Reconstruction of Sharia Understanding with the Humanistic Paradigm: Formulating Khaled Abou El Fadl's Idea of Sharia with the Norm Leveling Theory

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ABSTRACT

This paper examines Khaled Abou El Fadl's thoughts that focus on applying humanistic Sharia. Khaled considers the spread of Sharia with a humanistic pattern important because of the problem of not realizing the ideals of Islamic teachings that uphold justice, welfare, and other universal values at the level of reality for Muslims who experience backwardness and alienation. According to Khaled, this happened due to a misunderstanding in understanding the Sharia, resulting in a wrong practice. The misunderstanding that gave rise to this wrong practice has global implications, assuming that Islam is a non-humanistic religion. By using the analytical description method, this paper reformulates the humanistic Sharia proposed by Khaled from several of his works and rearranges it based on the theory of the leveling norms.

Keywords: Khaled Abou El Fadl, Islamic Law, Contemporary Fatwas

INTRODUCTION

Khaled Abou el Fadl is one of the figures aggressively voicing the re-reading of Islamic traditions based on ethical morals.[1] Khaled Abou El Fadl has written several internationally acclaimed books. Among them are: 1) "Speaking in God's Name: Islamic Law, Authority, and Women" (2001). This book discusses issues such as the authority of Islamic law, interpretation of sacred texts, and the role of women in Islamic society. 2) "The Great Theft: Wrestling Islam from the Extremists" (2005): As previously explained, this book critiques extremist interpretations of Islam and invites readers to return to a balanced and compassionate understanding. 3) "Reasoning with God: Reclaiming Shariah in the Modern Age" (2014): In this book, Abou El Fadl explores concepts such as Sharia, justice, and authority in Islam and provides arguments for the relevance and evolution of Shariah thought in the modern world. 4) "The Search for Beauty in Islam: A Conference of the Books" (2006): This book delves into the concept of beauty in Islam and how it is reflected in art, literature, and the intellectual heritage of Islam. 5) "Rebellion and Violence in Islamic Law" (2001): This work analyzes Islamic law pertaining to rebellion

and violence, offering an understanding of the religious position within the context of political and social resistance. As an activist for Human Rights, he has produced many works that talk about universal morality and humanity.[2] In one of his works entitled *Reasoning with God*, Fadl describes the reality of Muslims who are essentially far from Islamic values. According to him, Islam is a religion that promises peace, tranquility, and prosperity. However, these noble Islamic values are not in line with the reality of the condition of Muslims who are now experiencing setbacks, alienation from the international world, and even becoming victims of the spread of Islamophobia.[3]

The study of Sharia as an effort to reconstruct the understanding of Sharia is an important inquiry conducted by modern Islamic scholars and can be attributed to several factors. For instance, the factor of social change context. The ongoing challenges and evolving social context necessitate relevant and responsive thinking regarding the issues faced by Muslim societies. Critical thinking about the concept of Islamic Sharia helps adapt Islamic values to the realities of the modern world. Despite the resulting debates, Abdullahi Ahmed an-Na'im is an example of a Muslim who engages in such efforts.[4] In line with this, Jasser Auda argues that modern challenges, such as technological advancements and globalization, require a reevaluation of the concept of Islamic Sharia to ensure its continuity in confronting evolving realities.[5] The study of understanding Sharia also serves as a continuous effort to build a just society, which is the goal of Sharia itself. Mohammad Hashim Kamali explains that rethinking the concept of Islamic Sharia helps develop an understanding that promotes social justice, poverty alleviation, and the development of a fair society.[6]

Khaled Abou El Fadl's thinking on this subject is of significant importance. He has made significant contributions to understanding and interpreting the principles of Sharia in a modern context, as evidenced by his previously discussed works. The significance of Fadl's thinking can also be seen in international works that engage with his ideas. For example, "*An Introduction to Islamic Law*" by Wael B. Hallaq discusses the thinking and contributions of Khaled Abou Fadl in the context of Islamic law.[7] "Islam and the Challenge of Democracy" is a book where Fadl is one of the editors, discussing Islam, democracy, and the challenges faced.[8] "Sharia and the State in Modern Muslim Societies", edited by Robert W. Hefner, contains various writings that explore Khaled Abou Fadl's views on Sharia and the state in modern Muslim societies.[9] John R. Bowen authored "Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning", which analyzes the thinking of Khaled Abou Fadl and his influence in the context of Indonesia, particularly regarding Islamic law and equality.[10] According to Fadl, the problem of not being in line with the reality of Muslims today with Islamic values that should be is motivated by several factors. The first is the factor of authoritarianism, which restricts the meaning of religious texts.[11] Second, from the first factor, it gave birth to religious fatwas and decisions that were full of the ideological interests of certain groups. Third, the religious fatwas were then claimed as the will of God and, thus, made this Sharia far from its moral and ethical values.[12] To overcome these problems, Fadl offered to restructure the understanding of Islamic law by using a humanistic paradigm and separating it from temporal fatwas.

This paper aims to further elaborate on the thinking of Khaled Abou El Fadl, particularly based on a humanistic paradigm. The paper attempted to present several scholarly arguments. Firstly, reconstructing the understanding of Sharia based on the humanistic paradigm is a way to overcome authoritarianism in interpreting texts, resulting in the emergence of fatwas without a basis in human ethics. Secondly, to assess the extent of the influence of this humanistic paradigm, the concept of Sharia with the humanistic paradigm were correlated with one of the fatwas issued by the Majelis Tarjih regarding the permissibility of women's leadership. The Majelis Tarjih itself is one of the Religious

Councils of the Muhammadiyah Islamic Organization (further elaboration was discussed later). The correlation between the humanistic paradigm proposed by Fadl and the fatwa will primarily focus on the foundation of the fatwa, namely the three levels of norms that serve as the basis for the fatwa, known as *manhaj tarjih*. Therefore, this paper employed descriptive, analytical, and correlational methods.

DISCUSSION

1. The Urgency of Reconstructing Sharia Understanding

Talking about Reclaiming Sharia in the Modern Age, Fadl describes a contemporary discussion about the moratorium on criminal law in Islam. As the initiator of this moratorium, Tariq Ramadhan offered that the *hudud* penalties would no longer be enforced by force because they could potentially result in injustice.[13] Furthermore, Tariq emphasized that he did not reject the existence of Islamic criminal punishment as part of the Sharia, but the conditions of modern society today are no longer ideal for the implementation of these laws. As a result, if the death penalty is enforced by force, it will be contrary to the purpose of the law itself.[14]

The idea of a moratorium offered by Tariq Ramadhan was rejected by several figures, including Taha Jabir Alwani and Mustafa al-Shuk'a. As stated by Mustafa as-Shuk'a, the dominant argument is that Islamic criminal law is one part of the Sharia, which is a component of faith. Therefore, it cannot be used as a matter of debate, let alone rejection. In addition to impacting faith, it also impacts Muslims in general, who will be increasingly confused and even doubt about the Sharia.[15]

Fadl highlighted from this global discussion the confusion and indecision in trying to harmonize the understanding and application of Sharia with developments in human rights thinking. This confusion is evidenced by at least two things. First, on the one hand, they insist on rigidly implementing parts of Islamic law, but on the other hand, they do not believe in realizing the ideal conditions for applying Islamic criminal penalties. Even if that were to happen, the realization of the ideal condition would not be comprehensive, but only in certain areas.[16]

Second, those who insist on the application of criminal law are people who also often claim strongly that Sharia is in accordance with the ideas of modern government, democracy, and human rights. Sadly, this claim is not followed by the reality on the ground. As evidence, Fadl cites a case that took place in 2013 when a Saudi court caused outrage among human rights circles by punishing someone who committed acts of violence and paralyzed the victim by being sentenced to *qisas*[17] or paying a fine of one million riyals.[18]

This dangerous confusion has indeed been a concern for Fadl for a long time and has been the object of resistance all along. In his other writings, he has criticized various religious fatwas, considered parts of religion, but do not reflect the essence of Islam itself. For example, fatwas prohibit women from driving, travel bans, prohibitions against visiting her husband's grave, and other prohibitions that show the oppression of women. These fatwas seek justification under the protection of religious texts and are claimed to be the undeniable intent of God.[19] This is what Fadl calls the veil of authoritarianism. This authoritarianism wrapped in Sharia is actually the main source of many misunderstandings about the beauty of Islam.

These various realities became the basis for Fadl to propose an offer to reconstruct the understanding of Sharia and how to sort out the Sharia part, which is the unchanging divine value and its conditional application, for example, in the case of the application of Islamic criminal law that has been described previously. Fadl does not agree that the application of hudud must be rigid as described in the text textually. Historically, forms of criminal punishment such as qisas, stoning, and cutting of hands cannot

be separated from the criminal law tradition of the previous historical period, such as the tradition of the law of Moses, the tradition of Arabic culture, Roman law, and some aspects of Persian law. Fadl clearly said, *"Penal laws synchronized with the cultural customs and practices prevalent in their respective societies, so essentially there was no friction caused by the literal meaning of the text and the moral sensibilities of the people".[20]*

In other words, Fadl wanted to say that the application of Islamic criminal law that was carried out in the past was acceptable because it did not conflict with the culture and moral values that formed the perspective of society at that time. This is certainly different if the forms of criminal law are applied today. Today, global society cannot be separated from cosmopolitanism,[21] where epistemological sensitivity and value systems are built on social and cultural conditions that are different from historical times. Among these differences is that human moral values are no longer formed on a local but global scale because the human way of life is the result of various experiences that are shared collectively and cumulatively. Thus, the religious community must change the way of interpreting sacred texts in order to respond to this revolutionary shift and construction of self-awareness so that the universal values contained in these sacred texts can still be captured and practiced appropriately.[22]

2. Understanding Sharia with Humanistic Paradigm

Mashood A. Baderin[23] stated that the term Sharia refers to three meanings. First, Sharia is every aspect of religion in general, in terms of normative law and other aspects, such as ethics, morals, faith, and worship. Second, the Sharia is used for the general understanding of religious law, distinguishing it from common law and civil law. Third, the meaning of Sharia is the fundamental and universal foundation of religion, distinguishing it from fiqh. In this third sense, Sharia refers to the source of revelation, namely the Al-Quran and Sunnah, which are eternal in nature, while *fiqh* (Islamic jurisprudence) is a legal product resulting from understanding the sources of law. Thus, *fiqh* is temporal or commonly called the realm of *ijtihādiyyah.[24]*

For some contemporary Islamic thinkers, the meaning of Sharia is from the term fiqh, which needs to be done because the two terms are often interchanged. One of the maqāshid sharia experts, Jasser Auda, argues that Sharia essentially represents the divine aspect of Islamic law while fiqh shows the cognitive aspects of legal products that cannot be separated from legal actors, namely humans who cannot be separated from shortcomings. Distinguishing clearly this division, continued Jasser Auda, is very important so that there is no blurring of the meaning of Sharia and fiqh, which can have bad consequences, one of which is the claim of fatwas from certain parties as part of divine or Sharia provisions, when in fact it is only a *fiqh* phenomenon. Therefore, *ijtihādiyyah* can be criticized.[25]

This brief description of the concept of Sharia gives us an understanding of Fadl's position in the mainstream of Sharia discourse, where he is not the only person who believes in the importance of reaffirming the concept of Sharia so that it can be distinguished from other terms such as fiqh. Fadl stated that, in reference to the use of the word 'sharia' in Islamic literature, including the Quran, we would discover that Sharia was discussed in numerous forms. One of those forms is the use of the word sharia to show the way people lived in the past *(shariah man sabaq or man qablana)*, which also could mean a Greece way of logical thinking *shar'u al-Falāsif or tariqat al-falāsif).[26]* Thus, Fadl reasoned that linguistically speaking, the use of the word Sharia was not only narrowed to the legal regulations only or the way Muslims live, but it should also be about the way of life for everyone who is bonded by a common set of beliefs and convictions, from this definition. Fadl delivered a specific formula about Sharia, commonly known as *shar'u* Allah in Islam. He affirms,

In Islamic legal usage, typically, the expression *Shariat Allah or shar'* Allah refers to the broad concept of the all-inclusive and total path to and from God, which equated, by necessity, to the path leading to and resulting from social goodness *(ma'rūf)* and moral goodness *(husn, husna,* or *ihsan)*.[27]

The historical analysis that Fadl did and his comprehensively definition of Sharia [as a way of life that is more desired by God based on *ma'rūf* values (acts of kindness) and ideal morality] reveals two things: 1) that, in essence, Sharia entails principles that Allah wants, 2) the attempt to implement Sharia is an expression displayed by every man who is tightly correlated to and largely influenced by human's flaws and their macro condition. The first definition of Sharia is the one that Fadl describes as a divine system which is perfect and unchangeable. Meanwhile, the second definition is fiqh, which is the product of humans' logical reasoning, which is not perfect and will inevitably change. Fadl mentioned this statement several times, one of which is:

"Although Shariah, as the foundation and pathway to goodness, is immutable, unchangeable, and perfect, this foundation and pathway is not perfectly cognizable or realizable by humans".[28]

On another occasion, Fadl described,

"As explained in previous chapters, the tension in legal Islamic discourses was resolved by distinguishing between Sharia and fiqh. Sharia was argued as the divine ideal, immutable, immaculate, and flawless, while *fiqh* is not. *Fiqh* was treated as a human attempt to understand and apply the divine ideal, and several schools of legal thought were considered equally orthodox and authoritative".[29]

This paragraph reaffirms that having a clear distinction between Sharia and fiqh is crucial. Sharia is a divine law that is ideal, immutable, perfect, and without flaws. In contrast, fiqh is a human attempt to comprehend Sharia as described above. Since it is a human attempt, it is without a doubt that it will not last forever. It has flaws and cannot be perfect.

To be clearer, we can now understand how Fadl conceptualizes Sharia and *fiqh*. For Fadl, as explained in the previous paragraphs, Sharia is a way of life that entails ideal principles of morality. In principle, it cannot be vulgarly used as a form of a certain law reinforcement, but it is more like a foundation or a wide road, or in other terms, it is usually seen to function as a basic value. On the other hand, fiqh is a human's attempt to live according to the Sharia, where the implementation can hardly achieve the quality of Sharia. However, it does not mean that humans cannot achieve virtue. It is just that every human's attempt to accomplish intrinsic moral values should be based on the sharia principles.

The essential principles of Sharia – referring to Fadl's explanation – can be described as a way of life that comprises universal values, such as happiness, prosperity, peace, and others, which, as historical records show, never change from one tradition to another. In other words, Fadl describes it as "…*as a basic value system equivalent to natural virtues, goodness, and beauty…*"[30] . These Various explanations regarding the differences between Sharia and fiqh above can briefly be seen in Figure 1:
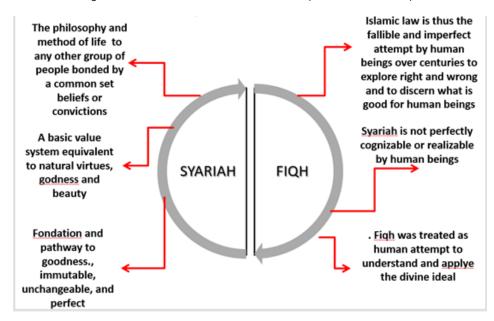
Figure 1: The differences between the concepts of Sharia and fiqh

The philosophy and method of life to any other group of people bonded by a common set beliefs or convictions

A basic value system equivalent to natural virtues, godness and beauty

Fondation and pathway to goodness., immutable, unchangeable, and perfect

SYARIAH **FIQH**

Islamic law is thus the fallible and imperfect attempt by human beings over centuries to explore right and wrong and to discern what is good for human beings

Syariah is not perfectly cognizable or realizable by human beings

. Fiqh was treated as human attempt to understand and applye the divine ideal

3. Application of Humanistic Sharia with Legal Norm Leveling Theory of Syamsul Anwar

In simple terms, we can summarize the spirit of the humanistic paradigm of Sharia, which was initiated by Fadl, which is not at the level of practical law but is principled and universal values that are the basis of all legal determinations and applications as well as a guide to life desired by God. Noble values, in the view of maqāshid Sharia, cannot be contrary to human nature such as love, security, welfare, peace, justice and other noble values which, are the true face of the beauty of Islamic law.[31] This definition is of course still at a theoretical level which needs to be reduced to an epistemological formulation. guide. Therefore, the question is how can the spirit of this humanistic Sharia be formulated as a practical guide in its application? The success of this formulation is also seen from the success or failure of the Sharia formulation to produce fatwas that are more in line with human values.

To answer these important issues and challenges, I tried to "ground" the spirit of Fadl's idea by formulating it through the theory of leveling legal norms. The theory of increasing norms was initiated by Syamsul Anwar, a professor of Islamic law at the Sunan Kalijaga Islamic University, Yogyakarta.[32] Apart from being an expert on Islamic law, he is also actively involved in giving birth to various decisions and fatwas to respond to the problems of the people. This is evidenced by his work as chairman of the Muhammadiyah Tarjih and Tajdid Council from 2000 until now.[33] The theory of the leveling of legal norms initiated by Syamsul Anwar is the result of reflection on the various concepts of usūliyyūn scholars regarding *al-usūl and al-furū*'. By examining the various conceptions and opinions of leading scholars regarding these two terms, he concludes that from the beginning, there has been a stratified level of norms in Islamic law, where one norm with another overshadows and underlies each other. Although this level is not found explicitly in the literature, it can be seen from the signals given by the scholars, especially al-Syatibi, who stated that the universal principle is in stages.[34]

The hierarchy of norms can be arranged by covering three levels. First, concrete legal norms *(al-ahkām al-far'iyyah)*, namely normative legal provisions that are *taklīfi* (The divine law pertaining to human actions that is burdened with legal obligations) and *wad'ī* (The law that renders something as cause for the existence of another or a condition for something else or as an impediment to something else), such as *wajib, haram, mandūb, makrūh, mubah, sabab, shart*, and *man'u*. Laws at this level

directly provide legal provisions on problems in the field. Second, general principles *(al-usūl al-kulliyyah)* are norms above concrete laws which are more abstract and become general principles in Islamic law. Such as the principle that originally everything in the aspect of muamalah is permissible unless there is a special argument that prohibits it. Third, are the basic principles *(al-qiyām al-asāsiyyah/ al-mabādiʾ al-asāsiyyah)*, namely the most basic legal norms and universal principles of the Islamic religion in which general principles are built on. These basic values such as benefit, justice, equality, freedom, brotherhood and so on.[35] If viewed from above, the highest normal is the basic principle that underlies the norms below it, namely general principles, which are the umbrella for concrete-practical laws. When viewed from below, the basic principles become the foundation of general principles and general principles become the foundation of concrete laws.[36]

Based on the three levels of norms formulated by Syamsul Anwar, we can place the humanistic sharia idea of Khaled Abou El Fadl at the level of Islamic law that seems applicable. **First,** Sharia, with the understanding of universal and absolute values is placed on the basic norm *(al-qiyām al-asāsiyyah)*. **Second,** general principles *(al-usūl al-kulliyah)* in Fadl's perspective, we can term as principles that connect these universal values with global human social, cultural and political developments, or we can term them as interconnective principles. **Third**, concrete law *(al-ahkām al-farʿiyyah)*, in the sense of Fadl is fiqh or fatwas that must be shaded or based on general principles and basic principles.

We can also see the application of this formulation from several decisions of the Tarjih and Tajdid Council of Muhammadiyah which have made the theory of leveling norms a method in deciding the law *(manhaj tarjih)*.[37] A concrete example is the fatwa regarding the ability of women to become leaders. In Indonesia itself, the issue of whether or not women can become leaders is still a debate until now. In fact, several Islamic websites that have become a reference for many Indonesian Muslim communities in general still contain articles explaining why women are not allowed to be leaders. For example, on the website romaysho.com, one of the top 10 Islamic pages in Indonesia contains an article *"Pemimpin Wanita Menurut Kaca Mata Islam".*[38] The article reaffirmed that the inability of women as leaders is a Sharia decree based on many religious arguments. Among the main evidences is hadith,

$$لَنْ يُفْلِحَ قَوْمٌ وَلَّوْا أَمْرَهُمْ امْرَأَةً$$

A people will not be prosper if they leave their affairs to women.[39]

Muhammadiyah, through the Tarjih and Tajdid Council, was the earliest Indonesian Islamic organization to produce progressive views on the role and progress of women from a religious perspective.[40] Through the treatise, *Adabul Mar'ah fil Islam*, which was decided at the 18th Congress in Garut and then printed in 1982,[41] Muhammadiyah has issued an opinion that women have the opportunity to access public space and take part in it just like men. In other words, for a long time, Muhammadiyah had a view that allowed women to become leaders. More specifically, in the chapter " bolehkah perempuan menjadi hakim?" (can women be judges?) in the decision it was said, *"bagaimana halnya seorang wanita menjadi hakim, direktur sekolah, direktur perusahan, camat, lurah mentri, walikota dan sebagainya agama tidak memberi alasan bagi yang menolak dan menghalang-halangi!"* (How can a woman be a judge, school director, company director, sub-district head, village minister, mayor and so on? Religion does not give reasons for its refusal and hindrance!").[42]

This religious fatwa is then based on various propositional arguments, which in this case will be more focused on the logic of understanding the arguments centered on the application of the theory of leveling norms with the humanistic sharia paradigm as the goal of this paper. At first, the Tarjih Council determined the basic values of men and women in the view of the Sharia. By quoting the verse of the Qur'an, at-Taubah verse 71, which reads, "The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakah and obey Allah and His Messenger. Those - Allah will have mercy upon them. Indeed, Allah is Exalted in Might and Wise", Majelis Tarjih concluded that men and women have the same position and potential in front of the Sharia. Both of them have the potential to do good and are equally given the task of upholding justice. That way, in every field, men and women have the same opportunity to fight for goodness and do good deeds.[43] This basic principle is used as a basis for understanding other particular texts that talk about women. One of them is the previously mentioned hadith.

According to the Tarjih and Tajdid Council, in the spirit of equality between men and women, the hadith that textually prohibits women from becoming leaders must be understood casuistically. This opinion does not actually violate the text of the hadith itself because, as Suyuti himself stated that, the Prophet's words came out with a special context, namely to a woman who became the successor of leadership at a time when the Persian Empire was experiencing political conflict. Thus, the woman, who was actually only a political puppet, was appointed as a leader not based on the fulfillment of the ideal requirements of a leader.[44] Based on this background, Muhammadiyah concludes that the Prophet's threats to leaders who failed actually did not refer to the female figure but rather to the context of political upheaval that raised an incompetent person to become a leader. As for today, women are just like men in terms of having the opportunity and competence to become leaders.[45] The fatwa related to women's issues in the Book of Religious Questions and Answers Volume IV confirms the previous decision, which, in essence, all the arguments related to women's work must be understood on the basic value of equality and balanced with the spirit of the times.[46]

With the spirit of humanistic Sharia, we can describe Muhammadiyah's religious decisions regarding women in the framework of the theory of leveling norms. First, the norm of equality between men and women to both have the opportunity to do good becomes the basic principle (al-qiyām al-asāsiyyah). Second, from this basic principle, a general principle is formulated that women also have the same potential as men to participate in the public sphere, including in the political sphere. This is the general principle (al-usūl al-kulliyyah). Third, the arguments that literally close the opportunity for women to become women must be understood based on the basic norms and general principles so that they give birth to fatwas that open up opportunities for women to maximize their potential, including becoming leaders. This section becomes the concrete law *(al-ahkam al-far'iyyah).*

CONCLUSION

Based on the above discussion, the following points are necessary to be noted. First, Khaled Abou El Fadl's project of reconstructing the understanding of Sharia with a humanistic style is motivated by the problem of the lack of a clear distinction between the meanings of Sharia and *fiqh*. As a result, the temporal fatwas are claimed to be a part of the Sharia and represent God's intentions. This then has an impact on not realizing the true values of the Sharia. All of that leads to the incompatibility of the ideals of the Sharia with the reality of Muslims. Second, based on Fadl's analysis, Sharia is universal values such as justice, welfare, and equality, as well as other values that are in accordance with human dignity. These values are actually the basic principles and core objectives of the Sharia. Since these values are

parts of the core of the Sharia, they are deemed absolute and perfect. Meanwhile, *fiqh* is a human understanding of these values, which is mediated by an understanding of religious texts. Because it comes from humans, the traditional fiqh cannot be separated from shortcomings and is open to criticism and reinterpretation. Third, the spirit of building fiqh based on humanistic Sharia initiated by Fadl aims to make various fatwas in accordance with the spirit of the times and the conditions of the people so that the noble values of Sharia can be realized. One way to formulate this spirit is by conceptualizing the application of the humanistic Sharia by using the theory of leveling norms which was initiated by Syamsul Anwar. Fourth, the theory of leveling norms shows that there are three tiered norms in Islamic law: (1) the basic principle which in Fadl's view is the Sharia itself; (2) the general principle which in Fadl's idea can be called a general principle that connects the basic principles with the spirit of the times; and (3) concrete law which in Fadl's view is a product of *fiqh* itself.

The findings of this paper contribute, among other things, to further solidifying the evidence of the influence of Khaled Abou Fadl's thinking on the construction of Sharia understanding among Indonesian Muslims, albeit indirectly. One notable example is reflected in the religious fatwa formulated by Muhammadiyah regarding women's issues in the public sphere. The fatwa is based on three levels of norms, with the value of human dignity being one of the fundamental values underlying every Islamic law. This value of human dignity aligns with the humanistic paradigm of Sharia advocated by Khaled Abou El Fadl. Therefore, this paper can serve as a foundation for further research to examine the extent to which Khaled Abou El Fadl's thinking directly influences religious fatwas.

ENDNOTES

[1] Nadirsyah Hosen calls it as *an enlightened paragon of liberal Islam.* Nadirsyah Hosen, "Pujian dan Kesaksian" dalam Khaled M. Abou Fadhl, *Atas Nama Tuhan; dari Fikih Otoriter ke Fikih Otoritatif,* Pent. R. Cecep Lukman Yasin (Jakarta: Serambi, 2004).

[2] Some of the works he wrote show how serious he is to explore the values of morality and ethics in Islamic teachings. Among these works are *Speaking in God's Name: Islamic Law, Authority and Women* (Oneworld Press, Oxford, 2001); *Rebellion and Violence in Islamic Law* (Cambridge University Press, 2001); *and God Knows the Soldiers: The Authoritatice and Authoritarian in Islamic Discouerses* (Rowman and Littlefied, 2001); *Islamic and the Challenge of Democracy* (Princeton University Press, 2004); *The place of Tolerance in Islam* (Beacon Press, 2002); *The Search for Beauty in Islam* (Rowman and Littlefield, 2001).

[3] Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age,* (Lanham: Rowman & Littlefield, 2014), xiii

[4] Abdullahi Ahmed An'-Na'im, *Islam and the Secular State: Negotiating the Future of Sharia,* (Harvard University Press, 2008)

[5] Jasser Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (London, The International Institute of Islamic Thought, 2008)

[6] Jasser Auda, Maqasid *al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* (London, The International Institute of Islamic Thought, 2008)

[7] Wael B. Hallaq, *An Introduction to Islamic Law,* (US: Cambride University Press, 2009)

[8] Khaled Abou El Fadl, al. *Islam and the Challenge of Democracy,* (A Boston Review Book, 2004)

[9] Robert W. Hefner, *Shari'a and the State in Modern Muslim Societies,* (Indiana University Press, 2011)

[10] John Richard Bowen, *Islam, Law and Equality in Indonesia, an Anthropology of Public Reasoning,* (Cambridge University Press, 2003)

[11] More clearly, Khaled Abou Fadhl said, *authoritarianism is the act of "locking" or captivating the Will of divine or the will of the text into the specific determination, and then presenting this determination as inevitable, final and conclusive.* Khaled M. Abou Fadhl, *Speaking in God's Name: Islamic Law, Authority and Women,* (Oxford: Oneworld Publications, 2003), 2; *Conference of the Book, The Search Beauty in Islam,* (Lanham: University Press of America, 2001), 36

[12]Regarding the second and third factors, Khaled Abou Fadhl highlighted the various religious fatwas issued by the CRLO (Council for Scientific Research and Legal Opinions), mainly fatwas regarding women. According to Khaled, many of the fatwas are not in line with the true values of Islam. Such as the prohibition of women going out without a mahram, and other fatwas considered not in favor of women. Amin Abdullah, "Pendekatan Hermeneutik". Dalam Pengantar Khaled Abou fadhl, *Speaking in God's Name,* ix; Raisul "Pemikiran Hukum Islam Khaled Abou El Fadl", dalam *Mazahib Jurnal Pemikiran Islam,* Vol. XIV, No. 2 (2015), 150

[13]Tariq Ramadhan, "An International Call for Moratorium on Corporal Punishment, Stoning and The Death Penalty in the Islamic World. https://tariqramadan.com/an-international-call-for-moratorium-on-corporal-punishment-stoning-and-the-death-penalty-in-the-islamic-world/;

[14]Ibid.

[15]al-da'wah ta'līq al-'uqūbāt al-jasadiyyah fi al-Islām https://www.alhurra.com/latest/2019/10/23; Ārā` Jamā'ah al-'Ulamā` Da'wā Ṭāriq Ramadhān li Ta'līq al-Ḥudūd, *Multaqan,* August 6, 2005, http://www.ikhwan.net/forum/showtread.php?2810

[16]Khaled Abou El Fadl, *Reasoning with God,* 293

[17]Qisas means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-iamd in exercise Of the right of the victim or a Wali. https://www.lawinsider.com/dictionary/qisas

[18] "Saudi Arabia: News of Paralysis Sentence 'Outrageous", *Amnesty International,* April 2, 2013, http://www.amnesty.org/en/news/saudi-arabia-news-paralysis-sensence-outragious-2013-04-02 . Ibid, 294

[19]Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women,* (London: Oneworld Publications, 2001), 428

[20]Khaled Abou El Fadl, *Reasoning with God, 294*

[21]Jeremy Waldron, "What Is Cosmopolitan?" *Journal of Political Philosophy* 8, no.2 (2000), 227.

[22]Khaled Abou El Fadl, *Reasoning with God,* 295

[23]Mashood A. Baderin is professor of law at the School of Oriental and African Studies at the University of London, and the author or editor of several books dealing with the intersection of international and Islamic law. In his 2003 work, International Human Rights and Islamic Law, Baderin examines the compatibility of Islamic law with human rights on the international stage, questioning whether or not in fact Muslim states, operating by Islamic law, can comply with international laws regarding human rights. Baderin closely examines the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and articles of the Convention on the Elimination of All Forms of Discrimination against Women as they compare to Islamic law and concludes that such laws are compatible, especially if there is a synthesis made, and if international laws are not simply imposed from the top down. https://www.encyclopedia.com/arts/educational-magazines/baderin-mashood

[24]Mashood A. Baderin, "Understanding Islamic Law in Theory and Practice, "*Legal Information Management,* Vol.9, No.3 (2009), 186-187; see also, Niki Alma Febriana Fauzi, "Nalar Fikih baru Muhammadiyah: Membangun Paradigma Hukum Islam yang Holistik", *Afkaruna,* Vol. 15, No. 1 (2019), doi 10.18196/AIIJIS.2019.0093, 19-41

[25]Jasser Auda, *Maqāsid al-Syarī'ah as Philosophy of Islamic Law: A Systems Approach,* (London: The International Institute of Islamic Thaught, 2007), 59

[26]Khaled, *Reasoning with God,* 296

[27]Ibid,

[28]Ibid, 296

[29]Ibid, 309. See also Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany: State University of New York Press, 1995).

[30]Khaled Abou El Fadl, *Reasoning with God,* 297.

[31]Regarding the characteristics of the benefit to be achieved in the objectives of the Shari'a, al-Qaradawi describes it quite comprehensively. see Yusuf al-Qaradhawi, *Madkhal li Dirāsah al-Syarī'ah al-Islāmiyyah,* (Kairo: Maktabah Wahbah, 1997 M).

[32]https://uin-suka.ac.id/id/page/detil_dosen/195602171983031003-Syamsul-Anwar.For the full biography, see Supriatna, "Menulusuri Pemikiran Hukum Islam Prof. Dr. H. Syamsul Anwar, MA. Dalam *Khoiruddin nasution, Ahmad Pattiroy dan Slamet Khilmi* (ed.) *Dari Hasbi Ash-Shiddiqy Hingga Malik Madany: Pemikiran Hukum Islam Dekan Fakultas Syari'ah UIN Sunan Kalijaga Yogyakarta (1963-2007)* (Yogyakarta: Syari'ah Press UIN Sunan Kalijaga, 2009)

[33]During his leadership period, many products of the Muhammadiyah Leadership Council and Tajdid were born, and these decisions were progressive in nature so that they were not only references for Muhammadiyah residents, but Indonesian Muslims in general. Among them are the *Fiqh* of Child Protection, the *Fiqh* of Disasters, the *Fiqh* of Information, and others. Some of the writings that review his thoughts include: Niki Alma Febriana Fauzi, "Syamsul Anwar dan Pemikirannya dalam Bidang Hisab-Rukyat" *Al-Marshad Jurnal Astronomi Islam dan Ilmu-Ilmu Berkaitan,* Vol. 1, No. 1 (2015), http://dx.doi.org/10.30596%2Fjam.v1i1; Qaem Aulassyahied, "Wacana Studi Interkoneksi Hadis: Telaah Ringkas Pemikiran hadis Syamsul Anwar, *Jurnal Tarjih,* Vol. 13, No. 2, (2016).

[34]One of these signs is contained in Ash-Syatibi's explanation of the qath'i law and the anni law. According to ash-Syatibi, the distinction between these two laws is not dichotomous, but rather a distinction between levels and levels. The determination is that the more a legal norm is supported by legal sources or arguments, the more qath'i it is, on the other hand, the fewer legal norms are supported, the more legal norms are supported. anni. In other words, ash-Syatibi wants to state that there is no keqathi'an that is based on only one independent proposition. Keqath'ian can only be achieved if a number of propositions are corroborated towards one purpose and meaning. Abu Ishaq Asy-Syatibi, *al-Muwāfaqāt,* (Arab Saudi: Dār Ibn 'Affan), I, 27-28. Lihat juga Syamsul Anwar, "Teori Pertingkatan Norma dalam Ushul Fikih" *Asy-Syir'ah,* Vol.50. No.1 (2016), 150

[35]Ibid, 162

[36]Ibid.

[37] Syamsul Anwar, *Manhaj Tarjih Muhammadiyah,* (Yogyakarta: Majelis Tarjih dan Tajdid Pimpinan Pusat Muhammadiyah, 2018).

[38]https://rumaysho.com/947-pemimpin-wanita-menurut-kaca-mata-islam.html

[39]This Hadith has been dated by many Imams of Hadith in their books. Among them, al-Bukhari, *Ṣaḥiḥ al-Bukhārī,* tahqiq. Muhammad Zuhair bin Nashir an-Nashir, (t.t: Dār Ṭūq al-Najāh, 1442 H), IV, 8

[40]Wawan Gunawan Abdul Wahid even said that the Tarjih Council and the Tajdid Muhammadiyah were the earliest fatwa institutions to issue a fatwa allowing women to become leaders. Wawan Gunawan Abdul Wahid, "Kepemimpinan Perempuan Dalam Kajian Majelis Tarjih Muhammadiyah: Telaah Analisis Gender", *Musāwa,* Vol. 3, No. 1, (2004)

[41]Majelis Tarjih Pimpinan Pusat Muhammadiyah, *Adabul Marah Fil Islam,* (Yogyakarta: PT Percetakan Persatuan, 1982).

[42]Ibid, 51

[43]Ibid, 51

[44]Jalaluddin as-Suyuti, *Asbāb Wurūd al-Ḥadīš aw al-Lam fī Asbāb al-Ḥadīš,* (Beirut: Dār al-Kutub al-Ilmiyyah, 1984 M), 82-84.

[45]*Adabul Mar'ah,* 51-52

[46]Tim Majelis Tarjih, *Tanya Jawab Agama,* (Yogyakarta: Suara Muhammadiyah, 1998), IV, 241

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