Ibn Ashur's Concept of Maqasid Sharia-Finding Method

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Abstract:

This paper aims to reveal the concept of maqasid sharia-*finding method according to Tahir ibn Ashur. It argues that Ibn Ashur's approach to search for* maqasid sharia *revolves around three methods. The first is inductive method. This method can be done through the induction of many* 'illat *(reasons) that have the same* hikmah *(goals) and the induction of many* dalil *(provisions) that have the same* 'illat *(reasons). The second is* al-bayan al-nashshi *method. This method refers to understanding of explicit provisions (dalil) in the Qur'an as they leave no room for alternative interpretations according to Arabic language traditions. The third is* sunnah mutawatirah *method. This method is divided into* mutawatir ma'nawi *and* mutawatir 'amali. Mutawatir ma'nawi *is an inference resulted from testimonies of many* shahaba *(the Prophet's companions) concerning a Prophet's particular action. Actions that are considered* mutawatir ma'nawi *include those that are clear, bright and axiomatic in nature (ma'lum min al-din bi al-dharurah), or at least close to* ma'lum min al-din bi al-dharurah. *Meanwhile,* mutawatir 'amali *is an inference resulted from a testimony of one* shahaba *concerning actions always repeated by the Prophet.*
Key Words: Tahir Ibnu Ashur, *Maqasid Sharia*, Inductive Method, *Al-Bayan Al-Nashshi* Method, *Sunnah Mutawatirah* Method

INTRODUCTION

Allah has created men with the best possible creation. He has bestowed them *'aql* (reason), so that they are able to think and form abstract ideas. The *'aql* given by Allah makes humans able to develop in response to the changing world, including religious life. That is why humans alone are obliged by Allah to perform religious duties, whereas other creatures are not. With their mind, humans are able to develop and improve their standard of living from time to time. They have the capacity to produce knowledge to adapt to new situations.

Humans experience a very rapid development in living religious life; they learn, understand and practice religious teachings. New methods have been made in order to facilitate their religious life, including Muslims with their Islam. In fact, the development of science and the advance of technology sometimes create problems for Muslim society. The way they respond to the development of science is generally patterned into three attitudes. There are those who accept it as a whole, there are those who reject it as a whole and there are those who act selectively by taking only what is seen positive for the progress of Muslim society. These three Muslim groups are equally adamant that their own opinions are better and more useful.

Allah does understand the basic characters of human beings and, therefore, has revealed the Qur'an in accordance with their characters. In this sense, the Qur'an accommodates the possibility of various interpretations of some verses from the Qur'an that look ambiguous. Such multiple interpretations occur because a particular word is open to more than one interpretation or understanding, which in *ushul fiqh* is referred to as *lafdz musytarak* or *lafdz musykil*. This case can be found, for instance, in the word *quru'* as mentioned in Surah al-Baqarah verse 228 (Syarifudin, 1999: 15). In understanding this verse, there are inescapable differences of opinion among Muslim scholars and even among *shahaba* (the Prophet's companions). Umar ibn Khattab, for example, interpreted *quru'* in this verse to mean *haidh*, while Zaid ibn Thabit interpreted it as *cleanliness* to perform worship. Umar's opinion was followed by Imam Abu Hanifa, while Zaid's opinion was followed by Imam al-Shafi'i. This difference of opinion did not result in the two of them at odds, nor physical clash. The two *shahaba* and the two *mujtahid* respected each other and valued opinions that differed from their own (Zain, 1998: 277).

For the *ushul fiqh* experts, exploring the Islamic teachings can be done with a variety of approaches. Some classify the approaches into two, some into three and some others into four. The two approaches are usually named textual and contextual; the three approaches involve linguistics, analogy and benefits; and the four approaches are based on literal meaning (harfiah), understanding (mafhum), signaling (isyarah) and objectives (maqasid). All of these approaches have been carefully studied in the science of *ushul fiqh*. If made simple, the approaches to understanding the Islamic teachings are precisely grouped into three, *i.e.* textual, contextual and *maqasid*. The most interesting study of the three is the study of the *maqasid* approach (Zein, 2005: 177). It is interesting because the use of *maqasid* was not only as the spirit or soul of *ijtihad*, but also later as the method of *ijtihad*, especially after the coming of *al-Muwafaqat* authored by al-Syathibi.

Al-Syathibi has been excellent in formulating the theory of *maqasid* in his book *al-Muwafaqat*. Generally speaking, he said that the Islamic sharia was revealed by Allah with the aim of providing benefits to human beings. The benefits are generally referred to five aspects, *i.e.* religion, soul, reason, descent, and property (Syah, 1992: 67). In his book, al-Syathibi explains these five types of benefits, called *maqasid sharia,* very well. Al-Syathibi is popularly known as the founding father of *maqasid sharia*.

The method of *ijtihad* most widely used by *ulema* in exploring Islamic law, especially those with human dimension, is the benefit-based method or *maslahat* method. That is why discussion over this method is very much found. This benefit-based method is the most popular method among Muslims. In using this method, some are superfluous, some are selective and some refuse. However, when observed more carefully, these three attitudes in principle seem to use the same *maslahat* method, but with different names. The Shafi'i School, for example, rejects the idea of *maslahat mursalah* and replaces it with *istidlal*. In

general, at the usage level, almost all schools use the theory of *maslahat* though some of them may prefer to different names.

The *maslahat* method is the method most formulated by *ulema*. Hundreds of pages and even volumes of books have explained this method. The method is so widely discussed because of (1) the difficulty in formulating the concept of *maslahat* and (2) its status as the most fundamental method. This is so because all Islamic teachings are certainly grounded in the concept of benefits or *maslahat*, both those related to the worldly life and the hereafter, as well as material and spiritual life. Among the scholars who are concerned with discussing the *maslahat* theory is al-Ghazali in his book *al-Mustashfa*. This book is very interesting and becomes the standard reference for the science of *ushul fiqh*. Many *ulema*'s works were born after they were inspired by this book, including those who specifically studied this book and those who studied theories contained in this book. Therefore, it is very reasonable that *al-Mustashfa* becomes one of the most popular books of *ushul fiqh*.

Equally excellent is the book of *al-Muwafaqat* by al-Syathibi. This book was written half a century before the fall of Granada, the last Muslim city in Andalusia. The book invites Muslims to revive Islamic law, prioritize the general benefits, and direct them to pay attention to the reality and the universe. At first, al-Syathibi named this work with *al-Ta'rif bi Asrar al-Taklif* until one day he met a *syeikh* or teacher of *ilm makrifat*. The syeikh said to him: "Last night I saw you in dream that you held in your hand a book that you have compiled. I asked you about it, and then you said that it was the book of *al-Muwafaqat*." The syeikh again said: "I ask you about this good naming, and you say that with that you want to unite the school of Ibn al-Qasim and Abu Hanifah." Since then, al-Syathibi called his work *al-Muwafaqat* (Al-Syathibi, 2006: 19). In *al-Muwafaqat*, al-Syathibi succeeded in formulating the theory of *maqasid sharia*. He also explained the method to trace the *maqasid sharia*.

Among the latest developments on the theory of *maqasid sharia* is the concept proposed by Muhammad ibn Ashur (1879 AD - 1973 AD) in his book *Maqasid Shari'ah Islamiyyah*. Ibn Ashur was called upon to write his renewal ideas that focused on the most fundamental realm of Islamic law, namely *ushul fiqh*. According to him, there are some methodological problems in *ushul fiqh* as the fundament of Islamic law, so that improvements need to be done; otherwise, it will be difficult to maintain Islamic law as the law capable of adapting and responding to the various demands of the times and places.

DISCUSSION
Uncovering the Birth of *Maqasid Sharia* Theory

Among *ushul fiqh* studies interesting to examine is the study of *maqasid sharia*. It is so because *maqasid sharia* is the most important topic in the science of *ushul fiqh*. This is the reason of why al-Syathibi in his *al-Muwafaqat* focuses on only the issue of *maqasid sharia*. Since the early time of Islam and even the Prophet period, the theory of *maqasid sharia* gained great attention.

Ideas of *maqasid sharia* have a strong historical reference, though as an independent scientific discipline it was known only when al-Syathibi wrote his *al-Muwafaqat*. He dedicated one volume of his book to study *maqasid sharia*. However, embryo of studies concerning *maqasid sharia* has existed since the time of the Prophet, such as the following hadith:

عن ابن عمر رضي الله عنهما أنه قال: قال النبي صلى الله عليه وسلم لنا لمّا رجع من الأحزاب : لَا يُصَلِّيَنَّ أَحَدَكُم الْعَصْرَ إِلَّا فِي بَنِيْ قُرَيْظَةَ، فَأَدرك بعضهم العصر في الطريق،

فقال بعضهم: لانصلي حتى نأتيها، وقال بعضهم: بل نصلي ! لم يرد منّا ذلك (أي أنه أراد الإسراع). فذُكر للنبي فلم يعنّف واحدا منهم. وفي رواية مسلم: وقال أخرون : "لا نصلي إلا حيث أمرنا رسول الله وإن فاتت الوقت"

"Narrated from Ibn 'Umar, he said: "The Prophet PBUH said to us when returning from the Battle of Ahzab: Let none of you pray Ashr except in the Bani Quraizhah village. Later, some of them met the time for Ashr prayer in the middle of the way. Then said some of them: We (may) not pray until we get there. Another shahaba said: Instead, we should pray right now. That (the literal meaning) is not what the Prophet wants from us (what the Prophet wanted was for us to speed up the journey). After that, the case was reported to the Prophet PBUH, and he did not denounce one of them. (In the narrative by Imam Muslim, there is an additional line: Another shahaba said: We do not perform the prayer except in accordance with what the Prophet PBUH commanded, even though the time for Ashr prayer is up)." (Al-Bukhari, 1407: 321; Muslims, 1998: 1391)

The above Hadith tells of two groups of *shahaba* who differed in their understanding of the Prophet's order. The first group perceives the order with textual approach, i.e. not to perform the Ashr prayer before reaching the Bani Quraizah village even though the prayer time is up. Meanwhile, the second group understands it with *maqasid* approach, i.e. the Prophet wanted them to walk faster.

Muslim scholars have different opinions in response to this hadith. The majority of them (jumhur) support those who use maqasid approach, while Dhahiriyyah scholars support those who use textual approach. Ibn Qayyim describes the view of the jumhur as follows: "Both groups are equally rewarded for their intentions to obey the Prophet's order. However, the *maqasid* group has two virtues, i.e. due to their obedience to speed up the journey and their obedience to perform the prayer in time. The Prophet's affirmation towards the textual group was simply because he understood their limitations in understanding the implied meaning of the order."(Al-Asqalani, 2002: 410).

In other words, Ibn Qayyim argues that the textualists' stance is tolerable because of their weakness in knowledge, not because of their correct interpretation. Unlike the *jumhur*, Dhahiriyyah scholars as represented by Ibn Hazm's statement argue: "If we were present at the Banu Quraizah event, we would not perform the Ashr prayer, even after midnight, unless we arrived in that village." Such a view is in line with the principles of their school that reject the *maqasid* method (Al-Raisyuni, 2005: 8).

At the time of *shahaba*, thoughts on maqasid became clearer as can be seen from the policies adopted by al-Khulafa al-Rasyidin (Babakr, 2002: 8). If observed more carefully, many policies made at that time are based not only on the explicit message of the Qur'an and the Hadith, but also on the objectives (implicit message) of the Qur'an and the Hadith (Al-Saifi, 2010: 35, and Al-Uwaid, Vol. 25, 2011: 15).

After the *shahaba* period, thoughts on *maqasid* were continuously practiced and formulated by the *ulema*. Although *maqasid sharia* was not explicitly used as a standard term for a specific scientific study, the *ulema* had been considering the implementation of *maqasid sharia* in formulating Islamic laws. Terms that were relevant to the spirit of *maqasid* at that time included the theories of *qiyas, istihsan* and *maslahat mursalah* (Al-Yubi, 1998: 44).

In the 3rd century H, works that specifically studied Islam from the aspect of *maqasid* were born, although they were still scattered in various books and disciplines, such as sufism, *kalam* or theology, comparative religion and *fiqh*. Some prominent figures

included al-Tirmizi al-Hakim (d. 296 H/ 908 AD), Abu Zaid al-Balkhi (d. 322 H/ 933 AD), al-Qaffal al-Kabir (d. 365 H/ 975 AD), Ibn Babawaih al-Qummi (d. 381 H/ 991 AD), and al-'Amiri al-Failasuf (d. 381 H/ 991 AD), as they conducted profound studies of *maqasid sharia.*

According to Abdallah ibn Bayyah, the 5th century Islamic *hijri* calendar marked the birth of Islamic legal philosophy (Auda, 2008: 16). In this period, theories of *maqasid sharia* have emerged as part of *ushul fiqh*. The *ulema* who first discussed *maqasid sharia* was al-Haramain al-Juwaini (d. 478 H/ 1085 AD), although he didn't explicitly mentioned *maqasid sharia* in his writings. Al-Raysuni called this period as *al-wiladah al-kaminah,* or the birth period. Al-Haramain al-Juwaini's thoughts were then continued by his disciple named Abu Hamid al-Ghazali, al-Razi, and so on up to al-Syathibi.

After al-Syathibi time, the development *maqasid sharia* as a discourse experienced acute stagnation. The discourse, which was first systematically codified by a1-Syatibi, suddenly disappeared until later in the first half of the 20th century AD Ibn Ashur reformulated the *maqasid* studies. Ibn Ashur offered a new approach in studying *maqasid sharia* that had been adapted to the reality of modern context. This reformulation is evident in his brilliant work named *Maqasid Syari'ah Islamiyyah*, which was first published in Tunisia in 1946 AD.

Moreover, Ibn Ashur also called for making *maqasid sharia* an independent scientific discipline (fann 'ilm mustaqill). This call is believed to have triggered the development of the study of *Maqasid sharia* afterwards. Since his time, studies on *maqasid sharia* with emphasis on methodology and approach, rather than a collection of value concepts, began to spread (Mawardi, 2010: 197). That is why Ibn Ashur was named the third pillar of *maqasid sharia* (Al-Yubi, 1998: 70) due to his great contribution in bringing this discipline in the top popularity. *Maqasid sharia* is now the new *prima donna* in Islamic studies. Al-Raysuni maintains that *maqasid* sharia has been experiencing a perfect birth (al-wiladah al-kamilah), especially in the *Maghreb* or the birthplace of Ibn Ashur.

Contemporary *ulema* are now pioneers of the study of *maqasid sharia*, such as Ahmad al-Raisuni, Nuruddin Mukhtar al-Khadimi, Abdullah bin Bayyah, Muhammad Habib ibn Khaujah, Ismail al-Hasani, Thahir al-Misawi, Nu'man Jughaim and so on. Besides *Maghreb* regions including Tunisia, Morocco and Aljazair, another region that is now the center of the study of *maqasid sharia* is Malaysia. Like in *Maghrib*, support of the local *ulema* in Malaysia is both in individual and institutional levels. In the said countries, *maqasid sharia* becomes a separate department in several well-known universities.

Intellectual Background of Ibn Ashur

Portrait of one's intellectual background cannot be separated from his sociological, political and geographical stance. It is always necessary to understand his family, how he was born and raised, where he lived and grew up, what situation and conditions he has encountered, what he has learned and who influenced him.

Background of The Writing Maqasid Syari'ah Islamiyyah

Ahmad al-Raisuni stated that Ibn Ashur was the second teacher of *maqasid sharia* after al-Syathibi. He has succeeded in making *maqasid sharia* meet a perfect birth, that is, a discipline that is studied independently. As *Maqasid Syari'ah Islamiyyah* becomes the first book talking about *maqasid* after a period of acute stagnation, it also brings significant impact on the later generations to study, theorize and dialogue *maqasid sharia* with

contemporary issues. Indeed, this achievement is not a coincidence, but a product of the context that surrounds the life of Ibn Ashur.

The first factor deals with Tunisia's academic atmosphere. From a sociological perspective, Ibn Ashur's love of *maqasid* is inseparable from the academic atmosphere of *Maghreb* regions known to have many experts in the study of *maqasid*. Abderrazak Belabes reports that for a long time the *Maghreb* regions (Andalusia/ Spain, Morocco, Tunisia, Aljazair, Libya and Mauritania) have given birth to utilitarian (maqasidi) thinkers. Thinkers of classical period included Abu Imran al-Fasi (d. 430 H), Abu al-Walid al-Baji (d. 471 H), Ibn aI-'Arabi (d. 543 AH), Ibn Rusyd (d. 595) and of course Abu Ishaq al-Syatibi (d. 790 H). Among the scholars who were in the same period with Ibn Ashur were Muhammad Aziz Bu'tur (1825-1907 AD), Salim Bouhabib (1827-1924 AD), Muhammad Khidr Husein (1874-1958), Muhammad' Aziz Ja'it (1886 -1970 CE) and Abdul Hamid bin Badis (1889-1940 CE). Ibn Ashur was born into a family of *ulema* with the Islamic scholarship atmosphere. His complete name is Muhammad Tahir ibn Muhammad ibn Muhammad Ibn Ashur. His grandfather, *i.e.* Muhammad Ibn Ashur, who died in 1868 AD, 11 years before the birth of Ibn Ashur, was an expert in *fiqh*, *ushul fiqh*, linguistics, literature and Arabic grammar.

The second factor is concerned with the socio-political context. In general, the portrait of the life of Ibn Ashur is divided into two main phases. The first phase is the era of French colonial rule over the *Maghreb* countries (Morocco, Aljazair and Tunisia) which ranged from 1881 to 1956. The second phase is the period of Tunisian independence in 1956 up to 1973, in which he died. The first phase of his life was marked by various major events in the Islamic world, such as the weakening of the Ottoman Empire over his territories. This situation leads European imperialists to colonize Islamic countries in the Middle East, including Tunisia.

According to Ismail al-Hasani, there were three factors that helped shape Ibn Ashur's intellectual background the way he is now. The first is the renewal movement initiated by Muhammad Abduh in Egypt. *Al-Urwah al-Wuṣqa*, the magazine that Abduh managed, gave a strong influence on the people of Tunisia to rise up against the colonial authority. The people's awareness to fight the authority grew even stronger after Abduh's visit to Tunisia in 1884 and 1903. The second is the thoughts of a Tunisian reformer, Khairudin al-Tunisy (18 10-1890 AD), who initiated to advance the nation through education. The steps taken by al-Tunisy include the spreading of liberation ideas through his writings in various magazines and the printing of inexpensive books to be distributed to the public. He also establishes Khalduniah and al-Sadiqiah University to study modern sciences. The third is educational reforms echoed by Zaitunah University. The post-independence phase marked by the rise of Habib Borgouiba as president has brought many changes in Tunisia. For the sake of bettering the country's underdevelopment, Borgouiba actively promoted secularization campaigns everywhere and claimed that it was the only way to bring the country towards progress. Islam was set aside from political arena and even public spaces. As a result, religious endeavors or *syiar* are almost invisible in daily life, except for official rituals like Friday prayers or religious holidays. On the other hand, Western tradition is seen as the ideal prototype worth following. On the basis of human rights and freedom, a portrait of liberal and humanist Islam was increasingly displayed, and issues of human rights were designed to become learning materials in all educational institutions (Muhammad, 2015: 20).

Methodological Problems of Ushul Fiqh

In the academic perspective, the motive prevailing the writing of *Maqasid Syari'ah Islamiyyah* was ibn Ashur's intellectual anxiety towards the Islamic sciences, especially *ushul fiqh*. Ibn Ashur argues that the science of *ushul fiqh* is relative in nature, so that it cannot provide definite conclusions, as with the natural sciences.

Three criticisms have been raised by Ibn Ashur to *ushul fiqh*. Firstly, *ushul fiqh* is seen incapable to provide definitive arguments and solutions (dharuri or qat'i) in dealing with different opinions. This notion is due to the fact that the principles of *fiqh* (qawaid fiqhiyyah) are induced and formulated precisely from particular problems that exist in the schools of *fiqh* (fiqh madzahib). In other words, such principles are formulated for the purpose of defending the opinions of certain *fuqaha* of madzhab. Secondly, most of the themes of in *ushul fiqh* revolve only around how to extract law from religious texts, but are still far from efforts to understand main objectives of the law, both general and specific objectives. Thirdly, the themes of *ushul fiqh* that are related to *maqasid*, such as *qiyas, maslahat mursalah, munasabah, ikhalah* (masalik al-'illah), are generally placed at the end of the book, when readers are generally bored and so is the writer.

Ibn Ashur's *Maqasid Sharia*-Finding Method

One of the most fundamental elements in *maqasid sharia* discourse is concerned with the method of understanding and tracing the *maqasid sharia*. This is as to avoid misdiagnosis by assuming *maqasid* not as *maqasid*, and vice versa. Those who review *maqasid* complained of the lack of explanation about it in classical literatures. Numan Jugheim in his dissertation entitled *Thuruq al-Kasyf 'an Maqasid al-Shari'* states that from a number of literatures on *maqasid*, including the books of *ushul fiqh*, there are only two books that specifically discuss the method to understand *maqasid*, i.e. *al-Muwafaqat* by al-Syathibi and *Maqasid Syari'ah Islamiyyah* by Tahir ibn Ashur (Jugheim, 2002: 10). Likewise, according to Jamaluddin 'Athiyyah (2006: 15), the majority of contemporary *ulema*'s works in explaining the method of understanding *maqasid sharia* only recycles the thoughts of a1-Syathibi and Tahir ibn Ashur. That is why Ibn Ashur has a crucial position in the study of *maqasid sharia*. He maintains three methods to determine law based on *maqasid* sharia:

The Inductive Method (Istiqra')

The Arabic word *istiqra* is equivalent to *induction*. In the Great Indonesian Dictionary (KBBI), the term *induction* has three meanings that almost have something in common: a) a method of thinking that departs from a specific rule (thing or event) in order to determine a general rule; b) a way of drawing conclusions based on a special case to be used for general case; c) an inference of a general law from particular instances. Viewed from the philosophical perspective, induction is a form of reasoning, which is different from deduction, abduction and dialectical reasoning (Lubis, 2014: 41-46).

There are three keywords in understanding Ibn Ashur's *istiqra'*, namely *nushush al-ahkam al-juz'iyyat, tawatur* and *natijah. Al-ahkam al-juz'iyyat* is the texts of particular laws which are the objects of observation; *tawatur* refers to the quantity of objects observed; and *natijah* refers to the result of observation. *Tawatur* has a close relationship with *natijah* in that the more the number of the objects, the stronger the result produced. *Natijah* is a universal principle (kulliyyah) which is the objective (maqasid) of the particular laws being observed.

Based on these three keywords, Thir ibn Ashur classifies the inductive method to determine *maqasid sharia* into the following two parts:

Induction of Many 'Illat *(Reasons) That Have The Same* Hikmah *(Goals)*

Example of this point is *maqasid sharia* concerning the elimination of deception (gharar) and the maintenance of brotherhood among fellow Muslims (ukhuwwah islamiyyah). *Gharar* is any form of transactions whose results are unclear, is inability to hand over goods to the buyer, and is incorrect size or scale of goods being sold (Al-Jauziyyah, 1987: 818). The elimination of *gharar* is the objective of Islamic law in the field of *muamalah* which is taken from inductive approach to laws that have different *illat* or reasons, but leads to one common goal, namely the elimination of *gharar* (ibthal al-gharar).

Based on *maqasid sharia* of the elimination of *gharar*, Prophet Muhammad forbade *'urban* (transaction based on deposit systems), *hashat* (speculative transaction), *muzabanah* (transaction with imbalanced barter), *ma'dum* (transaction where the goods do not yet exist), *ijon* (transaction over fruits that are still young or unripe) and all forms of transaction that contains *ghabn* or fraud. Likewise, the Prophet forbade transaction in which the goods sold could not be handed over to the buyer, such as selling off a cow that is not known to exist, a bird that flies in the air, or a fish in open waters.

Based on *maqasid sharia* of maintaining brotherhood among fellow Muslims, the Prophet obliged to explain the defects of goods being sold, the possibility to return defective goods not explained during the transaction, the prohibition on selling *musharrah* (animals that deliberately do not milked so that they may look fat or pregnant).

In addition to the inductive method towards particular reasons ('illat) as explained above, *i.e.* the elimination of *gharar* and the maintenance of brotherhood, the inductive method is also strengthened with *kulli* provisions from the Qur'an and the hadith, such as Surat al-Nisa' verse 29 and Surat al-Baqarah verse 188. If observed carefully, the reasons ('illat) for the cases above vary, but they all lead to one goal, namely the elimination of *gharar* in transaction (ibthal al-gharar fi al-mu'amalat). Therefore, it can be concluded that one of the *maqasid sharia* in the field of *muamalah* is the prevention and elimination of *gharar*. That is why every transaction that contains fraud or is potentially detrimental to one party (seller or buyer) is prohibited in Islamic teachings.

Induction of Many Dalil *(Provisions) That Have The Same* 'Illat *(Reasons)*

Among examples of this type of inductive method is *al-rawaj* (smooth transaction in the market) that are induced from the legal provisions, such as a hadith forbidding *talaqqi al-rukban* (transaction in the middle of street), *al-mudharr* (transaction on the basis of compulsion) and *ihtikar* (stockpiling the merchandises). Hence, it can be concluded that one of the *maqasid sharia* in the field of *muamalah* is smooth transaction that allows the distribution of essential goods to run fairly and evenly. There is no significant price disparity between one region and another, between one community and another, and between one time and another.

At glance, the two forms of inductive method (istiqra') look similar, but if observed closely, the difference between the two is obvious. In the former, the object of induction is *'illat*, while the inference is the similarity of *hikmah*. In the latter, the object of induction is *dalil*, while the inference is *'illat*.

Al-Bayan Al-Nashshi *Method*

Al-bayan al-nashshi method is an understanding of provisions in the Qur'an with a clear designation (al-wadihah al-dalalah) as they leave no room for alternative interpretations according to Arabic language traditions. For example, the verse *kutiba*

'alaikum al-shiyam is usually understood as *it is obliged upon you all to fast*. Here, if anyone thinks that the said verse is intended to mean *fasting has been written on the board*, then everyone knows this is incorrect meaning. Thus, the parameter in understanding the sacred text of the Qur'an is according to Arabic language use (bi hasab al-isti'mal al-arabi). In other words, Ibn Ashur does not let the Qur'an speak for itself. Abdul Majid Najjar states that this method is the most original method. Meanwhile, Nu'man Jugheim in his dissertation explained that what is meant by *nash* (sacred text) explanation is not to merely take literal meaning of the text ('ibarah al-nash) by negating the possibility of other meanings that can be taken through *isyarah* (signaling), *iqtidha'* (implicative meaning) or *dilalah* (implied meaning); rather, non-literal meaning of the text that can only be done if there are indicators leading to the intended meaning.

Abdul Majid Najjar maintains that this method can be carried out by detailing the level of clarity of the *nash* into three types. The first is *bayan al-nas*, which is an explanation from the *nash* with only one possible interpretation; the second is *bayan al-dhahir*, which is an explanation from the *nash* with more than one possible interpretation (ihtimalat); and the third is *bayan bi al-ima' wal-tanbih*, which is an explanation from the *nash* by means of signaling and warning.

Sunnah Mutawatirah *Method*

Sunnah mutawatirah can be found in the two conditions, *i.e. mutawatir ma'nawi* and *mutawatir 'amali. Mutawatir ma'nawi* is an inference resulted from the testimonies of many *shahaba* (the Prophet's companions) in unlimited numbers concerning the Prophet's actions. From this point, a common knowledge was born among the many *shahaba* about the implementation of certain actions as they can witness from the Prophet. Actions which are seen *mutawatir ma'nawi* refer to those that are clear, bright and axiomatic in nature (ma'lum min al-din bi al-dharurah), or at least close to *ma'lum min al-din bi al-dharurah*. An example of *mutawatir ma'nawi* is the prescription of *shodaqah jariyah*, which is partly in the form of *al-habs* (waqaf). This particular action was stated by Imam Malik in response to Syuraih saying that *al-habs* (waqaf) was not part of obligations to Allah. Imam Malik then said: Syuraih spoke in his country (Kufa/ Iraq) and did not come to Medina. If he came to Medina and saw the *atsar* (relics) of the Prophet's wives, companions and the tabi'in, and what they have given (waqaf) from their possessions as well as these seven plots as *shadaqah* from the Prophet. One should not speak about Allah's laws unless he has proper knowledge of *khabar* (hadith of the Prophet). There are many examples of actions that are *mutawatir ma'nawi* in matters of *ibadah* (religious services), such as *khutbah* (speech) in the two Eids carried out after the Eid prayer (Ashur, 2012: 21-22).

Meanwhile, *mutawatir 'amali* is an inference resulted from a testimony of one shahaba concerning actions always repeated by the Prophet. Such a testimony then give birth to the intention or objective of sharia (maqasid sharia). An example of *mutawatir 'amali* is a hadith contained in the book of Saheeh al-Bukhari as narrated by al-Azraq bin Qais. He said: we are performing a prayer by the river in the Ahwaz area where the water is receding. Then came Abu Barzah al-Aslamiy riding a horse; he joined the prayer and took off his horse, then the horse left. Then Abu Barzah left his prayer and chased his horse until he found it again and bound it. Then he came and did his prayer again. Among us was a clever person and said: look at this old man. He left the prayer because of his horse! Then Abu Barzah came in and said: no one has reproached me since separating from the Prophet. Abu Barzah said: actually my house is far away. If I keep praying and let my horse go, then

I am not sure that I can reach my family tonight. Abu Barzah said that he had accompanied the Prophet and witnessed the ease he provided. Therefore, Abu Barzah's testimony of the repeated action by the Prophet could give birth to *maqasid sharia*, namely *al-taisir* (the ease). In this case, Abu Barzah thought that breaking the prayer to chase his horse and then starting the prayer was more important. This is because continuing the prayer contains difficulties as consequently he has to return to his home on foot. This kind of *maqasid*, for Abu Barzah, is a *dhan* (presumption) approaching *qath'i* (certainty), while for others the action is *muhtamal* (doubtful) because it is based on *taqlid* and kind-minded (Ashur, 2012: 21-22).

The difference between *mutawatir ma'nawi* and *mutawatir 'amali* is located in the subject and the object. In *mutawatir ma'nawi*, the subject are many (a number of shahaba), while the object is single (a particular Prophet's action). In the other hand, in *mutawatir 'amali*, the subject is single (one shahaba), while the object is many (the repeated actions by the Prophet).

CONCLUSION

Ibn Ashur argues that there are some methodological problems in *ushul fiqh*, which is the fundamental pillar in Islamic law. If such problems are not corrected, it would be difficult to maintain Islamic laws capable of adapting and responding to the various demands of the times and places. One of the things that must be given a special attention in the science of *ushul fiqh* is concerned with the theory of *maqasid sharia*. Ibn Ashur has made great efforts to conduct a serious and in-depth study concerning the theory of *maqasid sharia*.

Ibn Ashur's important achievement in studying the theory of *maqasid sharia* cannot be separated from the following two contexts. The first factor deals with the academic atmosphere in Tunisia known to have many experts in the study of *maqasid*. Ibn Ashur was also born into a family of ulema with the Islamic scholarship atmosphere. His complete name is Muhammad Tahir ibn Muhammad ibn Muhammad Ibn Ashur. His grandfather, i.e. Muhammad Ibn Ashur, who died in 1868 AD, 11 years before the birth of Ibn Ashur, was an expert in *fiqh, ushul fiqh*, linguistics, literature and Arabic grammar. The second factor is concerned with the socio-political context. In general, the portrait of the life of Ibn Ashur is divided into two main phases. The first phase is the era of French colonial rule over the Maghreb countries (Morocco, Aljazair and Tunisia) which ranged from 1881 to 1956. The second phase is the period of Tunisian independence in 1956 up to 1973. In addition, Ibn Ashur's intellectual background is also influenced by the reform movement initiated by Muhammad Abduh in Egypt, the reformist thoughts of Khairudin al-Tunisy and the educational reform echoed by the University of Az-Zaitunah.

Ibn Ashur's approach to search for *maqasid sharia* revolves around three methods. The first is inductive method. This method can be done through the induction of many *'illat* (reasons) that have the same *hikmah* (goals) and the induction of many *dalil* (provisions) that have the same *'illat* (reasons). The second is *al-bayan al-nashshi* method. This method refers to understanding of explicit provisions (dalil) in the Qur'an as they leave no room for alternative interpretations according to Arabic language traditions. The third is *sunnah mutawatirah* method. This method is divided into *mutawatir ma'nawi* and *mutawatir 'amali*. *Mutawatir ma'nawi* is an inference resulted from testimonies of many *shahaba* (the Prophet's companions) concerning a Prophet's particular action. Actions that are considered *mutawatir ma'nawi* include those that are clear, bright and axiomatic in nature

(ma'lum min al-din bi al-dharurah), or at least close to *ma'lum min al-din bi al-dharurah*. Meanwhile, *mutawatir 'amali* is an inference resulted from a testimony of one *shahaba* concerning actions always repeated by the Prophet.

REFERENCES

Ashur, T. I. (2012). *Maqasid Syariah Islamiyyah*. Tunisia: Dar al-Salam.

AI-Jauziyyah, I. Q.. (1987). *Zaad al-Ma'ad fi Huda Khair al-'Ibad.* Beirut: Muassasah al-Risalah.

Al-Asqalani, I. H. (2002). *Fath al-Bari,* ed. Muhibbuddin aI-Khatib. Beirut: Dar al-Ma'rifah.

Al-Bukhari, M. I. (1407). *Shahih al-Bukhari,* ed. Mustafa al-Bigha. Beirut: Dar Ibn Kasir.

Al-Naisaburi, Muslim bin Hajjaj. (1998). *Shahih Muslim,* ed. Fuad Abdul Baqi. Beirut: Dar Ihya al-Turas.

Al-Raysuni, A. (2005). *Al-Bahts fi Maqasidal-Syari'ah: Nasy'atuh Watathawwuruh Wamustaqbaluh*. London: Seminar *Maqasidal-Syari'ah* oleh Yayasan al-Furqan li al-Turats-Islami.

Al-Saifi, M. S. I. (2010). *Al-Ijtihad al-Maqashidi fi* Ashr *al-Khulafa'al-Rasyidin*, Thesis Jurusan Syariah Wal-Qanun Jami'ah Islamiyyah Ghazah. Gaza: Islamic University of Gaza.

Al-Syathibi, A. I. (2006). *Al-Muwafaqat fi Ushul al-Syari'ah, Tahqiq li Abdullah al-Darraz.* Kairo: al-Hay'ah al-Mishriyyah al-'Ammah li al-Kitab.

Al-Uwaid, A. A. (2011). *Ushul al-Fiqh 'Inda al-Shahabah, Ma'alim fi al-Manhaj*, Jurnal *al-Wa'y al-Islami,* Vol. 25. Kuwait: Kementerian Wakaf dan Urusan Keislaman.

Al-Yubi, M. S. (1998). *Maqasidal-Syari'ah al-Islamiyyah Wa'alaqatuh bi al-Adillah al-Syar'iyyah*. Riyadh: Dar al-Hijrah li al-Nasyr wa al-Tawzi.

Auda, J. (2008). *Maqasid shariah as Philosophy of Islamic Law: A System Approach* London: IIIT

Babakr, A. R. S.. (2002). *Dirasah Tathbiqiyyah Haul Falsafah a1-Maqasidfi al-Syari'ah al-Islamiyyah,* Diktat Jurusan Ushuluddin. Al-Jazair: Universitas al-Jazair.

Jamaluddin, A. (2006). *Nahw Taf'il Maqasidal-Syari'ah.* Virginia: International Institute of Islamic Thought.

Jugheim, N. (2002). *Thuruq al-Kasyf 'An Maqasidal-Syari'.* Jordan: Dar an-Nafa'is.

Lubis, A. Y. (2014). *Filsafat Ilmu Klasik hingga Kontemporer.* Jakarta: Rajawali Pers.

Mawardi, A. I. (2010). *Fiqh al-Aqalliyyat dan Evolusi Maqasidal-Syari'ah dari Konsep ke Pendekatan.* Yogyakarta: LkiS.

Muhammad, A. (2015). *Rekonstruksi Maqasid al-Syariah dalam Perspektif Thahir bin 'Asyur (Sebuah Upaya Mendialogkan kembali Syariat dengan Realitas)*, www.ruangkesadaran.blogspot.com.

Syah, I. M, et al. (1992). *Filsafat Hukum Islam.* Jakarta: Bumi Aksara.

Syarifuddin, A. (1999). *Ushul fiqh.* Jakarta: PT LOGOS Wacana Ilmu.

Zain, A. (1998). *Islam: Akidah dan Syariah*, terjemahan dari *al-Islam 'Aqidatun Wasyari'atun* karya Mahmud Syaltut. Jakarta: Pustaka Amani.

Zein, S. E. M. (2005). *Ushul fiqh.* Jakarta: Prenada Media.