

Title : The Treasure of Fiqh Existence in History

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The Treasure of Fiqh Existence in History

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Fiqh is the integrated element with important position for moslem, it is not something over to the statement about internal dynamics in various scientific had significant role in creating the flow of historical fluctuations in Islam. In historical studies, Hamilton Gib (1895-1971 AD) said that fiqh is the main figure of various scientific in Islam. Meanwhile, according to Abid Al-Jabiri (1935-2010 AD), fiqh is the only discipline that is considered representative to represent the character of Islamic civilization with numerous of intellectual property treasures.

The foundation of the first fiqh was built during the time of Muhammad's prophethood from revelation (609/610 AD) to the death of Prophet Muhammad (632 AD). Therefore, the Prophet Muhammad only had about 23 years to develop a legal system, even though there were many unfinished legal issues at that time. Many legal issues of moslem have been managed by Prophet Muhammad based on the Quran and the results of his ijtihad.

Day by day and Islam spread outside the Arabian and moslem far from Prophet era, there were more legal problems they had in daily life. At the end of the day, the existence of fiqh is very important as solution to legal issues.

Period of the Companions (Sahaba)

After completing the prophetic period, it was followed by a period of sahabat (*al-Khurafaarasyidin*) that start with the leadership of Abū Bakr as-Şiddīq (11-13 AH), Umar ibn Al-Khattāb (13-23 AH), Uthmān ibn ‘Affān (23-35 AH), and Ali ibn Abi Talib (35-40 AH). At that time, fiqh was so flexible because all sahabat gave legal decisions based on the Koran, hadith and ijtihad by themselves.

Some methods used by sahabat in providing legal answers to the issue, namely; *Firstly*, deliberation to find common agreement on legal issues. This method is used by sahabat of Abū Bakr as-Şiddīq to get the solution to many legal issues in people's lives. *Secondly*, maslahah and reason considerations. This method is oftenly used by Sahabat of Umar ibn Al-Khattāb in solving legal issues.

Period of the Followers (Tabi'un)

After period of sahabat ends, it was continued by period of the followers (tabi'un) who still had a bond between teachers and students with friends. There were some fiqh experts at that time including; Saib ibn al-Mussayīb ibn Hāzn ibn Abī Wāhb al-Mākhzumi al-Quraisy (636-715 AD/15-94 AH), Urwah ibn az-Zubāir (d. 712 AD/94 AH), al-Qāsim ibn Muhammad ibn Abū Bakr (d. 108 AH), Ubaidillah ibn Abdillah (d. 716 AD/98 AH), Abū Ayyūb Sulaiman ibn Yasar al-Madanī al-Hilālī (d. 725 AD/107 AH) and others. Fiqh tended to be with interference of authorities. Authorities can use their power to manipulate and influence the results of judges' decisions in applying laws as abuse of power.

Period of the Mazhab Ulama

During the Period of the Mazhab Ulama, there was great development of fiqh. At this period, many ulama were born such as; *firstly*, Nu'mān ibn Thābit ibn Zūtā ibn Marzubān or known as Imam Abū Hanīfah (699-767 AD/80-150 AH) was born in Kufa, Iraq. Abū Hanīfah was known as a rationalist in the field of fiqh because many of his decisions were based on reason (*ahl ra'yi*). *Secondly*, Mālik bin Anas bin Mālik bin Abī 'Āmir bin 'Amr bin Al-Hārith bin Ghaymān bin Khuthayn bin 'Amr bin Al-Hārith al-Asbahī al-Madanī or also known as Imam Mālik (711-795 AD/ 93-179 AH) was born in the city of Medina. Imam Mālik is known as the one who mastering hadith due to his method in using many hadiths in making legal decisions. *Thirdly*, Abū Abdillāh Muhammad ibn Idrīs al-Shāfi'ī or known as Imam al-Shāfi'ī (767-820 AD/150-204 AH) was born in Gaza, Palestine. Imam Shāfi'ī is moderate person in fiqh, who combine two groups between *ahl ra'yi* experts in Iraq and hadith experts in Medina. *Fourthly*, Abū 'Abdillāh Ahmad ibn Muhammad ibn Hanbal Ash-Syabānī or known as Imam Ibn Hanbal (780-855 AD/164-241 AH) was born in Baghdad, Iraq. Imam Hambali is known as a fundamentalist in the field of fiqh because he is assertive about law.

There are different views and methods in making the law by ulama, one of which is influenced by the socio-cultural area of local society. There is also one of the many great works of mazhab imams, including, *Fiqh al-Akbar* by Hanafi, *Muwatha'* by Maliki, *al-Umm* by Syafi'ī, and *Musnad* by Ahmad bin Hanbal.

Period of Deterioration

During this period, it was marked by high adoration and fanaticism by muslim on particular mazhab. Moreover, Muslim believe that other mazhab was incorrect. This period is stagnant, with its characteristics are explaining kitab along with codification (*tadwin*), namely the book keeping of all Islamic science in many forms, then *al-Tafsir bi al-Ma'tsur* was born, the hadiths were recorded in *al-Jawami'*, *al-Masanid*, *al-Mustadarakat* and also recorded by the narrators *Jar wa ra'dil*. The followers put into book form of fatwa and the results of *ijtihad*.

Fanaticism on particular mazhab is growing and rooted in muslim. The enthusiasm of fanaticism made ulama at that time less use their thinking power to have independent *ijtihad* in making legal decisions. They prefer to tie the opinions of previous ulama and without thinking that the social conditions they faced at that time were different from the social conditions of previous ulama. Fiqh at this time lost its spirit and appeal as social control and social engineering.

The manipulation of mazhab was happened due to by people in certain capacity in the field of law but they gave their own fatwas by looking for justification from mazhab. Based on this condition, some ulama state that *ijtihad* can not be achieved.

Therefore, the creativity is weak in conducting *ijtihad*. As impact, the fanaticism towards particular mazhab is aimless by ordinary people and ulama. At the end of the day, the productivity was not found in any work unlike what was done by previous ulama.

Period of Resurrection

At this period, it started with the abandonment of muslim around the world, even in the areas where muslim populations had been in western colonies. Ulama and intellectual people at that time saw that the deterioration of muslim was due to their absence in thinking, especially in fiqh development. Muslim are starting to realize that Islamic resurrection must be conducted, because if it never happened, it will make Islam retreat and worst.

The common feature of this fiqh period is the slogan of starting *ijtihad*. In this period there were some figures of reformation, namely; Muhammad 'Abduh (1845-

1905 AD), Muhammad Rasyid ibn Ali Ridha ibn Syāmsūddin ibn Baha'uddīn al-Qālmuni al-Husaini (1865-1935 AD), Syed Ahmed Taqvi ibn Syed Muhammad Muttaqi (1817-1898 AD), 'Allāmah Šiblī No'mānī (1857-1914 AD), Muhammad Iqbal (1876-1938 AD) and so on. The leaders of Islamic reformation said that fiqh must be organized in this era, so that it would not be drowned out by the progress of the moslem society that live with complex problems.

Technological and cultural developments in human life that are happening today are rapid and unpredictable. Therefore, a progressive fiqh is needed in responding to many challenges so that fiqh accepted by many groups and relevant with the Islamic principle of "*shalih li kulli zaman wa makan*". Therefore, ijtiḥad is needed, which is considered as the most effective and appropriate method to explain and answer the moslem needs of the day as solution to many legal issues.