

Justice Ontology; A Study of 'Umar Ibn Al-Khattāb's *Ijtihād*

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Abstract

The paper was conducted to discover the nature of justice in the view of 'Umar Ibn Al-Khattāb and to reveal his *ijtihād* from the point of view of a philosophical theory of justice. This research includes philosophical research that is historical-factual about a character with the type of library research then analyzes and presents it in a descriptive form. This paper finds that the essence of justice in the view of 'Umar Ibn Al-Khattāb is acceptable behavior that is animated by the principle of equality. 'Umar Ibn Al-Khattāb has applied the principle of equality before the law. He treats reason and revelation in harmony and balance in his *ijtihād*. 'Umar Ibn Al-Khattāb drew inspiration from the intellect that Allah had given him by capturing universal values brought by the Koran, such as justice and equality, which are valid forever. This research contributes to the flexibility of 'Umar Ibn Al-Khattāb in *ijtihād*, which is imbued with the principle of equality.

Keywords: 'Umar Ibn Al-Khattāb; justice; philosophy; ontology; *ijtihād*

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Tulisan ini dilakukan untuk menemukan hakikat keadilan dalam pandangan 'Umar Ibn Al-Khattāb dan mengungkap *ijtihadnya* ditinjau dari sudut pandang teori keadilan filosofis. Penelitian ini termasuk penelitian filsafat yang bersifat historis-faktual mengenai tokoh dengan jenis penelitian pustaka kemudian menganalisis dan menyajikannya bentuk deskriptif. Tulisan ini menemukan bahwa hakikat keadilan dalam pandangan 'Umar Ibn Al-Khattāb adalah perilaku adil yang dijiwai oleh prinsip persamaan. 'Umar Ibn Al-Khattāb telah menerapkan prinsip kesamaan di hadapan hukum. Ia memperlakukan akal budi dan wahyu dengan selaras dan seimbang di dalam *ijtihadnya*. 'Umar Ibn Al-Khattāb memperoleh inspirasi dari akal budi yang telah Allah berikan pada dirinya dengan menangkap nilai-nilai universal yang dibawa Alquran, seperti keadilan dan persamaan yang berlaku selamanya. Penelitian ini memberikan kontribusi tentang fleksibilitas 'Umar Ibn Al-Khattāb dalam ber*ijtihad* yang dijiwai oleh prinsip persamaan.

Kata Kunci: 'Umar Ibn Al-Khattāb, keadilan; filsafat; ontology; *ijtihad*

Introduction

During prophetic times, the Holy Prophet was the source of law. He can answer any problems that arise. *Ṣaḥābahs* can see firsthand this practice in solving publicity problems, including legal issues. The Holy Prophet, as a unifying figure and a source of reference, was able to reduce conflicts and differences of opinion that occurred.¹

After the Prophet's death, to be precise, not many disputes arose during the time of Caliph Abū Bakr. Moreover, Abū Bakr was more focused on dealing with apostates and dissidents of zakat.² The burdens in law appeared and increased during the Caliph 'Umar Ibn Al-Khaṭṭāb time. This problem was in line with the expanding area of Islamic rule, accompanied by the complexity of the problem.

The Holy Prophet admired 'Umar. In a *ḥadīth* narrated by Bukhārī and Muslim, 'Āishah narrates that the Prophet Muhammad said about *muḥadithūn* (people who were inspired by the truth in their mouths) in previous people Prophet's followers had one of them, that person was 'Umar Ibn Al-Khaṭṭāb.³

As a leader, state and religion, 'Umar performed *ijtihād* to answer legal problems. Its *ijtihād* covers several areas of law, including faith, worship, *mu'āmalah*, *jināyah* (criminal), and *munākahah* (marriage). His *ijtihād* is sometimes in line with the text, but it is known to be liberal.⁴ Some of its controversial *ijtihād*, namely the distribution of *ghanimah* (spoils of war), distribution of zakat for converts, triple divorce, sale of *umm al-walad*, punishment for thieves, punishment for adultery, and *ta'zīr* (punishment provisions regulated by the government) for those who commit acts light

¹ Rafat Y Alwazna, 'Islamic Law: Its Sources, Interpretation and the Translation of It into Laws Written in English', *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 29 (2016), <https://doi.org/10.1007/s11196-016-9473-x>.

² Ocktoherrinsyah, 'Apostasy in Islam: Historical and Legal Perspectives1', *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 49, no. 1 (2015): 154-55, <http://dx.doi.org/10.14421/asy-syir'ah.2015.%25x>.

³ ST. Halimang, *Praktik Hukum Umar Bin Khattab dan Peluang Implementasinya di Negara Hukum Indonesia* (Yogyakarta: Deepublish, 2017), 5.

⁴ Tasnim Rahman Fitra, 'Ijtihad 'Umar Ibn Al-Khaṭṭāb dalam Perspektif Hukum Progresif', *Al-Ahkam* 26, no. 1 (14 April 2016): 50, <https://doi.org/10.21580/ahkam.2016.26.1.705>.

punishment.⁵ His courage in doing *ijtihād* depart from the principles of justice that he believes in and the method of establishing the law that he applies. Therefore, the study of the nature of justice from the perspective of 'Umar Ibn Al-Khaṭṭāb deserves to be researched.

This paper raises two main questions: What is the nature of justice in the view of 'Umar Ibn Al-Khaṭṭāb? How can 'Umar Ibn Al-Khaṭṭāb's *ijtihād* be viewed from the point of view of a philosophical theory of justice? By the subject matter, this paper aims to discover the nature of justice in 'Umar's view and reveal 'Umar's *ijtihād* from the point of view of a philosophical theory of justice. This research includes philosophical research that is historical-factual about characters. The material object in this paper is 'Umar Ibn Al-Khaṭṭāb's *ijtihād*, while the formal object is the philosophical theory of justice put forward by Majid Khadduri. This research is included in the library research category. The author presents the data in descriptive form. This paper can be used as a reference in legal studies, especially about the method of legal stipulation. It can be applied as a consideration in legal cases filed in court.

***Ijtihād* 'Umar Ibn Al-Khaṭṭāb**

Etymologically, *ijtihād* is *al-jahd* which means profound ability. According to Abū Zahrah's terminology, *ijtihād* is the mobilization of jurisprudence experts' capabilities in determining the law relating to the deeds of the argument in detail.⁶

'Umar Ibn Al-Khaṭṭāb positioned deliberation as the highest principle. This second caliph highly valued the opinions of the people around him. He once compared one person's opinion to a knotted thread, the opinion of two people

⁵ M Zaidi Abdad, 'Ijtihad Umar Ibn Al-Khattāb: : Telaah Sosio-Historis Atas Pemikiran Hukum Islam', *Istinbath Jurnal Hukum Islam* 13, no. 1 (2014): 42-43.

⁶ Muhammad Syukri Albani and Rahmat Hidayat Nasution, *Filsafat Hukum Islam dan Maqashid Syariah* (Jakarta: Kencana, 2020), 61; Hamid Pongoliu, 'The Existence of the Statement of the Companions (Fatwā Ṣaḥāba) and Its Hujjah in Islamic Legal Thoughts', *Al-Ahkam* 29, no. 2 (7 November 2019): 192, <https://doi.org/10.21580/ahkam.2019.29.2.4281>.

is like two tied threads, and the opinion of three people is like a rope that is tightly knotted and hardly untied.⁷

‘Umar Ibn Al-Khaṭṭāb was a companion of the Prophet who clung to the Koran and the Sunnah.⁸ Al-Dāruqūṭnī and al-Bazazar reported that while on the pulpit, ‘Umar Ibn Al-Khaṭṭāb gave a warning to people who rely on reason (*ahl al-ra’y*) labelled as opponents of the Sunnah, they do not memorize and collect *ḥadīths*. They give fatwas with the ability of his wits that end up misguided and misleading. Every Muslim must follow the Sunnah, not making it up. As long as we stick to the Sunnah, we will not go astray.⁹

‘Umar never sent a *risālah al-qaḍā’* to Abū Mūsā al-Ashy’arī, which contained an order to equate the assembly (trial) and views. For cases where the law is not found in the Koran and Sunnah, the alternative is an analogy (*qiyās*). ‘Umar said, "*identify cases with similarities and similarities, then make an analogy on each new case against similar old cases*".¹⁰

The Holy Prophet taught *ijtihād* to his friends for a long time. The most phenomenal case and the legitimacy of *ijtihād* was Muādh ibn Jabbal to Yemen.¹¹ Although ‘Umar was known to be very obedient and adhering to the Koran and Sunnah, Munawir Sjadzali noted that rulers, judges, scientists who adopted legal wisdom, textual legal decisions were not always in line with the sound of the

⁷ Ahmad Hatta, *The Golden Story of Umar Bin Khaththab* (Jakarta: Maghfirah Pustaka, 2013), 258.

⁸ Abdul Rokhmat Sairah, M Mukhtasar Syamsuddin, and Arqom Kuswanjono, ‘Religious Experience and Character Building: Philosophical Study of The Spiritual Dynamics of Umar Bin Khattab(583-644 AD)’, *International Journal of Arts and Social Science* 2, no. 6 (2019): 62–63, www.ijassjournal.com.

⁹ Muhammad Abdul Aziz Al-Halawi, *Fatwa dan Ijtihad Umar Bin Khattab, Ensiklopedia Berbagai Persoalan Fiqih*, ed. Zubeir Suryadi Abdullah (Surabaya: Risalah Gusti, 2003), 4.

¹⁰ Ibn al-Qayyim Al-Jawziyyah, *I’lām Al-Muwaqqi’in ‘an Rabb Al-‘Ālamīn*, ed. Muḥammad Muḥyiddin ‘Abdul Majīd (Beirūt: Dār al-Fikr, n.d.); Fitra, ‘Ijtihad ‘Umar Ibn Al-Khaṭṭāb dalam Perspektif Hukum Progresif’, 54–55.

¹¹ Muhammad Husain Haekal, *Umar Bin Khattab Sebuah Telaah Mendalam Tentang Pertumbuhan Islam dan Kedaulatan Masa Itu*, ed. Ali Audah (Bogor: PT Tintamas Indonesia, 2015), 684–85; Maskur Rosyid, ‘Istiṣḥāb Sebagai Solusi Pemecahan Masalah Kekinian’, *Syariah Jurnal Hukum dan Pemikiran* 18, no. 1 (30 June 2018): 45, <https://doi.org/10.18592/sy.v18i1.2125>.

text. Sometimes it's completely different. It is like in 'Umar's *ijtihād* in the following cases.¹²

1. Distribution of *ghanimah* (booty)

Normatively, the distribution of *ghanimah* after deducting one fifth for religious and social activities, such as donations for orphans and the poor, four-fifths (the remainder) is distributed to those who participated in the war. This provision is mentioned in the Koran Surah Al-Anfāl Verse 41.¹³ The assets are divided into movable and immovable assets.

When 'Umar and his troops succeeded in conquering Iraq, Syria and Khurasan, he refused to share immovable property in the form of lands to the fighters who participated in the war. 'Umar chose to let the owner control the land but charged the owner with taxes and *jizyah*. Taxes and *jizyah* were administered by *bayt al-māl wa al-tamwīl* which were earmarked for a regular income to war participants and finance government activities. This *Ijtihād* 'Umar faced many challenges from the fighters who participated in the war even though he was able to convince those who opposed it. It can be said that 'Umar's view is based on the paradigm that the public benefit takes precedence over the benefit of the individual.¹⁴

2. Distribution of zakat for converts

Al-Tawbah Verse 60 states that converts are part of *mustahiq*. 'Umar stopped giving zakat to converts which had been practiced since the time of the Prophet and Abū Bakr. The consideration was that the Holy Prophet used to give zakat to converts to be more interested in Islam, but now Islam is strong and does not need them anymore.¹⁵

¹² Munawir Sjadzali, *Ijtihad Kemanusiaan* (Jakarta: Paramadina, 1997), 37–41; Vita Fitria, 'Reaktualisasi Hukum Islam Pemikiran Munawir Sadzali', *Akademika: Jurnal Pemikiran Islam* 17, no. 2 (24 October 2012): 1–18, <https://ejournal.metrouniv.ac.id/index.php/akademika/article/view/190>.

¹³ Roibin, *Sosiologi Hukum Islam (Tela'ah Sosio Historis Pemikiran Imam Syafi'i)* (Malang: UIN Malang Press, 2008), 18.

¹⁴ Amir Syarifuddin, *Pembaharuan Pemikiran dalam Hukum Islam* (Padang: Angkasa Raya, 1993), 97; Abdad, 'Ijtihad Umar Ibn Al-Khattâb: : Telaah Sosio-Historis Atas Pemikiran Hukum Islam', 43; Ahmad Hasan, *Pintu Ijtihad Sebelum Tertutup*, ed. Agah Gamadi (Bandung: Penerbit Pustaka, 1984), 108; Azhari Akmal Tarigan, 'Umar Ibn Al-Khaththâb dan Siyâsah Syar'iyah', *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 32, no. 1 (13 February 2008): 80, <https://doi.org/10.30821/MIQOT.V32I1.157>.

¹⁵ Tarigan, 'Umar Ibn Al-Khaththâb dan Siyâsah Syar'iyah', 74–77.

3. Divorce three

During the time of the Prophet and Abū Bakr, if a husband dropped three divorces at once, then only one divorce was counted. The legal consequence is that the husband can still return (reconcile) if he wants it during the waiting period (*'iddah*).¹⁶ 'Umar changed this practice. He changed the stipulation that three *talaqs (talaq bā'in)* were dropped simultaneously. The consideration is that many husbands easily pronounce triple divorce and education for the people to not easy to drop the divorce.

4. Sales of *umm al-walad*

During the Prophet and Abū Bakr, when an owner impregnated his slave and gave birth to a child, the child who was born was a slave. It can be bought and sold. However, 'Umar made a different policy by stating that the child born was a free human being because his father was an independent person. The sale of *umm al-walad* was also prohibited because the genetics had mixed with the blood of the slaves. In this case, 'Umar also reminded Muslims that the Prophet's mission was to perfect noble morals.¹⁷

5. Punishment for thieves

Normatively, the punishment for a thief above a specific limit and price cut off the hand. This provision is as contained in Surah al-Mā'idah Verse 38. However, during the reign of 'Umar, this punishment was not applied absolutely. 'Umar had never implemented the law of cutting off the hands of thieves because the city of Medina was currently in a low season.¹⁸

6. Punishment for adultery

During the time of the Holy Prophet, if a man who was not married committed adultery, he was flogged a hundred times and exiled for one year.¹⁹ One time 'Umar visited the Roman territory and met a man who was punished by being exiled to the region and witnessed firsthand the condition of the man's

¹⁶ Subhi Mahmasani, *Filsafat Hukum Islam* (Bandung: Al-Ma'arif, 1976), 83; Syarifuddin, *Pembaharuan Pemikiran dalam Hukum Islam*, 73.

¹⁷ Younus Y. Mirza, "The Slave Girl Gives Birth to Her Master": Female Slavery from the Mamlūk Era (1250–1517) to the Islamic State (2014–)', *Journal of the American Academy of Religion* 85, no. 3 (September 2017): 577–99, <https://doi.org/10.1093/jaarel/lfx001>.

¹⁸ Mahmasani, *Filsafat Hukum Islam*, 69.

¹⁹ 'Abd al-Raḥmān Al-Juzayrī, *Kitāb Al-Fiqh 'alā Al-Madhāhib Al-Arba'āh* (Beirut: Dār al-Fikr, 1986); Muḥammad Ibn 'Alī Al-Shawkānī, *Nayl Al-Awṭār*, vol. 4 (Cairo: Maktabah Dār Turāth, 1965), 73.

life. 'Umar then abolished the exile sentence considering that Muslims would not mingle and not be influenced by their enemies.²⁰

7. *Ta'zīr*

The type of punishment for both the perpetrator of crime and immorality has been determined with certainty.²¹ Normatively, a person should not be punished with more than ten lashes. However, 'Umar had once punished the forger of the *bayt al-māl wa al-tamwīl* seal with one hundred lashes.

The Nature of Justice in the Perspective of 'Umar Ibn Al-Khaṭṭāb

'Umar's concept of justice is reflected in the text of the speech he delivered before the people when he first assumed the position of caliph. He opened the broadest possible access so that justice was easily achieved. In his first speech, he emphasized that he would not allow people to do wrong or violate the rights of others. He will be hard on the wrongdoers. On the contrary, he will be gentle with honest people, obedient to religion, and act pretty.²²

'Umar's speech signs of justice can also be seen when he was about to send his troops to Qadisiah, which numbered 4,000. He emphasized that judge has its beginnings and signs in his speech. The symptoms of fairness are shame, generosity, gentleness, and kindness. Meanwhile, the beginning of a sense of justice is compassion. Allah made the door for everything. The fair door is *i'tibār*, and the key is *zuhd*. *I'tibār* is remembering death and preparing it with good practices. *Zuhd* is taking the rights of others and repaying them with the same or more ownership.²³

'Umar also enforced justice between the governors and the people. In deciding a case, he does not see the status of the person being judged, strong or weak, rich or poor, and all are the same in the eyes of the law. 'Umar has succeeded in upholding justice on a practical level with great success. To the

²⁰ Mahmasani, *Filsafat Hukum Islam*, 43; Abdad, 'Ijtihad Umar Ibn Al-Khaṭṭāb: Telaah Sosio-Historis Atas Pemikiran Hukum Islam', 47.

²¹ Azhari Akmal Tarigan, 'Ta'zir dan Kewenangan Pemerintah dalam Penerapannya', *AHKAM: Jurnal Ilmu Syariah* 17, no. 1 (7 January 2017), <https://doi.org/10.15408/ajis.v17i1.6223>.

²² Haekal, *Umar Bin Khattab Sebuah Telaah Mendalam Tentang Pertumbuhan Islam dan Kedaulatan Masa Itu*, 90.

²³ Achmad Sunarto, *Biografi Umar Bin Khaththab* (Surabaya: Aulia, 2014), 101-2.

extent that his name always goes hand in hand with justice and is difficult to separate.²⁴

The concept of justice applies not only to others but also to himself. 'Umar ordered that anyone who saw the mistakes in him (in character, decisions and attitudes) are welcome to correct those mistakes in a sermon. At that time, a person from the assembly stood up and shouted, "By Allah, if we see the bend, we will straighten it with our swords". 'Umar replied, "Praise be to Allah who has placed in this country the person who will straighten 'Umar's curves".²⁵

For 'Umar, both relatives and not had the same position in justice and truth. 'Alī Ibn Abī Ṭālib praised 'Umar Ibn Al-Khaṭṭāb's judge. 'Alī explained that 'Umar was a person who was not afraid of criticism from those who like to criticize. Allah determines the truth of his mouth and heart. When 'Umar spoke, an angel guided him and straightened his steps until people thought.²⁶

Upholding justice is part of the preaching of Islam. The principle of justice is the primary buffer in maintaining society and government.²⁷ Islam will not exist if it is rife with injustice and injustice practices. The enforcement of justice is an obligation that all elements in Islamic society must carry out. In 'Umar's view, upholding justice is a practical message for Islam, in which the human heart can be open to faith.²⁸

Apart from not looking at status and kinship relations, 'Umar's justice also did not look at the religion of the people he was dealing with. The son of the governor in Egypt, 'Amr Ibn al-'Aṣ, whose name was Muḥammad Ibn 'Amr, had experienced punishment from him. Once upon a time, Muḥammad Ibn 'Amr was having a horse race with Christian Qibti youth. The young man defeated Muḥammad Ibn 'Amr, then he did not accept and even whipped the young man. The young Christian Qibti then went to Medina to complain about his problem to 'Umar. After that, 'Umar summoned 'Amr Ibn al-'Aṣ and his son to Medina to

²⁴ Halimang, *Praktik Hukum Umar Bin Khattab dan Peluang Implementasinya di Negara Hukum Indonesia*, 53–54.

²⁵ Hatta, *The Golden Story of Umar Bin Khaththab*, 138.

²⁶ Faruq Gasim Anuz, *Kepemimpinan dan Keteladanan Umar Bin Khathab* (Jakarta: Dhiyaul Ilmi, 2020), 178.

²⁷ Abdul Rohim, *Jejak Langkah Umar Bin Khattab Kisah Pemimpin Besar yang Sederhana dan Keras dalam Kebenaran* (Yogyakarta: Mueeza, 2017), 85–86.

²⁸ Hatta, *The Golden Story of Umar Bin Khaththab*, 258.

be tried. 'Umar found Muḥammad Ibn 'Amr guilty and ordered the young Christian Qibti to flog him.²⁹ 'Umar's justice is facing public complaints against his governor's mistakes also occurred to the Governor of Kufah Sa'ad Ibn Abī Waqaṣ, Governor of Basrah Abū Mūsā al-Ash'arī, and Governor of Himsh Sa'īd Ibn 'Amīr.³⁰

Another proof that 'Umar does not differentiate between religions in being fair is the case that occurred between a Jew and a Muslim. Both of them complained about their problems to 'Umar. After hearing information from both parties, 'Umar decided the truth was on the side of the Jews. The Jew said, "*By Allah, you have selected correctly*".³¹

History has recorded that 'Umar did not care about the status of the person who filed a case against him in upholding justice. He did not differentiate between the strong or the weak, the rich or the poor. He will decide the claim based on the truth. One of 'Umar's success in keeping justice is adhering to the fact, despite himself and his family.³²

The concept of justice that stands out from 'Umar Ibn Al-Khaṭṭāb is the principle of equality before the law. This principle he emphasized *risālah al-qadā'*, which he sent to Abū Mūsā al-Ash'arī.³³ This order to uphold equality before the law has proven to be adopted by many modern states and is in effect today. Equality before the law is a condition for the realization of justice. When 'Umar refused to share immovable property in the form of land to the fighters who participated in the war, the text was not by the Koran. 'Umar prefers to let the owner control the land. However, they were burdened with taxes and *jizyah*, which were administered by *bayt al-māl wa al-tamwīl* and allocated for a regular income to those who participated in the war and paid for government

²⁹ Anuz, *Kepemimpinan dan Keteladanan Umar Bin Khathab*, 172-73.

³⁰ Ali Muhammad Ash-Shallabi, *Biografi Umar Bin Khathab*, ed. Khairul Amru Harahap and Akhmad Faozan (Jakarta: Pustaka al-Kautsar, 2008), 519-27; Hafsa Ayaz Qureshi and Syed Abdul Ghaffar Bukhari, 'Education as a Catalyst of Personality Development: A Case Study of 'Umar Bin Khattāb (R.A)', *Journal of Islamic & Religious Studies* 4, no. 2 (2019): 65, <https://doi.org/10.36476/JIRS.4:2.12.2019.11>.

³¹ Hatta, *The Golden Story of Umar Bin Khaththab*, 261.

³² Ash-Shallabi, *Biografi Umar Bin Khathab*, 137; Sairah, Syamsuddin, and Kuswanjono, 'Religious Experience and Character Building: Philosophical Study of The Spiritual Dynamics of Umar Bin Khattab(583-644 AD)'.

³³ Anuz, *Kepemimpinan dan Keteladanan Umar Bin Khathab*, 83.

activities. This decision contains the spirit of equality (justice) so that the spoils of war are effective. The landowners still enjoy it, the fighters can enjoy it as a steady income, and the wheels of government are helped to maximize services to the community.

The case of *umm al-walad* also shows the principle of equality as the essence of justice. A child born to a slave whose owner has impregnated it has the status of a free person and cannot be bought and sold. 'Umar Ibn Al-Khaṭṭāb upholds the value of equality and human values. Moreover, no one can choose whose womb will be born.

The Theory of Philosophical Justice

Majid Khadduri initiated the theory of philosophical justice. In the theology of justice from an Islamic perspective, he uses several approaches, namely: political justice, teleological justice, philosophical justice, ethical justice, legal justice, justice between nations, social justice, and changes in the concept of modern justice.

The term of justice uses the word '*adl*'. Synonyms of the word '*adl*' are *qist*, *qaṣd*, *istiqāmah*, *wasat*, and *mizān*. Meanwhile, the antonym for '*adl*' is *jawr*. Synonyms of the word *jawr* are *ẓulm* (wrong action), *tughyān* (tyranny), *mayl* (inclination), and *inhirāf* (deviation). The word '*adl*' comes from the verb '*adala*', which means, first, to straighten out, amend, and change, second, fleeing, departing, dodging from one road to another. Third, equal or equivalent or equate. Fourth, to balance or offset, be proportional or in a balanced state.³⁴

Justice is acceptable behavior, namely placing everything in its place or according to its portion. Fair does not have to be evenly distributed; it applies to everyone but is very subjective.³⁵ Justice is a general principle. The scale of justice may vary depending on the subject and the place.

³⁴ Madjid Khadduri, *Teologi Keadilan Perspektif Islam* (Surabaya: Risalah Gusti, 1999), 8; Syaakir Sofyan, 'Nilai Keadilan dalam Ekonomi Islam', *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 13, no. 2 (30 December 2019): 355–82, <https://doi.org/10.24239/blc.v13i2.499>.

³⁵ M. Agus Santoso, *Hukum, Moral dan Keadilan: Sebuah Kajian Filsafat Hukum* (Jakarta: Kencana, 2015), 87.

Khadduri explained that philosophical justice is defined and determined by philosophers who are not by revelation but following reason. The aim of Muslim philosophers was not to question the authority of revelation but to seek an understanding of justice as presented in Greek philosophers' work and make it clear and understandable to believers without the need to conform to creeds or faith. Khadduri divides philosophical justice into four kinds:³⁶

1. Rational justice as a balance between divine justice and natural justice
2. Reasonable justice as ideal justice
3. Sound justice as a statement of a social contract
4. Tough justice as natural justice

In studying rational justice as a balance between divine justice and natural justice, Khadduri adopted the concept of justice of the philosopher al-Kindī. The reason is an instrument that can lead people to understand the truth; however, there is a path (revelation) whose truth is single. The two ways must be considered harmonious and balanced. The notion of justice is identical with a quality (quality) inherent in humans and encourages them to do something right, shown and determined by reason. Justice is the center of all virtue; wisdom, courage, and fortitude. Justice is synonymous with the product of sense, but in the end, it gets inspiration from God, who instils reason in humans. Through the two paths of al-Kindī, rational justice aims to achieve two happiness; in this world (goodness in nature) and the hereafter (a form of moral goodness).³⁷

The concept of rational justice as ideal justice is adopted from al-Farabi's thought. Al-Farabi's theory of justice is closely related to the idea of political order (*al-Siyāsah al-Madaniyah*). Al-Farabi argues that no political charge can survive unless built based on the quality of excellence and perfection, and

³⁶ Khadduri, *Teologi Keadilan Perspektif Islam*, 115–16; Tamyiez Dery and Tamyiez Dery, 'Keadilan dalam Islam', *MIMBAR : Jurnal Sosial dan Pembangunan* 18, no. 3 (8 September 2002): 338, <https://doi.org/10.29313/mimbar.v18i3.78>.

³⁷ Khadduri, *Teologi Keadilan Perspektif Islam*, 116–21; Agus Romdlon Saputra, 'Konsep Keadilan Menurut Al-Qur'an dan Para Filosof', *Dialogia: Jurnal Studi Islam dan Sosial* 10, no. 2 (2 December 2012): 191, <http://jurnal.iainponorogo.ac.id/index.php/dialogia/article/view/310>.

justice. Humans may reach their perfection in three types of political community, namely;³⁸

1. a large community consisting of inhabitants of the world regions who are used to form the world-state;
2. medieval communities comprised of people or nations, which make up the nation-state; and
3. small communities confined to cities, which include a city-state.

In the view of al-Farabi, the central city is the smallest unit to achieve human perfection. The main cities that comprise one nation form the leading nation. Justice in this context, according to al-Farabi, is the highest virtue that humans seek to cultivate and cultivate in themselves and are the foundation upon which political order is established.

The concept of rational justice as a statement of a social contract put forward by Khadduri is identical to Ibn Sinā's idea of justice about a just city. The appropriate city that Ibn Sinā dreamed of was a place for residents who felt the need to come together to establish a political community through tacit consensus and agreement. Thus, a city must have legal instruments and a ruler to achieve this goal. A ruler is a prophet who has moral character and divine authority contained in his prophecy. He became the Prophet-Ruler and lawmaker who laid down laws to organize human relations in all its aspects.³⁹ Sharia is strictly enforced to maintain the household's integrity and reasonably regulate divorce and inheritance matters. Divorce is narrowed by refusing to give women the right to separate.⁴⁰

The rational concept as natural justice meant by Khadduri as a philosophical theory of justice is Ibn Rushd's idea of justice. Ibn Rushd refuses to understand al-Ash'arī, which says that justice is a manifestation of Allah's will. A measure to differentiate between just and wrongdoing has been contained in the sharia. According to Ibn Rushd, this doctrine is absurd and contrary to revelation and reason. Humans treat justice because they are eager to achieve a benefit for themselves. Allah does not need anything good for Himself. He treats justice

³⁸ Khadduri, *Teologi Keadilan Perspektif Islam*, 123–29.

³⁹ Ahwan Fanani, 'Gagasan Keadilan dalam Islam' (Semarang, n.d.).

⁴⁰ Khadduri, *Teologi Keadilan Perspektif Islam*, 129–33.

because justice flows from His perfection. Justice as a virtue is a quality of honesty and self-control. Justice persists in a country insofar as each of its citizens pursues virtue. The continuity of justice depends on the ruler who leads a nation. Such a ruler must be a philosopher because he is interested in science, investigates its nature and can teach it. Philosophers should master theoretical and practical sciences, like a king, to perfect their leadership skills. He needs wisdom and intellectual qualities. Likewise, law enforcers (decision-makers) also need the exact attributes. In Ibn Rushd's theory of justice, a distinction is made between divine justice and human justice. Human justice accepted by reason is imperfect. Meanwhile, divine justice known through revelation is an expression of God's perfection. In Ibn Rushd's view, the final justice is not singular (different from al-Kindī) because the scale of justice for each aspect comes from entirely other sources.⁴¹

'Umar Ibn Al-Khaṭṭāb's *Ijtihād* in the Perspective of Justice Theory

To reinforce the dimensions of justice in 'Umar Ibn Al-Khaṭṭāb's *ijtihād*, the philosophical theory of justice put forward by Majid Khadduri can approach as follows. In a philosophical theory of justice, there are two pathways in the form of reason and revelation that must be considered harmonious and balanced. 'Umar Ibn Al-Khaṭṭāb is a leader who sticks to the text. Even so, the Holy Prophet has given an example as in the case of Mu'ādh Ibn Jabbāl's sending to Yemen. The dialogue between the Holy Prophet and Mu'ādh took place around the relationship between revelation and reason (*ijtihād*). 'Umar also applied this provision through *risālah al-qaḍā'* to punish based on *qiyās* or *ijtihād* when the Koran and Sunnah did not regulate it.

The central city illustrated by al-Farabi in explaining the concept of rational justice as ideal justice is not identical with the government of 'Umar Ibn Al-Khaṭṭāb. However, there are several similarities with 'Umar's government, among others: A ruler is not an arbitrary person, but he must be blessed with the highest qualities that enable him to receive his essential function. It must have all the highest rates, namely reason. It can be seen from the brilliance of 'Umar, who had the height of reason.

⁴¹ Khadduri, 137-54.

In al-Farabi's view, the ruler must combine all executive, legislative, and judiciary powers. 'Umar Ibn Al-Khaṭṭāb was noted as the first leader who created a judiciary and separated the judiciary (judiciary) from the government (executive). 'Umar had a concept of justice that would enable him to operate the public order by the standards of justice in sharia. The best ruler is the one who clings to the scale of justice in his hands because he has the power to enact, interpret and apply the sharia.⁴² 'Umar as a ruler proved able to hold on to a scale of justice capable of making, interpreting and applying sharia through *ijtihād* and daily practices that reflect justice and equality.

The just city illustrated by Ibn Sinā is an ideal city and an illustration of the concept of rational justice as a statement of a social contract. Ibn Sinā directly praised the succession model of Caliph 'Umar Ibn Al-Khaṭṭāb, who formed a committee to elect a successor in consultation with the people.⁴³ The prerequisite for a just city with legal instruments and a ruler who makes laws that lay down rules to organize human relations in all its aspects has been owned by 'Umar's government. Even so, the just city that Ibn Sinā dreamed of was not synonymous with 'Umar's rule. For him, the proper city is a forum for residents who feel the need to come together to form a political community through tacit consensus and agreement. The existence of ruler is a prophet who has a moral character and divine authority in his prophecy.

Meanwhile, Ibn Rushd's model of philosophical justice theory, which carries the concept of rational as natural justice in the example, illustrates that sharia is strictly enforced to maintain the integrity of the household and regulate divorce and inheritance issues reasonably. Divorce is narrowed by refusing to give women the right to separate.⁴⁴ When juxtaposed with 'Umar Ibn Al-Khaṭṭāb's *ijtihād*, Ibn Rushd's concept regarding triple divorce is indeed different. Three divorces are counted as three simultaneously in essence so that husbands are more careful and do not quickly drop divorce on their wives. 'Umar prefers to approach his husband. Meanwhile, Ibn Rushd chose to close the wives by refusing to give them the right to file for divorce.

⁴² Khadduri, 126–27.

⁴³ Khadduri, 134.

⁴⁴ Khadduri, 133.

Every policy of 'Umar Ibn Al-Khaṭṭāb demonstrates philosophical justice. The essence of justice that does not differentiate between Muslims and non-Muslims, the rich and the poor, men and women, the strong and the weak, he has practiced since the beginning he assumed the position of caliph. The examples mentioned above demonstrate this justice. This essence of righteousness is the spirit of every *ijtihād* and policy of 'Umar Ibn Al-Khaṭṭāb.

The philosophical theory of justice that places reason and revelation in harmony and balance can be seen from 'Umar Ibn Al-Khaṭṭāb's *ijtihād-ijtihād*. Justice is synonymous with the product of sense, so is 'Umar's *ijtihād*, which is inseparable from his hard work to bring about justice. He drew inspiration from Allah, who instilled intelligence in him and able to grasp the universal values obtained by the Koran, such as justice and equality that are timeless. Regarding the various cases above, 'Umar's *ijtihād* cannot be separated from the universal values of the Koran as a source of inspiration which he applies to issues that are sometimes considered controversial.

Conclusion

From the practice of *ijtihād* and 'Umar Ibn Al-Khaṭṭāb's policies, a prototype of the nature of justice in 'Umar Ibn Al-Khaṭṭāb's view was found, namely appropriate behavior inspired by the principle of equality. 'Umar has applied the principle of equality before the law. The focus of equality is not a slogan or jargon, but he realizes it. Thus, there is no difference before the law between rulers and commoners, relatives and non-relatives, rich and poor people, strong and weak people, Arab and non-Arab people, and between Muslims and non-Muslims.

Through the philosophical theory of justice, 'Umar Ibn Al-Khaṭṭāb's *ijtihād* includes two paths, reason and revelation, which can be acted out in harmony and balance. 'Umar was a leader who held fast to revelation. If the leads, he applies the law according to the texts in general. However, in several cases such as *ghanimah*, zakat for converts, punishment for thieves, punishment for adultery, and *ta'zīr*, he does not apply them according to the implied meaning of the text form of universal values that must be guided. Its ability to grasp these universal values makes its *ijtihād* products more flexible and closer to justice. His *ijtihād* cannot be separated from his hard work to bring about justice. He drew inspiration from Allah, who instilled intelligence in him by capturing

universal values obtained by the Koran, such as justice and equality, which are timeless, which he implements in his *ijtihad*.^[a]

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