



Relationship of *Maqasid al-Shari'ah* with *Usul al-Fiqh* (overview of historical, methodological and applicative aspects)

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Abstrak

Kajian tentang *maqasid al-shari'ah* telah banyak ditulis dan dikaji oleh para peneliti hukum Islam, ada yang menulis tentang konsep *maqasid al-shari'ah*, pemikiran para tokoh, kemudian aplikasinya terhadap berbagai isu hukum Islam dan sosial. Sebagai sebuah kajian baru, *maqasid al-shari'ah* banyak dikaji dalam rangka pembaharuan hukum Islam, namun tidak banyak yang membahas tentang sejarah lahirnya *maqasid al-shari'ah* dan hubungannya dengan *usul al-fiqh*. Karena secara historis, lahirnya *maqasid al-shari'ah* tidak bisa lepas dari perkembangan *usul al-fiqh* melalui para ulama yang mempopulerkan yaitu para ulama *usul al-fiqh*. Begitu juga dari segi metodologis, *usul al-fiqh* mempunyai hubungan erat dengan metode *istinbāt al-āhkām* seperti *qiyās*, *maslāha al-mursalah*, *al-zārī'ah* dan *istihsān*. Sedangkan dari segi aplikasinya, *maqasid al-shari'ah* sama dengan *usul al-fiqh* yaitu berangkat dari dalil baik *naqlī* (wahyu) maupun *'aqlī* (akal) yang bersifat global, kemudian menganalisa berbagai pendapat para ulama dalam menentukan hukum Islam. Hanya saja *usul al-fiqh* lebih didominasi aspek kebahasaan sedangkan *maqasid al-shari'ah* lebih mengedepankan aspek *'illah* dibalik sebuah teks. Oleh karena itulah untuk melihat letak hubungan antara *maqasid al-shari'ah* dan *usul al-fiqh*. Penelitian ini menggunakan metode *library research* atau kajian pustaka dengan meneliti sumber-sumber utama yang membahas tentang hubungan antara *Usul al-fiqh* dan *maqasid al-shari'ah* dari segi historis, metodologis dan aplikatif.

Kata kunci: *Maqasid al-shari'ah*, *usul al-fiqh*, relasi

Abstract

Studies on *maqasid al-shari'ah* have been widely written and reviewed by researchers of Islamic law. Some have written about the *maqasid al-shari'ah's* concept, the figures' thought, and its application to various Islamic law and social issues. As a new study, *maqasid al-shari'ah* is widely studied in the context of renewing Islamic law, however little discuss about history of *maqasid al-shari'ah* and relations with *usul al-fiqh*. Because historically, the birth of *maqasid al-shari'ah* can't be separated from development of *usul al-fiqh* through the scholars *usul al-fiqh*. As well as in terms of methodology, *maqasid al-shari'ah* have a close relationship with method *istinbāt al-āhkām* in *usul al-fiqh*, as *qiyās*, *maslahāh al-mursalah*, *al-zārī'ah* and *istihsān*. While in terms of application, *maqasid al-shari'ah* together with *usul al-fiqh* namely departing from the proposition of *naqlī* (revelation) and *'aqlī* (reason) which is global and analyzes various opinions in deciding Islamic law. It's just that *usul al-fiqh* is dominated by linguistic aspects, meanwhile the *maqasid al-shari'ah* emphasizes the divine aspect behind the law. That's why to see relationships among *maqasid al-shari'ah* and *usul al-fiqh*, this research uses library research method or literature review by researching the main sources which discusses about relations *maqasid al-shari'ah* and *usul al-fiqh* in terms of historical, methodological and applicative.

Keywords: *Maqasid al-shari'ah*, *usul al-fiqh*, relationship

Introduction

Islamic law or which includes *fiqh* and fatwa are structured to answer various issues and problems that occur in the community, especially the Muslim community of the world. Because the various problems that exist in Muslim societies in the world are always developing, and cannot be solved only by interpreting the text contained in the Qur'an and Hadith as the main source of textual teachings of Islam. Although there are various verses in the Qur'an that state the completeness of the teachings of Islam, textual answers do not solve problems that develop in society. That is because there are different and changing situations and conditions. For this reason, it is necessary to have an interpretation of religious texts through *ijtihad* conducted by scholars, to answer the problems that occur in the middle of the Muslim community of the world. The instrument used by the ulama in formulating Islamic law always refers to the rules of *fiqh*, but the rules of *usul al-fiqh* are more dominant using the linguistic approach in exploring a law contained in religious texts. So, it is necessary to have a new alternative or renewal of *usul al-fiqh* as a governing science related to procedures in *istīnbāt al-āhkām* (excavation of law).

One of the new alternatives offered by contemporary scholars, to answer various problems that develop in society is the *maqasid al-shari'ah* approach. The *maqasid al-shari'ah* approach has the aim of promoting the values of social welfare in answering problems that develop in society. This is based on the argument, that *maqasid al-shari'ah* is able to reveal the various meanings, goals, and objectives of Islamic law.¹ The *maslahah* aspect behind the Islamic presidency, which then formed the background of the emergence of a study discourse called *maqasid al-shari'ah*. Namely the objectives of Islamic good fortune that is both *ta'abbūdiyyah* (the afterlife oriented) and *ta'aqqūliyyah* (world-oriented). While *usul al-fiqh* as a science examines the procedures for extracting Islamic law from the arguments that exist, but rather only in language analysis. Even so, people who want to emigrate or explore Islamic law through Islamic legal sources, both agreed upon,² or not agreed,³ it must understand *usul al-fiqh* as a main foundation in exploring a law through religious texts.

When viewed from the very beginning of the development of Islamic legal thought, the study of *maqasid al-shari'ah* is placed not too significantly in the study of the scholars. The scholars of *usul al-fiqh* (*ushūliyyīn*) were limited to placing them in additional discussion in the laws of a school. More deeply, Islamic legal thinking has been bound by the attention of the scholars, in which the excavation of Islamic law is only associated with the study of *usul al-fiqh* and *qawā'id al-fiqh* which is oriented to the text, not to the meaning contained behind a text. Whereas between *usul al-fiqh*, *qawā'id al-fiqh* and *maqasid al-shari'ah* are three important things that are inseparable, developing and running in the same linear line. Because *usul al-fiqh* is

¹ Jaser Audah, *Membumikan Hukum Islam Melalui Maqasid Syariah* (Bandung: PT Mizan Pustaka, 2015), p. 6.

² Wahbah Al-Zuhaili, *Al-Wajiz Fi Ushul Al-Fiqh*, 16th ed. (Damaskus: Dar al-Fikr, 2011), p. 21.

³ *Ibid.*, p. 21.

a science that studies the methodology of determining Islamic law, while *qawā'id al-fiqh* is the main foundation of Islamic law, while *maqasid al-shari'ah* is the values, spirit, and spirit contained in Islamic law. So that the three aspects are interrelated and cannot leave each other in extracting an Islamic law.

As is known, the discussion of *maqasid al-shari'ah* that is currently developing is directly focused on theory and practice, but not much is explained related to the history of the beginning, development, and birth of various theories until it becomes an alternative study in Islamic legal discourse. At least there are several studies that lead to the theme of the relationship between *maqasid al-shari'ah* and *usul al-fiqh*, for example, written by Ali Mutakin in Hunafa Journal 2010 about the Maqasid Shari'ah Theory and Its Relationship with the Istinbath Legal Method and Fatimah Halim in Legal Studies Journal 2017 who discusses the Relationship Between Maqasid Shari'ah With Several Methods of Legal Determination. And from previous studies, there is not much mention of the history and application of *maqasid al-shari'ah*. So that this research is deemed necessary to examine the relationship between *maqasid al-shari'ah* with *usul al-fiqh* through historical, methodological, and applicative aspects.

Research Method

This research is a qualitative study with data sources derived from literature review and information from scientific journals related to *maqasid al-shari'ah*. To support the search for data in this study, various classic books and journal articles or writings of academics were also searched and directed towards this theme.

The historical relations of *Maqasid al-Shari'ah* dan *usul al-fiqh*

The birth of *maqasid al-shari'ah* cannot be separated from *usul al-fiqh*, because historically the *maqasid al-shari'ah* was born from the womb of *usul al-fiqh*. So, to see the history of the journey regarding the study of *maqasid al-shari'ah*, it is necessary to explain some scholars who have contributed to the study of *maqasid al-shari'ah*. Attention to the *maqasid al-shari'ah* actually existed before asy-Syatibi who is considered to be the father of the *maqasid al-shari'ah*, even in the time of the Prophet. Hammādī al-Ubāyḍī mentions the first person to speak *maqasid al-shari'ah* namely Ibrāhīm al-Nakhā'ī (d. 96 AH), a person from *tābī'in* 'who says in every law of Allah SWT has a purpose namely benefit.⁴ But according to Jaser Audah, *maqasid al-shari'ah* was already discussed in the time of Abu Bakar when codifying the Qur'an. After the Sahaba, *maqasid* theory and classification developed. However, the *maqasid al-shari'ah* that we see and know as it is today is not so mature before the scholars of *usul al-fiqh* from the 5th AH to the 8th AH. However, in the first three centuries, the term *hikmah* was known, 'illah, *munāsabah*, *ma'ānī*

⁴ Hammadi Al-Ubaydi, *Al-Syatibi Wa Maqasid Al-Syari'Ah* (Beiru: Dar Qutaybah, 1996), p. 134-135.

and already existed in the method of thinking of the scholars of Islamic law before, even using it.⁵

After al-Nakhā'ī, Tirmīdzī al-Hākīm (d. 296 AH/908 AD), who wrote the first manuscript of the *maqasid al-shari'ah*. Where the word "*maqasid*" is found in his *al-Shalāh wa Maqāṣīduha*, which contains research on spiritual secrets and wisdom in every prayer and remembrance movement.⁶ In the 3rd century, there was Abū Zayd al-Balkhī (d. 322 AH/933M), who wrote the first manuscript of the *maqasid al-shari'ah* in the field of *mu'amalah*. His work, entitled *al-Ibānah 'an Ushūl al-Diyānah*, is a work that traces the various objectives that lie behind Islamic law. The same work with the title *Masālih al-'Abdān wa al-Anfus*, discusses how the practice of Islamic religion and its laws have a positive impact on physical and mental health.⁷

Then there is al-Qaffāl al-Kabīr al-Shāshī (d. 365 H / 975 AD), with the oldest work on the *maqasid al-shari'ah* which is in the *Dār al-Kutūb* Cairo of Egypt, with the title *Mahāsīn al-Syar'ī*. A manuscript that discusses the rules, objectives, wisdom of the shari'a. The composition of the discussion in the work, such as the composition of classical jurisprudence. Starting with *thahārāh*, ablution, and so on.⁸ The development of various concepts such as *al-Ḍarūrīyyāh*, *al-siyāsāh*, and *al-makrūmāh* by al-Qaffāl facilitate the way of al-Juwainī and al-Ghazalī in developing the theory of *shafi'i Shi'a* and *maqasid's* theory. The two scholars then put forward the concepts of *al-Ḍarūrīyyah*, *al-hājjiyyah*, and *al-tahṣīniyyāh*.

After that, there was the Ibnu Bawabayh al-Qummī (d. 381 AH / 991 CE). The leading and first scholars of the 4th AH from the *Shafi'ah* circles, who studied the *maqasid al-shari'ah* with his work *I'lalu al-Sharā'ī*.⁹ The study of *maqasid al-shari'ah* was then continued by al-Amīrī al-Faylasūf (d. 381 AH / 991 M), through his work *al-I'lām bi Mānāqib al-Islām*. Trying to examine the theoretical classification of Islamic sharia objectives related to *al-Hudūd* or criminal law in Islam. With the discussion of punishment for murderers, thieves, opening up the disgrace of others, and so forth. The discussion then became the inspiration of the ulama in formulating *al-kullīyyāh al-khomsah*, namely protecting religion, soul, reason, descent, and wealth.¹⁰ After al-Qaffāl, there was a Abū Ja'fār Muhammad 'Alī (d. 381 AH) from *al-Imāmiyyāh circles* who study the 'law' through their work *I'lāl al-Sharā'ī*.¹¹ In the contiguous period, there was Abū Bakr ibn al-Ṭayyib al-Baqilani (d. 403 AH) with his work *al-Ahkām wa al-I'lal* which combines kalam science with *usul al-fiqh* which resulted in the study of *maqasid al-shari'ah*.¹²

⁵ Jaser Audah, *Al-Maqasid Untuk Pemula, Penjt. Ali Abdelmon'im* (Yogyakarta: SUKA-Pres UIN Sunan Kalijaga, 2013), p. 29-30.

⁶ Ibid., p. 30.

⁷ Ibid., p. 31.

⁸ Ibid., p. 35.

⁹ Ibid., p. 35.

¹⁰ Ahmad Al-Raysuni, *Baths Fi Al-Maqasid Al-Shari'ah; Nash'atuhu Wa Tatawuruhu Wa Mustaqbaluhu* (London: Muassasat al-Furqan li Turath al-Islami, 2005), p. 10.

¹¹ Ibid., p. 8.

¹² Muhammad Husayn, *Al-Tanzir Al-Maqasidi 'ind Al-Imam Muhammad Tahir Ibn Ashur* (Jazair: Jaza'ir: Wuzarat al-Ta'lim al-Ali wa al-Bahath al-Ilm, 2003), p. 95.

The term *maqasid al-shari'ah* then appears in the application of various methods of *usul al-fiqh* such as *al-Qiyās*, *al-Istihṣān* and *al-Maslāhah*. Even so, *maqasid al-shari'ah* has not been seen as part of the study of Islamic legal thinking in its own right. So that the development of the theory of "public needs" by al-Juwaini (d. 478 AH/1085 AD) in the 5th AH. The methods that existed until the 5th AH, were apparently unable to answer the problems of civilization that continued to develop. So then theories such as *al-Maslahah al-Mursalah* emerge as a method that includes "what is not mentioned and which is behind the sacred texts". As for the scholars of *usul al-fiqh* who are the most influential in the theory of *maqasid al-shari'ah* from the 5th AH to the 8th AH are the Abū al-Ma'ālī al-Juwaini (d. 478 AH/1085 AD), Abū Hāmid al-Ghazālī (d. 505 AH/1111 AD), al-I'zzu al-Dīn Ibn A'bdu al-Salām (d. 660 AH/1209 AD), Shihāb al-Dīn al-Qarāfī (d. 684 AH/1285 AD), Shamsuddīn Ibn al-Qayyīm (d. 748 AH/1347 AD) and Abū Ishāq al-Shāṭibī (d. 790 AH/1388 AD).

Al-Juwainī as the originator of "the theory of public needs", wrote the book *al-Burhān fi Usul al-fiqh*. Which is the work of *usul al-fiqh* first, discusses "levels of basic needs" or known as *al-Darūriyyāh*, *al-Hājjiyyāh*, *al-Taḥṣīniyyāh*. Al-Juwaini suggests 5 levels of *maqasid al-shari'ah*, namely *al-Darūrāh*, *al-Hājjah*, *al-‘Ammah*, *al-Marrām*, *al-Mandūbah* and what cannot be returned to a specific or clear purpose.¹³ As for al-Ghazālī as the originator of 'levels of necessity', developing the theory of al-Juwaini in his book *al-Mustashfā*. In the beginning to interpret *maslahah* as a method to attract benefits and reject damage in beings. In this case, the benefit of beings is the ultimate goal to be achieved. That way, the benefit is the same as maintaining the objectives of the sharia. Which are the objectives of the sharia in beings there are five kinds, namely guarding religion, guarding the soul, guarding the intellect, guarding offspring, and protecting property.¹⁴

After al-Ghazālī, there was the Fakhruddīn al-Rāzī (d. 606 AH). Through his book *al-Maḥṣūl fi al-‘Ilmi al-uṣūl*, there was a difference in the order of *al-uṣūl al-khomsah* by prioritizing guarding the soul over guarding religion.¹⁵ The next scholar was Abū ‘Abdullāh Muhammad Ibn ‘Abdul al-Rahmān (d. 546 AH), who wrote the book of *Mahāṣin al-Islām wa Sharā‘i al-Islām*. Then there was al-‘Izzu al-Dīn Ibn ‘Abdu al-Sālām (d. 660 AH/1209 CE), who wrote two books about the *Maqāṣid*. In it discusses the wisdom behind the rules of shari'a, namely: *Maqāṣid al-Ṣalāh* and *Maqāṣid al-Ṣaum*. However, his major contributions in the theory of *maqasid al-shari'ah* are found in the book of *Qawā‘id al-Ahkām fi Masālih al-Anām*. After that, there was Najmu al-Dīn al-Ṭūfī (d. 716 AH), a scholar who caused much controversy and his ideas worried many scholars, because he gave a very large portion in the use of reason.¹⁶ Then there is Ibnū al-Taymiyyāh (d. 728 AH), who

¹³ Audah, *Al-Maqasid Untuk Pemula*, Penjt. Ali Abdelmon'im, p. 38.

¹⁴ Husin Hamid Hasan, *Naẓariat Al-Maslahah Fi Al-Fiqh Al-Islami* (Kairo: Dar al-Nahdah al-Arabiah, 1971), p. 5-6.

¹⁵ Fakhruddin Muhammad Ibn Umar Ibn Al-Husayn Al-Razi, *Al-Maḥshul Fi Ilmi Ushul* (Damaskus: Muassasat Risalah, n.d.), p. 160.

¹⁶ Husayn, *Al-Tanzir Al-Maqasidi ‘ind Al-Imam Muhammad Tahir Ibn Ashur*, p. 100-101.

has contributed to the study of *maqasid al-shari'ah* which was applied directly into his fatwas in the book of *Majmū al-Fatāwā al-Kubro*.¹⁷

Next was Ibnu al-Qayyim al-Jauziyyah from the Hanbali school. With his criticisms of the practice of legal engineering or *al-hiyāl* (something that can be a medium to justify the unlawful and forbid the halal). Then there was Tāju al-Dīn as-Subkhī (d. 771 AH), with his work *al-Jawāmī'* which gives additional *al-Darūriyyāh al-khomsāh* by preserving honor (*hifdz al-'ard*).¹⁸ After that appeared Abū Ishāq al-Shāṭibī Ibrāhīm bin Mūsā al-Malīkī (d. 790 AH / 1388 AD), the Ulama school of Islamic scholars who succeeded in composing the *maqasid al-shari'ah* to be the basis of Islamic law. Through *al-Muwāfaqāt fī al-Ushūl al-Sharī'ah*, he succeeded in making a major contribution to the development of the *maqasid al-shari'ah* by transforming three important things; first, making *maqasid al-shari'ah* as legal principles. Second, making the *maqasid al-shari'ah* from a wisdom that is behind the rules become a basic rule. Third, the *maqasid* from uncertainty becomes a belief.¹⁹

After the death of al-Shāṭibī, the study of *maqasid al-shari'ah* experienced stagnation and then five centuries after it emerged the Ibnu 'Ashūr (d. 1393 AH/1973 CE) through his work the *Maqāṣid al-Syar'iyyah al-Islāmiyyāh* trying to get *maqasid al-shari'ah* from *usul al-fiqh* into a new scientific discipline. This is done by Ibnu 'Ashūr because the issues that are developing and current issues are more relevant to be studied with *maqasid al-shari'ah*.²⁰ In addition to Ibnu 'Ashūr, there is also 'Ilālu al-Fāsī from Morocco (d.1974 AD) who wrote *Maqāṣid al-Sharī'ah al-Islāmiyyāh wa Makārimuhā*.

In the current era, *maqasid al-shari'ah* is widely studied by observers of Islamic law and Islamic law such as Hasan al-Turabī, Jaser Audah, Ahmad al-Raysuni, Muhammad Khalid Mas'ud, Jamaluddin al-Athiyyah, Yusuf al-Qardhawi, Abdul Majid Najjar, Abdullah bin Bayyah, Abdullah Ahmad an-Na'im, KH. Sahal Mahfudh, KH. Ali Yafie and other scholars. In addition, the studies of *maqasid al-shari'ah* have developed in many countries which are predominantly of the *maliki school*, although in the beginning the studies of the *maqasid al-shari'ah* have been formulated by many scholars who are of the *shafi'i school*.

Methodological relations of *Maqasid al-Shari'ah* and *Usul al-fiqh*

Maqasid al-shari'ah was developed as a method aimed at realizing the achievement of the ultimate goal of the stipulation, and implementation of the Islamic law that is the benefit of mankind. In this case, the purpose of the methodology of *maqasid al-shari'ah* is to explore the 'illah and wisdom behind a law, with the theoretical building of *maslahah* and *al-Kulliyah al-khomsah*. *Maqasid al-shari'ah* as a method still remains through the ulama opinion search approach, using inductive research, excavation of the 'illah and wisdom of the law, the use of

¹⁷ Ibid., p. 103.

¹⁸ Ibid.103-104.

¹⁹ Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah (Juz II)* (Beirut: Dar al-Kutub al-ilmiah, 2003), p. 8.

²⁰ Husayn, *Al-Tanzir Al-Maqasidi 'ind Al-Imam Muhammad Tahir Ibn Ashur*, p. 114.

al-Kulliyah al-Khomsah, synergizing the norms, determining the benefit. It's just that the substance of meaning through the method of *maqasid al-shari'ah* refers to shari'a characteristics that liberate and spread benefit, according to the principles of moderation (*tawassuth*), tolerance (*tasammuh*), balance (*tawāzun*), ease (*taysīr*), and other principles of moderation (*tawassuth*), tolerance (*tasammuh*), and other principles which is directly proportional to the nature and clear logic as a consideration of the *tasyrī'* process.²¹ The *maqasid al-shari'ah* method is also based on the existence of the greatest, most powerful and strong benefit with the main reference to the arguments of *naqlī*, to the results of studies that have been carried out. This is so that the existing benefit covers all layers, both general and special.

The benefit to be realized in Islamic law is divided into two namely the world and the hereafter. With three levels of needs, namely *al-darūriyyah*, *al-hājiyyah* and *al-tahšīniyyah*.²² It is through this purpose of benefit that the *maqasid al-shari'ah* has a close relationship with *usul al-fiqh* in methodological terms, as mentioned by 'Abdullah bin Bayyah in his book '*Alāqah al-Maqāsid al-Shari'ah bi al-Uṣūl al-fiqh*'. There are at least 20 discussions that discuss the close relationship of *maqasid al-shari'ah* with *usul al-fiqh*.²³ Because the end of the objectives set and the application of Islamic law is to realize the human benefit in the world and the hereafter. So *maqasid al-shari'ah* must be known by the *mujtahid* in the context of developing Islamic law and answering legal issues that have not been clearly regulated by the Qur'an and Hadith. More than that, *maqasid al-shari'ah* must be known to determine whether a law, especially human interaction (*mu'amalah*) can be applied or not when there is a change in society starting from social structure, conditions, and others.

As for the relationship between *maqasid al-shari'ah* and *usul al-fiqh*, it can be seen through several legal methods that mediate the creation of *maqasid al-shari'ah*, such as the *ta'lili* method with *qiyas* and its *istihsan* focusing on the 'illah to achieve the *istislahi* method on *maslahah* through *maslāhah al-mursālah* and *al-ẓarī'ah* (*sadd al-ẓarī'ah* and *fath al-ẓarī'ah*).

The *ushul al-fiqh* expert (*uṣūliyyun*) gives the definition of *qiyas* in a variety of meanings. Where the core meaning of *qiyas* is to equate a law whose problem does not exist in the text (*nash*) with a law whose problems are contained in the text, because of the similarity of 'Illah law.²⁴ 'Illah law for most *usul al-fiqh* experts becomes the core point in performing *qiyas*. But some of the schools of Hanafi and Hanbali differ from the majority of the scholars of *usul al-fiqh*, such as Ibnu Taymiyyah and Ibnu Qayyim Jawziyyah who say *qiyas* are very dependent on the wisdom.²⁵ In line with them, al-Shatibi said that 'illah is a wisdom (*hikmah*) in the

²¹ Abu Yazid, *Logika Ushul Fiqh; Interelasi Nalar, Wahyu Dan Maqasid Asy-Syari'Ah* (Yogyakarta: Ircisod, 2019), p. 59-60.

²² Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah* (Juz II), p. 5.

²³ Abdullah bin Bayyah, *Alaqah Al-Maqasid Syari'ah Bi Ushul Al-Fiqh* (Kairo: Madani al-Muassasah as-Saudiyyah, 2006), p. 99-132.

²⁴ Wahbah Al-Zuhaili, *Ushul Al-Fiqh Al-Islami (Jilid 1 & 2)*, 1st & 2nd ed. (Damaskus: Dar al-Fikri, 1986), p. 603.

²⁵ Muhammad Abu Zahrah, *Ushul Al-Fiqh* (Kairo: Dar al-Fikr al-Arabiyy, 1958), p. 205.

form of being and not having a *maslahah* or *mafsadah* especially when it has to do with the stipulation of an order, prohibition, whether explicit or not. Because for al-Shatibi, "illah" is none other than *maslahah* and *mafsadah*, so that in the view of al-Shatibi the determination of the law can be based on *hikmah* not 'illah.

The devising judgment (*Istinbāt al-Ahkām*) method with *qiyas* and *maslahah al-mursalah*, as well as others, is the method used to realize Islamic law reform. In this case, it can be linked to or use the *maqasid al-shari'ah* approach which is the basis for realizing the benefits to be achieved by Islamic law. For example, the use of *qiyas* in *usul al-fiqh*, which is usually used to establish a law whose problem does not exist in *nash* by equating the problems that exist in the text, because of the equality of 'illah. Therefore, the use of *qiyas* must fulfill four elements, namely *al-Ashlu*, *al-far'u*, *al-hukmu al-āshl* and 'illah. Of the four elements, the position of "illah" ranks the most important because there is and there is no law in a new case, it depends on the presence and absence of "illah".²⁶ 'Illah can be used as the basis for establishing a law on a new case because it has basic aspects of *maslahah* and *mafsadah*. An example is the law of cannabis which is unclean because it is intoxicating and can damage the mind, equated with the law of wine (*khamr*) which has an intoxicating and intrusive nature. Intoxicating and corrupting the mind is 'illah which makes unclean and various other examples. So, in considering a law, it cannot be separated from the aspects of *maslahah* and *mafsadah* that exist. From the explanation above, there is a relation between *maqasid al-shari'ah* with *qiyas* found in the 'illah section.

Because *maqasid al-shari'ah* is part of the continuity of 'illah a law. Therefore, *maqasid al-shari'ah* not only talks about the laws that are set but also why those laws are determined. So, the scholars say that *maqasid al-shari'ah* has a relationship with *usul al-fiqh*, in this case with the *qiyas* method and more specifically related to 'illah, because one of the pillars of *qiyas* is 'illah. Therefore, this is the essence of the relationship between *maqasid al-shari'ah* and *usul al-fiqh*.²⁷

The next method is *istihsan*. Which etymologically means to think something is good. While understanding the terminology means many variants of meaning. Among them are those raised by al-Sarakhsī, as follows; *istihsan* is to leave the *qiyas* by practicing other *qiyas*, because they are considered to be stronger than him with the existence of a demanding proposition and compatibility with the benefit of humans.²⁸ And basically, the *istihsan* is a displacement from the *al-qiyās al-jālī* (the clear *qiyas* 'illah) to the *al-qiyās al-khāfī* (*qiyas* that are vague 'illahs) due to several things, such as the use of clear *qiyas* with 'illah, but whose effects are unclear but have an obvious but ineffectual impact, but have an obvious effect but have an obvious but not effective effect, but have an obvious impact but have an obvious but not effective impact, but have a clear impact but have an obvious but

²⁶ Fathurrahman Djamil, *Filsafat Hukum Islam*, 1st ed. (Jakarta: Logos Wacana Ilmu, 1997), p. 135-136.

²⁷ Abdul Helim, *Maqasid Al-Shari'ah Versus Usul Fiqh* (Yogyakarta: Pustaka Pelajar, 2019), p. 38.

²⁸ Abu Bakr Muhammad ibn Ahmad ibn Abi Sahl Al-Sarakhsi, *Ushul Al-Sarkhisi (Jilid II)* (Beirut: Dar al-Kutub al-Ilmiyyah, 1993), p. 200.

not effective effect. the use of *qiyas khafi* whose 'illah is not very clear but the impact caused is effective.²⁹ One example is the endowment of agricultural land. If seen from the perspective of *qiyas jali*, this waqf can be likened to a sale and purchase agreement. Because in buying and selling the main thing is the transfer of ownership rights from the seller to the buyer, so that the irrigation rights and making the channel for irrigation do not exist. However, if seen from the perspective of *qiyas khafi*, the waqf case is equated with leasing. So that the transfer of use rights also benefits from the owner of the goods to the renter. Likewise, waqf, the most important thing is how the goods can be used, and bring *maslahah*.

So methodologically, *istihsan* is an alternative in solving problems that cannot be solved using *qiyas*. Due to the use of *qiyas*, it is not in accordance with the interests desired by the community or does not affect the existence of *maslahah*. In this case, there is a very close relationship between *maqasid al-shari'ah* and *istihsan* as a method that is in *usul al-fiqh*. Namely, the existence of a process of moving the law to another law, because it is considered to be stronger or strengthen one of the propositions to other stronger propositions. Such a function is a concept of *istihsan*, which actually also implicitly exists in the *maqasid al-shari'ah*.³⁰

The relationship between *maqasid al-shari'ah* and *ushul al-fiqh* in terms of the next method is found in the *istislahi* method. The method is a method in the approach of determining the law, the problem of which is not clearly regulated in the Qur'an and Hadith and this method puts more emphasis on the aspects of *maslahah* directly. There are at least two methods developed under the *istislahi* method, namely *maslahah al-mursalah* and *al-zarī'ah* (*sadd al-zarī'ah* and *fath al-zarī'ah*).

The nature of *maslahah al-mursalah* is any benefit that is included in the purpose of *shari'* without any proof that justifies or cancels.³¹ The concept of *maslahah al-mursalah* as a method of determining the law, in its operation, emphasizes the aspects of *maslahah* directly. So, in this case, when viewed in terms of legality, 'illah is divided into three, namely:³²

First, *maslahah al-mu'tabarah*. *Maslahah* whose existence is strengthened by the existence of the sharia *text*. That is, the text with the form 'illah in it states that something is considered as *maslahah*. Like the fatwa of Umar bin Khattab about the punishment for the drinkers. Where liquor drinkers have to be beaten 80 times. This is then analogous to the *maslahah* whose existence is considered to be *al-mu'tabarah*, or to someone who accuses others of adultery.³³ Second, *maslahah al-mulghah*. Namely *maslahah* whose legality is rejected and contradicts the Shariah

²⁹ Abd al-Karim Zaidan, *Al-Wajiz Fi Ushul Al-Fiqh* (Beirut-Lebanon: Mu'assasat al-Risalah, 1998), p. 231.

³⁰ Helim, *Maqasid Al-Shari'ah Versus Usul Fiqh*, p. 43.

³¹ Muhammad Sa'id Ramadan Al-Buthi, *Dawabit Al-Maslahah Fi Al-Syari'ah Al-Islamiyyah* (Beirut-Lebanon: Mûassâsât Rîsâlâh, 2001), p. 228.

³² Muhammad Abu Hamid Al-Ghazali, *Al-Mustashfa Min Ilmi Al-Ushul* (Beirut: Darul Kutub al-Ilmiyyah, 2002), p. 173-174.

³³ Zahrah, *Ushul Al-Fiqh*, p. 432.

text. Or something that according to humans *maslahah*, but the text of the sharia rejects and denies these *maslahah*. An example is the fatwa of a fiqh experts (*faqih*) regarding the punishment of a king who has intercourse during the day of Ramadan, by fasting two months in a row instead of freeing slaves. In view of the *faqih*, freeing slaves would not have a deterrent effect on the king. Third, *maslahah al-mursalah*. Namely, *maslahah* whose legality is not supported and not rejected by the *shari'a* texts. In the sense that a benefit which position does not have the support of the *shari'a* text and does not get a clear rejection of the *shari'a* text. For example, when Abu Bakar ordered his companions to codify the Qur'an into a Manuscripts. But this was never done by the Prophet Muhammad in his lifetime. Abu Bakar's argument for doing this was for the benefit of keeping the Qur'an from extinction and keeping its worries awake because at that time many friends who memorized the Qur'an died. From this explanation. there is a relationship between *maqasid al-shari'ah* and the *maslahah* method in *usul al-fiqh*, namely the similarity of theories between the two, which discuss *maslahah*. So that the relationship between *maqasid al-shari'ah* and *māslāhāh* is in the same theory that both of them are about the *maslahah al-dārūriyyah, al-hājiyyāh, al-tahšīniyyāh*. Which of these three things lead to one goal, namely the benefit which is the core of the study of *usul al-fiqh* and *maqasid al-shari'ah*.³⁴

The *al-zarī'ah* means what is the media or intermediary (*waṣīlah*) and the path to something.³⁵ If related to Islamic law, *al-zarī'ah* is divided into two, namely *sadd al-zarī'ah* and *fath al-zarī'ah*. *Sadd al-zarī'ah* is blocking an intermediary so that it does not become damaged or minimize the impact that brings damage. While *fath al-zarī'ah* means to take or use an intermediary if the intermediary can bring *maslahah* to be achieved.³⁶ Therefore, *al-zarī'ah* in its use can be mandatory, *sunnah*, *makruh* and may be opened and closed, because only as an intermediary. If the intermediary leads to an unlawful thing, then it becomes unlawful to open it. Likewise, if it leads to something that is mandatory, then it must also open it. One example of *fath al-zarī'ah* is the compulsory law of Friday prayers so that leaving all activities at that time must be left. Whereas the example of *al-zarī'ah*, for example, excludes Friday prayers in the middle of the COVID-19 exhibit to break the chain of the spread of the deadly virus.

So that the basis for whether *al-zarī'ah* should be opened or closed is the existence of the goals of action, which have a connection with it.³⁷ From this explanation, *al-zarī'ah* is more directed towards efforts to prevent the possibility of damage and to the maximum extent possible try to attract a benefit. Therefore, *maqasid al-shari'ah* has a relationship with *al-zarī'ah* contained in *usul al-fiqh*. From a few brief explanations above, it shows that *maqasid al-shari'ah* has a close relationship with *usul al-fiqh*. In addition, *maqasid al-shari'ah* also has a close relationship with other sciences, such as Islamic philosophy, social science, and so

³⁴ Helim, *Maqasid Al-Shari'ah Versus Usul Fiqh*, p. 48.

³⁵ Ibn Qayyim Al-Jauziyah, *I'lam Al-Muwaqqi'in 'an Rabb Al-'Alamin* (Beirut: Dar al-Fikr, n.d.), p. 142.

³⁶ Al-Zuhaili, *Ushul Al-Fiqh Al-Islami (Jilid 1 & 2)*, p. 873.

³⁷ Zahrah, *Ushul Al-Fiqh*, p. 290.

on. It is this connection with other sciences that then gives rise to various opinions regarding the relationship of *maqasid al-shari'ah* and *usul al-fiqh*. In this case, the relationship between *maqasid al-shari'ah* and *al-zarī'ah* lies in the purpose or outcome or result. The aim of the *maqasid al-shari'ah* is to realize the benefit and prevent damage. Likewise, with *al-zarī'ah* whose ultimate goal is to achieve benefit and avoid damage.³⁸

Relative application of *Maqasid al-Shari'ah* and *Usul al-fiqh*

The motivation of Islamic jurists to discuss *maqasid al-shari'ah* is to mediate the gap between Islamic law and global challenges and respond to the stagnation of *usul al-fiqh*. Because *usul al-fiqh* is considered helpless when dealing with global and modern issues.³⁹ However, in the application, both *maqasid al-shari'ah* and *usul al-fiqh* are both sourced from the argument of *al-ijmālī* or *al-kullī* (global), not from the argument of *tafṣīlī* (detail). The proposition *ijmālī* are general rules that have not been related to any case or propositions that are still global.

The *kullī-ijmālī* proposition thus is a global proposition that does not clearly indicate the designation of certain laws. Instead, it shows instructions that indicate several laws to continue to be relevant to the development of society. For example, the *kullī* argument, for example, is a text of revelation that contains a ban on annihilation. Text like this does not refer to the provisions of certain events, but rather includes various legal events that contain the damage. Therefore, there are a number of immeasurable events whose legal allotment is based on the text of revelation like this.⁴⁰ The proposition itself means instructions⁴¹ or performances.⁴² Therefore, it can be concluded that the proposition is a clue to something so that something can be known. According to 'Abdul Wahab Khalaf, that argument is something that can be relied upon by using *shahih* (true) reasons on sharia law that is operation (*amaliyah*), both *qaṭ'ī* or *dzannī*.⁴³ For this reason, the argument *kullī* is proof that shows the laws that are still global, both derived from the Qur'an and hadith.

In principle, the law is not born for itself but works for the benefit of society. To bring about benefit in a substantive sense, it is necessary to articulate revelation and reason in formulating the legal provisions needed by the evolving reality of society. All legal provisions are actually based on the very transcendental propositions of revelation. However, verbal revelations, in general, express the problem in macro and outline. Because of that, the involvement of logic and reason

³⁸ Helim, *Maqasid Al-Shari'ah Versus Usul Fiqh*, p. 54.

³⁹ Kholid Hidayatullah, "Madzhab Ulama Dalam Memahami Maqasid Syariah," *Jurnal Studi Dan Penelitian Hukum Islam; Ulul Albab* 1, no. 1 (2017), p. 2.

⁴⁰ Yazid, *Logika Ushul Fiqh; Interelasi Nalar, Wahyu Dan Maqasid Asy-Syari'Ah*, p. 102.

⁴¹ Ahmad Warson Al-Munawwir, *Kamus Al-Munawwir Arab-Indonesia Terlengkap* (Yogyakarta: Pustaka Progresif, 1997), p. 147.

⁴² Luwis Ma'luf Al-Yasu'i, *Al-Munjid* (Libanon: Dar al-Masyriq, 1984), p. 220.

⁴³ Abdul Wahab Khalaf, *Ilm Ushul Fiqh* (Kairo: Dar al-Hadis, 2002)20.

ijtihad or *istinbāṭ* cannot be avoided. The revelations that govern macro issues in the terminology of Islamic jurisprudence are called the propositions *kullī* or *ijmālī* (global). While the revelations that reveal detailed problems called the argument *juz'ī* or *tafsilī* (detail).⁴⁴ Where the existence of the proposition is to cover the use of logic and logic of ijtihad in formulating legal provisions at the operational level.

Then if *maqasid al-shari'ah* is interpreted as wisdom, then the excavation is to conduct a study of the arguments of *ijmālī*, by raising questions as to what, what is the purpose, what is the purpose of establishing law.⁴⁵ Whereas if *maqasid al-shari'ah* is the continuation of the logic of the law. Then look for 'illah through *al-ijmā'*, *al-imā'u wa al-tanbīh*, which is the inclusion of the character in law and is mentioned in *lafaz* (pronunciation). If the inclusion is not as 'illah, then the inclusion does not mean anything. The next step through *al-sibru wa al-taqsim* is testing, classification, and determination of God. Likewise through *munasabah*, namely research on the purpose of law, through *tanqīh al-manāṭ* (retouching and modalities), which determines one of the attributes as 'illah, through *al-tardu*, *al-sibr*, *dawrān*, and *ilghā al-Farīq*.⁴⁶ Every law is always there 'illah and purpose, every anything that has become a legal provision there must be 'illah law and its purpose and benefit.⁴⁷ Every *maqasid al-shari'ah* must use the proposition, there is no mention of the *maqasid al-shari'ah* unless accompanied by an argument.⁴⁸

So *maqasid al-shari'ah* is a unity with the language rules in *usul al-fiqh*. Because it cannot work alone, it is parallel to the approach of *lafdziyyāh* or linguistic (*qawā'idh al-Uṣūliyyāh al-Lughāwiyyah* and *ta'arrud al-Adillāh*). The *maqasid* at the level of the *ma'natwi* is *maslahah*, 'urf, *istihsan*, *al-ẓarī'ah*. If there are general rules in shari'a about *al-darūriyyāh* (primary), *al-hājiyyāh* (secondary), or *al-tahṣīniyyah* (tertiary), then it cannot be annulled with particular propositions. Likewise, the general rules of shari'a or particularity must be maintained together. Because the particular form is also desired in order to uphold the proposition *kullī*, so that the argument *kullī* is not left behind which causes the desired benefit to be lost. Then there must be truth *maqasid* to produce particular propositions. Some of these questions are not more important than others. So that the objectives of sharia can be obtained from all of them. That's what you want to look for".⁴⁹ So that the person who takes the *juz'ī* text and ignores the *kullī* goals is lost or wrong. Likewise, people who take the *kullī* text and ignore the *juz'ī* text are also wrong. This all assures us that what is demanded is to preserve the objectives of *shar'ī* because the proposition *kullī* and *juz'ī*, both referring to the intention of the *shar'ī*, so that both must be held in punishing every problem.⁵⁰

⁴⁴ Yazid, *Logika Ushul Fiqh; Interelasi Nalar, Wahyu Dan Maqasid Asy-Syari'Ah*, p. 101.

⁴⁵ Helim, *Maqasid Al-Shari'ah Versus Usul Fiqh*, p. 148.

⁴⁶ Khalaf, *Ilm Ushul Fiqh*, p. 75-79.

⁴⁷ Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Al-Aqalliyat Dan Evolusi Maqashid Al-Shari'ah Dari Konsep Ke Pendekatan* (Yogyakarta: LKiS, 2010), p. 371.

⁴⁸ Ahmad Al-Raysuni, *Al-Fikr Al-Maqasidi Qawā'iduh Wa Fawā'iduh* (Rabat: Dar al-Bayda, 1999), p. 59.

⁴⁹ Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah, Tahqiq 'Abdullah Daraz (Juz II Dan III)* (Kairo: Dar al-Hadis, 2006), p. 371-373.

⁵⁰ Ibid., p. 7-9.

The concept of *maqasid al-shari'ah* has a function as a stylist and disciplinarian in the method of establishing Islamic law from the *shar'i* proposition or commonly called *istidlāl*, not as a tool to avoid the law let alone annul it. Therefore, the existence of the principle *kullī* cannot annul things that are particular, because it functions as a stylist and disciplinarian in carrying out *istidlāl* and *ijtihad*. Whereas the subject of the study of *usul al-fiqh* according to Wahbah al-Zuhaili are the postulates or sources of general sharia law which are used in finding global rules and sharia law extracted from the arguments.⁵¹ However, various propositions in Islamic sharia have explained that each Sharia law has a specific purpose, namely to realize the benefit of humans in this world and the hereafter. So *maqasid al-shari'ah* has a position as a benchmark in assessing and seeing things, that understanding a law must be in line with the intentions outlined by the legislator namely for benefit. Because both *Usul al-fiqh* and *maqasid al-shari'ah* have the basic goal of regulating *ijtihad* and guiding *faqih* in efforts to reduce the law from its global sources. This is the meeting point between *maqasid al-shari'ah* and *usul al-fiqh* in terms of its application, which both depart from the proposition of *ijmālī* or *kullī* in the sense of a global proposition. And as a regulator in terms of *istidlāl* and *ijtihad* a law.

One example of a meeting point between *maqasid al-shari'ah* and *usul al-fiqh* in terms of its application is the LBM PBNU Religious View of the Implementation of Friday Prayers in Covid-19 Infected Areas. Containing the practice of Friday prayers and Jama'ah prayers in the midst of the outbreak of Covid 19 and the practice of worship can be removed by replacing the midday prayer by referring to the legal proposition, the opinion of scholars, the opinion of '*illah*', and *al-Kulliyah al-Khomsah*.⁵²

Conclusion

Maqasid al-shari'ah and *usul al-fiqh* are two sides of one currency, which are theoretically different but cannot be separated from each other. That is because *usul al-fiqh* becomes the initial foundation to find out more detailed about the legal arguments that are *ijmālī* and *maqasid al-shari'ah* as sustainability in analyzing legal arguments. Historically, the emergence of *maqasid al-shari'ah* cannot be separated from *usul al-fiqh*. It can be seen that the themes discussed in the *maqasid al-shari'ah* are themes that were studied and written by the scholars of *usul al-fiqh*. Whereas the relationship between *maqasid al-shari'ah* and *usul al-fiqh* from a methodological point of view is the continuation of the '*illah* law, which is in the *ijtihad* through both through *qiyas*, *istihsān*, *maslahah al-mursalah* and *al-zarī'ah*. As for its application, between *maqasid al-shari'ah* and *usul al-fiqh* are both sourced from the argument of *ijmālī*, namely the proposition that is still global, not the argument that has been detailed in explaining a law. As for the separation between the studies of *maqasid al-shari'ah* and *usul al-fiqh* conducted by scholars, *usul al-fiqh* is a relative separation and not a separation of *haqiqi*. *Maqasid al-shari'ah* is part of the

⁵¹ Al-Zuhaili, *Ushul Al-Fiqh Al-Islami (Jilid 1 & 2)*, p. 27.

⁵² LBM PBNU, "Pandangan Keagamaan LBM PBNU Tentang Pelaksanaan Shalat Jumat Di Daerah Terjangkit Covid-19.," 2020.

usul al-fiqh because its birth is the implication of the study of *maslahah* that was developed and made theory in the *maqasid al-shari'ah*. While from a methodological point of view, *maqasid al-shari'ah* is part of *usul al-fiqh* because the methods used have a close relationship with the methods available in *usul al-fiqh*. In this case, *maqasid al-shari'ah* is still a compliment or a supporter of the methods that already exist in *usul al-fiqh*. While in terms of its application, between *maqasid al-shari'ah* and *usul al-fiqh* both departed to combine the purpose of the law with the reason for the birth of the law, besides that it also departed from the inductive collectivity of the proposition.

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