



## The Urgency of the *Maqāṣid Al-Syarī'ah* in Reasoning Islamic Law

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### **Abstract :**

This paper aims to present several theories about how important to understand *maqāṣid al-syarī'ah* when someone wants to study a law in Islam, someone cannot be separated from that context. *Maqāṣid al-syarī'ah* is a barometer or the main standard of consideration in the formulation of *shari'ah* with the aim of benefit the Ummah, and Islam consistently makes *maqāṣid al-syarī'ah* in all its rules. The thinking of Ibn 'Āsyūr about *maqāṣid* is built on this principle, that it's imperative to accept the concept of *ta'līl*. The theory of *maqāṣid* rests on three basic concepts; (a). *Maqāṣid* are sometimes *qath'ī* and *ḍannī* (assumptive). (b). *Maqāṣid 'āmmah* and *khaṣṣhah* (c). *Al-maqām*, *al-istiqrā'* and distinguish between *waṣilah* and purpose in the application of *fiqh* law. Every phenomenon that has great potential for *maslahah* it can be stated to be included in the *maqāṣid al-syarī'ah*. On the other hand the human need is not to know the *maqāṣid al-syarī'* itself, but to find a law for a new case that has no prescribed text. Ontology of *maqāṣid al-syarī'* at *al-khāssah* is also a value, because knowing the law for that case is complete with the text, now the needed for a new case, so the ontology of *maqāṣid al-syarī'ah* in this dimension is a transcendent value to refer when conducting *tahqīqal-manāt*.

### **Keywords :**

*maqāṣid al-syarī'ah*; reasoning; islamic law

### I. Introduction

In an effort to understand *maqāṣid al-syarī'ah* someone cannot be separated from both contexts. That's means, the determination of the *maqāṣid* contained in the text must go through socio-political and cultural considerations in which the text appears and is contemporary and takes into account the language context by involving *fiqh*, *balaghah* (literary), and linguistic knowledge. *Maqāṣid al-syarī'ah* is a barometer or the main standard of consideration in the formulation of *shari'ah* with the aim of the benefit of the Ummah, and Islam consistently makes *maqāṣid al-syarī'ah* in all its rules.

According to al-Ghazali *maqāṣid al-syarī'ah* aiming at realizing benefit and rejecting harm to humans in achieving their life goals, this is one of the *maqāṣid al-syarī'ah* which includes: preserving religion, preserving souls, preserving mind, preserving offspring and preserving wealth and preserving wealth. Al-Syātibī defines *maqāṣid al-syarī'ah* as a *shari'ah* goal in realizing benefit for humans both in the world and the hereafter. Al-Syātibī distributes *maqāṣid al-syarī'ah* in three categories namely, *naruriyyāt*, *hajjiyyāt* and *tahsiniiyyāt*. *Maqāṣid al-syarī'ah* is found from the results of understanding the substance of the legal recitation based on the Qur'an and the Hadith can also be understood from the methods of determining the law applied by the Messenger of Allah.

Alyasa 'Abubakar in his writing "*The Divine Method*" explains that; Al-Qur'an and Sunnah can be understood (interpreted) through the principles of *luḡawiyah*, the rules of *ta'līliyah* and the rules of *istislahiyyah*. There is no doubt that the Qur'an and hadith are the main sources in the study

of Islamic law and all those who carry out the study of Islamic law and daily practice are required to refer to it.

## II. Review of Literature

### 2.1 Definition of *Maqāṣid al-syarī'ah*

According to al-Ghazālī *maqāṣid al-syarī'ah* aiming at realizing benefit and denying harm to humans in achieving their life goals, this is one of the *maqāṣid al-syarī'ah* which includes: Preserving Religion, preserving souls, preserving mind, preserving offspring and preserving wealth and preserving wealth. . Al-Syāṭibī defines *maqāṣid al-syarī'ah* as a goal of the *Shari'ah* in realizing benefit for humans both in the world and the hereafter. Al-Syāṭibī distributes *maqāṣid al-syarī'ah* in three categories namely, *uriaruriyyat*, *hajjiyyat* and *taḥsiniyyat*. These three terms will be explained further specifically.

*Maqāṣid al-syarī'ah* is divided into three main categories.<sup>1</sup> Namely: (1). *Maqāṣid al-ḍaruriyyat*; *Maqāṣid* to preserve the five basic principles in human life which include preserving religion, soul, descent, reason and wealth, as the word of God in Sura al-Isrā verse 32: (2). *Maqāṣid al-hajjiyyat*, which is *maqāṣid* to eliminate difficulties or make the maintenance of the five basic *azazes* even better. (3). *Maqāṣid al-taḥsiniyyah*, *maqāṣid* which is intended so that humans do their best for the maintenance of the five basic *azaz*. Establishment of law based on the maintenance of human interests and benefit, then, is known as *maṣlahāb*, but the use of *mablahāb* as a stand-alone term was not yet popular in the days of Imām Mālik and Imām Syafī'ī, but the theory of *maṣlahāb* is often associated with Imām Mālik. The reason is of course because among the four founding figures of the school, Imām Mālik is most often used the term *maṣlahāb*.

The scholars of *uṣuliyyin* gave the definition of *maṣlahāb* by giving sharia law 'to a case that is not contained in the text or *ijma'ulama* on the basis of maintaining benefit. The use of the term *maṣlahāb* requires very binding conditions so as not to be separated from the values of *maqā' sidal-syarī'at*. *Maṣlahāb* requirements include: 1). *Maṣlahāb* is not allowed to conflict with the objectives of sharia, 2). Benefits There should be a rational discussion of research so that it can reach the conclusion that actually *Maṣlahāb* can provide benefits and reject *kemudharatan*, 3). Health is general and 4). Its implementation does not cause unnatural difficulties. If we look at the division of *maṣlahāb*, this indicator belongs to the type of *maṣlahāb mu'tabarab*. Imām al-Ghazālī in discussing *maṣlahāb* does not provide a detailed limit on the meaning of *maqāṣid al-syarī'ah* except to say only that;

ومقصود الشرع من الخلق خمسة، وهو أن يحفظ عليهم دينهم ونفسهم وعقلهم ونسلهم ومالهم. فكل ما يتضمن حفظ هذه الأصول الخمسة فهو مصلحة وكل ما يفوت هذه الأصول فهو مفسدة ودفعها مصلحة.

Meaning: What we mean by the purpose of the *syara'* of the creatures there are five, namely maintaining their religion, soul, intellect, descent, and property. Anything that contains an effort to preserve these five principles is called *maṣlahāb*, and every one that removes these five principles is called *mafsadāt* and rejects it is called *maṣlahāb*.

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<sup>1</sup> See. Al- Syāṭibī, *Al- Muwāfaqāt...*, jld II. p.30

## 2.2 Correlation of *Maqāṣid al-Syarī'ah* with *Maṣlahāh* according to *Al-Syāṭibī*

The correlation between *maṣlahāh* and *maqāṣid* in the view of Al-Shāṭibī, is as follows; According to al-Syāṭibī, the intended *maṣlahāh* is (*maṣalih mursalah, istiṣlahiyyah*) which is considered by ulema jumhur as *maṣlahāh* which is not mentioned in the Qur'an and sunnah directly, but does not mean it has no connection with the Qur'anic verses or the traditions of the Messenger of Allah. According to al-Shafi'i, this *maṣlahāh* still has a relationship with the Qur'an and the hadith of the Messenger of Allah, if it can be seated or given a place in the categories of *maqāṣid al-syarī'ah* which he systematically introduces. According to him all taklif (burdens, orders and prohibitions) sent down by Allah to humans, either to fulfill needs or to provide protection or to avoid hardship and prevent harm, can be grouped into *maqāṣid al-syarī'ah* (the aim of the Shari'a of a law). As mentioned earlier, the levels of the *al-syarī'ah maqāṣid* are *al-daruriyyat, al-hajjiyyat* and *tah.siniyyat*.<sup>2</sup>

*Maqāṣid al-syarī'ah* can be known by paying close attention to verses and traditions, both those that are specific (specific, specific texts) that are the argument for a problem and also which are general (general texts) containing principles, it will be known that there are benefits to be achieved and protected by the Qur'an in every command, prohibition or permission given by God. This is what is called a *maṣalih* that wants to be preserved, fulfilled and protected by the Qur'an, or more precisely what will be the *maqāṣid al-syarī'ah*, according to the concept presented by al-Syāṭibī.<sup>3</sup> In other words the Shariah law 'is determined based on the *maṣlahāh* contained therein, this benefit is also found in productive plants when zakat is taken.

This series of activities is named as reasoning for *mursalah* or *istiṣlahiyyah*, namely reasoning that relies on *maṣlahāh*. So the problem of *mursalah* is not just the subjective thought of the *mujtahids* without the guidance of the text. *Maṣlahāh mursalah* is a conclusion made based on the determination of the position of an action in the category of *maqāṣid al-syarī'ah*. According to al-Syāṭibī and the scholars agree to divide *maṣlahāh* into three types (*mu'tabarāh, mulghāh* and *mursalah*).

## III. Discussion

### The Process of Formulation of the Study of Islamic Law

#### 1. Understanding Islamic Law

Abd al-Wahab Khallaf shared Islamic law into five characteristics.<sup>4</sup> 1). Perfect, perfection in Islamic law can be seen from the Islamic *Sharia* which is revealed in its general form and global problems, where the stipulation of the Qur'an regarding Islamic law globally aims to give freedom to the scholars in performing jihad according to the demands of the situation and conditions. 2). Islamic law is universal covering all of nature without limits and is not limited by certain regions and regions. Elastic and dynamic, Islamic law that is elastic which covers all fields and fields of human life, humanitarian issues, physical and spiritual life, the relationship of interaction between creatures and creatures and the demands of life in the world and the hereafter. *Ta'abudi* and *ta'quli*, Islamic law can be divided into two forms namely; (1). The form of worship whose main function is to bring people closer to God. (2). The form of *mu'amalah* contains *ta'quli* nature, meaning that it can be understood by the human mind in doing work through the process of human reason and thought itself. The five Islamic laws are systematic. Abū Ishāk Al-Syāṭibī in his book *al-Muwāfaqāt Fi Uṣul al-Ahkām* mentions that the *shari'at* actually sets a strict limit for the believers in all their

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<sup>2</sup> Al-Syāṭibī, *Al-Muwāfaqāt...*, jld.III, p.30-48

<sup>3</sup> Al-Syāṭibī, *Al-Muwāfaqāt...*, jld III, p. 8.

<sup>4</sup> Abd Wahab Khallaf, *Khulasah Tārikh Tasyrī'al- Islamī*, (Mesir: Dār al-Kutūb al- 'Arabiyyah, 1987), p. 7

deeds, words and creeds. Muhammad Ali al-awahawī in his book *Kasyf al-Termi al-funūn* said the *shari'ah* that Allah had implied for his servants ranging from the laws that had been brought by a Prophet to the way they were carried out.

## 2. Stages of Islamic Law Formulation

Stages of the formulation of Islamic law in the historical trajectory of the development of Islamic law precisely diera friends and *tabi'in*. At the time of the Prophet there was no methodological problem in understanding the Qur'an because the Companions were directly under his guidance and if necessary they could ask directly about problems that were considered unclear to them.

From history we know that soldiers in the time of Messenger of Allah and Abu Bakar were not paid because they were part of the spoils of war. But, in the era of 'Umar, regular soldiers were provided and given permanent benefits. Because of this 'Umar did not give war booty to the soldiers but Sawad's land was used by 'Umar for public purposes such as allowances for underprivileged fighters and border maintenance costs, and others.

During the *tabi'in* and thereafter *ijtihad* activities increasingly developed with various tendencies respectively. Differences are increasingly developing and *ijtihad's* style is greatly influenced by regionalism. The Iraqis are considered more inclined to use ratios, while the people of Medina prefer the traditions or traditions of the community as well as the traditions that develop in society. In the period of *mujtahid* priests in the II H century to the middle of the IV H century, there was a rapid development of *ijtihad*, schools of law also progressed so that the methods of understanding the Qur'an and hadith began to be developed even to be recorded.

One of the most prominent figures in the field of legal development is Imām al-Shāfi'ī (W. 204 H.) marked by the compilation of the book *al-Risālah* until it becomes the first reference in the methodology of understanding the law and in the methodology of the Hadith. Even in the disciplines of the sciences *shari'ah al-Shafi'i* methodology is still relevant and maintained until now. *Al-Risālah* holy book is the first book written by *Usul Fiqh* systematically as a guide in *istinbath* Islamic law, also very relevant if used to develop new laws in accordance with the times.

### 3.3 *Usul al-Khamsah* as the Foundation for Establishing *al-Maqāṣid al-Syarī'ah* in Islam

#### a. *Maqāṣid al-Darūriah*

##### 1. Preservation of Religion

Etymologically, *al-din* (religion) means retaliation (*al-jaza'*), calculation (*al-hisāb*), and obedience (*al-tā'ab*). According to *Ibn 'Āsyūr*, this word changes to haqīqah 'urfīyyah for a collection of creeds and actions. taught by the Messenger of Allah who came from Allah. Therefore, what is meant by preserving religion is maintaining Islam, faith, and ihsan. Maintaining religion as a *maqāṣid* is realized by the *Shari'a* by setting means (*wasā'il*). Yūsuf Hamid al-Ālim divided it into two levels. First is the origin (*al-darūriah*), which is in the form of faith in Allah and the Day of Judgment. Second, a level below it (*al-hājah*), is a consummation for the purpose of preserving religion itself. Such as orders to establish prayers, pay alms, perform fasting, and pilgrimage. Some of them are also complementary (*al-tahsinīyyah*), such as the good for which the law is circumscribed.

##### 2. Maintenance of the soul

Preservation of the soul means guarding the soul from actions that can damage, eliminate and extinction, both individually and in groups. The purpose of preservation here does not merely refer to the existence of *qisas* laws but *qisas* also include *juz'iyah* from forms of soul care. While maintenance of the most important soul is the act of salvation, including treating the sick.

Ahmīdān, clarifying the purpose of caring for souls in terms of *wujūd*, the *Shari'a* by setting four conditions as *wasā'il* namely; marriage, making a living for children and parents, allowing forbidden eating and drinking in an emergency. While maintenance of the soul from the side of *'adām* is divided into two types of *wasā'il*.

### 3. Maintenance of Intellect

Al-Jarjani clarified that; the word *'aql* is taken from *'iqal al-bair* (donkey's bridle), meaning to keep its owner from bad things. While Yūsuf Hamid al-'Alimī, defines that reason is a potential in humans who in their own way are able to gain knowledge. That is the potential for intellect (*al-quwwah al-idrākīyyah*) which accompanies the potential of the senses, not by way of revelation. The Ahmīdān justifies that the *maqāsid al-darūriyyah* in the context of maintaining mind from the aspect of being is carried out with one *wasā'il*, namely the obligation to fulfill knowledge. Many verses and traditions that command studying, and talk about the advantages of knowledge.

As for the maintenance of reason from the side of *'adām*, it is done with two *wasā'il*. First, prohibiting drinks. that damages the mind, Second, the prohibition of food that damages the mind, the sanction is in the form of *ta'zīr* which is repatriated to *ijtihād* and government regulations. The above explanation inspires us that the laws that are *ta'aqquli* and which relate to the community require regulations from the government so that they become strong in value and have a binding nature in their enforcement, as is the urgency of government regulations regarding the obligation of alms on plants and seeds that have economic potential both in terms of collection and distribution to the community.

### 4. Maintenance of Heredity

The scholars differed in explaining the purpose of raising offspring. As al-Juwayni refers to it as a means of reproduction (*wa al-furūj ma'sūmat bi al-budūd*), al-Ghazālī mentions it with the word *al-nasl* berartil which means reproduction (*al-khalq*), also implies the offspring (*al-duriyyah*) while al-Raazi calls it the word *al-nasab*<sup>5</sup> which means a close relative (*al-qarabah*) from the father's line. Another case with Ibn 'Āsyūr who chose the sentence *al-nasl* as *al-ūarūriyyah*, because it is related to the reproductive system (*al-khalq*) which neglects to cause damage.

### 5. Maintenance of Assets

Ibn Manzūr in **Lisān al-'Arabī** states, that *al-māl* (property) is a variety of items that are usually owned. As for the terms, Ziyād Muhammad Ahmīdān, interpreting property is something that tends to be liked by human characters and can be stored for use at any time, whether it is movable or fixed objects. The preservation of wealth from the aspect of existence is carried out by *al-syari* in an effort to seek sustenance. As for the maintenance of property from the side of *'adam*, realized by *al-syārī* through two *wasā'il*. First, *al-syari* 'prohibits the destruction of property. Second, *al-syari* 'establishes sanctions for wrongdoing and destruction of property.

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<sup>5</sup> Ibn Manzu, *Lisan al-'Arabī*, jld.VIII, p. 540.

#### b. **Al-Ḥajjiyyāt**

After seeing how *al-maqāṣid al-ḍarūriyyah* concluded in *istiqrā'* from the Shari'a texts, the following will be examined about *al-ḥajjiyyah*. *maqāṣid al-ḥajjiyyah* is one level below *al-maqāṣid al-ūarūriyyah* and under certain conditions can rise to *ḍarūriyyah* level. This is the reason for the importance of *al-maqāṣid al-ḥajjiyyah* so that the ulama paid great attention to it. The scholars have formulated many rules in the context of *al-maqāṣid al-ḥajjiyyah*. al-Tirmidhi in his book *Sunān al-Tirmidhi*, titled, *Ḥudūdubā wa Qawā'iduba*, expresses twenty-one *qawā'id*, both *al-qawā'id al-uṣuliyyah*, *al-fiqhiyyah al-ḥajjiyyah* found in *nash*, covering the twenty-one *qawā'id*, both *al-qawā'id al-uṣuliyyah*, *al-fiqhiyyah al-ḥajjiyyah* found in the texts, covering the field of worship, such as lightening (*rukhsab*) may break the fast for people who are sick or traveler. Qasr Prayers for traveler. It is also true to eat pork during an emergency.

#### c. **Al-Taḥṣiniyyah**

The concept of *maqāṣid* in the field of *al-taḥṣiniyyah* aims for the perfection of the *mukallaf*, therefore *al-Syārī ib* maintains it by establishing various legal provisions. Maintenance of *al-Taḥṣiniyyah* in the *Shari'a* includes worship, customs, *muamalat*, and *jinayat*.

#### d. **Maqāṣid al-Syārī'ah Based on Fitrah**

The discussion above shows how that *al-kullīyyāt al-kebams* is formulated by generalizing from various *juḥ'ī* propositions that are *tasyrī* inductively. This theory of *maqāṣid* was developed before al-Shalī'ibī, as seen from al-Ghazālī's acceptance of the validity of the *kullī* rules. Then al-Shāṭibī did the development by looking at *maqāṣid* from four aspects: (1). From the aspect of the goal of *al-syārī* 'establishing the Shari'a'; (2). From the aspect of the aim of *al-syār* untuki to be understood by humans. (3). From the aspect of *al-syārī*'s goal to develop *taklīfī*. (4). Of the aspects of the goal of *Shārī*.

### IV. Conclusion

The development of the theory of *maqāṣid* underwent three phases. First as a beginning phase that began since the time of the Companions, *tabi'in*, *tabi'tabi'in*, and ended until the time of Imam al-Ḥaramāyn al-Juwaynī (w.478H / 1085M). This phase of *maqāṣid* is still discussed together with the topic of other studies not yet becoming an independent science, both in the study of *Fiqh*, and *Uṣul al-Fiqh*. The second phase then begins from the time of Imam al-Juwaynī, and ends at the time of Ibn Abd al-Salam (d. 660 H / 1262 AD). This phase of *maqāṣid* has become a separate discussion and is beginning to be distinguished from other discussions. Phase Three. Starting from the time of Ibn 'Abd al-Salam, to the present era. However, according to Yusuf Ahmad Muhammad al-Badawī, he stated that Imam al-Shafī'ī (d. 204 120 AD) as the composer of the *Uṣul al-fiqh* science, as well as the foundation of the theory of *maqāṣid*, this can be understood from the pattern of legal reasoning that it follows, Al-Shafī'ī is a part of the *mutakallimin ulama* whose reasoning uses the *ta'lil* method and divides the law into *ma'qul* and *ghayr ma'qul*. This separation is the basis of the theory of *maqāṣid*, so *al-Shafī'ī*'s efforts in these two things become the basis for the building of the theory of *maqāṣid* so that it can be stated as laying the foundations of the theory of *maqāṣid*.

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