Maqāṣid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law

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Abstrak: Peran paling utama dan penting *maqāṣid al-sharī'at* yang patut dipelajari adalah sistem direktif dan pertahanan. Sistem direktif, misalnya, menempatkan *maqāṣid al-sharī'at* sebagai rujukan utama untuk setiap reformasi atau proses perubahan dan dinamisasi hukum Islam, sedangkan yang terakhir menempatkannya sebagai prinsip moralitas tertinggi yang memberikan landasan dan kekuatan etis-spiritual untuk masyarakat Muslim ketika mereka berinteraksi dengan hukum. Dengan dua peran tersebut, *maqāṣid al-sharī'at* dapat menjadi pendorong perubahan masa depan menuju masyarakat yang lebih konstruktif dan humanistik. Penelitian pustaka ini meneliti *maqāṣid al-sharī'at* dari masa Nabi Muhammad Saw. hingga hari ini. Hal ini bertujuan untuk menguraikan posisi *maqāṣid al-sharī'at* sebagai acuan utama dan landasan etis-spiritual bagi dinamisasi proses hukum Islam dalam menghadapi persoalan kontemporer. Ini juga mengkaji konsep *maqāṣid al-sharī'at* dan menganalisis fleksibilitas, kemampuan beradaptasi, dan dinamika hukum Islam. Selain itu, dimaksudkan untuk membuka pikiran mereka yang menyatakan bahwa hukum Islam begitu lestari, doktrinal, abadi, dan final sehingga dianggap tidak dapat beradaptasi dengan berbagai bentuk perubahan sosial dan modernisasi yang membawa banyak isu kekinian.

Kata kunci: Masalah-masalah Kontemporer; Dinamisasi; Landasan etika-spiritual; *Maqāṣid al-Sharī'at*

Abstract: The two primary and significant roles of *maqāṣid al-sharī'at* worth studying are directive and defensive systems. The directive system, for instance, puts the *maqāṣid al-sharī'at* as the main reference for any reformation or changing processes and dynamization of the Islamic law, whereas the latter places it as the supreme principle of morality that provides the foundation and ethical-spiritual power for Muslim Societies when they interact with the law. With these two roles, the *maqāṣid al-sharī'at* can serve as a driving force to create future changes towards a more constructive and humanistic society. This study is library research which examines the *maqāṣid al-sharī'at* from the time of Prophet Muhammad (Peace be Upon Him) to this very day. It aims at elaborating the position of *maqāṣid al-sharī'at* as the primary reference and ethical-spiritual foundation for the dynamization process of Islamic law in dealing with contemporary issues. It also examines the concept of *maqāṣid al-sharī'at* and analyzes the flexibility, adaptability, and dynamic of Islamic law. In addition, it is intended to open the mind of those who claim that Islamic law is so immutable, doctrinal, eternal, and final. This means that Islamic law is assumed to be inadaptable to various forms of social changes and modernization.

Keywords: Contemporary Issues; Dynamization; Ethical-spiritual Foundation; *Maqāṣid al-Sharī'at*

Introduction

Allah established the Islamic law to give benefits to human beings and to prevent any *mafsadāt* (harms), both in this world and the hereafter (Syabani, 2015: 127- 142). Creating benefits is crucial in the formulation of law, – These laws include the divine law deriving from a transcendent source (revelation) as in the Islamic law and the human-made law-, although each law has their respective emphasis (Bakrie, 1996: 130).

Concerning the Islamic law, the difference is in the privilege of the law itself. In the meantime, lots of contemporary public issues including democracy, general election, parliamentary system, corruption, life and health insurances, stem cell therapy, and alike need a critical, wise and thorough reviews by applying the *maqāṣid al-sharī'at* (the objectives of Islamic law) In Indonesia, for example, democracy which is manifested in general elections, usually taking place every five years, has been accepted as a means to elect the head of central, provincial, and local governments as well as their respective members of parliaments. Regarding its implementation, the majority of Indonesian Muslim scholars have accepted the concept of democracy positively considering its compatibility with the Islamic teachings (Hakiki, 2016: 1-17). Regarding the corruption phenomenon, the Transparency International mentions that Indonesia's Corruption Perception Index (CPI) score rose to 38, and the country ranked the 89th out of all countries in the world in 2018. Here, the Zero Point denotes the most corrupt country; the higher the rank of a country, the less corruption is found in the country (Saputra, 2019).

Life and health insurances have also been part of public needs and interests. Therefore, practicing them in a way which is in line with the Islamic law must be studied and, in turn, stipulated under the government regulations (Hasanah, 2019: 239-268). Similarly, the practice of human organ transplantation, including the recent breakthrough in medical treatment, stem cell therapy, need to be taken into account as well (Setiawan, 2014). These are a few examples of contemporary issues in today's human life, where an up-to-date perspective of Islamic law must be present.

Questioning *maqāṣid al-sharī'at* is essentially considered as a

perennial issue with great questions; *Is the Islamic law eternal or temporary? Is it adaptable to changes and modernization? Can it answer different and new issues that arise among society?* And *Is it capable of accommodating the changes and the process of modernization?* among others. There are also a series of other questions closely related to the *maqāṣid al-sharīʿat* issues. To this end, discussing and elaborating the issues has been relevant to this date.

Addressing the characteristics of Islamic law, two groups of scholars have different opinions. The first group, comprising of some *fuqahāʾ* (Islamic jurists) and several Islamologists, concludes that the Islamic law is eternal. Here, C. S. Hurgonje (2010) and Joseph Schacht (1996: 1) belong to this group. They claim, in accordance with its concept, development and methodology, the Islamic law is eternal. Consequently, it is not adaptable to any form of social changes and process of modernization (Masood, 1998). They build their claim based on the following premises: First, the Islamic law is eternal as the concept of law is authoritative, divine and absolute, which in turn does not allow any change in it. As a logical consequence of this concept is that the law is sacred, final, and eternal and closes any door to changes. Second, the Islamic law is eternal due to the nature of its origin and development, in which it was untouched by any institution of law and social changes during its formative period. Third, Islamic law is eternal as it does not develop any methodology for its changes.

In contrast, the second group says Islamic law can adapt to social changes and modernization. This group includes the majority of *fuqahā* (Islamic jurists), Subhi Mahmasani (Mahmashani, 1981), for example, and a small number of Islamic law observers including Linant Bellefond (1956: 412-425) and Coulson (2011: 81). They argue the principles of the Islamic law that depends on *maṣlaḥat* (public interests), *maqāṣid al-sharīʿat* (the objectives of Islamic law), and the flexibility of law in practice, as well as *Ijtihād* (independent reasoning) (Arief, 2017) clearly show that the Islamic law is adaptable to social changes and modernization. They construct their arguments rationally. According to this group, Islamic law aims at giving benefits to all human beings. Therefore, it is expected that the Islamic law appreciate and welcome every social change and modernization for

they considerably take parts in making efforts to achieve the *maqāṣid al-sharīʿat* (the objectives of Islamic law). Given its objectives, Islamic law must be flexible.

Acknowledged or not, the interaction between social changes and the theory of Islamic law has taken place since the time of Prophet Muhammad (Peace be Upon Him). This interaction reached its peak during the time of the enculturation between the Islamic and the Western cultures. This is a logical consequence of the expansion efforts during the reign of the Rashidun Caliphs, Umayyad caliphate, and Abbasid caliphate. Consequently, the renewal of Islamic law has occurred in terms of codification and modification. This renewal or modernization that has taken place in the body of Islamic law is based on the concepts of *maṣlaḥat* (public interest) and *maqāṣid al-aḥkām* (the objectives of rulings) (Halaq, 2005; Bsoul, 2016; Thahir, 2019).

Al-Shaṭibi wrote a mature concept of *maqāṣid al-sharīʿat* in his book *al-Muwāfaqāt fī Uṣūl al-Sharīʿat*, (al-Shaṭībī and Daraz) ʿAllal al-Fassi in *Maqāṣid al-Sharīʿat al-Islāmiyyat wa Makārimuhā*, (al-Fasi, 1993) and Ibn ʿĀshūr in *Maqāṣid al-sharīʿat al-Islāmiyyah* respectively (Zed, 2008). They, among others, are regarded as *maqāṣid al-sharīʿat* initiators. To name a few, the contemporary Muslim scholars with their works on *maqāṣid al-sharīʿat* include Abd al-Wahhāb Khallāf, al-Raisūnī, Sayyid Quṭb, Yūsuf al-Qaraḍāwī, and Jasser Auda.

This study aims at elaborating the position of *maqāṣid al-sharīʿat* as the main reference and ethical-spiritual foundation for the dynamization process of Islamic law in dealing with contemporary issues. This study also examines the concept of *maqāṣid al-sharīʿat* and analyzes the flexibility, adaptability, and dynamic of Islamic law. This is library research (Zed, 2008) in which its sources of data are literature, a collection of written works. In term of the data collection, this study uses a documentary technique (Creswell, 2014; Nawawi, 1991: 133). According to Bailey, a documentary technique refers to analyzing documents that contain information about the phenomenon expected to study (Bailey, 2007). According to Payne and Payne, this method is used to investigate and classify physical sources, most commonly written documents, in the private or public domain (Payne and Payne, 2004). Hadari Nawawi mentions that a documentary technique is a technique of collecting data through written heritages

- especially in terms of archives and books - about opinions, theories, and arguments regarding the problems being studied (Nawawi). Here, this study conducts an in-depth study on some works (i.e. books) of previous Muslim scholars focusing on *maqāṣid al-sharīʿat* including, but not limited to, al-Shaṭībī's *Al-Muwāfaqāt fī Uṣūl al-Sharīʿat,* al-Fassi's *Maqāṣid al-sharīʿat al-Islāmiyyat wa Makārimuhā,* and Ibnu 'Ashur's *Maqāṣid al-sharīʿat al-Islāmiyyat* respectively. It also reviews the works of contemporary scholars: *Maṣādir al-Tashrīʿ al-Islāmī fī mā lā Naṣṣ{ fih* by Abd al-Wahhāb Khallāf, *Naz}ariyyat al-Maqāṣid 'ind al-Imām al-Shaṭībī* by Ahmad al-Raishuni, *Al-'Adālat al-Ijtimā'iyyat fī al-Islām* by Sayyid Quṭb, *Al-Ijtihād fī al-Sharīʿat al-Islāmiyyah maʿa Naẓrāti Taḥlīliyyāt fī al-Ijtihād al-Muʿāṣir* by Yūsuf al-Qaraḍāwī, and *Maqashid Shariah as Philosophy of Islamic Law: A Systems Approach* by Jasser Auda. Other works in terms of books, articles, and journals are also used to gain a better understanding of the *maqāṣid al-sharīʿat.*

To analyze the data in this study, the following procedures are applied: 1) capturing the basic ideas of the primary sources, 2) highlighting the ideas through the research method perspective, 3) presenting various views and theories in secondary sources to sharpen and complete the analysis, and 4) performing further analysis to develop a new analysis which is in line with the ideas. By conducting the last procedure, this study is expected to produce objective findings and conclusion.

Discussion
Understanding the Roles of Human Beings

According to Hasan al-Turabi, the preservation of the earth has something to do with human existence. For this reason, saving the human species from extinction is necessary (1975: 75). One of the ways to save them is by allowing them to live in pairs, a man and a woman, to have descendants *(tawallud)* and to breed *(tanāsul).* Here, human souls need proper and effective regulations since damaged human souls will cause damages on earth (Junaidi, 2014: 71).

Islam teaches universal norms stating that everyone is a part of and has a responsibility to others. They are a part of nature and universal humanity. Therefore, they cannot escape from others and need to live in groups to defend themselves, to breed, and to carry

out more comprehensive functions to fulfil their tasks of being Allah's vicegerents (Junaidi, 2014: 71). The smallest society is family, and it joins with other families to form a community. In turn, lots of communities form a large group of people which is known as a nation or a state. Everyone has different status according to their role in life. This is what encourages each of people to support one another; the weak and vulnerable are protected, and the rich can benefit from the poor. Human beings are weak creatures as Allah said in Sūrat al-Nisā' [4]: 28 (Ali, 1992: 193). They are unable to fulfill their own needs as they must complement and support one another. In other words, they depend on other creatures in this world (al-Ṭabarī, 2000: 32).

Islam also teaches that all human beings are brothers and sisters since they come from one ancestor, the Prophet Adam, as mentioned in Sūrat al-Nisā' [4]: 1 (Ali, 1992: 183). Allah then created Eve from Adam as his wife. From them come all human beings in this world. During his last pilgrimage, Prophet Muhammad gave his farewell sermon. Among others, he said, *"O people, know that your God is one, your ancestors are one. Do know there are no privilege for Arabs over 'Ajam (non-Arab) people and neither do 'Ajam over Arabs. White people have no superiority over black people, and neither do black people over white people except for their fear of Allah."* (Hanbal, 1978).

His sermon becomes an essential principle that all human beings are created equal. Ethnic, linguistic, and skin color differences due to geographical factors are only signs to make it easier to recognize them and provide help as mentioned in Sūrat Al-Ḥujurāt [49]: 13: *"Indeed, the noblest person in Allah's side is the most pious. Men and women only differ in gender. Their deeds are judged and justified by their piety and their ability to give more benefits for others."* (Ali, 1992: 1342-1343).

The Islamic Law at a Glance

Throughout human history, a social change over time is a natural phenomenon. No society is in a dormant state at different times; all is always moving and heading towards an increasingly perfect civilization (Junaidi, 2014: 67). To realize such noble mission of creating a perfect civilization and fulfilling Allah's order to become His vicegerents and preserve the earth, proper and effective regulations to rule their life is necessary. Allah has established such regulations through the teachings

delivered by all of His Messengers. For Muslims, the regulations are written in Islamic law, which is different from other laws as previously mentioned.

The Islamic law is different and is exceptional compared to other laws for several reasons; 1) the Islamic law has benefits and effects which are not only limited to one's life in the present time in this world, but also in the hereafter. This is because the law itself is created for happiness in both dimensions, the present and the afterlives; 2) the benefits brought by the Islamic law are not only related to material dimension (*māddī*) but also immaterial dimension (*rūḥī*), and 3) the religious benefits in the Islamic law become the foundation for other laws. This means if a religious benefit in the Islamic law contradicts to the one which belongs to the other laws, the religious benefit must come first (Bakrie: 64; Sya'bani, 130).

Islamic law is a law which is closely related to this change. Besides playing a role in changing society from its bad condition to a good one, the Islamic law itself has also been a product of change as the result of contextual *Ijtihād* by its scholars and practitioners from the time of Prophet Muhammad to the present day (al-Awwa, 1998: 4). During the Prophet's days, religious issues were solved through revelation, whereas worldly issues were settled through consultation with his Companions. In the era of the Companions, *naṣṣ* (texts) from the Qur'ān and Hadīth became the primary reference, but the policies and decisions were made through discussions and deliberations among them.

In responding to the contemporary issues, Islamic law has been more developed than its initial inspiration. However, the law still refers to the texts in the Qur'an and Sunnat as its primary sources. In this regard, the Islamic law is not an instant law made by God according to His desires. Still, it is the law that will progressively develop and guide the development of Muslim society through *Ijtihād* (independent reasoning). The *Ijtihād* is conducted by understanding the texts, analogizing new cases to the ones that already have legal rules, and issuing new laws in line with the objectives of *sharī'at* (Madkur, 1983: 58-62).

According to Anwar, the process of legal reasoning in stipulating a legal regulation involves three poles which have dialectical relations

to one another. These three include the texts, the reality, and the objectives of the law. The texts, with their symbols and dependence on generalization and abstraction in expressing an object, enable the *mujtahid* (the one who conducts *Ijtihād*) to add a new meaning to them. This meaning is produced to adequately understand the issues and the spatio-temporal space in which it happens and to consider the objectives of law. The reality of the issues lights up the understanding of the texts, while the texts give a clear orientation in coping with reality at the same time (Anwar, 2003: 154).

One's dependency on Islamic law can bring glory as the law has an ability to shape human beings into perfect beings or make them more humane. In its realization, the Islamic law includes 2 (two) categories: *sharī'at* which is permanent, clear, firm, *qaṭ'iy* (absolute) and universally applicable; and *fiqh* which is open to changes and interpretable. Here, the *mujtahid* plays a significant role in finding the truth based on their independent reasoning. For this reason, the truth is *ẓanniy* (interpretable) and supposedly applicable. The latter category is flexible, adaptable and responsive to the social dynamics and the changing times. With such natures, Islamic law can provide reasonable and applicable solutions (Junaidi, 2014: 77).

The Qur'ān is the primary source of Islamic law. However, according to Wahyuni, not all of the texts contain and give an understanding which is *qaṭ'iy al-dilālah* (in a strict, specific, and detailed manner) and no longer requires a detailed explanation. There are a lot of verses in the Qur'ān with *mujmal* (global/undetailed), *khafī* (unclear), or *mushkīl* (abstruse) narration. In many cases, the Qur'ān even only mentions universal norms and values. To understand such verses would undoubtedly require further explanation and details. However, it does not mean the imperfection or weakness of the Qur'ān, but it is an advantage that makes it to be always *up to date* and relevant to every place and era and in line with its position as the source of the *sharīa* (Wahyuni, 2016: 225-252).

The Islamic law which has been practiced until now is a dynamic law stipulated by Muslims based on their understanding and interpretation on the revelation (texts) (ibn Khaldun, 200). Such understanding and interpretation, which is adaptable and adjustable to the changing times, is called *fiqh*. Here, *fiqh* is known as *al-ḥukm*

al-Islām (Islamic law). The term *al-ḥukm al-Islām* distinguishes it from other laws. Such term is not popular in the books of *uṣūl fiqh*, and it is only mentioned once by Ibn Hazm al-Ẓāhirī in *al-Nubzat al-Kāfiyah,* Volume I, on page 59. Besides, it is mentioned three times in *al-Furūq,* a book written by As`ad ibn Muhammad ibn al-Husayn. In the work of Muhammad ibn Bahādur al-Zarkashi, *al-Manthūr fī al-Qawā'id,* it is only mentioned once (Junaidi, 2014: 18).

The term *al-ḥukm al-Islām* is often understood and interpreted as *fiqh* and *al-sharī'at al-Islāmiyyah.* However, each of these terms has its framework. For this reason, in several posts and forums, contemporary Muslim scholars make extra efforts to describe each term so that they can be distinguished from one another and have a respective proportional position (Khatib, 2014: 79-80).

The method of conducting *istinbāṭ* (searching for legal cause) in *uṣūl fiqh* (the principles of Islamic Jurisprudence) is classified into three forms: *ṭarīqat al-Ijtihād al-bayāni* (a semantic/linguistic *Ijtihād* method), *ṭarīqat al-ijtihād al-tawfīqi* (reasoning towards conflicting religious propositions), and *ṭarīqat al-ijtihād al-ta'līli* (reasoning with legal causes/purposes), one of which is the method of *maqasid al-sharī'at* (Anwar, 2003: 157). This method is developed to achieve the ultimate objective in establishing and implementing Islamic law, benefits for humanity.

Ṭarīqat al-ijtihād al-bayāni is an *Ijtihād* method or legal discovery by explaining the existing *naṣṣ* (texts) through linguistic/semantic reasoning or approaches to the texts. The followings are the procedures of this method: 1) checking on the clarity of the statements mentioned in the texts (Qur'ān and Hadīth), 2) finding the meaning of the texts, 3) observing the scope (broadness and narrowness) of the statements mentioned in the texts, and 4) analyzing the forms of *taklīf* (a legal charge or obligation) mentioned in the texts (Anwar, 2003: 157-158).

In the meantime, *tarīqah al-ijtihād al-tawfiqi* is a method of making law by harmonizing the conflicting texts in the Qur'ān and the Hadīth. This method of ijtihad is carried out in three techniques; *al-jam'u* (compromising), *al-Naskh* (abrogation), and *at-tarjīḥ* (reinforcing) (Anwar, 2003: 158). Lastly, *ṭarīqat al-ijtihād al-ta'līli* is a legal discovery method by finding the legal causes or purposes mentioned in the texts in the Qur'ān and the Hadīth. This *ta'līli* method is classified

into two types; *ta'līlu al-aḥkām bi al-'illah* (legal discovery based on legal causes) and *ta'līlu al-aḥkām bi maqāṣidi al-sharī'at* (legal discovery based on legal purposes) (Anwar, 2003: 158).

According to Hazri, the *maqāṣid* is supposed to give way for the *uṣūl al-fiqh* for the *uṣūl* has been occupied with technicalities. Any difficulties are expected to be solved or dealt with by discovering the underlying objectives of the *sharī'at*. Here, the historical look at the development of Islamic law has revealed the constitution of *ijtihad* (Hazri, 2015: 422-426).

Understanding *Maqāṣid al-Sharī'at*

The term *maqṣid* (plural: *maqāṣid*) means *a purpose, a principle, an objective, an intent, an end, a goal, telos* (Greek), *finalité* (French), or *Zweck* (German) (Auda, 2008: 2).

It derives from the verb *qaṣada-yaqṣudu* and has different meanings, i.e. leading to one direction, goal, middle-path, fairness, consistency, not exceeding limits, straight path, a middle-way between exaggeration and insufficiency. In the meantime, the word *sharī'at,* according to Thahir, etymologically means *al-'utbah* (the lap of the valley), *al-'atabah* (a doorway and a stair), *mawrīd al-sharīah* (a path where the thirsty look for water), and *al-ṭarīq al-mustaqīmat* (a straight path). The use of the term *sharīah* referring to the meaning *mawrid al-sharī'at* is found in the words of the Arabs: *shara'at al-ibil,* which means a camel goes out and heads to the water source to drink (Ismai'il, 1985; Musa, 1989: 17), whereas its meaning as *ṭarīqat al-mustaqīmat* is mentioned in Sūrat al-Jāthiyah [45]: 18: *"Then We put thee on the (right) way of religion; so follow thou that (way), and follow not the desires of those who know not"* (Ali, 1992: 1297)

For Muslims, *sharī'at* means religion, *al-ṭarīqat al-mustaqīmat* (the straight path), and *al-nuṣuṣ al-muqaddas* (the sacred texts) from the Qur'ān and Sunnat (Rauf, 1989: 1-50). Schacht says, *sharī'at* is the sacred law of Islam. He adds, *it is an all-embracing body of religious duties, the totality of Allah's commands that regulate the life of every Muslim in all aspects; it consists of ordinances regarding worship and rituals, as well as political and (in the narrow sense) legal rules."* (2007: 142). In short, *maqāṣid al-sharī'at* is defined as the objectives or purposes behind the Islamic law enactment (Auda, 2008: 2).

The knowledge of *maqāṣid al-sharī'at* is essential. Here, understanding the *maqāṣid al-sharī'at* can be used as a tool to comprehend narratives in the Holy Qur'ān and the Sunnat/Hadīth. It also helps to settle the conflicting arguments (*ta'ārud al-dilālah*) that may be found in both sources of Islamic law. Further, it can also be used as a method to establish a law in cases where legal provisions are not available either in the Qur'an or the Sunnat (Sya'bani, 138: 138).

In *uṣūl al-fiqh,* the objectives or purposes of Islamic law are often referred to as *maqāṣid al-sharī'at* which is manifested or reflected through the five fundamental elements in the Islamic law: *hifz al-din* (protection and preservation of religion), *hifz al-aql* (protection and preservation of intellect), *hifz al-nafs* (protection and preservation of soul), *hifz al-mal* (protection and preservation of property), and *hifz al-'irdh* (protection and preservation of lineage). *Maqāṣid al-sharī'at* is also mentioned in different terms, including *maqāṣid al-sharī'*, *maqāṣid al-sharī'at*, and *al-maqāṣid al-shar'iyyah* (Raosuni, 1992: 17). Essentially, these different terms imply the same meaning, which is the purposes or objectives of Islamic law enactment. In general, the Muslim scholars of Islamic jurisprudence interpret *maqāṣid sharī'at* as the essence of the Islamic law enactment (al-Fasi, 1993). Najm al-Din al-T{ūfi (d. 716 H/ 1216), for example, defines *maṣlaḥat* as what fulfills Allah's purpose as the Law Maker (*al-Shāri*). Meanwhile, al-Qarafi (d. 1285 H/ 1868) associates *maṣlaḥat* and *maqāṣid* with the principles of Islamic Jurisprudence. He states *'A purpose of the law (i.e. maqāṣid al-sharī'at) is invalid unless it gives benefits or avoids harms' (*al-Qarafi, 1994: 33). Al-Fasi, as quoted by al-Raisūnī, mentions:

> "*Maqāṣid al-sharī'at* is the objectives of *sharī'at* and the secrets that have been set by *al-Shāri*' (Allah) in any provisions of His law" (al-Rausani, 1992: 18).

The general principle of *maqāṣid al-sharī'at* is enforcing the significance of *jalb al-maṣāliḥ wa dar' al-mafāsid* (getting benefits and avoiding harms). In this case, al-Raisuni states:

> "In general, *maqāṣid* means upholding rules, getting benefits, avoiding harms, building equality among human beings and establishing *sharī'at* (the Islamic law) as an authoritative legal product. On the other hand, it can also lead Muslim to become a strong, respectable and calming community. Suffice to say, *maqāṣid al-sharī'at* is the objectives of the

Islamic law enactment which needs to happen for the sake of human beings as a whole" (al-Rausani, 1992: 18-19).

A Brief History of *Maqāṣid al-Sharī'at*

The literature review shows that the *maqāṣid al-sharī'at* in terms of *maṣlaḥat* or any other terms having a close meaning with *maqāṣid* has essentially been present since the time of Prophet Muhammad (Peace be Upon Him) and his Companions, especially 'Umar ibn Khattab and the other caliphs (i.e. Abu Bakr, 'Uthman and 'Ali), as narrated in several events. This is because the *sharī'at* brought by Prophet Muhammad (Peace be Upon Him) to give benefits to all human beings is not supposed to be understood textually. Such benefits have existed since the Qur'ān verses were revealed and have also been mentioned in the hadīth. This indicates that *maqāṣid al-sharī'at* basically never leaves the texts but always goes along with it (Hasan, 209).

One of the most popular examples is mentioned in a *mutawātir* (mass transmitted) hadīth about performing 'Asr prayer in Banī Quraiẓat (Auda, 2008). Prophet Muhammad (Peace be Upon Him) sent some of his companions to Banī Quraiẓat to ask them to perform 'Asr prayer (al Bukhari, 1986: 321). However, the usual time for performing 'Asr prayer was almost over, yet they had not arrived in Banī Quraiẓat area. At the time, the Companions were divided into two groups with two different opinions. The first group argued for performing the Asr' prayer in Banī Quraiẓat area with any consequences, while the second insisted on performing the prayer on the way before the 'Asr prayer time ran out.

The argument behind the first opinion is that the Prophet's command literally asked everyone to perform the 'Asr prayer in Banī Quraiẓat area. In the meantime, the second opinion is based on the objective or purpose mentioned in the Prophet's command, which was to ask the Companions to rush into Banī Quraiẓat area. It was not intended to postpone the 'Asr prayer until the time was over. According to the narrators of the hadīth, when the Companions reported the incidence to the Prophet, the Prophet (Peace be Upon Him) confirmed and justified the two opinions. The Prophet's *taqrīr* (acknowledgement), as later practiced by Islamic jurists and scholars, shows the possibility and permission to have different points of view (Isra, 2018).

The only scholar who disagreed with the opinion of the Companions who performed the Asr' prayer on their way to Bani Quraizah is Ibn Hazm al-Ẓahiri (a prominent jurist of the Ẓahiri school). He argued that those Companions should have performed the 'Asr prayer after arriving at Banī Quraiẓat as told by the Prophet even though they did it after midnight (Ibnu Hazam, 29). The above example illustrates an early history of the concept of *maqāṣid al-sharīʿat* in implementing the Islamic law and the arising implications from giving the fundamental position on the *maqāṣid* which has existed even at the times of the Prophet and his Companions.

The Quran, as the transcendental source of Islamic teachings, provides an essential foundation, *the principle of governing the interest of people* in every enactment of its legal regulation (Hallaq, 2005, 84). One of the shreds of evidence showing the presence of *maqāṣid* or *maṣlaḥat* in every law enactment and texts is that the texts only mention the basic principles in the application of practical laws; civic, crime, economics, politics, and any other aspects. In some verses in the Qurʾān, the law on a matter is mentioned along with its wisdom, explicitly or implicitly, The examples are the verse about gambling and wine (Ali, 1992: 277), the verse about alms or charity (Ali, 1992: 468), and the verse about women's menstruation, among others (Ali, 1992: 89-90). This shows the importance of seeking benefits in the objectives of law which have become the fundamental principle of Islamic law. Many texts in the Quran only state the general principles of law; *al-aṣlu fiʾl-ashyāʾ al-ibāḥat ḥattā yadull al-dalīl ʿalā al-taḥrīm* (permissibility is the fundamental norm in all things unless there is evidence to establish a prohibition) (Ali, 1992: 23)*,* the verse on the fundamental of law enforcement about *rafʾ al-ḥaraj wa al-taysīr* (avoiding difficulties and promoting simplicities) (68-69), and the verse about performing obligations and giving rights to their owners, among others (Hasan, 2019).

During the era of the Prophet's Companions, the need for *maqāṣid* was more pressing. This happened since a lot of issues needed definitive legal answers considering many Companions were in different places, especially after the expansion of Islam. They found customs and cultures in one place were different from the ones in another. Consequently, they, as *warathah al-anbiyāʾ* (the heirs of the

Prophets) played a significant role in continuing the Prophet's duty to spread Islam. They had been trained well since they accompanied the Prophet during their lifetime. No wonder if they could have a powerful potential in capturing and applying *maqāṣid* in every process of conducting *Ijtihād*.

The implementation of *maqāṣid shari'ah* during their era is found in many occasions: electing Abu Bakar as the first caliph; forbidding Abu Bakar from conducting business due to his public position by allocating some wages for him in return; not executing the penalty of cutting off the thieves' hands during the prolonged drought; (Khasan, 2008 296-314; Amir, 1987) and so on. In formulating the rules of life for Muslims at the time, they referred to the texts in the Quran and the hadīth of the Prophet. If they did not find any from both, the one that could correspond to the existing issues, they then conducted *Ijtihād* by looking for the lessons mentioned in the Qur'ān and the hadīths.

One of the issues that arose after the Prophet Muhammad passed away is Ḥudhaifa's marriage to a Jewish woman. 'Umar bin Khattab, who heard the information, asked him to divorce her. Since Ḥudhaifat knew that marrying a woman of the book was allowed, he asked 'Umar if the woman was *ḥarām* (unlawful) for him. 'Umar then replied that it was not *ḥarām* to marry a woman of the book. However, he was worried that other Companions would follow his step as Jewish women generally had a more beautiful appearance. If that happened, it could cause a slander for Muslim women and lead to pre-marital sex among society as there would be a large number of unmarried Muslim women (Hasan, 2019).

Just like the Companions, *tābi'īn* (the generation right after the Companions) always associated the implementation of the Islamic law to *maqāṣid*. This is because they learned and followed the methods directly from the Companions. If they did not find any texts regarding a specific issue, they would consider *maṣlaḥat* (benefits) and *qiyās* (analogy). As Ibrahim an-Nakha'i once said, *"Allah's laws surely have a purpose which is al-ḥikmat (wisdom) and maṣlaḥat (benefit) that returns to us"* (ibn Ali ibn Hajar al Asqalani, 1995). The pattern of *maqāṣid* during the *tābi'īn* era is reflected by two strong schools, the Hejaz and Iraq schools. They have both practiced the fundamentals of *maṣlaḥat* in

producing legal decisions. In addition, different circumstances between the era of the Companions and that of *tābi'īn* encourage the latter to perform *istinbāṭ* (searching for legal cause) with any means of *maṣlaḥat*.

A clear example is the issue of *tas'īr* (setting up a price as a general benchmark) when prices rise, and demands increase. The *tābi'īn* including Sa'id bin al-Musayyab, Rabi'ah bin Abdul Rahman, and others issued a *fatwā* (religious advice) that *tas'īr* is permissible. The Prophet (Peace be Upon Him) himself was reluctant to set up a fixed price even at the time when prices rose since *tas'īr* contains elements of unwillingness from the capital owners. However, the *tabi'īn* clarified that the contexts that occurred at the time of the Prophet (Peace be Upon Him) and what happened in their time are different. They added that the rising prices of daily necessities during the time of the Prophet (Peace be Upon Him) were triggered by changes in the natural conditions due to the prolonged drought. In other words, the issue was not pressing at the time. In the context of the *tabi'īn* era, the increasing price was triggered by the spread of stockpiling, greediness, and weak religious capacity. For this reason, such a condition requires the regulation of general pricing to maintain balance and avoid hoarding practices. These two examples are frequently mentioned in the books of hadīth, including Ibn Majah's *Sunan* and Imam Malik's *Al-Muwaṭṭa'* and become an essential discussion in the classical and contemporary *fiqh* books (Hasan, 2009).

Conducting such method in making a decision on a new issue, after the death of the Prophet (Peace be Upon Him), by referring to the texts in the Qur'an and hadīth and upholding the *maqāṣid shari'ah* essentially has tarted from the era of the Companions, *tābi'īn*, *tābi' al-tābi'īn* (the generation right after *tābi'īn*), the imam of *madhāhib* (schools of Islamic law), and so on, to this present time.

In view of the *al-a'immat al-mujtahidīn* (the *imāms* of Ijtihād), the *maqāṣid* can essentially be found in the methodology of their *istinbāṭ*. In Maliki's school, for instance, *fiqh maṣāliḥ* (jurisprudence based on benefits) is very popular for the results of the jurisprudence are dominated with the principle of achieving benefits. In the meantime, Imam Abu Hanifah generated *maqāṣid* through *qiyās, istiḥsān* and *'urf*. Similarly, Imam Shafi'i also applied *qiyās* while Imam Ahmad ibn Hanbal and Imam Malik went with *qiyās, maṣāliḥ mursalah, shadd*

al-dharī'ah, and *fatḥ al-dharī'ah*. In short, all scholars of the majority schools have agreed to use *maqāṣid syarī'ah* as a legal foundation except the *Ẓahiriyyah* school that only refer to the texts in the Qur'ān and the Hadīth. For this reason, they have denied the presence of *ta'līl* and *qiyās*. Nevertheless, they have applied *maqāṣid* on a limited basis to those which are only mentioned by the texts (Nur, 2008).

The study conducted by Ahmad al-Raisūnī mentions that the first person used the term *maqāṣid al-shar'īy* is Abu al-Ma'ali Abd al-Malik Ibn Abdullah Imam al-Haramain al-Juwaynī, (d. 478 H / 1085) in his book *al-Burhān fi Uṣūl al-Fiqh* (al Juwayni, 1980). The book is also known as *al-Kulliyyah al-Khams* and *al-Uṣūl al-Sharī'at* (al-Raisūnī, 1992: 38). According to the works of previous Muslim scholars, Imam al-Shaṭibi illustrates and draws a conclusion that all scholars agree that Allah has established various legal provisions to maintain the five fundamental elements *(al-ḍarūriyyat al-khams)* in the Islamic law: *hifẓ al-din* (protection and preservation of religion), *hifẓ al-aql* (protection and preservation of intellect), *hifẓ al-nafs* (protection and preservation of soul), *hifẓ al-mal* (protection and preservation of property), and *hifẓ al-'irdh* (protection and preservation of lineage). These five elements are also known as the objectives of the Islamic law *(al-maqāṣid al-shar'iyyah)* (al-Raisūnī, 1992: 39) while Imam al-Ghazālī has used the term *al-uṣūl al-khamsah* (2018: 286-287) Al-Ghazalī then claims anything which is aimed at maintaining the five fundamental elements is considered as *al-maṣlaḥat*. In contrast, anything contradicts to them is regarded as an opponent of the *al-maṣlaḥat*, which is *al-mafsadah* (harms). Avoiding *mafsadah* itself is also considered as *al-maṣlaḥat* (al Ghazali, 2018: 286-287).

Tāj al-Dīn 'Abd al-Wahhab Ibn al-Subkī, who was usually called as Imam al-Subkī (d. 771 H/ 1370), adds one more objective of law, protection and preservation of dignity *(hifẓ al-'irḍ)*. It is then commonly known as *al-kulliyyah al-sittah* (ibn al-Subkī: 280). Al-Qarafī (d. 694 H/ 1295) is actually the first Muslim scholar who started using such term and classified it into the fifth objective (i.e. *hifẓ al-mal*/protection and preservation of property) (al-Qarafī, 1973: 391). In the same way, a contemporary scholar, Sa'id Ramaḍan al-Būṭī, also mentions that the objective of *sharī'at* is to preserve one's religion, soul, intellect, lineage, and property (al-Būṭī, 1990: 27).

Muslim scholars have also agreed that the scale of priority in implementing the Islamic law is in line with the order of the protection and preservation of the five fundamental elements. This means protecting one's religion takes precedence over protecting one's life, protecting one's life takes precedence over protecting one's intellect, and so on. In short, some scholars divide the objectives of the Islamic law into five fundamental elements and some others classify them into six elements. Some do not even develop them in details.

The *Maqāṣid shari'ah* proposed by al-Shaṭībī (al-Shaṭībī and Daraz, 1999) is basically a follow-up of the concept of *maṣlaḥat* that have emerged in the majority works of *uṣūl fiqh* experts before him. In other words, the embryo or gene of *maqāṣid shari'ah* has existed since the time of Prophet Muhammad (Peace be Upon Him) and the era of his Companions. Ibn 'Ashūr states that the validity of the concept of *maqāṣid* as a tool for legal formulation lies on the extent of its certainty and closeness to the level of *qaṭ'ī* (certain) (Ibnu Ashur). For this reason, the concept of *maqāṣid al-sharī'at* he offers stands upright and he dared to make a valuable breakthrough and contribution to the next generation in studying and formulating the *maqāṣid al-sharī'at* on this basis.

His statement has been supported by a historical, systematical, and periodical reviews starting from the times of the Prophet, the Companions, the *tābi'īn*, the *mujtahidīn* and those who were closest to the time of al-Shaṭībī. It has gone further until the present day with the emergence of contemporary scholars including Abd al-Wahhab Khallaf, Ahmad al-Raisūnī, Yūsuf al-Qaraḍāwī, and Jasser Auda, to name a few. The literature review shows that *maṣlaḥat* has been the essence of *maqāṣid shari'ah*.

Sharī'at as the Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law

The contemporary *Ijtihād* (independent reasoning) has become a primary requirement. Al-Qaradawi even claims that its status reaches *farḍu kifāyah* (a collective obligation) (al-Qardhawi, 1994: 34) especially in the today's era with its dynamic problems and rapid technological advances. The old and classic methods and approaches will experience difficulties in providing legal solution to deal with

contemporary cases. Therefore, finding the right and sophisticated method in *Ijtihād* to compete with the progressive development of society and the dynamics of the demanding era is necessary. In this regard, the method of *maqāṣid al-sharī'at* is considered capable of interacting with and counterbalancing the progress of contemporary era (Sapriadi, 2018: 1-2).

Every Allah's law has its objectives, both special objectives (*'illāt* and *ḥikmat*) and general objectives (*maqāṣid 'āmmat*). All is to give benefits to human beings. Any law which generally aims at giving benefits means realizing the *maqāṣid al-sharī'at*. Here, the flexibility, versatility, and dynamics of the Islamic law appear in the concept of *maqāṣid al-sharī'at*. At the same time, the concept also opens the mind of those who claim that Islamic law is so immutable, doctrinal, eternal, and final that it is assumed to be inadaptable to various forms of social changes and modernization which bring lots of contemporary issues.

Referring to the progress and development of the *maqāṣid* from time to time, the *maqāṣid* has a very significant position in the process of *Ijtihād*. It is supported by many texts, theorems, logic and realities that are present and aim at giving benefits to human beings, not only in this world, but also in the hereafter. In fact, to acknowledge that the dimension of *maqāṣid* in the study of Islamic law is very significant, a number of scholars of Islamic Jurisprudence place it as one of the main requirements to perform *Ijtihād*. Al-Raisūnī claims:

> 'For the first time and within certain and observable limits, we have found the first requirement to conduct *Ijtihād* is to understand the *maqāṣid al-sharī'at* properly. In addition, we have also discovered the second and last requirement inseparable from understanding the *maqāṣid* that is the possibility of performing *istinbāṭ* of the Islamic law by understanding the *maqāṣid al-sharī'at*.'(al-Rausani, 1992: 353).

The understanding of the objectives of Islamic law is to avoiding a condition where a person who interpret or conduct reasoning on Islamic law gets trapped in the laws which are particular *(juz'iyyāt)* and ignores the *maqāṣid al-sharī'at*. In this regard, al-Qaradāwī (1985: 44) declares:

> 'Understanding the objectives of Islamic law (*maqāṣid al-sharī'at*) is so necessary that one does not get caught up in a mistake by only paying attention to the laws which are partial (*juz'ī*), without addressing the

objectives of laws, universal (*kullī*) in nature. Otherwise, the law will only lead (us) to a mix-up and confusion.'

As a method, the *maqāṣid al-sharī'at* gives a perspective on reasoning in solving any issues in Islamic law, particularly regarding *mu'āmalah* (transaction) in the religious life of plural societies. To finally reach and make an effort to solve the issues, a *mujtahid* must first focus his/her attention on the objective of law *(maqāṣid)* mentioned in the Quran and the hadīth. This means they do not merely see the texts literally, but preferably the objectives of the law itself as the main point. In this case, to find and formulate ideally legal ethics and morals mentioned in the verses is the most important thing (Ghazali, 2005: 359). In other words, the *maqāṣid al-sharī'at* or ideally legal ethics are explored and given more attention when establishing or making legal products, whether they are explicitly mentioned in the texts or in the context of the texts. Here, the context is not personal context which is particular *(juz'ī),* but rather universal context *(kullī).*

Further, performing *istinbāṭ* is not merely observing the *asbāb al-nuzul* (the occasions of revelation) of a text in its normative sense, but more importantly on its *maqāṣid al-sharī'at* (Ghazali, 2005: 359). The use of *maqāṣid* is emphasized and manifested through the expression *al-'ibrah bi al-maqāṣid lā bi al-alfāẓ* (what to consider is the *maqāṣid,* not the texts literally) (Ghazali, 2005: 359). To this end, what to consider from a statement mentioned in the texts in the Quran and the hadīth is the generality of the objective of *sharī'at* and such consideration should be separated from any specific *naṣṣ* (texts).

To accommodate contemporary issues, the perspective of understanding the *maqāṣid* as a method to establish the Islamic law is to know, to search, and to gain the basic principles of Islam. Therefore, when a law has come to its *maqāṣid*, the texts must be inseparable from their initial Arab context (i.e. decontextualizing the texts) and re-contextualization is, in turn, made to associate the basic principles of Islam into the non-Arabic context. In the end, the contextualization, discontextualization, and re-contextualization become the interpretation techniques that can be applied over time (Ghazali, 2005: 359).

As an answer, performing a new interpretation on the approaches of studying religious texts, especially the texts produced by Islamic

scholars, is likely to take place. Among the new interpretations is to present an understanding that emphasizes on the objectives of the legal enactment itself or the *maqaṣid al-sharīʿat*. Therefore, developing an understanding that focuses on the substances instead of the legal-formalism of the *naṣṣ* (texts) is necessary. Abdul Moqsith states "*In searching for maqaṣid al-sharīʿat by various means, one is not supposed to be enthralled by the beauty of a text. This is because being enthralled is an ideological act that will only dull their creativity in searching for the objective meaning and the importance of understanding the background or the occasions of revelation*" (Ghazali, 2005: 361). Finding the substantive meaning will accordingly shape and analysis not only on the structure of sentences, but also - what is rather foundational- the social and cultural classes and structures that surround the history of the birth of texts.

The Islamic law has no other objective but to bring benefits *(jalb al-maṣāliḥ)* and avoid any harms *(darʿu al-mafāsid)*. This paradigm is constructed by al-Thūfī in *Risālah fī Riʿāyah al-Maṣlaḥat*. He mentions "*idhā taʿaraḍa al-naṣṣ wa al-maṣlaḥatu arjahā al-maṣlaḥat*" (if a text and *maṣlaḥat* contradict to one another, *maṣlaḥat* will take precedence) (Khallaf, 1982). Referring to this paradigm, *maṣlaḥat* may revoke the *texts* in the Quran or the Hadīth. This means the reasoning on *maṣlaḥat* can become a stronger argument than the one on the texts *(naṣṣ)*.

In this regard, individual (subjective) *maṣlaḥat* and universal (collective) *maṣlaḥat* must first be separated. An individual (subjective) *maṣlaḥat,* for instance, is associated with individual interests which are separated from the interests of others. As it is subjective in nature, the one entitled to determine it is the individuals concerned (Khallaf, 1982: 362). In the meantime, the *maṣlaḥat* that has social-objective nature for the interest of many people is authorized and assessed by groups of people through a *shūrā* (deliberation) to reach a consensus *(ijmāʿ)*. In turn, the decision that has become the result of the consensus by considering the *maṣlaḥat* serves as a binding supreme law.

Maṣlaḥat (benefit), as the realization of *maqaṣid,* is the basic foundation of any legislation in Islamic law. Practically, this does not happen because the Islamic teachings need to follow and adapt to the development of *maṣlaḥat,* but to objectively gain *maṣlaḥat*. Adaptation is required. For this reason, *maṣlaḥat* is a fundamental, unchanged, and

universal religious teaching, In the meantime, the practice to gain the ideal *maṣlaḥat* is a religious case which is classified as *fuṣūl* (branches). Such case can change due to the changing times and civilizations.

The *maṣlaḥat* or *maqāṣid al-sharī'at* itself serves as the main reference and ethical-spiritual foundation for the dynamization process of the Islamic law in dealing with contemporary issues. Due to the institutionalized and developed concept of *maqāṣid al-sharī'at,* further question, whether the *maqāṣid* can become an independent legitimacy, has emerged.

In responding to such question, three groups have different opinions. The first group sees the *maqāṣid* as an independent legitimacy. It can create its own laws and become a means to perform *tarjiḥ*. In the meantime, the second group claims that *maqāṣid* is not seen as an independent legitimacy. To that end, *maqāṣid* is powerless before the texts of the Islamic law and *ijmā'*. At last, the third group is the moderates who always keep the *maqāṣid* in balance with the existing texts of Islamic law. The last opinion seems closer to the truth as it is in line with the rules of law and common sense and goes along with the benefits for all human beings.

The last opinion mentions the *maqāṣid al-sharī'at* by its nature is based on the Islamic law. This means it follows legal arguments and guidance. To that end, it cannot be separated from legal rules and theorems. As commonly known, the balance used in determining whether something brings *maṣlaḥat* (benefits/public interest) or *mafsadat* (harms) is the law. Here, the *maqāṣid al-sharī'at* is the essence of the texts, laws, *qarīnat* (legal clues) and *'illāt* (legal causes). A strong bond between the *maqāṣid* and legal arguments resembles the relationship between *kulliyyāt* and *juz'īyāt*.

Meanwhile, the opinion which sees the *maqāṣid* as an independent legitimacy points out the function of *'aql* (reason/intellect) in finding the benefits in every issue. The rapid development and emergence of problems which come after one another causes the limited number of texts to be unable to provide legal solutions. To this end, implementing the *maqāṣid al-sharī'at* in order to open a gap in order to move and make legal decisions according to the demands of the changing times is necessary.

Maqāṣid al-sharī'at or *maṣlaḥat shar'iyyah* can be considered as a legal source if it meets the criteria to protect and preserve the seven fundamental elements: *ḥifẓ al-din*, *ḥifẓ al-nafs*, *ḥifẓ al-'aql*, *ḥifẓ al-nasl*, *ḥifẓ al-māl*, *ḥifẓ al-'irḍ* and *ḥifẓ al-bī'at* (protection and preservation of religion, soul, intellect, lineage, property, dignity, and environment respectively), which are commonly known as *kulliyyāt sab'ah*. These five (original) or seven (with the last two additions) fundamental elements are classified into three consecutive phases, i.e. *ḍarūriyyāt* (primaries), *ḥājiyyāt* (secondaries), and *taḥsiniyyāt* (tertiaries). The restriction of *maqāṣid* which is limited to the five elements is based on *istiqrā'* (inductive reasoning). However, some Muslim scholars include *ḥifẓ al-'irḍ* (protection and preservation of dignity).

Muslim scholars have illustrated the *maqāṣid* and its application in performing *istinbāṭ*. Imam Shaṭibi, for example, suggests the requirement to be eligible to perform *Ijtihād* is when a person is capable of understanding the *maqāṣid* perfectly. Only by then, he/ she is able to perform an *istinbāṭ* (law-making) from the *maqāṣid* point of view.

A contemporary legal decision can be made by applying the *maqāṣid* which is supported by arguments. One of the examples is the issue about *istinsākh* (cloning). Muslim scholars claim that cloning is illegal due to the fact that it is not in line with the notion of *ḥifẓ al-nasl* (protection and preservation of lineage) and other *maqāṣid*. The tendency to apply *maqāṣid*, in this case, does not necessarily mean to exclude the arguments mentioned in the texts in making legal decisions. In fact, the decision made is said to be automatically in accordance with the arguments claiming about the *maqāṣid*.

Another example is related to *zakāt mustaghallāt* which is *zakāt* on properties that can bring profit to the owners by leasing or selling the properties such as villas, factories, hotels, cars, aircraft, ships and other means of transportation. According to some scholars, such properties are not subject to *zakāt* as they are not included in the types of wealth in *zakāt*. On the other hand, some others argue that the properties are bound to *zakāt* considering that they are included in the types of wealth subject to *zakāt* and that the *'illāt* of paying the *zakāt* has been fulfilled; the wealth has grown steadily. The obligation of paying *zakāt* for the properties is according with the wisdom of paying it, which

is to purify the wealth and to help people in need. If the owners of plants and fruits who only get low profits are required to pay *zakāt*, it would not make sense if the owners of villas or factories who get high profits do not pay it.

The issue on human organ transplantation also demands the presence of *Ijtihād* to create its legal solution. Several questions have arisen: Is human or animal organ transplantation legal to save a human's life? Is the transplantation permitted if the animal donor is a dog? Can someone give up his/her whole or parts of body after his/her death for anatomic study so that it can be useful for others? and many other questions which require *maqāṣid* in the contemporary *Ijtihād*.

Promoting contemporary *Ijtihād*, both *Ijtihād intiqāi* and *Ijtihād inshā'i*, play an important role in solving and answering any problems faced by Muslims nowadays, particularly if no legal provision is available. *Ijtihād intiqai,* for example, is an *Ijtihād* method to choose one of the opinions expressed by former scholars by performing *tarjīḥ* to show that one opinion is better than the other. This method is expected to harmonize the opinions of scholars and to refer to the arguments they have used. In the end, the strongest argument which meets the standards of *tarjīḥ* is taken.

In the meantime, *Ijtihād inshā'i* means performing *istinbāṭ* on a legal issue which has not been mentioned by former scholars. The obligation to pay *zakāt* on factories, villas for rent, or hotels, for example, is mentioned by Sheikh Abu Zahrah, Sheikh Abd al-Wahhāb Khallāf, and Sheikh Abdur Rahman Hasan. Their opinion is eventually justified by al-Qaraḍawi in his book, *Fiqhu al-Zakāt,* as it has a stronger argument *(rājiḥ)*.

The next type of *Ijtihād* is a combination of *ijtihād intiqa'i* and *ijtihād inshā'i.* This means choosing the opinion of former scholars and adding it with new element of *Ijtihād*. The example is an *Ijtihād* conducted by the Religious Advisory Body, Kuwait, concerning abortion. Their *fatwā* refers to the opinion of former scholars and is supported with the result of a new *Ijtihād* according to the science and technology advances in modern medicine. With modern devices, the state of the embryos can be detected earlier if they are exposed to any disability or illness that can affect their body or mind after they are born.

The *fatwā* says that a doctor is not allowed to abort or terminate pregnancy that has reached one hundred twenty days, except to save the mother's life from a real danger. In such case, the abortion or termination is permissible under the agreement of the husband and his wife and the pregnancy has not reached forty days. However, if the pregnancy is more than forty days, but less than one hundred twenty days, the abortion is not permissible unless the existence of the embryo would endanger the mother's health due to the embryo's disease that may lead to her death or chronic pain after giving birth. In addition, an abortion is allowed if the embryo to be born is believed to be exposed to severe disability or acute disease impairing its body or mind and unrecoverable or curable. The abortion outside of the *ḍarūrāt* (emergency) circumstance is required to be performed in government hospitals. In the meantime, the abortion taken after forty days of pregnancy should not be done except by the decision of three specialists, one of whom has specialty in chronic diseases in pregnant women and birth, and one of the other two specialists is a Muslim.

Conclusion

Referring to the discussion, the following conclusions are made:

Maqāṣid al-sharī'at is also known with *maqāṣid al-Shāri', maqāṣid al-sharī'at*, and *al-maqāṣid al-shar'iyyat*. Essentially, these different terms imply the same meaning, the purposes or objectives of the Islamic law enactment. Generally, the Muslim scholars of Islamic Jurisprudence interpret *maqāṣid al-sharī'at* as the essence of the Islamic law enactment. The general principle of *maqāṣid al-sharī'at* is enforcing the significance of *jalb al-maṣāliḥ wa dar' al-mafāsid* (getting benefits and avoiding harms).

Maqāṣid al-sharī'at is an independent legitimacy as it points out the function of *'aql* (reason/intellect) in finding the benefits in every issue. The rapid development and emergence of problems which come after one another causes the limited number of texts to be unable to provide legal solutions. To this end, implementing the *maqāṣid al-sharī'at* in order to open a gap in order to move and make legal decisions according to the demands of the changing times is necessary.

There are two major and significant roles of *maqāṣid al-sharī'at* worth studying, directive and defensive systems. The directive system puts the *maqāṣid al-sharī'at* as the main reference for any reformation or changing processes of the Islamic law, whereas the latter places it as the supreme principle of morality that provides the foundation and ethical-spiritual power for Muslim Societies when they interact with the law. With these two roles, the *maqāṣid al-sharī'at* is no longer said to be an obstacle for any reformation as addressed by the philosophy of materialism which states that *religion (i.e. Islamic law)* is opium to society. In contrast, a religion can serve as a driving force to create future changes towards a more constructive and humanistic society.

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