Islamic Law and the Politics of Nation-State: Debating Citizenship *Fiqh* Through the *Al-Maskūt 'Anhu* Discourse

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Abstrak: Aspek-aspek fikih kewarganegaraan (*fiqh al-muwāṭanah*), yang muncul dari ranah ijtihad, memicu banyak perdebatan karena sifat teoretisnya. Terminologi "fikih kewarganegaraan" tidak ditemukan secara eksplisit dalam Al-Quran atau Sunah, dan sebagai konsekuensinya, tidak terdemonstrasikan dalam konteks era kenabian. Artikel ini bertujuan untuk menggali konsep fikih kewarganegaraan melalui diskursus *al-maskūt 'anhu*, dan menyoroti bagaimana para sarjana muslim memvalidasi temuan-temuan baru. Artikel ini menggunakan teori analisis wacana kritis Foucault untuk menunjukkan bahwa setiap era memiliki hak prerogatif untuk mengadopsi sistem politik dan kerangka hukum yang berbeda. Dengan menggunakan pendekatan kualitatif dan menganalisis berbagai sumber literatur, penelitian ini merekomendasi-kan diskursus *al-maskūt 'anhu* sebagai konsep dasar yang mewadahi studi kewarganegaraan dalam pemikiran hukum Islam. Studi ini menemukan bahwa fikih kewarganegaraan, pada dasarnya, mencakup perpaduan diskursif antara aspek politik dan agama. Hal ini dapat dimanfaatkan secara efektif sebagai mekanisme tata kelola hukum pada era negara-bangsa, dengan catatan dapat berkontribusi terhadap kesejahteraan masyarakat dan mendorong kesetaraan sosial.

Kata kunci: hukum Islam; *al-maskūt 'anhu*; fikih kewarganegaraan, politik; negara-bangsa

Abstract: The jurisprudential aspects of citizenship (known as *fiqh al-muwāṭanah*), emerging from the realm of *ijtihād*, have sparked considerable debate due to their theoretical nature. The term "citizenship *fiqh*" is not explicitly mentioned in the Quran or Sunna; consequently, it lacks demonstration within the context of the Prophetic era. This study aims to delve into citizenship *fiqh* by examining the discourse known as *al-maskūt' anhu*, shedding light on how Muslim scholars validated novel findings. To achieve this objective, the paper employs Foucault's critical discourse analysis theory to showcase that each era holds the prerogative to embrace distinct political systems and legal frameworks. Adopting a qualitative approach and drawing from various literary sources, this research proposes embracing the *al-maskūt 'anhu* discourse as the fundamental concept underpinning studies on citizenship within Islamic legal thought. This investigation discerns that citizenship *fiqh* embodies a blend of political and religious engagement. It can be effectively harnessed as a mechanism of legal governance during the nation-state era, provided it effectively contributes to the populace's well-being and fosters social equity.

Keywords: Islamic law; *al-maskūt' anhu;* citizenship *fiqh*, politics; nation-state

Introduction

This research seeks to delve into the concept of citizenship *fiqh* by examining the discourse of *al-maskūt' anhu* (the unspoken) and exploring how Muslim scholars have engaged with it in the contemporary era. On the one hand, the term "citizenship *fiqh*" is not explicitly mentioned in predominant religious texts, such as the Quran and the Sunna. On the other hand, citizenship *fiqh* is positioned as an ideal concept for Muslim life in the modern era, given the emergence of the nation-state system. In theory, Islam as a religion does not acknowledge concepts like border regions, nationalities, flags, and various other symbols (Formichi, 2013). Conversely, the discourse of citizenship introduces a system of socio-political relations centred around the identity of a shared homeland. This starkly contrasts the history of classical Islamic civilization, which developed its socio-political relations based on religious identity (Maarif, 2018).

The Islamic jurisprudence (*fiqh*) that once served as a foundational basis for socio-political relations in the classical Islamic era no longer occupies the same position following the emergence of the citizenship discourse within the context of the nation-state. The Islamic tradition is being re-evaluated in light of the issues of pluralism in ongoing citizenship debates within the intellectual life of the Muslim world. Considering global matters like democracy, human rights, and citizenship within the Muslim world, they are now being established (Harmsen, 2008). Simultaneously, among Muslims who uphold the governance of the sharia law of the land, many do not necessarily accept the association of this law with non-Muslims (Lugo et al., 2013). The effort to transition *fiqh* from a private legal realm to a public one represents one approach to address the paradigm shift in Islamic law within the nation-state era (An-Na'im, 1996). Changing from a textual religiosity-based legal system to conventional positivism has implications for implementing *fiqh* (Hallaq, 2001). The interplay between *fiqh* as a religious teaching and citizenship as the contemporary system of socio-political relations underscores the need for synergy between religion and the state to ensure they function harmoniously (al-Hilālī, 2012).

Several researchers have delved into the exploration of citizenship from an Islamic perspective. Hashim Kamali (Kamali, 2009) investigates how the concept of citizenship is applied to analyze the

typological identity between *Dār al-Islām* and *Dār al-Ḥarb*. Kamali's inquiry aims to contextualize the Islamic notion of citizenship within the modern context and critique traditional Islamic regulations that may not align well with the nation-state era. Andrew F. March (2017) assesses the challenges of political liberalism that compel Muslim citizens to live as minorities in liberal societies, examining this through a doctrinal affirmation of citizenship. In a departure from these previous analysts, Maszlee Malik (Malik, 2018) embodies explicitly the terminology of citizenship *fiqh*. For Malik, citizenship *fiqh* is a contemporary and comprehensive Islamic perspective for multi-religious social orders.

While certain analysts have engaged in discussions about academic considerations regarding citizenship from an Islamic perspective, an examination of citizenship *fiqh* from an *uṣūl al-fiqh* perspective, mainly through the discourse of *al-maskūt 'anhu*, during the era of the nation-state, remains unexplored. The citizenship *fiqh*, as this new term is referred to, necessitates a clarification of its standing within Islamic legal thought. This is because *fiqh* is intricately tied to *uṣūl al-fiqh* as a scholarly discipline that underpins all legal outcomes derived through the process of ijtihad. Citizenship, being a recent term, is not explicitly recognized by primary sources in Islamic law. Therefore, delving into the citizenship *fiqh* through the discourse of *al-maskūt 'anhu* establishes its foundational framework.

Method

This research employs a qualitative approach, utilizing cross-literature to establish primary sources from *uṣūl al-fiqh* books, such as "al-Risālah" (al-Shāfi'ī, 2005), "al-Burhān fī Uṣūl al-Fiqh" (al-Juwaynī, 2012), and "al-Mustaṣfā min 'Ilm al-Uṣūl" (al-Ghazālī, 2011). These foundational *uṣūl al-fiqh* texts are supplemented by works like "al-Aḥkām al-Sulṭāniyyah" (al-Māwardī, 2006), "Ghiyāth Al-Umam" (al-Juwaynī, 1985), and "Al-Islām wa Insāniyyah al-Daulah" (al-Hilālī, 2012) that address the discourse on citizenship in Islamic legal contexts. These reference sources focused on the discussion of citizenship, serve as supporting evidence to gauge the extent to which the concept of citizenship *fiqh* is explored, from its inception to its contributions to knowledge, particularly within contemporary Islamic legal studies.

This study employs Michael Foucault's critical discourse analysis. Several key concepts from Foucault's work are applied to this study. Firstly, a comprehensive depiction of discursive events is utilized, reflecting on Foucault's perspective, to elucidate how Muslim scholars engage with citizenship *fiqh* as a modern discourse. Secondly, the concept of discontinuity from Foucault's framework is employed to investigate the shift of authority within Islamic discourse during the Middle Ages, and this is juxtaposed with the theory of power transition in citizenship discourse within the nation-state era. Lastly, the perspective of change and transformations from Foucault's work is harnessed in this study to uncover that alterations in political paradigms and the evolution of religious discourse contribute to the perception of citizenship *fiqh* as a legal framework governing the nation-state.

The Difference Between the Citizenship *Fiqh* and the Citizenship Law

Citizenship, as a concept, originated in ancient Greek city-states, primarily associated with property owners, excluding women, enslaved people, and impoverished members of the community. In a Greek city-state, citizens had the right to vote, were subject to taxation, and were obligated to military service. The Romans first employed citizenship to distinguish the citizens of Rome from the local tribes they had conquered and united. Individuals indebted to the government, entitled to certain protections, lay the foundation for the relationship between an individual and the state. Citizenship underscores the existence of a flexible status in fulfilling responsibilities. Citizens bear distinct rights, duties, and obligations not extended to outsiders or non-citizens residing within a country. Rooted in citizenship, citizens possess full political rights, including voting, running for office, and participating in public affairs (The Editors of Encyclopaedia Britannica, n.d.).

In the ancient era of Islamic civilization, the term "citizenship" did not appear in classical *fiqh* literature. *Fiqh* is defined as a compilation of Islamic law encompassing various aspects (al-Jazīrī, 2003). *Fiqh al-ṭahārah* (the *fiqh* of purification) addresses purification procedures for different impurities. *Fiqh al-'ibādah* (the *fiqh* of worship) pertains to various forms of worship and their implementation. *Fiqh al-muʿāmalah* (the *fiqh* of economics) examines contracts and their conditions. *Fiqh al-*

munākaḥah (the *fiqh* of marriage) covers all aspects of marriage. *Fiqh al-jināyat* (the *fiqh* of criminal law) deals with various types of criminal law. *Fiqh al-siyāsah* (the *fiqh* of politics) encompasses political matters, from leadership to relationships between Muslims and non-Muslims. The disappearance of the term "citizenship" in various classical *fiqh* literature is understandable, considering that the political realities surrounding *'ulamā'*, as authors, when formulating and writing their respective books in the era of codification (*'aṣr al-tadwīn*), have not yet been confronted with the discourses of nation-state issues.

In the contemporary era, within the context of Islamic studies, the term "citizenship" is identified by the term *al-muwāṭanah*, derived from *al-waṭan* (homeland). The term *al-waṭan* was explored in the Arab-Islamic world by Rifā'a al-Ṭahṭāwī (Sālim, 2011). Politically, al-Ṭahṭāwī defines *al-waṭan* as a nation's land, and those residing within it are referred to as *al-muwāṭin* (citizens), forming the essence of citizenship represented by the *al-muwāṭanah* concept. *Al-muwāṭanah* establishes uniform rights and obligations among citizens, shaping their connection to their countries (*ḥuqūq wa wājibāt mutabādilah bayna al-insān wa waṭanih*). The disappearance of socio-religious classes like *kāfir dhimmī* and *kāfir ḥarbī* in the state-religion relationship is influenced by the application of citizenship *fiqh* (*fiqh al-muwāṭanah*), as a living law within religion and the state (Malik, 2018).

Based on the above etymology, citizenship *fiqh* in the present era can be perceived as a socio-political pact linking rights and obligations between the state and citizens, irrespective of their faith, race, ethnicity, or the culture prevalent in social communities grounded in the universal values of Islamic law. In contrast, citizenship law refers to the legal framework governing citizenship acquisition, retention, and loss in a specific country. Citizenship signifies being recognized as a member of a nation or state, entailing the associated rights and privileges (Roy, 2022). Citizenship law typically defines criteria for acquiring citizenship, encompassing birth within a country, descent from citizens, or naturalization. These laws may address dual citizenship, citizenship revocation for criminal conduct or fraud, and citizen rights and duties (Shachar et al., 2017).

Between these two definitions, the distinction between citizenship *fiqh* and citizenship law lies in the source and legal authority. Regarding

sources, citizenship *fiqh* is rooted in Islamic law, while citizenship law derives from the fundamental laws of a country. Regarding legal enforcement, citizenship *fiqh* lacks the absolute power to bind all citizens, whereas citizenship law is enforceable and universally binding. The convergence of these two terms lies in their transformation of citizenship into a socio-political discourse, considered an ideal framework for exploring the state-citizen relationship. The presence of the state and citizens in the discourse fosters stability in the public sphere, facilitating comprehensive development for both entities, thereby steering the nation and state toward positive growth (Farjānī, 2020).

The Citizenship *Fiqh* in the *Uṣūl al-Fiqh* Perspective: An Analysis Based on the *al-Maskūt 'Anhu* Discourse

Uṣūl al-fiqh, a theoretical discourse within Islamic legal thought, remains open to engagement with social and humanities issues. Al-Shāfi'ī, in his al-Risālah, underscores the interconnectedness of law and phenomena (al-Shāfi'ī, 2005). This viewpoint signifies that evolving phenomena across eras demand a dynamic and human-centred legal reasoning process. As a term, *Fiqh* represents a science in Islamic legal thought encompassing religious teachings' practical and casuistic aspects. The laws derived from ijtihad are not absolute; jurisprudence and legal products are often bound by the objective criteria underlying them (Hanafi, 2004). Consequently, the application of a legal product depends on the formulation of objective criteria. In cases where objective criteria are absent, *fiqh* cannot arbitrarily judge a legal matter in a phenomenon.

Not all aspects of human life find exhaustive mention in the primary sources of Islamic law. While present, their enumeration is notably limited. This situation is also tied to the historical and socio-political context during the revelation of religious texts. The historical context of the decline of religious texts is understood as *asbāb al-nuzūl* for the Quran and *asbāb al-wurūd* for Hadith (al-Zarkāshī, 1992). If a law-related phenomenon is explicitly covered in the Quran and through *mutawātir* authentic hadith, it is endowed with a *qaṭ'ī* legal ruling. In *uṣūl al-fiqh*, laws deemed *qaṭ'ī* must be acknowledged and adhered to. As a result, ijtihad does not govern these matters. Consequently, matters not explicitly detailed in religious texts are considered *ẓannī* (al-Khin, 2007).

Thus, contemporary ijtihad is admissible to formulate and rationalize an ideal legal approach.

Uṣūl al-fiqh categorizes matters explicitly demonstrated in religious texts as *al-manṭūq bihi*. In contrast, matters not explicitly mentioned, both in the Quran and Hadith, fall under the "silent" category *(al-maskūt 'anhu) (*al-Zuḥailī, 1987*). Al-maskūt' anhu,* as a term, refers to legal subjects not explicitly detailed by religious texts. The existence of *al-maskūt 'anhu* is logically grounded in the finite and conclusive nature of religious texts *(al-mutanāhī),* juxtaposed with the unlimited and uncharted nature of evolving human experiences *(al-lā mutanāhī)* (Adonis, 2011). Hence, human critical reasoning assumes the responsibility of elucidating encountered phenomena, given that no phenomenon can elude the realm of law.

Within *uṣūl al-fiqh*, *al-maskūt 'anhu* serves as a discourse identifying unspoken aspects, thereby laying the groundwork for legal formulation (al-Rāzī, 2011). Even if these aspects lack explicit coverage in the Quran and Hadith, they can still be inferred by identifying overarching principles rooted in the various dimensions of Islamic Sharia (Al-Ghazālī, 2011). While silent matters lack explicit elaboration, this doesn't equate to an exemption from the law or detachment from religious teachings (al-Āmidī, 2003).

Islamic legal thought presents a range of responses to *al-maskūt 'anhu*. Firstly, some firmly assert that *al-maskūt 'anhu* doesn't generate law. This perspective emerges from a textual literalist approach, contending that adherence to the explicit instructions in the Quran and Hadith suffices. Secondly, some explicitly claim that *al-maskūt' anhu* holds no legal implications. This viewpoint stems from a liberal-secular stance, asserting that what isn't expressly forbidden by the Quran and Hadith is permissible. Thirdly, some affirm that *al-maskūt 'anhu* can establish law and legal consequences, provided it aligns with religious teachings, doesn't compromise human welfare, or contravene social justice (al-Ḍāhir, 2017).

Given the perspectives offered by diverse Muslim scholars regarding *al-maskūt' anhu*, the assessment of the Muslim community's stance toward contemporary citizenship terminology within Islamic legal thought can be grouped into three models. Firstly, the textually exclusive community dismisses citizenship's presence due to its absence

in the Quran and Prophet's teachings. The liberal-secular community emphatically acknowledges citizenship's occurrence in the modern era, readily embracing its implementation. Lastly, the moderately inclusive community approaches citizenship with equitable consideration, evaluating its application in the public sphere based on its potential to enhance general welfare and social justice.

Beyond varying attitudes toward citizenship, the discourse on citizenship within Islamic legal thought extends into multiple realms: Firstly, citizenship is intertwined with the development of human rights in Islamic legal thought. Approaching citizenship from a human rights perspective explores the socio-political interplay between the rights of Muslims and non-Muslims. Despite diverse belief systems, the citizenship discourse guarantees the right to religious belief and practice, a shared value across communities (Ghanūshī, 1993). Secondly, citizenship contributes to discussions on minority *fiqh* within Islamic legal thought. Examining citizenship from a minority *fiqh* perspective delves into how Islamic law mandates the protection of minority rights worldwide. This inquiry reflects a commitment to realizing universal Islamic values that transcend community distinctions (Dawush, 2008). Thirdly, citizenship is entwined with the discipline of *maqāṣid al-sharīʿah*. A study of citizenship through the lens of *maqāṣid al-sharīʿah* seeks to align universal Islamic values, safeguarding religion, life, family, intellect, and property, with the principles of social justice and public welfare inherent in citizenship (Hamīsh, 2017). Fourthly, citizenship is a part of the process of establishing political authority in Islamic legal theory.

Exploring citizenship from an Islamic political-legal standpoint aims to elucidate the most appropriate methods for selecting leaders and implementing political systems in different eras. This investigation underscores the dynamic nature of politics, necessitating adaptations within Islamic law (Ikīj, 2019). Lastly, citizenship engages in discussions on international geopolitics within Islamic legal thought. Studying citizenship from a geopolitical viewpoint examines the collaborative relationship between nations with Muslim-majority populations and European countries, emphasizing the importance of Islamic law in realizing international humanist principles (Farjānī, 2020).

The diversity of approaches to citizenship in Islamic legal thought underscores that although not explicitly addressed in the Quran and

Hadith, citizenship as a discourse can be reasoned and systematically studied within the framework of *al-maskūt 'anhu*. In essence, the evolution of law is an ongoing interplay between political ideologies and legal reasoning (Salim GP, 2017). This academic exploration underscores the necessity of accommodating any discourse that contributes to human benefit, even if it emerges beyond the confines of religious texts or traditions.

Caliphate vis a vis Citizenship: Paradigmatic View of Transferring Power

According to al-Jābirī's (2000) research, the form and system of government in Islamic political history have never remained constant but have consistently changed and varied. These shifts in government structure are shaped by the socio-political phenomena that influence epistemological figures of each era (Knysh, 2017). The dynamic and inconsistent nature of governmental forms and systems in Islamic political history reflects human-driven political historicity rather than a fixed theological norm. The evolution of government structure in Islamic political history forms a complex discourse of power dynamics among actors in Islamic civilization's history (al-'Ashmāwī, 1992). As a result, the form and system of government within Islamic political history retain a dynamic character, even while Islam as a religion remains sacred (Salim GP, 2020).

The earliest debate following the Prophet's passing revolved around the question of who was entitled to lead the Muslims: individuals from the *Muhājirīn* or the *Anṣār*? This query marked the initial catalyst for the transformation of Muslim consciousness from matters of faith and prophetic missions to the realm of political practice and leadership (al-Kathiri, 1980). The rule of law aligns inherently with the historical development of Islamic practices concerning power. Within Islam, the highest authority is not vested in an individual but in a system of regulations derived from the Sharia as revealed by God and exemplified in the Sunna of the Prophet. From the time of Prophet Muhammad, he consistently embodied the *uswah ḥasanah*, serving as an exemplar and role model, adhering to all divine commands and avoiding prohibited actions (Asshiddiqie, 2010).

During the early stages of the religion, the initial generation of Islamic leadership, characterized by figures such as Caliphs Abū Bakr

Siddīq, 'Umar ibn Khaṭṭāb, 'Uthman ibn' Affān, and 'Alī ibn Abī Ṭālib, is often referred to as the era of the *Khulafā' al-Rāsyidūn*. This term encapsulates the idealized perception of the Islamic state leadership system (Ibn Khaldūn, 2004). The successor to the departed Prophet was considered the head of the Muslim community. Additionally, the initial group of companions who succeeded in continuing Prophet Muhammad's leadership role became recognized as *khalīfat al-rasūl*. Therefore, the commonly understood concept of the caliphate, synonymous with the Islamic leadership tradition, actually aligns more with the concept of *khalīfat al-rasūl*, rather than the elaboration of *khalīfatullāh* (Riḍā, 2017). In the realm of Islamic political civilization, the process of establishing and transferring power can be categorized into at least three models:

Firstly, power determination aligns with the choice of the political elite (*isnād al-sulṭah bi ikhtiyār al-nakhbah)*, often referred to as *ahl al-ḥall wa al-'aqd*. A leader's political authority gains acceptance and legitimacy if it is endorsed by the political elites who have been elected and trusted by the community. This system, governed by the political elite, recognizes and honors the public's aspirations in selecting leadership. This model of power determination is underpinned by the ideas of Sunni theologians, particularly Asy'āriyyah. Al-Shahrastānī cites Abū Ḥassan al-Asy'ārī as asserting that "leadership is established through agreement and choice, not by textual authority or coercion."

Secondly, power determination is based on the appointment of a previous leader *(istikhlāf al-ḥākim),* often understood as *wilāyat al-'ahd*. This model involves the direct selection of a leader by the preceding one. A classic example of this power transfer model through appointment is the succession of 'Umar b—al-Khathab, chosen by Abū. Bakar al-Siddīq to assume the role of *khalīfah* (al-'Ashmāwī, 1992).

Thirdly, the transfer of power to heirs *(intiqāl al-sulṭah ilā al-warāthah),* also known as *tawrīth al-sulṭah* or breed politics. This model of power transfer reserves leadership exclusively for the offspring of the king or sultan, precluding others from assuming leadership roles. The transfer of power operates as a patrimonial political ideology, where succession automatically passes to the previous leader's son upon retirement or death. This practice embodies the concept of patrimonial political ideology (Messick, 1992).

The term *khalīfah*, originally signifying a substitute or one who is authorized, has transformed its meaning in patrimonial political ideology. Originally perceived as a substitute for the heir, *khalīfah* has evolved to denote inheritance. The initial concept of *al-khilāfah* has evolved into the concept of *al-dawlah*, shifting from replacement and transition to a fiercely defended concept even with bloodshed (Esposito & Shahin, 2013). Thus, the divisions of power in Islamic political history are marked by the word *dawlah*, symbolizing political power, followed by the term *banī*, representing political identity, and culminating in breed names as expressions of patrimonial political practice. This development is evident in the emergence of new dynasties after the era of *al-Khulafā' al-Rāshidūn*, including *Dawlah Bani Umayyah* and *Dawlah Bani' Abbāsiyyah*, among others (Yasin, 2012).

In the framework of patrimonial political ideology, the exclusive transfer of power to a particular breed has the potential to create social barriers, which may eventually lead to rebellion from outside the breed. The transition from one *dawlah* to another, from one *bani* to another, is marked not by mutual respect and trust but often by accusations and conflicts that may escalate into violence (Foudah, 1988). This dynamic contrasts with the experiences of the Muslim community during the era of the caliphate and dynastic politics in the Middle Ages (Crone, 2014). With the establishment of the nation-state, the concept of citizenship *fiqh* provides an opportunity to shape contemporary relationships in the public sphere. This implies that differences between political systems in classical and contemporary periods arise from distinct contexts (Abdillah, 2022).

The integral relationship between citizenship in Islamic and Nation-State discourse becomes evident as one examines the evolution of political concepts and frameworks, with the former laying foundational principles that interact dynamically with the discourses and structures of the nation-state in the latter era. In countries adhering to a democratic system, the transfer of political power is conducted extensively and not in accordance with unilateral appointments or based on lineage (Fadel, 2018). In the politics of the nation-state, which accommodates the idea of citizenship, the power transfer in determining a leader is performed in several models, for instance, through representing state institutions or direct general elections (van Dijk & Kaptein J.G., 2016). These two things situate the position of citizens as a prior component

in the politics of the nation-state. Citizens possess the right to have authority in determining the fate and policies of the country in the next few decades (Stevenson et al., 2015). This political situation was not discovered when power was transferred within the caliphate system (Sodiqin & Radiamoda, 2021).

Within democratic systems, the transfer of political power occurs through comprehensive processes, not unilateral appointments or lineage-based decisions (Fadel, 2018). In the context of the nation-state and citizenship, power transfer to determine a leader can follow various models, such as representation through state institutions or direct general elections (van Dijk & Kaptein J.G., 2016). These models prioritize citizens as key actors in the political landscape. Citizens wield the authority to shape the country's future and policies in the coming decades (Stevenson et al., 2015), unlike the power transfer processes in the caliphate system (Sodiqin & Radiamoda, 2021).

Within the concept of citizenship, all individuals possess an equal right to vote and stand for election, regardless of their religion, ethnicity, or daily practices. The openness of this political framework emphasizes a balanced distribution of power between state institutions and the citizenry (Hashmi, 2002). Unlike the caliphate system, where leadership succession often centered on a descendant of the caliph, citizenship bestows these rights upon all citizens (Eirik Hovden, Christina Lutter, 2016). In this context, citizens hold political power determining who occupies leadership positions and how the political system operates.

The Citizenship *Fiqh* as the Politics of Law in the Era of Nation-State

Each era of human civilization carries its distinct characteristics, even within the same religious framework. In the context of Islamic political civilization's history, although Al-Māwardī and Al-Juwaynī belong to the Shafi'ite school and adhere to Sunni beliefs, they hold different views on a leader's ethnic origin. While al-Māwardī, in *al-Aḥkām al-Sulṭāniyyah*, stipulated that a leader must be from the Quraysh tribe (al-Māwardī, 2006), al-Juwaynī, in *Ghiyāth al-Umam*, asserted that anyone with mastery of political affairs, military knowledge, and religious understanding could become a leader, irrespective of their Quraysh lineage (al-Juwaynī, 1985).

Human activities and the phenomena enveloping them, be they political, social, or cultural, hold the power to shape relationships between coexisting discourses (al-Shagīr, 2010). Citizenship imposes upon the individual the responsibility to fulfill obligations to their homeland, in return for which they acquire their rights as citizens. However, failure to fulfill these obligations leads to the forfeiture of the civil rights they are entitled to (al-Ṭahṭāwī, 2002). Consequently, citizens, united by a shared homeland, must collaborate to elevate and refine their nation's system, upholding the honor and esteem of their homeland (Behlul Ozkan, 2012). National identity is a construct influenced by social conditions, culture, and geographic location within a specific area (Hanafi, 2012).

The presence of citizenship discourse on the horizon of socio-political life in the Nation-State era influences Muslim communities' mindset and knowledge perspective in reinterpreting and re-narrating religious teachings in the public sphere. The caliphate system was essentially a product of ijtihad (Mcquaid, 2007). Evolving times necessitate variations in political systems. The advent of the Nation-State era underscores the principle that citizens possess the right to participate in shaping political policies. In contrast to the caliphate system's focus on leadership, citizenship *fiqh* emphasizes regulations ensuring citizens' equal rights (Smock, 2004). In this context, citizens are not just observers of political power but active contributors to policy development, with equal rights at stake.

Pre-modern Muslim jurists partitioned the world into the *Dār al-Islām* (home of Islam) and the *Dār al-Ḥarb* (home of war). These concepts negate the advanced standards of the foundation of increasing citizenship in Muslim nations, integrating Muslims into Western social orders, and advancing a more peaceful worldwide framework (Kuru, 2019). The citizenship *fiqh*, which enacts legal consequences, can be perceived as a form of modernization and a change in the perception of Islamic law itself (Bonderman, 1968). As citizens, Muslims are subject to national law and, by implication, to universal law; as community individuals, they are subject to custom or standard law. As Muslims, they are subject to certain devout standards, the elucidation of which is variable (Otto, 2008).

Unlike the ancient caliphate and kingdom systems, which delineated territories based not on geographical parameters but on controlled areas,

the contemporary discourse of citizenship emerged with the orientation of social, political, and cultural life within the nation-state concept of the modern era (Wahid, 2006). The notion of the nation-state as a framework for political identity in the modern era necessitates the practice of citizenship as a legal framework governing socio-political interactions between citizens and their country on a national scale and with other countries on an international scale. Given the inextricable nature of the Muslim community from the nation-state paradigm, addressing this issue requires an innovative and dynamic approach that amalgamates modern Islamic sources with classical Islamic traditions, enabling the adaptation of religious discourse. This awareness empowers Muslims to exist in civilized cultures, free from religious constraints, and embrace political paradigm shifts (Masrukhin, 2020).

Citizenship is perceived as an axis that combines more comprehensive and responsible programs with improved benefit conveyance. Within the social arrangement space, citizenship has been demonstrated in three broad ways (Sabates-Wheeler et al., 2020): First, as with social rights, which assert that social and political rights are incorporated as citizens' rights, this involves civil rights as part of the national identity, which serves economic security, educational facilities, and social welfare. Second, as a form of agency energizing the citizens to commit and perform a concern in social policy, financial decision-making, and political decision-making in the life of the state system. Third, social responsibility and social accountability highlight that citizens, as recipients of state services, must perform a position as actors and designers and not as passive beneficiaries, which not merely demands the fulfilment of rights but is also responsible for the country's development.

Citizenship is a pivotal axis that intertwines comprehensive and responsible initiatives with improved welfare provision. In the realm of social arrangements, citizenship manifests in three primary ways (Sabates-Wheeler et al., 2020): firstly, by recognizing social rights and integrating them as part of citizens' rights, encompassing economic security, educational access, and social well-being. Secondly, as an empowering agency, they motivate citizens to engage in social, financial, and political decision-making within the state system. Thirdly, as social responsibility and accountability, citizens are urged not just to receive state services passively but to actively contribute as actors and designers

actively, thereby fostering the fulfillment of rights and the nation's advancement.

Within the nation-state era, intellectuals endeavored to contextualize Islam by adopting a more inclusive approach that resonated with the evolving socio-political landscape. This approach was particularly evident in how Muslim societies expressed their socio-political beliefs and collaborated to fulfill the sociopolitical objectives of Islam. Academic efforts to interpret Islamic teachings had a profound impact on public discourse. Throughout the nation-state era, discussions on Islam's relevance to various aspects of life have consistently embraced a nationalistic-Islamic perspective, fostering Islamic revivalism in regions where Islam is widely practiced to improve the populace's well-being. As demonstrated through citizenship *fiqh*, Islam emerges as a vital source of values that contribute to constructive alternatives for the nation (Hasan, 2009).

The contemporary term "citizenship" within the discourse of Islamic legal thought can be assessed based on its capacity to benefit humanity. In Islamic legal theory, benefits *(al-maṣlaḥah)* are categorized into three models (Opwis, 2010).: firstly, *al-maṣlaḥah al-mu'tabarah* pertains to benefits explicitly mandated, such as prayer, zakat, fasting, and hajj. Secondly, *al-maṣlaḥah al-mulghāh* refers to perceived benefits arising from human judgment, which might involve actions deemed beneficial but are prohibited by Sharia, like the sale of intoxicants. Thirdly, *al-maṣlaḥat al-maskūt anha* denotes benefits not explicitly instructed or prohibited by Sharia, but discerned through general and global arguments.

Citizenship *fiqh* addresses the discourse of religious establishment and religious freedom in the context of the Nation-State era. These principles collectively enable citizenship *fiqh* to support citizens, encompassing political, social, and other rights associated with international law in the public sphere (Zada, 2017). Understanding the nature of these principles within the nation-state era is pivotal, as they reflect the dual identity of the state itself in multiple facets (Lukito, 2017). By prioritizing public welfare and achieving social justice for all citizens, citizenship *fiqh* emerges as the political ethic of the Muslim community, fostering cooperation in the Nation-State era. Moreover, it transcends distinctions based on majority-minority statistics and

differences in belief, ethnicity, or culture, embodying the concept that Islamic law is adaptable and can harmonize with discourses of the Nation-State era (Nur et al., 2020).

The emergence of citizenship *fiqh* can be interpreted as an effort within the restorative justice system, a development in Islamic legal thought that positions citizens as beings bestowed with inherent rights *(ḥuqūq al-ʿibād)*, particularly concerning political and religious aspects in the public sphere *(Sodiqin, 2021)*. In this context, citizenship *fiqh* reconciles Islamic teachings with the complexities of human political existence in the Nation-State era. In this era, citizenship transforms into a constitutional identity, shaping the formulation and socialization of laws. Although citizenship is encompassed within the concept of *al-maskūt 'anhu*, according to Ahmed El-Tayeb, the Grand Sheikh of Al-Azhar University, it is essential to address issues that aim to broaden individuals' horizons in alignment with their interests (Hadi, 2021).

Conclusion

Based on the analysis presented above, this research concludes that the concept of citizenship *fiqh* represents an attempt by Muslim scholars to engage in a negotiation process with the discourse of citizenship in the modern era. Citizenship *fiqh* draws upon the universal values within Islamic laws pertaining to human rights issues. However, despite its legal foundation, the establishment of citizenship *fiqh* within the Muslim world has been hindered by the lack of political consensus among Muslim countries. Consequently, although Muslim scholars have extensively discussed citizenship *fiqh* from various perspectives, it remains a religious-political discourse crafted by scholars to address issues related to global citizenship within the context of the nation-state era.

This study has revealed that Muslim scholars' responses, rooted in the concept of *al-maskūt 'anhu*, to new issues not explicitly addressed in the Qur'an and Sunnah, can be observed through three distinct aspects. Firstly, the evaluative aspect: Contemporary notions like citizenship would be assessed from three standpoints. Those aligning with a textually exclusive perspective would reject the concept outright. Meanwhile, proponents of the liberal-secular viewpoint might argue that these new concepts are permissible in the absence of explicit religious references. However, those adopting a moderately inclusive stance would

engage in comprehensive research and analysis to determine which aspects of these new concepts can be adopted and which should be avoided. Secondly, the deliberative aspect: Citizenship *fiqh*, as a term, can be explored through diverse lenses, including human rights, minority *fiqh*, *maqāṣid al-sharī'ah* (objectives of Islamic law), political authority, and geopolitics. Thirdly, the discursive aspect: Citizenship *fiqh* can be seen as an adaptive demonstration of Islamic law's ability to establish connections with socio-political discourses during the Nation-State era.

Nonetheless, this research still exhibits certain limitations. It primarily focuses on citizenship *fiqh* from the perspective of the *al-maskūt 'anhu* discourse. It does not extensively utilize broader arguments *(al-adillah al-ʿāmmah)* derived from definitive texts or interpretations of religious texts concerning real-world challenges in the context of the Nation-State era. Subsequent studies are necessary further to develop citizenship as a contemporary discourse within Islamic studies. Muslim scholars well-versed in *fiqh* or *tafsīr* (Qur'anic exegesis) could construct a comprehensive understanding of citizenship rooted in legal maxims or general arguments prioritizing public welfare and social justice. Such arguments could also address issues like discrimination, oppression of minorities, and violence committed in the name of religion.

References

Abdillah, M. (2022). Sharia and Politics in The Context of Globalization and Society 5.0. *Ahkam : Jurnal Ilmu Syariah*, *22*(2), 263–286. https://doi.org/10.15408/ajis.v22i2.28959

Adonis. (2011). *Al-Thābit wa al-Mutaḥawwil*. Dār Sāqī.

Al-Āmidī, S. (2003). *Al-Iḥkām fī Uṣūl al-Aḥkām*. Dār Shamī'ī.

Al-'Ashmāwī, S. (1992). *Al-Khilāfah al-Islāmiyyah*. Sina.

Al-Ḍāhir, N. A. (2017). Al-Maskūt 'Anhu wa Dalālatuh al-Lughawiyah. *İslami İlimler Araştırmaları Dergisi*, *1*(2), 189–212.

Al-Ghazālī, A. Ḥāmid. (2011). *Al-Mustaṣfā min 'Ilm al-Uṣūl*. Dār Nafāis.

Al-Hilālī, S. (2012). *Al-Islāmī wa Insāniyyah al-Dawlah*. Maktbah Hai'ah 'Ammah.

Al-Jābirī, M.' Abid. (2000). *Al-'Aql al-Siyāsī al-'Arabī*. Markaz Dirāsāh Wahdah 'Arabiyah.

Al-Jaziri, A. al-R. al-. (2003). *Al-Fiqh 'Ala Madhahib al-Arba'ah*. Dar al-Kutub al-Ilmiyah.

Al-Juwaynī, A. A.-M. (1985). *Ghiyāth al-Umam*. Dār al-Minhāj.

Al-Juwaynī, A. A.-M. (2012). *Al-Burhān fī Uṣūl al-Fiqh*. Dār al-Wafā'.

Al-Kathiri, F. H. (1980). *Succession to the caliphate in early Islam*. Portland State University.

Al-Khin, M. M. (2007). *Al-Qaṭ'ī wa al-Ẓannī fī al-Thubūt wa al-Dalālah 'inda al-Uṣūliyyīn*. Dār Kalim Thayib.

Al-Māwardī, A. A.-Ḥasan. (2006). *Al-Aḥkām al-Sulṭāniyah*. Dār al-Hadīth.

Al-Rāzī, F. (2011). *Al-Maḥsūl fī 'Ilm Uṣūl al-Fiqh*. Dār al-Salām.

Al-Shāfi'ī, M. B. I. (2005). *Al-Risālah*. Maktabah al-Turāth.

Al-Shagīr, A. M. (2010). *Al-Ma'rifah wa al-Sulṭah fi al-Tajribah al-Islāmiyah*. Dār Rukyah.

Al-Ṭahṭāwī, R. (2002). *Al-Murshid al-Āmīn*. Majlis A'lā Li Thaqāfah.

Al-Zarkāshī, B. (1992). *Al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*. Wizārah Auqāf Islāmiyah.

Al-Zuḥailī, W. (1987). *Uṣūl al-Fiqh al-Islāmī*. Dār al-Fikr.

Asshiddiqie, J. (2010). *Konstitutional, Islam dan Tradisi Negara*.

Behlul Ozkan. (2012). *From the Adobe of Islam to the Turkish Vatan The Making of a National Homeland in Turkey*. Yale University Press.

Bonderman, D. (1968). Modernization and Changing Perceptions of Islamic Law. *Harvard Law Review*, *81*(6), 1169–1193. https://doi.org/10.2307/1339260

Crone, P. (2014). Medieval Islamic Political Thought. In *Medieval Islamic Political Thought*. https://doi.org/10.1163/004325309x12560449563289

Dawush, A.-H. (2008). *Al-Muwāṭanah wa Mas'alah al-Aqalliyāt*. Aljazair University Press.

Eirik Hovden, Christina Lutter, W. P. (2016). *Meanings of Community across Medieval Eurasia*. Brill.

Esposito, J. L., & Shahin, E. E. (Eds.). (2013). *The Oxford Handbook of Islam and Politics*. Oxford University Press.

Fadel, M. (2018). Political legitimacy, democracy and Islamic law: The place of self-government in islamic political thought. *Journal of Islamic Ethics*, *2*(1–2), 59–75. https://doi.org/10.1163/24685542-12340015

Farjānī, K. (2020). *Al-Muwāṭanah wa Madīnah al-Dawlah fī al-Fikr al-Siyāsī al-Mu'āṣir*. Ahram Mashriyah.

Formichi, C. (2013). Islam and the Making of the Nation. In *Islam and the Making of the Nation*. https://doi.org/10.1163/9789004260467

Ghanūshī, R. (1993). *Ḥuqūq al-Muwāṭanah: Ḥuqūq Ghair al-Muslim fī al-Mujtama' al-Islāmī*. IIT.

Hadi, S. A. (2021). *Sheikh Al-Azhar: al-Qadaya al-Maskut 'Anha Tahdufu Li At-Tawassu'ah 'ala An-Nas Bima Yuwaim Masalihahum*. Gate.Ahram.Org.Eg. https://gate.ahram.org.eg/News/2698277.aspx

Hallaq, W. B. (2001). Authority, Continuity and Change in Islamic Law. In

Authority, Continuity and Change in Islamic Law. Cambridge University Press.

Hamīsh, A. (2017). *Fiqh al-Muwāṭanah fī Uṣūl al-Sharī'ah wa Maqāṣidiha*. Aurāq Thaqāfiyah.

Hanafi, H. (2004). *Min al-Naṣ Ila al-Waqi'*. Markaz Al-Kitab Li Nasyr.

Hanafi, H. (2012). *Al-Huwiyyah*. al-Majlis al-A'la Li Thaqafah.

Harmsen, E. (2008). *Islam, Civil Society, and Social Work*. Amsterdam University Press.

Hasan, N. (2009). *The making of public Islam: Piety, agency, and commodification on the landscape of the Indonesian public sphere*. 229–250. https://doi.org/10.1007/s11562-009-0096-9

Hashmi, S. H. (2002). *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*. Princeton University Press. https://doi.org/10.1515/9781400825370.xi

Ibn Khaldūn, A. (2004). *Muqaddimah*. Dār Ya'rib.

Ikīj, M. (2019). *Fiqh al-Muwāṭanah: Ḍawābiṭ al-Ta'sīs wa al-Tibāsāt al-Tanzīl*. Nohoudh Center.

Kamali, M. H. (2009). Citizenship: An Islamic perspective. *Journal of Islamic Law and Culture*, *11*(2), 121–153. https://doi.org/10.1080/15288170903273060

Kamali, M. H. (2016). Caliphate and political jurisprudence in Islam: Historical and contemporary perspectives. *Muslim World*, *106*(2), 384–403. https://doi.org/10.1111/muwo.12145

Knysh, A. (2017). Islam in Historical Perspective. In *Islam in Historical Perspective*. Routledge. https://doi.org/10.4324/9781315639222

Kuru, A. T. (2019). *Islam, Authoritarianism, and Underdevelopment*. Cambridge University Press.

Lugo, L., Cooperman, A., Bell, J., O'Connell, E., & Stencel, S. (2013). The World's Muslims: Religion, Politics and Society. *Pew Research Center*, *202*, 226.

Lukito, R. (2017). State and Religion Continuum in Indonesia: The Trajectory of Religious Estabishment and Religious Freedom in the Constitution. *The Indonesian Journal of International & Comparative Law, September 2015*, 1–43.

Maarif, A. S. (2018). Islam, Humanity and The Indonesian Identity: Reflections on History. In *Leiden University Press*. Leiden University Press.

Malik, M. (2018). Fiqh al-Muwatanah (Fiqh of Citizenship): A New and Inclusive Islamic Approach for Multi-religious Societies. *Penang Institute Issues*, *17*(June), 1–19.

March, A. F. (2017). Liberal citizenship and the search for an overlapping consensus: The case of Muslim minorities. *The Ethics of Citizenship in the 21st Century*, *4*, 145–178. https://doi.org/10.1007/978-3-319-50415-5_9

Masrukhin, M. Y. (2020). *Menjadi Muslim Moderat: Teologi Asy'ariah di Era Kontemporer*. OIAAI.

Mcquaid, J. V. (2007). The Struggle for Unity and Authority in Islam: Reviving the Caliphate? *The Center for Strategic Studies, CNAC, September*.

Messick, B. (1992). *The Calligraphic State: Textual Domination and History in a Muslim Society*. University of California. https://doi.org/10.2307/3034743

Nur, I., Adam, S., & Muttaqien, M. N. (2020). Maqāṣid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law. *Ahkam: Jurnal Ilmu Syariah*, *20*(2), 331–360. https://doi.org/10.15408/ajis.v20i2.18333

Opwis, F. (2010). *Maslaha and the Purpose of the Law*. Brill.

Otto, J. M. (2008). *Sharia and National Law in Muslim Countries*. Leiden University Press. https://doi.org/10.26530/oapen_595098

Riḍā, M. R. (2017). *Al-Khilāfah*. Hindāwī.

Roy, A. (2022). *Citizenship regimes, law, and belonging: The CAA and the NRC* (First edition). Oxford University Press.

Sabates-Wheeler, R., Wilmink, N., Abdulai, A. G., de Groot, R., & Spadafora, T. (2020). Linking Social Rights to Active Citizenship for the Most Vulnerable: The Role of Rights and Accountability in the 'Making' and 'Shaping' of Social Protection. *European Journal of Development Research*, *32*(1), 129–151. https://doi.org/10.1057/s41287-019-00223-5

Sālim, A. M. (2011). *Al-'Aql wa-al-Dīn min al-Khiṭāb al-Iṣlāḥī ilá al-Khiṭāb al-'Almānī* (al-Ṭab'ah 1). Ru'yah lil-Nashr wa al-Tawzī'.

Salim GP, M. A. (2017). Competing Political Ideologies on the Implementation of Islamic Law in Indonesia: Historical and Legal Pluralist Perspectives. *Ahkam: Jurnal Ilmu Syariah*, *17*(2). https://doi.org/10.15408/ajis.v17i2.6233

Salim GP, M. A. (2020). From Usul Fiqh to Legal Pluralism: An Autoethnography of Islamic Legal Thought. *Mazahib*, *19*(1), 79–106. https://doi.org/10.21093/mj.v19i1.2414

Shachar, A., Bauböck, R., Bloemraad, I., & Vink, M. P. (Eds.). (2017). *The Oxford handbook of citizenship* (First edition). Oxford University Press.

Smock, D. (2004). Ijtihad: Reinterpreting Islamic Principles for the Twenty-first Century. *US Institute of Peace*.

Sodiqin, A. (2021). Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System. *Ahkam: Jurnal Ilmu Syariah*, *21*(2), 357–378. https://doi.org/10.15408/ajis.v21i2.22675

Sodiqin, A., & Radiamoda, A. M. (2021). Dinamika Konstitusi Islam: Dari Periode Kekhilafahan hingga Nation-State. *JIL: Journal of Islamic Law*, *2*(2), 138–167. https://doi.org/10.24260/jil.v2i2.241

Stevenson, C., Hopkins, N., Luyt, R., & Dixon, J. (2015). The social psychology of citizenship: Engagement with citizenship studies and future research. *Journal of Social and Political Psychology*, *3*(2), 192–210. https://doi.org/10.5964/jspp.v3i2.581

The Editors of Encyclopaedia Britannica. (n.d.). *Citizenship*. Britannica.Com. Retrieved March 7, 2022, from https://www.britannica.com/topic/citizenship

van Dijk, K., & Kaptein J.G., N. (2016). *Islam, Politics and Change* (Leiden). Leiden University Press. https://doi.org/10.26530/oapen_605451

Wahid, A. (2006). *Islamku Islam Anda Islam Kita*. Wahid Institute.

Yasin, A. J. (2012). *Al-Sulṭah fī Al-Islām*. Tanwir.

Zada, K. (2017). The Rohingya's Muslim Asylum Seekers in Southeast Asia: From National to International Law Perspective. *Ahkam: Jurnal Ilmu Syariah*, *17*(1). https://doi.org/10.15408/ajis.v17i1.6227

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