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THE GOLDEN AND THE DARK AGES OF ISLAMIC JURISPRUDENCE: ANALYZING THE ORIENTALIST THOUGHT

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Abstract: The evolution of Islamic jurisprudence during the third to the fifth century of Hijra demonstrated different phases of events and political transition that had an impact on the growth of Islamic law. Hence, by the third century of Hijra, various methodologies of legal reasoning began to emerge and implemented by Muslim scholars as a secondary source after the Quran and Sunnah. Oriental scholars, Joseph Schacht and Wael Hallaq have classified the third century of Hijra as *The Golden Age of Islamic Jurisprudence*. Whereas through the fourth century of Hijra, the practice of *Taqlid* and the fanaticism towards the Imam Mazhab contributed to *The Dark Age of Islamic Jurisprudence*. This article aims at analyzing the views of Joseph Schacht and Wael Hallaq on the development of *usul fiqh* during the third to the fifth century of Hijra by using the methodologies of qualitative and comparative. This article concludes the validity of Schacht and Hallaq's facts on the importance of ijtihad in the zenith of *usul fiqh*. This article proves that Schacht prejudicially asserting that the practice of *Taqlid* meant the decline of intellectual growth and the backwardness of legal reasoning. While Hallaq believed in *Taqlid* as a medium to enhance the growth of legal reasoning among Muslim Scholars.

Keywords: Orientalist, Islamic jurisprudence, *Taqlid*, Ijtihad.

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INTRODUCTION

The development of Islamic Jurisprudence during the third century of Hijra shows the establishment of schools of Sects (Mazhab) that applied and introduced the principles of Islamic law. *Usul fiqh* is the methodology of the law and it provides standard criteria for the correct deduction of the rules of fiqh (law) from the sources of the Quran and Sunnah. Many principles of *usul fiqh* were established and applied by Muslim scholars such as *ijma*'(consensus), *qiyas* (analogy), *ijtihad* (personal reasoning), *masalih mursalah* (consideration of public interest) and

istihsan (preference) (Badran, 1984, 472). During the first and second century of Hijra, the Companions of Prophet Muhammad interpreted the law with references from the Quran, Sunnah, and ijtihad to obtain the law (Kamali, 1999, 3-5).

Thus, during the third century of Hijra, the jurist progressively witnessed the advancement of *usul fiqh* as the principle of law and as the rules of interpretation of the divine source. Although the jurists differently agree to uphold the ijtihad as a source of law, yet the methodology is subservient to explicit injunctions of the Quran and Sunnah. Hence, it may indicate the intelligence of Muslim scholars in interpreting law from the sources of Syari'ah (Abdul Latif, 1939, 203-204). The theory and the practice of *usul fiqh* were emphasized by Joseph Schacht and Wael Hallaq in their books and articles. As stated by Schacht (1982, 57-58) and Hallaq (2009, 55), the growth of Islamic jurisprudence in the third century of Hijra was classified as '*The Golden Age*' prior to the increasing numbers of Muslims scholars and many methodologies of *usul fiqh* applied by them.

The development of Islamic law after the demised of Prophet Muhammad shows various legal inquiries arise and demanded the companions to interpret laws based on the Quran, Sunnah and ijtihad (Khallaf, 1942, 308-309). However, as claimed by Muhammad (Yahya Muhammad, 2000, 70-71), the practice of ijtihad in the second century of the Hijra illustrates the vigilant approach of jurists to preserve the purity of the Syari'ah and to assure the application of laws based on the sources of Islam. The expansion of Islamic sovereignty and territory during the third century of Hijra demanded the extensive contribution of jurists to interpret a legal text and render judicial decisions according to the principles of *usul fiqh* (Khallaf, 1942, 310-311).

Moreover, the zenith of Islamic jurisprudence in the third century of Hijra was known as *The Golden Age* and its illustrated various theories and methodologies of *usul fiqh* being extensively used by the jurists (Abdul Latif, 1939, 96-101). Therefore, the orientalists had an incredulous conclusion about *The Golden Age* of *usul fiqh* and allegedly the principles of *usul fiqh* were transplanted from the corpus of Rome, Jews and Christianity (Rafiq, 2016, 121-123). Thus, the orientalist such as Schacht, Goldziher, Snouck Hurgronje, and Gibb concluded that the establishment of foreign elements in *usul fiqh* was credited to the progressiveness of Islamic law during the third century of Hijra. They defended the advancement of western laws and claimed that Prophet Muhammad and Muslim jurists transplanted foreign elements into *usul fiqh* (Watson, 1974, 121-123).

As a result, Schacht (1982, 57-58) and Wael Hallaq (2009, 55) have classified the durations between the third and the fifth century of Hijra as *The Golden*, and *The Dark Ages* of Islamic legislation. Various important events were associated with those periods such as; (i) the development of ijtihad, (ii) the emergence of four Imams of Mazhab, (iii) the practice of *Taqlid*, (iv) the closing of the doors of ijtihad, and (v) the era of the reawakening of Islamic law. Thus, the article will identify the following objectives: (1) the zenith of ijtihad and the emergence of Imam Shafi'i, (2) the formation of Imam Mazhab, and (3) the Dark age of *usul fiqh*.

The Golden Age in *Usul Fiqh*

i. The Practice of Ijtihad

According to Hallaq (1997, 19), the ijtihad (personal opinion) is widely used by Islamic scholars in Medina, Iraq and Syria. Thus, by the end of the second century of Hijra, Muslim jurists began to approach the principles of *usul fiqh* as a clarification of legal problems. According to Kamali (1999, 3-5), *usul fiqh* enables the jurist to ascertain the strengths and weaknesses in ijtihad, and to give preference to the ruling discussed. Consequently, with the expansion of the territorial domain of Islam, the possibility of confusion in understanding the laws in the Quran was prominent among Muslim scholars. Therefore, the jurists essentially practiced ijtihad to avoid disputation and diversity of juristic thought in legislation. According to Hallaq, the quality of reasoning bound by no authoritative text develops in favor of rigid and systematic methods. Ijtihad and *qiyas* were two terms that encompassed all forms of systematic reasoning based on the Quran and Sunnah (Wael Hallaq, 1997, 19).

As stated by Schacht (1982, 62-63), the extensive practice of ijtihad led to the Traditionalist movement to uphold the Quran and Sunnah as supreme law and rejected the practice of ijtihad. In contrast, Hallaq claimed that Traditionalists do not reject the practice of ijtihad, but instead do not encourage the legal reasoning in Islamic law (Wael Hallaq, 2009, 56). From an Islamic perspective, the Traditionalist refers to the *Ahlul hadith* from the Hijaz Jurists who were distressed over the practice of ijtihad in becoming more prevalent in Islamic law. Besides, the Traditionalist's mission was to eradicate the negligence of the hadith as a source of law and to identify the presence of various hadiths transmitted inaccurately by the Jurists. (Farouq Abu Zaid, 1986, 37).

Hence, the *Ahlul Hadith* or Traditionalist does not absolutely deny the practice of the ijtihad as specified by Schacht. On the other hand, the practice of ijtihad is not encouraged to be practiced among Muslims to elude the widespread practice of ijtihad with different interpretations (Madkur, 1964, 56-57). Moreover, as stated by Hallaq, the Rationalist movement upholds the use of legal reasoning as the source of law besides the Quran and Hadith. Whereas during the third century of Hijra, Traditionalism was opposed to Rationalism in the methodology of Qiyas. The Rationalist acknowledged that human reason should not exclusively stand on its own, however, the method of interpretation had to solely participate in the divine revelation (Hallaq, 2009, 57). The Rationalist pioneered by Ibrahim al-Nakha'i in Kufah, well known for various expertise in the science of fiqh. Thus, the practice of reasoning in Islamic law is significant to accommodate the progressive life in Kufah (Madkur, 1964, 37-38).

Consequently, at the end of the third century of Hijra, most jurists are reported to have combined the ideologies of Traditionalism and Rationalism, known as the *Theory of Synthesis*. It was a significant practice resulted in *The Golden Age* of *usul fiqh* (Abdul Majid, 1994, 122).

ii. The Emergence of Imam Shafi'i

The history of Islamic law shows that the book of Imam Shafi'i, *Al-Risalah* was very significant and explicitly refers to the methodologies of *usul fiqh*. According to Hallaq, *al-Risalah* is considered the main reference for the later jurists in the science of fiqh and he was

acknowledged by Muslim scholars as the *Mujaddid* in Islamic law (Hallaq, 1997, 32). Hence, the historiography of *Al-Risalah* was the first effort made by Imam Shafi'i to reconstruct the methodology of *usul fiqh* in proper documentation (Hassan, 1966, 240).

Furthermore, Schacht (1982, 48) acknowledged that Imam Shafi'i's rigorous in stringent criteria in ijtihad has resulted in a fallacy in the application of ijtihad among the jurists. According to Schacht (1982, 48-52), at the end of the third century of Hijra, the practice of ijtihad was decreasing and the *Taqlid* (imitation) was in practice among the jurists, and it was the indicator for the closing of the gate of ijtihad among the jurists. Besides, Schacht's opinion on the involvement of Imam Shafi'i in *usul fiqh* and acknowledged his intelligence in preserving the sources of law and legal reasoning in the *Al-Risalah* is coextensive with Muslim scholars (Islahi, 2007, 56-57).

Consequently, Schacht and Hallaq acknowledged that Imam Shafi'i did not encourage the use of *ra'y*, instead, the method of *qiyas* was applied to deduce the rules from the sources to unravel current legal problems (Hallaq, 2009, 51). Shafi'i recognized strict analogical and systematic reasoning which was referring to the *Qiyas and ijtihad*, to the exclusion of arbitrary opinions and discretionary decisions (*ra'y*, *istihsan*, which Shafi'i uses as synonyms) which were practiced by his predecessors. Schacht and Hallaq acknowledge the authority of Imam Shafi'i as a founder of Shafi'ite school and compiled the method of *usul fiqh* in comprehensive documentation (Schacht, 1982, 46). Besides, Hallaq included Ibn Surayj, the students of Imam Shafi'i in his acknowledgment of his Imam as the first synthesizer and the architect of *usul fiqh* (Wael Hallaq, 2009, 60). Thus, according to Hallaq, Imam Shafi'i was known as *The Founder and the pioneer of the usul fiqh* (Hallaq, 2009, 60).

In the Islamic perspective, Imam Shafi'i was a pioneer in the science of *usul fiqh*. Besides, his contribution in merging the principles of *usul fiqh* in his book, *Al-Risalah*, is the model for the later jurists and theoreticians strove to imitate (Hasan, 1974, 178). The opinion that Imam Shafi'i was the founder of *usul fiqh* was incorrect because it was practiced by jurists before he entered the scene. The evidence is shown in Abu Yusuf's criticism of the Syrian scholars for their negligence of *usul fiqh* (Abd Wahhab Khallaf, 1942, 286). Abu Yusuf used the term *usul fiqh* and it shows that the methodology was practiced by Imam Shafi'i's predecessors and some of his contemporary jurists have formulated the principles before him as well. In addition, according to Subki (1939, 107-109), the principles of *Ijma*', *qiyas*, and *ra'y* were practiced by the early jurists but have not been documented. Thus, Schacht and Hallaq's claim that Imam Shafi'i was the first legal thinker and was responsible for introducing the principles in *usul fiqh* was incorrect.

iii. The Great Synthesis Methodology by Imam Shafi'i

Schacht and Hallaq note the prominence of Imam Shafi'i in revolutionizing the science of law by merging the ideology of Traditionalism and Rationalism in his book, *Al-Risalah* (Hallaq, 2009, 21), and it resulted to '*The Golden Age'* of *usul fiqh* in the third century of Hijra (2009, 66-67). According to Hallaq, *The Great Synthesis* focuses on intellectual expertise in the interpretation of law by the method of reasoning and with the Quran and Sunnah. Moreover, Schacht argues that *The Great Synthesis* began since the second century among scholars of Kufa such as al-Awza'i, Abu Yusuf and Shaybani (Schacht, 1982, 40-41).

In Islam, the merging of legal reasoning with the Quran and Sunnah began to be practiced by scholars in Iraq, but it was done in an irregular and unfastidious manner. This was very much in contrast to Imam Shafi'i's meticulous practice in ensuring that the Quran and Sunnah are used as the main reference in the methodology of *usul fiqh*. Thus, this statement refutes Schahct's assertion that fiqh scholars in Iraq ignored references to the Quran and Sunnah, and instead used ijtihad alone in the analysis of the law (Abu Zaid, 1986, 20-22).

iv. The Zenith of *Usul Fiqh* Epistemology

The establishment of legal reasoning and *usul fiqh* methodologies among the Muslim Jurists during the third century of Hijra was known as *The Golden Age* of Islamic law. According to Hallaq, Muslim scholars began to acknowledge the practice of ijtihad as the continuous process of development in Islamic law and the most important source besides the Quran and Sunnah (Hallaq, 2009, 31). The history of Islamic law shows that in the third century of the Hijra, the practice of *ijma* 'and *qiyas* was widely used in Islamic law (Abdul Latif, 1939, 96).

As stated by Hallaq, the essential unity between revelation and legal reasoning led to the emergence of Mazhab and they introduced various forms of legal reasoning in jurisprudence, education, and law enforcement. Hallaq's statement coincides with the history of Islamic law which shows that in the third century of the Hijra, the Imams of the Mazhab began to apply doctrines and methodologies based on their analysis in the discussion of Islamic law. The emergence of the school of Imam of the Abu Hanifah, Imam Malik, Imam Shafi'i and Imam Ibn Hanbal was a new paradigm in the epistemology of *usul fiqh* that remains in use to this day (Khallaf, 1942, 315). Thus, the statements of Schacht and Hallaq on this matter are parallel to the facts of the writings of Muslim scholars.

In conclusion, Schacht and Hallaq proves the progressiveness and the establishment of the principles of *usul fiqh* during the third century of Hijra and it was known as *The Golden Age* of Islamic law. The rise of the practice of ijtihad proves that Islamic scholars were intellectually capable of legal reasoning, and in dealing with various changes in the society, cultural and political aspects of Muslims.

THE DARK AGE OF USUL FIQH

The Practice Of *Taqlid* And Its Impact On The Development Of *Usul Fiqh*: An Analysis

The Dark Age of Islamic law refers to the weakening of the *usul fiqh* practice at the beginning of the fourth century of Hijra. The fanatical of the Muslims towards the methods and teachings of Mazhab has led to the practice of *Taqlid* (Imitation) which has had a negative impact on Muslim scholars' thoughts (Abdul Majid, 1994, 214-218). Consequently, the history of Islamic law shows that the practice of *taqlid* did not occur in a short time, in fact, it occurred gradually and has had a negative impact on the development of Islamic law. In addition, the priority concern of the government towards the national defense while neglect of legal reasoning was an indicator to the decrease of the development of Islamic law during the fourth century of Hijra (Abd. Al-Aziz, 1997, 45-50).

According to Schacht and Hallaq, during the third century of Hijra, the growth of the Mazhab came to completion. Schacht stated that the Mazhab sect had begun to form specific doctrines and principles of *usul fiqh*, which they began to exert on and influence their followers (Schacht, 1982, 58-59). While Hallaq (2009, 34-35) in his study focused on the history of the Mazhab formation and the doctrine of *usul fiqh* introduced by them. As stated by Hallaq, the extensive practice of legal reasoning at the end of the third century of Hijra among the jurists, and the fanaticism of Imam Mazhab among the followers was an indicator to the beginning of the practice of *Taqlid* in Islamic law.

Consequently, in the history of Islamic law, the third century of the Hijra showed that the Imam Mazhab began to apply a variety of doctrines and legal reasoning based on their thorough analysis in Islamic law. Thus, this situation was a significant event in increasing the practice of legal reasoning upon the views of the Imam Mazhab (Madkur, 1964, 39-40).

As a result, various *usul fiqh* methods such as *ijma*', *qiyas*, *istihsan* and *masalih mursalah* began to be used by Imam Mazhab who indirectly introduced various methods of individual reasoning (*ra'y*). The diversity of methods of *usul fiqh* began to exist due to social, cultural, intellectual development, and geographical differences that impacted the diversity of legal views among Muslim scholars (Abdul Majid, 1994, 140).

An analysis of the historical facts of Islamic law shows that Schacht and Hallaq's claim to the formation of the Imam Mazhab which began to take place in the third century of the Hijra is correct. Therefore, with the establishment of Mazhab at that time, the theory of *usul fiqh* and its epistemology was recognized and well known among the Muslims. The fanatical attitude of the Muslims towards the views of the Imam Mazhab eventually led to the existence of the practice of *taqlid* among the Muslims, which was growing at the end of the third century of Hijra (Abdul Halim El Muhammady, 1986, 11).

The Inclination of Islamic Jurisprudence

At the end of the third century of Hijra, the increasing practice of *Taqlid* among the jurists led to prejudice and fanaticism against the teaching of extremist followers of the Mazhab (Muhammad Sallam Madkur, 1964, 58). At the same time, criticizing and elevating the views of Imam Mazhab is becoming more prominent among Muslims, which has indirectly led to a negative impact on the political and social development of Islamic law.

The practice of *taqlid* towards the teaching of Imam Mazhab began during the Abbasid rule. As a result, Muslims began to adhere to every view and teachings of the Imam Mazhab despite having migrated to other districts (Muhammad, 2000, 175). Besides, Schacht claims that the practice of *taqlid* was blindly imitated and it was a skeptical impression to the *usul fiqh* scholars. He prejudicially described them as intellectually backward, naive, and weak due to their unproductive legal reasoning and effortlessness in producing the latest ijtihad (Schacht, 1982, 71).

As a result, the development of *usul fiqh* during the fourth century of the Hijra declined. According to Hallaq, the reasons for *usul fiqh* being inactive were due to the decreased amount of ijtihad practices and the minimum amount of law cases recorded by the jurists (Wael Hallaq, 1997, 36). Whereas Schacht decreed that durations as the decline of fiqh intellectual due to the strict qualifications of ijtihad set by Imam Shafi'i which indirectly restricted the creativity of

scholars and Muslims to practice ijtihad. Consequently, the fourth century of Hijra is pronounced by Schacht as the ceased practice of ijtihad among the jurists and the door of ijtihad began to close (Schacht, 1982, 70-73).

In contrast, the practice of ijtihad never ceased, yet the practice of *Tarjih* or re-elaboration of earlier jurist's reasoning was continued by the later jurists in accordance with the current legal issues. Consequently, their efforts to analyze, explain and select the best point of view from the previous ijtihad had shown that they had a responsibility to add legal perspectives to the current legal reasoning (Muhammad, 2000, 73).

SCHACHT AND HALLAQ'S OPINION ON THE IMPACT OF *TAQLID* IN *USUL FIQH*

The history of Islamic law indicated that the *taqlid* was practiced among jurists for more than a century and it was the basis for the decrease in legal reasoning at the end of the third century of Hijra. In addition, the government's involvement in politics and national defense while neglecting the development of Islamic law, diminishes the *usul fiqh* progressivity and ijtihad (Abdul Majid, 1994, 214-218). As a result, the scholars of fiqh during that time were demotivated to practice ijtihad prior to the political pressure, the monopoly of rank, and the government's favoritism towards some Muslim scholars. In addition, the decision of ijtihad and the criteria of fiqh scholars in issuing legal views were used as political propaganda which eventually leads to the lack of self-confidence of fiqh scholars to practice ijtihad. This situation has initiated *Taqlid* practice to be applied in a significant way among Muslim scholars (Abdul Majid, 1994, 214-218).

As stated by Schacht (1982, 68-71), the *Taqlid* practice was aimed at opposing the decision of the *ijma* 'of *mujtahid mutakhir* (mujtahid emerged after the advent of Imam Mazhab) and not the earlier mujtahid. It occurs among the adherents of the four major schools of jurisprudence or of the Sunni school that has authority in the discussion and analysis of the present law. According to Schacht (1982, 71):

> "…Under the rule of Taqlid as it was formulated, the doctrine must not be derived independently from Koran, Sunnah, and ijma', but it must be accepted as it is being taught by one of the recognize schools…the official doctrine of each school is to be found not in the works of the old masters, even though these had been qualified in the highest degree to exercise ijtihad, but in those works which the common opinion of the school recognizes as the authoritative exponents of its current teaching…"

On the contrary, according to Shah Waliyullah al-Dahlawi, *taqlid* practice among the last jurists against the ijtihad and the legislation of the former jurists (Imam Mazhab). Thus, the diligence and intellect of the four Imams produced a remnant of fiqh, and their knowledge of ijtihad was inherited from earlier generations to the later Muslims (Al Nimr, 1987, 165). Therefore, it is deniable if the practice of *taqlid* was revised only to the ijtihad of later Muslim

scholars, in fact, the earlier jurists introduced the legal doctrine and grew out of varied juristic approaches including the methods of reasoning, and it was a heritage and references for each generation (Hallaq, 2009, 74).

Furthermore, Hallaq elaborated on the significance of *taqlid* and described it as an optional method for those who were disqualified to practice ijtihad by imitating the law prepared by the earlier jurists. Thus, he concluded, the practice of *taqlid* was not an indicator of the backwardness of jurists' intellect as has been claimed by Schacht, yet it was significant to be practiced by jurists during the fourth century of Hijra, to avoid from uncertainty result of ijtihad (Hallaq, 1997, 111).

By the fourth century of Hijra, the expansion into Islamic territory, and politics have influenced the formation of law and *usul fiqh* epistemology (John Hursh, 2010, 1401-1423). Thus, Islamic scholars in the fourth century of Hijra encountered a challenging situation in dealing with various legal issues that required a comprehensive analysis and legal reasoning among the Muslim jurists. Schacht concludes that all the legislation and ijtihad were finalized by the previous mujtahid, and all the activities of the subsequent mujtahid were unnecessary. Schacht's statement skeptically concluded the role of jurists who were seen as unreactive and he claimed it resulted in the closing of the gate of ijtihad (Schacht, 1982, 71-73).

It is undeniable that as early as the fourth century of Hijra, certain opinions in the writings of Muslim scholars pointed to the decline of the ijtihad practice among the mujtahids. This is prior to the practice of *taqlid* towards the teaching of the Mazhab and consequently has restricted the freedom of Muslim scholars to choose the reasoning of other Imam Mazhab (Sayis, 1995, 112).

As such, it has affected the creativity of fiqh scholars who were considered to have less confidence in ijtihad practice. In addition, the practice of *taqlid* seems to deny the position of Islamic legislation as a dynamic legal system and demonstrated the stagnation of legal reasoning among scholars of fiqh. This resulted in the decline of ijtihad and eventually led to Schacht's claim that the door of ijtihad was closed. Besides, it was a prejudicial statement against Islamic law and Muslim scholars, whom Schacht and the West describe as stagnant and regressive (Rahimin Affandi, 2004, 7-8). While in the Islamic perspective, there is no statement made by Muslim scholars who proclaimed the practice of ijtihad as having ceased or ended. Besides, it is an obligation to Muslim jurists to analyze the law by using the principles of Islamic jurisprudence and to assure the progressiveness of the epistemology of *usul fiqh* practices among the Muslim scholars (Mohd. Nor, 2000, 48).

CONCLUSION

To encapsulate, the development of Islamic law in the third century of the Hijra is known as *The Golden Age* prior to various theories and methods of *usul fiqh* were introduced by Imam Mazhab. Schacht and Hallaq acknowledged the intelligence of Imam Shafi'i in systematically compiling the *usul fiqh* methodology in his book, *Al-Risalah*, and pronounced him as an *Architect of Islamic Jurisprudence*. Whereas *The Dark Age* of Islamic jurisprudence which began in the fourth century of Hijra simply signified the decline of the ijtihad practice among Muslim scholars. It was not an indicator of *The Closing of The Gate of Ijtihad* as mentioned by Schacht in his book, *An Introduction to Islamic Law*. Indeed, this is a step in the resurgence of

Islamic law in a difficult era that demands a global intellectual and holistic ideology of fiqh scholars.

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