



**The Position of *Maqasid al-Shariah* within Islamic Legal Sources:
A Comprehensive Analysis**

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Abstract: This study examines the position of *maqasid al-shariah* within the hierarchy of Islamic legal sources and its role in contemporary legal derivation. While *maqasid al-shariah* serves as a framework for preserving five essential elements its precise position within Islamic legal sources remains ambiguous. This research addresses whether *maqasid* functions as a primary source equivalent to the Quran and Sunnah or merely as an interpretative tool and how it interacts with secondary sources like *qiyas*, *istihsan* and *maslahah mursalah*. Employing document analysis, comparative analysis and interdisciplinary approaches integrating *usul al-fiqh* and *maqasid* studies, this research examines primary Islamic sources and classical and contemporary scholarly works. Findings reveal that *maqasid* maintains an organic relationship with primary sources while serving as an evaluative framework for secondary sources. In *qiyas*, *maqasid* guides identification of '*illah*' (legal cause); in *istihsan*, it justifies departures from strict analogical reasoning; for *maslahah mursalah*, it distinguishes valid public interests; and it filters '*urf*' (custom) and guides *sadd al-dhara'i*. Contemporary applications in Malaysia and Indonesia demonstrate *maqasid's* practical significance. In Islamic finance, *maqasid* principles guide evaluation of cryptocurrency and digital sukuk. The emergence of "maqasid-oriented *ijtihad*" represents a methodological innovation integrating traditional *usul al-fiqh* with *maqasid* considerations. This research clarifies that *maqasid al-shariah* functions not as a separate hierarchical source but as an integral framework permeating all levels of legal derivation. The findings suggest traditional *usul al-fiqh* methodologies, when properly integrated with *maqasid* principles, remain adequate for realizing shariah objectives in modern contexts, though requiring dynamic application responsive to contemporary realities.

Keywords: *Maqasid al-Shariah*, Islamic Legal Theory, Islamic Jurisprudence, Islamic Legal Sources, Contemporary Islamic Law

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Abstrak: Penelitian ini mengkaji posisi *maqasid al-syariah* dalam hierarki sumber-sumber hukum Islam dan perannya dalam derivasi hukum kontemporer. Meskipun *maqasid al-syariah* berfungsi sebagai kerangka untuk memelihara lima elemen penting posisi tepatnya dalam sumber-sumber hukum Islam masih ambigu. Penelitian ini membahas apakah *maqasid* berfungsi sebagai sumber primer setara dengan Al-Quran dan Sunnah atau hanya sebagai alat interpretasi, dan bagaimana interaksinya dengan sumber sekunder seperti *qiyas*, *istihsan*, dan *maslahah mursalah*. Menggunakan analisis dokumen, analisis komparatif, dan pendekatan interdisipliner yang mengintegrasikan *ushul al-fiqh* dan studi *maqasid*, penelitian ini mengkaji sumber-sumber Islam primer serta karya ulama klasik dan kontemporer. Temuan mengungkapkan bahwa *maqasid* mempertahankan hubungan organik dengan sumber primer sekaligus berfungsi sebagai kerangka evaluatif untuk sumber sekunder. Dalam *qiyas*, *maqasid* membimbing identifikasi 'illah (sebab hukum); dalam *istihsan*, ia membenarkan penyimpangan dari penalaran analogis ketat; untuk *maslahah mursalah*, ia membedakan kepentingan publik yang valid; dan ia menyaring 'urf (adat) serta membimbing *sadd al-dzara'i*. Aplikasi kontemporer di Malaysia dan Indonesia menunjukkan signifikansi praktis *maqasid*. Dalam keuangan Islam, prinsip *maqasid* membimbing evaluasi mata uang kripto dan sukuk digital. Munculnya "ijtihad berorientasi *maqasid*" merepresentasikan inovasi metodologis yang mengintegrasikan *ushul al-fiqh* tradisional dengan pertimbangan *maqasid*. Penelitian ini memperjelas bahwa *maqasid al-syariah* berfungsi bukan sebagai sumber hierarkis terpisah melainkan sebagai kerangka integral yang meresapi semua tingkat derivasi hukum. Temuan menunjukkan metodologi *ushul al-fiqh* tradisional, ketika diintegrasikan dengan tepat dengan prinsip *maqasid*, tetap memadai untuk merealisasikan tujuan syariah dalam konteks modern, meskipun memerlukan aplikasi dinamis yang responsif terhadap realitas kontemporer.

Kata Kunci: *Maqasid al-Shariah*, Teori Hukum Islam, Fikih Islam, Sumber-sumber Hukum Islam, Hukum Islam Kontemporer

Introduction

Maqasid al-shariah, referring to the higher objectives of Islamic law, has long been recognized as a crucial concept in Islamic legal thought. From the perspective of legal argumentation, *maqasid al-shariah* plays a pivotal role in Islamic jurisprudence. It serves as a fundamental basis and foundational framework for legal reasoning, particularly in addressing issues not explicitly delineated in the primary textual sources of the Quran and Hadith. The argumentative validity of *maqasid al-shariah* is evident through its function in

preserving the five essential elements of human existence, namely: religion, life, intellect, lineage and property.¹

The jurisprudential significance of *maqasid al-shariah* is manifest in its capacity to provide a hermeneutical framework for deriving legal rulings, especially in cases where explicit textual evidence is absent. This teleological approach to Islamic law underscores the importance of understanding the overarching objectives of Shariah in the process of legal deduction and application. Moreover, the epistemological validity of *maqasid al-shariah* is substantiated by its comprehensive approach to safeguarding the quintessential aspects of human welfare. This holistic paradigm encompasses the protection and promotion of religious beliefs, the sanctity of human life, the cultivation of intellectual faculties, the preservation of familial and social structures and the safeguarding of material resources. These five fundamental objectives collectively form the cornerstone of Islamic legal theory and practice, providing a robust framework for juridical deliberation and ethical considerations in Islamic law.²

However, the precise position of *maqasid* within the hierarchy of Islamic legal sources and its exact role in the process of legal derivation have not been comprehensively elucidated by earlier Islamic scholars and jurists. This ambiguity has given rise to various questions and challenges in the application of *maqasid al-shariah* in contemporary contexts.

Although the concept of *maqasid* has existed since the early days of Islam, its recognition as a significant component in *usul al-fiqh* has undergone a gradual and non-uniform evolution. Al-Juwayni, in his "*Al-Burhan fi Usul al-Fiqh*", is considered among the earliest scholars to discuss *maqasid* systematically within the context of *usul al-fiqh*.³ His student, Al-Ghazali, further developed this concept in "*Al-Mustasfa*", linking *maqasid* with the concept of *maslahah*.⁴ Al-Shatibi, in "*Al-Muwafaqat*", brought about a major innovation by establishing *maqasid* as a fundamental basis in *usul* theory, asserting that understanding

¹ Zarul Arifin, "Kehujahan *maqasid al-syari'ah* dalam filsafat hukum Islam," *AL-ADALAH: Jurnal Syariah dan Hukum Islam* 5, no. 2 (2020); Ibrahim Musa Al-Shatibi, *Al-Muwafaqat Fi Usul al-Shariah* (Beirut: Dar al-Kotob al-Ilmiyah, 2004).

² Muhammad Nazir Alias et al., "Scientific approach as the basis for the formation of *maqāsid al-sharī'ah* concept and principles: a comparative study," *Malaysian Journal of Syariah and Law (MJSL)* 12, no. 2 (2024).

³ Abd al-Malik Abdullah Al-Juwayni, *Al-Burhan Fi Usul al-Fiqh*, ed. Abd al-Adhim Mahmud Al-Dib (Qatar: Dar al-Wafa, 1997).

⁴ Muhammad Muhammad Al-Ghazali, *Al-Mustasfa Min Ilm al-Usul* (Beirut: Dar al-Kotob al-Ilmiyah, 1993).

maqasid is an essential prerequisite for a *mujtahid* (jurist capable of independent reasoning).⁵

However, despite these significant developments, they have not fully resolved the question of the precise position of maqasid within the hierarchy of Islamic legal sources. Is maqasid on par with primary sources such as the Quran and Sunnah? Or does it function merely as an interpretative tool? How does maqasid interact with secondary sources such as *qiyas*, *istihsan* and *maslahah mursalah*? These questions have not been comprehensively addressed by earlier scholars. More pressingly, in the context of an increasingly complex modern world, questions arise about how maqasid can be utilized to address contemporary issues not directly discussed in classical texts. Have the traditional sources and methodological tools of Islamic jurisprudence that were established and extensively discussed by classical Muslim scholars - specifically *qiyas*, *istihsan* and *maslahah mursalah* - truly succeeded in achieving and realizing the higher objectives and purposes of Islamic law (maqasid al-shariah) or have they fallen short in this regard?? Or are new approaches required?

This study aims to examine and analyze the actual position of maqasid al-shariah within the framework of Islamic legal sources. It will assess how maqasid interacts with other legal sources and how it can be effectively utilized in the process of legal derivation, particularly in addressing contemporary issues. The study will also investigate whether the traditional approach to *usul al-fiqh* is still adequate for realizing maqasid in the modern context or whether methodological reforms are necessary. By examining these questions, this research seeks to fill the gap in our understanding of the position and role of maqasid al-shariah within Islamic legal sources. It aims to provide a clearer and more comprehensive framework for the application of maqasid in contemporary Islamic legal reasoning, thereby ensuring the relevance and efficacy of Islamic law in facing modern-day challenges.

The significance of this study lies in its potential to contribute to the ongoing scholarly discourse on the role of maqasid in Islamic legal theory and practice. By clarifying the position of maqasid within the hierarchy of legal sources and its interaction with other methodological tools in *usul al-fiqh*, this research can provide valuable insights for jurists, scholars and policymakers engaged in Islamic legal reasoning and the formulation of contemporary *fatawa* (legal opinions).

Moreover, this study's exploration of the adequacy of traditional *usul al-fiqh* methodologies in realizing maqasid in the modern context could potentially pave the way for methodological innovations in Islamic legal theory. Such innovations could enhance the capacity of Islamic law to address complex

⁵ Al-Shatibi, *Al-Muwafaqat Fi Usul al-Shariah*; Ahmad Al-Raysuni, *Nazariyyah al-Maqasid 'Inda al-Imam Al-Shatibi*, 2 ed. (Herndon: The International Institute of Islamic Thought, 1992).

contemporary issues while maintaining fidelity to its core principles and objectives.

In essence, this research endeavors to bridge the gap between classical Islamic legal theory and contemporary legal challenges, offering a nuanced understanding of how *maqasid al-shariah* can be effectively positioned and utilized within the framework of Islamic legal sources to ensure the continued relevance and applicability of Islamic law in the modern world.

Maqasid al-shariah originates directly from the Quran and Sunnah through a process called *istiqra'*, involving comprehensive study of Shariah texts⁶. Al-Ghazali emphasizes that *maqasid* is known through the Quran, Sunnah and *Ijma'*, representing the overall implicit meaning (*mafhum kulli*) of the entire corpus of Shariah texts.⁷ Al-Shatibi states that *maqasid* holds high epistemic authority as it derives from countless textual proofs, making it a robust conclusion rather than free interpretation.⁸ Thus, *maqasid* represents the essence and main objectives implicit in revelatory texts, serving as an important framework for understanding and applying Islamic law in modern contexts.

Maqasid al-shariah serves as a fundamental guide in Islamic legal derivation, enabling jurists to formulate rulings based on underlying purposes rather than literal understanding alone. As demonstrated by Sabir and Muher⁹, it functions as a bridge between immutable texts and changing societal realities, serving as an essential instrument in both *ijtihad istinbati* and *ijtihad tatbiqi*. *Maqasid* maintains Islamic law's flexibility while preserving fundamental principles, resolves conflicts between legal texts through *tarjih* and encourages development of responsive legal methodology, evident in the emergence of *ijtihad maqasidi* by scholars like al-Shatibi.¹⁰

The Rashidun Caliphate, particularly Abu Bakr and Umar, demonstrated the significance of *maqasid al-shariah* in their jurisprudential decisions and actions. Their approach reflected a profound understanding of the primary purposes of shariah and its importance in safeguarding the welfare of the Muslim community. For instance, Umar's decision to discontinue zakat distribution to recent converts illustrates the adaptability of Islamic law to changing societal circumstances, provided it aligns with the *maqasid al-shariah*.¹¹ This underscores

⁶ Alias Muhammad Nazir et al., "Scientific approach as the basis for the formation of *maqāṣid al-sharī'ah* concept and principles: A comparative study," *Malaysian Journal of Syariah and Law (MJSJL)* 12, no. 2 (2024).

⁷ Al-Ghazali, *Al-Mustasfa Min Ilm al-Usul*.

⁸ Al-Shatibi, *Al-Muwafaqat Fi Usul al-Shariah*.

⁹ Muhammad Sabir and Abdul Muher, "Maqasid syariah dan metode penetapan hukum dalam konteks kekinian (memahami korelasi antara keduanya)," *TAHKIM* 17, no. 1 (2021).

¹⁰ Al-Shatibi, *Al-Muwafaqat Fi Usul al-Shariah*.

¹¹ Ahmad al-Khurasani Al-Bayhaqi, *Al-Sunan al-Kubra*, ed. Muhammad Abd al-Qadir Ata (Beirut: Dar al-Kotob al-Ilmiyah, 2003).

the importance of flexibility in applying Islamic law to ensure its relevance in addressing contemporary challenges.

Umar's decision to refrain from distributing war-acquired lands to the army, instead imposing the tax (*kharaj*),¹² exemplifies the prioritization of public welfare over individual interests. This action not only ensured a more equitable distribution of wealth but also secured a sustainable revenue source for the Islamic state, aligning with the *maqasid al-shariah* in preserving wealth and economic stability. Similarly, Umar's imposition of zakat on horses¹³ demonstrates the capacity of Islamic law to evolve in response to novel situations for the benefit of society.

Regarding social and moral issues, Umar's prohibition of marriage to women of the Book¹⁴ and his ruling on the irrevocability of triple *talaq* pronounced in one instance¹⁵ highlight the importance of *maqasid al-shariah* in shaping a moral society and protecting the institution of family. These decisions emphasize that legal rulings are not merely based on literal interpretations of texts but also consider long-term social and moral implications. The increase in the punishment for alcohol consumption further illustrates how laws can be adjusted to more effectively achieve *shariah* objectives within contemporary contexts.¹⁶

Uthman's decision to capture stray camels,¹⁷ despite its apparent contradiction with a hadith, exemplifies the importance of balancing textual evidence with current realities. This indicates the caliphs' understanding of the need to interpret and apply Islamic law within a broader context, always considering *maqasid al-shariah* as a guiding principle.

In conclusion, the approach of the Rashidun Caliphate in determining laws based on *maqasid al-shariah* demonstrates the concept's importance in ensuring Islamic law remains relevant, just and capable of addressing contemporary issues. It proves that *maqasid al-shariah* is not merely theoretical but serves as a practical foundation for dynamic and responsive legal determinations that meet societal needs. This approach enables Islamic law to continually evolve and adapt to changing times while maintaining its fundamental principles and primary objectives.

¹² Ya'qub Abu Yusuf, *Kitab al-Kharaj* (Cairo: Matba'ah al-Salafiyah, 1933); Ali Muhammad Al-Mawardi, *Al-Hawi al-Kabir Fi Fiqh Madhhab al-Imām al-Syafi'i Wa Huwa Syarh Mukhtasar al-Muzani*, ed. Ali Muhammad Mu'awwad and Adil Ahmad Abd Al-Mawjud (Beirut: Dar al-Kotob al-Ilmiyah, 1999).

¹³ Yusuf Abdullah Ibn Abdul Barr, *Al-Istidhkar*, ed. Salim Muhammad 'Ata and Muhammad 'Ali Mu'awwad (Beirut: Dar al-Kutub al-Ilmiyyah, 2000).

¹⁴ Abd al-Razzaq Humam Al-Humayri Al-San'ani, *al-Musannaf*, ed. Habib al-Rahman Al-Azami (Beirut: al-Maktab al-Islami, 1982).

¹⁵ Ibn Hajjaj Al-Naysaburi Muslim, *Sahih Muslim*, ed. Abu Qutaybah Nazar Muhammad Al-Faryabi (Riyadh: Dar Al-Tayyibah, 2006).

¹⁶ Ahmad Muhammad Al-Tahawi, *Sharh Ma'ani Al-Athar* (Cairo: Alam El-Kotob, 1994).

¹⁷ Ibn Abdul Barr, *Al-Istidhkar*.

The Importance of *Maqasid al-Shariah* and Its Functions

Maqasid al-Shariah represents the higher objectives of Islamic law, serving as the cornerstone of Islamic jurisprudence that promotes human welfare while addressing contemporary challenges. This framework enables scholars to interpret Islamic law focusing on substance over form, as demonstrated in financial contracts where scholars evaluate both technical *Shariah* compliance and broader objectives of protecting wealth and economic justice. The Malaysian Islamic banking system exemplifies this, evaluating products against specific prohibitions like *riba* and broader economic well-being objectives.¹⁸

In social contexts, *Maqasid al-Shariah* strengthens family institutions through marriage regulations that prevent illegal marriages via proper documentation and guardian consent¹⁹ and evaluates traditional customs like Sasak divorce practices (*beseang*) against principles protecting family welfare.²⁰ The framework promotes peaceful coexistence by emphasizing justice, freedom, and equality,²¹ with Manas and Siddeek showing how these principles foster social harmony across cultures.²²

For international relations, *Maqasid al-Shariah* serves as an evaluative framework for Islamic countries assessing global treaties' alignment with Islamic values²³. The ethical dimensions extend to personal spiritual development, where Norman and Ruhullah explore how soul purification (*tazkiyat al-nafs*) connects with achieving higher *Shariah* objectives,²⁴ recognizing that legal compliance alone is insufficient without internalizing ethical values.

Contemporary developments have expanded *Maqasid* beyond traditional boundaries, with Tazul Islam proposing *Maqasid al-Qur'an* as a broader paradigm

¹⁸ Mohd Shukor Bin Mohd Ishak and Fadhilah Adibah Binti Ismail, "The Role of *Maqasid Al-Shari'ah* in Applying Fiqh Muamalat into Modern Islamic Banking in Malaysia," *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020).

¹⁹ Rafeah Saidon et al., "Preventing illegal marriages in the light of *Maqasid Al-Shariah*," *Pertanika Journals* 25, no. S (2017).

²⁰ Doni Azhari et al., "Beseang (Customary Divorce) in Sasak Society from the Perspective of *Maqasid Al-Shariah*," *Malaysian Journal of Syariah and Law* 12, no. 3 (2024).

²¹ Mursyid Djawas and Sri Astuti A. Samad, "Conflict, Traditional, and Family Resistance: The pattern of Dispute Resolution in Acehnese Community According to Islamic Law " *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 1 (2020).

²² Shayuthy Abdul Manas and Mohamed Ibrahim Mohamed Siddeek, " Peaceful Co-existence in The Light of Objectives of *Sharia'h*," *Global Journal Al-Thaqafah (GJAT)* 6, no. 113-126 (2016).

²³ M. L. Mohd Yusob et al., "Maqasid al-Shariah as a Parameter for Islamic Countries in Screening International Treaties Before Ratification: An Analysis," *Pertanika Journal of Social Sciences & Humanities* 23, no. S (2015).

²⁴ Nurul Ain Norman and Mohammad Eisa Ruhullah, "Exploring The Ethical Dimensions of Fiqh: The Role of The Soul in Achieving *Maqasid Al-Shari'ah*," *Al-Shajarah: Journal of The International Institute of Islamic Thought and Civilization (ISTAC)* 29, no. 1 (2024).

encompassing entire Islamic discourse.²⁵ This expansion includes integrating Maqasid with ESG principles in Takaful operations²⁶. Recent scholarship demonstrates practical applications in family law, including inheritance rights of children born out of wedlock and marriage compatibility concepts.²⁷

Community development integration includes zakat empowerment programs for fishing communities and family resilience in post-disaster contexts²⁸. Modern applications address domestic violence prevention and digital age challenges, with studies on Applied Behavior Analysis therapy for autistic children showing how Maqasid frameworks guide modern therapeutic approaches within Islamic ethical parameters.²⁹

Sources of Islamic Law

Islamic law sources form the foundation of Islamic legislation and are divided into agreed-upon and disputed sources. The agreed-upon sources (*Muttafaq 'Alaihi*) consist of four primary sources:

The Quran serves as the primary source, encompassing both general principles (justice, proportional punishment, trade permissibility) and specific detailed laws (inheritance distribution, hudud penalties, marriage prohibitions)³⁰. This dual approach enables the Quran to function comprehensively, establishing timeless principles while providing detailed legal guidance.³¹

²⁵ Tazul Islam, "Expansion of Maqasid Thought Beyond Maqasid Al-Shariah: Maqasid Al-Quran As A New Paradigm," *Hamdard Islamicus* 45, no. 4 (2022).

²⁶ Fahru Azwa Mohd Zain et al., "Integrating environmental, social and governance (ESG) principles with Maqasid al-Shariah: a blueprint for sustainable takaful operations," *International Journal of Islamic and Middle Eastern Finance and Management* 17, no. 3 (2024).

²⁷ Anas Maulana et al., "Inheritance Rights of Nasabiyyah Children Born Out of Wedlock According to Islamic Family Law," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024); Zuliza Mohd Kusrin et al., "Muslim in Malaysia Understanding in Regards to the Concept of Compatibility (Kafa'ah) in Islamic Marriage," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024).

²⁸ Hukmiah Husain et al., "Zakat and Empowerment of the Bajo Tribe Fishing Community in Bone, South Sulawesi: Collaboration between BAZNAS and the Ministry of Religion," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024); Imron Rosyadi et al., "Realizing Post-Disaster Sakinah Families: Analysis of the Resilience of Semeru Eruption Survivors' Families at the Relocation Site from the Maqāṣid al-Sharī'ah Perspective," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024).

²⁹ Siti Nurjanah et al., "Mitigating the Digital Age Impact: Collaborative Strategies of State and Religious Institutions for Family Harmony in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024); Raihana Zainal Abidin and Nur Wakhidah Muhammad Nazir Alias, "The Importance of Applied Behavior Analysis (ABA) Therapy in Nurturing Children with Autism Spectrum Disorder (ASD) According to Maqāṣid al-Sharī'ah," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024), p. 742-767.

³⁰ Muhammad Mustafa Al-Zuhayli, *Al-Wajiz Fi Usul al-Fiqh*, 2 ed. (Damascus: Dār al-Khayr, 2006); Wahbah Al-Zuhayli, *Usul al-Fiqh al-Islami* (Dimashq: Dar El Fikr, 1986).

³¹ Al-Zuhayli, *Usul al-Fiqh al-Islami*; Abdullah Yusuf Al-Anzi, *Taysir Ilm Usul Al-Fiqh* (Beirut: Muassasah al-Rayyan, 1997).

The Sunnah of the Prophet, the second source, encompasses the Prophet Muhammad's sayings, actions and approvals, serving to clarify and complement Quranic laws. It comprises three types: *Sunnah Qauliyyah* (spoken hadiths like "actions are judged by intentions"), *Sunnah Fi'liyyah* (Prophet's worship practices and actions) and *Sunnah Taqririyyah* (Prophet's approval of companions' actions through silence or consent). These three types provide comprehensive guidance complementing Quranic teachings.³²

Ijma' represents the consensus of mujtahids from the Muslim community on specific legal rulings. It occurs in two forms: *ijma' sarih* (explicit agreement through words or actions) and *ijma' sukuti* (some scholars issue rulings while others remain silent). While *ijma' sarih* is widely accepted, *ijma' sukuti* remains debated - accepted by Hanafi, Maliki and Hanbali schools but rejected by Shafi'i and Zahiri schools³³.

Qiyas, the fourth source, involves analogical reasoning between cases lacking explicit texts and those with texts based on shared '*illah* (legal cause)³⁴. Used when no clear text exists from Quran, Sunnah or *ijma'*, *qiyas* allows extending rulings - for example, analogizing alcohol prohibition to drugs based on their shared intoxicating nature.

The disputed sources (*Mukhtalaf Fih*) of Islamic law consist of four main categories that scholars debate regarding their validity and application:

Istihsan represents a legal methodology where a qualified jurist (*mujtahid*) chooses to abandon an apparent analogical reasoning (*qiyas jali*) in favor of a less obvious but more suitable analogy (*qiyas khafi*) or creates an exception to a general principle when compelling evidence supports such departure. Primarily used by the Hanafi school, it includes choosing between differing *qiyas* and making exceptions for public interest. For example, while trustees generally aren't liable for damage without negligence, *istihsan* makes general workers like mechanics responsible for client property damage unless unavoidable, protecting public interests despite differing from general principles.³⁵

Maslahah Mursalah refers to interests not specifically mentioned in shariah texts.³⁶ It comprises three types: *maslahah mu'tabarah* (shariah-recognized interests like protecting life), *maslahah mulghah* (shariah-rejected interests like usury) and *maslahah mursalah* (interests lacking specific texts like prisons or military registration during Umar's time)³⁷. Shafi'i and Hanafi schools

³² Al-Zuhayli, *Usul al-Fiqh al-Islami*.

³³ Al-Zuhayli, *Usul al-Fiqh al-Islami*.

³⁴ Al-Zuhayli, *Usul al-Fiqh al-Islami*; Al-Ghazali, *Al-Mustasfa Min Ilm al-Usul*.

³⁵ Al-Zuhayli, *Al-Wajiz Fi Usul al-Fiqh*.

³⁶ Muhammad Said Ramadan Al-Buti, *Dawabit al-Maslahah Fi al-Shariah al-Islamiyyah* (Beirut: Mu'assasah al-Risalah, 1982).

³⁷ Al-Ghazali, *Al-Mustasfa Min Ilm al-Usul*.

reject it as independent proof, while Maliki and Hanbali schools accept it for addressing societal needs³⁸.

'*Urf* (custom) refers to widely accepted societal practices³⁹. It includes '*urf sahih* (valid customs not contradicting Quran or Sunnah, like removing shoes indoors) and '*urf fasid* (invalid customs contradicting texts or causing harm, like *usury*). Hanafi and Maliki schools accept it as independent source, while Shafi'i views it as secondary. Acceptance requires widespread practice and non-contradiction of texts or *ijma'*.⁴⁰

Sadd al-dhara'i involves prohibiting permissible matters likely leading to harm or prohibited actions. Maliki and Hanbali schools accept it as law source, while Hanafi and Shafi'i reject it unless based on shariah evidence. All scholars accept examples like prohibiting insulting non-Muslim idols to prevent insulting Allah.⁴¹

These disputed sources enable Islamic law to address contemporary issues lacking clear texts, with usage varying by school of thought, ensuring shariah remains relevant while adhering to fundamental principles.

The methodology of this study incorporates several approaches to comprehensively analyze the position of *maqasid al-shariah* within the sources of Islamic law. Document analysis is extensively employed throughout the study, particularly in examining primary sources such as the Quran, Sunnah and the works of both classical and contemporary Islamic scholars. Comparative analysis is utilized in sections investigating the interaction of *maqasid* with various Islamic legal sources, including *ijma'*, *qiyas*, *istihsan*, *maslahah mursalah*, '*urf* and *sadd al-dhara'i*.

Conceptual and thematic analyses are employed in parts that delve into the core concepts of *maqasid* and identify significant themes in discussions regarding its position within Islamic legal sources. An interdisciplinary approach is implemented in sections integrating understanding from the fields of *usul al-fiqh* (principles of Islamic jurisprudence), *fiqh* (Islamic jurisprudence) and *maqasid al-shariah*.

This combination of methodologies facilitates a deep and multidimensional analysis, yielding a comprehensive understanding of the position of *maqasid al-shariah* within the framework of Islamic legal sources. The multi-faceted approach allows for a nuanced examination of both theoretical foundations and practical applications of *maqasid* in Islamic legal theory and practice. By employing these diverse methodological tools, the study aims to

³⁸ Al-Zuhayli, *Usul al-Fiqh al-Islami*; S. Syaripuddin, "Maslahat as considerations of islamic law in view Imam Malik," *Samarah* 4, no. 1 (2020).

³⁹ Al-Zuhayli, *Usul al-Fiqh al-Islami*.

⁴⁰ Al-Zuhayli, *Usul al-Fiqh al-Islami*.

⁴¹ Al-Zuhayli, *Usul al-Fiqh al-Islami*.

provide a holistic view of the subject matter, bridging historical perspectives with contemporary relevance and theoretical constructs with practical implications.

The intricate relationship between *usul al-fiqh* (principles of Islamic jurisprudence) and *maqasid al-shariah* (objectives of Islamic law) represents a fundamental aspect of Islamic legal theory. This relationship is characterized by a dynamic interplay that significantly influences the interpretation and application of Islamic law in both historical and contemporary contexts. *Usul al-fiqh*, as the methodological framework for deriving Islamic legal rulings, provides the essential tools and principles for interpreting primary sources of Islamic law, namely the Quran and Sunnah. It encompasses a range of hermeneutical techniques, including linguistic analysis, analogical reasoning (*qiyas*) and consensus (*ijma'*), among others⁴². These methodologies enable jurists to extrapolate legal rulings from textual sources and apply them to novel situations.

Maqasid al-shariah, on the other hand, represents the higher objectives and overarching purposes of Islamic law. Traditionally categorized into five primary objectives - the preservation of faith, life, intellect, lineage and property - *maqasid al-shariah* provides a teleological framework for understanding the intent behind divine legislation.

An Analysis of the Position of Maqasid within the Sources of Islamic Law

a) The Quran

The relationship between *maqasid al-shariah* and the Quran is fundamental, with the Quran serving as the primary source of Islamic jurisprudence through complex textual exegesis and teleological considerations. The Quran functions not merely as legal injunctions but as a comprehensive guide embodying principles that form *maqasid al-shariah*'s foundation.

Key aspects of this relationship include:

- i. **Textual Foundations:** Quranic verses directly articulate divine legislation purposes, such as Islam being sent as mercy to all worlds (21:107), providing the basis for *maslahah* central to *maqasid* theory. Verses emphasizing justice and prohibition of wrongdoing (16:90) construct the ethical framework underpinning *shariah* objectives⁴³.
- ii. **Thematic Coherence:** Extracting *maqasid* involves comprehensive study of recurring themes, commands and narratives. Scholars analyze verses holistically to discern overarching goals behind specific injunctions⁴⁴.

⁴² Al-Ghazali, *Al-Mustasfa Min Ilm al-Usul*; Al-Zuhayli, *Usul al-Fiqh al-Islami*.

⁴³ Muhammad Tahir Ibn Ashur, *Maqasid al-Shariah al-Islamiyyah*, ed. Muhammad al-Habib Ibn al-Khujah (Qatar: Wizarah al-Awqaf Wa al-Shu'un al-Islamiyyah, 2004).

⁴⁴ Nu man Jughaym, *Turuq al-Kashf An Maqasid al-Shari* (Amman: Dar al-Nafa'is, 2014); Mithaq Sadiq Mahmud Al-Maliki, "Turuq al-Kashf An Maqasid al-Shariah Ind al-Buti: Dirasah Wa al-Tatbiq," in *Maqasid Al-Shari'ah: Konsep dan Pendekatan*, ed. and and (Kuala Lumpur: Jabatan Fiqh dan Usul Akademi Pengajian Islam Universiti Malaya, 2016).

- iii. **Methodological Basis:** The Quran provides methodological foundation through concepts like *maslahah*, *'adl* (justice) and *ihsan*, becoming guiding principles for determining maqasid. Verses emphasizing intellect and reflection (3:190-191) justify using *ijtihad* in contemporary applications⁴⁵.
- iv. **Structural Implications:** The Quran's structure reflects maqasid importance by accompanying legal rulings with explanations of their wisdom, indicating that understanding objectives is crucial as literal compliance⁴⁶.
- v. **Hermeneutical Approaches:** This relationship has generated various hermeneutical approaches, from literal interpretations to contextual readings, leading to debates on balancing textual fidelity with higher objectives⁴⁷.
- vi. **Contemporary Applications:** The dynamic relationship enables flexibility in applying Islamic law to novel situations through *ijtihad* aligned with shariah's spirit and purpose⁴⁸.

The organic, inseparable relationship between maqasid al-shariah and the Quran ensures Islamic law remains faithful to scriptural origins while responsive to societal needs, maintaining relevance while preserving fundamental principles.

b) The Sunnah

The Sunnah, encompassing the sayings, actions and approvals of Prophet Muhammad (peace be upon him), constitutes the second primary source of Islamic jurisprudence after the Quran⁴⁹. It complements the Quran and plays a pivotal role in shaping maqasid al-shariah, providing practical examples and applications of divine guidance.

Key aspects of the relationship between Sunnah and maqasid al-shariah include:

- i. **Textual Foundations:** Numerous hadiths articulate the purposes behind divine legislation. The hadith “لا ضرر ولا ضرار” (There should be neither harming nor reciprocating harm) provides foundational basis for preventing harm, central to maqasid theory⁵⁰. Similarly, the hadith “إنما

⁴⁵ Ibn Ashur, *Maqasid al-Shariah al-Islamiyyah*.

⁴⁶ Muhammad Saad Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyah* (Al-Riyadh: Dar al-Hijrah, 1998); Nur al-Din Mukhtar Al-Khadimi, *Ilm al-Maqasid al-Shariah* (al-Riyadh: Obekan Publishers & Booksellers, 2001).

⁴⁷ Yusuf Al-Qaradawi, *Dirasah fi Fiqh Maqasid al-Shariah: Bayna al-Maqasid al-Kuliyyah wa al-Nusus al-Juz'iyah*, 3 ed. (Cairo: Dar al-Shuruq, 2008).

⁴⁸ Nur al-Din Mukhtar Al-Khadimi, *Al-Ijtihad al-Maqasidi: Hujjiyyatuh, Dawabituh, Majalatuh* (Qatar: Wizarah al-Awqaf Wa al-Shu'un al-Islamiyyah, 1998).

⁴⁹ Al-Ghazali, *Al-Mustasfa Min Ilm al-Usul*.

⁵⁰ Muhammad al-Qazwini Ibn Majah, *Sunan Ibn Majah*, ed. Shuayb Al-Arna'ut et al. (Beirut: Dar al-Risalah al-Alamiyyah, 2009). Hadith no. 2341.

- الأعمال بالنيات” (Actions are judged by intentions) highlights the importance of internal states aligning with external actions in maqasid analysis⁵¹.
- ii. **Thematic Coherence:** Extracting maqasid from Sunnah involves comprehensive study of recurring themes within hadith literature. Scholars analyze hadiths holistically to discern overarching goals behind specific injunctions, revealing objectives related to wealth preservation and social justice⁵².
 - iii. **Methodological Basis:** The Sunnah provides methodological foundations through concepts like *maslahah*, justice and *ihsan*. The Prophet's endorsement of Mu'adh ibn Jabal's use of *ijtihad* when sent to Yemen justifies independent reasoning in understanding and applying maqasid in contemporary settings⁵³.
 - iv. **Practical Implementation:** The Sunnah demonstrates how maqasid are realized in daily life, reflecting balance between strict adherence to law and consideration of circumstances. During hardship, the Prophet permitted concessions, embodying the maqasid of preventing hardship⁵⁴.
 - v. **Structural Implications:** Hadith collections often accompany legal rulings with explanations of their wisdom, indicating that understanding objectives is as crucial as literal compliance⁵⁵.
 - vi. **Hermeneutical Approaches:** The relationship has generated various hermeneutical approaches, from literal interpretations to contextual readings. Maliki and Hanafi schools often prioritize the spirit and objectives when literal interpretations might lead to hardship.
 - vii. **Contemporary Applications:** This dynamic relationship allows flexibility in addressing contemporary issues. Bioethical issues like organ transplantation are approached by considering the maqasid of preserving life⁵⁶. Contemporary Islamic legal methodology has evolved to address complex social issues, including the application of *talfiq* as a method for legal solutions.⁵⁷

⁵¹ Muhammad Ismail Al-Bukhari, *Sahih al-Bukhari*, ed. Mustafa Dib Al-Bugha (Damascus: Dar al-Yamamah, 1993). Hadith no. 1.

⁵² Al-Qaradawi, *Dirasah fi Fiqh Maqasid al-Shariah: Bayna al-Maqasid al-Kuliyyah wa al-Nusus al-Juz'iyyah*; Jasser Auda, "Madkhal Maqasidi Li al-Ijtihad: Hall al-Ta'aruḍ Wa Dalalah al-Maqasid Unmudhjayn," *Islamiyyah al-Marifah* 71 (2013).

⁵³ Sulayman Abu Dawud, *Sunan Abi Dawud* (Cairo: Dar al-Hadith, 1988). Hadith no. 3592.

⁵⁴ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyyah*.

⁵⁵ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyyah*.

⁵⁶ Al-Qaradawi, *Dirasah fi Fiqh Maqasid al-Shariah: Bayna al-Maqasid al-Kuliyyah wa al-Nusus al-Juz'iyyah*.

⁵⁷ Mohd Hafiz Jamaludin, Ahmad Hidayat Buang, and Arip Purkon, "Talfiq as A Method for Legal Solutions in Contemporary Islamic Law," *AHKAM: Jurnal Ilmu Syariah* 24, no. 1 (2024).

- viii. **Epistemological Considerations:** Deriving maqasid from Sunnah raises questions about hadith authenticity and human understanding of divine intent. Scholars scrutinize chains of narration and texts to ascertain reliability⁵⁸.

The relationship between maqasid al-shariah and Sunnah is organic and inseparable, ensuring Islamic law remains faithful to foundational sources while responsive to evolving societal needs, maintaining relevance while preserving fundamental principles.

c) *Ijma'*

Ijma' (scholarly consensus) holds a significant position in relation to maqasid al-shariah through several key aspects:

- i. **Foundation of Maqasid al-Shariah:** *Ijma'* serves as a foundational source for understanding shariah objectives. By examining consensus reached by companions and subsequent generations, scholars can identify underlying objectives behind rulings. Since companions received shariah directly from the Prophet and understood its wisdom, their consensus reveals embedded maqasid, confirming these objectives as divine will rather than personal opinions⁵⁹.
- ii. **Limiting Generality of Texts:** When general texts may contradict maqasid al-shariah, *ijma'* helps restrict interpretations to align with shariah objectives⁶⁰. For example, while Quranic verses command fulfilling promises and contracts, scholarly consensus establishes that contracts must not contain prohibited elements or conflict with Islamic law principles, especially when they could undermine the preservation of religion⁶¹.
- iii. **Clarifying Ambiguous Texts:** *Ijma'* clarifies general (*mujmal*) texts based on alignment with maqasid al-shariah. For instance, the Quranic command to establish prayer was specified through companions' consensus as five daily prayers with designated times and methods, realizing the objective of preserving religion⁶².
- iv. **Preventing Harm:** *Ijma'* can prohibit apparently permissible matters that could lead to harm and contradict maqasid. Scholars reached consensus prohibiting selling grapes to winemakers because, although selling grapes is generally permissible, selling to those making alcohol contradicts the

⁵⁸ Al-Ghazali, *Al-Mustasfa Min Ilm al-Usul*.

⁵⁹ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyyah*.

⁶⁰ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyyah*.

⁶¹ Muhammad Ahmad al-Qurtubi Ibn Rushd al-Hafid, *Bidayah al-Mujtahid wa Nihayah al-Muqtasid* (Cairo: Dar al-Hadith, 2004).

⁶² Ibn Rushd al-Hafid, *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*.

objective of preserving intellect, thus blocking pathways to prohibited actions.

- v. **Establishing New Laws:** For new issues lacking specific textual evidence, scholars engage in *ijtihad* based on general *maqasid*, focusing on benefit and harm prevention, then reach *ijma'*. Examples include establishing price controls during oppression, creating prisons and compiling the Quran to preserve *maqasid* like protecting wealth, honor and promoting religion⁶³.
- vi. **Resolving Disputes:** *Ijma'* resolves scholarly disagreements, maintaining ummah welfare and unity, which is included in *maqasid al-shariah*⁶⁴. For example, contemporary scholars' consensus declaring smoking haram based on medical evidence resolved earlier disputes, aiming to preserve life and health as primary shariah objectives.

In conclusion, *ijma'* ranks as the third most authoritative source after Quran and Sunnah, playing a crucial role in deriving rulings that realize *maqasid al-shariah*, serving as a guarantee for achieving these objectives and community welfare across time and place.

d) *Qiyas*

Maqasid al-shariah plays a crucial role in *qiyas* (analogical reasoning) within Islamic jurisprudence, ensuring legal rulings align with shariah's higher purposes. The position of *maqasid* within *qiyas* encompasses several key aspects:

- i. **Guidance in Identifying 'Illah:** *Maqasid* guides the identification of '*illah*' (legal cause) in *qiyas*. Jurists must ensure the '*illah*' aligns with *maqasid*⁶⁵. For example, alcohol's prohibition is based on its intoxicating nature ('*illah*'), serving the *maqasid* of preserving intellect. Understanding *maqasid* ensures the '*illah*' is accurate and achieves shariah objectives.
- ii. **Ensuring Suitability of Rulings:** *Maqasid* ensures rulings derived through *qiyas* are appropriate for contemporary contexts. When addressing new issues, *maqasid* provides a framework for assessing whether rulings fulfill shariah objectives⁶⁶. For instance, extending zakat to modern assets like currency and stocks maintains alignment with social justice goals. Contemporary scholarship has developed frameworks for

⁶³ Abd Al-Wahhab Khallaf, *Al-Siyasah al-Shar'iyah*, 6 ed. (Beirut: Mu'assasah al-Risalah, 1997).

⁶⁴ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyah*.

⁶⁵ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyah*; Abd al-Rahman Al-Kaylani, *Qawaid al-Maqasid Ind al-Imam al-Shatibi* (Beirut: Dar El Fikr, 2000).

⁶⁶ Yusuf Al-Qaradawi, "Bayn al-Maqasid al-Kulliyah Wa al-Nusus al-Juz'iyyah: Dirasah Fi Fiqh Maqasid al-Shariah," in *Maqasid al-Shariah al-Islamiyyah: Dirasat Fi Qadaya al-Manhaj Wa Majalat al-Tatbiq*, ed. Muhammad Sulaym Al-Awwa (London: Al-Furqan Islamic Heritage Foundation, 2006).

- analyzing modern financial instruments, including crypto assets, within Islamic parameters⁶⁷.
- iii. **Deepening Understanding of Legal Wisdom:** Maqasid enables jurists to understand the wisdom behind legal rulings, viewing law from both literal and broader ethical perspectives⁶⁸. The prohibition of *riba*, for example, is understood not merely as a financial issue but as preserving justice and societal welfare.
 - iv. **Addressing Contemporary Needs:** Since legal texts cannot address every emerging issue, maqasid provides dynamic solutions within shariah framework. Zakat laws originally referred to specific wealth types (gold, silver, livestock), but through qiyas, these extend to modern forms like stocks and bonds, realizing zakat's maqasid of wealth redistribution for social justice.
 - v. **Accommodating Human Diversity:** Maqasid in qiyas allows consideration of individual circumstances. If the '*illah*' is present, the ruling applies; if absent, it may be waived, providing flexibility and preventing hardship⁶⁹. For example, sick individuals and travellers may break their Ramadan fast based on the '*illah*' of hardship, aligning with maqasid al-shariah.
 - vi. **Establishing Consistency in Rulings:** Accurate application of maqasid in qiyas prevents contradictions among shariah rulings, maintaining Islamic law's authority⁷⁰. For instance, qisas (retribution) for intentional murder extends to indirect killing methods (poisoning, drowning) because the '*illah*' of intentional killing exists in all forms, demonstrating that Islamic law evaluates crimes based on consequences, not merely form.

In conclusion, maqasid al-shariah holds a vital position within qiyas, providing guidance in identifying '*illah*' and ensuring rulings are relevant, consistent and aligned with shariah's higher objectives. This integration enables Islamic law to evolve and meet societal needs while remaining faithful to foundational principles, achieving justice, welfare and goodness for all.

e) *Istihsan*

Istihsan represents a sophisticated legal methodology in Islamic jurisprudence, not merely personal preference⁷¹. The position of maqasid al-shariah within *istihsan* is pivotal and manifests through two primary aspects:

⁶⁷ Mustafa Omar Mohammed, Mohamed Cherif El Amri, and Ayman Mohammad Bakr, "Guiding Fiqh Analysis of Crypto Assets: A Proposed Framework," *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024).

⁶⁸ Ahmad Al-Raysuni, *Maqasid al-Maqasid* (Cairo: Dar al-Kalimah Li al-Nashr Wa al-Tawzi', 2014); Ibn Ashur, *Maqasid al-Shariah al-Islamiyyah*.

⁶⁹ Ahmad Al-Raysuni, *Al-Fikr al-Maqasidi Wa Qawa'iduh Wa Fawa'iduh* (Al-Ribat: Jaridah al-Zaman, 1999).

⁷⁰ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyyah*.

⁷¹ Al-Zuhayli, *Usul al-Fiqh al-Islami*.

i. **Preference of *Qiyas Khafi* over *Qiyas Jali*:**

Qiyas jali is explicit analogy while *qiyas khafi* is subtle analogical reasoning. *Istihsan* sometimes prioritizes *qiyas khafi* when it better aligns with maqasid al-shariah.

Example: *Agricultural Land Lease Payments*

- ***Qiyas Jali*:** Compares agricultural leases to residential rentals (payment required upfront).
- ***Qiyas Khafi*:** Compares agricultural leases to *muzara'ah* system where profit distribution occurs post-harvest⁷².
- ***Istihsan* Decision:** *Qiyas khafi* is preferred as it serves maqasid of preserving wealth and life of farmers, acknowledging their potential lack of initial capital and agricultural uncertainties. Post-harvest payments reduce risks and hardships.

ii. **2. Exemption from General Principles:**

Istihsan permits exceptions to general rules for specific cases to prevent hardship or achieve greater benefit (*maslahah*).

Example: *The Istisna' Contract*

- **General Principle:** Islamic law prohibits selling non-existent goods due to *gharar* (uncertainty).
- **Specific Case:** *Istisna'* contract (manufacturing order)⁷³.
- ***Istihsan* Decision:** Despite the general prohibition, *istihsan* allows *istisna'* contracts based on societal needs and to facilitate commerce (aligning with *hajiyyat* (complementary needs) in maqasid). This serves preserving wealth and facilitating human affairs, with specific conditions to minimize uncertainty.

In both scenarios, maqasid al-shariah guides legal decision-making. *Istihsan* involves thorough examination of Shariah objectives, allowing flexibility without compromising fundamental principles. This demonstrates Islamic law's adaptability to diverse situations and temporal changes, showing Shariah as a responsive system that addresses societal needs while adhering to core principles.

f) ***Maslahah Mursalah***

Maslahah mursalah refers to public interests identified by human reasoning without explicit textual support or rejection in Islamic law⁷⁴. It aligns with Shariah's general objectives but differs from maqasid al-Shariah, which derives directly from revealed texts. The key distinction is their origins: *maslahah mursalah* comes from human reasoning, while maqasid al-Shariah is rooted in

⁷² Abu Bakr Mas'ud Al-Kasani, *Bada'i al-Sana'i fi Tartib al-Shari'i* (Beirut: Dar al-Kotob al-Ilmiyyah, 1986).

⁷³ Ibn Rushd al-Hafid, *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*.

⁷⁴ Al-Zuhayli, *Usul al-Fiqh al-Islami*.

scripture and categorized as *masalih mu'tabarah* (benefits explicitly recognized by Islamic law).

The Shafi'i School's Approach: The Shafi'i school accepts maqasid al-Shariah for legal rulings but adopts a restrictive approach to *maslahah mursalah*⁷⁵. They ensure only public interests genuinely supporting maqasid al-Shariah are considered valid. This caution prevents deviations in legal determinations, as equating human-perceived benefits with maqasid al-Shariah risks allowing unqualified parties to define Shariah objectives based on personal inclinations⁷⁶.

Maqasid as Evaluative Framework: Maqasid al-Shariah serves as an arbiter for evaluating changing public interests, functioning as Shariah's enduring 'spirit' while *maslahah* represents its adaptable practical manifestation. For example, in evaluating modern technology for religious practices (digital Quran apps, GPS-based Qibla finders), maqasid al-Shariah determines whether these support preserving religion (*hifz al-din*).

Enabling Flexibility: Maqasid al-Shariah allows flexibility in accepting new forms of *maslahah* without compromising Islamic principles. It provides scope for *ijtihad* based on temporal and spatial changes. In contemporary financial transactions like e-commerce or digital currencies, maqasid principles such as wealth preservation (*hifz al-mal*) and transactional justice assess their Shariah compatibility. Recent Islamic banking developments demonstrate this, where shared values accommodate diverse communities while maintaining Islamic principles⁷⁷ (Alidar et al., 2024).

Catalyzing Innovation: Understanding maqasid al-Shariah encourages creative solutions for contemporary issues. In Islamic home financing, comprehension of maqasid regarding wealth preservation and usury prohibition has spurred innovations like *musharakah mutanaqisah* (diminishing partnership), meeting modern financing needs while maintaining Shariah principles.

In conclusion, maqasid al-Shariah's role in accommodating evolving *maslahah* is crucial for Islamic law's continued relevance. It guides the evaluation, filtering and acceptance of changing public interests while preserving fundamental Islamic principles, enabling Muslims to adhere to Shariah in an ever-changing world without compromising their faith's fundamental values.

g) 'Urf

The position of maqasid al-Shariah within the context of 'urf (custom) is both significant and integral. Maqasid al-Shariah serves as a filter to determine whether a particular 'urf can be accepted as 'urf *sahih* (valid custom) or should

⁷⁵ Al-Ghazali, *Al-Mustasfa Min Ilm al-Usul*.

⁷⁶ Alias Muhammad Nazir, Mokhtar Ahmad Irdha, and Mohd Kashim Mohd Izhar Ariff, *Maqasid Syariah Sebagai Asas Penentuan Hukum Syarak* (Bangi: Penerbit UKM, 2023).

⁷⁷

be rejected as '*urf fasid* (corrupt custom)⁷⁸. This is because the primary objective of Shariah is to achieve public interest (*maslahah*) and to avert harm, which lies at the core of *maqasid al-Shariah*. Customs that support the attainment of *maqasid al-Shariah* are more likely to be accepted.

For instance, the practice of providing a dowry in marriage within certain communities can be evaluated through the lens of *maqasid al-Shariah*. If this practice is seen to support the *maqasid* of wealth preservation (*hifz al-mal*) by assisting couples in starting a new life together and the *maqasid* of lineage preservation (*hifz al-nasl*) by promoting marriage, it can be accepted as '*urfsahih*. However, if the amount of the dowry becomes excessively high to the point of hindering marriage, it may be deemed contrary to *maqasid al-Shariah*.

Maqasid al-Shariah also plays a crucial role in facilitating the evolution of '*urf* in accordance with changing times and contexts, provided that such evolution does not conflict with the objectives of Shariah. For example, in the realm of *muamalat* (transactions), the custom of business has shifted from physical transactions to e-commerce. The *maqasid* of wealth preservation (*hifz al-mal*) and the principle of justice in transactions allow for the acceptance of e-commerce as a new '*urf*, as long as it meets the contractual requirements of Islam and does not contain prohibited elements such as *riba* or *gharar*.

In conclusion, the position of *maqasid al-Shariah* in the context of '*urf* serves as a primary guide in evaluating, accepting and applying '*urf* within Islamic law. It ensures that the flexibility permitted through the concept of '*urf* does not deviate from the primary objectives of Shariah. In this way, *maqasid al-Shariah* enables Islamic law to remain relevant and responsive to social changes while safeguarding the fundamental principles of Islam. This approach demonstrates the adaptability of Islamic law in addressing cultural diversity and changing times, without compromising its original purpose of achieving the welfare of humanity in this world and the hereafter.

h) *Sadd al-Dhara'i*

Maqasid al-Shariah plays a pivotal role in *sadd al-dhara'i* (blocking the means to harm), forming a foundation for comprehensive legal decision-making in Islamic jurisprudence. This relationship manifests through several key aspects (*Al-Yubi, Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyah*):

- i. **Guide for Assessing Potential Harm:** *Maqasid al-Shariah* guides assessment of potential harm from certain actions. For example, selling weapons during civil unrest is prohibited despite arms trade being fundamentally permissible, because it could exacerbate bloodshed. This

⁷⁸ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyah*.

aligns with preserving life (*hifz al-nafs*), one of the five primary objectives.

- ii. **Balancing Short-term Benefits vs Long-term Risks:** Maqasid facilitates holistic consideration of immediate benefits against future harm. The prohibition of ketum (Southeast Asian tree with addictive compounds) exemplifies this - despite potential economic benefits, it's prohibited due to detrimental effects on health, intellect and society, corresponding with preserving intellect (*hifz al-'aql*) and life.
- iii. **Adapting to Contemporary Contexts:** Maqasid enables Islamic law adaptation without compromising principles. Driving under intoxication, though non-existent in early Islamic times, is prohibited based on *sadd al-dhara'i* to preserve life and property.
- iv. **Considering Societal Implications:** Maqasid ensures decisions consider long-term societal effects beyond technical aspects. Toxic waste disposal in public water sources is prohibited despite being economical, due to harm to public health and environment, aligning with preserving life and progeny (*hifz al-nasl*).

Examples with Scholarly Consensus:⁷⁹

- **Digging holes in public roads:** Prohibited due to potential harm, preserving life
- **Placing poison in public food:** Forbidden as it endangers public lives
- **Selling grapes to winemakers:** Prohibited as it may lead to intoxicant production, preserving intellect

In conclusion, Maqasid al-Shariah's position in *sadd al-dhara'i* is highly significant, providing theoretical basis for legal decisions while ensuring alignment with Islamic law's broader purposes. This integration enables meaningful, just and relevant application of Islamic law to modern challenges while preserving Shariah's core values and primary objectives.

Contemporary Applications in Southeast Asian Context

The application of maqasid al-shariah in contemporary Islamic jurisprudence within Malaysia and Indonesia demonstrates significant practical implications for modern legal reasoning. In Malaysia, the integration of maqasid principles in Islamic banking regulations has led to innovative financial products that balance Shariah compliance with market demands.⁸⁰ The Securities Commission Malaysia's Shariah Advisory Council frequently employs maqasid-

⁷⁹ Al-Yubi, *Maqasid al-Shariah al-Islamiyyah Wa Alaqatuha Bi al-Adillah al-Shar'iyah*.

⁸⁰ Ishak and Ismail, "The Role of Maqasid Al-Shari'ah in Applying Fiqh Muamalat into Modern Islamic Banking in Malaysia."

based reasoning in evaluating new financial instruments, particularly in determining the permissibility of cryptocurrency trading and sukuk structures.⁸¹

Indonesian Islamic jurisprudence has similarly embraced *maqasid al-shariah* in addressing contemporary issues. The Indonesian Ulema Council (MUI) has utilized *maqasid* principles in formulating fatwas on modern biotechnology, including stem cell research and genetic engineering, where traditional texts provide limited guidance⁸². The preservation of life (*hifz al-nafs*) and intellect (*hifz al-aql*) as primary *maqasid* have been instrumental in these deliberations.

In family law, both Malaysian and Indonesian Islamic courts have applied *maqasid* reasoning in cases involving polygamy permissions, child custody disputes and divorce proceedings⁸³. The emphasis on protecting family welfare (*hifz al-nasl*) has led to more stringent requirements for polygamy approval and enhanced protection for women's rights in divorce settlements.

Practical Implications for Contemporary Fatwa Formulation

The position of *maqasid al-shariah* within Islamic legal sources has direct implications for contemporary fatwa formulation in Muslim-majority countries. Religious authorities increasingly rely on *maqasid*-based reasoning when addressing issues absent from classical texts, such as organ transplantation, artificial intelligence ethics and environmental protection.⁸⁴

Case Study - COVID-19 Pandemic Response: During the COVID-19 pandemic, Malaysian and Indonesian religious authorities utilized *maqasid al-shariah* to justify temporary suspension of congregational prayers and modification of Hajj procedures. The preservation of life (*hifz al-nafs*) took precedence over the literal observance of religious obligations, demonstrating the practical application of *maqasid* in crisis situations.

Case Study - Digital Islamic Finance: The emergence of digital Islamic finance platforms in both countries has required extensive *maqasid*-based analysis.⁸⁵ Regulators have evaluated blockchain-based sukuk, peer-to-peer

⁸¹ Mohammed, Amri, and Bakr, "Guiding Fiqh Analysis of Crypto Assets: A Proposed Framework."

⁸² Faroque Amin, "Applicability of Islamic methodology concerning novel issues to the organ transplantation in religious scholars' contemporary discourse," *Religions* 21, no. 670 (2021).

⁸³ Saidon et al., "Preventing illegal marriages in the light of *Maqasid Al-Shariah*."; Azhari et al., "Beseang (Customary Divorce) in Sasak Society from the Perspective of *Maqasid Al-Shariah*."

⁸⁴ Amin, "Applicability of Islamic methodology concerning novel issues to the organ transplantation in religious scholars' contemporary discourse."

⁸⁵ Mohammed, Amri, and Bakr, "Guiding Fiqh Analysis of Crypto Assets: A Proposed Framework."

Islamic financing and digital zakat collection systems through the lens of wealth preservation (*hifz al-mal*) and prevention of exploitation⁸⁶.

Methodological Implications for Modern Ijtihad

This study's findings reveal significant methodological implications for contemporary *ijtihad* processes⁸⁷. The integration of *maqasid al-shariah* with traditional *usul al-fiqh* methodologies has led to the development of what contemporary scholars term "maqasid-oriented ijtihad" (*al-ijtihad al-maqasidi*)⁸⁸.

In practice, this approach involves:⁸⁹

1. Preliminary maqasid assessment of new issues
2. Textual analysis guided by maqasid considerations
3. Analogical reasoning (*qiyas*) that prioritizes maqasid alignment
4. Evaluation of public interest (*maslahah*) within maqasid framework
5. Final ruling formulation that explicitly addresses maqasid realization

This methodology has been particularly evident in Malaysian Islamic Development Department (JAKIM) fatwa processes and Indonesian MUI deliberations, where committees now routinely conduct maqasid impact assessments before issuing religious rulings.⁹⁰

Research on *talfiq* as a method for legal solutions in contemporary Islamic law shows how maqasid principles guide the integration of different jurisprudential approaches.⁹¹ Studies on maqasid as parameters for international treaty screening demonstrate the broader applications of these principles in contemporary governance.⁹²

The expansion of maqasid thought beyond traditional boundaries, including the development of *maqasid al-Quran* as a new paradigm, reflects the

⁸⁶ Husain et al., "Zakat and Empowerment of the Bajo Tribe Fishing Community in Bone, South Sulawesi: Collaboration between BAZNAS and the Ministry of Religion."

⁸⁷ Al-Khadimi, *Al-Ijtihad al-Maqasidi: Hujjiyyatuh, Dawabituh, Majalatuh*; Usamah Muhammad Al-Shayban, "Istihmar al-Maqasid al-Shar'iyah Fi al-Ijtihad," *Majallah al-Jam'iyyah al-Fiqhiyyah al-Su'udiyyah* 17 (2013).

⁸⁸ Muhammad Sabir and Abdul Muher, "Maqasid syariah dan metode penetapan hukum dalam konteks kekinian (memahami korelasi antara keduanya)."

⁸⁹ Al-Khadimi, *Ilm al-Maqasid al-Shariah*; Jasser Auda, *Re-envisioning Islamic Scholarship: Maqasid Methodology as a New Approach* (Swansea: Claritas Books, 2021); Al-Buti, *Dawabit al-Maslahah Fi al-Shariah al-Islamiyyah*; Syaripuddin, "Maslahat as considerations of islamic law in view Imam Malik."

⁹⁰ Alias et al., "Scientific approach as the basis for the formation of maqāṣid al-sharī'ah concept and principles: a comparative study."

⁹¹ Jamaludin, Buang, and Purkon, "Talfiq as A Method for Legal Solutions in Contemporary Islamic Law."

⁹² Mohd Yusob et al., "Maqasid al-Shariah as a Parameter for Islamic Countries in Screening International Treaties Before Ratification: An Analysis."

evolving nature of maqasid applications in modern contexts⁹³. Contemporary scholarship on the ethical dimensions of fiqh emphasizes the role of spiritual considerations in achieving maqasid al-shariah⁹⁴.

Conclusion

This study has examined the position of maqasid al-shariah within Islamic legal sources, addressing a critical ambiguity that has persisted since the classical period. The research demonstrates that maqasid al-shariah does not occupy a separate hierarchical position competing with the Quran and Sunnah, but rather functions as an integral interpretative framework that permeates all levels of legal derivation. The findings reveal that maqasid maintains an organic relationship with primary sources, emerging as an inherent dimension that illuminates the divine wisdom underlying legal prescriptions. With secondary sources, maqasid serves as a calibrating mechanism: guiding the identification of *'illah* in *qiyas*, justifying departures from strict analogy through *istihsan*, distinguishing valid public interests in *maslahah mursalah*, filtering customary practices in *'urf* and preventing potential harm through *sadd al-dhara'i*. Contemporary applications in Malaysia and Indonesia demonstrate maqasid's practical significance. The COVID-19 pandemic response and the evaluation of digital financial instruments illustrate how maqasid-based reasoning enables Islamic law to address unprecedented challenges while maintaining its ethical foundations. The emergence of "maqasid-oriented *ijtihad*" represents a methodological evolution that integrates traditional *usul al-fiqh* with maqasid considerations. This research concludes that traditional *usul al-fiqh* methodologies remain fundamentally adequate for realizing shariah objectives in contemporary contexts when properly integrated with maqasid principles. The perceived inadequacy stems not from the failure of traditional tools but from their mechanical application without conscious alignment with maqasid. The study clarifies that maqasid functions not within a rigid hierarchy but as a pervasive framework operating across all legal sources, serving as the crucial bridge between textual fidelity and contextual relevance. The implications extend to contemporary Muslim jurists, who now have a coherent framework for addressing novel issues while maintaining methodological rigor, and to policymakers in Muslim-majority countries seeking to integrate Islamic legal principles with modern governance. Future research should explore more sophisticated methodologies for maqasid-based *ijtihad* and investigate applications in emerging fields such as artificial intelligence ethics and environmental law. In essence, maqasid al-shariah represents the soul that animates Islamic law - not an auxiliary concept but the golden thread weaving

⁹³ Islam, "Expansion of Maqasid Thought Beyond Maqasid Al-Shariah: Maqasid Al-Quran As A New Paradigm."

⁹⁴ Norman and Ruhullah, "Exploring The Ethical Dimensions of Fiqh: The Role of The Soul in Achieving Maqasid Al-Shari'ah."

through all sources, ensuring coherence, relevance, and fidelity to divine purposes. Its proper understanding and application remain essential for Islamic law to fulfill its mission of securing human welfare, establishing justice, and manifesting divine mercy in human affairs.

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