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# THE SOCIAL HISTORY OF ISLAMIC LAW

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## ABSTRACT

The social history of Islamic law is a recording of beliefs, thoughts, actions and interpretations of Muslims against the Islamic Law system. The content of the social history Law is illustrated intact in the social history of Islamic Law concerning the character, place and time. The purpose of this research is to know the social history of Islamic Law starting from the condition of Pre-Islamic Arabia, the period of Mecca and Medina, Khulafa Rashidun, Umayyads, Abbasid dynasties, sand social history of Islamic Law. The method used is an analytical, descriptive method based on the historical literature review of Islamic Law that colored the life of the nation and the state.

Pre-Islamic Arabs hold fast to tradition. And the Mecca period, the number of Muslims, is still small and weak, not yet united as a people and not yet have government. The principles of law in the constitution of Medina, the ideas in the constitution can serve as the basis or model of the development of the modern government. The laws that came out of the Messenger of Allah became *tasyrik* 'for Muslims and is a law that must be followed, whether it comes from God's revelation and from *ijtihad* (diligence) of Muhammad own.

The condition of Islamic law in The Khulafa Rosyidun time, there are several things that can be concluded: (1). The caliphs still cling to the Qur'an and al-Sunnah in overcoming various legal problems, (2). The territory of Islam is widespread and the problematic life of the people is increasingly complex and complicated, then Umar bin Khatab, both as a person and as caliph much encouraged scholars to actively perform *ijtihad*.

The Islamic law of the Umayyad period did not go far beyond what the earlier scholars did (in Sahabah era). There are several factors that encourage the rapid development of Islamic Law, namely: (1). Personal factors *mujtahid*[1], (2). Social Environment factors, and (3). Political factors and the will of the authorities. At the time of the Abbasid, socio-cultural factors influenced the development and fostering of Islamic Law. In the field of *tafsir* (commentary), from the beginning was known two methods, the first is the *tafsir bil ma'tsur*, the traditional interpretation by taking the interpretation of the Prophet and the *Sahabah*[2]. Secondly, the *tafsir bi al-ra'yi*, a rational method that relies heavily on opinions and thoughts rather than taking traditions and opinions of *Sahabah*.

The framework of the *fiqh* is determined by the time factor, place, customs and local socio-cultural conditions. The journey of *fiqh* cannot stop until the *fiqh Maliki*, *Hanafi, Shafii*, and *Hanbali, fiqh* must continue to develop throughout the ages and places, especially in the face of pluralism and globalization, *fiqh* must appear to provide alternative solutions to humanitarian solutions.

**KEYWORD:** History, Social, and Islamic Law

## INTRODUCTION

The history of Arabs, before the advent of Islam cannot be known with precision and certainty. It is due to two

things: (1). They have no political power because most of the population is nomadic groups. If there is political leadership, there is only tribal political leadership. This makes their lives fraught with violence and conflict, as there are frequent seizures of fertile areas with very limited numbers to feed their livestock. (2). The writing culture have not known. Most of them were illiterate, resulting in the absence of historical writing in those days, before the end of Umayyad rule (132 H / 750 AD). Previously, their culture and traditions were told orally (Muhammad Husein Haikal, 1984: 43). The period of Mecca, the principal program was to introduce and teach Islam to families, close relatives and to the Meccans about tawheed, that there is no god but Allah (*La Ilaha Illalah*), and their idolatry is a great *musyaque* and tyranny. *Dakwa* method used is door to door, clandestinely that lasted for three years. The person who first received the call of Islam was his own wife, Khadija, his nephew Ali ibn Abi Talib, his adopted son Zaid bin Harithah and Abu Bakr (Ibn Hisham, 1329 H: 356-360). Mission propagation of the Prophet in Mecca is more focused on the planting of a strong creed of *tawheed* and moral formation. This period has not much laid the foundations of Islamic law development considering the position of the new Prophet as a head of religion, has not made the head of society or the state. But, that does not mean in the period of Mecca there is no *tasyri* 'at all. There is *tasyri* 'but the application of *shari'a* is more specific to the guidance of Islamic *aqidah* and the cultivation of *akhlaqul karimah* (Ibid).

Since going to Medina, the Prophet devoted his attention to controlling the political atmosphere of the people of Medina, in particular, reconciling the *Aus* and *Khajraz*. The first political policy pursued by the Prophet was the effort to unite the entire population of Medina as unity of *Ansar* society. On the other hand, the Prophet sought to strengthen the relationship between the *Ansar* and the *Muhajirin*, through the bonds of brotherhood between them (K.Ali, A., 1966: 37).

The *Sahabah* period has begun since the death of the Prophet at 11 *hijra,* until the end of the first century *hijri tasyri'iy*. This period is called the period of *Sahabah* (friends), because the power of legislation is driven by the figures of *Sahabah* (Ibid). In the face of new problems that require an immediate legal response, Abu Bakr issued a policy to further develop the creativity of *ijtihad* which at the time of the Prophet was never even done by some *Sahabah*. Umar bin Khatab was a *sahabah,* who often did *ijtihad* and was very careful in accepting and using *hadith*, as did Uthman ibn Affan and Ali bin Abi Talib. And, *ikhtilaf* that occurred in the time of *Sahabah* begins with the death of the Prophet, then arose a different view of the leadership authority of Muslims. The politically correct problem was considered important at that time, because it would be in direct contact with the law-enforcement authority (Kamil Musa, 1989: 183).

*Ikhtilaf* in *Sahabah* period can be divided into three, namely: (1). Differences of opinion caused by the nature of the Qur'an, (2). Differences of opinion caused by the nature of al-Sunnah, (3). Differences of opinion in the use of *ra'yu.* Thus, the traces of the history of Rashidun's sermons are the interpretation of the legal verses (The *Tafsir Ahkam*), which discusses and clarifies the legal provisions to apply to the particular events encountered at the time. *Ijtihad* they hold on to the ability of language, the background of legal knowledge, the wisdom of the law, the causes of down verse (*asbab al-nuzul*), and the causes of the emergence of *hadith* (asbab wurud al-hadis) (Ibid). The period of *Khalifa Rashyidun* ended in 661 AD, spliced with the Umayyad period (661-750 AD). This government was founded by Muawiyah ibn Abi Sufyan, who, during the reign of Ali bin Abi Talib served as Governor of Damascus. In the Umayyad Age, the leadership system of the caliph replaced with the royal system, although the symbols *khilafah* still maintained. Whereas, in the Abbasid dynasty, the Caliph was the supreme head of state.

## LITERATURE RIVIEW

### Methodology

The methodology used is analytical descriptive study, which is by describing various phenomena that occur from time to time based on periodization of the social history of Islamic Law, based on literature review on the history of Islamic Law, that colored the life of the nation and state. Periodization of social history, Islamic law concerns: Pre-Islamic Arab conditions, the period of Mecca and Medina, Khulafa Rashidun, Bani Umayyah, Abbasid dynasty, and social history of Islamic Law.

## RESULT AND DISCUSSION

### Result

The results of this study show that: The pre-Islamic Arabs held strongly to tradition, meaning merely based on habits that have been going on for generations from their ancestors with the belief of polytheism. The characteristics of Islam during the period of Mecca are: (1). There are still very few, (2), have no power whatsoever compared to the opponents of Islam, (3) they are ostracized by the opponents of Islam, for example their economic activities are blockaded.

Principles of law in the constitution of Medina, the ideas in the constitution can serve as the basis or model of the development of the modern government, as demonstrated by the classical Western rule, that contributes to the development of modern government, especially to the idea of democracy and the rule of law. The characteristics of Islamic Medina are as follows: (1). Muslims are no longer weak because the numbers are many and qualified, (2). United, (3). Already laid the foundations of Islamic Law development in order to improve the standard of living, (4). Already have a legal rule about the state of war and peace. The Messenger of Allah gave *fatwas*, resolved disputes, answered questions, sometimes with the legitimacy of one verse or several verses of the Qur'an, Sometimes with the *ijtihad* of the Messenger of Allah resting on the inspiration of Allah, or relying on the clues of his words and the determination of the matter. The laws that come out of the Messenger of Allah become *tasyri'* for Muslims, and is a law that must be followed, whether it comes from the revelation of Allah and from *ijtihad Rasulullah* own.

The condition of Islamic law in the time of *Khulafa Rosyidun,* there are several things that can be concluded: (1). The caliphs still cling to the Qur'an and *al-Sunnah* in overcoming various legal problems, (2). The territory of Islam is widespread and the problematic life of the people is increasingly complex and complicated, then Umar bin Khatab, both as a person and as caliph much encouraged scholars to actively perform *ijtihad*.

Islamic law, at this time, did not go far from what had been done by the previous scholars (in the *Sahabah* period). There are several factors that encourage the rapid development of Islamic Law, namely: (1). Personal factors *mujtahid*, (2). Social Environment factors, and (3). Political factors and the will of the authorities.

At the time of the Abbasid, socio-cultural factors influenced the development and fostering of Islamic Law. In the field of exegesis, from the beginning was known two methods, the first interpretation, *tafsir bil ma'tsur*, the traditional interpretation by taking the interpretation of the Prophet and the *sahabah*. Secondly, the interpretation of bi *al-ra'yi*, a rational method that relies heavily on opinions and thoughts rather than taking traditions and opinions of *sahabah*.

The thought of *fiqh* scholars, is determined by the time factor, place, customs and socio-cultural conditions (Subhi Mahmassani, 1980: 221). It is also influenced by the pattern of previous scholars who occupy the region's thinking.

Allegedly, when the Islamic region spread to Egypt, Hujaz, Iraq, Syria and other important areas that became the center of the study of Islamic Law in both Hijriah, originally occupied by fiqh figures from among *sahabah* (Ahmad Hasan, 1970: 117).There is an unbroken historical connection from the time of the Companions to the time of the appearance of the *madhhab* priests, during the golden age of Islam around the second and third centuries of the *Hijri*, especially when the rise of *al-mazahib al-arba'ah* figures such as; Abu Hanifah, Malik Ibn Anas, Shafi'i and Ahmad Bin Hanbal which is a continuation episode of the history of the growth of Islamic Law since the time of the *sahabah*.

**Discussion**

**The Social History of Islamic Law**

**Pre-Islamic Arabs**

The Arabs are divided into two major groups, namely Qathan and Adnan, Qathan are those, who originally resided in Yemen, an area whose fertile soil strongly supports them to defend the majority of the population that occupies the center of the Arabian Peninsula and Hijaj. However, when viewed other facts, actually pre-Islamic Arabs are not stupid. The proof, from an economic point of view, for example, they include a reliable merchant community and not a few of them who became successful entrepreneurs like Khadijah, who later became the wife of the Prophet. From a political point of view, pre-Islamic Arabs have applied the "modern" bureaucratic principles of their day. This can be seen from the existence of certain positions in maintaining the Ka'bah, (Muhammad Husein Haikal, Op. Cit: 35) namely:

- *Hijabah*, the doorman of the Kaaba or the caretaker.

- *Siqayah*, the water providers for the guests and pilgrims of the Kaaba.

- *Rifadha*, the officer who provides food for the visitors of the Kaaba.

- *Nadwa*, the chief meeting officially in each year.

- *Liwa*, the banner holder in battle

- *Qiyadah*, the commander of the army of war.

In the field of law, the pre-Islamic Arabs held strongly to tradition, meaning merely based on the habit that had been going on for generations from their ancestors with the beliefs of polytheism. In marriage, for example, they know some marriages, including the following:

- *Al-Istibdla* marriage, ie a husband willingly or deliberately telling his wife to sleep with other men or husbands of people, who are considered noble or honorable, with the aim that he has a descendant (anak) noble as well. For example, a husband wants his wife to sleep with a king to have an honorable child. Of course, as long as his wife slept with other men, her husband did not "interfere" until his wife was pregnant.

- *Al-Isytirak* marriage, that is, some men are randomly working with a woman. After proven she was pregnant, then the woman invited all the men who had worked on her, and announced that she had been pregnant. To determine who the father of the fetus was, she pointed to one of the men, and whoever of them, no one could refuse his appointment.

- *Al-Badal* marriage, which is mutually exchange wife without divorce, in advance, with the aim to eliminate boredom in sexual relations.

- *Al-Shigar* marriage, a guardian marries his son or sister to a man without a dowry.

In the midst of the Arab community of Jahiliyah, described in the Qur'an as a society in the condition of *al-dlulumat* or "the darkness", Muhammad emerged the messenger of Allah, by bringing a rescue mission to the Arab society from the darkness of faith, which believed in many gods (polytheists) to *tawheed* (Monotheist) with the formulation of *La Ilaaha Illa Allah*, there is no God but Allah, who knows the behavior of man, and later in the Hereafter will repay human beings according to his actions, while still living in the world.

In the life of pre-Islamic Arab society, there has been a social order of life, economic, political, religious, even culture and art. That fact shows that pre-Islamic Arabs are a nation that already has civilization, only when viewed from an Islamic point of view, that civilization is a civilization that does not reflect as an uncivilized nation, such as: killing a daughter alive, drunk, Gambling, adultery, and other community diseases. This is the importance of the Islamic descendants descending them to make their civilization as civilized civilization (*akhlakul karimah*).

**Mecca Period**

Historians agree that Muhammad's mission in spreading Islam was divided into two periods, namely the period when he was still in Mecca, called the Mecca period, and the period since he emigrated to Medina until his death, is called the Medina period. During the Period of Mecca, Muslims are still small and their positions are still weak, not yet united as one people and have no government. The characteristics of Islamic society in this period are (Sya'ban Muhammad Ismail, 1985: 93: (1)) very little, (2), has no power whatsoever compared to the opponents of Islam, (3) they are excommunicated by Opponents of Islam, such as blocks economic activities.

**Medina Period**

The policy pursued by the Prophet rests on the principle of "mutual living and mutual support". Muhammad tried to establish a public welfare institution. To realize this purpose, the Prophet initiated the drafting of a common covenant or consensus known as the "Medina Charter". The main points of the Medina Charter are as follows:

- All the people who co-signed this charter unite to form a national unity.

- If one of the groups participating in the signing of this charter is attacked by the enemy, then the other group must defend it by mobilizing joint forces.

- Not a single group is permitted to enter into communion with *Quraish* infidels, or to seek protection from them, or to help them resist the Medinan society.

- Muslims, Jews and all others in Medina are free to embrace their respective faiths and beliefs, and they are guaranteed their freedom in performing their worship according to their respective religions and beliefs. No one is permitted to interfere with other religious affairs.

- The Personal or individual affairs, or non-Muslim groups' minor affairs shall not involve the other parties as a whole.

- Any form of oppression is prohibited.

- Starting today, all forms of bloodshed, murder, and persecution are forbidden throughout the country of Medina.

- Muhammad became head of the Republic of Medina and holds the highest judicial powers.

The principles of law in the Medina constitution, the ideas in the constitution can serve as the basis or model of the development of the modern government, as demonstrated by the classical western rule, which contributes to the development of modern government, especially to the idea of democracy and the rule of law. (Deddy Ismatullah, 2006: 9). The concept of government in the Greek period was practiced in Rome, then there was a vacuum of development of the concept of government until the birth of the Prophet Muhammad's government in Medina (622 - 632 AD) (Ibid). The characteristics of Islamic Medina are as follows (Ibid): (1). Muslims are no longer weak because the numbers are many and qualified, (2). United, (3). Already laid the foundations of Islamic Law development in order to improve the standard of living and (4). Already have a legal rule about the state of war and peace.

In the period of the Prophet, the *tasyri'* power controller was the Prophet himself. There is no Muslim except the Messenger of Allah himself, who makes the law on an occasion, both for himself and for others. Everything related to Islamic Law was immediately asked and given the word by Muhammad, no society dare to do *ijtihad* own. Muhammad gave the *fatwas*, resolved disputes, answered questions, sometimes with the legitimacy of one verse or several verses of the Qur'an, sometimes with the *ijtihad* of the Prophet (s) relying on the inspiration of Allah, or relying on his guidance of the *bahats* and the determination of the problem intended. The laws that came out of the Messenger of Allah became *tasyri'* for the Muslims and a law that must be followed, whether it comes from the revelation of Allah and from the *ijtihad* of the Prophet himself (Deddy Ismatullah, 2014: 61).

Besides sourced to the Qur'an, in solving various problems faced, Rasulullah adheres to the Revelation of Allah as an explanation of the Qur'an. The revelation of Allah, which is not the Qur'an is *being* against him called *al-Sunnah or hadith*. The meaning of *al-Sunnah* or *hadith* is a word, deed or *Taqrir* based on the Prophet. If the rendering is narrated by the majority of the *sahabah*, *tabi'in, and tabi'uttabi'in*, the impossibility of lying, the *hadith is mutawatir*. If not, then the *mutawatir* level down into the *hadith mother* or *Ahad.* The famous *Hadith and hadith ahad* is classified again into *shahih, hasan*, and *dha'if*. If the denial is proved to be a lie (not from the Prophet), then the *hadeeth* is *maudlu* '(*hadith* which is not a *hadith*) (Ibid: 72). Thus the *hadith* is divided into *hadith qauliyah, hadith fi'liyah, and hadits taqririyah. Hadith qauliyah* is a *hadith* which is the word of the Prophet. *Hadith fi'liyah* is a *hadith* in the form of Apostles. And *hadits taqririyah* is a *hadith* in the form of deeds of the *sahabah* known by the Apostle, but he did not do it and not also forbid it (Ibid).

**The *Khulafa Rasyidun* Period**

The Sahabah period begins since the death of the Prophet at 11 AH, until the end of the first century *hijri tasyri'iy* (power of legislation). Some of them lived up to the decades of the first century hijri, such as Anas bin Malik who died at 93 AH (Abd Khalaf Wahab, 1968: 43). It is called the period of the *sahabah,* because the power of legislation is driven by the figures of sahabah (Ibid).

After the death of the Prophet, the post of head of the State of Medina - by mutual agreement - was held by Abu Bakr. The election of Abu Bakr as the first *khalifah* of the Prophet was based on several considerations, including: (1). Abu Bakr was the closest and longest accomplice to the Messenger of Allah, (2). Companions who are often appointed by the Prophet as a prayer imam when he cannot do it, (3). Abu Bakr is a figure of a *sahabah* senior of *Muhajirin,* who is undoubtedly his integrity and capability. The social and political issues that arose in his time were:

- The number of people who claim to be the Prophet.

- Number of people who came out of Islam (apostasy).

- The number of memorizers of the Qur'an who died on the battlefield, so feared, would threaten the existence of the Qur'an itself.

- Began to emerge a false *hadith*.

- The problem of life of the people increasingly complex, and has not found its legal provisions in the Qur'an and al-*Sunnah*.

To overcome and deal with those who claim to be prophets and apostates, including those who do not want to pay *zakat* (tithe). Abu Bakr - on the outcome of the agreement of his aides issued a policy to combat them. To overcome the threat to the existence of the Qur'an, because the number of *Sahabah* memorizing *sahabah* who died in the *Yamamah* war reached 1000 people, on the proposal of Umar bin Khatab, ordered Zaid bin Thabit as the secretary of the Prophet, to collect the writings of al- Qur'an for immediate accounting (Umar Sulaiman al-Ashbar, 1991: 63-64).

In the face of new problems that require an immediate legal response, Abu Bakr issued a policy to further develop the creativity of *ijtihad,* which at the time of the Prophet was never even done by some *sahabah*. Abu Bakr assisted by Umar bin Khatab, composed the following *ijtihad* method (Ibid):

- Seek and establish the legal provisions of something in the Qur'an.

- If in the Qur'an is not found, then seek and establish the law of something in al-*Sunnah*.

- If in *al-Sunnah* was not found, then sought a *sahabah,* who had heard the explanation from Muhammad about the legal provisions of something. If found, it is decided on the basis of the information of the *sahabah*after being fully believed in the truth.

- If the companions referred to in pon c are not found, then Abu Bakr and Umar invite the best *sahabah* for deliberation, in order to establish the legal provisions being faced. If there is an agreement between them, then the agreement becomes a decision.

As for the time of Umar bin Khatab became the second caliph, while still holding on to the *thuruq al-Istinbath* above, the portion of the use of individual *ijtihad* is more dominant, even in the view of contemporary Islamic law analysts, Umar ibn Khatab is the *khalifa* of the courageous and liberal *Rashidun* in doing *ijtihad*. He is often considered controversial in setting up a punishment, just as he once freed a thief from a cutting-hand penalty for stealing, it was considered forced. Umar bin Khatab is a caliph of *ijtihad* activists, the following is the testament of Umar bin Khatab to a judge named *Shuraih* (Ibid):

- Hold on to the Qur'an in solving the case.

- If not found in the Qur'an you should hold on to the *al-Sunnah*.

- If in al-Sunah you do not find, then *ijtihad* (Ibid). Here Umar bin Khatab did not tell Shuraih to find anyone who ever knew a *hadith* that explains the legal stipulation of something. It is clear that Umar bin Khatab is more concerned with *ijtihad* than seeking and finding traditions from others. What Umar bin Khatab may have done

because of caution in using *hadith* considering that time has begun to emerge traditions that doubt its validity.

As for *ijtihad* at the time of Uthman bin 'Affan, that the wife who divorced her husband who was sick and then her husband died because of his illness, get the treasure, whether the wife is waiting or not.

*Ijtihad* at the time of Ali bin Abi Thalib ie (Ibid):

- Sanctions for the drunkard are 80 times the whipped, analogized to the sanction of the accused of adultery.

- When Ali bin Abi Talib was preaching, suddenly there was a congregation who asked about the division of heirs consisting of: (1). Wife, (2). Mother, (3). Father, and (4). Two daughters. Spontaneously, Ali bin Abi Talib answered "the *osteri* part became 1/9". Because this fatwa is done in the pulpit, it is called the division of the inheritance of *mimbariyah*.

The social situation behind the legal decisions of the Companions proves convincingly that, Islamic law grows and develops in the direction of social history (Deddy Ismatullah, Op.Cit: 85). The Quran is final, the revelation has ceased, and the Prophet Muhammad SAW has passed away his lap. But, the wheels of the age continue to spin and the problems facing mankind increasingly complex, Islamic law must remain exist and survive throughout this sociological factor that is conscious Umar bin Khatab, so that in the case of theft, that was released from the punishment of hand cut. Umar bin Khatab did not mean to oppose the *Qur'anic* texts, nor disregard the terms of the law of hand cut as defined in the *hadith*, but Umar ibn Khatab paid more attention to the psycho-social aspect of the thief, who was so compelled to commit the theft. From these findings, that in relation to the conditions of Islamic law at the time of *Khulafa Rosyidun,* there are several things that can be concluded:

- The caliphs still cling to the Qur'an and al-Sunnah in overcoming various legal issues.

- The area of Islamic rule has been widespread (even during the time of Umar bin Khatab Islam has arrived in Spain and North Africa) and the problematic life of the people increasingly complex and complicated, then Umar bin Khatab, both as a person and as caliph much encouraged scholars to actively perform *ijtihad*.

**The Ummayads Period**

Muawiya became king in the first Islamic kingdom in history, sparked by the political turmoil that occurred before the end of Khulafa Rosyidun in the time of Ali bin Abi Talib. One of the most prominent successes of the Umayyads was the expansion of Islamic territories to Algeria, Tunis and Tabrisa, and Morocco and even Spain and the Atlantic Ocean coast to the west, to Asia Minor and Turkey to the north, and to some parts of the State Soviet Union (now Russia), like Uzbekistan, Tazikistan.

The extent of Islamic dominion becomes one of the growing factors of Islamic law, given the increasingly complex and complexity of new issues arising in the struggle of social interaction among nations, which requires an answer from Islam as the guiding religion of human life (Ibid).

The Islamic law at this time did not go far from what had been done by the previous scholars (the Sahabah Period). The steps they took in the legal process were (Umar Sulaiman al-Ashbar, Op.Cit: 81):

- Seeking its provisions in the Qur'an.

- Seeking its provision in al-*Sunnah*, if it is not found in the Qur'an.

- Back to the opinion of the *sahabah* and al-*Sunnah* not found.

- Do *ijtihad* if not also find opinion *sahabah*. Thus the arguments of Islamic law in the Umayyad period are: (1). The Qur'an, (2). Al-*Sunnah*, (3). *Ijma* ', (4). *Ijtihad / Qiyas*.

There are several factors that encourage the rapid development of Islamic Law, namely:

- Personal factors *mujtahid*

Every *mujtahid*, both belonging to the *ahl ul hadith* and *ahlur ra'yi*, has their respective intellectual potential, has their own teacher, lives in different family environments, the tendency of various subjectivities. All this will affect both the process and the results of *ijtihad* of every *mujtahid*.

- Social Environment Factor

The result of ijtihad of a mujtahid will be influenced by the social environment, in which he or she associates. This can be seen cases of differences of opinion result ijtihad Imam Syafi'i and Imam Hanafi. Despite the descendants of the *Quraish* aristocracy, Imam Shafi'i had long been raised in an agrarian (Egyptian) society, while Imam hanafi, besides being a merchant's son, was himself a merchant inheriting his father's blood.

- Political Factors and the Will of Rulers

In addition to the social and political factors of the power circle, also have little effect on the performance and productivity of one's *ijtihad*. In fact, it is almost impossible to find *ulama* and *mujtahid* especially during the period of *Bani Muawiyyah* which is completely sterile from the influence of the palace. If any, can be counted on the fingers.

The opinion of Imam Malik, that the *ijma'* of Medina is a *hujjah* that must be followed (Ibid). Of course, what is meant by "the people of Medina" by him is the Alamo. Medina clerics who are members of this group *ahlul hadith* is not known the exact number because there was never found a special note. But among them some belong to the "7 Medina clerics" called *al-Fuqaha al-Sab'ah*, namely: (1). Sa'id bin Musayyab, Urwah ibn Zubair, Abu Bakr ibn Abdurrahman al-Makhzumi, Ubaidillah bin Abdullah bin Utbah bin Mas'ud, Kharija bin Zaid bin Thabit, Al-Qosim ibn Muhammad ibn Abu Bakr, and Sulaiman bin Yasar.

**Abbasyid Period**

The Abbaasiyah dynasty was born in the history of revolution after defeating the Umayyads. And, the factors that support the success of this dynastic formation include the increasing disappointment of *mawal*i (ie, non-Arab groups who have embraced Islam, served as second class citizens) against the Umayyads, The outbreak of unity among the Arab tribes, and the emergence of religious society's disappointment and their desire to have a charismatic leader (K. Ali, Op. Cit: 231). They are marginalized in governmental affairs and in social life, even the Arab rulers always pay attention to the hostility toward them. Sounders notes that in *Kufa* between Arabs and *mawali* communities, each has its own mosque and their intermarriage is greatly overrated. In addition, these *mawali* communities are subject to heavy tax burdens (Sounders, 1972: 96).

In the Abbasid dynasty, the Caliph was the supreme head of state. Therefore, the Caliph received the highest honor of the people. This period is a period of Islamic is awakening that is characterized in the field of science. Beginning with the incessant program of translating Greek philosophical books into Arabic, coupled with the many non-Arabs who

had first enlightened his knowledge, who converted to Islam. The progress of this civilization is at least determined by two things:

- The occurrence of assimilation between the Arabs with other nations that first experienced a development in the field of science. Persian influence is very strong in the field of government. In addition, the Persians have been instrumental in the development of science, philosophy, and literature (Ahmad Amin, tt: 207). Indian influence is seen in the fields of medicine, mathematics, and astronomy (Ibid: 177-178), whereas Greek influences enter through translations in many fields of science, especially philosophy.

- The translation movement takes place in three phases. The first phase, at the Caliph al-Mansur to Harun al-Rashid. In this phase, which is widely translated are works in the field of astronomy and magnetism. The second phase, lasted from the time of Caliph al-Mak'mun until the year 300 H. Books are widely translated is in the field of philosophy and medicine. The third phase, takes place after 300 AH., especially after the paper mill. The field of science which is translated more widely (Ibid: 288-290).

In the field of *tafsir*, from the beginning was known two methods, the first interpretation, *tafsir bilma'tsur*, the traditional interpretation by taking the interpretation of the Prophet and the Companions. Secondly, the *tafsir bi al-ra'yi*, a rational method that relies heavily on opinions and thoughts rather than taking traditions and opinions of the *sahabah*. Both of these methods developed during the reign of the Abbasids. However, the *tafsir with afsir bi al-ra'yi* method is strongly influenced by philosophical and scientific thought.

The same is true in the science of jurisprudence, and especially in theology, the development of logic among Muslims is very influential on the development of science (Ibid).

The Four Imams of *Mahzab* during the time of the first Abbasid rule, Imam Abu Hanifa (700-767 CE), in his legal opinions were influenced by the developments taking place in Kufa, a city in the midst of Persian culture whose peoples' lives had progressed. Imam Malik (713 -795 AD), used many of the traditions of Medina's tradition, Imam Shafi'i, including the only *mujtahid* who dared to change his ijtihad results for the reasons of time and place, so that the *Taghayyurul ahkam bi taghayyuril azman wal amkinah* Because of the change of time and place.) The existence of qoul qadim and qoul jadid became one of the proofs. This shows how many socio-cultural factors influence the development and development of Islamic Law. In the time of Imam Ahmad ibn Hanbal attention of Muslims including the government at that time more focused on The development of *mu'tazilah* sect of theology and not to the development of Islamic Law (fiqh).

**The Social History of Islamic Law**

The *Mahzab* are: (1). The product of *ijtihad* about the law of a problem, (2) the school is the law of excavation (*istinbath*) used by the *ulama*. The first point indicates that the sense of the school is identical with fiqh (John L. Esposito, 1995: 455-456). In a general and definitive sense, *madhhab* is the ideology or flow of law in Islam that is formed on the basis of *ijtihad* results in the effort to understand and explore the laws of Islamic sources, namely al-Qur'an and *al-Sunnah* (Indonesian Ministry of Religion, 1993: 738).

While "*the sahabah*" is Arabic, the plural form of *shahib*, said *shahib* itself is *isim fa'il* derived from the word *shahiba, yashabu* which means is *sahabah*, associate, *sahabah*. Thus, the understanding of a companion's language is to become a *sahabah* of the person, who associates with him, accompanying him within an unspecified time limit

(Ahmad Khaliq, Op.Cit: 48). According to *jumhur ulama*, a *sahabah* in the sense of the term is everyone who sees the Messenger of Allah (al-Rahman al-Sakhawi, t.t, vol. 3: 95).

To study *'ulum al-Qur'an* known *asbab-al-nuzul* science, and the study of *hadith* that is *asbab al-wurud*, from *Tarikh al-Tasyri'al-Islami* born the history of Islamic Law is a study of Islamic Law in terms of social history, The science of *asbab-al-nuzul, asbab al-wurud* and the history of Islamic law have a very close relationship. As for the word *shari'ah* and *fiqh*, these two terms are often used in Arabic literature, and raises problems when translated and used in literature other than Arabic (Abdul Halim Barkatullah and Teguh Prasetyo, 2006: 1).

In terminologically, the *Shari'ah*, according to Shaykh Mahmus Syaltut, implies the laws and ordinances that Allah is enjoining for His servants to follow. According to Faruq Nabhan the term *shari'a* means everything that God commanded His servants to do. Meanwhile, according to Manna 'al-Qathan means all the provisions of Allah in disyari'atkan to his servants concerning *aqida*h, worship, morals and *muamalah*. Thus, the *Shari'ah* is identical with religion. *Shari'ah* is an Islamic teaching that is not interfered with human reason. The *Shari'a* is a pure revelation of Allah that is fixed, unchangeable and cannot be changed by anyone except by the Absolute God Himself. And *fiqh* terminologically, according to Abu Zahrah is to know the laws of the '*amalis*h' nature which are studied from his arguments in detail (Abu Zahrah, 1977: 23). According to al-Amidi, *fiqh* means the science of a set of *shari'ah* law which is *furu'iyah* and is obtained through the casting of an istidlal (Al-Amidi, Dar al-Ma'arif: 1976: 13). From the definition of *fiqh* means human effort in understanding and interpreting the teachings of revelation or *syara* 'law contained in the Qur'an. *Fiqh* is an interpretation and understanding of a *zanniy*, then the truth is relative and bound by the circumstances surrounding it, so *Fiqh* is always changing with time and place changes.

Please note that Islamic Law is a typical Indonesian term translated literally from the Islamic Law term from Western literature. So, Islamic Law is not a translation of shari'ah, because Islamic Law is very different from the *Shari'ah* good philosophy, the source of making, the purpose and so forth. There are two different opinions among the scholars and experts of Islamic law in Indonesia that, *Hasbi ash-Shiddieqy* in his philosophy of Islamic Law defines the "collection of efforts of *fuqoha* in implementing Islamic *Shari'ah* in accordance with the needs of society" (TM Hasbi ash- Shiddiqi, 1982: 33).According to Amir Syarifudin provide an explanation that if the word law is associated with Islam, then Islamic Law means "a set of rules based on the revelation of Allah and the *Sunnah* of the Apostle about the behavior of the *mukallaf*-man who is recognized and believed to be valid and binding for all Muslims who are Moslem. Simply put, Islamic law is a law based on God's revelation. So that, Islamic Law according *ta'rif* this includes the law of *shari'ah* and *fiqh* law, because the meaning *syara* 'and *fiqh* contained therein.

Based on the above description, it is clear that if anyone says that Islamic law is unchanged and fixed, then what is meant by the word Islamic law here is meaningful *syari'ah* or *syara* law, namely the teachings of God, whose truth is absolute, complete and perfect. If it is said that Islamic Law is changed and can be contextualized according to the development and change of time, then it is Islamic Law meaning *fiqh,* as a result of *ijtihad* and human interpretation *(mujahid)* to *shari'ah* which is relative truth.

Therefore, if comparative between Islamic Law and Western Law, both aim to create a orderly and orderly order of life, both in relation to both individual and collective life. Both are the provisions that bind humans to carry it out. The most basic bases are as follows:

- The Islamic law is part of *the Dinul Islam system* and therefore it cannot be separated from other aspects of Islamic teachings such as the teachings on belief (*ahkam al-'itiqadiyyah*) and the teachings on ethics (*ahkam al-khuluqiyyah*). Implementation of Islamic Law is one concrete manifestation of reflection from the reflection of one's faith to God, which in the process of its implementation remains within the frame of *akhlaqul karimah*. That is, one's faith in God, to the Prophet, and to the Qur'an, will give birth to awareness to obey the implementation of Islamic Law. Things are very different in Western Law. The law in the perspective of Western philosophy is something neutral that is not directly related to a particular religion, since law is one of the products of science which is deemed to be free of religious values.

- The source of Islamic Law is the Qur'an (*al-wahy al-matluww*) and *al-Sunnah (al-Wahy ghaer al-matluww)* both derived from revelation. No one doubts about the wickedness of everything that comes from God. The Western Law is the truth that is sourced and produced by human thought and thought which is loaded with subjectivity and relativism. That want to be realized by the order of Islamic Law of justice, truth, order, and the real benefit (intrinsic) according to the limitations and provisions of Allah SWT. Whereas the law of the West-though ideally both wanted to achieve as directed by the Islamic Law- is a mere justice and order. In other words, Islamic law is none other than the Law of God, while the Western Law is a pure Law made by man.

- The Islamic law is closely related to the faith and other aspects of Islamic teachings, so the consequences do not stop on the implementation of the world alone, but will determine the journey of every person's life in the hereafter, then there will be legal consequences that must be accounted for later in the afterlife Anyone who does not implement Islamic Law.

The five characteristics that Islam encounters, according to abed al-Wahab Khallaf are:

- The Perfect

The Perfection of Islamic Law can be seen that Islamic *Shari'ah* is derived in the form of a general and global problem. The application of the Qur'an to the law in the form of a global and simple is intended to give the clerical freedom to *ijtihad* in accordance with the calls, demands and needs of the situation and conditions. Islamic law becomes a universal and dynamic direction, acceptable in all places and times. Islamic law is useful and valid for all ages.

- The Universal

Islamic *Shari'ah* is universal across all unlimited realms, not limited by certain regions and powers, unlike the teachings of previous prophets. The universality of Islam corresponds to the owner of the law that is God whose power is infinite. Universality is affirmed in the Qur'an "and we (Allah) have not sent you (Muhammad) except to make mercy for all nature". (Al-Anbiya'21: 107)

- The Elastic and The Dynamic

The Islamic law is elastic in all aspects and aspects of human life concerning humanity, physical and spiritual life, interaction between fellow creatures with Creator, as well as the demands of life of the world and the hereafter is contained in his teachings.

- The *Ta'bbudi and Ta'aqquli*

The Islamic *Shari'a* can be distinguished in two forms, namely the form of worship, its main function to bring people closer to Allah, which is to believe in Him and all its consequences in the form of worship containing pure *ta'abudi* meaning (ideas and concepts) contained therein cannot be thought *Ghoiru ma'qulat al-ma'na*) or irrational. The second form is the *mu'amalah* contained in the nature of ta'aquli, worldly whose meaning can be understood by reason (*ma'qulah al-ma'na*) or rational, man can do it with the help of reason and human thought.

- The Systematic

The Islamic *Shari'a* is systematic, meaning it reflects a number of related doctrines and relates to one another logically. The command of prayer in the Qur'an is always accompanied by an order to fulfill *Zakat*. Orders to eat and drink, accompanied by the sentence; "But do not overdo it". The search for fortune is accompanied by inferior and colonial prohibitions and explicit exclusions of searching for the fortune. Similarly with the institution, the courts in Islam will not impose the hand-cutting punishment for thieves if the society is in a state of chaos and starvation occurs. Nor is anyone justified to interact with God alone, while forgetting and ignoring the world's sanctuary.

As a product of reason, Islamic *fiqh* has not only produced a framework for Islamic Law thinking in the narrow sense, but it contributes greatly to the framework of Islamic thought development in a more comprehensive provision. The presence of *fiqh* amid the struggle of Islamic scholarship since the period of companions until the emergence of figures imam sect, accompany the ups and downs of the development of Islam (Ahmad Kholiq, 2009: 17).

At a certain period in the history of Muslims, *fiqh* has given its own style for the development of Islam from time to time, so strong "roots" understanding of the majority of people against *fiqh* (*fiqh* oriented) for centuries, it appears criticism from the reformers, especially that factor The cause of decline in the Islamic scholarly tradition, one of them because Muslims are mired in *fiqh* tradition that tends to be too normative. Even though its development (*tasyri'*) the Islamic law is very elastic and flexible (Ibid). In certain situations, some Muslims sometimes find the "sacred" to some *fiqh* products of the scholars (Muhammad Hasan al-Hajwi, 1977: 6)). This criticism may be reasonable because historical phenomena show that some *fiqh* is identical with Islamic law in the sense of God's law. In this way, *fiqh* is no longer seen as a relative, adaptable and interpretable product of human history and human beings, but is seen parallel to the sacred and absolute law of God. Such views arise due to the under-comprehending factor of most Muslims towards the journey of *fiqh* history within the framework of social interaction. Yet in the historical development of early Islamic institutions of history shows that the law (including Islamic Law) always changed and colored social interaction (William C. Schutz, 1972: 458).

William Friedman proposes the same thesis as C.Schutz, that in order to avoid a less intact understanding of *fiqh*, it must first be understood proportionally about the relationship between legal theory and social change as a historical process. This is important, in light of a full understanding of a problem, an important key in solving the most fundamental problem of Islamic Law (William Friedman 1964: 19).

The weakness of social history insight Islamic law is mostly Muslim, and misunderstanding of *fiqh,* which is considered the law of God, it is not surprising that the characteristics of the development of Islam in a particular era is dominated by the pattern of understanding of *fiqh.* The result is distortion to *fiqh*. Distortion at an alarming point will give rise to a view of Sectarianism and fanaticism against the school of *fiqh* (Akhmad Kholiq, Of.Cit).

Therefore, the Prophet's recommendation on the possibility of doing ijtihad among the *sahabah*, in the subsequent development of the *fiqh* history, has enormous implications for the tradition of ijtihad usage by many companions

(Mohammad Ali al-Sayis 1957: 45-59). And (Mohammad Farouq Nabhan, 1977: 118). What the *sahabah* do in ijtihad, is the maximum effort to keep their decisions as close as possible to the Qur'an and the guidance of the Prophet. Companions are concerned to keep their personal judgments and judgments aligned or at least in the spirit of the Messenger of Allah (Ibn Qayim 1973: 97). The diversity of *ijtihad* which then gave birth to *fiqh* products first in Islam is still in the spirit and soul of Islamic law. The use of *ra'yu* among the *sahabah* has been widely pursued, but its implementation is very selective, let alone control in freedom of use *ra'yu* among *sahabah* have been running. It is proven on one occasion a *sahabah* to use *ra'yu* as long as the case requires reasoning to solve it. But on another occasion, the Companions denounced its use as long as it was not in line with the spirit of *shari'ah*.

Thus the framework of the fiqh scholars is determined by the time factor, place, customs and socio-cultural conditions (Subhi Mahmassani, 1980: 221). It is also influenced by the pattern of previous scholars who occupy the region's thinking. Allegedly, when the Islamic region spread to Egypt, Hujaz, Iraq, Syria and other important areas that became the center of the study of Islamic Law in both *Hijriah*, originally occupied by *fiqh* figures from among the *sahabah* (Ahmad Hasan, 1970: 117) . There is an unbroken historical connection from the time of the Companions to the time of the appearance of the *madhhab* priests, during the golden age of Islam around the second and third centuries of the *Hijri*, especially when the rise of *al-mazahib al-arba'ah* figures such as; Abu Hanifah, Malik Ibn Anas, Shafi'i and Ahmad Bin Hanbal which is a continuation episode of the history of the growth of Islamic Law since the time of the *sahabah*.

## CONCLUSIONS

The pre-Islamic Arabs held strongly to tradition, meaning merely based on habits that had been going on for generations from their ancestors with the beliefs of polytheism. The characteristics of Islam during the period of Mecca are: (1). There are still very few, (2) have no power whatsoever compared to the opponents of Islam, (3) they are ostracized by the opponents of Islam, for example their economic activities are blockaded.

The legal principles of the Medina's constitution, the ideas in the constitution can serve as the basis or model of the development of the modern government, as demonstrated by the classical Western rule that contributes to the development of modern government, especially to the idea of democracy and the rule of law. The characteristics of Islamic Medina are as follows: (1). Muslims are no longer weak because the numbers are many and qualified, (2). United, (3). Already laid the foundations of Islamic Law development in order to improve the standard of living, (4). Already have a legal rule about the state of war and peace. The laws that come out of the Messenger of Allah become *tasyri* 'for Muslims and is a law that must be followed, whether it comes from the revelation of Allah and from *ijtihad*.

The condition of the Islamic law in the time of *Khulafa Rosyidun,* there are several things that can be concluded: (1). The caliphs still cling to the Qur'an and al-*Sunnah* in overcoming various legal problems, (2). The territory of Islam is widespread and the problems of the life of the *Ummah* are increasingly complex and complicated, so Umar bin Khatab, both as a person and as Caliph much encourages scholars to actively engage in *ijtihad*. The Islamic law of the Umayyad period did not go far beyond what the earlier scholars did (in the days of the Companions). There are several factors that encourage the rapid development of Islamic Law, namely: (1). Personal factors *mujtahid*, (2). Social Environment factors, and (3). Political factors and the will of the authorities. At the time of the Abbasid, socio-cultural factors influenced the development and fostering of Islamic Law. In the field of exegesis, from the beginning was known two methods, the first interpretation, *tafsir bil ma'tsur*, the traditional interpretation by taking the interpretation of the Prophet and the Companions.

Secondly, the interpretation of bi *al-ra'yi*, a rational method that relies heavily on opinions and thoughts rather than taking the traditions and opinions of the *sahabah.*

The framework of the *fiqh* scholars is determined by the time factor, place, customs and local socio-cultural conditions. The journey of *fiqh* cannot stop until *fiqh Maliki, Hanafi, Shafii*, and *Hanbali, fiqh* must continue to develop throughout the ages and places, especially in the face of pluralism and globalization, *fiqh* must appear to provide alternative solutions to humanitarian solutions.

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