

Fiqh Aqalliyat: the Endeavor for the Well-Being of Muslims as a Minority

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Abstract

Fiqh Aqalliyat: The Endeavor for the Well-Being of Muslims as a Minority. Fiqh Aqalliyat (Minority Jurisprudence) is a contemporary branch of Islamic legal studies that has emerged in response to the reality of Muslims living as minorities in non-Muslim countries. This situation gives rise to various social, political, and religious challenges that are not fully accommodated by classical fiqh, which was developed within the context of majority Muslim societies. Fiqh Aqalliyat therefore presents itself as a form of modern ijtihad (independent legal reasoning) that seeks to prioritize the welfare of the community through a contextual and flexible approach while remaining grounded in the foundational principles of Islam. This study employs a qualitative method with a literature review approach to explore the concept, its shar'i foundations, and its application in the lives of Muslim minorities. The findings indicate that Fiqh Aqalliyat is not intended to replace established Islamic law, but rather serves as an adaptation to the challenges posed by different times and places. Principles such as maslahah mursalah (unrestricted public interest), rukhsah (legal dispensation), and taghayyur al-fatwa (change of legal opinion) constitute the primary foundations in formulating rulings relevant to minority contexts. Accordingly, Fiqh Aqalliyat serves as a vital instrument in maintaining the balance between Islamic integrity and social engagement within pluralistic societies. This study recommends further academic and practical development of Fiqh Aqalliyat so that it may become an applicable and effective solution for Muslim communities across the globe.

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1. INTRODUCTION

Fiqh Aqalliyat, commonly known as *minority fiqh*, refers to the branch of Islamic jurisprudence applicable to Muslim communities living as minorities in a given territory. In Indonesia, Minority Fiqh remains relatively unknown and has not been widely discussed by Indonesian scholars. It may also be considered inapplicable or untested, given that Muslims in this country constitute the majority, although in several provinces—such as Papua, Maluku, and the Bengkayang Regency in West Kalimantan—Muslims are indeed minorities. The emergence of Fiqh Aqalliyat originated from the accumulated anxieties of Muslim minorities, particularly in the United States, Europe, Asia, and Africa, as they encountered issues related to their religious practices.

Consequently, in this jurisprudence, scholars (*fuqaha*) are required to understand the type of minority context in which they are issuing legal opinions (*fatawa*), since the characteristics of minorities differ considerably, as do the problems they face and the solutions required. The minority status of foreigners arriving in a region differs from that of indigenous populations; similarly, the minority of the economically disadvantaged differs from that of those possessing wealth, honor, and power. A final key principle of this fiqh is

liberation from the strictures of a specific legal school (*madhhab*). Qardhawi stated: 'What is most needed for a mufti today is to liberate people from the constraints of a single madhhab into the vast ocean of the shari'ah, where all schools—whether followed or obsolete—and the opinions of imams and scholars not affiliated with a specific madhhab can be drawn upon.'

2. METHOD

This study employs a qualitative approach emphasizing library research (*Library Research*). Library research may be understood as a series of activities involving the collection of data from written sources, in which the researcher reads, records, and processes research materials without conducting direct fieldwork for data collection. Data were gathered through secondary sources, including books, academic literature, journals, and internet-based information sources.

3. RESULTS AND DISCUSSION

A. Terminology of Fiqh Aqalliyat

Fiqh al-Aqalliyat (فقه الأقليات), terminologically, is a branch of fiqh that focuses on the needs, realities, and challenges faced by Muslims living as minorities in non-Muslim countries or regions. This term gained widespread use in the contemporary era, particularly as increasing numbers of Muslim communities migrated and settled permanently in Western or non-Muslim countries.

The term *fiqh al-Aqalliyah* (minority jurisprudence) still appears unfamiliar to many scholars of Islamic law, especially in Indonesia, as it has only recently emerged and is absent from traditional classical legal literature. Nevertheless, upon examination of its subject matter, *fiqh al-Aqalliyah* does not differ substantially from conventional fiqh. Some of its discussions can be found within traditional legal texts, but the language and mode of presentation are framed within a more modern context.

According to Imam Mawardi, several factors account for the stagnation of minority fiqh studies in Indonesia: *first*, Muslims in Indonesia occupy a majority position and are therefore not directly confronted with cases facing Muslim minorities; *second*, the hegemonic trend of transnational fiqh has rendered geographically specific jurisprudence—such as minority fiqh—somewhat taboo and less studied; *third*, the stagnation in the development of *usul fiqh* theory makes it difficult to address new and highly heterogeneous legal events.

Abdullah bin al-Shaikh al-Mahfuz bin Bayyah, a member of the European Council for Fatwa and Research (ECFR), has developed *Fiqh al-Aqalliyat* through rulings pertaining to Muslims living outside Islamic states. According to him, the designation of this specialized fiqh with the term *Fiqh al-Aqalliyat* has been the subject of prolonged debate among Islamic scholars; however, the ECFR affirmed the validity of this term since, in contemporary usage, it can be well understood.

One significant aspect of this debate concerns the word 'minority' attached to this fiqh. According to Khalid Mas'ud regarding the problematic nature of the term *minority*:

First, semantic ambiguity and the sub-nation implication: the term *minority* blurs identity boundaries by introducing new social units within the framework of the nation-state, which is expected to be cohesive. A *religious minority* may be seen as part of a *sub-nation*, weakening integration by implying a loyalty or identity distinct from the 'mainstream nation.'

Second, the interconnection between Muslim and non-Muslim minorities: the issue of Muslim minorities in non-Muslim countries is closely linked to how majority-

Muslim states treat other religious minorities, creating ethical and political interconnections.

Third, differences between Western and non-Western contexts: the condition of Muslim minorities in Western countries differs significantly from their situation in non-Western nations such as India or China, where the legal framework, colonial history, and identity politics often place Muslim minorities in more complex and sometimes repressive circumstances.

In conclusion, the term *minority* in a religious context is neither a neutral nor a simple category. Its use must be understood critically, with consideration for the historical, political, and social dimensions that accompany it.

B. Usul Fiqh Theory in Fiqh Aqalliyat

In this context, usul fiqh theory as a methodology for determining Islamic law plays a vital role in ensuring that Islamic legal products remain relevant and contextual. The approach of usul fiqh in *fiqh al-aqalliyat* tends to be flexible, adaptive, and welfare-oriented. Several key usul fiqh principles applied in *fiqh al-aqalliyat* are as follows:

Al-Maqasid al-Shari'ah (Objectives of Islamic Law)

The maqasid approach emphasizes that Islamic law aims to protect five primary objectives: religion, life, intellect, lineage, and property. In the minority context, the emphasis of maqasid may differ. With this approach, a mufti or legal scholar can consider the socio-political context before issuing a ruling.

Al-Darurah (Emergency) and Al-Hajah (Pressing Need)

The usul fiqh maxim states:

الضَّرُورَاتُ تُبَيِّحُ الْمَحْظُورَاتِ

"Necessities render prohibited things permissible."

In minority life, many conditions may be classified as *hajah 'ammah* (general need) approximating an emergency, such as: purchasing a home through an interest-based mortgage in the absence of shari'ah alternatives; participating in non-Muslim social or political systems; and accepting employment in environments not fully aligned with shari'ah principles.

Al-Ta'sir (Ease) and Raf' al-Haraj (Removal of Hardship)

Islam as a religion of *rahmatan lil-'alamin* promotes ease and discourages hardship. The key Quranic principle is:

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ

"Allah intends ease for you, and does not intend hardship for you" (Qur'an, al-Baqarah: 185). In *fiqh al-aqalliyat*, this maxim is applied in various rulings to facilitate worship, social interaction, and occupational choices—for example, combining prayers (*jam'*) in difficult work conditions, or wearing non-traditional clothing provided that bodily modesty (*'awrah*) is maintained.

Al-'Urf (Local Custom and Practice)

Local customs and practices that do not contradict the shari'ah may be used as a legal source. In the minority context, *'urf* helps bridge differences between Islamic values and surrounding cultural norms—for example, offering congratulations on religious holidays of other faiths in a social (rather than theological) manner, or adopting non-shari'ah banking or administrative systems in daily transactions.

Ijtihad and Tajdid (Legal Renewal)

Given the many novel issues arising in the lives of Muslim minorities, *ijtihad* (independent legal reasoning derived from primary sources) is indispensable. *Fiqh al-aqalliyat* promotes *ijtihad jama'i* (collective legal reasoning), as practiced by fatwa

institutions in Europe and America, along with the renewal of usul fiqh methodology to remain contextual while remaining anchored to the foundational principles of Islam.

C. Usul Fiqh Methods for Fiqh Aqalliyat

Fiqh al-Aqalliyat, as part of what is considered a novel legal problematic, demands the application of *ijtihad* in determining its contemporary legal rulings. In this context, new *ijtihad* constitutes an obligation for: *first*, demonstrating that Islamic shari'ah is indeed applicable across all times and places; *second*, serving as a concrete form of da'wah for all Muslims in resolving legal issues in their lives through Islamic law; *third*, providing the primary avenue for the *tajdid* (renewal) process; and *fourth*, fulfilling the fundamental needs of Muslim communities in addressing their contemporary legal challenges.

Every form of fiqh, regardless of its form or context, takes the Qur'an and Sunnah as its primary legal sources. *Ijma'* (scholarly consensus) and *Qiyas* (analogical reasoning) are the next recognized sources accepted by the majority of usul fiqh scholars. *Fiqh al-Aqalliyat* is no exception, as these four sources also serve as its legal foundations. However, *Fiqh al-Aqalliyat* places greater emphasis on the general principles and universal values of the Qur'an as the primary basis for determining rulings on the issues it addresses.

The Sunnah, which generally constitutes a response to specific events at particular times, must be understood in line with the general principles of the Qur'an. In Yusuf Qardhawi's view, the Sunnah often addresses particular and detailed matters—whether universal or temporal, general or case-specific—and, since it may not contradict the Qur'an, must in application also conform to the Qur'an's general principles. *Ijma'*, expressing scholarly consensus at a given period, must also be understood in accordance with *maqasid al-shari'ah*, whose general principles are contained in the Qur'an. Where a past *ijma'* no longer fits the present context, it need not be followed, pursuant to the legal maxim that rulings change with time and place. Likewise, *Qiyas* may not produce a ruling that contradicts the general principles of the Qur'an.

All of the foregoing is intended to derive welfare-oriented rulings applicable in the context of Muslim minority communities in a given country. The purpose and context of the law play a dominant role here, consistent with Imam al-Ghazali's position that the objective of Islamic law is to bring about *maslahah* (benefit) and to prevent *mafsadah* (harm). The *maslahah* offered by the shari'ah is absolute in nature, applying to the general interest regardless of whether the matter is governed by an explicit scriptural text or not.

D. Legal Rulings Derived from Fiqh Aqalliyat

The following are examples of legal rulings issued through the fatwas of ECFR scholars, chaired by Yusuf Qardawi, with Bin Bayyah among its members, and of FCNA scholars, chaired by Thaha Jabir al-Wani.

Matters of Faith and Worship

On the permissibility of extending holiday greetings to non-Muslim friends, relatives, neighbors, or teachers on the occasion of the Ahl al-Kitab festivals, the ECFR issued a ruling of *permissible (jawaz)*. The evidence cited includes Qur'an 60:8–9:

لَا يَنْهَىكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُم مِّن دِيَارِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ

"Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes" (Qur'an, al-Mumtahanah: 8). According to Yusuf Qardawi, this verse clearly teaches two patterns of interaction with non-Muslims: acting justly and kindly toward those who are not hostile, and refraining from making allies of those who wage war against Muslims.

Treating others with justice means not diminishing their rights, while treating them with kindness means sharing some of one's own rights with them.

Economic Affairs

Economic issues constitute real challenges faced directly by Muslim minorities in the West. On the question of purchasing a home through an interest-bearing bank mortgage, Yusuf Qardawi issued a permissibility ruling, thereby revising his earlier position that had aligned with the majority view prohibiting bank interest. Although, in Qardawi's view, *riba* (usury) remains among the seven major sins to be avoided, upon observing the reality of Muslim minorities in the West, he concluded that the need could approximate an emergency condition which, under the *fiqh* maxim 'necessities render prohibited things permissible' (*al-daruratu tubih al-mahzurat*), justifies an exception.

Political Participation

On questions of political participation—such as the ruling on residing in a non-Muslim country and acquiring citizenship, or the ruling on voting for non-Muslim leaders—scholars in the field of *fiqh al-aqalliyat* have offered the following legal positions:

First, the objective of political cooperation and participation is to protect rights, freedoms, and the preservation of Muslim values and existence in that country.

Second, the foundational ruling for political cooperation between Muslims in Europe is permissible, recommended, and sometimes obligatory, based on Qur'an 5:2: "*Help one another in righteousness and piety...*"

Third, political cooperation includes membership in civil society organizations, participation in political parties, and similar activities.

Fourth, among the most important maxims to be upheld in this political cooperation is adherence to Islamic ethics: honesty, justice, responsibility, and respect for pluralism and differing viewpoints.

Fifth, participation in general elections is permissible, provided adherence to shari'ah principles, ethics, and legal regulations with the intention of promoting the public good rather than individual interests.

Sixth, it is permissible to use financial resources for election purposes even if the candidate chosen is not Muslim, as long as they are considered capable of realizing the general welfare.

Seventh, this permission for political cooperation applies equally to Muslim women as to Muslim men.

These rulings prioritize, attend to, and emphasize the minority context, oriented toward the welfare of the Muslim community living in that minority situation—which constitutes the core application of *maqasid al-shari'ah*.

Family Law

A prominent issue arising in minority *fiqh* concerns family law—specifically, the permissibility of a Muslim inheriting from a non-Muslim relative. The Prophet Muhammad (peace be upon him) said:

لا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ

"A Muslim cannot inherit from a disbeliever, nor can a disbeliever inherit from a Muslim" (HR. Bukhari and Muslim). This hadith unambiguously states that a Muslim may not inherit from a non-Muslim and vice versa. No scholar disputes the authenticity of this hadith; all agree and do not differ on this point. Nevertheless, Yusuf Qardawi elected to follow a minority opinion—unpopular among the four major schools—that a Muslim may receive inheritance from a non-Muslim (though not the reverse), based on reports from the Companions, including Umar, Mu'adh, and Mu'awiyah, who permitted Muslims to inherit from non-Muslims but not vice versa.

Qardawi further argued that the *maslahah* (benefit) dimension of accepting inheritance from a non-Muslim outweighs that of leaving it to be inherited by non-Muslims, who might use it for sinful purposes or religious proselytization. In this case, Qardawi engaged in *ta'wil* (interpretive reasoning), just as the Hanafi scholars did regarding the hadith "*A Muslim shall not be killed for [killing] a disbeliever*"—interpreting 'disbeliever' to mean a *harbi kafir* (a disbeliever at war with Islam). The prohibition on mutual inheritance, therefore, similarly applies only between Muslims and *harbi kafir*.

E. *Fiqh Aqalliyat* as an Endeavor for Muslim Welfare in Minority Contexts

Fiqh al-Aqalliyat represents a creative and contextual response from the Islamic legal tradition to the condition of Muslims living as minorities, particularly within non-Muslim majority societies. In this reality, Muslims face unusual challenges—cultural pressures, different legal systems, and limitations in practicing *shari'ah* comprehensively. Therefore, *fiqh al-aqalliyat* emerges as a strategic endeavor to safeguard the welfare of Muslims in minority situations.

The primary objectives of *fiqh al-aqalliyat* are: to preserve the Islamic identity of Muslims within secular or multicultural societies; to provide a middle ground between *shari'ah* requirements and socio-political realities that do not fully support the implementation of Islamic law; and to ensure the active participation of Muslims in social, political, and economic life without compromising their religious integrity.

This *fiqh* is not a compromise of Islamic principles, but a contextual *ijtihad* grounded in *maqasid al-shari'ah*. It is built upon the principle of *maslahah* (public interest). In the minority context, the welfare pursued is not only individual but also collective: welfare of identity (preserving religious rootedness), social welfare (enabling peaceful coexistence and constructive citizenship), and political welfare (enabling Muslims to pursue their rights legitimately within the prevailing political system).

Fiqh al-aqalliyat also serves as a means of demonstrating an inclusive, tolerant, and compassionate face of Islam. It is not merely a law for survival, but a *da'wah* instrument showing that Islam can coexist harmoniously in a pluralistic society. Principles of *ta'ayush silmi* (peaceful coexistence), *ta'aruf* (mutual acquaintance), and *al-'adalah* (justice) constitute the key values that define *fiqh al-aqalliyat* as a strategy for sustaining Islam in the modern diverse world.

Fiqh al-aqalliyat is a scholarly endeavor by Muslims to preserve their religion while building welfare in the midst of minority conditions. With a contextual *usul fiqh* approach grounded in *maqasid al-shari'ah*, this *fiqh* does not aim to alter principles, but to ensure that principles remain alive and relevant in new realities. It is not a symbol of weakness, but a manifestation of intellectual courage in responding to the challenges of the age wisely and beneficially.

4. CONCLUSION

This study on *Fiqh al-Aqalliyat* (Minority Jurisprudence) offers a new consideration in determining legal rulings in Indonesia, particularly for Muslim minority communities in specific regions, even though the examples presented above pertain primarily to the legal challenges of Muslim minorities in the West and Europe. *Fiqh Aqalliyat* provides an answer and a conceptual approach to attaining *maslahah* and preventing *mafsadah*. Minority *Fiqh* is a new format of jurisprudence specifically devised to address the religious legal challenges faced by Muslim minorities in the West or in particular localities. It is not an entirely new or separate *fiqh*, divorced from communal or traditional *fiqh*; rather, it is one branch of the broad Islamic scholarly discipline of *usul fiqh*. It draws upon the same agreed-upon

sources—the Qur'an, Sunnah, Ijma', and Qiyas—and employs the same methodological framework. The concept of legal derivation (*istinbath*) in Minority Fiqh is therefore not entirely novel, even though it frequently employs concepts beyond these four sources. Fiqh Aqalliyat is a vital endeavor in responding to the complexity of Muslim minority life. By adhering to the principle of *maslahah* and the flexibility of the shari'ah, this fiqh assists Muslims in remaining steadfast in their religious teachings while adapting to plural environments. Its development, however, must remain grounded in sound scriptural evidence and must not disregard the boundaries of the shari'ah.

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