

DEVELOPMENT OF MAQASHID SHARIA THEORY IN MODERN TIMES

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ABSTRACT

Al-Syatibi is considered the father of 'maqashid' classical scholars through his monumental work *al-Muwaffaqat fi Usul al-Syariah*. On the other hand, modernization was carried out by Rasyid Ridha, who consented to modern cases. Thaha ibn 'Assyria, with his monumental work, is considered the father of modern maqashid scholars. With his monumental work, *Maqashid al-Shariah as Philosophy of Islamic Law: A systems approach*, published by IIIT in London in 2007, Jasser Auda is a contemporary maqashid figure with concerns in the field of Islamic law from a very different generation. This article seeks to systematically reveal the thoughts of modern and contemporary maqashid figures using the considerations of *Maqashid al-Sharia* in determining the birth of legal decisions.

Keywords: Maqashid sharia; Islamic law

1. INTRODUCTION

The 'maqashid' theory was carried out by Rasyid Ridha, a modern case. Thaha ibn 'Assyria, with his monumental work, is considered the father of modern maqashid scholars. With his monumental work, *Maqashid al-Shariah as Philosophy of Islamic Law: A system approach*, published by IIIT in London in 2007, Jasser Auda is a contemporary maqashid figure with concerns in the field of Islamic law from a much different generation. This article attempts to uncover a systematic way of thinking about modern maqashid figures

The Messenger of Allah permitted Mu'adz bin Jabal to have faith and was the forerunner of the birth of maqashid al-shari'ah during the time of the Messenger of Allah and was justified by

revelation. When the Messenger of Allah has died, and the revelation is over, then reason with the thought of falsafi maqashidi plays a role in matters in his nash and those that do not exist. Philosophical thinking about Islamic law that existed nash dates back to Khulafa al-Rasyidin, especially Umar ibn Khattab. The abolition of the law of hand-cutting for thieves, zakat for nasealaf, etc., was carried out by Umar bin Khattab based on the conformity of the times to guarantee the enforcement of justice, which is the principle of Islamic law and is the goal of Islamic law (maqashid al-shari'ah).

The development of Islamic legal philosophy, continues to roll from time to time with references to the hadith of Mu'adz bin Jabal above. Al-Tirmidzi (d.296. H) was the first to introduce a work on maqashid al-S yari'ah under the title al-Shalat wa Maqashiduha. It was followed by Abu Zaid al-Bakhili (d.322 H) with his contribution of thought on maqashid al-shari'ah with his work al-Ibanah 'an 'Ilal al-Diyanah. It was followed by al-Qaffal al-Kabir (d. 365 H) with his work Mahasin al-Sharai'. Later generations Ibn Babawaih al-Qummi (d. 381 H) wrote about maqashid al-shari'ah under the title 'Ilal al-Sharai', and al-'Amiri al-Failasuf who introduced his work al-I'lam bi Manaqib al-Islam.

The 5th century A.D. became a new chapter in the thematic and systematic formulation of the Maqashid alshari'ah as an answer to the complexity of social problems that were not accommodated by previous literal formulations. The first ushul fiqh expert Abu al-Ma'ali al-Juwaini (d. 478 H) emphasized the importance of understanding maqashid al-shari'ah in establishing the Law. According to al-Juwaini, no one can establish law in Islam before it can fully understand the purpose of Allah, establishing commandments and prohibitions. The treatise Ushul Fiqh entitled al-Burhan fi Ushul al-Fiqh (Real Postulates in the Proposal of Jurisprudence) began to promote ideas and elaborate Maqashid al-shari'ah in the discussion of 'illat on the issue of Qiyas. In his opinion, to 'illat, ash becomes 5 (five) levels as Ushul al-Shari'a, namely:

1. al-dlaruri (basic necessities),
2. al-hajah al-'ammah (public needs),
3. almukramat (moral behavior),
4. al-mandubat (suggestions), and
5. Sea that is not specifically listed in the above category (tahsiniyyat). Al-Juwain posits that the maqashid of Islamic law is to preserve (al-'ishmah) faith, soul, reason, family and property.

The brilliant development of maqashid al-shari'ah theory reached its peak in the 8th century AD after the emergence of Abu Ishaq al-Syathibi (d. 790 H) with his work *al-Muwafaqat fi Ushul al-Sharia* (conformity in the Fundamentals of Sharia). With a model of study terminology almost similar to al-Juwaini and al-Ghazzali, al-Syathibi promoted an important formulation for the position of maqashid al-shari'ah in Islamic law. When before al-Syathibi maqashid was only positioned as *mashalih al-mursalah* (loose benefit; irregular in the Qur'an and Sunnah), then the idea of al-Syathibi repositioned it as part of the basics of Islamic law. Al-Syathibi considered that maqashid are the main points of religion (*ushul al-din*), the rules of sharia (*qawaid sharia*), and the universal values of religion (*kulliyat al-millah*).

Al-Syatibi developed the Maqashid theory in 3 (three) substantial ways, namely: First, the maqashid which was originally part of the Benefit of mursal (*al-masalih al-mursalah*) became part of the basics of Islamic law. Maqashid, which previously belonged to the category of freelance benefit, is not mentioned in the nash, and has never been judged as the basis of independent Islamic law. Second, Dari "the wisdom behind the law" becomes "the basis for the law." Based on the foundation and generality of maqashid, Al-Syatibi argues that the generality of inevitability, necessity and completeness, cannot be defeated by partial law. Third, Dari *Zhanniyyah* (uncertainty) towards *qath'iyah* (certainty). With his *al-Muwafaqat* work, complementing many aspects of Maqashid's earlier ideas, the book went on to become a standard book of maqashid al-shari'ah among scholars until the 13th century A.D./20 A.D.

Based on the background mentioned, this current study goes to answer as follows:

- 1) How is Maqashid Al-Syar'iyah in Rasyid Ridla's Perspective?
- 2) How is Maqashid Al-Syar'iyah in the Perspective of Ibn 'Assyria?
- 3) How is Maqassid Al-Syariah in thr perspective of Jasser Auda?

2. METHODS

This research is qualitative descriptive research that uses a library research approach. The data sources used in this study are primary and secondary sources. Data collection techniques with keyword search, subject liquefaction and from engineering scientific articles. Data checking is carried outwith triangulation techniques, namely collect all the data then sort and manage it into writing.

3. RESULTS AND DISCUSSION

Maqashid Shari'a Theory in Modern Times

a) Maqashid Al-Syar'iyah in Rasyid Ridla Perspective

Al-Gazali's *Ihya Ulum al-Din* greatly influenced the thought of Sayyid Muhammad Rasyid Ridha. The Book of *Ihya Ulum al-Din* helps shape his view that Muslims should consciously internalize (internalize) their faith, and go beyond mere birth observances, and should always be aware of the ethical implications of his actions. The book of *Ihya Ulum al-Din* encouraged the young Sayyid Muhammad Rasyid Ridha to concentrate on spiritual preparation for the afterlife (Athallah, 2006).

The book has not only piqued his interest in repeatedly reading it, but has been his first teacher in shaping his personality. It was while under the influence of al-Ghazali that, says Sayyid Muhammad Rasyid Ridha, he followed the Naqsyabandiyyah order, practiced his teachings, and performed very strenuous 'U zlah exercises. A few years later after diligently living a Sufi life and practicing the teachings of the order, Sayyid Muhammad Rasyid Ridha realized the many heresies and khurafat found in the teachings of Sufism and the order. Therefore, the teachings were abandoned by him.

In fact, his attitude towards the teachings of Sufism and the order not only did he get there, but he guided his people to abandon the teachings that had been mixed with heresy and khurafat. That is by opening recitations for men and recitations for women, cutting down considered sacred trees and bringing blessings, and prohibiting people from seeking blessings from the graves of the saints or having sex with the deceased guardians. The change in Sayyid Muhammad Rasyid Ridha's attitude towards Sufism and order arose after he studied the hadith books assiduously.

In Lebanon, Sayyid Muhammad Rasyid Ridha tried to implement the ideas of renewal he had acquired. However, this effort was met with political pressure from the Turkish Kingdom of Usmani which did not accept the ideas of renewal it put forward. As a result of the growing opposition, finally in 1898 AD, Sayyid Muhammad Rasyid Ridha moved to Egypt following his teacher, Muhammad Abduh, who had lived there for a long time (Nasution, 1975).

The Concept of Shura Basic Law Rasyid Ridha

The word ‘shura’ comes from the root of the word shawara. This basic form has many meanings. Among the many meanings, it is to offer oneself, to welcome and to be targeted. The term musyawaral (musyawarah) is the masdar form of the verb syawara, yusyawiru means “to appear, offer and take something”. The latter meaning is found in the expression ‘syawartu Fulanan fi al-amri’ (I take the fulan's opinion on my affairs).

Some fiqh scholars state that shura means asking for the opinions of others on an affair, because people who are deliberating are required to issue their opinions on a problem that is faced together. Shura is often associated with modern (Western) political theories, such as the republican system of government, democracy, parliament, representative system, senate, formators and various concepts related to the system of government.

In Islam, shura is not an optional issue, but shura is an obligation for leaders who take responsibility for the future of the people. In fact, Allah has glorified shura by making it one of the letters in the Qur'an. The shura obligation, in addition to referring to the nash-nash of the Qur'an, also refers to the hadiths of the Prophet and the ijmak of the companions.

There are at least two verses about shura that are directly related to the political context, namely, Surah Ali Imran (3:159),

فَبِمَا رَحْمَةٍ مِّنَ اللَّهِ لِنْتَ لَهُمْ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانْفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ
وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ ﴿١٥٩﴾

Translation:

“Thus it is due to mercy from Allah that you deal with them gently, and had you been rough, hard hearted, they would certainly have dispersed from around you; pardon them therefore and ask pardon for them, and take counsel with them in the affair; so when you have decided, then place your trust in Allah; surely Allah loves those who trust.

Rasyid Ridha stated the order, Syura here is not only attributed to the Prophet, but is aimed at Muslims to make Syura the first rule and principle for an Islamic system of government. In line

with Rasyid Ridhho, Quraish Shihab stated, editorially this verse was addressed to the Prophet SAW. In order to discuss certain issues (such as war affairs) with their friends or members of the public, but this verse is also a guide to every Muslim, especially to leaders, to always uphold the principles of shura in making decisions and making policies.

Ridha stated that shura is the best way (solution) in solving the problems of the people. Shura is a (strategy) in dealing with important conditions in society, for example war, government management and other social problems. The leader of the people (caliph) must abide by the principle of shura, to find a solution to every problem faced, especially regarding political issues that concern the interests of society at large. In addition to being based on the principle of the above verse, there are also several hadiths of the Prophet that stipulate shura is one of the legal principles in Islam (Yamin, n.d).

The thought of Sayyid Muhammad Rasyid Ridha was greatly influenced by al-Gazali's *Ihya Ulum al-Din*. The Book of *Ihya Ulum al-Din* helps shape his view that muslims should consciously internalize (internalize) their faith, and go beyond mere birth observances, and should always be aware of the ethical implications of his actions. The book of *Ihya Ulum al-Din* encouraged the young Sayyid Muhammad Rasyid Ridha to concentrate on spiritual preparation for the afterlife (Athaillah, 2006).

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In fact, his attitude towards the teachings of Sufism and the order, not only did he get there, but he guided his people to abandon the teachings that had been mixed with heresy and khurafat. That is by opening recitations for men and recitations for women, cutting down trees that are considered sacred and bringing blessings, and prohibiting people from seeking blessings from the graves of the saints or having sex with the deceased guardians. The change in Sayyid Muhammad

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b) Maqashid Al-Syar'iyah In The Perspective Of Ibn 'Assyria

Maqashid al-Shari'ah in Ibn 'Assyrian's Perspective In Ibn 'Assyria's view, every sharia that Allah has passed down and entrusted to man must not be empty of noble purposes and wisdom. He based this view on legalistic sources, the word of Allah among them surah al-Dukhān [44]: 38-39 "And we did not create the heavens and the earth and what is between them by playing games. We did not create both but rather with haq, but mostly they did not know. "

The idea of maqashid al-shari'ah, as a value, principle, and paradigm has been known since the beginning of Islam. However, conceptually, the thought of maqashid al-shari'ah was only systematically constructed by al-Syathibi through his book al-Muwafaqat fi Usul alSyari'ah, which means Harmonization of the Principles of Shari'a. It was for his services that al-Syathibi was named the Father of the First Maqosid al-Shari'ah (Muhtamiroh, 2013).

Through his work Maqashid al-Shari'ah al-Islamiyyah, Muhammad Thahir ibn 'Assyria developed the theory of al-maqashid by carrying out three important transformations, namely:

1. The transformation of al-maqashid from simply *maslahat al-mursalah* (*maslahat/maslahat lepas*) to the proposal of *al-din wa qawa'id al-shari'ah wa kulliyat almillah* (religious principles, sharia rules, and points of belief in Islam).
2. Al-maqashid's transformation from "wisdom behind rules" to "basis of rules". Based on this understanding al-Syathibi draws the conclusion that any rule made in the name of sharia cannot overstep al-maqashid. He further said, based on this second transformation, knowledge of al-maqashid is the main requirement for *ijtihad* expertise at all levels.
3. Al-maqashid's transformation from "uncertainty" to "belief" from *zanniy* to *qat'iy*. Namely the belief in the results of the induction process he carried out on the verses of the Koran to draw conclusions about al-maqashid.

c) Maqashid Al-Syar'iyah dalam Perspective Jasser Auda

Some of the criticisms and some solutions presented by Jaser Auda as one of the scholars who became one of the representations of the idea of contemporaryization of *maqashid al-shari'ah* through his work *Maqashid Shariah as Philosophy of Islamic Law; A Systems Approach*, a monumental work by Jaser Auda that became the medium for the publication of his ideas on the systems approach to exploring Islamic law.

The presentation of criticism was popularized by Jasser Auda as follows:

a. Partiality of Maqashid Range

The efforts of the initiators of traditional *maqashid* do not include the specific intent of a *nash*/law covering a particular topic of jurisprudence. According to modernscholars, the range of *maqashid* should ideally be renovated towards a more systematic improvement in the field of range classification.

The modern classification divides *maqashid* into 3 (three) levels, namely: 1) General *Maqashid* (*al-maqashid al-'ammah*), is a *maqashid* that can be studied in all parts of Islamic law such as the traditional *maqashid* formulation, plus new *maqashid* proposals such as justice and ease. 2) Special *Maqashid* (*al-maqashid alkhassah*), is a *maqashid* which can be observed throughout the contents of certain chapters of Islamic law, such as child welfare in family law; protection from crimes in criminal law; and protection from monopoly in economic law. 3) *Maqashid* Partial (*al-maqashid al-juz'iyah*), i.e. the intentions behind a *nash* or certain laws, such as the intent of

expressing the truth in requiring a certain number of witnesses in a particular legal case for example (Auda, 2008).

b. Individualism the subject of Maqashid Law

Traditional maqashids have more to do with the individual than with the family, society or humanity. In order to correct the shortcomings of the maqashid theory regarding the reach of individual people, the idea of maqashid modern and contemporary Muslim scholars was expanded to include a wider human range of people, namely society, nation, and even mankind. Like Ibn 'Atsur who prioritizes maqashid relating to the interests of the nation or humanity over maqashid around individual interests. Rasyid Ridho included the issue of reform and women's rights in his maqashid theory, as well as Yusuf al-Qardhawi who studied dignity and human rights a lot in his maqashid theory.

According to Jasser Auda, the expansion of maqashid's reach allowed him to respond to global issues, as well as make him develop from just the wisdom behind the decision of a law to a practical plan for the reform and renewal of Islamic law (Auda, 2008).

c. Maqashid Induction and Generality Reform

Traditional maqashid is deduced from the study of fiqh literature rather than from sharia sources (qur'an and al-Sunnah). In addition, the traditional maqashid classification does not include the most common values such as justice and freedom. Departing from the results of these corrections, contemporary scholars introduced a new maqashid theory that he directly dug from nash. According to Jaser Auda, this approach will allow maqashid to transcend the historicity of jurisprudence decisions and represent the values and general principles of nash. Thus, detailed laws (ahkam tafshiliyyat) can be extracted from the overarching principles (kulliyat).

In addition, the idea of contemporaryization of maqashid is a new formulation concept virtualized by modern and contemporary maqashid scholars with regard to the point of view of meaning towards dlaruriyyat al-khams which became the standard of understanding since the 5th century AD. In the development of maqashid of the 20th century AD, the terminology used in positioning dlaruriyyat al-khams From what originally used the term protection or safeguard (hifdz/muhafadzah) to the development of human rights. Hifdz al-din, which in traditional

maqashid is interpreted as the concept of protection against religion, in contemporary glasses is reinterpreted into the concept of freedom of faith according to the term Ibn 'Assyria or freedom of belief in other contemporary expressions (ibn 'Ashur, 2009).

Hifdz al-nafs and hifdz al-i'rdl which originally meant the protection of the body soul and the protection of honor, in contemporary developments were replaced with the protection of human rights and the protection of human dignity and dignity. Hifdz al-nasl, which originally meant protection, in its development, turned into a family-oriented theory. Ibn 'Assyria made it the theme of family care as a maqashid of Islamic law. Likewise, Hifdz al-mal, which originally meant the protection of property, developed into more familiar and melienial socioeconomic terms such as economic development, social assistance, cash distribution, prosperous society and reduction of differences between economic classes (Sana, 2003).

The concept of hifdz al-'aql, which in the classical traditional tradition is interpreted as the protection of reason, in its development was replaced with the concept of developing scientific thought, countering the taklid mentality and preventing the migration of experts abroad which is in line with the concept of hifdz al-'aql. The birth of these new ideas is intended to retranslate the positioning of ushul al-sharia sources so as not to lose their relevance to global progress and challenges.

CONCLUSION

Maqashid Sharia in modern times Modern is more sweetened and in harmony with the issues of the present than with the Classical Maqashid conception. Some shifts in interpretation of the Classical Maqashid conception that hifz al-nasl which means the preservation of offspring, developed into concern for the family, even sampai proposed the existence of a civil Islamic socialsystem. Hifz al-'aql which means the preservation of reason, developed into the development of scientific thought, the journey of studying, suppressing the mentality of jumping on the bandwagon, and even avoiding the immigration of experts abroad. In modern Maqashid theory it also undergoes reformulation. The concept of hifz al-ird, which means the preservation of honor, evolved into the preservation of human dignity and safeguarding human rights. On the other hand, hifz al-din, which means the preservation of religion, evolved into freedom of faith in contemporary expressions. Hifz al-mal which means the preservation of treasures, develops into economic development and suppresses the

inter-class chasm. In addition, Maqashid Contemporary also advocates the development of Human Resources (HR) as a contemporary expression of Benefit that can be measured empirically through HR development targets according to the United Nations (UN).

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