

Foreign Elements In The Methodologies of USUL Fiqh: Analysing The Orientalist Thought

Authors : Ariyanti Mustapha

Abstract : The development of Islamic jurisprudence since the first century of hijra has fascinated many orientalists to explore the historiography of Islamic legislation. The practice of uŕĒl fiqh began during the lifetime of the Prophet Muhammad and was continued by the companions as the legal reasoning due to the absence of the legal injunction in the QurĒn and Sunnah. The orientalists propagated that the Roman and Jewish legislation were transplanted in Islamic jurisprudence and it was the primary reason for its progression. This article focuses on the analysis of foreign elements transplanted in the uŕĒl fiqh as mentioned by Ignaz Goldziher and Joseph Schacht. They insisted the methodology of Sunna and IjtihĒd were authentically from Roman and Jewish legislation, known as Mishnah and Ha-Kol were invented and transplanted as the principles in uŕĒl fiqh. The author used qualitative and comparative methods to analyze the orientalists' views. The result showed that many erroneous facts were propagated by Goldziher and Schacht by claiming the parallels between the principles, methodologies, and fundamental concepts in uŕĒl fiqh and Roman Provincial law. They insisted Sunna and IjtihĒd as an invention from the corpus of Jewish Mishnah and Ha-kol and further affirmed by Schacht that Islamic jurisprudence began in the second century of hijra. These judgments are used by the orientalists to prove the inferiority of Islamic jurisprudence. Nevertheless, many evidences has proven that Islamic legislation is capable of developing independently without any foreign transplant.

Keywords : foreign transplant, ijtiĒad, orientalist, USUL Fiqh

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