatedness with certain conditions and attributions that implies the meaning of repetition. According

to *Jumhūr* of '*ulamā'*', this can be defined through indications, such as the minimal condition by which the instruction stands. If there is no such indication, the minimal prerequisite of the instruction should be applied once as for the indication that requires repetition is an order that occurs with the conditional formulation.<sup>56</sup>

## 2. *Ta'līl* Reasoning (*'illa*)

*Ta'līl* reasoning is a strategy that sees the background of a stipulation. In other words, it seeks to understand what are reasons that form a particular regulation. In the context of the *manāsik*, this strategy tries to understand the intention of the activity, whether it has a value, the absence of which would harm another activity. The '*illa* in this context are classified into three categories: '*illa tashrī'*, '*illa qiyāsī* and '*illa istiḥṣānī*.<sup>57</sup> The difference between these categories lies only in the context of its usefulness and the intensity of its requirements. The requirements of '*illa qiyāsī* are more than that of *tashrī'i* and *istiḥṣānī*. Accordingly, *dalīl qiyas* and *istiḥṣān* are included in *ta'līl* reasoning.<sup>58</sup>

Referring to the above two mentioned ḥadīths, the reason (*'illa*) behind the organisation of the *manāsik* is the perfection of hajj. The perfection in this context should be fulfilled through the *manāsik*, such as the understanding upon the requirements, pillars, conditions of obligation and things that nullify hajj. Unawareness of these matters would potentially lead to imperfection or

<sup>54</sup> Fathī al-Durainī, *Al-Manḥāj Al-Islāmiyyah Fī Ijtihādi Bi Al-Ra'yī Al-Tasyrī'* (Damaskus: Dār al-Kutūb al-Ḥadīth, 1975), p. 704.; Nazar Bakry, *Fiqh Dan Uṣūl Fiqh*, 4th ed. (Jakarta: PT. Raja Grafindo Persada, 2003), p. 186.

<sup>55</sup> 'Abd al-Wahhāb Khallāf, *'Ilm Uṣūl Al-Fiqh*, p. 240-243.

<sup>56</sup> Siti Fahimah, "Kaidah-Kaidah Memahami Amr Dan Nahy: Urgensitasnya Dalam Memahami Alqur'an," *Al-Furqan* 1, no. 1 (2018): 6.

<sup>57</sup> Muṣṭafā Aḥmad Syalabī, *Ta'līl Al-Aḥkām* (Kairo: Dār al-Nahḍah al-'Arābiyyah, 1981), p. 142.; 'Abd al-Ḥakīm 'Abd al-Raḥmān As'ād al-Sa'dī, *Mabāhiṭh Al-'Illat Fī Al-Qiyās 'inda Al-Uṣūliyyīn*, Vol. I (Bairūt: Dār al-Basyā'ir al-Islāmiyyah, 1986), pp. 169-327.

<sup>58</sup> Syalabī, *Ta'līl Al-Aḥkām*, p. 142. 'Abd al-Ḥakīm 'Abd al-Raḥmān As'ād al-Sa'dī, *Mabāhiṭh Al-'Illat fī Al-Qiyās 'inda Al-Uṣūliyyīn*, p. 169-327.

even nullification of ḥajj. Therefore, the ḥajj conducted is a failure during the year one is obliged to conduct it, even though he/she has paid dam for some relevant cases. For this reason, the pilgrims should really spend the time and opportunity that are obliged by the sharia,<sup>59</sup> namely doing ḥajj once in a lifetime for adult Muslims with a sound state of mind, should they are capable<sup>60</sup> of doing it, and fulfil the conditions of health physically and mentally and possessing funds to families left behind at home.<sup>61</sup>

An activity that is conducted repeatedly does not count as an obligation any longer, but rather recommendation (Sunna). Based on a ḥadīth of the Prophet Muhammad peace be upon him, the obligation of ḥajj is only once in a lifetime for those who have the capability, while the next ḥajjs counts as Sunna. Ibn ‘Abbās conveyed that al-‘Aqrā bin Habis asked the Prophet Muhammad peace be upon him, “O Prophet, is the ḥajj (conducted) every year or only once (in a lifetime)? The Prophet answered: بل مرة واحدة فمن زاد فهو تطوع which means “once in a lifetime, and whoever adds over it, it (counts) as *tatawwu*’ (Sunna) (reported by Abū Dāwud and Ibn Mājjā).<sup>62</sup>

This ḥadīth, according to al-Albānī, is sound.<sup>63</sup> It emphasises that the second ḥajj and every other ḥajjs after, count as Sunna. Accordingly, those who have conducted the ḥajj and wants to perform it once again should set priority to people--who have fulfilled the conditions of the obligation of the ḥajj--who are yet to perform it. Somebody who has performed ḥajj but maintains his/her desire to go for another ḥajj indicates his/her egoism (*sarakah*).

Nowadays, the waiting list of ḥajj departures reaches the length of 20 years. This duration of await also covers people who have gone for a ḥajj previously. For this matter, the government needs to uphold the decided regulations firmly and close the opportunity of repeating ḥajj that happens at the cost of the first-time pilgrims. The reason for this policy is that the opportunity of ḥajj counts only once in a lifetime. Therefore, the priority should be appropriately set so that it does not contradict to the provisions of Allah. People that have gone for a ḥajj but possess the necessary finance capability needed for another visit should allocate it to other kinds of priorities such as charity for houses of worship, Islamic education institutes, scholarship for underprivileged children, free ḥajj visit for people in needs, building houses for homeless, helping orphans, etc. All of these are teachings of Islam and even more appropriate in the context of the current economic situation of Indonesia.

Upon the consideration of the *‘illa* of the order of *manāsik*, the organisation of *manāsik* is essential to provide the prospective pilgrims with the necessary knowledge concerning ḥajj,<sup>64</sup> either before the departure or during the actual ḥajj through a commando of a Karom. *Manāsik* is therefore classified

<sup>59</sup> Hamka, *Studi Islam*, ed. M. Rusydi, Vol. II (Pustaka Panjimas, 1983), p. 150.; Muḥammad Ibn Idrīs al-Syāfi‘ī, *Al-Risālah* (Kairo: Muṣṭafā al-Bābī al-Halabī, 1978).; Mahmūd Syaltūt, *Islām, ‘Aqīdah Wa Syarī‘ah* (Kairo: Dār al-Qalām, 1966), p. 12.; Āli as-Sayyīs, *Naṣṣiyah Al-Fiqh Al-Ijtihād Wa Atwaruh* (Kairo: Majma’ al-Buhūth al-Islāmiyyah, 1970), 8.

<sup>60</sup> BBC Webwise, “Hajj: Pilgrimage to Mecca,” n.d., [https://www.bbc.co.uk/religion/religions/islam/practices/hajj\\_1.shtml](https://www.bbc.co.uk/religion/religions/islam/practices/hajj_1.shtml).

<sup>61</sup> Salim Baharoon, “Severe Sepsis and Septic Shock at the Hajj: Etiologies and Outcomes,” *Travel Medicine and Infectious Disease* 7, no. 1 (2009): 248.

<sup>62</sup> Abū Dāwud al-Sijistānī, *Sunan Abī Dāwud* (Bairūt: Dār al-Fikr, n.d.), no. 1725.; Abī Abdullāh bin Muḥammad bin Yazīd al-Qazwīnī, *Sunan Ibn Mājjā*, p. 2886.

<sup>63</sup> Muḥammad Naṣīruddīn al-Albanī, *Ṣaḥīḥ Abī Dāwud*, Vol. V, terj. Ahmad Taufik (Jakarta: Pustaka Azzam, 2006), p. 405.

<sup>64</sup> Jaferi, “Pengaruh Prediket Haji Mabur Terhadap Motivasi Manasik Calon Jamaah Haji.”, 113.

into the *baṭiniyya* (mental) needs, i.e. capability of the prospective pilgrims of *manāsik* knowledge needed for hajj. Accordingly, both material and spiritual dimensions should be balanced so that hajj becomes perfect.<sup>65</sup>

### 3. *Istiṣlāḥī* (Benefit) Reasoning

*Istiṣlāḥī* reasoning (*turuq al-istiṣlāḥī*) is a strategy that deals with verses and ḥadith that have a relatively general meaning. For example, the texts that order the *manāsik* as conducted by the Prophet Muhammad peace be upon him contain benefit. The benefit in this context is that *manāsik* makes the prospective pilgrims able to keep away from activities that could harm the hajj. Accordingly, *manāsik* is an event that is necessary and is ordered by the sharia in a clear way (*qaṭ'ī*). The formulation of the texts that use imperative expression (*al-amr*) indicates its position as an obligatory act. For this reason, refraining from *manāsik* would potentially make one's hajj imperfect or even nullified, based on the provisions of the sharia.

As a manual of doing hajj, *manāsik*, through the *istiṣlāḥī* reasoning, represents a highly valuable affair that relates to the validity and nullification of hajj. *Uṣūliyyūn* defines valid (*ṣaḥ*) as “*tarattubu thamratihi al-maṭlūbati minhu shar'an 'alaihi. Fa idhā basala al-sababu wa tawaffara al-shartu wa antafa al-manī'u tarattabati al-atharu al-shar'iyyatu 'alā al-fi'l* (the fulfilment of something required by the sharia, [in a condition that] the causes exist, the requirements are fulfilled, the inhibitor does not exist, and the given act achieves the intention of the sharia.)<sup>66</sup> This definition shows that an act is valid (*ṣaḥ*) as long as the requirements and pillars are fulfilled and the inhibitor is absent, and the in-

tion of the sharia is fulfilled. If one of the mentioned conditions is not met, the given act is null.

From the linguistic point of view, null or void means “*tararrudu al-taṣarruf al-shar'iyyi 'an i'tibārihi wa athārihi fī naẓari al-shar'i* (a legal act of sharia that refrains from its intention and objective as indicated by the sharia).<sup>67</sup> This definition shows that an act, in this context, hajj, that does not fulfil the requirements and pillars counts as null and void, so that the hajj should be repeated in another time.<sup>68</sup>

Based on the *istiṣlāḥī* reasoning, *manāsik* has several *maṣlaḥa*<sup>69</sup> (benefits) compared to *mafsada* (drawbacks), which is obtaining necessary knowledge for hajj in order to achieve hajj *mabrūr*. As the *shāri'* (the source of sharia) Allah--Exalted and Glorified is He--does not create laws unless with specified intentions. For this reason, the real intention of *manāsik* is to get the advantages (*maṣlaḥa*)<sup>70</sup> and keep drawbacks (*mafsada*) away from the prospective pilgrims both in the world and the hereafter. In other words, it is intended

<sup>65</sup> Nadia Caidi, “Pilgrimage to Hajj: An Information Journey,” *The International Journal of Information, Diversity, & Inclusion* 3, no. 1 (2019): 60.

<sup>66</sup> 'Abd al-Wahhāb Khallāf, *'Ilm Uṣūl Al-Fiqh*, p. 47.

<sup>67</sup> Abū 'Ainain Badran, *Uṣūl Al-Fiqh Al-Islāmī* (Aleksandria: Mu'assasah Shahab al-Jamī 'ah, 1984), p. 45.

<sup>68</sup> Abdul Wahid, “Kemungkinan Berhaji Di Luar Zulhijjah: Perspektif Qathi Dan Zhanni,” *Jurnal Penelitian* 11, no. 1 (2014): 24.

<sup>69</sup> Muḥammad Abū Zahrah, *Uṣūl Al-Fiqh*, p. 366.; Fathi al-Durainī, *Al-Manḥāj Al-Islāmiyyah Fī Ijtihādi Bi Al-Ra'yī Al-Tasyrī'*, p. 28.; Wael B. Hallaq, “The Frimacy of The Qur'an in Shatibi Legal Theori,” in *Islamic Studies Presented to Charles J. Adams*, ed. Wael B. Hallaq dan Donald P. Litte (Leiden: EJ-Brill, 1991), p. 89.

<sup>70</sup> Tim Penyusun Kamus Pusat Pembinaan dan pengembangan Bahasa, *Kamus Besar Bahasa Indonesia*, Vol. II (Jakarta: Balai Pustaka, 1989), p. 563.; Muḥammad Ibn Āli al-Shawkanī, *Irshād Al-Fuhūl Ilā Tahqīq Al-Hāq Min 'Ilm Al-Uṣūl*, p. 242.; Sa'īd Ramaḍān al-Buṭī, *Ḍawābiṭ Al-Maṣlaḥat* (Bairūt: Dār al-Fikr, n.d.), p. 27.

to pull advantages, avails, and kindness<sup>71</sup> and push away disadvantages.<sup>72</sup>

In addition to using three strategies of deriving law (*istinbāt*) as the above-elaborated, the theory of *maqāṣid al-sharīʿa*<sup>73</sup> is another appropriate method of finding a legal conclusion. The intention of sharia of *manāsik* is so that the ḥajj could be conducted ideally, making it proper to be classified as *ḍarūriyya* (the primary intention) and *ḥājiyya* (the secondary intention). The reason behind its classification as *ḍarūriyya* is that not only does it mention the word *manāsik*, the order of ḥajj is directed to those who are capable of doing (Q.S. Āli ʿImrān: 97). On the other hand, it is *ḥājiyya* because the *manāsik* represent the needs of prospective pilgrims to make their ḥajj perfect without any drawbacks, either in its obligatory conditions or the pillars of ḥajj.

From the above-explained reasonings of *uṣūl al-fiqh*, it is evident that the question of legal certainty of *manāsik* that have been organised consistently for prospective Indonesian pilgrims could find its answer from a proper investigation upon the text of the Qurʾān and the ḥadīths. All the three methods of *uṣūl al-fiqh* indicate that the *manāsik* is

an order that contains an *illa* of the perfection of ḥajj as well as values of *maṣlaḥa*. As for the *maqāṣid sharia* method, *manāsik* could be classified into a primary intention (*ḍarūriyya*) and secondary intention (*ḥājiyya*) for the prospective pilgrims.

With the legal certainty of *manāsik* based on the *uṣūl al-fiqh* reasonings, *manāsik* of ḥajj in Indonesia is an obligation before their departure to the Holy Land. The notion of obligation (*wājib*) is restricted, especially for those who do not have the necessary knowledge with regards to the ḥajj procedures. For this reason, doing ḥajj without proper knowledge would lead to failure, either for the miscarriage of pillars or other fundamental elements of ḥajj. Accordingly, the organisation of *manāsik* by the government is relevant to the *dalīl*,<sup>74</sup> especially the mentioned ḥadīth. Make the best of the opportunity of ḥajj with proper preparation, because it is a once in a lifetime obligation.

## Conclusion

Based on the intention of this article, which is seeking for legal certainty of *manāsik* of ḥajj as organised in Indonesia through *uṣūl al-fiqh* reasonings, it is evident that the *manāsik* as programmed by the Ministry of Religious Affairs through BPA (Badan Penyelenggaraan Haji, The Organ of Ḥajj Organisation) is *wājib* (obligatory) for prospective pilgrims. This legal conclusion is based on Q.S. al-Baqarah: 200 and Q.S. al-Anʿām: 162 and ḥadīths of Muslim, Abū Dāwud, Nasāʾī and Ibn Mājjā. Classifying *manāsik* as *wājib* (one of the *taḳlīf* law) is based on the fact that those texts contain imperative expressions (*al-amr*), instructing the pilgrims to follow what the Prophet did during his pilgrimage.

<sup>71</sup> Noor Naemah Abdul Rahman, "Relevansi Teori Al-Maslahah Menurut Al-Syatibi Dalam Menangani Isu Perobatan Masa Kini," *Al-Risalah* 13, no. 1 (2013): 50.

<sup>72</sup> M. Zaki, "Formulasi Standar Maslahah Dalam Hukum Islam (Studi Atas Pemikiran Al-Ghazali Dalam Kitab Al-Mustashfa)," *Al-Risalah* 13, no. 1 (2013): 34.

<sup>73</sup> Abū Ishāq Ibrāhīm bin Mūsā bin Muḥammad al-Lakhmī Al-Syātibi, *Al-Muwāfaqāt Fī Uṣūl Al-Syarīʿah*, 2nd ed. (Bairūt: Dār al-Kutūb al-ʿIlmiyyah, n.d.), p. 7.; Wahbah al-Zuhaylī, *Uṣūl Al-Fiqh Al-Islāmī*, p. 1017.; Abū Ḥamīd Ibn Muḥammad Ibn Aḥmad al-Ghazālī, *Al-Mustashfa Min ʿIlm Al-Uṣūl* (Bairūt: Dār al-Fikr, n.d.), p. 251.; ʿAbd. al-Mālik ibn Yūsuf al-Juwainī, *Al-Burhān Fī Uṣūl Al-Fiqh* (Kairo: Dār al-Ansār, n.d.), p. 295; Edi Kurniawan, "Distorsi Terhadap Maqasid Al-Syarīʿah Al-Syatibi di Indonesia," *Al-Risalah* 18, no. 2 (2018): 184–86.

<sup>74</sup> Sihabudin Rahmat Junaidi, Thohir Luth, M. Ridwan, "Policy Design in Professionalism-Based Implementation of Hajj Pilgrimage," *Journal of Humanities and Social Science* 19, no. 1 (2014): 78.



The obligation of joining the *manāsik* for prospective Indonesian pilgrims is based on the *uṣūl al-fiqh* reasonings, such as *bayānī*, that the texts contain imperative expressions so that it is an obligation to fulfil the mentioned acts. Based on the *ta'līlī* reasoning, the 'illa of *manāsik* is the perfection of hajj (a proper knowledge is needed to make hajj perfect). As for the *istiṣlāḥī* reasoning, the organisation of *manāsik* contains *maṣlaḥa* to achieve the validity of hajj based on the sharia. As for the *maqāṣid sharia*, *manāsik* belongs to the primary (*darūryya*) and secondary (*hajjiyya*) needs for prospective pilgrims, especially Indonesian. This way of *manāsik* is different from the way it was performed during the time of Prophet Muhammad peace be upon him that the companions were quick to understand the hajj procedures for the simultaneous following to what the Prophet did during the actual hajj.

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