

**Moenawar Chalil and Legal Issues:
His Views on *Ijtihād*, *Ijmā'*, *Taqlīd*,
Ittibā' and *Madhhab***

Muslim reformists affirmed that the *Shari'ah* was not given to man ready-made, to be passively received and applied. Rather, it was to be actively constructed by means of *ijtihad* so as to make it compatible with the progress of time. This view was unanimously upheld by reformists who insisted that the gate of *ijtihad* had to be reopened and that *taqlid* should be abandoned. Studies show that in fact *ijtihad* never ceased to operate as a means through which the *fuqaha'* (jurists) were able to adapt the law in response to contemporary challenges.¹ Nevertheless, this fact was little understood in Chalil's time, when it was generally assumed that the gate of *ijtihad* was still closed. Therefore, in declaring that they had "reopened" the gate and "abandoned" *taqlid* in order to inject new life into the *Shari'ah*, the reformists were taking a truly radical step in the eyes of their contemporaries.

Chalil followed in the path of those reformists, calling for a revival of Islam by means of *ijtihād* and the abandonment of *taqlid*. His concept of *ijtihād* will be discussed by examining its nature and implementation in order to determine whether he was able to use it to effect changes in the *Shari'ah* in keeping with the newly emerging realities. *Ijihād* was often linked to the principle of *ijmā'* (consensus) by reformists, who considered the two as a means to promote Islam and its adaptability to change. Hence, Chalil's concept of *ijmā'* will also be discussed in light of the reformist view, since he linked the concept of *ijmā'* to the notion of a legislative body. Likewise, Chalil's reluctance to accept any *ijmā'* other than that which had been reached by the *salihun* will be discussed. He followed the

¹For a survey of the proponents and opponents of the closure of the gate of *ijtihād*, see Shaista P. Ali-Karamali and Fiona Dunne in their "The Ijtihad Controversy," *Arab Law Quarterly*, 9 (1994), 238-257; for a comprehensive discussion establishing that *ijtihād* was never ceased to be practiced, see Wael B. Hallaq's "Was the Gate of Ijtihad Closed?," *IJMES*, 16 (1984), 3-41.

While the first and the second parts of this chapter discuss Chalil's concept of *ijtihad* and *ijma'*, the third part will present his opinion on the antithesis of *ijtihad*, namely *taqlid*. In discussing the subject of *taqlid*, Chalil rigid intolerance for its practice will be explored *vis-à-vis* the stance of its proponents. This exploration is aimed at examining the validity of his total rejection of *taqlid* as well as the arguments advanced by its proponents in support of its legal soundness. Chalil's call for the practice of *imbat'* and the rejection of *mudhhab*s will also be discussed in this part. This discussion will shed more light on his adherence to reformist principles, which considered *imbat'* and the abandonment of *mudhhab* as essential to restoring dignity to reason which had for a long time been subordinated to the authority of established practice.

I

² Moenawar Chalil, *Kembali kepada Al-Qur-an dan As-Sunnah* (Jakarta: Bulan Bintang, 1956), 371.

³Ibid., 372-373.

Although the requirements of *ijtihād* encompass various branches of the Islamic sciences, Chalil holds that *ijtihād* is more viable to perform now than ever before, because most Prophetic traditions and the answers to many religious questions have been discussed, collected and even commented upon.⁵ Along the same lines, al-Shawkānī also refuted the proposition that contemporary jurists could no longer attain the high qualifications that had enabled the ancient jurists to undertake the laborious duty of *ijtihād*. He explains that *ijtihād* had now become easier than in the past due to the progress made in the *Qur'ānic* sciences and the publication of numerous compilations of the juridical sciences.⁶ The belief in the viability of *ijtihād* confirms the reformist doctrine that only by means of *ijtihād* can the *Shari'ah's* intrinsic potential for change be realized.

⁵ Moenawar Chalil, "Memperloas Dan Mempersehat Dalam Memahami Hukum-Hukum Islam," in *Boeah Kongres Muslimin Indonesia* (October 20-25; 1949), 53.

⁶lik A-Mansurnoor, "Shawkānī and the Closed Door of *Ijtihād*: Did Shawkānī Possess the Key to the Reopening of the Closed Door of *Ijtihād*?" *Hamdard Islamicus*, 11 (1988), 63; in his *al-Muwāfaqāt*, al-Shāṭibī also expresses the need for the continuity of *ijtihād* saying: "*Ijtihād* cannot cease except at the end of the world when man's subjection to the Law will cease." al-Shāṭibī, *al-Muwāfaqāt fi Uṣūl al-Shari'ah*, vol. 4 (Beirut: Dār al-Kutub al-'Arabiyah, n.d.), 89.

In addition to the arguments that *ijtihād* had become easier due to the progress in the *Qur'ān*, *ḥadīth* and juridical sciences, the reformists sought other justifications for its increased implementation. They maintained, for example, that its exercise should face no hindrance, since the *Qur'ān* has stipulated legal provisions in a restricted number of verses. It is generally assumed that the *Qur'ān* contains very few legal injunctions. In fact, the number of verses which can be regarded as embodying religious legislation is no more than five hundred and may be as low as three hundred, while of that number, the vast majority pertain to *al-aḥwāl al-shakhsīyah* (personal status).⁷ In addition, they also made it easier to meet the qualifications for *ijtihād* by relaxing the restrictions on membership in the *Majlis Tarjīh* of the *Muḥammadiyah*. These qualifications broadly stated that any individual possessing the ability to conduct the task of *tarjīh* could become a member of the *Majlis*. While the word "ability" reflected the flexible nature of the requirement, it also opened the door for many interpretations, one of which was the mere ability to read and comprehend the *Kitāb Kuning* at the level of *Subul al-Silām*.⁸

The reformists also tended not to define the areas of *ijtihād*, because a nonspecific form of *ijtihād* was more suited to the heterogeneous nature of contemporary legal problems. Chalil in this case does not specify if the requirements proposed for a *mujtahid* were to be met by those who embarked on *ijtihād* in all areas or only in a particular area. More importantly, he does not define *ijtihād* in the sense of *ijtihād muṭlaq* (independent *ijtihād*), but rather sees it as any exercise of reason and choice in the derivation of legal

⁷W. M. Ballantyne, "The Second Coulson Memorial Lecture: Back to the Sharia!," *Arab Law Quarterly*, 3 (1988), 324; this is not to deny that other scholars argued against the notion that the *Qur'ān* contains only a very tiny fraction of legal injunction. Zafar Ishaq Ansari, "The Contribution of the Qur'ān and the Prophet to the Development of Islamic *Fiqh*," *Journal of Islamic Studies*, 3 (1992), 145.

⁸ Cited in Fatchurrahman Djamil, "Ijtihad Muhammadiyah Dalam Masalah-Masalah Fikih Kontemporer: Studi Tentang Penerapan Teori *Muqāṣid al-Surūḥ*," (Ph.D. dissertation, I.A.I.N. Syarif Hidayatullah, Jakarta, 1993-1994), 107; *Subul ul-Sulum*, a commentary of *Bulūḡ al-Murām*, is written by al-Ṣan'ānī. See Muḥammad Ibn Ismā'il al-Ṣan'ānī, *Subul ul-Sulum: Shurḥ Bulūḡ al-Murām*, 4 vols. (Miṣr: al-Maktabah al-Tijāriyah al-Kubrā, 1950).

⁹Chalil, *Kembali kepada Al-Qur-an dan As-Sunnah*, 373; see also Syekh Ahmad as-Surkati al-Anshari, *Tiga Persoalan* (Jakarta: Pimpinan Pusat Al-Irsyad Al-Islamiyyah, 1988), 32.

¹⁰For the traditionalists' view that *ijtihad* implies the concept of *ijtihad mutlaq*, see 'Abd al-Rahmān Bā 'Alawī, *Bughyat al-Mustarshidin* (Semarang: Maktabat wa Maṭba'at Usaha Keluarga, n. d.), 6; for the use of Bā 'Alawī's *Bughyah* as an important reference by the traditionalists, see A. Malik Madany, "Ijtihad Dalam Kemantapan Hidup Bermadzhab (Dari Halqah-Halqah di Pesantren sampai dengan Munas Alim Ulama NU di Bandar Lampung)," *Al-Jum'iah*, 51 (1993), 23; Pengurus Besar Nahdlatul Ulama, *Ahkām al-Fuqahā'*, vol. 1 (Semarang: Toha Putra, n.d.), 26, 30, 39, 49, 58, 60, 63, 66.

¹¹Cited from Shiddiq's statement in Howard M. Federspiel's *Persatuan Islam: Islamic Reform in Twentieth Century Indonesia* (Ithaca, New York: Cornell University Modern Indonesia Project, 1970), 50.

It should be mentioned that the works of the reformists on purification, which were noted for their polemical character, featured articles on *khilāfiyyah* (debatable) questions and advocated the revision of established religious practices, such as *al-tahniʿuz bi-al-niyyah* (pronouncing the intention of prayer), *qunūt* (prayer recited specifically in the *Ṣubḥ* prayer), *talqīn* (an instruction given to the deceased at the graveside at the close of the burial service) and their like. This polemical character in return provoked a counter-attack from the traditionalists who mounted fierce resistance in defense of established practice.²⁴

In implementing the principle of *ijtihād*, Chalil could not claim to have conducted the judicial revision by which a revitalization of Islam might be achieved. His *ijtihād*

22. "Mukhtar Memberantas TBC Muhammadiyah," *Aulu* (November, 1990), 11-15.

²³Arbiyah Lubis, *Pemikiran Muhammadiyah dan Muhammad Abduh* (Jakarta: Bulan Bintang, 1993), 101.

²⁴It seems that the works of traditionalist scholars which primarily discussed issues categorically belonging to the *khilafiyāt* portray the traditionalists' response and support of the religious practices which the reformists had attacked. Siradjuddin Abbas, *40 Masalah Agama*, 4 vols. (Jakarta: Pustaka Tarbiyah, 1992); idem, *I'tiqad Ahlussunnah Wal-Jam'ah* (Jakarta: Pustaka Tarbiyah, 1993); idem, *Kumpulan Soal Jawab Kengamman* (Jakarta: Pustaka Tarbiyah, 1987); to the genre of traditionalist works which counterattack in defense of their religious practices belong 'Alī Ma'sūm's *Hujjat Ahl al-Sunnah wa al-Jam'ah* (Pekalongan: Ibn Mashhadī, n.d.), and Mahfudh Shiddiq's *Disekitur Soal Idjibnd dua Taqlid*.

Chalil argues that the aforementioned texts were not correctly interpreted by the proponents of consensus and as a result the argument for the authority of consensus was inconclusive.³¹ In his opinion, the phrase "the middle nation" simply means the chosen people who witnessed the delivery of the divine message by the early Prophets to their peoples. It means also that Muhammad had witnessed what his *ummah* had done. Chalil must have been well aware of the ambiguity of the phrase "the middle nation," the interpretation of which had baffled *mufasssirs* and had led them to differ considerably from one another.³² According to Chalil, the second and third verses simply mean that Muslims are the best of mankind, because they are the ones committed to leading others to

²⁹Ibid., 7: 181.

³⁰Ibid., 3: 103.

³¹Chalil, *Kembali kepada Al-Qur-an dan As-Sunnah*, 316.

32^a 'Abdub, for example, interprets "middle nation" to mean striking a balance between one's religious duties and the material gains and exigencies of one's life. He makes no reference to consensus and instead states that equilibrium is emphasized in the word *ummatan wasaʿan* which carries criticism against both the practice of *ghuluw* (excess), manifested in the habit of asceticism advocated by the Christians, the Ṣābi'ūn and the Wathaniyūn as well as the pursuit of material comfort espoused by the Jews in Muḥammad's time. Muḥammad 'Abdub, "al-Ummah al-Wasaʿ," in *al-Imām Muḥammad 'Abdub* (eds.) Adūnis and Khālidah Sa'īd (Beirut: Dār al-'Ilm li-al-Ma'lāyīn, 1983), 47-48.

namely the *mujtahids* or the *ahl al-hall wa al-'aqd*, it made it even easier for Chalil to accept this aspect of consensus rather than deny it, since their knowledge of the *Shari'ah* made them the only people competent to perform the task of consensus. His opposition to the principle of consensus was in line with the thought of many reformists who rejected adherence to the consensus of the past merely as such, since there were no solidly reliable texts to support its validity.³⁶ Reformists argued that consensus required a validity tantamount to that of the *Qur'ān* and the solidly reliable *ḥudūth*, because it would function as one of the infallible sources of law on the basis of which new legal questions would be solved.

Chalil's rejection of consensus was not absolute since he accepted the consensus of the *ṣaḥābah*, the authoritativeness (*ḥujjiyyah*) of which was never disputed by any scholar.³⁷ The *ṣaḥābah* were deemed to belong to a different category, since they were the most understanding (*ʿaqlūh*), virtuous and knowledgeable. This was so because they had witnessed the revelation of the *Qur'ān*, knew how to interpret it and understood the objectives of the Prophet as a law-giver. Yet, Chalil dismisses the validity of the consensus of the Rāshidūn (Abū Bakr, 'Umar, 'Uthmān and 'Alī), the Shaykhān (Abū Bakr and 'Umar) and the consensus of the local communities of Medina and Kufah.³⁸ In this, he followed the reasoning of the *Persis* which accepted the consensus of the *ṣaḥābah* as a body but not as individuals.³⁹

³⁶ Chalil's objection was representative of the stand taken by the *Persis* which equally disqualified the authority of consensus on account of its lack of textual evidence and the ambiguity of its definition. Besides, the *Persis* also argued that the consensus reached by scholars in a particular time would be void in another time as values evolved and opinions changed. "Dari Hal Ijma'," *Pembela Islam*, no. 56, 29-33.

³⁷ Chalil, *Kembali kepada Al-Qur-an dan As-Sunnah*, 312; on the authoritativeness of the consensus of the *ṣaḥābah* see, for example, al-Shawkānī's *Irshād al-Fuḥūl* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1937), 81.

³⁸ Chalil, *Kembali kepada Al-Qur-an dan As-Sunnah*, 312; those who argued against the consensus of the Rāshidūn and the Shaykhān held that they were the people to be emulated (*ahl li-al-iqtidā' bihim*), but that their sayings did not establish an authoritative argument (*lā 'ulā unna qawlahum ḥujjah*). al-Shawkānī's *Irshād al-Fuḥūl*, 83.

³⁹ A. Hassan, *Al-Boerhaan Kitub Fiqh*, vols. 1-2 (Bandung: Persatoean Islam, 1929), 12-13.

III

⁶⁵Federspiel, *Persatuan Islam*, 46.

⁶⁷Moenawar Chalil, "Sedikit Pendjelasan Ttg. Arti Taqlied," *Abadi* (January 22, 1954).

According to Chalil's definition, *naqlid* is identical with blind imitation and connotes a state of complete passivity.⁷³ As such, the definition deprives a person of the conscious act involved in carrying out one's role as a *muqallid* (a practitioner of *naqlid*). This aspect was not considered by Chalil or any of the other Indonesian reformists, for none of them acknowledge in their writings that such a mental characteristic exists in the act of *naqlid*.⁷⁴ The matter is mentioned, instead, by Mahfudz Shiddiq when dealing with the obligations of those who are incapable of conducting *ijāhād* themselves. Shiddiq quotes from *al-Maqṣad al-Saḍīd* in which it is said:

It is obligatory for him [who is incapable of conducting *ijtihād*] to exert his utmost efforts (*an yubdhula wus'uh*) in an attempt to find the best Imām who undoubtedly belongs to the category of the people of vision (*ahl al-nazar*), absolute *ijtihād* (*al-ijtihād al-murtaq*), trustworthiness (*al-'adālah*) and a perfect keenness of mind (*al-yaqzūh al-ālmah*).⁷⁵

Indeed, *muqallid* should not be seen as consisting of totally blind imitation as its practice entails introspection and a conscious exercise of one's faculties. It involves knowing the limitations of one's ability to derive guidelines for one's conduct from the *Qur'ān* and *sunnaḥ*. It also demands an effort to seek the opinions of others and to adopt the most suitable among them.⁷⁶ The exercise of conscience by a *muqallid* was discussed by the *uṣūliyyūn* (legal theorists) in conjunction with the requirements of the jurist from whom a *muqallid* adopted any legal opinion. This discussion served the dual purpose of settling the eligibility to practice *muqallid* and of anticipating the possible invalidity of a *fiqh*, nullified as a result of a shortcoming on the jurist's part. This shortcoming may stem from either imperfect or incomplete knowledge of the sciences required for *ijtihād* or doubts surrounding the scholar's moral integrity. The latter quality, in particular, is of

⁷³Chalil, "Sedikit Pendjelasan Ttg. Arti Taqlied."

⁷⁴Ibid.; this is a typical definition set by Indonesian reformist scholars. See, Hassan, *Ringkasan Islam*, 42; As-Surkati, *Tiga Person/an*, 24-35.

⁷⁵Shiddiq, *Disekitar Soal Idjihad dan Taqlid*, 72-73.

⁷⁶Bernard Weiss, "Interpretation of Islamic Law: The Theory of Ijtihad," *American Journal of Comparative Law*, 26 (1978), 207.

When the layman [*'awāmm*] makes his choice, his action is referred to as *taqlīd*: "investing with authority." His choice "clothes" the juristconsult's opinion with authority. It is the right of the layman to practice *taqlīd*; and, applied to him, the term is commendatory. On the other hand, *taqlīd* is applied to the juristconsult only exceptionally; in his case it is a term of disapprobation, drawing upon him the censure of his colleagues.¹⁰⁴

In other words, the practice of *taqlid* for the *ʿawām* was a manifestation of their freedom to seek the opinions of others, whereas inquiries into juridical truth were the privilege of jurists. While nobody had the right to prevent the former from following the opinion of the jurist of their choice, the latter too were under no constraint to arrive at a predestined opinion.¹⁰⁵ Moreover, the rejection of *taqlid* was in contradiction with the

105 Ibid. 82-83.

It is generally known that ranks were assigned to the *mudhhab* scholars depending on the levels of legal enterprise that they undertook and their adherence to the methodological means and other precepts set by their Imām. The highest rank was that of the *mujtahid muntasib* (*mujtahid* who was affiliated to a particular *mudhhab*) whose expertise in the sciences of *ijtihād* and proficiency in the art of *istinbāṭ* (deduction) allowed them to exercise an independent *ijtihād*, although at the same time exhibiting an unbroken link with the method and principles of their Imām.¹⁶⁰ Next in rank came those whose full comprehension of the teaching of their Imām enabled them to systematize (*raṭṭabū*), edit (*ḥammurū*) and generate their Imām's statements. Then came those scholars who had memorized, understood and mastered the teachings of their Imām in both simple and complex cases. The last rank was subdivided into several categories of scholars who due to their inability to acquire the proofs belonged to the lowest rank of scholarship.¹⁶¹

159 Wahyudi, "Hasbi's Theory of Ijtihād in the Context of Indonesian Fiqh," 6.

¹⁶⁰The *usūlīyūn* did not adopt a unified approach with regard to the number of ranks of the *madhhab* scholars and the name assigned to each rank. Nonetheless, in spite of difference in the number of ranks and their names they did not differ in describing the identity or the character by which each particular rank was recognized. For a conclusive discussion of the different ranks, their number and the time when each scholar lived see Hallaq "Was the Gate of Ijtihad Closed?" 29.

161 al-Nawawī, *al-Mujmū' Shurḥ al-Muhaddḥdhub*, vol. 1, 43-44; Zakariyā al-Ansāri *Ghāyāt al-Wuṣūl Shurḥ Lubḥ al-Uṣūl* (n.p.: Maṭba'at Muṣṭafā al-Bābi al-Halabi, 1941), 148; Āl Taymīyah, *al-Musuwwuduh*, 489-491; Ibn al-Ṣalāḥ, *Fatāwā wa Musā'it Ibn al-Salāḥ*, 29-36.

"unawareness" of the role of *taqlid* in the judicial system showed his unawareness of the legal mechanism through which the practice of *taqlid* had evolved. Chali's ultimate rejection of *taqlid* solicited the views of founders of the *madhhab* who warned against the unquestioning acceptance of their legal decisions. This reference, however, showed that he did not appreciate the legal meaning and the implications of their views.

Chalil's call for the practice of *itibā'* and the rejection of *madhhab* was intended to free Muslims from relying on the authority of others. His call for creative lawmaking by means of *ijtihād* was also directed to the same end. His concept of *itibā'*, however, seems to have been incompatible with the intellectual state of the *'awāmm* who were not capable of discovering the reasons behind the proofs that they were supposed to be demanding. *Itibā'*, therefore, did not bring its practicers out of the state of blind obedience which it initially was intended to do. Chalil developed arguments against the adherence to *madhhabs* and proposed a return to an independent legal reasoning by means of *ijtihād*. This proposal failed to materialize, since his *ijtihād* and that of his reformist counterparts eventually created other variant legal opinions, which not only augmented the state of legal stagnation, but also helped to foster a new *naqlīd* against which his call for the abandonment of *madhhabs* was directed.