

## ***FIQH AL-AQALLIYAT*; JURISPRUDENCE FOR MUSLIM MINORITIES AS A GUIDE TO LIVING IN NON-MUSLIM COUNTRIES**

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**Abstract:** Being a Muslim who lives in a limited situation is not expected by anyone. However, the reality today is that many Muslims have begun to migrate from one Muslim-dominated area to another non-Muslim-dominated area, either for the sake of continuing their studies or working to support their families. The challenges faced by Muslims in Indonesia are not as complex as Muslims living in Western (non-Muslim) countries, where they are a minority group. They often face various challenges to practice their faith. It takes a full struggle to remain continuous in practicing the teachings of Islam. This paper wants to examine the challenges and problems of Muslim minorities living in Western countries. In addition, it wants to re-examine how the fiqh response provides a solution to the problems that befall Muslim minorities living amid a non-Muslim majority group. There should be someone who pays special attention to this minority problem. On that basis, contemporary scholars think that Muslim minorities get special treatment from the point of view of fiqh. This is because relying on classical fiqh will actually complicate the position of Muslims in Western countries. Therefore, a progressive solution is needed by compiling a new fiqh specifically for Muslim communities in Western countries, namely *fiqh al-aqalliyat*.

**Keywords:** Minority Jurisprudence, Minority Muslims, and Non-Muslims.

**Abstrak:** Menjadi seorang muslim yang hidup dalam situasi serba terbatas tidaklah diharapkan oleh siapapun. Namun, realitanya dewasa ini banyak sekali umat Islam yang mulai hijrah dari satu wilayah yang didominasi umat Islam ke wilayah lain yang didominasi non muslim, baik untuk kepentingan melanjutkan studi ataupun bekerja mencari nafkah keluarga. Tantangan yang dihadapi oleh umat Islam yang ada di Negara Indonesia tidaklah serumit umat Islam yang hidup di Negara Barat (non muslim), di mana mereka menjadi kelompok minoritas. Mereka sering kali menghadapi berbagai macam tantangan untuk menjalankan keyakinannya. Butuh perjuangan penuh untuk tetap kontinu dalam menjalankan ajaran agama Islam. Tulisan ini ingin mengkaji tentang tantangan dan persoalan muslim minoritas yang menjalani kehidupan di Negara Barat. Selain itu, ingin menelaah kembali bagaimana respons fikih memberikan solusi atas persoalan yang menimpa muslim minoritas yang hidup di tengah-tengah kelompok mayoritas non muslim. Sudah semestinya harus ada orang yang memberikan perhatian khusus terhadap problem minoritas yang demikian ini. Atas dasar itu, para ulama kontemporer berpikir agar muslim minoritas mendapatkan penanganan khusus dari sudut pandang fikih. Sebab, bertumpu pada fikih klasik justru akan merepotkan posisi umat Islam di Negara Barat. Karenanya, dibutuhkan solusi progresif dengan menyusun fikih baru khusus komunitas muslim di Negara Barat, yaitu *fiqh al-aqalliyat*.

**Kata Kunci:** Fikih Minoritas, Muslim Minoritas, dan Non Muslim.



## INTRODUCTION

No one denies that the teachings of Islam have a universal nature that can lead to the belief that Islam is applicable and appropriate for every age and place.<sup>1</sup> However, no one can deny the fact that the applicability of Islam to every place and time requires that there be only one face of Islam throughout the ages and in every place.<sup>2</sup> The emergence of various madhhabs from various (geographical) places is one of the undeniable facts in history.

The practical teachings of Islam (fiqh) grow and develop not only from a single interpretation.<sup>3</sup> Therefore, the jurists are accustomed to closing their studies with the sentence "Wa Allahu A`lamu Bi al-Sawabi" (Allah SWT knows better the correct opinion) which contains the philosophical meaning that fiqh is relative and is not worthy of conflict and debate.

The spirit of Islam can truly be fully felt when fiqh can be a legal solution for Muslims. It is an oasis in the middle of the barrenness of thought in human life.<sup>4</sup> This is the true meaning of the teachings of Islam which provides shade for its adherents. Instead of the opposite, fiqh is sometimes

only used as a tool to reinforce an understanding that is often contrary to the reality of human life. It does not provide benefits and convenience, but instead invites some negative effects and difficulties for humans.<sup>5</sup> So it seems that fiqh seems rigid and static, not elastic and flexible.

The elasticity of fiqh will be needed when a Muslim lives in a non-Muslim area. Being a Muslim who lives in a limited situation is not expected by anyone. However, the reality today is that many Muslims have begun to migrate from one Muslim-dominated area to another non-Muslim-dominated area, either for the sake of continuing their studies or working to support their families. So they are not only outnumbered, but also helpless in the face of pressures from the non-Muslim majority.<sup>6</sup>

This problem presents an unavoidable situation of interfaith mixing. The impact is the opening of challenging spaces for religious formats and the emergence of barriers that limit and even change religious understanding and

<sup>1</sup> Yusuf Al-Qardlawi, *Malamib Al-Mujtami` Al-Muslim Alladzji Nanshudubu* (Kairo: Maktabah Wahbah, 1993), 51.

<sup>2</sup> Yusuf Al-Qardlawi, *Fi Fiqh Al-Aqalliyat Al-Muslimah Hayat Al-Muslimina Wasat Al-Mujtama`at Al-Ukbra* (Beirut: Dar al-Syuruq, 2001), 21.

<sup>3</sup> Lu`ay Safi, *Al-Aqidah Wa Al-Siyasah Ma`alim Nazhariyyah `Ammah Li Al-Dawlah Al-Islamiyah* (Herndon, Virginia: IIIT, 1996), 156.

<sup>4</sup> Supardi, "Nalar Fikih Bagi Muslim Minoritas," *Masile: Jurnal Studi Ilmu Keislaman* 3, no. 1 (2022): 2, doi:<https://doi.org/10.1213/masile.v3i1.52>.

<sup>5</sup> Zain Zuhri Sholeh, "Pembaruan Ijtihad Dalam Fikih; Sebuah Upaya Membumikan Sabda Langit," *Investama: Jurnal Ekonomi Dan Bisnis* 2, no. 5 (2021): 36.

<sup>6</sup> M. Ali Kettani, *Muslim Minorities in The World Today* (New York: Mansell Publishing, 1986), 36.

practice.<sup>7</sup> In other words, there are many legal problems faced by Muslim minorities who are required to strengthen their commitment to implementing the teachings they believe in. On the one hand, if they choose to join the political system in a non-Muslim country, it means that they must also adopt the beliefs prevailing in that country, which are mostly secular. The secular system is clearly against Islam. In addition, this choice also encounters obstacles, considering that the number of Muslims who are a minority will not be able to influence the policies and political systems in the country.

Faced with this problem, Islam advocates renewal and innovation in religious thought, especially in the science of fiqh.<sup>8</sup> This statement is also supported by Thaha Jabir Al-`Alwani who said that classical fiqh was considered unable to provide sufficient space to provide legal solutions.<sup>9</sup> So it requires a new method of determining the law which may not be largely the same as that practiced by classical Muslim jurists.

However, not all Muslims have the same view and consider it a fairness. Not a few of the Muslims will actually consider the

renewal of the law as a matter of heresy that must be shunned. The question is why is there always a truth claim that negates the possibility of other opinions being true, which ultimately leads to social conflict? Does the majority view have the right to be the only standard of reference for judging minority views that develop in other contexts?

Many scholars adhere to the rule: "What is not commented on by the Shari'ah indicates that it is permissible". However, most laypeople turn that rule into, "What is not mentioned by the Shari'ah is forbidden, and doing it is heresy".<sup>10</sup> The same seems to apply to the ideas of establishing the foundations of minority fiqh (*fiqh al-aqalliyah*) in all parts of the world.

Although it is relatively new, conceptually minority jurisprudence is not a completely new model of jurisprudence and is independent of classical fiqh. Minority jurisprudence is only one branch of the discipline of fiqh that exists in the teachings of Islam. From the aspect of the method, minority jurisprudence also uses ushul fiqh methodology which is almost the same as other fiqh, because its main sources are the Qur'an, As-Sunnah, Ijma`, and Qiyas.

<sup>7</sup> Firdaus, "Muslim Minoritas Di Negara Non Muslim," *UNES Journal of Social and Economics Research (UJSER)* 4, no. 1 (2019): 23.

<sup>8</sup> Nurhayati, "Fikih Minoritas: Suatu Kajian Teoretis," *Abkam: Jurnal Ilmu Syariah* 13, no. 2 (2013): 193, doi:<http://dx.doi.org/10.15408/ajis.v13i2.932>.

<sup>9</sup> Thaha Jabir Al-`Alwani, *Towards a Fiqh For Minorities; Some Basic Reflections*, 18th ed. (Washington DC: International Institute of Islamic Thought (IIIT), 2010), 7.

<sup>10</sup> Ahmad Imam Mawardi, "Fikih Mayoritas Versus Fikih Minoritas: Melacak Akar Konflik Sosial Atas Nama Syariat," *Justicia Islamica* 9, no. 2 (2016): 107, doi:<https://doi.org/10.21154/justicia.v9i2.348>.

Therefore, a comprehensive explanation is needed to discuss the above issues.

The dialectic above raises the question of what are the challenges and problems of Muslim minorities in Western countries. How does fiqh reasoning provide solutions to problems that occur for Muslim minorities who live in the midst of a majority group that does not adhere to the teachings of Islam?

## METHOD

Looking at the variables, this study uses the library research method, which is a discussion to solve a problem through a literature review approach. Library research emphasizes theoretical studies, references, and scientific literature.<sup>11</sup> While the research approach is qualitative, which means that researchers carry out procedures that have become rules in a qualitative approach, such as observation and documentation, both in books, journals, and online media.<sup>12</sup> Thus, the primary data in this research are books, journals, and online media that discuss the issue of Muslim minorities in non-Muslim countries.

## RESULTS AND DISCUSSION

### 1. Minority Jurisprudence Terminology According to Experts

*Fiqh al-aqalliyah*, which translates into Indonesian as minority jurisprudence, consists of two words: *fiqh* and *aqalliyah*. Etymologically, the word *fiqh* means 'understanding'. In terminology, fiqh means knowing about the practical rulings of Sharia (*amaliyyah*) which are extracted from detailed arguments.<sup>13</sup> The word *amaliyyah* contained in the definition of fiqh above explains that fiqh only concerns external matters. So that matters of inner nature such as faith and creed are not included in the scope of fiqh.<sup>14</sup>

The word *aqalliyah* comes from the word “*qalla*” which means little, the opposite of much, and the word “*qoumun qalilun*” means little in number and physically weak.<sup>15</sup> According to Kamal Sa'id Habib, minority as a contemporary term is not recognized by Islamic culture, as the term sociology is now understood. But because it has become widespread, its form and definition are accepted following Islamic culture.<sup>16</sup> Terminologically, minority jurisprudence is a form of jurisprudence that

<sup>11</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*, 19th ed. (Bandung: CV. Alfabeta, 2013), 199.

<sup>12</sup> Mohamad Mustari and M. Taufiq Rahman, *Pengantar Metode Penelitian*, 1st ed., vol. 1 (Yogyakarta: Laksbang Pressindo, 2012), 86.

<sup>13</sup> Zakariyyā Al-Anshārī, *Ghāyat Al-Wushūl Syarh Lubb Al-Ushūl* (Semarang: Maktabah Hidayah, 2000), 7.

<sup>14</sup> Amir Syarifuddin, *Ushul Fikih* (Jakarta: Logos Wacana Ilmu, 1997), 2–3.

<sup>15</sup> Ibn al-Manzûr Al-Ifrîqî, *Lisân Al-'Arab* (Al-Qâhirah: Dâr al-Ma'ârif, 2001), Juz V, 2726.

<sup>16</sup> Kamâl Sa'id Habib, *Kaum Minoritas & Politik Negara Islam Sejak Awal Pemerintahan Nabi SAW Sampai Akhir Pemerintahan Utsman (1H–1325 H Atau 621 M–1908 M)* (Bogor: Pustaka Thariqul Izzah, 2001), 55.

maintains the relevance of Shari'ah laws to the dimensions of the community in which they live.<sup>17</sup> It is the jurisprudence of a limited community that has special conditions that allow something that is not feasible for others to become feasible for them. This definition is in line with the statement of Thaha Jabir Al-'Alwani in his book entitled *Maqashid al-Syariah*, he said;<sup>18</sup>

فَفَهْ نَوْعِيٌّ بِرَاعِيٌّ اِرْتِبَاطُ الْحُكْمِ الشَّرْعِيِّ بِظُرُوفِ  
الْجَمَاعَةِ وَبِالْمَكَانِ الَّذِي تَعِيشُ فِيهِ فَهُوَ فَهْمٌ جَمَاعَةٌ  
مَحْصُورَةٌ لَهَا ظُرُوفٌ خَاصَّةٌ يَصْلُحُ لَهَا مَا لَا يَصْلُحُ  
لِغَيْرِهَا وَيَحْتَاجُ مُتَنَاقُلَهُ إِلَى تَقَافَةٍ فِي بَعْضِ الْعُلُومِ  
الْإِجْتِمَاعِيَّةِ خُصُوصًا عِلْمِ الْإِجْتِمَاعِ وَالْإِقْتِسَادِ وَالْعُلُومِ  
السِّيَاسِيَّةِ وَالْعَلَاقَاتِ الدَّوْلِيَّةِ

*"A variant of fiqh that maintains the link between the sacred text (shar'i law) and the living dimension of a community and its environment. It is the jurisprudence of a limited community that has special conditions that allow something that is not appropriate for others to be appropriate for them. Obtaining it requires the application of some of the sciences of society in general as well as sociology, economics, and some of the sciences of politics and international relations in particular."*

Jamaluddin Atiyyah Muhammad stated that although it is rather difficult to find a definition that is acceptable to all parties and covers all forms of minorities in the world that need <sup>special</sup> protection, there are common characteristics of minorities,

namely; a collection of ethnicities, groups, religions, and languages that are different from other communities in a country. Other standards accommodate all forms of minorities, namely; first, in terms of numbers. The minority must be less in number than the overall majority population. Secondly, in terms of powerlessness. Minorities must lack power and strength, and thus need protection. Third, differences in group identity, ethnicity, culture, language and religion. Minorities usually have their characteristics or identities, such as nationality, religion, or language that are different from the majority population in a country.<sup>19</sup>

Yusuf Al-Qardlawi explained that minority fiqh has several unique characters, among others; first, the style of fiqh understood by the Muslim community today is limited to the exoteric domain of religion, thus marginalizing the exoteric aspects of religion, namely theological, inner, spiritual. In contrast to Muslim minorities who need a comprehensive fiqh framework. This paradigm is the substance of minority fiqh. Second, Muslim minorities are essentially part of the integral Muslim community. They have equal religious rights and obligations. However, the fact is that

<sup>17</sup> Miskari, "Fikih Muslim Minoritas Di Non-Muslim Mayoritas," *Al-Maslahah* 11, no. 1 (2015): 2, doi:<https://doi.org/10.24260/almaslahah.v11i1.134>.

<sup>18</sup> Thaha Jabir Al-Alwani, *Maqashid Al-Syariah* (Beirut: Dar al-Hadi, 2001), 97.

<sup>19</sup> Jamaluddin 'Athiyyah Muhammad, *Nahwa Fiqh Jadid Li Al-Aqaliyyat*, ed. Shofiyullah (Bandung: Marja, 2003), 16–18.

they live under the rules of an area that is not categorized as an Islamic state or an area of majority adherents of Islam. Therefore, a conception of Islamic law is needed that is relevant and does not contradict the reality they face. Third, although it was realized from the beginning that minority fiqh is a variant of fiqh in general, it has distinctive characteristics that distinguish it. The fiqh products produced by Muslim jurists in the past were born out of a situation where Muslims were the majority. Perhaps, the condition and situation of Muslims today escapes the prediction of classical scholars when mixing between nations is inevitable. So that it requires a new conception of fiqh intended for them. Fourth, the existence of Muslims in non-Muslim majority countries is an important factor in efforts to spread the dimensions of the universality of Islamic teachings. Therefore, special and serious attention is needed, so that the question of the law of living in a 'Kafir country' is not worth asking and discussing again.<sup>20</sup>

From the above discussion, it can be concluded that minority fiqh is one part of the type of fiqh in general, except that it has a special character because it will be determined in a society with special characteristics that are different from fiqh in general, namely Muslim minorities in Western countries. In terms of sources of

law, minority fiqh is the same as fiqh in general, which is sourced from the Qur'an and As-Sunnah which is built on *Ijma`*, *Qiyas*, *Istihsan*, *al-Maslahab al-Mursalab*, *Sad al-Dhara`i*, *Urf*, and other arguments that have been explained by the scholars of ushul fiqh. However, in terms of its form, minority fiqh is a new form because the legal actors are Muslim minority groups that have special characteristics, which are not shared by the majority of other Muslims.

## 2. Problems and Challenges of Muslim Minorities in Non-Muslim Countries

The phenomenon of Muslim communities in the West is often associated with the problem of Western society's insecurity towards Muslims. Western societies that claim to have advanced and modern civilizations sometimes consider Muslim societies with their Islamic values as conservative societies. Meanwhile, Muslim communities in the West have their own problems that are closely related to identity, traditions, trends, and life struggles.<sup>21</sup> This means that Muslims living in non-Muslim countries are considered as people who are conservative, left behind, and have no civilization, so they become a minority Muslim group.

The challenges faced by Muslims in Indonesia are not as complex as those in Western countries, where they are a

<sup>20</sup> Al-Qardlawi, *Fi Fiqh Al-Aqalliyat Al-Muslimah Hayat Al-Muslimina Wasat Al-Mujtama`at Al-Ukbra*, 30–34.

<sup>21</sup> M. Aji Surya, "Tantangan Muslim Di Amerika," *Kumparan.Com*, 2020.

minority group. They often face various challenges to practice their faith. It takes a full struggle to remain continuous in practicing Islam.<sup>22</sup> Unlike the majority group who rarely, if ever, experience the difficulties of praying, finding halal food, accessing religious education for children, being forced to wear clothes or uniforms that expose the aurat, being harassed for wearing the hijab, and being accused of terrorism when holding religious recitations.<sup>23</sup>

Being a minority is not easy, the majority group generally does not understand the psychological problems of minorities. This applies to anyone and in any name. The mystical, spiritual, and psychological atmosphere of Muslim minorities in non-Muslim countries is often ignored.<sup>24</sup> Implicitly, this shows that Muslims do not easily accept the positive side of Western civilization which is actually very much needed to catch up with backwardness and underdevelopment. For example, some Islamic countries - including Indonesia - are bringing their countries towards democracy. For this purpose, Islamic countries inevitably have to look to

Western countries with mature democratic systems.

One example of a Muslim minority in a European country that is often faced with social problems is the Spanish Muslim community. They are often discriminated against, especially in gaining access to freedom of religion and politics. Moreover, it is associated with the increase in terrorism that is always pinned on Muslims, so they are increasingly under pressure.<sup>25</sup> The same thing also happens in India, where Muslim minority groups experience a lot of discrimination. It is still fresh in memory how the riots that occurred in Gujarat in February 2002, hundreds of Muslims were killed, raped, and burned alive. Even today, many of them are still living in refugee camps with very sad conditions. Another discriminatory treatment is the difficulty of Muslims getting jobs so they are forced to disguise themselves as Hindus to apply for these jobs.<sup>26</sup>

In contrast to Spain and India, the Muslim community in the United States is actually freer in practicing their worship and beliefs. The development of Islam in America is growing rapidly, both quantitatively and qualitatively, such as the

<sup>22</sup> Damanhuri, "Kaum Minoritas Muslim Di Barat: Tantangan Dan Masa Depan," *Analisis* 12, no. 1 (2012): 230, doi:<https://doi.org/10.24042/ajsk.v12i1.638>.

<sup>23</sup> Rina Rehayati, "Minoritas Muslim: Belajar Dari Kasus Minoritas Muslim Di Filipina," *Ushuluddin* 17,

no. 2 (2011): 229–30, doi:<http://dx.doi.org/10.24014/jush.v17i2.694>.

<sup>24</sup> Nasaruddin Umar, *Geliat Islam Di Negeri Non Muslim; Sebuah Catatan Perjalanan* (Tangerang Selatan: PT. Pustaka Alvabet, 2019), 24.

<sup>25</sup> *Ibid.*, 86.

<sup>26</sup> *Ibid.*, 88.



attributes of Muslims that have been worn everywhere. In other words, the United States gives freedom and tolerance to its citizens to express all forms of beliefs and beliefs without any intervention from the government, unless it can disturb public order.<sup>27</sup>

In general, the complaints of Muslim minorities about the implementation of Islamic teachings in Western countries touch almost all aspects of Islam and have become a dilemma for them. The various problems faced include; first, problems in the field of pure worship, such as prayer and fasting. Finding a mosque in Western countries is very difficult, often Muslims are willing to travel long distances so that their Friday prayers can be performed. On the other hand, they also have to carry out their study assignments or have to carry out work duties in the company. Too often leaving study or work assignments for the reason of performing Friday prayers is sometimes not immediately understood by the campus and superiors where they work.<sup>28</sup>

The second is family law (*akhlak al-syakhsiyah*). In this area, some Muslim minorities in the West face complicated issues related to the legal status of marriage. It is common to find married couples who were originally Christian, but over time the

wife converted to Islam, while the husband still adheres to his old religion. If we refer to classical fiqh, of course, the wife must ask for a divorce from her husband, because Muslim women are not allowed to marry non-Muslim men. Until now, interfaith marriage is still difficult to penetrate the law of permissibility, given the strong *naqliyyah* arguments that forbid it. However, just as much as fiqh says "A", Muslims say "B". Therefore, many Muslims in the West prefer to maintain their marriages despite different religions, under the pretext that it is impossible to tear down the family building that has been established with sweat and tears. For the sake of the integrity of a family, they choose to maintain and care for the building rather than having to destroy it.<sup>29</sup>

Third, the issue of interaction (*muamalah*) between Muslims and non-Muslims. The majority of fiqh scholars forbid a Muslim to befriend a non-Muslim. Applying this opinion in Western countries has the potential to cause problems. Muslims will be increasingly oppressed and discriminated against by large communities in Western countries. As citizens, Muslims should be able to integrate themselves into a community. They should not close themselves off from Western society. In

<sup>27</sup> Ibid., 108.

<sup>28</sup> Mubasirun, "Persoalan Dilematis Muslim Minoritas Dan Solusinya," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 10, no. 1 (2015): 107,

doi:<https://doi.org/10.21274/epis.2015.10.1.99-122>.

<sup>29</sup> Abd. Moqsih Ghazali, "Minoritas Muslim Perlu Fikih Minoritas," *IslamLib*, 2011.

such a situation, although many scholarly opinions and sacred texts prohibit Muslims from associating with non-Muslims, in the end, Muslim minorities in the West tend not to care anymore.<sup>30</sup>

If we look back at the ethical-moral guidance of the Qur'an and the exemplary history of the Prophet Muhammad SAW, we will find information that adherents of other religions are not a threat to Muslims. Religious plurality was incarnated in the family of the Prophet Muhammad SAW. Some history books tell that the Prophet Muhammad SAW once had a polytheist son-in-law (Abu Al-'Ash, Zainab bint Al-Rasul's husband), a Coptic Christian slave girl (Maria Al-Qibthiyah) and a Jew (Raihanah), a Jewish father-in-law (the father of Shafiyah, the Prophet's wife). Waraqah ibn Naufal who testified and recognized Muhammad's prophethood was the cousin of Khadijah bint Khuwailid (the prophet's wife).<sup>31</sup>

On this basis, contemporary scholars think that Muslim minorities in the West should receive special treatment from the point of view of fiqh. This is because relying on classical fiqh will actually complicate the position of Muslims in Western countries. Therefore, a progressive solution is needed by pioneering new fiqh specifically for

Muslim communities in Western countries, namely *fiqh al-aqalliyat*. Currently, contemporary scholars who pay special attention to their work on Muslim minorities, including Jabir Al-'Alwani wrote a book entitled *Towards a Fiqh for Minorities*, Yusuf Al-Qardlawi wrote a book entitled *Fi Fiqh al-Aqalliyat al-Muslimah*, and Ahmad Imam Mawardi wrote a book entitled *Fiqh Minorities; Fiqh al-Aqalliyat and the Evolution of Maqashid al-Syariah from Concept to Approach*.

### 3. Framework for Minority Jurisprudence

The aspect of novelty which is an important element in minority fiqh demands creative efforts in producing it, as is the case in fiqh al-nawazil. The urgency of the new ijihad pattern is aimed at; [1] Explaining the relevance of Islamic law to social change; [2] The most realistic da'wah media for Muslim communities in solving the various legal problems they face by utilizing Islamic law; [3] As a gateway to the continuity of reform in Islam; [4] Becoming a bridge for Muslims in meeting their primary needs related to contemporary issues.<sup>32</sup>

The above opinion is in line with what 'Alwani said when discussing the various legal problems faced by Muslim minorities in Western countries. Many of these laws have no counterpart in classical fiqh

<sup>30</sup> Vita Fitria, "Islam Di Barat (Dinamika Minoritas Muslim Dalam Mayoritas Non-Muslim Amerika Serikat)" (Yogyakarta: UIN Sunan Kalijaga, 2003), 4.

<sup>31</sup> Ghazali, "Minoritas Muslim Perlu Fikih Minoritas."

<sup>32</sup> Supardi, "Nalar Fikih Bagi Muslim Minoritas," 6.

literature. He said; "The problems of Muslim minorities can only be solved with a new law based on the principles, goals, and values contained in the Qur'an through the maqashid sharia approach and a new ijihad methodology."<sup>33</sup>

'Alwani's statement shows an attitude of doubt about the ability of classical fiqh to provide answers to legal problems that afflict Muslim minorities. In fact, he voiced the importance of renewal starting from the ijihad methodology inherited from classical scholars, namely linking the objectives of sharia to the reality of Muslim life in Western countries. In the words of Anas Al-Shaikh Ali, this effort is called the "comprehensive methodology of minority fiqh". An effort that maintains the legacy of classical scholars, but does not hesitate to make creative and innovative efforts to create new things.<sup>34</sup>

One of the legacies of classical scholars that has not received a full touch is maqashid sharia. The existence of the purpose (maqashid) behind all the laws that have been established by God is fully believed by the majority of fiqh scholars. In fact, discussions about this adage continue among scholars until now. Starting from

Abu Bakr Al-Qaffal Al-Shashi (d. 365 AH), Abu Abdillah Muhammad bin Ali Al-Turmudzi (d. 279 AH), to contemporary scholars Muhammad Tahir Ibn Ashur (d. 1379 AH).

Maqashid sharia as a new approach in the realm of ijihad is a priority that cannot be ruled out because this maqashid can later make minority fiqh a new fiqh from the aspect of the methodology it uses. Unfortunately, the methodological system offered by minority fiqh is not yet complete and established as a methodology. It is still scattered in various studies and even many are only general principles that are placed on existing ushul fiqh theories.

As the initiator of *fiqh al-aqalliyat*, Yusuf Al-Qardlawi explained that in initiating minority fiqh, nine methodological principles are needed, including; [1] Minority fiqh cannot exist without straight contemporary ijihad. Therefore, he mentions two patterns of ijihad that can be developed in minority fiqh, namely *tarjibi intiqā'i* and *ibda'i insya'i*.<sup>35</sup> [2] Must pay attention to the rules of fiqh that are universal. [3] Pay attention to the fiqh of reality (*fiqh al-waqi'*) that occurs. [4] Emphasizing collective fiqh and not just

<sup>33</sup> Al-'Alwani, *Towards a Fiqh For Minorities; Some Basic Reflections*, 18.

<sup>34</sup> Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Al-Aqalliyat Dan Evolusi Maqashid Al-Syar'ah 'ab Dari Konsep Ke Pendekatan* (Yogyakarta: LKIS Pelangi Aksara, 2010), 133.

<sup>35</sup> *Tarjibi intiqā'i*, namely choosing opinions that have been expressed by previous scholars by determining which opinion is the strongest in favor of the realization of maqashid al-syar'ah. While *ibda'i insya'i*, namely ijihad to find new laws on new problems that are not found in comparison in previous fiqh.

individual fiqh. [5] Minority fiqh must be built on a method that facilitates (*manhaj al-taysir*). [6] Paying attention to the rule of fiqh which reads "the change of law is influenced by situations, conditions, times and places". [7] Using the method of graduality of the law. [8] Knowing all the things that are primary (*dlaruriyyat*) and secondary (*hajjiyyat*) human needs. [9] Freeing oneself from the attachment of mazhabs.<sup>36</sup>

The above description gives a strong impression of the dominant position of maqashid sharia in shaping and developing minority fiqh. Even so, Yusuf Al-Qardlawi also bases his mindset on the tools of ushul fiqh. As it is well known that every fiqh in any context always makes the Qur'an and As-Sunnah the main source of reference. While ijma' is used as an agreement on the legal status of a case obtained from a common understanding of the propositions of the text, and qiyas as a syllogism reason (*illat*) of the law of a new event with the illat of the law of the event that has been determined by the propositions of sharia.

Minority Jurisprudence is not an exception, because the four arguments above are also a source of law for him. It's just that minority fiqh emphasizes the principles and values of the universality of

the Qur'an as the basis for deciding the law. Al-Sunnah, which is a response to a specific event and at a specific time, must be understood in line with the general principles of the Qur'an.<sup>37</sup> Ijma' as an agreement of scholars at a certain period, in a certain place, and for a certain event, must also be understood in line with *maqashid shari'ah* whose general principles are contained in the Qur'an. Similarly, qiyas must not produce rulings that contradict the general principles of the Qur'an.<sup>38</sup>

In addition to the sources described above, minority fiqh also uses several other sources that are still disputed by scholars, such as *maslahat* (basing the law on the general principle of benefit when no clear evidence is found), *istihsan* (moving from a general text or *qiyas jally* to a specific text or *qiyas khafy*, because it is more acceptable to the special or qiyas khafy logically), *sadd al-dharai'* (closing the path to harmful things), *shar'u man qablana* (sharia of the Prophets before us), *al-'urf* (custom), *istishab* (continuing the previous law at present as long as there is no evidence that changes it), *qaul al-shababi* (opinion of the Companions of the Prophet), and so on.<sup>39</sup> All of this is intended to find a benefit-oriented law that can be applied in the context of Muslim

<sup>36</sup> Al-Qardlawi, *Fi Fiqh Al-Aqalliyat Al-Muslimah Hayat Al-Muslimina Wasat Al-Mujtama'at Al-Ukbra*, 40–60.

<sup>37</sup> Yusuf Al-Qardlawi, *Kayfa Nata'ámalu Ma'a Al-Sunnab Al-Nabawiyyab Ma'álim Wa Dhawábiib* (Beirut: al-Dâr al-'Arabiyyah li al-'Ulûm, 2006), 37–38.

<sup>38</sup> Al-Qardlawi, *Fi Fiqh Al-Aqalliyat Al-Muslimah Hayat Al-Muslimina Wasat Al-Mujtama'at Al-Ukbra*, 39.

<sup>39</sup> 'Abdul Wahhâb Khallâf, *Ilmu Uşul Al-Fiqh* (Mesir: Maktabah Dakwa Islamiyah, 2010), 32.

minorities. The purpose and context of the law play a very dominant role in this case.<sup>40</sup>

In its application, the tools of ushul fiqh are all used to explore a legal product that will be collected into an option and will be selected based on the level of expected benefit and the level of ease in its application. That is why community fiqh is also referred to as *fiqh al-maqashid*, because the chosen law is not necessarily based on the strength of the evidence, but on its alignment with *maslahah*, or called *fiqh al-taysir* (fiqh that facilitates) because the chosen law is the most likely to be applied.<sup>41</sup>

The emergence of *fiqh al-maqashid*, *ijtihad maqashidi*, and *tarijih maqashidi* is what characterizes minority fiqh which is different from fiqh in general, both in terms of methodology and substance. Unfortunately, until now no work has been found that fully discusses *ushul fiqh al-maqashidiyyah* as well as the existing classical ushul fiqh. As is common in classical fiqh, minority fiqh is also built on the foundation of legal rules known as *al-qawaid al-fiqhiyyah*. The number of fiqh rules is quite large and is a derivation of the five main rules known as *al-kulliyat al-khams*, among others;<sup>42</sup>

الْأُمُورُ بِمَقَاصِدِهَا

"Everything depends on intention"

الْيَقِينُ لَا يُزَالُ بِالشَّكِّ

"Confidence cannot be dispelled by doubt"

الْمَشَقَّةُ تَجْلِبُ التَّيْسِيرَ

"Adversity brings ease"

الضَّرُّ يُزَالُ

"Difficulties must be eliminated"

الْعَادَةُ مُحْكَمَةٌ

"Custom can become law"

The five main rules above have provided an initial description of how fiqh must consider the most essential things, namely intentions, and things that facilitate and bring benefits. This is what is used as a basic foundation by Yusuf Al-Qaradhawi and Thaha Jabir al-'Alwani, although they do not provide specific explanations about which fiqh rules are dominantly used in minority fiqh. Although the number of fiqh rules is so large and continues to grow, Abdullah bin Al-Shaikh Al-Mahfud bin Bayyah, one of the developers of minority fiqh, summarized it into six major rules that become the operational basis of fiqh al-aqalliyat, including;<sup>43</sup>

التَّيْسِيرُ وَرَفْعُ الْحَرَجِ

"The rule of easing and removing difficulties"

تَغْيِيرُ الْفَتْوَى بِالتَّغْيِيرِ الزَّمَانِ

<sup>40</sup> Al-Alwani, *Maqashid Al-Syariah*, 105.

<sup>41</sup> Mawardi, *Fiqh Minoritas: Fiqh Al-Aqalliyât Dan Evolusi Maqâshid Al-Syarî'ah Dari Konsep Ke Pendekatan*, 141.

<sup>42</sup> Ibrâhîm Muḥammad Maḥmūd Al-Harîrî, *Al-Madkhal Ila Al-Qawâ'id Al-Fiqhiyyah Al-Kulliyah* (Oman: Dâr al-'Ammâr, 1997), 27.

<sup>43</sup> Ali Ahmad Al-Nadawi, *Al-Qawâ'id Al-Fiqhiyyat; Maḥbūmuhā Wa Nasy'atuhā Wa Tathannuruhā Wa Dirâsat Muallafatihā Wa Adillatuhā Wa Muḥimmatuhā Wa Tatbīquhā* (Damaskus: Dâr al-Qalam, 1994), 65.

"The rule of changing fatwas due to changing times"

تَنْزِيلُ الْحَاجَةِ مَنْزِلَةَ الضَّرُورَةِ

"The rule of placing necessity in the position of emergency"

الْعُرْفُ

"Habit"

النَّظَرُ إِلَى الْمَالَاتِ

"Considering legal consequences"

تَنْزِيلُ الْجَمَاعَةِ مَنْزِلَةَ الْقَاضِي

"Putting the general public in the judge's shoes"

From the above explanation, it can be concluded that in forming minority fiqh, a framework based on maqashid sharia and two new ijihad methodologies are needed. First, *ijihad intiqai wa tarjibi*. This method can be used to establish legal certainty in a fiqh case that has similarities to classical fiqh. As with fiqh in general, the opinions of the fuqaha are not single but vary because fiqh is relative and is also influenced by geographical aspects (place) so the resulting legal products are also quite diverse. Consider the opinions of the fuqaha as legal products (A1), fiqh (A2), fiqh (A3), fiqh (A4), and fiqh (A5). All legal products are collected and then analyzed which fiqh product contains more benefits. However, the aspect of benefit is not the only aspect of consideration in choosing classical legal products, but also looks at the aspect of convenience. Thus, the application of these legal products does not experience technical obstacles in everyday life.

Second, *ijihad ibda'i wa insya'i*. In this method, there is no similarity of legal cases in the past, so it is impossible to find the opinions of classical scholars to determine the legal status of certain cases. Therefore, a special process is needed which is often called *ijihad ibda'i wa insya'i* by using three tools at once in analyzing the sacred text (*dalil tafsihi*), namely *maqashid al-syariah*, *ushul fiqh*, and *al-qawaid al-fiqhiyyah*. After getting the answer from the sharia to the fiqh case, the next process is to pay attention to the aspects of benefit and the aspects of ease in carrying it out.

## CONCLUSION

From the discussion above, it can be concluded that Muslim minorities living in non-Muslim countries experience a dilemma between being loyal to the teachings of Islam or mingling with the majority group which is mostly contrary to the values of Islamic teachings. In addition, a serious problem faced by Muslim minorities is that they often get discrimination from the rulers in the place where they live, who always favor and prioritize the non-Muslim majority group. In general, the problems faced by Muslim minorities are threefold: the problem of mahdlah (pure) worship, the problem of family law, and the problem of interaction (*muamalah*) between Muslims and non-Muslims. These three problems drag

Muslim minorities inevitably to blend in with the local culture so that outwardly they lose their identity as a Muslim. Finally, they choose not to stick to one madhhab in the aspect of worship and choose the maslahat opinion in the aspect of *muamalah* (interaction) and *akbwal al-syakhsyyah* (family law).

Muslim minorities are actually people who are in a special situation that cannot be treated the same as Muslims in general, because of the peculiarities of the situations and conditions they face. Therefore, contemporary scholars create *ijtihad* methodologies and frameworks based on *maqashid al-syariah* and *maslahah al-mursalah* in compiling new *fiqh* specifically to answer the problems faced by Muslim minorities. First, the *intiqâ'î tarjîhî* method, which is to choose the opinions that have been expressed by previous scholars by determining which opinion is the strongest in favor of the realization of *maqâshid al-syarî'ah*. Second, the *ibdâ'î insyâ'î* method, which is *ijtihad* to find new laws on new problems that have no comparison in previous *fiqh*.

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