

9-1-2022

## A Critical Analysis of the Claim that Absolute Juristic Interpretation (Ijtihād) Has

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### Recommended Citation

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# Journal of Islamic Thought and Civilization (JITC)

Volume 12 Issue 2, Fall 2022

ISSN(P): 2075-0943 ISSN(E): 2520-0313

Homepage: <https://journals.umt.edu.pk/index.php/JITC>



Article QR



**Title:** A Critical Analysis of the Claim that Absolute Juristic Interpretation (*Ijtihād*) has Ended

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**DOI:** <https://doi.org/10.32350/jitc.122.03>

**History:** Received: May 09, 2022, Revised: July 19, 2022, Accepted: November 19, 2022, Available Online: December 25, 2022

**Citation:** Alnaief, Moath, and Kotb Rissouni. "A critical analysis of the claim that absolute juristic interpretation (*Ijtihād*) has ended." *Journal of Islamic Thought and Civilization* 12, no. 2 (2022): 28–40. <https://doi.org/10.32350/jitc.122.03>

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**Conflict of Interest:** Author(s) declared no conflict of interest



A publication of

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# A Critical Analysis of the Claim that Absolute Juristic Interpretation (*Ijtihād*) Has Ended

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## Abstract

This article critically analyzes the dominant opinion prevailing regarding the foundation of Islamic jurisprudence (*uṣūl al-fiqh*) which states that absolute independent juristic interpretation (*al-ijtihād al-muṭlaq al-mustaqill*) is no longer possible. Therefore, based on the belief that this level of interpretation requires the creation of a unique method for deriving legal rules (*istinbāt*), a method that arguably ended with the founders of the primary schools of law. This research inspects a new interpretive method which was not developed by late scholars. Consequently, the article uses legal reasoning as an interpretive method to criticize the previous opinions regarding Islamic Jurisprudence by using both textual and rational evidence. For instance, the preservation of religion and the continued renewal of convenient sources requires scholars to reach the highest level of interpretation (*ijtihād*). In addition, a connection to the legal reality of the time and rulings were necessary to adapt them, an issue dependent upon direct derivation of rulings from religious texts or the freedom to implement secondary forms of evidence. Therefore, this research concludes that the founders of the traditional law schools did not develop their foundations independently. Instead, they did so through constructive investigation and analysis. Their interpretations conformed to the Prophet's (SAW) Companions. Such a process continued and future independent scholars followed their footsteps. In addition, the legal reality in every age saw the rise of individuals who positively impacted the renewal of the foundations of jurisprudence by interpreting Prophetic *hadīth* which required advanced interpretative skills.

**Keywords:** Absolute *Ijtihād*, *Ijtihād*, Islamic law, Independent juristic reasoning, *Madhāhib*

## Introduction

Despite all the facts, jurists and scholars have described Islam as a universal, progressive, and dynamic religion. Therefore, Qur'ān has been declared to be a convenient source for all the Muslim ummah. This asserts that Quran implies all the interpretations and these interpretations include the application of this learned context according to Islamic laws. However, Islamic jurisprudence is a set of regulations and rules which are laid down from the Quran, teachings of the Prophet (SAW), and the Sunnah. Over the centuries this (*fiqh*) has been formulated and passed down as a legacy from one generation to another. Therefore, this article discusses a common opinion found in the works of Islamic jurisprudence (*fiqh*), the foundations of jurisprudence (*uṣūl al-fiqh*), and absolute independent juristic interpretation (*al-ijtihād al-muṭlaq al-mustaqill*) which ended with the generation that included the founders of the leading schools of Islamic law.<sup>1</sup> This opinion disrupts

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<sup>1</sup>This belief became popular amongst jurists of the four Sunni schools of law at the beginning of the 4<sup>th</sup> century AH/12<sup>th</sup> century CE and continues to the present day. See for example Sayf al-Dīn al-Āmidī, *al-Ihkām fi Uṣūl al-Ahkām* (Cairo: Dār al-Ma'ārif, 1981), 4:233; Muḥammad Sa'īd Ramaḍān al-Būṭī, "al-Ijtihād fī'l-Sharī'a al-Islāmiyya," *Conference Proceedings: al-Ijtihād fī'l-*

the process of interpretation and reform and entrenches traditional thought that does not coincide with the advances of modern life. Based on the above discussion, this research intends to analyze certain research objectives:

1. To state what did many scholars claim that absolute 'ijtihād' ended?
2. To state do these reasons stand up to the criticism?
3. To state what was the impact of this criticism in developing opinions?
4. To state the evidence both in Islamic law and legal law reality which suggest a continuity of legal reasoning at this level?

Why did many scholars claim that absolute *ijtihād* ended? Do their reasons stand up to criticism? What is the impact of this opinion? Is there evidence within both Islamic law and legal reality that suggest a continuity of this level of legal reasoning?

Furthermore, this article implements critical and analytical methods to develop a complete understanding of the presented issues. Therefore, intellectual and historical reasoning is employed as a methodology which led to the development of majority opinions, a survey of its religious and scholarly implications, and honest criticism of this approach.

## 2. Defining Absolute Independent Juristic Interpretation

For several scholars of Islamic law, the realm of interpretation (*ijtihād*) is divided into several levels and stages according to their knowledge and the ability to produce a unique method of deriving legal rulings. The highest of these levels is 'absolute independent juristic interpretation (*al-ijtihād al-muṭlaq al-mustaqill*)'. Most well-known sources on the foundations of jurisprudence (*uṣūl al-fiqh*) such as *al-Burhān*, *al-Mustaṣfa*, *Jam' al-Jawāmi'*, and *al-Baḥr al-Muḥīṭ*, do not provide an explicit definition of this level, preferring only to mention its conditions.<sup>2</sup> However, other sources related to individual issues and legal opinions (*fatwa*) give a more precise definition. For example, the twelfth-century judge Ibn Ḥamdān al-Ḥanbalī wrote that an absolute independent jurist is 'independent in his knowledge of rules of Islamic law derived from general and specific sources and can determine rulings of new issues from them'. Such a jurist has also 'memorized the majority of the jurists' opinions but does not blindly follow any of them or belongs to a specific school of law'.<sup>3</sup> From this definition, Ibn Ḥamdān argued that absolute interpretation is defined by two abilities: independence in an interpretive method and vast knowledge of the rules of *fiqh*.

In contrast, another scholar Shāh Walī Allāh al-Dahlawī provided three qualifications: the ability to freely interact with the principles of interpretation on which his rulings are based, comprehensive knowledge of the statements of the Prophet (SAW) and his Companions in every

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*Islām* (Oman: Wizārat al-Awqāf, 2012), 446; Wael Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle Eastern Studies* 16:1 (March 1984): 3-41; Muhammad 'Alī b. Ḥusayn, *Tahdhīb al-Furūq* (Beirut: Dār al-Kutub al-'Ilmiyya, 1989), 2:188; Muḥammad al-Amīn b. al-Shaykh, *al-Ijtihād bayn Musawwaghāt al-Inqitā' wa Dawābiṭ al-Istimrār* (Dubai: Dār al-Buḥūth li'l-Dirāsāt al-Islāmiyya wa Iḥyā' al-Turāth, 2003), 25; Abd. Rasyid Idris and Basri Ibrahim, "Analysis for Claim that Door of Ijtihād is Closed in Muslim Community," *International Journal of Academic Research in Business and Social Sciences* 10:9 (2020): 898-911; Tāj al-Dīn al-Subkī, *Jam' al-Jawāmi'* (Cairo: Muṣṭafa al-Bābī al-Ḥalabī, 1937), 546; Jalāl al-Dīn al-Suyūṭī, *al-Radd 'ala man Akhlada ila al-Arḍ* (Cairo: Maktabat al-Thiqāfa al-Dīniyya, 1982), 39.

<sup>2</sup>Muḥammad al-Ghazālī, *al-Mustaṣfa* (Riyadh: Dār al-Faḍīla, 2013), 2:1044-52; Tāj al-Dīn al-Subkī, *Jam' al-Jawāmi'*, 469-71; Muḥammad al-Zarkashī, *al-Baḥr al-Muḥīṭ* (Kuwait: Wizārat al-Awqāf, 2010), 6:199-206.

<sup>3</sup>Aḥmad b. Ḥamdān al-Ḥanbalī, *Ṣifat al-Fatwa wa'l-Mufīṭ wa'l-Mustaḥfī* (Beirut: al-Maktab al-Islāmī, 1960), 16.

area of the law to extract rulings and resolve conflicts in the sources, and the ability to provide answers to substantial issues that arose during the scholar's lifetime.<sup>4</sup>

Therefore, an 'absolute independent juristic interpretation (*al-ijtihād al-muṭlaq al-mustaqill*)' is a level in which a jurist 'is independent in his views of foundation of jurisprudence and substance of the law. These views are extracted directly from religious texts based on a unique interpretive methodology that he has developed on his own which he applies to all areas of the law.'<sup>5</sup> The point of 'independence' means that the jurist has invented a unique interpretive methodology which is used to speak about substantive laws. Therefore, jurists used this method used to reach an interpretation that may agree or disagree with other scholars. Whether it is about foundations or substance, his views of Islamic law do not indicate any form of imitation (*taqlīd*). For most scholars, this description only applies to the Prophet's (SAW) Companions and the founders of the primary schools of law. Additionally, the point of 'absolute' refers to interpretation in all areas of substantive law without exception.

A scholar with these above-mentioned qualities may be deemed an 'absolute independent jurist (*al-mujtahid al-muṭlaq al-mustaqill*)'. Alternatively, if a scholar is not independent, he is considered an 'affiliated absolute jurist (*al-mujtahid al-muṭlaq al-muntasab*),' which means that he is absolute in all areas of substantive law but affiliated with the interpretive methodology of a previous scholar. If a scholar is considered an 'absolute,' jurist he may only be so in one area of substantive law or one particular point of law while adhering to the foundations, substance, and texts of his school's founder. In such situation, a scholar would only be considered 'absolute' in certain areas and deemed an 'absolute and restricted' jurist (*al-muṭlaq al-muqayyad*).<sup>6</sup>

However, it is important to note that some post-classical scholars equated the terms 'absolute' and 'independent,' a point criticized by al-Suyūṭī. He stated that, "Many [scholars] of our time have erred in thinking that terms 'absolute' and 'independent' are identical. This is not the case. I claim to be an absolute jurist, not an independent one. I follow the school of al-Imām al-Shāfi'ī and his path of interpretation".<sup>7</sup> Even today, the lack of a uniform set of technical definitions in Islamic jurisprudence has only excavated the divide between scholars on this issue of absolute and independent interpretation, which is explored by Wael Hallaq.<sup>8</sup> To prevent this above confusion, most modern scholars emphasized the necessity of separating the terms "absolute" and "independent."

Therefore, the highest rank that could be achieved by a jurist is of "absolute" and 'independent' scholar. Consequently, a scholar who reaches this rank can interpret all areas of the law and produce a unique interpretive style. According to scholars, this rank was only achieved by the legal scholars amongst the Prophet's (SAW) Companions and the founders of the primary schools of law such as Abū Ḥanīfa, al-Shāfi'ī, and Aḥmad b. Ḥanbal. However, the quality of 'independence' is a point of contention amongst researchers that proves the fragility of arguments and are analyzed further in this article.

<sup>4</sup>Shāh Walī Allāh al-Dahlawī, *Iqd al-Jid fī Ahkām al-Ijtihād wa'l-Taqlīd* (NA), 5.

<sup>5</sup>Modern researchers have developed this definition by combining several sources. See for example Muḥammad b. al-Najjār, *Sharḥ al-Kawkab al-Munīr* (Saudi Arabia, Maktabat 'Ubaykān, 2009), 4:467; 'Ārif Ḥasūna, "Mada Wujūd al-Mujtahid al-Muṭlaq al-Mustaqill wa'l-Muntasab fī Hādha al-'Aṣr," *Jordanian Journal of Islamic Studies* 5:3 (2009), 129; Nādia al-'Amrī, *al-Ijtihād fī'l-Islām* (Beirut: Mu'assasat al-Risāla, 2003), 173.

<sup>6</sup>Ibn Amīr al-Ḥājī, *al-Taqrīr wa'l-Tahbīr* (Cairo: Maṭba'at Būlāq, 1969); Ḥasūna, "Mada," 146; Muḥammad Amīn b. al-Shaykh, *al-Ijtihād*, 42-55; al-Suyūṭī, *al-Radd*, 39-42.

<sup>7</sup>al-Suyūṭī, *al-Radd*, 41.

<sup>8</sup>Hallaq, "Was the Gate," 25.

### 3. Appearance and Reasons for the Belief that Absolute Interpretation Ended

At the beginning of the fourth century AH, scholars voiced for closing the gates of *ijtihād*, suggesting that scholars rely upon the legal heritage of the established schools and only issue new judgments on truly novel matters. Subsequently, this belief led to the rejection of existence of any absolute and independent jurists after the development of the traditional schools of law and the death of their eponyms. Some of the most important scholars who have made this statement over the centuries are:

- Ibn Burhān (d. 518 AH): “The foundations of the schools and the principles of the eponyms are related to us by earlier generations. It is not possible for those of later generations to contradict it.”<sup>9</sup>
- Ibn al-Munayyir (d. 683 AH): “The followers of the school eponyms today are adherent jurists (*mujtahidūn multazimūn*), meaning that they do not create a new school...creating an additional school with its foundations and principles is impossible, as all forms of interpretation have been previously covered.”<sup>10</sup>
- Ḥasan al-‘Aṭṭār (d. 1250 AH): “In our age, the thirteenth century, there are few students of knowledge and subjects to study...”<sup>11</sup>
- Muḥammad ‘Alī b. Ḥusayn al-Mālikī (d. 1367 AH): “The majority of scholars agree that no person has achieved the conditions for absolute interpretation since the fourth century. If anyone makes such a claim to have achieved these conditions themselves, they are not to be believed.”<sup>12</sup>
- Muḥammad Sa‘īd Ramaḍān al-Būṭī (d. 1434 AH): “There is no meaning in aspiring to become what is called an absolute jurist, as there is no meaning or justification in disposing of the principles of deriving rulings and explaining the religious texts, simply because they were discovered so long ago.”<sup>13</sup>

The purpose of providing the above examples is to show the historical context for the above-claimed statement that absolute independent interpretation has ended. These examples also define the field this study seeks to criticize, ensuring that criticism is not based upon unverified reports from unknown individuals. Critical observation must be done within a limited field, deconstructing its dimensions and analyzing its weak points to reach what the critic believes is the correct opinion.

Just as each opinion in knowledge has purposes that move it in an environment, so does the belief that absolute independent interpretation has ended. The reasons for this are as follows:

#### 3.1. Closure of Diversity in Legal Interpretation

One of the most potent reasons for suggesting that absolute independent interpretation has ended is the belief that, by doing so, the gates of diversity in legal interpretation will be closed. The weakness of religion, the rise of dishonesty, and the desire for positions of power are all serious issues that have dominated Muslims since the generation of the founders of schools of law.

<sup>9</sup>al-Suyūṭī, *al-Radd*, 113.

<sup>10</sup>*Ibid.*

<sup>11</sup>Muḥammad b. Ḥusayn al-Mālikī, *Tahdhīb al-Furūq wa'l-Qawā'id al-Suniyya fī'l-Asrār al-Fiqhiyya* (Beirut: Dār al-Kutub al-'Ilmiyya, 1989), 2:185.

<sup>12</sup>al-Mālikī, *Tahdhīb*, 2:188.

<sup>13</sup>Muḥammad Sa‘īd Ramaḍān al-Būṭī, “al-Ijtihād fī'l-Sharī‘a al-Islāmiyya,” *Conference Proceedings: al-Ijtihād fī'l-Islām* (Oman: Wizārat al-Awqāf, 2012), 445-46.

Therefore, the average number of good people in knowledge and morals has decreased.<sup>14</sup> In addition, this has become a necessary precaution to reduce the legal material with which individuals can manipulate and close the path of intrepid people who are audacious. This can only be done by limiting absolute independent interpretation to the first great scholars and prohibiting it for those who came after them. Hence, in scholars' opinion this is a preventative measure to protect the sanctity of the *Sharī'ah*.

After analyzing the sources and reality, these above stated reasons are invalid for two reasons. Firstly, that the continued existence of absolute independent interpretation does not mean that the matter to interlopers and pretenders and forgoing an investigation of the validity of the conditions of scientific rigor and moral integrity necessary for carrying out such a noble project as Islamic legal interpretation. This extraordinary level of *ijtihād* is reached through certain tools and characteristics that must be tested. Secondly, that reality has shown the presence of several scholars in later eras, in which none were claimed by scholars who have created "chaos" in legal interpretation or that they have damaged the *sharī'ah*. These scholars exercised their *ijtihād* in all areas of the law, examining the foundations of the rules of deriving laws independently, even though they had no role in creating them.

### 3.2. Absolute Independent Interpretation

In the past, several scholars stated that absolute independent interpretation ended with the interruption of qualifications of those who performed it.<sup>15</sup> Particularly, in later generation of scholars who have lost the will or desire to be like ones before them, who no longer seek knowledge at so vast a scale, and possess the natural talents of *ijtihād*. As a result, absolute independent *ijtihād* ended because the reasons for its existence also ended.

Therefore, the above response to this belief is summarized in three major points. Firstly, the talent for *ijtihād* in every generation of Muslim *ummah* is a natural part of existence (*sunna kawniyya*) that cannot be reversed. Hence, evidence for this statement is found by the Prophet's (SAW) (*ḥadīth*), which confirms that individuals will appear to renew the religion every century. Such renewal cannot occur without the talents of independent interpretation and an analysis of this *ḥadīth* will come later in this present research. Secondly, in the historical reality prominent figures appeared in every age who exercised *ijtihād*. They were widely proficient in every area of the law, both in its substance and fundamentals. They were also skilled in analyzing the statements of Prophet (SAW), confirming their possession of tools of absolute *ijtihād* and the ability to examine foundations of jurisprudence independently. In addition, it is adequate here to mention that just a few of these individuals are as Ibn Daqīq al-ʿĪd, Ibn Taymiyya, Ibn Ḥajar al-ʿAsqalānī, etc. Thirdly, the conditions for an individual in becoming an absolute jurist should be examined according to the circumstances of every age and readiness of the scholars of that age to perform *ijtihād*. *Ijtihād* should spring from scholars' intellectual and social environment that not only appeared as a repetition of what is found in historical sources. This is because previous scholars spoke about the tools of *ijtihād* as integrated with the problems and issues of their time. Likewise, our current age demands tools which match with people's knowledge and intellectual condition.

### 3.3. The Inability to Innovate New Foundations of Law

Presuming, the fact that an independent jurist describes and develop unique foundations and methods of interpreting the legal texts and can derive new rules from them. Hence, those who

<sup>14</sup>al-Sayyid Khudrī, *al-Ijtihād fīma lā Naṣṣ fīhi* (Riyadh: Maktabat al-Ḥaramayn, 1983), 1:56; Muḥammad al-Amīn b. al-Shaykh, *al-Ijtihād*, 19.

<sup>15</sup>Sayf al-Dīn al-ʿĀmidī, *al-Iḥkām fī Uṣūl al-Aḥkām* (Cairo: Dār al-Maʿārif, 1982), 4:202; Jalāl al-Dīn ʿAbd al-Raḥmān, *al-Ijtihād: Dawābiṭuhū wa Aḥkāmuhū* (Cairo: Dār al-Ṭībāʾ al-Ḥadītha, 1986), 202.



believe that independent *ijtihād* has ended rely upon the claim that earlier scholars have exhausted the paths of deriving new legal rulings and interpreting religious texts. Therefore, there is no room for the creation of a new method. The only way to deal with contemporary issues is to imitate the methods of previous scholars.<sup>16</sup>

In this particular case the belief that the founders of the four Sunni schools of law created their methods of interpretation and then closed the gates of independent *ijtihād* by exhausting the ways. This asserts that the texts can be interpreted and criticized by the following points:

- There is a difference in the definition of an “independent” jurist. This means that a jurist has innovated tools for interpretation not only in present but before also. This means that it simply refers to a scholar who has accepted past tools only after investigating them. Therefore, most scholars support the first approach.<sup>17</sup> However, this extensive definition does not necessarily need to be accepted. Thereby, limiting the definition further would help in reducing the conflict between scholars because many disagreements in Islamic Law have occurred due to the failure of scholars to agree on fixed terms.
- A narrow definition of ‘independent interpretation’ is more appropriate due to the circumstances of the present age, which demands a reduction in the conditions of interpretation. Therefore, the definition of ‘independent interpretation’ is limited in accepting the foundations of legal derivation and explanation of religious texts of others with the investigation. Thus, whoever honestly investigates the foundations of law they use, understanding their origins, legitimacy, and creation of substantive law, is not an imitator of a previous scholar. Instead, he is closer to being an independent jurist.
- If ‘independent interpretation’ means that a scholar has innovated tools for deriving rules that have not been used before, then the definition cannot be applied to the founders of the Sunni schools themselves. This is because many of the tools developed by the schools, such as analogy (*qiyās*), preference (*istihsān*), public good (*istiṣlāḥ*), preventing and opening the paths (*sad wa fath al-dharā’i*), and finding their origins in the interpretation of the Prophet’s (SAW) Companions and the issues that they faced. They were not explicitly named, as field of foundations of jurisprudence (*uṣūl al-fiqh*) had not developed to that particular point which required independent terms and that these scholars were jurists by nature. Perhaps, one scholar wrote, “For this reason, some of the Shāfi’ī scholars of foundations stated: there are no independent jurists beyond the Prophet’s (SAW) Companions.”<sup>18</sup> Therefore, issues of foundations settled amongst the four founders of the Sunni schools that were not entirely invented by them. Instead, most of their foundational tools were taken from the Prophet’s (SAW) Companions. For example, Abū Ḥanīfa took many of his foundations from his teacher Ibrāhīm al-Nakhī, to the point that Shāh Walī Allāh al-Dahlawī stated in his work entitled *The Conclusive Argument from God* that Abū Ḥanīfa could not be considered an independent jurist.<sup>19</sup> This, of course, was an exaggeration, as Abū Ḥanīfa did not blindly take the

<sup>16</sup>See Wahba al-Zuhaylī, “al-Ijtihād fi’l-Sharī’a al-Islāmiyya,” *Conference Proceedings: al-Fiqh al-Islāmī* (Riyadh: Imam Muhammad b. Sa’ud Islamic University, 1980), 192; al-Būṭī, “al-Ijtihād,” 446.

<sup>17</sup>al-Suyūṭī, *al-Radd*, 113; Muḥammad al-Sannūsī, *Iyqāz al-Wisnān fi’l-‘Amal bil-Ḥadīth wa’l-Qur’ān* (Beirut: Dār al-Kitāb al-Libnānī, 1968), 63-64; Muḥammad al-Dusūqī, *al-Ijtihād wa’l-Taqlīd fi’l-Sharī’a al-Islāmiyya* (Doha: Dār al-Thaqāfa, 1987), 127; Ḥasūna, *Mada*, 134-35.

<sup>18</sup>Ḥasūna, *Mada*, 136. This work preferred the view that “independent” meant an independent evaluation of the foundations of law based upon investigation.

<sup>19</sup>Shāh Walī Allāh al-Dahlawī, *Hujjat Allāh al-Bāliḡha* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1995), 1:271.



foundations of law from his teacher and spent years in analyzing and adding details to make them as close to independent developments as possible.

- Additionally, scholars of every age who worked to renew the foundations of law developed independent views of the science of jurisprudence. They investigated the conditions for which the foundations of jurisprudence are used and integrated as the field of the ‘purposes of the *sharī‘ah* (*maqāṣid al-sharī‘ah*)’ with it, combining the spirit of the texts with their practical application. This process cleansed works of jurisprudence from unnecessary material and called for a greater application of wisdom. For example, al-Shāṭibī and his work *al-Muwāfaqāt* is one of the most prominent of the ‘renewers’ of this field. It is not necessary here to cite other scholars. Instead, the important thing to note here is that these examinations of the field elevated the scholars who performed them to the level of “independent.” Labelling them as blind imitators of those who came before them.

From the above discussion, it is stated that absolute independent interpretation ended with the generation of scholars who innovated their principles of interpretation in contrast to historical and legal reality. Throughout the ages, the natural state of human reason has been to seek intellectual and systematic freedom, bringing a constant state of renewal to life.

### 3.4. Later Scholarly Discourse Regarding the End of Absolute Independent Interpretation

One of the major reasons that scholars have stated recently is that absolute independent interpretation has ended and this level of interpretation has been lost, stating that there is a consensus on this matter.<sup>20</sup> This reliance on the perception of scholars cannot be dismissed so easily.

However, this statement is opposed by those who continuously claimed that no historical period was devoid of absolute independent jurists.<sup>21</sup> Scholars who made this claim were no less than some of the most influential figures in the field, including al-Qaffāl, al-‘Izz b. ‘Abd al-Salām, and Ibn Daqīq al-‘Īd. If two contradictory statements of the scholars exist and no solution can be found, the logical conclusion is that they should both be dismissed, as following one statement means developing a ruling without a shred of evidence. However, it is possible to state that, in general, a positive statement is preferred over a negative one and that first statement is based on some form of first-hand knowledge.

The belief that there is a consensus that there were no independent jurists in every age is incorrect for two reasons. The first is that a consensus can only be reached by independent jurists, so if there were no such jurists, it would be impossible for a consensus to be achieved. The second is that there is significant disagreement on the matter, and no consensus can be claimed if there is an apparent disagreement between scholars.<sup>22</sup>

## 4. Impact of the Claim that Absolute Independent Interpretation has Ended

After critically discussing and evaluating the reasons of the claim that absolute independent interpretation has ended, it is now essential to understand the impact that this claim has, most notably:

<sup>20</sup>Ibn Badrān al-Dimashqī, *al-Madkhal ila Madhhab al-Imām Aḥmad* (Beirut: Mu’assasat al-Risāla, 1981) 192; Muḥammad al-Amīn b. al-Shaykh, *al-Ijtihād*, 25; Ḥasūna, *Mada*, 137.

<sup>21</sup>‘Abd al-Rahmān b. Abī Bakr al-Suyūṭī, *Taqrīr al-Istinād fi Tafṣīr al-Ijtihād* (Alexandria: Dār al-Da’wa, 1983), 64-65; Muṣṭafa al-Zarqā’, “al-Ijtihād wa Dawr al-Faqīh fi Ḥall al-Mushkilāt,” *Majallat al-Dirāsāt al-Islāmiyya* 20:4 (1405), 46; Ḥasūna, *Mada*, 137.

<sup>22</sup>See Muḥammad al-Ṣan’ānī, *Irshād al-Nuqqād ila Taysīr al-Ijtihād* (Beirut: Mu’assasat al-Rayān, 1992), 39; Muḥammad al-Shawkānī, *Irshād al-Fuhul* (NA), 2:1038; Muhammad Amin b. al-Shaykh, *al-Ijtihād*, 20.

- *Disrupting the direct derivation of legal rulings from texts due to the claim that independent tools have been lost.* This process is necessary for every period, as every age is subjected to new issues and circumstances that must find appropriate solutions in religious texts or derived from them. Ibn Taymiyya stated, "It is rare for an expert in the evidentiary value and rulings of the texts to find them lacking."<sup>23</sup>
- *End of Independent Evaluation of the Foundations of Jurisprudence.* By stating that only the four founders of *Sunni* schools held the ability to derive rulings and exhausted the methods of interpretation, it is logical to say that their opinions must be followed entirely. Their content and method must be free of all criticism or attempts for reformation. However, this stands in contrast to the reality, where it is known that in every age, there were reformers who analyzed the foundations of Islamic jurisprudence and polished the conditions of the foundations and principles, corrected misunderstandings, and connected *sharī'a* rulings with their practical applications. This was all done to "Reform and regulate the interior of Islamic law according to the purposes of the *Sharī'a*, which removed the barriers of its applications."<sup>24</sup>
- *Limitation of the Role of Interpretation to Novel Areas.* Most existing rulings are nothing more than an extension of earlier scholars found in previous works of *fiqh*. These rulings might not be sufficient to develop solutions for contemporary issues, while the original texts of Islam (the Qur'ān and Prophetic Sunna) are always a source of guidance. However, suggesting that gate of absolute independent interpretation has closed, preventing the direct derivation of rulings from texts and limits rulemaking to extensions of previous rules or preference of one earlier opinion over another.
- *Marginalization of Major Historical Figures.* History of Islamic law is rich with individuals known for their styles of interpretation, including al-Qaffāl, al-'Izz b. 'Abd al-Salām, Ibn Daqīq al-'Īd, Ibn Hajar al-'Asqalānī, and Ibn Taymiyya from the pre-modern period and Aḥmad Shākīr, Muḥammad Rashīd Riḍā, Muḥammad al-Tāhir b. 'Ashūr, and 'Abd Allāh b. al-Siddīq al-Ghumārī in the contemporary period. This is all supported by the statement, "There are those who have become absolute scholars amongst legal scholars of every age."<sup>25</sup>

## 5. Legal and Practical Necessity for the Continuity of Absolute Independent Interpretation

The continuity of absolute independent interpretation is a strong guarantee for the preservation and renewal of religion, ensuring that the guidance of Islam remains relevant. This is particularly important due to the significant changes brought by the digital revolution. Therefore, the development of artificial intelligence and spread of social media has brought moderation and advancements. These advancements have brought with them several new issues that require analysis, connecting the needs of modern society with the rules of Islamic law. Absolute independent interpretation opens the door for several issues to be dealt with, as only a jurist who reaches this level can understand the depth of the foundations of jurisprudence and the rules of interpretation. Certainly, jurist can reach a point where new rulings can be developed that are flexible to fit changing circumstances.

A jurist who explores and scrutinizes the foundations of jurisprudence can only do so through intense consideration and investigation, nor can he address legal issues without thinking independently. This process does not depart from the deductive approach decreed in the schools. However, a jurist might add restrictions and conditions to the jurisprudence of revelation or fill a

<sup>23</sup>Ahmad Ibn Taymiyya, *al-Istiḳāma* (Riyadh: Imam Muhammad b. Sa'ud Islamic University, 1991), 2:217.

<sup>24</sup>Qutub al-Raysūnī, *al-Tajdīd al-Uṣūlī 'ind al-Shāḫībī* (Saudi Arabia: Dār al-Maymān, 2018), 27.

<sup>25</sup>Zakariyya al-Birrī, "al-Ijtihād fī'l-Sharī'a al-Islāmiyya," *Conference Proceedings: al-Fiqh al-Islāmī* (Riyadh: Imam Muhammad b. Sa'ud Islamic University, 1980), 252.

deficiency in the literature where earlier scholars could not accurately balance theory and practice. These additions spring from independent thinking and continuous investigation of tools of jurisprudence. For example, the contemporary researcher ‘Abd al-Majīd al-Najjār has developed several ideas not discussed by previous scholars related to the mechanisms for detecting the objectives of the *Sharī‘ah* and to apply these objectives to real-world situations.<sup>26</sup>

Regarding substantive law issues, absolute interpretation is also available due to the availability of material. It is now possible to easily access texts of exegesis, jurisprudence, and foundations of jurisprudence. The widespread belief that interpretation has become fragmented is an exaggeration. Instead, a critical interpretation would help to cover many new developments which will allow independent consideration of complex individual issues. The continuity of absolute independent interpretation, in the meaning discussed above, is supported by the following textual and logical evidence:

### 5.1. Qur’ān

“Indeed, it is we who sent down the message, and indeed, We will be its guardian.”<sup>27</sup> In this verse, it is clear that the guardianship of religion cannot be fulfilled entirely except by the absolute and independent jurist, as he alone can directly derive rulings from the texts and interpret contemporary issues in all areas of substantive law. This level of jurists is the only level which can reset the boundaries of the *Sharī‘ah* if they are disrupted and protect the *Sharī‘ah* from distortion which enters law under the guise of false *ijtihād*. Therefore, the role of lower jurists is limited to serve *ijtihād* of the schools of law and treating contemporary issues within its boundaries. Hence, the preservation of religion is connected to the highest level of interpretation. The more complete a scholar is in the tools and characteristics of interpretation, the more completely he would preserve the religion, renew its spirit, and continue its guidance of world.

### 5.2. Prophetic *Sunnah*

The Companion Abū Hurayra reported that Prophet Muḥammad (SAW) stated, “God sends those who renew matters of faith at the head of each century.”<sup>28</sup> It is clear from this hadith that the ‘renewer’ promised by God must be from the highest levels of *ijtihād*, as the basis for all renewal is an independent investigation. A scholar who imitates other schools (*muqallid*) cannot renew the faith, as the term “renew” in the hadith must refer to its most general meaning, as the previous term which “who” refers to both an individual and a group.<sup>29</sup> This ruling is valid despite the difference between the scholars about the phrase ‘at the head of each century’, which could mean either the beginning or the end. This is a minor difference that does not impact the overall ruling derived from hadith, which is that the concept of “renewal” can only occur at its greatest level with the presence of an absolute independent jurist, even though the term might include other meanings of ‘renewers,’ such as political leaders.

Additionally, it is well-known that a claim for the renewal of religion must come out of a noticeable deviation, corruption of its understanding or practice, or marginalization of its role in forming basis of reality. Calling these deviations out and providing solutions requires a high level of talent in areas such as the purposes of *Sharī‘ah*, knowledge of how they can be used to deal with

<sup>26</sup> Abd al-Majīd al-Najjār, *Maqāṣid al-Sharī‘a bi Ab‘ād Jadīda* (Beirut: Dār al-Gharb al-Islāmī, 2006), 275-82.

<sup>27</sup> Qur’ān al-Hijr 15:9, Sahih International Translation.

<sup>28</sup> Sulaymān b. al-Ash‘ath Abū Dāwūd, *al-Sunan* (Beirut: Dār al-Risāla, 2009), ḥadīth no. 4391.

<sup>29</sup> al-Mubārak b. al-Athīr, *Jāmi‘ al-Uṣūl fī Aḥādīth al-Rusūl* (Qatar: Wizārat al-Awqāf, 2012), 8:230.

the circumstances of the time, and the ability to analyze the current reality and understand what must be done based on the guidance of revelation.

### 5.3. Logic

The continuity of absolute independent interpretation is a practical necessity that cannot be belittled. The evidence for this is plentiful and includes the following:

1. The assignment of religious duty in Islam cannot be done without explicit evidence. In contemporary issues, that evidence cannot be understood by only relying upon textual evidence. Instead, it requires an interpretive opinion, which is only available if done by an absolute independent jurist. This means that the absence of such jurists impacts the development of religious duties and rules.
2. The texts of Islamic law and independent rulings of scholars are limited, while the reality is constantly in a state of renewal and unlimited, ‘and it is impossible for the limited to match the unlimited.’<sup>30</sup> This situation requires that scholars directly derive rulings from a treatment of texts in a way that allows evidence found in the texts to be applied to contemporary issues either directly or indirectly. A jurist may rely upon a ‘public good analogy (*qiyās maṣlaḥī ‘ām*),’ or a legal analogy between public good and a legal good, to discover the rulings for novel issues. This practice can only be performed by an absolute independent jurist. Although, such jurists have not invented the fields of “analogy” or “public good” on their own, they could have investigated and applied them directly.
3. Scholars have discussed new issues in economics, medicine, and politics at a very high level of legal interpretation, no less than the level of ‘independent’ investigation. This is because tools of *ijtihād* have been made more readily available than ever before. For example, explanations of Qur’ān are printed and distributed quickly, the *ḥadīths* of Prophet (SAW) are validated and purified from errors, the consensus of the scholars is clear, and all sciences have been written down and made accessible to all. Despite the difference between individuals their ability to access and understand the sciences. Whoever is lucky enough to have the ability to interpret these sciences can develop an independent view and apply solutions to contemporary problems and derive new rulings for them by returning to the evidence found in religious texts or secondary forms of evidence. By doing so, this person becomes well-acquainted with the main areas of substantive law, taking the foundations of law through investigation. Some critical scholars who are evidence of the continuity of this high level of *ijtihād* are Ibn ‘Āshūr, Ibn ‘Uthaymayn, and Aḥmad Shākir. The presence of these individuals is clear evidence that the highest level of absolute independent interpretation can be achieved, albeit with differences like the intellectual tools and abilities of each age and individual.

Therefore, it would not be a departure from the truth to state that some modern jurists have reached the level of absolute independent jurist, based on the following characteristics of their opinions:

1. The comprehensiveness of their rulings. They have developed opinions and written on every area of substantive law.
2. The profound analysis of issues presented to them and an awareness of the conditions of applying rules to real-world situations, exhibiting a strong aptitude in the fundamentals of jurisprudence.

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<sup>30</sup>Muḥammad b. Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Beirut: Dār Ibn Ḥazm, 1995), 16.

3. The ability to apply exceptions to their rulings, meaning that they suggest altering a rule, stopping its application temporarily, or suggesting its re-application. This area indicates that they have reached a high level of interpretation, particularly in areas of the law in which there is no precedent.

## 6. Conclusion

Absolute independent interpretation (*al-ijtihād al-mustaqill al-muṭlaq*) is a level of interpretation that has continuously existed in Islamic history. Beginning from the time of the Prophet's (SAW) Companions through the founders of the four schools of law to the present day. Therefore, this continuity is present due to its immense need in the preservation and renewal of religion, which cannot be achieved except through a high level of legal interpretation. These interpretations derived rulings directly from the fundamental texts of Islam and treated contemporary issues in light of texts or secondary foundations of law. By doing so, these jurists corrected their path of religiosity and reformed religious awareness, considering the purposes of *sharī'ah*.

Those who claim that the highest levels of interpretation have ended due to the impossibility of innovating new forms of deriving laws from their sources, that the founders of the four Sunni schools of law have exhausted all forms of interpretation, and that there is no room for development are incorrect. Consequently, this is because the founders of *Sunni* schools of law themselves did not innovate all their methods of interpretation. Instead, they took most of their legal foundations from the Prophet's (SAW) Companions, such as analogy, public good, and juristic preference. However, their reliance upon earlier foundations of law was based on an independent investigation and results of their interpretation agreed with that of earlier generations.

The legal reality of subsequent eras is most significant evidence of the continuity of absolute independent *ijtihād* in three ways: Firstly, the qualifications of being such a jurist have been fulfilled by several individuals throughout history, that their work on the foundations of jurisprudence (*uṣūl al-fiqh*) was unique and independent. Secondly, they were entirely able to develop solutions for contemporary issues with a high level of interpretive skill no less than that of the founders of the four Sunni schools of law.

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