

## **EXAMINING THE BASIS OF MAQASHID SHARIA IN RENEWAL OF ISLAMIC LAW IN INDONESIA**

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**Abstract:** Social transformations have propelled renewal of Islamic law in Indonesia along with the advancement of technology and science. This social change demands new laws that cater to human needs while preserving their religious essence. Therefore, the guiding principle in every exploration of Islamic law is comprehending the literal interpretations of the Quran and Sunnah. A reformer, including those in Indonesia, must be able to understand maqashid sharia, which entails understanding the purpose of the sharia design for the benefit of humans. This research aimed to capture the dynamics of Islamic legal reform in Indonesia by assessing role of maqashid sharia as a driving aspect behind this transformation. The study employed a qualitative approach, employing both empirical and normative methodologies. It examined the application of maqashid sharia theories in Indonesia's renewal of Islamic law. The findings reveal that the rationale of maqashid sharia has been extensively developed and implemented by Islamic scholars to reform Islamic law, both pre-and post-Indonesian independence. This indicates a familiarity among Indonesian scholars and society with maqashid sharia. Furthermore, the study demonstrates that decisions made through maqashid sharia reasoning in the context of legal reform in Indonesia have consistently accommodated societal changes across various legal, social, and economic domains without contravening overarching sharia principles. Consequently, legal reform initiatives in Indonesia have effectively realized the objectives of sharia in protecting religion, soul, intellect, property, and offspring.

This is evidenced by enacting numerous regulations grounded in maqashid sharia reasoning that align with the needs of social and societal transformation.

**Keywords:** Renewal Islamic Law, Maqashid Shariah, Examining Law

**Abstrak:** Pembaharuan hukum Islam di Indonesia terjadi karena adanya perubahan sosial di dalam masyarakat seiring berkembangnya teknologi dan ilmu pengetahuan. Perubahan sosial itu pada gilirannya menuntut adanya hukum baru yang didasarkan pada kebutuhan manusia tanpa merusak aspek keagamaan mereka. Karena itu koridor yang dipakai dalam setiap penggalian hukum Islam disampaing memahami makna literalis Al-Quran dan sunnah, seorang pembaharu termasuk yang ada di Indonesia harus mampu memahami maqasyid al-syari'at, yaitu tujuan syariat diturunkan hanya untuk kemaslahatan manusia. Penelitian ini berusaha memotret dinamika pembaharuan hukum Islam di Indonesia dengan melihat sejauhmana maqashid syariah berfungsi sebagai aspek pendorong dari perubahan itu. Penelitian ini bersifat kualitatif melalui pendekatan empiris dan normatif, yaitu dengan melihat teori-teori maqashid syariah yang diaplikasikan secara empiris di dalam pembaharuan hukum Islam di Indonesia. Dari hasil penelitian ditemukan bahwa penalaran maqashid syariah telah lama tumbuh dan dipraktekkan oleh para ulama dalam upaya pembaharuan hukum Islam, baik sebelum kemerdekaan Indonesia dan maupun setelah kemerdekaan Indonesia. Ini memberikan tanda bahwa ulama dan masyarakat Indonesia pada umumnya telah akrab dengan maqashid syariah. Temuan lainnya, bahwa ketetapan yang diambil melalui nalar maqashid syariah dalam konteks pembaharuan hukum di Indonesia telah secara konsisten mampu beradaptasi dengan perubahan sosial di Indonesia hampir di semua sektor, hukum, sosial, dan ekonomi tanpa menyalahi ketentuan syariah secara umum. Sehingga upaya pembaharuan hukum di Indonesia telah dapat mencapai tujuan syariat dalam menjaga agama, jiwa, akal, harta, dan keturunan. Ditandai dengan lahirnya beberapa aturan yang disandarkan atas nalar maqashid syariah yang memang sesuai dengan kebutuhan perubahan sosial dan masyarakat.

**Kata Kunci:** Pembaharuan, Hukum Islam, Maqashid Sharia

## INTRODUCTION

Social change an inevitable consequence of evolving societal needs, reshaping societal dynamics. These changes, impacting Muslims as well, introduce a host of pressing issues for which traditional Islamic jurisprudence often lacks adequate solutions. Given that many of these social changes were unprecedented in the early days of Islam, relying solely on existing legal provisions becomes inadequate. Islamic law is also required to be able to adapt to these changes by formulating provisions that address contemporary human needs. The foundational teachings of Islamic law were revealed to accommodate the overall human condition, offering guidance for individual and societal conduct.<sup>1</sup>

This social change demands new creativity from ulama (religious scholar) to reassess traditional values and devise new legal solutions, recognizing that previously employed methodologies may fall short in addressing emerging Islamic legal problems. Historically, methodologies employed were often *ad hoc* and disaggregated.

<sup>2</sup>Ulama's failure to innovate and respond to societal needs risks stagnation and decline

1 Suparman Usman, *Hukum Islam: Asas - Asas Dan Pengantar Studi Hukum Islam Dalam Tata Hukum Indonesia* (Gaya Media Pratama 2002) 65.

2 Amir Muallim and Yusdani, *Konfigurasi Pemikiran Hukum Islam* (UII Press 2001) 49–50.

within Islamic jurisprudence. The third century AH witnessed such a period of decline, characterized by a perceived inability of Islamic law to adapt to contemporary changes. This phase, from the middle of the fourth Hijriah century to the end of the 13th century, marked a disheartening stagnation in Islamic legal development, marked by an overreliance on textual interpretations and blind adherence to legal norms. Islamic legal experts at that time gave many fatwas and laws that were not in accordance with their capabilities, which resulted in the fatwa and the door to *ijtihad* was closed.<sup>3</sup>

The birth of the theory of *maqashid al-shari'ah* as a method of researching Islamic law can be seen as one of the efforts to overcome the legal impasses from the interpretation of the Qur'an and Hadith. This approach can also help resolve conflicting arguments (*ta'arud al-adillah*) and is particularly instrumental in establishing legal rulings where explicit textual guidance is absent, utilizing semantic (linguistic) studies.<sup>4</sup>

While Islam's fundamental legal principles remain immutable, legal changes occur in response to advancements in science and technology and shifts in societal norms.<sup>5</sup> Thus, Islamic jurisprudence, therefore, allows for the adaptation of legal provisions through the process of *ijtihad* to reflect contemporary needs and values. *Maqasid sharia*, as a theory developed by *ulamas*, serves as a guiding principle in this endeavor, facilitating the formulation of laws that address evolving societal challenges while upholding the ethical-spiritual foundation of Islamic Law.<sup>6</sup> This means that *maqashid sharia* was born to address the legal needs that cannot be resolved by the current methods, namely the *bayani* and *ta'lili methods*. *Bayani* is a legal provision obtained from the language of the *nas*, *ta'lili*, by determining the existence of the same characteristics in two events, while *maqashid sharia* refers to the next method, *istishlahi* which relies on benefit and avoids harm.

The concept of *maqashid sharia* provides a vital framework for religious scholars to engage with Islamic law in a nuanced and dynamic manner, ensuring its relevance and applicability in contemporary contexts. The term objective of Islamic law is synonymous with *maqashid sharia*.<sup>7</sup> This research aims to describe and analyze

- 3 Rupi'i Amri, 'Dinamika Ijtihad Pada Masa Taklid Dan Kemunduran' (2019) 16 Jurnal Tarjih dan Pengembangan Pemikiran Islam 1.
- 4 Abd Wahab Khallaf, *'Ilmu Usul Fiqh* (Dar al-Qolam 1983) 23.
- 5 Zarul Arifin, 'Kehujahan Maqasid Al-Syari'ah Dalam Filsafat Hukum Islam' (2020) 5 Al-'Adalah: Jurnal Syariah dan Hukum Islam 258. See also, Abrar ZYM, 'Pemikiran Ibnu Khaldun Terhadap Filsafat Hukum Islam' (2017) 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Fanny Tasyfia Mahdy, 'Filsafat Hukum Ibnu Sina Dan Perluasan Pemikiran Plato' (2017) 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Muhammad Zulhilmi, Winny Dian Safitri and Nadlia Ariyati, 'Public Preferences On Factors Affecting Maqashid Shariah-Based Health Insurance Services In Aceh Province' (2023) 8 Petita: Jurnal Kajian Ilmu Hukum dan Syariah <<https://petita.ar-raniry.ac.id/index.php/petita/article/view/222>>; Muammar, 'Nurcholish Madjid Dan Harun Nasution Serta Pengaruh Pemikiran Filsafatnya' (2017) 2 Petita : Jurnal Kajian Ilmu Hukum dan Syariah; Murdan, 'Hukum Islam Dalam Kerangka Sistem Hukum Masyarakat Modern' (2016) 1 PETITA: Jurnal Kajian Ilmu Hukum dan Syari'ah.
- 6 Iffatin Nur, Syahrul Adam and M Ngizzul Muttaqien, 'Maqāsid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law' (2020) 20 Ahkam: Jurnal Ilmu Syariah 331.
- 7 Husein Hamid Hassan, *Nadzariyat Al-Mashlahat Fi Al-Fiqh Al-Islamiy* (Dar al-Nahdhat al-Arabiyyah 1971) 242.

several Islamic legal reforms in various Islamic legal reforms in Indonesia rooted in this conceptual framework.

## Methods

This article has used library method with law approach. Overall, the library method is a systematic approach to legal research that involves identifying, gathering, analyzing, and synthesizing legal information to address a particular legal issue or question. By following this method, legal professionals can conduct thorough and effective legal research to support their arguments and make informed decisions. Based on their research findings, legal researchers use the library method to formulate persuasive legal arguments to support their position on the legal issue. This may involve citing relevant statutes, regulations, case law, and secondary sources to build a compelling argument.

## Results and Discussions

### *Maqashid Sharia In Historical Trajectory*

Companions during the time of prophethood regarded maqashid sharia in understanding the commands of Allah SWT and the Prophet Muhammad PBUH. For example, in the famous story frequently cited by Islamic legal experts regarding the companions' varied interpretations of a hadith from the Battle of Khandaq, which read, "Never pray Asr prayers, except in Bani Quraizah". In understanding the Prophet's command, the companions diverged in their interpretations, with some praying Asr during travel while others did so at Bani Quraizah. This discrepancy arose from differing approaches: one group considered the maqashid aspect, while the other adhered strictly to the literal meaning. Unfortunately, many scholars in the post-sahaba era leaned towards literal interpretations rather than considering maqashid aspects.

Theorization of Maqashid was initially introduced by Shafi'i scholars, notably Imam al-Haramain al-Juwaini (d. 478 AH), around the 11th century AD. He emphasized Maqashid sharia to comprehend Islamic lawfully. In fact, he is regarded as the first ushul expert who emphasized that a person cannot establish Islamic law without grasping the purpose behind Allah's commands and prohibitions. He introduced the term "maqasid al-sharia" in his work "al-Burhan," discussing it extensively in the chapter on maslahah.<sup>8</sup>

Al-Juwaini categorized sharia maqasid into two: those resulting from the *istiqla* path and the *ta'aqquli* path. The *istiqla* path involves deducing maqasid through inductive reasoning from the Quran and Sunnah, yielding immutable laws like the five daily prayers and fasting. Al-Juwaini divides sharia maqashid into two: maqashid resulting from the *istiqla* path and the *ta'aqquli* path. The *Istiqla* path is deducing maqashid through inductive reasoning from the Quran and Sunnah, yielding immutable laws like the five daily prayers and fasting. Conversely, the *ta'aqquli* path employs deductive

8 Ikhsan Nur Rizqi, 'Maqashid Syari' Ah Perspektif Imam Haramain Al -Juwayni' (2021) 7. See also, Muhammad Siddiq Armia, 'Public Caning: Should It Be Maintained or Eliminated? (A Reflection of Implementation Sharia Law in Indonesia)' [2019] Qudus International Journal of Islamic Studies; Muhammad Siddiq Armia and others, 'Criticizing the Verdict of 18/JN/2016/MS.MBO of Mahkamah Syar'iyah Meulaboh Aceh on Sexual Abuse against Children from the Perspective of Restorative Justice' (2022) 17 AL-IHKAM: Jurnal Hukum & Pranata Sosial 113.

reasoning to derive laws not explicitly stated in the texts, necessitating intellect to discern benefits for humans.<sup>9</sup>

Al-Juwaini grouped the maqashid based on the benefit level into five categories. The first category, *darurih*, pertains to necessities, while the second, *hajiyyah*, encompasses needs. The third category, *tahsiniyah*, concerns issues of embellishment or enhancement. The fourth category addresses Sharia-related issues associated with the Sunnah, while the fifth category encompasses Sharia principles that are universal and rational but are partial in nature and cannot be fully rationalized. Furthermore, he outlined the primary objectives of maqashid sharia in preserving human life, identifying four essential elements: the preservation of religion, soul, offspring, and property. Notably, he did not explicitly mention the preservation of intellect. His rationale lies in the belief that intellect is inherently embedded within the preservation of these four elements. In other words, the proper preservation and functioning of reason are indispensable for the realization and meaningful preservation of these fundamental aspects of human life.<sup>10</sup>

This *Maqashid* theory introduced by al-Juwaini was then further refined by his student, Imām al-Gazzālī (505 H/ 1111 AD) but in this case, his characteristics of an independent academic remained. The discussion of *Maqasid as-Shariah* in Al-Ghazali's thought can be traced from several of his works on *Maqasid as-Shariah*, spreading in several of his books, including *al-mankhul min Ta'liqat al-Usul*, *Asas al-Qiyas*, *Syifa al-Galil fi Bayaini Syabah wa al-Mukhil wa Masalik at-Talil*, and *al-Mustasfa min Ilmi al-Usul*.<sup>11</sup> He argued that *maslahah* is a form of care for the purpose of *Syarak*. *Maslahah* is a statement about achieving benefits and rejecting harm<sup>12</sup>. Achieving benefit and rejecting harm in *mashlahah* is not to achieve human's but Syarak's will and purpose, including religion, soul, intellect, offspring, and property. Therefore, for Imām al-Gazzālī, every matter or action taking care of those five is considered *maslahah*. On the other hand, anyone who damages or denies the purpose of the five Islamic laws, is referred to as *mafsadah*.<sup>13</sup> He then divided three levels in Maqashid theory: *Dlaruriyat* (primary needs), *Hajiyyat* (secondary needs), and *Tahsiniyyat* (tertiary needs).

After Imam al-Ghazali, other scholars contributed to theorizing Maqashid, such as Izzudin bin Abdussalam, Shihab al-Din al-Qarafi, Najm al-Din al-Thufi, Ibn Taymiyyah, and Ibn al-Qayyim. However, these scholars still integrated Maqashid within the framework of *maslahah al-mursalah* without considering it an independent *usul al-shari'ah*. The ulama at that time only explained that *maqāsid al-syari'ah* in terms of its results and objectives was not a separate concept. *Maqāsid al-syari'ah* remains interpreted as an interest in achieving *maslahah* and rejecting *mafsadah* in the framework of legal law, aiming to maintain the five interests.<sup>14</sup>

9 Rizqi (n 8).

10 Rizqi (n 8).

11 Danu Aris Setiyanto, 'Maqasid As-Syariah Dalam Pandangan Al-Gazzali' (2019) 4 Hukum Islam Dan Pranata Sosial 10.

12 Abū Hāmid Al-Ghazālī, *Abū Hāmid Al-Ghazālī, Al Mustasfā Min 'Ilm Al Usul, 'Abdullah Mahmūd Muhammad Umar ( Mutaqiq)* (Dār al Kutub al 'Ilmiyah 2008) 275.

13 Al-Ghazālī (n 12).

14 Ridzwan bin Ahmad Akbar Syarif, 'Konsep Maslahah Dan Mafsadah Sebagai Asas Pemikiran Maqasid Syariah: Satu Analisis' (2016) 10 Ijtihad: Jurnal Hukum dan Ekonomi Islam 1.

Abu Ishaq al-Syatibi<sup>15</sup> was pivotal in popularizing Maqashid theory as a distinct subject of study through his famous book, *al-Muwafaqat*.<sup>16</sup> He aimed to demonstrate that sharia exists to protect the welfare of humanity. Al-Shatibi formulated scientific principles regarding *maqashid al-syari'*, laying the groundwork for its development as an independent discipline.

The primary objective is to demonstrate that sharia exists to protect the interests of humanity. Al-Syatibi is recognized for developing scientific principles concerning *maqashid sharia*, which were inferred from the foundational principles of sharia and subsequently formulated into a theory known as Maqashid al-Shari'ah.<sup>17</sup>

Al-Syatibi contends that the current field of jurisprudence is inadequately responsive to emerging societal issues (fiqh proposals cannot often address contemporary social realities), necessitating a novel disciplinary approach to yield precise and expedient legal resolutions. It was under the auspices of al-Syatibi that Maqāshid evolved into an independent scientific discipline, distinct from its progenitor, jurisprudence. Consequently, Imam al-Syatibi (790 H.) is credited as the founder of the scientific discipline of *Maqashid sharia*.<sup>18</sup> Al-Syatibi found the conceptual building of *maqashid sharia* in three categories; daruriyah, hajiyah and tahsiniyah. These three categories must always be oriented towards the benefit of the five basic principles (*al-mabadi' al-khamsah*), namely the protection of religion, soul, intellect, property and offspring.<sup>19</sup>

Al-Shatibi introduced significant changes to previous Maqashid theories. Firstly, he positioned Maqasid as part of *usul al-shari'ah*, making it essential for legal *ijtihad* and judicial decisions. Secondly, he shifted Maqashid from being post-established law (*al-hikmah min wara'i al-ahkam*) to the basic principles or rules in the law (*qawa'id al-ahkam*). Lastly, he emphasized collective evidence in its various forms (*istiqra' al-ma'nawi*) whether related to the text directly (*manqulah*) or indirectly (*ghairu manqulah*) to understanding sharia, ensuring alignment with its objectives. Finally, from this collectivity of propositions, the maqashid of Islamic law was born, namely protecting religion, soul, offspring, property and intellect.<sup>20</sup>

Ibn Ashur's contributions solidified Maqasid al-Sharia as a distinct scientific discipline essential for addressing contemporary legal challenges and fostering universal values

15 Nailur Rahmi, 'Sejarah Dan Perkembangan Maqashid Syariah Serta Karya Ulama Tentangnya Sebelum Imam Syatibi' (2023) XIV 54.

16 Al-muwafaqat is Imam Syatibi's greatest work, it is a scholarly work in the field of jurisprudence as well as one of the forms of sharia reform as a whole. This book not only explains the basics of ushul fiqh with a new methodology based on *istiqra'* from the main sources of Islamic Sharia, but also explains the main basics for understanding Sharia comprehensively. Scholars who have a very important role in popularizing this book are Muhammad Abduh and his student Muhammad Rashid Ridha and Rasyid Ridha's student, Abdullah Darraz. Even Rasyid Ridha sees this book of al-muwafaqat as comparable to his al-Muqaddimah Abdurrahman Kasdi and Dosen Stain Kudus, 'Maqasyid Syari 'Ah Perspektif Pemikiran Imam Syatibi Dalam Kitab' [2014] Yudisia 63.

17 Philosophical Principles Of Islamic Law

18 Mukhlis Abidin, 'Paradigma Maqāsid Syariah Menjadi Disiplin Ilmu' (2019) 2 TAWAZUN : Journal of Sharia Economic Law 73.

19 Maulidi, 'Maqasid Syariah as the Philosophy of Islamic Law: A Systematic Approach According to Jasser Auda' (2015) 3 Journal Al-Mazahib 1. See also, Gabriele Lattanzio, 'Beyond Religion and Culture: The Economic Consequences of the Institutionalization of Sharia Law' (2022) 52 Emerging Markets Review 100918 <<https://linkinghub.elsevier.com/retrieve/pii/S1566014122000358>>.

20 <https://muhammadiyah.or.id/theori-maqashid-dari-al-juwaini-al-ghazali-anggaran-al-syatibi/>

such as tolerance, equality, democracy, and human rights. Following al-Shatibi, scholars like Ibn Ashur further developed the Maqashid theory. Ibn Asyur (d. 1393 H) wrote a book entitled "*Maqasid Syari'ah Islamiyah and at- Tahrir wa Tanwir*", positioning him one of the important figures in the *Maqasid Sharia* and Tafsir discourse. He further promoted the existence of *maqâshid fiqh* as a vehicle for a new scientific discipline in exploring 'illat (basic reasons) of law separate from *fiqh* and its branches. Ibn 'Asyur emphasized the universal applicability and distinction from Islamic jurisprudence.<sup>21</sup> The foundations of *Maqashid* formulated by Ibn Asyur include: Fitrah, Tolerance, Freedom and Human Rights (Justice).<sup>22</sup>

After Ibn Asyur, scholars such as Muhammad al-Fasi also discussed the Maqashid sharia. However, their approaches were similar. While Ibn Asyur sought to contemporize and apply the concepts of Maqasid Sharia, as developed by Imam Syatibi in *Al-Muwaffaqat*, Al-Fasi aimed to further elaborate on these concepts, aligning closely with Syatibi's framework. Al-Fasi's discussion follows the division outlined by Imam Syatibi in his work *Al-Muwaffaqat*. Ibn Asyur focused on reconstructing Syatibi's Maqasid Sharia framework, whereas Al-Fasi primarily reiterated Syatibi's ideas.<sup>23</sup>

#### *Maqashid Sharia Theory*

The term "*maqashid sharia*" refers to the underlying values guiding the legal process in Islamic law.<sup>24</sup> Its interpretation has evolved from simpler meanings to a comprehensive understanding. Various scholars have interpreted it as legal wisdom, objectives, or meanings. Al-Bannani interpreted it as legal wisdom, al-Asnawi interpreted it as legal objectives, al-Samarqandi equated it as legal meanings. On the other hand, Al-Ghazali, al-Amidi, and Ibn al-Hajib defined it as "reaching benefits and rejecting *mafsadat*." These diverse interpretations highlight its connection to wisdom, goals, intentions, and benefits. Generally, scholars of Ushul Fiqh consider it synonymous with the objectives of Islamic law.<sup>25</sup>

In subsequent developments, the study of maqashid sharia became a major study in the philosophy of Islamic law. This term is sometimes used interchangeably with Islamic legal philosophy due to their shared focus on establishing laws that prioritize human benefit and respect human rights and dignity.<sup>26,27</sup> However, Islamic legal philosophy delves deeper into theoretical, epistemological, and methodological aspects, while maqashid al-shari'ah emphasizes the moral and humanitarian goals behind laws. Both contribute to understanding Islamic law from different perspectives, with Maqashid sharia serving as a fundamental basis for contemporary Islamic legal thought amidst globalization and social change.<sup>28</sup>

21 Maulidi (n 19).

22 Abidin (n 18).

23 Jurnal Ilmiah, Hukum Keluarga and Islam Volume, 'Hikmatina : Volume 3 Nomor 2, 2021 99' (2021) 3 99.

24 Ahmad al-Hajj al-Kurdi, *Al - Madkhal al - Fiqhi: Al - Qawa'id al - Kuliyah* (Damsyik: Dar al-Ma'arif, 1980), 186.

25 Hassan (n 7).

26 Arifin (n 5).

27 UIN Syekh and others, 'Hubungan Maqashid Al-Syariah Dengan Filsafat Hukum Islam' 1.

28 Abdurrohman Kasdi, 'Actualizations of Maqâsid Al-Shariah In Modern Life; Maqâsid Al-Shariah Theory As a Method of The Development of Islamic Laws and Shariah Economics' (2019) 16 *Justicia Islamica* 247.

*Maqashid sharia* is closely linked to "*maslahah*," as both prioritize benefit and avoid harm.<sup>29</sup> *Maslahah* cannot exist without mitigating harm, emphasizing the inseparable nature of the two concepts in Islamic law. Preserving *maslahah* (benefit) and preventing *mafsadah* (harm) is fundamental to the sharia's objectives. Achieving these objectives entails prioritizing benefits and rejecting harm. Scholars like Imam al-Ghazali and al-Syatibi equated *maslahah* with Maqashid sharia, viewing the latter as an effort to establish *maslahah* as a key element of Islamic legal goals.<sup>30</sup>

These two concepts are often used together by scholars to formulate laws and fatwa relevant to contemporary society, with *maslahah* reflecting the application of maqashid sharia principles to assess outcomes based on benefit. Maqashid sharia aims to protect religion, life, intellect, offspring, and property, while *maslahah* focuses on promoting general welfare by applying Islamic law for individual and societal goodness. Thus, maqashid sharia essentially revolves around benefits, encompassing all provisions made to realize them within Islamic law.<sup>31</sup>

*Maqashid Sharia* is theoretically utilized to address contemporary challenges that necessitate Islamic law provisions to be dynamic, flexible, and universal, transcending temporal and spatial limitations. Islamic law is viewed as a framework capable of fulfilling and protecting human interests, marked by the growth of adherents to its provisions. Therefore, the applicability of Islamic law in a given country, both legally and sociologically, should not be construed as diminishing its universality but rather hinges on societal awareness within the Islamic community of the country.<sup>32</sup>

The universality of Islamic law stems from its fundamental principle, articulated by Ibn al-Qayyim, as the wisdom and benefit for humanity in this world and the hereafter. This principle embodies equal justice, mercy, well-being, and wisdom. When justice turns into tyranny, mercy turns into violence, prosperity turns into misery, and wisdom turns into stupidity; it contradicts Islamic law. Ibnu al-Qayyim further elucidated that Sharia represents God's justice among His servants, mercy towards all His creations, protection of all earthly entities, and manifestation of His wisdom through the teachings of the Messenger of God. Thus, Islamic Sharia serves as a guiding light for the discerning, a remedy for spiritual ailments, and a path for the righteous, bringing happiness, solace, and tranquility to the soul.<sup>33</sup>

This realization is actualized when the primary objective is to uphold the Maqasid sharia, protecting the pillars of human welfare which encompass five essential aspects requiring protection: protection of religion (*hifz al-din*), such as the recitation of the

29 Asafri Jaya Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi* (Rajawali Press 1996) 69.

30 Muhammad Khalid Mas'ud, *Islamic Legal Philosophy* (Islamic Research Institute 1997) 223.

31 Zul Anwar and Ajim Harahap, 'Eksistensi Maqashid Al-Syari'ah Dalam Pembaruan Hukum Pidana Di Indonesia' (1829) 16 *Istinbath Jurnal of Islamic Law/Jurnal Hukum Islam* ISSN 1829-6505 vol. 16, No. 1. p. 1-264 22. See also, Muhammad Siddiq et al Armia, 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power Distributed Fairly?' (2022) 7 *JILS* 525; Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' [2018] *Intellectual Discourse*.

32 A Latif, 'Pembinaan Hukum Islam Di Indonesia: Modernisme Dan Reformisme Nahdatul Ulama (NU)' (2020) 19 *Ekspose: Jurnal Penelitian Hukum dan Pendidikan* 1047. See also, Chiara Formichi (ed), 'Muslims in the Nation-State (1940s to 1960s)', *Islam and Asia: A History* (Cambridge University Press 2020) <<https://www.cambridge.org/core/product/A4C99902ADE159B1E6F0AC449C56666E>>.

33 Ibnu al-Qayyim Al-Jauziyah, *I'lam AlMuwaqqiin, Juz I* (Dar Ibnu Jauzy) 41.



Shahada, prayers, zakat, fasting, and Hajj; protecting of life (*hifz an-nafs*); protecting of intellect (*hifz al-'aql*), including provisions for sustenance; protection of offspring (*hifz an-nasl*); and protection of wealth (*hifz al-mal*), encompassing *muamalah* (economic transactions).<sup>34</sup> Anything that contributes to protecting these five aspects is termed *maslahah*, while anything resulting in their loss is termed *mafsadah*.<sup>35</sup>

From the perspective of legislators, the aim of Islamic law or *maqasid Sharia* is to address human life needs categorized as primary (*daruriyat*), secondary (*hajiyyat*), and tertiary (*tahsiniyat*). Primary needs are fundamental requirements necessitating utmost protection and maintenance to realize the benefits of human life fully. Secondary needs support primary needs, such as independence and equality, while tertiary needs encompass other societal needs beyond primary and secondary ones essential for the well-being of human life.

The foundation of building *maqasid al-shariah* lies in acknowledging the objectives of sharia creators, commonly known as the rights of Allah that must not be forsaken, alongside fulfilling the rights of *mukallaf* or His servants. This is intended so that the legal provisions issued remain a theo-centric orientation and are not absolutely anthropocentric which can be trapped in a lustful orientation. Al-Syatibi reformulated the objectives of Sharia into four elements: the intention of syar'i (Allah SWT) in establishing the sharia, the syar'i's purpose in establishing comprehensible sharia, third, the purpose of syar'i is to implement sharia to the mukallaf, and fourth, the meaning of sharia when it requires the mukallaf to submit to sharia law.<sup>36</sup> The first aspect relates to the nature of sharia. The second aspect relates to the ability to understand the sharia. The third aspect relates to the ability to implement sharia. Finally, the fourth aspect is related to the obedience of the mukallaf man to enter into the provisions of the sharia so that he is free from the restraints of his desires. By carefully considering the systematic approach developed by Ash-Shatibi, it becomes apparent that the concept of *maqashid sharia* refers to the first aspect above, which is the essence of the syar'i objectives of sharia from its inception.<sup>37</sup>

From the perspective of law makers, the aim of Islamic law or *maqashid sharia* is to fulfill the needs of human life: primary (*daruriyat*), secondary (*hajiyyat*), and tertiary (*tahsiniyat*). Primary needs constitute the fundamental requirements that Islamic law must protect and uphold to ensure the genuine welfare of human life. Secondary needs encompass requirements necessary to fulfill primary needs, such as autonomy and equity, thus reinforcing the foundation of primary necessities. Tertiary needs encompass other aspects of human life beyond the primary and secondary realms, which warrant provision and preservation for societal well-being.

Meanwhile, the second aim of Islamic law is to look at the side of the perpetrator (*mukallaf*) or executor of the law, namely humans. Islamic law aims to achieve a happy life while preserving human life. Humans, as perpetrators and implementers of laws established by God, have an obligation to obey and implement these laws in everyday life. To effectively fulfill this obligation by the legislator's intent, The insights derived

34 Sulaeman Sulaeman, 'Signifikansi Maqashid Asy-Syari'Ah Dalam Hukum Ekonomi Islam' (2018) 16 DIKTUM: Jurnal Syariah dan Hukum 98.

35 Muhammad Said Romadhon al-Buti, *Dawabit Al-Maslahah Fi Al-Syari'ah Al-Islamiyyah* (Dar al-Muttahidah 1992) 71.

36 Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Usul Al-Ahkam* (Jilid 1, Dar al-Ma'rifah 2004).

37 Sulaeman (n 34).

from these investigative pursuits serve a dual purpose: validating the viewpoints of past scholars and furnishing a rational basis for formulating laws aligning with the divine will of God, the ultimate legislator, to meet contemporary legal exigencies.

To effectively fulfill this obligation by the law maker, individuals must enhance their comprehension of Islamic law by studying its foundational principles and methodologies. Given the overarching principle in Islamic law of promoting benefit and preventing harm in life, acquiring knowledge concerning the benefits and harms about individual, societal, and environmental spheres necessitates comprehensive observation and interdisciplinary research. The findings from these observation and research activities are paramount for testing the opinions of past ulama and also serve as a rational basis for establishing laws that are in accordance with Allah' will as the law maker for current legal needs.

In an effort to create and maintain the five main things above, al-Syatibi divided the benefits into three levels, as follows.

1. *Dharuri* or *daruriyat* benefits, encompasses interests imperative for this world and the hereafter. Their absence jeopardizes life's continuity and disrupts the prospects of the hereafter. These fundamental benefits—maintaining religion, soul, intellect, offspring, and property—must be protected to avoid the failure of human prosperity. To maintain religion, it is obligatory, among other things, to perform prayers, zakat, fasting and Hajj. To maintain the life, basic needs (food, clothing and shelter) are required. To maintain reason, there is a prohibition on drinking wine. To maintain offspring, marriage is prescribed and adultery is prohibited. And to maintain property, procedures for property ownership are stipulated and prohibitions on taking other people's property in an unauthorized manner. Included in realizing this goal is the law of punishing people who carry and spread heretical teachings, the law of qiyas to protect the life, the crime of lashing for drinking wine to protect the intellect, the crime of adultery to protect offspring, the crime of theft to protect wealth.<sup>38</sup> The benefits of *hajji* or *hajjiyat* is to support the interests that must exist (*dharuriyat*) to achieve benefits, but the continuity of life can still be maintained, even in difficult and abnormal situations. Because of this, it is different from *daruriyyat*, *hajjiyat* is not an essential thing, but rather things that need to be considered to prevent people from experiencing difficulties in their lives. Not maintaining this group will not cause damage (*mafsadah*) which can eliminate the public benefit (*dharuriyat*), but it will only result in difficulties and hardship for the mukallaf. At this level, Allah prescribes, among other things, plural and qasar prayers for people who are traveling, in order to maintain religion; the permissibility of hunting animals to enjoy delicious food, in order to maintain the soul; it is recommended to seek knowledge as a developer in order to maintain reason; provisions regarding dowry by the husband at the time of the marriage contract, in order to maintain offspring; and permitted in transactions to maintain assets.
2. The benefits of *tahsini* or *tahsiniyat*, namely benefits that refer to the realization of interests that are neither *daruri* nor *hajj*. In other words, the absence of this interest will not cause difficulties or threats to survival. *Tahsiniyat* is more related to the ethics of doing appropriate action and abandoning inappropriate ones, such as carrying out the sunnah of eating and drinking and avoiding listening to useless

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38 Al-Ghazālī (n 12).

things. In other words, the benefit of the *Hajji* (*hajjiyat*) is complementary, improving the quality of worship practices and better transaction patterns, and encouraging the development of commendable morals and habits.<sup>39</sup> For example, Syaifi'i prohibits buying and selling feces, dogs and all *najis* (impure) objects because he equated this act with buying and selling wine and carrion which were considered impure. The determination of the impurity of these two objects reflects the view that these objects have low value. Allowing buying and selling transactions for impure objects can be interpreted as providing a positive assessment of the object's appearance, whereas these objects are viewed negatively and considered worthless.

3. The benefits of *dharuri*, *hajji*, and *tahsini* are interconnected, forming a hierarchical continuum of importance.<sup>40</sup> *Dharuriyat* represent primary needs, indispensable for sustaining the five essential principles: religion, life, intellect, offspring and wealth. *Hajjiyat* constitute secondary needs, complicating rather than threatening life if neglected. *Tahsini* serves as enhancements, ensuring appropriateness in conduct without posing existential risks.<sup>41</sup> This stratification facilitates prioritization in addressing conflicts between competing interests, with *dharuriyat* taking precedence over *hajjiyat*, and *hajjiyat* over *tahsiniyat*.<sup>42</sup>

Scholars often frame the objectives of Islamic law as "maqasid al-sharia,"

Ushul Fiqh scholars often frame the objectives of Islamic law as *maqashid sharia*,<sup>43</sup> aiming to promote human happiness in this world and hereafter by maximizing utility and minimizing harm. Abu Zahrah formulated the aim of Islamic law as to build a primary society, from a moral society to a moral and civilized society, full of compassion for each other, so that justice can truly be upheld (Zahrah [tth]: 82 -83). Abu Zahrah saw the purpose of Islamic law in two ways: law as social engineering which can change people's behavior for the better and law as social control which can monitor people's behavior and actions in accordance with established rules and regulations.<sup>44</sup>

#### *Analysis Of Islamic Law Reform In Indonesia Through Maqashid Sharia*

Law has always been an important pillar in human life. As time progresses, the law also evolves and adjusts to suit the demands of society. The main aim of law is to protect the rights and interests of society, and guarantee the security and justice for all individuals in a country. Old effective laws may no longer be relevant today, along with significant changes in human life and the social dynamics of society. Therefore, the law must be able to adapt and develop to meet the needs and changes over time. Transformations in law can be triggered by various factors, including social changes."

Islamic law should adapt to everchanging social dynamics. When society experiences transformations in values, lifestyle, technology and social structure, Islamic law should be able to adapt without losing its essence and basic principles. This adaptability

39 Al-Ghazālī (n 12).

40 Al-Syatibi (n 36).

41 Fathurrahman Djamil, *Filsafat Hukum Islam* (Logos 1998) 127.

42 Djamil (n 41).

43 Hassan (n 7).

44 Busyro, *Dasar-Dasar Filosofis Hukum Islam* (CV WADE GROUP 2016).

allows Islamic law to remain relevant and guide in accordance with current developments, while maintaining moral values originating from religious teachings. On the one hand, Islamic law is static because it adheres to the main sources of the Quran and hadith and is a dogmatic religious law; on the other hand, it is also dynamic. This dynamic nature allows Islamic law to respond and adapt to various problems arising in line with developments over time, situations and conditions.<sup>45</sup>

The requirement for Islamic law to adapt to social changes and community needs is one of the factors driving the need for reform. This perspective aligns with al-Jauziyah's argument that alterations in legal thought and distinctions should be reconciled with the dynamics of time, place, circumstances, intentions, and needs; a significant oversight occurs when Islamic law fails to acknowledge and adapt to these changes.<sup>46</sup> The dynamism in the renewal of Islamic law exemplifies its universal nature, demonstrating that the adaptability of Islamic law, as informed by Islamic jurisprudence, is not static but undergoes dynamic modifications in response to evolving times, places and circumstances.

The concept of *ijtihad* plays a crucial role in the renewal process of Islamic law. Ibn Taimiyah posited that the progress or decline of Islamic law depends on the frequency of *ijtihad* carried out by *mujtahids*.<sup>47</sup> In the context of Islamic legal reform, it is vital to note that *ijtihad* aims not to alter religious tenets but to ensure the relevance and utility of Islamic teachings in a constantly changing era; thus they remain functional in guiding Muslims in everyday life. Islamic legal reform focuses on actualizing the legal aspects of Islamic teachings as delineated in the texts through reinterpretation rather than modifying or abandoning the Quranic texts and Hadith to reflect contemporary developments.

In Indonesia, social reform of Islamic law, considering achieving objectives of Islamic law, has been a long standing practice. Historical instances include Indonesian ulama's innovative response to the challenge of distant residential areas by supplementing the call to prayer with the beating of drums or *kentongan* to fulfill *maqashid sharia*. This adaptation illustrates that reforming Islamic law in Indonesia embraces universal values applicable to all Muslims and incorporates local values to contextualize these universal principles according to each region or nation's unique language and rhythm. Local differences certainly do not need to be questioned, but must be seen as an implementation of *rahmatan lil 'alamîn*.<sup>48</sup> The typology of reforming Islamic law in the use of drums and *kentongan* as additional forms of the call to prayer was in the context of maintaining the continuity of religion (*hifdz al-din*) in the category of *dharuriyat*, namely to maintain religious obligations, in particular, the five daily prayers. In addition, Moreover, these adaptations helped local people avoid difficulties (*hajjiyat*) and easily fulfill religious requirements, even if they could not attend the mosque but were informed of prayer times.

45 Wiwi Arwinda Mayani, 'Perkembangan Hukum Islam Di Indonesia Pada Masa Kerajaan Islam Sampai Dengan Masa Reformasi' (2013) 53 *Journal of Chemical Information and Modeling* 1689.

46 Al-Jauziyah (n 33).

47 Muhammad Amin, *Ijtihad Ibnu Taimiyah* (INIS 1991) 2.

48 Moh Khasan, 'Kedudukan Maqashid Al-Syari'ah Dalam Pembaharuan Hukum Islam' (2008) 8 *Dimas* 296. See also, Samy Ayoub, 'Creativity in Continuity: Legal Treatises (Al-Rasā'il Al-Fiqhiyya) in Islamic Law' (2023) 34 *Journal of Islamic Studies* 305 <<https://doi.org/10.1093/jis/etac063>>.

The renewal of Islamic law also transpired during the national movement in Indonesia between 1908 and 1945, prior to independence, amidst the colonial era. Educated Islamic movements sought to advance by emulating or collaborating with colonial powers. Negative accusations were often leveled against them, especially for those who taught and worked with the colonialists, even though many teachers worked in Muslim schools. Therefore, it is not surprising that at that time many fatwas were issued stating that attending Dutch schools was haram, or at least contrary to Islam. The same fatwa was also issued regarding how to dress Indonesians who started wearing European style clothing so that they were considered imitators of Christian Europeans or Dutch; those who imitated them were considered infidels. European-style trousers, hats and ties are hated by Kyai and Quran teachers, who condemn the wearing of them as haram.<sup>49</sup>

The rejection from some ulama did not deter some Islamic figures from carrying out reforms focusing more attention on the nature of Islam in general. For them, Islam is in line with the contemporary demands for progress, Islam also does not hinder every effort to seek knowledge, scientific development and so on. Islam is a universal religion and the Prophet Muhammad was sent to all nations until the end of time. Therefore, they do not hesitate to imitate and adopt Western thought, including Christian missionaries, as long as it does not contradict the basic teachings of Islam.<sup>50</sup> From this reform effort, the Jamiat Khair association was born and founded in Jakarta in 1905, followed by Budi Utomo which was also founded in Jakarta on 20 May 1908 by Dr. Wahidin Sudirohusodo and several students from the medical school, Persyarikatan Ulama, in Majalengka in 1911. Later, Muhammadiyah was founded in Yogyakarta on 18 November 1912.

The people of the independence movement, who act as *mujadids*, were applying the principles of maqashid sharia in building the theological arguments of their efforts, namely upholding the main values in Islam and adapting them to the context of the times to ensure continuity, relevance, and a deep understanding of Islam. In their struggle against the colonialists, implicitly they have taken care of some aspects of Maqashid sharia. First, they protected their religion (*hifdz al-din*) and tried to ensure the freedom to practice religion, enabling Muslims to live with pride in their belief in being Muslim and freely practice their religion. Second, they protected the life (*hifdz al-nafs*); they tried to prevent conflicts and preserve human rights, avoiding violence that can endanger lives in the negotiation process with the colonizers. Third, they protected their property (*hifdz al-Mal*) from exploitation and oppression that may be done by the colonists. Lastly, they protected intellect (*hifdz al-aql*), they encouraged independent and critical thinking so that the people involved in the struggle can think without being influenced by external pressure or manipulation. By protecting these aspects, they not only fight for physical independence, but also to preserve the moral, spiritual, and humanitarian values recognized by Islam. This confirms that their struggle does not sacrifice the important principles emphasized by religion.

In Indonesia, the renewal of Islamic law, grounded in the principles of Maqashid sharia—namely, the preservation of religion (*hifdz al-din*), life (*hifdz al-nafs*), wealth (*hifdz al-mal*), and lineage (*hifdz al-nasl*)—is evident through the enactment of several legislative measures. These include Law No. 7/1989 on Religious Courts, Law No.

49 Nafilah Abdullah, 'K.H. Ahmad Dahlan (Muhammad Darwis)' (2017) 9 Jurnal Sosiologi Agama 22.  
50 Deliar (Noer, *Gerakan Moderen Islam Di Indonesia 1900-1942* (LP3ES 1985) 322–327.

1/1974 on Marriage, laws concerning zakat (almsgiving), Sharia Economics, Waqf (endowment), and the Compilation of Islamic Law in Indonesia (KHI), which serves as the foundation for religious judges adjudicating civil disputes in Religious Courts. The overarching objective of these legal instruments is to protect religion (*hifdz al-din*). In marriage, to protect and uphold the rights of both women and men—particularly concerning protecting life, property, and offspring—marriages must be officially registered with the state. Moreover, divorces are to be processed in the presence of a Religious Court, with the mandatory attendance of two witnesses.

To secure waqf (endowed) assets (*hifdz al-mal*), beyond the mere registration in the context of waqf, recent provisions have been integrated into both the KHI and Law No. 41/2004 on Waqf. These provisions, which possess an administrative, juridical nature, aim to extend the benefits derived from waqf acts by *maqashid sharia*. Specifically, they ensure the protection of waqf land from unauthorized transfer of ownership, whether for personal use or other purposes.

A notable reform in the Islamic law of inheritance in Indonesia is the introduction of mandatory wills, as articulated in Article 209 of the KHI. It stipulates that "(1) The assets inherited by adopted children shall be divided according to Articles 176 to 193, while adoptive parents not granted a will are entitled to a mandatory will of up to one-third of their adopted child's inherited assets; and (2) Adopted children not designated in a will are similarly entitled to a mandatory will of up to one-third of the inheritance from their adoptive parents." The purpose of this mandatory will is to ensure that adopted children, and adoptive parents receive a specified share of the inheritance in recognition of their contributions to the life of the deceased.<sup>51</sup>

In economics, protecting life (*hifdz al-nafs*) and assets (*hifdz al-mal*), justify governmental intervention in market prices. Although historically, the Prophet Muhammad PBUH did not directly intervene in the pricing of goods in Medina; contemporary governance can employ measures to prevent uncontrolled price hikes, ensuring that citizens retain their purchasing power for daily necessities. Additionally, Moreover, governmental price controls can prevent individuals' financial resources from being exhausted on a limited array of products, enhancing overall quality of life.

The establishment of Sharia banking and financial institutions is similarly rooted in *maqashid sharia*, which prioritize communal benefit (*maslahah*), including asset protection. This principle also underpins the implementation of productive zakat and cash waqf, advocating for transactions that promote societal welfare and forbid harmful practices such as hoarding (*shikar*), price manipulation (*najas*), speculative trading in foreign exchange and stocks, uncertainty (*gharar*), gambling, dumping, and all forms of usury.<sup>52</sup>

The practice of *murabahah* in Indonesian Sharia banks represents an Islamic Law Reform aimed at embodying the principles of *maqashid sharia* in protecting life (*hifdz al-nafs*) and property (*hifdz al-mal*). Initiated with the National Sharia Council Decree No. 04/DSN-MUI/V/2000, *murabahah* is delineated as a transaction where the seller

51 Azhar Azhar, 'Pembaharuan Hukum Islam Dalam Khi Melalui Analisis Maqashid Syari'Ah' (2013) 13 *Islamika : Jurnal Ilmu-Ilmu Keislaman* 57. See also, Sukron Ma'mun and Ibnu Akbar Maliki, 'A Socio-Historical Study of Women's Rights Advocacy in Islamic Legal Construction' (2023) 7 *Journal of Southeast Asian Human Rights* 1 <<https://jurnal.unej.ac.id/index.php/JSEHR/article/view/39156>>.

52 Asriaty, 'Penerapan Mashlahah Mursalah Dalam Isu-Isu Kontemporer' (2015) 19 *Madania*.

discloses the cost and profit margin to the buyer. Though not present in early Islamic practice, DSN-MUI fatwa permitted this contract within *muamalah* (financial transactions) as it generally meets the criteria of mutual benefit without explicit prohibition. When *murabahah* is included in *muamalah*, generally, the boundaries that bind this principle are determined by the principle of benefit. It is included as one of the applications of *maslahah murlah* because in making and implementing *murabahah* financing contracts, the public interest is always taken into account, not just the interests of the individuals or parties involved. This principle is rooted in sharia which emphasizes the importance of prioritizing benefits and rejecting harm to achieve the overall goals of Shari'a.<sup>53</sup>

The framework for *muamalah* transactions distinguishes them from worship practices, incorporating validity criteria based on mutual benefit (*tadabu al-manafi'*) and mutual consent (*an taradin*). These principles ensure that transactions fulfill individual or party interests and contribute to communal prosperity and willingness, aligning with sharia's cooperative spirit (*al-ta'awun*)..<sup>54</sup>

Post the issuance of DSN-MUI's fatwa (DSN-MUI No. 04/DSN-MUI/V/2000), *murabahah* contracts have dominated Sharia financing in Indonesia, constituting a significant portion of financing portfolios. At PT Bank BNI Syariah in 2019 alone, *murabahah* contracts had the largest composition (around 62% of the total financing portfolio), followed by other financing: *musyarakah*, *mudharabah* and *qardh* contracts.<sup>55</sup> It is similar in other financial institutions, such as BMT reaching 75% of all other contracts.<sup>56</sup> *Murabahah* contracts are increasingly popular in meeting community financing needs due to their lower risk for financial institutions and customers. Banks or financial institutions can offer or approve larger financing amounts to clients through these agreements. For customers, a key advantage is the certainty of installment amounts. This is because, in this buy-and-sell model, a fixed margin or bank profit is established, remaining unchanged until the financing is fully repaid.

Drawing upon numerous discussions, it becomes apparent *Maqasid sharia* or the objectives of Islamic law are an important instrument in the process of renewing Islamic law in Indonesia. This concept emphasizes a deeper understanding of the main goals of Islamic law, such as protecting religion, life, intellect, offspring and property. *Maqasid sharia* serves as an essential framework for Islamic law reform in Indonesia, facilitating the alignment of legal modifications with religious objectives to ensure that reforms remain congruent with the core aims of Islam and preserve religious values, the promotion of justice and societal welfare by offering innovative approaches to adjust legal principles for better fairness and benefit in line with Islamic law's main goal of protecting community rights and interests, the adaptation to social evolution by enabling Islamic law to intelligently adjust to social changes and evolving societal norms without compromising religious tenets; and the fostering of contemporary law

53 Abdul Atsar and Azid Izuddin, 'Implementation of Fiqh Based on the Maslahah in Murabahah Financing in Sharia Banking' (2019) 18 *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* 119.

54 Juhana S. Praja, *Filsafat Hukum Islam* (LPPM-UIB 1995) 113–114.

55 Maria Elena, 'Akad Murabahah Dominasi Pembiayaan Bank Syariah' (*Finansial Bisnis Indonesia*, 2019).

56 Huzeini Alghifari and others, 'Analisis Implementasi Akuntansi Murabahah Pada BMT Iqtisaduna Yogyakarta Berdasarkan Fatwa DSN MUI' (2022) 20 *DIKTUM: Jurnal Syariah dan Hukum* 135.

development by allowing for the renewal of Islamic law to reflect changing times, thus enabling the creation of legislation that meets the contemporary needs of society.

By incorporating *maqasid sharia* into the process of Islamic law renewal, the effort becomes more comprehensive. It remains aligned with the essence and foundational values of Islam while also staying relevant amid societal dynamics and evolving times. This method highlights the necessity of *ijtihad*—dynamic interpretation—in response to the demands of changing times, guided by principles such as *ra'yu* (opinion) and *qiyas* (analogical reasoning).<sup>57</sup>

### Conclusion

Renewing Islamic law is an effort to maintain the relevance of Islam amidst the dynamics of social change and technological progress. This endeavor is not solely about preserving Islamic law as a relevant guide for Muslims, individually and communally. It also aims to equip Islamic law with the capacity to address contemporary challenges. This involves integrating socially recognized values while steadfastly upholding the fundamental precepts of the faith. Islamic law thus seeks to strike a delicate equilibrium, balancing tradition with innovation on the one hand and protecting the essence of religious doctrine on the other. Central to reforming Islamic law is the pivotal role of the *maqashid sharia* principle, which underpins *ijtihad*. This principle accentuates the importance of comprehending Islamic law's overarching objectives, focusing on preserving religion, life, intellect, offspring, and property when explicit answers are elusive in the Quran and Hadith.

The discourse on renewing Islamic law in Indonesia is deeply imbued with the reasoning derived from *maqashid sharia*. This practice predates the nation's independence and the establishment of the Republic of Indonesia. Various Islamic movements vigorously championed the application of *maqashid sharia* reasoning to renew Islamic law. They founded institutions and organizations spanning social, political, and economic spheres, all aimed at achieving parity with the colonial powers by emphasizing the protection of religion (*hifdz al-din*), life (*hifdz al-nafs*) and ensuring equality through the protecting of intellect (*hifdz al-aql*). Pioneering entities such as the Indonesian Trade Company, Budi Utomo, Syarikat Islam, Muhammadiyah, and Nahdhatul Ulama played significant roles during this era.

The application of *maqashid sharia* became even more widespread post-Indonesia's independence, extending beyond social discourse. *Maqashid sharia* has been institutionalized by enacting numerous laws aligning with *sharia* objectives. Noteworthy legislations include the Marriage Law, the Zakat Law, the Waqf Law, the Hajj Law, the Special Autonomy for the Aceh Region, and the Halal Product Assurance Law (JPH Law), among others. These regulations reflect the government's commitment to protecting the five foundational necessities: religion (*hifdz al-din*), life (*hifdz al-nafs*), intellect (*hifdz al-aql*), property (*hifdz al-mal*), and offspring (*hifdz al-nasl*), thus embodying the essence of *maqashid sharia* in modern governance.

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