

The Concept Of Islamic Law

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**THE CONCEPT OF ISLAMIC LAW THOUGHT OF SAYYID SABIQ IN THE
BOOK OF *FIQH SUNNAH* (ANALYTICAL STUDY
IN DISTINGUISHING *BID'AH* AND *IKHTILAF*)**

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ABSTRACT

Sayyid Sabiq is a fiqh sunnah writer who strived to be an enlightener on the rise of taqlid (an Islamic term denoting the conformity of one person to the teaching of another) and the closing door to ijihad (an Islamic legal term referring to independent reasoning or the thorough exertion of a jurist's mental faculty in finding a solution to a legal question) for Muslims. Muslims at that time disbelieved each other and always rubbed against differences in maddhab (a school of thought within fiqh; Islamic jurisprudence). Regarding ikhtilaf (an Islamic scholarly religious disagreement), according to Sayyid Sabiq there are forbidden ikhtilaf as well as the allowed one. Sayyid Sabiq's Concept of Islamic Law tends to be strict on certain legal issues and loose on others. This paper is classified as normative Islamic law research with a conceptual and philosophical-logical approach. The method of data analysis used in this research is the deductive-inductive method. The results of the study concluded that according to Sayyid Sabiq; the permanent Islamic law that cannot be changed has criteria as follows; a) has been explained in detail by nass (sentences from the Quran or hadith that are used as reasons or the basis for deciding a problem, as a guide in sharia law), b) the laws of aqidah (creed) and worship, c) all laws whose nass status is qat'i ad-dilalah. Meanwhile, the dynamic Islamic law which follows changes in time and place has criteria as follows; a) laws that are only explained by the nass globally, b) laws on civil benefit, siyasa (politics), war and justice, c) and all the laws whose nass status is ann'i ad-dilalah. Sayyid Sabiq's thoughts applied the integration of fiqh with aqidah (creed) and morals. That means, the substance of his thought has succeeded in eradicating the dichotomy of fiqh with other elements of Islamic teachings.

Keywords: *Sayyid Sabiq, Islamic Law, Bid'ah, Ikhtilaf*

A. Introduction

Fiqh Sunnah of Sayyid Sabiq is a formulation product of Islamic law born in the revival era of Islamic law, which was written in 1940-1950 AD. While Sayyid Sabiq himself as the author was born in 1915 AD in Egypt or 115 years after the beginning of the Islamic revival era.¹ This era is known as a transitional era (between the end of the *taklid* phase and the beginning of the awakening phase) which certainly makes the book of *Fiqh Sunnah* the first product of the Islamic law formulation is more appealing to study.

The accentuation resides on the way of thought pattern offered as well as the model of the *fiqh* book displayed so that its contribution can be felt by Muslims (as the consumers of Islamic law) in the context of completing the missing puzzles in the early revival era of Muslims.² It is expected that the *fiqh* product produced by Sayyid Sabiq can be hypothesized as *fiqh* providing enlightenment on the entire aspects as well as to unite Muslims from the variety of divisions, one of the causes is the fanaticism of the *madhhab*. At least, the *Fiqh Sunnah* can maintain the harmony

among people who possess different thoughts.

As explained in the previous chapter that among the goals of Sayyid Sabiq in writing the book of *Fiqh Sunnah* is to provide a correct description of Islamic *Fiqh* in accordance with Allah's intention, to remove heresy, fanaticism of the *madhhab* and to remove *khurafat* (superstition) which argues the door of *ijtihad* has been closed as well as to unite the *ummah* (community) to adhere to the Qur'an and *Sunnah*.³

The purpose of writing the book of *Fiqh Sunnah* was explicitly stated by Sayyid Sabiq that he had a solid determination to produce *fiqh* that is objective, honest and clean from the variety of personal and group interests.⁴ This was a response to the worldwide tradition of *taklid* at that time, considering the existing legal products were no longer able to answer the actual problems of Muslims.

The most essential thing that the researcher underlines from the objectivity of Sayyid Sabiq's attitude is that every product of Sayyid Sabiq's *fiqh* are the

¹ Aibdi Rahmat, "PEMIKIRAN FIKIH AL-SAYYID SABIQ DALAM BIDANG IBADAH," no. 1 (2009): 16.

² Anwar Hafidzi and Mohd Hatta Mohd Hani, "Wahbah Zuhaili's and Sayyid Sabiq's Perspective on The Recitation of Marriage Contract in Indonesia" 17 (2020): 16.

³ "Ebook-Fiqih-Sunnah-Vol-i-Sayyid-Sabiq.Pdf," n.d.

⁴ Abdul Basit Misbachul Fitri, "HUKUM MEMINANG PINANGAN ORANG LAIN PERSPEKTIF IBNU HAZM DAN SAYYID SABIQ (STUDI KOMPARATIF)" 1, no. 1 (2017): 37.

results of his *istinbat* (the power of decision-making of Islamic law based on existing Quranic or Sunnah arguments) originating from the Qur'an and Sunnah (either directly or indirectly), not because of his alignment with certain *maddhab*, Islamic scholars or other interests.⁵ In other words, he produced *fiqh* products based on strong arguments, not emotional ones. The following is an explanation and description of discussion example of *Khilafiyah Fiqh* in the book of *Fiqh Sunnah* Sayyid Sabiq.

B. Discussion

1. Aspects Influencing Sayyid Sabiq's Thoughts

As for the normative references for Sayyid Sabiq in writing the book of *Fiqh Sunnah* as informed by his student Yusuf Qarḍawi were the books of *Fiqh al-Hadīs* which discuss law like as *Subul as-Salām* by aṣ-Ṣan'ānī, namely the *Syarah* (expounding) of the book *Bulūg al-Marām* and the book *Nail al-Auṭār* by ash-Syaukānī, namely the *syarah* of the book *Muntaqā al-Akbar min Ahādīs Sayyid al-Akhyār*.⁶ In addition, Sayyid

Sabiq's writing also refers to the book of *ad-Dīn al-Khālīṣ* by Shaykh Maḥmūd Muḥammad Khaṭṭāb as-Subkī, the book of *al-Mugnī* by ibn Qudāmāh and the book of *Zād al-Mu'ād* by ibn Qayyim and others. In addition to the normative aspect, Sayyid Sabiq's thoughts were also greatly influenced by the variety of situations and conditions at that time, including:

a. Fanaticism in *Maddhab*

During Sayyid Sabiq's time, Muslim fanaticism was not conducive. The *maddhab* adherents felt that they were the most righteous and seemed to equate the opinion of the *imam* (an Islamic leader position) as a revelation. Consequently, it caused Muslims to lose the guidance of the Qur'an and Sunnah since they believed that the door of *ijtihad* had been closed so that Shari'a was positioned as the opinion of the *fuqaha* (fiqh experts) and the *fuqaha's* opinion was considered as the Shari'a.⁷ As the result, they deemed everyone who contradicted their *fuqaha's* opinion as a heretic, whose words could not be trusted, and their *fatwa* (non-binding legal opinion on a point of Islamic law (sharia) given by

⁵ Mohamad Nur Husen, "(Studi Perbandingan Kitab Fiqh al-Sunnah Karya Sayyid Sābiq dengan Wasā'il al-Syī'ah Karya Syaikh Muhammad bin Hasan al-Ḥur al-'Amili dengan Metode Istidlāl)," n.d., 130.

⁶ Faculty Of Law, Universitas Sultan Agung Semarang, Indonesia. et al., "Reconstruction of

Shighat Taklik Talak as a Reason for Divorce in Islamic Court of Religion to Make a Justice-Based Judge's Decision.," *International Journal of Advanced Research* 5, no. 9 (September 30, 2017): 1517–24, <https://doi.org/10.21474/IJAR01/5474>.

⁷ Arif Al Wasim, "Fanatisme Mazhab dan Implikasinya terhadap Penafsiran Al-Qur'an," *Syariati : Jurnal Studi Al-Qur'an dan Hukum* 4, no. 01 (May 1, 2018): 13–22, <https://doi.org/10.32699/syariati.v4i01.1160>.

a qualified jurist in response to a question posed by a private individual, judge, or government) was rejected.

Another consequence of this fanaticism attitude and blind faith was the occurrence of disputes and divisions among Muslims due to the difference in *maddhab* they adhere to. They even disagreed about whether or not a woman of the Hanafi *maddhab* was married to a man of the Shafi'i *maddhab*. Some of them considered it was invalid because the woman was still doubtful in her faith. While others considered it was legitimate on the grounds that it was given to women *who are 'immah experts*

b. Stagnation Thoughts of Muslims

Actually, the stagnation in thinking among Muslims was caused by the negative effect of the *maddhab* fanaticism due to the courage of Islamic scholars to *ijtihad* was very rare to find. Generally, the majority perception of Muslims had been uniformly shaped to consider the door of *ijtihad* was closed.⁸ Furthermore, anyone who wanted to do *ijtihad* would face a huge risk, both in the form of social discrimination and others such as the threat of position and salary for a teacher or Islamic scholar who worked in

government institutions that adhere to a particular *maddhab*.

For instance, Sheikh Taqiyuddin as-Subkī was reluctant to perform *ijtihad*, even though he had already been qualified for it. This reluctance occurred because of maintaining the profession and position that had been determined for the *fuqaha* to be in the corridor of the four *maddhabs*.⁹ As the consequence, anyone who dared to leave the corridor would not get any position, including to assume the position of a judge whose *fatwa* would certainly be ignored. Other than that, he would be considered a heretic.

Furthermore, the phenomenon of the stagnant thinking of Muslims had been completely well documented in the tradition and writing model of the *fiqh madhhab* book, which was started by the book of *matan fiqh* which was then given *syarah* by students or scholars who shared the same *maddhab* as the author of the *matan* book, then the book of *syarah* was given comment (*asyiah*).¹⁰ Later, the commentary (*hasyiah*) was compiled in a summary (*mukhtasar*) consisted of the main issues contained in the summarized book. In addition, checking (*tahqīq*) the truth of the

⁸ Edi Yanto, "TERTUTUPNYA PINTU IJTIHAD," n.d., 16.

⁹ Rupi'i Amri, "DINAMIKA IJTIHAD PADA MASA TAKLID DAN KEMUNDURAN" 16 (n.d.): 20.

¹⁰ Amri.

book was conducted in terms of both its content and language disclosure in a description (*al-hamisyah*; jama': *al-hawāmisyy*). The tradition of writing books this way became an inherent feature of the classical books (*al-kutub al-qadīmah*) which came to be known as the yellow book. The tradition of writing *fiqh* books using this concept certainly made *ijtihad* activities unable to develop.¹¹ Thus, *fiqh* products that can answer the variety of actual problems faced by Muslims are truly difficult to obtain.

These kinds of situations and conditions had shaped Sayyid Sabiq's mindset so that he was inspired to write the book of *Fiqh Sunnah* with the aim of re-melting the frozen thought of Islamic law among Muslims by referring to primary references, namely the Qur'an and *Sunnah*. To understand both references in order to answer the actual problems of Muslims, it has become a necessity to return to *ijtihad*.

c. The Fall of Egypt into Western Hand

The modern period (1800 - onwards) was an era of Islamic revival. The fall of Egypt into the West

¹¹ Abdulah Safe'i, "REDEFINISI IJTIHAD DAN TAQLID: Upaya Reaktualisasi dan Revitalisasi Perspektif Sosio-Historis," *ADLIYA: Jurnal Hukum dan Kemanusiaan* 11, no. 1 (June 13, 2019): 25–40, <https://doi.org/10.15575/adliya.v11i1.4850>.

hand has awakened the Islamic world of its weakness and made Muslims aware of the new higher civilization of the West had emerged as a threat to Islam. Kings and Islamic leaders began to think about how to improve the quality and strength of Muslims. The ideas of renewal in Islam emerged during these modern periods.¹² The European culture was getting stronger and almost controlled all aspects of life at that time which made the Eastern people forgot their local religion and culture.

According to Sayyid Sabiq, the emergence of reformist figures at a time when the world was confused became a necessity so that human beings returned to the true figures provided solid grip in their lives, namely the Qur'an and *Sunnah*. Contrastly, the progress in science and other knowledge without being based on morals would lead into the tool destroying their civilization and even themselves. This has happened to the previous nations as recorded in Quran in the *surah* Al-Fajr [89] verses 6-14.¹³

¹² Muhammad Zuhdi Karimuddin, "KEDUDUKAN MAZHAB, TAKLID DAN IJTIHAD DALAM ISLAM," *Al-Qadha* 6, no. 1 (June 28, 2019): 55–65, <https://doi.org/10.32505/qadha.v6i1.1291>.

¹³ M Muttaqien, "Arab Spring: Dimensi Domestik, Regional dan Global," *Jurnal Global & Strategis* 9, no. 2 (December 14, 2017): 262, <https://doi.org/10.20473/jgs.9.2.2015.262-276>.

Sayyid Sabiq's statement proved the events of the West's progress as well as the backwardness of Muslims, especially what happened in Egypt had become a separate reference for him in forming his mind frame. Moreover, a number of his teachers were indeed Islamic reformers, such as Maḥmūd Syaltūt, āhir ad-Dinārī and Maḥmūd Muḥammad Khaṭṭāb as-Subkī as described earlier. Likewise his friends, such as asan al-Bannā` (1324 - 1368 H) who gave the introduction to the book of Sayyid Sabiq's *Fiqh Sunnah*.¹⁴

2. Sayyid Sabiq's Model of Thought

a. The Universality of Islamic Teachings

According to Sayyid Sabiq, Islamic teachings are universal and intended for all mankind until the Day of Judgment. This teaching is not specific to a particular country or period. This is based on Allah's affirmation in *Surah Al-Furqan* [25] verse 1, *Surah Saba'* [34] verse 28, and *Surah Al-A'raf* [7] verse 158, as well as based on the hadith of the Messenger of Allah, which means;

"I have been given 5 (five) things that have never been given to a (Prophet) before, that every Prophet who was sent specifically to his people,

¹⁴ Rahmat, "PEMIKIRAN FIKIH AL-SAYYID SABIQ DALAM BIDANG IBADAH."

while I was sent to every (person) who is red and black. It has been made lawful for me the spoils of war which were not lawful for anyone (the Prophet) before me, have been made land (earth) as something good, holy and as a place of prostration so that whenever a man wants to pray (performs salah) he (may) perform it anywhere he is. I have been saved from the spells performed by Masirah Shahr, and I have been interceded".¹⁵

In order to prove the universality of Islamic teachings, Sayyid Sabiq presented 3 (three) logical arguments which were also accompanied by *naqli* arguments from the Qur'an and *Sunnah*. The three arguments were as follows: *First*, there is nothing difficult in the teachings of Islam to believe or to implement for human beings. *Second*, Islamic teachings remain the same with changing times and places such as teachings on faith and worship are described in detail and completely, as well as explained in strict *nass* (sentences from the Quran or hadith that are used as reasons or the basis for deciding a problem, as a guide in sharia law) so that one cannot add or subtract from them.¹⁶ Meanwhile, Islamic teachings have adjusted with the changing times and places, such as matters relating to the

¹⁵ Hafidzi and Hani, "Wahbah Zuhaili's and Sayyid Sabiq's Perspective on The Recitation of Marriage Contract in Indonesia."

¹⁶ Fitri, "HUKUM MEMINANG PINANGAN ORANG LAIN PERSPEKTIF IBNU HAZM DAN SAYYID SABIQ (STUDI KOMPARATIF)."

benefit of civil society, political affairs and war. *Third*, every Islamic teaching aims to protect religion, soul, mind, lineage and property. This is in accordance with nature and reason, in line with the times and relevant (to meet needs) with every era and place.

In order to apply the framework of thought above, Sayyid Sabiq in formulating his *fiqh* law has applied the rules as used by Syāṭibi, namely:

“The basic principle in matters of worship for the mukallaf (Muslims who are subject to religious obligations or orders, who can be subject to law and must be adults and do not experience mental or intellectual disorders) is ta’abbud (implementing what is according to the nass) without the need to review the wisdom. While the basic principle in matters of ‘ādāt (non-worship) is needed to review the wisdom (benefits).”¹⁷

The substance of the above rule, a *mukallaf* is bound by the *nass* in matters of worship, either in doing it or in leaving it. In other words, it is not permissible for a *mukallaf* to practice or leave a worship without the *nass*, neither is he allowed to leave or practice a worship that is different from the provisions of the *nass*. Besides, in terms of *‘ādāt* or *mu‘āmalah*, a *mukallaf* may actually carry out any activity as long

¹⁷ Husen, “(Studi Perbandingan Kitab Fiqh al-Sunnah Karya Sayyid Sābiq dengan Wasāil al-Syāḥ Karya Syaikh Muhammad bin Hasan al-Ḥur al-‘Amili dengan Metode Istdilāl).”

as there is no *nass* prohibiting it and as long as it provides benefits or prevent from any *harm*.

b. The Purpose and Importance of Islamic Teachings

According to Sayyid Sabiq, the objectives of Islamic teachings include: *First*, to cleanse and purify the soul through knowing Allah and worshipping Him. *Second*, to strengthen the relationship between human beings and uphold it based on the principles of mutual love and affection, brotherhood, and based on the principles of equality and justice. This goal is rooted in the importance of understanding the teachings of Islam.¹⁸

One of the important aspects of Islamic teachings resides in the application of Islamic law. Because, Islamic law reflects the scientific side of Islamic teachings. The determination of religious law is *mahḍah* (pure) such as the laws of worship only comes from the revelation of Allah to His prophet, whether it is in the form of the Book (Al-Qur'an) or in the form of Sunnah or sourced from something determined by the Prophet

¹⁸ Maragustam Siregar, “Islamic Education Thought of Sheikh Nawawi Al-Bantani: The Disaster in The Qur’an,” *Cendekia: Jurnal Kependidikan Dan Kemasyarakatan* 1, no. 1 (June 27, 2021): 127–43, <https://doi.org/10.21154/cendekia.v1i1.2194>.

Muhammad based on his *ijtihad*.¹⁹ While the function of the Messenger of Allah should not go beyond the function (delivery) and (explanation).

While the determination of law related to worldly affairs such as court affairs, politics and war, the Messenger of Allah was ordered to consult on these issues. Sometimes he put forward an opinion, then retracted it based on the opinion of a better friend. He did not hesitate to withdraw his opinion and accept the opinion of friends. As happened during the battles of *Badr* and *Uhud*. Likewise the companions, they came to ask the views and opinions of the Messenger of Allah regarding matters that they did not know.²⁰ There were even some of them who only came to ask for an explanation of the intentions stated in the *nass*, with the aim of ensuring the understanding that had been understood so far, whether it was true or not. In these circumstances, he sometimes justified the understandings put forward by friends and sometimes also explained where their mistakes were.

¹⁹ Syamzan Syukur, "PETUNJUK RASULULLAH MENGENAI MUSYAWARAH DALAM PERSPEKTIF SEJARAH" 10, no. 2 (2013): 12.

²⁰ Bustami Saladin, "PRINSIP MUSYAWARAH DALAM AL QUR'AN," *el-'Umdah* 1, no. 2 (December 1, 2018): 117–29, <https://doi.org/10.20414/el-umdah.v1i2.533>.

c. Guidance of the 4 Rules

According to Sayyid Sabiq, the general rules of Islamic law in establishing a provision as outlined by Islam must be used as guidelines by Muslims include 4 (four) rules, namely: *First*, it is not permissible to discuss a law whose events have not yet occurred. *Second*, do not ask too many questions and complicate the problem (law). *Third*, stay away from disputes and divisions in religious matters. *Fourth*, return the various disputed issues to the Qur'an and *Sunnah*.²¹

Furthermore, Sayyid Sabiq added that as long as religious issues have been described clearly and the arguments on which they are based are solid, then there should be no more debate. According to Sayyid Sabiq, these four principles have been adopted by the companions and generations after them in exploring Islamic law. Likewise, the *imams* of the *madhhab* (consisted of four *imams*), they also used these rules in formulating Islamic law. They devoted all their abilities in order to introduce the religion of Islam to the people and guide them to the right path. They prohibited Muslims to do *taqlid* (an Islamic term denoting the conformity of one person to the teaching of another)

²¹ Husen, "(Studi Perbandingan Kitab Fiqh al-Sunnah Karya Sayyid Sābiq dengan Wasāil al-Syī'ah Karya Syaikh Muhammad bin Hasan al-Ḥur al-'Amili dengan Metode Istidlāl)."

against them. As they said that it is not permissible for someone to follow their opinion without knowing the argument they were using. In addition, they emphasized that their *maddhab* has been a valid *hadith*.²²

d. Sayyid Sabiq's Epistemology of Thought

The epistemology or the way of thinking of Sayyid Sabiq is divided into two; *First*, the way of his thinking worked in the form of criticizing his reference books.²³ *Second*, the way of his thinking worked in order to produce ideas that were applicable and operational from his framework of thought. These two ways of Sayyid Sabiq's thinking aimed to produce *fiqh* substances that were relevant to his goal of writing his *Fiqh Sunnah* book.

Regarding the critique of the yellow book in terms of *maddhab* sides, Sayyid Sabiq's *fiqh* is a jurisprudence that is free from *maddhab*. In fact, one of the goals of writing the book of *Fiqh Sunnah* was to challenge the fanaticism of the *maddhab* which was seen by Sayyid Sabiq

as the cause of divisions between Muslims and the decline and freezing of Islamic legal thought.²⁴ In this case Sayyid Sabiq has followed the authors' attitude of his reference books, namely Imām an'ānī, Imam Syaukānī, and Shaykh Maḥmūd Muḥammad Khaṭṭāb as-Subkī, Ibn Qayyim al-Jauziyyah and Shaykhul Islam Ibn Taimiyyah. They were *fuqahas*, even *mujtahids* who were not tied to any particular *maddhab*.

In terms of the discussion methodology of the discussion, Sayyid Sabiq made a syncretism between the *fiqh* methodology and the *akām* interpretation methodology or *mauḍū'ī* interpretation. It means that Sayyid Sabiq applied the *fiqh* methodology and discussion it according to the themes and topics of *fiqh* designed previously.²⁵ But on the other hand, he also added his discussion as carried out by *mufassir* (the person who explains the meaning (intention) of the Qur'anic verse; interpreter expert) in his *akām* interpretation book or his *mauḍū'ī* commentary book. The discussions contained in the book of commentary on the *akām* are usually the discussions of the philosophy of Islamic

²² Hafidzi and Hani, "Wahbah Zuhaili's and Sayyid Sabiq's Perspective on The Recitation of Marriage Contract in Indonesia."

²³ Muhammad Sulthon, "Hukum Islam dan Perubahan Sosial (Studi Epistemologi Hukum Islam dalam Menjawab Tantangan Zaman)," *Jurnal Ilmiah Universitas Batanghari Jambi* 19, no. 1 (January 22, 2019): 27. <https://doi.org/10.33087/jiubj.v19i1.548>.

²⁴ Rahmat, "PEMIKIRAN FIQH AL-SAYYID SABIQ DALAM BIDANG IBADAH."

²⁵ M Rahmat Effendi, "KAJIAN TENTANG PRINSIP DASAR DAN METODE BERFIKIR DALAM FILSAFAT DAKWAH YANG DITURUNKAN DARI AL-QUR'AN," n.d., 17.

law, such as the purpose of law, legal position, legal wisdom and so on.

Everything Sayyid Sabiq did in his *Fiqh Sunnah* was a creative process and a reflection of his framework of thought as described in the previous discussion. At the same time, it was a critique to his main reference books. This is because the reference books of *Fiqh Sunnah*, in general, did not contain discussions relating to the philosophy of Islamic law, especially regarding the purpose and position of the law.²⁶

In terms of the content scope of the book, Sayyid Sabiq in general followed the content scope of his reference books, even the books of *fiqh* in general, such as discussing the *fiqh* of worship, the *fiqh* of family law, the *fiqh* of *mawaris* (relating to the distribution of inheritance), the *fiqh* of *jinayat* (a study of Islamic jurisprudence related to crime), the *fiqh* of buying and selling and others. But in particular, he presented certain discussions that are not found in other *fiqh* books, such as topics on human rights, upholding religious freedom for non-Muslims and the law against commodities in the context of monopoly, and others. .

In terms of the use of *dalil* (arguments), substantively, the *fiqh* arguments used by Sayyid Sabiq are *al-adillah al-muttafaqah 'alaihā* (the arguments agreed upon by the scholars of *fiqh*), namely the Qur'an, *hadith*, *ijma'* and *qiyas*. However, Sayyid Sabiq did not include *qiyas* as his *fiqh* arguments in terms of classification and mention. Thus, only three arguments are recognized and used in the *Fiqh Sunnah* books, namely Qur'an, *Sunnah ahīṭḥah (sahih hadith)* and *ijma'*.²⁷ Limiting the mention of the proposition to only these three things is a form of classification that was first conducted by Imam al-Juwaini, as revealed from his statement in his monumental book *al-Burhān fī Uṣūl al-Fiqh*.

3. The Substance of Sayyid Sabiq's *Fiqh Thought*

Sayyid Sabiq viewed matters of worship as something that must be based on the *nass*. In other words, creating worship or adding to the procedures for worship or subtracting from what has been explained by the *nass* is considered *haraam* (forbidden) by the Islamic law and is seen as a heresy. The following are

²⁶ Rahmat, "PEMIKIRAN FIQH AL-SAYYID SABIQ DALAM BIDANG IBADAH."

²⁷ Zakaria Syafe'i, "IJMA SEBAGAI SUMBER HUKUM ISLAM," *ALQALAM* 13, no. 67 (October 31, 1997): 9, <https://doi.org/10.32678/alqalam.v13i67.493>.

examples of Sayyid Sabiq's strict fiqh in the field of worship:²⁸

First, regarding the intention during *wuḍu`* (ablution) and *salah* (prayer). According to Sayyid Sabiq, intentions for *farḍu* (obligation) *wuḍu`* and *farḍu prayer* are only in the heart, while the tongue is not a place of intention, so saying intentions (oral) is not a shari'a, because the essence of intention is the desire (heart) to do a job in order to obtain the pleasure of Allah.

In line with the opinion of Ibn Al-Qayyim that intention is determination to do something, its place is in the heart and has nothing to do with the tongue at all. Therefore, there is no hadith telling that the Messenger of Allah and his companions recited intentions. Reciting intentions when going to purification and praying can give the devil an opportunity to disturb and instill a sense of misgiving; Satan restrains and torments them with intent, so that they seek to correct his intentions. We can see this in some people who keep repeating their intentions. In fact, reciting the intention is not part of the prayer.²⁹

²⁸ Husen, "(Studi Perbandingan Kitab Fiqh al-Sunnah Karya Sayyid Sābiq dengan Wasā'il al-Syī'ah Karya Syaikh Muhammad bin Hasan al-Ḥur al-'Amili dengan Metode Istidlāl)."

²⁹ Sakirman Sakirman, "METODOLOGI QIYAS DALAM ISTINBATH HUKUM ISLAM," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum*

Second, concerning the law of *musta'mal* water. According to Sayyid Sabiq, the law of *musta'mal* water is like the absolute law of water, that is, it is pure and purifies as its original nature. In this case Sayyid Sabiq maded *istidlal* (methodology of collecting *dalil* argument) with two traditions narrated by Ahmad and Abu Daud respectively from Rabi' bint Mu'awwiz and the hadith narrated by the congregation from Abu Hurairah.³⁰ In addition, according to Sayyid Sabiq, there is no single argument that changes the basic nature of the *musta'mal* water to become impure.

From the hadith of Rabi' bint Mu'awwiz above, Sayyid Sabiq did not explain his *wajh ad-dilalah*, because the hadith is very clear that the Messenger of Allah used the remaining water in his hands to sweep his head (performing *wuḍu`*). It is the same meaning that the Messenger of Allah used *musta'mal* water for purification. Thus, the law of *musta'mal* water is pure and purifying like absolute water or like its nature. Meanwhile, from the hadith of Abu Hurairah, Sayyid Sabiq explained his *wajh ad-dilalah*, namely if the believer had not been *najis* (unclean based on Islamic law)

Islam 9, no. 1 (June 10, 2018): 37.
<https://doi.org/10.21043/yudisia.v9i1.3672>.

³⁰ Rahmat, "PEMIKIRAN FIQH AL-SAYYID SABIQ DALAM BIDANG IBADAH."

as stated by the Prophet, then there would have been no reason to make water disappear from its sacred nature just because it was touched by the believer.³¹ Substantially, the touching of two sacred objects is impossible for one to affect (defile) the other. Or in other words, illogically for a sacred thing plus the other of its kind turn into *najis* (unclean based on Islamic law).

The substance of Sayyid Sabiq's Fiqh thought contains several criteria, including:

a. Integral to *Aqidah* (Creed) and Morals

The demanded *fiqh* by Sayyid Sabiq through his *Fiqh Sunnah* book was *fiqh* based on *aqidah* (creed) and morality. So that the discussions contained in the *Fiqh Sunnah* book often seem integral to the elements of *aqidah* and morals. As an example can be seen in the discussion of *salah*. In the *salah* chapter, Sayyid Sabiq did not directly discuss the *fiqh* of *salah* as is generally done by *fuqaha* (*fiqh* experts).³² But he started by describing the position of *salah* in the view

of Islam (the view of Allah) and the benefits of *salah* for a Muslim.

The substance of this description is in the form of instilling faith and morals in the readers who will study the *fiqh* of *salah*. So that readers of Fiqh Sunnah book are expected by Sayyid Sabiq to gain an understanding of Islamic jurisprudence that is truly based on true faith and noble character. This analysis and conclusion is not excessive, because it is supported by a number of other data, namely in the form of explicit statements by Sayyid Sabiq, as follows:

*“Thus, this book is expected to describe the true Islamic Fiqh. This is one of the missions that the Prophet Muhammad was sent as the messenger of Allah on the surface of the earth. This book is also expected to open the door of understanding for mankind to know Allah and His Messenger, unite Muslims to stick to the Qur'an and Sunnah and eliminate differences of opinion and (bid'ah) heresy, and fanaticism in maddhab. This book is also expected to erase the prejudices of people who view the door of ijtihad has been closed.”*³³

Based on the statement, it is clear that one of the purposes of writing Fiqh Sunnah book was to provide readers with an understanding of the wisdom of Allah as Shari'ah and the function of the Prophet Muhammad as *Mubayyin* (someone who

³¹ Mohammad Shodiq Ahmad, “Thaharah: Makna Zawahir Dan Bawathin Dalam Bersuci (Perspektif Studi Islam 3mprehensif),” *Mizan: Journal of Islamic Law* 2, no. 1 (June 12, 2018), <https://doi.org/10.32507/mizan.v2i1.134>.

³² “Ebook-Fiqih-Sunnah-Vol-i-Sayyid-Sabiq.Pdf.”

³³ “Ebook-Fiqih-Sunnah-Vol-i-Sayyid-Sabiq.Pdf.”

explains clearly) the Shari'a of Allah. So that the fiqh obtained by readers is not empty of spiritual values. In addition, Sayyid Sabiq also stated that Shari'a is a manifestation and application of *aqidah*.³⁴

In addition to the *salah* chapter, there are many other examples from the contents of the Fiqh Sunnah book which show the substance of Sayyid Sabiq's fiqh is integral to *aqidah* and morals as in the discussion of *zakat* (alms). In the discussion of *zakat*, Sayyid Sabiq even informed the historical side of *zakat* law. So that it looks like the graduality (*tadrīj*) of the *zakat* law. This historical information is certainly crucial for readers in order to understand and appreciate the shari'a of *zakat* and its essence.³⁵ Then Sayyid Sabiq enriched his discussion by explaining a number of arguments from the Qur'an and Hadith whose substance is *targīb* (motivation) to give *zakat*, and *tarhīb* (threat) for people who are reluctant to give *zakat*.

b. Discussing Varieties of People's Issues Dynamically

There are a number of actual issues of Islamic law which are discussed in Fiqh

³⁴ Lukman Arake, "AGAMA DAN NEGARA PERSPEKTIF FIQH SIYASAH," no. 2 (2018): 38.

³⁵ Husen, "(Studi Perbandingan Kitab Fiqh al-Sunnah Karya Sayyid Sābiq dengan Wasā'il al-Syī'ah Karya Syaikh Muhammad bin Hasan al-Ḥur al-'Amili dengan Metode Istdilāl)."

Sunnah book of Sayyid Sabiq dynamically. Some of them are as follows: *First*, paper money and bonds. According to Sayyid Sabiq, they are classified as an asset that must be paid *zakat* when it reaches the *nisab* (the minimum amount that a Muslim must have before being obliged to give *zakat*), which is the price of $27\frac{7}{9}$ Egyptian pounds. Because these two types of treasures can be immediately valued in silver.³⁶ From Sayyid Sabiq's statement, it can be analyzed that the argument used by Sayyid Sabiq is implicitly the *qiyas* argument. This can be seen from the *nisab* determined by him which is worth the *nisab* of silver. Thus, Sayyid Sabiq has concluded that banknotes and legal bonds are obligatory on *zakat* by tying it up to the law on obligatory *zakat* on silver.³⁶

Another analysis showed that Sayyid Sabiq had directly contributed to the dynamics of Islamic law in the field of *zakat*. On the other hand, paper money and bonds are part of the actual *mu'amalat* media faced by the *ummah* in Sayyid Sabiq's era until now. Thus, the *Fiqh Sunnah* of Sayyid Sabiq is the actual *fiqh* (*wāqi'*). If analyzed more deeply, Sayyid

³⁶ Faizal Yulianto and Lilik Rahmawati, "Pengembangan Unit Pengumpul Zakat (UPZ) UIN Sunan Ampel Surabaya: Telaah Strategi dan Implementasinya" 3 (2021): 12.

Sabiq's conclusion that obliges *zakat* on banknotes and bonds is not only based on the *qiyas* argument, but also on the *spirit* and principles of Islamic law, namely the principle of justice (*al-'adālah*).³⁷

It simply means Sayyid Sabiq implicitly said that it is very unfair if a rich person who has hundreds of millions or even billions of assets is not subject to the obligation to pay *zakat* just because his assets are stored in the form of banknotes, while a goat breeder who only has 5 (five) goats are subject to the obligation to pay *zakat* in the amount of 1 (one) goat. In fact, when assessed, the price of 5 (five) goats is only worth ±Rp. 5 million, even to make money worth Rp. 5 million, the owner of the goat must maintain it for ±2 (two) years.³⁸

So it can be concluded that Sayyid Sabiq's opinion that classified banknotes and bonds as one of the assets that are required by *zakat* is very appropriate and holds the principle of justice. He came to this conclusion certainly by taking into account the progress of science and technology at that time, especially the

progress of economics and the development of technology for the medium of economic exchange, namely from gold and silver money or others into banknotes and bonds.

Second, burying two bodies in one grave. In his *Fiqh Sunnah*, Sayyid Sabiq stated that the law is *makruh* (disapproved), except in an emergency. This emergency situation is like a difference in the number of bodies that must be buried while the people who bury them are very limited. In these circumstances, it is permissible to bury more than one dead body in one excavation (*jā'iz*). Sayyid Sabiq's conclusion is based on the hadith narrated by Imam Ahmad and Turmudzi. In the hadith is stated that when the battle of Uhud was over, the Companions of the Ansar came to the Messenger of Allah, they said to him,

"O Messenger of Allah! We have been injured and feel weak, so how do you order us to take care of the bodies of these martyrs?" Then the Messenger of Allah said, "Dig the grave, widen and deepen the excavation, then bury two or three bodies in one dug". They asked, "Who should we put first among them?" The Messenger of Allah (saw) replied, "Put the one who

³⁷ Rahmat, "PEMIKIRAN FIKIH AL-SAYYID SABIQ DALAM BIDANG IBADAH."

³⁸ Takiddin Takiddin, "UANG DALAM PERSPEKTIF EKONOMI ISLAM," *SALAM: Jurnal Sosial dan Budaya Syar-i* 1, no. 2 (December 1, 2014).
<https://doi.org/10.15408/sjsbs.v1i2.1539>.

*memorizes the most of the Qur'an first!"*³⁹

Sayyid Sabiq's discussion and conclusion that is permissible to bury the bodies of more than one person in one hole is something that really responds to the actual conditions today. Especially conditions in densely populated cities, while the availability of land for burial is completely limited. Similarly, the situation and condition of the pilgrims every year, where many of them died in the sacred land so that the officers were forced to bury them en masse in one hole.

Third, the wife may leave the house without her husband's permission. In this section, Sayyid Sabiq allowed a wife to leave the house without her husband's permission in certain circumstances, namely in the context of carrying out *fardu kifayah* (the legal status of an activity in Islam that is obligatory, but if it has been done by another Muslim then this obligation is invalid) tasks, such as duties as a midwife, which if this task is not conducted immediately because she has to wait for permission of her husband, then the safety of others will be

threatened.⁴⁰ Another condition that was tolerated by Sayyid Sabiq is in the context of seeking *fardhu 'ain* (the legal status of an activity in Islam that must be carried out by all individuals who have met the requirements) knowledge, in the condition that the husband is completely not able to teach the knowledge, nor does the wife has mastered the science. Under these circumstances, the wife is allowed to leave the house to hear the recitation of the Islamic scholars in the *ta'lim* assemblies.

c. Discussing the Actual Affairs in *Mu'amalah*

Sayyid Sabiq also discussed something actual in *mu'amalah* (rulings governing commercial transaction) affairs, namely the provisions related to contract employees as well as the freelance ones.⁴¹ In his *fiqh* formulation, Sayyid Sabiq described the definition of a contract employee with a brief redaction namely a person who is given wages to work for a certain period of time. The provisions formulated by Sayyid Sabiq regarding this contract employee are:

⁴⁰ Hafidzi and Hani, "Wahbah Zuhaili's and Sayyid Sabiq's Perspective on The Recitation of Marriage Contract in Indonesia." [2](#)

⁴¹ Muhammad Yunus, Fahmi Fatwa Rosyadi Satria Hamdani, and Gusti Khairina Shofia, "TINJAUAN FIKIH MUAMALAH TERHADAP AKAD JUAL BELI DALAM TRANSAKSI ONLINE PADA APLIKASI GO-FOOD," *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah* 2, no. 1 (January 31, 2018): 135–46, <https://doi.org/10.29313/amwaluna.v2i1.3363>.

³⁹ Faculty Of Law, Universitas Sultan Agung Semarang, Indonesia. et al., "Reconstruction of Shighat Taklik Talak as a Reason for Divorce in Islamic Court of Religion to Make a Justice-Based Judge's Decision."

First, the term of the contract must be clear. If it is not clear, then the contract is invalid. *Second*, the work to be done by contract employees must be clear. *Third*, contract employees may not work for other people during the contract period. If this is violated, then his salary may be reduced according to the level of work he left. *Fourth*, if the person who employs this contract employee terminates the contract unilaterally without any acceptable reason, then the contract employee is still entitled to receive full salary in accordance with the contract agreement.

However, if there is an acceptable reason, such as the condition that the worker is no longer able to carry out his work due to a certain illness or disability, then the person who employs him has the right to cancel the contract (terminate the contract). Under such conditions the worker is not entitled to other than wages for as long as he works. The person who employs him is not obligated to pay him his full salary.⁴²

The *fiqh* discussion about contract employees conducted by Sayyid Sabiq is certainly very relevant to the demands of *mu'amalah* in modern times, because there

are so many agencies both government and private employing contract employees in reality. Even Indonesian citizens today are very much working with the contract system abroad. Not infrequently, some of them experience arbitrary treatment from their employers, both physically and mentally, as well as they are often harmed materially, such as not receiving wages according to the contract or not receiving any wages at all.

4. Sayyid Sabiq's Thoughts on *Khilaffiyah Fiqh*

Fiqh Sunnah of Sayyid Sabiq is a *fiqh* that tends to be tolerant of differences. Even though Sayyid Sabiq's thoughts are not tied to a particular *maddhab*, even the presence of *Fiqh Sunnah* does not act as a *maddhab's* fanaticism. However, he was very tolerant of different views on the matters of *khilafiyah* (differences of opinion among scholars regarding *fiqh*). The following are examples of his tolerance for different views of *fiqh*:⁴³

First, concerning *Qunut Fajr*. Sayyid Sabiq has shown his firm position in discussing the law of *qunut Fajr*. He stated that the only *qunut* prescribed was the *qunut nazilah*, not the

⁴² Astri Dwi Andriani, "PERAN ISTRI SEBAGAI WANITA KARIER DALAM PERSPEKTIF ISLAM DAN PENGARUHNYA TERHADAP ANGKA PERCERAIAN INDONESIA" 18, no. 2 (2020): 13.

⁴³ Arifuddin Ahmad, "Tadabbur al-Ḥadits: Solusi Masalah Khilafiyah" 2 (2015): 20.

qunut at dawn prayer.⁴⁴ However, since the issue of *qunut* at dawn prayer is a *khilafiyah affair*, Sayyid Sabiq showed a tolerant attitude towards groups who viewed *qunut* Subuh as something circumsised at the end of the discussion. This attitude can be clearly seen through his statement as follows:

*“Although (in the issue of qunut) there are a few (problems), but this is a form of difference in opinion that is permissible. So, doing (qunut) or leaving it is the same, and the best guidance is the guidance of the Prophet Muhammad.”*⁴⁵

Second, the law to *qodha* (replace something in another occasion) prayers. In this matter, Sayyid Sabiq only presented the views of two opposing groups. The two groups are *Jumhur Ulama* (majority of Islamic scholars) who argued that it is obligatory to *qodha* the prayer for those who intentionally leave it. As for the other group, Ibn Taymiyyah and Ibn Hazm, according to the view of this second group, prayers that have been intentionally left out of time cannot be *qodha* forever. Meanwhile, to compensate for the

weight of his sin, he must repent and multiply the worship of *sunnah*.⁴⁶

The location of Sayyid Sabiq's tolerance resided in his attitude which did not discredit groups that had different views from him. He only discussed their views, not the subject. Even that was done implicitly in this case since it was a very sensitive issue.²¹

From the two examples above, it is clear that Sayyid Sabiq had a high tolerance for anyone who possessed different views from him in Islamic legal thought. This attitude was certainly inseparable from the original purpose of his writing the *Fiqh Sunnah* book, which focused on uniting people to adhere to the Qur'an and Sunnah and to overcome the disputes and divisions that occurred between them.

However, it should be underlined that Sayyid Sabiq's tolerance attitude was only limited to *fiqh* issues that were truly in the *khilafiyah* category, not to inventive problems (*bid'ah*), both in the form of additions and subtractions in matters of religion. For example, Sayyid Sabiq said that the act of reciting the intention when going for ablution and praying is something that does not have

⁴⁴ Amri, “DINAMIKA IJTIHAD PADA MASA TAKLID DAN KEMUNDURAN.”

⁴⁵ “Ebook-Fiqih-Sunnah-Vol-i-Sayyid-Sabiq.Pdf.”

⁴⁶ Hafidzi and Hani, “Wahbah Zuhaili’s and Sayyid Sabiq’s Perspective on The Recitation of Marriage Contract in Indonesia.”

any shari'a. He even quoted the statement of Ibn al-Qayyim al-Jauziyyah which essentially said that the place of intention was the heart, not the tongue.⁴⁷

Furthermore, Sayyid Sabiq's Book of *Fiqh Sunnah* is a *fiqh* that tends to be strict on certain legal issues but loose on the other ones. Actually, there are 3 (three) forms of Sayyid Sabiq's statement regarding the division of *syara'* law nature, as follows:

First, permanent law. This law is always relevant to changes in time and place, such as matters of *aqidah* (creed) and worship that have been described in detail and perfectly by *nass*, so no one is allowed to add or subtract from it.²² *Second*, pure religious law such as the laws of worship, the sharia is only based on the revelation of Allah to His prophet, either in the form of the Book (Al-Qur'an), Sunnah or the Prophet's *ijtihad* that has been determined (its rules). Meanwhile, the function of the apostle should not exceed the function of *tablīg* (deliver) and *tabyīn* (explain).⁴⁸

Third, there are parts that are *qaṭ'i* and relevant to all ages, places

and all societies among the sharia law such as the law of worship, marriage, divorce, inheritance, the lawfulness of buying and selling, the prohibition of usury, recording debt and pawnshops, *mu'arabah* law, *syuf'ah*, *udūd* and *qiṣaṣ*. There is also the only set a number of rules and principles of global law which does not change with the change of time and place, so that a *mujtahid* task to perform legal formulation *juz` Í* (applicable law). As for the difference (the result of *istinbat*) in the laws of this *juz`* does not bring any harm.

5. Concerning *Bid'ah* and *Ikhtilaf*

Sayyid Sabiq's thoughts on his *Fiqh Sunnah* book contain a clear distinction between legal identities which are classified as *bid'ah* and *ikhtilaf*. As a form of tolerance, Sayyid Sabiq had leniency in matters that are considered *khilafiyah*. However, if it is a matter of *bid'ah* (something made up) then Sayyid Sabiq was strict (intolerant) in addressing this issue.⁴⁹

An example of Sayyid Sabiq's strict *fiqh* in matters that has been regulated in detail by the *nass* is that Sayyid Sabiq not only prohibited *talāq bid'ī*, but he also viewed that *talāq bid'ī* did not fall for divorce because it is contrary to the

⁴⁷ Rahmat, "PEMIKIRAN FIQH AL-SAYYID SABIQ DALAM BIDANG IBADAH."

⁴⁸ Husen, "(Studi Perbandingan Kitab Fiqh al-Sunnah Karya Sayyid Sābiq dengan Wasā'il al-Syī'ah Karya Syaikh Muhammad bin Hasan al-Ḥur al-'Amili dengan Metode Istidlāl)."

⁴⁹ Sulthon, "Hukum Islam dan Perubahan Sosial (Studi Epistemologi Hukum Islam dalam Menjawab Tantangan Zaman)."

Qur'anic *nass*, as recorded in the *surah* at-Ṭalāq [65] verse 1, which essentially requires the *iddah* period²⁵ for any husband who wants to divorce his wife, it is also against the Sunnah. Even according to the hadith narrated by Ahmad, Abu Daud and Nasa'i from Ibn 'Umar, that the Messenger of Allah rejected the divorce that Ibn 'Umar did to his wife. Even the Messenger of Allah did not consider her divorce in the slightest.

In addition, Sayyid Sabiq added his argument that *talāq bid'i* is the opposite of *talāq sunnī*, so it is called *bid'ah*. While every act of *bid'ah* was declared as a heresy by the Messenger of Allah. Besides, the Messenger of Allah also stated that any work (in matters of religion) that has no basis from us is rejected.²⁶

Furthermore, the looseness example of Sayyid Sabiq's *fiqh* in unregulated matters by *nass* resided in the law of detention (*as-sijn*). In this case, there are no special provisions from the Qur'an or Hadith *nass*. Indeed, there is a hadith narrated by Ab Dāud, Tirmīzi and Nasā'i from Bahz Ibn Hākīm from his great-grand father that the Messenger of Allah once detained a man for accusations for a moment during the day, then he released him. However, the provisions of the *nass* regarding the terms of detention, the criteria for the place of detention, the

types of detention and so on are not regulated by the *nass* at all. Thus, Sayyid Sabiq formulated all of that based on the principles of Islamic law, especially the principles of benefit and justice.

Among Sayyid Sabiq's legal formulations regarding prisoners is permissible to make detention for people who have been convicted and accused of committing a crime that is not yet at the level of obtaining a had sanction, on condition the convicted person must be examined or tried as soon as possible. So that he can be released quickly if not proven guilty. In addition, the place of detention must be adequate and also food as well as clothing must meet health standards. All these costs are borne by the state treasury.

C. Conclusion

If we analyze more profoundly the substance of Sayyid Sabiq's thought in distinguishing between *bid'ah* and *ikhtilaf*, then there are similarities with the substance of Imam ash-Syāfi' thought who has classified *ikhtilaf* into 2 (two) classifications, namely forbidden *ikhtilaf* and allowed *ikhtilaf*. Furthermore, Imam ash-Syafi'i explained that the forbidden *ikhtilaf* is that of against a law as explained by Allah in His book (the Qur'an) or by His prophet with clear *nass*, the *nass* that

does not contain *takwil* meaning (*qaṭ'ī ad-dilalah*).

The substance of Sayyid Sabiq's thought is concluded in the form of explanation that permanent Islamic law cannot be changed (added or subtracted) has criteria as follows; a) has been explained in detail by the *nass*, b) the laws of *aqidah* (creed) and worship, c) all laws whose *nass* status is *qaṭ'ī ad-dilalah*. As for the dynamic nature of Islamic law, Sayyid Sabiq divides it into 3 criteria; a) laws that are only explained by the *nass* globally, b) laws on civil benefit, *siyasa* (politics), war and justice, c) and all laws whose *nass* status is *annī ad-dilalah*.

Lastly, after examining both deductively and inductively concerning the laws contained in Sayyid Sabiq's *Fiqh Sunnah* book, the substance of Sayyid Sabiq's *fiqh* is relevant to the three statements as above, namely strict in matters of worship law and laws have been regulated in detail by *nass* which is *qaṭ'ī ad-dilalah* but is loose and dynamic in legal matters which are only regulated globally by *nass*, or the principles and rules are set such as in *siyasa* (government) affairs as well as technical matters of the judiciary.

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