

Globethics Repository

The logo for Globethics, featuring the word "Globethics" in white, sans-serif font centered within a solid blue rectangular background.

Ijtihād Maqā#idi : the interconnected Ma#lahah-based reconstruction of Islamic laws

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see <https://www.globethics.net>. Data and content policy of Globethics Repository see <https://repository.globethics.net/pages/policy>.

Item Type	Book
Authors	Thahir, A. Halil
DOI	10.58863/20.500.12424/170118
Publisher	Globethics.net
Rights	Attribution-NonCommercial-NoDerivatives 4.0 International
Download date	2026-07-05 14:41:53
Item License	https://creativecommons.org/licenses/by-nc-nd/4.0/
Link to Item	http://hdl.handle.net/20.500.12424/170118

Ijtihād Maqāṣidi

The Interconnected Maṣlahah-Based
Reconstruction of Islamic Laws

A. Halil Thahir

Interconnectedness
The Prophet Muhammad | Aurat | al-Hadith | Mono
Tradition | Jilbab | Muslimah Clothing | Al-
Islamic Culture | Mujtahid | Khimār | Equality
The Qur'an | Ijtihād | The Sunnah | In
Hijāb | Judisprudence | Women | Hanafi | Justi
Shari'ah | Islamic Law | Religion

Ijtihād Maqāṣidi

The Interconnected Maṣlaḥah-Based

Reconstruction of Islamic Laws

Ijtihād Maqāṣidi

The Interconnected Maṣlaḥah-Based Reconstruction of Islamic Laws

A. Halil Thahir

Globethics.net Theses

Director: Prof. Dr. Obiora Ike, Executive Director of Globethics.net in Geneva and Professor of Ethics at the Godfrey Okoye University Enugu/Nigeria. Series editor: Ignace Haaz, Ph.D

Globethics.net Theses 30

A. Halil Thahir, *Ijtihād Maqāṣidi: The Interconnected Maṣlaḥah-Based Reconstruction of Islamic Laws*

Geneva: Globethics.net, 2019

DOI: 10.58863/20.500.12424/170118

ISBN 978-2-88931-220-7 (online version)

ISBN 978-2-88931-221-4 (print version)

© 2019 Globethics.net

Managing Editor: Ignace Haaz

Assistant Editor: Samuel Davies

English Translation: Maufur

Globethics.net International Secretariat

150 route de Ferney


1211 Geneva 2, Switzerland

Website: www.globethics.net/publications

Email: publications@globethics.net

All web links in this text have been verified as of January 2019.

This The electronic version of this book can be downloaded for free from the Globethics.net website: www.globethics.net.

The electronic version of this book is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License (CC BY-NC-ND 4.0). See: <https://creativecommons.org/licenses/by-nc-nd/4.0/>. This means that Globethics.net grants the right to download and print the electronic version, to distribute and to transmit the work for free, under the following conditions: Attribution: The user must attribute the bibliographical data as mentioned above and must make clear the license terms of this work; Non-commercial. The user may not use this work for commercial purposes or sell it; No derivative works: The user may not alter, transform, or build upon this work. Nothing in this license impairs or restricts the author's moral rights. 

Globethics.net retains the right to waive any of the above conditions, especially for reprint and sale in other continents and languages.

TABLE OF CONTENTS

1 Introduction	7
2 Maqāsid al-Sharī'ah and the Excavation of Islamic Laws	19
2.1 <i>Understanding Maqāsid al-Sharī'ah and its Development</i>	19
2.2 <i>General Objectives (al-Maqāsid al-'Āmah) in the Qur'an.....</i>	23
2.3 <i>Muslim Scholars ('Ulamā') on Maṣlaḥah.....</i>	34
2.4 <i>Al-Ghazali (d. 505 AH) on Maṣlaḥah.....</i>	37
2.5 <i>Al-Shatibi (d. 790 AH) on Maṣlaḥah.....</i>	43
2.6 <i>Al-Ṭūfī (d. 716 AH) on Maṣlaḥah.....</i>	56
2.7 <i>The Interconnected Maṣlaḥahs as an Approach.....</i>	71
2.8 <i>The Interconnected Maṣlaḥah in Contemporary Islamic Studies: A Comparison.....</i>	73
2.9 <i>The Operative Works of the Interconnected Maṣlaḥah-Based Ijtihād Maqāṣidī</i>	82
2.10 <i>Elements of Ijtihād Maqāṣidī.....</i>	91

3 Islamic Law and the Methods of Its Excavation
Sharī ‘ah, Islamic Jurisprudence and Islamic Law..... 91

3.1 *Sharī’ ‘ah*..... 95

3.2 *Islamic Jurisprudence (Fiqh)*..... 97

3.3 *Islamic Law* 98

3.4 *The Characteristics of Islamic Law*..... 99

3.5 *The Principles of Islamic Law*..... 103

3.6 *Ijtihad and Mujtahid*..... 111

3.7 *Requirements of Mujtahid* 115

4 Maqāsid al-Sharī’ah-Based Fiqh: The Application
of the the Interconnected Maşlahahs in Muslim
Women’s Clothing127

4.1 *The Meaning of Hijāb, Jilbab, and Khimār*..... 128

4.2 *The History of Muslimah Clothing* 137

4.3 *Women’s Aurat*..... 141

4.4 *Scholars on the Requirements Islamic Clothing*..... 148

4.5 *Considering Shahrur’s Thoughts on the Function of Muslimah Clothing: A Contemporary Reading Towards Religious Texts* 150

4.6 *The Relevance of Shahrur’s View About the Function of Muslimah Clothing with the Maqāsid al-sharī’ah: Protection of Life Based on the Tradition and Aesthetics*. 155

4.7 *Maqāsid al-Sharī’ah in Muslimah Clothing*..... 160

5 Conclusion 171

6 Bibliography 173

7 About the Author..... 191

INTRODUCTION

It is commonly understood that Islam came into existence with various dimensions,¹ including its legislation which aims to bring as many possible benefits for mankind, both in this world and hereafter.² Al-Ghazālī (d. 505 AH) said that Islam is concerned with five kinds of virtues³ which, in *uṣūl al-fiqh*'s (Islamic jurisprudence) terminology, are called *al-kulliyāt al-khams* (the five universal). They include protection of religion (*al-dīn*), life (*al-nafs*), reason (*al-'aql*), descent (*al-nasl*), and property (*al-māl*).⁴ Given the importance to protect the five *maṣlahah*

¹In general, Mahmud Shaltut classifies the teachings of Islam into two dimensions: *aqīdah* and *sharī'ah*. He calls the *aqīdah* dimension of the Qur'an with the term *al-imān* (beliefs) and the *sharī'ah* one with *al-'amal al-salih* (good deeds). According to Shaltut's classification, Islamic jurisprudence falls under the category of *sharī'ah*. See Mahmud Shaltut, *al-Islam 'Aqidah wa Shari'ah*, (n.p: Dar al-Qalam, 1966), pp. 11-13.

²It means to say that the axiology of Islamic jurisprudence is by definition theanthropocentric because it is oriented to the fulfillment of divine (heavenly) and human (worldly) well-beings altogether.

³Al-Ghazālī further said that these five well-beings do not exclusively belong to Islam, but also to all religions (*millah*) that aspires to the well-being of humankind. Therefore, al-Ghazālī said that there is no single religion that does not forbid disbelief, killing, fornication, and consumption of anything that can impair the dysfunction of the reason. See Abu Hamid al-Ghazali, *al-Mustafā min 'Ilm al-Uṣūl*, Vol. 1, (Bairūt: Dār al-Fikr, t.th.), p. 286.

⁴Al-Zuhaili Wabbah pointed out that the Mālikīyah and Shāfi'īyah scholars listed the five main principles (*al-uṣūl al-khamsah*) in the following order: religion, life, reason, lineage, and property. Meanwhile, Ḥanafīyah scholars listed: religion, life, lineage, intellect, and property. Similarly, al-Būṭī said that the

(the objectives of Islamic law), al-Shāṭibī (d. 505 AH) insisted that mujtahids must know well and integrate *maqāṣid al-sharī'ah* (the objectives of Islamic law) into their intellectual endeavors (*ijtihād*).

Before al-Shāṭibī (d. 790 AH), the study on *maqāṣid al-sharī'ah* serves only as one instrument in figuring out the 'illat (the basic cause) of law when a legal analogy (*qiyās*) should be conducted to decide a legal status unknown to the *naṣṣ* (al-Qur'an and Hadith). The use of *maṣlaḥah* in search for the basic cause of the law (*masālik al-'illah*) is limited only to the cause that is acquired by reasoning ('*illat ijtihādī* or *mustanbaḥah*), not that is explicitly mentioned by the texts, such as al-Qur'an, Hadith, and *ijmā'*. In other words, the study on *maṣlaḥah* before al-Shāṭibī (d. 790 AH) is confined to the realm of *qiyās*.

Al-Shāṭibī (d. 790 AH), on the other hand, suggested that the whole process of *ijtihād*, whether or not directly linked with the text, should consider *maṣlaḥah* as the "spirit" of the objectives of Islamic law. He further explained that an *ijtihād* aligned to the objectives of Islamic law (*al-ijtihād al-maqāṣidī*) should fulfill four aspects.⁵ Firstly, it should be based on the text and the law that is contained therein, as well as the objectives of Islamic law (*al-nuṣūṣ wa al-aḥkām bi maqāṣidihā*); secondly, it should compromise the universal and general messages with the partial evidence (*al-jam' bayn al-kulliyāt al-'āmah wa al-khāṣah*); thirdly, it should be based on the principle of inviting the good and refusing the bad (*jalb al-maṣlaḥah wa dar'u al-mafāṣid*); fourthly, it should predict the things that might happen in the long term (*i'tibār al-ma'ālāt*): whether the legal decision to be made will lead to the realization of goodness (*maṣlaḥah*), or supposedly will cause badness (*maf-sadah*). With regard to the last aspect, al-Shāṭibī (d. 790 AH) said that

ijmā' of 'ulama set up *al-uṣūl al-khamsah* according to the al-Ghazālī's order, i.e. religion, soul, intellect, lineage, and property. See Muhammad Sa'id Ramaḍān al-Būṭī, *Ḍawābiṭ al-Maṣlaḥah fi al-Sharī'ah al-Islāmiyyah*, (Bairūt: Muassasah al-Risālah, 1982), p. 250.

⁵Ahmad al-Raysuni, *Nazarīyyat al-Maqasid 'Inda al-Imam al-Shatibi*, (Bairūt: al-Ma'had al-'Alami li al-Fikr al-Islami, 1995), pp. 362-384.

the Prophet Muhammad had been reluctant to kill the hypocrites in fear that he would be considered in the future as a killer of His companions.⁶

In fact, al-Shatibi's breakthrough concept of *maqāsid al-sharīah* still has limitations in the study of Islamic jurisprudence. Like al-Ghazālī (d. 505 AH), the pioneer of *maqāsid*, al-Shātibī put forward partial accounts of Islamic jurisprudence by limiting himself to the aspects of the five universals (religion, life, intellect, lineage, and property), without making any linkage of each aspect. In addition to relying heavily on the five universals (*al-kulliyāt al-khams*), Shātibī's *ijtihād maqāsidī* talked *maṣlaḥah* only in terms of its significance levels, i.e. *maṣlaḥah ḍarūriyyāt* (primary needs), *maṣlaḥah ḥājjiyyāt* (secondary needs), and *maṣlaḥah taḥsīniyyāt* (tertiary needs).

Consequently, such a partial approach leads also to partial understanding of Islamic jurisprudence. For instance, the obligation of five times daily prayers is seen as linked only to the benefit of religion, nothing to do with that of life, reason, descent, and property. Similarly, the obligation to cover the aurat (certain parts of the body), is considered merely as a preventive teaching to avoid fornication which, in the study of *maqāsid al-sharī'ah*, falls under the category of the protection of the descent (*al-nasl*). Thus, it is not too surprising that the groups with the banners of "Sharī'ah" enforcement, either from religious institutions such as the Majelis Ulama Indonesia (MUI), and local regulation (Perda), have invited controversy among the public. The most current and most controversial example in the media was the Regional Regulation (Perda) of the Lhoksumawe City of Aceh which bans straddling for women while riding a motorbike.⁷ This regulation concerns only with the benefit of descent (*al-nasl*), i.e. a good behavior by which sexual desire from man can be avoided. Meanwhile, the aspect of the protection

⁶Ahmad al-Raysuni, *Ibid.*

⁷<http://www.republika.co.id/berita/nasional/politik/13/01/08/mgaz85-larangan-duduk-mengangkang-bukan-syariat-islam>, accessed February 22, 2013.

of life (*al-nafs*) lists at the top of the hierarchy of the five universals than just that of modesty. There is also a number of other Islamic legal decisions in the books of Islamic jurisprudence, both on worship (*'ibādah*) and socio-economics (*mu'āmalah*), which turned to be void of interconnected maṣlaḥah.

One example is in fiqh on women, such as on dressing and polygamy. The absence of the interconnected maṣlaḥah-based paradigm in the two cases has resulted in the subordination of women and, therefore, legal rules which neglects women's natural rights. It is obligatory for women to cover their entire body except palms and face. Indeed, there are some scholars who argued that a woman is allowed only to reveal one of her eyes in the presence of men other than her mahram. They argued that because women are the reasons behind the rampant adultery, they must be secluded and isolated from association with men in order that the latter is not swayed and fascinated by their beauty and, therefore, is not committed to adultery. Such maṣlaḥah, in the study of maqāṣid al-sharī'ah, belongs to the realm of protecting offspring (*ḥifẓ al-nasl*), and in the hierarchy of the five universals (*al-kulliyāt al-khams*) it sits in fourth position after religion, life, and reason, and one level above property.

In term of its strength, Abū Zahra considers the benefit of women Islamic dressing as *hājīyyat* (secondary), not *ḍarūriyyat* (primary), needs. In fact, as Nasaruddin Umar said, women Islamic dressing is *taḥsīniyyat* (tertiary), which can be subdued to *ḍarūriyyat* and *hājīyyat*. Thus, it is not an exaggeration when Muḥammad Shahrūr, a Syrian scholar, said:

“Indeed, ḥijāb is a private matter that a woman can determine for herself, without any pressure, intimidation, or terror. Al-Tanzīl al-Ḥakīm should not be reduced to referring to a woman who wears ḥijāb, and by which we call a woman who wears ḥijāb after she is not as going “back to religion”, as if she was an

*apostate. Such reduction is an insult both to Islam and woman because it confines this great religion to only a piece of cloth.”*⁸

The above-mentioned quote implies that, in Shaḥrūr’s opinion, women are free to choose the types, models and designs of their dressing, as long as they can protect themselves from harassment. Dressing has nothing to do with religion. In fact, if someone was naked in front of her or his non-family (non-*muḥrim*), the punishment would be only social. It seemed that Shaḥrūr wanted to suggest, “it is too trivial to attribute dressing with religion; there are other things which are more important than dressing!”⁹

Therefore, Shaḥrūr holds that Muslim female dressing should not only be seen merely from the perspective of covering their bodies, as the Islamic clerics desired to. Rather, it should take into account another criterion, i.e. to what extent dressing will make a woman free from harassment.

Dressing will meet its best function when its designs, models, and desired colors follow tradition (*‘urfīyyah*), contain aesthetic values or beauty (*jamāliyyah*). In Shaḥrūr’s opinion, “appropriate” and “inappropriate” (*yaliq wa lā yaliq*)¹⁰ are the standards to decide whether or not

⁸Ibid., *Dirasat*, p. 327. There are other Muslim scholars who share the same opinion as Shaḥrūr’s. Musda Mulia, for instance, pointed out that “we should appreciate and respect whatever women decided to choose in order that social harmony to be established. Sociologically, *jilbab* does not signify anything, nor it means a symbol of piety. A woman who wears a *jilbab* is not necessarily a pious one and otherwise. *Jilbab* is not identical with one’s piety.” See Siti Musda Mulia, “Memahami Jilbab dalam Islam” in *Psychology of Fashion Fenomena Perempuan (Melepas) Jilbab*, (Yogyakarta: LKiS, 2010), xiii.

⁹Shaḥrūr explained that the oversimplification of *hijab* into religious matters are due to some reasons, i.e. powerlessness (*al-‘ajz*), and more importantly patriarchal societies (*dhukuriyat al-mujtama’*), and discrimination of others on behalf of religion. Amid patriarchal societies, the *ulamas* (Muslim jurists) were also influenced by the patriarchal traps when formulating their legal products; in this case, a woman was treated as goods to be taken care of and controlled according to the preference of *ulamas* most of whom are male. Ironically, all these were done on behalf of glorifying women. See Shaḥrūr, *Dirāsāt*, p. 325.

¹⁰Ibid., p. 170.

dressing accords aesthetic values or beauty (*jamāliyyah*). A woman decides to restrict her freedom in dressing not because of religious demands, but of “appropriate”- or “inappropriate”-ness. Shaḥrūr also asserted that dressing has different aesthetic standards depending on where, when, and by whom it is worn. The aesthetic values of dressing are always changing and are subject to others’ criticism. He gives the following example on how dressing has different standards of appropriateness and beauty:

*In some societies it was found inappropriate for someone of the age of sixty years old, for instance, to wear red short pants and a purple t-shirt. However, such outfit colors may be considered trendy and acceptable in other societies.*¹¹

The aspect of tradition (*ʿurfiyyah*), Shaḥrūr said, is wider than aesthetics, because the former can restrict one’s freedom of choice on something which has nothing to do with “appropriate” or “inappropriate”, and beauty. Shaḥrūr illustrates that a widow who is on her waiting period and is religiously not allowed to talk about marriage, is “supposed” to dress according to the standards that her society is imposing on her. This provision, Shaḥrūr said further, has nothing to do with aesthetics.¹²

A study on Islamic jurisprudence based on interconnected maṣlaḥah (*ittiṣāliyyāt al-maṣāliḥ*) is necessary as it considers multi perspectives in its discussion. It is only by doing so that the word that the Prophet Muhammad was sent to bring flexible and tolerant teachings as well as grace to all human beings will become realized into this world.

This book attempts to answer two main issues: firstly, how does the interconnected maṣlaḥah-based ijtihād maqāṣidī work? Secondly, what are the implications of the interconnected maṣlaḥah-based ijtihād maqāṣidī on women’s dressing?

¹¹Ibid.

¹²Ibid.

Discussions on *maṣlaḥah* (public interests), or precisely *maqāṣid al-sharī'ah* (the objectives of Islamic law), have been so far dominated by studies on the fathers of the concept of *maṣlaḥah*, such as al-Ghazālī (d. 505 H.), al-Shāṭibī (d.790 H.), and al-Tūfī (d. 716 H.). Among many works are Asafri Jaya Bakri, *Konsep Maqasid al-Syari'ah Menurut al-Syatibi dan Relevansinya Dengan Ijtihad Hukum Dewasa Ini*, (Graduate Program IAIN Syarif Hidayatullah Jakarta, 1994); Imam mawardi, *Fiqh Minoritas Fiqh al-Aqalliyat dan Evolusi Maqasid al-Syari'ah dari Konsep ke Pendekatan*, (Yogyakarta: LKiS, 2010); Ahmad al-Raysuni, *Nazariyyat al-Maqāṣid 'Inda al-Imām al-Shāṭibī*, (Bairut: al-Ma'had al-'Alami li al-Fikr al-Islami, 1995).

However, these works fail to provide innovative, new discussions on the issue, such as how the concepts of *maṣlaḥah* proposed by those leading figures are developed into a concept of interconnected *maṣlaḥah*-based *ijtihād maqāṣidī* whose presence is supposedly able to bring certainty on contemporary legal problems in accordance with the rapidly changing times and sophisticated modern science.

This book is built upon the following theoretical framework. Noel J. Coulson said that Islamic law is divided into two sections: divine law and jurisprudence (laws of the *faqīh*).¹³ While the former is related to the laws that are revealed by God and, therefore, are absolute, the latter are the legal products of human understanding and, therefore, are historical and profane.¹⁴ Due to their historical and changeable natures, it is, therefore, imperative for Muslim jurists to take goodness or benefits into account when formulating their legal products. Nevertheless, it is im-

¹³Noel J. Coulson, *Conflicts and Tension in Islamic Jurisprudence* (Chicago: The University of Chicago Press, 1969), p. 3

¹⁴Muhammad Arkoun said that Islamic teachings brought to us consist of two traditions: the first is “T” which refers to transcendental, enduring, unchangable traditions; the second is “t” which means the historical-cultural products of mankind, both passed by one generation to another generation or originated from the interpretations on the sacred textes. See Muhammad Arkoun, *al-Fikr al-Islami: Qira'ah 'Ilmiyyah*, transl. Hashim Salih (Bairut: Markaz Inha' al-Qawmi, 1987), pp. 19-20.

portant to note that the legal benefits that Muslim jurists have in mind should be measurable and within the parameters of the benefits that have been formulated by the Muslim scholars in the theory of maqāṣid al-sharīʿah.

Maqāṣid al-sharīʿah, which many researchers ascribed its peak to the creative hands of al-Shāḥibī (d. 790 AH), consciously or not, is nuanced by religious imagination (*al-mikhyāl al-dīnī*) and the religious, social, economic, and even political memories (*dzākirah*)¹⁵ which are certainly different from current conditions and situations. It is inadequate to see the benefits in a professional world and fashion only from the eyes of the five universals (*al-kulliyāt al-khams*) which relies more heavily on levels of significance, i.e. *ḍarūriyyāt* (urgent, primary needs), *ḥājjiyyāt* (secondary needs), and *taḥṣīniyyāt* (tertiary needs); rather, it necessitates also the use of maṣlaḥah-based ijtihād maqāṣidī.

Al-Shāfiʿī (d. 204 AH) is one scholar who spoke the loudest in rejecting the use of reason in its various forms, either through istiḥṣān or maṣlaḥah mursalah in excavating Islamic laws. Later scholars, such as al-Juwaynī (d. 478 AH) and al-Ghazālī (d. 505 AH), followed this thesis but then developed it into a concept of maṣlaḥah. Al-Juwaini (d. 478 AH) is considered as the forefather of maqāṣid. He brought forth the concept of taʿlīl (causation) in three categories: *ḍarūriyyat*, *ḥājāt* and *maḥāsīn*. It is Juwayni's concept (d. 478 AH) that then inspires al-Ghazālī to formulate a new package of maṣlaḥah, namely maqāṣid al-sharīʿah in the framework of al-uṣūl al-khamsah (the five principles), which includes the protection of religion, life, intellect, descent and property, even though in practice it “mirrors” Shāfiʿī's ijtihād, i.e. *qiyās* (analogical reasoning).

¹⁵One's way of thinking cannot be separated from the shadows of the memories (zakirah) and imagination (khayal) hammered by religious, social, cultural, and other modes. See Muhammad Arkoun, *al-Fikr al-Islami: Naqd wa Ijtihad*, transl. Hashim Salih (Bairut: Dar al-Saqi, 1998), p. 240.

Unlike al-Ghazālī (d. 505 AH) who belongs to Shafī'ī school, al-Shāṭibi (d. 790 AH) developed further Juwaynī's and al-Ghazālī's concepts of *maṣlaḥah* and established it as a method of Mālikī's *istinbāt*, i.e. *maṣlaḥah mursalah* (the unattested interest), which maintains a high level of dependence on texts.¹⁶ Similar to al-Ghazālī (d. 505 AH), al-Shāṭibi (d. 790 AH) stated that the human goals or purposes (*maqāṣid al-mukallaf*) should not run against the five foundational goals of the laws (*maqāṣid al-sharī'ah*), and that both are largely compatible, and if there is disagreement between the two, *maqāṣid al-mukallaf* should be given a priority.¹⁷

The concept of *maṣlaḥah* was also developed by al-Ṭūfī (d. 716), a Hanbalī scholar who overtly refuses the interference of reason in *istinbāt*. For al-Ṭūfī, *maṣlaḥah* is the most leading and strongest legal evidence, particularly in relation between each human (*mu'āmalah*). Any legal evidence or postulate that contradicts to the spirits of

¹⁶For al-Shatibi, al-maqāṣid al-'āmah should be a consideration in comprehending particular evidence (*dalīl juz'ī*). *Ibid.*, p. 370.

¹⁷Around six centuries after al-Shatibi, Muhammad al-Tahir bin 'Ashur (d. 1393) came up as an emerging figure of *maṣlaḥah* with his famous work, *Maqāṣid al-Sharī'ah al-Islāmiyyah*; almost in the same time, there was also another scholar, 'Alāl al-Fāsī (d. 1394 H.) with his work, *Maqāṣid al-Sharī'ah wa Makānatuhā*. Both Arab-Maghribī scholars share common ideas in many aspects. For example, both share a common word that *maqāṣid al-sharī'ah* is built upon human nature. Quoting Qur'anic verse, Rum: 30 and al-A'raf: 119, Tahir bin Ashur and 'Alāl al-Fāsī agreed that protection human nature is part of *maqāṣid al-sharī'ah* which, therefore, should not contradict human intellect in a normal condition. Nevertheless, they disagreed on some points. Tahir bin Ashur put forward the autonomization of *maqāṣid al-sharī'ah* as a separate discipline from *uṣūl fiqh* by formulating its concepts, maxims as well as its focuses. On the contrary, 'Alāl al-Fāsī is concerned more on the detailed description of *sharī'ah*, including its philosophy and hidden values, rather than on discourse of its autonomy and independence from *uṣūl fiqh*. Later on, there came up a number of Muslim scholars on *maṣlaḥah*, such as Muḥammad Sa'īd Ramaḍān al-Būṭī, *Dawābiṭ al-Maṣlaḥah fī al-Sharī'ah al-Islāmiyyah*; Mustafā Zaid, *al-Maṣlaḥah fī al-Tashrī' al-Islāmī*, Mustafā Shalabī, *Ta'īl al-Aḥkām*; Husain Hamid Hassan, *Naẓariyāt al-Maṣlaḥah fī al-Fiqh al-Islāmī*. See Yūsuf Ḥāmid al-'Alīm, *al-Maqāṣid al-'Āmah li al-Sharī'ah al-Islāmiyyah*, (Kairo: Dār al-Ḥadīth, t.th.), p. 6.

maṣlaḥah should be rejected, because laws are not for the benefits of God, but solely to help humans reach maṣlaḥah, which is to gain goodness and in the same time to avoid dangers both in this life and the hereafter.

Since this work is a library research on interconnected maṣlaḥah-based ijtihād maqāṣidī, the data was collected from many literature sources, including primary and secondary ones. The primary sources include: (1) *al-Muwāfaqāt fī Uṣūl al-Sharī'ah* by Abū Ishāq al-Shāṭibi (d. 790 AH); (2) *al-Mustasfā fī 'Ilm al-Uṣūl* by al-Ghazālī (d. 505 AH); (3) *al-Ta'yīn fī al-Sharḥ al-Arba'in* by al-Ṭūfī (d. 716 AH). Meanwhile, the secondary sources are articles and books related to the discussion of uṣūl al-fiqh, especially on maqāṣid al-sharī'ah. The data collected was analysed by using deductive, inductive, comparative-critical methods. The author used a deductive method when explaining the basic principles of maqāṣid al-sharī'ah and its relation to ijtihad. An inductive method is used when the author found that a number of scholarly opinions about maṣlaḥah are scattered in several sources after which conclusions were then made. A comparative-critical method is used when comparing the thoughts of the leading proponents of maqāṣid al-sharī'ah and determining the originality of their ideas.

This book is organized into the following discussions: The first chapter contains an introduction that includes the background of the problem, such as a description of the problems related to maqāṣid al-sharī'ah approach in the studies of Islamic jurisprudence, which is so far still centered on a maṣlaḥah perspective. Therefore, it requires a holistic approach in order to produce an Islamic law which is rich with maṣlaḥah.

The second chapter presents a discussion on the theoretical foundation of the studies of maqāṣid al-sharī'ah by reviewing the ideas of three leading figures, i.e. al-Ghazālī, al-Shāṭibi, and al-Ṭūfī. This section is then followed by a discussion on the concept of interconnected

maṣlaḥah-based ijtihād maqāṣidī to complement the previous concept of ijtihād maqāṣidī initiated by those leading figures, particularly al-Shāṭibi.

Chapter three examines Islamic law from various perspectives to find the common thread between the shariah, Islamic law, and Islamic jurisprudence. Discussion on the characteristics and principles of Islamic law was included also in this chapter. In other words, this chapter aims to provide a general overview of how Islamic law should be positioned, especially in the efforts of formulating legal rules that seek to bring the benefits for people. Such positioning will bring the Islamic law from its ideal concepts into practical usage for people.

Chapter four examines the application of interconnected maṣlaḥah-based ijtihād maqāṣidī in which Muslim clothing is taken as an example. The object of study is discussed within the framework of the previous chapters, leading to a new concept of *maqāṣid al-sharī'ah*-based Muslim clothing or what the author calls it as "*libās maqāṣidī*".

Chapter five is a summary of what the author discussed in the previous chapters. This section is divided into two topics: conclusions and suggestions. Conclusion highlights the main points with reference to the research focus. Suggestions are meant to provide recommendations for other researchers on maqāṣid al-sharī'ah, especially on the basis of interconnected maṣlaḥah.

MAQĀṢID AL-SHARĪ'AH **AND THE EXCAVATION OF ISLAMIC LAWS**

2.1 Understanding Maqāsid al-Sharī'ah and its Development

Etymologically, *maqāṣid al-sharī'ah* contains two words: *maqāṣid* and *al-sharī'ah*. The term *maqāṣid* is the plural form of *maqṣad* that is derived from the verb **قصد-يقصد** (*qaṣada- yaqṣudu*) and contains different meanings, i.e. leading to one direction, goal, middle-way, fair, consistent, do not exceed the limits, a straight path, a midway between exaggeration and insufficiency.¹⁸ Al-Māwardī said that all these meanings are found in the Qur'ān. The word, *sharī'ah*, etymologically refers to the path leading to spring. Terminologically, *sharī'ah* is defined as:

الأوامر والنواهي الإلهية المتعلقة بالسلوك والعمل من حياة الإنسان

God's commands and prohibitions relating to the behaviors of humans in life

Thus, *sharī'ah* concerns only with practical matters rather than beliefs. When the word *maqāṣid* is attributed to *sharī'ah*, it immediately brings into our mind the legal purposes of *sharā'* (fiqh), both inform of

¹⁸ Muhammad Amin Suhayli, *Qawā'idah Dar'u al-Mafāsid awlā Min Jalb al-Maṣāliḥ Dirāsah Tahliyyah*, (Egypt: Dar al-Salam, 2010), p. 64.

maqāṣid al-sharī'ah (*al-ijtihād al-maqāṣidī*) as a legal theory and its application in some cases. 'Abd al-Majīd al-Najjār said that studies of *maqāṣid al-sharī'ah* should cover all of God's commands and prohibitions, related to human behaviors, beliefs, and other aspects of human life. It is no doubt that each God's command must have a purpose (*maqṣūd*) that calls for realization both in this world and in the Hereafter. A command to be faithful to Allah, for instance, aims to realize a peaceful soul in the world as a requirement to get pleasures in the Hereafter.¹⁹ In relation with this purpose, God says in Surat al-Ra'd: 28: '*alā bi dhikrillāh taṭ mainnal-qulūb* ('Your heart will be at peace if you remember Allah').

Before al-Ṭāhir ibn 'Āshūr, *maqāṣid al-sharī'ah* has been not yet defined by its main prominents, including al-Shaṭībī, who conceptualized for the first time *maqāṣid* in his work, *al-Muwafaqāt*. There are two possible reasons, Musfir bin 'Ali al-Qaḥṭani puts in, why al-Shaṭībī neglected the definition of *maqāṣid* in this case: first, his *al-Muwafaqāt* was dedicated for scholars who have true knowledge and interests on the science of Islamic jurisprudence. Therefore, he felt it unnecessary to provide a definition of something that scholars are already familiar with; secondly, the focus of al-Shaṭībī's *al-Muwafaqāt* is to build a theory of *maqāṣid* still unknown by the previous scholars. Although al-Shaṭībī did not specifically define the term, his elaborate explanation will bring its readers closer to the definition of *maqāṣid al-sharī'ah*.²⁰

The concept of *maqāṣid al-sharī'ah* has undergone rapid development after al-Shaṭībī, making scholars aware of significance to define the term in such a way according to the ruling standards of a definition, which are *jami'* and *mani'* (comprehensive). In al-Raisūnī's opinion, as

¹⁹ Abd al-Majīd al-Najjār, *Maqāṣid al-Sharī'ah bi Ab'ād Jaīdah*, (Tunis: Dar al-Gharb al-Islami, 2012), p. 15.

²⁰ See also Musfir bin 'Ali al-Qaḥṭani, *al-Wa'y al-Maqasidi Qira'ah Mu'asirah bi li al-'Amal Maqasid al-Shari'ah fi Manahi al-Hayat*, (the Beirut: al-Shabakah al-'Arabiyyah li al-Abhath wa al-Nasr, 2013), p. 21.

quoted by Imam Mawardi, sharī'ah is the “laws of behaviours set up by Islam, whether in relation to the conception of Islamic theology and legislation”.²¹ Definitions by scholars at the time referred to its equivalent meanings of the term, such legal wisdom, legal purposes, legal meanings. Respectively al-Bannānī, al-Asnawī and al-Samarqandī put forward those definitions. al-Ghazālī, al-Āmidī, and Ibn al-Hājib defines maqāṣid al-sharī'ah as “gaining benefits and rejecting disutility (*mafsadat*)”.

Therefore, maqāṣid al-sharī'ah has a strong connection with wisdom, causes (*'illat*), goals or intentions, and well-beings.²² A more comprehensive definition of maqāṣid al-sharī'ah is given by Ibn 'Āshūr and 'Alāl al-Fāsi. Ibn 'Āshūr defines maqāṣid al-sharī'ah al-‘āmah as referring to:

المعانيو الحكمالمحوظةللشارعفيجميعأحوالالتشريةأومعظمهابحيث
لاتختصملاحظتهابالكونفينو عخاصمناًحكامالشريعةفقدخلفيهذاأوصا
فالشريعتو غايتهاالعامتو المعانيتلتيلايخلوالتشريةبعمنملاحظتهاويدخل
بهذاأيضامعانمالحكمليستملاحظتفيسائرأنواعالأحكامولكنهامحوظة
ففيأنواعكثيرةمنها

Meanings and wisdom that Shari' maintains in its legal determination. This does not only apply to certain types of laws but also to all properties, general purposes, and meanings contained in the Sharī'ah laws as well as all legal meanings unnoticed but maintained in many legal forms.²³

Ibn 'Āshūr's definition of maqāṣid al-sharī'ah is still centered at the realm of al-maqāṣid al-‘āmah (public good) rather than specific benefits

²¹ See Ahmad Imam Mawardi, *Fiqh Minoritas Fiqh al-Aqalliyat dan Evolusi Maqāṣid al-sharī'ah: dari Konsep ke Pendekatan*, (Yogyakarta: LKiS, 2000), pp. 178-179.

²² Ibid., p. 180.

²³ See 'Alāl al-Fāsi, *Maqasid al-Shari'ah wa Makarimuha*, (Kairo: Dar al-Salam, 2011), p. 24. See also Muhammad al-Ṭāhir bin 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, (Tunisia: Dār Sukhūn li al-Nashr wa al-Tawzī', 2007), p. 49. See also Musfir al-Qaḥṭāni, *al-Wa'y al-Maqasidi*, p. 13.

(al-maqāṣid al-khāssah) that religion also maintains to secure worldly and heavenly happiness. ‘Alal al-Fāsi, on the other hand, refers maqāṣid al-sharī’ah to:

الغاية منها والأسرار التي وضعها الشارع عندك لحكمنا أحكامها

“The goals and hidden meanings behind Shāri’s laws.”²⁴

This definitions of maqāṣid al-sharī’ah mentioned above can also includes two kinds of the benefits, i.e. general and specific benefits. ‘Alal al-Fasi’s definitions of the term is repetition with different wordings. al-Raysuni provided similar definition:

الغايات التي وضعنا الشريعة لأجل تحقيقها المصلحة العباد

The objectives of Sharī’ah by which the goodness for all the mankind can be realized.²⁵

It is true that al-Raysūnī did not explicitly mention the term *al-maqāṣid al-khāsh* (specific objectives). However, at the end of his definition he mentioned *maṣlahah al-‘ibād* (human welfare), indicating that al-Fasi also requires specific objectives in regard with Islamic or legal arguments.

The general objectives of sharī’ah is linked to the purposes of human creation, i.e. to become caliphs (leaders, managers) on earth by worshipping Allah. In practice, it is impossible that leadership will be realized without the individual and social orders. Thus, it is right to say that the general and ultimate objective of sharī’ah is to realize the purposes of human presence on earth, i.e. becoming the caliphs to bring the benefits into individual and social life in order to achieve true happiness in this world and in the Hereafter.²⁶ Ibn ‘Āshūr explains the general objectives of Sharī’ah as follows:

²⁴ See Aḥmad al-Raysūnī, *Naẓariyat al-Maqāṣid ‘Inda al-Imām al-Shāṭibī*, (Herndon, Virginia: The International Institute of Islamic Thought, 1995), p. 18., and Mufsir al-Qahtani, *al-Wa’y al-Maqasidi*, p. 22.

²⁵ Ibid.

²⁶ Ibid., p. 17.

"إذ انحناسنا استقرار الشريعة الإسلامية الدالة علم مقاصد هامة للتشريع فيها هو حفظ نظام الأمة واستدامة اتصالها بصلاحيات العالم من عليها هو نوحا لإنسان ويشمل اتصالها بصلاحيات عقلها وصلاتها بعملها وصلاتها بحمايتها بين يديها من نمو واداء العالم الذي يعيش فيه"

If we examine the sources of Sharīah with reference to its objectives, it is clear to us that the goal is to maintain human orderliness and endure human welfare, including their intellects and behaviors, as well as the universe wherein they live.²⁷

2.2 General Objectives (al-Maqāṣid al-‘Āmah) in the Qur’an

Although maqāṣid al-sharī'ah has been widely discussed by many scholars, there is still little attention given on how the Qur’an talks about the general objectives (*al-maqāṣid al-āmah*). As al-Raysūnī pointed out, quoting Abd al-Karīm Ḥamīdī, the general objectives of the Qur’an are:²⁸

أما المقاصد العامة فتفهي تلك الأغر اضا العليا الحاصلة من مجموعة أحكامها
أن

al-maqāṣid al-āmah are noble goals derived from a set of the Qur’anic laws.²⁹

There are two ways to figure out the general objectives of the Qur’an. They are:

1. They are known to or confirmed by *naṣṣ* (*mansusah*); that is, the Qur’an explicitly mentions the given goals. al-Raysūnī said that there are four objectives explicitly mentioned in the Qur’an: the first is accepting the One-ness of Allah and worshipping Him

²⁷ Ibid.

²⁸ Al-Raisuni, *Maqasid al-al-'Ilmiyyah Ghayat wa li al-'Amaliyyah Maqasid al-Shari'ah* (Beirut: al-Shabakah al-'Arabiyyah li al-Abhath wa al-Nahr, 2013), p. 25.

²⁹ Ibid., p. 24.

(*tawhīd allā wa 'ibādatih*).³⁰ Among the verses that speak of this goal are Surah Hud: 1-3:

الرَّ كُتُبٍ أَحْكَمَتْ ءَايَةُ ثُمَّ فَصَّلَتْ مِنْ لَدُنِّ حَكِيمٍ خَبِيرٍ ١ أَلَّا تَعْبُدُوا
إِلَّا اللَّهَ إِنِّي لَكُمْ مِّنْهُ نَذِيرٌ وَبَشِيرٌ ٢ وَأَنْ أَسْتَغْفِرُوا رَبَّكُمْ ثُمَّ تُوبُوا
إِلَيْهِ يُمَنِّعْكُمْ مِّنْ عَذَابٍ حَسَنًا إِلَىٰ أَجَلٍ مُّسَمًّى وَيُؤْتِ كُلَّ ذِي فَضْلٍ فَضْلَهُ
وَإِنْ تَوَلَّوْا فَإِنِّي أَخَافُ عَلَيْكُمْ عَذَابَ يَوْمٍ كَبِيرٍ ٣

(This is) a Book, with verses basic or fundamental (of established meaning), further explained in detail, - from One Who is Wise and Well-acquainted (with all things): (It teaches) that ye should worship none but Allah. (Say): “Verily I am (sent) unto you from Him to warn and to bring glad tidings: (3) “(And to preach thus), ‘Seek ye the forgiveness of your Lord, and turn to Him in repentance; that He may grant you enjoyment, good (and true), for a term appointed, and bestow His abounding grace on all who abound in merit! But if ye turn away, then I fear for you the penalty of a great day.

and Surah al-Zumar: 1-2:

تَنْزِيلِ الْكِتَابِ مِنَ اللَّهِ الْعَزِيزِ الْحَكِيمِ ١ إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ
فَاعْبُدِ اللَّهَ مُخْلِصًا لَهُ الدِّينَ ٢

The revelation of the Book is from Allah, the Mighty, the Wise. Surely We have revealed to you the Book with the truth, therefore serve Allah, being sincere to Him in obedience.

The second objective is guidance for the mankind in religious and worldly affairs (*maqṣad al-hidāyah al-dīniyyah wa al-dunyāwiyyah*).³¹ The Qur’an addresses this goal in eleven verses:

a. Surah al-Baqarah, 185:

شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ هُدًى لِّلنَّاسِ وَبَيِّنَاتٍ مِّنَ الْهُدَىٰ
وَالْفُرْقَانِ ١٨٥

³⁰ Ibid., p. 26.

³¹ Ibid., pp. 26-27.

The month of Ramazan is that in which the Quran was revealed, a guidance to men and clear proofs of the guidance and the distinction;

b. Surah Ali Imrān, 1-4:

الَمْ ۱ اللَّهُ لَا إِلَهَ إِلَّا هُوَ الْحَيُّ الْقَيُّومُ ۲ نَزَّلَ عَلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ وَأَنْزَلَ التَّوْرَةَ وَالْإِنْجِيلَ ۳ مِنْ قَبْلُ هُدًى لِّلنَّاسِ وَأَنْزَلَ الْفُرْقَانَ إِنَّ الَّذِينَ كَفَرُوا بِآيَاتِ اللَّهِ لَهُمْ عَذَابٌ شَدِيدٌ وَاللَّهُ عَزِيزٌ ذُو انتِقَامٍ ٤

Alif Lam Mim. Allah, (there is) no god but He, the Ever-living, the Self-subsisting by Whom all things subsist. He has revealed to you the Book with truth, verifying that which is before it, and He revealed the Tavat and the Injeel aforetime, a guidance for the people, and He sent the Furqan. Surely they who disbelieve in the communications of Allah they shall have a severe chastisement; and Allah is Mighty, the Lord of retribution.

c. Surah al-Isrā, 9:

إِنَّ هَذَا الْقُرْآنَ يَهْدِي لِلَّتِي هِيَ أَقْوَمُ وَيُبَشِّرُ الْمُؤْمِنِينَ الَّذِينَ يَعْمَلُونَ الصَّالِحَاتِ أَنَّ لَهُمْ أَجْرًا كَبِيرًا ٩

Surely this Quran guides to that which is most upright and gives good news to the believers who do good that they shall have a great reward.

d. Surah al-Jin, 1-2:

قُلْ أَوْحِيَ إِلَيَّ أَنَّهُ اسْتَمَعَ نَفَرٌ مِّنَ الْجِنِّ فَقَالُوا إِنَّا سَمِعْنَا قُرْآنًا عَجَبًا ۱ يَهْدِي إِلَى الرُّشْدِ فَآمَنَّا بِهِ وَلَنْ نُشْرِكَ بِرَبِّنَا أَحَدًا ٢

Say: It has been revealed to me that a party of the jinn listened, and they said: Surely we have heard a wonderful Quran, Guiding to the right way, so we believe in it, and we will not set up any one with our Lord.

e. Surah al-Ahqāf, 30:

قَالُوا يٰقَوْمَنَا إِنَّا سَمِعْنَا كِتَابًا أُنزِلَ مِن بَعْدِ مُوسَىٰ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ يَهْدِي إِلَى الْحَقِّ وَإِلَى طَرِيقٍ مُّسْتَقِيمٍ ٣٠

They said: O our people! we have listened to a Book revealed after Musa verifying that which is before it, guiding to the truth and to a right path:

f. Surah al-Nahl, 64:

وَمَا أَنْزَلْنَا عَلَيْكَ الْكِتَابَ إِلَّا لِتُبَيِّنَ لَهُمُ الَّذِي اخْتَلَفُوا فِيهِ وَهُدًى وَرَحْمَةً
لِقَوْمٍ يُؤْمِنُونَ ٦٤

And We have not revealed to you the Book except that you may make clear to them that about which they differ, and (as) a guidance and a mercy for a people who believe.

g. Surah al-Nahl, 89:

وَيَوْمَ نَبْعَثُ فِي كُلِّ أُمَّةٍ شَهِيدًا عَلَيْهِمْ مِّنْ أَنفُسِهِمْ وَجِئْنَا بِكَ شَهِيدًا
عَلَىٰ هَؤُلَاءِ وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً
وَبُشْرَىٰ لِلْمُسْلِمِينَ ٨٩

And on the day when We will raise up in every people a witness against them from among themselves, and bring you as a witness against these-- and We have revealed the Book to you explaining clearly everything, and a guidance and mercy and good news for those who submit.

h. Surah al-Baqarah, 1-2:

الْم ١ ذَٰلِكَ الْكِتَابُ لَا رَيْبَ فِيهِ هُدًى لِّلْمُتَّقِينَ ٢

Alif Lam Mim. This Book, there is no doubt in it, is a guide to those who guard (against evil).

i. Surah al-Baqarah, 38:

قُلْ إِنَّا أَهْبَطْنَا مِنهَا جَمِيعًا فَأَمَّا يَا تِئْتِكُمْ مِّنِّي هُدًى فَمَنِ تَبِعَ هُدَايَ
فَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ ٣٨

We said: Go forth from this (state) all; so surely there will come to you a guidance from Me, then whoever follows My guidance, no fear shall come upon them, nor shall they grieve.

j. Surah Tāhā, 123:

قَالَ أَهْبِطَا مِنْهَا جَمِيعًا بَعْضُكُمْ لِبَعْضٍ عَدُوٌّ فِيمَا يَأْتِيَنَّكُمْ مِنِّي هُدًى
فَمَنِ اتَّبَعَ هُدَايَ فَلَا يَصِلْ وَلَا يَسْقَى ١٢٣

He said: Get forth you two therefrom, all (of you), one of you (is) enemy to another. So there will surely come to you guidance from Me, then whoever follows My guidance, he shall not go astray nor be unhappy;

k. Surah al-Māidah, 16:

يَهْدِي بِهِ اللَّهُ مَنِ اتَّبَعَ رِضْوَانَهُ سُبُلَ السَّلَامِ وَيُخْرِجُهُم مِّنَ الظُّلُمَاتِ
إِلَى النُّورِ بِإِذْنِهِ وَيَهْدِيهِمْ إِلَى صِرَاطٍ مُسْتَقِيمٍ ١٦

With it Allah guides him who will follow His pleasure into the ways of safety and brings them out of utter darkness into light by His will and guides them to the right path.

The third mansusah objective of the Qur'an is self-cleansing and wisdom-teaching (*maqṣad al-tazkiyah wa ta'līm al-ḥikmah*).³² This objective is clearly mentioned in the following three verses:

a. Surah al-Baqarah, 151:

كَمَا أَرْسَلْنَا فِيكُمْ رَسُولًا مِّنكُمْ يَتْلُوا عَلَيْكُمْ آيَاتِنَا وَيُزَكِّيكُمْ وَيُعَلِّمُكُمُ
الْكِتَابَ وَالْحِكْمَةَ وَيُعَلِّمُكُم مَّا لَمْ تَكُونُوا تَعْلَمُونَ ١٥١

Even as We have sent among you a Messenger from among you who recites to you Our communications and purifies you and teaches you the Book and the wisdom and teaches you that which you did not know.

b. Surah Ali 'Imrān, 164:

لَقَدْ مَنَّ اللَّهُ عَلَى الْمُؤْمِنِينَ إِذْ بَعَثَ فِيهِمْ رَسُولًا مِّنْ أَنفُسِهِمْ يَتْلُوا
عَلَيْهِمْ آيَاتِهِ وَيُزَكِّيهِمْ وَيُعَلِّمُهُمُ الْكِتَابَ وَالْحِكْمَةَ وَإِنْ كَانُوا مِن قَبْلُ
لَوْي ضَلَّالٍ مُّبِينٍ ١٦٤

Certainly Allah conferred a benefit upon the believers when He raised among them a Messenger from among themselves, reciting to them His communications and

³² Ibid.

purifying them, and teaching them the Book and the wisdom, although before that they were surely in manifest error.

c. Surah al-Baqarah, 231:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ
بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ
نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوعًا وَادْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا
أَنْزَلَ عَلَيْكُمْ مِنَ الْكِتَابِ وَالْحِكْمَةِ لِيُعْظِمَكُمْ بِهِ وَآتِقُوا اللَّهَ وَأَعْلَمُوا أَنَّ اللَّهَ
بِكُلِّ شَيْءٍ عَلِيمٌ ٢٣١

And when you divorce women and they reach their prescribed time, then either retain them in good fellowship or set them free with liberality, and do not retain them for injury, so that you exceed the limits, and whoever does this, he indeed is unjust to his own soul; and do not take Allah's communications for a mockery, and remember the favor of Allah upon you, and that which He has revealed to you of the Book and the Wisdom, admonishing you thereby; and be careful (of your duty to) Allah, and know that Allah is the Knower of all things.

The fourth mansusah objective of the Qur'an is grace and happiness (*maqṣad al-rahmah wa al-sa'ādah*), which is noticeable from the following Qur'anic verses:

a. Surah al-Anbiyā', 107:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ ١٠٧

And We have not sent you but as a mercy to the worlds.

b. Surah al-Isrā', 82:

وَنُنزِّلُ مِنَ الْقُرْآنِ مَا هُوَ شِفَاءٌ وَرَحْمَةٌ لِّلْمُؤْمِنِينَ وَلَا يَزِيدُ الظَّالِمِينَ
إِلَّا خَسَارًا ٨٢

And We reveal of the Quran that which is a healing and a mercy to the believers, and it adds only to the perdition of the unjust.

c. Surah Taha, 1-3:

طه ١ مَا أَنْزَلْنَا عَلَيْكَ الْقُرْآنَ لِتَشْقَى ٢ إِلَّا تَذَكْرَةً لِّمَن يَخْشَى ٣

Ta Ha. We have not revealed the Quran to you that you may be unsuccessful. Nay, it is a reminder to him who fears:

d. Surah al-Anfāl, 24:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ إِذَا دَعَاكُمْ لِمَا يُحْيِيكُمْ
وَأَعْلَمُوا أَنَّ اللَّهَ يَحُولُ بَيْنَ الْمَرْءِ وَقَلْبِهِ وَأَنَّهُ إِلَيْهِ تُحْشَرُونَ ٢٤

O you who believe! answer (the call of) Allah and His Messenger when he calls you to that which gives you life; and know that Allah intervenes between man and his heart, and that to Him you shall be gathered.

e. Surah al-Baqarah, 179:

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ ١٧٩

And there is life for you in (the law of) retaliation, O men of understanding, that you may guard yourselves.

The fifth purpose is to uphold truth and justice (*maqсад al-haq wa al-'adālah*), which is clearly mentioned in the following verses:

a. Surah al-ḥadīd, 25:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ
بِالْقِسْطِ وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنْعَفَةٌ لِلنَّاسِ وَلِيَعْلَمَ اللَّهُ مَن
يَنْصُرُهُ وَرُسُلَهُ بِالْغَيْبِ إِنَّ اللَّهَ قَوِيٌّ عَزِيزٌ ٢٥

Certainly We sent Our messengers with clear arguments, and sent down with them the Book and the balance that men may conduct themselves with equity; and We have made the iron, wherein is great violence and advantages to men, and that Allah may know who helps Him and His messengers in the secret; surely Allah is Strong, Mighty.

b. Surah Al-An'am, 115:

وَتَمَّتْ كَلِمَتُ رَبِّكَ صِدْقًا وَعَدْلًا لَا مُبَدَّلَ لِكَلِمَتِهِ وَهُوَ السَّمِيعُ الْعَلِيمُ

And the word of your Lord has been accomplished truly and justly; there is none who can change His words, and He is the Hearing, the Knowing.

c. Surah al-Nisā', 85:

مَنْ يَسْفَعْ شَفْعَةً حَسَنَةً يَكُنْ لَهُ نَصِيبٌ مِّنْهَا وَمَنْ يَسْفَعْ شَفْعَةً سَيِّئَةً يَكُنْ لَهُ كِفْلٌ مِّنْهَا وَكَانَ اللَّهُ عَلَىٰ كُلِّ شَيْءٍ مُّقْبِلًا ٨٥

Whoever joins himself (to another) in a good cause shall have a share of it, and whoever joins himself (to another) in an evil cause shall have the responsibility of it, and Allah controls all things.

d. Surah al-Māidah, 48:

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيِّمًا عَلَيْهِ فَاحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمَنَاجِيَ وَلَوْ سَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَكِنْ لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ فَأَسْبِقُوا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ ٤٨

And We have revealed to you the Book with the truth, verifying what is before it of the Book and a guardian over it, therefore judge between them by what Allah has revealed, and do not follow their low desires (to turn away) from the truth that has come to you; for every one of you did We appoint a law and a way, and if Allah had pleased He would have made you (all) a single people, but that He might try you in what He gave you, therefore strive with one another to hasten to virtuous deeds; to Allah is your return, of all (of you), so He will let you know that in which you differed;

e. Surah al-Shūrā, 17:

اللَّهُ الَّذِي أَنْزَلَ الْكِتَابَ بِالْحَقِّ وَالْمِيزَانَ وَمَا يُدْرِيكَ لَعَلَّ السَّاعَةَ قَرِيبٌ ١٧

Allah it is Who revealed the Book with truth, and the balance, and what shall make you know that haply the hour be nigh?

f. Surah al-Raḥmān, 1-9:

الرَّحْمَنُ ۙ عَلَّمَ الْقُرْآنَ ۚ خَلَقَ الْإِنسَانَ ۚ عَلَّمَهُ الْبَيَانَ ۚ
الشَّمْسُ وَالْقَمَرُ بِحُسْبَانٍ ۝ وَالنَّجْمُ وَالشَّجَرُ يَسْجُدَانِ ۖ وَالسَّمَاءُ
رَفَعَهَا ۚ وَوَضَعَ الْمِيزَانَ ۗ أَلَّا تَطْغَوْا فِي الْمِيزَانِ ۚ وَأَقِيمُوا الْوَزْنَ
بِالْقِسْطِ ۚ وَلَا تُخْسِرُوا الْمِيزَانَ ۙ

The Beneficent Allah, taught the Quran. He created man, Taught him the mode of expression. The sun and the moon follow a reckoning. And the herbs and the trees do prostrate (to Him). And the heaven, He raised it high, and He made the balance. That you may not be inordinate in respect of the measure. And keep up the balance with equity and do not make the measure deficient.

2. They are known through *ijtihād* (*istinbāt*); that is, the general objectives of the Qur'an are obtained through inductive studies of the goals of the Qur'an (*maqāṣid al-Qur'ān*) and its universal designations (*dalālah kullīyah*).³³ This field had been an object of study focus among Muslim scholars who pursued and explored the intricacies of the al-Qur'an, and whose life are always under the guidance of the Qur'an. Several names worth to be mentioned as the scholars of *maqāṣid* are al-Tirmidhi (w.320 AH/932 AD), al-Qaffal al-Kabir (d. 365 AH/976 AD), al-'Amiri al-Failasuf (w.381 AH/991 AD), al-Juwaini (d. 478 AH/1185 AD), al-Ghazali (d. 505 AH/1111 AD), al-Ṭūfī (d. 716 AH/1318 AD), al-Shatibi (d. 790 AH/1388 AD), ibn 'Āshūr (d. 1393 AH / 1972 AD) and 'Alal al-Fasi (d. 1394 H./1974 H.).

It was from their studies that the concept of *al-maqāṣid al-'āmah* (the general objectives) of the Qur'an emerged and became the foundation of *maqāṣid al-sharī'ah*. The following is a brief account of *maqāṣid al-Qur'ān* as outlined by those leading figures:

- 1). al-Ghazālī on *Maqāṣid al-Qur'ān*

³³ Ibid., p. 23

al-Ghazālī devided the objectives of the Qur'an (*maqāṣid al-Qur'ān*) into two categories: primary (*muhimmah*) and complementary (*mughniyah, mutimmah*). There are three primary objectives in the Qur'an: the first is to introduce God, as the one and the only to be worshipped (*ta'rīf al-mad'u ilayh*), which is Allah; the second is to introduce the straight path (*ta'rīf al-ṣirāṭ al-mustaqīm*), which is *shar'ah*; and the third is introduce human conditions when seeing Allah (*ta'rīf al-wuṣūl ilayh*), which is the Day of Resurrection.³⁴

al-Ghazālī said further that there are three maqṣad al-Qur'ān which are complementary (*mutimmah*): the first is to introduce the conditions of those who accept da'wah (an invitation to goodness), and Allah's secrets for them in order that we are glad (*li al-targhīb*) and longing (*li al-tashwīq*) to Him. At the same time, it also explains the conditions of people who reject and oppose da'wah and how Allah warns and punishes them in order that we take a lesson (*li al-i'tibār*) and fear of (*li al-tarhīb*) Him.³⁵

The second complementary maqṣad al-Qur'ān (*mutimmah*) is to tell the conditions of those who oppose the teachings of Allah and to uncover their disgrace and stupidity through proper arguments, so we leave (*al-tanfīr*) falsehood and hold firmly the truth (*al-tathbūt fī al-ḥaq*). The third complementary *maqṣad al-Qur'ān* is to introduce ways to obtain life provision (*kayfiyah akhdz al-zad*) and preparation (*al-isti'dād*) towards an eternal life.³⁶

2). Ibn 'Abd al-Salam on Maqāṣid al-Qur'ān

Ibn 'Abd al-Salam's conception of maqāṣid al-Qur'ān is built upon one rule:

جلبالمصالحوأسبابهاودرءالمفاسدوأسبابها

³⁴ Ibid., p. 30.

³⁵ Ibid., p.31.

³⁶ Ibid.

Realizing the benefits along with their various causes, while rejecting all forms of damages (*mafsadah*) along with their causes.³⁷

The Qur'anic verse which represents best the above rule is Surah al-Nahl, 90:

﴿إِنَّ اللَّهَ بِأَمْرٍ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَائِي ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ ٩٠﴾

Surely Allah enjoins the doing of justice and the doing of good (to others) and the giving to the kindred, and He forbids indecency and evil and rebellion; He admonishes you that you may be mindful.

In Ibn 'Abd al-Salam's opinion, goodness (*al-ihsān*) is bringing benefits or resisting damages (*jalb al-maṣāliḥ aw da'fu al-maṣāsid*). The "al" (*alīf lām*) in each word in the verse, i.e. *al-'adl* (doing justice), *al-ihsān* (doing good), *al-fakhsya'* (doing shameful deeds) and *al-munkar* (doing a sin), is general and covers all types (*istighrāq*), from small to large. Thus, *al-ihsān* is inclusive of any efforts to realize the benefits or to refuse damages.³⁸

3. al-Biqā'i on Maqāṣid al-Qur'ān

al-Biqā'i pointed out that all the content of the Qur'an leads to three general objectives (*al-maqāṣid al-'āmah*), which are an explanation of the faith (*al-'aqīdah*), laws (*aḥkām*), and stories (*qiṣaṣ*). The three general objectives are shown in Surah al-Ikhlāṣ, 22.³⁹

4. Ibn 'Āshūr on Maqāṣid al-Qur'ān

For Ibn 'Āshūr, the general objective of al-Qur'ān is:

إنَّ اللَّهَ تَعَالَىٰ أَنْزَلَ الْقُرْآنَ لِتَتَدَبَّرَهُ وَتَتَذَكَّرَ بِهِ رَحْمَةً مِنَّا وَمُنِظْرًا
رَحْمَةً لِّمَن تَبَغَّىٰ مِنْهُمْ أَدَّ اللَّهُ مِنْهُمْ

³⁷ Ibid., p. 32

³⁸ Ibid.

³⁹ Ibid., p.33

Allah brings down the Book of Qur'an as a benefit and a grace for all people, conveying what God wants from them.⁴⁰

In practice, the general objectives in the Qur'an include eight matters: to straighten a belief (*iṣlāḥ al-'i'tiqād*), to purify manners (*tahdhīb al-akhlāq*), to impose laws (*al-tashrī'*), to control people (*siyāsa al-'ummah*), to deliver stories and news about the previous communities (*al-qīṣaṣ wa akhbār al-umam al-salīfah*), to teach something according to the conditions of the talked (*al-ta'līm bimā yunāsib halah al-mukhāṭabīn*), to give advice and warnings (*al-mawa'id wa al-indzār*), and to demonstrate miracles with the Qur'an (*al-i'jāz bi al-Qur'an*).⁴¹

2.3 Muslim Scholars ('Ulamā') on Maṣlaḥah

This section does not mean to provide the shifting development of maqāṣid al-sharī'ah from a concept into an approach, as pointed out by Mawardī in his book, *Fiqh of Minorities*.⁴² Rather, it highlights the distinctive thoughts of three leading figures on maṣlaḥah, which is the heart of the studies on *maqāṣid al-sharī'ah*. The author chose the three central figures due to some considerations: firstly, al-Ghazālī (d. 505 AH), al-Shāṭibī (d. 790 AH) and al-Ṭūfī (d. 716 AH) are coming from different schools of Islamic jurisprudence; al-Ghazālī (d. 505 AH) belongs to Shafi'i school whose ijtihad emphasizes much on the concept of qiyās; al-Shatibi (d. 790 AH) belongs to the Mālikī who puts forward maṣlaḥah

⁴⁰ Ibid, p. 35.

⁴¹ Ibid., pp. 36-37.

⁴² The conceptualization of maqāṣid al-sharī'ah started from al-Tirmidhi (d. 320 AH / 932 AD), followed then respectively by the following scholars: al-Qaffal al-Kabir (d. 360 AH / 972 AD), al-'Amiriy al-Failasuf (d. 381 AH / 991 AD), al-Juwayni (d. 478 AH / 1185 AD), al-Ghazali (d. 505 AH / 1111M .), al-Shathibi (d. 790 AH / 1388 AD), Ibn 'Ashur (d. 1393 AH / 1972 AD), and 'Alal al-Fasi (d. 1394 AH / 1974 AD) . See Jassir 'Auda, *al-Ijtihād al-Maqāṣidī Min al-Taṣawwur al-Uṣūliyy Ilā al-Tanzīl al-'Ilmiy*, (Beirut: al Shabakah al-'Arabiyah li al-Abhath wa al-Nasr, 2013), pp. 17-18.

mursalah as a main proposition after the Qur'an and the Hadith; al-Ṭūfī (d. 716 AH) is a Ḥanbalī which relies heavily on the literal understanding of the Qur'an and the Hadith as well as giving priority to prophetic reports of the companions (*āthār al-Ṣaḥābat*) than analogy (*qiyās*) and other legal propositions in his intellectual excavation of Islamic laws. While the distinctive features of Ḥanbalī' school are visible in his *maṣlaḥah* on Islamic rituals and fixed ordinance (*muqaddarāt*), al-Ṭūfī does not go beyond *maṣlaḥah* in his legal propositions in relation with *mu'āmalah*.

Secondly, the elaboration of the thoughts of these three figures—and surely other proponents of *maqāṣid al-sharī'ah*—on *maṣlaḥah* can be utilized as a tool of analysis when examining Shahrur's account of Muslim clothing and its relevance to *maqāṣid al-sharī'ah*.

Historically, since al-Shāfi'ī (d. 204H.) wrote his work *al-Risālah*, there has been an agreement that set up Islamic jurisprudence (*uṣūl al-fiqh*) as a methodology in legislation of Islamic laws. Scholars of *uṣūl fiqh* were debating whether or not *maṣlaḥah* is a method of judicial verdicts (*istinbāṭ al-ḥukm*). The controversy was stirred by the fact that they disagree on to what extent reason (ra'y) can play a role in understanding the the messages of texts.

Al-Shāfi'ī (d. 204 AH) is one scholar who spoke the loudest in rejecting the use of reason in its various forms, either through *istiḥsān* or *maṣlaḥah* mursalah in excavating Islamic laws. Later scholars, such as al-Juwaynī (d. 478 AH) and al-Ghazālī (d. 505 AH), followed this thesis but then developed it into a concept of *maṣlaḥah*. Al-Juwaynī (d. 478 AH) is considered as the forefather of *maqāṣid*. He brought forth the concept of ta'līl in three categories: *darūriyyat*, *ḥājāt* and *maḥāsin*. It is Juwayni's concept (d. 478 AH) that then inspires al-Ghazālī to formulate a new package of *maṣlaḥah*, namely *maqāṣid al-sharī'ah* in the framework of *al-uṣūl al-khamsah* (the five principles), which includes the

protection of religion, life, intellect, descent and property, event though in practice it “mirros” al-Shāfi’ī’s ijtihad, i.e. analogy (*qiyās*).

Unlike al-Ghazālī (d. 505 AH) who belongs to Shafī’ī’s school, al-Shatibi (d. 790 AH) developed further Juwainī’s and al-Ghazalī’s concepts of *maṣlaḥah* and established it as a method of Mālikī *istinbāt*, i.e. *maṣlaḥah mursalah*, which maintains a high level of dependence on texts.⁴³ Similar to al-Ghazalī (d. 505 AH), al-Shatibi (d. 790 AH) stated that *maqāṣid al-mukallaf* should not run against *maqāṣid al-sharī’ah*, and that both are compatible, and if there is disagreement between the two, *maqāṣid al-mukallaf* should be given a priority.⁴⁴

The concept of *maṣlaḥah* was also developed by al-Ṭūfī (d. 716), a Hanbalī scholar who overtly refuses the interference of reason in *istinbāt*. For al-Ṭūfī, *maṣlaḥah* is the most leading and strongest legal evidence, particularly in *mu’āmalah*. Any legal evidence or postulate that contradicts to the spirits of *maṣlaḥah* should be rejected, because

⁴³ For al-Shatibi, *al-maqāṣid al-‘āmah* should be a consideration in comprehending particular evidence (*dalīl juz’ī*). *Ibid.*, p. 370.

⁴⁴ Around six centuries after al-Shatibi, Muhammad al-Tahir bin ‘Ashur (d. 1393) came up as an emerging figure of *maṣlaḥah* with his famous work, *Maqāṣid al-Sharī’ah al-Islāmiyyah*; almost in the same time, there was also another scholar, ‘Alāl al-Fāsī (d. 1394 H.) with his work, *Maqāṣid al-Sharī’ah wa Makānatuhā*. Both Arab-Maghribī scholars share common ideas in many aspects. For example, both share a common word that *maqāṣid al-sharī’ah* is built upon human nature. Quoting Qur’anic verse, Rum: 30 and al-A’raf: 119, Tahir bin Ashur and ‘Alāl al-Fāsī agreed that protection human nature is part of *maqāṣid al-sharī’ah* which, therefore, should not contradict human intellect in a normal condition. Nevertheless, they disagreed on some points. Tahir bin Ashur put forward the autonomization of *maqāṣid al-sharī’ah* as a separate discipline from *uṣūl fiqh* by formulating its concepts, maxims as well as its focuses. On the contrary, ‘Alāl al-Fāsī is concerned more on the detailed description of *sharī’ah*, including its philosophy and hidden values, rather than on discourse of its autonomy and independence from *uṣūl fiqh*. Later on, there came up a number of Muslim scholars on *maṣlaḥah*, such as Muhammad Sa’id Ramaḍān al-Būfī, *Dawābiḥ al-Maṣlaḥah fī al-Sharī’ah al-Islāmiyyah*; Mustafā Zaid, *al-Maṣlaḥah fī al-Tashrī’ al-Islāmī*, Mustafā Shalabī, *Ta’līl al-Aḥkām*; Husain Hamid Hassan, *Naẓariyāt al-Maṣlaḥah fī al-Fiqh al-Islāmī*. See Yūsuf Hāmid al-‘Ālim, *al-Maqāṣid al-‘Āmah li al-Sharī’ah al-Islāmiyyah*, (Kairo: Dār al-Hadīth, t. th.), p. 6.

laws are not for the benefits of God, but solely to help humans reach *maṣlaḥah*, which is to gain goodness and in the same time to avoid dangers both in this life and the hereafter.

The following section attempts to elaborate and compare the thoughts of these leading figures on *maṣlaḥah*: al-Ghazali (d. 505 AH), al-Shāḥibī (d. 790 AH) and al-Ṭūfī (d. 716 H.). It is hoped that this will find a common thread between, as well as distinctive features of, each figure, and it eventually maybe developed as a tool of analysis in contemporary Islamic legal studies, on Muslim clothing and polygamy in particular.

2.4 Al-Ghazālī (d. 505 AH) on Maṣlaḥah

Al-Ghazālī or Abu Hamid Muhammad ibn Muhammad al-Ghazali al-Ṭufī al-Shafī'ī was born in 450 AH/1058 AD in a small town in Khurasan (Iran) three years after the Seljuq came to rule in Baghdad.⁴⁵ al-Ghazali's parents were yarn spinners and well-known as pious persons with a simple life.

When he was a child, on his father's will, al-Ghazālī was a student of Ahmad bin Muhammad al-Razikani. Then, he went to Nisabur and studied at Madrasah Nizāmiyah led by al-Haramayn al-Juwayni al-Shafī'ī (478 AH). It is in this madrasa that al-Ghazālī learned different scientific disciplines, such as Sufism, jurisprudence, monotheism, philosophy and logics.⁴⁶

Al-Ghazālī demonstrated his intelligence and deep knowledge in scientific discussions attended by religious scholars and Nizām al-Mulk (d. 485 AH), the founder of the madrasa Nizāmiyyah who was also the Prime Minister of the Sultan Seljuq, Mālik Shah. Al-Ghazālī's stunning performance attracted the attentions of all scholars and Nizām al-Mulk

⁴⁵ Sha'bān Muhammad Isma'īl, *Uṣūl al-Fiqh Tārīkhuh wa Rijāluh*, (Makkah: Dār al-Salām, 1998), p. 203.

⁴⁶ Ibid.

as well, giving him a teaching position at the Madrasah Nizāmiyah in 484 H and became the head of the university five years.⁴⁷ Al-Ghazālī died on 4 *Jumadil akhir* 505 AH or 1111 AD in Tus where he was born and finally buried.⁴⁸

Etymologically, *maṣlahah* is equal to *manfa'ah* (benefit, utility) in terms of measure (*wazn*) and meaning. In uṣūl al-fiqh's terminology, *maṣlahah* means everything that can realize the goodness and avoid all sorts of *maḍarrah* (danger) or *mafsadah* (damage) in human life.⁴⁹ Thus, the presence or absence of *maṣlahah* is determined by two things. It means *maṣlahah* when it brings goodness and, on the contrary, it means *mafsadah* or *mafsadah* (damage) or *maḍarrah* (danger) when it attracts dangers, inequality, injustice and so forth.

For al-Ghazālī, in general there are always legal rationality (*ta'līl al-ahkām*) behind God's laws (*sharī'ah*) in the Qur'an and Hadith.⁵⁰ That is, any provision from these two legal sources of law always has purposes (*maqāṣid*). Maqāṣid can reveal God's main ideas which are hidden behind the written words and, therefore, it can be also a basis to understand what God really wants by His rules for His creatures. Furthermore, it can also identify problems uncovered textually.

However, as al-Ghazālī pointed out, it is God-oriented rather than human-percieved *maṣlahah* that can be taken as a legal consideration.

⁴⁷ Al-Ghazali wrote no less than two hundred titles in a various number of scientific disciplines and fifty of them were published. In theology and philosophy, for example, he wrote a total of 19 titles, in sufism and morality 19 titles, in exegesis 2 titles, and in fiqh and usul fiqh 8 titles. Ibid., p. 204. The period between the death of Imam Ahmad bin Hanbal in 241 AH/848 AD and the birth of al-Ghazali was nuanced heated intellectual debates and fanaticism of jurist schools, which resulted in unhealthy intellectual atmosphere as each school was claimed by its supporters to be the most suitable with the teachings of Islam while others were declared deviant and heretical.

⁴⁸ Ibid.

⁴⁹ Abu Hamid al-Ghazali, *al-Mustaṣfā min 'Ilm al-Uṣūl*, Vol. 1, (Bairūt: Dār al-Fikr, t.th.), p. 286.

⁵⁰ Ibid.

The benefits are not meant for God's sake, but for all the mankind in this world and the Hereafter.⁵¹

As for whether or not *maṣlaḥah* is recognized by Sharī'ah, al-Ghazālī divided it into three categories:⁵² The first is *maṣlaḥah mu'tabarah* (the accredited welfare), i.e. one which is in line with the will of God. In this regard, al-Ghazālī gave an example of the unlawfulness of drinking everything that is intoxicating because of its *qiyās* with alcoholic drinks (*al-khamr*); the second is *maṣlaḥah bāṭilah or mulghah* (the corrupt welfare), i.e. one which is contrary to the will of Allah. In this case, al-Ghazālī relates this kind of *maṣlaḥah* to his refusal to the opinions of some scholars who require a king to fast two consecutive months as a ransom (*kifārāt*) of his conjugal relationship during the days in the month of Ramadan, on the grounds that if the king was required to pay *kifārāt* with freeing a slave, as stipulated in nass—it would not give a shock therapy to him. For al-Ghazālī, applying this logic would mean ruining the whole foundation of Islamic laws and people would change them as they wish.⁵³

The third *maṣlaḥah* is one which the *naṣṣ* (the Qur'an and the Hadith) does not clarify whether it falls under *maṣlaḥah mu'tabarah* (justified by the Shāri') or *maṣlaḥah mulghah* (rejected by the Shāri'). This type of *maṣlaḥah* is called *maṣlaḥah mursalah* (undecided by the texts). This *maṣlaḥah* is applicable, al-Ghazālī said, as long as it belongs to the urgent needs (*ḍarūrah*) and the public interests, such as permission to attack unbelievers who make Muslims as human shields, even though the attack would kill some of those Muslim shields.⁵⁴

⁵¹ Ibid.

⁵² Ibid. See also al-Bashir Shammam, *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'Alaqaṭuhā bi al-Mabāhith al-Lughawiyyah Ru'yah fī al-Muwāzanah Bayn Muqtaḍayāt al-Lisān wa Maqāṣid al-Shār'i* (Tunis: al-Shirkah al-Tunisiyyah li al-Nasr wa Tanmiyah Fonun al-Rasm, 2013), p. 100.

⁵³ Ibid., p. 101.

⁵⁴ Ibid.

Al-Ghazālī asserted that God’s purposes for all the mankind consist of five basic principles: i.e. religion (*dīn*), life (*nafs*), reason (*‘aql*), descent (*nasab*), and property (*māl*). For al-Ghazālī, everything that reflects the protection of those principles is called *maṣlaḥah*, and otherwise is *mafsadah*.⁵⁵

In al-Ghazālī’s opinion, the five principals (*al-uṣūl al-khamsah*) do not exclusively belong to Islam, but also to all religions (*milal*) which requires the realization of public good on earth. Therefore, al-Ghazālī said further, there is no single religion that accepts apostasy, murder, adultery, theft, and consumption of something that could impair the functions of the reason.

Nevertheless, it should be noted here that al-Ghazālī’s concept of the five benefits was developed from *maṣlaḥah* which has been previously conceptualized by leading scholars such as al-Juwaynī (d. 478 AH/1185 AD) and al-‘Amirī (d. 381 AH/991 AD), and then continued by the proponents of *maqāṣid al-sharī‘ah* afterwards, such as al-Shāṭibi and al-Fasi. Before al-Ghazālī, the protection of religion (*hiḏz al-dīn*) is concerned with the criteria of apostate that al-‘Amirī called it prohibition of loosing identity (*muzjirah khal’i al-bayḏah*). The scholars of *maqāṣid* after al-Ghazālī, such as al-Shāṭibi, Allāl al-Fāsī, and al-Ṭāhir ibn ‘Āshūr, associated the protection of religion (*hiḏz al-dīn*) with all the aspects of Islamic teachings, ranging from beliefs (*aqīdah*), rituals, *muā‘malah* and others. As times passed by, the understanding of *hiḏz al-dīn* is then not only about religious matters, but it is extended also to religious freedom. Thus, to protect one’s freedom of choice to a certain belief part of *sharī‘ah* (*maqāṣid al-sharī‘ah*). This idea, as quoted by Jassir ‘Auda, was proposed for the first time by Saif ‘Abd al-Fattāh.⁵⁶

⁵⁵ al-Ghazali, al-Mustasfa, p. 287.

⁵⁶Jassir ‘Audah, *al-Ijtihad al-Maqasidiy Min al-Taṣawwur al-Uṣūliyy Ilā al-Tanzīl al-‘Amaliyy* (Bairut: al-Shabakah al-‘Arabiyyah Li al-Abhath wa al-Nahr, 2013), p. 30.

Before al-Ghazālī, protection of life (*hifz al-nafs*) was related with more specific issues, i.e. prohibition to kill (*muzjirah qatl al-nafs*), protection of honor (*hifz al-'ird*), and prohibition to injure honor (*muzjirah thalib al-'ird*). In a further development, al-Juwaynī, al-Ghazālī, and al-Shāṭibī consistently simplified the term into two well-known terms, i.e. *hifz al-nafs* (protection of life), and *hifz al-nasl* (protection of descent). Thus, the term *muzjirah qatl al-nafs* (prohibition to kill) is included in the studies of *hifz al-nafs*, while *hifz al-'ird* and *muzjirah thalib al-'ird* were integrated into the studies of *hifz al-nasl* (protection of descent).⁵⁷

Although the term has been not changed, the protection of reason (*hifz al-'aql*) has been understood in conjunction with scientific, social, and cultural developments. When it was first formulated, the protection of reason was only centered on the prohibition to consume alcoholic drinks (*al-khamr*) due to their demaging affects on the mind. It was al-Qaradawi who then extended the term *hifz al-'aql* into an obligation to keep seeking knowledge until the end of life (*min al-mahdi ila al-lahd*), an obligation to observe and think about the universe (*malakūt al-samawāt wa al-ard*) for both individual and public interests.⁵⁸ Saif 'Abd al-Fattāh, a later proponent of *maqāṣid*, then developed the concept of al-nasl *hifz* into freedom of thought.⁵⁹

Protection of property (*hifz al-māl*) has been also shifting from one to another period. Al-'Āmirī, before al-Ghazālī, called it *muzjirah akhdz al-māl* (a ban to take property), in which the punishment of theft (*al-sāriqah*) and robbery (*al-ḥirābah*) were also discussed. Al-Juwaynī then changed the term into *'ismah al-māl* (protection of property), which was then finalized by al-Ghazālī to the concept of *hifz al-māl* that he divided it into three levels: *al-ḍarūrāt* (primary), *al-ḥājāt* (secondary) and *al-*

⁵⁷ Ibid., pp. 25-26.

⁵⁸ Ibid., p. 28.

⁵⁹ Ibid., p. 29.

taḥsīnāt (tertiary).⁶⁰ This categorization was based on the level of demand and the scale of priorities. *Maqāṣid al-darūriyyāt* (primary objectives) refers to fundamental needs the absence of which will destroy the lives as whole.⁶¹

Maqāṣid al-ḥājiyyāt (secondary objectives) is defined as something that can facilitate people in fulfilling their primary needs.⁶² Because of its significance in sustaining and completing the primary objectives, the presence of these secondary objectives is required (lit. *ḥājiyyāt*) rather than necessary (lit. *darūriyyāt*). That is, the absence of *ḥājiyyāt* would not necessarily destroy human life, event though lackness or difficulties may exist.⁶³

While *maqāṣid al-taḥsīniyyāt* (tertiary objectives) is defined as something whose presence is not necessary or required, but beautifies (lit. *taḥsīniyyāt*) the realization of the primary (*darūriyyāt*) and secondary (*ḥājiyyāt*).⁶⁴ On the contrary, their absences will not damage or make life difficult, rather it only impairs a sense of beauty and ethics.

In regard with the legality of *maṣlaḥah* by the Shārī', al-Ghazālī classifies it into three: the first is *maṣlaḥah mu'aththirah* (authoritative), which is the benefits explicitly mentioned by the texts; the second is *maṣlaḥah mulghāh* (useless) and *gharībah* (unknown), which are the benefits neglected by the texts; and the third is *maṣlaḥah mursalah* (unregulated), which is the benefits not mentioned directly by the texts but in conformity with *maṣlaḥah* described by the texts.⁶⁵ It is important to note here that, as al-Ghazālī put in, *maṣlaḥah ḥājiyyah* (secondary benefits) and *maṣlaḥah taḥsīniyyah* (tertiary benefits) can not be used as a legal basis unless supported by *aṣl* (i.e. something whose legality is explained by the texts). Thus, the operative work of al-Ghazālī's

⁶⁰ Ibid., p. 289.

⁶¹ Ibid., p. 290.

⁶² Ibid., p. 291.

⁶³ Ibid.

⁶⁴ Ibid., p. 292

⁶⁵ Ibid., pp. 310-311.

maṣlaḥah is indeed that of analogy (*qiyās*), because if there is no support from *sharā'* (the lawgiver), then it is *istiḥsān* (considered to be better).⁶⁶

In al-Ghazālī's opinion, *maṣlaḥah ḍarūriyyah* (primary, urgent benefits) can serve as a legal basis only if it meets the following requirements: firstly, it does not conflict with *naṣṣ qaṭ'ī* (a decisive text). For al-Ghazālī, *naṣṣ qaṭ'ī* is stronger than *maṣlaḥah mursalah*. When there is contradiction (*ta'arūḍ*) between *maṣlaḥah* and *naṣṣ ḡannī* (an equivocal text), then the priority is given to *maṣlaḥah* without neglecting the texts. In other words, what applies here is that *maṣlaḥah* specifies (*takhṣiṣ*) the general meanings of texts; secondly, *maṣlaḥah* is universal (*kulliyāt*), not particular (*juziyyāt*); thirdly, there is a strong belief that *maṣlaḥah* is a real, not a mere eutopian, presumptuous or suspicious one.⁶⁷

2.5 Al-Shāṭibi (d. 790 AH) on Maṣlaḥah

Abū Ishāq ibn Mūsa al-Gharnaṭī is known also as al-Shāṭibi. The name al-Shāṭibi is derived from the name of his mother land, Shatibah (Xativa or Jativa). He was born in Granada. Hamka Haq said that al-Shāṭibi's exact birth date is still unknown up to now. In general, most people refer to his death, i.e. 790 AH/1388 AD.⁶⁸ However, it is strongly supposed al-Shāṭibi was born and spent his life in Granada during the reign of Yūsuf Abū al-Hajjāj (1333-1354 AD) and Sultan Muhammad IV (1354-1391).⁶⁹

The name Shāṭibi is attributed to his father's birthplace at Sativa (Shāṭibah), an area in east Andalusia. In 1247 M, al-Shāṭibi's family fled to Granada when Sativa was finally captured by the king of Spain Uraquon after a nine-year war since 1239M.⁷⁰

⁶⁶ Ibid., pp. 293-294.

⁶⁷ Ibid., pp. 295-309.

⁶⁸ Sha'bān, Uṣūl al-Fiqh, p. 417.

⁶⁹ Hamka Haq, al-Shatibi: *Aspek Teologis Konsep Maṣlaḥah dalam Kitab al-Muwafaqat*, (Jakarta: Publisher Publishing, 2007), p. 17.

⁷⁰ Ibid.

Al-Shāṭibi learnt from a number of teachers among of whom are Ibn al-Fakhrār al Ibiri, Abū ‘Abd al-Balinsī, Abū al-Qāsim al-Sabti, Abū Abd Allah al-Sharī fī al-Tilimsānī, Imam al-Maqrī, Al-Khaṭīb Ibn al-Marzūq, Abu ‘Ali al-Manṣūr al-Mashzālī, Abu al-‘Abbās al-Qabāb, and Abu ‘Abdillāh al-Ḥfār.⁷¹

Among many works of al-Shāṭibi are: *Kitāb al-Muwāfaqāt*; (2). *Kitāb al-I’tiṣām*; (3). *Kitāb al-Majālis*; (4). *Sharḥ al-Khulāṣah*; (5). *Unwān al-Ittiḥāq fī ‘Ilm al-Ishtiḳāq*; (6). *Uṣūl ‘an-Naḥw*; (7). *Al-Ifadāt wa al-Inshadāt*; (8). *Fatāwā al-Shāṭibī*.⁷²

Al-Shāṭibi said that the purpose of Shā’ri’ (Allah) are four. They are:

a. *Qaṣd al-Shāri’ fī Waḍ’i al-Sharī’ah* (the Lawgiver Has Purposes in His Legislation)

Al-Shāṭibi pointed out that Allah revealed the Sharī’a (laws) is not but for bringing the benefits and avoiding difficulties (*jalb al maṣāliḥ wa dar’u wa al-Mafāsid*). To put it simpler, God imposed the rules for the benefits of people in the world and the Hereafter as well.⁷³ The realization of those benefits requires the fulfillment of five basic elements, i.e. religion, life, descent, reason and property.⁷⁴

⁷¹ Al-Shatibi criticized excessive fanaticism (ta’aṣṣub) of the Granadian scholars and the Andalusian society over the Mālikī school. Others than Mālikī followers were misguided. It is known that the people of Andalus are strict followers of Mālikī’s school since their king, Hisham al-Awwal bin Abdurrahman al-Dākhil, who reigned from 173-180H, announced it as the official school of the state. According to one story, Hisham al-Awwal preferred to choose Mālikī school after he questioned two scholars, one is Hanafī and the other one is Mālikī. Hisham al-Awwal asked: “where does Abu Hanīfah come from?” the Hanafī scholar replied: “Kufa”. Then, he returned to the Mālikī scholar: “where does Imam Mālik come from?” the Mālikī scholar said: “Medina”. Hisham then said: “it is enough for us a cleric who came from a place wherein the Prophet migrated into. Al-Shatibi wrote *Kitāb al-Muwāfaqāt* in order to bridge the current tensions between the Mālikī and the Hanafī; See Ibid.

⁷² Sha’ban, *Uṣūl al-Fiqh*, Ibid.

⁷³ Ibid.

⁷⁴ Ibid. There is disagreement among scholars on the ordering of the five benefits. Given that al-Ghazali was the initiator of those five benefits, I inclined to al-

Waḥbah al-Zuhaylī pointed out that Mālikī and Shāfi'ī's scholars listed the five main principles (*al-uṣūl al-khamsah*) in the following order: religion, life, intellect, descent, and property. On the hand, Ḥanafī put them in the order: religion, life, descent, intellect, and property.⁷⁵ Similarly, al-Būṭī said that 'ulamā agreed to follow the initiator's (i.e. al-Ghazālī) order of *al-uṣūl al-khamsah*, namely religion, life, intellect, descent, and property.⁷⁶

In an effort to realize and maintain the five basic elements, al-Shāṭibi divided the benefits into three categories:⁷⁷

1. *Al-maqāṣid al-ḍarūriyyāt* (primary, basic objectives);
2. *Al-maqāṣid al-ḥājīyyāt* (secondary objectives);
3. *Al-maqāṣid al-taḥsīniyyāt* (tertiary objectives).

Al-maqāṣid al-ḍarūriyyāt is:

الأمر التلبدمنها في قيام مصالح الدين والدنيا،
بحيث إذا فقدت لم تجر مصالح الدنيا على استقامة،
بل على فساد وتهاجر جو فو تحياتو في الآخر ة فو تالنجاةو النعيمو الرجوعو
ر انالميين.

Something whose presence is necessary in order to realize the goodness of religion and the world, and whose absence would make it unstable, and even damaged and destroyed, and in Hereafter it would lead to the loss of

Ghazali's ordering of *maṣlaḥah*, i.e.: religion, life, reason, descent, and property. Ibn al-Subki (d. 771 AH) added the honor (*al-'ird*) as the sixth benefit that is also maintained and protected by religion. al-Qarafi, al-Shawkanī, and Ibn 'Ashūr refused it because they see that the protection of honor is already included in the scope of protection of descent. See Ahmad al-Raisūni, *Nazariyat al-Maqāṣid*, pp. 62-64.

⁷⁵ See Waḥbah al-Zuhailī, *Uṣūl al-Fiqh al-Islāmī*, Vol. 2, (Bairūt: Dār al-Fikr, 1986), pp. 752-753.

⁷⁶ See Muhammad Sa'id Ramaḍān al-Būṭī, *Ḍawābiṭ al-Maṣlaḥah fi al-Sharī'ah al-Islāmiyyah*, (Bairūt: Muassasah al-Risālah, 1982), p. 250. See also Musfir bin 'Alī, *al-Wa'y al-Maqāṣidī*, p. 43.; Abd. Al-Majid al-Najjar, *Maqasid al-Shari'ah bi Ab'ad Jadidah* (Tunisia: Dar al-Gharb al-Islami, 2012), p. 47.

⁷⁷ Al-Shatibi, *al-Muwāfaqāt*, Vol. 2, 6

safety (from the wrath of God), pleasure, and harmful returning (to Allah).⁷⁸

Protection of *maqāṣid al-darūriyyāt* ranks the highest and most important than the two other *maqāṣids*. Therefore, sacrificing *darūriyyāt* needs for *hājīyyāt* and *taḥsīniyyāt* is not justified.⁷⁹

Al-maqāṣid al-hājīyyāt is:

إنها مفتقرة إليها من حيث التوسعة وفعال الضيق المؤدي بالحر جرم المشقة اللاد
قتيفو تالمطوب بإذ المتر عدخلعدا المكلفين - علي الجملة -
الحر جرم المشقة،
ولكنه لا يبلغ مبلغ الفساد العادي المتوقع في المصالح العامة.

Something that is needed to bring forth easiness and eliminate limitedness that can cause difficulties and make what is sought is neglected. If *maqāṣid* is not maintained, the mukallaf people in general will be in trouble, but not to the extent of normal damages that the public good in general attempts to avoid.⁸⁰

In short, the *hājīyyah* benefits refer solely to difficulties in this life. It is the spirit upon which Islam is actually built. Therefore, this spirit is reflected in all aspects of life, both in rituals and *mu'amalah* (interaction with others), such as relief (*rukḥṣah*) of shortening (*qaṣar*) prayers for those who are sick or on travels and the rightfulness of anything good (*tayyibāt*).

Al-maqāṣid al-taḥsīniyyāt is:

فمعناها الأخذ بما يليق من محاسن العادات وتجنب الأحوال المنسآت التي أتت فيها العق
واللر اجحاتو يجمع ذلك قسم مكارم الأخلاق

⁷⁸ Al-Shatibi, *al-Muwāfaqāt*, Vol. 2, Ibid. Abu Zahra pointed out that rejecting everything that can result in the loss of one of the five basic elements can be regarded as *darūrī* (primary/urgent). See Abū Zahra, *Usul al-Fiqh*, p. 371.

⁷⁹ Sapiuddin Shidiq, *Usul Fiqh*, (Jakarta: Kencana, 2011), p. 226. See also, Abu Zahra, *Usul al-Fiqh*, p. 372.

⁸⁰ Ahmad al-Raysūni, *Naẓariyat al-Maqāṣid 'inda al-Imām al-Shāḥibī*, (Herdon: al-Ma'had li al-'Ali al-Fikr al-Islāmī, 1995), p. 146.

Maintaining good and proper traditions, as well as refraining from anything that can tarnish the mind. This understanding is summarized in noble characters.⁸¹

It includes also the benefits that can enhance ones' dignity in society and in the presence of Allah. Unlike *ḍarūriyyāt*, the absence of *taḥsīniyyāt* does not cause destruction and annihilation of human life. Unlike *ḥājjiyyāt*, its absence will not also bring difficulties to human life but concerns only with noble morals and good customs.⁸²

Al-Qarāfī said that *maṣlaḥah* under the category of *taḥsīniyyah* is known also with complementary *maṣlaḥah* (*ma huwa maḥal al-tatimmāt*), because it serves only to complement the benefits. al-Shāṭibi gave some examples of this *maṣlaḥah*: cleaning excrements, ritual washing (*wūḍū'*), dry ablution (*tayammum*), bathing, covering the private parts of the body (*'aurāt*), using make-up, extra religious services (*nawāfil*), eating and drinking manners, avoiding disgusting foods and beverages, being too lavish and too saving.⁸³

In *mu'āmalah*, al-Shāṭibi provides the examples of *maṣlaḥah taḥsīniyyāt* as follows: a ban to sale religiously unclean goods, prohibition for slaves to be witnesses and leaders, prohibition for women to become leaders and marry by themselves. In criminal laws, the examples include enactment of retaliation (*qiṣās*) for free men for killing a slave, prohibition to kill women, children, clergy during a war.⁸⁴

⁸¹ Ibid. See also Musfir bin 'Ali, *al-Wa'y al-Maqasidi*, p. 51.

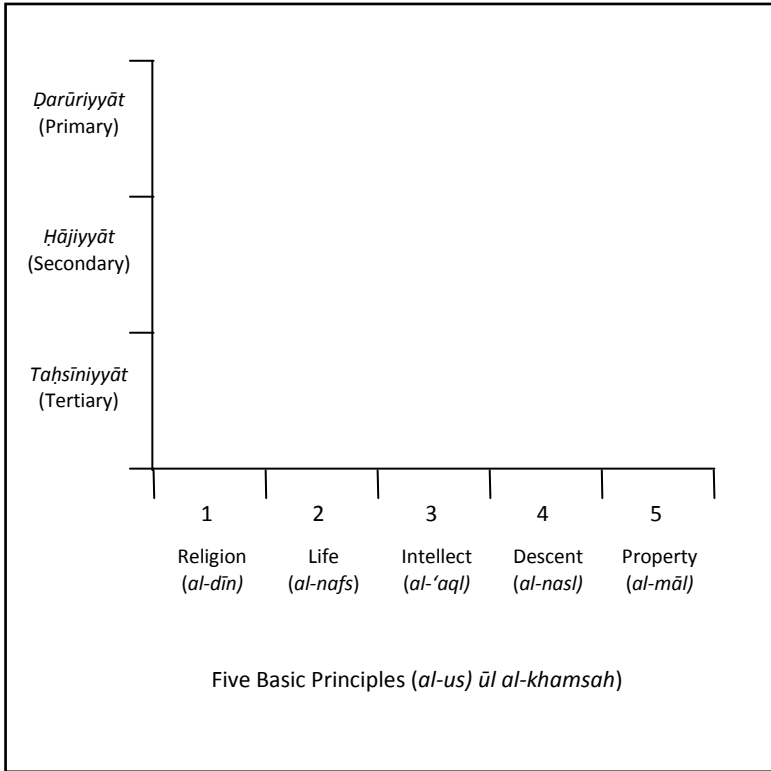
⁸² Al-Raysuni, *Nazariyah*, p. 227.

⁸³ Al-Shatibi, *al-Muwafaqat*, Vol. 2, pp. 22-23.

⁸⁴ Ibid.

The following figure sums up the the basic principles of al-uṣūl al-khamsah and their classification:

Figure 2.1. *Al-Shaṭībī's Maṣlaḥah*



The application of the three categories of maṣlaḥah is shown in the table on next page.⁸⁵

⁸⁵ *Ibid.*, pp. 227-230. See also Fathurrahman Djamil, *Metode Ijtihad Majlis Tarjih Muhammadiyah*, (Jakarta: Logos, 1995), pp. 41-44. These examples are elaborated from the ones given by Abu Zahroh in *Usul al-Fiqh*, pp. 370-373.

Tabel 2.1 Application of the Three Categories of Maqāṣid al-Sharī'ah⁸⁶

No.	Five Basic Principles	<i>Ḍarūriyyāt</i>	<i>Hājiyyāt</i>	<i>Taḥṣīniyyāt</i>
1	Religion	Protection and observance of primary religious obligation such as a daily five-time prayer	Protection and observance of religious obligation to remove difficulties such as combining (<i>jamā'</i>) and shortening (<i>qasar</i>) prayers for the travelers	<ul style="list-style-type: none"> - Religious obedience and respects for human dignity as well as observance of religious obligation such as covering the aurāt, cleaning cloths and bodies. - Removal of religious chants whose sources are still unknown, and interfaith readings for the beginners.
2	Life	Fulfillment of basic needs of life such as foods and other physical needs.	<ul style="list-style-type: none"> - Allowance of hunting and enjoying good foods and bevarages 	<ul style="list-style-type: none"> - Establishment of table manners; - Protection of one's self from other's unjustified accusation and abuse
3	Intellect	Prohibition of alcoholic drinks	<ul style="list-style-type: none"> - Call for learning - Prohibition of drinking alcohol lesser or more 	<ul style="list-style-type: none"> -Restraint from thinking and listening to the unuseful

⁸⁶ Some cases in this table were modified from Fathurrahman Djamil, *Metode Ijtihad.*, pp. 41-44.

4	Descent	Provision of marriage and prohibition of unlawful sex (<i>zinā</i>)	Obligation for a husband to mention maḥar during the marriage contract, ṭalaq rights for the husband dan khulū' rights for the wife, and obligation to cover the aurāt in the presence of non-muḥrim	- Obligation of marriage proposal (<i>khitbah</i>) and banquet (<i>walimah</i>) in marriage - Prohibition to go outside by showing off <i>zīnah</i> (garnish).
5	Property	Provision of property entitlements and prohibition of unjustified control of other's property	Provision of forward sales (<i>salam</i>)	Prohibition of doing transaction which contains <i>gharar</i> (speculation)

The above classification of *maṣlaḥah* will help the scholars of Islamic law to analyze legal cases which contain a contradiction between *maṣlaḥahs*. When the contradiction is between two *ḍarūriyyāt maṣlaḥahs*, the priority should be given to the highest among the five basic principles (*al-uṣūl al-khamsah*), which are orderedly religion, life, intellect, descent and property.

This solution for the contradicting *maṣlaḥah* applies also to *ḥājjiyyāt* and *taḥsīniyyāt*. For example, jihād in the way of Allah is a *ḍarūriyyāt* in the maintenance of the existence of religion and it brings human casualties. In this case, protection of religion through *jihād* must take precedence over maintenance of life even though the two are equally ranked as *ḍarūriyyāt*.⁸⁷

If the contradiction between between *ḍarūriyyāt* and *ḥājjiyyāt* and *taḥsīniyyāt*, or between *ḥājjiyyāt* and *taḥsīniyyāt*, both *maṣlaḥah ḥājjiyyāt*

⁸⁷ Fathurrahman Djamil, *Metode Ijtihad*, p. 46.

and *taḥsīniyyāt* must be ignored in order to realize *maṣlahah ḍarūriyyāt*, and *maṣlahah taḥsīniyyāt* should be left for the sake of *maṣlahah ḥājjiyyāt*. For instance, someone should meet his or her basic needs of food in order to survive. The foods should be justified ones (*ḥalāl*). Then, he or she somehow cannot find *ḥalāl* food, and he would die if he did not eat so in this condition it is justified to eat unjustified foods (*ḥarām*) in order to survive. Eating, in this case, means to protect the soul which is *ḍarūriyyāt*, while eating *ḥalāl* foods is *ḍarūriyyāt*.

Thus, protection of life (*ḍarūriyyāt*) should take precedence over *ḥājjiyyāt*.⁸⁸ One example of contradiction between *ḍarūriyyāt* and *ḥājjiyyāt* is the necessity to keep praying in congregation (*maṣlahah ḥājjiyyāt*) albeit there is no a jurist (*faqīh*), an abstinent (*warā'*), or Qur'anic reciter (*qāri'*) (*maṣlahah ḥājjiyyāt*).

Al-Shāṭibi asserted that maintainance of the five basic principles can be done in two ways: (1). In terms of its presence (*min nāhiyyat al-wujūd*), i.e. maintaining the things that can endure its existence; (2). In terms of absence (*min nāhiyyat al-'adam*), i.e. preventing the things that can cause its loss. In practice, these two ways of maintaining the five basic principles are exemplified as follows:⁸⁹

1. Maintaining religion (*al-dīn*) in term of its presence (*al-wujūd*) through prayers and charity, and in term of its absence (*al-'adam*) through *jihād* and punishment for the apostates;
2. Maintaining life (*al-naḥs*) in term of its presence (*al-wujūd*) such as eating and drinking, and in term of its absence (*al-'adam*) through retaliation (*qiṣāṣ*) and compensation (*diyāt*);
3. Maintaining intellect (*al-'aql*) in term of its presence (*al-wujūd*) through eating and studying, and in term of its absence (*al-'adam*) through punishment (*ḥādd*) for alcoholics;

⁸⁸ Ibid., p. 45.

⁸⁹ See al-Raysūni, *Naẓariyyat al-Maqāṣid*, pp. 146-147.

4. Maintaining descent (*al-nasl*) in term of its presence (*al-wujūd*) through marriage, and in term of its absence (*al-'adam*) through punishment (*ḥādd*) for those who did or accused someone of adultery;
5. Maintaining property (*al-māl*) in term of its presence (*al-wujūd*) through trading and working, and in term of its absence (*al-'adam*) through usury and cutting off the hands of thieves.

b. *Qaṣḍu al-Shāri' fi Waḍ'i al-Shārī'ah li al-Ifhām* (the Lawgiver Revealed the Law to be Understood)

In Shāṭibi's opinion, because the Qur'an was revealed in Arabic, its proper understanding will require knowledge on the correct rules of the language.⁹⁰ In addition, al-Shāṭibi also stressed that Sharī'ah aims to realize the benefits for the Community (*Ummah*) of Muhammad who is known as “*ummiyyah*” (i.e. unable to read and write). Therefore, Sharī'ah is also “*ummiyyah*”.⁹¹

c. *Qaṣḍu al-Shāri' fi Waḍ'i al-Shārī'ah li al-Taklīf bi Muqtaḍāhā* (The Lawgiver Revealed the Law to be Obidied According to the His Demands)

In this case, al-Shāṭibi divided legal charge or obligation (*taklīf*) into two categories:⁹² the first is *taklīf* that is beyond human capability (*al-taklīf bimā lāyutāq*). There will be further discussion on this since it is known that *taklīf* should be within the limit of human ability. Still related to this, al-Shāṭibi said: “A *taklīf* which is beyond the limits of human ability, then it is not valid regardless the sense approves it”.

⁹⁰ Ibid., p. 149

⁹¹ Ibid.

⁹² Ibid., pp. 150-151.

The second is *taklīf* which contains difficulties (*al-taklīf bimā fi hi mashaqqah*).⁹³ Al-Shāṭibi discussed the issue in further length. Al-Shāṭibi pointed out that the Lawgiver (*Shāri'*) does not mean by *taklīf* to cause difficulties (*mashaqqah*) for the *mukallaḥs* (the subject of laws), otherwise He provides an added value to them. For example, the obligation of jihad is not intended to lead them to destruction, but for the benefits of them (*waṣīlah amar ma'rūf nahy al-munkar*).⁹⁴ Similarly, the provision of cutting off hands in theft was not intended to cause damages over the body but for the sake of maintaining others' property.

When it seems there is *mashaqqah* in *taklīf*, it is *kulḥah*, namely something that is indispensable from human activities as it is the case that hard-working day and night to make a living for people is not considered *mashaqqah*, rather a necessity and prevalence. It applies also to the issue of religious observance.⁹⁵ Al-Shāṭibi called it *mashaqqah mu'tādah* (normal or usual difficulties) because it can be done and, therefore, in *tashrī'* it is not seen as *mashaqqah*. What he means by *mashaqqah* is what he calls it *mashaqqah ghair mu'tādah* or *ghair 'ādiyyah*, i.e. one that is unusual and impossible to do, or whose realization would cause harm and trouble. One example is obligatory fasting for the sick and the elders, which is *mashaqqah ghair mu'tādah* condemned by Islam. Islam provides a *rukhhṣah* (relief) to overcome such *mashaqqah*.⁹⁶

**d. *Qaṣḍu al-Shāri' fi Dukhūl al-Mukallaḥ Taḥta Aḥkām al-Sharī'ah*
(the Lawgiver aims to bring humans into the Guidance
of the Law)**

Al-Shāṭibi insisted that *maṣlahah* that the Lawgiver wants to establish is one that sustains the establishment of life on earth for the sake of

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid., pp. 152-153.

the Afterlife.⁹⁷ Therefore, *maṣlahah* which is inclined only to mundane life rather than eternal life is not the purpose of the Lawgiver. This is why realization of *maṣlahah* should be void of lust and only by doing so that human beings will become freely conscious servants (*ikhṭiyāran*) rather than compulsory ones (*ittiṭāran*).

In Shāṭibi's opinion, there are three conditions to fulfill in order to figure out the *sharī'ah*.⁹⁸

1. Knowledge of the Arabic language. This requirement is imperative because the Qur'ān, which is the primary source of Islamic law is written in Arabic.⁹⁹ The question is then whether other-than-Arabic translation is enough to understand the Qur'an? Shāṭibi's answer on this issue is shown in his description of the inferred meanings of the word (*dalālah lafẓī*).

For al-Shāṭibi, the inferred meaning of the words can be seen from two aspects: firstly, words that provide definite meanings (*muṭlāq*), which is called *dalālah aṣliyyah* (original meanings); secondly, words that demonstrate additional rather than definite meanings, which is referred to as *dalālah tābi'ah* (secondary meanings).

Al-Shāṭibi said that *dalālah aṣliyyah* is found in all languages and it, therefore, can be translated, such as an utterance that someone is standing. However, an emphasis in utterance or statement about someone, al-Shāṭibi said, belongs to *dalālah tābi'ah* and it is, therefore, hard to be translated because it links to the oral tradition of the Arabs who always consider the informant (*mukhbīr*), the informed (*mukhbar 'anh*), and the information (*nafs al-ikhbār*), the situation and the wording (*al-hāl wa al-nasaq*), the grammatical aspects (*naw' al-uslūb*), the short (*ījazz*), and the length of the words (*itnāb*) and so forth.¹⁰⁰

⁹⁷ Al-Shatibi, *al-Muwāfaqāt*, Vol. 2, pp. 128-150.

⁹⁸ Fathurrahman Djamil, *Metode Ijtihad*, p. 46.

⁹⁹ *Ibid.*, p. 66.

¹⁰⁰ *Ibid.*

2. Knowledge of the Sunnah.¹⁰¹
3. Knowledge of the reasons of the Qur'anic revelation.¹⁰²

Al-Shāṭibi offered three ways to understand *maqāṣid al-sharī'ah*.¹⁰³ The first is by examining the pronunciation of the commands (*al-amr*) and prohibitions (*al-nahy*). The commands in the the Qur'an and the Hadith are meant to be realized and, on the contrary, the prohibitions are supposed to be restrained and kept away. The necessity to keep away from the prohibited is the purpose desired by Allah.¹⁰⁴

It is important to note that the commands and prohibitions in the Qur'an and the Hadith have two dimensions: primary and secondary ones. For example, a strong command for praying is a primary objective, while avoiding indecency (*al-fakhshā'*) is a secondary one.¹⁰⁵

The second is by analyzing the basic cause (*illāh*) behind the commands or the prohibitions. When the cause is clearly known (*ma'lūmah*) from a commands or a prohibition, it then should be guidance and be followed, because the legal objectives in the corresponding command or prohibition can be realized by submitting to the literal '*illāh*' in the *naṣ*. The examples are a procreative objective in marriage and a mutual gain in trading.

On the other hand, the unknown cause ('*illāh ghayr al-ma'lūmah*), al-Shāṭibi said, must leave it to the Lawgiver with *tawaqquf* (i.e. no analysis should be conducted). This is because to extend the scope (*al-ta'addī*) of something unclear means to lay down laws without any legal proposition, and it goes against the law. The scope of any injunction or prohibition can be extended only when the objective of the law has been

¹⁰¹ Ibid., p. 68

¹⁰² Ibid.

¹⁰³ Ibid., pp. 295-307. See also, Asafri Jaya Bakri, "Konsep Maqāṣid al-Sharī'a Menurut al-Syatibi and Relevansinya dengan Hukum Islam", (Disertasi- Program Pascasarjana UIN Jakarta, 1994), pp. 128-145.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid, p. 132

clearly known. The third is by analyzing legal issues not explicitly mentioned by the Lawgiver (*sukūt al-shāri'*).¹⁰⁶

2.6 Al-Ṭūfī (d. 716 AH) on Maṣlaḥah

Najm al-Din Abu al-Rabi' Sulayman ibn Abd al-Qawi bin Abd al-Karim bin Sa'id Al-Ṭūfī al-Sarsari al-Baghdadi al-Hanbali is later known as Al-Ṭūfī.¹⁰⁷ The name al-Ṭūfī is attributed (*nisbat*) to Ṭawfa, a village located in Sarsar Iraq where he was born. Besides he is known as al-Ṭūfī, he is also widely identified with the name Ibn Abi 'Abbas. Al-Ṭūfī was born in 673 AH (1274 AD) and died in 716 AH (1316 AD) in Palestine.¹⁰⁸

Al-Ṭūfī wrote no less than 42 books on various topics, especially on the Qur'an, jurisprudence, logic, Arabic, and literature.¹⁰⁹ Out of all his works, one was echoing the loudest and shaking the world of Islamic thoughts, especially in of Islamic jurisprudence, namely *Kitāb al-Ta'yīn fī Sharh al-Arba'īn*, which is an explanation on *Al-Ḥadīth al-Arba'īn al-Nawawiyyah*.

¹⁰⁶ Ibid.

¹⁰⁷ Ibn al-'Imād, *Shadzarat al-Zahab fī Akhbāi Man Zahab*, Vol. 5, (Bairūt: al-Maktabah al-Tijāri, t.th.), p. 39.

¹⁰⁸ Qamaruddin Khan, *Pemikiran Politik Ibn Taymiyyah*, trans. Anas Mahyudin, (Bandung: Pustaka, 1983), pp. 37-38.

¹⁰⁹ Mustafā Zaid, *al-Maṣlaḥah fī al-tashrī' al-Islāmī wa Najm al-Dīn al-Ṭūfī*, (Bairūt: Dār al-Fikr al-'Arabī, 1964), pp. 91-94. During the periode of al-Ṭūfī, a number of Islamic jurisprudence has been used to justify the policies and interests of the authorities under the Mamluks of Egypt (649-924 H/1250-1517 AD). For instance, all the farmlands was shared exclusively between the political and the military authorities. The whole agricultural land in Egypt, for example, is divided as follows: 4 parts goes to the ruler as an individual, i.e. the sultan; 9 parts to the royal officials, including the security guards, the palace servants and soldiers assigned to provide immediate services to the king; 11 parts to the Mamluk emirs and other Mamluk soldiers. See Sir John Glubb, *Soldier of Fortune, The Story of the Mamluks*, (New York, 1973), p. 207, as cited by Abdallah M. Al-Husayn al-'Amīrī, *Dekonstruksi Sumber Hukum Islam*, terj. Abdul Basir, (Jakarta: Style Media First, 2004), p. 37.

In his book, precisely on the explanation of al-Hadith No. 32, i.e. *lā darāra walā dirāra* (no harm is allowed to oneself or to others), al-Ṭūfī expressed his ideas on *maṣlaḥah* as an independent proposition (*dalil mustaqil*) in excavating Islamic laws,¹¹⁰ on which this dissertation will explain in the following.

In fact, there is no other scholar who considers *maṣlaḥah* as an independent legal proposition (*mustaqil*) before al-Ṭūfī, nor among the leaders of the major schools, such as Abū Ḥanīfah al-Nu'man bin Thabit (d. 150 AH/767 AD), Mālik ibn Anas (d. 179 AH/795 AD), Muhammad ibn Idrīs al-Shāfi'ī (d. 204 H/819 AD), and Ahmad ibn Ḥanbal (d. 241 H / 855 AD), and their followers as well. To some extent, Abū Ḥanīfah accepts *maṣlaḥah* as the basis for determining laws through a method of *istiḥsān*, i.e. legal judgments based on common sense of practicality or appropriateness rather than directly on the texts or strict analogy (*qiyās*). Later, his opponents alleged that *istiḥsān* has violated the provisions in texts and analogy. The proponents of *istiḥsān* insisted that the allegation is untrue.¹¹¹ *Istiḥsān*, according to its proponents, is obviously in line with the provisions of the texts (*naṣ*) and *qiyās*, except that in certain cases the analogy is subtle and not immediately known.

On the other hand, Mālik (d. 179 AH) accepts al-*maṣāliḥ al-mursalah*¹¹² as a method in legal excavation (*istinbāt al-ḥukm*). One can use this method to “creatively” determine the laws, on which it is un-

¹¹⁰ See Najm al-Din al-Ṭūfī, *Kitāb al-Ta'yīn fī Sharḥ al-Arba'īn*, (Bairuut: Muassasah al-Rayyan, 1994), pp. 234-280.

¹¹¹ Referring to *uṣūl al-fiqh* among Hanāfi, Wahbah al-Zuhaili defines *istiḥsān*: “to turn from the provisions of *qiyās jalī* to the demands of *qiyās khāfi* because of stronger propositions, or turning away from the universal or deductive provisions (*kulliyāt*) to the demands of partial issues (*juz'ī*). See Wahbah al-Zuhailī, *Uṣūl al-Fiqh al-Islāmī*, Vol. 2, (Bairūt: Dār al-Fikr, 1998).

¹¹²The scholars *uṣūl fiqh* classified *maṣlaḥah* into three types: the first is *maṣlaḥah mu'tabarah*, i.e. one which is justified and considered by *naṣ*; the second is *maṣlaḥah mulghāh*, i.e. one which is clearly rejected and not considered by *naṣ*; and the third is *maṣlaḥah mursalah* or *muṭlaqah*, i.e. one that is unclear whether justified or refused by *naṣ*. It is the third type of *maṣlaḥah* which the Mālikī put forward in excavation of Islamic laws. See *Ibid*.

clear whether the text justifies it or not (*mursalāh*, *muṭlaqah*) as long as they meet the criteria of *ḍarūriyyah* (urgent), *kullīyyah* (universal) and most likely will bring *maṣlaḥah* within the scope of the five basic principles (*al-uṣūl al-khamsah*), i.e. religion, life, intellect, descent and property.

Al-Shāfi'ī (d. 204 AH), on the other hand, explicitly rejected the use of reason (ra'y) in Islamic legislation, and, therefore, in the protection of *maṣlaḥah* for human beings as well. He asserted that the only acceptable source of law is the Qur'ān and the Sunnah of the Prophet. For al-Shāfi'ī (d. 204 AH) Sunnah is the second source of law after the Qur'an. Even, al-Shāfi'ī does not only consider the Sunnah as a binding source of law, but also as divine and, therefore, equal as the Qur'an.¹¹³ He asserts that the Sunnah is equal to the Qur'ān and both cannot abandon (*naskh*) each other; in fact, the Sunnah is meant to interpret, judge and cancel the Qur'ān.¹¹⁴

al-Shāfi'ī (d. 204 AH) pointed out further that all the legal benefits for the mankind are found in the Qur'ān and the Sunnah, and there is no need to use common sense except in urgent situations. For al-Shāfi'ī, reasons serves only to derive laws by using a strict analogy (*qiyās*) based on the two sources of laws: the Qur'ān and the Sunnah.¹¹⁵

Ahmad ibn Ḥanbal (d. 241 AH) emphasizes the authority of Hadith (*hujjiyyah al-ḥadīth*) which is considered weak, and the opinions of the companions of the Prophet (*āthār al-ṣaḥābah*) and the followers who came after them, with regard to the laws and the interpretation of *naṣṣ*.¹¹⁶

The opinions of the four jurist schools above on *maṣlaḥah* were also replicated by the scholars afterwards, such as al-Juwaynī (d. 478 AH),

¹¹³Muhammad Abu Zahra, al-Shāfi'ī, (Cairo, Dār al-Fikr, 1948), pp. 183-184, as cited by Abdullah M. Al-Husayn al-Amiri, *Dekonstruksi*, p. 5.

¹¹⁴ Ibid.

¹¹⁵ Ibid., p. 6

¹¹⁶ Ibid., p.8.

al-Ghazālī (d. 505 AH), Ibn Taymiyyah (d. 728 H.), Ibn Qayyim al-Jauziyah (d. 751 AH), although they established some additional criteria and conditions. Ṭūfī's opinion on *maṣlaḥah*, as described above, is mostly derived from his explanation (*sharḥ*) on the hadith no. 32 in his *al-Hadith al-Arba' in al-Nawawiyah*. The Hadith in question reads:

لا ضرر ولا ضرار

No harm should be allowed to oneself and to others.¹¹⁷

Regardless of whether the chain of transmitters is strong or its attribution to the Prophet is authentic, al-Ṭūfī found that the hadith represents the Qur'anic objectives to protect the good and well-being for the mankind. For him, the Ḥadīth is only a fragment of the following complete sentence:¹¹⁸

لا حقوقاً ولا إحقاق ضرر بأحد ولا فإضرار مع أحد

No harm is allowed to someone and no adverse retaliatory actions are allowed on someone.

Al-Ṭūfī said further that the al-Ḥadīth contains a fundamental legal principle:

لا حقوق ضرر شرعاً إلا بموجب إحصاء مخصوص

No unlawful and harmful acts are justified (to others) unless there are reasons that specify (*takhṣīs*)¹¹⁹

To elaborate his views on the necessity to realize the benefits for the mankind as well as his rejection on any harmful actions both to one's self and to others, al-Ṭūfī quoted some Qur'anic verses, such as Surah al-Baqarah, 185:

¹¹⁷ Al-Ṭūfī, *Kitāb al-Ta'yīn*, p. 234. The Hadith is found in *al-Muwattā'* No. 1234, *Sunan Ibn Majah* No. 2331 and 2332. See Mālik ibn Anas, *al-Muwattā'* Vol. 5, (Beirut: Dar al-Kitāb al-'Arabi, t.th.), p. 37. Ibn Majah, *Sunan Ibn Majah*, Vol. 7, (Beirut: Dar al-Pole al-'Ilmiyyah, t.th.), p. 143.

¹¹⁸ Al-Ṭūfī, *Kitāb al-Ta'yīn*, p.236

¹¹⁹ Ibid.

شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ هُدًى لِّلنَّاسِ وَبَيِّنَاتٍ مِّنَ الْهُدَىٰ
وَالْفُرْقَانِ فَمَن شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ وَمَن كَانَ مَرِيضًا أَوْ عَلَىٰ
سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّامٍ أُخَرَ يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ
وَلِتُكْمِلُوا الْعِدَّةَ وَلِتُكَبِّرُوا اللَّهَ عَلَىٰ مَا هَدَاكُمْ وَلَعَلَّكُمْ تَشْكُرُونَ ١٨٥

The month of Ramazan is that in which the Quran was revealed, a guidance to men and clear proofs of the guidance and the distinction; therefore whoever of you is present in the month, he shall fast therein, and whoever is sick or upon a journey, then (he shall fast) a (like) number of other days; Allah desires ease for you, and He does not desire for you difficulty, and (He desires) that you should complete the number and that you should exalt the greatness of Allah for His having guided you and that you may give thanks.¹²⁰

Al-Tūfī also cited Surah al-Nisa', 28:

يُرِيدُ اللَّهُ أَن يُخَفِّفَ عَنْكُم وَخَلَقَ الْإِنسَانَ ضَعِيفًا ٢٨

God wants to give relief to you and the man was made to be weak.¹²¹

and also Surah al-Hajj, 78:

وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ
مِنَ حَرَجٍ مَّلَّةً أَيْبِكُمْ إِبْرَاهِيمَ هُوَ سَمَّاكُمُ الْمُسْلِمِينَ مِن قَبْلُ وَفِي هَذَا
لِيَكُونَ الرَّسُولُ شَهِيدًا عَلَيْكُمْ وَتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ فَأَقِيمُوا
الصَّلَاةَ وَآتُوا الزَّكَاةَ وَاعْتَصِمُوا بِاللَّهِ هُوَ مَوْلَاكُمْ فَنِعْمَ الْمَوْلَىٰ
وَنِعْمَ النَّصِيرُ ٧٨

And strive hard in (the way of) Allah, (such) a striving a is due to Him; He has chosen you and has not laid upon you an hardship in religion; the faith of your father Ibrahim; He named you Muslims before and in this, that the Messenger may be a bearer of witness to you, and you may be bearers of witness to the people; therefore keep up prayer and pay the poor-rate and hold fast by Allah;

¹²⁰ Al-Qur'an dan Terjemahnya, (Madinah: Mujamma'Khadim al-Haramayn, 1990), p. 33

¹²¹ Ibid., p. 122.

He is your Guardian; how excellent the Guardian and how excellent the Helper!¹²²

Based on the Ḥadīth, al-Ṭūfī insisted that *mafsadah* should be removed unless there is *takhṣīs* by evidence (*dalīl*). Thus, the contents of the Ḥadīth should take precedence over all legal evidences in order to avoid dangers and reach *maṣlahah* at the same time. This is because, as al-Ṭūfī said, if there is *ḍarar* in some evidences and we eliminate it by applying the Hadith—the methods of *takhṣīs* and *bayān*—, then we actually have applied two evidences simultaneously; but if we do not eliminate it, it means that we do not apply any of the arguments, i.e. the Ḥadīth. Whereas, compromising several propositions is more than neglecting one of them.¹²³

For al-Ṭūfī, there are nineteen propositions of the Sharī'a. They are (1). *Al-Kitāb*; (2). *Al-Sunnah*; (3). *Ijmā' 'al-Ummah*; (4). *Ijmā' ahl al-Madīnah*; (5). *Al-Qiyās*; (6). *Qawl al-Ṣaḥābī*; (7). *Al-Maṣāliḥ al-Mursalah*; (8). *Al-Istiḥāb*; (9). *Al-Barā'ah al-Aṣliyyah*; (10). *Al-'Awāid*; (11). *Istiqrā'*; (12). *Sadd al-Dzarī'ah*; (13). *Istidlāl*; (14). *Al-Istiḥsān*; (15). *Al-Akhdz bi al-Akhaf*; (16). *Al-'Ismah*; (17). *Ijmā' 'Ahl al-Kufa*; (18). *Ijmā' Asyrah*; (19). *Ijmā' 'al-Khulafā' al-Arba'ah*.¹²⁴

Of the nineteen propositions, Al-Ṭūfī said the strongest proposition is *naṣṣ* (texts) and *ijmā'* (consensus). The two sources of law are sometimes in harmony and sometimes in contradictory with *maṣlahah*. When they align with *maṣlahah*, there is no problem then because the three propositions, i.e. *naṣṣ*, *ijmā'* and *maṣlahah*, agree on laws. When there is disagreement between the two and *maṣlahah*, the latter should be given a priority through specification (*takhṣīs*) and explanation (*bayān*) of the passages of *naṣṣ* and *ijmā'* without annulling one of the two proposi-

¹²² Ibid., p. 523.

¹²³ Al-Ṭūfī, *Kitāb al-Ta'yīn*, p. 237.

¹²⁴ Ibid, p. 238.

tions, as it is the case when the Sunnah is given precedence over the Qurʾān through *bayān*.¹²⁵

To emphasize his opinion, al-Ṭūfī provides a long explanation of the meaning and the scope of *maṣlaḥah* and the Shāriʿs attention on it. Al-Ṭūfī pointed out that *maṣlaḥah* is derived from *mafʿalah* from the word *ṣalāḥ*, which means “something which is in a perfect state according to its role”. For example, a pen is made in such a way for writing. A sword is hampered in such a way for cutting.¹²⁶

According to traditions (‘urf), *maṣlaḥah* is a means to achieve the goodness. Meanwhile, according to the law, *maṣlaḥah* is something that can help to realize the objectives of the Lawgiver, either in the forms of worship or customs. Then, *maṣlaḥah* is divided into two parts: i.e. conducts according to the will of the Lawgiver (*Shāriʿ*), such as worship and anything else that is meant to bring the benefits for all mankind in this life, such as customs.¹²⁷

Al-Ṭūfī argued that *maṣlaḥah* is applicable only in human interaction (*muʿamalat*), not in matters related to worship and fixed ordinance (*muqaddarāt*) because worship belongs to the absolute rights of the Lawgiver. It is impossible for someone to know what is in worship, both in terms of quality and quantity, time or place, unless with the guidance from the Shāriʿ. The servant is but to do what has been ordered by the God, because a servant is considered obedient if he or she follows the master’s commands.

It is also the case with worship. Therefore, when philosophers begin to deify reason and refuse Sharīʿa, they are worth to receive the wrath of

¹²⁵ For al-Ṭūfī, *maṣlaḥah* is a means by which the benefits are realized. For example, trade is a means to achieve a profit. According to sharīʿa, *maṣlaḥah* is something that leads to the objectives of the Shāriʿ, both in the form of worship or customs. *Maṣlaḥah* is divided into two, i.e. conducts according to the will of the Shāriʿ, such as worship and anything else that is meant to bring the benefits for all mankind in this life, such as customs. See *Ibid*.

¹²⁶ *Ibid.*, p. 274.

¹²⁷ *Ibid.*, p. 279.

Allah. They are away from the truth. In fact, they are misleading. Unlike the mukallaf, they have mixed *siyāsah* (politics) with sharī'ah which is meant deliberately for the benefits of the mankind.¹²⁸

In relation with the Shāri's attention on *maṣlaḥah*, al-Ṭūfī pointed out two important things: Firstly, al-Ṭūfī refused two opinions that both accepts and rejects at the same time on whether God's acts are based on reason (*mu'allalah*)? For al-Ṭūfī, God's acts are based on some wisdom the benefits of which go back to the mankind (*mukallaf*), not to Allah because He is perfect and does not need anything else.¹²⁹ Secondly, al-Ṭūfī also disagree with two conflicting opinions on the question of whether protection of *maṣlaḥah* is a must for Allah (*wājibah 'alayh*)—similar to that of *mu'tazilah*—, or it is just His grace for his creatures (*tafaḍḍul min Allāh*). Al-Ṭūfī said that protection of *maṣlaḥah* is no doubt coming from Allah (*wājibah minhu*) as a grace, but it is not obligatory for Him (*lā wājibah 'alayh*).¹³⁰

Ṭūfī's concept of *maṣlaḥah* is built upon four principles:¹³¹

- a. Reason alone without revelation can determine the good and the evil. However, this autonomous function of reasons is limited in the aspects of *mu'amalah* and customs;
- b. Still related to the first opinion above, he found that *maṣlaḥah* is an independent proposition of the Lawgiver whose justification does not depend on the confirmation of the *naṣṣ*, but on reason alone. For al-Ṭūfī, to determine whether or not something is *maṣlaḥah* is based on customs and experimentation, without necessary reference to the *naṣṣ*;
- c. As mentioned before, *maṣlaḥah* serves as *shar'ī*'s proposition only in *muā'malah* (social relationships) and customs. In the as-

¹²⁸ Ibid., p. 279

¹²⁹ Ibid.

¹³⁰ Ibid., pp. 241-242.

¹³¹ See Ibrahim Hosen, "Beberapa Catatan Tentang Reaktualisasi Hukum Islam", in *Kontekstualisasi Ajaran Islam*, (Jakarta: Paramadina, 1995), pp. 254-257.

pects of worship and *muqaddarāt* (something whose quantity is determined already by the *naṣṣ*), *maṣlaḥah* cannot be used as a legal proposition. In either case, the decisions should belong to the *naṣṣ* and the *ijmā'*. Al-Ṭūfī made this differentiation because for him worship is Allah's absolute right and, therefore, is unknown to human beings in terms of its amount, manner, time and place unless there is justified explanation from Him. While *mu'amalah* aims to provide the benefits for the mankind, worship belongs to the best knowledge of Allah and, therefore, it is imperative for human beings to follow. In *mu'amalah*, human beings have a freedom to choose what they consider best as benefits and *maṣlaḥah*. Therefore, in such case they should prefer *maṣlaḥah* when the benefits are contradictory with the *naṣṣ*;

- d. For al-Ṭūfī, *maṣlaḥah* is no doubt the strongest *sharī'*s proposition. He argued that *maṣlaḥah* serves as an argument (*hujjah*) only when there are no *naṣṣ* and *ijmā'*, but it should take precedence, through *takhṣīṣ* and *bayān*, when there is a conflict between the two. The preference and the priority of *maṣlaḥah* over the *naṣṣ* apply in all its characteristics, both in the *qaṭ'ī* and *ẓannī* chain of transmission (*sanad*) and the content (*matn*).

Based on the four principles above, al-Ṭūfī established three arguments in giving *maṣlaḥah* a priority over the *naṣṣ* and *ijmā'*:¹³² First, the scholars disagree on the position of *ijmā'* as a legal proposition, and they agree, even those who are opposing the *ijmā'*, on that of *maṣlaḥah*. This means that giving a priority to the agreed (*maṣlaḥah*) over the disputed (*ijmā'*) is more reliable.¹³³

Secondly, the *naṣṣ* contains a number of contradictions, which has caused disagreement among scholars, while there is no disagreement on maintaining *maṣlaḥah*. Thirdly, there are *naṣṣ* in the Sunnah that is

¹³² Ibid.

¹³³ Ibid.

rejected by *maṣlahah*, such as Umar’s prohibition to convey the Hadith on the “guarantee” of Heaven for those who uttered *tawhīd* (oneness of God). Umar meant this ban for the sake of Muslims, i.e. his concerns that the Hadith would encourage laziness among them.¹³⁴

In al-Ṭūfī’s opinion, justification of *istidlāl* (logical inference) in the aspect of worship is found in the *naṣṣ*, i.e. the Qur’an and the Sunnah. The two sources of law explain laws either separately or simultaneously. Table 2.2. below provides the steps of *istidlāl* for a better understanding:

Table 2.2. Istidlāl in the Aspects of Worship and Muqaddarāt in Ṭūfī’s Opinion

Scope	Legal Sources	Steps
‘ <i>Ibādah</i> and <i>Muqaddarāt</i>	The Qur’an alone (<i>in-farada bihī al-Kitāb</i>)	a. When there is only one verse, a legal basis can be inferred directly; b. When there are several verses, then there are some possibilities: - One single meaning: the step is the same as point (a) - Different meanings: the steps should be: compromise, naskh, and selection of Sunnah more closer to the spirits of the Qur’an.
	The Sunnah alone (<i>in-farada bihī al-Sunnah</i>)	a. When there is only a single <i>hadith ṣaḥīḥ</i> (sound hadiths), a legal basis can be inferred directly. However, if there is not, the step should be: selection of <i>al-Kitāb</i> or <i>ijtihād</i> more closer to good behaviors and manners; b. When there are several hadiths, then there are some possibilities: - If all the hadiths are <i>ṣaḥīḥ</i> (sound) and contain a single

¹³⁴Ibid.

		<p>meaning, they should be treated as if there is a single hadith; if they contain different meanings, the steps should be compromise and selection of the closest to the Qur'an and <i>ijmā'</i>;</p> <ul style="list-style-type: none"> - If there is only a single <i>ḥadīth ṣaḥīḥ</i>, the step is the same as item (a); - If all the hadiths have different levels of <i>ṣaḥīḥ</i>, a priority should be given to the most <i>ṣaḥīḥ</i> one. <p style="text-align: center;">-</p>
	<p>The Qur'an and the Sunnah (<i>ijtima'a fi al-ḥukm Kitāb wa Sunnah</i>)</p>	<ul style="list-style-type: none"> a. If they share a common meaning, a legal basis can be inferred from one with the support from the other; b. If they have different meanings, the step should be compromise, <i>nasakh</i> and selection of the Qur'an, not the Sunnah.

On the other hand, in the aspect of *mu'āmalah*, as al-Ṭūfī said, *istidlāl* (logical inference) should be built upon *maṣlaḥah*. In their views of a legal matter, *maṣlaḥah* and other legal propositions such as *naṣṣ*, *ijmā'* and *qiyās* may end up in two possibilities: same or different. To implement these two possibilities, al-Ṭūfī recommended the following steps of *istidlāl*:¹³⁵

If *maṣlaḥah* and other legal propositions share a common legal provision, then there is no problem, such as the agreement among the *naṣṣ*, *ijmā'* and *maṣlaḥah* in determining the five primary laws (*ḍarūrī*), i.e.: *qiṣāṣ* for killers, killing the apostates, cutting off the hands of thieves, *ḥad* for the plaintiff of adultery (*qādzif*), and *ḥad* for alcoholics.¹³⁶

¹³⁵ Ibid., p. 277.

¹³⁶ Ibid.

On the contrary, if *maṣlaḥah* and other legal propositions disagree, then a compromise should be done between them (*al-jam'u bayna-humā*), such as by applying some propositions to some particular laws, not to others, as long as they do not contradict *maṣlaḥah* or play around with the propositions. If a compromise is impossible, then *maṣlaḥah* should take precedence over any other propositions, in accordance with the Prophet's words in the Hadith: *lā ḍarara wa lā ḍirāra*. For al-Ṭūfī, this Hadith aims in particular to eliminate *mafsadah* (damages) and maintain *maṣlaḥah* which is the main objective of the *sharā'*. In this case, the other legal propositions serve only as a means (*wasā'il*). In short, the objective should take precedence over the means.¹³⁷

Al-Ṭūfī added that *maṣlaḥah* and *mafsadah* could be contradicting to each other for which there should be steps to avoid it. It is possible that a legal case sometimes only contains *maṣlaḥah*, or *mafsadah* alone, or contains *maṣlaḥah* and *mafsadah* at the same time. If it only has one *maṣlaḥah*, there is no problem, i.e. the *maṣlaḥah* can serve as a legal basis. However, if several *maṣlaḥahs* are found, then an effort should be made to accommodate all of them. When compromise is not possible, the priority should be given to the most urgent *maṣlaḥah* or drawing is made when they are equally important.¹³⁸

When a legal case contains only one *mafsadah*, the given *mafsadah* should be avoided; if many, the whole *mafsadahs* should be kept away as much as possible. If this step is hard to take, an effort should be directed at the most possible one. If *mafsadahs* have different levels of urgency, it is the heavier one that should be avoided (*irtikāb akhaḥ al-ḍararayn*). However, if the levels of *mafsadahs* are equal, selection or drawing should be made in order to avoid *tuhmah* (prejudice).¹³⁹

If a legal case contains *maṣlaḥah* and *mafsadah*, the step should be bringing the former and abandoning the latter. If not possible, the con-

¹³⁷ Ibid., p. 278.

¹³⁸ Ibid.

¹³⁹ Ibid., p. 279.

sideration should be based on the level of its importance between bringing the *maṣlahah* and rejecting the *mafsadah*. If they are equally important, then a random selection or, if necessary, drawing can be made in order to avoid *tuhmah*.¹⁴⁰

If a legal case contains contradiction between two *maṣlahah* and two *mafsadahs*, or between *maṣlahah* and *mafsadah*, the legal decision should be made on the basis of dominance (*arjah*) both in *maṣlahah* and *mafsadah*. If they are equally leveled, a random selection or drawing can be made.¹⁴¹

Table 2.3 Mapping and Comparing *Maṣlahah* Between *al-Ghazālī*, *al-Shāṭibi* and *al-Ṭūṭi*

Name	Back-ground of Thinking	Qualification of <i>Maṣlahah</i>	Ways of Understanding <i>Maṣlahah</i>	Functions of <i>Maṣlahah</i>
Al-Ghazālī (450 H/1058-505 H/111 M)	Shāfi'ī school; <i>qiyās</i> is a legal proposition after the Qur'an, the Sunnah, and Ijmā'; for al-Shāfi'ī, <i>ijtihād</i> means <i>qiyās</i> .	Strength: <i>ḍarūrāt</i> , <i>ḥājāt</i> , <i>taḥsīnāt</i> (related to maintenance of religion, life, intellect, descent, and property) Scope: Universal (<i>kullī</i>) and particular (<i>juz'ī</i>)	<i>Ta'lil al-ahkām</i> : a method of figuring out the 'illat (a basic cause of the law) as a requirement of <i>qiyās</i>	Provides a legal consideration if it meets the qualification: <i>ḍarūrāt kulliyāt</i> there is a strong belief that it will most likely bring <i>Maṣlahah</i> <i>Maṣlahah ḥājāt</i> and <i>taḥsīnāt</i> cannot provide

¹⁴⁰ Ibid.

¹⁴¹ Ibid., p. 279.

		<p>Legality: <i>Muath-thirah</i> (has an impact, and is considered as a legal basis), <i>Mulghah</i> (not considered as a legal basis)</p>		<p>a legal consideration unless there are <i>naṣṣ</i> that support it, which means <i>qiyās</i></p>
<p>Al- Shāṭibi (730H/1328 M-790H/1388M)</p>	<p>Mālikī School; Maṣlaḥah mursalah is a legal source after the Qur'an, the Sunnah, and Ijmā'</p>	<p>Strenght: <i>darūrāt</i>, <i>ḥājāt</i>, <i>taḥsīnāt</i> (related to maintainance of religion, life, intellect, descent, and property)</p> <p>Scope: <i>Dunyawi-yah</i> (wordly) and <i>ukhrawiy-yah</i> (other wordly), each is related to the aspects of <i>kullī</i> (universal) and <i>particular</i> (juz'ī)</p> <p>Legality: <i>Mu'tabara</i>,</p>	<p>Texts-centered <i>Ijtihādī</i>:</p> <p>Knowledge of Arabic language and all intricate elements; knowledge of Sunnah; knowledge of <i>asbāb al-nuzūl</i></p>	<p><i>Maṣlaḥah mursalah</i> based ijtihad; <i>maqāṣid al-sharī'ah</i> takes precedence over <i>maqāṣid al-mukallaḥ</i>; <i>Al-Maqāṣid al- 'Āmah</i> serves as a legal basis which relies on particular legal propositions (dalīl juz'ī)</p>

		<i>mulghah</i> , and <i>mur-salah</i>		
Al-Ṭūfī (675H/1277-716 H /1318 M)	Hanbalī School	<p>Strength: No classification of <i>ḍarūrāt</i>, <i>ḥājāt</i>, <i>taḥsīnāt</i>; for him <i>maṣlaḥah</i> is absolute and unlimited; its strength relies on the categories of <i>rajaḥ/qāwī</i> and <i>ar-jaḥ/aqwā</i></p> <p>Scope: <i>maṣlaḥah duniyāwīyah</i> and <i>maṣlaḥah ukhrawīyah</i></p> <p>Legality: Any <i>maṣlaḥah</i> is valid, regardless of whether or not it conforms the <i>naṣṣ</i></p>	Reason alone can figure out <i>maṣlaḥah</i>	Serves as an independent legal basis (<i>mustaqāl</i>) in <i>mu'āmalah</i> only.

2.7 The Interconnected *Maṣlahahs* as an Approach

It has been mentioned earlier that the objectives of Islamic law is to realize the benefits while at the same time removing the damage (*mafsadah*) for the mankind both in this life and Hereafter. The benefits that it seeks to realize are summed up in the five basic principles (*al-uṣūl al-khamsah*: religion, life, intellect, descent, and property). The five basic principles are hierarchical, i.e. the benefit related to maintainance of religion should take precedence over the other four ones, and that of life over that of intellect, descent, and property, and so forth.

The five *maṣlahahs* are interrelated to and mutually supportive of each other. For instance, event though the ultimate purpose of the obligatory daily five times prayers is to maintain the benefit of religion (*hiḍḍ al-dīn*), it linked also to the protection of life, intellect, descent, and property.¹⁴² Anyone who wants to do prayers is required to be free from hadath and filth, and is recommended to preceed it with the use of tooth stick (*siwāk*) and to take a bath before doing a Friday prayer. All these rules in prayer is aimed at maintaining the goodness of life.

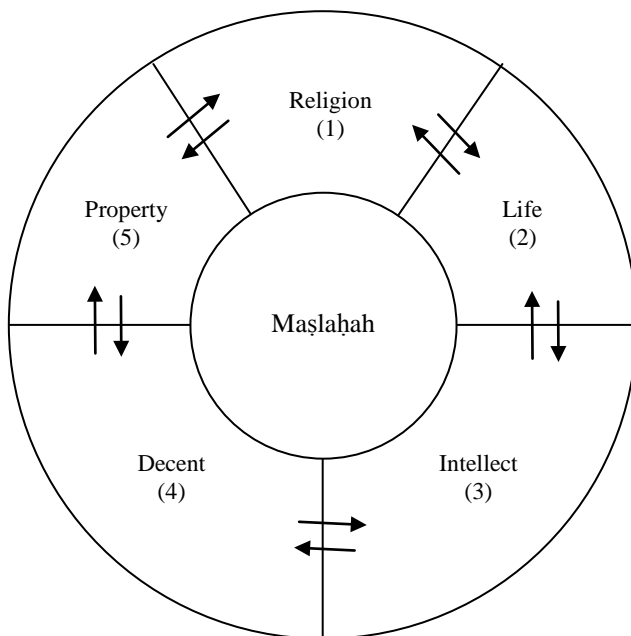
Anyone who is going to carry out prayers should be also in a conscious state of mind. God strongly forbids a drunk to “approach” prayers. Thus, prayer concerns also with the benefit of intellect. Prayers which are conducted in a proper and sincere manner will keep someone away from indecency (*fakhshā'*), such as fornication and also evil things religiously and socially. The benefit that prayers bring forth is also categorized as *hiḍḍ al-nasl* (maintenance of descent). Prayers also teach discipline if carried out timely and consistently. Even, Allah also commands that someone should attend a Friday prayer in order not to waste time; He also said that after the Firday prayer someone should immedi-

¹⁴² Further discussion on *maṣlahah* in prayers is available in Afzalur Rahman, *Tuhan Perlu Disembah*, trans. Hasmayah Rouf, (Jakarta: Porch Sciences of the Universe, 2002), pp. 44-276.

ately spread on earth to make a living in the name of Allah (*faḍl Allāh*). Thus, Allah’s command to make prayers as a means for help (*isti’ānah*) in life, including in working, is accompanied with its imperative realization. From this explanation, it is true to say that prayers are also related to the protection of property (*hiḥẓ al-māl*).

Looking at the relationship between each basic principle, as in the case of prayers above, the interconnected *maṣlaḥah* (*ittiṣāliyat al-maṣālih*) in the framework of the five basic principles (*al-uṣūl al-khamsah*: religion, life, intellect, descent, and property) can be summarized in the following figure:

Figure 2.2. *The Interconnected Maṣlaḥah (ittiṣāliyat al-maṣālih)*



The chart above shows that each basic principle of *maṣlaḥah* has its own distinctive cell of scope. However, it does not mean to say that each cell has no relationship at all with the others; in fact, they are linked and

complementary to each other. The benefit of religion, as the highest one to be given a priority, is hard to come true without life, intellect, descent and property.¹⁴³ In other words, the maintenance of the religious benefits require the other four ones and otherwise.

2.8 The Interconnected Maṣlaḥah in Contemporary Islamic Studies: A Comparison

In a broader scope of Islamic studies, Amin Abdullah has in fact initiated the concept of interconnectivity. In Amin's opinion, the paradigm of interconnectivity assumes that to understand the changing complexities of human life, each scientific building of religious and social studies, the humanities, and the natural sciences can not stand alone from each other. In brief, there is a need for mutual cooperation and interdependence between disciplines in order to help people understand the complexities of their problems in life.¹⁴⁴ Amin Abdullah said:

*Ḥaḍārāt al-naṣ (texts-oriented religious culture) cannot stand away from ḥaḍārāt al-'ilm (science and technology) and cannot be separated from ḥaḍārāt al-falsafah (culture, philosophy, ethics) and vice versa.*¹⁴⁵

Separation of *ḥaḍārāt al-'ilm* (scientific culture) from *ḥaḍārāt al-falsafah* (ethical, emancipatory culture) will only result in a deprived human and ecological life. A mere marriage between *ḥaḍārāt al-naṣ* (texts-oriented religious culture) and *ḥaḍārāt al-'ilm* (science and technology) without *ḥaḍārāt al-'ilm* can give birth to radicalism and fundamentalism. Thus, Amin Abdullah pointed out, the presence of *ḥaḍārāt*

¹⁴³ Prayers, for example, will not be carried out completely without the existence of healthy soul and mind as well as property in covering the aurat as one of its requirements.

¹⁴⁴ Amin Abdullah, *Islamic Studies Di Perguruan Tinggi Pendekatan Integratif-Interkonektif*. (Yogyakarta: Pustaka Pelajar, 2006), vii-viii.

¹⁴⁵ *Ibid.*, p. 402.

al-falsafah is a must. Similarly, *ḥaḍārāt al-falsafah* will lose its finality if it restrains itself from religious issues widely established in the culture of texts.¹⁴⁶ The interconnectivity between the cultural, philosophical, and scientific-technological entities in the Islamic academic world, such as State College for Islamic Studies (STAIN), State Institute for Islamic Studies (IAIN), and State Islamic University (UIN), Amin Abdullah added, is seen in the following chart:

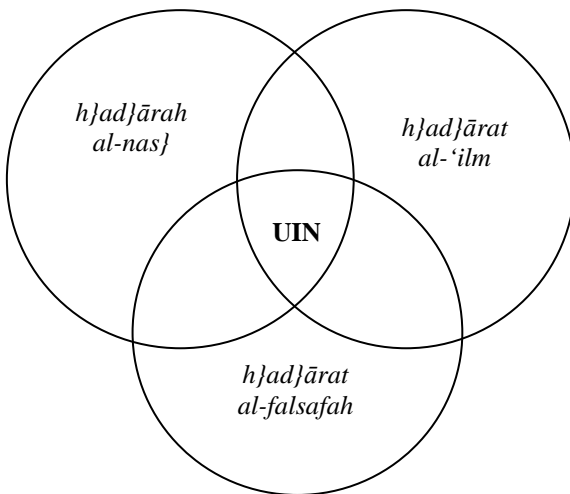


Figure 2.3 Scheme of Interconnected Entities¹⁴⁷

Amin Abdullah also emphasizes that scholars of Islamic sciences should begin to reconstruct and reinterpret the terms *ittiḥād* (union) and *ḥulūl* (incarnation) which are widely used in classical Sufism and often criticized by the jurists (*fuqahā'*) and the theologians (*mutakallimūn*). In order to understand the practical-functional meanings of *wiḥdat al-wujūd* (unity of existence) and *ḥulūl*, the terms should not be interpreted

¹⁴⁶ *Ibid.*, p. 403.

¹⁴⁷ *Ibid.*, p. 405.

as a union of divine and human elements, rather than of basic human needs, such as clothing, foods, shelters, religious affiliation or religiosity, self-actualization, and so on, regardless of race, coloured skin, ethnicity and religion. Amin Abdullah calls this understanding as *ittiḥād al-‘arīf wa al-ma’rūf* (unification between who know and what is known).¹⁴⁸

The interconnected “trinity” of the *ḥadārah* as proposed by Amin Abdullah above is situated at the level of critical analysis, which is the third tier of Islamic studies. Amin pointed out that there are three areas of Islamic studies: the first is practical faiths and understanding of the revelation as interpreted by scholars, interpreters (*mufasssīr*), social figures along with their respective preferences. In general, this scientific layer is “allergic” to any scientific-theoretical clarification and purification. At this level, Amin Abdullah said further, it is difficult to make a differentiation between religion and traditions, between religion and culture, and between beliefs and habits of mind.¹⁴⁹

The second tier is scientific theories as conceived and established in such a way by the scholars in their respective fields, such as the *‘ulūm al-tafsīr* (science of the Qur’an), *‘ulūm al-ḥadīth* (science of the Hadiths), Islamic thoughts (theology, philosophy, and mysticism), fiqh (laws and social institutions), and history of Islamic civilization, Islamic thoughts, and Islamic proselytization.¹⁵⁰ Theories of Islamic science in the second tier is in fact the fruits of abstraction from the revealed texts and from religious practices along the Muslim periods, from the Prophet, companions (*Ṣahabat*), followers (*tābi‘īn*) eras through the historical developments of Muslim societies. Aware or not, all political, social, cultural conditions of those eras contributed to the theoretical constructions.

¹⁴⁸ Ibid., pp. 381-382.

¹⁴⁹ Ibid., pp. 72-73.

¹⁵⁰ Ibid.

The third tier is critical examinations (*qirā'ah naqdiyyah muntijah*) or the so-called “meta discourse”, of the historical developments of the ups and downs of the theories established by the scholars in the second tier.¹⁵¹ In this layer, theories, which are considered by some scholars as solid and mature (*naḍij*) and, therefore, “immune” to criticism (*ghayr qābil li al-niqāsh*), began to be in dialogue with other sciences, either with similar disciplines, such as *'ulūmu al-Qur'ān* with *'ulūm al-Ḥadīth* and the history of Islamic civilization and so forth, or with different ones such as with natural science, humanities, and social sciences. The third tier of Islamic science, as Amin Abdullah put it, actually belongs to the philosophy of Islamic sciences.¹⁵²

Therefore, since the concept of interconnectivity is a critical examination of Islamic sciences in the second tier which belongs to philosophy of Islamic sciences, it can be inquired from the aspects of its consistency, coherence and correspondence.¹⁵³ From the aspect of consistency, Islamic teachings, such as respect for human dignity, must have an integrated connection with each other teachings, relationship between texts, between *ijmā'* (concensus) and *ittifāq al-'ulamā'* (agreements of Muslim scholars) in *bahtsul masā'il* and *munas tarjīh* (forums

¹⁵¹ Ibid.

¹⁵² Ibid., p. 74.

¹⁵³ In the philosophy of science, there are three theories of truth: the first is the correspondence theory. According to this theory, the truth or the true situation is when the contents of a statement or an opinion has a correspondence with its objects. Thus, the truth is what is consistent with the fact, with reality, with the actual situation; the second is coherence or consistency theory. This theory states that the truth is built on the relationship between decisions (judgments) and something else, i.e. the fact or reality, rather on the relationship between the decisions or the judgements themselves. In other words, the truth is established on the relationship between the old and new decisions the justification of which we already knew. Thus, according to this theory, decisions or judgements are interconnected and are mutually explaining to each other. Hence, there came a formula: truth is a systemic coherence; truth is consistency. The third is theory of pragmatism. According to this theory, whether or not a speech, proposition, or theory is true will depend solely on its usefulness. Something is true if it brings benefits and otherwise. See Amsal Bakhtiar, *Filsafat Ilmu*, (Jakarta: King Grafindo Persada, 2011), pp. 112-121.

on religious problems), the opinions of Muslim leaders, heads of organizations, and religious officials.¹⁵⁴

From the aspect of coherence, an Islamic teaching should be correlated to others and should not stand independently. The concept of divinity is inseparable from that of social responsibility; tenderness and compassion for others is indispensable from insistence in dealing with misconducts; *ukhuwwah* (brotherhood) is inseparable from *Islāmiyyah*, *bashariyyah* (humanity), and *waṭaniyyah* (nationality); *al-'adālah* (fairness) is closely related to *insāniyyah* (humanity); *al-'amānah* (honesty) is linked to the teachings of inclusiveness and *al-samāḥah* (tolerance), and so on.¹⁵⁵ From the aspect of correspondence, there is no gap between theories and practices, between pure and applied concepts.¹⁵⁶

Being the starting point of the philosophy of Islamic sciences, the above-mentioned three criteria will help us analyze deeply and critically (*qirā'ah naqdiyyah*) the Islamic teachings and doctrines as written, said, and propagated by Muslims within a certain period of time, whether or not they meet the aspects of consistency, coherence and correspondence. It is only by doing so that we can produce something new being able to meet the needs and welfare of the planet.

Based on the explanation above, it is important to note that there are differences between the interconnected cultural entities (*al-ḥadārah*) as proposed by Amin Abdullah above and the interconnected *maṣlaḥah* in this book. The difference can be found at least in the following: the first is that the two concepts above have different scopes. The scope of the interconnected *maṣlaḥah* is clearly in the area of *al-uṣūl al-khamsah* (religion, life, intellect, descent, and property), which is a central issue in the studies of *maqāṣid al-sharī'ah*, by still considering the three-scale priorities: *ḍarū riyyāt*, *ḥājīyyāt*, and *taḥsīniyyāt*. In addition, it also considers the scale priorities of the five basic principles in formulating

¹⁵⁴ Amin Abdullah, *Islamic Studies*, p. 79.

¹⁵⁵ *Ibid.*, p. 80.

¹⁵⁶ *Ibid.*

maqāṣid al-sharī'ah-based Islamic laws with the principle of the protection of *al-uṣūl al-khamsah* simultaneously. Because the scope of the interconnected *maṣlaḥah* is the heart of *maqāṣid al-sharī'ah*, i.e. the benefits within the the framework of *al-uṣūl al-khamsah*, the laws that are derived from it can be attributed to *maqāṣid al-sharī'ah*, such as *al-libās al-maqāṣidī* (utility in dressing), *al-iqtisād al-maqāṣidī* (utility in finance), *al-ṣawm al-maqāṣidī* (utility in fasting), and so forth.

Whereas, Abdullah's concept of the interconnected *haḍārah* is directed toward the efforts to articulate the three entities of *haḍārah* the basis of text, science, and philosophy through a critical reading of the second tier of Islamic sciences; it aims expectedly to generate an a grounded understanding of religion, in accordance with the needs and contemporary places and times (*ṣaliḥ li kul al-zamān wa al-makān*). In other words, the scope of the interconnected *maṣlaḥah* is more specific than Amin's concept.

The second difference is that the concept of interconnected *maṣlaḥah* was born out of my concerns on the studies of *maqāṣid al-sharī'ah* which are still focused solely on *maṣlaḥah* within the framework of *al-uṣūl al-khamsah* and the scale priorities of *ḍarūriyyat*, *ḥājīyyāt*, and *taḥsīniyyat*, without any attempt to analyze the relational aspects between *maṣlaḥahs*; therefore, there is no wonder that laws which derived from such an approach focused only its attention on one *maṣlaḥah* not the others.

Using the paradigm of the interconnected *maṣlaḥah*, the obligation of daily five times prayers, for instance, should not be considered as God's command related only to the benefits of religion, but associated also with the other four benefits, i.e. life, intellect, descent, and property at the same time. It is also the case with Islamic doctrines on dressing, business, politics, and so forth. Strictly speaking, each benefit does not stand alone; rather it has a closed link with the other benefits in which all of them are completing each other.

Thus, the interconnected *maṣlaḥah* is a continuation and a further development of *maṣlaḥah* that has been conceptualized by previous scholars from the partial, particular propositions (*juz'īyyāt*) and seemingly inductive methods (*istiqrā'ī*) in formulation of Islamic laws. I come up with my own legal maxim:

ماكان أكثر اتصالا بالمصالح كان أكثر فضلا

The more connected a *maṣlaḥah* is, the more it brings virtues.

which can fill the gap among the following maxims of maqāṣidiyah:¹⁵⁷

1. الضرر يزال (a harm must be removed);
2. المشقة تجلب التيسير (difficulties can bring convenience);
3. الضرورة تبيح المحظورات (emergencies can allow the forbidden);
4. درء المفسد مقدم على جلب المصالح (refusing *mafsadah* should take precedence over bringing *maṣlaḥah*);
5. إذا تعارض مفسدتان روعي أعظمهما ضررا بارتكاب أخفهما (when there are two opposing *mafsadahs*, a greater *mafsadah* is maintained by doing a lesser one);
6. الحاجة تنزل منزلة الضرورة (*hājah* can replace *ḍarūrāt*).

Whereas, Abdullah's interconnected *haḍārah* was a response to his academic concerns on a tension which seemed to heighten between religious "normativity" and "historicity" in the Islamic higher institutions in the period 1990-1997 and then slightly calmed down in the period 1998-2005 as Master programs has been established in both public and private Islamic universities.¹⁵⁸ Amin Abdullah wrote:

¹⁵⁷ See Jalāl al-Dīn al-Syūfī, *al-Ashbāh wa al-Naẓāir fī al-Furū'*, (Semarang: Maktabat Family Enterprises, t.th), pp. 55-62.

¹⁵⁸ See Amin Abdullah, *Islamic Studies*, vi-vii.

To reduce the tension which quite often turned to unproductive, the author offers a scientific paradigm of “interconnectivity” in contemporary Islamic studies in universities. Unlike the paradigm of “integration” of science which is hoped to eliminate the tensions in question by fusing and squashing one into another, either by merging the aspect of religious “normativity-sacredness” as a whole into the realm of religious “historicity-profanity”, or otherwise immersing and negating the whole aspect of Islamic historicity into religious normativity-sacredness without reserve, the author recommends the paradigm of “interconnectivity” which more modest (i.e. capable of self-measuring), humble and human.¹⁵⁹

The quote above implies that the concept of interconnectivity brought forward by Amin Abdullah was born out of the “womb” of academic anxiety in regard with the tensions between “normativity-sacredness” and “historicity-profanity” in Islamic studies on the one hand, and the difficulty in implementing the paradigm of “integration” of science on the other hand. For him, the paradigm of interconnectivity is easier to be applied in the academic world because it is more modest (capable of self-measuring), humble, and humane.

Concerns about difficult, not to say impossible, realization of the paradigm of “integration” of science is quite reasonable considering a huge gap in the framework or horizon of scientific integration. The paradigm of integration of science requires a deep understanding of the two fundamental sources of Islam, i.e. the Qur’an and the Hadith, which are interpreted hermeneutically to be a point of departure for religious worldviews (*Weltanschauung*), and skilfull analysis on social issues in the modern and post-modern era modern through the mastering of natu-

¹⁵⁹ Ibid.

ral sciences, social sciences, and humanities.¹⁶⁰ Amin Abdullah illustrates the relationship of science in the following “spider web” figure:

Figure 2.4 The Horizon of Theo, Anthropocentric Integration of the Scientific Disciplines in Islamic State Universities¹⁶¹



¹⁶⁰ Ibid., p. 106.

¹⁶¹ Ibid., p. 107

2.9 The Operative Works of the Interconnected *Maṣlaḥah*-Based *Ijtihād Maqāṣidī*

Before going further into the discussion of *ijtihād maqāṣidī*, we need to understand properly the meanings of the term *ijtihād* and all its intricacy.

The term *ijtihād maqāṣidī* (intellectual excavation of Islamic laws with *maqāṣid al-sharī'ah* as an approach) is a term that for the first time was mentioned by al-Shāṭibī in his work, *al-Muwāfaqāt fi Uṣūl al-Sharī'ah*. In this book, al-Shāṭibī set up the rules of *maqāṣidiyyah* (objectives) as a basis in excavating Islamic laws. 'Abdurrahman Ibrahim al-Kilani, as quoted by Imam Mawardi, mapped Shāṭibī's rules of *maqāṣidiyyah* into three categories:¹⁶²

The first is the rules related to *maṣlaḥah* (benefits) and *mafsadah* (damage), which as follows:

وضع النشر انعنا ما هو لمصالح العباد في العاجل والأجل معا

Determination of the *sharī'ah* laws are for the benefits of the servants, both in this world and and Hereafter.¹⁶³

المفهوم ممنو ضع النشر عأن الطاعة أو المعصية تعظم بحسب عظام المصلح
ة أو المفسدة الناشئة عنها

It can be inferred from God's determination of the *sharī'ah* that obedience and disobedience are measured according to the levels of the benefits and mafsadat that they produce¹⁶⁴

¹⁶² Imam Mawardi, *Fiqh Minorities* (Yogyakarta: LKiS 2010), pp. 213-214. Some rules of *maqāṣidiyyah* mentioned by Imam Mawardi has been in fact summarized by Ahmad al-Raysuni into two categories: the first is the thirty three rules related to the objectives Shāri' (Allah); the second is the fifty five rules related to the objectives of mukallaf. See Ahmad al-Raysuni, *Naẓariyyat al-Maqāṣid 'Inda al-Imam al-Shatibī*, (Herndon: al-Ma'had al-'Alami li al-Fikr al-Islami, 1995), pp. 344-349.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

الأوامر والنواهي من جهة اللفظ عدلتساو في دلالة الإقتضاء وإنما الإختلاف بينم
أوامر وجواباً وندبوما هو نهيتحر بما أو كراهة لا تعلمنا النص صوما
صلافر قبالابتعا عالمعانيو النظر في المصالحو فيأيمرتبتتفع

Commands and prohibitions contained by the text is equally strong in terms of propositions. The question whether they are justified or recommended, haram or makruh cannot be answered from the text, but from the meaning and analysis of in and to what extent the maṣlaḥah takes place¹⁶⁵

المصلحة إذا كانت هي الغالبة عند مناظرها في مالمقسدة حكما لإعتياد فيها
مقصودة شرعاو لتحصيلها وقعلنا الطلاب العباد

If the benefit is more dominant than the damage according to customs, then this is what exactly the benefit is desired by the Lawgiver and needed to to fulfill¹⁶⁶

الأحكام المشروعة للمصالح لا يشترط وجود المصلحة في كل فرمنا فراده
إبحالها

The laws are aimed at the realization of the benefit does not require any benefit in each aspect of the whole aspects at the same time¹⁶⁷

From the legal maxims above it can be inferred that the values, meanings, and presence of benefits are more authoritative than the texts in determining Islamic laws. This condition contradicts the position of the texts in classical *istinbāt al-ḥukm*.

The second category is the rules of *maqāsid* to eliminate difficulties (*raf' u al-ḥaraj*). They are:¹⁶⁸

إنالشار علميقصدإلالتكاليفبالشقوق العناتفيه

Shāri' (Allah) does not want to bring difficulties and misery by His-*taklif* (legal obligation)¹⁶⁹

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid., pp. 215-216

لانز عفا انالشار عفاصد الالالتكليفمايلز مفيهكلفتو مشقةو لكنهللا يقصدنف
سالمشقةبليقصدما فيذلكنالصالحالعائدة علنالملكافين

There is no question that Allah has established His-*taklīf* in which there are burden and hardship; however, the truth is that He does not desire the difficulties, rather the benefits that go back to the *mukallaf* (legally competent)¹⁷⁰

إذاظهر فيبعضالرا أياالقصدالالتكليفمالايدخلتحتقدر ةالعبدفذلكر اجعفيال
تحقيقاللسوا بقهاو لو احقهاو قر انه

If there is an objective that does not make sense to the servant, its legality is then equal or similar to what has preceded it¹⁷¹

الشرعيةجارية فيالتكليفمقتضاها علنالطر يقالو سطلالعدلالأ خذمنالال
طر فينبقسطميا فيهاالدا خلتحتكسبالعبدو لامغير مشقةانحللال

The *Sharī'a* needs to be explained in a moderate, fair and balanced manner, all of which can be done by the servant who do not have any difficulty and weakness.¹⁷²

الأصلالذالذبالقو لانبجملها علنعمومها لحر جاو النمالايمكنعقلالشر عافهوا
وغير جارو لالعلالاستقامة اطر ادفالاستمر الاطلاق

Basically, if a judgment will lead to difficulties or is impossible according to the sense and *sharī'*, then it can not be done consistently (*istiqāmah*) and, therefore, should not be passed on¹⁷³

منمقصودالشار عفاالالعمالو امالملكفعليها

Part of the *Sharā'*s objectives in every deed is that a mukallaf is consistent in his or her acts¹⁷⁴

The third rule of *maqāṣidiyah*, in Shāṭibi's opinion, is concerned with the outputs of the acts by the *mukallaf* (legally competent). This category consists of the following two rules:¹⁷⁵

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

النظر فيما لاتالأعمال معتبر مقصود شرعا كانت الأفعال موافقة أو مخالفة

Examining the outputs of the legal acts is commanded by the *sharā'*, whether or not the action conforms or contradicts the purpose of *sharā'*¹⁷⁶

للمجتهد أن ينظر في الأسباب ومسبباته

A *mujtahid* (learned scholars) shall examine the causes and consequences of the law¹⁷⁷

In order to apply the rules of *maqāṣidiyyah* above in an *ijtihād*, a *mujtahid* (a learned scholar) should take the following steps:

The first is relying on the Qur'anic texts and the Sunnah as well as the laws and their objectives contained therein (*al-nuṣūṣ wa al-ahkām bi maqāṣidihā*). This step confirms that *ijtihād maqāṣidī* still hold the Qur'an and the Sunnah as legal sources and propositions. The whole process and the legal products should not deviate from the spirits of the two legal sources.¹⁷⁸ When the *naṣṣ* of the Qur'an and the Hadith are definite (*qaṭ'iy al-dalālah*), *ijtihād maqāṣidī* should not go away from legal provisions of the *naṣṣ*. Thus, the alleged contradiction between the *naṣṣ qaṭ'ī* and *maṣlaḥah*, which assumes that the later will take precedence over the former, is untrue at all. The true case is that when there is contradiction between the *naṣṣ qaṭ'ī* and *maṣlaḥah maẓnūnah* or *wahmiyyah* (presumptive benefits), the former should abandon the latter.

When *ijtihād* is about presumptively inferred meanings of the texts (*dalālah ḥannī*), it should not go beyond the meanings of the *naṣṣ ḥannī*, by seeking the closest meaning to Allah's will for the purpose of which *maqāṣid al-sharī'ah* can be used as an approach. A *mujtahid* should not limit himself to the literal meanings of the texts, rather he should strive to uncover *maqāṣid al-sharī'ah* behind the texts, so that the the benefits-

¹⁷⁵ Ibid., p. 217.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ See also, Nur al-Din al-Khadimi, *al-Ijtihad al-Maqasidiy*, (the Beirut: Dar Ibn Hazm, 2010), p. 144.

oriented laws can be established. One example is the case whether or not it is allowed to pay charity (*zakāt*) with something different from the type of property, such as *zakāt* for rice plants is paid by money or others. According Mālikī school, such *zakāt* is permissible and valid because it can realize the purpose of *zakāt* itself, which is to fulfill the needs of the needy people.¹⁷⁹

The second is combining universal and general passages with particular propositions (*al-jam'u bayn al-kulliyāt al-'āmah wa al-adillah al-khāṣah*). The universal and general passages (*al-kulliyāt al-'āmah*) can be *naṣṣ* (the al-Qur'an and the Sunnah), and also universal passages obtained synthetically from an inductive research (*al-kulliyāt al-istiqrā'iyyah*) on several *naṣṣ* (the Qur'an and the Sunnah) and partial laws (*juz'ī*). The universal *naṣṣ* includes:

- a. A command to do justice (*al-adalah*) in Surah al-Nisā', 58:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ
النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا
بَصِيرًا ٥٨﴾

Surely Allah commands you to make over trusts to their owners and that when you judge between people you judge with justice; surely Allah admonishes you with what is excellent; surely Allah is Seeing, Hearing.

- b. Prohibition to do something that may harm one'self or others in the Hadith:

لا ضرر ولا ضرار

No harm is allowed to one'self nor to others

- c. The quality of actions depends on intentions as in the Hadith:

إنما الأعمال بالنيات

Any form of actions depends on its intentions

¹⁷⁹ Rasyuni, *Naẓariyat al-Maqasid*, pp. 363-368.

While the universal principles that are obtained synthetically through an inductive research (*al-kulliyāt al-istiqrā'iyyah*) on the naṣṣ and the laws are:

- a. The necessity to maintain and realize the five common benefits (*al-kulliyat al-khams*), i.e. religion (*al-dīn*), life (*al-nafs*), intellect (*al-'aql*), descent (*al-nasl*), and property (*al-māl*) by paying attention to the hierarchical priority and aspects of their significance: *darūriyyāt* (primary), *ḥājīyyāt* (secondary), and *tahsīniyyāt* (tertiary);
- b. The legal maxims, such as:

الضرر يزال

Demages must be removed

المشقة تجلب التيسير

Difficulties bring convenience

العادة محكمة

Tradition can be used as a legal basis

This second step of *ijtihād maqāṣidī* asserted that when a mujtahid found a postulate in the Qur'an or in the Sunnah on a particular legal case, he should not determine its legal status based solely on the meaning of the text, but should also see whether or not its realization is in line with *al-kulliyāt al-'āmah* (the five general benefits) and the general maxims of Islamic jurisprudence. If there are two complementary and uncontradictory meanings, the legal status should be set according to what the law designated, and this is what the so-called *ijtihād maqāṣidī*. However, if the partial meaning of the text (*juz'ī*) contradicts the *al-kulliyāt al-'āmah*, a compromise should be made as far as possible between the two by the methods of *bayān* and *takhṣīṣ* where the particular meaning explains and specifies (*takhṣīṣ*) the general one. When a compromise is not possible, the priority should be given then to the messages contained in the *al-kulliyāt al-'āmah* or general maxims of fiqh be-

cause it has been obtained through an inductive research (*istiqrāʾ*) whose level of validity is *qaṭʿī* (obvious, convincing), as opposed to *juzʿī* argument (partial, case by case law) which is *ẓannī* (ambiguous, uncertain).

One examples is the case of limiting rights of managing property (*taqyīd taṣarruf al-māl*) designated by a *juzʿī* argument based on the public good, such as that it is intended to hurt others, or it can bring a greater difficulty than a benefit referred to by a *juzʿī* argument.

The third step is bringing the benefits and refusing damages in an absolute and necessary manner (*jalb al-maṣāliḥ wa da rʿu al-mafāsid muṭlaqan*). The step applies when a legal case is not designated by naṣṣ both in the Qurʿan and the Sunnah, in which there is a possible *maṣlaḥah* or *mafsadah*. When it is certain that it brings *mafsadah*, it should be considered unjustified; on the contrary, if it brings *maṣlaḥah*, it should be treated as legally binding as long as it falls under the *al-kulliyāt al-ʿāmah* (the five general principles: religion, life, intellect, descent, and property), and mostl likely will bring the universal benefits in the future.

In regard with this type of *ijtihād*, some scholars have established terms. Some called it *al-maṣlaḥah al-mursalah*,¹⁸⁰ *al-qiyās al-kullī*, *al-qiyās al-mursal*, and *al-qiyās al-wāsiʿ*.

The fourt is taking into account the legal consequences that may accour in the future (*iʿtibār al-maʿālāt*). This step in fact falls under the category of examining laws and its purposes (*al-ahkām bi maqāṣidihā*), it nevertheless puts an emphasis on the legal consequences possibly taking place in the future. When a *mujtahid* found that a legal rule can bring *mafsadah* in the long term, it should be replaced by the one which is “free” from possible problems in the long term. This kind of legal

¹⁸⁰ The term is used by Mālikī school, although in practice the are other jurist schools which use similar terms, such as *qiyās kullī*, *qiyās mursal*, and *qiyās wāsiʿ*.

settlement is similar to a jargon by the Indonesia's loan offices, "Solving Problems without Problems".

One case to which the step can be applied is built is the Prophet's reluctant attitude toward fighting the hypocrites, despite that he knows very well their hypocrisy that made them worth to be fought.

أخاف أن يتحدث الناس أن محمدًا يقتل أصحابه

I'm afraid that people would say, that Muhammad is fighting his Companions.

In some fiqh literatures, this method of *ijtihād* is similar to *sad al-dzarī'ah* (closing a door for possible damages). The difference is that while the former does not only take into account matters that may bring damages in the future, but also those that can bring benefit, the latter focuses only on damages (*mafsadāt*).

The fifth step is that all the legal considerations, ranging from the first to the fourth steps of *ijtihād maqāṣidi* should consider a linkage between *maslahahs*, or what the author refers to as the interconnected *maṣlahahs* (*ittiṣāliyyāt al-maṣāliḥ*). When a *mujtahid* seeks to establish a legal status in economy, for example, in addition to giving an attention to the related texts in the Qur'an and the Sunnah, he should also consider other *maṣlahahs*, such as the benefits of religion, life, intellect, and descent, simultaneously. The reason is that in reality there is no specific law which contains only one benefit, rather a number of benefits. This is where the hidden meaning of an Islamic doctrine that goodness will be rewarded with ten of it, even with seven hundreds of it, such as the rewards for *ṣadaqah* and *infāq* (charity). The reward is doubled because it can bring more *maṣlahahs*. The legal maxim that can be used with regard to this step of *ijtihād* is:

ما كان أكثر اتصلاً بالمصالح كان أكثر فضلاً

The more something is interconnected with various benefits, the more valuable it is.

Another example of the interconnected *maṣlahah*-based *ijtihād maqāṣidi* is the case of Muslim clothing. On this issue, both the Qur'an and the Sunnah mentioned only the necessity for a woman to cover the 'aurat.¹⁸¹ The two legal sources do not mention directly other aspects as requirements for a clothing to be considered *sharī'* (Islamic) or not, such as its cleanness, aesthetic values, or its conformity to customs and so forth. Whereas, these values are universal messages of Islam as referred to by the following universal texts (*al-nuṣūṣ al-kulliyah wa al-'āmah*), and legal maxims (*kulliyāt*):

- a. Surah al-Mudatstsir, 1-4:

يَا أَيُّهَا الْمُدَّثِّرُ ۙ ۱ فَمَنْ أَنْذَرَ ۚ ۲ وَرَبِّكَ فَكَبِّرْ ۚ ۳ وَثِيَابَكَ فَطَهِّرْ ۚ ۴

O you who are clothed! Arise and warn, And your Lord do magnify, And your garments do purify,

- b. Surah al-A'raf, 31:

﴿يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ ۝ ۳۱﴾

O children of Adam! attend to your embellishments at every time of prayer, and eat and drink and be not extravagant; surely He does not love the extravagant.

- c. The Hadith of the Prophet:

إن الله جميل يحب الجمال

God is beautiful and loves beauty

- d. Universal legal maxim:

العادة محكمة

¹⁸¹ The Qur'an talked about Women clothing in Surah al-Nur, 31 and al-Ahzab, 59.

Customs can be considered as a legal basis

These universal *naṣṣ* and legal maxims and other legal arguments can help a *mujtahid* determine the legal status of clothing and polygamy on the basis of the interconnected *maṣlaḥah*.

2.10 Elements of Ijtihād Maqāṣidi

There are three interrelated elements in *ijtihād maqāṣidi*, i.e.: the text (*al-naṣṣ*), reality (*al-waqī'*), and the subject of law (*al-mukallaḥ*).¹⁸² The texts in the context of *ijtihād maqāṣidi* refer to legal propositions whose legal causes (*'illat*) and purposes (*maqṣad*) will be applied to a certain legal case. The reality (*al-waqī'*) is the operational object of *ijtihād maqāṣidi* to which a legal provision and its objective in the *naṣṣ* will be attached to it. The legal subject (*al-mukallaḥ*) is someone who is ready in mind, soul, and physic to accept the reality according to a legal claim and its objectives contained in the *naṣṣ*.¹⁸³ These three elements of *ijtihād maqāṣidi* have fundamental rules to be considered in the process of *ijtihād*.

1. The Basic Provisions of the Texts (*Naṣṣ*).

Since *ijtihād maqāṣidi* is associated with the legal provisions contained in the *naṣṣ* (the Qur'an and the Sunnah), which are in Arabic, it is imperative for a *mujtahid* to have proper knowledge of the intricacy of *naṣṣ* (texts) and its *maqāṣid* (purposes). For example, it is a necessity to apply the general meaning of a *naṣṣ* unless there is a speciality (*takhṣīṣ*). Similarly, the *khāṣ* (specific), *muṭlaq* (general), and *zāhir* (literal) legal arguments should not be taken away to other provisions unless there is

¹⁸² Nur al-Din al-Khadimiyy, *al-Ijtihad al-Maqasidiyy*, p. 174.

¹⁸³ Ibid.

an evident that said so.¹⁸⁴ In short, *ijtihād maqāṣidi* should not be taken out of the linguist rules, such as *al-amr* and *al-nahy*, *al-muṭlaq* and *al-muqayyad*, *al-haqīqah*, *al-majāz* and others.

2. The Basic Provisions of the Reality (*al-Waqf'*)

A study on reality (*al-waqf'*) is the most difficult process in *ijtihād maqāṣidi*, because improper vizualisation of it would make the corresponding laws “wrongly addressed”. The work of *ijtihād maqāṣidi* does not only rely on the analysis of the text and its objectives, but it also demands accuracy in situating laws in realities each of which has a different characteristics. For instance, it is clear that buying and selling is justified (*ḥalāl*) while usury is forbidden (*ḥarām*). The problem then is that the terms *al-bay'* (buying and selling) and *al-ribā* (usury) in the Qur'an are written in the form of unit nouns (*ism al-jins*) which refer to general meaning, regardless of their shifting characteristics in social realities due to the development of science and technology. Thus, it could be the case that a legal rule which is in reality referred to as *al-bay'* and is declared justified by the *naṣṣ*, would change into other legal status, such as discouraged (*makrūh*) or forbidden (*ḥarām*) because it has peculiarities that require a change of legal status.

In the context of situating reality as an integral part of *ijtihād maqāṣidi*, the presence of a collective intellectual endeavour (*al-ijtihād al-jamā'ī*) is necessary. By this collective *ijtihād*, an expert on social reality can provide a proper and objective description of the reality based on which legal provisions in the *naṣṣ* and their *maqāṣids* are then inferred. The scholars of *uṣūl al-fiqh* call the adjustment of law with reality as *taḥqīḥ al-manāṭ*. Nur al-Din al-Khadimiyy, quoting al-Shāṭibī, defines the term as:

¹⁸⁴ See Abu al-Walid al-Bajī, *al-Isyarat fi Usul al-Fiqh al-Malikiyy*, Tahqih Nur al-Din al-Khadimiyy, (Tunisia: Dar al-Pole al-Wataniyyah, 1998), pp. 92-93.

أن يثبت الحكم الشرعي بمدركه الشرعي لكن يبقى النظر في
تعيين محله

Establishing the laws of shar', but the analysis is to determine the accuracy of the object of the law¹⁸⁵

Thus, taḥqīḥ al-manāt requires precision in understanding the objects of the law with all its characteristics. A collective object of the law must be distinguished from an individual one. The object of law in a country may be different from that in other countries. Even, the same object of law could possibly have a different legal status because of the shifting circumstances. The process of taḥqīḥ al-manāt will make Islamic law flexible and dynamic in accordance with the demands of socio-cultural dynamics (*ṣāliḥ li kulli zamān wa makān wa 'awā'id*).

3. The Basic Provisions of the Subject of Law (*al-Mukallaf*)

It is no doubt that Islamic law is meant to be understood and implemented by the *mukallaf* (a subject of law, or someone upon which a law is imposed). The reality (*al-waqi'*) exists because there is relevance to the subject of law. The most important point of the discussion is on the reasoning by the subject of law (*'aqlaniyah al-mukallaf*). Each *mukallaf* has a different reasoning about the *naṣṣ* (texts), its legal provisions and their maqāṣid as well as its reality.

Historically, the reasoning of *mukallaf* (*tarikhiyyah 'aql al-mukallaf*) reached a peak in the glorious era of Mu'tazila which linked the concept of *al-taḥsīn and al-taqbīḥ* (the good and the bad) to *taklīf* (a burden to perform a command or to leave a ban). For Mu'tazila, a command must have rationality in which the concept of *al-taḥsīn and al-taqbīḥ* can be used as a measure. Abū Ḥāshim al-Jubba'ī al-Mu'tazilī himself, allegedly to emphasize the rationality of *taklīf*, preceded his definition of *taklīf* with the words "*irādah*" (God's will), as follows:

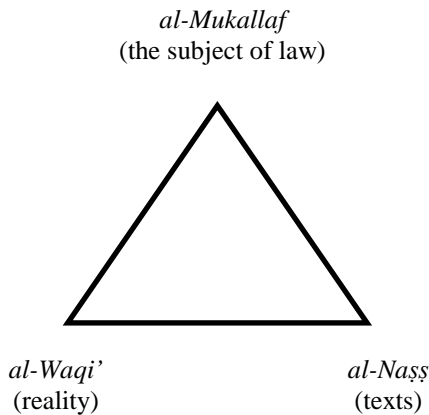
¹⁸⁵ Al-Khadimiy, *al-Ijthad*, p. 183.

إرادة فعلماء علماء المكلفين كلفته ومشقة

The willingness to perform an obligation for mukallaf in which there is a burden and difficulty as well.¹⁸⁶

Thus, *ijtihād maqāṣidi* must also take into account the reasoning characteristics of the *mukallaf*, as a subject of law who will come into direct contact with and perform the laws. A *mujtahid* should also develop his reasoning capacity in examining the texts, the reality, and the *mukallaf*. The following figure presents the dialectical relations between text, reality, and *mukallaf* in regard with *ijtihād maqāṣidi*.

Figure 2.5. *Dialectical Relations Between Texts, Reality, and Mukallaf in Ijtihād Maqāṣidi*



¹⁸⁶ Yahya Muhammad, *al-Aql wa al-Bayān wa al-Ishkālīyāt al-Dīniyyah* (the Beirut: al-Intishar Muassasah al-‘Arabiyy, 2010), p. 22. See also, ‘Abd al-Jabbar al-Hamadaniyy, *al-Majmū ‘al-Muḥīṭ bi al-Taklīf fi al-‘Aqāid*, taḥqīq ‘Umar al-Sayyid ‘Azmi, Vol. 1. (Egypt: al-Mu‘assasah al-Misriyyah li al-Ta’lif wa al-Iba’wa al-Nasr, t.t), p. 11

ISLAMIC LAW AND THE METHODS OF ITS EXCAVATION - SHARĪ ‘AH, ISLAMIC JURISPRUDENCE AND ISLAMIC LAW: A RED LINE

3.1 Sharī‘ah

Etymologically, *sharī‘ah* means *al-‘utbah* (twist of valley), *al-‘atabah* (a doorway and a stair), *mawrīd al-sharī‘ah* (a path where a drinker is looking for water), and *al-ṭarīq al-mustaqīmah* (a straight path).¹⁸⁷ The use of the term *sharī‘ah* referring to the meaning *mawrīd al-sharī‘ah* can be found in the words of the Arabs: *shara’at al-ibil*, which means the camel goes out into the water source to drink.¹⁸⁸ The meaning of *al-sharī‘ah* as *ṭarīqah al-mustaqīmah* is found in the Qur’an, Surah al-Jathiyah, 18:

ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا
يَعْلَمُونَ ١٨

¹⁸⁷ Sha‘ban Muhammad Isma‘il, *al-Tashrī‘ al-Islāmī: Masdaruh wa Aṭwāruh*, (Mesir: Mktabah al-Nahḍah al-Mṣriyyah, 1985), p. 7; and Kamil Musa, *al-Madkhal Ilā al-Tashrī‘ al-Islāmī*, (Bairut: Muassasah al-Risālah, 1989), p. 17, as quoted by Dedi Supriyadi, *Sejarah Hukum Islam*, (Bandung: CV Pustaka Setia, 2007), p. 17.

¹⁸⁸ Ibid.

Then We have made you follow a course in the affair, therefore follow it, and do not follow the low desires of those who do not know.

Terminologically, *sharī'ah* can both take a broad meaning, including the Islamic teachings in the form of faith, morals, or practical laws, and a specific one in which it refers to practical rules of Islam ('*amaliyyah*') alone, as defined by Shafiq Gharbal as follows:

مجموعة الأحكام الشرعية العملية المستنبطة من الكتاب
والسنة والرأي والإجماع

A number of *sharī'* laws which are practical derived from al-Kitab, al-Sunnah, reason and consensus.¹⁸⁹

The meaning of *sharī'ah* which is confined to the practical-legal aspects ('*amaliyyah*') above is a reduction of the term referring to religion that includes theology, practical laws and morality. It is clear from the Qur'an Surah al-Shura, 13:

﴿شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّىٰ بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَىٰ وَعِيسَىٰ أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ اللَّهُ يَجْتَبِي إِلَيْهِ مَنْ يَشَاءُ وَيَهْدِي إِلَيْهِ مَنْ يُنِيبُ ۝۱۳﴾

He has made plain to you of the religion what He enjoined upon Nuh and that which We have revealed to you and that which We enjoined upon Ibrahim and Musa and Isa that keep to obedience and be not divided therein; hard to the unbelievers is that which you call them to; Allah chooses for Himself whom He pleases, and guides to Himself him who turns (to Him), frequently.

The above verse shows us that religion (*al-dīn*) is basically universal and applicable to all generation, from that of Noah, Abraham, Moses, Jesus, to that of Muhammad who was the seal of the Prophets and Apostles. Nevertheless, each generation of the prophets has its own peculiari-

¹⁸⁹ Shafiq Gharbal, *al-Mawsū'ah al-'Arabiyyah al-Muyassarrah*, (Kairo: Dār al-Qalam, 1965), p. 1083.

ties and characteristics in its teachings, especially in the aspect of practical laws, but not in faith and moral issues. To distinguish religion's universal teachings from its locally-temporal practical laws, it is necessary to make a differentiation between religion and *sharī'ah*. Religion refers to religious teachings as a whole, including faith, practical laws, and morality, while *sharī'ah* is confined to the practical laws only.

3.2 Islamic Jurisprudence (*Fiqh*)

Islamic jurisprudence (*al-fiqh*) etymologically means “to know and understand something very well.”¹⁹⁰ This meaning of *fiqh* is found in several terms, such as *fiqh al-sira* (to understand the history of the Prophet Muhammad), *fiqh al-da'wah* (to understand the intricacies of proselytizing activities), *fiqh al-nisā'* (to understand the intricacies of women) and social-*fiqh*.

During the earlier period of Islam, the word *fiqh* means an understanding of the teachings of Islam as whole, which is synonymous with the word *sharī'ah* and religion (*al-dīn*) including the dimension of faith, practical and moral laws. It was Abū Ḥanīfah who initiated the division of *fiqh* into two categories: *al-fiqh al-akbar* and *al-fiqh al-aṣghar*. *Al-fiqh al-akbar* is understood as *usūl al-dīn* (the basics of religion) which covers theology or monotheism. *Al-fiqh al-aṣghar*, on the other hand, is associated with *fiqh* along with the methodological tools of its formation.¹⁹¹

After Abū Ḥanīfah, starting from al-Shāfi'ī, Muslim scholars narrowed the definition of *fiqh* into practical laws as it is in the case of *sharī'a*. The following definition of *fiqh* is the most popular among them:

العلم بالأحكام الشرعية العملية المكتسب من أدلتها التفصيلية

¹⁹⁰ Luwis Ma'lūf, *al-Munjid fi al-Lughah wa al-A'lām*, (Bairut: Dār al-Mashriq, 1986), p. 591.

¹⁹¹ Supriyadi, *Sejarah Hukum*, p. 22.

The science of *sharā'* related to practical laws (*'ama-liyyah*) which are obtained from the detailed arguments.¹⁹²

Looking at the definition of *fiqh* above, it is reasonable to say here that *fiqh* is a science of Islamic laws (Islamic Jurisprudence), as it is apparent in the definition of *al-'ilm bi al-aḥkām* (knowledge on laws), and also legal materials as well as procedures at courts (procedural laws, *fiqh al-murāfa'āt*). However, it is important to note that by the definition above, *fiqh* is not always synonymous with the laws or the rules (legislation). *Fiqh* is closer to ethical concepts of religion (religious ethics).¹⁹³

3.3 Islamic Law

Etymologically, a law (*al-ḥukm*) means decision, obstruction and separation. In its further development, the term law is identical with wisdom. Both the words function to prevent someone from doing bad deeds with providing legal certainty on issues and putting a marker between the good and the wrong. However, the two have a different emphasis in its application. While the former emphasizes the formal legal aspects, the latter focuses more on substantial-cultural aspects¹⁹⁴.

Terminologically, some scholars defined the law as:

خطاب الله المتعلق بأفعال المكلفين اقتضاء أو تخييرا أو وضعاً

God's commands pertaining to the actions of mukallaf (someone who is mindful and mature), either in the form of demands for performing something (obligatory and recommended [Sunnah]) or abandoning (*ḥarām and makrūh*), or a choice between performing or abandoning

¹⁹² See Wahbah al-Zuhaili, *al-Fiqh al-Islāmi wa Adillatuhā*, Vol. 1 (Bairut: Dar al-fikr, 1989), p. 15.

¹⁹³ Supriyadi, *Sejarah*, p. 25.

¹⁹⁴ Supriyadi, *Sejarah*., p. 25.

(*mubāḥ*), or make something as a cause, a term, and a barrier (*mani'*)

The definition of law above suggested that Islamic law is actually the texts (*naṣṣ*) of the Qur 'an and the Sunnah which are the representation of God's will as a hakim (law-maker). Meanwhile, a mujtahid only plays as *al-kāshif* (discoverer) by the will of God, especially when the fixed texts (*thawābit*) should face social realities which are always changing (*mutaghayyirāt*) according to circumstances. Therefore, even though many Islamic laws do not always reflect exactly the wording of these two sources of laws—because reasoning is also involved in the process of legal excavation through linguistic or non-linguistic rules, such as *qiyās*, *istiḥsān*, 'urf, *maṣlahah*—they are still considered divine laws and require observance from all Muslims.

From the description of the *sharī'ah*, Islamic jurisprudence, and Islamic law above, it can be inferred that *sharī'ah* is the substantial concept of all the teachings of Islam, including beliefs, morals, and laws, while Islamic jurisprudence (*fiqh*) is a functional concept that works to understand practical teachings of Islam. On the hand, Islamic law is both functional-theological in the sense that it is derived from intellectual endeavours of mujtahid who later codified it into jurisprudence (*majmu 'āt al-aḥkām*) and received a theological justification, i.e. the laws that they produced through their intellectual inquiries are coming from Allah. The scope of Islamic law is the same as *fiqh*, namely practical matters ('*amaliyyah*) only.

3.4 The Characteristics of Islamic Law

Islamic law has three characteristics upon which the scholars built their legal excavation in order to produce rules that are applicable and are in accordance with the realities of human life. They are:

1. Removing barriers and difficulties ('adam al-ḥaraj).

This characteristic comes from some Qur'anic verses and the hadith, such as:

a. Surah Al-Baqarah, 286:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ رَبَّنَا
لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إصْرًا كَمَا
حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ وَاعْفُ
عَنَّا وَارْحَمْنَا أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ
٢٨٦

Allah does not impose upon any soul a duty but to the extent of its ability; for it is (the benefit of) what it has earned and upon it (the evil of) what it has wrought: Our Lord! do not punish us if we forget or make a mistake; Our Lord! do not lay on us a burden as Thou didst lay on those before us, Our Lord do not impose upon us that which we have not the strength to bear; and pardon us and grant us protection and have mercy on us, Thou art our Patron, so help us against the unbelieving people.

b. Al-Baqarah, 185:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

Allah desires ease for you, and He does not desire for you difficulty

c. Surah Al-Hajj, 78:

وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ
مِنْ حَرَجٍ ٧٨

And ye strive in the way of Allah and Jihad in truth. He has chosen you, and has imposed no difficulties on you in religion.

d. Surah al-Nisa, 28:

يُرِيدُ اللَّهُ أَنْ يُخَفِّفَ عَنْكُمْ وَخُلِقَ الْإِنْسَانُ ضَعِيفًا ٢٨

God wants to give relief to you, and the man was made to be weak

e. Hadith of the Prophet:

ما خير بين أمرين إلا اختار أيسرهما ما لم يكن إثما

The Prophet was not given a choice between two things, but he chose the most convenient as long as it is not a sin

The application of its characteristics is found, for example, in the permissibility of *qaṣar* (summarizing four cycled prayers into two) during a travel. Another example is the permissibility to break fasting for the sick and the traveler, to eat unclean foods in emergency condition, and the permissibility of *tayammum* for the sick or when no water is found for ritual ablution (*wuḍū'*).

1. Minimizing the Burden (*taqlīl al-takālīf*)

This characteristics means that all Islamic laws are not out of the limits and are applicable without bringing difficulties beyond human ability. It is true that every law brings both difficulties to each *mukallaḥ*, but they are still within human limits. Those difficulties may come from Islam itself or human unusual observance such as fasting *wiṣāl* (a continuous fasting without eating before and after daybreak), praying on one leg, and so on.

This characteristics also regulates that a twofold legal burden in two similar cases cannot be considered as something that should be performed at once, such as obligatory bath for ritual impure removes *wuḍū'* obligation as long as nothing is done to annul it. Similarly, the punishment for *zinā mukhshan* (illicit sex by a married man) is enough by stoning without having to combine with one-hundred scourging. These are the examples of Islamic laws wherein the characteristic of minimizing the burden is involved.

2. Gradual determination of the law (*al-tadarruj fi al-tashrī'*)

Social, cultural, economic and political conditions sometimes become the barriers in the application of laws. Nevertheless, Islamic law is binding because it is theological, which is believed to come from God which requires efforts for its implementation. This characteristic came up to bridge this gap. One legal maxim of fiqh reflects the spirit of this characteristic:

ما لا يدرك كله لا يترك كله

Something that cannot be realized fully should not be abandoned fully

A well-known example of this characteristic is the Qur'anic prohibition of khamr (liquor). The Qur'an presents the law in stages; it first informs that khamr has the benefits for the human body but God said that the sin in it is greater than the benefits. The Qur'an then continues with the ban on prayers in a drunken state, and the last stage is expressly ban on drinking liquor. These stages chronologically are recorded in the following Qur'anic verses:

a. Al-Baqarah, 219:

﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْعٌ لِلنَّاسِ وَأَثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ ۚ ٢١٩﴾

They ask you about intoxicants and games of chance. Say: In both of them there is a great sin and means of profit for men, and their sin is greater than their profit. And they ask you as to what they should spend. Say: What you can spare. Thus does Allah make clear to you the communications, that you may ponder.

b. Al-Nisa', 43:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْرَبُوا الصَّلَاةَ وَأَنْتُمْ سُكَرَىٰ حَتَّىٰ تَعْلَمُوا مَا تَقُولُونَ وَلَا جُنُبًا إِلَّا عَابِرِي سَبِيلٍ حَتَّىٰ تَغْتَسِلُوا وَإِنْ كُنْتُمْ مَرْضَىٰ أَوْ عَلَىٰ سَفَرٍ أَوْ جَاءَ أَحَدٌ مِّنْكُمْ مِنَ الْغَائِطِ أَوْ لَمَسْتُمُ النِّسَاءَ فَلَمْ

تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوْهِكُمْ وَأَيْدِيكُمْ إِنَّ اللَّهَ
كَانَ عَفُوًّا غَفُورًا ٤٣

O you who believe! do not go near prayer when you are Intoxicated until you know (well) what you say, nor when you are under an obligation to perform a bath-- unless (you are) travelling on the road-- until you have washed yourselves; and if you are sick, or on a journey, or one of you come from the privy or you have touched the women, and you cannot find water, betake yourselves to pure earth, then wipe your faces and your hands; surely Allah is Pardoning, Forgiving.

C. Al-Maidah verse 90-91:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ
مِّمَّنْ عَمَلِ الشَّيْطَانِ فَأَجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ٩٠ إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ
يُوَفِّقَ بَيْنَكُمْ الْعَدُوَّةَ وَالنَّعْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ
اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ ٩١

O you who believe! Intoxicants and games of chance and (sacrificing to) stones set up and (dividing by) arrows are only an uncleanness, the Shaitan's work; shun it therefore that you may be successful.

The Shaitan only desires to cause enmity and hatred to spring in your midst by means of intoxicants and games of chance, and to keep you off from the remembrance of Allah and from prayer. Will you then desist?

3.5 The Principles of Islamic Law

Is the principle here is the principle that is used as the principal person in thinking, acting, and so forth.¹⁹⁵ According Soenarjo, as quoted by Supriyadi, that there are nine principles of Islamic law, which is detailed as follows:

¹⁹⁵Supriyadi, *Sejarah Hukum*, p. 157.

1. Monotheism (*Tawhīd*)

This principle asserts that the whole building of Islamic law is lied down on the Oneness of Allah. With the principle of *tawhīd*, the implementation of a law will mean also as a worship and its qualities indeed depends to what extent God is present in both pure worship (*mahḍah*) or in impure one (*ghayr mahḍah*). It is this implementation of laws that the prophet referred to as *iḥsān* (good deeds):

أَنْ تَعْبُدَ رَبَّكَ كَأَنَّكَ تَرَاهُ وَإِنْ لَمْ تَكُن تَرَاهُ فَإِنَّهُ يَرَاكَ

Be ye worship your God as if you see Him. If not, verily He sees you.

The principle of monotheism also suggested that that Islamic law should always be aligned with the Qur'an and the Sunnah, either through a direct understanding of the the texts or the spirits contained therein through a linguistic or non-linguistic approach such as *maqāṣid al-shar'ah* and others.

Normatively speaking, this principle is found in Surah al-'Imran, 64:

قُلْ يَا أَهْلَ الْكِتَابِ تَعَالَوْا إِلَى كَلِمَةٍ سَوَاءٍ بَيْنَنَا وَبَيْنَكُمْ أَلَّا نَعْبُدَ إِلَّا اللَّهَ
وَلَا نُشْرِكَ بِهِ شَيْئًا وَلَا يَتَّخِذَ بَعْضُنَا بَعْضًا أَرْبَابًا مِّنْ دُونِ اللَّهِ فَإِن
تَوَلَّوْا فَقُولُوا اشْهَدُوا بِأَنَّا مُسْلِمُونَ ٦٤

Say: O followers of the Book! come to an equitable proposition between us and you that we shall not serve any but Allah and (that) we shall not associate aught with Him, and (that) some of us shall not take others for lords besides Allah; but if they turn back, then say: Bear witness that we are Muslims.

2. Justice (*al-'adl*)

Quraish Shihab, as quoted by Supriyadi, pointed out that justice as demanded by the Qur'an has a very diverse meaning, both in the process of establishing the law, enforcement of the humanitarian values, and so

on. Justice can be attributed to four meanings: first, justice is sameness; second, justice is a balance; third, justice is respect and fulfillment for the individual rights or putting something in its proper place; fourth, justice is attributed to God.¹⁹⁶

In the context of Islamic law, the principle of justice demands for legislation, and the application of Islamic law should also consider the objective conditions of the society where the law will be applied in a particular time. It could be that a particular law is applicable in some places but is not in some other places because of the social, cultural, economic and political factors. In this case, the the implementation of laws which does not reflect justice should be “deferred” until the time is conducive while at the same time looking for other alternative ones which are more adaptable.

3. Equality (*al-Musāwah*)

The principle of equality implies that any individual and group have the same and equal rights in the eyes of Islamic law. Therefore, legislation should consider also the fulfillment of human rights in order that Islamic law can truly become a blessing for the mankind. This principle applies, for example, in examining the position between men and women in their self-actualization both as the servants of God to improve their piety and as “the chaliphs” on Earth to maintain an ecosystem which is balanced and able to lead them to the happiness in the Hereafter.

Thus, the relationship between one and another individual, or one group and another group or individual, a men and women is not that between “subjects” vs. “object”, rather between “subjects” vs. “subjects”. In such a relationship, it is not justified for one individual or a group to control and repress others on behalf of religion.

¹⁹⁶ Ibid., pp. 159-160.

It is undeniable that some of Islamic doctrines are still far from the principle of equality, such as the provision on woman's domestic roles. The rule stipulated that when a woman is leaving home she should be accompanied with a mahram and should be covering parts of her body except eyes. On the contrary, a man is free to do activities outside, and is required to cover only his body between his navel and knees. In addition, a man is also given the right to do polygamy, even without permission from the first wife. Looking at these unfair Islamic laws, Muslim scholars are dealing with challenges to produce Islamic laws which are egalitarian without losing the spirits of maṣlahah as reflected in the Qur'an and the Sunnah.

Normatively, the principle of *al-musāwah* has its normative foundation in the Qur'an, Surah al-Hujurat, 13:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ
لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْوَاهُ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ١٣

O you men! surely We have created you of a male and a female, and made you tribes and families that you may know each other; surely the most honorable of you with Allah is the one among you most careful (of his duty); surely Allah is Knowing, Aware.

4. Independence/freedom (*al-Ḥurriyyah*)

This principle asserts that each individual has the basic rights of religious freedom, the improvement of health and peaceful life, knowledge, descent, and properly entitled property. Therefore, any law that does not reflect the principle of *al-ḥurriyyah* should be reoriented, reconstructed, and deconstructed, if necessary.

The principle is rooted in the the Qur'an, Surah al-Baqarah, 256, Surah al-Maidah, 48, Surah Yunus, 99, and Surah al-Kafirun, 6, which read:

- a. Al-Baqarah, 256:

لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ
بِالطُّغُوتِ وَيُؤْمِنُ بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ لَا
أَنْفِصَامَ لَهَا وَاللَّهُ سَمِيعٌ عَلِيمٌ ٢٥٦

There is no compulsion in religion; truly the right way has become clearly distinct from error; therefore, whoever disbelieves in the Shaitan and believes in Allah he indeed has laid hold on the firmest handle, which shall not break off, and Allah is Hearing, Knowing.

b. Surah al-Maidah, 48:

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ
وَمُهَيِّمًا عَلَيْهِ فَاحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ
عَمَّا جَاءَكَ مِنَ الْحَقِّ لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا وَلَوْ
شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَكِنْ لِيَبْلُوَكُمْ فِي مَا آتَاكُمْ
فَأَسْتَبِقُوا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ
فِيهِ تَخْتَلِفُونَ ٤٨

And We have revealed to you the Book with the truth, verifying what is before it of the Book and a guardian over it, therefore judge between them by what Allah has revealed, and do not follow their low desires (to turn away) from the truth that has come to you; for every one of you did We appoint a law and a way, and if Allah had pleased He would have made you (all) a single people, but that He might try you in what He gave you, therefore strive with one another to hasten to virtuous deeds; to Allah is your return, of all (of you), so He will let you know that in which you differed;

c. Al-Kafirun, 6:

لَكُمْ دِينُكُمْ وَلِيَ دِينِ ٦

You shall have your religion and I shall have my religion.

5. Commanding the Good and Prohibiting the Forbidden (*al-‘Amr bi al-Ma‘rūf wa al-Naḥy’ ‘an al-Munkar*)

The principle of *al-‘amr bi al-ma‘rūf* requires that Islamic laws should function also as a social engineering for a better human life and dignity through methods and approaches that make sense and accord to tradition and culture. On the other hand, by the principle of *al-naḥy’ ‘an al-munkar* Islamic law is intended to be a social control for human life in order to avoid all forms of damages and difficulties.

6. Helping One Another (*al-Ta‘āwun*) and Dialogue (*al-Shūrā*)

This principle is based on the notion that no one is perfect but the Prophet Muhammad. Accordingly, it asserted that human beings should help one another in social, political, and legal and other aspects of life. *Ijtihād* should be done in a collective manner (*jamā‘ī*) which involve all the experts in various fields of the legal matter in question. The law of economics, for example, should not be ever separated from religious, environmental, socio-cultural, educational aspects and others. The presence of those experts is needed to produce legal products aligned with and interconnected to human life. This is in this are that the principle *ta‘āwun* and *shūrā* found its significance.

The principle of *ta‘āwun* finds its basis in the Qur’an Surah al-Maidah, 2, Surah al-Mujadalah, 9, Surah Ali ‘Imran, 159, and Surah al-Shura, 38:

a. Surah al-Maidah, 2:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْلُوا شَعِيرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ
وَلَا الْقَلْبَدَ وَلَا أَمِينَ الْبَيْتِ الْحَرَامِ يَتَّبِعُونَ فَضْلًا مِّن رَّبِّهِمْ وَرِضْوَانًا
وَإِذَا حَلَلْتُمْ فَاصْطَادُوا وَلَا يَجْرِمَنَّكُمْ شَنَا نُ قَوْمٍ أَن صَدُّوكُمْ عَنِ
الْمَسْجِدِ الْحَرَامِ أَن تَعْتَدُوا وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا
عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ٢

O you who believe! do not violate the signs appointed by Allah nor the sacred month, nor (interfere with) the of-

ferings, nor the sacrificial animals with garlands, nor those going to the sacred house seeking the grace and pleasure of their Lord; and when you are free from the obligations of the pilgrimage, then hunt, and let not hatred of a people-- because they hindered you from the Sacred Masjid-- incite you to exceed the limits, and help one another in goodness and piety, and do not help one another in sin and aggression; and be careful of (your duty to) Allah; surely Allah is severe in requiting (evil).

b. Surah al-Mujadalah, 9:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَنَجَّيْتُمْ فَلَا تَنَجَّوْا بِالْإِثْمِ وَالْعُدْوَانِ وَمَعْصِيَتِ
الرَّسُولِ وَتَنَجَّوْا بِالْبِرِّ وَالتَّقْوَى وَتَقُوا اللَّهَ الَّذِي إِلَيْهِ تُحْشُرُونَ ٩

O you who believe! when you confer together in private, do not give to each other counsel of sin and revolt and disobedience to the Messenger, and give to each other counsel of goodness and guarding (against evil); and be careful of (your duty to) Allah, to Whom you shall be gathered together.

c. Surah Al-Imran, 159:

فَمَا رَحْمَةٌ مِّنَ اللَّهِ لَئِن تَ لَّو كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ
لَأَنْفَضُوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ
فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ
الْمُتَوَكِّلِينَ ١٥٩

Thus it is due to mercy from Allah that you deal with them gently, and had you been rough, hard hearted, they would certainly have dispersed from around you; pardon them therefore and ask pardon for them, and take counsel with them in the affair; so when you have decided, then place your trust in Allah; surely Allah loves those who trust.

d. Al-Shura, 38:

وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ وَمِمَّا
رَزَقْنَاهُمْ يُنْفِقُونَ ٣٨

And those who respond to their Lord and keep up prayer, and their rule is to take counsel among themselves, and who spend out of what We have given them.

7. Tolerance (*al-Tasāmuh*)

This principle asserts that the different thoughts of laws due to different theories, methods and approaches used in *ijtihād* should be wholeheartedly accepted as a fact in a pluralistic reality. Nevertheless, this disagreement can be tolerated as long as it related to *ẓanniyāt* (no legal clarity) and does not interfere with the public good.

Muhammad Sa'id al-Ashmawi, basing himself on the historical revelation of the Qur'an and the messages, set up the general purposes of Islamic laws that should be a framework in formulating laws. They are:¹⁹⁷

Firstly, *sharī'ah* was revealed in relation with the establishment of a religious community, and its implementation depends on the existence of this given community; secondly, *sharī'ah* is revealed because of its basic causes, and the latter does not have any conformity with it;¹⁹⁸ thirdly, *sharī'ah* aims to realize the general benefits for societies. One way to reach this purpose is that some parts of *sharī'ah* removes (*nāsikh*) earlier parts of it. Therefore, the truth and the benefit of *sharī'ah* depend on circumstances and conditions which are changing according to technological and scientific developments;¹⁹⁹ fourthly, there are some parts of *sharī'ah* which apply specifically to the Prophet Muhammad and to particular occasions;²⁰⁰ fifthly, *sharī'ah* has an uninterrupted relationship with the past. Similarly, the roots of *sharī'ah* are closely related to the communities where it was im-

¹⁹⁷ Muhammad Said al-Asymawi, *Nalar Kritis Syari'ah*, transl. Luthfi Thomafi, (Yogyakarta: LKiS, 2012), pp. 46-47.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

posed. Nevertheless, there are some social institutions that are taken as a legal basis;²⁰¹ sixthly, the religion is already perfect and its value lies in its continuous attempts to adapt to the changing conditions of communities and drag people to a more dignified life.²⁰²

Ashmawi's explanation on the purpose and principles of *sharī'ah* above shows us that *sharī'ah* does not come in a vacuum context, rather in a historical "wrap" along with its various dynamics for which *sharī'ah* offered solutions for social problems under the framework of *maṣlaḥah*. Without this method of reading, Islam as "Blessing for the World" with the jargons "Back to the Qur'an and the Sunnah", "Islam Yes, Politics No" and others would be a figment only.

3.6 *Ijtihād* and *Mujtahid*

Linguistically, the term *ijtihād* is derived from the word "*juhd/jahd*" which means an ability (*al-tāqah*) when the letter *jīm* reads *ḍammah* (i.e. *juhd*), and a difficulty (*al-mashaqqah*) when the letter reads *fathah* (*jahd*).²⁰³ Thus, *ijtihād* literally means putting all the efforts, both in the form of *juhd* (ability) and *jahd* (difficulties), because someone who devotes all the ability will be also definitely faced with troubles. It is not considered an *ijtihād* until someone "imposes" himself to do what he pleases and is ready to bear difficulties. An example of *ijtihād* in the sense of the meanings above is a saying by 'Alī bin Abī Tālib:

فعلیکم بالجد والاجتهاد، والتأهب والاستعداد، والتزود في منزل الزاد

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Mustafa Ja'far Ceh Fard, *al-Ijtihād 'Inda al-Madzāhib al-Islāmiyyah Dirāsah Tahliyyah Ḥawla Madāris al-Ijtihād Wa Manāhijih Wa Adwārih* (Bairut: Markaz al-Hadarah li Tanmiyah al-Fikr al-Islamiy, 2011), p. 15.

Devote yourself and get ready and prepare, be well-equipped!²⁰⁴

The meaning of *ijtihād* above is also found in the hadith of the Prophet Muhammad from ‘Aisha:

كان رسول الله صلى الله عليه وسلم يجتهد في العشر الأواخر ما لا يجتهد في غيرها

The Prophet used to strive his efforts during the last ten (of Ramadan), more than he ever did in any other times.

There are several definitions by ulamas on the term *ijtihād*. For al-Shafī‘ī, it means *qiyās* (analogy) and even the two words are synonymous. He said:

فما القياس؟ أهو الإجتهد أم هما مفترقان؟ قلت هما اسمان لمعنى واحد

So what is *qiyas*? Is it the *ijtihād*, or both are different?. I replied, “They are two words with the same meaning meanings.”²⁰⁵

If we look it carefully, Shāfi‘ī’s definition of *ijtihād* above is a *tamthīl* (metaphore) of how *ijtihād* itself works, because the method of *ijtihād qiyāsī* (i.e. *ijtihād* by analogy) is one among many methods of excavating Islamic laws that he mentioned in his *al-Risāla*, such as textual analysis of the aspects of the *taḳlīf* (*al-‘amr and al-nahy*), the inference of meaning (*al-manṭūq and al-maḥmūm*) and so forth. ‘Abd al-Wahhab Khallaf defines *ijtihād* as follows:

عبارة عن بذل الجهد للتوصل إلى الحكم في واقعة لا نص فيها بالتفكير واستخدام الوسائل المختلفة من قياس أو استحسان أو مصالح مرسلة أو ترجيحات عقلية ظنية للاستنباط بها، فيما لا نص فيه.

²⁰⁴ Ibid.

²⁰⁵ Muhammad bin Idris al-Shāfi‘ī, *al-Risālah*, (Bairut: Dar al-Kutub al-‘Ilmiyyah, tt.), p. 477.

a metaphore of devoting all the ability to figure out the laws in reality on which there is no *naṣṣ* by thinking and using various methods such as:

qiyās or *istiḥsān* or *maṣlaḥah mursalah* or *tarjīh* (preference of one opinion) which is rational and *ẓannī* (allegedly true) in order to decide a legal status of an event on which the *naṣṣ* is silent.²⁰⁶

The definition above, as what al-Shafi'ī did, limits the scope of *ijtihād* only to the issues unexplained by the Qur'an and the Sunnah and, therefore, its application is done by *qiyās*, *istiḥsān*, *maṣlaḥah mursalah*, or by *tarjīh* (preference of one opinion from another). In fact, as mentioned earlier, the method of *ijtihād* sometime includes *ghayr al-naṣṣ* (non-textual), and sometimes includes textual analysis of the Qur'an and the Sunnah by a linguistic approach, such as *al-amr* (imperative), *al-nahy* (prohibition), *al-'ām* (general), *al-khāṣṣ* (*specific*), *al-muṭlaq* (*unconditional*), *al-muqayyad* (*conditional*), *al-haqīqah* (*real*), *al-majāz* (*figurative*), *al-manṭūq* (*pronounced*), *al-maḥṣūm* (*implied*), and so forth. A more comprehensive definition of *ijtihād* is given by al-Jurjani:

استفراغ الفقيه الوسع ليحصل له ظن بحكم شرعي

A hard effort of a jurist (*faqīh*) to obtain the strongest suspension of the *sharī'ah*.²⁰⁷

Al-Shāṭibi provides a definition of *ijtihād* with an emphasis on formulation of the law, in the form of confidence (*al-'ilm*) or a strong suspicion (*al-ẓann*) as well as the effort to figure out the objectives of the *sharī'ah* (*maqṣad al-sharī'ah*). He wrote:

استفراغ الوسع وإبلاغ الجهد في تحصيل العلم أو الظن بالحكم
طلباً لمقصد الشارع المتحد

²⁰⁶ Abd al-Wahhab Khallaf, *Maṣādir al-Tashrī' al-Islāmi Fi Mā La Naṣṣa Fīh*, (Damaskus: Dar al-Qalam, tt), p. 17.

²⁰⁷ Al-Sharif 'Ali bin Muhammad al-Jurjani, *al-Ta'rīfāt*, (Bairut: Dar al-Kutub al-'Ilmiyyah, 1983), p. 10.

Devoting all the efforts and mobilizing all the ability to acquire knowledge or suspicion of the law, in the hope of figuring out the purpose of the only Shā'ri'.²⁰⁸

Farid al-Ansari said that there are three possible understanding of the fragment: “*ṭalaban li maqṣad al-shāri' al-muttahid*” in the sentence above: the first is that although *mujtahids* often disagree on a particular law, they share a common intention, i.e. to uncover the purpose of the Shāri'. The second is that the purpose of Shāri' in a legal proposition, although it contains possible different legal directions, is one. It is the task of a *mujtahid* to reveal the given single purpose “hiding” behind a legal proposition. Therefore, although *mujtahids* disagree in certain law, they actually go to a common intention, i.e. the single purpose of the Shāri'.²⁰⁹ The third is that the single purpose of the Shāri' means nothing but a proper application of the laws. Moreover, al-Shāṭibi said that there are three stages in the process of *ijtihād*:²¹⁰

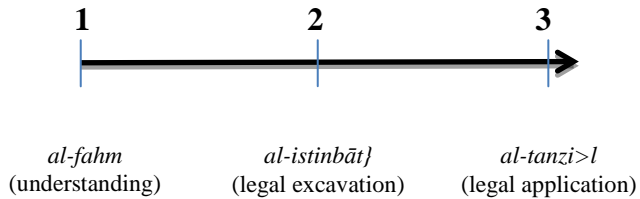
1. ***Al-Fahm***, which is a true understanding of legal reasoning and aspects of laws, as well as the *maqāṣid al-sharī'ah*;
2. ***Al-Istinbāt***, which is the excavation of Islamic law. This stage will run well if a *mujtahid* has a proper understanding on the relationship between causes and effects (*al-sabab wa al-musabbab*) and the ability to infer from several indicators (*al-amarāt*), and knowledge of *maqāṣid al-sharī'ah*;
3. ***Al-Tanzīl***, which means that the law derived directly from the scripture or through *istinbāt* should be applied according to the legal reasoning (*al-manāt*): will it be applied to something general or specific?. This stage is very important as to make the laws more grounded and applicable.

²⁰⁸ Farid al-Ansari, *al-Muṣṭalaḥ al-Uṣūliyy 'Inda al-Shāṭibiy*, (Mesir: Dar al-Salam, 2010), p. 298.

²⁰⁹ *Ibid.*, p. 305

²¹⁰ *Ibid.*, pp. 307-312.

Figure 3.1 Shātibī's Stages of Ijtihad



3.7 Requirements of *Mujtahid*

The Muslim scholars found it important to provide certain requirements in *ijtihād*, because it is a scientific work that is related to revelation. There are two dimensions in *ijtihād*: rationality and sacredness. The rational aspects of *ijtihād* is inevitable since a *mujtahid* should be clever in articulating the God's "limited" message (*al-mutanahiyyah*) in dialogue with the realities of human life which are changing according to the "unlimited" development of science and technology (*ghayr al-mutanahiyyah*). Therefore, a *mujtahid* must have necessary knowledge of the al-Qur'an and the Sunnah which represent the will of Shāri', and of people's needs that require legal truism and certainty.

On the other hand, the sacred dimensions of *ijtihād* refer to the fact that the results of an *ijtihād*, true (*sawāb*) or false (*khaṭa'*) regardless of the controversy surrounding them, are still considered as sacreds law and must be obeyed. They are also possibly be used as the basis for emasculating human rights for which morality, as a requirement in addition to scientific one, for a *mujtahid* plays a significant role.

1. Scientific Requirements

The scientific requirements can be categorized into two parts: the first is the requirements related to science of religion (*'ulūm al-dīn*) such

as the Qur'an, the Sunnah, *ijmā'*, *asbāb al-nuzūl* (occasions of revelation) and *nasīkh wa mansūkh* (the abrogating and abrogated); the second is those related to tools (al-wasā'il) to understand the true message of the Qur'an and the Sunnah, i.e the rules of language such as command and prohibition, the general and the specific, and so forth.

a. Requirements related to the science of religion ('*ulūm al-dīn*)

1. Knowledge of the Qur'an.

There is disagreement among the scholars that the Qur'an is the source of Islamic law besides the Sunnah. The formalization of the Qur'an as the most important requirement in *ijtihād* was first launched by Shāfi'ī in *al-Risālah*. Talking about the requirements for a *mujtahid*, he wrote:

العلم بأحكام كتاب الله: فرضه وأدبه وناسخه ومنسوخه وعامه
وخاصه وإرشاده

Knowing the laws of the Book of Allah: farḍu, nasīkh and mansūkh, the general and the specific, and all their designation.²¹¹

Other scholars, such as al-Basri al-Mu'tazili, al-Juwaynī, al-Ghazālī, Fakhr al-Din al-Razi, al-Amidi, Ibn Hazm, and others followed it later.²¹² However, those later disagree on whether a *mujtahid* must memorize the entire Qur'an or simply know the verses related to the issues in question. Following al-Shāfi'ī, al-Juwaynī and al-Ghazālī require a thorough and in-depth knowledge of the Qur'an in *ijtihād*.²¹³ Whereas, al-Basri al-Mu'tazilī does not require that a *mujtahid* should memorize the entire Qur'an. Abu al-Walid al-Bajī among the Mālikī argued that a

²¹¹ Al-Shafi'ī, *al-Risālah*, p. 510.

²¹² See Fathi al-'Atawī, *al-Ijtihād fi al-Fikr al-Islāmiy*, (Bairut: Dar al-Fikr, 2014), p. 170. See also Sami Brahim, *Naqd al-'Aql al-Uṣūliy Dirāsah Tahlīliyyah Naqdiyyah Li Uṣūl al-Fiḥ 'Inda al-Mu'tazilīh* (Tunisia: al-Magharibiyah Li al-Tiba'ah wa Ishhar al-Kutub, 2014), p. 135.

²¹³ Fathi al-'Atawī, *al-Ijtihād*, p. 171.

mujtahid should be a true expert ('*alīm*) of the laws of the Qur'an, or otherwise he at least can read the whole Qur'an. Al-Bāji wrote:

صفة المجتهد أن يكون عالما بأحكام الكتاب وإن لم يكن من شرطه
أن يكون تاليا لجميعه

The criteria is that a mujtahid should know the laws of the Book. If he can not meet this requirement, at least he read the whole Book.²¹⁴

2. Knowledge of the Sunnah.

As it is in the case of the Qur'an, the Sunnah is a source of Islamic law. Therefore, it makes sense that scholars require a *mujtahid* to have understanding of the Sunnah along with its intricacies. Even al-Juwaynī expressed that in essence there is no separation between the Qur'an and the Sunnah.²¹⁵

3. Knowledge of *ijmā'*

Ijmā' or consensus is a basic legal proposition after the Qur'an and the Sunnah. Islamic law that has been a consensus of scholars and based on the *naṣṣ* is "permanent" and can not be annulled by other *ijtihād* afterwards. Therefore, knowledge of Islamic law which has become the consensus of scholars is very urgent. Relating to this, al-Shāfi'ī said:

ولا يكون لأحد أن يقيس حتى يكون عالما بما مضى قبله من السنن
وأقوال السلف وإجماع الناس واختلافهم

One should not do *qiyās* unless he knows the Sunnah, opinions of the previous scholars, *ijmā'* of *ulamā'* and their disagreements.²¹⁶

²¹⁴ Abu al-Walid al-Bāji, *Ihkām al-Fuṣūl fī Ahkām al-Uṣūl*, Vol. 2. (Bairut: Dar al-Gharb al-Islamiy, 1995), p. 728

²¹⁵ Imam al-Haramayn Abu al-Ma'aliy al-Juwayniy, *al-Burhān fī Uṣūl al-Fiqh*, Vol. 1. (Kairo: Dar al-Wafa', 1992), p. 128.

²¹⁶ Al-Shāfi'ī, *al-Risālah*, p. 510.

b. Knowledge of Arabic language and its intricacies

Scholars agreed that Islamic law is derived from the Qur'an and the Sunnah. It is God's prerogative that these two sources are in Arabic. Therefore, it is reasonable that a mujtahid is required to have the ability to understand the Arabic language and all its intricacies. With Being skillful in Arabic language a mujtahid can dive into a sea of rational meaning ('*aql al-ma'ānī*) of the Qur'an and the Sunnah. al-Shāfi'ī attested this requirement by saying:

لا يعلم من إيضاح جمل علم الكتاب أحد جهل سعة لسان العرب
وكثرة وجوهه وجماع معانيه وتفرقها

Someone who is blind of Arabic can not find an explanation of the sentences, aspects, meanings and the differences in the Book.²¹⁷

Al-Juwaynī requires knowledge of *naḥwu* (syntax) and *i'rāb* (inflection) in *ijtihād*, because both play a major role in revealing the messages and the intents of the Shāri' in the Quran and in the Sunnah. Al-Ghazālī shares a common opinion. For him, a *mujtahid* must be equipped, even though is not skillful as imam Khalil al-Nahwi, with knowledge of *naḥwu* in order to figure out the message and the purposes of God in the Qur'an.²¹⁸

2. Intelligence and Morality Requirements

It is not enough for *mujtahids* to just have a deep knowledge, especially on the Quran and the Sunnah as well as the the intricacies of the Arabic. A *mujtahid* should also have good morality and high intelligence. This requirement is divided into two: general and specific. The general requirements are Muslim, matured and intelligent. These three conditions apply not only to the *mujtahid*, but also to *muftis* (ju-

²¹⁷ Ibid.

²¹⁸ Al-Ghazali, *al-Mustasfā*, Vol.2. p. 202

rists), judges, witnesses, transactions, and other Islamic laws. The absence of one of these three conditions would make someone lose the eligibility (*al-ahliyyah*) in legal actions, particularly for a *mujtahid* whose opinions become references for the public in understanding and implementing Islamic teachings.²¹⁹

In addition to Islam, mature, and intelligent, a *mujtahid* should be also fair and *warā‘* (strictly refraining from what is unlawful and unnecessary). This requirement does not mean to put limitations on people—such as those who belong to the freedom of thought, who want to understand by their independently the messages of the Qur’an and the Sunnah. It is morality that would distinguish a thinker of Islam (*al-mufakkir fi al-Islām*) from a *mujtahid*.

Legal Reasoning of the Imām Madhhab

1. Hanafi’s School

Broadly speaking, the Hanafi’s jurist school built their legal reasoning on the following: the Qur’an, the Sunnah, *qawl al-Ṣaḥābī* (opinions of the Companions), *qiyās* (analogy), *istiḥsān* (preference), *ijmā‘* (consensus), and *urf* (tradition). As for these legal arguments, Abū Ḥanīfah said:

أخذ بكتاب الله، فإن لم أجد فبسنة رسول الله (ص)، فإن لم أجد في كتاب الله ولا سنة رسول الله أخذت بقول أصحابه، أخذ بقول من شئت منهم وأدع قول من شئت منهم. فأما إذا انتهى الأمر إلى إبراهيم النخعي والشعبي وابن سيرين والحسن وسعيد بن المسيب، فقوم اجتهدوا فأجتهد كما اجتهدوا

I took (the law) with the Book of Allah, if I do not find it with the Sunnah of Rasulallah p.b.u.h. If I do not find it in the Book of Allah, nor in the Sunnah of the Prophet, then I take the opinion of his companions; I would take from

²¹⁹ See al-Juwainiy, *al-Burhan*, Vol. 2.,p.869.

them an opinion that I want to, and I leave an opinion that I want. If the matter ended up with Ibrahim al-Nakh'iy, al-Sha'biy, Ibn Sirin, al-Hasan, and Sa'id al-Musayyab, then people do *ijtihād*, then I do *ijtihād* as they do.²²⁰

In regard with the Qur'an, the Hanafī believes that it is a name for a meaning only (*ism li al-ma'nā*). Therefore, Abū Ḥanīfah argued that the required reading of the Qur'an in a prayer can be in non-Arabic language. As for the Sunna, the Hanafī preferred only *the sunna muta-wātirah* (the continuous) or *mashhūrah* (the well-known) as the basis of their legal reasoning. *Ḥadith aḥad* (a single-transmitted), even if it is valid, can serve as a legal reasoning if narrated by a companion who is also known as a jurist, such as Abu Bakr, Umar, Uthman, and Ali. If not, a *ḥadith aḥad*, such as that from Abu Hurairah, must comply with *qiyās*.²²¹

The Ḥanafīte also argued that *qawl al-ṣahāby* can be used as a legal proposition if it has become a consensus among them, as long as no evidence is found in the Qur'an and the Sunnah.²²² Whereas, *qiyās* ranks the fourth in Hanafī's *ijtihād*. This method is chosen if the Qur'an and the Sunnah are silent, and there is *qawl al-ṣahāby* that reaches the level of consensus. The Ḥanafīte is also known as a jurist schools which is fond of using *istiḥsān* (preference) in *ijtihād*.

2. Mālikī's School

Although Imam Mālik bin Anas did not write anything on *uṣūl al-fiqh* (jurisprudence), his followers of the next era, al-Qadī 'Iyad, Ibn Rushd, Ibn Hamdun, and al-Qarafī established a methodology of *ijtihād*

²²⁰ See Muhammad al-Khudari Bek, *Tārīkh al-Tashrī' al-Islāmiy*, (Bairut: Dar al-Kutub al-'Ilmiyyah, 2008), p. 144.

²²¹ Muhammad Salam Madkur, *Manāhij al-Ijtihād fi al-Islām* (Kuwait: Jamī'ah al-Kuwayt, 1973), p. 599.

²²² Ibid.

which is as systematic as Shafī‘ī’s. Broadly speaking, Mālikī’s legal reasoning can be divided in two parts: the first is legal propositions which is also used by other jurist schools and the second is those exclusively belong to the Mālikī

a. Legal Propositions used also by other jurist schools

1) The Qur’an

Imām Mālik choose as a legal basis the Qur’anic verses that are *sharīh* (firm) and do not need a *ta’wīl* (allegorical interpretation). The Mālikī avoid *ta’wīl al-naṣṣ* unless there is no sharī reasoning that requires otherwise. As the Shafī‘ī’s school, the Mālikī also made *mafhūm muwāfaqah* (harmonious meaning) and *mafhūm mukhalafah* (divergent meaning) as a legal guidance.²²³

2) The Sunnah.

Unlike the Hanafī, the Mālikī accepts a *ḥadīth aḥad* (single transmitted hadiths) as a legal proposition as long as it does not contradict ‘*amal ahl al-Madīnah*’ (the practices of the people of Madinah). The Mālikī gives a priority to *ḥadīth aḥad* over *qiyās* as long as it is in accordance with ‘*amal ahl al-Madīnah*’.

3) *al-Ijmā’* (Consensus)

The Mālikī recognizes only the consensus of *ahl al-Madīnah* and overrides *ḥadīth aḥad* when it turns out to be contradicting with ‘*amal ahl al-Madīnah*’.²²⁴

4) *Qawl al-Ṣaḥābī* (Opinions of the Companions)

For the Mālikī, *qawl al-Ṣaḥābī* plays a strategic role in the excavation of Islamic law. One example is when Imam Mālik rejected *hajj*

²²³ Mustafa Ja’far, *al-Ijtihād ‘Inda al-Madzāhib al-Islāmiyyah*, p. 112.

²²⁴ *Ibid.*, p. 112.

tamattu' (performing *'umrah* during the *hajj* season) based on a hadith by Sa'ad bin Abi Waqas from 'Umar that prohibits it.²²⁵

The reason behind Mālik's *istidlāl with qawl al-Ṣaḥābī* is that the Companions sometimes hear directly from the Prophet, or from other companions, or from their extraordinary understanding of the Qur'anic verses.²²⁶

5) *Qiyās* (analogy)

One example of Mālikī's *ijtihād with qiyās* is the obligation to make up (*qaḍā'*) and pay *kafārat* (penance) for people who did not perform *qaḍā'* until the coming of the consecutive Ramaḍān, based on analogy with those who deliberately break fasting in Ramaḍān; in both cases, they have disrespected the month of Ramaḍān.²²⁷

6) *al-Istiṣḥāb* (Presumption of Continuity)

Al-Istiṣḥāb is defined as:

الظن ببقاء الحكم في الحال أو الاستقبال بناء على ثبوته في الماضي وعدم قيام الدليل على تغييره

An allegation which becomes a permanent law in the present or in the future based on the existing laws in the past and there is no a legal proposition that changes it.²²⁸

7) *al-Istiqrā'* (a inductive research)

8) *al-Istidlāl* (reasoning)

For the Mālikī, *al-istidlāl* refers to:

محاولة معرفة الدليل المفضي إلى الحكم الشرعي من جهة القواعد
لا من جهة الأدلة المنصوصة

²²⁵ Salim Madkur, *Manāhij al-Ijtihād*, p. 636.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid., pp. 638-639.

Efforts to determine legal propositions that can lead to the the sharī laws from the perspectives of legal maxims rather than the connotations of the texts.²²⁹

Al-Shawkani provides a definition of *al-istidlāl* as follows:

الدليل الذي ليس نصا ولا إجماعا ولا قياسا

It is a legal proposition which is not the *naṣṣ*, *ijmā'*, nor *qiyās*.²³⁰

9) *al-Istiḥsān* (juristic preference)

10) *Shar'u Man Qablanā* (the laws preceding Islam)

b. Distinctive Features of the Mālikī's Legal Reasoning

The distinctive features of the Mālikī's legal reasoning include *ahl al-Madīna* (the practices of the people of Madinah), *al-maṣlaḥah al-mursalah* (the unattested interests), *sadd al-dzarī'ah* (blocking the means), and *al-'urf* (tradition). As it has been explained before, for the Mālikīs the use of *ahl al-madīna* take precedence over a *ḥadīth aḥad*. In other words, *ḥadīth aḥad* is annulled when it contradicts the practice of the people of Madinah on the grounds that they knew better the behaviors of the Prophet.

In a further development, the scholars of Mālikī's school developed the legal arguments of *al-maṣlaḥah al-mursalah* in a more mature but "new" concept of *maqṣid al-sharī'ah*, especially after the publication of the *al-Muwāfaqāt fī Uṣul al-Sharī'ah* by Abu Ishaq al-Shāṭibi. *Maqāṣid al-sharī'ah*, which was originally a concept, has been developed further by scholars in the post-Shāṭibi, such as ibn 'Āshūr, 'Alal al Fasi, Nur al-Din Mukhtar, into an approach and a method of *ijtihād*, known later as *al-Ijtihād al-Maqāṣidī*. Whereas, *sadd al-dzarī'ah* and *al-'urf*, despite of specific requirements for their implementation, in fact can be integrated into the studies of *maṣlaḥah* or *maqāṣid al-sharī'ah*.

²²⁹ Mustāfa Ja'far, *al-Ijtihād*, p. 115.

²³⁰ *Ibid.*, p. 116.

3. The Shafi'ī School

Shafi'ī's legal reasoning includes the Qur'an, the Sunnah, *al-ijmā'*, *qawl al-Ṣaḥābī*, *al-Qiyās*, *al-Istiṣhāb*, and *al-'Urf*.²³¹ Like other jurist schools, the Qur'an and the Sunnah are the primary sources in the ijtihād of the Shafi'ī. For al-Shafi'ī, hadith *aḥad* is a valid legal proposition and should be used before *qiyās*. Al-Shafi'ī refused the Iraqī scholars' claim that the imposition of hadith *aḥad* should be narrated by famous men, and also Mālik's opinion that it should be part of '*amal al-Madīnah*'. As it is in the case of *Ḥadīth Aḥad*, al-Shafi'ī used *ijmā'* (consensus) as a legal proposition without any requirement that it should be following the people of Medina.²³² Al-Shafi'ī also established *qawl al-Ṣaḥābī* as a proposition legal proposition before moving forward to *qiyās*.

Al-Shāfi'ī was the first scholar who introduced and used a method *qiyās*. In his opinion, *qiyās* is used when there is a legal case on which the *naṣṣ* is silent.²³³ By his method of *qiyās*, al-Shafi'ī made a new breakthrough in *ijtihād*, i.e. a moderation (*wasatīyyah*) between the Mālikī's seemingly very rigid *ijtihād* and the Hanāfi's loose one. In some particular cases, al-Shafi'ī also used *al-istiṣhāb* and *al-'urf* in his ijtihād.

4. The Ḥanbali's School

Ibn al-Qayyim asserted that there five elements upon which Ahmad bin Hanbal built his *ijtihād*: the first is the literal meanings of the Qur'an and the Sunnah. When a legal status of a problem is found in the al-Qur'an and the Sunnah, then the guidance is what is written in these two sources, regardless of any others' opinion, including those of the great Companions. For example, Imam Ahmad disagreed with his friend Ali,

²³¹ Ibid., p. 138.

²³² Ibid., p. 139

²³³ Al-Shaf'ī, *al-Risālah*, p. 477

‘Ustman, Talhah, Ubai bin Ka’b who said that *junūb* (impure bath) is not obligatory for a married couple who have not yet reach orgasm in their intercourse. His refusal was based on a hadith narrated ‘Ā’ishah saying that the Prophet and she has been in such situation, the Prophet remained taking a bath.²³⁴

The second legal proposition is religious verdict (*fatwā*) of the Companions when there is no naṣṣ. For the Hanbalīs’ school, the *fatwās* of the Companions, on which there is no disagreement among them, serve as a legal proposition of law after the Qur’an and the Sunnah. However, they do not terminologize it as a consensus.²³⁵ When there is disagreement among the Companions on their *fatwās*, Imam Ahmad bin Hanbal chose the closest opinion to the Qur’an and the Sunnah.

Ahmad ibn Hanbal also used *Ḥadīth Mursal* (one which does not mention the Companions in the sanads) as the fourth legal reasoning. *Qiyās* is applied only no legal proposition is found in one of these four legal sources. Thus, for the Hanbalī, *qiyās* ranks at the fifth in the ordering of his legal reasoning.²³⁶

²³⁴ Mustafa Ja’far, *al-Ijtihād ‘Inda al-Madzāhib al-Islāmiyyah*, p. 152.

²³⁵ *Ibid.*, p. 153.

²³⁶ Muhammad Salam Madkur, *Manāhij al-Ijtihād*, p. 168.

MAQĀSHID AL-SHARĪ'AH-BASED FIQH: THE APPLICATION OF THE INTERCON- NECTED MAŞLAĤAHS TO MUSLIM WOMEN'S CLOTHING

From Dogmatic to Artistic *Hijāb*:
The Search for Meanings of *Hijāb*, *Jilbāb* and *Khimār*

The Qur'an and the Hadith, as the sources of Islamic law, do not explain in detail, how should the form of clothing for both men and women. But it is undeniable that in the Qur'an there are several terms which are allegedly presumed by scholars (*zannī al-dalālah*)²³⁷ as representing "Muslimah Clothing", which are: *hijāb*²³⁸, *jilbab*²³⁹ and *khimār*²⁴⁰. Therefore, the scholars give further details about the right fashion according to Islam, related to Islamic ways of clothing, such as the term of *aurat* (part of the body which may not be visible to others), some condi-

²³⁷Eventhough alQuran is believed as *qat'iy al-wurud* (reliable as authentically revealed from God) and came to us based on consensus but there are two possibilities to gain meanings; first *Qat'iy al-Wurud* which is when the text is percise and clear where there is no need for further interpretation (Ta'wil) Second, *Zanniy al-Dalalah*, is when the text is *interpretable*, and open to be understood from different perspectives, and each is valid to be claimed as the true understanding without replacing the other trues, as long as the interpretation uses the right method of interpretation.

²³⁸ The word *hijāb* is mentioned eight times in the Qur'an; they are surah al-A'raf, 46; al-Ahzab; 53, Shad, 32;., Fushshilat, 5, al-Shura, 51, al-Isra', 45; Maryam, 17, dan al-Muthaffifin, 15. From the eight uses of the word *Hijab*, there is only one use of *Hijab* in al-Ahzab that connects to the meaning of Muslimah clothing.

²³⁹ Q.S. al-Ahzab, 59

²⁴⁰ Q.S. al-Nur, 31

tions, and the functions of clothing, from symbol of piety, modesty and even resistance to the hegemony of Western culture.

In detail, the authors described the discussion as follows:

4.1 The Meaning of *Hijāb*, *Jilbāb*, and *Khimār*

a. *Hijāb*

Linguistically, *hijāb* is a synonym to *Sitr* (cap). *Hijāb* also means²⁴¹:

اسم ما احتجب به وكل ما حال بين شيئين حجاب

something that is used as a barrier, and everything that prevents two things to access visually called *hijāb*²⁴²

According to Abu al-Baqā` al-Kafawi (d. 1094 AH), *hijāb* is “everything that can cover and block to achieve something that is sought, such as caps, weakness (*al-‘ajz*), and sin”²⁴³

Hijāb with the above meaning contained in the Qur’an at:

1. Surah Shad (38), 32:

فَقَالَ إِنِّي أَحْبَبْتُ حُبَّ الْخَيْرِ عَنْ ذِكْرِ رَبِّي حَتَّى تَوَارَتْ بِالْحِجَابِ
٣٢

Then he said: Surely I preferred the good things to the remembrance of my Lord-- until the sun set and time for Asr prayer was over, (he said): drive them until they were hidden from his sight behind the veil²⁴⁴.

²⁴¹See, Ibn Manzhur, *Lisan al’Arab*, Vol. 1, (Bairūt: Dār al-Fikr, 1990), p. 298.

²⁴²Fuad al-Barazi, *Hijab al-Muslimah* (Riyad : Maktab Usul al-Salaf, 1995), p. 27

²⁴³See Abu al-Baqā` al-Kafawi, *al-Kulliyat: Mu’jam fi al-Mushalahat wa al-Furuq al-Lughawiyah*, (Bairut : Muassasat al-Risalah, 1993), 360. Weakness *al-‘ajz* becomes the burden (*hijab*) of somebody to gain what he wants , while a Sin can be a burden from some one to his/her God. See also Muhammad Abd. Al-‘Aziz ‘Amr, *al-Libas wa al-Zinah fi al-Shari’ah al-Islamiyyah*, (Bairut.: Muassasat al-Risalah, t.th), p. 117

²⁴⁴*Al-Qur’an dan Terjemahnya*.

2. Surah Maryam (19), 17:

فَاتَّخَذَتْ مِنْ دُونِهِمْ حِجَابًا فَأَرْسَلْنَا إِلَيْهَا رُوحَنَا فَتَمَثَّلَ لَهَا بَشَرًا سَوِيًّا
١٧

So she took a veil (to screen herself) from them; then We sent to her Our spirit, and there appeared to her a well-made man.²⁴⁵

3. Surah al-Ahzab (33), 53:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتَ النَّبِيِّ إِلَّا أَنْ يُؤْذَنَ لَكُمْ إِلَى طَعَامٍ غَيْرٍ نَظِيرٍ إِنَّهُ وَلَكِنْ إِذَا دُعِيتُمْ فَادْخُلُوا فَإِذَا طَعِمْتُمْ فَانْتَشِرُوا وَلَا مُسْتَسِيبِينَ لِحَدِيثٍ إِنَّ ذَلِكَ كَانَ يُؤْذِي النَّبِيَّ فَيَسْتَحْيِي مِنْكُمْ وَاللَّهُ لَا يَسْتَحْيِي مِنَ الْحَقِّ وَإِذَا سَأَلْتُمُوهُنَّ مَتَاعًا فَسَلُوهُنَّ مِنْ وَرَاءِ حِجَابٍ ذَلِكُمْ أَطْهَرُ لِقُلُوبِكُمْ وَقُلُوبِهِنَّ وَمَا كَانَ لَكُمْ أَنْ تُؤْذُوا رَسُولَ اللَّهِ وَلَا أَنْ تُنْكِحُوا زُجُوجَهُ مِنْ بَعْدِهِ أَبَدًا إِنَّ ذَلِكَ كَانَ عِنْدَ اللَّهِ عَظِيمًا ٥٣

Believers, enter not the houses of the Prophet without his permission, nor wait for a meal to be prepared; instead enter when you are invited to eat, and when you have had the meal, disperse. Do not linger in idle talk. That is hurtful to the Prophet but he does not express it out of shyness; but Allah is not ashamed of speaking out the Truth. And if you were to ask the wives of the Prophet for something, ask from behind a curtain. That is more apt for the cleanness of your hearts and theirs. It is not lawful for you to cause hurt to Allah's Messenger, nor to ever marry his wives after him. Surely that would be an enormous sin in Allah's sight.²⁴⁶

From the descriptiopn of language used by the word *hijāb* as mentioned above, shows that there is no text in the Qur'an that shows the meaning of the way of clothing as commonly understood by Muslims today. In the abovementioned text (*naşş*) would be more appropriate if the word *hijāb* is understood as curtain.

While the term *hijāb* is defined as²⁴⁷:

²⁴⁵Ibid.

²⁴⁶Ibid.

²⁴⁷ Al-Barāzī, *Hijāb*, p. 28.

لباس شرعي سايع تستر به المرأة ليمنع الرجال الأجانب من رؤية
شيئ من بدنها

The Sharī (Islamic) perfect outfit, made to cover the body of women; to block the view of men who are not mahram for her

From the definition of *ḥijāb* as mentioned above, it is understood that the term is not limited to a particular type of clothing. As long as the women's clothes can serve to cover the naked-ness and block the view of men who are not mahram for female aurat, it's proper to be called as Hijāb.

The Qur'anic verse that presumably has something to do with women's clothes is Surah al-Ahzab (33), 53. The verse is revealed in Medina. During that time, many people from the Islamic community came to the Prophet's home to ask for help and asking for something. His wives lived in the rooms surrounding by the assembly hall, which became the first mosque built by the prophet for Muslims.²⁴⁸

The historical background of the revelation of the verse (33:53) according to Anas bin Mālik (d. 93 AH) as follows:

That verse is related to the marriage process of the Prophet to Zaynab bint Jahsh. at that time, the Prophet prepare food for the guests invited. But after they eat, most of guests -in this story said three guests – were still sitting and chatting. The Prophet entered the room of 'Aisha, then came out, with the expectations of the guests who are still living, had gone, but they have not, then he came back into the rooms of his other wives, alternating in and out to the chambers of all His wives. Finally they came out after the Prophet was waiting for a long time. "Anas bin Mālik, who told this story said "So I submit it to the Prophet, then he entered. I would also

²⁴⁸See Fadwa El Juindi, *Jilbab*, p. 245.

enter but has fitted the veil between me and him, and then this verse revealed.²⁴⁹

In another narration that comes from al-Nasa'i, it is mentioned, that the wife of the Prophet, A'ishah, Said that 'Once when she was eating with the Prophet, 'Umar was passing over, then the Prophet invited Umar and he did eat, then -said 'Aisyah- his finger touched my finger, then 'Umar said, 'hus' or 'awwah', then came down the verse above.²⁵⁰

Another version also mentioned that the companion of the Prophet, Anas bin Mālik (d. 93 AH) stated that 'Umar ibn al-Khattab (d. 24 AH) proposed to the Prophet that, "O Messenger, good and bad people go into your house, shouldn't you ordered ummahāt al-mu'minīn (wives of the Prophet.) to put the veil?" Then this verse came down to put Hijāb.²⁵¹

The scholars differed in terms of the necessity of *hijāb*, is it specifically only for the wives of the Prophet, or also the duty of every muslimah? Relating to this issue, Quraish Shihab explained various scholarly opinions. Some scholars argue that the requirement to wear the *hijāb*, such as the content of the verse of *hijāb* above applies in general to all Muslimah. This opinion is followed by a scholar who sets the whole body of a woman is *aurat* (nakedness), not least the face and palms. The above opinion, based on the following reasons:

First, at Prophet time, not only the wives of the Prophet who wear *hijāb*, but also all other Muslimah.²⁵² Second, the prohibition to enter the Prophet's house without permission does not mean a ban on the speciality of the Prophet house, but also applies to all the houses. Third, the editorial paragraph:

²⁴⁹See M. Quraish Shihab, *Jilbab Pakaian Wanita Muslimah Pandangan Ulama Masa Lalu & Cendekiawan Kontemporer*. Print IV (Ciputat: Lentera Hati, 2009), p. 73

²⁵⁰Quraish Shihab, *Jilbab.*, p. 74

²⁵¹Ibid.

²⁵²Ibid, p. 76.

ذلكم أطهر لقلوبكم وقلوبهم

In this way, is purer for your hearts and their hearts

The demand to purify the heart as contained in the paragraph above is not restricted to the wives of the Prophet, but also applies to every Muslim²⁵³. As already alluded by the author, there are scholars who understand that the word *ḥijāb* has nothing to do with clothes. The word *ḥijāb* as the way of dressing for women and the clothes are new interpretation which never existed at the Prophet time. The call for piety of the command and also prohibition to enter a house without permission of its owner cannot be imposed by the verse of *ḥijāb*, because there are other verses that explicitly mention it, i.e surah al-Nur [24]: 27, the editorial of the verse is as follows:

*O believers! enter not houses other than your own, until you take permission and salute the residents there of. This is better for you, haply you may be heedful*²⁵⁴.0

Thus, the content of the *ḥijāb* verse, does not necessarily apply in general to any Muslim or Muslimah.²⁵⁵

One thing that needs to be stressed here, that various disagreements of the scholars regarding their understanding the *ḥijāb* verse is something that can't be denied, because each scholar has a perspective in the understanding of religious texts, including the text of *ḥijāb*, also the elements of "interest" outside the text, such as religious imagination (*al-mikhyal al-dīnī*), and memory (*al-dzakīrah*) of the interpreters who con-

²⁵³ Ibid. 'Atiyah Saqar mentioned other reasons other than what is mentioned by Quraih Shihab, that at the beginning of Surah al Ahzab the Prophet was told to increase piety and not to listen to the Kaafir and the Hyprocrites. All Muslims are called upon this verse since the Khitāb (the one who is spoken to) who is partial cannot be burden to be applied generally based on the Khitab, analog , and other. See 'Atiyah Saqar, *al-Ḥijāb Bayn al-Taṣḥī' wa al-Ijtimā'*, (Cairo: al-Dār al-Misriyyah li al-Kitāb, 1991), p. 176

²⁵⁴ *Al-Qur'an dan Terjemahnya*.

²⁵⁵ Quraish, *Jilbab.*, pp. 83-84

sciously or not, that can color the result of an interpretation.²⁵⁶ Thus, the different opinions about *ḥijāb* are more influenced by the logic of the interpreters rather than merely the firmness of the wording of the text itself.

b. *Jilbāb*

Linguistically, *jilbāb* means: *al-qamīs* (the robe, shirt), the plural form is *jalābīb*. Some interpret *jilbāb* as the:

ثوب أوسع من الخماردون الرداء تغطي به المرأة رأسها
وصدرها

Looser clothes, other than *Khimārs* (veil), not the scarf, which is used as head gear and cover of the chest of a woman²⁵⁷

Jilbāb is also interpreted as *al-izar* (a type of cloak), *al-khimārs* (veil), *al-rida'* (shawl), *al-miqna'ah* (veil), used by women to cover the head, back and chest²⁵⁸.

²⁵⁶According to Muhammad Arkoun, the logic ('aql) is one capacity amongst other capacities of mind. Arkoun prefers the usage of the word "mind" (*Fikr*) dari pada kata akal ('aql), because the word "Fikr/Mind has broader understanding. The Word *Fikr* has three unswers; the first is the 'aql itself which until now hgas more concerns from scholars since 'Aql has mnore works on Scientific and cultural products. Second: Imagination (*khayaal, L'imagination*). The Third is Memory (*dhakirah, La me'moire*). The two qualities cannot be separated from 'Aqal (Logic/Ratio) when it works. Because Aql needs memory as it needs imagination.

It cannot be separated from the last it needs imagination to keep the brain fresh the three capacities are compliment to each others as the effort to see wide spaces of human soul (*al-rūḥ al-bashariyah*), which is to search how each works and the mechanism of the soul at certain moment. For Example when the creator does his work, be it a philoshoper, or an artist See Muhammad Arkoun, *Al-Fikr al-Islamī Naqd wa Ijtihad*, Tarj. Hashim Salih (Bairut : Dar al-Saqi, 1998), p. 240.

²⁵⁷²⁵⁷Ibn Mandhur, *Lisan al-'Arab*, Vol 1, 272. See also Muhammad al-Thabaṭṭabai, *al-Mizan fi Tafsiṛ al-Qur`an*, vol 16 (Bairut : Matba'at Isma'ilyyan, t.th), p. 339.

²⁵⁸ibid

Ibn al-Sikkit (d. 244 AH) said that *jilbāb* is “something that can cover up women, or cover up clothing from the top”. Abu Hasan al-Biqā’i (d. 777 AH), quoting the opinion of al-Khalil (d. 767 AH), says: “every outfit outside and inside, which is used as the cap is *jilbāb*”²⁵⁹

By the term, the definition of *jilbāb* is:

الملاءة التي تلتحف بها المرأة فوق ثيابها تستر جميع بدنها
وملابسها

A long dress, which is used by women's coats, put on the shirt, and it can cover the entire body, and clothes.²⁶⁰

From the above definition, it is understood that *jilbāb* is a garment with the following criteria; first, the clothes worn over clothing which is commonly used; second, the clothes can cover the entire body of women.

In al-Qur’an, the command about wearing *jilbāb* contained in Surah al-Ahzab, 59. Quraish Shihab emphasized that before the revelation of the verse, how to dress between free women and slaves, were good or irreverent, almost can be said same. Therefore, nosy men often interfere²⁶¹. There fore to distinguish between the two social classes the verse

²⁵⁹ See Muhammad Shams al-Haq Abadi, *‘Awn al-Ma’bud: Sharh Sunan Abi Dawud*, Vol. 11, (Bairut : Dar al-Kutub al-‘Ilmiyyah, 1990), p. 106.

²⁶⁰ *Ibid.*, p. 33

²⁶¹ Quraish, *Jilbab*, p. 86. The almost similar explanation about the history behind the revelation can be taken from al-Barazi, *Hijab al-Muslimah*, 126. Also Abdul Halim Abu Shuqqah. He explains that clothes can be varied from place to place according to natural seasons and social class. There are clothes that are used only by elites, common people, and slaves. The Jahiliyyah society was like that. The elite men wore scraft and gamis, and also some jewelswhile ordinary people wore only *Izar*. This happened also to women, Free Women and elite wore Niqob together with Jilbab, while poor women and slaves wore minimum clothes and open their faces. Even open their heads, as it is the symbol of poverty . On the other hand Niqob is the symbol of wealth See Abdul Halim Abu Shuqqah, *Kebebasan Wanita*, Translation . As’ad Yasin, (Jakarta: Gema Insani Press, 1997), p. 299

revealed. According to Quraish the verse is speaking about the function of cloths as the social class indicators based on their profession.²⁶²

Some scholars understand that the word which is contained in Surah al-Ahzab, 59:

يَدْنِينَ عَلَيْهِنَ مِنْ جَلَابِيْبِهِنَّ

Let them stretch out their *jilbāb*

The verse hints that the entire female body, including the face and hands, is *aurat* (nakedness), and therefore should be covered except one; eyes. The opinion was expressed by al-Alusi (d. 1270 AH), Ibn Jarir (d. 311 AH), Ibn al-Mundhir (d. 277 AH). Based on the history of Muhammad bin Sirin (d. 110 AH)²⁶³. Umm Salamah narrated that when the above verse revealed, the women of the Anshar (Community of madinah who help the Muslim exiles “Muhajirin” from Macca) when they are out of the house, they look like bunch of crows perched on their head, and they wore black²⁶⁴.

c. *Khimār*

Linguistically, *khimār* is a synonym of the word *nashīf* (headgear, hoods). *Khimār* word formed from the word *khammara* which means covering. Everything that can be used as a lid called *khimār*. *Khimār*

²⁶²Ibid, p. 52

²⁶³Ibid, p. 106

²⁶⁴ Al-Baraz, *Hijab*, p. 108. This Hadith is the the preposition of Muhammad Salih bin Uthaymin when he said that all parts of women body is Aurat and shall be covered, including their facebut theie eyes. He even said that if they can see without their eyes, they must cover their eyes too . so the permission to open their eyes is as a matter of emergent (*dharurah*). See “Risalah Jilbab” dalam *Jilbab dan Cadar*, Translaltion Abu Said Al Anshori (Jakarta: Pedoman Ilmu Jaya, 1994), p. 84.

²⁶⁵ can also mean ‘*imamah* (turban, headgear males), as contained in the text of hadith Umm Salamah:

انه كان يمسح الخف والخمار

The Prophet wiped Khuff (shoes) and Khimār ('*imamah*, a turban)²⁶⁶

In short, definition of *khimār* is²⁶⁷:

ما تغطي به المرأة رأسها ووجهها تستر به عن أعين الرجال

“Something that is used by women as headgear and and to cover their face from the male gaz.”

Based on the explanation of the definition of *ḥijāb*, *jilbāb* and *khimār* as mentioned above, the authors noticed that from the three terms, basically, there is a point in common. That is, each means closure (*sitr*), although there were words which have more general meaning than other. *ḥijāb* and *jilbāb* mean clothing that covers the entire female body. The only difference between the two terms lies in its use, *ḥijāb* can be used for garments that cover the entire body of a woman, both underwear and outer clothing; *jilbāb* is outerwear that especially covers the whole body; and *khimār* is clothes that can cover the head, face and neck.

Some people claimed that the three types of clothes mentioned above are Islamic dresses. In my opinion, this claim is presumably because the three terms are contained in the Qur'an; moreover, each of them is complementary to each other in covering the 'aurat of Muslim women as guided by Islam. Therefore, any women's clothes that can cover the nakedness of women, as well as not to provoke the sexual desire of males can be called *ḥijāb* or *jilbāb*.

²⁶⁵ Ahmad al-Zawī, *Tartīb al-Qāmūs al-Muḥīṭ*, Vol. 2, (Bairūt: Dār al-Kutub al-‘Ilmyyah, 1996), p. 106. Murtaḍā al-Zubaydī, *Tāj al-‘Arūs*, vol 6 (Bairūt: Dār al-Fikr, 194), p. 366.

²⁶⁶ Ibid, p. 36

²⁶⁷ Al-Barāzī, *Hijab*, p. 37. Compare with Ibrahim al-Abyari, *al-Mawsū‘ah al-Qur’āniyah*, Vol. 12, (T.t : Muassasat Sajl al-‘Arab, 1984), p. 178

4.2 The History of Muslim Women's Clothing

It was long before the presence of Islam that *jilbāb* became a culture, which is rooted in some Arabian nations. Fadwa El-Guindi wrote that based on the data of Assyrian laws, dated back in the year 1450-1250 BC, there was evidence on the relationship between *jilbāb* and social stratification. The Assyrian laws mentioned that there was a qualification of women who were obliged and who were prohibited to wear *jilbāb*. The women who were required to wear *jilbāb* were the women of nobility (the elites), or female slaves when accompanying the noble women. This law clearly prohibited slave girls to wear *jilbāb*, including unmarried prostitutes.²⁶⁸

Slaves who were proved to be wearing *jilbāb* would be punished by severe sanctions, i.e. being whipped/slashed 50 (fifty times), their ears being cut, and their heads being doused with a pitch (*qatran*). This rule also applied to men who have slave women wearing *jilbāb* and did not report it.²⁶⁹ Assyrians also mentioned in their laws that a man who wants to make a slave woman as his wife has to invite five or six of his friends and put a *jilbāb* on his slave in front of his friends by saying: "This is my wife".²⁷⁰

The women in the Ancient Greek in Athens were also obliged to wear *jilbāb* and to be staying inside the house; even, married couples should not see each other except during the wedding night (*laylat al-zawāj*).²⁷¹ They are forbidden to leave the house unless there was something very important, like visiting a close family member, the sick and

²⁶⁸El-Guindi, *jilbab*, p. 44. Compare with al-Barazi, *Hijab*, p. 41. Thus, *jilbab* gives the impression of respect for the users.

²⁶⁹Athiyyah Saqar, *al-Hijab Bayn al-Tashri' wa al-Ijtima'* (Kairo : al-Dar al-Misriyyah li al-Kitab, 1991), p. 27.

²⁷⁰Ibid.

²⁷¹Ibid., p. 30.. See Mubashshir al-Tirazi al-Husayni, *al-Mar'ah wa Huququha fi al-Islam*, (Bairut: Dar al-Kutub al-'Ilmiyyah, 1997), p. 8, and Fida 'Abd al-Razzaq al-Qasir, *al-Mar'ah al-Muslimah Bayn al-Shari'ah al-Islamiyyah wa al-Adalil al-Gharbiyyah*, (Bairut: Muassasat al-Rayyan, 1999), p. 14.

so on. When they had to leave the house, they must wear a thick *jilbāb* that covers their face except their eyes.²⁷²

The Ancient Greek society treated women as merchandise, not only for their parents as the “owners”, but also for her husband. They believed that when an accident happened or their wish did not come true, all was because of the wrath of their gods. Therefore, once they could escape from disasters, they presented women as sacrifice, and made mediation (*waṣīlah*) with them²⁷³

Unlike the classical Greek, the ancient Egyptian society did not require women to wear *jilbāb* when doing social activities such as in the fields and markets, if the circumstances are secured and safe. However, when situations were unsafe, they were wearing *jilbāb* in order to keep themselves safe from any disruptions. On the other hand, the ancient Egyptian society gave very heavy sanctions for adultery, i.e. cutting child’s reproductive organs or genitals for men, and cutting noses for women.²⁷⁴

Abrahamic religions before Islam, such as Judaism and Christianity, are also very concerned about the use of the *ḥijāb*. In the Bible, the Book of Genesis, verse 65: 24 says:²⁷⁵

“*He said to the servant: “Who is the man who walks in the park towards us? The servant replied: “He is my master,” then Maria took the hood and hung up on her.”*”

Meanwhile, *jilbāb* is not known among the Arab women in *Jahiliyyah* (pre-Islamic) era. In daily life, they were wearing a shirt (*al-burd*)

²⁷²

²⁷³ Ibid.

²⁷⁴ Ibid. compare with al-Barzi, *Hijab*, p. 52.; Wel Durant, *Qissat al-Hadarah*, trans. Zaki Najib Mahmud, Vol .1, (Bairut : Dar al-Jil, t.th.), p. 103.

²⁷⁵ Quoted from Abdur Rasul al-Ghifari, *Wanita Islam*, (T.t : Pustaka Hidayat, t.t), 30. In the Book published by Indonesian Bible Society, the text above reads: “He said to the servant: “Who is that man walking in the field toward us? “ The servant replied: “He is my master. “So takes her veil, and she veiling “. See *Alkitab*, (Jakarta: Lembaga Alkitab Indonesia, 2009), p. 28.

whose side is left open (without sewing), and a thin clothes that does not cover the body. This tradition was prevalent also among the Arab women in the time of Prophet Muhammad. As narrated by Imam Muslim in his *Şahīh*, there was once a woman²⁷⁶ doing *tawāf* (circleing the Ka'bah) while being naked and said:

اليوم يبدو بعضه او كله # فما بدا منه فلا أحله

Today some or all are visible # Things which are seen are the things I don't consider lawful

Then the verse 31 of Surah al-A'raf was revealed: ²⁷⁷

وَالَّذِينَ كَذَّبُوا بِآيَاتِنَا وَاسْتَكْبَرُوا عَنْهَا أُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا
خَالِدُونَ ٣٦

'O children of Adam! Take your best adornment whenever you go to mosque and eat and drink and do not cross the limit. Undoubtedly, the persons crossing the limit would not be liked by Him.²⁷⁸

Imam Zarkasyi (d. 794 AH) commented on pre-Islamic women²⁷⁹:

²⁷⁶According to al-Suhayli, the woman is Daba'ah bint 'Amir bin Sas'ah. See 'Atiyah, *al-Hijab*, p. 36.

²⁷⁷See Abu al-Hasan al-Wahidi, *Asbaal-Nuzul*, (Bairūt: Dār al-Fikr, 1988), p. 151. Based on the word of God Surah al-Ahzab, 33: ولا ترحن تبرج الجاهلية الأولى “do not be ornate and behave like the people of the first jahiliyyah. The scholars' classify times of Jahiliyyah into two parts, namely *al-Jahiliyyah al-ula* and *al-Jahiliyyah al-tsaniyah*. The time limits al-jahiliyyah al-ula, as follows: 1) Phase between Adam and Nuh, a history of al-Hakim bin Uyaynah; 2) Phase between Nuh and Idris, a history of Ibn Abbas; 3) Phase between Nuh and Ibrahim, a history of al-Kalbi; 4) Phase Musa and Isa; 5), Phase between Daud and Sulaiman, narrated by Abu al-'Aliyah; 6), the phase between Isa and Muhammad, a history of al-Sha'bi. From the history it can be concluded that al-Jahiliyyah al-Ula is the period before the appointment of the Prophet Muhammad. While al-Jahiliyyah al-Tsaniyah are evils that occur after the period afterward, along with the coming of Prophet Muhammad. See al-Thabarisi, *Majma' al-Bayan fi Tafsir al-Qur'an*, Vol. 7, p. 558. See Isma'il Haqqi al-Barusi, *Tafsir Ruh al-Bayan*, Vol. 7, (Bairūt : Dar al-Fikr, t.th.), p. 170.

²⁷⁸*Al-Qur'an and Terjemahnya*, p. 225.

²⁷⁹ Nong Darol Mahmada, *Kritik Atas Jilbab*, <http://islamlib.com/id/artikel/kritik-atas-jilbab>. downloaded at August 20th 2011.

*They were wearing clothes that expose their necks of her chest, so the veins of their necks and limbs as well as the surrounding areas become visible. They also poked their jilbāb towards their backs, so that their faces remain open. That is why they are then immediately ordered to lend their jilbābs in order to close the front side of their chests.*²⁸⁰

Hindun bint ‘Utbah (d. 14 AH) once was wearing clothes that show her chest when she was calling the infidels of Mecca to fight against the Muslims during the war of *Uhud*. This is usually done by the pre-Islamic women in lighting up the fight spirits.²⁸¹

Under these circumstances, Islam came and provided guidance on how humans should dress and which part of the body that is considered *aurat* (nakedness) and, therefore, must be covered and kept away from the views of those who do not have rights to look at. The provisions on dressing associated with *jilbāb* are well described in Surah al-Ahzab, 59. While the ban to show *zīnah* (jewelry), which later referred by scholars as female *aurat* is mentioned in Surah al-Nur, 31.

From the above description, we can see that *jilbāb* which was originally a Mesopotamian-Persian traditions and the segregation of men and women which was Hellenistic-Byzantine tradition, were actually break into the boundaries of geo-culture, not excluding the northern and eastern part of the Arabian Peninsula, such as Damascus and Baghdad,

²⁸⁰Ibid.

²⁸¹ Ibid. In addition to the conditional factors such as those described above, these two verses also fell more political, discriminatory and elitist. Surat Al-Ahzab, in which there are verses of hijab, fell after the battle of the Trench (5 AH). While the letter of An-Nur down after al-Ahzab and its condition when it was vulnerable. Is political because the verses above down to answer the attacks launched hypocrites, in this case Abdullah ibn Ubay and their allies, against Muslims. The attack "put on" the Muslim women, by slandering the prophet's wives, especially Aisha. Siti Aisyah events on this, called al-ifk events. At the time, these events are horrendous so to end it, must be confirmed by the revelation of the five verses that QS. An-Nur (23), 11-16. See Ibid.

which were regarded as the capital of Islamic politics during the Mu’awiya and Abbasid Dynasty.

The Institutionalization of *jilbāb* and the segregation of women had crystallized when the Islamic world has the link to Hellenism and Persian civilization in those two important cities. By this period, *jilbāb* that was the choice of clothes, got legal certainty (being institutionalized), as mandatory attire for Muslim women.²⁸²

4.3 Women’s *Aurat*

The word *aurat* is derived from the Arabic word that literally means a gap (*al-‘ayb*), deficiency (*al-naqs*), something shameful, or something deemed bad (*al-shay’ al-mustaqbah*) of the members of the human body and something that brings shame when viewed.²⁸³ Ibn al-Manzur (d. 711 AH) said that *aurat* is:²⁸⁴

العورة كل ما يستحيا منه إذا ظهر وهي من الرجل ما بين السرة
والركبة ومن المرأة الحرة جميع جسدها إلا الوجه واليدين إلى
الكوعين

Nakedness is anything that is considered a shame if visible. Nakedness of man is the section between the navel and the knees, while the nakedness of the free woman is her entire body apart from the face and two hands until two wrists.

The word “*aurat*” is mentioned in the Qur’an four times, two are in the form of a single (*mufrad*) and the other two are in the plural form (*jamā’*).²⁸⁵ The meaning of the word ‘*aurat*, in the Qur’an is as follows:

²⁸² Nasaruddin Umar, *Fikih wanita Untuk Semua*, (Jakarta: Serambi Ilmu semesta, 2010), p. 26.

²⁸³ Majd al-Din al-Fayruz Abadi, *al-Qamūs al-Muḥī*, (t.t: Mustafa al-Ḥalibi, 1925),

²⁸⁴ See Ibn al-Manzur, *Lisan al-‘Arab*, Vol. 4, p. 612.

²⁸⁵ Husein Muhammad, *Fiqh Perempuan Refleksi Kiai atas Wacana Agama dan Gender*, Print 5 (Yogyakarta: LKiS, 2009), p. 67. ‘Athiyah Saqar wrote that everything considered embarrassing, such as *qubūl* (penis) and rectum (parts

وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَهُنَّ طَوَّفُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَى بَعْضٍ كَذَلِكَ
يُبَيِّنُ اللَّهُ لَكُمُ الْآيَاتِ وَاللَّهُ عَلِيمٌ حَكِيمٌ ٥٨

'O believers; let those servants your hands own and those of you who have not reached puberty, ask leave of you three times-before the morning prayer, and when you put off your clothes at the noon and after the nightprayer. These are three times of privacy for you. After these, three times there is no sin on you or on them. They come and go about one to the other. Thus, Allah narrates His signs for you. And Allah is Knowing, Wise.²⁸⁸

A discussion of *aurat* in the books of fiqh (Islamic jurisprudence) is related to the parts of the human body that must be covered with certain conditions because leaving them open in public is bad, embarrassing and stimulating sexual arousal.²⁸⁹ Thus, the meaning of “*aurat*” in fiqh is the same as that in Surah al-Nur [24], 31 and 58.

Scholars set different limits of *aurat* for men and women, whether when performing *shalat* (ritual prayer) or when *non-mahram* (marriageable) people are present. Ibn Rushd (d. 595 AH) and al-Shawkani (d. 1250 AH) said that there are three opinions about the limits of *aurat* for men: First, ‘*aurat* for men is between the center and his knees. This opinion is hold by al-Shāfi’ī (d. 204 AH), Mālik (w.179 H.) and Abū Ḥanīfa (d. 150 AH);

Second, ‘*aurat* for men is the genitals (*qubūl*), the anus [rectum] (*dubūr*), and the thighs; Third, as noted by al-Zahiri (d. 270 AH), Ibn Jarīr (d. 311 AH), one transmission from Mālik (d. 179 AH), and Ibn Ḥanbal (d. 241 AH), ‘*aurat* for men includes the penis and the rectum only, the rest is not.’²⁹⁰

²⁸⁸Ibid., p. 554.

²⁸⁹ See Syarif al-Din al-Nawawī, *al-Majmu’ Sharh al-Muhadzdzab*, Vol. 3, (Jeddah: Maktabah al-Irshad, t.th.), p. 168.

²⁹⁰ See Ibn Rush, *Bidayah al-Mujtahid*, Vol. 1, (Mesir: Mustafa Babi al-Halibi li al-Nashr, 1960), p. 83, and al-Shawkani, *Nayl al-Awṭar*, Vol. 2, (Bairut: Dar al-Jil, 1973), 49. see, Husein, *Fiqh Perempuan*, p. 69.

Similarly, Muslim scholars also disagree about the limits of *aurat* for women. This disagreement is clearer in their discussions on the different limits of *aurat* for free (*hurrah*) and slave (*amāt*) women, although there are no authoritative texts which explicitly mention the case.

The majority of the Shafi'ite, Mālikīs, and Ḥanafīs argued that the nakedness of the free woman (*hurrah*) are all parts of the body except the face and the palms (the upper, outer, bottom, and inside).²⁹¹ The legal basis for the scholars in determining the *aurat* for women is Surah al-Nur [24], 31. The verse explicitly explained that believing women should not show beauty and ornaments (*zīnah*), except what (ordinarily) appear thereof.²⁹² However, some scholars disagree on the necessity for women to cover the face.²⁹³ The debate arises due to their different interpretations on the word *الاما ظهر منها* ('except what ordinarily appear thereof') as mentioned in Surah al-Nur, 31 above.

²⁹¹ See Muhammad 'Ali Al-Ṣabuni, *Rawā'i' al-Bayan Tafsiṣ Ayat al-Ahkam*, (T.t.: Dar Ihya' al-Turāth al-'Arabi, t.th.), p. 383. al-Sharbini, *Mughni al-Muhtaj*, Vol. 1, (Bairut: Dar Ihya' al-Turath al-'Arabi, t.th.), p. 185, Ali bin Abi Bakr al-Marghinani, *al-Hidayah Sharh al-Bidayah*, Vol. 1, (Bairut: al-Maktabah al-Islamiyyah, t.th.), pp. 43-44, and al-Siwasi, *Sharh Fath al-Qadir*, Vol. 1, (Bairut: Dar al-Fikr, t.th.), p. 259.

²⁹² Based on the paragraph above, those who may show *zinah* (beauty and decoration) in the presence of each other are: 1). husband; 2). father; 3). the father of the husband; 4). child; 5). children of the husband; 6). brother ; 7). son of the brother; 8). children of sisters; 9). Muslim women (*Muslimah*); 10). the slaves that they possess; 11). Male servants who have no desire (for women); 12). Children who do not understand about the *aurat* of women.

²⁹³ Ibn Al-Mukhtar al-Shinqiti, based on some transmission from the Prophet's Companions, said that in general there are three opinions about *zinah zahirah*: First, something that women make as ornaments and seeing them does not mean viewing the part of their body; clothing (*thiyā*) is considered *zinah* in this category. Second, female ornaments where seeing them means seeing parts of women's body, such as eye shadow (*kuhl*) and ring (*khatam*); Third, some parts of women's body, i.e. face and two hands. See Ibn al-Mukhtar al-Shinqiti, *Adwa' al-Bayan fi Idah al-Qur'an bi al-Qur'an*, Vol. 5, (Bairut : Dar al-Fikr, t.th.), p. 515. See Abū al-Ḥasan al-Mawardi, *al-Nukat wa al-'Uyun*, Vol. 4, (Bairut : Dar al-Kutub al-'Ilmiyyah, t.th.), pp. 91-92.

The Ḥanafites and Mālikīs argued that face and two hands of women are not the *aurat* (nakedness), and therefore can be shown.²⁹⁴ They refer to the opinion of some of the Prophet's companions: Ibn Abbas (d. 68 AH) and the transmission of Tabi'in Sa'id bin Jubair (d. 95 AH), 'Atak (d. 114 AH), 'Ikrimah (d. 105 AH), al-Dahhak (d. 105 AH), that the *zinah zahirah* (apparent adornment) include the face (*al-wajh*) and the two hands (*al-kaffān*).²⁹⁵

Based on this allegorical interpretation (*ta'wīl*), as Ibn Jarir (d. 311 AH) said, the above verse implies "they do not reveal their ornaments except their urgent limbs that should be open, i.e. the face and two hands".²⁹⁶ A Hadith narrated by Bukhari supports this interpretation:

إن امرأة جاءت إلى رسول الله صلى الله عليه وسلم فقالت يا رسول الله جئت لأهب لك نفسي فنظر إليها رسول الله صلى الله عليه وسلم فصعد النظر إليها وصوبه ثم طأطأ رسول الله صلى الله عليه وسلم رأسه فلما رأت المرأة أنه لم يقض فيها شيئاً جلست

It is true that a woman came to the Prophet, and said: "O Allah's Prophet, I have come to give myself to you, then the Prophet looked at her, raising the view and directing (the position of) view, then the Prophet bowed his head. When the women knew that the Prophet did not want her, then she sat down"²⁹⁷

²⁹⁴ Muhammad 'Ali al-Sabuni, *Rawa'i al-Bayan Tafsir Ayat al-Qur'an*, Vol. 2, (Jakarta: Berkah Utama, t.t), dan al-Barazi, *Hijab*, 143. and al-Sayyid al-Sabiq, *Fiqh al-Sunah*, Vol. 1, (Bairut: Dar al-Fikr, 1983), p. 108.

²⁹⁵ See Ibn Jarir, *Tafsiral-Tabari*, Vol. 9, 303-305. see Yusuf al-Qardawi, *al-Niqab li al-Mar'ah* (Kairo: Maktabah Wahbah, 1996), pp. 30-31; Jalal al-Din al-Suyuti, *al-Durr al-Manthur*, Vol. 5, (Bairut: Dar al-Kutub al-'Ilmiyyah, t.th.), p. 31; Ibn 'Atiyah al-Andalusi, *al-Muharrar al Wajiz*, Vol. 4, (Bairut: Dar al-Kutub al-Ilmiyyah, t.th.), p. 31; Ibn Rusyd, *Bidayat al-Mujtahid*, Vol. 2, (Bairut: Dar al-Kutub al-Ilmiyyah, t.th.), 185; al-Khattab al-Jalil al-Ru'ayni, *Mawahib al-Jalil*, Vol. 2, (Bairut: Dar al-Kutub al-Ilmiyyah, t.th.), p. 181.

²⁹⁶ Ibn Jarir, *Tafsir*, Ibid.

²⁹⁷ See Muhammad bin Isma'il al-Bukhari, *Sahih al-Bukhari*, Vol. 9, (Bairut: Dar al-Fikr, 1991), p. 94.

They also argued that the Prophet would not have raised and directed his gaze at the woman should she has not made her face visible.²⁹⁸

It should also be emphasized that although for the Ḥanafite and Mālikis the face and hands are not ‘*aurat*, lustful look at them are considered unlawful.²⁹⁹ This is the reason that in order to avoid a look that turns into lust, Allah gives a command of holding eyes (*ghadd al-bashar*) for both men and women, prior to His call to avoiding fornication (*hiḥf al-farj*) and concealing our hidden beauty (*zīnah bīṭinah*).

Abū Yūsuf (d. 182 AH), a member of the Ḥanafī’s school, tolerates almost half of the legs and arms of a free woman because these are not *aurat* for them.³⁰⁰ On the contrary, the Ḥanbali argued that a free woman should cover all parts of their body, including the face and hands. However, for the sake of *shalat* (ritual prayer), women are permitted to show off their face and palms.³⁰¹

The followers of the Ḥanbali’s school and the majority of the Shāfi’īte, asserted that women’s face and two palms are ‘*aurat* and, therefore, should be covered.³⁰² This opinion is based on a narration from Ibn Mas’ud (d. 32 AH), Ibn al-Jawzi (d. 597 AH), which said that the word *إلا ما ظهر منها* (that which normally appears) refers to scarves (*al-rida’*), clothing (*al-thiyāb*), and limbs that are visible under the clothes (*atrāf al-a’da’*). Thus, the face and two palms must be covered.

²⁹⁸Al-Qardawi, *al-Niqab*, p. 38.

²⁹⁹see Muhammad Sa’id Ramadan al-Buti, *Fiqh al-Sirah*, (Bairut: Dar al-Fikr, t.th.), p. 231.

³⁰⁰Husein, *Fiqh Perempuan*, p. 70.

³⁰¹Ibid. see, al-Kaludzani, *al-Hidayah*, Vol. I, Cetakan 1, (T.t.: Matabi’ al-Qasim, t.th.), p. 28.

³⁰²Al-Zuhayli, *al-Fiqh al-Islami*, Vol 1, p. 755. See Abd al-Rahman al-Jaziri, *al-Fiqh ‘Ala al-Madhahib al-Arba’ah*, Vol. 1, (Istanbul : Waqf al-Iklas, 1990), p. 191. The obligation to cover the face and two hands applies in all situations, i.e. whether or not the condition is free from slander (*fitnah*). See Abu Zakariya al-Nawawi, *Rawḍat al-Talibin*, Vol. 1, (Bairut : Dar al-Kutub al-‘Ilmyyah, 1992), p. 389; Muhammad Nawawi al-Bantani, *Nihayat al-Zayn* (T.t.: Sarahya’ al-Kutub al-‘Arabiyyah, t.th.), p. 47. See Ibn Jarir, *Tafsir*, 304. see Ibn ‘Atiyah al-Andalus, *al-Muḥarrar l-Wajiz*, Vol. 4, (Bairut : Dar al-Kutub al-Ilmiyyah, t.th.), p. 31.

In addition, the Ḥanbalī based their opinions on Surah al-Ahzab, 59. The order to let down upon themselves their garments (*idna' al-jalābib*) means the obligation to cover all parts of the women's body, including the palms of the hands. This is in line with the transmission of 'Ubaydah al-Salamani saying that the wives of the believers (at the time of the Prophet) let down upon themselves their *jilbāb* so that all parts of their body are covered except their eyes.³⁰³

From above description, we can understand that the disagreement among the Muslim scholars on the 'aurat of women lies only on the face and two hands.³⁰⁴ As for the other parts of woman's body, they agreed that they are *aurat* that should not be visible except in the presence of certain people mentioned in Surah al-Nur, 31.

The above provision on the 'aurat for free woman applies in the presence of non-*mahram* (marriagable) men.³⁰⁵ The 'aurat in the presence of the same sex (both female), or in the presence of a *mahram* man, is the same as the aurat for a man, namely between the center and the knees.³⁰⁶

The dispute also occurs on the boundaries of the 'aurat of slave women (*ʿamat*). Al-Nawawi (d. 676 AH) mentioned three interpretations on the 'aurat for slave women³⁰⁷: First, parts of the body between the center and the knees. The majority of Shāfiʿī belongs to this opinion;

³⁰³Ibn Taymiyyah, *Majmu' al-Fatawa*, Vol. 15, (Bairut : Muassasat al-Risalah, 1987), p. 371

³⁰⁴It is important to note that if showing off the face and palms can really cause sexual arousal for those who look at it, all Muslim scholars agreed on its prohibition. Similarly, the scholars agreed that show off face and the palm is permitted for women if it is for the sake of science, medical treatment, witness or other emergencies. See Fida Abd al-Razzaq al-Qasir, *al-Mar'ah al-Muslimah bayn al-Shari'ah al-Islamiyyah wa al-Adalil al-Gharbiyyah*, (Bairut: Muassasat al-Rayyan, 1999), p. 128.

³⁰⁵Those who are permitted to reveal 'aurat in front of him is detailed in Surah al-Nur [24], 31, whom Shahrur Muhammad calls *maḥārim-al-zīnah* (those who may expose beauty and ornaments). See Muhammad Shahrur, *Naḥwa Uşūl Jadīdah*, p. 365.

³⁰⁶'Atiyah Şaqar, *al-Hijāb Bayn al-Tashrī' wa al-Ijtimā'*, pp. 57-62.

³⁰⁷Husein, *Fiqh Perempuan*, p. 72.

Second, it is the same as the *aurat* for free woman (*ḥurrah*), except the head; Third, other parts of the body that are needed to be visible for work, i.e. those except the head, neck, arms and hands.

4.4 Scholars on the Requirements of Islamic Clothing

Islam does not specify the form and model of clothing, but specifies the criteria for all forms and models of clothing prevailing among societies whose culture and civilization are different from one another. This is because the Islamic law recognizes the existence of the ‘urf (customs) as long as it does not contradict Islamic law.

The criteria for Muslim women’s clothing are:

- 1) It should cover all the parts of her body classified as ‘*aurat*.³⁰⁸
- 2) It should be thick and opaque,³⁰⁹ based on the Hadith:³¹⁰

إن أسماء بنت أبي بكر دخلت على رسول الله صلى الله عليه وسلم
وعليها ثياب رفاق فأعرض عنها رسول الله صلى الله عليه وسلم
وقال يا أسماء إن المرأة إذا بلغت المحيض لم تصلح أن يرى منها
إلا هذا وأشار إلى وجهه وكفيه

That Asma 'bint Abi Bakr entered the house of the Apostle to wear thin, the Prophet said:" O Asma', in fact, women who had menstruation (baligh) are not allowed

³⁰⁸Atiyyah, *al-Ḥijāb*, p. 94, Fidā Abd. al-Razzāq, *al-Mar'ah al-Muslimah*, p. 129. As explained earlier, the ‘*aurat* for free women is distinguished from slave women. The ‘*aurat* of slave women is the same as that of men, which is part of the body between the center and the knees. The *aurat* of free woman, according to the majority Shafī’ī, Mālikī, and Hanafī are all parts of the body other than the face and the palms of hands.

³⁰⁹Atiyyah, *al-Ḥijāb*, Ibid. See al-Nawāwī, *Rawḍat al Ṭālibīn*, Ibid., Fidā Abd al-Razzāq, *al-Mar'ah al-Muslimah*, p. 129.

³¹⁰ See Shams al-Haq Abadi, *Sharḥ Sunan Abī Dāwūd*, Vol. 11, p. 109. The hadith, as admitted by Abu Daud, is classified as *mursal* because Khalid bin Duraik who is mentioning the Prophet’s wife in the hadith, ‘A’ishah, does not know ‘Aisha personally, not even he lives in the same period as her. Many scholars considered that the *mursal* hadith can not be used as a legal proof. See Quraish, *Jilbab*, pp. 129-130, dan Subhi Ṣālih, ‘*Ulūm al-Hadīth wa Muṣṭalahuhū*, (Bairūt: Dār al-Malāyin, 1977), p. 166.

to be seen of her except this and this, with hints face and palms hand".

also based on the Hadith narrated by Muslim:

صنفان من أهل النار لم أرهما قوم معهم سياط كأذناب البقر يضربون بها الناس ونساء كاسيات عاريات مميلات مائلات رؤوسهن كأسنمة البخت المائلة لا يدخلن الجنة ولا يجدن ريحها وإن ريحها ليوجد من مسيرة كذا وكذا

There are two groups of experts hell who punished before Allah have never seen before, (1) people who carry a whip-like tail cattle used to hit people (he was a despotic ruler), (2) women who dressed but naked, which is always immoral and attract others to commit adultery, her hair of a camel's hump, they will not go to heaven, it will not even smell them, although the smell of paradise was wafted as far as a very long journey.³¹¹

It can be understood from the Hadith that the main purpose of clothing is to cover the 'aurat in order to avoid temptation (*fitnah*). Thin and transparent clothes will provoke curiosity and slander both for the gazer and the wearer.

3) It should be loose and untight³¹²

Among the objectives of *hijāb* is to avoid temptation (*fitnah*) from men. This is unlikely to happen when the clothing is not tight or showing off the curves of the body. Thus, the *hijāb* should be loose and not tight. Prophet said:

كساني رسول الله صلى الله عليه وسلم قبطية كثيفة مما أهداها له دحية الكلبي فكسوتها امرأتي فقال ما لك لم تلبس القبطية قلت كسوتها امراتي فقال لى مرها فلتجعل تحتها غلالة فأني أخاف أن تصف حجم عظامها

The Messenger dressing qubtiyah (clothes made of hemp-made thin Egypt) thick to me that the clothes al-

³¹¹Muslim, *Sahih Muslim*, Vol 14, (Bairüt : Dar al-Fikr, 1981), p. 110

³¹²Atiyyah, *al-Hijab*, p. 96.

Kalbi awarded to him. And then I put the clothes on my wife. Prophet asked me: “Why are you not wearing Qubtiyyah?” I replied: I put the shirt on my wife. Then the Prophet said: “Command her to wear clothes inside, behind Qubtiyyah, because I’m afraid the clothes can still describe the shape of the bones.”³¹³

- 4) The model of the clothes should not invite the passionate views of men.³¹⁴ Clothes that invite lust is contradictory to the purpose of the call to cover the ‘*aurat*. In addition, women should not also wear perfume that can “tease” men.³¹⁵ The criteria for women’s clothing is intended to avoid slander³¹⁶ that eventually brings someone closer to fornication or adultery, an act that is strictly forbidden in Islam.

4.5 Considering Shahrur’s Thoughts on the Function of Muslim Women’s Clothing: A Contemporary Reading Towards Religious Texts

Relating to the function of women’s clothes, Muhammad Shahrur³¹⁷, a Syrian Islamic thinker, provides an explanation of the content of Sura al-Ahzab, 59 which reads:

³¹³ Ahmad bin Hanbal, *al-Musnad*, No. 20787, Vol. 44, (Bairut: Dar al-Fikr, t.th.), p. 257.

³¹⁴ Al-Barazi, *Hijab*, p. 289.

³¹⁵ In addition to the four requirements above, Fida Abd al-Razzaq provides other requirements for clothing, including Islamic one: first, it does not resemble men’s clothing; Second, it is not similar to infidels’ clothing; Third, it does not use perfume; fourth, it is not intended for popularity (*thawb al-shuhrah*). See Fidā Abd al-Razzāq, *al-Mar’ah al-Muslimah*, p. 130.

³¹⁶ Fuad al-Barazi said tha a “slander (*fitnah*)” in relation to the expose of the *aurat* means desire to do something justified only for married couples. See Fuād al-Barāzī, *Hijāb al-Mar’ah*, p. 259.

³¹⁷ Muhammad Shahrur was born in Damascus, Syria on April 11, 1938, from a father Deyb Shahrur and a mother Siddiqah bin Salih Filyun. Shahrur has five children: Tariq al-Laith, Basul, Masun and Rima out of his marriage with Azizah. Academically, he earned his doctorate in the field of soil and foundation mechanics at the University of Ireland. He is a lecturer at the Faculty of Civil Engineering in Mechanics of Land and Geology. Remarkably, he was prolific in writing Islamic studies and has produced a monumental work. His works include: *al-Kitāb wa al-Qur’ān : Qirā’ah Mu’āṣirah*, (Damaskus: al-Ahālī, 1990),

*O Prophet! Tell to your wives, and daughters and Muslim women, that they should keep putting a part of their wrapping covers over their faces. This is nearer than this that if they are recognized, they should not be annoyed. And Allah is Forgiving, Merciful.*³¹⁸

Shahrur asserted that the above verse talks about improving the model of clothes and was revealed in a prophetic context, and it is not a sharī'ah. The messages contained in the verse provide a lesson (*ta'līm*) on "how to dress" in order to avoid interference. According to Shahrur's opinion, the opening of the verse which reads يا أيها النبي "O Prophet", shows that it is intended to be a lesson rather than sharī'ah (*tashrī'*).³¹⁹

Shahrur also stated that the above verse was set in Madina with the understanding of locality and temporality (*maḥalliah*), in relation with the absence of interference from bad people (*fāsiq*) against those believing women (*mukmināt*), when they go out to meet their needs.³²⁰ Shahrur continued that currently these factors are gone because the mechanism for the implementation of this verse is not permanent. This verse teaches how *mukmināt* should wear clothing or the so-called *jilbāb* to perform their social activities.³²¹

The verse also set up two reasons for the application of the doctrine of wearing the veil: knowledge (*al-ma'rifah*) and disruption (*al-adzā*). Shahrur pointed out that *mukmināt* are required to cover certain parts of their bodies that, if revealed, would cause harrasmant (*al-adzā*).

Naḥwa Uṣūl Jadīdah li al-Fiqh al-Islāmī, (Damaskus: al-Ahālī, 2000), *al-Islām wa al-Imān: Manzūmat al-Qiyam*, (Damaskus: al-Ahālī, 1994), *Dirāsāt Islāmiyyah Mu'āshirah fi al-Dawlah wa al-Mujtama'*, (Damaskus: al-Ahālī, 1996).

³¹⁸ *Al-Qur'an and Terjemahnya*, p. 678.

³¹⁹ Shahrur, *Naḥwa Uṣūl*, p. 372.

³²⁰ *Ibid*.

³²¹ It should be reiterated here, that Shahrur defines *jilbab* as "outerwear that serves to protect a person (*al-libās al-khārijī li al-himāyah*). Whatever the shape and model of clothes are, as long as they can provide protection from various disorders, they can be considered *jilbab*. See, Shahrur, *Naḥwa*, p. 324.

However, it should be treated as a teaching, rather than a legal provision. There are two kinds of disruption: natural (*al-ṭabiʿi*) and social nature (*al-ijtimāʿi*), and natural disturbances related to the geographical environment, such as air temperature and weather.³²² Shahrur also confirmed that a woman should dress according to the weather conditions and air temperature when and where she is, so as not to cause a natural disturbance on her. The verse, for Shahrur, is just a reminder of disruption and knowledge.

In the word: *أَنْ يُعْرَفْنَ فَلَا يُؤْذِنَ* (“so that they are known, therefore they are not disturbed”), the particle *faʿ* indicates the existence of a cause (*faʿ al-sababiyyah*) and sustainability (*taʿqīb*) between knowledge and disorders. This is what so-called social disorder (*al-adza al-ijtimāʿi*). A woman should wear the outer garment (*libās khārijī*) and be active in her community in accordance with the social customs in the society, so that she does not become the target for taunts and annoyance. If she does not do that, then she will experience social disruption. Social disruption is the only form of punishment she received in the sense that God does not set a specific reward or punishment for her. This was the situation when this verse was revealed in Madina, i.e. the vandals are breaking the social order of *mukmināt* who go out at night to meet their needs.³²³ In other parts, Shahrur wrote:

Indeed, hijāb for women is a private matter that can be determined by herself and for herself, without pressure, intimidation, and terror. There should be no any reduction in al-Tanzīl al-

³²² To fulfill the function of clothing as proposed by Shahrur, it is right to follow the advice of Henk Schulte Nordholt: we must really carefully select a variety of clothing, which clothes are to wear for particular seasons which are changing throughout the year, for the celebrations, inside or outside the house, workplaces, raining. What is the appropriate attire in the evening?” Henk Schulte Nordholt, “Pendahuluan” in Henk Schulte Nordholt (ed.), *Outward Appearances Trend, Identitas, Kepentingan*, trans. M. Imam Aziz, (Yogyakarta: LKiS, 2005), p. 1.

³²³ Muhammad Shahrur, *Naḥwa*, p. 372.

*Hakīm related to women in the use of the Hijāb, and we call the women who previously did not wear the hijāb then wear it as a “back to religion”, as if she had come out of religion. Such reduction is an insult to Islam on the one side, and also an insult to the honor of the woman on the other side, because we limit this great religion into a problem of piece of cloth.*³²⁴

The above quote indicates that Shahrur wants freedom (*al-ḥurriyyah*) entirely for women to choose the type, model and design of the clothes, as long as it enables to protect them from interference. The problem of clothing has nothing to do with religion. In fact, if someone naked in front of her non-*maḥram* people, she deserves only a social punishment, not the other. It seemed that Shahrur wanted to say, “It is too trivial to attribute clothing to religion, there are other things that are more important than clothing.”³²⁵

The functions of clothing can be realized when the designs, models, and even a choice of color follows the tradition (*‘urfīyyah*), and have aesthetic values (*jamaliyyah*). Shahrur said that to decide whether a cloth meets the *jamaliyyah* aspect or not, is to determine whether it is “appropriate” and “inappropriate” (*yalīq wa lā yalīq*).³²⁶ Someone who

³²⁴ Ibid., *Dirasat*, p. 327. There are other Muslim scholars who share the same opinion as Sharur's. Musda Mulia, for instance, pointed out that “we should appreciate and respect whatever women decided to choose in order that social harmony to be established. Sociologically, *jilbab* does not signify anything, nor it means a symbol of piety. A woman who wears a *jilbab* is not necessarily a pious one and otherwise. *Jilbab* is not identical with one's piety.” See Siti Musda Mulia, “Memahami Jilbab dalam Islam” in *Psychology of Fashion Fenomena Perempuan (Melepas) Jilbab*, (Yogyakarta: LKiS, 2010), xiii.

³²⁵ Shahrur explained that the oversimplification of hijab into religious matters are due to some reasons, i.e. powerlessness (*al-‘ajz*), and more importantly patriarchal societies (*dzukuriyat al-mujtama'*), and discrimination of others on behalf of religion. Amid patriarchal societies, the ulamas were also influenced by the patriarchal traps when formulating their jurist products, which is in this case a woman was treated as a goods to be taken care of and controlled according to the preference of ulamas most of whom are male. Ironically, all these were done on behalf of glorifying women. See Shahrur, *Dirāsāt*, p. 325.

³²⁶ Ibid., p. 170.

would restrict her freedom in choosing clothes is not because of the demands of the Shari'a in covering the 'aurat, rather because of "appropriateness" or "inappropriateness". Shahrur also emphasized that the clothing aesthetic standards are varying with different circumstances; where, when, and by whom the clothes are worn. The aesthetic value of clothes is always changing and open to criticism. Different standard of decency and beauty in dressing is shown in the example given by Shahrur:

*"Sometime societies found it inappropriate for someone who was sixty years old, for instance, wears a red short pant and a purple t-shirt. However, such colored outfit might be considered trendy and acceptable in other societies"*³²⁷

The aspects of tradition (*'urfīyyah*), Shahrur said, are wider than the aesthetics, because tradition can restrict a person's freedom to make choices that have nothing to do with the "appropriate" or "inappropriate" as well as with beauty. Shahrur illustrates that, a widow, who is on her waiting period and is religiously not allowed to marry or talk about marriage, is "supposed" to dress according to the standards that her society is imposing on her. This provision, Shahrur said further, has nothing to do with aesthetics.³²⁸

The aspects of conformity with the tradition (*'urfīyyah*) and aesthetics (*jamaliyyah*) that Shahrur mentioned above shows that the concept of clothes always move between two limits: the minimum limit (*al-hadd al-adnā*)³²⁹ and the maximum limit (*al-hadd al-a'lā*), in addition to the aspects of beauty (*jamaliyyah*) and tradition (*'urfīyyah*). These two aspects need to be considered because it is very closely related to efforts to avoid interference (*adzā*), as implied in Surah al-Ahzab, 59. Sharur's opinion on the the function of is shown in the following figure:

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Ibid.

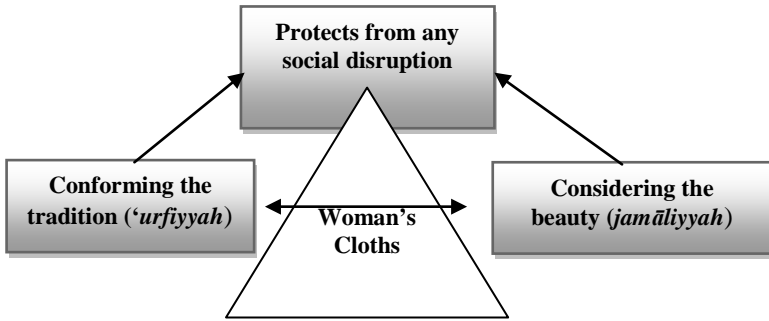


Figure 4.2 *Shahrur* on the Functions of Women's Clothing

The chart above shows that the function of women's clothing is to protect the wearer from natural and social disruptions. That function can be realized if the clothes meet the aspects of beauty and tradition.

4.6 The Relevance of *Shahrur's* View About the Function of Muslim Women's Clothing with the *Maqāṣid al-Sharī'ah*: Protection of Life Based on the Tradition and Aesthetics

As mentioned in the previous section, the function of clothing for women in *Shahrur's* opinion is to protect them from interference (*adzā*). The disorder can be natural (*tabi'īyyah*), such as the heat of the sun, cold, etc., and social (*ijtimā'īyyah*). For the realization of these functions, women's clothing should consider the aesthetic aspects (*jamāliyyah*) and tradition (*urfīyyah*) of where and when the clothes are worn.

To determine whether someone is dressing decently so he or she will not be heckled and booed will depend on the tradition and the prevailing culture in the community. Each region has its own culture and values

which affect how people consider a dressing polite or not. Besides meeting the aspect of conformity with the prevailing tradition, women's clothing should also take into account the aesthetic aspects (*jamaliyyah*). The aspects of tradition and aesthetics support the realization of women's clothing functions, i.e. avoiding interference.

Sharur's function of clothing is not the same as *maqasid al-sharī'ah* of clothing proposed by other scholars. Other scholars asserted that the purpose of clothing is the dresser can avoid fornication, i.e. illegal sexual intercourse outside marriage. Thus, the purpose of clothing in terms of the *maqasid al-sharī'ah* is included in the category of *hifz al-nasl* (protection of descendants)³³⁰ which some scholars call *hifz al-'ird* (protection of honor). The protection of honor in clothing, those scholars said, is to refrain from falling into fornication, and to bring clarity of one's lineage of conjugal relationship that is acceptable to Islam.

Thus, Muhammad Shahrur and other scholars disagreed on the function of clothing. Shahrur emphasizes on the protection of the soul (*hifz al-nafs*) in order to avoid social and natural damages, while the later emphasizes the protection of the descent (*hifz al-nasl*).

The function of clothing conveyed by Muhammad Shahrur is actually similar to the opinion of Quraish Shihab. In Quraish's opinion, clothing has the functions of cover of the 'aurat, decoration, protection from the heat and cold as well as the fortress of things that can disrupt order, and finally as a marker in nature and profession.³³¹ The difference between Muhammad Shahrur and Quraish Shihab in determining the function of clothing lies on their sources of reference. Muhammad Shahrur built his opinion on Surah al-Ahzab, 59, while Quraish Shihab described

³³⁰ According to those scholars, the protection of offspring is realized by two main ways: instruction of marriage and prohibition of adultery. Covering the 'aurat supports the the prohibition of adultery, and is ranked as tertiary (luxuries).

³³¹ Quraish Shihab's opinion on the function of clothing has been described by the author in chapter two of this dissertation.

every function of clothing based on other verses which talk about the clothes, both for men and women.³³²

It is important to note here that the function of clothing for women in regard with *maqasid al-sharī'ah* is listed in the secondary rank (*ḥājīyyāt*).³³³ It comes after the primary benefits (*daruriyyat*) and before tertiary one (*tahsiniyyat*), both seen as the protection of descent (*hiḥz al-nasl*), as the scholars argued, and as a protection of life (*hiḥz al-naḥs*), as Muhammad Shahrur, Quraish Shihab, and Nasaruddin Umar said.

As previously described, that maṣlahahs in the five basic principles (*al-uṣūl al-khamsah*) is hierarchical, the first (i.e. religion) is more urgent than the next. Or, in other words, the sequence of the last principle (maintenance of property) is the lowest maṣlahah before maintenance of offspring, and so on. The five basic elements are divided into three sequential ranks: *darūriyyat* (primary, urgent), *ḥājīyyāt* (secondary), and *tahsiniyyat* (tertiary).

This ranking is important, particularly when we are faced with a situation where there is a contradiction (*ta'arud*) between multiple maṣlahahs. For example, when there is a contradiction between maintenance of life and that of descent, the former should be given priority. Likewise, the protection of children should be "put aside" when it competes with the interests of religion and intellect. Thus, the protection of children can only take precedence when there is a negotiation with the protection of property. The provision applies when the ranking of each maṣlahah is the same: *daruriyyat*, *hajiyyat*, or *tahsiniyyat*.

If we follow the opinion of scholars that the function of clothing to protect the offspring (*hiḥz al-nasl*) is the secondary benefit (*hajiyyat*), then the maṣlahah of clothing should not take precedence over that of

³³² The verses are: QS. Al-A'raf (7), 26, QS. Al-Nahl (16), 18, QS. Al-Azab (33), 59.

³³³ The opinion is based on the opinion of Yusuf Hamid and Abu Zahra. Meanwhile, Nasaruddin Umar categorized dressing a tertiary maṣlahah (*tahsiniyyat*). See Yusuf Hamid, *al-Maqāṣid al-'Āmah li al-Sharī'ah al-Islāmiyyah*, p. 459, and Abu Zahrah, *Uṣūl al-Fiqh*, p. 371.

religion (such as *jihād fi sabīlillah*), life (such as making a living for survival) and that of intellect (such as seeking knowledge); particularly, the examples given by the authors are identified as the primary (*daruriyyat*).

Meanwhile, if the function of clothing follows Shahrur's opinion, which is attributed to the protection of life in order to avoid natural and social interference with attention to the beauty (*jamaliyyah*) and the radition (*'urfiyyah*), then clothing can be categorized as the secondary *maslahah* (*hajiiyyat*) and even the tertiary one in regard with the intellect, lineage, and property.³³⁴

So, it is important to emphasize here that the standpoint of the scholars and Muhammad Shahrur in viewing the functions of clothing are still on the realm of *al-uṣūl al-khamsah* (the five objectives of Islamic law or *maqāṣid al-sharī'ah*: the protection of religion, life, intellect, descent and property). The concept of *maqāṣid al-sharī'ah* was initiated by al-Ghazali and developed later by al-Shāṭibi.

The suitability of the function of the clothing as explained by Muhammad Shahrur above becomes clearer when his explanation of *maslahah* is seen from Ṭūfi's concept (d. 716 AH) in which he classified it into two domains: wordly (*dunyawiyyah*) and other wordly (*ukhrāwiyyah*). The wordly *maṣlaḥah* is related to the problem of human transaction (*mu'āmalah*), while the other wordly *maṣlaḥah* mostly deals with worship and Devine decrees (*muqaddarāt*). As mentioned earlier, al-Ṭūfi argued that human transaction (*mu'āmalah*) provides more space for creativity, especially in its formats, as long as it brings the benefit and simultaneously removes the harm.

³³⁴Fathurrahman Djamil gave some examples of tertiary *maṣlaḥah* as follows: maintenance of reason, i.e. refrain from fantasizing or listening to something that is not useful; maintenance of the descent, i.e. mandatory *khitbah* and *walimah* in marriage. See Fathurrahman Djamil, *Metode Ijtihad Majlis Tarjih*, pp. 43-44. The maintenance of the property, i.e. the provision to avoid *gharar* transactions (speculation).

Shahrur asserted that clothing has nothing to do with the issue of *ḥalāl* (lawful) and *ḥarām* (unlawful). The command to wear *jilbāb* in Surah al-Ahzab (33), 59 means to be *ta'limāt* (teaching): how it can protect the wearer from a variety of disruptions, especially social ones. It seems that Shahrur views clothing as a pure wordly issue (*mu'amalah*) and, therefore, just as Ṭūfī's concept of *maṣlahah*, he gives a wide space to reason, including in determining the the model of clothing in whatever forms as long as it does not cause trouble (*mafsadah*), or danger (*ḍarar*) for the human life on this planet.

In my opinion, the way Muhammad Shahrur explained the function of clothing is not much different from the steps of finding *maṣlahah* which is the core of *maqāṣid al-sharī'ah* as initiated by al-Ghazali (d. 505 AH), al-Shāṭibi (w . 790 AH) and al-Ṭūfī (d. 716 AH). As explained before, the way to figure out *maṣlahah*, in Ghazali's opinion, is by *ta'līl al-aḥkām* (i.e. looking the basic cause for the determination of the law). *ta'līl al-aḥkām* is mujtahid's effort in revealing the 'illat (the basic cause) behind the laws for *qiyās* (analogy) as a method of legal formulation as prevailing in the Shafī'ī school.³³⁵

Shāṭibi pointed out that the *maṣlahah* is also known through the mastery of the Arabic language, the Sunnah, and the historical contexts of of the revelation. Meanwhile, al-Ṭūfī suggested that in *mu'amalah*, *maṣlahah* can discovered through reason alone, without having to refer the what is written in the texts.

Sharu's function of clothing is based on Surah al-Ahzab, 59:

³³⁵ According to these madhhabs, there are two ways to find 'illat (cause): the first, it is known from the textual wording ('illah mansūṣah, i.e. 'illat which is stressed by the text); and the second, it is known through ijtihad because it is not explained by the texts. The second model of 'illat is known also as 'illah *mustanbaṭah* (i.e. 'illat obtained through ijtihad) which includes three phases: identification of the basic cause (*takhrij al-manāt*), selection of the basic cause (*tanqīh al-manāt*), and determination of the basic cause, which is no doubt embedded and influential in laws (*taḥqīq al-manāt*).

يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزُوجُكُمْ وَبَنَاتِكُمْ وَنِسَاءَ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلْبَابِهِنَّ ذَلِكَ أَدْنَىٰ أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا
٥٩

‘O Prophet! Tell to your wives, and daughters and Muslim women, that they should keep putting a part of theirwrapping covers over their faces. This is nearer than this that if they are recognized, they should not beannoyed. And Allah is Forgiving, Merciful.³³⁶

Shahrur provides reviews of the functions of clothing according to Islam by interpreting the sentence: “such so that they are easier to be known, so they are not disturbed”). Shahrur analyzed the verse by looking at the linguistic aspects after which he then generated conclusions about the function of clothing as explained earlier. Thus, Shahrur’s steps in uncovering the *maqāṣid al-sharī’ah*, particularly on clothing, is not too much different from the that of *maqāṣid al-sharī’ah* as brought forth by the three leading figures: al-Ghazali, al-Shāṭibi and al-Ṭūfī.

4.7 *Maqāṣid al-Sharī’ah* in Muslim Women’s Clothing

As explained in the discussion of *maqāṣid al-sharī’ah*, the Islamic teachings, including Muslim women’s clothing, aim to bring the benefits while at the same time avoiding dangers for human life, both in this world and in the hereafter. The benefits of *maqāṣid al-sharī’ah* cover the five main principles (*al-uṣūl al-khamsah*), i.e.: the protection of religion, life, intellect, descent, and property. Each principle is rated into *ḍaruriyyat* (primary), *ḥajjiyyāt* (secondary), and *taḥsiniyyat* (tertiary, beauty).³³⁷

³³⁶ *Al-Qur`an dan Terjemahnya*, p. 678.

³³⁷ The division of *maṣlaḥah* into three categories: *daruriyyat*, *hajjiyyat* and *taḥsiniyyat* in the five basic principle, is initiated by al-Ghazali and al-Shatibi. As for al-Ṭūfī, *maṣlaḥah* is absolute, without any limits and its strength ranges from *rajīh* (preponderant)/*qawī* (strong) and *arjah* (superior)/*aqwā* (stronger), and includes wordly (*dunyawiyyah*) and other wordly (*ukhrawiyyah*).

Based on my research on some literatures, I found no discussion on *maqāşid al-sharī'ah* about Muslim women's clothing that follows al-Ghazali and al-Shāṭibi's systematization, especially in classifying *maşlahah* based on three domains: *ḍaruriyyat*, *ḥajjiyyāt*, and *taḥşiniyyat*. Nevertheless, explanations of *maqāşid al-sharī'ah* in Muslim women's clothing can be observed from the application of the five basic principle of (*al-uşūl al-khamsah*): religion, life, intellect, descent, and property. The following is the *maqasid al-shari'ah* for Muslim women's clothing as presented by some scholars:

1. To purify the hearts of the dresser and the people around her from. By Islamic dressing, some doors have been closed for the *satan* (evil) to whisper bad things which lead to sins. Some people fall into fornication from their curiosity to see pornographic contents after which they are involved in a manner that is immoral, such as rape and illicit sexual intercourse. Sinful deeds would not occur when the heart is full of piety to Allah as reflected in Islamic dressing.³³⁸ Related to this purpose, God asserts in Surah al-Ahzab, 53.;
2. To shield oneself from the interference of unscrupulous people.³³⁹ Allah asserts this goal in Surah al-Ahzab, 59.³⁴⁰
3. To be a symbol of Islam and implant a sense of shame to do despicable things. It is natural that anyone will be embarrassed when the private parts of her or his body is exposed.

³³⁸ See Aḥmad Muştafā al-Marāghī, *Tafsīr al-Marāghī*, Vol. 8, (Bairūt: Dār al-Fikr, t.th.), p. 31; Wahbah al-Zahayli, *al-Tafsīr al-Munīr*, Vol. 2, 1 (Bairūt: Dār al-Fikr, t.t), p. 87; Ibn Taymiyyah, *al-Tafsīr al-Kabīr*, Vol. 5, (Dār al-Kutub al-‘Ilmiyyah, t.th.), p. 360. See Muhammad Fuad al-Barāzī, *Hijāb al-Muṣlimah*, pp. 121-123.

³³⁹Fuad al-Barazi, *Hijāb al-Muṣlimah*, p. 126.

³⁴⁰Translation of the verse is: “O Prophet! say to your wives and your daughters and the women of the believers that they let down upon them their overgarments; this will be more proper, that they may be known, and thus they will not be given trouble; and Allah is the Forgiving, the Merciful. See *Al-Qur`an Terjemahnya*, p. 678.

It is illustrated in the story of Adam and Hawa, who are tempted to eat the forbidden fruit in Heaven which madem them to “cast away” from Heaven in nakedness. They immediately covered their bodies with the leaves of Paradise. Allah says in Surah al-A’raf, 22:

فَدَلَّلَهُمَا بِغُرُورٍ فَلَمَّا ذَاقَا الشَّجَرَةَ بَدَتْ لَهُمَا سَوْءَاتُهُمَا وَطَفَفَا
بِخِصْفَانٍ عَلَيْهِمَا مِنْ وَرَقِ الْجَنَّةِ وَنَادَاهُمَا رَبُّهُمَا أَلَمْ أَنْهَكُمَا عَن
تِلْكَ الشَّجَرَةِ وَأَقُلُّ لَكُمَا إِنَّ الشَّيْطَانَ لَكُمَا عَدُوٌّ مُبِينٌ ٢٢

Then he caused them to fall by deceit; so when they tasted of the tree, their evil inclinations became manifest to them, and they both began to cover themselves with the leaves of the garden; and their Lord called out to them: Did I not forbid you both from that tree and say to you that the Shaitan is your open enemy?³⁴¹

Thus, humans by nature feel embarrassed when their private parts are exposed. They will lose their feeling of shame if they do not get used to cover them. Considering the importance of feel of shame, the Prophet categorized it as a part of faith (*al-ḥayā’ min al-īmān*).³⁴² It should be also emphasized that in essence covering nakedness with clothing is to maintain the dignity because event though there are many people who are dressing properly, they are still loosing their dignity.

From the above description, it is understood that the maqāṣid al-sharī’ah for Muslim clothing within the framework of maṣlaḥah in the al-uṣūl al-khamsah are inclusive of the protection of descent (*hifz al-nasl*). Yusuf Hamid said that the protection of descent in Islam is realized in two ways:³⁴³ the first is by mandatory marriage. He emphasized that the primary purpose of marriage is as a safeguard against having legitimate offspring, while the other goals, such as to avoid the tempta-

³⁴¹ *Al-Qur’an and terjemahnya*, p. 233.

³⁴² Badr al-Dīn Al-‘Aynī, *‘Umdat al-Qāri’ : Sharḥ Ṣaḥīḥ al-Bukhārī*, Vol. 1, (Bairūt: Dār al-Fikr, t.th.).

³⁴³ Yusuf Ḥāmid al-‘Ālim, *al-Maqāṣid al-‘Āmah*, pp. 399-408.

tions of the satan and to achieve serenity and inner peace are complementary (*ṭabi'ī*).³⁴⁴

The second way is rejecting something that can bring various harm (*daf'i al-mafāsīd*), i.e. prohibition of fornication. Thus, protection of offspring that is *daruriyyat* is by prohibiting adultery, in addition to mandatory marriage. While prohibitions on *khalwah* (i.e. two non-*mahrams* staying alone in a quiet place), looking at non-*muhram* women, dressing in an indecent way, and showing off beauty for non-*mahram* men is complementary goals (*tabī' wa mukammil*).³⁴⁵

Thus, it can be asserted here that the *maşlahah* of Muslim women's clothing, when viewed from the standpoint of its strength, ranks at *hajiyyat* (tertiary, complementary) in the protection of descent.³⁴⁶ Whereas, prohibition of adultery and marriage is *daruriyyat* (primary). Because it is *hajiyyat*, Muslim women's clothing requires prudence (*iḥtiyat*) in order to keep away from fornication. On the other hand, the effort to protect offspring which are *tahsiniyyat* (tertiary) includes prohibition for women to go out by showing off her jewelry.³⁴⁷

Simply put, protection of the descent in the frame of the three *maşlahahs* (*daruriyyat*, *hajiyyāt*, and *tahsiniyyat*) is summarized in the following figure:

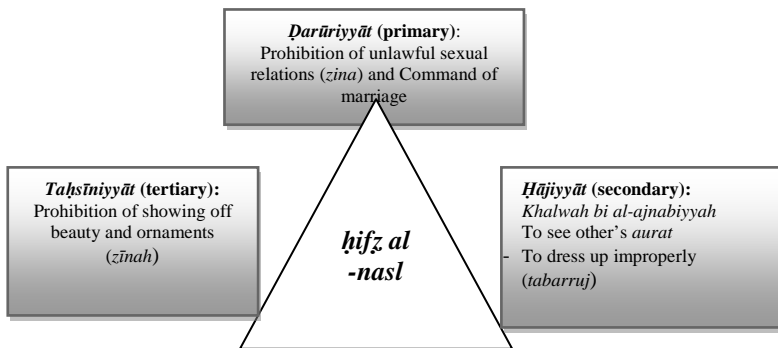
³⁴⁴The purposes of marriage, which are natural (*tabi'i*), in Hamid Yusuf's opinion, are: 1. As the bastion of the temptations of satan (*taḥassun min al-shaitān*); 2. Willingness to spousal relationships (*kasr al-tawqan*); 3. Holding the eyes (*ghadd al-basar*); 4. Keeping the intimate parts (*hifz al-farj*). See Ibid.

³⁴⁵ See Ibid., pp. 445-463.

³⁴⁶ See Muhammad Abu Zahrah, *Uşūl al-Fiqh*, (T.t.: Dar al-Fikr al-'Arabi, t.th.), p. 371.

³⁴⁷ Ibid., p. 372.

Figure 4.2 *Maṣlahah in the Protection of Descent (Hifz al-Nasl)*



In contrast to the description of *maqasid al-shari'ah* of Muslim women's clothing above, Quraish Shihab argued that clothing, regardless of the sex, has the following functions:³⁴⁸

1. Covering the 'aurat, i.e, things that are prone to "accidents" and therefore should not be exposed;
2. To be 'a jewellery' for the wearer. These two functions of clothing are based on Surah Al-A'raf (7), 26:

يُنَبِّئُ بَيْنِيْ ءَادَمَ قَدْ اَنْزَلْنَا عَلَيْكُمْ لِبَاسًا يُورِيْ سَوْءَاتِكُمْ وَرِيشًا وَلِبَاسٌ
الْقَوِيُّ ذٰلِكَ خَيْرٌ ذٰلِكَ مِّنْ ءَايٰتِ اللّٰهِ لَعَلَّهُمْ يَدْكَرُوْنَ ۚ ٢٦

'O children of Adam! Undoubtedly, We have sent down towards you a dress that may cover your shameful parts and one that be an adornment to you; and the dress of righteousness, that is the best. This is one of Allah's signs, that I they may be admonished.³⁴⁹

- 1) To be a protection from the heat and cold as well as the fortress of things that can disrupt public order. This function is implied in the Surah Al-Nahl (16), 81 which reads:

³⁴⁸ Quraish Shihab, *Jilbab*, pp. 50-52.

³⁴⁹ *Al-Qur'an dan Terjemahnya*, 224.

وَاللَّهُ جَعَلَ لَكُمْ مِمَّا خَلَقَ ظِلَالًا وَجَعَلَ لَكُمْ مِنَ الْجِبَالِ أَكْنَانًا وَجَعَلَ لَكُمْ
سُرُبِيلًا تَقِيكُمْ الْحَرَّ وَسُرُبِيلًا تَقِيكُمْ بَأْسَكُمْ كَذَلِكَ يُبَيِّنُ نِعْمَتَهُ عَلَيْكُمْ
أَعَلَّكُمْ تُسَلِّمُونَ ٨١

And Allah gave you shades out of things He made, and made for you shelters in the mountains, and made for you some garments to protect you from heat and some garments to protect you in fighting. Thus does He complete His favour on you, that you may submit to His Command.³⁵⁰

- 2) As a marker in nature or profession.³⁵¹ This function is understood from Surah Al-Ahzab (33), 59.

Quraish said further that Islam wants all these functions, or at least the most important one which is covering the 'aurat, to be realized in clothing. Unfortunately in practice, Quraish said further, the emphasis on this function has made some Muslims put aside the functions of beauty and identity.³⁵²

³⁵⁰Ibid., p. 404.

³⁵¹ Hussein Muhammad said that the difference of 'aurat boundaries between free women and slave women in the view of scholars of fiqh is referring to women's status and social functioning at the time; whether she's a free woman who is, in the social construction of the Islamic community at the time, recommended not to work outside the house, leave the house, and expose themselves to many people, or whether she is a slave that is constructed to serve and work and do everything for the benefits of his master. With the above reasons, said Hussein, the former should be bodily more covered than the later. See Hussein Muhammad, *Fiqh Perempuan*, p. 82.

³⁵²Ibid., p. 53. In line with the Quraysh, Fadwa El Guindi, mentions the types of headcovers as an indicator of a person's social conditions in the community and social status. He said that Yemeni women wear what is known as *lithmah*, which is "a thin, light, colored fabric worn on the head to conceal the hair and forehead, while the lower part can be pulled up and down to show off the face or the eyes only." An unmarried girl wears this type of clothing all the time and a married woman in the daily routines at home or during informal morning visits. In addition, there is also a type of clothing called *sitara*. Women of lower economic status wear this type of clothing. The higher status women wear a cloth called *syarsyaf*, i.e. "long skirt folds worn over clothing and a coat that covers the head, shoulders to waist, both are made of silk. See Fadwa El Guindi, *Jilbab*, 167, 172-173.

Looking at Shihab’s functions of clothing above, it is clear then that the most important *maqasid al-sharīah* in clothing, both for men and women equally, is the protection of life (*hifz al-nafs*) rather than the descent (*hifz al-nasl*); even so, none of it is rated as *ḍarūriyyat*, but only *ḥajjiyyāt* or *taḥsīniyyāt*.³⁵³ The following table summarized the functions of clothing, as proposed by Quraish Shihab in relation with the *maqāṣid al-sharī’ah*:

Table 4.1 The Functions of Clothing in Relation to Maqāṣid al-Sharī’ah In Quraish Shihab’s Opinion

No.	Function of Clothes	Aspects of <i>Maṣlaḥah</i>	Rank of <i>Maṣlaḥah</i>
1	Covering the ‘ <i>aurat</i> ’	<i>Hifz al-dīn</i> (protection of religion) in pray-ers	<i>Ḥajjiyyāt/ Taḥsīniyyāt</i>
		<i>Hifz al-nafs</i> (protection of life) outside prayers	
2	As a decoration or ornament	<i>Hifz al-nafs</i>	
3	As a safeguard from the heat and cold as well as things that can impair order		
4	As a marker in nature or profession		

³⁵³ The hierarchial significance of the *maṣlaḥah ḥajjiyyāt* on clothing is based on Abu Zahra’s opinion. See Abu Zahra, *Uṣūl al-Fiqh*, p. 371. As for the rank of *maṣlaḥah taḥsīniyyāt* in *Hijab*, Nasaruddin Umar said: “The veil and the like remains an Islamic teachings that needs to be considered seriously, at least the veil provides lessons on ethics and aesthetics (*taḥsīniyyāt*).” See Nasaruddin Umar, *Fikih Wanita untuk Semua*, (Jakarta: Serambi, 2010), p. 28. Nur al-Din al-Khadimiya, former Tunisian Minister of Religious Affairs, shares the same opinion. See Nur al-Di al-Khadimiya, *al-Ijtihad al-Maqasidiy* (Tunisia: Dar Ibn Hazm, 2010), p. 44.

From the Shihab’s description of the function of clothing above we can also see that *maşlahah* to be realized is the protection of religion (*hiḏ al-dīn*) and life (*hiḏ al-naḏs*), all of which are ranked secondary (*ḥājiyyāt*) or tertiary (*taḥsīniyyāt*). Quraish Shihab does not mention that the obligation to cover the ‘*aurat* is part of the efforts to protect the existence of offspring (*hiḏ al-naḏl*), as said by Yusuf Hamid and Abu Zahra. For Quraish, uncovering the ‘*aurat* can lead to “unwanted incident”.

Thus, it is safe to say here that scholars do not discuss the issue of Islamic clothing by looking its relation with the overall *al-uşūl al-khamsah* (the five basic principles) simultaneously. Their discussions are dominantly nuanced with an outlook of the efforts to prevent fornication and to meet the requirements of prayer conditions. The benefits of intellect and property are absent in the discussion of clothing.

Nasaruddin Umar said that the most prominent discourse in Indonesia on the use of *jilbāb* is related to the issues of health, trends, fashion, privacy due to the accumulation of the quality of religious education and propaganda in society. In fact, one study revealed that the prostitutes in Nanggroe Aceh Darussalam (NAD) are hiding their identity by wearing *jilbāb*.³⁵⁴

Based on the above description, I can point out here that the benefits contained in Muslim women’s clothing have interconnection among all the *maşlahahs*. As explained earlier, the function of women’s clothing is to cover the ‘*aurat* which is complimentary (*mukammil*) to the prohibition of adultery as a form of the protection of offspring (*hiḏ al-naḏl*). However, in addition to the function of covering the ‘*aurat* for the benefit of the descent, the clothing also serves as a covering of ‘*aurat* in prayers (*hiḏ al-din*), protection from natural and social disruption (*hiḏ al-naḏs*), and a marker of identity and profession.³⁵⁵

³⁵⁴Juneman, *Psychology of Fashion*, p. 5.

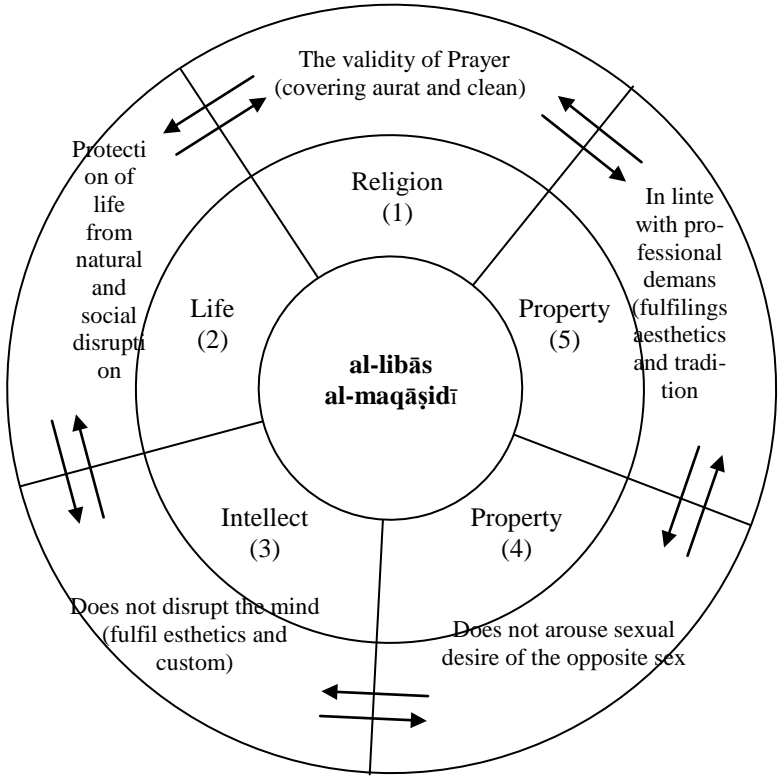
³⁵⁵See Quraish Shihab, *Jilbab*, pp. 50-52

Thus, the concept of clothing in Islam is in line with the *maqāṣid al-sharī'ah*. I conceptualize it as *al-libās al-maqāṣidi* or 'beneficial clothing' in which Muslim women's clothing should fulfill its main functions: to cover nakedness, to avoid fornication, and to fulfill other functions related to religion, life, intellect, and property. The concept of *al-libās al-maqāṣidi* requires the fulfillment of appropriateness as a Muslim, a comfort in workplace, aesthetic values, and most importantly the capacity to cover the 'aurat. If in any circumstances the cloth is no longer able to meet these entire functions, then at least it should bring benefits of covering the aurat, avoiding fornication, and fulfilling the requirement of prayers, then the benefits related to life, intellect, and property. In this case, I propose a new legal maxim of fiqh with regard to *al-libās al-maqāṣidi*:

ما كان أكثر اتصالا بالمصالح كان أكثر فضلا

Anything that is interconnected with more maslahahs is having the most virtues.

The extent to which the maṣlaḥah is interconnected in the legal maxim above will depend on the following points: the first is the fulfillment maṣlaḥah, which the main goal of the establishment of a law. In the case of clothing, its main purpose is to protect the welfare of offspring by covering the aurat; the second is maṣlaḥah in connection with the five basic principles (religion, life, intellect, descent and property) by taking into account the scale of *daruriyyat* (primary), *hajiyyāt* (secondary), and *taḥṣīniyyāt* (tertiary). To sum up, *al-libās al-maqāṣidi* or 'the beneficial clothing' is shown in the following figure:



CONCLUSION

Based on the research problem and how it is answered by an analysis of the data, we can conclude that the interconnected *maṣlahah*-based *ijtihād maqāṣidi*, which is the main argument of this dissertation, works in the following stages: (1) it should be built upon the Qur’anic texts and the Sunnah with all legal provisions contained therein as their objectives (*al-nuṣūṣ wa al-ahkām bi maqāṣidihā*); (2) it should integrate the general and universal messages with the specific and particularistic ones (*al-jam’u bayn al-kulliyāt al-‘āmah wa al-adillah al-khāṣṣah*); (3) it should bring benefits and refuse absolute damages (*jalb al-maṣālih wa dar’u al-mafāsid muṭlaqan*); it should consider the legal consequences that possibly occur in the future (*i’tibār al-ma’ālāt*); (4) all the benefits of the legal considerations, ranging from the first to the fourth stages should take into account the interconnection between each *maṣlahah* or what that I refers to the interconnected *maṣlahah* (*ittisāliyyāt al-maṣālih*)

The implications of the interconnected *maṣlahah*-based *ijtihād maqāṣidi* on the case of Muslim women’s clothing is that it brings forth the concept of ‘beneficial clothing’ (*al-libās al-maqāṣidi*), i.e. clothing that can fulfill its primary function, which is to cover the aurat but also can sustain the benefits of religion, life, intellect, and property simultaneously.

Despite its all limitations, the findings of this research recommend that *maṣlaḥah* should be integrated in any legal formulation of Islamic laws because by only doing so that the legal products will aspire to the benefits which was the core of the Islamic teachings. There is a great expectation that in the future a new concept of *ijtihād maqāṣidi* will emerge for the sake of more adaptable and applicable Islamic laws.

BIBLIOGRAPHY

- Abd al-Raziq, Ali. *al-Islām wa Uṣūl al-Ḥikam*, Tunis: Dar al-Ma’arif li al-Ṭibā’ah, 2011.
- Alaniy (al), Muhammad al-Subhiy, ‘*Ulūm al-Qur’ān*, Tunis: Wizarat al-Ta’lim al-‘Aliy, 1999.
- Amin, Qasim. *Taḥrīr al-Mar’ah*, Tunis: Dār al-Ma’arif, 2014.
- Ansoriy, Farid. *al-Muṣṭalah al-Uṣūliyy ‘Inda al-Shāṭibiy*, Kairo: dar al-Salam, 2010.
- Awdah, Jassir, *Naqd al-Naskh*, Bairut: al-Shabakah al-‘Arabiyyah, 2013.
- _____. *al-Ijtihād al-Maqāṣidiy*, Bairut: al-Shabakah al-‘Arabiyyah, 2013.
- Abadi, Muḥammad Shams al-Haq. ‘*Awn al-Ma’būd: Sharḥ Sunan Abī Dāwūd*. Vol. 11. Bairut: Dār al-Kutub al-‘Ilmiyyah, 1990.
- Abu Syuqqah, Adul Halim. *Kebebasan Wanita*. Terj. As’ad Yasin. Jakarta: Gema Insani Press, 1997.
- Abu Zaid, Nasr Ḥāmid. *Dawāir al-Khawf Qirā’ah fī Khitāb al-Mar’ah*. Bairut: al-Markaz al-Thaqāfi, 2000.

- Abyārā (al), Ibrāhīm. *al-Mawsū'at al-'Arabiyyah*. Vol. 12. t.t: Muassasat Sajl al-'Arab, 1984.
- Afandi, Khozin (dkk.). *Buku Penunjang Berpikir Teoritis Merancang Proposal*, Surabaya: Pascasarjana IAIN Sunan Ampael Surabaya, 2006.
- Agustin, Nurul SS, "Gender" *Ensiklopedi Islam Tematis*, Vol. 6. Jakarta: Ihtiar Baru Van Hoeve, t.th.
- Ahmada, Nong Darol. "Kritik Atas Jilbab". Dalam <http://islamlib.com/id/artikel/kritik-atas-jilbab>. 20 Agustus 2011.
- Alā'ī (al), Ṣalāh al-Dīn. *al-Majmū'al-Mudzhīb fī Qawā'id al-Madzhab*. Bairut: Dār 'Imār, t.th.
- Ali, Muhammad Daud. *Hukum Islam Pengantar Ilmu Hukum dan Tata Hukum di Indonesia*. Jakarta: PT. Raja Grafindo Press, 2002.
- Alkitab*. Jakarta: Lembaga Alkitab Indonesia, 2009.
- 'Ālim (al), Yūsuf Ḥāmid. *al-Maqāṣid al-'Āmah li al-Sharī'ah al-Islāmiyyah*. Kairo: Dār al-Ḥadīth, t.th.
- 'Aziz (al), Muhammad 'Abd. *Al-Libās wa al-Zīnah fī al-Sharī'ah al-Islāmiyyah*, T.t.: Muassasah al-Risālah, t.th.
- Amīn, Qāsim. *Taḥrīr al-Mar`ah al-Jadīdah*. Kairo: al-Markaz al-'Arabī li al-Bahath, 1984.
- Amīrī (al), Abdallah M. Al-Husayn. *Dekonstruksi Sumber Hukum Islam*. terj. Abdul Basir. Jakarta: Gaya Media Pertama, 2004.
- Andalūsī (al), Ibn 'Aṭīyyah. *al-Muḥarrar al Wajīz*. Vol. 4. Bairut: Dār al-Kutub al-'Ilmiyyah, t.th.
- Arkoun, Muḥammad. *al-Fikr al-Islāmī Naqd wa Ijtihād*. terj. Hashim Ṣālih. Bairut: Dār al-Sāqi, 1998.

- _____ Arkoun, Muḥammad. Arkoun, Muḥammad. *al-Fikr al-Uṣūlī wa Istihālat al-Ta'ṣīl*. terj. Hāshim Ṣālih. Bairūt: Dār al-Sāqī, 1999.
- _____ *Buhūth Ijtimā'īyah: Min al-Ijtihād ilā Naqd al-'Aql al-Islāmī*. terj. Hāshim Ṣālih. Bairut: Dār al-Sāqī, 1992.
- 'Arabī, Ibn. *Aḥkām al-Qur`ān*. Vol. 3. Bairūt: Dār al-Fikr, t.th.
- Assyaukanie, A. Luthfī. "Tipologi dan Wacana Pemikiran Arab Kontemporer". *PARAMADINA*. Vol.1. Jakarta: PARAMADINA, 1998).
- Ashmāwī (al). Muḥammad Sa'īd. *Ḥaqīqat al-Ḥijāb wa Hujjiyat al-Hadīth*. t.t.:Maktabat Mabdu'li al-Ṣaghīr, 1995.
- Atabik Ali dan Ahmad Zuhdi Muhdlor. *Kamus Kontemporer Arab-Indonesia*. Yogyakarta: Multi Karya Grafika, 1998.
- Auda, Jasser. *Maqasidal-Shari'ah As Philosophy of Islamic Law A System Approach*. London: The International Institute of Islamic Thought, 2008.
- 'Aynī (al), Badr al-Dīn. *'Umdat al-Qāri': Sharḥ Ṣaḥīḥ al-Bukhārī*. Vol. 1. Bairut: Dār al-Fikr, t.th.
- Bāb, (al). Ja'far Dak "al-Manhaj al-Lughawi fi al-Kitab". Muḥammad Shahrur, *al-Kitāb wa al-Qur`ān: Qirā`ah Mu'āṣirah*. Damaskus: al-Ahālī, 1990.
- Baedhowi. *Antropologi Al-Qur`an*. Yogyakarta: LKiS, 2009.
- Bakr, Abd al-Karim. *al-Qawā'id al-Ashr*, T.tp: Mu'assasah al-Islāmiyyah al-Yawm, 2011.
- Baryan Bariy, *al-Thaqāfah wa al-Musāwah*, Bairut: al-Majlis al-Watany, 2011.

- Bashir (al), Shammam. *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'Alaqa-tuhā bi al-Mabāhiṭh al-Lughawiyyah*, Tunis: al-Shirkah al-Tunisiyyah li al-Nahsr, 2013.
- Britishd, Denkan. *Ma al-Ma'rifah*, Tarj. Mustāfa Nasir, Kuwait: al-Majlis al-Wataniy, 2013.
- Bakhtiar, Amsal. *Filsafat Ilmu*. Jakarta: Raja Grafindo, 2011.
- Bantanī (al), Muḥammad Nawawi. *Nihāyat al-Zayn*. t.t.:Sarahya' al-Kutub al-'Arabiyyah, t.th.
- Barazi (al), Muhammad Fuad. *Hijāb al-Muslimah*. Riyad: Muktabat Uṣūl al-Salaf, 1995.
- Barūsī (al), Ismā'il Ḥaqqī. *Tafsīr Rūḥ al-Bayān*. Vol. 7. Bairut: Dār al-Fikr, t.th.
- Bayḍāwī (al), Yūsuf. *Bayḍat al-Dīk*. t.t: al-Maṭba'ah al-Ta'awuniyyah, t.th.
- Braja, Durrah. *Inner Beauty Sebagai Produk Ibadah Kepada Allah swt*. Solo: Balqis Queen, 2008.
- Būṭī (al), Muḥammad Sa'īd Ramaḍān. *Ḍawābiṭ al-Maṣlaḥah fī al-Sharī'ah al-Islāmiyyah*. Bairut: Muassasat al-Risālah, 1982.
- _____ *Fiqh al-Sīrah*. Bairūt: Dār al-Fikr, t.th.
- _____ *Ṣaḥīḥ al-Bukhārī*. Vol. 9. Bairut: Dār al-Fikr, 1991.
- Bungin, Burhan. *Metodologi Penelitian Kualitatif*. Jakarta: PT Raja Grafindo Press, 2001.
- _____ *Metodologi Penelitian Kuantitatif*. Jakarta: Kencana, 2005.
- Commins, David. "Religious Reformers and Arabic in Damascus, 1885-1914". *International Journal of Middle East Studies*. 18. (1986).

- _____ “Syria” “ed.” John L Esposito “et al”. *The Oxford Encyclopedia of The Modern Islamic World*. Vol. 4. New York & Oxford: Oxford University Press, 1995.
- Connolly, Peter. *Aneka Pendekatan Studi Agama*. Yogyakarta: LKiS, 2009.
- Dahlan, Moh. *Abdullah Ahmed an-Na'im Epistemologi Hukum Islam*. Yogyakarta: Pustaka Pelajar, 2009.
- Darīmī (al), Fathī. *Khaṣāiṣ al-Tashrī' al-Islāmī: fī al-Siyāsah wa al-Ḥukm*. Bairut: Muassasat al-Risālah, 1987.
- Devid, Gonston. *Mukhtaṣar Tārīkh al-'Adālah*. Terj. Mustafa Nasīr, Kuwait: al-Majlis al-Wataniy, 2012.
- Dzahabiy (al), 'Abd Allah. *Kitāb al-Kabāir*, Bairut: Dar Ibn Kathir, 2007.
- Dilbert. *The Ulama Medieval Damascus and the International World of Islam Scholarship*. USA: University International, 1997.
- Djamil, Fathurrahman. *Metode Ijtihad Majlis Tarjih Muhammadiyah*. Jakarta: Logos, 1995.
- Durant, Wel. *Qiṣaṣat al-Ḥaḍārah*. Terj. Zaki Najib Mahmud. Vol. 1. Bairut: Dār al-Jil, t.th.
- Emzir. *Metodologi Penelitian Kualitatif Analisis Data*. Jakarta: Rajawali Press, 2010.
- Engineer, Asghar Ali. *Pembebasan Perempuan*. Terj. Agus Nuryanto. Yogyakarta: LKiS, 2003.
- Fanani, Muhyar. *Metode Studi Islam*. Yogyakarta: Pustaka Pelajar, 2008.

_____. *Fiqh Madani Konstruksi Hukum Islam di Dunia Modern*. Yogyakarta: LKiS, 2010.

Ghaffārī (al), AbdurRasul. *Wanita Islam*. t.t: Pustaka Hidayah, t.th.

Ghazālī (al), Abū Ḥamid. *al-Mustasfā min ‘Ilm al-Uṣūl*. Vol.1. Bairut: Dār al-Fikr, t.th.

_____. *al- I’tiṣām*. Vol. 2. Bairut: Dar al-Kutub al-‘Ilmiyyah, 2005.

Guindi, Fadwa El “Ḥijāb”. *The Oxford Encyclopedia of the Modern Islamic Word*. New York: Oxford University Pers. 1995.

Ḥasan (al), Shāhid, *Naẓariyah al-Tajdīd al-Uṣūliyy*, Bairut: Markaz Nama’, 2012.

_____. *Jilbab Antara Kesalehan, Kesopanan Dan Perlawanan*, terj. Mujiburrohman. Jakarta: Serambi Ilmu Semesta, 2003.

Fāsi (al), ‘Alāl, *Maqāšid al-Sharī’ah al-Islāmiyyah Wa Makārimuhā*. Mesir: Dar al-Salam, 2011.

_____. *Maqāšid al-Sharī’ah al-Islāmiyyah Wa Makārimuhā*. Mesir: Dar al-Salam, 2011.

Ḥajar, Ibn. *al-Durar al-Kāminah*. Vol. 2. India: Dār al-Ma’ārif. 1314 H.

Ḥanafī, Ḥasan. *al-Turāth wa al-Tajdīd: Mawqifunā min al-Turāth al-Qadīm*. Bairut: 1981.

Ḥassān, Ḥusain Ḥamid. *Naẓariyāt al-Maṣlahah fī al-Fiqh al-Islāmi*. Bairut: Dār Fikr, t.th.

Haq, Hamka. *Al-Syathibi Aspek Teologis Konsep Maslahah dalam Kitab al-Muwafaqat*. Jakarta: Erlangga, 2007.

Hosen, Ibrahim. “Beberapa Catatan Tentang Reaktualisasi Hukum Islam”. *Kontekstualisasi Ajaran Islam*. Jakarta: IPHI, 1995.

- Hosen, Ibrahim. "Beberapa Catatan Tentang Reaktualisasi Hukum Islam". dalam *Kontekstualisasi Ajaran Islam*. Jakarta: PARAMADINA, 1995.
- Husayni (al), Mubashshir al-Tirazi. *al-Mar`ah wa Huqūquhā fī al-Islām*. Bairut: Dār al-Kutub al-‘Ilmiyyah, 1997.
- Ibn ‘Atṭār, ‘Ala’ al-Din. *al-I’tiqād al-Khāliṣ Min al-Shak wa al-Intiqād*, Katar: Wizarah al-Awqaf wa al-Shuun al-Islamiyyah, 2011.
- Ibn Daqīq al-‘Īd, Muhammad bin ‘Ali. *Ihkām al-Ahkām*, Bairut: al-Maktabah al-‘Asriyyah, 2006.
- Ibrahim, Sami. *Naqd al-‘Aql al-Uṣūliyy*, Tunis: Manshurat Karim al-Sharif, 2014.
- Ibrahim, Abdul Syukur. (ed.). *Metode Analisis Teks dan Wacana*. Yogyakarta: Pustaka Pelajar, 2009.
- Ismā’īl, Sha’bān Muḥammad. *Uṣūl al-Fiqh Tārīkhuh wa Rijāluh*. Makkah: Dār al-Salām, 1998.
- Ismail, Ahmad Syarqawi. *Rekonstruksi Konsep Wahyu Muhammad Shahrur*. Yogyakarta: eISAQ Press, 2003.
- Jābī (al), Sālim. *Mujarrad Tanjīm*. Damaskus: Akad, 1991.
- Jābiri, Muḥammad Abid *al-Dīn wa al-Dawlah wa Taṭbīq al-Sharī’ah*. Bairut: Markaz Dirāsāt al-Waḥdah al-‘Arabiyyah, 1996.
- Jarīr (al), Ibn. *Tafsīr al-Ṭabarī*. Vol. 9. Bairut: Dār al-Kutub al-‘Ilmiyyah, 1992.
- Jaṣṣāṣ (al), *Ahkām al-Qur’ān*. Vol. 3. Bairut: Dār al-Fikr, t.th.
- Jaziri (al), Abd. al-Raḥmān. *al-Fiqh ‘Alā al-Madhāhib al-Arba’ah*, Vol. 2. Istanbul: Waqf al-Ikhlās, 1990.

180 Ijtihād Maqāṣidi: Reconstruction of Islamic Laws

- Jidah, A.H. *al-Aṣlah wa al-Ḥadāthah fi Takwīn al-fikr al-‘Arabī*. Libanon: 1985.
- Jorgensen, Marianne W. dan Phillips, Louse J. *Analisis Wacana Teori & Metode*. Togyakarta: Pustaka Pelajar, 2007.
- Juneman. *Psychology of Fashion Fenomena Perempuan [Melepas] Jilbab*. Yogyakarta: LKiS, 2010.
- Ja’far, Mustafa. *al-Ijtihād ‘Inda al-Madzāhib al-Islāmiyyah*, Bairut: Markaz al-Hadarah al-Islamiyyah, 2011.
- Jahwi (al), Abu Bakr. *Miftāḥ al-Sa’ādah al-Abadiyyah*, Tunis: Maktabah al-Manār, tt.
- Kafawī (al), Abū al-Baqā’. *al-Kulliyāt: Mu’jam fi al-Muṣṭalaḥāt wa al-Furūq al-Lughawiyah*. Bairut: Muassasat al-Risālah, 1993.
- Kalūdzānī (al), *al-Hidāyah*. Vol. 2. Cetakan 1.t.t.: Maṭābi’ al-Qāsim, t.th.
- Khadimiy (al), Nur al-Din Mukhtar. *al-Ijtihād al-Maqāṣidiy*, Tunis: Dar Ibn Hazm, 2010.
- Khan, Qamaruddin. *Pemikiran Politik Ibn Taimiyyah*. terj. Anas Mahyuddin. Bandung: Pustaka, 1983.
- Khaldun, Ibn. *Muqaddimah Ibn Khaldūn*, Bairut: Dar Sadir, 2009.
- Khūlī (al). Amīn. *Manhaj al-Tajdīd fi al-Naḥw Wa al-Balāghah Wa al-Tafsīr Wa al-Adab*. Bairut: Dār al-Ma’rifah, 1961.
- Liddle, R. William. “Skripturalisme Media Dakwah : Satu bentuk Pemikiran Dan Aksi Politik Islam Orde Baru” Terj. *Jurnal Ilmu dan Kebudayaan Ullumul Qur’an*. Jakarta: Aksara Buana, 1991.
- Mabruk, Ali. *Mā Warā’ Ta’sīs al-Uṣūl*, Bairut: Ru’yah li al-Nashr wa al-Tawzi’, 2006.

- Muhaamad, Abd al-Wasif. *Misbāh al-Sālik*, Bairut: Dar al-Kutub al-Ilmiyyah, 2011.
- Muhammad Abd Allah. *Al-Risālah fī al-Fiqh al-Imām al-Mālik*, Bairut: Dar al-Kutub al-‘Ilmiyyah, 2014.
- Muhammad al-Nuwayhi, Abd al-Salam. *‘Ilm al-Nabāt ‘Inda al-‘Arab*, Tunis: Dar al-Ma’arif li al-Tiba’ah, tt.
- Muhammad, Yahya. *al-‘Aql wa al-Bayān wa al-Ishkāliyyat al-Dīniyyah*, Bairut: Muassasat al-Insha’ al-‘Arabiy, 2010.
- Mahmudi, Zainul. *Sosiologi Fikih Perempuan*. Malang: UIN Malang Press, 2009.
- Majma’ al-Lughah al-‘Arabiyah. *al- Mu’jam al-Muhfarrash li Alfāz al-Qur’ān*. Kairo: al-Hay’ah al-Mis}riyyah al-‘Amah, 1970.
- Mandhūr, Ibn. *Lisān al-‘Arab*. Bairut: Dār al-Fikr, t.th.
- Marāghī (al). Aḥmad Mustāfā. *Tafsīr al-Marāghī*. Vol. 8. Bairut: Dār al-Fikr, t.th.
- Marghinani (al), ‘Alībin AbīBakr. *al-Hidāyah Sharḥ al-Bidāyah*. Vol. 1. Bairut: al-Maktabah al-Islāmiyyah, t.th.
- Mawardi, Amad Imam. *Fiqh Minoritas Fiqh al-Aqalliyat dan Evolusi Maqashid Al-Syari’ah dari Konsep ke Pendekatan*. Yogyakarta: LKiS, 2010.
- Mawardī (al), Abu al-Ḥasan. *al-Nukat wa al-‘Uyūn*. Vol. 4. Bairut: Dār al-Kutub al-‘Ilmiyyah, t.th.
- Minhaji, Ahmad. *Kontroversi Pembentukan Hukum Islam*. Yogyakarta: Uni. Press, 2001.
- Muhammad, Muhammad. *Fiqh Perempuan Refleksi Kiai atas Wacana Agama dan Gender*, Cetakan 5. Yogyakarta: LKiS, 2009.

Muslim. *Ṣaḥīḥ Muslim*. Vol. 14. Bairut: Dār al-Fikr, 1981.

Mustaqim, Abdul. *Pergeseran Epistemologi Tafsir*. Yogyakarta: Pustaka Pelajar, 2008.

Muthahari, Murtadha. *Wanita dan Hijab*. Terj. Nashib Mustafa. Jakarta: Lentera, 2000.

Nawāwī (al). Abū Zakariyā. *Rawḍat al-Ṭālibīn*. Vol. 1. Bairut: Dār al-Kutub al-‘Ilmyyah, 1992.

Najjār (al), Abd al-Majīd. *Maqāṣid al-Sharī’ah bi Ab’ad Jadīdah*, Tunis: Dar al-Gharb al-Islamiy, 2012.

Nawāwī, Sharīf al-Dīn. *al-Majmū’ Sharḥ al-Muhadzdzab*. Vol. 3. Jeddah: Maktabat al-Irshād, t.th.

Nordholt, Henk Schultte. “Pendahuluan” dalam Henk Schulte Nordholt (ed.). *Outward Appearances Trend, Identitas, Kepentingan*. Terj. M. Imam Aziz. Yogyakarta: LKiS, 2005.

Noldeke, Theodor. *Tārikh al-Qur`an* Terj. Jerman: al-Kamel: 2008.

Putnam Tong, *Rosemarie. Feminist Thought*. Terj. Aquarini Priyatna Prabasmoro. Yogyakarta-Bandung: JALASUTRA, 2004.

Qattaniy (al), Musfir bin ‘Aliy, *al-Wa’y al-Maqāṣidiy*, Bairut: al-Shabakah al-‘Arabiyyah li al-Abhath wa al-Nashr, 2013.

_____. *Su’al al-Tadbīr Ru’yah Maqāṣidiyyah f al-Islāh al-Dīniy*, Bairut: al-Shabakah al-‘Arabiyyah, 2013.

Qayrawaniy (al), *al-Risālah fī Fiqh al-Imām al-Mālik*, Bairut: Dar al-Kutub al-‘Ilmiyyah, 2014

Qarḍāwī (al). Yusuf. *al-Niqāb li al-Mar’ah*. Kairo: Maktabat Wahbah, 1996.

- _____ *al-Ijtihād fī al-Sharī'ah al-Islāmīyah*. Kairo: Dār al-Qalam, 1995.
- _____ *Fiqh al-Awlawiyyāt*. Kairo: Maktabat Wahbah, 1996.
- Qaṣīr (al), Fida' Abd al-Razzāq. *al-Mar'ah al-Muslimah Bayn al-Sharī'ah al-Islāmīyah wa al-Aḍālīl al-Gharbiyyah*. Bairut: Muassasāt al-Rayyān, 1999.
- Qurtūbī (al). *Al-Jāmi' li Ahkām al-Qur`ān*. Vol. 15. Bairut: Dār al-Kutub al-`Ilmiyyah, 1993.
- Rahmat, Jalaluddin. *Konstektualisasi Doktrin Islam Dalam Sejarah*. Jakarta: Paramidana, t.th.
- Rashad bin Zayn, . *Al-Mufakkirūn al-Judud*, Tunis: Dār al-Janūb li al-Nashr, 2009.
- Raysuniy (al), Ahmad. *Maqāṣidal-Sharī'ah*, Bairut: al-Shabakah al-`Arabiyyah, 2013.
- _____. *Al-Ijtihād al-Naṣ al-Wāqi' al-Maṣlaḥah*, Bairut: al-Shabakah al-`Arabiyyah, 2013.
- _____. *Naẓariyat al-Maqāṣid 'Inda al-Imām al-Shāṭibī*. Herndon, Virginia: The International Institute of Islamic Thought, 1995.
- Ru'aynī (al), al-Khaṭṭāb al-Jalīl. *Mawāhib al-Jalīl*. Vol. 2. Bairut: Dār al-Kutub al-`Ilmiyyah, t.th.
- Rush, Ibn. *Bidāyah al-Mujtahid*. Vol. 1. Mesir: Mustafā Bābīal-Ḥalībīli al-Nashr, 1960.
- Ṣābūnī (al), Muḥammad 'Alī. *Rawā'i' al-Bayān Tafṣīr Ayāt al-Ahkām*. t.t.: Dār Iḥyā' al-Turāth al-`Arabī, t.th.

- S}alāh, Ibn. *Kitāb ‘Ulum al-Hadith*, Tunis: Mashurat, 1988.
- Salim, Ahmad Muhammad. *Ishkālīyyat al-Turāth Fīal-Fikr al-‘Arabīy al-Mu’āṣir*, Kairo: Ru’yah li al-Nahr wa al-Tawzi’, 2010.
- Shafi’i (al), Muhammad bin Idris. *Diwān al-Imām al-Shāfi’i*. Bairut: Dar al-Kutub al-‘Ilmiyyah, 2014.
- Shammam, al-Bashir. *Ru’yah Taqwīmiyyah li Ishāmāt al-Shāṭibiy wa Ibn ‘Āshūr al-Maqṣadiyyah*, Tunis: Maktabah Tunis, 2013.
- _____. *Falsafat al-Tashrī’ Fīḍaw’i Maqāṣid al-Sharī’ah*, Tunis: Maktabah Tunis, 2013.
- _____. *Ḥurriyah al-Ḍamīr*, Tunis: Maktabah Tunis, 2013.
- Shati (al), Muhammad al-Ṣādiq. *Lubāb al-Farāīḍ*, Tunis: Dār al-Ma’arif li al-Tibā’ah, 1988.
- Suhayliy, Muhammad Amin. *Qā’idah Dar’u al-Mafāsid Awlā Min Jalb al-Maṣālih*, Kairo: Dar al-Salam, 2010.
- Ṣālih, Muḥammad Zakī. *al-Tartīb wa al-Bayān ‘an Āyat al-Qur`ān*. T.t: Dār al-Maktabah al-‘Ilmiyyah, 1979.
- Ṣawwāf (al), *Tahāfut al-Qirā`ah al-Mu’āṣirah*. T.t: al-Ṣawwāf, 1993.
- Suyūṭī (al), Jalāl al-Dīn. *al-Durr al-Manthūr*. Vol. 5. Bairut: Dār al-Kutub al-‘Ilmiyyah, t.th.
- Sābiq (al) al-Sayyid. *Fiqh al-Sunah*. Vol. 1. Bairut: Dār al-Fikr, 1983.
- Saeed, Abdullah. *Interpreting the Qur`ān Towards Contemporary Approach*. London: Routledge Taylor & Francis Group, 2006.
- Saqar, ‘Atiyah. *al-Hijāb Bayn al-Tashri’ wa al-Ijtīmā’*. Kairo: al-Dar al-Misriyyah li al-Kitāb, 1991.
- Schacht, Joseph. *Pengantar Hukum Islam*. Terj. Joko Supomo. Yogyakarta: NUANSA, 2010.

- Schacht, Joseph. *The Origins of Muhammadan Jurisprudence*. Terj. Joko Supomo. Yogyakarta: Insan Madani, 2010.
- Setiawan, Nur Kholis. *Al-Qur`an Kitab Sastra Terbesar*. Yogyakarta: eLSAQ Press, 2005.
- Shāṭibī (al), Abu Ishāq. *al-Muwāfaqāt fī Uṣūl al-Syarī'ah*. Bairut: Dār al-Kutub al-‘Imiyyah, 1971.
- _____ *al-Muwāfaqāt fī Uṣūl al-Syarī'ah*. Vol. 2. Bairut: Dār al-Fikr, 2005.
- Shahrur, Muhammad *al-Kitāb wa al-Qur`ān: Qirā`ah Mu`āṣirah*. Damaskus: al-Ahālī, 1990.
- _____ *Dirāsāt Islāmiyyah Mu`āṣirah fī al-Dawlah wa al-Mujtama`*. Damaskus: al-Ahālī, 1996.
- _____ *Mashrū` Mīthāq al-‘Amal al-Islāmī*. Damaskus: al-Ahālī, 1999.
- _____ *Naḥwa Uṣūl Jadīdah li al-Fiqh al-Islāmī*. Damaskus: al-Ahālī, 2000.
- _____ *Teks Ketuhanan Dan Pluralisme Pada Masyarakat Muslim*. Terj. Mohammad Zaki Husein. Yogyakarta: Hans Bunga, t.th.
- _____ *al-Islām wa al-Īmān: Manzūmat al-Qiyam*. Damaskus: al-Ahālī, 1994.
- Sharbīnī (al), *Mughni al-Muḥtāj*. Vol. 1. Bairut: Dār Ihyā’ al-Turāth al-‘Arabi, t.th.
- Shawkānī(al), Muḥammad. *Fath} al-Qad>ir*. Vol. 4. Bairut: Dār al-Kutub al-‘Ilmiyyah, 1994.
- _____ *Nayl al-Awt}ār*. Vol. 2. Bairut: Dār al-Jil, 1973.

Shayrāzī(al), Muhammad.*al-Qāmus al-Muhit*. Vol. 2. Bairut: Dār al-Kutub al-‘Ilmiyyah, 1995.

Shidiq, Sapiuddin. *Ushul Fiqh*. Jakarta: Kencana, 2011.

Shihab,M. Quraish. *Jilbab Pakaian Wanita Muslimah Pandangan Ulama Masa Lalu & Cendekiawan Kontemporer*. Cetakan ke IV. Ciputat: Lentera Hati, 2009.

_____ *Wawasan al-Qur`an: Tafsir Maudhu`i*. Bandung: Mizan, 1998.

Shinqīfī (al), Ibn al-Mukhtār.*Aḍwā’ al-Bayān fi Idāḥ al-Qur`ān bi al-Qur`an*.Vol. 5. Bairut: Dār al-Fikr, t.th.

Siwāsī (al).*Sharḥ Faḥ al-Qadīr*. Vol. 1. Bairut: Dār al-Fikr, t.th.

Soldier of Fortune, Sir John Glubb. *The Story of The Mamluks*. New York: t.p., 1973.

Subḥī, Šālih. *‘Ulum al-Hadīth wa Muṣṭalaḥuhu*. Bairut: Dār al-Malāyīn, 1977.

Supriyadi, Dedi. *Sejarah Hukum Islam*. Bandung: Pustaka Setia, 2007.

Suryakusuma, Julia.. Bandung: Qanita, 2010.

Syadzili,Ahmad Fawaid. “M.Shahrur Figur Fenominal dari Syria”. *“Studi Teks Dan Tafsir”*. ed. Hans Bunga, t. t.: t.p., 2002.

Syam, Nur. *Agama Pelacur Dramaturgi-Transendental*. Yogyakarta: LKiS, 2011.

Syamsuddi, Sahiron. *Hermeneutika Al-Qur`an Madzhab Yogya*. Yogyakarta: Islamika, 2003.

Syamsuddin, Abdul Mustaqim Sahiron. “Muhammad Shahrur Dalam Penafsiran Al-Qur`an”. dalam *Studi Al-Qur`an Kontemporer*. Yogyakarta: PT Tiara Wacana Yogya, 2002.

- Syuqqah, Abdul Halim. *Kebebasan Wanita*, Vol 4. Terj. As'ad Yasin. Jakarta: Gema Insani Press, 1997.
- Ṭabarīsī (al). *Majma' al-Bayān fī Tafṣīr al-Qur`ān*. Vol. 7. Bairut: Dār al-Fikr, t.th.
- Ṭāhir (al), Muḥammad bin 'Ashur. *Maqāṣid al-Sharī'ah al-Islāmiyyah*. Tunisia: Dār Sukhūn li al-Nashr wa al-Tawzī', 2007.
- Ṭabāṭabāi (al). *al-Mīzān fī Tafṣīr al-Qur`ān*. Vol. 16. Bairut: Maṭba'at Ismā'iliyyan, t.th.
- Taymiyyah, Ibn. *Majmū' al-Fatāwā*. Vol. 15. Bairut: Muassasat al-Risālah, 1987.
- _____. *al-Tafṣīr al-Kabīr*. Vol. 5. Bairut: Dār al-Kutub al-'Ilmiyyah, t.th.
- Tūfī (al), Najm al-Dīn. *Kitāb al-Ta'yīn fī Sharḥ al-Arba'īn*. Bairut: Muassasat al-Rayyān, 1994.
- Turabiy (al), Hasan. *Hīwār al-Dīn wa al-Fan*, Tunis: Maktabah Tunis, 2013.
- _____. Hasan. *Mushkilāt Taṭbīq al-Sharī'ah al-Islāmiyyah*, Tunis: Maktabah Tunis, 2013.
- _____. *Tajdīd al-Fiqh al-Islāmiy*, Tunis: Maktabah Tunis, 2013.
- Ulwānī (al), Ṭāhā Jābir "Fiqh al-Awlawiyyat". *Qaḍāyā Islāmiyyah Mu'āsirah*. Vol. 9. Bairut: t.p., 1999.
- Umari, A.D. *al-Turāth wa al-Mu'āsirah*. Qatar; t.p. 1985.
- Umar, Nasaruddin. *Fikih Wanita Untuk Semua*. Jakarta: Serambi Ilmu Semesta, 2010.

‘Umar, Aḥmad Mukhtār. *‘Ilm al-Dilālāt*. Kuwait: Maktabat Dār al-‘Arubah li al-Nasyr wa al-Tawzi’, 1982.

Wāḥidī (al), Abu al-Ḥasan. *Asbāb al-Nuzūl*. Bairut: Dār al-Fikr, 1988.

Wadud, Amina. *Quran Menurut Perempuan*. Teju. Abdullah Ali. Jakarta: Serambi Ilmu, 2001.

Wahyudi, Yudian. *Ushul Fikih Versus Hermeneutika Membaca Islam dari Kanada dan Amerika*. Yogyakarta: Pesantren Nawesewa Press, 2007.

Ya’qūb, Emil Badi’. *Fiqh al-Lughah wa Khaṣaiṣuh*. Bairut: Dār al-Tsaqāfah al-Islāmiyyah, t.th.

Yusuf, Ulfa. *Hayrah al-Muslimah*, Tunis: Dar Sihr li al-Nashr, 2013.

_____. *Nāqīṣat ‘Aql wa Dīn*, Tunis: Dar Sihr li al-Nashr, 2010.

Zahrah, Muḥammad Abū. *Uṣūl al-fiqh al-Islāmī*. Vol. 2. Bairut: Dār al-Fikr, 1986.

_____. *al-Shāfi’i*. Kairo: Dār al-Fikr, 1948.

Zaid, Muṣṭafā. *al-Maṣlaḥah fī al-Tashrī’ al-Islāmī wa Najm al-Dīn al-Ṭūfi*. Bairut: Dār al-Fikr al-‘Arabī, 1964.

Zawī (al), Ahmad. *Tartīb al-Qāmūs al-Muḥīṭ*. Vol. 2. Bairut: Dār al-Kutub al-‘Ilmyyah, 1996.

Zanji (al), Abu ‘Abd Allah. *Muḥāḍarāt fī Tārīkh al-Madzāhib al-Mālikiy*, T.tp.: Manshurat ‘Akarid, 1988.

Zubaydī (al), Murtada. *Tāj al-‘Arūs*. Vol. 6. Bairut: Dār al-Fikr, 1994.

Zuḥayli (al), Wahbah. *al-Tafsīr al-Munīr*. Vol. 21. Bairut: Dār al-Fikr, t.th.

_____. *al-Fiqh al-Islāmī wa Adillatuh*. Vol.1. Bairut: Dār

_____. *Uṣūl al-Fiqh al-Islāmi*. Vol. 2. Bairut: Dār al-Fikr, 1998.

Zuhri, Saifuddin. *Ushul Fiqih Akal Sebagai Sumber Hukum*. Yogyakarta: Pustaka Pelajar, 2009.

ABOUT THE AUTHOR

A *Halil Thahir* was born on November 21, 1971 in Situbondo, precisely in Tamansari, the foot of Mt. Argapura, Sumbermalang, a village where most of the people are farmers of corn and cassava and tobacco in the dry season. It was the condition of this village that seemingly motivated the author's parents, Siti Saleha and (late) Mohammad Tahir, sent seven children to study for a better life.

In his childhood, Halil Thahir studied at SDN Tamansar, the only state-owned formal educational institution in his village at that time and completed it in 1983. He then continued his study at the Nurul Jadid Probolinggo for thirteen years (1983-1996). In this pesantren, he formally studied at the MTs Nurul Jadid (finished in 1996), and then continued at the Madrasah Aliyah Nurul Jadid in 1989, S1 Qodlo' Faculty of Sharia IAI Nurul Jadid and graduated in 1994. He received his Master degree in Shari'ah (2003) and doctorate (S3) degree in Dirasah Islamiyya (2012) from the Postgraduate of IAIN Sunan Ampel Surabaya.

He was also a teacher at the Madrasah Aliyah Nurul Jadid Special Program (MA PK) from 1990 to 1999. He then moved to Ngawi teaching at the MTs and Aliyah Al-Hidayah (2000-2004), STAI Kendal (2004-2005), STAI Maarif Baluk Magetan (2004-2005). Since 2005 he has been appointed as a permanent lecturer at Dept. of Ushuluddin, the State Islamic Institute (STAIN), Kediri on courses of Fiqh and Ushul Fiqh.

In addition to giving lecturers, he is actively engaged in several social and religious organizations such as, among others, a Chairman of Commission MUI Fatwa and Legal Ngawi, Vice-Katib Syuriah PC NU

Ngawi, Secretary Jam'iyah Ahlit Thariqah al-Mu'tabarah An-Nahdliyyah Ngawi, Deputy Chairman of the Standing Committee Ta'lif wa al-Nasyr Jam'iyah Ahlit Thariqah al-Mu'tabarah An-Nahdliyyah East Java Province, and PW NU East Java RMI.

He has also produced a number of scholarly works both in books and journals. Among his books are: (1) *Menggugat Otenisitas Jilbab dan Hijab: Konsep Pakaiian Ala Syahrur*, STAIN Kediri Press; (2) *Muhammad Abduh Pemikiran dan Pengaruhnya Terhadap Pembaharuan Islam*, STAIN Kediri Press; (3) *Naḥwa Afṣah al-Kalām Durūs al-Lughah al-'Arabiyyah*, STAN Kediri Press; (4) *Qirā'atunā al-Mu'āṣirah Durūs al-Lughah al-'Arabiyyah*. His works in journals, among others, include: (1) "Membongkar Ortodoksi Dalam Islam: Telaah Pemikiran Muhammad Arkoun", in *Jurnal Al-'Adalah STAIN Jember*; (2) "Menggugat Konsep Ikhtiyat dalam I'adah Shalat dhuhur t Ba'd al-Jum'ah", *Jurnal Empirisma* STAIN Kediri; (3) "Rekonstruksi Dalil-Dalil Hukum Para Imam Madzhab: Menimbang Masalah Sebagai Dalil Hukum Terdepan", *Jurnal Empirisma* STAIN Kediri; (4) "Dari Nalar Literalis-Normatif Menuju Nalar Kontekstualis-Historis Dalam Studi Islam", *Islamica: Jurnal Studi Keislaman* (Terakreditasi) PPs IAIN Sunan Ampel Surabaya.

Married to Nana Najibah, the lovely family constituted of four sons and daughters is living in the village Randusongo RT. 02 RW. 03, Gerih District of Ngawi.



Globethics.net is a worldwide ethics network based in Geneva, with an international Board of Foundation of eminent persons, 140,000 participants from 200 countries and regional and national programmes. Globethics.net provides services especially for people in Africa, Asia and Latin-America in order to contribute to more equal access to knowledge resources in the field of applied ethics and to make the voices from the Global South more visible and audible in the global discourse. It provides an electronic platform for dialogue, reflection and action. Its central instrument is the internet site www.globethics.net.

Globethics.net has four objectives:

Library: Free Access to Online Documents

In order to ensure access to knowledge resources in applied ethics, Globethics.net offers its *Globethics.net Library*, the leading global digital library on ethics with over 1 million full text documents for free download. A second library on Theology and Ecumenism was added and a third library on African Law and Governance is in preparation and will be launched in 2013.

Network: Global Online Community

The registered participants form a global community of people interested in or specialists in ethics. It offers participants on its website the opportunity to contribute to forum, to upload articles and to join or form electronic working groups for purposes of networking or collaborative international research.

Research: Online Workgroups

Globethics.net registered participants can join or build online research groups on all topics of their interest whereas Globethics.net Head Office in Geneva concentrates on six research topics: *Business/Economic Ethics*, *Interreligious Ethics*, *Responsible Leadership*, *Environmental Ethics*, *Health Ethics* and *Ethics of Science and Technology*. The results produced through the working groups and research finds their way into *online collections* and *publications* in four series (see publications list) which can also be downloaded for free.

Services: Conferences, Certification, Consultancy

Globethics.net offers services such as the Global Ethics Forum, an international conference on business ethics, customized certification and educational projects, and consultancy on request in a multicultural and multilingual context.

Globethics.net Publications

The list below is only a selection of our publications. To view the full collection, please visit our website.

All volumes can be downloaded for free in PDF form from the Globethics.net library and at www.globethics.net/publications. Bulk print copies can be ordered from publications@globethics.net at special rates from the Global South.

The Editor of the different Series of Globethics.net Publications Prof. Dr. Obiora Ike, Executive Director of Globethics.net in Geneva and Professor of Ethics at the Godfrey Okoye University Enugu/Nigeria.

Contact for manuscripts and suggestions: publications@globethics.net

Global Series

Christoph Stückelberger / Jesse N.K. Mugambi (eds.), *Responsible Leadership. Global and Contextual Perspectives*, 2007, 376pp. ISBN: 978-2-8254-1516-0

Heidi Hadsell / Christoph Stückelberger (eds.), *Overcoming Fundamentalism. Ethical Responses from Five Continents*, 2009, 212pp.
ISBN: 978-2-940428-00-7

Christoph Stückelberger / Reinhold Bernhardt (eds.): *Calvin Global. How Faith Influences Societies*, 2009, 258pp. ISBN: 978-2-940428-05-2.

Ariane Hentsch Cisneros / Shanta Premawardhana (eds.), *Sharing Values. A Hermeneutics for Global Ethics*, 2010, 418pp.
ISBN: 978-2-940428-25-0.

Deon Rossouw / Christoph Stückelberger (eds.), *Global Survey of Business Ethics in Training, Teaching and Research*, 2012, 404pp.
ISBN: 978-2-940428-39-7

Carol Cosgrove Sacks/ Paul H. Dembinski (eds.), *Trust and Ethics in Finance. Innovative Ideas from the Robin Cosgrove Prize*, 2012, 380pp.
ISBN: 978-2-940428-41-0

Jean-Claude Bastos de Morais / Christoph Stückelberger (eds.), *Innovation Ethics. African and Global Perspectives*, 2014, 233pp.
ISBN: 978-2-88931-003-6

Nicolae Irina / Christoph Stückelberger (eds.), *Mining, Ethics and Sustainability*, 2014, 198pp. ISBN: 978-2-88931-020-3

Philip Lee and Dafne Sabanes Plou (eds), *More or Less Equal: How Digital Platforms Can Help Advance Communication Rights*, 2014, 158pp.
ISBN 978-2-88931-009-8

Sanjoy Mukherjee and Christoph Stückelberger (eds.) *Sustainability Ethics. Ecology, Economy, Ethics. International Conference SusCon III, Shillong/India*, 2015, 353pp. ISBN: 978-2-88931-068-5

Amélie Vallotton Preisig / Hermann Rösch / Christoph Stückelberger (eds.) *Ethical Dilemmas in the Information Society. Codes of Ethics for Librarians and Archivists*, 2014, 224pp. ISBN: 978-288931-024-1.

Prospects and Challenges for the Ecumenical Movement in the 21st Century. Insights from the Global Ecumenical Theological Institute, David Field / Jutta Koslowski, 256pp. 2016, ISBN: 978-2-88931-097-5

Christoph Stückelberger, Walter Fust, Obiora Ike (eds.), *Global Ethics for Leadership. Values and Virtues for Life*, 2016, 444pp.
ISBN: 978-2-88931-123-1

Dietrich Werner / Elisabeth Jeglitzka (eds.), *Eco-Theology, Climate Justice and Food Security: Theological Education and Christian Leadership Development*, 316pp. 2016, ISBN 978-2-88931-145-3

Obiora Ike, Andrea Grieder and Ignace Haaz (Eds.), *Poetry and Ethics: Inventing Possibilities in Which We Are Moved to Action and How We Live Together*, 271pp. 2018, ISBN 978-2-88931-242-9

Christoph Stückelberger / Pavan Duggal (Eds.), *Cyber Ethics 4.0: Serving Humanity with Values*, 503pp. 2018, ISBN 978-2-88931-264-1

Theses Series

Kitoka Moke Mutondo, *Église, protection des droits de l'homme et refondation de l'État en République Démocratique du Congo*, 2012, 412pp.
ISBN: 978-2-940428-31-1

Ange Sankieme Lusanga, *Éthique de la migration. La valeur de la justice comme base pour une migration dans l'Union Européenne et la Suisse*, 2012, 358pp. ISBN: 978-2-940428-49-6

Kahwa Njojo, *Éthique de la non-violence*, 2013, 596pp.
ISBN: 978-2-940428-61-8

Carlos Alberto Sintado, *Social Ecology, Ecojustice and the New Testament: Liberating Readings*, 2015, 379pp. ISBN: 978-2-940428-99-1

Symphorien Ntibagirirwa, *Philosophical Premises for African Economic Development: Sen's Capability Approach*, 2014, 384pp.

ISBN: 978-2-88931-001-2

Jude Likori Omukaga, *Right to Food Ethics: Theological Approaches of Asbjørn Eide*, 2015, 609pp. ISBN: 978-2-88931-047-0

Jörg F. W. Bürgi, *Improving Sustainable Performance of SME's, The Dynamic Interplay of Morality and Management Systems*, 2014, 528pp.

ISBN: 978-2-88931-015-9

Jun Yan, *Local Culture and Early Parenting in China: A Case Study on Chinese Christian Mothers' Childrearing Experiences*, 2015, 190pp.

ISBN 978-2-88931-065-4

Frédéric-Paul Piguët, *Justice climatique et interdiction de nuire*, 2014, 559 pp.

ISBN 978-2-88931-005-0

Mulolwa Kashindi, *Appellations johanniques de Jésus dans l'Apocalypse: une lecture Bafuliiru des titres christologiques*, 2015, 577pp. ISBN 978-2-88931-040-1

Naupess K. Kibiswa, *Ethnonationalism and Conflict Resolution: The Armed Group Bany2 in DR Congo*. 2015, 528pp. ISBN: 978-2-88931-032-6

Kilongo Fatuma Ngongo, *Les héroïnes sans couronne. Leadership des femmes dans les Églises de Pentecôte en Afrique Centrale*, 2015, 489pp. ISBN 978-2-88931-038-8

Bosela E. Eale, *Justice and Poverty as Challenges for Churches: with a Case Study of the Democratic Republic of Congo*, 2015, 335pp,

ISBN: 978-2-88931-078-4

Andrea Grieder, *Collines des mille souvenirs. Vivre après et avec le génocide perpétré contre les Tutsi du Rwanda*, 2016, 403pp. ISBN 978-2-88931-101-9

Monica Emmanuel, *Federalism in Nigeria: Between Divisions in Conflict and Stability in Diversity*, 2016, 522pp. ISBN: 978-2-88931-106-4

John Kasuku, *Intelligence Reform in the Post-Dictatorial Democratic Republic of Congo*, 2016, 355pp. ISBN 978-2-88931-121-7

Fifamè Fidèle Houssou Gandonour, *Les fondements éthiques du féminisme. Réflexions à partir du contexte africain*, 2016, 430pp. ISBN 978-2-88931-138-

5

Nicoleta Acatrinei, *Work Motivation and Pro-Social Behaviour in the Delivery of Public Services Theoretical and Empirical Insights*, 2016, 387pp. ISBN 978-2-88931-150-7

Texts Series

Principles on Sharing Values across Cultures and Religions, 2012, 20pp. Available in English, French, Spanish, German and Chinese. Other languages in preparation. ISBN: 978-2-940428-09-0

Ethics in Politics. Why it Matters More than Ever and How it Can Make a Difference. A Declaration, 8pp, 2012. Available in English and French. ISBN: 978-2-940428-35-9

Religions for Climate Justice: International Interfaith Statements 2008-2014, 2014, 45pp. Available in English. ISBN 978-2-88931-006-7

Ethics in the Information Society: the Nine 'P's. A Discussion Paper for the WSIS+10 Process 2013-2015, 2013, 32pp. ISBN: 978-2-940428-063-2

Principles on Equality and Inequality for a Sustainable Economy. Endorsed by the Global Ethics Forum 2014 with Results from Ben Africa Conference 2014, 2015, 41pp. ISBN: 978-2-88931-025-8

Focus Series

Christoph Stückelberger, *Das Menschenrecht auf Nahrung und Wasser. Eine ethische Priorität*, 2009, 80pp. ISBN: 978-2-940428-06-9

Christoph Stückelberger, *Corruption-Free Churches are Possible. Experiences, Values, Solutions*, 2010, 278pp. ISBN: 978-2-940428-07-6

—, *Des Églises sans corruption sont possibles: Expériences, valeurs, solutions*, 2013, 228pp. ISBN: 978-2-940428-73-1

Benôit Girardin, *Ethics in Politics: Why it matters more than ever and how it can make a difference*, 2012, 172pp. ISBN: 978-2-940428-21-2

—, *L'éthique: un défi pour la politique. Pourquoi l'éthique importe plus que jamais en politique et comment elle peut faire la différence*, 2014, 220pp. ISBN 978-2-940428-91-5

Willem A Landman, *End-of-Life Decisions, Ethics and the Law*, 2012, 136pp. ISBN: 978-2-940428-53-3

Corneille Ntamwenge, *Éthique des affaires au Congo. Tisser une culture d'intégrité par le Code de Conduite des Affaires en RD Congo*, 2013, 132pp. ISBN: 978-2-940428-57-1

Elisabeth Nduku / John Tenamwenye (eds.), *Corruption in Africa: A Threat to Justice and Sustainable Peace*, 2014, 510pp. ISBN: 978-2-88931-017-3

Dicky Sofjan (with Mega Hidayati), *Religion and Television in Indonesia: Ethics Surrounding Dakwahtainment*, 2013, 112pp. ISBN: 978-2-940428-81-6

Yahya Wijaya / Nina Mariani Noor (eds.), *Etika Ekonomi dan Bisnis: Perspektif Agama-Agama di Indonesia*, 2014, 293pp. ISBN: 978-2-940428-67-0

Bernard Adeney-Risakotta (ed.), *Dealing with Diversity. Religion, Globalization, Violence, Gender and Disaster in Indonesia*. 2014, 372pp. ISBN: 978-2-940428-69-4

Nina Mariani Noor/ Ferry Muhammadsyah Siregar (eds.), *Etika Sosial dalam Interaksi Lintas Agama* 2014, 208pp. ISBN 978-2-940428-83-0

B. Muchukiwa Rukakiza, A. Bishweka Cimenesa et C. Kapapa Masonga (éds.), *L'État africain et les mécanismes culturels traditionnels de transformation des conflits*. 2015, 95pp. ISBN: 978-2-88931-042-5

Dickey Sofian (ed.), *Religion, Public Policy and Social Transformation in Southeast Asia*, 2016, 288pp. ISBN: 978-2-88931-115-6

Symphorien Ntibagirirwa, *Local Cultural Values and Projects of Economic Development: An Interpretation in the Light of the Capability Approach*, 2016, 88pp. ISBN: 978-2-88931-111-8

Karl Wilhelm Rennstich, *Gerechtigkeit für Alle. Religiöser Sozialismus in Mission und Entwicklung*, 2016, 500pp. ISBN 978-2-88931-140-8.

John M. Itty, *Search for Non-Violent and People-Centric Development*, 2017, 317pp. ISBN 978-2-88931-185-9

Florian Josef Hoffmann, *Reichtum der Welt—für Alle Durch Wohlstand zur Freiheit*, 2017, 122pp. ISBN 978-2-88931-187-3

Cristina Calvo / Humberto Shikiya / Deivit Montealegre (eds.), *Ética y economía la relación dañada*, 2017, 377pp. ISBN 978-2-88931-200-9

Maryann Ijeoma Egbujor, *The Relevance of Journalism Education in Kenya for Professional Identity and Ethical Standards*, 2018, 141pp. ISBN 978-2-88931233-7

African Law Series

D. Brian Dennison/ Pamela Tibihikirra-Kalyegira (eds.), *Legal Ethics and Professionalism. A Handbook for Uganda*, 2014, 400pp. ISBN 978-2-88931-011-1

Pascale Mukonde Musulay, *Droit des affaires en Afrique subsaharienne et économie planétaire*, 2015, 164pp. ISBN: 978-2-88931-044-9

Pascal Mukonde Musulay, *Démocratie électorale en Afrique subsaharienne: Entre droit, pouvoir et argent*, 2016, 209pp. ISBN 978-2-88931-156-9

Pascal Mukonde Musulay, *Contrats de partenariat public privé : Options innovantes de financement des infrastructures publiques en Afrique subsaharienne*, 2018, ISBN 978-2-88931-244-3, 175pp.

China Christian Series

Yahya Wijaya; Christoph Stückelberger; Cui Wantian, *Christian Faith and Values: An Introduction for Entrepreneurs in China*, 2014, 76pp. ISBN: 978-2-940428-87-8

Christoph Stückelberger, *We are all Guests on Earth. A Global Christian Vision for Climate Justice*, 2015, 52pp. ISBN: 978-2-88931-034-0 (en Chinois, version anglaise dans la Bibliothèque Globethics.net)

Christoph Stückelberger, Cui Wantian, Teodorina Lessidrenska, Wang Dan, Liu Yang, Zhang Yu, *Entrepreneurs with Christian Values: Training Handbook for 12 Modules*, 2016, 270pp. ISBN 978-2-88931-142-2

Christoph Stückelberger / Li Jing, *Philanthropy and Foundation Management: A Guide to Philanthropy in Europe and China*, 2017, 171pp. ISBN: 978-2-88931-195-8

Christoph Stückelberger / Vanessa Yuli Wang, *Faith at Work. Directory of Christian Entrepreneurs and Workers*, 2017, 126pp. ISBN: 978-2-88931-207-8

马提阿斯奈格鲍尔 (Matthias Neugebauer), 茨温利的伦理学 *Ulrich Zwingli's Ethics*, 2017, 329pp. ISBN 978-2-88931-214-6

理查德·希金森 (Dr. Richard Higginson) 著, 刘殿利 (Dr. Dianli Liu) 译, 信仰、希望与全球经济: 一种为善的力量 *Faith, Hope & the Global Economy: A Power for Good*, 2017, 319pp. ISBN 978-2-88931-228-3

Faith-based Entrepreneurs: Stronger Together. Report of the International Conference Geneva 2018, 2018, 88pp. ISBN 978-2-88931-258-0

China Ethics Series

Liu Baocheng / Dorothy Gao (eds.), *中国的企业社会责任 Corporate Social Responsibility in China*, 459pp. 2015, en Chinois, ISBN 978-2-88931-050-0

Bao Ziran, *影响中国环境政策执行效果的因素分析 China's Environmental Policy, Factor Analysis of its Implementation*, 2015, 431pp. En chinois, ISBN 978-2-88931-051-7

Yuan Wang and Yating Luo, *China Business Perception Index: Survey on Chinese Companies' Perception of Doing Business in Kenya*, 99pp. 2015, en anglais, ISBN 978-2-88931-062-3.

王淑芹 (Wang Shuqin) (编辑) (Ed.), *Research on Chinese Business Ethics [Volume 1]*, 2016, 413pp. ISBN: 978-2-88931-104-0

王淑芹 (Wang Shuqin) (编辑) (Ed.), *Research on Chinese Business Ethics [Volume 2]*, 2016, 400pp. ISBN: 978-2-88931-108-8

Liu Baocheng, *Chinese Civil Society*, 2016, 177pp. ISBN 978-2-88931-168-2

Liu Baocheng / Zhang Mengsha, *Philanthropy in China: Report of Concepts, History, Drivers, Institutions*, 2017, 246pp. ISBN: 978-2-88931-178-1

Liu Baocheng / Zhang Mengsha, *CSR Report on Chinese Business Overseas Operations*, 2018, 286pp. ISBN 978-2-88931-250-4

Education Ethics Series

Divya Singh / Christoph Stückelberger (Eds.), *Ethics in Higher Education Values-driven Leaders for the Future*, 2017, 367pp. ISBN: 978-2-88931-165-1

Obiora Ike / Chidiebere Onyia (Eds.) *Ethics in Higher Education, Foundation for Sustainable Development*, 2018, 645pp. IBSN: 978-2-88931-217-7

Obiora Ike / Chidiebere Onyia (Eds.) *Ethics in Higher Education, Religions and Traditions in Nigeria* 2018, 198pp. IBSN: 978-2-88931-219-1

Readers Series

Christoph Stückelberger, *Global Ethics Applied: vol. 4 Bioethics, Religion, Leadership*, 2016, 426. ISBN 978-2-88931-130-9

Кристоф Штукельбергер, *Сборник статей, Прикладная глобальная этика Экономика. Инновации. Развитие. Мир*, 2017, 224pp. ISBN: 978-5-93618-250-1

John Mohan Razu, *Ethics of Inclusion and Equality, Vol. 1: Politics & Society*, 2018, 452pp., ISBN:978-2-88931-189-7

CEC Series

Win Burton, *The European Vision and the Churches: The Legacy of Marc Lenders*, Globethics.net, 2015, 251pp. ISBN: 978-2-88931-054-8

Laurens Hogebrink, *Europe's Heart and Soul. Jacques Delors' Appeal to the Churches*, 2015, 91pp. ISBN: 978-2-88931-091-3

Elizabeta Kitanovic and Fr Aimilianos Bogiannou (Eds.), *Advancing Freedom of Religion or Belief for All*, 2016, 191pp. ISBN: 978-2-88931-136-1

Peter Pavlovic (ed.) *Beyond Prosperity? European Economic Governance as a Dialogue between Theology, Economics and Politics*, 2017, 147pp. ISBN 978-2-88931-181-1

CEC Flash Series

Guy Liagre (ed.), *The New CEC: The Churches' Engagement with a Changing Europe*, 2015, 41pp. ISBN 978-2-88931-072-2

Guy Liagre, *Pensées européennes. De « l'homme nationalis » à une nouvelle citoyenneté*, 2015, 45pp. ISBN: 978-2-88931-073-9

Copublications & Other

Patrice Meyer-Bisch, Stefania Gandolfi, Greta Balliu (eds.), *Souveraineté et coopérations: Guide pour fonder toute gouvernance démocratique sur l'interdépendance des droits de l'homme*, 2016, 99pp. ISBN 978-2-88931-119-4 (Available in Italian)

Stefania Gandolfi (a cura di), *Diaspore e democrazia. Le diaspore sono portatrici di valori*, 2018, 207pp. ISBN 978-2-88931-266-5

Reports

Global Ethics Forum 2016 Report, Higher Education—Ethics in Action: The Value of Values across Sectors, 2016, 184pp. ISBN: 978-2-88931-159-0

African Church Assets Programme ACAP: Report on Workshop March 2016, 2016, 75pp. ISBN 978-2-88931-161-3

Globethics Consortium on Ethics in Higher Education Inaugural Meeting 2017 Report, 2018, 170pp. ISBN 978-2-88931-238-2

This is only selection of our latest publications, to view our full collection please visit:

www.globethics.net/publications



Ijtihād Maqāṣidi

The Interconnected Maṣlahah-Based Reconstruction of Islamic Laws



A. Halil Thahir

received his Bachelor Degree from the Faculty of Sharia, IAIN Nurul Jadid in 1994, and his Master degree in Shari'ah from IAIN Sunan Ampel Surabaya in 2003. He completed his Doctoral Degree in Dirasah Islamiyyah (Islamic Studies) in 2012 from the Postgraduate of IAIN Sunan Ampel Surabaya. Currently, he serves as a full-time faculty at the Department of Ushuluddin (Theology), State Institute for Islamic Studies (IAIN) Kediri, specializing on Fiqh and Ushul Fiqh, where he is also appointed as the head of Dept. of Ulum al-Qur`an wa al-Tafsir of the Graduate Program. With the support of the Indonesian Ministry of Religious Affairs, he participated in an Academic at University of Marmara Turkey in 2013 and received a Postdoctoral Fellowship Program for Islamic Higher Education (POSFI) at the University of Sousse, Tunisia.

In this book Islamic law is presented from various perspectives to find the common thread between the Sharia, Islamic law and Islamic jurisprudence. The discussion is focused on the characteristics and principles of Islamic law as a means of providing a general overview of how Islamic law should be positioned, especially in the efforts of formulating legal rules that seek to bring benefit for people. Islamic law is brought from its ideal concepts into practical usage.

This works gives many concrete examples of the critical understanding of social behaviours in the Islamic society, such as Muslim clothing and the conduct of Muslim women, by providing meticulous hermeneutic analysis of the literature that is used as legitimation of certain religious conventions. This work instills a deep ethical understanding of the normative foundations of Islamic law in the global perspective.