

THE PRINCIPLES FOR *IJTIHÂD* IN RESPONSE TO THE CONTEMPORARY PROBLEMS

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Abstract: This article focuses on the qualifications a *mujtahid* should meet in responding to current problems in the modern era. The author argues that the quality of hadith is influential in legal deduction of *taklîfî* rulings which might fall under the category of: *wâjib*, *sunnah*, *mubâh*, *harâm* and *makrûh*. *Mujtahid* is also required to be able to understand consensus arguments (*ijmâ'*) amongst scholars so that no *mujtahid* can exercise their legal deduction which contradicts with the existing consensus. It is also urgent that a *mujtahid* understand the position of the analogy both theoretically and practically and understand the differences between the methods of *ijtihâd* starting from the phase of revelation, the period of Companion of the Prophet to the time of the legal school of thoughts. On top of the above-mentioned conditions, a *mujtahid* would only be able to respond to contemporary issues when he or she has an adequate understanding of the *mashlahah* or what is popularly known as public interest in Islamic legal discourse.

Abstrak: Rambu-rambu Perumusan Hukum dalam Merespons Masalah Kontemporer. Artikel ini menfokuskan pada standar persyaratan yang harus dipenuhi seorang *mujtahid* dalam merespon masalah kekinian di era modern. Penulis mengemukakan bahwa bahwa kualitas hadis berpengaruh dalam menyimpulkan hukum *taklîfî* yang berada pada tataran: *wâjib*, *sunnah*, *mubâh*, *harâm* dan *makrûh*. *Mujtahid* juga dipersyaratkan mampu memahami argumen konsensus (*ijmâ'*) antara ulama sehingga tidak ada *mujtahid* yang melakukan *istinbâth* hukum yang berlawanan dengan konsensus yang ada, memahami kedudukan analogi baik secara teoretis maupun praktis dan memahami perbedaan metode *ijtihâd* lintas masa mulai fase turunnya wahyu, masa sahabat, masa tabiin dan masa mazhab. Di atas semua persyaratan tersebut di atas, seorang *mujtahid* hanya akan mampu merespons isu-isu kontemporer ketika memiliki pemahaman yang memadai tentang teori *mashlahah* atau *public interest*.

Keywords: Islamic law, *ijtihâd*, *mujtahid*, contemporary issues

Introduction

Ijtihâd is a necessity towards the society as *al-nushûsh thâbit wa waqâ'î mutaghayyirah* (verses will be remained but events continuing). The role of *mujtahid* is highly anticipated with the thought in *istinbâth* of the law in Islam to solve social problems that occurred all this while. On the other hand, the *ijtihad* that does not fulfill the qualification will cause ruination and prolonged social conflict. These procedures and rules were made was not intended to narrow the *ijtihad* process and close the *ijtihad* but it is an effort to perpetuate the process of *ijtihad* until it can produce a 'product' that is suitable with modern spirits and needs.

Islamic law is flexible the methods and approaches that some Muslim scholars have developed did work on the nerve of this divine law.¹ Relating the rules of *ijtihad* with the modern's knowledge and with the discourse of collective *ijtihad*- integrative will produce a better *ijtihad*'s products. Professionalism and the expertise in comprehending a particular knowledge will cause an individual to study a particular knowledge deeply until cooperation with the other party will be extremely needed in solving society problems that become more complex. Besides, the energy needed to solve the society problem is getting bigger as the complexity of problems faced by the society is rapidly grown quantitatively and qualitatively.

The objective of this writing is to answer a question: how to coordinate the rules of *ijtihad* with the current social system and modern age. With descriptive analysis, the author has prepared this writing with a critical and exact writing based on data accumulation gained from the documentation technique. The seconder source that the author used, divided by two sources that is contemporary reading source and classical references that emanate during the early age of sects progression. Basically, sects had given an intellectual prosperity and a significant reference towards the Islamic knowledge structure with its advantages and disadvantages. Meanwhile the contemporary books try to 'read' the current problems and questions as the rapidly growth age nowadays.

Terminologically, *ijtihad* means to give all out the efforts. This term is being used specifically on a task that needs 'energy plus'. In terms of Jurisprudence Islamic Scholars, this term means to give out the efforts in producing and resulting sharia jurisprudence and law.² In terms of quality, *ijtihad* can be divided into *ijtihad al-tâm* which means to give out all the efforts until they feel do not have any energy greater than that (*'an yubadzdzil al-wus' fî al-thalab ilâ an yuhiss min nafsih bi al-'ajz 'an mazid thalab*). Whereas *ijtihad al-nâqish* means thinking seriously and critically in producing and resulting the jurisprudence law in Islam, in terminology of Aḥmad ibn Ḥanbal: *al-nazr al-muthlaq fî ta'arruf al-ahkâm al-syar'iyah*.² *Ijtihad* is never ends as being mentioned in Muwaqafat, first, it is impossible for

¹Fauzi Saleh, "Problematika *Talfiq* Mazhab dalam Penemuan Hukum Islam," in *Islamica*, Vol. 6 No. 1 (September 2011), p. 66.

²Abû Muḥammad Muwaffiq al-Dîn 'Abd Allâh ibn Aḥmad ibn Muḥammad ibn Qudâmah al-Jamâ'ilî al-Muqaddasî al-Dimasyqî al-Ḥanbalî Maqdisî, *Rawdhat al-Nazhîr wa Jannat al-Manâzhir*

ijtihâd to be stopped except with the ended of *ashl al-taklîf* (responsibility) which means the Resurrection Day. Second, it is impossible for *ijtihâd* to be ended before this world ruins.

As a jurisprudence product that being responsible, scholars restrict a few criteria in qualifying a person to become a *mujtahid*. First, comprehend the Arabic language until he can understand the term extrinsically and intrinsically. Second, comprehend the interpretation of al-Qur'an especially that are related with jurisprudence and law (*âyât al-ahkâm*) accompanied with his knowledge regarding *khâbar* and the competent Companions in their field. In terms of comprehending al-Quran, a *mujtahid* is required the jurisprudence and law verses at least five hundreds verses even though he is not required to memorize it. The *mujtahid* should know the verses to ease him for reaching those verses when it is needed.

Meanwhile in *Hadîts* field, a *mujtahid* must be able to differentiate between *Hadîts shahîh* than *Hadîts dha'îf*, whether with knowing the narrators and their justice or scrutinize it through the book of *al-shahîhah*. Third, comprehend *khâbar*, *matn* and *sanad* including with the ability to recognize the narrator, *ta'dîl* and *tajrih*, the last time they narrated *hadîts*, a specific questions that becomes the cause of *hadîts* being revealed, differentiate between the law whether they are compulsory, *Sunnah*, forbidden and permissible until they are not mixed among them. Fourth, comprehend the argument that becomes consensus (*ijmâ'*) between the scholars until not to produce other *ijtihâd* that oppose with them. Fifth, apprehend the position of analogical (*qiyâs*) in terms of theoretically and practically.

All the five rules above are the *khulâshah* (conclusion) al-Syahrastâni and contents from what had been said by scholars such as al-Suyuthi, he said there are 15 rules without the other three rules, which are, comprehension of *dalil al-'aqli* because it includes in Usul Islamic Jurisprudence field, theology's field and philosophy with a few arguments and not necessary to be mentioned. The compression and combination of these rules is because of a few terms that being used has already included in others field such as mentioned by al-Suyuti that, '*ilm lughat, al-nahw, al-sharf, al-ma'âni, al-bayân, al-badi*' as a six fields of knowledge disciplines.³

The qualification of *mujtahid* is highly determines the result of his *ijtihâd* because it will effects the society and will be applied and implemented in their life widely. Therefore, the *mujtahid* must fulfill the criteria qualification and insisted to have intelligence and the ability to apprehend the content of *verses* and then make an *istinbât* (give out law). Whoever has the ability to observe with the exact rule (*inshâf*) then, he will be able to gain a relevant law or *law*.⁴

fî Ushûl al-Fiqh al-Islâmî 'alâ Madzhab al-Imâm Ahmad ibn Hanbal, Vol. II (n.p.: Mu'assasah al-Rayyân li al-Thibâ'ah wa al-Nasyr wa al-Tawzî', 2002), h. 334.

³Abû al-Wafâ' 'Alî ibn 'Uqayl ibn Muḥammad ibn 'Uqayl al-Baghdâdî Zafarî, *Taysîr Ijtihâd* (Beirut: Mu'assasah al-Risâlah, 1999), p. 40.

⁴*Ibid.*, p. 207.

As the other knowledge field that require a very strict rules, hence, it is compulsory for *mujtahid* to prepare themselves with a monumental matters such as comprehension in al-Qur'an and *Hadīts*, it must be initially started with the ability to apprehend Arabic language, understanding *'amm* (general) and *khâss* (specific), *naskh-mansukh* (abrogation), *muthlaq-muqayyad* (absolute-nonabsolute), comprehending analogy (*qiyâs*) and etc.⁵ Furthermore, the jurisprudence *mujtahid* in al-Ghazâlî perspective, is someone that practice and live (*mumaratsah*) in his field, but it does not mean he must memorize and comprehend the Jurisprudence because he will produce the product himself later on.⁶

Research Methodology

This paper is the result of qualitative research that collected data through documentation study. It is considering the basic materials in this research concerning aspects of historicity, character thinking, developing theories and public welfare. I will conduct data collection, mapping and grouping of data from a number of books, journals and others from primary, secondary and tertiary materials.

The study of the dynamics of *ijtihâdî* thought departs from the discourse of individual understanding with all the social settings that affect it and the variety of individuals. I will collect these kinds of thoughts and I map and then I elaborate in this paper with descriptive and comparative analysis. I will then do the sharpening of those thoughts and describe it in the writing.

The Coordinating *Ijtihâd* from Time to Time Understanding the Revelation (Sharia) Phase

As the observation and study I made, *ijtihâd* emerges after the phase of revelation (*sharia*) which means Mecca and Medina period. During the Mecca period, Prophet PBUH was focusing on belief system (*tawhîd*) in about thirteen years. The second period was during Prophet PBUH migrated from Mecca to Medina and founded the (Muslim Kingdom), and need the rules and law to manage the society. This is because Prophet PBUH did not bring any jurisprudence and law when entering Medina.

The verses of al-Quran that revealed before *Hijrah* mentioning about the rejection towards polytheism (*syirk*) and invite them to believe in Allah, preach them with the true taught of Islam. Al-Qur'an teaches them about moral, good behavior and attitude in Islam. For this moment, al-Quran not focusing on the implementation of sharia consisted of law

⁵*Ibid.*, p. 423.

⁶Abû 'Abd Allâh Badr al-Din Muḥammad ibn 'Abd Allâh ibn Bahâdir al-Zarkasyi al-Syâfi'i, *Tasyrif al-Musamma bi Jam' al-Jawâmi' li Tâj al-Dîn al-Subki*, Vol. IV (n.p.: n.p, n.y), p. 573.

and jurisprudence, which, focusing on it after the *hijrah*. If we want to make a classification, then, we can see that, the verses that are relating with branch (*fur'*) law are just about two hundreds verses, meanwhile the rest has been mentioned earlier, even though the arrangements are different in terms of *itsbât* (determination), *nafy* (negation), *khavar* (information), and *insyâ'* (information that does not contain true or false). Even though there are lots of style of language; *amr* (command), *nahy* (prohibition), *istifhâm* (question), *tawkîd* (stressing) and so on. The preach of Islam was being in that way for thirteen years, until the faith permeated in the souls of its followers and replacing the darkness that contains in the heart with the lightness of Islam.⁷

Then is Medina period, Medina itself did not have rules and laws as a guidelines to be followed before. Therefore, the revelation asks for comprehension and takes a jurisprudence verse which is being revealed to Prophet PBUH, either an answer for a question or explaining the law and jurisprudence because there were two law involved in the verses of al-Quran.⁸ There are such verses of Quran that revealed without started with questions and asking for fatwa however because of necessity or showing a certain law or jurisprudence.⁹ The overview about the explanation of jurisprudence in Medina commonly is an answer for a question or an event that happened. Every law or jurisprudence (law) is being revealed gradually.¹⁰

In author opinion, in this age cannot be assumed as the progression period of Islamic jurisprudence. It is because of law that being revealed at the moment is *matlû* or *ghayr al-matlû*. Even though there are *ijtihâd* at the moment but it cannot be assumed as jurisprudence law. It is because every single matter that had been done by Prophet PBUH and His Companions had been endorsed their authentication by the revealed knowledge either Quran or *Hadîts* of Prophet Muhammad PBUH. Based on that opinion, the author named this period as pre-jurisprudence, which means they do not have a full authority in making *ijtihâd* because it was still in the process of determining the law and jurisprudence (law).

⁷Muhammad 'Alî Sâ'yis, *Târîkh fî al-Tasyrî' al-Islâmî*, translated by Nurhadi AGA (Jakarta: Pustaka Kautsar, 2003), p. 19-20

⁸Muhammad Salâm Madkûr, *al-Madkhâl li Tasyrî' al-Islâmî, Târîkhuh wa mashâdiruh wa Nazhariyyatuh al-'Ammah* (Kairo: Dâr al-Nahdhah al-'Arabiyyah, 1960), p. 69

⁹The verses that were revealed as the answers for a question in al-Qur'an verse 15. *Ibid.*, p. 69.

¹⁰Regarding the implementation of sharia in Madinah can be explained as follows: a) The authority of law for this moment, based on Prophet Muhammad PBUH, without intervention from any other parties, whether from al-Qur'an (*matlû*) or Sunnah (*ghayr matlû*). b) The verses were revealed based on events or an answer for a question, and verses that were being revealed without any causes were very little. c) The law of Islam were not stated at once, however gradually and continuously based on al-Quran and Sunnah. Muhammad 'Alî Sâ'yis, *Târîkh fî al-Tasyrî'*, p. 21.

The Companions *Ijtihâd* Age

Next, the author is mentioning about the Companions (*shahâbah*) period. (11 H – 40). Muḥammad ‘Alî Sâyis mentioned it as the khulafurrasyidin’s period. According to him, the senior Companions took the responsibility to give out a law and making decision after the death of Prophet Muhammad PBUH and they had a big problem in defining a law for a certain events or situations. This is because; the territory of Islam had widely spreads and expands beyond the peninsula of Arab: including Egypt, Damascus, Iran and Iraq. The Muslims faced lots of situations and problems that they had never faced before.¹¹

Then, he explained, the progression process of Islamic law at the moment was based on *ijtihad* made by the Companions which means, their diligence will based on observing the indicator, making analogy, assumption and so on. Then they will make a law based on consideration after thinking, analyzing, reflecting, and pondering from the situations as defined by Ibn Qayyim. Therefore, their opinion just not based on analogy only as known nowadays, however it including analogy, assuming something good (*istihsân*), *barâ’ah ashliyyah* (basic freedom), *sadd dzarâ’i’* (blocking the means as source of evil) and *mashlahat al-mursalah* (public interest). In this period, the jurisprudence of Islam was based on al-Qur’an, Sunnah, *ijmâ’* and *ijtihad*. The term of *ijtihad* started at this period because, after the death of Prophet Muhammad PBUH, the Companions were facing new cases and situations that were never happened during the Prophet Muhammad PBUH still alive.

In this period, they were divided into two groups, which are the one who tend to use ratio and the other one who did not use it. Among the endeavor that had been used by the Companions of Prophet Muhammad PBUH in determining a law or jurisprudence were¹²: First, explanation about the verses of Quran and its interpretation. Second, making *qiyas* (comparison) is similar and comparable with the law that consisted in al-Quran and Sunnah or the law or jurisprudence that has been agreed (*ijma’*) before. And the third is *ijtihad* with *ra’y* (view and opinion from the comprehension of the matter).

Opinion (*ra’y*) Islamic Jurisprudence is based on the ability of the Companions to comprehend the verses of al-Quran and *Hadîts* as being mentioned by Ibn al-Qayyim which means, what was the tendency of the heart after reflecting, thinking and pondering. The expansion of Islamic law in this period is because of: (1). The different way of comprehending certain parts of verses in al-Quran, because of the existence of uncertainty argument (*dalâlah dzanniyyah*) which means, have two meanings from one term, the reality (*haqîqah*) and parable (*majâz*). (2) Their differences in memorizing and comprehending *Sunnah*. (3) Their

¹¹*Ibid.*, p. 59-60. However, they were very cautious in making decision. The taught from al-Quran and Prophet Muhammad PBUH became their main source of action. Hasan ‘Abdul Qadir, *Nazhariyyah al-Ammah fi Târîkh al-Islamic Jurisprudence al-Islami* (Kairo: Dâr al-Kutub al-*Haditsah*, t.t.), p. 56.

¹²Muḥammad Salâm Madkûr, *al-Madkhal li Tasyrî’*, p. 83.

differences in giving diligence and opinion (*ra'y*). (4) The residency where they lived. (5) The change of time and age.¹³

Example of contemporary jurisprudence. First, parts of Muslims during Abu Bakar reign did not want to pay zakat because they think the zakat was only paid to Prophet PBUH. In this case, Abu Bakar made a meeting, and Umar thinks they should not be killed, as Prophet PBUH said, “meanwhile Abu Bakar understands the term *‘bi haqqiha*” as one of them is not paying zakat.” Second, narrated that ‘Umar bin Khaththab faced a problem regarding a person was killed by a group of people. Should the group of people being killed because of killing a person because Allah said:

Ali said: What is your opinion Umar if a group of people steal a date palm, parts of them were taking this part, and the other part, taking another part of date palm, and will you cut their hands? Umar answered: Yes, certainly. Ali said: then, it same goes with that situation. Umar then took Ali’s opinion regarding this matter and then he said: If a residents of Shan’a’ gathered to kill someone, then I will kill them.¹⁴

At this period, the Companions intelligently solved the problems that they faced even though the situations that were never happened during the age of Prophet Muhammad PBUH and the law was made after evaluating the consequences of a certain law and jurisprudence as being done by ‘Umar, Ottoman and others.¹⁵ This solution for today’s case such divorce, economic problems, communication cases,¹⁶ can be a comparison in deciding the case.

There are certain books that include political conflict influence during the age of Ottoman and Ali as part of jurisprudence progression of the Companions. I observes that the influence and the access to *ijtihad* progression were emerged and emanated during the *tābi’in* period with various modification.at a certain group. The modification was just not influenced political field, but also jurisprudence, theology and etc. Meanwhile, at the period of the Companions, the author notices it as a unique progress which they were so genius and have a methodology and excellent style of thinking. This was proven on how the conceptual comprehension of Umar in work delegation, Ottoman in adding Friday’s prayer azan and so on. All of these show how their abilities in comprehending the verses of Quran with a judgmental and critical view.

The *Tābi’in Ijtihād* Age

Next is *tābi’in* period (40 H – Abad II H). In this period, it was influenced by Shi’a,

¹³*Ibid.*, p. 86-87.

¹⁴*Ibid.*, p. 83.

¹⁵Abd al-Wahhāb Ibrāhīm Abū Sulaymān, *al-Fikr al-Ushūliy: Dirāsāt Tahliyyat Naqdiyyah*, (Jeddah: Dār al-Syurūq, 1983), p. 38-39.

¹⁶Fauzi, “Shuwar al-Hadhānah ba’da al-Thalāq fi Aceh al-Wustha,” in *Studia Islamika*, Vol. 24, No. 1, 2017, p. 99.

Khawarij and Ahl al-Sunnah. There were two sects emerge: a. Sect *Hadîts* (Hijaz) b. Sect Opinion (*al-ra'y*) (Iraq)¹⁷ Political condition that influences the jurisprudence initially was being started by problems faced at the end of 'Utsmân bin 'Affân reign. The Jews and Iran that had lost in wars gathered to ruin Muslim's strength. Among of them were, the emergence and the spreads of fake *Hadîts*.

In this period, the Muslims scholars were fighting to straighten and save the society from various elements that influenced the Jurisprudence of Islam in terms of sources that emanated new masterpiece. Among of them were political conflict, fake *Hadîts*, the emergence of jurisprudence school, which was called the school of *Hadîts* and *ra'y* that were totally different of each other. The weakness was that, *iftirâdhi* (supposition) problem, which means the opinion of the scholars were only based on theory and cannot be implemented in the reality. This is because most of the school of opinion was tend to make an original taught as the guidelines.¹⁸

According to me, *tabi'in* did influence the jurisprudence of Islam. This is because of the political influence that existed, wanted to strengthen their position including the comprehension of law and jurisprudence. *Khawârij* for instance, they comprehend the verses of al-Quran literally (*dhâhiri*) and implemented it according to their belief. Meanwhile, the Shi'a have their own special sources and references in narration of *Hadîts* and al-Quran, until when there were contradiction against them, they refused to accept them even though the narration were authentic. In the middle of them, there was another group that called Sunnah's members.

***Ijtihâd* Sect Age**

Next, It is about the formation of sect in jurisprudence of Islam¹⁹ (Century ke-2 till 4 H). Among the typical criteria of this period are, first, the expansion of Islamic jurisprudence that influenced by many factors: the concern of *khalîfah* towards the Islamic jurisprudence, freedom of thought, lots of debates, lots of occasions occur, the cultural mixture, and book keeping of knowledge. Secondly, the formation of jurisprudence sects.²⁰

¹⁷Abû Zahrah stated it with the Sunnah-based jurists and opinion-based jurists. He was not agree with other people that say Sunnah-based jurists only exist in Hijaz and opinion-based jurists only exist in Iraq. The base on the branding are: a) The rate of opinion-based (*ra'y*) in Iraq are widely used. b) The opinion-based (*ra'y*) for Iraq citizens are commonly based on analogy methods, meanwhile the citizens of Medina are based on looking at the benefits gained from an action. Muḥammad Abû Zahrah, *Târikh al-Madzâhib al-Islâmiyyah* (Kairo: Dâr al-Fikr al-'Arabî, 1996), p. 259-260.

¹⁸Râsyid Ḥasan Khalîl and 'Abd al-Fattâḥ Abd Allâh al-Barsyûmî, *al-Sâmî fi Târikh al-Tasyrî' al-Islâmî* (Kairo: t.p, 1997), p. 158-168.

¹⁹Muḥammad 'Alî Sâ'yis, *Târikh fi al-Tasyrî'*, p. 124-125.

²⁰Starting with the contradiction of the Companions in determining a law, some of them based on the verse, and some of them based on making diligent and flexible in debating about the justification of the law. As the effect, the schools of Islamic Jurisprudence were widely emerged

This period started since the second century of *hijrah*. This century can be considered as the strength growth era, the maturity of thoughts, a wider academically life, an intense and profound studies that producing a great Islamic Jurisprudence, absolute diligence, a free rights in giving and taking out of Islamic law. At this period, the Quran, Sunnah and language knowledge were being codified and contributing to the emergence of *qâdhî* (judge), linguists, experts in *ta'wîl* and *Hadîts*, theologies and jurists. Muḥammad 'Alî Sâ'yis classifies this period as the fourth period. Among the factors that contribute to the Islamic law growth were: first, the concern of the Caliphs towards Islamic Jurisprudence and the jurists. The concern of Caliph Muawiya and the Abbasid in giving supports towards the progression of Islamic Jurisprudence Islam. In fact, they were focusing on religion matter. During the reign of Caliph Abû Ja'far al-Manshûr, he influenced them by giving a reward. Al-Mahdî fight against the heretics. During the reign of al-Rasyîd, he specified Abû Yûsuf as his friend, and during the reign of al-Makmûn he allocated his time with the scholars for academics discussions.

The second, the freedom of thoughts. Among the reasons of the spreading of Islamic Jurisprudence among the scholars were because of the freedom of thoughts in academics research, among them there were scholars made a diligent (*ijtihād*) in understanding a certain law with peacefully and serenity without afraid of the authority or people who sustained their views. Lots of debates and discussions occurred. Contradiction and debates always happen among the scholars. For example among the scholars from Hijaz and Iraq during the reign of Umawiyah.²¹

in various places. In fact, the political influence becomes a reason of emanating a sect such as: syi'ah and Khawarij, and some of them based on academic background such as: sect Ḥanafî, Mâliki, Syâfi'î, Ḥanbalî, Awzâ'î, Bashrî, Layts, Dhahirî, Thabarî and so on, and this happened because of the separation of Islamic Jurisprudence and became an independent knowledge. Muḥammad Salâm Madkûr, *al-Madkhâl li Tasyrî'*, p. 95. The five prominent sects– Ja'farî, Ḥanafî, Mâliki, Syâfi'î, and Ḥanbalî,– emanated during the reign of Abbasids. For the previous age, when people talked about sects (sects), it means sects among the Companions of Prophet Muhammad PBUH, 'Umar, 'Âisyah, Ibn 'Umar, Ibn 'Abbâs, 'Alî and so on. According to Murtadhâ al-'Asykarî as being taken by Jalâl al-Dîn – the initial sect have two main groups: school of Caliphs school of ahl Bait. The first group has two main branches: school of al-hadith and school of al-ra'y. See Jalaluddin Rachmat, "Critical View on Islamic Jurisprudence History: From the Reign of *al-Khulafâ' al-Râsyidîn until the Age of Liberalism*," in Nurcholish Madjid, *et al.*, *Kontekstualisasi Doktrin Islam dalam Sejarah* (Jakarta: Paramadina, 1995), p. 268-269.

²¹Muḥammad 'Alî Sâ'yis, *Târîkh fi al-Tasyrî'*, p. 124-125. Even though the contradiction between both sides – as stated by Nurcholish Madjid – only on their characteristic and intellectual style of their region. Meanwhile in individual level, many of them did not follow the general characteristic. The generalization was actually referred to scholars such as Rabî'ah that considered as the "Kelompok Penalaran" and Aḥmad bin Ḥanbalî was categorized into narrative side. See Nurcholish Majid, *et al.*, *Konstekstualisasi Doktrin Islam dalam Sejarah*, p. 243. I do think that is important to find a good method to solve the various problem in the society as suggested by a number of scholars. See example; Kamaruzzaman Bustamam-Aḥmad, "The Application of Islamic Law in Indonesia: the Case Study of Aceh," in *Journal of Indonesian Islam*, Volume 1, Number 1, June 2007.

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Thirdly, the effort of systemize the law in Islam. The scholars at this moment had set a law that suitable with the needs of humanity, which they cling with the verses or the defection of the verses because their comprehension will become the law and will be implemented towards the society.²³ Among of the advantages of this periods were giving easiness towards the society to implement it in their life because every single inquiry that they were doubt in it, they can straightly refer to Jurisprudence book. Meanwhile, the disadvantage of this period is the ended of *ijtihâd* efforts in taking out a law, and people feel they do not have to think any more about the jurisprudence because every inquiries already have their answers.²⁴

According to me, this period was the climax period of jurisprudence because during this period the Jurisprudence is Islam was being systemized until the Islamic jurisprudence knowledge had widely spreads to the worldwide and becomes the academically debates in the modern age. However the impact of the formation of sects, it had enrich the Islamic knowledge treasure.

***Ijtihâd of Iftirâdhî* in Islamic Jurisprudence**

This period oscillated between the middle of 4th Century-656 (the collapse of Baghdad). Among the typical characteristic of this period are: firstly, scrutinize the justification of a certain jurisprudence. Secondly, assuming of an occasion with the law. Jurists of *ra’y* (opinion) who were scholars from Iraq gave their opinions on the situations that will happen in the future in various perspectives, in fact they were discussing about problems that beyond the reality, however, logically it may happen. The freedom in thinking had made the scholars became more focused in their studies. This had made the quantity of Islamic Jurisprudence became wider and larger and have various laws. Furthermore, with the respond from other scholars regarding the opinion had expanded the quantity of Islamic Jurisprudence.²⁵

Thirdly, great debates occur on the assumption. Fourthly, the process of proving the

²²Madjid, *et al.*, *Kontekstualisasi Doktrin Islam*, p. 243.

²³Among the reasons of emanation of Islamic Jurisprudence sects are: The expansion of Muslim Kingdom and the variety of culture; the spreads of jurists in various cities; lots of fatwa and situations occurred; effort of arrangement of books (*tadwîn*) and translation occurred; political influence. During the Abbasids reign, the scholars were given a freedom of having long discussion and debates because the reign was built on the name and purpose of religion. Islami. Muḥammad Salâm Madkûr, *al-Madkhâl li Tasyrî‘*, p. 93, 95-98.

²⁴Amir Syarifuddin, *Ushul Fiqh*, Vol. I (Jakarta: Logos, 1997), p. 32.

²⁵Muḥammad Salâm Madkûr, *al-Madkhâl li Tasyrî‘*, p. 100.

verses by the sects followers. Fifthly, the other views that oppose in the sects. Sixthly, taking out the various origin problems of their leaders. Seventhly, the collapse of Islamic Kingdom that stop the freedom of thought.²⁶ Eighthly, the modern scholar in jurisprudence, only limit the research and discussion in a narrow scope and perspectives not as the previous scholars that never limit their discussion in certain scope and perspectives. Until give an overview the other sects that do not similar with them as the wrong one. Ninthly, among the main criteria are they want to nurture the methods of their previous leaders in sects.

The causes of stagnation scholars in this period: (1) The development and advancement of writing and essay previously ease the people that came after them. (2) They feel authoritative for some scholars to criticize relatives who perform due to maintenance reasons of religion or malice. (3) Decline and fall of the Kingdom so less attention given to the feasibility of a person of becoming a *muftî*. (4) There is a kind of campaign the pupils of an Imam so that the teaching process is only limited to a certain sect.²⁷ Before the middle of the seventh century, the fall of Baghdad to the hands of the Tartar and including al-Mu'tasim, the last Abbasid caliph. Jurists at this time refer to the imitation as the priests had left a huge treasure in the form of law to the problems that arise at the time. Especially good fortune often shows a certain sect followers who became Qadi, mufti and others. When there is a weakness in the state, authorities sometimes set mufti who is not experts. Because it was also the jurists getting away from diligence, either because of laziness or subject to the opinion formulated as *ijma'* (consensus).

Since the early of the Fourth Century in *Hijrah*, the Muslim Kingdom strength started to decline that cause schism to be happened. The kingdom sometimes colonized by Tartar and sometimes by Bani Buwaih. The condition of country had made the freedom of thinking among the scholars being narrowed. It is because they were suppressed by the colonizer that causes them to be based on *taqlîd* (follower). They were gradually getting far from the process of diligence until a jurist only hold certain sect. Moreover, they giving out command it are prohibited for followers to migrate from a sect to another sect that they wanted to.²⁸ Writing this time adapted to the method of writing other material which covers the theory, principles and its codification. By studying a section, the discussion includes various *furû'* and the opinions of various sect and opinion by making comparisons, all of which are in the book of bylaws. Writings avoid *maslak* of honor, *syarh* and *hawasyi*, as well as from fanaticism and influence others. Law which was in line in accordance with the Qur'an and *Hadîts*, to highlight various opinions, postulate, scientific discussion and independent.

The second stage begins with the fall of Baghdad in the hands of the Mongols in 656 H. Jurists in this century that is called as scholars of *muta'akhkhirîn*. Map scientific center

²⁶*Ibid.*, p. 105.

²⁷*Ibid.*, p. 106-111.

²⁸*Ibid.*, 105.

was moved from Baghdad, Bukhara and Nishapur into Egypt, Sham, India, Minor Asia and Africa. *Mujtahid* activities are limited to attempt to sort out between a weak and a strong history, focusing on the book last *Syarh Mukhtasar*, even *Syarh 'alâ Syarh*. Therefore, the shape of future work is mostly in the form of *syarh*, and *hashi'a*. Also essay form *al-fatwa*, the law is based on explanation and classification according to the book of Islamic Jurisprudence. Ibn Taymiyyah and Ibn Qayyim are including those against the current stagnant condition.

Actually, the *taqlîd* period did not happen at once but happens gradually which because of the malevolence of the outsiders towards the Islamic Kingdom. Essentially, this is not the first attempt, but never performed in the 2nd century of Abbasid period. Then appear again at the end of the thirteenth century migrated with a clearer format. Ibn al-Muqaffâ effort 'in the second century *Hijrah*, the beginning of the reign of the Abbasid Caliph Abû Ja'far al-Mansûr wrote a letter inviting to establish a law that applies to all of the city; the source of the Qur'an and Sunnah. When not found *nashsh*, then through the reasoning that refers to the justice and welfare. It is necessary according to his opinion because of the many differences of opinion on an issue scholar.

Caliph Abû Ja'far al-Mansûr and Hârûn al-Râshid Mâlik invited to force the community to follow a single school of thought. However, this invitation was rejected by Imâm Mâlik. In the 11th century *Hijrah*, Muḥammad Sultan 'Almakir, one of the king of India, formed a committee composed a comprehensive book against history of *Zhâhiri*. The effort has resulted in a work called the *al-Fatâwâ al-Hindiyyah*.²⁹ The advantage is the expansion and explanation of jurisprudence book; they follow to taking out an authentic law as their previous leaders. The weakness is that they do not think and studying critically and creatively the jurisprudence product to be suited and implemented with the current condition.³⁰

I agree to name it with period of *taqlîd* and *jumûd* (old-fashioned). It is because the scholars had made an effort to make a research and study even though not as great as before because of the country condition that was not stabilized. Therefore, if it is scrutinized, the reasons why the current scholars less active in making research is because of the political condition that restrained their freedom to become active.

Islamic Jurisprudence is the knowledge of the law of comparative personality 'by knowing the various opinions in the matter, the argument of that opinion and the underlying rules to make comparisons and take an opinion closer to the truth, as well as conducted a study comparative with the laws in force in our country and developed countries.

This period oscillated from 7th century until now. The criteria of this period are the emergence of reformer and innovator to oppose *taqlîd* that happened previously. Secondly,

²⁹*Ibid.*, p. 110; Compare with Mhd. Syahnan, "Modernization of Islamic Law of Contract Modernization of Islamic Law of Contract: A Study of 'Abd al-Razzaq al-Sanhuri's *Masadir al-Haqq fi al-Fiqh al-Islami: Dirasah Muqaranah bi al-Fiqh al-Gharbi* (Jakarta: Badan Litbang & Diklat Departemen Agama RI, 2009).

³⁰Amir Syarifuddin, *Ushul Fiqh*,p. 32.

the efforts to rise the thoughts. The third is the writings of contemporary jurisprudence in Islam.³¹ The fourth is the effort to make a law that free from any sects.³² The fifth, the change of methods in learning jurisprudence in Islam. The sixth, the formation of Islamic Jurisprudence Comparison³³ is included in the current progression. The seventh, the emanation of new attainments that are assumed to be more representative in solving the current problems.³⁴

Ottoman Government in the late thirteenth century Hijriyyah face the overload of group of scholars to form a law of *al-mu'āmalah al-madaniyyah* (civil law) taken from Islamic Jurisprudence to remain bound to the al-Hanafī sects. But taking into account the benefit of man and the spirit of the times, without having to be bound by the opinion of authentic in sect. So this committee resulted in a number of Islamic laws Jurisprudence matching the events occur. These are all published in “*Majallah al-Ahkām al-Adliyyah*”. This magazine contains 1581 discussions that are easier, much of the dispute; even contain the authentic opinions by sect for the benefit of considerations of that era. Implementation began in 1293 in high tribunals. In 1326 a law, marriage and divorce are no longer quote from al-Hanafī sect. At the same time, considered to be the first time the embodiment of Ibn al-Muqaffā ‘with the support of Abū Ja‘far al-Mansūr and Harūn al-Rasyīd. This period is also no longer a handle on a particular sect and away from *taqlīd*.³⁵ Egypt is not left behind in the development of Islamic Jurisprudence and its efforts in forming law into human intent. Qânûn no. 25, 1920 are taken from the sect four. Last Qânûn 1923, 1929 are no longer bound by the four sects and so on have always been progressing.

Among the advantage of this period was, thinkers and scholars were influenced to face the reality law that can produce jurisprudence formula that is parallel with the circulation of age. The disadvantages are that, lots of formulation that being offered was still in theory and discussion but not being practically implemented. This may be happened because of differentiation between the level of knowledge and information among the idealist with the actual and real condition of the society.³⁶ I also see lots of books written about the periodization of Islamic jurisprudence. However, the books did not include the basic explanation

³¹Muhammad Salām Madkūr, *al-Madkhâl li Tasyrī'*, p. 117.

³²*Ibid.*, 118-120.

³³*Ibid.*, 114-115.

³⁴Muhammad Salām Madkūr, *al-Madkhâl li Tasyrī'*, p. 120-121.

The final study refers to the restoration of relations between the reader Author, reviving impartial role between Text, Author and Reader, Opacity and Transparency meaning and so on. M. Amin Abdullah in Khaled Abou El Fadl, *Atas Nama Tuhan* (Jakarta: Serambi, 2004), p. xi-xvii.

³⁵Muhammad Salām Madkūr, *al-Madkhâl li Tasyrī'*, p. 120-125. The final study refers to the restoration of relations between the reader Author, reviving impartial role between Text, Author and Reader, Opacity and Transparency meaning and so on. M. Amin Abdullah in Khaled Abou El Fadl, *Atas Nama Tuhan*, p. xi-xvii.

³⁶This final research had return back the relationship between the author and the reader, reviving a balance function between texts, authors, and readers and so on. See, M. Amin Abdullah in Khaled Abou El Fadl, *Atas Nama Tuhan*, p. xi-xvii.

of criteria for ever periods until there are necessity to differentiate between the periods. In my opinion, even though there were long intervals between these periods, there are no necessities to separate between them as long as there are not predominating factors that need them to be separated. This means there were two periods that had specific criteria that becomes impossible for them to be combined into one period.

A book written by Râsyid Khalil and Abd al-Fattah Abdullah Al-Barsyumi titled *al-Sâmi Fi Târikh al-Tasyri' al-Islâmi*³⁷ for example, the periodization of Islamic jurisprudence divided into six parts. The sixth period that initially started by Baghdad collapse until nowadays, were being called as the *jumûd* and *taqlîd* period. I do not agree with this. It is because according to me, this period should be divided into two periods. From 4 H until 6 H can be assumed as the Islamic Jurisprudence Iftiradhi period. This period cannot be assumed as *jumûd* (old-fashioned) because the scholars still making the *ijtihâd* process even though they were not as free as before. I observe the combination between the Companions (*shahâbat*) and *tâbi'in* becomes one period whereas both period have their own specific criteria.

The circulation period has resulted various types of thoughts and works to develop Islam especially in the expansion of jurisprudence. The theory of *benefits* by al-Syâthibi had been elaborated in terms of theoretical and implementation so that the theory and the implementation of jurisprudence becomes very flexible. The expansion of jurisprudence done by Abid Al-Jabiri, Abou Fadel and others, are very fundamental research. This becomes the main criteria in building the jurisprudence in Islam.

Thawâbit and Mutaghayyirat: a Consideration in Ijtihâd

When talking about *ijtihâd*, matter that needs to be viewed is the significant differentiation between two terms in religion methods, *thawâbit* (fixed) and *mutaghayyirat* (interchangeable). *Thawâbit* (fixed) means something that state, constant and non-interchangeable from time to time. This is because, the part includes general, macro and universal matters.

Meanwhile *mutaghayyirat* (interchangeable) is something interchangeable according to place and time. It is flexible, dynamic, accommodative, and consider a suitable *benefits* according to Islamic jurisprudence. Abdul Karim Soros says there are ten points about this method. However I will just take four points from it as followed: a) The religion and the knowledge about the religion are two different things; however they are not contradicted from each other. b) The religion is constant, meanwhile the knowledge about religion is depends on the human comprehension that are dynamic and changeable. c) Jurisprudence is secular knowledge including '*ardhiyyat al-dîn* (religious formality) d) Syariah is 'silence', it responds and feedback communication based on how we communicate with it.³⁸

³⁷Râsyid Hasan Khalîl and Abd al-Fattâh Abd Allâh Al-Barsyûmî, *al-Sâmî fi Târikh al-Tasyri' al-Islâmî* (Kairo: t.p, 1997), p. 222.

³⁸Abd al-Karim Soros, *al-'Aql wa al-Tajribah* (Lebanon: al-Intisyar al-'Arabi, 2010), p. 26-27.

In *mutaghayyirat* (interchangeable) *methods*, the product of *ijtihād* must be able to be produced from a matured and concrete consideration especially in terms of *benefits*. All this while, the usage of benefits was not strict and eventually becomes *damages*. Because of that, Raysûni introduced *wujûh i'tibâr* (objectives consideration perspective) as followed:

1. *Tahaqquq min maqâsid al-nashsh al-syar'i* means understanding the meaning and definition of verses *syar'i*. As we know, not every terms and *syar'ives* can be understood by guesswork but it must be focused deeply. Maybe certain parts have literal meaning, and sometimes can be gained from the content of sharia and its objectives. For instance, in comprehending term *adh'âfan mudhâ'afah* in Q.S. Ali 'Imrân/3: 130.³⁹ A *mujtahid* should be able to scrutinize and study the lessons and secret behind the word. What is actually meant by debt that continuously and multiply increased? Is it the basic debt or its interest? Raysûni stated that, the continuously and multiply increased is not on the capital money however its interest. But, the term can be understood by *vice versa* means if the increasing is not happening, it is not considered as usury as understood by a certain contemporary scholars. By observing other verses, including the previous verse, hence, this term is not *maqsûdah*. Usury as stated by al-Raysuni, is still forbidden and prohibited whether the amount is large or small. The term is being used to describe the bad effects of usury itself.⁴⁰
2. *taharri ma'rifat al-hikmah wa al-mashlahah al-maqshûdah* means to scrutinize the understanding of the *wisdom* and *benefits* that is desired, hence to understand the meaning and discuss about the wisdom behind the particular law
3. *al-nadhr fi mâ yudhann maqshadan wa lays bi maqshid* means to observe any verses that are assumed as the *objectives* of *sharia* however they are not. Raysûni uses the verses that contains about the excoriation of world and be humble with it. Some may think we must avoid from having wealth and its grace, however it is not meant by that⁴⁵. It's actually means is as stated by al-Ghazali which to take a middle approach (*i'tidâl*) between *ifrâth* (excess) dan *tafrith* (insufficient)⁴¹ and in order to reach the ultimate purpose of Islam as *rahmat li al-'âlamîn*.⁴²
4. *al-tamyiz bayn mâ huwa maqshûd li dhâtih wa mâ huwa maqsûd li ghayrih* means to differentiate between the objectives of sharia related to the matter and other matter that comes with it. Therefore, something that is forbidden by sharia is sometimes because

³⁹Ahmad Raysûni, *Maqâshid al-Maqâshid: al-Ghâyat al-Ilmiyyah wa al-Amaliyyah li Maqâshid al-Syar'i'a* (Lebanon: al-Syabakah al-'Arabiyyah li Abhâts wa al-Nasyr, 2014), p. 99.

⁴⁰*Ibid.*.p. 100.

⁴¹Al-Ghazâlî, Abu Hâmid Muḥammad ibn Muḥammad al-Thûsî. *Ihyâ 'Ulûm al-Dîn*, III, n.pl.: n.y. p. 63.

⁴²Fauzi, "The Interactions Of *Madzhabs* In Aceh: The Tripolar Typology" in *MIQOT: Jurnal Ilmu-Ilmu Keislaman*, Vol. XLII No. 1 Januari-Juni 2017, p. 17.

of the *dzat* (substance of the action or the word) or because of *lighayrih* (other factors that comes with it), as being commanded.⁴³

5. *murâ'at al-maqâsid al-âmmah 'ind kull tathbiq juz'i* means to observe to the general objectives during stating the specific one. A *mujtahid* will review *daruriyat al-khamsah* (five main principles) during taking out specific law (*fatwâ*).⁴⁴
6. *murâ'at al-maqâshid al-khâshshah bi al-majâl al-tasyri' al-ladzi tanmi ilayh mas'alat al-bahts* means considering the specific objective of sharia in *tasyri'* context related to the problem discussed.
7. *murâ'at muthlaq al-mashâlih al-mursalah* means to observe the determination of *al-masâlih al-mursalah*. It means, every question that included in *al-masâlih al-mursalah* should have a *dalil* and its argument.
8. *tartib al-hukm wa darajâtihi, bi qadr al-mashlahat aw al-mafsadah* means the hierarchy of law and its level must be suitable with the level of its *benefits* and *damages*. *Benefits* at the lower level can be categorized into Sunnah, meanwhile, a higher benefits can be categorized into compulsory (*wâjib*). Same goes with the prohibited (*harâm*).⁴⁵
9. *murâ'at al-maqâsid 'inda ijrâ'i al-aqyisah* is meaning to observe into the objectives when using the comparative method. Ibn Taymiyyah mentioned that, knowledge about the true comparative is very important, and it is owned by the one who understands the wisdom and secret of syariat and its objectives and also its benefits that included in Islamic taught. It also gives benefits towards the humanity in this world and hereafter which contains wisdom, benefits, blessing and holistic justice.⁴⁶
10. *i'tibâr al-ma'âlat wa al-'awaqib*⁴⁷ means considering prospective forward and the consequences of a certain action. Al-Syâtibi stated that considering the consequences of a certain action as the objectives of sharia, whether it is unanimously or contradicted. A *mufti* cannot make a law (compulsory or forbidden) until he scrutinizes the effect of the matter. The matter may be assumed can give a benefits or damages at the moment, but the effects of the action becomes vice versa.⁴⁸

⁴³Ahmad Raysûni, *Maqâshid al-Maqâshid: al-Ghâyat*, p. 99.

⁴⁴Abû Hâmid Muḥammad ibn Muḥammad al-Thûsî al-Ghazâlî, *al-Mustashfâ fî 'ilm al-Ushûl*, Vol. I (Beirut: Muassasat al-Risâlah, 1997), p. 417.

⁴⁵Ahmad Raysûni, *Maqâshid al-Maqâshid: al-Ghâyat*, p. 112.

⁴⁶Taqiyy al-Dîn Abu al-Abbâs Ahmad ibn 'Abd al-Halîm Ibn Taymiyyah al-Harrânî, *Majmû' al-Fatâwâ*, Vol. 4 (Saudi Arabia: Majma' al-Mâlik Fahd li Thibâ'ah al-Mushhaf al-Syarîf, 1995), p. 363.

⁴⁷Ahmad Raysûni, *Maqâshid al-Maqâshid: al-Ghâyat*, p. 97-98.

⁴⁸Ibrâhîm ibn Musâ ibn Muḥammad al-Lakhmî al-Gharnathî al-Syâthibî, *al-Muwâfaqat fi Usûl al-Syarî'ah*, Vol. 4 (Kairo: Maktabat al-Tawfiqiyah, n.d.), p. 194.

***Ijtihād* Concordance Cases**

Lots of *ijtihād* cases use benefits method, however become damages because of not cautiously used the methods. The examples of the cases as followed:

The Non-Multiply Usury

Tahaqquq min maqasud al-nashsh al-syari' means to understand the meaning of verses of al-Quran and *Hadīts*. As we know not every terms and verses in al-Quran and *Hadīts* can be understood literally and through assumption however need to be studied deeply. Maybe certain verses have literal meaning, and maybe certain verses can be understood from its objectives. For example, the understanding of *adh'âfan mudhâ'afah* in Q.S. Ali 'Imrân/3: 130.⁴⁹ A *mujtahid* must be able to study the wisdom and the secret behind the term. What is actually meant by continuously and multiply increase, is it the capital money or the interests of the money. Al-Raisuni stated that, the multiply is not on the capital money, but the interests. However the term can be understood as if the non-multiply does not occur then it is not considered as usury as being understood by contemporary scholars. By observing into other verses, including the previous verse, the term is not *maqsûdah*. The usury – says Raysûni– is constantly prohibited either in small amount or large amount. Therefore, this term is being used to emphasize the badness of usury itself.⁵⁰

Fasting *Kaffârat*

A scholar from Andalusia, Yahya bin Yahya al-Laythi (152-234 H) gave fatwa towards the King 'Abd al-Rahmân ibn Hakam (176-278H) that had sexually intercourse during the day of Ramadhân. The king need to fast for two months consecutively as his sentence. According to him, for a king, by freeing a slave as the punishment will not give a positive impact to respect the Holy month of Ramadhân. In that *Hadīts*, the scholars were contradicting each other in determining a sentence whether by *al-tartib* or *al-takhyir*.⁵¹

Conclusion

Guidelines *ijtihād* in my opinion, is very fundamental and crucial to be implemented as to produce a justice law for the benefits of the society. Contemporary cases nowadays

⁴⁹Ahmad Raysûni, *Maqâshid al-Maqâshid: al-Ghâyat*, p. 99; See also, Mhd. Syahnan, "Modern Qur'anic Exegesis and Commercial Contracts: A Comparative Study of Rashid Ridha's and Sayyid Qutb's Interpretation of Some *Riba* Verses," in *MIQOT: Jurnal Ilmu-Ilmu Keislaman*, November-December 1997, pp. 15-23.

⁵⁰Ahmad Raysûni, *Maqâshid al-Maqâshid: al-Ghâyat*, p. 100.

⁵¹Ibrâhîm ibn Musâ ibn Muḥammad al-Lakhmî al-Gharnathî al-Syâthibî, *al-I'tisham*, Vol. II (Beirut: Dâr al-Kutub al-'Ilmiyyah, n.d.), p. 352-354.

for sure need a highly full attention from the genius and cautious law makers. The coordination must be done by looking at previous occasions as a lesson, the current time, and the future as the effect of product of law. *Mujtahid* should be able to determine between *thawâbit* (fixed) and *mutaghayyirat* (interchangable) so the society will not get confuse later on with the *ijtihâdiah* that had been made. This is very important to differentiate between the measurer and what is being measured and also what becomes the sources, methods and analysis material. This guideline is very important to produce a systematic and synergic thought.

Arrangement and mapping of *ijtihâdiah* according to my is very important in order to produce a legal product that is wise and fair for the benefit of the people. Today's contemporary case certainly invites the attention of intelligent, genius, and *ihtiyâthi* (cautious). The arrangement here should be directed to *mujtahid* qualification by reading the present as a reality and a future coming as the impact of a product. *Mujtahid* must also be able to map the domain of *thawâbit* and *mutaghayyirat* so as not to confuse the society in the future towards the product of *ijtihâdiah*. It is important to distinguish between what is measured and which are the source, method and material of analysis. Mapping like this according to the writer needed to be able to organize the thinking systematic and synergistic.

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