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Initiating Social Fiqh Sahal Mahfudz

Faozi Latif

UIN Saizu Purwokerto, Indonesia

Corresponding author's email: faozi.latif@gmail.com

Abstract: Fiqh has a central role as a legal instrument to regulate the life of Muslim society. They need a legal instrument whose character is no longer purely textual normative, as is the case with the Qur'an and hadith, but which is already structured into an applicable legal institution (fiqh). Unfortunately, fiqh often positions itself as the holy and untouched Al-Quran and Hadith. For Kyai Sahal, fiqh is not a dogmatic-normative concept, but an active-progressive concept. His thoughts on social fiqh opened a new discourse in positioning fiqh as an instrument for realizing benefit.

Keywords: *fiqh; sahal mahfudz; social fiqh*

A. INTRODUCTION

In Islam, the role of fiqh is very vital. Fiqh is a tool that makes it easier for people to carry out religious orders. Religious orders originating from the holy texts of the Al-Quran and Hadith, are revealed to be applicable legal institutions through fiqh. Thus, fiqh is codified to operationally manage all human activities, starting from religious ritual issues to profane issues, whether political, social, economic or cultural.

However, sometimes the role of fiqh in helping solve community problems sometimes causes dilemmatic problems. The use of medieval fiqh books as a reference in solving societal problems is considered to

have substantive weaknesses, especially in terms of era differences, sociological, psychological and cultural. It is this difference that causes the obstacle of "dialogue" between fiqh (which is in the book) and social reality.

In connection with many things, the current modern era has brought fiqh to a problematic and dilemmatic position. Fiqh is not only difficult to resolve various social problems and issues it faces, but it is also still stuttering about defining its self, especially in the context of formulating appropriate legal methods to be used to resolve these various problems. However, due to its reflective nature, cognitive abilities are needed to translate idealistic religious



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texts into empirical reality. This is the urgency of developing or updating fiqh. Because fiqh is the result of *ijtihad*, certain tools are needed to regulate the attainment of fiqh products known as *ushul fiqh* or legal theory and *qawa'id fihiyyah* or legal maxim. The first is understood by Muslim jurists as a building on investigative principles and methodologies by which practical legal rules derive their particular sources. While the latter is more in character as a guideline for making practical religious laws, which determines the final form of a legal decision to be taken if the conditions and requirements underlying an issue that had previously been decided have changed.

Sahal Mahfudz, who is known as Mbah Sahal is a figure, leader, economist, icebreaker, setback, poverty, and background. He is a multidisciplinary figure and dynamicalist among Islamic boarding schools and Nahdlatul Ulama, the two institutions that raised him. As a scholar, Sahal has no doubt about his religious scientific capacity, especially his mastery of the yellow book or *al-turast al-islami*. This scholarly capacity can be seen from the numerous works covering various scientific aspects (Riyadi, 2016).

For Sahal, fiqh is not a dogmatic-normative concept, but an active-progressive concept. Fiqh must be in direct contact with *af 'al al-mutakallifin* attitudes, behavior, conditions, and actions of Muslims in all aspects of life, both worship and *mu'amalah* (social economic interaction). Sahal does not accept that fiqh is insulted as a stagnant science, a source of stagnation and decline of the ummah, fiqh is actually a science that

directly comes into contact with the real life of the ummah, therefore fiqh must be dynamic and revitalized so that its concept is able to encourage and mobilize Muslims to improve their economic aspects in order to achieve worldly happiness (Riyadi, 2016).

His advantage that no one else has is that he is able to infuse fiqh with contemporary critical thinking, so that the ideas of his fiqh thinking are not too vulgar and even more towards social fiqh. That is, fiqh is not only a science of the hereafter which denies life. But he mixes and implements it in the form of human empowerment. However, the fiqh formulation that was constructed hundreds of years ago is clearly not sufficient to answer all the problems that occur today. The social, political and cultural situation is different. The law must rotate according to space and time. If it is only based on the formulation of the text, what if there are legal problems that are not found in the textual formulation of fiqh? Do you have to be *mauquf*? Even though it is not permissible for scholars to make legal issues themselves. This is where the need for "new fiqh" which accommodates new problems that arise in society (Riyadi, 2016).

B. BIOGRAPHY OF SAHAL MAHFUDZ

Full name of Sahal Mahfudz (hereinafter referred to as Kyai Sahal) is Muhammad Ahmad Sahal bin Mahfudz bin Abd. Salam Al-Hajaini was born in Kajen Village, Margoyoso Pati on December 17, 1937. Kyai Sahal was born to Kyai Mahfudz bin Abd. Salam al-Hafidz (w 1944 AD) and Hj. Badi'ah (d. 1945 M) who was born alive in a boarding school, grew up in a boarding school

environment, studied until her field of service was also in a boarding school. Kyai Sahal's five brothers, namely, M. Hasyim, Hj. Muzayyanah (wife of KH. Mansyur, caretaker of PP An-Nur Lasem), Salamah (wife of KH. Mawardi, caretaker of PP Bugel-Jepara, sister of KH. Abdullah Salam's wife), Hj. Fadhilah (wife of KH. Rodhi Sholeh Jakarta), Hj. Khodijah (KH. Maddah's wife, caretaker of PP Assuniyah Jember who is also KH. Nawawi's granddaughter, KH. Abdussalam's biological sister, KH. Sahal's grandfather). In 1968/69 Kyai Sahal married Dra Hj. Nafisa bint KH. Abdul Fatah Hasyim, caretaker of the Fathimiyah Islamic Boarding School, Tambak Beras Jombang, and has a son, Abdul Ghofar Rozin, who has since been prepared to replace Kyai Sahal's leadership (Riyadi, pp.115-116). Another version related to his birth is that Kyai Sahal was born in Kajen, February 16, 1933 AD, which means it coincides with the 20th of Shawwal 1351 H. This date is based on old records belonging to Kiai Mahfudh Salam which were found two years before Sahal died (al-Nashr, 2016).

Little Sahal must have been lucky to be born and raised in a family with a strong tradition of learning, especially in his surroundings where there are many Islamic boarding schools and madrasahs whose leaders are still related by blood to him. This made it possible for him to access various kinds of knowledge. Even though since he was 8 years old he had been abandoned by his father, he was blessed with this conducive culture. Guided and mentored by his uncle, KH. Abdullah Salam, Sahal grew and developed into a person who is proficient in the fields of fiqh, language and society in

a relatively fast and young time (Faisal, 2010).

After completing his Tsanawiyah education at Madrasah Tsanawiyah Matha'liul Falah, since 1953 young Sahal then traveled to seek knowledge from a number of qualified scholars. Not feeling enough with the knowledge he had, he then continued his studies in Mecca under the tutelage of Sheikh Yasin for three years. When he was 29 years old, he was trusted to lead the Maslakul Huda Islamic Boarding School in North Polgarut. At the same time, he was appointed Director of the Matha'liul Huda Islamic College replacing KH. Abdul Salam (Faisal, 2010).

Kajen, Bendo, and Sarang, three Islamic boarding schools where Sahal studied, have provided sufficient knowledge to improve Sahal's quality. His wanderings seeking knowledge have led him to become a teacher and young kyai who are respected and respected by the students. However, Sahal remained humble, simple, and humble as taught by his teachers. Good analytical skills and scientific understanding are able to make Sahal's thoughts grounded and useful for the benefit of the people (al-Nashr, p.105).

His figure is very understated. His speech was calm, straightforward, without any pretensions to teach. Even though Sahal was highly respected. He served two terms as Rais Aam Syuriah of the Nahdatul Ulama Executive Board (1999-2009) and General Chairman of the Indonesian Ulema Council (MUI) for the 2000-2010 period. At the VII MUI National Conference (Munas) (28/7/2005) Rais Aam Syuriah of the

Nahdlatul 'Ulama (NU) Executive Board, was re-elected for a second period as Chairman of the Indonesian Ulema Council (MUI) for the 2005-2010 term (Muttqin, 2012).

Sahal is diligent in caring for the Maslakul Huda Islamic boarding school, he is also known as an organizational activist. Chairing the Association of Islamic Boarding Schools (Rabitah Ma'ahid Islamiyah) in the Central Java region, he concurrently serves as Head of NU Syuriah in the same area. KH. Sahal once said, "Pesantren as moderators of village development," he said, "are independent educational institutions. It does not belong to individuals, but belongs to the people, has a dual function, as an educational institution and a village social institution." In collaboration with the Jakarta Economic and Social Research, Education and Information Institute (LP3ES), and the Mandiri Bandung Foundation, the students were given lessons on Appropriate Technology. Establishing the Boarding School and Community Development Bureau (BPPM), the pesantren also fosters cooperatives, animal husbandry and restoration of people's houses (Muttqin, 2012).

Meanwhile, the work he had done was a teacher at the Sarang Islamic Boarding School, Rembang (1958-1961), Lecturer at the Special Faculty of Fiqh at the Kajen (1966-1970), Lecturer at the Tarbiyah Faculty of UNCOK, Pati (1974-1976), Lecturer at the Fak. Syariah IAIN Walisongo Semarang (1982-1985), Chancellor of the Nahdlatul Ulama Islamic Institute (INISNU) Jepara (1989-present), permanent columnist at AULA Magazine (1988-1990),

permanent columnist at Suara Merdeka Daily, Semarang (1991-present), Rais 'Am Syuriah PBNU (1999-2004), Chairman of the Indonesian Ulema Council (MUI, 2000-2005), Chairman of the National Sharia Council (DSN, 2000-2005), and as Chairman of the Sharia Supervisory Board for Joint Life Insurance Putra (2002-present). A figure like Kyai Sahal would be worthy of being an example for everyone. In recognition of his character, he has received many awards, including World Peace Figures (1984), Class I Manggala Kencana (1985-1986), Bintang Maha Putra Utarna (2000) and National Uniting Figures (2002) (Riyadi, p. 119).

Sahal passed away on Friday, January 24 2014 in the morning. He died at his residence in the Mathali'ul Falah boarding school complex, Kajen, Pati, Central Java. Sahal is buried in Kajen, near Pati, Central Jawa (Auliani, 2014).

C. GENEALOGY OF SOCIAL FIQH SAHAL MAHFUDH

Sahal's fiqh thinking tends to be different from the others. This was heavily influenced by his anxiety about the culture of formalist thought, in the sense of applying fiqh theories based solely on textual understanding without considering the practical or contextual conditions. It turns out that even among the people there is anxiety like that and feel they are not free with the formalist style of thinking. From there emerged contextual fiqh as an alternative choice of anxiety that developed in society. The term used is also quite accommodative, namely social fiqh, which means that the way of thinking and acting is

in accordance with the social conditions that develop in society without losing its textual basis. If one observes closely, Sahal's concept is a criticism of the two mainstreams of thought that were developing at that time, namely: first, a group that only pursues the area of practice without being equipped with adequate abilities. Second, groups that are only busy with discussions or rhetoric but forget about the conditions that are developing in society (Aulia, 2017).

Sahal's Social Fiqh ideas were influenced by his intellectual network, namely meetings with Kiai in several Islamic boarding schools, Mbah Mansyur (Lasem), Mbah Muhajir Bendo (Pare, Kediri), Mbah Mad and Kiai Zubair (Sarang), Syech Yasin al-Fadani (Makkah). Besides that, Kyai Sahal was also guided by his uncle, Mbah Abdullah Salam, Kajen. In addition to the network of Kiai and Islamic boarding schools which became the scientific foundation of Sahal, the work of the organization and Non-Governmental Organization (NGO) that Sahal was involved in also played a role in bringing about the achievement of the idea of Social Fiqh. Without clashing with the social reality of society, Fiqh will only be a text that is unable to communicate with the times (Aziz, 2015).

The contextual style of Sahal's thinking was greatly influenced by the attitude of Kyai Mahfudh Salam, Sahal's father, who was not anti-new things. There were at least three important things from his father's attitude that greatly influenced Sahal's life, namely Kiai Mahfudh's advanced communication patterns in building relationships, his open

attitude towards knowledge outside the pesantren, and his firm attitude when dealing with the problems of the people. These three attitudes are based on a strong and deep understanding of Islamic religious teachings so that what Sahal does is an interpretation of Islamic religious teachings originating from the Koran, al-Hadith, and classical books (al-Nashr, p. 106).

A reading of social reality will lead to a conclusion that the development of fiqh is a necessity. Al-Quran and Hadith texts have stopped, while society continues to change and develop with its various problems. Many social, cultural, political, economic and other problems that have emerged recently need to immediately obtain fiqh legality. As the most practical form of Shari'a, it is only natural that Fiqh is considered to be the most responsible for providing solutions so that changes and developments in society remain within the guidance or corridors of Shari'a.

For the purpose of developing fiqh, in fact, past mujtahids have provided a solid foundation, as described in the principles of ushuliyah and fiqhiyah. Until now, it seems that there is no methodology or manhaj for understanding sharia that has been tested (efficacious) for its success in overcoming various social problems other than what has been formulated by previous scholars. Even fiqh, in the sense of compendium jurisprudence, is still relevant to be used as a reference in dealing with various actual problems (Mahfudh, 2011).

What is urgent to be done is to change the public's view of fiqh as a whole and in its entirety, not only to ordinary people, but to

groups who feel they have been able to understand fiqh correctly. The weakness of the last group is that fiqh is positioned only as a codification or compilation of Islamic law. In the view of this group, fiqh is a compilation of laws that are fully applicable. Because it falls on the assumption that fiqh is as strong and sacred as the Al-Quran and Hadith. This is not only disproportionate, but has lowered the rank of Allah and the Sunnah of the Prophet as a completely universal source of law (Mahfudh, 2011).

Sahal was able to carry out the doctrine of fiqh civilization as a key word in the community empowerment program around his pesantren. The basics of fiqh and tips for success of Kyai Sahal can be read in various of his works or works about him, including Social Fiqh Nusantara, New Faces of Islamic Boarding School Fiqh, Study of Social Fiqh, Searching for Meaning Islamic Boarding School, Dialogue with Sahal, and so on. The basics of his thoughts are not only contained in these books, but have been seriously studied by various academics both in undergraduate, postgraduate, and even doctoral degrees. In these books we can explore the basic concepts of Sahal's social Fiqh in empowering the community. It was here that Sahal used the term social fiqh as a bridge to bring together normative fiqh texts with various contemporary social problems (Muntaqo, p.73).

In Sahal's formulation, the term fiqh renewal is actually carried out with the development of fiqh through the reinterpretation of ushul fiqh principles such as the expression "al-ibrah bi generally al-lafz la bi especially as-sabab" towards

realizing a contextual style of fiqh. This kind of effort is *ijtihad* in the sense of language, not terms. Through the idea of social fiqh, Kiai Sahal wanted to correct the tradition of fiqh in the pesantren community which so far has not responded to social problems. Kiai Sahal attempted to address what is often referred to as the problem of modernity through the contextualization of fiqh or social fiqh, not the constitutionalization of Islamic law which was operated by force. The function of social fiqh is very progressive, including being a "counter discourse" against the hegemony of old, conservative thought patterns. This is because the key concept of all Islamic legal thought is universal goodness (AlMunauwar, 2018).

D. PARADIGM OF SOCIAL FIQH

Islamic Shari'a regulates the relationship between humans and Allah which in fiqh becomes a component of worship, both social and individual, *muqayyadah* (bound by conditions and pillars) and *muthlaqah* (operational techniques are not bound by certain terms and pillars). It also regulates the relationship between human beings in the form of *muasyarah* (association) and *muamalah* (transaction relations to fulfill family relationships and procedures, which are formulated in the *munakahat* component. To organize associations that guarantee peace and justice, it also has rules that are spelled out in the *jinayah* component, *jihad* and *qadha* (Mahfudh, p. 33).

he above components are the technical operational aspects of the five objectives of the Shari'a (*maqashid ash-shariah*) namely maintaining religion, mind, soul, lineage

(heredity) and property. These components unanimously and integrately arrange the main areas of human life in the context of endeavoring to carry out taklif, to achieve worldly and ukhrawi welfare (sa'adatuddarain) as the goal of his life (Mahfudh, p.33).

Social Fiqh in the style of Sahal Mahfudh then wants to initiate and offer a paradigm of Fiqh that is able to answer and realize the benefit of creatures in the world and the hereafter, so that the Fiqh offered emphasizes the need to pay attention to policy making and act in upholding benefit and being able to read developments in an ever-evolving context (Dahlan, 2016).

In short, it can be formulated that the paradigm of social fiqh is based on the belief that fiqh must be read in the context of solving and fulfilling three types of human needs, namely dharuriyat (primary) needs, hajiyat (secondary) needs, and tahsiniyat (tertiary) needs. Social fiqh is not only a tool to see every event from black and white eyes, as we commonly find fiqh perspective, but social fiqh also makes fiqh a paradigm of social meaning (Mahfudh, p.34).

Fiqh is not only seen as a tool for measuring the truth of orthodoxy, but must also be interpreted as a tool for reading social reality and then taking certain attitudes and actions towards that social reality. So that fiqh has a dual function, namely as a tool to measure social reality with sharia ideals which end in halal or haram law, permissible or not permissible, and at the same time being a social engineering tool. These two functions are only possible if the products and reasoning

tools owned by fiqh are developed contextually. The contextual approach to fiqh can be done through the contextualization of fiqh products scattered in classical treasures, as a model for the development of the qauli school of thought as well as by developing the manhaji school of thought through the application of ushul fiqh principles and fiqhiyah principles, as well as through integration between 'ilat Hukum and jurisprudence (Mahfudh, tt.).

According to Sahal, the salient features of the new "paradigm with fiqh" are: *first*, trying to re-interpret fiqh texts to find new contexts. *Second*, the meaning of belonging to a school has changed from having a textual school (the qauli school) to being a methodological school (the manhaji school). *Third*, fundamental verification between the main teachings (ushul) and the branches (furu'). *Fourth*, fiqh is presented as a social ethic, not as a positive state law. Fifth, the introduction of the methodology of philosophical thinking, especially in cultural and social issues. Therefore, the presence of fiqh here is also a hermeneutic trap that influences its methodological issues (Aulia, tt).

Sahal's idea of seeing social conditions that are far from the realization of fiqh civilization, poses a big challenge in contextualizing the contents of the fiqh text itself. From here, his efforts emerged in empowering the community through this fiqh civilization. First, in zakat, for example, Kiai Sahal does not just recommend zakat as a religious responsibility. But there is a spirit of empowerment for the poor who are crying to feel the hardships of life on the side of the

main road. For this reason, according to Sahal, Zakat is a "strategic way" so that the poor in various corners of the village can rise and even become the main support for the national economy. Apart from that, in the field of improving health, Sahal built an Islamic Hospital and BPR Artha Huda Abadi which served savings and loans for small communities. Currently, even Artha Huda Abadi has established a Syari'ah unit. Currently, BPR Artha Huda Abadi's assets are worth tens of billions of rupiah. *Second*, social Fiqh is also reflected in Sahal's commitment to environmental preservation. He initiated fiqh al-bi'ah (environmental fiqh) which then gave the pesantren spirit to campaign for saving the earth and the environment. So far, fiqh texts have not been confronted with various social and environmental problems, such as tsunamis, floods, mudflows, earthquakes, and the current global warming. These sensitive issues, according to Kiai Sahal, must immediately get a strategy in social fiqh, so that religionists are not clumsy in responding to the environmental crisis that continues to haunt society (Muntaqo, p.75).

Third, Relocation of Prostitution. According to Kiai Sahal, there are two best ways to deal with prostitution. First, through the centralization of prostitution locations, namely localizing prostitution from a place far from contact with the population. Second, through a causative-sociological approach. The first approach is intended as a middle ground between two schools of thought, namely those who still want prostitution as it is and those who insist on eliminating prostitution. Kiai Sahal recommended Nusakambangan and

Karimunjawa as places to minimize the negative effects of professional prostitution. Kiai Sahal's opinion was based on the principle of akhaff ad-dararain, namely taking the attitude that carries the least risk of two kinds of danger. The second way, namely by tracing the background of the perpetrators and efforts to distance the causes that lead to adultery and sexual freedom.

Fourth, about contextual education. Sahal views education as a conscious effort to shape character and behavior in a systematic, planned and directed manner. Kyai Sahal's criticism is about the world of modern education which has failed to carry out a humanitarian mission, including the criticism in which it is aimed at Islamic educational institutions. The criticism is as follows: "Islamic educational institutions outside the pesantren, which were originally expected to be alternative media, in their development have been deemed unable to maintain this expectation. Cognitive educational policies (assuming that in-depth scientific understanding will produce religious behavior that can be accounted for scientifically), in the end it will produce products that master Islam scientifically, but are often questioned in terms of practice (amaliyah)."(Riyadi, pp. 125-126)

Fifth, about the relationship between religion and the state. The relationship between the two refers to "mutualism symbiosis". Both influence each other and need the common good. In his next idea, Kiai Sahal sees the importance of "political cultururation" to create civil society in modern democratic discourse. Civil society is

understood as an area of organized social life with the characteristics of volunteerism, self-generating, obedience to law, self-supporting, and self-reliance in dealing with the state (Riyadi, pp. 124-125).

E. CLOSING

Sahal's social fiqh thinking tends to be transformative in nature because it is directed at transforming unequal social structures into functional and humanist structures while at the same time trying to transform society into a modern direction. Community development activities are carried out by emphasizing the dialectical unity between reflection and action, theory and practice, as well as faith and charity.

The idea of Social Fiqh, in terms of the discipline of fiqh itself, is quite interesting, but it still requires deepening and some supporting tools, especially socialization. Methodological improvement still needs to be done, including correlation patterns in presenting fiqh as ethics. Likewise, the problem of taking benefit and the integration of wisdom and illat in qiyas needs to continue to be matured within a methodological framework.

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