



Research Paper / Araştırma Makalesi

The Islamic Judicial System as a Moslem's Problem Solving Institution of The Modern Islamic Law (In The Case of The Adab al-Qadi of "al-Hidaya" And "al-Nihaya")*

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Annotation

Islam is the truth and latest religion on the world. The Islamic history, that written by moslems, who lived on the world of the different countries, it was one of these proofs. And they were effected to the all world with their unique culture, and with their distinctive science, and with their righteous law system, and mentality. The Islamic Law system one of the great success that written by moslems too. There is so meaningful part of the Islamic Law that named "Adab al-Qadi". We can summarize the all Islamic Law system in the case "Adab al-Qadi" as a mirror. Actually, we found the "Adab al-Qadi" in the books of "al-Hidaya" and "al-Nihaya" as a summary of the Khanafit Mazkhab, that founded in the Central Asia. So, we'll talk about the comparison analyze between "al-Hidaya" and "al-Nihaya" in the perspective of the Islamic Juridical Law system, and we'll show it as moslem's problem solving institution of the modern Islamic Law.

Key words: Islamic Law, Marginani, Signaqi, al-Hidaya, al-Nihaya, Adab al-Qadi.

Modern İslam Hukukundaki Müslümanların Husumet Mercii Müessesesi Olarak İslam Yargı Sistemi (Hidâye ve Nihâye Eserlerindeki Edebü'l-Kâdı Bölümleri Örneğinde)

Öz

İslam dini en son ve hakikat dindir. Müslümanlar tarafından ortaya konulan İslam tarihi de bunun kanıtıdır. Nitekim, müslümanların kendine özgü medeniyetinden, orjinal fikir ve buluşlar ile ortaya koydukları ilim ve bilimden, vahiy ve akıl kaynaklı adalet prensibine göre çalışan hukuk sisteminden, özgün yaşam tarzıyla sıkı sıkıya bağlı olan dünya görüşlerinden, muhakkak dünya halkı da etkilenmiştir. Diğer hukuk sistemlerinden ayrıcalıklı olarak müslümanların tesis etmiş olduğu İslam hukuk sistemi de bunlardan biridir. İslam hukukundaki "Edebü'l-Kâdı" bölümü, önemine binaen yargıçı (fakihi) diğer tüm fikhî konuları da bilmesini kaçınılmaz kılmıştır. Bu sebeple, "Edebü'l-Kâdı" bölümü İslam hukukunun bir özeti (ve aynası) olarak da değerlendirilebilir. Aslında, sözünü etmiş olduğumuz "Hidâye" ve "Nihâye" eserlerini, biz *Orta Asya Hanefî* ekolünün özü olarak kabul etmekteyiz. Bu nedenle, makalemizde "Hidâye" ve "Nihâye" eserlerindeki Edebü'l-Kâdı bölümlerini, genel olarak İslam Hukuku (özel olarak da İslam Yargı Hukuku) açısından mukayese edeceğiz. Bununla beraber, günümüz hukuk sistemleri arasında, özellikle müslüman toplumundaki dava ve husumetlerin çözüm mercii bir müessese olarak çalıştırılabileceğinin mümkün olduğunu ortaya koymaya çalışacağız.

Anahtar Kelimeler: İslam Hukuku, Merginâni, Signâki, Hidâye, Nihâye, Edebü'l-Kâdı.

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A. The Meaningful Knowledge About al-Marginani and al-Signaqui

a.a. The Short Life Story of The Great Khanafit Faqih Named al-Marginani and His Works

a.a.a. Name:

In all life story, we can find the role model influence for us and we use it as a mirror for our life, that given to us only once. Marginani was one of them for us in the Islamic Law in the Central Asian region. He was named in the *tabaqat* books as *Burhanuddin Abu al-Hasan Ali b. Abu Bakr b. Abdulcalil al-Fargani al-Merginani al-Rishdani*.¹ And his laqab was in the *fiqhs* books calling "*al-Marginani*" mostly. And sometimes he was named "*al-Reshdani*" too. His authority was knowing in the Central Asian Khanafit Law School as "**Sahib al-Hidaya**" also.

a.a.b. The Date of Birth and Dead:

Marginani was born in the small village of the big city Marginan at the **511** of Hidjra and **1117** of Meladi calendarial date. This date meaning the so meaningful period of the Qarakhanit State history, that raised so more *fukhahas* and *ulamas* in the Central Asian Islamic History. And he was dead at the **593** of the Hidjra and **1197** of the Meladi in the famous city Samarqand. His tomb settling in Samarqand city at now.²

a.a.c. Nasab:

Actually, we talked about Marginani's *nasab* in the part, that related with his name's knowledges, shortly. His father's name was Ali, and Grandfather's name was Abu Bakr, and thirth father's named as Abdulcalil. Laknawi talked about Margiani's *nasab*, and shortly we can summarize his thesis like; *Marginani's nasab withstands to Usman, who was groom of the Prophet Mukhammad*.³ Therefore Marginani was caring about *tasaavuf* also with the Islamic Law.

a.a.d. Teachers and Students:

We can summarize Marginani's teachers shortly: *Najmuddin Abu Hafs al-Nasafi (461/537-1068/1142)*, *al-Sadru al-Shahid Husamuddin Umar b. Umar b. Abdulaziz (483/536/1090/1141)*, *Osman b. Ali al-Bikand (Baykandi) (552/1157)*, *Ziyauddin Muhammad b. Husayn al-Bandaji (545/1150)*, *Ali al-Isbijabi (454/535-1062/1140)*, *Kivamuddin Ahmad b. Abdurrashid al-Buhari*, and finally, we can talked about his grandfather *Abu Hars Umar b. Ali al-Zandaramisi* as his teacher too.⁴

And we shall to give a short portrait about his students who theached them like: *Shams al-Aimma Abu al-Vajd Shamsuddin Muhammad b. Abdussattar b. Muhammad al-Imadi (642/1244)*, *Mahmud b. Husayn al-Usturshani (632/1234)*, *Nizamuddin Umar (600/1203)*, *Shayh al-Islam Jalaluddin Muhammad*, *Shayh al-Islam Imaduddin b. Abu Bakr*.⁵ Between of these his students Nizamuddin, Jalaluddin and Imaduddin were his sons. Actually, Nizamuddin Umar was so famous with his *fatawas* in the Marginan city. Therefore, he wrote the book named "*Jawahir al-Fatawa*".⁶ And we can find his granchild named *Abu al-Fath Zaynuddin Abdurrahman b. Abu*

¹ Aiiitmat Kariev, "Burhaneddin el-Merginani'nin "el-Hidaye" İsimli Eseri ve Hukuk İlmindeki Yeri", *Orta Asya Alimlerinin İslam Medeniyetine Katkıları: Bildiri Kitabı*, ed: Muhittin Düzenli vd., (Bişkek: Kırgızistan-Türkiye Manas Üniversitesi Yayınları, 2019), 631.

² Kahlala Umar Rıza, *Mujam al-Muallifin Tarajim al-Musannif al-Kutub al-Arabiyya*, (Beirut: Maktabat al-Musanna va Daar Ihya al-Turas al-Arabiyya, 1957), 7/45-46; Muhammad Abdulhay b. Muhammad al-Laknawi, *al-Fevaid al-Bahiyya fi Tarajim al-Hanafiyya*, (Cairo: 1324), 141-144.

³ Hayruddin Zirikli, *al-Alam*, (Cairo: 1957), 5/73; Sarkis, *Mujam al-Matbuat al-Arabiyya*, (Cairo: 1928), 2/1739.

⁴ Yusuf Ziya Kavakçı, *XI. ve XII. Asırlarda Karahanlılar Devrinde Mâvera' al-Nahr İslam Hukukçuları*, (Ankara: Sevinç Matbaası, 1976), 131-133; Ahmet Özel, *Hanefi Fıkıh Alimleri*, (Ankara: Türkiye Diyanet Vakfı Yayınları, 3. Baskı, 2013), 86-87.

⁵ Abdulqadir Kurashi, *al-Jawahir al-Mudiyya fi al-Tabakat al-Khanafiyya*, (Cairo: 1398), 2/627-629; Tashkubrizaada, *Miftah al-Saada*, (Cairo: 1968), 2/264.

⁶ Zehebi, *Siyar Alam al-Nubala*, (Beirut: Daar al-Shafak, 1985), 21/232; Zirikli, *al-Alam*, 5/73; Sarkis, *Mujam al-Matbuat al-Arabiyya*, 2/1739.

Bakr Imaduddin (670/1271) as one of his students who wrote book named "Fusul al-Ahkam fi Usul al-Ahkam" that saved in Turkey library calling the Topkapı with the number 3856 A. 824.

a.a.d. Books:

Marginani was wrote the great meaningful books like: "*al-Hidaya*", "*Bidayat al-Mubtadi*", "*Muhtarat al-Navazil*", "*al-Tajnis va al-Mazid*", "*Kitab al-Faraiz*", "*Kitab al-Hajj*", "*Kifayat al-Muntahi*", "*Muhtasar al-Fatava*".⁷ And these books effected to the Central Asian Khanafit Law school. Actullay, the "*al-Hidaya*" was symbolized of the Khanafit Mazhab philosophy as a law book. We'll talk about this great book in the nextly themes spesificly.

a.b. The Role Model Life Story of The Famous Khanafit Faqih Named al-Signaqi and His Books

a.b.a. Name:

The tabakat books gived to us the name of Signaqi as *Husamuddin Husayn b. Ali b. Haccac b. Ali al-Signaqi al-Hanafi*. Also, his lakab was so differently like; "*Husam al-Milla va al-Din*", "*Sahib al-Nihaya*", "*Sharih al-Hidaya*", "*Faqih*", "*Usuli*", "*Jadali*", "*Imam*", "*Shayh*". All these his lakabs, gived to us so meaningful knowledge about Signaqi, who was famous in the acedemical area, as a lider of the fukahas in his period.⁸

a.b.b. The Date of Birth and Dead:

Signaqi was born at the 620/1223? in the Signak/Sugnak city on the coast of the Sayhun river (Kızıl Orda). And this date of Central Asia history, was very critical period of the Chingis Khan occupation. Therefore, he was dead in the Aleppo or Marw at the 714/1314, after the scientific excursion in the so different cities as like; Damascus, Cairo, Bukhara, Nisabur, Marw, Aleppo.⁹

a.b.c. Nisba:

The Bukhara city was a symbol of the Islamic Civilization in the Kharakhanid State on the Central Asia before the Chinqis Khan Occupation. And Signak was one of them. In the Bukhara were ulamas who were the best of the their other opponents, and they were so popular with their lakab or nisba. Signaqi was popular in the acedemical area as *al-Signaqi* and sometimes as *al-Bukhari*. We can understand of his nisba, the Signaq city was more civilized with the Islamic culture in it's days.¹⁰

a.b.d. Teachers and Students:

Signaqi is our boast between the ulemas in Central Asia. Therefore he was educated from the diffrently and more popularity ustazs in their period likely; *Hafizuddin al-Kabir Muhammad b. Muhammad b. Nasr al-Bukhari (693/1293)*, *Fahrudin Muhammad b. Muhammad b. Ilyas al-Maymargi (?)*, *Mashar (?)*, *Jalaluddin (?)*, *Husamuddin al-Niyazawi al-Ahwazi (?)*, *Abu al-Barakat Hafizuddin Abdullah b. Ahmad b. Mahmud al-Nasafi (710/1310)*, *Shamsuddin al-Adud al-Kindi (?)*, *Imam Jamaluddin (?)*, *Ruknuddin al-Afshanji (?)*. Some of these were his classmate as his ustaz too.¹¹

And, we must talk his students who learned from Signaqi, as like; *Jalaluddin Ahmad b. Mahmud al-Gujduvani (730/1329)*, *Kiwamuddin Muhammad b. Muhammad b. Ahmad al-Hunadji al-Kaki (749/1348)*, *Ibn al-Fasih Abu Talib Ahmad b. Ali b. Almad al-Hamadani (755/1354)*, *Abu Muhammad SHamsuddin Abdullah b. Hajjaj b. Umar al-Kashgari al-Hanafi al-Sufi (?)*, *Jalaluddin*

⁷ Ferhat Koca, "Merginâni, Burhaneddin", Türkiye Diyanet İslam Ansiklopedisi, (Ankara: Türkiye Diyanet Vakfı Yayınları, 2004), 29/182-183.

⁸ Özel, *Hanefî Fıkıh Alimleri*, 126-127.

⁹ Ibn Hajar, *al-Durar al-Kamina fi Ayan al-Miat al-Samina*, (Cairo: 1966), 2/268; Brockelmann, *GAL*, 1/468, 664, 2/141.

¹⁰ Svat Soucek, *A History of Inner Asia*, (Cambridge University Press: 2000), 316-318; Mehmet Boynukalin, *Fıkıh Usulü Alimleri ve Eserleri*, (İstanbul: Marmara Üniversitesi İlahiyat Fakültesi Vakfı Yayınları, 2017), 217.

¹¹ Abdulhay Laknawi, *al-Fawaid al-Bahiyya fi al-Tarajim al-Khanafiyya*, (Cairo: 1324), 62; Ibn Kutluboga, *Taaj al-Tarajim fi al-Tabakat al-Khanafiyya*, (Baghdad: 1962), 25.

Ahmad b. Yusuf al-Kharazmi al-Kurlani (?), Amir Katib b. Umar al-Itkani (758/1356), Nasiruddin Abu Abdullakh (?), Muhammad b. Umar (752/1351).¹²

a.b.e.Books:

We have to more differently books of the great alim al-Signaql in the different fields as like; kalam, fiqh, morfologia of the arabic language and its grammar, and another fields. He has the some books in kalam that named "*al-Tasdid fi Sharkhi al-Tamkhid*", "*Damigat al-Mubtadiin va Nasirat al-Muhtadin*". Also he writed so meaningful books in the fiqh like; "*al-Wafi*", "*al-Nihaya fi Sharkhi al-Hidaya*", "*al-Kafi*" that effected to the Central Asian Khanafit Law schoul. We'll talk on these books specially in the nextly subjects. And finally there are some books maned "*al-Najat al-Tali Tilwa al-Marakh*", "*al-Muvassal fi Sharhki al-Mufassal*", "*Kitab al-Mukhtasar*", "*Risala-i Husamuddin al-Signaql*", "*Sharkh Muhtasar al-Takhawi*", "*Kashf al-Avar li Akhl al-Bawar*", "*Fetawa al-Riaya fi Tasdid Masail al-Hidaya*".¹³

B. The Brief Knowledge About "al-Hidaya" And "al-Nihaya" As A Introduction to Theme

The book that named "al-Hidaya" was written by Burhanuddin al-Marginani in the period of Qarakhanids. And it was includes to the main ideas of the Khanafit Mazkhab in the Central Asia. Therefore, the book of al-Hidaya was translated to English language, when the England occupation was actualized on the moslems, who lived in the Hind and Sind area. Also, we was shocked when we saw, Tsarist Russia was ordered the translating al-Hidaya to Russian language for understanding of the philosophy in the Khanafit Mazhab. Actually, who want to research the main of Khanafit Mazhab, he must to make a deep research as hes duty, on the al-Hidaya.

The book of the "al-Nihaya" it is second part of the book al-Hidaya in this contex as a continuation. We have some meaningful knowledge about al-Nihaya, that it was bulky book that commented on the al-Hidaya. And Babarti was giving the message about al-Nihaya, when he was teaching al-Hidaya he was needing to al-Nihaya more of the another commentary books, that writen on the al-Hidaya. But the book of the al-Nihaya was very detailed. Therefore, Babarti summarized al-Nihaya in his new book, named "al-Inaya" and it was 10 volume. Al-Inaya also was wery detailed, and Konavi summarized al-Nihaya only one volüme, that named "Hulasat al-Nihaya fi Favaid al-Hidaya". Finally, we can say al-Hidaya and al-Nihaya the main philoshophy of the Khanafit Mazhab in the Central Asia and Ottoman Empire too.

C. The Comparision Analyze Between The "al-Hidaya" And "al-Nihaya" As A Result

The Islamic Jurisprudence system actually so meaningful part of the Islamic Law, in the contex of law thought. The al-Hidaya has to "Adab al-Qadi" part that given in it more themes like; "*al-Shahadat*", "*al-Ruju an al-Shahadat*", "*al-Vakalat*", "*al-Dava*", "*al-İkrar*", "*al-Sulh*" related with the Adab al-Qadi. And all these subjects, founded on the holy idea in the Islamic Law, that we named it "al-Adaala". Under the these masail we were shocked when we saw the "al-adaala" of qadi who sad "*If come dad and his son to court, a qadi should to make al-adaala between dad and his son in the discussing with them, and in the giving the facility, and all that needed to them in the court*",¹⁴ and this is, really, the justice of Islam.

And the part "Adab al-Qadi" of the al-Nihaya, also was implicit to the themes; "*Kitab al-Shahadat*", "*Kitab al-Ruju an al-Shahadat*", "*Kitab al-Vakalat*", "*Kitab al-Dava*", "*Kitab al-İkrar*",

¹² Rahmi Yaran, "Siğnakî", Türkiye Diyanet İslam Ansiklopedisi, (İstanbul: Türkiye Diyanet İşleri Başkanlığı Yayınları, 2009), 37/164-166.

¹³ Katip Chalabi, *Kashf al-Zunun*, (İstanbul: 1941-1942), 2/1849, 2032.

¹⁴ Burhanuddin Ali b. Abu Bakr al-Marginani, *al-Hidaya Sharh Bidayat al-Mubtadi*, (Talik: Abdusselam Abdulhadi Shannar, Beirut: Daar al-Dakaik, 2019), 3/262.

"*Kitab al-Sulh*".¹⁵ These subjects related the same themes of the al-Hidaya related with Adab al-Qadi. We saw the knowledge about Adab al-Qadi in the al-Nihaya more detailed. And it was also, concentrated on the term of "al-Adaala" like to al-Hidaya. There isn't the different ideas of the al-Marginani. Because, al-Signaqui concentrated to the giving of author's justice ideas.

Al-Marginani and al-Signaqui were using the Quranic proof, Muhammedian ideas proof, and logical proofs too. So, these books "al-Hidaya" and "al-Nihaya" were written in the same method, and were so popular in the Central Asia on the Adab al-Qadi. Therefore, we can find it, as the durable justice system between the Central Asian people. This is evidence of two books, that we have talk on its effect on the all Khanfit books.

D. An Influence of The Marginani And Signaqui On The Central Asian Khanafit Law Schoul as a Result And It's Maintaining Currentness

There isn't any suspicion in the being the great leadership of al-Marginani and al-Signaqui between Central Asian moslems in their days. Also, their books "al-Hidaya" and "al-Nihaya" influenced to more Islamic law books that written by Khanafian fukahas.

For example; we can list some books like this: *al-Fatawa al-Hindiyya*, *Fath al-Kadir*, *Tabyin al-Hakaik*, *al-Inaya*, *Durar al-Hukkam*, *al-Bahr al-Raik*, *Majma al-Anhur*, *Radd al-Muhtar*, *al-Lubab*.

And another one subject, it is the idea, that widespread in another books of Khanafit Mazhab. Also, we can find the effect of al-Marginani and al-Signaqui in another mazhabs books. As a result we can talk on the part of Adab al-Qadi, actually in these days, we all moslems people we'll been in the some difficult lawsuit, and the Islamic juridical system it is working for us as a problem solving institution today.

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¹⁵ Abdurrahman b. Saud b. Muhammad al-Sulayni, *al-Nihaya Sharkh al-Hidaya: Min Bidayat Kitab al-Shahadat ila Nihayat Fasl al-Shira*, (Risala al-Majestir, Jameat Umm al-Kura Kulliyat al-Shariyat va al-Dirasat al-Islamiyya, Saudia: H. 1437), 70.

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