Published online: 21 August 2024

Reshaping Minority Fiqh

The Ideas of ʻAbd Allah Ibn Bayyah

Haidar Masyhur Fadhil

To cite this article:
Fadhil, Haidar Masyhur. "Reshaping Minority Fiqh: The Ideas of ʻAbd Allah Ibn Bayyah." *Australian Journal of Islamic Studies* 9, no. 2 (2024): 37-65.

RESHAPING MINORITY *FIQH*: THE IDEAS OF ‘ABD ALLAH IBN BAYYAH

Haidar Masyhur Fadhil*

Abstract: This article analyses the contribution of ‘Abd Allah ibn Bayyah’s approach in the development of minority fiqh, particularly within the context of reconstructing Islamic law for Muslim minorities in Western countries. Ibn Bayyah is recognised as a neo-traditionalist striving to reconstruct Islamic law with an innovative approach to meet the needs of these minority groups. This research adopts a descriptive-analytical approach to comprehend the concepts introduced by Ibn Bayyah. In his efforts, Ibn Bayyah employs several new approaches, including the utilisation of verification of the hinge (*taḥqīq al-manāṭ*) to understand reality, weighing weaker opinions (*al-qawl al-ḍa’īf*) while considering communal welfare (*maṣlaḥa*), connecting the objective of Sharia (*maqāṣid al-sharī’a*) with legal theory (*uṣūl al-fiqh*), and optimising the Islamic legal maxims (*al-qawā’id al-fiqhiyya*). The article delineates the significance of the new approaches introduced by Ibn Bayyah in the context of minority fiqh development and their impact on Islamic legal thought for Muslim minorities in Western countries. It is anticipated this analysis will provide profound insights into the new paradigm in addressing legal challenges faced by Muslim minorities within the social and legal context of the West.

Keywords: *‘Abd Allah Ibn Bayyah, legal maxim, minority, Islamic law*

INTRODUCTION

Every individual holds the inherent right to practise their religious beliefs in a manner that resonates with their faith. However, practical application of Islamic teachings within the daily fabric of cultures vastly differs between regions dominated by Islamic beliefs and those inhabited by minority Muslim populations. The contextual disparities stemming from social, psychological, political and legal dimensions impose distinct barriers that prevent Muslims from adhering to religious practices in the same ways as those in predominantly Muslim nations.[1]

The challenge faced by Muslim minorities becomes apparent when attempting to apply interpretations derived from personal juridical reasoning (*ijtihād*) prevalent in predominantly Muslim societies. The significant divergence between these interpretations and the lived

* Haidar Masyhur Fadhil is an HDR student in Islamic studies at the Faculty of Islamic Studies, Universitas Islam Internasional Indonesia (UIII). He focuses on *hadɪth* studies, Muslim societies, digital Islam and Islamic law. Author email: haidar.masyhur@uiii.ac.id.

1 Noor Harisudin, *Fiqih Aqalliyat* [Minority Fiqh] (Tangerang: Pustaka Kompas, 2021), 7.

realities of minority Muslim communities underscores the necessity for the conceptualisation of minority *fiqh*. This branch of Islamic teachings is tailored to address the contemporary challenges confronted by Muslim minorities, allowing them to adhere to religious principles while navigating their existence within non-Muslim cultural landscapes.

In acknowledging the unique circumstances of Muslim existence within non-Muslim cultures, al-'Alwānī emphasises the distinctiveness of minority *fiqh*. This perspective accounts for the intricacies and peculiarities of Muslim life in non-Muslim environments, advocating for a contextualised approach to Islamic jurisprudence that accommodates these diversities.[2]

Moreover, delving into the methodology outlined in Ibn Bayyah's work, "*Ṣinā'at al-Fatwā wa Fiqh al-Aqalliyāt*," holds particular significance. Ibn Bayyah, a prominent neo-traditionalist figure, endeavours to reform the inherent rigidity within Islamic law to address modern challenges. His approach strives to reconcile the traditional principles of Islamic jurisprudence with the evolving needs of contemporary society, especially within minority Muslim communities.[3]

Therefore, in light of this contextual backdrop, this article explores Ibn Bayyah's approaches and synthesises them into a contemporary framework of Islamic legal principles tailored explicitly for minority *fiqh*. The objective is to contextualise and adapt Ibn Bayyah's insights to construct a legal framework that resonates with the distinct realities and challenges faced by minority Muslim populations in non-Muslim cultural milieus.

THE NOTION OF MINORITY FIQH

Linguistically, the term "minority *fiqh*" (*fiqh al-aqalliyāt*) comprises two key terms: *fiqh* (Islamic jurisprudence) and *aqalliyāt* (minorities).[4] *Fiqh*, etymologically understood by Muslim scholars (*'ulamā*) as comprehension (*al-fahm*),[5] holds semantic breadth. Contrarily, Schacht delineates *fiqh* as encompassing "understanding, knowledge, and intelligence."[6] In terminological context, al-Juwaynī defines it as "knowing the Sharī'a law through the method of personal juridical reasoning (*ijtihād*)."[7] Al-Juwaynī's interpretation denotes *fiqh* as the outcome of human reasoning striving to apprehend and construe Divine law or Sharia.

On the other hand, etymologically, *aqalliyāt* denotes minorities or groups. According to the Cambridge dictionary, a minority signifies "any small group in society that differs from the

2 Mouez Khalifaoui, " Maqāsid al-Sharī'a as a legitimization for the Muslim Minorities Law," in *The Objectives of Islamic Law: The Promises and Challenges of the Maqāsid al-Sharī'a*, ed. Rumee Ahmed and Muna Tatari Idris Nassery (London: Lexington Books, 2018).

3 Rezart Beka, "Maqāsid and the Renewal of Islamic Legal Theory in 'Abdullah ibn Bayyah's Discourse," *American Journal of Islam and Society* 3 (2021).

4 Noor Harisudin, *Fiqih Aqalliyāt*, 35.

5 Ahmad Imam Mawardi, *Fiqh Aqalliyat dan Evolusi Maqāsid Sharia dari Konsep ke Pendekatan* [Minority Fiqh and the Evolution of Maqasid al-Sharia: From Concept to Approach] (Yogyakarta: LKiS, 2020), 119.

6 Okan Dogan, *Rethinking Islamic Jurisprudence for Muslim Minorities In the West* (Austin: University of Texas Press, 2015), 8.

7 'Abd al-Malik al-Juwaynī, *Matn al-Waraqāt* [An Introductory Text in Islamic Principles of Jurisprudence] (Riyadh: Dar al-Samay'i, 1996), 7.

majority due to race, religion, or political beliefs, or an individual belonging to such a group."[8] Ibn Bayyah elucidates that the term "minority" constitutes a political term intertwining race, language or religion. He asserts that a minority cannot be disassociated from the number of adherents in a specific region; if the number is scant or fewer, it falls within the category of a minority.[9] Mas'ud, in his article "Islamic Law and Muslim Minorities," critiques the usage of the term "minority" in minority *fiqh* and he writes:

> Certainly, proponents of fiqh al-aqalliyāt face unresolved complexities. Initially, the term "minority" presents substantial challenges due to its inherent ambiguity. Its lack of precise definition evokes the notion of a subset within a nation-state construct. Moreover, the concept of religious minority is notably more fragile than both sub-national or national minorities, as it encompasses further divisions such as language and culture.
>
> Furthermore, the issue of minorities intertwines intricately with various other minority scenarios, particularly evident in the distinction between non-Muslim and Muslim minorities within Muslim nations. These distinct groups are often perceived dissimilarly within the societal framework.
>
> Additionally, the circumstances of Muslim minorities in Western nations markedly contrast with those in non-Western regions, like India, showcasing divergent experiences. This divergence implies that minorities in disparate settings necessitate the formulation of distinct jurisprudential frameworks. Consequently, the term "minority," upon critical examination, appears to lose its relevance, given the varied and unique circumstances of these different minority groups.[10]

The critique posited by Mas'ud can be effectively addressed through several highly substantive points. First, the term "minority" would not pose a problematic issue when juxtaposed with the word "Muslim," as it generates a distinct perception – a minority group unified under the umbrella of Islam. Harrān defines Muslim minorities as a collective of Muslims residing under non-Muslim governance amid a majority populace not adhering to Islam.[11] Meanwhile, Rafeek delineates a Muslim minority as a group numerically, politically and socially inferior to non-Muslims within a specific societal framework, subjected to varying treatment while maintaining solidarity to preserve their Islamic identity as a religious minority.[12]

Salah Sultan further divides Muslim minorities into two categories. First, those based on population size, as evident in Europe, America, India and China. Second, minorities categorised by legal rights, such as the discrimination experienced by Muslim minorities in

---

8 *The Cambridge Dictionary*, s.v. "Minority", accessed April 25, 2024, https://dictionary.cambridge.org/dictionary/english/minority.

9 'Abd Allah ibn Bayyah, *Ṣinā'at al-Fatwā wa Fiqh al-Aqalliyāt* [Fatwa Making and Minority Fiqh] (Dubai: al-Muwatta Center, 2018), 252.

10 Muhammad Khalid Mas'ud, "Islamic Law and Muslim Minorities," *ISIM Newsletter* December (2022), 17.

11 Taj al-Sirr Ahmad Harrān, *Hādir al-'Ālam al-Islāmī* [The Present of the Muslim World] (Riyadh: Maktabah al-Rusyd, 2007), 142.

12 Rafeek, *Fiqh al-Aqalliyat (Jurisprudence for Minorities) and the Problems of Contemporary Muslim Minorities of Britain from the Perspective of Islamic Jurisprudence* (Portsmouth: University of Portsmouth, 2012), 66.

countries like Uzbekistan, Azerbaijan and Chechnya.[13] Therefore, referring to the definitions provided by Harran and Sultan, the term "minority" would not pose a problematic nature, as stated by Mas'ud earlier.

Moreover, the categorisation of Muslim minorities based on population size and legal rights can be critiqued by referencing the views of Jasser 'Awda. 'Awda contends that the fundamental criterion for Muslims to be regarded as minority does not rely on sheer numbers or population count. Instead, the key consideration revolves around whether Muslims reside within what are labelled "non-Muslim countries," "non-Muslim societies," "non-Muslim contexts," operate under "non-Muslim politics" or are governed by "non-Muslim governments." Consequently, the distinguishing factor does not concern the quantity of Muslims but how the state structures its governance or implements policies that can be characterised as "non-Muslim." This necessitates the development of specialised legal frameworks such as *fiqh al-aqalliyāt* (minority *fiqh*), *fiqh al-ghurba* (jurisprudence for those in exile), *al-madhhab al-ūrubbiyy* (the European School of Law), European Sharia or European Islam.[14]

Meanwhile, concerning the terminology of minority *fiqh* in general, Duredija and Rane propose there is not a universally agreed-on definition.[15] Ibn Bayyah defines it as jurisprudence laws related to Muslims living outside Islamic countries.[16] Ibn Bayyah's definition, particularly the phrase "outside Islamic countries," would spark extensive debate due to the current complexity of state systems, especially in relation to the concept of nation-states prevalent in today's world, which have replaced imperial systems, city-states and other forms of authoritative agencies.[17]

Meanwhile, Saeed defines it as a specific discipline that considers the correlation between religious rulings and the circumstances of the community and the geographical area in which it exists.[18]

From the shortcomings of the aforementioned definitions, I contend that the most fitting definition of minority *fiqh* is a branch of *fiqh* that examines the legitimacy of voluntary, modern migration in addressing everyday issues encompassing political, social, economic, religious and cultural aspects. This branch of minority *fiqh* stems from the development of *fiqh* legal products that lacked answers in the past from *fiqh* experts or jurists.

---

13 Mawardi, *Fiqh Aqalliyat*, 44.

14 Adel Ibrahim Alturki, Jamal and Ahmad Wasito, "Good Muslims and Good Citizens: How Fiqh al-Aqalliyat Solves the Problems of Muslim Minorities in the West," *Peradaban Journal of Religion and Society* 2 (2023).

15 Adis Durideja and Halim Rane, *Islam and Muslims in the West: Major Issues and Debates* (Pargrave Macmillan: Cham, 2019), 209-29.

16 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 252.

17 Andreas Wimmer and Brian Min, "From Empire to Nation-State: Explaining Wars in the Modern World, 1816-2001," *American Sociological Review* 71, no. 6 (2006).

18 Abdullah Saeed, "Reflection on the Development of Fiqh for Minorities and Some of the Challenges it Faces," in *Applying Sharia in the West*, ed. Maurits Berger (Leiden: Leiden University Press, 2013).

Indirectly, the above definition I propose reflects several crucial aspects. First, the concept of the permanence of the Muslim minority condition in the aforementioned Western context. Second, the notion that a substantial portion of Western Muslims deliberately seeks guidance from the Islamic legal legacy in their daily decision-making processes. Third, the premise that the context in which Western Muslims find themselves necessitates approaches to Islamic jurisprudence that entail additional flexibility and adaptation beyond those already present in the Islamic legal heritage.[19]

Besides examining the philosophical meaning of minority *fiqh* as I have explained above, we also need to look at the social significance inherent in the product of minority *fiqh*, as developed by Yohei, who argues that minority *fiqh* is the most significant 'goods' or 'commodities' invented by the *'ulamā* to survive and regain their authority in this highly competitive contemporary religious market of Islam, particularly in Muslim minority societies.[20]

Based on his argument, minority *fiqh* plays a significant role in the contemporary religious market of Islam, particularly in Muslim minority societies. This concept discreetly avoids addressing the core aspects of Sharia and instead focuses on issues specific to the social and geographical circumstances of minorities living under non-Muslim governance. It accommodates strong and weak consumers, allowing for flexibility in religious practice. Moreover, it appeals to the non-Muslim majority, emphasising compatibility with the national constitution and commitment to abide by societal rules.

Furthermore, the minority aligns with the evolving Muslim identity among minorities in the West, integrating their identity as Muslims with their European identity. This concept represents a universal and intangible *umma*, which does not conflict with nation-states. It bridges the physical and spiritual belonging of Muslim minorities, making it attractive to these communities.

In essence, minority *fiqh* serves as a strategic tool for religious scholars (*'ulamā*) to regain authority within Muslim minority societies by responding to the popularity of unqualified thinkers in these communities. It is not only an expression of a new Muslim identity but also a means to strengthen the position of the *'ulamā* in the competition for religious authority.[21]

HISTORICAL OVERVIEW OF MINORITY *FIQH*

Generally speaking, the issue concerning minority Muslims was deliberated by classical jurists (*fuqahā*) in the 9th century regarding the challenges faced by Muslims residing in non-Muslim territories. The matter intensified during the 10th and 11th centuries, notably after the

19 Andrew March, "Sources of Moral Obligation to Non-Muslims in the Jurisprudence of Muslim Minorities," *Islamic Law and Society* 16 (2009): 34-94.

20 Matsuyama Yohei, "Fiqh al-Aqalliyat: Development, Advocates and Social Meaning," *Ajames* 26, no. 2 (2010).

21 Ibid.

Christian conquest of Sicily and Muslim territories in the Iberian Peninsula.[22] Some jurists argued that dwelling in non-Muslim lands not only weakened their faith but also bolstered the authority of non-Muslim powers to oppress minority Muslims. Conversely, other jurists contended that residing in non-Muslim lands was permissible as long as Muslims could peacefully practice their religious obligations. Certain scholars uphold the belief that living in a non-Muslim country might even become obligatory if Muslims derive benefit from their residency or if their departure would lead to adverse consequences. The ruling might even be deemed impermissible (haram) if Muslims fear abandoning Islam due to witnessing widespread evil and disobedience.[23] Modernist jurists, around the turn of the 20th century, also sanctioned residing in non-Muslim lands provided that Muslims could exercise religious freedom.[24]

During that time, authoritative opinions like fatwas were provided to offer guidance to Muslims residing in specific circumstances. Nevertheless, the imperative to evolve legal interpretations that accommodate the circumstances of being a minority has significantly intensified in the past 200 years. The latter portion of the 20th century holds particular significance due to the substantial migration of Muslims to non-Muslim territories, notably in Europe and North America. This influx of Muslims has spurred ongoing dialogue on jurisprudence tailored for minority communities.[25]

As noted by Hassan, the discourse on minority *fiqh* has been developed by Sunni Arab scholars, particularly those affiliated with the Muslim Brotherhood.[26] Among the leading figures who initiated this discourse on minority *fiqh* are Al-'Alwānī (d. 2016) and al-Qaraḍāwi (d. 2022). Subsequently, other figures emerged in the next phase, such as Ibn Bayyah, who continuously reinforced the methodology of this minority *fiqh*. Although it cannot be denied that many Muslim scholars disagree and often oppose the concept of minority *fiqh*, for instance Syrian scholar al-Butī, who views minority *fiqh* as a concept lacking logic and a plot to divide Islam. Meanwhile, Hizb al-Tahrīr figure Asif Khan vehemently opposes this minority *fiqh*, considering it a betrayal of the sanctity of Islam by invoking emergency (*ḍarūrah*) and necessity (*ḥajāh*).[27]

The first pioneering figure was Tāha Jābir Al-'Alwānī, born in Iraq in 1935 and died on 4 March 2016. Al-'Alwānī was an expert in legal theory (*uṣūl al-fiqh*). He obtained his doctoral degree from al-Azhār University in Cairo, Egypt. Previously, Al-'Alwānī taught extensively at

22 Uriya Shavit, "The Wasati and Salafi Approaches to the Religious Law of Muslim Minorities," *Islamic Law and Society* 19 (2012).

23 Khaled Abou el-Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from Second/Eight to the Eleventh/Seventeenth Centuries," *Islamic Law and Society* 1, no. 2 (1994).

24 Andrew March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009), 171-72.

25 Abdullah Saeed, "Reflection on the Development of Fiqh," 241.

26 Said Fares Hassan, "Fiqh al-Aqalliyat and Muslim Minorities in the West," in *Routledge Handbook of Islamic Law*, ed. Khaled Abou el Fadl, Ahmad Atif Ahmad and Said Fares Hassan (London: Routledge Taylor & Francis Group, 2019), 317.

27 Asif Khan, *The Fiqh of Minorities: The New Fiqh to Subvert Islam* (London: Khilafah Publication, 2004), 2.

various Middle Eastern universities. He later moved to America, where he gained inspiration through engagement with the Western world.[28]

The first time Al-'Alwānī used the term "minority *fiqh*" was in 1994 when the Fiqh Council of North America, under his leadership, issued a fatwa allowing American Muslims to vote in the general elections of that country, even in the absence of Islamic political parties or Muslim candidates. Then, in 2021, al-Alwānī's first book on minority *fiqh* was published under the title "*Towards a Fiqh for Minorities: Some Basic Reflections*."[29]

Several pivotal factors underpin Al-'Alwānī's adoption of the discourse on minority *fiqh*. Initially, the contemporary presence of Muslims in non-Muslim territories differs significantly from historical contexts. Presently, they are not merely "others" but integral parts of non-Muslim regions, necessitating integration and cultivation of their distinct identity. This circumstance underscores the requirement for *fiqh* tailored for minorities due to their enduring settlement in non-Muslim lands, a departure from historical transience.

Second, Al-'Alwānī contends that, besides the nature of Muslim presence in non-Muslim domains, legislation is shaped by the cultural and geographical milieu in which it evolves. Consequently, jurisprudence and laws formulated by jurists residing in majority Muslim domains prove inadequate in addressing the needs of Muslim minorities under non-Muslim governance.

Central to Al-'Alwānī's theory of minority *fiqh* is the inapplicability of Islamic heritage to the contemporary situation of Muslim minorities. He advocates reassessment of the sources of *fiqh*, asserting the Qur'ān as the sole foundation of Islamic legislation. He regards the *sunna* merely as an elucidation of the Qur'ān's rules and principles during the Prophet's era, rejecting it as a standalone source. Al-'Alwānī posits that the Islamic legal heritage is rooted in the medieval geopolitical context and a dichotomous division of the world, urging a shift towards acknowledging the universality of Islam and accounting for evolving factors and challenges. He stresses the necessity of a *fiqh* of coexistence, contrary to historical periods that emphasised welfare *fiqh* (*fiqh al-ḥarb*), which centred on conflict.[30]

In line with Al-'Alwānī, Yūsuf al-Qaraḍāwī is another proponent of minority *fiqh*. He was born on 9 September 1926 and died on 26 September 2022. His thoughts in the field of *fiqh* have become a primary reference among Muslim scholars. Initially, al-Qaraḍāwī was a conservative scholar. However, he shifted his stance to moderation when he came into direct contact and interaction with the West. Al-Qaraḍāwī is confident that Islam is capable of resolving all issues, including those faced by Muslim minorities in the West.[31]

---

28 Harisudin, *Fiqih Aqalliyat*, 17.

29 Tausef Ahmad Parray, "The Legal Methodology of Fiqh al-Aqalliyat and its Critics: An Analytical Study," *Journal of Muslim Minority Affairs* 32, no. 1 (2012): 88-107.

30 Munazza Akram, "Issues of Muslim Minorities in Non-Muslim Societies," *Islamic Studies* 58, no. 1 (2019).

31 Harisudin, *Fiqih Aqalliyat*, 19.

The shift towards moderation became apparent in the early 1970s when al-Qaraḍāwī began visiting Muslim communities in the West. Following this, along with other jurists, he formulated, organised, institutionalised and promoted an approach addressing the distinctive challenges encountered by Muslim minorities.[32]

Al-Qaradāwī's approach and rationale regarding minority *fiqh* differ somewhat from Al-'Alwānī's perspective. His significant contribution to this area is evident in the book titled "*Fī fiqh al-aqalliyāt al-muslimah: ḥayat al-muslimīn fī al-mujtamaʿāt al-ukhrā*," which was partially translated into English as Fiqh of Muslim Minorities: Contentious Issues and Recommended Solutions.[33]

Similar to Al-'Alwānī, Al-Qaraḍāwī acknowledges the distinctiveness of the situation of Western Muslims, necessitating the formulation of a systematic theoretical framework falling within the realm of Islamic jurisprudence. However, unlike Al-'Alwānī, Al-Qaraḍāwī views minority *fiqh* not as an autonomous field of scholarly exploration but as a subdivision of existing *fiqh*. He draws parallels, likening it to established categories of *fiqh* such as medical fiqh (*fiqh al-ṭibb*), economic *fiqh* (*fiqh al-iqtiṣād*) and political *fiqh* (*fiqh al-siyāsah*). Additionally, akin to Al-'Alwānī, Al-Qaraḍāwī underscores the significance of *ijtihād* in the theory of minority *fiqh* but perceives it as a contemporary manifestation of the well-established process of renewal (*tajdīd*) deeply embedded in the classical Islamic legal tradition.[34]

The initial formulation of minority *fiqh* proposed by Al-'Alwānī and Al-Qaraḍāwī was positively received by Ibn Bayyah. In his view, there are three benefits that can be derived from the outcomes of this study. First, the guidance issued based on the study of minority *fiqh* will serve as a legal reference for Muslim minorities in general in implementing Sharia. Second, it serves as a guide for interacting with groups of different beliefs, fostering the belief that religion is not a barrier separating people but a connecting bridge for mutual understanding, mutual assistance, compassion and respecting the rights of fellow humans and the state. Third, it aims to facilitate religious life, aligning with Islam's character as a religion that is elastic and flexible.[35]

In summary, minority *fiqh* addresses the everyday challenges faced by numerous Muslims residing in Western countries, aiming to harmonise divergent practices with the cultural norms and values of the host societies within the bounds of Islamic jurisprudence. Its objective is to reformulate and reinterpret Islamic principles like the land of Islam (*dār al-islam*) without manifesting as a religious reform movement that challenges orthodoxy.[36]

32 Shavit, "The Wasati and Salafi Approaches."
33 Yūsuf al-Qaradāwi, *Fī fiqh al-Aqalliyāt al-Muslimah: Hayat al-Muslimīn fī al-Mujtamaʿāt al-Ukhrā* [Minority Fiqh: Contentious Issues and Recommended Solutions] (Cairo: Dār al-Shurūq, 2001).
34 Durideja and Rane, *Islam and Muslims in the West*, 209-29.
35 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 255-56.
36 Parray, "The Legal Methodology of Fiqh al-Aqalliyat."

A BRIEF INTELLECTUAL BIOGRAPHY OF ‘ABD ALLAH IBN BAYYAH

‘Abd Allah ibn al-Mahfūz ibn Bayyah was born in Timbedra, Southeast Mauritania, in 1935. His father, al-Mahfūz, was a prominent scholar who chaired the inaugural Mauritanian ‘Ulamā Conference following the country’s independence. Ibn Bayyah’s early education in Islamic studies commenced under his father’s tutelage at a school named *Mahzarah*. He received instruction in various traditional disciplines such as Arabic, *fiqh*, Islamic history (*sīrah*) and so on. In addition to his father, his primary instructors included Muhammād Ibn al-Shin, who taught him Arabic, and Ibn al-Sālik al-Masumi, his Qur’ān teacher.[37]

At 24 years old, he pursued further studies in Tunisia, specialising in Islamic law and undergoing training for a judicial career. On return, he held various governmental roles, starting as the head of the Sharia Department at the Ministry of Justice, then progressing to deputy head positions at the High Court and later the Supreme Court. He advocated for the establishment of the Ministry of Islamic Affairs in Mauritania and concurrently served as its inaugural minister. Ibn Bayyah’s notable accomplishment in Mauritania was the institutionalisation of Arabic in government offices, a tangible realisation of his efforts to implement Islamic Sharia principles in Mauritanian legislation instead of adopting French law. He stands as one of the foremost contemporary Sunni scholars, heading the Muslim Community Peace Forum and Al-Muwatta Foundation in Abu Dhabi. Georgetown University recognised him among the 50 most influential Islamic figures globally from 2009 to 2016.[38]

Ibn Bayyah presently resides in Jeddah, Saudi Arabia, where he held a position as a professor of jurisprudence at King ‘Abd al-’Azīz University for an extended duration. In addition to his scholarly pursuits, he has played an active role in the establishment and management of various transnational institutions by the *‘ulamā* aimed at addressing contemporary Islamic issues. These initiatives notably include the European Council for Fatwa and Research (ECFR) and the International Union of Muslim Scholars during the 1990s and 2000s. Subsequent to the Arab revolutions, he disengaged from the aforementioned organisations and played a pivotal role in founding the Forum for Promoting Peace in Muslim Societies, the Council of Muslim Elders and the Emirates Fatwa Council, all situated in the UAE.[39]

Moreover, Ibn Bayyah was an extensively published author, with numerous works available in multiple languages. Among his significant literary contributions are *Maqāsid al-Mu’āmalat wa Marāṣid al-Wāqi’āt* (Focusing on the Objectives of Transactions and Observations of Empirical Facts), *Tawḍīh Awjuh Ikhtilāf al-Aqwāl fī Masāil min Mu’āmalāt al-Amwāl* (Analyzing Differing Opinions of Scholars in Financial Transactions), *Mashāhīd min al-*

37 Muhammad Safwan et al., The Fiqh al-Tawari Thoughts of ‘Abd Allah Ibn Bayyah, *Afkar Journal* 19 (2022).

38 Shofa Robbani, Abu Yasid and Sanuri, “The Revitalization on Maqasid al-Mua’amalat according to Abdullah Ibn Bayyah and its implication on Islamic Law,” *Research, Society and Development* 10, no. 14 (2021).

39 Usaama al-’Azami, “Abdullah ibn Bayyah and the Arab Revolutions: Counter-revolutionary Neo-traditionalism’s Ideological Struggle against Islamism,” *The Muslim World* 109, no. 3 (2019).

Maqāsid (Empirical Observations Derived from Objectives), *Sadd al-Dharā'i wa Taṭbiqātuhu fī Majāl al-Mu'āmalāt* (Methods to Prevent Harm and their Application in Transactional Domains), *Āthār al-Maṣlaḥa fī al-Waqf* (Examining the Impact of the Benefit in Endowment), *Tanbīh al-Marāji' 'ala Ta'ṣīl Fiqh al-Wāqi*' (Guidance Notes on Facilitating Understanding of Contemporary *Fiqh*), *Fatāwā Fikriyyah* (Thoughtful Fatwas), *Ṣinā'at al-Fatwā wa Fiqh al-Aqalliyāt* (The Craft of Issuing Fatwas and Minority Jurisprudence), *Khitāb al-Amn fī al-Islām wa Thaqāfah al-Tasāmuḥ wa al-Wi'ām* (Addressing Peace in Islam and a Culture of Tolerance), *Ḥiwār 'an Bu'din Ḥawla Ḥuqūq al-Insān fī al-Islām* (a Comprehensive Dialogue on Human Rights in Islam) and numerous others.[40]

Later, Yohei classified Ibn Bayyah as a staunch adherent to the doctrine of classical *fiqh*. Meanwhile, Farrar categorised him as a type of scholar following an adapted-traditionalism or neo-traditionalist approach. As al-'Azami elucidates, neo-traditionalism generally refers to a branch of Sunnism emphasising reverence and adherence to one of the four schools of law, along with the Ash'arī or Māturīdī schools of theology, and esteems Sufism. In terms of Islamic law and its rejuvenation, neo-traditionalism presents as open to drawing from multiple schools of law for valid rulings, not confining itself to a single school.[41] This is exemplified in his work titled "*Ṣinā'at al-Fatwā wa Fiqh al-Aqalliyāt*," which grapples with the complexities of modernity while considering the juristic heritage (*al-turāth*).[42]

David Warren suggests that Ibn Bayyah's contribution to Islamic jurisprudence involves reconfiguration of the traditional concept of *taḥqīq al-manāṭ* (verification of the hinge), enabling the production of new *fiqh* laws grounded in classical *fiqh* texts.[43] This has led to the formulation of diverse fatwas, spanning from prohibitions on offensive jihad in contemporary times to the development of a specialised minority *fiqh*.

He is not, however, an agent of revolutionary change. Ibn Bayyah refused to serve the revolutionary administration in 1978 following a military coup, preferring prison then exile in stable Saudi Arabia. He also rallied against the instability and extremism that impacted the region after 9/11 and the Gulf War. He directly addressed the fears of global Salafi-jihadism and promoted a religious politics of moderation (*al-wasaṭiyya*) at international fora. He further participated in peace conferences, condemned international terrorism and refuted the legal case for Salafist-inspired jihad.[44]

IBN BAYYAH'S APPROACH TO MINORITY *FIQH*

The decline of Islamic law in the modern era, according to Ibn Bayyah, is attributed to three main factors: a shallow understanding of the existing social realities, a limited comprehension of the true essence of Islamic law and methodological errors in comprehending the relationship

40 Robbani, Abu Yasid and Sanuri, "The Revitalization on Maqasid al-Mua'amalat."
41 Beka, "Maqāsid and the Renewal of Islamic Legal Theory."
42 Salim Farrar, "Shariah -Based Sufism in the Modern Era: A Look at the Work of Shaykh 'Abdullah ibn Bayyah," *Malaysian Journal of Syariah and Law* 10, no. 2 (2022).
43 Ibid.
44 Ibid.

or interconnectedness between texts, contexts and the objectives of Sharia. Regarding this matter, Ibn Bayyah states:

> Indeed, certain scholars exhibit deficiencies and constraints in their comprehension of Islamic law. They lack adherence to a proper methodological framework, possess limited insight into reality, overly focus on textual interpretation of Islamic laws, and neglect the social context when applying Islamic law. Moreover, they issue fatwas addressing secondary issues (*furū'*) without clear legal principles and discuss specific cases (*juz'iyyāt*) without considering the broader objectives (*maqāṣid*). Their detachment from public interest results in harm rather than benefit.[45]

To address various problems mentioned above, particularly concerning the approach to Muslim minorities, it is essential to undertake reforms across several aspects. One of the foremost necessities is methodology reform within *fiqh*, particularly in the context of minority *fiqh*. Ibn Bayyah's proposed position for the methodology of minority *fiqh* serves as a complement to the methodologies put forth by predecessors like Al-Qaradāwī and Al-'Alwānī. These methods and sources significantly contribute to issuing fatwas that align with the objectives of minority *fiqh*.[46] I will examine four juristic methods on which Ibn Bayyah lays emphasis. These methods are reading the reality using *taḥqīq al-manāt*, choosing *al-qawl al-ḍa'īf*, combining *maqāṣid al-sharī'a* with *uṣūl al-fiqh* and implementing *al-qawā'id al-fiqhiyya*.

Choosing al-Qawl al-Da'īf

One of the considerations used by Ibn Bayyah in his jurisprudential thought is favouring (*tarjīḥī*) the weaker opinion (*al-qawl al-ḍa'īf*) based on benefit considerations and abandoning the initially preferred opinion due to the discovery of this weaker opinion or its increased strength because many scholars adopt it. This could also be due to the strong influence of the objectives of Sharia in different contexts. This *tarjīḥī* consideration stems from the importance of considering the objectives of Sharia in *ijtihād*, which is later referred to as *al-ijtihād al-maqāṣidī*. Ibn Bayyah explains that a weaker opinion, when viewed in the current context, may be more in line with the objectives of Sharia than the originally preferred opinion. In this case, the weaker opinion could occupy the position of the previously preferred opinion and be practised.[47]

The consideration for using the weaker opinion stems from the principle of weighing consequences (*al-naẓar fī al-maālāt*) in *ijtihād*, which means a *mujtahid* should consider the potential consequences of the fatwa they issue, whether it brings benefit or harm (*mafsada*). Ibn Bayyah asserts that considering benefits and harms as a result of the fatwa can be a valid reason for changing it. The initially preferable opinion (*afḍal*) may be downgraded to less

---

45 'Abd Allah ibn Bayyah, *Tanbīh al-Marāji' 'Alā Ta'sīl Fiqh al-Wāqi* [Alerting the Reviewer to Reality Fiqh] (Dubai: al-Muwatta Center, 2018), 17.

46 Dogan, *Rethinking Islamic Jurisprudence*, 38.

47 'Abd Allah ibn Bayyah, *Maqāṣid al-Mu'āmalāt wa Marāṣid al-Wāqi'āt* [The Intentions of Transactions and Realities] (Dubai: al-Muwatta Center, 2018), 129.

preferable (*mafḍūl*) and vice versa, even to the extent that a weaker opinion can be preferred over a stronger one.[48]

Ibn Bayyah highlights that, although the majority of jurists prohibit the practice of weak opinions, some jurists from various schools of thought allow it. He cites Ibn ʻĀbidin's statement that in cases where there is disagreement among scholars, it is permissible to select one of the existing opinions by considering which fatwa is closer to benefit, easier for the community to undertake, and aligns with their customs or culture.[49] Al-Qarāfi also reinforces that choosing a weak opinion for issuing a fatwa is the majority opinion among scholars, provided the use of this weak opinion is only permissible in cases of necessity and need.[50]

Ibn Bayyah then presents three conditions to be considered when practising a weak opinion: first, the weakness of the opinion should not be severe; second, the opinion should have a clear source, meaning a knowledgeable jurist worthy of being followed in terms of expertise and integrity; and third, the presence of a genuine emergency or necessity that prompts its application.[51] Fourth, as explained by al-Juwaynī, consideration should be given to the reality of changing times, customs and circumstances that determine whether the weak opinion should be followed or abandoned.[52]

Ibn Bayyah provides several examples of the application of *al-qawl al-ḍa'īf*. Among them is the issue of currency devaluation, inflation, or in *fiqh* terms, known as *al-tadakhkhum*. He explains that the majority of scholars believe the devaluation of currency, leading to a decrease in the wealth of the lender, should not be a consideration for altering the loan amount because that falls under the category of riba prohibited by Sharia. Hence, regardless of the devaluation, the borrowed amount remains the same in repayment. However, Ibn Bayyah favours a contrasting opinion to the majority, following Abū Yūsuf's stance, which considers currency devaluation as a factor for altering the loan amount.

Ibn Bayyah argues that the characteristics of gold and silver differ from those of paper money. Gold and silver hold a fixed value, whereas paper money's value fluctuates due to various factors such as wars, domestic political upheavals or economic activities within and outside the country. He contends that if inflation is not considered in altering the loan amount, it could lead to losses for the lender. Sharia commands fairness and the removal of harm. Therefore, based on this reasoning, Ibn Bayyah deems the system of interest-based lending permissible. He even states that fatwa institutions in various countries remain rigid in addressing this issue. He believes these institutions are too fixated on the numerical value of the loan rather than the actual value, which contradicts the objectives of Sharia.[53]

---

48 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 264.

49 Ibid., 160.

50 Ahmad ibn Idrīs al-Qarāfi, *al-Ihkām fī Tamyīz al-Fatāwā 'an al-Aḥkām wa Taṣarrufāt al-Qādī wa al-Imām* [The Criterion for Distinguishing Legal Opinions from Juridical Rulings and the Administrative Acts of Judges and Rulers] (Aleppo: Maktab al-Matbuat al-Islamiyyah, 2015), vol. 1, 93.

51 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 189.

52 ʻAbd al-Malik al-Juwaynī, *Ghiyāth al-Umam fi Tayyāth al-Ẓulm* [Helping the Community in the Face of Injustice] (Qatar: Maktaba al-Imam al-Haramayn, 1981), 403.

53 Ibn Bayyah, *Maqasid al-Mu'amalat*, 133-34.

At the conclusion of this discussion, Ibn Bayyah clarifies that, while the weaker opinion is favoured in this case, it does not imply that the majority supported strong opinion held by scholars is nullified. The established opinion remains valid. However, due to considerations of benefit and the objectives of Sharia, the weaker opinion replaces the position previously held by the stronger one.[54]

Reading the Reality

The first step taken by Ibn Bayyah in approaching *ijtihād* for minority *fiqh* involves factual observation of the circumstances surrounding Muslims residing in non-Muslim countries, encompassing their conditions, needs and obligations.[55] Abū Zayd evaluates the emergence of new opinions in Islamic law as nothing but a reflection resulting from the social changes in society, which can evolve according to its needs at any given time.[56] Al-Raysūni adds there exists an inseparable relationship between *fiqh* and reality. When these two aspects become disconnected – where *fiqh* progresses in one direction while reality evolves separately elsewhere – they weaken each other. Reality weakens in a Sharia sense as it lacks legitimacy from religious law. Meanwhile, *fiqh* weakens as it fails to accommodate the continuous changes in reality.[57]

For instance, the interconnection between *fiqh* and reality is evident in contemporary jurists' rulings regarding issues like smoking and interest-based mortgages. These rulings heavily rely on the input of doctors, sociologists and economists, who can provide precise assessments regarding the detrimental effects of smoking on human health or the significance of homeownership. Such evaluations help determine whether a particular matter constitutes a genuine necessity or mere convenience, potentially altering absolute scriptural prohibitions into permissible actions.[58]

To accommodate the integration between *fiqh* and reality, a specific form of *ijtihād* commonly employed by scholars is known as "*ijtihād fī taḥqīq al-manāṭ*." Scholars hold varying definitions of *taḥqīq al-manāṭ*. Al-Qarāfī regards *taḥqīq al-manāṭ* as the verification of the presence of legal causes that have been previously agreed on in new cases.[59] In different terms, Al-Gazāli interprets it as the endeavour to explain the applicability or inapplicability of a universal law, whether it is a command or prohibition, in each specific case based on the criteria brought forth by both.[60] Al-Gazāli further elaborates that two aspects are to be

54 'Abd Allah ibn Bayyah, *Mashāhid min al-Maqāsid* [Scenes from the Objective of Sharia] (Dubai: al-Muwatta Center, 2018), 191-93.

55 Dina Thaha, *Muslim Minorities in the West: Between Fiqh of Minorities and Integration* (Cairo: American University in Cairo, 2012), 20.

56 Fāruq Abū Zayd, *al-Sharī'a al-Islamiyah Bayna al-Muhāfizīn wa al-Mujaddidīn* [Islamic Law between Conservatives and Modernisers] (Cairo: Dar al-Ma'mun, 1978), 16.

57 Ahmad al-Raysūnī, *al-Ijtihad al-Nash, al-Wāqi', al-Maṣlaḥah* [Juridical Reasoning: Text, Reality and Interest] (Beirut: Dar al-Fikr, 2000), 60.

58 Dogan, *Rethinking Islamic Jurisprudence*, 48.

59 Ahmad ibn Idris al-Qarāfi, *Sharh Tanqīḥ al-Fusūl* [The Explanation of Tanqīh al-Fusul in Legal Theory] (Beirut: Dar al-Fikr, 2004), 314.

60 Abu Hamid al-Ghazali, *al-Mustaṣfā min 'Ilm al-Usūl* [Legal Theory of Muslim Jurisprudence] (Beirut: Dar al-Kutub al-Ilmiyah, 2012), 230.

investigated in the process of *ijtihād fī taḥqīq al-manāṭ*. First, the presence of legal cause in a particular case. If proven to exist, it can be equated with a similar case, and vice versa. Second, adjusting the criteria (*al-manāṭ*) present in a case with the criteria desired by the commands and prohibitions ordained by Allah.

Al-Shātibī elucidates that the activity of *taḥqīq al-manāṭ* is a continued process of *ijtihād*, employed after successfully deducing laws from Sharia evidence, aiming to determine the harmony of the law with reality. Ibn Bayyah strongly concurs with this explanation. According to him, the activity within *ijtihād fī taḥqīq al-manāṭ* occurs when the law is to be applied to the legal subject. Based on this, Ibn Bayyah employs the term "*tanzīl al-ḥukm*" (application of the law).

Furthermore, *taḥqīq al-manāṭ* emphasises that, in exercising *ijtihād*, an individual's capacity to comprehend the ideas and meanings inherent within the texts needs to be supplemented by thorough examination of a problem to determine its legal status. This is the primary reason why the form of *ijtihād* like *taḥqīq al-manāṭ* will continue endlessly until the Day of Judgement due to the endless array of life's issues. Hence, *ijtihād fī taḥqīq al-manāṭ* does not cease with the exploration of ideas (*istinbāṭ*) found within the texts but extends to an individual's ability to comprehend the diverse realities of different cases.[61] Ibn Bayyah adds that, without *taḥqīq al-manāṭ*, it is possible for a ruling to be rendered irrelevant to reality or even stray from the desired objectives of Sharia. Consequently, the Islamic jurisprudence may tend more toward harm than benefit for humanity. Islamic jurisprudence might indicate the execution of commands in situations where they should not apply, or conversely, prohibitions might be imposed where they are unnecessary. Ibn Bayyah terms *taḥqīq al-manāṭ* as the identification of a matter based on reality.[62]

Ibn Bayyah explains there are two understandings that have evolved regarding the process of *ijtihād* methodology in *taḥqīq al-manāṭ.* First, the method of *qiyas* involves applying the *'illah* (cause) agreed on by scholars, found in the original legal ruling, to specific issues where legal clarity is absent (*far'*), so they can be judged according to the original law. According to Ibn Bayyah, a method like this is not a form of *ijtihād* present within *taḥqīq al-manāṭ*, as it fundamentally does not seek legal analogies. This method bears no difference from the process of *qiyas*.[63]

Second, the application of general principles to their subordinate units is used to ensure the precise placement of the law on its subject. This method differs from *qiyas*.[64] For instance, any intoxicating substance is deemed impermissible for consumption, a viewpoint widely agreed

61 Darmawan, "Tahqiq al-Manath Dalam Pembaruan Hukum Kewarisan Islam di Indonesia" [The Verivication of the Hinge in the Renewal of Islamic Inheritance in Indonesia], *al-Daulah: Jurnal Hukum dan Perundangan Islam* 8, no. 1 (2018).

62 'Abd Allah ibn Bayyah, *al-Ijtihād bi-Taḥqīq al-Manāṭ: Fiqh al-Wāqi' wa al-Tawaqqu'* [Juridical Reasoning by the Verivication of the Hinge: Reality and Anticipation Fiqh] (Dubai: Tabah Foundation, 2014), 4-16.

63 Ibid.

64 'Abd Allah ibn Bayyah, *Ithārat Tajdīdiyah fi Huqūq al-Usūl* [Innovative Issues on Legal Theory] (Jeddah: Sibawayh li al-Tiba'ah wa al-Nashr, 2013), 101.

on by the majority of scholars. However, this theory operates effectively only when a legal subject possesses the desired characteristic (intoxication). Therefore, if a jurist intends to apply this theory to a specific object such as an alcoholic beverage, they need to delve deeper into whether this object qualifies as an alcoholic drink. They must investigate if the substance contained within it has intoxicating properties. Additionally, how should a liquid containing alcohol that is not consumed orally, such as perfume, be evaluated? These considerations exemplify the essence of the *ijtihād* process *taḥqīq al-manāṭ*.[65]

Superficially, the methodological form of *taḥqīq al-manāṭ* may resemble *qiyās*, but it is essential to underline that *qiyās* primarily operates in the process of extracting and deducing laws (*istinbāṭ*), while *taḥqīq al-manāṭ* primarily operates in their application (*taṭbīq al-hukm*).

Some scholars studying *taḥqīq al-manāṭ* sometimes equate *al-manāṭ* with *'illah*. Ibn Bayyah does not deny this due to their functional similarity. Ibn Bayyah explains *al-manāṭ* as the manifestation of several crucial factors forming a final reason for a law. However, it is important to highlight a distinction in the placement of *'illah/al-manāṭ. 'Illah* in *qiyās* serves as the apparent reason for judging an object similarly to a previous law, while *al-manāṭ* serves as the reasoning for determining a law, whether it is similar or different. *Taḥqīq al-manāṭ* is not merely a way to determine *'illah* (*laysa min masālik al-'illah*), but is evidence for establishing a law.

According to al-Shātibī, changes and variations when establishing the law (*tanzīl/taṭbīq*) arise from changes in *al-manāṭ* of something. Sharia law is patent and static but not dynamic. What is dynamic is *al-manāṭ*. Additionally, it is evolutionary because an object to be judged possesses diverse characteristics and criteria. The judgements of mujtahids will vary due to the diverse criteria of *al-manāṭ*. Therefore, it is a paradigm mistake if one assumes the law changes. The law always follows its *al-manāṭ* (cause). What changes is the cause of the law, not the law.

As for the objects of *taḥqīq al-manāṭ*, Ibn Bayyah classifies them into several parts: entities with diverse types (*al-anwā'*), perceptible entities (*al-a'yān*), the conditions of a community and nation (*awdā al-umam*) and the occurrences dictated by time and place (*al-zamān wa al-makān*).

In recognising *manāt*, several approaches function as tools to understand the legal object. Ibn Bayyah terms these approaches as "*masālik al-taḥqīq*," whereas Al-Gazāli refers to them as "*al-mawāzīn al-khamsah*," namely linguistic measurement (*al-mīzān al-lugawī*), customary measurement (*al-mīzān al-'urfī*), sensory measurement (*al-mīzān al-ḥissī*), intellectual measurement (*al-mīzān al-'aqlī*) and empirical measurement through observation (*al-mīzān al-ṭābi'ī*).

These approaches indicate the necessity of integrating knowledge to comprehend *al-manāṭ* in reality. Everything subject to the law needs to be thoroughly understood in terms of composition, nature, characteristics and type. To achieve this, Ibn Bayyah acknowledges the

[65] Ibrahim ibn Musa al-Shatibi, *al-Muwāfaqāt fī Usūl al-Sharī'a* [The Reconciliation of the Fundamentals of Islamic Law] (Cairo: Dar ibn 'Affan, 2008), vol. 3, 32.

limited scope of expertise possessed by *faqīh* in interacting with legal objects necessitates collaboration with other experts in various fields. Just as only a doctor with expertise understands bodily ailments and their remedies, issues in the stock market are comprehended by economists, governance is known by political scientists and so forth.

Therefore, Ibn Bayyah believes that *ijtihād bi taḥqīq al-manāṭ* can be extremely beneficial. He is convinced that through *ijtihād bi taḥqīq al-manāṭ*, human issues, especially those faced by minority Muslim communities, whether new or old cases requiring legal reform due to the inapplicability of old laws, can be addressed. Ibn Bayyah assesses that most legal issues encountered by minority Muslims have an older legal nature but are presented in a new form.

Combining Usūl al-Fiqh and Maqāsid al-Sharī'a

In general, according to Ibn Bayyah, the structure of Islamic law encompasses two main aspects: law and wisdom.[66] The law consists of known jurisprudential norms such as obligatory (*wājib*), recommended (*sunna*), prohibited (haram), disliked (*makrūh*) and permissible (*mubāḥ*). These legal norms are derived and established based on detailed evidence from Qur'anic verses and *ḥadīth*, with the aid of *fiqh* methodologies commonly referred to as *uṣūl al-fiqh*. Behind each of these legal norms lies wisdom, benefit and advantages, in the worldly life and the hereafter, which will be experienced by every obedient servant. This wisdom is often articulated by the term *maqāṣid al-sharī'a*, which, in terminology, is defined by al-Raysūni as the goals established by Sharia to be realised for the benefit of humanity.[67]

Uṣūl al-fiqh and *maqāṣid al-sharī'a* complement each other like spirit and body. As Ibn Bayyah emphasises, one of the tasks of *usūl al-fiqh* is to deduce (extract and discover laws) and define (limit the scope of laws). In this context, *maqāṣid al-sharī'a* assists *uṣūl al-fiqh* in the effort of extracting and discovering (deduction) the laws of God (jurisprudence). On the other hand, *uṣūl al-fiqh* helps to define (limit) the role of *maqāṣid al-sharī'a*, ensuring it operates within its structured mechanisms and does not become unrestricted (liberal). The extraction of laws that only involves *uṣūl al-fiqh* without considering *maqāṣid al-sharī'a* can result in dry legal decisions that do not align with the fundamental needs of human life. Similarly, the use of *maqāṣid al-sharī'a* without the guidance of *uṣūl al-fiqh* tends to produce legal decisions that lack direction (liberal). In short, *uṣūl al-fiqh* is a working partner of *maqāṣid al-sharī'a* in finding ideal legal decisions that align with the intended objectives.[68]

Revitalisation of *maqāṣid al-sharī'a* according to Ibn Bayyah encompasses three crucial aspects. First, activating (*taf'īl*) the function of *uṣūl al-fiqh* within the framework of *maqāṣid al-sharī'a*, as one of its inherent structures. This aims to expand the scope of juristic preference (*istiḥsan*), public walfare (*istiṣlāh*), explolation of ideas (*istinbāṭ*) through analogy (*qiyas*),

66 'Abd Allah ibn Bayyah, *'Alaqāt Maqāsid al-Sharī'a bi Usūl al-Fiqh* [The Relationship between Objective of Sharia and Legal Theory] (London: Al-Furqan Islamic Heritage Foundation, 2006), 134.

67 Ahmad al-Raysūnī, *Naẓariyya al-Maqāṣid 'inda al-Shātibī* [The Concept of Objective of Sharia on Shatibi Perspective] (Virginia: The International Institute of Islamic Thought, 1995), 15.

68 Mifthakul Arif, "Konsep Maqasid al-Shari'a Abdullah bin Bayyah" [The Concept of Objective of Sharia on 'Abd Allah ibn Bayyah Perspective], *El-Faqih: Jurnal Pemikiran dan Hukum Islam* 6, no. 1 (2020).

considering the consequences of the law (*murā'āt al-maālāt*), *dharī'ah* and so forth by selectively narrowing down some of the generalities (*'āmm*) of Qur'anic and *ḥadīth* texts to achieve higher benefits, which are the fundamental goals of Islamic law. Ibn Bayyah claims this kind of specification is well-known among the Maliki school, citing figures like al-Shātībī and ibn al-'Arabī. Ibn Bayyah's deduction from al-Shātībī (and other Māliki figures) is that the necessity of secondary needs—akin to emergencies—can sometimes justify the specification of the general principles of evidence (*naṣṣ*) and most of these generalities are weak. A clear example is a doctor being permitted to see the private parts while treating and combining Maghrib and Isha prayers during heavy rain or long travels. All these relaxations are essentially based on considering the consequences of the law, achieving benefits or avoiding specific harm. This framework of the exploration of ideas (*istinbāṭ*) ultimately does not change the structure of *uṣūl al-fiqh* but makes it more dynamic.[69]

Second, scholars are encouraged to independently engage in *ijtihād* (*ijtihād mustaqil*) when dealing with new and complex issues. Of course, this *ijtihād* should be conducted following the existing procedures – after identifying the issue at hand (*taḥqīq al-manāṭ*), then formulating evidence using available *ijtihād* tools and finally making legal decisions. This approach aims to address contemporary problems (social, economic, etc.).[70]

Third, striving to choose legal opinions (*ikhtiyār al-aqwāl*) that align more with the objectives of Sharia, even if these opinions have relatively weaker evidential strength. As long as the attribution of the opinion comes from a reliable source (*thiqah*), and there is a justified need, then such a choice is considered valid.[71]

Islamic Legal Maxims as a Basis for Ijtihād

Like classical *fiqh*, minority *fiqh* is built on the foundation of Islamic legal maxims. According to Duski Ibrahim, Islamic legal maxims hold a significant function and extremely urgent role in preserving and developing Islamic law. Among the roles of these legal maxims are three main points.

First, Islamic legal maxims can serve as a reference for experts or enthusiasts of law, facilitating their resolution of *fiqh* issues by categorising similar problems within the scope of a single maxim. Second, they serve as a medium or tool for interpreting texts to establish laws, especially those falling under the category of "*mā lam yu'lam min al-dīn bi al-ḍarūrah*," which are laws not explicitly explained in the Qur'ān or *ḥadīth* because their evidence remains indirect. Third, *fiqh* is a body of knowledge or competence that enables the comparison of a particular issue with similar ones.[72]

However, it does not conclude the thought by elaborating on Ibn Bayyah's conceptualisation of these maxims into several main principles. First, simplifying and relieving hardship. This

69 Ibid.
70 Ibid.
71 Ibid.
72 Duski Ibrahim, *al-Qawā'id al-Fiqhiyya* [Islamic Legal Maxims] (Palembang: CV Amanah, 2019), 20.

legal maxim is one of the specifics of Islamic law. The ease made in this legal maxim is based on the weakness of human beings, their many activities and the complexity of their lives. The Legislator (*al-Ḥākim)*, Allāh, is a compassionate person who does not want His slaves to be miserable; instead, He wants them to be happy and prosperous in this world and the Hereafter. Therefore, the scholars of legal theory agree that humans cannot be burdened with actions beyond their ability (*taklīf bi mā lā yutāq*).[73]

Al-Māliki also emphasised that the principle of ease is central in all forms of *taklīf*. One of the privileges of the people of Prophet Muḥammad is that Islamic law is as light as the law as stipulated in the Qur'ān; no obligation except has been facilitated by Allāh by opening the door to ease and dispensation in it.[74]

The verses of the Qur'ān that support this rule include sūrah al-A'la verse 8: "And we will guide you to an easy path." While the *ḥadīth* that supports this rule is narrated by Imam Muslim number 2327: "The Prophet SAW will not choose between two things (heavy and light), except for the lighter of the other, as long as the light thing is not a sin."[75]

It should also be noted that this legal maxim has several provisions that are the basis for creating this rule so as not to exceed the limits (progressive) and conservative. Therefore, Yusri Ibrahim set seven provisions about this rule.[76] First, certain factors encourage them to apply it. The reason can be an emergency, urgent need or distress. This rule should not be made without a clear reason, let alone reasons of passion. Therefore, al-Shātibī classifies distress in two forms. The first is the difficulty still in the standard stage (*al-mashaqqah al-mu'tādah*), which is the difficulty experienced by humans where they can deal with it without getting harmed. Difficulties in this category do not create relief in Sharia and usually do not release worship, such as the difficulty of ablution in the cold or fasting in the hot season, as is the case in Middle Eastern countries. These hardships do not relieve the Muslim of their obligation to worship. The second is a difficulty that is considered to provide extra difficulty (*al-mashaqqah ghayr al-mu'tādah*), namely difficulties that, if carried out, can damage the soul, damage the order of life and hinder the implementation of more beneficial work rationally. For example, dangers that can cause death.[77]

Second, there is great potential for achieving the objectives of implementing this convenience legal maxim. If the consequences of practising the legal maxim have the same potential, and no effect, then it is not permissible to practice it. For example, suppose the fatwa on the permissibility of stoning the Jamrah before sunset makes the place crowded, too, just

---

73 'Abd al-Karīm ibn 'Alī, *Ithāf Dzaw al-Basāir bi Sharh Rawdah al-Nāzīr* [Inspiring the Insightful on the Explanation of Rawdah al-Nazir] (Saudi Arabia: Dār al-Usamah, 1996), 176.

74 Muhammād Alawī al-Maliki, *Al-Risālah al-Islāmiyah Kamāluha wa Khuluduhā wa 'Alamiyyatuhā* [The Islamic Message: Perfection, Eternity and Universality] (Beirut: Dār al-Hāwī, 2018), 61.

75 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 268.

76 Muhammād Yusri Ibrāhim, *Fiqh al-Nawāzīl li al-Aqalliyāt: Ta'sīlan wa Tatbīqan* [Minority Fiqh: Theory and Practice] (Qatar: Wizāra al-Awqāf wa al-Shuūn al-Islāmiyya), 420.

77 Dewi Haldi, *Qāidah al-Hājah Tunazzilu Manāzil al-Dārurah* [Positioning Neccesity in Emergency Position] (Jakarta: UIN Syarif Hidayatullah, 2022), 30.

like the fatwa on stoning the Jamrah after sunset. In that case, the first fatwa is not allowed based on the rule of convenience.

Third, the implementation of the Taisir rule must be consistent with Sharia. In this case, it is not permissible to make the rule contradictory to Sharia that is certain (*qaṭ'ī*) or universal principles in religion, such as contradicting consensus (*ijmā'*) or clear texts of the Qur'ān and *sunna* (*sarīḥ*).

Fourth, the practice of this legal maxim of convenience must not contradict Sharia. In this case, it is only allowed on the rule with a clear tendency of proof. Such as the issue of 'divorce three' at once to facilitate the divorce process if it is no longer possible to return. Although this violates consensus, there is specific evidence that serves as the legitimacy of the fatwa and several other scholars agree on it.

Fifth, taking things lightly (*tatābu' al-rukhas*) is not permissible because it will make fatwa seekers later choose only what is light in carrying out Sharia.

Sixth, there are no consequences of damage, either directly or indirectly. Therefore, a mufti must know the potential of fatwas in the future by at least mastering and understanding the legal maxim of considering the legal consequences (*al-naẓar ilā al-maālāt*). Ibn Taymiyya even argued that a mufti is prohibited from issuing a fatwa harmful to Muslims, becomes a *fitnah* for them or only aims to satisfy lust.

Seventh, one must maintain and know the circumstances of the fatwa seeker. The urgency of knowing the personal reasons and circumstances of a person who asks for a fatwa is so that a mufti can provide a suitable legal decision, so relief (*rukhsah*) can be placed according to its context. Therefore, the author considers the need for a mufti who is credible and moderate in issuing fatwas in this modern era. Not burdensome, but the religious essence is still achieved.[78]

Second, positioning neccesity in an emergency position. This legal maxim explains the Sharia exception that turns difficulty into ease is not limited to emergencies. However, more than that, the needs of the general public, whose level is one below the emergency, also give the impact of convenience. However, it needs to be underlined that it is only sometimes the convenience that many people need that makes the legal implications precisely the same as an emergency. Instead, part of the need (*al-ḥājah*) can occupy the law of emergency in certain circumstances. Therefore, al-Juwayni thinks that sometimes the needs (desires of the people) can become an emergency for specific individuals.

To apply this legal maxim to the minority, we need to know in advance the two main terminologies in this rule. First, about the need (*al-ḥājah*), al-Zarqā interprets the need as a situation requiring ease and relief to achieve a particular purpose. What distinguishes necessity and emergency lies in its legal implications, if the law of necessity is permanent and

[78] Nur Sholikin, *Studi Komparatif Pemikiran Abdullah bin Bayyah dengan Muhammad Yusri Ibrahim* [A Comparative Study of the Idea 'Abd Allah Ibn Bayyah and Muhammad Yusri Ibrahim] (Jakarta: UIN Syarif Hidayatullah, 2021), 72-74.

sustainable. In contrast, the law of emergency is temporary and will turn into no emergency when something that causes the emergency disappears.[79]

Al-Zarkashi gives a simple example of this need (*al-ḥājah*) as a hungry person; if they do not immediately find something to eat, they do not die, but face a difficult and difficult situation.[80]

Substantially, the scholars classify *ḥajah* into two types. First is a general need (*al-ḥājah al-'ammāh*), namely a list of needs that, if it cannot be fulfilled, will cause difficulties (*mashaqqah*) for everyone, such as government, trade and so on.[81] Al-Shātibī termed this as *al-ḥājah al-kuliyyah*, whose needs are for all humans without exception. The second is a particular need that is also termed by scholars as relief (*rukhsah*), namely relief that only applies to individuals in certain conditions and times.[82] The need for things that are easy and convenient but fall under the list of forbidden things according to Sharia.

Based on this, not all needs can replace emergencies, where people can freely do things that are forbidden or leave obligatory things. Al-Tūfī said: It is only permissible for a qualified scholar (*mujtahid*) to rule on any tertiary benefit if they have a legal equivalent of one type to make it a necessity that requires ruling.[83]

The second terminology related to this legal maxim is the term emergency, which Ibn Bayyah defines as:

> Emergency is protecting the soul from harm and danger. Al-Jasshas said that emergency is when a person fears danger and damage to the soul or some of the limbs because of not eating. Al-Qurṭubī said: Emergency is not independent of being forced by an oppressor or independent of hunger. This view is held by the majority of *fuqahā*.[84]

The definition provided by Ibn Bayyah illustrates the position of an emergency that, if not done, will cause damage or loss of life, as well as property damage that will result in a shift in the law from prohibited to permit, such as eating pork at a time of extreme hunger in the forest, where there is no other food. If they do not eat, it is feared that they will die.

In this emergency, we need to flashback about the application of this rule during the time of Caliph 'Umar ibn Khattab. During 'Umar's leadership, the enslaved people belonging to Hatbi stole a camel from the Muzannah tribe. 'Umar cancelled the hand-cutting punishment for them because he considered them to be in a state of urgent need when others were equally experiencing hardship and food shortages. What is noteworthy is that 'Umar understood

---

79 Ahmad al-Zarqā, *Sharh al-Qawā'id al-Fiqhiyyah* [The Explanation of Islamic Legal Maxims] (Damascus: Dār al-Qalam, 1989), 209.

80 Muhammad ibn Bahādir al-Zarkashi, *al-Manthūr fi al-Qawā'id* [The Scatter in Islamic Legal Maxim] (Beirut: Dār Kutub al-Ilmiyah, 2000), vol. 2, 319.

81 Sālih ibn Gānim, *al-Qawā'id al-Fiqhiyyah al-Kubrā wa Mā Tafarra'a 'Anhā* [Islamic Legal Maxims and its Derivations] (al-Rayāni: Dār Balensiah, 1999), 287-288.

82 'Abd al-Rahmān ibn Kamāl al-Din al-Suyutī, *al-Ashbah wa al-Nazāir* [Similiarities and Analogies] (Riyadh: Maktabah Nazar al-Baz, 1997), 61.

83 Sulaymān ibn 'Abd al-Qawī al-Ṭufī, *Sharh Mukhtasar al-Rawdah* [The Explanation of Mukhtasar al-Rawdah] (Damascus: Muassasah al-Risālah, 2008), vol. 3, 207.

84 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 287.

emergency conditions as complex and compelling conditions that must be considered in making Islamic legal decisions.

According to Hassan Duman, emergencies are generally divided into general and specific, whose harmful effects are fatal and recurrent. Meanwhile, if we look at the details of emergencies, they can be divided into three:

- The first level is the emergency of damage that affects all people, such as human life, damage to religion, damage to property, damage to reason, loss of honour and wasting offspring.
- The second level is an emergency that affects only some things. For example, damage to some limbs or some property. This is a level below the first. In this case, people merely worry about losing a hand, foot, hearing or eye. When people are worried they will lose these members, this is the second level of emergency.
- The third level is an emergency in which the damage is not direct, but causes damage to some or all of them.

Therefore, the legal maxim of *al-ḥājah tunazzal al-manzilah al-ḍarūrah* can be implemented in various fields of *mu'āmalah* for which there is no textual evidence (*naṣṣ*) and cannot be compared. Contemporary *mu'āmalah* issues become an urgent need for the community, in the field of trade and services and if it is not allowed, it will cause and make it difficult for the community to meet their needs. It is allowed with the provision until the difficulties faced can be resolved. Only, the permissibility of something that is prohibited because of necessity is limited to fulfilling needs only, not more or more than that, as *ḍarūrah* is only allowed if it reaches the limit of the disappearance of the urgency.

The concept of *al-ḥājah* can occupy the emergency position closely related to the determination of the law. However, the difference is that the emergency is limited by time, while the *ḥājah* is not limited by time or may be at any time. The law determined based on *ḥājah* is general, not limited as the law determined based on custom or habit.

If something is permissible based on the consideration of necessity, and there is text that legitimises it or if no text prohibits it, then it is permissible. However, if the fulfilment of a need does not have a text that legitimises it and does not become a public custom, there is no gap to be equated and it does not bring real *maṣlaḥa*, then fulfilling that need is not allowed.

Based on the preliminary discussion of this rule, scholars believe that *ḥājah* can be the basis for determining the law as an emergency in certain conditions and situations, namely urgent or urgent needs to be met immediately.

Third, viewing the end state of legal effects. According to this legal maxim, a mufti must consider the legal consequences or results of the speech or action determined by its legal status. In this context, something seen as more beneficial up front may become damage. Conversely, something deemed harmful up front may end up being beneficial in the end. The mufti must be careful with this. This also sometimes makes minority *fiqh* opinions different from *fiqh* in general.

The legal maxim of *maālāt* is often referred to as *fiqh tawāqqu'* (*fiqh* of anticipation), which is to rely on *fiqh* law on something that has a high potential to occur or be affected by the consequences of the legal decision. For example, as narrated by Imam Bukhari, *ḥadīth* number 1568, when the Companions wanted to kill the hypocrites around the Prophet, he said: "Do not do that, lest people out there say that Muhammad killed his companions."[85]

Allāh forbids his servants to vilify other religions, even if they are misguided and wrong because, if this is done, it will cause more significant damage with excessive retribution. This is the concept of *maālāt* rules; However, the mistakes of other religions are the truth for Muslims because the adverse effects of making fun of and insulting their religion are not allowed.

Then, according to Yusri Ibrahim, three things must be fulfilled in practicing the rules of *maālāt*. First, considering well the results, benefit and damage, at least with immense potential (*ẓann*). Second, implementing the rule must follow *maqāṣid al-sharī'a*. Third, the case that will occur can be measured regarding the reason (*illat*) and the law. If the above elements are not met, implementing the rule will be difficult.[86]

As an example of the application of the *maālāt* legal maxim for Muslim minorities, the European Fatwa Council prohibits mosque imams from conducting marriage contracts before they are officially recorded by the government, even though the conditions in Islamic law have been fulfilled, because the subsequent impact, when there is a dispute or quarrel, will not be able to defend the rights of his wife and children if there is no official record or marriage book.[87]

If examined more deeply, the discussion in this *maālāt* legal maxim is almost the same as the concept of *sadd al-dharī'ah* (rejecting more significant damage). This term has become a scientific term in the study of *uṣul al-fiqh*, which is a source of law or method of determining a law by looking at and predicting what will be caused by an act or word so it will be prohibited if it will cause damage or harm to life. The effort to close the way so damage does not occur is the substance of the term *sadd al-dharī'ah*. However, there is a difference between the two: if the concept of *sadd al-dharī'ah* usually starts from a permitted matter and the law changes to prohibited because of the anticipation of problems that will occur. As the concept of *maālāt* usually occurs on initially prohibited issues, the law changes to become permissible.[88]

As a widely known example, Ibn Qayyim once wrote the story of his teacher, Ibn Taimiyah, when travelling through the Tatar people who were drinking alcohol. His companion tried to forbid the Tatars, known as troublemakers then, from sinning by drinking alcohol. However, Ibn Taymiyyah disapproved of his companion's action and said: "Allah has forbidden

85 Sholikin, *Studi Komparatif Pemikiran*, 102.
86 Ibrāhim, *Fiqh al-Nawāzīl li al-Aqalliyāt*, 582.
87 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 369.
88 Sholikin, *Studi Komparatif Pemikiran*, 101-04.

intoxicants because they distract from Allah and prayer, and they distract themselves with intoxicants by killing people, taking hostages and taking people's property."[89]

THE IMPLEMENTATION OF IBN BAYYAH'S APPROACH

One of the main problems faced by minority Muslims living in Western countries is the difficulty in finding purely halal employment. For instance, a Muslim working at a restaurant that sells pork or intoxicating alcohol faces a dilemma regarding the legality of their job.[90]

The ECFR issued a fatwa stating that selling alcohol and pork is forbidden based on the *ḥadīth*: "Verily, Allah has forbidden trading in alcohol, dead meat, pork, and idols."[91] Consequently, the implication of this fatwa is that Muslim worker should leave such a job and seek alternative halal employment. If finding another job is challenging due to the constraints of Western countries, the ECFR proposes a solution. The individual can request their employer not to involve them in the sale of pork but assign them other duties unrelated to the sale of the prohibited items. If this remains difficult, it is permissible for them to continue working there as long as there are no other viable alternatives free from the sale of prohibited items according to Islamic law.[92]

Ibn Bayyah provides a footnote to this fatwa, commenting that it originates from the Hanafī school of thought. He continues by mentioning that the reality in the field often portrays Muslim workers not as sellers of pork but merely as delivery persons facilitating its transfer to buyers, receiving payment for this service. Therefore, determining the legal status of such work cannot be generalised into a single fatwa, as scholars differ in their opinions on this matter.

In the Hanafī school, Ibn 'Ābidin and al-Zaylaī' regard this work not as haram but as *makrūh*. They argue that facilitating the sale of pork is not a sin and there is no compulsion involved. Instead, the wrongdoing lies with the business owner who sells the pork and alcohol. In contrast, in the Shāfi'i school, scholars forbid such employment. Al-'Umrānī contends that hiring or employing someone for something forbidden is not permissible.

In the meantime, the majority of jurists argue that it is permissible for Muslims to work for non-Muslims. However, the jurists do set specific boundaries. The work performed must be halal, such as sewing, construction, farming and the like. However, if the work involves haram activities like producing wine, tending pigs and so forth, then it automatically becomes forbidden.[93]

---

89 Ibn al-Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn* [Informing the Legal Officials on the Authority of the Lord of all Beings] (Dammam: Dar ibn al-Jawzi, 1997), vol. 3, 13.

90 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 558-562.

91 "al-'Amal fi Matāim Tabī Luhūm al-Khinzīr" [Working in Restaurants that Sell Pork], European Council for Fatwa and Research, accessed April 25, 2024, https://www.e-cfr.org/blog/2014/01/31/%D8%AD%D9%83%D9%85-%D8%A8%D9%8A%D8%B9-%D9%84%D8%AD%D9%85-%D8%A7%D9%84%D8%AE%D9%86%D8%B2%D9%8A%D8%B1-3/.

92 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 558-62.

93 Wizara al-Awqāf wa al-Shuūn al-Islamiyah, *al-Mawsu'ah al-Fiqhiyyah* [Fiqh Encyclopedia] (Kuwait: Wizara al-Awqāf wa al-Shuūn al-Islamiyah, 1983), vol. 1, 290.

This opinion is based on the *ḥadīth*: "Allah curses the seller of intoxicants and the one who carries it." This explanation reflects the varying opinions among different Islamic schools of thought and scholars.[94]

Additionally, it is essential to consider whether the wages received by the worker are halal.

Ibn Bayyah notes that, within the Hanbalī school, there are also two differing opinions. The first narration states the wages received are valid and permissible, while the second narration suggests the wages are not lawful and lack blessings, and it is recommended to give it away as charity.[95]

Finally, Ibn Bayyah evaluates that the differences in opinions regarding this employment relate to the discussion of "*sadd al-dharī'a*."[96] Ibn Bayyah classifies the scholarly debates regarding a Muslim working in a restaurant that sells haram goods into two main points that must be considered. First, if the potential harm and damage caused by working in such a restaurant will outweigh the benefits, then the ruling will automatically lead to its prohibition. This opinion is in line with what Ibn Qayyim said that closing the loopholes that lead to evil must be closed, whether or not the perpetrator intends to do evil.[97] The second thing is the opposite: if the potential benefits gained from working in the restaurant are greater than the *mudharat*, such as fulfilling his family's livelihood, then there can still be various differences of opinion, as explained above. Ibn Bayyah's second opinion is in accordance with what was conveyed by al-Qarāfi in one of his classifications regarding *dharī'a*. Al-Qarāfi considers that there is an issue that is still in dispute whether the matter is prohibited or permitted so that main point to differences of opinion is likely to occur, especially in contemporary issues.[98]

CONCLUSION

The notion of minority *fiqh* has become a crucial discussion in the early 20th century. Minority *fiqh* was first introduced by al-'Alwānī and al-Qaradāwī, then later developed by ibn Bayyah. It signifies a branch of *fiqh* that assesses the legitimacy of voluntary, modern migration in addressing various everyday issues encompassing political, social, economic, religious and cultural aspects. The primary argument within minority *fiqh* is its role in facilitating Muslim minorities to practice their religion in non-Muslim majority countries. Additionally, minority *fiqh* draws on evidence from texts that specifically address issues in minority regions, forming part of the Islamic jurisprudence used by the majority.

Ibn Bayyah, a neo-traditionalist scholar, contributed significantly to the development of minority *fiqh*. His approaches included using Islamic legal maxims as the basis for *ijtihād*, opting for opinions that align more with benefit (*maṣlaḥa*), elaborating on *uṣūl al-fiqh* and

94 Ibid.
95 Ibid.
96 Ibn Bayyah, *Ṣinā'at al-Fatwā*, 558-62.
97 Hatim Ahmad Abbas, "Sad al-Dharāi' fi al-Sharī'a al-Islamiya" [Blocking of the Means in Islamic Law], *Iraq Academic Scientific Journals* 9, no. 4 (2008).
98 Ibn 'Alī, *Ithāf Dzaw al-Basāir*, vol. 4, 331.

maqāṣīd al-sharī'a, and applying *taḥqīq al-manāṭ* to understand reality. Ibn Bayyah emphasises the need to look at social realities before deciding on the law so the fatwas that will be produced will provide convenience, especially for Muslim minorities living in the West. Furthermore, the methodology proposed by Ibn Bayyah is none other than trying to combine the methodologies of various schools of thought and find common ground in the formulation of minority *fiqh* so it can be used by future generations of jurists.

BIBLIOGRAPHY

Abbas, Hatim Ahmad. “Sad al-Dharāi’ fi al-Sharī’a al-Islamiya” [Blocking of the Means in Islamic Law]. *Iraq Academic Scientific Journals* 9, no. 4 (2008): 18-29.

Abou el-Fadl, Khaled. “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from Second/Eight to the Eleventh/Seventeenth Centuries.” *Islamic Law and Society* 1, no. 2 (1994): 141-87.

Abu Zayd, Fāruq. *al-Shari’a al-Islamiyah Bayna al-Muhafizin wa al-Mujaddidin* [Islamic Law between Conservatives and Modernisers]. Cairo: Dar al-Ma’mun, 1978.

Akram, Munazza. “Issues of Muslim Minorities in Non-Muslim Societies.” *Islamic Studies* 58, no. 1 (2019): 107-26.

Al-’Azami, Usaama. “Abdullah ibn Bayyah and the Arab Revolutions: Counter-revolutionary Neo-traditionalism’s Ideological Struggle against Islamism.” *The Muslim World* 109, no. 3 (2019): 1-23.

Al-Ghazali, Abu Hamid. *al-Mustasfa min ‘Ilm al-Usūl* [Legal Theory of Muslim Jurisprudence]. Beirut: Dar al-Kutub al-Ilmiyyah, 2012.

Al-Jawziyya, Ibn al-Qayyim. *I’lām al-Muwaqqi’īn ‘an Rabb al-’Ālamīn* [Informing the Legal Officials on the Authority of the Lord of all Beings]. Dammam: Dar Ibn al-Jauzi, 1997.

Al-Juwayni, ‘Abd al-Malik. *Ghiyāth al-Umam fi Tayyāth al-Zulm* [Helping the Community in the Face of Injustice]. Qatar: Maktaba al-Imam al-Haramayn, 1981.

Al-Juwayni, ‘Abd al-Malik. *Matn al-Waraqat* [An Introductory Text in Islamic Principles of Jurisprudence]. Riyadh: Dar al-Samay’i, 1996.

Al-Maliki, Muhammād Alawī. *Al-Risālah al-Islāmiyah Kamāluha wa Khuluduhā wa ‘Alamiyyatuhā* [The Islamic Message: Perfection, Eternity and Universality]. Beirut: Dar al-Hawi, 2018.

Al-Qaradāwi, Yūsuf. *Fī fiqh al-Aqalliyāt al-Muslimah: Hayat al-Muslimīn fī al-Mujtamaʿāt al-Ukhrā* [Minority Fiqh: Contentious Issues and Recommended Solutions]. Cairo: Dār al-Shurūq, 2001.

Al-Qarāfi, Ahmad ibn Idris. *al-Ihkām fī Tamyīz al-Fatāwa ‘an al-Ahkām wa Tasarrufāt al-Qādī wa al-Imām* [The Criterion for Distinguishing Legal Opinions from Juridical Rulings and the Administrative Acts of Judges and Rulers]. Aleppo: Maktab al-Matbuat al-Islamiyah, 2015.

Al-Qarāfi, Ahmad ibn Idris. *Sharh Tanqih al-Fusul* [The Explanation of Tanqeeh al-Fusul]. Beirut: Dar al-Fikr, 2004.

Al-Raysūni, Ahmad. *al-Ijtihad al-Nash, al-Waqi, al-Maslahah* [Juridical Reasoning: Text, Reality and Interest]. Beirut: Dar al-Fikr, 2000.

Al-Raysūni, Ahmad. *Nazariya al-Maqāsid 'inda al-Shātibi* [The Concept of Objective of Sharia on Shatibi Perspective]. Virginia: The International Institute of Islamic Thought, 1995.

Al-Shatibi, Ibrahim ibn Musa. *al-Muwafaqat* [The Reconciliation of the Fundamentals of Islamic Law]. Cairo: Dar ibn 'Affan, 2008.

Al-Suyutī, 'Abd al-Rahmān ibn Kamāl al-Din. *al-Ashbah wa al-Nazāir* [Similiarities and Analogies]. Riyadh: Maktabah Nazar al-Baz, 1997.

Al-Ṭufī , Sulaymān ibn 'Abd al-Qawī. *Sharh Mukhtasar al-Rawdah* [The Explanation of Mukhtasar al-Rawdah]. Damascus: Muassasa al-Risālah, 2008.

Alturki, Adel Ibrahim, Jamal and Ahmad Wasito. "Good Muslims and Good Citizens: How Fiqh al-Aqalliyat Solves the Problems of Muslim Minorities in the West." *Peradaban Journal of Religion and Society* 2 (2023): 85-104.

Al-Zarkashi, Muhammad ibn Bahādir. *al-Manthur fi al- Qawā'id* [The Scatter in Islamic Legal Maxim]. Beirut: Dar al-Kutub al-Ilmiyah, 2000.

Al-Zarqā, Ahmad. *Sharh al-Qawā'id al-Fiqhiyyah* [The Explanation of Islamic Legal Maxims]. Damascus: Dār al-Qalam, 1989.

Arif, Miftakhul. "Konsep Maqasid al-Shari'a Abdullah bin Bayyah" [The Concept of Objective of Sharia on 'Abd Allah ibn Bayyah Perspective]. *El-Faqih: Jurnal Pemikiran dan Hukum Islam* 6, no. 1 (2020): 18-35.

Beka, Rezart. "Maqāsid and the Renewal of Islamic Legal Theory in 'Abdullah ibn Bayyah's Discourse." *American Journal of Islam and Society* 3 (2021): 103-45.

Darmawan. "Tahqiq al-Manath Dalam Pembaruan Hukum Kewarisan Islam di Indonesia" [The Verivication of the Hinge in the Renewal of Islamic Inheritance in Indonesia]. *al-Daulah: Jurnal Hukum dan Perundangan Islam* 8, no. 1 (2018): 166-93.

Dogan, Okan. *Rethinking Islamic Jurisprudence for Muslim Minorities in the West*. Austin: University of Texas Press, 2015.

Durideja, Adis, and Halim Rane. *Islam and Muslims in the West: Major Issues and Debates*. Palgrave Macmillan: Cham, 2019.

European Council for Fatwa and Research. "al-'Amal fi Matāim Tabī Luhūm al-Khinzīr" [Working in Restaurants that Sell Pork]. Accessed April 25, 2024. https://www.e-cfr.org/blog/2014/01/31/%D8%AD%D9%83%D9%85-%D8%A8%D9%8A%D8%B9-%D9%84%D8%AD%D9%85-%D8%A7%D9%84%D8%AE%D9%86%D8%B2%D9%8A%D8%B1-3/.

Farrar, Salim. "Shariah-Based Sufism in The Modern Era: A Look at the Work of Shaykh 'Abdullah ibn Bayyah." *Malaysian Journal of Syariah and Law* 10, no. 2 (2022): 49-60.

Haldi, Dewi. *Qāidah al-Hājah Tunazzilu Manāzil al-Dārurah* [Islamic Legal Maxim: Positioning Neccesity in Emergency Position]. Jakarta: UIN Syarif Hidayatullah, 2022.

Harisudin, Noor. *Fiqih Aqalliyat* [Minority Fiqh]. Tangerang: Pustaka Kompas, 2021.

Harrān, Taj al-Sirr Ahmad. *Hādir al-'Ālam al-Islāmī* [The Present of the Muslim World]. Riyadh: Maktaba al-Rusyd, 2007.

Hassan, Said Fares. "Fiqh al-Aqalliyat and Muslim Minorities in the West." In *Routledge Handbook of Islamic Law*, edited by Khaled Abou el Fadl, Ahmad Atif Ahmad and Said Fares Hassan, 313-323. London: Taylor & Francis Group, 2019.

Ibn 'Ali, Abdul Karim. *Ithāf Dzaw al-Basāir* [Inspiring the Insightful on the Explanation of Rawdah al-Nazir]. Saudi Arabia: Dār al-Usamah, 1996.

Ibn Bayyah, 'Abd Allah. *'Alaqāt Maqāsid al-Sharī'a bi Usūl al-Fiqh* [The Relationship between Objective of Sharia and Legal Theory]. London: Al-Furqan Islamic Heritage Foundation, 2006.

Ibn Bayyah, 'Abd Allah. *al-Ijtihād bi-Taḥqīq al-manāṭ: Fiqh al-Waqi' wa al-Tawaqqu'* [Juridical Reasoning by the Verivication of the Hinge: Reality and Anticipation Fiqh]. Dubai: Tabah Foundation, 2014.

Ibn Bayyah, 'Abd Allah. *Ithārat Tajdīdiyah fi Huqūq al-Usūl* [Innovative Issues on Legal Theory]. Jeddah: Sibawayh li al-Tiba'ah wa al-Nashr, 2013.

Ibn Bayyah, 'Abd Allah. *Maqasid al-Mu'amalat wa Marasid al-Waqi'at* [The Intentions of Transactions and Realities]. Dubai: Al-Muwatta Center, 2018.

Ibn Bayyah, 'Abd Allah. *Mashāhid min al-Maqāsid* [Scenes from the Objective of Sharia]. Dubai: al-Muwatta Center, 2018.

Ibn Bayyah, 'Abd Allah. *Sina'ah al-Fatwā wa Fiqh al-Aqalliyāt* [Fatwa Making and Minority Fiqh]. Dubai: Al-Muwatta' Center, 2018.

Ibn Bayyah, 'Abd Allah. *Tanbīh al-Marāji' 'Alā Ta'sīl Fiqh al-Wāqi* [Alerting the Reviewer to Reality Fiqh]. Dubai: Al-Muwatta Center, 2018.

Ibn Gānim, Sālih. *al-Qawā'id al-Fiqhiyyah al-Kubrā wa Mā Tafarra'a 'Anhā* [Islamic Legal Maxims and its Derivations]. Jeddah: Dār Balensiah, 1999.

Ibrahim, Duski. *al-Qawāid al-Fiqhiyya* [Islamic Legal Maxims]. Palembang: CV Amanah, 2019.

Ibrāhim, Muhammād Yusri. *Fiqh al-Nawāzīl li al-Aqalliyāt: Ta'sīlan wa Tatbīqan* [Minority Fiqh: Theory and Practice]. Qatar: Wizāra al-Awqāf wa al-Shuūn al-Islāmiyya, 2013.

Khalifaoui, Mouez. "Maqāsid al-Sharī'a as a Legitimization for the Muslim Minorities Law." In *The Objectives of Islamic Law: The Promises and Challenges of the Maqāsid al-Shari'a*, edited by Rumee Ahmed and Muna Tatari Idris Nassery, 271-84. London: Lexington Books, 2018.

Khan, Asif. *The Fiqh of Minorities: The New Fiqh to Subvert Islam*. London: Khilafah Publication, 2004.

March, Andrew. *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*. Oxford: Oxford University Press, 2009.

March, Adrew. "Sources of Moral Obligation to Non-Muslims in the Jurisprudence of Muslim Minorities." *Islamic Law and Society* 16 (2009): 34-94.

Mas'ud, Muhammad Khalid. "Islamic Law and Muslim Minorities." *ISIM Newsletter* December (2022): 17.

Mawardi, Ahmad Imam. *Fiqh Aqalliyat dan Evolusi Maqāsid al-Shari'a dari Konsep ke Pendekatan* [Minority Fiqh and the Evolution of Maqasid al-Sharia: From Concept to Approach]. Yogyakarta: LKiS, 2020.

Parray, Tausef Ahmad. "The Legal Methodology of Fiqh al-Aqalliyat and its Critics: An Analytical Study." *Journal of Muslim Minority Affairs* 32, no. 1 (2012): 88-107.

Rafeek. *Fiqh al-Aqalliyat (Jurisprudence for Minorities) and the Problems of Contemporary Muslim Minorities of Britain from the Perspective of Islamic Jurisprudence*. Portsmouth: University of Portsmouth, 2012.

Robbani, Shofa, Abu Yasid and Sanuri. "The Revitalization on Maqasid al-Mua'amalat according to Abdullah bin Bayyah and its implication on Islamic Law." *Research, Society and Development* 10, no. 14 (2021): 1-10.

Saeed, Abdullah. "Reflection on the Development of Fiqh for Minorities and Some of the Challenges it Faces." In *Applying Sharia in the West*, edited by Maurits Berger, 241-255. Leiden: Leiden University Press, 2013.

Safwan, Muhammad, Saiful Islam, Mohd Syukri and Abdul Karim. "The Fiqh al-Tawari Thoughts of 'Abd Allah Ibn Bayyah." *Afkar Journal* 19 (2022): 141-72.

Shavit, Uriya. "The Wasati and Salafi Approaches to the Religious Law of Muslim Minorities." *Islamic Law and Society* 19 (2012): 416-57.

Sholikin, Nur. *Studi Komparatif Pemikiran Abdullah bin Bayyah dengan Muhammad Yusri Ibrahim* [A Comparative Study of the Idea 'Abd Allah Ibn Bayyah and Muhammad Yusri Ibrahim]. Jakarta: UIN Syarif Hidayatullah, 2021.

Thaha, Dina. Muslim Minorities in the West: Between Fiqh of Minorities and Integration. Cairo: American University in Cairo, 2012.

Wimmer, Andreas, and Brian Min. "From Empire to Nation-State: Explaining Wars in the Modern World, 1816-2001." *American Sociological Review* 71, no. 6 (2006): 867-97.

Wizara al-Awqāf wa al-Shuūn al-Islamiyah. *al-Mawsu'ah al-Fiqhiyyah* [Fiqh Encyclopedia]. Kuwait: Wizara al-Awqāf wa al-Shuūn al-Islamiyah, 1983.

Yohei, Matsuyama. "Fiqh al-Aqalliyat: Development, Advocates and Social Meaning." *Ajames* 26, no. 2 (2010): 33-55.