MAQASID AL-SHARI'AH
KONSEP & PENDEKATAN

Penyunting:
Noor Naemah Abdul Rahman
Abdul Karim Ali
Ridzwan Ahmad

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Maqasid al-Shari'ah: Konsep dan Pendekatan

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The Theory of Maqasid al-Shari'ah: A Literature Review and Research Agenda

Abu Talib Mohammad Monawer & Noor Naemah Abdul Rahman

Introduction

The concept of '*Maqasid al-Shariah*' refers to the objectives of *shari'ah* (Islamic law) that promote human welfare through acquisition of every possible benefit (*manfa'ah* and avoidance of any kind of harms or injuries (*madarrah*). Ibn Ashur said: "The overall objective (*maqasid 'amm*) of Islamic legislation is to preserve the social order of the community and insure its healthy progress by promoting the well-being and virtue (*salah*) of the human being. The *salah* of human beings consists of the soundness of their intellects and the righteousness of their deeds, as well as the goodness of the things of the world in which they live that are put at their disposal" (Ibn-Ashur, 2006). In order to achieve those objectives the lawgiver (*shari'*) - Allah swt prescribed many *ahkam* (provisions and rulings) since the inception of sending prophets and messengers which meet at some divinely common purposes that could help mankind to live a systematic and peaceful life on this earth (al-Qayyim, 1973; Kamali, Khan, & Al Shaikh-Ali, 2008; Mohamad Akram Laldin & Hafas Furqani, 2013). This is the very meaning of the concept of *maslahah* (in singular, plural is *masalih*) as known in Islamic Jurisprudence (*al-fiqh al-Islami*).

The application of *maqasid al-shariah* is evident in the *ijtihad* (individual reasoning) of Muslim jurists (*fuqaha*) beginning from the companions (*sahabah*) of the prophet (PBUH) and more evidently it is found in the *ijtihad* of 'Umar- the caliph of Islam Islam (al-Dehlawi, 2005; al-Jundi, 2008). *Maqasid al-shariah* was well considered by almost all later *fuqaha* (jurists of Islamic jurisprudence) particularly Abu Hanifah (150H), Malik (178H), Shafi'ie (204H) and Ahmad (241H), Imams of four popular Sunni *madhahib* (schools of Islamic legal thought) in their *ijtihad* as found in their *fiqh* legacy (al-Furuji, 2001; Ibn-Mukhtar, 2014; Kamali et al., 2008).

Hence, the concept of *maqasid al-shariah* and its applications are not something innovated by the later *fuqaha* rather it is the core concept of *shari'ah* since its inception; and the Qur'an and the Sunnah are the first sources that explicitly stated *masalih* in the provisions and legal rulings (*ahkam*) of *shari'ah* (al-Qayyim, 1973). Shah Wali al-Allah al-Dehlawi (2005) affirmed the consideration of *masalih* in the *ahkam* of *shari'ah* substantiating with the Sunnah and the consensus (*ijma'*) of people of three best centuries (*khayrul Qurun*). The concept of *masalih* was considered in the *ijtihad* of previous scholars regardless of its theorization, and it was also considered in the *ijtihad* of other scholars who were not studied by contemporary researchers yet. In addition, scholars of *ahl al-Ra'y*, who are more popular for causation and rationalization (*ta'lil*) of *Shari'ah*, were to be considering *masalih* in their *ijtihad*.

However, it became a fact that Shatibi is mentioned whenever *maqasid* is discussed; and the study of this subject linked to the repetition of Shatibi's discourse. Meanwhile, Shatibi's discourse is linked to the theory of al-Ghazali which received full reservation. The subject again remained the same until Ibn Ashur (1379H) who fouded it as a new knowldge and added a new dimension to previous categorizes of *maqasid*. Meanwhile, the development and evolution of *maqasid al-shariah* as a discipline requires study of all discussions contributed to this discourse by the pioneers, contemporaries as well as the later scholars in order to discover new information about the Islamic law and its dynamism to respond to the contemporary needs of the society. More importantly, the thoughts of pioneer scholars need to be examined, because the later additions are mostly benefited from the earlier contributions. At this very point, the contribution of earlier *fuqaha* i.e. scholars before al-Shatibi (790H) comes to the focus.

The objective of this paper is to review the contemporary literature on the contributions of the earlier *fuqaha* along with the evolution of the *maqasid* theory. It will also find out the gaps in the literature to propose some directions for future research. In this review, the authors selected the *fuqaha* who contributed to *maqasid al-Shari'ah* whether by application or by theorization since its emergence until al-Shatibi (790H) during the period between 2nd and

8th centuries. The paper will exclude four scholars whose contributions have been studied enough to the extent that their names i.e. al-Juwayni, al-Ghazali, al-Shatibi and Ibn Ashur, are repeated whenever the theory of maqasid al-shari'ah is discussed.

To collect data, the researchers used Google Scholar search engine using the keywords: *maqasid, maqasidi, masalih, maslahah, maslahi, Ta'lil, Taqsid, I'tibar al-Ma'al, Daruriyyat*. This is because these keywords are frequently mentioned by contemporary researchers and scholars after the discourse of *maqasid al-Shari'ah* was theorized. This paper will use different dimensions of maqasid theory in order to highlight the maqasidic thinking of the selected *fuqaha*. The dimensions are such as three levels *maqasid al-shari'ah*: *Daruriyyat* (necessities), *Hajiyyat* (needs) and *Tahsiniyyat* (luxuries); five necessities: protection of Deen, life, progeny, intellect and property; three types of maqasid: general, specific and partial; *I'tibarul Ma'alat* (consideration of consequences) etc.

This paper is divided into three parts. The first part will discuss the terminologies, theorization and evolution of *maqasid al-shariah*. The following part will deal with the contemporary studies on the contributions of early classical *fuqaha* and indentify the gaps in the literature. The final part will put the limitations of the present research and will provide some directions for future research.

The Terminology of *Maqasid al-Shari'ah*

The word maqasid al-shari'ah is later used by the scholars whereas other different words were used by the earlier scholars to mean the same concept. It is to be noted that terminologies are the innovations of systematic study of later scholars. The same applies to the term of maqasid al-shari'ah. Among the terms used by the early scholars are *Hikam* (wishdom), *Asrar* (secrets), *Ma'ani* (underlying insights), *Mabaghi*, (aims), *'Ilal* (reasons), *Maghza* (purport/gist), *Murad al-Shar'* (purport of law), *Gharad al-Shar'* (goal of law), *Murad Allah* (purport of Allah), *Murad Rasulihi* (purport of His Messenger), *Maqsad* (end), *Maqsud* (intent) etc.

As for the technical term *maqasid* was used by scholars like al-Hakim al-Tirmizi (320H) as a key word in the title of his book *al-Salat wa*