

**Moderation of Homosexual *Fiqh* in Indonesia:
A Study of The Huzaemah Tahido Yanggo's thought**

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DOI: <http://dx.doi.org/10.29240/jhi.v7i2.5462>

Received: 10-07-2022

Revised: 12-09-2022

Approved: 03-10-2022

Abstract

This study aims to identify the moderation of Huzaemah Tahido Yanggo's *fiqh* of the law of purity over homosexual acts. This is a qualitative research in the form of heirloom studies which uses a normative-philosophical approach. The paradigm of moderate *fiqh* conceptualized by M. Quraish Shihab becomes the theory of analysis. The results show that there is a paradigm basis for moderate *fiqh* in the construction of Huzaemah's *fiqh* on the law of purity over homosexual acts. This great conclusion can be seen from the following various aspects. The first aspect is the dimensions of the paradigm of *fiqh al-maqashid* and *fiqh al-awlawiyat* in the use of theological foundations that emphasize the realization of the benefit orientation of Islamic sharia, namely the regeneration of offspring (*hifz al-nasl*) and the protection of honor (*hifz al-'ird*). The second aspect is the paradigm pattern of *fiqh al-muwazanat*, and *fiqh al-ma'alat* in the basis of consideration of the impact of disease from a medical perspective, and violations of national legal norms in Indonesia. The pattern of the *fiqh al-ma'alat* paradigm can also be seen from Huzaemah's advice to the community and the government to realize preventive efforts, healing as well as rehabilitation and empowerment of homosexual actors to positive things. The theoretical implications of this study show that a holistic

fiqh paradigm is needed in prohibiting homosexual acts, namely by involving multiple perspectives, such as medical, state norms, psychology and socio-cultural norms.

Keywords: Huzaemah Tahido Yanggo; *fiqh* moderation; homosexual; Indonesia

Abstrak

Penelitian ini bertujuan untuk mengidentifikasi moderasi pemikiran fikih Huzaemah Tahido Yanggo tentang hukum keharaman atas tindakan homoseksual. Penelitian kualitatif berupa kajian pustaka ini menggunakan pendekatan normatif-filosofis. Paradigma fikih moderat yang dikonseptualisasikan oleh M. Quraish Shihab menjadi teori analisis. Hasil penelitian menunjukkan terdapat basis paradigma fikih moderat dalam konstruksi pemikiran fikih Huzaemah tentang hukum keharaman atas tindakan homoseksual. Kesimpulan besar ini dapat dilihat dari berbagai aspek berikut. Pertama, dimensi corak paradigma *fiqh al-maqashid* dan *fiqh al-awlawiyat* dalam penggunaan landasan teologis yang menekankan terwujudnya orientasi kemaslahatan pensyari'atan Islam, yakni regenerasi keturunan (*hifz al-nasl*) dan proteksi kehormatan (*hifz al-'ird*). Kedua, corak paradigma *fiqh al-muwazanat*, dan *fiqh al-ma'alat* dalam landasan konsideran dampak penyakit dari perspektif medis, dan pelanggaran norma hukum nasional di Indonesia. Corak paradigma *fiqh al-ma'alat* juga dapat dilihat dari saran Huzaemah pada masyarakat dan pemerintah agar mewujudkan upaya preventif, penyembuhan sekaligus rehabilitasi maupun pemberdayaan para pelaku homoseksual pada hal-hal positif. Implikasi teoritik penelitian ini menunjukkan bahwa dibutuhkan paradigma fikih holistik dalam mengharamkan tindakan homoseksual, yakni dengan melibatkan multi perspektif, seperti medis, norma negara, psikologi maupun norma sosial budaya.

Kata Kunci: Huzaemah Tahido Yanggo; moderasi fikih; homoseksual; Indonesia;

Introduction

The issue of homosexual existence has triggered a lot of resistance and even criminalization in Indonesian society. Even though, Indonesia itself is a country of law and adheres to a democratic system and upholds human rights.¹ Polemics about this phenomenon are getting bigger in the view of religious life

¹ Saskia E Wieringa, "Criminalisation of Homosexuality in Indonesia: The Role of the Constitution and Civil Society," *Australian Journal of Asian Law* 20, no. 1 (2019): 227–45.

in Indonesia.² This is because homosexual acts are seen as abnormal acts and contrast to religious teachings.³ Especially, among Muslims who argue that homosexual acts are a form of deviation from Islamic teachings.⁴ However, in the realm of praxis, there is a contestation of Islamic legal thought (*fiqh*) among Muslim intellectuals in Indonesia itself. There are those who respect and even advocate for the existence of homosexuals by arguing that homosexuals are part of a sexual orientation of a natural nature. On the contrary, there are those who strongly reject it by declaring homosexuality as an act forbidden in Islamic teachings.⁵

Apart from the polemic above, Islam which contains universal teachings in the form of *rahmatan lil alamin* (affection for the life of the universe) should be able to become the epistemological basis of Islamic law (*fiqh*) in solving various problems of dynamic people, not excluding homosexual problems.⁶ The existence of *fiqh* is a variant of Islamic teachings that contributes greatly to shaping the understanding and social attitudes of Muslims in society.⁷ Therefore, the existence of universalism of Islamic teachings is expected to encourage Muslims to put forward a moderate *fiqh* paradigm without neglecting the correct rules of *fiqh*.⁸ Moreover, Muslims in Indonesia in the context of the global Islamic world are seen as role models for the manifestation of moderate Islamic religion.⁹ This is also inseparable from the existence of Pancasila as the ideology of the Indonesian state which is seen as being able to bring together the values

² Munadi Usman, "Lesbian Gay Biseksual and Transeksual (LGBT) Polemic in Indonesia : Study of Opinion of The Indonesian Ulama Council and The Liberal Islam Network (JIL)," *Islamiyyat : Jurnal Antarabangsa Pengajian Islam; International Journal of Islamic Studies* 40, no. 2 (2018): 123–29, <https://doi.org/https://doi.org/10.17576/islamiyyat-2018-4002-04>.

³ Wisnu Adihartono, "Homosexuality in Indonesia: Banality, Prohibition and Migration (The Case of Indonesian Gays)," *International Journal of Indonesian Studies* 1, no. 2 (2015): 1–15.

⁴ Siti Ibadheha HARRISA and NOKIA PUTRI ANDIKA LAINSYAMPUTTY, "Cultural Violence towards the LGBTQ+ Community in Islamic Majority Country: A Case From @tabu.Id's Comment Section," *Religió: Jurnal Studi Agama-Agama* 12, no. 1 (March 12, 2022): 83–102, <https://doi.org/10.15642/religio.v12i1.1862>.

⁵ Zulfa Hudiyan, "Kontestasi Pemikiran Hukum Islam Tentang Homoseksual Di Indonesia," *MIYAH: Jurnal Studi Islam* 18, no. 1 (2022): 152, <https://doi.org/https://doi.org/10.33754/miyah.v18i1.418>.

⁶ Athoillah Islamy, "Landasan Filosofis Dan Corak Pendekatan Abdurrahman Wahid Tentang Implementasi Hukum Islam Di Indonesia," *Jurnal Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 1 (2021): 61.

⁷ Athoillah Islamy, "Pemikiran Hukum Islam Nurcholish Madjid" (Universitas Islam Negeri Walisongo, 2021), 114.

⁸ Eko Siswanto and Athoillah Islamy, "Fikih Moderasi Beragama Dalam Kehidupan Bernegara Di Indonesia," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 7, no. 2 (July 1, 2022): 200, <https://doi.org/10.35673/ajmpi.v7i2.2802>.

⁹ Hamid Fahmy Zarkasyi, "Appraising the Moderation Indonesian Muslims with Special Reference to Muhammadiyah and Nahdlatul Ulama," *ADDIN* 12, no. 1 (January 9, 2019): 2, <https://doi.org/10.21043/addin.v12i1.4179>.

of Islamic teachings, as well as the value of *maqashid sharia* with universal values in the social life of a multicultural state.¹⁰

However, it is important to know that the paradigm of moderate jurisprudence referred to here is not as a permissive, apathetic, or liberal *fiqh* paradigm, but rather a *fiqh* paradigm that integrates two opposing tendencies of *fiqh* paradigms, namely the textual *fiqh* paradigm with the liberal *fiqh* paradigm.¹¹ In this context, Quraish Shihab offers four patterns of *fiqh* paradigms in responding to legal issues in a moderate manner. First, *fiqh al-maqashid* which emphasizes understanding of the reasons for the establishment of the law, Second, *fiqh al-awlawiyat* which emphasizes the priority of consideration that is paramount. Third, it is *fiqh al-muwazanat* which emphasizes the sorting of better levels of benefit. Fourth, *fiqh al-ma'alat* tool emphasizes a review of the implications of legal disposition.¹²

Huzaimah Tahido Yanggo is one of the Muslim intellectuals in Indonesia who has a serious concern regarding the homosexual phenomenon. It has a philanthropic paradigm base that can be said to be comprehensive in the midst of contesting the thought of *fiqh* regarding the existence of homosexuals. According to Huzaemah, the views of Muslim intellectuals who declare the verily of homosexual acts are contrary to the message of the law in various theological foundations of Islamic law (*fiqh*) and the opinions of *fiqh* scholars who prohibit homosexual acts.¹³ Huzaemah added that those proponents of homosexual acts do not have the correct basis of *fiqh*, do not prioritize preventive efforts in maintaining the safety of human souls, and are also contrary to national legal norms in Indonesia.¹⁴

This study aims to explore and identify the dimensions of the moderate *fiqh* paradigm in the construction of Huzaemah Tahido Yanggo's thought on homosexuality. This is a qualitative research in the form of literature studies

¹⁰ Akhmadul Faruq, "Al-Pancasila fi al-Mandzûri al-Maqâshidî al-Syar'î: Dirâsah Tahlîliyah," *al-Ihkam: Jurnal Hukum dan Pranata Sosial*, Vol. 16, no.1 (2021): 207

¹¹ Ainol Yaqin, "Yûsuf Al-Qardâwî's Istinbât Method and Its Implementation in the Moderation of Islamic Law," *Al-Abkam* 31, no. 1 (April 29, 2021): 110, <https://doi.org/10.21580/ahkam.2021.31.1.7075>.

¹² M. Quraish Shihab, *Wasathiyah: Wawasan Islam Tentang Moderasi Beragama* (Tangerang: PT. Lentera Hati, 2019), 179–80.

¹³ Huzaemah Tahido Yanggo, *Problematika Fikih Kontemporer* (Jakarta: Gaung Persada Press, 2019), 22–33.

¹⁴ Huzaemah Tahido Yanggo, "Penyimpangan Seksual (LGBT) Dalam Pandangan Hukum Islam," *MISYKAT: Jurnal Ilmu-Ilmu Al-Quran, Hadist, Syari'ah Dan Tarbiyah* 3, no. 2 (December 20, 2018): 1–12, <https://doi.org/10.33511/misykat.v3n2.1-28>.

which use a normative-philosophical approach.¹⁵ The primary data of this study uses Huzaemah Tahido Yanggo's scientific work entitled *Sexual Deviance (LGBT) in the View of Islamic Law* (2018), and *Contemporary Fiqh Problems* (2019). The nature of this research approach is descriptive-analytical. The pattern of the moderate *fiqh* paradigm conceptualized by Quraish Shihab in the form of *fiqh al-maqashid*, *fiqh al-awlawiyat*, *fiqh al-muwazanat*, and *fiqh al-ma'alat* is used as an analytical theory in exploring and identifying the dimensions of the moderate *fiqh* paradigm in Huzaemah Tahido Yanggo's thinking regarding homosexual behavior. Meanwhile, data analysis techniques are researched through data reduction, data presentation, and drawing conclusions.

There are several previous studies that are correlative with the focus of this research, including research conducted by Rustam Dahar Karnadi Apollo Harahap (2016) explaining that homosexual acts are contrary to Islamic law and human rights. Therefore, the Indonesian government must prohibit and sanction the perpetrators of the law.¹⁶ Then research by Syafi'in Mansur (2017) stated that almost all religions in Indonesia prohibit homosexual acts. It's just that Hinduism, Buddhism and Confucianism are not firm on the ban because there is no express threat in the scriptures of these religions.¹⁷ Then research by Amri and Athoillah explained that Huzaemah Tahido Yanggo's thoughts related to homosexual behavior used a multidimensional approach to Islamic law, and had a prephenotic-socialist orientation.¹⁸ Parallel to Amri and Athoillah's research, research by Hudiyani also concluded that Yanggo's *fiqh* on homosexual acts is based on considerations of danger, both on aspects of religious, social, medical and constitutional teachings of the state in Indonesia.¹⁹

Referring to the various studies above, there has not been found any research that identifies against the paradigm of moderate *fiqh* initiated by Quraish Shihab in the construction of Huzaemah Tahido Yanggo's *fiqh* thought on homosexuality. Through the paradigm of moderate *fiqh* conceptualized by Quraish Shihab, this study is theoretically expected to explore the dimensions of the moderate *fiqh* paradigm in the epistemological basis of Huzaemah *fiqh*

¹⁵ M. Atho Mudzhar, "Tantangan Studi Hukum Islam Di Indonesia Dewasa Ini," *JURNAL INDO-ISLAMIKA* 2, no. 1 (June 20, 2012): 102, <https://doi.org/10.15408/idi.v2i1.1656>.

¹⁶ Rustam Dahar Karnadi Apollo Harahap, "LGBT DI INDONESIA : Perspektif Hukum Islam, HAM, Psikologi Dan Pendekatan Maşlahah," *Al-Ahkam* 26, no. 2 (December 2, 2016): 224, <https://doi.org/10.21580/ahkam.2016.26.2.991>.

¹⁷ Syafi'in Mansur, "Homoseksual Dalam Perspektif Agama-Agama Di Indonesia," *Aqlania* 8, no. 1 (July 30, 2017): 57, <https://doi.org/10.32678/aqlania.v8i01.1020>.

¹⁸ Amri Amri and Athoillah Islamy, "Homosexuality in Contemporary Islamic Legal Approaches: Study of Huzaemah Tahido Yanggo's Thought," *Al'Adl* 15, no. 2 (2022): 105, <https://doi.org/http://dx.doi.org/10.31332/aladl.v15i2.4063>.

¹⁹ Hudiyani, "Kontestasi Pemikiran Hukum Islam Tentang Homoseksual Di Indonesia," 152.

regarding homosexual acts. It is the focus and the novelty of this study. This research is urgent because there is a dualism of *fiqh* among Muslim intellectuals in Indonesia. The dualism of *fiqh* thought in the form of pros and cons in the realm of its praxis can cause a dilemma for society regarding how to be moderate without neglecting the correct rules of Islamic law (*fiqh*) in responding to the homosexual phenomenon.

Construction of a Moderate *Fiqh* Paradigm

One of the Muslim intellectuals who has a great concern for the importance of realizing moderate Islamic religious understandings and attitudes, not extreme left or right, is M. Quaish Shihab. In this case, he offers the foundation of the moderate *fiqh* paradigm that can be the basis of the *fiqh* paradigm in realizing a moderate understanding and attitude in establishing the provisions of Islamic legal norms (*fiqh*) on an issue. He explained that there are at least four patterns of moderate *fiqh* paradigms, including *fiqh al-maqashid*, *fiqh al-awlawiyat*, *fiqh al-muwazanat*, and *fiqh al-ma'alat*.²⁰ Further explanation is as follows:

The first is *fiqh al-maqashid*. This pattern of *fiqh* paradigm emphasizes a deep understanding of what is the main orientation of legal interpretation (*maqasid sharia*) related to an issue.²¹ This is intended not to make a legal provision that only emphasizes the aspects of factuality that are the source of Islamic law, both from the Qur'an and hadith.²²

The second is *fiqh al-awlawiyat*. This pattern of *fiqh* paradigm emphasizes the selection related to the benefits that are prioritized in the determination of the law.²³ In the realm of praxis, the existence of this pattern of *fiqh* paradigm will lead to consideration of the level of benefit caused by the establishment of laws.²⁴

The third is *fiqh al-muwazanat*. This pattern of *fiqh* paradigm emphasizes the comparison of the degree of benefit to choose from. The existence of this pattern of *fiqh* paradigms leads to a consideration between the level of benefit and emptiness which is the basis for the establishment of the law.²⁵ Such a paradigm of *fiqh* is not excessive, because in the formulation of the law must

²⁰ Shihab, *Wasathiyah: Wawasan Islam Tentang Moderasi Beragama*, 179–80.

²¹ Shihab, 179–80.

²² Nur Hasan, "Relationship of Maqasid Al-Shari'ah with Usul Al-Fiqh (Overview of Historical, Methodological and Applicative Aspects)," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 3, no. 2 (April 30, 2020): 231, <https://doi.org/10.30659/jua.v3i2.8044>.

²³ Shihab, *Wasathiyah: Wawasan Islam Tentang Moderasi Beragama*, 180.

²⁴ Nashrun Jauhari, "Fiqh Prioritas Sebagai Instrumen Ijtihâd Maqâsidî Perspektif Yûsuf Al-Qarâdawî Dan Urgensinya Di Era Kontemporer," *Marâjî: Jurnal Studi Keislaman* 3, no. 1 (2016): 132–59.

²⁵ Shihab, *Wasathiyah: Wawasan Islam Tentang Moderasi Beragama*, 180.

weigh the best legal decision steps that can cause benefits and convenience for human life.²⁶

The fourth is *fiqh al-ma'alat*. This pattern of *fiqh* paradigm emphasizes the importance of efforts to review the implications of legal provisions. The review is intended to identify whether orientations of legal enforcement have been reached or otherwise. It is important to reconsider the implications of legal enforcement that are potentially contrary to the benefits on which it is actually oriented.²⁷

In this study, the existence of four patterns of the moderate *fiqh* paradigm formulated by M. Quraish Shihab above will be an analytical theory to explore and identify the paradigm of moderate *fiqh* in the construction of Huzaemah Tahido Yanggo's *fiqh* thinking on homosexuals.

Intellectual Diaspora and Life of Huzaemah Tahido Yanggo

Huzaemah Tahido Yanggo is one of the most powerful Muslim woman intellectuals in Indonesia who was born on December 30, 1946 and died on July 23, 2021. She had concerns in Islamic science in the field of comparative *fiqh* of schools. She earned Her Baccalaureate (BA) degree from the *Sharia* Faculty of Alkhairaat University. Then she continued diaspora of formal education to Al-Azhar University, Cairo, Egypt until he got a Master of Arts (MA) in 1981 and he obtained her doctorate in 1984. Both her master and doctorate's degrees were presidium laude.

Yanggo became one of the first female professors at Syarif Hidayatullah State Islamic University Jakarta. In addition, she has also been the rector of the Institute of Quranic Sciences, Jakarta (2018-2022). Her socio-religious work can also be seen in her role as a member of the fatwa commission of the Indonesian Ulema Council since 1987. Not only that, she also became the National *Sharia* Council of the Indonesian Ulema Council from 1997 to 2000. Even in 2000, she served as Chairman of the Central Indonesian Ulema Council in the Field of Social Studies and Development.

There are various awards obtained by Huzaemah during her lifetime, including Leadership and Management for Improving the Role of Women" from the Minister of State for the Role of Women of the Republic of Indonesia (1999), Women's *Fiqh* Experts (2007), Members of the Qur'an Interpretation Improvement Team of the Ministry of Religion of the Republic of Indonesia (2007), Women Award for achievements in realizing the rights of women and

²⁶ Yasmin Hanani Mohd Safian, "The Contribution of Yusuf Qaradawi to the Development of Fiqh," *Electronic Journal of Islamic and Middle Eastern* 4 (2016): 53, <https://doi.org/https://doi.org/10.5167/uzh-124518>.

²⁷ Shihab, *Wasathiyah: Wawasan Islam Tentang Moderasi Beragama*, 180.

children from Syarif Hidayatullah State Islamic University Jakarta (2015), Satyalancana Karya Satya 30 Years (2016) and so on.

Her scientific work includes books entitled Introduction to Comparative Schools (2003), *Masail Fiqhiyah: A Study of Contemporary Islamic Law* (2005), Contemporary Women's *Fiqh* (2010), and Problems of Contemporary *Fiqh* (2019), a scientific article entitled Sexual Deviance (LGBT) in the View of Islamic Law (2018), and others.²⁸

The above portrait of the diaspora of intellectual and social life shows us that Huzaemah's personal figure is an intellectual who has an intensive Islamic educational base and has an active role in various social and religious activities. Moreover, the expertise of Islamic science in the field of *fiqh* makes the construction of homosexual *fiqh* that it conveys very worthy and interesting to study in depth.

The Paradigm of Moderate *Fiqh* in Huzaemah Tahido Yanggo's *Fiqh* Construction On The Monasticism of Homosexual Acts

In the sub-chapter of the core discussion, before describing the core analysis related to the dimensions of the moderate *fiqh* paradigm towards the construction of Huzaemah's *fiqh* on homosexuality, it is important that we first understand that the term homosexual in sociological review is someone who has a tendency to sexual relations towards the same sex. For example, men with men are then referred to by the term Gay, and women with women are called Lesbians. Meanwhile, the term gay in *fiqh* is called *al-limâth*. Meanwhile, lesbian is called *as-sihâq*, and bisexual is a term for someone who has a tendency to sexual orientation, both towards men and women. The term bisexual in the review of *fiqh* is analogous to homosexual practice, both in the form of *limât* and *sihâq*.

Transgender is the psyche of people who have problems, namely not between psychiatric conditions and physical (gender) identity. This then in the social realm makes their behavior incompatible with gender roles in general, even to the point that some change their gender completely which is then called a transsexual. The existence of the sexual orientation of transgender people falls into the category of homosexuals, bisexuals, or also heterosexuals. Meanwhile, the term transgender in *fiqh* is called *mukhannats* or *kebuntsa*. It means a man who resembles a woman in his mannerisms, such as his tenderness, style of speech and gestures. In Indonesia, transgender people are known by various terms, including sissy, *varia* (female-male) or *wadam* (female-adam).²⁹ Meanwhile, for a

²⁸ Amri and Islamy, "Homosexuality in Contemporary Islamic Legal Approaches: Study of Huzaemah Tahido Yanggo's Thought," 97–98.

²⁹ Mamluatun Nafisah, "Respon Al-Qurân Terhadap Legalitas Kaum LGBT," *Jurnal Online Studi Al-Qur'an* 15, no. 1 (January 31, 2019): 81–83, <https://doi.org/10.21009/JSQ.015.1.04>.

person who fall into the category of having a double sex (*khunsa*), then in Islamic law it is allowed to perform sex enhancement surgery, whether accompanied by the intention to marry or not. However, the genital enhancement surgery must be done professionally, both biologically and medically.³⁰

Based on the explanation above, it can be said that Lesbian, Gay, Bisexual, and Transgender actions have similarities in aspects of sexual orientation tendencies, both in psychic and biological aspects. In the discourse of Islamic thought itself, the reality of the problem related to homosexual acts actually has long historical roots, both in classical and contemporary Islamic discourses.³¹ So what about the moderate view of *fiqh* that Yanggo presented about homosexual acts? To answer this question based on the analysis, that is the dimensions of the moderate *fiqh* paradigm in Yanggo's construction of *fiqh*, thought on homosexual acts can be mapped into two epistemological bases; first, the dimensions of the pattern of *fiqh fiqh al-maqashid* and *fiqh al-awlawiyat* in the use of theological foundations; second, the pattern of *fiqh al-muwazanat*, and *fiqh al-ma'tools* in the use of medical, constituency and sociological foundations. Further explanation on it would be widely described in the sub chapter.

The Paradigm Pattern of *Fiqh al-Maqashid* and *Fiqh al-Awlawiyat* in the Use of Theological Foundations

It is undeniable that the phenomenon of the development of homosexuals has resurfaced in various modern countries, including Indonesia. They are always looking for justifications and arguments that support and justify its existence. One of the fundamental arguments which is often used is freedom on the basis of Human Rights.³² Moreover, the phenomenon of homosexuality has also caused debate among religious people, as is the case among Muslim intellectuals, both from intellectual circles who have a tendency to the conservatory Islamic paradigm and from intellectual circles who have a tendency to the liberal Islamic paradigm through their respective arguments.³³

³⁰ Muhammad April and Asrizal Saiin, "Perfection of Sex For The Intersex (Khunsa) To Get Married: Maqāshid Syaīah Perspective on Corrective Surgery," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 173, <https://doi.org/https://doi.org/10.14421/ahwal.2021.14205>.

³¹ Farid Esack and Nadeem Mahomed, "Sexual Diversity, Islamic Jurisprudence and Sociality," *Journal of Gender and Religion in Africa* 17, no. 2 (2011): 41.

³² Syarifuddin Syarifuddin, "Application of the Legal Maxim of Al-Ashl Fi Al-Ibdha 'al-Tahrim to the Phenomena of Homosexuality," *Al-Manabij: Jurnal Kajian Hukum Islam* 16, no. 1 (2022): 45–58, <https://doi.org/https://doi.org/10.24090/mnh.v16i1.6424>.

³³ Aisya Aymanee M. Zaharin, "Reconsidering Homosexual Unification in Islam: A Revisionist Analysis of Post-Colonialism, Constructivism and Essentialism," *Religions* 13, no. 8 (July 29, 2022): 702, <https://doi.org/10.3390/rel13080702>.

Responding to polemics related to the homosexual phenomenon as above, Yanggo stated that the phenomenon of homosexuals in Indonesia is exacerbated by some Muslim intellectuals and activists who actually advocate for it by using the legitimacy of nas's partially understood postulates. They don't see the correlation aspect between one verse and another that addresses a particular issue. Yanggo said that this cannot be justified because the existence of centuries of verses in the Qur'an is actually mutually collaborative and informative in explaining legal provisions related to certain issues.³⁴ Yanggo's concern for the liberalism of *fiqh* in Indonesia over the validity of homosexuality is not an exaggeration. Due to the fact that the existence of the Compilation of Islamic Law (KHI) as a reference to Islamic law in Indonesia has experienced criticism and counter from Indonesian Muslim intellectual groups in the form of a Counter Legal Draft (CLD)- KHI by offering the formulation of an Article that allows the marriage of homosexuals.³⁵

Furthermore, Yanggo explained that the occurrence of misinterpretation by some Muslim intellectuals in Indonesia in legitimizing the validity of homosexual acts was due to the lack of Islamic science, such as not having read much interpretation and Hadith, and also not understanding the *fiqh* methodology tools well and so on. This is what then makes them easily give legitimacy to the existence of homosexuals under the pretext that there is no prohibition from the Qur'an and hadith that forbid it. In fact, the ban on homosexuals is seen by them as a violation of Human Rights.

Yanggo asserted that homosexual acts fall into the category of bad deeds and can damage the personality, morals and teachings of the Islamic religion. In this regard, Yanggo explains the explanation for the prohibition of homosexual acts that can be found on various theological foundations contained in the sources of Islamic law itself (the Qur'an and Hadith), among others, the Qur'an explains that homosexual couples in the form of *liwath* belong to serious criminal acts (major sins), because they include heinous acts that damage personality, morals and religion. This is in accordance with the word of Allah in Q.S al-A'raf verse (7): 80-81, and Q.S al-Syu'ara verses 165-166. According to Yanggo, the explanation in these verses also shows that there is a historical event in the form of the story of the Prophet Luth who had sexual relations with fellow men, not to women, so that in the end Allah sanctioned punishment by distorting their country, not to mention the wife of Prophet Luth who was part of the lesbian community at that time. Furthermore, Yanggo also rests on the information from the Hadith of the Prophet Muhammad Saw narrated by Muslims from Abi Said, in the form of Hadith which means: *Let not men see the*

³⁴ Yanggo, *Problematika Fikih Kontemporer*, 15–16.

³⁵ Athoillah Islamy, "Eksistensi Hukum Keluarga Islam Di Indonesia Dalam Kontestasi Politik Hukum Dan Liberalisme Pemikiran Islam," *Al-Istinbath : Jurnal Hukum Islam* 4, no. 2 (November 30, 2019): 169–71, <https://doi.org/10.29240/jhi.v4i2.1059>.

aurat of other men and let not women see the aurat of other women and do not touch fellow men under a blanket, nor should fellow women touch under a blanket". Not only based on the explanations in the Qur'an and Hadith, Yanggo based her thoughts on the opinions of jurists who have contended on the law of the monastics over homosexual acts. In addition, Yanggo also relies her argument in the form of a *fiqh* rule that reads the law of origin of sexual relations is haram until there is a legal argument that justifies it in the form of a valid marriage contract.³⁶ Yanggo also states that marriages between transgender persons are men who change their genitals to female genitalia in order to be allowed to marry fellow men. In this regard, Yanggo refers to the explanation of the Prophet's Hadith which states that Allah forbids male behavior that resembles female behavior, and vice versa.³⁷

When viewed in the paradigm of moderate *fiqh*, the basis of the arguments of Huzaemah's *fiqh* above can be said to tend to have the pattern of the paradigm of *fiqh al-maqashid* and *fiqh al-awlamiyat*. The existence of the two patterns of the moderate *fiqh* paradigm can be seen from the basis of huzaemah's *fiqh* argument in the form of the use of a theological foundation that emphasizes the realization of the benefit of the Islamic law (*maqasid sharia*) on the recommendation of marriage, namely in the form of maintaining the regeneration of offspring (*hifz al-nasl*) and maintaining honor (*hifz al-'ird*). Such an argument is not excessive because sexual relations in married life in Islam are also a medium in the cultivation of human morals, namely in order to realize different gender relations to be able to build a life full of problems, both socially and culturally. Moreover, sexual relations between the opposite sexes in married life are part of the need for human nature to be able to live in pairs with each other.³⁸ The *fiqh* paradigm shows that Yanggo had a great concern for the dimension orientation of the legal provisions contained in nas. This is parallel to the pattern of the *fiqh al-maqashid* paradigm which emphasizes a deep understanding of what is the main orientation of legal interpretation (*maqasid sharia*).³⁹ Especially in the discourse of contemporary jurisprudence, the existence of maqashid sharia is not only a value and paradigm of *fiqh*, but also as a social indicator in responding to complex and dynamic problems of modern law.⁴⁰ Such a pattern of *fiqh* paradigm is also intended not to make a legal

³⁶ Yanggo, "Penyimpangan Seksual (LGBT) Dalam Pandangan Hukum Islam," 1–4.

³⁷ Yanggo, *Problematika Fikih Kontemporer*, 20.

³⁸ Nur Hadi, "Maqashid Syari'ah Hukum Perkawinan Dalam Kompilasi Hukum Islam (KHI)," *Al-Fikra: Jurnal Ilmiah Keislaman* 16, no. 2 (December 29, 2017): 227, <https://doi.org/10.24014/af.v16i2.3831>.

³⁹ Shihab, *Wasathiyah: Wawasan Islam Tentang Moderasi Beragama*, 179–80.

⁴⁰ Deri Wanto, Rahmat Hidayat, Repelita, "Maqasid sharia's Change as Theory: From Classical to Cotemporary *Maqasid Shariah*," *Al-Istinbath: Jurnal Hukum Islam* 6, no.2 (2021): 427-428.10.29240/jhi.v6i2.3122

provision merely refer to the factuality that is the source of Islamic law, both from the Qur'an and hadith.⁴¹

The above consideration is not only the epistemology of *fiqh*, but also the existence of the marriage orientation (*maqasid al-nikah*) emphasized by Yanggo, as well as the orientation to realize the lineage (*nasab*), considering that this orientation is one of the solid foundations in building a staircase life, namely to bind relationships between individuals based on the equation of blood. In this context of maintaining *nasab*, Islamic religious teachings proclaim the institution of a valid marriage contract between the opposite sex of Islam (male and female). Even the implications of the legal neutrality of the *nasab* have a strong relationship with various forms of benefit orientation that have a priority in relation to marriage law, such as regarding *nasab* rights, guardianship rights, the right to earn a living and the right to obtain inheritance, and so on.⁴²

It is in this context that the existence of the pattern of the *fiqh al-awlawiyat* paradigm is seen in the epistemology of Yanggo *fiqh* in making considerations of the legal basis for the monasticism of homosexual acts because the pattern of the *fiqh al-awlawiyat* paradigm in the realm of its praxis emphasizes the selection of benefits that are prioritized as considerations in the determination of the law.⁴³ In addition, the existence of this pattern of *fiqh* paradigm will lead to consideration of the level of benefit caused by the establishment of laws.⁴⁴

The Paradigm Pattern of *Fiqh al-Muwazanat*, and *Fiqh al-Ma'alat* in the Use of Medical, Constitutional, and Sociological Foundations

The presence of Huzaemah Tahido Yanggo's *fiqh* thinking in responding to the phenomenon of homosexuals that has returned to the surface of Indonesian society is a very important thing that has received attention, and can even be a reference for legal references for Muslims to be able to respond to this phenomenon wisely. This happens because in the midst of the rapid flow of information related to social religious issues in the social media space (online) today, religious authorities in the media are fragmented based on religious group affiliations. The problem of authority in the media is no longer determined by

⁴¹ Hasan, "Relationship of Maqasid Al-Shari'ah with Usul Al-Fiqh (Overview of Historical, Methodological and Applicative Aspects)," 231.

⁴² M. Lutfi Khakim and Mukhlis Ardiyanto, "Menjaga Kehormatan Sebagai Perlindungan Nasab Perspektif Maqashid Syari'ah," *Nizham Journal of Islamic Studies* 8, no. 01 (May 21, 2020): 39–40, <https://doi.org/10.32332/nizham.v8i01.2105>.

⁴³ Shihab, *Wasathiyah: Wawasan Islam Tentang Moderasi Beragama*, 180.

⁴⁴ Jauhari, "Fiqh Prioritas Sebagai Instrumen Ijtihad Maqâshidî Perspektif Yûsuf Al-Qarâdawî Dan Urgensinya Di Era Kontemporer," 132–59.

the scientific capacity of a figure, but who controls the media the most and has a large number of followers.⁴⁵

Yanggo explains that the monastic law on homosexual acts is also caused by a great risk to the safety of the lives of the perpetrators, such as HIV/AIDS venereal cancer, syphilis, and others.⁴⁶ *Fiqh's* consideration of homosexual monastic law is also in line with the Islamic law-based orientation (*maqasid sharia*), which is to maintain the safety of the human soul (*hifz al-nafs*). Not stopping here, Yanggo also states that homosexual behavior violates the ideology of Pancasila, the 1945 Constitution, and Law No I of 1974 which concerns the validity of marriage and the Compilation of Islamic Law (KHI) which prohibits same-sex marriage.⁴⁷ Not just a critique and *fiqh* analysis of homosexual expectations, Yanggo also gives various suggestions to the public to put forward various preventive efforts to keep away from the emergence of homosexual behavior. She states that the existence of religious education and sex education should not be ignored in an effort to avoid the emergence of homosexual behavior in society. In this context, Yanggo gives advice regarding concrete steps in society to avoid homosexual behavior. First, avoid various things that can lead to the formation of homosexual behavior. Second, carry out a valid marriage contract between a man and a woman. Third, impose penalties on perpetrators of sexual deviance. Fourth, the government prohibits any propaganda, promotion and support for the legalization and development of homosexuals. The government must also establish regulations (laws) that prohibit all forms of homosexual behavior. Fifth, the government facilitates various work programs and budgets in the context of mentoring, rehabilitating and healing homosexual perpetrators. Sixth, the active involvement of the community in assisting the assistance of homosexual perpetrators is necessary.⁴⁸

If reviewed in the paradigm of moderate *fiqh*, the basis of the arguments of Huzaemah's *fiqh* thought above can be said to tend to have the pattern of the paradigm of *fiqh al-muwazanat* and *fiqh al-ma'alat*. Both patterns of the *fiqh* paradigm can be seen from the basis of Yanggo's *fiqh* argument which emphasizes the consideration of a medical perspective that states homosexual acts can result in dangerous diseases that threaten the life of the perpetrator. Not only the medical perspective, the pattern of the paradigm pattern of the *fiqh al-muwazanat* paradigm, and *fiqh al-ma'alat* can also be seen from the basis of Yanggo's *fiqh* argument which emphasizes the consideration of the perspective of the legal constitution that applies nationally in Indonesia, that the legal norms

⁴⁵ Ansori, Muhammad Iqbal Juliansyahzen, "The Contestation of the Family Law Discourse in the Digital Age: Islam, State, and Gender," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No.1(2022):244.

⁴⁶ Yanggo, "Penyimpangan Seksual (LGBT) Dalam Pandangan Hukum Islam," 11–12.

⁴⁷ Yanggo, 11–12.

⁴⁸ Yanggo, 25–27.

in force in Indonesia prohibit same-sex marriage. Consideration of the country's set of legal norms or constitutions shows that Yanggo emphasizes the preventive paradigm in realizing the benefit of society at large. The *fiqh* paradigm is in accordance with the rules of *fiqh* which reads *al-dhoror yuzal* (danger must be eliminated), and also in accordance with the rules of *fiqh* which reads *al-maslahat al-ammah muqoddamatun ala al-maslahat al-kebssob* (the public interest takes precedence over individual interests). The consideration of Yanggo's *fiqh* arguments involving the perspective of state norms can also be said to be a form of moderation of Islamic proselytizing in the context of state life in Indonesia.⁴⁹

The *fiqh* argument that Yanggo constructed over the monasticism of the above homosexual acts when viewed in the perspective of contemporary *maqasid sharia* can be included as a manifestation of maqashid value in the form of *hifz wathan* (preserving the benefit of state life). In the realm of praxis, *hifz wathan* can become a *fiqh* paradigm that considers and pays attention to the impact of broad social benefits in state life in Indonesia because the realization of benefits in national life in the realm of praxis also has a positive impact on the preservation of other *shariah maqasid* values for religious people both as individual beings and social beings in state life.⁵⁰ The basis of such a *fiqh* argument is in accordance with the character of the development of the epistemology of Indonesian Islamic law in general which integrates the text (nas) with social reality in Indonesia.⁵¹

The existence of the *fiqh al-ma'alat* paradigm pattern is also very visible from the great attention of Yanggo who also provides advice to the community and the government regarding the importance of carrying out preventive efforts, healing as well as rehabilitation and empowerment of human resources against homosexual perpetrators.⁵² Such a suggestion is inseparable from Yanggo's criticism of liberal Islamic thinkers who view homosexual acts as a given thing from God because Yanggo views that sexual disorder must be cured through human effort because the sexual abnormalities may be caused by various factors.⁵³ As explained by Dwiyantri, the cause of a person becoming LGBT is due to several factors, including genetic, hormonal, discomfort of gender roles,

⁴⁹ Husaini Husaini and Athoillah Islamy, "Harmonization of Religion and State : Mainstreaming the Values of Religious Moderation in Indonesian Da'wah Orientation," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 7, no. 1 (January 30, 2022): 51–52, <https://doi.org/10.35673/ajhpi.v7i1.2128>.

⁵⁰ Syamsul Bachri, Tarmizi Tarmizi, and Habibah Habibah, "Nasionalisme Dalam Perspektif Hukum Maqasid Al-Syariah," *Moderation | Journal of Islamic Studies Review* 1, no. 2 (2021): 65–66.

⁵¹ Moh Mukri, Imam Mustofa, and Fauzan Fauzan, "Constructing The Epistemological Aspect Fiqh Nusantara," *Akademika : Jurnal Pemikiran Islam* 24, no. 1 (2019): 135.

⁵² Yanggo, "Penyimpangan Seksual (LGBT) Dalam Pandangan Hukum Islam," 25–27.

⁵³ Yanggo, *Problematika Fikih Kontemporer*, 21.

and social group interactions.⁵⁴ Yanggo's suggestion is in line with the results of research by Umar which states the importance of a structured strategy to help homosexuals as a medium of healing, both sociologically and theologically.⁵⁵

At this point, we can understand that the existence that the dimensions of the moderate *fiqh* paradigm in the basis of Yanggo's *fiqh* arguments about the monastic law of homosexual acts is a paradigm of *fiqh* that is not monolithic, but rather multidimensional by involving centuries of perspectives. In other words, it is not the paradigm of *fiqh* that tends to refer to the normative foundations of law textually.

Conclusion

This study concluded that the construction of Yanggo's *fiqh* of the law of purity over homosexual acts has the basis of a moderate *fiqh* paradigm. Such a big conclusion can be seen from the existence of the pattern dimensions of the moderate *fiqh* paradigm in the *fiqh* arguments that it constructs. First, the pattern of the *fiqh al-maqashid* and *fiqh al-awlawiyat* paradigms in the use of theological foundations (*nas*) which emphasizes the realization of the benefit of the Islamic *sharia* orientation (*maqashid syaraih*) in the form of the continuity of regeneration of offspring (*hifz al-nasl*) and the protection of honor (*hifz al-'ird*). Second, the paradigm pattern of *fiqh al-muwazanat*, and *fiqh al-ma'alat* in the basis of considering the impact of disease from a medical perspective, and violations of national legal norms in Indonesia that prohibit same-sex marriage. The pattern of the *fiqh al-ma'alat* paradigm can also be seen from Yanggo's advice to the community and the government regarding the importance of preventive effort, healing as well as rehabilitation and empowerment of human resources for homosexual actors. The theoretical implications of this study show that moderate *fiqh* is needed in responding to homosexual behavior through a holistic jurisprudence paradigm involving multiple perspectives, as well as medical approaches, state norms, psychology and existing socio-cultural norms, not just a textual *fiqh* approach. The limitation of this study is that it does not identify Huzaemah's method of interpretation of the various theological foundations of homosexual monastic law. It is important to study in depth because *fiqh* thinking cannot be separated from the method of interpretation of the main source of *fiqh*, both the Qur'an and hadith.

⁵⁴ Ita Dwiyaniti, "The Criminal Penalties for LGBT in a Human Rights Perspective," *Semarang State University Undergraduate Law and Society Review* 1, no. 1 (January 31, 2021): 1, <https://doi.org/10.15294/lsr.v1i1.49835>.

⁵⁵ Subehan Khalik Umar, "Living Together With LGBT People In Indonesia," *Al-Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 8, no. 2 (December 30, 2019): 129, <https://doi.org/10.24252/ad.v8i2.11218>.

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