

Comprehensive Fatwa Development Based on Maqasid Shariah: A Study in Brunei Darussalam

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Abstract

The fatwa institution is recognized as an authoritative body and a reference for Muslims in obtaining information related to the determination of current laws that are questioned among the community. There are various fatwas issued in various areas of life such as worship, creed, transactions, family matters, medicine, and even in the fields of science and technology. Today, the presence of the discipline of Maqasid Shariah is seen to play a significant role in providing a basis for arguments in determining laws and issuing fatwas regarding emerging issues. The application of Maqasid Shariah in fatwa issuance must be based on a profound and comprehensive understanding of the disciplines related to legal reasoning and the collection of Shariah texts in determining the benefits derived from the spirit of Shariah, rather than solely on rational considerations. Therefore, this study will focus on the position and application of Maqasid Shariah in determining laws related to current issues by the Department of the State Mufti of Brunei Darussalam to produce a comprehensive fatwa model based on Maqasid Shariah. This study uses document analysis method, namely the Book of Fatwas of the Government of Brunei Darussalam from 2012 to 2022. In addition, interviews with stakeholders were also conducted to obtain current and up-to-date inputs regarding fatwas involving elements of Maqasid Shariah. The study found that the Department of the State Mufti of Brunei is authoritative in setting an example in producing fatwas bound by disciplined fatwa principles and orderly procedures.

Keywords: Maqasid Shariah, Law, Fatwa Institution, Government of Brunei Fatwa, Current Issues.

Introduction

Global changes with the emergence of new technologies and innovations, as well as new phenomena faced, partly demand legal solutions to matters not discussed by past scholars and not found in Sharia texts. Here, the Maqasid Shariah (objectives of Shariah) are seen as relevant and significant for argumentation, with a tendency to examine issues based on human welfare. Indeed, the measurement of welfare arises from a deep and comprehensive understanding of Sharia texts. Maqasid Shariah is oriented towards the spirit of the Sharia itself by realizing the objectives of Sharia in every law to address questions in human life.

Research Background

In essence, Maqasid Shariah is a discourse of knowledge that has undergone phased development like other disciplines in Islamic studies. Initially, it did not emerge as a separate discipline until the era of al-Shatibi. Although this era is considered the peak of Maqasid Shariah, this field of knowledge was still not fully conceptualized at that time. Contemporary scholars have further developed Maqasid Shariah, making it a more organized discipline (Ramli, 2016). It is important to understand that even though early scholars never explicitly defined Maqasid al-Shariah, including al-Shatibi who is considered a pioneer of this field Al-Obeidi (1992), the concept and content of Maqasid have been extensively discussed in their works and have become a foundation for contemporary scholars in defining and conceptualizing the term Maqasid al-Shariah (Ibrahim, 2019). This is because the values of Shariah objectives are inherent in every ijthad and laws issued by them, and these values are indeed contained in the Quran and Sunnah (al-Duraini, 1997).

In essence, Maqasid Shariah is the foundation of all actions of the accountable and serves as the engine driving human activities towards realizing the common good, which is to provide benefits and prevent harm. This is because the nature of Islamic Shariah itself is divine in origin but oriented towards humanity (Muhammad, 2003).

As for the linguistic perspective, the term "fatwa" is derived from the root words "afta" and "ifta'," which mean explanation, clarification, advice, and counsel (Ibn Manzur, n.d.). According to the Dewan Dictionary Fourth Edition (2004), fatwa refers to a decision on a religious law (which has not been decided before) based on Quranic verses, hadiths, and other legal sources including ijthad by a mufti (those authorized to make decisions on Shariah law). The definition of the term fatwa has been stated by most classical and some contemporary scholars in their writings, including Al-Qarafi (1998); Abu Zuhrah (1997); Al-Zuhaili (2004); Al-Qaradawi (2006), and others. Literally, a fatwa is an answer given by a mufti to a question posed to them, regardless of whether the question is specific or general and whether it is posed by an individual or a group (Mehmood et al., 2015). Directly, the fatwa institution is seen to play a significant role in the development of fatwas to provide the best solutions to contemporary issues. The modern era's development, filled with sophisticated innovations and technology, has led society to face various new challenges (Alias et al., 2017). Hence, the fatwa process also faces complex challenges, requiring more careful research and in-depth studies before a fatwa decision is issued by qualified individuals (Baharuddin, 2021).

Therefore, research on fatwas and their relationship with Maqasid Shariah is highly significant given current demands. Two factors to be examined in the formation of a Comprehensive Maqasid Shariah Fatwa in the Brunei Darussalam Government Mufti Department are internal

factors, by examining the fatwa process, and external factors, by considering the catalyst elements influencing its implementation.

Objectives

1. Exploring the understanding, interpretation, dimensions, and discussions of Shariah Maqasid by ancient and contemporary scholars.
2. Examining the application of Shariah Maqasid elements in the Fatwas of the Government of Brunei Darussalam.
3. Developing a comprehensive fatwa model based on Shariah Maqasid for the country of Brunei Darussalam.

Research Methodology

This study employs a qualitative method to obtain more comprehensive and holistic findings. Through literature review, content analysis is conducted to gather accurate and current facts discussed by past and contemporary Islamic scholars regarding the examined issues. Additionally, a semi-structured interview approach is carried out with stakeholders and authorities to acquire precise information regarding the procedures, processes, and implementation of fatwa issuance. The data obtained is then analyzed using Nvivo14 software.

Findings and Research Discussion

1. Formulation of the Definition of Maqasid Shariah by Islamic Scholars

The objectives of Islamic law (Maqasid Shariah) receive diverse definitions among Islamic scholars. Commonalities in defining Maqasid Shariah among both ancient and contemporary scholars can be observed, as shown in Table 1.

Table 1
Definition of Maqasid Shariah by Islamic Scholars

Figure	Definition
Al-Syatibi (2004)	No specific definition. Establishes two principles, namely the purpose of the legislator and the purpose of the recipient of the law, which is humans.
Ibn 'Ashur (2007)	All meanings formulated for the set of laws legislated, whether they apply in their entirety or the majority of them.
al-Fasi (2011)	The goal of the law and the secret behind each law established by the Shariah.
Al-Raysuni (2010)	The goal sought by the Shariah for the benefit of humanity.
Al-Yubi (1998)	The meanings and wisdoms considered in determining any general or specific Shariah law (aiming to bring about goodness).
Muhammad Bakr (2006)	An immediate or deferred (interest) desired by Allah SWT for His servants.
al-Qaradawi (2006)	The wisdom behind the determination (purpose) of the laws legislated for humanity.
Al-Zuhaili (2004)	The purpose and value that can be extracted from the establishment of laws, whether for the entirety of the legislated laws or part of them.
Awda (2007)	A purpose, target, principle aimed at in the application of Shariah

law, which is to achieve benefit or prevent harm.

Based on the definition above, the equation in defining Maqasid Shariah is identified with three (3) elements, namely: (i) objectives or goals or purposes; (ii) law; and (iii) welfare or interests or human goodness (Figure 1).

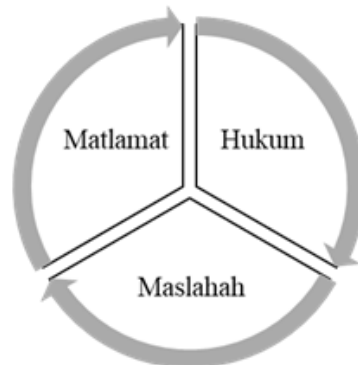


Figure 1: The main elements in the definition of Maqasid Syariah.

In analyzing the position of Maqasid Shariah for determining a law, it can be formulated into three forms of its usage, namely (i) maqasid as law and objective, (ii) maqasid as the path that realizes the law, and (iii) maqasid as the intention or purpose for the accountable and their objectives (Ramli, 2016).

Clearly, Maqasid Shariah is the philosophy of Islamic legislation itself created by Allah SWT for the purpose of human welfare and well-being. Therefore, in literary discussions, Maqasid Shariah is also associated with *maslahah* (public interest), because the objective of Shariah is directly to fulfill the demands of *jalb al-maslahah wa dar' al-mafsdah*. Based on this justification, some jurists use *masalih* (public interests) as an alternative expression to maqasid. For example, Al-Juwayni alternates between the terms maqasid and *masalih* in his book (Yunos, 2016).

Application of Maqasid al-Shariah in Fatwa Issuance

Maqasid al-Shariah is the philosophy of Islamic legislation itself aimed at realizing the welfare and well-being of humanity. The categories of maqasid based on human interests or benefits that impact their quality of life can be divided into three forms: (1) *Maqasid Daruriyyah*, which are fundamental interests for humans consisting of five elements: religion, life, intellect, progeny, and property (Imam al-Ghazali, 1983; Anwar, 2021). The dimension of Maqasid Daruriyyah is also expanded by contemporary scholars (Jaser Awda, 2008; Ari Murti, 2021; Ahlun, 2021). (2) *Maqasid Hajjiyyat*, which are interests that provide ease and comfort to humans based on *al-samahah* or not excessively burdening humans Muda & Omar (2011), and (3) *Maqasid Tahsiniyyat* or *Kamalat*, which are complements and enhancements to life to avoid defects that tarnish their lives (Ghazali, 2018).

In determining a fatwa based on Maqasid al-Shariah, the following matters need to be considered:

1. The hierarchy of Maqasid al-Shariah categories is based on the priority of benefits, with placing daruriyyat benefits as the most important, followed by *hajiyyat*, and then

tahsiniyyat (Al-Syatibi, 2004). All these benefits are not separate from each other, with some complementing others.

2. The order of precedence in *daruriyyat* benefits. The order of precedence begins with preserving religion, followed by preserving life, preserving intellect, preserving progeny, and ends with preserving property, which is an obligatory order that needs to be prioritized according to its position (Al-Amidi, 1985; Al Najjar, 1997; Ghazali, 2018).
3. Identified benefits or interests are based on texts taken from the Qur'an and Sunnah; thus, benefits are considered definitive, and there is no room for debate. However, benefits that conflict with clear texts are rejected and considered invalid. As for benefits not found in the texts of the Qur'an and Sunnah, this situation allows scholars to explore benefits through in-depth research and *ijtihad* based on strict Sharia principles (Zamroni, 2021).
4. Targeting the implementation of Maqasid Shariah should prioritize goals based on the arrangement of targets, prioritizing *Maqasid Ammah/Kulliyat* (overall Sharia objectives) over *Maqasid Khassah/Juziyyah* (specific and grouped Sharia objectives).
5. New laws produced in the form of applying the principle of *al-rukhsah* closely related to Maqasid Shariah need to be examined so that the law or fatwa issued is applicable during urgent circumstances (*darurah*) where the nature of the law conflicts with the original law, which is *al-'azimah* (Al-Amidi, 1985).

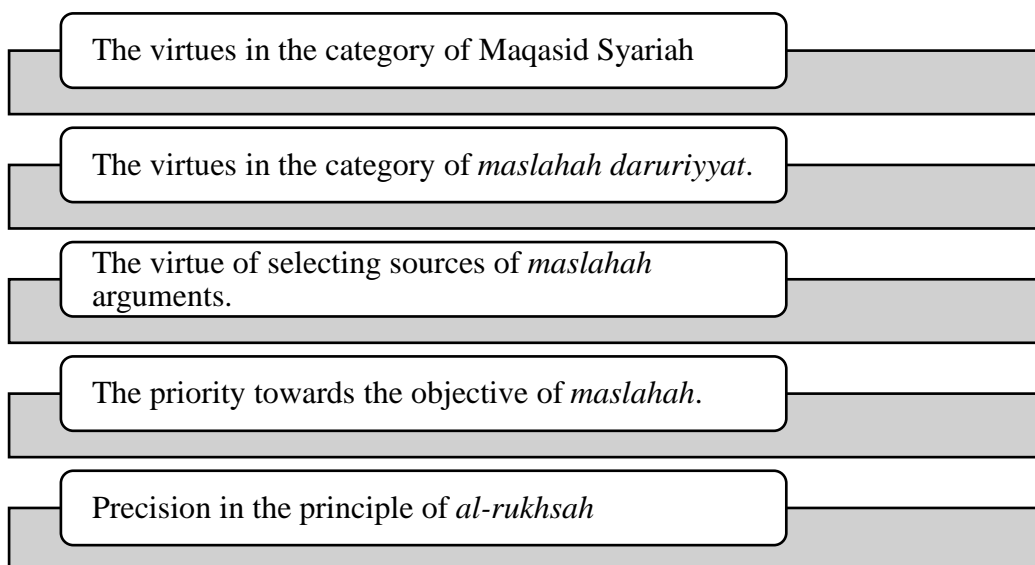


Figure 2: The Foundations of Fatwa Research based on Maqasid Daruriyyah

Interview Analysis

The interview analysis conducted for the methodology of fatwa formulation highlights three items, namely (1) Maqasid Elements, (2) Maqasid Position, and (3) Maqasid Role as shown in Figure 2 below.

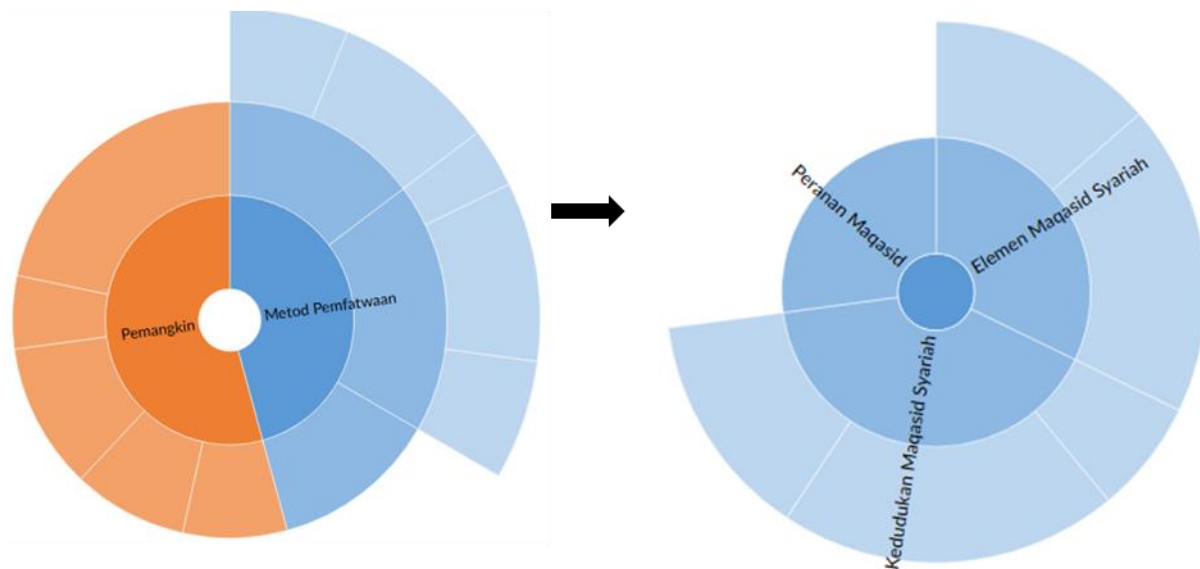


Figure 3: Methods in Determining Fatwas

The Role of Maqasid Shariah as a Fatwa Method

Through the analysis of conducted interviews, all five informants agreed that the fatwa institution plays a role in applying Maqasid Shariah in determining a law as an answer to a arising issues. This is because the function of Maqasid Shariah is as an approach to determining a law regarding an issue by examining the aspects of benefits to achieve the objectives of Shariah (Alias, 2018). The following are examples of statements:

Informant 1

Translate:

"...Yes, among the contributions of the Mufti Department to Brunei society is the prohibition of customs that contradict faith and Shariah, which have deep roots originating from influences of religions other than Islam. Besides, it mandates customs that are not contradictory using fiqhi methods."

Informant 2

Translate:

"...So, if we look at this first question, in my opinion, it is appropriate and important for the Maqasid Shariah approach to be widely used in the issuance of fatwas, and it becomes a practiced norm, especially in Brunei Darussalam."

Informant 3

Translate: *"...Maqasid Shariah is indeed necessary in issuing fatwas, but it (MS) is not the basis for a law. Because as we know, the basis for issuing a law needs to follow the methodology of law production, including Ijtihad altogether. It's just that (MS) is indeed used, especially in determining the best law in a particular case."*

The Position of Maqasid Sharia in Determining Fatwas

From the perspective of the position of Maqasid Sharia in determining fatwas, it cannot be viewed in isolation from the Sharia sources used in deducing a particular law. This is because the value of Maqasid Sharia is inherent in every ijtiḥad and laws issued by scholars, and these values are indeed contained in the Quran and Sunnah (al-Duraini, 1997).

Informant 5

Translate:

"...indeed, if we examine the Quranic verses or the principles of jurisprudence, it can be said that the objectives of Sharia are embedded in the legislation of those laws."

Maqasid Sharia occupies a significant position as the basis of argumentation for a fatwa, especially when dealing with contemporary issues present in the modern era. If a new issue arises that is not addressed in the texts of the Quran and Sunnah, this situation allows scholars to refer to analysis and ijtiḥad under strict conditions.

Informant 2

Translate: *"...current studies related to the dangers of smoking and also those who are exposed to smokers (passive smokers), the contemporary scholars, including the muftis worldwide, including Brunei Darussalam itself, have issued fatwas prohibiting it, based on Maqasid Sharia, meaning that in the matter of smoking, it also preserves religion, life, wealth, and progeny."*

What strengthens the process of issuing fatwas in Brunei Darussalam is the firmness in prioritizing the Shafi'i school of thought in the derivation of laws and fatwas. Adhering to the Shafi'i school of thought has been legislated by the Government of Brunei Darussalam.

Informant 1

Translate: *"In Brunei Darussalam, the relied-upon opinion of the Shafi'i school is prioritized... In making and issuing any fatwa in the manner predetermined before, the Council and Committee of Law shall usually follow the definitive opinion of the Shafi'i school."*

Maqasid Shariah Element as the Basis for Fatwa

Two Shariah Objectives elements proposed by the informant, namely the safeguarding of the five matters under the Necessities of *Daruriyyah* (*Daruriyyah al Khams*), represent four out of the five informants, and the element of benefit (maslahah) was mentioned by all respondents, each presenting several fiqhiyyah principles. The following are statements from the informant regarding the safeguarding of the five matters:

Informant 1

Translate: *"..... If we know that Shariah Objectives have several types, namely necessity, need, and enhancement, looking at each of these, necessity needs to safeguard 5 matters."*

Informant 2

Translate: "..... *Maqasid is by emphasizing the aspects of Shariah that focus on the preservation of the five fundamental objectives as mentioned; according to Shariah, it is to preserve their religion, their lives, their intellect, their progeny, and their wealth.*"

The following are statements related to the benefit (*maslahah*) element:

Informant 1

Translate: "..... *If we look at Shariah Objectives, focusing on the general welfare.*"

Informant 4

Translate: "..... *the criteria set by Shariah Objectives themselves, namely providing benefit and eliminating harm.*"

Conclusion

The fact that needs to be acknowledged is that Shariah Objectives (Maqasid Syariah) constitute the spirit of the Shariah, capable of interacting and playing a role in providing legal answers and solutions to contemporary issues. Matters that cannot be directly addressed by existing Shariah texts, involving benefit or harm, should have their legal rulings determined based on Shariah Objectives. Understanding Shariah Objectives is a crucial prerequisite for someone to engage in *ijtihad* and to provide the community with understanding, freeing them from blind imitation (*taqlid*). The application of Shariah Objectives in the Government of Brunei's fatwas forms part of the argument in determining a law related to contemporary issues presented, whether it is stated directly or indirectly.

The Maqasid Sharia are now seen as a crucial solution in determining Sharia law in facing increasingly complex current issues. Changes in lifestyle, technological advancements and new innovations, as well as the phenomena encountered, partly demand legal solutions and fatwas to ensure that every decision and action truly aligns with and complies with Sharia law. Sharia objectives are no longer discussed on a small scale but have become a topic of global discussion in a universal form. The dimension of *Maqasid Daruriyyah* has also been expanded by contemporary Islamic scholars by placing development and human rights alongside the scale of preservation and protection as proposed by earlier scholars. This paradigm shift is seen as highly relevant to current developments and demands. Directly, fatwa institutions are seen to play a significant role in the development of fatwas based on Sharia objectives (without denying the legal inference methods already existing in the principles of jurisprudence) to provide the most principled and practical solutions to new issues requiring comprehensive legal answers. Therefore, this study will demonstrate the credibility of the Brunei Darussalam Government Mufti Department in organizing and implementing Sharia objectives as the basis for legal rulings in issued fatwas. Finally, a comprehensive fatwa model based on Sharia objectives by the Brunei Darussalam Government Mufti Department is proposed to serve as a reference, emulation, and guidance for other fatwa institutions, both nationally and globally.

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