Renewal of Islamic Law According to Jaringan Islam Liberal of Indonesia: A Reflection from Qawaidu ‘Uqulî Al-ijtîma’îyah

Ansari Yamamah

Department of Comparative School of Law, Syariah Faculty, State Institute for Islamic Studies of North Sumatra, Indonesia

Abstract: The movement of thought in Islamic Law is continuously developing in line with the development of human reason. That is why there is no space to authorize and legitimate the classical ideas and traditional of Islamic schools of law that some times covered by syncretic traditions while the ideas starting intermingled with the existed local cultures of a nation. The danger is while the traditional Islam forces the authoritarianism of the application of the ideas in the contemporary time. Jaringan Islam Liberal (Islam Liberal Network), in Indonesia, tries to promote a new paradigm of understanding of Islamic sources purely based on rational and sociological perspectives. Though they are dreaming of making liberal Islam as a school for Muslims, in its development, Jaringan Islam Liberal is only a discourse in which its function does not have any significant influence on the majority of the Indonesian Muslims. Instead, it has caused rejection and hatred. Actually, the case is not because Jaringan Islam Liberal is free to use their logic while interpreting Islamic sources but it is because Jaringan Islam Liberal totally disregards classical fuqoha’s views which for traditionalists have turned into Islamic law itself.

Key words: Islamic law · Traditional Islam · Liberal Islam · Jaringan Islam Liberal · Qawaidu ‘uqulî al-ijtîma’îyah · Futuristic law

INTRODUCTION

“We need not bother about nomenclature, but if some name has be given to it, let us call it liberal Islam” [1]. 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 the road map of Islamic thought (law), the group is called traditional Islam (Islam adat/customary Islam) [2] which is characterized by a combination of local habits and religious understandings both in daily life and religious rituals [3]. In the angle of Abdullah Ahmed an-Naim, they are the Muslims who do not use social reason and shackles themselves with the classical fuqoha which they force to be applicable in the contemporary time [4].

Other group, as the most important alternative to traditional Islam is Islamic revivalist or usually known as Islamism, fundamentalism and also 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 valley of Mediterranean river (The Ottoman Empire), West Asia (Safawi Empire) and...
Liberal Islam emerged in the 18th century. This group world and on the other side, it means to free Muslim from colonialism which at that time dominated most Islamic revert the purity of Islam as its original [3, 6]. The calls "liberal age" (1798-1939) is ambiguous. On one interpreter group which can best meet requirements to liberal Islam in Islamic liberalization movement which of Islam. They also claim that they are the only Islamic other point, according to Albert Hourani (1983), have been developing in few centuries after the presence weakens psychological striking force [9]. On the other side, according to Albert Hourani (1983), liberal Islam in Islamic liberalization movement which he calls "liberal age" (1798-1939) is ambiguous. On one side, it means that liberalization of Muslims 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 [3].

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 stems from the thought of Syah Waliyullah ad-Dahlawy (1703-1762) who perceives that Islam and Muslim are in the danger of a contradictive pragmatic 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 the renewal of theological-legal pragmatism 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 the traditions of traditional Islam because he thinks that revival must be done and introduced properly so that social reason can accept and does not refuse it [7].

Therefore, Syah Waliyullah argues that is the time for Islamic law to be revealed in thought and argument openly without stopping at schools of classical and medieval Islamic laws, free from customary noncritical 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 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 started to distinguish between jihiad and taklid as well as logic and the authority God [3].

**Definition of Liberal Islam:** The term “liberal Islam” is a combination of two words: liberal and Islam with their 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 [3, 8].

Meanwhile, Nurcolot Madjid asserts that liberal Islam is Islam which escapes from traditionalism and sectarianism chain as this only freezes reason and weakens psychological striking force [9]. On the other point, according to Albert Hourani (1983), liberal Islam in Islamic liberalization movement which he calls “liberal age” (1798-1939) is ambiguous. On one side, it means that liberalization of Muslims 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 [3].

Under the perspective of Jaringan Islam Liberal alone, as explained by Luthfi Assyaukani, “liberal” refers to critical and modern Islamic thought, progressive and dynamic. Furthermore, in its website it is stated that "The name of liberal Islam we believe in represents the Islamic principles that stress 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 that Islam is always tied to an adjective, because in its reality Islam is always differently interpreted depending on the needs of its readers. We choose one specific exegesis so that there is only an adjective of Islam what we call "liberal". In order to promote our liberal reading, we set up Jaringan Islam Liberal - JIL [10].

From the above discussions, it can be said that liberal Islam means a school of thought trying to free Muslims from religious conservatisms and fundamentalism which thwart the striking force of human reason. It is hoped that the presence of liberal Islam will soon free ulama (intellectuals) from psychological academic fear that may thwart the creativity of "move" in Islam [11].

Prior to 2001, Paramadina Press, 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) in 1999 [3]. 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. Jaringan Islam Liberal (Jaringan Islam Liberal – JIL) activists also more often refer to Kurzman’s book than that of others.

In its website, it is stated that Jaringan Islam Liberal 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 [10].

The establishment of this Jaringan Islam Liberal started from a discussion group of some Muslim youth intellectuals who previously had built a network with one of its initiators namely Goenawan Mohammad, a senior journalist. Then, this group developed into a mailing group. In March 2001, it was changed into Jaringan Islam Liberal 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 Jaringan Islam Liberal. After Ulil Abshar-Abdalla and Hamid Basyaib, Jaringan Islam Liberal is currently being coordinated by Luthfi Assyaukanie, a young liberal Islam figure and an alumnus of Jordan, ISTAC Malaysia and Melbourne University, Australia [10].

Since its establishment, Jaringan Islam Liberal has been cooperating with The Asia Foundation, an organization concerned in secularism, pluralism, liberalism and gender balance (feminism). Currently, there are some donor agencies which are cooperating with Jaringan Islam Liberal in addition to personal donations. However, in its community network, Jaringan Islam Liberal does not have any special membership system. This aims to give loosening and inclusivism which is open to all [10].

Legal Interpretation Basis of Jaringan Islam Liberal:
On its official website, it is stated that Jaringan Islam Liberal has its own legal interpretation method of Islamic teachings [10,12]:

Open to All Forms of Intellectual Exploration on All Dimensions of Islam: Jaringan Islam Liberal believes 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 ijtihad (interpretation of Islamic Law), partly or wholly, is a threat on Islam itself, because by being so Islam will rot. This group believes that ijtihad and other forms of critical thinking can be done from many points of view, not only ones that relates to ibadah (rituals) and mu'amalah (social interaction) but also ilahiyah (theological issues). Here, it seems that Jaringan Islam Liberal is braver to expand the sphere of ijtihad to the issues which have never been discussed by classical fuqaha.

On the other side, Jaringan Islam Liberal also believes that all people have the rights to conduct the ijtihad because ijtihad, 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 legal corpus in the centuries ago [13] and it is more dangerous as an effort has been taken to force their enforcement for an unknown period of time.

Prioritizing Religio-ethics, Not Literal Texts: The ijtihad developed by Jaringan Islam Liberal is trying to interpret Islam based on the spirit of "protestant", not on literal and narrow-minded readings of the Qur’an and Sunnah that will only cripple Islam. On the contrary, by using religio-ethics based interpretation will allow Islam to flourish creatively and be a part of humanitarian global civilization.
Believing in Relative, Open and Plural Truth: Jaringan Islam Liberal clings to the idea of truth (in the interpretation of religion) is something relative on the grounds that interpretation is human activity that is wrapped 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 Jaringan Islam Liberal an absolute truth is in the God’s revelation, not in its understanding.

Siding with Oppressed Minorities: Jaringan Islam Liberal stands on the interpretation of Islam that side with the oppressed minorities and those who are marginalized in the context of Indonesia. Each social-political structure that perpetuates injustice to the minority groups is contradictory with the spirit of Islam 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 Jaringan Islam Liberal 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.

Believing in Religious Freedom: Jaringan Islam Liberal embrace that it is the freedom of every one whether or not to believe in religions that must be protected. There should not be any persecution against whosoever 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, this group does not justify the practice of human relationship based on theological doctrine (Muslim and non Muslim, the faithful and the disbeliever, right and wrong, black and white) because this will create the breaking-up relationship within community and state.

Separation of World and Heavenly Authorities, Religious Authorities and Politics: Jaringan Islam Liberal believes the authorities of the religion 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). On the contrary, this group believes that religion is the source of inspiration that can influence public policies, but religion does not have a holy right to determine all kinds of public policy making [13]. That is why religion should be of the private domain, whereas public affairs should be administered through consensual process.

It is stated in Fiqh Lintas Agama (Inter-Religious Jurisprudence) book that some interpretations of Jaringan Islam Liberal both related to worship jurisprudence (fiqh al-ibadah), social jurisprudence (fiqh al-ijtimâ‘), political jurisprudence (fiqh al-siyasi) and to the relationship among followers of a religion have emerged a new discourse in the life of Muslims in Indonesia [14].

From the six legal interpretations above, the writer sees that Jaringan Islam Liberal has tried to give a middle way (solution) to break the ice and bridge the sharp differences between the traditionalist and the revivalist groups in understanding and practicing Islamic teachings. However, the writer thinks that what has been done by Jaringan Islam Liberal seems too minimize the central role of fuqoha (jurists) or classical interpreters. As a result, the groups that support the status quo of Islamic law feel disturbed by the presence of Jaringan Islam Liberal.

Actually, what has been done by Jaringan Islam Liberal is an effort to reconstruct methodological structure of istinbat al-ahkam which has been established by previous ulama. Unfortunately, Jaringan Islam Liberal has failed to receive sympathy from and accommodate two main streams of Islamic thought of traditionalist and revivalist. Even, liberal Muslims, including Jaringan Islam Liberal, 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 [15, 3].

For further attention, Jaringan Islam Liberal actually is trying to return to original Islam which is originated only from the Qur’an and Sunnah as its interpretation. They do not adhere themselves to the system of classical legal thought (methodology) as agreed by the later ulama that include ijma’ (consensus) and qias (analogy) as the source of Islamic law in addition to the Qur’an and Sunnah.

In the view of the writer, Jaringan Islam Liberal actually intends to create a contemporary istinbat al-ahkam methodology what the writer calls qawa’il ‘uqul
al-ijitima‘iyah (social logic principles) which in turn can be used as source of Islamic law in addition to the Qur’an, Sunnah and Ijma’.

Qowaidu ‘Uqul Al-ijitima‘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’ and Sunnah 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: the approach for textual study, historical contextual study as well as textual and social relationship study. In the textual study, its core 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, the core 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 socialization [16] on legal understanding and provisions as can be clearly seen in a principle that states al-’adatu muhakkamah (tradition becomes legal dictum). It means that community problem with its different dimensions has a significant influence on legal development process, especially the development of Islamic law 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 which 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, salith 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 istinbat 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 within society which institutionalizes to become a regulation or law. Second, sociological jurisprudence which studies relationship between legal provisions 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 the meanings of legal concepts and its conceptual relationship, including their relation to morality [17] and the purpose of the law itself.

By the existence of social role in understanding and formulating Islamic law gives an implication that model and style of classical interpretation, which are very strict with nas 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 the format Islamic law which grows and develops in Arab land an sich must find contemporary forms which are different conditionally and 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”, but the intellectual jihad effort, like that of taken by Jaringan Islam Liberal, should not be regarded as an effort to “liberalize” Islam, instead of being support, moreover it is claimed as a conversion.

Answering this anxiety, 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
perspective of legal understanding, according to Rahman,
one thing that must be done by a fuqoha is to fully
understand an important meaning stated by nas by
studying situation of social reality development which is
related to the problem that needs its solution and which
is related to universal nas must be correlated with
contemporary social and historical context concretely [18].

What has been described by Rahman indicates that
there is a need to reactualize nas understanding and
interpretation by seeing social and historical situation
when it emerged to be brought to contemporary domain
which is adjusted to its concrete social and historical situation.

There is no other way to synchronize nas interpretation with contemporary concrete condition but
by using qawaidu ‘uqul al-ijtima’iyah which is not only
a generic collection of ulama’s maximum logic when they are doing istinbat al-akham as embodied in qias,
istihsan, maslaha 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 the dynamics of social reality so that it
creates a legal structure in the formation of life which runs
based on community necessity and need (supply and
demand of law) in order to build a rahmatan li al-alamin
civilization.

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

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 reason [13] (generic/pragmatical
logic, (la dinan liman la ‘aqla lahu) and moral reason
(philosophical logic, lahum gubun la yafqohuna biha
walahum ‘a’yunun la yubsiruna biha walahum azanun
la yasma’una biha). Meanwhile, social reason consists of
ethics/value/norm/culture and social reality view
(waja’alma likulli ummatin syir’atan wa minhaja). In
Tafsir Ahmadiyyah 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 [19].

Istinbat 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 the formulations of legal
methodology which have been established by classical
ulama such as qiyas, mashlahah mursalah, istihsan,
istihsab, ‘urf, etc. but in a dimension of contemporary
paradigm. For example, in their application, the methods of
legal formulation must be adjusted to the reality of the
problem and legal need as a legal reasoning istinbat
akham and not on the other way around; contemporary
social reality is forced to be adjusted to methods
classical legal formulation. This is because contemporary
problems of social reality must be seen from perspective
of contemporary interest and benefit which continues to
change depending on time and place. Only through this
way, Islam will always become rahmatan lil‘alamin
(blessing upon the universe) and salih li kulli az-zaman
wal amkinah (valid for every place and time).

Legal Characteristics: Qawa’idu ‘uqul al-ijtima’iyah
has its legal characteristics that cover contemporary and
future dimension (futuristic law) which continues to
prioritize maslahah/maqasidu 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 gaul qadim and
gaul jadid) and there is no need to be applicable
universally.

Quyud/conditions: The implementation of qawa’idu ‘uqul
al-ijtima’iyah as source of law has its own quyuds or
conditions: it shall not against dilalah nas which is qoth’i
(absolute indication) and shall not against jma’i as well as
social and logical principles which are applicable
universally.
CONCLUSION

Liberal Islam which is popularized by Jaringan Islam Liberal 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 there is a relativity of truth, 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.

Though they are dreaming of making liberal Islam as school for Muslims, in its development, Jaringan Islam Liberal is only a discourse so that its function does not have a significant influence on the majority of Indonesian Muslims. Instead, it has caused rejection and hatred. Actually, this is not because Jaringan Islam Liberal is free to use their logic when they are interpreting a law but because it Liberal 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 law 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 [20].

Contrary to pragmatic legal realism theory as stated by Resco Pound, law as a tool of social engineering [21], social reality which the writer calls the principles of social reason (qawa’idu ‘uqul al-ijtima’iyah) serves as not only a tool of law engineering but also as a source of law.

REFERENCES


