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Good Muslims and Good Citizens: How *Fiqh al-Aqalliyat* Solves the Problems of Muslim Minorities in the West

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Abstract

Fiqh al-aqalliyat articulates the importance of providing a normative basis for religious, social, and political activities for Muslim minorities in non-Muslim societies. It aims to help those who seek a healthy middle way between being a good Muslim on the one hand and being a good citizen on the other. The view of *Fiqh al-aqalliyat* does not only provide a way out for the Muslim minority to carry out religious obligations in unique and special situations. More than that, *Fiqh al-aqalliyat* also provides a conceptual basis for Muslim minorities to integrate and become part of Western society.

Keyword

Integration, Europe and America, fiqh al- Aqalliyat, muslim minorities

Introduction

Muslim minorities in European and American countries, which are predominantly non-Muslim, often face conflicts between religious principles and social norms that apply in the countries where they live. They are faced with social and cultural conditions that are different from their social conditions of origin. The majority culture is certainly dominant so in some ways, the linking of these two cultural values psychologically confronts the Muslim minority with choices: remaining true to their original culture, following the majority culture, or standing on two identities by carrying out a process of positive adaptation and integration between the two. This can affect their identity and beliefs, as well as present challenges in carrying out their religious obligations such as prayer, fasting, and other worship. Muslims in European and American countries, for example, have to face problems such as negative media stereotypes, marriage to non-Muslims, difficulty or limited halal food, facilities for houses of worship that are far from ideal, local values that (sometimes) are not following Islamic teachings, constitutions that not fully in favor of the Islamic religion, some residents are Islamophobic and work that is contrary to religious teachings and so on (Hasirudin, 2021, p. 10). Apart from that, most Muslim minorities who were initially immigrants also had to face complex socio-political problems, starting from identity crises, discrimination, racism, and anti-migrant movements to Islamophobia (Dianto, 2020; Lukens-Bull & Woodward, 2021; Scharbrodt, 2021).

These problems ultimately hinder the unification of the Muslim minority with the local community. In many cases, the Muslim minority becomes a group that is excluded from the socio-political life of the country where it lives. Not only because of political policies and racist, anti-immigrant, or anti-Islamic movements but also because of the understanding and beliefs of Muslims themselves which lead to an understanding of *fiqh* which tends to be inconsistent with the spirit of living together in a non-Muslim majority environment (Taha, 2012).

Therefore, the application of the provisions of classical *fiqh* in these conditions will potentially cause problems and difficulties for Muslims themselves. One of the roots of the problem is the view of the dichotomy between “*dar Islam*” (land of Islam) and “*dar al-harb*” (land of war) in classical *fiqh* which is problematic, and irrelevant to contemporary developments. Besides, Western countries have different legal systems and norms from Muslim countries. Some classical *fiqh* views may not be following Western norms and laws, so adopting them can lead to legal and social problems. This could lead to discrimination or exclusion, or even cause bigger problems, such as inter-religious and intercultural tensions. In short, the realities of life for Muslims living in non-Muslim countries are so fundamentally different from Muslim-majority countries that traditional Islamic jurisprudence

cannot offer meaningful solutions to their problems.

Therefore, there is a need for jurisprudence with a special perspective for Muslims who are in these non-Muslim majority areas. The view of *fiqh* is in harmony with the social conditions faced by Muslim minorities. So that they can carry out Islamic teachings well without causing legal or social problems. This is what gave rise to the idea of pioneering minority *fiqh* (*Fiqh al-Aqaliyyat*). The goal of most attempts to theorize jurisprudence in this line of reasoning is to facilitate the lives of Muslim minorities; it also, aims to create a foundation for the moral obligations of Muslims towards non-Muslims in such an environment. And most importantly, minority *fiqh* can provide a way to create positive relations between Muslims and non-Muslims in immigrant-receiving countries (Kazemipur, 2016).

Even though it is relatively new, conceptually minority *fiqh* is not a really new model of *fiqh* and is separate from traditional *fiqh*. Minority *fiqh* is only one branch of the broad *fiqh* discipline within Islam. He also uses the proposed *fiqh* methodology which is almost the same as other *fiqh*. Because he refers to the same source, namely the Qur'an, *Sunnah*, *ijma'*, and *qiyas* (Mawardi, 2015).

Even though *Fiqh al-Aqaliyyat* was born in the context of Europe and America, the perspective of this *fiqh* can certainly be utilized by Muslims in various regions that have socio-political conditions similar to those in Europe and America. In the Indonesian context, for example, several topics in minority Jurisprudence can be a contextual perspective to address problems in various areas where Muslims are a minority, such as in East Nusa Tenggara, Papua, Bali, and Maluku (Kusnandar, 2021). Thus the problems experienced by Muslim minorities in Europe and America are also likely to be experienced by Muslim minorities in areas in Indonesia. Because of this, this article will provide a comprehensive overview of minority *fiqh*, related to Islamic legal solutions to problems faced by Muslim minorities throughout the world. And how does this view of *fiqh* act as a solution to the conflict of values that hinders positive relations between Muslim minorities and non-Muslim communities in Western countries.

The Problem of the Western Muslim Minority and the Need for a New *Fiqh* Discipline

The Problem of Applying Islamic Law as a Minority

Muslims living in European countries and America face various complex socio-political problems related to immigrant-local relations, minority-majority, discrimination, Islamophobia, identity crisis, discrimination, and so on (Dianto, 2020; Hasirudin, 2021; Kettani, 2005). In addition, the Muslim minority also faces serious problems regarding their perception of life as a minority living in a very different area from where *fiqh* law is produced and developed and their

beliefs as Muslims. In countries like America and England, they will be faced with problems that cannot be found in context with what is in *fiqh* books in general. The compulsion to choose (political vote) leaders and political representatives who are not Islamic, the difficulty of finding halal food, the difficulty of carrying out *qurban* (ritual animal sacrifice of a livestock animal during *Eid al-Adha*), because of the difficulty of permits for slaughter, differences in religion in marriage, saying merry Christmas and attending different community events religion, times of prayer and fasting, regarding bank interest and usury, all provisions of Islamic law which are not allowed to be applied by existing laws and regulations and so on are just a few of the daily problems faced. Mathias Rohe, professor of law at the University of Erlangen Germany, gave a pretty good review of the facts about the problem of the German Muslim minority which local scholars have given fatwas, starting from the most basic, namely immigration to infidel countries, religious conversions, Islamic punishments for the grave sins (*hudud*) they commit while in that country Islamic law sanctions cannot be carried out, donations of *syubhat* (Halal and Haram are not clear) and unlawful items for mosques and others, work income which is very likely not one hundred percent guaranteed to be clean from syubhat and haram, the rights and obligations of the wife and others (Rohe, 2004).

The problems faced by Muslim minorities related to the application of Islamic law in European and American countries occur in various problems in various aspects of *fiqh* (Mawardi, 2015). For example, in aspects of *mahdah* (pure) worship such as the issue of prayer and fasting. Prayer times in several countries in Europe become uncertain if the implementation is based on the movement of the earth around the sun. Not infrequently the *Isya'* prayer can only be held at 11 or even midnight. Even finding a mosque in the West for Friday prayers is difficult. Muslims often have to travel long distances to hold Friday prayers, while at the same time, they have to work in a company. Too often they leave work for the reason that Friday prayers are sometimes not immediately understood by their superiors in the West. Problems in carrying out fasting occur in countries where the division of sing-night tends to be extreme, such as Scandinavian countries such as Sweden, Norway, and Finland, where the duration of the sing-night is approximately 21 hours. Whereas in Russia people fast for 19 hours, in America 16 hours or in England 17 hours and 45 minutes. Practically they fast for more than 15 hours (NUonline, 2015).

In the field of family law (*Ahwal Al-Syakhsiyah*), Muslim minorities in the West face thorny issues regarding marital status. Many couples face problematic choices related to marriage with people of different religions. For example, when a Christian woman marries a man of her religion, and then for 20 years together and has four children, suddenly the wife embraces Islam, while the husband still adheres to his old religion. Consistent with old-conventional *Fiqh*, the wife must divorce her husband. However, the choice to separate certainly has very heavy and

complex implications and risks such as the economy, children, extended family relationships, and others, so it is better to avoid it. Does the wife have to separate from her husband or is it allowed for the couple to have different religions but remain as husband and wife (Rohe, 2004) . Other problems related to marriage are of course also related to inheritance issues. There are not a few *Fiqh* views that prohibit Muslims from inheriting their wealth from non-Muslim families or descendants. This is difficult to fulfill in Muslim families in the West where one member of the family has a different religion. One of the problems in the muamalah field is the use of financial services such as buying a house through instruments that are considered to contain usury, insurance, and so on.

Problems in Social Integration

Over the last twenty years due to the marked growth in the number of Muslim immigrants, the refugee crisis, and the current geopolitical upheaval between Western countries and Islamic political groups. Integration is “a process in which new immigrants and the communities in which they live—both individuals and institutions—adapt to one another.” The integration process is influenced by the characteristics of immigrants and host communities (Jiménez, 2011, p. 4).

In the context of Muslim minorities in non-Muslim countries, the process of social interaction and integration of the Muslim community with non-Muslim local communities experiences many obstacles, both from the socio-political conditions of the host country and from the characteristics of Muslims themselves. From the socio-political aspect of the host country, these barriers are in the form of employment discrimination based on religion and ethnicity; lack of acceptance of minorities by host communities; Rigid Secularism and Intolerance of Religious practices by the local government; residence separation; and post-colonial hatred and antagonism in Europe. Meanwhile, from the Muslim aspect, the obstacles are in the form of conservative and ethnocentric views promoted by religious leaders (Liebert, Siddiqui, & Goerzig, 2020) .

Employment discrimination experienced by the Muslim minority occurs in most countries in North America and Western Europe. Several studies have found that Muslim-sounding names face job discrimination in North America and Western Europe. This discrimination even occurs in second and third-generation Muslim immigrants born in Europe who have received higher education. A study in France found that Muslim applicants were four times less likely to receive a call than their Christian counterparts with the same qualifications (Liebert et al., 2020).

European Muslims also face difficulties related to citizenship policies. This is influenced by the colonial perspective bias. Western European countries have historical ties to colonialism with the countries of origin of Muslim immigrants. Like France, which has colonial connections with North African countries, and England

with South Asian countries. This experience of colonialism is often articulated by post-colonial governments in policies toward Muslim minorities in Western Europe (Maussen, Bader, & Moors, 2011). France has adopted an approach that minimizes the public presence of Islam in French society in the name of *laïcité*. The principle of *laïcité* or the secular political system enforced in France is translated into a policy of refusing to accommodate or include religion in public life. The government's decision to ban all "conspicuous" religious symbols, including the Muslim headscarf in public institutions in 2004 and then the veil in public places in 2010, can be interpreted as a model example of this policy (Idriss, 2005). This echoes the policies of the French colonial government over North Africa which tried to marginalize Islam and Arabic as markers of the religious and cultural identity of the colonized people (Maussen et al., 2011). Integration experts agree that the principle of *laïcité* is seen by some as an obstacle to the ability of Muslims to integrate with local communities and practice Islam and results in an increased desire to assert religiosity or even generate radical or conspiratorial thoughts (Liebert et al., 2020).

The same condition are also seen in North America. Discrimination against Muslims was also influenced by orientalism and colonialism which laid the foundation for the Muslim-Western dichotomy. Muslimism is often combined with certain races and nationalities so that it is independent of religiosity or individual identity. People who come from the Middle East often identify collectively as Muslims. Thus discrimination against Muslims is often linked to non-white racist sentiments. Even other non-white groups, such as Sikhs, are often misunderstood as Muslims and slandered because they are associated with the Islamic religion (Barnsley, 2021).

The obstacle for the Muslim minority to integrate into the society of Western countries is also due to factors originating from within the Muslim community itself, namely the existence of a conservative religious understanding and tends to support the attitude of keeping distance from non-Muslim communities. This understanding is based on the classical *fiqh* understanding of relations with non-Muslims and the dichotomy of "*dar al-Islam*" (land of Islam) and "*dar al-harb*" (land of war). Such as the opinion regarding the prohibition of electing a non-Muslim head of state, the prohibition of entering the military in a non-Muslim country, the prohibition of congratulating other religious holidays, and so on. Such a view would potentially cause problems. Muslims will be increasingly alienated from large communities in the West. They will be considered withdrawn from society.

This condition is exacerbated by the existence of religious leaders (*imams*) who spread conservative views. Existing studies suggest that there are many mosques in Europe funded by Islamic groups from countries outside Europe who then elect Imams who teach a conservative form of Islam that does not easily conform to Western values. Their views on politics expressed through sermons

often reflect these dangerous gaps in cultural integration (Liebert et al., 2020).

It is these obstacles that raise doubts about the ability of Muslims to integrate into non-Muslim societies. The views of classical *fiqh* are unable to clearly and decisively answer the problems of Islamic law they face because classical *fiqh* was written in the past in areas where the majority of the population is Muslim. Because of this, it is necessary to formulate *fiqh* that can address the problems faced by Muslim minorities in countries with a non-Muslim majority, while at the same time laying the groundwork for dialogue between cultures so that Muslim minorities can fulfill their role as good Muslims as well as good citizens.

The Conceptual Understanding of *Fiqh al-Aqalliyyat*

Terminological Understanding

Fiqh al-Aqaliyyat was initiated by two Islamic jurists in the late 1990s, namely Thaha Jabir Al-Alwani and Yusuf al-Qaradawi. Both are eminent Muslim scholars who have made significant contributions to the field of Islamic jurisprudence as it deals with the rights and obligations of Muslim minorities. Al-Alwani is an Iraqi-American scholar who has written extensively on this subject. He studied '*Usul al-Fiqh*' at Al-Azhar University and migrated to the United States in the 1970s. Alwani is later known as the founder and former chairman of the *Fiqh* Council of North America (FCNA), an Islamic organization based in the United States that provides Islamic legal opinions (fatwas) on various aspects of Muslim life (FCNA, 2021). Al-'Alwani introduced the *Fiqh al-Aqaliyyat* and used it for the first time in 1994 The *Fiqh* Council of North America (FCNA) issued a fatwa allowing American Muslims to vote in general elections, even if there were no Islamic political parties, or even completely void of Muslim candidates (Fadl, 1994).

Meanwhile, al-Qaradawi is an Egyptian-born Muslim intellectual who is famous for his work on Islamic law and its application in modern times. Yusuf al-Qaradawi also studied at Al-Azhar University and in 1997 he founded The European Council for Fatwa and Research (ECFR) intending to guide Islamic law to Muslim minorities in Europe (ECFR, 2020). Many people consider that al-Qaradawi's thoughts have shifted from conservative thinking to moderate thinking. His views that were firm and conservative in determining Islamic law and in assessing the pattern of relations between Islam and the West began to soften as his experience of direct contact with the Western world. Nevertheless, his commitment to Islam is very strong and because of that, he believes that Islam can provide answers to all life's problems including what is faced by Muslim minority communities in the West. His full book entitled "*Fi Fiqh al-Aqalliyyat al-Muslimah: Hayah al-Muslimin Wasat al-Mujtama'ah al-Ukhra*" contains his ideas on Islamic law in responding to contemporary problems of Muslim minorities in the West. For him, the problem of

the diversity of Muslim minority communities in the West cannot and cannot be solved by sending them back to Muslim countries, because in fact, the problem lies not in their existence in the West, but because classical *fiqh* does not adequately answer their problems. The two scholars have been influential in shaping the discourse around Islamic law and the rights of Muslim minorities, and their work continues to be widely studied and referenced today (Mawardi, 2010).

The term *Fiqh al-Aqalliyat* became an established term in early 2000. But it is clear who first introduced the term. Some claim that al-Qaradawi did it with his early book *Al Halal wa al Harm* (1960). Others argue that Taha Jabir al-‘Alawani first introduced him with his papers in various conferences and magazines, especially those presented around 1994. The third hypothesis argues that ‘Abd al-Majid al-Najjar or Muhammad Fath Othman was the first. However, it was the publications of al-Qaradawi and al-‘Alawani that led to the acceptance of the term in many scientific and public circles. Through their writings, *Fiqh al-Aqalliyat* moves from being just a fatwa to becoming a framework for how to deal with various problems of Muslim minorities related to Islam in various dimensions, both ritual, social, economic, and political. Furthermore, the term ‘*Fiqh al-Aqalliyat*’ was institutionalized through its recognition by local and international Muslim legal councils such as the European Fatwa and Research Council, the Association of American Muslim Jurists, the Islamic Society of North America, the Islamic *Fiqh* Academy, al-Azhar, and others (Hassan, 2019).

Thus, as in Taha Jabir al-‘Alawani’s conception, the term ‘*fiqh*’ in the phrase “*Fiqh al-Aqalliyat*” refers to what Abu Hanifa, the founder of the Hanafi school of thought, termed *fiqh al-akbar* (grand jurisprudence) which includes branches the theological and practical branches of Islamic law. In Alwani’s understanding, *fiqh* appears as a comprehensive term that originally means understanding (*fahm*) of the wisdom and purpose behind God’s commands, provisions, and prohibitions. *Fiqh al-Aqalliyat* is designed to revitalize this original meaning which refers to the identification of the purpose of God’s commandment in its minority context. Therefore, Alwani envisions a *fiqh* model for minorities that builds a strong connection between the values of the Qur’an and Islamic jurisprudence in reviving the scope of *fiqh al-akbar* (Yakar & Yakar, 2021, p. 386).

While the word “*aqalliyah*” comes from the word *qallala* which means little, the opposite of many. According to Taha Jabir al-‘Alwani, *aqalliyah* means minority or group, which is a political term that is defined as a group of people within a government who in terms of ethnicity, language, race, or religion is different from the growing majority group (Al-Alwani, 2010).

However, in Said Fares Hassan’s observation, from the literature published by these *fiqh* supporters, there is no clear definition of the concept of *Fiqh al-Aqalliyat*. al-Qaradawi in his work “*Fiqh al-Aqalliyat al-Muslima*” does not

provide a definition. He only explained the objectives, characteristics, and sources of *Fiqh al-Aqalliyat*. One of the reasons for his disinterest in this definition of law is that al-Qaradawi considers *Fiqh al-Aqalliyat* to be part of general *fiqh* (*al-fiqh al-'amm*), however, *fiqh al-aqalliyat* gives attention and consideration to political and social changes that are not taken into account by old *fiqh*. He argues that if there is a jurisprudence for zakat and a political jurisprudence, then there is room for *fiqh* for *aqalliyat* (Hassan, 2019, p. 316).

On the other hand, al-'Alwani focuses on methodology and seeks to define the meaning of *Fiqh al-Aqalliyat*. However, the definition put forward by al-Alwani tends to only provide arguments for the need for this *fiqh*. Al-'Alwani describes *Fiqh al-Aqalliyat* as "a form of *fiqh* which maintains the relationship of shariah law with the dimensions of a community and with the place where they live", with the following characteristics: "*fiqh* that applies to limited communities living in special circumstances. What may be good for that community may not be good for another community. How to obtain it requires the application of some social sciences in general and sociology, economics, and some political science and international relations in particular" (Al-Alwani, 2010, p. 3)

Meanwhile, there are other standards put forward to mark minorities, namely: First, in terms of numbers: it is clear that the number of minorities must be fewer than the total majority population. Second, in terms of powerlessness: minorities must not have power and authority so they 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. So, *Fiqh al-Aqaliyyat* is one type of *fiqh* that is part of *fiqh* in general, it's just that it has a special character because it will be applied to people with special characteristics, which are different from *fiqh* in general, namely Muslim minorities in the West (Kettani, 2005).

Jasser Auda (2018), with a different perspective, provides a review related to the status of society with a special character which is the basis for consideration in *fiqh al-aqalliyat*. Auda believes that from the various literature on *fiqh al-aqalliyat*, it appears that the basic premise for Muslims to be considered *aqalliya* ('minority') is not a number or population. Conversely, do Muslims live in so-called "non-Muslim countries", "non-Muslim societies", "non-Muslim contexts", "non-Muslim politics" or under "non-Muslim governments"? Thus, the "special characterstic" here is not about the number of Muslims, but about how the state runs a system of government or policies that can be labeled as 'non-Muslim' so that Muslims need a special law called *fiqh al-aqalliyat* (*fiqh* for minorities), *fiqh al-ghurba* (*fiqh* for people in exile), *al-madhhab al-urubbiyy* (European School of Law'), European *sharia*, or European Islam (Auda, 2018).

Sources and Methods

In terms of legal sources, *Fiqh al-Aqaliyyat* is the same as *fiqh* in general, that is, it is sourced from the Qur'an and Hadith, which are built on *ijma*, *qiyas*, *istihsan*, *al-masalih al-mursalah*, *sad al-dhara'i*, *'urf*, and propositions -another argument that has been submitted by the scholars of *ushul fiqh*. Al-Qaradawi fulfills the use of these sources because he intends to use them within the framework of a comprehensive *Ijtihad*, the exigencies of the time, the interest of the Muslim community (rather than only the individual interest), the consideration of the gradual application of the rulings, the recognition of human contemporary necessities and the liberation of oneself from commitment to any single school of thought (Qaradawi, 2001). *Fiqh al-Aqaliyyat* is essentially a continuation of its methodological framework. The source of *Fiqh al-Aqaliyyat*, according to al-'Alawani, starts from the Al-Qur'an and As-Sunnah. Classical *fiqh*, especially as it relates to the interaction between Muslims and non-Muslims, is historically bound and irrelevant to the present. Classical *fiqh* arguments can be taken as precedents but should not be the main perspective (Al-Alwani, 2010).

Minority *fiqh* has four main elements that must be considered in making sharia decisions, namely renewal of commitment to *ijtihad*, *maqasid al-syari'ah*, *taysir* (facilitate), and *'urf* (tradition). The renewal of *Ijtihad* in the field of *Fiqh* in question is contextual *Ijtihad* which is carried out by taking into account the context and aims and objectives of the Shari'a. Here, Qaradawi identifies two types of *Ijtihad*: creative and selective. Creative *ijtihad* is a traditional approach to sharia interpretation and is used to raise previously unanswered questions. Meanwhile, selective *ijtihad* (*takhayyur*) uses and selects previous *fiqh* views to answer new questions. Selective *ijtihad* is a method that is preferred over creative *ijtihad* because it does not completely abandon *taqlid* but seeks alternative ways so that *taqlid* remains applicable in modern life. This is generally more acceptable and in line with making fatwas than inventing something new, which someone might accuse of being an "innovation" towards Islam, or a modernist approach to issues, which traditionalists dislike (Reifsnider, 2020, p. 135).

Meanwhile, *Maqashid al-syari'ah* means Sharia goals. According to al-Ghazali, al-Amidi, and Ibn Hajib, it is understood as an effort to gain benefits and reject *mafsadat* (damage or destruction). While Imam Syatibi defines that *maqashid al-shari'ah* are the main principles of Islamic law which are the fundamental objectives of Islamic law disciplinarity. According to al-Syathibi, Shari'a was sent down by Allah to realize the human benefit and avoid *mafsadat* (Auda, 2007). Most major Islamic jurists agree with the connection of *Maqashid al-syari'ah* to *maslahah*. *Maslahah* means "public interest, goodness, welfare, and benefit". Since *maslahah* is about the general or community welfare, one may have to lose something for the common

good. Although prioritizing the best for society, *maslahah* is not without debate (Reifsnider, 2020, p. 136). The benefit is divided into three needs, namely *dharuriat* (primary), *hajiyyat* (secondary), and *tahsiniat* (tertiary). *Dharuriat* (primary) needs must exist for the realization of human life, consisting of five parts that must be maintained, namely *hifdzu al-din* (religion), *hifdzu al-nafs* (soul), *hifdzu an-nasl* (offspring), *hifdzu al-mal* (treasure) and *hifdzu al-'aql* (mind) (Auda, 2007).

The next element is *taysir*. *Taysir* has been explained in English through the words, “facilitation, leniency, and making easy.” This is a legitimate method of formulating Islamic law. In practice, if there are two possible solutions, the easier and less restrictive path is taken. Qaradawi interpreted *taysir* as ‘the true spirit of Islam’ (Caeiro, 2011). But because of the risk of abuse, al-Qaradawi suggested that it should be applied only when necessary and that it is intended only as a temporary measure until things return to normal.

Next is *urf*. This term is often equated with ‘*adat*. According to Hafiz Abdul Ghani, ‘*urf* is a habit of a people, while ‘*adah* is a tradition or habit; however, the scope of *urf* is greater (Reifsnider, 2020, p. 137). One of the reasons why ‘*urf* is used as a source of law in determining shari’ah is the application of the basic principle of Islamic law: “benefit and eliminate harm”. Islamic law ensures that the interests and benefits of people are protected and hardships are avoided. When people get into certain habits, it is not easy to break them. *Fiqh* experts from various schools of thought give recognition to the principle of benefit. ‘*Urf* is especially useful in *mu’amalat* (people interaction); however, its use is very limited, related to worship or ethics. Another reason is that the Prophet Muhammad did not reject all the customs of the people of his time (Ghani, 2011). In the context of minority *fiqh*, *urf* represents a context that includes time, space, and circumstances that must be considered in making decisions about sharia. This could also fit with al-Qaradawi’s vision to demonstrate da’wah by allowing the process of Islamization to occur through the local incorporation of Islamic customs and practices (Reifsnider, 2020, p. 137).

Fatwas Based on Fiqh al -Aqalliyyat

The European Council for Fatwa and Research (ECFR) and the *Fiqh* Council of North America (FCNA) have a major role to play in providing religious guidance and promoting the understanding and application of Islamic law (*Fiqh*) among their respective communities. In the context of minority *fiqh*, this organization is to provide guidance and support to Muslims living in non-Muslim majority communities. It includes issuing fatwas (religious fatwas) on various aspects of Islamic life that take into account the unique circumstances facing Muslims in Europe and America. Typical fatwas of minority *Fiqh* may relate to the permissibility of certain practices in Islam which may be influenced by local laws or customs in non-Muslim majority

societies. The following are examples of fatwas related to the political, social, and economic fields issued in the context of minority *fiqh*.

In the field of faith and worship, conveying congratulations on the *Ahl al-Kitab* holiday to friends, relatives, neighbors, or thesis supervisors, and so on is a problem that is always asked about, both in Muslim-majority countries such as Malaysia and Indonesia or especially in countries -countries with a Muslim minority. In response to this, ECFR stated that it is permissible to convey congratulations to them. The argument put forward is al-Mumtahanah verses 8 and 9 which teach us to be good and fair to non-Muslims who are not hostile to fighting Muslims. Doing justice is meant not reducing their rights while doing good is meant giving some of our rights to them. Conveying holiday greetings to them is an act that is permissible because it is part of a good deed when it has a positive effect on the pattern of human interaction. what is not permissible is participating in their religious rituals. Yusuf al Qaradawi agrees with Ibn Taymiyyah that it is forbidden for Muslims to take part in non-Muslim holidays. However, Qaradawi did not agree about the prohibition of congratulating non-Muslims on holidays, especially since there are still family ties, neighbors, or work relations (Qaradawi, 2001, p. 145).

In the economic field, the problem of buying a house using interest-bearing bank loans is problematic. Because housing is a vital necessity for Muslim communities in the West, the majority of scholars forbid all transactions that have elements of usury. In this matter, Yusuf al-Qaradawi declared his permissibility and corrected his own opinion which previously prohibited it, and firmly rejected the view of the scholars who allowed it. Yusuf al-Qaradawi considers that buying a house with interest-bearing credit is an emergency condition which in *fiqh* rules is the reason something that is prohibited is permissible. The second reason put forward by Yusuf al-Qaradawi is an analysis of the benefits and benefits that will lead to the benefit of the lives of Muslim minorities in the West (Qaradawi, 2001, pp. 154–155). The ECFR response was built by al-Bishri. He considered the decisions of Ibn al-Qayyim and Abd al-Rizq al-Sanhuri. Al-Qayyim said that there are two types of interest, explicit and hidden, which provide some leeway. It was Al-Sanhuri who believed that the prohibition of interest was to protect people against exploitation by those in need. If the prohibition of interest is not to protect those in need but to increase their difficulties, then there must be concessions (Zahalka, 2017).

In the field of family law, issues that attract attention are regarding the permissibility of a Muslim receiving inheritance from non-Muslim relatives, and secondly regarding the status of a wife who converts to Islam while her husband remains a non-Muslim. There was a question asked by a man *mu'allaf* (newly converted to Islam) who was left to die by two parents who are still non-Muslim. This man is the sole heir of both parents who left quite a lot of inheritance. The question is, is it okay that he received an inheritance from his parents, while the

hadith expressly states that Muslims may not inherit non-believers, just as on the other hand, non-believers are also not allowed to inherit the property of Muslims? As a consideration, the questioner said that if he is allowed to take his parents' inheritance then the inheritance he gets will be used for the benefit of Islamic institutions, while if it is not allowed then the property will fall to non-Muslims. There is no denying the degree of validity of the hadith regarding the prohibition of mutual inheritance between Muslims and infidels. All madhab scholars agree and do not disagree on this matter. Nevertheless, Yusuf al-Qaradawi chose to follow the unpopular opinion among the four schools of thought which stated that Muslims may receive an inheritance from non-Muslims, but not the other way around. Yusuf al-Qaradawi's opinion is based on several traditions from the time of his companions, one of which is a history from 'Umar, Mu'adz, and Mu'awiyah, that they allowed Muslims to receive the inheritance of non-Muslims, but did not enforce the opposite. In addition, this ability is also compared to the permissibility of Muslim men marrying women of the People of the Book, while men of the People of the Book are not allowed to marry Muslim women (Qaradawi, 2001, pp. 126–128).

An issue that is no less interesting in the field of family law is the case of marriage. This case ranks first in matters of family law in Muslim minority communities in the West, bearing in mind that interfaith marriages and religious conversions of one partner are common. An interesting and controversial issue is the conversion of a wife's religion to become a Muslim woman, while her husband still adheres to his original religion. The question is, should the wife divorce her husband? The context of this question is a psychological conflict because, on the one hand, the majority of scholars think that the wife must file for divorce, while on the other hand, the wife objects to leaving the husband she loves and sacrificing children and families that have been built harmoniously (Qaradawi, 2001, p. 105). Classical *fiqh* answers to the problems mentioned above are quite diverse, but the majority of people and scholars believe in the necessity of divorce between the two. This was also Yusuf al-Qaradawi's belief before knowing the reality of the problem when the Muslim woman was in the context of being a Muslim minority in the West. Yusuf al-Qaradawi then changed his view and stated that the wife may live with her husband based on the benefit she wants to maintain. This view results from the *tarjih maqashidi* method (the superiority of an opinion over several opinions based on the domination of its beneficial values) on the opinions that exist among the scholars. Yusuf al-Qaradawi mentioned nine (9) opinions of Ibn Qayyim on the above issues: (1) the cancellation of marriage after converting to Islam; (2) the marriage is canceled if the husband does not want to be invited to convert to Islam; (3) the marriage can be canceled after the 'iddah period if the wife has had sexual intercourse, and immediately canceled without waiting for the 'iddah if the wife has

not had intercourse; (4) if the wife converts to Islam before the husband converts to Islam, then the divorce occurs immediately. But, if the husband converts to Islam before the wife, then the wife converts to Islam during the 'iddah period, then she is still legally his wife, while if not, then there will be a divorce at the end of the 'iddah; (5) considering the 'iddah for husband and wife, namely that if one converts to Islam before having sex, the marriage will be annulled. If he converts to Islam after having intercourse and his partner converts to Islam while still in 'iddah, then the marriage is still valid. Meanwhile, if the 'iddah ends before the spouse converts to Islam then the marriage is canceled; (6) the wife stays with her husband and waits for him to embrace Islam even though it takes years of waiting; (7) the husband has more rights over his wife as long as the wife does not leave the house; (8) the husband and wife remain in the marriage as long as they are not separated by the sultan; and (9) the wife remains with her husband, but husband-wife relations are not permitted (Mawardi, 2010; Qaradawi, 2001, pp. 106–108).

From these fatwas, it can be seen that maqasid al-shari'ah in this *fiqh* is positioned more as a method of approach rather than as a concept of noble values, as is generally the case in traditional *fiqh*. Legal products are also different. If in *fiqh* in general, legal products are based on *hujjiyah al-nash* (Nash authority), then legal products in *Fiqh al-Aqaliyyat* are based on *hujjiyah al-maqasid* (authority of sharia objectives), namely to gain benefit and eliminate harm. Thus, the logical consequence is that *Fiqh al-Aqaliyyat* frees itself from differences in schools and has the right to choose an opinion from any school that is considered to reflect more the realization of benefit when the legal issues that occur have equivalents to or have been discussed in the past. In new cases, the consideration of the realization of maqasid al-shari'ah as universal Islamic principles and values prevails over the domination of the text as is the case in *fiqh* studies in general.

Fiqh Al-Aqalliyat as an Instrument of Integration

Many Muslims are very well integrated into societies where they are a minority. However, for many people, there is a fear of total assimilation and thus losing their religious and cultural differences. Some think that Muslims do not have to integrate. Sayyid Qutb, an Islamic thinker, and activist from Egypt, returning home after traveling across the United States, argued that Muslims should separate themselves from the rest of society. The idea of building a truly separate community within society was also promoted by M. Ali Kettani. He sees the separation as a mechanism to protect Islamic identity and values from western cultural assimilation (Haddad, 2011). The doctrine that has a lot of influence in the integration debate is “*Al-Wala' wal-Bara'*” (loyalty and denial). This is a doctrine that commands Muslims to be loyal to fellow Muslims and to be free from disbelief, misguidance, and tyranny by infidels. In practice, Muslims are prohibited from socializing, making

friends, working together, or greeting infidels, and even have to hate non-Muslims (Reifsnider, 2020).

However, many scholars, especially those with moderate views, have a new understanding of this doctrine. Scholars who promote *fiqh* al-aqalliyat such as Al-Qaradawi understand that *al bara'* (rejection) is not aimed at all non-Muslims, that attitude is only aimed at non-Muslims who show hostility towards Muslims. In the social context in the West, Al-Qaradawi advocated for Muslims who are a minority to become pioneers of benefit for the surrounding community. Furthermore, he argues that efforts to create benefits for society regardless of religion are *da'wah* efforts (inviting others to Islam). Al-Qaradawi believes that with the right way of preaching Europe and America will be in the bosom of Islam gradually (Reifsnider, 2020).

Scholars who support *fiqh* al-aqalliyat generally encourage Muslim minorities to be involved and integrate into the society where they live. Al-Qaradawi argues that a Muslim wherever he is has two identities that must be balanced, namely identity as part of the Muslim community and at the same time part of the community. their society. Therefore al-Qaradawi advocated for Muslim minorities to carry out their roles and responsibilities in their community as well as possible. For Al-Qaradawi the concept of "*umma*", as a doctrine of brotherhood and unity of Muslim identity, does not conflict with the concept of citizenship. The concept of citizenship is a neutral concept that has to do with religious and secular significance. Citizenship is a flexible notion shaped by necessity.

Al-Qaradawi stated that the idea of citizenship was historically recognized by the Prophet in the Madianah Charter. The Medina Charter is a statement of the unity of citizens of different religions and ethnicities. The Medina Charter is based on the philosophy of peaceful coexistence and mutual support among citizens, regardless of their differences. Their loyalty to the country is the bond that unites these different identities. However, al-Qaradawi also reminded us that the process of integration with western society and culture should not fade identity as a Muslim. Muslim minorities in the West do have to contribute to the development of their communities, but they have to maintain their system of faith, values, and morals as Muslims. Only by preserving a proper identity can Muslim minorities integrate and contribute positively to Western communities. Qaradawi calls this vision: commitment without isolation, integration without assimilation. Al-Qaradawi's vision is explained by the concept of multiculturalism which is one of the approaches to community integration. Multiculturalism views society as a group of people with heterogeneous identities. Thus, in this perspective, the identities of different social groups are maintained, not merged and assimilated into a single identity. The multicultural perspective offers an alternative way of presenting members of ethnic minority groups as an active integral segment of the

whole society (Algan, Bisin, & Verdier, 2012).

Another minority *fiqh* proponent, Taha Jabir Al-Alwani also emphasized the imperative for Muslims to capitalize on their positive contributions and potential in their new Societies in the West. For this reason, Alwani put forward the main principles of minority *Fiqh* which were taken from the main sources of Islam, to determine the nature of the interaction between the Muslim minority and the non-Muslim majority. Among these principles is that Allah permits us to do good and do justice to people who do not fight Muslims, as mentioned in Qur'an, *Surah al-Mumtahanah*: 8-9. This verse becomes a minority *Fiqh* principle to provide a moral and legal basis for interacting with the other non-Muslim majority. In addition, Alwani quoted the *Surah Ali 'Imran* Verse 110 which states that Muslims are the best nation that has ever been resurrected for mankind. This implies that Muslims exist for the benefit of all mankind and should share this benefit with the rest of human society. Alwani also rejects the dichotomy between *Dar al-Islam* and *Dar al-Harb*. Alwani stated that where Muslims enjoy peace and security is *Dar al-Islam*. thus from the perspective of *Fiqh al-aqalliyat*, every place where Muslims can practice their beliefs is Islamic land (Taha, 2012).

In addition to providing a basis for interaction with non-Muslims and the concept of citizenship, the *Aqalliyat fiqh* also provides consideration of Islamic law which has become a driving force in the integration of Muslims into Western society. Fatwas regarding social and political issues regarding citizenship have become the basis for the Muslim minority to be active in social and political activism in the Western countries they live in. Such as fatwas in the political and social fields. In the political field, several basic problems can be found, such as the participation of Muslims in politics and electing leaders who are not Muslims.

Regarding Muslim participation in political activism in Western countries, ECFR stated that it is permissible. Activism includes being a member of social institutions, participating in political parties, and so on. Muslims who are allowed to be active in politics must adhere to Islamic morals, such as honesty, justice, and responsibility, and respect pluralism and different views. While taking part in the general election, using the property for the benefit of the general election even though the person elected is not a Muslim, as long as it is deemed capable of realizing the public benefit, is permissible (Mawardi, 2010). In addition, in the social field, the fatwa regarding the permissibility of giving congratulations and respect for non-Muslim holidays or religious days is also the basis for building positive relationships with non-Muslims in their neighborhood.

Fiqh al-aqalliyat with its new views, thereby providing a conceptual foothold and encouraging the integration and increased involvement of Muslim minorities in political activism. Now the symptoms of Muslim political activism in Europe are increasing. In Western Europe, most Muslims are involved in leftist parties, which

advocate for immigration and anti-racism. The leftist parties, therefore, win the majority of the votes of the Muslim minority electorate and are considered the natural home for politicians from Muslim backgrounds. In the Netherlands and the UK, Muslims are even accepted as political figures in society as mayors, such as Ahmed Aboutaleb who became mayor of Rotterdam in 2009 and mayor of London in 2016, and Sadiq Khan (Scharbrodt, 2021).

Apart from involvement in politics, the Muslim minority is also involved in various other civic activities. They are involved in a variety of civic activism in the form of advocacy and various projects working with non-Muslims that are not all related to issues affecting Muslim minorities. In the UK there is Islamic Relief, a charity founded in Birmingham in 1984. It is the first and largest Islamic-based charity in the West with chapters all over the world. In addition, many Muslims are also involved in efforts to fight Islamophobia. Islamophobia is used to describe various forms of racism and anti-Muslim hatred. Across Western Europe, various organizations exist to monitor, record and combat Islamophobia, including both Muslims and non-Muslims (Scharbrodt, 2021).

In the social aspect, Oliver Scharbrodt (2021) looks at the increasing integration and presence of Muslims in public life. Scharbrodt also saw a shift in the perception of Muslims from immigrants living temporarily to becoming citizens and an integral part of Western European society. Because of that, they try to get citizenship and take a role in the social, cultural, and political life of the country they live in. Individual Muslims in Western Europe are not merely recipients of traditional forms of Islam or blind adherents of transnational Islamic movements and trends, but agents in their religious constructs who redefine and practice Islam according to their particular needs and aspirations shaped by the diverse national contexts in which they find themselves. in Western Europe (Scharbrodt, 2021).

With the *Aqalliyyat fiqh* Muslims in the West adopted an integrationist approach that sought a synthesis between Islamic practices and European sociocultural and political values. With the *Aqalliyyat fiqh* Muslim minorities in the West can also be able to practice Islamic norms while supporting liberal, democratic, and pluralistic notions of European society (Ramadan, 2009). Adoption of such “European values” produces “European Islam” or various national equivalents such as “English Islam”, “French Islam”, and so on.

Conclusion

Fiqh al-Aqalliyyat articulates the importance of providing a normative basis for religious, social, and political activities for Muslim minorities in non-Muslim societies. It aims to help those who seek a healthy middle way between being a good Muslim on the one hand and being a good citizen on the other. The view of *Fiqh al-aqalliyyat* does not only provide a way out for the Muslim minority to carry

out religious obligations in unique and special situations. More than that, *Fiqh* al-aqalliyat also provides a conceptual basis for Muslim minorities to integrate and become part of Western society.

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