

# PONDOK PESANTREN AND ISLAMIC SCIENCES DEVELOPMENT: A CASE STUDY ON THE DEVELOPMENT OF *FIQH* STUDIES OF MA'HAD ALY SITUBONDO, EAST JAVA

H. Yasid

State Islamic Institute (IAIN) of Sunan Ampel Surabaya &  
Ibrahimi Islamic Institute (IAII) Situbondo, East Java, Indonesia  
(yazidabu@hotmail.com)

## Abstract

*Pondok Pesantren* (Islamic Boarding School) is an institution of *al-tafaquh fi al-din*, which is the development of religion sciences especially the science of *fiqh* (Islamic law). In the structure of religious teachings, *fiqh* science occupies the central position even the most concrete typographical arrangement as it has a direct contact with the various provisions of law in religious and typical social life. *Pondok Pesantren* has been developing *fiqh* as it is reflected in the establishment of Ma'had Aly (Higher Islamic Boarding School) at *Pondok Pesantren* Salafiyah Syafi'iyah Situbondo. As an institution of higher education in the *Pondok Pesantren*, Ma'had Aly Situbondo has been projected to be the center of the development of jurisprudence (*fiqh* center) as a response to a variety of legal issues. The development of *fiqh* in Ma'had Aly Situbondo has different perspectives with the other Islamic boarding schools in general because it puts *ushul al-fiqh* (principles of jurisprudence) as a method of legal *istinbath* (inference) in the central position in the study of *fiqh* and the formulation of operational laws.

*Keywords: fiqh, ushul al-fiqh, text of revelation, reality, boarding schools.*

## Introduction

*Pondok Pesanteren* (Islamic Boarding School) is one of the oldest educational institutions in Indonesia. Not many references reveal when the first boarding school was established. But it was almost certain that the boarding school was established together with the spread of Islam by *Wali Songo* (the nine saints) in this homeland, particularly on the island of Java. Therefore, the first *Pondok Pesantren* is believed to have been established by Sheikh Maulana Malik Ibrahim. This is because the prominent scholar who is also known as Sheikh Maulana Maghribi (d. 822 H) is the person who first spread Islam among so called *Wali Songo* or the nine saints.<sup>1</sup>

However, the figure who is acknowledged the most successful in establishing and developing the boarding school in the real sense is Raden Rahmat, known as Sunan Ampel. He founded the first boarding school in the Kembang Kuning at the time when there were only three students, namely Wirjo Suroyo, Abu Hurairoh, and Kyai Bangkuning. He then moved to Delta Ampel, Surabaya, and founded the boarding school there. This then led him to become famous as Sunan Ampel. The religious and educational mission of Sunan Ampel was achieved successfully that he was well known by the people of Majapahit. Since then, new boarding schools were founded by his *santri* or students and his son, such as Pondok Pesantren Sunan Giri by Sunan Giri, Pondok Pesantren Demak by Raden Fatah, and Pondok Pesantren Tuban by Sunan Bonang.<sup>2</sup>

The increasing number of boarding schools had their momentum when it was in contact with the Dutch in the colonial era. Repression and restraint of the Dutch towards Indonesian people and the development of Islam made many schools organise resistance and consolidate. They considered that oppression and colonialism done by the Netherlands were essentially a form of slavery. This is inconsistent with the human nature because basically every human being is born in a state of purity and independence. All human beings are equal so that no one has the right to enslave anyone else.<sup>3</sup>

The purpose of the establishment of boarding schools is basically divided into two general and specific purposes. The general purpose is to guide *santri* to become true Muslims and be able to become preachers of Islam in the surrounding community. While the specific purpose is to prepare the *santri* to become scholars of religion and practice it in the community.<sup>4</sup>

In accordance with the Pondok Pesantren purposes, KH. A. Hasyim Muzadi, the former chairman of the Nahdlatul Ulama' (NU), once pointed out that as educational and religious institutions, Pondok Pesantrens attempt to socialize the teachings of Islam as practiced by *Ulema Salaf* into the local social values in addition to emphasizing the importance of implementing in the real life practice or in special ritual occasions. Nothing has escaped from Islamic boarding school education concern ranging from the pure worship, like prayers, to the knowledge of criminal law, civil and government system.<sup>5</sup>

### ***Pondok Pesantren as a Sub-Culture***

As the oldest Islamic institution, pesantren has unique characteristics that seem different from other institutions. One of these institution, owned by the Pondok Pesantren, is the system of value itself. In fact, this unique value system once said by the late KH Abdurrahman Wahid, former NU chairman, as a subculture. Actually the term of subculture does not have the strong scientific basis, but the idea still has an important meaning. This is reflected, at least, in an effort to track and assess the uniqueness of very prominent boarding schools.<sup>6</sup>

Furthermore, there should be some aspects in the world of boarding schools that can represent subcultures. They are:

1. The existence of pesantren as an institution for the disobedient in the public life in this country.
2. The presence of a number of supports which becomes the backbone of boarding school life.
3. Ongoing process of formation of independent values (al-akhlaq al-karimah) in a boarding school along with its symbols.
4. The presence of interest to allow the public to regard the pesantren as an ideal alternative to the attitudes that exist within the community itself.
5. The development of mutual influence with the people that will culminate in the formation of new values which are universally acceptable to both parties.<sup>7</sup>

The Islamic boarding schools have a general view of life that is different from the views of people in the public. The Pondok Pesantren world view is rooted in the appreciation of the tenets of Islam which teaches that the purpose of human life in this world is nothing else but to seek the blessings of God which is more concretely realized in the form of worship in accordance with the guidance of *shara'*. Although the aspects that are profane or mundane are not entirely denied, the emphasis on things that are *ukhrawiyah* (hereafter) are positioned far above the interests that are *duniawiyah* (on earth).<sup>8</sup>

In *Pondok Pesantren* values, visions to achieve acceptance in the sight of Allah SWT in the last days occupy important positions in the order of the *pesantren*. This view demands total obedience to God as reflected in the form of obedience, performing religious obligations and stay away from all restrictions in accordance with the provisions of *shara'*. In this context there is a definition that *santri* or students are those who always pay attention to religious obligations.<sup>9</sup>

With a unique lifestyle, the boarding school is able to maintain the application of its values over the centuries. Therefore, in the long term Islamic boarding school institutions are in a cultural position which is relatively stronger than other communities. Pondok Pesantren is able to make a total transformation among the believers without having to sacrifice its identity. When we observe the growth pattern of Pondok Pesantren, it almost shows the ability to do the transformation. Starting from a small mosque or *mushalla*, Pondok Pesantren then developed into a dominant institution that plays a role in the formation of shared values that apply to both the public and Pondok Pesantren.<sup>10</sup>

In subsequent developments, Pondok Pesantren is faced with a dilemma to deal with multifarious problems of change and development in society. On the one hand, pesantren is required to adapt to the context of the social dynamics. But on the other hand, it must retain its identity as a distinctive educational institution pioneered by the scholars and *Auliya'* going back to centuries ago.

Pesantren had done an adaptation process with the development of community schools at the beginning of the 20th century by a young *kyai* who just completed his education in Makkah (Mecca). During the Dutch colonisation period, the Dutch eliminated the pesantren teaching system and replaced it with local government educational system. In the territory of Mataram, education-*pesantren* style which was originally recognized and enforced formally was replaced by a

model of class and government school. This Dutch colonial policy resulted in the inhibition of the development of Islam and pesantren. As a result, the public's understanding of Islam was low and even quite apprehensive.<sup>11</sup>

To respond to this development the young *kyai* (*ulema*) of Pondok Pesantren established a new educational system in order to offset the educational system run by the colonial administration. With the new system, known as *madrasah*, boarding schools, developed well and rapidly. The *kyai*-s (*ulema*) consolidated the position of their pesantren to face the Dutch schools. If previously a *Pondok Pesantren* had about two hundred students, with the new system a Pondok Pesantren could recruit more than 1500 *santri* or students, like Pondok Pesantren Tebuireng Jombang, East Java.<sup>12</sup>

A century ago, the challenges faced by Pondok Pesantren were how to build and manage a model of *madrasah* education well. However, the challenges faced by the present Pondok Pesantren are more challenging because of the rapid changes occurring in boarding school life which demand reformation and adjustment without eliminating the formation of their identity as an institution of moral and noble personality. Because of this, a number of big pesantren like Salafiyah Syafi'iyah Situbondo, Zainul Hasan and Nurul Jadid Probolinggo, Darul Ulum Jombang and others began to develop higher education institutions. Colleges which they built are not only for religious knowledge competence but also for general knowledge such as informatics and computer sciences, fishery, nursing and other fields.

### **The Development of *Fiqh* Studies in *Pondok Pesantren***

The development of *fiqh* (Islamic Law) science seems very clear and even dominant in almost all *Pondok Pesantren* nationwide. It cannot be separated from the history of the boarding school centered in the villages and are concerned with learning religious sciences (*al-tafaqquh fi al-din*). *Fiqh* terminology itself has a broad meaning and includes the religious sciences which are strategically developed in the boarding school as an educational institution, struggle and community service. In the structure of religious teachings, *fiqh* is the most concrete lesson because it has direct contact with social institutions.

The word *fiqh* which is derived from Arabic means *al-fahm* (understanding). The terminology meaning is to understand something that becomes a right and obligation of someone else, or understand the particular laws (*juz'i*) based on the arguments. This definition put forward by Imam Abu Hanifah (d. 150 H) who tended to interpret the *fiqh* in general, includes the laws *i'tiqadiyyat* (faith), *wijdaniyyat* (morality-*tashawuf*), and *'amaliyyat* (legal, practical). Given the coverage is so comprehensive the nomenclature of *fiqh* in Hanafiyah schools known as *al-fiqh al-akbar* in accordance with the development of *fiqh* in this era of schools did not diversify into a separate discipline.<sup>13</sup>

This condition is different from the succeeding era of jurisprudence schools wherein the figures (Shafi'i School) tend to separate the discussion of the jurisprudence monographically from the study of faith and *tashawuf*. With this,

according to al-Shafi'i (d. 204 H), *fiqh* is to know the laws of practical *shar'i* (practice) which is obtained through law *istinbath* based on the *tafshili* evidence (detailed).<sup>14</sup> It can be implied from this definition that the laws of jurisprudence are a very practical and applicable as prescription and guidance for *mukallaf* (matured) in carrying out daily activities in religious and public life. What can be emphasized from the definition above is that the condition of jurisprudence based on the transcendental *syar'i* evidence and the process of taking legal postulate, requires logical *ijtihad* involvement or *istinbath*.

Basically, every law that is attached to various events and incidents is based on revelation as a guideline. However, not all revelation is described explicitly in the text of Qur'an and Hadith, but is described implicitly instead. On the basis of the evidence, revelation can be divided into two types, namely:

1. *Juz'i - tafshili* evidence- that is the detailed evidence of revelation text that shows certain laws explicitly as the revelation that clearly shows legal obligation is to take obligatory prayers, Ramadhan fasting, committing adultery, stealing, blood flow and things like that.
2. *Kulli - ijmal* evidence- namely the global evidence shows no specific legal terms explicitly, but implicitly is sufficient as indicators. Like the hadith text that means "Cannot do harm" (HR Imam Ibn Majah).

This hadith does not show the illegal aspects for certain events explicitly. Yet, no small amount of legal events based on this hadith indirectly, like consuming drugs and other acts that can jeopardise themselves and others.

The first evidence (*juz'i-tafshili*) has become the guideline of jurisprudence developed in *Pondok Pesantren*. This can be noted due to the formation of operational law which is directly confronted with detailed evidence as it has been mentioned in the definition of *fiqh* (jurisprudence). However, it does not mean that the type of second evidence (*kulli-ijmal*) had no contact with the formation of *fiqh* or Islamic jurisprudence. The object of discussion of jurisprudence, as the methodology of *istinbath* relates to the nature of the evidence, is to make formulation of rules that functions to simplify the process of *istinbath* or excavation of operational laws. In other words, the rules of *ushul al-fiqh* needed by Mujtahid in his academic work to explore legal sources (*istinbath al-ahkam*) can be referred to evidence of *kulli-ijmal* because it is built upon the evidence of revelation that expresses general matters combined with elements of formal logic. The second type of evidence that is attached with the knowledge of *ushul al-fiqh* receives less attention in the study of jurisprudence in *Pondok Pesantren*.

Practically, the evidences of *juz'i-tafshili* and *kulli-ijmal* in the context of expansion of jurisprudence knowledge have a very strong and close relationship that cannot be separated from each other. That is, evidence of *juz'i-tafshili* explicitly stated in the text of revelation is needed in the *istinbath al-ahkam* (excavation of the laws), also cannot ignore the evidence of *kulli-ijmal* either in the form of general principles as embodied in the text of revelation, and some rules of *ushul al-fiqh* are actually created and adopted from the content of revelation text indirectly. As

rules dictate that the original law of the text that contains the order is mandatory, the original law from the prohibition in a text is illegal. The occurring general *lafadz* is deemed general as long as it has not found a niche in other texts.

Apart from the lack of reference of *kulli-ijmali* arguments in the study of *fiqh* tradition in Pondok Pesantren, the existence of *fiqh* in the oldest Islamic institution in the country occupies a very central and strategic position. Besides referring to the propositions of revelation, *fiqh* is also concerned with social welfare in the process of excavation. In fact, in daily religious and social life, none of the *mukallaf* deeds contain any legal implications. In this context, *fiqh* has a very important role in providing legal prescriptions for the benefit of mankind in this world and hereafter. *Fiqh* is a concrete rule in an effort to respond to various issues and events that keeps going throughout the history of humanity. Legal issues relating to the welfare of the world that are profane later called *fiqh al-mu'amalah*. To appreciate the benefit of the afterlife, the sacred character later appeared called the *fiqh* of worship (*fiqh al-'ibadah*).

Nomenclature of *fiqh* developed in most boarding schools does not divide the study of law only in two segments, namely the *fiqh al-'ibadah* and *fiqh al-mu'amalah*. Instead, they divide the scientific structure of *fiqh* into four major sections, namely: the *fiqh* of 'ibadah (rituals), *mu'amalah* (social), *munakahah* (family), and *jinayah* (crime). Such a distribution is done according to the *fiqh* literature treasures owned by Pondok Pesantren during the time that referring often to the *fiqh* references written since the era of the growth of schools of *fiqh* in the second century Hijriyah<sup>15</sup> until the middle ages. However, in terms of substance, those four parts can actually be simplified into two, namely *fiqh al-'ibadah* and *fiqh al-mu'amalah*. Al-Ghazali in his famous work, *Ihya' Ulum al-Din* (2008: vol. III: 509 – 512; vol. IV:667–670.) did this subdivision, 'ibadah and *mu'amalah*, along with adding two more in the domain domain of tashawwuf<sup>16</sup> discussion, namely *muhlikah* (something that can be harmful) and *munjiyah* (matters which may save).

### *Fiqh al-'Ibadah*

'*Ibadah* (worship) has a sense of being wholly submissive and obedient to God by doing all the commands and staying away from all prohibitions. Being submissive and obedient in this context is done by the servant to his Creator without subtracting, adding and questioning the reason of the commands and prohibitions. Thus, the *fiqh* of worship set up the relationship with his God as represented in the practice of religious rituals such as prayers, fasting, paying zakat, reading the Qur'an and others. Running the provisions of worship, *fiqh* is an obligation without having to question the *illah*, *hikmah*, and *mashlahah* contained therein. This reality must be done even though it is believed that any provision of God must contain a value for the benefit of his servant. Humans as servants are required to run the procedure as outlined in His teaching.

With a sense of worship as described above, the *fiqh* of worship has a static character, did not experience any changes due to changes outside. The *fiqh* of worship has no need of the creative and innovative development as its character is

immutable. In matters of religious ritual we do not need to create new forms of practice as those already established by the text of revelation. In the matter of prayers, for example, we do not need to modify and expand the number of obligatory prayers in day and night, the number of *raka'at*, number of *ruku'*, prostration ways, and so on, likewise, in a matter of other rituals practices, such as obligatory fasting, *sunnah* fasting, pilgrimage and so forth. In this connection, a fiqh rule states: "Legal origin practice of worship is forbidden until there are evidences that show the opposite legal".<sup>17</sup> Another rule has the same meaning as that principle says: "God cannot be worshiped except in the manner specified in the *shari'ah*".<sup>18</sup>

### *Fiqh al-Mu'amalah*

The second element of *fiqh* is the legal provisions relating to social issues. This element of *fiqh* could change according to the context of community development. What is important in this *fiqh al-mu'amalah* is how we appreciate the lofty principles of religious teachings set forth largely in the religious texts for example: fairness values (*al-'adalah*), equality (*al-musawat*), consultative (*al-shura*), mutual understanding (*al-taradli*), not hidden (*'adamu al-gharar*), not perilous (*'adam al-dlarar*), there is no compulsion (*'adam al-ikrah*), not speculation (*'adam al-muqamarah*) and others. By upholding the principles above, the real *fiqh* is a moral movement to uphold the rights and obligations of each party in proportion in the association of daily life.

Religious texts relating to *fiqh al-mu'amalah* is generally *mujmal* (general), that set the legal issues in universal ways. These conditions are made purposely by *shari'ah* (makers of *shari'ah*). *Shari'ah* deliberately gives such rules so that religious teachings which are *fiqh* views can move dynamically responding to a variety of legal issues that continue to develop in society. In addressing the various legal events in the community, a *Mujtahid* must study it by using *istidlal* instruments, either religious texts or observation of reality that can bring out the conclusions of law which refers to the sublime principles of religion. Some phrases said that the pretensions of *Mujtahid* in doing *istinbath* is how the product of law obtained can reflect the values of *maqashid al-shari'ah* (the intent and purpose of *Shari'ah*), which is to spread the benefits and prevent damages (*li jalb al-mashalih wa dar 'i al-mafasid*).

In the *fiqh* of worship, we are forbidden to do development and innovation, but not in *fiqh al-mu'amalah*. In this *fiqh (mu'amalah)* which is concerned with everyday social interaction, we are free to develop as far as possible and not contrary to the provisions of general texts. While there is no text to forbid, we are given the freedom to create and develop it according to the benefit of the surrounding context. Therefore, the principles that are later developed by Islamic Juries in *mu'amalah* matters are the principles of *al- bara'ah al-ashliyyah* stating that the absence of verse in the Holy Qur'an and Sunnah pertaining to special case is a sign of something legal permissibility. More editorial rules in this matter are:

The origin law in the *fiqh al-mu'amalah* is permissible until there is a proof that shows the law of inverse."<sup>19</sup> Another rule that also convey the same message is: "The *fiqh al-mu'amalah* is basically a neutral force until there are restrictions known."<sup>20</sup>

The *fiqh al-muamalah* documents have evolved over time. If in the early days, many *fiqh al-mu'amalah* discussed the types of transactions traditionally suitable with the reality of society at that time, it is now grown in scope according to the dynamics of modern society with the impact of advances in science and technology, similarly, in terms of constitutional law developments in *fiqh al-mu'amalah*. In the early days of the development of jurisprudence, constitutional law was not well developed because of the system that prevailed at the time was monologue and relied on aspects of the Caliphate and the Empire. In contrast, today the theory of constitutional law is dynamic with the rapid development of nation states in the world, including Islamic countries.

So, it is not surprising that in the early days of the birth of *fiqh*, the themes of studies that emerged revolved around the study of transactions and the like, the law of marriage with its implications, the Islamic criminal laws (*jinayah*), as well as the very prominent leadership of Quraysh tribe in the study of *fiqh al-siyasah*. By contrast, in our own time, the study of *fiqh* reaches broader themes in accordance to the appropriate developmental level. Given the vast area of the current study, the composition of *fiqh* emerged with more specific divisions and fragmentations so that the paradigm of *fiqh al-mu'amalah* is more accessible to the public. More specific discernment is stated such as in themes of *fiqh al-usrah* or *al-ahwal al-shakhshiyah* (family law), *al-fiqh al-madani* (civil law), *al-fiqh al-jina'i* (criminal law), *fiqh al-murafa'at* (procedural law), *al-fiqh al-dusturi* (constitutional law), *al-fiqh al-da'wali* (international law), *al-fiqh al-iqtishadi* (economic law) and others.<sup>21</sup>

As we know, there have been recent development in forms of transactions in the global economic arena such as stocks trading, credit card transactions, buying and selling copyrights and so forth. The development of the transaction due to the progress of science and technology does not dampen the implementation of *fiqh al-mu'amalah* as long as these refer to the principles previously stated. Various forms and formats of modern transactions that occur at this time can be appreciated in the *fiqh al-mu'amalah* as long as these follow the general principles of justice such as no coercion, no harm, and other principles.

The level of rapid social development necessitates the need of religious understanding in creative and dynamic ways in addressing the issues of *fiqh al-mu'amalah* whose arguments intentionally are set as universal forms of moralistic appeal. With this pattern of understanding, the expression of Islam is *shalihun li kulli zaman wa makan* (always within the context of time and place), Islam is a religion of *rahmatan lil alamin* (as a mercy for the universe), Islam is *kaffah* (a whole) religion, Islam is the perfect religion and others do not become empty adage, but there is a proof in the daily life of doing *mu'amalah* (social sphere) today.

This reality at certain intensity levels can affect a number of Islamic boarding schools (Pondok Pesantren) for the development of *fiqh* according to the



context of the reality of changes that cannot be avoided. In this case, the *fiqh* as a product of *ijtihad* must be contrasted with the study of *ushul al-fiqh* as the instruments of its methodology. Therefore, the study of *fiqh* in Islamic boarding schools (Pondok Pesantren) should be developed by combining proportionally between *fiqh* as a legal dictum with *ushul al-fiqh* as method of *istinbath al-ahkam*. With this kind of paradigm, it is expected that the development of *fiqh* is no longer rigid by interpreting the long heritage of each legal document verbally and textually. Conversely, *fiqh* as prescriptions and legal guidance, every *mukallaf* human being truly becomes a mirror of the universality of Islam as a religion of mercy for all the worlds. Awareness of the development of *fiqh* in the direction has begun to grow in a number of Islamic boarding schools (Pondok Pesantren) in the country. One example is the establishment of institutions like Ma'had Aly (Higher Pondok Pesantren) which concentrates on *fiqh* and *ushul al-fiqh* in Islamic Boarding School Salafiyah Syafi'iyah Situbondo East Java.

### **Ma'had Aly Situbondo as Study Center of Fiqh**

For the purpose of development of *fiqh* in *Pondok Pesantren*, the late KHR As'ad Syamsul Arifin, the former chief of Salafiyah Syafi'iyah Islamic Boarding School Situbondo, at the end of his life in 1990 had founded the institute of Ma'had Aly (Higher Islamic boarding School). Looking ahead, the higher Islamic education institutions are projected to be a center of study of *fiqh* or an institution of *al-tafaqquh fi al-din* that can respond to various religious and social matters according to perspectives of Islamic law.

Until recently, the existence of Ma'had Aly Situbondo cannot be separated from the Islamic boarding school community. In addition to institutional structures, Ma'had Aly Situbondo is under the auspices of the Islamic Boarding School Salafiyah Syafi'iyah Situbondo. Its birth is also a representation of a number of *Kyai* (Ulema) of *Pondok Pesantren*. Therefore, launching and opening ceremonies were conducted by the board *Rabithah al-Ma'ahid al-Islamiyyah* (the Islamic Boarding School United all over Indonesia). Because of that, the style of Ma'had Aly in the future is very much determined by the institutions of Islamic boarding school. It is also required to affect the climate of renewal in the boarding school environment, particularly in the field of development of *fiqh* according to the level of dynamics that occur in society.

In 2012 Ma'had Aly Situbondo turned 22 years old and has graduated six batches of students. In 2003, Ma'had Aly Situbondo was been appointed by Directorate of Pondok Pesantren, Ministry of Religious Affairs, as a pilot project in Indonesia. A year later, in late 2004, Ma'had Aly got the decree of equalization to Masters Program (Masters in Islamic Law) from the Director General of the Islamic Religious Institutions (*Bagais*), now Director General of Islamic Education (*Pendis*), Ministry of Religious Affairs.

In the past two decades, Ma'had Aly Situbondo has escalated religious thought, particularly in the field of *fiqh* and *ushul al-fiqh*, which is thought to be a concentration field studies since the beginning of its establishment. Unlike the

traditional study of *fiqh* in Pondok Pesantren in general which places the material of *ushul al-fiqh* limited to the introduction of legal *istinbath* methodology, Ma'had Aly Situbondo appreciates the science of *ushul al-fiqh* parallel to the *fiqh* itself. If the Islamic boarding school is generally positioned, *ushul al-fiqh* as *istinbath* theories of law that need to be introduced as a supplement of the subjects of *fiqh*, Ma'had Aly Situbondo put *ushul al-fiqh* as an epistemology that is very strategic in efforts to provide premises to be applied in mechanisms of crucial decision-making.

The intensity of the use of the science of *ushul al-fiqh* in the learning process of Ma'had Aly is intended to maximize legal services to the community. Increasing challenges occurring in society demanded Ma'had Aly to rethink the academic design that makes methodology of *istinbath* as the basis for the study of *fiqh*. The glum of academic activities and research both in academia as well as Islamic lately became a turning point for the study of *fiqh* creatively as well as innovatively. Ma'had Aly Situbondo indeed also experienced the difficulties and challenges in the effort to develop research activities to become more passionate and dynamic. Nonetheless, in the middle of the declining of campus researches, Ma'had Aly Situbondo attempts to do a study of *fiqh* methodologically to respond to a variety of contemporary issues of Islamic law.

In the realm of curriculum, at the end of 2004, Ma'had Aly updated the process of learning by doing curriculum development workshop. This activity was preceded by a series of evaluations of the structure and curriculum content of Ma'had Aly that has been applied for a half decade. In the workshop, the lecture materials that have a base of research and analysis have been increased. In addition, the concentration of matter, namely-*ushul al-fiqh*, gives greater priority to methodological studies or *fiqh* process rather than *fiqh* product. In the composition of *fiqh*, products were also given priority to the contents of *fiqh* that are based on realities, such as legislation *fiqh*, modern economy *fiqh* and others. With such a configuration, like a research design, *fiqh al-turath* (classic) is positioned as a theoretical foundation to develop mechanisms for resolving various issues of law by using the *istinbath* methodological approach or science of *ushul al-fiqh*. After conducting a series of evaluations and refinement, the composition of the curriculum is considered as a real need of the society according to the present level of development.

Research with historical analysis also needs to pay attention to the study of *fiqh* and *ushul al-fiqh* because *fiqh* as a product of *ijtihad* was born according to the context of the surrounding reality. So, the referral sources of *fiqh* is not only text-based observations but also revealed via *Mujtahid* towards the reality of each society and its environment. Therefore, the older literature on the history of law-making (*tarikh al-tashri'*) has been very valuable for the current generation to be developed for any legal event that occurs. What needs to gain attention in the study of *fiqh* are the objectives of *shari'ah* (*maqashid al-shari'ah*) which is to spread the benefit of servants, both in this world and hereafter. Thus, the study of *fiqh* developed in Ma'had Aly Situbondo cannot be separated from the *maqasid al-Shari'ah* provided that the results are compatible with the realities of society. In other words, each product of law resulted that is based on the results of research

and in-depth review is expected to reflect the settlement of legal issues in the academic context and is not shifted from its main benefits.

Besides the areas of curriculum, Ma'had Aly Situbondo is also making development in the study of *fiqh* as extra-curricular activities. With this, Ma'had Aly develops a *bahth al-masa'il* (problems and solutions) forum by compiling various *fiqh* issues faced in the community then analyzed and formulated in the mechanism of problem solving. *Masa'il Fiqhiyyah* discussion is then integrated with a weekly newsletter publishing called *Tanwirul Afkar* (TA) led by students of Ma'had Aly. Reports of any results of the study and analysis of various matters of *fiqh* are published in that newsletter. TA Bulletin which is published every Friday has a target to overcome the *fiqh* issues comprehensively with *manhaji* approach (methodological).

In addressing various legal events that occur in society, the TA uses perspective of classical and contemporary *fiqh*. That is, besides appreciating the old legacy of *fiqh* products materials in any mechanism of legal determination, the TA is also concerned about methodological aspects of law itself. This methodological approach was meant to anticipate the problems of contemporary *fiqh* that need solutions methodologically. With such approaches, the performance of *fiqh* is expected to reflect values of religious universalism in addressing any legal event. By appreciating aspects of *fiqh* methodology that are summarized in the rules of *ushul al-fiqh*, legal settlement is also expected to create new events that have never appeared before.

To disseminate the results of the study of *fiqh*, the accumulation of TA newsletter publishing has been collected in book form and published by several national publishers. The first book was published by LKiS Jogjakarta (2000) entitled *People's Fiqh: Fiqh Convergence with the Authority*. The second book entitled *Fiqh of Reality: Responses of Ma'had Aly against Contemporary Islamic Discourse of Law and published by Pustaka Pelajar Jogjakarta (2005)*. The third book was published by Erlangga publisher Jakarta (2007) with the title *Fiqh Today*. This last book is formatted into four editions, namely *Controversial Fiqh*, *Political Fiqh*, *Family Fiqh*, and *Fiqh of Sufism*.

### **The Content of People's Fiqh**

The *People's Fiqh* book is a summary and an anthology of the results of the *fiqh* study of third batch students of Ma'had Aly Situbondo which was published in the TA newsletter. The theme in this book relates to contemporary jurisprudence with regard to religious issues. Nevertheless, this book simply does not rule out the old treasures of precious *fiqh* in the provision of premises of Islamic jurisprudence. The discussion in this book generally tries to combine the classical *fiqh* with modern methodologies in addressing the problems of *fiqh* that arise in the community.

This reality is consistent with the historical background of the TA newsletter itself to respond to the intellectual anxiety concerning the mechanism of legal decision-making that evolved over the years for example, what is going on in some forums of *bahth al-masa'il* implemented in a number of Islamic boarding

schools. Ma'had Aly assumes that the activity of *bahth al-masa'il* is far from perfect in term of methodology and illustration. As the result, when the religious issues discussed are not in references of classical fiqh (known as yellow book) then immediately declared as *mauquf* (deadlock) without any further explanation when the matter will be discussed again by using a new method of approach.

The classical *fiqh* cannot be split with each study and discussion of *masa'il fiqhiyyah* in the TA newsletter because Ma'had Aly is born from the *salaf* Islamic boarding school which upholds the tradition. From this *fiqh* tradition then an alternative methodology to respond to every social problem that continues to emerge from time to time was developed. Ma'had Aly believes that by doing moderate approaches the classical *fiqh* it will not lose its context. Instead, it will always be able to reflect the values of conformity with the level of development of a society at any time.

The spirit of the content of this book realizes that the impression of *fiqh* stagnation is due to lack of appreciation to rebuild the *fiqh* so that it becomes a model of community. In any case, empirically *fiqh* has become the guideline of the people, mainly in traditional society. Therefore, efforts are being done to rebuild *fiqh* by revitalizing and actualizing with correspondence to the challenges faced.<sup>22</sup> Furthermore, the spirit of this book is to realize that among the Islamic boarding schools, *ushul al-fiqh* is only used as a "vitamin pill" that is consumed when the human body feels feverish while their daily consumption is the material of *fiqh*, and yet limited to *fiqh* in *Shafi'iyyah* school. Nothing to do with this book to assess such a case is wrong, but if it is connected with the spirit of taking *ummah* towards a more dynamic life then it becomes less relevant because of the accelerated lifestyle and civilization of nations is not often overtaken by the *fatwa* in a static *fiqh*. Based on this matter, the study of *fiqh* should be continued at the level of methodology in order to follow the ongoing acceleration. For that, there is no alternative except to make *ushul al-fiqh* as "daily food" that is sometimes needed to be supplemented with various flavor to make it more delicious.<sup>23</sup>

In the People's *Fiqh*, the themes chosen are related to unresolved *fiqhiyyah* issues. Even if necessary, it is to look for a challenging theme, factual, touching the livelihood of many people, yet marketable. Therefore, deciding the theme requires the administrators of the TA newsletter to continuously keep updated with the latest issues.<sup>24</sup> As per the results, such selection of themes will impact on the emergence of the pros and cons among the readers. Some are supportive because *fiqh* should indeed be dynamic, some people feel angry and think that the TA newsletter has gone beyond the limits of reasonableness.<sup>25</sup>

The atmosphere of the pros and cons can be reflected in a number of themes that are considered crucial and controversial. In the middle of the tendency of certain people who consider forced marriage as equity, the TA makes the point that forced marriage should not be in the teachings of religion. When there are doubts among the public for a good relationship with non-Muslims, the TA stated that there is no strong reason for marrying not mutually co-believers among Abrahamic religions because they have the same God. In fact, when discussing these issues the TA gives intriguing title "Reconciling Jesus and Muhammad".<sup>26</sup>

The new spirit to look for alternative solutions of *fiqh* issues in this book needs to be appreciated. It is because Islam as a religion of mercy has given signs like the provisions of the proposition *kulli* and *ijmali* in the text of its revelation. From the universal arguments, it is needed to be broken down into *ushul al-fiqh* rules that could bring new legal postulates in responding to new events. With this kind of methodological approach there will not be even the slightest problem which cannot be solved by *fiqh*. The context of the real *fiqh* is a reality of changes that continue to arise in the community. There is no other way in response to a variety of new challenges in society except through revitalizing the contents of *fiqh* according to the challenge of changes by maximizing the use of the *ushul al-fiqh* rules as an analytical tool and method of study.

### **The Contents of Fiqh of Reality**

*The Fiqh of Reality* book is a collection of TA newsletters crewed by fourth batch students of Ma'had Aly Situbondo. As in the previous *People's Fiqh* book, the themes chosen in this book relate to the issues of *fiqh* which arise in society and need to provide a response and resolution academically. The spirit of the contents of this book is to realize that the assessment of the public about the existence and ability of *fiqh* to respond to the changes in society split in two. Some have considered that *fiqh* is the source of the backwardness of the *ummah*. The reason is simple: by appreciating the *fiqh* that is fragmented into different sheets of so called yellow book (classical book) we are conditioned by the reality of the past without any lawsuit and historicity. Others say the opposite that *fiqh* is a source of dynamism for it is nothing but the product of *ijtihad* which is created by Islamic jurists. As creations of *ijtihad*, *fiqh* certainly cannot be separated from the historical context of when and where it was born. Thus, the foundation of *fiqh* is not merely a text of revelation, but also the reality of community of *fiqh* itself as its object.<sup>27</sup>

Since the history of its birth, *fiqh* constructions often appear when humanitarian issues are raised in the community and need to be responded to. Thus, the assumption of *fiqh* as a source of dynamism has its own relevance because it was born to respond to the dynamics of the community. Sometimes *fiqh* is even rated as one of the most concrete epistemological and apocalyptic sciences in direct contact with reality. *Fiqh* foundation is not merely some normative authority, but also appreciative towards an objective of reality on this planet. In this connection, it is not surprising that the typology of schools of *fiqh* in the expanse of history has always backed the context of the surrounding reality.<sup>28</sup>

Hanafi *fiqh* schools, for example, appeared with the rationalism of his performance as Imam Abu Hanifah (d. 150 H) as a founding father. He was born and raised in an urban community and tends to think rationally, even permissively. Therefore he more often used the argument of analogy (*qiyas*) rather than Hadith text where the validity is sometimes still questionable. In contrast, Imam Malik (d. 179 H) who was born and raised in an established Medina community tends to build up a formula of traditional *fiqh madhhab*. The building of

Maliki *fiqh* schools with such a formula makes for the preservation of deeds of *Ulema of Hijaz* (Medina) which has been a tradition sturdy and well established.<sup>29</sup>

The intersection of the text with reality has its own meaning because a text was born not in the empty space. It always appears as the context of a growing reality instead. Of course, the text has a broad interpretation concerning verses that are integrated with the contexts of historical experiences of mankind. The integration of texts and contexts need to be elaborated in a systematic way because of the true divine law (*shari'ah*) which is not born except for the context of well-being and welfare of mankind throughout history.<sup>30</sup>

The book *Fiqh Reality* is judged as appropriate and minimizes the impression that the *fiqh* is less accommodating to the reality of arising social problems. In the tradition of study developed by Ma'had Aly Situbondo, classical *fiqh* books are appreciated contextually in the spirit of every single change. That is, in addressing a variety of legal events in the community, these books (yellow book), which have been very traditional in the world of Pondok Pesantren, becomes a theoretical foundation for formulating a response to be given by the *fiqh* as a product of *ijtihad*. These patterns need to be developed to integrate the findings of previous creations of *Mujtahid* with the level of its relevance in society in this era.

### The Content of *Fiqh Today*

As reflected in its title, *Fiqh Today* contains the actual themes regarding legal issues happening. In fact, legal events that are considered controversial in the community become a specific portion in the discussion of book (compilation of TA bulletin) created by fifth batch students of Ma'had Aly Situbondo. The first edition of this book contains a discussion of controversial *fiqh*. What became the subject of this chapter was praying with the use of two languages; women becoming *imam* of Friday prayers; Hajj time criticised by some groups; the mosque which became often used as a place of wedding; and other themes which were considered controversial by the public.

Responding to the controversy and a number of issues of *fiqh* in the community, this book realizes that as a product of *ijtihad fiqh* possesses an actual dynamic character which even within certain limits can raise controversial ideas in the community. As a result of law *istinbath* creativity, *fiqh* certainly cannot be separated from the historical context of when and where it was born. The foundation of *fiqh* is not merely teaching the sacred text, but also the context of social *fiqh* itself as a subject. However, because observations of the *mujtahid* sometimes are not congruent in view of the interrelation of text to the context of societal change, then the conclusion of *fiqh* itself is not uniform and brings some variety and varied opinions.

Actual *fiqh* discussion in this book is considered to have its own meaning because *fiqh* itself is, in a substantive sense, an apocalyptic epistemology science with which the birth process combines two elements at once; namely, the argument text (*naqli*) and the postulate ratio (*'aqli*). Another aim of *fiqh* is to unearth the

normative authority of revelation brought into the operating rules that have direct contact with the realities of life. That way, the link of text and observational arguments against the reality of change cannot be separated in the process of the birth of *fiqh*. Instead, they form a complementary relationship which is then used as the basis of each *mujtahid* in the process of extracting operational laws. As a result, it is not surprising that the typology of schools of *fiqh* in the expanse of history has always been backed by the context of the surrounding reality.<sup>31</sup>

Besides the themes of *fiqh* which are considered controversial in the community, *Fiqh Today* also presents another theme in the fields of *fiqh al-siyasah* (political *fiqh*) and *fiqh al-usrah* (family *fiqh*). In the last part of this book, the theme of *fiqh al-tashawuf* is presented, namely the formation of *fiqh* which has dimensions of character and morality. This serves as an important theme because in Islam *fiqh* is built integrally on the values of ethics and morality. This is the point of difference between *fiqh* and western legal philosophy which dicotomizes law with morality. In the principle of *tashri'* philosophy in Islam, law without morality is evil, whereas morality only without formulating in the frame of *fiqh* is utopia. The concept of *maqasid al-shari'ah* in the science of *ushul al-fiqh* is built for the purpose of morality to create a just society by upholding the principles of benefit.

In responding to the benefit principle that sometimes moves dynamically in accordance with the level of social changes, *fiqh* as a result of *istinbath* creativity, is built referring to the revelation as well as social reality. On this basis, the intersection of revelation of the text with the reality of the public cannot be avoided in any process of formation of laws that has a social dimension (*fiqh al-mu'amalah*). The legal discussion in *Fiqh Today* has been the the intersection between revealed text and the context of this very necessary change.

## **Conclusion**

Pondok Pesantren (Islamic Boarding School) is identical to the legacy of Islamic sciences studies. However, the *fiqh* studies appear to be more dominant than the other Islamic sciences. *Fiqh* studies in Ma'had Aly Situbondo have been done methodologically by placing the science of *ushul al-fiqh* as an analytical tool that should be applied in the formulation of the mechanism of law provisions. The intensity of the use of *fiqh* sciences in each study of *fiqh* is intended to maximize legal services to the community which is characterized by the rapid challenges of change that occur in almost all areas of life. In the areas of the curriculum, since 2004 Ma'had Aly has been developing learning materials by increasing research as a tool of analysis for *fiqh* studies. In addition, the concentration of matters like *fiqh* and *ushul al-fiqh* prioritizes more the process of *fiqh* studies rather than the products. In the composition, *fiqh* products were prioritized based on the reality, like legislation *fiqh*, modern economy *fiqh* and others. A study with historical analysis also receives special attention in the development of *fiqh* studies. Ma'had Aly Situbondo is also developing *fiqh* studies as extra-curricular activities. This is reflected in the development of *Bahth al-Masa'il* forum. A forum which aims to formulate the legal issues faced the community is integrated with the publication of

a weekly newsletter called Tanwirul Afkar (TA). The accumulation of newsletter publishing is then compiled in a book form and published nationwide. TA has published six books, *People's Fiqh* (LKIS, Yogyakarta, 2000), *Fiqh of Reality: Ma'had Aly Responses to the Contemporary Islamic Legal Discourse* (Pustaka Pelajar, Yogyakarta, 2005), *Fiqh Today: Controversial Fiqh* (Erlangga, Jakarta, 2007), *Fiqh Today: Political Fiqh* (Erlangga, Jakarta, 2007), *Fiqh Today: Family Fiqh* (Erlangga, Jakarta, 2007), and *Fiqh Today: Fiqh of Tashawuf* (Erlangga, Jakarta, 2007).

## Endnotes

<sup>1</sup>See Dr. dr. Wahjoetomo, *Higher Education Islamic School* (Jakarta: Gema Insani Press, 1997), p. 70.

<sup>2</sup>Ibid, p. 71

<sup>3</sup>Ibid, p. 77.

<sup>4</sup>Faiqoh, *'Nyai' Agents of Change in Islamic School* (Jakarta: Kucica, 2003), p. 139.

<sup>5</sup>Ibid, p. 140.

<sup>6</sup>Ibid, p. 167.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid.

<sup>10</sup>Wahjoetomo, *Higher Education Islamic School* (Jakarta: Gema Insani Press, 1997), p. 68.

<sup>11</sup>Ibid, p. 76.

<sup>12</sup>Ibid, p. 77.

<sup>13</sup>Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh* (Damascus: Dar al-Fikr, 1996), vol. I, p.15–16.

<sup>14</sup>Sayf al-Din Abu al-Hasan al-Amidi, *al-Ihkam fi Ushul al-Ahkam* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1980), vol. I, p. 7; al-Mahalli, *Hashiyah al-Bannani 'ala Sharh Jam'i al-Jawami'* (Beirut: Dar al-Fikr, 2003), vol. I, p. 24.

<sup>15</sup>Hijriyah is an islamic calendar which had been commenced since Mohamed's migration from Makkah to Madinah in sixth century.

<sup>16</sup>*Tashawwuf* so called Sufism is an attempt to purify the soul and distance themselves from the despicable nature so it can constitute noble manners of human beings.

<sup>17</sup>Abu Yasid, MA, LL.M, *Reason & Revelation: Interrelations in the Process of Establishment of Shari'ah* (Jakarta: Erlangga Publisher, 2007), p. 59.

<sup>18</sup>Abu Yasid, MA, LL.M, *Epistemology of Fiqh: Elements of Substance, Methodology, and Application of the Doctrine of Religion* (Situbondo: Ibrahimy Press, 2010), p. 136.

<sup>19</sup>Abu Yasid, MA, LL.M, *Reason & Revelation: Interrelations in the Process of Establishment of Shari'ah* (Jakarta: Erlangga Publisher, 2007), p. 59.

<sup>20</sup>Abu Yasid, MA, LL.M, *Epistemology Fiqh: Elements of Substance, Methodology, and Application of the Doctrine of Religion* (Situbondo: Ibrahimy Press, 2010), p. 138.

<sup>21</sup>See Abd al-Wahhab Khallaf, *Ilm Ushul al-Fiqh* (Kuwait: Dar al-Qalam, 1978), p. 22-23.

<sup>22</sup>Editorial Team Tanwirul Afkar, *People's Fiqh: Fiqh Convergence with the Power* (Yogyakarta: LKiS, 2000), p. xvii.

<sup>23</sup>Ibid, p. xviii.

<sup>24</sup>See ibid, p. xxvi.

<sup>25</sup>Ibid, p. xxvii.

<sup>26</sup>Ibid, p. xxviii.



<sup>27</sup>Abu Yasid, M.A., LL.M (editor), *Fiqh Reality: Ma'had Aly Responses to the Contemporary Islamic Legal Discourse*, (Yogyakarta: Pustaka Pelajar, 2005), p. viii.

<sup>28</sup>Ibid, p. ix.

<sup>29</sup>Ibid.

<sup>30</sup>See Ibid, p. ix – x.

<sup>31</sup>Abu Yasid, M.A., LL.M. (editor), *Fiqh Today, Controversial Fiqh Edition* (Jakarta: Erlangga Publisher, 2007), p. iii.

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