

Najmuddin at-Tufi on Public Interest In Islamic Law: a Point of View

Introduction

Muslim jurist who ever discourses the public interest in Islamic Law, can be ascertained, will involve and investigate the Hanbali jurist Najmuddin Abu Rabi' Sulaiman bin Abdul Qawi at-Tufi, who was acknowledged as at-Tufi¹. At-Tufi denotes a figure who has specific theory regarding the public interest in Islamic Law - as the spirit or the objective of the Syari'at. Instead, he was solely a Muslim Jurist who exaggerated the necessary of public interest and allowed it to overrule , or limit the scope of, textual laws arrived at by a consensus of Muslim Jurists².

The following article will discuss at-Tufi's theory of public interest in Islamic Law. Before discussing this subject, it is necessary to understand at-Tufi's life and his works so we are able to understand his theory better. This article divides into four parts. The first part concerns with at-Tufi's life and his works, the second part discusses his basis theory of public interest in Islamic, the third part ex-

plains at-Tufi's public interest as the method of ijtihad, and the last part comprises the conclusion.

At-Tufi was born in Iraq 1259 A.D³ and died in 1318 A.D⁴. He was born at the thirteenth century A.D. The thirteenth century A.D. was a century of unprecedented calamity in the history of Islam. Hardly had Islam recovered from the adverse effects of the crusades than it had to face the onslaught of the Tartars. They destroyed the great kingdom of the Khawarizms, sacked Bagdad, annihilated the caliphate, devastated cities, razed to the ground great monuments of learning and culture, and massacred millions of Muslims till rivers were red with their blood. So great was the terror of the Tartars that their name was sufficient to make the Muslims shudder from head to foot. Poverty, demoralization and spiritual ruin followed in the wake of this colossal political and military defeat. Having captured Iraq they were threatening Syria and Egypt⁵.

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Furthermore, that in the early days any adequately qualified jurist was regarded as having the faculty of *ijtihad*, that is, the right to go back to the original sources and interpret them for himself. But with the passage of the years, the crystalization of the different schools of law and the progressive enunciation of the doctrine, this faculty was held to have fallen into abeyance ; and since about the end of the third century of the Hijra, all jurists have been regarded as mere *muqallids*, that is, those whose duty it is to accept the opinions of their great predecessors without the exercise of private judgement⁶. In consequence of the exercise as already adduced, is the closing of the gate of the *ijtihad*⁷. This phenomenon occurred from the end of the third to the end of the thirteenth century of the Hijra⁸.

At-Tufi (b. 1259⁹ and d. 1318 C.E¹⁰) lived in these troublous times. He constituted a Muslim jurist profound love to many spheres of Islamic studies. Endowed with a penetrating intellect and a wonderful memory¹¹, at-Tufi studied in all of places at that time all the existing sciences, religious and rational jurisprudence, *hадис* (Traditions), *Tafsir* (Qur'an Commentaries), theology, Arab Literatures, Islamic Law, and his works cover all these fields¹². One of them is his *Syarh al-Arba'in an-Nawawiyyah* (the explanation of forty traditions written by Nawawi), especially the tradition number thirty - two. Departing from his commentaries above has resulted a theory or thought on public interest (maslahat) in Islamic Law.

At-Tufi is one of the three free thinkers of Hanbali Jurists - Ibnu Taimiyah, Ibnu al-Qayyim al-Jauziyah and at-Tufi¹³. Actually at-Tufi is indeed of Ibnu Taimiya's disciples¹⁴.

It is natural that if at-Tufi has a theory, moreover his theory relating to the facts of the stagnation of Islamic Law thought particularly, and Islamic thought generally in his life. And could be supposed why at-Tufi was regarded as a free thinker of Hanbali Jurists, because he was under the influence of his predecessor-Ibnu Taimiyah.

The Basis of at-Tufi's Public Interest

As already asserted that at-Tufi's theory of public interest in Islamic Law was based on his commentaries on a tradition and supported by the other law texts (nas) either al-Qur'an verses or traditions. The tradition denotes the basis of at-Tufi's public interest is *la dharara wa la dhirara*¹⁵, and the main meaning of this tradition according to him is public interest (maslahat)¹⁶ in Islamic Law, moreover, if the meaning of this tradition links with many other law texts whether al-Qur'an verses, for examples: *Yunus* (10): 57-58, *al-Baqarah* (2): 189, *al-Maidah* (5): 38 and *an-Nur* (24): 2, or traditions, for instances ; *la yabi 'ala ba'i ba'd, la yabi 'hadir lubad*,¹⁷ and *wala tankihu al-mar-at 'ala ammatiha wala ala khalatiha*.¹⁸

Starting his understanding from the tradition *la dharara wa la dhirara* aforementioned and the other law texts whether al-Qur'an verses or the other traditions above , he concluded that the meaning of all law texts is to pay attention to the public interest (maslahat) as the objective or the spirit of Islamic law. In this connection, at-Tufi classified (categorized) the public interest in Islamic Law into two categories, namely - the public interest regarding the sphere of devotional duties (*ibadah mahdah*) and the public interest re-

specting to the newly arising affairs of the world (*mu'amalah*), but at-Tufi has focussed on the public interest of worldly social matters not on the public interest of pure personal matters because the public interest in the field of pure personal matters merely Allah is omniscient and can not be thought by humankind. On the contrary, the public interest in the sphere of worldly social matters can be contemplated by humankind in accordance with the changing circumstances in their lives based on the basic guidances of scripture and prophet traditions¹⁹.

In the sphere of newly arising affairs of the world, however, according to at-Tufi the strongest guidance is the public interest. If the application of one law text deviates from the public interest, so the public interest is primary from the law text, because the public interest in this sphere constitutes the objective or the spirit of Islamic Law, whereas the law texts denote an instrument of the objective or the spirit, in this sense, the objective or the spirit of law is priority over that the instrument²⁰. Briefly, the public interest is the ultimate goal of the *Syari'at*, meanwhile the law texts involve the other indications of *Syari'at* could be regarded as a tool or a method for hollowing the public interest.

At-Tufi's Theory of Public Interest as a Method of Ijtihad

As already described, according to at-Tufi that the public interest constitutes the strongest guidance among the other Islamic law postulates regarding the worldly social matters. Accordingly, the public interest in this field should be prioritized over those other guidances of Islamic Law, because the public

interest denotes the objective or the spirit of Islamic Law can be understood as the instrument of the public interest.

Jamaluddin al-Qasimi declared that at-Tufi's *maslahat* above - mentioned can be called as the unspecified expediency or *maslahat mursalah*. Yet also can be regarded as the result of wrong *ijtihad* and there was who accused it as the abrogation theory. Even be identified as *Shi'ah* theory and follow passion method²¹.

In this context Muhammad Mustafa Syalabi adduced that at-Tufi's public interest is the fourth of four theories of the public interest in Islamic Law. The three theories before at-Tufi's theory are:

1. The public interest theory based on the law texts clearly, it is Qadi Husein's theory, one of as-Syafi'i's disciples.
2. The public interest theory based on law texts clearly or unclearly but stipulation is, it can be analogized to the respected public interest. it is as-Syafi'i and Hanafi jurist.
3. The unspecified theory, it is Malik's theory²².

Apart from pros and cons to at-Tufi's theory, but no one Muslim Jurist disputes that the objective or the spirit of Islamic Law is the benefit for all aspects of humankind live and it is known that the second Khalifah, Umar bin Khattab r.a. succeeded to the Khalifah two years after the prophet Muhammad (peace be upon him). Yet during his rule he took quite a number of important decisions in the field of law which seem to represent a departure either from the texts of the Qur'an or from the prophet Traditions. Below are a few examples:

1. In the administration of the spoils of war Umar bin Khattab did not interpret literally the pattern dictated by verse 41 al-Anfal, that one - fifth of the spoils were to be allotted to Allah, the messenger, his relatives, orphans, the needy and wayfarer, and the remainder were to be distributed to those who took part in the war. Umar left the properties, particularly the lands of the newly conquered regions, to the original owners and imposed on them taxes as a source of revenue to cover the state expenditures. This includes the allowances of the members of what might be called today the Standing Army.
2. Despite a clear stipulation in verse 60 at-Taubah, as to whom the alms are to be distributed to, including the newly converted Muslim whose heart are still to be reconciled (al-Muallafah qulubuhum), Umar bin Khattab did not allot a portion of the alms to them.
3. At the time the Prophet and Abu Bakar, in addition to the punishment of one hundred whiplashes, as prescribed in verse 2 an-Nur, an unmarried adulterer had to be banished for one full year. Umar abolished that additional penalty after he was informed that one adulterer went to a non-Muslim country.²³

As expected, Umar's courageous policies in adjusting the original teaching of Islam to contemporary situations (social change) always caused heated arguments and even friction between himself and other senior companions of the prophet. Ultimately, Umar always emerged as the winner, because he succeeded in convincing the others that his departure from the Qur'anic texts and the traditions of the prophet did not mean deviation from the objectives of the Syari'ah. Conversely, by departing from the Qur'anic texts

and traditions in changing situations Umar had served the true purposes of the application of Islamic Law: upholding justice, high morality, rationality and genuine popular interest.²⁴

Although Umar deviated from Qur'anic verses in the important points formally, he did perform the essence of Qur'anic verse. Lastly, one conclusion was found that in spite of the law being able to change, literally to cope with social change, the true purpose and ethic as the root of the Islamic Formal Legal do not change. That is something significant nowadays for Muslim Jurists to formulate the ethic of Islamic Law as the ultimate goal of Islamic Law.²⁵

The formal changing of Islamic Law, Umar has settled this because of his total comprehensive understanding to the Qur'an and the Prophet Traditions message. According to Abu Zahrah that Umar has realized the law texts well and has creative understood deal with the true purpose of Syari'ah.²⁶

Husein Hamid Hasan said that Mustafa Syalabi is the first Muslim Jurist who classified the public of Islamic Law into two categories: (1) the public interest can not change, (2) the public interest can change. In brief, the public interest can be specialized into immutable public interest and contemporary public interest. The contemporary public interest relates to worldly social matters, whereas the immutable public interest relates to pure personal matters.²⁷ These categories of the public interest if we relate to Umar's cases of law, clearly Umar's cases could be specialized into worldly social matters.²⁸

Muslim Jurists of the four schools classify the law into two categories: the laws which

deal with ibadah mahd (pure ritual matters) and the laws relate to mu'amalah duniaiyah (worldly social matters). Within the first category there is little that the jurists can do. However, within the second category there is ample room for jurists to exercise their intellectual reasoning, with genuine interests of the people as their primary consideration. In this connection ibn al-Qayyim al-jauziyah confirms that the law can change or differ due to the change of time and to differences of locality, situation, objective and custom²⁹.

Ahmad Mustafa al-Maragi, said "surely the laws are legislated in humanity's interest, and these interest differ in different eras and localities. So if a law is legislated at a time when the need is urgent, when the time comes when that law is no longer needed, suited to the time. The new law will be better than the first or thereof from the point view of the people's interest³⁰.

According to at-Tufi within this context the ultimate goal of worldly social matters is public interest. When the application of dalil Syari'ah deviates from public interest, so the public interest is a priority over that dalil Syari'ah. The public interest is therefore the ultimate goal, whereas dalil Syari'ah as the method, and the ultimate goal is primarily from the method³¹. In this sense of this theory, clearly at once social reality is perceived as the method of application of the public interest is Islamic Law. Accordingly, wherever and whenever we find the public interest so there is Syari'ah of Allah³².

Springing from at-Tufi's theory, clearly that Islamic Law has been formulated by Allah for upholding justice which constituted fundamental stipulation for raising the idea.

Formulating the norms of law usually tightens from philosophical and empirical background. The philosophical and the empirical background make possible to realize the actualization of law not solely be translated black and white pattern. It could be translated rigidly in the term may and may not or can and can not.

Recently is appearing a new topic in studying law that called legal resources. The term really can not be quited of philosophy of law. In this sense, the law could not be appeared awkwardly by normative-dogmatical approach or the law is regarded as a set of consistent logic norms. The law ought to be understood as a tool can formulate the varieties of social policy. In other words the law denotes a tool for changing, controlling, building and social engineering.

Concluding Consideration

To end these introductory remarks, I do not hesitate to say that:

Muslims who live at the end of the 20th century, spreading all over the world with diverse customs, cultures traditions and historical background should not have any problem in adjusting the application of Islamic Law to their respective locality, custom, culture and tradition without endangering the universality of Syari'ah, and the Syari'ah is truly a dynamic legal system with high degree of adaptability.

The application of at-Tufi's public interest considers Muslims respective localities, customs, culture and traditions. And this method freshing Islamic legislation in mod-

ern age and has to play a key role in the renaissance of Islamic jurisprudence.

Footnotes

¹Ibnu al-'imad, Syazarat az-Zahab fi Akhbar min Zahab, (Beirut: al-Maktab at-Tijari), V: 39.

²M. Umaruddin, 'al-Istihsan wa al-Maslahah. Usbu' al-Fiqh al-Islam, (Damaskus; 1961), p.354.

³Mustafa Zaid, al-Maslahah fi at-Tasyri' al-Islam wa Najamuddin at-Tufi, (Kairo: Dar al-Fikr al-'Arabi, 1959), p.66.

⁴Abdul Wahhab Khallaf, Masadir at-Tasyri' al-Islam fi ma la Nassa fihi, (Kuwait: Dar al-Qalam, 1972), p.105.

⁵Usbu' al-Fiqh al-Islam, 'Ibnu Taimiyah as a Thinker and Reformer, p. 77.

⁶J.N.D. Anderson, Islamic Law in the Modern World, (New York: New York University Press, 1959), p.14.

⁷Joseph Schacht, An Introduction to Islamic Law, (London: Oxford at the Clarendon Press, 1971), p.1.

⁸J.N.D. Anderson, Islamic Law, p.14-15.

⁹Mustafa Zaid, al-Maslahah, p.66.

¹⁰Abdul Wahab Khallaf, Masadir, p.105.

¹¹Ibnu al-'Imad, Syazarat, p.39. Mustafa Zaid, al-Maslahah, p.73.

¹²Mustafa Zaid, al-Maslahah, p.91-107.

¹³Muhammad Mustafa Syalabi, Ta'lil al-Ahkam, (Beirut: Dar an-Wahdah, 1971), p. 379.

¹⁴Ibid.

¹⁵Ibnu Majah, Sunan Ibnu Majah, "Kitab al-Ahkam", Bab Man Baniya fi Haqqihi M.F. Abd al-Baqi (Mesir: Isa al-Balai al-Halabi wa Syarakah, 1953/1373), II: 784, hadis no. 2341. Hadis Hasan riwayat Ikrimah dari Ibnu Abbas.

¹⁶Imam Malik, al-Muwatta' Syarah as-Suyuti "Kitab al-Aqdiyah" bab al-Qoda' fi Marfiqi (Mesir: Isa al-Babi al-Halabi t.t) II: 218. Hadis riwayat Imam Malik dari Amr dari Yahya al-Mazini dari ayahnya.

¹⁷Mustafa Zaid, al-Maslahat, p.21.

¹⁸Muslim, Sahih Muslim, Kitab al-Buyu', Bab Tahrim Buyu (Mesir: Isa al-Babi al-Halabi, t.t.), I: 658 dan 660.

¹⁹Ibid, Kitabun Nikah, Bab Tahrim al-Jam'u al-Marat wa Ammatiha, I: 590.

²⁰Mustafa Zaid, al-Maslahat, p. 46 dan 48.

²¹bid, p.17.

²²Muhammad Abu Zahrah, Ibnu Hambal Hayatuhu Waasaruuhu Arauhu wafiquhuhu (Mesir: Dar al-Fikr al-'Arabi, t.t), p.361.

²³Muhammad Mustafa Syalabi, Ta'lil, p. 292.

²⁴Amiur Nuruddin, Ijtihad Umar bin Khattab: Studi Tentang Perubahan Hukum Islam, (Jakarta: C.V. Rajawali, 1991), p. 137-154. Ali Hasaballah, Usul at-Tasyri' al-Islami, (Mesir: Dar al-Ma'arif, 1964), p.149 dan 156.

²⁵Yusdani, Towards Reformulating The Methodology of Islamic Law: Searching For a New Model in al-Mawardi, Edisi Ketiga, 1995, p.65.

²⁶Fazlur Rahman, Islamic Methodology in History, (Karachi: Central of Islamic Research, 1965), p. 180-182.

²⁷Muhammad Abu Zahrah, Tarikh al-Mazahib al-Islamiyah, (Mesir: Dar al-Fikr al-Arabi, t.t.), p. 30.

²⁸Husein Hamid Hasan, Nazariyah al-Maslahah Fi Fiqh al-Islam (Kairo: Dar an-Wahdah al-Arabiyah, 1971), p. 321-322.

²⁹Yusdani, Towards..... al-Mawardi, p. 65.

³⁰Ibnu al-Qayyim al-Jauziyah, al-I'lam al-Muwaqi'in, (Mesir: Maktabah at-Tijariyah, 1955) III: 3.

³¹Ahmad Mustafa al-Maragi, Tafsir al-Maragi, (Mesir: Mustafa al-Babi al-

Halabi, 1974), I: 187. Ramdan al-Buti,
Dawabit al-Maslahah fi al-Syari'ah al-
Islamiyah (Beirut: ar-Risalah, 1973), p. 23.

³¹Mustafa Zaid, al-Maslahah, p. 17.

³²Muhammad Ma'ruf ad-Dawalibi, al-
Madkhal ila Ilm Usul al-Fiqh, (Beirut: Dar
al-Ilm Lil-Malayin, 1965), 409.