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MAQĀṢID ASY-SYARĪ'AH APART FROM UṢŪL FIQH? AN OFFER ON ISLAMIC LAW SYSTEM SPINOFF

[1] Masykur Rozi, [2] Subaidi
[12] UIN Sunan Kalijaga Yogyakarta
[1] masykurrozi93@gmail.com, [2] subaidi@uin-suka.ac.id

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ABSTRACT

The use of uṣūl fiqh and *maqāṣid asy-syarī'ah* as methods of finding and verifying law often causes them to overlap and even self-contradict. Therefore, it is necessary to understand the principle of motion, then operate them in their respective parts. This paper aims to examine the principles of motion of each and build a reciprocal relationship between them. This research is qualitative-documentative, with data collected from books and journals. This study concludes that initially, *maqāṣid asy-syarī'ah* adheres to the principle of motion of *istinbāṭī uṣūl al-fiqh*, then becomes a spinoff with the principles of philosophical, analytic, and applicable motion to apply the law. The position of *maqāṣid asy-syarī'ah* as a spinoff has the consequence that it becomes an independent part of the Islamic legal system.

Keywords: Fiqh, Islamic Law, Purpose, Philosophy, Spinoff

ABSTRAK

Penggunaan uṣūl fiqh dan maqāṣid asy-syarī'ah sebagai metode penemuan dan verifikasi hukum kerap kali menyebabkannya tumpang tindih dan bahkan self-contradiction. Oleh sebab itu, perlu kiranya memahami prinsip gerak keduanya, kemudian mengoperasikannya pada bagiannya masing-masing. Makalah ini bertujuan untuk menelaah prinsip gerak masing-masing dan membangun relasi resiprokal keluanya. Riset ini berjenis kualitatif-dokumentatif dengan data yang terkumpul dari buku-buku dan jurnal. Penelitian ini berkesimpulan bahwa pada awalnya maqāṣid asy-syarī'ah menginduk kepada prinsip gerak istinbāṭī usul fikih, kemudian menjadi spin-off dengan prinsip gerak filosofis, analitik, dan aplikatif untuk menerapkan hukum. Posisi maqāṣid asy-syarī'ah sebagai spin-off memiliki konsekuensi bahwa ia menjadi bagian yang berdiri sendiri sebagai bagian dari sistem hukum Islam.

Kata Kunci: *Fikih, Hukum Islam, Tujuan Hukum, Filsafat, Sempalan*

INTRODUCTION

The dynamics of the development of the *masqāṣid asy-syarī'ah* began since its inception in the 5-8 H (11-14 M) centuries, a period in which the discourse of the philosophy of Islamic law became a trend among the experts of *uṣūl al-fiqh*. During this period, there was an important momentum in the discourse on legal methodology, namely the emergence of *maqāsid asy-syarī'ah* as an independent element. The incident occurred when ash-Syāṭibī (d. 1388 AD) put his legal ideas into a work entitled *al-Muwaffaqāt fī Uṣūl asy-Syarī'ah* (Auda, 2012, p. 51). However, this *maqāṣid* has never received open acceptance by jurists in about five centuries. The main factor is possible that as-Syāṭibī's work was not widely disseminated until the 19th Century (*Nass*ery et al., 2018, p. 226).

In the pre-Syāṭibī era, *maqāṣid* discourse became part of *uṣūl al-fiqh*, to be precise in the sub-chapter *masālik al-'illat* (ratio legis). Al-Ghazāli (d.1111) in *al-Mustaṣfā* called it *al-munāsabah*, a method of discovering laws developed from the conception of *maṣlaḥah* composed by his teacher, *al-Juwainī* (d.1085) (Auda, 2012, pp. 53–54). The method of discovering ratio legis from the two classical thinkers of Islamic law, as we understand it, is the meaning of *naṣṣ* by tracing the characteristics that underlie the enactment of a law. Of course, at this level, the meaning of *ẓahir* becomes a benchmark for the validity of the value of *maṣlaḥah* features, bearing in mind that the essence of legal discovery is its textual style. In other words, *maqāṣid asy-syarī'ah* is nothing but the legitimacy of aspects of legal reasons as a goal.

The above conception contemplates Ash-Syāṭibī, who considers that such legal discoveries have no purpose because they only examine certain arguments without systemic unity in achieving the ideal law conditions. This can be seen from his reflections on the case of *murā'ah al-khilāf*, which according to him, is a reflection of Islamic law not having a soul (Masud, 1973, p. 178). In another sense, the law only needs to be implemented, regardless of what the law is enforced for. In order to break down the pointlessness of *uṣūl al-fiqh* law products (which lead to mistakes), he wants to base it on the main mission of the shari'a was revealed, with the conception that the principle of benefit is a core feature of legal construction (Auda, 2012, pp. 57–58).

The conceptions of *maqāṣid* al-Ghazālī (d.1111), al-Juwainī (d.1085), and asy-Syāṭibī (d.1388) have a significant influence on the flow of development of legal methodology. The *mutakallimīn* school, which is associated with ash-Syāfi'iyyah, still maintains the grip of *maqāṣid* as an inseparable part of *uṣūl al-fiqh*, or classical *maqāṣid*. On the other hand, which appears in the style of contemporary Islamic legal thought, is the establishment of *maqāṣid* as a separate element from *uṣūl al-fiqh* (Auda, 2012, p. 59). This tendency was pioneered by Ibn Assyria (*Nass*ery et al., 2018, p. 228).

This causes a new definition of "fiqh *maqāṣid*." Yusuf Qardhawi defines *maqāṣid* fiqh as thinking about particular propositions versus their true aims. The jurists in this context are divided into three groups. First, the literal-textualist group fully holds particular propositions. Second, the *Mu'aṭilah*

group, namely those who fully accept *maqaṣīd* and distort particular propositions. Third, the moderate group (*mutawassiṭ*) adopts both of them in producing laws (Qaraḍāwī, 2007, pp. 39–40).

The differences between the three groups above are caused by various philosophical views about the relationship between elements of the nature of Islamic law (people, methods, and law). According to Batul Faruq, this philosophical assumption determines the form of legal exploration methods among those with a greater tendency towards *maqāṣid* and fiqh proposals (Fārūq, 2013, pp. 260, 228). So, it can be mapped that the tension between the classical and contemporary *maqāṣid* groups is a methodological problem, and it can be said up to the epistemological level in a more real context.

Suppose these two methods are forced to converge. In that case, it will bring about overlapping methodologies, as seen in the *maqāṣid* method in the 19th Century, which, according to Cefli Ademi, was more than an apologetic attitude towards Western progress during the occupation. In this range, classical *maqāṣid* theories are quoted in such a way, and at the same time, they attack the fiqh product resulting from the method they quote (*Nass*ery et al., 2018, p. 227). So if you look further, for someone aware of this contradiction, in the end, they are still 'forced' to choose to base the law on fiqh proposals, as well as *maqāṣid asy-syarī'ah*.

Based on some of the dynamics above, the problem that arises is that *maqāṣid* thinkers have not been able to position *uṣūl al-fiqh* and *maqāṣid asy-syarī'ah* in a balanced way. *Maqāṣid syarī'ah* does not yet have a clear position in the methodological order of Islamic law. This article intends to position *maqāṣid asy-syarī'ah* in the structure of the Islamic legal order so as not to distort the *uṣūl al-fiqh*. To fulfill this effort, the author questions the focus on the details of each role. From there, a unified movement will be built side by side with different roles in producing Islamic law using systemic motion principles.

Several Islamic legal thinkers have studied this discourse. Among them was Abdullah bin Bayah, with his work entitled *'Alāqah Maqāṣid asy-Syarī'ah bi Uṣūl al-Fiqh*. This book discusses the intersection between the general status of the *maqāṣid*, which defeats the 'authority' of the *khāṣṣ*'s specific propositions. In this way, there is an overlap between the opportunities for *maqāṣid* specialize (*takhsis)*. To reconcile this contradiction, Bin Bayah offers a middle way to properly place the *khāṣṣ* and *'amm*. This conclusion was inspired by Asy-Syāṭibī, who warned the fuqahās not to get caught up in the *tanāsukh* between the two, namely ignoring generality (*maqāṣid*) for practicing specificity (single proposition) and vice versa (Bayah, 2006).

The next writer is Ali Mustakin in his writing on the Kanun Journal publication. He concluded that *maqāṣid asy-syarī'ah* is the law's core that dreams of creating a beneficial world order. These *maslahah* values must be sourced in the Qur'an and Sunnah. There are two methods of discovery, namely: *ta'lil*, which includes *qiyas* and *istiḥsān, then istiṣlāḥ* which includes *maṣlaḥah mursalah* and *żarī'ah*

(Mutakin, 2017). In this work, he does not even touch on the principles of the second methodical movement but instead includes *maqāṣid* in *uṣūl al-fiqh*. So that what happened was only discussing one aspect, namely the excavation of *maqaṣīd* with *iṣṭinbāṭ*.

The next work is the writings of Fatimah Halim in the Journal of Hunafa. He concluded that the benefit of human life was the goal of revelation. Whereas in order to find *maqaṣīd*, contextual ijtihād can be done using *asbāb an-nuzūl*, *qiyās*, and *żari'ah* intermediaries *(Halim, 2010)*. He tries to elaborate between the *maqaṣīd* and *uṣūl al-fiqh* ijtihad methods. The difference with this author's writing is the pattern that emphasizes the systematization of the two methods by systematizing the roles of each.

The work that tries to provide a flat portion is Abdul Helim's writing entitled *Maqāṣid al-Syarī'ah* versus *Uṣūl al-Fiqh*. He saw that the *maqāṣid* did not yet have a clear position in fiqh proposals, both in the role of excavation and legal analysis. Even though the idea of *maqāṣid asy-syarī'ah* has existed for centuries, it is only an "extra" in producing law; *uṣūl al-fiqh* is still the "main actor." Helim tried to put the two in a balanced position. He concluded that this goal could be realized using various analyses to find *maslahah*. The analysis starts from the qauli method, inductive, digging illat, making synergistic fiqh principles, expanding *uṣūlul khomsah*, and studying the meaning method, determining the priority of *maslahah* and ending with a *qawaid fiqhiyyah* study which ends with a legal statement on a case (Helim, 2019). Although this work has the same objective, it differs in approach and methodology from the author.

RESEARCH METHODS

The method used in this paper is qualitative as an approach, documentary as a data collection strategy, and content analysis as a scalpel. The primary data used are books and notes that contain material on fiqh proposals and *maqāṣid asy-syarī'ah* from both classical and contemporary circles. Then, secondary sources include other records containing information about the two's relationship. At the same time, the paradigmatic framework that plays a role in compiling the direction of research is philosophical, especially epistemology, in its two contexts, namely the context of discovery and the context of justification (Gunstone, 2015, p. 229). This certainly takes into account the author's 'desire,' which can only be achieved by borrowing the critical-constructive function of philosophy to focus data, frame discussion, control subjectivity, and emphasize data analysis (Given, 2008, p. 872).

RESULTS AND DISCUSSION

The Principle of the Ijtihadi Movement in the Islamic Legal System

The system is a device or element regularly interconnected to form a totality; or an orderly arrangement of views, theories, principles, and so on (Asasriwarnia & Jandra, 2018, p. 2). The legal system is a relationship between elements in it, namely one of the principles is to create a new law. Legal scholars use the concept of a legal system to help with the nature of certain laws (Raz, 1971, pp. 802, 795).

According to Baderin (2021), nature is associated with the character or essence of something. Thus, in terms of scholarship, the Islamic legal system is a relationship between parts of Islamic law, where understanding each of these parts can find the essence of Islamic law itself.

Of course, this discussion will involve all elements of Islamic law so that all existence will be directly or indirectly related. Therefore, contextual and conceptual restrictions are needed to involve important elements in this systemic relationship.

In this discussion, the author only involves three components of Islamic law. These three elements can be grouped into two functions, namely the function of the legal discovery method, which consists of (1) uṣūl fiqh and (2) *maqāṣid syarī'ah*. While the third element is fiqh, which is a legal product of the previous method: These features the author derives from reading several works related to Islamic law, such as Shaṭibī's Philosophy of Islamic Law, Muhammad Khalid Masud's Dissertation (Masud, 1973, p. 43), A book called *Contemporary Anthropology of Religion* edited by Timothy P. Daniels (Daniels, 2017), and *Falsafah al-Fiqh* by Batūl Fārūq (Fārūq, 2013). The authors then filter these concepts by only involving components with a methodical role.

Damanhuri once used the word "principle of motion" in Islamic law with the nuances of ijtihad or work procedures (Damanhuri, 2016, p. 22). What is meant by 'principle of motion' in this paper takes a different perspective. The author was inspired by a physics study, namely rigid-body dynamics. This sub is a branch of kinematics that studies the movement of interconnected features under external forces. Each of these parts has its motion, which systemically goes in one direction. Motion here means a change from one position to another, affecting the other associated devices ("Rigid Body Dynamics," 2020). Suppose we imagine a motorcycle whose interrelated components are moving according to their pattern towards one goal: turning the rear wheel. Thus, the word "principle of motion" in this paper has a broader meaning than working procedures, which includes the interrelated relationship between the operation of the theory and the elements outside it.

Applying this concept to the nature of Islamic law implies that each of the three features above has its movement, where the trigger for its movement is an external push (*khārijiyyah*). External encouragement in this context is a social condition that demands movement from the three features above. The principle of movement is the provision of the situation when the legal methodology is used, while the motion is the application of the legal methodology itself. Thus, the 'principle of ijtihadi movement' rules for using these features according to their respective ijtihad patterns and functions caused by social conditions/context.

Uṣūl al-Fiqh, as the first feature, has two principles of motion, namely *istinbāṭ* motion and *istidlāl* motion. The first is the discovery of law by digging directly from the source. While the second is departing from casuistic events (*ṭāri'*). The external driving factor is when a new case is found and has no legal status.

The next feature is fiqh, which is the fruit of *uṣūl al-fiqh*; it has two principles, namely the motion of '*azīmah* and *rukhṣah*. The principle of motion of '*azīmah* is the implementation of laws such as the 'law of origin' ('Uṡmān, 2002, p. 208). While the second is imposing a legal dispensation due to an external matter ('*āriḍ*). The factors are difficulties, emergencies, and precarious societal conditions ('Uṡmān, 2002, p. 170). When forced to enforce the law of origin, it will only worsen the difficulties and even threaten his life. Thus, in this case, the external drive is 'there or not' in the critical situation. Applying these two movements requires a science called *al-qawā'id al-fiqhiyyah* (Islamic legal maxim).

Finally, the principle of motion of *maqāṣid asy-syarī'ah* is philosophical, theoretical, and applicable. The first principle is the use of *maqāṣid* at the level of legal philosophy. The second is its use as a reference for understanding a case with a conceptual and operational framework that guides the analysis. At the same time, the third is its role as a measure of implementing the law that directly intersects with the community. The external driving factor here is whether or not there are benefits from legal products for society.

Some of the principles of this movement are interrelated towards one final goal, namely, to create laws that are dedicated to the benefit of both this world and the hereafter. In other words, the law is an offering from Allah to be used as manhaj in creating ideal conditions in society. This agrees with Jasser Auda's systems approach, which emphasizes that Islamic law has a 'purposeful' character (Auda, 2012, p. 105).

Principles of Movement of *Ijtihād* in *Uṣūl al-Fiqh*

As briefly reviewed in the previous sub-chapter, the external driving factor of a fiqh proposal is at-*ṭāri'* (new case). This is a consequence of the universal scope of Islamic law, where there should not be a legal vacuum in a case (asy-Syuwaylī, 2018, p. 113). Cases that do not have halal-haram tendencies, *makruh-sunnah*, are still labeled '*mubah*.' By its definition, fiqh is a discussion related to the actions of a *mukallaf*.

The implication of this assumption is usually the continuity of law-seeking movements. The form of the legal discovery movement is to apply the methods of *uṣūl al-fiqh* by associating values from legal sources with casuistic events. Thus, the law discovery movement has two patterns: one is moving toward legal sources to find values, and the second is moving toward cases to understand the essence of the legal event. The first is called *istinbāṭ*, and the second is called *istidlāl*.

Istinbāṭ, in its etymological root, describes the activity of taking water from the ground. Afterward, this word became a technical term in the form of efforts to take meaning from legal sources with great care, relying on the power of isyarāh and thoughts ('Uṡmān, 2002, p. 52). In this case, a *mujtahid* deliberately creates a law from the texts, meaning that the law is already in it and can be detected by the principles of fiqh.

The methodology used in this movement is the rules of language analysis (*alfāẓ*) in *uṣūl*

al-fiqh. We know there are two schools in uṣūl fiqh: the *mutakallimin* and Hanafiyyin schools. The first group represents the Syāfi'iyyah, Malikiah, and Hanabilah with a distinctive style in their theoretical framework, namely dividing *dalālah* into *manṭūq* and *mafhūm* (az-Zuḥailị, 1986, pp. 360–361).

In contrast to *mutakallimin*, Hanafiah has a theoretical framework for analyzing legal codes from *Nass*. As for this group, several divisions are known, including (1) the placement of meaning (*waḍ' al-ma'nā*). (2) the use of lafaz refers to meaning (*i'tibār isti'māl al-lafẓ fi al-ma'nā*). (3) the side of clarity and whether or not lafaz refers to meaning (*dalālah al-lafẓ 'alā al-ma'na bi ḥasbi ẓuhurih wa khafa'ih*). (4) the character designation and understanding of lafaz reveal the meaning (*kayfiyah dalālah al-lafẓ 'alā al-ma'nā wa ṭuruq fahm al-murād*) (az-Zuḥailị, 1986, p. 202). However, what has direct implications for the law is the latter by dividing it again into *'ibārah an-nass, dalālah an-nass, isyārah an-nass*, and *iqtiḍā' an-nass* (az-Zuḥailị, 1986, p. 348).

In several situations, there have been cases where the case was not listed in the specific argumentation of legal sources, thus making the *istinbāṭ* motion impossible. This problem must be addressed differently by going directly to the case. This is an *istidlāl* movement. There are various definitions of this term; according to al-Āmidī (d.1233), it is a type of argument that does not include *nass*, *ijma'*, or *qiyas* (al-Āmidī, 2003, p. 145). Meanwhile, according to al-Juwainī, *istidlāl* is the search for meaning which, according to reason, is deemed to be by the law without any backing of an agreed source of law (al-Juwainī, 1399, p. 1113). Thus, this movement is the last effort to seek legal legitimacy claims.

According to al-Ījī, *istidlāl* focuses on finding causes, māni', and conditions. The method used is *talāzum bayna ḥukmayni min ghayri ta'yīn al-'illah, istiṣḥāb* and, *syar'u man qablanā*. These three are agreed upon by the scholars, while the Hanafiah group includes *istiḥsān*, then *maṣalīḥ mursalah* by Malikiah (al-Ījī, 2004, pp. 502–504).

Thus these two movements, once again, are responses to external factors, namely the vacancy of a case from legal status. The cause of this emptiness is "*syubuhat*." The author deliberately borrows this term from asy-Syuwaylī to describe the conditions of 'obscurity' [pen: iltibās] that are encountered so that the values of the text cannot be raised, or on the one hand, the nature of a case is not understood. This syuhuhat consists of three types, including (1) *ḥukmiyyah syubuhat*, namely the factor of omission of specific arguments or arguments that are still mauqūf, (2) *syubuhat mafhūmiyyah*, which is caused by a misunderstanding of understanding, (3) *syubuhat maṣdāqiyyah*, omission of the applicable legal subject (asy-Syuwaylī, 2018, pp. 113–114).

Maqāṣid asy-Syarī'ah as a Spinoff of the Principles of Ijtihadic Movement of Fiqh Proposals

In this chapter, the author assumes that initially, the *maqāṣid asy-syarī'ah* became part of the movement of *uṣūl al-fiqh*, but in turn, it was detached and then had its principle of motion. The author deliberately chose a spinoff concerning the term media, namely

'story,' which is detached from a main narrative so that it has its plot (*Spinoff | Meaning in the Cambridge English Dictionary*, n.d.).

Genealogically, *maqāṣid* ash-*syarī'ah* is based on the principle of *istidlal* movement in *uṣūl al-fiqh*. Of course, the most influential sections are *istiṣlāḥ*, *istiḥsān*, and *munāsabah*, where in this section, illat is traced and projected as the ultimate goal of the law. However, afterward, he experienced a momentum where he gained his philosophical foundation and then moved to criticize fiqh and fiqh proposals. This moment is when ash-Syāṭibī wants to give a spirit to fiqh to have a clear direction, namely based on *maslahah* and giving *maslahah*.

The giving of this spirit is manifested in the lines composed by him by modifying several parts of the motions of *uṣūl al-fiqh*. The first modification is *maslahah* mursalah which was originally only part of the *munāsabah* and was placed as usūl asy-*syarī'ah*. Next is *ḥikmah min warā' al-aḥkām* which was originally an 'excluded element' because it did not meet the requirements to be made *'illah*, now it becomes qawā'id al-aḥkām. The last is giving maqaṣid, which was initially considered *ẓanni* because it went through the induction process with the status of *qaṭ'ī* (Auda, 2012, pp. 57–58).

Maqashid as *usūl asy-syarī'ah* means making the creation of benefit for humans the biggest reason for establishing *asy-syarī'ah*. We can draw this principle into core values from all legal provisions and other benefits in every 'legal form.' At this level, core values can be used as a paradigmatic construction that forms the 'worldview of Islamic law' that "fiqh has the goal of creating benefit." In this context, *maqāṣid* has a 'philosophical movement' because it functions constructively towards the fiqh worldview.

Because Islamic law leads to benefits, all methods contained in Islamic law must have the potential to produce benefits. In other words, it can be used as the ideal value standard of Islamic law. The purpose of the ideal value is "how Islamic law should be." Assessing the ideality of the 'construction of Islamic law' is to consider how the final result of a law is if it is implemented (asy-Syāṭibī, 1997a, pp. 177–178). It can be said that Islamic law, without including this value, does not reflect the true will of Shari'a. In this context, *maqāṣid* can move in an "analytic" pattern towards Islamic law.

It is known in plural that various ways can be achieved in achieving a goal, as in Islamic law, in which we are familiar with the concepts of *maqāṣid* and *wasā'il*. Therefore there is a plurality of truth in the construction of Islamic law. Of course, this will affect the applicative level that all constructions that lead to Shari's wishes are true. It is not enough to stop there; the role of *maqāṣid* in the applicable context of Islamic law is to choose the one that is best applied in society. This is what was emphasized by 'Izz ad-Dīn b. 'Abd as-Salām (d. 1262) that an alim must have the capacity to select *maṣlaḥah* in the 'priority hierarchy' scheme (al-ahamm ṡumma al-ahamm) (as-Sulamī, 2014, p. 43). In this role, the author calls it "applicative movement."

As a spinoff, *maqāṣid* asy-syrī'ah builds its construction to highlight the 'positive' side of

effects in Islamic law. Thus, the external factor of the *maqāṣid* principle is "fiqh's neglect of expediency," something that has been felt by asy-Syāṭibi, as well as Jasser Auda with his claim that implementing Islamic law as we receive from jurisprudence will create difficulties for Muslim society in the midst of changing world order. Already completely different. To review it more deeply, the author presents the following sub-chapters using the framework of the abovementioned three *maqāṣid asy-syarī'ah* movements.

Maqāṣid asy-Syarī'ah in Its Philosophical Motion

The main role of this philosophical movement is to provide an argument for the 'purposeful' worldview of Islamic law. As for the Islamic tradition, the submission of an argument entitled "*al-adillah an-naqliyyah al-mu'ayyadah bi al-adillah al-'aqliyyah*," namely a theological argument that is supported by rational evidence, or in another editorial called *al-adillah wa al-barāhīn* (Āfandī, 1932, p. 7). This argumentative tradition originates from the *mutakallimīn* in the debate on divine issues. As J. Schacht said, a deeper dive into fiqh arguments will unintentionally touch on theological issues because most jurists are also interested in theology. (Giorgio Levi della Vida Conference, 1971, p. 4). The close relationship between theology and fiqh is principal and branch (*usūl wa furū'*), where the basic assumption is that fiqh is a branch of theology. This has two reasons: First, the fundamental aspect of fiqh is based on the premises of theology. Second, the premise of the science of kalam has an ideological and methodological influence on the premise of Islamic law (Fārūq, 2013, p. 73).

As in philosophical discourse in general, the first emphasis is on the question of the existence of something (ontology). Here, the jurists question the existence of the *maqṣad* in the *asy-syarī'ah* and are drawn to its essence. The next general principle is "if it exists, then it is possible to know," so after emphasizing its existence, they ask how to know it. Meanwhile, after it is known, consider the benefits of this *maqṣad* (Fārūq, 2013, p. 42).

A popular question among jurists in discussing the relationship between law and *maqṣad* is the existence of *'illat* in shari'a. As for Asy'ariyyah, they believe that *asy-syarī'ah* law is included in the prevalence of God's actions (*jā'iz*). Therefore, it does not have *'illat*. The Mu'tazilah argue that Allah's actions are based on 'His justice,' so he has a reason behind it. Meanwhile, the middle position is put forward by Māturīdiyyah, where God's actions have causes and purposes that return to the benefit of creatures, manifesting His grace (Auda, 2012, pp. 107–108).

According to the author, this discussion traps understanding because it always drags legal discourse into the theological realm, so it is necessary to delimit 'God in legal and theological perspectives. The jurists presumably tried to do this during the development of uṣul al-fiqh so that one met the Asy'ariyyah jurists who acknowledged the existence of *'illat* in law, as seen in the thought of Fakhruddin ar-Razi ('Āsyūr, 1984, pp. 379–380). Here we can draw a line of demarcation that *'illat Hukum* is an attribute that is the sole cause of law. Whereas *'illat* in theology is the

cause that 'obliges' Allah to do something (al-Būṭī, n.d., pp. 96–97).

The next 'trap' is the absence of demarcation between *'illat* and *maqṣad*. In the perspective of the uṣuliyyūn, *maqṣad* is the same as *'illat* because 'purpose is categorized as a reason for God's action in deriving shari'a.' This makes 'multiple overlapping' between three elements: (1) *'illat* in the perspective of *uṣūl al-fiqh*, (2) *'illat* in the perspective of theology, and (3) *maqṣad*. The author tries to unravel this "complexity" by proposing two stages of argument, first to distinguish between *maqṣad* and *'illat* in uṣul fiqh, and second to link the two with 'Illat in theology.

As for *'illat* in *uṣūl fiqh* is an attribute that causes the law to effect. In this case, we can break it down into three elements, first: *'illat*, second: law as a construction, and three: law as a predicate. Law as a construction is a rule that contains a subject and predicate, while law as a predicate is to explain the subject in the label *al-ahkam asy-syar'iyyah*. For example, in the legal expression "the adulterer must be stoned," the construction is the expression itself that the adulterer (subject) is obligatory (predicate) and stoned. Furthermore, the law as a predicate is the 'mandatory stoned status' (predicate) assigned to the subject (adulterer). Of course, it must first know its condition as a predicate before constructing the law constructively. It is *'illat* that caused the adulterer to be labeled as having to be stoned, namely the act of adultery.

Thus, *'illat* is a property understood from *Nass* to connect the subject and the predicate. At the same time, *maqṣad* is a goal that can be captured from determining the relationship between the three, namely in the form of excellent values to be achieved from the law. Thus *'illat* is the initiator of the law, then *maqṣad* is the value desired by the legislator, *'illat* regulates the construction of *wasilah*, *maqṣad* sets the target to be achieved. In the example of "the adulterer must be stoned," the *maqṣad* is 'so that humans avoid mixing lineages.'

The placement of this *'illat*, law, and *maqṣad* shows a certain vision of Allah in establishing *asy-syari'ah*. The *asy-syari'ah* is a mission that can deliver humans in that condition. Therefore, the existence of *maqṣad* can be accepted; because of that, fiqh is a 'purposeful entity.' This aligns with and strengthens the naqlī argument in letters an-Nisa: 165 and al-Anbiyā: 105.

As a philosophical consequence, if existence has been accepted, it is possible to know. In this case, Ibnu 'Āsyūr (d. 1973) proposed three methods in uncovering *maqṣad*, including 1) *Istiqrā'* Shari'a either through 'single *'illat*' or 'collective *'illat*,' 2) from clear arguments, and 3) mutawatir hadith both in terms of meaning and activity (*ma'na/'amali*) ('Āsyūr, 2010, pp. 26–30).

The fundamental difference from the method of knowing the purpose of law in *maqāṣid asy-syari'ah* science is the emphasis on the collectivity of the verses of the Koran in concluding the features of *maqāṣid*. This is a form of *istiqrā'* (induction), meaning various verses with a similar theme. Based on the similarity of goals and wisdom, it will be drawn into *maqāṣid* features. Compared with the suggestion of fiqh that it is sufficient to

use one verse in determining the law. This is quite understandable because *istinbāṭ*, which incidentally uses linguistic rules in large portions, cannot ignore even one word to serve as a legal basis.

The final consequence is to formulate the benefits of *maqāṣid*. There is debate whether *maqaṣīd* values can be a determining factor in forming legal constructions. For ar-Raisūnī, maqāsid or *maṣlaḥah* is considered as one of the 'dependent sources of law' (*al-maṣādir at-tab'iyyah*) provided that it does not conflict with shari'a values, namely *maslahah* is pure or superior to *mafsadah* (preponderant) (ar-Raisūnī, 2014, p. 148 dan 421)

Maqāṣid asy-Syarī'ah in Its Analytical Motion

As an ideal value, *maqāṣid* functions as a vision of the future (ma'āl), which can be described from the conclusion of the search for these values behind the *nass*. As for the form of these values, there is an essential meaning and the meaning of *'urfī*. The first is the universal meaning common sense judges as truth, while the second is the meaning formed by a community that something is good for humans ('Āsyūr, 2010, pp. 83–84).

There are several requirements for a value to be a maqaṣid, including: 1) *ṡubūt* (recognized meaning), 2) *ẓāhir* (identifiable), 3) *inḍibāṭ* (measurable criteria) and, 4) *iṭṭirād* (generally applicable). ('Āsyūr, 2010, pp. 84–86). In this case it can be exemplified by "justice", where this meaning can be seen in its provisions in an-Nisā: 46 and 135, al-Mā'idah: 8, 41-42, an-Naḥl: 90 and 126, al-Ḥujrāt: 9 The form of justice can be identified because it shows measurable indicators, and is generally accepted because almost all humans recognize that justice is a benefit.

As for the *maqṣad* in the context of its breadth of coverage, it is divided into three. First: *maqṣad 'āmmah* (universal), which includes the entire *syarī'ah* law. This term is called ash-Syāṭibī with *kuliyyāt al-millah*. Second, *maqṣad khāṣṣah* (partial) includes special terms which usually go beyond the limitations of tabwīb in fiqh. Third: *maqṣad juz'iyyah* (particular), limited in scope in the meaning stored in the objective law values as a predicate.

The features of maqsāṣid are divided into three hierarchical qualities. First: *ḍarūrī*, if it concerns the basic life in supporting the life of this world and the hereafter. Second, *ḥājī*, if it involves non-primary things that support the ease of life. (asy-Syāṭibī, 1997a, pp. 18–19). Finally, *taḥsīnī* when it comes to tertiary matters to support quality of life and aesthetics. The author deliberately overhauls the position of these features. As for *darūriyyāt khamsah*, it is usually included in the first classification. However, those features the author put out. This means these three hierarchies are the 'quality' of features, not features in the quality hierarchy. This is done to simplify the classical *maqāṣid* by adding *tatimmah* and *takmilah*.

In order to fulfill the criteria of analytic movement, the first thing that needs to be emphasized is the substantive-accidental nature (*jauhariyyah-a'rāḍiyyah*) of *maqāṣid* and legal constructions. In this study, it is known that the substance of the law is its *maqṣad*, while the accidents from it are various kinds

of wās'il, where ar-Raisūni calls it '*taṭbīq 'araḍī'* (ar-Raisūnī, 2014, p. 442). This is in line with ash-Syāṭibī that *ma'āl* can annul the legal construction of contextual changes are found. For example, a legal construction applied in *Nass* at the time of its decline produced benefits. However, in its development, it produced *mafsadah*; then the construction lost its '*masyrū'iyyah'* status (asy-Syāṭibī, 1997a, pp. 177–178).

This substantial status of *maqṣad* provides an analytic-critical movement in viewing *wasā'il* in terms of its potential to lead towards *maqṣad*. By placing *maqṣad* as a critical motion function, it can move in two directions, namely the internal and external directions. The internal movement is to see the relationship between *maqaṣid 'kuliyyah* ('*āmmah*), *khāṣṣ*ah and *juz'iyyah* in jointly delivering towards the ideal conditions expected by the *asy-syarī'ah*. In this case, control is held by universal intent, which analyzes and criticizes partial and particular maqsad so there are no internal contradictions in the maqāsid hierarch (an-Najār, 2008, p. 43).

While the external movement is the role of each of the three in assessing legal construction in terms of its potential to achieve benefits at every level, in this way, the function of the *maqāṣid* referred to by ash-Syāṭibī is in this external motion because it annuls the construction of law, not annuls other maqsads which have a lower scope.

Maqāṣid asy-Syarī'ah **in Its Applicative Motion**

This discussion will be more inclined towards the principles of the fiqh movement, which have been alluded to earlier. It is stated that fiqh applicative movements have two kinds, namely '*azimah* and *rukhshah*, where the concept building comes from fiqh proposals, but the applicative identification is assisted by legal maxim (*qawā'id fiqhiyyah*). This discussion is important because differences in socio-community conditions, both in the dimensions of time and place, demand different application patterns. Consequently, to achieve *maqāṣid*, a method is required that allows a *mufti* or *Faqih* to accommodate these differences towards the same goal.

The tradition of using legal maxims marked a shift in the era of ijtihad towards *taqlid*, namely when Muhammad b. Ibrahim al-Jājirmī (d.1216) conducted an induction of the opinions of the Syafi'iyyah scholars and then grouped them into an idiom.(Opwis, 2010, pp. 139–140) At this time, these opinions were like primary sources of law, with evidence that in later times, the scholars carried out *qiyas* with these opinions, and not a few also called them the term '*nass*' (Auda, 2012, p. 312). In Abū Zahrah's perspective, this ijtihad is referred to as ijtihad taṭbīqī, namely an attempt to expand the scope of law outlined by the founders of the school of thought. This ijtihad is usually in the form of *takhrīj* and *taṭbīq ilat* laws, which have been determined by their predecessors in particular matters (*juz'iyyah*). In other words, ijtihād is *taḥqīq al-manāṭ (Zahrah, n.d., p. 379).*

It was Syihāb ad-Dīn al-Qarāfī (d.1285) who attempted to systematize the 'great building' (legal edifice) of Islamic law by making more than 50 lists of legal maxims. His teacher also did the same thing, 'Izz ad-Dīn b. 'Abd as-Salām, but with a more

concise formulation, only consists of five universal principles (*kulliyyāt khamsah*) (Opwis, 2010, pp. 142–143). These two jurisdictions have different characteristics regarding the starting point for giving *rukhshah* compared to most *mutakallimin Faqih*. As for both, the assessment of the capacity of the 'subject' of the *rukhshah* is seen from the *maslahah* and *mafsadah*. Meanwhile, *mutakallimin*, in this case, represented by Fakhr ad-Dīn ar-Rāzī (d. 1209), based his judgment on māni', which was made as *'illat* (ar-Rāzī, 1992, p. 120). So in the example of giving *rukhṣah* 'permissibility' of eating carrion for someone who is almost dying of starvation, the emphasis of the argument is on "for what" rather than "why."

The methodological implication is that at least three functions of legal maxims can guide a *mufti*/*Faqih* in applying legal constructions. First: in giving *rukhṣah*, it is not fixated on māni', but the point of emphasis is on applicative considerations looking at the *maṣlaḥah* and *mafsadah* for those who do it. Second: it can be used as a *tarjīh* method for the arguments or opinions of previous scholars by considering the *maslahah* and *mafsadah* of each opinion if applied in a particular community. Third: the use of *sadd*/*fatḥ aż-żarī'ah* in the conception of 'law and *wasā'il* in order to achieve *maslahah* (Opwis, 2010, pp. 143–155).

The legal construction that has passed this legal maxim and the status of the implementation of '*azīmah* and *rukhṣah* is still being debated. As for ar-Rāzī, al-Āmidī, Ibnu Ḥājib (d.1249) classified it in the aqsām al-fi'l section, while asy-Syaukānī (d.1839) and others included it in aqsām al-ḥukm. First, it does not change the legal provisions; it just changes the way of acting under the law. The second is changing the law (ar-Rāzī, 1992, p. 121).

The legal maxim is the last method before a legal construction is implemented in society. Sometimes a *Faqih* acts as a judge (*qāḍi*) or *mufti*. For a *mufti*, the scope of the law is only binding on the mustaftī, so he must understand the situation and conditions of the fatwa requester so that the law he instructs will bring benefit; likewise, for a judge, where the scope of the law binds all of his *wilāyat al-ḥukm* to find out the social-community conditions (al-Ajfān, 1984, pp. 68–69).

Building Reciprocal Relations of *Uṣūl al-Fiqh* and *Maqāṣid asy-Syarī'ah*

As a manifestation of the effort to 'harmonize' the principles of motion above, in this chapter, the author tries to compile them into an integrated methodological system of Islamic law. Based on the discussion about the principles of fiqh proposals, *maqaṣīd* asy-*syarī'ah*, and fiqh have their respective central roles. This central role is the movement's characteristics, goals, and functions. The movement of fiqh proposals is finding the law (law finding) from a *nass* or legal case. In addition, maqaṣid *syarī'ah* provides a world view and critical internal and external analytical functions. Whereas fiqh, with the help of legal maxim, is at an applicative level related to how to implement legal constructions on an individual and community scale.

The author will prepare reciprocality in this context in several stages: first, connecting the changing sides of Islamic law. Second, the relationship between legal discovery and legal benefits. Third, the selection and application of law.

Immutability-Flexibility Relationship

The applicative context between fiqh and fiqh proposals has a diametrical difference. It is an open secret that the principles of *uṣūl al-fiqh* produce legal certainty because they only provide law in the sense of a predicate. On the other hand, legal maxims provide an applicative process for legal constructions. In another sense, a legal construction has two opposing sides, namely "immutability" and "flexibility," or in Ahmad ar-Raisūnī's language, it is called *aṡ-ṡābit wa al-marūnah* (ar-Raisūnī, 2014, p. 409).

This raises questions regarding the status of Islamic law, whether it is a mystical or profane law. Al-Ghazāli indicates that he is included in the ma'qūlat, which in the premises of the legal construction can be based on *ẓanniyah* matters. In addition, the benefits of fiqh science are only limited to dunyawiyyah. It is interesting when al-Ghazālī faces the fact that the source is a revelation (suggestion). Responding to this, he argued that there is something different between sources and fiqh. As for fiqh is only the result of human understanding of revelation and only provides the *ẓahir* dimension in a rule (Fārūq, 2013, pp. 61–62). Thus, what does not change are the values of revelation, while what changes is the construction resulting from the understanding of revelation. Contrary to that, Asy-Syaukānī reveals that fiqh is a mystical entity on the basis that it is taken from divine premises in the form of revelation (Fārūq, 2013, p. 66).

Different things will certainly happen from the two things above when dealing with triggers for the principle of the ijtihadi movement, namely social conditions. How do mystical vs. profane entities deal with social needs? In a straight line with asy-Syaukāni, N.J. Coulson, H.A.R. Gibb, H.J. Liebesny, M. Khudduri, H. Lammens, G. Makdisi, J.N.D Anderson recognizes the fact that Muslim society regards fiqh as a sacred entity because it relies on mystical sayings. Therefore, it is closed because it is based on divine law. Thus the social disorder of Muslim societies is due to humans ignoring those laws rather than because fiqh is insufficient to provide control and social engineering (Masud, 1973, p. 49).

On the other hand, it was pioneered by Leon Ostorong and S.G.V Firtsgerald that fiqh is responsive and open to social change. This is because the legal material contained in the revelation is little, so it can only develop and change along with social changes in the future. The entire body of Islamic law, thus, cannot be viewed as God's law (Fārūq, 2013, p. 50).

In short, al-Ghazālī and supporters of the flexibility of Islamic law emphasize that Islamic law is responsive to social needs concerning premises captured from legal sources. Conversely, for supporters of "immutability," Islamic law becomes a rigid rule, approaching legal positivism, which closes its eyes to the social context it faces.

The same pattern occurs in the enmity between the schools of origin of fiqh and

maqāṣid asy-Syari'ah, where they are the same in terms of their sources but differ in the values they take. The most basic difference between the two is the "level of depth" in exploring meaning. For fiqh proposals, it suffices the *zahir* meaning, while *maqāṣid* sharia dives deeper even to "*irādah*" (*maqṣad* asy-syāri'). So when asked about immutability vs. flexibility, the meaning taken by *maqāṣid asy-syarī'ah* remains, while what changes is the meaning of *Zahir*. Maqaṣid can take the core values of the *asy-syarī'ah*; fiqh proposals digest constructions. In a more philosophical language, maqaṣid is a substance (*jauhar*), while construction is an accident (*'araḍ*)

Thus, when faced with a social change, the ideal values of *maqaṣīd* may not change, but they can change in legal construction.

Relationship between *Istinbāṭ*, Istidlāl, and Maqaṣidi Criticism

There are several reasons why the author prefers the word "*maqaṣidi* criticism" to the term "*istiṣlāḥ*." This word describes the analytic function of legal construction, while the word *istiṣlāḥ* represents debate in its status as a source of law. The next reason is that "*maqāṣidi* criticism" lies in the movement principle of *maqāṣid asy-syarī'ah*, while *istiṣlāḥ* is in the principle of motion of fiqh proposal, namely Istidlāl. So that it becomes the last option in the search for law, namely when there are no *naṣṣ*, *qiyās*, and ijmā'.

As per the previous discussion, the between *uṣūl al-fiqh* and *maqāṣid* asy-*syarī'ah* has a different meaning-making process. This must be combined in the context of "legal utility construction." Fiqh proposals only produce legal constructions, while these ideal values evaluate the *maslahah*-mafasid. This conception is by ash-Syāṭibi when discussing *ma'āl al-fi'l* (asy-Syāṭibī, 1997b, pp. 177–178).

Once again, these values cannot be separated from the *naṣṣ* because they are taken from the excellent values behind the text. This answers the concerns of the uṣūl scholars that, guided by the *maṣlaḥah*, will harm the text. *Ta'āruḍ bayna an-nuṣuṣ wa al-maqāṣid* only occurs because of different levels of extracting meaning. One understands it to a substantive level; conversely, it is new to an accident. So, using *maqaṣidi*'s critical analysis is the same as seeing "skin" using "contents." If all of them are willing to be drawn to as deep as the substantive level (*maqaṣidī* values), as ar-Raisūnī said, surely there will be no contradictions either between verses or between verses and *maqāṣid* (ar-Raisūnī, 2014, p. 442).

There are several possible differences between the two: *First*, if both are drawn to the *maqaṣidi* level, what is found is the difference in the direction of benefit. Sometimes one *maqṣad* is more priority, and another is less priority. In this case, it cannot be said to be contradictory but preponderant or rājiḥ-marjūḥ. The way to determine both can be done with the *maqāṣid* hierarchy, *ḍarurīyāt khamsah*, the scope of *maslaḥah*, and *ma'āl al-fi'l*.

Second, ika *naṣṣ* has constructed, whereas *maslahah* shows a different thing. *Maqāṣid* may annul it in the sense of suspending the construction application. This is included in the instigation of the legal series.

Third, the differences between *maqāṣid* may be due to differences in perspectives and external tendencies in the search for values. These tendencies include the ideas of kalam, movements, ideologies, and organizations that carry certain interests. So those values have been manipulated and contaminated by interests or passions; of course, in this pattern, we should not consider contradictions between *maqāṣid* but "contradictions of interests."

As for using this critique-analysis, it also has several possibilities. First, the legal construction in *naṣṣ* is by the criteria of ideal *ḍarūriyyāt* values, so the construction is used as is. Second, the legal construction is not by ḍarūriyyāt, so it must be annulled and form a construction relevant to that primary need. Third, legal construction meets the criteria of *ḥājiyyāt* so it may be temporary or permanent. This depends on the level.

Fourth. Legal construction does not fulfill *ḥājiyyāt*; there are opportunities for expansion and legal reconstruction. Fifth, Legal construction is by *tahsiniyāt*, carried out if it does not reduce the values of *ḍarūriyyāt* and *ḥājiyyāt*. Sixth, legal construction is not by tahsiniyyāt. It is seen first whether *ḍarūriyyāt* and *ḥājiyyāt* have been fulfilled. Thus, each motion has given its function, so the reciprocity of the two will be intertwined.

CONCLUSION

A study of *Maqāṣid asy-syarī'ah* by using the principle of motion leads to the conclusion that initially, it was based on the principle of motion of *istinbāṭī uṣūl al-fiqh* as a method of discovering law. Because of the development of the study of this theory, it later became a spinoff with the principle of a philosophical movement to form a worldview, analytic to assess the effectiveness of legal products resulting from fiqh proposals, and applicative to apply the law by incorporating it in the rule of law. This concept positions the three partitions to move hand in hand without distorting the principle of motion of one another.

The position of *Maqāṣid asy-syarī'ah* as a spinoff has the consequence that it becomes an independent part of the Islamic legal system. The possibility that occurs next is that there is a contradiction beyond the reach of researchers between the three partitions. Therefore, a more in-depth study is needed to strengthen the position of *maqāṣid asy-syarī'ah*. One way is to try to find a philosophy of science so that you do not have to adhere to the philosophy of *uṣūl al-fiqh*.

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