The Urgency of Maqasid Al-Shariah Reconsideration in Islamic Law Establishment for Muslim Minorities in Western Countries

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Muslim minorities in western countries encounter different Islamic law problems than those in countries with Muslims as the majority of the population. Their conditions as minorities and non-accommodative and diverse country regulations for their needs as Muslim minorities are one of the things to be considered, while socio-cultural attributes are other contributing factors in creating new issues. Thus, it brings up Islamic fiqh (precise understanding of Shariah Law), specifically for those who are known as minority fiqh (fiqh al-aqalliyyat). This study describes the flexibility and the width of Islamic law in conversing with many aspects of life's problems, specifically Islamic law on the Muslim minority society in western countries. The solution to the problems is investigated based on textual and contextual approaches, idealistically and realistically. Thus, the Islamic law problems on Muslim minority society in western countries, which have been one of the biggest problems, are no longer solved merely based on the classic fiqh containing social, cultural, political contexts that are different from the Islamic law contexts on Muslim majority society. Interestingly, even though the legal solution to the problems done through maqasid al-shariah approach is different from the result of the classical fiqh approach, it does not mean that the principles and the arguments used as fundamentals of law from both approaches are different. In sum, maqasid al-shariah fiqh reconsideration becomes one of the solutions in solving the Islamic law problems for Muslim minority society in western countries.

Key words: *Classical Fiqh, Reconsideration, Maqasid Al-Shariah, Muslim Minority, Western Country.*

Introduction

Population migration from one geographical region to another is one of the traditional realities of humans through the ages. The encounter of human groups from many regions creates the new reality of plural, multi-ethnic, multi-racial, and multi-religion societies. The consequences of the plurality are the rise of conflicts between groups and/or the formulation of the acculturation process initiated from the accommodative adaptation process (Khan et al., 2018). Migration has been an interesting topic to be explored. The social migration from Muslim countries to non-Muslim countries is not an exception. History has noted the long wave of Muslim migration to other countries, which are considered more promising of a better life, even though they have to encounter a high psychological risk as immigrants, minority groups of race, and religion, even as the lowest working class in the social strata. Western countries, like America and Europe, have been the main destinations. Western countries are considered more developed and promising for their lives and become the majority of destinations for Muslim immigrants – even though the West, in the Islamic traditional literature studies, is considered as the *dar al-harb* (region/country of war) as the reversed status of their home countries, which as thought as *dar al-Islam* (Islamic region/country). As Muslim minorities, they have to involve themselves in reconciliation with the dominant cultures or rules of Western society (Kunst & Sam, 2013).

As the minority group, they face different social and political conditions from the conditions of where they originated (Ocampo et al., 2018). The majority culture is dominant, thus in several topics on the correlation of the two values, psychologically makes the Muslim minority face several options: remain firm with the culture of origin, acculturate to the majority culture, or stand in between the two identities by positively adapting and integrating between the two (Malik, 2004). The choices become more complicated when included in the aspects of religion and beliefs – mainly when the understanding of the religion they get in their Islamic origin country is no longer appropriate to the conditions of the western countries where they are now (Cox & Marks, 2006). In western countries, the governance system is secularly characterised, in which the position of religion is separated from non-religious matters (worldly). Religion is a sacred matter. Meanwhile, other than religion is profane. This perspective is on the contrary to the Islamic governance system, as stated in *al-fiqh al-siyasi* (political *fiqh*), which is integrating the religion and non-religion matters. In western countries, even though every citizen is given freedom and rights to live their religious teachings and beliefs, the daily culture will be distinct to the Islamic countries or the countries with Muslims as the majority (Zaman et al., 2019).

In western countries, there are some psychological, social, political, and legal barriers or barriers that make it difficult for minority Muslim communities to practise religion precisely as they do in Muslim countries. According to Abdullah Saeed, there is the issue of "adjusting

traditional Islamic norms to Western contexts" experienced by most Muslim minorities in Western countries (Haddad & Esposito, 2000; Saeed, 2004). In Western countries like the United States and Britain, many new legal problems are found (*nawazil*) that are far different from the legal problems faced by the majority of Muslims in Muslim countries, i.e. the necessity of voting (political vote) for leaders and political representatives who are not Muslim, the difficulty of finding food that is guaranteed halal (halal food), the difficulty of performing the sacrifice and *akikah* worship because of the difficulty of slaughtering, religious differences in marriage, and attending different religious events, prayer times and fasts, bank interest and usury, all the provisions of Islamic law which do not apply to applicable laws and regulations and so forth are a few of the daily problems faced by them (Malik, 2004).

The emergence of new Islamic law issues as mentioned above finally rises *fiqh al-aqalliyyat (fiqh minority),* namely a collection of Islamic teachings that are considered able to accommodate contemporary issues faced by the Muslim minority community so that they can still run the teachings of religion, which remain in the bond of the principle of religion, although in a format different from that of Islamic law in general. *Fiqh al-aqalliyyat* is not a *fiqh* form that binds itself strictly to *ijtihad* products of ancient salaf scholars either substantially or methodologically, but *fiqh* form, which refers to the creation of the benefit that becomes the fundamental value of *maqasid al-shariah* with adaptable and flexible methods (Al-Alwani, 2003; Auda, 2008; Chapra, 2008).

What is the procedure of *maqasid al-shariah* in solving the new *fiqh* problem for the Muslim minority community in the West? This is the primary concern of this study. The views of Islamic jurists who pioneered the minority *fiqh* in the West, namely Thaha Jabir al-Alwani, director of the Fiqh Council of North America (FCNA), and Yusuf Qaradawi, director of the European Council for Fatwa and Research (ECFR) became interestingly fundamental.

Fiqh al-Aqalliyyat and Maqasid al-Shariah

Along with the development of the era, Muslim minority communities in western countries are experiencing various Islamic law problems that are dilemmatic and different from the Muslim community who live in a country with a Muslim majority. Therefore, to solve these problems, reference to Islamic law is needed that makes them feel confident and comfortable living their life as Muslims. In relation to this, Yusuf Z. Kavakci explains that Muslims living in western countries must adopt in order to adapt to modern secular life while maintaining their religious teachings. However, on the other hand, they should not violate Islamic religious rules (Kavakci, 2008). Therefore, the *fiqh* must be able to answer the needs of contemporary Muslims in order to be able to run the religious teachings with functional overall aspects of one's life based on *fiqh*. Accordingly, one solution to overcome these problems is with the fiqh geographical, better known by the name of *fiqh al-aqalliyyat*.

In recent years, the *fiqh* issue for Muslim minority communities in the western world is new and unique in the history of *fiqh* development. From the context, this happens because the western country is generally a non-Muslim country, while from the contextual side, this happens because the essence and format of the problem are different from the general problems that have been resolved in the classical *fiqh*. Therefore, the *fiqh al-aqalliyyat* is expressed as one form of *fiqh al-nawazil,* which is essential and urgent to be studied further (Lambak et al., 2019).

As a new form of *fiqh*, scholars' diverse opinions about how the methods can be used in solving problems in *fiqh* al-nawazil become commonplace in the Islamic world. Musfir bin Ali ibn Muhammad al-Qahtani states that there are three commonly used methods, namely: narrow and complicating methods, methods that ease and simplify, and moderate methods between complication and ease (Musfir, 2003).

In general, the first method has a firm characteristic of the provisions of religious law but tends to be excessive, complicates and narrows the application of Islamic law so that it is blatantly disingenuous because it is contrary to the concept of grace, compassion, convenience, and flexibility of Islamic law (Ibrahim & Khan, 2019). Nevertheless, this method is still widely used because of the fanaticism of a particular madhhab or scholar's opinion, holding on to the literal meaning of nass, exaggerating in applying the concept of sadd al-dhara'i, and being careful in dealing with problems (Musfir, 2003). Some examples of the product of this method are the prohibition of working women, although the community needs have been arranged following the limitations of *shariah*, and forbidding of all types of photographic images either silent as photographic, or moving such as video and television. Moreover, the internet with some programs such as Facebook, Friendster, and so forth, are also forbidden.

The second method is generally exaggerated in facilitating a problem with the principle that eliminating difficulties and achieving benefits and convenience is part of *maqasid al-shariah*. However, this method also tends to be exaggerated because it is not based on the right method and is based solely on the desire and interest of sheer lust, which is *syara'*. This second method has the characteristic of exceeding the limits of using the basis of the benefit even though it is against the *nass*, following the easy opinion and *talfiq* (the practice of choosing the most comfortable opinion among opinions) among the existing *madhhab*, and doing *hiyal* (transition to other laws because they want to avoid the law that must be applied) in the orders of *syara'* (Musfir, 2003). The case example is the acceptance of all forms of usurious transactions for the reason that it is impossible to bring up a new form of Islamic transactions. Meanwhile, the third method is a moderate method that emerged from the accumulation of the expectations to hold on to the *dalil-dalil* or arguments and wishes to raise Islamic teachings that are easy, flexible, and appropriate to every era and time (Qaraḍāwī, 1993). This method does not only soothe the sharia that follows sheer luck, but also underestimates the factors of benefits and

easiness in religion. As an example of the product from this latter method is allowing Muslims in the West to vote in politics, taking credits in banks that have usurious content, and gathering the graves of Muslim and non-Muslims in one graveyard site.

Based on these methods, the *fiqh al-aqalliyyat* is more precisely stated as adhering to the third method, also called *fiqh al-taysir* (*fiqh* that facilitates). In principle, this *fiqh* is not as difficult as the first method and not excessive in facilitating the problem solving based on the proposed *a-fiqh* that has been agreed, namely the proposition of *al-fiqh* based on *maqasid* (*maqasid*-based ijtihad). Thus, through the application of the third method, the problems faced by Muslim minority communities in western countries can be well overcome without having to contravene Islamic religious law by adapting to their environment, resulting in the creation of harmonisation of life with the non-Muslim majority community. Therefore, the study of *maqasid*-based ijtihad becomes essential and urgently required so that the problems faced by the Muslim minority community in western countries related to religious issues in everyday life can be resolved soon.

In examining how *maqasid*-based *ijtihad* is applied in the development of *fiqh al-aqalliyyat*, it is necessary to know how *maqasid al-shariah* is understood by the initiators of *fiqh al-aqalliyyat* for Muslim minority communities in western countries, namely Taha Jabir al-Alwani and Yusuf al-Qardawi, given in more detail in the following description.

Maqasid al-Shariah in the Perspective of Taha Jabir al-Alwani and Yusuf al-Qaradawi Methodology

In general, Taha Jabir al-Alwani and Yusuf al-Qaradawi have many similarities. They were both born in Middle Eastern Muslim countries, raised in Middle Eastern academic traditions, had been active in various Islamic organisations considered traditionalists and fundamentalists; in the past they were both actively writing with traditional approaches for the Western world. Nevertheless, the difference is Yusuf al-Qaradawi still lives in Qatar, even though it continues to be active around the Western countries, especially Europe. Interestingly, he also led the ECFR (European Council for Fatwa and Research/Al-Majlis al-Uroba li al-Ifta 'wa al-Buhuts). Meanwhile, Taha Jabir settled in Virginia, America and served as head of College of Cordova University. Interestingly, he also became the head of several non-governmental organisations engaged in the field of Islam and also as a partner of the American government in dealing with various religious issues (Ibrahim et al., 2019a).

After observing the reality of the Islamic world in various countries, especially in the western world, the traditionalist pattern of view that they used for a long time began to shift toward a modern viewpoint that places more emphasis on the meaning, objectives, and purpose of Islam or *maqasid al-shariah*. This can be seen from their recent works that discussed the urgency of

the *maqasid* approach in solving the problems of Islamic law and in developing contemporary Islamic discourse. For them, Islamic law for Muslim minorities in western countries *(fiqh al-aqalliyyat)* is unlikely to be built without the foundation of universal Islamic values contained by *maqasid al-shariah*. In more detail, some of their views on *maqasid al-shari'ah* are described as follows:

Maqasid al-shariah According to Taha Jabir al-Alwani

In general, there are two Taha Jabir al-Alwani writings that individually and intensively examine the meaning and function of *maqasid al-shariah* in relation to the development of the proposed *al-fiqh* and *fiqh al-aqalliyyat*. The writing is *Qadaya Islamiyyah Mu'asirah Maqasid al-shariah* (Taha Jabir, 2001) and *"Maqasid al-Shari'ah,"* the writing in an anthology book study of *maqasid al-shari'ah* (Abd al-Jabbar, 2002). The underlying meaning of *maqasid al-shariah,* according to Taha Jabir al-Alwani, is not different from the primary meaning that has been expressed by the previous *maqasidiyyun,* which emphasised purpose, *'illat* of *shariah* itself. What is different from Taha Jabir al-Alwani is the cessation of the study of *maqasid* on the three main conceptions of *maqasid al-shari'ah*, namely *daruriyyat, hajiyyat* and *tahsiniyyat*. For him, there are other more universal values which he calls al-*maqasid al-'ulya al-hakimah* (ultimate goals of absolute nature), namely: *tawhid* (unity of God), *tazkiyyah* (self-cleansing) and *'umran* (peace) (Abd al-Jabbar, 2002). These three values , according to Taha Jabir, are the fundamental values of the macro or the fundamental principles upon which all the provisions of the *Shariah* of Allah, from the first prophet until the last prophet, were built.

These three values are the *maqasid* in the highest level, under which are the values of justice, freedom, and egalitarianism; as second-level maqasid are followed by the conceptions *of daruriyyat, hajiyyat;* and *tahsiniyyat* as the lowest level of *maqasid,* which is the third (Abd al-Jabbar, 2002). The logical basis for the determination of the three central values mentioned above as *al-maqasid al-'ulya,* is the principle that Allah Almighty is the creator of nature, man, and life. Allah, as the lifter of the human being, the caliph (*mustakhlif*) is the essence, the human being sent as Caliph (*mustakhlaf*) must have the cleanliness of the soul to perform the task, nature (*al-kawn*) entrusted (*al-musakhkhar*) in man needs to be prosperous or reconciled. The relevance of these three things is integral, as the goal to be achieved is in the effort to obtain the essence of the benefit (Abd al-Jabbar, 2002). Meanwhile, the arguments of the *nass* for the three central values are the verses of the Qur'an that are elaborated further by the hadith of the Prophet Muhammad (Taha Jabir, 2001). Taha Jabir al-Alwani explains twenty-five (25) general limits on *al-maqasid al-'ulya*, from sources, functions, methodologies, to applications (Taha Jabir, 2001). Of the twenty-five limitations, there are three most essential points to be discussed concerning the emergence of *fiqh al-aqalliyyat*, namely the functions, methods, and applications of *al-maqasid al-'ulya*.

By applying *al-maqasid al-'ulya al-hakimah* as a method derived from the Qur'an as a proposition with the highest authority, it is not only individual problems that can be solved, but also the collective, – the society, the people and the nation – because *al-maqasid al-'ulya al-hakimah* is universal (Yusuf Qaraḍāwī, 2006a). In this context, there appears to be a will to shift the dominance of the particular *fiqh* as it develops today with the universal *fiqh*, which emphasises the universal values of *maqasid al-shariah* in determining the laws of the particular propositions. This is the basis of the thought of the emergence of *fiqh al-aqalliyyat.*

Maqasid al-shariah According to Yusuf al-Qaradawi

The book is entitled *Dirasah fi Fiqh Maqasid al-shariah Bayna al-Maqasid al-Kulliyyah wa al-Nusus al-Juz'iyyah* (Yusuf Qaraḍāwī, 2006a)*: al-Siyasiyyah al-Shar'iyyah Fi Daw 'al-Nusus al-shariah wa Maqasidiha* (Yusuf Qaraḍāwī, 2005) *and Madkhal li Dirasah al-shariah al-Islamiyyah* (Yusuf Qaraḍāwī, 1997) are some examples of the work of Yusuf al-Qaradawi in detail concerning *maqasid al-shari'ah*. A partial explanation of this can also be found in other works he has written lately after he came across directly various Islamic realities in different parts of the world, especially western countries. He experienced a change from the hard *madhhab (shiddah)* to the comfortable and light *madhhab (taysir wa al-takhfif)* (Buqlaqulah, 1998), which is generally based on the principle of *maqasid al-shari'ah.*

Interestingly, Yusuf al-Qaradawi's understanding of the basic definition and function of *maqasid al-shari'ah* is no different from previous scholars. However, he asserted *that maqasid al-shari'ah* is not limited to *fiqh* aims only, but also to the whole aspects of Islam, especially the problem of *aqidah* (Yusuf Qaraḍāwī, 2006a). This argument strongly argues against the opinion that *maqasid al-shariah* is only in the *fiqh* field, including the opinion that was born as a consequence of the domination of *maqasid al-shariah* discussions in the *fiqh* domain compared to other spheres in Islamic studies. Therefore, Yusuf al-Qaradawi defines *maqasid* as the goal desired by the *nass* of all commandments, prohibitions, and permissibility, and which the law of *juz'iyyah* wishes to realise in the life of the people of *mukallaf* both personally, family, group and the *ummah* as a whole (Yusuf Qaraḍāwī, 2006a).

The application of the above *maqasid al-shariah* approach will raise a new *fiqh* format*, fiqh al-maqasid*, which is always able to provide answers to contemporary Islamic issues. Some examples of *fiqh* that are born from this approach are *fiqh al-sunan* (*fiqh* regarding the sunnat of Allah in life), *fiqh al-maqasid, fiqh al-ma'alat* (*fiqh* which is oriented to law effect), *fiqh al-muwazanat* (*fiqh* of justice), *fiqh awlawiyyat* (*fiqh* of priority), *fiqh al-taghyir* (fiqh of change) and *fiqh al-ikhtilaf* (*fiqh* of difference) (Qaraḍāwī, 2006a). This *fiqh*, as the name implies, is a *fiqh* form that emphasises the essence of benefit, wisdom, fairness, priority, and conformity with the demands of its legal context. In this context, *fiqh al-aqalliyyat* is included as a result of the

maqasid al-shari'ah approach, as it seeks to answer the legal issues that occur in a context and objectives that are consistent with those mentioned above (Olivier, 2020).

Based on the above description, it is clear that the conception of *maqasid al-shariah* from Taha Jabir al-Alwani and Yusuf al-Qaradawi is a continuation of the previous *maqasid al-shari'ah* development, especially from the conception of *maqasid al-shari'ah* of al-Shatibi and Ibn 'Ashur who had delivered the study of *maqasid al-shari'ah* from concept to approach. However, the views of Taha Jabir and Yusuf al-Qaradawi are more actual and applicable because of the context of the era that confronts them in new, more detailed, unique, and diverse legal issues. The Muslim context as a minority in the western world, for example, has not been a significant issue during the time of Ibn 'Ashur, especially in the time of al-Shatibi, so the study of their *maqasid al-shari'ah* did not address this issue. Meanwhile, Taha Jabir al-Alwani and Yusuf al-Qaradawi are intensively concerned and struggling with the problem of Muslim minorities in the West, thus initiating the *fiqh al-maqasid,* especially for those who are called *fiqh al-aqalliyyat*. The following is an explanation of the principle of *maqasid al-shari'ah* in the *fiqh al-aqalliyyat* (March, 2009).

The Main Rules of *Maqasid al-Shari'ah* in *Fiqh al-Aqalliyyat*

Fiqh al-aqalliyyat is part of *fiqh al-maqasid,* which is produced consistently through the *maqasid al-shari'ah* approach. The legal basis in *Fiqh al-aqalliyyat* is based on the *istinbat* and general principles of *maqasid,* which emphasises the urgency of universal Islamic values, aims, purposes, wisdom, and *'illat* of Islamic law. Welfare, with all its aspects such as justice, equality, freedom, peace, prosperity, and the ease of life, are ideal conditions that must be shaped as a reflection that Islam is a religion of compassion that always fits all places and times.

Abdullah Mahfuz Bin Bayyah mentioned some of the main rules of *maqasid al-shari'ah* used *fiqh al-aqalliyyat* as an effort to build benefits in the application of Islamic law in the Muslim minority community in a western country. The proposed rules include facilitating and eliminating hardship (*al-taysir wa raf 'al-haraj)*, the rules of *fatwa* change due to the change of time (*taghyir al-fatwa bi taghayyur al-zaman*), the rule of positioning the need for emergency position (*tanzil al-hajah manzilah al-darurah*), custom rules (*al-'urf*), the rules of considering the legal consequences (*al-nazar ila al-ma'alat*), and the rule of positioning the general public in the role of judge (*tanzil al-jama'ah manzilah al -qadi*) (Bin, 2006).

The reconsideration of the application of these rules becomes very important in the process of determining the law of *fiqh al-aqalliyyat* and is very beneficial for Muslim minority communities in western countries. The urgency of applying this rule as a significant consideration is in line with the position of Muslim society as a minority that has no authority

to make global policies. The characteristics of minorities with their socially-cultured areas of life have been relatively different from the socio-cultural values developed in Muslim countries, the difficulties they feel in carrying out Islamic teachings as applied in Muslim countries, as well as their high religious aspiration to remain a good Muslim (Qaraḍāwī, 2001), are the main reasons to find an applicative solution for the minority Muslims. Consequently, it forces contemporary jurists to reinterpret the arguments and *nass* so that the problems facing the Muslim minority community in the western country can be overcome. Reinterpretation is what demands *maqasid al-shari'ah* serve as the consideration so that the actual values of Islam can still be realised even though the form of *fiqh* that results is different from *fiqh aghlabiyyat*, the *fiqh* majority in general.

The rules of *fatwa* change due to change of time (*taghyir al-fatwa bi taghayyur al-zaman)* applied in *fiqh al-aqalliyyat,* are general rules that apply to all Islamic law. In the *maqasid al-shari'ah* approach, this principle is fundamental in order to maintain contextual relevance with the law. Yusuf al-Qaradawi explains that laws that change due to the changing times are laws defined by *'urf* and habit'. On the other hand, the law of its determination is based on the *shar'iyyah nass,* which is not based on 'urf and fixed habits and has not changed significantly (Qaraḍāwī, 2006b). Therefore, in the determination of *fiqh al-aqalliyyat*, it requires the accuracy of laws that are based on *nass qat'i* (definite or explicit propositions) and which laws are the social, cultural and political constructs (Muhammad, 1991). The differences in the times, places, and conditions as experienced by Muslim minority communities in western countries deserve different forms and legal provisions, with the classical *fiqh* formed at different times, places, and conditions.

The rule of "emergency conditions allow forbidden things" is a popular rule and is the *ijma 'ulama*. On the other hand, the rule "the need to occupy an emergency position in the determination of the law" is a rule that is not widely known by the general public. Nevertheless, this latter rule has been widely used in determining law on contemporary issues, especially with regard to medical and economic problems whose concepts and technologies are rapidly moving. The underlying meaning of emergency (*al-darurah*) and necessity (*al-hajah*) is different, but both applications have a common goal, namely to get the benefit, which is the purpose of the *shari'ah.*

The application of the next rule, the rule of habit *(al-'urf)*, in *fiqh al-aqalliyyat* is also interesting to be studied because the context of *'urf* is a Western country whose social-cultural system does not develop in the same way as the socio-cultural system developed in the Muslim countries. As a *maqasid*-based *ijtihad* product, *fiqh al-aqalliyyat* will consider habits based on measures of benefit values outlined in *maqasid* concepts and approaches. Good and bad are relatively universal values because they are based on a common-sense agreement of the majority of humankind. However, there are differences in some conditions. Under these

different conditions, *maqasid al-shari'ah* can serve as a decisive instrument. Based on the synthesis method on the opinions of some scholars such as al-Qarafi,' Izz bin 'Abd al-Salam, al-Suyuti, al-Ghazali, Ibn'Abidin, and some other opinions, in his analysis, Bin Bayyah mentions that *hujjiyah'* become the basis in the determination of law or *fatwa*, and others (Bin, 2006). In some respects, the rule of *'urf* is in one way with the rule of law changing because of the changing times and places, as mentioned above, because the times and places are the determinants of the creation of a habit.

The rule considering the legal consequences (*al-nazar ila al-ma'alat*) becomes an essential rule in the realisation of the benefit. When the benefit is understood as an ideal state that is expected to materialise, then consider what will happen when a law applied becomes something to do. The methods of law in the proposal of *al-fiqh* such as *istihsan, maslahah mursalah, sadd al-dhara'i 'wa fathuha a*nd some similar methods, are the application of the rule of law due for consideration. Based on empirical conditions, living as a minority in a western country provides a probability for this Muslim community to apply the rule in the determination of the law or the choice of legal choice, which will be used as guidance. As is known, in *fiqh* there are always some opinions of scholars in a case, then when it comes to choosing from the many opinions that exist, the choice must be based on the consideration of the benefit that will result. This is the essence of *maqasid*-based *ijtihad* when applied in the *tarjih al-aqwal* method (Khan & Konje, 2019).

Methodological Approach of *Maqasid al-Shari'ah* and Its Implications to the *Fiqh al-Aqalliyyat* Format

The previous explanations have dealt with the history of *maqasid al-shariah* from concept to approach, as it has also been mentioned that *fiqh al-aqalliyyat* is the product of the thought process using *maqasid al-shariah* as an approach. The interrelationships of both can be seen from Yusuf al-Qaradawi's view of the four main objectives of *maqasid al-shari'ah* (1) to understand the nass of the Qur'an and al-Hadith not only on the aspect of his *harfiyyah,* but the meaning behind the text itself in the form of *'illat*, intent or wisdom; (2) *maqasid al-shari'ah* becomes a rule in the process of choice of law, *tarjih* and *istinbat* law; (3) proselytising and giving of fatwas and providing legal certainty, (4) directing the Islamic movement (5) reviving the *fiqh* in harmony with the Qur'an and al-Sunnah (Ashur, 2007).

The principle of reaching human benefit and rejecting the virtue promoted by *maqasid al-shari'ah* is, in fact, the universal soul of all Islamic law-setting methods described in the books of *al-fiqh* suggestions. This basic principle is used as the basis by Malik bin Anas and his *madhhab,* who recognise *maslahah mursalah* as one of the *syara'* arguments that should be practised as the *sadd al-dhara'i'* (Yūsuf Qaraḍāwī, 1991), and Hanafi madhhab that uses *istihsan* in the determination of the law. The orientation of the benefit in Islamic law has been

strengthened to this day, so that, in this modern age, according to the study of Yusuf al-Qaradawi, none of the scholars did not make *maslahah mursalah* as a proposition when it came to settling cases that had no basis of *nass* (Qaraḍāwī, 2005).

The above approach has significant implications for the format and style of *fiqh al-aqalliyyat*. Flexible and inclusive shades of Islamic law appear dominant in this *fiqh* form when in *fiqh al-aqalliyyat fatwa,* and legal provisions are no longer limited to the interpretation of certain *fiqh madhhab* but are open to various interpretations, to then be chosen based on which is more aligned with the nature of the purpose of *shariah* Islam. Furthermore, when the existing *fiqh* is considered inappropriate to apply, the *fiqh al-aqalliyyat* presents new insights and interpretations of the issues studied.

Fiqh al-Aqalliyyat as a System: The Unity of *Fiqh*, Reality and *Maqasid al-Shariah*

On a theological level, no one doubts that God created beings with His will and power. With all His good qualities, God created everything with a definite purpose and apart from the nature of vanity. The rules that are made are to be implemented by humans in the context of their lives in order to achieve the goal of happiness and benefit (Ahmad & Muhammad Jamal, 2000). Accordingly, it can be said that the Lord's decisions, the reality of life, and the purpose of life is an interconnected unity. *Fiqh* as legal provisions understood from the word of God and hadith the Prophet, theoretically always have a close connection with the context of life as established by law, as well as related to the purpose of the law it carries that is to realise the benefit. *Fiqh* has proliferated since the early days, and reached its peak in the *tadwin* period, the period of modification of *fiqh* books after the establishment of the *madhhab* leaders (Hallaq, 2007).

Muslim minority societies in western countries find it challenging to apply classical Islamic interpretations when there is a wide gap between what is the reality faced, and what ought to be, the ideal conditions that should be understood from the classical tradition. This gap further strengthens Western discourse in the places where they live, that the teachings of Islam are incompatible with the values of Western culture. The only way to respond positively to these adverse conditions and assumptions is to return to the underlying values and universal principles brought by Islam, *maqasid al-shariah*, to then serve as a basis for reorganising the existing *fiqh* following the existing reality, but that cannot be separated from the basic principles of Islam (Qaraḍāwī, 1999).

The meeting of *fiqh*, the reality of the lives of Muslim minority communities in the West and *maqasid al-shari'ah* is what ultimately creates a new type of *fiqh* known as *fiqh al-aqalliyyat*. Thus, it can be said that *fiqh al-aqalliyyat* is an actual product that reunites the main elements of *fiqh* (law, reality, purpose) that have been scattered throughout the time taqlid flourished.

Furthermore, the *fiqh al-aqalliyyat* reunites all aspects of Islam in a single container of macro *fiqh* as it did in the early days in which *tawhid*, law, and morals became one unity as depicted in *al-fiqh al-akbar* by Imam Abu Hanifa (Khan & Konje, 2019).

With this *al-aqalliyyat fiqh*, new issues arising during the Muslim morality community in the West have not found their equivalent either in terms of matter and/ or the context that can be resolved well. The issue of the dichotomy of *dar al-Islam* and *dar al-harb* remains: citizenship in a non-Muslim country, with all rights and obligations attached to it, religious relationships with other faiths, social cooperation relations, political economy with non-Muslims, family law such as marriage and inheritance of different religions, and Muslim graves mixed with non-Muslim graves are among the issues discussed in *fiqh al-aqalliyyat* based on *maqasid al-shariah* as its primary consideration.

Conclusion

Based on the discussion, it can be concluded that it is very important to bring up Islamic *fiqh* specifically for Muslim minorities in western countries. The Islamic law problems that have been one of the biggest problems will no longer be solved merely based on the classic *fiqh* that are different from the Islamic law contexts in Muslim majority society. The *maqasid al-shariah* as a moderate *fiqh* is an essential way to solve their Islamic law problems that are faced differently by Muslim majorities in Islamic countries. The *maqasid al-shariah* needs to be developed urgently as the main instrument that holds to the rules in facilitating and eliminating difficulty, rule of change of fatwa due to change of time, rules of needs positioning in emergency, custom rules, rules of after-effect law consideration, and rules of positioning the public on the judge position. Interestingly, the *fiqh* provides flexibility and the width of Islamic law in conversing with many aspects of life problems in solving the Islamic law in the Muslim minority. Therefore, the reconsideration of *maqasid al-shariah fiqh* becomes one of the powerful solutions in solving the Islamic law problems for Muslim minority society in western countries. Finally, by applying such *fiqh*, the Muslim minorities in western countries can live harmoniously with their society by following the universal Islamic rules, and without contravening the local laws.

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