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UNCOVERING THE SIDE OF SOCIAL CHANGE: Examining Its Position as a Method of Ijtihad

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Abstract. When the views of jurists place social change as a legal theory, this paper actually places social change as one of the methods of developing Ijtihad as *urf*, *Maqashid al-sharia* and others. The existence of social change is important to determine and nullify the law. Here is the difference between theory and method. As a method its role is broader than a theory that manifests itself independently, it is needed even to determine the existence of the law, besides the law has a dependency on social change. There are several reasons for putting social change as a method of developing Ijtihad, namely: social change becomes a necessity. Social change as a method has been carried out by friends and scholars such as Umar Ibn al-Khattab who is brilliant and controversial friend in performing Ijtihad, Imam Syafi'i with *qaul qadim* and *qaul jadid*, al-Tha'fi with the concept of *maslahah* and finally Ibn Qayyim al-Jauziyyah with the rules of *his* - the rules of social change. Legal experts such as J.N.D. Anderson's research and flow L. Esposto, concluded that the method generally developed by Islamic reformers in solving legal problems still relies on a partial approach by exploiting the *tafiq* and superstitious methods. This shows social change into a method for enriching the Ijtihad method.

Keywords: Social change, Islamic law, theory and method

INTRODUCTION

The existence of social change as an instrument of legal formation and development is no doubt. The contribution of social change also colors the dynamics of law including Islamic law. It can be said that the journey of social change is in tune with the legal movement itself. Even before the law appeared social change had manifested itself along with the space and time of this life. This shows that social change encourages the emergence of law or vice versa. Law will change because it is no longer relevant to social change and social change requires that legal change occur. In this context social change becomes an important aspect of giving birth and changing the law.

Social change theory have been going on for a long time. However, if we see the role and journey of social change in the context of Islamic law, it has contributed

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INTRODUCTION

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Social change theory have been going on for a long time. However, if we see the role and journey of social change in the context of Islamic law, it has contributed

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significantly in presenting and removing the law. It can be said that the role of social change is the argument of the development of Ijtihad itself. This paper tries to put that social change is actually a method of developing Ijtihad with various legal arguments and their relationship with Ijtihad itself. If this article has been conceived by a previous author which is not yet known by the author himself, the writing is no more than merely emphasizing the logical argumentative offerings

LITERATURE REVIEW

The position of Ijtihad becomes strategic after it has been developed through methods. As was done by the previous Mujtahid scholars, with a variety of methods of combating Ijtihad. But in its development the existing method requires deep enrichment and this needs to be put in a new paradigm. According to Yusuf Qaradawi, there are two appropriate and suitable methods used in the context of globalization. (2). Ijtihad Insyai'i, namely conceiving a new conclusion from an issue that has not yet been determined by the previous Ulama, whether old or new. In Ijtihad this model requires a thorough understanding of new cases stipulated by law. This is where understanding of the method of determining the law raised by the experts on fiqh is proposed. Like qiyas, istihsan, istislah, troubles al-mursalalah, sadduz zari'ah and maqashid sharia. Included in this case is social change.

Based on the above theoretical framework, this paper will analyze whether social change in a legal theory or Ijtihad development methods can be compared to previous Ijtihad methods such as qiyas, istihsan, istislah, urf problemah al-mursalalah, sadduz zari'ah and sharia maqashid.

METHODOLOGY

This type of research is library research. Library research is intended, gathering sources of literature, whether in the form of books, encyclopedias, journals, magazines, and others. The method used in this study is a qualitative method that emphasizes the aspects of the process rather than just the results and according to him qualitative research has a natural terrain as a source of naturalistic data.

The approach used in this study is a philosophical and historical method. The philosophical approach is used in order to position the nature of social change whether

as a theory or legal method both legally and normatively. Whereas the historical approach is used in tracing historical data of thoughts - thoughts that talk about social change both in Indonesia, as well as forms of thoughts and figures outside of Indonesia.

This research uses descriptive nature (descriptive research). The aim is to describe a matter, usually in this study the researcher has gotten / has an overview in the form of preliminary data about the problem to be examined. The description aspect elaborates on historical literature data. Then the description of field phenomena is analyzed by the source and theoretical framework of literary data with the philosophical and historical approaches.

FINDINGS AND DISCUSSION

Hubungan Perubahan Sosial dengan Hukum Islam

When social change is seen as a legal theory (social change theory), the existence of social change is so important, social change also determines the effectiveness and change of law. If this is related to Islamic law, the role and function of social change is also seen as important which also manifests itself in the process of forming and developing Islamic law.

Islamic law is interpreted as the entire Book of God that governs the lives of every Muslim in all its aspects.¹ The mention of Islamic law is not found in texts or legal literature in Islam, because it is only known by the term sharia - fiqh - Allah's law and is similar to it. The term Islamic law is a translation of the Western literature "Islamic law", bringing its understanding to sharia.² Islamic law as a collection of rules that govern life requires devices whose function is to strengthen the rules in Islamic law itself. When social change is correlated with Islamic law, social change becomes ²⁴ an important tool in the formation and development of law. Islamic law always adopts social change. This

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¹Joseph Schacht, *An Introduction to Islamic Law* (Oxford : University Press, 1964) p. 1

²In Western literature, Islamic sharia is translated as "Islamic law" and Islamic jurisprudence is translated as "Islamic jurisprudence." This means that the mention of Islamic law is often used as a translation of the term Islamic law or Islamic Jurisprudence. If the Islamic Shari'a is translated into Islamic law then in the category of understanding of Shari'a in the narrow sense, because the meaning contained in the Shari'a is broadly not only legal aspects, but also aspects of i'tikadiyah and khuluqiyah. If the Islamic law is translated from Islamic law, then the legal value in the discussion of the law is qath'i. Then the Islamic law is intended translation of Islamic Jurisprudence, the Islamic law in question including the field of Ijtihadi is zhanni, not including the value of Islamic law in the sense of sharia is qath'i. Suparman Usman, *Hukum Islam Asas – Asas dan Pengantar Studi Hukum Islam Dalam Tata Hukum Indonesia* (Jakarta : Gaya Media Pratama, 2002) p. 20 - 21

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makes social change more dynamic, not rigid, elastic and universal that can reach and penetrate space and time wherever the law is located.

Based on historical records, it is almost certain the role and contribution of social change becomes an important legal instrument in the formation and development of law. This seems to have begun the time of the Companions, a community close to the Prophet and the Companions themselves are historical actors in the laying of Islamic law. Interestingly again in the context at that time even though Islamic law was seen as well established, the contribution of social change was still needed. Social change remains a legal device in the mindset of friends, whether the law is considered final even or the emergence of legal cases that require new laws, social change is the basis of legal considerations by friends.

The process of determining the law by considering social change is when Abu Bakr has just been appointed as the first Caliph, preferring to leave the profession of the merchant and focus on becoming the caliph. The choice made by Abu Bakr as an effort to realize the general benefit over the benefit that must take precedence over his personal interests. Umar Ibn Khattab also did the same thought about the treasures of Ghanimah (booty). During the time of the Prophet 4/5 of the spoils of war were distributed to the prajurids involved in the war and 1/5 again for other welfare as mentioned in the Koran. But Umar Ibn Khattab during the opening war of Iraq and Sham did not distribute the spoil as mentioned in the Qur'an. Umar was more likely to use the spoils for the welfare of Muslims who needed more. The policy that was carried out by Umar was based on the consideration of al-mursalah maslahah. Other legal events such as the annulment of the law of cutting off the hands of Umar Ibn Khattab for thieves of the economic crisis, or collecting the Koran in one Manuscripts and other cases, were determined through a maslahah approach to the problem.

Usman Ibn Affan also carried out the same policy of allowing camels to roam on the grounds of benefit. According to Ustman the Prophet forbade collecting camels because at that time the situation was safe, but when the government began to weaken and security was not guaranteed, the camels had to be secured. The method used by Usman uses qiyas. Determination of caning 80 times, where Ali Ibn Abi Talib used the Ijtihad Ijtihad method of Ijtihad Ali Ijtihad was considered appropriate, because someone committing the crime of drinking khamar could lead to other crimes due to his

drunkenness, so that it could be anticipated by stipulating the caning for khamar drinkers with 80 times whipping. Another interesting case is the determination of Abdullah Ibn Mas'ud's friend about the iddah of a pregnant woman whose death of her husband by waiting to give birth to a child. The process of establishing this law also uses usul fiqh with nasakh and mansukh Qs al-Baqarah verse 234 (iddah death of husband 4 months and ten days) and uses Qs. at-Thalaq verse 4 (iddah pregnant until giving birth) that the proposition that comes later invalidates the previous argument.

The end of the period of companions came the tabiin period, this period was marked by the presence of Islamic legal figures such as Sa'id Ibn al-Musayyab (15 H-94 H) in Medina, al-Qamah ibn Qays (d. 62 H), Ibrahim bin Yazid An-Nakh'ie, Hammad Abu Sulaiman, Abu Hanifah and others.³ This period became the forerunner to the schools of fiqh. The first school began with the emergence of the Hanafi school of thought founded by Abu Hanifah (80-150 AH) a faqih and Ulama who used ra'yu and rationalism more in jihad.⁴ His method of thinking is more rational and realistic than textual, this is due to geographical factors that Baghdad and Kufa, the area of Abu Hanifah are cities far from the center of the Prophet's tradition, namely Medina and its surroundings, so that this affects his mindset and at least the vocabulary of traditions about law. This can be seen in the process of determining the legal istinbath using its own method of adhering to the Koran, hadith, qaul sahabi, ijma', qiyas, istihsan and urf.⁵

Then came the Maliki School which was initiated by Imam Malik (d. 179 H) Imam Malik using the method of istinbath law is the Koran, hadith, ijma', qiyas, charity experts in Medina, masalah al-mursalah, qaul sahabi, istihsan sad al-zariah, urf and istishab. The tradition of the Medina expert population is used as one of his usulul methods, this is because Malik never moved or left the city of Medina until the end of his life, so he was held by Imam Dar al-Hijriah, so that the patterns of life of Madinah experts helped shape his thinking paradigm. A well-known work is "al-Muwatta", this work is part of his identity as an expert on hadith.

Next came the emergence of the al-Syafii school which was attributed to its founder Imam Muhammad Idris al-Syafii (150 H-204). The legal theory developed by

³ Satria Efendi dan M. Zein, *Ushul Fiqih* (Jakarta: Kencana, 2005) p. 17

⁴ Hammad Abu Zahrah, *Tarikh al-Mazahib al-Fiqhiyah*. p. 188

⁵ Sya'ban Muhammad Ismail, *al-Tasyri' al-Islami Masadiruh wa atwaruh*, cet 2 (Kairo : Maktabah al-Nahdah al-Misriyah, 1985) p. 316

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Imam Syafii takes the middle ground between the ahlu al-ra'yi and the more moderate ahlu al-hadith between the experts of ra'yu and ahlu al-hadith. Various thoughts in ushul fiqh are outlined in a famous work namely "ar-Risalah" containing formulations and methods of thinking as well as basic principles in carrying out istinbath law or Ijtihad. On this basis in performing istinbath law, Imam Syafii uses steps namely through the Koran, Hadith, ijma', qiyas and istishab. In the hadith Syafii uses khabar ahad if the raw is tsiqat (strong and trustworthy) and does not require having to be famous as Imam Malik. Syafii also did not use istihsan as Abu Hanifah even he refused.

After the Syafii school also appeared the Hanbali's School. This school was attributed to its founder Ahmad Ibn Hanbal (164 - 241 AH). Ahmad Ibn Hanbal is known as an expert on hadith, this is seen in his work "Musnad Ahmad Ibn Hanbal", although he was a student of Imam Shafi, Ahmad Ibn Hanbal appeared with his own thinking patterns with the theory of the law of the Koran, hadith, ijma', qiyas, istishab, maslahah al- mursalah and sad al-dzariah. With regard to traditions, he prioritizes mursal traditions and da'eef traditions rather than the use of qiyas. This school also prioritizes the opinion of friends, although alone as a reason to leave the qiyas. Qiyas will be used as a proposition, if an emergency, which does not find an answer in the Koran, hadith despite the hadith da'eef and the opinion of friends. In this case, Ahmad Ibn Hanbal is more normative or textual in nature and does not use ra'yu.

Social Change as a Method of Developing Ijtihad

In the historical trajectory of Islamic law, the existence of Ijtihad and social change are two things that have been realized. Ijtihad is the legal proposition after Alquran and Hadith, where Ijtihad contributes a source of dynamics to the Qur'an and Hadith. Whereas social change has also brought itself to a very long time, it can be said that the age of social change is older than the age of Ijtihad.

The long journey of social change has made a major contribution to the formation and development of law. Social change has succeeded in dynamizing the law along with the legal movement. Social change descends into material and selection of legal formulation. But when the question arises about the capacity for social change whether as an argument, method or theory becomes a lengthy discussion that needs to be emphasized, even though open debate with different rationale.

In the conventional legal perspective, the existence of social change is placed as one of legal theories which is then called the "social change theory" theory.⁶ This theory explains the operation of law in society raises certain situations. If the law is effective it will cause changes and changes can be categorized as social change. A social change is nothing but a collective deviation from an established pattern.⁷ If the social change of a theory, in the theory there are several things namely: there are symptoms observed, the symptoms are interrelated, logical and systematic relations, there are generalizations, deductive analysis and corresponds to reality, can be proven. This indicator shows that social change in legal perspective becomes a legal theory.

Unlike the case with Islamic law, although there is no confirmation whether as an argument, method, theory and others, this paper places social change as a method of developing Ijtihad. This means that social change can be taught as a legal proposition from the method of developing Ijtihad whose capacity is the same as *ijma'*, *qiyas*, *istihsan*, *maslahah al-mursalah*, *sad-dzarai* and others. There are several reasons for putting social change as a method of developing Ijtihad, namely:

1. Social change is a necessity and something that is certain to happen is desired or not (Surely Allah ¹² does not change the condition of a people, until they change the situation that is in themselves. Qs. Ar-Ra'd: 19). This means that social change becomes a necessity. When this is associated with Islamic law the contribution of social change becomes the solution to encourage more dynamic and contextual law. Here the role of social change is not only a source of legal raw materials but also a method.
2. Putting social change as a method of Ijtihad, isn't this new idea already carried out by Umar Ibn Khatthab who is brilliant and controversial friend in performing jihad, Imam Syafii with *qaul qadim* and *qaul jadid*, al-Thufi with the concept of *maslahah* and finally Ibn Qayyim al -Jauziyyah with the rules - the rules of social

⁶ Teori berasal dari bahasa Yunani secara etimologi berarti memandang, memperhatikan, pertunjukan. Sedangkan secara terminologi teori adalah pendapat yang dikemukakan sebagai keterangan mengenai peristiwa, kejadian yang sebenarnya serta bisa didefinisikan sebagai pendapat, cara atau aturan untuk melakukan sesuatu. Ada tiga hal yang harus diketahui tentang teori : (1). Teori merupakan suatu proporsi yang terdiri dari konstruk yang sudah didefinisikan secara luas sesuai dengan hubungan unsur – unsur dalam proporsi tersebut secara jelas. (2). Teori menjelaskan hubungan – hubungan antar variabel sehingga pandangan yang sistematis dari fenomena yang diterangkan variabel – variabel tersebut dapat jelas. (3). Teori menerangkan fenomena dengan cara menspesifikasikan variabel yang saling berhubungan

⁷Soerjono Soekanto dan Mustafa Abdullah, *Sosiologi Hukum dalam Masyarakat* (Jakarta, Rajawali Press, 1987) h. 242. Lihat pula, Abdul Manan, *Aspek – Aspek Pengubah Hukum*, h. 23 - 24

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change. Although legal practitioners place their thinking as a theory of social change, in reality these figures interpret that social change is actually a method of Ijtihad. This is evident from the breakthrough of Umar Ibn Khattab to change the law of thalak, the criminal law of the perpetrators of zina muhsan discarded for a year, restricting the mustahik of zakat converts and others. Although many see these cases based on urf, istihsan or maslahah, this is certainly not independent of social change. When social change is analogous to urf, istihsan, maslahah or the other, there is no difference with social change as a changing aspect and method of determining the law.

3. There is a tendency for jurists to indirectly ideologize social change as a method, although it is not explicit to say it, as JND Anderson and Jhon L. Esposito's research concludes that the method generally developed by Islamic reformers in solving legal issues still relies on partial approach by exploiting the talfiq and superstitious methods. This means that in responding to social change the Mujtahids still maintain an established method (uhul fiqh) and have not been satisfactory. This is where it needs to be emphasized that social change can be a legal method to enrich the ushul fiqh method.
4. When social change is placed as a method of Ijtihad, this places that the position of social change is no different from other Ijtihad methods such as urf, istihsan maslahah, maqashid al-shariah and others. This can be seen, in terminology the method is defined as the way or means that must be taken to achieve a goal. Function method means as a means to an end. Method is defined as the science of the method (science of method). The method is a regular way to achieve a desired goal. In scientific studies the method concerns the problem of how to work to be able to understand the object of the science concerned. Each branch of science develops methods, namely knowledge about the various ways of working adapted to the object of study of the relevant sciences. Maybe science often changes, but what doesn't change is method, because the essence of science is a method.⁸

⁸ Sabian Utsman, *Dasar-Dasar Sosiologi Hukum* (Yogyakarta : Pustaka Pelajar, 2009) p. 75

CONCLUSION

The thoughts in this paper are limited to the idea of placing the concept of social change as a method of developing Ijtihad not as a theory laid down by other legal practitioners. Interestingly, when there is no Islamic legal literature that integrates social change as a method or theory, this paper leads to the conclusion that social change is a method. A method has an important role in the development of Ijtihad. The emergence of Ijtihad is a response to social change, as other methods of Ijtihad such as qiyas, ijma', istihsan, troubles al-mursalaha, maqashid al-sharia and others.

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