

Looking for Moderate Fiqh: The Thought of Mohammad Hashim Kamali on the Reformation of Rigidity and Inflexibility in Islamic Law

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Abstract

This article aims to examine Mohammad Hashim Kamali's thoughts on the paradigm of moderate Islamic law (*wasatiyyah*), which emphasizes harmonious values and a humanistic approach as an integral part of *maqasid al-shariah*. The focus is on how Kamali's moderate fiqh can address contemporary issues and offer an alternative to rigid, literal interpretations of Islamic law. This research employs a library research method, analyzing Kamali's works and relevant literature to explore the foundations of his thought. A philosophical-normative analysis is used to discuss how Kamali's ideas on moderate fiqh are rooted in the objectives of Islamic law (*maqasid al-shariah*) and how they align with contemporary needs for flexibility and human-centered legal reasoning. The study finds that Kamali proposes a reformation of Islamic law in response to the violence and rigidity fostered by formalistic legal understandings. His moderate fiqh, based on the principles of *wasatiyyah*, advocates for a balanced, context-sensitive approach to Islamic law that aligns with humanist values and social justice, all while upholding the core objectives of *maqasid al-shariah*. Kamali's thought offers a significant contribution to the development of Islamic jurisprudence, proposing a moderate and

adaptive legal framework that remains faithful to Islamic principles while responding to the complexities of the modern world. His approach can help reconcile traditional Islamic law with contemporary humanistic values, promoting peace, justice, and tolerance.

Keywords: Fiqh, *Maqasid al-Shariah*, Mohammad Hashim Kamali, *Wasatiyyah*

Introduction

Islamic law¹ is often identified as the cause for the perception of Islam as a normative religion that prioritizes formal law. According to Abdullahi Ahmed An-Na'im, the slow development of Islamic law after the codification phase is suspected to have contributed to the lagging of the religion in the history of human civilization.² Khaled Abou El Fadl agrees to this submission by showing that Islamic law appears to be far from modernity and cannot answer the problems associated with the realities developing in communities.³ Moreover, Mohammad Hashim Kamali states that Islamic law is experiencing a paradigmatic crisis, leading to the distance from morality and the reality of life.⁴

The demands of modernity and globalization require serious analysis of Islamic law through different approaches. This is necessary due to the inability of a mono-discipline approach to resolve the challenges of the present times. *Bayani* reasoning is also no longer adequate to achieve the objective as stated by Muhammad Abid Al-Jabiri.⁵ Therefore, several contemporary thinkers and

¹ Wildani Hefni, Rizqa Ahmadi, and Imam Mustofa, "Reinventing the Human Dignity in Islamic Law Discourse: The Wasatiyah Approaches from Khaled Abou El-Fadl to the Interreligious Relation," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 2 (2022), <https://doi.org/10.24090/mnh.v16i2.6928>.

² Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1996), 27; See Ahmad Taufiq, "Pemikiran Abdullah Ahmed An-Naim Tentang Dekonstruksi Syari'ah Sebagai Sebuah Solusi," *International Journal Ihya' 'Ulum al-Din* 20, no. 2 (October 2018): 147, <https://doi.org/10.21580/ihya.20.2.4044>; See also Lukis Alam and M. Rizkoni Salis, "Menggagas Pemikiran Abdullahi Ahmed An-Na'im: Islam and The Secular State: Menegoisasikan Masa Depan Syariah," *Saintifika Islamica: Jurnal Kajian Keislaman* 2, no. 2 (2015): 7–12; See also Busyro, "Abdullah Ahmad An-Na'im Dan Konsep Pemikiran Hukum Liberalisnya," *Al-Hurriyah* 15, no. 2 (December 2014): 44.

³ Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001), 71; See also Hefni, Ahmadi, and Mustofa, "Reinventing the Human Dignity in Islamic Law Discourse: The Wasatiyah Approaches from Khaled Abou El-Fadl to the Interreligious Relation," 239.

⁴ Mohammad Hashim Kamali, *The Middle Path of Moderation in Islam: The Qur'anic Principle of Wasatiyyah* (Oxford: Oxford University Press, 2015), 61.

⁵ Ibrahim M. Abu-Rabi', *Contemporary Arab Thought: Studies in Post-1967 Arab Intellectual History* (London: Pluto Press, 2004); See also Happy Saputra, "Reaktualisasi Tradisi Menuju

leading world figures are focused on renewing Islamic study methodology, including Fazlur Rahman,⁶ Muhammad Syahrur,⁷ Hassan Hanafi,⁸ Mohammed Arkoun,⁹ Nasr Hamid Abu Zayd,¹⁰ Aminah Wadud,¹¹ Ibrahim Abu Rabi,¹² and Ebrahim Moosa.¹³ The next generation includes Omit Safi,¹⁴ Tariq Ramadhan,¹⁵ and others. These contemporary figures and thinkers were referred to by M.

Transformasi Sosial: Studi Pemikiran Muhammad Abid Al-Jabiri,” *Substantia: Jurnal Ilmu-Ilmu Ushuluddin* 18, no. 1 (April 2016): 18, <https://doi.org/10.22373/substantia.v18i1.3031>.

⁶ Fazlur Rahman introduced a renewed methodology for Islamic studies, specifically in the field of Islamic law with hermeneutical tools. Basit B. Koshul, “Fazlur Rahman’s ‘Islam and Modernity’ Revisited,” *Islamic Studies* 33, no. 4 (1994): 403; See also Katajun Amirpur, *New Thinking in Islam: The Jihad for Democracy, Freedom and Women’s Rights* (London: Gingko Library, 2016).

⁷ Muhammad Syahrur introduced the hudud or boundary theory in thinking in Islamic law. See Muhammad Syahrur, *Nahw Ushul Al-Jadidab Li al-Fiqh al-Islami* (Damaskus: al-Ahali li al-Thiba’ah wa al-Nasyr wa al-Tawzi’, 2000); Fuad Mustafid, “Pembaruan Pemikiran Hukum Islam: Studi Tentang Teori Hudud Muhammad Syahrur,” *Al-Ma’azhib: Jurnal Perbandingan Hukum* 5, no. 2 (2017): 306, <https://doi.org/10.14421/al-mazaahib.v5i2.1423>.

⁸ Hassan Hanafi is known for the reconstruction of the principles of fiqh. See Hassan Hanafi, *Min Al-Nash Ila al-Waqi’* (Kairo: Markaz al-Kitab li al-Nasyr, 2005); See also Muhammad Said, “Rekontekstualisasi Pemikiran Islam dalam Manhaj Ushul Fiqh Hassan Hanafi,” *Muharrrik: Jurnal Dakwa dan Sosial* 2, no. 1 (July 2019): 1, <https://doi.org/10.5281/zenodo.3544708>.

⁹ Muhammad Arkoun, *Al-Fikr al-Islam* (Beirut: Markaz al-Inma’ al-Qaumi, 1987); See also Mahsun, “Pendapatan Mohammed Arkoun Dan Sayyed Hossein Nasr Tentang Tradisi dan Modernitas dan Implikasinya Terhadap Pemikiran Hukum Islam,” *Al-Mabsut: Jurnal Studi Islam dan Sosial* 8, no. 2 (September 2014): 15, <https://doi.org/10.56997/almabsut.v8i2.78>.

¹⁰ Muhammad Khalid Mas’ud, “Classical Islamic Legal Theory as Ideology: Nasr Hamid Abu Zayd’s Study of Al-Shafi’is al-Risalah,” in *Islamic Studies in the Twenty-First Century: Transformations and Continuities*, ed. Leon Buskens and Annemarie Van Sanwijk (Amsterdam: Amsterdam University Press, 2016).

¹¹ Aminah Wadud is known for her brilliant thinking related to gender studies. Haifaa Jawad, “Muslim Feminism: A Case Study of Amina Wadud’s ‘Qur’an and Woman,” *Islamic Studies* 42, no. 1 (2003): 107; See also Amirpur, *New Thinking in Islam: The Jihad for Democracy, Freedom and Women’s Rights*.

¹² Tashya Panji Nugraha, “Refleksi Pemikiran Muhamad Ibrahim Abu Rabi dalam Pendekatan Integratif Interkoneksi,” *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 2, no. 2 (December 2017): 57, <https://doi.org/10.25217/jm.v2i2.136>.

¹³ Ebrahim Moosa, “Interface of Science and Jurisprudence: Dissonant Gazes at the Body in Modern Muslim Ethics,” in *God, Life, and the Cosmos*, ed. Ted Peters, Iqbal Muzaffar, and Syed Nomanul Haq (London: Routledge, 2002), 331.

¹⁴ Omid Safi, *Progressive Muslims: On Justice, Gender and Pluralism* (London: Oneworld Publications, 2003).

¹⁵ Nathan Spannaus and Masooda Bano, “Transformative Islamic Reform: Tariq Ramadan and the Center for Islamic Legislation and Ethics (CILE),” in *Modern Islamic Authority and Social Change, Volume 2: Evolving Debates in the West* (Edinburgh: Edinburgh University Press, 2018), 125, <https://www.cambridge.org/core/books/modern-islamic-authority-and-social-change-volume-2/transformative-islamic-reform-tariq-ramadan-and-the-center-for-islamic-legislation-and-ethics-cile/D896B24AED6635E8A686867ABE03DF88>.

Amin Abdullah as academics struggling to establish a synthesis between *turats* (Islamic scientific treasures) and *hadatsah* (modernity).¹⁶

In the course of the history, fiqh has had a significant influence on human life but trapped in a narrow space and has a textualistic-formalistic orientation. This is because Fiqh experts are limited to a model of legal reasoning that abandons religious absolutism due to the application of a literal approach without humanist values.¹⁷ The phenomenon is known by Zubaedi as textual fixation which tends to be closed and legal-formal.¹⁸ It is also referred to as a crippled rational mind by Hasan Turabi due to the focus only on legal texts (*nusus al-shariah*) without any attention on the surrounding social context.¹⁹

The scholarship domination of Islamic law leads to the development of legal-formal nuances among Muslims without focusing on the ethical aspects and humanist character. This has made *Fiqhiyah* practices become a tool for mapping ideologies as well as the religious and political affiliations of certain groups in the community.²⁰ The textuality of fiqh reasoning has the capacity to cause violence, radicalism, and discrimination against women and non-Muslims.²¹ This is confirmed by Ahmed An-Naim that women and non-Muslims are victims of a formal-legal understanding of the texts.²² Khaled Abou El Fadl also criticized contemporary fatwa institutions that marginalized contextual reasoning, leading to the understanding of fiqh as a concept discriminating against women.²³

Fiqh is undeniably the favorite reference for the community to support the process of living life.²⁴ Therefore, it is very worrying when the practice of violence in the name of religion is often triggered by the formal legal spirit of

¹⁶ Abdul Basith Junaidi and Tolchatul Chair, "The Foreword of Amin Abdullah," in *Islam Dalam Berbagai Pembacaan Kontemporer* (Yogyakarta: Pustaka Pelajar, 2009).

¹⁷ al-Shatibi, *Al-Muwafaqat Fi Usul al-Sharia* (Beirut: Dar al-Kutub al-Ilmiyah, n.d.), 276.

¹⁸ Z. Zubaedi, "Membangun Fikih yang Berorientasi Sosial: Dialektika Fikih dengan Realitas Empirik Masyarakat," *Al-Jami'ah: Journal of Islamic Studies* 44, no. 2 (December 2006): 230, <https://doi.org/10.14421/ajis.2006.442.429-452>.

¹⁹ Al-Turabi Hasan, *Fiqih Demokratis: Dari Tradisionalisme Kolektif Menuju Modernisme Populis* (Bandung: Arasy, 2003), 19–21.

²⁰ Isna Fitria Agustina et al., "Political Hoaxes in the Post-Truth Era: An Islamic Political Analysis," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 (November 2023): 649, <https://doi.org/10.29240/jhi.v8i2.8457>.

²¹ Jalil Roshandel and Sharon Chadha, *Jihad and International Security* (New York: Palgrave Macmillan, 2006), 54, <https://doi.org/10.1057/9780312376130>.

²² Abdullahi Ahmed An-Na'im, "Mahmud Muhammad Taha and the Crisis in Islamic Law Reform: Implications for Interreligious Relations," *Journal of Ecumenical Studies* 25, no. 1 (1988): 3–6, <https://www.semanticscholar.org/paper/Mahmud-Muhammad-Taha-and-the-crisis-in-Islamic-law-Na'im/d2638565692e66b30d4032f37e05ebd668072705>.

²³ Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, 119.

²⁴ M. B. Hooker, "Muhammadian Law and Islamic Law," in *Islam in South-East Asia* (Leiden: Brill, 1988), 29, https://doi.org/10.116/9789004642898_008.

Islamic law and harsh theological understandings.²⁵ The gap between Islamic law and other disciplines also leads to a contextualist orientation in the application as observed in the total implementation of the classical law without considering the local aspects.²⁶

The continuous development of several contemporary issues has made Mohammad Hashim Kamali to put forward the idea of moderate fiqh. The intention is to have a rational model of *maqasid al-shariah* based on the values of peace, love, and the vision of *rahmatan lil 'alamin* to ensure a sync with community development.²⁷ Kamali identified historical facts regarding diverse interpretations and understandings, even concerning the introduction of fiqh schools.²⁸ The diversity was confirmed as the concrete evidence that differences in understanding of authentic sources of Islam were should not be regretted, but rather a strength to be integrated.²⁹ The diverse opinions further showed the vast space for change considering the differences in place and time, thereby indicating the flexibility of Islamic law.³⁰

Islamic law, despite its historical significance, has often faced criticism due to its rigid, formalistic, and textual nature, which many argue fails to account for the dynamic social contexts and the evolving needs of society. Scholars such as Abdullahi Ahmed An-Na'im and Khaled Abou El Fadl contend that the stagnation in Islamic legal thought, particularly since its codification, has limited its capacity to address the contemporary challenges faced by Muslim societies. In particular, An-Na'im and Abou El Fadl point to the formalistic approach of Islamic law,³¹ which often disregards the moral and

²⁵ Abid Rohmanu, *Paradigma Teoantroposentris Dalam Konstelasi Tafsir Hukum Islam* (Yogyakarta: IRCiSoD, 2019), 41.

²⁶ Mun'im Sirry, *Tradisi Intelektual Islam: Rekonfigurasi Sumber Otoritas Agama* (Malang: Madani, 2015), 582.

²⁷ Mohammad Hashim Kamali, *Maqasid Al-Shariah Made Simple* (Virginia: International Institute of Islamic Thought, 2008), 2–8.

²⁸ Mohammad Hashim Kamali, "Maqasid Al-Shari'ah and Ijtihad as Instrument s of Civilisational Renewal: A Methodological Perspective," *Islam and Civilisational Renewal* 2, no. 2 (2011), <https://doi.org/10.52282/icr.v2i2.647>.

²⁹ Kurnia Muhajarah and Moh. Erfan Soebahar, "Fiqh of Tolerance and Religious Moderation: A Study towards Indonesia, Malaysia, and Thailand," *Cogent Arts & Humanities* 11, no. 1 (December 2024): 3–5, <https://doi.org/10.1080/23311983.2024.2303817>; See also Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 46.

³⁰ Arbanur Rasyid et al., "The Actualization of the Concept of National Fiqh in Building Religious Moderation in Indonesia," *Millah: Journal of Religious Studies* 21, no. 2 (February 2022): 436, <https://doi.org/10.20885/millah.vol21.iss2.art5>.

³¹ An-Na'im, "Mahmud Muhammad Taha and the Crisis in Islamic Law Reform: Implications for Interreligious Relations," 3–6.

ethical values that are essential to modern human development, and which results in a disconnect between Islamic law and real-world applications.³²

This critique is also echoed by other scholars such as Azhar (2024), who argues for the necessity of reforming Islamic law to better align with the values of social justice and public welfare (maslahah) within contemporary society. Azhar highlights that the renewal of Islamic legal thought, particularly through the lens of maqāṣid al-sharī'ah (the objectives of Islamic law), offers a promising avenue for addressing these shortcomings.³³ This approach aligns with Ibn Qayyim al-Jauziyyah's stance on ijtihad, which stresses the importance of adapting legal rulings to contemporary circumstances while staying within the ethical bounds of Islamic.

The stagnation in Islamic law is further examined in studies on Islamic banking, such as Khalid's (2024) work on Islamic banking practices, where the integration of maqāṣid al-sharī'ah is proposed as essential for achieving broader societal well-being. Khalid's research suggests that without the holistic application of maqāṣid, which includes social and ethical goals, Islamic banking remains confined to a narrow understanding of economic transactions and fails to realize its full potential in promoting community welfare.³⁴ This highlights a broader challenge within Islamic law, namely the gap between legal theory and practice, which limits its ability to address the complexities of modern life.³⁵

Together, these scholarly contributions underline the pressing need for a reimagined approach to Islamic law that moves beyond its traditional formalistic orientation and incorporates broader humanistic values.³⁶ A shift toward a more flexible, contextually aware legal framework, which embraces the principles of maqāṣid al-sharī'ah, is essential to ensure that Islamic law remains relevant and effective in addressing the challenges of the modern world.

³² Asrul Hamid and Dedisyah Putra, "The Existence of New Direction in Islamic Law Reform Based on The Construction of Ibnu Qayyim Al-Jauziyah's Thought," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 247–57, <https://doi.org/10.31958/juris.v20i2.3290>.

³³ Azhar Azhar, "Islamic Law Reform in Indonesia from the Perspective of Maqāṣid Al-Sharī'ah: Kerinci's Intellectual Views," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (May 11, 2024): 750–69, <https://doi.org/10.22373/sjhk.v8i2.15051>.

³⁴ Rafiullah Sheikh and Khalid Hussain, "Reimagining Islamic Banking in the Light of Maqasid Shariah," *Qualitative Research in Financial Markets* ahead-of-print, no. ahead-of-print (November 28, 2024), <https://doi.org/10.1108/QRFM-04-2024-0108>.

³⁵ Johari Johari et al., "Istiḥsān Method and Its Relevance to Islamic Law Reform: Content Analysis of Fatwa of Majelis Ulama Indonesia on Corneal Transplant," *De Jure: Jurnal Hukum Dan Syariah* 15, no. 1 (July 4, 2023): 1–20, <https://doi.org/10.18860/j-fsh.v15i1.18442>.

³⁶ Mudassir Iqbal, "The Causes of Stagnation in Islamic Civilization, in the Context of the Intellectual Decline in Muslim Societies," May 15, 2022, <https://doi.org/10.2139/ssrn.4446049>.

Mohammad Hashim Kamali identifies a paradigmatic crisis in Islamic law, which has led to a disconnect between legal norms and moral as well as social realities. In response, Kamali proposes a moderate fiqh based on *maqasid al-shariah*, emphasizing values such as peace, justice, and the well-being of all humanity (*rahmatan lil 'alamin*). His approach offers a solution to the traditional fiqh that has been trapped in textuality and legal formalism by advocating for a more flexible and contextual fiqh that appreciates differences in interpretation based on time and place. Kamali's contribution to the reform of Islamic law seeks to bridge the gap between tradition and modernity, integrating ethical and social aspects into the application of Islamic law in contemporary society.

The novelty of this research lies in its exploration of Mohammad Hashim Kamali's conception of moderate fiqh as a dynamic and flexible framework for contemporary Islamic law. Unlike traditional fiqh, which has often been criticized for its rigid, formalistic application, Kamali's approach offers a reinterpretation of Islamic jurisprudence through the lens of *maqasid al-shariah*, prioritizing values such as peace, justice, and social well-being. By focusing on contextual reasoning and the integration of humanist principles, Kamali's moderate fiqh seeks to address the ethical and social dimensions of Islamic law, offering a practical response to modern challenges such as violence, discrimination, and inequality. This research contributes to the ongoing discourse on the reform of Islamic law, emphasizing the need for a balance between traditional texts and contemporary realities, thus providing a fresh perspective on how Islamic jurisprudence can evolve to better serve the needs of diverse Muslim communities in a globalized world.

This library research was conducted to explore data based on the thought of discussing archeology through philosophical-normative analysis. This article is included in philosophical-normative research. It is categorized as philosophical research because the discussion is the principles of Islamic legal philosophy which are focused on the framework of *maqasid al-Shari'ah*. While categorized as normative research because this research discusses the issues of fiqh, opinions, and fatwas of scholars with comprehensive and in-depth analysis. The focus of this study is on the argument of Kamali about the idea of reforming Islamic law as a response to violence in the name of religion which is significantly motivated by a formal legal understanding. The aim was to show the thoughts on the moderate Islamic law paradigm (*wasatiyyah*) consisting of harmonious values³⁷ and a humanistic approach established as part of *maqasid al-*

³⁷ Muh Irsyam et al., "The Moderating Role of Shariah Compliance in Millennials' Adoption of Digital Financial Transactions at Bank Muamalat," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 3, no. 2 (October 18, 2024): 199–222, <https://doi.org/10.32332/muamalah.v3i2.9459>.

shariah.³⁸ This is necessary because Islamic law is characterized by *tawazun* (balanced), *tawasut* (moderate) and *ta'adul* (justice) all of which can be used to develop an integral pattern of moderate fiqh *samaha cum-maslaha*.³⁹

Discussion

The Struggle of Moderate Intellectualism by Mohammad Hashim Kamali

Mohammad Hashim Kamali was born in Afghanistan in 1944, obtained a bachelor's degree in law from Kabul University in 1965 before proceeding to study Islamic law in the same institution. Kamali was appointed as a prosecutor at the Ministry of Justice, Kabul region and continued to obtain Master's degree (L.L.M) in Latin law from the University of London followed by a Doctoral degree from the same university in the field of Islamic law (1969-1976).⁴⁰

Kamali identified that the pattern generally used by Muslims to construct fiqh was based on religious logic and paradigms. In a more extreme way, the concept was developed religious textbooks, understood by practitioners and religious elites to be subsequently taught to the community through the combination of textualist and literal approaches. This pattern does not tolerate religious differences and plurality and focuses on making all truths to be single and uniform.

In this context, Kamali used *maqasid al-sharia* approach to recognize plurality in order to appreciate diversity and value the importance of tolerance. This was achieved through a contextual paradigm which was directed towards providing strong awareness on the importance of reinterpreting basic religious doctrines.⁴¹ The rational understanding of the moderate fiqh introduced by Kamali shows that Islamic law operates dynamically in a model-seeking relationship continuously adapted to cross-cultural translation by celebrating hybridity between different current intellectual opinions. The diversity combined with the differences in views led to a variety of intellectual traditions and contributed significantly to the plurality of identities in the formation of Islamic law. Kamali reoriented the relevance of Islamic principles to several problems that made fiqh to become a very narrow, rigid, textualist, and fatalist construct far from the relevance of modern life situations. A new challenge was

³⁸ Syamsuar et al., "Integration of Maqashid Syaria in Nurcholish Madjid's Thinking about Principles for Effective Good Governance," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (2024): 50, <https://doi.org/10.29240/jhi.v9i1.9701>.

³⁹ Kamali, *The Middle Path of Moderation in Islam: The Qur'anic Principle of Wasatiyyah*, 53.

⁴⁰ Ratna Jauhari, "Rekonstruksi Usul Al-Fiqh Mohammad Hashim Kamali: Analisis Metodologis Dalam Perspektif al-Aql al-Usul," *Al-`Adalah: Jurnal Syariah Dan Hukum Islam* 3, no. 7 (November 2018): 204, <https://doi.org/10.31538/adlh.v3i3.410>.

⁴¹ Mohammad Hashim Kamali, "Issues in the Legal Theory of Uṣūl and Prospects for Reform," *Islamic Studies* 40, no. 1 (2001): 6.

identified for Muslims to further explore effective and unified solutions to the problems of contemporary Islamic law.⁴² This is necessary because Kamali believes *fiqh* has a dynamic character.⁴³

The distinctive thinking of Kamali is observed from the shift in study paradigm by familiarizing and integrating social sciences in the construct of Islamic law studies.⁴⁴ The anxiety really manifested and articulated in the efforts made to contextualize Islamic law and reconstruct interpretations. Kamali's scholarship in Islamic law is not in the vein of textual rigidity and inflexibility that is very fanatical towards one school of thought or group but rather on the map of moderate thought.

Mohammad Hashim Kamali used a contextual approach to recognize plurality in order to appreciate diversity and assess the importance of tolerance. The application of the paradigm led to a strong awareness of the importance of reinterpreting basic religious doctrines. Moreover, the moderate *fiqh* being developed requires active engagement of all human beings due to the existence of religious plurality, leading to the demand for awareness and a participatory attitude in the framework of diversity. Kamali desired to find a common ground between theological or encounter commitments as well as to develop a foundation for the birth of a shared dedication to humanity.⁴⁵

Paradigmatic Framework of Moderate Fiqh in Islamic Law

In the context of Islamic law, moderate *fiqh* is opposed to the construction of schools and *manhaj* which are textualist, puritanical, absolutist, and uncompromising in religion, as developed by Ibn Taymiyah, a defender of

⁴² Siti Nurhayati et al., "Exploring Intellectual Property Issues in Counterfeit Shoe Purchases: A Sociological and Sharia Economic Law Perspective," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 3, no. 2 (October 18, 2024): 187–98, <https://doi.org/10.32332/muamalah.v3i2.9235>.

⁴³ Kamali always quotes the adage introduced by Ibn al-Qayyim al-Jauzi that *taqhayyurul al-fatwa bi taqhayyuri al-azman wal al-amkan* (changes in fatwa due to changes in time and place). In this case, Mohammad Taqi Amini also emphasized that change is nature and the only unchanging phenomenon is change. See Mohammad Hashim Kamali, *Freedom, Equality and Justice in Islam* (Cambridge: Islamic Texts Society, 2002), 128; See also Muḥammad Taqī Amīnī, *Time Changes and Islamic Law*, 1st ed., IAD Religio-Philosophy (Original) Series (Delhi: Idarah-i Adabiyat-i Delli, 1988).

⁴⁴ Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (London: Oneworld Publications, 2008), 51.

⁴⁵ Kamali always quotes the adage introduced by Ibn al-Qayyim al-Jauzi, namely *taqhayyurul al-fatwa bi taqhayyuri al-azman wal al-amkan* (changes in fatwa due to changes in time and place). Mohammad Hashim Kamali, "Shariah and Civil Law: Towards a Methodology of Harmonization," *Islamic Law and Society* 14, no. 1 (2007): 28, <https://doi.org/10.1163/156851907782792508>; See also Kamali, *Freedom, Equality and Justice in Islam*.

orthodoxy belonging to the Hambali school of thought.⁴⁶ It is rather focused on active participation of all humanity due to the existence of religious plurality, leading to the demand for awareness and a participatory attitude in the framework of diversity. Moderate fiqh is related to the elements of *rabbaniyah* (divinity) and *insaniyyah* (humanity) combined with *maddiyah* (materialism), *ruhiyyah* (spiritualism) revelation, and reason as well as a balance between general (*maslaha al-jama'iyah*) and individual benefits (*maslaha al-fardiyyah*).⁴⁷

A moderate attitude is beyond mere tolerance, teaches the importance of respecting diversity, and promotes efforts to understand others through constructive understanding in the scholarship light of Islamic law. This confirms active tolerance needed to continually strengthen mutual understanding considering the existence of diversity. Therefore, Mohammad Hashim Kamali desires to determine a common ground between theological or encounter commitments and develop a foundational framework to produce a shared dedication to humanity. Moderate fiqh is related to social institutions which are expected to deliver religious understanding to produce a harmonious and tolerant social subsystem.

Mohammad Hashim Kamali and the Reasoning for Islamic Law Reform

The interpretation of Islamic law by Mohammad Hashim Kamali departs from the reality of inequality that limits fiqh or law to a narrow space between two extreme poles (*manhaj*), right and left.⁴⁸ Kamali aimed to include the humanist, moderate, and transformative aspects far from discriminatory attitudes into the authoritative faqh. This is based on the repeated suggestion that classical *usul al-fiqh* suffers from a number of weaknesses making the concept unsuitable to meet the contemporary challenges faced by Muslims.⁴⁹ An example of the weaknesses recognized by Kamali is that the *usul al-fiqh* places substantial emphasis on technical (technicalism) and linguistic aspects (literalism).⁵⁰ In addition, it is also based on the values of medieval community

⁴⁶ M. Kholid Syeirazi, *Wasathiyah Islam: Anatomi, Narasi, Dan Kontestasi Gerakan Islam* (Bekasi: Alif.id, 2020), 46.

⁴⁷ Yusuf Al-Qaradhawi, *Kalimat Fi Al-Wasathiyah Wa Madlimiha*, (Kairo: Dar al-Syuruq, 2011), 13; See also Rauf Amin, "Prinsip dan Fenomena Moderasi Islam dalam Tradisi Hukum Islam," *Al-Qalam Jurnal Penelitian Agama Dan Sosial Budaya* 20, no. 3 (December 2014): 25, <https://doi.org/10.31969/alq.v20i3.339>.

⁴⁸ Muhammad Adil Iqbal and Shaikh Abdul Mabud, "Challenge of Globalisation to the Muslim Ummah: Religious Extremism and the Need for Middle Path (Wasat)," *Strategic Studies* 39, no. 3 (2019): 74–76.

⁴⁹ Kamali, "Issues in the Legal Theory of Uṣūl and Prospects for Reform," 11.

⁵⁰ Mohammad Abid Al-Jabiri divided the literal-textualist thinking paradigm into two events. First, sticking to the dhahir text which was rooted in traditions before Ibn Rushd (Andalusia) and peaked during the time of Ibn Hazm (al-Zahiri). Second, sticking to the meaning of the text but not in the entirety which became more visible after Ibn Rushd, specifically when he initiated al-Satibi using the maqasid al-shariah approach. See Muhammad

which Kamali considers no longer relevant. Another important factor considered to be hindering the contemporary survival is the doctrine of *taqlid* which is responsible for a purely textualist approach to Islamic law.⁵¹

According to Kamali, reasoning in Islamic law should not be expected to be focused on the text but an attempt towards moving away from mere confirmation. This process should run in the direction of every serious research conducted to produce ideas related to the suitability of Islamic law to actual reality. Therefore, a framework was developed to analyze the facts or legal cases based on *maslahah* theory with *maqashid al-shariah*. The perspective of Kamali is to show that *usul al-fiqh* legal theory intends to translate the value structure of revelation into an operational formulation of Islamic law through the assistance of *ra'yu* approach and *ijtihad* reasoning. However, in reality, *usul al-fiqh* is trapped between technical and linguistic aspects. Kamali also stated that *maqashid al-shariah* approach started with Abu Ishaq Ibrahim ibn Musa al-Shatibi, and his predecessors, Izz al-Din ibn Abd al-Salam and Abu Hamid al-Ghazali, but the development had limited influence.⁵²

In an effort to reform Islamic law, Kamali offered the concept of *tajdid badari* (civilizational renewal) combined with *al-siyasa al-sharia* (political sharia). These two concepts became the basis and considered the authentic approach for reconstructing Islamic law. The process leads to the consideration of optimal usage of some important instruments according to Kamali which are stated in the following paragraphs.

The first is the concept of *maslahah* developed based on the perception of Kamali that the main goal of law to achieve general welfare and the interests of the community is universal. Meanwhile, *maslahah* is believed to be a valid doctrine in Islamic law which is not being used effectively by the ulema.⁵³ Kamali also formed the view that the doctrine was conceptually and methodologically appropriate to the principles of *maqashid al-shariah* and needed

⁵¹Abid Al-Jabiri, *Taqwin Al-Aql al-Arabi* (Beirut: Dar al-Kutub al-Ilmiyah, 1991), 96; According to al-Shatibi, science of *usul al-fiqh* was produced as a burhani knowledge related to qath'i in order to provide scientifically credible knowledge of Islamic law. See also al-Shatibi, *Al-Muwafaqat Fi Usul al-Sharia*, 29.

⁵² Kamali, "Maqasid Al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective," 259.

⁵³ Kamali, "Issues in the Legal Theory of Uṣūl and Prospects for Reform," 14.

⁵⁴ Kamali, *Shari'ah Law: An Introduction*, 226.

to be adapted to contemporary problems in Islamic law.⁵⁴ The scholar also perceives *maslaha* as a rational concept due to the possibility of recognizing most of the benefits of the world through human reasoning, experience, and habits, even without the guidance of *al-shariah*. Most importantly, the doctrine is believed to have sufficient validity in relation to making moral judgments relating to right and wrong. In this context, Kamali stated that the function of *al-shariah* essentially is to only provide a set of criteria and guidelines to avoid confusion between personal prejudices and the existence of sacred texts developed for guidance.⁵⁵

The second is *istihsan* which is a doctrine associated with the legal preference for certain interpretations of Islamic law over others and believed by Kamali to be one of the instruments to reform Islamic law. This is based on the view of the doctrine as an integral theme and topic in *usul al-fiqh* which is considered inherently generic and versatile. Kamali also emphasizes that *istihsan* has a strong closeness to the concept of *maqasid* because the evidentiary basis, reasons and objectives are nearly identical to *maqashid al-shariah*. The concept is related to the aspects of ensuring justice, equality, finding ways to eliminate difficulties, and several others. This shows that Kamali believes *istihsan* has the capacity to cover two directions, including the textual evidence, *ijma'*, *qiyas*, *maslaha*, and *urf*, as well as the goals of sharia in the form of justice.⁵⁶ The theory focuses on determining the better alternative when the verdict or evidence associated with *al-shariah* failed one of the required goals. *Istihsan* is believed to have the capacity to fill the gap compared to *maqasid*.

The third is the reconceptualization of *ijtihad* as independent legal reasoning which is believed to be required in relation to the idea of *maqasid*. According to Kamali, nearly all discussions of Islamic law related to *maqasid* are focused on *ijtihad* and serves as the initial aim of opening a fairly wide space for the concept. This led to the proposition of *maqashid al-shariah* as a framework for all varieties of *ijtihad*. Kamali also identified the need to widen *ijtihad* by reducing reliance on *usul* and *qiyas* that focused on analogical reasoning.⁵⁷ *Maqasid*-oriented *ijtihad* is expected to encourage innovative thinking and legislation in

⁵⁴ Mohammad Hashim Kamali, "Maqāṣid Al-Sharī'ah: The Objectives of Islamic Law," *Islamic Studies* 38, no. 2 (1999): 193.

⁵⁵ Kamali, "Issues in the Legal Theory of Uṣūl and Prospects for Reform," 12.

⁵⁶ Mohammad Hashim Kamali, "Istiḥsān and the Renewal of Islamic Law," *Islamic Studies* 43, no. 4 (2004): 561.

⁵⁷ Kamali, *Maqasid Al-Shariah Made Simple*, 11.

Islamic law as well as economics, sociology and science.⁵⁸ Kamali believes that the classical doctrine of *ijma'*, as an important source of Islamic law, needs to be expanded to represent the general consensus of community to achieve the objective. The focus is expected to be on the application of political and religious leadership as the legislative vehicle. Therefore, *ijma'* can play a positive role in the democratization of legal theory and the entire political system in the Muslim world. *Ijtihad* and *ijma'* were also proposed to be combined in an integrated formula known as government procedures (*ulil 'amr*) in deciding a matter.

The fourth is the legal mechanism that supports *maqasid*-oriented *usul al-fiqh* in the form of *hikmah* (wisdom). The mechanism is defined by Kamali as the beneficial consequences of *al-shariah*, either in whole or in part. The rules of Islamic law were significantly emphasized to be informed by basic wisdom values considered as essentially *maqasid*.⁵⁹ Moreover, *Hikmah* is believed by Kamali to be oriented towards the perception of benefits as the highest goal of legislation.

The fifth is the science of *asbab al-nuzul* which is the event behind revelations and considered by Kamali to be an important instrument to support the reformation of Islamic law oriented towards *maqasid*. This is based on the belief that the concept can be used to identify the reasons and objectives of Islamic law by shifting focus from analogies, speculative thinking, and literalism. The trend is associated with the emphasis of *asbab al-nuzul* on interpretation in the broader context of revelation.⁶⁰ The field is important because it explains the intent and context of the original law.

In the analysis, Kamali continued a semi-contextualist approach which was based on *bayan*-based epistemology and *usul al-fiqh* of classical *manhaj* such as Abu Hamid Al-Ghazali and Yusuf al-Qaradawi. The reason was to apply more open approach which was termed ethical objectivist cum-rationalist contextualist in this research.

⁵⁸ Kamali, "Maqasid Al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective," 261.

⁵⁹ Adis Duderija, "Islamic Law Reform and Maqāṣid Al-Šarī'a in the Thought of Mohammad Hashim Kamali," in *Maqasid Al Shari'ah and Contemporary Muslim Reformist Thought* (London: Palgrave Macmillan, 2014), 26.

⁶⁰ Kamali, "Maqasid Al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective," 263; See also Duderija, "Islamic Law Reform and Maqāṣid Al-Šarī'a in the Thought of Mohammad Hashim Kamali," 29.

The Idea of Humanism-Moderatism in Fiqh by Mohammad Hashim Kamali

The reformist ideas of Kamali are a comprehensive effort to offer moderate thought that mediates between Islamic fundamentalism and Western liberalism. This contemporary thinker in Islamic law has a unique and distinctive perspective in criticizing the teachings of the religion. The idea of moderate fiqh was projected as a strategy for Islamic *da'wah* first implemented from in circles of Islamic law. According to Kamali, it is important and very necessary to develop Muslims by introducing moderate approaches that can enlighten the mindset and religious understanding.⁶¹ This is based on the analysis that the internal circles of Muslims are the key to realizing a harmonious civilization with a subsequent broader influence on the external circles. Moreover, human thought patterns are believed to be a determining factor that can lead to civilization development.⁶² This made Kamali to offer concrete steps towards introducing and formulating moderate fiqh through literary works and achievements in Islamic law.

The thoughts of Kamali are believed to be based on *wasatiyyah* (moderate) ideology manifested from the anxiety related to the current Islamic law which is textual and tends to reinforce religious absolutism. Moreover, the moderate fiqh developed was significantly influenced by several modernist figures such as Hasan al-Banna, Yusuf al-Qaradawi, al-Baghy al-Huli, and Muhammad al-Ghazali.⁶³ It was further based on four frameworks with the first related to the reconstruction of Islamic law through in-depth and comprehensive elaboration between classical and contemporary ulema. Kamali conducted several methodological criticisms of the classical thought⁶⁴ and subsequently offered new, more contextual ones without eliminating the former. The focus was elaborating perfecting the classical thoughts through the adaptation to the realities of contemporary developments. This showed that Kamali did not

⁶¹ Mohammad Hashim Kamali says that Islam really promotes the creation of moderate attitudes. This concept of moderation is an inseparable part of Islamic religion. Kamali writes: Moderation is recommended and desirable in Islam as observed in the considerable emphasis on justice, moderation, and balance in the Qur'an and Sunnah. The Qur'an also identifies the umma (Muslims) as the umma of moderation and balance "ummata wasatan" (al-Baqarah [2]: 143). See Mohammad Hashim Kamali and Aftab Ahmad Malik, "Fanaticism and Its Manifestations in Muslim Societies," in *The Empire and the Crescent: Global Implications for a New American Century* (Bristol: Amal Press, 2003), 18.

⁶² Mohammad Hashim Kamali, *Civilizational Renewal: Revisiting the Islam Hadhari Approach* (Kuala Lumpur: Arah Publication, 2008), 21; See also Kamali, *The Middle Path of Moderation in Islam: The Qur'anic Principle of Wasatiyyah*, 33.

⁶³ Kamali, *The Middle Path of Moderation in Islam: The Qur'anic Principle of Wasatiyyah*, 71.

⁶⁴ Kamali, "Issues in the Legal Theory of Uşul and Prospects for Reform," 17.

develop priority principles on the basis of rational considerations unilaterally but also an attention on particular texts.

Second, the thoughts of Kamali considered several static (*tsawabit*) and dynamic (*mutaghayyirat*) concepts. This led to the development of Islamic law based on three frameworks, including reform and change (change and continuity) as well as diversity. Third, attempt was made to avoid rigid and vague thoughts. This was based on the assumption of Kamali that rigid thoughts could lead to prolonged conflicts considering the existence of several ideas in Islamic law with the tendency to negate each other. The purpose is to ensure that the concepts produced from Islamic law is beneficial to humanity.

Fourth, the extensive research and undoubted figure of Kamali in Islamic law led to the exploration of Islam universally. The special attention placed on Islamic world caused the development of thoughts based on the reflections and experience. This is achieved through the time spent in a traditional-classical environment, the West, before finally settling in Malaysia which incidentally has very strong Islamic nuances. An interesting observation is that Kamali, with all the brilliant thought in Islamic law, is a neo-modernist without being Western.

Kamali formulated the four frameworks into the concept of Islamic thought that combined partial texts with universal Islamic principles and certain dimensions of reality. The explanation shows the thought pattern of Kamali which is based on *maqasid al-shariah* and placed on two major foundations, *tajdid hadari* (civilization renewal) and *al-siyasa al-sharia*, to reformulate Islamic law. The pattern has been embedded since the start of his intellectual career and argued to be the main tool to achieve *al-sahwah al-Islamiyah* (Islamic revival) project.⁶⁵

The moderate fiqh approach developed by Kamali is already visible from the works produced. It has been applied by differentiating *qat'i* (firm and static) things to be conducted dogmatically from *zanni* (vague and assumptive) that can be rationalized based on a certain context. The principle is the embodiment and continuity of *maqasid al-Shatibi* school of thought and also includes the doctrine adopted by Ibn Ashur as well as *maqasid al-shariah* introduced by Jasser Auda using a system approach.

Use of Moderatism as an Approach: *Maslaha-Cum-Samaha*

Islamic law is expected to be based on the principle of *maslaha mursalah* which is developed with the focus on community justice and welfare. It is also supported by *samaha* which is the tolerance aspect and combined with *maslaha* to ensure Islamic law provides values of certainty, justice, and prosperity. The process led to the formulation of *maslaha-cum-samaha* that theoretically prioritized

⁶⁵ Duderija, "Islamic Law Reform and Maqāṣid Al-Šarī'a in the Thought of Mohammad Hashim Kamali," 14.

benefit as well as respect for groups, people, and the opinions or existence of others. The concept can be implemented by combining the *wasatiyyah* approach with *maqashid al-shariah* to understand the text and context as well as ensure appropriate and ideal scientific logical reasoning.

Prosperity is the basic key to the realization of *maqasid al-shariah* which is eternal, universal, and has a contemporary spirit. Therefore, Kamali provides a perspective that fiqh is a dynamic scientific discipline with the capacity to develop over time. The *usul al-fiqh* does not exclude the integration of other scientific disciplines as observed from the inclusion of the contemporary insights from social sciences, philosophy, and even pure science. The intention is to ensure fiqh field does not become a monopoly of groups technically called *fuqaha* and to ensure the participation of experts from different scientific disciplines.⁶⁶ Furthermore, the empirical and historical dimensions are combined with philosophy, specifically hermeneutics, and maintain the function of will and reason as the approach to extract knowledge from divine and natural sources.

Authoritative expression models are always dominated by definitive text categories developed into the practice of a number of important institutions in the community. This requires being directed towards tracing connections between the literary processes behind the authority of texts and the socio-political procedures associated with the articulation. According to David Johnston, there has been an epistemological shift in the principles of *usul al-fiqh* in the twentieth century. The shift is evident in the formulation of law from the initial consensus (*ijma'*) and formal analogy (*qiyas*) towards a substantive rational approach. It is also characterized by the combination with other fields of social science and the recognition of the universal principles of Islam (*al-kulliyat*). The concept provides sufficient space for *maslahah* and focuses on the message behind *maqasid al-shariah* in the exploration of Islamic law.⁶⁷ Furthermore, moderate fiqh integrates and interconnects Islamic law with social science as an approach to ensure normative cum empirical analysis designed to focus on *maslaha-cum-samaha* aspects. The approach initiated by Kamali is observed to be operating through two domains which are explained further as follows.

Understanding Text and Context: Mainstreaming Wasatiyah Hermeneutics

Fiqh is produced based on the understanding of ulema about sacred texts as the initial basis to determine the truth in Islamic law. Moreover, theistic subjectivism strengthens the process of discovering the texts based on the argument that law can only be understood through the revelation of God. This led to the introduction of *wasatiyah* in moderate fiqh to determine the most

⁶⁶ Sirry, *Tradisi Intelektual Islam: Rekonfigurasi Sumber Otoritas Agama*, 152.

⁶⁷ David Johnston, "A Turn in the Epistemology and Hermeneutics of Twentieth Century Uşul Al-Fiqh," *Islamic Law and Society* 11, no. 2 (2004): 233.

relevant meaning from the text. Meanwhile, autonomous texts often cause tensions during the debate on authority and authoritarian text construction which can lead to authoritarianism in more extreme cases.⁶⁸ The emergence of the interpretive authoritarianism which focuses on using the rights associated with God has started becoming rampant and integrated into religious fatwas. The authoritarianism is used arbitrarily in the process of reading the texts of the Qur'an and Hadith (sacred texts) and subsequently used to resolve different contemporary problems. The previous section explained how the concept was introduced to Islamic law but Khaled Abou El Fadl had made attempts to dismantle authoritarianism during the process of interpreting religious texts using a *wasatiyah* approach which was called the beauty of fiqh.

The trend shows that moderate fiqh is very important in explaining the process of struggle between text, author, and reader. The three concepts have also been identified to be the focus of hermeneutical studies. Therefore, moderate fiqh was related to *wasatiyah* approach to produce *wasatiyah* hermeneutics which was aimed at developing texts with reference to the Qur'an. The purpose was to provide knowledge on consensus (*ijma'*) and allegorical reasoning (*qiyas*). It also functioned in parsing comments in the form of interpretations (*tafsir*) of the Qur'an as well as comments (*syarh*) on Hadith and fiqh texts.⁶⁹ Moderate fiqh with *wasatiyah* hermeneutics was designed to provide a non-legal system of understanding texts using different scientific fields and approaches. An example is the focus on the aspects of words and meaning (*dalalah*), communication (*khitab*) and others, as proposed by Mohammad Hashim Kamali.⁷⁰ The *dalalah* aspect in this case refers to the science of semantics (*ulum al-ma'ani*) and communication (*balaghah*).

Moderate fiqh with *wasatiyah* hermeneutics can be achieved by analyzing the text in several ways, including *ta'wil* (allegorical interpretation), observation of words with clear (*sarih*) and unclear (*kbafi*) meanings, common elements (*aam*)

⁶⁸ Criticism of texts is very important because texts are often understood as the center of all dimensions of life. It is not uncommon for texts to have complete sovereignty in all discourses, including the political, social, and religious aspects. The text creates a vision of itself that considers everything sufficient and later reproduce (tawlid al-nass) as a dynamic moving system. The significance of a text can be determined through the substantive meaning (maghza) from the past to the present reality. See Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, 53; Compare with Kamali, *The Middle Path of Moderation in Islam: The Qur'anic Principle of Wasatiyyah*, 31.

⁶⁹ Muhammad Khalid Mas'ud and Syafiq Hasyim, "Hermeneutika Wasatiyah (Moderat) Dalam Tradisi Hukum Islam," in *Moderatisme Fatwa: Diskursus, Teori, Dan Praktik* (Jakarta: International Center for Islam and Pluralism, 2018), 7.

⁷⁰ Kamali, *Principles of Islamic Jurisprudence*, 33; See also Mohammad Hashim Kamali, "Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives," *Islam and Civilisational Renewal* 7, no. 3 (2016): 307, <https://doi.org/10.52282/icr.v7i3.246>; See also Jauhari, "Rekonstruksi Usul Al-Fiqh Mohammad Hashim Kamali: Analisis Metodologis Dalam Perspektif al-Aql al-Usul," 204.

and special (*kehas*), absolute (*mutlaq*) and qualified (*muqayyad*) texts, as well as literal and metaphorical (*majazī*) aspects. Meanwhile, analysis of the textual implication pathway (*al-dilalah*) was divided into three aspects by Kamali, including *ibarah al-nash* (explicit meaning), *isharah al-nash* (implied meaning), and *iqtida' al-nash* (desired meaning).⁷¹ The trend shows the possibility of applying the moderate fiqh reasoning in a rational approach that allows free and natural development. The context can be identified in *ijtihad* law with different approaches. The reasoning was implemented in this research through in-depth efforts to understand texts by combining different methodologies in Islamic law with contextual approaches integrated into other social scientific disciplines, such as sociology, culture, and psychology for subsequent adaptation to current realities.

The textuality of Islamic law has an influence on responses to social change. Meanwhile, the law-in-book oriented nature shows the limitation in the ability to respond to different developing contemporary realities. In this context, moderate fiqh presents contextual understanding by integrating fiqh into other social sciences capable of providing historical factual analysis, such as sociology, anthropology, politics, economics, or psychology. The purpose is to make fiqh an embodiment of Islamic inclusivism not limited to a narrow school of thought. This shows that the formulation of fiqh is based on the consideration of respect for tradition and culture as well as gradual reduction of text superiority.

Logic of Legal Reasoning: Optimizing *Maqasid al-Shariah* in Responding to the Challenges of Modernity

Several legal considerations are related to Islamic tradition, including *qiyas* (deductive reasoning, syllogism logic), legal rules (*qawa'id fiqhiyah*), and customs (*urf*). It also focuses on principles of juristic preferences (*istihsan*), public good (*maslahat*), *maqasid* (legal objectives), and inductive reasoning (*istiqrā'*). Moreover, the development of *maqasid* as an important part of Islamic law theory or reasoning logic is beyond *qiyas* or syllogism. *Wasatiyah* approach was used to identify texts and contexts to determine the legal norms considered most relevant to a particular problem.

The process shows that the relationship between *maqasid* and *usul al-fiqh* is significantly important to understand the meaning of relevant and credible texts.⁷² The two concepts are inseparable as observed in the efforts made to

⁷¹ Mohammad Hashim Kamali, "Methodological Issues in Islamic Jurisprudence," *Arab Law Quarterly* 11, no. 1 (1996): 4, <https://doi.org/10.2307/3381731>.

⁷² Alfa Syahriar and Zahrotun Nafisah, "Comparison of Maqasid Al-Shariah Asy-Syathibi and Ibn Ashur Perspective of Usul al-Fiqh Four Mazhab," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 3, no. 2 (2020): 185, <https://doi.org/10.30659/jua.v3i2.7630>; See also Nirwan Syafrin, "Konstruksi Epistemologi Islam: Telaah Bidang Fiqh Dan Ushul Fiqh," *Tsaqafah* 5, no. 2 (November 2009): 229, <https://doi.org/10.21111/tsaqafah.v5i2.127>.

know and understand *maqashid* in the context of *ijtihad* and also to use the concept in determining the correct meaning, specifically in the construction of *dilalah al-faz*. In relation to this issue, al-Khadimi emphasized that *maqashid* sharia and *usul al-fiqh* had mutually reinforcing functions at a practical level and were almost inseparable to determine and explore certain intentions in the process of legal *istinbath*.⁷³

Kamali offered an integration of *usul al-fiqh* with *maqasid al-shariah*. This is necessary because legal *istinbath* process cannot be effectively implemented without the inclusion of different scientific aspects, including linguistic and benefit which is the main goal of sharia.⁷⁴ Al-Khadimi also observed a continuity between *usul al-fiqh* and *maqasid al-shariah*. This led to the formulation of *usul al-fiqh* as *usul min usul fiqh* (basic foundation of *usul al-fiqh*) and *maqashid* as *al-usul hiya asas al-maqashid* (*usul al-fiqh* is the basic foundation of *maqasid*).⁷⁵

According to Kamali, *maqasid al-shariah* is not burdened with methodological technicalities and literalist readings. This is different from the *usul al-fiqh* which prioritizes linguistic aspects considered inseparable from textual elements, leading to non-contextual understanding. Meanwhile, *maqashid al-sharia* has flexibility in the process of understanding and reading about the sharia.⁷⁶

The trend shows that moderate fiqh uses *maqasid al-shariah* approach to understand the intent and meaning behind certain texts.⁷⁷ The urgency of the *maqasid*-based approach to Islamic law reform is due to the possibility of using *maqasid al-shariah* to achieve *al-shariah*. In other words, the two concepts are closely related and conceptually inseparable. Moreover, *maqasid al-shariah* can function optimally in offering a comprehensive reading of Islam to provide very meaningful insight to *al-shariah* based on real social change and also to revitalize *usul al-fiqh*. *Maqasid* approach is realized by providing scope for innovative system to achieve dynamic *al-shariah* intersected with the discourse on contemporary human rights. This shows that the moderate fiqh offers a more flexible methodology to accept and adapt to a number of challenges related to the issues of democracy, human rights, good governance, objective world conditions regarding Muslims, and several others. The concept also

⁷³ Nur al-Din al-Khadimi, *Al-Maqasid al-Shar'iyah: Turuq Ithbatih, Hujjiyatih* (Riyadh: Dar Kunuz Ishbiliya, 2007), 64.

⁷⁴ Kamali, *Civilizational Renewal: Revisiting the Islam Hadhari Approach*, 85.

⁷⁵ al-Khadimi, *Al-Maqasid al-Shar'iyah: Turuq Ithbatih, Hujjiyatih*, 65.

⁷⁶ Kamali, *Principles of Islamic Jurisprudence*, 33; See also Kamali, "Moderation in Fatwa and Ijtihad: Juristic and Historical Perspectives," 305.

⁷⁷ S.H. Pamungkas, S.A. Ukkasah, and M. Faizin, "Integrating Maqasid Al-Shariah into Legal Policies for Hybrid Working: Enhancing Flexibility and Protecting Employee Rights in Indonesia," *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 3 (2024): 287–301; Rohmadi Rohmadi et al., "Optimizing Prenuptial Agreements for Asset Protection: A Maqashid Sharia Based Approach," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (October 11, 2024): 375–98, <https://doi.org/10.29240/jhi.v9i2.11064>.

accommodates the ever-growing understanding of *al-shariah* as a representation of sustainable relevance, development, and growth through independent reasoning (*ijtihad*), renewal, and reform (*tajdid, islah*).

The moderate fiqh thoughts proposed by Mohammad Hashim Kamali are summarized in the following table to ensure easier understanding:

| Issues | Moderate Fiqh Thought |
|---|---|
| Superiority of Text and the Use of Reason | Mohammad Hashim Kamali |
| | <p><i>Maslahah</i> and <i>Maqasid al-Shariah</i> theory</p> <ol style="list-style-type: none"> Reconstruction of Social Reality. Use of <i>ijtihad</i> reasoning. The concept of <i>hikmah</i> (wisdom). <p>Dialogue between Text, Author, and Reader</p> <ol style="list-style-type: none"> Reform. Harmonization. Humanization (moral). |
| Islamic Law Reform | <p><i>Siyasa al-shariah</i> and <i>tajdid hadari</i></p> <p>Civilization renewal is more likely to occur in <i>al-shariah</i> framework that is appropriate to the <i>maqasid</i> approach. The reformation of Islamic law is presented through <i>maqasid</i>-oriented <i>ijtihad</i> thinking.</p> |
| Criticism of <i>Ushul al-Fiqh</i> Methodology | <p>Too much emphasis is placed on linguistic aspects, thereby losing the ability to answer contemporary problems caused by social, political and cultural conditions.</p> <p>A comprehensive methodology is needed to produce a progressive-harmonious interpretation based on a social historical approach.</p> |

| | |
|----------------------------------|---|
| Moderate Humanist Interpretation | <p>Contextual-<i>ijtihadist</i> approach is needed due to the continuous focus of attention on reality. Placing the authority of the text to speak on a just and humanist basis.</p> <p>Implemented by focusing on: Authority Competence Determination of Meaning Representation Honesty Diligence Comprehensive Reasonableness Self-Restraint</p> <p>Consideration of <i>nash</i> and social reality. Use of the <i>maslahah</i> concept. Reconceptualization of <i>ijtihadi</i> as independent reasoning. <i>Ushul fiqh</i> based on <i>maqashid</i>. Use of the science of <i>asbab al-nuzul</i>. Universal observation. Observation of <i>tsawabit</i> and <i>mutagayyirat</i>.</p> |
|----------------------------------|---|

Conclusion

In conclusion, the moderate fiqh thought formulated by Mohammad Hashim Kamali was a set of *madhbab* approaches and a *syumuli* (comprehensive) process focused on combining different scientific disciplines. It offered a moderate-humanist approach which was considered more holistic, comprehensive, and flexible in achieving *ijtihad*. The intention was to integrate the construction of texts, understanding of the context, and optimization of legal reasoning based on *maqasid al-shariah* through independent reasoning (*ijtihad*), renewal, and reform (*tajdid* and *islah*). The introduction of moderate fiqh in formulating Islamic law was not based on only one proposition alone but rather a combination with several others. Instead of focusing only on the civilization of texts and reference to literal meanings which tended to be authoritarian using the name of God, the attention was on integration with other scientific fields to sustain the relevance of Islamic law to current developments. Moreover, the moderate fiqh thought formulated by Kamali did not deviate from the main purpose of sharia (*maqasid al-sharia*) which was to provide benefits through the law. It was also observed that the application of Islamic law (*ushul al-fiqh*) to resolve some problems could not be separated from *maqasid al-shariah*.

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