

## Book Review

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## Introduction

Discourse of Muslim family issues from the classical period to the contemporary era today, has undergone with dynamics need to be responsive justification of Islamic law. The dynamics of family issues can not be separated from the changes taking place in society. According to James W. Vand er Zanden in Nasruddin Rusli<sup>1</sup> that happened changes were caused by several factors, for instances a) Increasing or decreasing the population and changes in the ecosystem that exists around humans. b) Other Effect of cultural community as a result of cultural interaction. c) The nature of the community collectively, movement, and social revolution. and d) Tech- and modernity.

Therefore, fiqh of family as a discipline in Islamic studies, needs to be reviewed in a creative and responsive to perform ijihad reformative, in order to be understood and interpreted in accordance with the cultural dynamics surrounding communities, although historically the full dynamics and controversy. But according to M. Atho' Mudzhar<sup>2</sup> , fiqh in general must be seen in proportion as one of the products of Islamic legal thought in addition to fatwa, religious court decisions and laws in Muslim countries, with a proportionate attitudes are as follows:<sup>3</sup>

1. That fiqh is just one of several forms of Islamic legal thought products

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<sup>1</sup> Nasruddin Rusli, *Konsep Ijtihad Al-Syaukani; Relevansinya bagi Pembaharuan Islam di Indonesia*, (Ciputat: PT. Logos Wacana Ilmu, 1999), p. 152.

<sup>2</sup> M. Atho' Mudzhar, *Membaca Gelombang Ijtihad, Antara Tradisi dan Liberasi*, (Yogyakarta: Titian Ilahi Press, 1998), pp. 91-92.

<sup>3</sup> *Ibid.* pp. 92-93.

2. That due to its nature as a product of thought, then the actual fiqh should not be resistant to new ideas that emerged later
3. That let fiqh as a set of rules that has no validity limit is equal to the product of human thought perpetuates the proper temporal

Thus it can be understood that the family fiqh is actually an attempt, the result of interaction between the revelation and the translation of Muslim jurists response to the question of socio-political, socio-cultural faces. Therefore, if the family fiqh is no longer responsive to community issues that arise because of changing of age, family fiqh should be revised, updated, even if it may be replaced with a new family law altogether. According to Ahmad Mustafa Zarqa<sup>4</sup>, it indicates that future changes or social change is one of the factors that require changes in the law.

Departing from the framework, the author wrote a book entitled *Menuju Fiqh Keluarga Progresif*. The book has been published in two editions, the first edition published in May 2011, while the second edition which is a revised version of the first edition, published in May 2015. Various studies issues of fiqh and themes of Muslim families both in terms of doctrine, history, and thought also become the focus of attention of the whole discussion of the revised version of the book. Therefore, overall in the publication of the revised edition, substantially no significant change, but there is the addition of two chapters, namely discussion of the fourth and sixth chapters. There are also little change in charge on the concluding chapter. The concluding chapter of the charge change is a logical consequence of the addition of fourth and sixth chapters.<sup>5</sup>

### **The Progressive Fiqh of Family: Concepts, Methodologies, and Applications**

According author of this book,<sup>6</sup> the term fiqh progressive family has emerged as anxiety Muslim thinkers on the implications of the development and dynamics of globalization that have an impact on birth patterns of life and patterns of human relationships that result in a gap between Islam and the reality of human life, including family law. Family law assessed by Muslim thinkers have lost the power to address the problems of the times, so that there is stagnation and unresponsive. This is where the urgency of rebuilding the family law responsive to the progress of time (progressive).

<sup>4</sup> Mustafa Ahmad Zarqa, *al-Fiqh al-Islami fi Saubih al-Jadid*, (Beirut: Dar al-Fikr, 1968), p. 137.

<sup>5</sup> Yusdani, *Menuju Fiqh Keluarga Progresif*, (Yogyakarta: 2015), p. vi.

<sup>6</sup> *Ibid.* p. 237.

The book is organized into eight chapters by using the deductive method in the discussion, making it easier for the reader to understand the concept of family progressive fiqh, due to depart from studies that are common in fiqh position proportionally as a product of science and then rediscover family fiqh progressive.

In Chapter I, entitled Fiqh and *Reinventing* Fiqh of Family with presents a discussion on fiqh as a product of science and Islamic law as a science, as well as *reinventing* family fiqh.<sup>7</sup> This chapter explains that fiqh should be positioned as a product of science as well as science. So it must be able to respond to the times, is not final as long as this presumption against fiqh, which consequently resistant to change.

Similarly, Islamic law should be understood as reflexive values that are believed to society as institutions in social life. This shows that the legal charge should be able to catch aspirations of the people who grow and develop, not only are in the present, but also as a reference in anticipation of the development of social, economic, and political in the future. Thought is asserted that Islamic law is not just a static norm that promotes certainty and order, but also the norms that must be able to manipulate the thinking and behavior to change society in achieving its goals.

In the discussion on *reinventing* of fiqh of family, according author<sup>8</sup> many records Muslim family law in Indonesia is important to assess the implications of the situation of transition and change. To respond to these needs or *reinventing* a different perspective, so as to give a fresh new look for the development of family law that is more accommodating to human values that are universal justice, human rights, pluralism, democracy, and others.

Therefore, the authors of this book<sup>9</sup> wheeling identified four basic things that become a challenge and guidance in life and family life in general, and Muslims in particular family life in today's contemporary era. Four issues are demands for Human Rights (*Human Rights* of human rights), demands an awareness of equality between men and women (*gender equality and gender justice*), the demands of contemporary legislation (*modern legislation*), and culture (*culture*) family.

Chapter II of this book reveal about fiqh reform Muslim family which includes history of reform of Muslim families, Muslim fiqh a comparison, methods, and

<sup>7</sup> *Ibid.* pp. 1-26.

<sup>8</sup> *Ibid.* pp. 16-30.

<sup>9</sup> *Ibid.* p. 22.

goals of reform fiqh of family.<sup>10</sup> Specifically, the historical aspect of the reform of Muslim family fiqh discussed tentan g categories of Muslim countries on family law reform, and a wave of Muslim family law reform. Category of the Muslim countries in view of the author<sup>11</sup> include: 1) Muslim countries that still contain family law as contained in the books of fiqh mazhab adopted and the country did not want to perform the update. In this category are the countries of Saudi Arabia; 2) Muslim countries at least formally been completely left family law contained in the books of fiqh and clicking replace it with a European civil law. The country is Turkey; 3) states that take the path of moderate Muslims who are trying to impose Islamic family law after holding the update here and there, namely Egypt, Sudan, Lebanon, Syria, Jordan, Iraq, Tunisia, Morocco, Indonesia, and Pakistan.

The wave of legal reform in the Muslim world in the modern era actually began in the mid-19th century when the Ottoman empire mengimportasi trade laws and criminal west. However, M. Atho 'Mudzhar<sup>12</sup> noted that the reform movement in family law occurred in the 20th century.

In the discussion of comparative fiqh of Muslim family, only a comparison of family law in the three countries, namely Egypt representing middle eastern countries, Pakistan as a representation of the South Asian countries, and Indonesia represents countries of Southeast Asia. In his book, the author<sup>13</sup> identified that the nature of the reforms undertaken by Muslim countries is basically made up of two properties, namely; 1) *Intra-doctrinal reform* reforms of family law is carried out by combining the opinions of some schools or take other opinion apart from the main sect adhered to, 2) *extra-doctrinal reform*, is legal reforms by providing a completely new interpretation of the texts exist.

The method used by Muslim countries in reforming family law in the Muslim world in general, and in Egypt, Pakistan, and Indonesia in particular is a method that is not dependent *takhayyur* ijihad Muslims only in a particular school of law or that combine various *talfiq* view of schools law. The purpose of family law reform in the Muslim world stressing *maslahah* principle or general interest and *siyasah syarriyah*.<sup>14</sup>

At Chapter III of this book, discussed issues of fiqh of Muslim families

<sup>10</sup> *Ibid.* pp. 31-43

<sup>11</sup> *Ibid.*

<sup>12</sup> M. Atho' Mudzhar, *Membaca Gelombang Ijtihad...*, p. 175.

<sup>13</sup> Yusdani, *Menuju Fiqh Keluarga Progresif...*, p. 41.

<sup>14</sup> *Ibid.* pp. 42-43.

such as the age limit for marriage problems, problems registration of marriages, divorce procedure issues, polygamy, inheritance boys and girls, and was borrowed. In this third chapter correlated by author<sup>15</sup> Among the issues fiqh Muslim family mentioned above with a different perspective or rediscover fiqh Muslim family that is responsive to the advancement of age.

As for the Chapter IV, author<sup>16</sup> describes comprehensively about family law in Indonesia, which consists of Indonesia's Islamic family law such as divorce, marriage, inheritance, and child issues. It also discussed the movement of fair and equitable gender, family law policy formulation in Indonesia, and the application of family law in Indonesia, which includes polygamy, marriage in minors, equal rights between husband and wife, and build awareness of the law.

According to the author,<sup>17</sup> Indonesia has conducted national consultations on family law which aims to build a consolidated and re-mapping of family law in Indonesia, as well as space to build cooperation and build recommendations of family law that has principles of justice and equality for men and women. Therefore, even though there have been efforts to reform the Islamic family law in Indonesia, but in the social movement itself there are three important aspects that need to be targeted to create an Islamic family law that is fair and equitable gender in Indonesia. Three stages are:<sup>18</sup> state level, the community level, and the level of scholars.

At the end of this chapter, the author<sup>19</sup> asserts that the reform of family law in Indonesia is based on two basic assumptions, namely; 1) related to the effort to make family law in accordance with the basic principles of Islam itself in building a harmonious *family, mawaddah, and mercy*, 2) family law is expected to be responsive and accommodating in answering the challenges and demands of kontemporer such as gender, human rights, keberagaman, and democracy.

At Chapter V studied fiqh issues in Indonesian family reformation era such as domestic violence, child protection, interfaith marriages, inheritance rights of non-Muslims, and marriage *Sirri*. According to Marzuki Wahid was quoted by the author,<sup>20</sup> that issues of fiqh family in Indonesia above, necessary to find a solution by way of formulating a set of Islamic law which can serve as a reference basis for the creation of a just society which respects human values, respect for

<sup>15</sup> *Ibid.* pp. 47-67.

<sup>16</sup> *Ibid.* pp. 73-112.

<sup>17</sup> *Ibid.* p. 76.

<sup>18</sup> *Ibid.* pp. 85-86.

<sup>19</sup> *Ibid.* p. 115.

<sup>20</sup> *Ibid.* p. 119.

the rights of women, the prevalence of shades kerahmatan and wisdom, as well as the realization of benefit for all humankind.

In Chapter<sup>21</sup> contains exposure informing about the importance of family redefined progressive fiqh for the realization of the family who sakinah *mawaddah wa Rahmah*. This chapter is entitled huge Towards Progressive Fiqh of Family, specified in sub-study that includes; happy family (*sakinah, mawaddah wa Rahmah*), marriage as a sacred bond and the profane, the foundation and building a family, building a family principles “happy” like *al-karamat al-insaniyah* (breeding humans), select the appropriate partner conscience, partnership, consultation, *mahabbah* (love), the absence of violence, *al-’adalah* (justice), and *al-ma’ruf*<sup>22</sup>. Then the other sub-study is, responsibility and leadership in the family “happy” which includes; Allah / God, to family, to himself, to his profession, and to society.<sup>23</sup> Later this chapter ends with a review of governance relationships and patterns of interaction within the family samara which include;<sup>24</sup> have the maturity and wisdom and, healthy minds, healthy minds, respect the rights of *at-ta’awun* (cooperation), faithful, keeping the family honor, being an example, meet the sexual needs, and behave ma’ruf.

Departing from anxiety Muslim thinkers will be a lack of responsiveness of fiqh Muslim families to issues of family in the contemporary era, the authors<sup>25</sup> seeks to offer a logical and progressive family fiqh methodology, which is described in detail on Chapter VII including ; general discussion of fiqh progressive family, reason fiqh progressive of family, progressive fiqh of family methodology framework, progressive fiqh of family methodology application, as well as the challenges and constraints.

This chapter begins with a presentation on terminology fiqh progressive family. The writer<sup>26</sup> revealed that progressive fiqh of family is built on a foundation of Progressive Islam. In general, Progressive Islam emphasized the development of science, the discourse of fairness, openness, tolerance, and the need to build a moral integration of the Muslims in the state and nation building. Regardless of the pros and cons of the Muslim scholars of the Islamic dimension of this progressive, author<sup>27</sup> stressed that fiqh progressive of family

<sup>21</sup> *Ibid.* pp. 167-219.

<sup>22</sup> *Ibid.* pp. 183-188.

<sup>23</sup> *Ibid.* p. 189.

<sup>24</sup> *Ibid.* pp. 207-219.

<sup>25</sup> *Ibid.* pp. 237-257.

<sup>26</sup> *Ibid.* p. 238.

<sup>27</sup> *Ibid.* pp. 240-241.

is a family that seeks to elevate and socializing dimensions and the values of justice, equality, and equality of human values as essential values in Islam.

As for the discussion about the reason fiqh progressive of family, focused on the study and exploration of the progressive dimension of Islam which is now increasingly widespread. The phenomenon on the basis of an awareness and the need for two things, *the first* is to respond creatively and positively negative perception that assesses global world that Islam is a religion that is always slow in responding to the pace of the times that led to a very wide gap between the Islamic world and the western world ; *the second* is the realization that one of the strategies to fight extremism that always blamed on Islam is to empower the elements and aspects of the society progressive moderates and bridge the gap between the Islamic world with the other. Two things, according to the author<sup>28</sup> quoted from Tholhatul Choir and Ahwan Fanani (ed.)<sup>29</sup> became the basis of the urgency of education and socialization of progressive Islam.

In discussing the framework of a progressive fiqh of family methodology, the authors<sup>30</sup> agreed with Abdullah Saeed framework that is *progressive ijtihadist*. With this framework, progressive Muslim thinkers demanded mastery of the basics of Islam and contemporary issues, and then through the process of methodological thinking to find the answer. Furthermore author stated that all the provisions and status of traditional Islamic law, including family law that is not in favor of justice, goodness, and beauty have to be abandoned later replaced with provisions and legal status in accordance with the universal principles of Islam by using a progressive ijtihadi approach. In this way, the author believes that Islam and Islamic law will be able to exist and live in the world arena and able to answer the problems of the progress of time. Further confirmed that the framework of this progressive fiqh of family, is not intended to create a new religion or doctrine, but an effort to mere interpretations of traditional religious foundation to accommodate contemporary life, especially in responding to issues of Muslim family law today.

For applications progressive fiqh of family methodology, the author<sup>31</sup> first

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<sup>28</sup> *Ibid.* p. 245.

<sup>29</sup> Tholhatul Choir dan Ahwan Fanani (ed.) "Islam Progresif dan Ijtihadi Progresif dalam Pandangan Abdullah Saeed" in *Islam dalam Berbagai Pembacaan Kontemporer*, (Yogyakarta: Pustaka Pelajar, 2009), p. 527.

<sup>30</sup> *Ibid.* p. 249.

<sup>31</sup> *Ibid.* pp. 250-251.

proposed three models of *ijtihad* were identified by Abdullah Saeed, namely:<sup>32</sup> *The first* is a text-based *ijtihad*, is a common method of *ijtihad* performed by classical jurists and middle of the century and still has a lot of influence among traditionalist thinkers, both *eclectic ijtihad* is the effort of selecting text or opinions of previous scholars who most support the idea and the position which he believed, *The third* is a *context-based ijtihad* is a new phenomenon that tries to understand the legal issues in the context of historical and contemporary, with reference to the common good as the *maqasid al-shariah*. Of the three models *ijtihad* above, the third *ijtihad* models are options and alternatives that are used by the *Progressive Ijtihadists* that trying to further connect with the contemporary context so as to keep *up to date* and can be applied.

As in developing, promoting and disseminating the idea of Islam as the basis of departure progressive *fiqh* progressive of family, the author<sup>33</sup> looked to be having some problems. Among these are the dominant tendency *fiqh* paradigm that emerged during this further highlight and defend the truth of orthodoxy, that paradigm is always excessive emphasis on formal legal aspects, making it less able to capture the *moral ideal-reversed* formal legal provisions.

The book ends with Chapter VIII contains conclusions and a resume dari discussion in several earlier chapters, which seeks to answer the press olan-issue in connection with the offer of the concept of progressive *fiqh* of family reform, although emerged the pros and cons among Muslim thinkers.

### The Urgent of Progressive Fiqh of Family

This book is very urgent, because it encourages the development and renewal of thought in the study of Islamic law in the contemporary era. More specifically, the contribution to the contemporary Muslim family law reform, including in Indonesia, which has long been initiated by academics and legal practitioners in the Muslim world and in Indonesia, which is agitated by the controversy between the importance of the phenomenon *ijtihad* tailored to the needs and the objective conditions of society, with compliance persist with the existing legal context though no longer the progress of time.

However, an innovator bid of *fiqh* progressive of family in this book is different from the previous formulation of Islamic law, and not the same as the idea of Islamic legal reform in Indonesia given by other thinkers. This

<sup>32</sup> Abdullah Saeed, *Islamic Thought An Introduction*, (London and New York: Routledge, 2006), p. 55.

<sup>33</sup> Yusdani, *Menuju Fiqh Keluarga...*, p. 256.



book<sup>34</sup> using reason formation associate legal interpretation of the texts of the Quran and al-Hadis with the perspective of democracy, pluralism, human rights and gender equality, with the reworded in accordance with the laws and regulations applicable in the context of contemporary Indonesia.

As for M. Atho' Mudzhar,<sup>35</sup> initiated the need for reform of Islamic law in general, the social history and sociological approach, so that Islamic law is responsive to community issues that arise due to the changing times. The framework is understandable because, every product of Islamic legal thought is basically the result of interaction between thinkers of Islamic law with socio-cultural or socio-political surrounding.

While Abdul Manan<sup>36</sup> wrote down his ideas about reform of Islamic law in Indonesia by focusing on an active role in the renewal of the Religious Islamic law in Indonesia. These are the objectives to reach in writing his book, Abdul Manan besides an academic he is also a legal practitioner in the neighborhood began to Religious Court scrolled to the Supreme Court of the Republic of Indonesia, which has been seeing and experiencing firsthand the obstacles and controversies in the application legislation in the Religious Courts.

The book *Menuju Fiqh Keluarga Progresif* written by author, complementing the treasures of the development of reform Islamic law thought in the contemporary era. Substantively book is quite dense and comprehensive. This indicates to the reader the impression that the author of this book has a strong aspiration to be the existence of a change in the aspect of thought, development, and implementation of progressive family law through the framework of the philosophy of science and sociology of law framework, social history approach in the implementation of Islamic law reform in Indonesia in general, and the Muslim family law in particular, with the perspective of democracy, pluralism, human rights, and gender justice, which reworded in accordance with the laws and regulations applicable in the context of contemporary Indonesia ,

Although such deficiencies encountered in the selection of the conjunctions in several chapters, this book contributes ideas for all interested parties to deepen contemporary Islamic law, whether students, academics, scholars, legal practitioners, and community observer studies of Islamic law in Indonesia. For

<sup>34</sup> *Ibid.* pp. 167-219.

<sup>35</sup> M. Atho' Mudzhar, *Pendekatan Studi Islam dalam Teori dan Praktek*, (Yogyakarta: Pustaka Pelajar, 1998), p. 246.

<sup>36</sup> Abdul Manan, *Reformasi Hukum Islam di Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2006), pp. 6-11.

the record end, when analyzed as a whole it appears that the tendency is the author of the theory of *ijtihad* by using *maslahah* the perspective of democracy, pluralism, human rights and gender equality. However, as an input for the next revised edition should be considered a strategic communications formula that could unify understanding between groups of thinkers and supporters legalistic approach substansialistik formalistic approach, although it is still in the realm of utopia.

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