Fiqh Model of the Companions (Ṣaḥābah) of the Prophet and its Influence on Abu Hanifah's Rational Fiqh and Malik's Traditional Fiqh

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Abstrak: Penelitian ini mengkaji pengaruh metode *ijtihād* para sahabat nabi terhadap dua madhhab besar dalam tradisi hukum Islam. Metode tersebut yakni pemikiran rasional Abu Hanifah yang dikenal dengan *ahl al-raʾy* dan Malik bin Anas yang dikenal dengan *ahl al-ḥadīth*. Kajian ini merupakan penyelidikan sejarah dengan menganalisis secara kritis peristiwa-peristiwa penting di masa lalu seputar kehidupan kedua tokoh tersebut. Untuk itu, digunakan berbagai sumber sejarah, literatur *tārikh al-tashrī'* dan kitab fikih. Penelitian ini menemukan ada pengaruh positif metode *ijtihād* para sahabat nabi dengan pemikiran hukum Abu Hanifah dan Malik ibn Anas. Hal ini menunjukkan bahwa metode berpengaruh secara signifikan terhadap perumusan fikih Islam oleh kedua tokoh tersebut.

Kata kunci: *Ijtihād;* Tradisi Hukum Islam; Yurisprudensi

Abstract: This study examines the influence of the *ijtihād* methods of the Prophet's companion on two major schools of thought in Islamic legal tradition. These are the rational thinking of Abu Hanifah, known as *ahl al-ra'y,* and Malik ibn Anas, known as *ahl al-hadīth.* This study is a historical enquiry by critically analyzing significant events in the past around the lives of those two figures. Various historical resources are used, *tārikh tashrī'* and *fiqh* (Islamic jurisprudence) literature, etc. This study finds out that there is a positive influence of the Prophet's companions' *ijtihād* methods with the legal thinking of Abu Hanifah and Malik ibn Anas. This implies that the method significantly influences the formulation of Islamic jurisprudence by those two figures.

Keywords: *Ijtihād;* Islamic Legal Tradition; Jurisprudence

Introduction

In Islamic legal traditions, *tābiʾīn,* the follower of the Prophet Muhammad, living after the generation of *ṣaḥābah* (the Prophet's companion), played a significant role in shaping Islamic legal scholarship. During their period, three regions became scientific regions of Islamic law, where the legacy of the Companions' *ijtihād* tradition and the spread of fiqh scholarship were strong. These regions were Hijaz, Iraq, Syria, and Egypt. In Hijaz, two madhhabs developed in Mecca and Medina. In Iraq, on the other hand, Kuffah and Basrah became the centers of other madhhabs development (al-Jauziyyah, 1973: 18; al-Shirazi, 1356 H: 25-34). Pioneered by the *tābiʾīn*, more scientific activities developed rapidly in these two regions (Medina in Hijaz, and Kufa in Iraq) than others. Two other areas that also became the center of scholarly activity for *tābiʾīn* are Syria and Egypt (Hassan, 1970: 19). It was from these cities that the *tābiʾīn* spread the thoughts of the companions on *fiqh*.

In general, what the *tābiʾīn* did in enriching the fiqh was not much different from that of the companions'. They even used a lot of *manhaj* (methods, systems, or rules of *istidlāl*) inherited from the companions in performing legal *istinbāṭ* . They referred to the Holy Qur'an and Sunnah, and if they did not get it from both sources, they used the *manhaj* of the companions. Only then did they develop their *istinbāṭ* methodology while still adhering to the rules of *ijtihād* by the companions. (Khudhari Beik, n.y.: 150-156). In other words, the *tābiʾīn* based their stand on the opinion of the companions. As far as they chadīth ould do, they preserved the *ḥadīth* of the Prophet and the opinion of the companions in their memory. Concerning the *ijtihād* of the companions, the *tābiʾīn* carefully chose the best and strongest legal opinions should they found differences. Only then did they do *ijtihād* themselves. At least two steps were taken by the *tābiʾīn* when there are two different fatwas (legal opinions) from the companions. Firstly, they prioritized a companion's opinion over another companion's opinion when it is considered more robust. Secondly, they produced their own fatwa if they failed to find suitable ones from the companions (al-Dahlawi, n.y.: 143).

One essential aspect in the development of fiqh thought in the *tābiʾīn* period is the emergence of two streams of fiqh thought. The first is scholars who relied their legal thoughts on reasons, called *ahl al-raʾy*. The second is scholars who based their thoughts on the Prophet's

traditions or called *ahl al-ḥadīth*) scholars. This trend is relatively popular in Islamic legal traditions. Understanding these two major schools of fiqh during this *tābi'īn* period will be helpful to understand the development and transformation of *madhāhib al-arba'ah* (four schools of Islamic legal thoughts). These madhhabs consist of Maliki, Hanafi, Hambali, and Shafi'i schools and are considered among the most prominent ones.

Two important factors contributed to the development of two schools of thought during the *tābi'īn* period; the first is the geographical factor. The Hijaz region became the center of scholarly activities in the Muslim world before it spread in Iraq and Egypt through conquests. The Hijaz region was a gathering place for some companions. This is different from the conditions in Iraq, where the socio-economic conditions of the Muslim society were relatively more complex and plural. Furthermore, they were far from the center of the *ḥadīth* in Hijaz. This situation has prompted some companions to use the arguments of the Prophet's tradition rather than the reason. Of course, it was more encouraging for them to use more reasons than *ḥadīth*, which was difficult for them to obtain. This phenomenon was very clearly seen during the period of the *madhâhib al-arba'ah* development when they had to go through these two schools.

The second factor-which will later be discussed in this paper - is the role of the companions as teachers for companions. The companions, who, from the beginning, divided their legal thoughts into *ahl al-ra'y* and *ahl al- hadīth*, have a significant role in shaping the legal traditions of the *tābi'īn* living in Hijaz and Iraq. These *tābi'īn* figures later inherited their *fiqh* tradition to Muslim legal scholars of the second and third centuries AH, especially the scholars of *madhāhib al-arba'ah*.

The study aims at explaining the use of the *ijtihād* method in the early days of Islam and the extent to which it influenced the formation of the *ijtihād* system used by scholars of the second and early third century after the Prophet's hijrah. The paper looks at the influence of the *ijtihād* method on the formation of the *madhāhib al-arba'ah*, especially the rational school of Abu Hanifah and the traditional school of Malik bin Anas.

Research Method and Approach

This research deals with the development of *uṣûl al-fiqh* (principles of Islamic jurisprudence) sciences. As the theme being studied is also closely related to the history of the formation of Islamic law, this research will also utilize other disciplines such as târikh al-tasyrī` (Islamic legal history), the history of Islamic civilization,n and Islamic thought. Thus, this research can be categorized as Interdisciplinary research. More specifically, this research emphasizes Islamic law as its major focus and the history of thought as its minor.

The historical approach examines past events and experiences or activities of the companions and key figures of the *madhāhib al-arba'ah* critically (Komaruddin, 1984: 124; Crawford, 1928.) Data collected through a literature study on the development of *ijtihād* methods. Sources on *târīḥ al-tashrī*, Islamic history, and the history of Islamic civilization used as the primary source.

The Influence of the Companions on the Development of Abu Hanifah's Rational School

This madhhab was founded by a famous fiqh figure named Abu Hanifah al-Nu'man ibn Tsabit, ibn Zauti. His famous name is Abu Hanifah. He was born in 90 AH in the city of Kuffah. In many works of literature, it is mentioned that he was mawla of Persian descent but was born Arabic. His intellectual spirit began to develop when he was still relatively young. This factor also later made him a scholar who has expertise in Islamic legal sciences.

Abu Hanifah was a fiqh figure who was known for his tendency to use reasons. At least this was caused by three factors: (1) socio-cultural factors, or the place and time where Abu Hanifah lived; (2) the influence of his teachers; and (3) the system most dominantly influenced his thoughts. A careful examination of three factors can reveal the Prophet's companion's influence on Abu Hanifah's legal thoughts (Mudhar, 2000: 69).

Socio-cultural Aspects

Before conquering the areas outside the Arabian Peninsula, the Islamic state's population consisted only of Arabs and the Jews minority.

Although there were Persians who converted to Islam, their numbers were relatively small. After the massive conquest, during the second Caliph of Umar ibn Khattab, the Muslim population from non-Arab circles grew significantly. Thus, the social groups in the Islamic community became increasingly diverse and complex. At the same time, there was also assimilation between various groups in the urban areas conquered, especially after the construction of the city of Kufa as a meeting place for various ethnic groups from the North and South, from Hijaz and Nejd and various tribes in the areas stretching from Medina to Iraq (Faishal, 1973: 37). The mobility of the population due to this change was getting more intense. The city of Medina was initially being visited only by the Arabs. However, after the conquest, it began to be visited by many other ethnic groups, including the *'ajam* people (foreigners). Likewise, the cities in Egypt and Iraq began to be visited by many other non-Muslim ethnic groups. A phenomenon like this later became a factor leading to changing society's character into a more aggressive and critical society and creating various new social problems. Such a phenomenon began to happen during the time of Umar ibn Khaththab and continued until the reign of Kufa city, where Abu Hanifah spent his life later.

Sociologically, even though they lived in different places and times, there were similarities in the character of the social problems during the time of Umar ibn Khaththab and Abu Hanifah. At the time of Umar, the tendency to use *ra'y* (common sense} was so strong because there were so many social problems requiring legal certainty. At the same time, access to authentic legal text referring to the Prophet's tradition was absent, as he prohibited the writing of the Sunnah. The available Islamic legal texts were not sufficient to answer the problems (al-Madani, 1999) . Besides, acculturation between Islamic and Persian and Roman cultures due to the expansion of Islamic power created more and more new problems that needed legal certainty. This development encouraged some companions, including Umar himself, to use their common sense or *ra'y* (Sukanto, 1982: 4).

Abu Hanifah experienced a similar situation in Kuffah and Basrah. Partly due to the characteristics of the society, which tend to be critical. Socio-cultural problems arising from acculturation also occurred during the time of Abu Hanifah. At that time, Iraq became an Islamic

metropolitan center, where cross-cultural and cross-social interaction took place.

Faruq Abu Zaid, for example, mentioned several factors behind the rational tendencies and methods of Abu Hanifah. Among them is the socio-cultural situation of Kuffah. The people were familiar with a more developed civilization and cultures. This factor is the reason why Abu Hanifah is so rational. Fuqahâ in this area was often faced with various life problems and others. To overcome these problems, they are forced to use *ijtihād* and reason. Another factor behind Abu Hanifah's rationality was his dealing with shari'a sciences and Islamic theology or *kalām*. This later science made skilled in using reasons to solve various legal problems. This can be seen in his *ijtihād*, dominated by reasons, al-qiyās and istihsân, especially when he gives fatwas on social and commercial issues (Abu Zaid, n.y.: 10). This similar tradition was often practiced by Umar ibn Khaththab when he was confronted with the social issues of the time. As a brief illustration, Umar was often faced with social issues that can be traced in his policies. In some cases, Umar tended to decide differently from the previous provisions and even different from primary Islamic legal sources. One example is the implementation of a social allowance system for government officials.

This systemization effort led to several success stories of the Caliph. Umar ibn Khattab succeeded in conquering territories was ten years from 13 H / 634 AD - 23 H / 644 AD). This automatically had a positive impact on the abundance of state income, especially from the spoils of war, jizyah and land taxes (Ghanimah and Kharraj). Furthermore, to optimize the state's income, especially from the tax sector, which was so large, Caliph issued a policy on the social benefits system for all government employees, including military personnel, with different allocations from what his predecessors had done.

If Umar ibn Khattab is considered to have limitations in the justification of *ḥadīth*, the same situation was faced by Hanifah. During Abu Hanifah's period, such limitation is since the *ḥadīth* had not fully spread in Iraq. The limited use of hadīth by Umar ibn Khattab was more prevalent as he used more reasons in dealing with social issues. These became the reasons for using reasons or al ra'yu with a more significant proportion by Umar ibn Khattab and Abu Hanifah.

The Influence of Schools of Thought and Teachers

Ahmad Amin narrated one interesting thesis describing the transformation of the legal thinking method from Abu Hanifah to the companions' path (Amin, 1952: 180). According to Amin, some of Abu Hanifah's teachers were important figures in the field of fiqh and *ḥadīth*. They spread the flow of al-ra'yu from among the *tābi'īn* fiqh figures. Among them are Hammad ibn Sulaeman and Ibrahim Al-Nakhā`ī. These two figures made a significant contribution to the way of thinking of Abu Hanifah in law. From these two figures, Abu Hanifah also knew the rational *fiqh* thoughts of the *tābi'īn*, such as Al-Qamah ibn Qāis and al-Nakhā`ī. (al-Dahlawi: 143). If we trace al-Qamah ibn Qāis and al-Nakhā`ī more carefully, it can be known that the thoughts of Abdullah Ibn Mas'ud heavily influenced them. Caliph Umar ibn Khaththab assigned Abdullah ibn Mas'ud to become an advisor to Amir Amr ibn Yasir and a teacher at the place where he served (Kufah).

This happened during the expansion of Islam into the Kufah region. Also, in the Kufah region, Abdullah ibn Mas`ud's "liberal" thoughts were relatively popular and in great demand by *tābi'īn* scholars. His influence in the Kufah region continued with Abu Hanifah using his rational-legal thoughts. Further research shows that Umar ibn Khaththab carried out the liberal ideas of Abdullah ibn Mas'ud in the city of Medina. Ibn Mas'ud contributed to spreading the rational thought of Umar ibn Khaththab in Iraq (Ash-Shiddiqie, 1981: 34-35), especially in the city of Kufah. See for example the following scheme (Amin, 1952: 180):
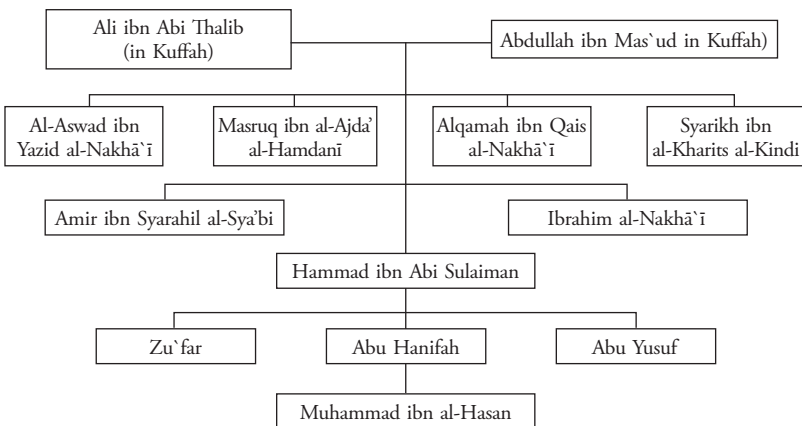
This scheme shows that the influence of the companions' thoughts on Abu Hanifah madhhab can be traced partly to his teachers. In this connection, it should also be emphasized that a teacher does not necessarily influence the thinking of his students. Nevertheless, that influence is difficult to be neglected, especially with the similarity of Abu Hanifah and Umar ibn Khattabs method in law using their reasons implemented to the method such as qiyas. Two influential figures for Abu Hanifah were Umar ibn Khaththab and Ibn Mas'ud (Mar'i, 1396: 105).

The Influence of the Companion's *Istinbāṭ* Method

From the historical sequence, it is not easy to see that the *istinbāṭ* method of the companions directly influences Abu Hanifah's *istinbāṭ* method. Besides, no single literature can confirm that the concept of *istinbāṭ*, as systematic, scientific and epistemological reasoning, already existed in the companion period. During the companions' era, legal istinbāṭ was conducted merely in operational practices. There was no scholarly formulation of the methodology. Nevertheless, some of the practices carried out by the Companions can easily be observed using the istinbāṭ analysis that developed in the second century AH.

Nevertheless, the method of *ijtihād* performed by Abu Hanifah in many branches of usul fiqh can be described in sequence as follows; al-Qur'an, Sunnah, *ijmā', qiyās, istiḥsān*, and *'urf* (Towana: 61).
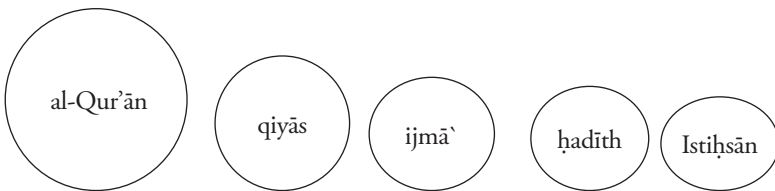
Abu Hanifah gave more portions to *ra'y* rather than *ḥadīth* when conducting *ijtihād*. With a strong emphasis on *ra'y,* Abu Hanifah dominantly used *qiyās* and *ijmā'* than *ḥadīth*. This use is due to two factors: First, Abu Hanifah is known to be very strict in determining the conditions for accepting a *ḥadīth* as an argument; Second, because of the spread of *ḥadīth* in the time of Abu Hanifah was not so maximal.

Some usul fiqh scholars consider these two factors the reasons for Abu Hanifah's preference to place the *ḥadīth* after *qiyās* and *ijmā'*. In addition to *qiyās* and *ijmā`*, Abu Hanifah also used istihsân. This becomes another indicator for Abu Hanifah's adoption of the companions' methods in dealing with legal issues.

The Influence of the Companions on the Traditional School of Malik Ibn Anas

Malik ibn Anas ibn Malik ibn Abu Amr al-Asbahi al-Madani was born in Medina in 93 AH or three years after the birth of Abu Hanifah. Malik ibn Anas was known as a person with a strong intellectual spirit. Before reaching ten years old, he had memorized the Qur'an. His strong interest in science became one of his potentials to become an influential scholar in his future. He spent his childhood studying various fields of knowledge (*ḥadīth*, *fiqh*, and *tafsīr*). His consistency in this endeavor made him known as an expert in the science of *ḥadīth* and fiqh. He wrote no less than 100,000 *ḥadīths*, which was then collected in an important work called al-Muwaththa '(Dutton, 2003: 23). His work is a reflection of his capacity in the field of *ḥadīth* based on fiqh. Therefore, it is not an exaggeration to say he was one of the *ḥadīth* experts in the discipline of fiqh.

The strong tendency to use *ḥadīth* as a source of law and *ijtihād* placed Malik ibn Anas as a *ḥadīth* teacher in Medina. As Abu Hanifah, in his many thoughts, was greatly influenced by way of thinking of the fiqh of particular companions, so did Malik ibn Anas. This can be seen in the characteristics of Maliki madhhab in carrying out *ijtihād*, which includes the following aspects:

First, Malik ibn Anas followed the people of Medina in performing his *ijtihād* by considering *ra'y* and *qiyās*, a method rarely practiced by other *fuqahā* in his day. For Malik ibn Anas, such practices were in accordance with the Sunnah of the Prophet, even the Sunnah of mutawātirah. This, according to Malik ibn Anas is one way to get familiar with the thoughts of the companions who inherited them.

Second, Malik ibn Anas considered and used the companions' saying as *shar'ī* (in line with Islamic law) proof, which must take precedence over the use of *qiyās*. Although this view was heavily

protested, Malik ibn Anas maintained that it is important to prioritize the thoughts of the companions, especially their sayings and fatwas, although the companions were considered as being not *ma'ṣûm* (free from any mistakes) (Mun`im A., 1995).

Third, there is a strong tendency to use *maṣlaḥah al-mursalah*. As the original characteristic of Malik ibn Anas, this methodology was influenced by the thought of the companions. One of which was Umar ibn Khattab. This method later recognized and legitimized by all subsequent madhabs, although under different designations. In this case, it can be seen that although Malik ibn Anas was famous for his strong use of *ḥadīth*, he still used ra'y.

Fourth, Malik ibn Anas is known to be very tolerant of the use of *ḥadīth āhād*. This use of *ḥadīth āhād* indicates that the Medina people's tradition had influenced Malik ibn Anas's thoughts. He even further stated that the *ḥadīth āhād* is acceptable as long as it does not contradict Medina's practice (Mun`im A., 1995: 98). The depth of influence that the thought of the companions has on Malik ibn Anas can be seen from three aspects as follow.

Socio-Cultural Aspects

So far, there is no clear explanation of the linkages between Malik ibn Anas and the generation of companions in accessing hadith. The can be traced from the development of Malik ibn Anas's thought. It is reported that several Prophet's companions contributed considerably to the thought of the hadith of Malik ibn Anas. These companions were Abdullah ibn Umar, Aishah, and Ali ibn Abi Talib. Anas ibn Malik was considered to receive the companions' influence from Abdullah ibn Umar's companions, who lived in Ali ibn Abi Talib era. Sociologically, there are similarities in the social and cultural problems faced by Malik ibn Anas and the Medina jurists from among the companions (Dutton, 2003).

The socio-cultural complexity of Medina during Umar ibn Khaththab's reign, as explained above, was not found in the lives of other companions. Among them are Ali ibn Abi Talib, Aishah, Abdullah ibn Umar, Zubair ibn Awwam, Talhah ibn Zubeir, Bilal ibn Rabbah and Zaid ibn Tsābit. Such complexity did not affect the

people to use hadith as the primary source of Islamic law. Among the cases decided by Umar ibn Khaththab that caused polemics among the companions are *ghanīmah* and *mu'allaf* (Muslim converts) (Qadhi, 1302 AH: 24-26.), *ḥudūd,* and *ṭalāq* (divorce). It is narrated that Umar ibn Khaththab added hudud for *khamr* (liquor) drinkers from 40 to 80 whips. He also Abolished the law of hand amputation for thieves as the punishment was not considered bringing goods (*maṣlahah*) because of the difficult economic situations at that time. Umar ibn Khattab also argued for the rightful triple *ṭalāq* (divorce) for those who uttered *ṭalāq* statement three times at a time. Umar ibn Khattab greatly rationalized the text. Still, the companions in Medina, at that time, strictly adhered to the hadith of the Prophet. Even though Umar ibn Khaththab, finally suppressed the polemic, the companions continued to stand on the hadith.

This phenomenon shows that the traditions of the Medina people to protect the Prophet's legacy in the form of hadith were strong among the companions, apart from Umar ibn Khattab. These companions include Ali ibn Abi Talib, Abdullah ibn Umar, and Aishah, followed by Abdullah Ibn Abbas and Zaid ibn Tsābit, and Amr ibn Ash. From this route, the thoughts of the companions of Medina played a role in shaping Malik ibn Anas' legal thoughts. The great tendency to maintain the traditions of the companions in Medina was what later characterized the *tābi'īn* generation, who became the teacher of Malik ibn Anas. This factor is also the reason why Malik ibn Anas placed the deeds of the *ahl al-Madīnah* as one of the Islam legal sources, even the second one, after the Qur'an.

Another reason why Malik ibn Anas followed the practice of the *ahl al-Madīnah* is that, for most of his time, he never left the city. He lived in Medina and Hijaz, where life was very simple and far from the complexity of culture and problems. His consistency in using hadith and his reluctance to *ijtihād* and *ra'y* were also heavily influenced by his situation. Of course, at Umar's time, the complexity of the problem was very high.
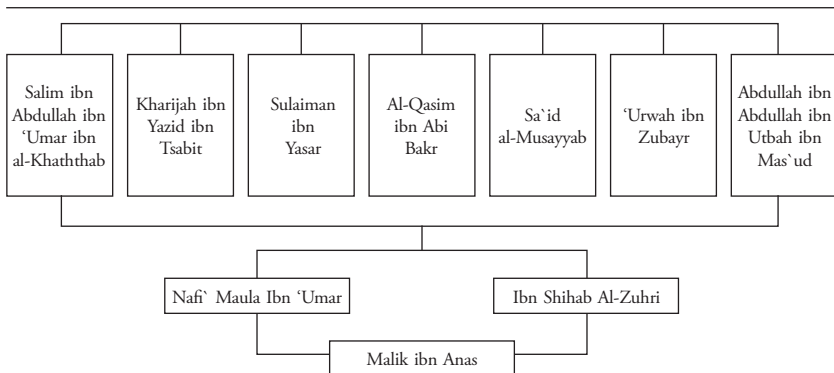
For nearly forty years, Malik ibn Anas lived in the reign of the Umayah dynasty and forty-six years during the reign of the Abbasiya dynasty (Dutton, 2003: 17). Those periods were full of political turbulence. This became a difficult time to defend the madhhab. At

the same time, schools of thought in politics and theology also emerged. Sometimes, they used the ḥadīth of the Prophet carelessly or even falsified some hadiths for political and sectarian interests. As a result, some false hadiths emerged, which eventually resulted in conflicts among the Muslim community. With such a situation and the negligence of the Prophet's hadith by many people, Malik ibn Anas felt the need to examine the hadiths' traditions seriously. His monumental book, al-Muwaththa, to some extent, was a response to the situations. The book showed his enthusiasm to save the hadith from various forgery and pragmatic interests. Malik ibn Anas had a lot in common with what the *ahl al-Madīnah* companions did in defending ḥadīth from the attack from the *ra'y* experts (Towana: 62).

The Influence of Teachers

Malik ibn Anas was the first scholar to compile a book of hadith systematically (al-Muwaththa'). His tendency to prioritize the use of hadith in Islamic legal reasoning is one of the dominant reasons he wrote the book. His tendency towards using hadith in each of his fiqh fatwas strongly connects with the network of previous scholars who became his teachers. The two most dominant figures influencing Malik's thinking in the field of ḥadīth-based fiqh were Nafi`, Maula ibn Umar and ibn Syihab al-Zuhri. Both scholars had a considerable role in bridging the thinking of Malik ibn Anas with seven jurists of Medina who were directly influenced by the generation of early companions. This connection can be seen in the following scheme:

Umar – Usman –Abdullah ibn Umar – Aisyah – Ibn Abbas – Zaid ibn Tsabit,

| Salim ibn Abdullah ibn 'Umar ibn al-Khaththab | Kharijah ibn Yazid ibn Tsabit | Sulaiman ibn Yasar | Al-Qasim ibn Abi Bakr | Sa`id al-Musayyab | 'Urwah ibn Zubayr | Abdullah ibn Abdullah ibn Utbah ibn Mas`ud |

Nafi` Maula Ibn 'Umar — Ibn Shihab Al-Zuhri

Malik ibn Anas

It is evident that two teachers of Malik ibn Anas, namely Nafi`
Maula Ibn Umar and Ibn Syihab al-Zuhri, obtained knowledge in
hadith from several prominent figures in the city of Medina. They
have been popularly known as the seven fuqahā of Medina (*fuqahā
al-sab'ah*). These seven figures were Umar ibn Khaththab, Usman ibn
Affan, Abdullah ibn Umar, Aishah, Ibn Abbas, and Zaid ibn Tsabit.
Two companion figures who had significant influences in transmitting
hadith knowledge from the companions to Malik ibn Anas were
Abdulah ibn Umar and Ibn Abbas. Some figures from the Medina
jurists obtained fiqh knowledge from the rational Umar ibn Khattab.
Hadīth did not have much influence on the fuqahā of Madinah until
later in Malik ibn Anas. Malik ibn Anas's thought is also a result of
communication between the *ra'y* experts from Umar and the hadith
experts from Abdullah ibn Umar and Ibn Abbas. Nevertheless, the
influence of the *ḥadīth* expert appears to be more dominant on
Malik ibn Anas, as evidenced by the extensive use of al-ijma` by the
companions and hadith.

That the use of hadith by Malik ibn Anas was so strong. This
was because the transmission of this school of fiqh thought from his
teachers does not necessarily close the possibility of other factors.
The use of reason can be seen in using the proposition "*maṣālih al-
mursalah*" (Hasann: 384-385) by Malik ibn Anas in his *istinbāṭ* method.
Maṣālih al- mursalah, as described in the previous chapter, is one of the
methodologies of istinbāth that has been widely used by the companions,
especially Umar ibn Khattab. This is Malik ibn Anas's affirmation of the
concept of "*maṣlahah*", which was substantively more or less the same
as what the previous companions did. There is no clear information on
how the practice was transmitted to Malik ibn Anas (Hasan: 4). Most
of the literature that supports the transmission of fiqh thought from the
companions to Malik ibn Anas deals with the field of hadith. One of the
seven Medina fuqahā who became the bridge that links Malik ibn Anas
to the companions was a prominent figure in *ra'y*, namely Abdullah ibn
Mas'ud. From this path, Malik ibn Anas obtained the influence of ra'y,
which he later formulated in the form of *maṣālih al-mursalah* (Beltahgy,
1397 H: 260-261).

Istinbāth Method

Using the approach of *al-'adillah al-shar'iyyah*, Malik ibn Anas took a different approach from his predecessor, Abu Hanifah. The difference lies in the portion of the use of al-ra'yu and hadith. Abu Hanifah dominantly *used ra'y* compared to hadith. On the other hand, Malik ibn Anas prioritized the use of hadith and ijma' pf the companions. Sequentially, the arguments used by Malik ibn Anas in his *ijtihād* is the Qur'an, the ijma' of the companions of Medina, then the *ḥadīth*, *qiyās* and *maṣālih al-mursalah* in the last (Mudhar, 2000: 79). This hierarchy in the sources of Islamic law can be seen in the following scheme:
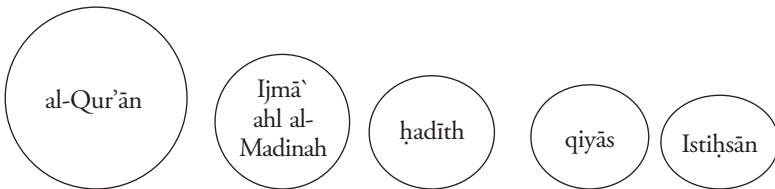
The scheme clearly shows Malik ibn Anas's strong tendency to use the ijma' of the companions of Madinah. Several factors indicated above are why the influence of the companions of Medina on Malik ibn Anas's thoughts was so strong. Malik ibn Anas's appreciation of the traditions of the companions in Medina as hadith experts was very high, so he gave the ijma of the companions the second place after the al-Qur'an (Khalil): even in a higher position than the *ḥadīth*. This choice is understandable because Malik was a native who lived long enough in Medina, and he also had extraordinary loyalty to the companion figures in Medina.

Another path of transmission that links the fiqh thought of the companions to Malik ibn Anas's school of thought, especially in the use of the sayings of the companions as the basis for *ijtihād*, is the practice of the *ahl al-Madīnah* . The influence of the companions' thoughts on Malik ibn Anas is found clearly in the use of the sayings of the companions. In his preface to al-Muwaththtā ', Malik ibn Anas argues that if a problem is not found in the authentic hadīth of the Prophet, it is obligatory to use the companions' sayings the source of *istinbāth*. According to Malik ibn Anas, companions are considered as knowing better about *ta'wīl* and *maqāṣid al-sharī`ah*.

Some Examples of The Influence of Companions on Abu Hanifah and Malik ibn Anas on Islamic Legal Issues

The influence of the thought of the companions on the imams of madhhab, especially Abu Hanifah and Malik bin Anas, is seen in the *ijtihād* method, and the influence is also evident from various issues of the theme of fiqh, which exist among the *madhhab*. The convergence of the themes of *fiqh* occurred earlier among companions. Some examples that can be mentioned here are as follows:

Ghanīmah (Spoils of War)

Following the provisions of the Qur'an and the sign of the Prophet, the spoils of war (*ghanīmah*) should be distributed to soldiers of war by four-fifths, while the remaining one-fifth, given to other welfare funds (for Allah and the Messenger). Q.S. Al-Anfal: 41

Since the Prophet's time, the provisions of the *ghanīmah* law applied, specially when the Muslims make conquests on a small scale outside Arabia. In practice, Muslims seemed to view the law as part of a mechanism to weaken the enemy and reward Muslim soldiers. After the Prophet passed away and Umar ibn Khaththab became Caliph, the spoils distribution policy was abandoned and considered no longer relevant. This event occurred when Iraq, Egypt and Syria were conquered and made into Islamic territories. Some senior companions who pioneered Umar withheld these spoils and were not distributed to the soldiers. This policy reaped a fairly loud protest from among other companions, and they urged Umar to cancel the policy that was considered contrary to the text of the Qur'an. As a result, this problem later became a consolidation among companions. There are two strongholds of the companions in enforcing the provision. One argued the need to follow the provisions in the Quran and the Prophet's guidance. This group was represented by Abd Rahman ibn 'Auf, Amr ibn Yasar and Bilal ibn Rabbah. They demanded the ruler (Umar) that four-fifths of the spoils of war be distributed to the soldiers. Meanwhile, the other strongholds, represented by Umar ibn Khaththab and Thalhah, and supported by Usman ibn Affan, argued that there was no need to share the spoils, citing the importance of the benefit and preparation of state coffers in the future. Methodologically, these two opinions seem to be justified. The first stronghold was guided by the *ẓāhir al-naṣ* (visible text), while the

second stronghold was guided by *the maqāṣid al-naṣ* (soul or substance of the text) scholars call the concept of *maslaḥah*. It can be concluded that if the first stronghold is the tradition of *ḥadīth* experts, the second is the *ra'y* experts' tradition. In the subsequent development of Islamic law, these two views significantly impacted the thinking of the scholars of the fiqh *madhāhib al-arba'ah*. Direct or indirect, in reality, the scholars of *madhāhib al-arba'ah* were also influenced by many companions. As an illustration of the meeting point between fiqh companions and *madhāhib al-arba'ah* in the context of the spoils, it is worth quoting the opinion of Musthafa Sa'id al-Khin. As happened among the companions, the issue of the spoils of war is also a study of *madhāhib al-arba'ah* scholars, especially Abu Hanifah and Malik bin Anas

First, in Abu Hanifah madhhab, the land conquered from the enemy's hands by means of war was regulated by the law that depended heavily on the authority of the leadership at that time. The leader can choose between handing out the land or holding it and leaving it in the hands of the local people by requiring taxes (*jizyah*). What Abu Hanifah did seemed to be a re-legitimacy of what Umar ibn Khaththab and other rational people were doing. In other words, Abu Hanifah seemed to signal that Umar (then the country's supreme leader) had full authority to determine whether the land was shared or detained. What Umar and the other companions did and what Imam Abu Hanifah said might be two different things: no direct contemplation of thought. However, it should be assumed that what Umar did, especially the use of reason, had been followed by Imam Abu Hanifah. This is the meeting point of fiqh of companions and madhāhib al-arba'ah.

According to Malik bin Anas, lands were similar to other spoils. However, if the leader considering that the division of the lands was better by considering *maslaḥah* (public benefits), they should be divided. Malik's argument is, more or less, the same as Abu Hanifah's. It was just that the consideration of benefit in Malik's view was more dominant. This is perhaps the feature of this *madhhab* (M ibn al-Khin, 1982: 69).

About '*Iddah* Woman Who Rejected Her Husband

There is no difference in the opinions of Muslim legal scholars from the Prophet's companions and until *madhāhib al-arba'ah* about the obligatory *'iddah* (three months post-divorce period before a woman

can remarry) for a woman who was divorced. This obligation is based on Q.S. Al-Baqarah: 228.

There is no provision for eliminating the obligation of *'iddah*. There have been differences in understanding the Qur'anic text on *'iddah* by the companions and madhāhib al-arba'ah. The difference lies in the time limit of the end of the 'iddah period. Some companions who are popular as *ra'y* experts, such as Abdullah ibn Mas'ud, Umar ibn Khaththab stated that his iddah ended when a woman purified (bathing) from the third menstruation after the divorce period. This contrasts with those who relied on "*ḥadīth*", such as Zaid ibn Tsabit, and Ibn 'Abbas, stating that the woman ends her iddah after entering the third menstruation. This difference lies in the differences in understanding the term قروء in verse 228 of Q.S. Al-Baqarah. Etymologically, the Arabic word قروء has two meanings; "clean" and "menstruation".

Among the companions of the *ra'y* experts such as Abdullah ibn Mas'ud and Umar ibn Khaththab, argue that the term means menstruation. Therefore *the 'iddah* period for a divorced woman ends by the end of the third menstruation. In contrast to Zaid ibn Tsābit, Ibn 'Umar and Aisha interpreted the term قرو with "clean" or "holy" so that the legal consequences of *'iddah* woman ends when entering the third menstruation (al-Qaththan, n.y.: 111 -113.)

The legal reasoning made by the companions influenced the Madhāhib al-Arba'ah. For example, Malik ibn Anas considered the *ḥadīth* expert companions such as Zaid ibn Tsābit and Ibn Umar, who their pupils from other companions followed. Similarly, Abu Hanifah, a rationalist, had the same view about the provision of 'iddah with the rationalist companions, such as Umar ibn Khaththab and Abdullah ibn Mas'ud. In many cases of Islamic jurisprudence, unbroken networks often found between the views of fiqh companions with imams of madhhab in the second and early third centuries of Hijra.

About Dowry for a Divorced Woman before Sexual Intercourse (*dukhūl*)

Dowry is a mandatory gift from a husband at the time of marriage. The problem emerges when the dowry is paid in debt, and the husband passes before having sexual intercourse with the wife. The difference

in legal opinions occurred among the companions and madhāhib al-Arba'ah. Some companions, such as Ibn Mas'ud argued that a woman is still entitled to dowry even though the husband passes and no sexual intercourse happened. The dowry can be taken from the properties left by the husband. In contrast, Ali ibn Abi Talib argued that the woman is not entitled to the debted dowry as no sexual intercourse happened. Ali even stated expressly, "we will not leave the Qur'an just because of one's statement"(Shaukani, n.y: 100.).

What Abdullah ibn Mas'ud said, again, also received a response from the equally rational Abu Hanifah Madhhab. Abu Hanifah even more emphatically stated, "when one of the husband and wife dies before intercourse occurred, then the wife is entitled to a full *mithl* of dowry as the term occurs with intercourse took place". If Abu Hanifah followed the thought of Ibn Mas'ud, then Malik bin Anas is precisely the opposite. He follows the thoughts of Ali ibn Abi Talib and Ibn Umar, who were both *ḥadīth* experts.

By observing the example of this last case, the influence of the companion's *fiqh* on Islamic legal schools led by Abu Hanifah and Anas bin Malik becomes obvious.

The Contribution to the Future of Islamic Jurisprudence

The contribution of the Prophet's companions on the future Islamic legal traditions, especially Islamic jurisprudence in the golden era of Islam, seems significant. The companions' tradition contributed to developing the dynamic and creative tradition in the formulation of Islamic law. This was done by considering socio-cultural and political considerations in legal reasoning, which the companions also applied.

Through Islamic legal schools, especially those led by Abu Hanifah and Malik, the companions contributed to the grand design of Islamic jurisprudence. This primarily related to the methodology of legal reasoning or called the systematization of the *ijtihād* methodology of the companions by madhhab scholars. Their methods in capturing the deep meaning of the Quranic texts have been their characteristics. This is the key success of the development of the early Islamic legal traditions (Mushlehuddin, 1973:42: 59).

In modern times, it is increasingly evident that the most outstanding

contribution to the future of Islamic jurisprudence is the richness of the companions' methodology in the formulation of the law. The companions' methodology is often used as the basis reasoning by Islamic legal reformers (Al-Rahili). One of the methods of *istinbāṭ* is the concept of *maslaḥah*. Since initiated by companions until modern times, this concept has never worn out and weathered. The notion of *maslaḥah* will remain relevant as a guideline for new laws.

The differences among the companions in ijtihād suggest that Islamic law was not rigid and static from the beginning. Implicitly, the companions showed that Islamic law opens to changes and have various dimension. The companions might give the idea of 'liberal' Islamic jurisprudence without their realization. They showed respect to other opinions. This indicates the "tolerant tradition" developed in the early Islamic era by considering the plurality of legal issues and opinions. This is logical considering that the future Islamic jurisprudence will increasingly face more pluralistic issues than before. Therefore, one alternative to anticipating future legal problems is by maintaing a tolerant tradition in Islamic legal thoughts as exemplified by generations of companions and continued by figures *madhhab* scholars (*fuqahā*).

Showing the influence of the companions' legal reasoning method on Islamic legal schools or madhhab is somewhat uneasy due to several factors:

First, it is uneasy about justifying whether the current era is the *taqlīd* era, the stagnation of Islamic law, or the revival era. If today is the *taqlīd* era, then it not followed the teaching of the companions that showed the dynamic of Islamic law in responding various legal issues unmentioned in the Qur'an. This implies that the spirit of taqlid contradicts the spirit of *ijtihād* , the companions.

Second, if today is refered to as the era of Islamic law revivalism, it is still difficult to cut the madhhab traditions. It is undeniable that the companions' methodology as mapped and transformed by the *madhāhib al-arba'ah* widely used by the contemporary jurists. It can be seen that almost all existing Islamic legal products refer to the *ijtihād* by early Islamic legal scholars, which among them *madhāhib al-arba'ah*.

The *madhāhib al-arba'ah* took almost 250 years from the second century to the middle of the fourth century of Hijra. After that,

Islamic legal traditions entered the period of *taqlīd* or the stagnation of Islamic law. It is not uncommon to find that the fiqh laws practiced by Muslims today throughout the world are generally the formulation of Abu Hanifah, Maliki, Shafi'i and Hanbali madhhabs. In Indonesia, the Indonesian Council of Ulama and the most prominent Islamic organizations, Muhammadiyah and NU, use the methodology of *madhāhib al-arba'ah*.

Third, no Islamic legal figures can be independent of the methods mentioned above. This is different from the golden age of Islam and the time of companions. Islamic legal revivalism took place in many Muslim countries, such as Turkey, Pakistan, Egypt, Syria, and even Indonesia, evidently maintaining the framework of the methodology of companions and madhāhib al-arba'ah in legal reasoning.

Conclusion

As the earliest *fiqh* and *ijtihād* products in the history of Islamic jurisprudence, the Prophet's companion *ijtihād* significantly influenced the future development of *fiqh*. The companions provided the basic framework for the new development of *ijtihād* methods that reached its glorious period in the era of *madhāhib al-arba'ah*, in the second half of the Hijra century. This influence can be seen in Abu Hanifah's strong relationship with the Umar ibn Khattab and Abdulah bin Mas'ud's thoughts through *tābi'īn* circles. The same is also true for Malik ibn Anas, with his traditional tendency. He was influenced by his teachers, the followers of the *ḥadīth* experts companions, such as Ibn Abbas, Ali ibn Abi Talib and others. This means that the *ijtihād* methods of the madhhab arba'ah scholars, especially Abu Hanifah and Malik ibn Anas, in the second and the third century of Hijra, were the results of the transformation of companions' *ijtihād* methods through the *tābi'īn* generation.

References

Ad-Dahlawi, W. (n.d.). *Kitāb hujjat al-bālighah, juz 1.*

Ahmad Hassan. (1970). *The Early development of islamic jurisprudence,*. Pakistan: Islamic Research Institut.

Al-Jauziyyah, I. Q. (1973). *I`lām al-muwāqi'īn 'an rabb al-'ālamīn*. Beirut: Dār al-Jalīl.

Al-Madani, M. bin M. (1999). *Naẓārāt fī fiqh al-fāruq 'umar ibn al-khattāb*. Mesir: Jumhuriyah Mishr al-Arâbiyah.

Al-Rahili, I. R. (n.d.). *Fiqh Umar ibn khathhtāb muwazzan bi fiqh ashhar al-mujtahidīn*. Makkah al-Mukarromah: Al-Jāmi'ah Ummu al-Qur'an.

Al-Syirazi, A. I. (n.d.). *Ṭabaqāt al-fuqahā*. Baghdad: u.p.

Amin, A. (1952). *Ḍuhā al-islām, Juz II, Cet. 3*. Cairo: Ta`līf wa al-Tarjamah.

Ash-Shiddiqie, H. (1981). *Sejarah pertumbuhan dan perkembangan hukum islam*. Jakarta: Bulan Bintang.

Crawford, C. C. (n.d.). *The Technique of research in education*. Boston: Houghton Mifflin Co.

Faruq Abu Zaid. (n.d.). *Ahkām al-islām bayna al-mutaqaddimīn wa al-mujaddidīn*.

Hasan, H. H. (n.d.). *Naẓariyat al-maṣlaḥah fī fiqh al-islāmī*. Cairo: al-Nahdah al-Arabiyyah.

Khudhari Beik. (n.d.). *Tārīkh al-tashrī 'al-islāmī*.

Komaruddin. (1987). *Kamus riset*. Bandung: Penerbit Angkasa.

Manna' Khalil al-Qaththan. (n.d.)., *al-Tashrī` wa al-fiqh fī al-islāmī*.

Mar'i, A. H. (n.d.). *al-Ijtihād fī al-sharī'ah al-islāmiyyah*.

Mudhar, M. A. (2000). *Membaca gelombang ijtihad, antara tradisi dan liberasi*. Yogyakarta: Titian Ilahi Press.

Muhamad Musa Towana. (n.d.). *al-Ijtihād wa madhā hājatunā fī hadhihi al-Ashr* (D. al-K. Al-Hadītsah, ed.).

Muhammad Beltahgy. (n.d.). *Manāhij al-tasyrī' al-islāmī fī al-qarn al-tsāni al-hijr*.

Muhammad Mushlehuddin. (1973). *Islamic jurisprudence and the rule of necessity and need*. Islamabad: Institute.

Mun`im A. (1995). *Sejarah fiqh islam: Sebuah pengantar*. Surabaya: Risalah Gusti.

Mustafa Sa'id ibn al-Khin. (1982). *Athar al-ikhtilāf fī al-qawā`id al-uṣūliyyah fī ikhtilāf al-fuqahā*. Beirut: Muassasah Risalah.

Qadhi, A. Y. al. (n.d.). *Kitāb al-kharrāj*.

Shaukani. (n.d.). *Nayl al-authār, vol. VI,.* Beirut: ĪDar al-Jalīl.

Sukanto, S. (1982). *Sosiologi suatu pengantar*. Jakarta: Rajawali Press.

Syukri Faishal. (1973). *Al-Mujtama`at al-islāmiyyah*, (Beirut: Dâr al-'Ilm lī al-Malayyīn.

Waliyullah Ad-Dahlawi. (n.d.). *Kitâb hujjat al-bālighah, Juz 1,.*

Yasin Dutton. (2003). *The Origin of islamic law, the qur'an, the muwatta and madinah amal*. Yogyakarta: Penerbit Islamika.

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