論文の英文要旨

論文題目	現代イスラーム法思想の概念的検討　—ムスリム・マイノリティ法学がイスラーム法学に提起する問題を中心に—
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At the end of the twentieth century, a new trend in *fiqh* (Islamic law) was introduced under the name of *Fiqh al-Aqallīyāt al-Muslimah* (Islamic law of Muslim minorities) by Ṭāhā Jābir al-'Alwānī (1935-). This concept especially solves the problems of Muslims residing in non-Muslim countries as minorities, with the aim of establishing an Islamic method for supporting the peaceful coexistence of Muslims and non-Muslims within such societies. It examines a consensus that overlaps between the Islamic and Western codes. This concept provides one of the main points of convergence for the many challenges faced by contemporary Muslims, such as the multiple identities of legal and theological discourses, opacity of religious authorities, and dissension among the orthodox.

No sooner had the concept been introduced, than it generated various comments within the Islamic world. Many *'ulamā'* from diverse backgrounds, such as Yūsuf al-Qaraḍāwī (1926-) and 'Abdullāh bn Bayyah (1935-), readily took an affirmative for this new concept. Numerous theoretical books regarding this issue as well as *fatwa* collections of prominent *'ulamā'* specializing is issues related to the Muslim minorities have been published.

This subject has been widely researched since it was introduced in 1994. However, the previous studies lack the viewpoint to analyze the theory of this new legal trend as an independent legal notion and to extract its conceptual features. In particular, the effort to compare the methodology and structure of the discourse of this concept with those of the classical *fiqh* has been superficial. The author provides this comparison in addition to considering the methodology of each main advocate of *fiqh al-aqallīyāt*.

The aim of this conceptual research is to show that the theory of *fiqh al-aqallīyāt* gives birth to a

logo-sphere that enhances the *fatwa* chaos and deconstructs the legal certainty that preserves the systematicity of the classical *fiqh*.

In the author's opinion, the discourse offered by the proponents of *fiqh al-aqallīyāt* stands in clear contrast to the great value that classical *fiqh* has placed upon legal certainty. The structure that has preserved *fiqh*'s legal certainty can be explained through the following three points. First, the framework of the interpretation of *fiqh* has been structurally limited by the recommendation of *taqlīd* (blind imitation) to the predecessor *mujtahidūn* (those who perform the individual reasoning in the legal issues) and by the formation of *madhāhib* (legal schools). The potential function of this limitation preserves predictability of the legal interpretation, which is one of the most organic parts of law as Gustav Radbruch (d. 1949) demonstrated in his legal theory. Here, we can find a type of systematicity in the logo-sphere of *fiqh*, by which the author means an interpenetration and reciprocal reference between each category of the law. Second, *fiqh* has retained its self-referential character when it treats issues coming from the environment. In other words, *fiqh* does not refer to concepts outside itself, but rather it translates the issues into its own language while interpreting them. This process is accomplished in Islamic jurisprudence through several concepts of *uṣūl al-fiqh* (fundaments of Islamic law), such as *al-sabr wa al-taqsīm* (probing and segmentation) and *tanqīḥ al-manāṭ* (refining reason). Third, the legal certainty of *fiqh* is "reified" as *dār al-islām* (abode of Islam). This concept is a subject within the Muslim community at the political level, which pursues an accomplishment of the absolutist "goal."

On the other hand, the nature of *fiqh al-aqallīyāt* excludes legal certainty from its discourse by denying the abovementioned three points. *Fiqh al-aqallīyāt* is advocated by *ijtihād*-ists, who call for the restoration of *ijtihād*, and several of them insist that *taqlīd* should be suppressed because it is harmful to contemporary Muslim society. They also want to demolish the sectarianism of *madhāhib* in order to expand the boundaries of legal interpretation. This trend indicates the advent of a discourse that pursues the topographical validity of each accident, without considering the overall totality of the legal system. Some proponents of *fiqh al-aqallīyāt*, such as al-'Alwānī, are ready to incorporate concepts from other disciplines into the discourse of *fiqh* as a means of creating a collective *ijtihād* that is suitable for the contemporary world. This clearly leads to the absence of self-referentiality in the law, which is one of the essential elements in preserving the systematicity of the law. Moreover, most advocates deny the absoluteness of the concepts of *dār al-islām* and *dār al-ḥarb* (abode of war), and some even assert that these concepts should be abandoned. Thus, *fiqh al-aqallīyāt*'s discourse can be depicted as a type of "micrologistic" domain, wherein one considers primitive elements defined by a comprehensive framework, such as a system or a totality, to be primary issues of concern. This is a form of discourse where one see things within the framework of the "micro-narrative," not in the "meta-narrative" that provides an all-encompassing view of the world. A law with such a characteristic could open only in the discourse of *fiqh al-aqallīyāt*, which deals with the society of Muslim minorities and which provides a scope for speeches free from elements that could suppress the amplification of *fatwa*.

A micrologistic interpretation of law has two types of possibilities for Muslims. First, it is able to rescue a human individual who would be buried in a law that is oriented toward preserving its system and totality. Second, it develops at the legal level the coexistence of Muslims with others in today's multicultural symbiotic society.