

FIQIH AND PROGRESSIVE LAW: Study of Inequality and Racial Issues in America

Ahmad Muhtadi Anshor

IAIN Tulungagung | Jalan Mayor Sujadi Timur No. 46 Plosokandang
Tulungagung | muhtadianshor2@gmail.com

Abstract: Racial issues and gaps in the US are a phenomenon that the world is witnessing, where intimidation against minority groups is often heard, and this act certainly contravenes the values of appropriateness and human values people of all races highly respect. This research is literature-based in which the data was analyzed in descriptive method based on content analysis. This research aims to reveal the racial issues in the US seen from the perspective of Fiqh and progressive law. The findings of this research imply that this phenomenon contravenes the fundamental principles of fiqh and progressive law.

Keywords: Racial Issue, Gap, Progressive Fiqh, Progressive Law

Introduction

This study departs from an interest in delving more into the new discourse model of fiqh and the human-based legal studies. In the modern discourse these days, aspects of legal studies and humanity have grown into serious matters in society and the state. Accentuation of this issue is traceable through the echoed attention of jurists to the humanistic efforts that have been given by minority groups. This perspective is intended to respond to the challenges and to prove that law and religion stay to provide protection of the values of humanity.¹

¹ Iffatin Nur, "The Best Interest of Child Dalam Fiqih Humanistik Dan Fiqih Humanistik," *Ahkam: Jurnal Hukum Islam*, Vol. 2, no. 2 2014., 135.

In line with the global dynamic following the World War II, or commonly known as postmodern or contemporary era, Islam, the religion existing to give solution to issues of the followers in this contemporary era, is venturing out into the new challenges where Islam is urged to carry out self-assessment amid this global competition.² Similar condition certainly happens in the discourse on Islamic law, and this is obvious with the presence of Islamic law thinkers in this contemporary era where they contribute their new ideas of Islamic law (fiqh) in this modern period.

Islam has placed its followers as a central subject, not as an object. This position highlights the connection between humans and their God, humans and humans, and humans and their universe.³ This principle has made Islam as not only a mere sacred fundamental for and to God, but Islamic law communicates with and listens to the beating pulse of human civilization from time to time and from place to place.⁴

The responses of Islamic law to humans' problematic life seems to have to hold a communication with varied cases these days.⁵ Racial issues sparked by police officers in the US along with the gaps in education, economy, and health need resolutions. This issue is worsened by discrimination arising between white and black people, which is escalating and triggers social unrest.⁶

The world is in racial turbulence, and criticism is addressed to four police officers as suspects. Derek Chauvin is the

² Abdullah Ahmed Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Right, and International Law* (New York: Syracuse University Press, 2006).

³ Ulil Abshar Abdala, *Membakar Rumah Tuhan: Pergulatan Agama, Privat, Dan Publik* (Bandung: PT Remaja Rosdakarya, 1999).

⁴ Nur Kholis, "Humanisme Sebagai Filsafat Hukum Islam, *Isti'dal: Jurnal Studi Hukum Islam*, Vol. 1, no. 1, 2014., 57.

⁵ Ifatin Nur, "In the Name of Public Interest We Evict? (Re-Actualizing the Standing Position of Proletarian Jurisprudence to the Marginalized)," *Journal, Saudi Journal of Humanities and Social Sciences*, Vol. 5, No. 2, 2020.

⁶ Benny D Koestanto, "Kesenjangan Dan Isu Rasial, Bara Yang Terus Menyala Di Tanah Amerika Isu Rasialisme Di AS Menjadi Bara Yang Terus Menyala Di Tengah Kesenjangan Dan Praktik-Praktik Diskriminatif Yang Dialami Warga Kulit Hitam.," *Kompas*, 2 Juni, 2020, <https://bebas.kompas.id/baca/dinasional/2020/06/02/kesenjangan-dan-isu-rasial-bara-yang-terus-menyala-di-tanah-amerika/>.

main suspect of the murder of George Floyd, an African-American man living in Minneapolis.⁷

During the presidency of Donald Trump, the US democratic system seemed to be weakening, on the contrary to what has been expected in his presidency, and the issue above highlights this rotten democracy. Justice, right equality, and discrimination abolishment are values the US has failed to demonstrate, and this was even worsened by the black campaign by President Trump in the time approaching the racial presidential election. This evidence possibly strengthens the sentiment and stigma of the colored migrants and Moslem people and ignites a fire amidst the racial unrest these days.⁸

Looking at the above issues, it is essential to look back at the substantive materials of the study of Islamic law (Fiqh) and progressive law. In the study of jurisprudence, Islam is known as the law of God (*al-ahkam al-syar'iyah*),⁹ characterized by all God's remarks about the humans' deed, done either individually or collectively, or under a government.¹⁰ The God's remarks can also be understood as His *kalam* He directly sent or through His messenger.¹¹ In addition to the values of the jurisprudence of Islamic law, the values of appropriateness and humanity are also recognized in Islamic studies.¹²

In the effort of criticism over the rule of law based on progressive law, all legal activities must be capable of providing

⁷ Tim Editor, "Kasus George Floyd, Bagaimana Sejarah Rasisme Amerika?," *Geotimes*, 10 Juni, 2020, <https://geotimes.co.id/opini/kasus-george-floyd-bagaimana-sejarah-rasisme-amerika/>.

⁸ Tim Editor, "PBBNU : Rasialisme Adalah Cacat Bawaan Demokrasi Amerika," *Jurnal Presisi*, 6 Juni, 2020, <https://jurnalpresisi.pikiran-rakyat.com/nasional/pr-15395666/pbbnu-rasialisme-adalah-cacat-bawaan-demokrasi-amerika>.

⁹ Regarding the substantial matter of the study of Islamic law, see Saim Kayadibi, "The State As An Essential Value (Daruriyyat) Of The Maqashid Al-Shari'ah," *Ahkam: Jurnal Ilmu Syariah*, Vol. 19, No. 1, 2019.

¹⁰ Asyraf Wajdi Dasuki and Nurdianawati Irwani Abdullah, "Maqashid Al-Shari'ah, Masalah and Corporate Social Responsibility," *American Journal Of Islamic Social Sciences*, Vol. 24, No. 1, 2007, 31–33.

¹¹ Abu Yasid, "Evolusi Syari'ah Dan Wacana Fiqih," *Islamica*, Vol. 4, no. 2, 2010, 250.

¹² See, Fauzi, *Hak Asasi Manusia Dalam Fikih Kontemporer* (Depok: Prenadamedia Group, 2018).

advocacy and protection to the vulnerable and minority groups.¹³ This is quite intriguing to bring this understanding to life in the format of fiqh and progressive law that are able to respond to the racial issues and gap sparked in the US. To obtain valid observation, this study was conducted based on library research where data is described in details with information obtained from online news, while content analysis was used to analyze the data.¹⁴

History and How racism started to arise in America

The history of racism in America has left a record of issues concerning racial violation, and not only does this history record violation committed by American civilians, but it also reveals what police officers have done. This condition is internalized into culture and triggers gaps in almost all aspects such as education, economy, health, and state security. Racism that seems to have been the core issue debated since a long time ago in the US is the discrimination between white and black people. This social issue is like everlasting fire that could give another spark strong enough to trigger unrest and concern among people in America.¹⁵

George Floyd, killed after a police officer knelt on his neck in Minneapolis, is the recent case of murder in America. This murder emerged in the public eyes following the arrest of George Floyd over counterfeit money as reported by a storekeeper. George Floyd murder is deemed unacceptable since George Floyd repeatedly pleaded that he could not breathe when a police officer knelt on his neck. Following this kneeling, George Floyd was found not moving before he finally was rushed onto an ambulance. He was declared dead.¹⁶

¹³ Bayu Setiawan, "Penerapan Hukum Progresif Oleh Hakim Untuk Mewujudkan Keadilan Substantif Transendensi," *Jurnal Kosmik Hukum*, Vol.18, no. 1 (2018).

¹⁴ For better understanding about content analysis method, read: John W. Creswell, *Qualitative Inquiry and Research Design, 3rd Ed* (Los Angeles: SAGE, 2013).

¹⁵ Tim Editor, "Sejarah Rasisme Di Amerika," *Bobobox*, 2020, <https://www.bobobox.co.id/blog/sejarah-rasisme-di-amerika/>.

¹⁶ Muhammad Ahsan Ridhoi, "Kematian George Floyd & Data Pembunuhan Kulit Hitam Oleh Polisi Di AS," *Dkatadat.Co.Id*, 1 Juni, 2020, <https://katadata.co.id/berita/2020/06/01/kematian-george-floyd-data-pembunuhan-kulit-hitam-oleh-polisi-di-as>.

Minneapolis is a multicultural city. However, the racism as reflected in the murder of George Floyd indicates that this city may be vulnerable to racial conflict. In the report on The New York Times, the gap between white and black people is quite obvious since the Afro-American people tend to live their unfortunate life in not really good areas, in contrast to the white living in far decent neighborhoods.¹⁷

Another triggering factor causing racism in Minneapolis is that police officers in this area are dominant with white people, and it is common that the police members have been allegedly racist in several decades. The police department of Minneapolis is also believed not to discipline its members according to bad records. Racism has taken place in Minneapolis since 1990, since migrants from Cambodia, Somalia, Ethiopia, Mexico, and Laos flocked to the country, according to population census data.¹⁸

Minneapolis was populated with 60% of white people, 20% of black, and 10% of Latin residents, and 6% of Asians. Different population background arising in this city also seems to be another contributing factor to racism. These figures indicate that racism in America has long been around. BBC reported that America has faced racist and civil riot since the post murder of Martin Luther back in 1968.¹⁹

History of racism in the US dates back to the 19th century. Racism was triggered by labor system that put white people in their highest rank far above those black people. Back in 1877, Georgia government imposed property tax for white people and black. This policy was believed to give additional burden to the black people (who earned only little money).²⁰

¹⁷ Tim Editor, "Sejarah Rasisme Di Amerika..."

¹⁸ Tim Editor, "Sebelum Kematian George Floyd, Rasisme Di Minneapolis Sudah Marak Terjadi," *KOMPAS.Com*, 3 Mei, 2020, <https://www.kompas.com/global/read/2020/05/30/222712870/sebelum-kematian-george-floyd-rasisme-di-minneapolis-sudah-marak-terjadi?page=all>.

¹⁹ Tim Editor, "Sejarah Rasisme Di Amerika..."

²⁰ Tim Editor, "Kasus George Floyd, Bagaimana Sejarah Rasisme Amerika?..."

Black people were also discriminated and it was obvious in the congress of Law concerning Civil Rights Year 1875 promising that it would give equal access to black people to all aspects. However, this policy was limited and weakened by the Decision of US Supreme Court. In 1892, "separate but equal" came to the surface, emphasized on access to public facilities, but this movement was not without an issue; black people were only allowed to sit at the back in public transports, while the front seats were only for the white.

At the end of the 19th century, amendment and constitution intended to protect the equality were performed, but again, this was challenged by the interpretation of the court, contrary to the principle of equality as expected. Support for desegregation started to be visible in the early 20th century, showing that black people started to live their normal life and were seen to work in religious services and organizations.

Furthermore, National Association for the Advancement of Colored People (NAACP) was founded in early 1909, intended to abolish and end racial discrimination, but it was not as expected and failed in 1935, where racial discrimination was still seen against colored people in several aspects of life.

Under the presidency of Harry S. Truman, presidential committee was established to fight for civil rights of black people.²¹ Truman's support for racial desegregation was apparent through the establishment of the presidential committee. President John F. Kennedy was also supportive to this desegregation. Kennedy accommodated services for black people. Affirmative action policy spared a room for marginalized people and evaluated gaps that had taken place far earlier. This action was passed to President Lyndon Johnson who put civil rights as priority in his government agenda.²²

²¹ C.S.C Wilson D. Miscamble, *Harry S. Truman, the Bomb, and the Transformation of U.S. Foreign Policy* (University of Notre Dame: Florida, 2010), 3.

²² Anthony Arnove, *Voices of a People's History of the United States* (New York: SevenStories Press, 2010), 420.

The racial discrimination encouraged several movements in support of the abolishment of racial discrimination. Moslem people in America initiated to join anti-racism demonstration that paralyzed the states. This movement brought some American Moslems further into the discussion on identity and racial equality and racism phenomena among Moslems.²³

What is elaborated above indicates that the struggle the black people in America have been involved in to be treated equally and to be given equal opportunities has opened the way to equality for the local citizens of America, immigrants, disabled people, women, and gay people. Attempts to fight against racism and disparities are just an understanding about behavior overshadowing another group, and it has rights also eclipsing the group.

This racial issue came along with the issue in the study of Islamic law, especially amidst the Moslem societies in the world. Several groups with their secular ideology claiming themselves as individuals mostly deserving Islam are found incapable of dealing with their knowledge, history, practices, and the ideology; they are incapable of responding and giving answers to the recent issues.²⁴ Racial issues in the history of the study of Islamic law are not only around the reality. Reducing the portion of racialism that has been deeply internalized into the western intellectuality is an attempt that groups of intellectuals have been striving.²⁵

Responding racial issue in America in terms of legal aspect, international law is identical to the interest of the groups of a certain state. Europe also has its international interest and runs its national development. One of the concepts of and influences on international law is the concept of Islamic law (hereinafter

²³ Tim Editor, "Egalitarianisme Islam Dan Ketegangan Rasial Antara Muslim AS," *Republika.Co.Id. Senin 13 Jul 2020* (<https://republika.co.id/berita/qdecrn366/egalitarianisme-islam-dan-ketegangan-rasial-antara-muslim-as>, 2020).

²⁴ Hasan Basri Marwah, "Fiqh: Dari Tradisionalisme, Pembaharuan, Hingga Geopolitik," *Al-Mazahib* Vol. 2, no. 1, 2012., 349.

²⁵ See Tim Editor, "In Defense of Critical Race Theory: Islam, Race, & the Modern Public Intellectual," *Maydan: Politics & Society*, 5 February, 2020.

progressive fiqh). The influence of Islamic law on the growth of international law is apparent in the concept of consular diplomatic law, human rights, and law concerning war and dispute resolution and peace.²⁶

Building Fiqh and Progressive Law: Advocacy for Minority

Before understanding progressive fiqh, this section aims to elaborate the theory of Islamic law highlighting the difference between sharia and Islamic law (fiqh). Based on the author's perspective, highlighting this difference is intended to help understand the theory of Islamic law easier. Sharia is principally related with revelations and all knowledge voiced by Al-Qur'an and Hadiths.²⁷ However, fiqh represents a method developed by fiqh experts intended to interpret Al-Qur'an and Hadiths to reveal the reality and issues growing in the society based on the interpretation of *mujtahid*.²⁸

This understanding indicates that sharia has a wider scope in all aspects of human life, but fiqh represents the small scope of explanation that is only related with practical rules (*al-ahkam al-'amaliyah*). Fiqh is also defined as an understanding of sharia. That is, Fiqh is different but still closely related.

In terms of the studies on social reality these days, fiqh is inextricable from human behavior either individually or collectively. Islamic law (fiqh) is *shalih li kulli zaman wa makan*. Thus, fiqh is required to be responsive to every problem existing in social reality.²⁹ Defining fiqh in a classical scope and in a narrow-minded way is another term of limiting all its application in all

²⁶ Eka An Aqimuddin, "Islam Sebagai Sumber Hukum Internasional," *Masalah-Masalah Hukum*, Vol. 45, no. 2, 2016., 318–19.

²⁷ Ahmad Muhtadi Anshor, *Al-Qur'an Dan Al-Hadits Sebagai Sumber Hukum Islam* (Tulungagung: SATU Press, 2020), 112.

²⁸ Mohammad Hashim Kamali, *Membumikan Syariah; Pergulatan Mengaktualkan Islam* (Bandung: Mizan, 2010), 21.

²⁹ See, Iffatin Nur and Muhammad Ngizzul Muttaqin, "Fiqh Jalan Tengah (Mempertemukan Maqashid Syari'ah, Hukum, Dan Realitas Sosial)," *Zawiyah: Jurnal Pemikiran Islam*, Vol. 5, no. 2, 2019, 215.

laws that deal with particular private issues, not public ones, and it has been long discussed.³⁰

Not like the definition of fiqh in contemporary period, fiqh is defined as a rule not only dealing with human behavior that is mere related with law, but it is also a rule that governs law, faith, ethics, moral, and many more in all perspectives of life that bring merit to all people. This definition is a response to the phenomenon in the life of individuals, families, organizations, and the state.

According to the history of Islamic science, there are no doctrines concerning the science of Islamic law that receive serious attention up to these days but fiqh (Islamic law). This notion comes from several groups of people, the Islamic group, or even the external parties, as heard from the Islamic group represented by Al-Jabiri who said:³¹ "It is apparent that the thought of the Islamic civilization, in terms of both the quantity and quality, fiqh of Islam is second to none, and it is without doubt that there is no single Moslem house, from the Gulf to Atlantic or even further to the hinterland of Asia and Africa, is bare of Islamic law (fiqh). Thus, in this term, fiqh is the most evenly distributed teaching all over the societies of Islam."

Furthermore, Al-Jabiri said³² "If we can call the Islamic civilization by the name of its product, we have to say that the Islamic civilization is fiqh civilization (*idza jaza lana an nusammi al-hadlarah al-islamiyah bi ihda muntajatiha fa innahu sayakunu 'alaina an naqula 'anha innaha hadlarah al fiqih*)."

In line with Al-Jabiri, Charles J. Adams also said "there is no more vital subject for all people of Islam but Islamic law (fiqh)." This indicates that Islamic law embraces expressions of religious experience that is vital in the continuity of the life of the moslems.

³⁰ See the definition of fiqh during classical period, Bernard G. Weiss, *The Spirit of Islamic Law* (Athens: Georgia University Press, 2007).

³¹ Muhammad Abid al-Jabiri, *Takwin Al-'Aql Al-'Arabi* (Beirut: Al-Markaz al-Saqqafi al-'Arabi, 2009), 96.

³² Ibid.

With its powerful position in Islam, Islamic law (fiqh) is a product of thoughts from the jurists of Islamic law that contribute their interpretation of normativity of texts adjusted to the current development. In the Islamic law of classical period, one of the streams of Fiqh revealed the tendency of the jurists of Islamic law (*fuqaha'*) in performing *ijtihad* (intellectual exercise). This tendency was affected by diverse approaches and methodologies used to study Islamic law (*ijtihad al-hukm*). This stream was deemed liberal, where it gave a huge chance for thoughts to be involved in the process of *istinbath al-hukm* (Stipulation of Islamic law). Another stream seemed literal, where the stipulation of Islamic law (*istinbath al-hukm*) tended to involve texts over thoughts.

The diverse streams of fiqh during the classical era tended to reflect the need of the people instead of war of arguments based on particular methodologies just to declare that there were no values of praxis at all. Imam Abu Hanifah, for example, seemed more liberal to determine the *istinbath* of the law since Abu Hanifah faced the high and varied dynamic of Bashrah, while the lexical resources in both Al-Quran and al-Hadiths were limited. This drawback seemed to give an access to Imam Hanafi to being more creative to perform his intellectual experiment in determining Islamic law as a solution to the problems of Ummah in his surrounding.

However, no matter how varied were the thoughts of fiqh in its time, those thoughts represent the picture and reality of concrete solution to all problems people are facing. Furthermore, this product of fiqh also serves as a guideline to resolve all the issues faced. This is what Hasan Hanafi defines as the values of praxis in religious thoughts.³³ A segment most thinkers have always overlooked because they have trusted discourse more (*al-khithabi*), which sometimes does not load any values of praxis (*al-'amali al-tathbiqi*) in reality.

³³ See, Hasan Hanafi, *Islamologi 1: Dari Teologi Statis Ke Anarkis* (Yogyakarta: LKiS, 2003), 160-170.

The progressive fiqh as the core discourse in this study is similar to the discourse on Social Fiqh, Minority Fiqh (*nahwa fiqh li al-aqaliyyat*),³⁴ and to progressive Islam (*al-Islam al-taqaddumi*),³⁵ and Kiri Islam that was initiated by Hasan Hanafi or several other thinkers that put Islam as the power of social criticism and revolution. Progressive is a behavior that embodies the provision of both rights and obligation according to the divine values.³⁶

The *Ijtihad* of progressive fiqh is more oriented to virtue (*mashlahah*). Principally, the essence of the responsive idea is in the reinterpretation of *mujtahid* of the text (*nash*) as a cultural product (*muntaj tsaqafi*) to respond to the modernity in *istinbath* of law (fiqh). The author understands the term “responsive” based on the typology of law initiated by Philippe Nonet and Philip Shelznick in their book *Responsive Law: repressive law, autonomy law, and responsive law*. In their definition, responsive law is aimed to respond to a phenomenon, a conduct, behavior, or legal occurrence that puts substantive justice as an orientation of legal objective, or it is called as *maqashid al-syari’ah* in Islamic law.³⁷ In the context of fiqh, the revelation of Al-Qur’an is inextricable from its socio-historical context. The record of history through verses in the Qur’an represents the form of “dialogue” that connects text and culture. Without reinterpretation and *tajdid*, fiqh would have lost its historical momentum and would not have been able to respond to the challenges these days.

The history of *tadrij al-ayat* indicates that a religion does not require ‘finale’ in its legal product since the studies of Islamic law constitute “unfinished religion understanding”. That is, Islamic law looks at social aspects, locality, and context to establish a dynamic Islamic law from time to time. The product of Islamic

³⁴ Read the work of, Muhammad Jamal al-Din al-Athiyyah, *Nahwa Fiqhin Jadidin Lil-Aqliyyat* (Kairo: Dar al-Islam, 2009).

³⁵ Regarding the discourse on “progressive Islam”, see. Shalahuddin Jursyi, *Al-Islamiyyun Al-Taqaddumiyyun* (Jakarta: PARAMADINA, 2006).

³⁶ Ratih Baiduri, *Teori-Teori Antropologi (Kebudayaan)*, (Medan: Yayasan Kita Menulis, 2020), 119.

³⁷ Robeert Kagan Philippe Nonet, Philip Shelznick, *Law and Society in Transition: Toward Responsive Law* (United Kingdom: Routledge, 2017), 18-19.

law represents the diverse construction and polarity of the humans' interpretation. Changing context also means shifting understanding of the law as in "*al-ahkam walidatul hajjah*". Claim over universality and authenticity of Islamic law is only in the values of essence, not in the history. Historical side is particular in the studies of Islamic law. In the term *al-qardlawi*, the essence (philosophy) of the Islamic law is called "*al-stabit*" (sacred/static). In terms of the history, it is called "*al-mutathawwir*" (profane/dynamic). In Islamic law, philosophical side involves fundamental values (*al-mabadi' al assasiyah*) and *maqashid syari'ah* that hold the characteristic of *qath'i*, while others are *dzanni* (multi interpretative).³⁸

These days, the understanding of the religious text is expected to be able to decide the substantive meaning in a text in line with the changing places and times that is dynamic "*taghayyur al-ahkam bi taghayyur al-azminah wa al-amkinah*". Within this scope of understanding, it is highly likely that the text of religion (Islamic law) is capable of holding a dialogue with the dynamic of the changing times. Critical prediction towards religion by "rejuvenating" the tradition (*turats*) will be able to respond to challenges in modern time.³⁹ This is because religion and modernity are not two opposing sides, but they accommodate dialogue and criticism to respond to the modernity. Thus, religion must not "die" and it must exist as a problem solver amidst this ever-changing global modernity.

In other words, the ideas of progressive fiqh also discusses the mission of liberation and advocacy over issues on equality and humanity, including those on enforcement of sharia, state democracy, relationship between religion and Human Rights,

³⁸ See, Maulidi, "Menggagas Fikih Responsif: Upaya Progresif Modernisasi Fikih," *Al-'Adalah*, Vol. 14, no. 2, 2017.

³⁹ Muhyidin dan Ilyas Supeno, "Pergeseran Orientasi Pemikiran Hukum Islam Kontemporer (Pembaharuan Pemahaman Hukum Islam Dari Legal-Eksoterik Menuju Substantif-Esoterik)," *Diponegoro Private Law Review*, Vol. 4, no. 1, 2019, 493.

women, and minority groups.⁴⁰ In general, it is obvious that the progressive fiqh in a discourse on Islamic law is intended to formulate a product of Islamic law (fiqh) that may contribute to the solution to respect humanity, justice, and to bring grace and merit to all ummah. This perspective also indicates that progressive fiqh sees that all human beings are equal, and those in minority groups deserve protection of rights under the law and state.⁴¹

Through this framework and methodology of progressive fiqh aforementioned, it implies that the reformulation of Islamic law (fiqh) is widely applicable to all aspects such as law reform for family, state, government, culture, gender, human rights, and many more. Thus, the presence of progressive fiqh is intended to formulate a set of Islamic laws that can serve as basic references to create the society of justice and to highly respect human values, women's rights, and to bring merit to all people.

Progressive fiqh also represents a new formulation of islamic law adjusted to the society and its culture. The model used to determine the progressive fiqh could embrace all aspects of islamic law, either in private or public scope, where the former may involve family law based on the values of justice and gender equality, while the latter may involve state politics that has its legal product that is just for all communities of people.

To develop the ideas of Islamic law with its vision of humanity and justice, progressive fiqh has empirical-historical tone that shows reflection and critical evaluation as an essential part of the development of the methodology of the thoughts of Islamic law in contemporary time. The objective of this progressive fiqh methodology is to lead the Islamic law to creating resolution

⁴⁰ See, Ahmad Imam Mawardi, "Fikih Mayoritas Versus Fikih Minoritas," *Justicia Islamica Jurnal Kajian Hukum Dan Sosial*, Vol. 9, no. 2, 2012.

⁴¹ See, Iffatin Nur, "In the Name of Public Interest We Evict? (Re-Actualizing the Standing Position of Proletarian Jurisprudence to the Marginalized)."

to the problems arising during this contemporary time, especially humanitarian issues.⁴²

Amidst the problem solving, Islamic law is expected to be involved in social reform. Critical reflection and evaluation in tackling the problems require revolutionary *ijtihad* model.⁴³ This Islamic law reform is also expected to be able to learn the social structure, to further investigate social institutions such as economic, politic, education, cultural institutions and many more, and to be able to predict to what extent those institutions have contributed to social injustice these days.

Meanwhile, progressive law once initiated by Satjipto Rahardjo demonstrates the vigor of liberation, challenging modern law that limits humanity and law. The mission of this liberation of progressive law aims to form a model of liberation from legal and linear traditional law. Furthermore, Sutjipto Raharjo argues that the theory of this progressive law is assigned to give services for human interest. Law is intended to serve people, to protect dignity, to ensure happiness, welfare, and prestige.⁴⁴

In reference to the paradigm of progressive law, law exists not for itself, but to highly respect the dignity and to ensure the welfare of its people. Law has to refer back to its fundamental philosophy, where law is for people and not the other way around. As a result, progressive law is established according to the philosophy of law to embody and exercise an ideal and just law.⁴⁵ The paradigm of progressive law is not only focused on the rules, but it also takes creativity of the legal actors. Any shift in the rules is progressive and it is done by embedding the creative meaning to the existing rules without having to wait for changes in the rules.

⁴² To better understand *ijtihad* model in contemporary era, see. Zakaria Syaefi, "Tracing Maqasid Al-Shari'ah in the Fatwas of Indonesian Council of Ulama (MUI)," *Journal of Indonesian Islam*, Vol 11, no. 1, 2017, 111.

⁴³ Ahmad Faisal, "Islamic Shari'a in Indonesia: The Struggle Between Sacrality and Profanity," *Jurnal Al-Ulum*, Vol. 19, no. 1, 2019, 33.

⁴⁴ Satjipto Rahardjo, *Hukum Progresif* (Yogyakarta: Genta Publishing, 2009), 6.

⁴⁵ See, Marilang, "Considering The Progressive Legal Justice Paradigm," *Jurnal Konstitusi*, Vol. 14, no. 2, 2017.

Insufficient law should not interrupt people from ensuring justice, but this paradigm should be able to interpret new regulations every time the issues that beg justice arise.

The main value in progressive law focuses on an understanding implying that progressive law is constructed to set people free from their problems that oppress them politically, economically, socially, and culturally amidst their social life. Progressive law manifests itself as a body that is liberating to provide advocacy and solution.⁴⁶

This idea shows that progressive law demonstrates the power as a social movement intended to give liberation in juridical and functional gamut. This liberation is deemed necessary due to oppression and injustice that intimidate human beings. The concept of liberation refers to the concept applied in postmodernist paradigm, not modernist one. It is generally understood that liberation is to set people free from taboo and irrational myths, ideology, and traditional burden that wander around the humans' rationality that controls their life.⁴⁷

In the context of the relationship between the government and its people, people and others, fiqh and progressive law exist as a reminder of human activities and good deed. When people obey the state, in return, the state has to give protection and security for them. When people of a minority group do not interfere with the interest of majority group, in return, those of the majority should appropriately do the same.

In terms of all racial phenomena and discrimination that take place in America, fiqh and progressive law view that all these phenomena are irrelevant to the principles of fiqh and progressive law. The main principle of the progressive fiqh is to put virtue to the fore for the sake of humanity. The author's view is supported by social themes regarding liberation of the weak, the minority, and the oppressed group that become the *focus theologicus* and the

⁴⁶ See, Yanto Sufriadi, "Penerapan Hukum Progresif Dalam Penegakan Hukum Di Tengah Krisis Demokrasi," *Jurnal Hukum Ius Quia Iustum*, Vol. 17, no. 2, 2010.

⁴⁷ Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah* (Yogyakarta: Kanisius, 1999), 180.

principles of Islamic teaching. This view emphasizes the understanding that Islamic law (*fiqh*) cannot stand alone, but it rather erects upright on the profound theological principle. Jurists of Islamic law (*fuqaha'*) and *ushul fiqh* experts (*ushuliyyin*) believe that Islamic law (*fiqh*) represents theological teaching (the science of *Kalam*).⁴⁸ Thus, the perspective of progressive *fiqh* in this study represents and embodies the fundamental values and principles of *tauhid* teaching in Islamic law.

The principle of the progressive law is to give the liberation to those handcuffed in the modern law with liberalist capitalist model that causes turbulence in the society. Moreover, progressive law exists to liberate people from status quo that has put people as the slaves of the rigid law.⁴⁹ That is, the principle and the objective of this progressive law are to set people free from any racial and discriminating act oppressing a minority group, including black people in the US.

With this construction of *fiqh* and progressive law, racial and discriminating issues taking place in America cannot be justified in any way. The rationality of *fiqh* and progressive law never manage to accept these discrimination and racial issues. Furthermore, in the context of human rights, the government should be aware of how to control and tackle these issues. Law is inseparable from people's life since their interests rely on legal certainty. These interests serve as requirements each individual and group hold and they are for those individuals and groups to meet. People are always faced with threatening challenges and issues, and those interests hold power to encounter the threats.

In terms of racial issues and discrimination in the US, interests encourage the groups to avert and protect themselves from those threats. The minority people in the US usually form

⁴⁸ See, Ahmad Syafi'i SJ, "Fiqh Proletar: Rekonstruksi Nalar Kepentingan Umum Dalam Kasus Pembebasan Tanah Untuk Pembangunan Menuju Ke Arah Transformasi Sosial Yang Progresif-Humanis," *Fikrotuna*, Vol. 3, no. 1, 2016.

⁴⁹ Regarding the theories and paradigm of progressive law, see Saifullah, "Kajian Kritis Teori Hukum Progresif Terhadap Status Anak Di Luar Nikah Dalam Putusan Mahkamah Konstitusi No.46/PUU-VII/8101," *Al-Manahij Jurnal Kajian Hukum Islam*, Vol. 8, no. 2, 2014.

groups to collect power to face those threats. In terms of social humanity and the state, protection of interests (in this case the minority group of black people) can be achieved through guidelines that determine how people should behave according to the values of humanity, or this is called as social norm, where the main objective is to bring peace without disadvantaging any parties.

Social norm plays its vital role in improving the discipline of the people, but it has not protected all interests since sanctions still are not capable of ensuring legal certainty for the continuity of people's life. Thus, in addition to social norms, the norm of law is also required to govern the people's life.

Back to the concept of fundamental values in Islamic law, the main objective of enforcing the law through the process of studies and the stipulation of Islamic law (*al-istimbath al-hukm*), as mentioned earlier, is to bring merit to all human beings.⁵⁰ Moreover, the values of the progressive law are reflected in rules that are liberating and provide justice for people. As the legal subject and object, humans have their capacity as individuals or groups, globally or locally, as men or women, as rulers or civilians, as rich or poor, minority or majority. In terms of the need of a minority group of black people in the US, progressive fiqh serves as a center that accommodates grievances over related problems and solution. Progressive fiqh also exists as responses of Islamic law to global issues these days. Progressive law also comes to serve as the fundamentals of formulation of the state rules with the mission of protecting and respecting the dignity of black people as a minority group in the US.

Conclusion

Progressive fiqh fundamentally constitutes the faith that serves as the appropriateness in the social life and the state. To

⁵⁰ See, Iffatin Nur & Muhammad Ngizzul Muttaqin, "Reformulating The Concept of *Maṣlaḥah*: From A Textual Confinement Towards A Logic Determination," *Justicia Islamica Jurnal Kajian Hukum Dan Sosial*, Vol. 17, no. 1, 2020.

respond to racial issues and discrimination against black people in the US, progressive fiqh exists as a mediator in responding all those issues. The main point of actualization of this progressive fiqh is to serve as reminders of all state policies and for people to behave based on virtue, appropriateness, and the values of humanity; progressive law is a measure taken to respond to racial issues and discrimination against black people as a minority group in the US. Progressive law is intended to liberate them from the burden of the state, and this is made possible with the involvement of liberation that sets people free from conventional systems and any formal procedure, both of which are likely to bring formality, not substantial justice.

To actualize it, the progressive law is a soul of the state law that deals with righteousness, humanity, and justice. Racial issues and discrimination against the black people in the US in the perspective of progressive law indicate that the law living in the society should not only be restricted to providing legal certainty, but it should stretch further to an extent where the law is also responsible for bringing welfare to the people and enforcing the law. This study is an idea of fiqh and progressive law that have an objective to lawfully respond to the issues of humanity in the present time, especially those dealing with racial issues and discrimination against the black people as a minority in the US. Through this study, it is expected that further research could provide more proper formulation in order to give appropriate responses and advocacy to human, social, political issues, and so forth.

References

- Abdala, Ulil Abshar. *Membakar Rumah Tuhan: Pergulatan Agama, Privat, Dan Publik*. Bandung: PT Remaja Rosdakarya, 1999.
- al-Athiyyah, Muhammad Jamal al-Din. *Nahwa Fiqihin Jadīdin Lil-Aqliyat*. Kairo: Dar al-Islam, 2009.
- al-Jabiri, Muhammad Abid. *Takwin Al-'Aql Al-'Arabi*. Beirut: Al-Markaz al-Saqafi al-'Arabi, 2009.

- An Aqimuddin, Eka. "Islam Sebagai Sumber Hukum Internasional." *Masalah-Masalah Hukum*, Vol. 45, no. 2, 2016.
- Arnove, Anthony. *Voices of a People's History of the United States*. New York: SevenStories Press, 2010.
- Baiduri, Ratih. *Teori-Teori Antropologi (Kebudayaan)*. Medan: Yayasan Kita Menulis, 2020.
- C.S.C, Wilson D. Miscamble,. *Harry S. Truman, the Bomb, and the Transformation of U.S. Foreign Policy*. University of Notre Dame: Florida, 2010.
- Creswell, John W. *Qualitative Inquiry and Research Design, 3rd Ed.* Los Angeles: SAGE, 2013.
- Dasuki, Asyraf Wajdi, and Nurdianawati Irwani Abdullah. "Maqashid Al-Shari'ah, Maslahah and Corporate Social Responsibility." *"American Journal Of Islamic Social Sciences*, Vol. 24, no. 1, 2007.
- Faisal, Ahmad. "Islamic Shari'a in Indonesia: The Struggle Between Sacrality and Profanity." *Jurnal Al-Ulum*, Vol. 19, no. 1, 2019.
- Fauzi. *Hak Asasi Manusia Dalam Fikih Kontemporer*. Depok: Prenadamedia Group, 2018.
- Hanafi, Hasan. *Islamologi 1: Dari Teologi Statis Ke Anarkis*. Yogyakarta: LKiS, 2003.
- Huijbers, Theo. *Filsafat Hukum Dalam Lintasan Sejarah*. Yogyakarta: Kanisius, 1999.
- Jursyi, Shalahuddin. *Al-Islamiyyun Al-Taqaaddumiyyun*. Jakarta: Paramadina, 2006.
- Kamali, Mohammad Hashim. *Membumikan Syariah; Pergulatan Mengaktualkan Islam*. Bandung: Mizan, 2010.
- Kayadibi, Saim. "The State As An Essential Value (Daruriyyat) Of The Maqashid Al-Shari'ah." *Ahkam: Jurnal Ilmu Syariah*, Vol. 19, no. 1, 2019.
- Kholis, Nur. "Humanisme Sebagai Filsafat Hukum Islam." *Isti'dal: Jurnal Studi Hukum Islam* 1, no. 1, 2014.
- Koestanto, Benny D. "Kesenjangan Dan Isu Rasial, Bara Yang Terus Menyala Di Tanah Amerika Isu Rasialisme Di AS

- Menjadi Bara Yang Terus Menyala Di Tengah Kesenjangan Dan Praktik-Praktik Diskriminatif Yang Dialami Warga Kulit Hitam." *Kompas*, 2 Juni, 2020.
<https://bebas.kompas.id/baca/internasional/2020/06/02/kesenjangan-dan-isu-rasial-bara-yang-terus-menyala-di-tanah-amerika/>.
- Marilang. "Considering The Progressive Legal Justice Paradigm." *Jurnal Konstitusi* 14, no. 2 (2017).
- Marwah, Hasan Basri. "Fiqh: Dari Tradisionalisme, Pembaharuan, Hingga Geopolitik." *Al-Mazahib*, Vol. 2, no. 1, 2012.
- Maulidi. "Menggagas Fikih Responsif: Upaya Progresif Modernisasi Fikih." *Al-'Adalah*, Vol. 14, no. 2, 2017.
- Mawardi, Ahmad Imam. "Fikih Mayoritas Versus Fikih Minoritas." *Justicia Islamica Jurnal Kajian Hukum Dan Sosial*, Vol. 9, no. 2, 2012.
- Na'im, Abdullah Ahmed. *Toward an Islamic Reformation: Civil Liberties, Human Right, and International Law*. New York: Syracuse University Press, 2006.
- Nonet, Philippe. Philip Shelznick, Robeert Kagan. *Law and Society in Transition: Toward Responsive Law*. United Kingdom: Routledge, 2017.
- Nur, Iffatin & Muhammad Ngizzul Muttaqin. "Reformulating The Concept of Maṣlaḥah: From A Textual Confinement Towards A Logic Determination." *Justicia Islamica Jurnal Kajian Hukum Dan Sosial*, Vol. 17, no. 1, 2020.
- Nur, Iffatin. "In the Name of Public Interest We Evict? (Re-Actualizing the Standing Position of Proletarian Jurisprudence to the Marginalized)." *Saudi Journal of Humanities and Social Sciences*, Vol. 5, no. 2, 2020.
- — —. "The Best Interest Of Child Dalam Fiqih Humanistik Dan Fiqih Humanistik." *Ahkam: Jurnal Hukum Islam*, Vol. 2, no. 2, 2014, 135.
- Nur, Iffatin, and Muhammad Ngizzul Muttaqin. "Fiqh Jalan Tengah (Mempertemukan Maqashid Syari'ah, Hukum, Dan Realitas Sosial)." *Zawiyah: Jurnal Pemikiran Islam*, Vol. 5, no. 2,

- 2019.
- Rahardjo, Satjipto. *Hukum Progresif*. Yogyakarta: Genta Publishing, 2009.
- Ridhoi, Muhammad Ahsan. "Kematian George Floyd & Data Pembunuhan Kulit Hitam Oleh Polisi Di AS." *Dkatadat.Co.Id*, 1 Juni, 2020.
<https://katadata.co.id/berita/2020/06/01/kematian-george-floyd-data-pembunuhan-kulit-hitam-oleh-polisi-di-as>.
- Saifulllah. "Kajian Kritis Teori Hukum Progresif Terhadap Status Anak Di Luar Nikah Dalam Putusan Mahkamah Konstitusi No.46/PUU-VII/8101." *Al- Manahij Jurnal Kajian Hukum Islam*, Vol. 8, no. 2, 2014.
- Setiawan, Bayu. "Penerapan Hukum Progresif Oleh Hakim Untuk Mewujudkan Keadilan Substantif Transendensi." *Jurnal Kosmik Hukum*, Vol. 18, no. 1, 2018.
- SJ, Ahmad Syafi'i. "Fliqh Proletar: Rekonstruksi Nalar Kepentingan Umum Dalam Kasus Pembebasan Tanah Untuk Pembangunan Menuju Ke Arah Transformasi Sosial Yang Progresif-Humanis." *Fikrostuna*, Vol. 3, no. 1, 2016.
- Sufriadi, Yanto. "Penerapan Hukum Progresif Dalam Penegakan Hukum Di Tengah Krisis Demokrasi." *Jurnal Hukum Ius Quia Iustum*, Vol. 17, no. 2, 2010.
- Supeno, Muhyidin dan Ilyas. "Pergeseran Orientasi Pemikiran Hukum Islam Kontemporer (Pembaharuan Pemahaman Hukum Islam Dari Legal-Eksoterik Menuju Substantif-Esoterik)." *Diponegoro Private Law Review*, Vol. 4, no. 1, 2019.
- Syafei, Zakaria. "Tracing Maqasid Al-Shari'ah in the Fatwas of Indonesian Council of Ulama (MUI)." *Journal of Indonesian Islam*, Vol. 11, no. 1, 2017.
- Tim Editor. "Egalitarianisme Islam Dan Ketegangan Rasial Antara Muslim AS." *Republika.Co.Id*. Senin 13 Jul 2020.
<https://republika.co.id/berita/qdecrn366/egalitarianisme-islam-dan-ketegangan-rasial-antara-muslim-as>, 2020.
- — —. "In Defense of Critical Race Theory: Islam, Race, & the Modern Public Intellectual." *Maydan: Politics & Society*, 5

February, 2020.

- — —. "Kasus George Floyd, Bagaimana Sejarah Rasisme Amerika?" *Geotimes*, 10 Juni, 2020.
<https://geotimes.co.id/opini/kasus-george-floyd-bagaimana-sejarah-rasisme-amerika/>.
- — —. "PBNU: Rasialisme Adalah Cacat Bawaan Demokrasi Amerika." *Jurnal Presisi*, 6 Juni, 2020.
<https://jurnalpresisi.pikiran-rakyat.com/nasional/pr-15395666/pbnu-rasialisme-adalah-cacat-bawaan-demokrasi-amerika>.
- — —. "Sebelum Kematian George Floyd, Rasisme Di Minneapolis Sudah Marak Terjadi." *Kompas.Com*, 3 Mei, 2020.
<https://www.kompas.com/global/read/2020/05/30/222712870/sebelum-kematian-george-floyd-rasisme-di-minneapolis-sudah-marak-terjadi?page=all>.
- — —. "Sejarah Rasisme Di Amerika." *Bobobox*, 2020.
<https://www.bobobox.co.id/blog/sejarah-rasisme-di-amerika/>.
- Weiss, Bernard G. *The Spirit of Islamic Law*. Athens: Georgia University Press, 2007.
- Yasid, Abu. "Evolusi Syari'ah Dan Wacana Fiqih." *Islamica*, Vol. 4, no. 2, 2010.