

Research Development Of Contemporary Fatwa In Facing Globalization Challenges: An Approach

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Abstract

Globalization is a worldwide cultural reform that affects all walks of life. Although originally directed toward openness in world economic activity, but has now begun to include openness and change in the political, social and social aspects of society. The diversity of these issues is the immediate impact of globalization is the dramatic development of the revolution and the evolution of science and technology. The uniqueness of the relationship between revelation and reason and understanding is that it ensures that fatwa research is always superior and capable of responding to current issues. The objective of the fatwa research actually exists as closely related to the Shariah objective (Maqasid al-Syariah) itself. The *fiqh* research is based on two main frameworks which cannot be separated from one another. First is the revelation of Allah whose truth is *mutlaq* and *muqaddas* as found in the Qur'an and al-Sunnah. The first framework of revelation requires a human understanding in responding to and interpreting its meaning. On this basis comes the jurisprudence and conducting *fiqh* research efforts extensively and effectively. The study expects three (3) main methods i.e. content analysis that examines the framework of fatwa epistemology and *ijtihad* in Islam (question of the source, the nature of a science and the balance sheets) used by a scholar / Syariah scholar; histological and comparative methods that examine the history of Islamic law construction and sociological research methods that examine the background of societies such as socio-political aspects, structures, economics and certain institutions (such as fatwa institutions) that affect the fatwa. Discussion of this article covers the concept and approach of *fiqh maqasidi* research and scientific *fiqh* in the context of fatwa development to meet the challenges of globalization. People are now faced with many new issues, the impact of the changing patterns of life and the rapid development of science and technology, as well as the birth of an era known as the Cyrene era in a broad framework called globalization. Fatwa institutions need to carry out legal affairs through fatwa research in two *fiqh* research frameworks i.e. *fiqh maqasidi* and scientific *fiqh*. Only in such a way that fatwa research results are able to meet the challenges of today and take precedence over all developments that take place in the face of globalization challenges.

Keywords: Fatwa Research, Scientific Research, Contemporary Fiqh, Globalization

Introduction

Globalization process is going on rapidly in the future, as per Colin Rose (1997) views that the world is changing very quickly and unprecedented. Society life including social, economic and educational development has become increasingly complex.

The need for Muslim societies to conform to hukum syarak in every aspects of life is undeniable. According to Hasnan Kasan (2006), national legislation through state power has also given authority to religious affairs authorities to issue and enforce Islamic law among Muslims. Every Muslim must conform to it according to taklif syarie. Although Muslims who are embraced and bound by the Islamic law do not reject those Islamic values in enforced laws, sometimes they refuse the form of implementation because they do not understand the forms and procedures in the process of issuing and enforcing the fatwa. It should be understood that there are two forms of Islamic law in Malaysia. First in the form of fatwa and second in the form of certain Islamic principles in the form of written laws or Islamic enactments such as the Islamic Family Enactment, the Syariah Evidence Enactment, the Syariah Malpractice Procedure Enactment and the Syariah Criminal Procedure Enactment.

Changes in the society caused by the globalization are seen macro-based, in terms of thinking, education, socio-cultural, economic, and political and so on and are greatly influenced by the rapid development of science and technology. Therefore, science and technology related questions are directly involved with the realities of human life and are constantly evolving in accordance with the intellectual development of the man himself. Science and technology have always created more complicated and sophisticated legal issues and are waiting for Islamic *fiqh* answers that are consistent with the flexibility and relevance of each human life era. This forces the mujtahid to put all the efforts of his ijtihad to find the resolution and conclusion of the authoritative law.

Legal issues in various aspects that never imagined would appear in the era when globalization emerges and expanding rapidly. Legal issues and fatwa on worship, family affairs (munakahat), business affairs (muamalat) and Islamic consumerism have emerged as a challenge to current law researchers (Ahmad Hidayat, 2012).

Scientific *fiqh* research in this article focuses on how to address the strategies and mechanisms of scientific methods applied in the development of contemporary fatwa. In general, scientific research mechanisms are aimed at acquiring knowledge. Rationally, vast majority of knowledge from all fields is derived from the research of knowledge experts in related fields. However, such research should be implemented by applying scientific methods of thinking and research. The scientific basis, then, can be regarded as a new and useful contribution to the field of knowledge.

Practically, the main interest that the author is referring to is, scientific effort is to know (know) and understand (how and why). The scientific element underlying the study as well is independent from the connotation of the philosophy of science itself.

Fatwa Research Based on *Fiqh Maqasidi*

The ancient discipline of scholars debates knowledge in the *fiqh* writing by analysing the law and submit their wisdom. For example they debate on zakat, law corresponding to it and its wisdom

and sale and purchase with the law and wisdom. *Fiqh* scholars debate on the law and at the same time discuss the wisdom as Hikmah al-Tasyri' (al-Raysuni, 1992).

Maqasid al-Syariah can be divided into two i.e. the general maqasid and special maqasid (Saad, 1998) but there are some writers who include maqasid al-Juziyyah. The special maqasid is contained in *hikmah al-Tasyri'* in law provision like wisdom of why prayer is obligated which is aimed at preventing *fahishah* (despicable and evil things) (Quran, al-Ankabut, 45). The general maqasid is aimed at preserving the peace and harmony of the universal human being. It is clear that wisdom in the Islamic *syariat* is to preserve the *maslahah* of human beings in the world and the hereafter. In the *maqasid al-Syariah* there is an '*illah* which is the instrument in setting of the law. '*Illah* is also used as legal guidance through *qiyas*. According to al-Syatibi *al-'illah* means *hikam* and *masalih* which is related to the messenger (Awamir) and must (Ibahah) and mafasid related to the forbidden (nawahi). Therefore, the elements of hardship (mashaqqah) are '*illah* to the law of qasr prayer. '*Illah* is *maslahah* (al-Raisani, 1992).

Islamic law looks to the benefits of the society either in the world or in the hereafter (Shatibi, 1997), thus proving the benefits and advantages of Islamic Law. It has been agreed upon by Usul, Muhaddithin and Mutakallimin scholars even the philosophers (al-Amidi, 1998).

The mujtahid deducts religious laws regarding the current issues based on the Syarak texts either through its words or '*illah* (al-Muti'i, t.t.). This approach has the following advantages:

1. It is a fundamental principle of understanding and practicing the real maqasid al-shari'ah. Without the concept of *istinbat* laws based on '*illah* (*ta'lil* ahkam) the mujtahids will face difficulties in deducting religious law related to current problems because only Allah s.w.t. alone knows the true will. Therefore, based on this approach, the mujtahids can deduct religious laws based on necessity and syarak motives generally.
2. It is one of the most important *qiyas* pillar that connects between the origin and the *furuk*. This leads to *istinbat* acceptance based on '*illah* law in general when it is associated with the act of servant (human) rather than acts of Allah SWT.
3. As complementary to the existence of '*illah* which is required by the *jumhur* i.e. clear (*zahir*) and consistent (al-Shawkani, 1999). The legal instinct in this situation is more to the backing of '*illah* or wisdom known as reasonable ('Ali Hasab Allah, 1964) in general. This means that not all '*illah* are considered motives or wisdoms.

Explanation of Islamic law in the context of '*illah* to achieve and fulfill the criteria of *maqasid al-Syariah* applies as follows (Shalabi, 1981):

- a. Know the law that is not based through *qiyas*.
- b. The mujtahid made a study based on the meaning that in accordance with syarak thus deducts the law. It is known as *istislah* or *maslahah mursalah*.
- c. Studying '*illah* for any law made and that '*illah* is limited (*'illah qasirah*) through explanation of legal wisdom.

Law is the commandment (Khitab) of Allah. Basically it is found in al-Quran and as-Sunnah. There are other sources that are secondary, such as Ijma', Qiyas, Maslahah and 'Urf. Generally these secondary sources can be regarded as extension of the principles found in the Quran and al-Sunnah. In other words it may be described as a method or way of analysing the will of the Qur'an and al-Sunnah.

Understanding the law from these sources, either directly from the Quran and al-Sunnah or through non-fundamental sources was called "*Fiqh*". That is why the scholars of Usul al-*Fiqh* define "*Fiqh*" as "Understanding Islamic law from its sources in detail" (Abdul Karim Zaydan, 1996).

One of the activities found in *fiqh* is 'Istinbat'. It can easily be described as a law-making process. However it is a loose term because the process can occur in many ways, either by *ijtihad* or *taqlid*. This is where the scholars have different opinions. For the *fiqh* scholars, *ijtihad* is compulsory, meaning no 'istinbat' would happen without *ijtihad*. A *faqih*, in their view must necessarily be a *mujtahid* (Sulaiman al-Asyqar: 1991).

However, this is not a new assertion. On the contrary, it has been a long time since some of the scholars have realized that the absence of *ijtihad* has caused Islamic law to remain excluded because it is seen as irrelevant to the current aspect (Yusuf al-Qaradhawi: 1994).

Alternatively, the term "research" should be used. As a matter of fact, the term is intended to be a serious academic work for the purpose of achieving scientific truth through an orderly process of identifying and analysing. What's left is how to make "research" as a basis in determining the law. Still, Usul *Fiqh* will be the base as it is the only certified and tested method in the history of Islamic law development. In other words, how to make Usul *Fiqh* as a method of Islamic law research when it comes to legal practice. Practice law is divided into two, namely the of *taklifi* law and the *wad'i* law (Abdul Karim Zaidan, 2004).

Fatwa research through *ijtihad* based on systematically revision process has potential in achieving high levels of research. In Usul *Fiqh* it is referred to as "Takhrij" works. Based on the theory of *Ijtihad*, it is the most basic *ijtihad* (Ahmad Ali Taha Rayyan, 1995). In modern research this term is referred to as "literature review" which serves to give a clear summary of the views and results of the previous study and identify the scope of the study which has not been done before.

As said al-Qaradawi (1997), besides the need to understand the Qur'an and al-Sunnah (*Fiqh al-Nusus*) requirements for understanding the reality (*Fiqh al-Waqi'*) is also very crucial. *Fuqaha* in the past also discussed about fatwa changes due to changes in circumstances. In relation to this it is important to understand all the relevant texts in the current context. Failure in this will result in whatever conclusions made may be too idealistic and difficult to be implemented in an existing environment.

The nature of the *maqasid al-Syariah* is certain (Qat'i). This certainty refers to the status of authority and credibility of the *maqasid al-Syariah*. For example, when *Shariah* permits all business activities, but at the same time prohibits usury (*riba*) (al-Quran, al-Baqarah, 275). The certainty for prevention of usury is to maintain and preserve the economic system from

irregularities or unfairness. This is to prevent the perversion of humanity (Muhammad Baqir, 1980) which has a negative effect on the Islamic economic system which is based on the concept of perfection, balance and justice (al-Qaradhawi, 1996). Obviously, the maqasid al-Shariah contained in any of the laws is irrefutable. If there is available any procedure or method of management it must be of great deal and benefit. However, if it is prohibited then there must be any harm inflicted or harm that must be avoided.

This maqasid-based fatwa research method is derived in many basis and series (Al-'Alim Yusof Hamid, 1991). First through the revelation contained in the Quran and al-Sunnah. Allah s.w.t. says (JAKIM, 1983):

[We sent] messengers as bringers of good tidings and warner's so that mankind will have no argument against Allah after the messengers. And ever is Allah Exalted in Might and Wise. (Qur'an, al-Nisa', 165)

In another revelation:

And We have not sent you, [O Muhammad], except as a mercy to the worlds. (Quran, al-Anbiya', 107).

So is the other words of Allah which means: “*that He may test who among you is better in deed; and many other Quranic verses*” (Quran, Al-Hajj, 39, Al-Baqarah, 183, Al-Maidah, 6)

which give a clear explanation of the causes and reasons of a decree. In al-Sunnah it is narrated (Muslim, 2006):

you people who can afford to make a living, then marry, because the marriage can protect the eyes and guard the genitals. Those who cannot afford it then fast because indeed fasting is a protector to him.

The second methodology is a research method though inductive (Istiqra'). This method is often applied by fuqaha (Amir Mu'allim, 1999) through the method of citing the general form of legal proceedings based on specific facts. According to al-Syatibi (1997) this method is based on fatwa research on all Shariah laws whether it is of rules or furu'. In addition, he stated that this inductive method is comprehensive and definitive. For example, maqasid al-Shariah is implied in the decision of kaffarah punishment by liberating a servant (Bukhari, Sahih Bukhari, chapter al-Siyam).

This method requires consistent effort and commitment to obtain effective and practical outcomes. Perhaps it is quite difficult to be implemented by the fuqaha because syariah law, fatwa and ijthad fuqaha are used widely around the world. Nevertheless, it is difficult to find *Fiqh* law that is contrary to maqasid al-Syariah until now. The only contrary are differences in interpretation and fuqaha understanding of 'illat al-Hukum (Ibn Rush, 1983), the effect of disagreement over a law. The fact is that the existence of maqasid al-Syariah in a law is certain and undeniable.

Thus, the best method of analysing the law resulted from challenges in globalization in practising the real syariah objective in fatwa research is as mentioned by al-Zarqa (1998):

The changes and differences of fatwa (law) are based on time changes (space), space (place), state, motivation and habits

According to al-Sayis (1970), Islamic law can be divided into two category, the first being a permanent and irreversible law and not interchangeable whether there is a change of current situations and second is the juz'iyah law that protects human interest and their way of life ('urf). This law will be adaptable to the human interest in parallel with the changing times and circumstances.

In line with this fact, al-taghayyur element exists in the interpretation of the nas especially in the second category. The al-taghayyur element is a complementary element in fulfilling the ever-changing and evolving human needs and circumstances (al-Zuhayli, 2001). Al-Raysuni (2000) views the reality (social) such as flowing water, are changing and not static.

The revaluation of previous fatwa results is a valuable treasure with regard to all fields of science that are not limited to the field of the religion alone, even involving all fields of science and technology particularly in the disciplines of biology, chemistry, physics, mathematics and others. It also includes intellectual values (such as psychological values, history, politics, ideology etc.) and the reality of society life either in socio-economic, cultural, social interaction and so on. This is because it is important to determine the fatwa based on the views and perspectives of the current globalization impact.

Scientific *Fiqh* Research in Istinbat Contemporary Fatwa

The term 'scientific' comes from 'science'. However, in the discussion here, the author did not extend the scope of science with the intention of science or the use of knowledge related to the material nature (Ahmad Mahzan, 1997). The focus in this discussion is the element of thought expected in science research to explain the phenomena through an approach called the scientific method. Holistically, this method is dependent on the logic of human reasoning and based on reasonable facts according to the perspective of human thinking. In addition, a principle created by science must be empirically tested.

Hence, each study or findings may be reviewed by other scholars using the same method. Therefore, every researcher needs to explain in detail the methods used, without concealing anything. The initial resolution that can be made is that science is the process of collecting facts, classifying them and enforcing facts. On the other hand, science fact is not absolute, as it is understood of the factual definition of fact, that is, undisputed or unchangeable. As a matter of fact, science facts are relative and changeable. Even in the context of science, facts presented is only limited in a purely scientific perspective (Sidek Mohd Noah, 2002).

According to Goldhaber and Nieto (2010), the scientific research method is defined as the techniques of studying a natural phenomenon of nature to acquire new knowledge and to unify or correct previous knowledge. More specifically, the scientific research method is largely related to the definition of science. Science is a research activity using certain methods such as experiments that emphasizes greatly on the importance in observation. Subsequently, the results of the observation require an explanation understood by the nature as general as possible. (Medawar 1984). This method should now be used to justify all areas of knowledge so that it could reach universality and accepted globally (Selamat, Mohd Murshidi & Ahmad Bazli 2012).

Ibn al-Haytham (1989) in *Kitab al-Manazir* (Optical Book) states:

“After we conduct our research and reasoning in stages and in orderly manner, premise criticisms and conclusions are made with caution and our aim is so that each test and revision of a subject can be judged, not prejudiced and takes into account what we value and criticism which is sought for truth and is not affected by opinion”.

The above affirmations illustrate that his scientific research is very concerned of correct information or data, thereby dismissing unfounded views. In fact, Ibn al-Haytham also has a different view on the method of obtaining information than the Aristotle method. For example, Ibn al-Haytham uses *istiqra'* method (induction method) to test the validity of the vision theory whereby Aristotle used the deduction method (Smith 2000).

Ibn al-Haytham's views differed from the usual knowledge from his time, making him a very critical researcher (Sobhi, 2012). This is because he conducted his scientific studies to ascertain whether the research conducted by the past researchers had the value of truth or simply their opinion.

The Sharia contained in the Qur'an and al-Sunnah is not deliberately constructed, but rather on the basis of certain objectives. Therefore, *fqaha* should always strive to conduct research to apply the Shariah objective in all circumstances in order to execute the law of God. They also know that the law concluded from the script at some point may need to be modified and reformed on the basis of reason and *'illat* has changed. The syariah objective cannot be applied through law and guidance without any zeal and solid understanding on reality and the current needs of society.

Fatwa is a form of flexible legal response suitable for any time, place and circumstances change. The fatwa issuance should rely on systematic methods of fatwa response. Likewise, current research inputs also serve as complementary to the given fatwa response. Hence, a guideline in the fatwa response or other law must be adhered to by every mufti who wishes to response to it so that the answer given is strictly in accordance with the requirements of *syarak*. Therefore, the study will discuss the theory of the philosophy of *taqwa*, the basic methodology of *fate* and the needs of research in the practice of fatwa.

All fatwa committees in each state in Malaysia have outlined their rules and method of issuing fatwa based on the *Undang-undang Pentadbiran Agama Islam*. Hence every problem that arises will be resolved and a fatwa is issued based on the methodology outlined. According to Suwaid Tapah (2004), the method adopted by the entire committee still maintains the ultimate references in Shafie sect either in the opinion of *qadim* or *jadid*. If this method is contrary to the public interest, the committee will refer to some opinions from the schools of Hanafi, Maliki and Hanbali.

The method of Islamic research has existed for centuries. This statement is supported by the existence of rules of legal determination in Islam until the birth of knowledge known as the science of *Usul al-Fiqh*. *Usul al-Fiqh* is a combination of two Arabic words i.e. *usul* and *fiqh*. *Usul* originated from the word *asl* which means the base of building or something built on it (Khalid Ramadan Hasan, 1998). *Fiqh* means understanding, defined as knowledge of Islamic law

relating to mukallaf (people who have fulfilled the requirement to carry out responsibilities and obligations of syarak such as puberty and intelligence) (Wahbah al-Zuhayli, 1996).

Fiqh can also be defined as a set of syarak laws relating to the daily practice of mukallaf taken from the detailed arguments. According to Wahbah al-Zuhailiy (1989), *Usul al-Fiqh* is a set of methods and principles used by fuqaha in making a legal determination taken from the detailed syariah argument.

Indirectly, a research process is conducted to determine certain laws of Islam using certain rules in *Usul al-Fiqh*. However, the use of this method is still at an introductory stage and has yet to be applied in academic research including academic studies conducted in connection with Islam from a social perspective.

Norsaidatul Akmar Mazelan (2003) argues that the impact of science and technology on the scope of knowledge and information acquisition will be much wider and diverse, the process of renegotiation as the main thrust. Electronic and digital sophistication will be noticeable either in communication technology or in other fields. So the main challenge for *Fiqh's* existing research is it should be in line with current developments. Reforms need to be holistically made in terms of human resources, facilities and most important research approaches.

Mohd Daud Bakar (1999) states that a fuqaha is allowed to be critical, review and free whether to adopt or otherwise contravene the contents of a *Fiqh* Islamic work. This understanding is also important for every Muslim to be aware of in order to avoid the sectarian fanaticism that usually occurs due to the differences towards the practice and study of the relative *Fiqh*. (Imran Ahsan Nyazee, 1983).

Abdul Halim El-Muhammady (2001) stressed that a relative *Fiqh* work should be evaluated openly and allows disagreement. For example by using the concept of *tarjih* and comparative sects, that is an open minded, logical, sane and systematic mind evaluating *fiqh* work in the past (Paizah Ismail, 1999). Using these approaches can be categorized as knowledge culture appropriation (Muhammad Abdul Rauf, 1995) and has given rise to the very high intellectual civilization of Islamic intellectuals in the past.

Fiqh research methodology that is integrative and thoughtful with reality is crucial to be done in Malaysia. Among the weaknesses of the current *fiqh* research approach is due to the extreme *taqlid*. This approach will slow down the reform of Islamic law research development programs for a long term. The Islamic law research development program relies heavily on not only material development, but requires Islamic scholarly concern to develop a more viable *Fiqh* research framework and approach.

For example, in this regard, there are too many new questions in various fields, whether syariah or theology, which should be answered by Islamic scholars. Among these issues are issues involving consumerism, economics, biotechnology, modern cultural change and ICT (Alias Azhar et.al, 2016). Faced with this problem, a law researcher should act proactively using a semi-*ijtihad* approach, by offering solutions to any problems arising through the serious review of the legal responses contained in the past legacy, making a more contextual interpretation and not just textual on the issue.

Realization effort and prudent approaches as well as wisdom in critically evaluating *Fiqh's* past legacy and updating *Fiqh* views in the form of solving the current problems faced by the Islamic community. In addition to the review of the existing fatwas based on Islamic law and expanding legal operations to act as a guiding agent to all aspects of human life (Muhammad Said Bustami, 1984).

In addition, it is necessary to adopt a scientific *fiqh* investigation approach to be first; ontology (what), epistemology (how) and axiology (for what) to recognize, differentiate and analyze the functional link between various sciences. Second; should be relevant to the context of the times. Due to the changing times due to the open communication between cultures, the implications of the assimilation and transmission process have taken place. In addition, technological advances (Mohd Hazim Shah, 2004) which directly or indirectly affect human life as well country development (Mahathir Mohammad, 1991) which basically causes drastic changes in the system of community life.

Legal researchers, especially in the context of fatwa, need to broaden their understanding so that the thinking of the people becomes dynamically in the sense, not frozen and static. The past jurisdiction can be revalued without compromising his authority as a major source of reference and high value in his time. In order to address legal issues in the wake of the impact of science and technology explosions, law researchers need to build a mind-searching question that is a inquiry culture, seriously conducting research and actively speaking voluntarily in the pursuit of a *Fiqh* research that is reflective of the development of science and technology of the globalization impact.

The advantages of scientific *fiqh* research applications in contemporary fatwa development can be referred to the following three main points (Kamaruzzaman Bustamam, 2002):

- i. Search and formulate ideas that are fundamental in various issues.
- ii. Introduction and understanding of fundamental issues that can influence critical thinking.
- iii. This process will form a mentality and thinking method that prioritizes intellectual freedom and tolerance of *fiqh* and denies sectarian fanaticism.

The application of scientific methods, in addition to being subjective not objective, is also characterized independently of value judgments. It is clear here that scientific research cannot be influenced by external value elements, such as educational background, family, peers, social environment and so on. The rationale is to avoid bias and prejudice in research that will affect the research results.

This approach can produce syariah researchers (including mufti) who have rational, careful and objective thinking skills. In addition, they are provided with the ability of conclusive power and analysis that will enhance the ability of *ijtihad*. The ability of *ijtihad* specialized syariah researchers involved in the development of contemporary fatwa should be based on *istinbat* and *istidlal* methodology with reference to heritage sources and modern authoritative. Researchers should have the scientific skills of application of scientific methods. These skills, among others, can boost efforts to explore new phenomena based on existing knowledge. In addition to

mastering the testing ability, researching and understanding linkages between theories, concepts and general principles contained in the *fiqh*.

Conclusion

In conclusion, research application of *fiqh Maqasidi* and scientific *fiqh* in contemporary fatwa development can be regarded as a very crucial requirement. Especially in the era of globalization that requires concern and proactive attitudes among Islamic fuqaha in offering the formula for solving Islamic problems on the various issues of life that arise in society. Rationally, it is imperative to apply the *fiqh Maqasidi* research in the essential *maqasid al-Syariah* framework into contemporary fatwa development efforts. In addition, *fiqh* scientific research is the best alternative in strengthening the thinking, research and methodology of a more sophisticated shariah research and able to resolve *fiqh* issues during the globalization systematically and conducive. Both research approaches needs to be done in istinbat fatwa efforts as pro-active measures to develop a framework of fatwa investigations that meet the criteria and in line with the demands of the change of the globalization era.

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