

Al-Syatibi Approach in Fatwa Standardizations and its Effect of States' Fatwa Committee

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Abstract

Al-Syatibi is a figure and has written extensively on the understanding of the sources of Islamic law to make ijthad union. Among them is connecting maqasid sharia element (Islamic law objectives) into a source of legal referrals. The difference of ijthad/fatwa among the mujtahid can produce a negative effect on society. Although generally a difference of view can bring benefits, but lately the opposite occurs. The attitude of some extreme to the figure leads to fray and misleading other community members. Thus, studies on the methodology of al-Syatibi were done to see the adaptation stage of his ideas to the administration of Islam in Malaysia. The study examined the theory by al-Syatibi with the literature review and discusses the situation of the difference legal/fatwa in Malaysia by linking State Fatwa Committee role by review of documents and interviews. This effort is by reference the provisions of written law at the state level. The study found the methodology of al-Syatibi towards the standardisation of legal practised through administrative approaches and drafting legislation.

Keywords: Syatibi, Usul Fiqh, Fatwa, Maqasid Syaria, States Fatwa Committee

Introduction

Fuqaha' disputes are common in istinbat sharia law. It shows the breadth of the ijthad among fuqaha' and freedom in giving opinions. However, this dispute should occur in the small context such as the interpretation of branches things. The existence of this dispute has considered good so various benefits and maslahat can be felt by the general public. But if the dispute is taken to the extreme, it can cause great damage such as hostility to the infidel (Al-Syatibi, 2010). Therefore this paper discusses this matter with the focus on al-Syatibi and his methodology in standardising the reference to the sharia law through maqasid al-sharia knowledge. This figure was chosen because al-Syatibi is a "mujaddid" (reformers) in the knowledge of usul al-fiqh and maqasid al-sharia (Tono, 2013)

Next, al-Syatibi awareness towards the standardisation of law can be seen from the standpoint of its effect on the states fatwa administrative in Malaysia. It stems from the lack of uniformity in the administration issues a states fatwa. This is because there are scholars who support the unconformity in the affairs of a fatwa because it is the result of ijthad by scholars who become mufti for each state (al-Qaradawi, 1996). However, this is contrary to

the stance of al-Syatibi (2010). Based on the situation in the states, during the post-independence, religious affairs including fatwa affairs is the exclusive right of states. Indirectly, the administration of religious affairs is managed by the state government. This has resulted in an inconsistency in religious affairs including in the affairs of the fatwa. Following the separation of powers is causing administrative rulings and decisions of the fatwa are not consistent among the states. While at the same time, these states are in a country where every person who is a citizen is free to move. This situation can cause a number of issues such as confusion of society to fatwa dispute on the same issue between the states. This is because disagreement in religious matters is difficult to digest by the public. In addition, it also can cause people to lose respect for the institution of fatwa and the fatwa. The public can also take the opportunity to go to another state where the fatwas are more inclined towards their interests. In addition, there are fatwas that are difficult and do not celebrate public *maslahat* (Asni, 2015).

Thus, the sequence of this issue, the researchers wanted to examine the extent of al-Syatibi influence toward the administration and fatwa legislation in Malaysia. There are some researchers who support towards standardisation as conducted by Nasohah et al. (2012), Mohamad and Mamat (2014), Mamat, Mohamad dan Hashim (2013) and Adil (2015). These studies are more geared towards the standardisation than management. There is a study of fatwa standardisation based on the idea of Ibn al-Muqaffa' by Sulong (2014) However, the correlation between al-Syatibi standardisation thinking ideas and coordination of the fatwa institution will be covered in this article.

According to the Unification View of Usul Al-Fiqh

In summary, the problems faced by Muslims during the time of the Prophet have been answered by the Prophet through *wahyu*. Al-Quran and al-Hadith are the primary sources to the end of time (Djalaluddin, 2015). Understanding as knowledge from the *nas* can be traced through various historical records since the days of Sahabah until *tabi' tabi'in*. It started and grew when the Sahabah refer all their actions on the Quran and Hadith to express their understanding of the methods in interaction with *nas* (Sulong, 2014).

The method of understanding the *nas* of *wahyu* developed according to the times where needs of *ijtihad* progressively increase. It makes Sahabah who are among the fatwa members outlines a concrete *istinbat* method. Among uniform *istinbat* *manhaj* (method) in the days of Sahabah is derived from the Qur'an, hadith, *ijma'*, *qiyas*, *maslahah* and *saddu al-dhara'i'* (Mustofa, 2016). Then, understanding the *dalil* developed in the time of *tabi'in* and *tabi' tabi'in* because changes over times, innovation power of the human mind and the opening of the Islamic territories, the scholars of the era have developed a method for *istinbat* by include methods such as *qawl sahabi*, *al-istishab*, *al-istihsan*, *al-masalih mursalah* and *syar' man qablana* (Baltaji, 2007). Then, interaction with the methods also changed where it started in the days of Malik by entering a structured method for interacting with the Qur'an such as methods are commonly known methods (*takhsis al'am*), or *khitab dalil* or *mafhum mukhalafah*, *al-amr* and *al-nahy* (Hallaq, 1986).

However, its climax is the methodology development of sharia law reference was developed by al-Syafi'i with recording and write *fiqh* law production methodology based sharia *dalil* which are organised better than previously which were not recorded, separated and partly just in the minds of *ulama*. Al-Syafi'i wrote a knowledge method of reference to the Qur'an, the Hadith and the use of *dalil* in it that are *qat'i*, *zanni*, *nasikh* or *mansukh* (Sulong, 2014). This research aims to outline the standardised procedures in Islamic law reference. Al-

Syafi'i coordinated epistemology structured reference knowledge about the methodology of Islamic law production among mujtahid. As a result, the law will be achieved uniformly and consistently (Sulong, 2014).

Legal Achievement through Maqasid al-Sharia

Even so, if only refer to the *istinbat* rules without *maqasid* methods supported by *maqasid al-sharia*, the findings of law is rigid and does not celebrate the importance of time and place. In this case, al-Syatibi has collected and empowered *maqasid al-sharia* knowledge in which previous knowledge is not very impressed and are in a state of isolation. Al-Syatibi also establishes rules on how to interact with *maqasid al-sharia* knowledge and apply it to the entire Islamic knowledge field (Jamal, 2016). Generally, *maqasid al-sharia* illustrates that Islam sends down by Allah for the benefit and welfare of mankind. Al-Syatibi uses Surah al-Anbiya', 21: 107 reinforce the premise that grace is a reflection by striving to do good and avoid sin despite the prophetic mission of Muhammad (al-Syatibi, 2010). Similarly, the word of Allah in Surah al-Nisa' 4: 165. The passages of the qur'an indicates that Islamic law is built for the purpose of securing the benefit of man to the world and akhirah. Furthermore almost every commandments and prohibitions, Allah states the pros and cons behind *taklif* (Al-Syatibi, 2010).

In this case, al-Syatibi tries connecting *maqasid al-Sharia* element in the fatwa and *ijtihad*. Among them is al-Syatibi entering *maqasid al-sharia* elements into the *usul* method. This combination can strengthen a law to *qat'i* level, it also can result law that celebrates the *mukallaf* benefit (Ahmad, 2008). For example, al-Syatibi uses *maqasid al-sharia* approaches into the concept of *al-amru* and *al-nahyu*, *mafhum mukhalafah* and arguments against each other (*al-ta'arud baina al-adillah*).

For example, the concept of *al-amru* and *al-nahyu*, Al-Syatibi suggested that about 70 *amar mutlak* text and 90 *nahi mutlak* texts, interpreted in accordance with *maqasid al-sharia* (Al-Syatibi, 2010). This is because the principles of Islamic Sharia law are brought to *maslahat*. Consideration of this *maslahat* indicates to *nas amar* and *nahyu* text which are absolute. Based on this, then there is no option *mukallaf* to choose it without any clue as to be no indication of the *maslahat* context and *maqasid al-sharia* achievements. Thus, although absolute utterance or sentence, there is a precise meaning to mean it and the law on the *amar* and *nahyu* pronouncement is according to the *maslahat* and *mafsadah* (Al-Syatibi, 2010).

Regarding *mafhum Mukhalafah*, Al-Syatibi uses *maqasid al-sharia* approach. This is because the dynamic nature of the sharia is constantly evaluated and interpreted according to current requirements because basically give benefit to mankind. In search of these adjustments, the Arabic language aspect and its relationship to culture in the past should also be measured and graded so that it does not provide a rigid interpretation of Islam in a different culture place (Al-Syatibi, 2010). The analysis of language, culture and the accuracy with *maqasid al-sharia* should be aligned in doing interpretations of Islamic sources so that the medium in the interpretation of scripture is more profound and comprehensive (Al-Syatibi, 2010). For example, Allah says in Surah al-Baqarah verse 280, based on this verse, hardship is the reason flexibility given in paying debts and instead of debtors who can afford it. The implications of understanding this scripture must be seen in parallel with the benefit *mukallaf* in debt and the benefit of creditors to recover lent money (Al-Syatibi, 2010).

Based on the concept of the arguments which are opposing each other (*al-ta'arud baina al-adillah*). Al-Syatibi provides steps when confronted with contrary arguments by

looking at two aspects which, if the general rule is contrary to the *juz'i* arguments (branch), it must be ensured that the *dalil* was authentic. This is because the conditions for these passages opposing between the arguments must be equally strong. There shall be no conflict between strong *dalil* with a weak *dalil*. Then, if it is *dalil juz'i*, *mujtahid* must *ta'wil* the *dalil* based on Islamic law are also acceptable methods of language and religious origins. Then, if the *dalil juz'i* do not receive interpretation, so practice that *dalil* as an exemption from the general principle (Al-Syatibi, 2010).

The influence of al-Fatwa Committee Syatibi in the States in Malaysia

Each state in Malaysia provides that Mufti is headed the fatwa committee in a state and jurisdiction to issue a fatwa about Islamic law. *Istinbat* the law by the state's official department is done collectively (*ijtihad jama'i*). Mufti and member of the committee are appointed by the King or Sultan of the respective states. As for Sabah, Melaka, Johor, Selangor and Penang are appointed by the Yang di-Pertuan Agong who is the religion chief of the states that do not have a king (Islamic Religious Administration Enactment (Malacca) 2002, Section 32 (1); Administration Act of Islamic Law (Federal Territories) 1993, Section 32 (1); Islamic Religious Administration Enactment (Penang) 2004, Section 44 (1); Administration Enactment of Islamic Law (Sabah) 1992, Section 33 (1); Majlis Islam Sarawak Ordinance, 2001, Section 35 (1)).

In terms of eligibility for appointment as mufti, there are no special qualifications are clearly provided in the Enactment or the Administration Act of Islamic Religious Affairs, whether areas of expertise, academic level or in terms of excellence (Yaacob and Majid, 1998). However, in practice, all appointed mufti has academic approval from the universities of the Middle East either at the level of Bachelor or Master (Yaacob and Majid, 1998). Based on the hierarchical structure, all states have a uniform three main positions, namely Mufti, Deputy Mufti and secretary. However different in terms of the composition of the State Fatwa Committee, such as the Selangor Fatwa Committee also consists of the Legal Adviser of the State, while in other countries there are none (Islamic Religious Administration Enactment (Selangor) 2003, Section 46 (2) (c)). The difference is in the number of scholars who can be appointed as a committee member, for example in Kelantan, number of appointment is between eight to fifteen people, while in Perak only between two to five people (Islamic Council and Malay Custom Enactment, Kelantan 1994, Section 33 (1) (c); Islamic Religious Administration Enactment (Perak) 2004, Section 35 (e)). The differences in in numbers will give different expertise power and contribution of ideas among members of the committee in producing a fatwa. Even so, when it comes to skills for research fatwa, the academics, the mufti, *istinbat* officials like Buang (2016), Adil (2016), Mohd (2015), Subri (2015), Adam (2015), Mohamad (2015) and Kamos (2015) suggested that the mufti should have a Doctor of Philosophy (PhD). This is because those who have the highest degree have high skills in the field of research, particularly in resolving current Sharia issues.

Moreover, the move towards fatwa alignment also provides in the enactment of some states to adopt the advice and recommendation from Muzakarah of National Fatwa Committee (MJFK). There are eight states that allocate about it clearly such as Perlis, Selangor, Perak, Johor, Penang, Malacca, Sabah and Sarawak (Mohamad and Mamat, 2014). While other countries do not allocate the section. But in practical terms, it can be said that the states are not allocated enactment adopted the advice and recommendation of MJFK as in the Federal Territory, Terengganu, Kelantan and other states (Mohamad, 2015).

In addition, all fatwa issued by the State Fatwa Committee may be divided into two categories:

1. The official fatwa was gazetted fatwa in the State Government Gazette (Nasohah et al, 2012). Gazetted fatwa is a fatwa that can be enforced by law, recognised by the court and all parties in the state.

2. The fatwa issued by the Mufti in person or through the Fatwa Committee but it is not gazetted in the State Government Gazette. This fatwa category cannot be enforced against any individual, agency or court. This fatwa is a response or a reference to the person who requested clarification on the laws that are still personally unclear (Nasohah, 2005). But this is excluded in Kelantan where the mufti can issue a formal fatwa on his own without through the fatwa committee. This is stated in the letter of Mufti appointment issued by the castle (Shukri, 2016).

Based on the provisions of the Islamic Religion Administration Enactment in each state, an official fatwa that was gazetted in the states have authority over the three parties which are individuals, Shariah courts and the civil courts. If there are fatwa differences in the same matter, the last fatwa issued shall be used (Mohamad, 2015).

By comparison, it was found that the authority granted to the fatwa issued by the State Fatwa Committee is different. For example fatwa issued in Selangor, Perak, Malacca, Penang, Johor and Terengganu must be obeyed by all established courts in these states (Islamic Religion Administration Enactment (Selangor), Section 49 (2); Islamic Religion Administration Enactment (Perak), Section 38 (2); Islamic Religion Administration Enactment (Malacca) 2002, Section 37 (2); Islamic Religion Administration Enactment (Penang), 2004, Section 49 (2); Islamic Religion Administration Enactment (Johor), Section 49 (2); Islamic Religion Administration Enactment (Terengganu) 2001, Section 51 (2)). But the fatwa issued in Pahang and Kedah only binding Islamic courts and does not include the civil courts (Administration Enactment of Islamic Law (Pahang) Act 1991, Section 36 (4), Mufti Enactment and Fatwa (Kedah Darul Aman) 2008, Section 22 (2)).

Each fatwa was gazetted, it will be effective and binding persons resident in the state. All states allocate the same punishment to those who violate Islamic fatwa. For instance in the Federal Territory, anyone who acts in contempt of religious authority or defies, disobeys or disputes the orders or directions of the Yang di-Pertuan Agong as the head of Islam, Majlis or the Mufti, expressed or given by a fatwa is guilty of an offence. If convicted, he could be fined not exceeding RM 3000 or a term of imprisonment not exceeding two years or both (Nasohah, 2005). Under Section 12 of Act 559, it is an offence for any person who gives, propagates or disseminates any opinion contrary to fatwa and upon conviction, the person may be fined not exceeding three thousand ringgit or a term of imprisonment not exceeding two years or both.

In addition, standardisation efforts at the state fatwa are through standardisation of approach to the madhhab views reference method. Through the provisions of Islamic Religious Administration Enactment every state except Perlis, the law provides that the priority is to make reference to the Shafi'i Madhhab that is based on the provisions of qawl muktamad. For example in Mufti Enactment and Kedah Fatwa 2008, Section 26 provides that in considering any fatwa under section 21 or certifying any opinion under section 25, the Fatwa Committee shall ordinarily follow qawl muktamad Shafi'i Madhhab based on Quran, hadith, ijmak ulama and qiyas. Unless the Fatwa Committee considers that following the qawl muktamad of Shafi'i madhhab will produced a contrary situation to the public interest, the Fatwa Committee may follow qawl muktamad of Hanafi, Maliki or Hanbali Madhhab after

obtaining the consent of His Majesty the Sultan. Similarly, if the Fatwa Committee considers none of the qawl muktamad opinions of the four madhhabs that can be followed without leading to a situation which is contrary to public interest, the fatwa may be decided by themselves without being bound by qawl muktamad of any four madhhabs (section 26 Mufti Enactment and Fatwa (Kedah Darul Aman) No. 10 of 2008. See also section 14, the Sabah Fatwa Enactment No. 7 of 2004).

Meanwhile, Perlis, control of standardisation not based on a narrow madhhab but to the public interest or current maslahat. This is to ensure that the fatwa is more accurate and rajih by maintaining two sources, namely al-Quran and al-Sunnah in seeking views meet maslahat within the scope of the views of recognised madhhabs by Ahl al-Sunnah wa al-Jama'ah, In this case, Section 7, Perlis Islamic Religious Administration Law Enactment 1964 provides:

(4) The Majlis when issuing a Fatwa and then Sharia Committee when giving its opinion under sub-section (2) shall follow the Al-Quran and or Sunnah Rasul Allah Sallal Allah 'Allaihi Wasallam. Provided that where the following of such tenets would be opposed to public interest.

Perlis approach implies that the results of a fatwa must look to the public interest which varies according to the current situation as well as core reference to Islamic law. When the correlation is constructed so that the right (rajih) fatwa decisions can be achieved. Although the main reference Perlis Fatwa Committee is Quran and al-Sunnah, yet even so their opinions are not excluded from the scope of the four venerated madhhabs which are Hanafi, Maliki, Shafi'i and Hanbali (Ismail 2011).

Thus, it can be said that the standardisation of elements occurs between the states in terms of reference of the law is a legal decision is still within the scope of the four madhhabs and takes the rajih view that parallel to maslahat and maqasid al-sharia as recommended by al-Syatibi. Consideration of maslahat and the public interest will lead to the same result among the drafters of the fatwa. Maqasid al-sharia doctrine in the drafting of a fatwa supported by the mufti and istinbat officer, Jaafar (2015), Mohamad (2015), Adam (2015), Kamos (2015), Shukri (2016), Omar (2015), Mohd (2015), Mohamad (2015) and Muda (2016). It is also supported by academicians such as Subri (2015), Buang (2016), Sulong (2014), Zuhdi (2016) and Adil (2016). Based on this, researchers would like to suggest that states incorporate maqasid al-sharia elements to the enactment as necessary elements in producing fatwa. This is because, besides it can standardise the fatwa, it also can make the fatwa issued is not rigid and celebrate current maslahat.

Based on the presented information, generally provision for the jurisdiction of the mufti in the states is almost uniform. This is a series of efforts towards fatwa standardisation specifically and Islamic law generally become on the agenda of the Federal Government to the states where it is enshrined in the Constitution. According to Article 76 (1) (b) of the Federal Constitution, Parliament may make laws to any matter enumerated in the State List, including Islamic law for the purpose of establishing legal equality between two states or more. Law made will apply to Muslims in the land, and when received by a law enacted by the Legislature of the State. Then, the law shall be deemed to be a law made by the Legislature. This has become a concrete control to realise the systems standardisation and the fatwa result.

Conclusion

The concept of uniformity brought by al-Syatibi is strengthening the sharia dalil has vanished. Al-Syatibi approach is not in the branch but involves methods of origin which must

be observed by all mujtahid. For example maqasid al-shari'ah compliance element in the determination of the current law. As a result, the uniformity of results obtained equally among mujtahid anywhere through recommended methodology. Thus in the present day, al-Syatibi awareness towards the standardisation of law practised by the administration and legislation. However, this study is limited to the scope of fatwa administrative standardisation at the state level, the researchers recommend further studies can be carried out at the Muzakarah of National Fatwa Committee.

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