

The Concept of Ijtihad in the Islamic Economic and Financial System

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Abstract

Ijtihad has historically served as the cornerstone of Islamic legislation, ensuring that the Shariah remains both principled and adaptable. In the contemporary era—marked by rapid economic transformations, increasingly complex financial activities, and emerging challenges—*ijtihad* is not only relevant but essential. The dynamic field of economics and *mu'āmalāt māliyyah* demands continuous scholarly engagement to derive rulings for unprecedented cases. This paper examines and analyses selected concepts of *ijtihad* within the domain of Islamic economics and finance. The findings highlight the importance of understanding specific *ḍawābiṭ* (juridical parameters) as a means of addressing contemporary societal needs and ensuring the continued relevance of Islamic economic and financial systems.

Keywords: *Ijtihad*, Islamic Economic, Financial System, Fundamental of *Mu'āmalāt*

Introduction

Contemporary economic and financial systems present pressing concerns that demand scholarly attention. Addressing these matters through *ijtihad* requires integrating essential elements from its general framework. It is important to note that *ijtihad* in economic and *mu'āmalāt* issues is reserved for the *mujtahid mutlaq*, who possesses mastery across diverse branches of *fiqh*. Nevertheless, Shariah also permits specialists who have mastered the foundational principles of *ijtihad* and developed expertise in *mu'āmalāt*, even if they have not attained full competence in other areas. In other words, it is based on the opinion that permits *tajazzu' al-ijtihad* (Al-Ghazali, 1999, Al-Tufi, 2001). This is emphasized by Ibn Taymiyyah (d. 728 H) (Ibn Taymiyyah(1999): "*Ijtihad* does not only occur in one matter without diversity or

subdivision. In fact, a *mujtahid* may have the capability to perform *ijtihad* in one matter yet may not be able to perform it in another, for a person may undertake *ijtihad* according to his ability”.

Problem Statement

The rapid expansion of global financial systems has introduced new institutional structures, digital platforms, financial innovations, and complex contractual arrangements that classical jurists could not have anticipated. These developments include multi-layered financing instruments, digital assets, algorithmic trading, electronic ownership transfers, international banking regulations, and fintech-based products that operate within systems fundamentally different from pre-modern market environments. As a result, many contemporary financial questions fall outside the scope of classical *fiqh* discussions, creating significant challenges for jurists attempting to derive accurate and relevant rulings.

Despite the extensive classical scholarship on *ijtihād*, there is no unified or comprehensive framework that clearly defines the qualifications, core concepts, and methodological tools required for a *mujtahid* specializing in modern financial *mu‘āmalāt*. Classical requirements of *ijtihād*—such as mastery of Arabic, *usūl al-fiqh*, *maqāṣid*, and *qawā‘id fiqhīyyah*—remain essential but insufficient when dealing with contemporary financial realities shaped by legal systems, risk structures, institutional mechanisms, and new forms of *riba*, *gharar*, and *hilah*. At the same time, regulatory bodies and Shariah governance frameworks differ in their methodological expectations, leading to inconsistent rulings and divergent standards across jurisdictions.

This fragmentation highlights a deeper methodological gap: the absence of a framework that meaningfully integrates classical *fiqh* principles with contemporary financial knowledge (*fiqh al-wāqī‘*). Without such integration, *ijtihād* risks becoming either overly literal - detached from financial realities - or excessively flexible in ways that compromise *maqāṣid* and ethical foundations. The current landscape demonstrates the need for a structured approach that equips *mujtahids* with both classical tools and modern analytical competencies.

Therefore, this study seeks to develop a structured framework that identifies the essential concepts, competencies, and methodological instruments required for the contemporary *mujtahid* operating within the sphere of financial *mu‘āmalāt*. The study addresses the pressing methodological and practical gaps in Islamic finance by systematizing the knowledge domains, analytical tools, and evaluative criteria necessary for producing rulings that are legally sound, contextually relevant, and aligned with *maqāṣid al-Sharī‘ah*.

The focus of this paper is on several specific concepts that must be possessed by a *mujtahid* in the field of economics and financial *mu‘āmalāt* in the present era. These concepts are as follows:

First Concept : Understanding the *Maqasid al-Shariah* (Objectives of Islamic Law) Related to Rulings on *Muamalat* and Islamic Finance

The foundation of *mu‘āmalāt* lies in *al-ta‘līl* — legal reasoning based on the presence of an *‘illah* (effective cause) — rather than *al-ta‘abbud*, which is rooted in pure devotion.

Consequently, anyone examining the Sharī'ah evidences concerning rulings in *mu'āmalāt* must grasp the underlying wisdom and overarching objectives of these rulings. Without knowledge of these *maqāṣid*, one is not qualified to exercise *ijtihād* in contemporary financial matters. Indeed, the process of *istinbāṭ* (deriving rulings) for new issues in *mu'āmalāt* remains incomplete without a sound understanding of these objectives. These *maqāṣid* may be broadly divided into two categories: (i) general *maqāṣid* in financial transactions, and (ii) specific *maqāṣid* in financial matters related to human labour and effort.

First: General *maqāṣid* in financial *muamalat*

The wisdom and aims established by Allah (s.w.t.) in *muamalat* include the following:

1. Preservation of Property (*ḥifẓ al-māl*)

Safeguarding wealth is among the essential objectives of Islamic law, a point upon which scholars such as al-Ghazālī (1999) and al-Āmidī (1982) have reached consensus. Wealth encompasses all items owned by an individual, whether goods, money, or other assets. Islamic law places great emphasis on the protection of wealth, as reflected in Qur'anic injunctions encouraging lawful work and the pursuit of sustenance. Jurists have therefore made the preservation of property a primary objective of Sharī'ah. Transgressing the rights of others is strictly prohibited, extravagance is discouraged, *hudūd* punishments are prescribed for violations of property rights, and compensation is required when damage occurs. Collectively, these rulings underscore the central importance Islam assigns to the safeguarding of wealth.

2. Justice ('*Adl*)

Justice is a primary objective of Islamic law in general. It is a Sharī'ah obligation in speech, worship, *mu'āmalāt*, and all other aspects of life. Within the framework of *maqāṣid al-Sharī'ah*, justice occupies a central role, particularly in financial transactions. Several scholars maintain that justice represents the ultimate aim of legislation in *mu'āmalāt* and beyond. Ibn Taymiyyah emphasized: "The foundation of contracts is justice. Through it, the Messengers were sent and through it, the Qur'an was revealed. Islam prohibits *ribā* because it contains elements of injustice, as is the case with gambling. The Qur'an also prohibits consuming wealth unlawfully or engaging in transactions involving deceit, such as selling unripe fruit or animals still in the womb, for all these falls under *ribā* and gambling. By contrast, transactions such as *muḍārabah* and *muzāra'ah* in agriculture do not contain elements of gambling; rather, they are matters of justice."

This demonstrates that justice is an intrinsic value underpinning the legislation of *mu'āmalāt*. Accordingly, any transaction that embodies justice is originally permissible unless it contains a prohibited element. Conversely, any transaction involving injustice is prohibited.

3. Circulation of Wealth (*al-Rawāj*)

Al-rawāj refers to the circulation of wealth among as many people as possible so that it may be directed toward rightful welfare purposes. This objective is reflected in Sharī'ah legislation, which encourages trade and establishes contractual formalities for the transfer of ownership. The encouragement of trade in *mu'āmalāt* is evident in the Qur'an and the Sunnah of the Prophet (s.a.w.). To preserve this objective, the Sharī'ah legislates contracts (*'uqūd*) in *mu'āmalāt* with the aim of transferring property rights, whether through exchange contracts

(*mu'āwadhah*) or donations (*tabarru'*). The validation of contracts is established in specific forms, such as verbal expressions indicating the mutual consent of both parties. A contract must also contain mutually beneficial conditions, and once these are fulfilled, the contract is valid. Accordingly, the basic ruling of financial contracts is based on enforceability (*luzūm*) rather than the right of option (*khiyār*), except where one of the contracting parties stipulates such a right.

A *mujtahid* in contemporary financial *mu'āmalāt* must therefore take into account the objective of *al-rawāj*, particularly in contracts where excessive rigidity in applying this principle may undermine sound financial systems. Examples include rulings on intermediaries in *ijāb* and *qabūl* (offer and acceptance), methods of *qabḍ* (delivery and receipt), and related matters. This objective has also led to certain relaxations (*takhfīf*) in some *mu'āmalāt*, as noted by Ibn 'Āshūr (1999). Among the matters included in this objective is the Sharī'ah's permission.

4. Clarity, Explicitness, and Precision

One of the *maqāṣid* of *mu'āmalāt* in Islamic law is that transactions must be clear, explicit, and unambiguous, ensuring that each party understands their rights and disputes are minimized. For this reason, the Sharī'ah prescribes the documentation of debts, the witnessing of sales, and the taking of pledges (*rahn*). Al-Qurṭubī, in his commentary on Qur'an 2:282, stated: "(‘Write it down’) is a clear indication that the matter should be written as explicitly as possible so that there is no dispute between the two parties, and so that a judge may be informed of it if there is a disagreement and the matter is brought before him" (Al-Qurṭubī, 1993).

Islam also legislated *rahn* (pledge) as a means of protecting property, particularly for contracts that cannot be documented in writing. Such pledges may be taken whether travelling or not. This is evidenced by the Prophet (s.a.w.) pledging his iron armour to a Jew when compelled to do so, even though he was not travelling. Based on this objective, it is obligatory for a *mujtahid* engaged in *ijtihād* on contemporary financial *mu'āmalāt* to consider ways of perfecting contracts and systems that reinforce them. The *mujtahid* must also pay attention to new methods that support the achievement of this objective. Modern transaction systems have developed rapidly, and their utility clearly advances this aim. Contemporary mechanisms that serve this objective include conventional or electronic stamps, business shares indicating the date of issuance, electronic lists of goods, numbering systems, and similar innovations.

5. Continuity of Impact

A contract (*'aqd*) serves as a means of transferring ownership of property from one person to another. One of its essential objectives is the existence of consequences following its conclusion — namely, that the buyer lawfully acquires the goods purchased and the seller rightfully receives the price, without dispute between the two parties. A contract is not deemed valid unless this objective is realized (Al-Qurṭubī, 1993). A foundational *fiqh* maxim states: "Every transaction that does not achieve its intended purpose is invalid" (Al-Suyūṭī, 1989; al-'Izz al-Dīn, 2001; al-Qarāfī, 1983). From this objective, several rulings are derived, including:

- a. Allocating exclusive ownership to one or more persons over property that is rightfully theirs, free of doubt, and preventing others from interfering with their ownership except for public interest. From this objective arise rulings validating transactions, fulfilling contractual conditions, and invalidating those that lead to harm.
- b. Granting the owner of property the freedom to manage what they own or earn, provided such management does not cause harm to themselves or others. Thus, a foolish or imprudent person (*al-safīh*) has no right to dispose of property. Islam also prohibits harmful management of property, including environmental damage, and forbids *mu'āmalāt* involving *ribā* to prevent both public and private harm.
- c. Protecting ownership from removal by force or without consent, except in cases where obligations are owed and deliberately neglected. In such cases, a judge may order the sale of property to prevent harm to others. As an application of this objective, Islamic law recognized ownership rights to products acquired in the pre-Islamic (*Jāhiliyyah*) era, which then transferred upon embracing Islam (Ibn 'Ashūr, 2001).

Given the importance of this objective in *mu'āmalāt*, a mujtahid deliberating on contemporary financial issues must consider it when determining the validity or invalidity of contracts or conditions. A mujtahid may annul contracts that are ambiguous, lack the intention to guarantee ownership, or prevent a buyer from obtaining the goods purchased. This objective also informs rulings on new methods of *qabḍ* (delivery and receipt), such as payment by cheque, credit card transactions, or ownership of shares transferred into an investment account.

Second: specific objectives in mu'āmalāt concerning property related to physical effort or the human self

What is meant here are contracts concluded by one of the two transacting parties to work on the property owned by the other party, with the aim of obtaining a share of what is produced from managing that property (Ibn Ashur, 2001). Such contracts are valid in Islamic law to serve the interest of the owner who is not developing his property. The person managing the property may enhance it through contracts such as (*ijarah*) hiring labour, (*al-musaqah*) irrigation of trees, (*al-mugharasah*) planting, *al-qirad (mudarabah)*, reward-based work (*al-ju'l*) and farming. These are all contracts relating to work undertaken by a person whether involving physical effort, intellectual input, time, or lifespan in managing the matters mentioned above. Anyone who examines the evidences for the rulings concerning *mu'amalat*, alongside the general *maqasid* discussed earlier, will identify specific objectives that must be present, namely:

1. Increasing *mu'āmalāt* that require labour, since many people are in need of employment. Therefore, Islamic law permits such work. An example is the allowance of slight deception (*gharar*) in *mu'āmalāt* of this type, because such deception is a normal feature of these contracts. The intended meaning of "permissible deception" here is the uncertainty involved in work that is difficult to measure such as the type of work performed, the duration of work, or variation in working hours. However, matters that can easily be measured or specified do not permit *gharar*, such as specifying the type of work, the amount of wages, the amount of capital in *mudarabah*, or the profit share of a manager in such contracts (Ibn Ashur, 2001).
2. Avoiding excessive burden on the worker in such contracts. The owner must not force or pressure the worker into excessive labour for high profit. Therefore, *fuqaha* state that it is impermissible

to stipulate unknown or unreasonable work from the worker (Ibn Qudamah, 1992, Ibn Abd al-Barr, 2003).

3. The contract does not become binding until work begins, except where delaying the binding nature would cause harm to either party, such as in *musaqah* contracts. Delaying binding status in such cases would destroy the existing crops or trees. Thus, the worker's option (*khiyar*) is permitted, as they are most aware of the requirements and benefits of the contract. However, this must not harm the original owner, whose interests must also be preserved especially in setting a start date for the contract, so the owner does not miss opportunities to invest his land, crops, or assets (Ibn Asyur, 2001).
4. Wages for work already completed must be paid promptly, since workers are in need of the proceeds from their labor (Ibn Asyur, 2001).
5. Additional allowances may be granted to the worker according to his needs, based on conditions agreed upon at the time of contract. However, no such additional allowance is given to the owner of the property (Ibn Abd al-Barr, 2003).
6. The worker may obtain tools to complete his work, and is not required to complete the work entirely by himself. If the worker cannot manage the task alone, he may employ another trustworthy worker, provided this does not harm the property owner (Ibn Qudamah, 1992).
7. Preventing contracts and conditions that turn the worker into a slave, such as lifetime contracts without freedom. For this reason, *fuqaha* state that *musaqah* contracts are invalid for trees that bear fruit year-round (e.g., banana trees) or trees that take a long time to bear fruit (e.g., olive or date palms, and similar trees) (Ibn Abd al-Barr, 2003).

It is therefore clear that the specific *maqasid* of Shariah in the field of financial *mu'āmalāt* involving human labour must be preserved when adjudicating on contemporary issues. Examples include contracts for building public facilities such as factories, petrol stations, and leasing buildings by some states to earn a share of the profit such as airports, ports, power stations, water desalination plants, and others.

Second concept: understanding the fundamental / general principles governing all mu'āmalāt

These fundamental principles are the result of the *istinbat* (deductions) made by earlier scholars from their study of the evidences related to *mu'āmalāt* rulings. These principles are:

1. "The original ruling of sale is permissibility" (Al-Sha'fie, 1997, Ibn Abd al-Barr, 2001). This principle is sometimes expressed as: *The default ruling of a contract or transaction is permissibility*. Other scholars present equivalent principles with the same meaning. This is the principal foundation in the field of *mu'āmalāt*. All rulings on modern *mu'āmalāt* and contracts can be derived based on this principle. The above principles are branches of a more general and comprehensive principle, namely: "The original ruling for all things is permissibility". The indication of the linkage between this principle and the preceding ones is that many scholars place this principle at the beginning of the chapter on *ribā* with the statement: "Permissibility is the default with respect to everything". (Ibn Abidin, 2003).
2. "The default ruling of a contract/transaction is validity and bindingness" (Al-Qarafi, 1983; Ibn Taymiyyah, 2005; Al-Sarakhsi, 1983). This principle states that any contract or transaction that fulfils all its conditions and lacks any impediment is valid, and its effects must be carried out. It is binding upon both parties such that neither can unilaterally revoke it. This has been the consensus (*ijma'*) of scholars across the various madhabs, even if their wording differs. This principle must serve as a guideline for a *mujtahid* in all modern contracts and *mu'āmalāt*, as long as they do not

- cause harm. Both of these principles (*permissibility* and *validity*) must be present in every contract and *mu'āmalāt*, unless there is evidence specifying otherwise. (Ya'kub al-Bahisin, 1997).
3. The foundation of a contract is mutual consent between the two parties, and its stipulations follow the terms agreed upon between them. This is a fundamental basis in *mu'āmalāt*: "Consent in transactions." Allah makes a contract lawful when both parties are mutually satisfied with the transaction and committed to the terms agreed upon (Ya'kub al-Bahisin, 1997). Scholars have discussed this principle extensively in their works, but all agree on the core meaning which is, "mutual consent in transactions" (Al-Zinjani, 2003). The discussion on this principle and its implications will be examined further in the third set of *dawabit*.
 4. What matters in a contract is the intention and meaning of the words, not merely the form or wording (Ibn al-Qayyim, 2024). This principle is a major basis for determining the validity of *mu'āmalāt* and contracts. It must be considered when assessing whether a contract is complete. The realization of the purpose intended by both parties is what matters whether expressed through the usual formulae of *ijab* and *qabul* (offer and acceptance), through other wording that serves the same function, such as a sale contract using the wording of a gift (*hibah*), mutual exchange without verbal formulae (*mu'atah*), or a *takaful* (mutual indemnity) contract using the wording of *hiwalah* (debt transfer), and vice versa.

A *mujtahid* in contemporary financial *mu'āmalāt* must therefore give due attention to this principle by considering the objectives of both parties to the contract, and not focusing solely on the outward form of their words. The *mujtahid* must understand the actual intent and internal purposes agreed upon between the two parties by referring to:

- i. Custom (*'urf*). This plays a major role in determining the intent of contracting parties. An unrestricted contract may be interpreted according to customary practice widely recognised by the community. Classical fuqaha expressed this with the principle: "What is known generally is regarded as customary practice (*'urf*), and what is stipulated becomes a condition" (Al-Suyuti, 1989).
 - ii. Supporting factors and surrounding circumstances that occur with the contract or precede it can have a strong impact on determining the intentions of both parties. Scholars state: *Realities supported by evidence require no verbal expression*" (Ibn Qudamah, 1992).
 - iii. The wording used during the contract. Different wordings may be used to convey the intended meaning. For example, fixing a price in a sale contract using the wording of a gift, such as a seller saying: "I give you this car for five thousand." Determining the intent of both parties must align with the Shariah's objectives and principles, which aim to secure benefits, prevent harm, remove hardship from Muslims, fulfil their needs, and provide them with ease because wording used in one type of contract may serve for another. The realisation of the contract's objective is the true purpose of the contract; if this is removed or voided, and only the wording agreed upon remains, such annulment would nullify all the agreements made (Ibn Qayyim, 2004).
5. The basis of financial *mu'āmalāt* contracts is their execution through words or through anything that indicates their intended meaning, Whether by Words or Actions (Ibn Taymiyyah, 1999). This principle is connected to the previous principle, and it is founded upon the principle of "mutual consent in contracts", because Allah SWT has legislated contracts to realise the objectives of both parties to the contract in a lawful manner whether through words, actions, or other means. The binding effect of a contract is therefore not restricted solely to *ijab* and *qabul*, except that this method is preferable to achieve the purpose of both parties, as each party may have its own way to reach mutual agreement (Ya'kub al-Bahisin, 1997).

6. The original ruling is the permissibility of stipulating conditions in a contract, its validity, and its binding effect. The default ruling for stipulating something in a contract is that it is permissible, valid, and binding (Al-Shatibi, 2002). This basis has been a matter of disagreement among scholars; however, the correct opinion is that it must exist in every condition so long as it does not invalidate any of the pillars of the contract, does not prevent the attainment of its objective, and is not among the conditions prohibited by *Shariah*. Financial *mu'āmalāt* are rarely concluded without any conditions. Therefore, it is obligatory for a *mujtahid* in contemporary financial *mu'āmalāt* to always examine the conditions contained in a contract, to scrutinise every condition stipulated or agreed upon, and to assess them from the perspective of the *fiqh* principles that can further strengthen the analysis of those conditions. The scholars have said, "Any condition that is not approved by Allah and is of no benefit to people is void for every contract." (Ibn Taymiyyah, 2005).
7. Based on ownership according to prevailing custom (*'urf*). The form of taking possession (*qabd*) must be according to *'urf*. (Al-Ghazali, 1992). This basis shows the manner of *qabd*, the delivery and receipt of price and goods in the transactions conducted. This is because the *qabd* (possession) of every item is the responsibility of each individual, in accordance with the prevailing custom.

Third concept: knowing the cause and objective that affect the ruling of muamalat

When examining the evidences related to *mu'āmalāt* rulings, it becomes clear that there are meanings or objectives that affect the rulings of *mu'āmalāt*. These objectives may sometimes be part of the very essence of the *mu'āmalāt* itself, while others relate to external matters. The objectives that can have an effect and are part of the essence of the *mu'āmalāt* itself are as follows:

First: Mutual Consent: This is the foundation of all financial transactions. Mutual consent that has an effect in a contract has certain *dawabit* (parameters/conditions). A *mujtahid* in the field of contemporary financial *mu'āmalāt* must pay close attention to these conditions. They are:

- i. The consent must not be based on something that makes lawful what Allah (SWT) has prohibited, or prohibits what He has made lawful, or abolishes what He has made obligatory. All such matters are invalid, must be avoided, and are not to be considered at all (Ibn Taymiyyah, 2005).
- ii. It must not contradict the objective of the contract and its norm, such as consent to a sale contract that does not grant ownership to the buyer, or consent to a lease contract that does not grant the lessee any benefit, and so on (Ibn Taymiyyah, 2005).
- iii. There must be no valid reason that can override the owner's consent and render a contract binding without it. In such cases, the owner's consent is not considered. For example: compulsion by a ruler upon a debtor to sell his property to settle debts, or to provide maintenance for himself and his family. Here, the consent considered is that of the ruler, not the property owner. Similarly, in matters concerning the property of an orphan, the consent considered is that of the guardian (*wali*), not that of the orphan himself (Ibn Taymiyyah, 2005).

Since the mutual consent of both parties to the contract in *mu'āmalāt* is of great importance, *ijtihad* in contemporary financial *mu'āmalāt* must be broadened to consider all means, methods, or mechanisms that indicate the purpose and objective intended by both parties whether in speech, action, or other forms. Islamic law does not limit a contract solely to the conventional *ijab* (offer) and *qabul* (acceptance) formula. The *Shariah* merely clarifies the *ijab* and *qabul* formula because it more

explicitly conveys the objective and purpose of both parties (Al-Bajuri, 1997; al-Dusuqi, 2004; Ya'kub al-Bahisin, 1997). The methods and systems that exist today include *ijab* and *qabul* conducted via telephone, fax, the internet, and websites. These systems are also recognised, because such practices have become customary among many people and are accepted in *'urf* (customary practice).

Second: Ownership

Qabd is one of the objectives that affects the completeness and validity of a transaction. At present, the mechanisms of *qabd* have developed and taken on various forms that have become customary among people. They are accustomed to carrying them out in their daily *mu'āmalāt*, such as: payment by credit card, electronic payment, payment through transfer to another account, ownership/*qabd*/delivery of goods via receipts and slips, ownership/*qabd* of a car through the handing over of keys, ownership/*qabd* of shares through their entry into an account, and others. Therefore, a *mujtahid* in contemporary *mu'āmalāt* must identify the practices that have become well-known in society, especially concerning the systems and methods they employ, as long as they do not contradict the *Shariah*. This is because the basis of ownership/*qabd* follows what is commonly practised by a society, since such matters have been established by the *Shariah* in an absolute manner (Al-Shirazi, 1983; Ibn Qudamah, 1992).

Third: Riba

It is one of the evils in *mu'āmalāt* and a cause for the prohibition of a transaction, in addition to containing great harm (Al-Qurtubi, 1993). The *ijma'* of the scholars has established the prohibition of *riba*, and its evidence has reached the level of *qat'i* proof. What is striking in contemporary financial *mu'āmalāt* is that almost all transactions contain elements of *riba*, and therefore this element must be given serious attention. If a *mu'āmalāt* contains any type of *riba*, then it is certainly prohibited, and the contract becomes invalid. This is what has been stated by the majority of scholars (Al-Qurtubi, 1993). Conversely, when a contract contains a certain objective, especially to provide ease, then the ruling may be the opposite, in accordance with what the Prophet (SAW) did whereby he forbade *muzabanah* (selling bulk goods without knowing the exact measure, weight, or number) and permitted *araya* (selling fresh dates with dried dates due to a need, in an amount less than five *awsaq*).

If the form of *riba* in question is not unclear to a *mujtahid* in determining its ruling, then what must be done is simply to exert diligent effort through *ijtihad* on such forms that can be considered as falling under *hilah riba*. The meaning of *hilah riba* in *mu'āmalāt* is when one of the objects of exchange in a transaction is not the actual objective, or when the contract itself is not the true intended purpose. Such forms are widely found, and in fact, in every era there are also forms of *riba* unknown to earlier generations. Therefore, a *mujtahid* must investigate every form of *riba* with wisdom, examining the stratagems (*hilah*) contained within until he can arrive at an accurate ruling. This is because not all stratagems carry the same ruling there are those whose prohibition is agreed upon, those whose permissibility is agreed upon, those whose prohibition is preferable such as *bay al-inah*, and those whose permissibility is preferable such as *al-tawarruq*. (Ibn Qudamah, 1993; Ibn Taymiyyah, 2005; Ibn Qayyim, 2004; al-Shatibi, 2002).

Fourth: The element of risk/deception (*gharar*)

It is one of the objectives that affects the permissibility and validity of *mu'āmalāt*. *Gharar* means the existence of risk. Some have said that *gharar* is uncertainty between two parties, where it is usually the case that one of them is more apprehensive than the other. Some have defined it as the

consequence for a person engaging in a transaction. Ibn Taymiyyah considered the most accurate definition of *gharar* to be uncertainty between safety and harm (Ibn Taymiyyah, 2005). The above meaning encompasses all forms of *mu'āmalāt*, especially those based on the unknown such as selling goods that are not yet identified, selling goods that do not exist, or selling goods not owned by the seller. The clearest examples include selling an animal still in the womb, selling unripe fruits, sale by mere touching *bai al-mulamasah*, *al-munabazah*, and others (Ibn al-Arabi, 1996, Al-Nawawi, 1998). Anyone who examines contemporary *mu'āmalāt* will realise that much of what occurs today almost amounts to *gharar* or deception in transactions, because many buyers cannot fully ascertain the reality and details of the goods they purchase or the transactions they enter into. Furthermore, these transactions often rely on descriptions of the goods through modern tools, whether static images or moving visuals. This also relates to the issue of the seller's ownership of goods prior to the transaction. Most modern transactions such as contractor agreements, manufacturing, production, import, insurance, equipment, vehicles, and others are based on the buyer's insurance after purchasing goods from someone else's ownership, given that the needs for such goods vary and it is impossible to obtain all of them directly.

This modern reality compels a *mujtahid* to carefully examine agreed transaction systems, including stipulated conditions, so that the transaction becomes clear and transparent to each party, with no hidden elements or *gharar* in it. It is important to identify the extent of *gharar* present in a transaction, because if the *gharar* is minimal, it may be excused in Islamic law (Ibn Taymiyyah, 2005). The maxim they apply is: "Every *gharar* that is difficult to avoid in a transaction is still permitted by the *Sharia*." (Izz al-Din, 2001).

Fifth: Prohibited and impure goods

Any goods that are prohibited or impure may not be bought or sold. Therefore, a *mujtahid* must examine this matter with regard to contemporary goods intended for sale, especially in this era where many innovations and inventions exist. Every day, we encounter new products that did not exist before. (Ibn Taymiyyah, 2005). As for the objectives that affect external elements rather than the essence of *mu'āmalāt* itself, one of them is: "The Existence of a Need". It is this need that serves as the basis for the legislation of *mu'āmalāt* from the outset and for *ijtihad* in every era and place. Islam takes need into account as a reason for granting concessions in certain *mu'āmalāt*, such as the *rukhsah* for the sale of *araya*, which is categorized as an exception to the prohibition of *muzabanah* (selling goods in bulk without knowing the exact measure, weight, or number), due to the farmer's need for the *bai' araya* transaction mentioned above (Ibn Taymiyyah, 2005). Thus, researchers find that earlier *fuqaha* adhered to *qawaid fiqh* when explaining the causes for the existence of rulings in *mu'āmalāt*. Among these principles are: (i) anything that fulfils a basic human need is permissible according to the *shara'*, (ii) anything that removes harm is excused by the *Sharia*, (iii) the greater the necessity, the greater the concession, and (iv) goods that need to be traded should be increased and distributed.

Need is taken into consideration in contemporary *mu'āmalāt ijtihad* to provide ease and well-being for the public, to facilitate their needs, and to fulfil the demands of their lives. If this need is not met, it will cause harmful consequences and excessive hardship for them. Indeed, the foremost purpose and objective of any principle in this *sharia* is to remove hardship, provide ease for people, simplify their affairs, and fulfil their needs. The *fiqh* maxims that encompass the above meaning include: "Hardship is removed by ease", "No harm and no reciprocating harm", "What is constrained becomes expanded", and "Need holds the status of necessity, whether general or specific".

Concept four: understanding systems and laws related to modern financial transactions

Among the characteristics of contemporary financial transactions is the diversity of methods and conditions involved. Likewise, the consequences of current transactions, responsibilities, or claims that arise vary according to location (country), general and specialized institutions, financial institutions, banks, and others. Therefore, to identify these matters, they must be understood through *fiqh al-waqi'* (*fiqh* of reality) by a *mujtahid*, by acquiring knowledge of the systems and laws that regulate all forms of transactions and dealings in the present era.

It is thus not permissible to exercise *ijtihad* in international business affairs by anyone who is ignorant of the systems and protocols/procedures related to such dealings. These systems and protocols are considered akin to *'urf* (customs) or conventions that Muslim scholars have agreed are essential to examine when performing *ijtihad* in matters of *mu'āmalāt*. In accordance with the above regulation, it is obligatory for a *mujtahid* in this field to study and identify international agreements, whether general or specialized, and to be knowledgeable of the laws of international financial bodies, the principles adopted by international business organizations, as well as all existing systems, laws, international understandings, and supplementary agreements related to these matters. This is because all laws and regulations have tangible effects on the rulings of *mu'āmalāt*, whether in terms of permissibility, prohibition, validity, or otherwise. Failure to understand these matters may result in rendering a lawful act unlawful or vice versa, and a *mujtahid* in such a context cannot be relied upon if he has not exerted every effort to fulfill the requirements necessary for proper *ijtihad*.

It is also not recommended to perform *ijtihad* regarding *mu'āmalāt* in a particular country without first understanding the systems and regulations governing transactions in that country, as reality bears witness to the diversity of *mu'āmalāt* according to the local context. For example, the contract of house ownership in some countries may confer complete and perpetual ownership, whereas in others, it may be limited to 99 years, among other variations. This is the reality to anyone intending to exercise *ijtihad* within an institution or specific banks must identify the systems in place within that institution or bank, as most contemporary transactions in financial and other dealings follow established rules and systems. These laws have become established customs (*'urf*), yet sometimes contain elements that may render a transaction prohibited or invalid. Peace of mind in performing *ijtihad* on such matters can only be achieved after studying and understanding all existing systems and regulations, as well as the relevant consequences in ruling on a particular matter. This is what a *mujtahid* must diligently strive to accomplish.

Also included in this concept is the requirement for a *mujtahid* to understand both current and past transactions by examining the conditions stipulated therein and agreed upon by both parties, as such types of transactions have become widespread in the present era, even across many sectors of *mu'āmalāt*. Furthermore, these transactions have become foundational, so that what was originally a primary transaction for certain dealings may eventually become merely an alternative form of transaction.

Concept five: identifying new transaction systems

As discussed above regarding the principles of *ijtihad* in contemporary issues, the most important principle is understanding the reality of these matters. A *mujtahid* must identify the issue either independently or by consulting experts in each arising matter. For someone studying the reality of modern financial systems, it is necessary to be aware of every rapid development in

transaction systems and their intermediaries. If the method or system for completing a transaction in the past involved direct meetings between the two parties or only the verbal expression of *ijab* and *qabul*, today it is no longer conducted in this manner. Contemporary *mu'āmalāt* now occurs through new methods such as written documentation, telephone, electronic means, and others. When such new realities in modern *mu'āmalāt* arise, anyone intending to perform *ijtihād* must be knowledgeable of every system or method in practice and must assess its compliance with the objectives of the *Shariah*, especially regarding *ijab* and *qabul*, which function as determinants of both parties' intentions and consent for the agreed transaction, as well as the extent to which it aligns with the clear, explicit, and precise principles that form a fundamental basis in *mu'āmalāt*.

As is known, in the system above, identifying goods and recording transactions is one aspect that must be properly executed. However, other aspects traditionally present in transactions, such as witnessing, are now rare, because modern transactions employ new methods and systems, such as relying solely on receipts, slips, photographs, television, or viewing only specific portions of the goods. Transactions are increasingly conducted through orders for each intended transaction, thereby modifying the existing system. This new system did not exist among previous generations, such as identifying goods by common or electronic brands, numbering, or recognizing the identity of a transacting party solely via a secret number, and similar methods.

Furthermore, assessing compliance with the objectives of a transaction involves understanding the consequences that may arise after its execution. There are various payment methods and goods in modern *mu'āmalāt* that were unknown to previous generations. Currently, payment-related matters include checks signed only by the buyer, ATM cards such as Visa or MasterCard, transfers from the buyer's account to the seller's account, and beyond that, we are entering a new phase where electronic finance will replace conventional cash.

Regarding ownership of goods, many new methods have emerged. Commonly, the buyer is provided only with a receipt indicating ownership of the purchased goods, while in financial shares, ownership is achieved only after transfer to the buyer's investment portfolio. Most contemporary financial transactions are conducted electronically due to current circumstances and public reliance; conducting them in traditional ways would be cumbersome and slow down business and commerce. If the reality of modern financial *mu'āmalāt* is as described, it is obligatory for a *mujtahid* to identify the methods and new systems used in specific transactions, as they have a significant impact on determining the ruling whether a transaction is valid or invalid, permissible or prohibited. It is insufficient to rely solely on questions, discussions, or the understanding of others, because the above transactions have replaced the old and traditional systems. A scholar cannot reach this level of understanding without knowing the methods in use across various types of *mu'āmalāt* in every era, and cannot rely merely on inquiries or meetings to comprehend the existing reality.

Conclusion

Ijtihād in the field of Islamic economics and financial *mu'āmalāt* must be carefully examined and conducted meticulously. Those who perform *ijtihād* in the areas of economics and *mu'āmalāt* are required to observe the principles of *ijtihād*, whether general or specific. All of these principles are essential for a *mujtahid* in order to ensure that their *ijtihād* remains within the bounds of *Shariah*. It is evident that Islamic law is not a legal framework distant from human reality. For every human problem, including those in the fields of economics and *mu'āmalāt*, Islam provides a solution.

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