

DRS. ILZAMUDDIN MA'MUR, M.A.

MAWDUDI'S AND AS SHIDDIQY'S Theory of Ijtihad in the Islamic Law

Introduction

In his *The Reconstructions of Religious Thought in Islam*, Muhammad Iqbal (1877-1938) asserts that Islam does not recognize any static view of the universe but supports a dynamic view.¹ This means that Islam with its dynamic nature will always be able to keep pace with the ever changing circumstances of the world. In line with this, as far as the Islamic law or Shari'a is concerned, it shows that it has undergone, to certain extent, some changes. The changes, of course, must not contradict the basic principles of the

teachings of the Qur'an and the Sunnah. The efforts directed to make such change is called *ijtihad* in Islamic legal term or, in Iqbal's words, the "principle of movement". According to Iqbal, as Noel J. Coulson puts it, the exercise of *ijtihad* or independent judgment is not only right, but also the duty of present generation of Islam.² Earlier than this, even Muhammad 'Abduh (1649-1905), the great Wgyptian jurist, had advocated the reinterpretation of the principles embodied in the divine revelation as a basic for legal reform.³ Though some modern

1) Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Lahore: Sh. Muhammad Ashraf, 1986). p. 146.

2) Rahimuddin Kemal, a prominent Indian Muslim scholar, explains further the reason behind the necessity of *ijtihad*. He says, "Such an institution of *ijtihad* is not an impossibility in the present day conditions. It is in fact, because the necessity for *ijtihad* today is far greater than in the past. With the progress of knowledge, life has become more complicated and many new factors have come into play. All these make *ijtihad* indispensable; otherwise, there is the danger of Muslims being left without any guidance for integration and development of Islamic law and ummat. See Rahimuddin Kemal, *The Concept of Constitutional Law in Islam* (Hyderabad: Fase Brothers, 'Al-Riaz', 1955), pp. 109-110.

3) Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964,

scholars on Islamic law, such as Joseph Schacht, H.A.R. Gibb, C.S. Hurgronje, and J.N.D. Anderson, just to mention but a few, still believe that the gate of *ijtihad* was closed and is closed in the contemporary Muslim world, although no recent Muslim reformists support this idea. Fazlur Rahman, for instance, is of the view that "... the door of *ijtihad* has always remained open and no jurist has ever closed it."⁴ Having conducted a comprehensive study on this matter, a similar conclusion is also reached by Wael B. Hallaq, i.e., the gate of *ijtihad* was never closed either in theory or practice. In fact, he argues, *ijtihad* constitutes the backbone of the Sunni legal doctrine as shown in its developments all along the history of Islamic law.⁵ Besides the four great Imams, Hallaq shows that there have been many *mujtahid* who reveal their *ijtihad* in the form of *fatwa*'s which

in turn become *furu'*. Even during the time of, as Schacht believes it, vacuum years, indeed there were *mujtahid* (*mufti*) who decreed their *ijtihad* (*fatwas*).⁶

In lights of the above point of view, it is, therefore, not surprising if in the history of Islamic legal thought in Pakistan and Indonesia, we great contemporary Muslim scholars like, among others, Sayyid Abul A'la Mawdudi (1903-1979) of Pakistan and Muhammad Hasbi Ash-Shiddieqy (1904-1975) of Indonesia. As far as the theory of *ijtihad* is concerned, both scholars are of the opinion that *ijtihad* is very important in that it facilitates a *mujtahid* to formulate or reinterpret Islamic law in modern time. In this paper, therefore, an attempt will be made to trace their respective ideas on *ijtihad* in Islamic law and to find out how they apply their *ijtihad*, if any, in coping with the problems faced

reprint 1991), p. 202.

- 4) Fazlur Rahman, *Islamic Methodology in History* (Islamabad: Islamic Research Institute, 1965, 3rd reprint, 1984), p. 172.
- 5) For a detailed and comprehensive discussion of the issue, see Wael B. Hallaq, "The Gate of *Ijtihad*: A Study in Islamic Legal History" (Unpublished Ph.D. dissertation, University of Washington, 1983), and Wael B. Hallaq, "Was the Gate of *Ijtihad* Closed?," in *International Journal of Middle East Studies*, Vol. 16, No. 1 (March, 1984).
- 6) For a comprehensive discussion on this issue, see Wael B. Hallaq, "From *Fatwa*'s to *Furu'*: Growth and Change in Islamic Substantive Law," in *Islamic Law and Society*, 1st edition (1993), pp. 1-33.

by the Muslim society of their respective environment. Furthermore, an analytical comparison between the two will also be taken into account.

Mawdudi's ideas on Ijtihad

Sayyid Abul A'la Mawdudi,⁷ is of the opinion that the entire work of the Holy Prophet which was completed in 23 years of his life as a Prophet, is the Sunnah which, in conjunction of the Qur'an, formulated and complete the Supreme Law of the real Sovereign. It is this law, Mawdudi adds, that is called *Shari'a* in Islamic terminology.⁸ Regarding its objective, he proceeds to say that, "The main objective of the *Shari'a* is to construct human life on the basis of *ma'rufat* and to cleanse it of the *munkarat*".⁹ In line with this, he emphasizes that

this Divine Law should govern not only individual but collective life of a Muslim. Though Mawdudi believes that the Islamic Law is all embracing law for all time and situation, he does not deny that the Islamic law still has room for change and interpretation, especially for those areas which are not covered by existing law yet. This change is possible, according to Mawdudi, in the field of what is called *mu'amalah*. As for the law of *'ibadah*, Mawdudi convinces that there is no room for *ijtihad* in *'ibadah*. To quote Mawdudi's own words: "In Islam there is no scope for legislation in the field of worships. Their forms have been laid and cannot be changed or amended. But the field of individual and social affairs or *mu'amalah* there is a limited scope for legislation in matters about

- 7) Sayyid Abul A'la Mawdudi, whose family tree can be traced back to 'Ali ibn Abi Talib, the last of the Khulafah al-Rashidin, was born on September 25, 1903, in Aurangabad, Deccan, presently Andhara Pradesh, India. He was self educated scholar who wrote no less than one hundred books and booklets and hundreds of speeches and statements. Though it seems that his interest is more in politics rather than Islamic law, his works touch almost all aspect of sciences such as education, economics, politics, history, etc. For a complete account on Mawdudi life and works, see Masudul Hasan, *Sayyid Abul A'la Mawdudi and His Thought*, Vols. I-II. (Lahore: Islamic Publications, 1984, 1986); Khurshid Ahmad and Zafar Ishaq Ansari, *Mawdudi: An Introduction to His Life and Thought* (London: Islamic Foundation, 1986); and Syed Asad Gillani, *Mawdudi: Thought and Movement* (Lahore: Islamic Publications, 1984).
- 8) Sayyid Abul A'la mawdudi, "The Role of Ijtihad and the Scope of Lagislation in Islam", in *Islamic Thought Quarterly Journal*, Vol. VII, No. 1 (1960), p. 11.
- 9) Sayyid Abu A'la Mawdudi, *Islamic Law and Its Introduction in Pakistan* (Lahore: Islamic Publications, 1955, 4th ed. 1983), p. 14.

which the Qur'an and Sunnah are silent."¹⁰

"Literary the world *ijtihad*, according to Mawdudi, "means to put in the maximum of effort in performing job, but technically it signifies maximum effort to ascertain, in a given problem or issue, the injunction of Islam and its real intent."¹¹ Henceforth, he disagrees if the *ijtihad* is employed to connote an independent and free use of one's own judgment. He asserts that any *ijtihad* that purports to be independent of it can neither be an Islamic *ijtihad* nor is there any room for it in the legal system of Islam.

It should be borne in mind, Mawdudi warns, that *ijtihad* in Islam is not meant to replace the Divine Law by man-made law, but to properly understand the Supreme Law and to impart dynamism to the legal system of

Islam by keeping it in conformity with fundamental guidance of the *shari'a* and abreast of the changing condition of the world. Since undertaking *ijtihad* in this sense is undoubtedly very hard, the *mujtahid* therefore has to meet certain qualifications otherwise his *ijtihad* will not be a healthy *ijtihad*. In stead of giving a clear and detailed explanation of what he means by healthy *ijtihad*. Mawdudi goes on to state that a *mujtahid* has to possess at least six requirements. They include: a) faith in the *shari'a* and conviction of its truthfulness; b) a proper knowledge of the Arabic language; c) sound knowledge of the Qur'an and the Sunnah; d) acquaintance with the contributions of the earlier jurist and thinkers (*mujtahidin*) of Islam; e) acquaintance with the problems and conditions of our times, and f) commendable character and conduct according

10) Sayyid Abul A'la Mawdudi, *Islamic Law and Constitution* (Lahore: Islamic Publications, 1955, 10th edition, 1990), p. 85. To support the idea he quotes Shathibi's opinion that the rule for worships is a little different from the one for general affairs of life. In general affairs the law is that where the sovereign is silent, the people are free to act on their won vision, this is the field of permissible. But contrary to this, in respect of matters of worship and prayer no such thing can be adopted which has no basis in the *shari'a*. For *'ibadah* are directly related to the clear command and the will of God. The reason for this distinction is that in the general worldly matters we ourselves may, with the help of our own intellect, discover the right path, but intellect cannot guide us in the realm of worship. It cannot tells us how to get nearest to the Lord Cf. al-Shatibi, *Al- I'tisam*, Vol. II, (Cairo: Matba' Mustafa Muhammad, nd), p. 115, cited in *Ibid.* p. 86.

11) Mawdudi, *Islamic Law and Constitution*, p. 76, and also Mawdudi, "The Role of Ijtihad ...", p. 12.

to the Islamic ethical standard.¹²

Having touched his definition of *ijtihad* and the qualifications required for a *mujtahid*, we now proceed to look at Mawdudi's technique of *ijtihad*. He is of the view that *mujtahid*, equipped with the above qualifications, has to follow the proper method and technique. Mawdudi categorizes the method of *ijtihad* into four forms: interpretation, analogy, inference, and province of independent legislation.¹³

Here the task of a Muslim scholar is a) to find out exactly and precisely the law, its nature and extent; b) determining its meaning and intent; c) investigating the conditions for which it is intended and the way in which it is to be applied to the practical problems; d) working out minor details in the case of such laws which are too brief for a straightforward application in actual life and finally; e) determining the extent of its applicability or applicability in case of exceptional circumstances, than determining its meaning and purport and defining occasion and circumstance to which is relevant.

The next method, analogy, is employed when no specific injunctions have been laid down in the *shari'a*, but provisions have been made about some analogous situations. In this case, the task of Muslim scholar is just to apply analogical injunctions to the problems which has identical causal connections.

Third method is applied to the problems about which *shari'a* has not prescribed specific guidance, but broad principles. In answering these problems, the function of Muslim scholar is to understand principles of the *shari'a* and the intention of the Law-giver and formulate such laws about the practical problems as are based on these principles and fulfill the intention of the Law-giver.

Finally, if there is a problem to which *shari'a* is totally silent, independent legislation can be resorted to but it must be in line with the real spirit of Islam. In other words, his independent judgment and reasoning should always be based on the Qur'an and the Sunnah. This last method employs *istihsan* and *maslahah al-mursalah*.

12) Mawdudi, *Islamic Law and Constitution*, pp. 77-78, and Mawdudi, "The Role of *ijtihad* ...", p. 13.

13) Mawdudi, *Islamic Law and Constitution*, pp. 74-76.

Ijtihad according to Mawdudi, can be carried out either individually or collectively. Of course, the Muslim scholars who will carry out the *ijtihad* have to possess certain qualifications, which have been mentioned above. As for the collective *ijtihad* it can be exercised by a council of competent scholars set up by the Islamic state,¹⁴ i.e., *Majlis-i Shura*.

Further more, in order to enforce the result of *ijtihad* as law, Mawdudi advocates one of the following methods:

Firstly, consensus of opinion by learned men of the community; secondly, the *ijtihad* of an individual or a group of individuals may gain wide popularity and people may *suo moto* adopt their verdict, for instance, the *ijtihad* of the hanafie, the Shafi'ite, the Malikite, and the Hanbalite schools of law were voluntarily accepted by large groups of Muslim masses. Thirdly, Muslim government may adopt a particular piece of *ijtihad* as its law, as for example the Ottoman government had adopted the Hanafi Law as the law of the land. Fourthly, an institution may be constitutionally empowered in an Islamic state to legislate and it may enact a particular piece of *ijtihad* in the form of law.¹⁵

Apart from these four methods, Mawdudi concludes that, any *ijtihad* undertaken by various Muslim scholars can be no more than a verdict and it has no binding force at all. It seems that for Mawdudi there is no more room for individual to do *ijtihad* whose result can be enacted but through the power of an Islamic government.

Practical Side of his *Ijtihad*

When we turn to practical reality, instead of giving example of or exercising *ijtihad* in Islamic law, Mawdudi is either preoccupied by the political issues facing the Muslims of the subcontinent or more interested in the political than legal aspects of Islam. Having stated again and over that it is only God who is sovereign in this universe, he proceeds to assert that Islam is an ideology, Islam is a revolutionary religion, and Islam is a complete way of life for all places and times. This means that, among other things, Islamic law is applicable in the

14) Masudul Hasan, *Mawiana Abul A'la mawdudi and His Thought*, Vo. II (Lahore: Islamic Publications, 1986), p. 49.

15) Mawdudi, *Islamic Law and Constitution*, pp. 79- 80.

modern world. However, he argues that Islamic law cannot be applied effectively unless the Muslim establish an Islamic state.

From this point of view, it is understandable if the efforts of Mawdudi's *ijtihad* is directed towards in the political aspect, i.e., *ijtihad siyasi*. Although most of his political ideas, to certain extent, are not different from the previous Muslim scholars, like al-Mawardi, al-Ghazali, and even Ibn Khaldun, he indeed proposes a new trend. While most of 'orthodox' Muslim scholars are holding that woman is not permitted to be the head of state. Mawdudi supports the president candidacy of Miss Fatimah Jinnah.¹⁶ Thus, he agrees that a woman can be elected as head of state. Mawdudi justifies his *ijtihad* by stating that in exceptional conditions and circumstances, *ijtihad* can be utilized to ascertain the situations justifying deviations from these injunctions to suit the exigencies of the time.¹⁷ It seems that he follows

the dictum of 'necessities make certain inhibitions legal' and 'difficulties attract concessions'.¹⁸

When mawdudi is criticized of being inconsistent with his previous view expressed elsewhere, he strongly argues that we have to choose between the two evils - the candidature of a woman, or the candidature of a tyrant. The candidature of a woman was a lesser evil than the candidate of a tyrant, and hence our acceptance of the candidature of a woman for the presidential elections in the special circumstances of the case was not against Islam. He emphasizes further that Islam permits exceptions in exceptional circumstances.

From this, it can be inferred that Mawdudi, though he does not explain further on the ground of either Qur'anic verses or the Sunnah, basing his reason on the legal maxim stating that the lesser harm is preferable to the greater harm, *irtikab bi 'ashaff al-*

16) Further discussion on Mawdudi's support to Fatimah Jinnah's presidential candidacy, see maudul Hasan, *Sayyid Abul A'la Mawdudi*, Vol. II, pp. 178-179, 493; Farhat Haq, "Islamic Reformism and the State: The Case of the Jama'at-i Islami of Pakistan," (Unpublished Pg.D. dissertation, Cornell University Press, 1988), p. 80; and Sayyed vali Reza Nasr, *The Vanguard of the Islamic Revolution: The Jama'at-i Islami of Pakistan*, (Berkeley: University of California Press, 1994), p.42.

17) Mawdudi, *Islamic Law and Constitution*, p. 83.

18) Mawdudi, *Islamic Law and Constitution*, p. 84.

dararain. Moreover, his conviction is also derived from an analogy or prayers when he says that "Even prayers could be curtailed or omitted in the event of danger. On the same analogy the selection of a woman as the president would be permissible of such a course have to be restored to, to save the country from tyranny and dictatorship."¹⁹

Another side of his *ijtihad* is his adoption of *trias politica*, i.e., that an Islamic state should have three separate functionaries such as legislative, executive and judiciary, a concept which was not recognized in the Islamic political discourses previously.

In legal thought Mawdudi, though acknowledge no attachment to any of the four schools of *fiqh*, tends to be rigid in interpreting the present conditions. For instance, he strongly rejects the idea the family planning which

is carried out in his country.

Muhammad Hasbi Ash Shiddieq's Ideas of *Ijtihad*

Like Mawdudi, Muhammad Hasbi Ash Shiddieq²⁰ also believes that *shari'a* is the 'final law' that God revealed through His last messenger, Muhammad. Coupled with the Sunnah of the Prophet, it is not rigid but flexible source of law in a sense that it can be applied in all places and times. It is dynamic and it therefore opens, to a certain degree, to a change. The change, of which Qur'an and the Sunnah is not clear or even silent, can be achieved through *ijtihad*. However unlike Mawdudi, Shiddieq opines that *ijtihad* can be applied, to certain extent, not only in the domain of *mu'amalah* but also of *'ibadah*. Shiddieq believes that *ijtihad* constitutes an important

19) Masudul Hasan, *Sayyid Abul 'Ala Mawdudi and His Thought*, Vol. II, p. 179.

20) Muhammad Hasbi Ash Shiddieq, who claimed to be the 42nd descendant of Abu Bakr al-Sidq, the first Caliph of Islam, was born on March 10, 1904, in Lhokseumawe, Aceh. He was an 'alim, Muslim intellectual, faqih, mufasir, who wrote no less than 72 books on *fiqh*, *tafsir*, *kalam*, *history*, and other topics on Islam. For further information on Hasbi's life and works, see Djamil Latif, *Riwayat Hidup Prof. T.M. Hasbi As-Shiddieq* (Jakarta: a.p., 1974); Nouruzzaman Shiddiqi, "Muhammad Hasbi Ash Shiddieq Dalam Perspektif Sejarah Pemikiran Islam di Indonesia". (Unpublished Ph.D. Dissertation, Graduate Faculty, Institute of Islamic Studies 'Sunan Kali Jaga', Yogyakarta, 1987); Yudian Wahyudi, "Hasbi's Theory of *Ijtihad* in the Context of Indonesian *Fiqh*," (Unpublished M.A. thesis, Institute of Islamic Studies, McGill University, 1993), pp. 12-22.

means for understanding and digging out the laws unexplicitly touched upon in the Qur'an and hadith. Moreover, *ijtihad* also constitutes a way through which the arising problems in the society, about which both of the Qur'an and the *Sunnah* are silent, can be found out. Before going further to Shiddieqy's ideas and practice of *ijtihad*, it is worth touching his definition of *ijtihad* and his qualification of a *mujtahid* in advance.

Ijtihad Shiddieqy defines, means the use of all capabilities of reason and deducing law from its proof (*chaliq*), by way of an inquiry which leads to the law, or it also indicates of doing research on a particular question in a scientific manner, and to using the capacity of reasoning to the utmost.²¹ In other words *ijtihad* signifies the use of reasoning to respond to the problems discussed in the light of Islamic law. To enable a *mujtahid* conducts his job, according to Shiddieqy, he has to equip himself with at least nine conditions: a) mastery of the Arabic language; b) pos-

sessing good knowledge of the Qur'an dealing with legal verses; c) sound understanding of ahadith especially those concerning the legal matters, not only in their content but also their validity; d) knowing the schools of the previous *mujtahid* so as to realize which laws considered of getting a consensus (*ijma'*) and which laws are still disutable; e) comprehending the prevailing condition of the society where the problems arise; f) understand *usul al-fiqh*; h) understanding the secret of Islamic law; i) knowing the maxims of Islamic jurisprudence deduced from universal legal maxims and the aims of Islamic law; and finally j) a *mujtahid* must be honest, just, and good in his conduct.²²

As for the method of *ijtihad*, especially related to the matters which are mentioned neither in the Qur'an nor hadith, Shiddieqy is of the firm opinion that there are at least five ways which can be utilized in this respect. They include *qiyas*, *istihsan*, *istislah*, *'urf*, and *istislah*.²³

21) Muhammad Hasbi Ash Shiddieqy, *Ruang Lingkup Ijtihad Para Ulama dalam Membina Hukum Islam* (Yogyakarta: IAIN Sunan Kali Jaga, nd), p.5.

22) Muhammad Hasbi Ash Shiddieqy, *Pengantar Hukum Islam*, I (Jakarta: Bulan Bintang, 1955, 6th ed. 1980), p. 115-117.

23) Muhammad Hasbi Ash Shiddieqy, *Sari Kuliah Fiqh*, Sala: Ramadhani, 1974), pp. 15-41.

Concerning the types of *ijtihād*, Shiddieqy, like Mawdudi, also opines that there are two kinds of *ijtihād*; *ijtihād fardi* and *ijtihād jama'i*.²⁴ The former is the efforts of an individual Muslim scholar, equipped more or less with the above qualifications, to find out the answer of certain legal issues, whereas the latter constitutes the collective effort of a certain number of Muslim scholars to solve certain legal problems. The most suitable institution to exercise *ijtihād jama'i*, according to him, is institution like *ahl al-hall wa al-'aql*, whose members consist of not only Muslim scholars specializing in Islamic law, but also those who come from different disciplines such as economics, medicine, education, etc.²⁵ In order not to be confused by the institution which bears the same name but has different function, Shiddieqy remarks that since we have two institutions, albeit both

are called *ahl al-hall wa al-'aql*, it is better for as to name the institution with the former function as *ahl al-hill wa al-'aql of imamah*, and for the later function as *ahl al-hall wa al-'aql of ijtihad*.²⁶

Although Shiddieqy is himself involved in both types of *ijtihād*, i.e., individual and collective *ijtihād*, this article will focus only on his individual *ijtihād*. As one of the Indonesian modern legal reformers, he does not restrict himself to a certain single school of *fiqh* in exercising *ijtihād*. He is not bothered by the fact that most Indonesian Muslim are Shafi'ites.²⁷ Like other modernists from other Muslim countries, Shiddieqy employs *talfiq* and *tak-hayyur* in his *ijtihād*. He, for instance, takes the *qiyas* of Shafi'i, *maslahah al-mursalah* of Malik, and *istihsan* of Abu Hanifah. In addition, he also takes use of *'urf*

24) Nouruzzaman Siddiqi, "Pemikiran M. Hasbi Ash- Shiddieqy Tentang Pembaharuan Hukum Islam di Indonesia," (Unpublished paper presented at the seminar held by the Faculty of Islamic Law, IAIN Sunan Kali Jaga, Yogyakarta, 7-8 July 1986), p. 9.

25) M. Hasbi Ash-shiddieqy, "Tugas Para Ulama Sekarang Dalam Memelihara dan Mengembangkan Qur'an, Hadits, dan Fiqh dalam Generasi yang Sedang Berkembang," in *Panji Masyarakat*, 14, No. 123 (15 March, 1973), p. 17.

26) Cf. H. Hasbi Ash- Shiddieqy, *Ilmu Kenegaraan dalam Fiqh Islam*, (Jakarta: Bulan Bintang), pp. 63.

27) See Ilzamudin ma'mur, "The Place of Islamic Court in the Judicial System of Modern Indonesia", in *Havard Islamicus*, Summer 1996, p. 75.

and the *saddu al-dhara'i* as sources of Islamic law.²⁸

Practical Side of His Ijtihad

Having discussed Shiddieqy's theory of *ijtihad* briefly, it is time to look at his actual *ijtihad*. Our source shows that Shiddieqy practiced *ijtihad* on more than five hundred items on different issues facing Indonesian Muslims such as organ transplantation, blood transfusion, dead penalty, etc. All of these can be found in his book entitled *Al-Ahkam: Hukum-Hukum Fiqh Islam* (Rules of Islamic Jurisprudence).²⁹ In order to give a cleaner picture of his exercise of *ijtihad*, an often disputed issue on 'wearing silk and gold by a man' and its law according to Shiddieqy, will be discussed in the following pages.

Shiddieqy's proceeds to settle this issue by undertaking the following steps. Firstly, he takes relevant three Qur'anic verses: *al-Baqarah* 29, *al-A'raf* 26 and *al-A'raf* 32.³⁰ Basing himself to these verses, Shiddieqy argues that since God has provided people with everything in this world, taking benefits from them is permissible, except from those things which are explicitly forbidden. Furthermore, God has also provided all kinds of dresses and clothing which could be used by people for protecting themselves from hot and cold weather, and God, according to him, also encourages them to dress properly and to adorn them selves by wearing jewelry, silk, gold, etc.

The second step is searching for a relevant hadith and he finds no less than eight *ahadith* which

28) A. Syadali, "Pemikiran Prof. Dr. T.M. hasbi Ash-Shiddieqy bagi Ummat Islam di Indonesia", (Unpublished paper presented at the seminar held by the Faculty of Islamic Law, IAIN Sunan Kalijaga, Yogyakarta, 7-8 July 1986), p.1.

29) M. Hasbi Ash- Shiddieqy, *Al-Ahkam: Hukum-Hukum Fiqh Islam*, Vols. 1-5, 4th ed. (Jakarta: Bulan Bintang, 1970).

30) These verses respectively are read as follow: "He it is Who created for you all that is in the earth"; "O children of Adam! We have revealed unto you raiment to conceal your shame, and splendid venture, but the raiment of restrain from evil, that is the best. This is the revelations of Allah, that they may remember"; and Say: who hath forbidden the adornment of Allah which He hath brought forth His bondment, and the good things of His providing? Say: Such, on the Day of the Resurrection, will be only for those who believed during the life of the world. Thus do We detail Our revelations for people who have knowledge." The English translation of these Qur'anic verses are based on A. Yusuf Ali, *The Holy Qur'an: Translation and Commentary* (Maryland: Amana Group, 1983).

address that wearing silk and gold are only permitted for women, not men. Having analyzed their *sanad* (transmitters) carefully, he convinces that all these *ahadith*. He then turns to the views of the previous *fuqaha*. Again, here he finds that most of them opine that men are forbidden to wear silk and gold, while women are permitted to wear gold and silk.

Following the principle of *al-aslu fi al-ashya' al-ibahah* (in its nature everything is permissible), he argues that since the cited verses of the Qur'an clearly indicate that using jewelry or ornament is permissible for both men and women and, therefore, they cannot be altered by the cited *ahadith* which are proven as *ahadith* of *ahad* not *mutawattir*. He then concludes that men are also permitted to wear both silk and gold. This conclusion is different from *jumhur 'ulama*, because he strongly holds that general rule of the Qur'an only can be altered by a *nas* of equal authority, that is either by the other Qur'anic verses or *hadith mutawattir*.

Conclusion

So far we have discussed Mawdudi and Shiddieqy's theories

and practice of *ijtihad* briefly. Both of these scholar, who lives in relatively same era and claim as the 42th descendant from the rightly-guided caliphs of 'Ali Ibn Abi Talib and Abu Bakr al- Siddiq respectively, agreed that *ijtihad* is very important method to develop Islamic law as having been demonstrated almost throughout the history of Islam.

They also do not disagree that *ijtihad* can be carried out on two levels; individual level and collective level. In addition, Mawdudi and Shiddieqy believe that the *mujtahids*, in order to get sound *ijtihad*, must meet certain requirements. This is because *jihad* cannot be conducted freely without taking into considerations the basic principle of Islam as propounded in the Qur'an and the Sunnah, the most important sources of Islam law.

While mawdudi and Shiddieqy share many things on the principles of *ijtihad* and requirements of *mujtahid*, they have different goals. Though both of them are concerned with the betterment of the Muslim society of their respective countries, Pakistan and Indonesia, they choose different 'vehicles' to achieve their objec-

tives. Mawdudi is more interested in the political aspects of Islam than the legal aspect of Islam, and his writings are thus focused on the politics. If he also writes on other aspects of Islam, he colors them with politics.³¹ Consequently, in line with this, many of his *ijtihad*s are found in the field of *fiqh siyasi*. Meanwhile, his contemporary, Shiddieqy, is thus more concerned with legal aspects of Islam as reflected in his writings. Shiddieqy does not only write theoretical aspect of *ijtihad*, he tries to apply them whenever are necessary. His *ijtihad* on various issues is compiled and published in five volumes. One example has been taken out from this compilation, i.e., on the issue of whether man is allowed to wear silk and gold or not. In addition, it is interesting to note here that while Shiddieqy, based on his *ijtihad*, permits man to wear silk and gold, conversely, Mawdudi forbids man to do so.³²

Because of the difference in concern, Mawdudi is known as the political thinker or theorist of

Pakistan, and Shiddieqy is recognized by his students in Indonesia as one of the *fuqaha* who takes initiative to establish what is called the 'Indonesian Fiqh'. While Mawdudi is known not only in South Asia but also in the Muslim world, Shiddieqy is only known by Muslims of the Southeast Asia. This is due to the fact that the works of the former have been translated into many languages such as English, Arabic, French, Indonesia, etc., whereas the works of the latter have been still in their original language, Bahasa Indonesia.

Wallahu a'lam bi al-sawab.

Bibliography

- al-Shatibi, *Al-I'tisam*, Vol. II Cairo: Marba' Mustafa Muhammad, nd.
- Ash Siddieqy, Muhammad Hasbi, *Ruang Lingkup Ijtihad Para Ulama dalam Membina Hukum Islam*, Yogyakarta: IAIN Sunan Kalijaga, nd.
- Coulson, Noel, J., *A History of Islamic Law*, Edinburgh: Edinburgh University Press, 1964, reprint 1991.
- Iqbal, Muhammad, *The Reconstruction of Religious Thought in Islam*, Lahore: Sh Muhammad Ashfaf, 1986.

31) Maryam Jameelah, "An Appraisal of Some Aspects of Mawlan Sayyid Mawdudi's Life and Thought", in *Islamic Quarterly*, Vol. XXXI, No. 2 (1987), p. 126.

32) Mawdudi's ideas on this issue can be read in Sayyid Abul Mawdudi, *The Questions of Dress* (Chicago: Kazi Publications, 1976, reprint 1978), p. 13.

- Kemal, Rahimuddin, *The Concept of Constitutional Law in Islam*, Hyderabad: Fase Brother, 'Al-Riaz', 1955.
- Mawdudi, Sayyid Abul A'la, *Islamic Law and Constitution*, Lahore: Islamic Publications, 1955, 10th edition, 1990.
- Mawdudi, Sayyid Abul A'la, *Islamic Law and Its Introduction in Pakistan*, Lahore: Islamic Publications, 1955, 4th ed., 1983.
- Muttaqin, Zainul, "Pola Ijtihad Hukum Muhammad Hasbi Ash- Shiddieqy dan A. Hassan", (Unpublished Undergraduate Thesis, Fakultas Syari'ah IAIN Sunan Kalijaga, Yogyakarta, 1992).
- Hallaq, Wael B., "The Gate of Ijtihad: A Study in Islamic Legal History" (Unpublished Ph.D. dissertation, University of Washington, 1983).
- Hallaq, Wael B., "Was the Gate of Ijtihad Closed?", in *International Journal of Middle East Studies*, Vol. 16, No. 1 (March, 1984).
- Rahman, fazlur, *Islamic Methodology in History*, Islamabad: Islamic Research Institute, 1965, 3rd reprint, 1984.
- Mawdudi, Sayyid Abu; A'la, "The Role of Ijtihad and the Scope of Lagislation in Islam", *Islamic Thought Quarterly Journal*, Vol. VII, No. 1 (1960).