

Gus Dur's *Ijtihād* Paradigm of Contemporary *Fiqh* in Indonesia

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Abstract

This paper reveals Gus Dur's *ijtihād* paradigm of contemporary *fiqh* in Indonesia in answering the problems of life. This study is a type of library research by tracing Gus Dur's works, Gus Dur's thought studies and other related scientific studies. This research uses the approach of Milton K. Munitz's thinking and the frame of mind 'Abd al-Majīd al-Najjār. This research found that the conservative *ijtihād* paradigm has led to conservative *fiqh* which is unable to establish dialectics between *fiqh* norms and socio-cultural and humanitarian values, which can even lead to radical Islamic movements and acts of terrorism. Therefore, Gus Dur's contemporary jurisprudential *ijtihād* paradigm is needed to build this dialectic. Theoretically, the Gus Dur *ijtihād* paradigm has characteristics promoting different socio-cultural and humanitarian values from Islamic reformers. In practical terms, the Gus Dur *ijtihād* paradigm has made Indonesian socio-cultural values a consideration in understanding and applying contemporary *fiqh* without changing existing *fiqh* norms. Gus Dur's contemporary *fiqh* has also become the basis for maintaining the Pancasila ideology, the 1945 Constitution, the Unitary State of the Republic of Indonesia and Unity in Diversity.

Keywords: radical; contemporary; *fiqh*; *ijtihād*; equality; Pancasila

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Tulisan ini mengungkap paradigma *ijtihād* Gus Dur tentang *fiqh* kontemporer di Indonesia dalam menjawab masalah-masalah kehidupan dengan studi kepustakaan dengan menelusuri karya-karya Gus Dur, studi pemikiran Gus Dur dan studi ilmiah terkait lainnya. Penelitian ini menggunakan pendekatan pemikiran Milton K. Munitz dan kerangka berpikir 'Abd al-Majīd al-Najjār. Hasil penelitian ini menemukan bahwa paradigma *ijtihād* konservatif telah melahirkan *fiqh* konservatif yang tidak mampu membangun dialektika antara norma-norma *fiqh* dan nilai-nilai sosial-budaya dan kemanusiaan, yang bahkan dapat mengarah pada gerakan Islam radikal dan tindakan terorisme. Oleh karena itu, paradigma *ijtihād* yurisprudensi kontemporer Gus Dur diperlukan untuk membangun dialektika tersebut. Secara teoritis, paradigma *ijtihād* Gus Dur memiliki karakteristik mempromosikan nilai-nilai sosial-budaya dan kemanusiaan yang berbeda dari para pembaru Islam. Secara praktis, paradigma *ijtihād* Gus Dur telah menjadikan nilai-nilai sosial-budaya Indonesia menjadi pertimbangan dalam memahami dan menerapkan *fiqh* kontemporer tanpa mengubah norma-norma *fiqh* yang ada. *Fiqh* kontemporer Gus Dur juga telah menjadi dasar dalam memelihara dan mempertahankan ideologi Pancasila, Undang-Undang Dasar (UUD) 1945, Negara Kesatuan Republik Indonesia dan Bhinneka Tunggal Ika.

Kata Kunci: radikal; kontemporer; *fiqh*; *ijtihād*; kesetaraan; Pancasila

INTRODUCTION

The problem of pluralism in human life is faced by not only Indonesia but also almost all countries in the world. France, for instance, experienced the phenomenon of Mohammed Arkoun. With his intellectual career, Arkoun sought an answer to the problems of life of Muslim communities living amid the plural French society. He acted as not only a professor but also a preacher in the community so that there is a close relation between action and contemplation.¹

In establishing a dialectic between theory and practice of Islam (*fiqh*), Barton suggests that the main problem faced by Indonesian Muslims is the encouraging response to the challenges of modernity and in particular acceleration of social change by putting an interpretation on the norms of Islamic law (*fiqh*) as a solution to the contemporary problematic realities. One of Indonesia's reformist figures who has embarked on the reform is Abdurrahman Wahid (Gus Dur). Gus Dur has evolved the new *ijtihad* paradigm that enables traditionalism to become the dialectic of modernism.² According to Baedhowi³, Gus Dur has established the dialectic between action and contemplation or between theory and practice to break the deadlock in any thoughts on *fiqh* among Indonesian Muslims. This needs to be done as radical Islamist movements have massively done penetration toward elements of Indonesian Muslim society.⁴ Hence, the study of Gus Dur's thoughts is of

¹B Baedhowi, "Islamologi Terapan sebagai Gerbang Analog Pengembangan Islamic Studies: Kajian Eksploratif Pemikiran Mohammed Arkoun," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 12, no. 2 (December 4, 2017): 347-79, <https://doi.org/10.21274/epis.2017.12.2.347-379>. 359-360.

²Greg Barton, *Gagasan Islam Liberal di Indonesia: Pemikiran Neo-Modernisme Nurcholish Madjid, Djohan Efendi, Ahmad Wahid, dan Abdurrahman Wahid*, ed. Nanang Tahqiq (Jakarta: Paramadina, 1999), 514-516.

³Baedhowi, "Islamologi Terapan sebagai Gerbang Analog Pengembangan Islamic Studies: Kajian Eksploratif Pemikiran Mohammed Arkoun." 369.

⁴Moh. Dliya'ul Chaq, "Pemikiran Hukum Gerakan Islam Radikal Studi atas Pemikiran Hukum dan Potensi Konflik Sosial Keagamaan Majelis Mujâhidin Indonesia (MMI) dan Jamâ'ah Anshârut Tauhid (JAT)" *Tafaqquh: Jurnal Penelitian dan Kajian Keislaman* 1, no. 1 (2013): 16-42, <http://jurnal.iaibafa.ac.id/index.php/tafaqquh/article/view/3>.

paramount importance in that they are remarkably influential and have many followers in Indonesia.⁵

A number of researchers have conducted studies of Gus Dur's thoughts. In his scientific study of Gus Dur's most representative thoughts, Barton⁶ uncovers the neo-modernism *ijtihād* paradigm in reforming Islamic thoughts in Indonesia. However, this study has not focused on the discussion of *fiqh* in relation to issues of state ideology or state constitution. Similarly, Dahlan's study discusses the notion of multicultural *uṣūl fiqh*, yet has not explained contemporary *fiqh* to solve the actual problems of Indonesian Muslim society.⁷ Rochmat also suggested that Gus Dur supported the resolution of the relationship between Islam and the state by adapting modern knowledge into the *fiqh* paradigm.⁸ Dahlan described authentic hermeneutics against Gus Dur's *fiqh* paradigm. Gus Dur.⁹ Therefore, the umbrella questions in this paper are formulated as follows: Why does Gus Dur establish *ijtihād* paradigm of contemporary *fiqh* in Indonesia? How does Gus Dur's *ijtihād* paradigm respond to the problematic life of Indonesian Muslim society?

CRITICISM ON *IJTIHĀD* PARADIGM OF CONSERVATIVE *FIQH*

The upheaval between the progressive *ijtihād* group and the conservative *ijtihād* group is a historical reality in the world of jurisprudence that occurs not only in the present, but it has also happened since the time of Imam Madhab. In the schools of *fiqh* differences of opinion have emerged in a number of worship and legal matters. Abū Ḥanīfah, who lived in Kūfā, was different from the other three priests. Abū Ḥanīfah's *fiqh* paradigm has a progressive or very free

⁵Wasisto Raharjo Jati, "Kearifan Lokal sebagai Resolusi Konflik Keagamaan," *Walisongo: Jurnal Penelitian Sosial Keagamaan* 21, no. 2 (December 15, 2013): 393–416, <https://doi.org/10.21580/WS.21.2.251.400>.

⁶Barton, *Gagasan Islam Liberal di Indonesia: Pemikiran Neo-Modernisme Nurcholish Madjid, Djohan Efendi, Ahmad Wahid, dan Abdurrahman Wahid*, 514-516.

⁷Moh. Dahlan, *Paradigma Ushul Fikih Multikultural Gus Dur* (Yogyakarta: Kaukaba Press, 2013).

⁸Saefur Rochmat, "The Fiqh Paradigm for the Pancasila State: Abdurrahman Wahid's Thoughts on Islam and the Republic of Indonesia," *Al-Jami'ah* 52, no. 2 (2014): 309–29, <https://doi.org/10.14421/ajis.2014.522.309-329>.

⁹Moh Dahlan, "The Hermeneutics Of Authentic Jurisprudence Of Gus Dur In Indonesia," *Al-Risalah* 17, no. 01 (January 17, 2017): 11–27, <https://doi.org/10.30631/al-risalah.v17i01.18>.

character, oriented towards urban society, and representing *Ahl al-Ra'y* who uses the method of *ijtihād qiyas* when he does not find answers in the Qur'an and Sunnah regarding legal issues that arise in society. Meanwhile, another fiqh school pioneered by Mālik Ibn Anas, a fiqh expert, and hadith expert has a conservative character and is suitable for shepherd society. He represented *Ahl al-riwāyah* which made the tradition of the residents of Medina as the foundation for the development of fiqh, not *qiyas* so that the Mālik fiqh paradigm was known as traditional fiqh.¹⁰ Departing from these two biased paradigms, al-Shāfi'ī developed the fiqh paradigm by integrating the *ijtihād* paradigm of the two schools of thought, namely Ḥanafī and Mālikī, so that he was recognized as a moderate fiqh expert. The last is Aḥmad Ibn Ḥanbal who is considered a fundamentalist fiqh expert, who prioritizes the Sunnah as the basis of Islamic law.¹¹

In the last decade, the Islamic fundamentalism movement has become one of the causes of the birth of a conservative *ijtihād* paradigm which later became the trigger for the birth of a conservative fiqh paradigm among Muslims. The *ijtihād* paradigm of conservative *fiqh* such as that of *HTI and Majelis Mujahidin Indonesia (MMI)* merely practice the textual provisions of the Qur'an and Sunna. In other words, what is not stated in the Qur'an and Sunna must not be practiced. Although the conservative *ijtihād* paradigm originally aimed to purify the Islamic teachings, as Aḥmad bin Ḥanbal had done before, it tends to be trapped into Islamic radicalism and fundamentalism.¹² In the conservative *ijtihād* paradigm, there is no dialectic between norms of *fiqh* and cultures of society, and so the resulting *fiqh* paradigm is not grounded but radical. Munitz views the conservative *ijtihād* paradigm as the modern one in that it does not establish the dialectic between concepts and facts, between norms and social cultures, of which the elite scientific paradigm emerges.¹³

¹⁰Musahadi HAM, "The Dimension Of *Tawḥīd* In The Development Of Islamic Law Institution: Quranic Exegesis Perspective," *Al-Ahkam* 27, no. 2 (December 1, 2017): 179, <https://doi.org/10.21580/ahkam.2017.27.2.1600>. 182.

¹¹Mujahid Zulfadli Rahman, "Gus Dur, HAM, dan Perdamaian," 2013, <http://www.gusdurian.net/id/article/opini/GusDur-HAM-Perdamaian/>.

¹²Chaq, "Pemikiran Hukum Gerakan Islam Radikal Studi atas Pemikiran Hukum dan Potensi Konflik Sosial Keagamaan Majelis Mujāhidin Indonesia (MMI) dan Jamā'ah Anshārut Tauḥid (JAT)" 23-24.

¹³Milton Karl Munitz, "Contemporary Analytic Philosophy" (New York: MacMillan Publishing Co. Inc., 1981).

The *ijtihād* paradigm of conservative *fiqh* has given rise to radical and extreme *fiqh*. As Irfan S. Awwas, Chairperson of the MMI for the period 2008-2013, states, it is impossible for a democratic system, including *Pancasila*, to synergize with Islamic law. Not only a democracy not bound by Islamic shari'a but also there are a number of principles and facts of Islamic history that are manipulated and claimed to belong to democracy. In the name of democracy, secular groups have discriminated against the teachings of Islamic law so as not to bring it in the affairs of the State.¹⁴

Due to the absence of the dialectic between norms of *fiqh* and social cultures, the paradigm turns to be conservative and irrelevant to Indonesian people's actual life necessities. The relationship between Muslims and non-Muslims will be increasingly disharmonious when the *ijtihād* paradigm of conservative *fiqh* is used as the foundation for understanding verses of the Qur'an. For instance, "*And never will the Jews or the Christians approve of you until you follow their religion*" (al-Baqara [2]: 120). This verse is likely to arouse hostility if it is partially understood without paying attention to the background of how it was revealed. In other words, applying the paradigm of conservative *fiqh* to understand the verse potentially leads to complex problems and ideological tensions between Muslims and non-Muslims, especially Jews and Christians. The *ijtihād* paradigm of conservative *fiqh* perceives the word لَنْ تَرْضَى (not willing) as 'resistance' and 'hostility'. What is worse is that the verse is interpreted as having connection with church building, evangelism, and other missionary activities. In response to this, Gus Dur suggests that the verse highlights the difference between Muslims and non-Muslims. What is unacceptable in each of these religious groups is due to the basic conception of their faith. Within the diversity of religious traditions, equality in humanity and brotherhood of interfaith, between mankind and nations are enabled if verses of Qur'an and the cultural values behind them are perceived in a deep manner.¹⁵

¹⁴Chaq, "Pemikiran Hukum Gerakan Islam Radikal Studi Atas Pemikiran Hukum Dan Potensi Konflik Sosial Keagamaan Majelis Mujāhidin Indonesia (MMI) Dan Jamā'ah Anshārut Tauhīd (JAT)", 30.

¹⁵Nurcholish Majid, Komaruddin Hidayat, and 1968- Ahmad Gaus A. F., *Passing over: Melintasi Batas Agama* (Jakarta: Penerbit PT Gramedia Pustaka Utama bekerjasama dengan Yayasan Wakaf Paramadina, 1998). 53-54; Abdurrahman Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi* (Jakarta: The Wahid Institute, 2006). 123.

On socio-religious, the conservative fiqh paradigm driven by the transnational Islamic movement has given rise to an ambivalent religious paradigm among members of Islamic socio-religious organizations, so the presence of the transnational Islamic movement has encouraged the emergence of polarization between moderate-conservative and moderate-progressive camps as happened in among Muhammadiyah management members. Nurhadi argues that Anthony Bubalo, Greg Fealy and Abdurrahman Wahid are figures who assess the existence of the transnational Islamic movement as a trigger for the birth of ideological contractions that lead to the fight of religious identity politics in the internal organization of the Muhammadiyah. Wahid's research also suggested that the problem of religious conservatism occurred among Islamic mass organizations - such as Indonesian Religious Leader (MUI) - and among Muslim communities in South Sulawesi and Surakarta in Central Java.¹⁶ The emergence of conservatism basically cannot be separated from two things: First, the strengthening of the democratic movement that is associated with the waning paradigm of liberal Islam in Indonesia. Second, the strengthening of Middle Eastern influence which has a textual-conservative tendency that is associated with the aspirations of the establishment of the Caliphate of Islam (*Khilāfah Islāmiyah*).

In relation to the conservative paradigm, Mudzakkir argues that the conservative paradigm in religious life and society in Indonesia has long historical roots as stated by a number of scientists, namely First, Martin van Bruinessen who mentioned that the return of conservative currents (*conservative turn*) in the development of Indonesian Islam in the present because of the long historical roots. In other writings, using the term "Islamic radical", Bruinessen appointed *Darul Islam* (DI) and the Indonesian Muslim Council of Syuro (Masyumi) as heirs to this phenomenon.¹⁷ Second, Jeremy Menchik put forward the symptoms of conservatism inherent in the course of Indonesian nationalism. Since the beginning the idea of tolerance developing in Islamic movements in Indonesia has a conservative tendency when viewed from the point of view of liberalism, namely tolerance which emphasizes communal integrity rather than individual autonomy so that tolerance is in

¹⁶Rochmat, "The Fiqh Paradigm for the Pancasila State: Abdurrahman Wahid's Thoughts on Islam and the Republic of Indonesia.". 375.

¹⁷Amin Mudzakkir, "Mintoritisasi Ahmadiyah di Indonesia," *Masyarakat Indonesia* 37, no. 2 (January 16, 2011): 1-24, <https://doi.org/10.14203/JMI.V37I2.650>. 57-58

reality, more of majority rhetoric than a minority's freedom. The conservative Islamic movement is no longer only concentrated in Jakarta but spreads in regions along with democratization after the implementation of decentralization and regional autonomy policies. Issues that are used are not only about the basic state but also include ethical aspects that refer to "sharia". Third, Michael Buhler argued that the aspirations of Islamic Sharia implementation were formally not only dependent on Islamic parties, but also spread in secular parties that opened alliances with religious groups.

The case of Tasikmalaya Regency in West Java is one example of the conservative religious paradigm. The Islamic religious movement led by Muslim leaders from the Partai Persatuan Pembangunan (PPP) since 1999 has a difference with larger and more established Islamic organizations, such as Nahdlatul Ulama (NU) and Muhammadiyah. Local Islamic movements in Tasikmalaya Regency are contemporary phenomena that anchor their ideological paradigm to the local historical imagination. They describe and socialize their movements as a continuation of similar movements in the past. They at least sought the Islamic genealogy movement in the existence of the Sarekat Islam, Masyumi, and Darul Islam in the past of Tasikmalaya.¹⁸ Historically, the Tasikmalaya Regency was an area that had long been known as a santri area. In the 1950s, the Darul Islam/Negara Islam Indonesia (DI/NI) movement made Tasikmalaya one base. During the New Order regime in power, the strength of Islam in political parties was still quite strong. In 1996, there was a big riot with nuances of ethnic and religious sentiments. Even after the New Order regime ended its rule, the Partai Persatuan Pembangunan (PPP) still dominated votes in elections.¹⁹

The conservative fiqh paradigm referred to here is basically a fiqh paradigm that contradicts liberal jurisprudence or progressive fiqh which is understood as a movement that supports the idea of reinterpreting Islamic teachings contextually.²⁰ So, the conservative fiqh paradigm referred to here covers the fundamentalist paradigm of jurisprudence, namely the flow that invites back to

¹⁸Mudzakkir "Mintoritisasi Ahmadiyah di Indonesia," 63.

¹⁹Mudzakkir "Mintoritisasi Ahmadiyah di Indonesia," 14.

²⁰Danu Aris Setiyanto, "Konstruksi Pembangunan Hukum Keluarga di Indonesia Melalui Pendekatan Psikologi," *Al-Ahkam* 27, no. 1 (June 9, 2017): 25, <https://doi.org/10.21580/ahkam.2017.27.1.1183>. 29.

the source of fundamental Islamic teachings, namely the Qur'an and Hadith, but by means of literal interpretation and also includes the paradigm of the "Islamist" movement defined as a movement that supports the idea of Islam as a political system and strives to establish an Islamic state (*Khilāfah Islāmiyah*).²¹

When the conservative Islamic movement developed massively in Indonesia, Nurcholish Madjid, an Indonesian Muslim intellectual, criticized the Islamic reform movement by keeping a distance from a number of Islamic community organizations such as Masyumi, Muhammadiyah, Persis and al-Irshad, because of community organizations. Islam was considered by Majdid to have lost its dynamics and became conservative. In addition to Madjid, one of the leaders of Islamic reformers in Indonesia who criticized the fiqh/conservative Islam paradigm was Abdurrahman Wahid, who was familiarly called Gus Dur. Since the 1970s, he has actively made efforts to renew ijtihād to give birth to the contemporary Islamic fiqh paradigm and at the same time reject the conservative fiqh paradigm.²² In contrast to Majdid who tends to rely on the texts of the Qur'an and the Sunnah in carrying out Islamic reform, Gus Dur prefers socio-cultural and humanitarian paths by carrying out ijtihād in formulating contemporary fiqh in Indonesia. This is also done in Islamic boarding schools that teach fiqh traditions based on consideration of socio-cultural or humanitarian values.²³

Based on this description, Abdurrahman saw that Islamic reform efforts carried out by a number of Islamic community organizations in Indonesia were unsuccessful in completing efforts to establish the relevance of religious law (fiqh) to the empirical reality of Indonesian society. Overall, the refresher carried out by Islamic reformists and Islamic fundamentalists were unsuccessful, even the refresher movement towards jurisprudence created a new freezing discourse from the existing ones so that the fiqh refresher movement gave birth to a kind of "neo-conservatism".²⁴

²¹Baedhowi, "Islamologi Terapan Sebagai Gerbang Analog Pengembangan Islamic Studies: Kajian Eksploratif Pemikiran Mohammed Arkoun." 377.

²²Dahlan, *Paradigma Ushul Fikih Multikultural Gus Dur*. 246-248.

²³Nazla Maharani Umayu, "Ideologi dan Wacana Kognisi Keagamaan di Pondok Pesantren Tradisional dalam Gema Santri," *IBDA: Jurnal Kajian Islam dan Budaya* 16, No. 2 (November 8, 2018): 276-86, <https://doi.org/10.24090/ibda.v16i2.1680>. 284

²⁴Abdurrahman Wahid, *Prisma Pemikiran Gus Dur* (Yogyakarta: LKiS, 2000). 42-43.

GUS DUR'S *IJTIHĀD* PARADIGM OF CONTEMPORARY *FIQHIN* INDONESIA: AN ALTERNATIVE

Historically speaking, Abdurrahman Wahid or Gus Dur is a phenomenal figure, who, in the reform era, was the President of the Republic of Indonesia. He was born amid the family of *Nahdlatul Ulama* (NU). His father was KH A Wahid Hasyim, the son of NU founder, KH M Hasyim Asy'arie. Gus Dur started learning Islam from his parents and Matraman Perwari Primary School.²⁵ In 1954, Gus Dur studied in Junior High School for Economics (SMEP) and lived with Kyai Junaid, a figure in the *Muhammadiyah* organization.²⁶ He also learned Islam in Islamic Boarding School (*Pondok Pesantren*) Krapyak, Yogyakarta. Graduating from SMEP in 1957, Gus Dur learned various sciences in *Pondok Pesantren* Tegalrejo, not merely Islam, but also such a general science as scientific work of the western world.²⁷ In 1964, he continued his study to Cairo, Egypt, and to Baghdad, Iraq. With his broad insights in Islam and science, together with KH Ahmad Siddiq, Gus Dur confirmed *Pancasila* as the final and legitimate ideology of Indonesian state.²⁸

His broad-mindedness also inspires the establishment of the contemporary *ijtihād* paradigm, which is important for Indonesian people to learn to accept and support the development of pluralistic life of Indonesian society.²⁹ For Gus Dur, an understanding of *fiqh* does not need to be sacred or defended at the expense of the essential human benefits (al-Mā'ida [5]: 3). The point is that Islam is perfect teaching that can be developed in accordance with the dynamics of life.³⁰ In this context, Gus Dur's *ijtihād* paradigm of contemporary *fiqh* seeks to build an understanding of *fiqh* that is factual and relevant to the development of

²⁵Greg Barton, *Biografi Gus Dur: The Authorized Biography of Abdurrahman Wahid*, ed. Lie Hua (Yogyakarta: LKis, 2010).

²⁶Barton, *Gagasan Islam Liberal di Indonesia: Pemikiran Neo-Modernisme Nurcholish Madjid, Djohan Efendi, Ahmad Wahid, dan Abdurrahman Wahid*, 514-516.

²⁷Abuddin Nata, *Tokoh-Tokoh Pembaruan Pendidikan Islam di Indonesia* (Jakarta: Raja Grafindo Persada, 2005).

²⁸Muhammad Rifai, *Gus Dur, KH Abdurrahman Wahid Biografi Singkat 1940-2009* (Jakarta: Ar-Ruzz Media, 2010); Abdurrahman Wahid, *Sekedar Mendahului: Bunga Rampai Kata Pengantar* (Jakarta: Nuansa, 2011); Barton, *Gagasan Islam Liberal Di Indonesia: Pemikiran Neo-Modernisme Nurcholish Madjid, Djohan Efendi, Ahmad Wahid, Dan Abdurrahman Wahid*, 514-516.

²⁹Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*, 123.

³⁰Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*, 126.

human interests, not a partial and conservative understanding that is easily trapped in extreme and radical notions. Gus Dur quotes the following Qur'anic verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا ادْخُلُوا فِي السِّلْمِ كَافَّةً

Meaning: *O you who believe, come into the whole of Islam completely (and perfectly).* (Al-Baqara [2]:208)

Regarding this Qur'anic verse, the *ijtihad* paradigm of contemporary Islamic law (*fiqh*) attempts to give a considered response to the age development so that Muslims will not misunderstand the *fiqh* verses and laws. The big mistake that often arises along with that verse is that Islam recommends the establishment of an Islamic state, and the term *kaffa* is interpreted as "intact", even in politics. In fact, according to Gus Dur, the verse discusses the general issue of human life that is not compelling. Following the contemporary *ijtihad* paradigm, the normative values of the verse ought to be like an 'oasis' for *Pancasila*, in the sense that they need to inspire people in terms of how the *Pancasila* ideology is practiced. In this way, the values of *fiqh* can integrate into Indonesian cultures, as reflected in the history of Indonesia's founding fathers first formulating the state ideology, *Pancasila*, and the state constitution, the 1945 Constitution.³¹

Gus Dur's *ijtihad* paradigm of contemporary *fiqh* suggests that the establishment of an Islamic state is not mandatory. What is mandatory is then enforcing society to practice *fiqh* teachings in life. This potentially provides a role for Muslims to maintain the pluralistic life of Indonesian society.³² Gus Dur's *ijtihad* paradigm refers to Ibn Taymiyah, arguing that the priest (*imām*) can be more than one person. Ibn Taymiyah's opinion (*fatwā*) indicates that there is no obligation to establish an Islamic State (*Khilāfah Islāmiyyah*). However, the *fatwā* was not used as a reference in the 1984 NU Congress at the *Salafiyah Syafi'iyah* Islamic Boarding School Situbondo East Java when the Congress proclaimed the importance of NU's position in the life of Indonesian nation and

³¹Munawar Ahmad, *Ijtihad Politik Gus Dur: Analisis Wacana Kritis* (Yogyakarta: LKis, 2010). 279.

³²Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*. 102-113.

state. Ibn Taymiyah's *fatwā*, in fact, is the official reference for the government of Saudi Arabia.³³

Gus Dur's *ijtihād* paradigm of contemporary *fiqh* is developed to realize benefits to both Muslims and non-Muslims. Following this paradigm, non-Muslims are fellow citizens who have an equal status in their rights and obligations. In this respect, public policies of the government need to consider public aspirations according to the perspective that policies of a leader need to be able to realize the benefits to their people (*taṣarruf al-imām 'ala al-rā'iyah manūṭ bi al-maṣlahah*).³⁴

Based on this reality, Gus Dur's contemporary *fiqh* paradigm that emphasizes substance rather than formality needs to be developed, so that the totality (*kaffah*) teachings of *fiqh* can be applied while maintaining the existence of social-human values such as equality, openness, tolerance and brotherhood³⁵ on the basis of *Pancasila* and the 1945 Constitution within the frame of a unitary state of the Republic of Indonesia (*NKRI*). The humanitarian paradigm as a system and legal norms is also stated in the United Nations Charter, in which equality, freedom and tolerance are the basis for state policy in building peace and equality of life in the world. For instance, Articles 1 and 2 encourage freedom and equality of dignity and rights of all humanity and prohibit discrimination on behalf of religion. Recognition of human dignity and rights that have basic rights, freedom and equality are the foundations for building a just, peaceful and civilized world. The UN's commitment to fight for human rights is confirmed in the Declaration of the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief in the UN General Assembly No. 36/55 on November 25, 1981. This constitutes the foundational document to realize universal values of freedom, justice and equality and ensure that these basic rights are protected and guaranteed by the Universal Declaration of Human Rights (UDHR).³⁶

³³Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*, 104.

³⁴Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*, 111.

³⁵Ruth Sessler Bernstein and Diana Bilimoria, "Diversity Perspectives and Minority Nonprofit Board Member Inclusion," *Equality, Diversity and Inclusion: An International Journal* 32, no. 7 (November 4, 2013): 636–53, <https://doi.org/10.1108/EDI-02-2012-0010>.

³⁶Moh. Dahlan, "Epistemologi Hukum Islam: Studi Atas Pemikiran Abdullahi Ahmed An-Na'im" (UIN Sunan Kalijaga, 2006). 237-239.

In relation to human rights in the field of religion, the Universal Declaration of Human Rights provides the freedom to adopt a particular religion and move from a certain religion to another without coercion. In the meantime, the conservative *fiqh* regulates the issue of religion within the stipulation that a Muslim, both male and female, cannot leave for or move to another religion. If a Muslim converts, his or her act is considered apostasy (the abandonment or renunciation of Islam) and deserves a death sentence. In response to this, Gus Dur suggests that if such a law is applied in Indonesia, from 1965, over 20 million people might have been sentenced to death due to their conversion from Islam to Christianity. Gus Dur adds that to implement the Islamic law as such requires new *ijtihad* along with the spirit of humanity in Indonesia.³⁷

The spirit of protection and enforcement of social-humanitarian values initiated by Gus Dur is indeed in line with that of *Pancasila* in the second precept, which states: A Just and Civilized Humanity. This precept describes the existence of the Indonesian nation as part of the universal humanity in building social order of the world that rests on human values as being just and civilized based on the potential of human reason and conscience and common norms and decency.³⁸ In addition, the second precept is imbued with the first one – Belief in the Only One God. This means that just and civilized humanity for the entire Indonesians should come from the teachings of God, the Almighty God. Humans, as God's creatures, have freedom and independence, and, as individuals, have equal rights and obligations, and so there should be no discrimination, coercion, extortion and violations of human rights. It is also stated in the opening of the 1945 Constitution of the Republic of Indonesia (UUD-NRI) that "*It is true that independence is the right of all nations, and therefore occupation of the world must be abolished as it is not in accordance with humanity and justice*".³⁹

The values of *Pancasila* are also in line with *maqāṣid al-sharī'a* (the purpose of Islamic law), which protects human values. These values are described by 'Abd al-Majīd al-Najjar as follows: *First*, maintaining the *fitrah* of human beings, which includes protection of both human body (*ḥifẓ al-nafs*) and reason (*ḥifẓ al-'aql*) as taught in the Precept of the One Godhead and the Principle of Just and

³⁷Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*, 111.

³⁸Pimpinan MPR dan Tim Kerja Sosialisasi MPR Periode (2009-2014), "Empat Pilar Kehidupan Berbangsa Dan Bernegara" (2012). 51-53.

³⁹Pimpinan MPR dan Tim Kerja Sosialisasi MPR Periode (2009-2014). 52-54.

Civilized Humanity. Likewise, contemporary *fiqh* provides guidance for humankind to fulfill his rights to Allah, self, family and guests. In other words, there is a balance between human rights and the rights of God, personal rights and family rights, and personal rights and other people's rights.⁴⁰ In this case, Gus Dur argues that the protection of values and human rights is the essential teachings of contemporary *fiqh*, committed to maintaining the essence and existence of humanity and, at the same time, rejects all forms of violations of human rights.⁴¹ Gus Dur's contemporary *fiqh* paradigm is portrayed in the integration of Islamic *fiqh* teachings in the tradition of the tarekat which has a national character because it is spread through the political path of the existing kingdoms so that a sense of nationality arises among the Indonesian Islamic movement. Thus, the implementation of *fiqh* teachings not only runs through the cultural path of society but also through the power lines of the kingdoms in Indonesia, so that the Indonesian *fiqh* paradigm is always actual *fiqh* in answering the dynamics of Indonesian people's lives,⁴² but it does not mean that *fiqh* norms are changed according to the needs of local culture, but local culture is only taken into consideration in understanding and applying *fiqh* teachings without any changes to the existence of *fiqh* teachings themselves.⁴³ One example is Abdurrahman's high attention in defending minority rights,⁴⁴ for example Gus Dur stated sternly that "if anyone believes the Ahmadiyya is wrong, please. But the 1945 Constitution provides them with the freedom to express their opinions. "In this case, it does not mean that Gus Dur defended the Ahmadiyya faith, but he defended the rights of minorities who still had to be protected. In the past, when Gus Dur became President of the Republic of Indonesia issued Presidential Decree of the Republic of Indonesia Number 6 of

⁴⁰Abd al-Majīd al-Najjār, *Maqāṣid Al-Sharī'ah bi Ab'ād Jadīdah* (Beirut: Dār al-Gharb al-Islāmī, 2008). 86-96.

⁴¹Nurcholish Majid, "Kebebasan Nurani (*Freedom of Conscience*) dan Kemanusiaan Universal sebagai Pangkal Demokrasi, Hak Asasi dan Keadilan," in *Demokratisasi Politik, Budaya dan Ekonomi*, ed. Elza Peldi Taher, 1st ed. (Jakarta: Yayasan Paramadina, 1994), 241. 125.

⁴²Wahid, *Prisma Pemikiran Gus Dur*. 105-106

⁴³Ainul Fitriah, "Pemikiran Abdurrahman Wahid tentang Pribumisasi Islam," *Teosofi: Jurnal Tasawuf dan Pemikiran Islam* 3, no. 1 (October 7, 2013): 39-59, <https://doi.org/10.15642/teosofi.2013.3.1.39-59>. 47-48.

⁴⁴Tempo.co, "Mahfud: Karena Gus Dur, Kata Assalamualaikum Populer Digunakan Umat Lain," Tempo, 2010, <https://nasional.tempo.co/read/239017/mahfud-karena-gus-dur-kata-assalamualaikum-populer-digunakan-umat-lain>.

2000 concerning Revocation of Presidential Instruction Number 14 of 1967 concerning Religion, Belief, and Customs of China which later with the Presidential Decree carried out religious activities, beliefs and China customs can be carried out without the need for special permits.⁴⁵

In an effort to safeguard human nature, Gus Dur also stressed the need for new interpretations of the provisions of conservative fiqh norms and their implementation⁴⁶ such as punishment for violations of *sāriqah* (stealing with the law of cutting hands), *hirābah* (rebellion in a country that legitimate), adultery, *qadhif* (accusing adultery), *sukr* (drunk), and *riddah* (out of Islam). In addition, the punishment of *qiṣās* (in kind) or *diyāt* (money fine) which only applies to men who are Muslim with men who are Muslims too, or if women who are Muslim (ah) are women who are Muslim (ah) and not for non-Muslims. Muslims (men/women) who kill non-Muslims cannot be *qiṣās*.⁴⁷

Second, maintaining human wellbeing means to preserve the values of human honor and glory (*ḥifẓ al-ʿird*). Contemporary *fiqh* explains that human beings are God's best creatures in both strength and nature, who are able to think, will, and act (Al-Tīn [95]: 4). These abilities do not belong to other beings (Al-Rūm [30]: 30), and so with them, humans get a noble and equal position as they are able to choose to do good deeds and leave bad ones (Al-Shams [91]: 8-10).⁴⁸ In the Indonesian context, the glorious values of human dignity need to be protected from any kind of violence and discrimination. In this stance, Indonesian Unity (the third precept of *Pancasila*) becomes an important basis for maintaining the dignity of the Indonesian people before other nations and countries.

In order to realize equal rights and dignity, Abdurrahman allowed the leadership of women in public affairs such as becoming a Prime Minister or President as he normatively supported Benazir Bhutto as the Prime Minister of Pakistan at that time. Therefore, Gus Dur argued that the Word of the Prophet

⁴⁵Rahman, "Gus Dur, HAM, Dan Perdamaian."

⁴⁶Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*. 243-244.

⁴⁷Dahlan, "Epistemologi Hukum Islam: Studi atas Pemikiran Abdullahi Ahmed An-Na'im." 220-223.

⁴⁸Al-Najjār, *Maqāsid Al-Sharī'ah bi Ab'ād Jadīdah*, 92; Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse: Syracuse University Press, 1990).

Muhammad, which stated "*woe to a people if led by a woman*" must be carried out a new interpretation that applies to socio-cultural and humanitarian conditions in the present, because the hadith of the Prophet was said in the VIII century AD on the Arabian Peninsula. From the socio-cultural and political side of the Prophet's time, the concept of leadership was individual in which a chieftain must lead wars, divide water through irrigation, lead trade caravans and reconcile all kinds of problems between families in a tribe, so that a leader functions make and also implement legal decisions at the application level. Meanwhile, at present, the concept of leadership both the President and the Prime Minister has been institutionalized and should not take its own decisions but through deliberations at cabinet meetings.⁴⁹

In an effort to maintain the unity of Indonesian nation, Gus Dur builds a contemporary *fiqh* paradigm that is in accordance with the ideological values of *Pancasila* and the 1945 Constitution placing citizens to have equal rights to make corrections and express aspirations to the government.⁵⁰ In an effort to safeguard Indonesian unity, Gus Dur suggested that the struggle of KH Hasyim Asy'arie issued a "*fatwā on jihad war*" in fighting the invaders at the beginning of the Indonesian independence war which remained *istiqamah* in favor of the new state of the Republic of Indonesia, even in its development, Nahdlatul Ulama (NU) firmly rejected the establishment of the 'Indonesian Islamic State (NII)' established by Kartosuwiryo, even from the beginning the NU Ulama had stated that the NII movement as *bughat* (rebellion) had to be eradicated.⁵¹ In order to realize this, President Joko Widodo also declares the vision of "Indonesia Sentris", later combined with the *Nawacita* program, to prevent disputes arising from within the country. The *Nawacita* program builds Indonesia from the periphery areas so that all levels of society could enjoy the distribution of development.⁵²

Third, maintaining the purpose of human life to merely carry out the commands of Allah and stay away from His prohibitions, and humans must be

⁴⁹Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*. 243-244.

⁵⁰Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*, 168-170.

⁵¹Wahid, *Prisma Pemikiran Gus Dur*. 156.

⁵²Eko Sulisty, *Jokoway: Cara Memahami Kepemimpinan Jokowi* (Jakarta: Kantor Staff Presiden Republik Indonesia, 2017).

useful not only for themselves, families but also for others.⁵³ In the life of Indonesians, this aims to realize the fifth principle of *Pancasila*, namely "Social Justice for All Indonesian People" (*Keadilan Sosial bagi Seluruh Rakyat Indonesia*). The realization of justice and welfare of the Indonesian people needs to be conducted in totality.

In an effort to realize justice, Gus Dur then took the example of the issue of inheritance rights of women which is not necessarily two to one as the textual provisions in the Qur'an, but new interpretations can be made in accordance with socio-cultural and humanitarian conditions in the present. He quoted the thoughts of Sheikh Muhammad Arsyad al-Banjari who argued that the provisions of inheritance in the Qur'an were different from the socio-cultural conditions of Banjar which put forward the principle of justice in the areas of Central Kalimantan and South Kalimantan.⁵⁴

In order to realize justice, Gus Dur suggests the contemporary *fiqh* paradigm based on the Qur'anic verses explaining justice. In the contemporary *fiqh*, Gus Dur explores the interrelationship between the values of justice as a concept and practice to improve public welfare (*al-maṣlaḥa al-'amma*) and standard of living of the poor and needy Indonesians.⁵⁵ Thus, Gus Dur's contemporary *fiqh* paradigm upholds the values of justice not merely formally, but also substantively, in which the enforcement and protection of social-humanitarian values are carried out as part of the implementation of *maqāṣid al-sharī'a* implied in the 1945 Constitution of the Republic of Indonesia:

First, preservation and protection of things related to religion; second, inner and outer preservation and protection of life; third, protection of the survival, honor and dignity of individuals and family; fourth, protection of mind from things that damage and pollute it, that cause behavioral irregularities and disturb the

⁵³Al-Najjār, *Maqāṣid Al-Sharī'ah bi Ab'ād Jadīdah*. 30 & 101.

⁵⁴Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*. 243-244 & 250.

⁵⁵Abdurrahman Wahid, "Universalisme Islam dan Kosmopolitanisme Peradaban Islam," in *Kontekstualisasi Doktrin Islam Dalam Sejarah*, ed. Budhy Munawar Rachman, 1st ed. (Jakarta: Yayasan Paramadina, 1995), 731. 99-100

function of reason; fifth, protection of property, in the sense that everyone deserves protection of their private property.⁵⁶

Inferring from Munitz⁵⁷, Gus Dur's contemporary *fiqh* paradigm teaches social-humanitarian values such as values of equality, openness, tolerance, and brotherhood. These are in accordance with the tendency of majority Indonesian Muslims to live amid the radical Islamic movements, massively developing in various lines but unable to surpass the tendency of the majority of Indonesian Muslims.⁵⁸ Nonetheless, radical Islamic movements need preventing. There are still many Muslim groups in Indonesia, who are tolerant and inclusive and pay more attention to social-human values in actualizing *fiqh* in Indonesian society. Research conducted by Zirmansyah et al.⁵⁹ has reported the distribution of respondents' answers to the actualization of *fiqh* in public and state life in Indonesia with alternative answers of SS (Strongly Agree), S (Agree), TT (Don't Know), TS (Disagree), and STS (Strongly Disagree), as follows:

Table of Research Results of Research and Development Agency of Republic of Indonesia, Ministry of Religion⁶⁰

NO	STATEMENTS	ALTERNATIVE ANSWERS (%)				
		SS	S	TT	TS	STS
1	Because the majority of Indonesian people are Muslims, Islam should become the state religion	2,6	5,8	16,9	45,6	29,1
2	Islam forbids people to impose their will	51,9	38,1	2,0	4,9	3,1
3	I agree if the Indonesian government applies a sentence of a hand-cut for a thief.	2,9	5,1	17,0	58,9	16,1
4	I agree if the government forcibly takes away rich Muslims' wealth due to their reluctance to pay alms.	4,3	4,8	11,7	33,1	46,1
5	In Islam, people need to be invited to do good deeds in a wise manner.	53,6	33,1	5,9	3,3	4,1

⁵⁶Pimpinan MPR dan Tim Kerja Sosialisasi MPR Periode (2009-2014), Empat Pilar Kehidupan Berbangsa dan Bernegara. 50

⁵⁷Munitz, "Contemporary Analytic Philosophy."

⁵⁸Wahid, *Islamku, Islam Anda, Islam Kita: Agama Masyarakat Negara Demokrasi*; Wahid, *Sekedar Mendahului: Bunga Rampai Kata Pengantar*.

⁵⁹Zirmansyah, *Pandangan Masyarakat terhadap Tindak Kekerasan atas Nama Agama: Studi Hubungan antara Pemahaman Keagamaan dengan Tindak Kekerasan atas Nama Agama*, ed. Bashori A. Hakim, 1st ed. (Jakarta: Kementerian Agama RI, Badan Litbang dan Diklat, Puslitbang Kehidupan Keagamaan, 2010). 54.

⁶⁰Zirmansyah, *andangan Masyarakat terhadap Tindak Kekerasan atas Nama Agama: Studi Hubungan antara Pemahaman Keagamaan dengan Tindak Kekerasan atas Nama Agama*, 54.

The above data reveal that most respondents disagree with or do not want the teachings of *fiqh* to be applied forcefully. Most respondents also refuse the teachings of *fiqh* that drive people into the perspective of making Islam the official religion of the state. Thus, Gus Dur's contemporary *fiqh* paradigm, which teaches social-humanitarian values as the principles of life for nation and state in Indonesia, is necessary to become an important reference. This study also strengthens the findings from Abdul Halim's research,⁶¹ which says that the application of Islamic law (*fiqh*) does not endanger the existence of *Pancasila* ideology, but instead, enhances *Pancasila*. This is because the application of contemporary *fiqh* highlights and enriches the materials for the formation of legislation to maintain and guarantee social humanitarian values such as equality, openness, tolerance and brotherhood within the plurality of national and state life in Indonesia.⁶²

Based on this description, the enactment of Indonesian legal norms based on the principles of justice and equality is basically in accordance with the spirit of contemporary *fiqh* norms initiated by Gus Dur who have the characteristic of prioritizing socio-cultural and humanitarian values in interpreting and applying the norms. *fiqh* norms, so that *fiqh* norms that have become positive laws that are carried out through a process of acculturation of culture with the traditions of the life of the Indonesian people can support the implementation of these legal norms optimally. In the context of legal politics, the jurisprudence normative process carried out through a process of cultural acculturation has run smoothly in Indonesia until now because the system of establishing *fiqh* norms in Indonesia is generally based on the Shāfi'ī schools, which in the *uṣūl fīkīh* rests on rules which reads: "culture can be confirmed as *shara'law*" (*al-ādah muḥakkamah*).⁶³

⁶¹Abdul Halim, "Membangun Teori Politik Hukum Islam Di Indonesia," *AHKAM: Jurnal Ilmu Syariah* 13, no. 2 (August 7, 2013): 259–69, <https://doi.org/10.15408/ajis.v13i2.938>.

⁶²Sessler Bernstein and Bilimoria, "Diversity Perspectives and Minority Nonprofit Board Member Inclusion"; Andri Georgiadou, "Reflections from EDI Conference: Equality, Diversity, Inclusion and Human Rights in Times of Austerity," *Equality, Diversity and Inclusion* (Emerald Group Publishing Ltd., 2016), <https://doi.org/10.1108/EDI-09-2016-0077>.

⁶³Abdurrahman Wahid, *Pergulatan Negara, Agama, Dan Kebudayaan* (Jakarta: Desantara, 2001). 156.

CONCLUSION

The results of this study suggest that the conservative ijthād paradigm is irrelevant in Indonesia because it can trigger the birth of Islamic radical movement that has spawned a number of acts of terror in a number of places in Indonesia starting from Bali Bombing 1, Bali Bombing 2 and other bombings in Indonesia. Therefore, the ijthād paradigm of Gus Dur's contemporary jurisprudence is urgently needed to make fiqh norms so that they can be interpreted according to the life needs of Indonesian people without changing the existence of fiqh norms themselves, so that there is a dialectic between fiqh norms and Indonesian culture then it becomes the foundation in giving birth to a living cultural climate of the people who are able to respect and uphold the values of equality, tolerance, brotherhood and encourage the birth of prosperity in the plurality of national life in Indonesia.

The implications of the ijthād paradigm of Gus Dur's contemporary jurisprudence can be described as follows: First, theoretically, the ijthād paradigm of Gus Dur's contemporary jurisprudence is different from the modern fiqh ijthād paradigm of Fazlur Rahman - which is based on the fusion of horizon from Geroge Hans Gadamer - which colors many Indonesian reformers like Nurcholish Madjid and Ahmad Syafii Maarif. Although it differs from the mainstream of Indonesian Islamic reformers, the ijthād paradigm of Gus Dur's contemporary jurisprudence has had a greater influence in giving birth to a new paradigm in Islamic thought, such as Liberal Islam by Ulil Absar Abdalla and Islam Nusantara voiced by the Nahdlatul Ulama Executive Board (PBNU) until now it remains istiqamah guarding and guarding the Pancasila, the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia (NKRI) and Bhineka Tunggal Ika. Second, socially, Gus Dur's idea that once stated that "Assalamu'alaikum" may be replaced with "Good Morning" actually makes the culture of greetings in Indonesia not only spoken by Muslims, but almost all circles, even non-Muslims too. say "*Assalāmu'alaykum*" eloquently because "*Assalāmu'alaykum*" has been regarded as part of the culture of Indonesian society in expressing greetings to each other. In addition, the majority of the Indonesian Muslim community still maintains a contemporary fiqh paradigm that has the characteristic of upholding the values of equality, tolerance, brotherhood and prosperity in the plurality of national life in Indonesia.

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