RENEWAL OF ISLAMIC LAW OF LIBERAL ISLAM NETWORK: *QAWAIDU 'UQULI AL-IJTIMA'IYAH* AS SOURCE OF ISLAMIC LAW

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"We need not bother about nomenclature, but if some name has be given to it, let us call it liberal Islam" (Asaf 'Ali Asghar Fyzee 1899-1981)³⁹⁴

A. INTRODUCTION

Essentially, both revealed religions and religions stemming from human thought (earth religions) aim to give a good way and regularity for humans in performing their functions as caliph. However, instead of becoming a way of life, some people sometimes deem religions as one of inhibiting factors of development both individually and communally. This view is not a result of a priori attitude towards the existence of religions and its implication on life dynamics, but they empirically perceive that religions are often used as a tool to prevent innovation and improvement of human reason.

This reality results from resistance against a perception which perceives religions (revelations) as the only source of inspiration and rationale in various aspects and structures of life. This view sometimes traps them in the circle of critical thinking and cultural creativity obstruction. This can be clearly seen in primitive traditionalist's way of thinking which stems from syncretic traditions. As a result, they are trapped in a fear to get out of "occult circle" of revelations. In turn, this group is forcibly and even forces other groups to live in a blind faith and ignores their rationale as human nature which should fuel civilization. In Islamic thought (law), the group is called traditional Islam "customary law/Islam³⁹⁵" which is characterized by a combination of local habits and religious understandings both in daily life and religious rituals.³⁹⁶ Abdullah Ahmed

³⁹⁶ For more information, see Charles Kurzman's, Wacana Islam Liberal: Pemikiran Islam Kontemporer Tentang Isu-Isu Global (Liberal Islam Discourse: Contemporary Islamic Thought about Global Issues), Bahrul Ulum, pen, (Jakarta: Paramadina, 2003), p. xv. In this book, Charles Kurzman also



³⁹⁴ See Asaf A. A. Fyzee, "The Reinterpretation of Islam" in *Islam in Transition: Muslim Perspectives*, Jhon J. Donohue and Jhon L. Esposito, editor, (New York: Oxford University Press, 1982), p. 193.

³⁹⁵ For a deeper study of customary Islam, see Sayyid Hosein Nashar, *Traditional Islam in the Modern World*, (London: Cambridge University Press, 1987).

an-Naim uses the term to refer to Muslims who do not use social reason and adhere themselves to classical *fuqoha* which they force to be applicable in contemporary time. ³⁹⁷

Other group which is the most important alternative to traditional Islam is Islamic revivalist or also known as Islamism, fundamentalism or wahabism. In its quite long history, the presence of Islamic revivalist, on one hand, is closely related to political condition of some great Islamic dynasties in the Mediterranean river (Turki Usmani Empire), West Asia (Safawi Empire), and South Asia (Mongol Empire) which are in their downfall. Meanwhile, on the other hand, scientific knowledge transfer in all Islamic world starts to accelerate and creates religious scholars internationally, including those who have studied in centers of science in the Middle East and those who study under the guidance of someone who has studied there. This has, in turn, reached Indonesia with the presence of Indonesian students such as Haji Miskin from West Sumatra and other students who have studied in the Middle East such as Saudi Arabia.³⁹⁸

This group challenges customary interpretation which is lack of attention to core doctrines of Islamic teaching. To deal with deviations by traditional Islam, Islamic revivalist wants to stress on the importance of Arabic mastery as a divine language, emphasize the falseness of local political institutions that have taken over the sovereignty of God and clean Muslim from fictitious practices and all non-Islamic practices which have developed since the presence of Islam few centuries ago. They claim that they are the only Islamic interpreter group which can best meet requirements to return the purity of Islam as its original.³⁹⁹

As an antithesis of the presence of traditional Islamic movement and Islamic revivalist, a new group called Liberal Islam emerged in the 18th century. This group

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quotes Cliford Geertz in his book, *Islam Observed: Religious Development in Morocco and Indonesia*, (Chicago: University of Chicago Press, 1968), which states that Muslims both in Morocco and Indonesia who are bound with customary (traditional) Islam thought give over-respects to figures who are considered as holy person in which most Muslims do not have basic knowledge of Qur'an and its teaching so that they are stagnant and dependent on their figures (ulama) who are also trapped in local traditions which are still not free from syncritism and cultures.

³⁹⁷ For further information see Abdullahi Ahmed an-Naim, *Islam dan Negara Sekular: Menegosiasikan Masa Depan Syariah (Islam and Secular Countries Negotiate Syaria Future),* Sri Murniati, pen, (Bandung: Mizan, 2007).

³⁹⁸ Charles Kurzman, Wacana Islam Liberal: Pemikiran Islam Kontemporer Tentang Isu-Isu Global (Liberal Islam Discourse: Contemporary Islamic Thought about Global Issues), p. xviii. For more information about some revivalist ulama groups from some Muslim worlds see Jhon Obert Voll, Islam: Continuity and Change in the Modern World, second edition, (New York: Syracuse University Press, 1994).

³⁹⁹ Charles Kurzman, Wacana Islam Liberal: Pemikiran Islam Kontemporer Tentang Isu-Isu Global (Liberal Islam Discourse: Contemporary Islamic Thought about Global Issues), p. xvi. See also Ernest Gellner, Muslim Society, (London: Cambridge Unipersity Press, 1981), p. 156.

stems from the thought of Syah Walivullah ad-Dahlawy (1703-1762) who perceives that Islam and Muslim are in the danger of a contradictive pragmatical theological-legal debate between traditionalist Islam and revivalist Islam. According to Syah Waliyullah, there is a need to take an effort to revitalize Muslim community by combining pragmatical theological-legal renewal and political-social organization. Although he asserts that traditions of traditional Islam (customary Islam) as the main source of all problems in Islam, he is more humanist and tolerant to traditional Islam traditions. He thinks that revival must be done and introduced properly so that community intelligence (social reason) can accept and does not refuse it.⁴⁰⁰ Therefore, Syah Waliyullah argues that time has come for Islamic law to be revealed in thought and argument openly without stopping at schools of classical and medieval Islamic laws, is free from customary syncritical obedience and escapes from theological inflexibility as shown by revivalist group such as Muhammad bin Abdul Wahab with his Wahabi movement (in the 18th century). It is Syah Waliyullah's open thought which has inspired the emergence of liberal thinker figures in the 19th century such as Jamaluddin al-Afghani (born in Iran 1838-1897), Sayyid Ahmad Khan (India 1817-1898) and Muhammad Abduh (Egypt 1849-1905) who start to distinguish between *ijtihad* and *taklid* as well as logic and authority (God). 401

B. Definition of Liberal Islam

The term "liberal Islam" is a combination of two words: liberal and Islam. The two words have different lexical meaning.

Kurzman alone has borrowed the term from Asaf 'Ali Asghar Fyzee, a Muslim intellectual from India who first used the term "liberal Islam" to refer to certain tendency in Islam, that is, Islam which is non-orthodox; Islam which is compatible with time change; and Islam which is future-oriented, not past-oriented. Nevertheless, the term liberal Islam has a negative connotation for some people because it is often associated with foreign domination, unlimited capitalism, hypocrisy which worship materialism, and hostility against Islam.⁴⁰²

Meanwhile, Nurcholis Madjid asserts that liberal Islam is Islam which escapes from traditionalism and sectarianism chain as this only freezes reason and weakens

⁴⁰² Kurzman, *Liberal Islam*, p. xiii. Compare to Adian Husaini and Nuim Hidayat, *Islam Liberal: Sejarah, Konsepsi, Penyimpangan dan Jawabannya (Liberal Islam: History, Conception, Deviation and Their Answer),* (Jakarta: Gema Insani Press, 2002), 2.



⁴⁰⁰ For more see J.M.S. Baljon, *Religion and Thought of Syah Wali Allah Dihlawi 1703-1762*, (Leiden: E.J. Brill, 1986), p. 162.

⁴⁰¹ For further information see Charles Kurzman, Wacana Islam Liberal: Pemikiran Islam Kontemporer Tentang Isu-Isu Global (Liberal Islam Discourse: Contemporary Islamic Thought about Global Issues), p. xviii-xxi.

psychological striking force.⁴⁰³ Meanwhile, according to Albert Hourani (1983), liberal Islam in Islam liberalization movement which he calls "liberal age" (1798-1939) is ambiguous. On one side, it means liberalization of Muslim from colonialism which at that time dominated most Islamic world and on the other side, it means to free Muslim from religious thought and attitude which inhibit development.⁴⁰⁴

Under the perspective of liberal Islam alone, as explained by Luthfi Assyaukani, "liberal" refers to modern Islamic thought tendency which is critical, progressive and dynamic. Furthermore, in his website it is stated that it represents the principles we believe in, namely Islam that stresses individual freedom and the liberation from all forms of oppressive structures of politics and society. Liberal here means two things: freedom and liberation. We believe Islam is always tied to an adjective, because Islam is always differently interpreted depending on the needs of its readers. We embrace one reading of it, that is "liberal". To promote our liberal reading, we set up Liberal Islam Network (*Jaringan Islam Liberal* – JIL). ⁴⁰⁵

From the above discussions, it can be said that liberal Islam means a school of thought trying to free Muslims from religious conservaticism and fundamentalism which thwart human sense striking force. It is hoped that the presence of liberal Islam will soon free ulama (intellectuals) from academic psychological fear that may thwart Islamic "movement" creativity.⁴⁰⁶

C. History of Liberal Islam in Indonesia

The term "Liberal Islam" has been widely used in Indonesia since the publication of book *Islamic Liberalism* (Chicago: 1988) written by Leonard Binder and *Liberal Islam: A Sourcebook* (Oxford: 1998) edited by Charles Kurzman which was then translated into Indonesian with the title *Wacana Islam Liberal: Pemikiran Islam Kontemporer Tentang Isu-Isu Global (Liberal Islam Discourse: Contemporary Islamic Thought about Global Issues)* published by Paramadina Jakarta in June 2001.

⁴⁰⁶ Muhammad Iqbal describes that actually Islamic dynamic core lies in ijtihad that he interprets as an intellectual movement. If the movement is weak or stops, Islam also will stagnant and change into a syncritical religion which is covered by superstition and deification. (for further information see Muhammad Iqbal, *The Reconstruction of Islamic Thought*).



⁴⁰³ Nurcholis Madjid, "Keharusan Pembaruan Pemikiran Islam dan Penyegaran Kembali Pemahaman Keagamaan (A Must for Islamic Thought Renewal and Religious Understanding Refreshment), in Charles Kurzman, *Wacana Islam Liberal: Pemikiran Islam Kontemporer Tentang Isu-Isu Global (Liberal Islam Discourse: Contemporary Islamic Thought about Global Issues)*, p. 492. Nurcholis Madjid further states that refreshment movement and thought liberalization (intellectual freedom) are needed for Islamic teachings as taught by Al Qur'an and Sunnah. The liberalization movement can be done through not only individual movement (*ijtihad fardhiah*) but also religious organization movement (*ijtiahd jama'i*) such as Muhammadiyah and other organizations. (p. 484-503).

⁴⁰⁴ Charles Kurzman, Wacana Islam Liberal (Liberal Islam Discourse), p. xxi.

⁴⁰⁵ For further information see *islamlib.com*

Meanwhile, the Indonesian version of Leonard Binder's book is published by Pustaka Pelajar Yogyakarta in the same year.

In 1999, Paramadina, in collaboration with Adikarya Ikapi Foundation and The Ford Foundation, also translated Greg Barton's dissertation of Monash University entitled *Gagasan Islam Liberal di Indonesia (Ideas for Liberal Islam in Indonesia)*.⁴⁰⁷ However, of the three books, it seems that it is Kurzman's book that is most serious to search for the root, make a map and develop indicators of liberal Islam. Liberal Islam Network (*Jaringan Islam Liberal – JIL*) activists also more often refer to Kurzman's book than that of others.

In its website, it is stated that Liberal Islam Network was established to respond religious "extremism" and "fundamentalism" in Indonesia such as the emergence of Islamic militant groups, church destruction, the presence of a number of media to voice aspirations of "Islamic militant" and the use of the term "*jihad*" or holy war as a means to justify violence.⁴⁰⁸

The establishment of Liberal Islam Movement started from a discussion group of some Muslim youth intellectuals who previously had built a network. One of its initiators is a senior journalist, Goenawan Mohammad. Then, this group developed into a mailing group. In March 2001, it was changed into Liberal Islam Network which at its first establishment received support and contribution from some Indonesian contemporary Muslim intellectuals such as <u>Nurcholish Madjid</u>, <u>Azyumardi Azra</u>, <u>Komaruddin Hidayat</u>, <u>Ahmad Sahal</u>, Budhy Munawar-Rachman, Hamid Basyaib, <u>Luthfi</u> <u>Assyaukanie</u>, <u>Rizal Mallarangeng</u>, <u>Denny J. A.</u>, Ihsan Ali-Fauzi, A.E. Priyono, Samsurizal Panggabean, <u>Saiful Mujani</u>, Hadimulyo, and Ulil Abshar Abdalla whom then led Liberal Islam Network. After Ulil Abshar-Abdalla and Hamid Basyaib, Liberal Islam Network is currently being coordinated by Luthfi Assyaukanie, a young liberal Islam figure and an alumnus of Yordania, ISTAC Malaysia, and University of Melbourne, Australia.⁴⁰⁹

Since its establishment, Liberal Islam Network has been cooperating with The Asia Foundation, an organization concerned in secularism, pluralism, liberalism and gender balance. Currently, there are some donor agencies which are cooperating with Liberal Islam Network in addition to personal donations. However, in its community network, Liberal Islam Network does not have any special membership system. This aims to give loosening and inclusivism which is open to all.⁴¹⁰

⁴⁰⁷ See publisher's foreword of the Indonesian edition of Charles Kurzman's book, Wacana Islam Liberal: Pemikiran Islam Kontemporer Tentang Isu-Isu Global (Liberal Islam Discourse: Contemporary Islam Thought about Global Issues), p. ix.

⁴⁰⁸ For further information see *islamlib.com*

⁴⁰⁹ For further information see *islamlib.com*

⁴¹⁰ For further information see *islamlib.com*



D. Legal Interpretation Basis of Liberal Islam Network

On its official website, it is stated that Liberal Islam Network has a legal interpretation method of Islamic teachings: ⁴¹¹

1. Open to all forms of intellectual exploration on all dimensions of Islam.

Liberal Muslims believe that Islam susceptible to critical thinking on itself is a chief principle that should be adhered to in order to keep Islam relevant from time to time. Closing the door of interpretations of Islam, partly or wholly, is a threat on Islam itself, because by being so Islam will rot. Liberal Muslims believe critical thinking can be done from many points of view, particularly ones that relate to social interaction, rituals, and theologies. Here, it seems that Liberal Islam Network is braver to expand critical thinking about issues which have never been discussed by classical *fuqoha*.

On the other side, Liberal Islam Network also believes that all people have the rights to conduct critical thinking because critical thinking, as asserted by Arkoun, is not a privilege of and therefore should not be monopolized by law experts (*al-a'immatu al-mujtahidun*) which has specified various corpus legal since few centuries ago,⁴¹² and it is more dangerous as an effort has been taken to force their enforcement for an unknown period of time.

2. Prioritizing religio-ethics, not literal textual readings.

Liberal Muslims believe literal-textual readings of the Qur'an and Sunnah will only cripple Islam. On the contrary, an interpretation that is more religio-ethics will allow Islam to flourish creatively and be part of the global civilization that champion universal humanity.

3. Believing that truth is relative, open for interpretations and plural.

Liberal Muslims believe the idea of truth (in the interpretation of religion) is relative, on the grounds that human interpretations of it are made under certain circumstances or contexts; it is also open in the sense that the interpretations could be wrong or right; it is plural in the sense that one way or another it reflects the needs of the interpreters which change depending on time and space. This thinking shows that in the view of Liberal Islam Network an absolute truth is in the God's revelation, not in its understanding.

⁴¹² For further information see Mohammed Arkoun, *Nalar Islami dan Nalar Modern: Berbagai Tantangan dan Jalan Baru (Islamic Reason and Contemporary Reason: Various Challenges and New Way)*, Rahayu S. Hidayat, pen, (Jakarta: INIS, 1994), p. 310.



⁴¹¹ Islamlib.com. See also Ulil Absor Abdallah, *Menggagas Islam Liberal (Initiating Liberal Islam)*, (Jakarta: Islamlib Press, 2003), p. 3.

4. Siding with oppressed minorities.

Liberal Muslims hold that a liberal interpretation of Islam is one which sides with the oppressed minorities and those who are marginalized in the context of Indonesia. Liberal Muslims hold that it is against Islam to persecute those who differ in religious beliefs or in opinions. Each social-political structure that perpetuates injustice against minority groups is against Islamic spirit that declares plurality. In this context, minority should be understood in its wide interpretation, including religious, ethnic, racial, gender, cultural, political and economic minorities. It can be clearly seen that Liberal Islam Network prioritizes and promotes the spirit of human universality, that is, all humans are equal in the eyes of God. One thing that differentiates them is their quality.

5. Believing in the freedom to practice religious beliefs.

Liberal Muslims hold that it is the freedom of human beings whether or not to believe in religions must be protected. There should not be any persecution against whomsoever based on his or her opinions or religions. Belief in God which is personal nature cannot be forced because it is a choice that develops based on truth received by someone. In the context of social interaction among followers of a religion, Liberal Islam Network does not justify relationship practice which is based on theological doctrine (Muslim and non Muslim, the faithful and the disbeliever, right and wrong, black and white) because this will cause relationship breakup within community and state.

6. Separation of world and heavenly authorities, religious and political authorities.

Liberal Muslims believe the authorities of the religions and the politics must be separated. The reason is because only a state that separates the two authorities that can accommodate religious and political life elegantly, not trapped in value and principle difficulties between world and heaven (transcendent and profane).

Liberal Muslims oppose the idea of theocracy. Religions are sources of inspirations that could influence public policy making, but they should not become holy prerogatives that grant the freedom to steer those policies (integrism).⁴¹³ Religion should be of the private domain, whereas public affairs should be administered through consensual process.

⁴¹³ Integrism is a view considering religion as a comprehensive and holistic system that should serve as the basis of life in the context of state and community. See Mohammed Arkoun, *Nalar Islami dan*



It is stated in *Fiqh Lintas Agama* (Inter-Religious Jurisprudence) book that some interpretations of Liberal Islam Network which are related to worship jurisprudence, social jurisprudence, political jurisprudence or Islamic jurisprudence which is related to relationship among followers of a religion have emerged a new discourse in the life of Muslims in Indonesia.⁴¹⁴

From the six legal interpretation basis of Liberal Islam Network, the writer sees that Liberal Islam Network has tried to give a solution to the problem and bridge main differences between traditionalist and revivalist groups in understanding and practicing Islamic teachings. However, the writer thinks that what has been done by Liberal Islam Network seems too minimize the central role of *fuqoha* (jurists) or classical interpreters. As a result, the presence of Liberal Islam Network has caused unrest among groups that support Islamic law status quo.

Actually, what has been done by Liberal Islam Network is an effort to reconstruct methodological structure of *istimabath al-ahkam* which has been established by previous ulama. Unfortunately, Liberal Islam Network has failed to receive sympathy from and accommodate two main streams of Islamic thought of traditionalist and revivalist. Even, liberal Muslims, including Liberal Islam Network, are accused of becoming the apostates who have been influenced by Western thought so that they sacrifice Islam on their own altar. This, of course, is a fatal accusation.⁴¹⁵

Actually, Liberal Islam Network is trying to return to original Islam which is originated from the Qur'an and Sunnah as its interpretation. They do not adhere themselves to classical legal thought system (methodology) as agreed by ulama by including *Ijma*' (consensus) and *Qias* (analogy) as source of Islamic law in addition to the Qur'an and Sunnah.

According to the writer, Liberal Islam Network actually intends to create a contemporary *istimbath al-ahkam* methodology which the writer calls *qawa'idu 'uqul al-ijtima'iyah* (social logic principles) which in turn can be used as source of Islamic law in addition to the Qur'an, Sunnah and *Ijma'*.

⁴¹⁵ Quoted by Kurzman from Abdullah Laroi, "Western Orientalism and Liberal Islam: Mutual Distrust?, MESSA Bulletin, Vol. 31 (1), July 1997, p. 7. See Charles Kurzman, Wacana Islam Liberal: Pemikiran Islam Kontemporer Tentang Isu-Isu Global (Liberal Islam Discourse: Contemporary Islamic Thought about Global Issues), p. xxvii.



Nalar Modern: Berbagai Tantangan dan Jalan Baru (Islamic Thought and Contemporary Thought: Various Challenges and A New Way), Rahayu S. Hidayat, pen, (Jakarta: INIS, 1994), p. 310.

⁴¹⁴ For more about the interpretations see Tim Penulis Paramadina, *Fiqh Lintas Agama: Membangun Masyarakat Inklusif-Pluralis (Fiqh of Inter-Religious Relations: Building an Inclusive, Pluralistic Society)*, Mun'im A Sirry, edt, (Jakarta: Paramadina, 2004).

E. Qawaidu 'Uqul al-Ijtima'iyah as Source of Islamic Law

Although it is not a new thing, social, political and cultural roles in the study of contemporary law have started to become a methodology in understanding, constructing and engineering a legal provision. This is because law which stems from both *Syari'* (Allah) and ulama's logic cannot be separated from and for the social interest of community.

Methodologically, as stated by Kuntowijoyo, social and political roles in legal understanding have three approaches: approach for textual study, historical contextual study as well as textual and social relationship study. In the textual study, it is the genesis of thought, consistency of thought, evolution of thought, systematics of thought, development and change, communication of thought, internal dialectic and sustainability of thought as well as intertextuality which are studied. In the contextual study, it is historical context, political context, cultural context and social context which are studied. Meanwhile, in the textual and social relationship study, it tries to see the influence of thought, thought implementation, thought dimension and thought socialization⁴¹⁶ on legal understanding and provisions as can be clearly seen in a principle that states *al-'adatu muhakkamah* (tradition become legal dictum). It means that community problem with its different dimensions has a significant influence on legal development process, especially Islamic law development in contemporary world.

On the other side, the question of why the Qur'an was revealed in stages (*tadarruj*) can answer the importance of social context (social rationale principle) in understanding the making of Islamic law. If God had wished, He would have revealed the Qur'an at once. It is *tadarruj al-ahkam* that indicates that the Qur'an was revealed based on community development so that it gives an intermingle influence on contextual understanding capability and law enforcement that emerges based on events occurred within community, including social context when the Qur'an was revealed. However, to keep the Qur'an alive actually in various contexts of community life, *salih li kulli az-azman wa al-amkinah*, Muslims should not force themselves being trapped in an understanding drive based on events occurred when the Qur'an was revealed, but it is today's historical events which should serve as *legal reasoning istimbath al-ahkam*.

Meanwhile, study of legal philosophy (including Islamic law) or jurisprudence is closely related to the social role when we are interpreting and formulating a legal provision. Due to the significant social role in the jurisprudence, Nur Ahmad Fadhil Lubis has classified jurisprudence into four based on its role and function: first, historical jurisprudence which is related to development of legal principles in time span and reason for the emergence of law as a result of tradition or historical fact developed

⁴¹⁶ For further information see Kuntowijoyo, *Metodologi Sejarah (Historical Methodology)*, second edition (Yogyakarta: Tirai Wacana, 2003), p. 191-198.

within society which institutionalizes to become a regulation or law. Second, sociological jurisprudence which studies relationship between legal provision stemming from individual, group or institutional behaviors. Third, functional jurisprudence which is a study of legal norm, interest and social need that serves as its basis. Fourth, analytical jurisprudence which is a study of purport of legal concepts and its conceptual relationship, including their relation to morality⁴¹⁷ and the purpose of the law itself.

Social role in understanding and formulating Islamic law gives an implication that classical interpretation model and style, which are very strict with *nash* understanding and tends to accept whatever written in the Qur'an and Sunnah, cannot be finalized, let alone be blindly forced in answering contemporary legal problems. Therefore, a new formula which is more universal and comprehensive is needed to enable us to open a new paradigm of thought of formulation of temporary Islamic law which is able to give an effective solution and is more futuristic. This is because Islamic law format which grows and develops in Arab land *an sich* must find contemporary forms which are different contextually.

Although intellectual "*jihad*" being performed by ulama (contemporary Moslem scholars) to reinterpret the Qur'an and Sunnah and reconstruct classical ulama's understanding as an effort to reform Islamic law thought has not yet resulted in any satisfying "thing", the intellectual *jihad* effort, like that of taken by Liberal Islam Network, should not be regarded as an effort to "liberalize" Islam. Instead of being support, it is claimed as a conversion to another religion.

To address the unrest, together with conservative ulama's massive strength which tends to disregard intellectualism, intellectuals (ulama) are trying to offer a theory to fill in the absence of epistemology and axiology of Islamic study, especially Islamic law with modernism approach, as called by Fazlur Rahman as a secularization effort resulting from unsatisfaction of Islamic conservatism which tends to get stronger in most Muslim countries. Thus, when we are talking about social role in legal understanding perspective, according to Rahman, one thing that must be done by a fuqoha is to fully understand an important meaning stated by *nash* by studying situation of social reality development which is related to the problem that needs its solution, and which is related to universal *nash* must be correlated with contemporary social and historical context concretely.⁴¹⁸

What has been described by Rahman indicates that there is a need to reactualize *nash* understanding and interpretation by seeing social and historical situation when it

⁴¹⁸ Fazlur Rahman, "Islamic Modernism: Its Scope, Method and Alternatives", in *International Journal of Middle Eastern Studies*, Vol.I, (1970), p. 317-33.



⁴¹⁷ For further information see Nur Ahmad Fadhil Lubis, *Yurisprudensi Emansifatif (Emancipative Jurisprudence)*, (Bandung: Citapustaka, 2003), hal. 2-3.

emerged to be brought to contemporary domain which is adjusted to its concrete social and historical situation.

There is no other way to synchronize *nash* interpretation with contemporary concrete condition but by using *qawaidu 'uquli al-ijtima'iyah* which is not only a generic collection of ulama's maximum logic when they are doing *istimbath al-ahkam* as embodied in *qias, istihsan, mashlaha mursalah*, etc. but also a collection of social engineering which is applied in the form of culture and civilization with contemporary and future dimension.

To answer the question of why *qawa'idu 'uqul al-ijtima'iyah* becomes one of sources of Islamic law and what its methodology is, the writer will try to describe it like the following:

According to the writer, *qawa'idu 'uqul al-ijtima'iyah* is a collection or provision of social reason, which is called public reason by an-Naim, which is threaded with social reality dynamics so that it creates a legal structure in the formation of life which runs based on community necessity and need (supply and demand) in order to build a civilization.

As a source of Islamic law, *qawa'idu 'uqul al-ijtima'iyah* has its own elements, methods, characters and conditions (*quyud*).

1. Elements of *Qawa'idu 'Uqul al-Ijtima'iyah*

Qawa'idu 'uqul al-ijtima'iyah consists of some elements such as divine reason, human reason and social reason. Divine reason is divine guidance in the form of divine revelation, divine inspiration or intuition as source of truth. Human reason consists of move reason⁴¹⁹ (generic/pragmatical logic, *la dinan liman la 'aqla lahu*) and moral reason⁴²⁰(philosophical logic, *lahum qulubun la yafqohuna biha walahum 'a'yunun la yubshiruna biha walahum azanun la yasma'una biha*). Meanwhile, social reason consists of ethics/value/norm/culture and social reality view (*waja'alna likulli ummatin syir'atan wa minhaja*).⁴²¹

⁴²¹ In Tafsir Ahmadiyah it is stated if *syir'ah* is understood as a way given by God to human beings in the context of relation with God and other human beings, the word *minhaj* can be understood as a finding of regulation (law) stemming from social engineering which is related to regularity of world life. See *al-Quran Dengan terjemahan dan Tafsir Singkat*, vol. 1, (Jakarta: Yayasan Wisma Damai Ahmadiyah), 2006, p. 443-444.



⁴¹⁹ Mohammed Arkoun calls it practical reason (*sens pratique*): an ability to control human being in their practical life without becoming object or result of rational thought process. See Mohammed Arkoun, *Nalar Islami (Islamic Reason) p.* 307.

⁴²⁰ Mohammed Arkoun calls it intelligence reason (*intelligence humaine*): an understanding or human understanding capacity consisting of thought and capacity to build an imagination. *Nalar Islami* (*Islamic Reason*) ..., p. 307.



2. Istimbath al-Ahkam Method

Legal formulation which is used in *qawa'idu 'uquli al-ijtima'iyah* applies reconstructive-futuristic thinking method stemming from reality of community's thought and intelligence development which the writer calls '*aqlu al-ijtima'iyah* (social reason), including legal methodology formulations which have been established by classical ulama such as *qiyas, mashlahah mursalah, istihsan, istishab, 'urf,* etc., but in a contemporary paradigm dimension. For example, in their application, the legal formulation methods must be adjusted to the reality of the problem and legal need as a *legal reasoning istimbath al-ahkam*, and not on the other way around; contemporary social reality is forced to be adjusted to classical legal formulation methods. This is because contemporary social reality problem must be seen from perspective of contemporary interest and benefit which continues to change depending on time and place. This way, Islam will always become *rahmatan lil 'alamin* (blessing upon the universe) and *salih li kulli az-zaman wal amkinah*.

3. Legal Characteristics

Qawa'idu 'uqul al-ijtima'iyah has legal characteristics which include contemporary and future dimension (futuristic law) which continues to prioritize *mahslahat/maqashidu as-syar'iyah*, is open and applicable locally; it means that decision made related to law must be able to be reviewed depending on time and place (in Syafi'i *fiqh* it is called *qaul qadim* and *qaul jadid*) and there is no need to be applicable universally.

4. Quyud/conditions

The implementation of *qawa'idu 'uqul al-ijtima'iyah* as source of law has its own *quyud* or conditions: it shall not against *dilalah nash* which is *qoth'i* (absolute indication) and shall not against *ijma'* as well as social and logical principles which are applicable universally.

F. Conclusion

Liberal Islam which is popularized by Liberal Islam Network in Indonesia prioritizes Islamic principle which stresses on individual freedom and liberation from all forms of oppressive structures of politics and society, including liberation from classical *fuqoha's* legal understanding. Therefore, they are open to all forms of intellectual exploration on all dimensions of Islam; prioritize religio-ethics, not literal textual readings; believe that truth is relative, open for interpretation and plural; side with oppressed minorities; believe in the freedom to practice religious beliefs; separate world and heavenly authorities, religious and political authorities.

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Though they are dreaming of making liberal Islam as school for Muslims, in its development, Liberal Islam Network is only a discourse so that its function does not have a significant influence on the majority of Muslims. Instead, it has caused rejection and hatred. Actually, this is not because Liberal Islam Network is free to use their logic when they are interpreting a law but because Liberal Islam Network totally disregards classical fuqoha's views which for traditionalists have turned into Islamic law itself.

Qawa'idu 'uqul al-ijtima'iyah is an offer as source of Islamic law with a clearer basis because it stems from social logic with its various dimensions. It is obvious that *qawa'idu 'uqul al-ijtima'iyah* has a significant role in the design of contemporary Islamic Law which has a direct relationship with globalization so that it creates a more *tasamuh* Islamic law and is open to legal engineering with a futuristic dimension. In line with Functional Sociology theory as stated by Thomas T. O'dea, values and practices within community have an impact on legal formulation.⁴²²

Contrary to Pragmatic Legal Realism theory as stated by Resco Pound, law as a tool of social engineering,⁴²³ reality in community which the writer calls social reason principles (*qawa'idu 'uqul al-ijtima'iyah*) serves as not only a legal engineering tool but also a source of law (*qawa'idu 'uqul al-ijtima'iyah as a tool and source of law*).

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⁴²³ For more information about *Pragmatic Legal Realism* theory, see Abdul Mannan, *Aspek-Aspek Pengubah Hukum*, (Jakarta: Prenada, 2009), p. 20-21.



⁴²² For further information see Thomas O'dea, *Sosiologi Agama: Suatu Pengantar (Religious Sociology: An Introduction)*, (Jakarta: Rajawali, 1985), p. 3.



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