

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

Ansari Yamamah

*“We need not bother about nomenclature,
but if some name has been 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

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).

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

stems from the thought of Syah Waliyullah ad-Dahlawy (1703-1762) who perceives that Islam and Muslim are in the danger of a contradictive pragmatist 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 pragmatist 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 syncretical 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 *taqlid* 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

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.

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.

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 Nurcholish Madjid, Azyumardi Azra, Komaruddin Hidayat, Ahmad Sahal, Budhy Munawar-Rachman, Hamid Basyaib, Luthfi Assyaukanie, Rizal Mallarangeng, Denny J. A., Ihsan Ali-Fauzi, A.E. Priyono, Samsurizal Panggabean, Saiful Mujani, 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

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.

