



AL-MAQQAHID AL-SHARI'AH PHILOSOPHICAL ASPECTS AND ITS RELEVANCE TO CONTEMPORARY IJTIHAD

by

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ABSTRACT

This study aims to describe maqashid al-Syariah in terms of the philosophical aspects of maqashid al-Syariah, the relevance of maqashid al-Syariah with contemporary ijtihad. This research uses descriptive qualitative. Data were collected through interviews, observation, and documentation. This study uses data analysis techniques, which consist of stages of data collection, data reduction, data presentation, and drawing conclusions. The results of the research on the relevance of maqashid al-Shariah with contemporary ijtihad show the philosophy of maqashid al-Syariah. Contemporary ijtihad also tries to see significant changes in Islamic law from time to time, namely changes from the family aspect, women's aspect, and worship aspect. In an effort to develop Islamic legal thought, especially in providing understanding and clarity on various contemporary legal issues, mujtahids need to know the purpose of Islamic law. In addition, the purpose of the law needs to be known in order to identify whether a legal provision can still be applied to a particular case or because of changes in social structure, the law can no longer be maintained. Thus, knowledge of Maqāṣid al-Shari'ah is the key to the success of the mujtahid in his ijtihad.

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1. INTRODUCTION

Assessment and understanding of sharia is of course a process of human thought and reasoning, both in the form of an introduction to the meaning of the rules of the Qur'an which are clearly indicated and in the form of analogies (analoging the new rules with the rules of the Qur'an) ¹. Both the nature and impact of the whole process of understanding God's law which literally means one's efforts to direct the power of his mind is governed by legal theory.

Allah swt made sharia for humans to have certain legal purposes not in vain; it has been determined by the arguments in the Qur'an for sure. As the word of God in QS. Ad-Dukhan/44: 38-39.

وَمَا خَلَقْنَا السَّمَوَاتِ وَالْأَرْضَ وَمَا بَيْنَهُمَا لِعِبَارَةٍ

Translation:

"And We did not create the heavens and the earth and what is between them by playing around."

Allah SWT. sent human choices through prophethood marked by His shari'ah to give rules to humans. The word of God in QS. Al-Hadid/57:25.

¹ Konteks Kekinian dan Ridwan Jamal, "Maqashid Al-Syari'Ah Dan Relevansinya Dalam," n.d., 1–12.

2. لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ وَلِيَعْلَمَ اللَّهُ مَنْ يَنْصُرُهُ وَرُسُلَهُ بِالْغَيْبِ إِنَّ اللَّهَ قَوِيٌّ عَزِيزٌ

The translation:

"Indeed, We have sent Our messengers with clear evidences and We have sent down with them the book and the balance (justice) so that people may act justly. And We created iron that has strength, great power and many benefits for humans, and that Allah may know who helps (religion) Him and His messengers even though (Allah) does not see it. Verily, Allah is All-Powerful, All-Mighty."

The purpose of syar'i to provide rules is to realize the benefit of humans both in this world and in the hereafter. In realizing benefit in the world and the hereafter, based on the research of fiqh experts, there are five main elements that must be maintained and realized, namely religion, soul, mind, lineage and property. The intent and purpose of the enactment of the law is related to the wisdom that emerges from the law.

The discussion about the formation or development of law which in terms of ushul fiqh is called *ijtihad* is closely related to the social changes that take place in people's lives. In general *ijtihad*².

As for what is used as a benchmark to determine the good and bad of something that is done and the main goal of legal development is what a basic human need is. The demands of human needs are tiered. In order, the rankings are: a) *Daruriyyat* (Primary); b) *Hajiyyat* (Secondary) and c) *Tahsiniyyat* (Tertiary)³.

Meanwhile, in the sense of the term according to Fathi al-Daraini said that the laws were not made for the law itself, but were made for another purpose, namely benefit⁴. Meanwhile, according to Abu Zahra in this regard, it is emphasized that the essential purpose of Islamic law is benefit⁵. And it seems no exaggeration when Wael B. Hallaq says that *maqashid al shari'ah* is an effort to express an emphasis on the relationship between the content of God's law and human legal aspirations⁶.

The purpose of *daruriyyat* is to maintain essential needs by safeguarding religion, soul, mind, lineage, and property with the limits of not being threatened by the five existences, these five existences are called *daruriyyat al-khams*. The needs of the *hajiyyat* group do not include essential needs. If not maintained this group does not threaten the existence of the five points above but will only cause difficulties for the *mukallaf*. This group is closely related to *rukhsah* in worship in jurisprudence. While in the *tahsiniyyat* group, it is a need that supports the increase of one's dignity in society and before Allah in accordance with propriety.

Likewise, in the contemporary era with the emergence of new phenomena in a more rational understanding of Islamic law, actual modern methodologies tend to create new *khilafiyah* among Muslims today, as we often follow through various mass media and other religious literature, such as the actualization of teachings. Islam, the actualization of *fiqh muamalah*, the renewal of Islamic law which aims to maintain the benefit of mankind through the door of *ijtihad*.

The definition of the language above, according to the author, it seems that the scholars have given the limits of *shari'ah* in the sense of the term by directly mentioning the purpose of *shari'ah* in general. This can be seen quite clearly in the limitations put forward by Syahat and Sayis, which essentially states that *sharia* is a set of God's laws that are given to human beings to have a happy life both in this world and in the hereafter. The content of such an understanding of *sharia* indirectly contains the content of *maqashid al-syari'ah*. *Maqashid as-shari'ah* in general means the general intention of imitating *shari'ah* by *shari'ah* (lawmakers).

2. RESEARCH METHOD

1. Research Types and Approach

The author uses descriptive research methods because this research has the aim of obtaining answers related to one's opinions, responses or perceptions so that the discussion must be qualitatively or using descriptions of words. "Descriptive research tries to find an appropriate and sufficient description of all activities, objects, processes, and people"⁷. Descriptive research recognizes various forms that can be

² Abdul Wahab Khalab, *Ilm Ushul al-Fiqh* (Kairo: Dar Kuwaitiyyah, 1968).

³ Fathur Rahman, *Islam, alih Bahasa Ahsin Muhammad* (Bandung: Pustaka, 1984).

⁴ Fathi Al-Daraini, *al-Manahij al-usuliyyaah fi Ijtihad bi al-Ra'yi fi al-Tasyri'*, Damasyik (Dar al- Kitab al-Hadis, 1975).

⁵ Muhammad Abu Zahrah, *Ushul al-Fiqh* (Mesir: Dar al-Fikr al-'Arabi, 1958).

⁶ Wael B. Hallaq, *The Frimacy of The Qur'an in Syatibi Legal Theori* (Leiden: EJ-Brill, 1991).

⁷ Sulistyio Basuki, *Metode Penelitian* (Jakarta: Penaku, 2010).



categorized as surveys, case studies, studies, causal-comparative studies, correlation studies, and so on. Each form of descriptive research has a different function and purpose, while this descriptive research is included in the "case study" category.

Based on the explanation of the qualitative research above, this study uses descriptive qualitative research chosen to make it easier to describe maqashid al-Syariah viewed from the philosophical aspect and the relevance of maqashid al-Syariah with contemporary ijtihad in the field; in this case the researcher examines the relevance of maqashid al-Shariah -Sharia with contemporary ijtihad.

2. Data and Data Sources

The data source is an important part for researchers in research, because the type of data source will determine the provision, depth and feasibility of the information obtained by the researcher. Sources of data obtained directly through interviews with the subject as a basic discussion. Based on the source, the type of data in this study consists of two types of data, namely primary data, namely data sources that are given directly to data collectors obtained from the field. Secondary data is a data source that does not directly provide data to data collectors, for example through other people or documents. Secondary data in this study is in the form of reading, namely from books or journals that can be a reference for researchers to then be analyzed. While secondary data sources are obtained from documents or archives, sources or informants, events in the field, places or locations, pictures, and recordings.

3. Data collection technique

Literature study is the first step in the data collection method. Literature study is a data collection method that is directed at searching for data and information through documents, both written documents, photographs, pictures, and electronic documents that can support the writing process. or existing academic and artistic writings”⁸. Literature study is So it can be said that literature study can affect the credibility of the research results.

There is various data collection techniques commonly used in conducting research. The following are data collection techniques used by the author in this study: 1) Literature Study, 2) participatory observation, 3) structured interviews.

4. Data analysis technique

Data analysis is the most important step in a study. The data that has been obtained will be analyzed at this stage so that conclusions can be drawn. In this study using the analysis technique of the Miles and Huberman model. According to ⁹ "said that qualitative data analysis activities are carried out interactively and take place continuously until complete, so that the data is saturated." Data analysis activities are data reduction, data display, and conclusion drawing/verification.

3. RESULTS AND ANALYSIS

a. Understanding Maqashid al-Syariah

In terms of language, maqasid al-syari'ah means the intent or purpose in the shari'ah of Islamic law. Therefore, the main discussion in it is the issue of wisdom and the 'illat of enacting the law. The term maqasid al-syari'ah is identical with the term Islamic legal philosophy¹⁰. The latter term involves critical questions about the purpose of establishing a law¹¹. Maqasid al-mukallaf also contains four aspects, namely: First, the discussion of maslahah, understanding, levels, characteristics, and relativity or absoluteness. Second, the discussion of the linguistic dimension of the taklif problem which is ignored by other jurists. An order which is taklif must be understood by all its subjects, not only in words and sentences but also in terms of linguistic and cultural understanding. Al-Syathibi discusses this problem by explaining dalalah Asliyah (essential meaning) and ummumiyyah (comprehensible to ordinary people). Third, analysis of the meaning of taklif in relation to abilities, difficulties and others. Explanation of aspects of huzuz in relation to and fourth, hawa and ta'abud ¹²

⁸ Sugiyono, *Metode Penelitian Kombinasi (Mix Methods)* (Bandung: Alfabeta, 2015).

⁹ Jumanta Hamdayama, *Metodologi Pengajaran* (Jakarta: Bumi Aksara, 2016).

¹⁰ Subhi Mahmasani, , *Filsafat al-Tasyri' fi al-Islam (t.t.: Dar al-Kasasyaf, 1952). Bandingkan dengan pernyataan Khalid Mas'ud dalam member judul bukunya mengenai pemikiran Al-Syat ibi sebagai berikut, Islamic Legal Philosophy: A Study of Abu Ishak al-Syatibi's Life and Tha* (Delhi: International Islamic Publishers, 1989).

¹¹ Akhmad Al-Raisuni, *Nazariyyat al-Maqasid 'Inda al-Syatibi* (Rabat: Dar al-Aman, 1991).

¹² Al-Raisuni.

b. Aspek Filosofis Maqashid al-Syariah

According to Abu Ishaq Al-Syatibi, the determination of the five points (*hifz al-din; hifz al-nafs; hifz al-'aql; hifz al-nasl; and hifz al-mal*) based on the arguments of the Qur'an and hadith. These arguments serve as *al-qawaid al-kulliyat* in setting *al-kulliyat al-khams*. The verses of the Qur'an that are used as the basis are generally Makkiyah verses, which are not *naskh* and the Madaniyyah verses which confirm the Makkiyah verses¹³. Among these verses are those related to the obligation of prayer, the prohibition of killing the soul, the prohibition of drinking intoxicating drinks, the prohibition of adultery and the prohibition of consuming other people's property in an improper manner¹⁴. The five main benefits, namely: religion, soul, mind, lineage and property, namely Maintaining Religion (*Hifz al-Din*), *Nurturing the Soul* (*Hifz al-Nafs*), *Keeping Mind* (*Hifz al-'Aql*)¹⁵

Each level described above, there are things or activities that are perfect for the implementation of the objectives of Islamic law. In the *daruriyyat* rank, for example, the minimum limit for intoxication is determined in order to maintain the mind, or a balance is determined (*tamasul*) in the law *qisas*, to *nourish the soul*. In *ranking hajiyyat*, For example, it is stipulated that *khiyar* in buying and selling to maintain property, or *kafa'ah* in marriage, to maintain offspring. Meanwhile, in the *tahsiniyyat* level, for example, the *taharah* procedure is set in the context of performing prayers, to maintain the religion; life will be more meaningful and bring peace of life.

c. Relevansi Maqashid al-Syariah dan Ijtihad Kontemporer

Facing contemporary problems, it is necessary to first examine the nature of the problem. Research on cases for which the law will be established is as important as research on legal sources that will be used as arguments. This means that in determining the text, it must be examined carefully, including examining the objectives of the law. Consequently, the existing cases cannot be equated with the law with the cases in the two main sources of law. Here in lies the importance of knowledge about the general purpose of the law in Islam. The purpose of the law must be known by the mujtahid in order to develop legal thought in Islam in general and to answer contemporary legal issues whose cases are not explicitly regulated by the Qur'an and hadith. Moreover, the purpose of Islamic law must be known in order to observe whether a case can still be applied based on one legal provision, because of changes in social structure, the law cannot be enforced. Thus knowledge of *maqasid al-syari'ah* is the key to the success of the mujtahid in his *ijtihad*¹⁶.

The search for *fiqh* experts for the benefit is realized in the form of the *ijtihad* method. Various terms have been used by them to describe the method of legal discovery. But basically, all of these methods lead to efforts to find benefits, and make them a tool to establish laws whose cases are not explicitly mentioned in either the Qur'an or hadith. On the basis of this assumption, it can be said that every method of determining the law used by *usu-fiqh* experts leads to *maqasid al-syari'ah*. The relevance between *maqasid al-syari'ah* and several methods of determining the law, here are some aspects of *maslahat* contained in *qiyas*, *istihsan*, *al-maslahat al-mursalat*, and *syaddu al-zari'at*, namely: *Qiyas*, *Istihsan*, *Al -Maslahat al-Mursalat*, *Saddu al-Zari'at*.

Contemporary *ijtihad* also tries to see significant changes in Islamic law from time to time. These significant changes emerged as a result, among which the most prominent was the development of the times which always asked for new ethics and paradigms. The changes that occur touch several legal aspects, namely the family aspect. family here is all that is related to *al-ahwal al-syakshiyah* such as: mandatory will, online marriage, *waqf* with money, pregnant marriage, family planning programs, age restrictions on marriage, money culture panai 'and others, aspects of women, pointing focusing on the participation of women in activities that were previously considered "men's territory" also highlighted other issues such as Muslim clothing, career women, women's leadership, education and others, aspects of worship, closure of temporary places of worship and arrangement of rows of rows with a certain distance. in the mosque during the Covid 19 Pandemic.

¹³ Agus Hermanto, "Konsep Maslahat dalam Menyikapi Masalah Kontemporer (Studi Komparatif al-Tûfi dan al-Ghazali)," *Al-'Adalah* 14, no. 2 (2017): 433, <https://doi.org/10.24042/adalah.v14i2.2414>.

¹⁴ Abdul Waid dan Niken Lestari, "Teori Maqashid Al-Syari'Ah Kontemporer Dalam Hukum Islam Dan Relevansinya Dengan Pembangunan Ekonomi Nasional," *Jurnal Labatila* 4, no. 01 (2020): 94–110, <https://doi.org/10.33507/lab.v4i01.270>.

¹⁵ Waid dan Lestari.

¹⁶ Satria Efendi, *Maqasid al-Syari'at dan Perubahan Sosial* ((Badan Litbang-Depag, No. 33 tahun XV, Januari 1991, 1991).



Efforts to develop Islamic legal thought, especially in providing understanding and clarity on various contemporary legal issues, mujtahids need to know the purpose of Islamic law. In addition, the purpose of the law needs to be known in order to identify whether a legal provision can still be applied to a particular case or because of changes in social structure, the law can no longer be maintained. Thus, knowledge of Maqāṣid al-Shari'ah is the key to the success of the mujtahid in his ijtihad.

CONCLUSION

God's law is contained in sacred texts, namely the Qur'an and Hadith. In general, there are five basic principles of maqashid al-shari'ah, namely guarding religion, guarding the soul, guarding property, guarding reason, and guarding offspring. All taklif laws contained in the Qur'an and hadith are intended to maintain and protect the five elements. Likewise, all the problems of modern human life must be answered and solutions found to maintain these five aspects.

Ijtihad carried out in the contemporary era with various humanitarian problems in its various dimensions requires a solid understanding of maqashid al-syariah. When global life is tested by the Covid-19 pandemic that threatens human life and science is looking for solutions to overcome this, the mujtahids issue new laws regarding the prevention of the spread of the Covid-19 virus. Maslahah can be seen from various points of view so that it gives birth to various divisions. The demands of the traditional/cultural dimension can be reached by wisdom, while those with the worship dimension are solely ta'abbud. Regarding the rights of Allah and the rights of mukallaf, it can be seen from the side of the general and special benefits they contain, or from the side of ta'abbud and ma'qul ma'na that is in them. Maqāṣid Shari'ah is absolutely necessary in contemporary ijtihad for the creation of humanist, elastic, and egalitarian fiqh. With the elastic character of al-Maqāṣid al-Shari'ah, across space and time, it is hoped that it will be able to make dialectics with the problems that continue to emerge in the present era.

REFERENCES

- [1] Al-Daraini, Fathi. *al-Manahij al-usuliyyaah fi Ijtihad bi al-Ra'yi fi al-Tasyri'*. Damasyik. Dar al- Kitab al-Hadis, 1975.
- [2] Al-Raisuni, Akhmad. *Nazariyyat al-Maqasid 'Inda al-Syatibi*. Rabat: Dar al-Aman, 1991.
- [3] Basuki, Sulistyo. *Metode Penelitian*. Jakarta: Penaku, 2010.
- [4] Efendi, Satria. *Maqasid al-Syari'at dan Perubahan Sosial*. (Badan Litbang-Depag, No. 33 tahun XV, Januari 1991,
- [5] Fathur Rahman. *Islam, alih Bahasa Ahsin Muhammad*. Bandung: Pustaka, 1984.
- [6] Hallaq, Wael B. *The Frimacy of The Qur'an in Syatibi Legal Theori*. Leiden: EJ-Brill, 1991.
- [7] Hamdayama, Jumanta. *Metodologi Pengajaran*. Jakarta: Bumi Aksara, 2016.
- [8] Hermanto, Agus. "Konsep Maslahat dalam Menyikapi Masalah Kontemporer (Studi Komparatif al-Tûfi dan al-Ghazali)." *Al- 'Adalah* 14, no. 2 (2017): 433. <https://doi.org/10.24042/adalah.v14i2.2414>.
- [9] Kekinian, Konteks, dan Ridwan Jamal. "Maqashid Al-Syari'Ah Dan Relevansinya Dalam," n.d., 1–12.
- [10] Khalab, Abdul Wahab. *Ilm Ushul al-Fiqh*. Kairo: Dar Kuwaitiyyah, 1968.
- [11] Mahmasani, Subhi. , *Filsafat al-Tasyri' fi al-Islam (t.t.: Dar al-Kasysyaf, 1952). Bandingkan dengan pernyataan Khalid Mas'ud dalam member judul bukunya mengenai pemikiran Al-Syat ibi sebagai berikut, Islamic Legal Philosophy: A Study of Abu Ishak al-Syatibi's Life and Tha*. Delhi: International Islamic Publishers, 1989.
- [12] Sugiyono. *Metode Penelitian Kombinasi (Mix Methods)*. Bandung: Alfabeta, 2015.
- [13] Waid, Abdul, dan Niken Lestari. "Teori Maqashid Al-Syari'Ah Kontemporer Dalam Hukum Islam Dan Relevansinya Dengan Pembangunan Ekonomi Nasional." *Jurnal Labatila* 4, no. 01 (2020): 94–110. <https://doi.org/10.33507/lab.v4i01.270>.
- [14] Zahrah, Muhammad Abu. *Ushul al-Fiqh*. Mesir: Dar al-Fikr al-'Arabi, 1958.

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