

FORMALIZING *FIQH AL-AQALLIYYAT* FOR MUSLIM MINORITIES PERSPECTIVES OF ABDALLAH BIN BAYYAH, TAHA JABIR AL-ALWANI & JAMÂL AL-DÎN 'ATIYYAH

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Received: 16-09-2024; Revised: 20-10-2024; Accepted: 21-11-2024; Published regularly: December 2024

Abstract: Minority jurisprudence is an innovation in jurisprudence regarding various problems faced by Muslims living in the midst of a non-Muslim majority. This research focuses on the methodology used by the conceptors of *fiqh al-aqalliyyat*, namely Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah in building the structure of the *ijtihad* framework of *fiqh al-aqalliyyat* in countries with Muslim minorities. This research is a qualitative literature study with several legal research approaches. More specifically, in the study of Islamic law this research belongs to the category of philosophical-normative-empirical research, by examining three main ideas initiated by the conceptors of *fiqh al-aqalliyyat* namely Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah. This research concludes that the thought of *fiqh al-aqalliyyat* Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah is considered to be able to accommodate the problems of Muslim minorities, by covering all the principles, methodologies, concepts of *ijtihad* from each mujtahid who focuses on *fiqh al-aqalliyyat*, so that these methods that have become legal products can be used for Muslim minorities to be able to carry out the principles of Islamic teachings substantially and coexist with non-Muslim majorities.

Keywords: *fiqh al-aqalliyyat*; Abdallah bin Bayyah; Taha Jabir Al-Alwani; Jamâl al-Dîn 'Atiyyah; *ijtihad*; Islamic legal methodology

Abstrak: Fikih minoritas merupakan inovasi dalam berijtihad tentang berbagai problematika yang dihadapi muslim yang hidup di tengah mayoritas non-Muslim. Dalam penelitian ini berfokus pada metodologis yang dipakai oleh konseptor *fiqh al-aqalliyyat* yakni Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah dalam membangun struktur kerangka *ijtihad fiqh al-aqalliyyat* pada negara dengan minoritas muslim. Penelitian ini merupakan studi kepustakaan yang bersifat kualitatif dengan beberapa pendekatan penelitian hukum. Lebih spesifik lagi, dalam kajian hukum Islam penelitian ini termasuk kategori penelitian filosofis-normatif-empiris, dengan mengkaji tiga pokok pikiran yang digagas oleh konseptor *fiqh al-aqalliyyat* yakni Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah. Penelitian ini menyimpulkan bahwa pemikiran *fiqh al-aqalliyyat* Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah dinilai dapat mengakomodir permasalahan muslim minoritas, dengan mencakup seluruh prinsip-prinsip, metodologi, konsep *ijtihad* dari masing-masing mujtahid yang berfokus pada *fiqh al-aqalliyyat*, sehingga metode-metode tersebut yang sudah menjadi produk hukum dapat digunakan bagi muslim minoritas untuk dapat menjalankan prinsip-prinsip ajaran Islam secara substansial dan hidup berdampingan dengan mayoritas non muslim.

Kata kunci: *fiqh al-aqalliyyat*; Abdallah bin Bayyah; Taha Jabir Al-Alwani; Jamâl al-Dîn 'Atiyyah, *ijtihad*; metodologi hukum Islam

Introduction

Every Muslim has an obligation to obey the sharia and carry it out, which is a proof of consistency with the covenant that a Muslim has pledged to Allah SWT, namely with the recitation of the shahada that he said, while a Muslim is also required to be able to understand the purpose, purpose, and procedure according to the understanding of the *salafu shalih*. The Messenger of Allah (SAW), as a direct channel from Allah SWT. has explained most of this, but due to the limitations of time, place, and the many problems that arise after the era of *nubuwwah*, it requires sophisticated *ijtihad* from credible scholars (*mujtahid*). One of the results of this *ijtihad* is then called *fiqh*, or in Indonesian terms, Islamic law.¹

Ulama' continue to strive for *ijtihad* by reinterpreting the propositions of the Quran and Sunna as well as the actualization of laws that are increasingly developing and complex, especially in countries with Muslim minorities and to be able to answer various modern problems in the current era of modernization. The diversity of legal opinions among *fiqh madhhabs* is commonplace, this proves that the nature of Islamic law is always dynamic and timeless by place and time. The diversity of legal opinions occurs because of the various dialectics of the figures and the conditions that surround them.²

This actualization and reinterpretation is done in order to preserve the benefits that have been systematized in the main objectives of sharia (*maqâshid al-syar'ah*) which are static and eternal, namely protecting religion (*hifdz al-dîn*), preserving the soul (*hifdz al-nafs*), preserving the mind (*hifdz al-'aql*), preserving property (*hifdz al-mâl*), preserving honor (*hifdz al-nasl*) and preserving the environment (*hifdz al-bi'ah*). These main objectives (*maqâshid al-syar'ah*) become the primary basis for scholars in doing jurisprudence and determining Islamic law. The legal reforms initiated by the scholars will focus on

their usefulness within the framework of *maqâshid al-syar'ah*, so that it can be seen whether the legal provisions are still valid or no longer suitable to be applied, because the purpose of the law or the underlying illat is no longer what it was.³

In recent decades, Muslims have settled in many countries outside the historical and geographical region of Islam. In these countries, which have witnessed the growth of the spread of Islam, Muslims have had to deal with new situations that raise many issues that go far beyond the limited personal issues of food, moon sighting, or marriage to non-Muslim women. The debate has now turned to larger and more profound issues related to Muslim identity, the role of Muslims in their new homeland, their relationship with the world Muslim community, the future of Islam beyond its current borders, and how Islam can move forward in establishing its universality in all parts of the world.⁴

With the rapid advancement of technology in this age of globalization, Islam has spread to many parts of the world. According to the head of the Union of Islamic Organizations in Europe (UIOE), there are 15.48 million Muslims living in Western Europe. Currently, they make up 4.5 percent of the entire population living in these states. The Council on American Islamic Relations (CAIR) estimates that there are currently between six and seven million Muslims in the United States. They are mostly immigrants who have continued their citizenship status in the country where they were born. The number of non-Muslim converts to Islam also appears to be declining in the region.

Based on the Pew Research Center data above, Muslims today no longer grow in a country with a majority of fellow Muslims, like the Middle Eastern countries and Indonesia, but have spread and mingled with non-Muslim communities, and coexist in their territories. Muslims form small groups in the midst of different faith environments, and these

¹ Muslim Minorities, "Islamic Law and Muslim Minorities Islamic Law and Muslim Minorities," 2003.

² S.Pd.I Kartini, "Pengembangan Fiqh Di Zaman Modern," *Jurnal Ilmiah Pedagogi | Edisi Khusus* | 7 (2017): 91–99.

³ Kartini.

⁴ Siti Sumiatun, "HUKUM ISLAM MINORITAS Menjawab 'Kegelisahan' Fikih Khusus Di Negara Non-Islam," *Islamic Review: Jurnal Riset Dan Kajian Keislaman* 3, no. 2 (2014): 469–76.

groups are later termed by scholars as “Muslim minorities.”⁵

The difficulty of minority Muslims in carrying out religious laws and practices, especially in family *fiqh*, is the fruit of discussion among scholars. With many requests for fatwas related to the problems experienced, encouraging scholars to find ways so that Muslim minorities can perfectly carry out religious orders, without burdening the implementation and in accordance with the conditions being faced. The discussion of these scholars gave birth to a discourse called *fiqh al-aqalliyat*.⁶

Fiqh al-aqalliyat or minority *fiqh* is also one of the *ijtihad* innovations offered by scholars as a solution to this problem. The term *fiqh* minority emerged in the early 1990s. The scholars paid high attention to the *fiqh aqalliyat* discourse, including Abdallah bin Bayyah, with a book written under the title *Shina’atul Fatwa wa Fiqhul Aqaliyyat* and Jamâl al-Dîn ‘Atiyyah, with the title *Fiqhu Jadid Lilaqaliyyat*. Abdallah bin Bayyah and Jamâl al-Dîn ‘Atiyyah are some of the many scholars who initiated this *fiqh* of *aqalliyat*. The initiators of *fiqh al-aqalliyat* believe that the existence of Muslims as a minority is an emergency existence. Basically, they do not want this situation to occur, but the conditions and environment force it. *Fiqh* which is flexible must be able to accommodate these problems. In this case, the problems faced by Muslim minorities have reached the level of *al-darurah*, which is a situation where the *mukallaf* feels severe danger and difficulty, so that it presents a concern if forced to carry it out will only cause damage to the soul, honor, property, and everything related to it. According to the scholars, in such circumstances it is permissible to leave what is commanded, do what is forbidden, or postpone the time of implementation, as long

as it does not go beyond the general provisions of the sharia that have been established. Ulama’ also mentioned that *fiqh al-aqalliyat* is included in *fiqh al-waqi’* (*fiqh* of reality), which is one of the scientific branches of *fiqh* that is closely related to reality. Legal decisions can change along with changes in reality.⁷

At the same level, research was conducted that compared the thoughts of several major figures in the field of minority *fiqh*, including Taha Jabir al-Alwani who is called the founder of *fiqh al-aqalliyat*, as well as Abdallah bin Bayyah and Jamâl al-Dîn ‘Atiyyah as formulators in constructing minority *fiqh* or *fiqh al-aqalliyat*. Most researchers tend to choose only one figure, whether Alwani or Abdallah bin Bayyah or Jamâl al-Dîn ‘Atiyyah. For example, Miftakhul Arif’s research entitled “The Concept of Maqasid Al-Shari’ah Abdullah bin Bayyah” only focuses on Bayyah alone⁸, Similarly, Muhammad Bushiri’s study on “Interpreting the Quran with the Maqashid al-Quran Approach: Taha Jabir al-Alwani’s Perspective”, which explores Alwani’s views”.⁹ And research conducted by M. Nanda Fanindy, with the title “Formulation of Maqasid Sharia Perspective of Jamaluddin Athiyyah; Case Study of Yogyakarta Special Region (DIY) Regional Regulation No. 7 of 2018 concerning Family Resilience”.¹⁰

In this context, this article seeks to present Bayyah, Alwani and Athiyyah’s new thinking on the importance of formulating minority *fiqh* as a methodological foundation. For Bayyah, Alwani

⁷ Adis Duderija and Halim Rane, “Minority Fiqh (Fiqh Al-Aqalliyat) BT - Islam and Muslims in the West: Major Issues and Debates,” ed. Adis Duderija and Halim Rane (Cham: Springer International Publishing, 2019), 209–29, https://doi.org/10.1007/978-3-319-92510-3_11.

⁸ Moh Wahib, “Implementation of the Minority Fiqh Concept for the Papuan Muslim Community,” *De Jure: Jurnal Hukum Dan Syari’ah* 13, no. 1 (2021): 97–112, <https://doi.org/10.18860/dj-fsh.v13i1.11930>.

⁹ Muhammad Bushiri, “Tafsir Al-Qur’an Dengan Pendekatan Maqâshid Al-Qur’ân Perspektif Taha Jabir Al-’Alwani,” *Tafsire* 7, no. 1 (2019): 144.

¹⁰ M. Nanda Fanindy, “Formulasi Maqasid Syariah Perspektif Jamaluddin Athiyyah; Studi Kasus Perda Daerah Istimewa Yogyakarta (DIY) No. 7 Tahun 2018 Tentang Ketahanan Keluarga” 1, no. 1 (2020): 66–90.

⁵ N Bahcekapili, “Fiqh Voor Islamitische Minderheden in Europa: Problemen En Oplossingen,” *Journal of Islamic Research* 1, no. 2 (2007), http://ktp.isam.org.tr/pdfdrg/Do3380/2008_1_2/2008_1_2_BAHCEKAPILIN.pdf.

⁶ Abas Mujiburohman, “Fiqh Al-Aqalliyat As an American Version of Local Wisdom,” *Khazanah: Jurnal Studi Islam Dan Humaniora* 16, no. 1 (2018): 1, <https://doi.org/10.18592/khazanah.v16i1.2091>.

and Athiyyah, this reformulation of a legal system problem is a response to the increasingly complex challenges facing Muslim communities in non-Muslim countries. Islamic law must be able to be actualized and contextualized through *ijtihad* arguments that are transformative and responsive to the challenges of the times. Therefore, there should be no normative vacuum in the legal status of interfaith inheritance in Muslim minority communities, as faced by Muslims in non-Muslim countries today.

Method

This research is a literature study by analyzing relevant literature written by Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah, including books, articles, fatwas, and other writings discussing the thoughts and styles of *ijtihad* of these three figures in *fiqh al-aqalliyyat*. This research is also qualitative with several legal research approaches. More specifically, in the study of Islamic law this research is categorized as philosophical and empirical research. This research is called philosophical because it discusses the principles of Islamic law or the philosophy of Islamic law, which is more popular as *ushul fiqh*, *qawaid fiqhiyyah*, *maqâshid al-syarî'ah*, or Islamic legal methodology. It is called empirical because the scope of the discussion includes a person's thoughts on Islamic law. One's thinking will not be separated from the dialectic of social and historical reality.

Results and Discussion

Islamic Legal Intellectuals Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah

a) Abdallah bin Bayyah¹¹

His name is Abdallah bin al-Mahfuz bin Bayyah, and he was born in the town of Timbedra, Eastern Mauritania, in 1935. He grew up under the tutelage of his father, Sheikh Mahfuz bin Bayyah, who was a qadi and also the head of the Mauritanian scholars'

union organization. He studied Islamic sciences at the study center known as Mahadir, which was headed by his father. He learned about *fiqh*, *usul al-fiqh*, *rules of fiqh*, Arabic language, the Quran, and hadith. Bin Bayyah stated, "Mahadir was like a university, because it taught many sciences. And what stands out there is *hurriyyah* (freedom) and *musawah* (equality), because Mahadir provides opportunities for people of all ages, from the elderly to young children to study there.

The young Bin Bayyah lived during the French colonization of Mauritania (1904-1960). Bin Bayyah was also a key figure in the establishment of the Ministry of Islamic Affairs and Primary Education. The idea came about when he was a delegate of Mauritania to a meeting of foreign ministers from Muslim countries in 1969. In addition to serving as Minister of Islamic Affairs and Education, Bin Bayyah also served as four other ministers at different times. He was appointed Minister of Primary Education and Religious Affairs, Minister of Justice and Official Holder of the Seal, Minister of State for Human Resources, and Minister of State for Directing State Affairs, Organizations and Parties.

Bin Bayyah is also a member of the Majma' Fiqh Al Islami Ad Dauli, an international Islamic jurisprudence organization under the auspices of the Organization of Islamic Cooperation (OIC). Bin Bayyah was also the Vice Chairman of the World Union of Islamic Scholars organization (al Ittihad al-'Alami li-'Ulama' al- Muslimin) founded in 2004 and chaired by Yusuf al-Qaradawi, but he resigned from his position as vice chairman in September 2013 due to disagreements between Bin Bayyah and al-Qaradawi, particularly regarding al-Qaradawi's statements in the media about the 2013 Egyptian coup.

b) Taha Jabir Al-Alwani¹²

In 1935, a family in Iraq welcomed Taha Jabir al Alwani into the world. He completed his doctoral

عبدالله بن الشيخ المحفوظ بن بيه، "من هو عبدالله بن بيه" ٤١٠٢، <https://www.youtube.com/watch?v=NgFdLZqehhU>.

الجزيرة، "رحيل المفكر الاسلامي طه جابر العلواني" ٦١٠٢، <https://www.aljazeera.net/culture/2016/3/5/رحيل-المفكر-الاسلامي-طه-جابر-العلواني>.

studies in 1973 focusing on *ushul fiqh*, a fundamental aspect of Islamic law, at Al Azhar University in Cairo, Egypt. Al Alwani held positions as an Islamic Studies instructor at the Iraqi Military Academy and taught Islamic Law at al Imam Muhammad bin Sa'ud University in Riyadh, Saudi Arabia. Later, he relocated to the United States, where he actively participated in academic endeavors. This transition led him to adopt a more open approach towards Westernization, advocating for the advancement of the American Muslim community. Additionally, he played significant roles in organizations such as the Organization of the Islamic Conference and the International Fiqh Council in Jeddah, facilitating connections with Fiqh Councils globally, including the Fiqh Council of North America.

c) Jamâl al-Dîn 'Atiyyah¹³

His full name is Jamaluddin al Atiyah he was born in Egypt precisely in an area called Kum Noor on May 12, 1928 AD, and was dated 22, Dhulqo'dah 1346 Hijri, he focused on learning the law of law or Qonun when in his college which is now called al Azhar and was formerly called Fadil university early and after getting a bachelor's degree in sharia after that he continued in the country of Kuwait and continued his studies until his doctorate at janif university, After that he returned to Egypt and began to build and lead Ma'had Al Alamiy Lilfikri Islamiy, for four years after that he also taught in the department of Sharia and Qonun dah Dirasat Islamiyah at the university of Qatar.

He was also the head of the faculty at that time. He became one of the scholarly experts in the field of *qanun* or Islamic law, especially focusing on contemporary issues such as those related to the renewal of *fiqh* law, renewal of *fiqh usul* as well as *qawaid fiqhiyyah* and updates related to expanding the scope of *maqâshid al-syarî'ah* and Islamic financial banks and in other fields especially in contemporary Islamic law. One of the main focuses in his research

is the actualization of Islamic law and the renewal of Islamic law applied or implemented in countries with Muslim minorities.

Discourse of *Fiqh al-Aqalliyyat* from the Perspectives of Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn 'Atiyyah: Polemics on Ontological Status

In defining *fiqh* for minorities, what must be considered and prioritized is the theoretical and methodological aspects of *fiqh*, without ignoring the opinions of the classical scholars (*salaf*). In this case, the theory of *fiqh* for minorities does not ignore the reasoning of *fiqh* science or the rules of extrapolation. This is carried out within the established rules of *ijtihad*, or the rules of interpretative analysis. *Ijtihad* is carried out by contemporary scholars today by applying the techniques and tools of *ijtihad* in a way that suits our times and focusing more on *ijtihad* in knowledge, science and learning tools, and restoring the role of sharia in modern life.¹⁴

There is no doubt that the role of *ijtihad* is to regulate and guide man's actions to achieve his role as *khalifah* on earth, in accordance with God's will. If this is achieved, the outcome will be positive and conducive for man to receive appropriate rewards.

With the birth of the *fiqh al-aqalliyyat* discourse developed by contemporary Islamic thinkers, it is hoped that it can provide an understanding of Islam that accommodates change, reality, and is functional in answering questions about the problems of Islamic law, especially those faced by Muslim minorities.

a) Definition and Urgency of *Fiqh* Minority

In linguistic etymology, *al-aqalliyyat* has a similar meaning between a small amount or being small, as the meaning contained in some verses of the Quran. In addition, it can also mean sparse (*nudrah*), non-existent (*'adam*), and lacking (*naqs*). The antonym of

¹³ ٨١٠٢ هـ، "جمال الدين عطية"، موقع إسلام أون لاين، https://www.ikhwanwiki.com/index.php?title=جمال_الدين_عطية.

¹⁴ Adel Ibrahim A. Alturki, Jamal, and Ahmad Wasito, "Good Muslims and Good Citizens: How Fiqh Al-Aqalliyyat Solves the Problems of Muslim Minorities in the West," *Peradaban Journal of Religion and Society* 2, no. 1 (2023): 85–104.

al-aqalliyyah (minority) is *al-aghlabiyyah/al-akthariyyah* (majority).

In social and political terminology, *al-aqalliyyah* means a group of people in a region, region, or country, where they differ from the majority community, both in terms of ethnicity, language, and religion. Another similar definition is a group of inhabitants of a nation, which is smaller than the whole population, has its own culture, language, and religion, and expects the protection of their existence in a certain legal force.¹⁵

According to Jamal al-Din 'Atiyyah Muhammad, a group can be categorized as a minority if it has three elements, namely in terms of numbers less than the entire population, no power and power so that it requires protection of their rights and obligations, and has differences with the majority in terms of ethnicity, culture, language, and religion. In this case, what is meant by *al-aqalliyyat* are groups of Muslim communities who live as minorities under the rule of non-Muslim governments and in the midst of non-Islamic majority societies.¹⁶

Based on the above understanding, if the two terms are combined, it will have a simple meaning, namely one of the scientific branches of Islamic law that discusses all the problems of minority Muslim communities living outside Islamic countries. Taha Jabir defines *fiqh al-aqalliyyat* as a form of *fiqh* that maintains the bond of sharia with the dimensions of a society and the environment in which they live, it is a limited social *fiqh* due to special conditions, making something that is suitable for others not necessarily suitable for them, and how to obtain it requires scientific integration, namely by approaching society in general, sociology, economics, politics, and international relations in particular.¹⁷

Taha Jabir continued that the scope of studies contained in *fiqh al-aqalliyyat* is not just discussing legal issues surrounding halal and haram, but is broader and includes issues of *aqidah*, *morals* and other fields. This is comparable to the problems faced by Muslim minorities, the reality that occurs covers every aspect of religious life.¹⁸

According to Abdullah bin Bayyah, "*fiqh* for minorities" is a specialized discipline that considers the relationship between religious rules and the conditions of society and its location. This *fiqh* applies to a specific group of people living in specific conditions with specific needs that may not be appropriate for other communities. In addition to religious knowledge, practitioners of this *fiqh* need a broad familiarity with several social science disciplines, particularly sociology, economics, political science and international relations.¹⁹

Therefore, the term "*fiqh* for minorities" is a precise definition, acceptable from both a religious and a conventional point of view. The term is not intended to grant privileges or concessions to minority groups that cannot be granted to majority Muslim groups. Rather, it aims to present minority groups as representative models or examples of the Muslim community in the countries where they live. It is a *fiqh* practiced by a community of exemplars, elites, and a rigorous approach, rather than frivolity or concessions. Based on these rules and fundamentals of *fiqh*, a number of parameters have been identified to be able to accommodate the problems that often occur to Muslim minorities.²⁰

The formulation of *fiqh al-aqalliyyat* was positively welcomed and supported by Abdallah

¹⁵ Wahib, "Implementation of the Minority Fiqh Concept for the Papuan Muslim Community."

¹⁶ M. Noor Harisudin, *Argumentasi Fikih Untuk Minoritas Muslim*, 2020.

¹⁷ Moh. Nasrun and Sulthon Fathoni, "Positififikasi Hukum Keluarga Di Dunia Muslim Melalui Pembaharuan Hukum Keluarga," *Islamika : Jurnal Ilmu-Ilmu Keislaman* 20, no. 01 (2020): 80–94, <https://doi.org/10.32939/islamika.v20i01.568>.

¹⁸ Ahwan Fanani, "Uşûl Al-Fiqh versus Hermeneutika Tentang Pengembangan Pemikiran Hukum Islam Kontemporer," *ISLAMICA: Jurnal Studi Keislaman* 4, no. 2 (2014): 194, <https://doi.org/10.15642/islamika.2010.4.2.194-209>.

¹⁹ Rabi'ah Adawiyah Phonna Effendy Jaraputri et al., "Legal Consequences for a Notary Public With Double Professions As a Rector of a Private University Based on Law on Office of Notary Public," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (2023): 25–35, <https://doi.org/10.18592/sjhp.v23i1.8611>.

²⁰ M. Noor Harisudin, "The Formulation of Fiqh Nusantara in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (2021): 39–57, <https://doi.org/10.18326/ijtihad.v21i1.39-57>.

bin Bayyah. In his view, there are three benefits that can be obtained from the results of the study. First, the guidance issued based on the study of *fiqh al-aqalliyat* will be a legal guide for minority Muslims in general in implementing sharia. Second, as a guide in interacting with groups of people who have different beliefs, so that they believe that religion is not a wall of separation between humans, but rather a bridge to get to know each other (*ta'aruf*), help (*ta'awun*), love (*al-mahabbah*), and respect rights as fellow humans and the state.²¹

b) Islamic Law: From Formal-Textual to Contextual-Substantial

Pulling the law from its nest is termed by *ushul al-fiqh* experts as *istinbat*, while the effort to get it is termed *ijtihad*. There are similarities in meaning between the two, namely both trying to extract the law to be determined. In the following, the author will explain the essence and main things related to the two terms above and then adjusted to the research discussion.

In taking the conclusion of a law, Abdullah Darraz in his preface to *al-Muwafaqat* divides the science in *istinbath* Islamic law into two categories, First is '*ilm al-lisan al-'arab* which is the science of Arabic language rules (linguistics), second is '*ilm al-asrar as-syariyyah wa maqasidaha* which is the science that reveals related to the secrets of sharia and its purpose. In this category must be balanced in its use, if someone only focuses on '*ilm al-lisan al-'arab* (linguistic science) then he only examines in a *dzahiri* or sees the law only in general without knowing related to the secret of what meaning is contained in it and in this case causes Islamic law to look rigid, dry, On the other hand, if it is too focused on '*ilm al-asrar as-syariyyah wa maqasidaha*, namely only examining related to the substance of the legal meanings contained in the text implicitly, it is feared that it will also be trapped into uncertainty

of meaning, ambiguity, and legal products that are contrary to Islamic law itself.²²

Both patterns have been classified by classical and contemporary scholars. As for Abdullah bin Bayyah divides the pattern of interpretation of the *nash* into 3 inclinations: First, textualist, namely *al-ittijah al-zahiri* which means that this pattern focuses more on surface meaning only, without the need to explore the implied meaning contained in the *nash*. Second, *ma'nawi* or *bathini* is an interpretation pattern that only focuses on the implied meaning contained in the text which is thought to be the ultimate meaning, by ignoring the external meaning of the text. Third, a group that is able to combine the external and internal meanings in the interpretation of the text. However, in fact, this moderate group still cannot be categorized as one. Among them there is also a textualist tendency, although it still adheres to the intent and purpose of sharia, such as the Shafi'i school. There are also those who tend to the substance of the text, although they still heed the external meaning of the text, such as the Hanafi, Maliki, Hanbali schools.²³

Based on the outline of the above classification, it can be concluded that since time immemorial, scholars have had different opinions on the methodology of lawmaking. When viewed from the methods used, it can be seen that there are two types of Islamic jurists: textual and contextual. Textual analysis refers to a group of scholars who use the text as the main source of jurisprudence, and also use text analysis techniques as their method of analysis, such as *istiqrā'* (induction), thematic interpretation, and linguistic rules. In contrast, contextual groups use an interdisciplinary approach. They try to combine the understanding of the text with other sciences, both sociology, history, and so on.²⁴

²¹ Zulkifli et al., "Constructing Muslim Identity in a Secular State: The Strategic Role of Two Singapore Islamic Organizations," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 18, no. 1 (2023): 27–53, <https://doi.org/10.19105/al-Ihkam.v18i1.6002>.

²² M.M.A. Abdullah, "Reconciliation through *Fiqh Al-Aqalliyat*: A Sri Lankan Perspective," *Sprink Journal of Arabic-English Studies* 01, no. 01 (2022): 39–45, <https://doi.org/10.55559/sjaes.v1i01.6>.

²³ U Jabir A L I Hudawi, "Abdullah Bin Bayyah: His Life and Contributions in Jurisprudence, Focus on Reality *Fiqh*," 2015.

²⁴ N. Gafoordeen and M.M.M. Sabir, 2023).

According to ‘Abdullah Darraz, so far the application of the methodology as described above has been applied by *ushul al-fiqh* experts. The main impact of focusing too much on linguistic studies in *ushul fiqh* and ignoring other scientific approaches is the fear of alienation of Islamic law from current social developments and changes. The legal products formulated will produce fatwas that are rigid, static and not adaptive so that they are powerless to face the swift currents of modernization.²⁵

To make up for the shortcomings and weaknesses found in the traditional textualist approach, contemporary *ulama*’ reform and reconstruct the structure that has been built in Islamic legal methodology by integrating the texts with other scientific approaches that are currently developing, such as paying attention to the socio-political, historical, and various other scientific contexts. With all the ability to make *ijtihad* with various approaches that exist so as to give birth to a new legal methodology known as *maqâshid al-syar’ah*. The *maqâshid* approach is not burdened with methodological techniques and literalist *nash* guidance but *maqâshid* provides flexibility in reading and understanding sharia. When some important doctrines in *ushul fiqh*, such as *ijma*’, *qiyas*, even *ijtihad*, seem to be burdened with strict and burdensome requirements, *maqâshid* provides more flexible access to sharia.²⁶

In this case, the contextualist group opens as wide a space as possible for reason to do *ijtihad* by making public welfare, namely *masalih al-ammah*, the main guide to *ijtihad*. Not only the benefits obtained from the text, but also the benefits obtained by the results of reasoning carried out by the *mujtahidin* collectively. Maximizing the potential of the mind of the modern era today is much more than the previous classical era. The current modern era is a golden age for rationality, empiricism and public

benefit, namely *masalih al-ammah*. Therefore, the use of *dalil naql* (*bayani* reasoning) needs validation by confirming its truth with *dalil aqli* (rational reasoning).²⁷

Formulation of *Fiqh Aqaliyyat* Methodology of Abdallah bin Bayyah, Taha Jabir Al-Alwani & Jamâl al-Dîn ‘Atiyyah on Muslim Minorities

Our understanding of religion and religious practice must, first of all, be based on the study of divine revelation on the one hand, and the dynamic real world on the other. The Quran guides us to the wonders and secrets of the physical world, while reflection on the real world brings us back to Quranic understanding. We must appreciate how the two interact, contrast and complement each other.²⁸

To build the foundations of such *ijtihad*, we need to keep in mind certain important rules and test their validity in issues relating to minority groups. If these prove conducive and have a positive impact, they can be tested in other areas; if not, they may be set aside for future research.²⁹

In defining *fiqh* terms and codifying *fiqh* literature, the next generation of jurists got caught up in dogma and terminology, and were influenced by translated works of philosophy and logic. They began to borrow terms from these works to classify them. There should be clarity in the classification of Islamic law related to duties and obligations as obligatory or recommended, preferred, prohibited; or allowed without conditions. The aim is to connect these terms with the concepts of reward and punishment, praise and rejection, and so on. This

²⁵ Arif Zunzul Maizal, “Fikih Minoritas: Inovasi Ijtihad Di Negara Non-Muslim,” *El -Hekam* 7, no. 2 (2022): 203, <https://doi.org/10.31958/jeh.v7i2.8309>.

²⁶ Amir Sahidin, “The Implementation of Maqâshid Al-Shar’ah in Shaykh Yusuf Al-Qardhawi’s *Fiqh Al-Aqaliyyat*” 19 (2021): 295–312.

²⁷ Ahmad Imam Mawardi, “*Fiqh Aqaliyyat: Pergeseran Makna Fiqh Dan Usul Fiqh*,” *Asy-Syir’ah; Jurnal Ilmu Syari’ah Dan Hukum* 48, no. 2 (2014): 315–32, <https://asy-syirah.uin-suka.com/index.php/AS/article/view/119>.

²⁸ Zainul Mun’Im, “Peran Kaidah Fikih Dalam Aktualisasi Hukum Islam: Studi Fatwa Yûsuf Al-Qaradhâwî Tentang Fiqh Al-Aqaliyyât,” *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (2021): 151–72, <https://doi.org/10.24090/mnh.v15i1.4546>. which contain actualizations of Islamic law, are fatwas on Muslim minority issues (*fiqh al-aqaliyyât*)

²⁹ MATSUYAMA Yohei, “*Fiqh Al-Aqaliyyât Development, Advocates and Social Meaning*,” no. 1 (n.d.): 33–55.

creates a vacuum in the science of *fiqh* in which the fundamental purpose of the rulings is lost until they re-emerge in *ijtihad* to reconstruct Islamic law in the Muslim minority.³⁰

a) Construction of Jabir Taha Jabir Al-Alwani's *Fiqh al-Aqaliyyat Ijtihad*

The founder of *fiqh al-aqalliyyat*, Taha Jabir al-Alawani, in the core of his writings on the matter states that there are 6 (six) main principles of the *ushul fiqh* method used in the discipline³¹:

1. Finding the unity of principle in the Quran and reciting it in light of the realities of life and its dynamics. The Quran and Sunna together constitute a unified whole and serve as the basis for the application of Islamic teachings in a particular context. The Sunna is therefore considered a complement to the Quran.
2. Prophetic law can be revoked (annulled), criticized, and purified from deviations by the Quran (deviations). The aim is to standardize the reference of the humanitarian mission.
3. Applying a geographical perspective in Quranic interpretation. Every country is in fact an Islamic country (*dar Islam*), both in terms of present and future circumstances because the earth belongs to God and Islam is His religion. In addition, we have the responsibility to persuade individuals to convert to Islam because all people are in fact "Muslims", whether we define them as *millat* (religious people) or as preachers (evangelizers).
4. Considering the universality of the command. If we think that the Quran is meant for all mankind, then it should be the only literature capable of answering the many natural problems that constantly arise.
5. Study in detail the basic principles, especially those relating to the ultimate goal of sharia, in order to incorporate them into the formulation

of modern *fiqh* principles for minorities. This study should be based on the ultimate goal and linked to higher values, taking into account the subtle difference between the goal of sharia and the intention of a responsible Muslim.

6. The jurisprudence that we have today is not based on *fatwas* or legal theories that can always be equated with the problems of today. Due to the fact that the ancient jurists did not live in our time, their inability to understand the problems we face today is a natural occurrence and not a defect.

As according to Taha Jabir al-Alawani in the content of *ushuliyah fiqh al-aqalliyyat* upholds three main arguments:³²

1. Changing the understanding of *maqâshid al-syarî'ah* from the notion of *al-daruriyyat al khams* which comes from the concept of *daruriyyat*, *hajiyyat* and *tahsiniyyat* to one that emphasizes truth and justice (*al-'adalah*) as a general rule.
2. An attempt was made to change the established traditionalist jurisprudential methodology of basing laws hierarchically on the Quran, hadith, *ijma* and *qiyas*, by giving precedence to the Quran, and considering circumstances using the doctrine of *maslahah* and the notion of custom or '*urf*'.
3. The claim that the Quran is universal in its application to humanitarian endeavors in general removes the boundaries between Muslims and non-Muslims.

b) Abdallah Bin Bayyah's Construction of *Fiqh al-Aqaliyyat Ijtihad* ³³

1. Tahqiqul Manat: Ijtihad in Responding to Reality

Fiqh al-aqalliyyat is an integral part of the reality faced by Muslim minorities, serving as a sharia guide for those living in non-Muslim-majority countries,

³⁰ Ilham Tohari and Moh. Kholish, "Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia," *Arena Hukum* 13, no. 02 (2020): 314–28, <https://doi.org/10.21776/ub.arenahukum.2020.01302.7>.

³¹ Taha J. Al-Alwani, "Towards a Fiqh for Minorities," 2010.

³² Abdolmohammad Kazempur, "Reckoning with the Minority Status: On Fiqh Al-Aqalliyyat Al-Muslema (Jurisprudence of Muslim Minorities)," 2017, 13–34, https://doi.org/10.1007/978-3-658-13889-9_2.

³³ Abdullâh Bayyah, *Sina'ah Al Fatwa Wa Fiqh Al-Aqalliyyat*, ed. Beirut Dar Al-Minhaj (Libanon, 2007).

to ensure they can practice the teachings of Islam in general. Abdallah bin Bayyah and other initiators of *fiqh al-aqalliyyat* realized that attachment to the text and restriction to *al-madzahib al-arba'ah* were unable to answer the problems faced by Muslim minorities. Therefore, they tried to take progressive steps by reopening the door to *ijtihad* which was considered closed by some parties.³⁴

According to Bin Bayyah, there are three forms of *ijtihad* that are relevant in the formulation of *fiqh al-aqalliyyat*.

First, *Al-Ijtihad Al-Ibda'i wa Al-Insha'i* (Constructive Creative): This form involves developing new legal conclusions for contemporary issues that have never been studied by classical scholars. In this case, the method used is to analogize the law-related issues to situations that have been explained by the *nash* (Quran and Hadith).

Second, *Al-Ijtihad Fi Tahqiq Al-Manat* (Juristic Reasoning by Ascertaining the Ratio Legis): This method focuses on determining the applicability of a law based on existing reality. In this process, the relevant criteria (*manat*) are analyzed.

Third, *Al-Ijtihad Al-Tarjihi* (Selective Method): This form of *ijtihad* involves choosing and selecting opinions and thoughts from classical scholars, based on considerations of *maslahat* and compatibility with the current reality.

This emphasizes that Bin Bayyah more often uses *tahqiq al-manat* and *al-tarjihi* methods in resolving *fiqh al-aqalliyyat* cases. One of the striking differences is Bin Bayyah's affirmation of *ijtihad fi tahqiq al-manat* as one of the categorical instruments in *ijtihad fiqh al-aqalliyyat*. This comparison can be made with the views of Yusuf al-Qaradawi who only mentions two forms of *ijtihad* that can be carried out, namely *al-ijtihad al-intiqal wa al-tarjihi* and *al-ijtihad al-ibda'i wa al-insha'i*.

The urgency of *tahqiq al-manat* can be seen from Bin Bayyah's statement that connects *ijtihad* with the process of putting the law as a bridge between

God's law and reality, and as a link between text and context. Without *tahqiq al-manat*, the law can become irrelevant to reality or even get out of the will of the sharia, so that it is closer to harm than benefit for humans *tahqiq al-manat* by Bin Bayyah is termed as *tashkhis al-qadiyah min haysu al-waqi'* (identification of a matter based on reality).

Bin Bayyah explained that there are two understandings that developed in understanding the process of *ijtihad* method in *tahqiq al-manat*.

First, the *qiyas* method, which is applying the '*illah* (causa) that scholars have agreed is found in the *asl* (mouth of the law) to specific issues that have no legal clarity (*far'*) so that they can be punished in accordance with the *asl* law. According to Bin Bayyah, this method is not a form of *ijtihad* found in *tahqiq al-manat*, because *tahqiq al-manat* is basically not looking for legal equality. This form of method is no different from the process of *qiyas*.

Second, the application of the general rule to the units below it, in order to ensure the correct position in placing the law on its object. This form of method is not the same as *qiyas*. For example, any intoxicant is considered *haram* to consume. The majority of scholars agree on that. However, this theory will only work if the object of the law has the desired nature (intoxicants). So if a *mujtahid* is going to apply this theory to an object such as alcoholic beverages, he needs to further examine whether this object is categorized as an alcoholic beverage or not. Whether the substance contained in it is intoxicating or not. And what if a liquid that contains alcohol but is not consumed by drinking, such as perfume, is still considered *haram*? This is what is required in the process of *ijtihad tahqiq al-manat*.

According to Abdallah bin Bayyah, *ijtihad tahqiq al-manat* has an important role in solving human problems, especially for minority Muslims. Both for new cases and old cases that require legal reform due to incompatibility with the previous law. Bin Bayyah argues that most of the legal problems faced by Muslim minorities are actually old types of legal cases, but wrapped in a new form. In fact, al-Shatibi praised the form of *ijtihad* in *tahqiq al-*

³⁴ Abdullah Bayyah, *فقه الواقع والتوقع: الاجتهاد بتحقيق المناط* (Al azhar: Daruttiba'ah wa Nasyr, 2010).

manat as an *ijtihad* activity that will never end until the coming of the Day of Judgment.

2. Al-Qawl Al-Dhaif As A Means of Beneficence

According to Abdallah bin Bayyah, *al-qawl al-dha'if* refers to an opinion that is considered weak in a madhhab and is not considered a *mu'tamad* (trusted) opinion in that madhhab. In *al-Fatwa fi al-shari'ah al-Islamiyyah*, 'Abdallah Muhammad Alu Khanin termed it *al-qawl al-marjuh*, which is the opposite of *al-qawl al-rajiḥ*. *Al-qawl al-rajiḥ* is based on evidence that is considered strong.

One of the considerations used by Bin Bayyah in his *fiqh* thinking is to favor (*tarjih*) *al-qawl al-dha'if* with consideration of *maslahat* and leave the opinion that was originally *rajiḥ* because the argument *al-qawl al-dha'if* is newly discovered or its strength increases because many scholars use it, or also because of the strong *maqâshid al-syarî'ah* impetus in the context of different times. This *tarjih* consideration departs from the importance of considering *maqâshid al-syarî'ah* in *ijtihad*, which is then termed *al-ijtihad al-maqashidi*. Bin Bayyah explained that a *dha'if* opinion if seen in the context of the present turns out to be more in line with *maqâshid al-syarî'ah* than the *rajiḥ* opinion, then the *dha'if* opinion can take the position of the *rajiḥ* opinion and be practiced.³⁵

The consideration of using *dha'if* opinions is also based on the rule of *al-nazr fi al-maslat in ijtihad*, namely that a *mujtahid* should look at the possibility of the consequences of the fatwa he gives, whether it brings *maslahat* or *mafsadah*. Bin Bayyah states that the consideration of *maslahat* and *mafsadah* as a result of a fatwa can be a valid reason for changing the fatwa. An opinion that was originally sound can become sound and vice versa, so that even a *dha'if* opinion can be given precedence over a sound opinion based on these considerations.³⁶

Bin Bayyah also stipulated three conditions for practicing *dha'if* opinions:

First, it is not severe in its weaknesses: The opinion has no significant weaknesses. **Second**, a clear source: The opinion comes from a jurist who has the knowledge and quality of faith that is worth following. **Third**, the emergency condition: Although in certain cases the *dha'if* opinion is favored, it does not mean that the *rajiḥ* opinion adopted by the majority of scholars becomes invalid. The *rajiḥ* opinion still applies, it's just that in certain situations, the *dha'if* opinion can replace the position of the *rajiḥ* opinion based on considerations of *maslahat* and *maqâshid al-syarî'ah*.

Another example given by Bin Bayyah is the Fatwa of the European Fatwa Council on the status of marriage between a wife who converts to Islam while her husband remains a non-Muslim. Bin Bayyah argues that in this situation, the marriage is valid even if the husband remains a disbeliever, contrary to the majority of scholars who state that the marriage relationship between the two is void.

c) Jamâl al-Dîn 'Atiyyah's Construction of *Fiqh al-Aqalliyyat Ijtihad*³⁷

As for the main basis in the foundation of the methodological formulation of *fiqh al-aqalliyyat* Muslim minority by Jalaluddin with the following details:

1. Primary Sources (المرجعية الشرعية)

Namely, there are several levels and several degrees of height or benchmark indicators of a law derived from the Quran and sunna with the first degree, namely the degree of the Quran and hadith with *qath'i* texts, as for the second degree, namely new sus or text from the Quran which is *dzanni* as well as the hadith, as for the third with texts or husus which are *dzanni* but have *qath'i* strength, as for the fourth, the last king is the text or text which is *dzanni* and has *dzanni* meaning.

³⁵ Arini Nabila Azzahra, "Dirayah : Jurnal Ilmu Hadis Metode Pemahaman Hadis : Telaah Atas Pemikiran Hadis K . H . Aceng Zakaria Dalam Kitab Al- Hidayah Fi Masâil Fiqhiyyah Mu t a ' Âridh Ah," 2022.

³⁶ Syamwil Faizin, "Urgensi Asbâb Al-Wurûd Dalam Diskursus Ilmu Hadits," At-Turas III, no. 2 (2016): 227–37.

³⁷ Jamaluddin Athiyyah, *Nahwa Fiqh Jadid Lilaqalliyyat* (Azhar: Darusslam, 2002).

2. Wihdatul Insani, Karamatul Insan, Mutlaq Insan

وحدة الإنساني، كرامة الإنسان، مطلق الإنسان

That is that the Quran has explained in general terms related to Allah's creation of his creatures who have differences but still to be able to interact and socialize with each other. Allah ta'ala has also explained in the Quran that humans with other humans are no different either by type or origin or race ethnic culture of each individual.

3. The Sunna of Diversity (سنة التنوع)

As for the form of diversity that occurs among mankind today is the diversity of religion with Allah emphasizing the boss of the religion that contains only Islam and also emphasizes that all humans used to have one belief that is one *ummah* and *wahidah* after that they have differences, among others there are also differences in language, ethnicity and race among mankind.

The purpose of diversity is to know each other and complement each other and help each other and compete with each other in goodness.

Rozi said that actually humans need advantages among each other, for example in vision where each human being has a different look, as well as those related to the voices of several people and each human being has a different voice, it is also said that each human being also has a different language among them.

Zamakhshari also said, The difference in accents is what can cause mutual knowledge between them and if it is said that they are in one form and one form, there will be a misunderstanding and deviation of ignorance that eventually occurs around them.

As for what Rasyid Rida said, that in the creation of all humans is a sign of the greatness of Allah and the greatness of his wisdom and to remember Allah with that, it is obligatory for us to be grateful for his blessings in a way for us to get to know each other and love each other and help each other among fellow human beings without any divisions caused by differences that occur among fellow human beings.

And also said by Muntakhib: Every *ummah* has its *qibla* which has their direction to pray according to their previous sharia and there is no difference between one and another than glory but glory only lies in every obedience and good deed they do and therefore compete in goodness and continue to hurry over it.

3. Rejecting All Types of Racism (رفض لكل أنواع التمييز)

And this is what the previous *jahiliyah* people did and even the previous *umayyads* and the current mass or contemporary *jahiliyah* era in essence the religion of Islam strongly prohibits rather than racism this racism consists of among others, namely in the race of ethnicity forgetting form and religion.

4. Obligation to be Fair and Equal (وجوب القسط والموااة)

Islam has regulated and established a treatment when there are religious differences between people, especially in countries with Muslim minorities, which has the principle of doing justice to be fair rather than government glasses or glasses of judgment on each different religion. Equality in treatment is also equality in laws and judgments, as well as in the burdens placed on citizens of a state.

Conclusion

The innovation of *ijtihad* as the times develop will always develop with the hope of answering various religious problems, especially in Muslim minorities. *Fiqh al-aqalliyyat* comes as a solution to answer the problems of Muslims in western countries, by shifting or taking formal-textual legal theory to contextual-substantial, so that it can be adapted to the situations and conditions experienced by Muslim minorities. This is done with the aim that Muslim minorities can carry out Islamic values ideally, without having to be exclusive with their environment.

The legal products produced through *ijtihad* *fiqh* minority, have differences with *ijtihad* *fiqh* in general, in this case *fiqh* minority is more lenient in legal issues so that Islamic law is flexible in countries with Muslim minorities by considering

mashlahah for Muslim minorities in various countries. As in this case Abdallah bin Bayyah, Taha Jabir Al-Alwani, Jamâl al-Dîn 'Atiyyah, have formulated several methodologies in constructing minority *fiqh*, with Abdallah bin Bayyah applying two forms of methods namely *al-ijtihād fī tahqīq al-manat* and *al-qawl al-dhaif* as a means of welfare and Jamâl al-Dîn 'Atiyyah has principles to be able to accommodate minority Muslim problems, among others, primary sources, *wihdatul insani*, *karamatul insan*, *mutlaq insan*, sunna of diversity, rejecting all types of racism, obligation to be fair and equality.

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