

Islamic Law and Contemporary Challenges from Fresh Ijtihad Point of View

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Abstract

The following article highlights how fiqh as a science is developed in the context of the dynamics and demands of humanitarian issues in the contemporary era. The main issue raised in this paper is how the reformulation of fiqh as a science can provide solutions and contribute to solving humanitarian problems such as human rights, the environment, the democratic system, local wisdom and others? To answer these various humanitarian problems, this paper starts from the framework of thought that fiqh as a science in addition to exploring its religious knowledge also needs to be integrated with the humanitarian sciences related to humanitarian issues that are developing at this time. In this way, it is expected that a fiqh study like this will be responsive and a solution to contemporary humanitarian issues. The approach used in this paper is a philosophy of science, history and deconstruction and reconstruction approach to the work of fiqh as science. Based on the results of studies that conducted, it can be concluded that for the development of fiqh as a science, a theoretical device is needed that requires the support of the human sciences that are developing in the contemporary era. That way, the model of fiqh studies with related human sciences is integrative that is multidisciplinary, interdisciplinary or even transdisciplinary.

KEYWORDS *Fiqh as a Science, Fresh Ijtihad, Social and Humanities Science, Progressive Islam*



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Abstrak

Artikel berikut menyoroti bagaimana fiqh sebagai ilmu dikembangkan dalam konteks dinamika dan tuntutan isu-isu kemanusiaan di era kontemporer. Pokok permasalahan yang diangkat dalam tulisan ini adalah bagaimana reformulasi fiqh sebagai ilmu dapat memberikan solusi dan berkontribusi dalam penyelesaian masalah kemanusiaan seperti hak asasi manusia, lingkungan hidup, sistem demokrasi, kearifan lokal dan lain-lain? Untuk menjawab berbagai permasalahan kemanusiaan tersebut, tulisan ini berangkat dari kerangka pemikiran bahwa fiqh sebagai ilmu selain menggali ilmu agamanya juga perlu diintegrasikan dengan ilmu-ilmu kemanusiaan terkait dengan persoalan kemanusiaan yang berkembang saat ini. Dengan cara ini, diharapkan kajian fiqh seperti ini akan responsif dan menjadi solusi bagi persoalan kemanusiaan kontemporer. Pendekatan yang digunakan dalam tulisan ini adalah pendekatan filsafat ilmu, sejarah dan dekonstruksi dan rekonstruksi terhadap karya fiqh sebagai ilmu. Berdasarkan hasil kajian yang dilakukan, dapat disimpulkan bahwa untuk pengembangan fiqh sebagai ilmu, diperlukan perangkat teori yang membutuhkan dukungan ilmu-ilmu kemanusiaan yang berkembang di era kontemporer. Dengan begitu, model kajian fiqh dengan ilmu-ilmu kemanusiaan yang terkait bersifat integratif yaitu multidisiplin, interdisipliner atau bahkan transdisipliner.

KATA KUNCI *Fiqh Sebagai Ilmu, Ijtihad Baru, Ilmu Sosial dan Humaniora, Islam Progresif*

Introduction

In an effort to formulate alternative thoughts and solutions to various humanitarian problems today, various variants of Muslim thought have emerged, such as moderate, traditional, liberal thinking, and so on. Of these many schools of thought, one of them is progressive Islamic

thought.¹ Different schools of thought have emerged to reinterpret Islam in order to respond and cater to heal and condition and the public demands of contemporary today.² Progressive Islam is a relatively new term in contemporary Islamic studies conducted by academics. This term is used to label the thoughts and movements of Muslims who are more serious in fighting for the enforcement of human values at the global level, such as the development of civil society, justice, equality, democracy, partiality to minority communities, marginalized and multicultural communities or pluralism. On the one hand these thoughts and movements³ as an expression of criticism and feelings of dissatisfaction with the Liberal Islamic thought movement which is more oriented towards a sharp internal criticism of the behavior and thoughts of Muslims who have received less attention from the dynamics of global humanitarian values. In addition, this school and movement of thought is also a constructive critique of modernism, with all its derivations that have not received equal attention from the Liberal Islamist school.⁴

The above reality provides inspiration for the emergence of Progressive Islam variants, giving fair attention between a critical attitude towards the inside and also being critical of the external side. Balanced

¹ At least there are six variants of Muslim thinkers: 1. *The Legal - ist-traditionalist*; 2. *The Theological puritans*; 3. *The Political Islamists*; 4. *The Islamist Extremists*; 5. *The Secular Muslims*; and 6. *The Progressive ijtihadists*, Abdullah Saeed, *Islamic Thought An Introduction*, (London and New York: Routledge, 2006), p. 142-150. The other categorizations are: 1." *Scholastic Traditionalism*," 2." *Salafi Literalism*," 3." *Salafi Reformism*," 4." *Political Literalist Salafism*," 5." *Liberal or Rational Reformism*," 6." *Sufism*". Tariq Ramadan, *Western Muslims and the Future of Islam*, (New York: Oxford University Press, 2004), p. 24-28.

² M. Amin Abdullah, *Multidisiplin, Interdisiplin, & Transdisiplin Metode Studi Agama & Studi Islam di Era Kontemporer*, (Yogyakarta: IB Pustaka PT Litera Cahaya Bangsa, 2021), p. 311-314.

³ Syamsuddin, Sahiron, "Islam Progresif dan Upaya Membumikannya di Indonesia" quoted from <http://nahdliyinbelanda.wordpress.com/2007/09/29/islam-progresif-dan-Efforts-Embracing-it-di-Indonesia/> accessed 7 July 2015.

⁴ Omid Safi, "What is Progressive Islam?" , in www.muslimwakeup.com/main/archives/2005/04/what_is_progres_1.php accessed July 7, 2014, Farish A. Noor, *Progressive Islam: Its Opportunities, Challenges and Future in Southeast Asia* . trans. Moch. Nur Ichwan and Imron Rosyadi (Yogyakarta: SAMHA, 2006), p. 23.

and fair to the heritage of the tradition of Islamic thought that lacks attention to human values and at the same time expresses constructive criticism of Liberal Islamic thought which can be considered less critical of modernity whose values contradict justice and human values. From this perspective with internal and external criticism, the ideas offered by Progressive Islam are oriented towards the advancement of Islam. It is on this basis that this variant of Islam is called the progressive term⁵ and its contribution in the context of Muslim and human life today.

Methods

The method of this research is qualitative, namely research both positive law and Islamic law as well as other legal materials related to the Principle of Willingness in the Parate Execution of Fiduciary Guarantees. While the approach method used is a legal comparison which is carried out by comparing the Principle of Willingness to Execute Fiduciary Guarantees in the Constitutional Court's Decision with the Principle of Volunteering (Taradhin) in Islamic law. The results of this comparison was analyzed the suitability of the principle of Willingness to Parate Execution of Fiduciary Guarantees in the Constitutional Court's Decision with the Voluntary Principle (Taradhin) in Islamic law, so that should be found whether the post-MK Parate Execution is appropriate or contrary to Islamic law. The data used is secondary data which includes: Primary legal materials such as: Al-Qur'an, Hadith, Constitutional Court Decision 18/PUU-XVII/2019 and Fiduciary Guarantee Law Number 42 of 1999 concerning Fiduciary Guarantee; Secondary legal materials such as: Civil Code, National Sharia Council Fatwa, KHES, books on Guarantee Law, both national and international journals related to Parate Execution.

⁵ *Ibid*, pp. 150-151.

Discussion

Fresh Ijtihad: The Root and Current Developments

The salient characteristics of progressive Muslims in developing their religious thinking are that:

- a. Some areas of traditional Islam require substantial reform in order to meet and support the needs of today's Muslim society.
- b. The need for fresh ijtihad⁶ as a new methodology of thought to answer contemporary human problems.
- c. The legacy of traditional Islamic scholarship needs to be developed creatively and integrated with modern Western scholarly thinking.
- d. Social dynamics and changes, whether intellectual, moral, legal, economic or technological, can be reflected in Islam.
- e. In its approach to the study of thought, it is not bound to dogmatism or to certain schools and theology.
- f. Pays attention very much to universal humanitarian ethics, for example civil society, justice, equality, democracy, partiality to minority communities, marginalized and multicultural or pluralistic communities.⁷

Furthermore, ten more technical-operational criteria can be described that distinguish progressive Muslims from others, that progressive Muslim thought offers: 1. The need to reinterpret or reapply Islam with reference to the substantial values of Islam; 2. Gender justice is an important part of Islam; 3. Every religion is substantively equal, ethically and constitutionally must be protected; 4. Equality in the dignity and position of all human beings; 5. Beauty is a value contained in Islamic civilization; 6. Upholding the values and rights of freedom in

⁶ M. Amin Abdullah, *Fresh Ijtihad Manhaj Pemikiran Keislaman Muhammadiyah di Era Disrupsi*, (Yogyakarta: Suara Muhammadiyah, 2019), pp. 200-202.

⁷ I DSS, "Progressive Islam," p. 5; Compare with Omid Safi, *Progressive Muslims*, p. 9-15; see also Omid Safi, "What is Progressive Islam," in *The International Institute for the Study of Islam in the Modern World (ISIM) News Letter*, No. 13, December 2003, p. 10.

human rights; 7. Be compassionate to all of God's creation ; 8. The rights of "others" exist and need to be respected; 9. S IKAP moderate and anti-violent resolution of problems of society; 10. High enthusiasm for issues related to the role of religion at the public level.⁸

There are three fundamental values in Islam, beauty, goodness and justice. These values are universal values and become the main foundation in all aspects of Islam. On that basis, all provisions of Islamic law, both classical and medieval eras that are not in accordance with these fundamental values, need to be harmonized with the universal values referred to by using the framework of a progressive ijthihad approach. With a methodology like this, Islam as God's teaching can support contemporary humanitarian issues at the local, national and international levels. In Omid Safi's language, what progressive Muslims do is "*is not so much an epistemological rupture from what has come before as a fine-tuning, a polishing, a grooming, an editing, a re-emphasizing of this and a correction of that*".⁹ Based on the description above, it is clear that *progressive ijthihadists or fresh ijthihad are the framework of progressive Islamic thought*. This framework of thought does not mean that the new Islam is merely reinterpreting Islam to serve as an ethical foundation to meet and respond to the complexities of contemporary human life problems .

The application of fresh ijthihad as a progressive Islamic ijthihad methodology can be mapped and positioned as a methodological alternative to the following ijthihad models:

First, is ijthihad which focuses on the text (nas – dalil). Ijthihad like this is called the bayani method or *text-based ijthihad*. This ijthihad method is a method that is usually and commonly used by classical and middle scholars. This method is also referred to as a method based on the full power of the text (textual oriented approach) either sourced from the

⁸ Omid Safi, *Progressive Muslim*, p. 16.

⁹ Abdullah Saeed, *Islamic Thought*, p. 55.

Koran, hadith, ijma or qiyas); (*Second*, the ijthihad method by choosing texts, arguments or views of previous scholars that can justify the tendency of their views. Ijthihad like this is commonly referred to as eclectic ijthihad (*eclectic ijthihad* ; *Third*, is a method or model of ijthihad that combines text and context. Ijthihad like This is called *contextual-based ijthihad or maqasid al-syari'ah-based ijthihad*. This third *ijthihad* integrates the world of text and the context of the problem at hand, then the historical aspect by considering the goal as the goal of a legal decision in Islam.¹⁰

Based on the explanation of the three models and methodologies of ijthihad, the final classification of ijthihad is the concern of Progressive Islam and this is what is called fresh ijthihad. The fundamental difference with the ijthihad methodology in general is that the classical and middle ijthihad methods in solving legal problems usually start from the text of the Qur'an, hadith, ijma and qiyas and relate them to their historical context. Meanwhile, fresh ijthihad in carrying out ijthihad tries to go further, namely connecting it with the present context so that it remains responsive and up to date.¹¹

Operationally and in more detail it can be explained related to fresh ijthihad in reinterpreting the Qur'anic passages with a focus and more emphasis on historical context and dynamics, several issues that were not covered by the sacred texts at the time the texts were revealed, every understanding and interpretation of the sacred texts needs to be based on the principles of compassion, justice and honesty, there is a level of norms in the holy book of the Qur'an, it is allowed to generalize on concretization or vice versa, needs to be done with great care when using texts or propositions to be seen. authenticity, and the need to focus and pay attention to the needs of Muslims in the contemporary era.

¹⁰ Abdul Hamid A. Sulayman, *Towards ad Islamic Theory of International Relations: New Direction for Methodology and Thought* (Herdon, Virginia: IIT, 1993), pp. 87-94.

¹¹ *Ibid*, such as Aminah Wadud, Tariq Ramadan, Muqtader Khan, Bassam Tibi, Farid Esack, Ebrahim Moosa, Fazlur Rahman, Khaled Abou el Fadl, and so on. M. Amin Abdullah, *Fresh Ijthihad Manhaj Pemikiran Keislaman Muhammadiyah di Era Disrupsi*, (Yogyakarta: Suara Muhammadiyah, 2019), pp. 200-201.

Implementing the above ideas is still problematic because there is still a strong assumption that there is only one Islam that must be accepted as the single truth. This single truth claim is still dominant among Muslims. Thus, the obstacles that become obstacles are from internal Muslims, namely the loss of freedom and the lack of solid democracy. For more details in this connection, the obstacles in promoting this thought can be stated:

First, is represented by conservative Muslim groups who spread his ideas by using all - at home; *Second*, is shown by the work of Muslim intellectuals who claim to care about the future of Islam but what they do is to wrap old ideas with new clothes ; *Third*, is the behaviour or actions repressive nation-state, and the *fourth* is what is indicated by the *global system of power* which does not give an opportunity dissent in discussing socio-economic issues.¹²

Regardless of these obstacles or obstacles, the Islamic ideas above continue to create an *equilibrium* of Islamic thought. In fact, the idea that Islam is not just touch with universal values such as justice and freedom be featured contemporary discourse, but is included in the areas of Islamic law. The emergence of the term *fresh ijtiḥad* which needs to reinterpretation of the legal texts and estab - frames to the method of determination of the law so that the properties of flexibility and elasticity of Islamic law endorsed by the Mujtahids past not only recorded and written in the book - the yellow book but become a daily reality.

One of the prominent spokespersons in the context of Progressive Islam is Abdullah Saeed. This character is a scholar with an excellent background in Arabic language and literature education as well as Middle Eastern studies. The combination of educational institutions followed, namely education in Saudi Arabia and Australia makes him competent to assess the two worlds, West and East, objectively. This figure is very *concerned* with the contemporary Islamic world. In his opinion there

¹² IDSS, “ *Progressive Islam*”, p. 5.

is a spirit how to teach -Islamic teachings are in accordance with all of situation and condition.¹³ Spirit to clicking - reactivate the progressive dimension of Islam within a period of time long enough torpor oppressed by the domination of the text.¹⁴ This method of thinking used by progressive Muslims is what he called *progressive ijihadist* or *fresh ijihad*.¹⁵

As it is acknowledged that to socialize fresh ijihad, it still faces many obstacles. Constraint is greatest internal obstacles, such as lack of -preparation of Muslims themselves to dissent that accompanied the fun at the culture of *takfir* which stems from the *truth claims*. Not a few Muslim scholars who perceive cynical or even considered as a deviation from the original Islam.

As it has been stated that the variant of Muslim thought above is a continuation of the modernist trend , which developed into neo-modernist and then became progressive. As a trend, this Muslim accommodate all the groups and people who have a presumption in favor of the values of uni -

¹³ Seminar on *Civil and Political Rights (Pundamental Liberties)*, MIEHRI, Hilton Malaysia Hotel, 16 May 2006, p. 74.

¹⁴ Abdullah Saeed's educational history is as follows: Arabic language study, Institute of Arabic Language, Saudi Arabia, 1977-79 , High School Certificate, Secondary Institute, Saudi Arabia, 1979-82, Bachelor of Arts, Arabic Literature and Islamic Studies , Islamic University, Saudi Arabia, 1982-86, Master of Arts Preliminary, Middle Eastern Studies, University of Melbourne, Australia, Master of Arts, Applied Linguistics, University of Melbourne, Australia (1992-94), Doctor of Philosophy, Islamic Studies , University of Melbourne, Australia (1988-92). His current positions are Director at the Asia Institute, University of Melbourne, Director of the Center for the Study of Contemporary Islam, University of Melbourne, Sultan of Oman Professor of Arab and Islamic Studies, University of Melbourne, Adjunct Professor at the Faculty of Law, University of Melbourne. His works include *Interpreting the Qur'an: Towards a Contemporary Approach*, (London: Routledge, 2006); 'Muslims in the West and their Attitudes to Full Participating in Western Societies: Some Reflections' in Geoffrey Levey (ed.). *Religion and Multicultural Citizenship*. (Cambridge: Cambridge University Press, 2006); 'Muslims in the West Choose Between Isolationism and Participation' in *Sang Seng* vol 16. (Seoul: Asia-Pacific Center for Education and International Understanding/ UNESCO, 2006). 'Jihad and Violence: Changing Understanding of Jihad among Muslims' in Tony Coady and Michael O'Keefe (eds). *Terrorism and Violence*, (Melbourne: Melbourne University Press, 2002); and his research entitled *Reconfiguration of Islam among Muslims in Australia* (2004-2006).

¹⁵ M. Amin Abdullah, *Multidisiplin, Interdisiplin, & Transdisiplin Metode Studi Agama & Studi Islam di Era Kontemporer*, (Yogyakarta: IB Pustaka PT Litera Cahaya Bangsa, 2021), pp. 313-314.

versal Islam so as to answer the needs of modern society. In this regard, it is mentioned several important issues that this group of Muslim thinkers want to answer, including gender inequality, discrimination against minority groups, both religious and ethnic minorities,¹⁶ violations of human rights, lack of freedom of speech, belief and practice of one's own religion, unequal distribution of wealth, and authoritarian government.¹⁷ In connection with this interpretation and thought of Islam, it was argued that *"although Islam does not have a clergy or a centralized church structure, Muslim religious establishments exert considerable influence in terms of how Muslims view and practice their religion. If they are antithetical to progressive Islam, their constituences would be averse to it as well"*.¹⁸

¹⁶ N.J. Coulson who stated that even what is called modern ijihad is still limping in touch with the existing problems because it has not been arranged a systematic approach. See NJ Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), pp. 75, 80-81, 152-154 and 220-223; see also Majid Khadduri, "From Religion to National Law," in J. Thompson and R. Reischauer (Eds), *Modernization of the Arab World* (New York: Van Nostrand, 1966), p. 41.

¹⁷ Jasser Auda, *Maqasid al-Syariah as Philosophy of Islamic Law: A System Approach*, (London, IIIT, 2008), p. 177-179. Shaykh Abdullah ibn Shaykh al-Mahfuz bin Bayyah, *Sina'at al-Fatawa wa Fiqh al-Aqalliyah* (Beirut: Dar al-Minhaj, 2007). pp. 6-8, 162, 163 etc. Similar thoughts can be read by Iqbal, whose renewal of thought can be found in his magnum opus, *The Reconstruction of Religious Thought in Islam*, (Lahore: Ashraf Press, 1971). The concept of reforming ushul which is very distinctive with his new model of text theory can be read in his work which was translated by his student, Abdullahi Ahmed an-Na'im into English with the title: *The Second Message of Islam*, (Syracuse: Syracuse University Press, 1987). The idea of renewing his proposal, which is basically a further development of the ideas of his teacher, Mahmud Muhammad Taha, is outlined in his famous work entitled *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, (Syracus: Syracus University Press, 1990). Muhammad Said Asmawi, *Usul al-Shari'ah*, (Beirut: Dar Iqra', 1983). Fazlur Rahman, "Toward Reformulating the Methodology of Islamic Law: Sheikh Yamani on Public International on Islamic Law" in *New York University Journal of International Law and Politics* 12 (1979): 219-24. Rahman's theory, which was later famous in the regulation of Islamic thought, was a "double movement" or *double movement* which always linked the moral ideals of the Qur'an and the legal-specifics in society in one whole dialectical movement. Muhammad Syahrur, *Al-Kitab wa al-Qur'an: Qira'ah Mu'asirah* (Damascus: al-Ahab li ath-Thiba'ah li an-Nasyr wa at-Tauzi, 1992). Syahrur popularized the "hudud theory" which he took inspiration from the natural sciences in understanding God's commands in the holy book

¹⁸ Omid Safi, *Progressive Muslims*, pp. 2-3.

Contemporary Challenges of Fresh Ijtihad

Based on the explanation of the methodological framework, issues and challenges of Islam above, it can be understood that the stagnation of Islamic thought in various fields entering the contemporary era is due to the irrelevant factor of the methodological and theoretical tools developed by Muslims in responding to contemporary humanitarian issues.¹⁹ In its historical dynamics, the methodology of Islamic studies has so far been more oriented to a normative theological-deductive approach, a literalistic bayani paradigm which is very dominant in text orientation and at the same time tends to pay less attention to the ethical-substantive of the text itself.²⁰

Furthermore, it can be argued that due to the lack of relevance of the theoretical tools of Islamic scholarship to respond and solve contemporary humanitarian problems today, Islam is not able to provide alternative solutions to contemporary problems today. Historically, it can also be argued that the bayani or literalistic paradigm lasted for quite a long time, namely from the 2nd to the 7th century Hijrah. It just underwent a kind of revision in the hands of al-Syatibi in the 8th century Hijrah by offering the maqasid sharia theory which refers to the purpose of establishing a legal decision. Then six centuries after al-Syatibi, this maqasid theory was revitalized by modern-day Muslim jurists.²¹

¹⁹ IDSS, "Progressive *Islam*", p. 14. M. Amin Abdullah, *Multidisiplin, Interdisiplin, & Transdisiplin Metode Studi Agama & Studi Islam di Era Kontemporer*, (Yogyakarta: IB Pustaka PT Litera Cahaya Bangsa, 2021), pp. 311-313.

²⁰ Abdullahi Ahmed al-Na'im in his book *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* at least mentions the difficulties in combining classical fiqh and contemporary fiqh thought patterns in several matters, including those related to law. Public, Modern Constitutionalism, Criminal Law, Modern International Law and Human Rights.

²¹ According to al-Jabiry's analytical framework, the thinking model that focuses on the study of text and language is generally categorized as a style of thinking that uses the *Bayani Epistemology*, which is distinctly different from the *Burhani* and especially *Irfani* models of thinking and ijtihad. Furthermore, M. Amin Abdullah, "Al-Ta'wil al-'Ilmi: Ke Arah Perubahan Paradigma Penafsiran Kitab Suci," *Al-Jami'ah*, vol. 39, 2. 2001, pp. 359-391.

Because they only revitalize the theory of al-Syatibi's maqasid, the group of thinkers above are adherents of utilitarian thought.²² Meanwhile, the fundamental problem of how the sacred texts are understood and applied in the dynamics and demands of contemporary humanity, of course, the situation and conditions have changed considerably, remains a strategic agenda and quite challenging for Islam today.²³ By contemporary thinkers, the above-mentioned theoretical tools of maqasid are considered no longer adequate to be developed and applied in the current era. It seems that the offer of maqasid theoretical tools by contemporary Islamic thinkers such as al-Jabiri, Rahman, Syahrur and others is more prospective.

This group of thinkers, to build a theoretical toolkit, offers a methodological framework that in addition to connecting the textual world with context and reality as well as contemporary human demands goes beyond the explicit meaning of the text to be more oriented towards exploring the goals the text wants to realize. However, this offer of theoretical tools and methodological frameworks still creates controversy and debate, even negative and suspicious accusations. This all arose because the offer of theoretical tools and methodological frameworks collided with the theoretical tools of the classical and middle era. Whereas the dynamics and development of science do not have to and always rest on the theories that have been established before. Of course, the dynamics and development of science is very possible with the demands of a

²² Muhammad 'Imarah, (ed). *al-'Amal al-Kamilah li al-Imam Muhammad 'Abduh*, 6 vols, (Beirut: Al-Mu'assasah al-'Arabiyah li ad-Dirasah wa an-Nasyr, 1972), p. 4. Muhammad Abduh, *Yusr al-Islam wa Usul at-Tasri' al-Am*, (Cairo: Mathba'ah Nahdlah Mishr, 1956). *Masadir at-Tasyri' fi ma la Nashsha fih*, (Cairo: Dar al-Kitab al-Arabi, 1955). *Maqasid as-Shari'ah al-Islamiyyah wa Makarimuha*, (Casablanca: Maktabah al-Wahdah al-'Arabiyah, 1963). *Tajdid Usul al-Fiqh*, (Beirut and Khortoum: Dar al-Fikr, 1980). This book has been translated into Indonesian by Afif Muhammad under the title *Renewal of Usul Fiqh*. See Hasan Turabi, *Renewal of Ushul Fiqh*, (Bandung: Pustaka Publisher, 1986). *Tajdid al-Fikr al-Islami*, (Rabat: Dar al-Qarafi li an-Nasyr wa at-Tauzi', 1993).

²³ Hallaq called it *religious utilitarianism (religious utilitarianism)*. Wael B. Hallaq, *A. History of Islamic Legal Theories: An Introduction to Sunni Usul Fiqh*, (Cambridge: Cambridge University Press, 1987).

paradigm shift or shifting paradigm in the philosophy of contemporary human science.²⁴

The efforts mentioned above are an effort to present a thought and at the same time a movement of fresh ijtiḥad methodology which aims to be used as an alternative reference for the realization of prosperity for all human beings in the universe. That way, the emergence of fresh ijtiḥad is a new and alternative formulation in accordance with the dynamics and demands as well as being responsive to challenges at the local, national and global levels today.²⁵ On that basis it can be said that the reasoning for the formation of fresh ijtiḥad can lead to Islam as a religion that is compatible with and can support the three levels of problems mentioned above.

Departing from this description, Islam with its distinctive values can appreciate pluralism, nationality, equality as share values that are firmly grounded in the interpretation of the Qur'an, ḥadith, maqasid sharia and public consensus. This offer of thought is different from classical and middle century thinking, because it uses Islamic understanding reasoning that links the interpretation of the Qur'an and al-Ḥadith texts with the perspective of democracy, pluralism, human rights and is discussed in

²⁴ Mohammad Iqbal, *The Reconstruction of Religious Thought in Islam*, (Lahore: Ashraf Press, 1971). Mahmud Mohammad Taha, *The Second Message of Islam*, transliterated: Abdullahi Ahmed an-Na'im (Syracuse: Syracuse University Press, 1987). Abdullahi Ahmed an-Naim, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, Syracuse: Syracuse University Press, 1990. Muhammad Said Asymawi, *Ushul ash-Syari'ah* (Beirut: Dar Iqra', 1983). Fazlur Rahman, "Toward Reformulating the Methodology of Islamic Law: Sheikh Yamani on Public International on Islamic Law," *New York University Journal of International Law and Politics* 12 (1979): 219-24. Rahman's theory which later became famous in the regulation of Islamic thought is a "double movement" or *double movement* which always links between the moral ideals of the Qur'an and legal-specific in society in one whole dialectical movement. Muhammad Syahrur, *Al-Kitab wa al-Qur'an and Qira'ah Mu'asirah* (Damascus: al-Ahab li ath-Thiba'ah li an-Nasyr wa at-Tauzi, 1992). Syahrur popularized the "hudud theory or the theory of Limits" which he took inspiration from the natural sciences in understanding God's commands in the holy book. Hallaq, *A History ...*, 214.

²⁵ Hamim Ilyas, *Fikih Akbar Prinsip-Prinsip Teologis Islam Rahmatan Lil 'Alamin*, (Tangerang: Alvabet, 2018), p. 29.

accordance with the rules of the legal system that applies in the context of the world. contemporary Muslims. In addition, the offer of thought above is controversial, and may be rejected by groups supporting the formalization of Islam. However, the presence of this kind of thinking is intended as an alternative to the idea of formalizing Islam so that Islam is compatible with the demands of contemporary human life.

The attitude and rejection of the theoretical tools and framework of the *fresh ijtiḥad* methodology above by groups supporting the formalization of Islam in Indonesia is due to the unpreparedness of these groups in accepting new perspectives in contemporary life such as democracy, pluralism, human rights,²⁶ as a global ethic of contemporary people's life that cannot be avoided and even needs to contribute. Meanwhile, on the other hand, some of the ideas offered are in principle different from the general understanding of Islamic teachings adopted by the community.

Implementation of Fresh Ijtiḥad

As the implementation of fresh ijtiḥad in Indonesia, one of the topics discussed by contemporary Muslim scholars is the relation of Islam and the concept of citizenship. The relationship between Islam and the *integration of citizenship* is a hot topic of conversation in Islamic discourse lately. The central issue is how to formulate and transform Islamic teachings, so that Muslims are able to be present in the socio-cultural reality wherever they are, mingling with other citizens with different religious, racial and ethnic identities, without having to lose their identity as Muslims.²⁷

²⁶ Thomas S. Khun, *The Structure of Scientific Revolutions*, (Chicago: The University of Chicago Press, 1970), p. 121.

²⁷ Suparman Marzuki, *Tragedi Politik Hukum HAM*, (Yogyakarta: PUSHAM UII and Pustaka Pelajar, 2011), p. 432.

The thought above can be said to be an effort to rethink the issue of citizenship.²⁸ In the socio-political context in Indonesia, the idea and concept of multicultural citizenship.²⁹ This proposal requires further exploration by assuming that the reality of cultural, religious, ethnic, racial, gender, and social ideological diversity is not considered as an obstacle, but instead is managed properly as social capital for the realization of democracy and strengthening public participation of civil society. harmoniously and peacefully. With the concept of multicultural citizenship above, civil society on the other hand can encourage the state to act fairly in providing security protection and public services to all components of the nation regardless of their social background.³⁰

In the context of this multiculturalism, Muslims in Indonesia as the majority need to present a new vision of diversity for the good/benefit of all parties (*Rahmatan lil-'Alamin*).³¹ However, as explained, such a religious vision can only be realized if Islam is understood through the perspective of fundamental values as offered by Progressive Islam, namely values that can apply to all ethnicities, nations, races, skins and religions, without any conditions.³²

To reach the concept of multicultural citizenship, the question is what is the role of Indonesian Muslim scholars, intellectuals and intellectuals in guarding the constitution and democracy in a modern Indonesian nation-

²⁸ Muhammad Adib, "Tariq Ramadan: Muslim, Identitas, dan Integrasi Kewarganegaraan", in Mirza Tirta Kusuma (editor). *Ketika Mekkah Menjadi Las Vegas Politics, and Religion* (Jakarta: PT Gramedia Pustaka Utama, 2014), p.282.

²⁹ Abdullah Saeed, *Islamic Thought: An Introduction*, issue I (New York: Routledge, 2006), p. 153, and Muhammad Adib, "Tariq Ramadan...p. 299.

³⁰ Robert W. Hefner, "Introduction: Multiculturalism and Citizenship in Malaysia, Singapore, and Indonesia", in Robert W. Hefner (ed.), *The Politics of Multiculturalism: Pluralism and Citizenship in Malaysia, Singapore, and Indonesia*, (Honolulu: University of Hawaii Press, 2001), p. 3 and 47 and Muhammad Adib, "Tariq Ramadan...p. 299-300. YUSDANI, *Islam dan Negara Sejahtera Studi Kontestasi Pemikiran Muslim di Indonesia Era Reformasi*, (Yogyakarta: Diandra Kreatif, 2021), p. 341-342.

³¹ Hamim Ilyas, *Fikih Akbar Prinsip-Prinsip Teologis Islam Rahmatan Lil 'Alamin*. (Tangerang: Alvabet, 2018), p.23-25.

³² M. Amin Abdullah, "Agama & Pembentukan Kepribadian Bangsa Di Indonesia", *Paper*, uploaded on 3 June 2010, (accessed 22 June 2013) and Muhammad Adib, "Tariq Ramadan...p. 300.

state? In this connection a concept of *al-hanifiyyah al-samhah*,³³ plurality and inclusivity³⁴ becomes relevant for re-explanation.

The expression of Islamic thought with the idioms of tolerance, spaciousness, openness, openness, plurality and inclusiveness in a society which in general is still exclusive, closed, sectarian, primordialistic, parochialistic. The socio-political situation and psychology in the country (Indonesia) as in the 1970s, even to a certain extent until now and *forever* there are still those who want a kind of *Islamdom* (political Islam, *caliphate, al-daulah al-Islamiyyah*) because the majority of Indonesia's population is Muslim (87%). It is natural that there are some interest groups who want the establishment of a kind of religious state or an Islamic state in Indonesia, to the exclusion of the agreement of the *founding fathers of the republic, the nation-state, Indonesia*.³⁵

To support the above idea, at least, there are three important things that have been conditioned in the effort to uphold the constitution in a modern nation-state and maintain the continuity of democratic life, and non-discriminatory state policies in the country. *First*, the convergence of religious faith (*distinctive values*) and the benefit of the nation-state (*shared values*). Indonesian Muslims, as well as other religious people³⁶ has matured, matured, intelligent, autonomous, able to independently consider, dialogue, meet critically-proportionately towards the point of convergence between faith, belief and Islamic religious rituals (*distinctive values*) on the one hand and the benefit and shared interests (*shared values*) to achieve national unity and peace in a nation-state

³³ Amin Abdullah, "Pesan Islam untuk Perdamaian dan Anti Kekerasan", *Paper*, presented at the Muhammadiyah Tanwir Session entitled "Message of Peace and the Movement of Nation's Independence in the face of National Crisis and Global Injustice" which was held at Muhammadiyah University Makassar, South Sulawesi on 26 - June 29, 2003, (accessed June 22, 2013) and Muhammad Adib, "Tariq Ramadan...p. 300.

³⁴ M. Amin Abdullah, "Islam and Keindonesiaan", in Komaruddin (editor). *Kontroversi Khilafah Islam, Negara, dan Pancasila*, (Bandung: Mizan, 2014), p.186.

³⁵ *Ibid*. p. 189.

³⁶ *Ibid*, p. 195.

format on the other hand. At this point, the Indonesian Muslim community has a qualitative advantage over other Muslim-majority nations in the world. Other nations are not or have not been able to carry out a positive-constructive dialogue between religious faith and nation state as was done and experienced by the Indonesian people.³⁷

Second, plurality, democracy, and inclusiveness are inseparable parts of the *maslahah* theory. Indonesia is a country in the form of an archipelago (*archepilago*). There are no less than 15,000 islands in this country. Prior to independence and the official establishment of the Republic of Indonesia in 1945, Indonesia was already a society with many diversity in diversity. This explanation strongly indicates that Indonesia from the beginning was a pluralistic nation. On that basis, the founders of this nation firmly established a system of state governance with the system of a nation state. This collective memory as a diverse and diverse nation is deeply embedded in the subconscious of the Indonesian people.³⁸

The *fitrah majbullah* as an inner condition and collective memory of the Indonesian nation has been deeply embedded in the conscience of the Indonesian people. In addition, the nature of *majbullah* is also a strength, cultural and social capital for Indonesia. Likewise, it can be said that the nature of *majbullah* is a positive spiritual energy that can be a strength of immunity and morality from the attraction of group sectarian interests. These forces, creative synthesis in an integrated manner with the development of Islamic thought in Indonesia. This is a subconscious power of the Indonesian nation, money is needed and needs to be developed in the context of the future of the nation and the future of a prosperous nation in the true sense.³⁹

The interpretation of the basic teachings of Islam by producing an open and accommodative understanding of religion is a creative development of the theory of public interest (*maslahah*) in the study of

³⁷ M. Amin Abdullah, "Islam and Keindonesiaan" pp.195-196.

³⁸ *Ibid.* p.196.

³⁹ *Ibid.*

contemporary Islamic law methodology.⁴⁰ This explains that the development of such a theory is a responsive and accommodating application in the nation-state system based on Pancasila. This phenomenon is called the process of Islamization or Islamicate which is unique, complex, responsive and accommodating which later transformed into the Unitary State of the Republic of Indonesia.⁴¹

Third, social cohesiveness (*fitrah majbullah*) as the social and cultural capital of the Indonesian nation. As is well known, sociologists of religion have long argued that one of the social functions of religion in the community of its adherents is to maintain social cohesion and unity. When this concept and theory was coined by Emile Durkheim, the scope of social cohesion only applies to the internal circles of certain religious communities. Meanwhile, for Indonesian Muslims after independence, this social cohesion was developed in the form of Indonesian unity. Thus, it can be stated that the theory of social cohesion for Indonesia is not only interpreted as peace, harmony, social unity but more than that. Thus, this social cohesion for the Indonesian people metamorphoses into Indonesian national solidarity, and this is what is called *fitrah majbullah* or the Indonesian subconscious mind. All of these pictures show that faith has a creative dialectic and is tightly integrated with the state and national order.⁴²

Meetings and encounters between ethnic, racial, ethnic, linguistic, religious and belief diversity in the country are the power of the subconscious and animate the daily lives of Indonesian people. It was these positive-constructive meetings and encounters that contributed greatly to bringing the Indonesian people out of a very complex crisis. Today, the Indonesian people are witnessing national and international geopolitics that are constantly changing and dynamically

⁴⁰ Jasser Auda, *Maqasid Al-Syart'ah as Philosophy of Islamic Law: A Systems Approach*, (London and Washington: The International Institute of Islamic Thought, 2008), pp. 5-9; 21-25.

⁴¹ M. Amin Abdullah, "Islam and Keindonesiaan".... p. 198.

⁴² *Ibid.*

turbulent, and all of this has a major impact on the religious and political mental resilience of the Indonesian people and nation.⁴³

All these events indicate that Indonesian Islamic thought is also required to always be critical, innovative, and anticipatory towards new developments in the future. There are still many obstacles, obstacles and test stumbling blocks that continue to block at all times in the long journey of national and state life in the Republic of Indonesia. If mapped, the area of thought and practice in the field is divided into three layers, namely: *first*, the level of discourse; *the second* is the normative-regulative level, and *the third* is the level of application/implementation in people's lives. In this context, if it is related to contemporary Islamic thought, it has succeeded at the level of raising issues of plurality, inclusiveness and tolerance in religious and national life at the level of public discourse. An intellectual contribution that is extremely important because not many nations whose majority are Muslim can accept this discourse. How many books are prohibited from entering certain countries have not yet been read because they discuss this plurality issue.

In connection with the three layers of thought and thinking above, fresh *ijtihad* is a contemporary Islamic study to provide answers and contributions in fighting for and upholding humanist ethical values, such as civil society, democracy, justice, gender equality, defense of minorities, the oppressed and plurality.⁴⁴ This offer of thought is a constructive criticism of the Liberal Islam movement, especially emphasizing internal criticisms of the views and behavior of Muslims who do not respect and appreciate the demands of the complexity of humanity at the local, national and international levels. Because the attitude and criticism of the

⁴³ *Ibid.*

⁴⁴ Yusdani, *Fikih Keluarga Muslim Milenial*, (Yogyakarta: Diandra, 2021), p.15.

negative impact of modernity with all its implications have not received adequate attention from the thoughts and actions of Liberal Islam .

Fresh ijthad theoretical tools as a contemporary framework of thought provide attention that has a balance between on the one hand internal criticism and on the other hand external criticism. Internal criticism is a constructive criticism of the Muslim intellectual heritage or treasures to be more responsive and contextual and oriented to humanist values. At the same time, fresh ijthad also criticizes modernity which is deemed not in line with true human values and justice. On that basis, the basic assumption of this fresh ijthad is that human values and true justice are in accordance with Islam.

Conclusion

This paper finally concluded and highlighted that the emergence of fresh ijthad as a solution to the impasse and stagnation of Islamic thought in the contemporary era can be used as an alternative reference to meet the demands and needs of contemporary human life. This theoretical device of ijthad is based on the commitment of the community to uphold the values of justice and humanity. The basis and reason for the formation of fresh ijthad ijthad can help and provide responsive answers to contemporary humanitarian problems at the local, national and international levels. This fresh ijthad puts forward the values of justice, equality, human rights, pluralism, and other global ethics. Fresh ijthad thoughts and movements position all citizens as *equal* and receive fair treatment, especially the guarantee of freedom of belief, minorities, both in terms of religion, economy, ethnicity and others are protected and their rights guaranteed. equal and fair. Therefore, in this view of Islamic thought, the transformation of Islam will not only make Islam acceptable to the public and all circles, it is also compatible with the demands of contemporary society and the ethics of global life.

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