

## Methodology and Scope of Social *Fiqh* (Thinking Study KH. M. Sahal Mahfudh)

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### Abstract

The purpose of this research is to answer the problem formulation, what is the nature of social *fiqh*? What is the methodology of social *fiqh*? This research is a legal research with doctrinal dimensions, interpreted logically and dogmatically. The nature of this research is qualitative with theological and sociological approaches. Social *fiqh* basically includes three things; First, social *fiqh* shifts the perspective of *fiqh* which is pure science towards applied science. Second, shifting deontological understanding toward teleological. Third, emphasizing *fiqh* method in giving birth to legal provisions, from giving satisfactory answers to efforts to realize the objectives of *fiqh*. Social *Fiqh* clearly has a methodology that is a contextualization of *fiqh* texts, switching to mazhab qauli ke mazhab manhaji, verification of ushul dan furu', *fiqh* as social ethics, philosophical-based application of thought. What distinguishes this study from previous research is that in this study it was found that the social *fiqh* of KH. M. Sahal Mahfudh was not only a *fiqh* product but also a *fiqh* methodology.

**Keywords:** social *fiqh*; method; ijtihad; science, law

### Abstrak

Tujuan dari penelitian ini untuk menjawab rumusan masalah bagaimanakah hakikat dari *fiqh* sosial? Bagaimanakah metodologi *fiqh* sosial?. Penelitian ini merupakan penelitian hukum dengan dimensi doktrin, ditafsirkan secara logis dan dogmatis. Sifat penelitian ini kualitatif dengan pendekatan teologis dan sosiologis. *Fiqh* sosial pada hakikatnya mencakup tiga hal; Pertama, *fiqh* sosial menggeser cara pandang terhadap *fiqh* yang merupakan ilmu pengetahuan murni menuju ilmu pengetahuan yang bersifat terapan. Kedua, Menggeser paham deontologis ke arah teleologis. Ketiga, mempertegas metode *fiqh* dalam melahirkan ketentuan hukum, dari memberikan jawaban yang memuaskan menuju pada upaya merealisasikan tujuan *fiqh*. *Fiqh* Sosial jelas mempunyai metodologi yaitu kontekstualisasi teks *fiqh*, beralih dari mazhab qauli ke mazhab manhaji, verifikasi ushul dan furu', *fiqh* sebagai etika sosial, aplikasi pemikiran yang berbasis filosofis. Yang membedakan penelitian ini dengan penelitian sebelumnya adalah bahwa dalam penelitian ini ditemukan bahwa *fiqh* sosial KH. M. Sahal Mahfudh ternyata bukan hanya sekedar produk *fiqh* tetapi juga metodologi *fiqh*.

**Kata Kunci :** *fiqh* sosial; metode; ijtihad; ilmu hukum.


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## Introduction

It has become *sunnatullah* if life continues. Consequently, life and civilization and social life also change. From this fact, we need a means that regulates human life. The means in question is *fiqh*. *Fiqh* never runs out of arguments in response to social changes and various contemporary problems. It is because in the *fiqh* the scope is unlimited to the problem of worship, but also the problem of social interaction, from problems relating to families to problems of political life. In *fiqh* also discussed the issue of social ethics among

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fellow Muslims and even talked about the ethics of friendship with non-Muslims. In short, *fiqh* addresses everything from private matters to public matters.

The object of *fiqh* discussion encompasses all human actions of the *mukallaf*. This concerns human interaction with God, human interaction with humans and objects, also involves human interaction with nature. The interaction knows no boundaries and places, and always follows the times (Nurdin, 1999). Because a *mukallaf* has a dynamic character, the means that regulate it should also have the same nature, namely *fiqh* which is called *likulli al-zaman wa al-makan*. *Fiqh* is always contributive and solutive to the development of human life. The reality is that the existing *fiqh* theories are still lacking to compensate for the rapid dynamics of society. In this connection, there are experts in *fiqh* who try to offer "new *fiqh*" to respond to problems that continue to emerge. For example, Kyai Sahal Mahfudh who conveyed his ideas about social *fiqh*.

In operational practice, social *fiqh* cannot stand alone. It always uses the *ushuliyah* and *fiqhiyyah* rules as its basis. For example, Kyai Sahal supports prostitution localization. In fact, the basis used in this problem is the *fiqhiyyah* rule which says "when there are two *mafsadat* simultaneously, then the smaller one is chosen". The attitude of legalizing localization is smaller than the practice spread everywhere. In this case, the review of *maslahah* and *mafsadah* is clearly a legal consideration.

Most Indonesian Muslims hold to the opinion of Islamic ulemas when carrying out their worship. The Kiai, ulama or religious figures who are often used as a reference for the community in religious affairs, often do not dare to make new formulations that come out of the *fiqh* texts that already exist. Legal context considerations are often sidelined to avoid legal errors. As a result, in various forums, the formulation of law that occurs is simply repeating the old laws that have been written in the classical *fiqh*.

Initially, the community accepted the above legal adoption model. The further development of the laws produced by such methods many are incompatible with their living conditions on the ground. The reality is no longer in accordance with the law in texts written centuries ago, where the social, cultural, and political contexts are different (Malik, 2012).

The methodology is something that is very important in every discipline. In the context of the social *fiqh* of KH. M. Sahal Mahfudh, there are two different views among experts. On one hand, there are those who say KH.M.Social *fiqh* is actually Mahfud as a legal product as *fiqh* in general, while the other side believes that social *fiqh* is not just a product, but also a method in *fiqh*.

## Research Problems

Based on the background of the problems that have been described, the formulation of the problem in this paper is: (1) What is the nature of social *fiqh*? and (2) What is the methodology and scope of KH.M. Sahal Mahfudh?

## Research Method

This research is legal research because it examines the principles of law, specifically Islamic law. Dimensions taken are doctrines or thoughts that are interpreted logically and dogmatically. The nature of the study is qualitative because it examines the ideas or thoughts of KH.M. Sahal Mahfudh. While the approach used is theological and sociological approaches. A theological approach is an approach that examines three things. First, relating to God or transcendence, both mythologically, philosophically, or dogmatically. Second, the significance of the doctrine. Third, activities arising from faith and interpretation of faith. While the sociological approach is an approach that emphasizes the interaction between religion and society. Pressure on structure, construction of human experience, and culture. The theological approach is used to find out *ushul*, while the sociological approach is used to find out the dynamic social problems that enter the realm of *furu* '.

## Discussion

### Ontological Meaning of Social Fiqh

Etymologically, social *fiqh* is arranged in two words, namely *fiqh* and social. While the terminology of *fiqh* is knowing the shariah laws' which are *amaliyah* studied from the propositions in detail. While in the view of al-Amidi, *fiqh* is a science related to religious law that is branched in through the reasoning of the proposition. From the above understanding, it can be understood that *fiqh* is not sharia, but is a translation or interpretation of sharia. This is because *fiqh* is only an interpretation or interpretation of the nature of the alleged situation and conditions that surround it so that *fiqh* will change following changes in time and place.

While the word social is taken from the English term, social which means it is friendly, sociable or social. Furthermore, the word was adopted into the Indonesian term to be social, which means that it refers to the community. Social also means paying attention to the public interest, for example, like helping, giving, and so forth.

The addition of the social word in social *fiqh* is not an adjective or arrangement of *shifat-maushuf* (grammatical terms in Arabic) which existence is as a complement in a sentence. But the structure of social *fiqh* is more similar to the composition of *Idhafah* (*mudhaf-mudhaf ilaih*) or phrases in Indonesian. The arrangement of *Idhafah* is interpreted as an effort to lean nouns with other nouns to form a new unity of meaning. The definition referred to social *fiqh* here is not social *fiqh*, but rather on the unity of the meaning of *idhafî* which means property. So the definition of social *fiqh* is knowing sharia law which is studied from texts in order to achieve human benefit.

### Social Fiqh Method

The methodology referred to is a tool used to *istinbath* law in solving various problems of the people. The need for social *fiqh* for a set of the methodology itself is very

urgent. The alignments orientation for the interests of the people contained in social *fiqh* must be created from the beginning when they want to find a solution. It is impossible for a legal product that is in favor of the interests of the Ummah to be produced from a legal approach that does not have a concern for their interests.

The need for the application of social *fiqh* in solving social problems must always be realized. Kiai Sahal Mahfudh as the originator of the idea of social *fiqh* has succeeded in proving in several concrete actions, it is a good precedent that social *fiqh* must not stop merely as a dead discourse that will repeat the stagnation of *fiqh*. *Fiqh* must be able to continuously respond to all the problems that exist in the midst of the people (Iqbal, 2017). As it has been exemplified by the companions of the Prophet. When a legal problem occurs, they unhesitatingly resolve it quickly. The basis they use as a guide is the Koran and the Hadith. If in both of them textual answers are not found, the friends unhesitatingly seek answers in a contextual way.

The methodology used in the social *fiqh* of the Kyai Sahal Mahfudh is: *first*, contextualization of *fiqh* texts; *second*, switch from the mazhab qauli to the mazhab manhaji; *third*, verification of Usul and Furu. Fourth, *fiqh* as social ethics, is not a positive state law; and *fifth*, the application of philosophical thought in the socio-cultural context, (Faishal, 2010). The contextualization is an attempt to redefine the text of *fiqh* to be in line with space and time (context) that exists today. Space and time now are not the same as space and time in the past, so it requires a new understanding of space and time now, including the challenges and dynamics of the times that follow (Ismail, 2019). The contextual understanding of understanding is different from textual understanding only see the text and are oriented towards the past.

Understanding religion contextually requires the ability to read social developments. A person is demanded to keep up with the changes and developments of the times continuously in order to be able to capture their substance so that the religious knowledge they master is able to respond to actual reality contextually. In the perspective of language, understanding Islam must use *fi'il al-mudhari* (verbs that show present and future meaning) in order to stay current and up to date. This was inspired by the verses of al-Quran *liyatafaqqahu fi al-din* (so that they understand religion) who use the sighat *fi'i al-l mudhari*. Do not let the understanding of religion use *fi'il al-madhi* (verbs that show the past) which causes the concepts that are born to be out of date or irrelevant to today's challenges.

Textual meaning makes the existing text unable to answer the challenges of the times dynamically and solutively. Textual meaning of *fiqh* has caused the phenomenon of *taqdis al-afkar al-diniyyah* (sacralization of religious thought) which causes religious thought to become stagnant so that it is less sensitive to contemporary social problems that continue to run rapidly without stopping. This kind of textual understanding is called *hadharah al-nash* (civilization of texts). Because it builds the world from texts, by texts, and for very theocentric texts, while understanding that places human benefit or what is known as anthropocentric is marginalized.

Every problem has its own context and can even be more complex than the problem itself. Therefore, making the yellow book as a reference to solve the actual problem is not a scientific error, but must be developed by providing concepts of approaches that pay attention to the root problems that arise in society, because each problem does not appear independently and suddenly. The basic problem related to the yellow book is how to position the yellow book itself. During this time the yellow book was made as a compendium of jurisprudence that is very legalistic, so the yellow book is often considered a positive law that can judge all issues in detail against the background of considerations, arguments, and decisions that have been fully standardized. In this case, the yellow book is aligned with the Koran and hadith.

The step required in the contextualization of *fiqh* texts is to open up with various other disciplines outside of science which so far have not been considered religious science, both exact science and social science with the aim of gaining an understanding of the yellow book in accordance with the context, both the context of the past when the yellow book was written and the context of the present. (Fathorrahman, 2006) Integration of the yellow book with references or other sciences will create scientific synergies that are very useful to provide solutions to contemporary social problems without leaving the historical roots of the Islamic tradition of the past.

The Second Switch from the Mazhab Qauli to the Mazhab Manhaji which includes:

**a. Mazhab Qauli in the Social Fiqh**

Having mazdhab qauli means following the ideas of the mazhab ulemas and followers. All this time the mazhab qauli of thought has always been used in *istinbath* law, especially among the Sunnis, especially NU. This can be seen in answering a problem that occurs, always looking for answers from classic texts that are considered *mu'tabar*. The debate that takes place is usually also in the context of maintaining one text over another text which is intended to serve as an example of law. The forum used in the debate is usually in *bahtsul masail*.

The meaning of *sa'adah al-darain* as in the NTS *bahtsul masail* tradition, according to Kiai Sahal is one form of the mazhab qauli of thought. Besides that, the mazhab of qauli can also be applied through the development of examples of *ushuliyah* and *fiqhiyah* methods. Among the NU ulemas, there is a high degree of caution in using the *ushuliyah* and *fiqhiyah* methods. For example, when speaking the method of *dar al-mafasid muqaddamun ala jalb al-mashalih*, rejecting damage must take precedence over bringing benefit. The ulemas are very careful to use these methods in real life. Al-Suyuthi exemplifies the ability to lie when it can prevent someone from slander. Examples like this continue to be passed on to the next students. They are reluctant to develop applicative examples that exist today. Kyai Sahal Mahfudh gave a basic explanation of the social *fiqh* method, namely in qauli the translation of *fiqh* could be realized through contextualization of the yellow book or through the elaboration of *masalik al-'illat* theory so that the *fiqh* produced could be in accordance with the theory of *maslahah al-'ammah* (Mahfudh, 1994).

The statement can be used as an explanation of one of the basic principles of social *fiqh* which emphasizes that social *fiqh* uses the method of moving from the mazhab qauli to the mazhab manhaji. Besides that, the statement can also be understood that the mazhab of qauli and manhaji must be used in legal *istinbath*. Because the development of social *fiqh* rests on the method of *al-muhafazah al-qadim al-shalih wa al-akhdzu bi al-jadid al-ashlah*. The method contains the necessity to appreciate classical texts as the legacy of previous ulemas, but also does not deny the renewal that is the demands of the times. Both must be placed proportionally in order to maintain the elasticity of *fiqh* and its compatibility with the present.

#### **b. The Development of Mazhab Qauli**

The success of dialoguing theory with social reality will usher in Islamic law in its existence and substance in the midst of society. So the development of *fiqh* thinking in qauli needs to be continued. The method is to contextualize the yellow book, and through developing the application of the *fiqhiyyah* and *ushuliyyah* rules. First, contextualization is an attempt to interpret *Fiqh* in order to be able to answer the problem being faced. Contextual understanding is not the same as textual understanding which only looks at the text and is oriented to the past where the text was written.

The textual understanding model causes religious thought to stagnate, rigid, and exclusive. In M. Amin Abdullah's terms, there is normative Islam and historical Islam. Normative Islam is a textual, doctrinal-theological understanding of Islam, and cannot be changed by changes in space and time. While historical Islam is an understanding of Islam that is influenced by space and time by using interdisciplinary, so that it is changed by changes in space and time.

Second, through the development of the application of the *ushuliyyah* and *fiqhiyyah* rules. This is important to do in order to respond to contemporary problems, both in the political, economic, cultural, and so on. Example of *al-daf'u hall min al-rafi'* rules, preventing or rejecting is more important than cure (Idris, 1987). Imam Suyuthi in the book *Al-Asybah Wa al-Nadhair* exemplifies the use of *mustakmal* water. This rule can be developed in health problems, namely rejecting disease with immune and strong deterrence power is more important and more effective than curing diseases that are already attached to the human body.

Another example is *the al-muta'addi aula min al-qashir*, something which benefits the wider community more than something whose benefits are limited. Al-Suyuthi exemplifies what Imam Syafii said that seeking knowledge is more important than sunnah prayer. This example can be developed in the economic empowerment program of the people which is very useful for independence and prosperity with professional management rather than alms individuals without professional management.

#### **c. Mazhab Manhaji in the Social Fiqh**

The mazhab manhaji is the second step if the mazhab qauli cannot answer a problem. The method used is to develop the rules of *masalik 'illat* whose purpose is to make *fiqh* relevant to the *maslahah 'ammah*. From this theory there are two important things that can be taken, first; there is an absolute recognition of *ijtihad* as an effort to develop *masalik 'illat*. Second; combining the needs of *ijtihad* with the obligation to realize benefit.

What stands out from social *fiqh* is the use of *masalik al-'illat*. So as to answer legal problems done using the *qiyas* method. *Qiyas* is equating the new case law with the law contained in the Koran or Hadith due to the similarity of *'illat*. There are four conditions in *the qiyas, ashl (nash) method, ashl law, furu '(new case), and 'illat*. From this requirement, it can be seen that *'illat* is important in shaping the new law uru or case. But the use of *masalik al-'illat* as the implementation of the mazhab of manhaji, does not mean limiting, but as an intermediary to achieve the goal, namely to realize the *laham maslahah*. In Islam *maslahah* is the main goal of the application of sharia. Sharia aims include; safeguarding religion, guarding souls, guarding intellect, guarding offspring, and protecting property (Wahyudin, 2014). The five objectives of the Shariah are divided into three categories, namely primary, secondary and tertiary.

Although ulemas agree *maslahah* as *maqashid al-shari'ah*, but they do not agree in making *'illat* as a source of legal determination. Among the ulemas who reject *maslahah* as a source of law is al-Shafi'i. He only accepts the main sources of Islamic law, the Quran, hadith, *ijma'* and *qiyas*. So according to the Shafi'i mazhab, *qiyas* is the only method of *ijihad*. All kinds of new laws that are not in the Koran, Hadith, or *ijma'*, will be resolved by *qiyas*. From this point, the Shafi'i ulema tried to broaden the scope of the *qiyas* region, namely by developing *masalik al-'illat*. In this context, *maslahah* is considered as the wisdom of establishing a law, not an approach to establishing a law. Because for them, *maslahah* is difficult to identify objectively. While the law must apply clearly and constantly.

*Masalik al-'illat* is a way to find the reasons used to establish the law. There are several stages to finding *'illat*. First, through the text of the Koran and the Hadith, both clearly and in a sign. Second, through *ijma' ulama*. Third, through *ijtihad* by looking at its suitability or through verification and testing. Thus the field of *ijtihad* will focus on the *al-'illat masalik* area.

The existence of the method of manhaji through the development of *masalik al-'illat* shows Kiai Sahal as the originator of the idea of social *fiqh* adhering to the Shafi'i mazhab. Then whether the method of manhaji is only limited by the mass development of *masalik al-'illat*. Of course not, because the challenge of social *fiqh* is to answer the problems of the people of all time. So it is not possible if only supported by the method of *ijtihad* which is fixated on the use of *qiyas*.

Another method to be reckoned with and appropriate to use is Hanafi's *istihsan* approach. This shows that social *fiqh* requires other methods that can meet these needs, for example also openness to all mazhabs and across scientific fields. Like the

social sciences, science, and technology. Social jurisprudence cannot close itself from the help of other disciplines. *Fiqh* whose object involves all human actions requires tools to analyze these actions more closely. For example in health issues, the development of medical science and technology can be used by ulemas in analyzing the problems of the people.

Third Verification of Ushul and Furu 'which includes the Integration of Wisdom and 'Illat. 'Illat is a trait that exists in *ashl* and something because of something that the law is prescribed. According to Wahbah Zuhaili, 'illat is something where the law is prescribed to bring about benefit. While other opinions say 'illat is a trait that tells the existence of the law (Muchsin, 2013). The meaning of informing the law is a sign of the existence of the law without any influence and without encouragement to the law itself. For example, intoxicating is 'illat because it is known as a sign of illicit drinking. 'Illat can be used in two senses. First, the wisdom that encourages the Shari'a law, namely realizing benefit and rejecting damage, for example, the benefits obtained for two people who transact from the ability to buy and sell. Safeguarding the lives of those born from illicit intentional killing and the obligation of *qishas* for perpetrators. While the binding is a trait that exists in all parts in the same condition. The meaning of relevance to the law is the legal relationship that can realize the benefit of humans, for example consent qabul which is 'illat for a sale and purchase agreement. Ijab and qabul are clear and binding things that bring benefit to the two people who make transactions to meet their needs. In this context, 'illat can mean wisdom and visible nature. For example, 'illat the existence of a volume law in the case of adultery sometimes takes care of offspring or adultery itself. Ushul experts prefer to refine the term 'illat with visible characteristics, while wisdom is something that is born from the law in force.

The condition for something that can be made 'illat is a visible and binding nature, both of which can be known with reason, such as pleasure and anger that are seen or known by the five senses, such as killing, or can be known through tradition, such as good and bad (Adlan, 2012). 'Illat is called *manathul hukm*, a place of law hangers according to *shari'a*. While wisdom is something that can be understood by reason that the existing law aims to bring benefit and avoid damage.

Considering wisdom is something that is still vague that can not be found with the visible senses or something that is not binding that changes with changing conditions, the ulama ushul make the rules of *al-hukmu yaduru ma'a 'illah wujudan wa' adaman*, the law revolves on ' illat, if there is an illat there is a law and if there is no illat there is no law. Ushul ulemas do not make the rules of *al-hukmu yaduru ma'a al- hikmah wujudan wa' adaman*. If there is an 'illat, even though the wisdom is not there then the law still exists, for example the ability to break the fast and pray for people who are traveling, even though not experiencing fatigue (*masyaqqat*) and may not break and recite the prayers for people who in their work have fatigue, like factory workers, because there is no illat, which is traveling or being sick, even though the wisdom is there, that is fatigue (*masyaqqat*).



**a. Masalikul 'Illat**

The main theme in the discussion of 'illat is about *masalikul' illat*, namely the methods used to determine the existence of 'illat in *ashl*. The most well-known methods are *Nash*, *Ijma*, *Sabr* and *Taqsim*. *First*, texts are certain traits that are explained by *nash*, either explicitly or implicitly. Explicitly, it is *nash* that shows the 'illat sent by the apostles, namely so that humans do not have an argument to God after the messengers. Whereas the *illat* that is implicit in the *nash*, for example, is accompanied by the law which shows that the trait is his *illat*, for example in the case of the person who steals his hand cut off, the person who commits adultery being stoned (*rajam*) a hundred times, and so on.

*Secondly*, *ijma'*, namely the nature agreed upon by the ulemas, such as *ijma'*ulama about the mixing of two causes in siblings (relatives of the father and mother) is 'illat to prioritize the division of inheritance from the brothers. *Third*, *sabr* and *taqsim*. *Sabr* is testing and *taqsim* is the process of selecting many traits that are worthy of being 'illat, then examined and studied in depth to determine the proper nature canceling out the unworthy trait. Appropriate traits are traits that are visible, binding, relevant, and can encroach upon others. Examples of cases of illicit *khamr*, whether this is due to wine, dripping or intoxicating. The first trait (grapes) falls because it is limited, the second nature falls due to nature which has nothing to do with the law and has no effect. Therefore the third (intoxicating) nature is determined as *illat* because it is a clear and relevant nature of law.

Apart from the three things above, some ulama ushul added another *illat*, *tanqihul manath*, which is to clear *illat* from unworthy qualities. So there are texts that contain 'illat, accompanied by some properties that have no connection with the law and do not include 'illat. For example, there are Bedouin people who come to the Prophet to tell about his sexual behavior during the day in the month of Ramadan, then the Prophet ordered to pay for *kafarat*. The ulama then examined what the *illat* of the law of paying for this *kafarat* was, whether Bedouins, the case in Medina, or daytime intercourse in the month of Ramadan. Ulema then discarded these qualities and found that 'illat was obliged to pay for expiation was to have intercourse intentionally during the day of the month of Ramadan. This was conveyed by Syafi'iyah ulema, while according to Hanafiyah, his *illat* is not only having intercourse but deliberately damaging the glory of the month of Ramadan by doing something that breaks fasting and having intercourse or eating and drinking. Intercourse is the same as something that damages fasting as determined by *nash*, such as eating and drinking.

**b. The Position of Maqashid Syariah in Social Fiqh**

*Maqashid Sharia* according to Thahir ibn Asyur is interpreting the meaning and wisdom set by the *sharia* (the maker of the shari'a) in all the processes of making the shari'a or most of the shari'a that are not specified in one type of sharia law. While Wahbah Zuhaili argues, *maqashid sharia* is the meaning and purpose which outlines

the sharia in all its laws or the majority of shari'a laws and secrets that have been outlined by shari'a from the laws of Allah. For mujtahid, knowing the maqashid of sharia is very important in the context of determining the law and understanding the text, while for other than the mujtahid to know the secrets of the sharia. *Maqashid Sharia* seeks to realize the good of mankind both in the world and in the hereafter by bringing benefits and resisting damage (Mubaligh, 2004). This is shown by an in-depth study of the objectives of the laws indicated by the Sharia texts.

In *maqashid al-shariah* there are four conditions. First, it remains, that is, the meaning contained is definite in its realization. Second, clear. It means that clarity is not disputed by *fiqh* ulemas in determining to mean, for example obtaining offspring which is the goal of the Shari'a marriage. Third, bound, in the sense of the meaning set, there is no doubt that the measure is not violated. Fourth, it applies, meaning that the meaning is different from the different times and places, such as being able to provide a living as a condition for *kafaah* (equality) in marriage according to the Maliki mazhab of thought. If these four conditions are met, then this is the purpose of the Shari'a.

The literature of *fiqh* and *ushul fiqh* does not talk much about *maqashid sharia* in the early days of Islam. Al-Rasyuni said, among classical ulemas before al-Syatibi had never found a clear and complete understanding of the meaning of sharia maqashid. While al-Ghazali only defines it as taking *maslahah* and rejecting *mafsadah*. He interpreted *maslahah* by safeguarding the five shari'ah objectives, namely preserving religion, preserving the soul, protecting the mind, preserving the offspring, and preserving property (Ghazali, 1993).

The lack of expert concern in discussing the classical era *maqashid sharia* was allegedly due to theological understanding, many *firqah* (groups) whose views were different. At that time the *maqashid shariah* became a contentious theme. The trigger is the question of whether God should give benefit to every law handed down to humans. According to the Muktazilah group who from the beginning had the doctrine of God, they had to do the best for humans, so they obliged it. But this is not in line with Ash'ariyah's creed which considers Allah has the right to do anything as a manifestation of His nature of worship. So it is not obligatory for God to give benefit to every law that is revealed. While Maturidiyah takes the opinion of moderation between the two. According to this mazhab, God's actions do have a cause and purpose. But that is not an obligation for Him. Because *fiqh* develops a lot among Sunnis who note below the faith of Ashariyah and Maturidiyah, it is understandable if discourse about sharia maqashid is less popular during the growth of *fiqh*.

Ulema who is considered as the originator of the theory of *maqashid sharia* is al-Syatibi with his work, *al-Muwafaqat*. He said that the burden in the shari'ah returned to the preservation of its goals for the creature. These goals consist of, *dharuriyyat* (primary), *hajjiyat* (secondary), and *tahsiniyyat* (tertiary). Al-Syatibi further said, Allah as the *shari'a* (the maker of the Shari'a) certainly has a goal in every law he set, namely

for the good of mankind both in the world and in the hereafter. Therefore he obliges every mujtahid to know the *maqashid sharia*, besides understanding the Koran and Hadith. He also stated that the knowledge of *maqashid sharia* is the main basis for understanding the law.

In the hands of Syatibilah the *theory of maqashid sharia* develops rapidly and is applicable. He explained the definition of *maqashid sharia* and explained the concept, up to the basic rules that must be possessed in using *maqashid sharia*. According to Jasser Auda, al-Syatibi's contribution to the theory of *maqashid sharia* is three. First, the shift in the meaning of *maqashid sharia* which is considered unclear and follows unlimited interests (unrestricted interest) becomes the basic core in law (fundamental of law). Second, the shift in *maqashid sharia* as the wisdom behind the law is the basis for legal regulation. Third, shifting the *maqashid sharia* which is considered *zhanniyah* to be *qath'iyyah*. Therefore, with his theory, al-Syatibi echoes the *maqashid sharia* as the basis of ijtiḥad, not as a means of justification.

c. **Ijtihad Jama'i**

The times are rapidly increasing, including in the field of science. That impacts the division of knowledge into a number of diverse specifications. Today, it is difficult to find experts in all fields of science as happened in ancient times. The impact, ijtiḥad can no longer be done alone (Qadir, 2004). A figure who has the capacity as Imam Hanafi, Maliki, Shafi'i, and Hambali seem to no longer exist. That is because the current education and scientific system are different from their era. During the mazhab, the tendency to do jihad was *fardy* or individually. So that the division of mujtahid into *mutlaq or mustaqil mujtahid* and *muqayyad mujtahid or muntasib*.

In this regard, Kiai Sahal offers *ijtiḥad jama'i* (collective ijtiḥad). That is, the difficulty of the ijtiḥad methodology with one person who has various disciplines, can be done by involving many people and having various kinds of disciplines needed. This is done in order to overcome the impasse of ijtiḥad (Basith, 2002). Kiai Sahal said "In a number of ulama formulas it was emphasized, at this time there is no longer possible *ijtiḥad fardy* (individual ijtiḥad), as was done by the fourth mazhab of *imam* (Asy'ari, 2013). However, ijtiḥad can still be limited to *ijtiḥad jama'i*. (collective ijtiḥad), an ijtiḥad that involves several experts from different disciplines and then establishes ijtiḥad in one or several cases.

In practice, ijtiḥad jama'i can be done in various ways, such as deliberations, discussions with experts, symposia, and seminars. In implementing the collectivity of ijtiḥad it is necessary to pay attention to the following principles. *First*, collective Ijtiḥad must be based on the intention to seek the pleasure of Allah and for the benefit of the people. *Second*, collective ijtiḥad must really be done as a group. *Third*, the identification of the problem is carried out jointly by considering the opinions of experts in their field. *Fourth*, individuals who participate in collective ijtiḥad are people who are experts in their respective fields. *Fifth*, the decision taken is not intended for

personal gain and lust only. By adhering to the above principles, *ijtihad jama'i* can be done to find legal answers and the provisions of *sharia maqashid*.

Fourth, *Fiqh* as Social Ethics, Not the State's Positive Law. Words that are often used to refer to ethics include good-bad, right-wrong, and so on. So that action is called ethical, if it has used for others and. And conversely, an action is considered unethical if it does not have an advantage and can even harm others. According to the study of Sufism, humans have two characteristics, namely praiseworthy and despicable. These two characteristics have an influence on social ethics. Whereas in the perspective of legal science, these two terms are called mandatory and haram. Acts must be done if the act has general benefit values, for example obeying traffic signs. While haram is an act that can cause harm and danger. For example illegitimate spikes on the road because it can cause harm to others. Most ulemas believe that good and bad measures are based on Allah's provisions. So something that is considered good and bad by God is definitely something that is good and bad in its essence.

The *ushuliyin* also has the same view as the above opinion, which is something that is said to be good and bad must be sourced from the Shari'a. This view was expressed by the Ash'ariyah group, while the Mu'tazilah group said that reason can find good and bad to safeguard goodness and prevent damage. According to Mu'tazilah, the function of sharia is to strengthen the findings of reason through a definite process, analysis, about something that is still uncertain or unclear for reason.

The basis for taking social ethics is personal ethics. In the perspective of Islam, humans are the center of their teachings, both related to God, human beings themselves, human interactions with humans, and humans with nature. Human-human interaction is the most complex interaction. Islam teaches the concepts of position, rights, and obligations and responsibilities. Human actions are not only accounted for in the world, but also in the afterlife.

Morality, ethics, and character are manifestations of life behavior, not only in the form of speech and writing. Spiritual values are very important to strengthen the Islam of someone who lives the Islamic doctrines, as practiced by ulemas who are able to set a good example for the people. Positive social ethics can not be separated from success in the process of socialization and internalization of values that are held in high regard in Islam, such as honesty, responsibility, helping others, and so on (Woodward, 2000).

In the context of *fiqh*, social ethics is part of *muamalah*, human relations that aim to meet the needs of life. In Islamic sharia regulated human relations with God and human relations with other humans in order to uphold the five goals of sharia, namely maintaining religion, reason, soul, offspring, and property. According to Ali Jumah Muhammad, the order of the five principles of the goal of Islamic sharia is to preserve the soul, reason, religion, descent, and wealth. A healthy mind and mind are conditions for the imposition of Islamic law. Furthermore, attention is paid to heredity or matters relating to self-esteem and human rights or glory. The last concern is guarding wealth as the foundation of life.

There is a difference between social jurisprudence and fundamentalists in seeing the position of Islamic law. For social *fiqh*, *fiqh* is strived to become social ethics, not positive state law. This is due to maintaining the existence of the Republic of Indonesia which is a plural state, especially in the religious field. The concept of *fiqh* formalization is considered to disturb the state constitution and the principles of a democratic state which upholds human rights.

While fundamentalists want to enforce that sharia is taken for granted. This fundamentalist view can be seen from four characteristics. First, fundamentalism is in opposition to threats to the existence of religion, such as secularism. Second, reject hermeneutics and intellectualism. Third, reject pluralism and relativism. Fourth, refusing to use the socio-historical approach. These four types of features make it difficult for fundamentalists to communicate with other groups, making them an exclusive group, even they are fighting for the Middle Eastern model of Islam without regard to the nationalism which is a place to stand and do activities.

Different from what was stated above, KH. Abdurrahman Wahid (Gus Dur) explores the idea of the indigenization of Islamic teachings. Gus Dur's ideas about indigenization were an effort to continue the spirit taught by walisongo in spreading Islam in Indonesia in the XV and XVI centuries on the island of Java. Walisongo succeeded in incorporating local values in Indonesian Islam. Walisongo also accommodates the historization of religious teachings. Sunan Bonang is able to change Javanese gamelan which is thick with Hindu teachings with dhikr which encourages love for God. Sunan Kudus utilizes Hindu and Buddhist symbols in his da'wah. The architecture of the Holy mosque, such as the shape of towers, gates and showers for ablution, symbolizes the eight Buddhist paths.

In delivering his da'wah, walisongo did not use a purification strategy of authenticating the teachings in total but made adaptations and adjustments to the socio-cultural reality of the local community. With this approach, the community can accept the preaching that is delivered in stages and does not resist or reject the new teachings that enter. According to Sunan Kalijaga, if people understand Islam, then the old negative habits will naturally disappear.

The practice of *fiqh* is done in daily life without having to become positive state law. Formalization actually causes the Islamic Shari'ah to lose its meaning, because submission to God with a whole heart turned into coercion, threat, and fear of sanctions and punishment from the state apparatus (Ataman, 2003). Moreover, the Islamization of the state and the system can be done by changing the spirit, values, and substance. This is what is meant by Indonesian Islam, Islam that is able to communicate with other groups in an inclusive and tolerant manner. Islam is a religion that encourages a dynamic attitude, able to display its position in rational arguments, not religion that has a narrow view. Formalist Islam in the form of total Arabization must be changed with the awareness of the importance of respect for local culture in a historical framework to develop religious life in Indonesia.

The concept of indigenization of Islam has the aim of realizing Islamic teachings as a social ethic that is able to animate people's behavior as awareness in their entire lives. If *fiqh* becomes a positive law of the country, the approach to its implementation as state law is repressive, forced, and punishable by the parties law enforcement officers, so that the law does not become a public awareness, but turns into a public ghost.

Fifth, the application of philosophical thought in the socio-cultural context. Philosophical thought is thought that uses the science of philosophy. Philosophy functions to find the essence of everything. Although the philosophical method pursues essence, substance, and pure objectivity, it must be placed in the inspirational space and motion that motivates a person to do something that touches the real problems of human life. Philosophical thinking which is more oriented to social care and the natural environment gives better prospects towards shifting paradigms in the methodology of philosophical and scientific approaches. This shift in thought clusters occurs because all science is historical, that is, it is built, designed, and formulated by human reason which is bound by time and space, influenced by the development of thought and the social life that surrounds it. Therefore it is very likely that changes, shifts, improvements, reformulation, reshuffle, and refinement of scientific epistemological designs. If this is not the case, then science will stagnate.

The following is an example of Kiai Sahal Mahfudh's thought which is the application of philosophical thought in the socio-cultural context:

**a. Addressing differences**

According to Kyai Sahal, addressing the differences of views that exist within the internal Muslim community requires *fiqh ikhtilaf* (*fiqh* difference) to neutralize differences. *Ikhtilaf fiqh* is ethics, insight, and solution to neutralize the tension between groups that threaten the unity and integrity of the people. Some ethics in differences of opinion are:

1. Starting with prejudice against fellow Muslims.
2. Respect the opinions of others as long as there is an argument.
3. Does not force the will that his opinion is the most correct.
4. Acknowledging the differences in branch issues (*furu'iyah*) and not raising them.
5. Do not disbelieve those who say the sentence *Laa Ilaha Illallah*.
6. Assess the differences scientifically by peeling the proposition.
7. In the matter of *furu'iyah*, there is not only one truth, because of the variety of propositions and the role of the reason that interpret propositions differently.
8. Be open in dealing with differences. Differences will enrich *hazanah* and religious flexibility. Should not blame and accuse teachings that are not known to be heretical, instead the background and essence of the teachings must be learned.

Differences of opinion among Muslims in Indonesia until now is still a haunting social problem. For example in the case of the initial determination of fasting and Hari Raya, the difference is still very strong. Muhammadiyah uses reckoning (a count of

reason), while NU and the Government use ru'yah (seeing empirically the shape of the moon).

**b. Truth Sourced from Science**

Islamic teachings are sourced from the Koran and Hadith. Broadly speaking, Islamic teachings are divided into aqidah, worship, ahlak, muamalah, jinayah, siyasah, and munakahat. While there are at least three sources of truth and knowledge, namely religion, reason, and inspiration. Not all problems are explained in detail in the Koran and Hadith, such as science and technology. Al-Quran and hadith are the sources of truth, but not the only one. With reason, humans can find the truth, but not all problems can be solved by reason alone. Because of the limitations of reason, Allah revealed revelations to the Prophet and Apostle to explain problems that are beyond reason or can be reached by reason, but require a very long process of time. While the problem is urgent to know, such as information about God, metaphysics, afterlife, and morals.

This context requires a choice between religion and reason. Regarding the problem that becomes the authority of religion, it must be returned to the Koran and Hadith. While in matters relating to reason, the reason must be maximally empowered. In the field of science, Islam really values reason. There are many verses of the Koran that command Muslims to think, be critical, and forbid *taqlid*.

The Koran affirms that there is no contradiction between the *quraniyyah* verse and the *kauniyah* verse or between religion and science. Both are sourced from God. Science is obtained by researching and investigating the universe with the ability of human reason and senses. Therefore, science and technology derived from reason and observation of the human senses, do not include *bid'ah*, polytheism, and kufr. Allah even instructs people to study and develop science and technology because it is useful to improve the quality of human life and strengthen faith because some of Allah's piety can only be known by His verses, both in the form of writing and in the form of natural law or *sunnatullah*.

This thinking is truly extraordinary because it asserts that religion must not obstruct the dynamics of science and technology which are the main characteristics of the globalization era. In fact, Islam encourages its people to continue to think critically and creatively in order to be able to create technologies that are beneficial to the wider community. Muslims should not experience a setback in the field of science because the Koran commands Muslims to continue to think seriously in order to be able to produce quality and competitive products, as is the case in developed countries that have strong research and development traditions. The creativity and high innovation power of the Caliph Umar bin Khattab and the golden era of Islam in the Abbasid era should inspire the awareness of Muslims to actively develop science and technology by remaining grounded in the Koran and Hadith.

**c. Trusting the Law of Causality**

The law can be known from repeated habits and experiences. Therefore, most people believe in a causal relationship (cause-effect). Ibn Qayyim al-Jauziyah shares the opinion of the above case in three ways. First, the law of causality is true, real, and impossible to change. Second, the law of causality is non-existent. God created everything without cause. God can replace an effect without other causes and it is not impossible to have a cause without the usual consequences that follow. Third, the middle way, which is to believe in the law of causality without denying the absolutes and power of God. Recognize the law of causality but still trust the absolute power of God which is placed proportionally and in balance. This balance is what was practiced by the Prophet Muhammad during his lifetime. One proof is that during the war, the Prophet consulted to find the right strategy. But the Prophet still asked God for help to be given a victory. If there are friends who are sick are ordered to seek treatment and lazy friends are ordered to work.

Imam Syatibi said that the cause and effect is the manifestation of *taklif* implementation. What is called cause and effect is basically created by God. Therefore it is very naive if we stick to it while forgetting its creator. If you are sick, then recover after taking medicine then don't forget that the one who created the medicine is Allah. So that belief in the law of causality within certain limits does not make a person an infidel; do not reduce the belief that absolute power only belongs to God. Because the law of cause and effect is God's creation. The balance between the law of causality and the absolute power of Allah will give birth to a Muslim person who is actively trying and working, at the same time fearing and trusting in Allah.

#### **d. Forced marital law**

In various references of classical *fiqh* there is the concept of wali *mujbir*, namely a wali who may force a girl who is still a girl to marry a male guardian of choice. The application of the concept of wali *mujbir* requires many conditions. Among other things, there is no clear animosity between guardian and child, the child is not involved in hostility with the prospective partner whether openly or not, the candidate must be *kufu* (equal) and rich. The meaning of rich here is being able to fulfill obligations as a husband and be able to pay a bride price. If these four conditions are not fulfilled, the marriage is not valid. Even though such classical *fiqh* formulation, but Kyai Sahal covered it with philosophical thinking, namely the purpose of marriage in order to build a *sakinah, mawaddah, warahmah* household.

This great goal must be accompanied by a process of compassion and humanizing humans because humans consist of bodies and souls. Kyai Sahal took a hadith which explained that the Prophet gave freedom for women to determine their chosen husband, should not be forced by their parents. This Hadith shows that the consent of a child is very important in the process of marriage because it is related to one's life in the long run. This opinion is reinforced by the assumption that every human being has the right to determine his own destiny.



From the four ideas of Kyai Sahal Mahfudh above, it can be seen the depth of the relevant knowledge. He not only explained seeing the text of the Koran, hadith, and the book *mu'tabar* (representative), but also examined the reasons and objectives behind the text known as *maqashid al-shariah*, the purpose of the application of Islamic law, namely maintaining religion, soul, reason, property and descent.

Kyai Sahal's thoughts avoid black and white characteristics in establishing the law because he is unable to solve the problem completely. Problem identification must be done comprehensively to find out the root of the problem that needs the help of philosophy, sociology, anthropology, history, psychology, and others. Then analyze it in-depth in the aspects of the proposition and the purpose of the application of the law, then legal decisions are taken that bring benefit to the world and the hereafter. Giving legal decisions must not be rash, let alone follow worldly passions and interests, but must be really careful and scientifically accountable and bring social benefits because accountability is not only in the world but also in the hereafter.

The spiritual aspect is very prominent in the thought of Kyai Sahal. According to him, the world is a garden of the hereafter, so that all the potential of the world, both knowledge, wealth, power, must be devoted to the future of the hereafter. The wealth of the world can be used for zakat, hajj, and alms to those in need so that it can lift poverty towards independence and economic prosperity. Religious ethics are very thick in the ideas and social movements of Kyai Sahal. Axiologically, this ethic has a great imprint on Kyai Sahal, so that all the transformation movements that are proclaimed are not in the name of each individual, but are made collectively, such as hospitals, BPR, boarding mazhabs, and so forth.

### **Analysis of the Thought of Kyai Sahal Mahfudh**

The thought of Kyai Sahal above proves the courage of Kyai Sahal to apply the Manhaji mazhab of religion with a strong *qauli* basis. As someone who mastered the hazanah of the ulama's thoughts in the kuning book, Kyai Sahal could not possibly leave the yellow book. It does not stop at the yellow book hazanah, especially in actual cases not found in the yellow book or to choose the opinion that is closest to the benefit.

A very long passage of time makes mazhab of the *qauli mazhab* stand very sturdy, making it difficult to replace. The most effective strategy is to develop the mazhab *qauli* with the mazhab *manhaji* if no thought is found in the mazhab *qauli* that is able to answer the problems that occur. The main parameter is the problem that can be answered and does not reach the status of *mauquf* (suspended). It is this great aim to solve social problems that must receive great attention with the emergence of the mazhab Manhaji of thought. In the context of Nahdlatul Ulama, the mazhab Manhaji is limited to the application of *qawaid ushuliyah* and *qawa'id fiqhiyah* conducted by experts, not just anyone, and in *istinbath jama'i* forums by involving

Kyai Sahal stepped forward in his community, which is not only limiting the mazhabs of manhaji to the application of the *ushuliyah* and *fiqhiyah* rules. Kyai Sahal

included the contextualization of *fiqh* texts and the development of examples in the *ushuliyah* and *fiqhiyah* rules in the method of developing the *mazhab* of *qauli*. While the *Manhaji mazhab* must go further, namely developing the theory of *al-ahillah* *masalik* which can combine the understanding of pure *qiyasi* and *maqashid al-sharia*, namely the consistent to safeguard religion, soul, wealth, reason, and harmony.

### **Rationality of Social *Fiqh* Method**

The development of science and technology was addressed in a variety of ways by Muslims. At least, in this case, there are three groups, namely: restorationist, reconstructionist and pragmatic (Azra, 2005). Restorationist groups say that the failure and setback of Muslims is caused by deviations from the truth of the teachings. So it is considered necessary to trace or return to the ideal Islamic ideals in the time of the Prophet and friends. This group also believes that modern science whose buildings are based on reason and materialism should be rejected because it is built on a basis that is contrary to Islamic principles. One of the group's leaders, Maryam Jamilah stated, "if the root of a tree is rattan, then the tree is rattan, therefore all fruit is rattan". This means that knowledge that develops from Western traditions such as physics, geography, zoology, and so on must be rejected. This view can be justified because in its history the Western scientific tradition considers if the position of revelation from the beginning is considered irrational and therefore should be rejected and marginalized from the thinking and discussion of modern science. They equate revelation with myths that do not meet the requirements of scientific truth.

Reconstructionist and pragmatic groups actually take a position that is not the same as the restorationist group. According to these two groups, there needs to be an effort to reinterpret Islamic teachings, so that the bad relations between Islamic sciences and modern science get a solution. In assessing the past of Islam, these two groups also showed an attitude that was not the same as the restorationist group. Where Islam at the time of the Prophet and Companions was seen positively as a revolutionary, progressive and rational civilization. This should be inherited and developed by the current generation by taking the positive side of modern science in solving problems faced by the people (Ulfah, 2009).

In relation to social *fiqh*, the opinion of the three groups is very possible if social *fiqh* accepts modern science as an important component in the implementation of *jama'i ijtihad* in order to find solutions to modern problems. For example, in the case of IVF and Islamic banks, in providing an explanation of these two cases, social *fiqh* cannot close itself from the involvement of experts in both fields to provide a good legal decision and oriented to the benefit.

The purpose of social *fiqh* is to achieve the benefit of the people. So when talking about social *fiqh* it will discuss at least three things; the contents of the teachings of *fiqh* itself, how *fiqh* is taught and implemented in the midst of society, as well as how the social environment responds to social *fiqh*. These three aspects have been considered as the core

of the study of legal sociology. In other words, as stated by Soetandyo Islamic jurisprudence means not only discussing doctrinal law, where *fiqh* is understood as written rules and discussion of it aims to find applicable legal principles but more than that, *fiqh* discussion also includes non-doctrinal, where *fiqh* is reviewed in terms of aspects of its implementation in the midst of community life (Wingjosoebroto, 2002).

Talking about the material aspects of law, means talking about how social jurisprudence formulates the postulates and their propositions. In the next stage, the postulates and propositions need to be developed, which is to bring functional postulates and propositions as a tool to dissect social problems so that they can be understood by the public. From there it can then be tested to what extent it can be accepted as social ethics.

In order to achieve this, the sociological approach is a rational choice as a theoretical basis. From this angle means social *fiqh* is positioned as an object. Then the following preconditions are needed, which is what N.J. states. Coulson as "putting social *fiqh* as an actual proportion", The proportion is that social *fiqh* thinking must be understood as a product of thought and positioned on six choices that are tug-of-war between; universalism-particularism, revelation-reason, unity-diversity, stability-change, idealism-realism, and authoritarianism-liberalism. Paying attention to the six pairs leads to the understanding, that social *fiqh* is an awareness of the fact that *fiqh* is produced by dynamic interactions between revelation and the reality facing Muslims. *Fiqh* is a response to socio-political, socio-economic, socio-cultural problems, and other actual realities. This shows the nature of *fiqh* that is dynamic and responsive to the changes encountered.

### Scope of Social *Fiqh*

Actually the main substance of the terminology of social jurisprudence is not entirely new. Because in some references there are legal material relating to social interests. Abd al-Wahab Khallaf, for example, detailed the *fiqh* of muamalat concerning the following matters:

1. Family laws called al-Ahwal Asy-Syakhsyiyah. This law governs people in the family, both in the initial formation until the end. In the Koran there are about 70 verses that explain this legal problem.
2. A law that deals with civil law, which is a rule that relates to human relations with humans, and human relations with something material. This law is called muamalah maddiyah
3. The jinayat law, namely the law governing the form of crime or violation and the provisions of the sanctions. The aim is to preserve property, life, reason, religion, tradition and honor, and to limit the relationship of perpetrators of criminal acts in society. The Koran discusses this problem in about 30 verses.
4. Procedural law or more commonly referred to as ahkam al-murafa'at, namely the law governing how people proceed in court. So that a case can be examined, diagnosed and decided correctly.

5. Al-Ahkam al-dusturiyah or constitutional law, namely law relating to the legal system that aims to regulate the relationship between the government and the people, their rights and obligations. The Koran addresses this issue in about 10 verses.
6. International Law (ahkam al-duwaliyah), which is the law that regulates relations between countries. The Koran addresses this issue in about 25 verses.
7. Laws relating to economics and finance, namely the law governing the rights of people who work with those who employ them, and how to realize prosperity and welfare of the people. (Nasr, 1987) The Koran discusses this issue in about 10 verses.

The above description shows that in outline, the substance of social *fiqh* has already existed in the previous references. The problem is that there are many new problems that arise and need to be answered by jurists (*fuqaha*).

## Conclusion

Substantively, the nature of social *fiqh* can be interpreted as an embodiment of actualization as well as contextualization. Actualization is re-defining the doctrine and intrinsic value of *fiqh* in a social context that is advanced through a humanist approach so that there is a match between legal norms and empirical reality. Whereas contextualization is an effort to make universal *fiqh* norms into a *fiqh* doctrine that is applicable in accordance with pluralist local conditions and situations. Social *Fiqh* is not just a product of *fiqh* or Islamic law. But it is also a methodology of Islamic law. The methodology of Social *Fiqh* includes five things, namely: Contextualization of the doctrine of *fiqh*; Switching from the *qauli* (textual) mazhab to the manhaji (methodological) mazhab; Verification of *ashl* (fundamental) doctrines that cannot change and *furu* (branches) that can change; Presenting *fiqh* as social ethics, not positive state law; And use philosophical thinking, especially in the social and cultural fields. Social *Fiqh* of KH. M. Sahal Mahfudh is a *fiqh* of transformation towards a just, prosperous and happy society. This social jurisprudence has become an embryo for the birth of *hadhori fiqh* (civilization *fiqh*), a *fiqh* capable of giving birth to a new, progressive, modern and productive civilization. Besides that it is also a mediator between two trends, liberalization and fundamentalism. *Fiqh* still rests on the text, but always sees reality in a transformative manner.

## Suggestions

A good research need a suggestion that can help the improvement of knowledge. Based on analysis and conclusion in this research, the author suggested that it is better if Kyai Sahal firmly states that his thoughts are not just a product of law, but also a new methodology about Islamic law or *fiqh*.

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