



DEVELOPMENT OF ISLAMIC LAW (FIQH) THROUGH THE MAQASID AL-SYARI'AH APPROACH

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Abstrak

The discussion about maqashid al-syari'ah or the purpose of Islamic law is an important discussion in Islamic law that has not escaped the attention of scholars and experts in Islamic law. Basically, Shari'a and religion cannot be understood partially. However, it must be seen as a whole as an inseparable whole. Religious goals and sharia goals can be categorized into general goals and specific goals. If all the commands and prohibitions of Allah are carried out in the Qur'an, as well as the orders and prohibitions of the Prophet SAW in the sunnah which are formulated in fiqh, it will be seen that all of them have a specific purpose and nothing is in vain. All of them have a deep wisdom, namely as a mercy for mankind, as confirmed in several verses of the Qur'an about the purpose of the Prophet Muhammad was sent. Grace for all nature in the verse is defined by the benefit of the people. Meanwhile, in simple terms, benefit can be interpreted as something that is good and can be accepted by common sense. It is accepted that reason contains that reason can know and understand the motives behind the determination of a law, namely because it contains benefits for humans, either by explaining the meaning itself by God or by means of rationalization

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Introduction

Shahratsani stated that the events faced by humans cannot be counted and are infinite, so it does not make sense if in every event there is a clear explanation (nash). And if the information is limited while the events are not limited, or if the infinite cannot be determined by the finite, it is certain that ijtihad must be accepted, so that there is no event without ijtihad. (Muhyidin 2019).

Religion guarantees a sense of security, tranquility, tranquility both physically and mentally for all its people which will have an impact on the social environment. The basic principles of religion like this of course must be the spirit of all religious people. Thus harmony in inter-religious life is always maintained. Moreover, the teachings of Islam is the last divine religion brought by the Prophet Muhammad as a complement to the Shari'ah for all the Shari'ah brought by the Prophets

and Apostles before him. Islam was taught through the Prophet Muhammad SAW with a great mission, not only for the Arabs but for the entire universe.

It is different from the previous religion or shari'ah. The Prophets and Messengers before the Prophet Muhammad were sent by Allah only for his people. For example, the prophet Noah was sent by Allah to the Bani Rasib, the Prophet Lut to the Madyans, the Prophet Musa to the Bani Isra'il, Prophet Isa also to the Children of Israel. However, the Prophet Muhammad was sent by Allah to all the worlds. As the word of Allah "wa ma arsalnaka illa rahmatan li al 'alamin" (We (Allah) did not send you (Muhammad) except as a mercy to the whole world). (Kemenag RI 2013; Ibrahim Abiodun Oladapo and Asmak Ab Rahman 2016)

Furthermore, Durkheim described religion as follows: Religion is not as individual response to life crises but as the embodiment of society's highest goals and ideals. Religion acts as cohesive social force and adds up to more than the sum of its parts. It is real, in that it exists in people's minds and impels them to heed societal dictates, but what is perceived as external to society -God- is in fact projection and reflection of society. (Segal 2006, 5)

From Durkheim's statement, it can be seen that religion is not only an individual response to life's crises but a manifestation of the highest goals and ideals of society. Religion acts as a cohesive social force that adds more than the sum of its parts. Religion is real, because it exists in the mind and encourages them to heed social orders, but what is considered external to society, God is a projection and reflection of society with simple language, religion is an inspiration to the whole society. When it comes to inspiring people, of course, there are no general religious norms that contradict one religion with another. From the background above, the author tries to describe this article which focuses on the urgency, role, and relevance in contemporary times.

Research Method

Research method using qualitative methods with descriptive research type. The informant technique used is the purposive sampling technique. Data collection tools used in the form of in-depth interviews and documentation studies. The data analysis technique used is data reduction, data display, leverage. Analysis of the data used in this study using the Miles and Huberman model. In this model data flow analysis will be used. So, in principle, data analysis activities are carried out throughout research activities (during data collection) and the most core activities include data simplification (data reduction), data presentation (data display), and drawing conclusions (making conclusions).

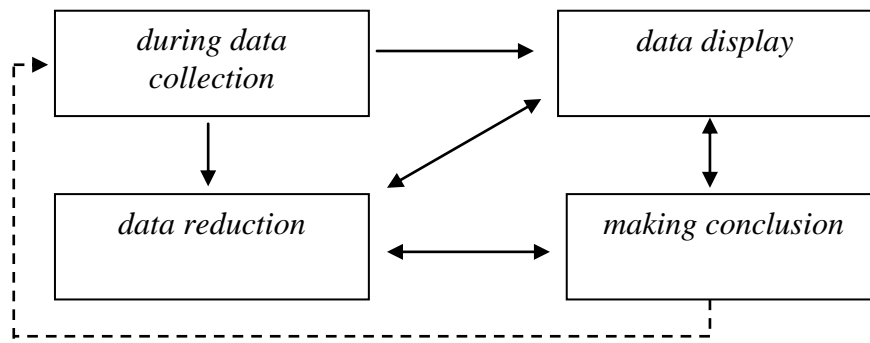


Chart 1: Miles and Huberman's Interactive Data Analysis Model

Findings and Discussion

1. Concept Maqasid al-Syari'ah

According to Satria Efendi (1998:14), maqashid al-syari'ah contains a general understanding and a special understanding. The general understanding refers to what is meant by legal verses or legal hadiths, both indicated by their linguistic understanding or the objectives contained therein. This general understanding is identical to the meaning of the term maqashid al-syari' (God's intention in lowering the legal verse, or the Prophet's intention in issuing legal hadith). While a special understanding is the substance or goal to be achieved by a legal formulation. (Shidiq 2022)

The word Maqashid is the plural form of the word meaning which means purpose, intent. (Al-Alukah n.d.)

يطلق مصطلح مقاصد الشريعة على الأهداف العامة التي تسعى الشريعة إلى تحقيقها في حياة الناس، ويطلق أيضاً على الأهداف الخاصة التي شرع لتحقيق كل منها حكم خاص

In terms, maqasid al-syari'ah is a general goal achieved by shari'ah in people's lives. Absolute Daa are also specific goals that are determined to achieve each of these special provisions. From this definition, it can be understood that Shari'ah has a general purpose and a special purpose. The general objectives are: Al-Daruriyyat, Al-Hajiya, and Al-tahsiniyatt.

In a different perspective, the term maqasid al-syari'ah is seen as an umbrella that covers concepts related to religious traditions as in the following statement: Maqasid al-Syari'ah is also an umbrella term that includes many other concepts that have been closely linked to it in the premodern Islamic tradition, most notably the idea of public interest (al masalih al ammah) and unrestricted interests (al masalih al mursala), as well other principles such as al-istihsan (juridical preference), istihsab (presumption of continuity), and avoidance of mischief (mafsada), all of which are considered to be directives in accordance with God's will. (Duderija 2014, 2)

The past thinkers introduced new concepts and classified them into three levels by giving a touch of consideration to new dimensions;

- a. General maqasid. This general goal is seen as the whole of Islamic law such as necessities and needs such as justice and facilities or materials.
- b. Specific maqasid. This goal is seen as a specific chapter in Islamic law, such as the welfare of children in family law, preventing crime in criminal law, and preventing monopoly in the law of buying and selling transactions.
- c. Partial maqasid. This goal is the “intention” behind certain rules. Or the implied meaning in any particular law. such as the intention to find the truth in looking for a number of witnesses in certain court cases, the intention to reduce the difficulty in allowing the sick and fasting person to break his fast, and the intention to feed the poor by forbidding Muslims from storing meat during the Eid al-Fitr holiday.(Auda 2007, 5)

2. Maqasid al-Shari'ah as an effort to realize rahmatan li al 'alamin

This maqasid al-syari'ah approach can basically open up space for dialogue between scientific disciplines. Based on a general goal, it will greatly make Islamic thought more active in every age and meal. The main purpose of the Shari'ah is masalih, which is goodness. Every religion and its teachings certainly teach goodness. Thus, in a multi-cultural life, religion and race must prioritize tolerance over the ideals of their respective religions if they do not want the destruction of this country we love.

The mindset of religious understanding is often something transcendental and absolute. Thinking like this will only shut you down from changes which are actually sunnatullah. Therefore, this kind of mindset should be changed by Muslims and people of other religions. As Nidhal Guessoum in Amin Abdullah states: The next important issue is the need to engage the Islamic scholars in a serious dialogue and convince them that scientist have much to say on topics that have for too long remained the monopoly of the religious scholars and their discourse. While there is no doubt in people's minds that human knowledge evolves and grows, it is often understood that religious, especially Islam are(is) absolute, immutable and transcendent principles, which are set in rigid frames of reference. But we know today that religious –and Islam is no exception- cannot afford to adopt a stationary attitude, lest they find themselves clashing with and overrun by modern knowledge, and religious principles appear more quaint and obsolete. (Abdullah 2020, 7) .

Thinking patterns that are only based on fiqh or fiqh proposals or philosophy can lead to antagonistic relationships, right and wrong and so on. Meanwhile, social problems and issues cannot only be resolved from one point of view. Therefore, it is necessary to build a mindset that leads to interconnectivity and integration between scientific disciplines to find an appropriate solution.

An understanding of Islam or sharia is not enough just to rely on a normative-dogmatic approach. The issues that arise in the contemporary era are increasingly complex according to the times. Therefore, new approaches that are more relevant are needed, such as sociological, historical, anthropological and so on. With the various approaches used, it is hoped that it can give birth to a complete understanding so that it can contribute and be accepted in the social order as the truth of Islam that is rahmatan li al-'almin, not a rigid teaching and is bound by space and time. (Junaedi and Wijaya 2019, 328)

In the rules of fiqh, we recognize the existence of kulliyat al-khams, namely the five main elements. kulliyat al-khams became part of maqasid al shari'ah. Kulliyat al-khams is defined as the five universal principles or human rights. When it comes to human rights, this is no longer thinking in terms of a particular group, ethnicity or religion. Every human being has the right to have human rights to be upheld and respected. The five elements are:

- a. Hifz al-din, namely the protection of religion. Protection of this religion when applied will create an atmosphere of harmony between religious people. There is no compulsion whatsoever in choosing a religion and practicing one's religion. Every religion and its adherents have the right to feel safe and comfortable in carrying out their worship.
- b. Hifz al-nafs, namely the protection of the human soul. It is not justified for humans to hurt each other let alone kill one another. The soul is a gift from God.
- c. Hifz al-nasl, namely protection of lineage or offspring. This gives birth to the understanding that free sex, LGBT and others that can damage the lineage are a violation of this lineage right. Because these actions can damage and even eliminate a person's lineage/lineage.
- d. Hifz al-'aql, which is protection against the mind. When someone upholds this understanding, of course, they will not dare to claim that they are the most correct. Freedom of thought brings a person to a democratic and broad-minded order.
- e. Hifz al-mal, namely the protection of wealth. Every human being regardless of race, ethnicity and religion is entitled to protection of his property. With this protection, it automatically gives birth to a paradigm that plundering, stealing and snatching other people's property without volunteering is not justified. So it is called a violation of human rights. (MD n.d.)

3. Maqasid al-Shari'ah and criticism of the science of fiqh

As in the previous discussion, Maqasid al-Shari'ah has general and specific objectives. The general goal can deliver to the benefit of religious people. Because it upholds human, social, cultural and cultural values as well as other universality values.

In the science of fiqh or fiqh proposals are known as tsawabit (things that are fixed / unchanging) and mutagayyirat (things that change according to time and eating). The things that cannot be changed are the texts that are more familiar with the term qath'iy. Meanwhile, things that open the possibility of change are often called zanniy. In the realm of qath'iy no one dares to change or reconstruct. However, in this zanniy area, humans have the opportunity to develop, adapt to changing times. (Abdullah 2020, 4)

Shari'ah is a clear and definite corridor in religion. Shari'ah and religion cannot be separated from one another. Religion is a larger entity and shari'ah is the part whose sources of reference, values and goals are mainstream Islam. The unity of shari'ah with Islam is a higher goal. There are several aspects of shari'ah in which society recognizes the degree of difference in the dogma and structure of Islamic beliefs. For example, the issue of justice is a central theme in sharia that applies to both Muslims and non-Muslims. Justice knows no discrimination. (Kamali 2008, 11)

With an understanding that considers Islam and Shari'ah as a unit and this entity can give birth to new thoughts about humanity with all the aspects that surround it. As Mohammad Hashim Kamal puts it; Consequently Islam and Its shari'ah do not admit of divisions between the various facets of human life. Religion is inseparable, in principle, from politics, morality and economics, just as the human personality cannot be compartmentalized into religious, political and economic segments. Islam addresses all of these and takes a unitarian approach to human existence, in this way creating a way of life and worldview of its own. (Kamali 2008, 17–18)

As a logical consequence, Islam and Shari'ah do not recognize any division or separation between various aspects of human life. Religion in principle cannot be separated from politics, morality, and economics as well as human personality which cannot be separated into segments of religion, politics and economics as well as other aspects. Islam addresses all of this and takes a unified approach to the unity of human existence, in this way ultimately creating its own way of life and worldview. Furthermore, in Hashim Kamali's explanation that as one way to unite views or patterns of thought, namely by functioning monotheism. In the explanation as follows:

Tawhid plays a unifying role which binds the community together and constitutes its source of equality, solidarity, and freedom. A society in which no other attribute except devotion to God and moral rectitude (taqwa) can qualify one individual's superiority over the other is founded on the essential equality of its members in the eyes of their Creator. It is in the nature of a unitarian order of society that the individual should enjoy a wide degree of autonomy and freedom. (Kamali 2008, 18–19)

From the explanation above, it can be understood that monotheism plays a role as a unifying community and is a source of equality, solidarity, and freedom (independence). Society has no other attributes except devotion to God and moral honesty (taqwa) can qualify the level of superiority of one individual over another based on the equality of essence in the eyes of the Creator. It is in the nature of the unitary order of society that individuals should enjoy extensive autonomy and freedom. This is because monotheism and belief in the omnipotence of God frees the individual from the shackles of all other forces, because they only expect from God.

In this era of globalization and disruption, all religions and their adherents, including Islam and its adherents, can no longer maintain a rigid mindset in solving current issues. Of course there will be a deadlock which will eventually harm his own religious teachings and scholarship. Because M. Iqbal emphatically stated: "the world of Islam should courageously proceed to the work of reconstruction, which was more than mere adjustment to modern conditions of life." (Hillier and Koshul 2015, 13)

In an effort to unify the paradigm of unity between disciplines with fiqh or *usul al-din*, Amin Abdullah has offered several urgent studies to be carried out. Among the points of thought proposed are the following: a. The relationship between the texts and their interpretation, b. Human dignity and worth, c. Modern Science, Social Sciences and Humanities, d. Contemporary *ijtihad*, the need for openness to other sciences, e. Contemporary women's fiqh, f. Inter-cultural and inter-faith dialogue, g. Social fiqh, h. Universal fiqh and *maqasid 'ammah*, i. Fiqh of citizenship; *Ummah*, Citizens and the international community. (Abdullah 2020, 90)

Fiqh requires an adjustment of views to a law by taking into account all aspects of human life. From several views on the importance of a comprehensive understanding of Islam, Shari'ah and social demands the need to expand the study of contemporary issues in fiqh. The general or universal *maqasid shari'ah* mindset should continue to be developed by Muslims in order to be able to show that Islam is the most perfect religion and the nuances of its benefits can be felt by all humans in this world. With the view that using various approaches will produce a tolerant

religious and social order. Textual understanding can lead to the division of the ummah both internally and externally. Because nowadays, all religions, especially Islam, should open a dialogue that builds/finds a solution to the issue, not a jadal dialogue or debate. (Abdullah 2020, 100)

Conclusion

In closing this discussion, the writer needs to highlight several points. Islam as a religion has a purpose. Shari'ah and religion cannot be understood partially. However, it must be viewed as a whole as an inseparable entity. Religious goals and shari'ah goals can be categorized into general goals and specific goals. In general, there is no difference between the general objectives of all religious and human teachings. Fiqh / fiqh proposals will become more relevant if they are based on a socio-cultural context. In other terms, fiqh becomes an authority that can be accepted by all space and time. This can be realized if the fiqh experts and all Muslims have an open mindset towards other scientific fields which will certainly be able to realize the condition of rahmatan li al alamin. On the other hand, the weakness of Fiqh/usul fiqh so far is still rigidly adhering to the texts. A rigid understanding of the texts will actually distance them from the main goal of Islam, namely rahmatan li al alamin. Therefore, contemporary issues are important to be considered in the study. In other words, it is necessary to expand the concept of maqasid al shari'ah.

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