

Contemporary Ijtihad

An Effort to Ground Islamic Orthodoxy
Within the Realities of Contemporary Life

Dr. Kyai Haji Abdul Ghofur Maemun

Delivered to an international gathering of *ulama* held 21 – 22 May 2017 at PP (*Madrasah*) Bahrul ‘Ulum in Jombang, Indonesia, and incorporated by Gerakan Pemuda Ansor in its [*Declaration on Humanitarian Islam*](#)

Definition of Certain Terms Employed in this Document

- *Fiqh*: Islamic jurisprudence; knowledge of practical, legal judgments derived from detailed evidence
- *Faqih*: Jurist; one who deduces legal rulings from detailed evidence, and whose judgments meet the holistic criteria and objectives of *shari'ah* (*maqashid as-shari'ah*)
- *Ifta*: Legal opinion (or ruling); clarification of an ambiguous matter related to a specific issue, in order to illuminate God's injunction in this regard
- *Mufti*: A jurist who closely observes reality and creates *fiqh*, in order to reveal God's injunction in regard to a specific circumstance, so as to achieve the holistic objectives of *shari'ah* (*maqashid as-shari'ah*)
- *Qadha*: To judge; a ruler's obligation to act in a certain manner—in accord with a legal injunction—after he has been petitioned to issue a judgment in regard to a specific matter
- *Qadi*: Judge; one who acts to alter reality and impose an obligation upon opposing parties to accept and act according to God's injunction

Ijtihad As Spirit

- Any discussion of Islamic law (*fiqh*) and legal opinions based thereon (*fatwas*) will be intellectually and spiritually impoverished if it remains guided [i.e., constrained] by the assumption that the gates of *ijtihad* are firmly shut. Islamic jurisprudence can provide appropriate and effective solutions to contemporary problems only if the gates of *ijtihad* are open
- *Ijtihad*, as discussed here, includes not only “comprehensive *ijtihad*” (*ijtihad muthlaq*)—as conducted by Imam Malik, Imam Shafi‘i, Imam Abu Hanifa, Imam Hambali and their respective schools of jurisprudence, when considered as a whole—but rather, *ijtihad* in its several variants, including *ijtihad tajazzu’i* (partial *ijtihad*, which seeks to address only certain limited issues)
- Muhammad Sulaiman al-Ashqar (1930 – 2009) wrote that according to correct opinion, *ijtihad* may examine discrete issues employing ideas that originate from any number of legitimate sources, and need not be confined to ideas originating from a single school of Islamic jurisprudence. Shaykh Ashqar wrote that the same is true of fatwas. See: *al-futya wamanahij al-iftaa’*
- The term *ijtihad* also refers to and includes *ijtihad intiqa’iy* and *ijtihad ibda’iy*. (Yusuf Qardhawi)

Ijtihad Intiqā'iy

- *Intiqā'iy*: to choose one of various opinions that exist within the broad corpus of classical Islamic jurisprudence, which opinion has a strong, or reasonably strong, logical and textual foundation
- The primary characteristic of *fiqh* is its nature as an estimate—as opposed to absolute expression—of the truth. Hence, every *fiqh* opinion implicitly recognizes and legitimizes the possible truth of other opinions, so long as these are accompanied by adequate postulates. Within our existing corpus of *fiqh* (Islamic jurisprudence), these possibilities are vast and have generated a wide range of valid legal opinions, which convinces us that it is in the very nature of *fiqh* to be dynamic, from its origins to the present day
- A number of considerations further convince us of the need to augment the existent [i.e., classical] body of legal opinions, particularly in regard to certain areas in which enormous change has occurred in recent centuries, including the field of social relationships, politics/governance and the development of scientific knowledge

Ijtihad Insya'iy

- *Insya'iy*: to generate new legal opinions regarding a particular issue, which opinions have never before been expressed. One example of this is to negate the relationship between menstruation (*haidh*) and the onset of adulthood (*bulugh*), which in previous *ijtihad* were never treated as separate issues
- *Ijtihad insya'iy* has been employed by the Nahdlatul Ulama Central Board and is evident in a number of its official decrees, such as the recent National Conference at which *ulama* ruled that the Unitary State of the Republic of Indonesia (NKRI) constitutes a legitimate form of governance from the perspective of Sunni political jurisprudence, and embodies the essence—although not the historic, outer form—of a caliphate, by guaranteeing Muslims' right to practice their religion freely, among other substantive criteria
- The NU Central Board ruled that from the perspective of Islamic law, NKRI meets all the substantive criteria for a caliphate and, in fact, represents one legitimate expression thereof

Requisite Elements Within the Practice of Ijtihad

- The customary Islamic sciences, including the Qur'an, hadith, Arabic grammar, *usul fiqh*, etc.
- Specialized knowledge of any subject regarding which an opinion is to be delivered
- Wisdom in addressing the actual circumstances of life and society at large
- Mastery of *maqasid as-shari'ah* (the purpose of religious norms)
- The ability to distance oneself from exclusive reliance upon upon a single *madzhab*. This does not mean negating or rejecting any of the various schools of Islamic law, but rather focusing upon, and emphasizing, the profound wisdom expressed within the broad tradition of Islamic jurisprudence

Several Requirements in Order to Fulfill the Purpose of Religious Norms (Maqasid as-Shari‘ah)

- In his book *al-Muwafaqat*, Imam Ash-Shatibi states that the purpose of religious norms can only be achieved if these norms are actually intelligible to Muslims. This statement clearly and indisputably assumes that in every era, there are experts who are capable of comprehending the Qur’an and Sunnah, and how to apply their principles to the daily lives of Muslims. This statement also implies that these experts have a profound religious duty to master the various disciplines required to attain the aforementioned level of comprehension, and convey their insights in a manner that is readily intelligible to others
- The requisite disciplines include the customary Islamic sciences—the Qur’an, Hadith, Arabic grammar, *usul fiqh*, etc.—but these disciplines should be wisely employed so as not to contravene the actual purpose of religious norms, and to ensure that *shari‘ah* may be readily understood and embraced by the Muslim community at large

Prerequisite Knowledge for a Mujtahed to Perform Ijtihad

- According to some experts, in order to comprehend God's law one must memorize the entire Qur'an. However, in the opinion of Imam al-Ghazali, it is sufficient to understand 500 verses that concern legal issues. In Ghazali's opinion, these 500 verses do not need to be memorized. It is enough to know where they are located within the Qur'an, so that whenever needed they may be quickly found and properly utilized
- Some *ulama* maintain that in order to comprehend God's law, one must commit thousands of *hadith* to memory. According to Imam al-Ghazali, it is enough to possess the various books of hadith and have the ability to cite the appropriate hadith as needed
- Although one may not completely agree with al-Ghazali's opinion regarding this matter, in general what he affirmed is more consistent with fulfilling the purpose of religious norms than the more burdensome requirements articulated by others

Wisdom and Prudence as the Essence of Maqasid as-Shari'ah

- Ibn Qayyim al-Jauziyah said the following in regard to wisdom and prudence being the essence of *maqasid as-shari'ah*:
- إن الشريعة مبناهما وأساسها على الحكم ومصالح العباد في المعاش والمعاد وهي عدل كلها ورحمة كلها ومصالح كلها وحكمة كلها فكل مسألة خرجت عن العدل إلى الجور وعن الرحمة إلى ضدها وعن المصلحة إلى المفسدة وعن الحكمة إلى العبث فليست من الشريعة وإن أدخلت فيها بالتأويل فالشريعة عدل الله بين عباده ورحمته بين خلقه وظله في أرضه وحكمته الدالة عليه وعلى صدق رسوله - صلى الله عليه وسلم - أتم دلالة وأصدقها.
- Ibn Qayyim made this statement in his chapter on “Changes to Fatwas and Dissimilarities Between Fatwas Occasioned by Differences in Time, Place, Context, Intention and Culture”
- This means that for a person who wishes to understand *shari'ah*, it is insufficient to master the various intellectual concepts associated therewith. One must also have a sophisticated grasp of reality

Seeking the Truth

With the Light of Maqasid as-Shari'ah

- Everything within the Qur'an is Truth. (cf. al-Baqara 119 and al-Baqara 2)

إِنَّا أَرْسَلْنَاكَ بِالْحَقِّ بَشِيرًا وَنَذِيرًا. البقرة : 119

ذلك الكتاب لا ريب فيه. البقرة : 2

- *Maqasid as-shari'ah* enjoins all who seek to know God's law not to become lost within the maze of a single school of classical Islamic jurisprudence, for the Truth may be found anywhere. For example, the issue of who has a right to choose a young woman's spouse [i.e., she or her family] cannot be adequately addressed, in our present day and age, by employing the texts of a single school of Islamic law
- Contemporary *fiqh* should actively engage with the immense heritage of *fiqh* bequeathed to us by a number of schools of Islamic jurisprudence, all of which are rich in accumulated knowledge

Certain Goals of Shari'ah to Which Jurists Should Pay Special Attention

- Ease the practice of *shari'ah* without abandoning *shari'ah* (the path to God)
- Acknowledge and make allowance for the fact that all human beings are in a state of spiritual evolution on the path (*shari'ah*) to God, and that most are incapable of immediately behaving in a manner that reflects the full perfection of a religious life
- Take into account, and differentiate between, the primary and secondary needs of humanity
- Prioritize the safeguarding of religion, including its primary message and objective, which is to serve as a blessing for all creation (*rahmatan li al-'alamin*) and a source of universal love and compassion