A Genealogical Analysis of the Concept and Development of Maqashid Syarī'ah

Iffatin Nur[1], Ali Abdul Wakhid[2], Lestari Handayani[3]

Abstract: *A Genealogical Analysis of the Concept and Development of Maqashid Syarī'ah.* *Maqāshid shsyarī'ah* has a tremendous urgency to the process of Islamic law's adaptability and modernization, especially in response to the increasingly complicated and crucial human problems where the treasures of classical fiqh are no longer capable to answer them. This paper studies a genealogical analysis to answer the question about the origin of the concept of *maqāshid syarī'ah* by uncovering its embryo and genes of this completely new concept. It was library research employing discourse analysis. Primary and secondary sources of works from previous and contemporary Muslim scholars discussing *maqāshid* were studied and analyzed using Gadamer's hermeneutics. The study found that from the historical perspective, *maqāshid syarī'ah* did not just emerge at the time of al-Syathibi, but, based on empirical data, it had been present long before his time. The literature analysis on ushūl fiqh concluded that the figures before al-Syathibi had developed some works that were actually in the area of the essential and substantial values of *maqāshid syarī'ah,* however, they presented them using other words and terms so that they were considered as not of *maqāshid syarī'ah.*

Keywords: genealogical analysis, maqāshid syarī'ah, al-Syathibi

Abstrak: *Analisis Genealogis Konsep dan Pengembangan Maqashid Syarī'ah.* *Maqāshid syarī'ah* memiliki urgensi yang luar biasa terhadap proses adaptasi dan modernisasi hukum Islam, khususnya dalam menanggapi permasalahan-permasalahan baru yang semakin rumit dan krusial di mana khazanah fiqh klasik tidak lagi mampu menjawabnya. Tulisan ini merupakan analisa genealogis untuk menjawab pertanyaan tentang asal mula konsep *maqāshid syarī'ah* dengan mengungkap embrio dan gen dari konsep yang benar-benar baru. Studi ini merupakan penelitian pustaka *(library research)* dengan menggunakan analisa diskursus *(discourse analysis).* Sumber primer dan sekunder penelitian ini berasal dari karya-karya ulama' Muslim klasik dan kontemporer yang membahas issu *maqāshid* yang dipelajari dan dianalisa dengan menggunakan hermeneutika Gadamer. Studi ini menemukan bahwa *maqāshid syarī'ah,* dari perspektif sejarah, tidak hanya muncul pada saat kehidupan al-Syathibi. Berdasarkan data empiris, *maqāshid syarī'ah* sudah ada jauh sebelum masa al-Syathibi. Hasil analisa literatur ushūl fiqh menyimpulkan bahwa tokoh-tokoh sebelum al-Syathibi telah mengembangkan beberapa karya yang sebenarnya telah memuat nilai-nilai esensial dan substansial *maqāshid syarī'ah,* hanya saja mereka menggunakan bahasa dan istilah lain sehingga dianggap bukan *maqāshid syarī'ah.*

Kata Kunci: analisa genealogis, *maqashid syarī'ah*, al-Syathibi

[1]IAIN Tulungagung, East Java, Indonesia 66221.
[2]UIN Raden Intan, Kota Bandarlampung, Lampung, Indonesia 35131.
[3]INSA Centre Val de Loire, PRISME, Bourges, France.
E-mail: [1]iffaeltinury@gmail.com, [2]aliabdulwakhid@radenintan.ac.id, [3]lestari.handayani@insa-cvl.france

Introduction

From the academic perspective, *maqāshid syarī'ah* (the basic objectives of Islamic law) brings forward the concept, purpose, and adaptability of Islamic law from its philosophical-ideal characteristic to the actual-empirical one. By this, an issue discussed in it from time to time is always interesting and debatable among Muslim scholars, primarily, as well as the laity in general. Hence, reviewing *maqāshid* has a strategic value in sharpening intellectual acuity and increasing academic treasure.

Meanwhile, from the historical perspective, *maqāshid syarī'ah* did not only emerge at the time of al-Syathibi,[1] but, based on empirical data, it had existed long before him. Therefore, reviewing the order of the genealogical *sanad* (chain of narrators) of each prominent figure in *maqāshid syarī'ah* from time to time since the Prophet Muhammad to the present day is important. By doing so, its genealogical structure (its origin) can be traced essentially and substantially. This is so because the discourses that developed before al-Syathibi did have the essential values of *maqāshid syarī'ah* since they might had used other terms that they were considered as not that of *maqāshid syarī'ah*.

Examining al-Syathibi's concept of *maqāshid syarī'ah* may depart from various perspectives: philosophical, systematical, ontological, axiological, and methodological aspects. The authors, however, in this study, limited the genealogical (origin) aspect only.

There were some studies on al-Syathibi's view about *maqāshid,* including those of Muhammad Khalid Masood, Hamka Haq, and Asafri Jaya Bakri, to name but few. Even though specifically outlining the

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[1] The full name of al- Syathibi is Abu Ishāq Ibrahim Ibn Musa al-Gharnatiy. He came from an Arab family, the tribe of Lakhmi, while his famous name, al-Syathibi, was taken from the name of his family, Shathibah (Xativa, or Jativa). His date of birth is also not known exactly, but in general, people only mention the year of his death which is 1388 (790 H). However, Hamka Haq, states that al-Syātibī was born and lived in Granada during the reign of Yusuf Abu al-Hajjaj (1333-1354 AD) and Sultan Muhammad V (1354-1391 AD). This allegation seems to be based on computational comparisons between the years of al- Syathibi's death and the period of power of the two Granada sultanates, which at that time Granada was an educational city. See further: Hamka Haq, 'Aspek-Aspek Teologis Dalam Konsep Mashlaḥah Menurut Syathibi Sebagaimana Dalam Al-'Muwāfaqāt' (unpublished Doctorate diss, IAIN Syarif Hidayatullah, 1995).

philosophical view of al-Syathibi in the Islamic law, Khalid Masood[2] did not express the al-Syathibi's views on the methodology he used to formulate the law's objectives, let alone studied the origin and development of the concept of *maqāshid syarī'ah* of al-Syathibi.

Likewise, the dissertation written by Hamka Haq[3] expressed specifically al-Syathibi's thoughts in the theological aspect as understood of the views of al-Syathibi that are spread in his book, *al-Muwāfaqāt*. Hamka was more oriented and attempted to adjust al-Syathibi's theological views with those of the *Mu'tazilite*, so his discussion about *tahsīn* (embellishment) and *taqbīh* (repugnance) was less satisfactory. Moreover, Hamka did not discuss al-Syathibi's ideas about the law.

Asafri Jaya Bakri[4] had directed the discussion on *maqāshid syarī'ah* and had revealed a little about its relevance and significance when conducting *ijtihād* at this present time. Unfortunately, he did not mention in his discussion any methodological aspect of the concept of *maqāshid syarī'ah*, let alone conducting genealogical research of it.

Therefore, this is the aspect that should be significant to be studied, bearing in mind that a prominent scientific finding is often a result of an accumulation process of the findings of the previous figures. Moreover, the emergence of a prominent figure cannot be separated from the influence of other contemporary or earlier figures. Thus, tracing back the originality (genealogical) aspect of al-Syathibi's concept of *maqāshid syarī'ah* and its development becomes a choice of theme in this study.

The essential question about *maqāshid syarī'ah* is a perennial problem as it is characterized by abundant questions such as whether the Islamic law is eternal or profane, whether it is adaptable to a variety of contemporary changes and modernization, whether it can answer various new problems that arise, whether it is capable to accommodate the changes and the process of modernization, and so forth. The list

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[2] See more in Muhammad Khalid Masood, *Islamic Legal Philosophy: A Study of Abu Ishaq Al-Syathibi's Life and Thought* (New Delhi: Adam Publishers and Distributors, 1989).

[3] Hamka Haq.

[4] Asafri Jaya Bakri, *Konsep Maqāshid Syarī'ah Menurut Syathibi* (Jakarta: PT Raja Grafindo Persada, 1996).

of questions related to the issue of *maqāshid syarī'ah* is certainly long; therefore, discussing *maqāshid syarī'ah* is still very relevant today.

The question that arises: *Where does the embryo of the concept of maqāshid syarī'ah come from?* This is one of the objectives of the study which is to uncover the embryo and genes of the concept which is considered to be completely new since, just as a preliminary understanding, there are only little answers obtained from the preliminary literature studies. The question goes on to whether al-Syathibi was the originator of the concept of *maqāshid syarī'ah* if the core spirit of the concept is *mashlahah*. Or, did al-Syathibi only formalize the concept of *mashlahah* into *maqāshid syarī'ah?* Isn't it true that the Prophet, Umar ibn Khattab, Malik ibn Anas, Imam Malik, al-Juwayni and al-Ghazali as well as some other figures had introduced and in favor of *mashlahah* to *zhāhir nashsh* (the apparent meaning of a text) on certain issues? Isn't it true that al-Juwayni had also revealed *al-hifzh al-khamsah* (preserving five primary necessities) that was later developed by al-Ghazali as written in al-Syathibi's *Al-Muwāfaqāt fi Usūl al-Syarī'ah*[5] (referred to as *al-Muwāfaqāt* for the discussion in this paper) volume II? And, at the time after al-Syathibi, there also emerged leading figures who wrote *maqāshid syarī'ah,-*such as Allal al-Fasi, Ibn 'Asyur, and others-, either as their original work or as a claim on the thoughts of other scholars like research by Yusuf Ahmad Muhammad al-Badawi about *Maqāshid Syarī'ah li Ibni Taimiyyah.*[6]

The jurists before al-Syathibi offered changes of the Islamic law through the consideration of *mashlahah*, methods of *qiyās* (analogical reasoning), *mashlahah mursalah* (unrestricted interest), *istihsān* (presumption of continuity), and *istishhāb* (juridical preference) whereas al-Syathibi offered his concept in anticipating various possibilities of changes, flexibility and adaptability of the Islamic law to miscellaneous issues of Muslim people which are increasingly crucial and keeps growing.

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[5] Abu Ishaq al-Syathibi, *Al-Muwāfaqāt Fi Ushūl Al-Syarī'Ah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003).

[6] Yusuf Ahmad Muhammad al-Badawi, *Maqāshid Syarī'ah 'inda Ibni Taimiyyah* (Jordan: Dar al-Nafais, 2000).

The previous ideas, including *maqāshid*, do not mean they have no weakness. However, it needs to be underlined that the weaknesses and shortcomings they possess of course should not just wipe out a profound idea. This is so since when further reviewed, it will be found that *mashlahah* and *maqāshid syarī'ah* have a tremendous urgency to the process of Islamic law's adaptability, modernization, and in responding to the increasingly complicated and crucial human problems where the treasures of classical jurisprudence are no longer capable to answer them. Therefore, it is no surprise that *maqāshid syarī'ah* is considered to have enormous importance in today's Islamic *ijtihād* as seen in the activities of *ijtihād* done by *Majma' al-Buhūts al-Islāmiyyah* in Cairo, *Majlis Ulama Indonesia* (MUI, the Indonesian Board of Islamic Scholars), *Majlīs Tarjīh* (the Legal Affairs Committee) of the Indonesian Muhammadiyah, *Bahtsul Masāil* of the Indonesian Nahdlatul 'Ulama, and so on.

In studying the origin and development of the concept of al-Syathibi's *maqāshid syarī'ah*, the authors picked one main figure of *maqāshid* which was al-Syathibi, and other figures such as Ibn 'Asyur, al-Fasi, Umar ibn Khattab, the Imams of the four schools of thought, al-Thūfi, al-Juwayni, and al-Ghazali. Umar ibn Khattab and those up to al-Ghazali were figures of initiators of *maqāshid syarī'ah* before al-Syathibi, while Ibn al-Fasi and Ibn 'Asyur were those who developed the concept of *maqāshid syarī'ah* post-Syathibi. In this regard, the authors raise the theme of ***"A Genealogical Analysis of the Concept and Development of Maqāshid Syarī'ah."***

This study was library research[7] employing discourse analysis, thus, the source of this research is pure literature.[8] In this research, the authors analyzed the language in its widest sense including studying

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[7] According to Zed, "Library research is research used library sources to get the data." So, the library research uses the library sources (books, journals, magazines, and so on) to collect and analyze the data. See further in Mestika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor Indonesia, 2008).

[8] see C. R. Kothari, *Research Methodology: Methods and Techniques, 2nd Ed.* (New Delhi: New Age International, 2004); Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D, 19th Ed.,* (Bandung: Alfabeta, 2013).

documents.[9] The types of data include: 1) the concept of *mashlahah* before al-Syathibi, 2) the concept of *maqāshid syarī'ah* of al-Syathibi, and 3) the concept of *maqāshid syarī'ah* post-Syathibi. The primary sources of books used in this study were *Al-Muwāfaqāt* and *Al-I'tishām*[10] by al-Syathibi, *Al-Burhān fi Ushūl al-Fiqh*[11] by al-Juwayni, *al-Mustashfā min 'Ilmi al-Ushūl*[12] by al-Ghazali, *Maqāshid Syarī'ah 'inda Ibn Taimiyyah* by al-Badawy, *Risalah fi Ri'āyah al-Mashlahah*[13] of al-Thūfi, Ibn 'Asyur's *Maqāshid Syarī'ah al-Islāmiyyah*[14] al-Fasi's *Maqāshid Syarī'ah al-Islāmiyyah wa Makārimuhā,*[15] and Jamaluddin Athiyah Muhammad's *Nahwa Taf'ili Maqāshid Syarī'ah.*[16]

Secondary data sources included the works previously published about the concept of *maqāshid syarī'ah*. These included *The Islamic Legal Philosophy: A Study of Abu Ishaq al-Syathibi's Life and Thought* (a dissertation written by M. Khalid Masood), *Aspek-aspek Teologis dalam Konsep Mashlahah Menurut al-Syathibi Sebagaimana dalam al-Muwāfaqāt* (The Theological Aspects of the Concept of Mashlahah According to al-Syathibi as in al-Muwāfaqāt, a dissertation written by Hamka Haq), *Konsep Maqāshid Syarī'ah Menurut al-Syathibi* (The Concept of *Maqāshid Syarī'ah* According to al-Syathibi, a dissertation written by Asafri Jaya Bakri), *Nazhāriyyah al-Maqāshid 'inda Ibn 'Asyur* (a thesis written by Ismail al-Hasany)[17] as well as some books of classical *ushūl fiqh* such as

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[9] S.E. Shaw and J. Bailey, '"Discourse Analysis: What Is It and Why Is It Relevant to Family Practice', *Family Practice*, 26.5 (2009), pp. 413–419 <https://doi.org/10.1093/fampra/cmp038>. See also: Anton Bakker and Ahmad Haris Zubair, *Metodologi Penelitian Filsafat* (Yogyakarta: Kanisius, 1992).

[10] Abu Ishaq al-Syathibi and Rashid Ridha (ed.), *Al-I'tishām* (Cairo: Mustofa Muhammad, 1999).

[11] 'Abd al-Malik ibn Yusuf Abū al-Ma'ālī al-Juwaynī, *Al-Burhān Fī Ushūl Al-Fiqh* (Cairo: Dār al-Anshār, 1400).

[12] Abu Hamid Muhammad Ibn Muhammad Ibn Muhammad al-Ghazali, *Al-Mustashfā Min 'Ilm Al-Ushūl* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2010).

[13] Najmuddīn al-Thūfi, *Risālah Fi Ri'āyah Al-Mashlahah* (Beirut: Dār al-Mashdīyah al-Banānīyah, 1994).

[14] Muhammad Taher Ibn 'Ashur, *Maqāsid Al-Syarī'ah Al-Islāmiyyah* (Tunis: Dār al-Tunisiyah, 1366 H/1947).

[15] 'Allal al-Fasi, *Maqāshid Syarī'ah Al-Islāmiyyah Wa Makārimuhā* (Cairo: Dar al-Salam, 2011).

[16] Jamaluddin Athiyah Muhammad, *Nahwa Taf'ili Maqāshid Syarī'ah* (Damascus: Dar al-Fikr, 2003) ISBN: 1-57547-925-7.

[17] Ismail al-Hasany, *Nazhāriyyah Al-Maqāshid 'inda Ibn 'Asyur* (Virginia: al-Ma'had al-'Alami li al-Fikr al-Islāmi, 1995).

al-Risalah[18]by Shafi'i, al-Razi's *al-Mahshūl*,[19] and the cutting-edge works on *ushūl fiqh* by Wahbah al-Zuhaili.[20]

In collecting data, due to the problem of characteristics and the nature of the research, this study used documentary technique. The documentary technique is a way of collecting data through the written heritages, - especially in the form of archives and books, - about opinions, theories, arguments/postulates, and others that have relations with the problems being researched.[21] Its application in this research includes: 1) capturing the basic ideas of the primary sources intact as they are; 2) highlighting the idea through the perspective of research methods; 3) presenting a variety of views and theories of secondary sources to refine and sharpen the analysis, and 4) performing a further analysis to develop an analysis that has any relevance with the idea. This last step was expected to produce any findings in the undertaken research.

In analyzing the data, following the character of the problems, the authors used descriptive[22] and hermeneutics[23] methods. The descriptive method was used based on the premise that this research seeks to elaborate

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[18] Muhammad Ibn Idris Shafi'i, *Al-Risālah* (Cairo: Maktabah Dār al-Turās, 1979).

[19] Fakhr al-Din Muhammad Ibn 'Umar Ibn al-Husain al-RazI, *Al-Mahsūl Fi 'Ilm Usūl Al-Fiqh. Vol. 3.* (Riyadh: Jami'ah al-Imam ibn Sa'ud al-Islamiyah, 1979).

[20] Wahbah al-Zuhaili, *Ushūl Al-Fiqh Al-Islami* (Damascus: Dar al-Fikr, 1986).

[21] Hadari Nawawi, *Metode Penelitian Bidang Sosial* (Yogyakarta: Gadjah Mada University Press, 1991), p. 133.

[22] The descriptive method of research is research describing the state of the subject (person, organization, society, etc.) based on the facts that appear as they are. Characteristically, the descriptive method is a fact-finding method and giving interpretations of those facts. See Hadari Nawawi, p. 73–76, 81.

[23] Hermeneutics is included in the study of social and historical sciences. The word origins from a Greek word: hermeneuein or hermeneutikos which means to interpret. The technical term was known as "hermeneute" which means to say, to explain, to interpret, and to translate. Hermeneutics is a stream of methodology that tries to reveal the meaning of a message. This term simply means an interpretation. As a methodological term, hermeneutics means changing ignorance into understanding. The objects of hermeneutics can be in the forms of textual messages and sociological or historical phenomena. See Amin Abdullah, *'Kata Pengantar Pendekatan Hermeneutika Dalam Studi Fatwa-Fatwa Keagamaan,' in Khaled Abou El-Fadl, Atas Nama Tuhan Dari Fikih Otoriter Ke Fikih Otoritatif*, trans. by R. Cecep Lukman Hakim (Jakarta: Serambi Ilmu, 2004); 13:E. Sumaryono, *Hermeunetik: Sebuah Metode Filsafat* (Yogyakarta: Kanisius, 1993); Hasan Askari, *Towards a Spiritual Humanism: A Muslim-Humanist Dialogue* (Leeds: Seven Mirrors, 1991), p.164.

on the origin of al-Syathibi's concept of *maqāshid syarī'ah,* whereas the hermeneutic method was used because this research was an analytical one and was undertaken to study a prominent figure on the concepts of law, philosophy, and history which were both could be found in the hermeneutics method.

After examining several streams of hermeneutics, it was then viewed that: first, the Gadamer's hermeneutics[24] is an appropriate method to be used in this research because its hermeneutical patterns pay appropriate harmonic-dynamic attention to the study of law, philosophy, and history within the framework of a textual study. Secondly, it was assumed that the author of *maqāshid* undoubtedly intended to convey his ideas across time in front of him, whereas the facts, phenomena, and information before the text of *maqāshid* were written became material considerations for him to compose the texts. Thus, such facts, phenomena, and any information that had been composed into texts became alive and vibrant data that may be interpreted in a different time. Gadamer's hermeneutics provides an appropriate tool for this necessity.

With regard to its usability, the study was intended as an effort to increase the treasure of knowledge on Islamic studies as well as a milestone to conduct further researches on the origins of the concept of *maqāshid syarī'ah* from the period of the Prophet up to al-Syathibi and its development after the time of al-Syathibi. Hopefully, it will add literature on the Islamic scientific thought, especially for the enrichment of literature in the academic world in Islamic universities.

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[24] see Hans-Georg Gadamer, *Truth, and Method* (London-New York: Continuum, 2006); Richard E. Palmer, *Hermeneutics Interpretation Theory in Schleiermacher, Dilthey, Heidegger, and Gadamer,* (Edvanston-USA: Northwestern University Press, 1969), p. 13; Josep Bleicher, *Contemporary Hermeneutics: Hermeneutics as Method, Philosophy and Critique* (London: Routledge & Kegan Paul, 1990); Richard J. Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics, and Praxis* (Philadelphia: University of Pennsylvania Press, 1983); Georgia Warnke, *Gadamer: Hermeneutics, Tradition, and Reason* (Stanford: Stanford University Press, 1987).

Results and Discussion

Referring to the Oxford Advanced Learner's Dictionary,[25] the word *genealogical* is an adjective of *genealogy* which means "*connected with the study of family history, including the study of who the ancestors of a particular person were,*" *concept* means '*an idea or a principle that is connected with something;*' development means '*the gradual growth of something so that it becomes more advanced, stronger, etc.*' The word *maqāshid* (single: *maqshid*) refers to '*a purpose, objective, principle, intent, goal, end,*[26] *telos (Greek), finalité (French),* or *Zweck (German).*[27] ' Whereas *syarī'ah* means '*the revelation that the Prophet Muhammad had received and made practicing it the message and mission of his life, i.e., the Qur'an and the Prophetic tradition.*[28] In this paper what the authors mean by '*maqāshid syarī'ah* ' is the meaning and purposes wanted by the *Shāri'*(the Law Maker, Allah the God Almighty) in establishing the law for His servants' benefits. While the term '*a genealogical analysis on the concept and development*' means a thorough study on *sanad*, genes, or embryos of the concepts of *maqāshid syarī'ah* before al-Syathibi as well as its development post-Syathibi.

There is a group of *fuqahā'* (Islamic jurists) including some traditional Muslim jurists and a large number of Islamologist like C.S. Hurgonje[29] and Joseph Schacht[30] who had concluded that the Islamic law is eternal.[31] Their argument was based on 3 (three) premises: 1) the Islamic law is eternal because its concept is authoritative, divine, and absolute so that it does not allow any change in it, 2) the Islamic law is eternal due to the

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nature of its origin and development in which, in its formative period, it was untouched by any institution of law and social changes, and 3) it is eternal because it does not develop any methodology for changes in the law.

The second group asserts that Islamic law is adaptive to social changes and modernization. They include Subhi Mahmasani[32] and Islamic law observers such as Linant Bellefond[33] and Coulson.[34] They argued that the principles of the Islamic law that rest on the considerations of *mashlahah* (benefits), on *maqāshid syarī'ah,* on the flexibility of law in practice, and the emphasis of *ijtihād*[35] (diligent reasoning), show clearly that Islamic law can be adapted to social changes and modernization. Their opinion was also based on rational arguments. According to them, the Islamic law is purposed to achieve benefits for mankind, therefore, it is supposed to be able to appreciate finely every social change and modernization for these two matters are considered taking parts in efforts to achieve *maqāshid syarī'ah.* Therefore, given the above purpose, Islamic law must be flexible.[36]

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[32] Subhi Mahmashani, *Falsafah Al-Tasyrī' Fi Al-Islām, Trans. by Ahmad Soejono* (Bandung: al-Ma'rifah, 1981).

[33] Y. Linant de Bellefonds, 'La Suppression Des Juridictions Du Statut Personnel En Egypte [The Suppression of Personal Status Jurisdictions in Egypt]', *Revue International Du Droit Compare*, 8. no.1 (1956) <https://www.persee.fr/doc/ridc_0035-3337_1956_num_8_3_10932.>.

[34] N. J. Coulson, *A History of Islamic Law* (New Jersey-USA: Aldine Transaction, 2011), p. 81.

[35] Ijtihād comes from the Arabic word jahada which literally means devoting all abilities or carrying burdens. Dahlan defines it as a serious effort by a mujtahid to reach a decision on syarī'ah (Islamic law) about a case in that is not explained in the Qur'an and/or the Sunnah of the Prophet Muhammad, see further in Abdul Azis Dahlan, *Ensiklopedi Hukum Islam* (Jakarta: Ichtiar Baru Van Hoeve, 1996), p. 669 Al-Khatib states that ijtihād is mobilizing all potential and capabilities owned by someone who has scientific qualifications, theological understanding, and good belief to establish the practical laws of Islam accompanied by arguments that are reviewed in detail and rationally, refers further to ; Abdul Karim al-Khatib, *Ijtihad Menggerakkan Potensi Dinamis Hukum Islam* (Jakarta: Gaya Media Pratama, 2005), p. 29; Meanwhile, al- Khallaf says ijtihād is devoting prime ability to produce Islamic law that was observant and guided by a detailed (tafshili) argument. In other words, ijtihad is the mobilization of all capabilities of a fāqih (an Islamic jurist) to gain knowledge about the law of something through the Islamic law's proposition, see further in: Khallaf, Abd al-Wahab, *Mashādir Al-Tahyrī' Al-Islāmi Fi Mā Lā Nashsh Fīh* (Kuwait: Dār al-Qalam. 1982); So, basically, ijtihād is the exertion of mental energy in the search for an Islamic legal opinion. In other words, ijtihād is the maximum effort expended by a Moslem jurist to apply ūshul al-fiqh (fundamentals of Islamic jurisprudence) in a purpose for discovering God's law. See further: Wael B. Hallaq, 'Was the Gate of Ijtihad Closed?', *Int. Journal of Middle Eastern Studies*, 16.1 (1984).

[36] Fazlur Rahman, *Membuka Pintu Ijtihād*, trans. by Anas Mahyuddin (Bandung: Pustaka,

The idea of *mashlahah* as an independent major pillar was increasingly neglected and reduced when the concept of *mashlahah mursalah* dominated the *mażhab fiqh* (schools of thought on the Islamic jurisprudence), especially the school of Maliki. Meanwhile, *qiyās* (analogical reasoning) - notably it becomes the liaison of methods in expanding and adjusting the teachings of law to social changes and modernization process - had been reduced in such a way. In this condition, the extreme scriptural-textual group (i.e. the school of Zhahiri) defied vigorously any analogical deduction effort based on the search for the objectives of Islamic law.

In the midst of intellectual anxiety as just explained,[37] there came the figure of al-Syathibi with his idea of *maqāshid syarī'ah* appeared in his magnum opus *al-Muwāfaqāt* as an alternative response to the changes and objective improvements of the conditions of Muslims. To realize his obsession, al-Syathibi put his reform ideas in three major agendas: 1) by conducting construction on the formulation of *maqāshid syarī'ah,* 2) by reconstructing the traditional concept of *qath'i* (certain) and *zhanni* (ambiguous), and 3) by developing the concept of *mashlahah mursalah* which is typical to the school of Maliki towards a more universal concept of *mashlahah.*

To the initiators of *maqāshid syarī'ah*, every law of God contains its objectives, both special objectives (termed as ʿ*illāt* and *hikmah*) and general ones (termed as *maqāshid ʿāmmah*) which is the realization of the benefit to mankind. This belief is supported by a mature concept as written by al-Syathibi in his *al-Muwāfaqāt*, ʿAllal al Fasi in *Maqāshid Syarī'ah al-Islāmiyyah wa Makārimuhā,* and Ibn ʿAsyur in *Maqāshid Syarī'ah al-Islāmiyyah.* Any law which generally realizes benefits to mankind means realizing *maqāshid syarī'ah.* Thus, it appears in the concept of *maqāshid syarī'ah* the flexibility, versatility, and dynamics of Islamic law. At the same time, it also opens the minds of those who state that Islamic law

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1995); Harun Nasution, Ijtihād Sumber Ketiga Ajaran Islam. In Jalaludddin Rahmat, *Ijtihād Dalam Sorotan* (Bandung: Mizan, 1991).

[37] In Masood's analysis, Syathibi came amid debates among scholars about the generality of lafaż (texts) and specificity of causes (asbābun nuzul). See Masood, 'Islamic Legal Philosophy', 1989.

is immutable, doctrinal, eternal, and final which is impossibly adaptable to various forms of social change and modernization.

From the preliminary exploration of literature, it was found that the essence of *maqāshid syarī'ah* of al-Syathibi and the core spirit he used as the basis in formulating the contents, missions, visions, and orientations of his *maqāshid syarī'ah* relied on the spirit of *mashlahah*. And, it also turns out that *mashlahah* is an essence and a substance that become the principle of legal reasoning. For example, it is said that goodness is *halāl* and *halāl* must necessarily be good. Such a statement had been used by jurists of the classical schools of thought, particularly Malik ibn Anas, as one method of applying *maqāshid syarī'ah.* Long before Malik ibn Anas, the Prophet Muhammad and Umar ibn Khattab had also done *ijtihād tathbīqi*[38] in seeking the benefit despite conflicting to *zhāhir nashsh* (the physical and perceptible side of a legal text).

Some previous researches stated that al-Syathibi was the first *guru* on *maqāshid syarī'ah.*[39] This means that al-Syathibi is the true originator of the concept. However, if the core of *maqāshid syarī'ah* presented by al-Syathibi is *mashlahah,* then the authors' temporary assumption is that al-Syathibi was not the first originator of the concept of *maqāshid syarī'ah* but rather it was the Prophet Muhammad (PBUH) himself which was then more firmly practiced and developed by the second Caliph Umar ibn Khattab and eventually by the jurists and scholars up to al-Juwayni and al-Ghazali. al-Syathibi was, therefore, the figure that formalized the concept of *mashlahah* into *maqāshid syarī'ah.*

Just as a brief elaboration of the above statement, it can be exemplified here a form of *ijtihād* referring to *maqāshid syarī'ah* conducted by Umar ibn Khattab. In some cases, Umar showed his proficiency in conducting *ijtihād.* Umar is considered to possess a very sharp vision in his search for the objectives of the law *(maqāshid al-ahkām).*[40] For example, Umar

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[38] Ijtihād tathbīqi is an ijtihād in order to stipulate a legal clause that has been generated through ijtihād inshā'i (ijtihād in issuing the law from the Quran and the Sunnah). See further in Syarifuddin Amir, *Ushul Fiqih, Vol. 2* (Jakarta: Kencana, 2014).

[39] Masood.

[40] Further descriptions with more complete case examples of efforts of ijtihād done by Umar ibn Khattab with a vision to realize maqāshid al-syarī'ah can be found in: Ibn Rushd al-

refused to give *zakāt* (alms) to new Muslim-converts even though such is explicitly stipulated in the Holy Quran Surah al-Taubah (9) verse 60 because he assumed that the character of the new converts was not fixed. Therefore, whenever the characteristic concerned is no longer found then *zakāt* is better distributed to those who are needier.[41] Such attitudes and actions according to Amier Nuruddin[42] became a valid proof that Umar did not just employ his ratio *(ra'yu)* in stipulating the law onto events that have no argument, but furthermore he tried to find *mashlahah* that becomes an objective of the implementation of such law despite having it conflicting to *zhāhir nashsh*.

In the following decades, the scholars of *fiqh* pioneered by Shafi'i tried to find legal sources of Islamic jurisprudence other than the Quran and the Sunnah. They agreed that *qiyās* is an important method of stipulating the law in response to the needs of Islamic law's adaptability. They stated that when the *Shāri'* establishes a law, He certainly desires certain objectives/wisdom. Therefore, if two events have a similar determinative aspect *('illāt)* and one of them contains firm and clear texts, then the law of the other event can be established.[43]

Even though this analogical deduction lies under strict formality protection which is the Quran and the Sunnah, its implementation often generates legal products that are contrary to the spirit of the Quran and the Sunnah. Such happens especially with those analogical deductions which are collaborated with the Ash'arite theological pattern of thought. This is because it closes tightly the search for the objectives of law since the *Ash'arite* people insist that there is no causality behind the deeds and words of God.

From a further literature exploration, it can be affirmed that the

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Qurthubi, *Bidāyatul Mujtahid Wa Nihāyatul Muqtashid* (Beirut: Dar al-Ibn Hazm, 1995), p. 338.

[41] see Muhammad Said Ramadan al-Buthi, *Dhawābith Al-Mashlahah* (Beirut: al-Risalah Muassasah, 1986), p. 150-151.

[42] See further in Amier Nuruddin, *Ijtihād Umar Bin Khattab: Studi Tentang Perubahan Hukum Dalam Islam* (Jakarta: Rajawali Pers, 1987).

[43] See further in several works of Shafi'i, particularly in his magnum opuses, *Al-Risalah* (Cairo: Maktabah Dār al-Turās, 1979); and *Al-Umm* (Alexandria: Dar al-Wafa, 2001) as well as in his papers of qaul qadīm (the old statements) and qaul jadīd (the new statements).

essence of *maqāshid syarī'ah* in the form of *mashlahah* or any other formalized various terms that contain the meaning of *maqāshid* has been there since the days of the Prophet and his companions. Apart from Umar ibn Khattab and other guided caliphs (i.e. Abu Bakr, Uthman, and Ali), al-Tirmidhi al-Hakim was the first scholar who made the writing about *maqāshid* in his books *Wa fi al-Irshād fi Tartīb Thurūqi al-Ijtihād*. More systematically, the mapping of *maqāshid syarī'ah* grows, develops, and gets institutionalized through the following periodizations:

Maqāshid Syarī'ah at the Time of the Prophet

Observing thoroughly *maqāshid* at this era, there can be found a variety of practices of attaining *mashlahah*. To be more concrete and precise, the Holy Quran that generally becomes the guidance, the improvement agent, and the director in attaining happiness, also includes well in detail various *'illāt* (legal causes) and *maqāshid* in some discussions contained in its sacred texts. For example, it can be observed closely the discussion of *nashsh* (legal texts), the discussion of phasing and *nasakh* (abrogation) in it as well as the discussions of *tarjīh* (affirmation) between the meanings of texts in the Quran.

Some texts of the Holy Quran become proofs for the presence of *maqāshid* or *mashlahah*. These texts do not explain matters in detail but they only explain the basic principles of law implementation that are practical including civil law, acts/regulations, crimes, economic, and many others.

Concerning trading which becomes one of the most important civil laws, for instance, the Quran mentions only four verses namely: 1) the law of permissibility to practice trading,[44] 2) the requirements that a trade transaction must be based on the willingness of both parties,[45] 3) the presence of a witness in a trade transaction,[46] and 4) a prohibition

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[44] The Holy Quran Surah al-Baqarah [2]: 275, see: Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an* (Maryland, USA: Amana Corporation, 1992), p. 115.

[45] Surah al-Nisā' [4]: 29, Abdullah Yusuf Ali, p. 184.

[46] Surah al-Baqarah [2]: 282, Abdullah Yusuf Ali, p. 117-118.

to conduct a trade at the time when a Friday prayer's call is echoed.[47] Concerning the enactment of regulations, the Quran only mentions three basic principles which are the consultation,[48] justice,[49] and equity[50] whereas the acts in detail are left to mankind so that they can take the most benefit through their wisdom. Concerning the laws on criminal conduct, there are only five types of criminal conduct of which their sentences are mentioned namely: murder, theft, mischief on the earth, adultery, and *qażaf* (slander).

In some verses, there explained the law of an issue as well its wisdom either openly or not, for example, the verses about wine and gambling,[51] the verses about menstruation,[52] and the verses about alms/charity.[53] This shows the importance of seeking benefits (for mankind) in the objectives of law which becomes a fundamental principle of Islamic law.

Many texts of the Quran only state the general principles of law such as *al-ashlu fi al-ashyā'al-ibāhah* (the original status of law for all matters is permissible),[54] the verses on the fundament of law implementation explaining *raf'ul haraj* (eliminating difficulties) and *al-taisir* (promoting ease),[55] and the verses about liability to perform obligations and conveying rights to their owners.[56]

On the other hand, the Hadits do not only serve as *muqarrir* (establisher), *mubayyin* (clarifier), and *munfashil* (differentiator) of Islamic law at the time where there is no clear text in the Quran, but also contain *maqāshid* as those of the Quran, namely: *maqāshid* of the texts of Sunnah, *maqāshid* of *nasakh* in the Sunnah, and *maqāshid* in *ta'ārudh*

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[47] Surah al-Jumu'ah [62]: 9, Abdullah Yusuf Ali, p. 1468-1469.

[48] Surah Āli 'Imrān [3]: 159, Abdullah Yusuf Ali, p. 169.

[49] Surah al-Nisā' [4]: 58, Abdullah Yusuf Ali, p. 203.

[50] Surah al-Hujurāt [49] : 10, Abdullah Yusuf Ali, p. 1341.

[51] Surah al-Māidah [5]: 91, Abdullah Yusuf Ali, p. 277.

[52] Surah al-Baqarah [2] : 222, Abdullah Yusuf Ali, p. 89-90.

[53] Surah al-Taubah [9]: 103, Abdullah Yusuf Ali, p. 468.

[54] Surah al-Baqarah [2]: 29, Abdullah Yusuf Ali, p. 23.

[55] Surah al-Baqarah [2] : 173, Surah al-Baqarah [2] : 185, Surah al-Nisā' [4] : 28, Surah al- Māidah [5]: 6, Surah al-Hajj [22] : 78, Abdullah Yusuf Ali, p. 68-69, 74, 193, 247-248, and 842 respectively.

[56] Surah al-Nisā' [4] : 58, Surah al-Isrā' [17] : 34, Surah al-Hajj [22] : 29, Abdullah Yusuf Ali, p. 203, 683, and 829 respectively.

(disagreement) and *tarjīh*. The *maqāshid syarī'ah* at the time of the Prophet can be elaborated as follows:

Maqāshid Syarī'ah of the Texts of Sunnah

Among the texts of hadits that show wisdom in *maqāshid* is the Prophet's sayings to his companions, Mu'aż ibn Janbal and Abu Musa al-Ash'ari, when they were assigned to Yemen, *"Do make things easy and not hard and give glad tidings and do not make people run away (from guidance)"*.[57] Likewise, the *iqrār* (approval) of the Prophet towards the saying of his companion, Mu'aż, to hold on *ra'yu* (analysis) in the absence of an answer from the texts of both the Qur'an and the Sunnah or when the legal texts are *zhanni* (unclear/ambiguous) and contain multi-functional meanings that require decisive meaning which is closer to the objective of law that may be reached with *al-ra'yu al-shahih* (good analysis), shows this kind of wisdom.

Some important points can be taken as avails of the Prophet's *iqrār* to his companion Mu'aż; it shows that *al-ra'yu al-shahih* can become a source of legitimacy after *nashsh* (the legal texts). It also affirms the position of *ijtihād* employing *al-ra'yu* in the absence of *nashsh* or the presence of texts that are *zhanni*.

Ijtihād bi al-ra'yi includes the use of *ijmā'* (consensus), *qiyās*, *'urf* (tradition), *mashlahah*, *istihsān*, *sadd al-żarī'ah* (blocking the means), *fath al-żarī'ah* (opening the means), and other things that are in harmony with the teachings of Islam without conflicting them to *nashsh* or the principles of Islamic law. This indicates a direct recognition by the Prophet about the limitation of *nashsh* in providing solutions to contemporary issues that must always bring benefits in every time and place. It is, therefore, necessary to have the capabilities to understand *maqāshid* appropriately and correctly.

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[57] A hadits (no. 3996) narrated by al-Bukhari. See: Muhammad ibn Ismail al-Bukhari, *Shahih al-Bukhari*, *The English Translation of Shahih Al-Bukhari With the Arabic Text*, trans. by Muhammad Muhsin Khan (Virginia: Al-Sadaawi Publication, 1996).

Maqāshid of Nasakh in the Hadits

Similar to the Holy Quran, the Hadits of the Prophet also pays attention to *maqāshid syarī'ah*. We can see it in the phasing of law implementation and the ease towards *mukallafīn* (mature Muslims upon whom the Islamic laws are subjected). If the abrogation comes from a heavier law to a lighter one, the objective to be achieved is a relief and ease, and when the vice versa takes place, the objective to be achieved is an effort towards a more perfect and better condition. So, in the end, a *mukallaf* can perform any command between '*azīmah* and *rukhshah* and can perform better obedience.

Therefore, the wisdom of this *nasakh* is aimed for the benefit of humans who become the object of law enforcement. Such can be seen from a hadits which describes that a group of Muslim delegates came to Medina on the feast of Eid al-Adha. The Prophet wanted to give a good reception to honor the guests so he forbade Muslims to store the meat at home, but when their guests had left the Prophet gave back the freedom to store the meat. Another example is that the prayer was first commanded to be performed only two *rakā'at* (cycles) in the morning and another two in the afternoon. After the Islamic spirit had immersed within the Muslims and they had felt the pleasure of Islam in their hearts then Islam commanded them to perform five prayers daily, and of course, all of that concerns with benefits attained to Muslims.

Maqāsidh of Ta'ārudh and Tarjīh in the Hadits

The *maqāshid* of ta'ārudh and tarjīh in the hadits is the recognition that '*illāt* or *hikmah* (wisdom/prudence) that is *manshūsh* (stipulated) is to take precedence over those which are not *manshūsh* because they contain *mashlahah* (benefits) and refuse *mafsadah* (detriments/harms). In addition, the recognition of the explanation of law provides clarity to a *mukallaf* to prioritize the hadits that have legal certainty over those that do not. Or, using al-Syathibi's statement "*maqāshid wadh'i al-syarī'ah lil ifhām*" (the objective of Islamic law is to be understood) which can be conducted by understanding the norms of the Arabic language and requisites in performing *ijtihād*.

Maqāshid Syarī'ah at the Period of the Prophet's Companions

The need for *maqāshid* was acknowledged by the Prophet's companions, this was because there present a lot of issues and legal problems that needed definitive answers. As already known, after the expansion of Islam many Companions scattered in various places where differences in customs and cultures from one place to another were found. Consequently, they had a very urgent role in continuing the prophet's duty to propagate Islam as *warathatul anbiyā'* (the heirs of the Prophets).

When making conclusions of law, the Companions always adhered to the principles of *maqāshid shari'ah* and common grounds in performing *ijtihād*. They had been trained well since they accompanied the Prophet during his lifetime. So it's not surprising that they could have a powerful potency in capturing and applying *maqāshid* in every process of performing *ijtihād*.

When observed, the values of *maqāshid* are very important as the ground of policy-making of the law so that the results of the decision are perceived to give benefits to all people. One example is a consensus of the Companions to ban Abu Bakr on trade and to look for a job when he was serving as the caliph for the benefit of Muslims. But, as compensation, some funds were fetched from *baitul māl* (the state treasury) for him to cover his daily expenses. One other evidence on the tendency to attain *mashlahah* (benefits) was the idea proposed by Umar to Abu Bakr for conducting a codification of the Holy Quran so that later on Zaid ibn Thabit was appointed as the executor of this task. This project was carried out based on the reason that many companions had become martyrs in the war of Yamamah which raised concerns about the loss of the Quran.

Regarding the stopping to give the part in charity to *muallaf qulūbuhum* (new converts that need to be commiserated) at the time of Umar, that does not mean a *nasakh* against the Quran since a *nasakh* is not going to happen after the revelation ceases. The policy, however, was taken based on the thought of being unnecessary to practice *ta'līf* (giving mercy) to the *muallaf* during the time of Umar. Thus this law was an interpretation in accordance with the texts of the Quran and did not cause

contradictions between the benefits and texts. A statement of whether the ta'līf is present or not or to choose those that are considered muallaf (new converts that are considered to be entitled to *ta'līf*), is included in the authority of a leader by having a consultation with others deemed capable. Likewise, the execution of penalties towards thieves by cutting their hands when the *'ām majā'ah* (famine) or *'ām ramadah* (prolonged drought periods) took place were not implemented at the time of Umar.

The election of Abu Bakr as the first Caliph was because the situation was treated similarly to the *imāmah* (leader) in prayer when the Prophet was sick. The achievable objectives were to maintain the state system and to preserve the continuity of propagating the Islamic preaching, civilization, and improvement for society.

A further example was the fall of three divorces to one pronunciation of *thalāqan thalāthan*. It was aimed to prevent any husband so as not to be careless when dropping a divorce to his wife with such pronunciation since it will only result in detriments.

And, when a group of people killed one person then a *qishash* (similar act as a penalty) should be done upon them. The expected goals are to protect the human's life from the evil doings of the criminals and to prevent them from committing mass murder.

Maqāshid Syarī'ah at the Time of Tābi'īn / al-A'immah al-Mujtahidīn

As the Islamic jurisprudence at the time of Companions always related to the *maqāshid,* so was as well during the period of tābi›īn (the generation right after the Companions) because they studied and took methods directly from the Companions. If there were no text, they took *mashlahah* and *qiyās*. As Ibrahim al-Nakhā'i[58] ever said, *"Surely the laws*

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[58] He was a tabi'īn from Iraq, his full name was Abu 'Ammar Ibrahim ibn Yazid ibn al-Aswad bin Amr ibn Rabiah ibn Harithah ibn Sa'ad ibn Malik ibn an-Nakhā'i, born in 46 H/666. He was skilled in the study of hadits and known as one of the great tabi'īn and memorized many hadits. He was extraordinarily expert on Islamic jurisprudence and was a leading mujtahid. Some even described him as a smart scholar as his teacher, Ibn Mas'ud, one of the prominent Companions in fiqh. Available on: 'Https://Ahlulhadist.Wordpress.Com/2007/09/10/Ibrahim-an-Nakha%E2%80% 99iy-Wafat-96-h/ Accessed on Feb 23', 2019; See also: Syihāb al-dīn Ahmad ibn 'Alī ibn Hajar al-Asqalānī, *Tahzīb Al-Tahzīb* (Beirut: Dar al-Fikr, 1995).

of Allah have a purpose namely *hikmah* (wisdom) and *mashlahah* (benefit) *that are back to us."* Similarly, the pattern of *maqāshid* during the *tābi'īn* period was reflected in the strong two schools, namely the school of Hejaz and one of Iraq. In principle, both of these two schools took *ar-ra'yu* but at a different level. This means that they both practiced the fundaments of *mashlahah* in making legal decisions. In addition, different circumstances between the period of the Companions and *tābi'īn* encourage the latter to perform *istinbāth* (searching for legal cause) with any device of *mashlahah*.

Tracking the period of *al-a'immah al-mujtahidin* (the *imāms* of *ijtihād*), the essence of *maqāshid* can be found in the *methodology of* their *istinbath*. In the Maliki's school, *fiqh mashalih* (jurisprudence based on attaining benefit) was very famous because the results of jurisprudence which were based on the aspect of seeking benefits predominated. Among Maliki's *fatwā* was that if it is difficult in an area to find a job which is lawful and is not likely to move to another place then one may take an illicit job as long as only to fulfill his/her emergency needs. Meanwhile, Imam Abu Hanifah took *maqāshid* through *qiyās*, *istihsān*, and *'urf.* Similarly, Imam Shafi'i did so through *qiyās* whereas Imam Ahmad ibn Hanbal and Imam Malik did so through *qiyās, mashalih mursalah, syaż al-żarī'ah,* and *fath al-żarī'ah.* So, to sum up, it can be said that all the scholars agreed to use *maqāshid syarī'ah* as a legal foundation except the *Zhahiriyyah* group that just stuck to texts only. They did so since they rejected the presence of *ta'līl* and *qiyās*. However, even so, they still used the *maqāshid* limited to those which were mentioned by texts alone.

Long before the period of *a'immah al-mażāhib* (the imāms of the schools of thought)*,* some scholars had performed *ijtihād* based on *maqāshid* and discussed it specifically including al-Tirmidhi al-Hakim. Maybe he was the first scholar who produced writing about *maqāshid* in his books: *Al-Shalāh wa Maqāshiduhā*, *al-Hajj wa Asrāruhu*, *al-'Ilālu Syarī'ah*, and *'Ilal 'Ubūdiyyah*. Other works on *maqāshid* by latter scholars include Abu Manshur al Maturidi (d. 333 H / 945) with his book *Ma'khad Shar'iy*, Abu Bakr al-Qaffal al-Shashi (d. 365 H / 976) with his works *Ushūl Fiqh* and *Mahāsin al-Syarī'ah,* Abu Bakr al-Abhari

(d. 375 H / 985) with his books *al-Ushūl, Ijmaʾ Ahli Madīnah* and *Mas`alah Jawāb wa Addalāil wa 'Ilal,* Al Baqilani (d. 403 H / 1013) in his book *al-Taqrīb,* Imam al-Haramain (d. 478 H / 1085) in *al-Burhān, Al-Shalāh wa Maqāshiduhā, al-Hajj wa Asrāruhu, al-'Ilālu Syarī'ah*, and *'Ilal 'Ubūdiyyah,* Imam al-Ghazali (d. 505 H / 1111) in his works *Al-Manhul, Shifā al-Ghalīl* and *al-Mustashfā,* Imam Fakhruddin al-Razi (d. 606 H / 1209) in his book *al-Mahshul.* Other works include those of Imam al-Amidi (d. 631 H / 1234) in *Al-Ihkām,* Ibn al Hajib (d. 636 H / 1239) in his book *Muntahā al-Wushul wa al-Amal fi al-'Ilmi Ushul wa al-Jadal.* Izzuddin ibn Abd Salam (d. 660 H / 1262) in his work *Qawāid al Ahkām fi Mashalih al-Anām,* Imam Qarafi (d. 684 H / 1285) in his work *al Furūq, al Ihkām fi Ahkām Tamyīzi Fatāwi 'an il-Ahkām,* Imam Baidhawi (d. 685 H / 1286) in *Minhājul Wushul ila 'Ilmil Ushul,* Imam al Isnawi in *Nihāyatul ushul fi Sharh Minhāj al-Wushul,* Ibn Taimiyyah (d. 728 H / 1328), and Ibn al-Qayyim al-Jauziyyah (d. 751 H / 1350).

In the next decades, there appeared al-Syathibi (d. 790 H / 1388) with his work *al Muwāfaqāt,* who formalized the diverse terminologies regarding the objectives of law using the terms *maqāshid al-syarī'ah, maqāshid al-ahkām* and so forth in his magnum opus *al-Muwāfaqāt.* The list continues to Imam Shaukani (d. 1250 H / 1834), Tahir ibn 'Asyur (d. 1393 H / 1973) in his book *Maqāshid Syarī'ah,* 'Allal al-Fasi (d. 1394 H /1974) with his book *Maqāshid Syarī'ah wa Makārimuhā,* Dr. Yusuf Hamid in his dissertation *al-Maqāshid al-'āmmah li al-Syarī'ah al-Islāmiyyah,* Dr. Ahmad al-Raishuni in his dissertation *Nazhariyatul Maqāshid 'indal Imām al-Syathibi,* Dr. Uthman Murshid in his book *al-Maqāshid wa Ahkām Syarī'ah wa Athāruhā fi al-Uqūd,* and so forth, all to name but few.[59]

According to the research undertaken by Ahmad al-Raishuni, the person who first used the term *maqāshid al-shar'īy* was Imam al-Haramain (Abu al-Maʾali Abd al-Malik Ibn Abdullah al-Juwayni, d. 478 H / 1085)

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[59] See further in Iffatin Nur, 'Maqashid Al-Syari'ah: Telaah Asal Usul Dan Perkembangan Konsep Maqashid Al-Syari'ah Syathibi, (Doctorate Diss. [Unpublished]),' (UIN Syarif Hidayatullah, 2008).

in his book *al-Burhān fi Ushūl al-Fiqh*[60].Some scholars call the book as *al-Kulliyyah al-Khams* and *al-Ushūl al-Syarī'ah*.[61]

Based on the works of previous scholars, Imam al-Syathibi concluded and explained that all scholars agree that Allah establishes various law provisions intending to maintain the five basic elements of human *(al-Dharūriyyat al-Khams)*. These five elements are safeguarding one's religion, one's life, one's intellect, one's descendants, and one's property. These five elements are also called the principal objectives of law *(al-maqāshid al-shar'iyyah)* [62] whereas al-Ghazali termed them with *al-ushūl al-khamsah*.[63]

Meanwhile, Taj al-Din 'Abd al-Wahhab Ibn al-Subki (d. 771 H / 1370), usually known as Imam al-Subki, added one other objective of law namely safeguarding one's honor *(hifzh al-'irdh),* so it is called *al-kulliyyah al-sitt* (the six elements).[64] However, before him, al-Qarafi (d. 694 H / 1295) was the first scholar to use the term and he grouped it into the fifth objective (i.e. safeguarding one's property).[65]

Al-Ghazali went on to explain that anything which is aimed to maintain those basic five is *al-mashlahah,* whereas, on the contrary, anything which contradicts to it is regarded as an opponent of *al-mashlahah* (benefits), namely *al-mafsadah* (harms). Rejecting *mafsadah* itself is also an *al-mashlahah*.[66] Meanwhile, Sa'id Ramadan himself also stated that the purpose of *syarī'ah* is to preserve one's religion, life, intellect, descendants, and property.[67]

The scholars also agreed that the scale of priority in implementing laws that are prescribed in Islam is consistent with the order of

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[60] 'Abd al-Malik ibn Yusuf Abū al-Ma'ālī al-Juwaynī.

[61] See Ahmad al-Raishuni, *Nazhāriyyah Al-Maqāshid 'inda Al-Imam Al-Syathibi* (Beirut: al-Jami'ah Muassasah, 1992), p. 38.

[62] Ahmad al-Raishuni, p. 39.

[63] Abu Hamid Muhammad Ibn Muhammad Ibn Muhammad al-Ghazali, pp. 286-287.

[64] Taj al-Din 'Abd al-Wahhab Ibn al-Subki, *Hashī'ah Al-'Allamah Al-Bannāni 'alā Matn Jam' i Al-Jawāmi, Chap. 2.* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2005), p. 280.

[65] Syihāb al-dīn Ahmad ibn 'Alī ibn Hajar al-Asqalānī, p. 391 For more details, see:; Ahmad al-Raishuni, p. 50–51; Compare with: 'Abd al-Malik ibn Yusuf Abū al-Ma'ālī al-Juwaynī, p. 1551.

[66] Abu Hamid Muhammad Ibn Muhammad Ibn Muhammad al-Ghazali, p. 287.

[67] Muhammad Said Ramadan al-Buthi, p. 27.

safeguarding those five types of basic elements. In other words, safeguarding one's religion takes precedence over safeguarding his/her life, safeguarding one's life takes precedence over safeguarding one's intellect, and so on.

In summary, it can be said that while some scholars itemize the objectives of laws into those five basic elements, others detail them into six types, and some others do not develop them in detail at all. Again, those five basic elements in the sequence are preserving one's religion, life, descendants, intellect, and property.

The *maqāshid shari'ah* of al-Syathibi is actually a continuation of the concept of *mashlahah* that had appeared in the major works of *ushūl fiqh* before al-Syathibi. In other words, the genes or embryos of *maqāshid syarī'ah* had existed since the time of the Prophet and the Companions. The validity of this statement had been supported by a historical, systematical, and periodical reviews starting from the time of the Prophet, the Companions, the *tābi'īn*, the *mujtahidīn* up to those who were closest to the time of al-Syathibi. The result of exploration indicates that *mashlahah* is the essence of *maqāshid syarī'ah*.

Conclusion

From previous elaboration and discussion, it can be concluded:

First, the conception of *mashlahah* in the view of the majority of Islamic scholars before al-Syathibi means attaining benefits and refusing disadvantages in order to maintain the objectives of the law, namely: maintaining one's religion, spirit, intellect, progeny, and wealth. In other words, attaining benefits and refusing disadvantages solely for the sake of worldly matters without considering their suitability with the objectives of the Islamic law, let alone opposing to them, can not be called *al-mashlahah,* but otherwise, it is *mafsadah.*

Second, in *al-Muwāfaqāt,* al-Syathibi used different terms associated with *maqāshid syarī'ah,* namely: *maqāshid syarī'ah, maqāshid al-shar'iyyah fī al-syarī'ah,* and *maqāshid min shar' i al-hukm.* To the authors' opinion, albeit with different words, those terms contain the same sense and meaning that are the objectives of the law sent down by Allah the

Almighty God. As quoted from his statement, al-Syathibi asserted *"Indeed the Syarī'ah aims to realize the benefit for people in the world and the Hereafter."* In another phrase, al-Syathibi said that *"The laws are stipulated (by Allah) for the benefit of His servants."* If the statements of al-Syathibi are examined, it can be said that the contents of the *maqāshid al-syarī'ah* or the objectives of the law are the benefit for mankind. Understanding the *maqāshid al-syarī'ah* took a sizable portion of the works of al-Syathibi. The *maqāshid al-syarī'ah* was indirectly presented almost in the four volumes of his *al-Muwāfaqāt.* Meanwhile, the concept of *maqāshid al-syarī'ah* substantially does not change significantly, and more in the form of development, addition, and refinement of the concept of al-Syathibi's *maqāshid al-syarī'ah*. Ibn 'Asyur, for example, reformed the classification of *maqāshid al-syarī'ah* that was initiated by al-Syathibi.

Third, genealogically, al-Syathibi's concept of *maqāshid* has a continuous embryo sequence which is the Quran, the Hadits, the period of Companions, Malik ibn Anas, al-Thūfi, al-Ghazali and al-Juwayni, the period of the Imams of *mazhab*, then al-Syathibi. The essence of the concept of *maqāshid al-syarī'ah* stated by al-Syathibi is the same as the conception of *mashlahah* expressed by his predecessors.

In the next decades, there present Ibn 'Asyur who developed the concept of *maqāshid syarī'ah* in theory and application that was contained in his magnum opus *Maqāshid al-Syarī'ah al-Islāmiyyah*. In realizing his idea, Ibn 'Asyur constructed the concept of *maqāshid syarī'ah* in terms of its equality in the science of *syarī'ah* and how to apply it. He asserted that all arguments of *fiqh* must be based on *maqāshid syarī'ah* behind it. Post the time of al-Syathibi and Ibn 'Asyur, there sprang figures that also proposed their ideas about *maqāshid syarī'ah*, - either as their original works or as a claim on the thoughts of other scholars -, such as 'Allal al-Fasi, Hamid al-'Alami, Wahbah al-Zuhaili, Muhammad Ilwan, and Jasser Auda, to name but few, or those who brought up a claim of *maqāshid* of the figures they examined like Yusuf Ahmad Muhammad al-Badawi who wrote *Maqāshid Syarī'ah 'inda Ibni Taimiyyah.*

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We hereby declare that there is no conflict of interest from any party in whatsoever form related to the future publication of this manuscript.

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