GUIDELINES FOR IJTIHĀD IN RESPONDING TO THE CONTEMPORARY PROBLEMS

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Abstract

Terminologically, ijtihiād means to give all out the efforts. This term is being used specifically on a task that needs 'energy plus'. In terms of Jurisprudence Islamic Scholars, this term means to give out the efforts in producing and resulting sharia-jurisprudence and law. Ijtihād is never ends as being mentioned by ulama, first, it is impossible for ijtihiād to be stopped except with...
the ended of asl al-taklif (responsibility) which means the Resurrection Day. Second, it is impossible for ijtihād to be ended before this world ruins. A mujtahid must be able to comprehend the Arabic language until he can understand the term extrinsically and intrinsically. He also must be able to comprehend the interpretation of al-Qur'ān especially that are related with jurisprudence and law (ayat al-ahkam) accompanied with his knowledge regarding khabar and the competent Companions in their field. Meanwhile in Hadith field, a mujtahid must be able to differentiate between Hadith Sahih than Hadith Dhaif, whether with knowing the narrators and their justice or scrutinize it through the book of al-sahihah, comprehend khabar, matan and sanad including with the ability to recognize the narrator, ta'dil and tajrih, the last time they narrated hadith, a specific questions that becomes the cause of Hadith being revealed, differentiate between the law whether they are compulsory, Sunnah, forbidden and permissible until they are not mixed among them. They also must be able to comprehend the argument that becomes consensus (ijma') between the scholars until not to produce other ijtihād that oppose with them. Fifth, apprehend the position of analogical (qiyas) in terms of theoretically and practically. Furthermore, there are differences between ijtihād (ijtihād) methods during every ages which are during the revelation (sharia) phase, during the companions' ijtihād age, during the tabi'in ijtihād age, during ijtihād sect (mazhab) age. It involves lots of new and contemporary incident that do not exist during the era of Prophet Muhammad pbuh. Hence, a ijtihād must be made to extract a law regarding the particular issues that are being arisen.

Key words: guidelines, ijtihād, contemporary problems

A. Introduction

Ijtihād (Ijtihād) is a necessity towards the society as al-muṣūs sābit wa waqā'ī mutagayyirah (verses will be remained but events continuing). The role of mujtahids are highly anticipated with the thought in istinbāt of the law in Islam to solve social problems that
occurred all this while. On the other hand, the *ijtihād* that does not fulfill the qualification, will cause ruination and prolonged social conflict. These procedures and rules were made was not intended to narrow the *ijtihād* process and close the *ijtihād* but it is an effort to perpetuate the process of *ijtihād* until it can produce a ‘product’ that is suitable with modern spirits and needs.

Relating the rules of *ijtihād* with the modern’s knowledge and with the discourse of collective *ijtihād* - integrative will produce a better *ijtihād* ’s products. Professionalism and the expertise in comprehending a particular knowledge will cause an individual to study a particular knowledge deeply until a cooperation with the other party will be extremely needed in solving society problems that become more complex. Besides, the energy needed to solve the society problem are getting bigger as the complexity of problems faced by the society are rapidly grew quantitatively and qualitatively.

The objective of this writing is to answer a question: How to coordinate the rules of *ijtihād* with the current social system and modern age. With descriptive analysis, the author has prepared this writing with a critical and exact writing based on data accumulation gained from the documentation technique. The seconder source that the author used, divided by two sources that is contemporary reading source and classical references that emanate during the early age of sects progression. Basically, sects had given an intellectual prosperity and a significant reference towards the Islamic knowledge structure with its advantages and disadvantages. Meanwhile the contemporary books try to ‘read’ the current problems and questions as the rapidly growth age nowadays.

B. Comprehending *Ijtihād* and Mujtahid

Terminologically, *ijtihād* means to give all out the efforts. This term is being used specifically on a task that needs ‘energy plus’. In terms of Jurisprudence Islamic Scholars, this term means to give out the efforts in producing and resulting sharia jurisprudence and law.²

In terms of quality, *ijtihād* can be divided into *ijtihād* al-tam which means to give out all the efforts until they feel do not have any energy greater than that. *(an yubahdil al-wuis fi al-talab ilā ‘an yuhiiss min nafsīh bi al-‘ajz ‘an mazin talab)*. Whereas *ijtihād* al-nāqis means thinking seriously and critically in producing and
resulting the jurisprudence law in Islam, in terminology of Ahmad ibn Hanbal: al-nazr al-mutlaq fī ta'ūruf al-ahkām al-syūr 'iyyah.}

Ijtihād is never ends as being mentioned in Muwaqafat, first, it is impossible for ijtihād to be stopped except with the ended of asl al-taklif (responsibility) which means the Resurrection Day. Second, it is impossible for ijtihād to be ended before this world ruins.

As a jurisprudence product that being responsible, scholars restrict a few criteria in qualifying a person to become a mujtahid. First, comprehend the Arabic language until he can understand the term extrinsically and intrinsically. Second, comprehend the interpretation of al-Qur’ān especially that are related with jurisprudence and law (ayāt al-ahkām) accompanied with his knowledge regarding khabar and the competent Companions in their field. In terms of comprehending al-Qur’an, a mujtahid is required the jurisprudence and law verses at least five hundreds verses even though he is not required to memorize it. The mujtahid should know the verses to ease him for reaching those verses when it is needed.

Meanwhile in Hadith field, a mujtahid must be able to differentiate between Hadīṣ Şahīḥ than Hadīṣ Da‘īf, whether with knowing the narrators and their justice or scrutinize it through the book of al-sahihah. Third, comprehend khabar, matan and sanad including with the ability to recognize the narrator, ta‘dīl and tajrīh, the last time they narrated hadith, a specific questions that becomes the cause of Hadith being revealed. differentiate between the law whether they are compulsory, Sunnah, forbidden and permissible until they are not mixed among them.

Fourth, comprehend the argument that becomes consensus (ijma‘) between the scholars until not to produce other ijtihād that oppose with them. Fifth, apprehend the position of analogical (qiyaṣ) in terms of theoretically and practically.

All the five rules above are the khulasah al-Syahrastani (conclusion) and contents from what had been said by scholars such as al-Suyūṭi. he said there are 15 rules without the other three rules, which are, comprehension of dālī al-aqli because it includes in Usul Islamic Jurisprudence field. theology’s field and philosophy with a few arguments and not necessary to be mentioned.
The compression and combination of these rules is because of a few terms that being used has already included in others field such as mentioned by al-Suyūtī that, ‘ilmu lugat, al-nahw, al-ṣarf, al-maʿāni, al-bayān, al-badi as a six fields of knowledge disciplines. The qualification of Mujtahid is highly determines the result of his ijtihād (Ijtihad) because it will effects the society and will be applied and implemented in their life widely. Therefore, the mujtahid must fulfill the criteria qualification and insisted to have intelligence and the ability to apprehend the content of verses and then make an istinbat (give out law). Whoever has the ability to observe with the exact rule (insāf) then, he will be able to gain a relevant law or law.

As the other knowledge field that require a very strict rules, hence, it is compulsory for mujtahid to prepare themselves with a monumental matters such as comprehension in Al-Quran and Hadith, it must be initially started with the ability to apprehend Arabic language, understanding āmm and khaṣṣ, naskh-mansūkh, muṭlaq-muqayyad, comprehending analogy (qiyaṣ) and etc.

Furthermore, the Jurisprudence mujtahid in al-Ghazali perspective, is someone that practice and live (mumarasah) in his field, but it does not mean he must memorize and comprehend the Jurisprudence because he will produce the product himself later on.

C. Coordinating Ijtihād from time to time.

1. Understanding the Revelation (Sharia) Phase

As the observation and study made by author, ijtihād emerges after the phase of revelation (sharia) which means Mecca and Medina period. During the Mecca period, Prophet PBUH was focusing on belief system (tawheed) in about thirteen years. The second period was during Prophet PBUH migrated from Mecca to Medina and founded the (Muslim Kingdom), and need their own rules and law to manage the society. This is because Prophet PBUH did not bring any jurisprudence and law when entering Medina.

Then is Medina period. Medina itself did not have rules and laws as a guidelines to be followed before. Therefore, the revelation asks for comprehension and take jurisprudence verses which is being revealed to Prophet PBUH. either an answer for a question or explaining the law and jurisprudence because there
were two law involved in the verses of al-Quran. There are such verses of Quran that revealed without started with questions and asking for fatwa however because of necessity or showing a certain law or jurisprudence. The overview about the explanation of jurisprudence in Medina commonly is an answer for a question or an event that happened. Every law or jurisprudence (law) are being revealed gradually.

In author opinion, in this age cannot be assumed as the progression period of Islamic jurisprudence. It is because of law that being revealed at the moment are matlū or ghair al-matlū. Even though there are ijtihād at the moment but it cannot be assumed as jurisprudence law. It is because every single matter that had been done by Prophet PBUH and His Companions had been endorsed their authentication by the revealed knowledge either Quran or Hadith of Prophet Muhammad PBUH. Based on that opinion, the author named this period as pre-jurisprudence, which means they do not have a full authority in making ijtihād because it was still in the process of determining the law and jurisprudence (law).

2. The Companions Ijtihād Age

Next, the author mentioning about the Companions (sahabat) period. (11 H – 40). In this period, the jurisprudence of Islam was based on al-Qur'ān, Sunnah, Ijma' and Ijtihād (Ijtihād). The term of ijtihād started at this period because, after the death of Prophet Muhammad PBUH, the Companions were facing new cases and situations that were never happened during the Prophet Muhammad PBUH still alive. At this period, they were divided into two groups, which are the one who tend to use ratio and the other one who did not use it. Among the endeavor that had been used by the Companions of Prophet Muhammad PBUH in determining a law or jurisprudence were: First, explanation about the verses of Quran and its interpretation. Second, making qiyas (comparison) between the similar and comparable with the law that consisted in Quran and Sunnah or the law or jurisprudence that has been agreed (ijma') before. And the third is, ijtihād with ra'yu (view and opinion from the comprehension of the matter).

At this period, the Companions intelligently solved the problems that they faced even though the situations that were never happened during the age of Prophet Muhammad PBUH and the law
was made after evaluating the consequences of a certain law and jurisprudence as being done by Umar, Ottoman and others.

There are certain books that include political conflict influence during the age of Ottoman and Ali as part of jurisprudence progression of the Companions. The author observes that the influence and the access to *ijtihād* progression were emerged and emanated during the tabi’īn period with various modification at a certain group. The modification was just not influenced political field, but also jurisprudence, theology and etc. Meanwhile, at the period of the Companions, the author notices it as a unique progress which they were so genius and have a methodology and excellent style of thinking. This was proven on how the conceptual comprehension of Umar in work delegation, Ottoman in adding Jumaat’s prayer azan and so on. All of these show how their abilities in comprehending the verses of Quran with a judgmental and critical view.

3. The Tabi’in *Ijtihād* Age

Next is Tabi’in period (40 H – Abad II H). In this period, it was influenced by Shi’a, Khawarij and Ahlusunnah. There were two sects emerge: a. Sect Hadith (Hijaz) b. Sect Opinion (ar-ra’yu) (Iraq). Political condition that influences the jurisprudence initially was being started by problems faced at the end of Ottoman bin Affan reign. The Jews and Iran that had lost in wars gathered to ruin Muslim’s strength. Among of them were, the emergence and the spreads of fake Hadith.

In this period, the Muslims scholars were fighting to straighten and save the society from various elements that influenced the Jurisprudence of Islam in terms of sources that emanated new masterpiece. Among of them were political conflict, fake Hadith, the emergence of jurisprudence school, which was called the school of hadith and ra’y that were totally different of each other. The weakness was that, iftiradhi problem, which means the opinion of the scholars were only based on theory and cannot be implemented in the reality. This is because most of the school of opinion were tend to make an original taught as the guidelines.

According to the author, tabi’in did influence the jurisprudence of Islam. This is because of the political influence that existed, wanted to strengthen their position including the comprehension of law and jurisprudence. Khawarij for instance,
they comprehend the verses of al-Quran literally (dhahiri) and implemented it according to their belief. Meanwhile, the Shi’a have their own special sources and references in narration of Hadith and al-Quran. until when there were contradiction against them, they refused to accept them even though the narration were authentic. In the middle of them, there was another group that called Sunnah’s members.

4. *Ijtihād Sect Age*

Next, the author mentions about the formation of sect in jurisprudence of Islam.\(^{16}\) (Century ke-2 till 4 H). Among the typical criteria of this period are, first, the expansion of Islamic jurisprudence that influenced by many factors: the concern of Khalifah towards the Islamic jurisprudence, freedom of thought, lots of debates, lots of occasions occur, the cultural mixture, and book keeping of knowledge. Secondly, the formation of jurisprudence sects\(^{17}\).

Thirdly, the effort to systemize the law in Islam. The scholars at this moment had set a law that suitable with the needs of humanity, which they cling with the verses or the defection of the verses because their comprehension will become the law and will be implemented towards the society\(^{18}\).

Among of the advantages of this periods were giving easiness towards the society to implement it in their life because every single inquiries that they were doubt in it, they can straightly refer to Jurisprudence book. Meanwhile, the disadvantage of this period is the ended of *Ijtihād* efforts in taking out a law, and people feel they do not have to think any more about the jurisprudence because every inquiries already have their answers\(^{19}\).

According to the author’s opinion, this period was the climax period of jurisprudence because during this period the Jurisprudence is Islam was being systemized until the Islamic jurisprudence knowledge had widely spreads to the worldwide and becomes the academically debates in the modern age. However the impact of the formation of sects, it had enrich the Islamic knowledge treasure.

5. *Ijtihād of Ijtirād* Islamic Jurisprudence

This period oscillated between the middle of 4\(^{th}\) Century-656 (the collapse of Baghdad). Among the typical characteristic of this
period are: firstly, scrutinize the justification of a certain jurisprudence. Secondly, assuming an occasion with the law. Thirdly, occur a great debates on the assumption. Fourthly, the process of proving the verses by the sects followers. Fifthly, the other views that oppose in the sects. Sixthly, taking out the various origin problems of their leaders. Seventhly, the collapse of Islamic Kingdom that stop the freedom of thought. Eighthly, the modern scholar in jurisprudence, only limit the research and discussion in a narrow scope and perspectives not as the previous scholars that never limit their discussion in certain scope and perspectives. Until give an overview the other sects that do not similar with them as the wrong one. Ninthly, among the main criteria are they want to nurture the methods of their previous leaders in sects.

Actually, the taklid period did not happen at once but happens gradually which because of the malevolence of the outsiders towards the Islamic Kingdom. The advantage is the expansion and explanation of jurisprudence book, they follow to taking out an authentic law as their previous leaders. The weakness is that they do not think and studying critically and creatively the jurisprudence product to be suited and implemented with the current condition.

The author does not fully agree to name it with period of taklid and jumud (old-fashioned). It is because the scholars had make an effort to make a research and study even though not as great as before because of the country condition that was not stabilized. Therefore, if it is scrutinized, the reasons why the current scholars less active in making research is because of the political condition that restrained their freedom to become active.

6. *Ijtihād* during the Expansion of Jurisprudence

This period oscillated from 7th century until now. The criteria of this period is the emergence of reformer and innovator to oppose taklid that happened previously. Secondly, the efforts to rise the thoughts. The third is the writings of contemporary jurisprudence in Islam. The fourth is the effort to make a law that free from any sects. The fifth, the change of methods in learning jurisprudence in Islam. The sixth, the formation of Islamic Jurisprudence Comparison is included in the current progression. The seventh, the emanation of new attainments that are assumed to be more representative in solving the current problems.
Among the advantage of this period was, thinkers and scholars were influenced to face the reality law that can produce jurisprudence formula that are parallel with the circulation of age. The disadvantages is that, lots of formulation that being offered were still in theory and discussion but not being practically implemented. This may be happened because of differentiation between the level of knowledge and information among the idealist with the actual and real condition of the society. The author also sees lots of books written about the periodization of Islamic jurisprudence. However, the books did not include the basic explanation of criteria for ever periods until there are necessity to differentiate between the periods. In author opinion, even though there were a long interval between these periods, there are no necessity to separate between them as long as there are no predominate factors that need them to be separated. This means there were two periods that had a specific criteria that becomes impossible for them to be combined into one period.

A book written by Rasyid Khalil and Abdul Fattah Abdullah Al-Barsyumi titled: *al-Sami Fi Tarikh al-Tasyri' al-Islami* hal. 222 for example, the periodization of Islamic jurisprudence divided into six parts. The sixth period that initially started by Baghdad collapse until nowadays, were being called as the jumud and taqlid period. The author does not agree with this. It is because according to the author, this period should be divided into two period. From 4 H until 6 H can be assumed as the Islamic Jurisprudence Ifitradhi period. This period cannot be assumed as jumud (old-fashioned) because the scholars still making the *Ijtihad* process even though they were not as free as before. Same goes to Ushul Islamic Jurisprudence written by Amir Syarifuddin hal. 32. al-Tarikh al-Islamic Jurisprudence al-Islami written by Muhammad Ali Sayis hal. 117 and al-Madhkhal fi al-Islamic Jurisprudence al-Islami written by Salam Madkur hal. 78, the author observes the combination between the Companions (sahabat) and tabi'in becomes one period whereas both period have their own specific criteria.

The circulation period has resulted various types of thoughts and works to develop Islam especially in the expansion of jurisprudence. The theory of *benefits* by Syatibi had been elaborated in terms of theoretical and implementation so that the theory and the implementation of jurisprudence becomes very
flexible. The expansion of jurisprudence done by Abid Al-Jabiri, Abou Fadel and others, are very fundamental research. This becomes the main criteria in building the jurisprudence in Islam.

D. Sawābit and Mutagayyirāt

When talking about *ijtiḥād*, matter that need to be viewed is the significant differentiation between two terms in religion methods, sawābit (fixed) and mutagayyirāt. Sawābit (fixed) means something that state, constant and non-interchangeable from time to time. This is because, the part includes general, macro and universal matters.

Meanwhile mutagayyirāt (interchangeable) is something interchangeable according to place and time. It is flexible, dynamic, accommodative, and consider a suitable benefits according to Islamic jurisprudence. Abdul Karim Sosos says there are ten points about this methods. However the author will just take four points from it as followed:

a. The religion and the knowledge about the religion are two different things, however they are not contradicted from each other.

b. The religion is constant, meanwhile the knowledge about religion is depends on the human comprehension that are dynamic and changeable.

c. Jurisprudence is duniawi knowledge including 'ardhiyyat al-Din (religious formality)

d. Syariah is ‘silence’, it responds and feedback communication based on how we communicate with it.30

In mutagayyirāt (interchangeable) methods, the product of *ijtiḥād* must be able to be produced from a matured and concrete consideration especially in terms of benefits. All this while, the usage of benefits was not strict and eventually becomes damages. Because of that, al-Raysuni introduced *Wujuh I’tibar al-Objectives* (objectives consideration perspective) as followed:

a. *Tahaqquq min Maqasid al-Naṣ al-Syari’i* means understanding the meaning and definition of verses syar’i. As we know, not every terms and verses syar’i can be understood by guesswork but it must be focused deeply. Maybe a certain part have literal meaning, and sometimes can be gained from the content of sharia and its objectives. For
instance, in comprehending term ad‘afan mudā‘afah in Qs. Ali ‘Imrān/3: 130. A mujtahid should be able to scrutinize and study the lessons and secret behind the word. What is actually meant by debt that continuously and multiply increased? Is it the basic debt or its interest? Al-Raisuni stated that, the continuously and multiply increased is not on the capital money however its interest. But, the term can be understood by vice versa means if the increasing is not happening, it is not considered as usury as understood by a certain contemporary scholars. By observing other verses, including the previous verse, hence, this term is not maqsudah. Usury as stated by al-Raisuni, is still forbidden and prohibited whether the amount is large or small. The term is being used to describe the bad effects of usury itself.

b. Taharri Ma‘rifat al-Wisdom wa al-Benefits al-Maqsudah means to scrutinize the understanding of the wisdom and benefits that is desired, hence to understand the meaning and discuss about the wisdom behind the particular law.

c. Al-Nazru fi ma yuzann Maqṣadan wa Layṣa bi Maqṣidi means to observe any verses that are assumed as the objectives of sharia however they are not. Al-Raisuni uses the verses that contains about the excoriation of world and be humble with it. Some may think we must avoid from having wealth and its grace, however it is not meant by that. It’s actually means is as stated by al-Ghazali which to take a middle approach (i’tidal) between ifrat (excess) dan tafrit (insufficient).

d. Al-Tamyiz bayna mā huwa Maqsūd li zatih wa ma huwa Maqsūd li Ghayrih means to differentiate between the objectives of sharia related to the zat and other matter that comes with it. Therefore, something that is forbidden by sharia is sometimes because of the zat (substance of the action or the word) or because of līghayrih (other factors that comes with it), as being commanded.

e. Mura‘at al-Objectives al-‘Ammah ‘inda kull Tathbiq juz I means to observe to the general objectives during stating the specific one. A mujtahid will review daruriyat al-khamsah during taking out specific law (fatwa).

f. Mura‘at al-Objectives a-Khassah bi al-majal al-tasyri’il al-ladhi tanmi ilayh mas‘alat al-buhth means considering the
specific objective of sharia in tasyri context related to the problem discussed.

g. *Mura'at mu'laq al-Mašāliḥ al-Mursalah* means to observe the determination of *al-mašāliḥ al-mursalah*. It means, every questions that included in *al-masaliḥ al-mursalah* should have a dalil and its argument.

h. *Tartib al-Hukm wa Darajatih, bi qadr al-benefits aw al-damages* means the hierarchy of law and its level must be suitable with the level of its benefits and damages. Benefits at the lower level can be categorized into Sunnah, meanwhile, a higher benefits can be categorized into compulsory (*wajib*). Same goes with the prohibited (*haram*).

i. *Mura'at al-Maqāsid 'inda Ijrā'i al-Aqyisah* is meaning to observe into the objectives when using the comparative method. Ibn Taymiyyah mentioned that, knowledge about the true comparative is very important, and it is owned by the one who understands the wisdom and secret of syariat and its objectives and also its benefits that included in Islamic taught. It also gives benefits towards the humanity in this world and hereafter which contains wisdom, benefits, blessing and holistic justice.

j. *I'tibār al-Ma'ālat wa al-'Awāqib* means considering prospective forward and the consequences of a certain action. Al-Syatibi stated that considering the consequences of a certain action as the objectives of sharia, whether it is unanimously or contradicted. A Mufti cannot make a law (compulsory or forbidden) until he scrutinizes the effect of the matter. The matter may be assumed can give a benefits or damages at the moment, but the effects of the action becomes vice versa.

E. *Ijtihād Concordance Cases*

Lots of *ijtihād* cases use benefits method, however becomes damages because of not cautiously used the methods. The examples of the cases as followed:

1. **The Non-Multiply Usury**

*Taḥaqquq min Maqāsud al-Naṣ al-Ṣyari* means to understand the meaning of verses of al-Quran and Hadith. As we know not every terms and verses in al-Quran and Hadith can be
understood literally and through assumption however need to be studied deeply. Maybe certain verses have literal meaning, and maybe certain verses can be understood from its objectives. For example, the understanding of ad’afan muda’afah in Qs. Ali ‘Imran/3: 130. A mujtahid must be able to study the wisdom and the secret behind the term. What is actually meant by continuously and multiply increase, is it the capital money or the interests of the money. Al-Raisuni stated that, the multiply is not on the capital money, but the interests. However the term can be understood as if the non-multiply does not occur then it is not considered as usury as being understood by contemporary scholars. By observing into other verses, including the previous verse, the term is not maqsudah. The usury − says al-Raisuni − is constantly prohibited either in small amount or large amount. Therefore, this terms is being used to emphasize the badness of usury itself.

2. Fasting Kaffarah (Kafarat Puasa)
A scholar from Andalusia, Yahya bin Yahya al-Laythi (152-234 H) gave fatwa towards the King ‘Abd al-Rahman bin Hakam (176-278H) that had sexually intercourse during the day of Ramadhan. The king need to fast for two months consecutively as his sentence. According to him, for a king, by freeing a slave as the punishment will not give a positive impact to respect the Holy month of Ramadhan. In that Hadith, the scholars were contradicting each other in determining a sentence whether by al-tartib or al-takhyir.

3. Conclusion
Guidelines ijtiḥād in author opinion, is very fundamental and crucial to be implemented as to produce a justice law for the benefits of the society. Contemporary cases nowadays for sure need a highly full attention from the genius and cautious law makers. The coordination must be done by looking at previous occasions as a lesson, the current time, and the future as the effect of product of law.

Mujtahid should be able to determine between saḥit and mutagayyirāt so the society will not get confuse later on with the ijtiḥād iah that had been made. This is very important to differentiate between the measurer and what is being measured and also what becomes the sources, methods and analysis material. This
guideline is very important to produce a systematic and synergic thought.

Endnotes:


6The verses of al-Qur’an that revealed before Hijrah mentioning about the rejection towards syirik and invite them to believe in Allah, preach them with the true taught of Islam. Al-Qur’an teaches them about moral, good behavior and attitude in Islam. For this moment, al-Qur’an not focusing on the implementation of sharia consisted of law and jurisprudence, which, focusing on it after the Hijrah. If we want to make a classification, then, we can see that, the verses that are relating with furu’ law are just about two hundreds verses, meanwhile the rest has been mentioned earlier, even though the arrangements are different in terms of itsbat, nafyi, khabar, dan insya’. Even though there are lots of style of language; amr, nahy, istifham, taukid and so on. The preach of Islam was being in that way for thirteen years, until the faith permeated in the souls of its followers and replacing the darkness that contains in the heart with the lightness of Islam.. Muhamad Ali Sayis, Tarikh fi al-Islamic Jurisprudence al-Islami, trans. Nurhadi AGA, (Jakarta: Pustaka Kautsar, 2003) h. 19-20


8The verses that were revealed as the answers for a question in al-Qur’an verse 15. Some say eight from it are relating with law:

(see Muḥammad Salām Madkūr, al-Madkhal ..., h. 69)

9Regarding the implementation of sharia in Madinah can be explained as follows:
a. The authority of law for this moment, based on Prophet Muhammad PBUH, without intervention from any other parties, whether from al-Quran (matlu’) or Sunnah (ghair matlu’).

b. The verses were revealed based on events or an answer for a question. And verses that were being revealed without any causes were very little.

c. The law of Islam were not stated at once, however gradually and continuously based on al-Quran and Sunnah. Muhamad Ali Sayis, *Tarikh*, h. 21

Ali Sayis mentioned it as the khulafurasyidin’s period. According to him, the senior Companions, took the responsibility to give out a law and making decision after the death of Prophet Muhammad PBUH and they had a big problems in defining a law for a certain events or situations. This is because, the territory of Islam had widely spreads and expand beyond the peninsula of Arab: including Egypt, Damascus, Iran and Iraq. The Muslims faced lots of situations and problems that they had never faced before.

Then, he explained, the progression process of Islamic law at the moment was based on ijthad made by the Companions which means, their diligence will based on observing the indicator, making analogy, assumption and so on. Then they will make a law based on consideration after thinking, analyzing, reflecting, and pondering from the situations as defined by Ibn Qayyim. Therefore, their opinion just not based on analogy only as known nowadays, however it including analogy, assuming something good (istihsan), bara’ah ashliyah, saad dzara‘il and maslaha almursalah. (Muhamad Ali Sayis, *Tarikh*..., pg. 59-60). However, they were very cautious in making decision. The taught from al-Quran and Prophet Muhammad PBUH became their main source of action. Hasan Abdul Qadir, *Nazorityyah al-‘Ammah fi Tarih al-fiqh al-Islami* (Kairo: Dar al-Kutub al-Haditsah, t.t.), pg. 56

Example of contemporary jurisprudence:

a. Parts of Muslims during Abü Bakar reign did not want to pay zakat because they think the zakat was only paid to Prophet PBUH. In this case, Abü Bakar made a meeting, and Umar thinks they should not be killed, as Prophet PBUH said:

> أمرت أن أقفل الناس حتى يقولوا لا إله إلا الله فإذا قالوا عصموا مني نماهم وأموالهم إلا على ذلك

Meanwhile Abü Bakar understands the term ‘bi haqqiha” as one of them is not paying zakat.

b. Narrated that Umar bin Khattab faced a problem regarding a person was killed by a group of people. Should the group of people being killed because of killing a person because Allah said: 

Ali said: What is your opinion Umar if a group of people steal a date palm, parts of them were taking this part, and the other part, taking another part of date palm, and will you cut their hands? Umar answered: Yes, certainly. Ali said: then, it same goes with that situation. Umar then took Ali’s opinion regarding this matter and then he said: If a residents of Sha’a’ gathered to kill someone, then I will kill them. Salam Madkur, *al-Madkhal*... , 83

Opinion (ra‘yu) Islamic Jurisprudence is based on the ability of the Companions to comprehend the verses of al-Quran and Hadith as being
mentioned by Ibn Al-Qayyim which means, what were the tendency of the heart after reflecting, thinking and pondering.

The expansion of Islamic law in this period is because of:

a. The different way of comprehending certain parts of verses in al-Quran, because of the existence of uncertainty argument (dalalah dhanniyyah) which means, have two meanings from one term, the reality (haqiqah) and parable (majaz).

b. Their differences in memorizing and comprehending Sunnah.

c. Their differences in giving diligence and opinion (ra’yu).

d. The residency where they lived.

e. The change of time and age. Muḥammad Salām Madkūr, al-Madkhal..., 86-87


Abū Zahrah stated it with the Sunnah-based jurists and opinion-based jurists. He was not agree with other people that say Sunnah-based jurists only exist in Hijaz and opinion-based jurists only exist in Iraq. The base on the branding are:

a. The rate of opinion-based (ra’yu) in Iraq are widely used.

b. The opinion-based (Al-ra’y) for Iraq citizens are commonly based on analogy methods, meanwhile the citizens of Medina are based on looking at the benefits gained from an action. (maslahah)


This period started since the second century of Hijrah. This century can be considered as the strength growth era, the maturity of thoughts, a widen academically life, an intense and profound studies that producing a great Islamic Jurisprudence, absolute diligence, a free rights in giving and taking out of Islamic law. At this period, the Quran, Sunnah and language knowledge were being codified and contributing to the emergence of Qadhi, linguists, experts in ta’wil and Hadith, theologies and jurists. Ali Sayis classifies this period as the fourth period. Among the factors that contribute to the Islamic law growth were:

a. The concern of the Caliphs towards Islamic Jurisprudence and the jurists.

The concern of Caliph Muawiya and the Abbasid in giving supports towards the progression of Islamic Jurisprudence Islam. In fact, they were focusing on religion matter. During the reign of Caliph Abū Ja’far al-Manshur, he influenced them by giving a reward. Al-Mahdi fight against the heretics. During the reign of Ar-Rasyid, he specified Abū Yusuf as his friend, and during the reign of al-Makmun he allocated his time with the scholars for academics discussions.

b. The freedom of thoughts

Among the reasons of the spreading of Islamic Jurisprudence among the scholars were because of the freedom of thoughts in academics research, among
them there were scholars made a diligent (ijtihad) in understanding a certain law with peacefully and serenity without afraid of the authority or people who sustained their views.

c. Lots of debates and discussions occurred. Contradiction and debates always happen among the scholars. For example among the scholars from Hijaz and Iraq during the reign of Umawiyah. (Muhammad Ali Sayis, *Tarikh...*, pg. 124-125). Even though the contradiction between both sides - as stated by Nurkhalis Majid - only on their characteristic and intellectual style of their region. Meanwhile in individual level, many of them did not follow the general characteristic. The generalization was actually referred to scholars such as Rabi'ah that considered as the "Kelompok Penalaran" and Ahmad bin Hanbali was categorized into narrative side. See Nurcholis Majid, dkk, *Konsektualisasi Doktri Islam dalam Sejarah*, cet. II, (Jakarta: Paramadina, 1995), h. 243.

17 Starting with the contradiction of the Companions in determining a law, some of them based on the verse, and some of them based on making diligent and flexible in debating about the justification of the law. As the effect, the schools of Islamic Jurisprudence were widely emerged in various places. In fact, the political influence becomes a reason of emanating a sect such as: syi'ah and Khawarij, and some of them based on academic background such as : sect Hanafi, Maliki, Syafi'i, Hanbali, Auza'I, Bashri, Laitis, Dahirri, Thabari and so on. And this happened because of the separation of Islamic Jurisprudence and became an independent knowledge. (Muhammad Salam Madkur, *al-Madkhal...*, pg. 95)

The five prominent sects—Ja'fari, Malik, Hanafi, Syafi'i dan Hanbali—emanated during the reign of Abbasids. For the previous age, when people talked about sects (sects), it means sects among the Companions of Prophet Muhammad PBUH, Umar, Aisyah, Ibn Umar, Abn Abbas, Ali and so on. According to Murtadha al-'Asykari as being taken by Jalaluddin - the initial sect have two main groups: school of Caliphs school of ahl Bait. The first group has two main branches: school of al-hadith and school of al-ra'y. (See Jalaluddin Rachmat, *Critical View On Islamic Jurisprudence History: From the reign of Al-Khulafa' al-Rasyidin until the Age of Liberalism in Nurchalis...* pg. 268-269

18 Among the reasons of emanation of Islamic Jurisprudence sects are:
1. The expansion of Muslim Kingdom and the variety of culture.
2. The spreads of jurists in various cities.
3. Lots of fatwa and situations occurred.
4. Effort of arrangement of books (tadwin) and translation occurred.
5. Political influence. During the Abbasids reign, the scholars were given a freedom of having long discussion and debates because the reign was built on the name and purpose of religion. Islami.Muhammad Salam Madkur, *al-Madkhal...*, h. 93, 95-98


20 Jurists of ra'y (opinion) which were scholars from Iraq, gave their opinions on the situations that will happen in the future in various perspectives, in fact they were discussing about problems that beyond the reality, however, logically it may happen. The freedom in thinking had made the scholars became
more focused in their studies. This had made the quantity of Islamic Jurisprudence became wider and larger and have various laws. Furthermore, with the respond from other scholars regarding the opinion had expand the quantity of Islamic Jurisprudence. Muhammad Salam Madkūr, al-Madkhal..., h. 100

21Since the early of the Fourth Century in Hijrah, the Muslim Kingdom strength started to decline that cause schism to be happened. The kingdom sometimes colonized by Tartar and sometimes by Bani Buwaih.

The condition of country had made the freedom of thinking among the scholars being narrowed. It is because they were suppressed by the colonizers that causes them to be based on taklid (follower). They were gradually getting far from the process of diligence until a jurist only hold certain sect. Moreover, they giving out command it is prohibited for followers to migrate from a sect to another sect that they wanted to. Muhammad Salam Madkūr, al-Madkhal..., 105

22The causes of stagnation scholars in this period:
1. The development and advancement of writing and essay previously ease the people that came after them.
2. They feel authoritative for some scholars to criticize relatives who perform due to maintenance reasons of religion or malice.
3. Decline and fall of the Kingdom so less attention given to the feasibility of a person of becoming a mufti.
4. There is a kind of campaign the pupils of an Imam so that the teaching process is only limited to a certain sect. Muhammad Madkūr Salam, al-Madkhal..., h. 106-111

It can be divided into several stages:

b. Before the middle of the seventh century, the fall of Baghdad to the hands of the Tartar and including al-Mu'tasim, the last Abbasid caliph. Jurists at this time refers to the imitation as the priests had left a huge treasure in the form of law to the problems that arise at the time. Especially good fortune often show a certain sect followers who became Qadi, mufti and others. When there is a weakness in the state, authorities sometimes set mufti who are not experts. Because it was also the jurists getting away from diligence, either because of laziness or subject to the opinion formulated as ijma' (consensus).

23Can be divided into several stages:

a. The second stage begins with the fall of Baghdad in the hands of the Mongols in 656 H. Jurists in this century that is called as scholars of muta'akhkhirin. Map scientific center was moved from Baghdad, Bukhara and Nishapur into Egypt, Sham, India, Asia Minor and Africa. Mujtahid activities are limited to attempt to sort out between a weak and a strong history, focusing on the book last Mukhtasar disyarh, even Sharh 'ala Sharh. Therefore, the shape of future work is mostly in the form: of honor, Syarh, and hashi'a. Also essay form h 'al-Fatwa, the law is based on explanation and classification according to the book of Islamic Jurisprudence. Ibn Taymiyya and Ibn Qayyim including those against the current stagnant condition itu.Muhammad Madkūr Salam, al-Madkhal..., 110

24Amir Syarifuddin, Usul..., h. 32
26Intended is Islamic Jurisprudence. Writing this time adapted to the method of writing other material which covers the theory, principles and its
codification. By studying a section, the discussion includes various furu and the opinions of various sect and opinion by making comparisons, all of which are in the book of bylaws. Writings avoid Maslak of honor, Sharh and hawasyi, as well as from fanaticism and influence others. Law-law which was in line with the benefits diistinbathkan humans and in accordance with the Qur'an and hadith, to highlight various opinions, postulate, scientific discussion and independent. Muhammad Madkur Salam, al-Madkhal ... , h. 117.

Essentially, this is not the first attempt, but never performed in the 2nd century of Abbasid period. Then appear again at the end of the thirteenth century migrated with a clearer format.

Ibn al-Muqaffa effort in the second century Hijrah, the beginning of the reign of the Abbasid Caliph Abū Ja'far al-Mansur wrote a letter inviting to establish a law that applies to all of the city. The source of the Qur'an and Sunnah. When not found Nass, then through the reasoning that refers to the justice and welfare. It is necessary according to his opinion because of the many differences of opinion on an issue scholars.

Caliph Abū Jafar al-Mansur and Harun al-Rashid Malik invited to make men run only his sects. However, this invitation was rejected Imam Malik. In the 11th century Hijrah, Muhammad Sultan 'Almakir, one of the king of India, formed a committee composed a book jami against history dhahir agreed in the Hanafi sect. The effort has resulted in a work called the al-Fataawa al-Hindiyyah. Madkur Salam Mohammed, al-Madkhal ... , 118-120

Islamic Jurisprudence is the knowledge of the law of comparative personality 'by knowing the various opinions in the matter, the argument of that opinion and the underlying rules to make comparisons and take an opinion closer to the truth, as well as conducted a study comparative with the laws in force in our country and developed countries. Madkur Salam Mohammed, al-Madkhal ..., 114-115.

Publication of the magazine al-Ahkam al-'Adliyyah. Ottoman Government in the late thirteenth century Hijriyyah face the overload of group of scholars to form a law al-Mu'amalah madaniyyah taken from Islamic Jurisprudence to remain bound to the Hanafi sects. But taking into account the benefit of man and the spirit of the times, without having to be bound by the opinion of authentic in sect. So this committee resulted in a number of Islamic law Jurisprudence matching the events occur. These are all published in "Majallah al-Ahkam al-'Adliyyah". This magazine contains 1581 discussions that are easier, much of the dispute, even contain the authentic opinions by sect for the benefit of considerations of that era. Implementation began in 1293 in high tribunals. In 1326 a law. marriage and divorce are no longer quote from al-Hanafi sect. At the same time. considered to be the first time the embodiment of Ibn al-Muqaffa with the support of Abū Ja'far al-Mansur and Harun al-Rashid. This period is also no longer a handle on a particular sect and away from taqlid. Egypt is not left behind in the development of Islamic Jurisprudence and its efforts in forming law into human intent Qanun no. 25. 1920 are taken from the sect four. Last Qanun 1923. 1929 are no longer bound by the four sect. And so on have always been progressing (Madkur Salam Mohammed, al-Madkhal ..., 120-1215

Guidelines for hjmaad in Responding to The Contemporary Problems
The final study refers to the restoration of relations between the reader Author, reviving impartial role between Text, Author and Reader, Opacity and Transparency meaning and so on. See, M. Amin Abdullah Khaled Abou El Fadl in, In the Name of God, 1st edition (New York: Porch, 2004), p. xi-xvii.

26 This final research had return back the relationship between the author and the reader, reviving a balance function between texts, authors, and readers and so on. See, M. Amin Abdullah in Khaled Abou El Fadl, Atas Nama Tuhan, 1st edition (Jakarta: Serambi, 2004), h. xi-xvii

27 Abd al-Karim Soros, al-'Aql wa al-Tajribah, (Lebanon: al-Intisyar al-'Arabi, 2010), h. 26-27


30 Iḥyā‘ Ulūmuddīn, III, h. 63


32 Iḥyā‘ Ulūmuddīn, III, h. 63


34 Abu Hamid Muhammad ibn Muhammad al-Gazali al-Tusi, Al-Mustasfa fi 'Ilm al-'Usūl, (Beirut: Muassat al-Risalah, 1997) Ji lid 1, h. 417

35 Ahmad al-Raisuni, Objectives al-Objectives: al-Ghayat al-'Ilmiyyah wa al-'Amaliyyah li Objectives al-Syari'ah, 2013, (Lebanon: al-Syabakah al-'Arabiyah li Abhath wa al-Nasyr, 2014), h. 112

36 Iḥyā‘ Ulūmuddīn, III, h. 63


38 Abu Hamid Muhammad ibn Muhammad al-Gazali al-Tusi. Al-Mustasfa fi 'Ilm al-Usul, (Beirut: Muassat al-Risalah, 1997) Ji lid 1, h. 417

39 Ahmad al-Raisuni, Objectives al-Objectives: al-Ghayat al-'Ilmiyyah wa al-'Amaliyyah li Objectives al-Syari'ah, 2013, (Lebanon: al-Syabakah al-'Arabiyah li Abhath wa al-Nasyr, 2014), h. 112


41 Iḥyā‘ Ulūmuddīn, III, h. 63


43 Abu Hamid Muḥammad ibn Muḥammad al-Gazālī al-Tūsī, Al-Mustasfa fi 'Ilm al-'Usūl. (Beirut: Muassat al-Risalah, 1997) Ji lid 1, h. 417

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REFERENCES


