FROM USUL FIQH TO LEGAL PLURALISM:
An Autoethnography of Islamic Legal Thought

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Abstract

This article seeks to introduce an autoethnography as a method in studying Islamic law. Through an autoethnography, a scholar could share a uni que and subjective experience, which would not only contribute to the understanding of social phenomenon but also reflect on possible different situations upon knowing the reality. It not only makes a sequence of events and their interpretation, but it also asks readers to emotionally 'relive' the events with the writer of autoethnography. This article uncovers processes and dynamics of my own thought in approaching and comprehending law in Islam including topics such as usul fiqh and legal pluralism. It discloses the development of my research interest and scope, both nationally and internationally in the past three decades. The article argues that knowledge is not necessarily produced by research work. In fact, personal narratives are considered scientific in that they could contribute knowledge to what we know about the world in which we live. And, last but not least, personal stories are valuable if they could: 1) provide a legitimate claim or justification, 2) offer something new to learn, and 3) help other people cope with or better understand world issues.

Keywords: *autoethnography, Islamic law, legal pluralism, usul fiqh.*

A. Introduction

As a method, autoethnography is used in various social disciplines including anthropology, sociology, history, literature, education, communication, and psychology. Autoethnography is a term in the qualitative study which has been introduced by David Hayano in 1979 to describe *personal*

nature.[1] However, a large group of scholars have argued that the personal nature or *self* element in a scientific paper should be minimized or made even zero. It has been pondered that self-narratives entail subjective bias and diminish the scholarship value of a paper.

Despite this premise, Sarah Wall, one of the most leading ethnographers contended that self-exploration in a paper has now become a common practice. In fact, when seen from the postmodernism point of view, such criticisms of the autoethnographic approach are no longer relevant.[2] With the presence of postmodernism paradigm, each of different ways of knowing and inquiring becomes equally legitimate. This is because the main objective of postmodernism is not to eliminate the existing scientific approaches; rather it sought to criticize their dominance and at the same time proposed some key alternative approaches, including autoethnography. Through an autoethnography, a writer could share his unique and subjective experience, which would not only contribute to the understanding of social phenomenon but also reflect on possible different situations upon knowing the reality.[3]

This article is an autoethnographic thinking which serves as both self-reflection and personal narration. It seeks to explore self-experience (*auto*) and systematically interpret and reflect it (*graphy*) in order to understand the sociocultural aspects surrounding it (*ethno*).[4] By unfolding my personal

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[1] David Hayano, "Auto-Ethnography: Paradigms, Problems, and Prospects". *Human Organization* 38 (1): Spring 1979, pp. 99-104.

[2] Sarah Wall, "An Autoethnography on Learning about Autoethnography", *International Journal of Qualitative Methods* 5 (2), June 2006, p. 2.

[3] Ibid.

[4] Carolyn Ellis, *The ethnographic I: A methodological novel about autoethnography.* Walnut Creek: AltaMira Press, 2004); Garance Maréchal, *Autoethnography.* In Albert J. Mills, Gabrielle Durepos & Elden Wiebe (Eds.), *Encyclopedia of case study research* (Vol. 2, pp. 43-45). Thousand Oaks, CA: Sage Publications, 2010).

stories related to experiences and sociocultural life, what I am trying to do here is not only to make a sequence of events and their interpretation, but also to ask readers of this article to, as Richardson puts it, "emotionally 'relive' the events with the writer."[5]

My aim in this article is to uncover processes and dynamics of my own thought in approaching and comprehending law in Islam since I began my undergraduate study in 1989 at the Department of Comparative Law and Islamic Schools (*Perbandingan Mazhab dan Hukum or PMH*) of Syarif Hidayatullah State Islamic University (UIN) Jakarta up to my current position as a Professor of Islamic Law at the same university. More importantly, this article discloses the development of my research interest and scope, both nationally and internationally in the past three decades. I will discuss some legal and social concepts to explain how my thought on law in Islam was shaped, reshaped, and influenced by various textbooks, journal articles, monographs that I read, and more importantly by scholars and experts that I met along my academic and research journeys.

B. Ciputat School of Thought

I would like to begin this personal narrative by revisiting my studentship in the early 1990s when I was registered as a bachelor degree student at the Faculty of Sharia, IAIN Jakarta. Along with my peers, seniors, and juniors, we founded a study club called *Forum Studi Hukum Islam (FSHI).*[6] During the 1980s to 1990s, study clubs on different disciplines and areas with a range of perspectives were mushrooming in Ciputat, a suburban area in the south of Jakarta. The well-known study clubs in Ciputat among others were *Formaci, Respondeo, Flamboyan Shelter*, and *Piramida.* Each club has its own focus

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[5] Laurel Richardson, "New Writing practices in qualitative research, *Sociology of Sport Journal* 17 (2000), p. 11.

[6] FSHI stands for Study forum of Islamic Law. The members of what used to be FSHI are now lecturers at the Faculty of Sharia and Law of UIN Syarif Hidayatullah Jakarta, such as: Prof. Nadirsyah Hosen, Prof. Euis Amalia, Dr. Yayan Sofyan, Afwan Faizin, MA., Azharudin Latif MA., Fahmi Ahmadi MA., and many others.

and strength such as: social theory, religious studies, political science, philosophy, and theology. The FSHI itself focused on legal theories, legal philosophy, and usul fiqh. Regular and periodical discussions were conducted to address concepts, theories, paradigms, thoughts of prominent Muslim experts, and historical legal practices as well as legal issues in contemporary contexts.

One of the major themes intensively discussed at FSHI meetings was a reform in Islamic legal thought. The word 'reform served as an appealing key concept, major icon, and trend among the Ciputat student activists at that time. This was magnified by active participation and contribution of IAIN important figures such as Harun Nasution, Nurcholish Madjid, Munawir Sjadzali, Ibrahim Hosen and others who were widelyknown as the key advocates of reform in Islam and its social aspects. Issues and cases of reform they had proposed and promoted were often provocative and controversial. Despite all these dynamics, IAIN (prior to its renaming into UIN) had managed to affirm its identity as a reformist Islamic higher education institution thus being established as one of the elite universities in the socio-religious thoughts.

In this context of intellectual dynamics, the discussion of Islamic legal thoughts among the FSHI members tended to "rebel" the comfort shackles of classical theories and outdated legal concepts. Since then, the alternative discussion on usul fiqh became the most popular topic of discussion in every meeting. One of the most cited books referring to the contemporary paradigm of usul fiqh was Al-Shatibi's book entitled Al-Muwafaqat[7]. This book which rooted from Maliki mazhab presents a discussion of two main concepts, namely 'maqasid al-shariah' and the 'maslahat'. Both concepts presented in the book had been discussed frequently in FSHI forum by inviting some external speakers. The study on these two concepts was a favorite as it was seen coherent to the non-literal thinking or to be exact, substantialism. These two concepts had colored the debates of FSHI meetings,

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[7] Abu Ishaq Ibrahim Al-Shatibi, *Al-Muwafaqat fî Usûl al-Sharî'ah* (Beirut: Dar al-Ma'rifah, 1999)

particularly when related to the current Islamic law in Indonesia.

In my final year of undergraduate study, the head of the Department of Comparative Law and Islamic Schools, Prof. Dr. Huzaemah Tahido approved my thesis proposal entitled "Transformasi `illah sebagai metode reinterpretasi hukum Islam[8]". This thesis departed from a fiqh principle *al-hukmu yaduru ma`a `illatihi wujudan aw `adaman* (a legal clause may alter depending upon the existed or negated `*illat* or reasoning). Under the supervision of the late Prof. Dr. Satria Effendi (*Allahu yarham*), I constructed my thesis by proposing an argument that for the purpose of Islamic legal reform in contemporary era, `*illat* as legal reasoning does not necessarily need to be tangible. I contended that `*illat* may transform into *maslahat*. Therefore, *maslahat* could function as a legal `*illat* which justifies the legal reform. On December 30, 1993 in my thesis defense, my examiner Prof. Dr. Hasanuddin AF rebutted my argument by contending that there is a significant difference between `*illat* and *maslahat* concepts. `*illat* tends to be more visible and subtle, while *maslahat* tends to be relative to the person, time, and place. Therefore, *maslahat* is not reliable to be measured and cannot function as `*illat.* As a student of the Department of Comparative Law and Islamic Schools (PMH) whose principle was "we are different in opinion because we are PMH", the examiner rebuttal became a constructive input to support my intellectual maturity.[9]

Upon my graduation in February 1994, I continued my study at the Graduate Program IAIN Syarif Hidayatullah that was directed by the late Prof. Harun Nasution (*Allahu yarham*). My class commenced in September 1994 with compulsory two courses taught by Professor Harun Nasution, namely (1) History of Islamic Civilization and (2) The Thoughts of Kalam Theology. The history course refreshed my memory of the

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[8] The transformation of '*illah* as the method of reinterpreting Islamic law (translated.)

[9] Some years later, when I went deeper into legal anthropology field, I found out that the practice of Islamic law in Muslim society is more of individual instead of collective experience. Thus, *maslahat* which functions as `*illat* should have been accepted.

sequence of events in Islamic history since the beginning of Islam in Makkah until the collapse of the Ottoman dynasty. More importantly, the perspective on the history reading was anti-mainstream by bringing some alternative perspectives from the classical and modern literature written by Muslim and non-Muslim scholars. The Kalam course provided me with the various schools of Islamic theology so comprehensively that I felt that what I got in my undergraduate study was superficial.[10]

C. The Correlation between Islamic Law and Theology

While doing my MA degree (1994-1996), I was still active in many FSHI weekly discussions. With some new insights I got from my study, I began to propose a new perspective, giving new color on Islamic legal thoughts, which used to be theory-centrist on *usul fiqh* principles. And now since I was exposed with the notion of the influence of theology on Islamic law, some big questions emerged: how does theology relate to Islamic law? Does theology have a significant impact on law?

In addition to discussing Fazlur Rahman's article *Functional Interdependence of Law and Theology*[11], translated and republished on *Jurnal Al-Hikmah* in 1992, FSHI happened to discuss my paper (a written assignment at the postgraduate school) on the intersection between theology and Islamic legal theories through the concepts of good (*husn*) and bad (*qubh*) of human conducts. My paper was trying to answer whether these orders were essentialist (coming from within) thus was known

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[10] I have to admit that these two courses in the postgraduate school were equipping me with a strong foundational knowledge, particularly when I was assigned as an *Assitant Professor* at the Institute for the Study of Muslim Civilisations in London, United Kingdom(2009-2012). I was teaching the 'Formation of Muslim Thought: Theology and Law' course for master students who are coming from various mazhabs and nationalities.

[11] Fazlur Rahman, "Functional Interdependence of law and Theology" in *Theology and Law in Islam* (Wiesbaden: Otto Harrassowitz, 1971)

by the logic, or these orders could be defined as good or bad because the revelation said so. The question turned to the next discourse about the status and the function of human logic as an instrument to discover and infer the law from sacred texts. To what extent the logic could conceive the legal norms and have the authority to produce an imperative legal provision? Surely, there was no consensus among the scholars of Islamic theology and usul fiqh on this particular enquiry.

Three major groups of ulama (Muslim scholars) responded to such question. The first group, Mu`tazilah posits that the logic (with its ability given by God) is able to differentiate between good and bad. Abu al-Husayn al-Basri, a Mu`tazilah ulama mentioned that 'husn' or good deed is an act that can be done without causing the doer any disapproval. On the other hand, 'qubh' is opposite to 'husn' in a way that when it is done, it causes disapproval to the doer. In a nutshell, an act is considered as 'good' when the logic finds the benefit in it and brings no harm or danger.[12] In this perspective, Mu`tazilah standpoint is quite similar to the Lex Naturalis view.

The second group is Maturidiah. Slightly different from Mu`tazilah, Maturidiah believes that although logic knows the good and bad in the essence of an act, the logic does not have an authority to instruct human to do the good acts and to avoid the bad ones. The one who has such authority, in Maturidiah view, is only God, not the logic. Therefore, it is God who has the sole authority to instruct an order or to charge a prohibition to human. Logic serves merely as the intermediary for the demanded or prohibited acts.

The third group is the Asy`ariah. Compared to Mu`tazilah and Maturidiah, Asy`ariah conceives that the human logic does not have the ability to judge good or bad values of an act. The quality of human act can be solely judged by the revelation. In other words, an act is considered as 'good' or 'bad' depending on the order or prohibition from God. An act is judged as 'good' when revelation said so and when revelation also has appraisal for the doer. In contrast, an act is said as 'bad' when the revelation shows its prohibition and when there is a threat sanction for the doer. In sum, the position and the function of

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[12] Abu al-Husayn Al-Basri, *Al-Mu`tamad fi Usul al-Fiqh* (Damaskus: al-Ma`had al-`Ilmi, 1964)

logic in Asy`ariah view is merely an instrument to comprehend the messages conveyed by the revelation, thus it is used to dig the substantive meaning of the text through the formulation of legal methods.[13]

Among the three groups mentioned above, Mu`tazilah puts logic on a higher position, while Asy`ariah does the opposite. Maturidiah position seems in the middle. Mu`tazilah sees the logic as moderately parallel to the revelation, thus the logic could also be a legislator as could the revelation. In contrast, Maturidiah sees the logic mainly as a motivator. That is, with the role of logic, humans are motivated to do the good acts and avoid the bad ones. For Asy`ariah, however, logic is not able to function optimally. Not only is the authority of logic be rejected, but also are the logic potentials is neglected by Asy`ariah.[14]

The big logic absolutely depicts the human independence and its strength, while the small logic reflects the human weakness. The issue of human strength and weakness seems giving implication in the field of Islamic legal thoughts. It is questionable whether or not human logic is morally and psychologically reliable to make an *ijtihad* (consensus) on the issues that were not textually regulated. The strong logic may facilitate the moral bravery to make *ijtihad*, while the weak one may not supportive enough in the reformulation of legal thoughts.

In relation to the function and position of logic at the first place, it is important to differentiate between rationalism and rationality. Rationalism is a view emphasizing the prominence and strength of human logic regardless its incoherence with the revelation texts. On the other hand, rationality is closely related to *ra'y* in early Islamic literature which means logic. Rationality had been widely known in early Islam indicated by the frequent use of *ra'y* in contriving an *ijitihad.* Rationality

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[13] Muhammad Abu Zahrah (n.d.), *Usul al-Fiq* (Darul al-Fikr al-`Arabi): 74.

[14] Harun Nasution, *Teologi Islam: Aliran-Aliran, Sejarah Analisa Perbandingan* (Jakarta: UIN Press, 1986)

had also been a significant phenomenon as there had been various methods in legal problem solving between the *Ahlul-Ra`y* centered in Iraq (which later established the Hanafi school) and the *Ahlul-Hadits* in Hijaz (which later formed the Maliki school). Along with the use of *ra'y* as a practical instrument in exploring and developing the Islamic legal thoughts, some concepts and methods emerged such as *istihsan*, *qiyas*, *sad al-dhara`i* and *istishlah* amid legal experts in the beginning of Islamic legal institutionalization.

Rationalism was more recently emerging along with the presence of Mu`tazilah which was supported by the Abbasiyah dynasty (750-1258 AD) in the early first century of their reign in Baghdad. The world at that time had been witnessing the growth of rationalism in thinking and debates arose among internal and external groups of Islam. Mu`tazilah was the pioneer and represented the Islamic rationalism movement until it was banned by the khalifa al-Mutawakkil who was ruling from 847 to 861 A.D. Ever since, Islamic rationalism was gradually decreased though not completely disappeared.

D. The rational thoughts on Islamic law: Sunni and Shia

Rationalism as an organized thinking movement did not eventually long last, especially because its forerunner as well as its supporter (Mu`tazilah) was no longer supported by the political leaders at that time. However, the rational theology approach in Islamic legal theories remained an interesting study for theologians and legal experts. The literature on usul fiqh in the following two centuries were utilizing the rationalist approach, like the logic and the dialectics. In their books on legal theories, some Imam Shafi`i students such as al-Baqillani (w. 402/1012), al-Juwaini (w. 478/1085) and al-Ghazali (w. 505/1111) reformulated theological issues and legal theories within the rational approach, such as: *taklif* (legal liability)*, ta`lil* (legal reasoning), *maqasid* (legal objectives) dan *maslahat* (legal benefits). Two experts in Islamic law from the Mu`tazilah group, al-Qadhi Abd al-Jabbar (died in 415/1024) and Abu al-Husayn al-Basri (died in 435/1044) authored books on usul fiqh by incorporating theological discussion. The majority of literature on Islamic legal theory in the fifth century of Hijr / 11st century adopted the theological method, thus the literature of this era were called *mutakallimun.* For the same reasons,

some legal scholars and experts view usul fiqh as the branch of theology.[15]

Not much has been known that the popular work of Imam Shafi'i, *al-Risalah,* was more than a book on usul fiqh. In fact, it was precisely a theological response to Mu`tazilah thoughts that gave a heavy emphasis in logic over the revelation. Although Imam Shafi'i never explicitly mentioned his disagreement on Mu`tazilah's views, his book that was written during the Mu`tazilah great influence in Abbasiyah dynasty, served as a defensive fortress to resist the widespread of rationalism movement in Islam.[16] While Mu`tazilah speculates that Qur'an is merely God's creation on earth and that God should be fair to all humankind, *al-Risalah* went beyond this view by affirming that Qur'an has all the guidelines for the human salvation both in the world and the hereafter. In short, *al-Risalah* sought to re-navigate the theological view *from* that of viewing God's obligation to the human being *to* that of viewing human obligations to God and to the fellow humans. In the words of Makdisi, *al-Risalah* is the juridical theology, that is a study on the God's orders and prohibitions.[17]

By the time the rational legal thinking experienced a decline among Sunni after the 11th century, in contrast, some legal thinkers of the Shia community, particularly the Usuli group, came to the fore. According to Modaressi[18], there are four sources of Islamic law from the perspective of Usuli: (1) Qur'an, (2) Prophet Sunnah and or Imam's statement, action, and approval, (3) *Ijma* (consensus of Shia fukaha) from which

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[15] Wael B Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1999): 37-38.

[16] George Makdisi, "The Juridical Theology of Shâfi'î: Origins and Significance of Uṣûl al-Fiqh" *Studia Islamica* 59 (1984): 5-47.

[17] Ibid.

[18] Hossein Modarressi, *Introduction to Shi`i Law: A Bibliographical Study* (London: Ithaca Press, 1994)

the Imam's opinions can be traced, (4) human logic. Logic serves a very important position in Shia usul fiqh as one of its main principle is *kullu ma hakama bihi al-`aql, hakama bihi al-shar`* (whatever the reason has instructed, it must have been prescribed by the religion). According to a principle known as *qa`idah al-mulazama* (the principle of correlation), a religious legal provision could be produced by *ijtihad* or logical decision. This sort of principle reminds us to Mu`tazilah leaders who believe that reason could serve as a legislator. Thus, the emergence of this rationalist group within Shia community might have had something to do with their interaction with the Mu`tazilah key figures.

Another explanation is the fact that some literature by Imam Shafi`i students had inspired and influenced the Shia thinking on usul fiqh. Stewart pointed out some evidence from which the correlation of Shii and Shafi`i scholars took shape: (i) some Shii scholars had learned from Shafi`i scholars, (ii) some comments and critics on the Shafi`i literature were provided by Shii scholars, (iii) some textbooks authored by Shafi`i scholars had been used in the Shii education contexts.[19] Additionally, some concepts and theories of law who were specifically attributed to Shafi`i school had also been found in the Shii Islamic legal thinking, such as *istishab* (continuity) and *ihtiyat* (caution).

The usul fiqh literatures by Sunni scholars (since 3H/9 A.D) preceded literature by Shia scholars, which written only two centuries later (5H/11 A.D). These early literature by Shii scholars included: *al-Tadzkira bi Usul al-Fiqh* by Syekh al-Mufid (died 413H/1022M); *al-Dzari`a ila Usul al-Shari`a* by al-Syarif al-Murtadha (died 436H/1044M); and *`Uddat al-Usul fi Usul al-Fiqh* by Syekh al-Thaifa (died 460H/1067M). These three leading Shii scholars were living in the same period as the Shafi`i legal theorists (al-Baqillani and al-Juwaini) and Mu`tazilah legal experts (Qadi Abd al-Jabbar and Abu Husayn al-Basri). This was exactly during the ruling of Buwaihi dynasty (934-1055 AD). According to Modaressi, the late presence of usul fiqh literature among Shii scholars had a lot to do with the Shii communities' satisfaction of having legal

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[19] Devin J. Stewart, *Islamic legal orthodoxy: Twelver Shiite responses to the Sunni legal system* (University of Utah Press, 1998)

references provided by the twelve living imams. For the first four centuries of the Islamic calendar, the need of Islamic legal reference and reformulation was fulfilled by these living imams.

E. The Study of Islam and Politics

Prior to my master study completion, I diverted my research interest. My previous research interest was usul fiqh by the consideration that it would deepen my expertise in the field. However, I feel that my knowledge on the other research interest would be very limited if I keep studying the same topic. On the other hand, I would like to explore the Islamic legal thoughts from diverse social science disciplines. Then, I decided to write my thesis on Islamic politics. This theme was inspired by two courses I took in my Graduate School, namely *Islamic Political Thoughts* or *Fiqh Siyasa* by the late Prof. Dr. Munawir Sjadzali (*Allahu yarham*) and *Islam and Politics in Indonesia* by Prof. Dr. Bahtiar Effendi (*Allahu yarham*). These two professors were then my thesis supervisors under the title "Etika Intervensi Negara dalam Pemikiran Politik Ekonomi Ibnu Taimiyyah".[20]

Writing a thesis on Islamic politics inspired me with new knowledge in explaining how religious norms are enforced in the sociopolitical reality. Through the realist-pragmatist political lens of Ibn Taimiyya, I comprehend that objective reality may redirect the legal thoughts, legal conclusion, or legal opinion. (Ibn?) Taimiyya described the political setting upon the collapse of Abbasiya and Mamluk dynasties. The Levant (Syria, Lebanon, Jordan, Israel, and now Palestina) were severely attacked by Mongol. Taimiyya view sees the concept of a nation-state as similar to etatism which believes that nation is the main power which controls all political elements in a rational tangle controlled strictly by the instrument of power.

For Ibn Taimiyya, nation-state is everything(?). For him, nation and sharia have reciprocal purposes. The nation exists for enforcing the sharia, and sharia is present for supporting the nation. When the *khilafa* system collapsed and there were no more symbols for Islam unity, Ibn Taimiyya suggested that

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[20] Arskal Salim, *Etika Interventsi Negara: Perspektif Etika Politik Ibnu Taimiyah* (Jakarta: Logos, 1999)

sharia could be the unifier in supporting the existence of the nation. It was then understandable that in the economic sector, Ibn Taimiyya allowed the nation to control the technicality of business and finance including setting the price of goods and services. The concept of nation in Taimiyya perspective was very centralistic and crucial.

My encounter with bibliographical studies on the concepts of nation-state in the landscape of Islamic political thoughts inspired me to prepare a research proposal in social empirical nature. During 1998-1999, when Islamic parties were mushrooming everywhere, I sent my proposal to The Asia Foundation. The proposal aims at investigating the perspectives of Islamic party leaders on the relation between religion and nation in Indonesia. The Asia Foundation agreed to support this study as an endeavor of education and political communication to Indonesian public prior to the General Election 1999 where Islamic parties rejoiced after their dormancy during the New Order era. This study was then summarized into two publications.[21]

In September 1999, I obtained a scholarship from CIDA for two-semester post graduate sandwich study at McGill University, Montreal, Canada. For the nine months of my study, I took seven courses in three different departments, namely Institute of Islamic Studies, Department of Political Science, and Department of Sociology. The series of courses widened my theoretical horizon, particularly on the sociopolitical approach in explaining Islamic phenomena in Indonesia. Some of my assignment papers were published in some international conferences which then I revised as book chapters and journal articles.[22]

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[21] Arskal Salim, *Partai Islam dan relasi agama-negara* (Jaringan Pendidikan Pemilih Untuk Rakyat, 1999); Arskal Salim, "Political Islam in Southeast Asia: In Inquiry into the idea of an Islamic State in the Post-Soeharto Indonesia" in *Seeking Alternative Perspectives of Southeast Asia*, eds. Andrew TH Tan, Michael LR Smith, and Khoo Kay Kim (Malaysia: Perak Academy, 2004).

[22] Arskal Salim, "Zakat Administration in Politics of Indonesian New Order" in *Shari'a and Politics in Modern Indonesia,* ed. Salim and Azra (Singapore: Institute of South East Asian Studies, 2003);

F. The Model of Islamic Legal Approaches in Indonesia

In early 2002, I got a scholarship from Australian government (AUSAID) to pursue my doctoral degree at the University of Melbourne for four years. With my previous research experiences in writing academic papers at McGill University, I constructed my thesis proposal to respond to the growing aspiration of Islamic sharia enforcement in Indonesia. In my early stage, I had three promoters from University of Melbourne, Merle Ricklefs, Abdullah Saeed and Tim Lindsey. In the later stages, I had only Professor Lindsey acting as my main supervisor as Professor Saeed was overload by the doctoral supervisees and Professor Ricklefs moved out to NUS Singapore. Fortunately, these two professors had tremendously contributed during my proposal writing until my first two years, particularly on the approach of my study.

My main argument in my doctoral thesis departed from the theory of Islamization in Indonesia by Ricklefs in some of his works. The history of Islamization in Indonesia did not only transform the people religion and belief, but also transform the culture system in so many aspects. Upon the Indonesian independence, this Islamization penetrated into the multiple layers of political structure though did not always succeed. By adopting and modifying this theory, my thesis was trying to explain that the aspiration of Islamic sharia enforcement in Indonesia is a part of the Islamization which occurred since the 13th century. In particular, for my thesis specialization, the Islamization happened in the legal field; therefore, the aspect of formal law in the Indonesian administration system was a contestation area between the pros and the cons.

To point out how the process of Islamic legalization occurred in the Indonesian setting in the period of 1945-2005, I proposed three cases. The first case was the amendment of Article 29 Law 1945 on religion. The second case was the

Arskal Salim, "Discourses on Democracy within Debates on Islam-State Relations in Indonesia", *Journal of Indonesian Islam* 2 (1) (2008); Arskal Salim, "Between ICMI and NU: The Contested Representation of Muslim Civil Society in Indonesia, 1990-2001" *Al Jamiah* 49 (2) (2011).

legislation of zakat management. The third case was the autonomy of Islamic sharia provision in Aceh. For these three cases, I employed these approaches (either discrete or combined): (1) historical approach, (2) constitutional law approach, (3) comparative politics approach. These three approaches were the models that I learned from my supervisors and colored my data analysis process from both the literature and interviews with the informants.

1. Historical Approach

By the historical approach, my dissertation discussion did not only focused on the post-independence era, but also focused on several decades or centuries ahead. For example, a discussion on the amendment of Article 29 Constitution 1945 on religious matter tracked back the roots of debates between religion and nation in 1920-1930s, between Soekarno and his political opponents from Islamic parties. The second example on the discussion of zakat management legislation, it traced back the historical facts on the zakat collection in Java in the second half of 19th century when Snouck Hurgronje was assigned as the advisor for Islamic politics of Dutch East Indies. Lastly, the discussion on the enforcement of sharia law in Aceh, it traced back the history of the 17th century where Aceh sultanate was in its victory and claimed the Islamic sharia enforcement. All of these historical approaches generated an analysis that these three study cases were connected long strings of the intricate relationship between Islam (and the interpretation of its teachings) and the nation (with the state administration).

2. Constitutional Law Approach

The Constitutional Law Approach, the thesis presented controversies and antagonism among norms, logics, and legal arguments which are contesting to support claims and needs of pros and cons groups. The discussion on Article 29 Constitution 1945 pointed out inconsistent logics and legal arguments from Representatives fractions. The article was claimed as containing reformist and democratic values. Another discussion on zakat legislation raised a fundamental question, "Why does Indonesia as a nation-state give tax privilege to Muslim zakat payers while the same privilege was not given to other belief taxpayers?"

Lastly, the discussion on the Islamic sharia enforcement in Aceh brought complex constitutional issues on how a province with Muslim majority was justified to enforce Islamic sharia to its people while the other provinces with the same Muslim majority do not have the same privilege.

3. Comparative Political Approach

By employing a Comparative Political approach, the thesis discussed some similar concepts or cases which occurred in another country as a benchmark to analyze three case studies in the thesis. The discussion on the amendment of the 1945 Constitution on Article 29 was correlated to the concept and practice of *millet* under the Ottoman governance. *Millet* was used as the analytical comparison framework to explore how Islamic parties in Indonesia amended Article 29 of the 1945 Constitution in order to practice *millet* in contemporary Indonesia. Another discussion looked into the legislation of zakat regulations which referred to Pakistan experience under the ruling of President Ziaul Haq who enforced a centralistic Zakat Ordinance. By a comparative diagnosis, the process of zakat legislation in Indonesia can be predicted to produce a similar result as Pakistan. Later, the other discussion analyzed the Islamic sharia in Aceh which assumedly adapts Iran's pattern and experience on their *wilayatul faqih* where the ulama lead the government. Acehnese religious scholars held a prominent role in cultural and scriptural settings, especially during the sultanate era and independence period. However, upon the decline of the New Order regime and unsupportive political situation, these scholars were not able to manage and control the political administration as what happened in Iran.

In 2006, I finished my doctoral study in the University of Melbourne. Two years later, my thesis was published by Hawaii University Press entitled *Challenging the Secular State: The Islamization of Laws in Modern Indonesia.*[23] This

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[23] Arskal Salim, *Challenging the secular state: The Islamization of law in modern Indonesia* (University of Hawaii Press, 2008)

book was reviewed by five scholars and experts across the globe and the reviews were published in reputable international journals.[24] In general, the reviewers express their appreciation, appraisal, and positive comment for the book that I authored. I would like to quote some of their positive comments below:

> · [this book is] *"a very important contribution to the literature on Islam and Muslim politics in general and on Indonesia in particular"*
> · *"it is a testimony to Salim's intellectual versatility that he brings these ethical divisions into focus, while also providing an even-handed overview of sharia debates".*

G. Legal Anthropology

Upon the completion of my doctoral study, I returned to Indonesia in March 2006 to teach at UIN Jakarta. While teaching, I assisted a foreign NGO in a recovery program post Tsunami in Aceh. This NGO focused on legal issues emerged as the result of Tsunami 2004. For six months, I had been living in Aceh and I learned about Aceh common law. From my learning on Aceh common law and legal issues of post-Tsunami, I wrote a monograph in Bahasa Indonesia discussing the practice of legal issue arrangements related to the lands, inheritance, and guardianship in Banda Aceh and Aceh Besar.

My involvement in some legal cases in post-tsunami Aceh motivated me to conduct a more intensive study. Coincidentally, there was an opportunity of postdoctoral fellow in a Germany leading research institute, Max Planck Institute for Social Anthropology located in Halle, ex East Germany region. I applied for this position with a research proposal on *Legal Issues among the postTsunami society.* Having interviewed in Jakarta, I succeed in this fellowship and I went off to Germany to begin my fellowship on November 1st, 2006.

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[24] Among others are *Journal of American Academy of Religion* 77 (2009), *Indonesia* 88 (2009), *Pacific Affairs* 82 (2009), *Studia Islamika* 17 (2009) and *History of Religions* 51 (2012).

In my first six months in Germany, under the mentorship of Prof. Dr. Franz von Benda-Beckmann and his wife Prof. Dr. Keebet von Benda-Beckmann, I recognized the significant difference of approach in understanding and explaining a legal fact. These two mentors were willing to introduce another anthropological approach which is new for me in the field of Islamic law. By this approach, the Islamic law study is navigated to the direction of seeking the causes of disputes, the process of settlement, the difference of legal reasoning as the basis of both claims, the results of the settlement and the logical arguments offered by the intermediary or judge in his verdict.

What about legal pluralism? Both Benda-Beckmanns agree that legal pluralism is one of analytical methods in the field of legal anthropology. It means that legal pluralism is not a discrete approach. Legal pluralism is defined as the existence of two or more legal norms or legal systems interacting one another in a process of legal modernization of a state country.[25] In Woodman's view, legal pluralism in a modern state is a specific method of legal arrangement for diverse population (races, ethnicities, and religions) to obtain his/her particular treatment or legal autonomy.[26]

Having the dispute and legal pluralism as the units of analysis, the legal anthropology was employed to explain and understand the social reality and personal experience in responding the legal cases. In this purpose, two qualitative methods (ethnography and case study) became so crucial in the legal anthropology approach. During my stay for 10 months in Lhoknga, Banda Aceh, I conducted an ethnography and case study for various legal cases which occurred in the village and the regency. I also looked into the disputes proceed by the *Mahkamah Syar'iyah* and state(civil?) courts in Banda Aceh and Jantho (the capital of Aceh Besar regency).

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[25] Michael Barry Hooker, *Legal pluralism: An introduction to colonial and neo-colonial laws* (Oxford: Clarendon Press, 1975)

[26] Gordon R. Woodman, "The idea of legal pluralism." *Legal pluralism in the Arab world* (1999): 3-19.

During my ethnography study of Aceh law, I conducted interview and observation for twofold purposes: (1) to describe deeply and holistically the Acehnese social law culture, particularly on the premise that there is a strong connection between Shafii mazhab and the local legal practice, (2) to explore the views and experiences of Acehnese people (local knowledge) in practicing the law and in responding legal cases. In this case, ethnography underlines the importance of native's point of view so-called *emic*. *Emic* is clearly different from *etic* which refers to the researcher's view and analysis.

Due to the significance of emic in ethnography, I managed to make time every morning or afternoon to make daily field notes. These notes narrated the interview results containing the name of the informants, location, date and time, keywords from the interview, analytical points, and reflective questions. Although most of interviews were digitally recorded, the field notes were more reliable when I need to quickly acquire some information. To date, I am still keeping all of my field notes. In addition to being as archives, these notes are often inspiring me to write papers for conferences or publication.

I have to admit that my background and my foundational discipline is the theory of Islamic law. This is the scholarship and expertise that I began since my study at the Department of Comparative Law and Islamic Schools of IAIN Ciputat in early 90-s. My second expertise on legal politics and legal anthropology was as a result of my intensive and extensive interaction with the literatures, communication with the reviewers, mentoring with other professors, and interaction with the other experts in these fields.

In the theories and methods in legal anthropology, I have learned greatly from Professor John Bowen, Washington University at St. Louis, United States of America. My connection was initiated by a book review[27] that I wrote for his book *Islam, Law and Equality in Indonesia.*[28] I deliberately

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[27] Arskal Salim, "Islamic Law and the Issue of Gender Equality in Indonesia." *Australian Journal of Asian Law* 7, no. 2 (2005): 187.

[28] John Richard Bowen, *Islam, law, and equality in Indonesia: An anthropology of public reasoning.* (Cambridge University Press, 2003).

quote here the Introduction and the Conclusion parts in that Review to point out how Islamic law is studied with a technically different method. In the Introduction section I wrote:

> *"[John] Bowen, a scholar from America, has sought to provide a new perspective, namely that of anthropology, in investigating Islamic law. For this anthropologist, who conducted participatory research for several years in the Gayo highlands of Aceh, the implementation of Islamic law is not exclusively understood as a transcendence of ritual, but is viewed more as a cultural phenomenon where individuals and society are involved in the process of its formation. Islamic Law, as such, consists not only of divine inspiration originating from God, but is also a product of the aforementioned interaction."*

Later on, on the Conclusion section I asserted:

> *"What Bowen has done via this work constitutes an analysis of Islamic law as a socio-cultural phenomenon and not merely as a legal or political fact. In the context of academic developments in Indonesia this book is clearly a relatively novel and very valuable contribution. For until now empirical studies which have sought to take up a case involving the implementation of Islamic law have been looking more from the point of view of accordance with Islamic legal precepts as a parameter. In other words, the academic research we often encounter in Islamic tertiary institutions in Indonesia, in mini-theses, theses and dissertations, invariably posit Islamic legal doctrines as the standard of truth to be used to interrogate whether a case of the application of an Islamic law within society is in accordance with, or conversely in fact contrary to Islamic legal regulations. This book of Bowen's teaches us a lesson that Islamic law is not exclusively to be found in Holy Scriptures, but also emerges in all sorts of public reasoning, both horizontal*

and vertical in nature; in village meetings, court rooms, parliamentary sessions and bureaucratic decisions".

My research experience with John Bowen during Andromaque project (France) for three years (2011-2013) gave me more opportunity to study further on the legal theories and anthropology methods. Our research focused on the property rights of women in Aceh and South Sulawesi. The property rights include the dowry, joint property, heredity, and post-divorce settlement. In Aceh and South Sulawesi, we paid some visits and made some observation of trials in religious courts. We also interviewed some parties such as the judges, lawyers, the plaintiffs (women), heads of village, and some academia in Syiah Kuala University and Hasanudin University. I obtained some specific lessons from John Bowen in this research, especially in applying the framework of plural legal reasoning within the dispute of women property rights. Parts of this study added with some chapters authored by research assistants and other Indonesian scholars has been published by Brill in 2018.[29]

H. The Pluralism of Islamic Law

On the Islamic landscape, it is a common phenomenon of pluralism of thoughts or legal practices. The earliest pluralism can be found in the era of Prophet Muhammad PBUH. It was narrated in Sahih Bukhari that the Prophet instructed a Muslim squad to fight the Bani Qurayza. In that instruction, Prophet emphasized that they should perform Asar prayer in the Qurayza village. A part of the squad interpreted this command literally, thus they performed Asar prayer once they arrived at the village though the prayer time was overdue. Another part of the squad depicted the message differently. The squad should travel so quickly thus they can still perform Asar prayer in the middle of their journey. When Prophet acknowledged this difference, he did not make any correction on both interpretations. This sample indicates that the practices of Islamic law in Muslim society have never been monolithic. The historical facts showed that for the first three centuries of Islam presence (6th century), the practices and

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[29] John Bowen and Arskal Salim (eds), *Women and Property Rights in Indonesian Islamic Legal Contexts*. (Leiden: Brill, 2018).

thoughts of Islamic law were so plural as indicated by the emergence of Islamic legal mazhabs from Sunni (Hanafi, Maliki, Shafii dan Hanbali) and non-Sunni (Ja'fari and Zaydi).

I feel so lucky to begin my intellectual career as a student of the Department of Comparative Law and Islamic Schools where I learned the dynamics of early Islamic law. For more than ten years, I have been exploring the anthropology of Islamic legal thoughts by employing legal pluralism as an analytical tool. I frequently found this method and approach in my social experience and I can peruse it for my personal religious practice.

I recalled when I was living in London in 2010 and performed fasting during the Ramadhan. I woke up and had my *sahoor* at 2.30 in the morning and I had my *iftar* at 8 in the evening, thus I was fasting for more than 17 hours per day. Thankfully, the time of *sahoor* and *iftar* moved slowly each day, the *sahoor* ended later and the *iftar* came earlier for 2 or 3 minutes. For example, in early Ramadhan 2010 the *imsak* was at 3.19; by the end of Ramadhan 2010, the *imsak* was at 4.27. *Iftar* time in early Ramadhan 2010 was at 20.33 while at the end of Ramadhan it was at 19.31.

I found some interesting facts on the fasting hours in London at that time. From the flyers that I got from the mosque near my flat, there were two versions of *imsak* time namely Central Mosque London and Hizbul Ulama UK. The *imsak* time that I mentioned earlier was by Central Mosque London. The Hizbul Ulama, on the other hand, set the *imsak* time 30 minutes later than the Central Mosque. Let say if the Central Mosque *imsak* time was 3.19, the Hizbul Ulama time was 3.49. One day, as I had some work at the office, I had my sahoor earlier that night and I intended to skip *sahoor* in the morning. The next morning, my wife and my son were getting up late, five minutes over the *imsak* time by Central Mosque version. Having in mind that there was another version of *imsak* time, they decided to follow the second version by Hizbul Ulama which allowed them to have more time to have their *sahoor*. As I enquired some of my colleagues in London, they also preferred the *imsak* time by the Hizbul Ulama for it gave them more time to enjoy their meal.

This kind of flexible schedule could also apply for the *iftar* time, particularly when Ramadhan came in summer whose day time is longer than the night. The fiqh literature mentioned that there are at least four different opinions for the *iftar* time in the countries where the days are longer than the nights. The first opinion states that the *iftar* is signaled by the sunset, thus if the sun sets at 10 p.m., the *iftar* is at 10 p.m. The second opinion mentions that the *iftar* time is set by the most proximate Muslim country. In the European setting, for instance, the closest Muslim country is Morocco and Turkey. The third opinion asserts that Ramadhan time (including the *imsak* and *iftar* time) is inferred from the countries of origin of Islamic sharia (Mecca and Madinah). The last opinion says that the fasting time is defined by the person's country of origin.

Of those four opinions, I personally prefer the first one, that *iftar* is defined by the sunset. It does not necessarily mean that I imply the first opinion is the most correct of all, yet I feel that the first option gives me a spiritual comfort. It does not feel correct for me to have my *iftar* while the Asar time is going on. You can imagine if you have your *iftar* then you perform Asar prayer instead of *Maghrib* prayer. However, I was not always consistent with that first choice. There were one or two occurrences during my stay in Europe that I had *iftar* at 6.00 p.m. when the sun was not completely setting. For example, when I was invited as a guest in my colleague's house when I follow the host's believed opinion that the *iftar* was at 6 p.m. In that case, I negotiated my personal option for respecting the host.

It has been long time that I acquired some axiomatic explanation from Islamic law textbooks related to the number and time in the Quran. The maxim mentions that any number and time in the Quran are absolute and nonnegotiable. However, as I lived and experienced the different settings, I would predict that such maxim may no longer valid. My first encounter with this maxim was in my undergraduate year in Ciputat. I was reading an article by the late Professor Ibrahim Hosen (*Allah yarham*). He pointed out in this article that the Quran told a story about Ayub who promised to hit his wife for 100 times (with a single lid) but eventually he hit only once (with 100 lids bundled as one). This story indicates that despite the explicitly commanded number, the practice can be applied slightly differently. It means that there is another interpretation

that one hit may mean a hundred hits. My thought was more provoked by David Powers[30] analysis on the Islamic heredity law in Arabic society. The law says that the widow of a dead husband gets 1/8 or 1/9. For Powers, though the Quran mentions 1/8 explicitly, in the legal heredity practice which could imply the `awl or rad (rounding up or down), the amount may change.

There were definitely some socio-historical justifications of how legal changes occurred. One of the strongest reasoning stated that the change occurred in the early period of Islam and the early generation of the Companions and tabi'in. The legal change was considered as legitimate since it was guided by the revelation and strong eschatological and spiritual nuance. However, this justification did not provide a satisfactory answer. Even more, another question arose and I kept looking for the valid explanation.

One of the most compelling questions was: Is every legal opinion (ijtihad) contains truth (hal kullu al-mujtahid musib)? There is a hadith saying that a valid ijtihad will earn two advantages while an invalid ijtihad will earn one advantage. When brought to the legal setting, this question can be formulated as: in every legal problem, does God only require one single rule to apply (hukm mu`ayyan)? Further, the question continues, "If Islamic law is rooted from the God conduct who is The Most Authoritative, why there are so many legal opinions in the same space and time which claim as having the equal legitimacy? If all opinions are equally legitimate, does not God have a specific legal command? In short, is there only one valid legal opinion; or are there plural valid legal opinions?

Questions after questions continued: "If God does not have a specific command, who verifies the legal compliance as what developed by the Islamic scholars?", "If God has multiple legal commands but the humans cannot retrieve that due to their limitation, can sharia contribute meaning to the humanity?", "In contrast, if God has a command and the

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[30] David S Powers, "Islamic Inheritance System: A Socio-Historical Approach." *Arab LQ* 8 (1993): 13.

humans retrieve it, how can we differentiate whether the legal opinion belongs to God or manmade?

Quite often, as an escape from this conundrum, I tend to revisit the concept of God's Oneness. God is The Most Singular, and the other creatures are plural. With this perspective, I imagine that the singular God despite His ability and command, He does not create one single kind of creatures, one single entity of life, one legal structure, or one single social system. Aside from his Oneness, any other creation is plural, thus the diversity is given.

I. Conclusion

To conclude this article, I would like to make a final note on the use of autoethnography method in my personal narrative all above. There are two emerging questions here. First of all, how can personal stories be considered as scientific? In this case, Carolyn Ellis mentions that there are three questions for which can be answered affirmatively prove the value of personal narrative. Those questions are (1) Can the author legitimately make these claims for his story? (2) Did the author learn anything new about himself? (3) Will this story help others cope with or better understand their worlds?[31] For these three questions, I am confident answering with affirmation that my narratives fulfill those questions.

My second question quoted Sarah Wall's (as mentioned in the Introduction section): Is personal experience which is beneficial for a wider context can be seen as a research result? As a legal ethnographer, I completely agree with her who believes that knowledge is not necessarily produced by research work, given that personal narratives can contribute knowledge to what we know about the world in which we live.[32]

Through this autoethnographic paper, I involved myself intensely in a process of academic culture (research and

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[31] Carolyn Ellis, "Creating Criteria: An Ethnographic Short Story", *Qualitative Inquiry* 6 (2) 2000, pp. 273-277.

[32] Wall. "An Autoethnography on Learning", p. 11.

publication on Islamic law topics) which is complex in terms of struggle of thoughts. My stories went across time, themes, theories, scientific forums, which might not always be linear. All of these efforts are in the spirit of presenting this autoethnographic piece which both personal and intellectual, both evocative and analytical, both descriptive and theoretical.

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