

The Existence of the Statement of the Companions (*Fatwā Ṣaḥāba*) and Its *Hujjah* in Islamic Legal Thoughts

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Abstract

Fatwā ṣaḥāba can be used as *hujjah* (proof) even though the ulama (scholars) have different opinions regarding its validity. The ulama categorize the Companions' *fatwā* as one of the sources of law decision which is still being disputed about the validity. It is different from the Qur'an, Sunnah, *Ijmā'*, and *Qiyās* that have been agreed by the most of the scholars as a source of Islamic law. The Companions' *fatwā* has an influence on the development of Islamic law thought which can be substantially equated like a *fiqh*, because it is the result of *istinbāt* (efforts to extract the *ẓanni* (speculative) sharia law from original sources through the mobilization of all natural reasoning abilities) and the results of the Companions' *ra'y* (establish a law of contemporary problems that have not been found in the Qur'an and hadith) which have been codified according to the particular mazhab. Therefore, the Companions' *fatwā* is the result of the *ijtihad* of the Companions as ulama of the previous generation and became the *hujjah* of the ulama until today who have colored Islamic law thought, such as *fatwā* of Abū Bakr, Umar, 'Uthmān, 'Alī, 'Abdullāh Ibn 'Abbās, 'Abdullāh Ibn Mas'ūd and other Companions. At least the *fatwā ṣaḥāba* can be used as *hujjah* in *istinbāt* of Islamic law when new problems arise, and no proposition is found in the Qur'an and hadith.

Keyword: eksistence; *fatwā ṣaḥāba*; *hujjah*; development of Islamic legal thought

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Fatwā ṣaḥāba dapat dijadikan *hujjah* walaupun para ulama berbeda pendapat mengenai keabsahannya. Ulama mengategorikan *fatwā ṣaḥāba* sebagai salah satu sumber pengambilan hukum yang masih dipertentangkan keabsahannya. Berbeda dengan al-Qur'an, sunnah, *ijmak* dan *qiyās* yang telah disepakati oleh jumbuh ulama sebagai sumber hukum Islam. *Fatwā ṣaḥāba* memberikan pengaruh terhadap perkembangan pemikiran hukum Islam yang secara substansial dapat disamakan seperti layaknya fikih. Sebab *fatwā ṣaḥāba* adalah hasil *istinbāt* hukum yang digali dari dalil-dalil *naṣṣ* yang *ẓanni* dan hasil *ra'y ṣaḥāba* dari masalah-masalah yang tidak terdapat dalilnya dalam al-Qur'an dan hadis yang telah dikodifikasikan menurut mazhab tertentu. Karena itu, *fatwā ṣaḥāba* merupakan hasil *ijtihad ṣaḥāba* sebagai ulama generasi sesudah Nabi saw. dan menjadi *hujjah* bagi para ulama sampai zaman sekarang yang telah mewarnai pemikiran hukum Islam, seperti *fatwā* Abū bakar, 'Umar, 'Uthmān, 'Alī, 'Abdullāh bin 'Abbās, 'Abdullāh bin Mas'ūd dan *ṣaḥāba-ṣaḥāba* lainnya. Setidaknya *fatwā ṣaḥāba* dapat dijadikan *hujjah* dalam *istinbāt* hukum Islam, ketika muncul masalah-masalah baru dan tidak ditemukan dalil ayat maupun hadis.

Keyword: eksistensi; *fatwā ṣaḥāba*; *hujjah*; perkembangan pemikiran hukum Islam

Introduction

Fatwā Ṣaḥāba (the statement of the companions) is the result of the thought of the *ṣaḥāba* in the *ijtihād* to establish the law of cases that are not contained in the Qur'an and the traditions of the Prophet. The statement of the companions in Islamic legal thinking can be used as a proof, because a companion is a person who can be accepted by the news in establishing the law. Companions are people who meet and can know and understand the actions of the Messenger of Allah during the enactment of the law.¹ Establishment of the law preceded by events or questions of the people who were witnessed directly by the companions who were constantly accompanying the Prophet. The companions who were always with the Prophet were *Khulafā' al-Rāshidīn*, 'Abdullāh ibn 'Abbās, 'Abdullāh ibn Mas'ūd, Anas bin Mālik, Zayd bin Thābit, 'A'isha, Umm Salāmah and the wives of the Prophet, Abū Hurayrah, 'Abdullāh ibn 'Umar, Mu'adh ibn Jabbāl, and Abū Mūsā al-Ash'ārī and other companions. Companions are people who are more aware of the *tashrī'* process so that they too know the method followed by the Prophet when an event was confronted with him.²

Companions are those who believe in the Prophet, associate with him for a long time and die in an Islamic state. Al-Baqilani and several other scholars, such as Ibn Faruk and Ibn Sam'an, stated that the Companions were people who had long been associated with the Prophet and learned a lot from the Prophet by following and taking his teachings.³ When faced with a new problem, they identify by looking at the text of the Koran to find out if the new problem is contained in it, if no verses are found relating to the problem that arises, they see the hadith, if not found in the hadith they ask for information from other *ṣaḥāba*, did they hear anything from the Prophet regarding the problem he was facing. This is like when Abū Bakr was asked about the grandmother's inheritance part. First, he looked for verses of the Qur'an relating to the matter of inheritance, then he gathered the companions to be

¹Rasyad Hasan Khalil, *Tarikh Tasyri': Sejarah Lagalisasi Hukum Islam*, ed. Nadirsyah Hawari (Amzah, 2009), 58.

²Rasyad Hasan Khalil, *Tarikh Tasyri': Sejarah Lagalisasi Hukum Islam*, 78; Nurdin Juddah, 'Metode Ijtihad Hakim dalam Penyelesaian Perkarā: Studi Kasus di Pengadilan Tinggi Agama Makassar Sulawesi Selatan' (UIN Alauddin Makassar, 2010), 32.

³M. Sulaymān 'Abdullāh Al-Asqar, *Al-Wāḍiḥ Fī Uṣūl Al-Fiqh* (Dār al-Nafā'is, 2001), 131.

asked for information on whether there was a history of the Prophet about the inheritance of the grandmother.⁴

Then al-Mughīrah testified that the Prophet gave him one-sixth. His statement was strengthened by the statement of Muḥammad ibn Maslamah after that Abū Bakr set 1/6 for the grandmother. The Companions never innovate in matters relating to religion, if they did not have the theological foundation that contained them, either from the Qur'an or from the Prophet's hadith. New problems that emerge as a logical consequence of the socio-cultural and socio-political development of the people which are very dynamic due to the increasing breadth of Islam and the changing circumstances surrounding them and not all problems have a clue based on the Koran and the hadith of the Holy Prophet, in fact many of them are truly new and do not have religious practical instructions.⁵ The Companions acted as mujtahids explaining the positions of the texts and connecting with each other and giving *fatwās* in matters not in the texts. It is they who act as legislative bodies and they also get that right not through election, but solely because of their expertise and skills.

The sources or propositions of Islamic law that are used in the time of companions are the Qur'an, hadith and *ijtihād* (*ra'y*).⁶ *Ijtihad* is done by *ṣaḥāba* in the form of a collective, *ṣaḥāba* gather and deliberate on the law of a case. The results of a *ṣaḥāba's* discussion is called *ijmā'*. Even though the Companions held deliberations but between them there were still differences in the legal status caused by the nature of the Qur'an and hadith as well as differences in *ra'y* in addition to socio-culture which clearly influenced. This paper seeks to examine some of the issues surrounding the existence of the *fatwā* of *ṣaḥāba* and their validity as a source of law disputed by the scholars.

***Fatwā Ṣaḥāba* in the Development of Islamic Legal Thought**

Fatwā is etymologically meaningful *وَاسْتَفْتَيْتُهُ فِيهَا فَأَفْتَانِي إِفْتًا وَفَتِي* means "I asked him for a *fatwā* on the matter, and he gave me a *fatwā*".⁷ Whereas in terminology, *fatwā* means the explanation of sharia law over a problem from existing problems, which are supported by propositions derived from the

⁴Madhī Faḍlullāh, *Al-Ijtihād Wa Al-Mantiq Al-Fiqh Fī Al-Islām* (Beirut: Dār al-Ṭalī'ah, 1987), 45; Aḥmad Ibrāhīm Bik, *Tārīkh Al-Tashrī' Al-Islāmī* (Kairo: Dār al-Anṣār, n.d.), 23.

⁵Jalāl al-Dīn 'Abd al-Raḥmān Al-Suyūṭī, *Al-Radd 'alā Man Akhḍad Ilā Al-Arḍ Wa Jahila Ann Al-Ijtihād Fī Kullī 'Aṣr Farḍ* (Beirut: Dār al-Kutub al-'Ilmiyah, 1983), 67.

⁶Jaih Mubarak, *Sejarah dan Perkembangan Hukum Islam* (Bandung: Remaja Rosda Karya, n.d.), 23.

⁷HLM. A. Achyar Aminudin Khairul Umam, *Ushul Fiqh II* (Bandung: Pustaka Setia, 1989, 173).

Qur'an, sunnah, and ijtiḥad. *Fatwā* is a matter that is very urgent for humans, because not everyone is able to explore the shari'ah laws. As for ijtiḥad, according to al-Āmidī, it means:

إِسْتِفْرَاحُ الْوَسْعِ فِي تَحْقِيقِ أَمْرٍ مِنَ الْأُمُورِ مُسْتَلْذِمٌ لِلْكَفَاتِ وَمُسَقَّقٌ.⁸

Meaning: "Describe all abilities in researching and studying a case that necessitates difficulties and difficulties".

Based on the explanation above, it was concluded that the *fatwā* was an explanation of sharia law on various kinds of problems that occurred in the midst of the community. If a *fatwā* is an explanation of sharia law on a particular issue, then the rules for taking a *fatwā* are not the same as the rules of ijtiḥad. Thus, a *muftī* is the same as *mujtahid*.

Ijtiḥad is interpreted as:⁹

إِسْتِفْرَاحُ الْوَسْعِ فِي طَلَبِ الظَّنِّ بِشَائِعِ مِنْ أَحْكَامِ الشَّرْعِيَّةِ عَلَيَّ وَاجِبٍ مِنَ النَّفْسِ الْعَجْزِي عَنِ الْمَزِيدِ فِيهِ.

Meaning: "Pouring out all his ability to explore the laws of *syara* from the postulates of *ẓannī*, until he felt unable to make more effort than he had poured out".

Based on the above definition it can be understood that *fatwā* is the result of ijtiḥad of the *muftīs* or *mujahids*. *Fatwā* is a process of ijtiḥad which is carried out by digging sharia law from the arguments that are *ẓannī* by devoting all their energy and abilities so that it is no longer possible for him to make more effort.

Fatwās are recognized as ijtiḥad if they meet the following three conditions:¹⁰

- 1) *Muftī* in ijtiḥad is only on the arguments of *ẓannī*. This is because according to al-Āmidī, the *qaṭ'ī* (certain) laws are not explored based on the ijtiḥad process. The law contained in the texts of the *qaṭ'ī* does not require any other interpretation. There is no contradiction or multi-interpretation of the texts of the *qaṭ'ī*. On this basis, ijtiḥad does not apply to matters of

⁸Alī Ibn-Abī 'Alī Al-Āmidī, *Al-Iḥkām Fī Uṣūl Al-Aḥkām*, II. (Beirut: Dār al-Kitāb al-'Arabī, 1984), 250.

⁹Satria Effendi, *Ushul Fiqh*, ed. M. Nurul Irfan Aminuddin Ya'kub (Jakarta: Kencana Prenada Media Group, 2008), 245.

¹⁰HLM. A. Achyar Aminudin Khairul Umam, *Ushul Fiqh II*, 140-141.

faith, nor the laws of sharia which the appointment is certain. For example the punishment of cutting off hands for thieves, hadd for adulterers, killing for apostates and so forth.

- 2) Muftī in ijtihad do the process of extracting sharia law, not the process for things that can be understood directly by reason, or cases that can be sensed. Research and trials in the laboratory to produce a hypothesis is not called ijtihad
- 3) A muftī in doing ijtihad must seriously by exerting the peak of his energy and abilities, to the extent that he cannot possibly make more effort than he has done. A muftī is not said to be doing ijtihad if he only devotes some of his abilities and energy, even though he is still able to make more effort than he has done.

Ṣaḥāba, as stated by the ulama of *uṣūl*, give indications to *ṣaḥāba* or people who can be accepted by the news in establishing the law. this is because it is impossible for someone who only met briefly to know and understand how the actions of the Prophet. during the *tashrī'* process. In addition, many legal provisions are preceded by events or questions, so that people who witness directly can understand the legal status of the event. Among the companions of the Apostle who accompanied him continuously were al-Khulafā' al-Rāshidīn, 'Abdullāh Ibn Mas'ūd, Anas bin Mālik, Zayd bin Thābit, 'Aisha, Umm Salāmah and the Apostles' wives, Abū Hurayrah, 'Abdullāh Ibn 'Umar, Mu'ādh Ibn Jabbāl, and Abū Mūsā al-Ash'arī. As a person who is close to the Apostle, a companion is someone who knows more about the *tashrī'* process so that they also know how the method or method adopted by the Prophet when an event is presented to him. The lesson they received from the Prophet was to formulate a legal problem that came after the Prophet's death. The steps of the companion have an important role for the next legal determination. They help the people in understanding the Qur'an and the Sunnah. The method of *istinbat* used by *ṣaḥāba* is a model of ijtihad.

As for the terminology, the scholars differed in defining *ṣaḥāba*. According to the hadith scholars, a companion is a person who meets with the Prophet, believes in him, and dies in Islam.¹¹ This definition gives an understanding that (1) Companions are people who meet with the Prophet, absolutely, whether

¹¹ Abd Al-'Aziz, 'Al-Ṣaḥābī', in *Al-Mawsū'ah Al-Islāmiyah Al-'Ammah* (Kairo: Majlis A'lā, 2003), 846; 'Alī Jum'ah, *Qawl Al-Ṣaḥābī 'inda Uṣūliyyīn* (Kairo: Dār al-Risālah, 2004), 9.

they meet only once or often, for a long time or for a while. (2) A person who meets with the Prophet, after he has been sent as an Apostle. (3) Someone who is a contemporary of the Prophet, but does not meet him, is not called a *ṣaḥāba* but a *mukhadharam*. *Ṣaḥāba*, according to the ulama of *uṣūl*, are all people who believe in the Prophet, associate with him for a long time, and die in an Islamic state. Meanwhile, according to al-Baqilani, Ibn Faruk, and Ibn Sam'an, a companion is a person who socialized in a long time and studied with the Prophet by following him and taking lessons from him.¹²

Some of the definitions above explain that there are slight differences in defining *ṣaḥāba*. However, all agreed that the Companions were people who believed in the Prophet and died in an Islamic state. The difference lies in whether or not the meeting with the Prophet. The scholars of hadith do not require the necessity of frequently meeting the Prophet, but only once is enough. This is because they consider that the Companions are hadith narrators and do not demand that they frequently meet and associate with the Prophet. Therefore, the Companions differ in quantity in narrating the hadith. Whereas the ulama of *uṣūl* required the duration of association because they considered that they were the generation that would convey Islamic laws and this required a long association with the Prophet so that they could produce knowledge and deep understanding.

The Influence of *Fatwā Ṣaḥāba* Against Islamic Legal Thought

The death of the Holy Prophet, certainly had a great influence. Even 'Umar Ibn Khaṭṭāb came to say "*whoever says Muhammad is dead, I will kill*". Abū Bakr later confirmed that the Prophet has really died. In this case, he based on Surah Āli 'Imrān Verse 144. This attitude of Abū Bakr was considered the first *ijtihād* after the Prophet died.¹³

The task of the Companions became difficult after the Prophet's death was caused by;

- 1) At the time when the Prophet was alive, Islamic law in the aspect of law was applied as community law. This is because the Holy Prophet had two authorities at once, religious and

¹²M. Sulaymān 'Abdullāh Al-Asqar, *Al-Wādiḥ Fī Uṣūl Al-Fiḥ*, 131.

¹³Bozena Gajane Strzyzewska, *Tārīkh Al-Tashrī' Al-Islāmī* (Beirut: Dār al-Awqāf al-Jadīdah, 1980), 39.

political power. This situation is certainly still held tight by them.¹⁴

- 2) Their attitude to not do something that was never exemplified by the Holy Prophet, such as the attitude of Abu Bakr when given advice about the need to collect al-Qur'an in one manuscripts "*kayf naf'al shay' lam yaf'alhu Rasūlallāh*".¹⁵
- 3) Internal encouragement to carry out and guard the purity of Islamic teachings as the main task of replacing the Messenger of Allah.
- 4) External factors such as the emergence of new problems that demand responses and solutions that have a theological foundation.

The behavior and deeds of the Companions will not be found without the basis of the Qur'an and sunnah.¹⁶ *Ṣaḥāba* never innovate in matters relating to religious matters, if they do not have a theological foundation that holds them back. Meanwhile, new problems must emerge as a logical consequence of socio-cultural and socio-political developments due to the wider expansion of Islam and the changing circumstances surrounding it. Not all of these problems have a precedent from the hadith of the Prophet, in fact many of them are truly new that do not have practical religious instructions.

Islamic teachings that originate from the Qur'an and hadith have been believed to guide every human behavior.¹⁷ On this basis the Prophet's companions had no choice but to commit *ijtihād*. Therefore, also the scholars agree that the law of *ijtihād* is *farḍ kifāyah* which means to forbid the absence of a period of *ijtihād* activities. Indeed, when the Prophet was still alive, if there were problems, the Companions could directly ask him or if the Prophet's position was far away, they made their own pilgrimage and then conveyed the results of their *ijtihād* to the Prophet. All matters became clear, whether confirmed or corrected by the Holy Prophet.¹⁸

¹⁴Muhammad Zuhri, *Hukum Islam dalam Lintasan Sejarah* (Jakarta: Remaja Rosda Karya, 1996), 37.

¹⁵Muhammad Ibn Ismā'īl Al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, III. (Beirut: Dār al-Ṣa'b, n.d.), 175.

¹⁶Muhammad 'Alī Al-Sāyis, *Tārīkh Al-Fiḥ Al-Islāmīyah*, 52.

¹⁷Al-Suyūṭī, *Al-Radd 'alā Man Akhlad Ilā Al-Arḍ Wa Jahila Ann Al-Ijtihād Fi Kulli 'Aṣr Farḍ*, 67.

¹⁸Muhammad Mūsā Tuwānā, *Al-Ijtihād Wa Madā Ḥajātinā Ilayh Fī Hādihā Al-'Aṣr* (Kairo: Dār al-Kutub al-Ḥadīthah, n.d.), 37.

Although the Holy Prophet had *tashrī'* authority, he never forbade his companions from performing jihad. In fact, the Holy Prophet appreciated the action.¹⁹ That proves that the Prophet legitimized the actions of his companions in the pilgrimage. But after the Prophet's death, there was no such authority anymore. So that what is done by the successors of the Prophet's leadership is only looking for a basis for solving any problems that arise in the Qur'an and the sunnah. If there is no clue from both of them, they do *ijtihad* by means of deliberation with the other superior authorities. This period is called the period of *al-tafsīr al-tashrī'*, which is the pioneering period of the practice of *istinbāṭ* (excavation; formulation) of law on problems that do not have a clue in the text.²⁰ This is what marked the beginning of the first *fiqh* period in the history of the development of Islamic legal thought.²¹

According to al-Sāyis, *fatwā ṣaḥāba* has a broad meaning, namely their *ijtihad* activities which include searching for religious texts according to the problem, performing *qiyās*, *istiḥsān*, *sadd al-dharī'a*, *maṣlaḥa mursala*, and so on.²² However, these terms did not appear at that time as the treasury of Islamic legal terms except during the time of the Imams of the school.

***Fatwā Ṣaḥāba* and its Prosperity in the Thought of Islamic Law**

Fatwā Ṣaḥāba in the history of the development of Islamic legal thought is divided into two categories, first; the words of a *ṣaḥāba* that has been agreed upon and secondly; disputed words of *ṣaḥāba*.

- a. If the words of *ṣaḥāba* was spread among the other *ṣaḥāba* and no one is known to deny it, then it can be used as evidence. The words of this type of *ṣaḥāba* are agreed upon *ijmā' sukūti* can be used as *ḥujjah*.²³
- b. If the words of a *ṣaḥāba* come from his own opinion or *ijtihad* then this is a dispute about its validity to be used as evidence in Islamic legal thinking.

¹⁹Muḥammad Mūsā Tuwānā, *Al-Ijtihād Wa Madā Ḥajātinā Ilayh Fī Hādihā Al-'Aṣr*, 30.

²⁰Strzyzewska, *Tārīkh Al-Tashrī' Al-Islāmī*, 360.

²¹Aḥmad Ibrāhīm Bik, *Tārīkh Al-Tashrī' Al-Islāmī*, 16.

²²Al-Sāyis, *Tārīkh Al-Fiqh Al-Islāmiyah*, 43.

²³Abd al-Karīm Zaydan, *Al-Wajīz Fī Uṣūl Al-Fiqh* (Beirut: Mu'assasah al-Risālah, 1996), 260-261.

Muhammad Sulaiman Abdullah al-Asyqar added several points regarding the types of *fatwās ṣaḥāba*, those are:²⁴

- a. Al-Khulafā al-Rāshidīn's words in a problem. The scholars agreed to make it a *ḥujjah* as explained in the hadith of the Holy Prophet, "*you should follow my sunnah and the sunnah of the al-Khulafā' al-Rāshidīn after me*".
- b. The words of a companion who is based on his thoughts and is opposed by other *ṣaḥāba*. Some scholars believe that such words of *ṣaḥāba* cannot be used as evidence. While other scholars from the *uṣūliyyīn* and jurists require to take it.

Based on the description above it is understood that the words of *ṣaḥāba* have several kinds of variations. All scholars agree that the words of a *ṣaḥāba* that is disputed as validity of *ḥujjah* are: (1) the words of a companion that comes from his own opinion and *ijtihād*; (2) the words of *ṣaḥāba* over problems that can be the object of *ijtihād*; (3) the words of *ṣaḥāba* that are not spread among the other *ṣaḥāba* and no *ṣaḥāba* who deny this opinion; (4) the words of the companions on a problem for which there are no texts, either the Qur'an or the hadith; and (5) the words of *ṣaḥāba* who reach the next generation, such as *tabi'in* and continue to the present day.

As for the words of *ṣaḥāba* who do not fall into the above categories, can be used as evidence in the taking of Islamic law. When there are differences of opinion regarding the validity of the *fatwā* of the Companions as a source of Islamic law, it can be understood that the *fatwā* of the Companions referred here is the *fatwā* of the companions that are still disputed regarding their validity. Because of this, not all the *fatwās* of *ṣaḥāba* are disputed as validity.

Some Ulema's Reasons in Accepting *Fatwā Ṣaḥāba* as *Ḥujjah*

Some scholars who argue that the *fatwā* of *ṣaḥāba* can be used as absolute *ḥujjah* and take precedence over the *qiyās* include Mālik and Aḥmad.²⁵ The legal basis are:

- a. Qur'an Surah Āli 'Imrān (2) Verse 110
Meaning: "*You are the best nation produced [as an example] for mankind. You enjoin what is right and forbid what is wrong and*

²⁴Al-Asqar, *Al-Wāḍiḥ Fī Uṣūl Al-Fiqh*, 134-135.

²⁵Muṣṭafā Al-Baghā, *Āthār Adillah Al-Mukhtalaf Fihā Fī Al-Fiqh Al-Islāmī*, 343-344.

believe in Allah . If only the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient."

b. Qur'an Surah Yāsīn (36) Verse 15

Meaning: "They said, "You are not but human beings like us, and the Most Merciful has not revealed a thing. You are only telling lies."

c. The Prophet's hadith

The command of the Holy Prophet to always follow his companions and follow the sunnah of al-Khulafā al-Rāshidīn is a strong argument that the Companions of the Prophet must be obeyed. More than that, in a narration of the history of al-Tirmīdhī and Hudhayfah, clearly the Prophet ordered to follow Abū Bakr and 'Umar. Then in another narration, the Holy Prophet also said that the best generation after his time was the generation of *ṣaḥāba* and *tābi'īn*.

d. *Ijmā'*

For example, when 'Abdurrahmān bin 'Awf became the head of the *khalīfa* election committee after 'Umar, he first offered 'Alī to be a caliph on condition that he followed the sunnah of the two previous caliphs, but 'Alī refused. Then he offered 'Uthmān the same terms and 'Uthmān accepted it. At that time there was no companion who denied the proposed conditions so that they reached the degree of *ijmā'*.

e. *Dalīl 'Aqlī*

The methods of *simā'ī* and *tawkīf* of the companions are very strong and it is customarily impossible for them to obey except based on the history they have heard. In addition, they will not claim based on their opinion except in an emergency. Meanwhile, the words of *ṣaḥāba* although originating from *ijtihād* but it can be ascertained their *ijtihād* is strong. This is because they know the process of the descent of the Qur'an and the methods that the Prophet used to convey and explain various laws in a matter.

The Reason Some Scholars Refuse the *Fatwā Ṣaḥāba* as *Hujjah*

Some scholars who reject the *fatwā* of *ṣaḥāba* as a *ḥujjah* include al-Ghazālī, the majority of al-Ash'aria, Mu'tazilah and so on. The propositions they use are:

a. Qur'an Surah al-Ḥashr (59) Verse 2

Meaning: "...So take warning, O people of vision."

The verse commands humans to *ijtihad*. Whereas *ijtihad* is different from imitation. If *ijtihad* is an attempt to find proof in a problem, then *taqlīd* is to take another opinion without an argument. Taking *fatwā* thus falls into the category of imitation. This is certainly contrary to the word of Allah in Surah al-Nisā' (4) Verse 59 as follows.

Meaning: "O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result."

Fatwā ṣaḥāba is one of the products of *ijtihad*. While their *ijtihad* can be right or wrong, because they are not *ma'sūm* (awake from making mistakes). On the contrary, the *ṣaḥāba* have agreed that their *ijtihad* may be challenged if it is not appropriate. As Abū Bakr and 'Umar did not blame those who refused their *ijtihad*. However, it is obligatory for all mujtahids to do *jihad* on issues that are included in the object of *ijtihad*.

b. Al-Shāfi'ī's opinion of Companions *fatwā*²⁶

Al-Shāfi'ī explained in detail about this. He makes the *fatwā* of *ṣaḥāba* as *ḥujjah* if the *ṣaḥāba* agree on a problem that is not argued in the Qur'an or hadith and there are no *ṣaḥāba* who reject that opinion. In this situation, the *fatwā* of *ṣaḥāba* takes precedence over *qiyās* because it is included in the *ijmak* category. For example, the obligation to slaughter one sheep for those who hunt doves in a state of *Ihram*. This follows the deeds of the *ṣaḥāba* who slaughter the sheep for anyone who hunts in the state of *iḥrām*.

If there is a difference of opinion among the *ṣaḥāba* on a problem, then the opinion is taken closer to the Qur'an, hadith,

²⁶Jum'ah, *Qawl Al-Ṣaḥābī 'inda Uṣūliyyīn*, 40.

ijmā' and *qiyās* or opinions supported by other propositions. For example, al-Shāfi'ī took the *fatwā* of *ṣaḥāba* in determining when the last *talbiyah* was echoed during the *'umrah* or the words of 'Umar in *khiyār* disgrace in marriage or the words of 'Alī in the law of the woman who was left by the missing husband. If the *fatwā* of *ṣaḥāba* does not agree and no one violates, then al-Shāfi'ī puts the *qiyās* before the *fatwā* of that companion. Al-Shāfi'ī further makes the *fatwās* of *ṣaḥāba* as an explanation in understanding the Qur'an and hadith. Like the explanation of *ṣaḥāba* about the meaning of *al-jazā'* in Surah al-Mā'idah (5) Verse 95, the obligation of *zakat* on the property of small children and crazy people and so on.²⁷ The difference of opinion of the scholars regarding the position of the *fatwā* of *ṣaḥāba* as one of the sources of *tashrī'* also causes a difference in punishing a problem that no texts explain.

Conclusion

Qawl al-Ṣaḥāba has a strong influence on the development of Islamic legal thought, then until now. When Muslims discover new problems, the *fatwā* of the Companions can be used as a solution to the legal support of Islamic law. The influence of *ra'y* which was done by *ṣaḥāba* in devotion, has inspired the thoughts of Muslims until now. The *ra'y* is here of course with a broad understanding that includes *qiyās*, *istiḥsān*, *istiṣḥāb* (*al-barā'a al-aṣliya*), *sadd al-dharī'ah* and *maṣlaḥah mursalah*. Everything is framed with a deep understanding of the *maqāṣid* (the purpose of Islamic law) and the principles of the noble Islamic law. The scholars categorize *qawl al-ṣaḥābī* as one source of legal decision which is still being disputed. In contrast to Qur'an, sunnah, *ijmā'* and *qiyās* that have been agreed upon as sources of Islamic law.[a]

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²⁷Muṣṭafā Al-Baghā, *Āthār Adillah Al-Mukhtalaf Fihā Fi Al-Fiqh Al-Islāmī*, 110-122.

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