

The Implementation of *Maqāṣid al-Sharī'ah* in Shaykh Yusuf
Al-Qardhawi's *Fiqh al-Aqalliyat*

Implementasi *Maqāṣid al-Sharī'ah* dalam Fikih Minoritas Syekh Yusuf
Al-Qardhawi

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Abstract

This article aimed to respond Muslim minorities' anxiety in the West, which deals with several dilemmatic choices of daily religious life activity. Muslim minorities are required to obey the teachings of Islam. Still, on the other hand, it contradicts with the reality of how difficult practicing Islamic teachings in Western countries according to the Islamic teachings such in Muslim-majority countries. Therefore, Shaykh Yusuf al-Qardhawi saw the need to initiate fiqh that could guide Muslim minorities in the West to continue to practice Islamic law, although in a slightly different format from prevailing teachings in Muslim-majority countries. This fiqh is popularly known as *Fiqh al-Aqalliyat*. As initiator, Shaykh Yusuf al-Qardhawi was very concerned about the implementation of *maqāṣid al-sharī'ah*. This article used library research. Based on this study, it can be concluded that the implementation of *maqāṣid al-sharī'ah* in Shaykh Yusuf al-Qardhawi's *Fiqh al-Aqalliyat* can be seen from the basis of his arguments, which aims such as the basis of the proposition relying on the law. It is also based on the main source of *maqāṣid al-sharī'ah*, the principle of paying attention to universal fiqh rules, etc. Furthermore, we can also consider his fatwas, such as the problem of overseeing the implementation of Friday prayers, the law of inheritance from non-Muslims, christmas compliment to *Ahlul Kitab*, and establishing Islamic institutions from zakat assets.

Keywords: Implementation; *maqāṣid al-sharī'ah*; *Fiqh al-Aqalliyat*; Shaykh Yusuf al-Qardhawi

Abstrak

Artikel ini merespon kegelisahan masyarakat minoritas Muslim di Barat yang dihadapkan dengan pilihan-pilihan dilematis. Di satu sisi dituntut untuk ta'at pada ajaran Islam, akan tetapi di sisi lain mereka dihadapkan pada kenyataan betapa sulit mengamalkan ajaran Islam sesuai tuntunan yang dipahami di negara-negara berpenduduk mayoritas Muslim. Karenanya, Syekh Yusuf al-Qardhawi melihat perlunya menggagas fikih yang bisa menjadi pedoman minoritas Muslim di Barat, agar mereka tetap bisa menjalankan syariat Islam, meskipun dengan format yang sedikit berbeda dengan format yang berlaku di negara mayoritas Muslim. Fikih tersebut populer dengan istilah Fiqh al-Aqalliyat. Dalam menggagasnya, Syekh Yusuf al-Qardhawi sangat perhatian terhadap implementasi maqashid al-syari'ah. Artikel ini merupakan penelitian kepustakaan. Berdasarkan kajian tersebut, dapat disimpulkan, implementasi maqashid al-syar'iah dalam Fiqh al-Aqalliyat Syekh Yusuf al-Qardhawi dapat dilihat dari landasan dalil dan pondasi-pondasi Fiqh al-Aqalliyat yang bertujuan merealisasikan maqashid al-syariah, seperti landasan dalil menyandarkan hukum kepada sumber maqashid al-syari'ah paling utama (Al-Qur'an), prinsip memperhatikan kaidah-kaidah fikih universal dan lain sebagainya. Juga dapat dilihat dari fatwa-fatwanya seperti masalah mengawalkan pelaksanaan shalat jum'at, hukum warisan dari non-muslim, mengucapkan selamat atas hari raya ahli kitab, dan membangun institusi Islam dengan harta zakat.

Kata Kunci: Implementasi; *maqāṣid al-shari'ah*; Fiqh al-Aqalliyat; Syekh Yusuf al-Qardhawi

Introduction

In the discourse of contemporary Islamic thought, the principle of *maqāṣid al-shari'ah* has become the main reference in responding to contemporary issues. This includes responding to the anxiety of Muslim minority communities in the West who are faced with dilemma choices (Mawardi, 2010, p. 109). On the one hand, as Muslims, they must be consistent and obedient to the teachings of Islam that they profess. However, at the same time, they are faced with reality, how difficult it is to practice Islamic teachings according to religious guidelines that are understood in Muslim-majority countries (Mawardi, 2014, p. 315). The difficulties they experience are not only in one particular aspect but also in various matters of worship, family, muamalat, and etc (Al-Qardhawi, 2001, p. 6).

Therefore, several Islamic scholars consider it necessary to initiate fiqh, which can guide Muslim minorities in the West. This fiqh became popular with the term *Fiqh al-Aqalliyat* or minority fiqh. Among the initiators was Shaykh Yusuf al-Qardhawi (Mawardi,

2010, p. 119). Al-Qardhawi not only wrote a book specifically about it, entitled, "*Fi Fiqh al-Aqalliyāt al-Muslimāt; Hayab al-Muslimīn Wasaṭ al-Mujtama'āt al-Ukbrā*," but al-Qardhawi stood with other founders, such the European Council for Fatwa and Research (ECFR) or *Majlis al-'Urūbī li al-Iftā' wa al-Buhūts* in London in 1997 which he chaired with the main objective of providing Islamic legal advisory services to Muslim minorities in Europe (Khalil, 2016, p. 34).

The interesting thing about Shaykh Yusuf al-Qardhawi's *Fiqh al-Aqalliyat*, particularly his general thinking, is the balance in arguing that using textual texts and contextual *maqāṣid al-sharī'ah* which has always been his guide in *ijtihad* (Al-Qardhawi, 2008, p. 39). Therefore, Shaykh Yusuf al-Qardhawi writes firmly in his book *Fiqh al-Aqalliyat*, that among the specialties of *Fiqh al-Aqalliyat* is, "The balance between looking at partial texts and universal *maqāṣid*, then should not underestimate one another. It is not permissible to ignore partial texts from the Qur'an and sunnah on the grounds of preserving the spirit of Islam and the objectives of sharia (*maqāṣid*); also should not underestimate the universal *maqāṣid* and general goals by only adhering to *zahir naṣ* and doing literally" (Al-Qardhawi, 2001, p. 36). This shows how close the relationship between *Fiqh al-Aqalliyat* Shaykh al-Qardhawi and *maqāṣid al-sharī'ah*. However, as far as the author's search for previous studies (*al-buhūts al-sābiqah*) related to Shaykh Yusuf al-Qardhawi's *Fiqh al-Aqalliyat*, no studies have been found that explains the implementation of *maqāṣid al-sharī'ah* in his *Fiqh al-Aqalliyat*. So this article aims to enrich the scientific treasures related to Shaykh Yusuf al-Qardhawi's *Fiqh al-Aqalliyat* and explaining the implementation of *maqāṣid al-sharī'ah* in his *Fiqh al-Aqalliyat*.

Method

The type of research used in this study is a type of literature research or library research. As for analyzing the data, this study uses an analysis method that is carried out by means of content analysis (Tobroni, 2003, p. 71), namely direct analysis of the description of the content of the preceding book discussion, by reviewing it critically, analyzing the content of the message and processing it to capture the content of the implicit message that is contained in it. In addition, this research is descriptive-analytic method.

Discussion

Definition and The Nature of Fiqh al-Aqalliyat

Linguistically, Fiqh al-Aqalliyat consists of two words, namely Fiqh and al-Aqalliyat. Etymologically, Fiqh is 'understanding' or '*al-fahm*' (Al-Razi, 1979, vol. 4, p. 442; Mandzur, 1999, vol. 10, pp. 305-306). Meanwhile, in terms of terminology, it has several meanings, first: at the time of the companions and the tabi'in, the meaning of Fiqh was absolute in general, whether related to deeds or beliefs, without any separation between the two. Second: in the next period, a new term emerged that specializes the term Fiqh with '*amali*' laws generated from detailed arguments (Ibrahim, 2013, p. 288). Of these two opinions, the more appropriate is the second meaning, which is related to the laws of practice, both related to worship, family, muamalat, and others resulting from detailed arguments. Meanwhile, etymologically, al-Aqalliyat is the plural form of aqalliyah which means: little or the opposite of many (*al-qillah*) (Mandzur, 1999, vol. 11, p. 287). Meanwhile, in terms of terminology, it is a group of people who live in an area, province, or country that is at odds with most of the local customs, language, or religion (Tubuliyak, 1997, p. 27). From this understanding, it can be concluded that Fiqh al-Aqalliyat is a form of fiqh that maintains the relationship of *shar'i* law to the dimensions of a community, and to the place where it lives. This fiqh is limited community fiqh that has special conditions, which allow something that is not suitable for other people (the majority) to be suitable for them (Thaha Jabir al-Alwan, 2001, p. 97)

To more clearly interpret the nature of Fiqh al-Aqalliyat, Shaykh Yusuf al-Qardhawi said that, the essence of Fiqh al-Aqalliyat does not come out of fiqh in general, it's just that it is fiqh that has its specificity, main discussion, and its problems. The previous fiqh experts have not known the theme that distinguishes them. This is, as now appears medical fiqh (*al-fiqh al-ṭib*), economic fiqh (*al-fiqh al-iqtisādī*), and political fiqh (*al-fiqh al-siyāsī*) and so on (Al-Qardhawi, 2001, p. 31-32). Therefore, the legal source of Fiqh al-Aqalliyat is the same as fiqh in general, namely sourced from the Qur'an and hadith which are built on *ijmā'*, *qiyās*, *istihsān*, *al-maṣlahah al-mursalah*, *sadd al-dzari'ah*, *'urf*, and others that have been conveyed by ushul fiqh scholars (Mawardi, 2010, p. 121). However, in terms of form, Fiqh al-Aqalliyat is a new form because the legal actors are Muslim minority communities who have special characteristics, not shared by the majority of other Muslims (Bayyah, 2007, p. 165).

Understanding The Nature of *Maqāṣid al-sharī'ah*

Linguistically, *maqāṣid al-sharī'ah* consists of two words, namely *maqāṣid* and *al-sharī'ah* (Muhammad Fajar Pramono and Amir Sahidin, 2021). Etymologically *maqāṣid* is the plural form of *maqshad* (Al-Razi, 1979, vol. 5, p. 95) which means the meaning and purpose that God intended (Al-Raisuni, 2010, p. 9). While *al-sharī'ah* is a fraction of the word *shara'a* which means it is a source of water (Mandzur, 1999, vol. 8, p. 175), determines, goes, enters, and submits (Al-Razi, 1979, p. 163). In interpreting this shari'ah, Shaykh Yusuf al-Qardhawi said that shari'ah according to the scholars contains two meanings, first: all religions which include aqidah, worship, adab, morals, law, and muamalah. In other words, shari'ah includes ushul and furu, aqidah and charity, as well as theory and application. Covers the entire contents of faith and creed and includes other aspects such as worship, muamalah, and morals brought by Islam and summarized in the Qur'an and Sunnah to be later explained by scholars of faith, fiqh, and morality. Second: the legal side that is charitable in Islam, such as worship and muamalah which includes relationship and worship to Allah. It also includes family affairs (*al-ahwāl as-shahsiyah*), society, people, state, law, and foreign relations (Al-Qardhawi, 2008, pp. 19-20). From this, it can be said that *maqāṣid al-sharī'ah* etymologically is the intent or purpose of every shari'a that Allah has set for humans.

As for *maqāṣid al-sharī'ah* in terminology according to Shaykh Yusuf al-Qardhawi, the goals that are the target of texts and particular laws to be realized in human life, whether in the form of orders, prohibitions, or permissibility for individuals, families, congregations, and people (Al-Qardhawi, 2008, p. 20). Ibn Taimiyah added, whatever is meant by Allah's prohibition will result in bad, and vice versa, whatever Allah's command must have good results, both can be seen from the wisdom of His commands and prohibitions (Taimiyyah, 1995, vol. 3, p. 19). Therefore, Imam al-Shatibi explained firmly, the Shari'a aims to realize the benefit of humans in the world and the hereafter (Al-Syatibi, 1997, vol. 2, p. 20). From some of these explanations, it can be concluded that *maqāṣid al-sharī'ah* is, the purpose of every shari'a that Allah has set for humans, whether in the form of commands, prohibitions, or permissibility, to bring benefits (*maṣlahah*) and prevent their harm in this world and the hereafter.

More specifically, *maṣlahah* in *maqāṣid al-shari'ah* is divided into three types, namely: *ḍarūriyyāt*, *ḥājīyāt* and *tahsīniyyāt* (Al-Ghazali, 1993, p. 174; Al-Syatibi, 1997, vol. 2, p. 17). *Ḍarūriyyāt* or primary *maṣlahah* is something that must exist for the sake of goodness and prosperity, both in this world and the hereafter, which includes the protection of religion, soul, intellect, lineage, and property or often referred to as *ḍarūriyyāt al-khams* (Al-Ghazali, 1993, p. 174; Al-Syatibi, 1997, vol. 2, p. 20). *Ḥājīyāt* or secondary *maṣlahah* is something that is needed to bring space and eliminate narrowness. While *tahsīniyyāt* or tertiary *maṣlahah* is something related to good habits and avoiding bad habits based on common sense considerations, this is often referred to as *akhlāq al-ḥarīmah* (Al-Syatibi, 1997, vol. 2, pp. 18-22). All three are the main principles that are the pillars of the sharia. Al-Shatibi explains that these three *maṣlahah* are undoubtedly established in religion for a jurist who wants to perform *ijtihād*, and all of them are considered as *maqāṣid al-shari'ah* (Al-Syatibi, 1997, vol. 2, p. 81).

Next, to know the true *maqāṣid al-shari'ah*, it can be done at least in the following ways (Al-Syatibi, 1997, vol. 3, pp. 144-165): First: to analyze the pronunciation of commands and prohibitions. The way is that the meanings contained in the pronunciation of the command (*al-amr*) and prohibition (*al-nahy*) are returned to the true meaning. This means that if the pronunciation of commands and prohibitions contained in the Qur'an and hadith is clear and contains only one purpose, then that purpose is what *al-Shāri'* (Allah) wants, either in the form of commands or prohibitions. Meanwhile, if the order or prohibition contains another purpose, as in the words of Allah, "*Then hasten to the remembrance of Allah and leave trading*" (Al-Jumu'ah: 9). The prohibition of buying and selling in this verse is not stand-alone. Still, the prohibition is only intended to reinforce the command to remember God immediately to perform Friday prayers. Thus, the prohibition of buying and selling in verse does not have a real aspect of *maqāṣid*.

Second: The study of *'illah* or the causes of commands and prohibitions. This method is done by analyzing the *'illah* of law contained in the verses of the Qur'an and hadith. "This god of law is sometimes clearly written and sometimes not. If *'illah* is written clearly in a verse or hadith, it must follow what is written and hadith. Because by following what is written, the legal objectives in the commands and prohibitions can be achieved. If the *'illah* of law cannot be known clearly, then it must be *tawāquf*, meaning to leave it to the will of *al-Shāri'* (Allah), who knows more about the purpose of the law. This attitude of

tawāquf, according to al-Shatibi, is based on two considerations: First, it is not permissible to expand the scope (*ta'addi*) of what has been stipulated in the texts. Because efforts to expand the scope of what is in the texts without knowing the *'illah* of the law, is tantamount to establishing a law without evidence, which contradicts the shari'a. Second, it is not justified to expand the scope or content of what has been stated in the text. However, it is possible to do so if the purpose of the law can be known. For example, it understands a hadith related to judicial matters. The Prophet once said, "A judge should not decide a case between two people in a state of anger" (Al-Bukhari, 1422, vol. 9, p. 65; Al-Naisaburi, n.d, vol. 3, p. 1342). The state of anger (*ghadab*) in the hadith is the cause. At the same time, the *'illah* is the emergence of misgivings or doubts in laying the legal basis and reasons. Therefore, a judge may not decide a case in a situation that can cause him to be not objective in deciding the law, such as being very hungry, nervous, and others.

Third: Analysis of the silence of *al-Shārī'* (Allah) towards the law. There are two kinds of silence in this explanation. First, silence because there is no motive. The silence of *al-Shārī'* in this regard is caused by the absence of a motive or factor that can encourage *al-Shārī'* to provide legal provisions. However, in the next range, humans can feel that the legal provisions have a positive impact. For example, the application of Islamic law to problems that arose after the Prophet's death, such as the collection of the Qur'an (*jam'u al-Qur'an*). At the time of the Prophet, there was no need or motivating factor that required the collection of the Qur'an. Then the collection was deemed very necessary to maintain the existence of the Qur'an because of the death of the friends who memorized the Qur'an and the many disputes among them (Al-Qathan, n.d, pp. 121-123). Therefore, the silence of the Prophet in his time shows that the collection of the Quranic manuscripts is not prohibited.

Next (second), keep quiet even though there is a motive. *Al-Shārī'*'s silence on a legal issue, although some factors or motives require *al-Shārī'* not to remain silent when the legal issue arises. This attitude must be understood that the provisions of the law must be as it is, without making additions and subtractions. Because what is determined is what *al-Shārī'* wants. For example, it is not prescribed for prostration of gratitude in the Maliki school of thought. Al-Shatibi explained that this prostration of gratitude was not prescribed because, on the one hand, it was not performed by the Messenger of Allah in his time, while on the other hand, the motives or factors for doing so, such as the realization of

gratitude for favors, are always inseparable from human life. Whenever and wherever they are (Al-Syatibi, 1997, vol. 3, pp. 144-165). Thus the silence of not doing the prostration of gratitude by the Prophet at that time contained *maqāṣid al-sharī'ah* that the prostration of gratitude was indeed not recommended.

The three methods above manifest the combined understanding between those who emphasize the *ẓahir* texts and those who emphasize the meaning of the texts' content or context. Because if the *ẓahir* texts or pronunciation only guides the understanding of the texts, it will make the Qur'an and sunnah a source of law that is unable to provide answers to new problems in human life. On the other hand, if the understanding of a text contained in the Qur'an and Sunnah is not tied at all to the *ẓahir* pronunciation. Then give full freedom to humans to interpret; as a result, religious teachings will only manifest in the form of moral values and lose their formal identity (Aibak, 2008, p. 76).

Implementation of *Maqāṣid al-Sharī'ah* in Foundation of Fiqh al-Aqalliyat

The scholars agree that shari'ah has a noble *maqāṣid al-sharī'ah* to simultaneously maintain the benefit of humans in the world and the hereafter (Al-Syatibi, 1997, vol. 2, p. 1). To realize the *maqāṣid al-sharī'ah*, a jurist cannot rely on the text and apply it haphazardly. However, a correct understanding of the conditions and reality is needed so that the text of the text can be applied and realized according to the *maqāṣid al-sharī'ah* that Allah wills (Al-Jauziyyah, 1991, vol. 3, p. 66). Seeing the very different conditions and conditions experienced by Muslims in the minority West, Shaykh Yusuf al-Qardhawi formulated the basic arguments and legal principles for Fiqh al-Aqalliyat in order to arrive at *maqāṣid al-sharī'ah* as follows (Al-Qardhawi, 2001, p. 37-38).

1. The Basic Arguments of the Fiqh al-Aqalliyat

The sources of taking law from Fiqh al-Aqalliyat are as sources of ordinary fiqh in general (Al-Qardhawi, 2001, p. 37), namely the Qur'an, hadith, *ijmā'*, *qiyās*, *istihsān*, *al-maṣlahah al-mursalah*, *sadd al-dzari'ah*, *'urf*, and so on (Mawardi, 2010, p. 121). However, there are some new signs to watch out for these sources. Among the most important signs is to rely on the first source (Qur'an), namely by returning all sources of law, whether agreed upon (Qur'an, sunnah, *ijmā'* and *qiyās*) or disputed (*istihsān*, *al-maṣlahah al-mursalah*, *sadd al-dzari'ah*, *'urf* and others) To the Qur'an (Al-Qardhawi, 2001, p. 37).

That is because the Qur'an is the law for shari'ah, the "father" of all legal laws, and has general rules and principles that become the anchorage of most cases that seem contradictory, both in partial and or detailed. In contrast to the sunnah, which is sometimes only a solution at the time and condition of certain people, it also sometimes explain things that have nothing to do with religion (Al-Qardhawi, 2001, p. 37). Therefore, the scholars stipulate that there is sunnah in it for sharia, and some are not. Even for the law, sometimes it is general and sometimes special; some are ongoing, and some are limited; some are fatwas conveying Allah's revelations and some are related to the leadership of a country; some are partial and personal, and some arguments are not valid or disputed (Al-Qardhawi, 2001, p. 37).

For example, the hadith reads, *"I separated myself (bari') from a Muslim who lives with the polytheists"* (Al-Asy'ats, n.d, vol. 3, p. 45; Al-Tirmidzi, 1998, vol. 4, p. 155). Also, the hadith reads, *"Whoever gathers with other people polytheists, and stays with him, then he is like them"* (Al-Asy'ats, n.d, vol. 3, p. 93). This hadith is a weak or daif hadith; although some scholars have it, it will still cause disputes among scholars (Al-Qardhawi, 2001, p. 38). The analysis is, first, the meaning of *bari'* or escaping here still allows other takwilan, such as being free from *diyab* payments in the event of a murder. The two polytheist sentences in terms of the Qur'an are idol worshippers, not including the *Ahlul Kitab*, and how can Islam forbid living with *Ahlul Kitab* in one house, while Muslims are allowed to marry women who are *Ahlul Kitab* (Al-Qardhawi, 2001, p. 38). So this is an example of a case that seems to contradict the Qur'an in order to realize the *maqāṣid al-shari'ah* that Allah wants.

As for the example from the authentic hadith (*ṣahīḥ*), *"Do not start greetings with Jews and Christians, if you walk with them then narrow their path"* (Al-Naisaburi, n.d, vol. 4, p. 1707). Textually, the above hadith seems to forbid this case without distinguishing those fighting the Muslims and not fighting (being peaceful). At the same time, this kind of understanding is far from the *maqāṣid al-shari'ah* behind the text, where Allah distinguishes between those who fight and those who do not. Allah also commands to do good (*al-birr*) and be fair (*al-qist*) to those who do not fight, *"Allah does not forbid you to do good and be fair to those who do not fight you because of religion and do not (also) expel you from your land. Verily, Allah loves those who act justly"* (Al-Mumtahanah: 8). In addition, there is also the generality of the verse, *"And if you are greeted with a greeting then answer wrong with a better one or something like it"* (Al-Nisa': 86). Also, the general saying of the prophet Muhammad, *"Spread greetings"* So, the hadith regarding the

prohibition of starting greetings and the command to narrow the way for the *Ahlul Kitab* can be devoted to experts *harbi* (fighting Islam) and walking arrogantly (Al-Qardhawi, 2001, pp. 39 & 128)

Therefore, the sunnah or hadith should be returned to the Qur'an and other sunnah; it should also be understood in the shade of its *maqāṣid* and separated between fixed goals and changeable wasilah. As for *ijmā'*'s argument, if it is built on a text that considers the situation and *'urf* (habits), then if the *urf* and the situation change, the law can also change. For example, the difference in the amount of money for the nishab of zakat, some say it is following gold, and some say it is by silver. Likewise with other arguments such as *qiyās*, *iṣṭislāh*, *istihsān*, *sadd al-dzari'ah*, *shar'un man qablanā*, *'urf*, *iṣṭiṣhāb* and *qaul al-ṣahābi*, then they should be returned to the principles and goals (*maqāṣid*) Qur'an. Then it should be for the faqih to take advantage of these ushul-ushul and arguments, namely by putting them in their proper place, and prioritizing the strong over the weak when there is a conflict, and weighing the opposition and *tarjih* it (choosing the strong argument) (Al-Qardhawi, 2001, p. 39).

From this, it appears that Shaykh Yusuf al-Qardhawi considers that every law that seems contradictory should be returned to the principles of *maqāṣid al-shari'ah*, especially *maqāṣid* Qur'an. This is in line with one of the dissertations that have been published as a book, entitled, "*Maqāṣid al-shari'ah al-Islāmiyyah wa 'Alāqātuhā bi al-Adillah al-Shar'iyyah*" explaining that *maqāṣid al-shari'ah* has a very close relationship with *shar'i* arguments, both agreed and disputed (Al-Yubi, 1430, p. 469). Therefore, Shaykh Yusuf al-Qardhawi emphasized that there are grounds that need to be presented by a jurist, namely in the form of seeking the purposes of the shari'ah before issuing the law; understanding the text in terms of causes and conditions (*'illah*); distinguish between established (permanent) intentions and changing *wasilah* (intermediary); and see the difference in meaning in worship and muamalat (Al-Qardhawi, 2001, pp. 155-199). So, all of this shows the implementation of *maqāṣid al-shari'ah* in the direct arguments of Fiqh al-Aqalliyat.

2. The Legal Principles of Fiqh al-Aqalliyat

Shaykh Yusuf Al-Qardhawi said that Fiqh al-Aqalliyat is built on principles that must be considered more than any other fiqh, even though every fiqh needs them to realize *maqāṣid al-shari'ah*. These principles are contemporary straight ijtihad; paying attention to the universal principles of fiqh; pay attention to the fiqh reality that occurs in his life;

emphasizing collective fiqh; built on an easy method (*manhaj taisir*); paying attention to the rule, "Fatwa may change following changing conditions"; paying attention to the gradual sunnah/legal graduation (*tadarruj*); knowing things that are the primary (*daruriyyat*) and secondary (*hajiyyat*) human needs; and free from the necessity of certain schools (Al-Qardhawi, 2001, p. 40-57).

In general, the foundations as above are very important so that it is possible to bring benefits to certain people, especially minority Muslim communities in the West. That is because to realize *maqāṣid al-sharī'ah*, a jurist cannot just rely on the text of the text, then apply it haphazardly. However, a correct understanding of the existing conditions and reality is needed so that the text of the text can be realized according to the objectives or *maqāṣid al-sharī'ah* that Allah wills. Regarding this, Ibn Qayyim once said:

“Do not be too stuck on the texts contained in the books of your lifetime. If someone comes to you from outside the area and asks about the law, do not treat the law according to your tradition, but first asks the tradition, then you decide based on his tradition and not according to yours based on your books. According to scholars, this is the correct and clear way. If you are swell-headed, you have gone astray and do not understand the intentions of the scholars and the early generations (*al-salaf*)” (Al-Jauziyyah, 1991, vol. 3, p. 66).

In line with the statement of Ibn Qayyim above, Ibn Ashur explained, "If the understanding of the syar'i texts is only explored in a *ẓahir* manner, it will undoubtedly narrow the scope of its meaning and little contribution. However, if that understanding is taken by paying attention to *‘illah* and its *maqāṣid*, surely, these texts will become a source of knowledge that will never lose its meaning. Thus, the door to analogical reasoning (*qiyās*) is opened, and this discussion of syar'i law will apply naturally to realize *maqāṣid al-sharī'ah*, realize maslahat and reject mufsadat' (Al-Raisuni, 1995, p. 360). The principle above is the implementation of *maqāṣid al-sharī'ah*.

Implementation of *Maqāṣid al-Sharī'ah* in the Fatwa of Fiqh al-Aqalliyat

Apart from being seen from the arguments and foundations of Fiqh al-Aqalliyat, the implementation of *maqāṣid al-sharī'ah* can also be seen from the fatwas quoted in Shaykh Yusuf al-Qardhawi's Fiqh al-Aqalliyat. This is because the ECFR (European Council for Fatwa and Research) institution chaired by Shaykh Yusuf al-Qardhawi has produced many fatwas and legal products through ijtihad based on the arguments and principles previously

mentioned. The following are some examples of legal cases that the institution has given a fatwa and then quoted in the book *Fiqh al-Aqalliyat* Shaykh Yusuf al-Qardhawi, including:

1. Friday Prayer Problem

Regarding the time for Friday prayers, Shaykh Yusuf al-Qardhawi was once asked about the law of performing Friday prayers before the sun slips (before noon) or after the time for Asr prayer due to the limited time for the sermon and Friday prayers at the time of noon in some parts of the world. In several country, especially in winter, or because there is no opportunity to perform Friday prayers because it coincides with school or work schedules, except in the morning or evening (Al-Qardhawi, 2001, p. 71). To answer this question, Shaykh Yusuf al-Qardhawi expressed several opinions regarding the timing of Friday prayers. The majority of scholars state that the time for Friday prayer is the time for the noon prayer, that is, from the slipping of the sun to the position of the sun that allows the shadow of an object to match the original object by reducing the shadow when the sun slips (Asr time). However, the Hanabilah scholars provide leeway for Friday prayer times. Some of them state that the time is the same as the time for the Eid prayer, which is when the sun starts to rise for about 10 minutes or a quarter of an hour until the time for noon ends. Others make the time before the sun slips (Al-Qardhawi, 2001, p. 72). The evidence on which they base it—which states the timing of the Eid prayer—is like the hadiths of the prophet and the deeds of the companions.

The evidence for the needs of the companions was narrated from Imam Ahmad, from al-Qadhi and his companions, from the words of Abdullah bin Sidan, he said, “I witnessed the Friday prayer with Abu Bakr, that the sermon and prayer were carried out before mid-afternoon; then with Umar, his sermon and prayer at mid-afternoon; while with Uthman, pray and sermon when the sun has slipped; I see no one who denounces it” (Muflih, 1997, vol. 2, p. 150). Therefore, al-Qarafi allowed Friday prayers at six in the morning (Muflih, 1997, vol. 2, p. 151), then strengthened by Ibn Qudamah, performing Friday prayers before the sun slipped, at six in the morning, will get a reward (Al-Maqdisi, 1967, vol. 2, p. 264). This is also as the expression of Atha', "Every Eid (Eid prayer) is when the time of dhuha: both Friday, Adha, and Fitri, as reported by Ibn Mas'ud, he said, "Eid is not except the beginning of the afternoon, really The Messenger of Allah prayed with us in the shade of al-hathim Makkah” (Al-Maqdisi, 1967, vol. 2, p. 264). As for the evidence that shows that Friday is a feast day (Eid). Namely, the prophet said: *"Indeed, Allah*

has made this day a feast for the Muslims" (Al-Qazwaini, n.d, vol. 1, p. 349). Also, he said: "*There have been accumulated on your day, two days of power ('Idain)*" (Al-Ashbahi, 1985, vol. 1, p. 178). After explaining some of these opinions, Shaykh Yusuf Al-Qardhawi said that it was permissible for me to do it at the beginning of the afternoon because of *dharuriyat* or because of the desire to occupy the position of *daruriyat*, to relieve and take according to the level (Al-Qardhawi, 2001, p. 75).

In contrast to the above opinion, Malikiyah scholars also expressed another opinion: easing the time limit for Friday prayers until the sun sets (Al-Qardhawi, 2001, p. 75). Imam al-Qarafi narrates that "Ibn Qasim said, while the sun has not set, even though he does not find some asar except after the sun has set. Meanwhile, according to Sahnun, before sunset with the level of the sermon, Friday and time for several asr. In addition, some (Malikiyah) others say (the limit is) until the sun is yellow ..." (Syihabuddin al-Qarafi, 1994, vol. 2, pp. 331-332). Based on these two opinions (Hanabilah and Malikiyah), Shaykh Yusuf al-Qardhawi then said, we can take lessons from two this relief, but if we are able, then we should do it at the agreed time, i.e. after the sun has slipped (dzuhur time). This is more important and in the context of prudence. So, it should be for the leaders of the Muslims to be eager to get out of the disputed matter to the one that is agreed upon when facing the path towards it (Al-Qardhawi, 2001, p. 76).

2. Inheritance Issues from non-Muslims

Regarding the issue of non-Muslim inheritance, Shaykh Yusuf al-Qardhawi chose an opinion that was not popular among the four schools of thought, namely that a Muslim may receive an inheritance from a non-Muslim, but not vice versa (Al-Qardhawi, 2001, p. 127). This opinion is based on several narrations of companions such as Umar, Mu'az, and Mu'awiyah, who allow a Muslim to receive an inheritance from a non-Muslim, but not vice versa (Al-Maqdisi, 1967, vol. 6, p. 367). It is also narrated that two brothers were arguing with Yahya bin Ya'mar, a Jew and a Muslim, about the inheritance of his pagan brother's property, then Yahya said that this Muslim still got the inheritance with the argument that he heard from Abu al-Aswad, that Muadh said The Messenger of Allah once said, "*Islam is adding to not reducing it*" (Al-Asy'ats, n.d, vol. 3, p. 126; Hanbal, 2001, vol. 36, p. 379). Meaning, Islam is a cause for obtaining good, not for making something unlawful and reducing (something) from it (Al-Qardhawi, 2001, p. 127).

Furthermore, Shaykh Yusuf al-Qardhawi said that the benefit of receiving an inheritance from infidels would be greater than allowing the inheritance to be controlled by infidels who are very likely to be used for the benefit of immorality or the development of their religion. While the hadith that forbids a Muslim to inherit property from an infidel can be interpreted as the Hanafi school of interpretation of the hadith, "*a Muslim should not be killed just for killing an infidel*", the meaning of the infidel here is the infidel who fights (*harbi*). So it is also the case that a Muslim does not inherit the infidel who fights because the relationship between the two has been cut off (Al-Qardhawi, 2001, p. 128). Al-Qardhawi said, "This opinion was also worked out by Ibn Qayyim and Ibn Taimiyyah" (Al-Qardhawi, 2001, p. 135).

3. Christmas Compliment to of *Ahlul Kitab*

Regarding the law of christmas compliment to *Ahlul Kitab*, Shaykh Yusuf al-Qardhawi allows if between him and them have kinship, neighborly relationships or social relations that require good relations, in the form of good relations, it is determined by good habits. However, it is permissible here to only say congratulations for participating in celebrating their holidays, so it is not permissible because Muslims have their holidays, and they also have holidays (Al-Qardhawi, 2001, p. 145). This permissibility is as Allah says, "*Allah does not forbid you to do good and to do justice to those who do not fight you because of religion and do not (also) expel you from your country. Verily, Allah loves those who act justly.*" (Al-Mumtahanah: 8)

According to Shaykh Yusuf al-Qardhawi, the verse above explicitly teaches to be good and fair to non-Muslims who are not hostile to or fighting Muslims. The Qur'an has chosen the phrase "*al-bir*" when it says: "do good," where this sentence is also used for someone who has the most rights after Allah, namely to his parents (*bir al-walidaini*). It was also narrated from al-Bukhari and Muslim that Asma bin Abu Bakr came to the Messenger of Allah and said, "O Messenger of Allah, indeed my mother, who is a polytheist, has come to me she has kept in touch and gave gifts. Can I keep in touch with him? He was patient, keep in touch with your mother" (Al-Bukhari, 1422, vol. 8, p. 4; Al-Naisaburi, n.d, vol. 2, p. 696). This is all for the polytheists, while it is well known that the attitude of Islam to the *Ahlul Kitab* is lighter than that of the idol worshipers. To the extent that the *Ahlul Kitab*, Muslims are allowed to eat the slaughter and marry the woman (Al-Maidah: 5). However, it should be noted that these congratulations do not mean acknowledging or agreeing with

their religion, but only ordinary congratulations that have become human habits (Al-Qardhawi, 2001, p. 149).

4. Establish Islamic Institutions from Zakat Assets

The use of zakat to establish Islamic institutions, such as mosques, schools, and centers for Islamic studies, is an urgent need because other sources of funds are very difficult, and many potential donors are willing to donate their money if it is in the name of zakat. However, whether this use is justified, considering that Islamic institutions are not included in the group of people entitled to receive zakat. Shaykh Yusuf al-Qardhawi answered this problem by first mentioning that one of the groups of recipients of zakat in the texts of the Qur'an is for *fi sabilillah*. In this case, the jurists have disagreements in interpreting *fi sabilillah*; among them, some limit it to (*jihad*) because that meaning is the meaning that appears when the sentence is absolute, this is a general opinion. While other scholars, some make its meaning wider, which includes all obedience and benefit for the Muslims, including building mosques, schools, bridges, managing the bodies of the poor, and others that contain benefits (Al-Qardhawi, 2001, p. 81). From this explanation, Shaykh Yusuf al-Qardhawi sees that the meaning of *fi sabilillah* can be used as the two opinions so that it can be used to establish Islamic institutions to preach, direct and educate Muslims in a particular country. Moreover, this case (establishing an Islamic institutions) is unquestionable, including examples of the current form of Islamic jihad, namely jihad with oral, pen, da'wah, and tarbiyah (Al-Qardhawi, 2001, p. 82). From this, it appears, there is an implementation of *maqāṣid al-sharī'ah* wherein some of the cases above, Shaykh Yusuf al-Qardhawi is very concerned about the text of the texts accompanied by the existing conditions and qualities in order to realize the benefit for Muslims, which is the core of *maqāṣid al-sharī'ah*.

Conclusion

From all the explanations above, it can be concluded that Shaykh Yusuf al-Qardhawi is very concerned with realizing benefits for humans, especially for minority Muslims, which is the core of *maqāṣid al-sharī'ah*. This shows the balance of Shaykh Yusuf al-Qardhawi in arguing with textual texts and implementing *maqāṣid al-sharī'ah* contextually so that the legal product that will be applied is more beneficial for the community he faces. The implementation of *maqāṣid al-sharī'ah* in Shaykh Yusuf al-Qardhawi's Fiqh al-Aqalliyat can be seen from the basis of the arguments and legal principles for Fiqh al-Aqalliyat,

which aims to realize *maqāṣid al-shari'ah*, such as relying the law to the ultimate source of *maqāṣid al-shari'ah*, the Qur'an. Then pay attention to the following principles: straight contemporary *ijtihād*, paying attention to universal *fiqh* rules, paying attention to the *fiqh* reality that occurs in his life; emphasis on collective *fiqh*; built on an easy motede; paying attention to the rule, "Fatwa may change following changing conditions"; pay attention to the gradual *sunnah*/graduality of the law; knowing things that become the primary and secondary human needs; regardless of the necessity of certain *madzab*. In addition, it can also be seen from the fatwas such as the permission to oversee the implementation of Friday prayers, the legal inheritance from non-Muslims, christmas compliment to *Ahlul Kitab*, and establishing Islamic institutions from *zakat* assets. This is based on the different realities and contexts facing Muslim minorities in the West, without changing things that have remained in Islam.

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