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The Importance of Considering the Factor of Fasad Al-Zaman in the Change of Islamic Law: A Highlight

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Abstract

The change that takes place in a society over time is a significant situation that demonstrates the flexibility of the Islamic law. According to Islamic scholars, apart from the development or evolution of the way of life, the deterioration of the society's values and morality over time is also taken into consideration in establishing laws. Although the world has undergone tremendous growth and physical development, yet the moral values of the society is deteriorating, which results in some Islamic laws to be changed. This phenomenon has triggered the question regarding the status of *fasad al-zaman* in changing the Islamic law. This study therefore aims to identify the role of *fasad al-zaman* in changing the Islamic law, whether it is the main or secondary proposition. Besides that, this paper also analyzes some examples for its consideration in the Islamic law during the period of the companions as discussed by Islamic scholars. This qualitative study applies the content analysis approach and descriptive method. The findings suggest that the consideration for the deterioration of the society's values and morality over time has been emphasized by scholars in determining any law although it might just be a secondary proposition.

Keywords: Fasad, Custom, Usul, Islamic Law, Transformation

Introduction

Fasad al-zaman is a significant situation that demonstrates the flexibility of the Islamic law. It affects the change of law, whereby besides the development or evolution of a society's way of life, *fasad al-zaman* is also taken into account in the establishment of a law. Although the progress of the world in the last few decades is now witnessing encouraging developments, yet the moral values of today's society are deteriorating. In fact, some laws may change due to this situation. This article tries to examine the actual role of *fasad al-zaman* in the change of Islamic law.

This study was carried out to identify the role of *fasad al-zaman* in the establishment of a law, either as the main or secondary proposition. This paper tries to highlight some examples of its application in Islamic law during the ruling of the companions.

The concept of fasad al-zaman according to the Shariah Perspective

Fasad al-zaman is a term formed from two Arabic words, which are *fasad* and *al-zaman*. In terms of language, Ibn Manzur (1993) stated that the word *fasad* is a part of the root word *fasada*, which means ugliness. It is the opposite word for *al-salah* which means good. Ibn Manzur (1993) translated the phrase *al-zaman* as a noun that indicates time, either momentarily or for a prolonged period.

In terms of terminology, Islamic scholars in particular the *usuliyyun* have defined the combination of the two words as the festering of morality, the deterioration of an individual's piety and the weakness in self-control. al-Zarqa' (1998) for example, believes that *fasad al-zaman* is as follows:

قد يكون تغير الزمان الموجب لتبديل الأحكام الفقهية الاجتهادية ناشئا عن فساد الأخلاق وفقدان الورع وضعف الوازع، لما يسمونه: فساد الزمان.

Meaning

Sometimes the change in time that affects the change in the law of *fiqh ijthadiyy* is due to the festering of morality, the deterioration of piety as well as the weakness in religious beliefs called *fasad al-zaman* (Al-Zarqa, 1998: 942-943).

Based on the two different aspects discussed above, it is evident that the definition from the perspective of terminology is more specific than the language since the value of damage is associated with the element of human character or morality as opposed to its association with the element of time as defined from the aspect of language. This is because, time remains unaffected and is not damaged, yet the people who live in a specific era or generation is affected by either the deterioration of their morality or religious beliefs. This is in line with the text from *Nufahat al-Wilayah* (t.th):

ذكرنا آنفا أنّ الزمان لا يراد به هنا المدة الزمنية لحركة الشمس والقمر (أو دوران الأرض حول نفسها والشمس) فالأزمنة متشابهة ذاتاً، والأشخاص هم الذين يتغيرون والحوادث والوقائع التي تجعل العصر والحياة حلوة أو مرة. وعليه فإذا قيل بفساد الزمان فالمراد فساد الناس.

Meaning

We have stated earlier that the meaning of time mentioned here does not refer to the period of time that occurs due to the movement of the sun and the moon (or the rotation of the earth around its axis and the sun). The substance of time is fixed (unchanged). On the other hand, the humans, situations and events are elements that change and affect time and life, whether good or otherwise. Thus, the meaning of *fasad al-zaman* refers to *fasad al-nas*, which means the festering of human morality.

If human morality is good, then the specific period of time is also deemed to be good. However, the festering of human morality affects the quality of the time during the affected generation, for it to be either good or not good. In short, the quality of a certain period of time is subject to the generation that lives in it.

Therefore, Islamic scholars have been found to use several different terms despite referring to the same concept. Some Islamic scholars would use the term *fasad al-zaman* (al-Zarqa' 1998) while others refer to it as *fasad al-akhlaq* (Al-Zuhayliyy, 1998). Similarly, some refer to it as *fasad ahl al-zaman* (Al-Qatifiyy, 2008) and *fasad an-nas* (Nufahat al-Wilayah t.th). Other researchers have also defined it as the change in social values (Huda, 2002).

Human Change and Fasad Al-Zaman

The previous definition of the term *fasad al-zaman* proves the existence of a close and direct relationship between change and humanity. In fact, this change determines whether an era is good or bad (Al-Qatifiyy, 2008). As a part of nature, it is inevitable for humans to experience change. Islamic scholars from the field of *usuluddin* and philosophy define nature as something other than Allah the Almighty and His attributes (Al-Nasafiyy, 1971). In other words, nature refers to beings and their attributes because each of them refers to the meaning of other than Allah the Almighty and His attributes, and is included in something considered as *jaizat* (something that has two logical possibilities of whether it exists or does not exist).

It is a natural and common phenomenon for nature to experience change, particularly among humans. This change is what distinguishes humans from the invariable nature of Allah the Almighty (Al-Nasafiyy, 1971). The change may involve numerous aspects, either from the outside or from within the individual. The change can also be classified as either having positive or undesirable effects.

However, *fasad al-zaman* relates to only the internal change experienced by humans, from a good to an undesirable state (Huda, 2002). This is due to the fact that the element of the festering of morality, the deterioration of piety as well as the weakness in religious beliefs in the definition of *fasad al-zaman* further explains the relationship that these aspects have with each other. The process of change is not new since the change in morality, particularly among people of the later generations, has been mentioned in the *hadiths* of the Prophet Muhammad PBUH.

The evidence in the change experienced by humans is further supported by Islamic history, particularly changes that affect the Muslims after the death of the Prophet PBUH (al-Zarqa' 1998; Huda, 2002). The change in morality and social values among the companions after the death of the Prophet PBUH has resulted in some changes in various aspects of life.

Classic cases of the change in law due to fasad al-zaman

The changes that take place in law, either due to technological development or *fasad al-zaman*, should be limited to *ijtihadiyy* law without involving the fundamental or basic laws (Al-Zarqa, 1998). With reference to this, some of the latest laws pertaining to certain issues have been found to be different from their original law. These laws are initially drawn up based on the concept of *urf* and they are in line with the *maslahah* of that era. However, the change of *urf*, especially due to the factor of *fasad al-zaman* demands laws that are more relevant with the present time. Furthermore, the change of laws in classical cases supports that the morality of the current generation may influence the change of laws in ensuring the continued practice of *maqasid shariah* in human life, which is to materialize good and to eliminate harm.

The change of the law due to *fasad al-zaman* does not happen only during the era of *mujtahid imams*, whereby according to the *usuliyyun* the change has been recorded since the time of the companions (Huda, 2002). This fact is further supported by historical records. The evidence of laws that have been changed due to the factor of *fasad al-zaman* shows that it

started during the ruling of Saidina Umar due to the issue of stray camels. Among the examples of classical cases that occurred during the ruling of Saidina Umar are:

i) Stray Camels

In the works of *fiqh*, stray camels are known as *dallat al-ibl*, which refers to camels that roam freely and are abandoned, and whose owners are not known. The law decreed by the Prophet PBUH is to continue to let the camels roam free until they are found by their own owners, without the need for outside interference or actions. The Prophet PBUH is of the opinion that the distinctive features of camels that have clogs and drinks will help them to find water and trees on their own. Thus, this law was continued until the ruling of Abu Bakar RA (Al-Zarqa 1998).

However, the implementation of the above law was different during the ruling of Umar; he stipulated that stray camels were to be captured and declared three times to the public (Huda, 2002). Once declared, the camels would be released again at the place where they were found. Although the change in law during Umar's rule pertaining to this issue is not as significant as the instructions given out by Uthman Ibn Affan, yet this change is significant enough to be recorded on the grounds of *fasad al-zaman*.

This is because, there was an increase in the number of stray camels during the time of Uthman Ibn Affan since many of the camel owners were companions of the Prophet who had migrated or were involved in a *jihad* at faraway places. At the same time, the Muslim community of this era came from various backgrounds due to the greater territories conquered under the Islamic rule. Therefore, the values of their religious beliefs were different from that of the Muslim community during the time of the Prophet PBUH, which is known as the period when the Prophet received the revelations.

Thus, it is not practical for the same law to continue to be applied during the later era since it would result in the *maslahah* and *maqasid* in the aspect of *hifz al-mal* to be ignored as camels were among the most important sources of property among the Arab community during that time. In other words, the cases of camels being stolen might be rampant if the law that was in effect at the time was not relevant to the current situation, which serves as a medium of control.

Besides the era when Umar RA was in power, the situation of *fasad al-zaman* also occurred during the ruling of Uthman Ibn Affan that resulted in a reform to be performed to the law based on his own *ijtihad*, which are as follows:

i) Stray Camels

Although the change in law pertaining to this issue has been performed by Umar RA, Uthman Ibn Affan has revamped the law implemented during the reign of Umar RA in accordance with the needs and situations of his own society. This is because, the morality and religious beliefs of the society during his rule are changing with the society becoming more irresponsible and untrustworthy and the number of camels roaming astray was on the rise.

In evidence, al-Baji has assessed the situation that prompted Uthman RA to act in such a manner. Uthman RA had initially adhered to the law implemented by Umar RA, that is by declaring the loss of the camels to the public. However, Uthman RA made a change to this

law by adding a follow-up action after the declaration is made; Umar RA would order for the animal to be returned to the place where it was found, yet Uthman would instruct for the camel to be sold and then given to its master when he claims for his rights, which reflects an action that has evolved over time. Hence, it is clear that the level of *fasad al-zaman* that happened during the reign of Uthman RA has prompted him to protect the property of the society, in line with the recommendation of the *maqasid* for the consideration of *hifz al-mal* (Al-Zarqa, 1998; Huda, 2002).

The change in law continues to take place during the ruling of Ali RA. Historical records show that *fasad al-zaman* is clearly a factor that influences the change of law for him to take it into consideration in certain issues. The development of the law is as follows:

i) The Obligation to Pay for Damages on *Al-saiy*

In the field of *fiqh*, *al-saiy* or *al-su'at* refers to several meanings, such as workers or entrepreneurs, zakat collectors, professional staff, a tell-tale (*al-namim*) and individuals who destroy something (*al-su'at bi al-fasad*). However, the basis of this discussion is the same, which is regarding the role of *yadd amanah*. *Yadd amanah* is the individual entrusted with something and is thus considered a trustworthy individual in all of his actions. Hence, the law pertaining to this issue is that the individual is not liable to pay damages for the damage or loss of the item entrusted to him unless the damage is caused by willful negligence.

The law was set by the Prophet PBUH himself and was implemented in accordance with his instruction. However, the level of trustworthiness among the companions was starting to deteriorate to the extent that some do not uphold the value although it is a responsibility set by the religion to be performed properly.

This factor has thus prompted Ali RA to draft a new law regarding this issue by instructing for payment of damages to be made to the individual who was entrusted with goods if it is damaged, even if the damage was unintentional. For instance, Ali RA once required a dyer (*al-sabbagh*) and a maker of decorative goods (*al-saigh*) to replace the goods because of the *maslahah* that will be fulfilled with the new law.

The law decreed by Ali RA was followed by Qadhi Shuraih where he made it mandatory for dyers and barbers to pay for damages. Furthermore, this law was also practiced by al-Shaficiyy, Abu Hanifah, Malik and Ahmad. The reason for the change in law is based on *fasad al-zaman* because the rights of the general public will be neglected if the person who receives the trust is not obliged to compensate for the damaged goods that are under his responsibility (Huda, 2002).

Fasad Al-Zaman's position as a factor in changing laws

Just as change may occur in human morality, the same situation applies in the law since it is also bound to change (Ibn Abidin t.th). The change that is performed to the law is based on a strict knowledge discipline. Laws cannot be arbitrarily changed since the change can only be made according to the existing legal classification set by the *usuliyyun* (al-Zarqa' 1998). This means that some laws can be changed while others remain fixed.

According to the *usuliyyun*, a law is classified into two categories; the *al-thawabit* and *al-mutaghayyirat* (al-Zuhayliyy 1986, al-Zarqa' 1998, Siti Fatimah 2015). The first category, *al-thawabit* refers to laws that are fixed and are not subject to change. This type of laws remains unalterable and are not influenced by time, place, atmosphere and other factors. The second category, *al-mutaghayyirat* however, refer to laws that are flexible, alterable and are

subjected to change depending on the factors that influence them. In other words, in the presence of a certified factor, the laws are also worthy of change.

Thus, this study focuses on the second category as it relates to the change of laws and its relationship to *fasad al-zaman* as the justification behind the need for change; whether it serves as the main or secondary proposition. Based on the examination of the discussion on the actual position of *fasad al-zaman*, the researcher believes that it is an important factor capable of influencing and supporting the change in laws. This observation is made based on the following justifications:

i) The inclusion of *Fasad al-Zaman* in the debate for *Ijtihad* Propositions

The Quran and the *Sunnah* are the two main propositions used as the source of laws in Islam. This is based on the words of Allah the Almighty in verse 59 of *Surah Al-Nisa'*:

"O believers! Obey Allah and obey His Messenger, and those in authority among you. Should you disagree about anything, then return it to Allah and His Messenger, if you truly believe in Allah and the Last Day. This is the best and fairest resolution."

Besides the above *Surah Al-Nisa'*, the *hadith* of the Prophet PBUH when appointing Muaz Bin Jabal RA as a judge pertaining to religious matters (*kadi*) in Yemen also supports that only the Quran and *Sunnah* serve as the main source of reference in a law. This is proven when the Prophet PBUH asked Muaz: "O Muaz, what is your reference in making a judgement?" Muaz RA replied that he would refer to the Quran. The Prophet PBUH then asked: "What if the matter being ruled is not contained in the Quran?" He replied that he would refer to the decision made by the Prophet PBUH. After that, the Prophet PBUH asked: "What if the matter was never decided?" Muaz then replied that he would make the *ijtihad* based on his views and wisdom. After hearing this answer, the Prophet PBUH said: "All praise be to Allah SWT who guides the Prophet PBUH and the messenger of the Prophet PBUH, Muaz RA."

Based on the above two propositions, it is clear that sources other than the Quran and *Sunnah* are those that are of *ijtihad* in nature. Thus, Securities Commission (2006:9) the Securities Commission (2006:9) also considers sources that are *ijtihad* in nature as a source of corroboration. This is proven in the following statement:

"In addition to the two main sources, namely the Quran and *Sunnah*, the MPS (*Shariah* Advisory Council, *Majlis Penasihat Syariah*) has also decided to adopt secondary sources and other Islamic legal *manhaj* such as *ijmak*, *qiyas*, *maslahah*, *istihsan*, *istishab*, *sadd al-zariah*, *urf*, *maqasid* shariyyah, *siyasah* shariyyah, *ta'wil*, *istiqra'*, *talfiq* and others that are adopted in Islamic jurisprudence."

Among the sources of law mentioned above is *urf*. This means that *fasad al-zaman* is also taken into consideration as a secondary proposition or corroboration in the determination of a law since it is one of the factors for change to be made to a law based on *urf* (Al-Zuhayliyy, 1986; Al-Zarqa, 1998)

ii) The Need for *Maqasid*

Maqasid refers to the actual goal determined by *sharia* in every law in order to fulfill human *maslahah* (Securities Commission, 2006). This means that each law is based on the actual

maqasid by taking into account the requirements of various aspects, such as place, time, and situation. In short, the law made on every issue is not in vain.

In this regard, al-Zarqa' (1998) believes that each law plays a role as a system that aims at the concept in upholding justice, and in manifesting good and preventing harm. al-Zarqa' further added that these laws have a close relationship with the situation, the medium and the morality of the society. Therefore, many laws whether they are related to the administration or prevention, are determined based on the situation of any given time. However, the laws no longer fulfill the desired *maqasid* after the transition in the society from one generation to another due to the different situations and morality based on the *fiqh* method as described below:

لا ينكر تغير الاحكام بتغير الزمان

Meaning: "The change of law caused by time is irrefutable."

Therefore, many contemporary *fatwas* are seen as contradicting the *fatwas* of the past jurists due to differences in the period of time or generation rather than due to the differences in proposition and corroboration (Ibn Bayyah, 2012). This coincides with the opinion of Iman al-Shatibiyy (1998:943) below:

لا عبث في الشريعة

Meaning: "Nothing is in vain in *sharia*."

iii) The Need for the Principle of *Maslahah*

The *usuliyyun* mentioned that *fasad al-zaman* is one of the factors that contribute to the change in *ijtihad* laws (Al-Zuhayliyy, 1986) based on *qiyas* and *maslahah* as both are under the topic of discussion of *al-mutaghayyirat* or laws that are subject to change (al-Zarqa' 1998). Even *qiyas* and *maslahah* in this regard are evaluated based on *urf* since the morality of mankind is used as the yardstick. If there is a change in the *urf* of human morality, then the law that is determined based on them would also directly change.

In short, the original law is recognized based on the concept of *urf* of human morality at the specific time since the *maslahah* would be clearly fulfilled if it is implemented (Al-Zarqa, 1998; Huda, 2002). However, with the passage of time, human morality also undergoes changes, thus resulting in new *urf* and situations that require for appropriate and relevant laws. Hence, the change of laws from the existing *urf* of human morality to the new *urf* must be compatible in terms of *illah qiyasiyy* (the figurative factor), which is *fasad al-zaman*, and it is evident that the new law encourages for the fulfillment of the *maslahah*.

The need for the change in law arises due to the fact that the existing law is only suitable to be applied to the society of that era, yet its relevance is no longer applicable for future societies that face new type of *urf* (Al-Zarqa, 1998)

iv) The Need for a Standard *Urf* That is Precise

Al-Zarqa' (1998) mentioned that besides the development in the way of life, *fasad al-zaman* is the second factor that influences the change in *ijtihad* law based on *urf*. This is in line with the views of Abdul Karim Zaydan who stated that the change in customs affect the laws that are built on the basis of their principles. This means that the change in law based on *urf* must adhere to all the standards and conditions that make them accountable as the propositions.

These standards and conditions are important in ensuring that the new *urf* is in the category of authentic *urf* since the new law that uses it as a basis can only be taken into

account if it does not contradict the religion, for instance *urf* that is *fasid*. The standards in question refer to various matters such as being in agreement with the Islamic method, the involvement of the society with the *urf* as a whole or in most part, the existence of a definite *urf* during the setting of the law and its agreement with the conditions agreed by the contracting parties, if any (Al-Zuhayliyy, 1986).

Conclusion

The deterioration of moral values of the society due to the changes experienced by one generation to another has had various effects, especially in terms of its effects on the existing religious laws. A law that is decreed at an earlier period of time may not be permanently fixed and does not undergo change. The law is determined based on the *maqasid* to attain *maslahah* and to eliminate harm in ensuring the continuity of the law. On the other hand, laws that are rigid and nonflexible are purposeless since they are not relevant to the needs of the current society or era.

This study shows that *fasad al-zaman* is not exempted from being considered in the change of laws based on the actions of the companions themselves who used social facts during the time of the Prophet PBUH as the *illah* in justifying their decisions. The data of the study proves that *fasad al-zaman* is used as the secondary proposition due to the need to evaluate other matters such as *maqasid*, *maslahah mafsadah* as well as the status of the *urf* authority due to their relationship with each other. The findings of this study are important in proving the need for *fasad al-zaman* to be considered as a propositional backing, particularly for legal bodies such as the *Mufti* Department and the *Shariah* Advisory Council in drafting the current laws.

The consideration of this factor will be beneficial since the new laws will be adapted to the current realities of the society. In a way, the continued use of the laws can be made alongside the *maqasid* outlined by Islam since the change in laws serves as the religion's control mechanism in addressing the societal problems.

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