# ACTUALIZATIONS OF *MAQĀṢID AL-SHARIAH* IN MODERN LIFE; *MAQĀṢID AL-SHARIAH* THEORY AS A METHOD OF THE DEVELOPMENT OF ISLAMIC LAWS AND *SHARIAH* ECONOMICS

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***Abstrak:*** *Artikel ini bertujuan mengkaji pemikiran Imam al-Syatibi tentang maqāṣid al-sharīah dan aktualisasinya dalam kehidupan modern. Metode yang digunakan adalah kualitatif, sedangkan analisis data yang digunakan adalah content analysis yakni sebagai sebuah upaya menganalisis substansi pemikiran maqāṣid al-sharīah, kemudian dikorelasikan dengan konteks kehidupan masyarakat sekarang. Hasil penelitian menunjukkan bahwa teori maqāṣid al-sharīah yang digagas oleh Imam al-Syatibi telah menghadirkan shariah dalam wajahnya yang elastis. Maqāṣid al-sharīah telah mentransformasikan teori-teori shariah ke dalam nilai-nilai kemanusiaan universal, seperti kemaslahatan, keadilan dan kesetaraan dalam kehidupan umat Islam. Hal ini setidaknya bisa dilihat dalam dua hal: pertama, maqāṣid al-sharīah sebagai metode pengembangan hukum Islam. Pengembangan teori-teori maqashid al-shariah mengilhami filsafat hukum Islam dan menjadi pangkal berpikir serta analisis yang pokok untuk pengembangan pemikiran hukum Islam pada era globalisasi dan perubahan sosial sekarang ini. Kedua, maqāṣid al-sharīah dalam membangun ekonomi shariah. Teori maqāṣid al-sharīah menempati posisi yang sangat sentral dan vital dalam merumuskan metodologi pengembangan ekonomi shariah. Dalam konteks ekonomi shariah, tujuan maqāṣid al-sharīah adalah menjaga kemaslahatan manusia. Seorang muslim didorong untuk memproduksi dan mengkonsumsi barang/jasa tentu dengan pertimbangan kemaslahatan.*

***Kata Kunci:*** *Aktualisasi, Maqāṣid al-Sharīah, Kehidupan Modern, Reinterpretasi*

***Abstract:*** *This article aims to examine the thoughts of Imam al-Syatibi on maqāṣid al-sharīah and its actualizations in modern life. The method used is qualitative, while the data analysis technique used is content analysis as an effort to analyze the substance of maqāṣid al-sharīah, in which it is then correlated with the context of current human's life. The results of the study show that the theory of maqāṣid al-sharīah initiated by Imam al-Syatibi has presented sharīah in its elastic face. Maqāṣid al-sharīah has transformed Islamic theory into universal human values, such as benefit, justice and equality in the life of Muslims in the world. This can be seen at least in two ways: first, maqāṣid al-sharīah as a method of developing Islamic*

*laws. The development of the theory of maqāṣid al-sharīah has inspired the philosophy of Islamic laws and becomes the basis of thinking and analysis which is fundamental to the development of Islamic legal thinking in this globalization era and dynamic social changes. Second, maqāṣid al-sharīah in building sharīa economics; maqāṣid al-sharīah's theory occupies a very central and vital position in formulating a sharīah economic development methodology. In the context of sharīah economics, the purpose of maqāṣid al-sharīah is to safeguard human benefits. A Muslim is encouraged to produce and consume goods/services of course within beneficial considerations.*

*Keywords: Actualization, Maqāṣid al-Sharīah, Modern Life, Reinterpretation*

## INTRODUCTION

The purpose of *maqāṣid al-sharīah* is *dar 'al-mafāsid* (preventing damage) and *jalb al-mashālih* (bringing benefits). This goal will be achieved when *maqāṣid al-sharīah's* theory can be implemented in modern society. Therefore, the actualization and interpretation of *maqāṣid al-sharīah* is very important to do.

Regarding the study of *maqāṣid al-sharīah*, all Islamic scholars agree that Imam al-Syatibi was the first initiator as well as the founder of *maqāṣid al-sharīah*. However, it does not mean that before him, the science of *maqāṣid al-sharīah* did not exist. Imam al-Syatibi is more accurately called the first person to compile it systematically. The theory of *maqāṣid al-sharīah al-Syatibi* are seen as more systematic and complete compared to the formulations from previous scholars. The formulations are considered inspiring the following scholars such as Muhammad Abduh, Muhammad Rashid Rida, Abdullah Darraz, Muhammad at-Thahir bin Asyur, and others afterwards.

Some scholars have compared the thought of al-Syatibi to be equal to the great views (*madzhab*) in *uṣūl fiqh*. He made a new paradigm regarding the tendency of *madzhab* in Islam in the science of *usul fiqh*. Previously, only there were only two *madzhab* known in the ushul fiqh, namely *Mutakallimin Madzhab* and *Madrasah of Fuqaha* or *Syafi'iyyah* and *Hanafiyyah*. Then, Mustafa al-Khin divided it into five streams, namely: *Mutakallimin, Hanafiyyah, al-Jam'i, Takhrij al-*

*Furu' 'ala al-Ushul* and *Syatibiyyah*.[1] Even Thahir bin Asyur, in his book *Maqāşid al-Sharīah al-Islamiyyah*, was confident enough of making this *maqāşid al-sharīah* a science of *mustaqil* which was detached from the science of ushul fiqh.[2]

According to al-Jabiri, Imam al-Syatibi had diverted the study of *Uşūl Fiqh* from *al-mumāsilāt al-qiyāsiyah al-dzanniyah* (the practices, principles and equality in *qiyas* that are relative) in the framework of the epistemology of *bayani*, to become *al-mumārasat al-istidlāliyah al-qath'iyah* (absolute inferential practices) in the framework of *burhani* epistemology. This was done by expanding the discussion of *maqāşid al-sharīah* with new themes that were directly related to Al-quran, and the study was not found in the works of previous scholars.[3] These themes include benefits (*mashlahat*) and limitations, *qashd* (purpose) in doing deeds, intentions in law and *maqāshid*, *maqāşid* and reason, *maqāşid* and *ijtihad*, and general objectives of *maqāşid al-sharīah*.[4]

We can observe how important the position of al-Syatibi is. He wrote *al-Muwafaqat* half a century before the fall of Granada which was the last Muslim city in Andalusia. The main purpose of this book is to revive the spirit of Islamic *sharīah*, to invite Muslims to prioritize general concerns, and direct them to pay attention to reality.[5] This is where the significance of the discussion of *maqāşid al-sharīah* initiated by al-Syatibi and its relevance to the current modern life.

The study of the *maqāşid al-sharīah* has been carried out by several researchers, such as Jasser Auda. *Maqāşid al-Sharīah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought, 2007. He highlighted the condition of Muslims living in the present era who are still poor, lagging behind other countries. According to him, the development

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[1] *Al-Kāfi al-Wāfi fi Uşūl al-Fiqh al-Islamī* (Beirut: Muassasah Risalah, 2000), 80.

[2] Muhammad al-Tahir Ibn Asyur, *Maqāşid al-Syarī'ah al-Islāmiyyah*, vol. II (Kairo: Dar al-Nafais, 2001), 180.

[3] Asafri Jaya Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi* (Jakarta: PT. Raja Grafindo Persada, 1998), 57.

[4] Hammadi Al-Ubaydi, *Asy-Syātibiy wa Maqāşid asy-Syarī'ah* (Mansyurat: Kulliyat ad-Dakwah al-Islamiyyah wa Lajnah al-Huffadz 'ala at-Turats al-Islami, 1992).

[5] Hassan Hanafi, "Maqāşid al-Syarī'ah wa Ahdāf al-Ummah, Qirā'ah fi al-Muwāfaqāt li al-Syathiby," *Cairo-Egyp* vol. 26, no. 103 (2002): 66.

of Islamic law using the maqashid al-sharia theory is urgent, because the Islamic law must be able to provide answers to contemporary problems, especially social problems of humanity. A legal case is related to one-sided value and reality on the other side, it needs to be analyzed holistically with an interaction-interconnection approach.[6]

Likewise, a study conducted by Duski Ibrahim, "Method of Determining Islamic Law According to al-Syatibi: A Study of the Concept of Istiqra 'al-Ma'nawi." Doctoral Dissertation in the Post-Graduate Program UIN Syarif Hidayatullah, 2006. He conducted scientific genealogy tracking and historical development of *maqāṣid al-sharīah*. According to him, reviewing the *maqāṣid al-sharīah* cannot be separated from the role of Imam al-Syatibi, a scholar who is an expert in various scientific fields who spends his age for the development of the *maqāṣid al-sharīah*. Imam al-Syatibi was part of the Andalusian scholar who compiled the book of *al-Muwāfaqāt*, to bridge the tensions that had occurred at that time between the Hanafi and Maliki Madhhabs.[7]

The next study was carried out by Wael B. Hallaq, "The Primacy of the Qur'an in Syathibi Legal Theory." In Islamic Studies. Leiden: EJ. Brill, 1991. According to him, Imam al-Syatibi played a major role in affirming the role of the Qur'an in the development of the *maqāṣid al-sharīah* theory. It is because *maqāṣid al-sharīah* it self seeks to express emphasis on the relationship between God's will in the verses of the Qur'an with human aspirations so that by developing the theories of *maqāṣid al-sharīah* means that they have applied the contents of the Qur'an. [8]

If it is analyzed, the previous studies have not been comprehensive. The study carried out by Jasser Auda is too specific, only related to Islamic law and did not address the modern aspects of

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6   Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institut of Islamic Thougth, 2007), 1–10.
7   Duski Ibrahim, "Metode Penetapan Hukum Islam Menurut al-Syatibi: Suatu Kajian Tentang Konsep Istiqra' al-Ma'nawi" Disertasi (Program Pasca Sarjana UIN Syarif Hidayatullah, 2006), 29–40.
8   Wael B. Hallaq, "The Primacy of The Qur'an in Syathibi Legal Theory," dalam *Islamic Studies* (Leiden: EJ. Brill, 1991), 89–95.

the actualization *maqāṣid al-sharīah*, while the dissertation research conducted by Duski Ibrahim limited the discussion on the concept of *al-istiqrā 'al-ma'nawī*. Moreover, the research carried out by Wael B. Hallaq stressed on the Qur'anic view with *maqāṣid al-sharīah* of Imam Syatibi. Herein lies the significance of the discussion of this article, by examining the theory of maqashid al-sharia and its relevance to modern life. We can observe how important the position of al-Syatibi is. He wrote *al-Muwāfaqāt* half a century before the fall of Granada, which was the last Muslim city in Andalusia. The purpose of this book is reviving the spirit of Islamic law, inviting the Muslims to prioritize general concerns, and directing them to pay attention to reality.

The method used in the research was qualitative. Meanwhile, the data analysis used was content analysis,[9] which was an attempt to analyze the substance of Imam al-Syatibi's *maqāṣid al-sharīah* thinking, and correlated with the current contexts of people's life. The analysis of the sources written by Imam al-Syatibi was done objectively and scientifically, to find the meaning and definitions of his thoughts.

The study of Imam al-Syatibi and his thoughts was historical, related to phenomena and socio-cultural backgrounds. The steps to be taken in this study were: collecting and analyzing the research data, describing the background of the life of Imam al-Syatibi, identifying research data and themes of thoughts, and determining the parts related to the thinking about *maqāṣid al-sharīah* and its actualization in modern life.

## IMAM SYATIBI AND HISTORY OF *MAQĀṢID AL-SHARĪAH*

The appearance of a figure cannot be separated from the influence of his surrounding environment, both in his current time and previous period. Likewise Imam al-Shatibi, who lived in Granada, was greatly influenced by Umayyad civilization in

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[9] W. Lawrence Neuman, *Social Methods, Qualitative and Quantitative Approachs* (Buston: Ally and Bacon, 1997), 21.

Andalusia.[10] Granada, in the 14th century, experienced various changes and political, socio-religious, economic and legal developments which would later influence the mindset and legal products of Imam al-Syatibi.[11]

Imam Syatibi has the full name Abu Ishak Ibrahim ibn Musa ibn Muhammad al-Lakhmi al-Gharnathi. He was born in Granada in 730 H/ 1328 AD and passed away on Tuesday the 8th of Sha'ban in 790 H/ 1388 AD.[12] The name *Syatibi* is *nisbat* (sign) to the place where his father's birth in Syathibah, an area in eastern part of Andalusia.[13] Imam al-Syatibi grew up in Granada at the end of the Andalusian Islamic kingdoms and his intellectual history was formed in the city which became the capital of Banu Nasr's kingdom.

The Islamic scholars estimate that Imam al-Syatibi lived between the era of two caliphs, Yusuf Abu al-Hajaj (1333-1354 AD) and Sultan Muhammad V al-Ghani Billah (1354-1391 AD) which was the golden age of Granada.[14] This estimation is based on the year of his death, 790 H / 1388 AD,[15] and if there is a comparison between the year of al-Syatibi's death and the reign of the two caliphs, there will be a meeting point.

Imam al-Syatibi started his educational history by studying Arabic and its grammar. In this field, it is noted that al-Syatibi studied to a great scholar in the linguistic field, Abu 'Abdillah ibn Fakhkhar al-Birri (d. 754 H / 1353 AD). He studied until his teacher passed away. Furthermore, in the same field, al-Syatibi studied to Abu al-Qasim al-Sharif al-Sabti (d. 760 H / 1358 AD), a famous *mufassir* (commentator) who held the title from king of Arab in his time. Furthermore al-Syatibi also deepened Arabic, especially the

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[10]  Abdurrahman Kasdi, "Maqashid Syari'ah Perspektif Pemikiran Imam Syatibi dalam Kitab al-Muwafaqat," *Yudisia* vol. V, no. I (2014): 48–49.

[11]  Andriyaldi Andriyaldi, *Teori Maqashid Syari'ah dalam Perspektif Imam Muhammad Thahir Ibnu 'Asyur* (Bukittinggi: P3M STAIN Bukittinggi, 2013), 46.

[12]  Al-Ubaydi, *Asy-Syātibiy wa Maqāṣid asy-Syarī'ah*, 11.

[13]  Abdul Aziz Dahlan (ed.), *Ensiklopedi Hukum Islam* (Jakarta: PT. Ichtiar Baru van Hoeve, 1997), 169.

[14]  Andriyaldi, *Teori Maqashid Syari'ah dalam Perspektif Imam Muhammad Thahir Ibnu 'Asyur*, 45.

[15]  Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi*, 17.

books of Imam Sibawaih and Alfiyah Ibn Malik to Abu Ja'far Ahmad al-Syarqawi (d. 762 H / 1360 AD).[16]

In the field of commentaries, Imam al-Syatibi studied on Abu 'Abdillah al-Balansani (d. 765 AH / 1363 AD), a well-known commentator and writer on his time. Whereas in the science of hadith, al-Syatibi studied on Abu al-Qasim ibn al-Bina and Syamsu al-Din al-Tilmisani (d. 767 AH / 1365 AD), who taught the books of *Jami 'as-Sah}ih al-Bukhari* and *al -Muwatta 'by Imam Malik.* Then in the field of *uşul fiqh,* he studied on Imam Abu 'Abdillah ibn Ahmad al-Maqarri (d. 761 H / 1359 AD), a diplomat and expert *tahqiq* in Maliki view, who came to Granada in 757 H / 1356. From him, *al-*Syatibi was introduced to al-Razi's thoughts *regarding uşul fiqh* as stated in the book of *al-Maḥşul.*

Imam al-Syatibi also studied *uşul fiqh* to Abu 'Abdillah Muhammad ibn Ahmad al-Sharif al-Tilmisani (d. 771 H), who also taught him about rational theology. Based on several sources, during studying to al-Tilmisani, al-Syatibi had a colleague who was later known as an Islamic scientist, ibn Khaldun. Furthermore Imam al-Syatibi studied to Khatib ibn Marzuq regarding *uşul fiqh.*[17]

In the field of philosophy and *kalam*, he studied to Abu 'Ali Mansur al-Masyzali (d. 770 AH / 1369 AD), who visited Granada in 753 H / 1352 AD, and received an award from ibn al-Khathib as a Vizier of Granada. Through his teacher, Imam al-Syatibi was familiar with Mu'tazilah's theological thinking and other rational thoughts.[18]

With this complete educational background, Imam al-Syatibi became a great scholar who was an expert in various scientific fields. Imam al-Syatibi was part of famous Andalusian scholars. As a *fuqaha* who had profound knowledge, Imam al-Syatibi recorded several times straightening the thoughts and practices of the scholars of his time, and often disagreed with the Granadian scholars that made him "ostracized" by them. Regarding this, Imam al-Syatibi told, "I have

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[16]  Hamka Haq, *Al-Syatibi, Aspek Teologis dalam Kitab al-Muwafaqat* (Jakarta: Penerbit Erlangga, 2007), 18.
[17]  Ibid., 19.
[18]  Ibid., 18–19.

come into several general professions, such as sermons and prayers. When I want to straighten the road, I find myself like a stranger among the majority of my friends. Customary practices have dominated their professions, and additional stains have covered original *sunnah*.[19]

Imam Syatibi rose up against and challenged the Granadian scholars at that time. He tried to straighten and restore the understanding of *sunnah* and bring people from the worng to the truth. The fierce dispute between Imam Syatibi and the Granadian scholars was inevitable. Every time Imam Syatibi enacted lawful matters, they would do contrarily, establishing haram rule without seeing the text (nash) first. For this reason, Imam Syatibi was later harassed, reviled, ostracized and considered leaving his belief.

Another thing highlighted by Imam Syatibi was the practice of *tasawwuf* which had been deviated from original rules. They gathered at night, then they had *dzikr* together in a very loud voice and ended up with dancing and singing until the end of the night. Some of them beat their breasts and even their own heads. Imam Syatibi rose to forbid this practice because it was deemed had deviated from the true teachings. According to Imam Syatibi, every way of getting closer to Allah which was not as practiced by the Prophet and his companions were wrong and forbidden.[20] Syatibi's *fatwa* on the deviant practice of *tasawwuf* was also reinforced by one of the scholars of *tasawwuf* at that time, Abul Hasan an-Nawawi. He said that whoever saw a person who drew near to Allah by the way that went out of sharīa was forbidden to get close to him.

Imam Syatibi also highlighted the excessive *ta'ashub* practiced by Islamic scholars and the Andalusian community at that time against the Maliki view. They saw that everyone who did not implement Maliki view was misguided. As was well known, Andalusians held this Maliki view closely since their Caliph Hisham

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[19] Abu Ishaq Al-Syatibi, *Al-I'tişām* (Beirut: Dar al-Maʻrifah, 1982), 25.
[20] Ibid., 264.

al-Awwal ibn Abdurrahman ad-Dakhil who ruled from 173-180H made this view an official foundation of the state.[21]

Since then, as if it were an official envoy, the Andalusians held firmly on Maliki view. Due to their excessive understanding, they no longer knew even became unfriendly to other view holders, especially Hanafi, so Muhammad Fadhil bin Asyur described them: "They no longer know anything other than Al-Qur'an and *al-Muwaṭṭa 'Imam Malik* " At that time, the cholars who were not adherent to Maliki had not been separated from the scorn, and even they were tortured as experienced by al-Allamah Baqa 'bin Mukhlid, a great scholar of Hanafi view.

Even though Imam Syatibi is a Maliki cleric,[22] but he still respected the other Islamic scholars, including those holding on Hanafi view, which at that time was always the number one target to be terminated. In fact, on various occasions, he often flattered Abu Hanifah and other scholars. The book of a*l-Muwāfaqāt* itself was deliberately written by Imam Syatibi in order to bridge the tensions that occurred at that time between the Hanafi and Maliki view holders.

Imam Syatibi was a productive scholar in writing religious books. His works all refer to two fields of science which according to the term of Hammadi al-Ubaidy, *ulūm al-wasīlah* and *ulūm al-maqāṣid*. *Ulūm al-wasīlah* is an Arabic language which is a *wasīlah* to understand Maqashid Science. For more details, the following is the summary of the works of Imam Syatibi.

First is the book of *al-Muwāfaqāt*. This book is the most monumental and best known work among other works of Imam Syatibi. This book consists of 4 chapters (*juz*), and initially this book was entitled *al-Ta'rīf bi Asrār al-Taklīf*. Then, after Imam Syatibi experienced a dream, it was changed to al-Muwafaqat.

The second is the book of al-I'tisham. This book consists of two *juz* and is written after al-Muwafaqat. This book explores detail about

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[21] Muhammad al-Tahir Ibn Asyur, *A'lām al-Fikr al-Islamī* (Tunisia: Maktabah al-Najah, n.d), 10.
[22] Muhammad Makhluf, *Syajarah an-Nūr az-Zakiyyah* (Beirut: Dar al-Kutub al-Araby, 1349), 231.

*bid'ah* and its ins and outs. It is written by Imam Syatibi on a special trip and he had passed away first before completing this book.

Third is the book of al-Majalis. This book is a *syarah* from the book of *al-Buyu'* which is found in *Shahih al-Bukhari*. Attanbakaty saw the benefit of this book by calling it: *"minal fawaid wa al-tahqiqat ma la ya'lamuhu illallah."*

Fourth is *Syarah al-Khulashah*. This book is a book of the science of *nahwu* which is *syarah* from *Alfiyyah Ibn Malik*. It consists of 4 large *juz* and according to Attanbakaty, this book is the best of *syarah Alfiyyah Ibn Malik* in terms of the depth and breadth of the knowledge he explained.

Fifth is *Unwan al-Ittifaq fi 'Ilm al-Isytiqaq*. This book is about the science of *sharf* and *lughah fiqh*. It is comparable to Ibn Jinny's book *al-Khulashah*. It's just that, unfortunately, this book was lost since Imam Syatibi was still alive.

Sixth, Usul an-Nahwu. This book discusses qawaid lughah in sharf science and nahwu science. In it is discussed qawaid ashliyyah about the knowledge. It's just that, unfortunately, this book has been lost since a long time ago.

The seventh is *Al-Ifadat wa al-Insyadat*. This book is specifically written as the descriptions of the life story of Imam Syatibi as well as the list of his teachers and students.

The eighth is *Fatawa al-Syatibi*. This book is the latest one. It's just that this book is not written directly by Imam Syatibi, but is a collection of *fatwa* scattered in the book of al-I'tisham and al-Muwafaqat

Among the many works of Imam Syatibi, only three are printed, namely *al-Muwāfaqāt, al-I'tiṣām* and *al-Ifadāt al-Insyadāt*.

Until the end of his life, according to some of his students, Imam al-Syatibi had held several positions. First, Imam al-Syatibi became a priest and also preacher in several mosques. Abu Ajfan said a number of scholars' statements regarding al-Syatibi's works.[23] He

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[23] Muhammad Abu Al-Ajfan, *Min As\ar Fuqahā' al-Andalus: Fatāwā al-Imam asy-Syaṭibi* (Tunisia: Matba'ah al-Kawakib, 1985), 56.

was a priest, *al-Shaykh al-ustadz* (great teacher), legal expert, researcher, *'allamah* and a righteous person.[24]

Secondly, Imam al-Syatibi was a *mufti* (*fatwa* expert). This is known from the existence of several *fatwas* which he issued to answer the issues raised to him. It's just that, according to Mas'ud Khalid Imam al-Syatibi, was an unofficial *mufti*, because a legal *mufti* appointed by the state got the title of *al-Musawwir* call attached after his name, while Imam al-Syatibi did not. However, Hamka Haq noted that even though it might not be the state *mufti*, some of his *fatwas* were used as the references in implementing government policies, for example in the tax enforcement for the benefit of the public.[25]

Whereas the third is Imam al-Syatibi was a great teacher. This is shown from the students of Imam al-Syatibi who later became important figures in Andalusia, such as Ibn 'Asim who became the chairman of the *qadi* in Granada. There was also Abu Bakr al-Qadi, a Granada jurisprudent expert, Abu Ja'far Ahmad, a student and discussion partner of al-Syatibi.[26]

## Actualization of *Maqāşid al-Sharīah* in Modern Life

The emergence of *maqāşid al-sharīah* was originated from the anxiety of Muslim intellectuals, especially Imam al-Syatibi so that Islamic laws were able to face the challenges all over the time. The renewal of *maqāşid al-sharīah* as an *istinbat* method through a new breakthrough with a philosophical approach to the system is considered an important to be applied by the scholars of *ushul* in current modern age. This is the starting point of Islamic legal thinking, according to Jasser Auda, which is increasingly firm and

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[24]  Ibrahim, "Metode Penetapan Hukum Islam Menurut al-Syatibi: Suatu Kajian Tentang Konsep Istiqra' al-Ma'nawi," 29.

[25]  Haq, *Al-Syatibi, Aspek Teologis dalam Kitab al-Muwafaqat*, 20.

[26]  Ibrahim, "Metode Penetapan Hukum Islam Menurut al-Syatibi: Suatu Kajian Tentang Konsep Istiqra' al-Ma'nawi," 32.

extends from the religious equality horizon (*musāwah dīniyah*) towards the social equality horizon (*musāwah ijtimā'iyah*).[27]

Etymologically, *maqāşid al-sharīah* consists of two words, *maqāşid* and *al-sharīah*. *Maqāşid* has the meaning of intention or purpose. *Maqāşid* is the plural form of *maqsud* which comes from the *qashada* syllable which means 'will'. *Maqāşid* means things that are desired and intended.[28] Whereas, *sharīah* terminologically means the road to a water source. The road to a water source can also be interpreted as walking towards the source of life.[29]

In al-Qur'an, Allah has stated some words of "*sharīah*" such is in the following verse: "*Then We set you upon a pathway of faith, so follow it, and do not follow the inclinations of those who do not know..*" (QS. Al-Jatsiyah: 18).

In another verse, it is also shown that, "*He prescribed for you the same religion He enjoined upon Noah, and what We inspired to you, and what We enjoined upon Abraham, and Moses, and Jesus: "You shall uphold the religion, and be not divided therein."* (QS. Asy-Syuura: 13).

From the two verses above, it can be concluded that "*sharīah* " is the same as "religion", but in the current development, there is a reduction in the meaning of *sharīah*. Therefore, Sheikh Mahmud Syaltout tried to restore the spirit of the knowledge of *sharīah*, saying that the *sharīah* is the rules created by Allah SWT to guide the humans in regulating their relations with their Lord, with both fellow Muslims and non-Muslims, nature and all aspects in this life.[30]

Terminologically, *maqāşid al-sharīah* is the objectives of Islamic laws contained in each of its rules. Imam al-Syatibi revealed about *sharīah* and its functions for human being as stated in the book *al-Muwāfaqāt*, that in fact, *sharīah* aims to realize human welfare in the

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[27] Abdul Basith Junaidi, *Islam dalam Berbagai Pembacaan Kontemporer* (Yogyakarta: Pustaka Pelajar, 2009), 254.

[28] Ibnu Mandzur, *Lisān Al-'Arab* (Kairo: Darul Ma'arif, 1999), 3642.

[29] Ahmad Warson Munawwir, *Al-Munawwir; Kamus Arab-Indonesia*, vol. 14 (Surabaya: Penerbit Pustaka Progressif, 1997), 712.

[30] Syaikh Mahmud Syaltut, *Al-Islām Aqīdatan wa Syarī'atan*, vol. 18 (Cairo: Dar asy-Syuruq, 2001), 13–16.

world and the hereafter. In another part, he mentioned that laws are enacted for the benefits of humanity.[31]

Actually al-Syatibi did not specialize himself in defining *maqāşid* in the form of *jami 'mani'* and was limited. However, he only introduced *maqāşid al-sharīah* through the elaboration of its broad theory. Al-Syatibi focused more on the study that *maqāşid al-sharīah* is the benefits or goodness and welfare of humanity, both in the world and in the hereafter. Therefore, Imam al-Syatibi placed the benefit (*maslahah*) in the position as the law of '*illat* or the reasons for the enforcement of Islamic laws.

Imam al-Amidi in his book, *al-Ihkam*, stated that the real purpose of the law was to achieve benefits and avoid the evil or combination of both.[32] Then, Imam Tahir ibn Asyur provided a definition related to *maqāşid al-sharīah,* namely meanings and wisdom that is desired by Allah in all conditions of *Tasyri'*. This desire is not only limited to one type of *sharīah* law, but all forms of *sharīah* law whose purposes and meanings are included within, and also legal meanings that are not recorded in various kinds of laws, but are recorded in other forms.[33]

Meanwhile, Yusuf al-Qardawi defined *maqāşid al-sharīah* as the desired goals by the texts of Al-Quran (*nash*), both in the form of orders, prohibitions and permissible things. The aim is to direct *juzi'yyah* (partial) laws in all aspects of the life of a *mukallaf*.[34]

The benefit (*maslahah*) that will be achieved in *maqāşid al-sharīah,* according to al-Syatibi, is divided into three levels, namely: first, *d}arūriyyah* (primary) needs *d}arūriyyah* needs must exist and must be met to fulfill the benefits of the world and the hereafter. If the needs are not fulfilled, there will be no prosperity in the world, even

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[31]  Abu Ishaq Al-Syatibi, *Al-Muwāfaqāt fi Uşūl al-Syarī'ah*, vol. 1 (Kairo: Dar al-Taufiqiyyah, 2003), 30.

[32]  Ali ibn Muhammad Al-Amidi, *Al-Ihkām fi Uşūl al-Ahkām*, vol. 3 (Kairo: Dar al-Sami'i, n.d), 271.

[33]  Ibn Asyur, *Maqāşid al-Syarī'ah al-Islāmiyyah*, II:10.

[34]  Yusuf Al-Qardawi, *Dirāsah fi Fiqh Maqāşid al-Syari'ah; baina al-Maqāşid al-Kulliyah wa al-Nuşūs al-Juziyyah* (Kairo: Dar al-Syuruq, 2006), 20.

damage in life. The human will lose pleasure and will feel a clear loss in the hereafter.[35]

There are five things that are included in the category of *d}arūriyyah* needs, namely maintaining religion (*hifdz al-din*), protecting the soul (*hifdz al-nafs*), nurturing reason (*hifdz al-'aql*), protecting offspring (*hifdz al-nasl*), and keeping up properties (*hifdz al-mal*). To maintain these five points, Islamic law is revealed. Every legal verse, if examined carefully, contains the reasons for its formation which is none other than maintaining the five points above.

Second, *hajjiyyah* (secondary) needs. *Hajjiyyat* needs are the secondary needs, where if they cannot be realized, they do not threaten the human's safety, but they will experience difficulties.[36] The existence of *rukhsah* (relief) law is an example of Islamic *sharīah* concern for *hajiyyat*. In term of worship, Islam mandates several *rukhsah* laws when in reality, it is difficult to carry out the commands of *sharīah*. In the case of *muamalah*, there are many types of contracts, various types of buying and selling, leasing, *syirkah* (companies) and *mudharabah* (trading with other people's capital through collective agreements for mutual profit) and some *rukhsah* laws in *muamalah*. In the matter of *'uqubat*, Islam prescribes fine for accidental killing and suspending the hand cut sentence for someone who has stolen something to save his life from starvation. Certain problems that cause relief in Islamic law are drawn from the verses of Al-Qur'an which inspires *maqāṣid al-sharīah*.

Third, *tahsiniyyah* (additional) needs. *Tahsiniyyat* does not reach the level of *dharuriyat* and *hajjiyyah*. This level of necessity is only complementary.[37] Matters which are propriety according to customs, avoid things that are not pleasing to the eye and are decorated with beauty in accordance with the demands of norms and morals.

Allah has ruled everything related to the needs of *tahsiniyyah* in various fields of life, such as worship, *muamalah* and *'uqubah*. In the

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[35] Al-Syatibi, *Al-Muwāfaqāt fi Uṣūl al-Syarī'ah*, 1:6.
[36] Mahmud Bilal Mahran, *Mausū'āt al-Tasyri' al-Islāmī* (Kairo: Majlis al-A'la, 2009), 619.
[37] Ibid., 620.

field of worship, Islam implies purification, either from unclean (*najis*) or from *hadats*, physically and from surrounding places and environment. Islam recommends us to always look nice and neat when we are going to go to the mosque and perform *sunnah* worships more. In relations with other people (*Muamalah*), Islam prohibits being wasteful, miserly, raising prices, monopoly and others. In the case of *uqubah*, Islam forbids killing children and women in a war.

## *MAQĀṢID AL-SHARĪAH* AS A METHOD OF THE DEVELOPMENT OF ISLAMIC LAWS

According to Yusuf al-Qardhawi, the reality of the infertility of Islamic jurisprudence (*fiqh*) is characterized by the systematization of jurisprudence which begins with discussions about worship. According to him, the characteristics of jurisprudence like this have spelled out the perspective of *fiqh* on legal, social, political and economic problems. In order for flexible *fiqh* to respond to the upcoming challenges, *ijtihad* is always needed by Muslim intellectuals.[38]

There is no word "final" for the *ijtihad* process, because Islamic law must be flexible in accordance with the dynamics of the wheel rotation of civilizations that never has the word "stop". Regarding the position of Maqāṣid's theory as the basis of the process of *ijtihad*, Imam al-Syatibi introduced two steps in the process of *ijtihad*, i.e. *ijtihad istinbathi* and *ijtihad tathbiqi*. This division carried out by Syatibi can make it easier to understand the mechanism of *ijtihad*. In *ijtihad istinbathi*, a Muslim *mujtahid* focuses his attention on efforts to extract ideas conceived in the holy texts (Al-Qur'an and Sunnah). After obtaining these ideas, then he should apply the ideas to the problems that occur on the field; this is what is called *ijtihad tathbiqi* or "applied *ijtihad*." Therefore, the object of *ijtihad istinbathi* is text, while the object of *tathbiqi* study is human being with the dynamics of changes and development they experience. Thus, it makes sense if Imam al-Syatibi

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[38] A. Qodri Azizy, *Membangun Fondasi Ekonomi Umat: Meneropong Prospek Berkembangnya Ekonomi Islam* (Yogyakarta: Pustaka Pelajar, 2004), 175–199.

called *ijtihad tathbiqi* as *ijtihad* which will never stop until the end of time.[39]

Through this *ijtihad*, *maqāṣid al-sharīah* is present as a system and dynamic approach in Islamic laws.[40] With *maqāṣid al-sharīah*, Islamic laws are able to provide answers to solve contemporary problems, especially social and humanity ones. Not just the opposite as lately, where Islam is reflected as terrorism, war, fighting with each other, intolerant, fanatical and fundamentalist and impressed that the quality of life or resources of Muslims is at low level, compared to other beliefs.

The development of *maqāṣid al-sharīah* theory has inspired the philosophy of Islamic laws and becomes main basis of the basic thinking and analysis, for the development of Islamic legal thinking in the current era of globalization and social changes.[41] Al-Syatibi's Kulliyyat al-Khamsah is very popular in the field of *usul al-fiqh* and *fiqh* in Islamic legal thought.

Jasser Auda asked important questions addressed to Muslims who live in the present era. If *Kulliyyat al-Khams* al-Syatibi is indeed important and functional in the contemporary era today, why in the world of everyday reality in Muslim-majority countries are still poor, lagging behind other countries that are also together undeveloped well? The annual report of the United Nations Development Program (UNDP) states that the Human Development Index (HDI) of the countries with Muslim population majority is still low in terms of literacy level, education, political and economic participation, women empowerment, not to mention the standard and quality of life that is feasible.[42] The second question he posed is why in countries with Muslim populations whose income per capita is quite high, but the

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[39] Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi*, 127–128.

[40] Asmuni et.al, *Pribumisasi Hukum Islam: Pembacaan Kontemporer Hukum Islam di Indonesia* (Yogyakarta: PPS FAI UII, 2012), 10.

[41] Budiarti Budiarti, "Analisis Yuridis Perkawinan Beda Agama dengan Pendekatan Maqashid al-Syari'ah dalam Konteks Negara Hukum Pancasila," *Justicia Islamica* vol. 5, no. 1 (2018): 36–39.

[42] Maulidi Maulidi, "Maqasid Syariah Sebagai Filsafat Hukum Islam: Sebuah Pendekatan Sistem Menurut Jasser Auda," *Al-Mazāhib* vol. 3, no. 1 (2015): 8.

level of distribution of justice, women's empowerment, political participation and equal opportunities to all of the citizens is still low.[43]

For this reason, the development of Islamic laws using the *maqāṣid al-sharīah* theory is very important, because the Islamic laws must be able to provide answers to contemporary problems, especially in terms of social and humanity problems.[44] A legal case is related to one-sided value and to reality on the other side, thus it is necessary to conduct a holistic analysis (wholeness). With the existence of scientific multidisciplinary interactions, it then becomes a holistic approach in solving the issues of Islamic jurisprudence.

## *MAQĀṢID AL-SHARĪAH* IN DEVELOPING *SHARĪAH* ECONOMICS

The presence of Islamic economics in many aspects is a reincarnation of *fiqih mu'amalat*.[45] Therefore, *sharīah* economics should restore the elasticity of *fiqh* by making *maqāṣid sharīah* the ultimate goal in the process. The *sharīah* economics can be built without denying the existing reality, but still in the frame of *maqāṣid al-sharīah*. This is because *maqāṣid al-sharīah* itself seeks to express emphasis on the relationship between the content of God's will (rules) and human aspirations.[46]

Up to this point, we can draw a connection that the theory of *maqāṣid al-sharīah* occupy very central and vital position in formulating the methodologies of developing *sharīah* Economics. Even Syatibi himself stated that *maqāṣid al-sharīah* is the mother of *ushul fiqh*.[47] This means that writing *usul fiqh* as a methodology cannot be separated from *maqāṣid al-sharīah*. This is because *Maqāshid's* theory can deliver the *mujtahid* to determine the standard of benefit in

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[43] Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, xxii.

[44] A. Bahruddin, "Implementasi maqasid al-shari'ah sebagai solusi problematika sosial dan kemasyarakatan kontemporer," *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* vol. 17, no. 1 (30 Juni 2017): 3–10, https://doi.org/10.18326/ijtihad.v17i1.1-18.

[45] Azizy, *Membangun Fondasi Ekonomi Umat: Meneropong Prospek Berkembangnya Ekonomi Islam*, 175–179.

[46] Hallaq, "The Primacy of The Qur'an in Syathibi Legal Theory," 89.

[47] Al-Syatibi, *Al-Muwāfaqāt fi Uṣūl al-Syarī'ah*, 1:32.

accordance with *sharīah*.⁴⁸ Even more so, according to al-Tufi, only on the field of *muamalat* can the rationalization of this benefit be applied.

To compile a solid *sharīa* economic building, it cannot be separated from the theory of *maqāşid al-sharīah*. Even Syaikh Muhammad Thahir ibn ur Assyria once said that "Forgetting the importance of the *maqāşid* side in Islamic *sharīah* is the main factor causing stagnation in jurisprudence.⁴⁹ Reviving the *sharīah* economics which has been buried for a long time and almost becomes a fossil, is one work on *ijtihadi*. This means that it requires the hard work of Muslim economists to look for economic values contained in Islamic teachings.

*Maqāşid al-sharīah* is one of the stimulants that needs to be developed by Muslim economists to develop *sharīah* economics. It should be emphasized on the importance of understanding the values contained in the *sharīah* rules, which makes *fiqh maqāşid* interpretable in the field of *sharīah* economics. *Maqāşid al-sharīah* is an understanding that is built on the purpose of establishing a law. Technically, this method aims to understand and study *sharīah* texts which are *juz'i* in the context of *maqāşid al-sharīah* and bind a law within its main, which is protecting the benefit of all human beings.⁵⁰

Thus, the theory of *maqāşid al-sharīah* should have implications for the economic behavior of every Muslim. In addition, Muslim economists should also pay attention to these implications when conducting economic analysis within *sharīah* framework. Compiling and describing the implications of *maqāşid* in economic theories is a very difficult challenge and task, which Muslim economists must always strive for.

In the context of *sharīah* economics, *maqāşid al-sharīah*'s goal is to safeguard human benefits. A Muslim is encouraged to obtain or produce beneficial goods/services that. Goods / services can be

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48 Muhammad Khalid Mas'ud, *Islamic Legal Philosophy* (Islamabad: Islamic Research Institute, 1977), 223–224.

49 Ahmad Al-Raysuni, *Nadzariyat al-Maqāşid 'inda al-Imam asy-Syathibi* (Beirut: International Islamic Publishing House, 1995), 10.

50 Yusuf Al-Qardawi, *As-Siyāsah asy-Syar'iyyah fi Dhau'i Nuşūh asy-Syari'ah wa Maqāşidihā* (Kairo: Maktabah Wahbah, 1998), 45.

measured for their benefit level relatively on the ability of goods / services to develop benefits. For *sharīah* economists, the concept of *maslahah* is more objective than the concept of utility to analyze the behavior of economic actors. Even though *maslahah* (benefits) might leave a little subjectivity, but it does not rise any vague as happens in the concept of utility.

Arguments regarding the aspect of benefits/ *maslahah* which are more superior to the utility are: first, *maslahah* is subjective, because each individual can determine something good /beneficial for themselves. However, the criteria for determining this *maslahah* are clearer and more directed, rather than subjectivity in the concept of utility. In the concept of utility, alcohol may contain utility, but it may or may not be, relative to each individual. But in Islamic economics, because alcohol does not contain any benefit and is clearly contradictory *to al-kuliyyah al-khamsah*, then it can be obviously concluded that alcohol is illegal.

Second, there is a correlation between individual and social interests that can be avoided, or at least minimized. This is because the criteria for *maslahah* between individuals and social can be synchronized, according to what is stated in the *syar'i* rules. In the view of Asad Zaman, Muslim people's consumption behavior is related to three things, namely, altruism, rejection of the concept of satiation; and feeding the poor.[51]

Third, the concept of *maslahah* applies to all economic activities in the society, both in the production and consumption processes. It is not like the conventional economics; where utility is the purpose of consumption; while profit is the goal of the production process

## CONCLUSION

Armed with the comprehensive and strong Islamic knowledge he had, Imam al-Syatibi is a reference for the public and the authorities in resolving various religious problems. This predicate

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[51] Asad Zaman, "Towards Foundation for an Islamic Theory of Consumer Behaviour" in F.R. Faridi (ed.)," dalam *Essays in Islamic Economic Analysis* (New Delhi: Genuine Publication & Media Pvt Ltd., 2002), 40–42.

brought him the enthusiasm to interact with the community, and encouraged him to deepen his knowledge through self-taught Islamic studies. The logical consequence of his expertise and interaction with the society made him an important role as a *mufti*, *imam* (*khatib*), productive teacher, and writer. As a *mufti*, Imam al-Syatibi gave many religious *fatwas* to the requesters. As a teacher, Imam al-Syatibi taught and developed his knowledge for all of his students. As an *Imam* and *Khatib*, Imam al-Syatibi often led congregational prayers and conducted sermons in many mosques.

Imam al-Syatibi succeeded in breaking the deadlock and freezing of *sharīah* sciences with the concept of *maqāṣid al-sharīah*. In fact, this concept has been successfully actualized in modern life, through *maqāṣid al-sharīah*'s interpretation as a method of developing Islamic laws and *maqāṣid al-sharīah* in developing *sharīah* economics. Through a holistic-humanistic approach in viewing *fiqh* and *sharīah*, as the grand design of the methods of developing *sharīah* sciences, *maqāṣid al-sharīah* is able to respond to the times. The renewal of *maqāṣid al-sharīah* as a method of *istinbath* in Islamic sciences is a new breakthrough and method which is now significantly important, and is used widely by the scholars of *ushul* in the modern era nowadays.

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