

## **MODERATE ISLAM: THE RESPONSE OF ISLAMIC LAW TOWARD CONTEMPORARY ISSUES IN INDONESIA**

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### **Abstract**

In the history of Islamic legal thought, always happens ongoing dialectical process of thesis, antithesis and synthesis by the fuqaha and Muslim scholars, so the opportunity to perform scientific works continues to be opened to those who meet the qualifications to do so. A thought is actually born from a thought process that is motivated by the socio-political setting that surrounds it. Indonesia is a plural society with diversity of religions, languages, ethnicities and cultures. This diverse population requires affirmation of the Indonesian Islamic model which reflects the diversity of society with universal messages of Islam and humanity. However, the phenomenon of some groups still sees Islam from a normative-doctrinal point of view so that it is not uncommon for excessive intellectual obstinacy. This attitude, at a certain level, has reached unwarranted truth claims. Those who are still trapped in a puddle one-sided perspective. This generally justifies his interpretation of the understanding of Islam as the most correct one while accusing other groups of practicing heresy (bidah), being heretical and infidel. Such an attitude, not only stigmatizes Islam substantially, but also rejects the ideological-historical reality that Islam is a moderate, inclusive and cosmopolitan religion that cannot be separated from historical dialectics. This article will elaborate on the typology of Islamic moderate thought by referring to the treasures of fiqh principles as a method for understanding the Islamic phenomenon that has developed in the reality of Indonesian history. These Islamic moderate values have significant meaning in responding to contemporary issues, such as the issue of Islamophobia, khilafah Islamiyah, jihad, and so on. On the other hand, moderate Islam strives to realize the universality aspect of Islamic law based on benefit, justice and civilized humanity which is the main core of Islam Rahmatan Lil 'Alamin as a worldview that can liberate Indonesia and world civilization from the tyranny of the tendency of religious exclusivism, liberalism, radicalism, and terrorism.

**Keywords:** Moderate Islam, Islamic Law, Islamphobia, Caliphate, Radicalism, Terrorism

### **INTRODUCTION**

Theologically, Islam is a system of values and teaching that is divine and transcendent. Meanwhile, from the sociological aspect, Islam is a phenomenon of civilization, culture and social realities in human life. Islamic dialectic with the reality of life is truly a reality that has continually accompanied this religion throughout its history. Since the inception, Islam has grown and developed in a condition that is not devoid of culture. This reality of life - whether admittedly or not - has a significant role in shaping the face and dynamics of Islamic moderation in Indonesia.

Since the beginning of its development, Islam in Indonesia has received cultural accommodation and acculturation. This is because Islam as a universal religion provides many norms about life rules compared to other religions. When we look at the relation between Islam and culture, there are at least two aspects that need to be emphasized, namely: first, Islam as a

socio-cultural concept, and second, Islam as a cultural reality. Islam as a conception of culture by experts is often referred to as the great tradition, while Islam as a cultural reality is called the little tradition or local tradition or also Islamicate, fields that are "Islamic", which influenced by Islam.<sup>1</sup>

The great traditions (Islam) are permanent original Islamic doctrines, or at least they are interpretations that stick closely to the basic teachings as the conception of faith and sharia; Islamic law that has inspired the mindset and action patterns of Muslims. Meanwhile, small (local) traditions are interpreted as elements contained in the cultural sense which includes concepts or norms, human activities and actions, and in the form of works produced by the community.

### **Dialectic of Islamic Law and Customary (al-'urf)**

Towards local traditions that guarantee justice and prosperity in the community, Islamic law will act very appreciatively. Accuracy of reciprocity between Islam and local culture in general is recognized by Islam itself as stated in the Quran and al-Sunnah. Specifically in the jurisdiction, since the process of interpreting the law (istinbath al-ahkam), local culture is accommodated in one ushul principle, which is commonly referred to as al-'urf, until its application (tathbiq al-ahkam), local culture is accommodated in one of the rules of fiqh (al-qawaid al-kulliyah al-khams), namely al-adah muhakkamah<sup>2</sup> In fact, the local tradition which is prestigious (urf shahih) in the view of Islamic law has a kind of authority to end a text. As an illustration, how a tradition that is propane by the scholars is then given some kind of authority to end a text.

At this level it is also interesting to pay attention to a fiqh rule that what lies in the tradition is no less meaningful than what is stated by the text; al-Tsabit bi al-'Urf ka al-Tsabit bi al-Nash. This rule illustrates how highly the scholars have given such a high appreciation of tradition. Tradition is not seen as an invaluable "low" element, but in certain spaces it is calculated as being equal to the religious text itself.

With this platform of thought, it is only natural that a number of ushulfiqh scholars state that knowing the Arab historical social setting from the formation of a religious provision as reflected in the holy text becomes very urgent and significant. Al-Syathibi in al-Muwaffaqat fi Ushul al-Syaria'ah, states that knowing the social conditions of Arab society, as the initial locus of the revelation of the Quran and the situation when a verse was revealed is one of the requirements that must be possessed by a commentator.<sup>3</sup> With this statement al-Syathibi really wants to say that the aspects that need to be considered in revealing the meaning of a text are not only from a grammatical point of view, but must also include knowledge about the sociocultural conditions that live in society during the era of the revelation of the Qur'an.

Thus, an effort is needed that is more than just recognizing, namely the categorization of which verses are universal and which are local-particular feels important. This also applies to hadith. Regarding verses or hadiths that are typical of local Arabic, it is very unwise if we just transplant it to be applied in Indonesia.

Islamic jurists see the principles of Islamic law as a secondary Islamic law, in the sense that it is applied only when primary sources do not provide answers to the problems that arise. Muslim jurists have different opinions about the inclusion of custom into Islamic law, but they have come to the same conclusion, that custom principles are an effective tool for building law. In this case Abu Hanifah included custom as a foundation of the istihsan principle.

Sarakhsi in the book of Mabsuth says that Abu Hanifah interpreted the actual meaning of a custom in accordance with the meaning generally used in society, but that enforceability was rejected if it was contrary to the text.<sup>4</sup> While Imam Malik believed that the customary rules of a country should be considered in formulating a statute, even though he saw the customs of the people of Medina as the most authoritative variable in his legal theory. Unlike the Hanafi and Maliki jurists who saw the social and political significance of custom in the process of law creation, Imam Shafi'i and Ahmad Ibn al-Hanbali did not appear to have paid much attention to their decisions. However, the evidence for the existence of Qaul Jadidof Shafi'i compiled after he arrived in Egypt, and contrasted with his Qaul Qodim compiled in Iraq, reflects the influence of custom traditions in the two different countries. While Ahmad Bin Hambal's acceptance of the dla'if hadith, when he got the hadith according to local customs<sup>5</sup> also provides evidence that the principles of custom have never been set aside by the Mujtahids in their efforts to develop Islamic law. Likewise, Imam Malik included custom as the foundation of the Maslahah al-Mursalah doctrine. Furthermore, he views the customary practices of the Medina people as a sufficient general consensus to be used as a source of law when there is no explicit text.

As a norm, rules, and all activities of Indonesian society, Islamic teachings have become a pattern for society to adopt. It is in this context that Islam as a religion has at the same time become the culture of Indonesian society. On the other hand, local cultures that exist in society do not automatically disappear with the presence of Islam. Some of these local cultures continue to be developed by getting Islamic colors. This development then gave birth to "cultural acculturation", between local culture and Islam. As a socio-cultural phenomenon in the dynamics of space and time, Islam, which initially functions as a subject at the real-life level, acts as an object and at the same time applies to various social laws. The existence of Islam, among others, is greatly influenced by the social environment in which it grows and develops.<sup>6</sup> The dynamics of Islam in the history of human civilization are thus largely determined by social struggles which in turn will greatly influence the color, pattern and character of Indonesian Islam.<sup>7</sup>

Islam as the world's great religion, culture and civilization has entered Indonesia since the 7th century and continues to develop until now. It has contributed to the diversity of Indonesian cultures. Islam is not only present in the great tradition, it even enriches plurality with the Islamization of culture and the indigeneity of Islam which in turn gives birth to many small Islamic traditions, as seen in Sasak Islam, Javanese Islam, Sundanese Islam, Banjar Islam. etc.

The Islamic variant of the archipelago continues to be sustainable and has developed in various ways and remains a characteristic feature of the Islamic phenomenon of Indonesian society which is different from the Islam in the Middle East and Europe. This is inseparable from the

heterogeneity and plurality of the Indonesian people that are not owned by any nation in the world.<sup>8</sup> with the heterogeneity and plurality of languages, in turn, Indonesia is a country that is unique, distinctive, and attractive in its diversity patterns. Religion that grows and develops in Indonesia inevitably has to dialectic with local culture which then has its own characteristics and uniqueness.

The areas of the archipelago that were first attracted to Islam were trade centers in big cities in coastal areas. Orthodox Islam entered deeply into the outer islands, which had little Hindu and Buddhist influence. Meanwhile in Java, Islam faced resistance from established Hinduism and Buddhism. In a process like this, Islam must not only tame its target, but also tame itself.<sup>9</sup> Clashes and resistance with local cultures forced Islam to obtain symbols that were in line with the cultural capture capabilities of local communities.

The ability of Islam to adapt to local culture makes it easier for Islam to enter the lowest strata of society. As a result, Islamic culture was heavily influenced by peasant culture and inland culture, so that Islamic culture underwent a transformation not only because of the geographical distance between Arabs and Indonesians, but also because of cultural distances

The process of cultural compromise like this would carry a risk that is not a bit, because in certain circumstances often tolerate interpretation perhaps somewhat deviated from the pure Islamic teachings. This cultural compromise eventually gave birth to what on the island of Java is known as syncretism or Abangan Islam. While on the island of Lombok it is known as the Islamic term Wetu Telu.<sup>10</sup>

The Islamization process that took place in the archipelago was basically in a process of acculturation. As it is well known that Islam was spread throughout the archipelago as a normative method in addition to aspects of art and culture. Meanwhile, the society and culture in which Islam is socialized is an empirical realm. In this context, as intelligent beings, humans are basically religious and by reason they know best about their own world. It is in this line of logic that humans, through their cultural behavior, always increase self-actualization. Therefore, in every cultural acculturation, humans form, utilize, change things that best suit their needs.<sup>11</sup>

From this paradigm, still within the framework of acculturation, what became known as local genius was born. Here, local genius can be defined as the ability to absorb while conducting active selection and processing of foreign cultural influences, so that a new unique creation can be achieved, which is not found in the territory of a nation that carries cultural influences.

On the other hand, the characteristics of the local genius can be specified, namely: being able to survive against the outside world; has ability to accommodate elements of the outside world; has the ability to integrate elements of external culture into the original culture; and have the ability to control and provide direction for further cultural development.<sup>12</sup>

Nusantara Islam as the answer to authentic Islam presupposes three things. First, Nusantara Islam has a contextual character, namely Islam is understood as a teaching related to the context of the times and places. Changes in time and regional differences are the keys to interpret the

teachings. Thus, Islam will experience changes and dynamics in response to change times. Second, Nusantara Islam is progressive in nature, namely the progress of the times is not understood as a threat to deviations from the basic teachings of religion (Islam), but is seen as a trigger for intense creative response. Third, Nusantara Islam has a liberating character. In a sense, Islam is a teaching that can answer humanitarian problems universally regardless of religious and ethnic differences. Thus, Islam is not rigid in facing the ever-changing social reality of society.

In this context, moderation of Islamic law wants to free itself from puritanism, authentication, and all forms of Islamic purification while also maintaining local wisdom without eliminating the normative identity of Islam. Therefore, Indonesian Islam has a more spread cultural ideology, which takes into account differences of locality rather than a centralized cultural ideology, which only recognizes religious teachings without interpretation. Then, it can be spread in various areas without destroying the local culture of the local community. Thus, there will no longer be radicalism practices that are supported by extreme religious ideas, which have been a threat to the creation of peace.<sup>13</sup>

Furthermore, by considering the socio-historical situations that covered the texts of the Quran when they came down, it can be concluded that there is a dialectical relationship between the text of the Quran and cultural reality. Because it is always dialectic with reality, religious traditions can change according to the social and cultural context of a society. Islam is a movement that opens and gives hope to all social groups, religion, class, ethnicity, and gender who live in certain socio-cultural areas to critically reinforce their self-identification to their locality, manage differences that arise as a consequence and directing the various different groups to always see further aspirations for the fulfillment of their own high human dignity.<sup>14</sup>

### **Indonesian Islamic Moderation**

In fact, the majority of Muslims in Indonesia are moderate, represented by Nahdlatul Ulama (NU) and Muhammadiyah and marked by support for the four-national consensus. In terms of organizational vision, NU, for example, has a khittah which includes moderation (tawassuth), balance (tawuzun) and tolerance (tasamuh). With this attitude of moderation, Muslims in Indonesia become a model in terms of peaceful life in community and nation, so does harmony between Islam and democracy. However, this country is now also faced with the emergence of various religious denominations that can disturb this characteristic of moderation.<sup>15</sup>

As happened in other Muslim-majority countries, these groups of puritans, radical or extreme fanatical groups have also emerged in Indonesia, especially in the reform era that supports this freedom. This has resulted in the emergence of tension cases, intolerance and horizontal conflict in society. There are also vertical conflicts between extremist groups or jihadis and country in the form of terrorism.

The development of Islam in Indonesia is very polarizing. Since the pre-independence era, Islam has shown its various faces, which are represented by Islamic mass organizations. This gave rise to many names, including traditionalist Islam, modernist Islam, abangan Islam,

puritan Islam, scriptural Islam, substantive Islam, literal Islam, extreme Islam, militant Islam, and so on.<sup>16</sup>

However, an interesting momentum occurred when the New Order fell from power, mushrooming hard-line, militant, radical and fundamental Islamic movements. The appearance of this group on the national stage has actually been started since the change in state policy in the 1980s, from Islamic marginalization to Islamic accommodation. It was only in the era of openness and political freedom that the Islamic movement showed its old character immersed in the New Order regime.

The Islamic trend that emerged after the New Order was the birth of radical Islam, represented by a number of Islamic organizations, such as Jihad Troops (Ahlussunah Waljamaah Communication Forum), Islamic Defenders Forum (FPI), Mujahidin Council following previous Islamic organizations such as KISDI. The characteristics of this group are based more on the integralist diversity between Islam and the country, so that this group puts forward the completely legal-formal style of Islam. The main issue that was raised was the enforcement of Islamic law in Indonesia.

The emergence of radical Islamic movements in Indonesia was motivated by two factors, namely: first, internal factors from within the Muslim community itself. This is based on the internal condition of the Muslim community that there have been deviations from religious norms. Secular life has penetrated the lives of Muslims. As a result, it encourages Muslims to make a movement back to Islamic authenticity.<sup>17</sup> This attitude is supported by a totality and formalistic understanding of religion, being rigid in understanding religious texts, so that it must refer to the Prophet's behavior in Mecca and Medina literally. Therefore, his religious identity is literalistic, rigid, and tends to reject social change. In turn they are frustrated by the rapidly changing world, while the response of Islam is very slow and lagging behind the secular-Western society. They radically reject modern concepts, such as democracy and human rights.

Second, external factors outside the Islamic ummah, both by the rulers and Western hegemony. The repressive attitude of the authorities towards Islamic groups, such as that of the New Order, has fueled Islamic radicalism. Likewise, the leadership crisis that occurred after the New Order, which was shown by weak law enforcement, has encouraged the Islamic movement to implement Islamic law as a solution to this crisis. In turn, Islamic radicalism is used as the answer to the weakness of the legal apparatus in solving cases related to Muslims.

Radicalism also occurs in the form of resistance to the West. The reaction shown was in the form of violent resistance to Western interests or multinational companies. US embassies and US companies are often targeting of violence inspired by an understanding of radicals as a religious struggle. Jihad has become a symbol of effective resistance to wage war against the West. This condition led to continued hostility between Islam and the West. In fact, radical Islamists see the West in an eternal battle against Islam.



Apart from the above factors, radical Islam in Indonesia was born due to a change of power and an uncertain situation. Abnormal conditions are used as a momentum to openly show cultural and political identities by groups of people, including Muslims.

The radical Islamic movement has given a different color to the journey of a religious style in Indonesia. For example, in the experience of Muslims, there has been a very sharp polarization between moderate Islam and radical Islam today. After moderate Islam has succeeded in gaining a place in the hearts of the rulers since the 1980s, now in the reform era, they are facing serious challenges from the radical Islamic movement that has penetrated the social strata of society. They managed to win limited public sympathy by building public opinion and movement organizations. No wonder their voices on the national stage can be heard so loud.

Therefore, the development of Islamic radicalism in Indonesia is a socio-historical reality in a pluralistic country, but it can also pose a threat to the future of pluralism in Indonesia. As anticipation, it is necessary to expand the moderate, pluralist and inclusive Islamic movement in the midst of society.

The idea of moderation is based on two things. First, discursively, the moderation movement of the ummah is believed to be the creation pillar of social harmonization in the multi-cultural era. Because after all, multiculturalism is a historical reality in society that must be addressed positively. Thus, religious exclusivity is totally believed to be a religious truth that can become an ideological stumbling block to solve the problem of pluralism in Indonesia. That is why pluralist education is a priority in bridging the doctrine of exclusion.

Second, practically, the practice of religious life still dictates the claim of truth and safety in each religious community that must be completely eroded so that there is no mutual blame between one religion and another. The problem of pluralism is often caused by the fanaticism of religious truth which gives rise to radical attitudes. Therefore, concrete efforts to build tolerance between religious communities are continuously carried out as part of a sustainable social process.<sup>18</sup>

### **Typology of Islamic Law thought**

In general, the typology of the perspective on Islamic law can be categorized into three groups, namely inclusive, exclusive and pluralist.<sup>19</sup> this categorization is not necessarily accepted by all circles. Even today, each category mapped by most authors continues to invite debate.<sup>20</sup> Therefore, it does not rule out the emergence of other categories to describe the dialectic of the diversity of Islamic legal thought. The categories referred to are: Fundamental, Moderate, and Liberal. These three categories can generally represent the struggles of thought in the Islamic world, including Indonesia. The following is a description of the three categories above.

The term "fundamentalism" is generally used both by academics and the mass media to refer to political Islamic movements with negative connotations such as "radical, extreme, and militant "and" anti-Western and American." However, not infrequently, the stamp of "fundamentalism" is given to all Muslims who accept the Qur ' an and Hadith as their way of

life. In other words, "most of the reassertion of religion in political systems and societies included in terms of Islamic fundamentalism."<sup>21</sup>

Fundamentalism is usually translated as al-Ushuliyyah al - Islamiyah (Islamic fundamentalism), al - Salafiyah (ancestral heritage), al - Shahwahal-Islamiyah (Islamic revival), al - Ihya al- Islam (Islamic revival), al-Badilal-Islam (Islamic alternative). Whereas in the western world the term fundamentalism can be replaced by revivalism, extremism, Islamism, integrism.<sup>22</sup> although the term has various meanings, it is still in the corridor that leads to "accentuating Islam" in all existing contexts.<sup>23</sup>

Meanwhile, word "moderate" is derived from the Latin 'moderate' which means "to reduce or control". The word "Moderation" in the Big Indonesian Dictionary is defined as: Reduction of violence or avoidance of extremes. Meanwhile, the word "Moderate" means: always avoiding extreme behavior or leaning towards a middle way.<sup>24</sup>

In Arabic, the word "moderation" can be translated with the word "Wasathiyyah" which literally means: something that is in the middle between the two sides. In terms of terms, the word "Wasathiyyah" can be defined as: a middle way between two opposing sides, not excessive, nor lacking, but a path that is the best and fairest between the two.<sup>25</sup>

In the perspective of the Quran, the word "Wasath" which is the origin of the word "Wasathiyyah" is in the context of mentioning the character of Muslims. The word "Wasathiyyah" in syar'i can also be interpreted as al-Shirâth al-Mustaqîm or a path that is straight.<sup>26</sup> This kind of meaning is strengthened by an explanation from the Prophet when he interpreted the verse Wa Anna Hâdzâ Sirâthî Mustaqîman Fattabi`ûhu Walâ Tattabi`u al-Subula (And really, this is My straight path. So follow it! Don't follow the pathstreet (another))<sup>27</sup> by drawing a straight line, as a sign for straight teaching. Then he also made a number of lines on the right and left of the straight line, as a sign of deviating teachings.<sup>28</sup>

According to Masyukri Abdullah<sup>29</sup> in the Quran, there are several verses that indicate the mission of Islam, the characteristics of Islamic teachings, and the characteristics of Muslims. The mission of this religion is a blessing for the universe (rahmatan lil 'alamin, QS. Al-Anbiya': 107). The characteristics of Islamic teachings are a religion that is in accordance with humanity (fitrah, QS. Al-Rûm: 30), while the characteristics of Muslims are moderate (ummatan wasatan, QS. Al-Baqarah: 143). In addition, there is also a verse which instructs Muslims to side with the truth (hanîf, QS. Al-Rûm: 30), and uphold justice (QS. Al-Maidah: 8) and goodness to become the best people (khair ummah, QS... Ali 'Imrân: 110).

These verses reinforce the need to be religious with a moderate attitude (tawassuth) which is described as a wasathan umatan, so that at present many scholars are promoting the concept of Islamic moderation (wasathiyyah al-Islâm). There are also Islamic groups who do not agree with this concept of moderation, because it is considered to be selling religion to other parties. In the language wasathiyyah means the middle way between two opposing or opposing sides (camps). The meanings and signs of moderation are quite varied, which cannot be separated from the understanding and religious attitudes of each ulama



According to Yusuf al-Qaradawi, Islamic law has moderate characteristics. With the characteristics of Islamic fiqh has always been in a fair and balanced position (*al-i'tidal wa al-tawazun*) so that it is far from excessive and out of the bounds of reasonableness. This kind of reality, indirectly is one of the impacts that arise from the inherent dimension of divinity (*al-Rabbaniyah*) that exists in Islamic law.

Qaradawi is one of the scholars who elaborates a lot on the moderation of Islamic law. He is a moderate Ikhwan figure and is very critical of Sayyid Qutb's thoughts, which are considered to have inspired the emergence of radicalism and extremism as well as a notion that accuses other groups of being *thaghut* or *kafir* (*takfiri*). He also revealed 30 signs of moderation, including: (1) comprehensive understanding of Islam, (2) balance between sharia provisions and changing times, (3) support for peace and respect for human values, (4) recognition of the plurality of religions, cultures and politics, and (5) recognition of minority rights.<sup>30</sup>

Meanwhile, Muhammad Imarah stated that moderate in Islam is not merely a "third and new attitude" but also a *manhaj* (method) that mediates between two opposing extremities, by rejecting excessive attitudes on one side that ultimately lead to partiality for one of two opposing poles. Moderate in the concept of Islam is a principle that requires every Muslim to be able to embrace and combine elements that can be synergized in a harmony that is not mutually hostile to the two opposite poles.<sup>31</sup>

Furthermore, by putting the term *wasatiyah* in the concept of Islam, M. Imarah states that Islamic *wasathiyah* is a *manhaj* that combines spirit and body, world and hereafter, religion and state, subject and object, real and ideal, goals and methods, reason and *naql*, local and global, *ijtihad* and *taqlid*, religion and knowledge, general and particular, sacred with profane, *das sein* with *das sollen*, and so on. In short, Islamic moderatism gave birth to a convergence between dualisms which are often rashly contested.<sup>32</sup>

In the realm of Islamic legal philosophy, this moderate attitude can be seen from the legal position that does not recognize the dichotomy between positivism and idealism which, in legal theory, is described as contradicting each other. Islamic law as law based on revelation, includes "law as it is" and "law as it should be". As law as it is, it is God's commandment which functions as positive law. Meanwhile, as "the law that should be," it is ideal because its ultimate goal is justice. This shows the difference between Islamic law and legal positivism, especially the flow of analytic positivism, which concentrates on the analysis of legal concepts and relations on the basis of a strict separation between reality (*das sein*; what is) and what it should be (*das sollen*; what should be), and thus separated from justice and ethics. It is also different from idealism which is more based on the principles of justice and is related to "the law that should be."<sup>33</sup>

From the above explanation, if the word moderate is juxtaposed with the word Muslim and forms the phrase "moderate Muslim", it can be simply formulated that moderate Muslims are those who stand between two opposing extremities, do not side with one side, and are in line or "the third path" by offering a comprehensive, balanced and fair solution.

Islamic law for Muslims is believed to have a purpose for the benefit of the people in understanding Islamic law and/or strengthening Islamic law and maintaining Islamic law. One of the characteristics of Islamic law includes; elasticity, moderation, and conformity of Islam to human nature are concrete forms of Islamic truth as a universal rule that can be used anytime, anywhere, and under any conditions.

Islamic law becomes relevant all the time in accordance with the development of time and space dimensions (shalih likulli zaman wa makan). All laws, both in the form of orders and prohibitions which are recorded in the texts of the Shari'a are not something meaningless. However, they all have a purpose and a purpose, where Allah conveys certain orders and prohibitions for the purpose and purpose of benefit.

The foundation of the building of Islamic law is represented by mashlahah which is aimed at the interests of human life as servants of Allah, both in terms of worldly life and the afterlife. Islamic law upholds the principles of justice ('adâlah), compassion (rahmah), and mashlahah. Every rule of law which deviates from these principles is not a part of Islamic law, although a rationalization is sought (ta'wîl) to make it part of it.<sup>34</sup> In addition, the greatness and nobility of Islamic law is manifested in the compatibility of its doctrine with the development of human life because of the mashlahah spirit that drives it.<sup>35</sup> The existence of Mashlahah in the building of Islamic law cannot be denied because al- mashlahah ( المصلحة ) and al-Syarîah ( الشريعة ) have combined and united, so that the presence of al-Mashlahah necessitates the demands of al-Syarîah ( الشريعة ).

In-depth research on the many texts of the Quran and Hadith has indeed resulted in convincing conclusions that the doctrine of Islamic law is always adhered to by wisdom and 'illah which leads to mashlahah, both for society and for individuals.<sup>36</sup> In fact, the doctrine of Islamic law is meant not only in the area of general muamalat (non-worship mahdah), but also mahdah worship. Thus, all areas of law with a variety of legal norms that have been outlined by al-Qur'an and Hadith disgorge from, as well as geared towards mashlahah for human life. This is because Allah does not need anything, even if it is mahdah worship. Strictly speaking, it is humans - as servants of Allah - who benefit from the fact that mashlahah is the basis of Islamic law.<sup>37</sup>

The presence of wisdom (hikmah) and illah in the norms of Allah's law (both in the form of al-amr and al-nahy) in turn ensures the existence of mashlahah. On the other hand, the formulation of a number of legal maxim (al-qawa'id al-syar'iyyah) rests on the discovery wisdom and 'illah which nota bene guarantee the existence of mashlahah. Thus, mashlahah is the axis and point of departure for the formulations of al-ahkâm al-syar'iyyah and al-qawa'id al-syar'iyyah.<sup>38</sup>

Implementing mashlahah is the main goal of Islamic law. In every rule of law, al-Syâri ' transmits mashlahah so that goodness, benefit is born and is avoided from badness or damage, which in turn realizes prosperity and well-being on earth. Because mashlahah is actually nurturing and paying attention to the objectives of Islamic law in the form of goodness and benefit desired by the Sharia, not by human passions.<sup>39</sup> The legal norms contained in the text (nusûs al-syarîah) can certainly manifest mashlahah, so that there is no mashlahah outside the

guidance of the Sharia text; and because of that, it is not valid to think that mashlahah should be prioritized if it is contrary to sharia texts.<sup>40</sup> Thus, it can be formulated that the essence of mashlahah is the axis of circulation and change in Islamic law, where the interpretation of the sharia text can rest on it.<sup>41</sup>

The purpose of Allah SWT in spreading mashlahah for His legislation is of course absolute and comprehensive, not limited to certain cases or objects; mashlahah spreads absolutely on all the basic principles and particularistic case units of Islamic law.<sup>42</sup> Islamic law is entirely mashlahah, whose representation can be in the form of eliminating mafsadah and can also be in the form of mashlahah. Strictly speaking, there is no law that contains al-madarrah but is ordered to stay away from it, and there is no law that contains mashlahah but is ordered to make it happen.<sup>43</sup> Mashlahah consideration is a method of thinking to obtain legal certainty for a case whose legal status is not determined by the texts or al-ijmâ. Finally, it cannot be denied that mashlahah is a provision that contains goodness for humans.<sup>44</sup>

Based on this elaboration, the legal norms contained by the texts can certainly manifest mashlahah, so that there is no mashlahah outside the text's instructions and because of that it is invalid to think that mashlahah must be prioritized if it is against the Sharia text. There is no place for consideration of mashlahah which will result in pressing the Sharia texts that contain mashlahah for human life. Strictly speaking, mashlahah contrary to nashh Sharia is not mashlahah essential but mashlahah superficial.<sup>45</sup>

Furthermore, in the context of the contradicts possibility of mashlahah, in terms mashlahah broader demands sacrifice of mashlahah narrower, then it can do the choice of leaving mashlahah narrower towards achieving mashlahah broader them.<sup>46</sup>

At the level of application, mashlahah is manifested in the methods or arguments of ijtiḥad to establish laws that are not explicitly emphasized by the texts, such as al-qiyas, mashlahah al-mursalah, al-istiḥsân, sadd al-dzarî'ah, and al-'urf. Therefore, any method or proposition of ijtiḥad that rests on the principle of mashlahah can be qualified as an effort to explore the meaning of the Sharia text (istidlâl bi al-nusûs al-syar'iyyah).<sup>47</sup>

Mohammad Hashim Kamali concluded that the identification mashlahah-- as the core Maqasid al-syarî'ah can be based on: (1) nusûs al-sharia, especially al-amr and al-nahy, (2) al-'illah and al-hikmah contained in nusûs al-syarî'ah, and (3) al-istiqrâ.<sup>48</sup>

In connection with the mashlahah and ijtiḥad relations, among scholars, the term al-ijtiḥâd al-istislâhiy is known, which is an effort to mobilize all the capabilities to obtain Sharia law by applying general-universal legal principles to a problem or case that is not confirmed by the text specifically which essentially leads to realizing mashlahah (jalb al-mashlahah) and avoiding or eliminating al-mafsadah (daf 'al - mafsadah), which is in line with the demands of Sharia principles. This ijtiḥad model actually leads to an attempt to enter law into the domain of sharia texts.<sup>49</sup>

The concept mashlahah as the core of the maqasid al-sharia is the best alternative for the development of methods of ijtiḥad, in which the Qur'an and Sunnah should be understood

through the methods of *ijtihad* with an emphasis on the dimensions *mashlahah*.<sup>50</sup> the concept of *mashlahah* is a method for changing the law. Through this concept, *fiqh* scholars have a framework to deal with legal issues contained in a legal system based on *sharia* texts which contains limited legal material foundations regarding life affairs, while legal problems are in changing circumstances and environmental conditions. Thus, the concept of *mashlahah* provided legitimacy for the new rule of law and allowed *fiqh* scholars to elaborate on contexts of cases that were not confirmed by the texts. Therefore, how much legal change can be achieved through the application of the concept of *mashlahah* depends on the weighted *mashlahah* legal reasoning pattern applied by *fiqh* scholars.<sup>51</sup>

Abû Ishâq al-Syâtibi categorized *mashlahah* into 3 (three) types, namely (1) *al-darûriyyah*, (2) *al-hâjiyyah*, and (3) *al-tahsîniyyah*. Furthermore, al-Syâtibi explained that *al-darûriyyah* is something that cannot be absent for the sake of goodness and prosperity, both in terms of heavenly affairs and worldly affairs, where when it disappears, does not exist, an orderly and worldly life cannot be realized. Prosperous; in fact, what is manifested is a chaotic worldly life and a wretched and suffering spiritual life. For al-Syatibi, *al-darûriyyah* includes efforts to preserve religion, nurture the soul, care for offspring, maintain wealth, and maintain intelligence.<sup>52</sup>

As for *al-hâjiyyah*, in the view of al-Syâtibi, is something that is needed in terms of its ability to bring space and eliminate the hardships that usually lead to hardships and troubles accompanied by missing goals/objectives. If *al-hâjiyyah* is not considered, there will be difficulties and troubles, but not to the extent of causing the damage that usually occurs in the case of *mashlahah al-darûriyyah*. The category of *al-hâjiyyah* actually leads to the perfection of *al-darûriyyah*, where with the establishment of *al-hâjiyyah*, all *al-masyaqqah* will disappear and create balance and fairness, so as not to cause extremity (*al-ifrât wa al-tafrît*).<sup>53</sup>

While *al-Tahsîniyyah*, according to al-Syâtibi's opinion, is something related to paying attention to good habits and avoiding bad habits, based on common sense considerations. This is often called *makârim al-akhlâq*. For al-Syâtibi, the existence of *al-tahsîniyyah* leads to the goodness that complements the principles of *Mashlahah al-darûriyyah* and *Mashlahah al-hâjiyyah*; this is because the absence of *al-tahsîniyyah* does not spoil the affairs of *al-darûriyyah* and *al-hâjiyyah*; it only revolves around the effort to manifest beauty, comfort and modesty in the relationship between the servant and God and with His fellow creatures.<sup>54</sup>

### **Mashlahah Formulation in the Development of Contemporary Islamic Law**

Ahmad al-Raisûni proposed a *mashlahah* application model proposal in the development of Islamic law. According to Ahmad al-Raisûni, it is imperative to respond to all *sharia* texts and legal rules with a *mashlahah* -oriented understanding model (*al-fahm al-maslahiy*) and an application model that is also *mashlahah* oriented (*al-tatbîq al-maslahiy*). This is called *Mashlahah* oriented response (*al-ta'âmul al-maslahiy ma'a al-nusûs*), which postscript eliminates responses that assume a contradiction of texts with *mashlahah*, and also displaces responses that assume there are no *mashlahah* texts, as assumed by the literalist-scripturalistic-reductionistic school.<sup>55</sup> In Ahmad al-Raisûni's view, the issue of *mashlahah* oriented responses

to texts includes: (1) mashlahah qualifications with the parameters of the texts; (2) mashlahah oriented interpretation of texts (al-tafsîr al-maslahiy li al-nusûs); and (3) mashlahah oriented application of texts (al-tatbîq al-maslahiy li al-nusûs). The following is a description of the ideas offered by Ahmad al-Raisûni.

The characteristics of idealism, absolutism and immutability of Islamic law are implications of the postulation that Islamic law comes from Allah SWT. However, what cannot be ignored from the characteristics of Islamic law is that sharia contains general principles that are intended to be understood as an Islamic ethic and hence, it can lead to various interpretations. This is where the sharia can be placed as an "open texture", a norm structure that is written in a standard manner but is open to interpretation.<sup>56</sup>

Perfection, absoluteness and immutability of law on the one hand and the guarantee of its validity throughout the ages and the demands of human needs that continue to develop on the other hand, make Islamic law contain antinomies that must be based on one another. The antinomy is between reason and revelation, unity and diversity, idealism and realism and stability and change.<sup>57</sup>

### **The Trend of Contemporary Islamic Legal Thought**

So far, there have been three tendencies in the discourse of Islamic legal thought, namely:

1. The tendency to use a formalist approach that devotes its attention to the material aspects of the standard disciplines of fiqh and ushul fiqh. So far, the formalist approach has been struggling with the reality of finished fiqh, independent of the historical dimension. This approach is commonly called the textual approach which was born from Muslim scriptural circles.<sup>58</sup> Arkoun calls it a monolithic approach, an approach that limits itself to written texts and pays less attention to the living Islamic tradition.<sup>59</sup>
2. The tendency to use a historical approach which has recently developed into historical-sociological. This approach appears to make up for the shortcomings of the first approach. This approach views fiqh as a fact not as a practice. Historical facts are presented as they are as an explanation for the reality of fiqh.
3. The tendency to use a normative-historical approach. This approach is a combination of the two previous approaches, assuming that the first approach does not touch reality, while in the second approach there is a concern that is removed from the roots of normativity so that with this approach it is expected that the two concerns will be overcome.

Regarding the last approach, Wael B. Hallaq analyzes two trends in Islamic law today. The two tendencies he refers to are what he calls religious utilitarianism and religious liberalism.<sup>60</sup>

Genealogically, these two tendencies take a broad framework from the religious doctrine proposed by Muhammad Abduh, both of which have the same goal of reformulating legal theory in a way that leads to a synthesis between Islamic religious values on the one hand and a substantive law suitable for the needs of modern society that is always changing on the other hand.

As for what distinguishes the two is the method used, the first directs its attention and bases its methodology on the concept of Mashlahah, while the latter places more emphasis on re-understanding revelation based on text and context.<sup>61</sup>

### **1. Religious Utilitarianism**

The thesis basis of this trend is the concept of mashlahah. What Hassan Turabi and Abdul Wahab Khalaf did is to reconstruct traditional legal concepts while breaking away from the shackles of medieval theoretical discourse.

The dictum of the concept of religious-utilitarianism is the view that the Quran as a source of law presents general, not special, things. So that the Quran does not have to be understood lexically, but more in spirit. On this basis, legal decision making is based on needs, interests and needs. Khallaf, for example, found his way through the qiyas, istihlah and istihsan methods. The three were then reformulated into a legal theory that was more sensitive to the needs and needs of society.

The legal theory which is based on the concept of Mashlahah was also adopted by Hassan Turabi. Although he is more 'liberal' than others in this group, in building his legal theory he is still rooted in traditional legal concepts, especially Qiyas Ijmali Wasi' and Istishlah Wasi', which he first equates with MashlahahMursalah.

Belief in the concept of istishlah and necessity in making legal decisions is unique in utilitarian-religious legal theories. Hallaq comments that what this religious-utilitarianism is doing has rationalized the establishment rather than bringing forth a new legal theory or formulating a method.

### **2. Religious-Liberalism**

What this tendency does is how to understand revelation textually and contextually. Thus, the main concern is around reinterpretation of the concept of sharia to find solutions to contemporary problems of reality. According to Hallaq, the figure who tends to fall into this category is Fazlur Rahman<sup>62</sup> and Mohammad Syahrour.<sup>63</sup>

Rahman, with his neo-modernism claim, has formulated a legal theory called 'The Double Movement Theory', namely from the particular to the general and vice versa. The first movement, understanding the situation and historical problems in which revelation was revealed, then we look for the ratio-legis (illat). The second movement generalizes and systematizes the general principles of the first movement to be exposed to the actual reality today.<sup>64</sup>

Meanwhile, Syahrour presented 'The Limits Theory' (hudud). This limit theory is described as God's commandment which is expressed in the Qur'an and the Sunnah can provide a lower limit and a higher limit for all human actions. A higher limit represents the legal minimum in a particular case and an upper maximum.<sup>65</sup>



Rahman and Syahrour in particular have offered new legal conceptions and legal methods, both of which emphasize ideas composed of textual and contextual analysis which are meant to place humanist law.<sup>66</sup>

Meanwhile, in contemporary Arabic thought discourse, together with M. Arkoun and M. Abed al-Jabiri, Hassan Hanafi's thought is also known, which is classified as a reformistic type of thought. In general, this type of thinking tends to believe that between turas (tradition) and modernity both are good. Tradition remains relevant to modernity as long as it is read, interpreted and understood by modernity standards.

The difference with Arkoun and Abed al-Jabiri lies in their approach to seeing traditions. If the first two thinkers use the deconstruction method,<sup>67</sup> Therefore Hanafi emphasizes the reconstruction approach, which is an attempt to rebuild community traditions (including religion) in a new way with a modern framework and rational prerequisites. Thus, the tradition will live on and can continue to be accepted. But in general, both the deconstruction and reconstruction approaches see tradition as a valuable treasure as long as it is interpreted in a modern way.

Rahman, Arkoun, as well as Hassan Hanafi often question why classical Islamic scientific methods such as fiqh, kalam, history, tafsir and hadith on the one hand have not changed. Meanwhile, on the other hand, times have experienced progressive changes. It is in this context that the reconstruction of Islamic scientific conceptions and methods that touch contemporary problems needs to be done immediately.

Through the historical-sociological method, the Quran and the Sunnah as sources of Islamic law are not seen as mere normative things, they are also positioned as subject matters that are studied objectively using scientific procedures. Such an assessment model is not intended to be value free. Thus, both remain indisputable postulates, the problem then is how they are presented in an interpretive form with methodological tools in their presentation. In this context, the social sciences are considered capable of being the basis of analysis in their methodology.

According to Hassan Hanafi, tradition will have no value when it is considered a museum for thoughts that have always been proud of. Tradition will have a use value for every condition of the age when it is placed in the frame of modernity after going through a process of interpretation and re-interpretation. The formulation of the idea is to position the science of ushulfiqh (Islamic legal theory) as a method (manhaj) in formulating a theory of interpretation (nazariyyah tafsir) on contemporary reality which is the ultimate goal of the at-Turas wa at-Tajdid scenario (tradition and renewal).<sup>68</sup>

Based on this elaboration, the reconstruction of contemporary Islamic legal thought paradigm means trying to integrate all the traditions stored in Islamic civilization into the modern spirit starting by eliminating the negative aspects (madharat) and selecting positive elements (mashlahah) in building a theory of interpretation of the texts. Based on the science of ushul fiqh which prioritizes reality and social liberation because it has accretion in mashlahahal-

'ammah. According to him, the benefit of society is a traditional consideration based on the revelation, besides that consideration on the basis of *maslahah* is a current requirement.<sup>69</sup>

It is in this context that the significance of Islamic law as a theory of action, namely how one understands the text of the texts as well as applies it in life, so that the text has meaning when it flows in human action and functions as a means of social transformation to realize benefit and avoid harm. This is the essence of the moderation paradigm of Islamic law in responding to contemporary issues, such as the issue of the Islamic caliphate, radicalism of terrorism by plagiarizing the holy meaning of *jihad*. []

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