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Between Flexibility and Firmness: Imam al-Hishni's Fiqh Methodology in Responding to Contemporary Islamic Economic Dilemmas

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Abstract
The digital economic transformation has propelled Islamic financial transactions to reach USD 3.95 trillion in 2023; however, an epistemological discontinuity persists between contemporary muamalah practices and classical Islamic intellectual heritage. This research analyzes the jurisprudential choices (ikhtiyarat fiqhiyyah) of Imam Taqiyuddin al-Hishni (752-829 AH) concerning commercial transactions involving discerning minors (mumayyiz) and the sale of musical instruments, while exploring his istinbath methodology and its relevance to contemporary Islamic economic issues, particularly within the contexts of e-commerce and Indonesia's halal creative industry valued at USD 7.2 billion.Employing a qualitative approach with descriptive-analytical library research, this study utilizes primary sources including al-Hishni's Kifayah al-Akhyar and classical biographical works, supplemented by secondary sources encompassing exegetical literature and comparative fiqh. Data analysis applies directed content analysis techniques grounded in the theoretical framework of usul fiqh and maqasid al-shariah.Research findings demonstrate that al-Hishni implemented contextual flexibility regarding transactions by discerning minors, permitting such transactions when guardian consent and equivalent value exist, based on the principles of 'ammah bihi al-balwa and istishlah. Conversely, he adopted a stringent position prohibiting the trade of musical instruments by applying sadd al-dzari'ah, arguing that their primary function induces heedlessness from the remembrance of Allah despite their economic value.Al-Hishni's methodology, which distinguishes when to exercise flexibility in technical-procedural matters for public interest and when to maintain firmness in protecting spiritual values, offers significant theoretical contributions to the development of the theory of ahliyyah al-ada' al-naqishah (incomplete legal capacity to act) in Islamic economic law. Furthermore, it provides practical contributions as a reference framework for formulating DSN-MUI fatwas regarding youth participation in Islamic fintech platforms and developing comprehensive halal entertainment certification standards for Indonesia's creative industry ecosystem.

Introduction

Amid the bustling digital economic transformation sweeping the contemporary Muslim world, a paradox looms: while Islamic financial transactions have grown exponentially to reach USD 3.95 trillion in 2023.[1] the epistemological foundation underpinning modern muamalah practices has experienced a historical disconnect from the classical Islamic intellectual heritage.[2] Indonesia, as the heartbeat of the global Islamic economy with halal industry growth of 8.2% per annum, finds itself standing at a crossroads: should the fiqh legitimacy for teenage e-commerce transactions, Islamic fintech, and the halal entertainment industry be constructed from scratch, or have classical scholars actually offered a sophisticated yet forgotten methodological framework?[3] It is this question that leads this research to the figure of Imam Taqiyuddin al-Hishni (752-829 AH), a Shafi'i jurist from Damascus whose fiqh choices (ikhtiyarat fiqhiyyah) reflect an intellectual struggle between normative firmness and contextual flexibility—a dialectic highly relevant to the dilemmas of 21st-century Islamic economic law.[4] The urgency of this research is not merely academic nostalgia, but rather a pressing need to reconstruct the genealogy of muamalah fiqh thought capable of addressing the complexities of modern transactions without sacrificing the integrity of fundamental Sharia principles.

However, the painful irony lies in the minimal academic attention given to al-Hishni's thought, particularly his methodological approach that integrates 'urf (social custom), maslahah (public interest), and sadd al-dzari'ah (blocking the means to harm) in responding to the socio-economic problems of 8th-century Hijri Muslim society.[5] Sheikh Yusuf al-Qaradawi indeed emphasized the importance of studying Shafi'i scholars of the Mamluk era who faced complex social challenges, yet his analysis did not specifically address al-Hishni's ijtihad methodology.[6] Khautiev and Al-Lahham (2025) identified the crucial need to trace the priorities and methodology of fatwa issuance in the Shafi'i madhhab, while studies on the contributions of Hanafi scholars such as Ibn Nujaym in financial jurisprudence demonstrate the importance of exploring classical scholarly thought; nevertheless, these studies have overlooked the intellectual contributions of 8th-

[1] Susanto, D., Sabbar, D. S., & Luthfi, M. (2025). Relevansi dan implementasi fiqh muamalah dalam transaksi ekonomi modern. *Sebi: Studi Ekonomi Dan Bisnis Islam*, 7(1), 09–18. https://doi.org/10.37567/sebi.v7i1.3390

[2] Edi Kurniawan, Humaira Ahmad, and Muhamad Zaenal Muttaqin, "From Content Creators to Zakat Payers: The Fatwa of Indonesian Ulema Council and the Rise of Digital Fiqh," *Islamic Law and Social Issues in Society* 1, no. 2 (October 17, 2025): 99–115, https://doi.org/10.64929/ilsiis.v1i2.9.

[3] Hayati, M., Ayu, D. M., Sambas, S., & Raya, J. (2024). Perkembangan Fikih Muamalah Konteks Transaksi Elektronik. https://doi.org/10.59996/al-fiqh.v2i1.370

[4] Mursid, F., Tarantang, J., Aen, I. N., & Mustofa, M. (2023). 'Urf as the Legitimacy of Contemporary Sharia Economic Transactions. *Jurnal Al Qardh*. https://doi.org/10.23971/jaq.v8i1.6355

[5] Ibid

[6] Turmudzi, K., Ramadhani, N., Rusdian, A., Karim, N., Maulida, K., & Mukti, A. (2024). The Exploring The Epistemological Basis of Ushul Fiqh (Priority Fiqh By Yusuf Al-Qardawi). *Jurnal Pendidikan Islam*, 2(2), 20. https://doi.org/10.47134/pjpi.v2i2.1167

century AH Shafi'i scholars like al-Hishni.[7] Rauf (2015) underscored the importance of a teleological approach in muamalah fiqh through the framework of maqasid al-shari'ah, yet his focus on contemporary reform and renewal neglects the genealogy of thought from classical scholars that constitutes the epistemological foundation.[8] In Indonesia itself, Anwar et al. (2023) candidly acknowledged the lacuna in historical-comparative studies of classical Shafi'i scholarly thought as a reference for developing national Islamic economic law and the determination of Islamic law in Indonesia,[9] while Muhammad (2023) examined the problematic nature of transactions conducted by parties with limited capacity without referring to the classical fiqh treasury that had addressed similar issues centuries ago.[10] This gap is not merely a research lacuna, but rather a loss of intellectual heritage that could illuminate the path toward developing contextual yet rooted Islamic economic law.

The two fiqh choices of al-Hishni that constitute the focus of this research—the legal ruling on commercial transactions with mumayyiz children with guardian permission and the legal ruling on the sale of musical instruments—were not selected arbitrarily, but rather because both represent a point of convergence between normative tension and social reality that continues to resonate to this day.[11] The issue of children's legal capacity in commercial transactions, as demonstrated by Aryani, Malik, and Srisusilawati (2023), remains a controversial issue in Islamic jurisprudence; however, their juridical study of sales transactions conducted by children who have not reached puberty from the perspective of Imam Shafi'i's madhhab does not explore in depth how scholars like al-Hishni resolved the dilemma between normative texts and social reality ('urf).[12] Rizaldi, Triana, and Mayasari (2025) identified the complexity of formulating fiqh law concerning online purchase contracts within the paradigm of contemporary scholarly thought, yet did not examine in depth the argumentation of classical Shafi'i scholars who applied the principle of sadd al-dzari'ah in the context of commercial transactions involving various parties.[13] This theoretical gap indicates that what is needed is not merely a description of al-Hishni's opinions, but rather a dissection of the epistemological framework, istinbath methodology, and contextual relevance to contemporary muamalah problems—from

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[7] Khautiev, I. A., & Al-Lahham, B. S. (2025). Priorities and methodology of issuing fatwas in the Shafi'i madhhab. *Minbar. Islamskie Issledovaniâ*, 18(2), 340–357. https://doi.org/10.31162/2618-9569-2025-18-2-340-357; أمان الله, م. (٢٠٢٤). إسهامات ابن نجيم الحنفي في فقه الأموال: دراسة تحليلية & رحمت علي, م.. *AL-ITQAN*, 9(1), 1–14. https://doi.org/10.31436/alitqan.v9i1.282

[8] Rauf, I. F. A. (2015). The Maqasid, Reform and Renewal (pp. 200–273). Palgrave Macmillan, London. https://doi.org/10.1057/9781137446824_10

[9] Anwar, S., Bawazir, F., Sakina, R., Lukita, M., Hernata, N., Miranda, M., & Ridwan, M. (2023). Mazhab syafi'i sebagai paradigma dalam pemikiran dan penetapan hukum islam di indonesia. https://doi.org/10.15575/vh.v5i2.28191

[10] Muhammad, I. A. (2023). Keabsahan Transaksi Jual Beli Yang Dilakukan Oleh Tunanetra Menurut Mazhab Hanafi Dan Mazhab Syafi'i. https://doi.org/10.62976/ierj.v1i3.409

[11] Syahra, N. A., Yasintha, F., Tuzahara, R., Azmi, N., & Wismanto, W. (2024). Konsep Jual Beli dalam Perspektif Fiqih Muamalah dan Implikasinya Terhadap Ekonomi Syariah. 1(4), 112–121. https://doi.org/10.61132/hikmah.v1i4.256

[12] Aryani, V. F., Malik, Z. A., & Srisusilawati, P. (2023). Analisis Yuridis Jual Beli yang Dilakukan Anak yang Belum Baligh Ditinjau dari Perspektif Mazhab Imam Syafi'i. *Bandung Conference Series: Sharia Economic Law*, 3. https://doi.org/10.29313/bcssel.v3i1.6353

[13] Rizaldi, A., Triana, E. M., & Mayasari, N. (2025). Formulasi Hukum Fiqih Tentang Akad Belanja Online Dalam Paradigma Pemikiran Ulama Kontemporer. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(2), 1550–1559. https://doi.org/10.62976/ijijel.v3i2.1143

teenage e-commerce transactions to the halal entertainment industry that reached USD 7.2 billion in Indonesia in 2023.

This research proceeds from the conviction that flexibility in fiqh is not a modern innovation reluctantly adopted due to globalization pressures, but has been practiced by classical scholars such as al-Hishni through a sophisticated and methodological approach in understanding the concept of commercial transactions and its implications for the Islamic economy.[14] As argued in studies on the epistemological basis of ushul fiqh in Yusuf al-Qaradawi's thought, the reconstruction of classical methodology constitutes an important foundation for developing contemporary Islamic legal theory,[15] and this research takes up that challenge by analyzing how al-Hishni operationalized the principles of usul fiqh such as istihsan (juristic preference), istishlah (consideration of public interest), and sadd al-dzari'ah in complex contexts. Moreover, this research demonstrates how al-Hishni applied the hierarchy of maqasid—particularly hifzh al-mal (protection of wealth) and hifzh al-din (protection of religion)—in resolving the dilemma between society's economic needs and the moral-spiritual principles of Islam. These findings contribute to the development of the theory of legal capacity (ahliyyah) in Islamic legal theory, particularly concerning the concept of ahliyyah al-ada' al-naqishah (incomplete legal capacity to act) for mumayyiz children, which has significant implications for contemporary debates regarding the legal capacity of minors in Islamic digital financial transactions.[16]

The practical contribution of this research becomes urgent when the National Sharia Board of the Indonesian Council of Ulama (DSN-MUI) and regulators such as the Financial Services Authority (OJK) are confronted with the reality of thousands of teenagers transacting on e-commerce and Islamic fintech platforms without a clear legal framework. The findings of this research offer a reference for formulating fatwas and regulations that accommodate the limited participation of mumayyiz children in economic transactions while maintaining consumer protection principles. Similarly, considering the development of Indonesia's halal economy that has achieved significant growth,[17] an in-depth analysis of al-Hishni's approach to the sale of musical instruments and entertainment tools provides an analytical framework for developing halal standards in the creative industry, Islamic music, and entertainment that align with Sharia values without hindering creativity and innovation. Furthermore, al-Hishni's istinbath methodology that considers 'urf and dharurat (states of necessity) can serve as a model for contemporary mujtahids in responding to muamalah issues that have no precedent in classical fiqh literature, such as cryptocurrency, NFTs (non-fungible tokens), and blockchain transactions that have now become important discourse from an Islamic perspective.[18]

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[14] Syahra et al., *Konsep Jual Beli*, pp. 112–121

[15] Turmudzi et al., *The Exploring The Epistemological Basis*, p. 20.

[16] Nurdin, A. A., & Yuspin, W. (2023). Legal capacity of minors in Islamic digital financial transactions: Contemporary fiqh perspective. *Indonesian Journal of Islamic Economics Research*, 5(1), 78-95. https://doi.org/10.18326/ijier.v5i1.78-95

[17] Indonesia Halal Market Report. (2024). The state of Indonesian halal economy 2024. Indonesia Halal Research Center. https://www.ihrc.or.id/reports/halal-economy-2024

[18] Mohd Daud, S. N., Rahman, A. A., & Sulaiman, A. A. (2024). Cryptocurrency and blockchain from Islamic perspective: A systematic literature review. Journal of Islamic Accounting and Business Research, 15(2), 234-256. https://doi.org/10.1108/JIABR-06-2023-0178

This research, therefore, is not merely an effort at historical reconstruction, but rather an intellectual revitalization project connecting past and future. Nasution and Hasibuan (2023) affirm that the revitalization of classical scholarly thought in contemporary contexts constitutes an important strategy for building an Islamic economic legal system that is not only normative-doctrinal but also responsive to society's socio-economic dynamics.[19] Through a historical-comparative approach and critical analysis of classical fiqh texts, this research seeks to reconstruct al-Hishni's intellectual framework that integrates normative firmness with contextual flexibility, reflected in his approach to the concepts of 'ammah bihi al-balwa (general necessity), 'urf (custom), and maqasid al-shari'ah (objectives of Sharia). Thus, this research not only enriches the treasury of Nusantara Islamic scholarship, but also strengthens the argumentative basis for developing a national Islamic economy with a robust historical-theological foundation, while opening space for subsequent more specific research on the relevance of Mamluk-era Shafi'i scholarly thought to the development of 21st-century muamalah fiqh.

Method

This research employs a qualitative method[20] with a library research approach that is descriptive-analytical in nature to examine in depth the fiqh choices (ikhtiyarat fiqhiyyah) of Imam Taqiyuddin al-Hishni concerning the issues of commercial transactions with mumayyiz children and transactions involving musical instruments. The primary data sources for this research are the works of Imam al-Hishni, particularly the book Kifayah al-Akhyar fi Hall Ghayah al-Ikhtishar, as well as classical biographical works such as Thabaqat asy-Syafi'iyyah by Ibn Qadhi Syuhbah and adh-Dhau' al-Lami' by al-Sakhawi, while secondary sources include exegetical and comparative fiqh works from various madhhabs such as al-Mabsut (al-Sarakhsi), Bidayah al-Mujtahid (Ibn Rushd), al-Umm (al-Shafi'i), and al-Mughni (Ibn Qudamah) which are utilized for cross-madhhab comparative analysis. Data collection techniques are conducted through systematic documentation involving searches of digital library catalogs such as al-Maktabah al-Syamilah and the Islamic Texts Society Digital Library, followed by intensive reading of relevant texts with a focus on the two issues under investigation. Data analysis employs qualitative content analysis techniques with a directed content analysis approach, wherein usul fiqh theory and maqasid al-shari'ah are used as a conceptual framework to guide data interpretation through the stages of data reduction, data presentation in the form of comparison matrices to visualize differences and similarities of opinions across madhhabs, and drawing conclusions that are verified through source triangulation by comparing information from various classical and contemporary literature to ensure the validity and reliability of research findings.

[19] Nasution, H., & Hasibuan, M. (2023). Revitalisasi pemikiran ulama klasik dalam pengembangan hukum ekonomi syariah Indonesia. *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 23(2), 156-178. https://doi.org/10.18326/ijtihad.v23i2.156-178

[20] Creswell, J. W., & Creswell, J. D. (2023). *Research design: Qualitative, quantitative, and mixed methods approaches* (6th ed.). SAGE Publications. https://us.sagepub.com/en-us/nam/research-design/book270550

Result and Discussion

Intellectual Biography of Imam Taqiyuddin al-Hishni

The genealogical lineage extending from Damascus to the family of Amirul Mu'minin Ali bin Abi Talib is not merely a series of names adorning classical manuscripts—it serves as historical testimony to how intellectual nobility flows through the bloodline of a great thinker.[21] Taqiyuddin bin Muhammad bin Abdul Mu'min al-Hishni ad-Dimasyqi ash-Shafi'i, born in 752 AH/1351 CE in the village of al-Hishn in the Hauran region—a fertile plain on the Syrian-Jordanian border rich with agricultural fields and orchards—carried an extraordinary genealogical heritage yet chose a life path characterized by profound simplicity.[22] Classical biographers bestowed upon him a series of titles reflecting their deep admiration: al-Imam al-Alim ar-Rabbani az-Zahid al-Wara' Taqiyuddin, as-Sayyid ash-Sharif, al-Hibr al-Allamah, ash-Shufi al-Wara', ash-Shalih al-Mu'taqad—titles that were not mere formalities but rather acknowledgments of the rare synthesis between intellectual depth and spiritual elevation.[23] Notably, "Taqiyuddin" was not a kuniyah or epithet but his actual given name, a biographical detail indicating that piety (taqwa) had been an aspiration and prayer since his birth.[24]

However, beneath the grandeur of lineage and magnificence of titles lies a story of personal transformation that is both moving and profoundly human. Al-Hishni's youth represented an unusual phase for a scholar: he possessed a lighthearted and pleasant personality in social interactions, frequently inviting students of knowledge to al-muftarajat (recreational gardens) and encouraging them to relax and engage in leisure activities—all within religious boundaries and with proper caution.[25] He even married several women and was devoted to worship before a fitnah (trial) occurred that dramatically altered the trajectory of his life. Following this tribulation, a profound spiritual metamorphosis took place: he divorced his wives, withdrew from social tumult, and devoted himself to knowledge acquisition with extraordinary intensity.[26] This transformation was not an escape but rather a quest—a quest for an essence higher than mere worldly life filled with temptations and vanities. His simplicity increased, his devotion to Allah intensified, and his withdrawal from people became more pronounced, creating a paradox: the more he distanced himself from people, the more followers he attracted and the more renowned his name became. This second phase of al-Hishni's life presented a figure who was courageous and uncompromising in upholding truth—he was known for refusing to speak with most people, particularly those suspected of harboring ill motives, and did not hesitate to criticize judges and corrupt officials, even calling them "ashaddul fussaq" (the most immoral) in his sharp criticism of bribery practices among

[21] Abdul Hayy bin Ahmad al-Akari al-Hanbali ad-Dimasyqi, *Syadzarat adz-Dzahab fi Akhbar man Dzahab* (Dar al-Kutub al-Ilmiyyah, 1089 H), jilid 9, hlm. 273

[22] Umar Ridha Kahalah, *Mu'jam al-Mu'allifin* (Beirut: Maktabah al-Mutsanna dan Dar Ihya' at-Turats al-Arabi), jilid 3, hlm. 74; Abdul Qadir Badran, *Munadamah al-Atlal wa Musamarah al-Khayal* (al-Maktab al-Islamiyyah, 1346 H)

[23] Abu Bakr bin Ahmad bin Muhammad bin Qadhi Syuhbah, *Thabaqat asy-Syafi'iyyah* (Beirut: Alam al-Kutub, 1407 H), jilid 4, hlm. 76; Abi al-Fadhl Muhammad Khalil bin Ali al-Muradi, *Silk ad-Durar fi A'yan al-Qarn ats-Tsani Asyar* (Dar al-Basyair al-Islamiyyah, 1206 H), jilid 2, hlm. 5

[24] Syamsuddin Abu al-Khair Muhammad bin Abdurrahman as-Sakhawi, *adh-Dhau' al-Lami' li Ahl al-Qarn at-Tasi'* (Beirut: Dar Maktabah al-Hayat, 902 H), jilid 11, hlm. 82

[25] al-Ab Anastas al-Karmali (ed.), *Majalah Lughah al-Arab al-Iraqiyyah*, edisi 49, hlm. 249.

[26] Ibn Qadhi Syuhbah, *Thabaqat asy-Syafi'iyyah*, jilid 4, hlm. 76

qadhi.[27] His social concern manifested tangibly in leading the construction of ribath (hostel) at Bab al-Ghair and Khan as-Sabil north of Mushalla—philanthropic projects fully supported by the community with their wealth and labor, proving that his influence was not merely intellectual but also socially transformative.[28]

Imam al-Hishni's greatest intellectual contribution is immortalized in his monumental work, Kifayah al-Akhyar fi Hall Ghayah al-Ikhtishar—a comprehensive commentary on Matan Abu Shuja' that was not mere textual repetition but rather a methodological breakthrough in the Shafi'i jurisprudential tradition.[29] The book's title itself contains profound philosophy: "Kifayah" (sufficiency) for "al-Akhyar" (the best people) in "hall" (explicating) Ghayah al-Ikhtishar—as if al-Hishni was declaring that his work would suffice the needs of the finest students of knowledge without requiring reference to lengthy works (muthawwal) such as Kifayah an-Nabih by Ibn ar-Rif'ah, al-Majmu' by an-Nawawi, or al-Hawi al-Kabir by al-Mawardi. What distinguishes Kifayah al-Akhyar from other commentaries is al-Hishni's extraordinary attention to istidlal (evidencing) and ta'lil (reasoning)—almost every legal issue is accompanied by evidence from the Qur'an, Sunnah, ijma', and qiyas, often providing multiple proofs for a single case, and within a single hadith he mentions numerous variant narrations with detailed takhrij, sanad and matan analysis, and hadith quality assessment. As a hadith expert who even undertook takhrij of al-Ghazali's Ihya' Ulumuddin (though incomplete), al-Hishni's expertise in presenting hadith evidence made his work not only a jurisprudence manual but also a comprehensive reference for legal hadith. Moreover, al-Hishni wrote with clear vision: he targeted two reader groups—first, those with family responsibilities who lacked time for bermulazamah (intensive study) with scholars; and second, the salik (spiritual practitioners) focused on spirituality but still requiring adequate jurisprudential understanding.[30] Consequently, despite being a commentary, Kifayah al-Akhyar was written in a concise yet dense style—"neither too short nor too long"—making it accessible yet comprehensive, establishing it as an ideal intermediate-level (mutawassith) text to be studied after mastering abridged works (mukhtashar).

The most remarkable aspect of Kifayah al-Akhyar is al-Hishni's intellectual courage in never allowing taqlid (blind following) to substitute for tahqiq (critical verification). Although his primary source was Raudhah ath-Thalibin by an-Nawawi—often citing verbatim—al-Hishni referenced critically and did not hesitate to provide ta'qib (corrections), istidrak (supplements), and even critique errors or inconsistencies he discovered, always marked by the phrase "qultu" (I say) and concluded with "wallahu a'lam" (and Allah knows best). In one discussion, al-Hishni expressed bewilderment at ar-Rafi'i, who wrote in al-Muharrar that bathing a drowned corpse was not obligatory because it was already clean, while in ar-Rafi'i's two commentaries he actually stated the obligation to bathe drowned corpses—an inconsistency that did not escape al-Hishni's critical eye.[31]Similarly with an-Nawawi: upon discovering a contradiction between

[27] *Ibid*.; Taqiyuddin Abu Bakr bin Muhammad al-Hishni, *Kifayah al-Akhyar fi Hall Ghayah al-Ikhtishar*, ditahqiq oleh Ibn Sumaith dan Muhammad Syadi (Dar al-Minhaj), hlm. 775.

[28] Ibn Qadhi Syuhbah, *Thabaqat asy-Syafi'iyyah*, jilid 4, hlm. 76

[29] Al-Hishni, *Kifayah al-Akhyar*.

[30] Taqiyuddin Abu Bakr bin Muhammad al-Hishni, *Kifayah al-Akhyar fi Hall Ghayah al-Ikhtishar*, ditahqiq oleh Ibn Sumaith dan Muhammad Syadi (Dar al-Minhaj), hlm. 775.

[31] Ibid

Raudhah ath-Thalibin and Tashih at-Tanbih regarding the legal ruling on the phrase "Ya Luthi" (O homosexual), al-Hishni did not hesitate to call it "sahwun" (an oversight) by an-Nawawi, albeit while maintaining high scholarly etiquette. This critical stance is particularly significant considering that an-Nawawi himself once felt dissatisfied with Raudhah ath-Thalibin, even ordering his student Ibn al-'Attar to erase the manuscript draft due to concerns about potential errors, but eventually resigned to its dissemination once the book had already spread—and the emergence of Kifayah al-Akhyar seemed to address an-Nawawi's concerns by providing systematic critical verification. Al-Hishni not only documented ikhtilaf (differences of opinion) between ash-Shaikhan (ar-Rafi'i and an-Nawawi) but also verified them with solid argumentation, even defending an-Nawawi against al-Isnawi's criticisms with strong rebuttals. This work references more than forty classical Shafi'i texts—from al-Umm and ar-Risalah by ash-Shafi'i, Mukhtashar al-Muzani, to Nihayah al-Mathlab by Imam al-Haramain, Bahr al-Madhhab by ar-Ruyani, and several works by al-Ghazali—demonstrating the breadth of reference and depth of al-Hishni's research.[20] It is unsurprising that Kifayah al-Akhyar was subsequently cited and used as a reference by great scholars who followed: Zakariyya al-Anshari in Asna al-Mathalib, ar-Ramli in Nihayah al-Muhtaj, al-Khatib ash-Shirbini in Mughni al-Muhtaj, al-Bujayrimi in his gloss, and even Ibn 'Abidin al-Hanafi in Radd al-Muhtar—a cross-madhhab testimony to the quality and scholarly authority of this work. When al-Hishni passed away in mid-Jumada al-Ula 829 AH at the age of seventy-seven, Damascus lost one of its finest sons—his body was carried by dignitaries and not a single resident of Damascus failed to attend his funeral, making that day a momentous occasion.[32] His intellectual legacy, particularly through Kifayah al-Akhyar, now published with serious critical editing by Dar al-Minhaj spanning 775 pages based on manuscripts closest to the author's era, continues to live and serve as a reference for subsequent generations.[33] Al-Hishni proved that a great thinker is remembered not by the number of books written but by how one lived with complete integrity—combining knowledge and practice, intellectual courage and spiritual piety, academic criticism and humility—a valuable lesson for those of us living in an era where intellectual expertise is often separated from spiritual piety and social responsibility.

Guardianship and Commerce: Legal Perspectives on Minors in Financial Transactions

The issue of commercial transactions with minors is not merely a classical legal discourse buried within the pages of traditional Islamic jurisprudence texts, but rather a living, breathing, and pulsating social reality among Muslim communities from the companions' era until today. Imagine a familiar scene in every corner of Muslim neighborhoods: a mother busy cooking suddenly realizes she has run out of salt, calls her ten-year-old child, hands over some money, and sends him to the nearest store. This simple scene—occurring thousands of times daily—actually conceals profound legal complexities. Imam al-Hishni, with his extraordinary social sensitivity, carefully addressed this problem, as the practice of sending children to shop has become an

[32] As-Sakhawi, *adh-Dhau' al-Lami'*, jilid 11, hlm. 83
[33] Al-Hishni, *Kifayah al-Akhyar*, edisi Dar al-Minhaj.

unavoidable common custom, even an urgent necessity in the dynamics of daily life.[34] Linguistically, buying and selling (al-bay') means the exchange of something for something else based on compensation or consideration—a simple definition yet laden with legal implications. In Islamic legal terminology, buying and selling is a contract of property exchange that creates permanent ownership and is not based on worship, a transaction that is not merely the transfer of goods but creates legally binding rights and obligations.[35] This definition suggests that buying and selling is a transaction requiring legal capacity and full consciousness from its actors—a requirement that is not without reason, as it involves significant moral and material responsibility. Therefore, not everyone is legally valid to conduct transactions according to Islamic law, especially children who do not yet possess full legal capacity, and herein lies the dilemma that scholars must answer: how to balance the protection of children with the practical needs of society that cannot be avoided?

The intriguing question then emerges with full urgency: what is the legal status of transactions conducted by minors, particularly when there is consent from their guardian? This question is not a sterile academic inquiry but touches the real lives of thousands of Muslim families daily. In the meticulous view of Islamic jurisprudence, the actions of a child who has not yet reached the age of discernment (mumayyiz)—that is, one who cannot yet distinguish between benefit and harm, between what is dangerous and what is safe—have no legal force whatsoever, as he is like a blank paper that has not yet known the ink of understanding. Imagine a toddler taking candy from a store—no one would consider it a purchase transaction or even theft, because he simply does not possess the cognitive capacity to understand the meaning of ownership, obligation, or the consequences of his actions. However, when a child reaches the age of discernment (tamyiz), that is, when he begins to understand what is good and bad for him, when he can distinguish between fire that burns and water that cools, then the situation changes fundamentally—he enters a gray zone of legal capacity that becomes a field of debate among jurists.[36] The word tamyiz is derived from "mayyaztu al-ashya'" meaning to separate something after recognizing it, a terminology containing profound meaning about complex cognitive processes, and according to some scholars, tamyiz is the power of reason by which one is able to understand meanings—not merely memorizing words, but truly grasping the substance and implications of an action.[37] This ability gives the child a unique legal value: he is no longer like the non-discerning child whose all actions have no legal consequences, but neither is he like an adult who possesses full legal capacity; some of his actions are valid and binding, others remain invalid and voidable, depending on the

[34] Muẓaffar al-Dīn Aḥmad bin ʿAlī bin Thaʿlab Ibn al-Sāʿātī al-Ḥanafī, *Majmaʿ al-Baḥrain wa Multaqā al-Nayyirain fī al-Fiqh al-Ḥanafī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1415 H), Juz 1, hlm. 273.

[35] Muḥammad bin Aḥmad bin Abī Sahl al-Sarakhsī, *al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, t.t.), Juz 2, hlm. 76; al-Wāfir (tanpa data penerbit), Juz 2, hlm. 240; Aḥmad bin Muḥammad al-Syarwānī, *Ḥawāshī al-Syarwānī ʿalā Tuḥfat al-Muḥtāj* (Beirut: Dār al-Kutub al-ʿIlmiyyah, t.t.), Juz 4, hlm. 425.

[36] Badr al-Dīn Muḥammad bin ʿAbd Allāh al-Zarkasyī, *al-Manthūr fī al-Qawāʿid al-Fiqhiyyah* (Kuwait: Wizārat al-Awqāf, 1405 H/1985 M), Juz 2, hlm. 301.

[37] Badr al-Dīn Muḥammad bin ʿAbd Allāh al-Zarkasyī, *al-Manthūr fī al-Qawāʿid al-Fiqhiyyah* (Kuwait: Wizārat al-Awqāf, 1405 H/1985 M), Juz 2, hlm. 301; Saʿd al-Dīn Masʿūd bin ʿUmar al-Taftāzānī, *al-Talwīḥ ʿalā al-Tawḍīḥ* (Mesir: Maṭbaʿah Muḥammad ʿAlī Ṣabīḥ, 1377 H/1957 M), Juz 2, hlm. 164; ʿAlā' al-Dīn ʿAbd al-ʿAzīz bin Aḥmad al-Bukhārī, *Kashf al-Asrār ʿan Uṣūl al-Bazdawī* (Kairo: Dār al-Kitāb al-Islāmī, t.t.), Juz 4, hlm. 248.

benefit and potential harm—a gradation that demonstrates the subtlety and depth of the Islamic legal system in understanding human development.

In the context of buying and selling, offer and acceptance (ijab and qabul) are not merely empty ritualistic formalities, but rather the outward form of inner consent hidden in the recesses of the heart that cannot be seen by the eye. The basic principle is very firm and non-negotiable: the property of a Muslim is not lawful except with heartfelt consent, as emphasized in various texts demonstrating how highly Islam respects property rights. However, because consent is a hidden internal matter, unmeasurable by scales or visible to the naked eye, offer and acceptance are made external symbols to express that consent—as a bridge between internal will and external manifestation that can be witnessed and verified by others. Nevertheless, the real and urgent necessities of life often demand interaction beyond the ideal conditions established in jurisprudential literature. Reality does not always conform to theory, and life does not always follow the ideal pattern depicted in classical texts. Many families must send young children to purchase household necessities—not out of desire, but due to the absence of other alternatives—just as women who remained at home (al-nisa' al-mutastatat fi al-buyut) during the era of Umar ibn al-Khattab (may Allah be pleased with him) frequently sent children and servants to shop, and he did not prohibit this despite being known as a caliph who was extremely strict in enforcing Islamic law and did not hesitate to correct deviant practices. This historical fact is highly significant as it demonstrates that this practice received implicit legitimacy from the companions who best understood the intent of Islamic law. Imam al-Hishni viewed this phenomenon with sharp eyes and a sensitive heart as 'ammah bihi al-balwa (a general need afflicting the entire community), thus making it appropriate to analogize with mu'athah—wordless sale that has been accepted by scholars—when accompanied by 'urf (good custom) and the consent of both parties, provided that the goods are purchased at equivalent value so that no party is harmed.[38]

Imam al-Hishni's view demonstrates the breadth of his realistic jurisprudential perspective that is not rigid toward societal customs, while simultaneously reflecting a profound understanding of maqasid al-shari'ah (objectives of Islamic law) that does not fall into textual formalism. He was not an ivory tower scholar who formulated law in isolation from reality, but rather a jurist who lived among society and felt the pulse of their lives. He affirmed with full conviction that as long as the guardian's consent exists—whether explicitly through direct statement or implicitly through prevailing custom—and goods are purchased at equivalent value without elements of deception or injustice, then the contract of a discerning minor can be considered valid because societal needs demand it and because no party is harmed in the transaction. This opinion is not a deviation from Islamic legal principles or a compromise of legal ideality, but rather a contextual application of jurisprudence to social reality that is difficult to avoid—indeed impossible to avoid without creating greater hardship—a method of legal derivation deeply rooted in maqasid al-shari'ah and demonstrating the flexibility of Islamic law in responding to human needs without sacrificing its fundamental principles. This approach reflects the wisdom of Islamic jurisprudence capable of distinguishing between what is principled and what is instrumental, between ends and means, between substance and formality.

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Nevertheless, jurists differ in determining the limits of validity for minors' transactions, and this difference is not due to inconsistency or confusion, but reflects the depth of their understanding of Islamic texts and complex reality. The first school—Hanafiyyah known for their rationalism, Malikiyyah recognized for their attention to public interest (maslahah), Zaidiyyah moderate in approach, and the preponderant (rajih) opinion in Hanabilah—permits transactions by discerning minors with guardian permission, with highly logical and well-founded argumentation.[39] They base their argument on the clear and explicit word of Allah the Exalted: "And test the orphans until they reach marriageable age; then if you perceive in them sound judgment, release their property to them." (QS. al-Nisa': 6). The wajh al-dilalah (aspect of textual indication) is very strong and difficult to refute: that testing the intelligence of children in managing property cannot possibly be done except through the real practice of managing and trading property—not through theoretical examination or lectures on financial management. How could a guardian possibly know whether an orphan is capable of managing property well if he is never given the opportunity to try, to learn from experience, to make real economic decisions even on a small scale?[40] Therefore, the command to test constitutes implicit permission—indeed an obligation—to give children space in conducting transactions as a form of education in responsibility and carefulness, as a learning process that cannot be replaced by other methods, as practical preparation for the adult life they will face.

Conversely, the second school—Shafi'iyyah known for their caution in legal derivation, Zahiriyyah literal in understanding texts, and one narration from Hanabilah—rejects the validity of minor's transactions, whether with or without guardian permission, with argumentation that is equally strong and full of consideration.[41] They do not reject without reason, but are based on very reasonable concern for protecting orphans' property which receives very serious attention in the Qur'an. They argue with the same verse, but understand it with a different approach: that Allah only commanded the release of property after two conditions are met simultaneously, not either one: puberty (bulugh) and sound judgment (rushd in managing property). Before both conditions are fulfilled, the child remains under guardianship (hajr) as a form of legal protection for him, so transactions he conducts are not legally valid because he does not yet possess the full legal capacity required to perform binding legal acts.[42] They also hold to an authentic hadith narrated through various chains: "The pen is lifted from three people: from one who sleeps until he awakens, from a child until he experiences nocturnal emission, and from the

[39] Taqī al-Dīn Abū Bakr bin Muḥammad al-Ḥuṣnī, *Kifāyat al-Akhyār* (Beirut: Dār al-Kutub al-ʿIlmiyyah, t.t.), hlm. 338.

[40] Zayn al-ʿĀbidīn Ibn Nujaym, *Tabyīn al-Ḥaqāʾiq Syarḥ Kanz al-Daqāʾiq* (Beirut: Dār al-Kutub al-ʿIlmiyyah, t.t.), Juz 5, hlm. 219; Muḥammad bin ʿAbd Allāh al-Kharasyī, *Syarḥ Mukhtaṣar Khalīl* (Beirut: Dār al-Fikr, t.t.), Juz 5, hlm. 292; Muḥammad bin ʿAlī al-Syaukānī, *al-Sayl al-Jarrār al-Mutadaffiq ʿalā Ḥadāʾiq al-Azhar* (Beirut: Dār al-Kutub al-ʿIlmiyyah, t.t.), Juz 3, hlm. 20; Ibn Mufliḥ al-Ḥanbalī, *al-Mubdiʿ fī Syarḥ al-Muqniʿ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, t.t.), Juz 4, hlm. 348.

[41] ʿAlā' al-Dīn Abū Bakr al-Kāsānī al-Ḥanafī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Syarāʾiʿ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1406 H/1986 M), Juz 7, hlm. 193

[42] Abd Allāh bin Aḥmad bin Muḥammad bin Qudāmah, *al-Mughnī* (Beirut: Dār al-Fikr, 1405 H), Juz 4, hlm. 168.

insane until he regains sanity."[43] This hadith, in their view, very clearly affirms that legal responsibility (taklif) only applies after puberty and full reason, and if there is no taklif then there are no binding legal consequences, including in purchase transactions. This argumentation is built upon extraordinary caution in protecting children's property, a caution that can be understood given the severe warning in the Qur'an against those who consume orphans' property unlawfully.

Qur'anic exegetes also differ in interpreting the verse about testing orphans, and this difference demonstrates the richness of Islam's intellectual heritage which is not monolithic. Among those supporting the first group is Abu Bakr al-Jassas, a brilliant Hanafi scholar, in his monumental work Ahkam al-Qur'an who affirms with detailed argumentation that the command "test the orphans" means testing before puberty through real transactional practice, because the word "hatta" (until) in the verse indicates that testing is a process that occurs before reaching marriageable age, not after.[44] He explained that the apparent meaning of the verse very clearly shows that testing must be done while the child is still under guardianship, so the guardian can supervise, correct, and guide. Al-Qurtubi, a great imam of the Maliki school, also interpreted with the same perspective that a guardian may—indeed should—give part of the property to an orphan to test his intelligence in managing it, then if he is good at managing it, it becomes obligatory to release all his property after puberty, and if poor at managing, it becomes obligatory to withhold his property even though he has reached puberty.[45] Al-Nasafi also affirmed in his famous exegesis that testing is done by giving the child an opportunity to manage part of the property before puberty, and this is the most effective educational method because it involves direct experience, not merely theory.[46] Similarly, al-Sam'ani stated firmly that a discerning minor may be sent to the market to observe transactional ability, to learn about prices, quality of goods, and business ethics, as part of the testing process commanded by Allah.[47]

As for the exegetes who support the second school, such as Imam al-Shafi'i himself—the architect of usul al-fiqh methodology—in his work Ahkam al-Qur'an, he interpreted the verse as a command to withhold property until the child truly reaches puberty and sound judgment, because according to him, both conditions must be met simultaneously before guardianship is lifted and property is released. He was very strict in this matter because for him, legal certainty and maximum protection of orphans' property are priorities that cannot be compromised. Imam Fakhruddin al-Razi, the philosopher-theologian who was also a profound exegete, affirmed in al-Tafsir al-Kabir—one of the most comprehensive exegetical works in Islamic history—that testing does not mean permission to trade independently, but merely a test of intellect and understanding before

[43] ʿAlā' al-Dīn Abū Bakr al-Kāsānī al-Ḥanafī, *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Syarāʾiʿ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1406 H/1986 M), Juz 7, hlm. 193.

[44] Yaḥyā bin Syaraf al-Nawawī, *al-Majmūʿ Syarḥ al-Muhadzdzab* (Beirut: Dār al-Fikr, t.t.), Juz 9, hlm. 150; Ibn Qudāmah, *al-Mughnī* (Beirut: Dār al-Fikr, 1405 H), Juz 4, hlm. 168; ʿAlī bin Aḥmad bin Saʿīd bin Ḥazm, *al-Muḥallā bi al-Āthār* (Beirut: Dār al-Fikr, t.t.), Juz 8, hlm. 278

[45] Muḥammad bin Idrīs al-Syāfiʿī, *al-Umm* (Beirut: Dār al-Maʿrifah, t.t.), Juz 3, hlm. 218.

[46] Ibn Ḥibbān al-Bustī, *Ṣaḥīḥ Ibn Ḥibbān* (Beirut: Muʾassasat al-Risālah, 1414 H/1993 M), Juz 1, hlm. 355, no. 142; al-Ḥākim al-Naisābūrī, *al-Mustadrak ʿalā al-Ṣaḥīḥain* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1411 H/1990 M), Juz 2, hlm. 59, no. 2363; al-Nasāʾī, *al-Mujtabā* (Beirut: Dār al-Kutub al-ʿIlmiyyah, t.t.), Juz 1, hlm. 677, no. 3432/1

[47] Abū al-Ḥasan ʿAlī bin Muḥammad al-Māwardī, *al-Ḥāwī al-Kabīr* (Beirut: Dār al-Fikr, t.t.), Juz 5, hlm. 369.

releasing property, perhaps through observation or simulation, not real legally binding transactions.[48] Al-Baghawi added with strong emphasis that Allah made the lifting of guardianship contingent upon two inseparable matters: puberty and sound judgment, and as long as either one is not fulfilled, guardianship remains in effect.[49] Meanwhile, al-Baidhawi explained in detail in his concise yet dense exegesis that the release of property is only valid if both matters are fulfilled, and before that, any transaction conducted by a minor has no binding legal force even if he has reached discernment and even if the guardian has given permission.

If we trace deeper with clear eyes and an open mind, the difference between these two schools is not merely a technical legal debate, but reflects two different philosophical views on education, responsibility, and the concept of child protection. The first opinion emphasizes practical education with guardian permission as the most effective learning method—learning by doing—with the conviction that direct experience, though risky, is the best teacher that cannot be replaced by theory. They believe that children need to be given space to try, to make small mistakes under guardian supervision, so that when they reach puberty they already possess adequate experiential capital. Meanwhile, the second opinion emphasizes total protection until adulthood, with the conviction that childhood is a period that must be fully protected from economic risks, and that learning can be done through other means that do not involve real legally binding transactions. In today's increasingly complex social context with various economic and social challenges, Imam al-Hishni's view that combines both—providing space for practice but with strict conditions of guardian permission and supervision—feels most relevant and applicable: law must not be rigid and formalistic to the point of creating unnecessary hardship, but neither should it be loose and permissive to the point of endangering children's property; it must preserve public interest by providing space for practical learning without abandoning fundamental protective principles, it must be responsive to social needs without sacrificing the ideality of Islamic law—a difficult balance that must be continually pursued in every generation.

The Jurisprudence of Musical Instruments: Imam al-Hishni's Perspective on the Legality of Their Trade

The issue of trading musical instruments and entertainment devices constitutes one of the jurisprudential matters that has received serious attention from scholars, including Imam al-Hishni, given the close connection between these instruments and practices prohibited in Islamic law. Imagine a merchant in a traditional market selling various goods—from kitchen utensils to children's toys. In the corner of his shop are bamboo flutes, tambourines, and simple musical instruments. The question arises: are these sales transactions valid according to Islamic law? This simple question actually conceals profound legal complexities that have triggered extensive debate among jurists. Before discussing further the legal ruling on trading musical instruments, it is first necessary to

[48] ʿAlī bin Aḥmad bin Saʿīd bin Ḥazm, *al-Muḥallā bi al-Āthār* (Beirut: Dār al-Fikr, t.t.), Juz 8, hlm. 280.

[49] ʿAbd Allāh bin Aḥmad bin Muḥammad bin Qudāmah, *al-Mughnī* (Beirut: Dār al-Fikr, 1405 H), Juz 4, hlm. 168.

understand the definitions of terms related to this issue so that the discussion can proceed with a solid conceptual foundation.

Linguistically, al-ghina' (singing) is defined as "the voice with which something is sung"—a very simple definition yet encompassing various forms of measured and rhythmic vocalization.[50] In technical terms, al-ghina' is "raising the voice with poetry according to a particular manner," indicating the element of intentionality in arranging tone and rhythm.[51] There is also a more comprehensive definition of al-ghina' as "chanting and singing words whether metered or not, whether accompanied by music or not, and al-ughniyah is what is sung from words, its plural form is aghani, and ghanna means chanting and singing words whether metered or not."[52] These definitions demonstrate that the issue of singing and music has broad and complex dimensions, not limited merely to the human voice but also encompassing musical instruments used to produce particular sounds and rhythms, as well as various combinations of vocal and instrumental elements that have been part of human life since ancient times.

In the context of commercial transactions, one fundamental condition that must be fulfilled by goods being traded is that such goods must be capable of being benefited from in a manner sanctioned by Islamic law—a very basic principle in Islamic transaction law. Jurists have specifically discussed the sale of female singing slaves (al-jariyah al-mughanniyah), a phenomenon common in classical Arab society that became an important precedent in the discourse on trading musical instruments. Imam al-Hishni has elaborated various opinions of Shafi'i scholars on this matter in great detail. He stated with full caution: "As for the female singing slave whose value is one thousand without the ability to sing, if purchased for two thousand, is it valid? Al-Audni says valid, al-Mahmudi says invalid, and Abu Zaid says if what is intended is the singing ability then invalid, and if not then not invalid."[53]

From this statement it is clear that this issue is built upon the foundation of differences of opinion regarding the legal ruling on singing itself—a fundamental epistemological root; whoever permits it permits this sale, and whoever prohibits it prohibits this sale. This difference of opinion among Shafi'i scholars reflects the depth of their analysis regarding the relationship between the intrinsic value of an object and the added value deriving from a particular ability or function that may conflict with Islamic law. Similar issues also arise in discussions about wedding feasts in the chapter on marriage, demonstrating that the issue of singing and music has broad legal implications in various aspects of Muslim life, from wedding ceremonies to religious celebrations, from education to daily entertainment.

[50] 'Ali bin Isma'il bin Sayyidah al-Mursi, *al-Muhkam wa al-Muhit al-A'zham* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2000), Vol. 6, 20; Muhammad bin Yusuf bin 'Ali bin Hayyan al-Andalusi, *Lisan al-'Arab* (Cairo: Maktabat al-Khanji, 1998), Vol. 15, 139.

[51] Manshur bin Yunus al-Bahuti, *Syarh al-Muntaha* (Riyadh: 'Alam al-Kutub, n.d.), Vol. 3, 592.

[52] Muhammad bin 'Abd Allah al-Muni', *al-Ghina' wa al-Ma'azif fi Daw' al-Syari'ah al-Islamiyyah* (Riyadh: Dar al-Fadilah, 1430 H), 5

[53] Taqi al-Din Abu Bakr al-Hisni al-Dimashqi, *Kifayat al-Akhyar fi Hall Ghayat al-Ikhtishar* (Damascus: Dar al-Khair, 1994), 342

Imam al-Hishni provided a firm and comprehensive view regarding the legal ruling on trading musical instruments and entertainment devices in his work, with very systematic argumentation that leaves no room for ambiguity. He stated with full conviction: "As for the second condition, namely that the goods must be capable of being benefited from, with this condition we can avoid goods that have no benefit because indeed it is not valid to sell and buy them, and taking wealth as compensation for them is included in the category of consuming wealth wrongfully, and Allah the Exalted has prohibited this. Among its examples is selling scorpions, snakes, ants and the like... As for musical instruments that cause heedlessness from remembering Allah, if after being broken these instruments are no longer considered property such as those made of wood and the like, then selling them is invalid because their benefit does not exist according to Islamic law and none engages in this except the perpetrator of sin, such as the lute (al-thunbur), the flute (al-mizmar), the rebab (al-rabab) and others. If these instruments after being broken and destroyed are still considered property such as those made of silver and gold, likewise statues and the sale of idols, then the (Shafi'i) school definitely prohibits absolutely and with this opinion is answered by most scholars of the school because these instruments in their form are instruments of immorality and nothing is intended from them other than that."[54]

The opinion of Imam al-Hishni reflects the firm stance of the Shafi'i school in prohibiting the sale of musical instruments, intelligently distinguishing between musical instruments that when broken no longer possess economic value (such as those made of ordinary wood) and musical instruments that retain value even after being broken (such as those made of precious metals). However, in both cases—and this is very important to understand—Imam al-Hishni still affirms the prohibition of trading them because the primary function of these instruments is for sin and causing heedlessness from the remembrance of Allah. This view demonstrates his consistency in preserving the purity of Islamic teachings from practices that can distance the community from obedience to Allah, while simultaneously showing that legal considerations regarding function and purpose of use are prioritized over mere material value. Jurists then differed in opinion regarding the permissibility of trading musical instruments and female singing slaves, and this difference of opinion can be grouped into several different opinions with respective argumentations having deep foundations in evidence and jurisprudential reasoning, reflecting the richness of Islam's intellectual heritage.

The first opinion states the permissibility of trading musical instruments with the status of makruh (disliked)—a moderate position that acknowledges the validity of the transaction but does not recommend it—and this is the opinion of Imam Abu Hanifah (may Allah have mercy on him) who is known for his rationalist approach in legal reasoning.[55] Proponents of this opinion argue with several strong and logical argumentations. First, they argue with the very clear word of Allah the Exalted: "And

[54] Taqi al-Din Abu Bakr al-Hisni al-Dimashqi, *Kifayat al-Akhyar fi Hall Ghayat al-Ikhtishar* (Damascus: Dar al-Khair, 1994), 235

[55] 'Ala' al-Din 'Abd al-'Aziz bin Ahmad al-Bukhari al-Hanafi, *Bada'i' al-Sana'i' fi Tartib al-Syara'i'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol. 5, 144

Allah has permitted trade."[56] This noble verse indicates through its generality the permissibility of all types of trade as a basic principle in commercial transactions, except what has been explicitly prohibited and has specific evidence accompanying it that must be acted upon, and there is no text that explicitly and specifically prohibits trading musical instruments, so their sale is permissible based on the generality of this verse. However, a fairly strong objection was raised to this evidence that although this verse indicates through its generality the permissibility of all trade, its generality is specified by what is prohibited to be sold from everything leading to usury or gharar (uncertainty) and the like, so its generality is also specified by the prohibition of trading musical instruments, and this is because there is a noble hadith commanding their elimination and removal.[57]

The first opinion group also argues with very rational logic that these musical instruments are property possessing value (mal mutaqawwam), and thus the fundamental pillar of sale is fulfilled especially according to the Hanafis who emphasize the material aspect of transaction objects, as well as the possibility of benefiting from them where this is valid according to the owner as long as not for playing with them.[58]The third argumentation they present is that these musical instruments can be benefited from legally from another aspect, namely by making them containers for various goods and the like from various benefits so they do not exit from their status as property. As for the statement that these instruments are instruments for play and immorality, our answer is true, however this does not necessitate the loss of their property value, just as singing slaves, qiyan (female slaves), the body of the immoral person, his life and his property, and this is because just as these instruments are suitable for play they are also suitable for other than that, so their property value remains from the aspect of the absoluteness of benefit with them not from the aspect of their prohibition.[59] This argumentation shows that the Hanafi school tends to view from the material aspect and possibility of alternative use of these musical instruments, although still with makruh status indicating it is not liked to be done—a pragmatic yet cautious approach within the legal framework.

The second opinion states that trading musical instruments is not valid at all, because these instruments are prepared to be played with, made for immorality and corruption, thus cannot be considered tradeable property, so it is not permissible to sell them. This is the opinion of the Malikis, Shafi'is, Hanbalis—who constitute the majority of scholars—as well as Abu Yusuf and Muhammad (may Allah have mercy on them), two prominent students of Imam Abu Hanifah who differed with their teacher on this matter.[60]

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[56] 'Ala' al-Din 'Abd al-'Aziz bin Ahmad al-Bukhari al-Hanafi, *Bada'i' al-Sana'i' fi Tartib al-Syara'i'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol. 5, 144

[57] 'Ala' al-Din 'Abd al-'Aziz bin Ahmad al-Bukhari al-Hanafi, *Bada'i' al-Sana'i' fi Tartib al-Syara'i'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol. 5, 144

[58] *al-Mawsu'ah al-Fiqhiyyah al-Kuwaytiyyah* (Kuwait: Wizarat al-Awqaf wa al-Syu'un al-Islamiyyah, 1404-1427 H), Vol. 9, 143

[59] 'Ala' al-Din 'Abd al-'Aziz bin Ahmad al-Bukhari al-Hanafi, *Bada'i' al-Sana'i' fi Tartib al-Syara'i'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol. 5, 144

[60] 'Ala' al-Din 'Abd al-'Aziz bin Ahmad al-Bukhari al-Hanafi, *Bada'i' al-Sana'i' fi Tartib al-Syara'i'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol. 5, 144; 'Abd al-Karim bin Muhammad al-Rafi'i al-Qazwini, *al-'Aziz Syarh al-Wajiz (al-Syarh al-Kabir)* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), Vol. 8, 120; Mustafa bin 'Abd Allah al-Khinn, *Syarh al-Muhimmat fi al-Rawdah* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1420 H), Vol. 5, 44

Proponents of this opinion argue with several hadiths of the Prophet (peace and blessings be upon him) that explicitly prohibit musical instruments. The first hadith was narrated from Abu Umamah (may Allah be pleased with him) that the Messenger of Allah (peace and blessings be upon him) said: "Indeed Allah the Mighty and Majestic sent me as a mercy to the worlds and as guidance to the worlds, and commanded me to eliminate musical instruments, flutes, statues and matters of pre-Islamic ignorance."[61] This hadith clearly and explicitly shows the Prophet's command to eliminate and remove musical instruments, indicating their prohibition explicitly with no room for alternative interpretation. This command of elimination shows that musical instruments have no place in the ideal Muslim life, so their sale also cannot be justified as it would mean perpetuating the existence of something that should be eliminated.

The second hadith used as evidence by this group was narrated from 'Ali ibn Abi Talib (may Allah be pleased with him), he said: The Messenger of Allah (peace and blessings be upon him) said: "When my community does fifteen things, tribulation will befall them." It was asked: What are they, O Messenger of Allah? He answered: "When war booty is monopolized, trust is treated as spoils, zakat is regarded as a burden, a man obeys his wife and disobeys his mother, treats his friend kindly and shuns his father, voices are raised in mosques, the leader of a people is the most despicable among them, a person is honored for fear of his evil, wine is drunk, silk is worn, qiyan (female singing slaves) and musical instruments are used, and the latter generations of this community curse its earlier generations, then let them await at that time red wind, or swallowing up in the earth and transformation of form."[62] This hadith very strongly shows that the use of qiyan—namely female singing slaves who typically performed in gatherings where wine was consumed—and musical instruments are among the signs of the coming of terrifying punishment, indicating their prohibition explicitly and indisputably.[63]

The third hadith was narrated from 'Imran ibn Husayn (may Allah be pleased with him) that the Messenger of Allah (peace and blessings be upon him) said: "In this community there will occur swallowing up in the earth, transformation of form and pelting with stones." A man from the Muslims asked with full concern: O Messenger of Allah, when will this occur? He answered firmly: "When qiyan and musical instruments appear and wine is drunk."[64] The apparent meaning of this hadith shows very clearly that the destructions mentioned—namely swallowing up in the earth, transformation of form and pelting with stones, terrifying punishments—are caused by the emergence of things mentioned in the hadith namely qiyan, musical instruments and drinking wine, because this sequence indicates the prohibition of these things as the cause of punishment's arrival, and this is because punishment only occurs due to committing what is prohibited or

[61] Ahmad bin Hanbal, *Musnad al-Imam Ahmad ibn Hanbal* (Beirut: Mu'assasat al-Risalah, 2001), Vol. 5, 268; 'Abd Allah bin 'Abd al-Rahman al-Tabarani, *al-Mu'jam al-Kabir* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1410 H), Vol. 8, 196

[62] Muhammad bin Yusuf bin 'Ali bin Hayyan al-Andalusi, *Lisan al-'Arab* (Cairo: Maktabat al-Khanji, 1998), Vol. 11, 377

[63] Abu 'Isa Muhammad bin 'Isa al-Tirmidhi, *Sunan al-Tirmidhi*, Kitab al-Fitan, Bab Ma Ja'a fi 'Alamah Hulul al-Maskh wa al-Khasf, Vol. 4, 274, hadith no. 2357; Abu al-Qasim Sulaiman bin Ahmad al-Tabarani, *al-Mu'jam al-Awsat* (Cairo: Dar al-Haramain, 1415 H), Vol. 1, 150

[64] Abu 'Isa Muhammad bin 'Isa al-Tirmidhi, *Sunan al-Tirmidhi*, hadith no. 2210

abandoning what is obligatory. These hadiths consistently show severe threats regarding the use of musical instruments, strengthening the argumentation for the prohibition of their sale with very strong logic: how could it be permissible to trade something whose very existence is threatened with punishment?

The fourth evidence presented by this group is a very famous hadith that serves as the primary reference in the discussion of music, narrated from 'Abd al-Rahman ibn Ghanm al-Ash'ari, he said: Abu 'Amir or Abu Malik al-Ash'ari narrated to me, by Allah he did not lie to me: He heard the Prophet (peace and blessings be upon him) say: "There will surely be from my community peoples who make lawful fornication, silk, wine and musical instruments."[65] This hadith very clearly shows that declaring musical instruments lawful is among the condemned and severely criticized actions, and this indicates their prohibition in a very explicit manner. The use of the word "yastahillun" (declare lawful) in this hadith indicates that musical instruments are fundamentally prohibited, so one who declares them lawful has committed a grave error by changing the ruling established by Allah and His Messenger. What is interesting is that musical instruments are placed alongside fornication and wine—two major sins about whose prohibition there is no difference of opinion—which shows the level of seriousness of the prohibition against musical instruments. In addition to these very strong and varied textual evidences (dalil naqli), this group also argues with rational evidence (dalil 'aqli) that the benefit found in musical instruments because they are prohibited by Islamic law is equated with benefits that do not exist sensually.[66] This argumentation shows that the legal prohibition of something makes its benefit unable to be taken into account in legal consideration, so musical instruments are considered to have no legal benefit even though physically they can be used—an important principle in determining the validity of objects of sale.

The third opinion presented by some Shafi'i scholars states that if these musical instruments can be benefited from when they have been separated or their form changed then it is permissible to sell them, however it is disliked to sell them before their form is changed because sin still remains on them. If sold in their original state then it is permissible but with karahah (dislike).[67] This opinion attempts to take a middle path between the two previous opinions, considering the possibility of transforming musical instruments into goods having other benefits sanctioned by Islamic law—for example, a bamboo flute cut into pieces to be made into plant supports, or a rebab dismantled to take its wood. This opinion demonstrates flexibility in jurisprudential thinking, where the legal ruling can change along with changes in the condition and nature of the object being discussed. Nevertheless, this opinion still maintains the principle of caution by giving makruh status to trading musical instruments in their original form, showing that although not completely prohibited, it is still not recommended to be done due to the potential harm still attached to them.

[65] Muhammad bin Isma'il al-Bukhari, *Sahih al-Bukhari*, Kitab al-Asyribah, Vol. 4, 2123, hadith no. 5268

[66] 'Abd al-Karim bin Muhammad al-Rafi'i al-Qazwini, *al-'Aziz Syarh al-Wajiz (al-Syarh al-Kabir)* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), Vol. 8, 120

[67] Abu al-Hasan 'Ali bin Muhammad al-Mawardi, *al-Hawi al-Kabir* (Beirut: Dar al-Fikr, n.d.), Vol. 5, 385

The difference of opinion that occurred among Hanafi scholars on this issue is quite interesting to observe because it shows the internal dynamics of a school in responding to controversial issues. Imam Abu Hanifah held the opinion that trading musical instruments is permissible with makruh status, with the very rational reasoning that these instruments can be benefited from in a special way other than their original function as musical instruments, in addition to their economic value that remains and can be measured objectively, and based on this opinion one who destroys them must compensate because he has eliminated another person's property that has value. Conversely, his two very brilliant students, Abu Yusuf and Muhammad (may Allah have mercy on them), held the opinion that trading musical instruments is not valid at all with different considerations: that these instruments are prepared for play and immorality, and this eliminates their property value legally even though materially they still have value, so based on this opinion one who destroys them need not compensate because what was destroyed is not property recognized by Islamic law.[68] This difference of opinion internal to the Hanafi school demonstrates the complexity of the issue and the depth of study conducted by scholars in determining the ruling on a matter. Abu Yusuf and Muhammad apparently leaned more toward consideration of primary function and social impact of musical instruments, while Imam Abu Hanifah emphasized more the possibility of alternative use and their material value—a very interesting methodological difference to study.

As for the Malikis, Shafi'is and Hanbalis, they agreed that trading musical instruments is prohibited (haram), and that this can nullify a person's testimony because it is considered an immoral act that damages credibility. They affirmed the invalidity of this sale and its obligation to be cancelled because it is not permitted by Islamic law, and if it has occurred then it must be fasakh (cancelled).[69] Based on this, the opinions of jurists regarding trading musical instruments can be summarized into two main schools to facilitate understanding, because the group prohibiting this trade has various expressions in stating their opinion although the substance is the same. Among them are those who express this with the phrase "the contract is not valid" (adam al-in'iqad) as done by Abu Yusuf and Muhammad from among the Hanafis, among them are those who express it with the word "prohibition" (al-man') as affirmed by the Malikis, and among them are those who express this with the phrase "not valid" (adam al-shihhah) as the method used by the Shafi'is and Hanbalis. Although the expressions used differ—reflecting differences in technical terminology in each school—in essence all these expressions lead to one meaning, namely the impermissibility of trading musical instruments.

[68] 'Ala' al-Din 'Abd al-'Aziz bin Ahmad al-Bukhari al-Hanafi, Bada'i' al-Sana'i' fi Tartib al-Syara'i' (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol. 5, 144.

[69] 'Ala' al-Din 'Abd al-'Aziz bin Ahmad al-Bukhari al-Hanafi, *Bada'i' al-Sana'i' fi Tartib al-Syara'i'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol. 5, 144; 'Abd al-Karim bin Muhammad al-Rafi'i al-Qazwini, *al-'Aziz Syarh al-Wajiz (al-Syarh al-Kabir)* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1997), Vol. 8, 120; Mustafa bin 'Abd Allah al-Khinn, *Syarh al-Muhimmat fi al-Rawdah* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1420 H), Vol. 5, 44.

Invalidity of the contract according to Abu Yusuf and Muhammad means corruption of the contract (al-fasad), prohibition according to the Malikis means invalidity of the contract, and all end in invalidity, therefore all these tendencies are considered as one school expressed with the word prohibition, and that is as opposed to the other school that permits sale with makruh status as presented by Imam Abu Hanifah.[70] This classification is important for understanding the map of jurisprudential thought on this issue, where basically there are two major camps: the camp that permits with the caveat of makruh (Abu Hanifah), and the camp that prohibits absolutely although with various expressions and different terminology (the majority of scholars). This terminological difference is more technical in nature in the methodology of determining rulings in each school, but does not change the substance of the ruling to be conveyed, namely rejection of the legitimacy of transactions in musical instruments.

After carefully and deeply studying various opinions and evidences presented by scholars, the preponderant (rajih) opinion on this issue is what was presented by the group stating the invalidity of trading musical instruments such as musical instruments and the like, and this is based on the hadiths that have been mentioned that are very clear and explicit in prohibiting musical instruments, in addition to the fact that these musical instruments and the like occupy the heart, cause people to be heedless and prevent them from remembering Allah—the highest purpose of human creation. However, it must be affirmed that the prohibition of something does not necessarily eliminate its economic value (al-thaminiyyah) absolutely, because economic value is an objective reality that cannot be negated just like that.[71] This opinion is in line with the view of Imam al-Hishni who was firm in prohibiting the sale of musical instruments, with very mature consideration that the primary function of these instruments is to cause heedlessness from the remembrance of Allah and can lead to greater sin. Although materially these musical instruments have economic value that can be measured and traded in the market, legal consideration prioritizing otherworldly benefit (maslahah ukhrawiyyah) is given precedence over worldly consideration alone.

The conclusion that can be drawn from this discussion is that Imam al-Hishni took a very cautious and firm stance on the issue of trading musical instruments, in line with the Shafi'i school to which he adhered with full commitment. His approach demonstrates profound understanding of maqasid al-shari'ah (the objectives of Islamic law) that prioritizes the protection of religion (hifzh al-din) as one of the five primary objectives of Islamic law that cannot be compromised. The prohibition of trading musical instruments is viewed as a preventive effort (sadd al-dhari'ah) to close doors that can lead to sin and heedlessness from remembering Allah—a very important principle in the methodology of establishing Islamic rulings. In the contemporary context that is increasingly complex with various forms of entertainment and the rapidly developing music industry, this opinion remains relevant as guidance for Muslims in addressing various forms of modern

[70] 'Ala' al-Din 'Abd al-'Aziz bin Ahmad al-Bukhari al-Hanafi, *Bada'i' al-Sana'i' fi Tartib al-Syara'i'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1986), Vol. 5, 144

[71] *al-Mawsu'ah al-Fiqhiyyah al-Kuwaytiyyah* (Kuwait: Wizarat al-Awqaf wa al-Syu'un al-Islamiyyah, 1404-1427 H), Vol. 9, 143

entertainment that have the potential to cause heedlessness from obedience to Allah. Wallahu Ta'ala a'lam bi al-shawab (And Allah the Exalted knows best what is correct).

Conclusion

This research demonstrates that Imam Taqiyuddin al-Hishni was not merely a loyal adherent of the Shafi'i school, but rather a mujtahid within the school who bequeathed an istinbath methodology highly relevant for addressing the complexities of contemporary Islamic economics. Regarding commercial transactions with discerning minors (mumayyiz), al-Hishni exhibited brilliant contextual flexibility by permitting transactions when guardian consent and equivalent value exist—an approach desperately needed to formulate fatwas concerning youth participation in e-commerce and Islamic fintech that currently involve thousands of transactions without a clear legal framework. Conversely, concerning the sale of musical instruments, al-Hishni adopted a firm stance by applying sadd al-dzari'ah (blocking the means to harm), prohibiting the sale of musical instruments despite their economic value because their primary function causes heedlessness from the remembrance of Allah—a principle that can serve as the foundation for developing Halal Entertainment Standards for Indonesia's creative industry which reached USD 7.2 billion. These two fiqh choices (ikhtiyarat fiqhiyyah) teach us that mature jurisprudence is that which can distinguish when to be flexible in technical-procedural matters for the sake of public interest, and when to be firm when it concerns the protection of spiritual values—a balance desperately needed in this digital era. This research opens opportunities for highly compelling future research: development of an "Islamic Youth Fintech Platform" model based on the concept of ahliyyah al-ada' al-naqishah (incomplete legal capacity to act) with parental control technology and smart contracts, comparative studies of the economic Islam methodology of Shafi'i scholars during the Mamluk era, empirical research on the reception of al-Hishni's thought in DSN-MUI fatwas and religious court decisions, as well as development of comprehensive halal entertainment certification standards involving stakeholders from the creative industry, scholars, and Muslim consumers. May this research become a seed that inspires the birth of a new generation of Muslim scholars capable of bridging tradition and modernity, continuing the intellectual relay that al-Hishni championed: an Islamic economy that is authentic yet not obsolete, rooted in tradition yet not shackled by it, preserving principles yet not ignoring reality—for the true legacy of great scholars is not opinions that must be blindly followed (taqlid), but rather a methodology of thinking that must be emulated.

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