Maqashid al-Syari'ah and the Reconfiguration of Maslahah: A Critique of Classical Ushul al-Fiqh Epistemology

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Abstract: The development of the era demands adaptability and flexibility in Islamic legal responses. Unfortunately, the old paradigm of "ushul fiqh," which is very literal, has not been able to resolve these various problems. Furthermore, this old approach often leads to debates due to differences in the methods and theories of ushul fiqh used. Therefore, criticism of the old methods and approaches is necessary, particularly through the maqashid asy-syariah approach based on maslahat. This article will elaborate on the criticism of ushul fiqh reasoning using maqashidi reasoning. This article is a literature review, with data sourced from literature and analyzed using inductive, deductive, and comparative methods. Based on Muqsith's theory of naskh al-nushush bi al-mashlahat, this article argues that the maqashid approach based on maslahah can change the law, even those already stated in the text. This article finds that the classical Islamic legal reasoning method, ushul fiqh, needs to be critiqued using the maqashid approach through contextualization, decontextualization, and recontextualization. As a result, the resulting laws will yield broader benefits. This article contributes to contemporary Islamic legal thought through the maqashid approach.

Keywords: critique; objectives of sharia; maslahah; islamic law

Abstrak: Perkembangan zaman menuntut adanya adaptabilitas dan fleksibilitas respon hukum islam. Sayangnya, pendekatan paradigma lama "ushul fiqh" yang sangat literal belum mampu menyelesaikan berbagai problem tersebut. Lebih jauh, pendekatan lama tersebut kerap menimbulkan perdebatan karena perbedaan metode dan teori ushul fiqh yang digunakan. Oleh sebab itu, kritik atas metode dan pendekatan lama perlu dilakukan, khususnya dengan pendekatan maqashid asy-syariah yang berbasis maslahat. Artikel ini akan mengelaborasi kritik nalar ushul fiqh dengan menggunakan nalar maqashidi. Artikel ini merupakan penelitian pustaka, yang datanya

bersumber dari literatur, dan dianalisis dengan metode induktif, deduktif, serta komparatif. Berdasarkan teori *naskh al-nushush bi al-mashlahat* yang diusung Muqsith, artikel ini berargumentasi bahwa pendekatan maqashid yang berbasis maslahah dapat mengubah hukum, bahkan yang sudah tertera dalam teks. Artikel ini menemukan bahwa metode istinbat hukum islam klasik, ushul fiqh, perlu dikritik menggunakan pendekatan maqashid dengan cara kontekstualisasi, diskontekstualisasi, dan rekontekstualisasi. Dengan begitu, hukum yang dihasilkan akan lebih menimbulkan manfaat yang lebih luas. Artikel ini berkontribusi pada pemikiran hukum islam kontemporer dengan pendekatan maqashid.

Kata kunci: kritik, maqashid, maslahah, hukum islam

Introduction

Criticism of Islamic legal thought has historically emerged from within the Muslim intellectual tradition itself. While external factors—such as geographical and temporal disparities—have undoubtedly influenced these critiques, the primary objections have been directed toward religious authorities seeking to impose doctrinal uniformity, as well as the perception that Sharia law is inherently static, eternal, and immutable (qath'i).[1] Beyond internal Muslim discourse, sharp critiques of Islamic legal theory have also arisen from Orientalist scholarship. Orientalists contend that the "gate of ijtihad" (independent juristic reasoning) in Islam was closed following the decline of Islamic intellectual dynamism.[2] They argue that Islamic law is incompatible with secularization, modernization, and democratic governance.[3] From their perspective, religion—as a social, political, and cultural phenomenon—should be analyzed through the lens of social sciences

[1] Mohammad Fazlhashemi, "Internal Critique in Muslim Context," *A Constructive Critique of Religion: Encounters between Christianity, Islam, and Non-religion in Secular Societies* (2020): 58.

[2] Akh Minhaji, "Mencari Rumusan Ushul Fiqih Untuk Masa Kini," *Al-Jami'ah: Journal of Islamic Studies* 38, no. 1 (2000): 242-256.

[3] Maysam al Faruqi, "From Orientalism to Islamic Studies," *Religion & Education* 25, no. 1-2 (1998): 20-29.

rather than religious studies.[4] This approach, they claim, yields more objective and unbiased knowledge.[5] Consequently, Orientalists maintain that contemporary understandings of Islamic phenomena are the product of subjective ijtihad and interpretation, constrained by exclusively Islamic theoretical and methodological frameworks, thus lacking objectivity.

In response to these critiques, several Muslim scholars have begun proposing new methodological frameworks for Islamic legal thought. Kamali, for instance, seeks to optimize conventional methods such as istihsan (juristic preference) by consolidating them with a maqasid (objectives of Sharia)-oriented approach.[6] Similarly, Al-Qaradawi emphasizes the necessity of renewing (tajdid) the principles of jurisprudence (usul al-fiqh) and substantive law (fiqh), particularly concerning probabilistic legal foundations (al-usul al-zhanniyat). To ensure the adaptability and flexibility of Islamic law, he underscores the importance of comparative analysis between Islamic legal doctrines and positive laws across different nations.[7] Meanwhile, Kamaludin Ahmed advocates for the critical evaluation and integration of modern scientific knowledge with traditional Islamic scholarship.[8] However, it must be acknowledged that these reforms can be seen as partial or incomplete. The enduring dominance of classical usul al-fiqh as the foundational paradigm for Islamic legal derivation remains deeply

[4] Michel Hoebink, "Thinking about renewal in Islam: Towards a history of Islamic ideas on modernization and secularization," *Arabica* (1999): 29-62.

[5] Ian Richard Netton, and Ian Richard Netton, *Orientalism revisited*, (Routledge, 2013).

[6] Mohammad Hashim Kamali, "Istiḥsān and the Renewal of Islamic Law," *Islamic Studies* 43, no. 4 (2004): 561-581.

[7] Al-Qaraḍāwī, Yusuf, *Taisīr al-fiqh li-l-muslim al-muʿaṣir. Naḥwa fiqh muyassar muʿāṣir. Fī uṣūl al-fiqh al-muyassar. Fiqh al-ʿilm* (Cairo: Maktabat Wahab, 22008, 1st edition 1999); Al-Qaraḍāwī, Yusuf, *al-Ijtihād fī sh-sharīʿa al-islāmīy maʿa naẓarāt taḥlīlīya fi al-ijtihād al-muʿaṣir* (Kuwait: Dār al-Qalam, 42011, 1st edition 1985);

[8] Kamaluddin Ahmed, "Science in the Framework of Islamic Legal Epistemology: An Exploratory Account." *In Islam and Biomedicine*, pp. 255-270. Cham: Springer International Publishing, 2022.

entrenched. More liberal reforms have also emerged, often labeled as "progressive methodologies" in Islamic legal interpretation. Yet, their application carries the risk of distancing jurists (mujtahids) from the core epistemological roots of Islamic legal thought.[9]

To bridge the diverse currents of Islamic legal thought, contemporary scholars have sought to develop new approaches and methodologies for deriving Islamic law, most notably through the framework of maqāṣid al-sharīʿah (the higher objectives of Islamic law). As a novel approach to legal reform, maqāṣid al-sharīʿah has been extensively studied by scholars—examining its conceptual foundations,[10] key figures,[11] historical development, and application to contemporary legal issues.[12] However, as both a methodological approach and a theoretical framework for legal derivation, maqāṣid remains inextricably linked to—and often overshadowed by—traditional uṣūl al-fiqh (Islamic legal theory). The relationship between the two continues to be a subject of debate. Scholars such as al-Shāṭibī and Ibn Bayyah argue that maqāṣid remains fundamentally within the domain of uṣūl al-fiqh, whereas others—including Ibn ʿĀshūr, al-Raysūnī, and Jasser Auda—contend that maqāṣid constitutes an independent discipline that should be disentangled from classical legal

[9] Isnain La Harisi, Deni Irawan, and M. Wahid Abdullah, "Renewal of Islamic Law: Comparative Study between Progressive Islamic Theory and Ijtihad Method," *al-Afkar, Journal for Islamic Studies* 7, no. 4 (2024): 732-747.

[10] Al Ikhlas, and Al Ikhlas. "The Concept of Maqasid al-Shariah As an Instruments of Ijtihad According to Imam al-Shatibi in al-Muwafaqat fi Ushuli Al-Shariah." *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 23, no. 2 (2021).

[11] Mohammad Abderrazzaq, "The Revival and Evolution of Maqasid Thought: From al-Shatibi to Ibn Ashur and the Contemporary Maqasid Movement," PhD diss., 2017.

[12] 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 (2020): 231-245.

theory.[13] This debate gained momentum as scholars began critically examining whether traditional uṣūl al-fiqh possesses the adaptability and dynamism necessary to address evolving contemporary challenges.

As a conventional methodology, uṣūl al-fiqh (Islamic legal theory) exhibits significant limitations, particularly when confronted with contemporary issues. Hofman, in his analysis of sensitive modern concerns, employs both traditionalist and reformist approaches to ijtihād (independent legal reasoning). He argues that a reformist interpretive framework offers a more rational and textually coherent approach to understanding scriptural intent.[14] Criticism of classical uṣūl al-fiqh reasoning is not new, as exemplified by al-Jābirī's work.[15] As noted by Maftuhin, both Islamic legal theory and broader Islamic studies must remain open to new conceptual frameworks grounded in humanistic and social scientific thought.[16] Even within Shīʿī circles, calls are emerging to reinterpret sacred texts through hermeneutic philosophy, phenomenology, and human rights discourse—signaling a potential decline in traditional fiqh scholarship.[17] These scholarly critiques reinforce the growing conviction that uṣūl al-fiqh alone is insufficient to sustain an adaptive and compatible Islamic legal system in the modern era. The methodology's rigidity in the face of evolving epistemological paradigms suggests that supplementary or alternative

[13] Hambari Hambari, and Qurroh Ayuniyyah, "Pemisahan Maqashid Syariah dari Ilmu Ushul Fiqh dan Pengaruhnya Pada Penetapan Hukum Islam Kontemporer," *Mizan: Journal of Islamic Law* 6, no. 1 (2022): 11-18.

[14] Murad Wilfried Hofmann, "On the Development of Islamic Jurisprudence," *American Journal of Islam and Society* 16, no. 1 (1999): 73-92.

[15] Mohammed Al-Jabri, *Arab-Islamic philosophy: A contemporary critique* (Austin: University of Texas Press, 1999).

[16] Arif Maftuhin, "Dari Nalar Ushuli ke Nalar Interdisiplin: Studi Atas Implikasi Kritik Nalar Islami Mohammed Arkoun," *Hermenia* 3, no. 1 (2004).

[17] Magdalena Rodziewicz, "The End of Traditional Islamic Jurisprudence in Hermeneutics of Moḥammad Mojtahed Shabestarī" *Journal of Shi'a Islamic Studies* 10, no. 2 (2017): 207-230.

approaches may be necessary to ensure Islamic law's continued relevance.

Therefore, Hashim Kamali emphasizes the necessity of developing a cohesive Islamic legal framework that harmonizes traditional uṣūl al-fiqh with maqāṣid al-sharīʿah to address contemporary Muslim societal challenges.[18] Echoing this perspective, Mashduqi highlights the importance of integrating textual ijtihād with the rational-empirical ijtihād conceptualized by al-Shāṭibī.[19] Proponents of this integrative approach between uṣūl al-fiqh and maqāṣid often base their arguments on historical foundations, noting that maqāṣid itself emerged from the development of maṣlaḥah (public interest) principles within Islamic jurisprudence.[20] They contend that these two methodological approaches to Islamic law are not mutually exclusive but rather complementary—capable of being synthesized to reinforce one another in legal derivation and application. This integrated paradigm seeks to balance textual fidelity with contextual adaptability, offering a nuanced methodology for addressing modern complexities while maintaining continuity with Islamic legal tradition.

Scholarly examinations of critiques targeting Islamic legal epistemology have proliferated in contemporary discourse. Analyzing the works of prominent Islamic thinkers—from Khomeini, Qutb, and Maududi to Abduh and Iqbal—Ali Siddiqi posits that the moral rationalism championed by Abd al-Jabbar should be seriously considered as an epistemic foundation for Islamic legal theory.[21]

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[18] Mohammad Hashim Kamali, "Methodological issues in Islamic jurisprudence," *Arab LQ* 11 (1996): 3.

[19] Muhammad Anis Mashduqi, "The Integration-Interconnection Paradigm in Islamic Law: Al-Syatibi's Thought in Al-Muwafaqat," *Al-Mazaahib: Jurnal Perbandingan Hukum* 12, no. 2: 205-221.

[20] 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 (2020): 231-245.

[21] Ahmed Ali Siddiqi, "Moral Epistemology and the Revision of Divine Law in Islam," *Oxford Journal of Law and Religion* 10, no. 1 (2021): 43-70.

Farahat further elaborates that early Islamic legislative theories lacked ontologically coherent legal concepts, with lawmaking essentially constituting case-by-case juristic opinion formulation by legal scholars.[22] Meanwhile, traditional Islamic legal scholarship (naturally derived through conventional ijtihad methodologies) faces sharp criticism from gender activists. These critiques highlight the near-total absence of gender considerations in male jurists' works.[23] The patriarchal dimensions of Islam, particularly within legal studies, remain a persistent subject of rigorous critique. Ennaji advocates for an "extra-Islamic" approach to consistently advance gender equality agendas.[24] These mounting criticisms collectively suggest that evolving Islamic jurisprudence lacks coherence with developments in other academic disciplines. This epistemological gap stems from the continued reliance on classical jurists' theoretical and methodological paradigms in contemporary legal derivation. The persistence of traditional frameworks has arguably hindered Islamic law's capacity to engage meaningfully with modern intellectual currents, particularly concerning gender theory and human rights discourses.

This article specifically seeks to advance the critique of Islamic legal derivation (istinbāt al-ahkām) that remains entrenched in classical paradigms (uṣūl al-fiqh). Through comparative analysis, I will examine concrete cases approached through both traditional uṣūl al-fiqh methodology and the maqāṣid (higher objectives) framework. This methodological comparison serves two purposes: first, to substantiate my critical assessment, and second, to reinforce my central hypothesis that an exclusive reliance on uṣūl al-fiqh inherently leads to textual authoritarianism - a rigid adherence to scriptural literalism that often

[22] Omar M Farahat, "a devotional theory of law: epistemology and moral purpose in early islamic jurisprudence," *Journal of Law and Religion* 31, no. 1 (2016): 42-69.

[23] Saadia Yacoob, "Islamic law and gender," *The Oxford handbook of Islamic law* (2018): 75-101.

[24] Moha Ennaji, "Mernissi's impact on Islamic feminism: A critique of the religious approach," *British Journal of Middle Eastern Studies* 49, no. 4 (2022): 629-651.

disregards contextual realities. In contrast, the maqāṣid-based approach, with its emphasis on identifying and actualizing the underlying purposes (masālih) of Islamic law, demonstrates greater capacity to yield legal outcomes that are both flexible and responsive to contemporary developments. By prioritizing the spirit rather than the letter of the law, this methodology better accommodates evolving social circumstances while remaining grounded in Islamic ethical principles. The comparative cases will illustrate how these divergent approaches lead to markedly different legal determinations, particularly in matters involving modern complexities that classical jurists could not have anticipated. Through this analysis, I aim to demonstrate that the maqāṣid framework offers a more viable epistemological foundation for Islamic jurisprudence in the 21st century - one that balances fidelity to tradition with necessary adaptation to new contexts and challenges.

This qualitative study draws on library-based research, utilizing relevant works on maqāṣid al-sharī'ah (the higher objectives of Islamic law) to examine the critique of traditional uṣūl al-fiqh (Islamic legal theory) through Muqsith's maslaḥah (public interest) approach, particularly the principle of naskh al-nuṣūṣ bi al-maṣlaḥah (superseding textual injunctions for greater benefit), while incorporating perspectives from prominent maqāṣid scholars and employing al-Qaraḍāwī's comparative analytical methods of ijtihād intiqā'ī (selective legal reasoning) and ijtihād inshā'ī (constructive legal reasoning) through inductive, deductive, and comparative analysis to specifically investigate how maqāṣid critiques uṣūl al-fiqh methodology

Maqāṣid al-Sharīʿah: A Substantive Critique of Legal-Formalist Uṣūl al-Fiqh

The emergence of new social phenomena and contemporary human experiences—many of which are not explicitly addressed in the sacred texts—necessitates the development of concrete responses and practical solutions. This is essential to ensure that the universal values

of Islam as rahmatan lil ʻalamin (a mercy to all creation) remain in harmony with the progression of modern times. In the formulation of Islamic legal rulings, a mujtahid (legal scholar) must not rely solely on the literal interpretation of scriptural sources. Rather, careful attention must also be given to the objectives of Islamic law (maqāṣid al-sharīʻah), which are integral to the legal reasoning process. Tujuan disyari'atkan sebuah hukum berarti hukum The very act of legislating in Islam implies a noble purpose: to safeguard all dimensions of a Muslim's life. At its core, sharīʻah is concerned with protecting both visible and unseen aspects of human well-being, centered on the principle of maṣlaḥah (public interest or common good).[25] Within the process of legal derivation (istinbāṭ), the concept of maqāṣid plays a crucial role. It serves not only as a foundational reference in legal interpretation, but also ensures that the broader principles of benefit and harm are taken into account—principles that lie at the heart of Islamic jurisprudence. Therefore, maqāṣid al-sharīʻah can be considered a primary methodology in the formulation of Islamic legal rulings.[26]

Fundamentally, Islam provides guidance for all aspects of human life, and therefore, the formulation of Islamic legal rulings must align with the principle of promoting public welfare (maṣlaḥah). Those engaged in the field of Islamic law are required to possess a deep understanding of maqāṣid al-sharīʻah, as legal conclusions must be drawn with careful consideration of the intended objectives behind each ruling.[27] Furthermore, Muhammad al-Tahir Ibn ʻĀshūr emphasizes that maqāṣid should not be viewed merely as a methodological tool for interpreting the aims of sharīʻah texts. Rather,

[25] Hatim Bu Syamah, *Madkhal Ila Dirasah Ilm al-maqasid al-syar'iyyah al-Islamiyyah,* (Tunis: AL-dar al-Tunisiyyah li al-kitab, 2015).

[26] Balqasim al-Gali, *AllImam Al-Syaikh Muhammad AL-Tahinr Ibn Asyur, Hayatuhu Wa Asaruhu,* (Tunis: Dar Al-Salam, 2014).

[27] Majid al-Najjar, *Maqashid al-syari'ah biabad Jadidah,* (Tunis: Dar al-gar al-Islami, 2012.

its application extends to a wide range of domains, including economics, family law, judicial procedures, and testimony.[28]

A recurring academic concern in the study of fiqh and uṣūl al-fiqh is the relatively infrequent application of maqāṣid in the understanding of Islamic law. Yet, Islamic rulings—whether codified, legislated, or revealed—are inherently purposeful and directed toward specific objectives. In the preface to the book Naẓariyyat al-Maqāṣid ʻinda al-Imām al-Shāṭibī by Aḥmad al-Raysūnī, Ṭāhā Jābir al-ʻAlwānī writes that although a significant body of scholarship and legal thought exists within the Islamic tradition, much of it reveals a vacuum—a lack of vitality and creativity in shaping life and society. This, he argues, stems from the absence—or deliberate neglect—of the spirit or theory of maqāṣid. This intellectual stagnation was similarly observed by Muḥammad Ṭāhir ibn ʻĀshūr, a prominent Islamic legal scholar from Tunisia. As cited by Ṭāhā Jābir al-ʻAlwānī, Ibn ʻĀshūr identified the marginalization of maqāṣid as one of the core reasons for the decline in dynamic legal reasoning within the field of fiqh.[29] Thāhir bin 'Āsyūr, as cited by Thahā Jābir al-'Ulwānī, said:

> *"neglecting maqāṣid has been identified as one of the key factors behind the significant stagnation experienced by many fuqahā' in their efforts to develop Islamic law. This neglect has led to the failure to uncover legal rulings that serve genuine benefit and public interest. Moreover, it has contributed to a growing sense of disillusionment, as legal discourse becomes increasingly preoccupied with technicalities and ḥīlah (legal stratagems), which have come to dominate the concerns of jurists—whether to a great or limited extent."*[30]

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[28] Muhammad al-Tahir Ibn Asyur, *Haula Maqashid al-Syari'ah al-Isamiyyah,* (Tunis: Bait al-hikmah, 2005).

[29] Thahā Jābir al-'Ulwānī, "Muqaddimah al-Ma'had", dalam Ahmad al-Raysūnī, *Naẓhriyat al-Maqāshid 'Inda al-Imām al-Syāthibī* (Riyādh: al-Dār al-'Ālamiyah li al-Kitāb al-Islāmī wa al-Ma'had al-'Alamī al-Fikr al-Islāmī, 1981).

[30] *Ibid.,* see also Nu'mān Jughaim, *Thuruq al-Kasyfi 'An Maqāshid al-Syari'ah*, Cet. 1 (Yordan: Dār al-Nafā'is, 2002).

The critiques put forth by al-'Alwānī and Ibn 'Āshūr should not be interpreted as a dismissal of the fiqh tradition or the contributions of classical fuqahā'. Rather, their concern lies in the tendency of many jurists to approach fiqh in an overly legal-formalistic manner, often at the expense of its maqāṣid (higher objectives). This critique implicitly calls for a re-evaluation of both uṣūl al-fiqh and fiqh itself. The need to reconstruct uṣūl al-fiqh and renew our understanding of fiqh arises not only from the recognition that these disciplines are products of specific historical contexts, but also from the urgent demands imposed by contemporary realities. Hasan al-Turābī similarly critiques the abstract nature of traditional uṣūl al-fiqh and fiqh, arguing that they remain largely theoretical and disconnected from lived experience. He states:

> "*Today, we must revisit uṣūl al-fiqh in light of its relationship with real-life circumstances. The existing frameworks of uṣūl al-fiqh within our jurisprudential tradition remain abstract and largely theoretical, failing to produce practical fiqh. Instead, they have given rise to endless debates that offer little in the way of legal progress. In truth, both fiqh and uṣūl al-fiqh must continuously evolve to meet the challenges of modern life.*" [31]

In a more critical tone, Akhmad Minhaji also observes that what is commonly referred to as fiqh and uṣūl al-fiqh today is often treated as untouchable dogma, immune to rational inquiry. This is in stark contrast to the early period of Islam, when both disciplines were dynamic and responsive to societal developments. Minhaji further asserts:

> "*It is indeed regrettable that over the course of its historical development, fiqh—which originally functioned as a science—has been transformed into a set of dogmas. As a result, the thought and methodology of fiqh (including uṣūl al-fiqh), which were once dynamic and evolved in accordance with societal changes, have been reduced to rigid doctrines that are memorized, preserved, and followed uncritically. Islamic legal thought, which is in fact*

[31]Hasan al-Turabi, *Fiqih Demokratis dari Tradisionalisme Kolektif Menuju Modernisme Populis*, ed. Abdul Haris dan Zaimul Am (Bandung: Arsy, 2003).

> *a product of human intellectual effort—dynamic, relative, and profane—has gradually assumed the status of sharīʿah, which is absolute, sacred, and inviolable. This phenomenon reflects a sanctification of religious thought (taqdīs al-afkār al-dīnī).*"[32]

These critiques, it must be acknowledged, deserve serious consideration. Islamic law, by its very nature, is bound to encounter the dynamic forces of social change—forces that demand a paradigmatic shift to prevent legal stagnation. Such a shift opens space for positioning Islamic law as a living, contextually relevant system of guidance. This is precisely why the maqāṣid dimension holds vital importance in contemporary Islamic legal studies. Indeed, several scholars have gone so far as to argue that a sound understanding of maqāṣid should be considered a fundamental requirement for anyone engaging in ijtihād. Aḥmad al-Raysūnī underscores this point once more, stating:

> *"For the first time—and to the extent that can be known—we find that the foremost condition for attaining the level of ijtihād is a sound and thorough understanding of maqāṣid al-sharīʿah. Moreover, we also observe that the second and final condition is likewise inseparable from maqāṣid, namely, the ability to derive legal rulings (istinbāṭ) based on an in-depth comprehension of the objectives of the sharīʿah."*[33]

The underlying aim of this approach is to prevent interpreters or legal reasoners from becoming trapped within the confines of merely particular (juzʾīyāt) rulings, thereby neglecting the broader objectives of maqāṣid al-sharīʿah. In this regard, Yūsuf al-Qarḍāwī offers a pertinent reminder, stating:

> *"Knowing the objectives (maqāshid asy-syarī'ah) is important so that one does not fall into error by only paying attention to partial (juz'i) matters (laws) without considering the universal (kullī) objectives of the laws. As a result, this will lead to confusion and a mixing of laws.*

[32] Akhmad Minhaji, *Hukum Islam Antara Sakralitas dan Profanitas: Perspektif Sejarah Sosial* (Yogyakarta: UIN-Sunan Kalijaga, 2004).

[33] Ibid.

Thus, it can be understood that maqāshid is an important theme in the study of Islamic law. With maqāshid, Islamic law is expected to produce a perspective of reasoning that does not only revolve around the literal provisions of a text, but also provides a perspective of reasoning that is always able to dialogue with the developments of the times. Thus, the important meaning of understanding maqashid is as a means to understand why Islamic law was established. However, without understanding the purpose behind the establishment of Islamic law, it is not impossible that the construction of Islamic law will be detached from its divine and human dimensions.

In the study of ushūl al-fiqh from the early to the medieval periods, the objectives of Islam were often referred to as maqāshid asy-syarī'ah, which were actualized through the reflection of fundamental values in Islamic law, namely preserving religion, life, reason, lineage, and property.[34] However, in theoretical studies of ushūl al-fiqh, these five universal principles remain bound by the wording of the text or, at the very least, must not contradict the nash-nash. It is intellectual phenomena such as this that have led to criticism of ushūl al-fiqh from a number of Islamic legal scholars, who consider it to be overly dependent on the text, thereby ignoring the facts of reality.[35] Additionally, an important point in understanding maqashid al-syari'ah is to understand the particular nash-nash of sharia within the global framework of maqashid al-syari'ah. Thus, the particular operates within

[34]It should be added that the concept of maqāshid al-syarī'ah is an important theme in the discourse of Islamic legal thought, and has become a fairly central part of it. Therefore, it is not surprising that scholars pay attention to it and discuss it, as done by al-Imām al-Juwaynī (w. 478 H), al-Ghazalī (w. 505 H), al-Rāzī (w. 606 H), al-Amidī (w. 631 H), al-'Izz bin 'Abd al-Salām (w. 631 H), al-Qarāfī (w. 685 H), al-Thūfī (w. 716 H), Ibn Taymyyah (w. 728 H), (w. 751 H), al-Syāthibī (w. 790 H), Muhammad Thahīr Ibn 'Asyūr (w.1393 H). see. Faqihuddin Abdul Qadir, "Nilai-nilai Pluralisme Dalam Ajaran Sosial Islam: Perspektif Fiqh Realitas," *Ulumuna* 5, no. 2, (2004): 270.

[35]Abdul Muqsith Ghazali, "Merancang (Kaidah) Ushul Fikih Alternatif." at Kamaruddin Hidayat dan Ahmad Gaus AF. ed. *Negara dan Civil Society Gerakan dan Pemikiran Islam Kontemporer* (Jakarta: Paramadina, 2005), 356-357.

the global framework, and the law is connected to its maqashid, not separated from it.

Does Sharia have a purpose or intention behind the establishment of a law, whether it is an obligation, a recommendation, a prohibition, or something left to the discretion of a mukallaf to do or not do (mubah)? Or is Sharia in its legal rulings merely of a ta'abbudiyah nature, where Sharia simply commands, prohibits, permits, and prohibits without considering any purpose behind those legal rulings? In other words, are the laws of Sharia mu'allalah (having reasons) with reasons that can be understood by humans or not? Questions like these have been debated by scholars of usul and fiqh since ancient times. Regarding this, Yusuf al-Qardhawi said:

> *"The majority of scholars, both past and present, agree that in general, the laws of Sharia are mu'allalah, and have a purpose in every law that is established, and that in broad terms, the purpose, illah, and wisdom of these laws can be understood, and in some cases, understood in detail. However, there are some laws, particularly those related to worship, whose specific purposes are not fully known to humans due to certain wisdom."*[36]

Undoubtedly, those who study Sharia will immediately establish its laws based on ri'ayah al-mashlahah with the principle of "rejecting mafsadah and realizing goodness (daf'u al-mafasid wa jalbu al-mashalih), as a form of actual realization of the message of Islam which has recommended the Prophet Muhammad to be a mercy to the universe. Then, by understanding maqashid al-Syari'ah, we can identify the types and patterns of laws that are created, especially in the field of criminal law.[37]

The benefits of understanding maqāṣid al-sharīʿah have been articulated by ʿAbd al-ʿAzīz ibn ʿAbd al-Raḥmān ibn ʿAlī ibn Rabīʿah,

[36]Yusuf al-Qardhawi, *Madkhal li Dirasah al-Syariah al-Islamiyah,* (Beirut: Muassasah al-Risalah, 1993).

[37] Abi Ishaq al-Syathiby, *al-Muwafaqat fi Ushul al-Syari'ah,* 2 (Beirut: Dar Ma'rifah, nd.).

who outlines several key advantages.[38] First, it assists mujtahidūn in deriving legal rulings and in grasping the dimension of maṣlaḥah (public interest) underlying every obligation imposed upon the mukallaf (legally responsible individual). Second, it equips the mujtahid with the necessary capacity to discern the benefit intended behind a legal ruling. Third, it enables one to understand legal cases for which no precedent exists in earlier legal texts. Fourth, it empowers the scholar to determine the stronger legal opinion among various options and to make an informed choice. Fifth, knowledge of maqāṣid enhances one's ability to distinguish between rulings that are universal in scope and those that are particular. Sixth, a scholar with insight into maqāṣid will feel at ease and confident when referencing classical legal opinions, recognizing the underlying intent behind them. Seventh, it supports the refutation of positions that reject the authority of analogical reasoning (qiyās). Eighth, it contributes to the proper formulation of qiyās and its application to contemporary issues. Ninth, through maqāṣid, a mujtahid gains the ability to distinguish between the literal text (naṣṣ) and the intended meaning (maqṣūd) of the Lawgiver, thereby recognizing when apparent textual contradictions are reconcilable through deeper legal and purposive understanding.

Maqashid al-syari'ah as Method of Ijtihad in Isalic Law

As a methodological framework, maqāṣid al-sharīʿah provides a reasoning perspective for addressing issues within Islamic law, particularly in the realm of muʿāmalah (social transactions) amid the religious plurality of contemporary society. To achieve these objectives, the implementation of maqāṣid al-sharīʿah as a method of legal reasoning can be carried out through several approaches as outlined below.

[38]ʿAbd. Al-ʿAziz bin ʿAbd. al-Rahman bin ʿAli bin Rabi'ah, *'Ilmu Maqashid al-Syari'*, (Riyadl: Maktabah al-Malik Fadh bin al-wathaniyah, 2002).

First, in the process of istinbāṭ (deriving) Islamic legal rulings, a mujtahid must focus primarily on the objectives (maqāṣid) embedded within the Qur'an and Sunnah, rather than on their literal words or letters. The central axis should be the purpose of the law itself. This involves identifying and articulating the ethical and moral ideals underpinning a given verse, rather than adhering strictly to its specific legislative formulation or literal expression.[39] In other words, the maqāṣid al-sharīʿah—the ethical aims of the law—must be explored and considered when determining or concluding a ruling, whether derived directly from a verse or the broader context surrounding it. Importantly, the relevant context is not a particular, personal (juz'ī) circumstance, but an impersonal, universal (kullī) one. Accordingly, this approach goes beyond the classical understanding of asbāb al-nuzūl (occasions of revelation) and instead emphasizes the overarching maqāṣid al-sharīʿah.[40] This emphasis on maqāṣid is encapsulated in the principle: "al-ʿibrah bi al-maqāṣid lā bi al-fāẓ" — meaning that legal rulings should be grounded in the intended objectives of the law rather than the literal wording of a text.[41] Thus, in considering any expression within the Qur'an or Ḥadīth, priority must be given to the universal purposes of sharīʿah rather than specific textual formulations.

Epistemologically, this theoretical proposition can be understood as a caution against the excessive reliance on the literal text, which risks neglecting the substantive essence of the text itself. An overemphasis on the literal wording may obscure the true purpose behind the text. This point is articulated by al-Raysūnī, who states:

> *"When naṣṣ (texts) are understood solely from their outward (ẓāhir) form and literal letters, their scope becomes constricted and their contribution minimal. However, when the underlying causes (ʿillat) and deeper meanings (maqāṣid) of the text are apprehended, these naṣṣ become an inexhaustible*

[39]Abdul Muqsith Ghazali, "Merancang (Kaidah) Ushul Fikih Alternatif".

[40]Ibid.

[41]Ibid.

source of knowledge. This opens the doors for analogical reasoning (al-qiyās) and broadens the path for maṣlaḥah (public interest), enabling the laws themselves to operate naturally in realizing the objectives of the sharīʿah, attracting benefit and repelling harm."[42]

In both classical and contemporary Islamic legal thought, scholars commonly adhere to a foundational legal maxim which states: "al-ʿibrah bi ʿumūm al-lafẓ lā bi khuṣūṣ al-sabab," meaning: "Legal consideration is based on the generality of the wording, not the specificity of the occasion (of revelation)." This principle emphasizes that legal rulings should be derived from the broad, general meaning of a Qur'anic verse or ḥadīth, rather than being limited to the particular historical context or reason behind its revelation.[43]

According to al-Zuḥaylī, this legal maxim has been upheld by nearly all scholars of uṣūl al-fiqh, serving as a strong directive that legal rulings must consistently be based on, or refer to, the literal (ẓāhir) wording of a naṣṣ (text). The majority of Islamic legal theorists (uṣūliyyūn) maintain that a general expression (ʿāmm) within a legal text often arises from a specific cause—whether prompted by a particular question, an incident, or other circumstances. Nevertheless, the generality of the expression remains unaffected, because it is rooted in the outward form of the text and should not be restricted based on the specific context of its revelation. This is the essence of the maxim: "What must be taken into account is the generality of the wording, not the specificity of the cause." The justification for maintaining the general scope of the legal text lies in the fact that the naṣṣ is issued by the Lawgiver, and its validity does not depend on the question asked or the occasion that prompted its revelation.[44]

Broadly speaking, this legal maxim asserts that when sharʿī texts employ general linguistic forms (ṣīghat ʿāmm), what must be followed

[42] al-Raysūnī, *Nazhariyat al-Maqāṣid.*

[43] al-Zuhaylī, *Ushūl al-Fiqh al-Islāmī*, 1 (Damaskus: Dār al-Fikr, 1986).

[44] Ibid.

is the meaning conveyed by that general expression—regardless of any specific cause mentioned in the text, whether that cause takes the form of a question or a particular incident. In this regard, human beings are obligated to adhere to the naṣṣ according to its linguistic form. Consequently, from the perspective of this legal principle, Muslims are presented with a singular option: to follow the literal (verbal) expression of the text. Under this framework, the contextual background (asbāb al-nuzūl) is not determinative and does not alter the generality inherent in a ṣīghat ʿāmm used within the sharʿī texts. What is to be upheld, therefore, is the apparent or surface meaning (ẓāhir) of the text.

Furthermore, this legal maxim teaches that when a naṣṣ is formulated using general wording, there remains no alternative but to apply the general provision—even if the text itself was revealed in response to a specific event. As Muqsith aptly notes, "complete submission to the generality of the wording confines us within a linguistic cage of meaning."[45] Such a perspective not only risks overlooking human and historical realities, but also subordinates real human experience to the text itself. Whether consciously or unconsciously, directly or indirectly, this principle places the particularities of lived human experience under the supremacy of the text (the Qur'an or the Sunnah). This conceptual framework, in effect, stands in tension with a foundational principle of religion itself—namely, the elevated status and dignity accorded to the human being.[46]

Methodologically, this classical ushūl al-fiqh method will result in at least two things: First, this method focuses too much on semantics and neglects the role of asbāb al-nuzūl (the historicity of a text). As a result, users of this method often fall into naivety. Second, these

[45]Muqsith, "Merancang (Kaidah).

[46]Ulil Abshar Abdalla, "Menghindari Bibliolatri" Tentang Pentingnya Penyegaran Kembali Pemahaman Islam" at Kamaruddin Hidayat dan Ahmad Gaus AF. ed., *Negara dan Civil Society Gerakan dan Pemikiran Islam Kontemporer* (Jakarta: Paramadina, 2005).

principles subordinate reality to the wording of the text. Thus, the aim of these principles is the truth of a text, with the consequence of ignoring the historical context (al-siyāq al-tārikhī) surrounding it. With these principles, context is viewed or placed in a secondary position.[47] Based on this method, all types of linguistic discourse such as qath'ī-zhannī, muthlāq-muqayyad, muhkam-mutasyābih are merely attempts to uphold the authority of the text (nash) alone. In such a reasoning situation, what is called "authoritarianism" [48] of the interpreter[49] will arise.

In the current context, the perspective of understanding maqāshid as one of the methods in determining Islamic law is to know, learn, and obtain the basic principles of Islam. Therefore, when the law has reached its maqāshid, the texts must be detached from their original Arabic context (decontextualization) and then recontextualized, that is, anchoring the fundamental principles of Islam in non-Arab regions of the world. Thus, contextualization, decontextualization, and recontextualization are the mechanisms of interpretation throughout the ages.[50]

There are several examples related to legal verses, both criminal and otherwise, for example, regarding punishment (had) for thieves. In the Qur'an it is stated: "The punishment for men and women who steal

[47]Muqsith, "Merancang (Kaidah).

[48] Amin Abdullah, "Kata Pengantar Pendekatan Hermeneutika dalam Studi Fatwa-fatwa Keagamaan." at Khaled Abou el-Fadl, *Atas Nama Tuhan dari Fikih Otoriter ke Fikih Otoritatif.* ed. R. Cecep Lukman Hakim, (Jakarta: Serambi Ilmu, 2004).

[49]An "authoritarian" interpretation, for example, can be seen in written works such as Hartono Ahmad Jaiz, For example, in the book *Ada Pemurtadan di IAIN* (Jakarta: Pustaka al-Kautsar, 2006); *Aliran dan Paham Sesat di Indonesia* (Jakarta: Pustaka al-Kautsar, 2003); *Menangkal Bahaya JIL dan Fiqh Lintas Agama* (Jakarta: Pustaka al-Kautsar, 2004). Adian Husaini, at *Islam Liberal, Sejarah, Konsepsi, Penyimpangan dan Jawabannya* (Jakarta: Gema Insani Press, 2002), and Luthfi Bashari dalam *Musuh Besar Ummat Islam* (Yogyakarta: Wihdah Press, 2003).

[50]Muqsith, "Merancang (Kaidah).

is to cut off their hands as a punishment for what they have done and as a punishment from Allah."[51]

Without considering the historical context (asbāb al-nuzūl) of the verse, at the level of application, the wording of the verse must inevitably be actualized in the context of a different society, even though the verse was revealed in the context of Arab society in the past.[52] Here, the historical context or background of the verse is not used. Nevertheless, for some people, maintaining the literal meaning of the verse is seen as a way to resolve social issues. In this case, it is to prevent criminal acts, which are the very essence of the objectives of Islamic law (maqāshid asy-syarī'ah). In "al-Tasyrī' al-Jinā'ī," 'Abd al -Qādir 'Awdah, for example, emphasizes the importance of applying the verse textually, not only because the verse (literally) must be followed, but also due to the necessity, where the provisions of the verse are intended to maintain societal peace from the scourge of crime, which is itself an embodiment of the maqāshid asy-syarī'ah. 'Awdah states as follows:

> *"The basis for imposing punishment on perpetrators of theft in Islamic law (in accordance with the literal wording of the verse) is, in my opinion, the best basis for imposing sanctions on perpetrators of theft from the past to the present in the Islamic world. And that is the secret to the success of Islamic criminal sanctions for theft offenders in Islamic law since ancient times, a secret (meaning) that can be observed in Hijaz (i.e., Saudi Arabia) in the present era.*[53]

If Awdah's argument is correct, then the substance (maqāshid) of the textual meaning of the legal verse is the creation of a safe society. This means that maintaining the textual meaning does not necessarily

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[51] al-Qur'ān, 5: 38.

[52] Jalāl al-Dīn al-Suyūthī, *Asbāb al-Nuẓūl al-Musammā Lubāb al-Nuqūl fi Asbāb al-Nuẓūl* (Beirut: Muassasah al-Kitāb al-Tsaqāfiyah, 2002). See also. Jalāl al-Dīn al-Suyūthī, *Asbāb al-Nuẓūl al-Musammā Lubāb al-Nuqūl fi Asbāb al-Nuẓūl* (Beirut: Muassasah al-Kitāb al-Tsaqāfiyah, 2002).

[53] Abd al-Qādir 'Awdah, *al-Tasyrī' al-Jinā'i al-Islāmī Muqāranān bi al-Qānūn al-Wadl'ī,* 1, (Beirut: Muasasah al-Risālah, 1992).

ignore the substantive meaning of a verse. Thus, it can be confirmed that any argument in the context of adherents of the literal approach, the principles of ushūl fiqh are still relevant to them. Examining the views of the literalists above, it is clear that every literal religious text contains maqāshid or, in the words of Ibn Hazm:

> *"In truth, the intention of Shari' (God) is mysterious to us, so He explains it Himself. This cannot happen except through clear words that are separate from other meanings."*[54]

On this basis, Islamic literalists will immediately reject arguments based on reasoning to explain the legal provisions of a text, because a text can only be explained by the text itself.[55] Regardless of differences in opinion regarding maqāshid, but taking the example of the verse on theft above, for example, that verse cannot be applied textually in the Indonesian context because Indonesia is different from Arabia. Geographically, the Arabian Peninsula is a barren and arid land consisting of valleys surrounded by mountains. Due to the infertile nature of the land, its people prefer to engage in trade as their primary livelihood. Their trade is not only local but also "international," and their wealth is abundant.

In such circumstances, it would certainly arouse the enthusiasm of bandits and robbers, who were the pride of Arab criminals at that time. Therefore, it is entirely rational that the Qur'an imposes severe penalties on those who disrupt public order and security, often accompanied by the seizure of property, as stipulated by the Qur'an.[56] At that time, such penalties were appropriate because rampant crime could only be curbed through harsh punishments that would strike fear into the hearts of people. Given the social conditions of Arab society as described above, it is reasonable for the Qur'an to establish severe punishments as mentioned in Surat al-Mā'idah: 38 above. When

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[54] Ibn Hazm, *al-Ihkām fī Ushūl al-Ahkām*, 3 (Beirūt: Dār al-Kutub al-'Iliyah, tt.), 530.

[55]Ibid.

[56]al-Mā'idah: 33.

considering the current context of Indonesia and taking into account the social-geographical conditions at the time the verse was revealed, the emphasis on substantive meaning or the possibility of interpreting alternative meanings or forms of interpretation, without necessarily adhering to a literal textual understanding, becomes open. In this regard, the suggestion by Ibn Qayyim is particularly intriguing, who stated:

> *"And do not be too fixated on the texts found in books throughout your life. If someone comes to you from outside your area and asks you about a law, then do not treat the legal decision according to your tradition, but first ask about their tradition, then decide by considering their tradition and not according to your tradition or based on your books. According to the scholars, this is the correct and clear way. And if you are stubborn, then you have gone astray and are unable to understand the intentions of the scholars and the early generations of Muslims (al-Salaf)."*[57]

Ibn al-Qayyim's view above suggests that in establishing a law, one should take into account the social, cultural, and even geopolitical conditions of a region (country), so that the objectives of the law can be properly achieved. In this context, the approach to reading religious texts, especially those produced by Islamic scholars, allows for new interpretations. Among these new interpretations is one that emphasizes the purpose of the law itself or maqāshid asy-syarī'ah. Therefore, it is time to develop an understanding that emphasizes the substance, not the legal formalism of a legal text. In Muqsith's words, "pursue maqāshid asy-syarī'ah in various ways, without being too captivated by the beauty of a text. For fascination is an ideological act that will only dull creativity in the search for objective meaning and the importance of understanding the background of the revelation of the verse."[58] Achieving substantive meaning necessitates analysis that is not limited to the structure of the sentence alone, but rather the

[57] Ibn al-Qayyīm, *I'lām al-Muwāqi'in 'an Rab al-'Ālamīn*, (Bairūt: Dār al-Fikr, nd.).

[58]Muqsith, "Merancang (Kaidah).

foundational analysis of class and the social and cultural structures surrounding the history of the text's origin.

Second, placing mashlahat as the legal umbrella. In fact, Islamic law has no other purpose than to realize mashlahat (jalb al-mashālih) and reject all forms of mafsadah (dar'u al-mafāsid). This paradigm was formulated by Muqsith Gazali with the expression *"naskh al-nushush bi al-mashlahat."*[59] This "principle" paradigmatically seeks to state that any texts, whether in the Qur'an, Hadith, or other texts, can be nullified by mashlahat. This means that the logic of mashlahat is stronger as evidence than the logic of the text (nash). The issue is, if mashlahat is the reference point, who has the right to define and formulate it?

In this case, it is necessary to first distinguish between individual (subjective) mashlahat and collective mashlahat. Individual (subjective) mashlahat refers to interests that pertain to the individual, person by person, and are separate from the interests of others. Because of its subjective nature, the right to determine it lies with the individual concerned.[60] Meanwhile, social-objective mashlahat, which is in the interest of the majority, is assessed by the majority through a shura mechanism to reach a consensus (ijmā'). Something that has become a consensus from the process of defining mashlahat through deliberation is the highest binding law. Here, collective problem-solving is crucial,[61] and this is what the Qur'an means by: "And their affairs are decided by consultation among them."

It is often argued that the mashlahat assumed by humans is illusory and relative, while the mashlahat established by God through the literal texts of the nash is true mashlahat. Humans have no authority to question or challenge the literal benefits of the text, and their duty is to practice and believe in them wholeheartedly.[62] However, Muqsith continues, as the spirit of the Qur'anic texts (nushūsh), benefits can

[59]Ibid.

[60]Ibid.

[61]Ibid.

[62]Ibid.

function to control the existence of the text by nullifying some texts that are no longer relevant. In this way, the ideal of public interest will continuously innovate to produce new religious texts amid the confusion and inadequacy of old religious texts and formulations.[63]

The next question is what happens if there is a conflict between mashlahat and nash. If we use the ushūl al-fiqh paradigm, what prevails (what is taken as an argument) is nash. This is because nash itself already encompasses mashlahat. Even if mashlahat is taken or prevails, it is mashlahat that does not contradict the nash, especially if the nash is qath'i al-dilālah wa tsubūt (definitely indicative and established).[64] According to Muqsith, what is accepted is the logic of mashlahat, or mashlahat has the authority to nullify sacred texts. This can be seen from the repeated nullification of certain Islamic legal provisions known as nasīkh-mansūkh, and all Islamic students must be aware of the story of the nullification of some Islamic sharia provisions deemed no longer based on mashlahat.[65]

Therefore, it is not impossible that something that is beneficial in a certain place and time may later become harmful in another place and time. According to Muqshit, if benefits can change due to changes in context, then it is possible that Allah may command something to be done because it is known to be beneficial, and then later forbid it because it is known that in practice these rules no longer promote benefits.[66] To strengthen this argument, Muqshit quotes the opinion of Ibn Rushd, who states that wisdom (mashlahat) is the twin sister of the sharia established by Allah.[67]

Thus, this opinion can be correlated with the method of establishing Islamic law that was once proposed by Yusuf al-Qaradawi. According to him, when considering Islamic law, a mujtahid must take

[63]Ibid.

[64]al-Zuhaylī, *Ushūl al-Fiqh*, 2.

[65]Muqsith, "Merancang (Kaidah).

[66]Ibid.

[67]Ibid.

into account aspects such as maqashid, the advancement of knowledge, the suitability of the times, and even compare it with more contemporary legal systems.[68] Thus, when discussing criminal law for thieves, for example, the context of amputation cannot simply be applied today, especially in the Indonesian context. Most modern countries have now established imprisonment as a replacement for classical punishment methods for criminals. In Indonesia, several provisions such as Article 362 of the Criminal Code, Article 476 of Law No. 1 of 2023, and others indicate that the punishment applicable to thieves is imprisonment or a fine.

In the context of maqashid studies, as explained earlier, there is a value of public interest that is the main objective of law enforcement, namely collective justice. This justice can be achieved through imprisonment and fines, as well as more modern methods, such as restorative justice. With this method, the rights of victims, perpetrators, and the community can be restored.[69] Thus, this method of punishment actually brings more public benefit than individual benefit. In short, the application of maqashid asy-syari'ah focuses on the value of the goal, setting aside practical matters that are certain to change.

Maqāshid Asy-syarī'ah Based on Maslahah

Thus, public interest, which is the realization of maqāshid, is the most fundamental basis of every Islamic Sharia law. This is not because Islamic teachings need to be opportunistically adapted to developments in public welfare, but rather because the objective demands of public welfare necessitate such adaptation. This is what 'Izz al-Dīn Ibn 'Abd al-Salām suggested when he said, "All religious provisions are directed toward the greatest possible public welfare for

[68] Al-Qaraḍāwī, *al-Ijtihād fī sh-sharīʿa al-islāmīy maʿa naẓarāt taḥliliya fī al-ijtihād al-muʿāṣir*, 1st edition (Kuwait: Dār al-Qalam, 1985).

[69] Ginting, Yuni Priskila, Audy Arcelya, Nadya Roseline, and Yovania Sipayung. "Sosialisasi Restorative Justice Dengan Melibatkan Pelaku atau Korban Pencurian." *Jurnal Pengabdian West Science* 3, no. 04 (2024): 370-382.

humanity."[70] Thus, public welfare is a fundamental, unchanging, and universal religious teaching. Meanwhile, the implementation of the ideal of public welfare is a religious matter of fushūl (branches), and therefore can change according to the course of history and civilization. As ushūl, such religious texts must not be altered or annulled.[71] It is important to note that nasakh cannot be applied to universal texts, teachings that transcend space and time, overcoming various ethnicities and beliefs,[72] such as the verse that states: "When you judge between people, judge with justice."[73] And other verses which, when translated, read

> *"O you who believe, be steadfast in upholding justice for the sake of Allah, and be witnesses with fairness. And let not your hatred for a people incite you to act unjustly. Be just, for justice is closer to piety. And fear Allah, for indeed, Allah is All-Knowing of what you do."*[74]

The verses related to justice and humanity are referred to as "al-ayāt al-a'lā qīmātan" or "al-ayāt al-ushūliyāt" (fundamental verses), or ushūl al-Qur'ān, and are of high standing. Such verses must not be abrogated,[75] as abrogating such verses not only contradicts the fundamental spirit of early Islam but also conflicts with the logic of

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[70] al-Raysūnī, *Nazhariyat al-Maqāshid.*

[71]Muqsith, "Merancang (Kaedah).

[72]Ibid.

[73] al-Qur'ān, 4: 58.

[74] al-Qur'ān, 5: 8.

[75]In the works of ushūl al-fiqh, the concept of nasakh is understood as the revocation or cancellation of a law against an existing legal provision or the revocation of a law that has been established in a previous khithāb with a subsequent khithāb. According to Shi'ite scholars, nasakh means revoking what has been established in the Sharia from laws and other matters. Both definitions, in essence, carry the meaning of "revoking" or "canceling." In general, nasakh means: 1) the legislator (al-syāri') establishes a law to apply to a particular event during a specific period; 2) then establishes a law regarding a different event from what was previously established; and 3) the subsequent revelation, in addition to establishing a new law, simultaneously revokes the applicability of the old law. Amir Syarifuddin, *Usul Fiqih*, I, (Jakarta: Logos, 1999).

abrogation itself.[76] Meanwhile, verses related to technical mu'āmalah as found in the Qur'an are referred to as "al-ayāt al-adnā qīmātan" or "al-ayāt al-furū'iyah" or "fiqh al-Qur'an." For example, verses related to hudūd or 'uqūbah, inheritance shares, and the like. All verses falling under this category are open to abrogation if they are no longer effective as a means to achieve public interest. Historically, abrogation has been present to continuously update religious texts that no longer represent the fundamental principles of Islam.[77] Thus, it can be understood that the authoritative position of mashlahat has become so dominant in determining Islamic legal provisions, even though these provisions have been justified by the Qur'anic text. Ahmad Khalaf Allah in his book "al-Harakah al-Islamiyah al-Mu'ashirah," as quoted by Jamal Sultan, states, "Public interest does not only change with the times in matters where there is no textual evidence, but it also sometimes changes in matters where there is textual evidence."[78]

According to Hasbi ass-Shiddiqiey, the Qur'an and Sunnah do not explain laws accompanied by statements indicating their permanence that will be abrogated. Any law that will be abrogated will certainly not be accompanied by statements indicating its permanence. Furthermore, abrogation does not apply to texts containing fundamental laws that remain valid for all times.[79] Hasbi's explanation clarifies that the legal provisions subject to abrogation are those of a particular nature. In other words, abrogation only applies to provisions of a partial or particular nature, not to laws of a universal nature. In other words, the particular verses are the legal verses in Medina, and the universal ones are the legal verses in Mecca. Hasbi, citing the opinion of al-Syāthibī, states, "Most abrogation occurred in Madinah,

[76]Muqsith, "Merancang (Kaedah).

[77]Muqsith, "Merancang (Kaedah).

[78]Jamal Sultan, *Pembaruan Pemikiran Islam Kritik Terhadap 'Pembaruan',* ed. Muhammad Syauqi (nd: Lembaga Konsultasi Pendidikan dan Sosial Islam, 1994).

[79] Hasbi ash-Shiddiqiey, *Pengantar Hukum Islam*, 2 (Jakarta: Bulan Bintang, 1981).

because the laws established in Makkah are of a general nature. General principles do not accept abrogation. Only specific laws are subject to abrogation."[80] Thus, what is definitive are the universal verses, because according to al-Syāthibī, the evidence used to establish the five universal principles includes definitive evidence, so they can also be classified as definitive.[81]

It is important to note that, even though it is based on reason, mashlahat can override the provisions of texts that are particular (juz'ī) and in the interest of the public or socially objective. The issue is that claiming the existence of a public interest for the sake of the common good must clearly have measurable criteria. For instance, in real life, a public interest may be deemed beneficial for most Muslims, while another group may view it differently.

In many cases, there is often a deadlock in interpreting the public interest. For example, in the view of Muslims, legal regulations or laws that appear to be sharia-based, as is common in some regions recently, are seen by some Muslims as being in the public interest, while others view them as primordial and not accommodating the interests of the majority. Thus, it is difficult to claim the term "public interest" (mashlahat) if it is solely based on reason. That is why, in Islamic legal studies, mashlahat must be rooted in religion. Third, amending (canceling) "dogmatic" religious provisions concerning public affairs, whether found in the Qur'an or the Sunnah. According to Muqsith, when there is a conflict between public reason and the literal meaning of the text of the teachings, public reason has the authority to refine or modify it. This refinement or modification can be done through tanqīh (sifting), which involves taqyid bi al-'aql (restriction by reason), takhshīsh bi al-'aql (specification by reason), and tabyin bi al-'aql

[80]Ibid.

[81] Fathurrahman Jamil, *Metode Ijtihad Majlis Tarjih Muhammadiyah* (Jakarta: Logos, 1995).

(clarification with reason), which is methodologically formulated with the expression "tanqīh al-nushūsh bi al-'aql al-mujtma".[82]

To support his argument, Muqsith cites the example of the two largest Islamic organizations in Indonesia, NU and Muhammadiyah, which disagree with the formalization of Sharia law. This means that NU and Muhammadiyah have tanqīh (sorted) which verses of the Qur'an can and cannot be applied. Thus, the Qur'an is very much subject to tanqīh and even nasakh. This is what is meant by nasakh bi al-'aql. It means that reason has the authority to abrogate the fiqh of the Qur'an, which is permitted in ushūl al-fiqh. Even if it is claimed that public reason is a collective decision of all components of this nation, regardless of religion, race, and religious thought, which in the Indonesian context is the House of Representatives (DPR), the author believes this is more appropriate. However, it must be acknowledged that public reason itself is greatly influenced by individual subjectivities. However, it must be acknowledged that public reason itself is greatly influenced by individual subjectivities. Nevertheless, public reason is necessary to avoid oligarchy of opinion or authoritarianism in formulating and resolving public affairs. In the public sphere, no single party or group in society should impose its views on others, as they all have equal standing and status. The authority of public reason only applies to specific verses of the Qur'an and Hadith, namely those that are technical and particular in nature, such as the provisions of hudūd law, qishāsh, ta'zir, and others, which in Islamic legal literature are referred to as fiqh, not sharia, which is entirely the Qur'an's response to specific cases occurring in a specific context, namely Arab society.

Therefore, verses that fall under the category of particular verses (juz'ī) or fiqh al-Qur'ān are relative and tentative, and their implementation requires refinement or renewal when these particular verses (fiqh al-Qur'ān) are to be universalized without going through the process of tanqīh. For allowing fiqh al-Qur'ān to remain exactly as

[82]Muqsith, "Merancang (Kaedah).

it is in its literal wording would lead the Qur'an into a trap that stifles the spirit and vital energy of the Qur'an. [83] Thus, the maqāshid asy-syarī'ah are not only derived through the dialectical process between Muslims and the Qur'anic text per se, but also as a result of dialogue with their inner conscience on one hand, and their interaction with the realities of life on the other.[84] The legal rulings derived from interaction with the text and with social reality will foster an awareness that the objectives of Islamic law are not merely derived from the literal text but also from a humanistic consciousness manifested in the creation of justice, equality, compassion, human rights, and pluralism—all of which reflect the maqāshid asy-syarī'ah.[85]

Based on these values, particular legal conclusions can be overruled by universal laws. In other words, maqāshid asy-syarī'ah is the source of the totality of Islamic law, which at the implementation level can be used as a paradigm for Islamic lawmaking. Therefore, if there is a provision of Islamic law, whether in the Qur'an or the Hadith, that substantively contradicts the maqāshid asy-syarī'ah, then that provision of law must be reformed in accordance with the logic of the maqāshid asy-syarī'ah.[86]

Conclusion

The maqāshid asy-syarī'ah approach can be used as an answer to contemporary Islamic legal issues, both in cases that are already stated in the text and in new cases that are not yet in the text. The search for answers to achieve the objectives of Islamic law on earth is inherently found in the principles of maqāshid asy-syarī'ah. Therefore, maqāshid asy-syarī'ah is a genuine and adaptive method of deriving Islamic law in line with the times. Islamic legal products should use the

[83]Muqsith, "Merancang (Kaedah).

[84]Ibid.

[85]Ibid.

[86]Ibid.

parameters of maqāshid asy-syarī'ah, as these principles include elements of protecting human life. Additionally, maqāshid asy-syarī'ah can also be regarded as a step toward reforming Islamic law, as it contains fundamental elements or values of human social life. The urgency of maqāshid asy-syarī'ah in the method of establishing law can be used as a paradigm for ijtihad in the current era, as maqāshid asy-syarī'ah not only contains the foundation for protecting and preserving human life but also serves as a universal guide for protecting humanity. The purpose of Islamic law is to establish justice, the principle of benefit, avoid harm, prevent corruption, and fulfill the principle of human equality. Thus, maqāshid asy-syarī'ah can serve as a model for the formulation of Islamic law based on justice, public interest, and humanity.

Conflicts of Interest

The authors declare no conflicts of interest with any party in writing this article

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