The Significants and Arguments for the Renewal of *Maqāṣid al-Sharīʻah*

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Abstract
Massive industrialisation has caused a number of critical and complex issues in social, cultural and ecological sectors. The most obvious one nowadays has been environmental degradation which is also related to the problem of entrenched ignorance. This certainly requires Muslims to immediately come up with solutions to these problems within the framework of Islamic thought. Unfortunately, Muslims have been considered inept and slow. Indeed, the orientation of thought in the Islamic world has been thus far dominated by the power of textualism, namely legal-formal interpretation with the dominance of linguistic approach. This article aims to critically diagnose and evaluate the problem of domination of the Islamic legal interpretation, especially in context of the conceptualisation of *maqāṣid al-sharīʻah*. It is essential, since Muslim scholars initially have deemed *maqāṣid al-sharīʻah* as a suitable solution to overcome textualism, yet it is still restrained by the supremacy of textualism. Consequently, its function is limited to mere method of legislation. Studies on *maqāṣid* textualism in the context of environmental degradation are non-existent. In order to fill the gap of this study, this article argues that *maqāṣid al-sharīʻah* must be transformed. The main reason in supporting this argument is that *maqāṣid al-sharīʻah* is an intellectual and historical product which is open to reconstruction. In addition, as an axiological discourse, it continuously evolves. Thus, this shows that the profane nature of *maqāṣid al-sharīʻah* seems not immune to change.

Abstrak

Sejumlah persoalan genting dan kompleks di bidang sosial, budaya dan ekologi terjadi akibat aktivitas industrial yang massif. Hal yang tampak di permukaan adalah destruktivikasi alam yang juga menyisakan masalah ketidakpedulian yang membudaya. Hal ini tentu menuntut kaum Muslim untuk segera memikirkan penyelesaian masalahnya berdasarkan kerangka pemikiran Islam. Karena selama ini, mereka dianggap gagap dan lamban. Memang selama ini, orientasi pemikiran di dunia Islam masih didominasi oleh kuasa tekstualisme, yakni penafsiran legal-formal dengan dominasi pendekatan linguistik. *Maqāṣid al-sharī'ah* diarusutamakan oleh para sarjana Muslim sebagai salah satu upaya untuk mengatasi tesktualisme, masih terkungkung oleh jerat tekstualisme. Konsekuensinya, fungsinya terbatas sebagai metode legislasi. Kajian mengenai tekstualisme *maqāṣid* dalam konteks kerusakan lingkungan, sejauh penelusuran ilmiah yang dilakukan, belum disentuh oleh para sarjana. Dalam rangka mengisi kekosongan kajian ini, artikel ini berargumentasi bahwa *maqāṣid al-sharī'ah* harus diperbaharui. Berbagai alasan yang menopang argumentasi ini adalah *maqāṣid al-sharī'ah* merupakan produk intelektual dan historis yang terbuka untuk direkonstruksi. Di samping itu, sebagai sebuah diskursus aksiologis, hal tersebut berkembang. Dengan demikian, hal ini menunjukkan adanya sifat profan *maqāṣid al-sharī'ah* yang tidak kebal perubahan.

Keywords: *Maqāṣid al-sharī'ah*; *maqāṣidi* approach; the renewal of *maqāṣid*; legal-formal interpretation; textualism; Islamic thought; environmental degradation.

Introduction

Industrial civilization[1] has a considerable detrimental effect at least in three sectors: ecological, economic and socio-cultural.[2] The industry (in large numbers and scale) is mostly interested in continuing to produce and enhance products, which consequently triggers more exploitation. The result is greater destruction.[3] Ecological damage means socio-cultural damage, especially in a developing country like Indonesia where people`s survival are highly dependent upon the capacity of the environment to uphold life and the associated culture, such as spiritual systems, rituals, food security to medical treatment.[4] The loss of sovereignty accompanied by the establishment of industrial world which is alien to third world society generates the birth of the poorest marginalized.[5] Poverty in turn produces ignorance and crime.[6]

Industrialization is often political since it involves the political-economy engineering of both the industry and the state.[7] Therefore, Muslims are required not to be naive in seeing industrial disasters as mere "God's will" then surrender. Industrial disasters are human crimes that must be opposed. In an ideal world, the interests of the society are prioritized over those of individuals therefore Muslims are expected to spark a

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[1] Industrial civilization is characterized by the ever more intensifying role of economics in human life and the increasing capacity of humans to exploit the environment, as a consequence of making the industry as a center in human life. See Robert Holton, "Industrial Civilisation," *UNESCO – Encyclopedia of Life Support System*, accessed January 27, 2020. https://www.eolss.net/Sample-Chapters/C04/E6-97-10.pdf

[2] Wondimagegn Tesfaye and Lemma Seifu, "Climate Change Perception and Choice of Adaptation Strategies: Empirical Evidence from Smallholder Farmer in East Ethiophia," *International Journal of Climate Change Strategies and Management* 8, Issue 2 (2016), 253-254.

[3] A. Calla, M. Foehr, et. Al., "Towards Industrial Exploitation of Innovative and Harmonized Production Systems," Paper published in *IECON 2016 - 42nd Annual Conference of the IEEE Industrial Electronics Society*.

[4] Kyle White, "Indigenous Food Systems, Environmental Justice, and Settler-Industrial States," in *Global Food, Global Justice: Essays on Eating under Globalization*, ed. M. Rawlinson and C. Ward (New Castle upon Tyne, UK: Cambridge Scholars Publishing, 2016) 143-156.

[5] Christine Hussman, "Marginality as a Root Cause of Poverty: Identifying Marginality Hotspots in Ethiopia," *Journal of World Development* 78 (2016), 420–435.

[6] Q. Wheeler-Bell, "Broken Glass: The Social Evil of Urban Poverty and a Critical Education," *Journal of Educational Policy* 33 no: 7 (2018): 1076-1102.

[7] Mary Anne Madeira, "New Trade, New Politics: Intra-Industry Trade and Domestic Political Coalitions," *Review of International Political Economy* 23 no. 4 (2016): 677-711.

resistance.[8] But in practice, even the Islamic religious elites are ignorant of industrial disasters. The Fatwa of Bandung Wetan MUI dated January 16, 2010 consisted of a call to restore the function of the mosque as a place of worship and to sterilize the mosque of Tamansari from residents who were evicted by the authorities.[9] It shows the superficial interpretation of the religious elites over the good and evil. The reason is that the power of textualism is still dominant in the world of Islamic studies.

These trends illustrate the previous point. First, the reading of the sacred text relies heavily on the linguistic approach with the final product in the form of formal (legalistic) law. This approach is commonly found among various Muslim scholars from the extreme literalist (*Salafi*)[10] to the moderate literalist (*Salafiyyah Syafi'iyyah*).[11] Second, any proposed reading with a contextual approach will be immediately bound by a legal-formal style of language approach. This is clearly shown by the debate around *istiṣlāfi* between the two opinions, namely acceptance of *istiṣlāfi* with the condition that the benefit is mentioned specifically in the sacred text or vice versa, with the widest support of course falling in the first.[12] The same fate falls upon the discourse of *istifisān*, which theoretically is a progressive power as an ethical foundation to deal with contemporary problems, but textualism downplays its role in debating the theory of legislation (*uṣūl al-fiqh*) —even with reluctance to accept it as a legitimate method.[13]

The long-term consequences of textualism's dominance are not just a reduction in the meaning of *ijtihad* into mere legislative activities and the role of *mujtahid* into mere *faqih*; the dominance of textualism will simplify industrial problems into sheer textual

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[8] Nakissa, A., "The Fiqh of Revolution and the Arab Spring: Secondary Segmentation as a Trend in Islamic Legal Doctrine," *Journal of The Muslim World* 105 no. 3 (2015): 415*.

[9] Muhammad Bernie, "MUI Bandung Buat Fatwa Sterilkan Masjid dari Pengungsi Tamansari," *Tirto.id Report*. Accessed Januari 28, 2020. https://tirto.id/mui-bandung-buat-fatwa-sterilkan-masjid-dari-pengungsi-tamansari-etEe

[10] Kiki Adnan Muzakki, "Salafi's Textualism in Understanding Quran and Hadith," *Journal of Qur'an and Hadith Studies* 8 no. 1 (2019): 18-33.

[11] David R. Vishanoff, "A Reader's Guide to al-Shāfi'ī's *Epistle on Legal Theory* (*al-Risāla*)," *Journal of Islam and Christian–Muslim Relations* 28 no. 3 (2017): 245-269.

[12] Muhammad Abu Zahrah, *Ushul Fiqih*, trans. Saefullah Ma'shum (Jakarta: Pustaka Firdaus, 2014), 455-460.

[13] Zahrah, *Ushul,* 437.

problems which can be solved only by a series of *fatwa* stemming from linguistic inquiry into the scriptures (text, *al-nusūs*), not from a deep understanding of reality (context, *al-wāqi'*). It is rather rash to state that a group of intellectuals who are trained only to deal with partial-text problems are capable to speak (read: judge) the complexity of reality which requires a holistic view and interdisciplinary scientific analysis to comprehend. As the final result is arrogance.[14]

This simplification illustrates a quite disheartening fact, which is the lack of confidence among Muslims to face complex reality as they are no longer experts in critical thinking thus they are incompetent at dealing with problems outside the text.[15] This leads to a new type of crisis. First, the sharp dichotomy between *'ulamā al-nuṣūs* and *'ulamā al-wāqi'*, when both should be equally moderated.[16] Second, the tendency of Muslims to disregard contemporary problems because they do not seem to be problematic according to text. The prophetic-transformative mission of Islam is shut (*mafijūb*) and raises a stagnant impression among the people, because the various forms of new *da'wah* (social advocacy, demonstrations, mass mobilization) towards new groups of *mustaḍ'afīn* (workers, farmers, indigenous peoples) who experience new kinds of oppression (exploitation of energy sources, depoliticization, etc.) is no longer considered Islamic.

A number of contemporary Muslim scholars suggest to establish *maqāṣid al-sharī'ah* as an alternative study that is free from textualism domination, able to break the stagnation of Islamic thought and used as an applied ethic for a number of global problems.[17] *Maqāṣid al-sharī'ah* literally comes from the Arabic word *qaṣada*, which means 'purpose' or 'intention', while the Arabic word *maqāṣid* is a noun (*maṣdar*) from the word *al-qaṣd*. The term *maqāṣid* is thus synonymous with intention, great purpose, end of things and goals. Based on its definition, *maqāṣid al-sharī'ah* is understood as "the *shar'i* goal which is intended by a law," or "the great goal that

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[14] Louay Safi, *The Foundation of Knowledge*: *A Comparative Study in Islamic and Western Methods of Inquiry* (Malaysia: International Islamic University Malaysia Press, 1996), 12-13.

[15] Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (New York: Oxford University Press, 2009), 31.

[16] Tariq, *Radical,* 37, 114

[17] M. Fadzhil Mustafa, A.T. Hidayah Abdullah et. al., "Conceptual Framework of Maqasid Value in Integrity Issues," *International Journal of Academic Research in Business and Social Sciences* 9, no. 11 (2019). 733-739.

must be taken into consideration by jurists in making legal decisions."[18] However, *maqāṣid al-sharī'ah* works with specific methodology in a broader spectrum than *uṣūl fiqh* and is not bound by linguistic approaches; for example, in reconciling the contradictions of two propositions, *maqāṣid al-sharī'ah* offers a contextual approach.[19] *Maqāṣid al-sharī'ah* uses the method of inducing meaning and giving birth to universal values that are believed to be divine (sacred) and used as a higher reference; then contrary to *fiqh*, *maqāṣid al-sharī'ah* enables ethics.[20] Because of this fundamental difference, Ibn Asyur strongly suggests a total separation between *maqāṣid al-sharī'ah* and the field of *uṣūl al-fiqh*.[21]

Nevertheless, efforts to mainstream *maqāṣid al-sharī'ah* face challenges. The power of textualism still devalues the existence of *maqāṣid al-sharī'ah* and even reduces its significance to the discourse of *ḍarūriyyāt al-khamsah* (five emergency needs).[22] Jasser Auda, one of the contemporary Muslim scholars, summarizes the development of *maqāṣid al-sharī'ah* from the era of the Prophet until the 21st century and seek to regenerate understanding of *maqāṣid al-sharī'ah* and avoid being constrained within textualism.[23] However, the idea of reform is not immediately accepted; even since the

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[18] Yusuf Al-Qaradhawi, *Fiqih Maqashid Syariah: Moderasi Islam Antara Aliran Tekstual dan Aliran Liberal*, trans. Arif Munandar Riswanto (Jakarta: Pustaka al-Kautsar, 2017), 19.

[19] Wan Naim Wan Mansor and Ahmad Badri Abdullah, "The Tyranny of the Majority and its Remedies: An Islamic Overview." *Journal of Islamic Civilisational Renewal* 8, no. 1 (2017), 95.

[20] Ahmad Badri Abdullah, "An Analysis of Islamic Jurisprudence (Fiqh) as Applied Islamic Ethics," *Journal of Islamic Civilisational Renewal* 5 no. 2 (2014), 191.

[21] Ibnu Asyur, *The Treatise of Maqāsid,* Eng trans. by Mohamed El-Tahir El-Mesawi (London: The International Institute of Islamic Thought, 2006), 22.

[22] The researcher finds that a variety of Islamic law and *usul fiqh* books in Indonesia does not even include *maqāṣid al-syarī'ah* at all, at least before the breakthrough popularity of Jasser Auda who is considered to be a prominent *maqāṣid al-syarī'ah* scholar. For instance, books titled: (a) *Studi Tentang Ushul Fiqih* (Iyad Hilal, Pustaka Thariqul Izzah*,* 2005), (b) *Filsafat Hukum Islam* (Prof. Dr. H. Ismail Muhammad Syah, Bumi Aksara, 1999), (c) *Metodologi Ijtihad Hukum Islam* (Jaih Mubarok, UII Press, 2002).

[23] Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syari'ah*, trans. Rosidin dan Ali Abd. El-Mun'im (Bandung: Mizan, 2015), 56.

earliest days of *maqāṣid al-sharī'ah* conception, al-'Amidi states that the *ḍarūriyyāt* theory of al-Gazali are not to be changed in any way.[24]

The superior power of textualism over *maqāṣid al-sharī'ah* is evident in the rejection of academic proposals to make *maqāṣid al-sharī'ah* as the basis of Islamic law equivalent to sacred texts, a source of consideration in *ijtihād*. Al-Syatibi suggests a change in *maqāṣid al-sharī'ah* : (1) from "certain benefits" to "principles of law"; (2) from the "wisdom behind the law" to "the foundations (the proposition) of law"; (3) from "being *zhanni* as legal proposition" to "being *qat'i* (absolute) as legal proposition." Al-Syatibi supposes that ulama's efforts in legal *ijtihad* actually always refers to *maqāṣid al-sharī'ah* , and the development of the theory of *maqāṣid al-sharī'ah* is merely an attempt to establish it as a specific standard for every *ijtihad*. Muslims should not only refer to the text in making law but also the purpose.[25] Such proposal is unsurprisingly rejected. Ulamas have quite fiercely debated in allowing non-text as the sources of law let alone this. It is important to also note the power of textualism in refusing any alternative source which can be perceived as a political rejection within the context of the politics of knowledge.

In the context of maintaining the urgency to renew *maqāṣid al-sharī'ah* , this article intends to assert the prescriptive argument that *maqāṣid al-sharī'ah* is not immune to changes. The author proposes three primary reasons for said argument. First, *maqāṣid al-sharī'ah* must be understood as a historical product that has evolved over time. Second, *maqāṣid al-sharī'ah* must be understood as an intellectual product that is open to criticism and change. Third, *maqāṣid al-sharī'ah* must be understood as a discourse in which the scope of interest is expandable.

Maqāṣid al-sharī'ah as a Historical Product

"So direct your face toward the religion, inclining to truth [fianīfa]. [Adhere to] the fiṭra of Allah upon which He has created [all] people. No change should there be in the creation of Allah. That is the correct religion [dīn], but most of the people do not know." (QS. 30:30).

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[24] Ahmad Al-Raysuni, *Imam al-Shatibi's Higher Objectives and Intents of Islamic Law* (London: The International Institute of Islamic Thought, 2005), 22.

[25] Jasser, *Membumikan,* 54-55.

Ibn Asyur begins his study of *maqāṣid al-sharī'ah* by quoting a few key words in the above verse. They are: *fiṭra* (natural inclination that God instills in humans), *fianīfa* (tendency to face things that are faithful and turn away from falsehood), and *dīn* (true religion or belief). He believes that *fiṭra* and *dīn* refer to the essential teachings of Islam that become the foundation of every theological doctrine, ritual, law, and individual as well as social morality. Muslims must hold onto this principle as a form of *fianīf* behavior. Ibn Asyur considers the verse as the basis of argument for the existence of *maqāṣid*, as well as the foundation of criticism against textualism.[26] The existence of the verse confirms the apparent nature of religious people to be free from formalism (changing forms of practice), and to obey essentialism (values that are fixed or unchanging).

It is very important to note the way Ibn Asyur, as a *mujtahid*, deals with sacred texts and draws conclusions from them. There is a clear line when a *mujtahid* expresses his opinion: even though certain conclusions are drawn from sacred texts, in fact, *mujtahid* only expreses a personal opinion. Although the truth of the sacred text is similar to the conclusion of a *mujtahid*, the theoretical positions of the two remain unequal. The truth of the holy text is sacred and in essence unparalleled, while the conclusion of a *mujtahid* is profane because it is still a conclusion. In addition, *maqāṣid al-sharī'ah* is a product of history; it is formulated in social, cultural, political and linguistic spaces and referred to the legacies of that particular historical space. History constantly experiences development and change and so does the product of history. The realization that *maqāṣid al-sharī'ah* is a historical product means to acknowledge that *maqāṣid al-sharī'ah* is profane and not immune to change. *Maqāṣid al-sharī'ah* is indeed believed to be divine values, dubbed as "the great goals that God wishes humans to realize," but these divine value system is not stated directly by God, but inferred by humans through *ijtihad* in the span of changing history.

It is necessary to re-examine the history of *maqāṣid al-sharī'ah* theorization in the 5th century Hijriyah to measure its historicity. Al-Gazali develops *maqāṣid al-sharī'ah* as a theory of need levels. Al-Gazali classifies basic human needs into three levels, namely "needs that must be attained" (essential, *ḍarūriyyāt*), "needs which fulfillment are highly recommended" (*fiājiyyāt*), and "needs which either fulfillment or unfulfillment do not matter" (luxuries, *tafisīniyyāt*). *Ḍarūriyyāt* is a need concerning

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[26] Asyur, *Treatise,* 78-80.

basic human rights that must exist to ensure the survival of one or all humans on earth; *ḍarūriyyāt* must be fulfilled for the benefit of humans in this world and the hereafter. *Ḍarūriyyāt* is formulated based on needs which unfulfillment could result in human extinction or threaten their security. The absence of *ḍarūriyyāt* will result in disaster, chaos and misery.[27] Al-Gazali offers five needs which are included in *ḍarūriyyāt,* namely the preservation of religion (*al-fiifz al-din*), the protection of the soul (*al-fiifz al-nafs*), the protection of common sense (*al-fiifz al-'aql*), the maintenance of property (*al-fiifz al-māl*) and the care for offspring (*al-fiifz al-nasl*).[28]

Ibn Taymiyyah develops a theory as the key to understand the five needs of *ḍarūriyyāt*. Islamic Sharia is seen as an instrument of revelation (*munazzalāt*) aimed to ensure the fulfillment of physical needs (*al-fiājah al-'udūwiyyah*, such as clothing, food, shelter) and three basic human instincts (*garīẓah*), namely the instinct for God and living in divine order (*garīẓah al-tadayyun*), the instinct of a stable life in order to survive extinction (*garīẓah al-baqā'*), and the instinct to continue living by creating offspring (*garīẓah al-nau'*). All three are naturally inherent in humanity (*mukhallaqāt*).[29]

Therefore, *maqāṣid al-sharī'ah* is the way *sharī'a* greatly concerns over those natural matters and places them within certain priorities which must be fulfilled or protected. Therefore *fiifz al-din*, or preserving one`s nature for religion, becomes a reference for all Islamic teachings in the field of '*aqīdah* (belief) and worship; *fiifz al-nafs*, the protection of human soul, becomes a reference for the provisions in Islamic law regarding murder; *fiifz al-'aql*, which is the protection of common sense, becomes a reference for the prohibition on alcoholism; *fiifz al-nasl* or the protection of the sanctity of lineage which proposition is a reference to the law of rape; finally, *fiifz al-māl*, the protection of property ownership, becomes a reference in the law of theft.[30]

The next level of need is *fiājjiyāt*; it is called a secondary need because it does not require fulfillment or general existence. It just helps humans to easily fulfill the needs

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[27] Abdul Aziz Dahlan, ed., *Ensiklopedia Hukum Islam* (Jakarta: Ichtiar Baru Van Hoeve, 1996), 1109.

[28] Jasser, *Membumikan,* 51.

[29] Edi Suwanto, "Hukum Pernikahan Melalui Media Elektronik: Studi FIkih Kontemporer Melalui Pendekatan Istislah," (Dissertation, UIN Ar-Raniry, 2017), 1.

[30] Raysuni, *Imam,* 19-21.

of *ḍarūriyyāt*, or to get rid of the problems that hinder their fulfillment. In other words, *fiājjiyāt* is a support for *ḍarūriyyāt*. For instance: agricultural or transportation facilities, and various types of other public needs. The non-fulfillment of *fiājjiyāt* has no impact on the continuity of human life.[31] If education is considered as a primary need, then educational infrastructure (such as school buildings, educational scholarships etc) becomes secondary needs; not essential but needed.

The last level of need is *tafisīniyyāt*. This is placed at the bottom of the list and called tertiary necessity because its existence is merely complement in human life. It is also only used in the context of social propriety, but its existence is not actually required, except when the primary and the secondary needs are well satisfied.[32] For example: the use of perfume, or owning luxury residences. The application of *tafisīniyyāt* which requires the fulfillment of *ḍarūriyyāt* and *fiājjiyāt* indicates an ethical limit, or the existence of the principle of "non-excessive," so that it should not be made a priority.

Al-Gazali popularizes the theory of *ḍarūriyyāt*, *fiājjiyāt* and *tafisīniyyāt* which is well known as the foundation of *maqāṣid al-sharī'ah* . However, it is important to acknowledge that the role of al-Gazali is limited to expand what is initially formulated by his teacher, namely al-Juwaini. Al-Juwaini develops a "theory of needs"[33] which classifies human needs into five: (a) *ḍarūriyyāt* or "urgent needs," such as fair laws in criminal cases; (b) *al-fiājjah al-'āmmah* or "public interests," such as transportation and public security systems; (c) *al-makrūmāt* or "the conception of morality which is not primary or secondary but is useful to counter immorality"; (d) *al-mandūbāt* or "policies that are not specifically mentioned in the text but are highly recommended"; and (e) finally, "things which are not included in the four previous classifications," which al-Juwaini himself finds difficult to define.[34]

Al-Juwayni also does not develop his theory independently; his theory is constructed by examining various *fiqh* decisions,[35] which means that al-Juwaini and al-Gazali actually fabricate in their capacity as *mujtahids* who examine the products of thought

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[31] Abdul Aziz, *Ensiklopedia,* 1110.

[32] Abdul Aziz, *Ensiklopedia,* 1110.

[33] Al-Qaradhawi, *Fiqih,* 22.

[34] Raysuni, *Imam,* 13 – 15.

[35] Jasser, *Membumikan,* 17.

in history. The term *maqāṣid* itself is not previously developed specifically as a theory of Islamic legislation; in the beginning, *maqāṣid* is used only in a number of works to show the beauty of Islamic law. A number of scholars who are known to use the term *maqāṣid* are al-Tirmizi al-Hakim with his work titled "Prayer and its Maqāṣid", Qaffal al-Shashi with the title "the Beauty of Shari'a Law" (well-known as the oldest *maqāṣid* manuscript), or Abu Zaid al-Balkhi with his work on the purposes behind Islamic law in the field of *mu'āmalah*.[36] This indicates the fact that *maqāṣid al-sharī'ah* is evolving as history continues to change.

Maqāṣid al-sharī'ah as Intellectual Product

The authentic gem of Islam is *haḍārah al-naṣ* (the civilization of the text, *bayānī*). *Maqāṣid al-sharī'ah* , especially in its more 'independent' form in the contemporary era, only receive the attention of a handful of scholars. Oddly, *maqāṣid al-sharī'ah* is more popularly discussed in Islamic economic studies because the concession of *maqāṣid al-sharī'ah* gives flexibility to Islamic economists to expand the possibility of capital uses.[37] Ratio-centered discourse does not really attract a special attention. It is true that Islamic rationalism has once reached its peak, but after *Mifinah* era is over and along with the death of *Mu'tazilah* intellectual regime, Islamic law schools strengthen and control Islamic cities in the classical century and establish textualism as a legitimate epistemology.[38] As a result, when the modern era comes and demands revolutionary steps among Muslims, Muslim intellectuals promote progressive ideas of Islam by "borrowing" western analytical tools which results in resistance. However, Jasser Auda suggests a slightly different opinion from them. He believes that *maqāṣid al-sharī'ah* is free from Western philosophical thoughts. *Maqāṣid al-sharī'ah* is 'purely' born from the womb of Islamic civilization, and visible in various occasions during the Prophet lifetime, and is shown by the Prophet in a number of fiadīth narratives. As an intellectual construction, he considers *maqāṣid al-sharī'ah* as quite

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[36] Jasser, *Membumikan,* 46-47

[37] Seif Ibrahim Tag el-Din, *Maqasid Foundations of Market and Economics: Edinburgh Guides to Islamic Finance* (Edinburgh: Edinburgh University Press, 2013), 36-44.

[38] George A. Makdisi, *Cita Humanisme Islam,* trans. A. Syamsu Rizal dan Nur Hidayah (Jakarta: Serambi Ilmu Semesta, 2005), 30-40.

established and authentic, not only valid as a legal methodology in the study of Islamic law, but also as a philosophical structure.[39] Jasser states:

> "Secular ideas emerge after Islam. Long before its emergence, it is historically proved that Muhammad has called for the struggle for justice. The real questions are; who is the figure who called for justice before Muhammad? Who has called for human equality before him? So when we talk about justice, freedom, facilitation, and human rights: all those are Islamic values."[40]

I believe that Jasser Auda means to illustrate two things from his statement above. First, the rejection of Muslims against certain values (freedom, justice, human rights) because of the dichotomous conflict between Islam and the West is actually a form of ahistorical attitudes and the acute result of textualism. It is primarily ahistorical since the attitude of resistance is often formed due to an incomplete study of early Islamic history; it is also textualistic because the study from the beginning is problematic for its absence of holism then it is interpreted without regard to the substance of the text. Second, and this is what I think is most important, Jasser Auda is asserting *maqāṣid al-sharī'ah* as a rational discourse in which Islamic law is not simply about obedience to the text without rational arguments behind it.

Hence, *maqāṣid al-sharī'ah* is an intellectual product. Even though *maqāṣid al-sharī'ah* is taken from sacred texts, the whole process of exploration (*takhrīj*), curation (*tanqīh*) and validation (*tafiqīq*) of *maqāṣid al-sharī'ah* is an intellectual process of a *mujtahid*. Cognitive processes (*idrāk*) are still applied even to schools of law claimed to be the most literalistic in establishing Islamic law.[41] The Zahiri School, in this case, is an interesting example. This school is classified as extreme literalist because there is such a close proximity between the text and the legal product; the legal product is exactly the same as the text.[42] However, the Zahiri School approach can also be called

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[39] Jasser, *Membumikan,* 60.

[40] Jasser Auda, "What is Maqashid." *Jasser Auda*. Accessed Januari 30, 2020. https://www.youtube.com/watch?v=ho5AiCBRoX8

[41] Jasser, *Membumikan,* 12.

[42] Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 179.

an epistemology. The product of *ijtihad* is always profane, because the truth and the understanding of the holy text are not in the same level. Consequently, Imam Malik refused the adoption of *al-Muwatta'* to be the sole reference in *mu'āmalah* affairs by the authority at that time, because groups of Islamic scholars were already diverse and the results of his *ijtihad* did not have any sacred legitimacy to subdue the results of other *ijtihad*.[43] Thus, *maqāṣid al-sharī'ah* as a product of *ijtihad* is also not resistant to change. *Maqāṣid al-sharī'ah* is called sacred insofar as there is a strong argument for its divine purpose.

Here are more noteworthy evidences for *maqāṣid al-sharī'ah* as an intellectual product. First, the existence of the most popular '*mutawātir*' fiadīth in the early history of *maqāṣid al-sharī'ah*, particularly the hadith about "the *'aṣr* prayer of the Prophet`s companions in the town of Banu Quraizah." After the betrayal of the Jews of Bani Quraizah, the Prophet (PBUH) sent some of his companions to besiege their town. Before departure, the Prophet ordered the envoys to establish *'aṣr* prayer in the village of Banu Quraizah. When the *'aṣr* prayer time limit was almost ended, the messengers had not yet reached their destination. Soon they broke into argument and they split in two sides. One group believed in the Prophet's instructions as specific and *zahir* instructions so they must pray *'aṣr* in Bani Quraizah town, even if the *'aṣar* time had passed. Other groups understood the Prophet's orders as instructions with a specific purpose, that is to say that the messengers rush to their destination. Both groups had strong opinions. The first group used a textual approach (the sound of the proposition), while the second group chose *maqāṣid* approach (the purpose of the proposition). The Prophet then confirmed both opinions.[44] The debate is an important point behind the history above in which two groups of Prophet`s companions, irrespective of their differing approaches, come up with the most plausible argument to justify one opinion over another. A reasonable exchange of opinions is endorsed by the Prophet.

The second episode which further becomes a remarkable trace within the history of the development of *maqāṣid al-sharī'ah* theory, is the case of the distribution of the spoils of war after the conquest of Egypt and Iraq during the caliphate of 'Umar bin

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[43] Khaled Abou el-Fadl, *Speaking in God's Name* (London: Oneworld Publication, 2001), 36.

[44] Hadith reported by Ibnu 'Umar, in *Al-Sahih al-Bukhari*, vol. 1, ed. Mustafa al-Buga (Beirut: Dar Ibn Kasir, 1986), 321.

Khattab (the second caliph of Islam). After the conquest, the warriors who participated in the war asked Khalifah `Umar for spoils of war in the form of lands in the conquered cities. The request is based upon *al-Anfal*: 41, which states that one fifth of the spoils of war belong to the Messenger of Allah and his family, and the rest is the right of the soldiers who fought. The proposition is extremely precise and specific, but 'Umar refused to grant the request of the soldiers by confronting the argument to another more general and universal proposition, namely *al-Ḥaṣr*: 7, where God states that the spoils of war need to be distributed to a number of groups in need "So that the treasure does not circulate only among a handful of rich people," —a statement to avoid welfare disparities. 'Umar`s opinion, especially his proposition, contained a higher value of justice. 'Umar proposed such argument after considering the long-term benefit: the newly independent Egyptian people from the oppression of Roman Christians would suffer even more if they had to lose their land. 'Umar worried that Muslims would be alleged as greedy people who did not advocate justice because the law was upheld by benefiting only a few people. In addition, 'Umar wanted to prevent the soldiers from being corrupted because they were lured by *jihad* with worldly motives.[45]

Even though the debate which took days to end was won by 'Umar, most importantly, it is necessary to pay more attention again and again to the debate itself. 'Umar's argument shows that the sacred text cannot be applied without considering three things: (1) the specific and global context of the time, namely the long struggle of Islamic *da'wah*, where the Islamic image is very much determined from its political policies, along with efforts to maintain the morality of Muslim soldiers so as not to be tempted by the victory coated with worldly motives; (2) the values of benefit, namely the fate of the Egyptian people who have long been oppressed and are entitled to sovereignty; and (3) the comparison between *'ām* and *khāṣ* proposition, where' `Umar chose to win the use of *'am* proposition before the use of a more explicit proposition. In the *'ām* argument, there are moral principles which are assumed to be the basis of values for specific contextual religious practices. This is why the *khāṣ* proposition can be set aside if it does not fulfill the moral principles desired by *'ām* in its application. Unsurprisingly, Ibn al-Qayyim firmly states that if the rulings of Islamic

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[45] Jasser, *Membumikan*, 43.

law, *fatwa*, or even rules that are claimed to be *sharī'a*, are contradictive to Islamic values, they must be considered null and void as *sharī'a*. He said;

> "Shari'ah is based on wisdom and achieving people's welfare in this life and the afterlife. Shari'ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Shari'ah, even if it is claimed to be so according to some interpretation."[46]

Shari'a is disregarded as law if it violates or does not fulfill one or all of the four values, namely wisdom, justice, compassion and kindness; Ibn al-Qayyim, in his opinion, has made a very bold move. His opinion shows the existence of a hierarchy for the general-principle proposition and the specific-practical proposition, where the latter must obey the former. Similar opinions emerge in al-Syatibi's theory regarding general rules governing the relationship between *ḍarūriyyāt*, *fiājjiyāt* and *tafisīniyyāt*: (a) *ḍarūriyyāt* is a basic reference for the development of *fiājjiyāt* and *tafisīniyāt*; (b) any harm to *ḍarūriyyāt* is reflected in the destruction of *fiājjiyā*t and *tafisīniyyāt*; (c) lack of attention to *fiājjiyāt* and *tafisīniyyāt* will have no effect on *ḍarūriyyāt*; (d) loss of attention to *fiājjiyāt* and *tafisīniyyāt* has the effect of partially harming *ḍarūriyyāt*; (e) the development of *fiājjiyāt* and *tafisīniyyāt* should only be done to fulfill *ḍarūriyyāt*.[47]

Based on the opinions of al-Syatibi and Ibn al-Qayyim, it is extremely important to emphasize the existence of a hierarchy: that the lower must weigh and obey the upper. The values which are orchestrated in a hierarchy and then given rules are a form of cognitive-fabricative work, which indicates that *maqāṣid al-sharī'ah* theory is not something sacred; at most, *maqāṣid al-sharī'ah* adheres to "open-sacredness," that is, sacredness which allows Muslim thinkers to debate and correct one another.

Maqasid as an Expandable Study

Jasser Auda develops *maqāṣid al-sharī'ah* as an ethical instrument instead of the law. *Maqāṣid al-sharī'ah* is too significant to simply deal with, for example, *fatwa* and

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[46] Jasser Auda, *Realizing Maqasid in the Shari'ah* in *The Objectives of Islamic Law: The Promises and Challenges of the Maqasid al-Shari'a*, ed. Idris Nassery (London: Lexington Books, 2018), 35.

[47] Raysuni, *Imam,* 112.

legal-formal rulings. For example, *al-fiifz al-'aql* (protection of common sense) is manifested as an ethical impulse to pursue scientific traditions, avoid intellectual crises, and offer *fath al-dharā'i* (paving the way; an inverse principle of *uṣul fiqh*, namely *sad al-dharā'i*) as a consequence of *maqāṣid al-sharī'ah* being open to various possible new applications.[48] In his proposal to make *maqāṣid* the basis of modern *ijtihad*, Jasser Auda contributes an important criticism against textualism by stating that *ijtihad* process is inseparable from the subjective conditions of *mujtahid*, in which due to his limited knowledge of an issue, or because of his sentiments againts certain groups, influences the legal ruling therefore it often appears far-fetched. Relying on *naskh mansūkh* arguments, Jasser Auda finds more than 200 verses on compassion, dialogue, peace, patience, forgiveness that are 'obliterated' to win verses about war,[49] which omission is suspected as a political expression instead of legal *ijtihad*. Another example is the use of *sadd al-dharā'i* which is very misogynistic when applied in rules that forbid women from driving a car, because doing so "potentially" makes women violate Islamic law when in contact with men, even to the extent of inviting male crime.[50]

Jasser Auda's suggestion is a model on how the scope of attention of *maqāṣid al-sharī'ah* expands, from being limited to legal-formal issues to global ethical issues. This expansion of coverage is irrefutable because it is a logical consequence of the historical and cognitive character of *maqāṣid al-sharī'ah*. Thus, *maqāṣid al-sharī'ah* is inevitable from renewal efforts. It is important to recognize that the expansion of the scope of *maqāṣid al-sharī'ah* is not proposed without context. Jasser Auda recommends four fundamental problems in the classical *maqāṣid* theme, which has come to the attention of many contemporary Muslim scholars.

First, the classical *maqāṣid* attention still revolves around themes of Islamic law in general. There are no classical *maqāṣid* analyses which are specifically assigned to specific legal topics. *Second*, the scope of issues in classical *maqāṣid* still only concerns individual matters rather than community issues, such as family and society. *Third*, due to its partiality, the classical *maqāṣid* classification does not formulate universal

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[48] Jasser, *Membumikan,* 57-58.

[49] Jasser 'Audah, *Maqasid Untuk Pemula,* trans. Ali Abdelmon'im from *Maqasid al-Shari'ah: A Beginner's Guide* (Yogyakarta: SUKA-Press, 2013), 68.

[50] Abou el-Fadhl, *Speaking,* 275.

"basic values" that can be used as ethical reference for many contemporary problems, such as justice, freedom and human rights. Fourth, the classical *maqāṣid* is concepted based on a study of *fiqh* literature instead of a thorough investigation of the Qur'an.[51]

To fix the first problem, namely the scope of attention that is too general, contemporary Muslim scholars introduce the newer concept and classification of *maqāṣid al-sharī'ah* by dividing it into three levels: (a) General *maqāṣid*, namely the values of *maqāṣid* abstracted from the body of Islamic law in general, as in the classical *maqāṣid*; (b) Specific *maqāṣid*, which are extracted from certain chapters in the study of Islamic law that contain specific issues, such as the welfare of children in family law and the concept of supervision in Islamic economics; and (c) Partial *maqāṣid*, namely efforts to explain certain purposes behind a legal text, such as the reason for determining the number of witnesses in the case of adultery, or the wisdom of slaughtering sacrificial animal on a ied day.[52]

To improve the second problem, namely the scope of issues that are not class or community sensitive, contemporary Muslim scholars propose *maqāṣid al-sharī'ah* to be broadened so that it does not only talk about individual rights, but also community rights (gender, disability, minority). Community-based *maqāṣid* encourages advocacy to prioritize community/ collective interests rather than individual interests. For example, Rashid Rida adds 'women's rights' in his *maqāṣid* theory, so does Yusuf al-Qardawi adding 'human rights'.[53] This improvement enables Muslim scholars to respond to global problems, and pushes for reform of Islamic thought.

To answer the third and final problem, contemporary Muslim scholars have introduced *maqāṣid al-sharī'ah* which is directly induced from Islamic sacred texts (in this case the Qur`an) which are more universal in nature, not from *fiqh* literature which tends to be temporal.[54] Induction aims to propose value foundation as reference both in legislation and *ijtihad*. The results of Ibn Asyur's survey leads him to the conclusion that *maqāṣid al-sharī'ah* is entirely about order, equality, freedom,

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[51] Jasser, *Maqasid*, 13-14.

[52] Jasser, *Maqasid,* 14

[53] Jasser, *Maqasid,* 14*.*

[54] Jasser, *Maqasid,* 14-15.

convenience, and preserving the rights of human nature.[55] Al-Qardawi concludes that *maqāṣid al-sharī'ah* is all about preservation of faith, safeguarding human dignity, purification of souls, restoration of morality, respectful treatment of women, and productive cooperation between people.[56] These values are references for the scholars in conducting legislation or for Muslim scholars in developing Islamic thought.

Conclusion

In dealing with various crises in the contemporary world, *maqāṣid al-sharī'ah* must replace the role of textualism as a way of understanding and *istinbāṭ* with sacred texts. *Maqāṣid al-sharī'ah* with a global ethical orientation that goes beyond the legal-formal style is very potential to be developed not only as a legal method but as a core construction for Islamic thought. The superior power of textualism over *maqāṣid al-sharī'ah* which rashly places the latter in a minor position in the thought dynamics of *uṣūl al-fiqh*, actually restrains the great function of *maqāṣid al-sharī'ah* as a vital element in the renewal of Islamic thought.

Maqāṣid al-sharī'ah must be understood as a historical product, which takes place and develops in an ever changing history. Al-Gazali formulated the theory of *maqāṣid al-sharī'ah* by dividing the level of human needs into three levels, namely *ḍaruriyat*, *fiājjiyāt* and *tafisīniyyāt*. But al-Gazali's formulation is not an original breakthrough because he solely develops the historic legacy of his teacher, al-Juwaini, who actually begins constructing the theory of *maqāṣid al-sharī'ah* after examining the fundamental weaknesses of *istiṣlāfi* theory previously developed in the Maliki School.

Besides, *maqāṣid al-sharī'ah* must be understood as an intellectual product, which involves human cognitive work and relies on rational argument. Even though the values in *maqāṣid al-sharī'ah* come from holy texts and are believed to be sacred, but in *ijtihad* process, *maqāṣid al-sharī'ah* is an intellectual process, which consequently makes it an open corpus for criticism, discussion and change. The debate between the two groups of Prophet`s companions in interpreting the Prophet's instructions, as well as the debate between the factions of 'Umar and *Mujahideen* in determining the

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[55] Jasser, *Maqasid,* 16.

[56] Jasser, *Maqasid*, 17.

distribution of spoils of war shows that rational argument must go hand in hand with that of the sacred texts.

Furthermore, *maqāṣid al-sharī'ah* must be understood as a discourse with an expanding scope of attention. Firstly, criticism against classical *maqāṣid* limitations (i.e. the scope of issues that are too general, insensitive to community based problems, unoriented to ethics, and not explored directly from sacred texts) has been responded by contemporary Muslim scholars with the courage to change several typical orientations of *maqāṣid al-sharī'ah*. *Maqāṣid al-sharī'ah* helps Muslims to draw not only the essence of *sharī'ah* in the form of law, but also a number of great values from sacred texts and confirm them as a strong reference for countering contemporary problems. Some of these values are justice, equality, freedom and productive cooperation between people.

Hence, based on the three arguments above, the theory of *maqāṣid al-sharī'ah* is actually not immune to change, therefore it is reasonable that the theory of *maqāṣid al-sharī'ah* is subjected to renewal. In conclusion, the theory of *maqāṣid al-sharī'ah* needs to be updated and developed to meet the demands of the contemporary age. However, the path of renewal is not easy since the power of textualism still refutes efforts to shift the authority of the text to be replaced by the authority of values/context.

Renewal does not necessarily make the divinity of *maqāṣid al-sharī'ah*, in the sense of (believed) divine values, lose its sacredness (desacralization). *Maqāṣid al-sharī'ah* remains sacred because the seriously carried out process of examining, discovering and establishing divine values is based on holy texts. What makes *maqāṣid al-sharī'ah* special is that its divinity does not automatically close the door of criticism. The tradition of criticism actually makes *maqāṣid al-sharī'ah* increasingly improve as a theory as well as a value.

Due to the challenges of contemporary problems and given its crucial role, the mainstreaming of *maqāṣid al-sharī'ah* must be promptly executed starting with the emergence of *maqāṣid al-sharī'ah* as a subject in various universities, if it is impossible to start in secondary schools. The subject is separate from *uṣūl fiqh*, and at a higher level, *maqāṣid al-sharī'ah* is a study of applied ethics that touches on various

contemporary issues. With this strategy, *maqāṣid al-sharī'ah* discourse is expected to be a catalyst for the transformation of more advanced critical thinking.[]

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