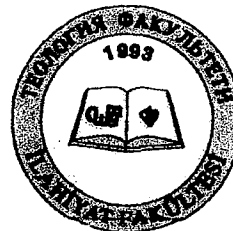


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**ТЕОЛОГИЯ
ФАКУЛЬТЕТИНИН
ИЛИМИЙ ЖУРНАЛЫ**

**İLÂHİİYAT FAKÜLTESİ
İLMÎ DERGİSİ**

13-САНЫ

Ош-2008

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Thesis Studies About Kâdihân in Turkey

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Vahit GÖKTAŞ*

Abstract

Thesis studies about Kâdihân in Turkey

This study takes an account of brief introduction to and assessment of thesis studied and published in Turkey on Hasan b. Mansur el-Özcendî (d. 592/1196), known as Kâdihân "an interpreter of the subject", who is a reputed Islam Lawman of VI/XII. Century, and a pioneering *fakih* of his age. Titles of thesis studied on Kâdihân are as follows: *Ascertainment and Analysis of the work of Kâdihân titled Şerhu'z-Ziyâdât, Kâdihân and his method in Hâniyye, Kâdihân el-Üzcendî and Fetâvâ Kâdihân*. While introducing these thesis, content analysis and criticism are preferred as methods.

Keywords:

Kâdihân, Thesis, Şerhu'z-ziyadat, Hâniyye, Fetavâ

Özet

Kadihan ile alakalı Türkiye'de yapılan tezler

Bu yazıda VI/XII. asır meşhur İslam Hukukçusu, zamanının en büyük fakiherinden, "meselede müctehid" Kâdihân lakabıyla meşhur Hasan b. Mansur el-Özcendî (ö. 592/1196) ile alakalı Türkiye'de yapılmış ve yayınlanmamış tezlerin kısa tanıtımı ve değerlendirilmesi yapılmıştır. Kadihan'la alakalı yapılan tezlerin başlıkları şöyledir: *Kadihan'ın Şerhu'z-Ziyâdât Adlı Eserinin Tahkik ve Tahlili, Kadihan ve Hâniyye'deki Metodu, Kadihan el-Üzcendî ve Fetâvâ Kâdihân*. Bu tezlerin tanıtımı yapılırken muhteva analizi ve tenkit cihetine de gidilmiştir.

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Kadıhan, Tez, Şerhu'z-ziyadat, Hâniyye, Fetavâ

Introduction

Hasan b. Mansur el – Ozcendi, who is known with his nick Kâdihân in Islam law history and who passed away in Bukhara in 591/1196, was born in Ozkent city of Fergana district of Maverâünnehr in 12. century and lived in this geography. In the period of Kâdihân, the Karahans were prevailing in the Maveraunnehr region, which is the first Muslim Turkish state. In this period, it can be easily said that there was a high level of scientific movement in the region due to the scholars raised up and the madrasas that were established. Kâdihân was raised up in a geography where the scientific movements were intense and in a family atmosphere which pomoted significant scholars.¹ In the period when he lived, he reached the degree of “mujtahid in issue” “mujtahid in mazhab”, namely “ehlü't-tashîh ve't-tercîh”² and has received the rank of the master of Hanafi lawmen. He has learnt science from important scholars and also taught to significant pupils. His most famous works is the Fetava Kâdihân, which is also known as Haniyye, which mainly is a book of fatwa. Kâdihân also has other works, namely *Şerh-u Camiu's-Sagîr*, *Kitâbu Mesâili'l-Gurûr*, which currently exists in our hands, and *Şerh-u Camiu'l-Kebîr*, *Şerhu'z-Ziyâdât ve Şerh-u Edebi'l-Kâdî*, *el-Emâli*, *el-Mahadır*, *el-Vakiât*, *Fevâid*, *Âdâbu'l-fudalâ*, which are the works that are named but have not reached to our days.

Thesis are the essential works that are prepared by researchers, who conduct scientific research, after long efforts. In our country and in the works, many of the thesis' are not published due to lack of opportunities, and the opportunity to use them is limited. In some countries, there is access to the thesis only in the institute where it is prepared, and there are restrictions on using the thesis due to various reasons. However, thesis prepared in Turkey can be collected in a center in a higher education institution. This center, in YOK gives the readers the opportunity to read and photocopy these thesis.³

Despite the fact that Kâdihân is a pioneering scholar of fiqh, it is hard to say that there are sufficient studies related to the life, works and opinions of this person. Three thesis have been prepared in Turkey about Kâdihân as far as we could determine. Two of these are masters thesis' and one is a Ph.D thesis. In

¹ Kadıhan belongs to the Merginanis family, which is considered as a pioneer family in Maveraunnahr in scientific terms.

² Hayrettin Karaman, *İslam Hukuk Tarihi*, İz Yay., İstanbul 1999, s. 249; İbn Abidin, *Reddü'l-Muhtar*, c. V, s. 279.

³ Thesis prepared and being prepared in Turkey can be scanned at www.yok.gov.tr There is opportunity to read 10 thesis in pdf format in electronic media, with the condition to become a member of this page.

ТЕОЛОГИЯ ФАКУЛЬТЕТИНИН ИЛИМИЙ ЖУРНАЛЫ

our current study, we aim at making a short description about the thesis prepared and published about Hasan b. Mansur el-Ozcendi (d. 592/1196), who is known with this title Kâdihân, who is one of the leading faqih of his time, a famous Islam Lawman of VI/XII. Century, with the opinion that this will be beneficial for the researchers.

PİŞKİN, Şuyip, *Kâdihân and his method in Hâniye*, Cumhuriyet University, Institute of Social Sciences, Masters Degree, Consultant: Assoc. Prod. Hakki Aydın, Sivas 2001, p 148.

In this thesis, a content analysis has been performed about "Fetavay-i Kâdihân", which is known among scholars as "Haniye", which is the most important and famous work of Kâdihân. The thesis comprises of premise, three sections and conclusion. In the first section, information has been provided about the author in general, and about his fiqh and history. In this section, the periods of Islam Law up to Kâdihân, description of fiqh, and the periods of fiqh from the Prophet (SAV) to the Abbasid period are described generally. Besides, information has been provided about the Hanafi sect, which Kâdihân belongs to. The fatwa books are studied in detail due to the fact that there are closely related to the issue and are examined in various aspects.

In the second section of the work, the life of Kâdihân is examined. While studying this section, the basic resources are used and efforts are demonstrated to give a brief summary of the subject, since there are lots of works about the issue. Second hand resources are referred for issues which required interpretation. In the second section of the thesis, information has been provided about the environment in which Kâdihân has lived. Since Kâdihân lived in a time period and geography in which the Karahanli state, which is the first Muslim Turkish state, prevailed, general information has been provided about fiqh in that period as well as the Karahanli madrasas as well as the situation of Hanafi sect in this period.

In the third and main section of the thesis, Haniye, the work of Kâdihân, and the method of this work are studied. The author has provided the index of the issues included in the book after the introduction of Haniye. Following this, the resources, systematic and the style of the work are studied. Titles are generated from certain predetermined issues while studying the issues, and the subjects are studied within the frame of these headings. Since the scope of the work is limited to the work of Kâdihân named Haniye, other works and the content of the works are not mentioned. In the third section of the work, some terminology frequently used by Kâdihân are determined and these are studied. Based on the work titled Haniye, the view point of Kâdihân towards Hanafi lawmen before him is demonstrated. Concerning the content analysis of the work, following issues are considered about the method of Kâdihân while authoring his work;

1. Separation of the subjects to Books, Chapters and Sections

- a. Examples about describing an issue
- b. Examples about direct introduction to the issue and its classification
3. Studying the issues theoretically
 - a. Giving a direct judgment on the issue
 - b. Giving solutions to some hypothetical problems
4. Issues on which the three masters of Hanafi Sect (Ebu Hanife, Ebu Yusuf, Imam Muhammed) agree
5. Issues of dispute among masters of sects
6. Issues on which the sect masters do not have healthy narratives
7. Including opinions of other sects
 - a. Examples about the Quran verses
 - b. Examples about sayings of prophet (hadeeth), and the issues are studied under these headings.

Kâdihân not only referred to the opinions of faqihs who lived before him about the subject he deals with, but also he emphasized that he preferred the opinions of some sect masters which he referred to. Finally he mentioned about his own opinion and jurisprudence. In the last section of the work, assessments are made about the place of Kâdihân and his work, Haniyye, within the realm of Islamic Law.

A general account of the work is given in the conclusion part of the thesis. In summary, Hasan b. Mansur el-Ozcendi, who is known with his nick Kâdihân, is an important faqih, who has lived in 12. century in Ozkent city of Fergana district of Maverannahr, and passed away in Bukhara in 592/1196. In the period of Kâdihân, the Karahans were prevailing in the Maverannahr region, which is the first Muslim Turkish state. Karahanlis has established great madrasas in Khorasan and Maverannahr long before the madrasas established by Nizamulmuluk in Saljukian State. Important science and cultural figures were grown in these madrasas, which were established in Bukhara, Semerkand and Belh. Kâdihân was born in a family which has grown numerous Islam scholars in such an atmosphere. He has become famous as the master of Hanafi lawmen in his period. He has reached the degree of mujtahid, and he taught to many important persons. Kâdihân has authored Haniyye, which is known among the classics of Hanafi fiqh. Although this work is named as fetawa, it rather recalls a classical work of fiqh. This book covers all of the *ibadat, muamalat and ukubat* issues of Islam Fiqh. It is a systematic work. Its style is fluent and easy. For this reason, it has been a main reference books highly reputed among Hanafi sect.

MIRZAİBRAİMOV, Samagan, *Kâdihân el-Üzcedî and Fetâvâ Kâdihân*, Ankara University, Institute of Social Sciences, Masters Thesis, Consultant: Assoc. Prod. Osman Tastan, Ankara 2002, p 92.

This work of Mirzaibraimov, which studies the life, works and fiqh opinions of Kâdihân, comprises of a premise section, five sections and one conclusion section.

The author has studied the life, works and training of Kâdihân in the first section. In this section of the thesis, information about his life has been given in short due to the lack of sufficient information. In this section, the training of Kâdihân, his scientific activities, places where he received his education, sciences he learnt, his teachers and pupils and his scientific personality are studied in general. Again in this section, the professional life of Kâdihân and his works other than Fatawai Kâdihân are studied.

In the second section of the thesis, the most reputed work of Kâdihân, Fetawa Kâdihân, is studied. Information about this section mainly rely on the Arabic tabaqat books. This section covers a significant place in the thesis. Mirzaibraimov has studied the work titled Fatawa Kâdihân in four main headings. He first emphasized the issue of fatwa and a general information has been given about Fetawa Kâdihân. Following this, the method of authoring and the issues of Fetawa Kâdihân are examined and comparisons are made. Accordingly, the work is not written in the form of question and answer. Kâdihân has demonstrated various approached in each section of the work. There are differences in the classification of sections of the work compared to other works. Kâdihân studied the same issue in various different parts. Kâdihân explains the reason of the fatwas he gave. Kadihan has mentioned the opinions of the masters of sects, scholars lived before him and the scientists and faqihs lived in his period. In this part of the thesis, Mirzaibraimov studied the works mentioned in Fetawa Kâdihân and Hanafi fatwa books before *Fetâvâ Kâdihân'*, the place of *Fetâvâ Kâdihân* among the fatawa books, and to which fatwa books this work has acted as a reference.

Mirzaibraimov then conducted works about specific issues which he selected from inside the work. The heading of the third section of the thesis is : " Opinions of Kâdihân about family law in his Fatawa" Mirzaibraimov classifies this section under two headings. These include the marriage law (nikah) and divorce law (talaq). The nikah section studies such issues as presence of a guardian, right of the guardian, the witnesses, mehir, type of mehir, mehri misil, right to determine the mehir and disputes on mehir. Divorce law included issues related to talaq, proxy in talaq, conditional divorce, zihar, illa, hulu, iddet and nasab.

In the fourth section of the thesis, the "opinions of Kâdihân about debts in mentioned in his Fatawa" are described. This section deals with vicious trades, non-binding contracts, condition being on approval, witnessing being on approval, defect being in approval, and ikale. In this section, due to the fact that Kâdihân did not have any outstanding opinion

about sales contract and that this contract type has been adopted by all fiqh sects, these contracts were not emphasized, and the opinions of Kâdihân about the types of vicious contracts, which are first mentioned by Hanafis, were mentioned.

In the fifth section of the thesis, the "opinions of Kâdihân about penalty law in mentioned in his Fatawa" are described. In this section, similar to the issues mentioned in classical fiqh books, subjects such as murders, crime requiring reprisal (qisas), qisas fi'n-nefs, political reprisal, the criminal being killed while committing crime, effect of joint action in killin on reprisal, doubt in killing, qisas fi'l etraf, crimes which do not require qisas, crimes which require hadd, hadd of adultery, qazf, hadd of drinking spirits, hadd of waylaying, theft, crimes requiring tazir are examined. Crimes of hadd and crimes of tazir are examined in separate issues. In this section also the damages caused by animals, crimes committed by children and crimes jointly committed are described in detail.

The author has made a general assessment in the final section of the thesis. According to this, Kâdihân has integrated his personal characteristics with the environment he was grown in. The fact that his family came from a scientific background and the environment he was raised up lead to the person like Kâdihân. Kâdihân has received lectures from the most reputed scholars of his time, and he also raised various students. He is a scientist with multi-aspects, which is lead by his fiqh position. His most famous work is Fawata Kâdihân. This work, with its reputed opinions and felicitous solutions to problems, has been used as a resource by many scholars after him up to our days. In this work, Kâdihân reflected the opinions of Hanafi sect, which is his sect, and provided important contributions to the literature of this sect. He provided various examples in his work about the issue, mentioned different methods and also included his own opinion. Kâdihân emphasizes up to date examples while studying an issue.

As a conclusion, the most essential aspect of Fatawa Kâdihân is that it is a book of fatwa rather than being a book of fiqh, and that it has a significant place in the history of fatwa.

While working this work of Kâdihân, Mirzaibraimov demonstrated the fiqh-based opinions of Kâdihân in terms of method, and did not prefer the method of comparison. He only confined with short explanations. While making conceptual analysis, works of the current lawmen are referred to. Comparisons are made with the problems of our day while studying the issue.

SEVİM, Abdullah, *Tahqeeq and Tahleel of Kadihân's Work Named "Şerhu'z-Ziyâdât"*, Marmara University, Faculty of Social Sciences, Ph.D thesis, Consultant: Prof. Dr. Fahrettin Atar, İstanbul 2002, p. 110+926

The thesis comprises of one introduction, four sections and one conclusion. Sevim indicates his basic target in studying such an issue as follows: "*Kâdihân, who has an elite position in Hanafi fiqh, authored numerous works. Works other than the one named "el-Fatawa" are manuscripts. There is a widespread opinion that analyzing the manuscripts is a very beneficial service. Based on this opinion, we have believed that making a tahqeeq and tahleel of all of the works of this scholar, who is known as the "mujtahid in issue" or at least " mujtehid of fatwa and ehl'ul tenkih", and particularly his manuscript work named Şerhu'z-Ziyâdât will be very beneficial for the academic realm. For this reason, we have determine the tahqeeq and tahleel of the work named Şerhu'z-Ziyâdât as the subject of our thesis.*"

It should be first emphasized that the work of Kâdihân named Şerhu'z-Ziyâdât is an incarnate work which provides important information and hints to those who particularly deal with fiqh.

In the introduction part of the thesis, Sevim studied the political and intellectual background of XII. Century Anatolia, in which Kâdihân lived and which is known as the age of imitation in the history of fiqh, and emphasized the Turkish immigrations to Anatolia after Malazgirt victory, Turkish immigrations to Anatolia over Khorasan and the religious, civilization and cultural changes caused by these immigrations in Anatolia. Besides, he took a look at the political, civilization and scientific status of Karahanlis. Also in this section of the thesis, the fiqh characteristics of this period, which is known as the period of imitation, are assessed.

The heading of the first section of the thesis is "Kâdihân's life, his works, and his place in fiqh and fiqh method". In this section, information has been given about Kâdihân's name, ancestry, place and year of birth, and places where he lived, namely Ozcend and Fergana. While giving information about the placed he lived, the Islamization of these regions and the scholars and faqihs lived in the region are considered. In the section related to the life of Kâdihân, the issues of his teachers, students and deatha are studied. Also in this section of the thesis, the works of Kâdihân are described in a wide format. Following are the works that are in our hands today:

1. *el-Fetâva'l-hâniyye*
2. *Şerhu'l-Câmil's-sagîr*
3. *Kitabu Mesâil'l-gurûr*

Works which have not reached to us but mentioned in the resources are as follows:

1. *el-Emâli*
2. *el-Mehâdir*
3. *Şerhu Edebi'l-kâdî*
4. *el-Vakîat*
5. *Fevâid*
6. *Âdâbu'l-fudalâ*

We are of the opinion that failure of these works to reach to our dates is a great loss particularly in terms of the science of fiqh.

Another title of the first section of the thesis is "Place of Kâdihân in fiqh and method of fiqh according to *Şerhu'z-ziyâdât*" Sevim writes the following in order to establish the place of Kâdihân in the science of fiqh: "The fact that the works of Kâdihân titled *el-Fetâvâ*, *Şerhu câmi's-sagîr*, *Şerhu'z-ziyâdât* and *Emâli* were referred to in 1090 parts of 14 fiqh books pertinent to various sects, which are lead by Hanafi sect, demonstrates that Kâdihân had an importance place in the science of fiqh. Kâdihân is quoted with praise in the *tabaqat* books. The fact that he is referred to as the "mujtahid of fatwa" "ehlu't-tenkih" and "mujtahid in issue" demonstrates his place in the science of fiqh. In order to set the place of Kâdihân in the science of fiqh, Sevim details the following issues:

1. His jurisprudences (ijtihâd) in the form of preference
2. His ability to deal with the issues using both the abstract and issue-based methods
3. His ability to involve principles of fiqh in his work
4. His ability to include the opinions of Faqih Ashab, Mutekaddimun and Muteahhirun in his work.

In order to determine his place in the method of fiqh, he studies the evidences he used and the ways of using such evidences. Accordingly, the evidences relied on by Kâdihân are as follows: Quran, sunna, ijma, qiyas, istihsan, istishan, tradition - customs, sayings - actions of ashab

Also for the purposes of determining his place in the science of fiqh procedure, he studied some fiqh procedure concepts mentioned in his work named *Şerhu'z-ziyâdat*. These concepts include the following: The te'vil of hadeeth, relying on haber-i vahid, liaynihi haram-ligayrihi haram, mentioning the karaha and intending for prohibiting, tenzihen mekruh, tahrimen mekruh, tahsees of amm, sefef, precaution.

After studying the life, works of Kâdihân and his place in fiqh and procedure of fiqh in the first section of the thesis, in the second section, works such as *ez-Ziyâdât* and *Şerhu'z-Ziyâdât* are presented. While studying this section, the subject of the work, works conducted in relation to the work, way of studying the topic, and his place among Hanafi resources are detailed. These two works and also *el-Fetâvâ* and *Mebûsât* are examined in terms of content and exemplified topics. Besides, Sevim provided the researchers with a wide document related to the manuscript copies within and outside Turkey.

In the third section of the thesis, information has been given, though very briefly, about the method followed in the tahqeeq and tahlil of the work. Accordingly, comparison of the copies, demonstrating the differences in copies, authoring of the text of the work, referring to Quranic verses and hadeeth, giving the resources for the hadeeth, describing the important persons, determining the principles of fiqh, establishing the resources of the work and the methods followed while doing these are taken into consideration.

Before giving the analyzed text, which is the fourth section of the thesis, a general evaluation is made in the conclusion part of the work. Accordingly, the work named *Şerhu'z-Ziyâdât* is written with the style of authoring, not commentating. Event based method and abstract method are used in authoring the work. The work has been prepared by using the opinions of fiqh scholars as well as numerous reliable fiqh resources. The work includes important findings in terms of comparative Islam law. As a conclusion, *Şerhu'z-Ziyâdât* is a candidate of being one of the important resources of Islam law even today.

Review

Three works studied under the headings Tahqeeq and Tahlil of *Kâdihân's Work Titled " Şerhu'z-Ziyâdât"*, *Kâdihân and his method in Hâniye*, *Kâdihân el-Üzcendî and Fetâvâ Kâdihân* fill an important gap in their fields. Part of the works of such an important person is still alive as manuscripts, waiting for the researchers. Works conducted about this Hanafi scholar, who is so much valuable that each of his work could be studied in a thesis, are not sufficient. However, in order to avoid that the works conducted repeat each other and no effort is wasted away, it is required to collect information on who works which subject in a center to be established and to enable the researches to execute their works in this center in a coordinated manner. Three thesis prepared were studied on dates close to one another. As a matter of fact, this is evident in the points that are similar in all of the three thesis, which had different subjects and were prepared independent from each other, as we have mentioned above. Particularly the information given about the life of *Kâdihân* mainly repeats itself, although this does not mean that it has not benefit.