

2. Reinventing the Human Dignity in Islamic Law Discourse

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Reinventing the Human Dignity in Islamic Law Discourse: The *Wasatiyah* Approaches from Khaled Abou El-Fadl to the Interreligious Relation

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Abstract: Violence in the name of religion has never completely disappeared from discourse on religious life. Surprisingly, Islamic law is used as the basis for committing acts of violence damaging interreligious relations. There is a gap between the goals of Islamic law and practice in society. This article aims to unpack the *wasatiyah* approach provided by Khaled Abou El-Fadl in Islamic law discourses. This research is a qualitative method using library research, which obtains information from books, articles, and journals. This research concludes that El-Fadl provides an essential concept known in contemporary Islamic law as *al-wasatiyah* by integrating various scientific disciplines to strengthen human dignity. El-Fadl offers a moderate-humanist approach as a system that is considered more holistic and comprehensive in Islamic law, especially in constructing texts, understanding the context, and optimizing legal reasoning based on *maqasid al-shariah* through independent reasoning. This article shows that El-Fadl allows greetings to non-Muslims, greetings of Christmas to non-Muslims, interacts with non-Muslims, and elects non-muslim leaders. El-Fadl believes in strengthening the theological basis of pluralism, which requires tolerance as a pathway for creating a mutually productive life together.

Keywords: Human dignity; Islamic law; Khaled Abou El-Fadl; inter-religious relation.

Abstrak: Kekerasan atas nama agama tidak pernah hilang dari wacana kehidupan keagamaan. Yang menarik, hukum Islam dijadikan dasar untuk melakukan tindakan kekerasan yang kemudian merusak hubungan antarumat beragama. Dalam konteks itu, terdapat kesenjangan antara tujuan hukum Islam dan praktik di masyarakat. Artikel ini bertujuan untuk mengkaji pendekatan *wasatiyah* yang ditawarkan oleh Khaled Abou El-Fadl dalam wacana hukum Islam. Penelitian ini merupakan penelitian kualitatif dengan kajian kepustakaan yang bersumber dari buku, artikel, dan jurnal. Penelitian ini menyimpulkan bahwa El-Fadl menghadirkan konsep moderatisme dalam hukum Islam kontemporer yang diistilahkan dengan *al-wasatiyah* dengan mengintegrasikan berbagai disiplin ilmu untuk mengokohkan martabat kemanusiaan. El-Fadl menawarkan pendekatan moderat-humanis sebagai sistem yang lebih holistik dan komprehensif dalam kajian hukum Islam, terutama dalam mengkonstruksi teks, memahami konteks, dan mengoptimalkan penalaran hukum berbasis *maqasid*

al-syariah melalui ruang ijtihad. Artikel ini menunjukkan bahwa El-Fadl membolehkan ucapan salam kepada non-Muslim, ucapan Natal kepada non-Muslim, interaksi dengan non-Muslim, dan memilih pemimpin non-Muslim. El-Fadl meyakini bahwa penguatan dasar teologis pluralisme membutuhkan toleransi sebagai jalur pelempang terciptanya kehidupan bersama yang produktif.

Kata kunci: Martabat kemanusiaan; hukum Islam; Khaled Abou El-Fadl; hubungan antarumat beragama.

Introduction

In the discourse of Islamic legal thought, there is a conflict between an understanding based on subjective and objective religiosity. In the context of subjective religiosity, there is a tendency towards a textual approach due to the absence of empirical analysis in the Islamic legal system.¹ There is a distance between Islamic law discourse and practices in society. A research result from Jalil Roshandle and Sharon Chadha shows that Islamic law (*fiqh*) was used as the basis for committing acts of violence, including terrorism.²

Amin Abdullah explained the characteristics of a subjective understanding, among others, as follows.³ *First*, normative. It means understanding other people or other groups through their knowledge. As a result, this view is dogmatic-theological because it uses only one of understanding. This normative view assumes that only their thoughts are the most correct and valuable, while knowledge of groups and other people is not proper. This paradigm is the thinking style that constantly contradicts (*al-uqul al-mutanafisa*). *Second*, involvement. Full involvement goes beyond the limits of fairness, so it's included in fanaticism (*asabiyah*).⁴ If fanaticism has entered, inevitably, emotions will also be involved. *Third*, observations from within. Normative religious understanding means seeing reality from insider. *Fourth*, absolutism. The interpretation that is born from the pattern of authoritarianism then leads to a single belief. Absolutism differs from science which relies on probability, which can be wrong and right. On the other hand, the absolutism of understanding excludes probability. *Fifth*, absolute. This understanding completely ignores the element of dialogue because it was based on a strict performance and intellectual despotism.⁵

In the context of Islamic law, the understanding described above has led to the knowledge of *fiqh* in a narrow space and has a textualists-formalistic orientation. This is supported by the ability of *fiqh* scholars who are trapped in a model of legal reasoning that combines religious absolutism by using a literal approach that is absent from the values of humanism.⁶ Adherence to rigid, rigid texts and legal formalities will lead to the turning of the Shari'a itself. The textualist approach leads scholars to fail to see complex realities outside the text, so the ideas born tend to be biased towards essentialism. Islamic law became a rigid doctrinal norm. As a result, inter-religious relations are limited by textual-

¹ A. Halil Thahir, "Dari Nalar Literalis-Normatif Menuju Nalar Kontekstualis-Historis Dalam Studi Islam," *Islamica: Jurnal Studi Keislaman* 5, no. 1 (1 September 2010): 1-14, <https://doi.org/10.15642/islamica.2010.5.1.1-14>.

² Jalil Roshandel dan Sharon Chadha, *Jihad and International Security* (New York: Palgrave Macmillan US, 2006), 27, <https://doi.org/10.1057/9780312376130>.

³ Amin Abdullah, "Intersubjektifitas Keberagamaan Manusia: Membangun Budaya Damai Antar Peradaban Manusia Melalui Pendekatan Fenomenologi Agama," dalam *Filsafat dan Bahasa dalam Islam* (Yogyakarta: Lemlit, 2006), 40.

⁴ Bart Schuurman dan Max Taylor, "Reconsidering Radicalization: Fanaticism and the Link Between Ideas and Violence," *Perspectives on Terrorism* 12, no. 1 (2018): 3-22.

⁵ Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, Repr (Oxford: Oneworld, 2010), 207.

⁶ Mohammad Hashim Kamali, "Methodological Issues in Islamic Jurisprudence," *Arab Law Quarterly* 11, no. 1 (1996): 3-33, <https://doi.org/10.2307/3381731>.

formalistic religious understandings, which lead to a strict and inflexible perspective, which can build a truth claim at a certain point.⁷

The textualist-dichotomous framework of thought in Islamic law is rooted in the creed of divine religions that only divide human reality into two-way views, white-black, right-wrong, light-dark, holy-dirty, and others.⁸ This is influenced by the traditional heritage of the Arab community who are in tribal leadership so that they are perched in tribal fanaticism. In a more extreme religious attitude, symptoms of disbelief, misdirection, and labeling appear, especially for thoughts that are contrary to the mainstream and the majority view.⁹ This reality is a crucial problem in the dynamics of the development of Islamic thought, especially the strengthening of homogeneous and centralized thinking. The tendency to adopt a view is a form of uniformity of religious belief.¹⁰

Based on that reality, some scholars emerged with the spirit of renewal to restore the energy of Islamic law that leads to harmony and peace. One of the intellectuals who emerged with the spirit of moderation in Islamic law was Khaled Abou El-Fadl.¹¹ El-Fadl critically reread classical fiqh to answer various problems in society. El-Fadl has the same argument as Yusuf al-Qaradhawi, who proposes alternative thoughts to fight the textualist-subjective understanding of fiqh. El-Fadl offers a renewal of thinking so that fiqh was reformed into fiqh of reality (*fiqh al-waqi'*) and priority fiqh (*fiqh al-awlawiyat*), namely fiqh that can be used as a new light for humanitarian problems that arise amid the reality of society.¹² In this context, the spirit of fiqh was revived to touch on actual issues, including issues of gender equality (*fiqh al-mar'ah*), constitutional fiqh (*fiqh al-dawlah*), citizenship (*fiqh al-muwatonah*), and so on. With the spirit of returning fiqh to its primary function, El-Fadl places that fiqh is a dynamic field of science that is not only understood statically, exclusively, and discriminatory.¹³

This article examines El-Fadl's thought of Islamic legal moderation, which offers educational

⁷ Roshandel dan Chadha, *Jihad and International Security*, 27.

⁸ Sayed Sikandar Shah, "Homicide in Islam: Major Legal Themes," *Arab Law Quarterly* 14, no. 2 (1999): 159–68.

⁹ Aksin Wijaya, *Dari Membela Tuhan ke Membela Manusia: Kritik atas Nalar Agamaisasi Kekerasan* (Bandung: Mizan, 2018), 3.

¹⁰ M. D. Litonjua, "Contending Ideologies: Liberal Democracy and Religious Fundamentalism," *International Review of Modern Sociology* 44, no. 1/2 (2018): 23–49.

¹¹ Khaled Abou El Fadl, *The Search for Beauty in Islam: A Conference of the Books* (Lanham, Md: Rowman & Littlefield, 2006), xv. Khaled Abou El-Fadl's biography has been written by many scholars in Indonesia and the context of global scholarship. His great works evidence El-Fadl's expertise in Islamic legal thought. Constructive and solution ideas are reflected in his various fascinating scholarly works. Some of the monumental books include: *Speaking in God's Name: Islamic Law, Authority and Women* (2001), *Rebellion and Violence in Islamic Law* (2001), *And God Knows The Soldier: The Authoritative and Authoritarian in Islamic Discourse* (2001), *The Place of Tolerance in Islam* (2002), *The Great Theft: Wrestling Islam from The Extremist* (2005), *The Search for Beauty in Islam; A Conference of The Books* (2006), *Reasoning with God: Reclaiming Shariah in The Modern Age* (2014), and so on. El-Fadl is also the founder of *The Institute of Advanced Usuli Studies*, an educational non-profit dedicated to ethics, beauty, and critical thinking in the Islamic intellectual tradition. Among the awards received, El-Fadl has received a *Human Rights Award* from the University of Oslo. In 2013, El-Fadl was named *the 500 smartest people of faith* from TheBestSchools.org, and was awarded *the Outstanding Muslim in America* in 214. Khaled was also named on *The Power 500 List of the World's Most Influential Arabs* and awarded as *The World's 500 Most Influential Muslims*. In other activities, El-Fadl is also an American Lawyer, on the Governing Council of Human Rights Watch, and was appointed by President George W. Bush as a member of the US Commission on International Religious Freedom. In other activities outside the academic environment, El-Fadl still takes the time to fill out online studies by giving fatwas related to Islamic law and human rights issues. This can be seen from <https://law.ucla.edu/faculty/faculty-profiles/khaled-m-abou-el-fadl>.

¹² Yusuf Al-Qaradhawi, *Fiqh al-Wasatīyah al-Islamiyah wa al-Tajdid: Ma'alim wa Manarat* (Cairo: Dār al-Syuruq, 2010), 18.

¹³ Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law*, 1 ed. (Cambridge University Press, 2001), <https://doi.org/10.1017/CBO9780511560163>; Nasrullah Nasrullah, "Hermeneutika Otoritatif Khaled M. Abou El Fadl: Metode Kritik Atas Penafsiran Otoritarianisme Dalam Pemikiran Islam," *HUNafa: Jurnal Studia Islamika* 5, no. 2 (15 Agustus 2008): 137–50, <https://doi.org/10.24239/jsi.v5i2.160.137-150>; Akrimi Matswah, "Hermeneutika Negosiatif Khaled M. Abou El Fadl terhadap Hadis Nabi," *ADDIN* 7, no. 2 (14 November 2015), <https://doi.org/10.21043/addin.v7i2.578>.

pluralism (*ta'addud al-madahib*) in the fiqh tradition that extends widely to the acceptance of others, especially in the discourse of religious harmony. This article focuses on El-Fadls moderate approach, which emphasizes that the flexibility of Islamic law can strengthen human solidarity for several centuries. The argument of this research shows that Islamic law has the value of the flexibility that can be applied and practiced among society and not just idealism from the possibility of its application.

Beauty in Islamic Law: Institutionalizing Human Dignity

The phenomenon of religious understanding is often manipulated to foster conflict and revive identity politics. The understanding of fiqh is directed to the dominance of religious values, which leads to exclusivity.¹⁴ Not only that, spiritual teachings are opposed to state policies. Authoritative and credible Ulama no longer hold religious authority—due to a group who felt the most authoritative in understanding religious texts in fiqh.¹⁵ Everyone with a different understanding considered a match opponent, if necessary, removed even by violent-extremism.¹⁶ Discrimination is also born from an experience that imposes and uses a legal-formal approach.

Religious narratives are a competitive arena that potential to be produced by certain groups to disseminate religious ideas and symbols to the public. Religious narratives become an arena easily manipulated and narrated according to subjective view.¹⁷ This phenomenon then leads to a pattern of misleading other groups, labeling infidel, and accusing apostates of heresy. This paradigm shapes the thinking in religious narratives, including in Islamic law. According with this, in the history of Islamic legal thought, there is the term pragmatism in the practical application of a school of thought. Ahmed Fekri Ibrahim defines “pragmatism” in fiqh as a beneficial act based on practicality and tends to be in a subjectively comfortable position. In the construction of Ibrahim, pragmatic thinking patterns are born from excessive flexibility of thought.¹⁸ This can be seen in several ways, which are caused by several things, including the excessive of the principles of *maslahah*; *choosing the facility* (*tatabbu 'al-rukhas*), and following the most accessible school (*al-talfiq bayn al-mazahib*); and finding legal instruments (*al-tahayul al-fiqhiyyah*) to justify certain decisions.¹⁹

According to Khaled Abou El Fadl, the monopoly of truth that ignores *maqasid al-shariah* was built by authoritarianism towards the text so that it ignores the socio-historical context. El-Fadl offers a

¹⁴ Norman Anderson, “Islamic Law Today the Background to Islamic Fundamentalism,” *Arab Law Quarterly* 2, no. 4 (1987): 339–51, <https://doi.org/10.2307/3381605>.

¹⁵ Litonjua, “CONTENDING IDEOLOGIES”; Paul Hedges, *Understanding Religion: Theories and Methods for Studying Religiously Diverse Societies*, 1 ed. (University of California Press, 2021), <https://doi.org/10.2307/j.ctv1h1vbz6>.

¹⁶ Rizqa Ahmadi, “Kontestasi atas Otoritas Teks Suci Islam di Era Disrupsi: Bagaimana Kelas Menengah Muslim Indonesia Memperlakukan Hadis melalui Media Baru,” *Jurnal Studi Agama dan Masyarakat* 15, no. 1 (26 Juni 2019): 22–35, <https://doi.org/10.23971/jsam.v15i1.1138>.

¹⁷ Wildani Hefni, “Moderasi Beragama Dalam Ruang Digital: Studi Pengarusutamaan Moderasi Beragama Di Perguruan Tinggi Keagamaan Islam Negeri,” *Jurnal Bimas Islam* 13, no. 1 (21 Juli 2020): 1–22, <https://doi.org/10.37302/jbi.v13i1.182>.

¹⁸ Ahmed Fekry Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History*, ed. oleh Peter Gran (Syracuse University Press, 2015), 31–60. <https://www.jstor.org/stable/j.ctt1j1nsn6.2015>

¹⁹ Al-Shatibi divides Islamic law (*fiqh*) thought into two ways. *First*, rigidity and inflexibility. This was caused by several things, including fanaticism towards certain schools, or scholars, depending on the text’s literal meaning and without reference to the purpose (*maqasid*); and excessive dependence on the use of *sad al-dhara'i* in disputed matters. *Second*, excessive flexibility. In this context, Abu Ishaq Ibrahim al-Shatibi explains that a wise mufti is moderate in view and does not burden with unnecessary frameworks (*al-shiddah*) and does not tend towards excessive flexibility. See Abu Ishaq Ibrahim al-Shatibi, *Al-Muwafaqat fi Usul al-Shariah* (Beirut: Dar al-Ma'rifat, t.t.).

dialogue-negotiation approach in presenting a moderate-harmonious and beautiful Islamic law. El Fadl proposes the need to create a new genre of Islamic thought characterized by five interrelated main things: self-restraint, diligence, comprehensiveness, reasonableness, and honesty. The study of Islamic law offered by El-Fadl is negotiable to unite various groups and factions fighting for the authority to read and interpret texts in the contemporary era to strengthen human dignity.²⁰

El-Fadl's thought of moderate Islamic law can be read in three constructions: *first*, a review of the objectives of methodologies in studying Islamic law. *Second*, the formulation of Islamic law by involving core aspects in the contemporary context by combining various social-humanities, Islamic and non-Islamic scientific approaches. *Third*, moderate-humanist Islamic law campaigns throughout the world with El-Fadl's intellectual pursuits to show that Islamic law respects human rights and dignity and is not discriminatory. These three indicators are essential as an element of acceptance and respect for the idea of the diversity (*ikhtilaff al-ra'y*) and an affirmation of the diversity of theology and schools of thought in Islamic law.²¹ El-Fadl emphasized that the *wasatiyah* approach in Islamic law does not interpret legal products with a rigid framework without looking at other parties or paying attention to developing realities. Thus, the true nature of the *wasatiyah* approach is to combine various thoughts to create ideal formulations of Islamic law by way of deliberation (*syura*), not by authoritarian methods.

According to El-Fadl, authoritarianism in Islamic legal thought is the result of procedural-methodological errors related to three things: the author, the text, and the reader. A reader will understand a text with methodological provisions in Islamic law. The interpretation of a text should not be determined by an individual or a group of people with particular interests. Apart from the notion that there is no single meaning in a text, a text reader does not have the capacity and is not authoritative to claim to speak for God. This authoritarianism of interpretation often leads to disputes: black-and-white, right-wrong, which triggers conflict. The approach of *wasatiya* in Islamic law conducted by El-Fadl contradicts the opportunist concept of following a school of thought.²² This approach emphasizes that following a madhhab is based on the belief in carrying out the shari'a as well as possible without choosing the easiest.

Opposing Authoritarianism and Confronting Sectarianism

The spread of the monopoly of truth that monopolizes interpretation with intolerant, literal-textual, anti-rational characteristics and ignores *maqashid al-shariah*, has encouraged El-Fadl to reconstruct the existing pattern by carrying out several criticisms of the authoritarian understanding of Islamic law. The phenomenon of authoritarianism, according to El-Fadl, is an indirect result of procedural-methodological errors related to three aspects: the text, the author, and the reader. In connection with this phenomenon, El Fadl discusses the tendency to isolate interpretations applied by some groups. Isolative interpretation is an interpretation that shackles and limits other groups by eliminating dialogue.

Today's most obvious example is the authoritarianism in the Wahhabi Islamic puritanism movement. The movement, based in Saudi Arabia, has received government support to close the

²⁰ Abou El Fadl, *The Search for Beauty in Islam*, 37.

²¹ Abou El Fadl, *Speaking in God's Name*, 34.

²² Abou El Fadl, *The Search for Beauty in Islam*, 35-36.

dynamics of the text so that the truth is singular.²³ Responding to this, El-Fadl explained the dynamics of Islamic law through critical scientific approaches such as hermeneutics and semiotics. El-Fadl is very concerned about the phenomenon of authoritarianism in the Islamic legal tradition. According to El-Fadl, the authoritarian attitude in Islamic law will close the views of others and hinder the interpretation of other parties. El-Fadl believes that Islamic law as a textual indicator is difficult to separate from fiqh books that have long been considered final. Thus, fiqh is challenging to avoid from authoritarianism, especially that carried out by jurists. Meanwhile, the jurists or Islamic jurists have become a source of textual legitimacy. El-Fadl, in this context, mentions that diversity within the schools of Islamic law is a form of recognition of the concept of *ikhtilaf* in Islamic law.²⁴

The moderate approach offered by El-Fadl is the first step in contextualizing a credible understanding. Therefore, El-Fadl shows the idea of an open text. It is a work in movement that allows itself to be freely studied and interpreted in various ways. In this position, the reader must be able to present a dynamic nuance to interpret the available text to lead to the text's compatibility with existing contemporary issues. A mujtahid must know and understand the original and historical meaning, which is very closely related to the historical context. El-Fadl's methodology is almost the same as that of progressive ijtihadists, but El-Fadl undertakes a reconstruction by contextualizing it with contemporary developments. El-Fadl took the following steps. *First*, reasonably serious attention to the historical context and dynamics. *Second*, realizing that many things developed long after the Qur'an was revealed so that contextual-ijtihadist approaches were needed that did not exist in the Qur'an. *Third*, understand and approach the text with an attitude of justice and fairness. *Fourth*, examine the authenticity of a text by examining its origins. *Fifth*, give a relatively high focus on contemporary issues. *Sixth*, maintaining the reader's authority to speak based on humanity.²⁵

El-Fadl's contextual of Islamic law understanding advocates dialogue-inclusive diversity to voice a progressive-humanist methodology of Islamic law instead of the concepts of exclusivity of performance. Contextual hermeneutics built by El-Fadl is multidisciplinary that combines various approaches such as linguistics, interpretation of social knowledge, and critical literacy. Thus, the approach of moderate Islamic law (*wasatiyah*) aims to empower fiqh that is humanist, moderate, transformative, and far from discriminatory in building beauty in Islamic law by rejecting authoritarianism and sectarianism.

Khaled Abou El-Fadl and Initiative to Make Islamic Law Down-to-Earth

The combination of abilities and knowledge obtained from the Western and Islamic intellectual traditions, coupled with his expertise as a legal practitioner, then place El-Fadl as a scholar who is highly regarded in Islamic legal scholarship in Western countries. El-Fadl did not waste his presence in America; he then colored the discourse on Islamic law in a non-Muslim majority country. Freedom of expression amid democracy with political and religious freedom in Western countries is used by him to voice his ideas and insights openly. El-Fadl's journey changed from traditional-conservative academics in Kuwait and Egypt to moderate-progressive academics. This progress is shown by El-

²³ Syeirasi M. Kholid, *Wasatiyah Islam: Anatomi, Narasi dan Kontestasi Gerakan Islam* (Bekasi: Alif, 2020), 83-99.

²⁴ Khaled Abou El Fadl, "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries," *Islamic Law and Society* 1, no. 2 (1994): 141-87, <https://doi.org/10.2307/3399332>.

²⁵ Abou El Fadl, *Speaking in God's Name*, 207-211.

Fadl's critical thoughts on actual issues of Islamic law. El-Fadl carries out a moderate and contextual grounding of Islamic law amid the plurality of contemporary society.

The grounding of Islamic law began with El-Fadl's idea of the *wasatiyah* Islamic legal approach, which departs from the understanding that religion is anthropocentric-humanist for humanity. El-Fadl criticized the understanding that positions religion more likely to be theocentric. In Islamic legal thought, the constructive criticism conveyed by El-Fadl is based on an anthropocentric-humanist understanding to move from a theocentric understanding. It is considered the trigger for the birth of Islamic legal thought, which is far from the religious mission of *rahmatan lil alamin*.²⁶ This inequality then became the initial basis for the delivery of religious understanding, including in Islamic legal thought, which is puritanical, militant, and even extreme. This reality arises as a result of a rootless knowledge of the benefit and harmony of humanity.

In contemporary Islamic law, El-Fadl examines the issue of the mujtahid's authority and the risk of intellectual despotism (*al-istibdad al-ra'y*), which is considered the cause of moving away from an objective religious manhaj. El-Fadl wants the return of Islamic jurisprudence (*fiqh*) as epistemology and at the same time as a research method, not merely Islamic scholarly discourses that are political and authoritarian.²⁷ El-Fadl offers a humanistic approach instead of a puritanical understanding of Islamic law. He uses the term puritan to describe the face of Islamic legal thought which has a practical orientation of theocentric theology. In El-Fadl's perspective, puritans are an exclusive, closed, intolerant group and textual-normative interpreters of texts. The understanding of puritan groups in Islamic law revolves around the issue of authenticity and denies humanitarian issues. El-Fadl refuted this understanding by constructing a moderate humanist approach to Islamic law with textual reasoning that puts forward values and morals rather than formal legal aspects. The approach of *wasatiyah* in Islamic law offered by El-Fadl emphasizes text interpretation using an empathetic and democratic attitude, rational, cosmopolitan, ethical aspects, and personal behavior.²⁸

As for the tendency of El-Fadl's thinking, which shows that Islamic law is contextualized amid a plurality of society, it can be seen in two frameworks.²⁹ *First*, the humanization of the meaning of the text. El-Fadl formulated the purpose of a text with the concept of authority in Islamic law. El-Fadl distinguishes between being an authority and being an authority. In El-Fadl's analysis, the *wasatiyah* of Islamic law can be realized if the authorities do not base their opinions on rational aspects alone. According to him, the authority of Islamic jurists should be based solely on their expertise in specific fields of Islamic law with a consistent methodology and strong arguments, not based on mere interests that are more based on the category of "authorities". As a result, the interpretation of texts in Islamic law tends to be despotic and absolute.

Second, the negotiation between the text, the author, and the reader with the involvement of hermeneutics. According to El-Fadl, among the three components, there is no domination. Still, they go hand in hand in a democratic way to determine and interpret religious texts in a humanistic-moderate manner. Efforts to understand the text require a study of philosophical texts and relevant

²⁶ Abid Rohmanu, "Khaled Abou El-Fadl Dan Orientasi Humanistik Dalam Studi Fiqh," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 8, no. 2 (2011), <https://doi.org/10.21154/justicia.v8i2.531>.

²⁷ Mahatsi, "Hermeneutika Humanistik (Studi Pemikiran Hermeneutik M. Amien Abdullah Dan Khaled Abou El Fadl)," *Jurnal Penelitian Agama*, VOL.XVII, NO. 3 September-Desember 2008, 1 Desember 2008.

²⁸ Khaled Abou El Fadl, *Great Theft, Wrestling Islam From The Extremists* (Harper San Francisco: Harper Collins Publisher, 2005), 22.

²⁹ Abou El Fadl, *Speaking in God's Name*, 86; Abou El Fadl, *The Search for Beauty in Islam*, 66.

scientific epistemology. In this case, El-Fadl uses contextual hermeneutics. In this context, El-Fadl pays attention to the methodological approach of *usul al-fiqh* combined with *maqasid al-shariah* so that the reader respects the integrity of the author's intent with a moral point of view.³⁰ In other words, readers are also required to bring an outstanding moral commitment to the text. This *wasatiyah* Islamic legal thought is a conceptual framework for building the idea of authority and attempts to identify abuses of authority in Islamic law. El-Fadl used the moral-intellectual ethos in making *wasatiyah* in Islamic law.³¹

Thus, it can be concluded that El-Fadl's idea seeks to link Islamic law with morality. Criticism of puritanism, which adheres to the extreme positivism view, becomes a basic foundation in including moral elements within the framework of *wasatiyah* Islamic legal approach. El-Fadl uses these perspectives and arguments to criticize the inadequacy of the public interest (*maslaha*) in the methodology of *usul al-fiqh* with other social practices.

Khaled Abou El-Fadl's Thought on Interreligious Relation

Interreligious relations are an essential theme in every religion. This theme happens because one religion and another religion have a relationship. This connection can be seen from the dynamics and dialectics between one religion and the previous religion that already existed. From the current debates, it can be shown that there is not a single relationship but a variety of connections according to the current reality. Changes may occur due to developments and social, political, and cultural realities. The dominance of textual understanding gave birth to absolute understanding and an assertive attitude towards other religions. This point is El-Fadl's concern in reconstructing formal-textual thoughts and denying *syumuliyah* (comprehensive) approaches, such as the text approach, context, the use of scientific, logical reasoning, and the application of the methodology of *usul al-fiqh* and the *maqasid al-shariah* system.

This section discusses four main issues as applications of El-Fadl's *wasatiyah* Islamic legal thought, including celebrating other religious holidays, greeting to non-Muslims, interacting with non-Muslim people or communities, and electing non-Muslim leaders. The following is a detailed explanation of the four issues from El-Fadl's perspective.

a. Wishing Merry Christmas to Christians

The polemic of Christmas greetings is a modern phenomenon born in a multi-religious society. A greeting from Muslims to another religion cannot be avoided because of the interaction of social life.³² Christmas greetings from Muslims to non-Muslims are considered a weakness of faith from a Muslim. In other words, these words can potentially lead to actions that resemble (*tasyabbuh*) of non-Muslim groups. Some scholars have expressed that it is haram to say Merry Christmas to non-Muslims. Ibn Taimiyah stated that it is *makruh* to witness non-Muslim holiday celebrations, even if participating is forbidden.³³ Ibn al-Qayyim al-Jauziyah also said that congratulating non-

³⁰ Hujair A. H. Sanaky, "Gagasan Khaled Abou El Fadl Tentang Problem Otoritarianisme Tafsir Agama Pendekatan Hermeneutik Dalam Studi Fatwa-Fatwa Keagamaan," *Al-Mawarid: Jurnal Hukum Islam* 14 (2005), <https://journal.uui.ac.id/JHI/article/view/2818>.

³¹ Abou El Fadl, *The Search for Beauty in Islam*, xv.

³² Rumadi Ahmad, *Fatwa Hubungan Antaragama di Indonesia: Kajian Kritis tentang Karakteristik, Praktis, dan Implikasinya* (Jakarta: Gramedia Pustaka Utama, 2016), 33.

³³ Ibnu Taimiya, *Iqtidha al-Shirat al-Mustaqim Mukhalafa al-Ashab al-Jahim* (Riyadh: Dar Ishbiliya, 1998), 483.

Muslims is a big sin.³⁴ Similarly, the opinion of Ibn Husain Thuri al-Qadiri, a scholar from the Hanafi school, explained that hailing in the context of greeting other religious celebrations can invalidate faith and resemble their customs.³⁵

In this context, El-Fadl has a different view by interpreting religious texts in a new context, especially in reconstructing religious reasoning in the configuration of the Islamic State. The new spirit on the fabric of *ukhuwah wathaniyah* is based on tolerance, decency, and brotherhood of all nation citizens from various religious backgrounds. The fact of pluralism becomes an *illat* for interpreting the classical text of fiqh so that they remain relevant to contemporary social realities. Reasoning on sacred texts, according to El-Fadl, needs to be adjusted to the concept of the nation-state. Thus, the interpretation of religious texts needs to be combined with a social science approach to see the complexity and reality of change. According to El-Fadl, opinions and fatwas that forbid Christmas greetings to non-Muslims should not be taken for granted. El-Fadl emphasizes context related to the historical setting of the text being referred to.³⁶ This can unify religious absolutism, which tends to be literal and becomes a conflict and heresy in religion.³⁷

In this case, El-Fadl denies opinions that tend to be intolerant in the fiqh of interreligious relations. According to El-Fadl, the prohibition of greeting Merry Christmas is because it departs from the literal and ahistorical understanding of the verses of the Koran and Hadith so that the experience that emerges is very exclusive. Intolerance theology appears to distinguish between Muslims and non-Muslims with symbolic markings. According to El-Fadl, the reader should be aware of the historical practices surrounding the revelation of the text. However, if the Qur'an is separated from its history and moral context, the puritan movement will distance Islamic law from humanism and morality. El-Fadl explained that all citizens, regardless of ethnicity and religion, are considered equal in a modern nation-state. Today's Muslims are in a multicultural society interacting with non-Muslims as equal citizens. This reality is the basis for greeting non-Muslims Merry Christmas.³⁸

El-Fadl's opinion in this regard is almost the same as Yusuf al-Qaradawi's opinion that Christmas greetings to non-Muslims are not part of an ideological bind that has implications for the faith. It is then returned to the congratulator because, in Islam, no text or text forbids it. Meanwhile, the verses of the Qur'an and hadith used as arguments for the prohibition are no longer following the context of the times, so there must be a new, more humanist understanding in constructing a moderate Islamic law approach.

Thus, in greeting merry Christmas or holidays to non-Muslims, El-Fadl has the same opinion, there is no prohibition. This opinion is based on text analysis which does not find the prohibition element. Meanwhile, the arguments used by scholars to explain those Christmas greetings to non-Muslims are considered textual. They do not marry contextual approaches and have no relevance to the current contexts. This explanation from El-Fadl is based on the construction of moderate fiqh, which is carried out through three strategies: understanding

³⁴ Muhammad bin Abi Bakr bin Ayyub bin Qayyim al-Jauziyah Abu Abdilla, *Ahkam Ahli Dzimmah* (Damman: Ramada li al-Nasyr, 1997), 441.

³⁵ Muhammad Husain bin Ali al-Thuri al-Qadiri, *Takmilah al-Bahr al-Raiq Syarh Kanz al-Daqaiq* (Beirut: Darul Kutul Al-Ilmiyah, 1997), 361.

³⁶ Abou El Fadl, *Great Theft, Wrestling Islam From The Extremists*, 50.

³⁷ Khaled Abou El Fadl, *The Place of Tolerance in Islam* (Boston: Beacon Press, 2002), 37.

³⁸ El Fadl, "Islamic Law and Muslim Minorities."

the text, understanding the context, and using scientific, logical reasoning by marrying social approaches, *fiqh*, *usul al-fiqh*, and *maqasid al-shariah*.

b. Offering Greetings to Non-Muslims

The issue of greeting non-Muslims has become an exciting discourse in the *fiqh* of inter-religious relations. This issue has become an in-depth discussion in the field of Islamic law. Historical issues and textualism are obstacles and are always suspicious of non-Muslims.³⁹ The root of the problem lies in a hadith narrated by Abu Hurairah, which reads as follows:

*“Do not start greeting the Jews and Christians. If you meet one on the road, hurry to the side. (Muslim from Abu Hurairah).”*⁴⁰


The hadith shows a strict prohibition that is intimidating. It is narrated that the Prophet not only forbade the greeting of non-Muslims, he even called on non-Muslims to take them to the side of the road. In this greeting, as mentioned above, the hadith narrated by Abu Hurairah came down in the context of the Prophet going to war by riding a vehicle to a Jewish village. At that time, the prophet said that do not start to greet them. If the companions met Jews and Christians in the middle of the road, the Prophet ordered them to show greatness by controlling the road until they were pushed to the side. The thing to note here is that the prophet’s attitude is very realistic because it is in the context of war; it even makes no sense if it begins with greetings in an atmosphere of war.

Regarding this issue, El Fadl emphasized the need for *asbab al-wurud*, a scientific discipline to find out the historical background of the descent of a hadith. According to El-Fadl, using other fields of knowledge in Islamic legal reasoning is necessary, including *asbab al-nuzul*, *asbab al-wurud*, linguistics, and other social sciences.⁴¹ That way, a historical plot will be obtained in a problem. The benefit is the primary key to establishing the law of greeting. In one context, the prophet forbade initiation greetings to Jews and Christians for the use of avoiding humiliation and harassment. But in a different context, the prophet greeted the Negus, the King of Ethiopia, in order to increase the bonds of friendship and intimacy between the Muslims and the king.

In this context, the *wasatiyah* in Islamic law approach is used to understand the context as a manifestation of Islamic inclusivism. Islamic inclusivism can be realized when the religious perspective is not too rigid to prioritize text. El-Fadl emphasized that the Koran teaches love of peace and mercy as in Q.S. Al-Furqan (25): 63. For El-Fadl, the element of benefit is substantial, and there is no element of harm in greeting non-Muslims. With respect and greetings, brotherly bonds can be realized to build a harmonious life without suspicion of different groups. This suspicion starts the disputes and then creates hostility and resentment.⁴²

From this explanation, it can be understood that Islamic law is very dynamic and accommodates the realities of social, political, and cultural changes. Meanwhile, from the aspect of the *maslaha cum-samaha* approach, greetings to other people of a different religion can increase human solidarity in the context of social relations. Greetings is a means to strengthen

³⁹ Rumadi Ahmad, *Fatwa Hubungan Antaragama di Indonesia: Kajian Kritis tentang Karakteristik, Praktis, dan Implikasinya*, 63.

⁴⁰  *Shih Muslim, Kitab al-Salam, Bab al-Nahy’ an Ibtida’ Ahl Kitab*, No. 2167, t.t.

⁴¹ Abou El Fadl, *Speaking in God’s Name*, 246.

⁴² Abou El Fadl, *The Place of Tolerance in Islam*, 17.

the human solidarity in the context of social relations. Therefore, suspicion of other groups should not be a barrier to strengthening of brotherhood among religious people. In terms of belief, each religion has different traditions and values, but brotherhood is the basis of human solidarity in the context of social life.

c. Inter-religious Socializing and Interacting

The issue of inter-religious interaction has also become an interesting discourse in the fiqh of inter-religious relations. This issue sometimes causes conflict due to the loss of tolerance and causes bloodshed with the argument of enforcing Shari'a law. Historical issues and textualism are obstacles and are always suspicious of non-Muslims. The events of September 11, 2001, regarding the tragedy of the attack on the World Trade Center (WTC) building, became the aftermath of tensions between Muslim and non-Muslim communities. As a result, inter-religious relations are increasingly strained along with the incident. Several verses of the Qur'an are often used to legitimize the prohibition of interaction between Muslims and non-Muslims. As for some of the verses of which are Q.S. Al-Baqarah [2]: 120 and al-Maidah [5]: 51. The growing discourse, many interpretations of the text of the Qur'an and hadith related to the fiqh of relations between religious believers, including the interaction between Muslims and non-Muslims, revolves around two interpretations, namely exclusive interpretation and progressive interpretation. The whole interpretation then places non-Muslims as enemies who always deceive Muslims, such an understanding then eliminates aspects of pluralism in inter-religious life.

El-Fadl, in this matter, sees the factor of building pluralism which requires tolerance, as a paved road for creating a mutually productive life together among people. With tolerance, a theological awareness that considers other religions as eternal enemies will slowly change. Through tolerance, Muslims will learn that non-Muslims are not always antagonistic. El-Fadl feels disturbed if the dispute between Muslims and non-Muslims is triggered by misinterpretations that lead to bloodshed. In the concept of *dar al-Islam* and the instrument of *al-siyasah al-syar'iyah*, Muslims do not only live with other Muslims, but also interact with non-Muslims. This interaction is not limited to socio-economic context, but also in several ways including socio-political and other cooperation.⁴³

According to El-Fadl, no specific argument prohibits Muslims from being hostile to non-Muslims. El-Fadl disagrees with implementing of *ahl-dzimmah* in a democratic nation-state. This concept then requires non-Muslims to pay taxes (*jizyah*). The conditions of modernity demand the abolition of this concept because if it is applied in the contemporary era. This concept undermines the goals of justice and self-respect. In contrast to the Middle Ages, according to Abou El-Fadl, exchange and reciprocity exist. At that time, in the context of signing a peace, the weak party was required to pay tribute to the stronger party. In contrast to the current concept, according to El-Fadl, implementing a unilateral tax system by Muslims will result in humiliation and alienation. It will also hinder cooperation from increasing the ropes of humanitarian solidarity.⁴⁴

In terms of interaction with non-Muslims, El-Fadl mentions the arguments of the Qur'an

⁴³ Abou El Fadl, *Speaking in God's Name*; Abou El Fadl, *The Search for Beauty in Islam*, 71.

⁴⁴ El Fadl, *Rebellion and Violence in Islamic Law*, 56.

that support the ethics of difference and tolerance, such as Q.S. Al-Hujurat [49]: 13. According to El-Fadl, the classical interpreters of the verse above have not explored the implications of this diversity or the role of peaceful conflict resolution in establishing patterns of social interaction that are born amid society. El-Fadl strongly emphasizes that the meaning of the text often has the same moral as the reader. If the reader is intolerant, so will his interpretation. Therefore, according to Abou El Fadl, there is a need for ethical reflection to the historical context.⁴⁵

Thus, El Fadl allows the interaction of Muslims and non-Muslims in social issues and activities, not in theological matters. Pluralism, which requires tolerance to create a mutually productive life among people, becomes the basis for *wasatiyah* Islamic legal thinking. With tolerance, a theological awareness that considers other religions as eternal enemies will slowly change, turning to see other religions as true friends. Through tolerance, Muslims will learn that non-Muslims are not always antagonistic. The relationship is based on the values of peace and humanism.

d. Voting for Non-Muslim Leaders

In the fiqh of inter-religious relations, the issue of choosing non-Muslims as leaders over the Muslims, whose majority of the population is Muslim, is an important issue. This discourse has the potential to be infiltrated by other matters, such as political interests, economics, and other pragmatic issues.⁴⁶ All texts in the fiqh narrative prohibit association and interaction with non-Muslims, requesting or receiving assistance from non-Muslims (*al-istianah bi ghayr al-Muslim*), and appointing or electing non-Muslims as leaders or public officials. However, the prohibition is aimed at non-Muslims who fall into the category of *harbi* infidels who fight Muslims. The question is, how about non-Muslims who are not hostile to Muslims?

Apart from the differences of opinion among the scholars regarding this matter, El-Fadl has the same view as Hanafiyyah scholar, Zainuddin al-Malibari. In this case, tolerance is essential because, in Islam, the core teaching points are justice, morality, and honesty. Islam does not teach absolutism of truth and blind fanaticism. El-Fadl explained that the formulation of Islamic law should not only be guided by specific arguments but must also pay attention to the general principles of the Qur'an.

Based on the explanation above, El-Fadl explained that if Indonesia wants democracy, the principles of justice and goodness must be prioritized for the community's benefit. Democracy should be implemented by eliminating nepotism, tribalism, and identity politics. El-Fadl emphasized the importance of understanding the context. In terms of leadership, according to him, the idea of democracy has become very important because, in terms of choosing a leader, the most important thing is to use Islamic principles, namely justice and truth, for the realization of benefit. In this context, benefit and tolerance (*maslaha cum-samaha*) are significant considerations for El-Fadl in reasoning about a problem.⁴⁷ Thus, the ability to give positions to non-Muslims is expected to be an intermediary to convey their group's aspirations and create peace in inter-religious life. In principle, the essential aspect of a leader lies not in the religion

⁴⁵ Abou El Fadl, *Speaking in God's Name*, 426.

⁴⁶ Aharon Layish, "Islamic Law in the Modern World: Nationalization, Islamization, Reinstatement," *Islamic Law and Society* 21, no. 3 (2014): 276–307.

⁴⁷ Abou El Fadl, *The Place of Tolerance in Islam*.

he adheres to but in managerial skills and abilities, responsibility, and the ability to prosper the community, which is realized with a commitment to equitable justice.

El-Fadl, in this matter, reconstructs traditional thinking and carries out reforms because Islamic law is temporary, which is always required to be compatible and relevant to the changes and developments of the times. If the opinion that states electing non-Muslim leaders is maintained, it will give birth to counter-productivity, leading to discrimination and protracted disputes.

Conclusion

The phenomenon of religious understanding is often manipulated to foster conflict and revive identity politics. The understanding of fiqh is directed to the dominance of religious values, which leads to exclusivity. Khaled Abou El-Fadl, one of the Islamic law thinkers, unpack the classical fiqh to answer various societal problems. The combination of abilities and knowledge obtained from the Western and Islamic intellectual traditions then places El-Fadl as a highly regarded scholar in Islamic legal scholarship. With the spirit of returning fiqh to its primary function, El-Fadl places that fiqh is a dynamic field of science that is not only understood statically, exclusively, and discriminatory.

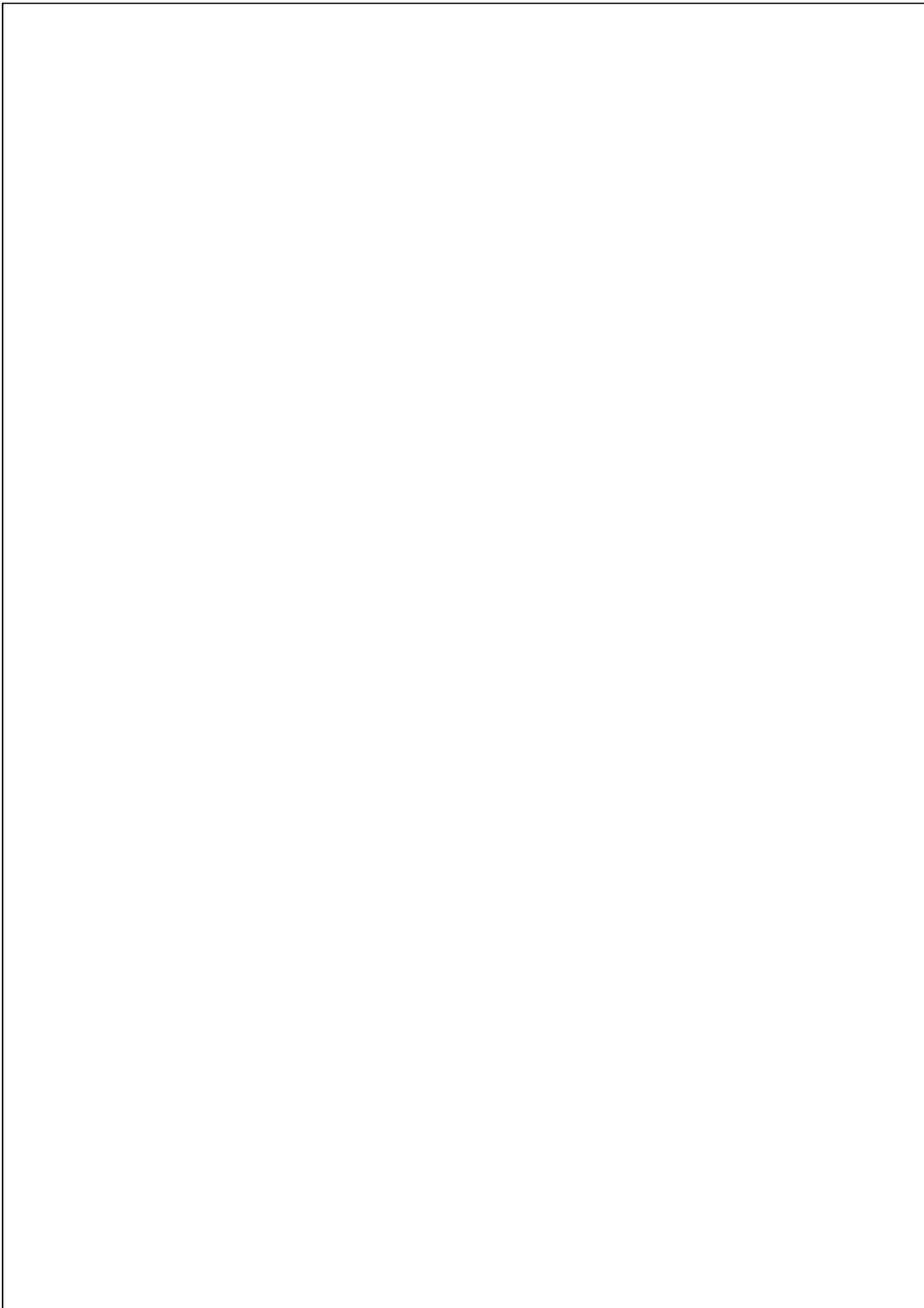
El-Fadl carries out a moderate and contextual grounding of Islamic law amid the plurality of contemporary society. El-Fadl provides an essential concept known in contemporary Islamic law as *al-wasatīyah* by integrating various scientific disciplines to strengthen human dignity. El-Fadl offers a moderate-humanist approach as a system that is considered more holistic and comprehensive in Islamic law, especially in constructing texts, understanding the context, and optimizing legal reasoning based on *maqasid al-shariah* through independent reasoning. According to El-Fadl, authoritarianism in Islamic legal thought results from procedural-methodological errors related to the author, the text, and the reader. A reader will understand a text with methodological provisions in Islamic law. The interpretation of a text should not be determined by an individual or a group of people with particular interests.

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