

MODERNIZATION OF FIQH IN CONTEMPORARY ERA: A Study of Yusuf Al-Qardhawi's Fiqh Thought

Muhammad Hidayat

Universitas Islam Negeri Sumatera Utara, Medan
Jl. William Iskandar Ps. V, Medan Estate, Sumatera Utara 20371
e-mail: muhammadiyah@uinsu.ac.id

Muhammad Ikhlas bin Rosele

UniversitasMalaya
50603 Kuala Lumpur, Malaysia
e-mail : ikhlas@um.edu.my

Abstract; This paper studies Islamic legal theory in Yusuf al-Qardhawi's Fiqh thought. Although many an academic have studied his thoughts in this field, Yusuf al-Qardhawi's methodology in legal distillation or *istinbat* always considers social conditions and advances in science and technology. As such, the results of *ijtihad* (Fiqh) obtained are always in accordance with the times and space. Therefore, it is very natural if then the question arises whether Yusuf al-Qardhawi can be called a reformer of Fiqh in this modern era? Related to this issue, this paper seeks to reveal the facts that can be used as evidence that Yusuf al-Qardhawi can be called a Fiqh reformer or not, by exploring and analyzing all his thoughts on Islamic law in his works. Thus, in terms of its type, this paper is included in descriptive analytical library research. As a result of the discussion that has been done, it can be concluded that Yusuf al-Qardhawi can be called a reformer of Fiqh in this modern era, for taking milieu and the social dynamics into his account in legal finding.

Keywords; *Yusuf al-Qardhawi, reformer, fiqh, modern era.*

Corresponding Author	Muhammad Hidayat
Articel history	Submitted : April 14, 2023 Accepted : May 14, 2024 Published : Juny 28, 2024
How to cite article	Hidayat, Muhammad, and Muhammad Ikhlas bin Rosele. "MODERNIZATION OF FIQH IN CONTEMPORARY ERA: A Study of Yusuf Al-Qardhawi's Fiqh Thought." MIQOT: Jurnal Ilmu-Ilmu Keislaman 48, no. 1 (2024): 73-87. http://dx.doi.org/10.30821/miqot.v48i1.1124

Introduction

The progress of science and technology (science and technology) today is so rapid. This is marked by the birth of many new products, both related to telecommunications, automotive, transportation, as well as those related to food technology, beverages, cosmetics, and others. The advancement of science and technology has brought significant influences and changes in various fields and joints of human life, both in the economic, political, social, cultural, and especially religious fields. Changes in social interactions in the midst of society are inevitable, which ultimately have an impact on the law and really require a legal response to solve all the problems that arise due to shifting values in social life.

Starting from this fact, the effort to always explore and develop Islamic law in order to answer the challenges of the times must continue, both individually and in groups. Therefore, the door to *ijtihad* must be opened wide.

Yusuf al-Qardhawi is one of the scholars who during his lifetime was known to be very concerned about social conditions in his legal considerations, so that the laws resulting from his *ijtihad* are felt to be beneficial and useful for humans today. Many scientists, scholars, writers, or academics who have studied, discussed Yusuf al-Qardhawi's thoughts and wrote them in the form of articles which were then published in various media or journals. In general, this article about Yusuf al-Qardhawi discusses the concept of Ushul Fiqh (*ijtihad* method) in resolving existing issues¹ and how its position and influence in the development of Islamic law,² especially Islamic law in Indonesia.³

Furthermore, there are also articles or writings about Yusuf al-Qardhawi, which specifically discuss his Fiqh thinking. Among them are the application of the concept of *fiqh* priority,⁴ concept of *fiqh ikhtilafnya*,⁵ concept *maqashid shari'ahnya*,⁶ and the issue of *asnaf zakat fi sabilillah*.⁷

¹Rini Angreni Hasibuan, at. all, Yusuf al-Qardhawi's Version of Contemporary *Ijtihad* Method, *Kariman Journal*, volume 11 number 01, (June 2023)

²Agus Mahfudin, Yusuf al-Qardhawi's Contemporary *Ijtihad* in the Development of Islamic Law, *Journal of Religion; Journal of Islamic Studies*, vol. 5, no. 1, (April 2014)

³Asni, Yusuf al-Qardhawi's Contemporary *Ijtihad* Thought and Its Relevance to Islamic Law Reform in Indonesia, *Al-'Adl Journal*, vol. 6, No. 1, (January 2013).

⁴Muhammad Khoirul Umam, Analysis of the Application of Yusuf al-Qardhawi's Concept of *Fiqh* Priority in the Post Modern Era, *Journal of Sharia Economic and Islamic Jurisprudence*, vol. 1, No. 1, (January 2022).

⁵ Muhammad Hanief Sirojulhuda, The Concept of *Fikih Ikhtilaf* Yusuf al-Qardhawi, *Tsaqafah Journal*, vol. 13, No. 2, (November 2017).

⁶Rasito and Izza Mahendra, Moderation of Jurisprudence through Yusuf al-Qardhawi's *Maqashid al-Syari'ah* Approach; Looking for its Relevance in Indonesia, *Al-Wasatiyyah Journal; Journal of Religious Moderation*, vol. 1, no. 1, (January-June 2022).

⁷ Ahmad Gunawan, Yusuf al-Qardhawi's Position and *Ijtihad* Method on *Fi Sabilillah* as *Asnaf Mustahiq Zakat* in Comparison of Four Mazhabs, *Tahkim Journal; Journal of Islamic Civilization and Law*, vol. 2, No. 1, (March 2019).

From some articles about Yusuf al-Qardhawi above, it can be seen that Yusuf al-Qardhawi has his own concept of Ushul Fiqh and Fiqh and has a significant influence on the development of Islamic law. In connection with this, it is worth asking whether Yusuf al-Qardhawi's thoughts on Fiqh (Islamic law) can be classified into the category of renewal, or can Yusuf al-Qardhawi be said to be a reformer in Islamic Fiqh?

Methodology

This research is a *library research*. The data collected in this paper all come from literature, especially books by Yusuf al-Qardhawi in the field of Ushul Fiqh and Fiqh. The data that has been collected, then analyzed and then presented in this paper. Therefore, this paper is descriptive analysis.

To answer the question whether Yusuf al-Qardhawi can be called a reformer of Fiqh in this modern era, the following steps are needed:

1. Formulate the meaning of the phrase Fiqh renewal
2. Establishing the criteria that must be present in a Fiqh reformer
3. Applying the criteria set out in Yusuf al-Qardhawi's *ijtihad* and Fiqh methods.
4. Draw conclusions

Results and Discussion

Definition of Fiqh Renewal

What is meant by renewal in this paper? To ask what perception is meant by renewal, perhaps it is necessary to limit what the concept of renewal means. Harun Nasution explains that the word renewal is a translation of the word modernism, which in Arabic is known as *al-tajdid*.⁸ Furthermore, he explains that what is meant by modernism in western society is the thought, flow, movement and effort to change old ideas, customs, institutions, and so on, to be adapted to the new atmosphere created by the progress of modern science and technology.⁹

Based on this definition of renewal, without excluding the opinions of experts, the interpretation of the limits intended by the renewal of Fiqh in this paper is to interpret and readjust the texts that are general and do not have details by referring to the present as a reference to be in harmony with the times due to the advancement of modern science and technology. With this concept of renewal, it will give birth to a change in the law, not the cancellation of the law; meaning that the existing legal products in the past are not canceled but we can take them as long as the relevance is still there, or may also revise

⁸ Harun Nasution, *Reform in Islam, History of Thought and Movement* (Jakarta: Bulan Bintang, cet. 10, 1994), pp. 12.

⁹ *Ibid.* 11.

them and select them so that they are in accordance with the interests of society. If it is not or there is no provision, then this is where the role of Muslim intellectuals seeks to realize new laws.

Furthermore, based on the meaning of Fiqh reform above, to determine whether someone is a reformer in the field of Fiqh, a set of criteria is needed to be used as a benchmark. The criteria can be stated as follows:

1. He must be of the opinion that the door to *ijtihad* is not closed.
2. Have the ability to make a new interpretation of legal sources
3. His thinking refers to and is in line with the situation and conditions and interests of his society. Therefore, he must be able to understand the social conditions in which he finds himself.
4. Reviewing the old *ijtihad*, then analyzing and selecting the various opinions that already exist using the comparative method. Then, he selects and takes one of the opinions that is relevant to contemporary demands. Thus, he is no longer bound to a particular school of thought fanatically and is open to new *ijtihad*, not being reactionary.
5. The view is that fatwas and *ijtihadi* rulings are subject to change due to changes in times, places, circumstances and customs.

Social Change and Fiqh Reform

Every society in the process of history, based on a sociological review, is constantly changing due to various factors. Among other things, it is caused by advances in science, technology and population growth. Changes in society automatically bring changes to culture, which includes values, norms and laws, because society and culture are closely related and cannot be separated. Where there is society there is culture and there is no culture without society.¹⁰

So, based on this sociological theory, the set of values, norms, and laws as part of the culture of a society, perhaps, must change in accordance with the demands of the development of the situation and the ever-changing conditions of society, so that the law does not become *out of date* because the law has lost its relevance in carrying out and guaranteeing the interests of community members, both individually and communally in their social interaction activities.

Departing from the sociological theory above, Islamic Fiqh, which is a legal product of the past, and until now is still being consumed by Muslim communities in Indonesia, may need to be reviewed for its relevance, especially in the field of muamalat, because the provisions in this field are generally determined based on interactions that cannot be

¹⁰Selo Sumarjan, *A Flower of Sociology* (Jakarta: Faculty of Economics UI, 1974), pp. 488.

separated from the interests of a particular society that is bound by space, time, and geographical environment that is constantly changing and different from one another.

Based on the description above, a framework can be summarized that if society changes, culture will also change. Islamic Fiqh as a product of past Islamic thinkers which is an integral part of Islamic culture,¹¹ may need to be updated to fit the context of the current situation and conditions that have changed more advanced due to the advancement of modern science and technology (iptek) which of course raises many new problems that need to be answered. Can Islam answer the challenges of the changing times? The answer is probably yes. What is the solution that can be proposed? The answer is the renewal of Islamic Fiqh itself.

Such was the issue that developed since the 19th or early 20th century in response to the changes and developments of the times, which in turn gave birth to reformers in the Islamic world.

Yusuf al-Qardhawi's Fiqh Thought

To answer the question of whether al-Qardhawi can be said to be a reformer in the field of Fiqh or not, then we need to first understand al-Qardhawi's views / thoughts on Fiqh. The following will describe al-Qardhawi's thoughts on Fiqh.

1. The Door of Ijtihad is Not Closed

The door to ijtiḥād in the sense of maximum effort in producing Fiqh laws from its basics through serious thought and research¹², for al-Qardhawi, is not closed. He firmly argues that no one can close it after it was opened by the Prophet Muhammad. One does not deserve to say, "We have no right to do ijtiḥād".¹³ From this expression it is seen that how anti al-Qardhawi against the opinion that the door of ijtiḥād has been closed. In fact, he demands a positive response from all parties who are competent to conduct ijtiḥād.

Al-Qardhawi's suggestion is not unreasonable. The grounds on which he stands, which may not be firm for others, are:

- a. The early generations as predecessors never made any comment on the matter. This is because Islamic shari'a, inevitably, has to give a ruling on all human activities. All legal events need to have a clear legitimization. Such a stance was universally agreed upon, and no one disputed it.
- b. Islam has never known a class system that monopolizes the right to ijtiḥād. Islam does not recognize the institution of "priesthood". Anyone who has a set of tools and

¹¹Sidi Gazalba, *Islam and Socio-Cultural Change* (Jakarta: al-Husna, 1983), p. 65

¹²Yusuf al-Qardhawi, *Basic Islamic Legal Thought*, Transl. Husein Muhammad (Jakarta: Firdaus. Cet. I, 1987), pp. 74

¹³*Ibid.* pp. 76

requirements for ijtiḥad has the right to do so to solve various problems that arise. He has the right to express the results of his study must be in a relative status.¹⁴

- c. If ijtiḥad is needed in every era, then in our current era, according to al-Qardhawi, it is even more needed than the previous era. Why is this so? According to al-Qardhawi, this is because of the changes that occur in life and social developments that are very rapid after the industrial revolution.¹⁵ This movement of progress raises a variety of new issues that need to get the right answer. For example, the issue of IVF, sex determination of babies in the womb, sperm banks, and so on. Therefore, a new ijtiḥad is needed.¹⁶
- d. It is an urgent need in this day and age to reopen the door of ijtiḥad, and in fact the door of ijtiḥad was opened by the Prophet SAW. So no one has the right to close it. We are now not just declaring the door of ijtiḥad open, but we must actually carry out the ijtiḥad.¹⁷

If this is acceptable, then perhaps a new question should be posed to al-Qardhawi as a follow-up to the above thought. The question in question is what ijtiḥad should we do now? In this case al-Qardhawi answered that the ijtiḥad that we must do today is *intiqā'i ijtiḥad* and *insya'i ijtiḥad*.

Ijtiḥad *intiqā'i* means ijtiḥad to choose one of the strongest opinions among several opinions that exist in Islamic Fiqh in the past.¹⁸ Through this ijtiḥad *intiqā'i*, al-Qardhawi wants to offer an effort to extract the law by conducting a comparative study among the opinions that have been produced by the previous mujtahid imams, and re-examining the arguments that are used as a basis for that opinion. In this way, a legal researcher will reach the point where he can find an opinion that is supported by arguments that are considered strong in accordance with the measuring instruments used in *tarjih*. Then, if we ask again, what is the measuring tool used in doing *tarjih*? Answering this question, al-Qardhawi said, "The measuring instruments in doing *tarjih* include:

- a. The opinion should be more suitable or in line with current interests,
- b. It is more likely to reflect mercy on people; it is closer to convenience; it is more likely to be effective in realizing the purposes of Shara', to benefit people and to prevent them from being harmed.¹⁹

While ijtiḥad *insya'i* means an effort to produce a completely original law in a problem, where the problem has never been raised by previous scholars, whether the

¹⁴*Ibid.*

¹⁵Yusuf al-Qardhawi, *Ijtiḥad in Islamic Shari'a*, Transl. Ahmad Shathori (Jakarta: Bulan Bintang, cet. I, 1987), pp. 127.

¹⁶Yusuf al-Qardhawi, *Basic Islamic Legal Thought*, p. 80.

¹⁷Yusuf al-Qardhawi, *Ijtiḥad in Islamic Shari'a*, p. 127

¹⁸*Ibid.* p. 150 and *Foundations of Islamic Legal Thought*, p. 80.

¹⁹Yusuf al-Qardhawi, *Ijtiḥad in Islamic Shari'a*, p. 151.

problem is new or old. This ijthihad *insya'i* can cover some old problems by means of a modern mujtahid proposing a new opinion that has not existed before.²⁰

If we look at the two forms of ijthihad above, both *intiqā'i ijthihad* and ijthihad *insya'i*, it seems that the point of view is emphasized on the object of the problem materially. Whereas in another section, it is mentioned by al-Qardhawi that the division of ijthihad is divided into ijthihad *jama'i* and ijthihad *fardi*. Both of these ijthihads seem to emphasize the technical aspects of their implementation, whether collectively or individually. For more details, the following will be quoted in the definition of the two forms of ijthihad.

Ijthihad *jama'i* is ijthihad in the form of a scientific institution consisting of people who have high abilities in the field of Fiqh, which is independent of political influence and pressure.²¹ Why should it be free from political influence and pressure? So that the institution is able to determine the law boldly and freely. Or perhaps so that the institution does not become a trumpet that voices the sponsor's message so that the law can be engineered in such a way for personal or group interests. Meanwhile, ijthihad *fardi* is ijthihad carried out individually in the form of in-depth studies or purely clean research results.²²

Furthermore, according to al-Qardhawi, in this day and age ijthihad should be carried out collectively (*jama'i*), but individual ijthihad is still needed, because individual ijthihad is what illuminates towards collective ijthihad, and actually the ijthihad process is an individual activity first.²³ Furthermore, al-Qardhawi mentioned that ijthihad should not be limited to Fiqh issues only, but also includes the field of Ushul Fiqh as an attempt to perfect what already exists because according to him some Ushul Fiqh issues are disputed. So, further research is needed. The issues in question, according to al-Qardhawi, include:

- a. Separating legal traditions from those that are not legal traditions
- b. Discussing the object of ijma', especially *sukuti ijma'*, and the extent to which it can be used as *evidence* and how to recognize it as a result of ijma'; discussing the problem of recognizing the results of ijma' when in reality there are still opinions that differ from the ijma' verdict; discussing the results of ijma' based on temporal *maslahat*, which is now inappropriate or no longer valid.
- c. About *istihsan* and *istislah* and when they can be used and what are the conditions of each and the limits of their use.²⁴

2.Changes in Fatwa due to Changes in Time, Place, Circumstances, and Customs

It is known that based on the induction of the texts, it can be concluded that the purpose of the Shari'ah is to realize the interests of the servant, and to establish justice

²⁰*Ibid.* p. 169, *Basic Islamic Legal Thought*, p. 80.

²¹*Ibid.* p. 127.

²²*Ibid.*

²³*Ibid.*

²⁴*Ibid.*, p. 129.

among people and eliminate injustice and corruption. These are the things that must be taken into account when interpreting the texts and realizing the rulings. The *jurist* should not be *blind to a particular fatwa*; rather he should take into account the changes in time, place, customs, circumstances and the general aims and objectives of the Shari'ah when ruling on partial issues.²⁵

From al-Qardhawi's statement above, perhaps there is a problem that needs to be raised. The problem in question is that if the law changes due to changes in situations and conditions, while the law is based on the text of the shari'a, does this not mean that the shari'a must be subject to situations and conditions, and if this happens, it means that the legal decision deviates from the will of the text?

To answer the above problem, al-Qardhawi said, "The state of the *nash-nash* is different about its level in terms of positivity (*tsubut*) and *dalalahnya*. In Islamic law there are areas that are forbidden and cannot be entered by *ijtihad*, namely the area called the term *ahkam qath'iyyah*, namely laws that are definitive and positive and derived from the *muhkam texts* in the sense that the texts are clear and unequivocal, both lafaz and meaning so that it does not require *takwil* and other interpretations. The rulings of this nature have been accepted and agreed upon by the people from generation to generation, such as establishing the obligation of prayer, fasting, the prohibition of usury and gambling, and so on. The rulings of these *qath'i* texts and those similar to them are not allowed to be disturbed with the excuse of modifying them."²⁶

In addition, there are also areas / areas that are open to *ijtihad*, namely the area of *zhanniyah ahkam* which is the result of thoughts and estimates to determine laws that are not definitive and positive.²⁷ In matters relating to some texts where there are differences regarding their positivity and *dalalah*, scholars of *ijtihad* can give the text a new meaning.²⁸

Furthermore, al-Qardhawi emphasized that as is known there are some fields whose laws have been confirmed and detailed by the texts of the Quran and Hadith. For example, in the field of worship and family affairs. This is because these two areas are almost entirely unaffected by changes in place and time. Outside of these areas, the legal texts do not mention them explicitly and in detail. They are only general or global in nature. For these areas, the realization is done by the thoughts and research of experts by basing themselves on the general foundations of Islamic shari'ah, so that the laws produced are in line with the situation, conditions and interests of the respective communities. The

²⁵Yusuf al-Qardhawi, *The Breadth and Flexibility of Islamic Shari'a*, p. 91

²⁶Yusuf al-Qardhawi, *Islamic Law Challenged by the Times*, Terj. Abu Zaky (Jakarta: Putaka Progressif, cet. I, 1990), pp. 20

²⁷*Ibid.* p. 21

²⁸*Ibid.* p. 22

legal texts in this field are global, non-binding and do not hinder the progress of society, for example regarding deliberation.²⁹

So, from al-Qardhawi's explanation above, it can be captured an understanding that the texts, both *zanni* and general or global and without details, were actually created by God in such a way that humans have the opportunity to determine the law through their respective interpretations according to the situation and conditions and their respective benefits. Because the texts have opened the door and the way for themselves to be interpreted, humans also make interpretations based on the situation and conditions in which they are. This does not mean that the texts are subject to circumstances, but rather that the texts themselves allow for this. Perhaps the concept of *rukhsah* in this study can inspire legal researchers how the Shari'ah does not ignore situations and conditions in making legal provisions.

Furthermore, al-Qardhawi added that most of the texts appear in the form of general principles and general provisions, not mentioning the details and ways of realizing it in detail except in matters that are fixed and eternal that does not change due to changes in place and time such as worship and family issues. As for other matters whose application varies according to time, space, circumstances and customs, the texts are mostly general and flexible so as not to leave people in difficulty. If the texts provide certain details, they may be suitable for one time, region and other circumstances. For example, al-Qardhawi argued about the issue of *shura*. The Qur'an has made *shura* as the basis of Muslim community life mentioned in QS. Ash-Shura/42: 38 was revealed in Mecca:

The command in this verse (al-Imran/3:159) was originally to indicate that deliberation is obligatory. If *shura* is an obligation upon the Messenger, then it is even more so upon his people. However, what is the form of *shura*? How is it to be realized in the relationship between the government and the people? The answer to that question is what the text leaves unexplained. Why is this so? Did God forget to mention it? Or is there a certain purpose? Because it is known from reality that every era has its own system; every place has its own conditions and every environment has its own provisions. A rural situation is not the same as an urban situation. The environment of an educated person is not like that of an illiterate person. The conditions of peace are not the same as the conditions of war. Thus, following only one form of *shura* at all times would cause hardship to people. Whereas Allah wants ease for His servants and does not want hardship. What is important is that the people are not forced to accept a ruler they did not elect and that the appointed ruler does not act arbitrarily.³⁰

The history of the Prophet Muhammad (PBUH) and his caliphs and the variety of forms of deliberation in their time gives us the flexibility to choose the best system for the

²⁹Yusuf al-Qardhawi, *Basic Islamic Legal Thought*, p. 75

³⁰Yusuf al-Qardhawi, *The Breadth and Flexibility of Islamic Shari'a*, pp. 42-43.

³¹ *Ibid.* p. 44

application of this *shura* principle, whether it is a direct general referendum, or a two-tier system, or something else that has been gained from experience and experimentation.³¹

Based on the existence of texts that do not have details and do not have indications, it is open to experts to make *ijtihad*. Based on this *ijtihad*, then rise *fiqhiyah* movement in line with the times and the needs of the people. But we, according to al-Qardhawi, must be careful to distinguish between Islamic law and Islamic Fiqh.³² For al-Qardhawi, it seems that the two terms are not the same. Indeed, it seems, in various literatures there are found the concepts of Islamic law, Islamic Fiqh, and Islamic shari'at whose meaning, by some people, is considered synonymous. However, for al-Qardhawi himself, *shari'at* means the noble texts of the Quran and authentic Hadith. Fiqh, on the other hand, is the result of the fuqaha's derivation of rulings from these texts or issues for which there is no text. Shari'at is fixed, unchanging and undeveloped. Fiqh, on the other hand, changes and develops. Shari'a is the revelation of God, while Fiqh is the product of human thought.³³ Although fiqh is the work of man and is subject to change, the author believes that the work of the predecessors should be preserved as a monumental work that is very valuable to later people because from it we can understand and learn a lot about the law and patterns of *istinbath and* comparative law. In addition, with no disrespect to them, it is necessary to find new and better opinions that are suitable for the present time as a solution to new problems.

3. Understanding Community Social Conditions

Al-Qardhawi uses no less than 60 pages of the book to describe the conditions of *ijtihad*. The conditions outlined are basically the same as those that have been put forward by most of the previous Ushul scholars, except for one thing, which, according to the author, is interesting to show in this discussion.

The requirement is that a mujtahid must know the lives of people around him.³⁴ This requirement is something new, which has not been included by previous Ushul Fiqh experts in the requirements of *ijtihad*. If the question is asked to al-Qardhawi, why should it be a condition of *ijtihad*? Then we can see al-Qardhawi's explanation of this that so that a person does not do *ijtihad* in things that are empty and useless. Rather, he should do jurisprudence in matters that actually occur to individuals and societies around him. This is because their way of thinking, their behavior has been influenced by various factors, both psychological, cultural, social, economic, and political. So, a mujtahid must have knowledge of the circumstances of his time, society, its problems, ideological and political streams, regarding the relationship and the extent of mutual influence between members of the community.³⁵

³² Yusuf al-Qardhawi, *Islam under the Attack of the Enemies*, Transl. Syafril Halim (Jakarta: Firdaus, cet. I, 1990), pp. 127.

³³ *Ibid.*

³⁴ Yusuf al-Qardhawi, *Ijtihad in Islamic Shari'a*, p. 61

³⁵ *Ibid.*

In another section, al-Qardhawi emphasizes how necessary this requirement is. According to him, this is an important requirement. He (mujtahid) can not give strands of fatwa from the ivory tower, or surau remote and far from the development of society. The legal decisions of the past are sometimes no longer appropriate for the present. A rule that always needs to be remembered is that fatwas and legal decisions can change due to changes in times, places, circumstances and customs. Therefore, a mujtahid must always observe the changes and developments in his society. He must understand the cultural level of the people at a time. He should not live in a mountainous valley, while his people live in another valley. A mujtahid must always question and know the intricacies of his society, about its progress and decline and the factors that cause it, the level of intellectual, psychological and sociological. With this knowledge he will be able to give the right legal decision. This is because deciding a matter requires detailed knowledge of everything.³⁶ A mujtahid will always look at legal texts and their arguments on the one hand, and look at social changes on the other. Thus, the resulting decision will be more on target. Every issue will be decided by considering the conditions, places, and situations of the times.³⁷

Therefore, as a continuation of this requirement, according to al-Qardhawi, we can say that a mujtahid must know the culture of his time so as not to be isolated from the society in which he lives and does *ijtihad*.³⁸

From the above cultural issues, what should a mujtahid know? According to al-Qardhawi among the modern culture that must be known now is the science of soul, education, social, economic, historical, political, international law, and humanities studies. In fact, he must have knowledge such as biology, physics, chemistry, mathematics, and so on because they are all potential cultures that must be owned by modern humans.³⁹

What is the need for these sciences to be known by a mujtahid? In this regard al-Qardhawi said that many modern problems are closely related to these sciences, so that a person who does not know them cannot give a fatwa on these problems. How will a faqih be able to give a fatwa on abortion, transplants, etc., if he does not have knowledge of what modern science has revealed about sperm and ovum and how they meet? This kind of problem is sometimes denied by people who have not studied it.⁴⁰

From the above description, it seems that al-Qardhawi does not want to struggle with the problem of *iftiradhi* as has happened in history. Rather, he wants to solve problems that are concrete and crucial at this time. When a problem occurs, he wants someone to solve the problem appropriately, in accordance with the social context in which he is, and

³⁶ Yusuf al-Qardhawi, *Basic Islamic Legal Thought*, p. 77.

³⁷ *Ibid.* p. 71.

³⁸ Yusuf al-Qardhawi, *Ijtihad in Islamic Shari'a*, p. 63

³⁹ *Ibid.*

⁴⁰ *Ibid.*

not merely refer to the “yellow book”. Even if one refers to the “yellow book”, one must first consider whether the verdict is suitable to be applied again at the present time, taking into account the development of the society that has changed. Therefore, a jurist is required to be in the midst of his society and know modern sciences so that he does not fall into the trap of blind taqlid or be reactionary to new decisions that are different from what is in the yellow book that is his smart book.

However, there may be something difficult to accept in what al-Qardhawi offers, namely that a mujtahid must master various disciplines, such as mental science, education, social, economic, history, politics, international law, humanities, biology, chemistry, and mathematics in addition to the sciences related to the Qur’an, hadith, and others. In the author’s opinion, such an opinion is no longer realistic. Why is that? Because can we find even one of the 100 figures today who has the capacity of complete knowledge as offered by al-Qardhawi? If this requirement absolutely must be met and cannot be negotiated anymore, then it would not be wrong if someone said that al-Qardhawi called the door of ijtihad open but it is difficult to enter it.

Perhaps realizing this, al-Qardhawi expressed a kind of revision of his thinking by saying that what we need now is a kind of international Islamic law institution. It gathers a number of experts from various disciplines who are asked to contribute their thoughts.⁴¹ Contributions of thought that can be in the form of paper, and will be discussed in a forum which then the results are socialized.⁴²

With the statement “gathering a number of experts from various disciplines who are asked to contribute their thoughts”, then we can capture the thought that al-Qardhawi wants to actually. The thought in question, perhaps, is that religious experts and scholars from various disciplines exchange information and collectively conduct thorough and comprehensive research and discussion of a problem from its various aspects. If this statement were true, then there would be no problem today. Fiqh scholars can get accurate information from experts in their fields before deciding on a problem that occurs in society.

Actualization of Yusuf al-Qardhawi’s Thought in Fiqh Issues

The following will briefly describe the actualization of al-Qardhawi’s thought in Fiqh issues. As an example will be found 2 (two) issues only.

a. About a girl’s permission to marry.

According to al-Qardhawi, a girl has more rights than her guardian in the matter of her marriage. Therefore, it is not permissible for the father or his guardian to disregard the consent and willingness of his daughter.⁴³

⁴¹ Yusuf al-Qardhawi, *Basic Islamic Legal Thought*, p. 82.

⁴² Yusuf al-Qardhawi, *Islamic Shari’a Challenged by the Times*, p. 117.

⁴³ Yusuf al-Qardhawi, *Halal and Haram in Islam*, Transl. Mu’ammal Hamidy (Surabaya: Bina Ilmu, 1982), pp. 240.

This is a classic issue on which the scholars disagree. In this matter, their opinions are divided into two. The first opinion, which is shared by the Shafi'iyah, Malikiyah and the majority of the Hanafi school, is that the father has the right to force his daughter to marry the husband he wants, even if he has not asked her permission. In fact, the father has the right to marry off his daughter even if she is reluctant and refuses the marriage. The reasons for this first opinion include the fact that the girl's parents are more aware of the interests of their daughter and the parents will not give wrong consideration to the interests of their daughter.⁴⁴

The second opinion, from the school of Abu Hanifah and his companions, is that the matter of marrying a girl is left to the girl herself. It is permissible for her father to marry her, provided that the girl consents. The reasons for this second opinion are:

1. Hadith narrated by Bukhari and Muslim "*al-Bikru tusta'dzanu wa idznuha shumatuha*"
2. Hadith narrated by Muslim and Nasa'i: "*wa al-bikru yasta'dzinuha abuha.*"

In this matter, it seems that al-Qardhawi is more inclined to the second opinion as we can see his comments on the first opinion as follows. "Perhaps this method was acceptable at a time when a young woman did not or could not recognize the person who came to propose to her except through her guardian or family. However, today's social conditions give women the opportunity to study, work and see the various lives of people."⁴⁵ Therefore, women now know their future husbands better than their own parents. Because women in modern times have been able to associate more widely with other people outside the family environment compared to the past, where women, let alone associating with other people outside the house is not allowed. Furthermore, al-Qardhawi said that of course this encourages today's fiqh experts to choose the second opinion.

b. On the obligatory zakaah on building leases.

What is the ruling on wealth that develops, that is cultivated, but does not change hands, but provides a large income to the owner, such as a building that is rented out, is such wealth subject to zakaah or not?

According to al-Qardhawi, the leased building is subject to zakaah. This is based on (a) the words of Allah which means "*Those in whose wealth there is a certain obligation.*", (b) the words of Allah which means, "*collect from their wealth sadaqah ...*" then (c) the words of the Apostle, "*Pay zakat on your wealth.*"

The text above mentions the obligation of zakat without distinguishing one wealth from another. Allah's words, "*collect from their wealth sadaqah...*" are general, i.e. they cover any kind of wealth, regardless of its form, type, and purpose.

⁴⁴ Yusuf al-Qardhawi, *Ijtihad in Islamic Shari'a*, p.160.

⁴⁵ *Ibid.*

*The reason that zakaah is obligatory on wealth is an-nama' (growth). If growth is the reason why zakaah becomes obligatory, then whether or not zakaah becomes obligatory depends on whether or not that reason is present. If growth occurs in a wealth, then it is obligatory to pay zakaah. But if it does not, then it is not obligatory.*⁴⁶

From the above, it appears that the building that is rented out is subject to zakaah. This is confirmed by al-Qardhawi as follows: "The building intended for investment is subject to zakaah."⁴⁷ This opinion does not contradict the opinion of the fuqaha'; they did not make it obligatory because they were unaware of the matter.⁴⁸

So, the problem discussed by al-Qardhawi is a problem that arises in this modern era. Because the reality is that today buildings are not only used for personal use, but also for investment. Buildings are now very likely to be developed and generate profits that are not small. Therefore, it is not wrong if al-Qardhawi's opinion is worth considering as a solution to the problems arising in this modern century.

Conclusion

From the previous description, it can be seen that al-Qardhawi as an expert has called for the need for ijtihad today and he also stated that the door to ijtihad is not closed. The insight of his thinking refers and is in line with his era. He has conducted comparative studies and *commented* on the opinions of previous scholars and stated that fatwas can change due to changes in times, places, circumstances and customs. On the basis of such indications, al-Qardhawi deserves the title as a reformer in the field of Fiqh today.

⁴⁶ Yusuf al-Qardhawi, *Hukum Zakat* Terj. Salman Harun (Bogor: Pustaka Litera Antarnusa, 1987), pp. 436-437.

⁴⁷*Ibid.* p. 452.

⁴⁸*Ibid.*

References

- al-Qardhawi, Yusuf. *Basic Islamic Legal Thought*. Translation. Husein Muhammad. Jakarta: Firdaus. Cet. I, 1987.
- al-Qardhawi, Yusuf. *Halal and Haram in Islam*. Translation. Mu'ammal Hamidy. Surabaya: Bina Ilmu, 1982.
- al-Qardhawi, Yusuf. *The Law of Zakat*. Translation. Salman Harun. Bogor: Pustaka Litera Antarnusa, 1987.
- al-Qardhawi, Yusuf. *Ijtihad in Islamic Shari'a*. Translation. Ahmad Shathori. Jakarta: Bulan Bintang, cet. I, 1987.
- al-Qardhawi, Yusuf. *Islam under the Attack of the Enemies*. Translation. Syafril Halim. Jakarta: Firdaus, cet. I, 1990.
- al-Qardhawi, Yusuf. *Islamic Law Challenged by the Times*. Terj. Abu Zaky. Jakarta: Putaka Progressif, cet. I, 1990.
- al-Qardhawi, Yusuf. *al-Ghazali Between Pros and Cons*. transl. Hasan Abrori. Progressive Library, 1997.
- al-Qardhawi, Yusuf. *The Rise and Fall of the Islamic Movement*. Ahmad Syaifuddin. Jakarta: Media Dakwah, t. th.
- Asni. Yusuf al-Qardhawi's Contemporary Ijtihad Thought and Its Relevance to Islamic Law Reform in Indonesia. *Al-'Adl Journal*. vol. 6, No. 1. 2013.
- Gazalba, Sidi. *Islam and Socio-cultural Change*. Jakarta: al-Husna, 1983.
- Gunawan, Ahmad. Position and Method of Ijtihad of Yusuf al-Qardhawi on Fi Sabilillah as Asnaf Mustahiq Zakat in Comparison of Four Mazhabs. *Tahkim Journal; Journal of Civilization and Islamic Law*. vol. 2, No. 1. 2019.
- Hasibuan, Rini Angreni, at. All. Yusuf al-Qardhawi's Version of Contemporary Ijtihad Method. *Kariman Journal*. volume 11 number 01. 2023.
- Mahfudin, Agus. Yusuf al-Qardhawi's Contemporary Ijtihad in the Development of Islamic Law. *Religi Journal; Journal of Islamic Studies*. vol. 5, no. 1. 2014.
- Rasito and Izza Mahendra. Moderation of Jurisprudence through Yusuf al-Qardhawi's Maqashid al-Shari'ah Approach; Looking for Relevance in Indonesia. *Al-Wasatiyyah Journal; Journal of Religious Moderation*. vol. 1, no. 1. 2022
- Sirojulhuda, Mohammad Hanief. The Concept of Fikih Ikhtilaf Yusuf al-Qardhawi. *Tsaqafah Journal*. vol. 13, No. 2. 2017.
- Sumarjan, Selo. *A Flower of Sociology*. Jakarta: Fak. Economics UI, 1974.
- Umam, Muhammad Khoirul. Analysis of the Application of Yusuf al-Qardhawi's Concept of Fiqh Priority in the Post Modern Era. *Journal of Sharia Economic and Islamic Jurisprudence*. vol. 1, No. 1. 2022.