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Qiyās on Rukhṣah and Its Impact on Solving Contemporary Muʿāmalāt Issues: A Jurisprudential Analysis

القياس على الرخصة وأثره في حل مشكلات المعاملات المعاصرة: تحليل فقهي

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Abstract

Qiyās is one of the acceptable adillah (proofs) in Islam for deriving Sharīʿah rules. According to the view of Imām al-Shāfiʿī and other Uṣuliyyūn (Uṣūlī scholars), qiyās can be applied in all areas of Islamic law including rukhṣah matters, especially in muʿāmalāt and Islamic finance, as long as the ʿillah in the laws is found. Although the topic of qiyās on rukhṣah is very important as it explains the process of qiyās and its scope and limitations, this topic has yet to be sufficiently discussed by researchers. Therefore, this study attempts to examine this topic and its role in istidlāl/deduction of law process, especially in the muʿāmalāt and Islamic finance area. The study is based entirely on library research. It finds that qiyās on rukṣah plays an important role in deriving new Sharīʿah rules based on the existing cases from the Qurʾān and Sunnah. For qiyās on rukhṣah in muʿāmalāt and Islamic finance matters, the study finds that it is very important to consider urgent needs and difficulties, especially in the current economic situation. This is because rukhṣah is a form of relaxation due to constraints and difficulties in the execution and implementation of a Sharīʿah law, and in the current economic context, where there are many constraints arising because of the dominating conventional monetary system, qiyās on rukhṣah is indispensable. Among the most important research findings are the permissibility of baiʿ al-ʿarāyā in selling raisin with grape, the right of withdrawing hibah assets being extended to other than fathers, the acquisition of shares of companies involved in the production of medicine made from excretory/najis elements, and the permissibility of holding Sharīʿah non-compliant shares in loss situations and others.

Keywords: *Qiyās, ʿillah, rukhṣah, Islamic finance.*

ملخص البحث

القياس هو أحد أدلة استنباط الأحكام الشرعية المقبولة في الإسلام. حسب رأي الإمام الشافعي وغيره من الأصوليين، يجوز أن يجرى القياس في جميع مجالات الأحكام الشرعية الإسلامية، حتى في مسائل تتعلق بالرخصة وخصوصا في مجال المعاملات المالية الإسلامية، طالما وُجدت العلة في تلك الأحكام. وعلى الرغم من أهمية موضوع القياس على الرخصة لأنها تشرح عملية القياس ونطاقها وتوسع حدودها، إلا أن هذا الموضوع لم يناقشه الباحثون بحد كافٍ خصوصا في مجال المعاملات والمالية الإسلامية. لذلك، تحاول الدراسة لبحث هذا الموضوع ودوره في عملية الاستدلال خصوصا في مجال المعاملات المالية الإسلامية. وتعتمد الدراسة على البحث المكتبي بالكامل. وتوصلت الدراسة إلى أن القياس على الرخصة يلعب دورًا هامًا في استنباط الأحكام الشرعية الجديدة مستندا على الأصل الثابت في القرآن والسنة. وبالنسبة للقياس على الرخصة في المعاملات والتمويل الإسلامي، تجد الدراسة أنه من الأمر المهم جدًا أن تراعى الحاجة الملحة، وخاصةً في الوضع الاقتصادي الحالي الذي يهيمن عليه النظام النقدي التقليدي. وذلك لأن الرخصة هي شكل من أشكال التخفيف بسبب القيود والصعوبات في تنفيذ أحكام الشريعة وتطبيقها، وفي السياق الاقتصادي الحالي، هناك العديد من القيود الحاجزه نتيجة للنظام النقدي التقليدي المهيمن، وهذا يجعل القياس على الرخصة أمرًا لا يستغنى عنه أحد. ومن أمثلة القياس على الرخصة جواز بيع العرايا في بيع الزبيب بالعنب، وحق الرجوع في الهبة لغير الأب، وتملك أسهم الشركات التي تُنتج الأدوية المصنوعة من النجسة، وجواز الاحتفاظ بالأسهم غير المتوافقة مع الشريعة في حالة الخسارة وغيرها.

الكلمات المفتاحية: القياس، العلة، الرخصة، التمويل الإسلامي.

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1. Introduction

1.1 Background of Study

The Islamic financial system is a system based on compliance with the laws and regulations prescribed by the *Sharīʿah* in economic and *muʿāmalāt*-related activities. In the current economic and financial development, many financial products are introduced to meet the needs of the community and the industry in the aspect of financial facilities, investment, protection, social finance and so on. In the context of the current *Sharīʿah* legal provisions and issuance of laws related to *muʿāmalāt*, with the introduction of many new products and concepts, many legal discussions, provisions and regulations have been issued by those involved in these matters.

The process of the issuance of law in Islamic finance can be expected to be quite complex. Due to the complexity of the concepts and applications of current financial architecture, the framework and objectives of contracts as well as the country`s legislative and economic system, which is different from what was discussed by the early Muslim scholars, a lot of in-depth study is required, especially in the aspects of legal issuance methodology and *Uṣūl al-Fiqh* methods that can help in resolving emerging issues.

Considering the need for a specialized discussion on Islamic finance and economics within the framework of the current *ijtihād* and deriving Islamic law processes, a study related to *qiyās* on *rukhṣah* in *muʿāmalāt* has been chosen with the aim of discussing this concept and how it can be applied in resolving current *muʿāmalāt* and Islamic finance issues.

1.2 Research Problem

Although *Uṣūl al-Fiqh* is a very important science of knowledge in deriving Islamic laws and solving *Sharīʿah* issues in various fields, including the field of *muʿāmalāt* and contemporary Islamic finance, not many studies have been produced on this topic. Similarly, although it is not denied that many writings and studies have been produced in the field of Islamic finance, there is not much effort in discussing the *ijtihād* in the modern day, specifically on *muʿāmalāt* matters. The studies that have been produced are mostly in the framework of *taqlīd* and depend on texts left by past scholars who discussed the issues that existed in the framework of their times and needs. The studies that are based only on texts without being guided by *ijtihād* and *Uṣūl al-Fiqh* as a tool in issuing *fatwā* and laws will cause the Islamic laws or *fiqh* to be rather rigid, and this may lead to the perception that the concept of *madhhab* is limited and is no longer relevant to resolving new *Sharīʿah* issues. On the other hand, the studies that are not based on strong foundation and heavily depend on *maqāsid* or *maṣlahah* only can lead to the perception that Islamic laws are not guided by clear basis and acceptable justification from *Uṣūl al-Fiqh* point of view (Roslan, Muhammad Mustaqim and Zainuri, Anwar Osman, 2023). The *ijtihād* that is based on correct understanding and is in accordance with what has been left by the *mujtahid* will solve many current issues that are not in the *turāth* of a *madhhab* and thus, expanding the boundary of the treasure of *fiqh* itself to a new horizon much bigger and wider than what has been left by the great scholars of the past (Shaarani, Ahmad Zakirullah, Ahmad, Ridzwan, 2021)

1.3 Research Questions

The research questions of this study are:

1.3.1 What is the meaning of *qiyās* on *rukhṣah*?

1.3.2 What are the opinions of *Uṣūl al-Fiqh* scholars on *qiyās* on *Rukhṣah*?

1.3.3 How can the concept of *qiyās* on *rukhṣah* be used to solve current issues in *muʿāmalāt* and Islamic finance?

1.4 Research Objectives

1.4.1 To discuss the meaning of *qiyās* on *rukhṣah*.

1.4.2 To discuss the opinions of *Uṣūl al-Fiqh* scholars on *qiyās* on *rukhṣah*.

1.4.3 To determine how the concept of *qiyās* on *rukhṣah* can be used to solve current issues in *muʿāmalāt* and Islamic finance.

1.5 Research Significance

The significance of this study for the field of Islamic finance in general and the process of issuing laws and *fatāwā* in particular, can be seen in terms of its contribution in explaining the concept of *qiyās* as one of the principles of issuing laws in Islam, as well as providing a better understanding of the function and importance of *qiyās* in issuing *fatāwā* and *Sharīʿah* law through issues and examples that have been discussed by previous scholars or new ones related to Islamic finance.

1.6 Research Methodology

This research is a library-based and qualitative study in which the writings and the views of Islamic scholars related to the topic are discussed and analyzed, with the aim of achieving a clear and better understanding of the issue and the framework that governs it. Subsequently, with the aim of resolving new contemporary problems using the concept of *qiyās* on *rukhṣah*, current Islamic financial products are compared and examined under this framework, identifying similarities between the resolved issues and the new *muʿāmalāt* issues that have not been discussed by scholars.

1.7 Literature Review:

A key insight from the literature review is that, to the best of the authors' knowledge, although the topic of *qiyās fī al-rukhṣah* is one of the main topics that exist in the discussions of *qiyās* by the *usuliyyūn* in their books, there is no specific study that explains about the concept of *rukhṣah* and its application in *muʿāmalāt* and Islamic finance, as this study aims to achieve. However, there are some recent writings on this topic that present examples of applications in Islamic finance specifically and Islamic law generally, such as the writing of Aisha Mubarak Aldhabah Alketbi (2024), titled *Qāʿidat al-Qiyās ʿalā al-Rukhṣah*. This article explains the concept of *qiyās* on *rukhṣah*, the discussion of scholars related to the topic, classification of types of *qiyās* on *rukhṣah* and analysis of examples of *qiyās* on *rukhṣah*. One of them, which is related to *muʿāmalāt*, is to allow *ʿarāyā* sale based on *rukhṣah*.

Hamdi Taha also produced the article *al-Qiyās fī al-Rukhṣah al-Syarīʿiyyah wa Atharuhū fī al-Furūʿ al-Fiqhiyyah al-Muʿāṣirah* (n.d.), which explains the concept of *qiyās* on *rukhṣah*, types of *rukhṣah*, debate and differences of scholarly opinion on this topic, as well as examples of current applications in issues related to purification (*ṭahārah*). However, there are no specific discussions on *muʿāmalāt* and Islamic finance matters.

The article, *al-Qiyās fī al-Rukhṣah al-Syariʿiyyah wa Atharuhū fī al-Fiqh al-Islāmī* written by Nora Muhammad (2023), explains almost the same things as Aisha above but more specifically brings some examples related to *muʿāmalāt*, such as *Istiṣnāʿ* contract and *baiʿ al-ʿarāyā* contract.

Additionally, the article titled *al-Qiyās fī al-Rukhaṣ wa ahammiyatuhā fī al-Ijtihād* by Omar Monah (2019) also discusses about the concept of *qiyās* and the disagreements between the scholars about whether it is permissible or not. An important point of this article is that it explains the function and significance of *qiyās* on *rukhṣah* in *ijtihād*. However, there are no specific discussions on *muʿāmalāt* in the examples.

2. Research Findings

2.1 The Concept of *Qiyās* on *Rukhṣah*

Qiyās is a process carried out by the *mujtahid* to acquire Islamic laws that do not exist yet or to reveal it through his works and efforts (Sulaiman, Khalid Mujtahid, 2022). According to al-Baiḍawī, *qiyās* is the affirmation of a ruling for one known case based on another known case, due to them sharing the same effective cause (*ʿillah*) according to the one who is making the judgment (al-al-Isnawī, 1999). *Qiyās* on *rukhṣah* refers to the application of rulings (*al-Aṣl*) that allow certain relaxations due to specific situations or dire needs on new cases (*furūʿ*) that are not mentioned in *Sharīʿah* texts, based on the similarities in *ʿillah* or legal reasoning between them (new cases/*furūʿ* and *al-Aṣl*) (Abdul Wahab Khalaf; n.d). *Rukhṣah* linguistically means relaxation or convenience. Practically, it refers to a category of rulings that are against the original rulings called *ʿazīmah*, but are acceptable and allowed because of the obstacles, like illness and inability, even though the original law (*ḥukm al-ʿazīmah*) prohibits it (al-Isnāwī, 1999; al-Sarakhsyī, 1983).

Examples of *qiyās* on *rukhṣah* include combining two different obligatory prayers into a single time due to illness. This new case (*al-Farʿ*) is permitted by *qiyās* on travel (*safar*) or combining prayers (*jamāʿh*) because of heavy rain, blizzard, or other dire situations that are acceptable by *Sharīʿah* (al-Bakrī, n.d; al-Shirbinī, n.d; al-Rāfie, 1997, al-Bukhārī; 2001; Muslim; 2006). Here, the permissibility of combining two prayers while traveling is the original *rukhṣah* case/*al-aṣl*, while the justification or *ʿillah* for these rulings is dire need, hardship, and difficulty. Another example is the permissibility of not staying overnight (*mabīt*) in Mina due to illness or sickness, or because of concern for the safety of goods in Makkah. These new cases (*furūʿ*) are allowed based on the *rukhṣah* of exempting those who served food and drink to Abbas`s family from the obligation of staying overnight in Mina (al-Zarkashī; 2007). There are many more examples that demonstrate the permissibility of *qiyās* on *rukhṣah* in *Sharīʿah* when its *ʿillah* or effective cause is properly identified.

Through *qiyās* on *rukhṣah*, many new situations that are not mentioned by *Sharīʿah* texts, such as in the Qurʾān and *Sunnah*, but share the same *ʿillah* with existing cases mentioned in them, will have the same *ḥukm* and rules as those existing cases since those existing cases are used as precedent cases and as guidance to the new laws.

2.2 *Qiyās* on *Rukhṣah* According to Imām al-Shāfiʿī

According to Imām al-Shāfiʿī, *qiyās* on all branches of *Sharīʿah* law is permissible, including *ḥudūd, rukhṣah, kaffārah*, *taqdīrāt* and others. This opinion is also supported by his own account of the generality of permission of *qiyās* on all *Sharīʿah* branches of laws as mentioned by al-Zanjānī and others (al-Zanjānī, n.d, al-Ghazālī, 1997; al-Juwaynī, 2007; al-Nawawī, n.d). It is also based on the branches of law/*furūʿ* found in his own writings and books, which clearly show his acceptance of *qiyās* in all *Sharīʿah* laws, including *rukhṣah* matters. Al-Zarkashī quotes from the book *al-Umm* regarding the example of *qiyās* on *ḥudūd* punishment where he (Imām al-Shāfiʿī) said:

"*And a hand is not cut off for those who rob on the streets* (*quṭṭāʿ al-ṭarīq*) *except those who rob the amount of a quarter dinar or more, and this is based on qiyās from the ḥadīth in punishment on thieves* (*at the same amount*)." (Imām al-Shāfiʿī, 2001; al-Zarkashī, 2007, 5:52)

There exists some confusion about the opinion of Imām al-Shāfiʿī himself regarding the permissibility of *qiyās* on *rukhṣah* as he prohibits it in some places (al-Shāfiʿī, 1983; al-Isnawī, 1999). However, based on the *furūʿ*/branches of law mentioned by Imām al-Shāfiʿī himself, as well as the explanation and enlightenment of Shāfiʿī scholars/*Aṣḥāb* about the meaning of his prohibition of *qiyās* on *rukhṣah*, the stronger opinion is that *qiyās* on *rukhṣah* is considered as permissible by Imām al-Shāfiʿī and the Shāfiʿī school of law. But this is only if the *qiyās* on *rukhṣah* fulfills its conditions (al-Jamal, n.d) and is in accordance with the nature of the *rukhṣah* itself, i.e. it is permitted because of need and necessity, not for luxury, seeking profit and cosmetic purposes.

In addition, this study is of the opinion that these two conflicting reports and the statement of Imām al-Shāfiʿī are true, but not in the same context. For the view that Imām al-Shāfiʿī allows *qiyās* on *rukhṣah*, it is the correct statement as he himself practiced it, as proven by numerous branches of law/*furūʿ* in the Shāfiʿī school that are derived through *qiyās* on *rukhṣah*. Regarding Imām al-Shāfiʿī's opinion that prohibits *qiyās* in the matter of *rukhṣah*, it is also true. *Qiyās* on *rukhṣah* should not go beyond the context or scope and subject matter specifically mentioned by the text of the *rukhṣah* itself. For example, *qiyās* on the permissibility of *baiʿ al-ʿarāyā* may not go beyond the *ribāwī* material under the staple food category, nor beyond food-related matters (Rafīq Yūnus al-Miṣrī, 2001). Thus, it is not permissible to use the *qiyās* of *bayʿ al-ʿarāyā* as a reference in order to allow the trade or exchange of gold with gold without the same scale/unit. Also, the permissibility of *qiyās* on *rukhṣah* on the right of withdrawing the *hibah* goods by the father must be limited to the *hibah* contract only and must not go beyond to other contracts such as the sale contract and so on, as what can be found in the literature of the Shāfiʿī *madhhab* on those issues.

2.3 The Application of *Qiyās* on *Rukhṣah* in Solving Current *Muʿāmalāt* Issues

The application of *qiyās* on *rukhṣah* is a very important method in the derivation of *Sharīʿah* laws including *muʿāmalāt* related matters. This is because through it, the *mujtahids* and jurists can understand the importance of *ʿillah* in deriving *Sharīʿah* laws, in addition to knowing the types of law that are within the scope of *qiyās* and those that are not. This will allow them to apply it in solving the current *Sharīʿah* issues that they face, and will also expand the scope of law beyond the *Sharīʿah* texts (Qurʾān and *Sunnah*) (al-Zanjānī, n.d).

It should be emphasized here that, although *qiyās* can be applied to all *Sharīʿah* laws including *rukhṣah* and other areas as mentioned earlier, this study will focus only on the *muʿāmalāt* field and thus, only laws related to *rukhṣah* on *muʿāmalāt* will be discussed.

2.3.1 Examples of *Qiyās* on *Rukhṣah in Islamic Finance*

Among the examples of *qiyās* on *Rukhṣah* are:

i) *Bayʿ al-ʿArāyā*

Bayʿ al-ʿarāyā is a sale between wet dates and dry dates and is considered a *rukhṣah* from the prohibition of selling of *mudhābanah* (*selling of fresh dates on the trees against dry dates*) and *muḥaqalah* (*a type of sale in which grains in ears are sold for dry* (*processed*) *grain*) (al-Nawawī, n.d).

From *Sharīʿah* point of view, it is not permissible to trade wet dates (*ruṭab*) with dry dates as it is included in the prohibition of the sale of *mudhābanah* and *muḥāqalah* (Ibn Ḥajar, 2001). This is because, according to *Sharīʿah*, the exchange of the same *ribāwī* goods requires each type of dates to be of the same weight (Mālik, 2004; Bukhāri, 2001; Muslim, 2006) Moreover, *mudhābanah* is forbidden because there is no similarity in terms of weight between the dates in the tree/wet dates with dry dates. But some people like to eat *ruṭab* (wet dates) while they have no money (to buy *ruṭab*).

Because of this, Islam gives *rukhṣah* and relaxation by allowing them to exchange dry dates with wet dates on the basis of fulfilling the needs of the poor, even though it is not permitted according to the normal rules (*ʿazīmah*) due to their dissimilarity as *ribāwī* items. However, this *rukhṣah* is limited to small quantities only (al-Māwardī, 1994; al-Nawawī, n.d; al-Imrānī, 2000).

This *qiyās* was mentioned by Imām al-Shāfiʿī in his book *al-Umm* (2001), along with making the *ruṭab* (wet dates) as *al-aṣl* and the grape as a new branch (*farʿ/furūʿ*) with the result (*ḥukm*) being that the permissibility of exchanging grapes with raisins is derived from the *qiyās* of the permissibility of exchanging dry dates with wet dates.

Some scholars made *qiyās* on *rukhṣah* based on this *bayʿ al-ʿarāyā* for selling gold for gold without the same scale/unit. The justification of this opinion is that it is attributed to the permissibility of *bayʿ al-ʿarāyā* and hence, it is permissible to sell jewelry made of gold with dinar (also made of gold) without the same weight as the jewelry, or selling gold jewelry with currency without the need to pay full in advance. The similarity between the two (*ʿarāyā* sale and selling gold with gold without the same measurement) is that in both cases, *bayʿ al-ʿarāyā* means to sell/exchange the same *ribāwī* items without adhering to the *Sharīʿah* requirement, i.e. the same weight and measurement, and it is permissible. Due to this resemblance, the same ruling is applied and therefore, it is permissible to exchange/sell jewelry with *dīnār* even though both are made from the same *ribāwī* material but do not have the same measurement and weight. (al-Baʿlī, n.d; Ibn al-Qayyīm, 2002; Rafīq Yunus al-Miṣri, 2001).

Based on the above opinion which allows selling gold with gold without adhering to *ribāwī* item rules of law because of its similarity with *bayʿ al-*

ʻarāyā, this issue can be counted as part of the *furuʻ* for the *qiyās* on *rukhṣah* as discussed above. But this study is of the opinion that the *qiyās* of gold based on *ruṭab* is not permitted because *bayʻ al-ʻarāyā* is allowed only within a limited scope and number, i.e. not exceeding more than *5 awsuq* (60+ kg) according to some narrations (Ibn Hajar al-Asqalani, 2001; al-Rafi`i, 1997; al-Imrani, 2000). Thus, it is inaccurate to make a comparison between *ʻarāyā* sale and selling gold without the same weight and measurement. Perhaps, this is what Imām al-Shāfiʿī meant when he stated that the *rukhṣah* cannot go beyond the *Sharīʿah* texts, as demonstrated above in the rules related to buying and selling *ʻarāyā*. Hence, it is not permissible to use *bayʻ al-ʻarāyā* as a reference while performing *qiyās* on matters not related to food and is allowed only in small amounts and within a limited scope.

ii) Medicine Made from Excreta/*Najis* Elements

One of the laws that can be included in the discussion of the permissibility of *qiyās* on *rukhṣah* is the use of excreta/*najis* in medicine. For this *farʻ*/new case, although the *najis* or excreta discussion does not directly fall under *muʿāmalāt* issues, it becomes a subject matter for *muʿāmalāt* transactions such as sale, *ijārah*/lease, partnership contracts or any other *muʿāmalāt* contract.

The justification for this *qiyās* is based on the *ḥadīth* of Anas bin Malik RA, where he once said: "*A group of people who had eaten a food in Madinah that is not their normal food and they became ill, and the Prophet ﷺ ordered them to get his ﷺ camel shepherd so that they would drink from the camel's milk and urine, then they met the camel shepherd and they drank milk and urine until they were cured, but they killed the shepherd and took the camel. Then the matter reached the Prophet ﷺ and he ordered them to be arrested and brought to him ﷺ and when they were found they were ordered to have their legs and hands chopped off and their eyeballs are to be taken out.*" (al-Bukhāri, 2001; al-Nawawī, 1929; Ibn Kathīr, n.d)

Based on the above *ḥadīth*, the Shāfiʿī school of law is of the view that it is permissible to use camel urine, and the *ʻillah* behind this rule is because it is to be used as medicine. This is an example of a leeway or *rukhṣah* where it is opposed to the original *Sharīʿah*/*ʻazīmah* rule that prohibits the consumption of all *najis* elements including camel`s urine (Mustafa Bugho, et al, 2003). Based on this *rukhṣah* or relaxation of using camel`s urine, it is permissible according to the Shāfiʿī *madhhab* to use feces of other animals or any kind of *najis*/excreta as long as it has the same *ʻillah* to be used as medicine and for medical treatment purposes (al-Juwainī, 2007; al-Nawawī, n.d; al-Qalyūbi wa al-ʻUmairah, 1955). The basis of this permissibility is analogical reasoning/*qiyās* on the matters of *rukhṣah*, and this tolerability is not limited to the situations and cases mentioned by the *Sharīʿah* texts only but can also go beyond them if any similarities are found in terms of *ʻillah*. Therefore, according to the Shāfiʿī *madhhab*, excrement and *najis* substances can be used as medicine under certain conditions, such as when there are no other medicine or remedy that could replace them, and are used with the advice of those who have knowledge in the field of medicine. If the medicine made from the *najis* elements can speed up the healing process compared to the medicine that is not made from *najis* elements, there are two opinions among the Shāfiʿī scholars about it, and the stronger/*aṣahh* one is that it is permissible (al-Nawawī, n.d.).

Regarding the *ḥadīth* that states: "*Allah* ﷻ *does not make my people's cure and treatment from the* *prohibited elements"* (al-Baihaqī, 1989), it implies that *najis* elements are not considered as permissible treatments in Islam since they are prohibited elements. However, Ibn Hajar al-Asqalani explained that the prohibition mentioned in the above *ḥadīth* transmitted by al-Baihaqī applies only for situations that are not very desperate (*ḍarūrah*) or the treatment that makes use of *najis* elements do not lead to intoxication (Ibn Hajar, 2001). Therefore, in the absence of a dire and desperate need or if the treatment leads to drunkenness and intoxication, *rukhṣah* cannot be used as an excuse to use prohibited goods and substances. These two conditions must be considered when using excrement or *najis* elements as medicine. This is supported by another *ḥadīth* narrated by Muslim which shows that the intoxicant is not a drug and medicine but a disease. The *ḥadīth* says:

"*One of the Prophet's ﷺ companions, Tariq bin Suwaid al-Ja`fi, asked the Prophet ﷺ about the use of khamr, then the Prophet ﷺ forbade it and hated the production of it* (*khamr*). *Then Tariq said: 'I make it as a medicine.' Rasulullah ﷺ replied: 'It is not a medicine but a disease.'*" (Muslim, 2006)

Also, among the branches of law that can be included here is the permissibility of using blood as a treatment when done using the stem cell method. This is also permitted by the National Council for the Religious Affairs of Malaysia in relation to cloning and ART (Assisted Reproductive Technology) treatment (Ministry of Health Malaysia, 2009).

The permissibility of using *najis* elements for medical purposes can also be applied to any product that uses excrements, such as urine, stool, vomit and so on, either from humans or animals including dogs and pigs. This is as long as it is for medical purposes and the guidelines mentioned above are not neglected, i.e. the medicine is used with the advice of experts and does not lead to the occurrence of immoral things and other things that are prohibited by Islam (al-Nawawī, n.d; al-Rāfie, 1997).

iii) Acquiring Shares in a Company that Manufactures Medicines from Excreta/*Najis* Elements

Included in the *furūʿ* of *qiyās* on *rukhṣah* for the above issue is the purchase of shares of a company that manufactures drugs and prescriptions made from *najis*. This *farʿ* can be considered as *tafrīʿ* (extension) of the *furūʿ* related to the above discussion. In the discussion of *qiyās*, *tafriʿ* is the extension of a ruling for one subject matter after having established it for another subject in a way that implies derivation and sequential connection (al-Kurdī, 2011). This *tafriʿ* connotation is often used in contexts like logic, jurisprudence, or Arabic rhetoric, where a ruling or judgment is extended from one case to another in a manner that shows that they are related, often to implication or analogy. In our context, the rule for acquiring shares of a company that manufactures medicines from *najis* elements is an extension of the rule for the permissibility of medicine made from excreta/*najis* elements.

As a well-established principle in Islam, any product must be *ḥalāl* and must not contain elements prohibited by Islam such as stool, alcohol, pigs, carcasses, etc. (Ibn al-Rifʿah, 2009). The sale of goods containing such elements is prohibited and illegitimate from the *Sharīʿah* point of view. But in the issue of the permissibility of using medicine made from *ḥarām* and prohibited elements, because of the *rukhṣah* on its use, which is for medical purposes as discussed before, a *rukhṣah* also exists in the activities that lead to its (medicine) existence. This includes buying shares of companies that are involved in the production of medicines that contain *najis* elements, provided that they are for medical purposes only.

Thus, this study is of the opinion that, since the sale of medicine made from *najis* elements is permissible due to the existence of a *rukhṣah* as discussed earlier, the securitization and sale of such shares also meet the requirements of *Sharīʿah* and hence, are also permissible. The *ʻillah* behind this permission is that the *najis* elements are to be used as medicine, subject to the fulfillment of the guidelines of using *najis* as medicine as mentioned previously.

However, this opinion can be further discussed because in the discussion of *rukhṣah*, there are situations where things that are allowed based on *rukhṣah* have become *mubāḥ* things without any restriction of usage. For instance, the *rukhṣah* on paying early *zakāh*, *istiṣnāʿ* and *salam* sale, *khiyār* option, and others that might fall under the *ḥājah* category (al-Zarqā`, 1989; Azām, 2010). Meanwhile, in other situations, *rukhṣah* is bound by certain *ḍawābiṭ*/ guidelines and parameters just like *ḍarūrah* situation.

iv) Granting Withdrawal Rights in *Hibah* Contracts to Mothers, Grandfathers and Grandmothers

Among the applications of *qiyās* on *rukhṣah* is the right of withdrawal of *hibah* assets by other than the father. Through the *qiyās* of the father on the rights above, the mother, grandfather and grandmother, as well as any other ancestor will have the right to withdraw *hibah* assets. The basis for this *rukhṣah* is the *ḥadīth* of the Prophet ﷺ:

"*It is not lawful for a man to give a gift or to grant a hibah, then he cancels it and asks for the asset to be returned, except for the father who gives something to his son* (*where it is permissible*)." This *ḥadīth* has been reported by Al-Tirmidhī, (1967); Abu Dāud, (2009) and al-Baihaqī, (2003).

This *ḥadīth* clearly shows the exception to the prohibition of withdrawing *hibah* where the father can withdraw the *hibah* and demand the return of the goods given to his children. The scholars of the Shāfiʿī school made *qiyās* of the father to all the *uṣūl* of the family tree (the father and other ancestors), and they also made *qiyās* of the son, as mentioned in the *ḥadīth*, to all *furuʿ* (other descendants). The *ʻillah* or justification for this exception to the prohibition for the father is due to the father`s mercy and kindness in caring for his own child and blood relations. Normally, the father will not withdraw the *hibah* except under forced circumstances or other purposes related to the welfare and benefit of the child, as mentioned by al-Shīrāzī:

وللخبر، ولأن الأب لا يتهم في رجوعه، لأنه لا يرجع إلا لضرورة، أو لإصلاح الولد.

"*This is because of the ḥadīth, also because the father will not be questioned and argued of his decision* (*to withdraw and return the good, because he will not ask back his hibah goods except because of dire need situations, or for the benefit of the child.*" (al-Shīrāzī, 1996)

In the matter of the *rukhṣah* given by *Sharīʿah* to the father to reclaim the *hibah* goods, the jurists of the Shāfiʿī school have extended the list to some other members of the family besides the father because, in their view, the same *ʻillah* or *dalālah* exists. Ibn al-Rif'ah (2009) mentioned some of the views of the *Aṣḥāb*/Shāfiʿī scholars about the list of the people who have the right to reclaim the *hibah* goods other than the father. They are:

First view: The mother, based on the *qiyās* of the father, as she is equal to the father since the child belongs to the both.

Second view: The grandfather, based on the *qiyās* of the father. As for the grandmother, there are different views between the Shāfiʿī scholars in extending the *'illah* of the father to the grandmother.

Third view: It is not permissible to extend the list of those who are allowed to reclaim the *hibah* property beyond the father.

Fourth view: The father is allowed to withdraw his *hibah* if the purpose of the *hibah* was to prevent the child from being rebellious, or the purpose of the reclaim is to encourage him to make amends. If the intention of giving the *hibah* was not in line with the above, such as if it was an absolute *hibah*, then the *hibah* goods cannot be reclaimed.

Although it is permissible to perform *qiyās* on *rukhṣah* in the matter of withdrawing this *hibah* as discussed earlier, only certain types of people are allowed to withdraw their *hibah* as mentioned above. To extend this list to other groups such as relatives, spouses, friends, and others is not allowed. This is because, for those who are allowed to withdraw their *hibah*, they have a special relationship, i.e. a close family relationship, with those who receive their *hibah* as opposed to other groups of people. This type of *'illah* of family relationship is called '*illah qāsirah* according to the *uṣūliyyūn*, i.e.: the type of *'illah* where it exists only in the place of the text and not elsewhere (al-Ghazālī, 1997: al-Amidī, 2003: Ibn al-Sam'anī, 1998).

The current application of this example of *qiyās* on *rukhṣah* can be seen in financial and wealth management products such as *hibah* offered by several companies, like al-Salihin Trustee Berhad and Wasiyah Shoppe. One of the products offered by al-Salihin Trustee is Pri-Hibah, where it is mentioned: "*A Hibah declaration by an asset owner stating that he has given the asset to the beneficiary and that he holds the asset* (*as trustee*) *for the benefit of the beneficiary. It is a written document that contains the terms and conditions of the grantor who is holding such assets.*" (Al-Salihin Trustee, 2016). Based on the *qiyās* on *rukhṣah*, this product can be extended to the grand grandparents as well as others according to the opinions mentioned by Ibn al-Rif'ah earlier.

For wet nurses, this study did not find the discussions and opinions of the *Aṣḥāb* on the rule for wet nurses reclaiming the *hibah* asset from their breastfed children. However, based on what is understood from the prohibition of withdrawing the *hibah* except for those mentioned above, it is safe to say that according to the Shāfiʿī's methodology of law, they are not included in the list and therefore, are not allowed to withdraw and reclaim the *hibah* goods from their nursing children. The *'illah qāsirah,* which is exclusive for close family relations, does not exist for wet nurses.

However, this issue could be further discussed as wet nurses in other laws assume the rights of mothers in terms of the prohibition of marriage and the existence of a family bond and relationship between them and the child. Based on the arguments of the breastfeeding law/*raḍā'ah* (Ahmad: 2001) and the permissibility of analogical reasoning to biological mothers in terms of their right to reclaim their *hibah* goods from their children, wet nurses also benefit from the same rights as real and biological mothers in the context of reclaiming *hibah* assets. This is because the same *'illah* exists, which is the blood relationship between the two (child and wet nurse). Thus, based on the above arguments, the same law is applicable for wet nurses, i.e.: to be included among those who have the right to repossess *hibah* assets from children breastfed by them.

v) Permissibility of Holding *Sharīʿah* Non-Compliant Shares in Loss Situations

According to the *Sharīʿah* Advisory Council (MPS) of the Securities Commission Malaysia, *Sharīʿah* compliant shares that have changed status and have been reclassified into *Sharīʿah* non-compliant shares, if they are in a loss position, investors can hold the reclassified shares to recover the cost of investment, i.e. the purchase price of the shares. On the other hand, if the investor is in a profit position, i.e. the price is more than the cost of investment after the announcement day/day of change of status, the shareholder should sell it and be entitled only to the value before the announcement day. During the holding period, investors are also allowed to subscribe to:

a. Any issue of new securities by a company whose *Sharīʿah* non-compliant securities are held by the investors, for example rights issues, bonus issues, special issues and warrants (excluding securities whose nature is *Sharīʿah* non-compliant e.g. loan stocks); and

b. Sharīʿah-compliant securities of other companies offered by the company whose *Sharīʿah* non-compliant securities are held by the investors on the condition that they expedite the disposal of the *Sharīʿah* non-compliant securities. (Security Commission, 202٥).

While the resolution does not mention what is the *Sharīʿah* justification or *ʿillah* for this permissibility, but looking at this decision, in the author's opinion, there are two possibilities that justify the permissibility to hold the shares, which are:

1) Loss:

The probable reason for the permissibility of holding shares that have changed status to *Sharīʿah* non-compliant is loss, where the loss is considered as *rukhṣah* for holding shares that have been listed as *Sharīʿah* non-compliant shares. In other words, the original law related to illegal businesses, including holding *Sharīʿah* non-compliant shares, states that it is not allowed. But, in the case of loss, it is permissible (*rukhṣah*) because of the need and requirement to prevent harm to the business. For this situation, it can be considered as a part of *qiyās* on *rukhṣah* because it is permitted to hold non-halal (*Sharīʿah* non-compliant) shares in order to avoid losses that could harm the higher objectives of *Sharīʿah* (*maqāṣid al-Sharīʿah*) under the category of the protection of wealth and property from destruction (*Ḥifz al-Māl*) (al-Khadimi, 2001).

However, *rukhṣah* simply because of loss is something that should be carefully examined, especially in business and stock market investments where profit and loss are a common thing. From the *Sharīʿah* point of view, a mere loss is not something that has the merit and weight to be given *rukhṣah* for relaxing the law of *Sharīʿah* and allowing the illegal rules. If it is allowed, then it changes the law of *Sharīʿah*, ultimately causing the determining factor of *Sharīʿah* laws to be the profits and losses in business, and not the rules and Will of God.

2) Harmful Loss:

In addition to the loss mentioned above as a first possibility, there is a possibility that the permissibility of holding *Sharīʿah* non-compliant stocks is not just due to a mere loss. But rather, it is due to a loss that harms the continuity of the business because of dire needs and due to the presence of fierce competition from non-halal stocks in the stock market investment segment.

The point here is that, for a small loss that does not bring harm to the investment, the original law prohibiting involvement in illegal activities and investments remains. But if it is a detrimental and huge loss, then a *rukhṣah*, which permits holding a stock that is considered as *Sharīʿah* non-compliant, applies. Thus, the acceptable *ʿillah* for this argument is the emergency situation and it is not merely a loss by itself. This is because a mere loss, as discussed earlier, cannot be an *ʿillah* in relaxing the prohibition.

Stronger Opinion According to this Study:

In the writer`s view, although it is mentioned above that the necessity of holding a non-halal stock is allowed due to the need and hardship in business and investment, and these are the elements attributed to *qiyās* on *rukhṣah*, it is necessary to examine this situation carefully. This is because emergencies mean very dire situations that can be harmful to life and other basic needs. While in business and investment, profits and losses are a common thing, especially in the context of stock market business, and in many situations, it does not bring harm to life.

Some may argue that the *Sharīʿah* gives some relaxation in terms of law even it if it does not achieve the *ḍarūrah* level and is only a *ḥājah* situation, such as holding these stocks, and hence, it should be allowed (al-Suyūtī, 1983, Al-Allāie, 1994). This argument should also be analyzed as stock market investment itself is something that has such risks and is not something that has merit in relaxing the *Sharīʿah* law.

Also, if the practices and jurisprudence of others are looked at closely, like fund managers who subscribe to other overseas *Sharīʿah*-compliant indexes, such as the S&P Dow Jones Islamic Index, MSCI, FTSE and other *Sharīʿah*-compliant indexes that require non-halal stocks to be disposed immediately, it rarely is the case where they suffer losses or bankruptcy when they are forced to sell their reclassified shares due to the need of complying with the *Sharīʿah* rule of the index providers above.

In light of the decisions held by the *Sharīʿah* Advisory Council of the Securities Commission, although it is clearly permissible on the basis of *rukhṣah* and can be included in the *furūʿ*/branches of laws under the purview of *qiyās* on *rukhṣah* as we have discussed so far, the author is of the opinion that this is a type of *rukhṣah* that does not meet the requirements of *Sharīʿah* in allowing something that is prohibited.

In fact, there are *Sharīʿah* compliant stocks that are profitable as well as those that lead to loss, and there are *Sharīʿah* non-compliant stocks that are profitable as well as those that lead to loss. On the other hand, selling a *Sharīʿah* non-compliant stock that is causing loss can be profitable for investors in the long run because the proceeds from the sale of that stock can be used to buy other *Sharīʿah*-compliant stocks that have the potential to grow and generate more profits. This will not only help other *Sharīʿah* compliant companies in obtaining their business capital, but it can also ensure that the investor is not involved in non-halal business activities for a long time without strong justification. Moreover, this is a form of encouragement recognized by *Sharīʿah* to help each other/*taʿāwun* in doing good things (al-Maʿidah, 5:2).

In addition, some argue that holding a *Sharīʿah* non-compliant share that is in a state of loss with the intention of recovering the capital (halal portion) is allowable. This is on the ground that when the halal asset is mixed with the non-halal assets, the halal portion can be proportionated, and the non-halal will not tarnish the halal portion and turn all the assets into non-halal assets. This justification also must be carefully examined as there are different contexts. If halal assets are mixed with haram assets, the fuqaha`/jurists allow the halal to be proportionated (Azam, 2010). But in the context of investment, when a decrease in the value of the portion and percentage of the halal assets that are mixed with haram assets is followed by a new increase in value and amount, it cannot be said with certainty that the original halal portion has been returned. The reason is simply because the new increase may perhaps be due to an increase in haram elements or activities of the company and therefore, whatever increase in value of the share after the reclassification date may be due to haram activities. Such a share should be considered as haram property and not considered as returning the halal portion to its original investment amount.

Thus, the opinion that these *Sharīʿah* non-compliant shares should be sold immediately is the correct opinion and is also held by international *Sharīʿah* index providers such as AAOIFI (2010), FTSE (2025), MSCI (2025), S & P Dow Jones (2025) and others. It is worth mentioning here that, according to their practices, the investor is given aprior notification of the status of the stock before its effective date (disposal date), and by doing so, the investor is given enough time to dispose the stock and avoid prolonged holding of non-halal instruments in their portfolio.

For this issue, it may be suggested that *Sharīʿah* Advisory Council (SAC) of Securities Commission could set a certain threshold, such as a loss of 70% or 80% for example, to consider when holding such non-Sharia-compliant stocks as permissible. This is based on *rukhṣah* on *muqaddarāt/taqdīrāt* (al-Zarkasyī, 1994; ʿAbd al-Karīm al-Namlah, 1999), as what has been discussed by the scholars on this topic. *Wallāhu aʿlam*.

3. Conclusion

Based on the discussion of the topic of *qiyās* in the matter of *rukhṣah*, it is clear that *qiyās* on *rukhṣah* is a methodology of law accepted by the scholars in solving the problems they face. This is evident from the examples discussed previously, which fall under the field of economic and *muʿāmalāt* matters. It is very important to address current urgent needs based on the requirements of *qiyās* on *rukhṣah*, especially considering the current economic situation which is dominated by the conventional monetary system, and the global economy being shrouded with uncertainty due to geo-political tensions in many parts of the world.

In order to implement *qiyās* on *rukhṣah*, scholars and jurists must have good knowledge of *Uṣūl al-Fiqh* as a tool to understand the building blocks of law in Islam. They must also be well versed and possess good understanding of *Sharīʿah* in general and Islamic finance in particular. Furthermore, they must also fully understand the issues, the surrounding situations, the science of comparative jurisprudence, the areas of agreement and disagreement among the jurists and *fuqaha`*, the restrictions and limitations, and must be in line with *Fiqh al-Muwāzanāt, Fiqh al-Maqāṣid, Fiqh al-Maʾālāt,* and other approaches. This is because, when Islam prohibits something or requires something, it is an obligation for all Muslims to abide by it, to symbolize their obedience towards God Almighty. Any attempt to act against God`s Will and command will only result in severe punishment in the hereafter. Thus, the permissibility of *qiyās* on *rukhṣah* must be carefully and cautiously studied in terms of its necessity and permissibility, it must have a strong basis and must be used only as a last resort. All this can be done by referring to the discussions of the scholars and jurists on it. All of this is to ensure that the sanctity and purity of the *Sharīʿah* remains intact and can simultaneously be implemented and practiced in modern-day transactions.

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