



## **Criticism of Reason against the Blasphemy of Ijma as a Source of Islamic Law**

**Moh. Bahrudin**

Universitas Islam Negeri Raden Intan Lampung

*moh.bahrudin@radenintan.ac.id*

**Faisal**

Universitas Islam Negeri Raden Intan Lampung

*faisal@radenintan.ac.id*

**Hanif**

Universitas Islam Negeri Raden Intan Lampung

*hanif@radenintan.ac.id*

**Abstract:** *The study and critique of reasoning against the blasphemy of ijmak aims to place the position of ijmak proportionally and rationally, in accordance with the initial objectives of the ijmak theory formulated in the early days of Islam so that there are no misperceptions about the blasphemy of ijmak. Indeed, ijmak as a source of Islamic law requires the existence of evidence based on the Qur'an and Hadith, it cannot stand alone independently. However, furthermore, ijmak only becomes a support for the status quo of the fiqh laws produced by the cleric contained in fiqh books. This research is intended to look at the blasphemy of ijmak as a source of Islamic law. The method used is descriptive method. Conclusions are drawn by using deductive thinking. Research shows that ijmak can be used as evidence, has validity and authority, although it still requires evidence from the Qur'an or Sunnah. Not all ijmak is qath'i and therefore not all ijmak must be followed. The blasphemy quality of ijmak is qath'i if it is supported by texts that are qath'i or related to matters that are 'ulima min al-din bi al-dharurah. The quality of ijmak is zhanni if it is only supported by zhanni's argument or in matters for which there is no explicit text in the syarak text.*

**Keywords:** *Criticism of Reason, Blasphemy Ijmak, Islamic Law.*

## A. Introduction

The dynamics and renewal of Islamic law necessitates the existence of ijthad activities by devoting all potential and mobilizing all available capabilities to find the laws of syarak or to implement them.<sup>1</sup> This is due to that after the Prophet died, Muslims are required to have the ability and independence in determining and or establishing Islamic law with regard to existing legal issues,<sup>2</sup> but no clear legal basis is found in the text of the Qur'an and or the Sunnah. In this context, the scholars have been given the blessing and justification by the Qur'an and Hadith to perform ijthad in order to determine and or establish Islamic law.<sup>3</sup>

Ijthad activities surely must follow the "standards" and "codes of ethics" that have been formulated by the scholars to ensure that the ijthad products they produce remain in the light of *ruh al-tasyri'* or *maqashid al-syari'ah*,<sup>4</sup> should not rely on uncontrolled freedom of thought. The discipline that examines the code of ethics for ijthad in

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<sup>1</sup> Abu Ishaq Al-Syathibi, *Al-Muwafaqat*, Juz I (Mesir: Mushthafa al-Babi al-Halabi, 1976), h. 11; See also Husain Husain, "Metode Ijthad Kontemporer Menurut Yusuf Al-Qaradawi," *Sulesana: Jurnal Wawasan Keislaman* 13, No. 2 (2019): h. 145–63, <https://doi.org/10.24252/sulesana.v13i2.13404>; See also Muhammad Hasbi, "Metode Ijthad T.M. Hasbi Ash-Shiddieqy Sebagai Produk Pemikiran Hukum Islam," *DIKTUM: Jurnal Syariah dan Hukum* 15, No. 1 (June 12, 2017): h. 109–26, <https://doi.org/10.28988/diktum.v15i1.429>.

<sup>2</sup> Abd Wafi Has, "Ijthad Sebagai Alat Pemecahan Masalah Umat Islam," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 8, No. 1 (June 7, 2013): h. 89–112, <https://doi.org/10.21274/epis.2013.8.1.89-112>.

<sup>3</sup> Sa'di Abu Habib, *Ensiklopedi Ijmak*, terj. M. Sahal Machfudz dan A. Mustofa Bisri, Cet. Ke-5 (Jakarta: Pustaka Firdaus, 2011), h. xxx.

<sup>4</sup> From a linguistic point of view, the word "*maqasahid al-syari'ah*" has its own meaning. The word "*maqashid*" is a plural form (*jama'*) and the word "*maqashid*". While the root word comes from the verbal word "*qashada*", which means towards; aim; willing and intentional. While understanding of "*syari'ah*" literally is the source of the spring or the source of life. The word "*syari'ah*" (singular) plural "*syara'i*" means everything that Allah has signaled to his servants, including the form of legal rules. Maqasahid al-Shari'ah in essence is the application of Shari'ah which is oriented towards realizing the benefit of mankind. See in Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London; New York: International Institute of Islamic Thought (IIIT), 2008), h. 2; See also Muhammad Al-Tahir Ibn Ashur, *Ibn Ashur: Treatise on Maqasid Al-Shariah* (London-Washington: IIIT, 2006), h. 13 & 71; See also Suansar Khatib, "Konsep Maqashid Al-Syari'Ah: Perbandingan Antara Pemikiran Al-Ghazali dan Al-Syathibi," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, dan Keagamaan* 5, No. 1 (December 30, 2018): h. 53–54, <https://doi.org/10.29300/mzn.v5i1.1436>.

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Islamic studies is known as the science of *ushul fiqh* or Islamic law jurisprudence.<sup>5</sup>

Islamic law jurisprudence has several studies, including the sources of Islamic law (*mashadir al-ahkam*) which are used as a base by scholars in making legal decisions. It's just that among these legal sources there are those who agree on their use by the majority of scholars, but there are also those who are in dispute. The agreed sources of law are the Qur'an, Sunnah, Ijmak and Qiyas.<sup>6</sup> The composition and order of such sources of law is inspired by the words in the Qur'an, surah al-Nisa' verse 59.

Al-Qur'an surah al-Nisa' verse 59 provides a legal lesson that the command to obey Allah SWT implies an order to place the Qur'an as the first source of law, while the command to obey the Messenger indicates an order to make the sunnah as a second source of law after the Koran.<sup>7</sup> The command to obey *ulil amri* implies an order to make *ijmak* of scholars as the third source of law.<sup>8</sup> Regarding the fourth source of law, *qiyas*, it is known from the order to return to the Qur'an and sunnah if there is a difference of opinion, by *qiyas* or analogy.<sup>9</sup>

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<sup>5</sup> At the beginning of the development of Islam, the term jurisprudence was defined as *ijtihad*. The emergence of *ijtihad* has existed at the time of the Prophet. The Prophet taught his companions to use their reasoning power in establishing the law, for example, when Umar ibn al-Khattab kissed his wife while fasting. See Abdul Aziz Dahlan, et.al., *Ensiklopedi Hukum Islam Indonesia*, Jilid II, Cet. Ke-1 (Jakarta: PT Ichtiar Baru-van Hoeve, 1996), h. 666; Coulson defines Islamic jurisprudence as the whole process of intellectual activity that ascertains and discovers the term God's will and transforms it into a system of rights and obligations that are legally enforceable. See Muhammad Muslehuddin, *Philosofy of Islamic Law and the Orientalist A Comparative Study Of Islamic Legal System* (Lahore: Ashraq Mirza, Mg. Director, Islamic Publication Ltd. tt.), h. 192; See also Hermansyah Hermansyah, "Konflik Dalam Yurisprudensi Islam," *Muamalat: Jurnal Kajian Hukum Ekonomi Syariah* 10, No. 1 (2018): h. 4–5, <https://doi.org/10.20414/mu.v10i1.2778>.

<sup>6</sup> Wael B. Hallaq, *An Introduction to Islamic Law* (New York: Cambridge University Press, 2009); See also Anwar Ahmad Qadri, *Islamic Jurisprudence in the Modern World* (Taj Company, 1997).

<sup>7</sup> Qaem Aulassyahied, "Studi Kritis Konsep Sunnah Muhammad Syahrur," *Kalimah: Jurnal Studi Agama dan Pemikiran Islam* 13, No. 1 (March 31, 2015): h. 125–56, <https://doi.org/10.21111/klm.v13i1.282>; See also Hendri Hendri, "Tekstualitas Hadis Nabi Saw.: Telaah Kritis atas Pemikiran Kassim Ahmad," *Tahdis: Jurnal Kajian Ilmu Al-Hadis* 9, No. 1 (2018): h. 1–28, <https://doi.org/10.24252/tahdis.v9i1.7522>.

<sup>8</sup> Edy Muslimin, "Qiyas Sebagai Sumber Hukum Islam," *Mamba'ul 'Ulum* 15, No. 2 (October 21, 2019): h. 242–50, <https://doi.org/10.54090/mu.25>.

<sup>9</sup> Ali Abd ar-Raziq, *Al-Ijma' fi al-Syari'at al-Islamiyyah* (Mesir: Dar al-Fikr al-'Arabi, tt.), h. 5.

The source of the law above is also strengthened by the conversation of the Prophet Muhammad with Muadz bin Jabal when he was sent to Yemen as a judge. The Prophet asked Muadz what his attitude would be if one day he would try a case. Muadz replied, will judge based on the book of Allah. The Prophet asked again, what if the basis is not found in the Book of Allah?" Muadz replied, will judge based on the Sunnah of the Prophet. The Prophet then asked again, then what if there is no legal basis in the Sunnah? Muadz explained that he would perform *ijtihad* based on his thoughts. Then the Prophet Saw said, "Praise be to Allah who has guided the Messenger of Allah on something that pleased the Messenger of Allah".<sup>10</sup>

Referring to the conversation of the Prophet and Muadh above, this shows that *ijmak* is one of the sources of Islamic law that is agreed upon by the majority of scholars. The juridical-sociological consequence is that if a law has been agreed upon by the scholars, then it has binding power, in the sense that the followers must follow and practice it in their daily lives. However, among scholars there is still a debate about the quality of the blasphemy or the authority of *ijmak*,<sup>11</sup> whether it is *qoth'i* (absolute-decisive) so that it must be practiced, or is it *zhanni* (relative-commensurate) which means providing an alternative, between having to follow *ijmak* product or being allowed to ignore it. This quality of blasphemy or the authority of *ijmak* will be the focus of the study in this article.

The purpose of conducting a study and critique of reasoning against the blasphemy of *ijmak* is intended to place the position of *ijmak* proportionally and rationally, in accordance with the initial objectives of the *ijmak* theory formulated in the early days of Islam so that there are no misperceptions about the blasphemy of *ijmak*. Indeed, *ijmak* as a source of Islamic law requires the existence of

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<sup>10</sup> Imam at-Turmudzi, *Al-Jami' al-Shahih Sunan at-Turmudzi*, III (Beirut: Dar Ihya' at-Turats al-'Arabi, tt.), h. 616.

<sup>11</sup> Chamim Tohari, "Konsep Ijma' Dalam Ushul Fiqh Dan Klaim Gerakan Islam 212," *Aqlam: Journal of Islam and Plurality* 4, No. 2 (December 1, 2019): h. 150-163, <https://doi.org/10.30984/ajip.v4i2.1009>; See also Moh Bahrudin, *Ilmu Ushul Fiqh* (Bandar Lampung: Cv. Anugrah Utama Raharja (AURA), 2019).

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evidence backing from the Qur'an and Hadith,<sup>12</sup> cannot stand alone independently. However, what happened later was that ijmak only became a support for the *status quo* against the fiqh laws of the clerical products contained in fiqh books. Once it is said that an agreement has been reached through ijmak, it is immediately deemed that there is no more opportunity for reinterpretation to produce a new fiqh law.<sup>13</sup> If this is the case, then ijmak becomes a "barrier wall" for the dynamics and renewal of Islamic law, because of the misperception that the blasphemy of ijmak is *qath'i*. Ijmak is only passive and retrospective, not active-prospective as a legal solution.

The study in this article is a normative or doctrinal research library.<sup>14</sup> The pattern of approach used is a philosophical approach, the philosophy of Islamic law<sup>15</sup> which in this case is the science of ushul fiqh, especially related to the theory of ijmak. The data analysis uses deductive logic,<sup>16</sup> considering that this study includes doctrinal research, so the starting point starts from the premises in the form of legal norms contained in the Qur'an and Hadith and leads to the discovery of legal principles or doctrines.

### B. The Blasphemy of Ijmak : Between *Qath'i* and *Zhanni*

The term ijmak is actually not foreign to Muslims, it's just that the term ijmak began to crystallize as a theory in the science of ushul fiqh along with the emergence of increasingly sharp dynamics of Islamic legal thought. In other words, the emergence of the theory of ijmak (consensus) is motivated by differences (*ikhtilaf*), especially in matters of fiqh, so people often say that ijmak is as old as *ikhtilaf*.

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<sup>12</sup> Ahmad Zaini and Ainun Najib, "Objektifikasi Hukum Ibnu Hazm Dan Pemabaharuan Hukum Islam di Indonesia," *Conference on Islamic Studies FAI 2019*, February 15, 2020, h. 65–71, <https://doi.org/10.30659/cois.v0i0.8072>; Sudirman M. Johan, "Fikih Syafi'iyah Dalam Pengamalan Syari'at Islam di Malaysia," *Al-Fikra : Jurnal Ilmiah Keislaman* 8, No. 1 (July 31, 2017): h. 156–75, <https://doi.org/10.24014/af.v8i1.3808>.

<sup>13</sup> Habib, *Ensiklopedi Ijmak*, h. xvi.

<sup>14</sup> Bambang Sungono, *Metodologi Penelitian Hukum*, Ke-7 (Jakarta: Raja Grafindo Persada, 2005), h. 68, 102.

<sup>15</sup> Philosophy of Islamic law is the rules, principles, or regulations from which *ruh tasyri'* contained in the Qur'an and or Sunnah will be revealed. See in Hasbi ash-Shiddieqy, *Falasafah Hukum Islam* (Jakarta: Bulan Bintang, 1974), h. 36.

<sup>16</sup> Hadi Sutrisno, *Metode Research II* (Yogyakarta: Andi Offset, 2012), h. 42.

Semantically and linguistically *ijmak* is a change in the form of the word from *ajma'a* (أَجْمَعَ) which can mean "to gather, unite, assemble, unite, assemble, or pull together".<sup>17</sup> *Ijmak* also means "will" and "agreement" (*al-'azm - al-ittifaq*).<sup>18</sup> According to the terms in the science of *ushul fiqh*, *ijma*q is defined as the consensus of the *mujtahids* of Muslims at a time after the Prophet's death on a *syarak* law relating to human actions.<sup>19</sup> With such a description of *ijmak*, since *ijmak* is one of the sources of Islamic law, *ijma* has a very strategic and significant position in the development and renewal of Islamic law.<sup>20</sup>

The discourse on blasphemy or the authority of *ijmak* is a significant thing in the study of *ijmak* theory. This is because the concept of *ijmak* is based on a cross of opinions among scholars regarding the existence of *ijmak* as a source of *syarak* law. (*mashadir al-ahkam al-syr'iyyah*). The majority or the number of scholars are of the opinion that *ijmak* is a proof in the sense that it can be used as a source of Islamic law. This is the opinion of the majority of scholars<sup>21</sup> such as al-Shafi'i, Ibn al-Humam, al-Jashshash, al-Gazali, ash-Syathibi, as-Sarakhsi, Ibn Hazm, and other contemporary scholars.

There are a number of arguments submitted by the majority of scholars to show the blasphemy of *ijmak* both from the verses of the Qur'an and Hadith, including the words of Allah SWT in the Qur'an Surah al-Nisa' verse 59 which means : O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority.

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<sup>17</sup> Saim Kayadibi, *Istihsan: The Doctrine of Juristic Preference in Islamic Law* (Kuala Lumpur, Malaysia: The Other Press, 2019), h. 20-21; See in Ibnu Mansur, *Lisan Al-'Arab*, Juz VIII (Beirut: Dar Beirut, 1956), h. 53.

<sup>18</sup> Abu Luwis Ma'luf, *Al-Munjid Fi al-Lughat Wa al-A'lam*, Cet. Ke-29 (Beirut: Dar al-Masyriq, 1987), h. 101.

<sup>19</sup> Muhammad Abu Zahrah, *Ushul Al-Fiqh* (Mesir: Dar al-Fikr al-'Arabi, tt.), h. 198; See also La Jamaa, "Fatwas of the Indonesian Council of Ulama and Its Contributions to the Development of Contemporary Islamic Law in Indonesia," *Indonesian Journal of Islam and Muslim Societies* 8, No. 1 (July 2, 2018): h. 29-56, <https://doi.org/10.18326/ijims.v8i1.29-56>.

<sup>20</sup> Moh Bahardin, "Ijmak Dan Legislasi Hukum Islam di Indonesia," *ASAS* 4, No. 2 (July 14, 2012), <https://doi.org/10.24042/asas.v4i2.1680>.

<sup>21</sup> Ahmad, *Al-Ikhtilaf Rahmah'an Niqamah* (Jeddah: Makatabah Dar al-Matbu'at al-Haditsah, tt.), h. 95.

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The word "*al-amr*" contained in the verse is a synonym with the word "*al-sya'n*" which means business or field, including the religious field and the worldly field.<sup>22</sup> In the worldly sector, the *ulil amri* or government authorities, such as presidents, sultans, kings, heads of state, or other leaders are in charge. As for the religious field, it is the scholars who have the right to regulate it.<sup>23</sup> Thus, the legal lesson that can be drawn from this verse is that Muslims are obliged to obey the ruler or *ulil amri* if the ruler has set a policy and must obey the ulama if the scholars have produced ijmak based on the texts of the Qur'an or Sunnah.<sup>24</sup>

Another argument which puts forward to support the blasphemy of ijmak is the word of Allah SWT in the Qur'an surah al-Nisa' verse 83. This verse instructs Muslims to refer to the Qur'an or Sunnah when there are differences of opinion.<sup>25</sup> Therefore, if the mujtahids have agreed, then Muslims are ordered to follow that ijmak and this means to return to the Qur'an or Sunnah.<sup>26</sup> Ibn Hazm also interprets "*ulil amri*" as rulers (*umara*) and experts (scholars).<sup>27</sup>

As the word of Allah SWT in the Qur'an Surah al-Nisa' verse 115, through this verse, Allah SWT intends to warn those who oppose the Messenger of Allah and follow the path of the unbelievers with punishment in hell. Even those who follow the path of the disbelievers are likened to those who oppose the Messenger of Allah. Therefore, the law of following the path of the unbelievers is misguided and unlawful, while following the path of the believers is obligatory. Thus, it means that consensus can be used as evidence

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<sup>22</sup> Abd al-Wahab Khallaf, *Ilmu Ushul al-Fiqh*, Cet. Ke-XII (t.p.: Dar al-Qalam, 1978), h. 47.

<sup>23</sup> Rusdaya Basri, *Ushul Fikih 1* (Parepare, Sulawesi Selatan: IAIN Parepare Nusantara Press, 2020), h. 47.

<sup>24</sup> Wahbah Al-Zuhaili, *Ushul Al-Fiqh*, Cet. Ke-26 (Damaskus: Dar al-Fikr, 2009), h. 517.

<sup>25</sup> Abdurrahman bin Nashir as-Sa'di, *Tafsir Al-Karim Ar Rahman Fi Tafsir Kalam al-Mannan* (Jakarta: Pustaka Sahifa, 2007), h. 110; See in Abdul Halim Hasan, *Tafsir Al-Ahkam* (Jakarta: Kencana, 2006), h. 284.

<sup>26</sup> Zakaria al-Sibri, *Mashadir Al-Ahkam al-Islamiyyah* (Mesir: Dar al-Ittihad al-'Arabi, 1975), h. 71.

<sup>27</sup> Abu Muhammad Ibnu Hazm, *Al-Ihkam Fi Ushulul-Ahkam*, Juz IV (Kairo: Maktabah al-'Athif, 1970), h. 644-645.

because it is the agreement of the scholars and the way of the believers.<sup>28</sup>

Another argument was also put forward that the similarity of opinion among Muslim mujtahids is basically a portrait of the representation of the opinions of Muslims as a whole. There are a number of hadiths of the Prophet and his companions which show that the agreement of Muslims is impossible to be wrong or misguided. Among them is the hadith of the Prophet which means "My people will not agree on mistakes or misguidance".<sup>29</sup> Then the hadith of the Prophet which means "A group of my ummah will always defend the truth until the Day of Resurrection comes".<sup>30</sup> Furthermore, there is a hadith of the Prophet which means "What is considered good by Muslims, it is also good in the sight of Allah".<sup>31</sup>

The three hadiths of the Prophet above in principle emphasize that ijmak of Muslims is guaranteed from the possibility of being wrong and astray. Although the quality of these traditions is not up to the degree of authenticity in terms of text, editorial, and transmission sequences, the hadiths support each other so that they can be categorized as valid in terms of their meaning. Therefore, these traditions support the theory of ijmak.<sup>32</sup> The point is it is impossible for Muslims to agree on falsehood and there will always be those who uphold the truth.

The scholars who support this ijmak blasphemy also stated that when the scholars agreed, in accordance with the theory of ushul fiqh, surely it required the support of the arguments and still pay attention to *maqashid al-syari'ah*.<sup>33</sup> The scholars also use certain *istinbath*

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<sup>28</sup> Ali al-Subuki and Taj ad-Din as-Subuki, *Al-Ibhajfi Ushulal-Minhaj* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1984), h. 354.

<sup>29</sup> Al-Imam Ahmad bin Hanbal, *Musnad Al-Imam Ahmad Ibn Hanbal*, Jilid V (Beirut: al-Maktab al-Islami, 1978), h. 145; See in Muhammad bin Yazid al Qazwini, *Sunan Ibn Majah* (Beirut: Dar al-Fikr, tt.), h. 1303; See in Abu 'Isa at-Turmudzi, *Sunan Al-Turmudzi*, Jilid IV (Mesir: Maktabah al-Halabi, tt.), h. 466.

<sup>30</sup> Abu al-Hasan Muslim, *Shahih Muslim Bi Syarh Al-Nawawi*, Juz I (Mesir: al-Maktabah al Mishriyah, tt.), h. 247; See in al-Suyuthi, *Jami'al-Jami' al-Shaghir* (ttp.: Dar al-Fikr, tt.), h. 200.

<sup>31</sup> Hanbal, *Musnad Al-Imam Ahmad Ibn Hanbal*, h. 381.

<sup>32</sup> Hazm, *Al-Ihkam Fi Ushulal-Ahkam*, h. 643-644.

<sup>33</sup> The explanation of *maqashid al-syari'ah* can be seen in Iffatin Nur, Ali Abdul Wakhid, and Lestari Handayani, "A Genealogical Analysis on the Concept and

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methods such as *qiyas*, *istihsan*, and so on. Because the product of the *istinbath* of the ulama is always based on the *syarak* argument, the consensus of the mujtahids has legal force.<sup>34</sup>

Referring to the various opinions above, it is clear that the consensus can be used as evidence for Muslims in establishing the law. The blasphemy of *ijmak* has been supported by arguments from various sources collectively, both from the Qur'an, Sunnah, and logical arguments as a unit. Indeed, these arguments have different objects or patterns of approach and do not explicitly point to the authority of *ijmak*. Even some traditions that are used to support the authority of *ijmak* are also classified as *dhaif* because they are included in the hadith of the week. However, the scholars emphasized that these arguments have the same direction and meaning and support each other.

If theoretically *ijmak* is still debated, but historical facts have proven that it has played an important role in uniting the ummah and minimizing the *side effects* of existing disputes, both sociologically<sup>35</sup> and politically.<sup>36</sup> Therefore, trust in the authority of *ijmak* no longer needs to be debated and should need to be maintained.

### C. Criticism of Reason against the Blasphemy of Ijma as a Source of Islamic Law

There is a difference of opinion among *ushul fiqh* scholars in determining the quality of the *ijmak* blasphemy, whether it is *qath'i* or *zhanni*. In this context, some scholars argue that the theory of *ijmak* comes from the Qur'an and the Sunnah, so it is

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Development of Maqāṣid Syarī'ah," *Al-'Adalah* 17, No. 1 (November 30, 2020): h. 1-30, <https://doi.org/10.24042/adalah.v17i1.6211>.

<sup>34</sup> Khallaf, *Ilmu Ushul al-Fiqh*, h. 47-48.

<sup>35</sup> al-Juwaini explained that *ijmak* has been proven to play a role as a defender and supporter of Islamic law jurisprudence, especially Islamic law thought inherited from salaf scholars. See Abu al-Ma'ali al-Juwaini, *Al-Burhan Fi Ushul al-Fiqh*, Cet. Ke-4 (Mesir: al-Wafa' Manshurah, 1418 H), h. 436.

<sup>36</sup> In the event of the election and appointment of Abu Bakr as caliph, it was clear that the deliberation and consensus of the people was pursued for a real and really urgent need to equalize perceptions and unite the people so that there would be no "leadership" vacuum after the Prophet's death. Munawir Syadzali, *Islam Dan Tata Negara*, Cet. Ke-1 (Jakarta: UI Press, 1990), h. 21.

generally considered that ijmak is a *qath'i* proof. Scholars who think so include Shairafi, Ibn Burhan, ad-Dabbusi, and Ibn Taimiyah.<sup>37</sup>

Al-Bazdawi also argues that the blasphemy of ijmak *qath'i* and states that the function of ijmak does improve the quality of a regulation, which was originally *zhanni* or still in dispute, increased to *qath'i* after the consensus or ijmak of the scholars. Therefore, if an agreement has been reached, then if there are those who disagree, they can be ignored.<sup>38</sup> Meanwhile, other groups of scholars, including ar-Razi and al-Amidi, stated that ijmak is a *zhanni* proof, because ijmak is stipulated in matters based on *qiyas* or *ahad hadiths* that are also *zhanni* in nature. A more moderate opinion states that if ijmak is determined by the total agreement of the scholars, then it is *qath'i*. But if there are still disagreements, such as the existence of ijmak *sukuti*, or the parties who disagree are only a minority, then this ijmak is *zhanni*.<sup>39</sup>

It is interesting what is stated in the book *Jam'u al-Jawami'* that if the ijmak relates to matters that fall into the category of '*ulima min al-din bi al-dharurah*, such as the obligation to pray five times a day, pilgrimage to the Baitullah, fasting in the month of Ramadan, then the opponent is considered an infidel. However, with regard to ijmak material which is not covered by the text, including ijmak *khafi* or *sukuti*, such as the destruction of the hajj pilgrimage due to commune before wukuf, the opponent is not a disbeliever.<sup>40</sup>

The explanation above shows that there are two categories of ijmak blasphemy quality: *qath'i* ijmak if supported by *qath'i* texts or relating to matters that include the '*ulima min al-din bi al-dharurah* category. Opponents of such consensus are infidels. As for ijmak which is of *zhanni* quality, ijmak in matters supported by

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<sup>37</sup> ar-Raziq, *Al-Ijma' fi al-Syari'at al-Islamiyyah*, h. 91.

<sup>38</sup> al-Sarakhsi, *Ushul Al-Sarakhsi*, Juz I (Beirut: Dar al-Kitab al-'Arabi, 1372 H), h. 301.

<sup>39</sup> Ali bin Muhammad al-Bazdawi, *Ushulal-Bazdawi* (Karachi: Jawid Press, tt.), h. 247.

<sup>40</sup> Muhammad bin Idris al-Syafi'i, *Jima' al-'Ilm* (Madinah: Dar al-Atsar, 2002), h. 22.

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*zhanni's* argument or in matters for which there is no explicit text in the syarak text, the quality of its blasphemy is also *zhanni* and those who oppose *ijmak* who fall into this category are not infidels.

The blasphemy of *ijmak*, as it has been stated, is that the majority of jurists have agreed that *ijmak* is one of the sources of Islamic law and therefore *ijmak* can also be used as a juridical argument in establishing Islamic law. The blasphemy of *ijmak* is based on the word of Allah SWT in the Qur'an surah al-Nisa' verses 59, 83 and 115. These verses cumulatively imply the validity and blasphemy of *ijmak* as a source of Islamic law.

Logically, the agreement of the mujtahids is a portrait or a real picture of the opinions of Muslims. There are a number of hadiths that indicate and guarantee the truth of the agreement of Muslims, that it is impossible for Muslims to agree on what is wrong as some of the hadiths that have been previously mentioned. Hadith from Abu Hurairah about the word of Allah SWT "Obey Allah and obey Allah's Messenger and *ulil amri* among you". *Ulil amri* is *umara*, and according to the narrations of Mujahid, al-Hasan, Ikrimah, and 'Atha', what is meant by *ulil amri* is *fukaha*.<sup>41</sup> These hadiths, although not valid in terms of the pronunciation of the *matan* and the chain of *sanad*, support each other then they can be said to be valid in terms of meaning and these traditions complement each other to support the *ijmak* theory.

Referring to the various opinions above, it can be understood that consensus can be used as evidence, but the blasphemy or its authority is not independent because it still requires the support of arguments from the Qur'an and Sunnah. Indeed, *ijmak* is a product of collective *ijtihad*, but in *ijtihad* the scholars still pay attention to *maqashid al-syar'iyah* and use certain *istinbath* methods, so that the consensus of the scholars can be accounted for.

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<sup>41</sup> Imam al-Mawardi, *Ahkam Sulthaniyah: Sistem Pemerintahan Khilafah Islam* (Jakarta: Qisthi Press, 2016), h. 91-92; See also Rachmat Bin Badani Tempo, Akhmad Hanafi Dain Yunta, and Saifullah Bin Anshor, "Tinjauan Fikih Terhadap Nasihat Kepada Penguasa:," *NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam* 5, No. 2 (December 26, 2019): h. 106-124, <https://doi.org/10.36701/nukhbah.v5i2.86>.

Regarding the quality of the objections of *ijmak*, some scholars argue that *ijmak* is a *qath'i* because *ijmak* is sourced from the Qur'an and Sunnah. This group also argues that the *ijmak* function does improve the quality of personal *ijtihad* products which were originally *zhanni* or still in dispute and can become *qath'i* after approval or *ijmak*. Therefore, if *ijmak* has been reached, then there should be no different opinions. The other group of scholars stated that the quality of the blasphemy of consensus is *zhanni* since *ijmak* is stipulated in matters based on *zhanni* texts as well. Object of *ijtihad* including *jama'i* *ijtihad* becomes the basis of *ijma'i* and in matters which legal basis is *zhanni* or there is no legal basis at all.

The blasphemy quality of *ijmak* can be divided into two categories; *ijmak qath'i* if it is supported by *qath'i* texts or relating to matters that include the category of *'ulima min al-din bi al-dharurah*. The blasphemy quality of *ijmak* which is *zhanni* is *ijmak* in matters on which the arguments are based on *zhanni* arguments. Therefore, Islamic law that was established through the previous *ijmak* can be annulled by the later *ijmak*, either by the same generation or by the next generation. It means *ijmak* may be annulled as the time for the determination of the *ijmak* has passed. *Ijmak* is possible at any time, as long as it is accompanied by correct *syarak* arguments and arguments in accordance with the methodology of establishing Islamic law. The latest *ijmak* product handling the same object will serve as a correction and replacement, as well as a sign that the validity period of the old *ijmak* legal status has expired.

According to the theory of Islamic law jurisprudence, the validity period of a legal regulation will end when *'illah* and *maslahah* it contains are no longer found, and the next generation of scholars may agree on a legal regulation that is different from the previous legal regulations. In a rule of *ushuliyah* it is stated that "The law will change along with changing situations and conditions".<sup>42</sup> Another rule of Islamic law states that "the law

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<sup>42</sup> Ali Ahmad al-Nadwi, *Al-Qawa'id al-Fiqhiyyah* (Damaskus: Dar al-Qalam, tt.), h. 158; See in Muhammad Ibnu Qayyim al-Jauziyyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Beirut: Lebanon: Dar al-Jail, tt.), h. 4.

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revolves around its legal arguments, both for the existence of law or not".<sup>43</sup>

Referring to the two *fiqhiyah* rules above, if the agreement of the scholars on a law contradicts the previous legal agreement, it means that there has been a change to the law which is in line with the change in *'illah* and *maslahah* and also means that the validity period of the previous legal agreement has ended.

Observing the opinions of scholars regarding the blasphemy of *ijmak* and examining the historical aspects of *ijmak* and the legal basis of *naqli* from the Koran and Hadith, the author argues that *ijmak* when viewed from the aspect of the quality of its blasphemy can be classified into 3 (three) types, they are:

*First:* *Ijmak* relating to the issue of *ubudiyah mahdhah* and supported by a verse or hadith *qath'i* or *'ulima min al-din bi al-dharurah*. *Ijmak* in this matter is binding on every Muslim and cannot be annulled because the evidence is strong. This is actually the form of consensus desired by Ibn Hazm, al-Shafi'i, and Imam Ahmad bin Hanbal. For example, *ijmak* regarding obligatory prayers, paying zakat, making pilgrimages, and so on. Such an opinion is in line with the *fiqh* rules that in matters of pure worship and having *qath'i* arguments, they are not the object of *ijtihad*. This is in accordance with the *qa'idah fiqhiyyah* formulated by the scholars that "Basically the law of worship is invalid, so there are arguments that command it".<sup>44</sup>

*Second:* *Ijmak* in the matter of *ubudiyah mahdlah*, but the argument is *zhanni*. The blasphemy of *ijmak* in matters like this is *zhanni* and is only binding on the person or community who agrees to it. Parties who disagree, should not be forced to follow the agreement because it is contrary to the freedom of *ijtihad* which is

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<sup>43</sup> Moh Bahrudin, *Kaidah-Kaidah Hukum Islam: Menjawab Masalah-Masalah Fikih Praktis Lengkap Dengan Contoh-Contohnya* (Bandar Lampung: Seksi Penerbitan IAIN Raden Intan, 2012), h. 13.

<sup>44</sup> Panji Adam, *Hukum Islam: Konsep, Filosofi dan Metodologi* (Jakarta Timur: Sinar Grafika, 2021), h. 42; See in Savvy Dian Faizzati, "Hukum Islam Antara Individu Dan Masyarakat," *Al-Rasikh: Jurnal Hukum Islam* 6, No. 02 (November 26, 2017): h. 13-35, <https://doi.org/10.38073/rasikh.v6i02.55>.

protected by syarak. For example, the problem of the number of rak'ahs for the tarawih prayer, the problem of raising up the basmalah reading in prayer, how to perform ablution, and so on.

*Third:* Ijmak in religious matters related to human relations (*muamalah basyariyah*) which is not stated or explicitly regulated in the text, such as regulations on the appointment of heads of state, administration and legislation on marriage, inheritance, and so on. Ijmak in these matters is *zhanni* and can be narrated because it is relative. This kind of Ijmak is binding when there is interference from the authorities to enforce it in the law. In the rules of *fiqhiyah* it is stated that "The wisdom of the leader to his people must refer to the realization of benefit".<sup>45</sup>

#### **D. Conclusion**

By looking at the arguments, both *naqly* and *'aqly*, related to the issue of blasphemy or the authority of ijmak, it can be concluded that ijmak can be used as evidence, has validity and authority, although it still requires evidence from the Qur'an or Sunnah. Not all ijmak is *qath'i* and therefore not all ijmak must be followed. The blasphemy quality of ijmak is *qath'i* if it is supported by texts that are *qath'i* or related to *'ulima min al-din bi al-dharurah* matters. The quality of ijmak is *zhanni* if it is only supported by the *zhanni* argument or in matters for which there is no explicit text in the syarak text. Ijmak which is *qath'i* is very limited in number, especially related to matters of worship of *mahdlah*, while ijmak which is *zhanni* is very much in number and usually involves matters relating to humans (*muamalah*). Ijmak in matters of this kind actually need to receive (treatment) and be developed by the scholars together with umara.

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<sup>45</sup> Taj ad-Din as-Subuki, *Al-Asybah Wa al-Nazha'ir* (Madinah: Dar al-Kutub al-Ilmiyah, 1991), h. 162; See in Mohammad Alfuniam, "Proses Pemilihan Presiden Indonesia Dalam Perspektif Politik Al-Mawardi," *Islamic Review: Jurnal Riset Dan Kajian Keislaman* 3, No. 1 (2014): h. 33-62, <https://doi.org/10.35878/islamicreview.v3i1.64>.

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