Postmodernism Approach in Islamic Jurisprudence (*Fiqh*)

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Abstract: The history of Islamic jurisprudence (*fiqh*) has gone through various phases. From the time of the Prophet Muhammad (PBUH), it has continuously become a dynamic force in fulfilling the contemporary needs of the Ummah. After the period of imitation (*taqlid*), Islamic jurisprudence enters the renewal process (*tajdid*) in order to rejuvenate Muslim society to the practice of Ijtihad. The emergence of new approach was caused by the changes and developments in human life that spark to the existence of new issues, which their answers cannot be traced in the works of classical fiqh. Accordingly, some would prefer to utilize the postmodernism approach in the process of interpretation of the divine texts in order to get the ruling (*hukm*). Some of the thinkers and scholars seem to neglect the normative guide in classical *Usul al-Fiqh* (the principle of Islamic jurisprudence) and tend to formulate new approaches in jurisprudence deciding process such as deconstruction, hermeneutics, limitation theory and double movement theory. Therefore, this article tends to analyze in the frame of new discourse of postmodernism approach in Islamic Jurisprudence (*fiqh*). This is especially in jurisprudences that are related to gender issues such as polygamy, inheritance and woman's testimony. Eventually, it becomes crucial to critically analyse the postmodern approach in *fiqh* whether it is in accordance with the provision in the divine scripts and the higher objectives of Shariah.

Key words: Islamic jurisprudence % Postmodernism % Gender % *Fiqh* % Polygamy

INTRODUCTION

The emergence of various streams of Islamic legal thoughts among the classical and contemporary scholars showed the dynamical development of Islamic jurisprudence discourse along its rich history. Started along the way from the early years of the Prophet PBUH, to the ages of the Caliphates, until it came to its golden ages in the time of Umayyad and Abbasid, varieties of trends in Islamic legal thought came to the forth as a response to the contemporary need of the different times. In our contemporary ages, the Islamic legal thought continues to develop until the emergence of a new trend of the postmodern trend. This new trend offers several new methods in Islamic jurisprudence especially in the epistemological level. It has gained strong attraction on some parts of Muslim society as it promotes new ideas that are marketable in the contemporary global world such as promoting equality of rights among citizens and genders and safeguarding the minority groups' rights in society. Therefore, this new trend deserves a detail analysis and careful academic observation.

Contemporary Typologies in Islamic Thought and Jurisprudence (*Fiqh*): According to Abdul Rahman Abdullah, basically there are no consensus upon the definition on Islamic Thought's trends or the concepts they try to promote [1]. There are generally five main streams that underlying the Islamic thinkers' mind that illustrate varieties of trends and stands in different issues [2]. There are:

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C   Fundamentalism - A group that belief Islam is the only doctrine to promote the development of Ummah and humankind. For this trend, Islamic tradition is sufficient andfree from the need of alien tradition whether from the east or the west. They call for reviving of Ummah back to their main reference that is Al-Quran and Sunnah according to the understanding and practice of the Companion.

C   Traditionalism - Agroup that pay it utmost concern on the traditions that is well-developed in certain context of society. For this group almost all the main problems in human lives had been discussed by the classical scholars in their works and the previous generation just have to search and apply the solution that were already in the heritage of their ancestor.

C   Reformism - a group of thinkers that put their effort in order to reconstruct the traditions and heritage of classical *fiqh* works by providing with new inputs for them. For them the rich and vast Muslims' intellectual tradition must be reviewed by new perspectives in order to maintain its relevance in the modern ages.

C   Post-Traditionalism - this stream try to critically analyse the classical works and traditions by the modern paradigm and then to reconstruct the traditions.

C   Modernism - they are group of thinkers that only accept the rational aspects of the religion and reject any perspectives or belief based on solely mysticism and spirituality.

Nevertheless, the main streams in Islamic thoughts along the history are the threefold of traditionalist/ fundamentalism, reformism and modernist-secularism. Eventually, in the 21st century, the classification of Islamic thought happened to be more complex, detail and not longer match the classical typology. For Example Tariq Ramadan proposed a new typology of this matter into six different streams that he defined as traditionalist scholastic, literalist *salafi*, reformist *salafi*, political *salafi*, liberalist or rationalist reformist and sufisme [3]. The detail descriptions of this classification are.

C   Traditionalist scholastic - it is a stream that tend to make reference exclusively to a particular school of *fiqh* range from Hanafi, Shafi`i, Hanbali, Zaydi to Ja`fari and others. Interpretations of scripts of Al-Qur`an and al-Hadis are base on these *madhhab'*s perspectives and therefore there are no room for new *ijtihad*. The main groups represent this trend are Doebandis, Barewalis, Talibans and Jama`at al-Tabligh.

C   Literalist Salafis - this trend reject any mediation of mazhabs' perspectives in the process of interpreting the divine scripts. They refer themselves as Salafi as their commitment in the methodology that they belief is the same being carried by the Companion of the Prophet PBUH and the three great generations after those periods. For those who submit themselves in these trends, they assert that clear divine scripts are authoritative and do not deserve any speculative interpretation (*ta`wil*).

C   Reformist Salafis - a trend in Islamic legal thought that inclines to investigate the 'purposes' and 'meanings' that they belief underlie the divine scripts and beliefs that the effort into *ijtihad* is still a need for ensuring the relevancy of Shariah in facing the new challenges in the modern world. This trend is represented by a long list of modern Muslim thinkers in the 20th century such as Jamal al-Din al-Afghani, Muhammad 'Abduh, Rashid Ridha, Iqbal, Malek Bennabi, Maududi and Sayid Qutb.

C   Political Salafis - this trend of thought yield a literal point of view especially in matters pertaining to political power, legislation of the Islamic legal punishment and they totally reject the notion of constitutionalism to be introduced to Muslim traditions. The aim of this group of thinkers is to establish the 'Islamic State' and 'Khalifah al-Islamiyyah' on the global level. *Hizb al-Tahrir* represents this trend of thought.

C   Liberalist/ Rational Reformist - this trend originated from the Western influences on some of Islamic thinkers resulting from the colonisation process. For this group of thinkers scripts from al-Quran and al-Hadith is limited by their context and disable to deal with modern individual and society matters that need to be solve solely by human faculty of reason.

C   Sufism - this trend tend to belief that Quranic and Prophetic texts instilled deep meanings and thus need some process of meditation and deep reflection in order to extract them. The school of sufis such as Naqshabandiyyah, Qadiriyyah, Shaziliyyah and others require the students (*murid*) to undergo levels of trainings and educations in the order to achieve certain spiritual conditions under the tutelage of a *Syaikh* [3].

There is also a typology proposed by RAND Corporation Report 2004, an intelligent agency under the US Marine that classify an ideology that they called as 'Islamism' into four main streams or trends which are

fundamentalism, traditionalism, modernism and secularism. This classification is based on the perspectives of all the trends mentioned on several issues pertaining to political and individual freedom, right of education, women's status, criminal judiciary and punishment, tendency to the process of renewal and reform and their attitudes towards the West [4]. Brief descriptions of these trends are:

C   Fundamentalism - it was divided into two categories, which is 'scriptural fundamentalism' and 'radical fundamentalism'. 'Scriptural fundamentalism' was referred to the trend that applies a rigid understanding and application of the divine scripts. Groups that represented this trend were the Wahhabis of Saudi, the Kaplan in Turki and the Iran revolutionist groups. Meanwhile the 'radical fundamentalism' is a trend of thought that incline to the aggressive version of Islamic teaching and has the possibility in resorting to terrorism. They also support a rigidness interpretation of religious texts. Hizb al-Tahrir, al-Qaeda and Taliban were included in this classification.

C   Traditionalism was also decided into two tendencies that are 'conservative traditionalism' and 'reformist traditionalism'. 'Conservative traditionalism' support a literal and strict Islamic teaching. Though they are not resort to terrorism, they resist modern value and the process of renewal and accept the opinion of local clerics and local traditional custom as their source in Islamic jurisprudence. Abdur Rahman I. Doi is among scholars that are included in this classification. The 'reformist traditionalism' however was referred to a trend that ready to tolerate to the process of reinterpretation of religious scripts in order to adapt with changes in society with the aim to safeguard the higher objectives of Shariah. Their sources of legislation are al-Quran, al-Hadith, modern jurisprudence, ethics and the local consensus of society. Among the forefront scholar for this trend is Yusuf al-Qaradawi.

C   Modernism is a trend that was characterised by their readiness to make major changes in the classical interpretation of religious scripts and Islamic teaching. They are also try to apply the method of historicity in interpreting Islam that is to understand the scripts according to its historical context and view that the teachings are only applicable in that certain social and historical contexts. Muhammad Shahrur, Bassam Tibi, Khalid Abou El-Fadl and Nawal Saadawi are included in this category.

C   Secularism is trend that aimed to secularised the religion by following the trend in the west that had isolated the roles of religion from the public and political sphere. This tendency was termed as 'mainstream secularism' meanwhile the 'radical secularism' is essentially describe by their 'anti American' and 'extremely hostile' tendencies [4].

This typology in the report has been criticised as it is mainly based on the perspective of United States Foreign Policy towards Islam especially in the 'war on terror' policy. Therefore, it is lack of careful analysis on the sources of Islamic jurisprudence utilised by these trends and the detail methodologies applied by them. For example, even though the Quran and Sunnah are mention as the main legal references to all the trends, the detail methodologies of dealing with the two and other sources such as *maslahah* and *'urf* were not been mentioned. It is the same with the notion of 'historicity of Islam' that is claimed in the report being the modernist are not really accurate. By its various forms and methods, historicity is more suitable and accurate to be classified as a method of the post-modern approach to Islamic jurisprudence that will be discussed later in this article [5].

According to Auda, there are basically three main tendencies in various contemporary theories of Islamic jurisprudence namely traditionalism, modernism and postmodernism. This classification is based on exhaustive analysis of current sources of Islamic jurisprudence such as verses of Quran interpreted according to the main exegeses, prophetic traditions in the collections of Hadith, Islamic higher interest (*maslahah*) induced from the scripts, rulings from traditional school of Islamic jurisprudence, rational arguments and modern values such as the Universal Declaration of Human Rights and similar international and national declarations. All the sources are also being analysed by their status of 'authority' in the perspectives of these contemporary tendencies range from the authority as proofs (*hujjah*), apologetic interpretations, interpreted (*mu'awwal*), supportive evidences (*isti'nath*), minor criticisms (*fi hi syai'*), radical interpretations and void (*butlan*) [5]. The three main tendencies contain several theories or trend in Islamic jurisprudence as described below:

C   Traditionalism tendency contains several trends such as the scholastic traditionalism that support the legal opinion of classical Islamic scholars in any certain *mazhab,* Scholastic neo traditionalism is more open in their attitude towards opinions in different school of

jurisprudence and tend to merge the opinions in order to give solutions to human problems. The neo-literalism are stream that hold a rigid interpretation of religious scripts and differ from the old-literalism due to their dependency on the hadith collection in one school of jurisprudence such as the Wahhabi version of the Hanbali school and reject the idea of purposes (*maqasid*) as a legitimate source of Islamic jurisprudence. The traditionalism tendency also manifested in the ideological based theory of some Muslim political movements that hold the concept of *hakimiyyah (*governance*)* is the right of God alone. They tend to reject the idea of democracy and resort to dictatorship for the sake of their political interest.

C   Islamic modernism is the tendency that its bases was developed by Muhamad Abduh (1905) and Muhammad Iqbal (1938), contains several trends for example the reformist interpretation or the school of thematic exegeses (*madrasah al-tafsir al-mawdu`i*) that hold the thematic method in interpreting religious scripts, apologetic interpretation trends that tend to interpret religious scripts base on certain modern ideologies such as democracy, capitalism, or socialism, stream that hold *maslahah*-based theories and the stream try put their efforts try to revise a number of *usul al-fiqh* methodologies such as the consensus (*ijma'*), analogical reasoning (*qiyas)*, abrogation(*naskh*) and others. The science-oriented reinterpretation also is included in this category due to its inclination to the modern science findings as the bases of interpretation for religious scripts as applied by Muhammad `Abduh himself [6].

C   The postmodernism tendency in current Islamic jurisprudence is being divided into several sub-tendencies such as the post-structuralism, neo-rationalism, the historicity stream, Critical Legal Studies (CLS) and finally the post-colonialism [5].

Postmodernism and its Emergence in Islamic Jurisprudence (*Fiqh*) Discourse: Postmodernism is a new tendency in the current intellectuals, arts and cultural processes that tend to reform all of those elements. It is a difficult concept to be defined accurately but basically it always being relates to the subjectivity and elasticity of values in human life, anti-rationalism and skepticism towards meta-narratives. It is response to the modernism thought and its influence in natural and social sciences and also try to provide a critical analysis and alternatives

to it. It is also skeptic and pessimistic towards the rational faculty of human mind specifically in its ability to grasp the 'reality' as such [7].

The postmodern thought started to appear in the field of literacy and architecturein the years between 1960's and 1970's. Its implied its skepticism towards various modern values such as 'truth' and 'justice' and also denounced the modern scientific inquiry methodologies as not 'scientific' enough. The basic method in postmodern analysis is the 'deconstruction' that was introduced by some French philosophers such as Derrida that assertedthat every dominant and authoritarian logocentrism values need to be deconstruct or decentralized [8]. The logo centrism values such as goodness, man, white, Europe are no longer have the dominant authority in the current discourse. The values that have been discriminated all the while such as badness, woman, black and Africa should be placed at the centre focus in the new discourse[9]. There are five basis of postmodernism thought[10] that are:

C   *The Death of The Subject and Author.* This thought hold that human beings do not have concrete and reliable consciousness of the reality. From Sigmund Freud to Nietzsche, they believed than human doesn't posses any concrete consciousness. Claude Levi Strauss rejected the existence of human objective consciousness and proposed that culture and its structures as a medium in understanding human cognitive ability. For Derrida 'subject' is only a construction of culture and for him the 'author' doesn't' play any roles in constructing the 'meaning'. Roland Barthes in his work titled *Image, Music and Text* [11] and Michel Foucault announced the 'death of the author' and according to Foucault 'author' is a modern phenomena that never exist in primitive and traditional society [12].

C   *Denial of reality.* Most of postmodern thinkers denied the existence of objective reality. They asserted that the 'reality' is just the construction of human mind or the result of social process in certain context. This is as being stressed by Baudrillard in his work titled *Simulation 1983* that the 'reality' is just reflection of images which have no bases of 'real' matter. These baseless images gave human being a kind of burden, which is the 'information loads' in the form of meaningless image simulations [13].

C   *The absence of 'meaning'* specifically the 'transcendental signified meaning'. For example Levi-Strauss pay his attention on the structure rather

than the meaning of certain proposition. Derrida hold that discourse or text is just symbol and does not contain any meaning as he mentioned that: " the text is all and nothing exist outside it," [8]. Other postmodernist belief that there are meanings in text but there are dependent on the interpretation of readers. In short, meaning in text exists in its pluralistic nature.

C   Post-modernist thinkers tend to *reject any meta-narratives and deny any claims of truth.* Meta-narratives are theories, knowledge, or world-views that claim to be the only truth. This includes the religions, science, positivism, socialism, democracy, liberalism, feminism andstructuralism. Foucault and Derrida agreed that there are no knowledge that is able to describe the truth about the reality of man and humanity [8]. They hold that the truth and authority of text only can be measured trough to the quality of their discourse. Due to the hegemonic nature of meta-narratives, postmodernist apt to replace it with new concepts such as discourse, invitation to discussion, instantaneous lightning-flashes, or local and mini-narratives [10].

Some of Muslim scholars tried to adapt this perspective into the field of Islamic jurisprudence [14]. Auda as mentioned before classify this new tendency in Islamic jurisprudence into five different trends. All the trends apt to apply the 'deconstruction' method on the normative, hegemonic values and teachings in Islamic jurisprudence and tried to bring about values that they saw as being discriminated in Islamic traditions especially in its jurisprudence. The differences of the five trends are according to their different perspectives on values that are regarded as 'logocentrism' in Islamic jurisprudence and targeted to be deconstruct. For example, the aim for deconstruction according to post-structuralism is the divine scripts, meanwhile for historicity trend is the period of revelation and for the CLS is the products of *fiqh* with its traditions due to their discriminative tendencies a specially towards women and the non-Muslims. The details of the tendencies of postmodernism in Islamic jurisprudence are below:

C   Post-structuralist is the postmodernism method of textual analysis. Some Muslim scholars applied thus approach in deconstructing the central position of Quranic texts in Islamic jurisprudence discourse [15]. In their efforts, the notion of revelation is being change from its normative concept. This trend hold

that the Quranic revelation to the Prophet Muhammad P.B.U.H is just a message that was being interpreted by the Prophet himself according to the surrounding culture and linguistic practices in his time. The aim of these efforts basically is to emancipate human being from the domination of religious scripts. This is the central theme in the postmodern Muslim thinkers such as Mohammad Arkoun, Nasr Hamid Abu Zaid, Hassan Hanafi, al-Tahir al-Haddad and Ebrahim Moosa.

C   Historicism is the trend that belief any ideas in texts need to be analysed trough their functions and positions in their historical contexts and developments. Scholars in this stream proposed that the Quranic texts must be analysed through this perspective due to its nature as the product of certain cultural context. According to this method, some of Quranic normative rulings are regarded as applicable only in the certain historical context that they were meant to be. Therefore, these rulings should not be applied in other contexts although it was stated in the clear, definitive and authoritative religious scripts. This is the theme for the Muslim thinkers such as Muhammad Shahrur [20] with his theory of 'limits' in Islamic Jurisprudence, Mahmoud Muhammad Taha [16] and `Abd Allah Ahmed al-Na`im [17] with their theory of reverse-abrogation (*nasakh*) and Fazlurrahman with his 'double movements' theory [18].

C   Anti-rationalism or neo-rationalism also applied the historicity method and gave the full authority to the rational ability of human in the process of acquiring jurisprudence. It has identical tendency as the Mu`tazilah or the school of rationality in Islamic theology. Nevertheless, there is a main difference between the neo-rationalist and the classical Mu`tazilah trend of thought which is the bigger credit that they gave to the humans' rationality to the extent that it has the ability to abrogate the definitive scripts [19].

C   Critical Legal Studies is a movement that has emerged in the United States. The objective of this movement is to deconstruct some old, discriminative legal doctrines in the legal system and replace it with the new policy that manage to benefits the society. They usually launch their attacks on the government that is responsible in legislating the jurisprudences. Scholars that supported these movements are those who were feminist and anti-racism advocators. Some of Muslim scholars hold the same idea in

deconstructing all sort of 'power' that they regarded to be influential in the legislative process of Islamic jurisprudence along the history of its development. These 'powers' range from the male domination in the legislative process to the tribe (*kabilah*) that was in power in Muslim societies during the jurisprudence's revelation or legislative period. For example the modernist and postmodernist Muslim feminist deconstructed the role of classical scholars that the viewed as the dominant 'male elites' who are responsible in discriminating women in their legal opinion However there is a significant difference between modern and postmodern Muslim feminist regarding to their aim of deconstruction. While the modern feminist tend to the deconstruct the dominant role of classical scholars, the postmodernist feminist went further by deconstructing the religious scripts that were viewed as the sources for women's discriminations [20]. Fatima Mernissi for example, tried to challenge all sort of rulings in the scripts that restrict women's sexual freedoms in the form of family institutions, dress codes, or the rule of '*iddah* in the divorce's procedures in Islamic Jurisprudence [21]. Another CLS trends in Islamic Jurisprudence manifested in the critical analysis on the certain tribes (*kabilah)* or governments' influences in the legislative process of the jurisprudence. For example, as being claimed by Nasr Hamid Abu Zaid, the motivation for Muhammad Idris al-Shafi`i in writing his monumental work in *usul al-fiqh*, *al-Risalah* was to demonstrate the superiority of Quraisy tribe to the extent that its traditions should be regard as a part of Islamic teaching [22].

C Post-colonialism movement aimed to support any values and cultures that were been discriminated by the west in order to overcome the west domination over the entire nations. Edward W. Said is among the forefront scholars of this movement. This trend had been welcomed by several Muslim scholars in order to deconstruct the western hegemony on Islam specifically the western perspective on Islam as a religion of anti-rational and violence. This trend also applied its criticism on the works of the western orientalist in the area of Islamic jurisprudence. They are being criticised for their prejudices to the Islamic cultures and traditions and for their claim that Islamic jurisprudence is a replica of the classical Roman's jurisprudence [6].

Postmodern Islamic Jursiprudence (*Fiqh*) Discourse on Gender Issues: In order to have a clear perspective on the deconstruction efforts of the Muslim postmodernist on the structures of classical Islamic jurisprudence, it will be significant to view their opinion on some Islamic jurisprudences pertaining to women or gender-related issues. This is according to the postmodern's deconstruction belief that women or 'female' is the important element that was being discriminated in classical Islamic jurisprudence by the 'male' elements that is the logocentrism of the system.

The postmodern discourses in Islamic jurisprudence are usually manifested in the harsh criticism or radical interpretations on the scripts that touch upon issues regarding women. Fatima Mernissi for example, criticised all the rulings of scripts that she viewed as restricting the sexual determination of women. For her, this kind of rulings were underlies by the negative perspectives on women as the source of social disaster (*fitnah*) due to their strong sexual desire and therefore need to be restrain under the religious sanctions. She applied the classical method of interpretation with the modern sociological analysis on the Quranic and Hadith's texts in order to achieve new conclusions. As for the issues of relating to the obligation for women to wear their veil (*hijab*), Mernissi claimed that it is in contradiction with the egalitarian spirit that is the main theme in the message of Prophet Muhammad P.B.U.H. She stressed out that this egalitarian notion had lost their influence in the Islamic Jurisprudence due to the dominant male elites, who were the Companions of the Prophet that were responsible in decreasing women's legal and social status that they enjoyed during the time of the prophet. The same case was in the issue of *nusyuz* as being stated in Quran, al-Nisa', verse 24 which allows the husband to inflict injury on his wife's body as a punishment due to her refusal to commit sexual intercourse with him. Mernissi viewed this allowance implies a ruthless stipulation and serious discrimination on women [23, 24].

Amina Wadud in her book titled *Qur'an and Woman* applied the hermeneutics reinterpretation on the religious scripts that illustrated the domination of man on woman. In order to apply the methodology on interpretation, an interpreter needs to consider three important elements: i) the context of the script ii) the grammar composition of the text, iii) the world-view that surrounded the text. Applying this method, Wadud touched upon the rulings in verse number 128 of surah al-Nisa' and verse number 231 Surah

al-Baqarah pertaining to the right to declare divorce that is exclusively given to the husband. Wadud agreed that this rightexisted in the time of revelation and was being regarded as normative rights for man in Islamic jurisprudence although it is not explicitly declared in the scripts that woman are refrained from it. But for her, this doesn't mean that this practice need to be maintained in the modern context as it is only match the needs and social condition on some particular time frame. Moreover, she argued that the practice is also contradicts the culture before the period of revelation when women also had the rights to declare divorce [25]. In the issue of polygamy as being stated in al-Nisa verse 2 and 3, Wadud argued that monogamy is the original type of marriage that was been recognised in the Quran referring to the verse number 129 in the same chapter that stressed the impossibility for husbands to do justice to their wives. She stated her disagreement on the justifications of polygamy that she viewed as contradictory with the spirits of al-Quran. One important justification that Wadud rejected is the notion that polygamy's able to solve economic crises involving women when a husband will provide for his wives financial supports. This is for Wadud, only applicable in certain condition of society where man is the sole breadwinner for the family whereas in the modern reality the conditions have changed. Wadud also regarded the justification as a simplistic perspective on economic crisis [25]. This is another challenge for the Muslim jurists to address the issues raised by so-called 'thinkers' [26].

For the verse number 282, Surah al-Baqarah that touch on the needs of two female witnesses in replacement of a male witness, Wadud concluded that this rulings must be contextualised accordingly and may changed by the change of the context. This practice was stipulated in the context that women are easily to be victimised in order to forced her to cancel her testimony due to certain interest. Therefore, the second female testifier was a need to remind the former about her testimony and to be firm on it if she was forgetful or being forced by somebody else to cancel the testimony. Wadud argued that if the right to testify had be given to women in the difficult years of wars and confrontations during the time of revelation, women should play the bigger roles within the conducive modern time in building the modern Muslim society that is based on justice, equality, morality and at the same time rejects any sort of discriminations and exploitations [25].

Wadud also commented on the ruling pertaining to female inheritance as being described in Quran, al-Nisa' verse 11 to 12 which stated that female only inherit half of the portion of his brother. Wadud stressed that it is the not the only division of inheritance that is permissible in Islam. In fact, the process of dividing the inheritance should be within the consideration of the real benefits and interests of all the inheritors though it doesn't follow the provision that is in the scripts as such. She gave an example in a family that the father has died and the mother was is left with two daughters and a son. Wadud argued that it is unacceptable to let the son have a bigger portion of the inheritance while the person that will be taking care of the mother is one of her daughter [19]. Muhammad Shahrur share the same sense when he included that the provision of inheritance division stated in the scripts in the third category of his limits theory. This third category manifested by the provision in the script that contains both of the highest limits and the lowest limits. So the two portion of inheritance for the male according to Syahrur manifest the maximum limits which is the 66.6 percent of the inheritance while the female portion is on the minimum limits which is the 33.33 percent of it. If the male happen to receive 60 percent and the female receives 40 percent of the inheritance is it considered to be permissible according to Syahrur as long as the portions don't exceed the both of the limits. Therefore these are some methods applied in deconstructing some of the provision that is in the definitive religious scripts [27, 28]. This differences and approaches do not mean to marginalize women [29], however many other aspects which give advantages to them.

CONCLUSION

Postmodernism developments in the discourse of Islamic jurisprudence (*fiqh*) often illustrated by radical changes in the approaches applied by its thinkers, scholars and practitioners in the effort of adapting with the constant changes in societies. The postmodern discourse on *fiqh* has the tendency of penetrating a new dimension of Islamic jurisprudence to ensure it stays relevance with the changes of time, place and condition. This is part of the dynamic developments in *fiqh*. However, due to its philosophical basis, that hold the notion of subjectivity of meaning and the denial of truth, this tendency should be carefully and critically evaluated

in order to maintain the basic characteristics of Islamic jurisprudence that were rooted in the definitive divine scripts (*al-nass al-qat`iyyah*) and the higher objectives of the religion (*maqasid al-shari`ah*). Therefore, a critical and selective approach need to be done by the Muslim jurists and scholars in order to face the emergence of this post-modern tendency in Islamic jurisprudence strategically.

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