MAQÂSHID AL-SYARÎ`AH AL-SHÂTHIBÎ AND IBN `ASHÛR'S PERSPECTIVES ON AL-QITÂL VERSE

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Abstract: The verse of *al-Qitâl* is frequently exploited as a symbol to instill a negative stigma against Islam and trigger the emergence of religious radicalism, which disrupts Muslim-non-Muslim relations. This study aims to look into al-Shâthibî and Ibn `Ashûr's perspectives of *Maqâshid al-Syarî`ah* and its relation to the verse of *al-Qitâl*. Studies revealed that al-Shâthibî and Ibn `Ashûr had the same passion for Islamic law reform. Differences arise in the methodological and conceptual domain employed to identify and map *Maqâshid al-Syarî`ah*. Al-Shâthibî uses it to refer to the *Maqâshid al-Syarî`ah* trilogy, which includes the purpose of Islamic law discourse, Islamic law philosophy, and Islamic law principle. On the other hand, al-Shâthibî only provides examples of application related to the goals of Islamic law discourse. Meanwhile, Ibn `Ashûr limits its application to the purpose of Islamic law philosophy related to morals and ethics. Furthermore, al-Shâthibî identify the dimensions of *Hifz al-Dîn* (protection of religion) in the verse of *al-Qitâl* using the *istiqrâ'* (induction), which is an Islamic law discourse methodology, while Ibn `Ashûr identify them based on the philosophy of Islamic law. This study concludes that al-Shâthibî and Ibn `Ashûr's perspectives of the verse of *al-Qitâl* contain *Maqâshid al-Syarî`ah* content.

Keywords: al-Shâthibî; Ibn `Ashûr; *al-Qitâl* verse; Islamic law philosophy; *Maqâshid al-Syarî`ah*.

Abstrak: Ayat *al-Qitâl* sering dimanfaatkan sebagai simbol untuk menanamkan stigma negatif terhadap Islam dan memicu munculnya radikalisme agama, yang mengganggu hubungan Muslim-non-Muslim. Penelitian ini bertujuan untuk melihat perspektif al-Shâthibî dan Ibn `Ashûr tentang *Maqâshid al-Syarî`ah* dan kaitannya dengan ayat *al-Qitâl*. Studi mengungkapkan bahwa al-Shâthibî dan Ibn `Ashûr memiliki semangat yang sama untuk reformasi hukum Islam. Perbedaan muncul dalam ranah metodologis dan konseptual yang digunakan untuk mengidentifikasi dan memetakan *Maqâshid al-Syarî`ah*. Al-Shâthibî menggunakannya untuk merujuk pada trilogi *Maqâshid al-Syarî`ah* yang meliputi tujuan wacana hukum Islam, filsafat hukum Islam, dan prinsip hukum Islam. Di sisi lain, al-Shâthibî hanya memberikan contoh penerapan yang terkait dengan tujuan wacana hukum Islam. Sementara itu, Ibn `Ashûr membatasi penerapannya pada tujuan filsafat hukum Islam yang berkaitan dengan moral dan etika. Selanjutnya, al-Shâthibî mengidentifikasi dimensi *Hifz al-Dîn* (perlindungan agama) dalam ayat *al-Qitâl* menggunakan *istiqrâ'* (induksi), yang merupakan metodologi wacana hukum Islam, sedangkan Ibn `Ashûr mengidentifikasinya berdasarkan filsafat hukum Islam. Penelitian ini menyimpulkan bahwa perspektif al-Shâthibî dan Ibn `Ashûr terhadap ayat *al-Qitâl* mengandung muatan *Maqâshid al-Syarî`ah*.

Kata kunci: al-Shâthibî; Ibn `Ashûr; ayat *al-Qitâl*; filsafat hukum Islam; *Maqâshid al-Syarî`ah*.

Introduction

There have been some errors in the interpretation of the verses of the Quran concerning war (*al-Qitâl*). Western scholars use the verse of *al-Qitâl* to accuse Islam of being a religion spread through sword and violence. In addition, radicals use the verse of *al-Qitâl* as a justification to committ violence, anarchy, and terror.[1] If traced,

this error emerges due to partial-monolithic and literalist textual interpretations of the verses of the Quran.[2] Meanwhile, to understand the verse correctly, a complete, comprehensive, and contextual model of interpretation (meaning) is

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[1] Arif Chasbullah and Wahyudi, "Deradikalisasi Terhadap Penafsiran Ayat-Ayat Qital," *Jurnal Fikri*, vol. 2, no. 2 (2017), pp. 407–424.

[2] Zakiya Darajat, "Jihad Dinamis: Menelusuri Konsep Dan Praktik Jihad Dalam Sejarah Islam," *Ijtihad Jurnal Wacana Hukum Islam dan Kemanusiaan*, vol. 16, no. 1 (2016), pp. 1–25.

necessary. This partial interpretation creates limited understanding of Islamic teachings, resulting in a blind fanatic attitude, stubborness (rigid), exclusivity and radicalism. Several terrorist attacks that happen recently have further supported the perception that ideology and religion are the root of terrorism.[3]

This has led several modern scholars and academics, including Jasser Auda[4] and Mohammad Arkoun[5] to criticize classical scholars who emphasize the linguistic aspect only. They argue that excessive attention to the linguistic aspect leads to literalist textual understanding, and disregards the core purpose and substance of Islamic law (*Maqâshid al-Syarî`ah*). Using the *Maqâshid al- Syarî`ah* perspective, al-Shâthibî and Ibn `Ashûr present an interpretation model that integrates textual and contextual meaning. This interpretation model by Jasser Auda is referred to as the middle way which is the only way to bridge the gap between text and reality (context). [6] According to al-Alwani as cited by Fawaid, disregarding one of these two elements makes the interpreter fail to reach perfect understanding of the Quran. With the purpose of producing a complete and comprehensive understanding of the Quran verses, it is essential to study the perspective of both al-Shâthibî and Ibn `Ashûr.[7]

Several scholars studied the *Maqâshid al-Syarî`ah* concept as a lens to discuss variety of issues such as banking,[8] zakat,[9] trade,[10] halal and healthy products,[11] Islamic tourism,[12] local wisdom,[13] politics and state constitution,[14] people's welfare,[15] banking management,[16] strengthening religious institutions,[17] and approach of system in Islamic law.[18]

Previously conducted research has discussed the verse of *al-Qitâl* as well. Among the findings is that war in Islam is not interpreted as killing, conquering cities, seizing property, and forcing non-Muslims to convert to Islam. However, it is a means of *da`wah* to elevate the word of Allah, which held the same status as other worships

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[3] Imam Mustofa, "TERORISME: ANTARA AKSI DAN REAKSI: Gerakan Islam Radikal Sebagai Respon Terhadap Imperialisme Modern [Terrorism: Between Action and Reaction: Radical Islamic Movement as a Response to Modern Imperialism]," *Religia*, vol. 15, no. 1 (2017).

[4] JASSER AUDA, "Systems as Philosophy and Methodology for Analysis," *Maqasid Al-Shariah as Philosophy of Islamic Law* (2019), p. 88.

[5] Mohamad Arkoun, *The Politics of Islamic Revivalism*, ed. Shireen T. Hunter, (Indiana, USA: Indiana University Press, 1988), pp. 182–183.

[6] Jasser Auda, *Maqashid Syariah as Philosopy of Islamic Law System Approach*, (Herndon, USA: International Iinstitute of Islamic Tought, 2008), p. 27.

[7] Ah. Fawaid, "Maqasid Al-Qur'an Dalam Ayat Kebebasan Beragama Menurut Penafsiran Thaha Jabir Al-'Alwani [Maqasid Al-Qur'an In Verse of Religious Freedom According to Thaha Jabir Al-'Alwani Interpretation]," *Madania*, vol. 21, no. 2 (2017), pp. 113–126.

[8] Mohammad Abu Hurayra, "Achievement of Maqasid-Al-Shari'ah in Islamic Banking: An Evaluation of Islami Bank Bangladesh Limited," *Global Journal of Computer Science and Technology: A Hardware & Computation*, vol. 15, no. 1 (2015), pp. 9–16.

[9] Rahmatina A Kasri, "Maqasid Al-Shariah and Performance of Zakah Institutions," *Kyoto Bulletin of Islamic Area Studies*, vol. 9, no. March (2016), pp. 19–41, http://www.asafas.kyoto-u. ac.jp/kias/pdf/kb9/03esf_03_kasri.pdf.

[10] Wahyuniati Hamid et al., "Trade Principles And Sharia-Adherence Banking Performance Analysis By Employing Maqasid Islamic Sharia Index Approach: Study on Indonesian Sharia Bank," *RJOAS*, vol. 11, no. November (2016), pp. 23–29.

[11] Nurdeng Deuraseh, "NEW ESSENTIAL VALUES OF DARURIYYAH (NECESSITIES) OF THE OBJECTIVES OF ISLAMIC LAW (MAQASID AL-SHARI`AH) (Keperluan Nilai Baharu Dalam Maqasid Shari`ah (Objektif Undang-Undang Islam))," *Jurnal Hadhari: An International Journal*, vol. 4, no. 2 (2012), pp. 107–116.

[12] Wan Nazjmi Mohamed Fisol et al., "Islamic Tourism Development Based on the Scientific of the Maqasid Shari'ah Framework," *International Journal of Academic Research in Business and Social* Sciences, vol. 9, no. 5 (2019), pp. 784–795.

[13] Eko Saputra and Busyro, "Kawin Maupah: An Obligation to Get Married after Talak Tiga in the Tradition of Binjai Village in Pasaman District a Maqâsid Al- Sharî'ah Review," *Qudus International Journal of Islamic Studies*, vol. 6, no. 2 (2018), pp. 181–219.

[14] Marybeth T Acac, "PANCASILA: A Contemporary Application of Maqasid Al-Shari'Ah?," *Journal of Indonesian Islam*, vol. 9, no. 1 (2015), p. 59.

[15] Elviandri et al., "The Formulation of Welfare State: The Perspective of Maqâid Al-Sharî'ah," *Indonesian Journal of Islam and Muslim Societies*, vol. 8, no. 1 (2018), pp. 117–146.

[16] Djumardin and Atin Meriati Isnaini, "The Existence of Sharia Supervisory Board in Maintaining the Purpose of Sharia Principles in Sharia Banking," *Journal of Legal, Ethical and Regulatory Issues*, vol. 21, no. 3 (2018), pp. 1–6.

[17] Zakaria Syafei, "Tracing Maqashid Al-Shari'ah in the Fatwas of Indonesian Council of Ulama (MUI)," Journal of Indonesian Islam, vol. 11, no. 1 (2017), pp. 99–124.

[18] Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam) [Maqâshid Sharî'ah In Jasser Auda: Islamic Law System Approach]," Jurnal Al-Himayah, vol. 2, no. 1 (2018), pp. 97–118.

like prayer, fasting, and zakat.[19] War is not the primary tool to interact with non-Muslims, it is one of the alternatives to achieve justice and suppress oppression.[20] War had a dynamic that is influenced by differences in socio-historical factors, such as political realities faced by Muslims from time to time.[21] War in Islam is not an act of murder and cruelty as perceived by the enemies of Islam. On the contrary, it has a humanistic aspect that can only be understood by doing a textual and thorough study of the verses of the Quran and Hadith, as well as doing an accurate reading of the practice of *al-Qitâl* (war) history in the early period of Islam.[22]

In addition, scholars have examined the concept of *Maqâshid al-Syarî`ah* from al-Shâthibî's perspective. Toriquddin's study show that in constructing *Maqâshid al-Syarî`ah*, al-Shâthibî refers to three main parts, namely the problem of *ta'lil* and *mashâlih* (benefit) and *mafâsid* (damage), the way to understand *Maqâshid al-Syarî`ah*, and the way to perform *Maqâshidi ijtihâd*.[23] Tono emphasized that through the concept of *Maqâshid al-Syarî`ah*, al-Shâthibî constructed a theoretical tool to increase the flexibility and adaptability of positive law as a response to practices that deviate from Islamic principles. According to Djalaluddin, the main idea of al-Shâthibî is *Maqâshid al-Syarî`ah*, in which there is *mashlahah* (benefit) aiming to actualize the happiness in this world and in the hereafter. For example, according to al-Shâthibî, the application of *qishas* law is aimed at ensuring survival and preventing crimes against humans which is the principles of *Maqâshid al-Syarî`ah*.[24] As a result, the concept

of *Maqâshid al-Syarî`ah* by al-Shâthibî not only comprises the *Ushul Fiqh* methodology, but also explains the major foundation in understanding Sharia as a whole.

In addition, several studies have examined the concept of *Maqâshid al-Syarî`ah* in Ibn `Ashûr's perspective. Chamim Tohari's study showed that Ibn `Ashûr reformed *Maqâshid al-Syarî`ah* issues which include nature (*fitrah*), tolerance (*samahah*), benefit (*mashlahah*), equality (*musawah*), and freedom (*hurriyah*). In line with that, Ainol Yaqin pointed out that *Maqâshid al-Syarî`ah* has four foundations, namely nature (*fitrah*), equality (*musawah*), tolerance (*samahah*), and freedom (*hurriyah*).[25] Zatadini's study also show that Ibn `Ashûr contributed to the development of fiscal policy concepts in three aspects, namely state spending, tax collection, and household costs.[26]

If we take a closer look, research on *Maqâshid al-Syarî`ah* as a perspective in understanding the verses of *al-Qitâl* still has yet to receive researchers' further attention. Therefore, this study conducts a comparative method of the concept of al-Shâthibî and Ibn `Ashûr in *Maqâshid al-Syarî`ah* which is used as a perspective to study the verses of *al-Qitâl*. Moreover, this study aims to discuss the following issues: examining the perspectives of al-Shâthibî and Ibn 'Ashûr on *Maqâshid al-Syarî`ah*, examining the perspective of al-Shâthibî and Ibn `Ashûr of *Maqâshid al-Syarî`ah* in analyzing the verses of *al-Qitâl*. This study argues that the concept of *Maqâshid al-Syarî`ah* proposed by al-Shâthibî and Ibn `Ashûr related to *al-Qitâl*'s verses can be used to respond to modern global concerns, which disrupt Muslim and Non-Muslim relations such as radicalism, terrorism, and fundamentalism.

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[19] M Junaidi, "PERANG DAN JIHAD DALAM PERSPEKTIF FIQH SIYASAH DAULIYAH (TELAAH HISTORIS BERBASIS TEKS SUCI)," *Law and Justice*, vol. 1, no. 1 (2016), pp. 65–73.

[20] Arif Chasbullah and Wahyudi, "Deradikalisasi Terhadap Penafsiran…, pp. 407–424

[21] Zakiya Darajat, "Jihad Dinamis: Menelusuri Konsep…, pp. 1–25.

[22] Ana Rahmawati and Azzah Nor Laila, "Qital: Reinterpretasi Pendekatan Humanis," *DINIKA: Academic Journal of Islamic Studies*, vol. 4, no. 3 (2019), pp. 414–434.

[23] Moh Toriquddin, "Teori Maqâshid Syarî'Ah Perspektif Al-Syatibi," *Journal de Jure, Jurnal Syariah dan Hukum*, vol. 6, no. 1 (2014), pp. 33–47.

[24] Mawardi Djalaluddin, "Pemikiran Abu Ishaq Al-Syatibi

Dalam Kitab Al-Muwafaqat," *Al-Daulah*, vol. 4, no. 2 (2015), pp. 289–300, http://journal.uin-alauddin.ac.id/index.php/al_daulah/article/view/1483.

[25] Chamim Tohari, "Pembaharuan Konsep Maqâsid Al-Sharî'Ah Dalam Pemikiran Muhamamad Thahir Ibn 'Ashur," *Al-Maslahah Jurnal Ilmu Syariah*, vol. 13, no. 1 (2017), p. 1.

[26] Nabila Zatadini and Syamsuri Syamsuri, "Konsep Maqashid Syariah Menurut Al-Syatibi Dan Kontribusinya Dalam Kebijakan Fiskal," *AL-FALAH: Journal of Islamic Economics*, vol. 3, no. 2 (2018), p. 1.

Method

This study employed a library research method, in which data sources are obtained by documentation from books, and both printed and electronic journals. The two data sources are primary and secondary sources respectively. The primary source is the concept of al-Shâthibî's perspective contained in *al-Muwafaqât Fî Ushul al-Syarî`ah* and Ibn `Ashûr in his *Maqâshid al-Syarî`ah al-Islâmiyah*. The secondary sources are books and journals that examine the perspectives of the two figures in *Maqâshid al-Syarî`ah*. This study uses a formal juridical normative approach to identify the perspectives of al-Shâthibî and Ibn `Ashûr about *Maqâshid al-Syarî`ah* in studying Muslim and non-Muslim relations. Furthermore, a comparative study is used to seek similarities and differences in the conceptual and methodological frameworks of the two figures.

Maqâshid al-Syarî`ah and The Verse of *al-Qitâl*

The study of *Maqâshid al-Syarî`ah* has received serious attention from Islamic scholars and jurists. The concept is that the aim of establishing Islamic law is to give blessings to human beings. The blessings of life are known as the values of universal goodness, such as justice, equality, freedom, peace, prosperity, and ease of life which reflect Islam as a religion of love appropriate for all conditions and times.[27] If associated with the verse of *al-Qitâl*, then the war in the concept of Islam is applied to realize the dimension of *Hifz al-Dîn* (protecting the religion), which is one of the goals of the Islamic law implementation (*Maqâshid al-Syarî`ah*). It refers to the purpose of religion to create goodness, peace, and prosperity and not to create conflict, evil, and war. *Maqâshid al-Syarî`ah* discusses how a person has the right to protect the religion, the soul, the mind, the offspring, and the property. Protection the five principles of *Maqâshid al-Syarî`ah* is important

for anyone to create peaceful life and harmony between religions.

In Islam, war is only declared to defend oneself or to stop military aggression by the enemies of Islam,[28] rather than to commit murder for no apparent reason. In addition, war is the last alternative and has to be done only to establish peace. When peace in life is disrupted and no longer valued, Muslims are allowed by Allah Swt to declare war.[29] War is allowed in Islam when fighting and opposing tyranny (self-defense and depending religion) (Surah al-Hajj [22]: 39-40); (Surah al-Baqarah [2]: 190); (Surah al-Nisâ': 75), preventing slander (persecution and chaos) (Surah al-Anfâl [8]: 39-40), and elevating the *syiar* of Islam (Surah al-Baqarah [2]: 193). These reasons, in addition to being the principle and value of *Maqâshid al-Syarî`ah*, also counteract the notion that Islam is spread by sword and violence.

Intelectual Contribution of Al-Shâthibî and Ibn `Ashûr

Al-Shâthibî (died 790 H/1388 A.D.) and Ibn `Ashûr (died 1393 H/1973 A.D.) were two figures who made significant contributions in the field of *Maqâshid al-Syarî`ah*. Before al-Shâthibî's time, the discussion of *Maqâshid al-Syarî`ah* was limited to partial themes (*juz`iyah*) such as prayer, fasting, zakat, hajj, and war. Although there seems to be an effort to expand the discussion and coverage of the level of *Maqâshid al-Syarî`ah* known as *al-Munâsabah* and *al-Mashlahah*, it did not make significant changes to the formulation and form of science. Al-Juwaini classified *Maqâshid al-Syarî`ah* (*al-Mashlahah*) into five levels[30] which were then summarized by al- Ghazâlî into three levels, namely *dharûriyat* (primary), *hajiyat* (secondary), and *tahsiniat* (tertiary). Al-Ghazali describes the level of *dharûriyat* into five pillars, namely protecting

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[27] Ahmad Imam Mawardi, "Fikih Mayoritas Versus Fikih Minoritas: Melacak Akar Konflik Sosial Atas Nama Syari'at [The Majority versus Minority Jurisprudence: Tracing the Roots of Social Conflict in the Name of Sharia]," *Justicia Islamica,* vol. 9, no. 2 (2012), pp. 105–118.

[28] Ana Rahmawati and Azzah Nor Laila, "Qital: Reinterpretasi…, pp. 414-434.

[29] Dede Rosdin, "Islam Dan Radikalisme: Telaah Atas Ayat-Ayat Kekerasan Dalam Al-Quran," *ADDIN*, vol. 10, no. 1 (2016), pp. 29–60.

[30] A. al-Ma'ali Al-Juwaini, *Al-Burhan Fi Ushul Al-Fiqhi*, (Beirut: Dar al-Kutub al-Ilmiyah., 1997), 1st ed, p. 79.

religion, the soul, the offspring, the mind, and property.[31]

Al-Shâthibî reconstructs the study of *Maqâshid al-Syarî`ah* by making it an integrated part of *Ushul Fiqh*. In the preface to *al-Muwafakât Fî Ushul al-Syarî`ah* by al-Shâthibî, Thâhâ Jâbir al-`Ulwânî stated that the originality and creativity of al-Shâthibî's perspectives are inseparable from his deep understanding and extensive mastery of the *nash* (the Quran and Hadith). One of the indications is his mastery of *istiqra'* (induction) method,[32] which is the observation and research of stand-alone law arguments then subsequently form the principles and rules of *Maqâshid al-Syarî`ah* that are general and definite (*qath`i*). Furthermore, the concept of his perspective ensures that every text of the law in the Quran and Hadith has both the spirit and spirit of law.

Because of this contribution, Umar al-Jidi, a Moroccan academic, compares al-Shâthibî with Imam al-Shafi`i; citing al-Shafi`i as the founder of the science of *Ushul Fiqh* through his work *al-Risalah*, and al-Shâthibî as the founder of *Maqâshid al-Syarî`ah* through his work *al-Muwafaqât*.[33] Jordanian academic, Nukman Jugaim called him the founder of the *Maqâshid al-Syarî`ah* trilogy, namely the concept of identifying and mapping *Maqâshid al-Syarî`ah* through three aspects; *maqâshid al-khithab al-syar`î* (discourse on Islamic law), *maqâshid al-ahkâm al-syar`iyah* (philosophy of Islamic law), and *maqâshid al-syari` fî manhâj al-tasyri` al-islâmî* (principles of Islamic law).[34] After al-Shâthibî's time, *Maqâshid al-Syarî`ah* experienced a period of stagnation. There are no substancial and original works that specifically address it. This condition lasted long enough until modern times.

Afterward, along with the interaction and intensive discussion of *al-Muwafaqât* and other works, Ibn `Ashûr appeared through his monumental work *Maqâsid al-Syarî`ah al-Islamiyah*. Ibn `Ashûr includes modern themes like *Maqâshid al-Syarî`ah* issues, including nature (*fitrah*), tolerance (*samahah*), benefit (*mashlahah*), equality (*musawah*) and freedom (*hurriyah*).[35] Ibn 'Ashûr distinguishes himself from his predecessors through his idea of reconstructing *Maqâshid al-Syarî`ah* as a separate and independent science from *Ushul Fiqh*.[36] According to Ibn `Ashûr, *Ushul Fiqh* should be abandoned because it will only lead to debates on *furû`* (*fiqh*) matters. In addition, *ushul fiqh* only emphasizes the linguistic aspect that leads to a literal textual understanding and ignores the core purpose and substance of Islamic law (*Maqâsid al-Syarî`ah*).

However, Ibn `Ashûr saw that the science of *Ushul Fiqh* remained in its existing condition as a theory of the formulation of Islamic law, while *Maqâshid al-Syarî`ah* served as its philosophical foundation. Ibn `Ashûr's focus on *Maqâshid al-Syarî`ah* also influenced his way of thinking which was expressed in his work *tafsir al-Tahrîr wa al-Tanwîr* which appeared before *Maqâshid al-Syarî`ah*. This validates Ibn `Ashûr's position as an expert in Islamic law.

*Maqâshid al-Syarî`ah* in the perspective of Al-Shâthibî and Ibn `Ashûr

In some classical literature's appearance before al-Shâthibî's time, no precise definition is found of *Maqâshid al-Syarî`ah*. Al-Shâthibî, who is considered the founder of *Maqâshid al-Syarî`ah*, does not make an adequate and comprehensive definition of it. One of the contributing factors is al-Shâthibî's consistency with the methodology used. In addition, as acknowledged by al-Shâthibî, the book al-*Muwafakât Fî Ushul al-Syarî`ah* are addressed to those who have good understanding

[31] Abu Hamid al-Ghazali, *Al-Mustashfa Min `Ilm Al-Ushul,* (Beirut: Dar Ihya' al-Turats al-Arabi, n.d.), p. 217.

[32] A. Al-Raisuni, *Nazhariyat Al-Maqashid 'Inda Al-Imam Al Syathibi,* (Herndon, USA: al-Ma'had al-'Alami Li al-Fikr al-Islami., 1990), 1st ed.

[33] Umar Al-Jidi, *Al-Tasyri' Al-Islami; Ushuluhu Wa Maqashiduhu,* (al-Dar al-Baidha', Maroko: Mathba'ah al-Najah al-Jadidah, n.d.), p. 243.

[34] Nukman Jugaim, *Al-Muharrar Fî Maqâshid Al-Sharî`ah,* (Beirut: Dâr al Nafâ'is, 2019), 1st ed, pp. 1–25.

[35] Muhammad al-Tâhir Ibn `Âshûr, *Maqâshid Al-Sharî`ah Al-Islâmiyyah,* ed. Hatem Bosemah, (Beirut & Kairo: Dâr al-Kitâb al-Lubnâni & Dâr al-Kitâb al-Mishri, 2011), pp. 23–25.

[36] Nukman Jugaim, *Al-Muharrar Fî Maqâshid Al-Sharî`ah...,* pp. 21–22.

of Islamic law.[37] It is evident that the writing methodology used by al-Shâthibî is different from the majority of *Ushul Fiqh* and *Fiqh* scholars who typically offer a comprehensive definition of terminology, particularly when it is the core theme of the topic of discussion.

Not so with `Iz al-Dîn Ibn Zugaibah, he argues that al-Shâthibî has mentioned a separate but complementary definition (integrated) in two places; first, when he suggests that God's purpose in enacting the law is for the sake of human life in this world and in the hereafter. Therefore, *taklîf* (burden) in law must lead to the purpose of the law itself. Second, he stated that the purpose of Islamic law application was to remove *mukallaf* from the demands of his lust so that one truly becomes a servant of Allah.[38] If observed, Ibn Zugaibah does not indicate that al-Shâthibî mentions the precise definition of *Maqâshid al-Syarî`ah*, but only provides an explanation and the key points of his perspective. It is contradictory to Ibn `Ashûr who clearly states the definition of *Maqâshid al-Syarî`ah*, which is:

> The meaning and wisdom (philosophy of law) that are considered by *Shari`* (lawmakers) in all or majority of the law enforcement, which is not limited to one particular type of law. Thus, it includes the Sharia characteristics and its general objectives as well as the meanings that are impossible not to be considered in law enforcement. [39]

From this definition, Ibn `Ashûr emphasizes meaning and wisdom (philosophy of law) in *Maqâshid al-Syarî`ah*. Nonetheless, there appears to be an attempt to combine the general characteristics of Islamic law with its general purposes. The general characteristics of Islamic law are the principles of tolerance, universality, flexibility, adaptability, dynamism, rationality, and

elasticity.[40] On the other hand, this intellectual discourse caused disagreements among scholars in determining the scientific relationship between *Maqâshid al-Syarî`ah* and *Ushul Fiqh*. Before al-Shâthibî's time, *Maqâshid al-Syarî`ah* was positioned as part of *Ushul Fiqh* included in the discussion of *Qiyas*. Al-Shâthibî reconstructed it into an unseparated concept from *Ushul Fiqh* and placed it in the middle of *Fiqh* and *Ushul Fiqh* study. However, Ibn `Ashûr made it a concept that was independent and different from *Ushul Fiqh*. By separating *Maqâshid al-Syarî`ah* from *Ushul Fiqh*, Ibn `Ashûr has three major expectations: first, as an independent rule and principle with a *dharûrî* (primary) level that is *qath`i* (certain). Second, as a 'judge' in deciding differences of perspectives in the schools of *Fiqh*, or at least minimizing the differences of opinion in *Fiqh*. Third, as a barometer in understanding religion, specifically enlightenment regarding the philosophy and purpose of the implementation of Islamic law.[41]

Trilogy of *Maqâshid al-Syarî`ah*

Historically, the concept of *Maqâshid al-Syarî`ah* substantially exists due to the existence of legal texts (Islamic law discourse). The understanding and practice demonstrated by jurists are heavily dependent on their comprehension of legal texts. For example, the terminology of *`Illat* (factor behind the enactment of a law) as *Maqâshid al-Syarî`ah* merely emerges as an impact of this intellectual discourse. Al-Shâthibî himself did not make *`illat* as the basis to establish *Maqâshid al-Syarî`ah*. Instead, he analyzed it directly from the verses of the Quran and Hadith with both explicit and implicit meaning. The results of the analysis give rise to the concept of the trilogy of *Maqâshid al-Syarî`ah*.

According to Al-Shâthibî, the *Maqâshid al-Syarî`ah* trilogy includes three things; (1) *maqâshid al-khithab al-syar`i* (discourse of Islamic law); the meaning contained in the legal texts that give rise to the law of *taklifi* and *wadh`i* commonly known

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[37] Abû Ishâq Al-Shâthibî, *Al-Muwâfaqât Fî Ushul Al-Sharî`ah*, ed. Abdullah Darrâz, (Kairo: Dar al-Fikr al-'Ârabi, n.d.), p. 59.

[38] Ahmad Ibn Bih, *`Alaqat Maqashid Al-Syariah Bi Ushul Al-Fiqh*, (London: Mu'assasah al-Furqon Li al-Turats al-Islami, 2006), pp. 41–43.

[39] Muhammad al-Tâhir Ibn `Âshûr, *Maqâshid Al-Sharî`ah…*, p. 189.

[40] Muhammad al-Tâhir Ibn `Âshûr, *Maqâshid Al-Sharî`ah…*, p. 317.

[41] Muhammad al-Tâhir Ibn `Âshûr, *Maqâshid Al-Sharî`ah…*, p. 166

as *al-hukmu al-syar`i* (Islamic law). (2) *maqâshid al-ahkâm al-syar`iyah* (philosophy of Islamic law); the wisdom and benefits to be realized by Islamic law which is commonly known as *`Illât, hikmah, ma`na, munasib, mukhayyal, al-istidlâl al-mursal, mashlahah, maqshad* (the plural form is *maqâsid*). (3) *maqâshid al-syari` fî manhâj al-tasyri' al-islâmî* (principles of Islamic law); the principle of life that is the standard made by *Shari`* (lawmakers) to enforce Islamic law, including the consideration in fulfilling the principles of ease, tolerance, balance.[42]

Even though al-Shâthibî does not explicitly mention the *Maqâshid al-Syarî`ah* trilogy, Jugaim Nukman's study showed that the concept is thoroughly explained. This trilogy is methodologically and conceptually important for several reasons, such as avoiding mistakes in determining *Maqâshid al-Syarî`ah* due to disability in distinguishing *maqâshid al-ahkâm al-syar`iyah* (the purpose of Islamic legal philosophy) and *maqâshid al-khithab al-syar`i* (the purpose of Islamic law discourse) when constructing *masalik al-`illat* (ways to know `illat). In addition, it is used to describe the concept of *Maqâshid al-Syarî`ah*, specifically to discover the `illat factor which can explain in detail the relationship between `illat in this trilogy.[43]

From this concept, it is clear that *maqâshid al-khithab al-syar`i* (discourse of Islamic law) is not a philosophy of Islamic law but is rather used as a means of fulfilling the benefit of life in this world and the hereafter. The benefit is highly dependent on one's consistency of submission to carry out commands (mandatory and *sunnah*), or leave prohibited (*haram* and *makruh*) and permissible (*mubah*) acts contained in legal texts. Without these legal texts, one will not know the benefits of life.

Al-Shâthibî's concept of Islamic law discourse is obvious when *taklifi* law (mandatory, *sunnah*, *haram*, *makruh* and *mubah*) is linked with *Maqâshid al-Syarî`ah*. According to al-Shâthibî, *taklifi* law will have a legal impact if it is accompanied with

intention (legal purposes). If not, then it is the same as taking actions with no value and no legal implications. In addition, al-Shâthibî relates the level of command or prohibition based on the level of benefit and the harm obtained. The level of benefit with mandatory status is certainly not the same as the law with the *sunnah* status, and likewise in the *haram, makruh*, and *mubah* laws. As it happens also in the *wadh`î* law (requirement, causes, *mani'*, valid and void). [44]

The relationship of the *Maqâshid al-Syarî`ah* trilogy is described as follows. According to (Surah al-Baqarah [2]: 183), the purpose of *maqâshid al-khithâb al-syar`i* is the mandatory law of fasting, while the purpose of *maqâshid al-ahkâm al-syar`iyah* of fasting is to achieve piety which is included in *Hifz al-Dîn* (protection of religion). In (Surat al-Baqarah [2]: 185), the purpose of *maqâshid al-khithâb al-syar`i* is to inform the mandatory law of fasting for those who can endure it. In this verse, it is also stated that sick people or travelers (on the way) are not allowed to fast. While in *maqâsid al-ahkâm al-syar`iyah* the law of fasting is to achieve piety which is included in *Hifz al-Dîn*. The purpose of dispensation for a *mukallaf* who is sick or a traveler to not fast is intended to provide convenience and eliminate the difficulties that are part of *maqâshid al-syari` fî manhâj al-tasyri` al-islâmî*.

In Surah al-Baqarah [2]: 178-179, the purpose of *maqâshid al-khithab al-syar`i* is to inform the mandatory law of *qisas* on the wrongdoer who commits murder. In this verse, there is also an admonition to forgive the wrongdoer from the punishment of *qisas*. The purpose of the admonition is to ease the burden of the law and as a form of compassion for the wrongdoer which is a part of the *maqâshid al-syari` fî manhaj al-tasyri` al-islâmî*. While the *maqâshid al-ahkâm al-syar`iyah* of *qisâs* is to maintain the soul (continuity) of human life which is included in *Hifz al-Nafs*.

In Surah al-Mâ`idah [5]: 90-91, the purpose of *maqâshid al-khithab al-syar`i* is the haram law of (drinking) alcohol, *al-maisir* (gambling by sacrificing

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[42] Nukman Jugaim, *Al-Muharrar Fî Maqâshid Al-Sharî`ah…*, p. 22.

[43] Nukman Jugaim, *Al-Muharrar Fî Maqâshid Al-Sharî`ah…*, p. 23.

[44] Abû Ishâq Al-Shâthibî, *Al-Muwâfaqât Fî Ushul Al-Sharî`ah…*, pp. 217–223.

to idols) and *al-azlam* (choosing fate with arrows). Meanwhile, the *maqâshid al-ahkâm al-syar`iyah* is to protect the mind (*Hifz al-`Aql*). The social impact of neglecting the protection of the mind is destroyed harmony and relationships with others. While the individual impact is neglecting prayers and remembrance of God.

In contrast, Ibn `Ashûr divided the *Maqâshid al-Syarî`ah* into two parts: the *maqâshid al-syarî`ah al-`ammah* and the *maqâshid syarî`ah al-khassah*. *Maqâshid al-Syarî`ah al-`ammah* is the goal and purpose of the Sharia which includes the interests and welfare of human beings in general, such as maintaining a beneficial system, maintaining welfare, avoiding harm, fulfilling equal rights, and implementing the Sharia according to the rules of God. On the other hand, the *Maqâshid al-Syarî`ah al-khassah* is the specific purpose of sharia (partial), namely morals (*mu`amalat*), such as family law, property use, legislation, and testimony, and so on.[45]

Ibn `Ashûr defines the scope of Sharia in term of morals and ethics that is considered a horizontal relationship between human beings. Meanwhile, the aspects of worship arising from both that impact the afterlife, are not included as part of the *Maqâshid al-Syarî`ah*. The reason is that the aspect of worship is a direct and vertical relationship between man and God (*ta`abudi*). In addition, there is no compulsory instruction from God to know the philosophy behind the obligation. In short, Ibn `Ashûr interpreted the Sharia with a number of moral and ethical rules that are revealed to Prophet Muhammad, PBUH, as a guidance to life in this world. If these rules are followed, then a person will achieve direct or indirect benefits of his life in the world.

Method in Identifiying the *Maqâshid al-Syarî`ah*

According to al-Shâthibî there are four methods used to identify the *Maqâshid Syarî`ah*; *First*, through commands and prohibitions that are clearly written in the *nash* (legal texts) called

manthuq al-Nash (textual meaning). *Second*, through the identification of the `illat of a command and prohibition which is frequently referred to as *Qiyas* or *Ma'qul al-Nash* (textual logic) in the literature of *Ushul Fiqh* scholars. *Third*, by considering the *Maqâshid* (purpose of law) that follows it. *Fourth*, through the 'silence' of *al-Syari*` (Islamic lawmakers) from the enforcement of the legality of an act even though there is an intended meaning behind it.[46] In contrast, Ibn `Ashûr put forward three stages of identifying *Maqâshid Syarî`ah*; *First*, using *Istiqra'* (induction) which is performed in two forms. (1) by examining the laws in which the `*illat* is already known through *masâlik al-`illah* procedure to seek the secrets or philosophy of those laws. (2) by observing the legal propositions that have the similar `*illat*. *Second*, using the arguments from the *nash* (legal texts) in the Quran that have *dhalâlah* (indication of meaning) clarity. *Third*, using the hadiths of *mutawatir*, *al-tawâtur al-ma`nawîy* obtained from observing the majority of the companions on the deeds of the Prophet SAW, and *al-tawâtur al-`amalîy* obtained from one or several companions who repeatedly witnessed the deeds of the Prophet, PBUH.[47]

Al-Shâthibî uses *istiqra'* (induction) as a method to identify *maqâshid al-khithab al-syar`i* (discourse of Islamic law). According to al-Shâthibî, induction is not used to identify *maqâshid al-ahkâm al-syar`iyah* (philosophy of Islamic law). However, to ensure the generality and integrity of the proposition, it is employed as a method to strengthen the validity from *zhannî* (presumption) to *qath`i* (certain) law. Contradictory, Ibn `Ashûr argues that induction is the method used to identify *maqâshid al-ahkâm al-syar`iyah* (al-Shâthibî's version of the philosophy of law). According to Ibn `Ashûr, *istiqra'* ranks first in hierarchy because its position is stronger than the *nash* (legal texts) that gives a general meaning. The generality of meaning is from partial or stand-alone proposition, but when

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[45] Muhammad al-Tâhir Ibn 'Âshûr, *Maqâshid Al-Sharî`ah…*, pp.189–120.

[46] Abû Ishâq Al-Shâthibî, *Al-Muwâfaqât Fî Ushul Al-Sharî`ah…*, pp. 298–312.

[47] Abû Ishâq Al-Shâthibî, *Al-Muwâfaqât Fî Ushul Al-Sharî`ah…*, pp. 298-312.

combined they can become *qath`i* (certain) laws. The position of legal texts, second after *istiqra'*, triggered Ibn `Ashûr to make a provision that only the Quran texts can be used to identify *Maqâshid al-Syarî`ah* because they have the *dhalâlah* (indication of meaning) clarity.

The difference between al-Shâthibî and Ibn `Ashûr's way of identifying *Maqâshid al-Syarî`ah* arises due to the terminology used. Al-Shâthibî conceptually uses *Maqâshid al-Syarî`ah* term to refer to the *Maqâshid al-Syarî`ah* trilogy while giving only the examples of *maqâshid al-khithab al-syar`i* (the purpose of Islamic law discourse) application. In contrast, Ibn `Ashûr conceptually uses *Maqâshid al-Syarî`ah* term to interpret *maqâshid al-ahkâm al-syar`iyah* (philosophy of Islamic law) related to morals and ethics. Ibn `Ashûr did not include *maqâshid al-khithab al-syar`i* (discourse on Islamic law) as a part of the term of *Maqâshid al-Syarî`ah* because it has become part of *al-Maqâshid al-Khasah* (specific *Maqâshid al-Syarî`ah*). Similarly, Ibn `Ashûr did not include *maqâshid al-syari` fî manhaj al-tasyri` al-islâmî* (principles of Islamic law) into the term of *Maqâshid al-Syarî`ah* because it is part of al-*Maqâshid al-`Ammah* (general *Maqâshid al-Syarî`ah*).

Some people who are unable to fully comprehend al-Shâthibî's version of the *Maqâshid al-Syarî`ah* trilogy criticize the identification method. For example, *`Illat* (factor behind the enactment of a law) which is *Maqâshid al-Syarî`ah* itself according to scholars, is used by al-Shâthibî as a method of identification. Nukman Jugaim clarified that in this context al-Shâthibî positioned *`illat* as a method of identifying *maqâshid al-khithab al-shar`i* (Islamic law discourse).[48]

Nasakh Concept in Understanding the verse of *al-Qitâl*

In the Quran, several verses are stated to contain commands to fight Non-Muslims who attack Muslims, and likewise, to make peace with Non-Muslims who want to make peace (Surah al-Taubah [9]: 190-191). The verses of the Quran

containing the issue of war in the early period of Islam are better known as the verses of *al-Qitâl* (verses about war). Ibn Taymiyyah mentioned that the majority of jurisprudence schools agree that war with Non-Muslims is not mainly caused by factors of religions and beliefs (of their choice). It is done to defend themselves and their religion from military aggression and physical intimidation. To understand the meaning of this seemingly contradictory verse, a good understanding of the *nasakh* (act of not enacting or repealing) and its relation to the verses containing the command for war and peace is required.

The concept of *nasakh* in the verse of *al-Qitâl* raises debate among the interpreters.[49] Because differences in understanding the text lead to polemics. If not addressed in balance and open-mindedness, it might disrupt Muslim and non-Muslim relations which frequently lead to religious radicalism that ends in acts of terrorism. The issue of *nasakh* in the perspective of interpreters can be classified into three; First, *Nasakh* in the perspective of classical interpreters, including al-Ghazali,[50] is not implementing the previous law due to the law that came later. Second, *Nasakh* in the perspective of medieval interpreters includes *istishna`* (exception), *takhsis* (specification), *taqyîd* (restriction), changing the meaning of a text that is clear to another meaning. Third, modern interpreters such as Muhammad Abduh and Rasid Rida reject the concept of *nasakh* in the Quran.

Some scholars of classical tafsir (*mutaqaddimîn*) such as al-Dhahaq Muzahim, Qatadah, Abdurrahman Bin Zaid, Mujahid and Ikrimah agreed that the verse that commands Muslims to fight Non-Muslims does not enact or repeal the verse that commands to make peace with Non-Muslims as mentioned in the Surah al-Baqarah [2]: 190, Surah al-Anfâl [8]: 61, Surah al-Mumtahanah [60]: 8-9, Surah al-Baqarah [2]: 256. Ibn Katsir argues that the verse of *al-*

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48 Nukman Jugaim, *Al-Muharrar Fî Maqâshid Al-Sharî`ah...,* p.25

49 Moh Abdul Kholiq Hasan, "AYAT-AYAT KEBEBASAN BERAGAMA DALAM PERSPEKTIF NASAKH: KAJIAN TERHADAP PENAFSIRAN IBN KATHÎR DAN RASHÎD RIDÂ [VERSES OF RELIGIOUS FREEDOM IN THE PERSPECTIVE OF THE NASAKH: STUDY OF THE INTERPRETATION OF IBN KATHÎR AND RASHÎD RIDÂ]," *Mutawatir: Jurnal Keilmuan Tafsir Hadis*, vol. 6, no. 2 (2016), pp. 284–313.

50 Abu Hamid al-Ghazali, *Al-Mustashfa Min...,* p. 107.

Qitâl (Surah al-Taubah [9]: 73) does not enact or repeal verse that contains the command to make peace.[51] Quoting the opinions of Ibn Mas`ud, Ibn Zayd, and Sulaymân ibn Mûsâ, Ibn Katsir asserted that the verse containing the command to make peace in (Surah al-Baqarah [2]: 256) cannot stand alone and must be linked to other verses that does not implement the law on it, namely the verse *"Ya ayyuhâ al-nabîy jâhid al-kuffâr wa al-munâfiqîn"* (Q.S. al-Tahrîm [66]: 9).[52] Another reason is that, quantitatively, there are more verses containing the command to fight Non-Muslims than the verses containing the command to make peace with Non-Muslims. Thus, the hundreds of verses that command the execution of polytheists and disbelivers cannot be immediately repealed by a handful of verses that want to leave the polytheists with their polytheism and the disbelievers with their disbelief.

In contrast, Ibn `Ashûr argued that the verse of *al-Qitâl* (verses containing the command to fight Non-Muslims) was not enforced by the verse containing the command to make peace. At the conquest of Mecca when many people converted to Islam in droves, and the Muslims became politically stronger that the verse of *al-Qitâl* became obsolete.[53] Some of the reasons include the opinion of Ibn Abbas as stated by al-Thabari who said that the verse was revealed after many people converted to Islam, and the revelation descended to the People of the Book and the Magians to pay *Jizyah* (taxes)[54] as a form of their recognition of Islam power at that time. In addition, this verse came down after the conquest of Mecca.

The perspective of Ibn `Ashûr, who said that the verse of *al-Qitâl* contained in Surah at-Taubah was not enforced by the verses that command peace, has two meanings: First, the verse commands the Prophet to be patient and to refrain himself from avenging ill-treatment of Non- Muslims to Muslim in Mecca. After Rasulullah migrated and formed the existence and strength of Muslims, only then do Muslims are allowed to fight Non-Muslims with a note that the Non-Muslims fight or plan to fight Muslims. However, Muslims are also commanded to make peace with Non-Muslims who want to make peace, even though the latter have often violated the agreement and there is not fulfilling the Hudaibiyah promise of peace (agreement).

In this context, the Quran declaration to fight Non-Muslims during that period emerged because peace did not create benefits. With this, the verse that contains the command to make peace with Non-Muslims is not enforced with the verse that contains the command to fight. *Nasakh* in this context was reserved for Non-Muslims during that period and was not generalized to all Non-Muslims anytime and anywhere. Al-Thabari argues that the verse containing the order to make peace has a specific meaning that applies to the People of the Book and the followers of the Magian religion who paid taxes as a form of their recognition of Islam power at that time.[55] It is also different from Ibn Taymiyyah who said that this verse has a general meaning, which is a general statement stating that one should not fight Non-Muslims.[56] Some modern interpreters, such as Muhammad Abduh and Rasid Rida, reject the concept of *nasakh* in the Quran because it is no longer relevant to the dynamics of the Muslims development today.[57] Thus, it is not accurate to say that the verse of *Madanîyah* (verses descended in Medina) annuls the verse of *Makkîyah* (verses descended in Mecca). Because, the nature of the *Makkîyah* verses, as Muhammad Thâhâ stated, is eternal, humanist, egalitary and universal.[58]

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[51] Ibn Katsîr, *Tafsîr Al-Qur'ân Al-Azîm* (Beirut: Dar al-Fikr, 1999), 159.

[52] Ibn Katsîr, *Tafsîr Al-Qur'ân Al-Azîm…*, p. 159

[53] Muhammad al-Thaher Ibn `Âshûr, *Al-Tahrîr Wa Al-Tanwîr*, (Tunis: Dar Sahnun li al-Nashr wa al-Tawzi), vol. 1, n.d, p. 227.

[54] Muhammad al-Thaher Ibn `Âshûr, *Al-Tahrîr Wa Al-Tanwîr…*, pp. vol. 1. 229.

[55] Ibn Jarir al-Thabarî, *Jâmi' Al-Bayân 'an Ta'Wîl Âyi Al-Qur'ân*, (Beirut: Dar al-Fikr, 2001), 1st ed, vol. 2, p. 124.

[56] Ibn Taimiyah, *Qâ'idah Mukhtasarah Fî Qitâl Al-Kuffâr Wa Muhâdanatihim Wa Tahrîm Qatlihim Li Mujarradi Kufrihim*, ed. Abdul Aziz Ibn Abdullah Ibn Ibrahim, n.d., pp. 123–124.

[57] Muhammad Rashîd Ridâ, *Tafsîr Al-Qur'ân Al-Hakîm*, (Beirut: Dâr al-Kutub al-Ilmîyah, 1999), p. 69.

[58] Abdul Mustaqim, *"Dekontruksi Teori Naskh Mahmud Muhammad Thâhâ" Dalam Abdul Mustaqim Dkk, Melihat Kembali*

Al-Shâthibî in his work *al-Muwafaqât Fî Ushûl al-Syarî`ah* clearly presents his concept of *nasakh* and the verses that descended in the phase of Mecca and Medina. From this concept, we figure out his opinion about the verse of *al-Qitâl*. Al-Shâthibî asserted that the verses that descended in Mecca phase play a role as the foundation and basis in determining Islamic law. While some of the verses that descended in the phase of Medina, are the basis or foundation of religion. However, it generally becomes a part of the basic principles of those that descended in the phase of Mecca. According to al-Shâthibî as stated by al-Raisuni, if the verses that descended in the Mecca serve as the foundation of religion, then the number of *nasakh* in the *Makkiyah* verses is small, because the *nasakh* cannot appear in verses that contain general principles. In this context, the verses that descended in the phase of Medina play a role in confirming and strengthening the basis and foundation of the verses that came down in the phase of Mecca. [59] Al-Shâthibî states that of the five principles (*al-kulliyat al-khams*) of *Maqâshid Syarî`ah*, only one principle was revealed in Madinah, namely the verse about the prohibition of drinking alcohol as a form of protection of the mind (*Hifz al-`Aql*) while others descended on Mecca.

Interpretation of *Maqâshid al-Syarî`ah* of the verses of *al-Qitâl*

This paper shows that al-Shâthibî used the method of *istiqra'* (induction) to ensure the generality and integrity of the proposition. In fact, it is used as a method to increase the validity level from *zhanni* (presumption) to *qath`i* (certainty) of law. This is because Islamic law is built on the foundation of protecting primary, secondary and tertiary needs and benefits. For example, the verse that contains the command to enforce *amar ma`rûf* and *nahî munkar* that descended in the phase of Mecca is part of protection of the five principles (*al-kulliyat al-khams*) of *Maqâshid*

al-Syarî`ah (Surah Lukmân [31]: 17), namely to protect the religion, the soul, the mind, the offspring, and the property. The Quranic verse that contains the command to fight Non-Muslims which descended in the phase of Medina is one of the five principles aiming to protect the religion (*Hifz al-Dîn*).

With this, the concept of war in Islam is enforced so that everyone can practice the religion in peace and security as stated by Jamaluddin `Athiyyah.[60] Meanwhile, Abdul Majid al-Najjar interprets it as the maintainance of valuing humanity and humanizing human beings (the Human Rights).[61] Ibn `Ashûr agrees with the majority of scholars who argue that it is not permissible to fight Non-Muslims with the aim of enforcing religion. Ibn `Ashûr's perspective is further reinforced by his concept of thought on the *Maqâshid al-Syarî`ah* which is general in nature with the aim to maintain the system of life and realize goodness in all aspects of life. In this context, war against Non-Muslims in Ibn `Ashûr's view is also part of the concept of protection of religion (*Hifz al-Dîn*).

Conclusion

The concept of al-Shâthibî's perspectives was a highly significant leap in the intellectual domain. Nevertheless, it is still limited to the methodological and conceptual basis without the applicable examples in the *Ushul Fiqh* methodology, specifically in *Maqâshid al-Syarî`ah* as an instrument of *istinbath* (formulation) of law. There are also other obstacles, such as the socio-historical context faced by al-Shâthibî that is different from today's modern global conditions today. This obstacle becomes an intellectual problem with an answer that is difficult to discover in al-Shâthibî's concept. For example, al-Syathibi has yet to explain applicable aspects of *Maqâshid al-Syarî`ah* related to *Hifz al-Dîn* (protection of religion). Due to differences in socio-historical context, when the term *Hifz al-Dîn* appeared in al-Shâthibî's time, the Muslims refer it

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Studi Alquran, Gagasan, Isu Dan Tren Terkini, (Yogyakarta: Idea Press Yokyakarta, 2015), p. 23.

[59] Â. Al-Raisuni, *Nazhariyat Al-Maqashid...*, pp.153–154.

[60] J. al-Din `Athiyah, *Nahwa Taf`il Maqashid Al-Syariah*, (Damaskus: Dar al-Fikri, 2001), 1st ed, p. 27.

[61] A. al-Majid Najjar, *Maqashid Al-Syariah Bi Ab`ad Jadidah*, (Beirut: Dar al-Garb Islami., 2006), 1st ed, p. 37.

to the protection of religion sanctity. In fact, if it is related to modern reality, it must be interpreted as *haq al-tadayyûn* (religious rights).

Similarly, though Ibn `Ashûr lived in modern times and continued the intellectual work of al-Shâthibî, he was able to make *Maqâshid al-Syarî`ah* evolve from the concept of value to the concept of approach. However, his perspectives have not specifically touched modern global issues, specifically the relations between Muslims and non-Muslims, such as issues of terrorism, radicalism, and fundamentalism which stem from wrong perceptions of people with different religions. Therefore, in realizing *Maqâshid al-Syarî`ah*, it is important to come up with a new alternative that focuses on examining this aspect and then bringing it to applicable level. This needs to be actualized so that Islamic law is able to respond the current demands on social and reality.

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