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## Reconstruction of Maqashid Shari'ah Perspective Muhammad Tahir Ibn 'Assyria: Efforts to Re-Discuss Sharia with Reality

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### Abstrak

*Rub dan inti setiap sesuatu yang disyariatkan oleh Islam, pada dasarnya adalah antara mendatangkan kemashabatan untuk manusia dan mencegah bahaya bagi manusia. Maka, hal penting untuk diketahui selain menjalani seluruh syariat yang diembankan Allah kepada hambanya, yaitu mengetahui dan menentukan seluk beluk maksud dan tujuan atas penyariatannya suatu hukum tertentu. Pada kajian ini, menaruh respon besar atas usaha keras Ibn 'Assyria dalam merumuskan kembali konsep-konsep hukum universal yang kemudian dinamakan ilmu maqashid al-syariah. Hal ini penting, sebab melakukan pendekatan terhadap universalitas syariat adalah salah satu elan vital yang sangat diperlukan, lebih-lebih di era globalisasi seperti sekarang ini yang mengandaikan perubahan serba cepat dan tidak diperhitungkan sebelumnya. Menurut Ibn 'Assyria bahwa sebab utama kemunduran fikih adalah abainya para sarjana akan studi maqashid, dan ini akan mengantarkan kita kepada pengkebirian nilai-nilai syariat itu sendiri. Senada dengan Ibnu 'Assyria, 'Alal al-Fasi, salah satu pakar maqashid al-syariah kontemporer juga memandang bahwa syarat utama keberhasilan mendialogkan fikih dengan realitas kontemporer sekarang ini adalah massif tidaknya sambutan para cendekiawan terhadap studi maqashid. Di sinilah fungsi dan peranan maqashid al-syari'ah menemukan momentumnya. Karakternya yang elastis, lintas ruang dan waktu diharapkan mampu berdialektika dengan problematika yang terus bermunculan. Ciri khasnya yang syumul, mampu merangkul setiap peradaban yang berjalan dan diharapkan dapat berperan sebagai pendobrak kelesuan peradaban Islam yang lama mati suri.*

**Kata Kunci:** *rekonstruksi, maqashid al-shari'ah, Ibnu 'Asyur, dialog, realitas*

### Abstract

*The spirit and essence of everything that is prescribed by Islam, is basically between bringing benefit to humans and preventing danger to humans. So, it is important to know other than undergoing all the shari'a that Allah entrusts to his servant, namely to know and determine the ins and outs of the intent and purpose of the preservation of a certain law. In this study, put a big response to the hard efforts of Ibn 'Asyur in reformulating universal legal concepts which were then called the science of maqashid al-sharia. This is important, because approaching the universality of the Shari'a is one of the vital elves that is needed, especially in the era of globalization like today which presupposes a fast-paced change and was not taken into account before. According to Ibn 'Asyur, the main reason for the decline of fiqh is that the scholars are ignorant of the study of maqashid, and this will lead us to castrate the values of the Shari'a itself. In line with Ibn 'Asyur, Alal al-Fasi, one of the experts in contemporary maqashid al-sharia also views that the main condition for success in dialoguing fiqh with contemporary reality today is the massive response of scholars on the study of maqashid. This is where the function and role of maqashid al-shari'ah find its momentum. Its elastic character, across space and time is expected to be able to dialectically with problems that continue to emerge. Its distinctive characteristic is that it is capable of embracing every civilization that runs and is expected to play a role in breaking down the sluggish sluggishness of Islamic civilization.*

**Keywords:** *reconstruction, maqashid al-shari'ah, Ibn 'Asyur, dialogue, reality*

### INTRODUCTION

The development of Islamic thought throughout its history has shown that there are unique variants in accordance with the spirit of the era (Ash-Shiddieqiy, 1998: 12). The variants are in the form of a kind of method, vision, and frame of mind that varies from one thought to another. Islamic teachings and enthusiasm will be universal (across the boundaries of time, race, and religion), rational, and necessary (an inevitable necessity and necessity), but due to the historical response of humans in the form of the challenges of the times faced are very different and varied, this will automatically lead to different styles and understandings (Abdullah, 1995: 277).

Classical jurisprudence, as a product of the results of reasoning and *ijtihad* of the scholars in the past, is often misunderstood and seated as an absolute entity. Jurisprudence, as a relative interpretation of religion, is often equated with religion itself, which is absolute, free from error. The implication, every problem that arises in the present reality, must always refer to the magical power of classical *fiqh* in finding a way out. And the result is clear, all phenomena that occur in the contemporary era must always obey the single

authority of the past. This is why many of the fiqh products produced are barren and seemingly dreamy above the horizons of past civilizations. This is what later became the culprit of many of the failures of classical Jurisprudence in dynamics and dialogue with children today.

A comprehensive understanding of the history of classical Jurisprudence is very likely to give birth to an awareness of how important it is to promote the Jurisprudence of Jurisprudence rather than classical Jurisprudence which always puts the text above all else. Departing from this reality, and taking into account that the spectrum of reality that continues to grow and increasingly find the intensity of its understanding, then to *maqashid al-shari'ah* is a necessity for the realization of the existence of a humanist, elastic and egalitarian fiqh. Learning from the failure of classical Jurisprudence in responding to the problems of the current era of globalization, the reconstruction and reform of fiqh design which is based on a framework is *maqashid al-shari'ah* very much needed for the development of the progress of Muslims, and as a stimulant to realize the benefit of the servant, which is the main objective from the Shari'a itself.

Maqashid al-shari'ah, is the spirit, spirit, and the core nature of the requisites of every command and prohibition in Islam. Its use as a spirit in the determination of the law, has been practiced since the lifetime of the Prophet Muhammad, the era of Companions, and the *tabi'in* period. Even so, its existence as an object of scientific study as well as an aspect of legal formulation considerations, only began around the end of the III century H. It is al-Hakim At-Turmudzi, who is considered the first to use the term "maqashid" and make it as an object of study scientific, which is manifested in a book by him "*Asb-Shalat wa Maqashiduba* (Raisuni, t.t.: 5).

In the next stage, the development of studies on *maqashid al-shari'ah* experienced *progress* very significant. The existence of *maqashid al-shari'ah* is not only limited to the object of scientific study or spirit in law, but has furthermore become an approach in the formulation of the law itself. Because of its enormous implications when it *exists* as an approach or philosophy of law, it is necessary to standardize excavation and its use. This is oriented so that the maqashid approach is not wildly operated and out of control, giving birth to the product of ijtihad and speculative and haphazard legal policies.

Based on this consideration, the scholars consciously as an ethical-scientific responsibility, formulated special rules as a form of discipline in an effort to detect the

existence of *maqashid al-shari'ah* in the contents of each syari'at rule, while at the same time establishing it in a proper or non-use status. as a basis for consideration of the formulation and *istinbath* of law.

Among contemporary scholars who offer a new concept in *ijtihad* is Muhammad Thâhir bin 'Asyur, he is a Tunisian-born Muslim intellectual who is highly respected and respected. Ibn 'Asyur was known as a progressive scholar in the field of Islamic law, especially those related to the science of *maqashid shari'ah*. Thanks to his development of this knowledge, he is considered as the successor scholar of the as-Syathibi idea known as the father of *maqashid al-shari'ah* (Mawardi, 2012: 194).

Ibn 'Asyur offered the idea of the *Maqashid Shari'ah* as a reference for *istinbath* in Islamic law. According to him the scholars really need a framework *maqashid* in the concept of *ijtihad* and the determination of *shari'a* law. In his book *Maqashid al-Shari'ah al-Islamiyyah* explained about the legality of law *maqashid* and the urgency of its application in formulating the design of law.

## DISCUSSION

### 1. Social-Historical Sketches, and Biography of Ibn 'Asyur

Muhammad Thahir ibn Muhammad ibn Muhammad Thahir ibn 'Asyur is his full name. He was born from a special family environment, or rather the family of the scholars, such as: Sheikh Ahmad bin 'Asyur, Muhammad bin 'Asyur, Muhammad Thahir bin 'Asyur al-Jad, and then Muhammad Fadhil bin 'Asyur. He was born in 1879 M in the suburbs named La Marsa, Tunisia (Al-Misawi, 2001: 13) and (Al-Hasani, 1995: 80).

Ibn 'Asyur began his education at the age of six years by studying the Koran and memorizing it under the care of Sheikh Muhammad al-Khiyari. Then proceed to study the *matan ajrumiah* in the field of *nabwu* and Maliki school of Jurisprudence books. In 1893 M he studied at Zaituna College, the oldest Islamic higher education institution in the Maghribi region, which had existed since the 8th century M There he studied *ulum al-quran*, hadith, fiqh, *ushul fiqh*, history, language and so on, besides he also explored French, the official language used by the French colonial government in Tunisia at the time. After graduating from Zaituna, who was marked by obtaining adiploma *tabtawi*, he continued to study at the great Tunisian Minister, sheikh Aziz Benashur, Shaik al-Islam Mahmud Benhajah, one of the dignitaries of the Hanafi schools in Tunis, sheikh Salim Bouhajib, a

great ulama of Maliki, and sheikh 'Umar Ahmad, High priest of the Maliki school. Of the many teachers, the four teachers were the ones who gave the most significant influence in the intellectual twists of Muhammad Thahir bin 'Asyur.

While Ibn 'Asyur academic career began by becoming a lecturer at his alma mater, Zaituna after obtaining his diploma *tathwi* in 1899 M, continued with his success in graduating as a *tabaqat at-tsaniab ulama* in 1903 M, becoming a lecturer at the *al-shadiqia madrasa* in 1904 M, ascending the rank of ulama *thabaqat al-ula* in 1905 M, became a member of the education reform council and the *auqaf* assembly, became the supreme judge of the Maliki school of law in 1923 M, then continued to serve as the grand mufti of the Tunisian region a year afterwards.

His life in general is divided into 2 major phases which have an influence on the development of his thinking. *First*, the French colonial era of the countries *Maghrib 'arabi* (Morocco, Algeria, Tunisia) in the period 1881 M - 1956 M *Second*, the independence era of Tunisia in 1956 M until 1973 M, the year he breathed his last (Al-Hasani, 1995: 75-76).

The first phase of his life was accompanied by various major events in the Islamic World, such as the weakening of the empire of the Ottoman empire. This condition was exploited by European imperialist countries to colonize Islamic countries in the Middle East, including Tunisia, the place of birth and development of his life.

Occupation that occurred demanded the people of Tunisia to fight to rise from adversity. In the process towards independence, there are several factors behind it. *First*, the influence of Islamic reformers from Egypt, Muhammad Abduh. The idea of "Islamic renewal discourse" which was conceived and disseminated periodically through the print media "*Urwatul Wutsqa*" greatly influenced the mindset of Tunisian intellectuals, including Ibn Assyria who was then one of them. Especially after Abduh's second visit to Tunisia (1903 M) which further whipped the enthusiasm of Tunisian scholars in thought. Naturally, if later Ibn 'Asyur was said to be influenced by Abduh besides Afghani, Rasyid Ridla and others. *Second*, the influence of Tunisian internal figures, Khairudin al-Tunisi, who tried to stir up scientific passion through the revitalization of press performance and thought, including the printing and dissemination of classical books, including the first printing of *al-Muwafaqat* (Al-Hasani, 1995: 78). With his work entitled: *Aqwam al-Mas'lik fi Ma'rifati al-Ahwāl al-Mamālik* " he tried to inspire Muslims to model the progress of European countries in several aspects. *Third*, the movement of influential figures at the time to

reconstruct the education system. This is where the attention of Ibn Asyur's first maqashid arose through his book, *Alaisa al-Shubb bi Qarib*, who criticized the education system through the lens of maqashid.

The second phase, post-independence life. In this phase he devoted all his energy and thoughts in the world of education. In addition to serving as an official teaching staff at the university, many of his achievements include being the Supreme Court Judge of the Maliki school and as the Grand Mufti of Tunisia 1926 M. His career brilliance also took him actively to participate in the international world such as as a member of *Majma' Lughah Arabiyah* (Arabic Language Study Center) in Cairo Egypt in 1940 M, as a member of the envoy *Majma' al-'Ilmi al-'Arabi* Damascus in 1955 M (Khalid, 1995: 51).

Throughout his decades of intellectual wandering, Ibn 'Assyria gave birth to many scientific works, both in the form of *sharah* (explanations) for the work of other scholars, *taḥqīq* (comments), collection of poetry, and scientific books. His works which are thinkers of poriflik include: *Tabrīr Ma'nā al-Sadīd wa Tanwīr al-'Aql al-Jadīd min Tafṣīr al-Kitāb al-Majīd; Maqāshid al-Syarī'ah al-Islamiyah; Ushūl Nidzām al-Ijtimā' fī al-Islam; Alaisa al-Shubhu bi Qarīb; Naqd 'Ilmi likitāb al-Islām wa Ushūl al-Hukem*, and many more of his works are scattered and have not yet been recorded. Of the many works of Ibn 'Ashūr, the book *Maqāsid al-Syarī'ah al-Islāmīyah* is one of his *master pieces*. The method of writing the book is divided into three broad frameworks, including: *first*, a discussion of establishing syarī'at goals. The need for a *faqīh* to know the *maqāsid al-sharī'ah*, the methods of determination and their levels (Ibn Asyur, 2001: 179-247); *second*, reviewing the *general maqāsid al-syarī'ah* (Ibn Asyur, 2001: 251-409); and *third*, discussing *maqāsid al-sharī'ah* specifically with all kinds of horizons in the realm of fiqh *mu'āmalāt* (Ibn Asyur, 2001: 413-517). This book is a theoretical basis for the *maqāsid al-syarī'ah* from Ibn 'Ashūr, while the application of the *maqāsid al-syarī'ah* to certain laws, whether worship or *mu'āmalat*, he poured more in other works, such as interpretation *Tabrīr Ma'nā al-Sadīd wa Tanwīr al-'Aql al-Jadīd min Tafṣīr al-Kitāb al-Majīd* or who is well known as the interpretation of *al-Tabrīr wa al-Tanwīr* and others.

## 2. Basic Concepts of *Maqashid Al-Sharia*

*Maqashid al-sharia* is etymologically composed of two words namely *maqashid* which is the plural form of the word *maqṣad*; *masdar mimi*, derivation from the root word *qasada*. *Al-qasdu* (Al-Muqri, 1987: 192), and *al-maqṣad* mean the same, namely; origin, the purpose of something, the straight path (*istiḳomah*), just, middle and not excessive. While the word

*al-sharia* means; religion, manhaj, path, way of life. Whereas terminologically, *maqashid* means to want something and hold fast to it (*iradah al-syai wa al-aẓm alayhi*). And the word *sharia* means what God has determined for His servants through the mediation of His prophet.

The understanding of *maqashid al-syariah* that we find today is more expressed by contemporary scholars, such as Ibn Asyur who divides *maqashid* into two parts; *'umm* and *kebass*. For the first he interpreted it as follows "wisdom, and the secrets and objectives of the Shari'a in general by not specializing in a particular field (such as prayer, fasting, etc.), (Ibn Asyur, 2009: 50). While for the second one he interpreted it as "a set of certain methods desired by the shari'ah 'in order to realize the benefit of humans in certain fields (such as to preserve offspring and safeguard the human heart with the marriages of marriage, preserve sustainable *mudharat* given the choice for divorce, etc.) "(Ibn Asyur, 2009: 154). While 'Allal al-Fasi, one of the contemporary *maqashid* scholars, defines as follows "the objectives of the Shari'a, and the secrets of the enactment of Shari'a which cover all of its legal products" (Al-Fasi, 1993: 3). While Ahmad Raisuni interpreted it as "the objectives of the Shari'a being revealed to realize the benefit of a servant (Raisuni, 1995: 19).

### 3. The History and Development of *Maqashid Al-Sharia* in Islamic Studies.

Islam is the last religion revealed by God on this earth. The decline in Islam that fulfills the previous Sharia certainly contains noble goals and noble intentions that point to humans themselves as *mukallaf* (objects subject to sharia obligations). In connection with that, he presupposes the existence of a set of wisdom that accompanies the decline of the Shari'a. Because it is difficult to say that *Shari'a*, in this case Allah does something without cause and wisdom implied (QS; Al. Mu'minun 115), (QS al-Baqarah: 185), (QS al-Maidah: 6), (QS al-Hajj: 78), (Surat al-Nisa: 28), and (Surat al-'Ankabut: 45). From this we can say that the emergence of *maqashid al-syariah al-Islamiyah* has existed along with the first revelations received by the Prophet. And the existence of *maqashid al-sharia* continues to go hand in hand with the revelations that came down in the period afterwards. This can be traced to our advices, recommendations and legal products that are prescribed by the Qur'an and the Sunnah of the Prophet, both consciously and unconsciously, surely contain some kind of great wisdom for the benefit of man himself. For example, *Shara'* ordered humans not to interfere with their wives during menstruation in order to maintain health

because medically, menstrual blood contains many harmful germs. The wisdom of marriage is prescribed as a way to realize human tranquility and to preserve offspring, and the goal is to order jihad *fi sabilillah* to maintain the communal security of the people and defend themselves against foreign intervention.

The Prophet Muhammad, as the sole manifestation of God's representative on earth, wisely never gave orders or suggestions except by first considering the psychology of the people and their historical socio-historical conditions. We can find traces of the Prophet's policies in the words of the Prophet such as "Surely this religion is easy", "Allah desires ease for you" "Even if it does not complicate my people, surely I will order them to bersiwak before prayer", and many more hadiths that show there are public benefit considerations in establishing a law. The Prophet's policy is like this, then continued by the friends and subsequent generations. The unique characteristics of the Islamic Sharia in formulating the design of the law with consideration of public benefit, graduality of revelation (*tadarruj nuzul*), the concept of seeking benefit and preventing (*jalb al-masalih wa sad ad-dzarai'*) slowly began to be developed by the scholars into a conception intact which slowly transformed into a theory of *maqashid al-sharia*.

Of course the journey of *maqashid al-sharia* to become a separate scientific discipline independently does not occur in an instant. Noted from the generation of friends, attention to the aims and objectives of the Shari'a began to be developed in accordance with the development of the era when they lived. Because Shari'a is a living thing (*hayy cloth*) that can adapt to where civilization develops. The demand to develop the Shari'a without breaking away from the main goal of 'forcing' them to do a variety of creative innovations in formulating the design of a legal product. The appointment of Abu Bakr as the first caliph to maintain the unity and integrity of the people, the collection of the Koran in a Manuscripts during the Ustman period, the abolition of the cutting of hands by Umar during the famine, were a few examples of the form of breakthrough telling the friends in developing the Shari'a, by developing it according to the period where they live, without ignoring the sublime wisdom of the Shari'a itself.

In line with the companions, tabi'in as the next generation of the best friend's tradition also includes the element of *maqashid al-shariah* as one of the considerations of legal decisions (Aziz, 2018: 80). During the Tabi'in period there were two madrassas that were developing rapidly; Hijaz with its *madrasah atsariah*, and Iraqi madrasa with its schools

of *ra'yu*. In the Hijaz *madrassa*, although textualist tendencies predominate, the application of the use of *maqashid al-sharia* cannot be ignored. The great influence of the *ijtihad* of friends such as Umar bin Khattab, Abu Huraira and the personal views of Siti 'Aisyah who based their views on the principle of *masalih al-mursalah*, *jalb al-masalih*, *dar' al-mafasid*, were absorbed and helped color the thinking lines of the *mujtahid* generations afterwards (Raisuni, 1995: 98). As for the Iraqi *madrassa*, even though it is famous for its schools *ra'yu*, this does not mean that religious texts are put aside. The use of *ra'yu* (reason/*ijtihad*) must still be based on the *validity* and opinion of the *salaf al-salib* and prioritize the benefit and *urf of hasanah* (good tradition). While the Hijaz *madrassa* used the Umar and Siti Aisyah *ijtihad*, the Iraqi *madrassa* used the *ijtihad* Ali ibn Abi Talib, Abdullah bin Mas'ud, and Ibrahim an-Nakha'i who considered the common sense and benefit more when finding problems that were not mentioned by the text. (Al-Khadimi, 1998: 106).

After the *tabi'in* era, the uproar in the study of *maqashid al-sharia* continued to rage. Slowly but surely, one by one the scholars and scholars began to explore more deeply the various other sides of this concept. After in the previous period the term *maqashid al-sharia* could only be partially recognized from the tendencies of the formulation of the concept of legal excavation, then in this phase the scholars began to 'be kind' giving a special space for the *maqashid al-sharia* to show their existence. Noted at-Turmudzi al-Hakim (3rd century H) was the first person to use the word *maqashid* in his book *al-Sholah wa maqashiduha* which describes the purpose and wisdom of prayer worship. Then followed by other works that still discuss about certain lessons from various worship, such as *al-Hajj wa asraruhu*, *al-'Illah*, *'Ilal al-Shari'ah*, *'Ilal al-'Ubudiyah* and *al-Furuq*. After al-Turmudzi then came Abu Mansur al-Maturidy (d. 333 H) with his work *Ma'khad al-Syara'* followed by Abu Bakr al-Qaffal al-Syasyi (w.365 H) with *Usul al-Fiqh* and *Mabasin al-Shari'ah*, Abu Bakar al-Abhari (d.375 H) and al-Baqilany (d. 403 H) each with his work, including, *Mas'alah al-Reply wa al-Dalail wa al-'Illah* and *al-Taqrif wa al-Ersbad fi Tartib Thuruq al-Ijtihad*. After al-Baqillany came Imam Haramain al-Juwaeny (w. 478 H) with *al-Burban*, *al-Waraqat*, *al-Ghiyatsi*, *Mughbitsul Khalq*, al-Ghazali (w. 505 H) with his work in *fiqh* and *ushul fikih* such as; *al-Mustashfa*, *al-Mankhul*, *al-Wajiz*, *Ihya Ulumiddin* and *Syifa al-Ghalil*, al-Razy (d. 606 H) with *Mafatih al-Ghaib*, *al-Aayat al-Bayyinaat*, *al-Mahshul* and *Asas at-Taqdis*, Saifuddin al-Amidy (d. 631 H) with his book *al-Abkam*, and *Ghayatul Maram*, Ibn Hajib (d. 646 H) with *Nafais al-Ushul*, *Syarh al-Mahshul*, *al-Furuq*, *al-Ihkam fi Tamyiz al-Fatawa'an al-Abkam wa Tasharruf al-Qadhi wal Imam*, al-Baidhaw

(d. 685 AH), al-Asnawi (d. 776 AH), Ibn Subuki (d. 771 AH), Izzuddin Abdussalam (d. 660 H) with *Qawaid al-abkam fi masalih al-anam*, al-Qarafi with *al-Faruq*, al-Thufi (w.716 H), Ibn Taimiyyah (w.768 H) and Ibn Qayyim (w.751 H).

#### 4. Ibnu 'Asyur and the Reconstruction Efforts of the Study of Maqashid *Al-Sharia*.

After the death of al-Syathibi, the development of the discourse experienced a cute stagnation. The maqashid discourse which was first neatly codified and systematically by Imam al-Syathibi suddenly disappeared without trace. Perhaps one factor in the dimming of the Maqashid discourse was due to the fall of the Islamic daula in Andalus - where al-Syathibi lived - in the hands of the Spanish Christian rulers. At the same time a massive expulsion of Muslims (*the court of taftisy* carried out) was from the land of Andalus, and its logical implications, almost all the relics of Islamic culture and the great works that were recorded, including books by al-Syathibi.

Until then in the first half of the 20th century, Ibn 'Assyria appeared as the father of the reform of the study of maqashid, which offered a new approach in studying the sharia maqashid that was adapted to current realities and modern contexts. This reform effort, contained in his brilliant work, *maqashid al-syariah al-islamiyah*, which was first published in Tunisia, 1946. In this book, Thahir bin 'Assyria deliberately aimed to reveal the secrets and wisdom of the Shari'a, as a torch, when the appearance of *ikhtilaf* among the scholars, either due to differences in life span, social conditions of society, or differences in the level of ability in the formulation of a law (Ibn Asyur, 2001: 3). This offer of Ibn Assyria, can be said as a bridge that can minimize the existence of a gap between the Muslims, in order to break the narrow fanatical tendencies of followers of certain schools and the disintegration of the *ummah*.

In this book, Ibn Asyur divided it into 3 broad categories. First is the legality of maqashid law, and the urgency of its application in formulating the design of a law. Regarding the legality of maqashid, as stated earlier, that God as the owner of the Shari'ah is impossible to pass down the Shari'a to humans without being accompanied by purpose and noble wisdom. This seems clear when we trace the verses of the Koran which hinted at it, as mentioned in the QS. Al-Dukhan 38-39, al-Mu'minin 115, al-Hadid 25, Ali Imran 19, al-Nisa 171, al-Shura 13, al-Maidah 44-48, al-Baqarah 179. For this reason a mujtahid, before formulating a theory maqashid is required to master the following things; know the full meaning of a text and the background of the text (*asbab al-nuzul*), make methodological

observations on texts that contain paradoxes at the end, conduct an analysis of ambiguous texts by analyzing them in other texts that clearly show the law, and make methodological compromises by putting *maqashid al-sharia* in line with religious texts to then be dialogue with contemporary reality, for the creation of a living, humanist fiqh concept and accommodating the general benefit (Ibn Asyur, 2001: 40).

In essence, some of the errors that occur between scholars are how to manifest what appears in the end of the text. Because of a lafadz, it is not placed except to free the sky of the meaning contained therein. Every text that is present, does not always indicate one single standard meaning. He presupposes the existence of radiant meanings from each different side. From here the difference in understanding for the scholars is a common thing considering each of them has a colorful point of view over the text. Now, to bridge the hustle and bustle of differences between scholars, the existence of *maqashid* is very necessary. It can be a kind of unifying entity of various tendencies, in which all streams can make peace and meet in the same estuary, that is benefit.

Ibn 'Asyur (2001: 29) then provides an analysis of the actions of the Prophet, as an instrument implementing the Shari'a of God, which in his view contains 12 methodical dimensions, namely; *tasyri* ', *fatwa*, *qadha*, *imarah*, *buda wa al-irshad*, *torch*, *isyarah ala al-mustasyir*, *an-nasihah*, *takmil al-nufus*, *ta'lim al-haqaiq al-'aliya*, *ta'dib*, *al-tajarrud 'an al-irshad* (Ibn Asyur, 2001: 19). From all these dimensions, he wants to give a conclusion that the true estuary to be directed by the Shari'a is one, while the path taken is many and varied. Therefore, it is not wise if we continue to debate *wasail* without regard to the main principles of the construction of the *wasail*, namely *maslahat*.

From here ibn 'Asyur used his theoretical basis on the epistemological basis of *qath'iyatul maqashid sharia*. In this problem the scholars are divided into two opposing camps; some are of the view that *maqashid* is *dzanni* (Al-Hasani, 1995: 103), while on the other hand there are camps which claim to be (*qath'i*) the certainty of *maqashid* (Al-Hasani, 1995: 105). As a party in the second camp, for Ibn 'Assyria, sharia is not a non-wisdom set of laws. Wisdom can be approached by observing the contents of the verses of the Koran. This is also what is contained in God's promise to keep His Shari'a and perfect His religion on earth (Al-Hasani, 1995: 110). Therefore, Thahir bin Assyria agrees with al-Syathibi's opinion that the science of *ushul fiqh*, as the science of *maqashid* is based on epistemic basis and building structure *qath'iy*. This is supported by two approaches; *aqli* and *yyar'i*, both

of which signal the certainty of sharia. Regarding *aqli*, this can be sniffed by direct observation of the verses of the law or orders that always signal the *benefit of 'aam*. While sharply, this can be known by the number of verses that require the preservation and improvement of the religion of God.

Whereas how to find out the methods of *maqashid al-shariah* al-Syathibi see there are 3 methodological tendencies. First, the tendency played by the Dhahiriah sect, where the *maqashid al-sharib* can only be known if we let the dhahir text speak as it is. Contrary to the first group, what is claimed by the Bathiniah camp, which tries to deny the existence of a text that speaks in its own name, on the contrary the purpose of the text is what is in the inner meaning of a text. As a step in compromising the two extreme tendencies above, the third group, played by *Jumbur Ulama*, wants to harmonize between the dhahir perspective and the mind of a text. For this group, the most important thing is how we intensely take the end of the text, without ignoring the mind, and vice versa, so that we can find the text go hand in hand with the meaning in it.

Unlike al-Syathibi, Ibn 'Asyur tried to offer a new perspective on how the method of works *maqashid al-shariah*. He divided it into 3 parts where the first part reads commands (*amr*) and prohibitions (*nahi*) which can only be found *maqashid al-shariah* in it if we do so in accordance with the request of the *Shariah* '. Second is how we can uncover the ratio-legis (*'illah*) of a law (*amr-nahi*), such as a marriage order to preserve offspring, buying and selling to take advantage of the goods purchased, and so on. While the third is, that *maqashid al-shariah* always contains 2 dimensions; the dimensions of *ashliab* and *tab'iyah*, which are sometimes clearly stated in the end of the text, and other times are only explicit cues. It's just that it should be kept in mind here is, although sometimes the *maqashid al-shariah* is not mentioned in the end of the text, it does not mean it does not exist. We can feel its existence only after we have carried out the 'lifting up' activity of the text to get the basic spirit of a text. This last thing also led Ibn Assyria to reject the voices that deny the existence of the ratio-legis (*ta'lil*) of a law (Ibn Assyria, 2001: 51). For him, a command of syara 'as a whole must presuppose the existence of ' *illah* (legal cause) and the purpose of its existence.

As for the second part of his book, Ibn 'Asyur discusses *maqashid tasyri 'ammah*. In the discussion this time, he seemed to want to emphasize the important position of universality in the ins and outs of sharia. For him, universality is one of the unique

characteristics of Islam, where with the existence of universality, Islam can take place and adjust to the pace of historical rhythm. The existence of this universality, is not entirely separate from *maqashid*, but rather it goes hand in hand and together affirm each other's important role in the grounding of Islam. With universality, sharia can flap its wings in various civilizations that are totally different from the values of Arabic culture, where Islam was first revealed. While with *maqashid*, he can formulate a common goal that cannot be ignored simply because of the different methods of *ijtihad*. The colorful methods of scholars to formulate the design of Islamic law can be mediated by the existence of this *maqashid*.

Muhammad Thahir bin 'Asyur provides a number of requirements to explore the basic spirit of a text. He gave these conditions for the sake of distinguishing the existence of an intrinsic spirit from a text from an spirit *awhami* or *fictional*. The first condition proposed by Ibn 'Asyur was *al-tsubut*, which means fixed or certain. This means that the existence of the basic spirit of a text is certain and not making it up. This can be recognized by the existence of the *qawiyah* of a text, and other texts which are of the same belief as the existence of an entity in question. The second is *al-dzūbūr* that a significant appear or clear. In short it can be interpreted as a *dilalah* emanating from behind the text, where the text meaning it can be clearly palpable in the minds of scholars. The third condition is *al-indzibath* which presupposes a clear boundary and leads to the intended purpose. While the last requirement is *al-ithirad* which means negating the friction of understanding which is based on differences in geographical location, cultural traditions and values of the times (Ibn Asyur, 2001: 56).

Reality is the determining factor for the success of *ijtihad* activities. The different realities of life often force Islamic scholars, both classical and contemporary, to change the results of their *ijtihad* because they feel they are unable to accommodate the values of Shari'a when applied to different civilizations. This does not mean negating the perfection of the teachings of Islam, on the contrary it can be interpreted by the elasticity of Islam as a religion that is flexible and adaptive to a variety of different cultural values. The balance sheet of Islamic elasticity can be sniffed out of conformity with the innate nature of man regardless of where he was born, and the influence of customary values that develop in his civilization. While citing a number of texts that indicate this, such as *QS. Al-Rum: 11, 30,* and *al-Shura: 13*. Ibn 'Asyur explains that what is meant by human nature is "a set of rules

that were attached by God from the very beginning of human creation, both in the end or the heart". Dhahir here means all things that are natural and sensory like humans walking on both feet, or using their eyes for viewing activities. While the mind is more *aqli*, that is, humans are created with a number of applicable methods in the use of reason. Regardless of the culture that developed and became a tradition, humans basically can actively distinguish good or bad things. And this second thing is believed by Ibn 'Assyria, that the nature of Islam as a religion of nature is none other than the nature *aqli*, where humans, by default can guarantee the things offered by Islam (Ibn Sina, t.t.: 98-100), as long as that matter still corresponds to reason. This does not mean that Islam is always in harmony with the plurality of various cultures, as loudly voiced by some groups, but what is the point of emphasis is that Islam always carries breath in accordance with good cultural values, and good culture is always in harmony with the methods of pure reason (Ibn Asyur, 2001: 62).

Through this foundation called *fitrah*, Ibn Asyur (2006: 97), then tried to develop his theory. He explained that the principle of *fitrah* is the principle that is most justly distributed to all humans, regardless of race, culture, religion and geographical location. Because human nature applies *syamil* (overall/general) to all humans, then sharia, as an entity that works with natural fuels, also presupposes the generality (*syumuliah*) of God's law, both of an *age* and *nature*. It is a general *age* meaning not temporal limited to a certain period and also a common *eating* which means 'forcing' it to break through tribal barriers, race and certain geographical areas.

Ibn Asyur in completing the epistemic basis of his theory, penetrated the concept of egalitarianism (*al-musawab*) which is a methodological continuation of the two principles above, *fitrah* and *syumuliah*. According to him, true egalitarianism has been engraved since humans began to appear on this earth. What comes from *syara'* must contain the meaning of equality. Thus Personality 'view the principle of *al-Musawab* for humans, just like they have in common in terms of creation. *Al-musawab* in *syara'* is *al-ashl*, which does not change until there is an argument which prevents it and shows special meaning. This barrier (*awaridh mani'ah*) is imprinted in 4 ways; *jibilliah* (character), *syar'iah*, *ijtimaiyah* (social) and *siyasiyah* (politics). The example of *jibilliah mani'ah* is like the differentiation between men and women in certain discourses. This discourse, does not mean leading to things that are not gender sensitive, on the contrary this pattern of differentiation arises because of differences

natural between men and women, such as differences in the division of tasks to make a living as a husband's obligation and give birth and breastfeed a child to his wife. This pattern of differentiation is not standard; it can be conditional in accordance with a demanding situation. However, this thesis proposed by Ibn 'Assyria refers to the normal conditions that usually occur. Then it is *mani'ab syar'iah* that is the barrier that comes from sharia. As conditional polygamy is permissible for men, one of the lessons is keeping the lineage, this cannot be found in the polyandry system. Whereas *mani'ab ijtimaiyah* is a barrier that is obtained from the prevailing social system, such as the social role of clever people who of course are different from ordinary people. While the latter is *mani'ab siyasiyah* is a barrier that prevails due to changing political stability. A concrete example in this case is the Prophet's order onday *Fath*, "Whoever enters the house of Abu Sofyan, he is safe (Al-Hasani, 1995: 275).

Muhammad Thahir bin Asyur elegant ideas did not stop here. Due to facilitate application of the *elan vital* in the upper third, it tries to promote two more independent entities, *samahab* (ease) and *hurriah* (freedom). The two entities move in tune with each other. With *samahab*, Ibn 'Asyur seemed to want to emphasize that religion is easy to understand. It does not require a variety of liturgical procession *meticulous* and *mbulet*. He only wants a simple pattern of religiosity, without getting stuck in the stream of simplification of religion. In the perspective of the majority of religionists who later agreed by Ibn 'Assyria, Islam always runs between two extreme tendencies, *tajrih* and *ifrath*. Being *tawasuth* and *i'tidal* is not only a necessity ordered by religion, but also a form of innate harmony of nature with the applicative action of humans in real reality. Here Ibn 'Assyria states that the real wisdom of *samahab* is that it corresponds to human nature, which basically always requires convenience. Allah revealed this Shari'a *muabbadah* and *'ammah* to all human beings, naturally this presupposes a form of convenience and flexibility so that it can be accepted openly across generations and geographically (Ibn Asyur, 2001: 67).

The process for applying all the concepts above, humans must be given the device *hurriyah* (freedom). In essence, freedom, can be interpreted as a free action that can be accounted for both morally (appropriateness in society), intellectual (human logic), and spiritual (based on religious values). Freedom is a condition where we can do everything we want and are not bound by any rules (*merdeka*). Furthermore, Ibn Asyur reiterated that the treatise brought by Islam was a form of the theology of liberation. He came to free man

from the cage of slavery, whether physical or non-physical. He first came when the law of slavery was a social institution that was widely accepted by the public, from the ancient Roman empire, the Persian empire, to Greek civilization. It was a general consensus at the time that slavery was natural and acceptable. So it is not wrong if later it was also adapted by Aristotle, the ancient Greek philosopher when presenting his thesis about the ideal family, which according to him must consist of father, mother, child and slave (Santhleir, 2008: 97). Here the message of Islam came to take place to release mankind from the phenomenon of injustice and step on the dignity of that human being. With its gradual character in establishing a law (*tadarruji*), Islam slowly began to abolish the system which had already taken over. He tried to minimize the emergence of new trends of slavery and provide concrete solutions to reduce existing slavery practices. This is realized by Islam by forbidding someone to sell themselves or parents who sell their own children, forbidding them from being made prisoners of war as slaves and replacing them with services to teach Muslim literacy. Meanwhile, to reduce the practice of slavery that already exists, Islam encourages slave owners to get to know them well, make slaves one of the groups entitled to receive zakat, and make free slaves as one of the *expiation* of various violations of Shari'a (such as killing accidentally, relating to husband wife during the day of Ramadan, *dzihar*, and so on).

While non-physical slavery includes the existence of a form of coercion of certain authorities who want to monopolize a school of ideology while marginalizing other opposing parties, curbing freedom of speech and association, and castration of democratic values which in the eyes of Ibn 'Assyria are a form of slavery that is opposite, restraint of freedom of speech and association, and castration of democratic values which in the eyes of Ibn' Assyria is a form of slavery that is opposite want to be liberated by Islam. The act of someone who is not based on the full freedom of the owner in God's eyes is zero. Humans as free creatures are free to determine the direction in which they will move, as long as this freedom is also accompanied by a form of full responsibility for the deeds they do. Standing hostile to freedom is a tyranny, call Ibn 'Assyria. Then he gave an example of a form of ideal freedom that occurred in the three early periods of Islam. As a result, people are free to choose the school and the results of reasoning according to their circumstances. Every scholar who has the capability to process legal affirmation (*istinbath*) has the right to formulate their own *ijtihad* results without any intervention of foreign

parties. There is no hegemony of a school of thought over others outside them. The relationship between them is a number of harmonious relationships that are built based on the principle of tolerance and *tepo seliro*. The best example of this is what Malik bin Anas played when he refused the request of the caliph Abu Ja'far to promote and formalize the Maliki fiqh school. In Malik's eyes, each community already had a handle in deciding what was considered good by them, precisely by doing a hegemony of a certain reasoning thought could cause disruption to the social stability of the community (Ibn Asyur, 2001: 150).

Indeed, it might look naive if a sturdy building of a theory, toothless helpless when faced with reality that is before the eyes. The urgency of the application of a theory is absolutely necessary to prove the validity of a theory. A bullshit, maybe that's what can be pinned on a theory that is zero data and poor application. Therefore, at the end of his book, Thahir ibn 'Assyria tried to make it a concrete form of application of the universal (*maqashid al-tasyri' ammah*) methods. This applicative form is stated in various aspects, including religious liturgy (worship), patterns of social interaction (*muamalat*), criminal and civil law. In this section he wants to prove that *maqashid al-shari'ah* is not just a utopian concept without realization. Application examples cited by Ibn 'Assyria were not only able to help bring together two opposing streams, fiqh and real reality into the same estuary but also a new concept offering in view of the Shari'a, namely with *maslahat* glasses.

## CONCLUSION

Once when Ibn Qayyim once said; "Sharia is built on the basis of the benefit of servants in the world and the hereafter, therefore it is fully just, full of mercy, and full of words of noble wisdom in it". Since the beginning of the revelation of God on earth, humans, as carrying out the *message of the divine treatise* have gone through various kinds of turmoil both cultural changes or changes in lifestyle and way of looking at the world. Good values at a time, very vulnerable subject to the rolling wheel of history, and turned into a pile of ancient stories that have no value. So it would not be excessive if we put a big response to the efforts of Muhammad Thahir bin Asyur in reformulating universal legal concepts which were then called the science of *maqashid al-sharia*. This is important, because approaching the universality of the Shari'a is one vital elan that is needed, especially in the era of globalization as it is today which presupposes a fast-paced change and was not taken

into account before. Continue to hold on to the classical fiqh formulation, will distance ourselves from the reality that is before us. Of course this is due to *background* our historical sociowhich is totally different from the period in which classical scholars formulated their ideas. If this continues to be forced, the resulting legal form will feel strange, rigid, and ahistorical. As Thahir bin 'Asyur discourse that the main reason for the decline of fiqh is that the scholars are ignorant of the study of maqashid, and this will lead us to castrate the values of Shari'a itself. In line with Ibn 'Assyria,' Allal al-Fasi, one of the experts in contemporary maqashid al-sharia also views that the main condition for success in dialoguing fiqh with contemporary reality is the massive response of scholars to the study of maqashid.

This is where the function and role of maqashid al-sharia finds its momentum. With his elastic character, cross-space and time, he is expected to be able to dialogue with emerging problems. With his trademark *syumul*, presumed capable of embracing every civilization running. He, as one of the scientific discourses which is the biological child of Islamic civilization and far from foreign influences, is expected to play a role as a breakthrough in the long-running lethargy of Islamic civilization. He, borrowing the language of Yusuf Al-Qardhawi plays the role of the father of all Islamic scientific disciplines which should contribute greatly to raising his children. Therefore, we deserve to leave much hope for the progress of Islam from this maqashid study.

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