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## THE INNOVATION OF AL-NAJJAR'S THOUGHT IN MAQASID AL-SHARI'AH

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**Abstract.** This article examines the *maqasid al-shari'ah* formulated by al-Najjar, a Tunisian thinker who was born on May 28, 1945, in his work *maqasid al-shari'ah bi Ab'ad Jadidah*. This research shows that *maqasid al-shari'ah* according to al-Najjar is the purpose (al-ghayah) of the Islamic law's application at both the universal and particular levels. This definition is in accordance with previous *maqasidi* thinkers, such as Ibn 'Asyur and 'Ilal al-Fasi. The innovation about *maqasid al-shari'ah* which was initiated by Al-Najjar lies in the classification of *maqasid al-shari'ah* into four main objectives: protecting the value of human life (*hifzh qimat al-hayah al-insaniyyah*), protecting human essence (*hifzh al-dzat al-insaniyyah*), protecting society (*hifzh al-mujtama'*) and protecting the physical environment (*hifzh al-muhit al-maddi*). Furthermore, al-Najjar also emphasized that all of these purposes originate and lead to the universal purposes of the *shari'a* (*maqasid al-syari'ah al-kulliyah*). Al-Najjar also tries to make the orientation of *maqasid al-shari'ah* from the partial-individual benefit to the universal-social benefit.

**Keywords:** Maqasid al-shari'ah; al-Najjar

**Abstrak.** Artikel ini mengkaji tentang pemikiran *maqasid al-shari'ah* yang rumuskan oleh al-Najjar, seorang pemikir asal Tunisia yang lahir pada 28 Mei 1945, dalam karyanya *Maqasid al-shari'ah bi Ab'ad Jadidah*. Penelitian ini menunjukkan bahwa *maqasid al-shari'ah* menurut al-Najjar adalah tujuan (al-ghayah) diberlakukannya syariat Islam baik pada level universal maupun partikular. Definisi ini sesuai dengan para pemikir *maqasidi* sebelumnya, seperti Ibn 'Asyur dan 'Ilal al-Fasi. Adapun inovasi yang digagas oleh Al-Najjar dalam kajian *maqasid al-shari'ah* terletak pada klasifikasi *maqasid al-shari'ah* menjadi empat tujuan utama, yaitu melindungi nilai kehidupan manusia (*hifzh qimat al-hayah al-insaniyyah*), melindungi esensi manusia (*hifzh al-dzat al-insaniyyah*), menjaga masyarakat (*hifzh al-mujtama'*) dan menjaga lingkungan fisik (*hifzh al-muhit al-maddi*). Al-Najjar juga berupaya untuk menjadikan orientasi *maqasid al-shari'ah* dari kemaslahatan yang cenderung parsial-individual kepada kemaslahatan universal-sosial.

**Kata Kunci:** *Maqasid al-shari'ah*; al-Najjar

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## Introduction

In the study of Islamic law, *maqasid al-shari'ah* is a very important and vital concept. According to Ismail Habib, the term *maqasid* first appeared in the work of al-Tirmidhi al-Hakim (d. 320 H) entitled *al-Salah wa Maqasiduha* (Bakr Isma'il Habib: 2003, 89). In its development, this concept continued to go through a metamorphosis process, either from the "value" aspects and its approach. As a value, *maqasid al-shari'ah* itself is an inseparable part of the study of Ushul al-Fiqh, such as *mashlahah-mursalah*, *istihsan*, *qiyas*, etc. Meanwhile, in terms of approach, *maqasid al-shari'ah* is often considered as a concept that has a significant role in determining most of Islamic law, especially related to contemporary issues (Maulidi: 2015, 251-264).

The urgency of the *maqasid al-shari'ah* concept in the study of Islamic law at least departs from the following things: *first*, generally, Islamic law is believed to be a law that originates from revelation and is intended for mankind, so that it will always face social change. In this context, is it possible that Islamic law, whose main source (al-Qur'an and Sunnah) was revealed in the past few centuries, can continue to adapt to social changes? The answer of this kind of question by some thinkers can be given by analyzing an important element in Islamic law, namely *maqasid al-shari'ah*. *Second*, historically, the study of *maqasid al-shari'ah* has been applied since the earliest days of Islam, in the Prophet and the Companions and *tabi'in* era. *Third*, in-depth knowledge of *maqasid al-shari'ah* is a very important "supply" for *mujtahids* in studying issues and establishing laws (Wahbah al-Zuhaili: 2001, 1045).

Meanwhile, according to Samih Abdul Wahhab al-Jundi, the urgency or function of *maqasid al-shari'ah* in Islamic law are as follows: (1) help to minimize the possibility of controversy among *mujtahids*. This is based on the general view among *mujtahids* that aspects concerning the benefit of human beings must always be prioritized without neglecting obligations to God; (2) help when *ta'arudh and tarjih al-ahkam* occur; (3) help to understand the direction and purpose of *nass-nass syar'i*; (4) is needed in deciding the *fatwa*; (5) the needed tools to explore *'illat in istinbat* work through the *qiyas* method; (6) help to resolve the controversy of the opinion of the companions and *tabi'in*; (7) is required when elaborating the *hadiths Ahad*. (8) is needed in the *istinbat al-ahkam* process for which there is no verbal argument and the *qiyas* cannot be applied because there is no *jami'* between *maqasid* and *maqasid 'alaih*. Thus, *khuludhiyyat al-syariah* and *al-Islam shalih li kulli zaman wa makan* find their relevance (Abdul Majid al-Najjar: 2008, 18).

The figure who is often considered as a pioneer in the study of *maqasid al-shari'ah* is Abu Ishaq al-Syatibi (d. 790 H). It can be seen in the commentary written by Abdullah Darraz as an introduction to the book *al-Muwafaqat* by al-Syatibi for instance. To sum up (*istinbat*) *shari'ah* laws, one must have deep knowledge about two things: Arabic and *maqasid al-shari'ah*. In that context, Abdullah Darraz later wrote, "Thus, the science of *Ushul Fiqh* loses a great part, which is the section that examines one of its supporting pillars [*maqasid al-shari'ah*] until Allah SWT. finally brought out Abu Ishaq al-Syatibi in the 8th century Hijri ..." (Ahmad al-Raysuni: 2013, 18).

In the following period, the figures who had serious concerns about the study of *maqasid al-shari'ah* continued to emerge. For example, Thahir Ibn 'Asyur (d. 1973 AD) who views the urgency of the concept of *maqasid al-shari'ah* not only as a fundamental principle (*al-mabda'*) of *ijtihad*, but also as an approach (*muqtarabah*) in *ijtihad*. Even Ibn 'Asyur firmly stated that in formulating Islamic law, we only relying on the *lafzhiyyah* arguments (*dalil*) approach (linguistic approach) is not enough, but also

must be equipped with a causative and theological approach (Muhammad al-Tahir ibn 'A shur: 2005, 20).

In subsequent developments, Islamic law is always required to be able to answer the issues and problems of the changing times. Besides that, it is also present with a vision for the realization of benefit as well as anticipating the emergence of harm for mankind. As the popular theory in Islamic law (*Ushul al-Fiqh*) "the general purpose of Islamic *shari'ah* (law) is to actualize the public interest through the protection and guarantee of human needs at the primary level (*daruriyyah*), secondary level (*hajjiyah*) level, and tertiary level (*tahsiniyyah*)" (Abdul Wahhab Khallaf: 198-200).

With these two main visions (main purposes), Islamic law is always assumed to be relevant in every time/era and every place (*shalih li kulli zaman wa makan*). In this context, the majority of Islamic law thinkers are of the view that *maqasid al-shari'ah* is one of the "powerful" methods to actualize the vision of Islamic law. Through the reasoning above, it is true that *maqasid al-shari'ah* is an important part of Islamic law that is able to present progressive-contextual laws as the demands of ever-changing times (Muhammad Hasim Kamali: 2008, 1).

### Biography of Intellect Al-Najjar

Al-Najjar is a contemporary Muslim scholar and political and socio-religious activist from Tunisia. His full name is Abdul Majid 'Umar al-Najjar. There is no definite information whether al-Najjar is a nickname attributed to lineage or tribe. He was born on May 28, 1945 AD/16 Jumadil Akhir 1364 H in Beni Khedache (Bani Khaddasy) (Gideon Golany: 1988, 67).

Al-Najjar's intellectual journey began from 1964 to 1972 at the primary and secondary education levels. Then he was active as a student at the Tunisian Olive University and obtained a License (Lc) in the *Ushul al-Din* concentration in 1972. Then he continued his education at the Al-Azhar University of Cairo and obtained a master's degree in the *Ushul al-Din* concentration in 1974. In the next seven years, which is in 1981 al-Najjar then succeeded in obtaining a doctorate in the field of Faith and Philosophy from al-Azhar University Cairo.

Al-Najjar's scientific career seems to be recognized at the international level. It can be seen clearly when he is active as a lecturer at several Middle Eastern universities, Zaituna University, Qatar University, Amir Abd al-Qadir University in Jazair, United Arab Emirates University, and others. He is also active as a speaker for seminars and scientific conferences at the international level. Here are some of them:

1. The 4th International Islamic Symposium, Tunisian Ministry of Culture, Kairouan Tunisia 1976.
2. Imam Ibn 'Asyur Symposium, University of Tunisia, Tunisia 1985.
3. Symposium on Renewing Islamic Thought, Journal of the Message of Jihad, Malta 1989.
4. Symposium on the Future of Islam, Center for the Study of the Future of Islam, Algeria, 1990.
5. Symposium on the Future of Islamic Work, Institute of International Islamic Thought, Virginia/America 1991.

6. Badi Al-Zaman Nursi Symposium, International Institute of Islamic Thought, Amman/Jordan 1997.
7. Ibn Taymiyya Symposium: His Scientific Attitude and Reformation Methodology, International Institute for Islamic Thought and Muta University, 2001.
8. Seminar on "Requirements of Da'wah in Light of Contemporary Data" University of Sharjah, April 2001.
9. Third International Forum "Religious Freedom in Islam", Amir Abdelkader Islamic University, Konstantin, Algeria, 2008.
10. Seminar "The conditions of social relations in Europe and the role of Muslims in strengthening them", European Council for Fatwa and Research, 2019.

In addition, al-Najjar is also an activist in political and socio-religious movements. This can be seen from its affiliation in organizations both at national and international levels. For example, al-Najjar served as Assistant Head of the International Union of Muslim Scholars; Head of the branch of International Union of Muslim Scholars in Tunisia; Assistant Secretary General in the organization of the European Council for Fatwa and Research; Chairman of the Research Center of the European Institute for the Human Sciences in Paris; member of the Tunisian National Constituent Assembly; and as a rapporteur of the Preparatory Committee and General Principles for Preparing the Tunisian Constitution.

In political and socio-religious activism, al-Najjar is also referred to as one of the founders of the *Al-Nahdhah* movement since 1974. *Al-Nahdhah* itself is an Islamist political movement that emerged and developed in Tunisia since the Arab Springs in the Middle East. The political chaos that initially started with the self-immolation of Mohammed Bouazizi in Tunisia on December 17 2010 bursted out and ignited the anger of the entire country. The protests that turned into a revolutionary movement demanded an end to the regime of Zine el-Abidine Ben Ali who had ruled as President of Tunisia for more than 23 years. The actions of Bouazizi and the Tunisian people have further inspired similar movements in other countries in the Middle East region. In Egypt, the people's revolution succeeded in overthrowing the government of Mubarak. In Libya, the anti-Gaddafi movement held an armed resistance. Likewise in Sudan, Yemen, and Bahrain. Various changes and restructuring of leadership in conflict-affected areas have gradually led to a new direction of democratization (Amjad M. Saleem: 2012, 4).

Other than that, al-Najjar is one of the scholars who are recognized internationally. This was evident when al-Najjar was awarded the award from Sheikh Ali ibn Abdullah for the global contribution to arbitration provided by the Ministry of Endowments in the State of Qatar in 1999 for research: *Environmental Issues from an Islamic Perspective*. He won the 2012 International Center of Moderation Award in Jordan as well.

## The Thought of *Maqasid Al-Shari'Ah* Al-Najjar

### Definition of *Maqasid al-Shari'ah*

Al-Najjar begins the explanation of *maqasid al-shari'ah* by distinguishing it from *al-shari'ah*. He considers the term *al-shari'ah* in the Islamic tradition is often understood as commands (*al-awamir*) and

*ilahiyyah* prohibitions (*nawahi*) regarding practical travel (*al-suluk al-amali*) in human life and contrary to the creed which is meant as commands (*al-awamir*) and prohibitions (*nawahi*) regarding faith; intuitive recognition of the unseen nature brought by religion. The implication is that *maqasid al-shari'ah* is also understood as the purpose behind laws concerning practical practice and separate from faith as the principle theme in *aqidah* (Abdul Majid al-Najjar: 2006, 15).

Meanwhile, for al-Najjar, *maqasid al-shari'ah* should be oriented to all forms of divine commands and prohibitions, both *aqidah* and *shari'a*. So based on this understanding, al-Najjar defines *maqasid al-shari'ah* as the purpose (*al-ghayah*) from which the *shari'a* is applied at the universal, particular and reliable level; human life should run on the laws that are prescribed for them according to its goodness and benefit (Mohammad Daud Ali: 2013, 61).

This definition is in accordance with the opinion of Ibn 'Asyur who states that the general *maqasid al-shari'ah* (*al-'ammah*) are the meanings and wisdoms that appear willed by Allah SWT (*al-syari'*) in all circumstances of the application of the *shari'a* or most of it. Likewise, the opinion of 'Ila al-Fasi that *maqasid al-shari'ah* is the purpose and the secrets behind the laws that Allah SWT (*al-syari'*). As Wahbah al-Zuhaili explains that *maqasid al-shari'ah* are the values and objectives of the *shari'a* which are implied in all or most of its laws. These values and purposes are seen as the purposes and secrets of the *shari'a* set by Allah (*al-Syari'*) in every legal provision (Wahbah al-Zuhaili: 2005, 307).

Furthermore, according to al-Najjar, discussion about the purposes and secrets behind the *shari'a* laws has a close relation with the purpose of human creation. Because if *shari'a* law is Allah's medium of communication to humans through *taklif*, then the main topic of *maqasid al-shari'ah* lies in how to actualize that purpose. Of course, Allah created humans with a purpose and enforced the *shari'a* on humans for actualizing the purposes (Ramayulis: 2010, 50).

Based on the relation between *maqasid al-shari'ah* and the purpose of human birth, the most important purpose of Islamic law (*al-maqasid al-a'la li al-shari'ah al-islam miyyah*) is the ability of humans to actualize and benefit by actualizing the purpose of their existence as caliphs on earth, consists the benefit of individuals, the environment, and society for the achievement of happiness in the hereafter. This opinion is in accordance with Ibn 'Ashur's statement that:

"If we look at the sources of Islamic *shari'a* showing the purposes for which a law is prescribed, so it is clear to us, from the universal and particular arguments, that the general aim of Islamic *shari'a* is to protect the human system and the actualization of goodness for humans including benefit, reason, deed, and everything exists on earth where humans live."

Jasser Auda states that Islamic law must be oriented to *maqasid al-shari'ah*, namely human benefit. Any reason cannot be justified if *maqasid shari'ah* as a legal purpose is neglected, even though it has departed from a relatively correct interpretation. This is confirmed by Jasser by quoting the statement of Ibn Qayyim:

"*Shari'ah* is based on wisdom and achieving people's welfare in this life and afterlife. *Shari'ah* is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the *shari'ah*, even if it is claimed to be so according to the same interpretation." (Jasser Auda, 2008, xxii).

Fathi al-Darini (1975: 28) states that Islamic law is not created for the law itself, but is created for another purpose, namely benefit. Meanwhile, Muhammad Abu Zahrah (2000: 552) asserts that all teachings brought by Islam contain real benefits. Allah himself asserts that the teachings of Islam both contained in the Qur'an and the Hadith of the Prophet are mercy, healing and guidance. The purpose of Allah SWT in enforcing His laws is to maintain the benefit of mankind, while avoiding *mufsadat* in this world and the hereafter. This purpose is to be achieved through *taklif* whose implementation depends on understanding the main sources of law the Qur'an and Hadith. Thus, the essential purpose of Islamic law is to bring about the benefit. There is no one law that is prescribed in the Qur'an and Hadith, but benefit in it (Faturrahman Djamil: 1997, 125).

Knowledge of *maqasid al-shari'ah* for al-Najjar is something very significant, especially in an effort to get the right understanding (*al-fahm al-sahih*) and the right application (*al-tatbiq al-mursyid*) on *shari'a* law. This proper understanding and application at a later stage becomes a determining factor for efforts to reach the purposes desired by Allah (*Musyarri*).

Al-Najjar in fact asserts knowledge of *maqasid al-shari'ah* can be a scale (*mizan*) in producing laws (*tahsil al-ahka m*), either in accordance with or against the *sunnah* or *hadith* of the Prophet, as 'Aisha's criticism to Abdullah Ibn 'Umar about the corpse will be punished for the tears of his family. Besides, of course, knowledge of *maqasid al-shari'ah* has a big role in the work of *ijtihad* in an effort to determine the law of reality. Because every effort to enforce a law, first of all it must go through setting its purposes in reality (*an yuhaqqiq maqsadahu fi al-waqi'*) although sometimes time, conditions and personality become obstacles for achieving the purposes of a law at the applying moment. And sometimes when the purpose of a law is known but it is certain that it will not be achieved if it is enforced at that time, then a *mujtahid* chooses to postpone the application of the law in the future when the conditions have been met and the purpose can be achieved when it is enforced.

Based on the significance of the knowledge of the *maqasid al-shari'ah*, Muslim thinkers give great attention to it. According to al-Najjar, scientific attention to *maqasid al-shari'ah* is divided into three phases: *first*, the phase of the *Fuqaha'* and *Ushuliyyun* analyze *maqasid al-shari'ah* without the use of the term specific scientific discipline but using the term causes of *shari'a* law (*'ilal al-shari'ah*), wisdom *shari'a* law (*hikmat al-syari'ah*), the secrets behind *shari'a* law (*asrar al-shari'ah*) and so on, as well as mixed or overlapped with other themes in the science of *Usul fiqh*. *Second*, the phase where the study of *maqasid al-shari'ah* becomes a separate theme from other themes in the science of *Usul Fiqh* and has not yet become an independent scientific discipline. *Third*, the phase where *maqasid al-shari'ah* becomes an independent branch of *Usul Fiqh*.

### Classification of *Maqasid al-Shari'ah*

In the era of al-Syatibi (d. 790 H.), *maqasid al-shari'ah* was summarized systematically and comprehensively by placing *maslahah* as the general purpose of legal institutionalization. For al-Syatibi, benefit as the substance of *maqasid al-shari'ah* must include one of the five main elements (maintaining religion, life, reason, lineage and property). Then the five main elements are converted to three levels: primary (*maqasid al-daruriyyah*), secondary (*maqāsid al-hajiyyah*) and tertiary purposes (*maqāsid al-tahsiniyyah*).

Fazlur Rahman (1986: 49) proposes a classification of *maqasid al-shari'ah* into two main elements: monotheism (*tawhid*) and social justice. According to Rahman, the central values of Islamic teachings lie in the value of monotheism (monotheism). *Tawhid* implies the centrality and urgency of God for human life. God is needed as creator, sustainer, guide and finally as judge. In addition to monotheism, the central message of the Qur'an also lies in the concept of social justice. Since the first time the Qur'an was revealed to the Prophet Muhammad, it has served as a guide to certain moral, spiritual and social problems, especially polytheism and the chronic socioeconomic inequality that existed in the prosperous Meccan merchant community. One of the principles of social justice laid down by the Qur'an is that wealth should not circulate only among the rich (Q.S. 59:7). As the embodiment of this principle, the Qur'an stipulates *zakat* whose objectives are detailed in Q.S. 9:60.

If we look at it in terms of its orderly purpose, then *maqasid al-shari'ah* can be divided into two parts: the purpose of *asliyyah* and the purpose of *tabi'iyah*. The purpose of this *asliyyah* is primary which is seen as an imperative in religion; they contains the benefits which are general and absolute and are not limited by certain situations, forms and times. While the purpose of *tabi'iyah* is the purpose of followers or accompanying the purpose of *asliyyah*. Serves as a driving force for the actualization of the original purpose, or as a liaison and complement to the original purpose. Al-Syatibi looked at the purpose of *tabi'iyah* specifically to consider human happiness or pleasure.

Furthermore, in terms of scope (*syumul*), then *maqasid al-shari'ah* can be divided into three parts, namely general objectives (*al-maqāsid al-'āmmah*), special objectives (*al-maqās id al-khāssah*) and particular purposes (*al-maqāsid al-juz'iyah*). The general purpose (*al-maqāsid al-'āmmah*) is centered on efforts to maintain or maintain the benefit of humans in general, both in this world and in the hereafter. Al-Syatibi argues that the general purpose as the ultimate purpose of institutionalizing Islamic law is the benefit of humans in the context of maintaining religion, life, reason, offspring and property.

Meanwhile, special objectives (*al-maqāsid al-khāssah*) are purposes related to specific purposes and objectives in certain chapters of certain chapters or fields of Islamic law studies. For instance, the purpose of institutionalizing punishment specifically in the field of *jinayat* is to deter (*izdijar*) perpetrators, or the institutionalization of *taharah* is to maintain cleanliness (*al-nazhafah*).

The particular purpose (*al-maqāsid al-juz'iyah*) is a purpose related to certain issues only, without touching other issues, namely limitedly only related to specific or partial problems. It is said so because this purpose is different from the first and second objectives which are comprehensive (*kulliyyah*), while this section specifically deals with certain issues or specific arguments drawn from the purpose of institutionalizing Islamic law itself. This study is specific in certain issues in the field of *fiqh*, such as specifically regarding the problem of ablution or specifically in matters of prayer, *zakat*, buying and selling and so on (Ahmad al-Raisuni: 2014, 30).

In this section, al-Najjar raises a critique by questioning the validity of this classification. According to him, if the primary purposes of *shari'a* (*al-maqasid al-dharuriyyah al-syar'iyah*) are the pillars and foundations of the purposes of *shari'a* on which other *shari'a* purposes are built, but in the study of *maqasid al-shari'ah* discussion, review of issues and details are very minimal, so it is worth asking about matters relating to the existing classification of *maqasid al-shari'ah*, like "are the parts in the primary purpose of preserving religion to preserving offspring really appropriate?" For instance, regarding safeguarding property, is it the primary purpose of the *shari'a* or does it belong to the main and high purposes (*asli 'ali*)? Or does it go in both? Or can it even belong to primary (*dharurah*),

secondary (*hajah*) and tertiary or complementary (*tahsiniyyah*) purposes at the same time? According to al-Najjar, safeguarding assets can be classified as primary, secondary and tertiary; if safeguarding property is meant to guard against theft, then it is the primary objective; if guarding property is intended as a guarantee and evidence in agreements and contracts, then it is included in the secondary purpose; if safeguarding property is intended as a purpose of convenience in *muamalah* in social life, then it is tertiary. All variants of this purpose lead to the highest purpose, which is to keep the treasure but in different phase and levels.

Thus, *maqasid al-shari'ah* are purposes that include the universality (*al-kulliyat*) of these purposes. So *maqasid al-shari'ah* can be primary, secondary and tertiary. All the examples explored in the secondary and tertiary objectives, all of them, are come up from this principle of universality although keeping at the secondary level, still, is under the primary level as the tertiary is under the secondary.

Regarding this problem, Jamaluddin 'Atiyyah said, "actually the primary, secondary and tertiary levels do not have a direct relationship with *maqasid al-shari'ah*, but all of them are related to media that bridging the realization of *maqasid al-shari'ah*. So all the levels are based on the media (*wasilah*) degree.

According to al-Najjar, the classification of *maqasid al-shari'ah* formulated by scholars from generation to generation are aimed to ease studies, including definitions and developing the science of *maqasid al-shariah* from the stage as part of the topic of Ushul al-Fiqh to become an independent scientific discipline. Thus, the existence of the *maqasid al-shari'ah* classification provides great benefits, although it does not mean that it stops at the existing and formulated classifications. Because it is still very possible to do developments in line with the development of the study and its context as well as the dynamic development of human life.

Even the need for innovation and reform of *maqasid al-shari'ah* becomes something that cannot be avoided. Al-Najjar wrote: "if we refer to the existing *maqasid al-shari'ah* classifications, especially the *maqasid al-shari'ah* classifications based on the level of benefit, and we look at the section on first [*al-maqasid al-dharuriyyah*] which getting full attention with a comprehensive and detailed discussion, then we will find that the primary objectives [*al-maqasid al-dharuriyyah*] which are included in it sometimes have not fulfilled the primary things needed by humans today to maintain their lives, so that their lives remain stable and productive".

For al-Najjar, the classification of *al-dharurat al-khamsah* is not a final decision and it is impossible to develop and innovate on it as some Muslim thinkers assume. Because after all human life always revolves sweetly, problems, complexities and crises of life are always evolving. Therefore, it is not an exaggeration to mention that the purpose of Islamic law is not only *al-kulliyat al-khams al-asasiyyah* as the primary purpose of *shari'a*, but it can still be added or developed with other primary purposes but still refers to the concept of *maqasid al-shari'ah* that already exists.

Al-Najjar shows an example that in this modern era the materialism-atheism philosophical genres are spread everywhere and have led to the emergence of violations of the meaning of humanity. Because this genre of philosophy views that human nature is not fixed. As existentialism, which holds that every human being actually creates his own essence. Also understand nihilism which views human life as meaningless (*qa'imah 'ala al-'abatsiyyah*). That's why many humans in this modern age have experienced failure and destruction of the existence of humanity in themselves.



Likewise, modern human civilization is heading towards an acute crisis that can threaten the destruction and extinction of humans, namely the environmental crisis. For al-Najjar, protecting the environment (*hifzh al-bi'ah*) should be also included in the category of primary objectives of *shari'a* (*maqсад min maqasid al-shari'ah al-dharuriyyah*). As for why in the study of *maqasid al-shari'ah* itself, until now it has not included *hifzh al-bi'ah* as part of it, according to al-Najjar, because at the maqasidi classic scholars time, it was not as urgent as today. Meanwhile, nowadays, the environmental crisis has become a common phenomenon that occurs everywhere—and the consequences can threaten the extinction of human life on earth.

In addition, if we observe in depth, *maqasid al-khamsah* which has been formulated in the study of *maqasid al-shari'ah* tends to emphasize individual benefits (*al-maslahah al-fardiyyah*) although it has a direct impact on social benefit (*al-maslahah al-ijtima'yyah*). It is proofed with examples of *maqasid al-khamsah* where the majority are aimed intensively at achieving individual benefit (*al-maslahah al-fardiyyah*) and are not associated with social benefit (*al-maslahah al-ijtima'yyah*) with a specific explanation. So these two seem to be something partial to each other.

Regarding this tendency, Ibn 'Asyur critiqued with his expression: "There is one issue that has escaped the attention of the reviewers of *maqasid al-shari'ah*, is that the purpose of *maqasid al-shari'ah*. The most important thing is the orderliness of human affairs, bringing benefit and preventing evil from them. Unfortunately, the attention of the jurists is only devoted to the individual goodness of humans and neglects to provide adequate explanations about social benefits and goodness.

Social life has strong relation and bond, and being an important determinant of the sustainability of human life. Thus, the thought of *maqasid al-shari'ah* should make protecting society (*hifzh al-mujtama'*) a part of the primary purpose of *shari'a* (*maqсад min maqasid al-shari'ah al-dharuriyyah*) which is independent and explaining the principles, rules and laws clearly as the others primary purpose of the *shari'a* (*maqсад min maqasid al-shari'ah al-dharuriyyah*).

Based on the description above, then al-Najjar proposed a new formulation in classifying *maqasid al-shari'ah*, namely a classification that is intended to include solutions to complex human life problems and include universal *shari'a* purposes for the creation of benefit for humans as described below.

### ***Maqasid al-Shari'ah* in Protecting the Human Life Value**

According to the explanation of the Qur'an that Allah creates humans with a special character among His other creatures, namely a character consisting of material and a rational spirit as He said in QS. Al-Hjurat: 28-29. Some of God's creatures are made up of pure spirits like angels, some are made up of pure substances like inanimate objects, some are made up of pure spirits and substances but have no sense like animals. Meanwhile, humans are created based on a special character that forms their permanent identity, and therefore they are burdened with law (*taklif*). Then Allah sent messengers to mankind to explain to them the truth, design a way of life for them, and explain that the purpose of his creation was to embrace the religion brought by the apostles as explained in the QS. Al-Dzariyat: 56.

Al-Najjar explains that if embracing religion and worshiping Allah is the purpose of human creation, then human life is closely related to the form of obedience to religion. So that human life is closely related to efforts to realize in maintaining the diversity of the religion sent by God and guarding the meaning of humanity which is covered by human's character.

First, the purpose of preserving religion (*hifzh al-din*). Al-Najjar states that preserving religion is the highest purpose (*al-maqсад al-a'la*) in the hierarchy of universal-general purposes (*maqashid al-kulliyah al-'ammah*) because it relates to with the nature and value of human existence. Even it is the main principle for realizing the meaning and value of human life; if it is achieved, then the highest purpose of the *shari'a*, which is "humans becoming caliphs" will be achieved.

Al-Najjar says that preserving religion is that laws should guarantee convenience for anyone who chooses faith in religion and embraces it with the totality of belief and practice without any hindrances and invalids over it. Thus, when religion comes with an explanation of all aspects of life, individual and social, then preserving religion means relating to the ease of religion and rejecting all obstacles in all aspects of life. For example, a Muslim can continue to pray and reject all obstacles that get in the way of performing the prayer. Or in a social context, people should be able to live together on the basis of religion in social relations.

Based on the above, al-Najjar then criticizes the understanding that simplifies *hifzh al-din* is only dealing with a person's religion. For al-Najjar, *hifzh al-din* has wider scope which includes all laws in religion. And the law in religion covers all aspects of life. This view is in accordance with what was once stated by Ibn 'Asyur that "*hifzh al-din* is guarding the religion of every Muslim from everything that can damage his beliefs and deeds. Whereas human *hifzh al-din* generally is to prevent everything that can damage absolute religious principles (*usul al-din al-qat'iyah*)".

Religion is the foundation of life which is being the purpose of human existence, so al-Najjar asserts that *hifzh al-din* is the highest purpose (*al-maqсад al-a'la*) in the hierarchy of the purposes of *shari'a* in general (*al-maqсад al-a'la*). -*maqasid al-'ammah*). Therefore, in the *maqasid al-shari'ah* literature we often find some scholars placing *hifzh al-din* as part of the primary purpose (*al-maqasid al-dharuriyyah*) followed by protecting the soul (*hifzh al-nafs*), mind (*al-'aql*), property (*mal*), and offspring (*nasl*).

### **Maqasid al-Shari'ah in Protecting the Humanity Essence**

Al-Najjar divides the purpose of protecting the essence of humanity into two parts. First, protect the soul (*hifzh al-nafs*). *Al-nafs* itself by al-Najjar is defined as the whole of human existence with its different elements. Meanwhile, the existence of human essence (*kaynunnat al-dzat al-insaniyyah*) is not different with the existence of the whole essence which includes weakness (*al-dha'f*) and strength (*al-quwwah*).

The definition of *hifz al-nafs* is the fulfillment of the causes of strength and preventing the causes of weakness in humans by measuring whether or not they are able to carry out their duties and functions. That's why *hifzh al-nafs* becomes one of the objectives of *shari'a* law and even the general purpose of *shari'a* law, just like what Allah said on QS. Al-Baqarah: 195.

As it is understood that the essence of human naturally consists of two elements: physical (*maddi*), namely the body and non-physical (*ma'nawi*), namely the spirit. Then *hifzh al-nafs* as one of the objectives of *shari'a* law is also aimed at both. So al-Najjar divides *hifzh al-nafs* into two. First, protecting the physical soul (*al-hifzh al-maddi li al-nafs*). According to al-Najjar, although the human body is nothing but clothing (*malabis*) for the spirit, it becomes the object of the enforcement of rules and laws (*qawanin*). The law deals with the causes of human survival, development, and life force.

There are also those related to the weakness, fragility and destruction of human life. That's why Islamic law commands all matters relating to the survival, growth and strength of human life while at the same time prohibits all matters relating to the weakness, fragility and destruction of human life.

*Second*, maintaining the mind (*hifzh al-'aql*). Mind is the highest power possessed by humans and that is the reason why humans accept *taklif*, as well as that's what makes human different with animals. According to al-Najjar, naturally mind is a power in humans that can understand, distinguish and judge. Like the soul, the mind also consists of two parts, physical and non-physical. The physical part of the mind is the brain and nerves. While the non-physical part of the mind is all the forms of information in it. Therefore, the maintenance of mind is also divided into two.

### ***Maqasid al-Shari'ah* in Protecting the Society**

The main duty carried out by humans based on religion, namely being a caliph on earth, cannot be carried out except within the community scope. Because this duty cannot be achieved by individual dedication by a person but requires collective solidarity among community members who complement each other's efforts. As the presence of laws in maintaining individual humans such as protecting the soul and mind, the main purpose of Islamic law also includes the maintenance of communal human beings as long as it becomes a supporting factor for humans to carry out their caliphate duties. Even this *hifzh al-mujtama'* is also a *maqasid al-shari'ah al-dharuriyyah* because the implementation of human tasks also depends on it; if the *hifz al-mujtama* is not implemented, then all the affairs of human life become chaotic and humans fail in carrying out their duties as caliphs on earth.

Al-Najjar divides *maqasid hifzh al-mujtama'* into two parts. *First*, the purpose of maintaining offspring (*maqasid hifzh al-nasl*). Society is a collection of individuals who are hereditary. If human individuals consist of healthy and safe physical and mental conditions or weak and sick, then so is society. These two entities, their conditions, are always connected and bound to each other. So that the continuity of generations in a society becomes something very important.

Islamic law pays high attention to maintaining society through the maintenance of offspring who continue the continuity of the formation of society. So that maintaining offspring is one of the purposes of Islamic law that is influential in maintaining society so that it is maintained and effective in helping humans carry out their duties as caliphs.

In the study of *maqasid al-shari'ah*, *hifzh al-nasl* or in other terms *hifzh al-nasab* are included in the five primary purposes. The definition seems varied; sometimes it is simplified with the explanation of maintaining the *nasab* relationship of child to father; sometimes it becomes broad which includes giving birth and caring for children by educating them. Meanwhile, al-Najjar tends to combine the two meanings.

From the definition of *hifzh al-nasl* above, the continuity of generation to generation with the birth of sufficient children is to replace the previous generation can guarantee the survival of society. On the other hand, if the birth of a new generation is halt, then society also will be extinct or—at least— be weak because only the older generation will remain if the population that dies is more than the generation that was born. Consequently, if only older generation are left, then humans will not be able to fulfill the duties they carrying out, which is being the caliph.

As for *hifzh al-nasl* in the concept of *hifzh al-nasab* is the nasab relationship of a child and his father is clear and produced through a legal and *syar'i* relationship; meet the requirements and laws governing marriage. The reliance of lineage on the family in a *syar'i* legal way can make a child have a strong relationship in his community as well as his strong relationship with his family which is the first forerunner to the formation of a society. Next, al-Najjar explains the method and stages of *hifzh al-nasl* into two parts; keep offspring by birth and keep offspring by keeping lineage (*nasab*).

*Second*, the purpose of maintaining the existence of society (*hifzh al-kayan al-ijtima'i*). As explained in the previous section that humans cannot fulfill the duties they carrying out as their creations unless they are incorporated in the structure of society, then the structure of this society will not have any effect on humans unless it protects them from all forms of damage that can scatter them. Although *hifzh al-nasl* is one of the basic *maqasid al-shari'ah* and is the main element in protecting society, it is not enough.

According to al-Najjar, there are two other substantial things in an effort to maintain the existence of society. *First*, maintaining social institutions (*hifzh al-muassasasiyyah al-ijtima'iyyah*). This social institution by al-Najjar interpreted as a public property built on the basis of the existence of the community. In other words, it is a determining element of community solidarity. This section is then classified into three: maintaining institutional traditions, maintaining family institutions and maintaining state institutions.

*Second*, maintaining social relations (*hifzh al-'alaqat al-ijtima'iyyah*). If institutions and traditions are the cause of maintaining the community, but this is not enough because even though social institutions are built and institutional traditions are created, often the relationships between the community structures either between individuals, officials or existing institutions have not been built well. For instance, an authoritarian government system, the emergence of many conflicts and hostilities or differences in social class that cause tension in society. Therefore, good social relations between members and the structure of society must be maintained so that unity, solidarity, security and stability are also created in the social life of the community. This section is classified by al-Najjar into three parts: maintaining brotherly relations (*al-hifzh birabit al-ukhuwwah*), maintaining justice and maintaining solidarity.

### ***Maqasid al-Shari'ah* in Protecting the Physical Environment**

The main duty carried out by humans as caliphs on earth is impossible except in an adequate physical environment, such as the condition of the soil, climate and temperature conditions. On the other hand, if the environment is not adequate, humans cannot carry out their duties. Allah creates the physical environment so that it can be used as well as possible by humans as emphasized in the QS. Al-Jatsiyah: 13.

As for the physical environment in which humans live, according to al-Najjar, consists of two main elements. *First*, wealth or property which is the result of human use of everything on earth, such as agricultural, plantation, and mining products. Keeping this wealth or property, according to al-Najjar, is the purpose of the *shari'a*, because it is a guarantee for the continuity of human existence. However, of course, this form of maintenance must be done in good and proper ways. Because wealth and property owned by humans are generally obtained from agricultural products that have gone

through a processing process. Agricultural products, both from plants and animals, are all part of the environment.

Hence, keeping wealth and property is a form of preserving the physical environment. On the other hand, damaging and neglecting property is also part of the destruction and pollution of the environment. For example, property obtained from agricultural products, plantations and agriculture, if managed in a bad way—with the emergence of waste and chemicals, it will indirectly have a negative impact on soil and water quality. Meanwhile, water and soil are important elements of the environment.

Furthermore, al-Najjar explains that efforts to keep wealth and property are done through five efforts: protecting wealth by business and development, protecting wealth from damage, protecting wealth by maintaining ownership rights, protecting wealth by maintaining value and its price, and safeguarding the wealth and property with publication and distribution.

*Second*, the purpose of preserving the environment (*maqсад hifzh al-biah*). Al-Najjar explains that what is meant by *hifzh al-biah* is protecting nature (*al-mahdhan al-tabi'i*) which is a place for human life. Everything on earth, both plants, animals and inanimate objects, has a direct influence on human life (*anna laha 'alaqatan bi al-hayah al-insaniyyah wa ta'tsiran fiha*). This environment and its contents are a gift provided by Allah to meet human needs and survival as confirmed in the QS. Al-Jatsiyah: 13.

Thus, Allah's vision of creating this natural environment is nothing but for the benefit of human life—and from it humans can fulfill their duties and functions as caliphs on the earth. Therefore, when humans commit acts of corruption against the environment, they are actually destroying their lives and creating obstacles to the fulfillment of their caliphate duties. And finally, the consequences of destructive actions on nature and the environment can create a weak human civilization and an environmental crisis for humans.

Unfortunately, this in-depth study of *hifzh al-bi'ah* has not received serious attention in Islam. Regarding this matter, it is stated that in the literature of Muslim intellectual thought, human rights are always associated with the concept of basic needs, *ushul al-khamsah*. The rights in question are the maintenance of five basic principles: (1) protection of religion (*hifzh al-din*), (2) protection of the soul (*hifzh al-nafs*), (3) protection of mind (*hifzh al-'aql*), (4) protection of offspring (*hifzh al-nasl*), and (5) protection of property/wealth (*hifzh al-mal*). In this context, studies on environmental protection and conservation are considered less significant in the repertoire of Islamic thinkers, even though *hifzh bi'ah* is a prerequisite for reaching *maqasid al-khamsah*. The benefit of the people can only be come true if nature, the earth or the environment, where humans take shelter, are preserved in balance and sustainability.

When the *maqasidi* scholars (*ulama*) have not described that this small human can and has the potential to do big damage to nature and can cause big harm to human life. Even these actions can threaten the extinction of the world's life. Thus, according to al-Najjar, *hifzh al-bi'ah* should be one of the primary purposes of Islamic law (*maqasadan dharuriyyan*) together with *hifzh al-mal*—both of which are the highest purposes of Islamic law as part of the purpose to preserve the material environment as a place for human life.

Thereafter, al-Najjar explains that efforts to preserve the environment can be done in four ways: protecting the environment from all forms of destructive actions, protecting the environment from pollution and pollution, protecting the environment from excessive consumptive behavior and protecting the environment by revitalizing.

## Conclusion

Based on the description above, it can be understood that al-Najjar positioned *maqasid al-shari'ah* as a central part in the vast universe of Islamic law studies. The centrality of *maqasid al-shari'ah* is in its position as a purpose (*al-ghayah*) and wisdom (*al-hikmah*) the enactment of *shari'a* law, either at the universal, particular and reliable level which covers all religious objectives; its scope extends to commands (*awamir*) and prohibitions (*nawahi*) in the practical dimension of action on the one hand and the dimension of human creed on the other. Although this purpose is manifested more clearly in the matter of Islamic *shari'a* laws with the availability of a wider "space" for *ijtihad* than in matters of faith. The main purpose to be achieved from *maqasid al-shari'ah* is benefit for human life both in the world and the hereafter.

All of these, for al-Najjar departed and was based on the main purpose of human creation, which is as caliph on the earth and as servants for Allah. Because if *shari'a* law is the medium of Allah's *khatab* towards humans through law imposition (*taklif*), then the central topic of *maqasid al-shari'ah* is about how to realize this purpose. So that knowledge of *maqasid al-shari'ah* is something that is very significant, especially in an effort to get the correct understanding (*al-fahm al-sahih*) and the correct application (*al-tatbiq al-mursyid*) on *shari'a* law as well as being the scales (*mizan*) in producing laws (*tahsil al-ahkam*). The correct understanding and application at the next stage will become a determining factor for efforts to realize the purposes of *shari'a* law as desired by Allah (*Musyarrri'*).

Here are some innovations of *maqasid al-shari'ah* thought proposed by al-Najjar: in critical reform of the classification and level of *maqasid al-shari'ah*. He considers the classification and level of *maqasid al-shari'ah* to the primary (*dharurah*), secondary (*hajjah*) and tertiary or complementary (*tahsiniyyah*) purposes formulated by *maqasidi* thinkers in general are not final (*ghayr al-nihaiyyah*) and rigid (*mulzimah*), but flexible according to the level of dynamic human needs. He considers *maqasid al-shari'ah* are purposes that include universality (*al-kulliyat*) and because of this, all classifications and levels of purposes of the *shari'a* lead to it. Similarly with al-Najjar's efforts to make the study of *maqasid al-shari'ah* oriented to the benefit of humans which reaches the social-universal point (*al-maslahah al-ijtima'yyah*) from the tendency of individual-partial benefit orientation (*al-maslahah al-fardiyyah*). It can be seen, in particular, when al-Najjar classifies the primary and highest purposes of *shari'a* law into four main things: protecting the value of human life (*hifzh qimat al-hayah al-insaniyyah*), protecting the human essence (*hifzh al-dzat al-insaniyyah*), protecting the society (*hifzh al-mujtama'*) and protecting the physical environment (*hifzh al-muhit al-maddi*). Each part of the four *maqasid* consists of two sub-*maqasid*. So overall *maqasid al-shari'ah* is divided into eight purposes (*maqasid*). The classification conceptualized by al-Najjar is come up from his efforts to make *maqasid al-shari'ah* oriented towards achieving universal and social human benefit from merely achieving partial benefit and tends to be individual.

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