The Living Fiqh: Anatomy, Philosophical Formulation, and Scope of Study

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Abstract: The living fiqh is derived from the living al-Quran and the living al-Hadith. It requires refining its formulation and methodological model as a contemporary socio-anthropological approach to fiqh. This article discusses the formulation of the concept of the living fiqh both deductively and inductively-abductively. The aim is to formulate and present this conception as a new approach or model of study and evaluation of fiqh practice in the contemporary era. The method used is abductive construction based on integrating fiqh into the behavior of its participants in various cultural clusters of Islamic society. The result found in this research is the formulation of the concept of The Living Fiqh as an explanation for society's acceptance of fiqh not only as knowledge but also as a practical guide in their lives. The implication is the availability of a sociological framework of fiqh that can explain the integration of fiqh in the daily life of Muslim communities spread across various models of cultural practices.

Keywords: Interlegality; Abduction; Socio-anthropology of Fiqh; The Living Fiqh.

Introduction

Discussions in socio-legal socio-anthropology over the past decade have recommended an interdisciplinary or multidisciplinary approach to avoid hegemonic biases and dichotomies between different fields of study. The term the living fiqh has emerged within this discussion, following the concepts of the living al-Qur’an and the living al-Hadith that preceded it. The explanation of the living fiqh that has surfaced so far is limited to a general narrative of qualitative exploration of the behaviors of individuals or communities who adhere to certain theological values and legal norms. In other words, the living fiqh, for now, is characterized by the study of the feelings, thoughts, and actions of individuals or communities who possess expertise in matters of worship and transactions. For example, discussions on gender within the guidance of fiqh are integrated with progressive gender studies (Agustina, 2021). The obedience and acceptance of society towards the version of marriage according to fiqh are connected to their compliance with marriage rules based on customary law guidance (Fatmawati, 2020).

The living fiqh is still within the scope of contemporary fiqh and shares similarities with terms such as social fiqh (Darna, 2021), cultural fiqh (A’yun & Imawan, 2022), civic fiqh, inclusive fiqh (Ariadi, 2017), and other similar terms. All these available formulations share a common vision in comparing and idealizing the implementation of fiqh in contemporary society, such as the term environmental fiqh (Ghufron, 2010). Regarding form, a fundamental difference in the living fiqh is derived from the methods of the living al-Qur’an and the living al-Hadith, well-established in the study of the Quranic and Hadith sciences.

Apart from the derivatives of the living al-Qur’an and the living al-Hadith, the living fiqh also has a methodological connection with the living religion (Jones, 2019). This study explains the meaning and behavior of people based on their religious awareness. Therefore, it needs to be clarified, which are the experiences and practices of the people that are part of the living religion, the living al-Qur’an, the living al-Hadith and which parts are actually within the scope of the living fiqh.
In other words, this article aims to experiment with formulating concepts based on exploring the literature on the practices of fiqh in society. The findings of consciousness-based practices of the living fiqh are prepared as an alternative reference for Muslims to both apply and evaluate the principles of fiqh, taking into account the transition of temporal contexts and diverse cultures (shifting legal orders) that they undergo (Salim, 2015). This means that the principles of fiqh should be seen as dynamic entities within the cultural space and evolving within specific frameworks of time and place without altering its fundamental teachings. This proposition views fiqh as an ongoing process of historical development, enabling its understanding and application to remain relevant in different and ever-changing situations.

As a scholarly approach, the vision of the living fiqh emphasizes the importance of appreciating diversity and different social contexts in applying fiqh. In other words, the living fiqh moves away from the tendency of dichotomous thinking that divides the Muslim community into peripheral Islam and central Islam, traditional Islam and modern Islam, and textual Islam and contextual Islam. The principles of fiqh blend with the spirit of accommodating cultural differences, traditions, and the needs of an increasingly global and multicultural society.

Based on these objectives, the living fiqh functions to preserve the relevance of fiqh in responding to the ever-changing social, cultural, economic, and technological changes of the modern era. Therefore, this article will further explain the anatomy, principles of the living fiqh, formulations, and models of its implementation and acceptance in various practices followed by its adherents. This is an effort to develop an understanding of the application of fiqh according to time and place within the various cultural branches of the Muslim community worldwide (Nasir, 2019).

**Literature Review**

Based on theoretical explanations grounded in Islamic inter-legacy and socio-cultural perspectives, it can be said that the living fiqh is theoretically correlated with the living al-Qur’an (H. S. A. Putra, 2012) and the living al-Hadith (Qudsy, 2016). The normative principles of the Qur’an and Hadith live within the thoughts, feelings, words, and actions of its participants (H. S. A. Putra, 2012). As Mattson states, the collection of Allah’s revelations did not emerge from a void. The Qur’an emerged within a historical continuum of Arab culture. Mattson describes that Islamic values encompass more than just a theological system but also broader aspects of cultural practices (Mattson, 2013). Mattson narrates the issue of legal matters in marriage experienced by Halwah binti Tsa’labah, which later became the reason for the revelation of the verse concerning the legal mechanism of zihar (Mattson, 2013). The provisions regarding zihar that existed within Arab culture can be claimed as one of the early models for studying the living fiqh.

Highlighting the sociology of Islamic jurisprudence in Indonesia, Arskal Salim’s research (2015) explains the pattern of the relationship between Sharia and legal pluralism in Indonesia as a dynamic and ongoing transition. Salim cites the debate on the law as culture between Gluckman (1955) and Bohannan (1957). Clifford Geertz (1983) also participated in the debate, stating that law is local knowledge. Throughout its expansion, Islamic understanding as a value encounters local cultural wisdom as an awaiting value. The interaction between this two legal knowledge culminates in the crystallization of a new model or form of obedience and practice (Wimra, 2022). The consequence of mutual shaping cannot be avoided. At times, Islamic thought, in this case, fiqh, shapes culture, and culture shape Islamic understanding at other moments.

Being situated between the patterns of understanding and the study of fiqh across schools of thought, the living fiqh focuses on exploring aspects of compliance and the choices of fiqh practice within society. One of the emerging issues, for example, is the problem of the environment, both in its macrocosm and microcosm dimensions. The phrase “fiqh al bi`ah” (jurisprudence of the environment) highlights how the awareness and knowledge of the environment within traditional communities predate the arrival of new values from Islamism and colonialism (Ghufron, 2010). The early patterns have been demonstrated in the history of fiqh teachings within Arab culture. These enduring patterns have also permeated various
forms of culture beyond Arab culture. This historical fact has been traced through the study of cultural fiqh accompanied by a social fiqh approach that focuses on extracting Islamic law to be applied in social realities (Darna, 2021). Furthermore, there has been the exploration of the formulations offered by contemporary fiqh scholars such as Khaled Abou al-Fadl, Abdullah Ahmad an-Na’im, and Muhammad Syahrur, as reactions to understanding the realities of modern Islam (Aini, 2019). Based on this mapping, the experimental formulation of the living fiqh, which takes a different focus, namely the acceptance of meanings and the compliance of fiqh practice among Muslim communities, becomes an urgent academic necessity for future Islamic studies.

Method

Exploration of the living fiqh on the meaning of fiqh texts absorbed in societal acceptance utilizes the abductive method. In this study, the abductive reasoning proposed by Charles Sanders Peirce (F. Faiz, n.d.; Khuza’i, 2007; Ndute, 2014; P Mullin, 2007) is employed. According to Peirce, abductive reasoning is used to generate explanations based on observed facts or data in case-by-case situations. It differs from deductive methods that focus on drawing conclusions from given premises and inductive methods that focus on generalizing based on observations of individual cases. The abductive method emphasizes the search for the clearest or best explanation for the observed phenomena (Stock, 2004).

The application of the Abductive Method can be achieved through the exploration of historical literature found in classical to contemporary fiqh. The data, consisting of authoritative literature on fiqh, is corroborated through selected case studies based on the interpretation and implementation of current fiqh. Based on this mapping, the anatomy, philosophical formulations, and scope of the living fiqh are formulated. The explanations derived from the formulation of the living fiqh provide a method of observation on the practices of fiqh adherents and practitioners. As a final outcome, the formulation of the living fiqh can serve as a foundation for further research and a more comprehensive understanding of the texts and practices of fiqh within Muslim societies in any country and culture, free from the influence of knowledge dichotomy.

Results and Discussion

Anatomy the Living Fiqh

The global anatomy design of the living fiqh can be illustrated through the following graphic:

**Graphic 1. Anatomy the Living Fiqh**

The characteristics of inquiry in the living fiqh share similarities with the living Quran in terms of examining human behavior inspired by their religious texts. Healing practices, communal prayers, talqin,
tahlil, recitation of the Quran in formal processions, raising the Quran above one’s head while taking an oath, and other similar practices serve as evidence that the Quran encompasses the social aspect of the Muslim community with diverse qualities. This situation provides a field of study for scholars to explore why the Quran has such a profound influence on the behavior, character, and natural disposition of Muslim adherents. Furthermore, the internalization of the Quran goes beyond the realm of the Muslim social system.

In certain places, in Muslim-populated countries, the use of greetings such as salam, expressive phrases like alhamdulillāh, subhānallāh, innālillāhi, has even permeated into the practices of people from various faiths. This cultural context strengthens the argument that the understanding of the Quran accommodates the overall dynamics of the adherents’ culture with a concise understanding, known as kalāmu Allāh. It is evident that both the Quran and the Hadith, as two instruments, are highly adaptable to enter into various models and forms of human culture in the world. Similarly, fiqh, as the practical derivative of the two main sources of Islamic law, namely the Quran and the Hadith, undergoes a similar reception by society. Fiqh embodies mobility and social action, serving as a subconscious stimulus for personal behavior based on the guidance of fiqh. The living fiqh is one term that strengthens the concept of Islamic legal products by emphasizing the principle of locality (Agustina, 2021).

The concept of Indonesian fiqh, academically introduced for the first time by T.M. Hasbi as-Shiddieqy, evolved from what is known as living laws to positive laws. The discourse of Indonesian fiqh, born in Indonesia, represents a form of fiqh that grapples with the real-life issues of Indonesian society, in line with the growth and development of the country with the largest Muslim population in the world. It is not surprising that within the context of Indonesian fiqh, various contemporary fiqh domains have emerged, such as environmental fiqh, social fiqh, pluralism fiqh, women’s fiqh, and others. Through three periods—namely, the pioneer period, formation period, and institutionalization period—Indonesian fiqh, which is based on contemporary and living laws, has been elevated to the status of positive laws that are binding on the entire Muslim community in Indonesia (Harisudin, 2017). Ijtihad becomes a behavior that emerges from communal consciousness. Ijtihad is an important evidence of how the interaction between Islam and various cultures in the world should mutually shape each other (Zakariyah, 1979).

**The Philosophical Formulation of the Living Fiqh**

Based on the ontological, epistemological, and axiological examination of fiqh presented by scholars from various schools of thought, it can be affirmed that fiqh is a practical legal thought product prepared as a response to legal issues in different timeframes and domains. The production of fiqh as a body of knowledge, derived from Sharia law, as a practical guide for worship and transactions, as a result of ijtihad, and as detailed legal evidence, must be continuously produced. As illustrated in the following schema:

**Graphic 2. The Philosophical Formulation of the Living Fiqh**
“Islamisasi Ilmu Pengetahuan” (Faruqi, 1989) and “Pengilmuan Islam” (Kuntowijoyo, 2006), in explaining Fiqh as a field of knowledge serve as the initial study on how Fiqh should be positioned as one of the products of Islamic Law and as a knowledge discipline that can either be separate from or integrated with Fiqh. Kuntowijoyo’s explanation tends to emphasize the importance of “pengilmuan Islam”, which involves the integration and objectification methods in the development of Islamic studies. In contrast, the understanding of Islamization of knowledge highlights the significance of humanities and social sciences from an Islamic perspective. It encompasses aspects of social sciences and pure sciences, aiming to unify perspectives on the essence of worldly life and history that are consistent with Islam (Sabil, 2014).

Furthermore, the philosophical aspect of Fiqh as a field of knowledge serves as a foundation for positioning Fiqh, as it pertains to Islamic law, practical guidance for worship and transactions, the result of scholarly ijtihad, and as detailed legal evidence. The application of its epistemological and axiological aspects was discussed by Harisuddin in his research on a new formulation of the epistemology of women’s Fiqh (Harisuddin, 2017). Harisuddin argues that it is important to establish a new epistemological formulation of Islamic law (Ushul Fiqh) to present Fiqh that is in line with contemporary women. This means that classical Fiqh has already addressed women’s issues and has become a living tradition, thus what is needed is a reform of Fiqh as an effort to broaden the scope of Islamic studies’ development.

The Scope of The Living Fiqh

The formulation of The Living Fiqh carried out in this research explains the model of practice of Muslim communities across cultures and schools of fiqh that they adhere to. In-depth observations are conducted by including evaluations of the community’s fiqh practices. Fiqh is not merely limited to formal rules governing interpersonal interactions, but it encompasses a broader understanding that encompasses rules regarding liturgy, ethics, aesthetics, and even matters of governance (Basyir, 2020). Fiqh is a totality of rules applied in various aspects of life, and therefore, its position is central, contributing to shaping the worldview and behavior of the Muslim community (Humaidi, 2008; Wahid, 1999). The areas that require research with the characteristics of The Living Fiqh include family law, Shariah economics, constitutional law, criminal law, and comparative schools of thought. In the context of Indonesia, this aligns with the study programs of Shariah faculties in Islamic higher education institutions.

Globally, the scope of The Living Fiqh can be seen in the following graphic:

**Graphic 3.1. The Scope of The Living Fiqh**

As an introductory illustration, the practice of *nikah cindua* in several nagari within the Minangkabau cultural region originates from the community’s understanding of *fiqh munakahat* regarding *taballul*. Fiqh regulates that *taballul* is applied to the divorce of *talak tiga* that can still be reconciled by the husband by
marrying his former wife to another man first. This means that, as mere knowledge, the Malalak community has accepted *fiqh munakahat* as the basis for their marriage behavior. Similar practices are also found in several Minangkabau and Kerinci communities, with different terms such as *nikah bacindua, cino buto* (Masduki, 2019) or *Kawin Maupah* (Saputra & Busyro, 2018). In another customary law context, a similar phenomenon occurs in Jember, Madura (Fatmawati, 2020).

In line with this illustration, there are also differences in fiqh schools of thought in the practices of community life. Although originating from the cultural locus of Arabia and having a strict and standardized orthodoxy, fiqh must be read through the lens of its recipient communities (Hidayat, 1996; Minhaji, 2008). Cultural identities such as customs, value systems, and societal perspectives on cosmology are key elements that underlie the interpretation of fiqh, which tends to transform their perspectives and forms of practice. In other words, fiqh would not hold much meaning without the presence of cultural instruments (Humaidi, 2008; Wahid, 2001). Meanwhile, cultural development would not have a clear direction without the presence of guiding values. This can be visualized succinctly through the following graph:

Specifically, the scope of the living fiqh is illustrated as shown in the graph below:

**Graphic 3.2. The Scope of The Living Fiqh**

Hallaq (2009) argues that for centuries, most of the Muslim world was ruled by foreign dynasties, which directly created a complex relationship between rulers and lawmakers on one side, and the ways in which legal experts interpreted and applied the law in a social context on the other. The regulatory products of colonized Muslim-populated countries were under the dominance of their colonial rulers’ legal systems. At the same time, the expansion of Islam also left a similar trace. Fiqh, as the guiding principles for the lives of Muslims, simultaneously influenced the behavior of society. This process involved the
formulation and establishment of *maslahah* (public interest) as the goal of Islamic law through a long process of intellectual struggle (Opwis, 2010). This then became the foundation of the living fiqh.

In practical terms, the living fiqh can be explored through various branches of Sharia studies, as follows:

1. **Scope of Constitutional Law (*Fiqh Siyasah*)**

   Based on the case in Indonesia, there is an interpretation of love for the homeland inspired by the struggles of Prophet Muhammad and the period of the righteous caliphs in establishing political power, serving as a signal for various phenomena and events that occur as valuable lessons in facing each changing era. The concept of love for the homeland in the Quran, hadith, and the ijtihad of scholars represents universal values of patriotism (Ikhsan, 2017). The geopolitical aspects of Islam, accumulated in the formulation of siyasah fiqh in various schools of thought, are absorbed and embraced by the Muslim community in Indonesia. Until now, it continues to exist amidst various polarizations, such as transnational movements advocating for the establishment of a caliphate to * thawut*.

   Various interpretations and practices of Muslim communities in different countries encompassing siyasah fiqh include issues related to citizenship, regulations, and legislation demanded by state affairs in terms of their conformity with the fundamental principles of religion, serving the welfare of humanity and fulfilling their needs (Shiddieqy, 1997). The question raised here is how siyasah fiqh regulates the intricacies of citizenship, requirements for obtaining citizenship, rights and obligations of citizens, and legal protection for citizens? Additionally, the study also focuses on the aspect of elections by analyzing the concept and process of elections within the governance system. This includes aspects such as the right to vote, eligibility of candidates, as well as the ethics and principles that should be followed in political campaigns.

   Another issue related to legislation explains the formation and functions of the legislative branch within the governance system, involving the process of lawmaking, policy determination, as well as mechanisms of supervision and accountability of the legislative institution (Iqbal, 2016). Moving on to the executive branch, it is related to the division of powers discussed in the study of *siyasah dusturiyah* (A. A. Putra & Rahmi, 2021), which presents models, functions, and responsibilities of the executive branch in the governance system, such as the election of the head of state, government policy implementation, public administration, and state financial management. Similarly, in the aspect of the judiciary, it encompasses the judicial system, establishment of courts, appointment of judges, legal procedures, and the protection of individual rights within the judicial system. This also includes how the community interprets and accepts concepts related to international relations, such as diplomacy, international agreements, the protection of citizens abroad, and the state’s obligations towards the international community. Additionally, there are other examples that can vary depending on the interpretations and understandings of jurists and practitioners of Islamic law.

2. **Scope of Family Law (*Ahwal as-Syakhshiyyah*)**

   In the 20th century, one of the phenomena that emerged in the Islamic world was the effort to reform family law (marriage, divorce, and inheritance) in countries with Muslim-majority populations. For example, Turkey in 1956, Egypt in 1920, Iran in 1931, Syria in 1953, Tunisia in 1956, Pakistan in 1961, and Indonesia in 1974. These reforms employed various methods, some involved modifications, while others focused on administrative regulations (Malek et al., 2023; Warman et al., 2023). If we examine the laws on family law in the Islamic world in the 20th century, at least 13 issues were addressed, including restrictions on marriage age, the role of guardians, marriage registration and documentation, dowry and marriage expenses, polygamy, maintenance, divorce and separation, the rights of divorced women, pregnancy and its legal consequences, child custody, inheritance rights of children, wills, and the validity and management of family endowments (*waqf*) (Mudzhar & Nasution, 2003).

   The issue that needs attention is the matter of *nikah siri* (unregistered marriage). The laws of several countries in the Islamic world recognize *nikah siri* because it is also acknowledged by Islamic jurisprudence (*fiqh*) (Khalilurrahman et al., 2022). All schools of Islamic jurisprudence discuss and explain guidelines
regarding the requirements and procedures for conducting nikah siri, including the consent of both parties, dowry (mahar), and various legal aspects of marriage in Islam. Definitively, the concept of nikah siri is not found in fiqh literature, but it can be understood as a marriage that is kept secret after the contract is solemnized. This means that the marriage is witnessed by two individuals who are then requested to keep the marriage confidential. Thus, nikah siri is related to the existence of witnesses who are expected not to disclose the occurrence of the marriage to anyone (Alfitri, 2020).

Furthermore, a topic that requires further research is how fiqh responds to the customary law practices of the community regarding the wali nikah (marriage guardian). Fiqh has rules regarding who can validly act as a wali nikah, along with the requirements and responsibilities in conducting the marriage contract. Meanwhile, customary law communities also have institutions concerning the role of a wali in marriage. This means that there are values underlying the role of a wali in both fiqh and customary law. Among them are the values of benefit (kenaslahatan), equality (persamaan), consultation (musyawarah), wisdom (kebijaksanaan), freedom (kebebasan), justice (keadilan), and well-being (kesejahteraan). By fulfilling these values inherent in the role of a wali in marriage, the goal of achieving a happy family can be easily realized (Faizah, 2017).

Furthermore, the term in fiqh that receives the most attention, especially from a gender-progressive perspective, is polygamy. Based on the available evidence, fiqh provides room for the existence of polygamy. The entire range of matters encompassing the requirements for a husband to engage in polygamy, as well as the husband’s obligations towards his wives and children in the context of polygamy, is carefully regulated within fiqh (Azwar et al., 2021). Generally, when discussing the issue of polygamy, almost all fiqh books (both concise and comprehensive) only highlight its permissibility (mubahah) without critically examining the essence behind this permissibility, whether from a historical, sociological, or anthropological perspective. This phenomenon reflects the failure of fiqh scholars to understand the principle of justice as stated in Surah An-Nisa’ (4) verse 3 (Ma’u, 2023; Sam’ani et al., 2023).

It is this principle of justice that was emphasized by Muhammad Abduh when he issued a highly controversial fatwa for his time. Abduh’s fatwa, issued in 1298 H, is extensively quoted by Ali Ahmad al-Jurjawi in his widely renowned book, “Hikmatu al-Tasyri wa Falsafatuhu” (Abduh’s Legal Wisdom and Philosophy). Abduh stated that the shari’a of Muhammad (peace be upon him) indeed permits men to marry up to four women simultaneously, on the condition that the man is capable of treating them justly. If he is unable to do so, he is not allowed to have more than one wife. In this regard, Abduh cited the verse that translates as “then marry only one” for those who fear that they will not be able to act with justice. According to Abduh, if a man cannot fulfill the rights of his wife, it disrupts the structure of the household and disrupts the livelihood of the family (Al Jurjawi, n.d.).

The discourse on polygamy also encompasses the mechanisms of rights and responsibilities of both the husband and wife. This includes provisions regarding financial support, equitable treatment, and the responsibility to maintain marital harmony. When children are involved, there are also regulations concerning the rights and responsibilities of parents, such as guidelines for their upbringing, education, and care, as well as the rights of children in relation to their parents. The obligations of parents towards their children are a crucial and influential aspect that affects the well-being of the children (Asman, 2020). These regulations are also present within various cultural contexts where Islamic teachings are propagated.

A similar spotlight should also be directed towards the issue of divorce in the form of talak. The procedural aspects of fiqh explain the requirements and essentials (Rusyd, 2007) of divorce. This includes various forms of talak, such as talak raj’i (revocable divorce) and talak ba’ in (irrevocable divorce), as well as the husband’s obligation to provide maintenance and other rights to the former wife who has been divorced (Andaryuni, 2021). In this regard, the perspective of customary law also demonstrates its involvement (Hudafi & Irwan, 2021).

The involvement of customary law perspectives in interpreting a rule produced by fiqh cannot be denied, as is also the case in inheritance law (Elfia et al., 2022, 2023). The guidelines found in fiqh regarding the distribution of inheritance outline the determination of inheritance shares for heirs such as spouses,
children, parents, and other close relatives (Efficandra, 2022). Inheritance law governs the transfer of wealth left by a deceased person to the living, including determining who is entitled to be an heir, their respective shares, and the method of settling the division of the estate. Islamic inheritance law holds a prominent position for a Muslim compared to other inheritance laws, as it is clear that Islamic inheritance law has been stipulated in the Qur’an and the Sunnah (and is even obligatory to implement) (Lubis, 2013).

3. Scope of Comparative Jurisprudence (Magaririn al-Madzahib)

The study of comparative fiqh schools is known to encompass the objects of study and debates among scholars. These debates occur not only among the mujtahid of different schools but also among the followers of these schools to this day. One issue that has gained prominence is the matter of qira’at (recitation) in prayer. This can be observed in the practice of reciting the Al-Fatihah during prayer. For example, the Shafi’i and Hanbali schools recite it silently (inwardly) during prayer, while the Hanafi and Maliki schools require it to be recited softly with the tongue. This debate has developed sociologically and even politically within Muslim communities in various countries and cultural groups.

Similarly, the debate regarding the pillars of ablution (wudhu) exists. Each school of thought holds different opinions regarding the essential elements of ablution. For instance, the Hanafi school considers washing the ablution limbs in a sequential order as a pillar, whereas the Shafi’i school believes that the order is not a pillar of ablution. These differences in perspectives have an impact on the tendencies and organizational structures of Islamic groups and organizations. Certain fiqh orientations isolate the practice of their worship, such as the positioning of mosque buildings with different groups.

At the social level, such as in the institution of marriage, there are also differences in concepts and practices that require exploration. One example is the opinion regarding the requirement of official registration of marriages by the state in the civil registry office. Differences of opinion among schools of thought arise concerning the legal recognition and validity of unregistered marriages. For instance, the Hanafi and Maliki schools consider unregistered marriages as valid, while the Shafi’i and Hanbali schools require official registration as a prerequisite for the validity of marriage. In certain community settings, these differing concepts give rise to marriage practices based on specific schools of thought, accompanied by customary law support as an additional justification (Hafidzi et al., 2022).

Similarly, in the socio-economic aspect, individuals engaging in commercial transactions must carefully consider determining factors before engaging in buying and selling, including considerations related to the goods and prices. Once everything is deemed secure, the parties involved can proceed with the sale agreement. However, transactions are typically subject to cancellation after the agreement, due to the cautiousness of either the seller or the buyer, who are allowed to retract their initial plans. Islamic Sharia provides the right to cancel or activate transactions, and this concept is known as “Khiyār.” Various schools of thought (madhahib fiqh) provide their stance on Khiyār and guidelines that allow its implementation. For instance, in cases of defective products or discrepancies in the original merchant’s product description, etc. However, depending on individual situations, all schools of thought may have consensus or disagreement regarding the nature of Khiyār. This paper emphasizes the debate due to its relevance in the current market, which requires further development towards broader consumer protection. Qualitative methodology is employed for the comparison among various schools of thought regarding Khiyār based on Fiqh literature. Khiyār becomes the right of both the seller and the buyer. However, depending on each unique condition, it can also be subject to cancellation (Harun, 2020).

In the practice of making up missed fasting days (qadha’ puasa), there are also variations in the interpretation and practices among different schools of thought in fiqh. The Hanafi school of thought permits making up missed fasts consecutively, while the Shafi’i school of thought allows making up fasts non-consecutively. In line with this, there are also dynamic opinions among scholars regarding the determination of the beginning and end of the month of Ramadan. In the case of Indonesia, the Nahdlatul Ulama and the Indonesian Council of Ulema (Perti) use the sighting of the new moon (ru’yatu al-hilal), while Muhammadiyah uses the calculation (hisab) method.
The impact of these differences in opinions affects the perspective of individuals following specific schools of thought and can influence the harmonization of their relationships. As an example, the differing interpretations regarding the permissibility of consuming sacrificial animal meat often become a topic of debate among various qurban organizing committees. The Hanafi school of thought allows the owner of the sacrificial animal to consume its meat, while the Maliki and Shafi’i schools of thought consider it impermissible for the owner to consume the meat.

4. Scope of Islamic Criminal Law (Fiqh Jinayah)

Exploring the living fiqh-based approach is equally important in addressing the issues of textual and contextual aspects of criminal fiqh. The question is, how do the rules and principles related to the law on criminal acts according to fiqh jinayah exist within society? Taking theft as an example, fiqh jinayah stipulates the punishment of amputation for a proven guilty thief. Similarly, the punishment of flogging or stoning for those involved in adultery. The punishment for apostasy varies in interpretation and implementation across different Islamic countries. The penalties for murder, assault, and violence also vary depending on the severity of the offense. All these variations are influenced by cultural factors, history, the legal system of each country, and the diversity of cultures within them (Runtoko, 2021). Additionally, there have been political efforts in several countries, including Indonesia, to modernize Islamic criminal law to align it with evolving spiritual, social, and cultural conditions (Zayyadi, 2020).

5. Scope of Islamic Economic Law (Fiqh Muamalah)

Questions that can be posed within the scope of fiqh muamalah include the implementation of productive zakat, which is an obligation for those who possess wealth reaching the nisab to pay zakat at a rate of 2.5% of their assets. This law discusses provisions regarding the wealth subject to zakat, methods of calculating zakat, and the recipients of zakat. The sociological impact of the formulation of productive zakat necessitates ongoing analysis or evaluation, considering the shift in transaction models towards digitalization (Rohmaniyyah, 2022).

Another field of study within the scope of fiqh muamalah is the concept of murabahah contracts. The emergence of the Shariah-compliant movement in financial institutions, such as banks, has led to the characteristics of overlapping interpretations by scholars and transaction participants. Murabahah is no longer understood solely as a buy-and-sell transaction with agreed-upon profit between the seller and the buyer. Its meaning has shifted in accordance with the practices of conventional finance. This allows businesses to be assumed to involve elements of riba or their contracts to be considered uncertain or doubtful due to the profit earned in such economic activities, which violates the main principle of fiqh muamalah, namely the principle of justice. (Perwitasari, 2017).

Similar situations also occur in several other contracts, such as musyarakah, where two or more parties participate in the capital and profits of a business. The profits and risks are shared according to the initial agreement. The same applies to ijara contracts, which refer to leasing or usufruct in exchange for compensation that may exhibit differing interpretations or indications of containing riba. Riba, according to fiqh muamalah, is considered unjust and prohibited. In this context, it is interesting to closely examine how contemporary mujtahids of fiqh muamalah conduct specific reviews to promote the concepts of justice, risk-sharing, and fair profits in economic transactions.

6. Scope of Fiqh Ibadah, Morality, and Cultural Rituals

The fiqh of worship does not have a direct correlation with moral standards and ritual cultural norms. These three aspects are situated in different realms of study. However, the scope of their practices is interconnected in the daily lives and regulations governing behavior (Baehaqi, 2017). In terms of worship, such as the way prayer is performed, the fiqh of worship provides guidance on the procedures and orderliness of performing the five daily prayers, including the movements, intentions, and supplications that should be recited. The concept of orderliness (tartib) has evolved into the notion of social mobility. Similarly, fasting as an act of worship stimulates specific social impacts, particularly in its execution that involves a significant number of people. The question that may arise is what kind of orderliness occurs within the community’s worship practices?
Prayer (shalat) is perceived to prevent indecent and wrongful acts, while fasting (siyam) instills piety in individuals. This necessitates conformity to the moral standards prescribed in the fiqh of worship. For instance, how slander is considered more severe than murder. Lying, breaking promises, and betraying someone’s trust are deemed impermissible acts in fiqh, except in certain circumstances such as to save a life. Furthermore, these moral standards function within the realm of business ethics, which prohibit fraud, price manipulation, and theft in commercial transactions.

The outcomes of the fiqh of worship are intertwined with cultural rituals as well. For instance, the model of celebrating the Haji pilgrimage, the practices involved in performing the aqiqah ritual after the birth of a child, including hair cutting, giving a name, and offering meat to the poor. In each of these examples, the fiqh of worship serves as a practical guide to carry out the acts of worship while maintaining morality, thus enabling the performance of cultural rituals that align with the objectives of Islamic law (maqasid al-Shariah).

Conclusion

The living fiqh is an empirical field of study within the discipline of fiqh that involves exploring the models of interpretation and implementation of fiqh within its adherents’ communities. Fiqh is a legal framework directly connected to the practices of the community. The anatomy of the living fiqh can be described by comparing it to the study of the living Qur’an and the living Hadith, which also focus on the embody of thoughts, feelings, and actions stimulated by the guidance of the Qur’an and Hadith. The exploration of models of interpretation and practice of fiqh takes an anthropological approach, with individuals or communities practicing fiqh at its center. The philosophical formulation of the living fiqh, whether epistemologically, ontologically, or axiologically, provides an explanation for the existence of the living fiqh, which is not a Current school of fiqh but rather a sociological-empirical method of exploring fiqh. This sociological-empirical exploration can be conducted within the scope of constitutional law (siyasah), family law (ahwalu asy-yakhshiyyah), comparative jurisprudence (maqarinu al-mazahib), Islamic criminal law (fiqh jinayah), Islamic economic law (mu'amalah), and fiqh of worship, morality, and cultural rituals. Within each element of the scope of the living fiqh, there are various interpretations and experiences of fiqh based on the interpretations of schools of thought and cultural influences, which require further explanation.

References


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