Comparison of *maqasid al-shari'ah* asy-Syathibi and ibn 'Ashur perspective of *usul al-fiqh* four mazhab

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Abstrak

Tujuan syariat Islam untuk memastikan terpenuhinya hak dasar manusia meliputi: hak hidup, berketurunan, berharta, berfikir dan berkehormatan. Ironisnya, problematika terkait pemenuhannya kompleks dan berkelanjutan, sehingga upaya mewujudkan Syariat Islam yang humanis adalah sebuah keniscayaan. Adalah maslahat, dimaksudkan sebagai jalan keluar untuk menjawab problematika tersebut, dan *maqashid al-shariah* adalah instrumen yang efektif untuk mewujudkan kemaslahatan tersebut. Kajian *maqashid al-shariah* dalam perspektif *al-Syathibi* dan *Ibn 'Ashur* menjadi penting, karena pemikiran keduanya berpengaruh bagi pengembangan *maqashid al-shariah*. Secara kualitatif-komparatif, kajian ini menelaah secara mendalam pemikiran kedua tokoh tersebut, untuk menyusun hipotesa yang dapat menunjukkan titik korelasi dari pemikiran keduanya, dan meletakkannya dalam kerangka pemikiran ulama empat mazhab. Hasil kajian ini dapat dijelaskan bahwa *maslahat* menurut *al-Syathibi* berorientasi dunia dan akhirat, berbeda dengan *Ibn 'Ashur* hanya di dunia saja. Selanjutnya, teori *maqashid al-shariah* al-Syathibi dan Ibn 'Ashur dalam tinjauan *usul al-fiqh* empat mazhab dapat dinyatakan masih dalam konteksnya.

Kata Kunci: Maqasid al-Syari'ah, asy-Syathibi, ibn 'Ashur, empat mazhab

Abstract

Islamic law is established to ensure that human interests related to basic rights inherent in their lives include: the right to life, descent, wealth, thought and respect, can be realized. The consideration is the problem related to the fulfillment of these rights is complex and sustainable, so the effort to realize humanist Islamic law is a necessity. In *usul al-fiqh* there is the concept of *maslahah*, as a way to ensure that basic human rights can be fulfilled and guaranteed its sustainability. *Maqasid al-Shari'ah* is an instrument formed to realize *maslahah*. The study of *maqashid al-shariah* in the perspective of *al-Syathibi* and *Ibn 'Ashur* becomes important, because the thoughts of both of them influence the development of *maqashid al-shariah*. Qualitative-comparative, this study examines in depth the thought of the two figures, to compile a hypothesis that can show the point of correlation of the thoughts of both, and put it in the framework of the scholars of the four schools. The results of this study can be stated that the orientation of the theory of *maqashid al-shariah* according to *al-Shatibi* to realize *maslahah* of the world and the hereafter, while *Ibn 'Ashur* confined to the world alone. Furthermore, the theory of *maqashid al-shariah* al-Syathibi and Ibn 'Ashur in the review of *usul al-fiqh* of the four schools can be stated in its context.

Keywords: Maqasid al-Shari'ah, asy-Syathibi, ibn 'Ashur, four mazhab

Introduction

Islam is a religion of humanity. Its existence is to ensure human preservation in this world. This can be seen from the values contained in the Sharia which are oriented to the fulfillment of the basic values inherent in human beings from birth, including: the right to life, the right to inheritance, the right to property, the right to use the mind and the right to practice religion according to belief.

Along with that, the reading of the current reality of humanity, concludes with alarming conclusions, that in the course of human life in this world almost every time that passes, always leaving the narrative of life far from decent words. The portrait of life is limited, oppressed, cornered and marginalized, a proof that the basic human needs for life have not been fully met, rather than to the proper level.

Meanwhile, the basic character of Islamic teachings is *sālih likulli al-zamān wa al-makān* (according to space and time). With this principle, it is essential that the text which is final and becomes the main basis of Islamic teachings can be adapted to dynamic realities. In the literature of *usul al-fiqh* the four mazhab are mentioned a concept of *maslahah* which is considered as the main consideration in *istinbaṭ al-ahkām* (devising judgment), and in its implementation an instrument called the *maqashid al-shariah* is needed.

The study of *maqasid al-shari'ah* in this research is focused on a comparative study of the thoughts of two figures, namely *asy-Syathibi* and *Ibn 'Ashur*. *Asy-Syathibi* is considered to be the father of the *maqasid al-shari'ah* for his role in initiating the study of the *maqasid al-shari'ah*, to become an independent scientific discipline. While *Ibn 'Ashur* is said to be the successor of *asy-Syathibi*, it is one step ahead of *asy-Syathibi* by giving priority to *maslahah* over text. In addition, the study will also target the validity of the concepts of thought of the two figures in the perspective of the four mazhab *usul al-fiqh* ulama perspective.

Therefore, a study of the theory of *maqasid al-shari'ah* developed by the two figures and their validity in the perspective of *usul al-fiqh* four mazhab urges to be done as an effort to find a complete design of an effective mechanism in concocting Islamic Sharia which is able to ensure the fulfillment of basic human rights, so the quality of the teachings produced will become more humane. This research is intended to answer two problems, first, the comparison of the thoughts of *asy-Syathibi* and *Ibn 'Ashur* about the theory of *maqasid al-shari'ah*. Secondly, the validity of the theory is in the perspective of the four mazhab *usul al-fiqh* scholars.

Research method

The approach used in this study is qualitative-comparative, in which the researcher interprets the deepest meanings and contexts surrounding the thoughts of the two figures about *maqasid al-shari'ah*, then exposes the facts to the characteristics of the data that appears, systematically and accurately.[1] Furthermore, compiling a hypothesis that can show the point of correlation of the thoughts of the two figures and put it in the framework of the thought of *maqasid*

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[1] Saifuddin Azwar, *Metode Penulisan* (Yogyakarta: Pustaka Pelajar, 2001), p.7.

al-shari'ah according to the ulama of the four *usul al-fiqh* mazhab. The type of this research is library research, because it relies on a critical and in-depth study of library materials related to the research variables.[2]

The data used in this study are based on two types of data sources, namely: first, the primary data source, which refers to a book by *asy-Syathibi* entitled al-*Muwâfaqât fî al-usûl al-Syarî'ah*, and *Ibn 'Ashur*'s work titled *Maqâşid al-Syarî'ah al-Islâmiyyah*. Then the researcher also explores supporting data sources by referring to the book *al-I'tişâm, Tafsîr al-Tahrîr wa al-Tanwir, Uşûl al-Sarakhşi, Badzl al-Nadzr fî al-Uşûl, al-Taqrir wa al-Tahbir, Syarh Tanqîh al-Fuşûl, al-Muwâfaqât, Taqrib al-Wuşhûl ila 'ilm al-usûl, al-Bahr al-Muhît, al-Tahşîl min al-Mahşûl, Sharh al-Luma', Ithâf dzawi al-Başâir, al-Tamhid, Rawdhah al-Nadzir*. Second, secondary data sources refer to the book of *Nażariyât al-Maqâşid 'Ind al-Imâm Muhammad al-Hirāhir Ibn 'Ashur, Nażariyyât al-Maqâşi' 'inda al-Imâm asy-Syathibi*, and *Usûl al-Fiqh al-Islamiy*.

The main instrument in this study is the researcher himself, in his role of setting the focus of research, collecting data, assessing data quality, analyzing data, interpreting data and making conclusions on everything.[3]

Based on the consideration that this type of research is library research, the data collection uses documentation techniques, by searching for data related to research variables in library sources. Then the data is inventoried for in-depth analysis. The analysis process is done by first interpreting the data, to be categorized according to the domain. Next, a hypothesis is developed to determine the connection point between the research variables, and then the validity of the data obtained is tested.[4]

Results and discussion

Starting the discussion related to the comparison of the thoughts of the two figures, it is necessary for researchers to describe the whole concept of *maqasid al-shari'ah* from each character as follows:

First, the explanation of the *maqasid al-shari'ah* in the thought of *asy-Syâthibi*, is explained in detail in a special study in the third chapter of the book *al-Muwâfaqât* which is titled *kitâb al-Maqâşid*. Starting his presentation, *asy-Syathibi* stated that *al-Maqâşid* (objectives) the enactment of Islamic law can be seen from two points of view, namely: *first*, from the perspective of *al-Shāri'* (Allah and His Messenger), which means that all provisions Allah and His Messenger in Islamic law are ensured to contain purpose. *Second*, the perspective of a *mukallaf*, that the legal consequences that arise from the actions of a Muslim are dependent on the intended purpose.[5]

[2] Jonathan. Sarwono, *Metode Penelitian Kuantitatif Dan Kualitatif, Graha Ilmu*, 2006, doi:10.1192/bjp.112.483.211-a, p.18.

[3] Afrizal, *Metode Penelitian Kualitatif* (Jakarta: Rajawali Press, 2014), p.134; Sugiyono, *Metode Penulisan Kombinasi* (Bandung: Alfabeta, 2012), p.306.

[4] Arikunto Suharsimi, "Prosedur Penelitian : Suatu Pendekatan Praktik (Edisi Revisi)," *Jakarta: Rineka Cipta*, 2013, doi:10.1017/CBO9781107415324.004, p. 274-275.

[5] Sandi Rizki Febriadi, "Aplikasi Maqashid Syariah Dalam Bidang Perbankan Syariah," *Awwaluna* I, no. Fakultas Syariah Universitas Islam Bandung (2017), doi:https://doi.org/10.29313/amwaluna.v1i2.2585, p.239.

Furthermore, *asy-Syathibi* further explained that the purpose of establishing the law in Islamic law when viewed from the perspective of *al-Shāri'* can be understood by using the four patterns of thought as follows:[6]

First, the Islamic Shari'a established by Allah and the Messenger of Allah is intended to realize a certain goal which is oriented towards the realization of benefit. *Second*, the quality of the benefit that is realized, depends on the quality of understanding in implementing Islamic law. *Third*, the mechanism of implementing Islamic Sharia by considering the principle of proportionality to the capabilities and basic potential possessed by humans. *Fourth*, the scope of implementation of Islamic law applies comprehensively covering all aspects related to basic human needs.

Besides that, the purpose of Islamic law when viewed from the perspective of the mukallaf, then it can be understood by using nine patterns of thought as follows:[7]

First, the intention to carry out an action related to its purpose. *Second*, the purpose of the enactment of Islamic law to synchronize between the objectives of sharia with the purpose of a *mukallaf*. *Third*, every action whose purpose is not in accordance with the purpose of *shara'* is that the action is essentially contrary to syarak. *Fourth*, for people who do or do not do a job, then there are times when the person's decision is in accordance with or not in accordance with *shara'*.

Fifth, in realizing benefit or avoiding disobedience, when it is included in what is permitted by *shara'*, then the effort ensures the risk is taken or even not related to a risk. *Sixth*, everyone who is burdened to bring benefit to himself, is not allowed to be delegated to others. *Seventh*, every person who is burdened to realize the benefit of others, then necessitates to realize the benefit for themselves. *Eighth*, the imposition of Islamic Sharia if the goal is known then for a believer can take steps to set his goals in accordance with the understanding that is owned, or in accordance with his assumptions, and or nothing else but just to carry out orders. *Ninth*, everything related to the interests of Allah SWT then for a *mukallaf* no choice is possible regardless of the conditions, whereas something related to human interests is possible to have a choice.

Secondly, the discussion of the whole concept of *maqasid al-shari'ah* in the thought of Ibn 'Ashur. It was explained that in principle *maqasid al-shari'ah* was intended to bring about benefits in the realm of individual, communal and wider life order. Technically, *Ibn 'Ashur* divides the study of *maqasid al-shari'ah* into two important parts, namely: 1) *al-Maqâşid al-'Ammah li al-Tasyrî'* (general objectives of establishing Islamic law. 2) *al-Maqâşid al -Khaşşah li al-Tasyrî'* (specific objectives of establishing Islamic law.[8]

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[6] Al-Syathibi, *Al-Muwâfaqât Fî Uşûl Al-Syarî'Ah* (Beirut: Dar al-Kutub al-ilmiyyah, 2009), p.412; Moh Toriquddin, "TEORI MAQÂSHID SYARÎ'AH PERSPEKTIF AL-SYATIBI," *Journal de Jure*, 2014, doi:10.18860/j-fsh.v6i1.3190, p.37.

[7] Al-Syathibi, *Al-Muwâfaqât Fî Uşûl Al-Syarî'Ah*, p.413-468.

[8] Ilham. Wahyudi, "Potret Pemikiran Ibnu Asyur Dalam Perkembangan Maqashid Syariah Kontemporer," *Tarbawi* VI, no. 1 (2018), http://ejournal.kopertais4.or.id/tapalkuda/index.php/tarbawi/article/view/3272, p.69.

The main thoughts of *Ibn 'Ashur* about *al-Maqâṣid al-'Ammah li al-Tasyrî* are stated in the following explanation:[9]

> *(al-Maqâṣid al-'Ammah) are the meanings and legal provisions which concern Sharia in all or most aspects of establishing Shari'a law, and are not specific to certain types of Shari'a law. The provisions include the characteristics of the Shari'a, the core objectives of the Shari'a, and the meanings of concern to Sharia. Besides that, it also includes the meanings of legal provisions which are not a concern of sharia in certain types of law, but are the concern of the majority.*

Based on the explanation above, it can be drawn a red thread which is the main thought of *Ibn 'Ashur* in explaining the concept of *al-Maqâṣid al-'Ammah li al-Tasyrî*, as follows:

1. General Purpose (a*l-Maqṣūd al-ʿĀmm*)

Variants of the objectives of the implementation of various forms of Islamic law, basically will lead to one of the most core goals, namely the realization of benefit for humans. This can be understood from Ibn 'Ashur's statement as follows:[10]

> *"(The point is) to maintain the order (life) of the universe, and preserve its usefulness, by (realizing) the benefits for its managers namely humans"*

The statement explained that the effort to maintain order and preserve the usefulness in this life with the mechanism of the implementation of Islamic law, the orientation is the realization of benefits for human life in all its aspects, so that the conclusion is that the nature of *al-Maqṣad al-ʿAmm* is the certainty of the realization of benefits for individuals, social, and living systems.

2. Characteristics of *maqasid al-shari'ah (awṣâf maqasid al-shari'ah)*

The characteristics of the variant of the objectives of the implementation of Islamic law will not be separated from the following three concepts:[11]

a. *Fitrah*

The value of tolerance, equality, freedom to live life, is part of the variant of the objectives of the implementation of Islamic law. These values are fundamental in human life because these values can be said to be included in *ḍarūriyyah al-khamsah*, none other than because they are related to human nature, so the common thread seems clear that the *maqasid al-shari'ah* will not be rid of human values.

The value of tolerance includes all aspects of life and without time limit, which is intended so that humans can avoid excessive attitudes. *Ibn 'Ashur* gave a clear concept, that tolerance means the existence of moderation in living life in the community, so that the effort to frame Islamic law is loaded with ease and relaxation into necessity, in order to ensure the realization of the objectives of Islamic sharia.

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[9] Ibn Asyur, *Maqâsid Al-Syarî'ah Al-Islâmiyyah* (Mesir: Dar al-Salam, 2007), p.49.

[10] Ibid., p.60.

[11] Sholikhah, "Pengembangan Maqasid Al-Syariah Perspektif Ibnu 'Asyur," *Ihya' 'Ulum Al-Din* 21, no. 2 (2019), doi:http://dx.doi.org/10.21580/ihya.21.1.4220, p.108-110.

Then related to equality between human beings, there are at least two basic thoughts. The first basis is that humans originate from the same origin of events, so that in principle every human being with various backgrounds of life has the same obligation towards the enactment of Islamic law, as well as obtaining the same rights to all five aspects of life guaranteed by Islamic sharia.

Equality between human beings necessitates the realization of true human independence. Where humans in principle have the fundamental right to manage their lives without the need for interference from other people also without the existence of something that prevents it. Therefore, the principle of freedom as explained by *Ibn 'Ashur* is a condition in which everyone has the same rights in carrying out his personal life. This explanation automatically avoids oppression, slavery and occupation efforts.

b. Priority for meaning

Islamic Sharia is basically as a Sharia which is able to adjust to the dynamics of time and place in this life. The rationale is the reality of the verses of the Qur'an which tend to use patterns of communication in general with readers who in this case are human beings when responding to issues related to life management. Therefore, with this communication pattern the priority of the meaning contained in each of the verses of the Qur'an becomes an important consideration in the determination of Islamic Sharia law. The meaning includes all aspects that are of concern to the Islamic Sharia to be enforced later.

c. Sharia enforcement

Regarding the enforcement of Islamic law, *Ibn 'Ashur* has provided comprehensive reviews as follows:

"The instruments used to enforce Islamic Sharia law are of two kinds, namely: first, الترهيب والموعظة (warning and awareness), the technical is to forbid the act of engineering law, *sadd al-ẓarâi'* to prevent damage, *fath al-ẓarâi'* for preventing opportunities for benefits. Secondly, التيسير والرحمة (simplicity and affection), the technique is to condition Islamic Sharia law so that it is easy to carry out, giving acknowledgment to the believers in relation to not being able to do their job properly ".

Based on *Ibn 'Ashur*'s two offers it can be concluded that the establishment of Islamic Sharia depends on how quality the existing instruments are able to be upheld and their sustainability ensured.

3. *Al-Ma'âni al-Mulâhazah*

The term is intended to explain the meanings that are of concern to sharia to be enforced in the context of realizing benefit in this life. The discussion is closely related to the distribution of the second *maqasid al-shari'ah* namely *al-Maqâṣid al-Khaṣṣah li al-Tasyrî 'Ibn 'Ashur* gives a simple review as follows:

"Al-Maqâşid al-Khaşşah is a mechanism that is recognized by sharak, to be used to realize the goals of benefit for humans, or to ensure the realization of benefits is general when applied to activities related to one's person, so as to make one's personal activities not eliminate substance of general benefit. The matters relating to these provisions are all the lessons that have been pursued in the establishment of laws relating to human daily activities. Examples are the prevalence of a documentation mechanism in pawning transactions, a mechanism of household governance in a marriage contract, and avoiding the emergence of risks in the provisions related to divorce ".

In this study, there are two important concepts from the thoughts of the two figures that will be compared based on the above explanation as follows:

1. *Al-Ta'lîl*

   Asy-Syâthibi's view regarding the concept of *al-ta'lîl* can be seen in the statement contained in the introduction to *al-Maqâşid* which is the third part of *al-Muwâfaqât* as follows:[12]

   "It is better if we explain the introduction logically before entering into the discussion in this chapter, that in fact the establishment of the Shari'a is nothing but to (realize) the benefit of a servant in the world and the hereafter together. And recognition like this should be based on evidence of its validity".

   Based on these statements it can be concluded that the basic considerations of the enactment of Islamic law to ensure the realization of human benefit in the world and the hereafter. The relationship between the enactment of Islamic law and the certainty of benefit necessitates the *al-ta'lîl* mechanism. The basic thought of *asy-Syathibi*, refers to the results of *istiqrâ'* of various legal texts. That thought was confirmed by *asy-Syathibi* in his statement as follows:

   إِذَا ثَبَتَ أَنَّ الشَّارِعَ قَدْ قَصَدَ بِالتَّشْرِيعِ إِقَامَةَ ٱلْمَصَالِحِ الْأُخْرَاوِيَّةِ وَالدُّنْيَوِيَّةِ وَذَلِكَ عَلَى وَجْهٍ لَايَخْتَلُّ لَهَا بِهِ نِظَامٌ...فَلَابُدَّ أَنْ يَكُونَ وَضْعُهَا عَلَى ذَلِكَ الْوَجْهِ أَبَدِيًّا وَكُلِّيًّا وَعَامًّا فِي جَمِيعِ أَنْوَاعِ التَّكْلِيفِ وَالْمُكَلَّفِيْنَ وَجَمِيعِ ٱلأَحْوَالِ.

   The statement confirms that when Allah and His Messenger set a certain Sharia aimed at ensuring the realization of the benefit of the world and the hereafter, in a way that does not damage the established order, the Sharia will continue as it should, continuously, thoroughly, and thoroughly to all the layers of the Muslim and all conditions.

   As for other arguments used, *asy-Syathibi'*s attitude in several places distinguishes between laws related to tradition and interactions between people, and laws related to worship. As for those related to tradition and interaction between communities, they are basically full of *'illah* to ensure the realization of benefit. While related to the law of worship is nothing but a form of worship which does not necessarily contain any *'illah*.

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[12] Al-Syathibi, *Al-Muwâfaqât Fî Uşûl Al-Syarî'Ah*, p.220.

The concept of *al-ta'lîl Ibn 'Ashur* provides a different understanding as stated by *Ibn 'Ashur* as follows:

All existing Sharia, especially Islamic Sharia comes intended to bring goodness to humans both now and later, the intention is at the time of the event and the period after the event. So, the purpose of the future is not in the hereafter, because the existing Sharia is not intended to limit the people in the hereafter, because the hereafter is nothing but made by God to reward all the actions that have been done in the world.

Ibn 'Ashur believes that the benefit in question is the benefit contained in the applicable Sharia (*'ājil*) and contained in the consequences arising from the enactment of the Sharia (*'ājil*).

Furthermore, the provisions of the said Sharia, by *Ibn 'Ashur* stated that all laws relating to *muammalah* basically contain certain *'illah*. As for *'illah*s associated with worship, it is determined on the extent to which efforts are optimized to clarify *'illah* contained therein.

The principle, that the concept of *al-ta'lîl* according to *Ibn 'Ashur* can be a basic framework of thought in the reason of Islamic Sharia law with the following considerations:

a. Whereas the concept of *al-ta'lîl* is intended as a way out of the impasse of a very dynamic problem while the text which is the source of law tends to be static;

b. Comprehensiveness of the concept of *al-ta'lîl* to be applicable to all forms of law both related to worship and *muammalah*;

c. The concept *of al-ta'lîl* can be an effective instrument to clarify the specifications of the enactment of Sharia law;

Based on the above comparison, there appears to be a different view that the benefit referred to by *asy-Syathibi* is the benefit that applies in the world and the hereafter, whereas *Ibn 'Ashur* restricts the benefit in the world, because in the hereafter is nothing but intended as retaliation for charity in the world. However, both of them have the same thought that Islamic law is intended to ensure the realization of benefit in this life.

2. *Maslahah*

Asy-Syathibi argues that the concept of *maslahah* can be understood as the goal of the implementation of Islamic law on humans. This is as explained by *asy-Syathibi* in a statement as follows:

"That the determination of the Shari'a is nothing but to (realize) the benefit of servants in the world and the hereafter simultaneously. And recognition like this should be based on evidence of its validity".

The statement confirms that the concept of *maslahah* is intended to realize human interests not only in the world, but also the realization of the interests in the hereafter simultaneously. Besides that, the concept of *maslahah* is basically made for the benefit of humans not for the sake of Allah. Even so,

humans are not allowed to sort their own desires but must be based on the Shari'a determined by Allah Swt.[13]

Furthermore, related to the interests of the world and the hereafter, *Asy-Syathibi* explained in more detail that the interests of the world can be described as described below:

"And what I mean by the benefit is everything that makes upright and perfect human life, and the fulfillment of all needs both biological and psychological, so that makes human abundance of pleasure".

The point is that human interests in this world include all aspects of life that can make human life in this world take place properly, and can fulfill all needs perfectly, thus making a human being abundant in enjoyment.

Then, the interests of the world that have been fulfilled perfectly, will be able to support in realizing the interests of the hereafter, namely to get the blessing of Allah, to ensure that humans get pleasure and noble degrees in the sight of Allah. Therefore, in principle, the concept of *al-maslahah* is intended to realize human interests in the world to further determine the realization of human interests in the afterlife.

While *Ibn 'Ashur* held a different view. This difference will be evident by referring to *Ibn 'Ashur*'s statement as follows:

"All existing Shari'a, especially Islamic Shari'a comes intended to bring goodness to humans both now and later, the intention is at the time of the event and the period after the event. So, the purpose of the future is not in the hereafter, because the existing Shari'a is not intended to limit the people in the hereafter, because the hereafter is nothing but made by God to reward all the actions that have been done in the world".

Ibn 'Ashur believes that the concept of *maslahah* is intended to realize human interests in every stipulation of the Sharia that is enforced, and in every consequence of the enactment of that decree. The concept of benefit can only be applied in the life of this world, not in the afterlife. That is because that the life of the hereafter will be nothing but intended to retaliate for the deeds committed by humans while living in the world.

Human interests referred to in the concept of the benefit of Ibn 'Ashur can be categorized in two ways, namely: first, the interests that are individually related, namely the realization of the guarantee of goodness in everything that is thought, believed and done by humans. Second, the interests related communally, namely the realization of the guarantee of goodness in society, in the aspect of intertwining between one individual with another individual, and also between community members and leaders.

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[13] Mawardi Djalaluddin, "Pemikiran Abu Ishaq Al-Syatibi Dalam Kitab Al-Muwafaqat," *Al-Daulah* 4, no. 2 (2015), doi:https://doi.org/10.24252/ad.v4i2.1483, p.296.

The validity of the theory of *maqasid al-shari'ah* asy-Syatibi and Ibn 'Ashur in the perspective of *usul al-fiqh* four mazhab

In principle, the concept of *maqasid al-shari'ah* has been frequently mentioned in some of the literature of *usul al-fiqh* in four sects. The editors used are quite varied, although essentially the same, that the objectives of the enactment of Islamic law are nothing but to realize benefit.

To make it clearer, researchers need to describe the views of the ulama of *Usul al-fiqh* in four schools about the concept of *maqasid al-shari'ah*. In the Hanafi school of thought, the *maqasid al-shari'ah* paradigm can refer to Abu Hanifah who consistently applies *al-Istihsān* in his *istinbath* process. Basically the concept of *al-Istihsan* is included in the pillars of *maqasid al-shari'ah*, because *al-Istihsan* becomes a theory intended to ensure the realization of benefits in Islamic law.

Furthermore, in the Shafi'i school, the application of *maqasid al-shari'ah* can be traced to the mechanism used in the Imam Syafi'i legal *istinbath* and the followers of his followers. *Imam Shafi'i* applies the scale of priority to the realization of the benefits in every legal determination. That attitude was followed by *al-Juwaini* who followed it up by dividing the benefits into three namely: the benefits of *al-ḍarūriyyah*, *al-hājiyyah* and *tahṣīniyyah*. *Al-Ghazali* added that the essence of Islamic law is to ensure the fulfillment of *al-ḍarūriyyah al-khamsah*. *Izz al-Din Ibn Abd al-Salam* also asserted that Islamic law aims to realize benefit and reject *mafsadah*, provided that it must be in line with the types of *shara'* actions, besides the benefits must be in the form of *ḍarūriyyah* or *al-hājiyyah* occupying the position of *ḍarūriyyah*, and the *maslahah* must be *kulliyyah* in certain cases.[14]

Likewise, it is not much different from the Maliki school of law that orientation of the determination of law refers to the realization of benefit. The basis of the intended benefit indeed refers to the optimization of reasoning that takes precedence over the results of reasoning from the generation of *tabi'in* as well as the results of reasoning from the inhabitants of Medina. The legality of the concept is implemented in the rules of *jalb al-Masalih wa dar 'al-mafasid* which is the basis of the *maqasid al-shari'ah* thinking framework. Furthermore, the implementation of *maslahah* in the Maliki school is not merely based on the *maslahah of al-mursalah* when confronted with problems that have no legal text reference or legal analogy, but also uses *maslahah* considerations in the realm of epistemology, namely in the realm of contextualization of legal texts with existing realities.[15]

Apart from that, it is also necessary to explain in this study the technical limitations of applying the theory of *maqasid al-shari'ah*. *Al-Ghazali* provides a limitation that *maqasid al-shari'ah* can be applied with the provisions of meeting three conditions, namely: 1) the intended benefit must be in accordance with the provisions of similar laws and recognized by sharia, 2) the intended benefit does not contradict the texts , 3) the intended benefit is included in the category of primary needs, so that when the three conditions are ignored, the intended benefit

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[14] Holilur. Rohman, "Maqashid Al-Syariah Mazhab Syafi'i Dan Urgensiya Dalam Ijtihad Kontemporer," *Hukum Islam* 16, no. 2 (2018), doi:https://doi.org/10.28918/jhi.v16i2.1737, p.203.

[15] "Al-Fikr Al-Maqasidy 'Ind Al-Imam Malik," *Maroko, Kementrian Wakaf Dan Agama Kerajaan*, 2012, http://www.habous.gov.ma/ 2012-01-26-16-12-45/50-2012-08-28-14-34-54.html.

will be canceled automatically. Meanwhile, the Maliki and Hanbali schools provide additional provisions in addition to those required in the Shafi'i school, that the intended benefit is included in something that can be reasoned, and the impact of its benefits is general and comprehensive, not private and partial oriented.

When looking at the concept of *maqasid al-shari'ah* developed by *Ibn 'Ashur*, which holds that private and partial considerations can be used as a reason for the application of *maqasid al-shari'ah* in the application of Islamic law, it seems not in accordance with the technical provisions outlined in the school of thought Maliki and Hanbali who want that the consideration of the realization of the benefits must be general and comprehensive, not private and partial oriented.

Likewise, in the explanation related to the prerequisites of benefit must be reasoned, certainly not in accordance with what was developed by *asy-Syathibi* who holds that the intended benefit must also be oriented to the realization of the future benefit in the hereafter. The consideration is clear that the expected benefit in the hereafter will not be able to be reached with ordinary reasoning. In contrast to *Ibn 'Ashur* who holds that the effort to realize the benefit is none other than the real life in the world today, because the afterlife is nothing but intended to provide retaliation for the actions carried out.

In essence, the differences that exist in the concept of *maqasid al-shari'ah* from the two figures in the perspective of *usul al-fiqh* Four Schools appear to be limited to the technical implementation only, each of the four schools has varying prerequisites, only fundamentally the concept of *maqasid al-shari'ah* can still be judged within the limits of reasonableness, because it still prioritizes the texts with all its qualifications in the context of having to deal with the benefit, the text takes precedence over the benefit.

Conclusion

The results of the comparison of the two concepts that become the pillars of *maqasid al-shari'ah* from the thoughts of the two figures can be broken down into two types, namely: first, the concept of *al-Ta'līl*, that *Asy-Syathibi* holds that the establishment of law in Islamic law is to ensure the realization of benefit for humans both in the world and in the hereafter. The relationship between the determination of the law with the certainty of the realization of the benefit gives an understanding of the *al-ta'lîl* (motive) aspect of the determination of law in Islamic law. The basis of asy-Syathibi's statement refers to the results of the *istiqrâ'* process carried out on various legal texts.

Meanwhile, *Ibn 'Ashur* argues that actually Sharia law contains certain *'illah*, which is intended to ensure the realization of interests for humans, only the explanation used by *Ibn 'Ashur* regarding these interests is different, that the intended interests are those contained in the Sharia law enacted (*'ājil*) and contained in the consequences arising from the enactment of the Shari'a law (*'ājil*).

Second, the concept of maslahat, *asy-Syathibi* argues that the concept of *maslahah* is intended to realize the interests of humans not only in the world, but also the realization of interests in the hereafter simultaneously. The human interest

in this world covers all aspects of life that can make human life in this world take place well, and can fulfill all needs perfectly, thus making a human being abundant in enjoyment. Then, the interests of the world that have been fulfilled perfectly, will be able to support in realizing the interests of the hereafter, namely to get the blessing of Allah, to ensure that humans get pleasure and noble degrees in the sight of Allah. This is different from *Ibn 'Ashur* who holds that the concept of *maslahah* is intended to realize human interests in every stipulation of the Sharia that is enforced, and in every consequence of the enactment of that decree. The concept of benefit can only be applied in the life of this world, not in the afterlife. That is because that the life of the hereafter will be nothing but intended to retaliate for the deeds committed by humans while living in the world.

As for the validity of the concept of *maqasid al-shari'ah asy-Syathibi* and *Ibn 'Ashur* in the perspective of *usul al-fiqh* the four mazhab are in principle the thoughts of the two figures about *maqasid al-shari'ah* are still within reasonable limits. The consideration is that both still prioritize the texts with all their qualifications in the context when dealing with the benefit. Although in the technical realm of implementation, each of the two figures appears to be one-sided with the provisions of certain Islamic school clerics while the other side is in accordance with the provisions of the other schools as well.

The study in this study, contributes positively to the development of Islamic legal thinking, in the context of providing alternative solutions related to the middle ground mechanisms in the process of *istinbath* law so as to present Islamic law in favor of the full interests of humanity.

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