

A REVITALIZATION OF *IJMAK* TOWARDS FORMATION CONTEXTUAL OF ISLAMIC LEGAL THEORY

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Abstract

Ijmak, which today is defined as the consensus of the mujtahid of the whole world and occupies the third position in the hierarchy of sources of Islamic law, is not widely used by scholars. *Ijmak* with this kind of definition is certainly impractical and tends to be idealistic. Because it is impossible to reach a unanimous agreement regarding the *furū'iyah* matter, it has become a matter of fact that differences of views are necessary. This research seeks to unearth *ijmak* artifacts in their historical development to find a true definition of *ijmak*. This study concluded that *ijmak* in the early era of its appearance was not the same *ijmak* as today. The old *ijmak*—in the era of Caliph Abu Bakr—with today's *ijmak* seems to have diametrical differences. *Ijmak* used to be democratic in tone (all people can have faith), open to criticism, and flexible in change. Whereas today the *ijmak* becomes the authority of the mujtahid, closed to criticism, and rigid. Even opposing the valid *ijmak* is considered a form of fussiness. In the context of Indonesianness, *ijmak* is synonymous with local wisdom that develops in the community. One example: polygamy is a taboo in Indonesian society, although Islamic law and state law it does not prohibit it.

Keyword: *Ijmak*; Islamic; Law; Mujtahid.

A. INTRODUCTION

The four priests of the golden age (Imam Abū Hanīfah, Imam Mālik ibn Anās, Imam Muḥammad ibn Idris al-Ṣhāfi'ī, and Imam Aḥmad ibn Ḥambāl) have distinctive postulates in formulating the correct form of *ijtihād* and reflecting the value of *maṣlahat*. For this reason, it is possible to appear a variety of different methods. Imam Abū Hanīfah had¹ an *istiḥsān*, that is turning from *qiyās jāli* to *qiyās khafi*, or an objection to the problem of *juz'iyah* over the problem of *kulliyyah*.² The Mālik priest, with his *maṣlahah mursalah*, means to seek the essence of goodness in a particular event. Imam al-Ṣhāfi'ī with his³ *qiyās* or analogy. Except for Imam Aḥmad, who

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- 1 Afzalur Rahman, *Islam: Ideology and The Way of Life*, The Muslim Schools Trust London, London, 1980, page. 349
 - 2 Ṭāhir Maḥmūd, *Istiḥsan: Anwa'uh Wa Hukmuh*, Pakistan Journal of Islamic Research, Vol. 12, No. 1, January 2012, page. 181.
 - 3 Mu'taṣim Sayyid Aḥmad, *Manāhij al-Tashī' baina al-Mawrūth wa Muḥāwalāt al-Tajdid*, al- Dār al-Maḥajah, Ruwais, 2013, page. 103.

emphasized the textual aspects of the Qur'an and Hadith. He is reluctant to use reason. That is why he is more categorized as a hadith scholar than a scholar of jurisprudence.⁴

Al-Ghazālī interpreted *ijmak* as the agreement of the people of the Prophet Muhammad Saw regarding matters of the world. Al-Amidī added the definition of al-Ghazālī by providing a condition that the agreement must come from the people of the Prophet Muhammad Saw, who were already *mukalaf*. Meanwhile, ibn Jarīr al-Ṭabarī argued that sometimes one person does not agree with the opinion of the majority of scholars. However, at least the majority opinion is a reflection of the *ijmak*.⁵

Ijmak is one of the Islamic law sources occupying the third position after the Hadith, according to the al-Shāfi'ī school. Likewise, in the general reference *uṣūl al-fiqh*, most put *ijmak* in third place as al-adillah al-shar'iyyah. Seeing such a fact, *ijmak* should be able to be realized amid society. However, researchers found a gap between the theory and its realization. The concept of *ijmak* is understood by scholars.⁶ Scholars, or Muslims in general, are a form of absolute agreement, unanimous, permanent, rigid, and have a binding force in totality. According to the most extreme opinion, resisting or denying the *ijmak* can even be said to be an infidel.⁷

The transformation of *ijmak* occurs because there is a dynamic—which Rahman calls—the Hadith Movement. In ancient times, Abū Yūsuf and al-Shaybānī, who were disciples of Imam Abū Ḥanīfah, used *ijmak* flexibly without any support from the prophet Saw's narration directly. At the same time, al-Shāfi'ī bases the validity of the *ijmak* on the hadiths.⁸ Then, another thing that became awkward was when al-Shāfi'ī's statement defending his arguments regarding *ijmak* became popular and was considered a hadith of the Prophet Saw. Moreover, in Sunan al-Tirmidhī, the editorial of "khata" was changed to "ḍalālah." The argument is "We have understood that God willing, Muslims will not disagree on the sunnah of the Prophet and will not agree on the wrong thing."⁹

Researchers found several results of previous studies on *ijmak*. Gartenstein-Ross examines the role of consensus in the contemporary

4 Moh Rifa'i, *Ushul Fiqih*, al-Ma'arif, Bandung, 1973, page. 141.

5 Abu Ḥammād Ṣaghīr Āḥmad ibn Muḥammad Ḥanīf, *al-Ijmā' li Abī Bakr Muḥammad ibn Ibrāhīm ibn al-Mundhir al-Naysābūrī*, Dār al-Furqān, Ajmān, 1999, page.15.

6 See Abd al-Wahāb Khalāf, *'Ilm Uṣūl al-Fiqh*, Dār al-Kutūb al-Islāmiyyah, Jakarta, 2010, page. 42-43.

7 There is some understanding of the law for someone who renounces the *ijmak*: (1) not infidel, (2) ungodly, and (3) infidel. Read Marwān Ghulām 'Abd al-Qādir, *al-Ijmā' 'ind al-Uṣūliyyīn*, Thesis—Um Qurā University, Makkah, 2008, page. 131-134.

8 Fazlur Rahman, *Islamic Methodology in History*, Islamic Research Institute, Islamabad, 1964, page. 62

9 *Ibid.*, 52. Muhammad Iqbal argued that in this modern era, the most likely form of *ijmak* is to form a Muslim legislative assembly or legislative assembly for Muslims. The idea deserves appreciation, but its implementation is still deadlocked. See Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, Stanford University Press, Stanford, page. 138.

struggle for Islam.¹⁰ The study tries to seek consensus regarding jihad's definition and application. Meanwhile, Ali studied the consensus between use and misuse among scholarly consensus.¹¹ Alaei studies the viewpoint of allame Majlesi I about the companion of consensus (Ashab-e Ijma) and trustworthy narrators' shaykhs.¹² A more specific study was conducted by Julia and Omar, who examined the application of ijma' in modern Islamic finance rulings from a literature perspective.¹³ The study of Muhammad and his team also examines ijmak in the context of establishing law in a country.¹⁴ However, this study has not been so detailed in mapping out consensus methodologically.

There has been no similar study that examines ijmak comprehensively. Researchers assume this is because maqāṣid al-sharī'ah has recently become a trend of Islamic legal thought. Research in Islamic universities speaks more about its meaning or philosophical aspects. However, few delve into the historicity of the scientific product of classical scholars. That is why attempts to challenge classical uṣūl al-fiqh theories have not been considered significant. Not to mention, ijmak is rigid and textual so that a sich becomes the antithesis of the flexibility of maqāṣid al-sharī'ah. On that basis, then this research can be accounted for its originality. Indeed, there are several studies with the theme of ijmak, but none of them have a similar orientation of discussion and analysis. For this reason, researchers are moved to examine the ijmak in more detail as one of the postulates that third rank in the hierarchy of al-adillah al-shar'iyah version of the al-Shāfi'i school but is neglected in practice.

B. RESEARCH METHODS

This research is classified as library research. Library search utilizes library sources to explore the theory, as well as to obtain the data. This study fully uses secondary data as its research data. Researchers use a variety of literature related to the discussion of ijmak and other relevant discussions. The sources of this research data include: The ¹⁵The doctrine of Ijma' in Islam by Ahmad Hasan. The book The Islamic Methodology in History by Fazlur Rahman. Kitab al-Ijmā: Ḥaḡiqatuh, Arkānuh, Shurūḡuh, Imkānuh, Ḥujjiyatuh, Ba'd Aḡkāmiḡ by Ya'qūb al-Bāḡisayn. The book The Reconstruction of Religious Thought in Islam by Muhammad Iqbal. Kitab al-

10 Daveed Gartenstein-Ross, The Role of Consensus in the Contemporary Struggle for Islam, *The Review of Faith & International Affairs*, Vol. 6, No. 4, 2008, page.13-22.

11 Abdullah bin Hamid Ali, Scholarly Consensus: Ijma': between Use and Misuse, *Journal of Islamic Law and Culture*, Vol. 12, No. 2, 2010, page.92-113

12 Mahdi Alaei, The Companion of Consensus (Ashab-e Ijma) and Trustworthy Narrators' Shaykhs, *Jurisprudence and Ijtihad*, Vol. 3, No. 6, 2016, page. 99-115.

13 Taslima Julia, and Zainab Belal Omar, Application of Ijma' in Modern Islamic Finance Rulings: Does Ijma' Really Exist? A Literature Review, *Bangladesh Journal of Integrated Thoughts*, Vol. 13, No. 19, 2020, page. 5-46

14 Hasanudin Muhammad, Agus Alimuddin, Muhammad Wahdini, and Lisda Aisyah, Ijma' Dalam Konteks Penetapan Hukum Pada Suatu Negara, *Istinbath : Jurnal Hukum*, Vol. 17, No. 2, 2020, page. 202-218

15 Mestika Zed, *Literature Research Methods*, Yayasan Obor Indonesia, Jakarta, 2008, Page. 1-2.

Ijmā' li Abī Bakr Muḥammad ibn Ibrāhīm ibn al-Munḍir al-Naysābūrī by Abu Ḥammād Ṣaghīr Āḥmad ibn Muḥammad Ḥanīf. The Book of *Ilm Uṣūl al-Fiqh* by Abd al-Wahāb Khalāf. The article "Possibility of Conducting *Ijma'* in the Contemporary World" by Muhammad Amanullah. Book *A History of Islamic Legal Theories* by Wael B. Hallaq. The book *The Principles of Muhammadan Jurisprudence* by Abdur Rahim. The book *Principles of Islamic Jurisprudence* by Mohammad Hashim Kamali.

The technique used in this study is the documentation technique, which is a method of collecting data obtained from books, articles, journals, and others. The stage carried out by researchers to collect related data is to browse books, journals, and other articles printed in libraries.¹⁶ Bookstores, and the internet. The data that has been collected will be processed with the following steps: Editing, Classifying, Coding. Researchers use the method of heuristic analysis.¹⁷

C. RESULT AND DISCUSSION

1. The Urgency of *Ijmak* at the Beginning of Its Emergence

The existence of *ijmak* plays an essential role in maintaining the integrity of the people. The absence of the Prophet Saw. can trigger an explosion of conflict between people. The critical role of the *ijmak* was seen during the election of Abū Bakr. The idea of making Abū Bakr caliph probably arose because the Prophet Saw did not have a successor to a son.¹⁸ However, the consent of some of those involved in the election of Abū Bakr was judged insufficient because not a few doubted his validity: Anṣār and Banū Hāshim. Therefore, it is necessary to legitimize the *ijmak* of the entire Arab society. Although the concept of "Islamic nation" or state was not yet known to the Arab community then, unity towards the whole society, regardless of belief, was one of the teachings of the Prophet Saw that must be applied.¹⁹

The four caliphs were elected by the people, either directly or indirectly. Reportedly, 'Umar's candidacy as caliph came from Abū Bakr, who had previously conferred with several responsible figures. Meanwhile, the selection of 'Uthmān was also on the committee formed by 'Umar to appoint his successor, or what is known as *ahl al-shūrā*. Moreover, the surviving member (*baqiyyat al-shūrā*) later appointed 'Ālī as the successor of 'Uthmān.²⁰

Looking at such historical facts, Hasan argues that *ijmak* in Islam is an informal activity and does not have suitable means to ascertain the

16 Tatang M. Amen, *Develop a Research Plan*, Rajawali Press, Jakarta, 1990, page. 135.

17 Kaelan, *Interdisipliner Qualitative Religious Research Methods, Paradigm*, Yogyakarta, 2010, page. 188.

18 Asghar Ali Engineer, *The Origin and Development of Islam*, Orient Longman, Hyderabad, 1987, page. 127.

19 Leonard Binder, *Religion and Politics in Pakistan*, University of California Press, Berkeley & Los Angeles, 1961, page. 35.

20 Abū Ja'far Muḥammad ibn Jarīr Al-Ṭabarī, *Tārīkh Al-Umam Wa Al-Mulūk*, Bayt al-Afkār wa al-Dawliyyah, n.d., Riyadh, page. 492.

people's will.²¹ It begins with a *shūrā* (deliberation) command in the Qur'an to anchor to a joint decision to obtain objective truth. The activity of the early caliphate used many *shūrā* means, especially during the election of leaders. Meanwhile, the caliphate became an authoritarian dynasty in the later caliphate period (Umayyads and Abbasids). Not a few people were forced to take an oath of allegiance to the caliph who led.²² In this era, *ijmak* suffered massive distortions.

In responding to *ijmak*, Muslims should have philosophical considerations that God is wise; God respects the differences in views of his people.²³ Regarding the differences among Muslims, the *ikhtilāf* (difference) of excellent views becomes the antithesis of the concept of *ijmak*. If the *ijmak* wants the unification of religious life—not limited to legal/jurisprudence—then the concept of *ikhtilāf* calls for such differences to be incarnated in religious life. Acknowledging differences is itself a form of open Islamic ideology. So that there will be the heterogeneity of intra-Muslim views, both in the local sphere and in one country, in other words, *ikhtilāf* is a pluralist Islam.²⁴

Ijmak appeared for the first time because of socio-political necessity (socio-political needs) Only in the later era did it involve the Qur'an and sunnah to legitimize it.²⁵ In the time of the Prophet Saw, the activity of *ijtihad* was centered on the Qur'an and its sunnah. Furthermore, these two sources of law are considered the final solution to the problems that arose when the Prophet Saw lived. Thus, when the companions are faced with a completely new problem, they use the medium of *ra'y* (reason). *Ijmak*, in the era of companions, did not need the postulate of *naş* as its support.²⁶

The *Ijmak* of the Companions represents an established religious practice in the time of the four early caliphs. Especially against 'Umar ibn Khaṭṭāb who always consulted with the companions in untangling the knot of the problem. Moreover, he has consistently reported the results of his talks to the public. Suppose it is rumored that 'Umar had consulted with some companions to determine the thief's punishment. They agreed to cut off the thief's hand if they committed the theft for the first time.²⁷

21 Hasan, *The Doctrine of Ijma' in Islam*, page. 29.

22 Ephraim Karsh, *Islamic Imperialism: A History*, Yale University Press, New Haven, 2007, page. 35. Compare the extreme picture of Muawiyah in Jonathan A. Berkey, *The Formation of Islam: Religion and Society in The Near-East, 600-1800*, Cambridge University Press, Cambridge, 2003, page. 76–77.

23 Abdullah bin Hamid Ali, *Scholarly Consensus: Ijma': Between Use and Misuse*, *Jornal of Islamic Law and Culture*, Vol. 12, No. 2, 2010, page. 112.

24 Mohamed Nachi, *Thinking about Ikhtilah: The Political Construction of Difference in the Islamic Context*, *History of the Present: A Journal of Critical History*, Vol. 2, No. 1, 2012, page.56.

25 Ahmad Hasan, *Ijma' in The Early School*, *Islamic Studies*, Vol. 6, No. 2, 1967, page. 122.

26 Hasan, *Op.cit*, page. 122.

27 However, not just any theft gets a hand-cutting penalty. The deciding factor is the theft in violation of *hīrz* (custody) or goods under a person's supervision and care. Anwarullah, *The Criminal Law of Islam*, A. S. Noordeen, Kuala Lumpur, 1997, page. 176.

Meanwhile, if you repeat, the punishment is cutting off the legs. The third time, he will be imprisoned.²⁸

The friend of 'Uthmān ibn 'Affān is also recorded in history that he once conferred with 'Umar and the senior companions regarding the wealth that increased with the expansion of the territory. Usman proposed that a *dīwān* (people's note) be formed. It is intended to know individuals who have or have not received a share of the property. Because it is feared that conflicts will arise if the country's wealth is not well organized.²⁹

Another achievement of 'Uthmān that reflects the *ijmak* is the initiation of the Hijri calendar. At that time, 'Uthmān was the one who instructed 'Umar to form a Hijri dating system whose rotation of counts began with the events of the hijra of the Prophet Saw. Another account mentions that 'Alī ibn Abī Ṭālib also thinks so.³⁰ In addition, 'Uthmān also proposed to start the first year with the month of Muharram, considering that the month was the beginning of the month, as was the custom of the Arabs at that time. 'Uthmān's proposal was fully agreed upon by 'Umar with several companions who were witnesses to the deliberations. It was entirely agreed 'Umar with some companions who were witnesses to the deliberations.³¹

Deliberation is the guiding path of *ijmak*—as Iqbal's idea—and God's call to humankind, as Allah said at al-*Ṣūrā* verse 38.³² As for Schacht, the *ijmak* of friends took the form of an unspoken agreement—later known as *ijmak sukūti*.³³ Although later did not explain much about the correlation between *sunnah* and *ijmak*, which is the primary material forming *ijmak sukūti*.³⁴ This version of *Ijmak* takes the form of an unspoken or implied agreement. Acceptance of an *ijmak-i sunnah* is characterized by repeated religious practices. *Ijmak* is a complicated concept. Even to understand its historical roots, Muslim scholars have diverse views and discussion materials.

2. *Ijmak* Transformation Flow

Ijmak is a legal theory that developed through a long process. Its emergence is the embodiment of the spirit of Muslims to affirm the meaning of being a true Muslim. The appointment of Abū Bakr al-Siddiq as caliph by historians of Islamic law is considered the beginning of his

28 'Abd al-'Azīm Barawī, *al-Wajīz fī Fiqh al-Sunnah wa al-Kitāb al-'Azīz*, Dār al-Ibn Rajab, Damietta, 2001, page. 443.

29 Aḥmad 'Abd 'Āl Al-Ṭaḥṭawī, *150 Qiṣas Min Ḥayāt 'Uthmān Ibn 'Affān*, terj. Tubagus Kesa Purwasandi, Mizan, Bandung, 2016, page. 30.

30 Aḥmad 'Abd 'Āl Al-Ṭaḥṭawī, *150 Qiṣas Min Ḥayāt 'Alī Ibn Abī Ṭālib*, terj. Rashid Satari Mizan, Bandung, 2016, page. 69.

31 Ṣādiq Ibrāhīm 'Arjūn, *'Uthmān Ibn 'Affān*, al-Dār al-Su'ūdiyyah, Jeddah, 1981, page. 60.

32 Ministry of Religious Affairs of the Republic of Indonesia, *Al-Jamil: Qur'an Tajwid Color, Translate Per Word, English Translation*, CV. Cipta Bagus Segara, Bekasi, 2012, page. 487.

33 Joseph Schacht, *Origins of Muhammadan Jurisprudence*, Oxford University Press, Oxford, 1979, page. 82.

34 An explanation of the correlation of *sunah-ijihad-ijmak* can be found in Chapter I, *Islamic Methodology in History*, composed by Fazlur Rahman.

emergence. In his time, *ijmak* was nothing but the result of an agreement from a deliberation. Although in that era, *ijmak* was not yet called "*ijmak*," its essence was the same—as explained in the previous subchapter—that is, the form of agreement of Muslims. At this time, there were also no various detailed conditions that limited the *ijmak*. *Ijmak* is a creative forum for friends to answer the needs and problems faced.

Historical documentation up to the early era of Imam Mazhab—around the 8th century AD—has not revealed many specific *ijmak* events because the *ijmak* was part of the science of *uṣūl al-fiqh* had not developed at this time. The data used as analysis material is general historical data or public events connected to *ijmak*. Suppose that in the era of Abū Bakr, there was defiance from some Muslims to pay *zakat*. 'Umar ibn Khaṭṭāb—who always backed up caliph Abū Bakr—was of the view that the best solution was to tolerate it. For him, the unity of Muslims is a priority.

The events underlying the interpretation of the *sunnah* of the Prophet Saw. continued into the early days of Imam Mazhab.³⁵ Although Muslims have spread throughout the Arabian peninsula, the *ijmak* process is still ongoing. In this case, the *sunnah* of the Prophet Saw was interpreted, developed, and brought to life by the dialectic process of Muslim life until it finally precipitated into agreed general knowledge. Nevertheless, the term "*ijmak*" in the early era of the school's imam was still not widespread. This can be seen from references from the 8th century to the 9th century AD. Suppose, in *al-Muwaṭṭa'*, Imam Mālik often referred to it as "a practice already agreed upon by the people of Medina." In the Iraqi school, there are also found the phrases *al-amr al-mujtama' 'alayh* and *'alaih amr al-nās 'āmmatan*, whose outlines have the same ontological basis, namely the agreement of society.

Ijmak, which is still not a mature building of Islamic legal theory, has a democratic nature because opposition votes always accompany the process of reaching a specific agreement. Throughout the history of Islam until the early era of imams, *ijmak* is a natural process of solving problems based on the opinions of most Muslims.³⁶ However, in the early era of this school imams, there began to be a bias in understanding *ijmak*. The authority of the *ijmak* began to be dictated. *Ijmak*, on the one hand, is the agreement of Muslims in general. Nevertheless, on the other hand, *ijmak* is also the agreement of scholars or experts in science. Suppose in the statement of *al-Awzā'i*—a cleric from Syria—who called it the agreed practice of the rightly-guided leader.³⁷

35 What is meant by the early era of imams is the time before Imam al-Shāfi'i, namely Imam Abū Ḥanīfah (Iraqi school), Imam Mālik (medina school), and schools that developed in other regions, such as the Syrian school. This periodization seems to be done because it excludes Imam al-Shāfi'i and others. However, the basis of its logic is not seen from the subject or the historical perpetrators but the historical fact that the era of Imam al-Shāfi'i was the initial momentum of fundamentally changing *ijmak*.

36 Ahmad Hasan, *Ijma'* in *The Early School*, *Islamic Studies*, Vol. 6, No. 2, 1967, page.122.

37 Hasan, *Op.cit*, page. 130.

What became the pattern of *ijmak* in the early era of the imam of this school was the spirit of interpretation of the Prophet's free *sunnah* and later crystallized in the practice and understanding of Muslims. Its difference with the *ijmak* in the era of the four caliphs was the method of doing *ijmak*. In the time of the four caliphs, the method of worship was by deliberating, and there were regular polls among the companions, even if only in part until they found the best conclusion. This agreement will later get the approval of all Muslims. It is no wonder that al-Rāzī defines *ijmak* as "the agreement of ahl ḥall wa al-'aqd."³⁸ Although such definitions are less commonly known.

Meanwhile, in the early era of the school imam, the religious trend changed. There is a change in the socio-cultural conditions of the Muslim community. This change is due to differences in people's mobility, residence, and the influence of foreign civilizations. So that uniting the understanding of all Muslims scattered in various regions in the matter of *furū'iyah* cannot be done. For example, between Medina and Iraq, there are differences in perspectives on *kafā'ah*. For Iraqis, husbands and wives have an equal position in domestic life, but in Medina, such an understanding is not known, not even in al-Muwatta'.³⁹ In the end, each region has its *ijmak* characteristics. So what exists is local consensus, not a universal consensus as the standard definition of *ijmak*.

Researchers see the format or method of *ijmak* in the caliphate era as *ijmak ṣāriḥ* or voiced. Because, at this time, the *ijmak* process occurs through a discussion mechanism between friends. They expressed their thoughts and ideas in a deliberative forum until they produced a verdict. After the caliph's era, the *ijmak ṣāriḥ* could no longer have happened due to the spread of Muslims. Whereas in the early era of the imams of the school, what existed was the *ijmak sukūṭī*. Society's agreement on a religious understanding or practice is no longer voiced but entrenched and sublimated in the form of social behavior and general understanding.

Imam al-Shāfi'ī denied the idea of the proponents of *sunnah* and *ijmak*, who said Hadith (in standard, recorded form) was unnecessary. For him, what has been understood by the public as *ijmak* is not a true *ijmak*. They do not form an *ijmak* but *iftirāq* (opposition) because everyone is free to criticize and interpret it. For this reason, there needs to be an effort to purify *ijmak*. *Ijmak* must be an absolute agreement and not left out of room to doubt it.⁴⁰

Until the era of Imam al-Shāfi'ī, the change of *ijmak* included two things: (1) the scope of participants who had faith and (2) the emergence of new features inherent in the *ijmak*: infallibility (indisputable) or discouraging the democratic nature that existed in the

38 Fakhr al-Dīn Al-Rāzī, *Al-Maḥṣūl Fī 'Ilm Al-Uṣhūl*, Juz 2, Dār al-Kutūb al-'Ilmiyyah, Beirut, 1999, page. 20.

39 Noel J. Coulson, *A History of Islamic Law*, Edinburgh University Press, Edinburgh, 1964, page. 49.

40 Fazlur Rahman, *Islamic Methodology in History*, Islamic Research Institute, Islamabad, 1964, page. 23.

previous version of the *ijmak*. Thus, the *ijmak* that Imam al-Shāfi'ī believes in is the agreement of all Muslims without exception to a matter. The Sunnah of the Messenger of Allah will permanently be attached to the hearts of Muslims. So, if Muslims agree, they will not be wrong (infallibility).

However, the basis for saying *ijmak* is immune to error is relatively weak. At first, the hadith "my people will not agree in error" was the personal opinion of Imam al-Shāfi'ī.⁴¹ This opinion was then considered to be a famous hadith until later generations. The statement is also contained in Sunan al-Tirmidī and is preached to the Messenger of Allah Saw.⁴²

Then to trace the changes in the post-Imam al-Shāfi'ī (d. 820 CE) *ijmak* theory is complicated. For there is no sufficient reference to explain the *ijmak*. Researchers assume that the formalization of Hadith colored the trend of Islamic thought of the 8th-9th centuries AD. The era was the time of two great scholars of the Hadith: Imam al-Bukhārī and Imam Muslim. Early references discussing *ijmak* only emerged in the middle of the 10th century AD. From the work of the Hanafiah scholar, Abū Bakr al-Jaṣṣāṣ (d. 980 AD) and his rival, a Shī'ah scholar, al-Qāḍī al-Nu'man.⁴³

A representative reference featuring the discussion of the authority of the *ijmak* for the first time is the work of 'Abd al-Jabbār al-Asadabādī (d. 1024 AD)—a Mu'tazilah scholar. His essays show that many verses of the Qur'an and hadiths of the Prophet Saw confirm the existence and authority of the *ijmak*. One example is al-Baqarah verse 143: -Moreover, similarly, We have made you (Muslims) "middle people, that you may be witnesses of (deeds) of man and that the Apostle (Muhammad) may be a witness to your (deeds).⁴⁴||

Al-Asadabādī interprets the *ummatan wasaṭan* as a competent Muslim, not a Muslim as a whole. Because, among Muslims, some do not carry out religious life properly. Those who are classified as incompetent are not included in the subject with the power of religion.⁴⁵ This may have implications for the change of *ijmak*, which was initially the agreement of all Muslims into an agreement of *mujtahid* or *ulama*.

Discussions related to the *ijmak* postulate continued in the era of al-Juwaynī (d. 1085 AD), al-Sarakhsī (d. 1101 AD), al-Ghazālī (d. 1111 AD), al-Amidī (d. 1233 AD), and al-Shāṭibī (d. 1388 AD). The opinions of previous scholars regarding the Qur'an and the Hadith used as a postulate still have not met a bright spot because the postulates presented cannot provide a logical unity of understanding. So the scholars tried to perfect it until the appearance of the hadith *mutawatir*

41 Muḥammad ibn Idrīs Al-Shāfi'ī, *Al-Risālah*, Muṣṭafā al-Bābī al-Ḥalabī, Cairo, 1940, page. 472.

42 Rahman *Islamic Methodology in History*, page. 52.

43 Wael B. Hallaq, *On The Authoritativeness of Sunni Consensus*, *International Journal of Middle East Studies*, Vol.18, 1986, page. 433.

44 Ministry of Religious Affairs of the Republic of Indonesia, *Al-Jamil: Qur'an Tajwid Color, Translate Per Word, English Translation*, CV. Cipta Bagus Segara, Bekasi, 2012, page. 22.

45 Hallaq, *On The Authoritativeness of the Sunni Consensus*, page. 436.

bi al-ma'na by al-Ghazālī and the perspective of istiqrā' or inductive postulate proclaimed by al-Shāṭibī. Nevertheless, Hallaq considered that the opinions of scholars after al-Juwaynī regarding the ijmak postulates were still not convincing in terms of logic, jurisprudence, and theology.⁴⁶

3. Formulation of Indonesian *Ijmak* Version

Reformers' thinking in formulating ijmak maintains the standard definition of ijmak, namely the agreement of the ulama or mujtahid. The agreement was voiced in a formal assembly, which means ijmak ṣāriḥ. However, there is an expansion of the meaning of mujtahid or a subject that has faith due to the development of the times. Most reformers argue that the subjects of ijmak are experts in cross-disciplinary sciences and legislative office holders. It is just that ijmak like this can certainly be influenced by political constellations in a country. Among those who argued thus were 'Abd al-Wahhāb Khalāf, Muhammad Iqbal, AbdulHamdid A. AbuSufyan.

In response to the legislature's involvement in forming a potentially non-neutral ijmak, some thinkers chose not to hand over the authority of the ijmak to the legislature. One of them is Amanullah. He argued that an independent institution should be established that accommodates mujtahids and scholars worldwide to produce the ijmak that Muslims need. Every Islamic government is obliged to participate in financing the institution without any political pressure for personal or group interests. Such an idea is in line with Maḥmūd Shaltūt's opinion that the ijmak should not submit to political pressure and disregard the principle of free speech.

Although many thinkers call for the formulation of the ijmak to be handled by the legislature, some think this method distances the ijmak from its fundamental nature. Sayyid Muhammad Yusuf, for example, argued that Iqbal's opinion regarding the Muslim assembly could not be justified. From the beginning, the authority of the ijmak was in the hands of the mujtahid, not the politician. To reach the level of the mujtahid, one must go through a series of strict conditions. How is it possible to hand over such heavy authority to the legislature elected through elections in various, sometimes dirty ways? Ijmak is a natural process that grows with Muslims, not resulting from plenary meetings.

In addition, there is Ziauddin Sardar, who argues that the longer time passes, the more ijmak is uprooted from its roots. Ijmak is essentially a mutual agreement between religious stakeholders and Muslims in general. He argued that ijmak existed even in the time of the Messenger of Allah. When the Apostle was about to issue a decree, he would convey it openly in an unpretentious forum—such as a mosque—to the Muslims present. Then there was a democratic discussion process until it finally reached the ijmak. Nevertheless, Muslims who should be allowed to participate in the ijmak is reduced only to the mujtahids. It is not surprising that in the history of Islam, there appeared

46 Hallaq, Op.cit., page. 449.

authoritarianism, theocracy, and despotism in an era of Islamic rule/caliphate.

In the context of Indonesianness, some thinkers argue that the legislation decided by the DPR is part of the *ijmak*. Because this rule is considered a reflection of the voice of the Indonesian nation in regulating something, some also argue that the decisions of Bahtsul Masail, the Tarjih Assembly, and the MUI Fatwa are also considered a form of embodiment of *ijmak* because they were formulated and mutually agreed upon by several scholars.

There has been much discussion of the *ijmak* formulated by thinkers, of which the trend of their *ijmak* reform thinking is *ijmak ṣāriḥ*. The *ijmak* in their minds took the form of a formal agreement. In addition, *ijmak* should only be formulated by mujtahids and people who are competent in a particular field. So the idea arose to infuse *ijmak* into the form of assembly, DPR, and MUI. The idea was heavily influenced by how they did not deconstruct the definition of *ijmak* in a totalitarian manner. They only contextualize the standard definition of *ijmak* if it can meet the demands of the times.

Judging from the egalitarian principle, instigating *ijmak* in such a form is tantamount to discrediting ordinary people. Although incompetent in Islamic law formulation, at least they are involved in the process. Thus, Islamic law became the exclusive product of religious elites. This is certainly in contrast to the *ijmak* in the era of the caliph or the beginning of the school's imam. They use *sunnah* as a basis for thinking and acting.

If indeed contextualizing *ijmak ṣāriḥ* is considered irrelevant. So what if (what if) contextualized is a rival of *ijmak ṣāriḥ*, i.e., *ijmak sukūṭī*? Could it be that the shortcomings mentioned can be covered? Researchers have described that *ijmak sukūṭī* is an unspoken but symptomatic agreement in social practice and general understanding.

However, the question may arise that there are similarities between the *ijmak sukūṭī* and the postulate 'ādat present in the study of the science of *uṣūl al-fiqh*. Indeed, there is no difference in principle. As the postulates *maslaḥah mursalah* (Imam Mālik) and *istiḥsān* (Imam Abū Ḥanīfah). There are only differences in terms of technicalities or methods. As *ijmak sukūṭī* with the postulate 'ādat, if it is to be distinguished, then *ijmak sukūṭī* is the process of forming its understanding naturally, whereas when it has crystallized and applied in social life repeatedly, it turns into 'ādat.

The interrelationship of concepts like this also colors many Muslim academics' thoughts, for example, Fazlur Rahman. At first, he discussed the *sunnah* of the Prophet Saw. That is, this kind of thinking pattern is not new. Many technical concepts in the study of *uṣūl al-fiqh* tend to be the same. The similarity is not present at the method level but in principle.

For researchers, applying *ijmak sukūṭī* is more relevant in the context of Indonesian Muslim society. Muslim society in general—in this

case, the so-called layman—can contribute to shaping the *ijmak*. In the end, various matters related to morals and religious law will be agreed upon through the mindset and actions of society. In other words, sublimating becomes local wisdom. Of course, the local wisdom of a group of Muslims cannot be generalized to be forced on other Muslim groups with different backgrounds.

Suppose, in terms of inheritance, the Javanese Muslim community will tend to divide property equally between heirs with the same degree: sons and daughters. Another example in terms of polygamy. Today's tendency is that people regard having more than one wife as taboo, even if it does not forbid it. Then marriages performed by early children—say under 20—are also considered harmful even though the jurisprudence does not forbid it.

These examples are the communal views of the Muslim community in Indonesia, and that is the real *ijmak*. This kind of reality is the true *ijmak*, as has happened in the history of the development of the natural minds of the Muslim society of the second and third centuries of Hijri. *Ijmak* is preserving noble values (*sunnah*), which then get social consent. If the *ijmak* is only centered on the authority of the religious elite, it is not necessarily that Muslim grassroots groups will agree on it. Thus, local wisdom or custom should be treated as *ijmak*.

D. CONCLUSION

The chronology of the formation of the *ijmak* begins with the appointment of Abū Bakr al-Ṣiddīq as caliph. This event was the first time the Muslim community deliberated on solving a fundamental problem without direct guidance from the Prophet Saw. Entering the time of the early Imams of the School, the *ijmak* underwent development. *Ijmak* is interpreted as (*sunnah*) precedent that is interpreted and gets the approval of the community. *Ijmak* in this era is democratic and inclusive. Nevertheless, a significant change occurred when Imam al-Shāfi'ī launched the hadith movement. The formalization of *sunnah* also affects the *ijmak*, which then becomes stagnant and rigid. Until the following times, the right of faith was reduced only to the mujtahid. A lay Muslim community is not considered capable. To this day, the definition of *ijmak*, a mujtahid agreement, has been maintained. The revitalization of *ijmak* should deconstruct the standard definition of *ijmak*. Some studies have proposed *ijmak* reforms but still, maintain the standard definition. Supposedly, the contextual *ijmak* is precisely the *ijmak* version of the early era of the imam of the school, which is the dialectic process of society in formulating standard rules and norms. In this case, all (Muslim) societies are involved without any lay or expert barriers. That way, it will create norms that genuinely reflect the mutual agreement. Suppose, in terms of marriage: it is common knowledge that polygamy in Indonesian Muslim society is taboo, although not haram.

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