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Evaluation of the *Maqāṣid al-Sharī'ah* Liberalization: An Examination of the Notion of 'Prioritizing Public Interest over Textual Evidence'

Agus Sunaryo[1*], Ahmad Hadidul Fahmi[2]

[1,2] UIN Prof. K.H. Saifuddin Zuhri Purwokerto
Jl. Ahmad Yani 40-A Purwokerto, 53126

Email: [1]agussunaryo@uinsaizu.ac.id; [2]ahmadhadidulfahmi@yahoo.co.id*

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Abstract: The effort to reconstruct Islamic law from liberal Muslim groups has a positive influence and acceptance for some people. However, the majority of Muslims have not been able to accept and prefer to follow the mindset and methodology of previous scholars. The concept of *maqāṣid al-sharī'ah* of liberal Muslim thinkers is methodologically considered not to have a strong basis because it dares to ignore the legal provisions in the specific daily, which are considered not in line with the purpose of the law and the benefit. *Maqasid al-Sharī'ah* should be built on efforts to integrate the texts of particular propositions into the texts of universal propositions (*kully*) to the purpose of legal legislation can be understood. This article critically examines the concept of *maqāṣid al-sharī'ah* developed by liberal Muslim thinkers, especially in Indonesia. This study explicitly emphasizes the importance of Islamic law in realizing the benefits and being a solution to various problems of contemporary life. The benefit to be achieved is the ultimate and universal benefit, namely the benefit obtained through legal formulation efforts by making specific texts as a foothold to understand the purpose of the law. It is not an assumptive benefit (*mawhūmah*) obtained through legal reconstruction efforts based on the purpose of the law and the benefit but ignores the texts of particular arguments.

Keywords: Islamic Liberals, *maqāṣid al-sharī'ah*, universal texts, particular texts, Islamic legal methodology

Abstrak: Upaya rekonstruksi hukum Islam dari kelompok Muslim liberal memiliki pengaruh dan penerimaan yang positif bagi sebagian orang. Namun, mayoritas umat Islam belum dapat menerima dan lebih memilih untuk mengikuti pola pikir dan metodologi ulama terdahulu. Konsep *maqāṣid al-sharī'ah* para pemikir muslim liberal secara metodologis dianggap tidak memiliki dasar yang kuat karena berani mengabaikan ketentuan-ketentuan hukum dalam keseharian yang bersifat spesifik yang dianggap tidak sejalan dengan tujuan hukum dan kemaslahatan. *Maqāṣid al-sharī'ah* seharusnya dibangun di atas upaya mengintegrasikan teks-teks dalil partikular ke dalam teks-teks dalil universal (kully) sehingga tujuan pensyariatan hukum dapat dipahami. Artikel ini mengkaji secara kritis konsep *maqāṣid al-sharī'ah* yang dikembangkan oleh para pemikir Muslim liberal, khususnya di Indonesia. Kajian ini secara eksplisit menekankan pentingnya hukum Islam dalam mewujudkan kemaslahatan dan menjadi solusi bagi berbagai persoalan kehidupan kontemporer. Kemaslahatan yang ingin dicapai

adalah kemaslahatan yang bersifat hakiki dan universal, yaitu kemaslahatan yang diperoleh melalui upaya perumusan hukum dengan menjadikan nas-nas khusus sebagai pijakan untuk memahami tujuan hukum. Bukan kemaslahatan yang bersifat asumtif (*mawhūmah*) yang diperoleh melalui upaya rekonstruksi hukum berdasarkan tujuan hukum dan kemaslahatan namun mengabaikan teks-teks dalil partikular.

Kata kunci: Islam liberal, *maqāṣid al-sharī'ah*, nas universal, nas partikular, metodologi hukum Islam

Introduction

Numerous adherents of Islam contend that the liberalization of Islamic thought is perceived as a project originating from the Western world, aimed at exerting influence over Islam through non-confrontational means. This strategy is deemed to be more efficacious in consolidating Western hegemony over the Islamic world, in contrast to confrontational approaches that necessitate substantial resources and expenditures. The liberalization of Islamic thought introduces the essence of liberalism within the framework of advancing ideas, concepts, and discourse surrounding Islam.[1] The advantages anticipated by Western nations from this initiative include the fomenting of discord within the Muslim community, a growing detachment of Muslims from authoritative Islamic sources, and the delineation of a clear divide between religious principles and state governance.[2]

Certain members of the Muslim community contend that Western nations are persistently undertaking deliberate and systematic endeavors to bolster the prevalence of liberalism among Muslims. The objective is to create a rift between Muslims and the religious values traditionally established by the ulama.[3] Furthermore, liberalism asserts that religion is no longer perceived as a set of doctrines and norms governing a way of life, but rather as a product of thought that is subject to modification, critique, and even deconstruction.

The intellectual offensive (*gazw al-fikr*) initiated by the Western world through the project of liberalization is beginning to yield outcomes in various Muslim nations. Numerous Islamic intellectuals are increasingly succumbing to influence, actively participating in the propagation of liberalist ideas.[4] The discursive promotion of Islamic critique, renewal, reconstruction, or deconstruction signifies that liberalism has secured a foothold in the perspectives of certain Muslims. Individuals such as Muhammad Iqbal,[5] Mahmoud Muhammad Taha,[6] Abdullahi Ahmed an-Naim,[7] Muhammad

1 Nicholas F. Gier, "Religious Liberalism and The Founding Fathers," in *Two Centuries of Philosophy in America. Oxford: Basil Blackwell Publishers*, ed. Peter Caws (Oxford: Basil Blackwell Publishers, 1980), 22–45.

2 Prayudi Prayudi, "Pemikiran Politik Islam Liberal Dan Perkembangannya Di Indonesia Dewasa Ini," *Jurnal Politica* 4, no. 2 (2013): 197–224.

3 Said Ramadan Al-Būṭī, *Ḍawābiṭ Al-Maṣlaḥah Fī Syarī'ah Al-Islāmiyyah* (Beirut: Mu'assasah al-Risālah, 1998), 10-13.

4 Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl Al-Fiqh* (Cambridge: Cambridge University Press, 1997).

5 Mohammad Iqbal, *The Reconstruction of Religious Thought in Islam* (Standford: Stanford University Press, 2013).

6 Mahmoud Muhammad Taha has notably contributed to the realm of Islamic law with his innovative theory on new models of naskh and *mansūkh*. Mahmoud Muhammad Taha, *The Second Message of Islam*, ed. Abdullahi Ahmed An-Naim (Syracuse, N.Y.: Syracuse University Press, 1998).

7 An-Naim's ideas evolved from the formulations developed by his teacher Mahmoud Muhammad Taha. Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 2019).

Said Asmawi,[8] Fazlurrahman,[9] and Muhammad Syahrur[10] are identified by Charles Curzman and Wael B. Hallaq as Islamic thinkers who align with liberal Muslim thought.[11] They have readily embraced various Western intellectual paradigms, displacing classical models put forth by earlier scholars. In certain instances, hermeneutics is deemed more compelling in offering legal resolutions compared to the *Uṣūl al-Fiqh* (Islamic legal methodology) approach, which is perceived as having diminished relevance in addressing the challenges of contemporary society.[12]

Within the realm of Islamic jurisprudence (*fiqh*), the liberalization of thought has engendered a multitude of novel concepts and methodologies in the process of legal derivation by way of inference (*istinbāṭ al-aḥkām*). Liberal thinkers aim to circumvent intricate and onerous requisites for Muslims to generate the outcomes of their intellectual endeavors (*ijtihād*). According to their perspective, "the door to *ijtihād* is perpetually open and never closed". Consequently, everyone possesses an equal entitlement to shape laws utilizing the scientific tools at their disposal. This entitlement mirrors the rights exercised by earlier Islamic thinkers such as Abu Hanifah, Malik ibn Anas, Muhammad ibn Idris al-Shafi'i, and Ahmad ibn Hanbal. There exists a parallel between the four Imams of the classical Schools of Thought and contemporary Islamic legal thinkers, as both groups have endeavored in the pursuit of *ijtihād*.[13]

Through the diverse methodologies presented, liberal Muslim groups encourage Muslims to boldly depart from the methodologies and outcomes of Islamic legal thought propounded by earlier scholars. This is evident, for instance, in their proposal of the *maqāṣidī–istiṣlāhī* approach. The ethos of liberalism propels them to a bold position where they no longer operate within the methodological confines of mainstream *Uṣūl al-Fiqh* experts. As a result, specific passages (*naṣṣ juz'iy*) may be overlooked if they are considered obsolete and incapable of realizing the objectives of the Shari'a, as deduced from the universality of the passages (*naṣṣ kully*). This conceptual proposition stands in clear opposition to the prevailing view of the majority of Usul al-Fiqh experts, who maintain that particular passages should not be dismissed solely for the sake of Sharia objectives, specifically the pursuit of benefits (*maṣlaḥa*).[14]

According to liberal Muslim groups, a comprehensive understanding of Islamic law necessitates not only consulting specific textual references but also perceiving the essence of these texts in a broader, more universal context. A proficient Islamic legal scholar should possess the capability to delve into the moral ideals or universality inherent in a text, without being confined by the legal norms articulated in specific texts. This is because particular texts are constrained by temporal, spatial, or specific social conditions, whereas the moral ideals within a text are timeless and universal. In the perspective of liberal Muslims, the applicability of legal provisions within a specific

8 Muhammad Said Asmawi, *Uṣūl Al-Sharī'ah* (Beirut: Dār al-Iqra', 1983).

9 Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: Chicago University Press, 1984).

10 Muhammad Syahrur, *Al-Kitāb Wa Al-Qur'ān: Qirā'ah Muā'ṣirah* (Damascus: al-Ahali li al-Ṭaba'ah wa al-Naṣr wa al-Tawzī', 1990).

11 Charles Kurzman, *Liberal Islam: A Sourcebook*, ed. Charles Kurzman (Oxford: Oxford University Press, 1998). Daryush Shayegan, as cited by Hamid Fahmi Zarkasyi, outlines three perspectives among Muslims regarding Western thought: some revert to the past, others confront it courageously despite risks, and a third group outright rejects anything originating from the West. Hamid Fahmy Zarkasyi, *Misykat: Refleksi Tentang Islam, Westernisasi & Liberalisasi* (Jakarta: Institute for the Study of Islamic Thought and Civilizations, 2012).

12 Yudian Wahyudi, *Ushul Fikih versus Hermeneutika: Membaca Islam Dari Kanada Dan Amerika* (Pesantren Nawasea Press, 2007).

13 Hassan Hanafi, *Humūm Al-Fikr Wa Al-Waṭan: Al-Fikr Al-'Arabi Al-Mu'Āṣir* (Cairo: Dār al-Quba li Tiba'ah wa al-Nasyr wa al-tawzi', 2003), II: 427-435.

14 Abdul Moqsith Ghazali, Luthfi Assyaukanie, and Ulil Abshar Abdalla, *Metodologi Studi Al-Qur'an* (Jakarta: PT Gramedia Pustaka Utama, 2009), 140.

text is intricately linked to the circumstances of the time or societal context prevailing during the revelation or narration of the text. Consequently, evolving times and dynamic social conditions may necessitate modifications to these provisions, ensuring the preservation of moral ideals.[15]

The concept of *maqāṣidī* reasoning is not a novel discourse in Islamic legal thought. Historical figures like al-Ghazali, al-Shatibi, and Ibn 'Asyūr have previously engaged in extensive discussions on *maqāṣid*, earning them the designation of maestros in the development of *maqāṣid al-sharī'ah*. The outcomes of their intellectual endeavors serve as prominent references for numerous contemporary Islamic legal thinkers, encompassing those identified as liberal Muslims. Nonetheless, in the hands of liberal Muslim thinkers, the *maqāṣid* theory has undergone a transformation, losing its inherent identity as it has been detached from the text of revelation. Notably, al-Shatibi had cautioned against the perils of extreme approaches in demonstrating *maqāṣid*, namely an excessive adherence to the literal text (*al-ittijāh al- ẓāhirī*) or an excessive reliance on Maqasid external to the text (*al-ittijāh al-bāṭinī*).[16] The solution lies in adopting a balanced approach towards *maqāṣid*, which entails neither overlooking the literal meaning of the text nor neglecting the objective dimensions underlying God's promulgation of specific laws.[17]

Given this premise, this article is positioned within the context of undertaking a critical examination of the ideologies of liberal Muslim groups, particularly in the utilization of *maqāṣid al-sharī'ah*. This practice often encounters clashes with the scholarly and methodological framework of Islamic law as delineated by authoritative scholars widely acknowledged within the Muslim community. The theories of *maqāṣid* and *maṣlaḥa*, having undergone a process of liberalization, will be revisited to align with their original formulation. Consequently, the resultant legal outcomes should genuinely fulfill tangible benefits, devoid of any speculative assumptions (*mawhūmah*) and the ensuing controversy. Both the particular–casuistic and universal–non-casuistic propositions must be approached with balance. This ensures that legal outcomes derived from both are not arbitrary in relation to their respective postulates. Simultaneously, they should remain effective in achieving the objectives of Sharia law.

Maqāṣid al-Sharī'ah and *Maṣlaḥa*: a Relational Concept

Certainly, Tahīr ibn 'Asyūr delineates *maqāṣid al-sharī'ah* into two distinct categories: general *maqāṣid* and specific *maqāṣid*. General *maqāṣid* encapsulate the meanings and wisdom that God addresses in all aspects or components of the Sharia, transcending any particular type of Islamic law. In the perspective of Ibn 'Asyūr, specific *maqāṣid* denote objectives that God intends to achieve human goals beneficial or congruent with general welfare in specific activities.[18]

According to Allal al-Fasi, maqasid are the objectives and underlying purposes crafted by Allah within every established law.[19] Abdullah ibn Bayyah articulates that *maqāṣid al-sharī'ah* encompasses the essence of God's intentions and purposes behind legislating laws. Additionally, the term *maqāṣid*

[15] Abdullah Saeed, *Interpreting the Qur'an: Towards a Contemporary Approach* (Oxford: Routledge, 2006), 3.
[16] Abū Isḥāq Al-Syāṭibī, *Al- Muwāfaqāt Fi Uṣūl Al-Syarī'ah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2004), IV: 120-123.
[17] Abdullah Ibn Syekh al-Mahfuz Ibn Bayyah, *Amālī Al-Dilālāt* (Cairo: Dār al-Minhāj, 2007), 341.
[18] Muhammad al-Ṭāhir Ibnu 'Asyur, *Maqāṣid Al-Syarī'ah Al-Islāmiyah*, ed. Muhammad Ṭāhir al- Mesāwī (Yordan: Dār al-Nafāis, 2001), 85. Ahmad Al-Raysuni, *Naẓariyāt Al-Maqāṣid 'inda Al-Imām Al-Syāṭibī* (Herndon: The International Institute of Islamic Thought, 1995), 18.
[19] Al-Raysuni, *Naẓariyāt Al-Maqāṣid 'inda Al-Imām Al-Syāṭibī*, 18.

al-sharī'ah at times denotes the law itself, encapsulating its content of promoting benefits and averting harm. Drawing on the perspective of al-Qarafi, as cited by Ibn Bayyah, Islamic law comprises two fundamental elements: *maqāṣid* and *wasā'il*. *Maqāṣid* represents a law embodying the essence of absolute benefit or harm. On the other hand, *wasā'il* denotes tools or means employed to achieve these *maqāṣid*. The term *maqāṣid* is occasionally utilized to denote an individual's intention or motive when undertaking legal activities, as articulated in the fiqh principles *al-umūr bi maqāṣidihā*.[20]

Based on the provided definitions, it can be comprehended that the objective of legal legislation, whether viewed from the perspective of God (*al-Shāri'*) as the Sharia lawgiver, the legal construct itself, or the *mukallaf* as the legal subject, is fundamentally oriented towards achieving benefit. The purpose behind formulating legal principles is to generate benefits, both in the present world and the hereafter. Simultaneously, the intent of a legal principle is to actualize a more orderly life for the legal subjects (*mukallaf*), aligning with the will of *al-Shāri'*. For the *mukallaf* who adheres to the rule of law, the objective is to attain happiness in both the present world and the hereafter.

The predominant consensus among fiqh scholars seldom raises doubts about the premise that all legal principles mandated by *al-Shāri'* consistently fall within the scope of fostering benefits and averting harm (*mafsadāt*). Challenges emerge, however, when delving into the discourse concerning whose authority dictates or determines these matters. Within the realm of fiqh scholarship, a perspective has emerged positing that when *maqāṣid al-sharī'ah* encompasses *maṣlaḥa*, it is fundamentally God, the Sharia lawgiver (*al-Shāri'*), who determines the benefit. This determination is not within the purview of human intellect or reasoning tools, be they individual or collective. Mustafa al-Zarqa, for example, characterizes *maṣlaḥa mursala* as encompassing all benefits within the broader framework of *maqāṣid al-sharī'ah*, where their presence, variety, or explicit absence is not stipulated in a legal text. In this context, al-Zarqa is essentially indicating benefits that are specific and detailed. The general benefit is explicitly mentioned in the legal proposition (*manṣūṣ*).[21] Consequently, the attibute *al-mursalah* in one of the categories of *maṣlaḥa* is determined solely by its specific and detailed characteristics.[22] The responsibility of the scholars is to expound upon the nuances, intricacies, and other more specific aspects of *maṣlaḥa*, while adhering to the overarching principles of *maṣlaḥa* as outlined in legal doctrines.

The jurisdiction of *maṣlaḥa* in the domain of God was further elucidated by Sa'id Ramadan al-Būṭī, who characterized *maṣlaḥa* as "the benefits desired by God for His servants, encompassing the protection of their religion, soul, intellect, progeny, and wealth, in a specific order".[23] In this context, al-Būṭī underscores the necessity for *maṣlaḥa* to align with God's will (*indirājuhā fi maqāṣid al-shāri'*). Additionally, he emphasizes that *maṣlaḥa* should not contradict the legal principles agreed upon by the scholars, namely the Qur'an, Hadith, or Qiyas, and does not dismiss a greater or equivalent *maṣlaḥa*.[24]

To draw a comparison, al-Būṭī (1929-2013) elucidates on the development of the concept of *maṣlaḥa* (utility) in Western legal thought, particularly in terms of criteria and standardization of

[20] Ibn Bayyah, *Amālī Al-Dilālāt*, 332-335 .

[21] Musṭafā Ahmad Al-Zarqā, *Al-Istiṣlāḥ Wa Al-Maṣāliḥ Al-Mursalah* (Damascus: Dār al-Qalam, 1988), 39.

[22] Wahbah al-Zuhayli states that from the aspect of its relationship to the text (*naṣṣ*), *maṣlaḥa* or *al-waṣf al-munāsib* is divided into three, namely: *al-munāsib al-mu'tabar*, *al-munāsib al-mulgha*, and *al- munāsib al-mursal*. Wahbah Al-Zuhaili, *Uṣūl Al-Fiqh Al-Islāmī* (Damascus: Dār al-Fikr, 1986), II: 752-754.

[23] Al-Būṭī, *Ḍawābiṭ Al-Maṣlaḥah Fī Syarī'ah Al-Islāmiyyah*, 23.

[24] Al-Būṭī, 18 and 123.

benefits. He posits that there exists a fundamental distinction between the concept of utility in legal thought among Western scholars and the *maṣlaḥa* (benefits) formulated by Islamic legal thinkers. For instance, Emile Durkheim (1858-1917) asserted that the criterion for determining *maṣlaḥa* (utility) is collective reason or communal customs. This implies that if reason or communal customs ascertain something to be good and of beneficial value, then the law should be formulated within that framework. Similarly, conversely, when the reason or customs of society deem something to be unfavorable and detrimental, laws will be established to prevent such occurrences. Al-Būṭī refuted Durkheim's concept, contending that human reason and societal customs are transient and contingent upon both time and space. Neither can serve as universal benchmarks for establishing the concepts of goodness or benefit. What is perceived as good and advantageous by a specific society might hold contrary value for another society or during a different period.[25]

William James (1842–1910), John Dewey (1859–1952), and proponents of pragmatism-individualism contended that the validity of everything, including law, is grounded in the benefits it furnishes.[26] Al-Būṭī critiques this theory primarily for its reliance on the standard of benefit measured by personal happiness, articulated as "*qīmah al-sa'ādah al-syakhsiyyah*". According to him, everything is deemed good and beneficial if it engenders a sense of happiness for an individual, without necessitating an assessment of the same impact on others.

In contrast to pragmatism-individualism, the tenets of utilitarianism put forth by Jeremy Bentham, John Stuart Mill, and Rudolf von Ihering align more closely with the *maṣlaḥa* theory in Islamic law. Utilitarianism posits that the implementation of law should aim to foster happiness and justice for all individuals.[27] According to adherents of the utilitarianism school, the criterion for benefits should not solely contemplate the impact on an individual but must extend to the well-being of society as a whole.[28]

Paraphrasing with formal tone. The relationship between *maṣlaḥa* and *maqāṣid al-sharī'ah* is explained more comprehensively by al-Syatibi who explains that God's purpose in making legal rules is to realize benefit and reject evil. Al-Syatibi divides maslahah into three levels as follows. Initially, there is the primary *maṣlaḥa* (*ḍarūriyyāt*), encompassing benefits whose attainment ensures the safeguarding of the five fundamental aspects of life. Failure to realize this level of *maṣlaḥa* would jeopardize the existence of these five elements, namely religion, life, intellect, progeny, and property. Subsequently, there is the supportive *maṣlaḥa* (*ḥājjiyyāt*), comprising benefits necessary for fostering freedom and averting difficulties. The absence of this benefit may not pose a serious threat but can lead to inconvenience and hardship. Finally, there is the embellishing *maṣlaḥa* (*taḥsīniyyāt*), involving benefits that are only supplementary in nature and do not reach the level of support, let alone the elementary level. All three categories of *maṣlaḥa* aim to ensure the realization of benefits for humanity, both in this world and the hereafter.[29]

At the fundamental level, there are five *maqāṣid*, namely: 1) safeguarding religion (*ḥifẓ al-dīn*), 2) safeguarding life (*ḥifẓ al-nafs*), 3) safeguarding reason (*ḥifẓ al-'aql*), 4) safeguarding progeny (*ḥifẓ*

[25] Al-Būṭī, 24 and 44.
[26] Lorens Bagus, *Kamus Filsafat* (Jakarta: Gramedia Pustaka Utama, 2005), 877-879.
[27] Gerald J. Postema, *Bentham and the Common Law Tradition* (Oxford: Oxford University Press, 2019), 403.
[28] Al-Būṭī, *Ḍawābiṭ Al-Maṣlaḥah Fī Syarī'ah Al-Islāmiyyah*, 24 and 44. See also Jeremy Bentham, *Theory of Legislation* (London: C.K. Ogden, 1934), 2.
[29] Al-Syāṭibī, *Al- Muwāfaqāt Fi Uṣūl Al-Syarī'ah*, II: 7-8.

al-nasl), and 5) safeguarding wealth (*ḥifẓ al-māl*). Realizing these five *maqāṣid* involves maintaining their existence to ensure their sustainability (*jānib al-wujūd*) or taking preventive measures to avert their loss or damage (*jānib al-'adam*). As an illustration, to uphold the sustainability of religion, God mandates Muslims to engage in acts such as prayer, fasting, and giving zakat. Furthermore, to prevent the loss of religion, God instructs Muslims to combat apostasy and confront hostile infidels.[30]

The five *maqāṣid*, as outlined by al-Shatibi, serve as the foundational pillars for the realization of *maṣlaḥa*. This perspective finds support from scholars such as Mustafa al-Zarqa[31] and Said Ramadan al-Būṭī. Consequently, *maṣlaḥa* can be comprehended as encompassing the objectives outlined in *maqāṣid al-sharī'ah*. If the maqāṣid are achieved, it follows that maṣlaḥa will also be realized. This line of thought can be elucidated as follows.

Taklīf → Maqāṣid → Maṣlaḥa

The provided diagram elucidates that *taklīf* represents God's involvement in formulating laws that must be adhered to by legal subjects (*mukallaf*). These legal provisions established by God serve a legal purpose (*maqāṣid*). The actualization of *maqāṣid* is designed to confer benefits (*maṣlaḥa*) upon legal subjects.

The *maqāṣid* at the complementary level (*ḥājjiyyāt*) exhibit a greater variety than the elementary level (*ḍarūriyyāt*). In the domain of worship, for instance, God provides certain exemptions for individuals facing challenges in performing rituals in the standard and conventional manner, whether due to illness or extensive travel. In the realm of *muamalat*, supplementary *maqāṣid* can be identified in legal regulations governing contracts for ordering goods (*salam* or *istiṣnā'*), cooperative agreements for agricultural land management (*muzāra'ah* or *musāqah*), and other similar contexts.[32]

Regarding *maqāṣid* at the supplementary level (*taḥsīniyyāt*), numerous examples abound. These include practices like dressing appropriately when attending the mosque, enhancing charitable contributions, observing etiquette during meals, refraining from buying and selling goods that contain impurities, and various other considerations.[33]

In the formulation of *maqāṣid*, there are five approaches that can be pursued, outlined as follows:

a. Comprehend the principles of the Arabic language (*al-qawā'id al-lugawiyyah*). This approach serves as the primary gateway to discerning the intentions of Sharia lawgiver (*al-Shāri'*), as articulated in legal texts employing Arabic as the language of instruction.[34]
b. Comprehend commands and prohibitions (*al-awāmir wa al-nawāhī*) from the perspectives of legal reasoning (*ta'līl*) and textual clarity (*ẓāhir*). To employ this second method effectively, a comprehensive grasp of the rules of the Arabic language is essential. This is because the formulations in legal texts, such as the Qur'an and Hadith, whether prescribing actions (*ṭalab al-fi'lī*) or forbidding them (*ṭalab al-tarkī*), are all articulated in Arabic. Attempts to identify the legal reasoning (*'illat al-ḥukm*) outside the text are only made when the text fails to mention it. However, in cases where such efforts are impractical, determining *maqāṣid* still necessitates

[30] Al-Syāṭibī, II: 7-8..
[31] Al-Zarqā, *Al-Istiṣlāḥ Wa Al-Maṣāliḥ Al-Mursalah*, 39.
[32] Ali Hasaballah, *Uṣūl Al-Tasyrī' Al-Islāmī* (Cairo: Dār al-Ma'ārif, 1976), 297.
[33] Ali Hasaballah, 297.
[34] Al-Raysuni, *Naẓariyāt Al-Maqāṣid 'inda Al-Imām Al-Syāṭibī*, 265-267.

referencing the intended meaning of the textual evidence in its natural form.[35]

c. Comprehending primary *maqāṣid* (*al-maqāṣid al-aṣliyyah*) and secondary *maqāṣid* (*al-maqāṣid al-taba'iyah*). Islamic legal rules encompassing *al-'azīmah* are typically classified as primary *maqāṣid*, while laws involving *al-rukhṣah* fall under the category of secondary *maqāṣid*.[36] A proficient Islamic legal expert must be adept at carefully distinguishing between the two. Hence, when deriving legal rulings (*istinbāt al-ḥukm*), errors are avoided, and the precedence of primary *maqāṣid* over secondary *maqāṣid* is upheld.[37]

d. Comprehending the lawgiver silence (*sukūt al-Shāri'*) in formulating legal rules. This implies that when God refrains from establishing legal provisions for certain scenarios, His silence is inherently purposeful. Instances of this are frequently encountered in matters of worship (*'ibādāt*), where God abstains from issuing explicit rules and leaves them open to interpretation in the textual context. According to al-Raysuni, understanding God's silence is crucial to prevent individuals from engaging in heretical practices under the guise of a "new sharia".[38]

e. Grasp the inductive method (*istiqrā'*), which involves examining particular texts (*juz'ī*) and aligning them within a universal framework (*kullī*). Through the *istiqrā'* method, al-Shatibi successfully categorized *maqāṣid* into elementary, complementary, and supplementary forms. This method also enabled him to dissect elementary *maqāṣid* (*ḍarūriyyāt*) into *al-maqāṣid al-khamsah*, comprising the protection of religion, life, progeny, property, and reason.[39]

Various viewpoints on criteria and models for determining *maṣlaḥa*, originating from both Muslim and Western thinkers in the context of utility theory, have impacted the perspectives of several schools of Islamic thought, including those of liberal Muslim groups. Both methodologically and substantively, the concepts of *maṣlaḥa* and *maqāṣid* developed by liberal Muslim groups have been significantly shaped by the ideas of various Western thinkers. Consequently, it is not uncommon for the products of their intellectual endeavors to diverge and clash with the prevailing thought frameworks of scholars in the fields of *fiqh* and *Uṣūl al-Fiqh* at large.

Evaluation of the Liberalization of *Maqāṣid*

The current discourse on Islamic law and *maqāṣid* is characterized by the emergence of three evolving approaches: literalistic, liberalistic, and moderate. The literalistic approach disregards *maqāṣid* entirely, focusing solely on the literal interpretation of the text. The liberalistic approach is characterized by a considerable degree of freedom in interpreting and employing *maqāṣid*, often diverging from the mindset initially conceived and developed by the ulama. Conversely, the moderate approach emerges as a middle ground between the two aforementioned approaches, advocating for a concept that does not overlook the specific text of the proposition while still giving due consideration

35 Al-Raysuni, 267-269.

36 *'Azīmah* is a general law and is prescribed as a basic rule that applies generally to every legal subject (*mukallaf*). Meanwhile, rukhṣah is a legal provision that is specifically prescribed because there are certain conditions (obstacles) that require the law to be applied specifically. This special implementation aims to eliminate difficulties and bring convenience to *mukallaf*. Ade Muzaini Aziz, "Fiqih Pandemi: Antara Azimah Dan Rukhshah," *NU Online*, July 14, 2021, https://banten.nu.or.id/syariah/fiqih-pandemi-antara-azimah-dan-rukhshah-G9Ntm. Al-Zuhaili, *Uṣūl Al-Fiqh Al-Islāmī*.

37 Al-Raysuni, *Naẓariyāt Al-Maqāṣid 'inda Al-Imām Al-Syāṭibī*, 269-274.

38 Al-Raysuni, 274-276.

39 Al-Raysuni, 276-282.

to the *maqāṣid* aspect.[40]

The liberalization of *maqāṣid*, within the context of this study, is centered on two specific aspects: the liberalization of *maqāṣid* history and the liberalization of legal inference (*istinbāṭ al-ḥukm*). These two forms of liberalization can be elucidated through discussions concerning the liberalization of maqāṣid history and the liberalization of legal inference (*istinbāṭ al-ḥukm*), with a particular focus on the Indonesian case.

The first aspect pertains to the liberalization of *maqāṣid* history. The historical interpretation of *maqāṣid*, as advanced by liberal Muslim groups, frequently deviates from the actual historical progression of the emergence and development of *maqāṣid* theory. Moreover, the lineage of *maqāṣid* is often not ascribed to figures possessing genuine qualifications and authority in the realm of *Uṣūl al-Fiqh*, particularly concerning the theory of *maqāṣid al-sharī'ah*. Abdul Majid al-Turki and Muhammad Abed al-Jabiri, for instance, assert that the individual who influenced al-Shatibi in formulating the theory of maqāṣid was Ibn Rushd. They contend that Ibn Rushd was a figure capable of liberating *fiqh* from the constraints of specific schools of thought and elevating it to a level of objectivity. According to al-Jabiri, the *maqāṣid* theory advanced by al-Shatibi is essentially a borrowed terminology from Ibn Rushd's *maqāṣid* theory. However, while Ibn Rushd formulated it in the context of worship (*'ibādāt*), al-Shatibi subsequently expanded its application to the realms of *fiqh* and *Uṣūl al-Fiqh*.[41] This assertion contradicts the evidence presented by other experts in *Uṣūl al-Fiqh*.

The term *maqāṣid*, with the understanding developed by al-Shatibi, first emerged in the 3rd century Hijriyyah, as per the majority of ulama. It was initially introduced by Imam Abu Abdillah Muhammad ibn Ali al-Turmudhi in works such as *al-Ṣalāt wa Maqāṣiduhā*, *al-Furūq*, *al-Ḥajj wa Asrāruhā*, and *Ilal al-'Ubūdiyyah*. Although not widely recognized as a *fiqh* and *Uṣūl al-Fiqh* expert, al-Turmudhi was among the pioneers in unveiling the wisdom and secrets behind Islamic law establishment, and he was the first to use the term *maqāṣid* in a manner later developed by al-Shatibi, according to al-Raysuni.[42]

Following the era of al-Turmudhi, the term *maqāṣid* was prominently featured in the works of renowned scholars, including Abu Mansur al-Maturidi (d. 333 AH), Abu Bakr al-Qaffal al-Shashi (d. 365 AH), Abu Bakr al-Abhari (d. 375 AH), al-Baqilani (d. 403 AH), al-Juwayni (d. 478 AH), and Abu Hamid al-Ghazali (d. 505 AH). Scholars widely recognize al-Juwayni and al-Ghazali as pivotal figures of their time for frequently incorporating the term *maqāṣid* into their writings. Al-Juwayni, though introducing a simple concept, was the first scholar to categorize *maqāṣid* into elementary categories (*ḍarūriyyāt*), general needs (*ḥājjāh 'āmmah*), not ḍarūriyyāt and not ḥājjiyyāt, not related to *ḥājjiyyāt* or *ḍarūriyyāt* but below the third criterion, and objectives that cannot be rationalized. This framework introduced by al-Juwayni, also known as Imam Haramayn, was further refined by his student, Imam Abu Hamid al-Ghazali.

Following the era of al-Juwayni and al-Ghazali, the discourse on *maqāṣid* continued to evolve with contributions from scholars like Fakhruddin al-Razi (d. 606 AH), al-Amidi (d. 631 AH), Ibn al-Hajib (d. 646 AH), 'Izzuddin bin Abd al-Salam (d. 660 AH), Shihabuddin al-Qarrafi (d. 684 AH), al-

[40] Yusuf Al-Qardawi, *Dirāsah Fi Fiqh Maqāṣid Al-Syarī'ah: Bayna Al-Maqāṣid Al-Kulliyah Wa Al-Nuṣūṣ Al-Juz'iyyah* (Cairo: Dār al-Syurūq, 2006), 39-42.

[41] Mohammad Abed Al-Jabiri, *Bunyāt Al-'Aql Al-'Arabi: Dirāsah Taḥlīliyyah Naqdiyyah Li Nuẓum Al-Ma'rifah Fī Ṡaqāfah Al-'Arabiyyah* (Beirut: Markaz al-Dirāsāt al-Waḥdah al-'Arabiyyah, 1990), 551-552.

[42] Al-Raysuni, *Naẓariyāt Al-Maqāṣid 'inda Al-Imām Al-Syāṭibī*, 40.

Baydhawi (d. 685 AH), al-Baquri (d. 707 AH), Najmuddin Al-Thufi (d. 717 AH), Ibn al-Taymiyyah (d. 728 AH), Ibn al-Qayyim al-Jauziyah (d. 751 AH), al-Maqarri (d. 758 AH) who was al-Shatibi's teacher, Ibn al-Subki (d. 771 AH), al-Isnawi (d. 772 AH), and al-Shatibi (d. 790 AH).[43] In the modern era, scholars such as 'Allal al-Fasi (d. 1973 AD),[44] Muhammad Tahir bin 'Asyūr (d. 1973 AD),[45] al-Raysuni (born 1953 AD), Yusuf al-Qardhawy (d. 2022 AD),[46] and al-Būṭī (d. 2013 AD) have made significant contributions to the study of *maqāṣid*.[47]

Examining the prominent figures in the development of *maqāṣid* theory, it becomes evident that maqāṣid studies have evolved through a rich history of intellectual discourse. This progression is marked by the continuous efforts of scholars in the field of *fiqh* and *Uṣūl al-Fiqh*, engaging in the interpretation of textual meanings within the context of their respective social environments.[48] Hence, the assertion made by al-Turki and al-Jabiri, attributing the term maqāṣid to Ibn Rushd, lacks robust historical substantiation.[49] Nonetheless, their contention that Ibn Rushd played a role in revitalizing academic thinking, which had long been constrained by the dominance of mainstream thought, holds some validity. This is particularly evident following the publication of Ibn Rushd's seminal work in philosophy, *Tahāfut al-Tahāfut*, a response to al-Ghazali's *Tahāfut al-Falāsifah*. The impact of Ibn Rushd's work has, to a certain extent, influenced the trajectory of Islamic rational thought. Therefore, it is reasonable to assert that Islamic rational-critical thinking, including in the realm of law, experienced a resurgence due to the contributions of Ibn Rushd's intellectual legacy.

The second dimension pertains to the liberalization of legal inference (*istinbāṭ al-aḥkām*) within the Indonesian context. In the domain of Islamic law, liberalization of legal inference takes place when *maqāṣid* tools are employed without strict adherence to their correlation with the text of specific legal arguments (*juz'iy*), whether derived from the Qur'an or Hadith. A pertinent illustration of this context is the perspective asserting that *fiqh* regulations concerning matters such as the hijab, the penalty for theft, stoning, the obligation to maintain beards, interfaith marriages, or the attire resembling Arab-style clothing, are deemed no longer applicable or relevant in the contemporary Indonesian setting. This viewpoint contends that these *fiqh* rules, rooted in the societal context of the Arab region, may be subject to reinterpretation and application, taking into account the universal essence of each respective provision.

Concerning the hijab, liberal examination suggests that Islam primarily advocates dressing in accordance with prevailing norms of modesty. Consequently, within the context of Indonesian society or other non-Arab societies, the criteria for hijab may deviate from those articulated by classical Arabic scholars in various *fiqh* literature. Another case in point is the regulation pertaining to interfaith marriages. Despite being explicitly delineated in various verses of the Qur'an and Hadith texts, liberal Muslim groups interpret these legal provisions as a contextual response to the social dynamics and psychological ambiance prevailing during a specific era in the interactions between

[43] Ahmad Al-Raysuni, *Muḥāḍarāt Fi Maqāṣid Al-Syarī'ah* (Cairo: Dār al-Kalīmah li al-Nasr wa al-Tawzī', 2010), 61-114.
[44] Alal Al-Fasi, *Maqāṣid Al-Syarī'ah Al-Islāmiyyah Wa Makārimuhā* (Marocco: Maktabah al-Wahdah al-'Arabiyah, 1993).
[45] Muhammad Tahir Ibn 'Asyūr, *Maqāṣid Al-Syarī'ah* (Jordan: Dār al-Nafā'is, 2001).
[46] Al-Qardawi, *Dirāsah Fi Fiqh Maqāṣid Al-Syarī'ah: Bayna Al-Maqāṣid Al-Kulliyah Wa Al-Nuṣūṣ Al-Juz'iyyah*.
[47] Al-Būṭī, *Ḍawābiṭ Al-Maṣlaḥah Fī Syarī'ah Al-Islāmiyyah*.
[48] Al-Raysuni, *Naẓariyāt Al-Maqāṣid 'inda Al-Imām Al-Syāṭibī*, 40-71.
[49] Ibn Rushd was born in 1126 and died in 1198. Meanwhile, al-Ghazali, the youngest figure among the initiators of the maqāṣid theory, died in 1111, 15 years before Ibn Rushd was born. Tim Penyusun, *Ensiklopedi Islam* (Jakarta: Ichtiar Baru Van Hoeve, 2005), III: 97.

Arab-Muslim and non-Muslim communities. From a liberal Islamic standpoint, the universal spirit of Islamic teachings promoting equality among individuals, coupled with the evolving dynamics in relationships between Muslims and non-Muslims, can serve as fresh considerations for crafting legal rules that are more pertinent and consonant with the principles of *maqāṣid al-sharī'ah*.

A comprehension of Islamic law that leans excessively towards freedom and tends to oversimplify the utilization of *maqāṣid*, thereby neglecting specific postulates, is deemed perilous by moderate-leaning scholars. This is primarily due to the intricate nature of researching and comprehending the extensive structure (universality) of Islamic law, particularly when not complemented by scholarly proficiency in the field of Islamic law and its methodological tools. Scholars such as Ali Jum'ah, Yusuf al-Qardawi, Sa'id Ramadan al-Būṭī, Abdullah ibn Bayyah, Ahmad al-Raysuni, or Mustafa Ahmad al-Zarqa, recognized for their expertise in the realms of *fiqh* and *Uṣūl al-Fiqh*, exercise great caution when employing *maqāṣid* as a tool for legal inference (*istinbāṭ al-aḥkām*). They conscientiously adhere to the guidelines established by senior scholars who contributed to the development of *maqāṣid* theory, particularly emphasizing the importance of not disregarding specific legal postulate texts.

For instance, Al-Raysuni, when questioned about the potential drawbacks of employing *maqāṣid al-sharī'ah* without sufficient expertise, underscored that *maqāṣid* should not be applied unless accompanied by robust sharia arguments. He further clarified that his viewpoint aligns with the formulations presented by a venerable scholar in the *maqāṣid* domain, namely al-Shatibi. Therefore, if an individual asserts that engaging in employment at a bank or financial institution employing an interest-based system is deemed permissible based on the principle of safeguarding assets (*ḥifẓ al-māl*), a facet of *maqāṣid al-sharī'ah*, al-Raysuni contends that such a legal inference lacks justification as it contradicts the fundamental principles of sharia.[50]

In various instances in Indonesia, liberalization of legal inference (*istinbāṭ al-aḥkām*) typically occurs when Islamic laws significantly differ from statutory regulations in Indonesia. It can also happen when Indonesian regulations are perceived to contradict principles of equality, human rights, or the tenets of tolerance and democracy. In the former scenario, liberal Muslim groups criticize and may even reject the *ḥudūd* laws of Islam. This rejection is rooted in the spirit of nationalism, human rights, and the legal culture of Indonesian society, which tends not to acknowledge laws involving punitive measures like amputation, flogging, stoning, or the death penalty. According to them, imprisonment is considered more beneficial and aligns with the objectives (*maqāṣid*) of implementing sharia law of *ḥudūd*, specifically providing a deterrent effect.[51] In the second scenario, liberal Muslim groups scrutinize Indonesian regulations that hinder (prohibit) interfaith marriages.[52] They argue that such restrictions run counter to the principles of societal equality and violate humanistic values. According to them, the principles of equality and humanism should take precedence since they are integral to *maqāṣid*, as opposed to the specific concept of Islamic law manifested in prohibitions on interfaith marriages and Indonesia's regulations that do not endorse them.[53]

Regarding the method of inference (*istinbāṭ*), liberal Muslim groups exhibit two fundamental

[50] Al-Raysuni, *Muḥāḍarāt Fi Maqāṣid Al-Syarī'ah*, 280-281.
[51] Makhrus Munajat, "Pengaturan Tindak Pidana Dalam Islam Berdasar Teori Maqasid Al-Syari'ah," *Asy-Syir'ah: Jurnal Ilmu Syariah Dan Hukum* 45, no. 1 (2011).
[52] Zuly Qodir, *Islam Liberal: Varian-Varian Liberalisme Islam Di Indonesia 1991-2002* (Yogyakarta: LKiS Pelangi Aksara, 2010).
[53] Nurcholish Madjid et al., "Fiqh Lintas Agama: Membangun Masyarakat Inklusif-Pluralis" (Jakarta: Yayasan Wakaf Paramadina, 2004).

weaknesses in their formulations. These shortcomings can be observed in at least two aspects: firstly, the disregard for specific textual evidence in favor of benefit-based arguments (*maṣlaḥa*). They seem to overlook or remain unaware that when one engages in legal inference (*istinbāṭ*) using *maṣlaḥa* or *maqāṣid*, careful attention must be given to the texts of specific propositions. The logical process of *maqāṣid* involves an initial examination of textual evidence to uncover the legal objectives (*maqāṣid*). This is in stark contrast to the approach of liberal Muslim groups in Indonesia, which, in the name of *maqāṣid* or *maṣlaḥa*, dismiss specific textual evidence.

In the context of inheritance, Islamic law stipulates different shares for sons and daughters, with sons receiving twice the share of daughters (2:1), as stated in Surah Al-Nisā', verse 11 of the Qur'an. However, liberal Muslim groups argue that this division is not static and immutable. They assert that the core principle guiding the distribution of inherited assets is to ensure fairness among all entitled heirs. The dynamic and relative nature of justice, influenced by contemporary circumstances and societal conditions, allows for adjustments in the inheritance portion. Consequently, the distribution of assets to sons and daughters is perceived not solely as a fixed proportion or nominal amount but rather guided by the principle of allocating assets according to the specific needs of each heir. Thus, the share could potentially shift to an equal division (1:1) or any other ratio, such as 2:1, with the aim of fostering a sense of justice for both male and female heirs.[54] Particularly when contrasted with the civil law system in Indonesia, specifically the *Burgerlijk Wetboek voor Indonesie*, which mandates an equal division of inheritance between male and female heirs. Article 852, paragraph 1 of the Civil Code articulates this principle as follows:

> "Offspring, including all their descendants, regardless of whether they originate from various marriages, inherit from their parents, grandparents, or all their blood relatives in a direct ascending line, with no differentiation based on gender or priority of birth."

The approach to legal inference (*istinbāṭ al-aḥkām*) through the lens of *maqāṣid* or *maṣlaḥa*, as employed by liberal Muslim groups, evidently contradicts the unequivocal (*qaṭ'īy*) legal provisions found in both the Qur'an and Hadith. The inductive understanding of *maqāṣid* is derived from specific propositions found in various verses of the Qur'an and Hadith texts. In situations where there is a conflict between specific propositions and *maqāṣid*, it becomes illogical, akin to attempting to derive a meaning (*ma'nā*) from a word (*lafaẓ*) while simultaneously disregarding or nullifying the word (*lafaẓ*) itself. Meaning (*ma'nā*) is derived from a word (*lafaẓ*), referred to as *madlūl*. The word (*lafaẓ*) serves to convey a specific meaning (*al-dāll* or *al-dalīl*). In this context, *maqāṣid* represents the meaning (*madlūl*), while the verses of the Qur'an or Hadith texts (of a specific nature) constitute a collection of words (*lafaẓ*) that give rise to meaning (referred to as *dalīl*). Thus, when the consideration of *maqāṣid* and *maṣlaḥa* disregards the provisions of the text of the legal proposition (*dalīl*), it prompts the question of how such disregard is possible when *maqāṣid* and *maṣlaḥa* themselves emerge from the text of the proposition (*dalīl*).

In the field of *Uṣūl al-Fiqh*, *maṣlaḥa* that contradicts the text of the proposition (*dalīl*) is termed assumptive benefit (*maṣlaḥa mawhūmah*). The *maṣlaḥa* falling into this category will be deemed invalid if it conflicts with the text of the proposition (*dalīl*) possessing a definite meaning (*qaṭ'īy al-dilālah*). One such text proposition with a certain meaning is found in the Qur'an, specifically in Surah Al-Nisā'

[54] Abdul Moqsith Ghazali, "Hukum Waris Dalam Suatu Konteks," *Islam Liberal*, 2012, http://www.islamlib.com/?site=1&aid=1693&cat=content&title=klipping.

verse 11, which states: "Allah has ordained to your children that the male gets the share of the two females." This verse unequivocally indicates that a man's share of inheritance is double or twice that of a daughter. The meaning of "double" is clear and cannot be construed differently, such as being equal to one or half.[55]

Liberal Muslim groups often assert the legitimacy of their approach, which involves disregarding the text of the proposition (*dalīl*), by drawing parallels with the practices of previous scholars, including companions of the Prophet. An intriguing example is the legal reasoning (*ijtihād*) of Umar ibn Khattab, where he decided not to apply the punishment of cutting off the hand for a thief. Liberal Muslim groups use this historical incident as justification, arguing that a close companion of the Prophet engaged in legal inference (*istinbāṭ al-ḥukm*) by prioritizing the benefit (*maṣlaḥa*). According to this perspective, Umar's decision not to enforce the law of cutting off hands for thieves during the lean season, when theft occurred to fulfill basic food needs, serves as a precedent. However, it is essential to note that the text of the argument (*dalīl*) is explicit in stating that the hands of thieves, both men and women, should be amputated.[56]

The assertion made by liberal Muslims appears premature and may overlook additional facts presented in the text of the proposition. Mohammad Biltajy argues that Umar's decision not to implement the punishment of cutting off the hands (*isqāt ḥadd al-sarīqah*) was not a matter of ignoring or disregarding particular *dalīl* texts. Instead, Umar considered the provisions of other *dalīl* texts, which were more specific in nature (*khaṣṣ*), such as the Hadith of the Prophet: "There is no cutting off of hands in extreme famine".[57] In addition to relying on the mentioned Hadith, Umar grounded his opinion in the Qur'an, specifically Surah Al-Baqarah verse 173 and Surah Al-Mā'idah verse 3.[58]

In addition to neglecting texts with a "certainty of meaning", liberal Muslim groups also err in their approach to determining *maṣlaḥa*. The benefits (*maṣlaḥa*) proposed by the liberal Islamic perspective are not grounded in divine revelation or the text of the *dalīl*; rather, they are formulated based on creative thinking and rational reasoning, both of which are subjective. This tendency is not unique to liberal Muslims in Indonesia but is a prevalent characteristic among liberal Muslim groups globally. The influence of Western philosophical thinking is evident in the arguments presented by various scholars when formulating the concept of *maṣlaḥa*, particularly concerning reconstruction, deconstruction, and critical theory. For instance, Moqsith Ghazali, while reinforcing the foundation of his argument in crafting the Counter Legal Draft Compilation of Islamic Law (CLD KHI), proposed alternative *Uṣūl al-Fiqh* principles, including: *al-ibrah bi al-maqāṣid lā bi al-alfāẓ, jawāz naskh al-nuṣūṣ bi al-maṣlaḥah*, and the rules of *jawāz tanqīḥ al-nuṣūṣ bi al-'aql al-mujtama'*.[59]

Moqsith Ghazali contends that it is crucial to adapt *Uṣūl al-Fiqh* principles when dealing with specific Quranic verses, such as those addressing polygamy, interactions between Muslims and non-Muslims, and others. Without the willingness to make adjustments, these verses might render Muslims ill-equipped to address the complexities of contemporary society. Adhering strictly to the

[55] Al-Būṭī, *Ḍawābiṭ Al-Maṣlaḥah Fī Syarī'ah Al-Islāmiyyah*, 133.
[56] Ahmad Sahal, "Umar Ibn Khattab Dan Islam Liberal," *Majalah Tempo*, April 7, 2002, https://majalah.tempo.co/read/kolom/78281/umar-bin-khattab-dan-islam-liberal.
[57] Muhammad Biltajy, *Manhaj Umar Bin Al-Khattab Fī Al-Tasyrī': Dirāsah Mustau'ibah Li Fiqh Umar Wa Tanẓīmātihi* (Cairo: Dār al-Salām, 2006), 214-215. Syamsuddin Al-Sarakhsi, *Al-Mabsūṭ* (Cairo: Al-Sa'ādah, 1324), X: 104.
[58] Abdullah Yusuf Ali, *The Holy Qur'an* (Hertfordshire: Wordsworth Editions, 2000).
[59] Abdul Moqsith Ghazali, "Argumen Metodologis CLD KHI," *Islam Liberal*, March 8, 2005, http://www.islamlib.com/?site=1&aid=101&cat=content&cid=9&title=argumen-metodologis-cld-khi.

textual interpretation of these verses could lead to practical challenges in societal implementation, making Islamic law appear inflexible and inadequate in offering solutions to current issues. In such a context, the methodological necessity of *tanqīḥ al-nuṣūṣ bi al-'aql al-mujtama'* (revising the meaning of religious texts with the thoughts of general public) becomes evident as a means to provide Islamic law that is not only adaptive but also serves as a solution to contemporary developments.[60]

The concept of tanqīḥ introduced by Moqsith Ghazali poses significant challenges, lacking a solid conceptual foundation in the works of prominent Uṣūl al-Fiqh scholars. The benefits (*maṣlaḥa*) formulated through public reasoning, diverging from legal provisions in the text of the dalīl, are inherently subjective and speculative. Nevertheless, liberal Muslim groups maintain their unwavering position that nothing in Islamic law is immutable; it will evolve and adapt according to societal standards of decency or societal benefit. In reality, individuals or groups have the flexibility to establish distinct parameters for determining appropriateness or benefit, leading to divergent perspectives. This approach often negates the significance of specific Qur'anic verses that offer legal resolutions for diverse situations. In this context, al-Būṭī stressed that *maṣlaḥa* does not hold the same independent status as the Qur'an, Hadith, *ijmā'* (consensus of scholars), and *qiyās* (legal analogy). Consequently, one cannot solely derive legal principles from the perspective of benefits (*maṣlaḥa*) without validating them through the legitimacy of textual evidence (*dalīl*) supporting legal rulings. *Maṣlaḥa* represents a universal concept derived from specific laws originating from textual evidence (*dalīl*). It emerges through the analytical process of specific legal provisions, leading to the identification of a universal and unifying principle, the pursuit of human welfare.[61]

Conclusion

In the realm of liberal Muslim intellectuals, *maqāṣid al-sharī'ah* has transformed into an approach touted as effective in offering solutions to diverse challenges in present-day society. Presented through narratives and arguments articulated with academic-philosophical language, these discussions have successfully persuaded certain individuals that the reconstruction, and even deconstruction, of historical Islamic legal constructs, employing a *maqāṣidī-istiṣlāḥī* approach, are essential for contemporary Muslims. The liberalization of *maqāṣid*, instead of serving as a solution to contemporary challenges, has, in practice, distanced Islamic legal discourse from its established methodological roots, as outlined by previous scholars. In certain cases, the suggested liberalization of *maqāṣid* by liberal Muslim groups has overlooked and dismissed the legal validity of specific textual postulates (*dalīl*), relying on assumed benefits. Essentially, the considerations based on benefits (*maṣlaḥa*) lack a solid foundation and are essentially speculative (*mawhūmah*).

Liberal Muslim intellectuals do not hesitate to scrutinize the content of specific textual propositions (*dalīl*) as a normative legal guide applicable across time and space. They advocate for these texts to be critically assessed and limited in their application by comparing them with texts from revelation considered more universal. These universal texts are thought to convey legal messages in a more humanistic manner, aligning with the overarching objective of legalizing (*al-tashrī'*) law to generate benefits (*maṣlaḥa*). This interpretation must not be accepted without scrutiny,

[60] Abdul Moqsith Ghazali, "Argumen Metodologis CLD KHI," *Islam Liberal*, March 8, 2005, http://www.islamlib.com/?site=1&aid=101&cat=content&cid=9&title=argumen-metodologis-cld-khi..

[61] Al-Būṭī, *Ḍawābiṭ Al-Maṣlaḥah Fī Syarī'ah Al-Islāmiyyah*.

particularly when the basis for determining benefits relies on the collective reasoning of a society that may be biased and driven by self-interest. Even without the liberalization project of *maqāṣid*, Islamic law already exists in an elastic and dynamic form, yet it does not neglect the significance of existing textual propositions (*dalīl*).

Bibliography

'Asyur, Muhammad al-Ṭāhir Ibnu. *Maqāṣid Al-Syarī'ah Al-Islāmiyah*. Edited by Muhammad Ṭāhir al-Mesāwī. Yordan: Dār al-Nafāis, 2001.

Al-Būṭī, Said Ramadan. *Ḍawābiṭ Al-Maṣlaḥah Fī Syarī'ah Al-Islāmiyyah*. Beirut: Mu'assasah al-Risālah, 1998.

Al-Fasi, Alal. *Maqāṣid Al-Syarī'ah Al-Islāmiyyah Wa Makārimuhā*. Marocco: Maktabah al-Wahdah al-'Arabiyah, 1993.

Al-Jabiri, Mohammad Abed. *Bunyāt Al-'Aql Al-'Arabi: Dirāsah Taḥlīliyyah Naqdiyyah Li Nuẓum Al-Ma'rifah Fī Ṡaqāfah Al-'Arabiyyah*. Beirut: Markaz al-Dirāsāt al-Waḥdah al-'Arabiyyah, 1990.

Al-Qardawi, Yusuf. *Dirāsah Fi Fiqh Maqāṣid Al-Syarī'ah: Bayna Al-Maqāṣid Al-Kulliyah Wa Al-Nuṣūṣ Al-Juz'iyyah*. Cairo: Dār al-Syurūq, 2006.

Al-Raysuni, Ahmad. *Muḥāḍarāt Fi Maqāṣid Al-Syarī'ah*. Cairo: Dār al-Kalīmah li al-Nasr wa al-Tawzī', 2010.

———. *Naẓariyāt Al-Maqāṣid 'inda Al-Imām Al-Syāṭibī*. Herndon: The International Institute of Islamic Thought, 1995.

Al-Sarakhsi, Syamsuddin. *Al-Mabsūṭ*. Cairo: Al-Sa'ādah, 1324.

Al-Syāṭibī, Abū Isḥāq. *Al- Muwāfaqāt Fi Uṣūl Al-Syarī'ah*. Beirut: Dār al-Kutub al-'Ilmiyyah, 2004.

Al-Zarqā, Muṣṭafā Ahmad. *Al-Istiṣlāḥ Wa Al-Maṣāliḥ Al-Mursalah*. Damascus: Dār al-Qalam, 1988.

Al-Zuhaili, Wahbah. *Uṣūl Al-Fiqh Al-Islāmī*. Damascus: Dār al-Fikr, 1986.

Ali, Abdullah Yusuf. *The Holy Qur'an*. Hertfordshire: Wordsworth Editions, 2000.

An-Na'im, Abdullahi Ahmed. *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. Syracuse: Syracuse University Press, 2019.

Asmawi, Muhammad Said. *Uṣūl Al-Sharī'ah*. Beirut: Dār al-Iqra', 1983.

Aziz, Ade Muzaini. "Fiqih Pandemi: Antara Azimah Dan Rukhshah." *NU Online*. July 14, 2021. https://banten.nu.or.id/syariah/fiqih-pandemi-antara-azimah-dan-rukhshah-G9Ntm.

Bagus, Lorens. *Kamus Filsafat*. Jakarta: Gramedia Pustaka Utama, 2005.

Bentham, Jeremy. *Theory of Legislation*. London: C.K. Ogden, 1934.

Biltajy, Muhammad. *Manhaj Umar Bin Al-Khattab Fī Al-Tasyrī': Dirāsah Mustau'ibah Li Fiqh Umar Wa Tanẓīmātihi*. Cairo: Dār al-Salām, 2006.

Ghazali, Abdul Moqsith. "Argumen Metodologis CLD KHI." *Islam Liberal*. March 8, 2005. http://www.islamlib.com/?site=1&aid=101&cat=content&cid=9&title=argumen-metodologis-cld-khi.

———. "Hukum Waris Dalam Suatu Konteks." *Islam Liberal*. 2012. http://www.islamlib.com/?site=1&aid=1693&cat=content&title=klipping.

Ghazali, Abdul Moqsith, Luthfi Assyaukanie, and Ulil Abshar Abdalla. *Metodologi Studi Al-Qur'an*. Jakarta: PT Gramedia Pustaka Utama, 2009.

Gier, Nicholas F. "Religious Liberalism and The Founding Fathers." In *Two Centuries of Philosophy in America. Oxford: Basil Blackwell Publishers*, edited by Peter Caws, 22–45. Oxford: Basil Blackwell Publishers, 1980.

Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl Al-Fiqh*. Cambridge: Cambridge University Press, 1997.

Hanafi, Hassan. *Humūm Al-Fikr Wa Al-Waṭan: Al-Fikr Al-'Arabi Al-Mu'Āṣir*. Cairo: Dār al-Quba li Tiba'ah wa al-Nasyr wa al-tawzi', 2003.

Hasaballah, Ali. *Uṣūl Al-Tasyrī' Al-Islāmī*. Cairo: Dār al-Ma'ārif, 1976.

Ibn 'Asyūr, Muhammad Tahir. *Maqāṣid Al-Syarī'ah*. Jordan: Dār al-Nafā'is, 2001.

Ibn Bayyah, Abdullah Ibn Syekh al-Mahfuz. *Amālī Al-Dilālāt*. Cairo: Dār al-Minhāj, 2007.

Iqbal, Mohammad. *The Reconstruction of Religious Thought in Islam*. Standford: Stanford University Press, 2013.

Kurzman, Charles. *Liberal Islam: A Sourcebook*. Edited by Charles Kurzman. Oxford: Oxford University Press, 1998.

Madjid, Nurcholish, Komaruddin Hidayat, Masdar Farid Mas'udi, Kautsar Azhari Noer, and Zainun Kamal. "Fiqh Lintas Agama: Membangun Masyarakat Inklusif-Pluralis." Jakarta: Yayasan Wakaf Paramadina, 2004.

Munajat, Makhrus. "Pengaturan Tindak Pidana Dalam Islam Berdasar Teori Maqasid Al-Syari'ah." *Asy-Syir'ah: Jurnal Ilmu Syariah Dan Hukum* 45, no. 1 (2011).

Postema, Gerald J. *Bentham and the Common Law Tradition*. Oxford: Oxford University Press, 2019.

Prayudi, Prayudi. "Pemikiran Politik Islam Liberal Dan Perkembangannya Di Indonesia Dewasa Ini." *Jurnal Politica* 4, no. 2 (2013): 197–224.

Qodir, Zuly. *Islam Liberal: Varian-Varian Liberalisme Islam Di Indonesia 1991-2002*. Yogyakarta: LKiS Pelangi Aksara, 2010.

Rahman, Fazlur. *Islam and Modernity: Transformation of an Intellectual Tradition*. Chicago: Chicago University Press, 1984.

Saeed, Abdullah. *Interpreting the Qur'an: Towards a Contemporary Approach*. Oxford: Routledge, 2006.

Sahal, Ahmad. "Umar Ibn Khattab Dan Islam Liberal." *Majalah Tempo*. April 7, 2002. https://majalah.tempo.co/read/kolom/78281/umar-bin-khattab-dan-islam-liberal.

Syahrur, Muhammad. *Al-Kitāb Wa Al-Qur'ān: Qirā'ah Muā'ṣirah*. Damascus: al-Ahali li al-Ṭaba'ah wa al-Naṣr wa al-Tawzī', 1990.

Taha, Mahmoud Muhammad. *The Second Message of Islam*. Edited by Abdullahi Ahmed An-Naim. Syracuse, N.Y.: Syracuse University Press, 1998.

Tim Penyusun. *Ensiklopedi Islam*. Jakarta: Ichtiar Baru Van Hoeve, 2005.

Wahyudi, Yudian. *Ushul Fikih versus Hermeneutika: Membaca Islam Dari Kanada Dan Amerika*. Pesantren Nawasea Press, 2007.

Zarkasyi, Hamid Fahmy. *Misykat: Refleksi Tentang Islam, Westernisasi & Liberalisasi*. Jakarta: Institute for the Study of Islamic Thought and Civilizations, 2012.