

Ibrahim Hosen's Nine Methods of Ijtihad to Anticipate Religious Social Problems

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Abstract

According to Ibrahim Hosen, the flexibility, elasticity and dynamism of Islamic law (syari'ah) makes itself compatible for all conditions and situations and applicable throughout the ages. The element of dynamism and flexibility would appear to be more prominent in Islamic law category. Not only because of the role of ijtihad in it, but also, in terms of its application fiqh should follow the conditions and situations as well as the times. This study shows that though his book, Islamic Law Reform in Indonesia, Ibrahim Hosen offers new principles of ijtihad. All of Ibrahim Hosen's thought related to the issue of construction, way of thinking, academic arguments, articulation and rules of ijtihad and its implications in responding and anticipating social and religious problems are very interesting to study through his books and writings directly or written by others.

In accordance with the research problem, this research found:

1. The Nash both Qura'n and Al Hadith are not the sources of the legal proposition which requires method for understanding (contextual) in its application. Classification should be carried out in Al – hadith including Tasyri'ul Ahkam hadith and the one which does not include Tasyri'ul Ahka>mhadith. Similarly, the application of Fiqh should follow the conditions and circumstances accordance with the demands of the times. The main goal of Fiqh is to benefit people, then the exact meaning of Ibrahim Hosen's 9 rules is to perform ijtihad Qat'i become fiqh through ta'aqquli approach.
2. Both Syari'ah and fiqh are based on simplicity and spaciousness principles which are based on seven principles: Isqat, Na'qs, Tabdi'l, Taqdi>m, ta'khi>r, tagyi>r and Rukhs} ah. With these principles, Ibrahim Hosen analyzes texts from mafhu>m side, instead of Mantu>q side through tafsir and ta'wil bil-aqli which stems from understanding dalalah Isyarah nash and dala>lah Nas}. This is the thing which makes Ibrahim Hosen's legal thought progressive - revolutionary and looks to a better improvements even though his fatwa often differs from the mainstream and invites contraversies but it's scientific truth must be upheld.
3. Ibrahim Hosen is one of Indonesian fuqaha' who tried to open widest door of ijtihad through manhaji **sect** implementing scientific truth principles. From here born two models, namely juristic or language analysis ijtihad model and context analysis model which created ijtihad anticipatory type, integralistic type and elective type.
4. By expanding the scope of social changes that affect all aspects of life where the pattern of utilitarian life becomes popular, then grow the spirit of al- intiqai both old and young ulama'(scholar). By tinkering texts and making qat'i into fiqh on tatbi law, then fiqh becomes progressive in responding to religious and social problems such as family law, economic, social, political and state structure through a renewal meaning of the methodology with rational considerations .

Key words: ijtihad, nine methods, anticipate, social problem,

1. Introduction

Freedom of *ijtihad* will ensure the development of Islamic law for all kinds of relations and other social needs, especially nowadays when the advanced technology of fast-paced and complex paced which full of the events and issues that are instant. Ibrahim Hosen was a scholar born in Bengkulu on January 1, 1917. In Munawir Sjadzali's view, Hosen has an extensive knowledge in the field of fiqh. He was able to see many variations of legal views on some problem. He understood variations among different schools, as well as variations among branches in the same school.

From Hasan Basri's prespective, Hosen assessed as being a broad knowledge scholars in fiqh science and Islamic law. He is a figure of scholars whom responsive to actual problems which oriented to the present and the future while respecting the past scholarly opinion. These scholars provides countless benefits for people especially the Muslims, as well as being *uswatun hasanah* for the scholars in the present and future as *wara> satuul anbiya>*. Another appreciation, he rated as a scholar who is optimistic whom expert in his field, and dare to express his opinions, and consequent with the truth of his opinion¹. He was very instrumental in fostering, developing and improving the symbols of Islam, especially in the field of education and development of Islamic Law in Indonesia.²

¹ Alamsjah Ratu Perwira Negara is the former Minister of Religious Affairs before Munawir ibid., P.xxi

² Drs. H.A. Razie Jachya is the former Governor of Bengkulu ibid. hlm. xix

In the study of Islamic law, Ibrahim Hosen was revolutionary dare to offer a new mode of articulation of the principles of Ijtihad which is very different from the concepts shared by other Indonesian scholars. The new articulation in question is attempted to review about the terms that are considered standard by most scholars of Indonesia. The terms were interpreted and developed in such a way that was different from the interpretation and understanding which is understood by many scholars, with the basic principle that the all the shari'ah and fiqh are intended for the benefit of mankind, which is based on the principles of *ease* and *spaciousness* (Hosen, p. 118).

According to the quote of Ibn Aqil, Ibrahim hosen states:

"Legislation or regulation in Islam is law or factual regulation which brings people closer to the benefit and away from the damage, even if it is not made by the Prophet and without any vision" (Hosen, p. 142).

With this principle, if the terms of the rules of Ijtihad stay with an understanding during this time, then the growth of social religious problems and the benefits which became *maqās'id al-syarī'ah* will be failed to achieved. Moreover the elasticity and flexibility of Islamic law will not be visible, which in the end is no longer a center of inspiration reform law. In the meantime, Ibrahim Hosen in his book *Islamic Law Reform in Indonesia* offers 9 new mode of interpreting and articulating the principles of Ijtihad, among which are making *Qat'iy* into *fiqh*, *ta'aqquli* approach (rational) and approach *zawa'jirat* criminal law (Hosen, p. 120).

The emergence of 9 new meanings rules of Ibrahim Hosen Ijtihad considering odd by other scholars, his fatwa about gambling forecast which considered to provide legal fatwa is strange, so many scholars refered him as a paid religious scholars and clerics bookies forecasts. In the case of lard, Ibrahim Hosen gives legal clarity to some foods which allegedly contain of lard, not only accused of being mercenary scholars but furthermore, his blood was *permitted* (Hosen, p. 202). With the described background above, the author conducted a related research for the construction of Ibrahim Hosen's mindset in ijtihad, including academic argumentation, rules articulation, and its implementation in responding and anticipating the social religious problems.

2. Lingual Approach

The emergence of various forms of thinking, including Ibrahim Hosen's perspective in the methodology of Islamic law is not out of the vacuum. He made the interpretation of law rules in his efforts to determine the laws from the law sources to obtain an answer for the problems that arise in society. From this context, some interpretation model and different meanings depend on the language or semantics. This is the knowledge that concerns the intricacies and shifting sense of the word. In the philosophy of language stated: "*In the world of the text, the world of the author and the world of the reader.*" The meaning of a word is determined by the user in the "*sentence*", and a sentence is determined by the user in the "*language*", and furthermore the meaning of the language is determined by the user in everyday life (Mustansyir, 1988, p. vi)

In addition, when the interpretation and meaning of the Ijtihad text rules are different from other scholars, it would arise the different legal/jurisprudence, moreover it likely give totally contrary jurisprudence from the existing one, because the text rule could be interpreted from the *ibarah Nas*}, *isyarah Nas*}, *dalalah Nas*}, and *iqtid}a>un Nas*} forms. Furthermore; the bid rules interpretations and meanings which ensure the elasticity Ijtihad and Islamic law flexibility toward a realization of all human venerated *maslahatana* re very interesting. Nevertheless, the benefit of the human experience growth and change in Islamic law are defined by past *masalahah* and could have set a new law based on the *masalahah* of the present. This is where the significance *Qa'idah* was held down by *jumhur* (Hanafi, 1980, p. 59).

"The guiding is generally text, not particularly cause." From this was born the rule: "The law was changed because of the changing times, places and circumstances" (An-Nadwi, 1991, p. 56).

2. Workforce Sizing Plan (WOZIP)

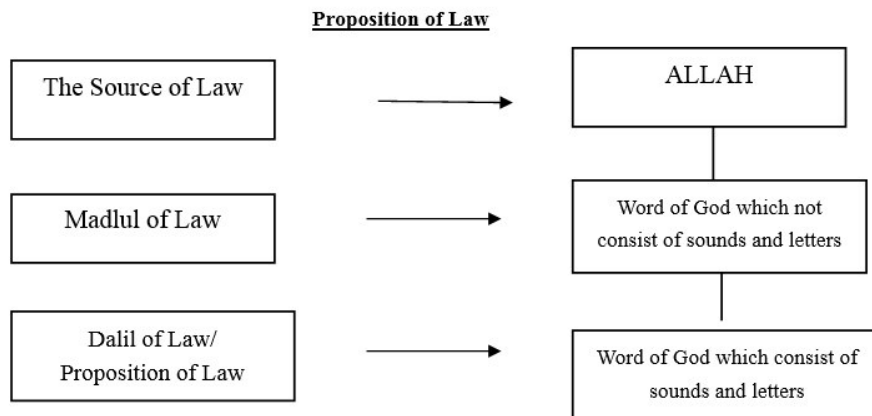
In Islamic law, ijtihad is deploying all the ability to produce Islamic Syari'ah that based on the (strong) alleged. "It is impossible to avoid the verses of the Qur'an as a source of law (*masdar al-tasyri>'al-Islami*). There are several books which state that Al - Qura'an is the source of law, among scholars who state that the Qur'an is the source of law is Abu Zahrah (Zahrah, p. 5). In Indonesia, one of the scholars who stated the Qur'an as a source of law is Muin Umar (Umar, 1986, p. 62) and Zaini Dahlan (Dahlan, 1987, p. 16).

According to Ibrahim Hosen, there are three matters related to Islamic law such as: Law, Justice, and the argument of law. Law is the command of God which is the word of God '*Kalam Allah*', *Nafs azali* has two *dala>lah* : *dala>lah al-lafdziya* (Al-Quran written with letters), *dala>lahal-ma'nawiyah* (*Sunnah and Ijtihad*). Therefore, according to *nafis Azali* the legal source is not the Qur'an but God. In the book of *al-Sulam and al-Tibya<n*, *abd al-Hamid Hakim* (Padang Panjang, West Sumatra's scolar) explained that the law (al-law) is: "The statutes of God about the actions of the *mukallaf* the form of a demand, selection or *wad}i>*, (Hakim, p. 7). "If the law is defined as the command of God (*Kitab Allah*), then the legislator (al-hakim) is God." According to *Abd al-Hamid Hakim*, the Muslims have agreed that no judge (determinants law) except Allah (*waal-muslimun itafaqu ala anahu la ha>kimu illa Allah*). The reason is the word of God: "The determination of rights law is only Allah (Qur'an, p. 56)" The statutes that come from Him, therefore the source of law (*mas}dar al-tasyri>'*) is Allah; the

object is the act mukallaf (fi al-mukallaf); and legal subject is mukallaf (Mubarak, 2005, p. 44).

Thus, the discussion regarding on the proposed Alqur'an, Ibrahim's said it being accordance with the science of kalam, as Al - Bazdawi stated in the book of *Us}u>l al-Di>n*, The God's word can be divided into two : first , the word of God is not composed of letters and sounds (*kalam Allah nafsi ' azali bi la Sawt wa la harf*) ; and secondly , the word of God which is composed of letters and sounds (*kalam Allah nafsi ' azali Sawt wa bi harf*) . In the extreme, al - Bazdawi stated that "Al - Quran (which are composed of sounds and letters) is not the word of God; but postulate that shows word of God" (Al-Bazdawi, 1963, p. 61).

In conclusion, with the logic of this theology, Ibrahim Hosen worried about the scholars who said that the Qur'an is a source of law are fall on understanding the role annihilation of Allah therefore, Ibrahim Hosen confirms that the source is God's law; the argument is the word of God that written and readable by humans; and the *madlu>l* is the word of God which not consist of sounds and letters. To more easily viewable chart below:



With the opinion of the Qur'an as a proposition and not a source of law, Ibrahim Hosen was sign on the door of ijthad field in Fatwa and Ijthad, where tarjih is to solve new problems by revealing seven principles:

1. The principle of *Isqa>t* (death of liability at the time of aging or unavailable) .
2. The principle of *naqs*(Reduction)
3. The principle of *Tabdi>l* (Replacement)
4. The principle of *Taqdi>m* (Putting)
5. The principle *Ta'khi>r* (end)
6. The principle of change (Change)
7. The principle of *rukhs}ah* (dispensation).

The implementation of the 7th principle is work by:

1. Pay attention on ruh (soul) in the Qur'an and stripped literal understanding.
2. Taking the spirit of *at- tasyri ' al -ahka>m* in the *hadith*.
3. *Classification Ta'aquli* and *Ta'abudi*.
4. Approach *zawa>jir* in criminal law.
5. To Support government's right in *takhs}i>s* and limiting the generality of *Nas} and* absoluteness (al-Munawwar, p. 8).

5. Ibrahim Hosen's Ijthad Model

With the seven principles, Ibrahim Hosen's Ijthad models follow the model of previous priests Mujtahids steps which are:

1. He overhauled if there any legal issues that have been shown by the Qur'an, If so whether Nash in *zany* or *qat'iy* status? When Nash was *q}at'y*, whether the law indicated *ta'abbudy* or *gairu ma'qulil ma'na* or *ta'aqquly* or *Ma'qu>lul ma'na*. Whether *ta'abbudy* does not apply in *Ijthad*, if *ta'aqquly* then *Ijthad* will play there. The law can be developed either by *Qiyas* or with another proposition. Likewise, if the proposition status is *Z}anny* then Ibrahim Hosen will use their best *Ijthad*. If the problem is never examined by earlier cholars then Ibrahim Hosen would clarify which the most powerful argument and most compatible with the benefit, and if the problem had not been *ijthad* by priests mujtahids before, he would do *Ijthad* independently by the *istinba>t* rules which could be described '*mu'tabar*' in order to define law.
2. If the problem can't be found in the Qur'an then Ibrahim Hosen researching and seeking it in the Sunnah or Hadith, He did the same principle as what he did in researching the Qur'an, to examine the validity and the authenticity of the Hadith. If there any results of *Ijthad* and fuqaha' views history (if any), it would be references and study materials for him. Thus, *Ijthad* ways which he did to approach the truth (*Aqrab Ilaal-s}awab*).

3. If the legal issue can't be found in the Qur'an and Hadith (either textual or contextual) he would examine whether the issue has been discussed by the earlier scholars or not. If the problem was addressed by the earlier scholars it occurred *ijma'* or consensus law among them or in dispute? If the problem occurs *ijma'* law then Ibrahim Hosen will stop there, especially if *ijma'* was among friends. If an issue is legal disputed among *fuqaha* then Ibrahim Hosen will do an *ijtihad* to pick and choose from those opinions (usually from all inspected *mazhab*) to determine where the opinion is the most powerful and precise argument and which are best suited to benefit (*maslahah*) (Hosen, pp. 108-109).
4. Lastly, if the law of such problems has not been discussed by the previous scholars he would do *Ijtihad* independently by the *istinba>t* rules which could be described '*mu'tabar*' in order to define law, while in the field *tarji>hIjtihad* Ibrahim Hosen take steps as follows :
 - a) Researching the valid citation from the *Fiqh*'s standard books from any existing *mazhab*. From each *mazhab* he would selected the most powerful opinion (usually within one *mazhab* there are some *qaul*).
 - b) Every *mazhab* has the most powerful argument (usually to determine the law of a problem , each *mazhab* has some proposition or argument)
 - c) Then he carefully examined the arguments of their respective statutes, advantages and weaknesses, as well as the instructions direction (searching methods and understanding proposition, *istinba>t* rules are used, and how to operate (whether provision or not). After that he comparing and examining to show the advantages and disadvantages of each, until come to a conclusion that the opinion of *A* is the most powerful argument and most appropriate to the benefit, the opinion of *B* is less powerful argument but in accordance to the benefit, the opinion of *C* is weak and not in accordance to the benefit, the opinion of *D* is weak argument but rather according to benefit (Hosen, pp. 108-109).

With the 7 principles and implementations as mentioned above, in the end Ibrahim Hosen anticipated the social problems in the renewal of Islamic law to formulate the religious new meanings of 9 methods *ijtihad*, namely:

1. Understanding of the Qur'an / Kitabullah
2. Understanding of the Sunnah / Hadith
3. Ta'aquli Approach
4. *Ijma'* Problems
5. Approach *Zawa>jir* on Criminal Law
6. Promote *Mas>lihMursal*
7. Using the Rule of *Irtika>b akhaffi al - D ararain*
8. Using the argument of *Sad al-Z>ari>ah*
9. Making *fiqh* the *Qat>'iy* (Hosen, p. 120)

6. The Methode Of Making *Ijtihad* By Ibrahim Hosen

a) Understanding the Qur'an or the Holy Book of Allah

On early days, many Scholars have been understanding the Qur'an literally, but in reality, they literally got something that does not fit with the Qur'an (even in terms of spirit and soul appropriate or desired AL-Qur'an) then they will say its included the threat of God's word, QS al-Maidah, 5: 44: "Whoever does not judge by what Allah revealed, then they are the people who disbelieve." QS Al-Maidah, 5: 45: "Whoever does not judge by what Allah has revealed, then they are the ones who do wrong." QS Al-Maidah, 5: 47: "Whoever does not judge by what Allah has revealed, then they are those who are wicked. "

We can do it through a new method in understanding Qur'an including the meaning of the spirit and soul (contextual), so that in reality we can find the existence of a rule or law in the spirit and soul which is relevant to the Qur'an, and also acceptable and justified by Islam, though it is literally not mentioned in Qur'an or even in terms of outward it opposite to the Qur'an. This opinion is accordance with the opinion of at-Tufi said: "If the *Nash* and *ijma* are contrary to *maslahah*, it must precede *maslahah* by *takhs>i>s* and *baya>n* ways, not by ignoring or leaving *Nas>* and *ijma'* at all (At-Tufi, 1998, p. 138).

For example, *Pancasila* obviously can't be found in Al-Qur'an literally, but if we look from the *Pancasila* side (state ideology) it's the nation unity and integrity, and *Pancasila* could be accepted as the sole basis of nation and state. The *pancasila* terms is relevant to the Al-Qur'an soul and the spirit which requires unity and brotherhood, furthermore when viewed in terms that the grain content of *Pancasila* was fits and nothing opposed to the Al-Qur'an. We could certainly received it, and it doesn't against or included threats, because that regulations and legislation can be considered as Islamic regulations (Hosen, pp. 121-122).

b) Understanding the Hadith of the Prophet,

In understanding Hadith, scholars didn't fit into the classification, whether Hadith Rasul submitted on

behalf of the Prophet that *Tasyri>'ul Ahka>m* (build or provide legal clarification) or emerge from the Prophet as a human being as a reflection of the nature. Thus everything that comes from the Prophet are followed and became proposition for restraints, according to the word of God, QS al - Ahzab, 33: 21: There has already been at the (self) that the Messenger of Allah a good role model for you, And the word of Allah, al-Hashr, 59: 7: What is given unto the prophet, then accept, and what he forbids you, then leave. "

In understanding the hadith we can classify hadiths which performed by the Prophet as *Tasyri'ul Ahkam* which is generally accepted and we have to follow it (not only for personal prophet, but also to the community), and whether is done by the prophet as an individual (as a human), which certainly not included in the word of God categories, so that there is no obligation to follow. For example, the hadith which conducted by prophet as a human being such as the fondness of prophet to sweet foods, leg of lamb, green dress, beard, mustache, shave and others. This expression is the same as the opinion of Abu Zahrah in his fiqh books (At-Tufi, 1998, p. 138). Similarly, special properties of prophet Muhammad such as married more than four, tahajud obligations, liabilities *amar ma'ruf nahi mungkar* under any circumstances (even though in danger) and others.

In addition, new ways to understanding the hadith above is to understand the hadith not only literally but also must be understood in terms of the spirit and soul (contextual understanding) as implemented in the Qur'an. Then in worldly matters relating to technical and we have adhered to the implementation of the Hadith of the Prophet: ¹. "You know more about the technical affairs of your world (Muslim, 1998, p. 6).

c) Ta'aqli Approach

In Islamic law there are Ta'abudi and Ta'aqli approaches because in the framework of Islamic law reformation, when it belongs to Ta'aqli's category will be approached with Ta'aqli approach. In this way, Islamic law could be developed through Qiyas method. Then divide it which had been considered Ta'abudi still possible to be categorized as Ta'aqli in Islamic law through study. The assessment whether or Ta'aqli ta'abudi is very important. Because it will be determined whether the case was still possible to be ijtihad or not. Along based on in-depth research, a legal provision known Ta'aqli then Ijtihad will apply to it. It can be developed for other cases that have similarities with Qiyas methods.

d) Ijma' Problems

The Renewal of *ijma'* by Ibrahim Hosen can be done by accepting *ijma'* sharikh that occur among companions (*ijma' sahabat*). According to the study, the possibility of *ijma'* besides companions as the definition formulated by the scholars is difficult. Meanwhile, on *ijma' suku>ti* still be debated. Despite of that *ijma'* should have proposition and sanad. If the proposition is the argument of Qat}'iy then essentially lies the power of the law is on *ijma'* but instead on the argument of which he rested. If the proposition is *Zjanny* then obviously will be very difficult to consensus. For in such circumstances each mujtahid will use Ijtihad to dig legal by *Istinba>t}* rules which restrained itself and the results certainly not necessarily the same.

Ijma' in the terms of narrations should be mutawatir, it obviously not easy to achieve that. Therefore in accordance to reality and facts in the context of Islamic law reform we should just stick to the *ijma' sahabat*. By simply holding on *ijma' sahabat*, we will dare to go hold leaps forward to solve contemporary problems that need to be established law, and we are not spared from the charges violate *ijma'*. Ibrahim Hosen in this case also offers the possibility of a longer way to go forward again, which follows the opinion of imam Ahmad that stating *ijma'* (consensus other than the Companions) as well as the formulation of the definition set forth the scholars are essentially non-existent. Because the so-called consensus among scholars essentially only limited discussion of scholars that was in place at that time. In fact there were many scholars in *mujtahid* level who did not participate (Hosen, p. 126). It similarly with at-Tufi's said: "Maintaining *maslahah* is stronger than *ijma'*, and shall be admitted as *dalil syara'*, due to strong arguments (*maslahah*) upon reasonable grounds and stronger (At-Tufi, 1998, p. 138).

e) Zawa>jir Approach on criminal Law

In the implementation of criminal purpose, earlier scholars widely understood through *Jawa>bir* approach, while the majority of other scholars there who believe the implementation of the criminal law containing elements of *Jawa>bir* and also *Zawa>jir*. *Jawa>bir* means that the punishment was carried out in order to atone the sins and errors committed by the convict. While *Zawa>jir* means that penalty was applied in order for the offender or convicted person feel cured and will not repeat the bad actions. Likewise those others who have malicious intent will be afraid, so discouraged such evil intentions.

If we adhere to the *Jawa>bir* theory the penalty we apply it to be exactly like what has been affirmed by

¹ Hadith related to the pollination of dates in which the prophet said: "I think the palm pollination there is no benefit." Then farmers Madinah Dates not pollinated, its date turned out to be unfruitful. So they came to the Prophet and said: "Dear Messenger of Allah, the dates turns unfruitful without pollination. Then the Prophet said: "You better know your world affairs." This Hadith Rasulullah merely the opinion that contains no command or prohibition.

Nas}, should be no less and no greater. Thief (who has met the requirements for their hands cut off) must be cut off. The adulterers (*gairu mukhs}an*) must be wracked hundred times. If the adulterers is still live according to the Shafi'i should be exiled for one year. The adulterers (*mukhs}an*) should be stoned or stoned to death. Conversely; in *Zawa>jir* approaches the penalty imposed on the convicted person does not have to exactly what was said by *Nas}*. The convicted person may be punished with anything, with the original record with the punishment that perpetrators will feel deterrent, and will not repeat his evil deeds and makes other people who have the same intention in fear, so he discouraged the evil intentions. It's not exactly like what was affirmed by *Nas}* but in this case it doesn't mean we leave *nas}*. The punishment that set by *Nas}* still applies and became maximum sentence. Because the purpose of *zawa>jir* approach is to make deterrent and to scare the criminals then if it has been achieved with a minimum penalty of the maximum sentence would not be needed anymore. The maximum punishment as confirmed by *Nas}* is still exist and can be applied at any time in require conditions.

Shahrur, an engineer from Syria introduced the *hudu>d* theory in understanding the verses of al-Qur'an through 6 kinds of *hudu<d*. 1) *al-had al-al-adna* (minimum limit), 2) *al-had al-a'la* (maximum limit), 3) *al-had al-a'la wal-adna had ma'an* (Restrictions called both maximum and minimum), 4) *al-h}ad al-a'la> wa h}ad al-adna> ala> nuqt}ah wa>h}idah* (maximum and minimum limits meet in one point), 5) *Al-h}ad al'a'la> bi khat}t} muqa>rib mustaqi>m* (not to the fullest extent and also does not touch the bare minimum), 6), *al-h}ad a'la> mujib muglaq la ajuz taja> wuzuh, wa al-h}ad al-adna> sa>lib yahjuz taja>wuzah* (a limit on the positive and negative minimum limit, and the two met at the midpoint) (Syahrur, 1990, pp. 453-466).

The implementation of *zawa>jir* theory in sentence is a reflection of Ta'aqquli approach in understanding *Nas}* (text of the Qur'an and Sunnah), so it would appear as contextual understanding of the law, at the same time Islamic law is dynamic and applicable throughout the ages (Ibrahim, 1993, p. 21).

f) Maslahah Mursalah Application

Maslahah mursalah which formulated by the scholars is a benefit that no arguments ordered him and against it (Basyir, 1992, pp. 49-50). Many of the scholars differ about the reasons. Several scholars consider it as a proposition of law and others did not see as a proposition of law. According to Ibrahim Hosen, in the framework of reform in Islamic law, *Maslahah mursalah* should be encouraged. For the core of objectives in Islamic law is to realize both globally and in the hereafter. On this basis then scholar said: "*Where there is a benefit that's where the law of God*" ((Ash-Shiddiqi, 1975, p. 331). The offer of any *ijtihad* whether supported by *Nas}* or not, is able to guarantee the benefit of humanity in Islam perspective, it will be legitimate and there should be realized it. It is the rules which need to be offered: *Iz\asahhat al-mas} lahad fa huwa maz\habi*.

The benefits for the people are not the same, and many varieties so that the benefit is always evolving and changing in accordance with the progress of time. In this matter Islamic law should be able to answer with the application of *Maslahah mursalah* as *maslahah* theory which propounded by at- Tufi. For example the Government could set up the currency, property tax, the official price, taking a percentage of the salary of civil servants for the construction and others.

g) The use of Irtika>b akhaffi al-D}araraini rules

Irtika>b Akhaffi al-D}araraini is a way in choosing a minimum or mild dangers alternatives. According to Ibrahim Hosen's rules: If there are two conflicting damage, then whichever is lighter damage is very precise and effective way to solve the new problems that arise that cannot be solved by the other arguments (An-Nadwi, 1991, p. 205). For example, the mysterious shooting (petrus) were ever practiced to quell crime or a firing place for terrorists is an action that is not based on the law (forbidden) and violate human rights. Meanwhile the unpunished rampant crime would have posed a public unrest which will falter National resilience and threatened sustainability of development. Admittedly, to do the evil in the form such as robberies, muggings, rape and others clearly forbidden by religion (Islam), but the illicit nature of these crimes is higher in value when compared with the illicit nature of a mysterious shooting that served as a means of eradication. Therefore, based on the rules of *Irtika>b Akhaffi al-D}araraini*, mysterious shootings and firing at a place for terrorists as a tool to eliminate such crimes can be justified legally.

Another example for such problem is slums which located in the middle of the city. If the slum is allowed, it will bring harm to the occupants and the city environment. But if this place was demolished, to be replaced or premises healthy housing market, as the benefits to the public there will also risky (*mud}arat*), which include the existing buildings must be destroyed and the residents should be moved to another place. Basically, damaging clearly cannot be justified and also there are bad (*mudlarat*) elements in displacement because it contains suffering for the displace people. However, if we consider which of the two the lightest harm was, of course we would say that the harm dismantling much lighter than the harm that would arise if it neglected. On this basis the dismantling case can be done and justified, it accordance with the *Irtika>b Akhaffi al-D}araraini rules* and *Maslahah mursalah* arguments (Ibrahim, 1993, p. 132).

h) The use of Sad al-Z}ari>'ah Arguments (dalil)

The purpose of *sad al-Z}ari>'ah* is to close the road that leads to forbidden by Islam (haram), as a follow preventive (prevention) (Zuhaili, p. 423). According to Ibrahim Hosen, this proposition can be

encouraged, based on this proposition the government could ban free sales of contraception tool for example, to prevent abuse. The government may prohibit the sale and purchase on line for damaging the market: The government may prohibit the super market runs from the center to the village which resulted in lethal traditional markets: The government may prohibit the distribution and sale of pornographic books, obscene movies; The government can shut down the massage parlors plus who hiring women massager, the government can set the prohibition of socializing IVF who comes from couple without marriage, etc.

i) Making Fiqh the Qat}'iy

In *Qat}'iy Nas}*, *ad-dalalah* contain of *Ta'aqquli* and *Z}anny* dimensions. Therefor this kind of *Nas}* is allowed for *ijtihad* and *fiqh*. According to Ibrahim Hosen, it possible to make fiqh in the Qat}'iy nash wich contains of al - dalalah *Ta'aqquli* or *Z}anny* which mean, in terms of understanding the editorial can be *mutaharrik-mutagayyir* (Zayd, 1994, p. 119), In short, lafaz} editorial Qur'an is *hammalah li al Wuju>h* (Darraz, 1966, pp. 110-111). Ibrahim gave an example of the validity of a divorce from wife when divorce rights had indeed been delegated by the husband to the wife. As known by *Nash Qat}'iy*, the right to divorce is in the hands of the husband, but if the husband has transferred the rights to his wife then his wife could dropped a divorce or divorce away from her husband, this is fiqh.

Another example of problem is the Zakat for muallaf *qulu>buhum*, the *Nas}* which related to this problem is Qat}'iy status. This kind of *Nas}* could be fiqh with the thought that zakat which given to them with the purpose to tame them, so they will not interfere or obstruct the defendant Muslims in weak condition. In strong Muslims conditions it would no longer need to tame them, so the zakat for *muallaf qulu>buhum* will be stopped. On this basis the Caliph Umar bin Khattab did not give their part, and in the theft case, Umar bin Khattab did not drop the law to cut the hands because of poverty. Even some scholars have argued the punishment of hand amputation became void because of repentance, the owner forgave him, or the thief returns it (Hosen, 1995, pp. 276-277.), Based *QS al-Maidah*, 6: 34 34. "Except those who repent (among them) before you can master (capture) them; Then know that Allah is all Forgiving, Most Merciful." Here the modus operandi, the motivation of the thief, and the value of the stolen goods, into consideration in giving the penalty (Hosen, pp. 455-456).

Ziauddin Sardar stated: The Shari'ah is like a spirral, confined by its limits but moving with time, with its norm requiring a fresh effort to understand by Muslims of every approach (Sardar, 1988, p. 119). Ziauddin give exemplary punishment qisas in al - Ma'idah, 5 : 45 which allows a person to claim damages, the shari'ah difined the limits which the compensation may be required¹. Hence the principle of an eye for an eye, a tooth for a tooth and so it implies the maximum compensation that may be required from a person. That limit is not the norm of Shari'ah, but restrictions beyond the permissibility. The syari'at norm is loving and forgiving as exemplified by the Prophet's attitude in impose penalties (Sardar, 1988, pp. 455-456).

Masdar Farid Masudi, scholars from among the traditionalists also have the perspective of jurisprudence which is in line with or affected Ibrahim thought. He insisted:

"The absolutesyari>'ah is basically does not exist, and apriori valid for all d}uru>f (time, place and circumstances). As the road or the way to achieve a goal, shari'ah must necessarily be dynamic and contextual. One of shari'ah package which compatible to reach the destination in a particular social duruf is necessarily suited to achieve the same goal in different d}uru>f. This applies not only for shari'ah which defined solely by humans, but also hit the shari'ah which offered by God as an expression of His abundant grace to humans. Indeed, the principle of relativity and contextuality shari'ah is obvious. In Qur'an, the principle is explicitly recognized in the verse; *Li kullin ja'alna>min-kum syir'atan waminha>ja /* to each of you (as the different communities), we launch new shari'ah and also different methods (Qur'an, p. 6: 48). However, because of religious understanding and dogmatic framework-formalistic as disclosed above, the clear principle of contextuality becomes blurred or obscured. Consequently, what is actually relatively been absolutized, and the actual dynamic becomes static. The Syari'ah which means ways (wasilah) to achieve the goal, has been given an absolute degree as well as the destination (gayah) (Mas'udi, 1993, pp. 126-128)

7. The Application And The Influence As An Ijtihad Model

With the new meanings of 9 Ijtihad rules which then realistically proven to be applied on the results of Ibrahim Hosen's Ijtihad as expressed above, many scholars said that Ibrahim Hosen actually deserve to be called as Mujtahid, particularly in the field of Legal Affairs Committee, fatwa and in new cases where the law has not been confirmed by Nash Qur'an or as-sunnah and has never been discussed by previous mujtahid priests. Abdul Fatah, the chairman of MUI West Java (then) proposed that Ibrahim Hosen's thoughts and ideas will be recorded, because he was one of figures in Islamic law renewal history in Indonesia (Hosen, p. 294) Even being a pioneer in permissibility of women becomes judges.

¹ Shari'ah is like a spiral, bound by constraints limit but move in line with the times, with norms that require new businesses understanding of Muslims from every era.

Ibrahim Hosen is capable of doing *ijtihad* for new problems that have not been *ijtihad* by earlier Mujtahids such as Pancasila as a principle of the state and the Constitution 1945 as constitution of Indonesia. The government of Republic Indonesia then established Pancasila as the sole foundation of Indonesian state. Ibrahim Hosen also doing *ijtihad* when he did not found any history of previous mujtahid on the law's issue such as the unification problem of first day of Ramadan, Insurance and Government reserve the right to specify (*takhs'i>s*) the general law (*amm*).

Ibrahim Hosen also capable of doing *tarji>h* to obtain the *ijtihad* (*fiqhiyah* problem). The earlier *Fuqaha*, not only from one *mazhab* (*Shafii example*), but of all the existing *mazhabs* not only from four *mazhabs*, but also from outside four *mazhabs*. For example family planning (KB) in IUD utilization cases where woman becomes a judge, which practiced in Indonesian Religious Courts by appointing judges from among women, illicit money case, beer's legal issues, etc.

The existence of a mujtahid who arranged the amendment was interpreted in 9 rules of *Ijtihad* which getting stronger as their realization of *nash* interpretation is not fixated in understanding of *dalalah mantuq* terms, which has fixed (sickle) editorial but in terms of *mafhu>m*, the editorial can be *mutaharrik-mutagayyir*. The fixed and changes nature of *nash* inherent in any *nas* has codified since its establishment, for example *nas* from Alqur'an. Whereas the transmission via oral to oral, although only after some time, such as the Prophet's hadiths, it will lead to multiple interpretations of the editorial contents, and also inflicted to ambiguity in terms of *wuru>d* (Amin, 1979, p. 20). These kind of *nash* keep invited the disagreement in clearance and similarity of the contains meaning. It confirmed by Abu Zaid, that text has lost its permanent nature although in the form of its editorial, and hence it becomes *ijtihad* arable (Zayd A. , p. 119).

In the meantime, Ibrahim Hosen stated in the respect to *nas* *qat'i* which has not many in number. Because to make a *nas* *qat'i*, it should abandon the *mutawatir* basic, all kinds of *ikhtima>l* *majaz* shapes, *kina>yah*, *iz>martakhs'i>s*, *taqdim* and *ta'khi>r*, *na>sikh*, or *ta'arud aqli*. As long as there is suspicion in a *lafaz* *nas* which containing *ikhtima>l*, it's still seen *z*anny. For instance a *nash* has made into *qat'i*, then whether its *qat'i jam>i'il al-ahwa>l* or *fi ba'di al-ahwa>l*. If *fi jami>'il al-ahwa>l*, its applied *la ijtihad>da fi muqa>balati an-Nas* rule. For example, the evening prayer has three cycles, and the morning prayer has two cycles, as well *wuquf* at Arafat and seven numbers of *tawaf* implementation should thus all time, can not be changed. but if the *fi ba'di al-ahwal* is *qat'iy*, the author agreed with the scholars whom considers that *qat'iy* in this form can be make in to *fiqh*. On this basis, it is not all *qat'i* law in terms of applicability (*tat>bi>q*) it *applies fi jami>'i al-ahwa>l*. Because if the *qat'i* is general, there is also the *qat'i* status which spesified the *mutlaq qat'iy*, and also *qat'i taqyid*. Thus, making *qat'i* into *fiqh* is in *t>atbi>q* terms side nor the *lafaz* which deny all forms of *mukhtamil* (Hosen I. , 1995, p. 175). On this basis, according to Ibrahim Hosen in the framework of reform in Islamic law, particularly in criminal law field, we can apply and be guided by *zawa>jir* theory.

The implementation of *Zawa>jir* Theory in this sentence is a reflection of *Ta'aqquli* approach in understanding *Nas* (the text of the Qur'an and Sunnah), so it would appear the contextual understanding or law. In this way Muslims would not get stuck easily with the assertion of the *Qur'an* which states that whoever does not rule by what devived by Allah then he was among those the *z>alim*, *kafir* and *fasiq* people (Qur'an, pp. 44,46,47).

The maximum and minimum terms of Islamic law also affects, or at least accordance with other scholars when it's talking about the certainty of punishment contained in *Nash*, such as Ziauddin Sardar, Sahrur and Masdar Farid as revealed above. In the meantime, when Muslimin a great commotion about reactualization ideas of Islamic law which expressed by Munawir Sjadzali as minister of religion, Ibrahim Hosen precisely expressed support, and stated that Munawir ideas is the *matan* and Ibrahim hosen's thought is the *syarakh*. Ibrahim Hosen offered of the renewal steps of Islamic legal thought which includes the idea of making *qat'i* into *fiqh* law (Hosen I. , 1995, p. 253).

8. The Implication Of Social Religious Problem In Indonesia

Ibrahim Hosen presence as one of the scholars who are able doing *ijtihad* using new meanings *ib ijtihad* rules is very meaningful related to opening *ijtihad* doors. Ibrahim Hosen is one of the *fuqaha>* in Indonesia who opened the doors of *Ijtihad* widely by taking *manhaji mazhab* and moderate with the developing of *Ihya> al-fikrah al-Islamiyya* with principles of scientific truth must be upheld. Ibrahim Hosen has bold step to hold leaps forward to solve the social problems faced at the time with explore and define their arguments *is>bat* and *t>atbi>q* law. The result of *Ijtihad* by ibrahim such as legal beer, IUD use, the permissibility of women as judges, lard etc is in order to address social and religious problems at the time. In the meantime, the implications of Ibrahim Hosen *Ijtihad* using new meanings rules *Ijtihad* can conclude two models *yuristik* :

a) Language analysis Model

In the postulates analysis of Islamic law either in the form of *nash* and *gairu Nash*, a form or the meaning and interpretation model can not be separated from semantics matters, for example the knowledge which concerning the intricacies and shifting sense of the word. Because the meaning of a word is determined by the user in the 'sentence', and a sentence is determined by the user in the 'language', and hereafter the meaning of the

language which specified by the user in everyday life. It's possible to do *ijtihad* in the study of jurisprudence with the interpretation and new meanings that can ensure the realization of human benefit. Because human benefit was experiencing growth and change, then the Islamic law based on *maslahah* assigned in the past, it could have set a new law based on the benefit of the present.

b) Analysis Context Model

A mujtahid intellectual thought which emanating from an anxiety is inseparable from the problems which cover it. It should be viewed as a response and dialectics thought with various phenomena that develop in society. A religious thought, such as *fiqh* can not be separated from some context: the context of time, space context, historical context, social context, cultural context, the psychological context and so on. That the community in a real condition is an important consideration in *isba>t al-hukm*, so understanding *fiqh* paradigm shift from the truth orthodoxy (black and white) became paradigm of social understanding (character nuanced understanding) and humanity.

In terms of the type of *ijtihad* Ibrahim Hosen thought can be apart into 3 types :

c) Anticipatory mode

Anticipatory mode is characterized by the efforts of Ibrahim Hosen as follows:

- 1) Promoting the re-interpretation in reviewing the *fiqh* texts to find its context which accordande to the benefit to be achieved by Islamic law objectives, so *fiqh* applies not only to the law of kinship, but also *fiqh* is able to provide answers to social problems that are being faced by the community (anticipatory).
- 2) No attempt was made to replace Ibrahim Hosen *nas}* with *maslahah*; but adjusting and providing the alternatives other laws accordance with it's context; because there can be no conflict *Nas}* with *maslahah hakikiyah*. *Nas qat'i* was identical to *maslahah hakikiyah*. When there *maslahah* which declared contrary to *Nash* it have to look the *dalalah* that consistent with customary law

d) Elective Mode

The meaning of using *madzhab* is reforming in textual *madzhab* character which arose a black and white *taas}s}ub* toward absolute methodologically *madzhab* (*mazhab manhaji*) with *ijtihadi* character. The benchmarks of validity in religious ideas instead from pure reasoning minds and text doctrine (*Nas}*) but also the fact how far the understanding can ensure fairness, humanity and human benefit for the people in this world and hereafter. This is done by Ibrahim hosen with these steps:

1. *A fundamental verification, which is the principal law (us}ul) and which branches (furu')*, placed where *qat'i* and *z}anni* are strategic and which are applicable for technical –*maqasid al hukm* reached.
2. *There must be awareness that the terms qat'i and z>anni Nas} is a provision of the experts proposed, therefore this provision of qat'i Nas} and z}anni Nas} are not certained, because the there are differences regarding limitation qat'i and whether or Nas} in the scholar's proposal itself.*
3. *Fiqh presented as social control rooted in the culture of society, not merely as a legal black-and- white dry from a sense of justice, humanity and welfare.*
4. *Promote the Islamic law methodology with the advanced of philosophical thought and rational that legal issues cannot be separated from the question of the meaning of language, context, cultural and social, so as to set the law accordance with the of Personality rules and it's maqasid.*

e) Integralistic Mode

Ibrahim Hosen trying to articulate a harmonious relationship between religion, reason and language with the principle which understanding the legal text may not be done properly if separated from human life. Understanding the legal text will be good when there is dialogue, harmonious relationship between the three interrelated elements: *Nas}* religion, reason and language and also living tradition and cases that occur in it (integrative). Even though at that *ijtihad* time Ibrahim tasted and abused a lot until he called by paid scholar, and scholars whom his fatwa ruling whether lawful or unlawful depending on the request, scholars forecasts and so on, but when many scholars are very appreciative of him, Ibrahim hosen trying to implement a new meaning of *ijtihad*rules.

On the other hand, the result of his first *ijtihad* by using *Ijtihad* mode and new meanings was quite controversial, but now is influencing the knowledge changing, attitudes and awareness among intellectuals and scholars, especially *fiqh* scholars in the face of the demands of the times which are increasingly complex with developing the spirit *al-intiqa>'i* (critical questioning attitude) in response to *fiqh* texts theological cases and micro oriented toward strategic *fiqh*, which is realistic-inductive oriented inhumanist *maslahah*. This may indicate the awareness to accept the change and reform in Islamic law with *ta'auqli* fields such as family law, economic, social, political and constitutional methodology through renewed meaning by rational considerations.

9. Conclusion

1. That Nash}, both the *Qur'an* and *Hadith*, is a proposition, not a source of law. To understand the nash it is necessary to apply new methods which will help us understand the soul (the context) of the nash. The hadith needs to be classified into the Tasyri>'ul Ahka>m hadith and the one which represents the prophet as an individual (as a human being). In the issue of ijma', Ibrahim Hosen only hold on ijma' **friend**, no further ijma' among scholars. In the meantime, Ibrahim Hosen's ta'aqquli approach to the meaning of the 9 rules of ijtihad based on applicability that jurisprudence which must follow the conditions and circumstances accordance with the demands of the times and destinations of jurisprudence. Ibrahim Hosen ta'aqquli approach is intended as a maximum effort for universal application of Islamic law and humanitarian principles which are transformative by freeing itself from the shackles that impede the integration of Islamic law as an integral part of social life. It is a fairly radical step of Ibrahim Hosen to perform demolition and deconstruction of methodology of Islamic law, which further being improved (meaning) again (reconstruction). Thus what is done by ijtihad rules are deconstruction and methodology reconstruction of Islamic law ijtihad.
2. Both Syariah and *fiqh* are intended for the benefit of mankind based on the principles of ease and spaciousness and based on seven principles: *Is\qa>t, Naqs, tabdi>l, taqdi>m, ta'khi>r, tagyi>rand rukhs}ah* principle. With these principles, Ibrahim Hosen analyzed the nash from *mafhu>m* side not it's *Mantu>q* with *tafsir* and *ta'wil bil aqli* methods, by moving a word from definite meaning (z}ahir) to the indefinite meaning (weak – *marju>h*) because there is something that causes the arguments of other meanings should be worn. Even *tafsir bil aqli* and *ta'wil* may be required when there are conflicting verses assessed (Ad-Darini, p. 202). *Tafsir bil aqli* and *ta'wil* are referred to *dala>lahisya>rah nas}* and *dala>lah nas}*. By doing so, Ibrahim Hosen classified as a sufficient *fiqh* scholar in his *progressive-revolutioner* legal thought, who believe the improvement to a better direction, where the attention and dedication devoted to improving the situation that existed at the time the change in legal interpretation visible and fundamental new meaning.
3. Ibrahim Hosen is one of the renowned *fuqaha>* not only in Indonesia, but also abroad. He tried to open the widest door of ijtihad which has been covered for along time by old interpretation, by taking manhaji mazhab, be moderate with developing *Ihya al-fikrah al-Islamiyya* with the principles of scientific truth which must be upheld. From here, born two models of Ijtihad, language analysis ijtihad model and context analysis ijtihad model. The combination of these two models of thinking spawned anticipatory ijtihad type, elective type and integralistic type.

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