

The Influence of Prophet Muhammad's Thought on Ijtihad

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Abstract

This study is based on library research through qualitative method research. The *mutasyabih* verses in Quran are greater in number than the *muhkam* (*obvious meaning*), it appears the various methods of ijihad and method of thinking to explore the formulation of laws and wisdom. The conflict is raised as a consequent in misunderstanding of doctrine of ideological religion. Further, the Muslim peoples are dragged into radicalism and liberalism leads to monolithic prejudice, religion doctrine as the most right ones, making the Muslim peoples to be radical, terrorism with bombing, ideological violation, and intellectual violations. Obtained The Prophet Muhammad with al-*Qiyas and istihsan*, after he passed away, movement of thought and politic appears that in turn leads to raised conflict and clash. There are two power of *manhaj al-fikr* (method of thought) by the companions. First group observes that Islam as a rational religion and its law is contextual. This group has figure such as Imam Ibnu Mas'ud. Second group asserts Islam as a dogmatic religion with its law that is textual, and the figure of this group is Imam Ibnu Abbas. Although this movement is considered as movement in thought of Islamic law and law methodology, *Ahl al-ra'y* inspired by the thought of Ibn Mas'ud and *Ahl al-hadith* inspired by the thought of Ibn 'Abbas. Imam Abu Hanifah using inductive theory, as a follower of *Ahl al-ra'y*, developed a new theory *istihsan* by discarding the *qiyas* theory and practicing other primary method based on justice and truth. Meanwhile, Imam Syafi'i using the deductive method came and formulated and developed the theories of *usul fiqh* systematically.

Keywords: Ijtihad; prophet Muhammad; islamic thought; qiyas; istihsan

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1.0 INTRODUCTION

Prophet Muhammad has taught *manhaj al-ijtihadi* to extract the law from the Nash literature and *manhaj al-ilmi* to produce theories of science. As a result, human mission as khalifah might possibly be tended to *basyariyyah* or *ibadiyyah*. If human position as khalifah governing the universe tends to *basyariyyah*, consequently, his thought, analyze and investigation will lead to negative manner, far from God, human will be slave of their own will, far from humanity, even more despise than animal. In contrast, if their attitude as khalifah are more dominating than *basyariyyah*, human being will be *ibad al-rahman*, his thought, analyze and the research will yield positive effect on the universe. In life of Muhammad as the God's messenger and the prophet, his *basyariyyah* is only existed as instrument to deliver psychological questions. The position of Muhammad as psychological prophet is superior to emotion, and when his biological do mistaken the psychological would directly take over. In other words, it is noteworthy that the entire of Muhammad's life is psychologically controlled; this is so-called *mi'raj* in between the creature and Khaliq.

2.0 THE PROPHET MUHAMMAD AND THE METHOD OF IJTIHAD

That the Allah has completed the creation of universe, Rasulullah mission is to deliver the al-Qur'an as base and guide has also been accomplished. Prophet Muhammad has taught *manhaj al-ijtihadi* to extract the law from the Nash literature and *manhaj al-ilmi* to produce theories of science. Ulama have reached one word that the Prophet Muhammad's ijihad does not relate to *aqidah* and basic matter, however, it concerns with *syar'iyyah* and the matters related with human-social life. The Prophet Muhammad obviously will carry out the ijihad if only the Nash al-Qur'an in-descended. Almost of ulama deny that the Prophet Muhammad has carried out the ijihad, like Ibn Hazem, even though they implicitly admitted it as long as the al-Qur'an is still the fundamental, and the ijihad will bring to wisdom. All the form of laws with wisdom are *ijma'* of the prophet's companions, *tabi'in* and *mujtahid*, and this wisdom is the aim of *syara'* which obtained through *qiyas*, *istihsan*

Ijtihad The Prophet Muhammad with al-Qiyas

Prophet Muhammad uses the ijihad with *qiyas* when a woman named of al-Jariyyah al-Khat'amiyyah comes to visit the prophet asking about her mother who has never done hajj during her life, because of her mother disability as mentioned in conversation with the prophet:

Meaning: In truth when a woman named of al-Jariyyah al-Khat'amiyyah comes to visit the Prophet Muhammad, and says "Oh Rasulullah! In truth my mother has a nazar to do the hajj, but she passed away. If I do the hajj for her, does it give her benefit?. Prophet Muhammad asks her: Yes, do the hajj for her, how about if your mother had debt, will you pay for her debt? Fulfill you right of Allah, in truth obligation to Allah is primarily to fulfill.

Ijtihad The Prophet Muhammad with Istihsan

When organize a war strategy during the war of Badar, Rasulullah keeps stay away from water sources, however a Rasul's companion, al-Khibab b. al-Mundir said: “Oh Rasulullah, is it revelation from Allah? If yes, so we follow it, but if through prophet’s ijtihad, it is better to approach and authorize the water sources. Then, the Prophet changes his strategy and follows his companion suggestions to authorize the water sources.

As aforementioned, the ijtihad of the Prophet Muhammad does not relate to the matters of theology and syar’i, however it does relate to social reality in community that is mentioned in the al-Qur’an. To the matters that connected with entire community such as to execute of Uhud and Badar war hostages, he will definitely do the ijtihad by involving all companions, but, he will do by himself for the matter related to domestic matters. In the ijtihad, the Prophet Muhammad uses two kinds of methods, for example qiyas and istihsan. First method deductively places the al-Qur’an as inspiration and base for istinbath al-hukm, this method is identically same with qiyas,

Ijtihad with the istihsan is raised due to the irrelevant of qiyas with maqasid al-syar’i and inability to solve the community’s matters, and it is faced to two matters, so they have to take the good one. Rasulullah receives a guide from the Allah or carry out the ijtihad by using the mind power to determine the one of the two good matters, like the case of war hostages. The Prophet Muhammad determines the law stipulation through inductive method in between two of ilhaq (reference) and zahir (clear), which are “to release the war hostages”, on the other side, he is faced to ilhaq khafi (obscure) such as “exterminate all the hostages”. The prophet prefers to release the hostages of the Badar war, hoping that all the hostages can give benefit to teach mukmins, in addition to get ransom for supporting the battle. In truth, the prophet has been aware by the Allah through His saying as mentioned in Surah al-Anfal verse 67, which is to kill the entire hostages by considering the political and peaceful stability. War is end, but the real situation is still under constellation. If the war of Badar hostages are released, it is scared that they will reunite the strength and take revenge for their lost.

3.0 RESEARCH METHODOLOGY

This is a qualitative research which consists of documentary analysis on various primary sources of data.

4.0 FINDINGS AND DISCUSSIONS

Influence method ijtihad of The Prophet Muhammad’s The Companions’

After the Prophet Muhammad passed away, the companions have no place to asking. In other side, the change occurred rapidly in community gives effect on the way to think, as a consequent of the rapidly growth of Islam. The companions keep expand and continue the spreading of Islamic ideology around the whole countries, thus they have to face challenges and new matters that never happens before. Further, when Islam conquered Roman in the west and Persia in the east. *Fuqaha* of the prophet’s companions at that time like Ibn Mas’ud, ‘Ali b. Abi Talib and ‘Umar b. Khattab are dare to carry out the ijtihad frankly. In deciding a law, the companions refer to the al-Qur’an and al-Hadits consecutively, and if there is no exist in both the al-Qur’an and al-Hadits, they will turn do the ijtihad (al-Dawlabi 1960).

Under the government of khalifah Abu Bakr and Umar b. Khattab, the companions are not allowed to leaving out of Madinah. It is aimed to make them easier for discussing when facing the newly appear matters. However, on the middle government of Khalifah ‘Umar b. Khattab and ‘Uthman b. ‘Affan Islamic ideology is expanded to whole countries by the companions. This matter then gives an effect on different methods of *istinbat* and law-stipulations. Among the companions who become mufti are ‘Abd Allah b. ‘Umar in Madinah. ‘Abd Allah b. ‘Abbas in Makkah, Ibn Mas’ud in Kufah, Aba Musa al-Asy’ari and Anas b. Malik in Basrah, Mu’adh b. Jabal, Ubadah b. Samat and Abu Darda’ in Syam, ‘Abd Allah b. ‘Amr b. al-As in Egypt.

The good deed done by Abu Bakr in determining the law is referring to the al-Qur’an and al-Hadits. If the matter does not exist in those of the al-Qur’an and al-Hadits, he then discusses it with the companions. The same thing is also done by Umar b. Khattab when deciding the law which does not exist in the al-Qur’an, al-Hadits. ‘Umar b. Khattab will carry out the ijtihad with the companions, and so with Uthman b. ‘Affan, ‘Ali b. Abi Talib, Ibn Mas’ud and others companions.

The ijtihad at that time does not have a clear limitation. However, they keep refer to Hadits *qawl* dan *taqrir* belong to the Prophet Muhammad, when sending Mu’adh b. Jabal to Yaman.

Rasulullah S.A.W sends Mu’adh b. Jabal to go to Yaman, and Rasulullah says “How will you enforce the law when asked about a matter?” Mu’adh then answer: “I will enforce the law with Allah’s Holy Book. Rasulullah ask: “If you do not find it in Allah’s Book? Mu’adh answers” I will enforce the law with al-Hadits, Rasulullah then ask again: if you do not find it in Sunnah Rasulullah and Allah’s Book, Mu’adh answers: I will do ijtihad with my opinions. Then Rasulullah clap his chest, and says: all the praises to Allah who has given the understanding to Allah’s messenger on the matters of the messenger sincere.” (Abu Dawud, 1997)

As a result, the companions then develop the ijtihad using various ways. Among them do the ijtihad through *qiyas*, *istihsan*, *maslahah*, and *syadd al-dhara’i*. Other companions trying to translate the *Nash* texts through *takhsis* in general form or turning away the *haqiqi* meaning to *majazi* or habiting *mafhum mukhalafah* and *mafhum muwafaqah*. The companions’ ijtihad are inspired by the Prophet Muhammad’s thought, because of the era of the prophet is different with the companions. The development of the ijtihad during era of the companions is very dynamic, thus a various methods of ijtihad are appeared. When the ijtihad is used during the governing of Khalifah Abu Bakr and Umar Bin Khattab, Islam is thought to have a new power in world war in between of the war competition of Rome empire and Persia. After defeated Persia in the east and Roman in the west, Islam obtains extraordinary power in economic and military aspects to develop Islamic civilization, assembling Islamic peoples and expanding Islamic ideology. The presence of Islam to eliminate ‘*Asabiyyah* (chauvinism) tribe and region, because in fact that there is indifferent among Arabian, Roman, and Persia except to abide on *Tauhid* banner, “There is no God except Allah”. In solving the problems appeared, new methods of thinking present to solve the cases as will be described below:

It is found that the conflict is the continuation of intellectual differences between *Ahl al-ra'y* inspired by the thought of Ibn Mas'ud and *Ahl al-hadith* inspired by the thought of Ibn 'Abbas. Imam Abu Hanifah, as a follower of *Ahl al-ra'y*, developed a new liberal theory *istihsan* by discarding the *qiyas* theory and practicing other primary method based on justice and truth. Meanwhile, Imam Syafi'i came and formulated and developed the theories of *usul fiqh* systematically. This created an open conflict against the method of *istihsan* method by justifying that it is "invalid and prohibited." Actually, the implication of the conflict was fanaticism towards madhhab by movement of madhhab formulation and the protection themselves. The conflict affected the birth a new stream *al-Ahna'af*, which developed the thought of Imam Abu Hanifah using inductive theory as well as the stream *al-Mutakallimin* developed the thought of Imam Syafi'i using the deductive method. Meanwhile, a new complementary madhhab was born, combining the both madhhab *al-Ahna'af* and madhhab *al-Mutakallimin*. Other Fiqh madhhab were also born, such as madhhab Hanafi, madhhab Maliki, madhhab Syafi'i, madhhab Hanbali, madhhab Dawud Zahiri. Legal decision produced using Imam Abu Hanifah's *istihsan* method and Imam Syafi'i's *qiyas* method will never meet, since the *istihsan* theory uses thought as a tool for analyzing the truth of a Nas text, and in the *qiyas* theory thought is used just to compare and look for the similarity of texts. Eventhough it is concluded, that legal produce of the both Imam will meet one to another, as long as Imam Syafi'i leaves the frame of thought of the *qiyas* theory, and uses his second theory, namely *bayan*, *takhsis*, *istihna'* theory, since the theory practiced by Imam Abu Hanifah is substantially the same theory, which was practiced by Imam Syafi'i, as well as the second theory of Imam Syafi'i, is the *istihsan* theory of Imam Abu Hanifah.

The Debate Among the companions of the Prophet to the spoils

Khalifah 'Umar b. Khattab prohibits allocation of the war-seized lands in Egypt, Syam and Iraq. This decision is seemed likely controversial that consequently raises a conflict among the companions. Hence, a comprehensive discussion is held to solve the respective conflict. 'Umar b. Khattab's suggestion is then supported by 'Ali b. Abi Talib, 'Uthman b. 'Affan, Talhah and Mu'adh b. Jabal. In meantime, the others companions suggest that the war-seized treasures should be allocated as well as *al-ghanimah al-harbiyyah* like the Prophet Muhammad ever done, in which written clearly in the Allah's saying:

"In truth know it anything which you obtain as war seizing, one fifth is for Allah, Rasulullallah, Rasulullallah relatives, orphans, poor people, and Ibn al-Sabil."

Surah al-Anfal (8): 41.

In meantime, Umar b. Khattab argues it with another verse:

"Any seizing treasures (الغنى) given by the Allah to His messenger come from the cities resident, so it belongs to Allah, Rasulullallah, Rasulullallah relatives, orphans, poor peoples, and people on the journey, so the treasures are not only distributed around rich peoples among you"

Surah al-Hasyr (59): 7.

'Umar b. Khattab responses that matter by looking at the existence of two verses which extrinsically contain a contradiction. However, when they are deeply analyzed, there are no contradiction existed. It is due to the effective of the verses under circumstance in which does not give 'Umar b. Khattab a benefit if 4/5 of seizing treasures are allocated to the army like Prophet Muhammad ever done. 'Umar b. Khattab employs verse *faqy'* and finally all companions accept the respective thinking (al-Hanafi, 2000).

The Debate Among the Companions of the Prophet Muhammad Against of Heritage Treasures

About heritage in accord to two grandfathers (mother's mother and father's mother), a man comes to Abu Bakar to report about heritage: a meeting of relatives with grandfather (mother's mother and father's mother) in a group of inheritor. The matter raised is, that the position of grandfather will represent the father if the father is no longer alive, and the relatives won't get heritage consequently. Due to this matter does not exist in the al-Qur'an and al-Hadits, the prophet's companions solve it by the *ijtihad*. Abu Bakr suggests that the inheritor shall be *umm li umm* (mother's mother) but not *umm li ab* (father's mother), and the siblings do not get heritage (al-Dawlabi, 1960). Meanwhile, according to 'Umar b. Khattab that the sibling's heritage is explained in the al-Qur'an but not the grandfather's right. A friend from al-Ansar, 'Abd al-Rahman b. Sahal suggests that both *umm li ab* and *umm li umm* shall be given the same portion, because it looks like more fair and rational by reflecting the following al-Hadits.

"In truth that a man comes to the Prophet and says " In truth son of my son has passed away, how is heritage for me" the Prophet says "for you is one sixth"

(Abu Dawud, 1997).

According to the above discussion, Abu Bakr solves the problems through using the theory of *al-jam'* (compromising) that comes out from all the opinions under the *Nash* and justice consideration. The position of *umm li ab* (father's mother) to obtain the same portion as well as *umm li umm* (mother's mother) by considering that the man has major right. While, grandfather gets one sixth under circumstance referring to the Hadits, and grandfather considerably enable to represent the position of father. The siblings get a portion according to the heritage consideration as mentioned in the *Nash*.

In relation to a woman who passes away leaving inheritors for example husband, mother, mother's relative and siblings. According to the *faraid* that the husband will get half, mother gets one sixth, mother's relatives get one third, and the sibling will get nothing. The corresponding allocation is based on Surah al-Nisa:

"...if their number is much bigger so they do get one third."

Surah al-Nisa' (4): 12.

When the siblings reporting this matter to Khalifah ‘Umar b. Khattab because the allocation is seemed likely to be unfair, different prospective appears among the ulama. ‘Umar b. Khattab together with ‘Uthman b. ‘Affan, Zayd b. Thabit, and Ibn Mas‘ud suggest that the position of the siblings are equal with mother’s relatives (*musyarakah* allocation). In meantime, ‘Ali b. Abi Thalib, Ibn ‘Abbas and Abu Musa al-Asy‘ari assert that the mother’s relatives obtain 1/3 remaining as mentioned in Surah al-Nisa (al-‘Umari, 1985). Group of ‘Umar b. Khattab makes decision based on the following al-Hadits:

“Give your remaining heritage to the deserved ones who are the closest man from descending men”
(al-Bukhari, n.d.)

When seeing the text in the al-Qur’an and the apparent reality, it is conclusively to note that the sibling man does get nothing. On the other hand, it is noted in the al-Hadits that the sibling man does get remaining heritage even though it is not a form of treasures, because all the treasures have been allocated to husband, mother and 3 mother’s relatives. This decision is thought to be unfair. Therefore, ‘Umar b. Khattab makes a decision that the portion of sibling is combined with the mother’s relatives ones (al-Dawlabi, 1960).

The Debate Among the Companions of the Prophet Muhammad Against of *Iddah* of Divorced-Pregnant Woman

This matter is explained in Allah’s saying:

“*Iddah* of a divorced pregnant woman is until birthing.”
Surat al-Talaq (65): 4.

While, *iddah* of a woman left by a dead husband is mentioned in the Allah’s saying as follow:

“People who die among you and leave wives, their wives then should wait the *iddah* until four months and ten days.”
Surah al-Baqarah (2): 234.

Those of two verses explain about the *iddah* of divorced-pregnant woman and woman left by died husband. However, Allah and Prophet Muhammad have never explained the *iddah* of pregnant-woman left by died husband, neither mentioned in surah Talaq nor mentioned in surah al-Baqarah. This matter implies *ijtihad* which leads to rise of different perspective among the companions. ‘Ali b. Abi Talib suggests that the *iddah* of woman takes the longest time, which is four months and ten days, referring to *ihhtiyat* (careful). Meanwhile, ‘Umar b. Khattab and Imam Ibn Mas‘ud assert that the *iddah* should be until birthing even though it does not yet reach four months and ten days (al-‘Umari, 1985).

Accordingly, the aforementioned explanation gives an idea that the prophet’s companions have developed the method of *ijtihad* in solving any matter which does not mention in the both of al-Qur’an and al-Hadits. *Ijtihad* is done in various ways according to the Prophet’s method, such as the use of theory of *qiyas*, theory of *istihsan* and theory of *maslahah al-mursalah*. Nevertheless, their *ijtihads* are not theoretically and systematically done.

The consensus and *ikhtiaf* are sometimes held when there is a different perspective among the companions in upholding the law. The agreed laws, such as the heritage matter of grandfather (mother’s mother and father’s mother) that is not mentioned in the both of al-Qur’an and al-Hadits. The companions agree the law regarding the portion of *umm lu abb* (mother’s mother) and *umm li umm* (father’s mother) in getting the same portion by considering “bab ‘awl” (man rightful), the meaning of text in the *Nash*, and the justice as *syara’* main aim. The agreement among the companions is then so-called *ijma’*, a source of the law after the al-Qur’an and al-Hadits.

There is a different in paradigm mindset among the companions regarding the laws. In this case, author conclusively notes the present of two kinds of typology. First, a group of Ibn ‘Abbas and ‘Ali b. Abi Talib observes the *Nash* by *Nahs al-ayah* (formalistic and scriptural). Second, a group of Ibn Mas‘ud and ‘Umar b. Khattab that considers the *Nash* by contextual *ruh al-ayah* (deeply meaning). For example, in regard with the allocation of heritage: husband gets ½, mother gets 1/6, mother’s relatives get 1/3, while the siblings do get nothing. This though is based on Surah al-Nisa’ (4):12. Ibn ‘Abbas, ‘Ali b. Abi Talib, and Abu Musa al-Asy‘ari suggest that mother’s relatives do get 1/3 referring to surah al-Nisa’. Ibn Mas‘ud, ‘Umar b. Khattab, ‘Uthman b. ‘Affan and Zaid bin Thabit stipulate a law that position of siblings is equal with mother’s relatives according to *ruh ayat* and the Prophet’s Hadits (al-Bukhari, 1997).

It is noted in the al-Qur’an that the sibling man actually does not get any portion; however, the al-Hadits says that he gets the remaining ones. Nevertheless, it is not a treasure, because, all treasures have been allocated to husband, mother and 3 mother’s relatives as well as mentioned earlier. This matter is felt unfair, therefore, ‘Umar b. Khattab decides that portion belongs to the siblings is combined with the mother’s relatives (al-Dawlabi, 1960). The respective thought is then accepted because ‘Umar b. Khattab looks it by *ruh* and by considering al-Hadits and justice. It will be unfair if mother’s relatives get portion while the siblings do get nothing. Both Ibn ‘Abbas and ‘Ali b. Abi Talib look it by the *zahir* and *ihhtiyat* (careful).

It is worth noting that the mindset of Ibn ‘Abbas is formalistic-scriptural because he looks the *Nash* by the *zahir*. This thinking then leads to a perspective that Islam is a dogmatism religion, a religion obtained by unthinking and without the *ijtihad*, and all *syari’at* are considered as devotion. As a result, this thought then raises a method that is so-called *qiyas*. *Qiyas* is a theory in which the role of mind is so limited, making analogy of law according to the law without the *Nash*. While, Ibn Mas‘ud looks the *Nash* by *ruh al-ayah*, asserting that Islam is a rational religion. If there is a law which on contrary with human mind, then it is required to do the rational interpreting and explanation. This thought then raises a method that is so-called *istihsan*, hoping this method can give justice and benefit to society.

Influence of The Prophet Muhammad’s Thought on Mujtahid

There are several of thinking movement and political motions present after the Prophet Muhammad passed away. Author notes the present of two large thinking movements. First group looks Islam through a textual approaching. This group is composed of Imam Ibnu Abbas,

Talhah, Aisyah, Abdullah Ibn Umar and other companions. In tabi`in period, several characters of *Ahlu al-hadits* appear like Imam Sa`id Ibnu al-Musayyab and a *mujtahid Ahlu al-hadits*, Imam Malik that is known with his book *al-Muwatta`* and Imam Syafi`i with his *al-Risalah*. Otherwise, second group looks Islam by contextual approaching. This group is composed of Imam Ibnu Mas`ud, Umar bin Khattab, Ali Bin Abi Talib and others companions. In tabi`in period, several numbers of characters appear such as Imam Ibrahim al-Nakha`i and a *mujtahid Ahlu al-ra`yi* that is Imam Abu Hanifah who is known for his *istihsan*.

Mindset of Imam Abu Hanifah with his *istihsan gairu al-muhaddad* leaves the theory of *qiyas* and establishes another method according to justice, beneficiation, and truth. This method is then used as reference to determine the truth of the *Nash* texts for implementation purposes irrespective of its liberality. The *Nash* texts (al-Qur`an and al-Sunnah) then become *masadir al-ahkam*, making this method enable to pioneering the development of Islamic law methodology in Iraq where at that time Iraq is the center of Islamic civilization in the world. Moreover, with this method Imam Abu Hanifah falls down the political power of Arabic sentries Bani Umayyah. On the other hand, Imam Maliki dominates the land of Hijaz, the place of *Rasulullah* in which then becomes the center source of *ahl al-Hadits*.

The present of those of two thinking movements imparts to a distinct paradigm on thinking, since both of their social live and intellectuality are indeed different. Consequently, they collide to each others. The different is becoming crucial when power transition from Khalifah Bani Umayyah to Khalifah Bani Abbasiyyah. Imam Malik as an importance character of law in Madinah protests toward the regulation of Bani Abbasiyyah that making mazhab Hanafi as state legal constitution.

Afterward, it is told that Muhammad bin Idris al-Syafi`i comes to Iraq, founding father of *usul fiqh* who describes his thought theoretically, systematically and academically. His thought is moderate in which neither *hijazi* nor *Iraqi*, expecting that it can compromise the two distinct thinking methods. The present of Imam Syafi`i however, is enhancing the conflict, especially when he asserts paradox statement on the *istihsan* belongs to Imam Abu Hanifah by “forbidden and abolishment”. On this conflict, Imam Syafi`i says *man istahsana faqad syarra`a*, “Whoever to perform *istihsan*, so he is able to make syari`at”. The position of Imam Syafi`i as founding father of *usul fiqh*, however, is unable to face with the strongly *istihsan* of Imam Abu Hanifah which has already been rooted in the Iraq. Imam Syafi`i then decides to migrate to the Egypt. Nevertheless, Imam Syafi`i statements have given a significance implication on the development of Islamic law methodology.

It is noticeable that the migration of Imam Syafi`i is not ending the conflict; however, it then extends to next generation. Al-Jasas, an ulama of mazhab Hanafi carries out antithesis on Imam Syafi`i thesis by giving harsh statement “whoever forbids and abolishes the *istihsan* is actually he does not understand the real meaning of the *istihsan*. If he understands, hence he will not say it (forbidden and abolishment)”. On the other side, Imam al-Ghazali tries to defend Imam Syafi`i by saying that “Imam Syafi`i talked about *istihsan* without understand the meaning of *istihsan* is an impossible thing”. This difference thinking, in turn leads to thinking collision and excessive fanatic on *mazhab*. In fact, the difference should enrich the knowledge, and the conflict of these of two *mazhab* influences the development of Islamic law methodology in the world even until today.

The law of Abu Hanifah through the *istihsan*, and the law of Imam Syafi`i through the *qiyas* are actually difficult to synergize. This is due to the different of mindset between the both laws. The theory of *istihsan* asserts that the mind has absolute power to analyze the truth of *Nash* texts for implementation, while in the theory of *qiyas* the *Nash* texts have absolute power and the mind is only to interpret the matters that are not mentioned in the *Nash* texts. The both laws actually can be synergized if Imam Syafi`i leaves his mindset of *qiyas*....? In the time of Islamic civilization victory in Iraq, the mindset of *istihsan* becomes driving force of Islamic law methodology with Imam Abu Hanifah as the icon. It is expected that the *istihsan* is more suitable to be implemented in order to face the globalization era, determining the truth of law *istinbat*. Thus, *manhaj* of the both of great Imam is then considered as two wings that guard the development of Islamic civilization priors to nation's *baldatun tayyibatun wa rabbun ghafur*

Influence of The Thought of Prophet Muhammad The Methods of ijtihad

According to the way of thinking belongs to the Prophet Muhammad, it can be observed two kinds of typology of thinking, for example the theory of *qiyas* developed by Imam Syafi`i and the theory of *istihsan* founded by Imam Abu Hanifah. The only existing matter is that Imam Syafi`i establishes the theory of *qiyas* as the only one *manahij al- istinbat* and denying another one. It then gives an impact that the Islamic law is seemingly intolerance (*la rahmat li al-`alamin*). Differently, Imam Abu Hanifah's thought is simpler, using the theory of *qiyas* if the theory is felt contradictory with *maqasid al-syar`iyyah*. Imam Abu Hanifah will leave the *qiyas* and use the *istihsan*, “favorable construction, or juristic preference” using the mind as tool to analyze the *Nash*.

The conflict is actually a continuity of the difference thought of *Ahl al-ra`y* inspired by Ibn Mas`ud and *Ahl al-Hadith* based on Ibn `Abbas mindset. Imam Abu Hanifah as successor of *Ahl al-ra`y* develops the theory of liberal *istihsan* leaving off the theory of *qiyas* and then using another theory which is based on justice and truth. In meantime, Imam Syafi`i is appeared to formula and asserts the theory of *usul fiqh* which is more systematic and academic with a moderate mindset. In fact, his presence imparts a conflict arguing the *istihsan* by his “forbidden and abolishment”. The conflict then implies to fanatic and efforts in making a justification on their *mazhab*. As a result, *al-Ahnaaf* ideology appears through inductive theory that is developed by Imam Abu Hanifah, and *al-Mutakallimin* ideology with its deductive by Imam Syafi`i. Otherwise, another *mazhab* is then present as combination of the both *mazhabs*. In addition, there are other *mazhab* that exist then such as *mazhab* Fiqh, *mazhab* Hanafi, *mazhab* Maliki, *mazhab* Syafi`i, *mazhab* Hanbali, and *mazhab* Dawud Zahiri.

Although the law stipulation of the *istihsan* and the *qiyas* is different in terms of mindset in which the *istihsan* is based on mind power in analyzing the truth in the *Nash*. While, the position of mind in the *qiyas* is only aimed for analogy. The stipulation of the both theories can be synergized as if Imam Syafi`i leaves off his mindset of *qiyas*, using theories of *bayan*, *takhsis* and *istithna`*, because of the theory used by Imam Abu Hanifah is actually same as well as the theory used by Imam Syafi`i. In spite of their difference in name and mindset, the laws have been stipulated since the time of the Prophet Muhammad, the companions and the *mujtahid al-musammaa* to give benefit in the world and the hereafter. *Malikiyah* and *Hanabilah* are allowable *mazhab*. *Hanafiyah* is referred to *maslahah al-mursalah* through the *istihsan*, because the *istihsan* uses *al-maslahah al-mursalah* (al-Zuhaili, n.d.). Imam Syafi`i suggests that the *istihsan* should properly be called as *masalih al-mursalah* as well as Imam Maliki's language. *Jumhur al-ulama* agree that *maslahah* is acceptable in Islamic *fiqh* and each law that contains of *maslahah* shall definitely be taken as reference as long as following the *Nash* and *al-maqasid al-syar`iyyah*. If there is a contradictory with the *Nash*, the theory of *al-maslahah al-mursalah* would not be acceptable as *hujjah syar`iyyah*.

Therefore, its position cannot be accepted as indispensable *hujjah*. In other words, it shall be rejected as indispensable *hujjah* (al-Zuhaili, n.d.).

Theory of *istihsan*, theory of *qiyas* and *al-maslahah al-mursalah* has been known to have similarity and also different to each of others. The same is the process of *ijtihad* in carrying out *istinbat al-ahkam* and *istidlal al-ahkam* by referring to the *Nash* in order to give *maslahah* to society. The only difference thing is merely the theories themselves. In terms of methods, the *qiyas* uses the mind as bridge to assume the law by comparing with the others laws having the *Nash*, or to exhibit the equal law *مقيس عليه* in the equal law (*مقيس*) because the both of laws agree about the *illat* that its language is difficult to be understood (al-Bardisi, 1987). Meanwhile, the *istihsan* and *al-maslahah al-mursalah* are less-conducted *ijtihad* (*ghayr al-muhaddad*) using the power of mind as tool to analyze the truth of the *Nash*, or phenomenon, moving from the *qiyas* or improperly common stipulation with *syara'*, towards the *Nash* or law stipulation according to that is written in the *Nash*.

In spite of difference on the reference, *al-maslahah al-mursalah* is theoretically a part of the *istihsan* belongs to Imam Abu Hanifah. The *istihsan* means a movement from the stipulation of *qiyas* or improperly common rule with *maqasid al-syar'i* towards to the al-Qur'an, al-Hadits, *ijmak* and *darurah*, respectively. While, the *al-maslahah al-mursalah* is defined as a movement from the *qiyas* to the *maslahah* which is synergic with *syara'* and there is not found a particular evident to reinforce or repulse it either (Abu Zuhrah, n.d.). Abu Ishaq al-Syatibi, an expert in *usul al-fiqh* from *mazhab* Maliki uses *juz'i* advantageous as representative of *kulli* evidents (al-Syatibi, 2002). It means if there is *ta'arud* between the *qiyas* and the *al-maslahah al-mursalah*, so the *al-maslahah al-mursalah* is taken as stipulation and the *qiyas* is left off. Consequently, if the *qiyas* is sustained in the certain matters, the aims of *syara'* in Islamic law will be unreachable. He asserts the meaning of *istihsan* in which to put *maslahah al-mursalah* as priority rather than the *qiyas*. Al-Syatibi also says that the *istihsan* does not directly refer to mind and desire, however, it is based on apparent evident in respect to the aims of *syara'* (*maqasid al-syar'i*). Although the utilized methods are indeed different among the ulama, the theory of *maslahah* is actually found on all the present *mazhab* if it is observed and clearly analyzed

5.0 CONCLUSION

In this section author briefly concludes the study systematically, hoping that it can be understood by the readers correctly. In addition, author implies that the Prophet Muhammad's thought shall properly be taken as inspiration and base in order to correcting and developing of Islamic law methodology, so it can remarkably be implemented in globalization era. Below are the conclusions of the study:

- Prophet Muhammad is indicated as the *Rasul* and the Prophet by the Allah. When Allah indicates Muhammad as His *Rasul*, all of his psychological ability (spiritual questions) dominates rather than his biological elements of the five senses (*basyariyyah*). However, when he is indicated as the Prophet, so he will carry out the *ijtihad* as well as *mujtahids* leads to the created *mushawwibah* and *mukhattiah* theories. Allah will directly remind the Prophet for his wrong.
- There are different perspectives among ulama regarding the position of Prophet Muhammad. First group says that the Prophet Muhammad has actually carried out *ijtihad*. This first group is composed by *jumhur al-ulama* of *ushul al-fiqh*, majorly *mazhab* Syafi'i ulama, some of *mu'tazila* groups. Second group pioneered by Ibn Hazm says that the Prophet Muhammad has never done *ijtihad*. He even says "whoever says the Prophet Muhammad has carried out *ijtihad*, they are truly great *kafir*, referring to verses in the al-Qur'an.
- There are two kinds of typology of thinking existing in the time of companions. First group regards Islam through textual approaching. The characters of this group are Imam Ibnu Abbas, Talhah, Aisyah, Abdullah Ibn Umar and others companions. In period of *tabi'in* there are a number of *Ahlu al-hadits* characters presents, such as Imam Sa'id Ibnu al-Musayyab and a *mujtahid Ahlu al-hadits*, Imam Malik who is popular with his *al-Muwatta* Book and Imam Syafi'i with his *al-Risalah* Book. Second group consists of Imam Ibnu Mas'ud, Umar bin Khattab, Ali bin Abi Talib and others companions, looking at Islam by contextual approaching. In the period of *tabi'in*, a number of character for this group existed such as figures of *Ahlu al-ra'yi*, Imam Ibrahim al-Nakha'i and a *mujtahid Ahlu al-ra'yi*, Imam Abu Hanifah who is famous with his *istihsan* method.

Imam Abu Hanifah as successor of *Ahl al-ra'y* develops theory of liberal *istihsan* leaving off theory of *qiyas*. He then uses another method which is majorly concerned to justice and truth. Meanwhile, Imam Syafi'i comes with his systematically and academically theory of *usul fiqh* through a moderate mindset. Group of *al-Ahna'f* then develops inductive theory through the Imam Abu Hanifah's thought and *al-Mutakallimin* group with their deductive theory expands the Imam Syafii's thought. The associated *mazhab* is then come out from the both of *mazhab* of *al-Ahna'f* and *mazhab* of *al-Mutakallimin*. In addition, others *Fiqh mazhab* are appeared such as *mazhab* Hanafi, *mazhab* Maliki, *mazhab* Syafi'i, *mazhab* Hanbali, and *mazhab* Dawud Zahir.

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