

## The Progressivity of Umar Ibn Al-Khattab's Ijtihad in Responding to Community Social Changes

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DOI: <https://dx.doi.org/10.29240/jhi.v8i1.4872>

Received: 29-06-2022

Revised: 07-04-2023

Accepted: 04-05-2023

Cite this article:

Arrasyid, F., Pagar, P., Tanjung, D., & Nor, M. (2023). The Progressivity of Umar Ibn Al-Khattab's Ijtihad in Responding to Community Social Changes. *Al-Istinbath: Jurnal Hukum Islam*, 8(1 May), 21-36. doi:<http://dx.doi.org/10.29240/jhi.v8i1.4872>

### Abstract

This study aims to see how Umar Ibn Al-Khattab's legal ijtihad typology responds to social changes that occur in society. Ijtihad is a legal decision-making process based on *syar'i* arguments. During his leadership, Umar ibn Khattab was known to history as one of the caliphs who often performed ijtihad and the results often differed from those of other companions of the Prophet in terms of understanding and practice of Islamic law. Umar bin Khattab often recited the Quranic texts and hadith of the Prophet by contextualizing verses and hadiths through his *maqasid* approach. This research uses normative legal research methods. The data were obtained through literature review and analyzed using a descriptive analysis approach. The results showed that Umar's ijtihad pattern of Islamic law in some cases is considered as an integrated, integral, and authentic understanding in order to realize the benefit of Muslims. He carried out the policy of Islamic law by paying attention to rapidly developing social changes. Although his Ijtihad seems contrary to the provisions of the text, in fact Umar can be said to be able to understand the general principles (*al-ushul al-kulliyat*) of the Koran. So that the Quranic text, which has

descended historically, can always provide answers and solutions to social problems of society that are always undergoing changes.

**Keywords:** Progressive Law; Ijtihad; Social Change

## Introduction

Change is a necessity that will continue to be created from the work of humans. Changes and the passage of time, make every element change. This condition is continuously moving without stopping. If changes and developments as a result of motion and dynamics are not seen in life, then it means that the signs of life itself have disappeared. Likewise with religion, its existence will be judged to have a function for a life, if religion is in practice open to the demands of motion and the dynamics of human life.<sup>1</sup>

The strength of religion lies in its ability to respond to moral issues. Even if religion is ultimately reluctant and unable to interact critically with various social problems and their development, it means that the prophetic mission of religion (moral messages) has been gradually reduced. Whereas in carrying out its duties, religion must be supported by local cultural wisdom.<sup>2</sup>

Likewise the presence of the Qur'an in the midst of society, which was originally a response to the problematic situation of society. As a basic principle, the Koran only contains a small part of the law in detail. While the sunnah is limited to cases that occurred during the time of the Prophet Muhammad SAW. Therefore, to solve new problems, especially those related to social problems (muamalah), it is necessary to carry out ijtihad by optimally utilizing Allah's grace. Because Islamic law accommodates social change in society.<sup>3</sup>

In the course of human history, there have been many figures from various scientific backgrounds who have tried to find the truth of religious teachings by using reason or thoughts as suggested by the Qur'an. Opportunities for them are wide open as long as they have the ability and authority to do so. One of them was Amir al-Mukminin, Umar ibn al-Khattab RA, the second caliph in the generation of khulafâ 'ràsyidûn. He was a great mujtahid who used his wits bravely and honestly, in order to maintain the relevance of Islamic teachings to the world in which he lived and ruled. He does ijtihad not only if

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<sup>1</sup> Iskandar Siregar, "The Relationship between Conflict and Social Change in the Perspective of Expert Theory: A Literature Review," *International Journal of Arts and Humanities Studies* 2, no. 1 (n.d.): 9–16, <https://doi.org/10.32996/bjajs.2022.2.1.2>.

<sup>2</sup> Hadi Pajarianto, Imam Pribadi, and Puspa Sari, "Tolerance between Religions through the Role of Local Wisdom and Religious Moderation," *HTS: Theological Studies* 78, no. 4 (January 27, 2022), <https://doi.org/10.4102/hts.v78i4.7043>.

<sup>3</sup> Muhammad Zubair Abbasi, "Islamic Law and Social Change: An Insight into the Making of Anglo-Muhammadan Law," *Journal of Islamic Studies* 25, no. 3 (September 2014): 325–49, <https://doi.org/10.1093/jis/etu045>.

there is no guidance from the Qur'an and Sunnah, but dares to ijtihad even though there are instructions from revelation and hadith. He dared to take a policy that was no longer in accordance with the understanding of the work of the Qur'anic verses or the traditions that were previously carried out by the Prophet Muhammad. The reason is because the social situation and circumstances have changed.

One example of Ijtihad Umar can be seen in the case of the expulsion of non-Muslims from the Arabian Peninsula as well as subsidies for the people he led. As for the background of the expulsion because Jews and Christians living in the Arabian Peninsula carried out usury transactions in entrepreneurship that had the potential to paralyze the economy of the *ummah*, it was integrated with the *hifz'ul maal* in the *maqashid asy-syari'ah*. Meanwhile, the subsidy policy for the people is the implementation of *hifz'ul an-nafs*, namely to ensure the survival of the people.<sup>4</sup> Another ijtihad occurs also in the case of abortion of the punishment (*had*) of cutting hands for thieves committed during famine.<sup>5</sup>

During the leadership of Umar bin Khattab, he had also issued a policy of delaying the withdrawal of zakat to goats, even though the number of goats had reached nishab. The background of Umar's policy was due to a long period of famine and drought.<sup>6</sup>

As we all know, Umar ibn Khattab was one of four caliphs (historically often referred to as *al-Khulafa' al-Rasyidun*). Compared to the other three caliphs, Umar is better known for being most controversial for his reading of the Quran. With the political power he held, revolutionary strength and courage, and could be called an intelligent caliph, Umar was able to creatively produce new fiqhs that had never existed in his senior days, Abu Bakr.<sup>7</sup>

The process of reforming Islamic law which is adapted to the context has also taken place in Indonesia. There are many researches and studies that have been produced with the theme of renewal of Islamic law. As was done by Ibrahim Hosen who gave the definition of property rights in the marriage

<sup>4</sup> Cut Nova Rianda, Asra Febriani, and Yoni Hendrawan, "Implementasi Maqashid Syar'iyah Dalam Ijtihad Umar Bin Khattab," *Jurnal Ekonomi & Perbankan Syariah* 2, no. 2 (2022): 307–21, <https://doi.org/10.37598/JEIPS.V2I2>.

<sup>5</sup> Khairatun Hisan and Arif Dian Santoso, "Analisis Syar'iyah Ijtihad Umar Bin Khattab Terhadap Hadd Sariqah," *Al-Jinayah: Jurnal Hukum Pidana Islam* 6, no. 2 (2020): 397–319, <https://doi.org/10.15642/AJ.2020.6.2.397-319>.

<sup>6</sup> Ahmad Munif, "Analisis Pendapat Khalifah Umar Bin Khattab tentang Penundaan Penarikan Zakat Binatang Ternak Kambing yang Telah Mencapai Nisab," *Muqtasid: Jurnal Ekonomi dan Perbankan Syariah* 3, no. 2 (December 1, 2012): 205, <https://doi.org/10.18326/muqtasid.v3i2.205-230>.

<sup>7</sup> Muhammad Riqki Akbar, Surya Agusriadi, and Wira Edi Dastia, "Kontroversi Kebijakan Fiskal Non-Zakat Khalifah Umar Bin Khattab," *Syar'ie: Jurnal Pemikiran Ekonomi Islam* 6, no. 1 (February 28, 2023): 59–69, <https://doi.org/10.51476/syarie.v6i1.411>.

contract for Muslim couples. According to him, the marriage contract is not to control and own the wife's body which positions the wife as an object, but the marriage contract creates utilization rights for the husband/wife towards their respective partners. This opinion is used as a basic argument to encourage legal renewal against Article 80 paragraph (5) of the Compilation of Islamic Law regarding the husband's obligation to his wife with *tamkin*.<sup>8</sup>

In addition to reforming *fiqh* (Islamic law), there is also renewal of the approach used in the process of finding law in Islamic law. As was done by M. Atho Mudzhar who found an interdisciplinary approach. According to him, this approach is more capable of presenting an understanding of Islamic law (*fiqh*) that is able to answer the challenges and needs of the *ummah* compared to using a monodisciplinary approach.<sup>9</sup>

This paper wants to elaborate on the typology of reading the holy verses of the Koran by Umar bin Khattab to answer the social-community problems that occurred at that time. The research was conducted using exploratory methods and case studies using a historical approach. So that the results of this paper can provide additional Islamic insight for Muslim scholars to be able to produce *fiqh* that is able to answer the problems of the people. This will automatically make the holy text of the Qur'an, which has been passed down historically, will always be *salih li kulli zaman wal-makan*. Accepted at all times and places.

## Discussion

### Progressiveness of Islamic Law in the face of Social Change

It can be understood that what is meant by social change is basically fundamental changes that occur in cultural patterns, structures, and prolonged social behavior. In other words, social change is a process that society goes through so that it becomes different from before. Social changes are changes that occur in the structure and function of society.

There are three basic interrelated components that form the structure and social behavior of society. The three components are ideology, technology, and social organization. Ideology is as a foothold in determining all social actions, technology is a tool used as a tool for the development of action, while social organization is a group that plays a key role in connecting actors with the

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<sup>8</sup> Widya Sari, Muhammad Arif, and E. Elkhairati, "Pemikiran Ibrahim Hosen Tentang Konsep Pernikahan dan Kontribusinya Terhadap Pembaruan Hukum Perkawinan di Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (May 25, 2021): 127, <https://doi.org/10.29240/jhi.v6i1.2540>.

<sup>9</sup> Ngainun Naim and Qomarul Huda, "Pendekatan Interdisipliner dalam Studi Hukum Islam Perspektif M. Atho Mudzhar," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (May 25, 2021): 41, <https://doi.org/10.29240/jhi.v6i1.2253>.

wider community. In social theory, the link between actors and structure/society is referred to as 'structuring' theory. Any research in the social sciences or history is concerned with relating action (often synonymously with agency) with structure. However, in this case it does not mean that the structure 'determines' the action or vice versa. This theory's fundamental purpose is to explain the dialectical relationship and the interplay between agents (actions) and society (structures)<sup>10</sup>

From the description above, it can be concluded that the dialectic of public relations will always give birth to actions that influence each other. It is not limited to only social aspects, but also other aspects, including legal aspects. There is no denying that empirical facts show this. All of this is done in accordance with the process of achieving benefit. Human benefit is almost the main pillar of every variety of demands in every life, including legal content. Therefore, it has become a reasonable necessity, if the change in law occurs due to changing times or circumstances and the influence of these social phenomena.<sup>11</sup>

If we turn back to the history of the formation of Islamic law, we can see how the development of thought in Islamic law has resulted in a wide and sharp variety of ideas, this condition occurs not only in basic theories, but also in several special aspects that are Partial.<sup>12</sup> The above diversity deserves to be evidence that Islamic law from generation to generation has actually experienced significant developments and changes. However, historical facts have confirmed that the development of public demands and public opinion on the law is often faster than the development and changes that occur in the law itself.

Because considering the needs of the community which always demands changes, in terms of new demands and interests, (due to changes in time and conditions) in addition to demands to obtain legal answers that are more appropriate and closer to legal theories and real reality (practical), then the conditions seem to have pushed the existence of the law to develop and change in line with the development of societal demands.

Through these facts, in the end gave rise to various variations of legal views by experts. The majority of Muslims are always faced with a tug of war between two extreme poles, namely in the form of revelation that does not change and social reality that tends to change. It is very impressive that there is a very strong boundary between the two. However, when viewed from the

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<sup>10</sup> Douglas George Ritzer and J Goodman, *Teori Sosiologi Modern* (Jakarta: Kencana Prenada Media Group., n.d.).

<sup>11</sup> Subhi Mahmashani and Ahmad Sudjono, *Falsafat al-Tasyri' Fi Al-Islam* (Bandung: Al-Ma`arif, 1981).

<sup>12</sup> Mohammad Hasyim, *Hillab Dalam Perspektif Sejarah Sosial Hukum Islam Dalam Pesantren*, vol. VIII, 2 (Jakarta: P3M, 1991).

perspective of history, these two camps will not work independently.<sup>13</sup> Muslims will always try to understand the essence of the message of Allah's revelation in order to respond to the problems of the people who tend to change. It's just that this understanding has given birth to a number of concept offers as well as their applications that are not always in line. The field of Islamic law is no exception, both at the methodological level (*ushul fiqh*) and its application (*fiqh*).<sup>14</sup> Even though it is necessary that the separation between the two extreme poles in the Islamic perspective should not occur. Because naturally, both acculturation, collaboration, and even syncretization processes will occur within normal limits.

In the context of Islamic law, after a long time the Muslims were patterned by the medieval view which tended to be conservative, who always refused dialectical changes, since the modern century Islamic jurists have increasingly realized that change, whether through the reform process (*islâh*) or reformation. (*tajdid*) is something that cannot be postponed any longer.<sup>15</sup>

Not to mention if we look at the condition of Islamic law during the *khulafâ 'al-Râsyidîn* period, a period that has a fairly short span of time with the life of the Prophet, there has been quite progressive thinking of the companions of the prophet. This is due to the rapidly changing situation and conditions of society.

### Umar bin Khattab and Ijtihad

Umar was the son of al-Khattab bin Nufayl bin 'Abd al-'Uzza bin Rayah bin 'Abdullah bin Qurt bin Rizah bin Adi bin Ka'ab bin Lu'ay bin Ghalib al-Qurashi al-Adawi. His mother was Hantamah binti Hashim bin al-Mughirah bin 'Abdullah bin 'Umar bin Makhzum.<sup>16</sup> Umar was born in Mecca in 513 AD, he came from Bani Adi one of the parts of the Qurasy tribe. Umar was the second caliph in Islamic history after Abu Bakr, at that time he received the titles *Amirul Mukminin* and *Al-Faruq* which means differentiator.<sup>17</sup>

During his leadership, Umar ibn Khattab was faced with many problems that had never been faced by a previous caliph, let alone during the time of the

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<sup>13</sup> Ahmad Minhaji, *Reformasi Hukum Islam Dalam Perspektif Sejarah Dalam Muhammadiyah Dan Reformasi* (Yogyakarta: Majelis Pustaka, 1999).

<sup>14</sup> Wihag Zafar and Ishaq Anshari, "Pengembangan Fiqh Islam," *Journal of Islamic Studies* 3, no. 1 (1992): 41–47.

<sup>15</sup> Minhaji, *Reformasi Hukum Islam Dalam Perspektif Sejarah Dalam Muhammadiyah Dan Reformasi*.

<sup>16</sup> Jufriadi Ramli and Ibrahim Ibnor Azli, "Marriage with a Woman of Ahli Kitab According to Ijtihad 'Umar Bin al-Khattab," *Birata: International Journal of Civilizational Studies and Human Sciences* 5, no. 2 (2022): 11–22.

<sup>17</sup> Nur Hairat Adam and Titin Samsudin, "Struktur Sosial Hukum Islam Pada Periode Pembentukan (Pembacaan Atas Ijtihad Umar Bin Khattab)," *As-Syams: Jurnal Hukum Islam* 1, no. 1 (Agustus 2020): 80–90.

Prophet. The development and social changes of society at that time were very fast, often creating new problems for which no answer had been found through the Qur'an and the Hadith of the Prophet. Umar bin Khattab was driven by the need for the ummah to provide solutions that prioritize benefits based on sharia sources. Umar's Ijtihad was not only in cases for which no answer had been found in the prophetic period, Umar also did ijihad on one issue even though the answer had been found in nash. It is intended to obtain more substantial benefits in context.<sup>18</sup>

Ijtihad Umar bin Khattab is often used as a legality for the opinions of muslim scholars today. As history has written, Umar often determined Islamic law as different from that contained in nash, taking into account the benefit factor of the people of that era. This means a form of contextuality of postulates, so for most Islamic thinkers, Umar is considered to have a hermeneutical consciousness. It is also mentioned that the ijihad performed by Umar was not a deconstruction of sharia, but rather constructed the context of a text in a series of falsehoods.<sup>19</sup>

Umar in performing his ijihad always made a serious correlation with other sharia postulates, such as the Quran, sunnah, ijmak, qiyas, and maslahah al-mursalah. It's not just to consider maslahat singularly. Umar's form of ijihad was not an attempt at deconstruction, but an implementation of the enactment of sharia law in his time.<sup>20</sup> The ijihad is intended for the realization of maqasid asy-sharia, which is to bring maslahat and reject damage (mafsadah) for the ummat he leads.

### Typology of Ijtihad Umar Ibn Al-Khattab

Umar ibn al-Khaṭṭāb was born in Mecca 13 years after the birth of the Prophet. His full name was Umar ibn al-Khaṭṭāb ibn Nufayl ibn 'Abd al-'Uzzā ibn Riyah ibn 'Abdullāh ibn Qurṭ ibn Razah ibn 'Ādī ibn Ka'ab ibn Lu'ay. From this we know that Umar came from the family of Banu 'Ādī. Meanwhile, his mother's name was Hantamah bint Hashīm ibn al-Mughīrah ibn 'Abdullah from Bani Makhzūm.<sup>21</sup>

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<sup>18</sup> Ahmad Fauzi, "Konsep Muallaf dalam Islam (Studi Kritis Terhadap Ijtihad Umar bin Khattab)," *Madania: Jurnal Ilmu-Ilmu Keislaman* 11, no. 1 (6): 29–39.

<sup>19</sup> Muhammad Ridwan, "Implementasi Syariat Islam: Telaah atas Praktik Ijtihad Umar bin Khattab," *TSAQAFAH* 13, no. 2 (January 25, 2018): 231, <https://doi.org/10.21111/tsaqafah.v13i2.1507>.

<sup>20</sup> Ridwan Ridwan, "Telaah Pemikiran Hukum Progresif Umar Bin Khattab Perspektif Indonesia," *Jurnal Hukum Samudra Keadilan* 13, no. 1 (2018): 32–43, <https://doi.org/10.33059/JHSK.V13I1.696>.

<sup>21</sup> Amiur Nuruddin, *Ijtihad Umar Bin Khattab: Studi Tentang Perubahan Hukum Dalam Islam* (Jakarta: Rajawali Press, 1987).

Umar ibn al-Khaṭṭāb was the second caliph after Ab Bakr al-Ṣiddīq. During his leadership, he made a lot of progress. In addition to the growing area of Islamic territory, Umar also managed to organize government administration well. Umar is also active in giving fatwas regarding the problems faced by the people.

Ijtihad is often interpreted as the mobilization of all abilities of a faqih (*fiqh* expert) to explore and formulate amaliyah laws (practical law) from detailed arguments.<sup>22</sup> Based on this definition, it can be seen that ijtihad has several essences, namely: a) Ijtihad is to devote the efforts and abilities of a fakih as much as he can; b) The purpose of ijtihad is to achieve ann law; c) That what ijtihad is aiming for is law that is practical in nature; d) The way to get to the law in question is by *istinbat*; e) The object of ijtihad is only on valid arguments or no arguments at all. These points show that there is a very strong tendency towards textually in the concept of ijtihad. In this regard, observing Umar's ijtihad is something interesting.

Umar himself is a friend who has very good scientific qualities. When the Prophet was still alive, Umar's opinions were often justified directly by Allah through His words. For example, when a hypocrite named 'Ubay ibn Salūl died, the Messenger of Allah wanted to light his corpse, Umar got up and expressed his opinion about the inadequacy of praying the corpse of a hypocrite who is an enemy of Allah. Immediately, revelation came down to confirm what was conveyed by Umar.<sup>23</sup>

However, Umar's true ijtihad in applying Islamic law only started after the Prophet died. In theory, Umar's concept of ijtihad can be seen in the messages he sent to judges who were appointed and assigned to various regions. There are two letters historically attributed to Umar, namely his letter to Shurayḥ who became qāḍī in Kuffah and Ab Mūsā al-Ash'arī who became qāḍī in Basrah.<sup>24</sup>

The two letters above clearly describe Umar's thoughts in ijtihad on a problem. On the one hand, Umar still firmly adhered to the existing na, but on the other hand, he also made benefit as an important consideration in ijtihad.<sup>25</sup>

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<sup>22</sup> Muhammad Abu Zahrah, *Muḥāḍarab Fī Tarīkh Al-Madhāhib al-Fiqhiyah* (Mesir: Maṭba'ah al- Madānī, 2000).

<sup>23</sup> Fahmi Jawwas, "Posisi Naṣ Dalam Ijtihad Umar Ibn Khaṭṭāb," *Jurnal Studia Islamika* 10, no. 2 (2013): 363.

<sup>24</sup> Ibnu Al-Qayyim, *A'lam al-Muwaqqi'in* (Beirut: Daar al-Kutub al-Ilmiyyah, 2000).

<sup>25</sup> M Said Ramadhan Al-Butt, *Dawābit Al-Maṣ laḥab* (Beirut: Mu'assasah al-Risālah, 2000).



## Progressive Ijtihad Umar Ibn Al-Khattab in Social Reality

In the stage of Islamic history, Umar Ibn al-Khattab is known as a figure of a thinker who is intelligent, hard, and brave. When he served as the second caliph during the time of al-khulafâ 'al-Râsyidûn, he had issued a lot of creative thoughts. Not infrequently his thoughts are textually different, even 'contrary' to the normative provisions that have been established and are well accepted in society. Therefore, this controversial thought often led to pros and cons among Muslim friends and scholars at that time. Some of them are able to understand and accept Umar's innovative thinking, but others find it difficult to accept and strongly reject his ideas. Among some of the changes resulting from his ijtiḥad are the following issues:

### a. Elimination of Zakat Rights for Muallaf

Not giving zakat rights to converts explicitly contradicts the Qur'an surah al-Taubah verse 60. However, Umar views that after several futât al-Islamiyah occurred during his time, the condition of Muslims is quite strong and exists and even becomes a strong force. really count. It was at that time that he saw that there was no longer anyone who needed to be called a convert, and consequently there was no quota for them in the distribution of zakat assets. According to Saiful Bahri in his paper entitled Ijtihad Umar al-Faruq, not finding converts as one of the recipients of zakat does not mean denying naa, but it is the situation of those who cannot be considered converts that makes them not get a share of zakat.<sup>26</sup>

### b. Discontinuation of the Law of Cutting Hands in a Low Year

Surah al-Maidah verse 38 clearly states that there is a punishment for ad cutting off the hands of thieves.<sup>27</sup> Umar made an effort to take this verse, then accompanied by consideration of the things behind the theft case, so that the understanding or interpretation of the letter al-Maidah verse 38 obtained by Umar was not rigid. This verse also does not always apply to all cases of theft, but there are exceptions, for example the theft is motivated by forced conditions. The concession given to the condition of compulsion (emergency) is closely related to efforts to realize the benefit which is the goal and essence of Islamic law. In this case, it does not mean that Umar's ijtiḥad is without na

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<sup>26</sup> Akbar, Agusriadi, and Dastia, "Kontroversi Kebijakan Fiskal Non-Zakat Khalifah Umar Bin Khattab."

<sup>27</sup> Nur Danisia Octaviani, Taufik Kurahman, and Moh Iqbal Assyauqi, "Reinterpretasi Teks Hukum Potong Tangan Perspektif Hermeneutika Khaled M. Abou El Fadl," *Al-Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 16, no. 4 (n.d.): 1537–50, <https://doi.org/10.35931/aq.v16i4.1155>.

support. Allah himself commanded not to plunge ourselves into destruction, it is permissible to eat carrion if it is absolutely necessary.<sup>28</sup>

c. Forbidding Marriage with Women of the People of the Book

Regarding the marriage of Muslim men with women of the people of the book, Umar actually argues that it is permissible to marry women of the People of the Book. However, under special conditions Umar stated that "indeed, foreign women deceive and humiliate". This is nothing but to maintain the stability of the Muslims and their psychological existence and social balance. In the language of *ushul fiqh*, it is known as preventive action in the form of *sadd al-dhari'ah*.<sup>29</sup>

d. Not Dividing *Ghanimah* (Boots of War)

In the Qur'an Q.S Al-Anfal: 41, the issue of *ghanimah* (spoils of war) has been clearly regulated. The text in this verse states that the division of the spoils of war is divided according to the provisions according to the Qur'an using the term *khumusahu* which means one fifth. One-fifth according to the meaning of the text is intended to meet the needs of worship and social charity. While all the rest was allocated for the war troops who managed to obtain the spoils that had been carried out by the prophet, including this method was also followed up to the time of Abu Bakr al-Siddiq ra.

When the caliph changed to Umar, the interpretation of the above verse underwent a very drastic change, especially after the conquest of the city of Iraq. Umar's view of the spoils of war is based on the paradigm of thought, that the benefit of the people must take precedence over the benefit of the individual. This view was considered strong by Umar to be used as evidence in reformulating the practice of dividing the spoils as pioneered by the Prophet and Abu Bakr. So that the next settlement step, by Umar, the booty was returned to the people who owned it, from there a certain tax was taken called *kharaj* and put into the state treasury for the benefit of the general public.<sup>30</sup>

e. The change of *Raj'i* divorce to *Ba'in* divorce

At the time of the Prophet and Abu Bakr's companions, if a man divorced his wife in one assembly, then this kind of divorce was considered a one-time divorce or referred to as *raj'i* divorce. Thus the provisions according to the *sunnah*<sup>31</sup> and *ijma'* friends after that. Despite the provisions that occurred

<sup>28</sup> Rianda, Febriani, and Hendrawan, "Implementasi Maqashid Syar'iyah Dalam Ijtihad Umar Bin Khattab."

<sup>29</sup> Nuruddin, *Ijtihad Umar Bin Khattab: Studi Tentang Perubahan Hukum Dalam Islam*.

<sup>30</sup> Agus Alimuddin et al, "Baitul Mal Dan Ghanimah Studi Tentang Ijtihad Umar Bin Khattab Dalam Penguatan Lembaga Keuangan Publik," *FINANSIA: Jurnal Akuntansi Dan Perbankan Syariah* 5, no. 1 (June 2022): 31–44, <https://doi.org/10.32332/finansia.v5i01.4823>.

<sup>31</sup> Zahrah, *Muḥadḍarah Fi Tarikh Al-Madhabib al-Fiqhiyah*.

during the time of the Prophet and his companions, during the time of Umar when he was the second caliph, he ordered that such divorces be considered as talak ba'in, considering that such habits among Arab society were made as a tradition. The meaning behind the order is solely as a sanction for those who play with the law as well as to prevent this cursed habit. Thus, people become more careful in pronouncing the triple talaq. Especially considering the severity of the divorce is so great, as Allah has mentioned in the Qur'an.<sup>32</sup>

#### f. Adultery Punishment for a Girl

Regarding the sanctions for adulterers who are still girls or have not been bound by a legal marriage, the Prophet, which was later agreed upon by the majority of scholars, is the punishment for being flogged one hundred times and exiled abroad. This exile abroad according to some views is an addition from the Prophet which is adjusted to God's law in Surah al-Nur (24) verse 2. The provision of punishment becomes a stipulation based on the well-known sunnah.<sup>33</sup>

Umar argues that at that time he had exiled Ruba'iah bint Umayyah bin Khalaf who then went to Rome, but learning from this experience, according to him there was no benefit regarding the reasons for exile abroad. In fact, it is very worrying if the exiled person will join the enemy of Islam. So he said: "I will not exile anyone after him." From this last statement, it can almost be concluded that the change in the interpretation of Islamic law above was caused by concerns about the position of the state at that time. In other words, the political situation and public security also influence the appearance of extracting Islamic law.

### Differences Ijtihad Umar Ibn Al-Khattab with Progressive Legal Theory

As explained earlier, Umar ibn al-Khaṭṭāb's ijtihad pays great attention to the benefit aspect. In this case it can be said that Umar's ijtihad is in line with Progressive law with its motto, law for humans. Both require that the applicable law should aim for the benefit of mankind. The socio-historical aspect is equally used as an important consideration in viewing a problem. Both enforce the law by prioritizing the value of justice, certainty, and the benefits of law for justice seekers.

Umar's Ijtihad and Progressive law are also in line in terms of rejecting the status quo. Both of them want a law that is up to date according to what law seekers need. However, the old law will be maintained as long as it is in line with the times, situations and conditions of society at that time.

<sup>32</sup> Jawwas, "Posisi Naṣ Dalam Ijtihad Umar Ibn Khaṭṭāb."

<sup>33</sup> Al-Qayyim, *A'lam al-Muwaqqi'm*.

In terms of the role of human behavior in law, both in Umar's Ijtihad, as well as in Progressive law, they both place him in an important position, namely that speaking of law is not only talking about regulations, but the most important thing is consideration of humans who are subject to these rules. However, when viewed further, in terms of the benefits desired by the two, there are quite basic differences, namely in the standardization of the desired benefits and the process of producing benefits in establishing a law. In his ijthad, as explained earlier, Umar in achieving a legal benefit remained guided and did not go out of na's guidance. Although his understanding is contextual, it remains in the corridor of existing rules, namely the Qur'an and hadith as well as what pious people have exemplified before. Umar views na as something that can apply to different spaces and times, it's just a matter of how to interpret the na in ijthad. So the benefits referred to in Umar's ijthad are benefits that remain bound to these three core foundations.

The principle that Umar believes is different from Progressive law which has the principle of freedom in producing laws. Interpreters are free to understand the provisions of a law even though they are out of existing regulations for the benefit. Law is also interpreted casuistically, meaning that the interpreter is not at all bound by the sound of written law. Written law is still considered important, but its existence is under the freedom of the interpreter. Based on this, the benefit according to progressive law is solely based on humans as those who are subject to the rule of law based on the subjectivity of the law maker.

When viewed in a practical setting, when both are applied to the same case, it is very likely that the resulting provisions will be different. For example, the case of Umar's ijthad forbids marrying women from the people of the book. In this case, basically Umar himself did not necessarily contra and left the na who allowed the marriage. However, considering priority aspects, social conditions, and religious issues as the main considerations at that time, he forbade the marriage of Muslim men with women of the people of the book. In this case he uses the principle of sadd al-dhari'ah. However, when this problem is solved by Progressive law, the results are certainly different. Progressive Law will look at this problem in terms of the right to marry which is owned by everyone. Restricting a person's right to marry the person he wants is something that is considered not beneficial for Progressive law. That is, between Umar's ijthad and progressive law, there are differences in the meaning of benefit.

Based on this brief analysis, it can be stated that Umar's ijthad and Progressive law in general do have similarities in terms of characteristics. However, there are fundamental differences that will cause them to differ in making decisions when they are at a practical level, namely differences in interpreting benefits and the process.

## Conclusion

Based on the description above, it can be concluded that Umar's *ijtihadh* regarding Islamic law in several cases was based on a unified, integral, and authentic arrest and understanding in order to realize the benefit of Muslims, which is the essence of the purpose of Islamic law. He carries out Islamic legal policies by paying attention to social changes that are developing rapidly. Even though his *Ijtihad* seems to contradict the provisions of the texts, Umar can actually be said to be able to grasp the general principles (*al-ushûl al-kulliyât*) of the Koran.

Umar's thoughts through his *ijtihadh*, were not only widely accepted and carried out by the Islamic community at that time, but also provided a new alternative in the courage to interpret the Qur'an and the Sunnah of the Prophet Muhammad, which later turned out to have made a significant contribution. for the development of Islamic legal thought in later periods.

During the time of the companions, the magnitude of this contribution was shown by the acceptance and implementation of Umar's *ijtihadh* by most of the companions. During the *Tabi'in* period, this contribution was seen with the birth of *ahl al-Ra'yu*. At the time of the Imam of the school of thought, the pattern of thought was developed in accordance with the developing social reality, except for Ahmad Ibn Hanbal. From this it can be said that the birth of thought at a certain time was the result of the influence of Umar Ibn al-Khattab's thoughts which were motivated by the socio-cultural community.

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