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A Genealogical Analysis on the Concept and Development of Maqâshid Syarî'ah

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Abstract: Studying maqâshid syarî'ah is perennial and has a strategic value in sharpening intellectual acuity since maqâshid syarî'ah has a tremendous urgency to the process of Islamic law's adaptability, modernization, and in responding to the increasingly complicated and crucial human problems where the treasures of classical fiqh are no longer capable to answer them. This paper studied a genealogical analysis purposed to answer the question about the origin of the concept of maqâshid syarî'ah by uncovering its embryo and genes of this completely new concept. It was library research employing discourse analysis. Primary and secondary sources of works from previous and contemporary Muslim scholars discussing maqâshid were studied and analyzed using Gadamer's hermeneutics. The study found that from the historical perspective, maqâshid syarî'ah did not just emerge at the moment of al-Syathibi's life, but, based on empirical data, it had been present long before his time. The literature analysis on ushûl fiqh concluded that the figures before al-Syathibi had developed some works that were actually in the area of the essential and substantial values of maqâshid syarî'ah, however, they presented them using other words and terms so that they were considered as not of maqâshid syarî'ah.

Keywords: genealogical analysis, maqâshid syarî'ah, al-Syathibi

Abstrak: Mempelajari maqâshid syarî'ah bersifat abadi dan memiliki nilai strategis dalam mengasah ketajaman intelektual. Hal ini karena maqâshid syarî'ah memiliki urgensi yang luar biasa terhadap proses adaptasi, modernisasi hukum Islam, dan dalam menanggapi permasalahan-permasalahan baru yang semakin rumit dan krusial di mana khazanah fiqh klasik tidak lagi mampu menjawabnya. Tulisan ini merupakan analisa genealogis untuk menjawab pertanyaan tentang asal mula konsep maqâshid syarî'ah dengan mengungkap embrio dan gen dari konsep yang benar - benar baru ini. Studi yang dilakukan berupa penelitian pustaka (library research) menggunakan analisa diskursus (discourse analysis). Sumber primer dan sekunder penelitian ini berasal dari karya-karya ulama' Muslim klasik dan kontemporer yang membahas maqâshid yang dipelajari dan dianalisa memakai hermeneutika Gadamer. Dari studi ini didapatkan temuan bahwa dari perspektif sejarah, maqâshid syarî'ah tidak hanya muncul pada saat kehidupan al-Syathibi. Berdasarkan data empiris, maqâshid syarî'ah sudah ada jauh sebelum masa al-Syathibi. Hasil analisa literatur ushûl fiqh menyimpulkan bahwa tokoh-tokoh sebelum al-Syathibi telah mengembangkan beberapa karya yang sebenarnya telah memuat nilai-nilai esensial dan substansial maqâshid syarî'ah, hanya saja mereka menggunakan bahasa dan istilah lain sehingga dianggap bukan maqâshid syarî'ah.

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Keywords: analisa genealogis, maqâshid syarî'ah, al-Syathibi

A. Introduction

From the academic perspective, *maqâshid syarî'ah* (the purposefulness of Islamic law) brings forward the concept, objectives, and adaptability of Islamic law from its philosophical-ideal characteristic to the actual-empirical one. By this, any issue discussed in it from time to time is always interesting and debatable among Muslim scholars, primarily, as well as the laity in general. Hence, reviewing *maqâshid* has a strategic value in sharpening intellectual acuity and increasing academic treasure.

Meanwhile, from the historical perspective, *maqâshid syarî'ah* did not only emerge at the time of al-Syathibi,¹ but, based on empirical data, it had been present long before him. Therefore, reviewing back the order of the genealogical *sanad* (chain of narrators) of each prominent figure in *maqâshid syarî'ah* from time to time since the Prophet Muhammad to the present day is important. By doing so, its genealogical structure (its origin) can be found out exactly in terms of both its essential and substantial aspects. This is so because it is possible that discourses developed by pre-Syathibi scholars did actually have the essential values of *maqâshid syarî'ah*, however, since they might have used other languages and terms, they were considered as not that of *maqâshid syarî'ah*.

Examining al-Syathibi's concept of *maqâshid syarî'ah* may depart from various perspectives including the philosophical angle of view, the systematization of thought on its *ushûl fiqh* (fundamentals of Islamic jurisprudence), its ontological, axiological, and methodological aspects. However, the authors limited this study on the genealogical (origin) aspect only.

There were some studies on al-Syathibi's view about *maqâshid*, including those of Muhammad Khalid Masood, Hamka Haq, and Asafri Jaya Bakri, to name but few. Even though specifically outlining the philosophical view of al-Syathibi in the Islamic law, Khalid Masood² did not express the al-Syathibi's views on the methodology he used to formulate the law's objectives, let alone studied the origin and development of the concept of *maqâshid syarî'ah* of al-Syathibi.

Likewise, the dissertation written by Hamka Haq³ expressed specifically al-Syathibi's thoughts in the theological aspect as understood of the views of al-Syathibi that are spread in his book, *al-Muwâfaqât*. Hamka was more oriented and attempted to adjust al-Syathibi's theological views with those of the *Mu'tazilite*, so his discussion about *tahsîn* (embellishment) and *taqbih* (repugnance) was less satisfactory. Moreover, Hamka did not discuss al-Syathibi's ideas about the law.

¹ The full name of al-Syathibi is Abu Ishâq Ibrahim Ibn Musa al-Gharnatiy. He came from an Arab family, the tribe of Lakhmi, while his famous name, al-Syathibi, was taken from the name of his family, Shaṭibah (Xativa or Jativa). His date of birth is also not known exactly, but in general people only mention the year of his death which is 1388 (790 H). However, Hamka Haq, states that al-Syâtibî was born and lived in Granada during the reign of Yusuf Abu al-Hajjaj (1333-1354 AD) and Sultan Muhammad V (1354-1391 AD). This allegation, seems to be based on computational comparisons between the years of al-Syathibi's death and the period of power of the two Granada sultanates, which at that time Granada was an educational city. See further: Hamka Haq, *Aspek-aspek Teologis Dalam Konsep Mashlahah Menurut Syathibi Sebagaimana Dalam al-'Muwâfaqât*, (Doctorate diss., Jakarta: IAIN Syarif Hidayatullah, 1995).

² See more in Muhammad Khalid Masood, *Islamic Legal Philosophy: A Study of Abu Ishaq al-Syathibi's Life and Thought* (New Delhi: Adam Publishers and Distributors, 1989).

³ Haq, *Aspek-aspek Teologis*, 1995.

Asafri Jaya Bakri⁴ had actually directed the discussion on *maqâshid syarî'ah* and had revealed a little about its relevance and significance when conducting *ijtihâd* at this present time too. However, he did not mention in his discussion any methodological aspect of the concept of *maqâshid syarî'ah*, let alone conducting genealogical research of it.

Therefore, this is the aspect which should be significant to be studied, bearing in mind that a prominent scientific finding is often a result of an accumulation process of the findings of the previous figures. Moreover, the emergence of a prominent figure cannot be separated from the influence of other contemporary or earlier figures. Thus, tracing back the originality (genealogical) aspect of al-Syathibi's concept of *maqâshid syarî'ah* and its development becomes a choice of theme in this study.

On the other hand, the essential question about *maqâshid syarî'ah* is a perennial problem as it is characterized by abundant questions such as whether Islamic law is eternal or profane, whether it is adaptable to a variety of contemporary changes and modernization, whether it can answer various new problems that arise, whether it is capable to accommodate the changes and the process of modernization, and so forth. The list of questions related to the issue of *maqâshid syarî'ah* is certainly long; therefore, discussing *maqâshid syarî'ah* is still very relevant today.

The question that arises: *Where does the embryo of the concept of maqâshid syarî'ah come from?* This is one of the objectives of the study which is to uncover the embryo and genes of the concept which is considered to be completely new since, just as a preliminary understanding, there are only little answers obtained from the preliminary literature studies. The question goes on to whether al-Syathibi was the originator of the concept of *maqâshid syarî'ah* if the core spirit of the concept is *mashlahah*. Or, did al-Syathibi only formalize the concept of *mashlahah* into *maqâshid syarî'ah*? Isn't it true that the Prophet, Umar ibn Khattab, Malik ibn Anas, Imam Malik, al-Juwayni and al-Ghazali as well as some other figures had clearly introduced and in favor of *mashlahah* to *zhâhir nash* (the apparent meaning of a text) on certain issues? Isn't it true that al-Juwayni had also revealed *al-hifdz al-khamsah* (preserving five primary necessities) that was later developed by al-Ghazali as written in al-Syathibi's *Al-Muwâfaqât fi Usûl al-Syarî'ah*⁵ (referred as *al-Muwâfaqât* for the discussion in this paper) volume II? And, at the time after al-Syathibi there also emerged leading figures who wrote *maqâshid syarî'ah*, -such as Allal al-Fasi, Ibn 'Asyur and others-, either as their own original work or as a claim on the thoughts of other scholars like a research by Yusuf Ahmad Muhammad al-Badawi about *Maqâshid Syarî'ah li Ibnî Taimiyyah*.⁶

The jurists before al-Syathibi offered changes of the Islamic law through the consideration of *mashlahah*, methods of *qiyâs* (analogical reasoning), *mashlahah mursalah* (unrestricted interest), *istihsân* (presumption of continuity), and *istishâb* (juridical preference) whereas al-Syathibi offered his concept in anticipating various possibilities of changes, flexibility and adaptability of the Islamic law to miscellaneous issues of Muslim people which are increasingly crucial and keeps growing.

The previous ideas, including *maqâshid*, do not mean they have no weakness. However, it needs to be underlined that the weaknesses and shortcomings they possess of course should not just wipe out a profound idea. This is so since, when further

⁴ Asafri Jaya Bakri, *Konsep Maqâshid Syarî'ah Menurut Syathibi* (Jakarta: PT Raja Grafindo Persada, 1996).

⁵ Abu Ishaq al-Syathibi, *Al-Muwâfaqât fi Ushûl al-Syarî'ah* (Beirut: Dâr al-Kutub al-'Ilmiyyah, 2003).

⁶ Yusuf Ahmad Muhammad al-Badawi, *Maqâshid Syarî'ah 'inda Ibnî Taimiyyah* (Jordan: Dar al-Nafais, 2000).

reviewed, it will be found that *mashlahah* and *maqâshid syarî'ah* have a tremendous urgency to the process of Islamic law's adaptability, modernization, and in responding to the increasingly complicated and crucial human problems where the treasures of classical jurisprudence are no longer capable to answer them. Therefore, it is no surprise that *maqâshid syarî'ah* is considered to have enormous importance in today's Islamic *ijtihâd* as seen in the activities of *ijtihâd* done by *Majma' al-Buhûts al-Islâmiyyah* in Cairo, *Majlis Ulama Indonesia* (MUI, the Indonesian Board of Islamic Scholars), *Majlis Tarjîh* (the Legal Affairs Committee) of the Indonesian Muhammadiyah, *Bahtsul Masâil* of the Indonesian Nahdlatul 'Ulama, and so on.

In this study, the authors picked one main figure of *maqâshid* which was al-Syathibi, and other figures such as Ibn 'Asyur, al-Fasi, Umar ibn Khattab, the Imams of the four schools of thought, al-Ṭûfi, al-Juwayni, and al-Ghazali in studying the origin and development of the concept of al-Syathibi's *maqâshid syarî'ah*. Umar ibn Khattab and those up to al-Ghazali were figures of initiators of *maqâshid syarî'ah* before al-Syathibi, while Ibn al-Fasi and Ibn 'Asyur were those who developed the concept of *maqâshid syarî'ah* post-Syathibi. In this regard, the authors raise the theme of “**A Genealogical Analysis of the Concept and Development of Maqâshid Syarî'ah.**”

B. Methodology

This study was library research⁷ employing discourse analysis, thus, the source of this research is pure literature.⁸ In this research, the authors analyzed the language in its widest sense including studying documents.⁹ The types of data include: 1) the concept of *mashlahah* before al-Syathibi, 2) the concept of *maqâshid syarî'ah* of al-Syathibi, and 3) the concept of *maqâshid syarî'ah* post-Syathibi. The primary sources of books used in this study were *Al-Muwâfaqât* and *Al-I'tishâm*¹⁰ by al-Syathibi, *Al-Burhân fi Ushûl al-Fiqh*¹¹ by al-Juwayni, *al-Mustashfâ min 'Ilmi al-Ushûl*¹² by al-Ghazali, *Maqâshid Syarî'ah 'inda Ibn Taimiyyah* by al-Badawy, *Risâlah fi Ri'âyah al-Mashlahah*¹³ of al-Ṭûfi, Ibn 'Asyur's *Maqâshid Syarî'ah al-Islâmiyyah*,¹⁴ al-Fasi's *Maqâshid Syarî'ah al-Islâmiyyah wa Makârimuhâ*,¹⁵ and Jamaluddin Athiyah Muhammad's *Nahwa Taf'ili Maqâshid Syarî'ah*.¹⁶

⁷ According to Zed, “Library research is a research used library sources to get the data.” So, the library research uses the library sources (books, journals, magazines, and so on) to collect and analyse the data. See further in: Mestika Zed, *Metode Penelitian Kepustakaan* (Jakarta : Yayasan Obor Indonesia, 2008).

⁸ See: C. R. Kothari, *Research Methodology: Methods and Techniques*, 2nd ed. (New Delhi: New Age International, 2004); Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, 19th ed., (Bandung: Alfabeta, 2013).

⁹ S.E. Shaw and J. Bailey, “Discourse analysis: what is it and why is it relevant to family practice?,” *Family Practice* 26, no. 5 (2009), pp. 413–419, doi:10.1093/fampra/cmp038. See also: Anton Bakker and Ahmad Haris Zubair, *Metodologi Penelitian Filsafat* (Yogyakarta: Kanisius, 1992).

¹⁰ Abu Ishaq al-Syathibi and Rashid Ridha (ed.). *Al-I'tishâm* (Cairo: Mustofa Muhammad, 1999).

¹¹ 'Abd al-Malik ibn Yusuf Abû al-Ma'âlî al-Juwayni, *Al-Burhân fi Ushûl al-Fiqh*. (Cairo: Dâr al-Ansâr, 1400 H/1980).

¹² Abu Hamid Muhammad Ibn Muhammad Ibn Muhammad al-Ghazali, *Al-Mustashfâ min 'Ilmi al-Ushûl*. (Beirut: Dâr al-Kutub al-'Ilmiyyah, 2010).

¹³ Najmuddin al-Ṭûfi, *Risâlah fi Ri'âyah al-Mashlahah* (Beirut: Dâr al-Mashdîyah al-Banânîyah, 1994).

¹⁴ Muhammad Taher Ibn 'Ashur, *Maqâsid al-Syarî'ah al-Islâmiyyah*, (Tunis: Dâr al-Tunisiyah, 1366 H/1947).

¹⁵ 'Allal al-Fasi, *Maqâshid Syarî'ah al-Islâmiyyah wa Makârimuhâ* (Cairo: Dar al-Salam, 2011).

¹⁶ Jamaluddin Athiyah Muhammad, *Nahwa Taf'ili Maqâshid Syarî'ah*, (Damascus: Dar al-Fikr, 2003), ISBN: 1-57547-925-7.

Secondary data sources included the works previously published about the concept of *maqâshid syarî'ah*. These included *The Islamic Legal Philosophy: A Study of Abu Ishaq al-Syathibi's Life and Thought* (a dissertation written by M. Khalid Masood), *Aspek-aspek Teologis dalam Konsep Mashlahah Menurut al-Syathibi Sebagaimana dalam al-Muwâfaqât* (The Theological Aspects of the Concept of Mashlahah According to al-Syathibi as in al-Muwâfaqât, a dissertation written by Hamka Haq), *Konsep Maqâshid Syarî'ah Menurut al-Syathibi* (The Concept of *Maqâshid Syarî'ah* According to al-Syathibi, a dissertation written by Asafri Jaya Bakri), *Nazhâriyyah al-Maqâshid 'inda Ibn 'Asyur* (a thesis written by Ismail al-Hasany)¹⁷ as well as some books of classical *ushûl fiqh* such as *al-Risâlah*¹⁸ by Shafi'i, al-Razi's *al-Mahshûl*,¹⁹ and the cutting-edge works on *ushûl fiqh* by Wahbah al-Zuhaili.²⁰

The method of data collection in this study used the documentary technique. This was due to the problem's characteristic and the nature of the research. A documentary technique is a way of collecting data through the written heritages, - especially in the form of archives and books, - about opinions, theories, arguments / postulates and others which have relations with the problems being researched.²¹

Its application in this research include: 1) capturing the basic ideas of the primary sources intact as they are; 2) highlighting the idea through the perspective of research methods; 3) in the highlight concerned, presenting a variety of views and theories of secondary sources to refine and sharpen the analysis, and 4) performing a further analysis to develop analysis that has any relevance with the idea. This last step was expected to produce any finding in the undertaken research.

The techniques of analyzing the data, in accordance with the character of the problems, used the descriptive²² and hermeneutics²³ methods. The descriptive method was used based on the premise that this research seeks to elaborate on the origin of al-Syathibi's concept of *maqâshid syarî'ah*, whereas the hermeneutics method was used because this research was an analytical one and was undertaken to study a prominent figure on the concepts of law, philosophy, and history which were both could be found in the hermeneutics method.

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¹⁷ Ismail al-Hasany, *Nazhâriyyah al-Maqâshid 'inda Ibn 'Asyur* (Virginia: al-Ma'had al-'Alami li al-Fikr al-Islâmi, 1995).

¹⁸ Muhammad Ibn Idris Shafi'i, *al-Risâlah*, (Cairo: Maktabah Dâr al-Turâs, 1979).

¹⁹ Fakhr al-Din Muhammad Ibn 'Umar Ibn al-Husain al-Razi, *Al-Mahsûl fi 'Ilm Usûl al-Fiqh*. Vol. 3. (Riyadh: Jami'ah al-Imam ibn Sa'ud al-Islamiyah, 1979).

²⁰ Wahbah al-Zuhaili, *Ushûl al-Fiqh al-Islami*, (Damascus: Dar al-Fikr, 1986).

²¹ Hadari Nawawi, *Metode Penelitian Bidang Sosial* (Yogyakarta: Gadjah Mada University Press, 1991), p. 133.

²² A *descriptive method* of a research is a research by describing the state of the subject (person, organization, society etc.) based on the facts that appear as they are. Characteristically, a descriptive method is a fact-finding method and giving interpretations on those facts. See: Nawawi, *Metode Penelitian*, pp. 73-76, 81.

²³ *Hermeneutics* is included in the study of social and historical sciences. The word origins from a Greek word: *hermeneuein* or *hermeneutikos* which means to interpret. The technical term was known as "*hermeneute*" which means *to say, to explain, to interpret, and to translate*. Hermeneutics is a stream of methodology that tries to reveal the meaning of a message. This term simply means an interpretation. As a methodological term, hermeneutics means *changing ignorance into understanding*. The objects of hermeneutics can be in the forms of textual messages and sociological or historical phenomena. See: Amin Abdullah, "Kata pengantar pendekatan hermeneutika dalam studi fatwa-fatwa keagamaan," in Khaled Abou el-Fadl, *Atas Nama Tuhan dari Fikih Otoriter ke Fikih Otoritatif*. Trans. and ed. by R. Cecep Lukman Hakim (Jakarta: Serambi Ilmu, 2004), p. 13; E. Sumaryono, *Hermeunetik: Sebuah Metode Filsafat*. (Yogyakarta: Kanisius, 1993); Hasan Askari and John Avery, *Towards a Spiritual Humanism: a Muslim-Humanist Dialogue* (Leeds: Seven Mirrors, 1991), p. 164.

After examining several streams of hermeneutics, it was then viewed that: first, the Gadamer's hermeneutics²⁴ is an appropriate method to be used in this research because its hermeneutical patterns pay appropriate harmonic-dynamic attention to the study of law, philosophy, and history within the framework of a textual study. Secondly, it was assumed that the author of *maqâshid* undoubtedly intended to convey his ideas across time in front of him, whereas the facts, phenomena, and information before the text of *maqâshid* were written became material considerations for him to compose the texts. Thus, such facts, phenomena, and any information that had been composed into texts became alive and vibrant data that may be interpreted in a different time. Gadamer's hermeneutics provides an appropriate tool for this necessity.

With regard to its usability, the study was intended as an effort to increase the treasure of knowledge on Islamic studies as well as a milestone to conduct further researches on the origins of the concept of *maqâshid syarî'ah* from the period the Prophet up to al-Syathibi and its development after the time of al-Syathibi. Hopefully, it will add literature on the Islamic scientific thought, especially for the enrichment of literature in the academic world in Islamic universities.

C. Results and Discussion

Referring to the Oxford Advanced Learner's Dictionary,²⁵ the words *genealogical* is an adjective of *genealogy* which means 'connected with the study of family history, including the study of who the ancestors of a particular person were:' concept means 'an idea or a principle that is connected with something:' development means 'the gradual growth of something so that it becomes more advanced, stronger, etc.' The word *maqâshid* (single: *maqshid*) refers to 'a purpose, objective, principle, intent, goal, end,²⁶ *telos* (Greek), *finalité* (French), or *Zweck* (German).²⁷ Whereas *syarî'ah* means 'the revelation that the Prophet Muhammad had received and made practicing it as the message and mission of his life, which are the Qur'an and the Prophetic tradition.'²⁸ In this paper what the authors mean by '*maqâshid syarî'ah*' in the title of this study is the meaning and purposes wanted by the *Syâri'* (the Law Maker, Allah the God Almighty) in establishing the law for His servants' benefits. While the term '*a genealogical analysis on the concept and development*' means a thorough study on *sanad*, genes, or embryos of the concepts of *maqâshid syarî'ah* before al-Syathibi as well as its development post-Syathibi.

²⁴ See: Hans-Georg Gadamer, *Truth and Method* (London-New York: Continuum, 2006); Richard E. Palmer, *Hermeneutics Interpretation Theory in Schleiermacher, Dilthey, Heidegger, and Gadamer*, (Edvanston-USA: Northwestern University Press, 1969), p.13; Josep Bleicher, *Contemporary Hermeneutics: Hermeneutics as Method, Philosophy and Critique*, (London: Routledge & Kegan Paul, 1990); Richard J. Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics, and Praxis* (Philadelphia: University of Pennsylvania Press, 1983); Georgia Warnke, *Gadamer: Hermeneutics, Tradition and Reason* (Stanford: Stanford University Press, 1987).

²⁵ Available online: <https://www.oxfordlearnersdictionaries.com/definition/english/> Accessed on Feb 12, 2025.

²⁶ Mohammad al-Tahir ibn Ashur, *Ibn Ashur, Treatise on Maqâshid al-Syarî'ah*, trans. Muhammad el-Tahir el-Mesawi (London: International Institute of Islamic Thought (IIIT), 2006), p. 2.

²⁷ Rudolf von Jhering, *Law as a Means to an End* (Der Zweck im Recht), translated by Isaac Husik, 2nd reprint ed. (New Jersey: The Lawbook Exchange [Originally published in 1913 by Boston Book Co.] 2001), p. 35.

²⁸ Jasser Auda, *Maqashid Shariah as Philosophy of Islamic Law: A Systems Approach*, (London: IIIT, 2008), p. xxiii.

There is a group of *fuqahâ'* (Islamic jurists) including some traditional Muslim jurists and a large number of Islamologist like C.S. Hurgonje²⁹ and Joseph Schacht³⁰ who had come to the conclusion that the Islamic law is eternal.³¹ This view is not without any argument, what they said was based on 3 (three) premises: 1) the Islamic law is eternal because its concept is authoritative, divine and absolute, so that it does not allow any change in it, 2) the Islamic law is eternal due to the nature of its origin and development in which, in its formative period, it was untouched by any institution of law and social changes, and 3) it is eternal because it does not develop any methodology for changes in the law.

The second group says that Islamic law can adapt to social changes and modernization. They include Subhi Mahmasani³² and Islamic law observers such as Linant Bellefond³³ and Coulson.³⁴ They argued that the principles of the Islamic law that rest on the considerations of *mashlahah* (benefits), on *maqâshid syarî'ah*, on the flexibility of law in practice, and on the emphasis of *ijtihâd*³⁵ (diligent reasoning), show clearly that the Islamic law can be adapted to social changes and modernization. Their opinion was also based on rational arguments. According to them, the Islamic law is purposed to achieve benefits for mankind, therefore, it is supposed to be able to appreciate finely every social change and modernization for these two matters are considered taking parts in efforts to achieve *maqâshid syarî'ah*. Therefore, given the above purpose, Islamic law must be flexible.³⁶

The idea of *mashlahah* as an independent major pillar was increasingly neglected and reduced when the concept of *mashlahah mursalah* dominated the *madzhab fiqh* (schools of thought on the Islamic jurisprudence), especially the school of Maliki.

²⁹ For more information about Hurgonje and his perception, see further in Christina Carvalho, *Christiaan Snouck Hurgronje: biography and perception* (MA thesis, Amsterdam: Universiteit van Amsterdam, 2010), <https://arno.uva.nl/cgi/arno/show.cgi?fid=168795>.

³⁰ Joseph Schacht, *An Introduction to Islamic Law*, (Oxford: Oxford University Press, 1996), p. 1.

³¹ Masood, *Islamic Legal Philosophy*, 1989.

³² Subhi Mahmasani, *Falsafah al-Tasyrî' fi al-Islâm*, trans. by Ahmad Soejono (Bandung: al-Ma'rifah, 1981).

³³ Y. Linant de Bellefonds, "La Suppression des Juridictions du Statut Personnel en Egypte" [The Suppression of Personal Status Jurisdictions in Egypt], *Revue Internationale du Droit Compare*, 8 no. 1 (1956), 412-425, https://www.persee.fr/doc/ridc_0035-3337_1956_num_8_3_10932.

³⁴ N. J. Coulson, *A History of Islamic Law*, (New Jersey-USA: Aldine Transaction, 2011), p. 81.

³⁵ *Ijtihâd* comes from the Arabic word *jahada* which literally means devoting all abilities or carrying burdens. Dahlan defines it as a serious effort by a mujtahid to reach a decision on *syarî'ah* (Islamic law) about a case in that is not explained in the Qur'an and/or the Sunnah of the Prophet Muhammad, see further in: Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, (Jakarta: Ichtiar Baru Van Hoeve, 1996), p. 669. Al-Khatib states that *ijtihâd* is mobilizing all potential and capabilities owned by someone who has scientific qualifications, theological understanding, and good belief to establish the practical laws of Islam accompanied by arguments that are reviewed in detail and rationally, refer further to: Abdul Karim al-Khatib, *Ijtihad Menggerakkan Potensi Dinamis Hukum Islam*, (Jakarta: Gaya Media Pratama, 2005), p. 29. Meanwhile, al-Khallaf says *ijtihâd* is devoting prime ability to produce Islamic law that was observant and guided by a detailed (tafshili) argument. In other words *ijtihâd* is the mobilization of all capabilities of a *fâqih* (an Islamic jurist) to gain knowledge about the law of something through the Islamic law's proposition, see further in: Khallaf, Abd al-Wahab. *Mashâdir al-Tahyrî' al-Islâmi fi Mâ lâ Nash fih* (Kuwait: Dâr al-Qalam. 1982). So, basically, *ijtihâd* is the exertion of mental energy in search for an Islamic legal opinion. In other words, *ijtihâd* is the maximum effort expended by a Moslem jurist to apply *ûshul al-fiqh* (fundamentals of Islamic jurisprudence) in a purpose for discovering God's law. See further: Wael B. Hallaq, "Was the Gate of Ijtihad Closed?" *Int. Journal of Middle Eastern Studies* 16, no. 1 (1984).

³⁶ See further: Fazlur Rahman, *Membuka Pintu Ijtihâd*. Trans. and ed. Anas Mahyuddin. (Bandung: Pustaka, 1995); Harun Nasution, *Ijtihâd Sumber Ketiga Ajaran Islam*. In Jalaluddin Rahmat, (ed.), *Ijtihâd dalam Sorotan*, (Bandung: Mizan. 1991).

Meanwhile, *qiyās* (analogical reasoning) - notably it becomes the liaison of methods in expanding and adjusting the teachings of law to social changes and modernization process - had been reduced in such a way. In this condition, the extreme scriptural-textual group (i.e. the school of Zuhairi) defied vigorously any analogical deduction effort based on the search for the objectives of Islamic law.

In the midst of intellectual anxiety as just explained,³⁷ there came the figure of al-Syathibi with his idea of *maqâshid syarî'ah* which was contained in his magnum opus *al-Muwâfaqât* as an alternative response to the changes and objective improvements of the conditions of Muslims. To realize his obsession, al-Syathibi put his reform ideas in three major agendas: 1) by conducting a construction on the formulation of *maqâshid syarî'ah*, 2) by reconstructing the traditional concept of *qath'i* (certain) and *zhanni* (ambiguous), and 3) by developing the concept of *mashlahah mursalah* which is typical to the school of Maliki towards a more universal concept of *mashlahah*.

To the initiators of *maqâshid syarî'ah*, every law of God contains its objectives, both special objectives (termed as *'illât* and *hikmah*) and general ones (termed as *maqâshid 'ammah*) which is the realization of the benefit to mankind. This belief is supported by a mature concept as written by al-Syathibi in his *al-Muwâfaqât*, *'Allal al Fasî in Maqâshid Syarî'ah al-Islâmiyyah wa Makârimuhâ*, and Ibn 'Asyur in *Maqâshid Syarî'ah al-Islâmiyyah*. Any law which generally realizes benefits to mankind means realizing *maqâshid syarî'ah*. Thus, it appears in the concept of *maqâshid syarî'ah* the flexibility, versatility, and dynamics of Islamic law. At the same time, it also opens the minds of those who state that the Islamic law is immutable, doctrinal, eternal, and final which is impossibly adaptable to various forms of social change and modernization.

From the preliminary exploration of literature, it was found that the essence of *maqâshid syarî'ah* of al-Syathibi and the core spirit he used as the basis in formulating the contents, missions, visions, and orientations of his *maqâshid syarî'ah* relied on the spirit of *mashlahah*. And, it also turns out that *mashlahah* is an essence and a substance that become the principle of legal reasoning. For example, it is said that goodness is *halâl* and *halâl* must necessarily be good. Such a statement had been used by jurists of the classical schools of thought, particularly Malik ibn Anas, as one method of applying *maqâshid syarî'ah*. Long before Malik ibn Anas, the Prophet Muhammad and Umar ibn Khattab had also done *ijtihâd taṭbîqî*³⁸ in seeking the benefit despite conflicting to *zhâhir nash* (the physical and perceptible side of a legal text).

Some previous researches stated that al-Syathibi was the first *guru* on *maqâshid syarî'ah*.³⁹ This means that al-Syathibi is the true originator of the concept. However, if the core of *maqâshid syarî'ah* presented by al-Syathibi is *mashlahah*, then the authors' temporary assumption is that al-Syathibi was not the first originator of the concept of *maqâshid syarî'ah* but rather it was the Prophet Muhammad (pbuh) himself which was then more firmly practiced and developed by the second Caliph Umar ibn Khattab and eventually by the jurists and scholars up to al-Juwayni and al-Ghazali. al-Syathibi was, therefore, the figure that formalized the concept of *mashlahah* into *maqâshid syarî'ah*.

Just as a brief elaboration of the above statement, it can be exemplified here a form of *ijtihâd* referring to *maqâshid syarî'ah* conducted by Umar ibn Khattab. In some cases, Umar showed his proficiency in conducting *ijtihâd*. Umar is considered to

³⁷ In Masood's analysis, Syathibi came amid debates among scholars about the generality of *lafadz* (texts) and specificity of causes (*asbâbun nuzul*). See: Masood, *Islamic Legal Philosophy*, 1989.

³⁸ *Ijihâd taṭbîqî* is an *ijtihâd* in order to stipulate a legal clause that has been generated through *ijtihâd inshâ'i* (*ijtihâd* in issuing the law from the Quran and the Sunnah). See further in: Syarifuddin Amir, *Ushul Fiqih*, Vol. 2, (Jakarta: Kencana, 2014).

³⁹ Masood, *Islamic Legal Philosophy*, 1989.

possess a very sharp vision in his search for the objectives of the law (*maqâshid al-ahkâm*).⁴⁰ For example, Umar refused to give *zakât* (alms) to new Muslim-converts even though such is explicitly stipulated in the Holy Quran Surah al-Tawbah (9) verse 60 because he assumed that the characteristic of the new converts was not fixed. Therefore, whenever the characteristic concerned is no longer found then *zakât* is better distributed to those who are needier.⁴¹ Such attitudes and actions according to Amier Nuruddin⁴² became a valid proof that Umar did not just employ his ratio (*ra'yu*) in stipulating the law onto events that have no argument, but furthermore he tried to find *mashlahah* that becomes an objective of the implementation of such law despite having it conflicting to *zhâhir nash*.

In the following decades, the scholars of *fiqh* pioneered by Syafi'i tried to find legal sources of the Islamic jurisprudence other than the Quran and the Sunnah. They agreed that *qiyâs* is an important method of stipulating the law in response to the needs of the Islamic law's adaptability. They stated that when the *Syâri'* establishes a law, He certainly desires certain objectives / wisdom. Therefore, if there are two events that have a similar determinative aspect (*'illât*) and one of them contains firm and clear texts, then the law of the other event can be established.⁴³

Even though this analogical deduction lies under a strict formality protection which are the Quran and the Sunnah, its implementation often generate legal products that are contrary to the spirit of the Quran and the Sunnah. Such happens especially with those analogical deductions which are collaborated with the Asy'arite theological pattern of thought. This is because it closes tightly the search for the objectives of law since the *Asy'arite* people insist that there is no causality behind the deeds and words of God.

From a further literature exploration, it can be affirmed that the essence of *maqâshid syarî'ah* in the form of *mashlahah* or any other formalized various terms that contain the meaning of *maqâshid* has been there since the days of the Prophet and his companions. Apart from Umar ibn Khattab and other guided caliphs (i.e. Abu Bakr, Uthman, and Ali), al-Tirmidhi al-Hakim was the first scholar who made the writing about *maqâshid* in his books *Wa fî al-Irsyâd fî Tartîb Thurûqi al-Ijtihâd*. More systematically, the mapping of *maqâshid syarî'ah* grows, develops and gets institutionalized through the following periodizations:

C.1. Maqâshid Syarî'ah at the Time of the Prophet

Observing thoroughly *maqâshid* at this era, there can be found a variety of practices of attaining *mashlahah*. To be more concrete and precise, the Holy Quran that generally becomes the guidance, the improvement agent, and the director in attaining happiness, also includes well in detail various *'illât* (legal causes) and *maqâshid* in some discussions contained in its sacred texts. For example, it can be observed closely the discussion of *nash* (legal texts), the discussion of phasing and *nasakh* (abrogation)

⁴⁰ Further descriptions with more complete case examples of efforts of *ijtihâd* done by Umar ibn Khattab with a vision to realize *maqâshid al-syarî'ah* can be found in: Ibn Rushd al-Qurṭubî, *Bidâyatul Mujtahid wa Nihâyatul Muqtashid*, (Beirut: Dar al-Ibn Hazm, 1995), p. 338.

⁴¹ See: Muhammad Said Ramadan al-Buṭî, *DHawâbiṭ al-Mashlahah*, (Beirut: al-Risâlah Muassasah, 1986), pp.150-151.

⁴² See further in Amier Nuruddin, *Ijtihâd Umar bin Khattab: Studi Tentang Perubahan Hukum dalam Islam* (Jakarta: Rajawali Pers, 1987).

⁴³ See further in several works of Shafi'i, particularly in his magnum opuses, *al-Risâlah* (Cairo: Maktabah Dâr al-Turâs, 1979) and *al-Umm* (Alexandria: Dar al-Wafa, 2001), as well as in his papers of *qaul qadîm* (the old statements) and *qaul jadîd* (the new statements).

in it as well as the discussions of *tarjih* (affirmation) between the meanings of texts in the Quran.

Some texts of the Holy Quran become proofs for the presence of *maqâshid* or *mashlahah*. These texts do not explain matters in detail but they only explain the basic principles of law implementation that is practical including civil law, acts/regulations, crimes, economic and many others.

Concerning trading which becomes one of the most important civil laws, for instance, the Quran mentions only four verses namely: 1) the law of permissibility to practice trading,⁴⁴ 2) the requirements that a trade transaction must be based on the willingness of both parties,⁴⁵ 3) the presence of witness in a trade transaction,⁴⁶ and 4) a prohibition to conduct a trade at the time when a Friday prayer's call is echoed.⁴⁷ Concerning the enactment of regulations, the Quran only mentions three basic principles which are the consultation,⁴⁸ justice,⁴⁹ and equity⁵⁰ whereas the acts in detail are left to mankind so that they can take most benefit through their wisdom. Concerning the laws on criminal conducts, there are only five types of criminal conducts of which their sentences are mentioned namely: murder, theft, mischief on the earth, adultery and *qadzaf* (slander).

In some verses, there explained the law of an issue as well its wisdom either openly or not, for example, the verses about wine and gambling,⁵¹ the verses about menstruation,⁵² and the verses about alms/charity.⁵³ This shows the importance of seeking benefits (for mankind) in the objectives of law which becomes a fundamental principle of Islamic law.

Many texts of the Quran only state the general principles of law such as *al-ashlu fi al-asyya' al-ibâhah* (the original status of law for all matters is permissible),⁵⁴ the verses on the fundament of law implementation explaining *raf'ul haraj* (eliminating difficulties) and *al-taysir* (promoting ease),⁵⁵ and the verses about liability to perform obligations and conveying rights to their owners.⁵⁶

On the other hand, the Hadits do not only serve as *muqarrir* (establisher), *mubayyin* (clarifier), and *munfashil* (differentiator) of Islamic law at the time where there is no clear text in the Quran, but also contain *maqâshid* as those of the Quran, namely: *maqâshid* of the texts of Sunnah, *maqâshid* of *nasakh* in the Sunnah, and *maqâshid* in *ta'ârudh* (disagreement) and *tarjih*. The *maqâshid syarî'ah* at the time of the Prophet can be elaborated as follows:

C.1.1. Maqâshid syarî'ah of the texts of Sunnah

⁴⁴ The Holy Quran Surah al-Baqarah [2] : 275, see: Abdullah Yusuf Ali, *The Meaning of the Holy Qur'an* (Maryland, USA : Amana Corporation, 1992), p. 115.

⁴⁵ Surah al-Nisâ' [4] : 29, *ibid*, p. 184.

⁴⁶ Surah al-Baqarah [2] : 282, *ibid*, pp. 117-118.

⁴⁷ Surah al-Jumu'ah [62] : 9, *ibid*, pp. 1468-1469.

⁴⁸ Surah Âli 'Imrân [3] : 159, *ibid*, p. 169.

⁴⁹ Surah al-Nisâ' [4] : 58, *ibid*, p. 203.

⁵⁰ Surah al-Hujurât [49] : 10, *ibid*, p. 1341.

⁵¹ Surah al-Mâidah [5] : 91, *ibid*, p. 277.

⁵² Surah al-Baqarah [2] : 222, *ibid*, pp. 89-90.

⁵³ Surah al-Taubah [9] : 103, *ibid*, p. 468.

⁵⁴ Surah al-Baqarah [2] : 29, *ibid*, p. 23.

⁵⁵ Surah al-Baqarah [2] : 173, Surah al-Baqarah [2] : 185, Surah al-Nisâ' [4] : 28, Surah al-Mâidah [5] : 6, Surah al-Hajj [22] : 78, *ibid*, pp. 68-69, 74, 193, 247-248, and 842 respectively.

⁵⁶ Surah al-Nisâ' [4] : 58, Surah al-Isrâ' [17] : 34, Surah al-Hajj [22] : 29, *ibid*, pp. 203, 683, and 829 respectively.

Among the texts of hadiths that show wisdom in *maqâshid* is the Prophet's sayings to his companions, Mu'adz ibn Janbal and Abu Musa al-Asy'ari, when they were assigned to Yemen, "Do make things easy and not hard and give glad tidings and do not make people run away (from guidance)".⁵⁷ Likewise, the *iqrâr* (approval) of the Prophet towards the saying of his companion, Mu'adz, to hold on *ra'yu* (analysis) in the absence of an answer from the texts of both the Qur'an and the Sunnah or when the legal texts are *zhanni* (unclear/ambiguous) and contain multi-functional meanings that require decisive meaning which is closer to the objective of law that may be reached with *al-ra'yu al-shahîh* (good analysis), shows this kind of wisdom.

There are some important points that can be taken as avails of the Prophet's *iqrâr* to his companion Mu'adz; it shows that *al-ra'yu al-shahîh* can become a source of legitimacy after *nash* (the legal texts). It also affirms the position of *ijtihâd* employing *al-ra'yu* in the absence of *nash* or the presence of texts that are *zhanni*.

Ijtihâd bi al-ra'yi includes the use of *ijmâ'* (consensus), *qiyâs*, *'urf* (tradition), *mashlahah*, *istihsân*, *sadd al-dzarî'ah* (blocking the means), *fath al-dzarî'ah* (opening the means), and other things that are in harmony with the teachings of Islam without conflicting them to *nash* or the principles of Islamic law. This indicates a direct recognition by the Prophet about the limitation of *nash* in providing solutions to contemporary issues that must always bring benefits in every time and place. It is, therefore, necessary to have the capabilities to understand *maqâshid* appropriately and correctly.

C.1.2. Maqâshid of nasakh in the Hadiths

Similar to the Holy Quran, the Hadiths of the Prophet also pays attention to *maqâshid syarî'ah*. We can see it in the phasing of law implementation and the ease towards *mukallafîn* (mature Muslims upon whom the Islamic laws are subjected). If the abrogation comes from a heavier law to a lighter one, the objective to be achieved is a relief and ease, and when the vice versa takes place, the objective to be achieved is an effort towards a more perfect and better condition. So, in the end, a *mukallaf* is able to perform any command between *'azîmah* and *rukhsah* and is able to perform better obedience.

Therefore, the wisdom of this *nasakh* is aimed for the benefit of humans who become the object of law enforcement. Such can be seen from a hadiths which describes that a group of Muslim delegates came to Medina on the feast of Eid al-Adha. The Prophet wanted to give a good reception to honor the guests so he forbade Muslims to store the meat at home, but when their guests had left the Prophet gave back the freedom to store the meat. Another example is that the prayer was first commanded to be performed only two *rakâ'at* (cycles) in the morning and another two in the afternoon. After the Islamic spirit had immersed within the Muslims and they had felt the pleasure of Islam in their hearts then Islam commanded them to perform five prayers daily, and of course, all of that concerns with benefits attained to Muslims.

C.1.3. Maqâsidh of ta'ârudh and tarjîh in the Hadiths

The *maqâshid* of *ta'ârudh* and *tarjîh* in the hadiths is the recognition that *'illât* or *hikmah* (wisdom/prudence) that is *manshûsh* (stipulated) is to take precedence over

⁵⁷ A hadiths (no. 3996) narrated by al-Bukhari. See: Muhammad ibn Ismail al-Bukhari, *SHahîh al-Bukhari*, Translated and edited by Muhammad Muhsin Khan, *The English Translation of SHahîh al-Bukhari With the Arabic Text* (Virginia; Al-Sadaawi Publication, 1996).

those which are not *manshûsh* because they contain *mashlahah* (benefits) and refuse *mafsadah* (detriments/harms). In addition, the recognition of the explanation of law provides clarity to a *mukallaf* to prioritize the hadiths that have legal certainty over those that do not. Or, using al-Syathibi's statement "*maqâshid wadh'i al-syarî'ah lil ifhâm*" (the objective of Islamic law is to be understood) which can be conducted by understanding the norms of the Arabic language and requisites in performing *ijtihâd*.

C.2. Maqâshid Syarî'ah at the Period of the Prophet's Companions

The need for *maqâshid* was acknowledged by the Prophet's companions, this was because there present a lot of issues and legal problems that needed definitive answers. As already known, after the expansion of Islam many Companions scattered in various places where differences in customs and cultures from one place to another were found. Consequently, they had a very urgent role in continuing the prophet's duty to propagate Islam as *waratsatul anbiyâ'* (the heirs of the Prophets).

When making a conclusions of law, the Companions always adhered to the principles of *maqâshid syarî'ah* and common grounds in performing *ijtihâd*. They had been trained well since they accompanied the Prophet during his lifetime. So it's not surprising that they could have a powerful potency in capturing and applying *maqâshid* in every process of performing *ijtihâd*.

When observed, the values of *maqâshid* are very important as the ground of policy-making of the law so that the results of the decision are perceived to give benefits to all people. One example is a consensus of the Companions to ban Abu Bakr on trade and to look for a job when he was serving as the caliph for the benefit of Muslims. But, as compensation, some funds were fetched from *baitul mâl* (the state treasury) for him to cover his daily expenses. One other evidence on the tendency to attain *mashlahah* (benefits) was the idea proposed by Umar to Abu Bakr for conducting a codification of the Holy Quran so that later on Zaid ibn Thabit was appointed as the executor of this task. This project was carried out based on the reason that many companions had become martyrs in the war of Yamamah which raised concerns about the loss of the Quran.

Regarding to the stopping to give the part in charity to *muallaf qulûbuhum* (new converts that need to be commiserated) at the time of Umar, that does not mean a *nasakh* against the Quran since a *nasakh* is not going to happen after the revelation ceases. The policy, however, was taken based on the thought of being unnecessary to practice *ta'lîf* (giving mercy) to the *muallaf* during the time of Umar. Thus this law was an interpretation in accordance with the texts of the Quran and did not cause contradictions between the benefits and texts. A statement of whether there presence *ta'lîf* or not or to choose those that are considered *muallaf* (new converts that are considered to be entitled to *ta'lîf*), is included in the authority of a leader by having a consultation with others deemed capable. Likewise, the execution of penalties towards thieves by cutting their hands when the '*âm majâ'ah* (famine) or '*âm ramadah* (prolonged drought periods) took place were not implemented at the time of Umar.

The election of Abu Bakr as the first Caliph was because the situation was treated similar to the *imâmah* (leader) in prayer when the Prophet was sick. The achievable objectives were to maintain the state system and to preserve the continuity of propagating the Islamic preaching, civilization, and improvement for society.

A further example was the fall of three divorces to one pronunciation of *thalâqan tsalâtsan*. It was aimed to prevent any husband so as not to be careless when dropping a divorce to his wife with such pronunciation since it will only result in detriments.

And, when a group of people killed one person then a *qishash* (similar act as penalty) should be done upon them. The expected goals are to protect the human's life from evil doings of the criminals and to prevent them from committing mass murder.

C.3. Maqâshid Syarî'ah at the Time of Tâbi'in / al-A'immah al-Mujtahidîn

As the Islamic jurisprudence at the time of Companions always related to the *maqâshid*, so was as well during the period of *tâbi'in* (the generation right after the Companions) because they studied and took methods directly from the Companions. If there were no text, they took *mashlahah* and *qiyâs*. As Ibrahim al-Nakhâ'i⁵⁸ ever said, "Surely the laws of Allah have a purpose namely *hikmah* (wisdom) and *mashlahah* (benefit) that are back to us." Similarly, the pattern of *maqâshid* during the *tâbi'in* period was reflected in the strong two schools, namely the school of Hejaz and one of Iraq. In principle, both of these two schools took *ar-ra'yu* but at a different level. This means that they both practiced the fundamentals of *mashlahah* in making legal decisions. In addition, different circumstances between the period of the Companions and *tâbi'in* encourage the latter to perform *istinbât* (searching for legal cause) with any device of *mashlahah*.

Tracking the period of *al-a'immah al-mujtahidîn* (the *imâms* of *ijtihâd*), the essence of *maqâshid* can be found in the *methodology* of their *istinbâth*. In the Maliki's school, *fiqh mashâlih* (jurisprudence based on attaining benefit) was very famous because the results of jurisprudence which were based on the aspect of seeking benefits predominated. Among Maliki's *fatwâ* was that if it is difficult in an area to find a job which is lawful and is not likely to move to another place then one may take an illicit job as long as only to fulfill his/her emergency needs. Meanwhile, Imam Abu Hanifah took *maqâshid* through *qiyâs*, *istihsân* and *'urf*. Similarly, Imam Shafi'i did so through *qiyâs* whereas Imam Ahmad ibn Hanbal and Imam Malik did so through *qiyâs*, *mashâlih mursalah*, *sadd al-dzarî'ah*, and *fath al-dzarî'ah*. So, to sum up, it can be said that all the scholars agreed to use *maqâshid syarî'ah* as a legal foundation except the *Zahiriyyah* group that just stuck to texts only. They did so since they rejected the presence of *ta'lîl* and *qiyâs*. However, even so, they still used *maqâshid* limited to those which were mentioned by texts alone.

Long before the period of *a'immah al-madzâhib* (the *imâms* of the schools of thought), there were some scholars who performed *ijtihâd* based on *maqâshid* and discussed it specifically including al-Tirmidhi al-Hakim. Maybe he was the first scholar who produced writing about *maqâshid* in his books: *Al-Shalâh wa Maqâshiduhâ*, *al-Hajj wa Asrâruhu*, *al-'Ilâlu Syarî'ah*, and *'Ilal 'Ubûdiyyah*. Other works on *maqâshid* by latter scholars include Abu Manshur al-Maturidi (d. 333 H / 945) with his book *Ma'khad Shar'îy*, Abu Bakr al-Qaffal al-Shashi (d. 365 H / 976) with his works *Ushûl Fiqh* and *Ma'hâsin al-Syarî'ah*, Abu Bakr al-Abhari (d. 375 H / 985) with his books *al-Ushûl*, *Ijmâ' Ahli Madînah* and *Mas'alah Jawâb wa Addalâil wa 'Ilal*, Al Baqilani (d. 403 H / 1013) in his book *al-Taqrîb*, Imam al-Haramain (d. 478 H / 1085) in *al-Burhân*, *Al-Shalâh wa Maqâshiduhâ*, *al-Hajj wa Asrâruhu*, *al-'Ilâlu Syarî'ah*, and *'Ilal*

⁵⁸ He was a *tabi'in* from Iraq, his full name was Abu 'Ammar Ibrahim ibn Yazid ibn al-Aswad bin Amr ibn Rabi'ah ibn Harithah ibn Sa'ad ibn Malik ibn an-Nakhâ'i, born in 46 H/666. He was skilled in the study of hadîts and known as one of the great *tabi'in* and memorized many hadîts. He was extraordinarily expert on Islamic jurisprudence and was a leading *mujtahid*. Some even described him as a smart scholar as his teacher, Ibn Mas'ud, one of prominent Companions in *fiqh*. Available on: <https://ahlulhadist.wordpress.com/2007/09/10/ibrahim-an-nakha%E2%80%9999iy-wafat-96-h/> Accessed on Feb 23, 2019. See also: Syihâb al-dîn Ahmad ibn 'Alî ibn Hajar al-Asqalânî., *Tahdzîb al-Tahdzîb* (Beirut: Dar al-Fikr, 1995).

'*Ubûdiyyah*, Imam al-Ghazali (d. 505 H / 1111) in his works *Al-Manḥul*, *Shifâ al-Ghalîl* and *al-Mustashfâ*, Imam Fakhruddin al-Razi (d. 606 H / 1209) in his book *al-Mahshul*. Other works include those of Imam al-Amidi (d. 631 H / 1234) in *Al-Ihkâm*, Ibn al-Hajib (d. 636 H / 1239) in his book *Muntahâ al-Wushul wa al-Amal fî al-'Ilmi Ushul wa al-Jadal*, Izzuddin ibn Abd Salam (d. 660 H / 1262) in his work *Qawâid al Ahkâm fî Mashâlih al-Anâm*, Imam Qarafi (d. 684 H / 1285) in his work *al Furûq*, *al Iḥkâm fî Ahkâm Tamyîzi Fatâwi 'an il-ḥhkâm*, Imam Baidhawi (d. 685 H / 1286) in *Minhâjul Wushul ila 'Ilmil Ushûl*, Imam al Isnawi in *Nihâyatul ushûl fî Sharḥ Minhâj al-Wushul*, Ibn Taimiyyah (d. 728 H / 1328), and Ibn al-Qayyim al-Jauziyyah (d. 751 H / 1350).

In the next decades, there appeared al-Syathibi (d. 790 H / 1388) with his work *al-Muwâfaqât*, who formalized the diverse terminologies regarding to the objectives of law using the terms *maqâshid al-syarî'ah*, *maqâshid al-ahkâm* and so forth in his magnum opus *al-Muwâfaqât*. The list continues to Imam Shaukani (d. 1250 H / 1834), Tahir ibn 'Asyur (d. 1393 H / 1973) in his book *Maqâshid Syarî'ah*, 'Allal al-Fasi (d. 1394 H / 1974) with his book *Maqâshid Syarî'ah wa Makârimuhâ*, Dr. Yusuf Hamid in his dissertation *al-Maqâshid al-'âmmah li al-Syarî'ah al-Islâmiyyah*, Dr. Ahmad al-Raishuni in his dissertation *Nazhariyatul Maqâshid 'indal Imâm al-Syathibi*, Dr. Uthman Murshid in his book *al-Maqâshid wa Ahkâm Syarî'ah wa Atsâruhâ fî al-'Uqûd*, and so forth, all to name but few.⁵⁹

According to the research undertaken by Ahmad al-Raishuni, the person who first used the term *maqâshid al-shar'îy* was Imam al-Haramain (Abu al-Ma'ali Abd al-Malik Ibn Abdullah al-Juwayni, d. 478 H / 1085) in his book *al-Burhân fî Ushûl al-Fiqh*.⁶⁰ Some scholars call the book as *al-Kulliyah al-Khams* and *al-Ushûl al-Syarî'ah*.⁶¹

Based on the works of previous scholars, Imam al-Syathibi concluded and explained that all scholars agree that Allah establishes various law provisions with an objective to maintain the five basic elements of human (*al-Dharûriyyat al-Khams*). These five elements are safeguarding one's religion, one's life, one's intellect, one's descendants, and one's property. These five elements are also called the principal objectives of law (*al-maqâshid al-syar'îyyah*)⁶² whereas al-Ghazali termed them with *al-ushûl al-khamsah*.⁶³

Meanwhile, Taj al-Din 'Abd al-Wahhab Ibn al-Subki (d. 771 H / 1370), usually known as Imam al-Subki, added one other objective of law namely safeguarding one's honor (*hifz al-'irdh*), so it is called *al-kulliyah al-sitt* (the six elements).⁶⁴ However, before him, al-Qarafi (d. 694 H / 1295) was the first scholar to use the term and he grouped it into the fifth objective (i.e. safeguarding one's property).⁶⁵

Al-Ghazali went on to explain that anything which is aimed to maintain those basic five is *al-mashlahah*, whereas, on the contrary, anything which contradicts to it is regarded as an opponent of *al-mashlahah* (benefits), namely *al-mafsadah* (harms).

⁵⁹ See further in Iffatin Nur, *Maqashid al-Syarî'ah : Telaah Asal Usul dan Perkembangan Konsep Maqashid al-Syarî'ah Syathibi*, (Doctorate diss. [unpublished], Jakarta: UIN Syarif Hidayatullah, 2008).

⁶⁰ 'Abd al-Malik ibn Yusuf Abû al-Ma'âlî al-Juwaynî, *Al-Burhân fî Usûl al-Fiqh* (Cairo: Dâr al-Anşâr, 1400 H/1980).

⁶¹ See: Ahmad al-Raishuni, *Nazhariyyah al-Maqâshid 'inda al-Imam al-Syathibi* (Beirut: al-Jami'ah Muassasah, 1992), p. 38.

⁶² *Ibid*, p. 39.

⁶³ Ghazali, *Al-Mustashfâ*, pp. 286-287.

⁶⁴ Taj al-Din 'Abd al-Wahhab Ibn al-Subki, *Hashî'ah al-'Allamah al-Bannâni 'alâ Matn Jam'i al-Jawâmi*, Chap. 2. (Beirut: Dar al-Kutub al-'Ilmiyyah, 2005), p. 280.

⁶⁵ Shihab al-Din Ahmad Ibn Idris al-Qarafi, *Syarḥ Tanqih al-Fusûl*, (Cairo: Maktabah al-Kulliyah al-Azhar and Dar al-Fikr, 1973), p. 391. More details, see: al-Raishuni, *Nazhariyyah al-Maqâshid*, pp. 50-51. Compare with: al-Juwayni, *al-Burhân*, p. 1551.

Rejecting *mafsadah* itself is also an *al-mashlahah*.⁶⁶ Meanwhile, Sa'id Ramadan himself also stated that the purpose of *syarî'ah* is to preserve one's religion, life, intellect, descendants, and property.⁶⁷

The scholars also agreed that the scale of priority in implementing laws that are prescribed in Islam is consistent with the order of safeguarding those five types of basic elements. In other words, safeguarding one's religion takes precedence over safeguarding his/her life, safeguarding one's life takes precedence over safeguarding one's intellect, and so on.

In summary, it can be said that there are some scholars who itemize the objectives of laws into those five basic elements, some others detail them into six types, and some others do not develop them in detail at all. Again, those five basic elements in the sequence are preserving one's religion, life, descendants, intellect, and property.

The *maqâshid syarî'ah* of al-Syathibi is actually a continuation of the concept of *mashlahah* that had appeared in the major works of *ushûl fiqh* before al-Syathibi. In other words, the genes or embryos of *maqâshid syarî'ah* had existed since the time of the Prophet and the Companions. The validity of this statement had been supported by a historical, systematical, and periodical reviews starting from the time of the Prophet, the Companions, the *tâbi'in*, the *mujtahidîn* up to those who were closest to the time of al-Syathibi. The result of exploration indicates that *mashlahah* is the essence of *maqâshid syarî'ah*.

D. Conclusion

From previous elaboration and discussion, it can be concluded several things as follows:

First, the conception of *mashlahah* in the view of the majority of Islamic scholars before al-Syathibi is attaining benefits and refusing disadvantages in order to maintain the objectives of the law, namely: maintaining one's religion, spirit, intellect, progeny, and wealth. In other words, attaining benefits and refusing disadvantages solely for the sake of worldly matters without considering their suitability with the objectives of the Islamic law, let alone opposing to them, can not be called *al-mashlahah*, but otherwise, it is *mafsadah*.

Second, in *al-Muwâfaqât*, al-Syathibi used different terms associated with *maqâshid syarî'ah*, namely: *maqâshid syarî'ah*, *maqâshid al-shar'iyyah fi al-syarî'ah*, and *maqâshid min shar'i al-hukm*. To the authors' opinion, albeit with different words, those terms contain the same sense and meaning that are the objectives of the law sent down by Allah the Almighty God.

According to al-Syathibi, as quoted from his own statement, "*Indeed Syarî'ah aims to realize the benefit for people in the world and in the Hereafter.*" In another phrase, al-Syathibi said that "*The laws are stipulated (by Allah) for the benefit of His servants.*" If the statements of al-Syathibi are examined, it can be said that the contents of *maqâshid al-syarî'ah* or the objectives of Islamic law are the benefit for mankind. Understanding *maqâshid al-syarî'ah* took a sizable portion of the works of al-Syathibi. The *maqâshid al-syarî'ah* was indirectly presented almost in the four volumes of his *al-Muwâfaqât*. Meanwhile, the concept of *maqâshid al-syarî'ah* substantially does not change significantly, and more in the form of development, addition, and refinement of the concept of al-Syathibi's *maqâshid al-syarî'ah*. Ibn 'Asyur, for example, reformed the classification of *maqâshid al-syarî'ah* that was initiated by al-Syathibi.

⁶⁶ Al-Ghazali, *al-Mustashfâ*, p. 287.

⁶⁷ al-Buṭṭi, *Dhawâbit*, p. 27.

Third, genealogically, al-Syathibi's concept of *maqâshid* has a continuous embryo sequence which is the Quran, the Hadits, the period of Companions, Malik ibn Anas, al-Ṭūfi, al-Ghazali and al-Juwayni, the period of the Imams of *madzhab*, then al-Syathibi. The essence of the concept of *maqâshid al-syarî'ah* stated by al-Syathibi is the same as the conception of *mashlahah* expressed by his predecessors.

In the next decades there present Ibn 'Asyur who developed the concept of *maqâshid syarî'ah* in theory and application that was contained in his magnum opus *Maqâshid al-Syarî'ah al-Islâmiyyah*. In realizing his idea, Ibn 'Asyur constructed the concept of *maqâshid syarî'ah* in terms of its equality in the science of *syarî'ah* and how to apply it. He asserted that all arguments of *fiqh* must be based on *maqâshid syarî'ah* behind it. Post the time of al-Syathibi and Ibn 'Asyur, there sprang figures that also proposed their ideas about *maqâshid syarî'ah*, - either as their own original works or as a claim on the thoughts of other scholars -, such as 'Allal al-Fasi, Hamid al-'Alami, Wahbah al-Zuhaili, Muhammad Ilwan, and Jasser Auda, to name but few³ or those who brought up a claim of *maqâshid* of the figures they examined like Yusuf Ahmad Muhammad al-Badawî who wrote *Maqâshid Syarî'ah 'inda Ibnî Taimiyyah*.

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