



The Authority of Islamic Legal Fatwa: An Analytical Study of al-Qarāfī's Perspectives

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Abstract

The tradition of madhhabs has been essential in shaping Islamic law, where the authority to issue fatwas guides Muslim communities and resolves legal issues. A crucial question concerns who legitimately holds this authority. This study examines the classical scholar al-Qarāfī's (626–684 AH/1228–1285 CE) contributions to fatwa authority, highlighting his flexible, integrative approach amid evolving legal needs. Using critical literature review and textual analysis, including al-Qarāfī's *al-Furūq*, the study explores the qualifications and limits of muftī and mujtahids, situating his views within historical debates on legal pluralism and madhhab adherence. Al-Qarāfī distinguishes two fatwa methodologies: *qaulī* (following authoritative madhhab opinions) and *manhājī* (employing ijtihad to derive new rulings). He permits qualified non-mujtahids (*muqallids*) to issue fatwas under certain conditions and classifies knowledge seekers (*tālib al-‘ilm*) into competency levels to define fatwa authority boundaries. His integrative model balances madhhab fidelity with flexibility, addressing tensions between orthodoxy and new legal realities. Al-Qarāfī's approach supports adaptive jurisprudence, recommending pluralism and methodological flexibility to meet modern Islamic law's complexities while preserving fatwa legitimacy.

Keywords: Madhhab, Fatwa, Authority, Al-Qarāfī, Ijtihad

1. Introduction

In the historical development of Islamic law, the tradition of *madhhab* or legal schools has played a pivotal role in the formation and maturation of the classical Islamic legal framework, extending into the contemporary period. As articulated by Hallaq in *The Origins and Evolution of Islamic Law*,¹ these *madhhabs* are not merely collections of normative rules but also function as social institutions characterised by a formal and hierarchical structure. As legal entities, the *madhhabs* transmit systematic instruction

¹ Mohammad Akram Nadwi, "The Origins and Evolution of Islamic Law By Wael B. Hallaq" (Oxford University Press, 2008), 120-25.

methodologies, *ijtihad* (independent reasoning), and *fatwas* (legal opinions), which serve as guiding principles for the Muslim communities that adhere to them. This structure constitutes "coercive power," an authority recognised socially and legally to regulate behaviour and resolve legal disputes within Muslim societies.² As both founders and central figures within their respective traditions, the imams of the *madhhabs* established the methodological and normative foundations that serve as the cornerstone for their followers and subsequent generations of scholars. The *fatwas* issued by these *imams* are regarded as authentic representations of their respective *madhhabs* and have been transmitted continuously through chains of scholarly transmission (*isnad*), thereby becoming primary references in the practice of Islamic law. However, as Calder elucidates in *Islamic Jurisprudence in the Classical Era*,³ the *madhhab* tradition is not a static legal system but rather a dynamic reality that continually evolves through interpretation, adaptation, and legal innovation undertaken by the scholars within each school.

The development process in Islamic legal thought frequently leads to differences of opinion, which substantially contribute to establishing a tradition of legal pluralism within Islam. Scholars affiliated with particular *madhhabs*, although committed to adhering to the fundamental principles of their respective schools, often develop new methodologies and interpretations that occasionally diverge from the views of the founding imams. Weiss emphasises this phenomenon in his study on the evolution of *ijtihad* within the *madhhabs*, where he asserts that such a plurality of interpretations constitutes a natural manifestation of the intellectual and contextual dynamics scholars face throughout Islamic history.⁴

Within the context of *fatwa*, the role of the *madhhab* becomes critically important as a source of legitimacy in issuing legal rulings. These *fatwas* serve as normative guidelines for the Islamic legal community and as instruments for resolving complex and contemporary legal issues. Nevertheless, a recurrent issue in Islamic legal studies concerns the authority and jurisdiction involved in the issuance of *fatwas*. The question of who legitimately possesses the capacity and qualifications to act as a *mufti*, the individual authorised to issue *fatwa*, is a significant matter that carries both academic and practical implications.⁵

In this regard, the *Ushul Fiqh* thought of classical scholars plays a crucial role in defining the parameters of such authority. One prominent figure in this tradition is al-Qarāfī (626-684 AH/1228-1285 CE),⁶ an eminent *Ushul Fiqh* scholar from Egypt who contributed significantly to the conceptualisation of *fatwa* authority. In his monumental work, *al-Furūq*, al-Qarāfī asserts that the authority to issue *fatwas* need not be exclusively confined to specific figures stemming from particular scholarly lineages, but may be entrusted to anyone who meets specific scholarly and moral qualifications.

Al-Qarāfī's approach demonstrates flexibility and openness in addressing the complex legal needs of Muslim societies, particularly beyond the traditional contexts where *madhhab* authority was predominant. By granting broader discretion to *mufti* or legal interpreters, al-Qarāfī contributed to

² Frank Edward Vogel, *Islamic Law and Legal System Studies of Saudi Arabia* (Harvard University, 1993), 45-50.

³ Norman Calder, *Islamic Jurisprudence in the Classical Era* (Cambridge University Press, 2010), 103.

⁴ Bernard G Weiss, *The Spirit of Islamic Law*, vol. 5 (University of Georgia Press, 1998), 103.

⁵ Dale F Eickelman and James Piscatori, "Muslim Politics," 2018, 210.

⁶ Nama lengkap al-Qarafi adalah Syihab ad-Din Abu al-'Abbas Ahmad ibn Abi al-'Ala' Idris ibn 'Abd ar-Rahman ibn 'Abd Allah ibn Yallin as-Sanhaji al-Bahafsyimi al-Bahansi al-Misri al-Qarafi. Lihat pengantar *muhaqqiq* Abu Bakr 'Abd ar-Raziq dalam Syihab ad-Din al-Qarafi, *al-Ihkam fi Tamyiz al-Ahkam wa Tasarrufat al-Qadi wa al-Imam* (Kairo: al-Maktab as-Saqafi, 1989), h. 13; Lihat pula pengantar Taha 'Abd ar-Ra'uf Sa'd (muhaqqiq) dalam al-Qarafi, *Syarh Tanqih al-Fusul fi Ikhtisar al-Mahsul fi al-Usul*, (Bairut: Dar al-Fikr, 1973), v.

expanding the scope of *ijtihad* and diversifying *fatwas*, indirectly stimulating Islamic law's development towards a more inclusive and adaptive framework. This approach also accommodates shifting socio-political contexts and evolving legal requirements, simultaneously preventing stagnation in the rigid practice of issuing *fatwas*.

Highlighted in research such as Islamic law and society, al-Qarāfi's perspectives remain pertinent in addressing contemporary challenges surrounding *fatwa* authority, particularly in the modern era where Muslim-majority countries confront social pluralism and diverse legal demands. For instance, Bowen emphasises how a more decentralised and inclusive conception of *fatwa* authority can enhance the legitimacy of Islamic law within pluralistic and modern societies.⁷ This development has significant implications for issuing *fatwas*, which are no longer confined solely to traditional *muftis* but are increasingly promulgated by more modern Islamic legal institutions.

Furthermore, the discourse on *fatwa* authority also opens debate concerning the relationship between the *madhhab*, the state, and civil society within modern Islamic law. As Kamali asserts, the modernisation of Islamic law necessitates reforms in the structure of *fatwa* authority to address legal issues that cannot be resolved solely through classical approaches. Accordingly, al-Qarāfi's conception of expanded *fatwa* authority may be a foundational starting point that facilitates methodological and institutional reform within Islamic law.

2. Literature Review

The Meaning of the Term *Fatwa* in the Islamic Scholarly Tradition

Fatwa has become popular and is frequently employed as a technical term in various works within Islamic law. Definitions or explanations of *fatwa*, both linguistically and terminologically, are rarely found in the classical works on *fatwa*, *usul fiqh*, or *fiqh*. Similarly, conceptual discussions regarding the essence of *fatwa* (*al-fatwā* or *al-futya*) are seldom encountered in Islamic legal theory literature, both before and after the era of al-Qarāfi. This scarcity may be attributed to the widespread usage of the term *fatwa* in diverse literatures and practical contexts, which has led scholars to consider delineating the precise boundaries (*hadd*) of *fatwa* as a matter of lesser importance in their writings.

The *fatwa* definition employed by some contemporary authors often refers directly to Arabic dictionaries, among which the *Lisān al-ʿArab* by Ibn Manẓūr is frequently cited.⁸ In this work, the term *al-fatwā* (الفتوى) or *al-futya* (الفتية) is linguistically understood to mean “to explain” (الإبانة). The dictionary also treats *fatwa* (*al-fatwā* or *al-futya*) as synonymous with *al-ifta*, which refers to the act of issuing a *fatwa* (إسما يوضع موضع الإفتاء). As applied in Sharia legal matters, a *fatwa* is defined as “clarifying complex or complicated legal issues.”⁹ To the author's knowledge, Ibn Ḥamdān (603–695 AH / 1207–1296 CE), a scholar contemporary with al-Qarāfi, implicitly addressed the meaning of *fatwa* by defining a *mufti* as “one who pronounces the law of God which he knows based on evidence.”¹⁰ From this definition of *mufti* emerges the understanding that a *fatwa* constitutes a pronouncement concerning God's law

⁷ John R Bowen, “Law and Social Norms in the Comparative Study of Islam” (JSTOR, 1998).

⁸ See for example the notion of *fatwa* defined by Muwaffaq ibn ʿAbd Allah ibn ʿAbd al-Qadir dalam Ibn as-Salah, *Adab al-Mufti wa al-Mustafti, tahqiq* by Muwaffaq ibn ʿAbd Allah ibn ʿAbd al-Qadir (al-Madinah al-Munawwarah: Maktabah al-ʿUlum wa al-Hikam, 2002), 23; See ʿAmir Saʿid az-Zaibari, *Mabāhis fī Ahkām al-Fatwa* (Bairut: Dar Ibn Hazm, 1995), 31.

⁹ See Abu al-Fadl Jamal ad-Din Muhammad ibn Makram ibn Manẓūr al-Afriqi al-Misri, *Lisān al-ʿArab*, Jilid XV, pokok bahasan tentang *Fata* (Bairut: Dar Sadir, 1997), 147–8.

¹⁰ Abu ʿAbd Allah Ahmad ibn Ḥamdān an-Namiri al-Harrani, *Sifat al-Fatwa wa al-Mufti wa al-Mustafti* (Bairut: al-Maktab al-Islami, 1397 H), 4.

grounded in evidential proof. This conception aligns with the explicit definition offered by al-Qarāfi (626–684 AH / 1228–1285 CE), who described *fatwa* as «the pronouncement of God's law based on evidence» (الإخبار عن حكم الله تعالى بمقتضى الأدلة).¹¹

The discussion of *fatwa* as a distinct chapter or subtopic has been included in several classical *usul al-fiqh* (principles of Islamic jurisprudence) texts, although not all such works address it. These texts generally do not provide a formal definition of *fatwa*, but rather focus more extensively on the characteristics of the *mufti* (the issuer of the fatwa) and the *mustafti* (the one seeking the fatwa), the qualifications required of the *mufti*, and various regulations related to the act of requesting a *fatwa* (*istifta*).¹² Contemporary scholars such as Muhammad Abu Zahrah, whose views were later followed by Wahbah az-Zuhaili, explain the concept of *fatwa* in terms of *al-ifta* (the act of issuing a fatwa) in comparison to the concept of *ijtihad*. *Ijtihad* is understood as extracting and deducing (*istinbāt*) legal rulings, whether prompted by a question or not. In contrast, the issuance of a *fatwa* is conceived as occurring only in response to a concrete event when a specific legal issue is raised and a qualified jurist (*faqih*) endeavours to ascertain and provide an authoritative answer.¹³

Criteria and Competencies Required for a Mufti

Based on Hallaq's research, works by early to mid-5th-century AH / 11th-century CE Islamic legal theorists affirm that the qualifications required for a *mufti* to issue a *fatwa* include attaining the status of *mujtahid*. It is widely recognised, including by scholars of *usul al-fiqh* such as al-Qarāfi, that to become a *mujtahid*, a *faqih* (jurist) must fulfil several criteria, such as possessing profound knowledge of the '*Ulūm al-Qur'ān*', '*Ulūm al-Ḥadīth*', the Arabic language, established consensus (*ijmā*'), and the principles of analogical reasoning (*qiyās*). If a *faqih* meets these qualifications for a particular legal issue alone, some theorists permit him to issue *fatwas* solely on matters where he can practice *ijtihad*. Conversely, anyone unable to fulfil all or part of the *mujtahid* requirements is prohibited from issuing *fatwas*.¹⁴ For example, although al-Shāfi'i (d. 204 AH / 820 CE) does not explicitly state that a *mufti* must be capable of *ijtihad*, he cautions that it is inappropriate for a *mufti* to issue a *fatwa* unless he is a learned scholar ('*ālim*) possessing deep knowledge and mastery in the sciences of the Qur'an, well-versed in the Sunnahs of the Prophet Muhammad, familiar with the opinions of earlier and contemporary scholars, proficient in the Arabic language (*lisān al-'Arab*), and competent in the

¹¹ Al-Qarafi, *al-Ihkam fi Tamyiz al-Fatawa 'an al-Ahkam wa Tasarrufat al-Qadi wa al-Imam*, dengan *tahqiq* oleh Abu Bakr 'Abd ar-Raziq (Kairo: al-Maktab as-Saqafi, 1989), 55.

¹² See for example on Abu al-Husain Muhammad ibn 'Ali ibn at-Tayyib al-Basri al-Mu'tazili (w. 436 H/1044 M), *al-Mu'tamad fi Usul al-Fiqh*, Juz II, given an introduction and corrected by asy-Syaikh Khalil al-Mais (Bairut: Dar al-Kutub al-'Ilmiyyah, t.t.), h. 357-65; Abu Ishaq Ibrahim ibn 'Ali ibn Yusuf asy-Syirazi (w. 476 H/1083 M), *al-Luma' fi Usul al-Fiqh* (Bairut: Dar al-Kutub al-'Ilmiyyah, 2003), h. 127-8; Abu al-Ma'ali 'Abd al-Malik ibn 'Abd Allah ibn Yusuf al-Juwaini (w. 478 H/1085 M), *al-Ijtihad min Kitab at-Talkhis*, dengan *tahqiq* oleh 'Abd al-Hamid Abu Zanid (Bairut: Dar al-'Ulum as-Saqafiyyah, 1408 H), h. 125-32; Abu Hamid Muhammad ibn Muhammad ibn Muhammad al-Gazzali (w. 505 H/1111 M), *al-Mustasfa fi 'Ilm al-Usul*, dengan *tashih* oleh Muhammad 'Abd as-Salam 'Abd asy-Syafi (Bairut: Dar al-Kutub al-'Ilmiyyah, 2000), h. 370-4; Fakhr ad-Din Muhammad ibn 'Umar ibn al-Husain ar-Razi (w. 606 H/1210 M), *al-Mahsul fi 'Ilm Usul al-Fiqh*, Jilid II (Bairut: Dar al-Kutub al-'Ilmiyyah, 1988), h. 525-40; Saif ad-Din Abi al-Hasan 'Ali ibn Muhammad al-Amidi (w. 631 H/1234 M), *al-Ihkam fi Usul al-Ahkam*, Juz IV, researched by asy-Syaikh Ibrahim al-'Ajuz (Bairut: Dar al-Kutub al-'Ilmiyyah, t.t.), 450-7; al-Baidawi (w. 685 H/1286 M), *Minhaj al-Wusul ila 'Ilm al-Usul* dalam Taqi ad-Din 'Ali ibn 'Abd al-Kafi as-Subki dan putranya yaitu Taj ad-Din 'Abd al-Wahhab ibn 'Ali as-Subki, *al-Ibhaj fi Syarh al-Minhaj 'ala Minhaj al-Wusul ila 'Ilm al-Usul li al-Qadi al-Baidawi*, Juz III, with *ta'liq* by Mahmud Amin as-Sayyid (Bairut: Dar al-Kutub al-'Ilmiyyah, 2004), 227-33.

¹³ See Muhammad Abu Zahrah, *Usul al-Fiqh* (Mesir: Dar al-Ma'arif, t.t.), 319; Wahbah az-Zuhaili, *Usul al-Fiqh al-Islami*, Juz II (Damaskus: Dar al-Fikr, 1986), 1156.

¹⁴ Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (New York: Cambridge University Press, 1997), 144-45.

principles of *qiyās* (analogical reasoning).¹⁵ The disciplines required by al-Shāfi'ī for a muftī constitute an essential body of knowledge necessary to exercise *ijtihād*. Two centuries after al-Shāfi'ī, Abu al-Ḥusayn al-Baṣrī (d. 436 AH / 1044 CE) explicitly affirmed that for a faqīh to act as a muftī, he must be a mujtahid.¹⁶ Asy-Shīrāzī (d. 467 AH / 1083 CE), similarly to al-Shāfi'ī, also stated that the qualifications required of a muftī include possessing a deep understanding (*'ārif*) of the evidence and the methods of deriving legal rulings (*ṭuruq al-aḥkām*) from the Qur'an and Sunnah.

Additionally, the muftī must be knowledgeable about the consensus (*ijmā'*) of both early and later scholars, analogical reasoning (*qiyās*), the systematic arrangement of proofs (*tartīb al-adillah*), and matters concerning preference (*tarjīḥ*). Furthermore, it is incumbent upon the muftī to possess trustworthiness and justice (*ṣiqāh*) and avoid making religious matters unnecessarily easy or lax.¹⁷ Mastery of legal evidence and its methods of derivation (*ṭuruq al-adillah*), as well as proficiency in the science of *usul al-fiqh*, are also stipulated by al-Juwaynī (d. 478 AH / 1085 CE) as essential qualifications for a muftī for their fatwas to be considered valid.¹⁸

Approximately one century later, some relaxation emerged regarding the qualifications required of a muftī, as reflected in the works of al-ʿĀmidī (d. 631 AH / 1234 CE). However, early indications of this shift had already appeared in the writings of Ibn Rushd (d. 520 AH / 1126 CE).¹⁹ Al-ʿĀmidī dedicated an entire chapter in his work to this issue, entitled "Is it permissible for one who is not a mujtahid to issue a fatwa according to the madhhab of another mujtahid?" or is it permissible for one who is not a mujtahid to issue a fatwa according to the madhhab of another mujtahid?. In addressing this question, al-ʿĀmidī first presents opinions prohibiting such practice, including that of Abu al-Ḥusayn al-Baṣrī. However, al-ʿĀmidī himself argues that a mujtahid within a madhhab who understands the methodology of an absolute mujtahid whom he follows and who is capable of *tafrī'* that is, applying existing legal rulings within the madhhab to new issues based on similarity in type and nature according to the principles and opinions of his imam who comprehends both differing and unanimous opinions within his madhhab, and who can reason and critically discuss the views of his school, may validly issue such fatwas,²⁰ he is entitled to issue a fatwa..²¹ Thus, al-ʿĀmidī did not fully endorse non-mujtahids (*lāisā bi-mujtahid*) assuming the role of muftī. Nevertheless, he did

¹⁵ Abu ʿAbd Allah Muhammad ibn Idris asy-Syafi'ī, *al-Umm*, Juz VIII, *takhrij* hadith and *ta'liq* by Mahmud Matraji (Bairut: Dar al-Kutub al-ʿIlmiyyah, 2002), 497.

¹⁶ Al-Basri, *al-Mu'tamad*, Juz II, 357-9.

¹⁷ Asy-Syirazi, *al-Luma'*, 127.

¹⁸ Al-Juwainī (Imam al-Haramain), *al-Ijtihad*, 125.

¹⁹ See Abu al-Walid Muhammad ibn Ahmad ibn Muhammad ibn Ahmad ibn Rusyd al-Qurtubi, *Fatawa Ibn Rusyd*, Juz III, dengan *tahqiq* dan *ta'liq* oleh al-Mukhtar ibn at-Tahir at-Talili (Bairut: Dar al-Garb al-Islami, 1987), 1494-1504.

²⁰ The term *mujtahid fi al-madhhab* was first introduced by al-ʿĀmidī, alongside the term *mujtahid muṭlaq*, which had long existed prior. Regarding the more nuanced levels of mujtahids, researchers typically refer to the earliest classification found in the work of an-Nawawī (d. 676 AH) in *al-Majmūʿ*. However, an-Nawawī's classification actually quotes the opinion of Ibn as-Salāḥ (d. 643 AH), which is contained in his work *Adab al-Muftī wa al-Mustaftī*. The mujtahid classifications discussed by Ibn as-Salāḥ and an-Nawawī appear within the context of qualifications required for a muftī. According to both scholars, there are two categories of muftis: *muftī al-mustaqill* (independent mufti) and *muftī ghayr mustaqill* (non-independent mufti). Those categorized as *muftī mustaqill* are either *mujtahid mustaqill* or *mujtahid muṭlaq mustaqill*. Meanwhile, those in the *muftī ghayr mustaqill* category, also known as *muftī muntaṣib*, include *mujtahid muntaṣib*, *mujtahid muqayyad*, and *mujtahid fi al-madhhab*. This classification reflects an emerging relaxation in the qualifications required of a muftī. For further reference, see Abu Zakariyyā Muḥyī ad-Dīn ibn Sharaf an-Nawawī's *al-Majmūʿ Sharḥ al-Muhadhdhab*, Volume I, edited and introduced by Mahmūd Matraji (Beirut: Dār al-Fikr, 1996), pp. 71-74; and Abu ʿAmr ʿUthmān ibn ʿAbd ar-Raḥmān (Ibn as-Salāḥ ash-Shahrazūrī), *Adab al-Muftī wa al-Mustaftī*, edited by Muwaffaq ibn ʿAbd Allāh ibn ʿAbd al-Qādir (al-Madīnah al-Munawwarah: Maktabah al-ʿUlūm wa al-Ḥikam, 2002), 86-101.

²¹ Al-ʿĀmidī, *al-Ihkam*, Juz IV, 457.

indicate a certain leniency by permitting a mujtahid within a madhhab (mujtahid fī al-madhhab) to serve as a muftī.

3. Results and Discussion

The Custodians of Fatwa Authority in the Historical Development of Islamic Law

The term "authority" is derived from the English word authority, which encompasses prestige, the right to act, expertise, an authorized person, power, and source.²² The usage of the term "authority" in this writing refers specifically to the meaning of "power" or "jurisdiction." Concerning the discussion on the authority of those who issue *fatwas* (avoiding the term "holders of fatwa"), the author adopts the terminology employed by Khaled M. Abou El Fadl, who distinguishes between "being in authority" and "being an authority."²³ According to him, a person who is "in authority" is obeyed by others by displaying symbols that convey the message that they have the right to issue commands or directives. In other words, obedience to someone in authority involves submission to their official position or capacity, leaving others with no option but to comply, even if they disagree with the authority figure.

In contrast, obedience to an "authority" involves a different spirit. Here, an individual sets aside their opinion out of deference to the authority holder, who possesses superior knowledge, wisdom, or understanding. Thus, submission to someone who holds authority entails recognizing their specialized expertise.²⁴

The concept of authority in law has long been an integral part of Islamic teachings. Various legal paradigms and categories have dominated all normative discourses concerning Islamic orthodoxy in Islamic law. Hallaq asserts that the concept of authority within Islamic law, while sometimes religious and moral, is fundamentally epistemic. It is consistently understood as a force that drives the inherent processes of continuity and change.²⁵ Regarding the issue of authority in Islamic law, Hallaq states that the principal agents driving change through legal legitimization and formalization are the *muftī* (the jurisconsult or legal opinion expert) and the *faqīh muṣannif* (the author-jurist or jurist who composes legal texts). Hallaq considers both to possess the authority to create and shape authoritative legal texts.²⁶

The Qurʾān does not provide explicit provisions regarding the issue of authority in Islamic law. While the Qurʾān frequently refers to God as the ultimate authority over all matters, it does not delineate the relationship dynamics and precise balance between God, the textual sources, society, and the individual. Furthermore, Islamic legal scholars generally believe that responsibility and accountability in the hereafter are personal and individual, with each person being accountable for understanding and implementing God's law.²⁷ Divine law represents an abstract concept of God's

²² John M. Echols dan Hassan Shadily, *Kamus Inggris Indonesia*, cet. ke-24 (Jakarta: PT Gramedia Pustaka Utama, 2000), 46.

²³ See Khaled M. Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority, and Women* (Oxford: Oneworld Publications, 2003), 18.

²⁴ In other terms, Abou El Fadl calls the term "holding authority" "coercive authority". As for the term "holding authority" with "persuasive authority". Coercive authority is the ability to direct the behavior of others by persuading, taking advantage, threatening, or punishing, so that reasonable people will conclude that for practical purposes they have no choice but to comply. Persuasive authority involves normative power. It is the ability to direct a person's beliefs or behavior on the basis of trust.

²⁵ Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), ix.

²⁶ Hallaq, xii, 233.

²⁷ The Qurʾān repeatedly emphasizes personal responsibility and accountability. For example, see Q.S. al-Anʿām [6]:164; Ibrāhīm [14]:51; Ghāfir [40]:17; al-Jāthiyah [45]:22; al-Mudassir [74]:38; an-Nūr [24]:11; and al-Baqarah [2]:286.

will, yet the nature and purpose of that will remain subjects of debate in an individual's pursuit and implementation of God's will.

Undoubtedly, Allah, the Qur'an, and the Prophet Muhammad (peace be upon him) are regarded by Muslims as the true bearers of authority in Islam. The Qur'an explicitly commands Muslims to carry out the commands of Allah and distinguishes this from following human desires. Allah instructs the Prophet to judge humanity according to divine law and prohibits submission to human whims.²⁸ On certain occasions, the Qur'an states, an Nisa:105:²⁹

Indeed, we have revealed to you, [O Muhammad], the Book in truth so you may judge between the people by that which Allah has shown you. And do not be for the deceitful advocate.

On other occasions, the Qur'an preaches to Muslims that they should settle all disputes regarding Allah and His Prophet. The Qur'an also makes it clear that those who refuse to settle their disputes by the decree of Allah and His Prophet are not considered to be true Muslims.³⁰ In Al-Qur'an said Surat Al-Ahzab Ayat 36:³¹

And it is not fitting for believing men and women, when Allah and His Messenger have made a decree, to make another choice about their affairs. And whoever disobeys Allah and His Messenger, then indeed he is in manifest error.

Concerning this discussion, the above verse can be understood as an injunction for humans to submit to Allah's decisions, laws, or ordinances. However, the issue arises concerning the concept of submission to divine law or ordinance, particularly regarding the proof of how it can be established that Allah or the Prophet has indeed issued or enacted a specific law. In other words, how do we ascertain that someone genuinely attributes something to Allah or His Prophet? This is what is referred to as the question of competence. Another issue pertains to determining the meaning of a legal provision, which involves understanding, interpreting, and applying the legal ruling. Furthermore, there is the question of who is responsible for verifying and resolving competence matters and determining meaning in a legal provision. What are the processes and frameworks for establishing competence, interpreting meaning, and implementing the law?

In the view of scholars, during his lifetime, the Prophet Muhammad (peace be upon him) was recognized as having an authoritative role in representing the will of Allah. He was regarded as the recipient of divine revelation, thus effectively serving as the ultimate authority within the earliest Muslim community. However, after his passing, the early Muslim society faced a severe and unprecedented problem concerning legitimacy and authority. The first caliph, Abu Bakr (d. 13 AH / 634 CE), encountered significant challenges from those who refused to pay zakat and from apostates; the second caliph, 'Umar ibn al-Khaṭṭāb (d. 23 AH / 644 CE), and the third caliph, 'Uthmān ibn 'Affān (d. 35 AH / 656 CE), were both assassinated. The fourth caliph, 'Alī ibn Abī Ṭālib (d. 40 AH / 661 CE), faced several major rebellions and was ultimately also assassinated.³² Besides political and socio-economic factors, these rebellions also reflected a crisis of authority. However, concerning competence and

²⁸ In the discourse of the Qur'an, *hawā'* (desires or whims) is explicitly distinguished from justice, truth, and divine law. For example, see Q.S. al-Baqarah [2]:120, 145; an-Nisa' [4]:135; al-Mā'idah [5]:49; al-An'ām [6]:119; al-Kahf [18]:28; al-Mu'minūn [23]:71; Ṣād [38]:26; Muḥammad [47]:14-16; and an-Nāzi'āt [79]:40. The Qur'an states that those who submit to their desires rather than to God are misguided. See Q.S. al-Jāthiyah [45]:23 and al-Qaṣaṣ [28]:50.

²⁹ Q.S. an-Nisa' [4]: 105. See on Q.S. al-Baqarah [2]: 213; al-Mā'idah [5]: 48.

³⁰ Q.S. Alu 'Imran [3]: 23; al-Mā'idah [5]: 44-5, 47; an-Nur [24]: 48, an-Nisa' [4]: 65; asy-Syura [42]: 10.

³¹ Q.S. al-Ahzab [33]: 36.

³² See Albert Hourani, *Sejarah Bangsa-bangsa Muslim*, terj. Irfan Abubakar (Bandung: Mizan, 2004), 74-9.

interpretation of various Islamic legal provisions, the Companions were granted discretion to hold authority over Islamic law based on their capabilities. Through their efforts, numerous Islamic legal rulings (fatwas) emerged, and the authority to issue such fatwas was subsequently passed on to successive generations.

Subsequently, the authority over Allah's law from the 2nd century AH/8th century CE onwards rested in a specific group of professionals known as the *fuqahā'* (Islamic jurists). From a socio-historical perspective, these Islamic legal scholars have been the exclusive spokespersons endowed with authoritative legitimacy throughout Islamic history. The *fuqahā'* have been the primary sources of textual legitimacy, grounded in their ability to read, understand, and interpret the will of Allah as revealed in the texts (*naṣṣ*), which are regarded as the embodiment of divine will. This divine will is recorded and sometimes concealed within the texts; these jurists must discover and analyze it.

Al-Qarāfī's Perspective on the Holders of Fatwā Authority

According to al-Qarāfī, whenever a mujtahid exerts their full capacity optimally to derive a *shar'ī* ruling, the ruling they obtain based on their strong conjecture (*ẓann*) is considered the law of Allah applicable to themselves and to those who follow them. Therefore, there is no dispute, and it is appropriate for mujtahids to have the authority to issue fatwas or act as *muftīs*. Al-Qarāfī does not restrict or limit the authority of mujtahids as *muftīs* solely to certain mujtahids or the imams of *madhhabs*. Consequently, anyone who reaches the level of *ijtihād* or meets the qualifications to perform *ijtihād* has the right to issue fatwas.

However, according to al-Qarāfī's view, as cited from al-Aḥmadī, in addition to fulfilling the qualifications for *ijtihād*, a mujtahid *muftī* must possess the attribute of *'adālah* (uprightness) so that their fatwas are trustworthy. It is also recommended that they intend to provide guidance and direction to the community, avoid *riyā'* (showing off) and *sum'ah* (seeking praise), maintain calmness and humility so that listeners (*mustami'*) feel comfortable receiving their words, and exhibit *qana'ah* (contentment) concerning the wealth of others.³³

Al-Qarāfī does not create classifications or hierarchical levels among mujtahids, as he distinctly differentiates between a mujtahid and a *muqallid*. For him, those who are not mujtahids are called *muqallids* (followers who perform *taqlīd*). In his view, a *muqallid* is a person who lacks the authority to engage in *istidlāl* (independent legal reasoning) based on the evidence of Islamic law.³⁴ The issue then arises is whether those other than mujtahids have the authority to issue fatwas. In *Nafa'is al-Usūl*, al-Qarāfī cites a statement by al-Aḥmadī, albeit with slightly different wording (see the previous page), which asks: "Is it permissible for a person who is not a mujtahid to issue fatwas according to the *madhhab* of the majority, as is the case in our present time?" In this matter, al-Qarāfī reiterates al-Aḥmadī's statement.³⁵ This is done by acknowledging (without further comment) that there is an opinion which does not permit non-mujtahids to issue fatwas, namely that of Abū al-Ḥusayn al-Baṣrī and a group of *usūl* scholars. At the same time, al-Qarāfī does not reject al-Aḥmadī's opinion, which allows a mujtahid *fi al-madhhab* to issue fatwas under certain conditions as mentioned above. Furthermore, al-Qarāfī provides the following clarification:

³³ According to al-Qarāfī, abstaining from *riyā'* (showing off) and *sum'ah* (seeking praise) is obligatory (*wājib*) rather than merely recommended (*yushtahab*), as stated by al-Āmidī. (See *ibid.*, Volume IV, p. 595; compare with al-Āmidī, *al-Iḥkām*, Volume IV, 445.

³⁴ Al-Qarāfī, *Nafa'is*, Juz I, 45.

³⁵ Al-Qarāfī, Juz IV, 598.

One should exercise caution regarding the current situation in our time, where some fuqahā' issue fatwas too easily by citing from obscure or unfamiliar books (*al-kutub al-gharibah*) that lack authenticated chains of transmission (*sanad*) from mujtahid muftis. These are not drawn from well-known and widely recognized texts, which, due to their popularity, are less prone to errors in copying and transcription. Furthermore, some among them are overly lax in issuing fatwas, such that if they find a fatwa in a commentary (*hāshiyah*) on a particular book, they immediately adopt it as their ruling. Such behavior is considered unethical and deviates from the legitimate principles."³⁶

Al-Qarāfi's attitude, as described above, can be understood as maintaining openness toward the view that prohibits non-mujtahids from issuing fatwas while also granting authority to mujtahids *fi al-madhab* to issue fatwas. Moreover, he permits non-mujtahids to issue fatwas only insofar as they act as transmitters or reporters of fatwas issued by mujtahids found in well-known texts whose authenticity in transmission is assured. On the other hand, al-Qarāfi firmly rejects those who are careless, reckless, and scientifically irresponsible in issuing fatwas. Thus, the leniency granted by al-Qarāfi to muqallids regarding the authority to issue fatwas remains within accountable boundaries. He considers it a grave calamity when someone unqualified dares to issue fatwas.³⁷

Al-Qarāfi's seemingly more lenient stance regarding the authority of non-mujtahids (muqallids) to issue fatwas is further clarified in his Book *al-Furūq*, specifically in the 78th principle (*al-farq*) concerning the "criteria for who is authorized and who is not authorized to issue fatwas."³⁸ Regarding this matter, al-Qarāfi limits the subjects to those engaged in scholarly pursuits, whom he refers to as *ṭalib al-'ilm* (seekers of knowledge), excluding laypeople who are indeed not authorized to issue fatwas and are instead obligated to seek fatwas. Al-Qarāfi establishes three classifications for *ṭalib al-'ilm* concerning their authority to issue fatwas.

First, those who only focus on studying the *mukhtaṣar* (abridged) texts of their madhhab, which contain absolute legal texts (*muṭlaq*) despite the existence of qualified texts (*muqayyad*) in other books, and general legal texts ('amm) despite the presence of more specific ones (*mukhaṣṣaṣ*) in other works. Even if they memorize and understand these texts, it is impermissible for them to issue fatwas based on the rulings in those texts.

Second, those who study a madhhab's book with a broad understanding and are capable of examining detailed explanations in its commentaries (*sharāḥ*), where the absolute texts have been qualified and the general ones specified, yet they do not fully grasp the methods of legal deduction and the evidence relied upon by the madhhab's imam in subsidiary matters (*furū'*). They have only encountered these methods generally through teachers or peers. Such individuals may issue fatwas on all legal provisions of the madhhab that they have memorized and transmitted by following the dominant opinion within the madhhab, provided they meet the conditions for issuing fatwas. However, they must not issue fatwas by performing *takhrīj* (deriving legal rulings from evidence in the texts they have mastered) on new issues not explicitly addressed in those texts.

Third, those who master the methods of *ijtihād* of their madhhab's imam, including the application of evidence, analogical reasoning (*qiyās*), its implementation, as well as the principles of jurisprudence (*uṣūl al-fiqh*) and the madhhab's legal maxims (*qawā'id*). In addition, they possess high moral integrity (*ad-diyānah*), self-control (are not reckless), and uprightness (*adālah*). Such

³⁶ Al-Qarafi.

³⁷ Al-Qarafi, *al-Ihkam*, h. 123.

³⁸ Al-Qarafi, *al-Furuq* (Bairut: 'Alam al-Kutub, t.t.), Juz II, h. 107.

individuals may issue fatwas within their madhhab either by transmission (*naql*), merely quoting or conveying the madhhab's opinions, or by performing *takhrīj*. Al-Qarāfī refers to this third group as *muftī* in the category of *muqallid mukharrij* (a *muqallid* who can derive legal rulings).³⁹

The classification made by al-Qarāfī appears to be based on the diverse levels of scholarly competence possessed by the *ṭālib al-‘ilm* (seekers of knowledge/educated individuals) of his time, thereby necessitating clear guidelines regarding who may issue fatwas and the limits of their authority. Those categorized by al-Qarāfī as having the authority to issue fatwas, as described above, are termed *muftī muqallid*. That is, *muftīs* who follow (perform *taqlīd* of) the imams or mujtahids within a particular madhhab. Although a *muqallid* has the authority to issue fatwas based on the rulings of the mujtahid they follow, al-Qarāfī maintains that fatwas of mujtahids that contradict or violate *ijmā‘* (consensus), legal maxims (*qawā‘id*), explicit texts (*naṣṣ*), and clear analogical reasoning (*qiyās jāli*), must neither be transmitted nor issued as fatwas by the *muqallid*.⁴⁰

The authority granted by al-Qarāfī to *muqallids* to issue fatwas, whether merely as transmitters of the fatwas of the mujtahids they follow (*naql*) or by deriving rulings (*takhrīj*) represents a breakthrough in the discourse of earlier scholars, who were still reluctant to explicitly authorize fatwa issuance to those other than mujtahids in their works. Al-Qarāfī's view appears to align with the realities of his time, where non-mujtahids (*muqallids*) acted as *muftī*, an inevitable circumstance. Moreover, there was a consensus among scholars (including al-Qarāfī himself) that in that era, no independent mujtahid (*mujtahid mustaqill*) remained if one refers to the classifications of mujtahids made by some scholars.⁴¹ In the practice of issuing fatwas after al-Qarāfī's time, and continuing to the present day among followers of the madhhab, fatwas are still issued both through transmission (*naql*) and derivation (*takhrīj*), as al-Qarāfī intended, alongside many other emerging methods.

Conclusion

Al-Qarāfī made a significant contribution to the discourse on authority and methodology in issuing fatwas through two complementary approaches: *qaulī* fatwas (following authoritative opinions within a madhhab) and *manhajī* fatwas (employing the *ijtihād* methods of the madhhab's imam to derive new rulings). This approach offers flexibility while maintaining adherence to the established madhhab framework. However, the *qaulī* method faces limitations due to restricted legal sources, and *tarjīh* often causes dissatisfaction amid madhhab pluralism. As an alternative, the *takhyīr* approach grants freedom to select among opinions, albeit controversially. The novelty of al-Qarāfī's thought lies in this integrative framework that opens the possibility of applying pluralism in modern

³⁹ See the explanation in more detail in Al-Qarafi, 107-10.

⁴⁰ Al-Qarafi, 109.

⁴¹ Although there are various classifications of *ijtihād* or *mujtahid*, they can broadly be grouped into two categories. Some scholars distinguish between *mujtahid muṭlaq* and *mujtahid fī al-madhhab*, while others differentiate between *mujtahid mustaqill* (independent mujtahid) and *mujtahid muntaṣib* or *mujtahid fī al-madhhab* (affiliated mujtahid). The first category refers to mujtahids who develop their *ijtihād* methods independently and issue rulings based on their own methodology. The second category includes mujtahids who partially or fully follows the *ijtihād* methods or principles of legal inference used by the independent or absolute mujtahid. According to most followers of the Shāfi‘ī and Ḥanafī madhhabs, independent *ijtihād* is considered closed. Conversely, most adherents of the Ḥanbali school believe that every era must have independent mujtahids. Meanwhile, followers of the Mālikī madhhab hold that while there may be eras without independent mujtahids, there may still be mujtahids *fī al-madhhab*, though it is not obligatory. For further reference, see Jalāluddīn Raḥmat, “A Critical Review of the History of Fiqh: from Fiqh al-Khulafā al-Rāshidīn to the Madhhab of Liberalism,” in Budhy Munawar-Rachman (ed.), *Contextualization of Islamic Doctrine in History* (Jakarta: Paramadina, 1995), 282.

Islamic legal decision-making. Accordingly, this study recommends methodological flexibility and madhhab pluralism as adaptive strategies to address contemporary Islamic law's complexities while preserving fatwas's scholarly legitimacy.

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