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To Link this Article: http://dx.doi.org/10.6007/IJARBSS/v13-i4/16685 DOI:10.6007/IJARBSS/v13-i4/16685

Received: 06 February 2023, Revised: 10 March 2023, Accepted: 28 March 2023

Published Online: 08 April 2023

In-Text Citation: (Muda et al., 2023)

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Vol. 13, No. 4, 2023, Pg. 711 – 720

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The Authoritative Role of Maqasid Shariah As A Basis for Determining Hukm When Dealing with Contemporary Issues

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Abstract

Maqasid Shariah is the spirit of shariat (Islamic Law) with an implicit meaning and reflects the goal of shariat in every piece of legislation established by sharak. The theories and concepts developed in Maqasid Shariah emphasise on the form and purpose of shariat in guaranteeing the importance of human life. Hence, Maqasid Shariah lays down two important fundamentals, namely the provision of benefits (Jalb al-Masalih) and the rejection of detriment (Dar’u al-Mafasid). Several studies have debated Maqasid Shariah’s complementary role when determining hukm (religious decree) in relation to contemporary fiqh problems. Therefore, this study examined and refined numerous points of view and arguments expressed by the ulama’. The document analysis method was used to gather the views of authoritative scholars pertaining to the debate on Maqasid Shariah and then, summarise its complementary role in contemporary hukm. Findings indicate that Maqasid Shariah is authoritative and can be used as a parameter as well as a complementary tool when determining hukm and fatwa in relation to current problems related to discipline and procedures that support the spirit of shariat.

Keywords: Maqasid Shariah (Objectives of Shariah), Maslahat (benefit), Contemporary Fiqh, Hukm, Fatwa

Introduction

Islam is Allah S.W.T.’s religion for all of mankind and it is very suitable to be practiced by all levels regardless of the location throughout the ages. Islamic teachings have been proven to
be dynamic and have clear objectives or Maqasid that interacts well with human life. The emergence of Maqasid Shariah in the Islamic studies discipline further highlights the superiority and authority of Islamic teachings.

Maqasid Shariah is seen as an important solution when determining the appropriate Shariah law that can be applied to current problems afflicting the Muslim community. This is because Maqasid Shariah is produced from a comprehensive and in-depth study of the collection of revelations that have been bestowed by Allah S.W.T. on mankind (Al-Raysuni, 1999). This approach also shows that the ulama’ are more moderate and universal when looking at Shariat (Rumaizuddin, 2012).

The majority of Islamic scholars have accepted and affirmed that Islamic law has a purpose in the established rules. However, there is also a group that rejects the existence of the law and its purpose that has been established by the sharak. This group adheres to certain Sharak texts that are separate from other texts and without taking into account the reason for unifying the texts as a whole. They reject the use of reason when establishing Sharak law because human reasoning cannot comprehend the purpose of sharak found in the revealed texts. Besides that, there are also groups that offer inaccurate and distorted interpretations of the Maqasid Shariah thus, deviating from the true will of the Sharak. This group tends to reject some Sharak laws on the grounds that it no longer supports Maqasid Shariah in today real world (Nizar, 2018).

**Definition of Maqasid Shariah**

From a linguistic aspect, Maqasid Shariah is a combination of two words namely *maqasid* and *Shariah*. Maqasid is the plural of *maqsad*, which is a derivative of the verbs *qasada*, *yaqsidu*, *qasd* and *maqsad*. It has several meanings namely approaching something and proceeding towards it, straight and not bent, fair, moderate and not extreme, and to break or in broken pieces (Ibn Faris, 1985). Meanwhile, Islamic Shariat is defined as the religious rules and laws that Allah S.W.T. has bestowed on His subjects through the al-Qur’an and the Prophet Muhammad S.A.W.’s Sunnah (Zaidan, 1990).

Maqasid Shariah has never been specifically defined by previous ulama’. Moreover, al-Syatibi, who is a famous pioneer in the science of Maqasid himself, never gave a specific definition. However, this does not mean that they ignored or rejected Maqasid Shariah as a basis for determining Shariah law. Various forms of applying Maqasid are found in their literary works that have been used as a guide by contemporary ulama’ scholars after them (Yusri, 2019). This is because, the value of Maqasid Shariah is contained in every ijtihad and the laws proclaimed by them together with their values are indeed found in the al-Qur’an and al-Sunnah (al-Duraini, 1997).

As for the specific aspects of the term, Maqasid Shariah has been defined by some Islamic scholars, as summarized in Table 1.
Table 1

<table>
<thead>
<tr>
<th>Scholars</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Al-Syatibi (2004)</td>
<td>There is no specific definition. Lays down two fundamentals, which are based on the intentions of Allah S.W.T. as the Creator of the Shariat and the intentions of humans who are burdened by Shariat.</td>
</tr>
<tr>
<td>Ibn ‘Ashur (2001)</td>
<td>Wisdom and all the attention accruing from the law that has been laid down, either as a whole or as a large part.</td>
</tr>
<tr>
<td>Al-Raysuni (2010)</td>
<td>The purpose established by Shariah to be realized for the benefit of mankind.</td>
</tr>
<tr>
<td>al-Fasi (2011)</td>
<td>Understand the goals of the Shariat and its secrets found in matters that have been established by the Shariah in each piece of legislation.</td>
</tr>
<tr>
<td>Al-Yubi (1998)</td>
<td>Meaning, wisdom and the like that are considered by Sharak when formulating the Shariat, either in general or specifically, with the aim of providing goodwill to humans.</td>
</tr>
<tr>
<td>Al-Qaradawi (2006)</td>
<td>Wisdom is the reason for establishing hukm that have been prescribed by Allah S.W.T. for humans.</td>
</tr>
<tr>
<td>Al-Zuhaili (2004)</td>
<td>Values and objectives of the Sharak that are implicit in all or most of the hukm.</td>
</tr>
</tbody>
</table>

Based on the definitions presented above, similarities in the definitions reveal the existence of several elements, such as the objective, purpose or goal, hukm, as well as maslahah (benefits), interest or human goodness. It is clear from the description of the definitions given by the ulama’ that Maqasid Shariah is based on the hukm that focuses on maslahah (benefits) in order to achieve the goals of the Shariat through research and observations of a collection of Sharak texts. Maqasid Shariah is not a maslahah (benefit) that can be interpreted by the human mind alone, rather, it is based on a deep and comprehensive understanding of Sharak texts (Muhammad Nizar, 2018).

Maqasid Shariah as A Basis for Determining Hukm

Maqasid Shariah is authoritative and can be used as a parameter as well as a complementary tool when determining hukm and fatwa in relation to current problems.

Hukm Based on Human Interest

Basically, Islamic Shariat aims to provide humans with benefits or goodwill and avoid detriments as well as guarantee their interests. The importance of maslahah (benefits) or human interests that impact the quality of life can be categorized into the following three forms.

1. Maslahah Daruriyyah (Essential Benefits)

Maslahah Daruriyyah is something that is considered fundamental and core to human life that is required to maintain and guarantee their well-being and stability in life. Failure to achieve it will cause human life to perish or face difficulties due to deficiencies (social and economic), chaos and detriments that might occur.
Al-Ghazali (1983) suggested that basic human maslahah consist of five elements, namely religion, soul, intellect, lineage and property. Only by achieving and sustaining these five elements can life be managed in an orderly and disciplined manner. This shows al-Ghazali’s significant role in the debate on Maqasid Shariah’s framework, which places maqasid as a maslahah (Anwar, 2021). This is expressed as follows:

“...The goal of Islamic Shari’at is to safeguard five basic human needs, which are their religion, self, lineage, intellect and property. Each element contained in it safeguards the five basic needs mentioned above, hence, it is called maslahah. On the other hand, everything that can jeopardize or destroy the five needs is called mafsadah”.

One example of sustaining these five basic maslahah (human benefits) is Islam making it obligatory for Muslims to perform several forms of basic worship known as the pillars of Islam to ensure the sanctity of the religion. In fact, the obligation to perform jihad and instilling punishment for those who leave Islam are aimed at safeguarding the concept of religion from any form of violation or desecration. In order to ensure that the soul is safeguarded and in a good, nourished and safe condition, Islam imposes torture against the killing of the soul, which is qisas, and makes it mandatory to choose food that adheres to the Halalan Thayyiban concept. In the context of caring for the mind so that it is healthy and functioning well, Islam fully allows the improvement of the mind by encouraging the seeking of knowledge and forbidding anything that is detrimental to it, such as consuming intoxicating or hallucinating beverages. The decree concerning marriage and the prohibition of adultery in Islam is intended to protect the purity of the offspring. In order to preserve wealth as a means of survival, Islam mandates that Muslims should seek sustenance that is halal, while completely prohibits acts that are unfair or cruel, such as corruption, thievery and so on (Zulkifly, 2006).

Awdah (2008) had expanded the dimensions of Maqasid Daruriyyah by not only focusing on the forms of protection and preservation but broadened it to include aspects of development and rights (Ari Murti, 2021). The five basic maslahah (benefits) presented by classical ulama’ were increased to six by including hifz ‘ird (safeguarding of honour) (Ahlun, 2021).

2. Maslahah Hajiyat (Complementary Benefits)
The development of maslahah under this category aims to provide convenience and facilities to Muslims and prevent them from facing difficulties when undertaking their daily affairs of life. Its absence will not bring about hardship or disrupt human life, as what happens in Maslahah Daruriyyat.

Maslahah Hajiyat can manifest in several forms such as worship, custom, muamalat and execution of punishment. In the case of worship, for example, it is prescribed that the musafir (travellers) should perform the jama' qasar prayers, preferable (harus) that the sick and musafir (travellers) break their fast during Ramadan, and those who are unable to stand can perform prayers while sitting-down. These exemptions facilitate those who are faced with unforeseen circumstances and eliminate difficulties faced when performing acts of worship. In the context of customary practices, Maslahah Hajiyat is applicable when Islam requires hunting and the freedom to use good and halal fortune in the form of food, beverage, clothing and residence. As in the case of muamalat, Maslahah Hajiyat is used as a contract or
agreement for purposes such as sales and purchase, leases and so on that aim to fulfil the needs of human life and guarantee a convenient life for Muslims (Zulkifly, 2006).

It is clear here that the role of hajiyyat is to provide a method of practice based on al-samahah or one that does not overly burden people.

3. Maslahah Tahsiniyyat or Kamalat (Desirables or Embellishments)

Maslahah Tahsiniyyat or Kamalat was developed to complement and ameliorate human life. Under this maslahah, humans are required to adhere to good customs, noble etiquette and morals as well as a healthy culture to avoid deficiencies that can disrupt their lives. Tahsiniyyat in relation of worship, among others refers to removing impurities and safeguarding the cleanliness the body and clothes, covering intimate parts of the body (aurat), performing non-obligatory acts of worship and preventing infidels from consuming alcohol in open places (Mohd Rumaizuddin, 2018). Some of the rulings in Islamic Shariat, such as cleansing, covering intimate parts of the body, extending charity and performing non-obligatory practices are some of the forms of implementing Maslahah Tahsiniyyat in the context of worship. In matters of muamalat, Islam forbids the sale and purchase of impure goods and committing fraud, proposing to one who is already engaged with another person, and telling husbands to do good to their wives are all acts aimed at ensuring that perfection and harmony are preserved and maintained as a complement to human life (Zulkifly, 2006).

**Hukm Based on the Purpose of Sharak Decrees**

Maqasid Shariah influences how sharak law determines and decides and its composition is based on decrees (evidence) found in the Sharak (Nizar, 2018), as described below.

1. **Maqasid Ammah**

The objective of Sharak decrees as a whole is to help preserve religion, life, intellect, lineage and wealth. Besides that, it also aims to facilitate matters and not hinder or obstruct, preserve and sustain an orderly human life system, help realise a Muslim’s aim to become a caliph on this earth and to bring goodwill, while avoiding evil.

2. **Maqasid Khassah**

The purpose or role of Shariah in a certain field, such as the role of Shariah in the field of crime, property and family. Each group of hukm has its own purpose and supports the Maqasid Ammah.

3. **Maqasid Juz’iyyah**

The purpose of Shariah in every hukm is related to a specific issue, such as the prohibition of consuming alcohol because it is intoxicating, prohibition of consuming carcasses because it is deleterious to health and the obligation to pay zakat to help the needy. This Maqasid is also known as wisdom, illah, secret of the sharak and ma’na.

**Hukm Based on the Status of the Maslahah and the Strength of the Sharak Decree**

Generally, the discussion touches on three elements

1. Status of the Maslahah category

   All the three goals of Shariat above are not separate from one another with some completing the other. For example, daruriyyat becomes complete with the existence of hajiyyat and
tahsiniyyat. Likewise, hajiyyat becomes complete with tahsiniyyat. Based on the sequence highlighted in the maslahah category, Islamic law related to the preservation of daruriyyat is the most important. Hence, the emergence of the concept (Zulkifly, 2006):

i. The tahsiniyyat hukm is not taken into consideration if it is detrimental to the elements in the hajiyyat or daruriyyat hukm. For example, covering one’s intimate body parts is categorized as tahsiniyyat and when there is a need to expose one’s intimate body parts during medical treatment in a life-threatening situation, which is a daruriyyat, then the prohibition of exposing one’s intimate parts is permitted because priority is given to the daruriyyat aspect.

ii. The hajiyyat hukm is not taken into consideration if it leads to the revocation of matters related to daruriyyat. For example, the performance of prayers is obligatory and is considered as daruriyyat, namely referring to the preservation of religion. Whereas, there are certain criteria related to the completion of prayers that are categorized as hajiyyat because it is more in the form of a wasilah (path) leading to the implementation of the ghayat (goal), which is prayer worship. Thus, if the goal (prayers) cannot be achieved due to difficulties in carrying out the wasilah (e.g., facing the Qibla), then this second point should be neglected and the first point must be carried out.

2. In the Context of Maslahah Daruriyyat
The five categories under daruriyyat are preserving religion, soul, intellect, lineage and wealth, which however, do not share the same status or position amongst each other. The sequence of the order begins with preserving religion, followed by preserving the soul, intellect, lineage and lastly, preserving wealth, which is based on a religious order that needs to be prioritized according to its position (Al-Amidi, 1985; Al Najjar, 1997). Most previous and contemporary scholars place Maqasid Shariah above the other objectives, namely to preserve Islam because it is the main objective propagated by the apostles (Mohd Rumaizuddin, 2018).

3. In the Context of the Source of Shariat
The ulama’ have established the order based on the priority of the sources of Islamic teachings. Thus, if the maslahah is based on texts from the al-Qur’an or the Sunnah, then the maslahah is considered authoritative and there is no room for debate. Likewise, if the established maslahah contradicts the a nas qat’i text, then the maslahah is rejected and considered invalid.

As for the maslahah that is not mentioned in the al-Qur’an or Sunnah texts, then scholars can refer to an analysis or ijtihad (independent reasoning) under strict conditions, such as the analysis must be carried out with due diligence to ensure that the maslahah really exists, instead of just following the logic of human reasoning, the maslahah must be of a general nature (kulliya) and beneficial to all, not just to a specific group, class, or individual, and the maslahah cannot contradict or conflict the authentic text of the al-Qur’an or Sunnah (Wafa, 2021).

Hukm Pertaining to the Inability to Implement Religious Demands
No Muslim is exempted from facing a situation that does not allow him/her to properly carry out religious duties. Therefore, Islam has introduced two important principles, namely al-'azimah and al-rukhsah. Both principles are closely related to Maqasid Shariah, especially the second level of maslahah, which is Maslahah al-Hajiyyat. Al-'Azimah is the original Shariat
hukm that must be mandatorily implemented regardless of the status or situation when there is no emergency or a similar situation (Saad, n.d; Khalaf, n.d; Zakiy al-Din, n.d).

One example of al-'azimah is performing a prayer on time by completing it perfectly and fulfilling all its tenets and criteria. Whereas al-rukhsah is a Shariat hukm that is applied when an urgent or pressing situation (emergencies etc.) arises, where the nature of al-rukhsah contradicts the original law, which is al-'azimah (Al-Amidi, 1985). One example of a hukm based on al-rukhsah is the leeway given to someone who is ill and unable to stand up to perform the obligatory prayers and thus, is allowed to perform the prayers in a seated position, while the original hukm requires the person to do it a standing position.

Determining whether a hukm is a form of rukhsah clearly requires the existence of a Maqasid Shariah element for the purpose of achieving the goals of Shariah by taking into account the benefits or maslahah of the individual. For example, application of the rukhsah hukm that changes the form of the prayer and taharah from the original law to a form of rukhsah hukm for individuals facing health problems or difficulties, as illustrated in Table 2.

Table 2
Type of Rukhsah Hukm in Prayers and Taharah

<table>
<thead>
<tr>
<th>Type of Rukhsah</th>
<th>Situation</th>
<th>Form of Rukhsah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Addition</td>
<td>A patient who wears a bandage due to an injury and is unable to remove it during ablution.</td>
<td>Is required to wipe water over the bandage in lieu of washing the actual body part during ablution that is bandaged while also performing mandatory tayammum.</td>
</tr>
<tr>
<td>Reduced</td>
<td>A patient who faints and remains so right until the end of the certain period of an obligatory prayer.</td>
<td>He is not obliged to perform the prayer when he wakes up from his fainting spell and it is not obligatory to perform (qada) it again.</td>
</tr>
<tr>
<td>Changes to the Structure</td>
<td>Patients who are unable to pray because they are unwell (sick) or in pain.</td>
<td>It is performed in a sitting or lying position or by using bodily gestures according to the patient's ability.</td>
</tr>
<tr>
<td>Replacement</td>
<td>Patients who are unable to use water for a hadas bath or perform ablution.</td>
<td>To perform tayamum as a substitute.</td>
</tr>
<tr>
<td>Brought forward</td>
<td>Patients who are sick and weak as well as needing constant rest in certain situations.</td>
<td>Perform jamak taqdim prayers by bringing forward the upcoming prayers and performing it concurrently with the current prayers as a measure of convenience.</td>
</tr>
<tr>
<td>Delay</td>
<td>Patients who are sick and weak as well as needing constant rest in certain situations.</td>
<td>Perform the jamak ta’khir prayers by delaying the current prayer and combining it with the next prayer session to come as a measure of convenience.</td>
</tr>
<tr>
<td>Abortion</td>
<td>Patients who are unable to use water or soil for the purpose of purification or tayammum.</td>
<td>Most scholars say that prayers should be performed without ablution or tayammum.</td>
</tr>
</tbody>
</table>
Conclusion
Maqasid Shariah is authoritative for determining hukm and fatwa in relation to current problems, as summarized in Table 3:

Table 3
*Maqasid Shariah as a Basis for Determining Hukm*

<table>
<thead>
<tr>
<th>3.1 Hukm Based on Human Interest</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Maslahah Daruriyyah (Essential Benefits)</em></td>
<td></td>
</tr>
<tr>
<td><em>Maslahah Hajjyyat (Complementary Benefits)</em></td>
<td></td>
</tr>
<tr>
<td><em>Maslahah Tahsiniyyat or Kamalat (Desirables or Embellishments)</em></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.2 Hukm Based on the Purpose of Sharak Decrees</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Maqasid Ammah</em></td>
<td></td>
</tr>
<tr>
<td><em>Maqasid Khassah</em></td>
<td></td>
</tr>
<tr>
<td><em>Maqasid Juz’iyyah</em></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3.3 Hukm Based on the Status of the Maslahah and the Strength of the Sharak Decree</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Status of the maslahah category</em></td>
<td></td>
</tr>
<tr>
<td><em>Context of Maslahah Daruriyyat</em></td>
<td></td>
</tr>
<tr>
<td><em>Context of the Source of Shariat</em></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>3.4 Hukm Pertaining to the Inability to Implement Religious Demands</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Al’azimah</em></td>
<td></td>
</tr>
<tr>
<td><em>Al-rukhsah</em></td>
<td></td>
</tr>
</tbody>
</table>

One fact that needs to be confirmed is the history of the existence of Maqasid Shariah, which started from the time of Prophet Muhammad S.A.W. and his companions until today. The Maqasid Shariah concept discussed here has been implemented especially when interpreting verses of the al-Qur’an that involve hukm verses for solving new problems that do not have *nas qat’i* due to changes in time and current developments. A good understanding of *Maqasid al-Shariah* is an important prerequisite for a Muslim intending to practice ijtihad and providing a better understanding to the community instead of being bound by *taqlid*.

This study has presented statements by authoritative ulama’ regarding the position of Maqasid Shariah as a basis for determining hukm and establishing a fatwa regarding contemporary issues. Four dimensions of Maqasid Shariah used as a basis for determining hukm and establishing fatwa were presented. The analysis clearly proves that Maqasid Shariah is the spirit of Shariat and plays a role in providing legal suggestions and solutions for solving contemporary issues. *Hukm* related to matters that cannot be subjected to deductive analogy (*qiyaṣ*) using existing Sharak texts pertaining to *maslahah* (benefits) or harm need to be determined based on Maqasid Shariah.

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