



Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context

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Abstract: Substantially, all Islamic law comes with a mission of benefiting humans, as the theory of *al-mashlahah* suggests. This article elaborates extensively on the theory of *al-mashlahah* in the discourse of Islamic legal thought from classical to contemporary times, starting from al-Ghazâli's theory of *al-mashlahah* in his book *al-Mustashfa* to `Izz al-Dîn ibn 'Abd al-Salâm's concept of *jalb al-manafi wa daf'u al-mafasid* (taking benefit, refuting harm) and al-Shatibi with a comprehensive integralistic approach in his work *al-Muwafaqat*. Contemporary Muslim intellectuals, such as Ibn Asyur, Abdul Majid Al-Najjar, Jamaluddin 'Athiyah and Jasser Auda further develop this theory. This article finds that there is a continuous dynamic of Islamic legal methods related to the theory of *al-mashlahah*, which is used as an argument in the contemporary era, transforming into *maqashid al-shariah*. The reform in Islamic law mostly makes use of the *maqashid* as the basic paradigm, which covers not only individual but also social, communal and universal social benefits. In this context, Al-Najar, 'Athiyah, and Jasser Auda offer new scope and dimensions of *maqasid al-shari'ah* theory to answer the problems of contemporary Islamic law.

Keywords: *al-mashlahah*, *maqashid al-shari'ah*, classical and contemporary era

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Abstrak: Secara substansial, semua hukum Islam hadir dengan misi kemaslahatan bagi manusia, sebagaimana yang diisyaratkan oleh teori *al-mashlahah*. Artikel ini mengelaborasi secara luas teori *al-mashlahah* dalam diskursus pemikiran hukum Islam dari masa klasik hingga kontemporer, mulai dari teori *al-mashlahah* al-Ghazâli dalam bukunya al-Mustashfa hingga konsep *jalb al-manafi wa daf'u al-mafasid* (mengambil manfaat dan menolak mudharat) dari 'Izz al-Dîn ibn 'Abd al-Salâm dan al-Shatibi dengan pendekatan integralistik yang komprehensif dalam karyanya al-Muwafaqat. Para intelektual Muslim kontemporer, seperti Ibnu Asyur, Abdul Majid Al-Najjar, Jamaluddin 'Athiyyah dan Jasser Auda mengembangkan lebih lanjut teori ini. Artikel ini menemukan bahwa terdapat dinamika yang terus menerus dalam metode hukum Islam terkait dengan teori *al-mashlahah* yang digunakan sebagai argumen di era kontemporer yang bertransformasi menjadi *maqashid al-syariah*. Pembaharuan dalam hukum Islam sebagian besar menggunakan *maqashid al-syari'ah* sebagai paradigma dasar, yang tidak hanya mencakup kemaslahatan individu tetapi juga kemaslahatan sosial, komunal, dan universal. Dalam konteks ini, Al-Najar, 'Athiyyah, dan Jasser Auda menawarkan cakupan dan dimensi baru dari teori *maqashid al-syari'ah* untuk menjawab permasalahan hukum Islam kontemporer.

Kata Kunci: *al-mashlahah, maqashid al-syari'ah, era klasik dan kontemporer*

Introduction

Etymologically, *al-mashlahah* comes from the root of *al-salâh*, which means goodness and benefit. *Al-mashlahah* is in singular form, while the plural form is *al-masâlih*. It shows the notion of something that contains a lot of goodness and benefits. Meanwhile, the opposite of it is *al-mafsadah*, which means something that has a lot of bad things.¹ *Al-mashlahah* can be interpreted as taking advantage and rejecting harm to maintain the goals of Islamic law. The purpose of the law includes the maintenance of religion, soul, mind, lineage and property. Therefore, realizing those goals is called *al-mashlahah* and rejecting all forms of harm that endanger human benefit can also be called as *al-mashlahah*.² Most Muslims jurists discuss it in their work.

For example, al-Ghazali emphasized that a benefit must be the same as sharia goals, even if it conflicts with human goals, because human benefit is not always based on sharia but on the wish of lust. Therefore, what is used as a benchmark in determining benefit is the wish and the goal of Islamic law, not the wish and the goal of humans. Therefore, the benefit of establishing a law must involve some points: First, *al-mashlahah* is the same as the sharia action types. Second, *al-mashlahah* does not leave or contradict the sharia texts. Third, *al-*

¹ Manzhûr, I. Lisân al-‘Arab. 5th edn. Qāhirah: Dār al-Ḥadīth. Mas’ud, M.K. (1989) Islamic Legal Philosophy: A Study of Abu Ishaq al-Shatibi’s Life and Thought. Delhi: International Islamic Publishers *Lisân Al-‘Arab* 2003.

² Al-Gazâli, *Al-Mustasfa Min ‘Ilm Al-Uṣûl*.

mashlahah is included in the category of *al-mashlahah al-dharuri*, both concerning personal and public benefit and universal, that is, it applies equally to everyone.³

While Imam Syâtibî states that *al-mashlahah* is an understanding of the protection of human rights by attracting benefit and rejecting damage.⁴ Ibn 'Âsyûr stated that *al-mashlahah* is the *nature* of an action that produces a continuous benefit and is determined based on the opinion of the majority of *ulama*.⁵ According to Sa'îd Ramadlân al-Bûthî, *al-mashlahah* can be defined as benefits intended by Allah for the benefit of His servants, whether in the form of maintenance of religion, soul, mind, lineage, and property.⁶ Therefore, *al-mashlahah* has a significant relationship with sharia.⁷

Such discourse on *al-mashlahah* amongst Muslim jurists shows that it occupies every debate in Islamic legal thought. This article will discuss the formulation of the theory of *al-mashlahah*, which is the core and estuary of *maqasid al-shari'ah* (goals and ideals of Islamic law), as a paradigm of Islamic legal thought in responding to various issues of Islamic law in the contemporary context. We argue that *al-mashlahah* serves the key concept that provides a wider space and flexibility for Islamic legal thought to respond and resolve problems and issues that Muslims face in contemporary world. It is through the concept of *al-mashlahah* that Islamic law can maintain its relevance to any situation, time and place in human's history.

This study is based on the library research that focuses on the concept of *al-mashlahah*. Library research is an effort to study various reference books and the results of previous research of the same or similar theme which serve the main data regarding the topic under investigation. The main data are collected from the primary sources of the Muslim jurists' works on *al-mashlahah* and related concepts, such as *maqashid al-sharia*. The sources are not limited to the classical and medieval works, but also cover to contemporary references. These sources include *al-Mustasfa min 'Ilm al-Usûl*, *al-Muwâfaqât fî Usûl al-Syarî'ah*, *Qawâ'id al-Ahkâm fî Masâlih al-Anâm*, *I'lam al-Muwaqqi'in 'an Rabb al-'Âlamîn*, *Dawâbith Mashlahah fî syarî'ah al-Islâmiyyah*, *Maqâsid al-Syarî'ah al-Islâmiyyah wa Makârimuha*, *al-Ijtihâd bain al-Nashs, wa al-Mashlahah wa al-Wâqi'*, *Maqâshid al-Syarî'ah al-Islâmiyyah*, *Islamic Legal Philosophy: A Study of Abu Ishaq al-Shatibi's Life and Thought*.

The collected data are then analyzed to gain the insight on how the concept of *al-maslahah* was formulated in the first place and then how this concept has

³ Al-Gazâli.

⁴ Al-Syâtibi, Ibrahîm bin Mûsa Abu Ishâq, *al-I'tishâm*. 2nd ed. Beirut: Dâr al-Ma'rîfah, n.d.

⁵ 'Âsyûr, *Maqâshid Al-Syarî'ah Al-Islâmiyyah*.

⁶ Al-Bûthî, Muhammad Sa'îd Ramadlân. *Dawâbith Mashlahah Fî Syarî'ah Al-Islâmiyyah*. Beirut: Muassasah al-Risâlah, 1990

⁷ Al-Jauziyyah, Ibnu Qoyyim, *I'lam al-Muwaqqi'in 'an Rabb al-'Âlamîn*. 2nd edn. Beirut: Dâr al-Fikr, 1997)

been contended amongst the Muslim jurists in the subsequent period up to the present time. Such dynamic conceptual debates reveals that *al-mashlahah* is not closed notion but is open to reinterpretation, as we want to enrich the debates.

The Qualification and the Existence of Al-Mashlahah

Muhammad Khalid Mas'ud, in his book *Islamic Legal Philosophy*, said five trends of attitude came up about the concept of *al-mashlahah* before Syatibi. First, it was begun by Imam al-Haramain al-Juwaini (438/1047) when he wrote *al-Burhan*, in which the *al-mashlahah* method became controversial. Many *Syafi'iyah Ulama* and some *mutakallimun* at that time said that *al-mashlahah* could only be accepted if there is the introductory text of *syara'*. It may not be used if *al-mashlahah* is controversial with the introductory text of *syara'*.⁸

The second trend that came up about the concept of *al-mashlahah* was represented by the experts of law who rejected *al-mashlahah mursalah*, such as Syaifuddin al-Amidi (631/1234) and Ibn Hajib (646/1249). In rejecting *al-mashlahah*, they are more leaning toward the argument of al-Ghazali than al-Razi, namely *al-mashlahah* can only be justified if the introductory text of *syara'* supports the argument (textually supported).⁹ The third trend that emerges can be seen from the thoughts of Al-'Izz Ibn 'Abd al-Salam, who, in looking at *al-mashlahah*, tends to think of *tasawwuf*. It is said to tend to *tasawwuf* thought because he divides *al-mashlahah* into two points: (a) *mundane*- which can be known as *'aqliy*, and (b) *uhkrawiy*- which can only be known as *naqliy*. About knowledge of *al-mashlahah*, he divides it into several levels. The lowest is the knowledge of ordinary people, followed by the higher knowledge of *adzkiya* (wise people), followed by the highest knowledge of *awliya'* and *ashfiya'*.

The fourth trend is represented by Ibn Taymiyyah (728/1328) and his student, Ibn al-Qayyim al-Jawziyyah (751/1350). According to Ibn Taymiyyah, if there is an *al-mashlahah* that people think has no basis in the text of *syara'*, then there are only two possibilities for that *al-mashlahah*: (a) there must be a text that the person does not know, or (b) it is not *al-mashlahah*. In other words, Ibn Taymiyyah considers all *al-maslahah* to exist in *nushush al-syar'iyah*, and all God's commands benefit.

The fifth trend is put forward by Najmuddin al-Thufi an Ulama of Hanbali, also often said to be Shi'iy, who says that *al-mashlahah* is a very fundamental basis so that it can beat other methods. Najmuddin al-Thufi's opinion became extraordinary at that time and even today because it collided with the mainstream thought of the majority.

After that, Syatibi appeared with his monumental work in the *al-mashlahah* field with his book *al-Muwafaqat*. In his book as seen from Syatibi's confession about the reason for writing it, he tries to bring together two schools

⁸ Mas'ud, *Islamic Legal Philosophy: A Study of Abu Ishaq Al-Shatibi's Life and Thought*.

⁹ Mas'ud, *Islamic Legal Philosophy: A Study of Abu Ishaq Al-Shatibi's Life and Thought*.

which are often seen as contradictory to one another: *ahl al-hadith* (Maliki school) and *ahl al-ra'y* (Hanafi school). At that period, Syatibi's residence was dominated by the Maliki school of thought, which became the state's official school of thought and greatly alienated the Hanafi school of thought *Ulama*. From such a phenomenon, Syatibi, who belongs to the Maliki school of thought, tried to overcome the sharp gap in the conflict between the two schools with his work.

The history of *al-mashlahah* does not just stop, because it continues to experience a formulation process that is more concrete and 'applicable'. For example, in 1857, along with the movement for legal reform in Tunisia, a document called '*Ahd al-Aman*' appeared which later became a very fundamental legal instrument in the 1860 Constitution. This document stated that there were three components of the problem: liberty (independence, freedom), security (security), and equality (equality). In 1867, Khayruddin Pasha in his work *Aqwam al-Masalik* said that *mashlahah* must be the supreme guide of the government. In 1899, Muhammad 'Abduh emphasized that *al-mashlahah* must be the principle guiding the establishment of law. In 1906, *al-Manar* magazine published al-Tufiy's work on *al-mashlahah* which was very radical and controversial, so Zahid al-Kawthari immediately criticized it.

The history of *al-mashlahah* theory in the modern era tends to strengthen *al-mashlahah* as a method that displaces the "rigidity" of Islamic law and supports Islamic law that is adaptive to change. Amid such tendencies, some writers also try to limit the use of the *al-mashlahah* method again. In 1965, Sa'id Ramadan al-Buthiy issued his dissertation work at Al-Azhar, *Dlawabith al-Mashlahah*.¹⁰ In his dissertation, he began his presentation by mentioning that the orientalist had started a new model of attack on Islam by advocating the most comprehensive possible opening of the door of *ijtihad* and emphasizing that the *al-mashlahah* method was a very fundamental method to become a reference. About this issue, Al-Buthiy said that the door to *ijtihad* is never closed, and Allah also values benefit. However, benefits still have limitations and qualifications. The use of the *al-mashlahah* method cannot be unlimited because the use of this method is fenced in by various 'rules of the game', which he said '*dlawabith al-mashlahah*'.

The building foundation of Islamic law is represented by *al-mashlahah* which is aimed at the interests of human life as servants of Allah, concerning worldly life and the life hereafter. Islamic law upholds the principles of justice (*'adalah*), compassion (*rahmah*), and *al-mashlahah*. Any rule of law that deviates from these principles is essentially not part of Islamic law, although rationalization (*ta'wil*) is sought to make it part of it. In addition, Islamic law's majesty and nobility are manifested in its doctrine's compatibility with the development of human life because of the spirit of *al-mashlahah* that drives it. The existence of *al-mashlahah* in the building of Islamic law cannot be denied because *al-mashlahah* (المصلحة) and *al-syari'ah* (الشريعة) have been united and

¹⁰ Al-Zarqa', *Al-Istishlah, Wa Al-Mashalih Fi Al-Syari'ah Al-Islamiyah Wa Ushul Al-Fiqh*.

merged so that the presence of *al-mashlahah* necessitates the demands of *al-syarî'ah* (الشريعة)

In-depth research on so many texts of the Qur'an and Hadith has resulted in a convincing conclusion that the Islamic legal doctrine is always attached to wisdom and 'illah, which leads to *al-mashlahah*, both for society and individuals.¹¹ The doctrine of Islamic law applies to both general *muamalat* (non-mahdah worship) and *mahdah* worship. Thus, all areas of law with various legal norms that the Qur'an and Hadith have outlined originate from and simultaneously lead to *al-mashlahah* for human life. This is because Allah does not need anything, even if it is *mahdah* worship. Strictly speaking, humans, God's servants, benefit from *al-mashlahah* being the foundation of Islamic law.¹²

The presence of wisdom and 'illah in the norms of Allah's law (both in the form of al-amr and al-nahy) guarantees the existence of *al-mashlahah*. On the other hand, the formulation of several legal maxims (*al-qawa'id al-syar'iyyah*) rests on the discovery of wisdom and 'illah, which incidentally guarantees the existence of *al-mashlahah*. Thus, *al-mashlahah* is the axis and starting point for the formulation of *al-ahkâm al-syar'iyyah* and *al-qawa'id al-syar'iyyah*.¹³

Realizing *al-mashlahah* is the main goal of Islamic law. In every rule of law, *al-Syâri* transmits *al-mashlahah* so that goodness, benefit, and avoidance of evil or damage are born, creating prosperity on earth. *Al-mashlahah* maintains and pays attention to the objectives of Islamic law in the form of goodness and benefits that Shari'ah desires, not human desires.¹⁴ The legal norms contained in the texts (*nusûs al-syarî'ah*) can certainly create *al-mashlahah*, so there is no *al-mashlahah* outside of the instructions of the Sharia text; because of that, it is not valid to think that *al-mashlahah* must be prioritized if it is contrary to the Sharia texts. Thus, it can be formulated that the nature of *al-mashlahah* is the axis of the obstacle, the axis of circulation and changes in Islamic law, on which the interpretation of the *Shari'ah* text can rest on it.¹⁵

The purpose of Allah Ta'ala in determining the *al-mashlahah* of the legal legislation that He does is absolute and comprehensive, not limited to certain cases or objects; *al-mashlahah* spreads absolutely to all the basic principles and particular case units of Islamic law.¹⁶ Islamic law is entirely *al-mashlahah*, whose representation can be in the form of omission of *mafsadah* and can also be in the form of embodiment of *al-mashlahah*. Strictly speaking, no law contains *al-madarrah* but is ordered to stay away from it, and no law contains *al-mashlahah*

¹¹ 'Âsyûr, *Maqâshid Al-Syarî'ah Al-Islâmiyyah*.

¹² Al-Qaradâwi, Yûsuf. *Madkhal Li Dirâsat Al-Syarî'ah Al-Islâmiyyah*. Kairo: Maktabah Wahbah, 2001

¹³ Al-Fâsiy, 'Allâl. *Maqâsid Al-Syarî'ah Al-Islâmiyyah Wa Makârimuha*. Rabat: Maktabah al-Wihdah al-Arabiyyah, 2013)

¹⁴ Al-Rahmân, *Al-Masâlih Al-Mursalâh Wa Makânatuha Fi Al-Tasyrî'*.

¹⁵ Hisân, *Nazariyyat Mashlahah Fi Al-Fiqh Al-Islâmiy*.

¹⁶ Al-Syâtibi, *Al-Muwâfaqât Fi Usûl Al-Syarî'Ah*.

but is ordered to make it happen.¹⁷ Considering *al-mashlahah* is a method of obtaining legal certainty for a case whose legal status is not determined by text or *al-ijma*. Finally, it cannot be denied that *al-mashlahah* is a provision that contains goodness for humans.¹⁸

Based on this elaboration, the legal norms contained in the texts can certainly create *al-mashlahah* so that there is no *al-mashlahah* outside the guidance of the texts, and because of that, the idea that *al-mashlahah* must be prioritized if it contradicts the *Shariah* texts is rejected by itself. There is no place for consideration of *al-mashlahah*, which will result in the urgency of the *Sharia* texts, which inherently contain *al-mashlahah* for human life. Strictly speaking, the *al-mashlahah* that contradicts the *Shari'ah* text is not the real *al-mashlahah* but the pseudo *al-mashlahah*. Furthermore, in the context of possible contradictions in *al-mashlahah*, if a wider *al-mashlahah* demands the sacrifice of a narrower *al-mashlahah*, then the choice of leaving the narrower *al-mashlahah* can be made to achieve this broader *al-mashlahah*.¹⁹

At the application level, *al-mashlahah* is manifested in the methods or arguments of *ijtihad* to establish laws that are not explicitly confirmed by the texts, such as *al-qiyâs*, *al-mashlahah al-mursalâh*, *al-istihsân*, *sadd al-dzarî'ah*, and *al-'urf*. Therefore, any method or argument for *ijtihad* that is based on the principle of *al-mashlahah* can be qualified as an effort to explore the content of the meaning of the *Shari'ah* text (*istidlâl bi al-nusûs al-syar'iyyah*).²⁰

Mohammad Hashim Kamali concluded that the identification of *al-mashlahah* as the core of *maqâsid al-syarî'ah* can be based on: (1) *nusûs al-syarî'ah*, especially *al-amr and al-nahy*, (2) *al-'illah* and *al-wisdom* contained in *nusûs al-syarî'ah*, and (3) *al-istiqrâ'*.²¹

About the *al-mashlahah* and *ijtihad* relations, the term *al-ijtihâd al-istislâhiy* is known among *Ulama*, which is an effort to mobilize all abilities to obtain *Sharia* law by applying general-universal legal principles to a problem or case that is not confirmed by the texts. specifically, which in essence, leads to realizing *al-mashlahah (jalb al-mashlahah)* and avoiding or eliminating *al-mafsadah (daf' al-mafsadah)*, which is in line with the demands of *Shariah*

¹⁷ Al-Salâm, Izz al-Dîn ibn 'Abd. Qawâ'id Al-Ahkâm Fi Masâlih Al-Anâm. 1st ed. Kairo: Maktabat al-Kulliyât al-Azhariyyah, 1997.

¹⁸ Sjadzali, Munawir, *Polemik Reaktualisasi Ajaran Islam*. Jakarta: Pustaka Panjimas, 1988.

¹⁹ Sjadzali, Munawir. *Polemik Reaktualisasi Ajaran Islam*. Jakarta: Pustaka Panjimas, 1988 .

²⁰ Hisân, Husain Hâmid. *Nazariyyat Mashlahah Fi Al-Fiqh Al-Islâmiy*. Beirut: Dâr al-Nahdah al-'Arabiyyah, 1971

²¹ Awadin, Adi Pratama, and Asep Taopik Hidayah. "Hakikat dan Urgensi Metode Tafsir Maudhu'i." *Jurnal Iman dan Spiritualitas* 2, no. 4 (December 2022), p. 651–57. <https://doi.org/10.15575/jis.v2i4.21431>

principles. This *ijtihad* model leads to efforts to incorporate law into the domain of sharia texts.²²

According to Ahmad Fathi Bahnashi, some Islamic jurists of the al-*tabi'în* generation turned away from textual applications of sharia texts that are absolute or general because these applications imply eliminating *al-mashlahah*. Instead, they interpret the sharia texts and apply them with the *al-mashlahah* framework, even though they give the impression of al-*taqyîd* or al-*takhsîs* or al-*ihmâl* to the sharia texts.²³

More than that, *al-mashlahah*, which is general and genuine, supports the realization of Islamic law's objectives and does not conflict with the texts of sharia, is a valid basis and frame of reference for Islamic law legislation.²⁴ Imran Ahsan Khan Nyazee also expressed the same: Islamic jurists agreed that *mashlahah* could be applied as the basic basis of a legal decision, and this *al-mashlahah* could be used as a rationale when extending the legal provisions to new cases. This is the basis of the *al-mashlahah* doctrine.²⁵

The concept of *al-mashlahah* as the core of *maqâsid al-sharî'ah* is the best alternative for the development of *ijtihad* methods, in which the Qur'an and al-Sunnah must be understood through *ijtihad* methods by emphasizing the dimensions of *mashlahah*.²⁶ The concept of *al-mashlahah* is a method for changing the law. Through this concept, fiqh scholars have a framework for dealing with legal issues in the legal system based on sharia texts whose postscript contain limited legal material foundations concerning life affairs, while legal problems in changing environmental situations and conditions. Thus, the concept of *al-mashlahah* provides legitimacy for the new rule of law and allows fiqh scholars to elaborate on case contexts that are not confirmed by the texts. Therefore, how much legal change can be achieved by applying the concept of *mashlahah* depends on the pattern of *al-mashlahah* based legal reasoning applied by fiqh's *Ulama*.²⁷

Yusuf al-Qaradawi emphasized that the substance of *al-mashlahah* desired by Islamic law is *al-mashlahah* which is comprehensive, integral, and holistic and includes a combination of *al-mashlahah al-dunyawiyyah* and

²² Madkûr, Muhammad Salâm. *Al-Ijtihâd Fi Al-Tasyrî' Al-Islâmiy*. Kairo: Dâr al-Nahdah al-'Arabiyyah, 1984.

²³ Al-Hafnâwiyy, Muhammad Ibrâhîm Muhammad, *Al-Ta'ârud Wa Al-Tarjîh 'ind Al-Ushûliyyîn*, Dâr al-Wafâ', 1987

²⁴ Kamali, Mohammad Hashim, "Fiqh and Adaptation to Social Reality." *The Muslim World* 86, no. 1 (1996), p. 72.

²⁵ Nyazee, Imran Ahsan Khan. *Theories of Islamic Law: The Methodology of Ijtihad*. Adam Publishers & Distribution, 1996.

²⁶ Bakri, Asafri Jaya, *Konsep Maqashid Syari'ah Menurut Al-Syatibi*, Jakarta: RajaGrafindo Persada, 1996.

²⁷ Opwis, Felicitas. "Maslaha in Contemporary Islamic Legal Theory." *Journal Islamic Law and Society* 12, no. 2 (2005), p. 183.

mashlahah al-ukhrawiyyah, a combination of *al-mashlahah al-maddiyyah* and *al-mashlahah al-rûhiyyah*, a combination of *al-mashlahah al-fardiyyah* and *al-mashlahah al-mujtama'iyyah*, a combination of *al-mashlahah al-qaumiyyah al-khâssah* and *al-mashlahah al-insâniyyah al-'âmmah*, and a combination of *al-mashlahah al-hâdirah* and *al-mashlahah al-mustaqbalah*. On this basis, Yusuf al-Qaradawi emphasized that the concept of *al-mashlahah*, which animates Islamic law, cannot be identified with utilitarianism and pragmatism, which postscript stems from the notion of materialism.²⁸

Furthermore, Qardawi put forward views on a convincing way to find out the *al-maqâsid al-shari'ah*: First, examine each *illah* (both *mansûsah* and *gairu mansûsah*) in the text of the Al-Qur'an and Hadith. Second, review and analyze the particular laws to then conclude the ideals of the meaning of the results of the integration of these particular laws.²⁹

In this regard, discussing who can judge whether something is *al-mashlahah* when carrying out *ijtihad* becomes very important. Something can be said to have *al-mashlahah* domain if it is in line with or not contrary to *nusûs al-syarî'ah*, and vice versa; something is not *al-mashlahah* if it is contrary to *nusûs al-syarî'ah*. In this context, the presence of the institution of *ijtihad* jama'i (collective *ijtihad*),³⁰ such as MUI, Bahtsul Masa'il NU, Muhammadiyah Tarjih Council, and Persis Hisbah Council, are very significant in eliminating the possibility of misuse of *al-mashlahah* arguments or methods by fardiy *ijtihâd* activities so that the conception and application of *al-mashlahah* in the *ijtihad* process are avoided from misunderstandings and misunderstandings.³¹ Even so, this does not mean closing the chances of *ijtihad fardî* tightly.

Al-Mashlahah Categorization

Before we further explain the categorization of *al-mashlahah*, it is necessary to state al-Bûthi's views on the criteria for *al-mashlahah* in assessing the qualifications of *al-mashlahah* that are valid according to syar'i. In al-Bûthi's view, the *al-mashlahah* criteria include five things, namely (1) something to be assessed is still within the corridor of the Syara' texts, (2) something that does not conflict with the Qur'an, (3) it does not contradict with the Sunnah, (4) it does not conflict to *al-qiyâs*, and (5) it does not sacrifice other more critical *al-mashlahah*.³²

²⁸ Al-Qaradâwi, *Madkhal Li Dirâsat Al-Syarî'ah Al-Islâmiyyah*.

²⁹ Al-Qaradhawi, *Fiqh Maqashid Syariah: Moderasi Islam Antara Aliran Tekstual Dan Aliran Liberal*.

³⁰ Al-Syarafi, Abd al-Majîd. *Ijtihad Kolektif*. Edited by Syamsusddin TU. Jakarta: Pustaka Al-Kautsar, 2001.

³¹ Zahro, Ahmad, *NU Intellectual Tradition: Lajnah Bahtsul Masa'il 1926-1999*, Yogyakarta: LkiS, 2004.

³² Al-Bûthî, *Dawâbith Mashlahah Fî Syarî'ah Al-Islâmiyyah*.

Muhammad Muslehuddin saw that the categorization of *al-mashlahah* with the *al-mashlahah al-mu'tabarrah* trilogy, *al-mashlahah al-mulghah*; *al-mashlahah al-mursalah* must still consider the dimensions of community interests and social realities that are constantly changing so that Islamic law must move in line with changes in social reality that occur, which in turn can maintain the flexibility of Islamic law.³³

On the other thinking, al-Gazâli explained that the first, the *al-mashlahah* which received firm justification for the acceptance of the *Shari'ah* texts (*al-mashlahah al-mu'tabarrah*), is *al-hujjah al-syar'iyah*, and its fruit is *al-qiyâs* which contains the meaning of picking the law from the logical-meaning content of an *al-nashs* and *al-ijma'*. The second, the *al-mashlahah*, gets the firm justification of the *Shari'ah* text for its rejection (*al-mashlahah al-mulghah*), while the third, according to al-Gazâli, is the *al-mashlahah* does not get the firm justification of the *Shari'ah* text, both for its acceptance and rejection. This became a field of disagreement among scholars.³⁴

On the other thinking, al-Gazâli also categorizes *al-mashlahah* based on the aspect of its substance strength (*quwwatiha fi dzâtiha*), in which *al-mashlahah* is divided into three, namely (1) *al-mashlahah al-darûrât level*, (2) *al-mashlahah al-hâjât level*, and (3) *al-mashlahah al-tahsînat/al-tazyînat level*. Each part is accompanied by a perfecting or complementary *al-mashlahah* (*takmilah/tatimmah*). The maintenance of the five primary objectives/principles (*al-usûl al-khamsah*) at the *al-darûrât level* is the strongest and highest level of *al-mashlahah*. The five basic objectives/principles include (1) maintaining religion (*hifz al-dîn*), (2) maintaining the soul (*hifz al-nafs*), (3) maintaining the mind (*hifz al-'aql*), (4) maintaining offspring (*hifz al-nashl*), and (5) maintaining assets (*hifz al-mâl*)³⁵. Syihâb al-Dîn al-Qarafi further refined Al-Gazâli's view of *al-usûl al-khamsah* by adding one more basic objective/principle, namely maintaining self-respect (*hifz al-'ird*) even though al-Qarafi himself admitted that This is the subject of debate among *Ulama*³⁶. This view seems to be quite well-founded because of the existence of the holy text of *Shari'ah*, which explicitly prohibits *al-qazf* (the act of hurling false accusations of adultery against others) and criminalizes it at the same time (Q.S. *al-Nûr*: 4, 23).

While the *al-mashlahah al-hâjât level* is *al-mashlahah* at the second level. The *al-mashlahah level of al-tahsînat/al-tazyînat* is a *al-mashlahah* that is not only at the emergency level but also at the *hâjât level*. As for *al-mashlahah*, which is at the level of *al-hâjât* and *al-tahsînat/al-tazyînat level*, it should not be used as

³³ Muslehuddin, Muhammad, *Philosophy of Islamic Law and The Orientalists*, New Delhi: Markazi Maktaba Islami, 1985.

³⁴ Al-Gazâli, *Al-Mustasfa Min 'Ilm Al-Usûl*.

³⁵ Al-Gazâli.

³⁶ Al-Qarafi, Syihâb al-Dîn, *Syarh Tanqîh Al-Fusûl Fi Ikhtisâr Al-Mahsûl Fi Al-Usûl*, Mesir: al-Matba'ah al-Khairiyah, 1889.

an independent basis/foundation for law-making if it is not supported by original justification because otherwise, it means establishing law with al-ra'yu; so, same with Istihâsân. If the justification of al-asl supports it, it is called *al-qiyâs*. As for *al-mashlahah* at the al-darûrât level, it can be achieved by the mujtahid's *ijtihâd*, even though specific al-asl justifications do not support it. Efforts to construct *al-mashlahah* al-darûrât level as above must fulfill three elements: *darûriyyah*, *qat'iyyah*, and *kulliyyah*.³⁷

The distinction of the *al-mashlahah* version of al-'Izz ibn 'Abd al-Salâm with two categories (*al-mashlahah* al-'âmmah and *al-mashlahah* al-khâssah) was later followed by several contemporary Islamic law experts. Abû Bakr Ismâ'îl Muhammad Mîqâ, for example, emphasized that by referring to the boundaries of *al-mashlahah*, two categories of *al-mashlahah* can be distinguished. First, *al-mashlahah* al-'âmmah, namely *al-mashlahah* whose maintenance determines the good and welfare of the whole community or most of society, without looking at the individual units of them; Second, *al-mashlahah* al-khâssah, namely *al-mashlahah* whose maintenance determines goodness and welfare that are individual; from the individual nature this will lead to collective (public) goodness and welfare.³⁸

In the thought of Najm al-Dîn al-Tûfi, *al-mashlahah* is divided into two types: (1) *al-mashlahah* that al-Syâri' wants for His rights, such as various worship services, and (2) *al-mashlahah* that al-Syâri' wants for good His creatures and the order of their lives, such as the various forms of *mu'amalah*.³⁹

Abû Ishâq al-Syâtibi categorizes *al-mashlahah* into 3 (three) types, namely (1) al-darûriyyah, (2) al-hâjiyyah, and (3) al-tahsîniyyah. Furthermore, al-Syâtibi explained that al-darûriyyah is something that cannot be absent for the sake of upholding goodness and prosperity, both in matters of the hereafter and worldly affairs; if it disappears, it does not exist, then an orderly and prosperous worldly life cannot be realized; In fact, what is manifested is chaotic worldly life (chaos) and wretched and suffering spiritual life. For al-Syâtibi, al-daruriyyah includes efforts to preserve religion, protect souls, protect offspring, protect wealth, and maintain reason.⁴⁰

As for al-hajiyyah, in the view of al-Syâtibi, it is needed in terms of its ability to bring relief and eliminate narrowness, which usually leads to difficulties and hardships accompanied by missed goals/targets. If al-hajiyyah is ignored, difficulties will arise, but not to the point of causing damage, which usually occurs in the case of *al-mashlahah* al-daruriyyah. The al-hâjiyyah category leads to the

³⁷ Al-Gazâli, *Al-Mustasfa Min 'Ilm Al-Usûl*.

³⁸ Mîqâ, *Al-Ra'yu Wa Atsaruhu Fi Madrasat Al-Madînah: Dirâsah Manhajiyyah Tatbîqiyyah Tutsbitu Salâhiyyat Al-Syari'ah Li Kulli Zamân Wa Makân*.

³⁹ Zaid Zaid, Mustafa, *Mashlahah fi al-Tasyri' al-Islâmiyy wa Najm al-Dîn al-Tûfi*. t.tp: Dâr al-Fikr al-'Arabiy, 1964.

⁴⁰ Al-Syâtibi, A.I, *al-Muwâfaqât fi Usûl al-Syari'ah*. 2nd edn. Beirut: Dâr al-Kutub al-'Ilmiyyah, 1982)

perfection of al-darûriyyah, in which with the upholding of al-hâjiyyah, all al-masyaqqah will disappear and balance and fairness will be created, so as not to cause extremism (*al-ifrât wa al-tafrât*).⁴¹

Al-Tahsîniyyah, in the opinion of al-Syâtibi, is related to paying attention to good habits and avoiding bad habits based on common sense considerations. This is often referred to as makârim al-akhlâq. For al-Syâtibi, the existence of al-tahsîniyyah leads to goodness that complements the principles of *al-mashlahah* al-daruriyyah and *al-mashlahah* al-hâjiyyah; this is because the absence of al-tahsîniyyah does not damage the affairs of al-darûriyyah and al-hâjiyyah; it only revolves around efforts to realize beauty, comfort and decency in the servant's relationship with God and with His fellow creatures.⁴²

Mashlahah Formulation in the Development of Islamic Law

Ahmad al-Raisûni submitted a proposal for an application model of *al-mashlahah* theory in the development of Islamic law. According to Ahmad al-Raisûni, it is a must to respond to all sharia texts and legal rules with a *al-mashlahah*-oriented understanding model (al-fahm al-maslahiy) and an application model that is also *al-mashlahah*-oriented (al-tatbîq al-maslahiy). This is what is called a *al-mashlahah*-oriented response (al-ta'âmul al-maslahiy ma'a al-nusûs), which postscript removes responses that assume there are contradictions between texts and *al-mashlahah*, and also displaces responses that assume there are texts that are not *al-mashlahah*. as assumed by the literalist-scripturalistic-reductionistic school.⁴³ In Ahmad al-Raisûni's view, the issues of *al-mashlahah*-oriented responses to texts include (1) Qualification of *mashlahah* with text parameters; (2) *Al-mashlahah*-oriented interpretation of the texts (al-tafsîr al-maslahiy li al-nusûs); and (3) *Al-mashlahah* -oriented application of texts (al-tatbîq al-maslahiy li al-nusûs). The following is a description of the ideas offered by Ahmad al-Raisuni.

The sisterhood of idealism, absolutism, and immutability of Islamic law implies the postulation that Islamic law originates from Allah Ta'ala. However, an inalienable characteristic of Islamic law is that the *Shari'ah* contains general principles that are meant to be understood as an Islamic ethic and, as such, can give rise to various interpretations. This is where the *Shari'ah* can be placed as an "open texture," a normative structure written in a standard way but open to interpretation.⁴⁴

⁴¹ Al-Syâtibi, A.I., *al-Muwâfaqât fi Usûl al-Syari'ah*. 2nd edn. Beirut: Dâr al-Kutub al-'Ilmiyyah, 1982.

⁴² Al-Syâtibi, A.I., *al-Muwâfaqât fi Usûl al-Syari'ah*. 2nd edn. Beirut: Dâr al-Kutub al-'Ilmiyyah, 1982.

⁴³ Al-Raisûni, A., *al-Ijtihâd: al-Nass, wa al-Wâqi wa al-Maslahâh*, Damaskus: Dâr al-Fikr, 2002.

⁴⁴ Tibi, Tibi, B., *Islam Kebudayaan dan Perubahan Sosial*, Edited by M.Z. dan Z. Abbas. Yogyakarta: Tiara Wacana, 1999.

Al-Mashlahah Formulation in Answering Contemporary Legal Problems

Studying *maqasid al-shari'ah* will prevent one from escaping the terminology of *al-mashlahah* and *al-mafsadat*. *Maqasid al-shari'ah* has a relationship with benefit, al-Juwaini uses the term general benefit (*al-mashlahah al-'ammah*) to explain *maqasid al-syari'ah* so that the two terms are interchangeable (Prihantoro, 2017). Al-Ghazali also considers that *maqasid al-shariah* is the same as *al-mashlahah al-mursalah* with its three levels: dharuriyah, hajiyah and tahsiniyah, as mentioned above, likewise with al-Tufi, al-Qarafi and Jasser Auda who with different wording stated that *maqasid al-shari'ah* is the same as *al-maslahah* (Auda, 2017).

Maqasid al-shari'ah, as a new approach in the *ijtihad* process, is an effort to make adjustments between text and context (the dynamics of human life). The emphasis of this *maqasid al-shari'ah* approach lies in resolving a legal issue by looking for the intention of Shara', which has no specific text, which can be done through various methods in *ijtihad* (Jamaa, 2011).

Maqashid al-shari'ah is closely related to *al-mashlahah* so that it can be a unified theory that is interrelated and mutually reinforcing as an answer to the problem of the tug of war between the authority of the text, the independence of reason, and the demands of reality. The theory of *al-mashlahah* and *maqashid al-shari'ah* received severe attention from Muslim intellectuals by developing, expanding the reach, and contextualizing the two methods to answer contemporary Islamic law problems.

The development referred to here includes addition, expansion, detailing, systematization, and contextualization. Departing from this notion of development, the notion of *maqâsid al-syarî`ah*, which by classical scholars is limited to only at the level of *al-kulliyyah al-khamsah*, can be added, expanded, further detailed and contextualized. This development aims to accommodate the times, clarify the benefits or rights in a particular segment, and clarify the relationship between each segment and other segments to avoid overlap between one benefit and other benefits.

The development of the notion of *al-maslahah/maqâsid al-syarî`ah*, for example, was carried out by progressive Muslim intellectuals, by Jamâl al-Din`Athiyyah by clarifying the segment of *al-mashlahah /maqâsid al-sharî`ah* into four kinds: individual segment (*majâl al-fard*), family segment (*majâl al-usrah*), people segment (*majâl al-ummah*), and humanity segment (*majâl al-insân*).⁴⁵

In his book *Nahw Taf'il Maqâsid al-Shari'ah*, Jamal al-Din Athiyyah metamorphosed the concept of *maqâsid al-shari'ah* by describing *maqâsid al-shari'ah* into four domains or dimensions, namely:

⁴⁵ Athiyyah, Jamal al-Din, *Nahwa Taf'iil Maqashid Al-Syari`ah*, Damaskus: Dar al-Fikr, 2001.

1. *maqâsid al-shari'ah* in the individual realm/dimension.

In *maqâsid al-shari'ah* 'ah relating to this individual realm, he divides it into *hifz al-nafs* (preserving the soul), *i'tibar al-'aql* (empowering the intellect), *hifz al-tadayyun* (maintaining religion), *hifz al-'ird* (maintaining self-respect/honor), *hifz al-mal* (maintaining property).

2. *Maqâsid al-shari'ah* in the realm/dimension of the family.

Includes *tanzim al-'alaqah baina al-jinsain* (regulating relations between two types of men and women), *hifz al-nasl* (maintaining offspring/breeding), *tahqiq al-sakinah wa al-mawaddah wa al-rahmah* (realizing a sense of tranquility, love, and affection), *hifz al-nasab* (maintaining lineage), *hifz al-tadayyun fi al-usrah* (maintaining religion in the family), *tanzim al-janib al-mu'assasi li al-usrah* (regulating essential aspects in the family), *tanzim al-janib al-mali* (regulating finance/finance in the family).

3. *Maqâsid al-shari'ah* in the realm/dimension of ummah.

Includes *al-tanzim mu'assasi li al-ummah* (regulating the organization of the ummah), *hifz al-amn* (maintaining security stability), *hifz al-'adl* (maintaining justice), *hifz al-din wa al-akhlaq* (maintaining religion and ethics), *al-ta'awun wa al-tadamun wa al-takafu* (establishing cooperation, solidarity and togetherness), *nashr al-'ilm wa hifz al-'aql al-ummah* (spreading knowledge and maintaining the minds of the people), *imarahal-ard wa hifz tsarwah al-ummah* (building the world and maintaining the welfare of the people).

4. *Maqâsid al-shari'ah* in the realm/dimension of humanity.

Includes *al-ta'aruf wa al-ta'awun wa al-takamul* (knowing each other, cooperating and integrating), *tahqiq al-khilafah al-'ammah li al-insan fi al-ard* (realizing the succession of god's duties in general for humans on earth), this *al-salam al-'alami al-qaim 'ala al-'adl* (realizing peace on earth based on justice), *al-himayah al-daulyah li al-huquq al-insan* (protecting human rights universally), *nashr da'wah al-Islam* (spreading the message of Islam).⁴⁶

In this context, it can be seen that the classification of *maqâsid al-shari'ah*, according to Jamaluddin al-'Athiya, starts with the most private circle, namely individual maqasid, then increasingly extends to the scope of the family dimension. After that, *maqâsid al-shari'ah* is expanded again with the dimension of the community, and the most global is *maqâsid al-shari'ah* in the dimension of humanity. These four segments are based on the conditions of modern times, which are different from those of classical times. In classical times, the formulation of *maqâsid al-shari'ah* is limited to *al-kulliyah al-Khaimah*, which means more on protecting *jamâ'ah*/people.

⁴⁶ 'Athiyah, Jamal al-Din, *Nahwa Taf'iil Maqashid Al-Syari'ah*, Damaskus: Dar al-Fikr, 2001

Here, it can be seen that the classification of *maqâsid al-shari'ah*, according to Jamal al-Din 'Athiyyah, starts with the most private circle, namely individual *maqâsid*, then expands to the scope of *maqâsid*, which begins to expand, namely the family dimension. After that, *maqâsid* is expanded again with the dimension of the community, and the most global is *maqâsid* in the dimension of humanity. 'Athiyyah's view is motivated by the humanitarian crisis and the lack of methods to solve it. This humanitarian crisis is experienced by almost all countries in the world, including Muslim-majority countries. The high rate of poverty, lack of education, unemployment, security, economic equality, and social welfare are unequal.⁴⁷

Abdul Majid al-Najjar, a Muslim intellectual from Tunisia, also put forward the formulation of *al-mashlahah / maqâsid al-shari'ah* in a modern context. According to Al-Najjar, *maqâsid al-shari'ah* is the purpose (al-ghayah) of the enactment of Islamic law both at the universal and particular levels by classifying *maqâsid al-shari'ah* into four objectives, namely protecting the value of human life (*hifzh qimat al-hayah al-insaniyyah*), protecting human essence (*hifzh al-dzat al-insaniyyah*), protecting society (*hifzh al-mujtama'*) and protecting the physical environment (*hifzh al-muhith al-maddi*).⁴⁸ Furthermore, al-Najjar also emphasizes that all of these objectives are based on and lead to the universal objectives of sharia (*maqasid al-shari'ah al-kulliyah*). It also shows al-Najjar's efforts to make the orientation of *maqâsid al-shari'ah* from benefits that tend to be partial-individual to universal-social benefits. This is evidenced by the results of his research that the *maqâsid al-shari'ah* initiated by al-Najjar shows a correlation and congruence with human rights.⁴⁹

Furthermore, the development of *al-mashlahah* theory in the contemporary era was carried out by Jasser Auda by developing the *maqâsid al-shari'ah* theory as a philosophical foundation in the application of Islamic law. Jasser Auda uses *maqâsid al-shari'ah* as the philosophical starting point of his thinking by using a systems approach as a method of thinking and a knife of analysis. It is a new approach that has never been thought to be used in Islamic legal discourse before. Jasser Auda uses six system features as an analytical knife in dissecting Islamic law. The six features are the cognition dimension of religious thought, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness.⁵⁰

⁴⁷ Busriyanti, *Maqasid al-Syari'ah dalam Penegakkan Hukum Lalu Lintas di Indonesia*" Al-Istinbath: Hukum Jurnal Islam, Vol. 6, No. 1, 2021, p. 79-84. DOI: <http://dx.doi.org/10.29240/jhi.v6i1.2470>.

⁴⁸ Al-Najjar, Abdul Majid, *Maqâsid al-Sharī'ah bi Ab'ād al-Jadīd*, Beirut: Dār al-Gharb al-Islāmī, 2008.

⁴⁹ Syihab, Zahwa, "The Innovation Of Al-Najjar's Thought In Maqasid Al-Shari'ah, *Mimbar Agama dan Budaya*, Vol 38, No 1, 2021, p. 18-34. DOI: 10.15408/mimbar.v38i1.23375.

⁵⁰ Auda, J, "Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach", *The International Institute of Islamic Thought*, 2017.

Jasser Auda proposes three concepts of *maqâsid al-shari'ah* reform from a contemporary perspective, namely: First, the reform of *maqâsid al-shari'ah*, which was initially nuanced in preservation and preservation, towards *maqâsid al-shari'ah* which is characterized by the development and glorification of human rights. Jasser Auda even suggests that the development of human resources (HR) is one of the main themes for the benefit of the people today. The implication of this reform concept is to adopt the concept of human resource development so that the level of realization of *maqâsid al-shari'ah* can be measured empirically by taking measures from various human resource development targets according to the United Nations (UN) agreement (ijma'). Second, Jasser Auda offers the levels of authority of the latest Islamic legal arguments and sources, including human rights, as a basis for compiling a typology of contemporary Islamic legal theory.

Based on Auda's view, it can be formulated that the formulation of classical *maqâsid al-shari'ah* towards contemporary *maqâsid al-shari'ah* is characterized by a change in orientation from classical *maqâsid al-shari'ah* which is "protection" (protection) and "preservation" (preservation) towards *maqâsid al-shari'ah* which is "development" (development) and "right" (freedom) can be described in the following table:

Classical Meaning	Contemporary Meaning
Hifzhu al-Diin (Guarding the Religion)	Providing freedom and respect for beliefs
Hifzh al-Nafs (Safeguarding Soul)	Being the protection of human rights and human dignity
Hifzh al-'Aql (Guarding the Intellect)	Being the development of scientific thinking and research
Hifzh al-Nasl (Preserving Progeny)	Being a concern for the development of the role of family institutions
Hifzh al-Maal (Protecting Wealth)	Being economic development and equalizing welfare levels

Based on this table, the development of classical *maqâsid al-shari'ah* carried out by Jasser Auda towards contemporary *maqâsid* can be seen. The development of *maqâsid al-shari'ah* by Auda is inseparable from the background of his thinking, which considers that the current humanitarian condition of Muslims is very concerning, so it requires human development as the primary goal of *maqâsid al-shari'ah* itself.

Suppose classical *maqashid* is more of a preventive effort. In that case, Jasser Auda's contemporary *maqâsid al-shari'ah* is more about developing and protecting human rights based on the needs and problems experienced by Muslims today. Then, if the classical *maqâsid al-shari'ah* is more individual, this

contemporary *maqâsid al-shari'ah* prioritizes the social aspects of society. This is because whatever the efforts of a law to prevent violations, if human resources (HR) are not developed, then the effort is less effective or even futile, especially when faced with the development of this increasingly modern era where there are no longer boundaries between regions about technology and information that have an impact on the socio-cultural life of humanity.

Therefore, the law in this case, including Islamic law, must adapt to the times without leaving the existing rules of Islamic law. For example, one of the efforts of Islamic law to protect property from theft is the law of hand cutting or imprisonment and so on. However, more than that, equalizing the level of welfare and education will be more effective in tackling theft.

The reality of contemporary social problems then affects the mindset of Muslim intellectuals in modernizing *maqâsid al-shari'ah* thinking so that it appears in their thinking that the concept of *maqâsid al-shari'ah* based on *al-mashlahah* is no longer individualistic but already generalistic. This means expanding the scope of *maqâsid al-shari'ah* orientation from benefits that tend to be partial-individual to universal-social benefits so that it can touch the fundamental issues of modern society so that *maqâsid al-shari'ah* in this contemporary era must also involve policymakers, in this case, the government. In the context of Islamic teachings, the government is obliged to fulfill its people's rights reasonably. The state must be able to guarantee the safety and welfare of its citizens for the realization of the public good. This is by rules of jurisprudence (*qaidah fiqh*):

تَصَرَّفُ الْإِمَامُ عَلَى الرَّاعِيَّةِ مَنْوُظٌ بِالْمَصْلَحَةِ

“The policy of an imam leader or leader towards the people he leads must be based on the common good”⁵¹

In realizing the theory of *maqâsid al-shari'ah* based on *al-mashlahah* in the contemporary context, it is necessary to raise a new variant of *al-mashlahah* that focuses on examining this aspect and then bringing it to an applicative level in the framework of creating harmonious Muslim and non-Muslim relations. It is all so that Islamic law can honestly dialogue with social demands and realities. Such as the concept of *hifz al-din* in the contemporary context can be interpreted with *haq al-tadayyun*, namely the right to practice religion in peace and security.⁵²

According to Ibn 'Ashur, the concept of *maqâsid al-shari'ah* is general and aims to maintain humanity's life system by realizing goodness in all aspects of life, including realizing equal rights. In the context of *hifz al-din*, the concept of *al-huriyyah* includes *hurriyat al-tadayyun* (freedom of religion). Furthermore, Ibn 'Ashur said that preserving religion for the entire nation is to avoid everything that would cancel the principles that religion adheres to, such as wanting everyone to embrace one religion and imposing certain religious teachings is a violation of the

⁵¹ Zuhdi, Muhammad Harfin, *Qawa'id Fiqhiyyah*. Mataram: Elhikmah, 2022.

⁵² 'Athiyyah, *Nahwa Taf'il Maqashid Al-Syari'ah*.

principle of al- hurriyah, disturbing other religions is a violation of the principle of samāḥah.

Similarly, Abdul Majid al-Najjar, a contemporary Muslim thinker from Tunisia, states that high al-din in this context is interpreted as maintaining human values and humanizing humans. Freedom of religion is part of respecting human values and humanizing humans, which are human rights.⁵³ For An-Najjar, the concept of *maqâsid al-shari'ah* must be classified more comprehensively and firmly emphasize the human and humanitarian aspects.⁵⁴ In this regard, he argues that modern human civilization is heading towards an acute crisis that can threaten human destruction and extinction, namely the environmental crisis. Therefore, protecting the environment (hifzh al-bi'ah) should be included in the category of primary objectives of sharia (*maqshad min maqâsid al-shari'ah al-dharuriyyah*).⁵⁵

Protecting the environment in the modern context is significant in actualizing the *maqâsid al-shari'ah* concept. Yusuf Al-Qaradhawy used the term hifzh al-bi'ah to consider when formulating his concept of environmental fiqh. Furthermore, al-Qaradhawy stated that protecting the environment (hifzh al-bi'ah) is the same as protecting the soul (hifzh al-nafs), protecting the mind (hifzh al-'aql), protecting offspring (hifzh al-nasal), and protecting property (hifzh al-māl). The rationality is that if the aspects of the soul, intellect, offspring, and property are damaged, human existence in the environment becomes tarnished.⁵⁶

The construction of the *maqâsid al-shari'ah* paradigm based on *al-mashlahah* in a modern context is oriented to deal with increasingly complex contemporary problems by combining classical applicable fiqh methodology with current realities and problems. This is referred to as the *maqâsidi manhaj*, where religious texts (divine revelation), al-Qur'an, and hadith must be understood in their intrinsic relational relationship with universal moral ideals (general principles), between authentic meaning (original meaning) and specific legal that is particular and temporal, so that the formulation of the Qur'anic worldview (Qur'anic Weltanschauung) is moderate and not dry and rigid (a dry legalism).⁵⁷

In a contemporary context, the *al-mashlahah* theory can be applied to answer contemporary legal problems with no explicit nass confirmation. Considering *al-mashlahah* theory, *jalb al-mashalih wa daf'u al-mafasid* can answer these legal problems. In this regard, DNA as a medium for determining nasb can be used as an illustration. According to Yusuf al-Qaradhawi, in determining the law whether or not the use of DNA tests is permissible for efforts

⁵³ Al-Najjar, *Maqâsid Al-Sharī'Ah Bi Ab'Ād Al-Jadīd*.

⁵⁴ Masrifah and Firdaus, "The Framework of Maslahah Performa as Wealth Management System and Its Implication for Public Policy Objectives."

⁵⁵ Al-Najjar, *Maqâsid Al-Sharī'Ah Bi Ab'Ād Al-Jadīd*.

⁵⁶ Al-Qaradāwi, *Madkhal Li Dirâsat Al-Syari'ah Al-Islâmiyyah*.

⁵⁷ Amin Abdullah, *Islamic Studies Di Perguruan Tinggi: Pendekatan Integratif Interkonesktif*.

to determine the nasab of mula'anah children, he tends to use the *istishlahiyah* method, which is a method of finding the law by relying on the general propositions of the Qur'an and Hadith and looking at the *al-mashlahah* side of the case being sought. In another sense, the *istishlahiyah* method is a form of reasoning that relies on consideration of the benefit of the purpose of the legislation, such as using DNA tests to identify the nasab of mula'anah children. This method is used because DNA testing is a new issue, and there is no detailed study in the Qur'an or hadith.⁵⁸

The essential values of *al-mashlahah* as *maqâsid al-shari'ah* can be used to formulate the present economy in production, consumption, distribution, fiscal policy, finance, financial institutions, and so on. The Qur'an and hadith, as shari'ah texts, have primarily determined the general principles in economic activities to create an equitable economic structure on the values of balance and prosperity without elements of exploitation, where shari'ah functions as a controller and regulator. In this context, the presence of sharia banks, sharia banking products, waqaf with cash and so on can be used as examples of Islamic law formulation in the contemporary context.

Conclusion

The main objective of Islamic law is to realize the welfare of human life. In this context, '*al-mashlahah*' refers to the concept of public interest or benefit, while '*maqâsid al-syarî'ah*' refers to the objectives of Islamic law. It can be said that *al-mashlahah* is the estuary of *maqâsid al-syarî'ah*, forming a unified, interrelated, and mutually reinforcing theory. The theory of *al-mashlahah* and *maqâsid al-syarî'ah* has received serious attention from Muslim intellectuals. They have developed, expanded the scope, and contextualized these concepts to address the problems of contemporary Islamic law. The development referred to here is addition, expansion, systematization, and contextualization. Departing from this understanding of development, the understanding of *maqâsid al-syarî'ah*, which by classical scholars is limited to only the level of *ushul al-khamsah* (maintaining religion, soul, mind, descendants, property) and the hierarchy of *al-mashlahah* consisting of *dharuriyat*, and *hajjiyat*, *tahsiniyat* can be developed and expanded in scope and contextualized. The purpose of this development is to accommodate the development of the times, clarify the existence of welfare in certain segments, and clarify the relationship between each segment and other segments so that overlapping between one welfare and another can be avoided. Based on the development and dynamics of the times, in the contemporary era, the paradigm of *maqâsid al-syarî'ah* welfare needs to be formulated to develop wider-scope welfare. This means making the

⁵⁸ Fahmi and Fahmi, "Penetapan Nasab Anak Mula'anah Melalui Tes DNA (Studi Atas Metode *Istinbât Yūsuf Al-Qaradāwī*)."

orientation of *maqâsid al-syarî`ah* welfare from partial-individual welfare to universal social welfare. In this context, Al-Najar, 'Athiyyah, and Jasser Auda appear to offer a new scope and dimension of the *maqâsid al-syarî`ah* theory to answer the problems of contemporary Islamic law. For example, in the context of *hifzh al-din*, its meaning can be expanded to become *haq al-tadayyun*, namely religious freedom to respect humanitarian values in Human Rights. Even Jasser Auda proposed a system theory approach in *maqâsid al-syarî`ah* using six system features: cognitive nature, interconnectedness, integrity, openness, multi-dimensionality, and meaningfulness. The construction of *maqâsid al-syarî`ah* based on *al-mashlahah* in a modern context, is oriented towards facing increasingly complex contemporary problems by combining classical and contemporary *ushul fiqh* methodology with contemporary realities and problems to realize the benefits of Islamic law for humanity and mercy for the universe.

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