

# AL-TAFTĀZĀNĪ'S DISCUSSION ON THE NATURE OF MAN *SINE QUA NON* (ESSENTIAL) TO THE *MUKALLAF* IN THE SCIENCE OF *UŞŪL AL-FIQH*

Mohd Hilmi Ramli\*

## ABSTRACT

*The discussion of mukallaf as the maḥkūm 'alayh is a key component in many works of uşūl al-fiqh. As a mukallaf, a person must not only recognize his or her individual responsibility to fulfill duties and obligations to God but also meet two essential conditions: first, possessing intellect ('aql) and second, having legal capacity (ahlīyyah). However, not all works of uşūl al-fiqh explore the metaphysical underpinnings of the concept of mukallaf. This study aims to delve into al-Taftāzānī's Talwīḥ 'alā Tawḍīḥ, a synthesis work of uşūl al-fiqh that articulates the metaphysical aspects of humanity that underpin the concept of mukallaf. The study will employ both textual and conceptual methods to understand the*

---

\* Senior lecturer at Raja Zarith Sofiah Centre for Advanced Studies on Islam, Science, and Civilization (RZS-CASIS), Faculty of Social Sciences and Humanities (FSSH), Universiti Teknologi Malaysia (UTM) Kuala Lumpur, 54100, Malaysia. (Corresponding Author) E-mail: [mohdhilmi@utm.my](mailto:mohdhilmi@utm.my)

*nature of man and its related concepts, particularly 'aql and ahlīyyah. The study finds that al-Taftāzānī's commentary, which reflects the views of notable jurists, making a great explanation on the insānī aspects of mukallaf.*

**Keywords:** *al-Taftāzānī, mukallaf, man, 'aql, ahlīyyah*

## INTRODUCTION

Is man the final product of the universe created by God, or is there a purpose to the universe that extends beyond humanity? Modern science has revealed the vastness of the universe, showing that earth is merely a tiny planet within this immense inter-galaxy expanse. As inhabitants of this world, humans are small creations who live according to the laws of nature. Carl Sagan was a renowned scientist who contributed significantly to NASA's planetary missions, claims "humans are inconsequential, a thin film of life on an obscure and solitary lump of rock and metal".<sup>1</sup> With ongoing discoveries in modern science, there is a possibility that other intelligent beings akin to humans may exist and built their own civilization on other planets.<sup>2</sup>

This idea, if taken seriously—which it has been in the West—suggests that humanity is unimportant, as aptly noted by Carl Sagan. In this view, human creation lacks a noble purpose; instead, humans are considered just another part of the ongoing cycle of change that characterizes the natural world.

In Islam, such speculation has never been thought of and acknowledged by the tradition and scholars because it remains uncertain and conjectural. While it cannot dismiss the capability of modern technology to estimate the size and age of the universe, and

---

<sup>1</sup> Carl Sagan, *A Vision on the Human Future in Space* (New York: Ballantine Books, 1994). His most extensive and popular work is *Cosmos* (1980; reprint New York: Ballantine Books, 2013).

<sup>2</sup> *Ibid.*

to speculate about the existence of extraterrestrials, it is essential to recognize that when Allah created the world and placed humanity within it, He designed it as a perfect habitat for mankind. Because of that, religions have been sent to the Prophets to guide humanity's conduct in this world. The sun, moon, water, minerals, and other elements have been created by Allah to assist humans in performing their worship. Therefore, humans do not need new planets; rather, men must wisely fulfill their responsibilities within the world that they inhabit now.

### A BRIEF IDEA ON ISLAMIC COSMOLOGY

The idea of cosmology is to understand the position of God *vis-à-vis* the created world. In the created world, man has been the locus of attention, because man is the only creation that is given the intellect (*'aql*) and legal capacity (*ahlīyyah*) to carry out the duties and obligations by God. However, there is no single discipline known as "Islamic cosmology". According to Anton M. Heinen:

Anyone familiar with the Arabic literature in this field will know that a single "Islamic cosmology" can hardly be written... never was a reality in Islamic intellectual literature.<sup>3</sup>

He adds further that, there were numerous theories, models, and schools of cosmological thought developed among the theologians, philosophers, metaphysicians, even scientists of Islam regarding issues and activities under the name of cosmology. According to Muzaffar Iqbal, the basis of the cosmological discussion developed in Islamic intellectual tradition is due to the philosophical reflection on the origins of the creation, it includes God, as the Most Truth Existence that manifest His Names and Attributes to the created world and the position of man in the whole creation.<sup>4</sup>

---

<sup>3</sup> See his preface in his work *Islamic Cosmology: A Study of al-Suyūfī's al-Hay'a al-saniyah fi al-hay'a al-sunnīyah* (Beirut: Bei Franz Steiner Verlag, 1982), vii.

<sup>4</sup>Muzaffar Iqbal, *In the Beginning: Islamic Perspectives on Cosmological Origins, in Contemporary Issues in Islamic Science*, ed. Muzaffar Iqbal (Routledge, 2012), 2.

*Cosmos* is a Latinized word of Greek *kosmos*, which means order, good order, orderly arrangement. It is said that Pythagoras was the first to apply this word to “the universe”. Today the meaning of *cosmos* denotes both order and the universe. Cosmology as a branch of knowledge, according to *Encyclopedia Britannica*, “is that framework of concepts and relations which man erects, in satisfaction of some emotional or intellectual drive, for whole, including himself as one of its elements”.<sup>5</sup> As such, it is a science that primarily deals with the way man sees himself in the whole universe created by God.

The early philosophers like Ikhwān al-Ṣafā, al-Bīrūnī and Ibn Sīnā deals with a universe created and sustained by God, in which there is an order, an ontological dependence upon the Creator. The universe, as the *cosmos*, is a pursuit to be a science for the purpose of man to gain knowledge of the Creator. They even regard the world in an analogical form that is like a macro cosmic, whereas man as the micro cosmic, because man possesses similar order to the universe despite in a microcosmic way.<sup>6</sup>

If man is regarded as a microcosmic and the end product of this universe, therefore, all the laws for man from God have the *maṣālih* (interest) that would benefit man. Certainly from man's view, God creates law that will benefit (*maṣlahah*) man, and He does not create laws that are harmful (*mafsadah*). If, however, there is something larger than man's creation, then man is subservient to the law that God gives, because man is being transitory in essence, which is to serve the highest and largest purpose. Despite the fact, it is God who knows the ultimate reason and purpose of the creation of man and the law.<sup>7</sup> Given the limitation that man possesses in order to understand the real

---

<sup>5</sup>Howard Percy Robertson, “Cosmology,” in *Encyclopedia Britannica*, (Chicago: Encyclopedia Britannica, Inc, 1963), 6:582-587.

<sup>6</sup>Seyyed Hossein Nasr, *An Introduction to Islamic Cosmological Doctrines* (Lahore: Suhail Academy, 2007), 1-11.

<sup>7</sup> It is in the *Sūrah al-Baqarah*: 216 that Allāh says: “But perhaps you hate a thing and it is good for you; and perhaps you love a thing and it is bad for you. Allāh Knows, while you know not”.

purpose of his own purpose of creation, God bestows knowledge to understand himself.

In this perspective, the cosmological framework, together with philosophical and epistemological framework of man, is a crucial prerequisite to understand the place of man in the science of *uṣūl al-fiqh* in clarifying the nature of obligation that man bears as *mukallaf* (person subject to law), specially pertaining to his thinking, legal capacity, and action to carry out the God's injunctions and he is not free to make and choose laws arbitrarily that suit his self-interest.<sup>8</sup>

### THE SCIENCE OF UṢŪL AL-FIQH

Al-Jurjānī defines *uṣūl al-fiqh* as “a science with methodology that by virtue of it, it arrives into a *fiqh*” (*al-‘ilm bi al-qawā'id allatī yatawaṣṣalu bihā ilā al-fiqh*).<sup>9</sup> This definition signifies three key interrelated concepts. First, the nature of knowledge that it deals with; second, the methodology; and third, the intended object of knowledge that has arrived. Al-Ghazālī explains that the definition of *uṣūl al-fiqh* cannot be understood except by knowing the meaning of *al-fiqh* first; which is the intended object of knowledge, known also as *al-fahm*.<sup>10</sup> *Al-fiqh* means knowledge (*al-‘ilm*), understanding (*al-fahm*) in its original sense.<sup>11</sup> This understanding (*al-fahm*) is used in a specific sense, which means knowledge that deals with the ruling of *Sharī'ah* established upon the *mukallaf*.<sup>12</sup> Therefore, the science of *uṣūl al-fiqh* is primarily a knowledge that is intended to understand the nature of rulings of *Sharī'ah* that applies to human beings known as *mukallaf*.

---

<sup>8</sup> Imran Khan Nyazee, *Theories of Islamic Law* (Islamabad: Islamic Research Institute Islamabad, 1994); reprint (New Delhi: Adam Publishers & Distributors, 2003), 44.

<sup>9</sup> Al-Jurjānī, *Kitāb al- Ta'rīfāt* (al-Qāhirah: Matba'ah Muṣṭafā al-Bābū al-Ḥalabī, 1938), s.v. “uṣūl al-fiqh”, 28.

<sup>10</sup> Al-Ghazālī, *al-Mustaṣfā min 'ilm al-Uṣūl*, ed. Najwā Dāww Beirūt: Dār al-Iḥyā' al-Turāth al-‘Arabī, n.d), 1:25.

<sup>11</sup> *Ibid.*

<sup>12</sup> Al-Ghazālī, *al-Mustaṣfā min 'ilm al-Uṣūl*, ed. Najwā Dāww Beirūt: Dār al-Iḥyā' al-Turāth al-‘Arabī, n.d), 1:25.

Jurists have developed a scientific method to study the science of *uṣūl al-fiqh*. Ibn Khaldūn (d. 808 A.H/1406 A.D) identifies two approaches (*ṭarīqah*) in *uṣūl al-fiqh*; first the *ṭarīqah al-shāfi'īyyah* or *al-mutakallimīn* or *al-jumhūr* and second *ṭarīqah al-ḥanafīyyah* or *ṭarīqah al-fuqahā'*.<sup>13</sup> The first approach is known as the *ṭarīqah al-shāfi'īyyah* or *al-mutakallimīn* or *al-jumhūr* because this method is distinguished by the way the principles of law have been established. They establish the principles based on sound logic and rational argument and they only accept those which are supported by strong evidence, even though their decision might go against their earlier jurists of the same *madhhab*.<sup>14</sup> For instance, they might disagree on the matter of principles (*uṣūl*) with al-Shāfi'ī, but they would agree on the branches (*furū'*). Ibn Khaldūn mentions the works under the *ṭarīqah al-shāfi'īyyah* or *al-mutakallimīn* namely *Kitāb al-Burhān* by Imām al-Juwaynī (d. 478 A.H/1078 A.D), *al-Mustasfā* by Imām al-Ghazālī (d. 505 A.H/1111 A.D), *Kitāb al-'Ahd* by 'Abd. al-Jabbār (d. 415 A.H/1025 A.D) and its commentary *al-Mu'tamad* by Abū al-Ḥusīn al-Baṣrī (d. 436 A.H/1044 A.D).<sup>15</sup> Ibn Khaldūn considers these four works as the chief and pillars of the *ṭarīqah al-shāfi'īyyah* or *al-mutakallimīn*. There are two abridged versions of the four works which were composed by Fakhr al-Dīn al-Rāzī in *al-Maḥṣūl fī 'ilm uṣūl al-fiqh* and Sayf al-Dīn al-Āmidī in *al-Iḥkām fī uṣūl al-aḥkām*.<sup>16</sup> These two works left an impact on the following *uṣūlī* scholarship, where the *al-Maḥṣūl* was summarized by al-Rāzī's student, al-Imām Sirāj al-Dīn al-Armawī in his *al-Taḥṣīl*. This approach is also known as the *ṭarīqah al-jumhūr*, in recognition of the practice of *madhāhib*,

---

<sup>13</sup> Ibn Khaldūn, *Muqaddimah* (Beirut: Dār al-Fikr, 2001), 1:573-579.

<sup>14</sup> *Ibid.*; Muḥammad Abū Zahrah, *Uṣūl al-Fiqh* (al-Qāhirah: Dār al-Fikr al-'Arabī, 1958), 19.

<sup>15</sup> Ibn Khaldūn, *Muqaddimah*, 576.

<sup>16</sup> *Ibid.* Ibn Khaldūn distinguishes the approaches of these two works, *al-Maḥṣūl* deals with enormous proof and arguments, while *al-Aḥkām* deeply engages in affirming the *madhāhib* by deliberating the problems. See: *Muqaddimah*, 576.

namely *al-Mālikiyyah*, *al-Shāfi‘iyyah*, *al-Ḥanābilah*, *al-Zāhiriyyah* and even *al-Mu‘tazilah*.<sup>17</sup>

The second approach is known as *ṭarīqah al-ḥanafīyyah* or *ṭarīqah al-fuqahā’*. This method verifies the basic rules outlined by the precedent or forefather jurists and then the disciples discussed them extensively.<sup>18</sup> This approach is accomplished in extensive use of legal principles and its approach is deductive and “pragmatic in the sense that theory is formulated in the light of its application to relevant issues”.<sup>19</sup> In Ahmad Hassan’s view, this approach emphasizes on the textual and real cases. Ibn Khaldūn lists ‘Abd Allāh bin ‘Umar al-Dabbūsī (d. 430 A.H/1028 A.D), ‘Alī bin Muḥammad al-Bazdawī (d. 484 A.H/1089A.D), Aḥmad bin ‘Alī Ibn

---

<sup>17</sup> Abd. Al-Karīm bin ‘Alī bin Muḥammad al-Namlah, *al-Shāmil fī Ḥudūd wa Ta‘rīfāt Muṣṭalahāt ‘Ilm Uṣūl al-Fiqh* (Riyād: Maktabah al-Rushd, 2009), 1:119. The author extensively lists down the works under this approach according to the specific *madhhab*; the Mālikī, *al-Taqrīb wa al-Irshād* by al-Bāqilānī, *Iḥkām al-Fuṣūl* by al-Bājī, *Muntahā al-Sūl* by Ibn Ḥājjib, *Tanqīḥ al-Fuṣūl* and its commentary by al-Qarāfi, its commentary by al-Shūshāwī, *al-Ḍiyā’ al-Lāmi’* by Ibn Ḥalūlū, *Nafā’is al-Uṣūl* by al-Qarāfi; the Shāfi‘ī, *al-Risālah* by the Imām himself, *al-Burhān*, *al-Talkhīṣ* and *al-Waraqāt* by al-Juwaynī, *al-Luma’* and its commentary *al-Luma’ wa al-Tabṣīrah* by al-Shīrāzī, *Qawāṭī’ al-Adillah* by Ibn al-Sam‘ānī, *al-Mustasfā* and *al-Mankhūl* by Imām al-Ghazālī, *al-Iḥkām* by al-Āmidī, *al-Wuṣūl ilā ‘ilm al-Uṣūl* by Ibn Burhān, *al-Maḥṣūl* and *al-Muntakhab* by al-Rāzī, *al-Minhāj* by al-Bayḍāwī and its commentaries among others by Ibn al-Subkī, al-Ibhāj and its commentary by al-Asnawī, *Nihāyat al-Sūl* and its commentary by al-Aṣfahānī, *al-Baḥr al-Muḥīṭ* by al-Zarkashī; the Ḥanābilah, *al-‘Uddah* by Abī Ya‘lā, *al-Tamhīd* by his student Abī al-Khaṭṭāb, *al-Wāḍiḥ* by his other student Ibn ‘Aqīl, *Rawḍat al-Nāẓar* by Ibn Qudāmah—this work contains three volumes which have been edited (*taḥqīq*) and have been made a commentary in eight volumes, namely *Ithāf Zawā’ir al-Baṣā’ir*, *Uṣūl* by Ibn Maflāh, *al-Tahrīr* and its commentary *al-Taḥbīr*; among the *al-Zāhiriyyah*, *al-Iḥkām fī Uṣūl al-Aḥkām* by Ibn Ḥazm; the *Mu‘tazilah*, *al-Mu‘tamad* by Ibn Ḥusīn al-Baṣrī, *al-‘Umd* by Qāḍī ‘Abd. Al-Jabbār and its commentary *al-‘Umd* by Abī al-Ḥusīn al-Baṣrī.

<sup>18</sup> Abū Zahrah, *Uṣūl*, 21.

<sup>19</sup> This is according to Hashim Kamali. See *Principles of Islamic Jurisprudence* (Cambridge: Islamic Text Society, 1991), 7.

al-Sā'ātī (d. 694 A.H/1295 A.D) as the best works under this approach.<sup>20</sup>

However, there is a synthesis approach developed by other jurists. Ṣadr al-Sharī'ah, for instance, in his opening of *al-Tawḍīḥ*, alludes the science of *uṣūl al-fiqh* as a combination of the *ma'qūl* (rational)<sup>21</sup> and *manqūl* (textual).<sup>22</sup> These two terms refer to the two approaches in *uṣūl al-fiqh*, the *ṭarīqah al-shāfi'iyyah* or *al-mutakallimīn* or *al-jumhūr* and the *ṭarīqah al-ḥanafīyyah* or *ṭarīqah al-fuqahā'* respectively. Al-Taftāzānī<sup>23</sup> concurs with Ṣadr al-Sharī'ah's view and furthermore, he asserts that the combination of *manqūl* and *ma'qūl*, is actually referring to a new approach, the *ṭarīqah al-muta'akhhirīn* (the method of the later) or *ṭarīqah al-jam'* (the synthesis approach) that he particularly represents. The approach synthesizes both the approaches of the *fuqahā'* as well as the *mutakallimīn*.<sup>24</sup> Al-Taftāzānī's unique position demonstrates his

---

<sup>20</sup> Al-Namlah, *al-Shāmil fī Hudūd wa Ta'rifāt Muṣṭalāḥāt* (Riyāḍ: Maktabah al-Rushd, 2009), 1:118, outlines some additional works that Ibn Khaldūn did not mention, for instance, *al-Sharā'ī* by al-Maturīdī, *Risālah* by al-Karkhī, *Masā'il al-Khilāf* by al-Ṣamīrī, and *al-Mizān* by al-Samarqandī.

<sup>21</sup> *Ma'qūl* is what is perceived in the mind at the high order, either it is existent or non-existent, it is simple or it is complex. It has two categories, *ma'qūl awwāl* and *ma'qūl thānī*. Given the meaning of *ma'qūl thānī* is the intelligible independent from any accidents (*'awāriḍ*), like the concept of *ḥalāl*, *ḥarām*, *mubāḥ*, *makrūh* and *ijāz*, therefore they are considered under the category of *ma'qūl thānī*. See al-Tahānāwī, *Kashshāf al-Iṣṭilāḥāt*, s.v. "al-Ma'qūl".

<sup>22</sup> *Manqūl* is taken from *naql*, which literally means written or recorded.

<sup>23</sup> His full name is Sa'd al-Dīn Mas'ūd (Maḥmūd) bin 'Umar al-Taftāzānī. See his full biography in Mohd Hilmi Ramli, "Al-Taftāzānī's Sources of Knowledge in Sharḥ al-Talwīḥ 'alā al-Tawḍīḥ li Matn al-Tanqīḥ fī Uṣūl al-Fiqh", *Afkar: Jurnal Akidah dan Pemikiran Islam*, (2020), 155-204.

<sup>24</sup> Al-Taftāzānī being the commentary of Ṣadr al-Sharī'ah's *al-Tanqīḥ*, which is an elaboration of his own book, *al-Tawḍīḥ*. This book is, in fact, the abridged version of *Uṣūl al-Bazdawī*, al-Rāzī's *al-Maḥṣūl* and Ibn Ḥājjib's *al-Mukhtaṣar*. See Abū Zahrah, *Uṣūl*, 24; al-Namlah, *al-Shāmil fī Hudūd wa Ta'rifāt Muṣṭalāḥāt*, 1:119. According to 'Abd. al-Karīm

ability to see thoroughly the common key features between the two approaches, and at the same time be able to see the distinctive differences between them, that allow him to combine and separate the best aspects from the both approaches. This study is of the view that his approach is not unusual, because the period at which he was living was the crystallization and synthesization of sciences in almost many fields.

## THE NATURE OF MAN

One cannot deny that there is a metaphysical assumption under the study of man.<sup>25</sup> The Muslim philosophers, theologians, and metaphysicians have thoroughly expounded the metaphysical and psychological nature of man—which includes man’s conception of knowledge, the nature of soul, the cognitive process, and the functions of perceptive senses. These aspects one might postulate that they are only the properties in the domain of *falsafah*, *kalām* or *taṣawwūf*. On the contrary, these metaphysical aspects of man are also discussed by jurists of prominent stature, like al-Taftāzānī, who discusses these in his work of *uṣūl al-fiqh*.

This is because only the *mukallaḥ*—the person upon whom the law binding—is the subject of *Shārī’ah* rulings. Therefore, most jurists, for instance, al-Taftāzānī see the importance of explaining the nature of *insānī* of *mukallaḥ*, or in other words, the aspect of man of *mukallaḥ*. From the metaphysical perspective, the concept of ‘person’ is related to *taklīf* what the science of *uṣūl al-fiqh* seeks to address. Al-Taftāzānī puts forth the importance of *uṣūl* in arriving

---

al-Namlah, there are enormous works written by this approach, among others, *Badī’ al-Nizām* by al-Sa’ātī.

<sup>25</sup> See the enormous and profound exposition by Syed Muhammad Naquib al-Attas on the nature of man, “The Nature of Man and the Psychology of the Human Soul”, in Chapter IV of *Prolegomena to the Metaphysics of Islām* (KL: ISTAC, 1998); *On Justice and the Nature of Man* (KL: IBFIM and Akademi Kenegaraan, 2016), and the recent work *Islām: The Covenants Fulfilled* (KL: Ta’dib International, 2023); and other important commentaries, Wan Mohd Nor Wan Daud, *Educational Philosophy and Practice of Syed Muhammad Naquib al-Attas* (KL: ISTAC, 1998); and Muhammad Zainiy Uthman, *al-Attas’ Psychology* (KL: HAKIM, 2022).

at the best judgment of the intended object of knowledge (*al-nāfi' fī al-wuṣūl ilā madārik al-maḥṣūl*).<sup>26</sup> The science of *uṣūl al-fiqh* as elucidated by al-Taftāzānī becomes essential in explaining the metaphysical nature of the 'person' in Islām because it deals with the 'person' itself known as the *mukallaf* or *al-maḥkūm 'alayh*.

On the role of man as *sine qua non* to *mukallaf*, al-Ghazālī brilliantly uses a metaphor in explaining man's role in the anatomy of the science of *uṣūl al-fiqh*. He organizes it as follows; 1) the fruit (*al-thamarah*); 2) the tree (*al-muthmir*); 3) the method of harvesting (*turuq al-istiḥmār*); 4) the harvester (*al-mustathmir*).<sup>27</sup> The fruit, which is the outcome or product of the legal rulings, means the legal classification of human actions pertains to the legal rulings, namely, mandatory, preferred, permitted, disliked, and forbidden, the categories of valid, null, and defective, and other classificatory terms.<sup>28</sup> The tree, which bears the fruit, refers to the sources or proves (*adillah*). According to al-Ghazālī, there are three accepted sources only, the Qur'ān, the Sunnah, and the Consensus (*ijmā'*).<sup>29</sup> The method of harvesting, al-Ghazālī asserts four methods: *dilālah bi al-ṣiḡhāh wa al-manẓūm* (by virtue of the words and its structure), *dilālah bi al-mafhūm* (by virtue of its understanding), *dilālah bi al-ḍarūrah wa al-iqtidā'* (by virtue its self-evident and requirement), and *dilālah bi al-ma'nā al-ma'qūl* (by virtue of its meaning of reasoning).<sup>30</sup> Harvester, he refers to the *al-mujtahid*. As for the *al-mujtahid*, there must be known his characters and the conditions to be *al-mujtahid*.<sup>31</sup>

---

<sup>26</sup> Al-Taftāzānī, *Sharḥ al-Talwīḥ 'alā al-Tawḍīḥ li Matn al-Tanqīḥ fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-'Ilmiyah, n.d; Maktabah Muḥammad 'Alī Sūbayh, n.d), 28. The work initially known as *al-Talwīḥ ilā Kashf Ḥaqā'iq al-Tanqīḥ*.

<sup>27</sup> Al-Ghazālī, *al-Mustasfā*, 1:32.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

Drawing from al-Ghazālī's insights, it is essential to expand upon and explore the requirements of the 'harvester.' If al-Ghazālī refers to the 'harvester' as one of the *al-mujtahid*, then this individual must also be among those knowledgeable and discerning in *uṣūl al-fiqh*, including scholars (*'ulamā'*), jurists (*fuqahā'*), muftis, researchers, academicians, and students or seekers of advanced knowledge. This raises the following question: What are the criteria for a qualified 'harvester'? Definitely, it must be the epistemological-psychological aspect, such as the understanding of man's nature, the nature of knowledge, and the nature of perceptive faculties must be the priority. This is in accordance to the main purpose of the science of *uṣūl al-fiqh*, namely, for the attainment of the deeply rooted attribute in the soul (*malakah*)<sup>32</sup> by the people who devoted themselves in the field to derive the ruling of *Sharī'ah*.<sup>33</sup> These people are essentially required to be constantly trained and developed in deep philosophical aspects of the *uṣūl al-fiqh*, while at the same time cognizant of the current philosophical and legal challenges.

### THE SYNTHESIS WORK OF UṢŪL AL-FIQH: AL-TAFTĀZĀNĪ'S AL-TALWĪḤ 'ALĀ AL-TAWDĪḤ

In most of the works in the *uṣūl al-fiqh* especially among the *ṭarīqah al-shāfi'īyah* or *al-mutakallimīn* or *al-jumhūr*, the jurists deal significantly with the question of epistemology, such how the knowledge of certainty arrived at one's understanding, how to distinguish between *ḥaqīqah* (real) and *majāz* (metaphor) and so forth. However, the works from the line of al-Taftāzānī's *al-TalwīḤ 'alā al-TawdīḤ* is a unique work of *uṣūl al-fiqh* in itself because the piece is a synthesis between the *ṭarīqah al-mutakallimīn* and *al-fuqahā'*. It represents the *ṭarīqah al-mutā'akhhirīn*.

Al-Taftāzānī's *al-TalwīḤ 'alā al-TawdīḤ* is actually a commentary work of another great work, Ṣadr al-Sharī'ah's *Tanqīḥ al-Uṣūl*. *Tanqīḥ al-Uṣūl* is a commentary of 'Ubayd Allāh bin

---

<sup>32</sup> Al-Jurjānī defines "*malakah*" as *ṣifah rāsikhah fi al-nafs*.

<sup>33</sup> See Ṭāsh al-Kubrā, *Miftāḥ al-Sa'adah wa Miṣbāḥ al-Siyādah*, ed. Kāmil Bakrī & 'Abdul Wahhāb Abū al-Nūr (al-Qāhirah: Dār al-Kutub al-Ḥadīthah, 1982), 2:163.

Mas'ūd bin Tāj al-Sharī'ah bin Ṣadr al-Sharī'ah al-Thānī al-Maḥbūbī (d. 747 A.H).<sup>34</sup> He wrote a *matn* of *uṣūl al-fiqh* entitled *Tanqīh al-Uṣūl*, a compendium on *uṣūl al-fiqh*, and then he himself did a commentary of the work, which is *Tawḍīh*. In addition, he wrote a commentary on the *Wiqāyāt* of his grandfather Ṣadr al-Sharī'ah al-Awwāl, that is *Nuqāyah*, an abridgment of the commentary on the *Wiqāyāt*.<sup>35</sup> Ṣadr al-Sharī'ah's *Tanqīh al-Uṣūl* is a summary of al-Rāzī's *al-Maḥṣūl*, al-Bazdawī's *Uṣūl* and Ibn al-Ḥājjib's *Mukhtaṣar*. He then wrote a commentary on his own book entitled *al-Tawḍīh*, to which al-Taftāzānī added a marginal commentary entitled *al-Talwīh*.<sup>36</sup> All these books, *al-Tanqīh*, *al-Tawḍīh*, and *al-Talwīh* are combined in a single publication that being referred here. Table 1 provides the list of the works and their levels.

Table 1: List of Works and their Levels.

Author (s)	Work (s)	Level (s)
Ubayd Allāh bin Mas'ūd bin Tāj al-Sharī'ah bin Ṣadr al-Sharī'ah al-Thānī al-Maḥbūb	<i>Tanqīh al-Uṣūl</i>	<i>Matn</i> (Main text)

<sup>34</sup> He is a scholar of profound knowledge. His works, among others *Sharḥ al-Wiqāyah*, *al-Washāḥ fī al-Ma'ānī*, *Ta'dīl al-'Ulūm fī Aqsām al-'Ulūm al-'Aqliyah*, and *Tanqīh 'alā al-Tawḍīh*. See al-Qannūjī, *Abjad al-'Ulūm*, 775.

<sup>35</sup> Ahmad bin Mohamed Ibrahim, *Sources and Development of Muslim Law* (Singapore: Malayan Law Journal, Ltd. 1965), 114.

<sup>36</sup> Ṭāhā Jābir al-'Alwānī, *Uṣūl al-Fiqh al-Islāmī: Source Methodology in Islamic Jurisprudence* (Herndon, Virginia: The International Institute of Islamic Thought (IIIT), 1990), 57.

Ubayd Allāh bin Mas‘ūd bin Tāj al-Sharī‘ah bin Ṣadr al-Sharī‘ah al-Thānī al-Maḥbūb	<i>Tawḍīḥ ‘alā Tanqīḥ al-Uṣūl</i>	<i>Sharḥ</i> (Commentary)
Sa‘d al-Dīn Mas‘ūd al-Taftāzānī	<i>al-Talwīḥ ‘alā al-Tawḍīḥ</i>	<i>Ḥawāshī Super</i> (Commentary)

Ḥājī Khalīfah in *Kashf al-Zunūn* describes Ṣadr al-Sharī‘ah’s *Tanqīḥ al-Uṣūl* is a refined text (*matn laṭīf*), which was well known by many people of his time.<sup>37</sup> The work itself was composed due to the intellectual circumstances of the time, where immense scholars of high reputation were rigorously devoting themselves to study, teach, and discuss al-Bazdawī’s *Uṣūl*.<sup>38</sup> However, there were scholars who overzealously abused the expression of al-Bazdawī in his *Uṣūl*. Thus, Ṣadr al-Sharī‘ah was aware of the situation and he took the responsibility to fix the problem and to clarify the misconception on al-Bazdawī’s thought and teaching.<sup>39</sup>

Al-Taftāzānī made a great commentary on *Tanqīḥ* of Ṣadr al-Sharī‘ah. The work is named as *al-Talwīḥ ‘alā al-Tawḍīḥ*. It is also known as *al-Talwīḥ ilā Kashf Ḥaqā’iq al-Tanqīḥ*.<sup>40</sup> Al-Taftāzānī’s *al-Talwīḥ* was made supercommentaries (*ḥawāshī*) by many scholars after him, for instance, Burhān al-Dīn Aḥmad bin

<sup>37</sup> Ḥājī Khalīfah Kātib Chellebī, *Kashf al-Zunūn ‘an Usāmā wa al-Kutub wa al-Funūn* (Istanbul: n.p, n.d), 1:496.

<sup>38</sup> *Ibid.* Ḥājī Khalīfah regards al-Bazdawī’s *Uṣūl* as a great work that contains subtleties contemplation and condensed explanation.

<sup>39</sup> *Ibid.*

<sup>40</sup> See ‘Alī Juma‘ah, *al-Kutub al-Mukawwanah, al-Kutub al-Mukawwanah li fikr al-Islāmī al-Sunnī* (al-Qāhirah: Dār al-Ṣāliḥ 2018), 245.

‘Abd. Allāh al-Siyūwāsī (d. 800 A.H),<sup>41</sup> al-Sayyid al-Jurjānī (d. 816 A.H),<sup>42</sup> al-‘Allāmah Muḥammad bin Firāmaraz, known as Mawlā Khasrū (d. 885 A.H),<sup>43</sup> al-‘Allāmah Ḥasan bin Muḥammad Shāh al-Fannārī (d. 886 A.H),<sup>44</sup> al-‘Allāmah ‘Abd. al-Ḥakīm bin Shams al-Dīn al-Sayalakutī,<sup>45</sup> al-‘Allāmah Aḥmad bin Sulaymān bin Kamāl Bāshā (d. 940 A.H),<sup>46</sup> and Abū al-Sa‘ūd bin Muḥammad al-‘Imādī (d. 983 A.H).<sup>47</sup>

It was reported in Ḥājī Khalīfah’s *Kashf al-Zunūn*, that Ṣadr al-Sharī‘ah’s *Tanqīḥ* (*matn*) and its *al-Tawdīḥ* (*sharḥ*) were complete works in the science of *uṣūl al-fiqh*, which a summary of great ideas from the great works (*mabsūt*) of his time.<sup>48</sup> Al-Taftāzānī’s *al-Talwīḥ* was a commentary that embarked on those works in order to get deeper and profound elucidation of Ṣadr al-Sharī‘ah’s thoughts on *uṣūl al-fiqh*, hence it is called as *al-Talwīḥ ilā Kashf Ḥaqā’iq al-Tanqīḥ*.<sup>49</sup> Al-Taftāzānī’s *al-Talwīḥ* was completed at the end of *Dhū al-Qā‘idah* in year 758 A.H/November 1357 while he was at Gulistani, one of the states of Turkistān.<sup>50</sup>

Al-Taftāzānī’s method in composing *al-Talwīḥ* is unique, original and brilliant because he incorporated *falsafah*, *kalām* and *sharī‘ah* in a harmonious and congenial way demonstrating the

---

<sup>41</sup> *Ibid.*, 246.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> See ‘Alī Juma‘ah, *al-Kutub al-Mukawwanah, al-Kutub al-Mukawwanah li fīkr al-Islāmī al-Sunnī* (al-Qāhirah: Dār al-Ṣāliḥ 2018), 245.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Ḥājī Khalīfah Kātib Chellebī, *Kashf al-Zunūn ‘an Usāmā wa al-Kutub wa al-Funūn* (Istanbul: n.p, n.d), 1:496.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.* See also Carl Brockelmann, *Geschichte der arabischen Litteratur (GAL)* (Leiden: Brill, 2012), 2:280.

integral elements between those sciences. His style of writing sophisticated, eloquent with full of rhetorical (*balāghah*) expression,<sup>51</sup> but yet, the work itself seems suggested to be used for students of advanced level. His elucidation demonstrates an in-depth knowledge of *falsafah* (philosophy), for instance, in the ideas of the intellect (*'aql*) as the cause for the *mukallaf*.

The concept of *'aql* that has the developmental stages from latent potency to absolute perfection is originally derived from the Neo-Platonism but al-Taftāzānī' courageously infused the idea to the concept of *mukallaf*. Thus, it implies a *mukallaf* as a person who is going through the perfection of *'aql* in understanding fully the God's injunction (*khiṭāb*). *'Aql* itself is not a passive substance, but indeed, it is a source of knowledge as well as the knowledge itself. Given that creative synthesis by al-Taftāzānī, *uṣūl al-fiqh* is not merely a science of deriving proves, but also, it demonstrates the scientific tradition in Islām.

### MAN AS A *AL-MAHKŪM 'ALAYH* (SUBJECT TO LAW)

The real person who is subjected to Law in Islam is the *mukallaf* whose nature is real and true corresponding to what is in reality (*al-*

---

<sup>51</sup> Al-Taftāzānī is cognizant of the close relation between the *uṣūl al-fiqh* and *al-balāghah*, *al-ma'ānī*, *al-bayān*, and *al-badī'*. These sciences facilitate the clear, intelligible and eloquence understanding of the expression in the Qur'ān and Ḥadīth in order to derive the rulings from them. Al-Taftāzānī offers an insightful thought on the limitation of these sciences if they are restricted to their own domain and separated from other sciences. Ḍiyā' al-Dīn al-Qālish rephrases al-Taftāzānī's remark based on his work, *al-Mukhtaṣar*, "most language expression examples are vague, it is because they are matter of the taste only. Their nature of truth will be different according to the nature of man's respective understanding" (*anna kathīran min al-i'tibārāt al-balāghiyah ḡannī lianna manātahā al-dhawq wa huwa yakhtalif bi ikhtilāf al-afhām*). In most cases also, given al-Taftāzānī's innate talent (*malakah*) and eloquent in those sciences, he employs his own definition and understanding in elucidating the proof and evidence in *Sharī'ah*. See Ḍiyā' al-Dīn al-Qālish, *al-Taftāzānī wa Ārāhu al-Balāghiyah* (Beirut: Dār al-Nawādir, 2010), 140-145.

*wāqi'*) as well as belief (*al-i'tiqād*).<sup>52</sup> In other words, the person is spiritually and physically exists, the only one who is solely given the *taklīf*; the only one who is conscious of his self-responsibility as well as responsibility to others, which includes animals, plants, and the universe, because of the trust that God has given. This person, because of his good and bad deeds, will not be responsible and judged in this world only, he is also responsible in the Hereafter before the God the Most Exalted One. Therefore, whichever God's creations like animal, plants, and inanimate things and man's artificially created entities like corporations are excluded in the real meaning of person.<sup>53</sup>

The term *taklīf* in *Shariah* refers to the assignment of legal responsibility. The individual who bears this responsibility is known as *mukallaḥ* or also called as *al-Maḥkūm 'alayh*. *Mukallaḥ* is the

---

<sup>52</sup> This category of *real* is derived from al-Taftāzānī's work *Tahzīb al-Sa'd* or known also as *Mukhtaṣar al-Ma'ānī*, where he distinguishes the categories of *al-ḥaqīqah al-'aqliyah*, i) *Mā yuṭābiq al-wāqi' wa al-'itiqād*; ii) *Mā yuṭābiq al-'itiqād* only; iii) *Mā yuṭābiq al-wāqi' only*; iv) *Mā lā yuṭābiq al-wāqi' wa al-'itiqād*. Al-Taftāzānī, *Tahzīb al-Sa'd* (al-Qāhirah: Maṭba'ah Ḥijāzī, n.d), 2:16. In the same manner, al-Taftāzānī defines "*al-ḥaqq* as the principle that correspond to the reality, which also includes the sayings, the belief, the religion, the legal thought, and whatever contradict to this, it is *bāṭil*." (*al-ḥaqq huwa al-ḥukm al-muṭābiq li al-wāqi', yuṭlaqu 'alā al-aqwāl wa al-'aqā'id wa al-adyān wa al-madhāhib bi i'tibārī ishtimāliḥā 'alā dhālik wa yuqābiluhu al-bāṭil*), al-Taftāzānī, *Sharḥ al-'Aqā'id al-Nasafi*, 88. See also al-Tahānawī, *Kashshāf al-Iṣṭilāḥāt*, s.v. "al-ḥaqq"; Al-Attas explains, "...*ḥaqq* denotes what is real as well as what is true, we are saying that *ḥaqq* has an aspect pertaining to the real and an aspect pertaining to the true in the sense that the real refers to the ontological and the true to the logical orders of existence." See *Prolegomena to the Metaphysics of Islām*, 128-132.

<sup>53</sup> See the thorough discussion on the relation of *taklīf* and *ahlīyyah* with legal person in Mohd Hilmi Ramli, "An Analysis of Legal Person Using *Taklīf* and *Shakḥ I'tibārī* in Islām" (Thesis Doctor of Philosophy, UTM, 2020), 121-185. and also the history of legal person in Mohd Hilmi Ramli, "The Genesis of Legal Person in the Western Tradition: Its Concept, History and Development", *International Journal of Islamic Finance and Sustainable Development* (2025), 1:105-118.

subject (*ism al-maf'ūl*) of the verb *kallaḥa*.<sup>54</sup> All jurists, then and now, including al-Taftāzānī discusses the *mukallaḥ* in the taxonomy of *al-ḥukm* as follows; first, the *al-Ḥākim* (the Law Giver); second, *al-Maḥkūm bihi* or *fihi* (the nature of the act); and third, the *al-Maḥkūm 'Alayh* (the *Mukallaḥ* or the Subject).<sup>55</sup> This classification, according to Nyazee, is credited to Ṣadr al-Sharī'ah for elaborating the structure of Islamic law in this way, although he borrowed this idea from those who preceded him, which is not unusual in Islamic law.<sup>56</sup> However, the way Ṣadr al-Sharī'ah and then followed by al-Taftāzānī arranged this topic is not in the beginning of their *uṣūl al-fiqh* works, because they begin with definitions, rules of literal construction, sources, and lastly the *al-ḥukm al-shar'ī*. The contemporary jurists' works on *uṣūl al-fiqh* either in English or Arabic, on the other hand, take a different approach by arranging the discussion of *al-ḥukm al-shar'ī* in the beginning of their works, which are the opposite approach from Ṣadr al-Sharī'ah and the earlier *uṣūliyyūn* (jurists).<sup>57</sup> The reason why they differ in their approach is not clearly delineated, but it is believed that by discussing the principles of legal rulings (*al-ḥukm*) in the beginning of the *uṣūl al-fiqh* works, will clarify the *raison de e'tre* of the *ḥukm*, before moving to other topics such as the sources, the theories of interpretation, and the *ijtihād*.<sup>58</sup>

---

<sup>54</sup> The Arabic verb in this form denotes an intense kind of duties imposed by someone superior or the God. See for instance Zayn al-Dīn al-Rāzī, Shaykh al-Imām Muḥammad bin Ābī Bakr bin 'Abd. Al-Qādir (d. 1266 A.D), *Mukhtār al-Ṣiḥāḥ* (Beirūt: Maktabah Lubnān, 1986), s.v. “kaf-lam-fa”, 240.

<sup>55</sup> Al-Taftāzānī, *al-Talwīḥ*, 2:122.

<sup>56</sup> Nyazee, *Theories*, 35.

<sup>57</sup> See for instance the works in English by Nyazee, *Theories*, and in Arabic by Wahbah al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī* (Dimashq: Dār al-Fikr, 1986), 33-192.

<sup>58</sup> According to Nyazee, he himself has retained, as far as is possible, the essence of the traditional pattern on which the works of *uṣūl al-fiqh* are written, so that the reader accustomed to them may not feel distracted. In fact, he mentioned that he has endeavored to develop a theory that explains the various aspects of Islamic law that is balanced between the traditional way of explanation and the modern mind's train of thought.

As a *mukallaf*, it entails the person not only to realize his individual self as the recipient of responsibility (*taklīf*) to perform duties and responsibilities to God, but more importantly, the *mukallaf* has two prerequisite conditions. This is the part where the metaphysical explanation on the nature of man; first, the intellect ('*aql*); and second, legal capacity (*ahlīyyah*).<sup>59</sup> The theologians and jurists are in consensus that intellect is the *manāṭ* of the responsibility (*taklīf*); the term *manāṭ* means 'the place of something is suspended' as well as 'the cause' ('*illah*).<sup>60</sup> Without the intellect, responsibility is deemed null and void. By virtue of the intellect, the

---

This is based on more than a decade of research and study of this law. See Nyazee, *Theories*, 5-6.

<sup>59</sup> Contemporary jurists are inclined to put the first condition of being a *mukallaf* as 'the ability to understand the God's injunctions', 'the ability to understand the proof of responsibility as prescribed by God in the Qur'an and Ḥadīth', see for example in Nyazee, *Theories*, 75 and 'Abd. al-Wahhāb Khallāf, *ʿIlm Uṣūl al-Fiqh* (al-Maktabah al-Kuwayṭīyah, 1968), 134. This is a vague description because there must be something prior to and of essential importance that could explain the ability of the *mukallaf* to understand God's injunction. That is why the previous jurists like *Ṣadr al-Sharī'ah* and al-Taftāzānī, and many others, they explicitly assert the '*aql*' as the medium to understand the God's injunction. From the '*aql*', it trickles down enormous discussion as we shall discuss.

<sup>60</sup> Fakhr al-Dīn al-Rāzī, *Muḥaṣṣal Afkār al-Mutaqaddimīn wa al-Muta'akhirīn min al-'Ulamā' wa al-Ḥukamā' wa al-Mutakallimūn* with a *Talkhīṣ* by 'Allāmah Naṣīr al-Dīn al-Ṭūsī (al-Qāhīrah: Maktabah al-Kullīyah al-Azhariyyah, n.d), 104; 'Aḍud al-Dīn 'Abd Raḥman al-Ījī, *al-Mawāqif* and his commentary (*sharḥ*) by al-Sayyid al-Sharīf 'Alī Muḥammad al-Jurjānī, *Sharḥ al-Mawāqif*, and the super-commentaries (*ḥawāshī*) by al-Sayyālakūtī and al-Jalabī compiled by Maḥmūd 'Umar al-Dimyāṭī, (Beirūt: Dār al-Kutub al-'Ilmiyah, 1998), 6:49; al-Taftāzānī, *al-Talwīḥ*, 2:185. The term *manāṭ* comes from the verb *nāṭa*, which means to hang, to suspend, or to attach. When it is used in the sense of '*aql vis-à-vis taklīf*', it means something of '*aql*' that is being suspended to the *taklīf*. What is the 'something'? According to al-Tahānawī, it is the theory (*al-naẓr*) as well as the diligence (*ijtihād*) in understanding the existent of the cause (*al-'illah*) that is being attached to *taklīf*. So, it means that *taklīf* presupposes a form of *a priori* knowledge. Al-Tahānawī, *Kashshāf al-Iṣṭilāḥāt*, s.v. "al-manāṭ".

*mukallaf* is given knowledge of his own legal capacity (*ahlīyyah*) and its degrees in bearing the *taklīf*.

*Al-Maḥkūm ‘alayh* is also known to the jurists (*fuqahā’*) as *al-mukallaf*, according to the jurists (*fuqahā’*), is a responsible person,<sup>61</sup> who possess legal capacity, whether he acts directly or through delegated authority<sup>62</sup> and he is a free Muslim who is sane (*‘āqīl*) and of age (*bāligh*).<sup>63</sup> Al-Taftāzānī defines it as ‘the subject who clings the God’s injunction of his actions’ (*alladhī ta’allaq al-khiṭābu bi fi’liḥ*).<sup>64</sup> An infant baby, on the contrary, is not incumbent upon them a *taklīf* because they have not developed a proper intellect yet.

This person known as *mukallaf* must acquire in himself necessary knowledge about God’s injunction because the expression

---

<sup>61</sup> Shaykh Muṣṭafā al-Zarqā, *al-Madkhāl al-Fiqhī al-‘Ām*, trans. Muhammad Anas al-Muhsin et al., *Introduction to Islamic Jurisprudence* (Kuala Lumpur: IBFIM, 2014), 7. Al-Taftāzānī in his commentary of Imām Nawāwī’s *Arbā’īn al-Āḥādīth* explains that the *mukallaf* is a person who is matured in his intellect (*al-‘uqalā’ al-bālighīn*). Intellect is necessary so that the responsibility can be endowed to man. Without intellect, the responsibility is not eligible and invalid. See Al-Taftāzānī, *Sharḥ al-Taftāzānī ‘alā al-Āḥādīth al-‘Arba’īn al-Nawawīyyah*, ed. Muḥammad Ḥassan Muḥammad Ḥassan Ismā’īl (Beirūt: Dār al-Kutub al-‘Ilmīyyah, 2004), 32.

<sup>62</sup> Imran Khan Nyazee, *Islamic Jurisprudence (Uṣūl al-Fiqh)* (New Delhi: Adam Publishers & Distributors, 2004), 109.

<sup>63</sup> Joseph Schacht, *An Introduction to Islamic Law*, 124. Actually God also subjects the non-Muslims the *taklīf*. But the *uṣūlīyyūn* are disputed where the non-Muslims are subjected to both the principle (*uṣūl*) or branch (*furū’*) matters, or only subjected to principle and not branch, or subjected only to branch and not principle. But given the general proof in the Qur’ān, God address *taklīf* to all human beings, including Muslims and non-Muslims, for instance, in the verse *al-Furqān*: 63, “Wa ‘ibād al-Raḥmān alladhīna yamshūna ‘alā al-‘arḍi hawnan” (And the servants of the Most Merciful are those who walk upon the earth easily). Here it applies to both Muslims as well as non-Muslims. See Haitham Hilāl, *Mu’jam Muṣṭalaḥ al-Uṣūl* (Beyrūt: Dār al-Jīl, 2003), s.v. “al-mukallifūn”, 323.

<sup>64</sup> Al-Taftāzānī, *al-Talwīḥ*, 2: 156.

*ta'alluq*<sup>65</sup> that al-Taftāzānī used denotes an intensive form of the verb coming from the verb '*aliqa*. '*Aliqa*, literally means 'to hang, be suspended, to stick, cling, adhere'.<sup>66</sup> In a simple understanding, it means a situation where a state of being of lower level is hanging or clinging to another state of being which is higher or superior. When it is used in the definition of *mukallaf*, it means the person—the *mukallaf*—is intensively and assiduously embracing the meaning and purpose of what God has instructed him to do, and what God has prohibited him from doing. It also implies that the person has already known about the knowledge that Allāh has given. The expression of *ta'alluq* also implies a form of intimate relationship between two parties, of which one of this party must be of erudite or conversant and be influential to others, and the other party, must be of lower knowledge that this party is willing to learn and absorb the knowledge. Al-Tahānawī presents the understanding of *mutakallimūn* regarding *ta'alluq*, where he finds that according to *mutakallimūn*, it means *al-iḍāfah bayn al-'ālim wa al-ma'lūm* (the adjoin between the knower and the known).<sup>67</sup>

The root word '*a-li-qa* shares the same root word of '*a-qa-la*. '*A-qa-la* means 'to hobble with the robe of the camel, to intern, confine, detain, arrest, put under arrest, to have intelligence, to

---

<sup>65</sup> According to al-Zamakhsharī, *ta'alluq al-aḥkām* is one of the sciences of understanding the ruling (*al-ḥukm*). Rulings can be effective because of the *mukallaf*'s action, it cannot be effective on its own. See Badr al-Dīn Muḥammad bin Bihādir bin 'Abdullāh al-Zarkashī, *al-Baḥr al-Muḥīt fī Uṣūl al-Fiqh*, (Kuwayt: Wizārah al-Awqāf al-Islāmiyah bi al-Kuwayt, 1992), 5: 119.

<sup>66</sup> See William Lane, *Lexicon* (Beirut: Librairie Du Liban, 1968), "'aliqa'", 5: 2150-2155; Hans Wher, *A Dictionary of Modern Arabic* (Beirut: Librairie Du Liban, 1980), "'aliqa'", 634.

<sup>67</sup> Al-Tahānawī, *Kashshāf al-Iṣṭilāḥāt*, s.v. "'ta'alluq". The word *bi* (of) which al-Taftāzānī used in the definition (... *bi fī 'lih*) also implies a kind of intimate relationship. See the variance usage of *bi* in William Wright, *A Grammar of the Arabic Language*, 3<sup>rd</sup>. ed. (Beirut: Librairie Du Liban, 1996), 159.

realize, to seize, to restrain, and to bind'.<sup>68</sup> In this context, al-Taftāzānī makes a connection of the process of *ta'alluq*; the one who clings to the God's injunction on his actions, with the intellect. Without the intellect and proper usage of it, the person would not be able to understand the meaning and purpose of instruction or prohibition given by God.

The discussion on intellect is given prominent attention in *uṣūl al-fiqh* not only because it is a prime attribute and faculty of the *mukallaf*, but also more importantly because of the nature and purpose of the sciences itself.<sup>69</sup>

Issues pertinent to *falsafah* are also being discussed in *uṣūl al-fiqh*, albeit not necessarily to the same degree. This is especially true in the case of intellect. Given that background, it might shed some lights on the reason why the philosophers' discourse of intellect prompted Ṣadr al-Sharī'ah's and al-Taftāzānī's interest to incorporate *falsafah* in their work - *al-Talwīḥ 'alā al-Tawdīḥ li Matn al-Tanqīḥ fī Uṣūl al-Fiqh*. Hence, it is not surprising that al-Ghazālī incorporates logic (*manṭiq*) in *uṣūl al-fiqh* and Ibn Rushd (d. 595 A.H/1198 A.D.)<sup>70</sup> keeps his intellectual acumen alive with writing commentaries on Aristotle's philosophy.

---

<sup>68</sup> William Lane, *Lexicon* (Beirut: Librairie Du Liban, 1968), "a-qa-la", 5: 2131-2134; Hans Wher, *A Dictionary of Modern Arabic* (Beirut: Librairie Du Liban, 1980), "a-qa-la", 630.

<sup>69</sup> According to al-Āmidī, the purpose of science of *uṣūl al-fiqh* is to arrive at the understanding of the rulings of Sharī'ah, by virtue of it, it is where the happiness of worldly and Hereafter resides. Fakhr al-Dīn al-Rāzī asserts, to understand the rulings of Sharī'ah, it requires an understanding of what knowledge (*'ilm*) and what certain (*yaqīn*) are *vis-à-vis* doubt (*shakk* or *ẓann*). All these require the sound *'aql*, otherwise, the rulings make no sense as such no happiness can be attained. See al-Āmidī, *Iḥkām*, 1: 6; al-Rāzī, *al-Maḥṣūl*, 1: 66-69.

<sup>70</sup> Ibn Rushd spent his daily life with the *qaḍī*'s work, but at the same time did a commentary on Aristotle. He was extremely busy that he took only two days of leave in his life, first in the day of his marriage, and second, on the day his father passed away. See Miguel Cruz Hemendez,

Other than the intellect which provides the *mukallaḥ*'s ability to comprehend God's obligation and the nature of responsibility, the *mukallaḥ* must also be fit to carry it out. This is known as the legal capacity (*ahlīyyah*). The term *ahlīyyah* is a verbal noun of *ahl*, 'relatives, folks, family, kin, people, members, followers, possessors, fit, suited, qualified'.<sup>71</sup> Literally, *ahlīyyah* means *al-ṣalāḥīyah* (fitness or ability). It is one of the characteristics of a person.<sup>72</sup> A statement, this person is capable of doing something, means he is mentally and physically fit and eligible to do certain things. Therefore, *ahlīyah* implies a kind of close intimacy and bonding between the members of the household, relatives, and also each of the members has the capacity of knowing each other. Technically, it is the ability or fitness to acquire rights and exercise them and to accept duties and perform them.<sup>73</sup> In other words, it is a locus of capacity which regulates balance in a person as to how his rights and obligations are.

## CONCLUSION

The discussion of man is essential for the *mukallaḥ*. Even though *mukallaḥ* is a technical term created out of the discipline of *uṣūl al-fiqh*, it is not a standing alone concept and isolated in the discipline. It is imperative to argue that the nature of man must be mastered and understood, in order to obtain a better understanding of the roles and purposes of *mukallaḥ*. The commentary of al-Taftāzānī, which reflects the views of notable jurists, has demonstrated the importance of cosmo-psychological nature of man, known also the

---

“Averroes, Maimonides: Two Master Minds of the 12<sup>th</sup> Century”, *The UNESCO Courier: A Window Open on the World*, 1986, Vol. XXXIX, 9, quoted in Wan Mohd Nor Wan Daud, *Budaya Ilmu: Makna dan Manifestasi dalam Sejarah dan Masa Kini*, New Edition (Kuala Lumpur: CASIS & HAKIM, 2019), 72.

<sup>71</sup> Hans Wer, *A Dictionary of Modern Arabic* (Beirut: Librairie Du Liban, 1980), “ahl”, 32-33.

<sup>72</sup> Al-Zarqā, *al-Madkhal*, 636.

<sup>73</sup> See al-Jurjānī, *al-Ta'rifāt*, s.v. “ahlīyah”; Nyazee, *Theories*, 75; Abū Zahrah, *Uṣūl*, 307.

*insānī* aspects of *mukallaḥ*, making it of great significance in this discourse.

## ACKNOWLEDGEMENT

This article is an extended from my Ph.D thesis entitled *Analysis of Legal Person Using Taklīf and Shakhṣ I'tibārī in Islām* at RZS-CASIS, UTM under the supervision of Prof. Dr. Muhammad Zainiy Uthman, successfully defended in January 2020.

## REFERENCES

- ‘Alī Juma‘ah, *al-Kutub al-Mukawwanah, al-Kutub al-Mukawwanah li fikr al-Islāmī al-Sunnī*. al- Qāhirah: Dār al-Ṣāliḥ, 2018.
- Ahmad bin Mohamed Ibrahim, *Sources and Development of Muslim Law*. Singapore: Malayan Law Journal, Ltd. 1965.
- al-‘Alwānī, Ṭāhā Jābir. *Uṣūl al-Fiqh al-Islāmī: Source Methodology in Islamic Jurisprudence*. Herndon, Virginia: The International Institute of Islamic Thought (IIIT). 1990.
- al-Attas, Syed Muhammad Naquib. *Islām: The Covenants Fulfilled*. KL: Ta’dib International. 2023.
- al-Attas, Syed Muhammad Naquib. *On Justice and the Nature of Man*. Kuala Lumpur: IBFIM and Akademi Kenegaraan, 2016.
- al-Attas, Syed Muhammad Naquib. *Prolegomena to the Metaphysics of Islām*. Kuala Lumpur: ISTAC, 1998; Kuala Lumpur: UTM Press, 2014.
- al-Ghazālī. *al-Mustaṣfā min ‘ilm al-Uṣūl*, ed. Najwā Dāww Beirūt: Dār al-Iḥyā’ al-Turāth al-‘Arabī. n.d.
- al-Ījī, ‘Aḍud al-Dīn ‘Abd Raḥman. *al-Mawāqif* and his commentary (*sharḥ*) by al-Sayyid al-Sharīf ‘Alī Muḥammad al-Jurjānī, *Sharḥ al-Mawāqif*, and the super-commentaries (*ḥawāshī*) by al-Sayyālakūtī and al-Jalabī compiled by Maḥmūd ‘Umar al-Dimyāṭī. Beyrūt: Dār al-Kutub al-‘Ilmiyah, 1998.
- al-Jurjānī, *Kitāb al- Ta’rīfāt*. Matba‘ah Muṣṭafā al-Bābū al-Ḥalabī, 1938.

- al-Khallāf, 'Abd. al-Wahhāb. *ʿIlm Uṣūl al-Fiqh*. al-Maktabah al-Kuwaytīyah, 1968.
- al-Namlah, 'Abd. Al-Karīm bin 'Alī bin Muḥammad. *al-Shāmil fī Hudūd wa Ta'rīfāt Muṣṭalahāt ʿIlm Uṣūl al-Fiqh*. Riyād: Maktabah al-Rushd, 2009.
- al-Qālīsh, Diyā' al-Dīn. *al-Taftāzānī wa Ārāhu al-Balāghīyyah*. Beirut: Dār al-Nawādir, 2010.
- al-Rāzī, Fakhr al-Dīn. *Muḥaṣṣal Afkār al-Mutaqaddīmīn wa al-Muta'akhirīn min al-'Ulamā' wa al-Ḥukamā' wa al-Mutakallimūn* with a *Talkhīṣ* by 'Allāmah Naṣīr al-Dīn al-Ṭūsī. al-Qāhirah: Maktabah al-Kullīyah al-Azhariyyah. n.d.
- al-Taftāzānī, Sa'd al-Dīn Mas'ūd (Maḥmūd) bin 'Umar *Sharḥ al-Taftāzānī 'alā al-Āḥādīth al-'Arba'in al-Nawawīyyah*. ed. Muḥammad Ḥassan Muḥammad Ḥassan Ismā'īl. Beirut: Dār al-Kutub al-'Ilmīyyah, 2004.
- al-Taftāzānī, Sa'd al-Dīn. *Sharḥ al-Talwīḥ 'alā al-Tawdīḥ li Matn al-Tanqīḥ fī Uṣūl al-Fiqh*. Beirut: Dār al-Kutub al-'Ilmīyyah, n.d.; Cairo: Maktabah Muḥammad 'Alī Sūbayḥ, n.d. Tahzīb al-Sa'd. al-Qāhirah: Maṭḥa'ah Ḥijāzī. n.d.
- al-Zarkashī, Badr al-Dīn. *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*. Kuwayt: Wizārah al-Awqāf al-Islāmiyyah bi al-Kuwayt, 1992.
- al-Zarqā, Shaykh Muṣṭafā. *al-Madkhāl al-Fiqhī al-'Ām*. trans. Muhammad Anas al-Muhsin (et. al). *Introduction to Islamic Jurisprudence*. Kuala Lumpur: IBFIM, 2014.
- al-Zuhaylī, Wahbah. *Uṣūl al-Fiqh al-Islāmī*. Dimashq: Dār al-Fikr, 1986.
- Anton M. Heinen, *Islamic Cosmology: A Study of al-Suyūṭī's al-Hay'a as-sanīya fī l-hay'a as-sunīya*. Beirut: Bei Franz Steiner Verlag, 1982.
- Carl Brockelmann, *Geschichte der arabischen Litteratur (GAL)*. Leiden: Brill. 2012.
- Carl Sagan, *A Vision on the Human Future in Space*. New York: Ballantine Books, 1994.

- Carl Sagan, *Cosmos*. 1980. Reprint, New York: Ballantine Books, 2013.
- Haitham Hilāl, *Mu‘jam Muṣṭalah al-Uṣūl*. Beirut: Dār al-Jīl, 2003.
- Ḥājī Khalīfah Kātīb Chellebī, *Kashf al-Ḍunūn ‘an Usāmā wa al-Kutub wa al-Funūn*. Istanbul: n.p. n.d.
- Hashim Kamali, *Principles of Islamic Jurisprudence*. Cambridge: Islamic Text Society, 1991.
- Howard Percy Robertson, “Cosmology”, *Encyclopedia Britannica*. Chicago: Encyclopedia Britannica, Inc, 1963.
- Ibn Khaldūn, *Muqaddimah*. Beirut: Dār al-Fikr, 2001.
- Imran Ahsan Khan Nyazee, *Theories of Islamic Law*. Islamabad: Islamic Research Institute Islamabad. 1994; reprint New Delhi: Adam Publishers & Distributors, 2003.
- Imran Khan Nyazee, *Islamic Jurisprudence (Uṣūl al-Fiqh)*. New Delhi: Adam Publishers & Distributors, 2004.
- Miguel Cruz Hemendez, “Averoes, Maimonedes: Two Master Minds of the 12<sup>th</sup> Century”. *The UNESCO Courier: A Window Open on the World*. 1986. Vol. XXXIX.
- Mohd Hilmi Ramli, “Al-Taftāzānī’s Sources of Knowledge in Sharḥ al-Talwīḥ ‘alā al-Tawḍīḥ li Matn al-Tanqīḥ fī Uṣūl al-Fiqh,” *Afkar: Jurnal Akidah Dan Pemikiran Islam* 2 (2020).
- Mohd Hilmi Ramli. “An Analysis of Legal Person Using Taklīf and Shakḥ I’tibārī in Islām”. Thesis Doctor of Philosophy, RZS-CASIS, UTM. 2020.
- Muḥammad Abū Zahrah, *Uṣūl al-Fiqh*. al-Qāhirah: Dār al-Fikr al-‘Arabī, 1958.
- Muhammad Zainiy Uthman, *al-Attas’ Psychology*. KL: HAKIM, 2022.
- Muzaffar Iqbal. “In the Beginning: Islamic Perspectives on Cosmological Origins,” In *Contemporary Issues in Islamic Science*, ed. Muzaffar Iqbal. Routledge: 2012.
- Seyyed Hossein Nasr, *An Introduction to Islamic Cosmological Doctrines*. Lahore: Suhail Academy, 2007.

- Ṭāsh al-Kubrā Zādeh, *Miftāh al-Sa'adah wa Miṣbāh al-Siyādah*.  
ed. Kāmil Bakrī & 'Abdul Wahhāb Abū al-Nūr. al-  
Qāhirah: Dār al-Kutub al-Ḥadīthah, 1982.
- Wan Mohd Nor Wan Daud, *Budaya Ilmu: Makna dan Manifestasi  
dalam Sejarah dan Masa Kini*. New Edition. Kuala  
Lumpur: CASIS & HAKIM, 2019.
- Wan Mohd Nor Wan Daud, *Educational Philosophy and Practice  
of Syed Muhammad Naquib al-Attas*. KL: ISTAC, 1998.
- William Wright, *A Grammar of the Arabic Language*. 3<sup>rd</sup>. ed.  
Beirut: Librairie Du Liban, 1996.