

The Role of Substantive Understanding Approach in the Changes of *Fiqh*

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Abstract: *The Role of Substantive Understanding Approach in the Changes of Fiqh.* This study aims to offer an approach in changing *fiqh* to stay in line with the demands of the texts and, at the same time, to create benefits for Muslims in their lives. This research is entirely library research whose data sources are obtained from several sources, including the *Tārīkh Tasyrī* written by Khudari Bek, *Tārīkh al-Mazāhib al-Islāmiyyah fī Tārīkh of al-Mazāhib al-Fiqhiyyah* written by Abu Zahrah, and *al-Ittibād al-Fiqhiyyah ‘inda Ashāb al-Hadīs fī al-Qarni al-Tsālits al-Hijri* by Abd al-Majid Mahmud Abd al-Majid, and several other sources relevant to the topic studied. The analysis technique used is content analysis, which is the only technique used in analyzing the information process. This research finds the fact that *fiqh* changes are a necessity to respond the social development as well as to create benefit for society. Efforts to change *fiqh* can be done by using a substantive understanding of the *syara’* texts which are the basis and source of change. It is in these aspects does appear the importance of the role of substantive understanding in the process of legal changes, as a solution in responding to the current and future development of society.

Keywords: Substantive Understanding, *Fiqh* Changes.

Abstrak: **Pendekatan Pemahaman Substantif dalam Perubahan Fikih.** Penelitian ini bertujuan untuk menawarkan suatu pendekatan dalam upaya melahirkan *fiqh* agar tetap sejalan dengan tuntutan nas dan perkembangan zaman, sekaligus untuk mewujudkan kemaslahatan bagi umat Islam dalam kehidupan mereka. Penelitian ini sepenuhnya adalah penelitian kepustakaan yang sumber datanya diperoleh dari sejumlah sumber, antara lain buku termasuk *Tārīkh Tasyrī* yang ditulis oleh Khudari Bek, *Tārīkh al-Mazāhib al-Islāmiyyah fī Tārīkh of al-Mazāhib al-Fiqhiyyah* yang ditulis oleh Abu Zahrah, dan *al-Ittibād al-Fiqhiyyah ‘inda Ashāb al-Hadīs fī al-Qarni al-Tsālits al-Hijri* oleh Abd al-Majid Mahmud Abd Majid., dan beberapa sumber lain yang relevan dengan topik yang diteliti. Teknik analisis yang digunakan adalah analisis isi yang merupakan satu-satunya teknik yang digunakan dalam menganalisis informasi. Penelitian ini menemukan fakta bahwa perubahan fikih merupakan suatu keniscayaan guna merespon perkembangan zaman sekaligus untuk mewujudkan kemaslahatan bagi masyarakat. Upaya untuk mengubah fikih dapat dilakukan dengan menggunakan pemahaman substantif terhadap teks-teks *syara’* yang menjadi dasar dan sekaligus sumber bagi perubahan hukum. Di sinilah nampak betapa pentingnya peran pemahaman substantif dalam proses perubahan hukum sebagai suatu solusi dalam menyahuti perkembangan zaman dan tuntutan masyarakat masa kini dan yang akan datang.

Kata Kunci: pemahaman substantif, perubahan fikih

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Introduction

Fiqh is the result of the understanding of the scholars (ulama) towards one verse at a time and one by one the traditions. This definition can be known from various definitions of fiqh that were put forward by the scholars in the fiqh books. Among the popular fiqh definitions among the scholars is the definition put forward by the scholars in the *Shafi'ite* school. They define fiqh as the knowledge of sharia law which is amaliyah extracted from the detailed arguments.¹

As a product of the thoughts of the ulama, *fiqh* is the result of ulama's ijtihad in understanding the arguments about legal issues, both found in the *Quran* and the *Hadith*. Certainly, *fiqh* is not obtained through *taqlid*, as it does not belong to the category of Allah's law which is grouped by scholars in the category of *ma'lum bi al-dhar'urah*.

Considering *fiqh* is the result of the understanding of the ulama towards detailed propositions, there may be differences of opinion it can develop and change due to changes in time, place, and situation around it. In history, it has been proven that various opinions in fiqh gave birth to schools of fiqh. In other words, fiqh has a relative nature, in terms of the cleric to which it is related, to *Abū Hanīfah*, or *Mālik ibn Anas*, or *Shāfi'ī* or *Ahmad ibn Hanbal*. The relative nature of *fiqh* can also be related to the area of growth and development; whether Iraq, Medina, Egypt, or other regions.²

¹ Busyro Busyro, 'Utilizing the Assets Acquired from Illegal Conducts A Study of Fiqh Maqāshid of Yūsuf Al-Qaradlāwī', *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*, 13.2 (2018), 231–253; Ammar Fadzil, Ahmed el-Mogtaba Banna, and Afandi Awang Hamat, 'Shatibi's Theories of Knowledge as Seen in His al-Muwafaqat: A Preliminary Study', *International Journal of the Humanities*, 6.1 (2008); Miftachul Huda and Mulyadhi Kartanegara, 'Curriculum Conception in the Perspective of the Book Ta'lim al-Muta'allim', *International Journal of Education and Research*, 3.2 (2015), 221–232; Sri Anitah W. Ismail and Dewi Rochsantiningih Sunardi, 'The Effectiveness Of Gallery Walk And Simulation (Galsim) To Improve Students'achievement In Fiqh Learning', *Walisono: Jurnal Penelitian Sosial Keagamaan*, 25.1 (2017), 231–252; Ahmad Sabri and Gusmaneli Gusmaneli, 'The Using of Media in Learning Fiqh to the Islamic Education Department of Education and Teacher Faculty of IAIN Imam Bonjol Padang', *Al-Ta Lim Journal*, 22.2 (2015), 180–193.

² Ahmad Dzajuli, 'Ilmu Fiqh Penggalan, Perkembangan Dan Penerapan Hukum Islam', Jakarta: Kencana, 2005; Muhyar Fanani, 'ILMU USHUL FIQH (Kajian Ontologis Dan Aksiologis)', *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*, 4.2 (2013), 197–208; Beni Ahmad Saebani, 'Fiqh Ushul Fiqh', 2009.

Also, *fiqh* which is the result of the thought and understanding of the ulama is very dependent on their ability to understand the texts and the environment that surrounds them. In this context, *fiqh* can come from scholars who prioritize the understanding of the substance of the texts (Quran and Hadith). In this paper, the ulama who hold understanding in substance are referred to as the substantive circles.

Researchers assume the scholars who hold and understand texts according to the meaning of the substance has existed since the early period of Islam. Understanding and thinking like this developed in the next generation to the present. For this reason, it is interesting to study products of understanding of *fiqh* they gave birth to and whether changes in time, place, and situation due to changes in the benefit of the people could change the *fiqh*.

Methods

This research is library research in which data collection depends on library materials that are relevant to the problem discussed.³ The primary sources of this research are the books of tasyri, *fiqh*, and related journals, including the *Tārīkh Tasyrī* written by Khudari Bek, *Tārīkh al-Mazāhib al-Islāmiyyah fī Tārīkh of al-Mazāhib al-Fiqhiyyah* written by Abu Zahrah, and *al-Ittihād al-Fiqhiyyah inda Ashāb al-Hadīs fī al-Qarni al-Tsālits al-Hijri* by Abd al-Majid Mahmūd Abd al-Majid. Data collection is completed when it is deemed sufficient to provide answers to the problems discussed. Secondary sources of research include *fiqh* proposal books, commentaries, and traditions that are relevant to research studies.

Data obtained through primary and secondary sources and classified according to proportions, then processed using descriptive and comparative methods. The descriptive method is used to explain the origin of substantive thinking patterns and their characters. While comparative methods are used to compare the opinions of scholars who use substantive and textualist patterns of thinking.

³ Mestika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor Indonesia, 2004).

Considering this research is a study on *fiqh*, the approach used in the discipline is called *ushūl fiqh*. The linguistic rules approach (*al-qawâid al-lughawiyah*) and the rules of meaning (*al-qawâid al-maknâwiyah*) are important in this study. Besides, a social history approach is used in Islamic legal thought (*fiqh*), which is an approach that can reveal that *fiqh* products are the result of interaction between the ulama and the socio-cultural or socio-political environment that surrounds it. Therefore, the product of mujtahid thought depends on the environment.⁴

Data directly related to the problem under study are systematically and objectively described, and then analyzed by using content analysis techniques, which are analyzing data according to content. To produce an analysis that can provide answers under the objectives of the study The author used historical and philosophical analysis.

Understanding the Term Substantive

The term substantive comes from the word substance which means the true character of something. This word can also mean content, point, and essence. The term substantive means the core. The word substantive is a noun from a substance. By paying attention to the meaning of the word substance, the substantive term can be understood to mean things that are core or basic. In this paper, because substantive is preceded by understanding, it is interpreted as something that encourages scholars to give birth to *fiqh* by paying attention to the core or main meaning of an argument, both verses of the Holy Quran and the hadith. The ulama who take this way of understanding are called those who understand substantively.

From the language aspect, substantive is a meaning that is based on linguistic considerations. This meaning is obtained by considering *karenah*. In this connection, there are two *karenah*, namely *karenah hâliyah* (the situation that surrounds) the discussion and *karenah lafziyah*

⁴ Abdul Rafay, Ramla Sadiq, and Muhammad Ajmal, 'Fragmentation of Islamic Financial Products—An Exploratory Study of Islamic Schools of Thought', *Rafay, A., Sadiq, R. & Ajmal, MM (2016). Fragmentation of Islamic Financial Products—An Exploratory Study of Islamic Schools of Thought. Abasyn Journal of Social Sciences, Special Issue*, 2016, 48–61.

(the pronunciation which gives the signal the meaning of the word out of its original meaning).

The substantification of *fiqh* is not just adjusting *fiqh* with place and time. Substantification is an understanding that leads to changes in *fiqh*. So it could be because of illness, health, heat, cold, poverty, wealth, and so on, substantification can apply. In short, it can be said that substantification in *fiqh* is an effort so that *fiqh* can respond and provide answers to certain conditions and conditions. This is important to note because there are often people trapped in understanding *fiqh* which is always used in normal conditions. *Fiqh* seems to apply to and in all situations, for example, regarding the law of cutting off hands for thieves. The law can only be applied under normal circumstances.⁵ However, in abnormal conditions, e.g. stealing at the starvation and in a condition where no one gives food, then the law of cutting the hands-off cannot be applied. This is one of the fatwa that Umar ibn Khattab gave to people who steal during the famine to save themselves, where the perpetrators are not subject to legal sanctions.

Substantification is not always based on space and time but also based on the needs needed by Muslims to implement Islamic sharia. In reality, everything that belongs to *fiqh* must be substantive. In *fiqh* there is nothing absolute except the *mujma' alaih* religious law and these are very few. For example, in the *Ribāwi* chapter, wherein selling or exchanging something, it is required to be equal or equal. But in a forced state the Messenger of Allah stated may not be comparable, which became known as *Bai'ul aroyah*. *Bai'ul aroyah* is to sell dates that are still raw on tree trunks with dates that are ripe in the hands of people. Maybe if in Indonesia sell rice that is still in the fields with rice. In the beginning,

⁵ Firqah Annajiyah Mansyuroh, 'Hukum Potong Tangan Bagi Koruptor (Kajian Ahkam Surah Al-Maidah Ayat 38)', *Dialogia: Jurnal Studi Islam Dan Sosial*, 17.1 (2019), 41–60; Thaufik Rachman, 'Kategorisasi Tindak Pidana Pencurian Dalam Hukum Islam' (Unpublished Phd Thesis, IAIN Walisongo, 2011); Nailul Rahmi, 'Hukuman Potong Tangan Perspektif Al-Quran Dan Hadis', *Jurnal Ulunnuha*, 7.2 (2018), 53–70; Bukhori Abdul Somad, 'Nilai-Nilai Masalah Dalam Hukum Potong Tangan: Analisis Kritis Perspektif Hadis Ahkam', *Madania: Jurnal Kajian Keislaman*, 19.1 (2015); Abdul Qodir Zaelani, 'Konsep Ta'aqquli dan Ta'abbudi dalam Konteks Hukum Keluarga Islam', *Asas*, 6.1 (2014), 50.

it was not allowed because the scales or values were not necessarily the same, but because of the needs of the Prophet allowed that practice. Everything related to *muāmalah fiqh* is always substantive, just how the ulama understand the texts (al-Quran and Hadith) as stated in the Holy Quran Surah Al-Baqarah (2): 185 “يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ” (Allah intends for you ease and does not intend for you hardship). This is where the meaning of God’s mercy to humans because religion is intended for humans. The problem sometimes lies with humans themselves. Some people cannot do Shari’a because the culture has created it or because of things caused by their inability.

If you misunderstand a local tradition, sometimes the understanding is substantively misunderstood as a reason to commit fraud, betrayal, even oppression, and other vices. In the past in religion, praxis has been practiced and often done, even without realizing it. Therefore, the term substantification is a new term in the life of the diversity of the people. In determining *fiqh* there is a rule: *al-umūru bi maqāshidihā* (all matters depend on the purpose), *al-hukmu yadūru ma’a illatibi* (legal determination depends on its *illat*). This usul rule is sourced from the hadith of the Prophet: “إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ” (acts are judged by what we meant to accomplish through them).⁶

In history, the process of understanding the diversity of one character with another figure is not always the same and tends to vary. Because of the difference came the school of priests. There are schools of Shāfi’i, Hambali, Hanāfi, Māliki, Zāhiri, and other schools. Followers of one school may also differ in some ways. This is because of differences in place, time, and culture. For example, in the Shāfi’i school, there is a difference especially between the Shāfi’i sect of Iraqi and Khurasani. Thus, substantive is an understanding that considers the situation surrounding it in establishing *fiqh* by not ignoring texts. Substantifists are also among those who use various propositions in determining the law besides texts, including *qiyās*, *maslahah mursalah*, and *istihsān*.

⁶ Muchlis Bahar, ‘Metode Penemuan Alasan Rasional Dalam Hukum Islam (Masalik Al-’Illat)’, *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman*, 1.1 (2015), 177–188; Ishaq Ishaq, ‘Maqashid Al-Syari’ah Based Ijtihad Dalam Contemporary Islamic Law’, *Interest*, 13.1 (2015).

The effort to find the relevance between substantive understanding and *fiqh* change requires in-depth and comprehensive discussion. According to researchers' observations of many literature, there has not been found specific research that addresses this theme. So far, several *fiqh* literatures found, both related to a particular school of *fiqh* and describing *fiqh* in a comparative perspective (*muqāranah*) between various schools, have not been found specifically for study and discussion of substantive understanding approaches in *fiqh* change. Nevertheless, it must be admitted that the product of substantive thought can be found in the amount of literature,⁷ found that the old methods produced by the ulemas were no longer reliable at this time in capturing the law in the source of revelation and providing answers - the answer to the problem of modern humanity. Therefore it is deemed necessary to have a shift and an actual understanding to answer the problems of modernity which in the end Islamic law or *fiqh* is not considered a law that "beyond the sky" and is considered as a fossil that must be abandoned by the Muslims themselves.⁸

Likewise,⁹ emphasized that it was necessary to find a solution to the (Islamic) legal problems that had been stagnant. The results of this study conclude that the integrative system approach must begin to be promoted through the transformation of *taqlid qauli* towards *taqlid manhaji*, from the lethal paradigm to the teleological paradigm as a solution to the problems of the Islamic law that seem stagnant.¹⁰

In many literatures that discusses the history of growth and development of *fiqh* or *Tārīkh Tasyrī*, there is no specific description regarding the theme of this study. In various books, *Tārīkh Tasyrī* is more described as the history of growth and development of *fiqh* from

⁷ Muhyidin Muhyidin and Ilyas Supeno, 'Pergeseran Orientasi Pemikiran Hukum Islam Kontemporer (Pembaharuan Pemahaman Hukum Islam Dari Legal-Eksoterik Menuju Substantif-Esoterik)', *Diponegoro Private Law Review*, 4.1 (2019); Qodir Zaelani, 'Pembaruan Hukum Keluarga: Kajian Atas Sudan-Indonesia', *al-Adalah*, 10.1 (2012), 331-342.

⁸ Muhyidin and Supeno.

⁹ Maulidi Maulidi, 'Menggagas Fikih Responsif: Upaya Progresif Modernisasi Fikih', *AL-ADALAH*, 14.2 (2017), 507-528.

¹⁰ Maulidi.

the beginning and golden period of *fiqh* to the decline of *ijtihad*. In several books of the *Tārikh Tasyrī*, the time of the rise of *ijtihad* and *fiqh* is explained in modern times.

The discussions related to *fiqh* figures in each period of growth, development, and golden *fiqh* are found in many *fiqh* history books. They are simply grouped according to the period and region of residence. Khudari Bek in the book *Tārikh Tasyrī* explains that the leading scholars of *Tasyrī* at the time of a great friend are the fourth Caliphs included Abdullah ibn Mas'ūd, Abū Musa al-Ash'ari, Muaz ibn Jabal, Ubay ibn Ka'ab, and Zaid ibn Thābit. *Fiqh* figures during childhood and *tabi'in*, including Aisha, Abdullah ibn 'Umar, Abū Hurairah, Urwah ibn Zubair ibn Awwam, Nafi' Maula Abdullah ibn 'Umar, Muhammad ibn Shihab al-Zuhri, Abdullah ibn Abbas, Mujahid ibn Jabir, Al-Qamah ibn Qais al-Nakho'i, and Anas ibn Malik. During the heyday of *fiqh* there were prominent figures of the school, such as Abū Hanifah, Mālik ibn Anas, Shāfi'i, Ahmad ibn Hanbal and Dawud ibn Khalaf al-Isfahani the founders of the Zahiri school.

At this time, there were two tendencies of ulama in doing jihad to design *fiqh*. The two groups are called *ahlu al-hadīth* based in Medina and *ahlu al-Ro'yi* in Iraq. *Ahlu al-hadīth* was pioneered by Imam Mālik and *ahlu al-ra'yi* was pioneered by Abū Hanīfa. In line with the science of jurisprudence and its literature, *ushūl fiqh* as a method of installing the law used by ulama in developing *fiqh* has very little effect in discussing the style of understanding of the ulama. The *ushūl fiqh* literature discusses more *Qawāid Luqhawīyyah* (linguistic norms) and *Qawāidh Maknāwīyyah* or *syar'iyyah* (rules relating to the principles and objectives of the determination of *tasyrī*).

The important studies related to this research came from Syatibi when explaining the ulama's method of finding *maqāshid al-sharī'ah*. According to him, some scholars are concerned with the use of *illat*, wisdom, and benefits in knowing *maqāshid al-sharī'ah* and determining the law.¹¹ They are identified as those who are substantive. So Syatibi

¹¹ Hasnani Siri, 'Metode Lafziyah Dalam Mengistinbatkan Hukum Menurut Mazhab

has given a signal that there are substantive scholars. However, he did not explain in detail the substantive understanding approach to *fiqh* change.¹²

Since there is no specific study on the substantive understanding approach to *fiqh* change, the researcher considers it important to research this issue so that it can reveal matters related to it scientifically.

The *Fiqh* Cases based on Substantive Understanding

Substantive understanding arises because of the freedom given by the Prophets to the friends to do *ijtihad*. Signs of the ability of friends to do *ijtihad* can be observed from the dialogue Muaz ibn Jabal with the Prophet Muhammad. when he was sent to be a judge by the Prophets to Yemen.¹³ The point of the dialogue stated that the Prophet justified the steps raised by Muaz in resolving the legal problems confronting him, referring to the Koran, the Sunna, and if no law was found in both, Muaz committed *ijtihad* to establish the law of a case.

Factually, many *ijtihad* friends and scholars use substantive understanding. There are several examples of *ijtihad* that were done by friends, both during the Prophet's life and afterward, and the opinions of the scholars who use substantive understanding. First, the case of the Prophet's order to the Companions for Ashr prayer in Banu Quraizah has stated in the hadith narrated by Ibn Umar PBUH, who said that the Prophet SAW said in the event of the battle of Ahzab.

Through this hadith, the Prophet told some friends who went to

Zahriyah', *DIKTUM: Jurnal Syariah Dan Hukum*, 9.1 (2011), 8–13.

¹² Intan Cahyani, 'Teori Dan Aplikasi Maqashid Al-Syari'ah', *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 1.2 (2014); Galuh Nasrullah Kartika MR and Hasni Noor, 'Konsep Maqashid Al-Syari'ah Dalam Menentukan Hukum Islam (Perspektif Al-Syatibi Dan Jasser Auda)', *Al Iqtishadiyah Jurnal Ekonomi Syariah Dan Hukum Ekonomi Syariah*, 1.1 (2014), 50–69; Ali Mutakin, 'Teori Maqashid Al Syari'ah Dan Hubungannya Dengan Metode Istinbath Hukum', *KANUN: Jurnal Ilmu Hukum*, 19.3 (2017), 547–570; Ghofar Shidiq, 'Teori Maqashid Al-Syari'ah Dalam Hukum Islam', *Majalah Ilmiah Sultan Agung*, 44.118 (2019), 117–130.

¹³ Ibnu Qayyim Al-Jauziyah, *Ilam al-Muwaqqiin an Rab al-Alamin'*, Juz III, Beirut: Dar al-Fikr, t.t.; Abd Salam Arief, 'Ijtihad Dan Dinamika Hukum Islam', *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia*, 7.1 (2017); Rizal Darwis, 'Pemikiran Ibnu Qayyim Al-Jauziyah Terhadap Paradigma Perubahan Hukum', *Adzkiya: Jurnal Hukum Dan Ekonomi Syariah*, 5.1 (2017), 67–86.

the village of Bani Quraizah not to perform the Ashr prayer except in the village. The command was conveyed by the Prophets to the friends of the return of Muslims from the Khandaq war. Although the meaning and meaning are clear, the friends differed in their understanding of the message of the Prophet while on the journey it turned out that the time of Asr prayer arrived. Some friends think that they should perform the Ashr prayer on time during the trip. According to them the purpose of the Prophet's expression in the hadith was so that they would speed up the journey so that they would soon arrive at the Bani Quraizah. These friends put more emphasis on the substance of the message of the Prophet. Those who hold such views can be called a substantive group. Some other friends think they should not perform the Ashr prayer unless they have arrived at the Bani Quraizah village. According to their understanding, that was what the Prophet wanted for them. This understanding emphasizes the textual meaning of texts or traditions. Those who are so relevant are referred to as textualists.¹⁴

An important note is a consideration that the differences in understanding and attitudes of the Companions towards the Prophet's Prophets in the case may not perform Asr prayer except in the Bani Quraizah village, not something wrong. Based on the above hadith, it turns out that the Messenger of Allah confirmed the understanding and attitude of the Companions who prayed the Ashr on their journey before they reached the Banu Quraizah. Likewise, he justified the understanding and attitude of friends who pray the Asr in the Bani Quraizah village.¹⁵

It is the decree of the Messenger of Allah that justifies the understanding and attitude of the group of friends who adhere to the substance of his message indirectly that the Messenger of the Prophet justifies the understanding substantially or substantively of the text. Second, the case of two friends who prayed on their way. When the

¹⁴ Khoirul Asfiyak, 'Kajian Filosofis Dan Antropologis Tentang Fenomena Ikhtilaf Dalam Tradisi Pemikiran Muslim', *Vicratina: Jurnal Pendidikan Islam*, 1.2 (2019).

¹⁵ Ghazali Ghazali, 'Ragam Teori Interpretasi Hadits Nabi Saw (Telaah Atas Implikasi Logis Dari Keragaman Interpretasi Hadits)', *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*, 1.1 (2019), 37–48.

midday prayer comes they don't get water for ablution. The two friends did tayamum as ablutions of ablution and then performed noon prayer. After that they continue the journey, in the middle of the trip they get water. A friend performs his ablution and repeats his prayer, while another does not perform his ablution and does not repeat his prayer. After the two friends arrived in Medina, they came to the Prophet (PBUH) conveys the experiences they experienced on the journey. Responding to this event, the Prophet told the ablution and repeated the prayer he had carried out the command according to the Hadith. While the friends who perform wudoo 'and repeat the prayers performed with tayamum, the Prophet said you get the reward twice.¹⁶

The case above illustrates that a friend who does not repeat prayers with tayamum when getting water is a symbol of understanding substantive friends. Things like this can be said as an understanding of texts in meaning or substance. While friends who repeat prayers performed with tayamum when getting water is a symbol of textual understanding.¹⁷ However, it is important to note the attitude and statements of the Prophet who respect and justify the actions of the two friends expressed in the example.

The attitude of the prophet who justifies both the understanding and the deeds of his companions, both those who do not repeat the prayer when he gets water to perform ablution or to the friend who repeats the prayer after getting water for ablution as a second gesture that the friend's actions are allowed in *fiqh*. At the same time, it gives an illustration that there are two forms of understanding of the texts of friends called understanding textually and substantively.

Although there are among friends who use understanding substantively in the event, actions based on such understanding are always confirmed

¹⁶ Jaih Mubarak, Cucu Cuanda, and Muhammad Sa'die Fattah, *Sejarah Dan Perkembangan Hukum Islam* (Bandung: Remaja Rosdakarya, 2000); Mutakin; Muhammad Ali Rusdi, 'Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam', *DIKTUM: Jurnal Syariah Dan Hukum*, 15.2 (2017), 151–168; Amir Syarifudin, 'Ushul Fiqh Metode Mengkaji Dan Memahami Hukum Islam Secara Komprehensif', *Jakarta: Dzikirul Hakim*, 2004.

¹⁷ Ze'ev Maghen, 'Three Shafi'ites in Search of Water: The Indulgence of Tayammum and Its Rigorous Preconditions', *Der Islam*, 82.2 (2005), 291–348.

back to the apostle. The Prophet agreed to such understanding and deeds as long as they were in accordance with Islamic law. However, if in the understanding and deeds of friends who are substantive judged wrong, of course, the apostle of the Prophet. Rectifying and correcting these understandings and practices in line with Islam.

Third, the inheritance of grandfather and siblings that occurred during the time of Abu Bakr as caliph. In the case of inheritance. the heirs are grandfather and heir. The problem is whether the existence of the grandfather can veil the brother. Related to this case, Abu Bakr's opinion was that grandfather occupied the position of the father so that he became a barrier (*hijāb*) for you to get the inheritance. Therefore, you do not get a share of the inheritance, if the heir left a grandfather as well as if he left his father. To strengthen his opinion, Abu Bakr argued with the Quran, Surah Yusuf verse 12.

The word *aba* contained in this verse is plural from the word *abun* which means father. Observing the expressions of the verse, those who claimed he followed the religion of his fathers were the prophet Yusuf since it was proven historically and according to a number of verses in the Quran that the father of the Yusuf is Yaqub. Meanwhile, the prophet Ishaq revealed in the verse is the son of Ibrahim, the result of his marriage to Siti Sarah. The interesting thing in the verse is that the Prophet Yusuf followed the religion of his fathers not only the religion of Yaqub, but also Ishaq and Ibrahim who were his grandfather. This is the reason for Abu Bakr to interpret the word *aba* that including grandfather and up. So, it means that Yaqub here is understood as the father, while Ibrahim and Ishaq as the grandfather. Abu Bakr's opinion was based on substantive understanding¹⁸.

Abu Bakr's opinion was indeed not approved by all friends at that time. Umar was a friend who had a different opinion from Abu Bakr

¹⁸ Sarjiyati Sarjiyati, 'Pembagian Warisan Menurut Hukum Islam', *JURNAL DAYA-MAS*, 4.1 (2019), 1–4; Khaeron Sirin, 'Analisis Pendekatan Teks Dan Konteks Dalam Penentuan Pembagian Waris Islam', *AHKAM: Jurnal Ilmu Syariah*, 13.2 (2013); Muhamad Faisal Tambi, 'Studi Komparasi Pembagian Warisan Menurut Hukum Islam Dan Hukum Adat', *Lex Privatum*, 6.9 (2019).

in the case of inheritance, where heirs and grandparents were. According to Umar ibn Khaththab, a grandfather is not the same as a father or father. It does not become a barrier for you to get a share (inheritance). Therefore, you have inheritance rights together with your grandfather. In this case, Umar based his opinion on the understanding of nature in understanding the meaning of the words *al-abbu* and *al-jaddu*.¹⁹ The word *al-abbu* only covers fathers. Whereas the word that means for grandfather in Arabic is the word *al-jaddu*.

Fourth, the case of the division of newly conquered lands that emerged during the time of Umar ibn Khattab.²⁰ This caliph is famous for always doing *ijtihad* considering the principles of *maslahat* and putting forward the spirit contained in the text of the Qur'an and Sunnah. In this context, Umar can be said to put forward the substantive nature of the text rather than just the outward meaning of the text, although there is also *fiqh* which tends to be textual. Umar's substantive thought is known from his strict attitude of not distributing land from areas conquered by the Islamic army for the benefit of the local population²¹. If he only sticks to the text of the text, of course, he will determine the land as *ghanimah* and become a right for those who participate in conquering the region. However, Omar saw the land as not belonging to the *ghanimah* contained in the general provisions of the word of Allah surah al-Anfal, 8:41.

Through substantive understanding, Umar asserted that the *ghanimah* property referred to in the above verse is a *ghanimah* property that can be transferred while the conquered area is not included as *ghanimah* because it cannot be transferred. Another consideration used by Umar, if the entire conquered area was divided, of course, the children or grandchildren of the local population would not get any more land for

¹⁹ Khoirul Anwar, 'Maqâshid Asy-Syarî 'Ah Menurut Ibnu Rusyd', *At-Tawasuth*, 1.1 (2019), 27–47.

²⁰ Rahma Fitriani, 'Pemilikan Tanah Perspektif Islam', *Al-Mabsut: Jurnal Studi Islam Dan Sosial*, 2.1 (2011), 1–14.

²¹ Nazih Ayubi, *Political Islam: Religion and Politics in the Arab World* (Routledge, 2003); Hamid Enayat, *Modern Islamic Political Thought: The Response of the Shi 'i and Sunni Muslims to the Twentieth Century* (Bloomsbury Publishing, 2005).

their survival. If the land is left in the hands of the owner, it can be useful to finance national defense and cover the state budget through the *jizyah* that is required of the landowner. However, the Islamic soldiers who participated in the conquest of the area did not agree with Umar's opinion and they debated the issue for three days and three nights. On the third day, Umar met them and to strengthen his opinion by explaining to them the word of God in the Holy Quran 59:7. After Umar explained the purpose of this verse in detail to the Muslim soldiers, they finally agreed with his opinion.

Fifth, Umar ibn Khattab's *ijtihad* did not impose penalties for thieves during the famine (*al-Muājā'ah*). Umar gave birth to legal provisions which illustrated that he was able to read the situation and conditions at the same time as being able to put forward the importance of the text. Abu Ubaidah narrated that Umar said: there is no hand-cut in years of hunger and drought. By quoting information from Sa'diy Ibn Qayyim put forward the expression of Umar stating that he did not apply the law of cutting off hands for stealing dates and not years of famine and drought.

Umar's reason for not cutting off the hand of a thief in a year of hunger has a strong foundation because according to him to apply a criminal sanction must meet a number of conditions in a sharia. Among those who steal are not in a forced condition. The situation faced by the people in the year of hunger puts them in a *subhat* condition. They steal because they are pressured by difficulties and the inability to get food to save themselves. While the apostle stressed not to punish in situations that have *subhat* elements. In this case, the Prophet SAW said that “وَرَوَاهُ النَّبِيُّ: عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - (مِنْ) قَوْلِهِ بَلْفَظٍ: اذْرَأُوا أَلْحُدُودَ بِالشُّبُهَاتِ” *Al-Baihaqi transmitted on the authority of 'Ali (RAA) that he said, "avert hadd punishment in case of shubha* (Bulugh al-Maram, Hadith 1260). Thus Umar's decision not to impose sanctions on thieves during the year of famine greatly considers the substantive text and situation that Muslims face in real terms in their lives.

Sixth, Umar ibn Khattab's *ijtihad* which does not provide zakat for converts by grounding in a deep understanding of the text whereas the

zakat for muallaf part is given since the time of the Apostles and Abu Bakr and is clearly stated in the at-Taubah verse 60 with the phrase *al-mu'allafat qulubuhum* as one who is entitled to receive zakat. Umar reasoned there was no need to persuade converts in his time to embrace Islam by being given zakat. Umar prevented people from taking Zakat continuously on the grounds of converts.

Umar's consideration does not give part of zakat for converts because it pays attention to *illat nash* in suraah al-Taubah 9:60, which is to persuade the hearts of converts to prevent their crimes against Muslims who were previously in a weak condition. When the condition of the Muslim community is strong, there is no reason to give alms to the converts.²²

Umar does not mean to abort part (*al-sahm*) to convert forever. However, that part remains and is not touched by deletion, because there is no *nasakh* after stopping revelation. Therefore, Umar cannot abrogate the law, while the companions know the law established according to the Qur'an and Sunnah and are practiced by the apostle until the end of his life and by Abu Bakr in the aftermath.

In line with that, if there is a change in the situation and place that requires Muslims to persuade the hearts of the converts to avoid the power of the enemy, then the zakat portion of the reverts can be given to them. If the situation returns to normal and Muslims have enough strength to protect them, the Muslim portion of the conversion will not be given to them. Stipulating the need to or not to persuade converts and choose some people to be persuaded his heart including the right of leaders to consult with the scholars by using substantive understanding.

Seventh, property grants from people who will die to others without compensation.²³ With this grant, ownership is changed from the owner to the recipient of the grant. The problem is related to the

²² Mustafa Ahmad Al-Zarqa, *'Al-Madkhal al-Fiqhi al-Am'*, (Beirut: Dar al-Feker, 1968).

²³ Abdul Hadi, 'Istinbat Hukum Islam Perspektif Az-Zahiri', *Nurani: Jurnal Kajian Syariah Dan Masyarakat*, 14.2 (2014), 27–48; Nafiul Lubab and Novita Pancaningrum, 'Mazhab: Keterkungkungan Intelektual Atau Kerangka Metodologis (Dinamika Hukum Islam)', *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam*, 6.2 (2015), 394–413.

grant of a person who is seriously ill who is medically suspected to have died. Daud Zahiri believes that a grant by a seriously ill person will die as legitimate as a healthy person. If the owner of the property donates all his assets according to Daud Zahiri, no one can obstruct his actions. The reason the scholars who did not allow grants by people who were seriously ill would die according to Daud Zahiri was based on the principle of *sadd al-zari'ah*. The establishment of law through such means is based on *ra'yu*. While this scholar does not use *ra'yu* in the determination of law, he only adheres to textual texts.

Jumhur ulama stipulates that a sick person who is presumed to die will have the same status as a will, a terminally ill person will die, wherein the law may not be because it would harm the heir's right to the assets left by the testator when he dies. In this case, the scholars use the principle of *sadd al-zari'ah*, which is to close the door or road so that no one is harmed because of the will.²⁴ Jumhur establishes the law of this problem by using a substantive understanding so that the heirs will not be harmed by the act of his heir before death.

The Application of the Substantive Understanding Approach in Changes in *Fiqh* and Contemporary Problems

Efforts to make changes to *fiqh* are a necessity. *Fiqh* as a product of thought and understanding of the ulama towards texts can not be separated from the influence of the situation and environmental conditions of the ulama who formulated it. This can be understood because *fiqh* was formulated by scholars to respond to the problems that arose in his time.

The efforts to make changes in *fiqh* in accordance with the objectives of Islamic teachings that want manifested benefit, upholding justice, the disappearance of tyranny, damage, and difficulties in human life.²⁵

²⁴ Alwi Rakhman, 'Al-Fiqh Al-Akbar Dan Paradigma Fiqh Imam Abu Hanifah', *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan*, 6.1 (2012), 141159–141159; Syahrullah Syahrullah, 'NUANSA Fiqhiyah Dalam Zahrah Al-Tafasir Karya Muhammad Abu Zahrah', *Al-Bayan: Jurnal Studi Ilmu Al-Qur'an Dan Tafsir*, 1.2 (2016), 131–138; Muhammad Abu Zahrah, 'Tarikh Al-Mazahib Al-Islamiyah', *Jizah*, (Egypt: Darul Fikri Al-'Arabi, 1996).

²⁵ Al-Jauziyah; Arief; Tariq Ramadan, 'Ijtihad and Maslahah: The Foundations of Governance',

Changes in *fiqh* because there are changes in situations and conditions in line with the rules of *fiqh* that read: *lā yunkaru thaghayyur al-abkām bi thaghayyur al-azmān*, no doubt a change in Islamic law occurred due to the changing times.²⁶

The change in *fiqh* referred to in the above rule is the *fiqh* formulated by the ulama using the benefit and ‘urf considerations. When the benefit has changed, of course, jurisprudence should be reviewed by scholars to make changes. Likewise, *fiqh* which is formulated by considering ‘urf, then with ‘urf changes in people’s lives naturally *fiqh* also changes.

Changes in *fiqh* have a close relationship with a substantive understanding of the text on the one hand and respond to various new problems that arise in the lives of Muslims on the other. By relying on substantive understanding, making *fiqh* can respond and determine the law against various problems that occur among Muslims. Legal solutions that are born are always in line with the conditions faced by Muslims. Such *fiqh* certainly brings benefit and goodness to the lives of Muslims.

Understanding substantive does not mean ignoring the textual text in establishing law. *Nash* textually remained in use as long as the legal case was indeed accessible to him. Substantive understanding is needed to establish legal cases that are not covered by textual texts so that they need to be understood in a substantive meaning. Besides that, it is important that substantive understanding should not conflict with texts because texts themselves contain benefits in them.

In the case of divorce as an example, there is a principle which is to be noted that the halal act which Allah hates is divorce. At the time of the triple divorce, the husband said to his wife counted down one divorce. However, during the time of ‘Umar ibn Khattab, when people began to easily drop divorce, the caliph made a change by establishing a triple divorce that was pronounced at once, counted down by three. By considering the benefits and narrowing the space for husband and wife divorce in the household, divorce in the new husband has legal

Islamic Democratic Discourse: Theory, Debates, and Philosophical Perspectives, 2006, 3–20.

²⁶ Mohd Akram Dahaman Dahlan and others, ‘Changes and Differences in Fatwa from Malaysia and Singapore Contexts’, *Middle-East Journal of Scientific Research*, 12.2 (2012), 204–214.

implications for divorce when it is said before a court hearing. In line with that all forms of divorce, such as figuratively, openly, playfully, in a state of drunkenness, by speech, in a state of compulsion or writing do not yet have legal force until it is said before a court hearing²⁷.

Another example of important *fiqh* changes is related to the problem of pricing goods (*tas'ir*). The government is the authority to set the price of the goods because it considers the benefit of the people.²⁸ This is in line with the hadith that can be used as an argument about the prohibition of fixing the price of goods. In a Hadith:

" حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا عَفَّانُ، حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ، أَخْبَرَنَا ثَابِتٌ، عَنْ أَنَسٍ، وَقَتَادَةَ، وَحُمَيْدٍ، عَنْ أَنَسٍ، قَالَ قَالَ النَّاسُ يَا رَسُولَ اللَّهِ غَلَا السَّعْرُ فَسَعَّرْنَا. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ «إِنَّ اللَّهَ هُوَ الْمُسَعِّرُ الْقَابِضُ الْبَاسِطُ الرَّازِقُ وَإِنِّي لَأَرْجُو أَنْ أَلْقَى اللَّهَ وَلَيْسَ أَحَدٌ مِنْكُمْ يُطَالِبُنِي بِمَظْلَمَةٍ فِي دَمٍ وَلَا مَالٍ"

The people said: Messenger of Allah , prices have shot up, so fix prices for us. Thereupon the Messenger of Allah (ﷺ) said: Allah is the one Who fixes prices, Who withholds, gives lavishly and provides, and I hope that when I meet Allah, none of you will have any claim on me for an injustice regarding blood or property (Abu Dawud, Hadith 3444).

Through this hadith it is known that the apostle objected to determining the price of the goods with the consideration that no one party would be harmed, both traders and buyers. By using *ra'yu*, Ibn Musayyab, Rabi'ah ibn Rahman, and Yahya ibn Sa'd al-Anshori argued that with consideration of the benefit of the people, the government could set the price of goods. They did a *ta'wil* on the hadith of the prophet which forbade the government to set prices. According to these scholars, the hadith of the prophet who spoke about the prohibition of price-fixing has *'illat* in it. *'Illat* is related to the falsehood of two

²⁷ Muhammad Zaini, 'Bayan Tafsir', *SuBstantia*, 15.2 (2013), 181–188.

²⁸ Sa'di Abu Habib, *Al-Qamus al-Fiqhi Lughatan Wa Istilahan, Syira*, (Dimashq: Dar Al-Fikr, 1988).

groups of people, namely the group of traders and buyers. The benefit regarding the merchant group is the benefit of a handful of people or *juz'i* while the benefit of the buyer is related to the benefit of many people or is general (*kullli*). Logically speaking, it is impossible for the benefit of *juz'i* or for the benefit of a small number of people to defeat the general benefit or *kullli*.²⁹

For the substantive group, the hadith is understood that the price-fixing of goods by the government occurs when the situation is needed. The application of price-fixing cannot be applied in all situations. This applies when there is an irregularity in the market price, where traders hoard goods so that goods become a temporary measure of increased demand which implies an increase in prices. In this situation, the government may set the price of the goods, even deemed obliged to take that action.

Substantive understanding can be applied in the case of the husband's livelihood obligations. The husband's obligations are based on the Koran, Hadith, and *ijmak* of the scholars. Sunnah confirms the obligation to support the husband to his wife whose translation: "*Jabir ibn Abdullah narrated that the Messenger of Allah PBUH has delivered a sermon before men, then he said: fear all of you in Allah in the affairs of women, you take them with the mandate of God, and you halal their faraj by the words of Allah, and they have the right to form food and clothing by your side in a manner that is familiar* (H.R. Abû Dâwud)".³⁰

This Hadith explains the husband's obligation to maintain the mandate by providing income to his wife in the form of food and clothing. By resting on a substantive understanding of this hadith, Ibn Musayyab believes that people who are unable to provide for their wives can be separated from their marriages.³¹ In family law in Indonesia, a

²⁹ Fathi Al-Darini, *Al-Manahij al-Ushuliyah Fi al-Ijtihad Bi al-Ra'yi Fi Tasyri'I al-Islamy* (Damaskus: Dar al-Kitab al-Hadits, 1975).

³⁰ Adzim Abâdi and Abi Tayyib Muhammad Syams al-Haq, *Aun Al-Ma'bûd, Syarah Sunan Abi Dâud* (Beirut: Dar al-Kutub al-Alamiyyah, tt.).

³¹ Al Sarakhsi and Abu Bakr Muhammad Bin Ahmad, '*Usul Al-Sarakhsi*', (Beirut: Dar al-Kutub Ilmiyah, 1993); Mustafa Shamsuddin, 'Kepentingan Penguasaan Usul Fiqh: Satu Analisis Umum', in *Kertas Yang Dibentangkan Di Seminar Usul Fiqh, Pada Desember, 2005*.

wife can submit *khulu'* or divorce to the court when her husband does not provide birth or inner income to him. This is certainly a form of protection for wives so that the husband fulfills his Islamic rights. Thus, the substantive development of this understanding is still possible to respond to the rights of the wife or woman in domestic life as long as it is in line with the text.

The application of the substantive understanding approach to contemporary problems can be seen in a number of cases, for example, the case of the overlength trousers which had a stir some time ago. This case is an old case that is “fried” again for public consumption, which is referred to as *isbāl* (extending clothing through the ankles). For the followers of the substantive understanding approach, the forbidden *isbāl* is related to the *'illat Khuyala'* (arrogant) based on the words of the Prophet SAW to Abu Bakr al-Shiddiq r.a when he said: O Messenger of Allah SAW, my sarong is often sagging (loose down) unless I guard it. So he said: “You are not included in the group of people who do that because they are arrogant (*khuyala*)” (Narrated by Bukhari and Muslim). Based on this hadith, Rasul SAW did not forbid the invocation made by Abu Bakr r.a because it was not based on arrogant intentions (*khuyala*). Strictly speaking, the forbidden *isbāl* is based on *'illat khuyala'*. When *'illat* does not exist then the sign is not forbidden. Thus, if this substantive understanding approach is being held up, then of course the case of the trousers does not become a scene.

Another example is the case of usury in housing loans. Buying and selling housing KPR models contain an element of usury because it requires an additional price from the appropriate price. Forbidden usury is based on the word of Allah SWT: “...وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا...” translated “...and Allah has permitted [the] trade but (has) forbidden [the] usury...” (Quran Suraah al-Baqarah 2:275). But based on a substantive understanding approach, buying and selling housing credit models is allowed because it is very useful and needed by the weak economy. That is, the ability is based on intention and benefit. Benefits include; First, the ups and downs of prices in buying and selling are halal. An increase in the price of an item due to the increased time is natural,

especially since the goods sold are in the form of a house and land that is getting higher and higher in price. Second, the KPR system is very helpful for economically weak people. Low-income employees are very difficult or even impossible to buy houses in cash. Third, the sale and purchase of home mortgage systems have been implemented in Islamic banks.³²

The application of the substantive understanding approach can also be seen in the case of using menstruation delay pills in the month of Ramadan. For intellectuals, women should not take menstrual delaying pills in order to fast for a full month in the month of Ramadan. According to him, menstruation is a *sunnatullah* which is made by God in every adult woman who is believed to have her wisdom and following the female characters. If it is postponed by using menstruation delay pills it will cause physical harm to the woman. This contradicts the hadith of the Prophet (PBUH): “لا ضرر ولا ضرار” (there should be no harm and no harm or harm to another party). As for the scholars who adhere to the substantive understanding approach, including Yusuf al-Qaradhawi as quoted by Muchlis Bahar, argues that the use of menstrual delay pills during the legal Ramadan may be on the condition of consulting first with an expert doctor to find out whether the pill is suitable for his physical condition or no. If the physical condition allows and is suitable for taking menstrual delay pills, then it is OK to use these pills. That is, the pill does not always have a negative impact on every woman; may not be suitable for certain women but other women. In accordance with the rules, the law of origin of all things is permissible (*al-Ashlu fi al-Asyā' al-Ibāhah*).

³² Seif I. Tag El-Din and N. Irwani Abdullah, 'Issues of Implementing Islamic Hire Purchase in Dual Banking Systems: Malaysia's Experience', *Thunderbird International Business Review*, 49.2 (2007), 225–249; Feisal Khan, 'How 'Islamic' Is Islamic Banking?', *Journal of Economic Behavior & Organization*, 76.3 (2010), 805–820; Noor Mohammad Osmani and Md Faruk Abdullah, 'Musharakah Mutanaqisah Home Financing: A Review of Literatures and Practices of Islamic Banks in Malaysia', *International Review of Business Research Papers*, 6.2 (2010), 272–282; Edib Smolo and M. Kabir Hassan, 'The Potentials of Musharakah Mutanaqisah for Islamic Housing Finance', *International Journal of Islamic and Middle Eastern Finance and Management*, 2011.

Conclusion

Understanding and thinking substantively of the text, on the one hand, and paying attention to the benefit of Muslims, on the other hand, may give birth to *fiqh* products that are not contrary to the will of Shari'a and meet the needs of the people at once. Substantive understanding has existed among friends since the time of the apostle. Changes in a situation, time, and place have implications for changes in the benefit of Muslims. In line with that, *fiqh* which is determined based on a substantive understanding with consideration of benefit can also experience changes so that *fiqh* can be implemented and bring benefit to Muslims. *Fiqh* with substantive understanding can provide solutions in explaining the law of contemporary problems.

This study recommends a topic for other research that at the time of discovery there was an understanding and substantive understanding since the beginning of Islam, at the same time certainly strongly suspected there is also an understanding that refers to the textual text which is the root of the emergence of textual understanding. This is certainly an interesting research area to do.

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