

## **Fiqh Renewal of Gamal Al-Banna and Its Relevance of Fiqh Developments in Indonesia**

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### **Abstract**

This research is based on library research which is intended to examine the fiqh renewal of Gamal al-Banna. He is one of Hasan al-Banna's brothers. In this research, there will be some questions. First, how the fiqh view of Gamal al-Banna is, second, how the social and political biography that surrounds Gamal al-Banna's life is, and third, how its relevance with the fiqh developments in Indonesia is. This study is using qualitative research method of content analysis and historical approach, in which the content analysis is to read the books and data associated with the idea of Gamal al-Banna, while the historical approach is to read how the scope and biographies in the Gamal al-Banna environment are. The results of this study are first, Gamal al-Banna has fiqh renewal which is more moderate than his brother Hasan Al-Banna, second, the biography of Gamal al-Banna is identified and third, the relevance of Gamal al-Banna's fiqh renewal to the development of fiqh renewal in Indonesia is found.

**Keywords:** *Fiqh, Renewal, Gamal, Relevance.*

### **Abstrak**

Penelitian ini didasarkan pada penelitian kepustakaan yang bertujuan untuk mengkaji pembaharuan fiqh Gamal al-Banna. Dia adalah salah satu saudara laki-laki Hasan al-Banna. Dalam penelitian ini, akan ada beberapa pertanyaan. Pertama, bagaimana pandangan fiqh Gamal al-Banna, kedua, bagaimana biografi sosial dan politik yang mengelilingi kehidupan Gamal al-Banna, dan yang ketiga, bagaimana relevansinya dengan perkembangan fiqh di Indonesia. Penelitian ini menggunakan metode penelitian kualitatif dengan analisis isi dan pendekatan historis, dimana analisis isi dengan membaca buku dan data yang terkait dengan gagasan Gamal al-Banna, sedangkan pendekatan historisnya adalah untuk membaca bagaimana ruang lingkup dan biografi di Lingkungan Gamal al-Banna. Hasil penelitian ini adalah yang pertama, Gamal al-Banna memiliki pembaharuan fiqh yang lebih moderat daripada saudaranya Hasan Al-Banna, kedua, biografi Gamal al-Banna diidentifikasi dan ketiga, relevansi pembaharuan fiqh Gamal al-Banna untuk pengembangan pembaharuan fiqh di Indonesia ditemukan.

**Kata kunci:** *Fiqh, Pembaharuan, Gamal, Relevansi.*

## Introduction

Al-Qur'an is a book of guidance revealed by Allah SWT to Prophet Muhammad SAW. Through Jibril<sup>1</sup> for the whole of mankind. He spoke to sense and human feelings, teach them about Akidah and Tauhid, cleanse their souls with various worship practices; gave them instructions for the good and interests, both in individual and social life, show them the best way to realize his true identity. Develop his personality and improve himself towards the perfection of charity so as to realize happiness for himself in the world and in the hereafter.

وَيَوْمَ نَبْعَثُ فِي كُلِّ أُمَّةٍ شَهِيدًا عَلَيْهِمْ مِّنْ أَنفُسِهِمْ وَجِئْنَا بِكَ شَهِيدًا عَلَىٰ هَٰؤُلَاءِ وَنَزَّلْنَا  
عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ ﴿٨٩﴾

*And [mention] the Day when We will resurrect among every nation a witness over them from themselves. And We will bring you, [O Muhammad], as a witness over your nation. And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims. (QS. An-Nahl, 16: 89).*

The al-Qur'an also encourages people to learn and acquires knowledge, this indication can be seen that the al-Qur'an was first revealed a call to read, by reading, people are required to learn.

أَقْرَأْ بِأَسْمِ رَبِّكَ الَّذِي خَلَقَ ﴿١﴾ خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ ﴿٢﴾ أَقْرَأْ وَرَبُّكَ الْأَكْرَمُ ﴿٣﴾ الَّذِي  
عَلَّمَ بِالْقَلَمِ ﴿٤﴾ عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ ﴿٥﴾

Read1 in the name of your Lord2 Who created.3 Created man from a clot of congealed blood.4 Read, and your Lord is Most Generous. Who taught knowledge by the pen,5 taught man what he did not know.(QS Al-Alaq 96 :1-5).

One of al-Qur'an sign are Syari'ah rules and scientific complexity that surround it, in one of study of the al-Qur'an is the study of Islamic law. In actual discourse of Islamic Law, Islamic Law comes to us revealed through *Khatam an-Nabiyyin*, Muhammad SAW, with primary sources as al-Qur'an, then he translated it in the form of sunnah, either in the form of sayings, deeds or words.<sup>2</sup> hence, the legislative authority (laws maker) in the period of the Prophet in the

<sup>1</sup> "dia di bawa turun oleh al-Ruh al-Amin (jibril) (QS al-Syu'ara' 26 : 193)

<sup>2</sup> Muhammad Khudori Beak, *Ushul Fiqh*, (Beirut : Dar al-Fikr,1988), h. 3.

hands of the Prophet himself. No one besides him allowed to do their own *ijtihad* to determine the law of a problem, either for themselves or for others.<sup>3</sup> Nevertheless, it is undeniable that in this period there have been *ijtihad* done by Prophet's companion. Only in the form of the application of the law, which in other languages are called (*Tatbiq*) Therefore, the their products of *ijtihad* are not a legal requirement yet (*tasri'*). Which become their guidance, except it has legitimized by Prophet Muhammad SAW.<sup>4</sup> So that the source of the law at that time there were only two, namely the al-Qur'an and Sunnah.<sup>5</sup>

After the Prophet SAW died then ended the period of revelation. Relay authorities also turned to His companions, thus at that time the Companions became and played an important role was very significant in defense the religion. They were not only save "Prophet's trades" but also spread the wings of Islamic dakwah across the Arabian Peninsula. New regions introduced about Islam in order to make the religion of Islam spread more widely.

Islamic Law theory (*Ushul Fikih*), as the discipline that examines the Islamic law, not only studying the problems of law and legitimacy in a social context and institutionally, but also see the issue as a matter of law epistemology. This means that the theoretical approach of Islamic Law emphasized on the perspective of knowledge and more precisely in terms of categories of certain knowledge (*al-'ilmu*) as opposed to tentative knowledge (*az-zann*).<sup>6</sup> Usul fiqh does not only contain an analysis of the legal arguments and reasoning, but in it there are also talk of formal logic, dialectical theology, linguistic theory and not less important- as well, according to Wael B. Hallaq, an constitutive element of *Ushul fiqh*- that is epistemology of law such as *Qiyas*.

Another than *Qiyas*, there is a fatwa which is also one of the products of Islamic law, fatwa is the result of mufti *ijtihad*, when the mufti asked to solve a problem that arises and develops in a given society. Fatwa of the results of mufti *ijtihad* has the space and the different dimensions, rather than the result of *ijtihad* and *istimbath al-hukuk*, fatwa is a request that is only binding on the requesting fatwas and edicts results of mufti *ijtihad* does not have the force of law

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<sup>3</sup> Abd Wahab Khalaf, *Khulashah Tarikh Tasri' al Islam*, Alih Bahasa Aziz Mansuri, (Solo, Rmadhan, 1990) h. 11.

<sup>4</sup> Ibid, h. 13.

<sup>5</sup> Direktorat Pembinaan PTAI, *pengantar Ilmu Fiqh*, (Jakarta : Proyek pembinaan PTAI, / IAIN, 1981), h. 16.

<sup>6</sup> Jeanette Wakin, "Interprtation of the Divine Comand in The Jurisprudence of Muawwaq al-Din Ibn Qudamah, dalam *ILJ*, h. 33.

remains, in a sense, that results fatwa can not be binding for a fatwa requesters to follow the fatwa, or unfollow. Islamic literatures fatwa can be entered as a renewal of fiqh in looking reality in the broader sense. In this paper would like to provide an overview of the new fiqh that are highly relevant to the realities that exist right now, in the language of Islamic law often called *Tajdid fiqh*.

One of the interesting movements is the fiqh renewal or the term of *Tajdid fiqh*, one of the important figures in this study is Gamal al-Banna, a character who is also a brother of Hasan al-Banna that has a different thought away from his brother, who by some people are considered as the leader of the extremists. Gamal Al-Banna figure who did an inclusive movement in the understanding of fiqh provide space for new dimensions of understanding of fiqh which is more friendly and more grounded in reality and provide solutions for the problems of the Ummah in the modern era. Three research questions in this paper are *first*, how the views of modern fiqh or *Tajdid fiqh* in view of Gamal al-Banna, *second*, how the biography and the history of Gamal Al-Banna's life *third*, and what is its relevance to the development of moderate Indonesian fiqh or fiqh renewal in Indonesia.

## **The Biography of Gamal Al-Banna**

Gamal al-banna was born in 1920 in an area of al-Mahmūdīyah, Egypt. His family got high trust in the culture and Islamic thought, in addition to the many donations given by this family in developing Islam and social work in Egypt. His father, Shaykh Ahmad Abd al-Rahmān al-Bannā spent almost 30 years to write *al-Fath al-Rabbānī fī Tasnīf wa Sharh Musnad al-Imām Ahmad al-Shaybānī* encyclopedia. Gamal Al-Banna was born December 15, 1920, known as the writing likes since a young age, although a younger sibling and a student of Hasan al-Banna, Gamal al-Banna had independent thinking of the Muslim Brotherhood. In the era of Gamal Abd Nasser, Gamal Al-Banna received an oppression from the government, Gamal Al-Banna also active in non-governmental organization in Egypt. In 1953, he founded the Egyptian Association for Aid to Prisoners.

In 1981, Gamal al-Banna founded the union International Islamic Workers, allied with the union workers in Jordan, Morocco, Pakistan, Sudan, and Bangladesh, with offices in Geneva, then moved to Rabat, Morocco, he also established Fauziyyah and Gamal el-Banna foundation For Islamic Culture and Information with his youngest brother, the late Fauziyyah al-Banna, in 1997.

Gamal is a son hadith expert named Shaykh Ahmad Abdurahman al-Banna, the author of *Hadist al-Fath ar-Rabbani fi Tartib Musnad al-Imam Ahmad asy-Syaibani encyclopedia*, in 24 volumes, from 1989, Gamal was widower, although he was the younger brother of Hasan al-Banna, mursyid and founder of the Muslim Brotherhood, however, he was opposed to the idea promoted by Jama'ah al-Ikhwan, although previously he had an intimate relationship with the latter group. Gamal is a graduate of Doctoral degree Jami'ah al-Qahiroh (Cairo University). He was classified as a front line reformer and a productive thinker. His works are very much either in the form of personal or written translation, which exceeds one hundred books, including muraja'ah.<sup>7</sup>

This kind of short biography, it is not sufficient to guess the background of his thinking (*historical background*) so it can be guessed grooves mind later. So worth the tangent is also in this biography is that Gamal was once a Muslim who crave the State or the State of Islam. No different with the Islamists now, of course, before he experienced a turning point in thinking (*a kind of epiphany*). Even with the Jama'ah al-Ikhwan, Gamal had been thrown into prison in Tursina in 1948.<sup>8</sup>

Hasyim saleh, specialist in translating Arkoun's works and criticism of Contemporary Islamic thought wrote in his column in *Sharq al-Ausat*, in this paper, Hasyim compared Gamal al-Banna with the Protestant reformer, Marthin Luther. He said the position of Gamal Al-Banna as a pioneer of Islamic revivalism (*Ra'id Da'wah al-Ihya al-Islami*). As Martin Luther position in Christianity that drives the religious reformation (*al-Islah ad-Din*). Gamal al-Banna was able to dig rationality, enlightenment and religious reformation of the root teachings of the al-Qur'an.<sup>9</sup>

According to Hashim, Gamal's project is a great leap forward because it was able to assert only the al-Qur'an is the only mandatory. In the language of Gamal which became the title of his essay is "*al-Audah Ila al-Qur'an*. 1983.<sup>10</sup> The idea is able to liberate Muslims from captivity accumulated traditions that

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<sup>7</sup> Majdi Said, *Gamal al-Banna Ta'ir al-Hurriyyah Yakhidu Munfaridan* dalam <http://Islamonline.netarabic.famous.2003/article.shtml>, di akses tanggal 2 februari 2015.

<sup>8</sup> Majdi Said, *Gamal al-Banna Ta'ir al-Hurriyyah Yakhidu Munfaridan* dalam <http://Islamonline.netarabic.famous.2003/article.shtml>, di akses tanggal 2 februari 2015.

<sup>9</sup> Hasyim Saleh, *Sakhsiyah Gamal al-banna dalam* Jurnal *Sharq al-Ausat*. Tanggal 24 2004, h. 7.

<sup>10</sup> Hasyim Saleh, *Sakhsiyah Gamal al-banna dalam* Jurnal *Sharq al-Ausat*. Tanggal 24 2004, h. 7.

often restrain freedom. Hasyim shaleh also put the project on Islamic thought as Muhammad Talbi, Abd Majid asy-Syarofi, Hasan Hanafi, Muhammad Arkoun, Muhammad Abid al-Jabiri, Abd Kariom Saraus and etc.

Likewise with the several comments, one of which came from Sa'dudin Ibrahim, a Director of the Ibn Khaldun Center Egyptian human rights. According to this figure from the Egyptian government oppositions, Gamal al-Banna was able to combine two messages at once, either as a driver of religion reformers, as well as Egypt or political reformers. Gamal is not only good at and criticism in the updating of religious interpretation, but also proficient and consistent in fighting for the values of civil society and democratization. In short Gamal was once dai of Islam and dai of democracy.<sup>11</sup>

Gamal al-Banna as a thinker, was born on 15 December 1920. Familiar with the world of writing and journalism in a young age. In 1946 he wrote a book *Dimuqrotiyah Jadididah* (neo-Democracy) one of his idea is a new understanding of Religion (*fahmu jadid ad-Din*) which became one of the pillars of Neo-Democracy. When the Muslim Brotherhood founded the print media, Gamal became editorial secretary, but according to Gamal recognition, he was never become a member of Muslim Brotherhood. Gamal has independent thinking. One of Gamal's interesting comment to Hasan al-banna is that Hasan al-Banna in his time, has recognized freedom of religion, in mabda' al-Ikhwan al-Muslimun, Hasan al-Banna affirmed his opinion by verses of the al-Qur'an, : *wa man sya'a fal yukmin wa man sya'a fal yakfur*.

In the Gamal Abd Nasser era, Gamal had been imprisoned because of his written entitled *Tarsyid Al-Nahdah*, This book review on 23 July 1952, known as a revolution, but Gamal noted it was not a revolution but is a military coup. Gamal 's opinion provoked a strong reaction of the military officers at the time, when setting up the chapter V, Gamal's printing assaulted by the police and forced him to stop writing. According to Gamal if at that moment, he has money about LE 6, he will undoubtedly raised it in court. And the incident remained a mystery until the magazine al-Qahirah review the incident.<sup>12</sup>

Meanwhile, in 1953, Gamal founded the Egypt Association for the assistance of prisoners, in 1981 founded the International Islamic Trade union

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<sup>11</sup> Sa'dudin Ibrahim, *At-Ta'addudiyah wa Hurriyyah fi Al-Islam li Gamal al-Banna*, (Beirut: Dar al-Manhill, 1996), h. 5-6.

<sup>12</sup> Majdi Said, *Gamal al-Banna Ta'ir al-Hurriyyah Yakhidu Munfaridan dalam hhttp://Islamonline.netarabic.famous.2003/article.shtml*, di akses tanggal 2 februari 2015.

with the labor unions in Jordan, Morocco, Pakistan, Sudan, Bangladesh, and his office in Geneva. Then move to Rabat, Morocco. During the 50's and 80's Gamal actively involved in the union of non-governmental organization, wrote numerous guide books, to translate foreign books at the end of December 1995. More precisely, this Egyptian-born thinker launched the book entitled *Nawh fiqh jaded* (initiated a new fiqh) volume 1. The book consists of three volumes which are completed in 1999, after his two volume work published in 1997. This book was sparked controversial in parts of Egypt and the Arab States.<sup>13</sup>

“*Nahwa Fiqh Jadid*” (Towards a New Fiqh) written by Gamal al-Banna, the younger brother of Hasan al-Banna. The two brothers take different path, although both of them are the major figures in the modern Muslim world. Hasan, became a successful da'i and successfully established a great organization and is very popular in the Islamic world: “Al-Ikhwān al-Muslimun”. While Gamal become a progressive activist working for the rights of workers. May struggle with the social workers or workers' organization is to inspire himself to perform and move the critique on the basis of the underlying theological mindsets, perspectives and dynamics of social, cultural and political society. Heavy criticism conveyed through books and writings lush in public media. He became a prolific thinker and writer with her thoughts were brave, very critical, and vocal. Many people refer to him as a liberal Muslim thinker, secular, humanist and feminist. One scholar, Hashim Sholeh, even positioning Gamal Al-Banna as a “*râ'id da'wah al-ihyâ' al-Islâmi*”, a pioneer of Islamic revival. Gamal struggle for liberation and freedom that society never subsided, even though the onslaught and stigmatization against him come from all over the Islamic world, until he died, January 30, 2013, at the age of 93.

Gamal al-Banna is also very appreciative of the modern streams, but after it was criticized and filled by Islamic values, such as democracy, Syura, Pluralism, freedom of thought, the revitalization of the role of women, secularism, nationalism, human rights, socialism, etc. Gamal as represented with the figures of other highly productive in doing enlightenment, Gamal's daily is reading and writing, as well as filling seminars both inside and outside Egypt. In the scientific field, for example in the field of hadith he used two-secant approach would be contrary to that approach that is both expansion and constriction of meaning. In this study of pure thought Gamal had has a real contribution to the study of one of the treasures of Islam that is in the field of hadith.

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<sup>13</sup> Majdi, Said, *Gamal al-Banna, Tafsir al-Hurriyyah Ykahridu Munfarida*,

Gamal al-Banna has written dozens of books, the amount of his books more than a hundred books. Some of them are: “*Al-Awdah ila al-Qur’an*”, “*Ruh al-Islam*”, “*al-Da’wah al-Islamiyyah al-Muashirah ma Laha wa ma ‘Alayha*”, “*Mas’uliyat Fasyal al-Dawlah al-Islamiyyah*”, (books that were banned by the research institute al-Azhar University, Cairo), “*al-‘Amal al-Islâmi li Irsa’i Siyadat al-Sya’b*”, “*Al-Ushul al-Fikriyyah li al-Dawlah al-Islamiyyah*”, “*Al-Mar’ah al-Muslimah bayna Taharir al-Qur’an wa Taqyid al-Fuqaha*”, “*Al-Ta’addudiyyah fi al-Mujtama’ al-Islamy*” (The Plurality of Islamic Society), “*Al-Ashlani al-‘Azhmani : Al-Kitab wa al-Sunnah*”, “*Kalla li Fuqaha al-Taqlid, Kalla li Ad’iya al-Tanwir*” (Say No! to the Conservative Fiqh Experts. Say No! to the tribe Enlightenment), “*Hurriyah al’I’tiqad*”, “*Nahwa Fiqh Jadid*”(3 volumes) and etc. Almost, if not entirely of Gamal al-Banna works contains criticisms and lawsuits against religious thoughts conservative, traditionalist and fundamentalist.

In the Gamal’s work “*Nahwa Fiqh Jadid*” I (1995), we see clearly the thoughts of Gamal al-Banna which was progressive, liberating and deconstructive. He criticized sharply the thoughts of classical fiqh experts that were very conservative and textual. Gamal also criticized efforts to reform the new thinkers, such Arkoun, Nasr Hamid Abu Zaid, Sahrur and others. Gamal’s criticism against a number of prominent thinkers is not aimed to against their motive, but against the way (method) it. In terms of motive Gamal and thinkers are, equally disappointed and concerned by the reality of life of the Muslims who have just risen to realize Islam as the religion of humanity. The Muslims are still underdeveloped. The construction of their religious reason are still trapped in buildings medieval Islamic intellectual who keeps the whole mechanism be established with conventional. For the sake of it, they were not only do the massive socialization process, particularly through educational institutions, ideology and sacralization of texts fiqh and the characters, but also to build alliances with political power or state. The fiqh products in its turn become sacral, anti-criticism and so on. Similarly, the characters (*Rijal al-Din*).

## **Fiqh Tajdid in The View of Gamal Al-Banna**

Gamal in understanding fiqh uses an interesting way of thinking that is *Al-Bara’ah al-Asliyah* concept (freedom) it was stated in the first page of *Nahw Fiqh Jadid* book, this doctrine is related to the affairs of the lawful and unlawful, but also strongly associated also with the entire life of the Islamic People which

explained in the al-Qur'an, humans are very honored and praised.<sup>14</sup> Gamal took inspiration from the story of Ibn Tufail entitled *Hay bin Yagazchan*” This story illustrates someone who can find God only through his mind with the help of experts in religion, but religion in accordance with the reasonable and not contrary to reason. According to Gamal, in the al-Qur'an and the hadith mentioned that freedom is fitrah, and Islam is a fitrah religion, because according to Gamal, God is fitrah for freedom above human, that was born in immaculate condition, original, free construction outside and in their environment that makes it colorful.

Gamal then set out further to see this doctrine in the context of shared living arrangements of people on earth. He also found a religious foundation that basically everything in this world is free, allowed or halal. Liability, restriction or prohibition is a mere exception. As an exception, it is very little. In general, he argued, such restrictions are imposed on things: form of worship, goods that destructive body (dharar) and activities that violate basic human rights: cult or deify besides Allah SWT (*isyarak/musyrik*), suppression (tyranny), degrading the dignity and sanctity of the body, deprivation of economic rights. Gamal said: “*Inna Ashl al-Ibahah La yaqtashir ‘ala al-Asy-ya wa al-A‘yan, bal Yasymal al-A‘al wa al-Tasharrufat allati Laisat min Umur al-Ibadah. Wa Hiya allati Nusammiha al-‘Adat aw al-Mu‘amalat. Fa al-Ash fiha ‘Adam al-Tahrim*”. (The basic principle of choice (allowance) unlimited to the goods (like foods, pen.) and things, but include the behavior and actions in addition as matters of worship. We called it as customs, traditions and social relationships. In the study of fiqh became a heated debate, because we have given guidance in the form of the Qur'an and hadith, this question can be explained that in the al-Qur'an and the Hadith of the Prophet was very limited, while the incidence of Mankind should be given legality and the solution of Islamic Law is unlimited, this reality later will be the foundation for Gamal that in any case be done but remains below the corridor Universality of the Koran and the Hadith.<sup>15</sup>

Whereas the earlier ulamas actually really know and understand the existence of this kaedah, but they introduce kaedah based on the study of Usul Fiqh which in the form of Ushul fiqh ma'nawiyah, “*Sadd al-Dzari'ah*, (closing the door or enforce the odds in danger or kemudharatan), This concept is philosophically useful as preventive and protection and this is done by the ulama

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<sup>14</sup> Gamal al-Banna, *Nahw Fiqh Jadid*, (Madinah. Dar as-Suruq, 2008), h. 3.

<sup>15</sup> Gamal al-banna, *Qadiyah Fiqh Jadid*, (Madinah : Dar as-Suruq, 2008) h. 27.

at the time.<sup>16</sup> By the way of this view, Ulama do serious study by producing a law-based preventive and protectionists in which there are no new creative values that can make people free from captivity. Many legal product which is produced from this preventive process ranging from Christmas should not be congratulated for example up to the study of prohibiting of disclosure of the female body and once declared that the law is obligatory to wear hijab, khimar and so on. In the real life or this modern reality, we look at the proceedings against the fatwas that are more preventive in nature than creative open and inclusive. For example in the MUI fatwa: “Halal Label”, and the most devastating is “Illegitimate of Pluralism, Liberalism and Secularism”, and others. Legal policy to limit the rights of such people, even not only be constructed through a fatwa religious institutions, but also by the policies of the State, for example on the Pornography Law and the discriminatory policies that are produced in these areas. (Read the Report of the National Commission for Women: In the Name of Regional Autonomy, the institutionalization of discrimination in the State Order of the Nation). How little human life on this earth.

Meanwhile, if we see in the second volume in the works *Nahw Fiqh Jadid*. In this second book Gamal mentioned the three terms are very basic in Islamic science those are Aqidah, Syari’ah and Fiqh, these three themes become the deep spotlight for Gamal, before Gamal do it, some of classical ulama already provide definitions associated with the Aqidah, Syari’ah and Fiqh. One of them, Mahmud Syaltut said that the meaning of syari’ah and aqidah is different, he wrote a book entitled *Al-Islam Aqidah wa Syari’ah*. Which means unconsciously Mahmud Syaltut said there is a differences between Aqidah and Syari’ah, it also raised a lot of debates, for example what is the difference Syari’ah with fiqh

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<sup>16</sup> Salah satu Ulama kalangan Syafi’iyah mengkritik metode ini salah satu komnetarnya adalah adalah sebagai berikut :

يظن الجاهل أن الحلال مفقود وأن السبيل اليه مسدود حتى لا يبقى من الطيب إلا الماء والحشيش النابت في الموات . وما عداه أحواله . أخبثته . الأيدي العادية وأفسدته المعاملة الفاسدة . وليس كذلك .

*Yazhunn al-Jahil anna al-Halal Mafqud, wa anna al-Sabil ilaihi Masdud Hatta La yabqa Min al-Thayyib Illa al-Ma wa al-Hasyisy al-Nabit fi al-Mawat. Wa Ma ‘adah Ahalathu al-Aydi al-‘Adiyah wa Afsadathu al-Mu’amalah al-Fasidah. Wa Laisa Kadzalik*”. (orang bodoh mengira bahwa yang makanan yang halal telah hilang. Jalan ke arahnya tertutup, sehingga (sumber hidup) yang baik hanyalah air dan rumput-rumput di padang tandus. Selainnya telah dicemari oleh tangan-tangan kotor dan transaksi-transaksi yang merusak. Padahal tidaklah demikian). Lihat Imam Ghazali al-Mustafa lil ilmi Ushul Fiqh, (Beirut : Dar al-Fikr, 2001).

and akidah with fiqh, Ibnu Jarir al-Thabari above paragraph “*Li Kullin Ja’alna minkum Syir’atan wa Minhajan*”, (each Ummah we made the way and method), which said that “Din” is one, whereas “Syari’ah” is different (*Al-Din Wahid wa al-Syari’ah Mukhtalifah*). So *Din* is a faith and “Syari’ah” is the way of life, and it can be different, the *Din* of Prophets is same, but their law rules are different. Thabari said the differences of syari’ah because of space and time (contexts) their different lives. If so, “*Din*” (faith) is a teaching that is fixed / established and universal, while “*syari’ah*” is the contextual teaching, plural, varied and changeable. If *syari’ah* is contextual, So, what makes it different from the term of “fiqh” ?. Is not fiqh is intellectual reasoning product of experts, and it is plural, diverse or different. This diversity is also better because it is the product of the space and the time of each of them.

In his second book, Gamal entitled the book as “*Hurriyah al-I’tiqad*”. Islam is essentially unlimited, it examines the two concepts Akidah and Syari’ah, the study of Akidah focus on the study of divine relationship between human and God.<sup>17</sup> Whereas in the syari’ah field, it focus on the study of rules associated with promiscuity in the form of policy, law and economics and the underlying principle that is justice.<sup>18</sup>, Gamal also affirms that Akidah is a basic of principle problem, while Syari’ah is the branch problem, Gamal also agreed with the view of Ibnu Qayyim al-Jauziyyah which is said that: “Syari’ah is *wisdom* and welfare. Entirely fair, mercy (love), public welfare, and wisdom. Each laws product which is out / off of the pillars of this, then he is not syari’at, even intellectualizationed as the name of religion”. With more assertive words, each laws product that are discriminatory, oppressive and inhospitable, it is not part of syari’ah, although based on the texts of the religion. Gamal also mentioned “*al-Kuliyyat al-Khams*” (Five Principles of Protection) or “*Maqashid al-Syari’ah*”, as formulated by Imam al-Ghazali from Thus and Imam al-Syathibi from Granada, Spanyol. And it’s important to be discussed in the understanding of renewal fiqh. At the present contexts.

Gamal insisted that the understanding of fiqh is equated with the *din* concept that is Universal or otherwise, as a concept and equated with the concept of syari’ah and fiqh, then it will born the universality those are contextual and particular, or also born the contrary: the relativity and transient in human values. From dimensions of a particular issue or *furu’* and a branch that become

<sup>17</sup> Gamal al-Banna, *Hurriyah al-I’tiqad*, (Madinah, Dar al-Suruq, 2008), h. 31.

<sup>18</sup> *Ibid*, h. 31.

an ushul dimensional issues. That phenomenon occurs in the circle of Islamic civilization and this is a big mistake of fuqaha.

One of Gamal al-Banna's critic is about the woman issues as subordinate of entities male (QS, An-Nisa' (4) :34) in it revealed that women are not equal with the men and consequently laying this position is very discriminatory, and in turn the women was a creature that is very marginal in a community, and it raises and led to the violence against women. In this case the question that arises is, how could God discriminate humans? Is not it stated in another ayat such as Surat al-Hujarat (49) : 13, states that all beings in front of God are the same and measured by its piety. If we talk about freedom and jihad problem, it is very different from what is taught by the Prophet Muhammad that are prophetic in understanding his Ummah.

In different argumentations Gamal said that Ijtihad is a historical necessity, history proves the development of Islamic law because of the mazhab leaders whom are dare to have different ideas with different methodologies devices they build. Likewise Gamal al-Banna wrote in his book with subtitles or themes "*Ijtihad hazha Ma'lum al-Majhul*" Gamal affirmed Ijtihad is a necessity in a religion, and constantly open and unclosed, some classical ulama made a discourse of closed ijthad. Whether or not preventive efforts but it is gradually become a dogmatic rooted, so it regress the creativity of ulama in reviewing Islamic Law in the level of methodology and renewal.<sup>19</sup> Gamal pointed out that in the age of the Prophet, alive a Muadh bin Jabbal who allowed to perform ijthad especially now, where the condition of Muslims is far from the Prophet and his companions era.

Gamal al-Banna revealed that the closed doors of ijthad more because of the many products ijthad diverse and contradictory, and the declining freedom of thought in Muslim society.<sup>20</sup> These circumstances lead to social chaos. While it was not or no mechanism in resolve it. From here, then the ulama make a strict restrictions or criteria. Imam al-Syafi'i requires scientific criteria about "qiyas" (analogy). In his well known book "al-Risalah", Imam al-Syafi'i said: "Al-Ijtihad Huwa al-Qiyas" (Ijtihad is an analogy). It surely contains the meaning of ijthad that should be tend and bound to the sources text; al-Qur'an and Sunnah. Mazhab Hanafi introduces "Istihsan" (*to consider something good*) or sense considerations for the good, as one of the legal decision-making mechanisms. But

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<sup>19</sup> Gamal al-Banna, *Qadhaya al-Fiqhu Jadid*, (Madinah: Far As-Suruq, 2008) halaman 23.

<sup>20</sup> *Ibid*, h. 27.

Imam Syafi'I, refused it, because it is equal to judge the law based on common sense rather than by God." *Man Istahsana Faqad Syarra'a*".

Besides the development of Ulama is also influenced with the views of qiyas for example, it is not a decisive element that it is *musbit*, so it is only about legal nature in the form of muzhir so it was not an innovation, as well as the inception a kind of doctrine rules of fiqh which states: "*La Ijtihad Ma'a al-Nash*" (there should be no ijihad on sound of a clear and explicit text), and "*La Ijtihad Ma'a al-Ijma*" (There should be no Ijtihad against legal decisions that have consensus). The two doctrins make the ijihad narrow and even closed, if we see from a deal of walfare is an aim of Law, the classic fiqh experts said that the text choices contain walfare. Gamal al-Banna questioned with the critical tone: "how come a walfare become an aims of Islamic Syari'at, but at the same time Syari'at itself is walfare. Is not it logic turn around that untargeted?"<sup>21</sup>

So that, the reading of renewal fiqh in the style of Gamal al-banna will open our eyes about the important of ijihad in Islamic Law. Is not Fiqh adage inconsistent because the inconsistency, it indicates the change is absolute in the study of Islamic law and the changes that can be done by opening the doors of Ijtihad is one of the way.

### **Its Relevance with Renewal Fiqh in Indonesia**

Islamic Law in Indonesia simultaneously with the entry of Islam to Indonesia, in this case a lot of debate long and interesting when we look at the historical fact that Islam come to Indonesia as the 12th century M in the safe through the Indian subcontinent, and evolved significantly in the coastal coast archipelago. Meanwhile, if we follow another idea that Islam come into Indonesia is when the 7th century and the 8th and come through Malabar were taken straight from the Arabian Peninsula. And of these two opinions the most trusted opinion is that the 7th century M.<sup>22</sup> that there is the development of Islam in the 13th century M It is also justified by the first growth of Islamic kingdoms as Samudra Pasai, Kutai, Gresik, and so forth, in some areas of the kingdom of Islam at the time the law used is Islamic law in relation with this law, the dominant mazhab used is Imam Syafi'i mazhab. And if there is a traditional law, the traditional law which is still in the preserve is the traditional laws do not conflict with

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<sup>21</sup> *Ibid*, h. 77.

<sup>22</sup> Lihat Azyurmadi Azra, *Jaringan Ulama Timur Tengah dan Kepulauan, Nusantara Abad XVII dan XVIII*, (Bandung: Penerbit Mizan, 1994), h. 24-36.

Islamic law. In the treasures of the archipelago there is a kind of assimilation of Islamic law and traditional law in various treasures of the archipelago, it can be found in some expression that exists in some traditional groups, for example, traditional of Minangkabau “*Adat basandi Syarak, Syarak basandi kitabullah*” (adat bersendikan syara’ syarak bersendikan kitabullah) see the phenomenon can be drawn a conclusion that the spread of Islamic law or fiqh in the archipelago is unbelievably loaded with cultural assimilation of existing and evolving at that time.<sup>23</sup>

One of the figures who energetically with Indonesian fiqh is Hasby As-Shidiqy, in his book Prof Nuruzzaman said that a fiqh that is suitable to live in Indonesia is a fiqh nuanced Nusantara, in one of well known articles, Hasbi wrote:

Barang siapa yang diantara kita sudi melepaskan keinsafan kedalam masyarakat dan kehidupan Umat Islam, dewasa ini, tentulah dapat terlihat olehnya perbedaan yang jelas dan nyata, akan lemahnya hukum Islam oleh kaum muslimin. Dan hal itu menunjukkan untuk menghidupkan kemabli hukum Islam di tengah-tengah Masyarakat Muslim Nusantara.

Other terms in the archipelago is for example in Aceh “ Hukum ngon adat hantoe ore, lagee zat ngon sifeut” (Islamic law and customs can not be separated, such as substance and nature of the relationship of an object).<sup>24</sup> So it can be said of Islamic law and traditional law is complementary in building the Indonesian Islamic law in the country. While in the community of Sulawesi there are interesting phrase Sulawesi “*Adat Hulo-hulo to Syarak, Syarak Hula-hula to Adat*” (Adat bersendi Syarak dan syarak bersendi Adat).<sup>25</sup> Seeing it to be very interesting if the study of Islamic law that was born in the Middle East become very assimilated with Khazanah Traditional Law in Indonesia or Nusantara. As it is discussed in this paper.

Despite the positive law of Islam which is set in the judiciary in Indonesia and renewal fiqhs in Indonesia, always have ups and downs. Nevertheless, for the sake of the development, it has taken place and make a new understanding

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<sup>23</sup> Lihat Departement Agama RI. *Kenang-Kenangan Seabad Peradilan Agama di Indonesia*, (Jakarta : CV, Ade Cahya, 1985), h. 5. Sumber ini selanjutnya disebut dengan *seabad Peradilan Agama*.

<sup>24</sup> Lihat Daud Ali, *Asas=Asas Hukum Islam* (Jakarta: Rajawali Press, 1990), h. 89.

<sup>25</sup> Lihat Abdul Ghani Abdullah, *Badan Hukum Syarak Kesultanan Bima*, (Jakarta: Disertasi IAIN Syarif Hidayatullah, 1987) h. 89.

of fiqh which become more attractive. It is also supported with the number of Indonesian students studying in the Middle East, there are lectures and study in Saudi Arabia, Egypt and upon his return from the Middle East they established madrasahs are modern patterned, for example like the Muhammadiyah schools, Persis, Al -Irsyad, and others. Which is not only introduce the Syafi'i mazhab but also another mazhab. Or books related to the comparison of mazhab, for example, the book of *Bidayah Al-Mujtahid* works Ibnu Rusyd, the book of *Nail Al-Author*, works Imam As-Syaukani. The book of *Subulus as-Salam* works Imam an-Shan'ai, and so forth. And the greatest is they also introduce renewal fiqhs such as Abd Hamid Hakim with his works *Al-Muin Al-Mubin*, there is also Zainudin Labey el-Yunussi works, entitled *al-durus al-fiqhiyyah*, that books become a public consumption in modern schools and give a variation of fiqh in the students thought. And it will affect the thoughts of legislation in Islamic law in the formation of KHI in the coming years.

One of the works that can be calculated is the works of Gamal Al-Banna, in his works provides a new offer in understanding of fiqh or it called Tajdid Fiqh or renewal fiqhs. The efforts made by Gamal is trying to dismantle the old fiqh that exist and are in a period Gamal had Al-Banna, even though Gamal al-Banna is the younger brother of Hasan al-banna, Gamal Al-Banna has a demegrasi line to clear the distinction between the two brothers, the Hasan al-banna more extreme in understanding Islam. But Gamal had has another picture of a more moderate form of understanding in the understanding of fiqh who live in the community. As for the relevance of the highly visible from the Fiqh updates between Gamal al-Banna with the renewal of Fiqh and Islamic Law in Indonesia is doing Ijtihad there are movements in the field of Fiqh, for example the Indonesian Fiqh of Hasbi asy-Syidiqqi, Social Fiqh of KH. Ali Yafi'i and KH. Sahal Mahfud, these pioneers open the new ijthad in understanding the society around them. By developing and approaching with another science, it produce more walfare view and more moderate in the middle of Islamic society. The effort in assimilating the Islamic Law and the traditional law includes in the ijthad movements, that is in the ijthad theory apply consequences to consider the customs and social conditions that exist in the place of ijthad was set, *Istimbat al-Ahkam Taghayyuru al-Ahkam bi tagahoyyuri al-azminath wa al-alkhwal* changing the law because of the changing conditions surrounding the time and era.

## Conclusion

From all of Gamal al-Banna thoughts about fiqh, as slightly described above, in essence, he asked a few things, as his update projects. First, that the law (the benefit of) human, not for the sake of God. Second, Islam is Aqidah and Syari'ah. Aqidah is faith that dwells in the human heart and the heart-directed to individuals. Syari'ah law is not material but the basic values of humanity which in essence of justice. Syari'ah is directed to human in relation to other human beings in society in various aspects of life. These basic values have to be a major foothold in persons, especially legal experts, to formulate laws or public policy / politics. While fiqh is law product which is generated from human mind that is contextual. Third, the basic principle is all that exists on this earth is permissible and halal, except for a few things that are forbidden God has put forward explicitly. Similarly, all the rules concerning public affairs and social relations is a free choice, except that endanger the lives of themselves and society. Fourth, freedom is the most fundamental thing for humans. This freedom of human, because he alone is endowed by God's wisdom. Fifth, Ijtihad is a historical necessity. He was always open and never closed. Sixth, the obligation of the Muslims is to turn on and use common sense (*I'mal al-'Aql*) and to explore human values (*al-Qiyam al-Samiyah*) from two main of Islamic sources: al-Qur'an dan al-Sunnah. They should get out of the ways and methods of conventional interpretation, and build a new interpretation based on the way of reason and universal human values.

In relevance to Islamic law in Indonesia is that the thinkers of Islamic law in Indonesia who glorify ijtihad by fiqh discourse on Indonesia, such as in this case is Hasbi as-Sidiiqi, Social fiqh KH. Ali Yafi'I and KH. Sahal Mahfud, etc. Fiqh models is what has matters, as was done by Gamal al-Banna when he was still alive.

## List of Literatures

### Book

Al-Banna, Gamal, *Nahw Fiqh Jadid*, Madinah. Dar as-Suruq, 2008.

\_\_\_\_\_, *Qadiyah Fiqh Jadid*, Madinah : Dar as-Suruq, 2008.

Ali, Daud, *Asas-Asas Hukum Islam* Jakarta: Rajawali Press, 1990.

Azra, Azyurmadi, *Jaringan Ulama Timur Tengah dan Kepulauan, Nusantara Abad XVII dan XVIII* Bandung. Penerbit Mizan, 1994.

- Beak, Muhammad Khudori, *Ushul Fiqh*, Beirut : Dar al-Fikr,1988.
- Direktorat Pembinaan PTAI, *pengantar Ilmu Fiqh*, Jakarta : Proyek pembinaan PTAI, / IAIN, 1981.
- Ghazali, *al-Mustafa lil ilmi Ushul Fiqh*, Beirut : Dar al-Fikr,2001.
- Ghani,Abdullah, Lihat Abdu, *Badan Hukum Syarak Kesultanan Bima*, Jakarta: Disertasi IAIN Syarif Hidayatullah, 1987.
- Ibrahim, Sa'duduin, *At-Ta'addudiyah wa Hurriyyah fi Al-Islam li Gamal al-Banna*, Beirut: Dar al-Manhill, 1996.
- Jeanette Wakin, "*Interprtation of the Divine Comand in The Jurisprudence of Muawwaq al-Din Ibn Qudamah*, dalam ILJ,
- Khalaf, Abd Wahab, *Khulashah Tarikh Tasri' al Islam*, Alih Bahasa Aziz Mansuri, Solo, Rmadhan, 1990.
- Majdi, Said, *Gamal al-Banna, Tafsir al-Hurriyyah Ykahridu Munfarida*,  
Lihat Departement Agama RI. *Kenang-Kenangan Seabad Peradilan Agama di Indonesia*, Jakarta : CV, Ade Cahya, 1985

### Website

- Majdi Said, *Gamal al-Banna Ta'ir al-Hurriyyah Yakhidu Munfaridan* dalam <http://Islamonline.netarabic.famous.2003/article.shtml>, di akses tanggal 2 februari 2015.
- Majdi Said, *Gamal al-Banna Ta'ir al-Hurriyyah Yakhidu Munfaridan* dalam <http://Islamonline.netarabic.famous.2003/article.shtml>, di akses tanggal 2 februari 2015.
- Majdi Said, *Gamal al-Banna Ta'ir al-Hurriyyah Yakhidu Munfaridan* dalam <http://Islamonline.netarabic.famous.2003/article.shtml>, di akses tanggal 2 februari 2015.

### Journal

- Saleh, Hasyim, *Sakhsiyah Gamal al-banna dalam Jurnal Sharq al-Ausat*. Tanggal 24 2004,  
\_\_\_\_\_, *Sakhsiyah Gamal al-banna dalam Jurnal Sharq al-Ausat*. Tanggal 24 2004.