

MULTIDIMENSIONAL PARADIGM OF *MAQASID SHARIA* IN THE BOOK OF “NAHWA TAF'ILI MAQASHID SHARIA” BY JAMALUDDIN ATHIYYAH

Muhammad Aminuddin Shofi*¹,
Sahrul Hidayatullah², and Abdul Hamid³

^{1,2} Sharia School of Miftahul Ulum Lumajang, Indonesia

³ Postgraduate School of Al-Ahgaff University, Hadhramaut, Yaman

*Corresponding e-mail: shofihasan85@gmail.com

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ABSTRACT

This study aims to describe the concept of maqashid syariah formulated by Jamaluddin Athiyyah, especially as presented in his book Nahwa Tafili Maqashid Syariah. Athiyyah's concept is unique because it divides maqashid sharia into four practical areas of life. This research combines descriptive analysis with a literature review. The primary data was collected from the book by Athiyyah, and the secondary data included books and literature from academic journals that are relevant to the research topic. Research findings indicate that Athiyyah's maqashid sharia carries a strong human spirit, which later becomes Athiyyah's rationality in developing maqashid sharia from five to twenty-four and summarized in four different dimensions: individual, family, public sphere, and humanity. The Athiyyah concept facilitates the application of maqashid sharia as a method of legal research or legal istinbath, thus can be used as a philosophical foundation (ideal norm) to analyze whether a draft law is in accordance with the objectives of Islamic law. Theoretically, this study calls for a more systematic and practical study of Athiyyah's ideas, so as to enrich the progressive and objective paradigm of Islamic law. It is recommended for Islamic law researchers to use this paradigm in empirical studies, both for enriching insights and for a test tool to what extent

the effectiveness and objectivity of this theory is in the context of legal studies in Indonesia.

Keywords: Humanity, Jamaluddin Athiyyah, Law, Maqashid Sharia.

ABSTRAK

Studi ini bertujuan untuk mendeskripsikan konsep maqashid syariah Jamaluddin Athiyyah, khususnya yang disajikan dalam buku “Nahwa Tafili Maqashid Syariah”. Konsep Athiyyah menjadi khas karena membagi maqahid syariah dalam empat bidang kehidupan yang lebih praktis. Riset ini menggabungkan analisis deskriptif dengan tinjauan pustaka. Sumber data primer adalah buku karya Athiyyah yang didukung dengan buku dan literatur dari jurnal-jurnal ilmiah yang relevan dengan topik riset. Temuan riset menunjukkan bahwa maqashid syariah Athiyyah membawa semangat kemanusiaan yang kuat, yang kemudian menjadi rasionalitas Athiyyah dalam mengembangkan maqashid syariah dari lima menjadi dua puluh empat dan terangkum dalam empat dimensi yang berbeda: individu, keluarga, ruang publik, dan kemanusiaan. Konsep Athiyyah memudahkan penerapan maqashid syariah sebagai metode riset hukum atau istinbath hukum, paradigma ini dapat digunakan sebagai landasan filosofis (norma ideal) untuk mengetahui apakah suatu rancangan undang-undang yang dikembangkan telah sesuai dengan tujuan hukum Islam. Implikasi riset secara teoretis adalah perlu adanya kajian lebih sistematis dan praktis tentang gagasan Athiyyah, sehingga dapat memperkaya paradigma hukum Islam yang progresif dan objektif. Direkomendasikan kepada para peneliti hukum Islam untuk menggunakan paradigma ini dalam kajian empiris, di samping untuk memperkaya wawasan, juga sebagai alat uji sejauh mana efektivitas dan objektivitas teori ini dalam konteks kajian hukum di Indonesia.

Kata Kunci: Hukum, Jamaluddin Athiyyah, Kemanusiaan, Maqashid Syariah.

INTRODUCTION

The goal of Islamic law (*maqashid sharia*) is to control people so they can be used for good.¹ A thorough comprehension of *maslahah*, which is the emphasis of *maqashid sharia's* purposes, is difficult to formulate precisely due to the numerous divisions and in-depth explanations of it. Even Jamaluddin

¹ Muhammad Abū Zahrah, *Uṣūlul Fiqhi*, (Kairo: Dar al-Fikr al-Araby, 1958), 364.

Athiyyah explained that the *maqashid sharia's* degrees of dharuriyat, hajjiyat, and tahsiniyat do not necessarily follow a set pattern but instead change throughout time in accordance with the advancement of human civilization in both place and time.²

Athiyyah mentioned that the noble goals of *sharia* has to be comprehensive, attending to the needs of individuals and community while maintaining the balance and access for all. These characteristics are then fallen into some categories of *maqashid sharia*, namely: personal-individual, family, social-communal and human in general.³

Athiyyah's *maqashid sharia* conception has its own distinctiveness. The classification of *maqashid sharia's* dimensions and its practical usage in both legal development and Islamic law research will be the key topics covered in this study. The core difficulties surrounding the relativity of applying *maqashid sharia* and its classification into levels (*maqashid*) based on place, time, society, circumstances, and many practical fields are addressed in Athiyyah's idea of renewing *maqashid sharia*.⁴

The rationales for bringing up the concept of *maqashid sharia* by Athiyyah was due to the clarity and applicability of the *maqashid* paradigm offered by Athiyyah in *Nahwa Taf'ili Maqashid Sharia* book. This book makes it very simple for students, researchers, and even practitioners of Islamic law to use *maqashid sharia* as a legal methodology, as a legal logic, or as a theoretical framework in legal research. Athiyyah's interpretation of the *maqashid sharia* is more suitable as a parameter for studying the issues of human existence due to the categorization of *maqashid sharia* into several dimensions of life, from personal-private space to public space.

According to Duski Ibrahim's research, *sharia* and the shariatization movement have undergone many transformations over time. The change took place in both the way that *sharia* was

² Jamaluddin Athiyyah, *Nahwa Taf'ili Maqashid Syariah*, (Damaskus: Dar Al-Fikr, 2003), 75.

³ Athiyyah, 122.

⁴ Jamaluddin Athiyyah, *Al-Waqi' Wa Al-Mitsal Fi Fikri Al-Islami Al-Mu'ashira*, (Beirut: Dar al-Hadi, 2001), 148-149.

being applied and how it was understood.⁵ Sharia was formerly believed to be Allah's solution to all human issues, as well as a pre-made plan for addressing social, political, economic, and cultural problems in addition to religious and spiritual ones.⁶ According to Zakaria Syafei's research, *maqashid*, which formerly only focused on protection (*hifdz*), has evolved into a separate realm in contemporary discourse. It now emphasizes a pattern of development (*tanmiyah*). *Maqashid*, which originally placed a focus on safeguarding Muslims, has since changed its focus to safeguarding all humanity.⁷

Other studies mostly focused on the traditional parameters (*maqashid al-khams*) when reviewing *maqashid sharia* as an analytical tool, both theoretically and practically. The only thing that changes is the reasoning and methodology. The *maqashid sharia* theory put forward by Athiyah not only provides fresh reasoning and methods, but also expands the *maqashid* principles into four facets of life. In order to make the employment of the *maqashid* method more successful, *maqashid sharia* is evaluated not only using a fresh approach, but also more specific and practical one.

The investigation of *maqashid sharia* theory application, which has not yet yielded a concrete notion in legal development and research, is the present study's main contribution. Ongoing disagreements exist on the viability of *maqashid sharia* as a stand-alone approach. Although some Muslim scholars believe that *maqashid sharia* alone is adequate to serve as a legal foundation, others believe that *maqashid sharia* must be connected to other Islamic legal foundations, such as the contents of the Qur'an and hadith, in order for it to be used correctly.

⁵ Duski Ibrahim, *Al-Qawa'id Al-Maqashidiyah (Kaidah-Kaidah Maqashid)* (Yogyakarta: Ar-Ruz Media, 2019), 77.

⁶ Hakimul Ikhwan, "Fitted Sharia in Democratizing Indonesia," *Journal of Indonesian Islam* 12, no. 1 (2018): 23, <https://doi.org/10.15642/JIIS.2018.12.1.17-44>.

⁷ Zakaria Syafei, "Tracing Maqasid Al-Shari'ah in The Fatwas of Indonesian Council of Ulama (MUI)," *Journal of Indonesian Islam* 11, no. 01 (2017): 106.

This article aims at examining Jamaluddin Athiyyah's theories on the application of *maqashid sharia* in different spheres of life, its implementation in legal *istinbath* and legal research, as well as its logical structure as a progressive-moderate paradigm in the dialectic of national law development. Employing a descriptive-qualitative methodology, the present study examines writings by Jamaluddin Athiyyah, particularly those found in his books *Nahwa Taf'ili Maqashid Syariah*, *Al-Waqi' Wa Al-Mitsal Fi Fikri Al-Islami Al-Mu'ashira*, *At-Tandhir Al-Fiqhi*, and *Nahwa Fiqhin Jadidin Li Al-'Aq*. Related references on the topic of *maqashid sharia* were also used for analysis. Data was collected through content analysis, literature study and documentation. Triangulation was also used for ensuring the accuracy of the data.

Although an issue of Islamic law in the present context has a legal basis, it has the potential to change. This change is due to differences of social conditions where the ayahs were revealed or hadiths were delivered by the Prophet, and of social conditions of the present time. Athiyyah's multidimensional *maqashid sharia* paradigm can be an alternative choice in the dialectic of Islamic law in Indonesia by considering the context of social condition then and now. Due of subjectivity, manipulation, justification, and interpolation, jurists frequently fall victim to these four types of error.⁸

FINDINGS AND DISCUSSION

Jamaluddin Athiyyah Biography

Jamaluddin Athiyyah was born and raised in a middle-class family in Kum al-Nur Village, one of the villages in the midst of Meet Ghamr, Dakahlia Province, Egypt, on December 5, 1928, or on December 22, Dzulqa'dah 1346 Hijriyah. He relocated to Cairo two weeks after his birth. Athiyyah was influenced by Sheikhs Abd al-Wahhab Khallaf, Muhammad Abi Zahra, and

⁸ La Jamaa, “Fatwas of the Indonesian Council of Ulama and Its Contributions to the Development of Contemporary Islamic Law in Indonesia,” *Indonesian Journal of Islam and Muslim Societies* 8, no. 1 (2018): 40, <https://doi.org/10.18326/ijims.v8i1.29-56>.

Hamid Zaki and Sami Genena while he was studying law. He also interacted with Sheikhs Muhib Al-Din Al-Khatib, Ali Al-Tantawi, Muhammad Abu Rida, Abbas Al-Akkad, and others.

Sheikh Hassan Al-Banna, Prof. Muhammad Farid Abdul Khaliq, Dr. Abdul Aziz Kamel, Sheikh Abdul Badi' Saqr, Saeed Ramadan, Mustafa Mu'min, Abdul Halim Abu Shaqqa, Izz Al-Din Ibrahim, and Youssef Abdul Muti were his teachers and colleagues who were influential in her academic activities.⁹

Jamaluddin Athiyyah wrote a number of scientific works over his lifetime, including:¹⁰

1. *Turats al-Fiqh al-Islami wa Minhaj al-Ifadah minhu 'ala Sha'idain al-Islami wa al-'Alami*
2. *At-Tandhir al-Fiqhi*
3. *An-Nadhariyah al-'Ammah li as-Syariah al-Islamiyah*
4. *Nahwa Taf'ili Maqashidi as-Syariah*
5. *Ilmu Ushul al-Fiqh wa Ulum al-Ijtimaiah*
6. *Istifadah min Manahiji al-Ulum as-Syariah fi al-Ulumi al-Insaniyah*
7. *Uluwiyat as-Syariah: Nidhamiha wa Tathbiqatuha*
8. *Al-'Alaqah baina as-Syariah wa al-Qanun*
9. *Nahwa Falsafah Islamiyah li al-Ulum*
10. *Sunanullah fi al-Aafaq wa al-Anfas*

Multidimensional Maqashid Syariah: From the Private Space to the Public Space

The goal of Shari'a is benefit, beyond the worldly benefit, human physical benefit, individual benefit as advocated by capitalists and existentialists, common good and workers as advocated by socialists and marxists, benefit of a specific nation as advocated by fascists and ultra-nationalists, and beyond momentary benefit as advocated by shallow people. The purpose

”الدكتور جمال الدين عطية وجهوده في تطوير الفكر الإسلامي – مجلة المسلم المعاصر“⁹
n.d.

الموسوعة التاريخية الرسمية لجماعة الإخوان _ Ikhwan Wiki _ جمال الدين عطية“¹⁰
n.d.”_ المسلمین

of sharia is to provide benefit, which encompasses all of this and even more.¹¹

Due to the numerous categorizations of *maqashid sharia* and the intricate discussions among them, Athiyyah categorized maqashid into different formulations, including: 1) *Maqashid al-Khalqi*, 2) *Maqashid Syariah al-‘Aliyah*, 3) *Maqashid Syariah Kulliyah*, 4) *Maqashid Syariah Khas*, 5) *Maqashid Syariah Juz’iyyah*, 6) *Maqashid Mukallafin*.¹² The structure of maqashid sharia is explained in the following manner to help with understanding:

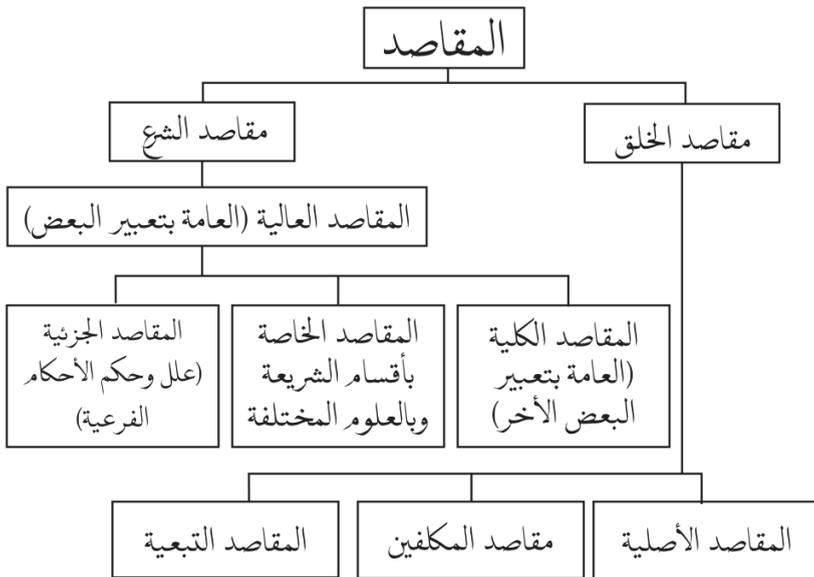


Figure 1.
 The *Maqashid Syariah* Thinking Framework of
 Jamaluddin Athiyyah

Maqashid al-Khalqi

Despite the fact that they occasionally overlap in reality, *Maqashid al-Khalqi*, or the goal of producing beings, is distinct

¹¹ Athiyyah, *Nahwa Taf’ili Maqashid Syariah*, 100.

¹² Athiyyah, 106.

from the purpose of enacting legislation. Syatibi clarified that there was not any ongoing ties between the two. This distinction enables Shari'a to be understood to safeguard not only the human interests but also the interests of all other living beings in the cosmos. According to Athiyyah, the distinctions among Allah's creations form the foundation for their interdependence and mutual support, protection, and enhancement.¹³

Maqashid Syariah al-'Aliyah

According to many scholars, the principal goal of *maqashid sharia al-'aliyah* is to put the principles of sharia, such as kindness, truth, love, justice, equality, human solidarity, common sense, independence, humanity, unity, and complementarity, into practice on Earth. Athiyyah asserts that Ghazali's justification for breaking down *maqashid sharia* into five well-known principles of maqashid mainly focused on the idea that *maqashid sharia* must be protected, and in order to do so, one needs consult the Qur'an, Hadith, and Ijma'.¹⁴

According to Athiyyah, the noble goals of the Shari'a must be all-encompassing, including doing good not only for the purposes of this world but also for the Hereafter, taking into account biological and psychological factors, maintaining a balance between individual and group interests, benefiting not only specific ethnic groups but also all people in general, and not only for the interests of the present but also for the future. All of these elements come from the creation of *maqashid sharia*, which took into account a number of factors, including the personal-individual, familial, social, and overall human dimensions.¹⁵

Maqashid Syariah Kulliyah

Legal studies frequently examine *maqashid sharia*, which Ghazali and Juwaini defined as the ensuring or protecting of religion, soul, mind, lineage, and property. Athiyyah clarified the distinction between *qawa'id (fiqhiiyah)* and *maqashid syariah*.

¹³ Athiyyah, 110.

¹⁴ Athiyyah, 113.

¹⁵ Athiyyah, 122.

Both *kulliyah* and *aghlabiyyah* in nature, *qawa'id* is a general (dominant) provision that can be applied to the circumstances it covers. Regarding *maqashid sharia*, both in general and in detail, it is more for the intent or wisdom of enforcing a rule before it is made law.¹⁶ *Maqashid* is more philosophical and sociological than *qawa'id fiqh*, which is more legalistic.

Maqashid Syariah Khas

Is it intended to normatively stipulate a certain law or Shari'a? In line with Shari'a, this includes the intention to study particular sciences in the social, humanities and natural law fields.¹⁷

Maqashid Syariah Juz'iyah

This is the intent behind a *furu'iyah* law; *fiqh* scholars refer to it as the law's wisdom. Some scholars, like Ghazali in his *Ihya* and ad-Dahlawi in *Hujjatullah al-Balighah*, feel the need to explain a law along with the arguments, methods, and insight that underlie it.¹⁸

Maqashid Mukallafin

According to Ghazali, the purpose of sharia is to give advantage and forbid the harm. This, according to Athiyyah, is not the purpose of Sharia; rather, it is the purpose of creating creatures, and the measure of a creature's benefit is the degree to which it fulfills the purpose for which it was created. Athiyyah defined *maslahah* as ensuring the implementation of the five *maqashid sharia* based on Ghazali's defense. According to Athiyyah as mentioned by Syatibi, this argument refers to *maqashid mukallafin*.¹⁹

In addition, Athiyyah added the types of *maqashid* in the debate of *sharia* from five to twenty-four, which are then

¹⁶ Athiyyah, 129.

¹⁷ Athiyyah, 131.

¹⁸ Athiyyah, 137.

¹⁹ Athiyyah, 138.

categorized into dimensions:²⁰ personal/individual dimension (فى مجلة الفرد), family/private dimension (فى مجلة الأسرة), ummah/public dimension (فى مجلة الأمة), and the human dimension (فى مجلة الإنسانية). The objective of these section is to:²¹

1. make each *maqashid*'s meaning clearer
2. propose *maqashid sharia* while still basing it on the Qur'anic texts, Hadiths, or *furu'iyah* legal studies
3. explain how the *dlaruriyyah*, *hajjiyyah* and *tahsiniyyah* levels serve as intermediates in the examination of each *maqashid*.
4. modify how *maqashid sharia* is applied, as there are instances when it is only applicable in specific settings and at particular periods and not in others.
5. describe the dynamic nature of the *maqashid* order (not standard).

These five arguments represent Jamaluddin Athiyyah's struggle to comprehend the *maqashid sharia*, which has a number of different interpretations from earlier scholars including al-Ghazali, al-Syathibi, Ibn Ashur, and others.

Personal-Individual Dimension of Maqashid Sharia

a. Life Protection (Hifdz an-Nafs)

Human freedom and glory are guaranteed by the Hifdz an-nafs, an expression of Allah's attitude that considerably exalts people in order to distinguish them from animals.²²

b. Intellectual protection (Hifdz al-'Aql)

The spirit of Hifdz al-'aql includes staying away from ideologies that promote atheism, acting foolishly, being confused, and engaging in actions like giving in to lusts, blind *taqlid*, enga-

²⁰ Athiyyah, 139.

²¹ Athiyyah, 140.

²² Athiyyah, 142.

ging in disobedience, and *takabbur* (arrogance) in issues of science.²³

c. Religious Protection (*Hifdz al-Din*)

Hifdz al-dzin refers to the defense of the rights to practice one's religion, not to the preservation of religion as such. According to the list put together by Athiyyah, *hifdz al-din* comes in third after *hifdz an-nafs* and *hifdz al-'aql*. This is based on the justification that the soul (body), which underpins all activities, must come first and that the mind serves as a point of reference. Whether or not a person is able to accept religious orders, protection from religion follows.²⁴ Athiyyah strongly supports religious freedom, which is in line with Ibn 'Assyria's position on *hurriyyah al-i'tiqadat*. Additionally, he agrees with Zuhayli's *al-hurriyyah fi al-din* in terms of religious freedom. It does not, however, agree with the viewpoint Zuhayli's on freedom of belief, for whom such freedom includes the ability to select a religion and even to renounce it.²⁵

d. Protection of Dignity (*Hifdz al-'Irdli*)

Al-'Irdlu refers to the human being or his honor, which can occasionally be denigrated or reproached, whether it is directed at oneself, his heirs, or the person for whom he is responsible. The respect due to one's forebears is a component of one's term of honor. This concept encompasses the entirety of human honor, making it wider.²⁶

e. Asset Protection (*Hifdz al-Mal*)

Implementation of *hifdz al-mal* manifests in a series of sharia laws that govern contracts relating to ownership, including inheritance, buying and selling, the extension of new regions

²³ Athiyyah, 143.

²⁴ Athiyyah, 145.

²⁵ Anthin Lathifah et al., “The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāsid Hifz Al-Dīn,” *Samarah* 6, no. 1 (2022): 369–90, <https://doi.org/10.22373/sjhc.v6i1.10957>.

²⁶ Athiyyah, 146.

(*ihya 'al-mawat*), and other related matters. And there are numerous regulations that control in order to ensure ownership, from the statute of cutting hands for thieves to not exploiting assets to the point where they are extremely bankrupt.²⁷

According to Athiyyah, the application of *maqashid sharia* to the individual/personal dimension produces sharia values that should be protected for all people. This indicates that the principles commonly referred to as *maqashid al-khams* are not implemented in all spheres of life.

Maqashid Syariah in the Family/Private Dimensions

a. Managing Bonds with the Opposite Sexes

Athiyyah claims that *maqashid sharia* guarantees the pattern of relationships between people of the opposite sex because there are legal requirements, rights, and obligations surrounding a husband and wife's relationship. A rule that has the intention of ensuring a good and proper pattern of relations with the opposite sex is one that has provisions like the recommendation to marry, the ability to marry more than one person (under certain restrictions), the divorce provision, the prohibition of adultery, and the prohibition of seclusion with the opposite sex who is not sharia mahram.²⁸

b. Hifdz an-Nasl (Continuing Descendants)

The Shari'a confirms that connections or relationships with the opposite sex are always intended to reproduce or produce children; this is considered *sunatullah* for people, animals, and plants. Hifdz an-Nasl is significant, hence the Shari'a has various rules, including:²⁹

- 1) *liwath* (anal sex) and *sahaaq* (homosexuality) are forbidden
- 2) the ban on unlawful abortions, discharging sperm outside the female genitalia, or burying female babies (as was the case during the Jahiliyyah period).

²⁷ Athiyyah, 147.

²⁸ Athiyyah, 149.

²⁹ Athiyyah, 150.

- 3) According to Ibn Ashur, it is imperative to ensure the male and female groups' continuity by outlawing castration (vasectomy) and other procedures that can endanger the uterus's health.

c. Realization of Sakinah, Mawaddah, and Rahmah Values

Building peace between partners and developing a loving connection is the goal of having a relationship with someone of the opposite sex in a bond of family. According to Athiyyah, the *sakinah* element of the family is included in the *dlaruriyyah* (urgent) level, the *mawaddah* aspect is included in the *hajjiyyah* level (in this instance, Athiyyah poses the question, "Should every marriage be built on love?"), and the *rahmah* aspect is included in the *kamaliyyah* level.³⁰

d. Hifdz an-Nasab (guarding the clan)

Athiyyah emphasized the distinction between *hifdz an-nasab* and *hifdz an-nasl* because, in his opinion, ushul fiqh scholars frequently struggled to make the two distinctions. According to Athiyyah, the categorization of *maqashid sharia* into four dimensions makes it simpler to differentiate *hifdz an-nasab* to *hifdz an-nasl*.³¹

Athiyyah offers a thorough explanation of this difference in the family dimension. In Athiyyah's opinion, *an-nasab* refers to the descent in a sociological context whereas *an-nasl* refers to descent in a biological context. *An-nasl* seeks to safeguard the sustainability of human existence, whereas *Nasab* seeks to safeguard lineage.

e. Keeping the Family's Religious Aspects

There are a number of legal requirements that must be met in order for this *maqashid* to be fulfilled, such as the head of the household's obligation to pick and practice a religion and impart

³⁰ Athiyyah, 150.

³¹ Athiyyah, 151.

that knowledge to his wife, children, and other dependents. Athiyyah sees retaining religious aspects in the family dimension, even at the *dlaruriyyah* level, in light of the possibility that the loss of religious components in a family can led to negative things that must be endured in the future.³²

f. Family Institutional Arrangement

The head of the family has the responsibility and is required to confer with family members in a case, even when fixing a problem, given that the family is, in theory, the foundation or principle of a lasting relationship rather than a temporary one. Family here can be broadened to include extended family members such as in-laws, in addition to being understood in the context of a small/nuclear family. Sharia law which has the intricacies of the *maqashid* issues, such as the provisions of the husband's rights over the wife, the wife's rights over her husband, the rights of siblings, friendship, and so on.³³

g. Managing Family Finances

There are some features of *maqashid sharia* that apply to families, but they obviously do not suffice without agreements for matters of money and property among the family members. *Maqashid sharia* related to some matters, such as dowry, good living for children, wives, divorced wives, wives who care for children after divorce, breastfeeding mothers, inheritance, wills, *waqf* in the name of the family, legal dependents of *diyat*, to control over (trust over) a property, and so forth.³⁴

Maqashid sharia/s use in the family sphere makes it an ideal analytical tool for the study of family law, because *maqashid* ideals encompass every part of the family, including the biological, sociological, psychological, and religious aspects.

Maqashid Sharia in the Dimension of Public Space

³² Athiyyah, 153.

³³ Athiyyah, 154.

³⁴ Athiyyah, 154.

Ibn 'Asyur's viewpoint, according to which the purpose of *maqashid al-'amm* (general) is to ensure the social structure (حفظ نظام الأمة), had an impact on Athiyyah's concept of *maqashid sharia* in the public domain. According to Ibn 'Asyur, the social dimension of sharia is implemented based on the oneness of the ummah, thus it is preferable to clarify the *maqashid sharia*, which attempts to ensure or preserve human private rights, and which aims to guarantee and protect common rights or the public interest.³⁵

a. Social Structure and Government

The ummah, community, or country is made up of numerous distinct entities with unique traits, capacities, and organizational structures. Sharia places a greater emphasis on issues of fostering national unity, which is exemplified by the oneness of religion, law, and language. The nation's oneness does not preclude plurality, and the Shari'a's unity does not preclude the numerous schools of *fiqh*. Similarly, the nation's unity of religion does not preclude the various sects of belief. It also does not contest the existence of numerous political parties with various platforms. Additionally, the usage of a range of accents and dialects does not invalidate the language's unity.³⁶

b. Hifdz al-Amn (Guarding the Security)

Security assurance includes both a nation's internal protection and security against external disturbances. There are internal security guarantees in the form of sharia implementation geared toward the protection of life, honor, and property, as well as the imposition of penalties for those who violate them, whether on personal-individual security such as *qisas*, criminal theft, and *had qadaf*, or on social stability such as war crimes.

Security assurances against external disturbances include suggestions for self-sufficiency in food to meet domestic need, so that the nation does not depend on foreign countries to meet

³⁵ Athiyyah, 96.

³⁶ Athiyyah, 155.

its food, industrial, and military requirements. These are regulated by the call for a fight on various forms of aggression. In actuality, every country has the right to govern its own internal affairs, is independent of international powers, and does not tolerate involvement in other countries' internal issues.³⁷

c. Iqamat al-‘Adl (Justice Enforcement)

Human justice is one of the many facets of justice, and it includes one's obligations to Allah, oneself, and one's family. Justice in the legal system and in the realm of political government are both components of social justice. Justice-related issues are divided by Qardlawi into three categories: 1) Social justice, 2) judicial justice, and 3) international justice.³⁸

d. Hifdz al-Din wa al-Akhlaq (Protection of Morality and Religion)

According to Shari'a, there is no distinction to be made between social-societal norms and religious and moral principles. This viewpoint is distinct from the secularist viewpoint. By rejecting all attempts to undermine religious characteristics, Shari'a sees protecting religion as a social necessity. Many academics believe that *maqashid tahsiniyyat* includes morality. Athiyyah holds a different perspective and categorizes morals at the *dlaruriyyat* level, for instance, by giving an example of being trustworthy and honest.³⁹

e. Mutual Cooperation, Solidarity, and Solidity Mentality

These values are based on religious principles such as a sense of brotherhood among people on a worldwide scale and brotherhood in faith on a more local scale. They are interrelated with one another and do not need to be formalized in a standard legislation or enforced by certain authorities. The law of zakat, infaq, waqf, or possibly even a rule that forces wealthy indivi-

³⁷ Athiyyah, 157.

³⁸ Athiyyah, 159.

³⁹ Athiyyah, 160.

duals to set aside a portion of their profits for the poor, are examples of how sharia protects or guarantees these ideals.⁴⁰

f. Promoting National Insights and Knowledge

Controlling the flow of media content that can be deceptive is part of keeping the public's perceptions intact. Islam has long advocated employing scientific methods of thought in order to avoid superstition and blind *taqlid*. This can be accomplished through the advancement of science. The implementation of regulations, such as those banning alcohol and drugs and regulating inaccurate media coverage, is how the Shari'a's protection of the nation's mentality is realized. This contains recommendations for reflection, thought, and contemplation as well as restrictions on blind taqlid, judging without sufficient evidence, and other practices. The requirement to learn and respect for professionals and scholars are also included.⁴¹

g. Social Welfare Insurance and Global Wealth Management

Establishing a sovereign authority's domain is the goal of earth management. While the idea that earth property should be Allah's property and that humans should only be tasked with administering it provides the foundation for the goal of ensuring the welfare of the populace. The development of national economic growth refers to these two objectives. According to Ibn Ashur, welfare guarantees can be seen as assurances that the ummah's economy will not collapse or be taken over by unjustified third parties.⁴² The main goal is a sustainable development goals until the end of the world.

In terms of the Islamic economic system, *maqashid shariah* refers to the protection of wealth, as well as its enhancement through investment and participation in business contracts in a way that minimizes risk and to manage wealth in a balanced

⁴⁰ Athiyyah, 161.

⁴¹ Athiyyah, 162.

⁴² Athiyyah, 163.

manner. The main objective to be attained is the reduction of poverty.⁴³

To the study of public law, including criminal law, state administration, political science, and governance, the application of *maqashid shariah* ideals in the public sphere is extremely relevant. In addition to being more particular, Athiyyah's selection of sharia *maqashid* is also more comprehensive.

Maqashid Sharia in the Humanitarian Dimension

a. Attempts to Get to Know, Support and Complement Each Other

The multicultural nature of people is the premise for this *maqashid* principle. Discrimination based on race, class or any other basis is prohibited under these beliefs.⁴⁴

b. Realization of Human Role as Caliph on Earth

The logic behind this *maqashid* statement pertains to the obligations and functions of people as the caliphs on earth. This topic is equally significant in terms of the foreign policy of Islamic nations, Islamic government entities, or Islamic governments that do not specifically identify as such.⁴⁵

c. Peaceful Realization Based on the Value of Justice

To keep peace, it is essential to first ensure the safety of all parties involved, to put mutual understanding above all other considerations, to organize international accords, and to monitor their execution. Justice serves as the foundation for any peace that is constructed in accordance with *maqashid shariah*. Justice here refers to justice for all people, not only justice for Muslims.⁴⁶

d. Protection of Human Rights by the State

⁴³ Ahmed Mansoor Alkhan and M. Kabir Hassan, "Does Islamic Microfinance Serve Maqāsid Al-Shari'a?," *Borsa Istanbul Review* 21, no. 1 (2021): 57–68, <https://doi.org/10.1016/j.bir.2020.07.002>.

⁴⁴ Athiyyah, 166.

⁴⁵ Athiyyah, 168.

⁴⁶ Athiyyah, 169.

The protection refers to those who are marginalized and the defense of freedom and human rights, including freedom of religion and thought, are the goals of this maqashid. Recently, the importance of this topic has come to the attention of the global community. Even though the real practice is guided by a double standard to serve the interests of major powers, it bypasses the idea of national sovereignty and permits international involvement to preserve human rights everywhere. It also forbids foreign meddling in a state's internal affairs.⁴⁷

According to Al-Maududi, the concept of human rights in Islam is far more humanistic than what is standardized by the West. He added that the study of human rights in Islam has given rise to a variety of concepts. An-Na'im, on the other hand, argues that Islamic human rights should be held to the same standards as those upheld by the West. Mashood A. Baderin seeks to reconcile Islam and human rights in the middle of these two opposing philosophies on human rights. According to Baderin, the two should complement rather than conflict with one another.⁴⁸

The clash between religion and human rights makes it inevitable that there will be barriers to the upholding and safeguarding of human rights in religious communities. One of the challenges is the "dual movement" between Islamization and Secularization, where each side has a different opinion on how human rights should be upheld.⁴⁹

e. The Spread of Islamic Da'wah

Of course, a wise approach, solid sermons, and reasoned discussion are used to carry out Islamic da'wah. Islam does not accept a restrictive stance toward religious freedom.⁵⁰ Athiyyah's

⁴⁷ Athiyyah, 170.

⁴⁸ Siti Rohmah, Moh Anas Kholish, and Andi Muhammad Galib, "Human Rights and Islamic Law Discourse: The Epistemological Construction of Abul A'la Al-Maududi, Abdullahi Ahmed An-Naim, and Mashood A. Baderin," *Justicia Islamica* 19, no. 1 (2022): 153–70, <https://doi.org/10.21154/justicia.v19i1.3282>.

⁴⁹ Fariz Ulul Abshar and Al Khanif, "Islam and Human Rights : Friend or Foe ?," *Addin* 15, no. 2 (2021): 229–58.

⁵⁰ Athiyyah, 171.

concept of *maqashid sharia* promotes human values while keeping in mind the subtleties of religion. The study of law and human rights is relevant to this *maqashid* dimension. The major purpose of Athiyyah's category of *maqashid sharia* into some dimensions is to demonstrate how necessary, dynamic and developing the *maqashid sharia* thinking is. The notion of adaptability (change) holds that Islamic law is adaptable to social change and necessitates a variety of new *ijtihad* that are in line with social realities and are capable of responding to social change. It should be emphasized that when adaptability is used, it can have two different meanings, including the potential for expanding current laws and the openness of a body of laws to change.⁵¹

The development of *maqashid sharia* thought was also sparked by Abd al-Majid al-Najjar. According to him, the essence of *maqashid sharia* so-called *maqashid sharia 'ala dawa'ir al-hayah al-insaniyyah* (*maqashid sharia* in the field of human life) is the embodiment of *al-daruriyyat al-tsaman* (eight primary needs) namely maintaining religion (*hifdz al-din*), maintaining humanity (*hifdz insaniyyah al-insan*), maintaining the soul (*hifdz al-nafs al-insaniyyah*), maintaining reason (*hifdz al-'aql*), protecting offspring (*hifdz al-nasl*), preserving people's behavior (*hifdz al-kiyan al-ijtima'i*), protecting property (*hifdz al-mal*), and preserving the environment (*hifdz al-biah*).⁵² This concept, which aims to demonstrate that *maqashid sharia* includes all elements of life, both in private and public spaces, is akin to the goal of Athiyyah's division of the *maqashid*'s dimensions.

In his research, Faishal Agil Al Munawar also proposes the notion of *hifzd al-lisan* as one of the *maqashid* principles of *sharia*. Munawar emphasized that *hifdz al-lisan*, or keeping one's manner of speech, is one of the crucial elements that must be preserved in the modern world of today. This is to be done immediately because, according to Qur'an and hadith, if the

⁵¹ Noor Harisudin, *Argumentasi Fikih Untuk Minoritas Muslim*, (Surabaya: Pustaka Radja, 2020), 71.

⁵² Faishal Agil Al Munawar, "'Abd Al-Majid Al-Najjar's Perspective on Maqāshid Al-Sharī' Ah," *Jurnal Ilmiah Syari'Ah* 20, no. 2 (2021).

tongue is not restrained, the impact will be very great both in this world and the hereafter. Most of us are aware that no matter the circumstance, different verbal activities or provocation, such as hate speech, blasphemy, the dissemination of false information and hoaxes, sarcasm, racism, and so forth, are simple to carry out in today's society.⁵³

Maqashid Syariah Implementation: From the Legal Istinbath Approach to the Culture of Legal Research

As-Sathiby, who is credited with having the biggest influence on the theory of *maqashid sharia*, categorized the concept into two categories, namely *maqashid al-syari'* and *maqashid al-mukallif* in his book *al-Muwaffaqat*. The fundamental idea of *maqashid sharia* according to Athiyyah, is that in addition to taking into account the interests and benefits of individuals, it is also important to take into account the interests and benefits of the general public, as personal interests cannot override the latter.⁵⁴

Islamic scholars contend that *maqashid sharia* takes on a new meaning in modern discourse. *Maqashid*, which previously placed a strong emphasis on protection (*hifdz*), has changed its focus to encourage development (*tanmiyah*). *Maqashid*, which had placed a strong emphasis on protecting Muslims, has since changed its focus to include all people (including non-Muslims).⁵⁵ The discourse of *maqashid sharia* is occasionally taken extremely far and even appears liberal in the development of the *istinbath* system of Islamic law. Therefore, for the purpose of *maqashid sharia* logic, any Islamic legal provision found in the

⁵³ Khairul Hamim, “Hifz Al-Lisān As Maqasid Al-Sharl’ah Al-Darūriyyah (Its Importance and Relevance in the Contemporary Era),” *Samarah* 5, no. 1 (2021): 317–37, <https://doi.org/10.22373/sjhc.v5i1.9139>.

⁵⁴ Jamaluddin Athiyyah, *At-Tandhir Al-Fiqhi*, (Alexandria: Maktabah al-Iskandariyyah, 1987), 63.

⁵⁵ Zakaria Syafei, “Tracing Maqasid Al-Shari’ah in The Fatwas of Indonesian Council of Ulama (MUI),” *Journal of Indonesian Islam* 11, no. 01 (2017): 99–124.

Qur'an or Hadith that substantively conflicts with *maqashid sharia* must be changed.⁵⁶

The reason why moderates are more diplomatic is that, in addition to upholding the literal meanings of the writings, they also take into account the goals behind the texts by weighing the two equally.⁵⁷ They possess the following traits: belief in the existence of the *maqashid sharia*, connection between some texts and their laws and others, balance of religious and secular concerns, connection between texts and reality, *taisir* (simplified) principles, research of the goals prior to passing laws, and comprehension of the text and its causes. The distinction between *wasilah* that can alter and normal *maqashid* is made for socio-cultural and historical reasons.⁵⁸

Ijtihad based on the *maqashid* has a comparatively adequate foundation of concepts and procedures that serve as the foundation for the growth and development of Islamic law. Jasser Auda's multidisciplinary approach, for instance, enables the contribution of numerous contemporary scientific areas in offering judicial concerns. On the other hand, *maqashid*-based *ijtihad* continues to have links with the traditional *ushul fiqh* technique that are mutually beneficial.⁵⁹

The balance between *maqashid sharia* and the method of *ushul fiqh* in its use both in legal *istinbath* and legal research is absolutely necessary. If the *ushul fiqh* method and *fiqh* rules are too determinant in *maqashid sharia* then the legal products and academic texts produced tend to be textual-conservative. On the other hand, if the paradigm is too dominant on *ushul fiqh* and

⁵⁶ Mutawali, "Maqashid Al-Syari'ah : Logika Hukum Transformatif," *Schemata* 6, no. 2 (2017): 117–39.

⁵⁷ Kholid Hidayatullah, "Madzhab Ulama dalam Memahami Maqashid Syari'ah," *Ulul Albab* 1, no. 1 (2017): 1–19.

⁵⁸ Nor Hadi and Jadzil Baihaqi, "The Motive of CSR Practices in Indonesia: Maqasid Al-Sharia Review," *Qudus International Journal of Islamic Studies* 8, no. 2 (2021): 327–52, <https://doi.org/10.21043/qijis.v8i2.8856>.

⁵⁹ Ilham Tohari and Moh. Anas Kholish, "Ijtihad Berbasis Maqashid Syari'Ah sebagai Pijakan Konseptual dalam Pembaruan Hukum Keluarga Islam Indonesia," *Jurnal Hukum & Pembangunan* 50, no. 2 (2020): 462, <https://doi.org/10.21143/jhp.vol50.no2.2587>.

fiqh rules, or even without using *ushul fiqh*, the legal products and academic texts produced tend to be liberal-subjective.

In order to address the issues with current Islamic law in Indonesia, the MUI adopts a dynamic technique for drafting fatwas. In fact, MUI fatwa draws from a variety of sources, including the hadith and the Qur'an, as well as *ijma'*, *qiyas*, *istihsan*, *maslahah mursalah*, *sadd al-dhari'ah* and clerics' opinions.⁶⁰

The scholarly tradition in Indonesia on the approach used to produce *fiqh* is to reinterpret the *syara'* theorems included in traditional *fiqh* by reading the circumstances of the local community in order to achieve the goals of Islamic law. It also includes implementing the transition from the textual school of thinking to the methodological school of thought in practice. The methodological school aims to improve *fiqh*'s adaptability to local wisdom across the archipelago and to the advantage (*maslahat*) of Indonesian Muslims.⁶¹

Athiyah employed the *mashlahah mursalah* technique to come to his conclusions about *maqashid*. For instance, consuming *khamr* is prohibited (haram) as part of the endeavor to safeguard the mind. However, applying the *qiyas* technique expands the prohibition to include all intoxicating foods and beverages, including *khamr*. Even when it does not shape as food, breaking the law can still be considered unlawful. Some examples include superstition and other practices that abuse the role of reason in thinking.⁶²

Athiyah explained, *maqashid sharia* cannot be separated from *ushul fiqh*, although *maqashid sharia* will still be a branch of discussion of *ushul fiqh*, which is useful to support and assist the formulation of legal reasoning.⁶³ As the goal of a law's

⁶⁰ Jamaa, “Fatwas of the Indonesian Council of Ulama and Its Contributions to the Development of Contemporary Islamic Law in Indonesia.”

⁶¹ Abdurrohman Kasdi, “Reconstruction of Fiqh Nusantara: Developing the Ijtihad Methodology in Formulating Fiqh from Indonesian Perspective,” *Qudus International Journal of Islamic Studies (QIJIS)* 7, no. 2 (2019): 239–66.

⁶² Athiyah, *Al-Waqi' Wa Al-Mitsal Fi Fikri Al-Islami Al-Mu'ashira*, 149.

⁶³ Athiyah, *Nahwa Taf'ili Maqashid Syariah*, 197.

execution is taken into account when it is being created, the science of *ushul fiqh* might be referred to as the science of *maqashid sharia*. This is accomplished by involving the two people's ongoing separate relationship both in the strategy, the target and the means.⁶⁴

According to Athiyyah, Ibn Ashur's view that *maqashid sharia* is a separate science from *ushul fiqh* and that it is incorrect to standardize *ushul fiqh* without *maqashid sharia* is a scientific error, because it separates *maqashid sharia* from its functional theory, which needs to be studied further.⁶⁵

The link between *ushul fiqh* approach and *maqashid*-based *ijtihad* approach is not necessarily broken. The *maqashid* approach in this situation offers a critique of traditional *ushul fiqh* as well as a theoretical proposal for the advancement of *maqashid*-based *ushul fiqh*. It is due to the fact that *ijtihad* based on *maqashid* generally does not reject traditional *ushul fiqh*. It is only that the philosophical significance of the *maqashid sharia* text serves as the primary foundation for establishing the law rather than the text's authority.⁶⁶

In Indonesia, the use of *maqashid sharia* as analytical tool still frequently follows the traditional methodology, with *maqashid al-khamsah* serving as the fundamental stepping stone. For instance, Agus Waluyo used three *maqashid sharia* points in his research on the Halal Product Guarantee Act: First, there is protection for religion from the government and other people. Second, there is protection for the soul and mind to prevent everyone from consuming illegal substances. Third, a product's halal certification is certain and protected by the law.⁶⁷ This study can be developed using *maqashid* elements in the public

⁶⁴ Athiyyah, 237.

⁶⁵ Athiyyah, 238.

⁶⁶ Tohari and Kholish, "Ijtihad Berbasis Maqashid Syari'ah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia", 471.

⁶⁷ Agus Waluyo, "The Developmental Policy of Halal Product Guarantee in the Paradigm of Maqāshid Sharī'ah in Indonesia," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 1 (2020): 41–60, <https://doi.org/10.18326/ijtihad.v20i1.41-60>.

sphere, such as security protection in terms of legal certainty and consumer safety when purchasing a product, guarantees of obtaining justice in terms of transparency of information on the Halalness of a product, and social welfare insurance to ensure consumers do not purchase products that are ineffective or even harmful to themselves.

Additionally, Ilyya Muhsin et al. analyzed *maqashid sharia* employed in relation to sexual violence on Islamic campuses by incorporating limitations on life insurance (*hifdz al-nafs*), offspring insurance (*hifd al-nasl*), self-esteem (*hifdz al-irdh*), and protections of freedom of thought (*hifdz al-aql*).⁶⁸ If Jamaluddin Athiyyah's interpretation of *maqashid sharia* was used, incidents of sexual violence that violate *maqashih al-khamsah* as detailed in this study analysis must also be addressed in order to guarantee security, give victims a sense of justice, and constitute immoral conduct (*maqashid* points in the public sphere). Attention must also be paid to the role played by the state in protecting victims' human rights (*maqashid* points in the humanitarian dimension).

It is Athiyyah's thought that makes *maqashid sharia* more applicable and effective as a legal *istinbath* method and as a theory of legal research analysis by developing the points of *maqashid sharia* and breaking them down into four separate dimensions. The *maqashid* approach as it is used by Athiyyah can offer a novel methodological perspective and expand the Islamic legal paradigm, making it more progressive and dynamic.

The Logic of *Maqashid Sharia* in the Dialectic National Law Development

The idea of *maqashid sharia* has gained much attention as a subject of study in the twenty-first century. Islam and global challenges, such as social, political, economic and ecological

⁶⁸ Ilyya Muhsin, Sukron Ma'mun, and Wardah Nuroniayah, "Sexual Violence in an Islamic Higher Education Institution of Indonesian: A Maqasid Al-Shariah and Foucauldian Perspective," *Samarah* 5, no. 1 (2021): 127–53, <https://doi.org/10.22373/sjkh.v5i1.9144>.

difficulties, are connected primarily through the *maqashid sharia*. *Maqashid sharia* also serves as a link between Islamic principles and contemporary social values like justice, equality and human rights.⁶⁹

Maqashid sharia formulated by Jamaluddin Athiyah was made simple to apply. He divides the three fundamental tenets of *maqashid sharia* into four categories: the individual, the family, the community, and mankind. This division has a significant impact on how important it is to implement the Islamic Welfare State program in order to serve the general populace. The idea is founded on the knowledge that the three fundamental tenets of *maqashid sharia* cannot be upheld alone via human strength but also with state enforcements.⁷⁰

In order to build a harmonious synergy between *maqashid* and social reality, it is crucial to attempt to dialectically relate the theory of *maqashid sharia* to actual difficulties or challenges, such as the phenomena of extremism that is currently sweeping the globe. As such, Sharia that we follow is dynamic, inclusive, and egalitarian rather than stagnant, exclusive, and discriminating.⁷¹ Avoiding discrimination teaches us that differences are actually tests and opportunities for healthy competition. Differences are Allah's creation; hence they are *sunatullah*.⁷²

According to Ghazali, the purpose of sharia is to avoid harm and bring benefits.⁷³ According to Athiyah, this is the purpose for which beings were created, not the objective of sharia,

⁶⁹ Tohari and Kholish, "Ijtihad Berbasis Maqashid Syari'Ah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia", 468.

⁷⁰ Syamsuri and Dadang Irsyamuddin, "Negara Kesejahteraan Dan Maqashid Syariah : Analisis Pemikiran Jamaluddin Athiyah," *FALAH Jurnal Ekonomi Syariah* 4, no. 1 (2019): 83–97.

⁷¹ M. Nanda Fanindy, "Formulasi Maqashid Syariah Perspektif Jamaluddin Athiyah; Studi Kasus Perda Daerah Istimewa Yogyakarta (DIY) No. 7 Tahun 2018 Tentang Ketahanan Keluarga," *Islamitsch Familierecht Journal* 1, no. 1 (2020): 23–45.

⁷² Jamaluddin Athiyah, *Nahwa Fiqhin Jadidin Li Al-'Aqaliyat*, (Kairo: Dar as-Salam, 2003), 74.

⁷³ Sutisna et al., *Panorama Maqashid Syariah*, ed. Abdurrahman Misno, (Bandung: Penerbit Media Sains Indonesia, 2021), 36.

and the measure of a creature's benefit is how well it serves this purpose. According to Athiyyah's explanation based on Ghazali's logic, the benefit of Sharia is to ensure the accomplishment of the five *maqashid sharia*. This argument was later stated as *maqashid mukallafin* by Syatibi according to Athiyyah.⁷⁴

The freedom to act in a *syara'* manner refers to the freedom to uphold human equality in preserving itself, which is the essence of *maqashid sharia*. According to Al-Khumalisi, Al-Qardhawi, Ar-Raisuni, and Islamil al-Husni, *maqashid sharia* considers the aspects of moral standards such as fairness, equality, independence, the right of association, economic and political rights.⁷⁵ According to Ghazali, the five *maqashid* points were mainly intended to formulate different benefits, not to limit them.

According to Auda cited by Thohari & Kholish, the current *maqashid* conception is more suitable than the traditional *maqashid* conception for addressing modern issues. The development of the idea of keeping children (*hifzd al-nasl*) into the defense of the family demonstrates this. While the protection of reason (*hifzd al-'aql*) evolved into the development of scientific thinking, efforts to study need to be taken to avoid suppressing emotional thinking patterns based on groups and others. Additionally, freedom of belief has grown from the preservation of religion (*hifzd al-din*) in contemporary manifestation. Maintaining wealth (*hifzd al-mal*) turned into economic growth and a reduction in social inequity during this time. Similar to how the idea of defending the soul (*hifzd al-nafs*) transformed into defending human rights and dignity.⁷⁶

The benefits of Jasser Auda's *maqashid sharia* include bringing back the goal of sharia itself, which has previously been forgotten by linguistic textualists who have ignored the purpose of the Qur'an and Hadith texts as a source of Islamic law, into a holistic and comprehensive analysis of *maqashid sharia* so that it

⁷⁴ Athiyyah, *Nahwa Taf'ili Maqashid Syariah*, 138.

⁷⁵ Athiyyah, 97.

⁷⁶ Tohari and Kholish, "Ijtihad Berbasis Maqashid Syari'Ah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia", 473.

does not only rely on one argument only to solve a case, instead various kinds of perspectives (multidimensional).⁷⁷ From this, it can be seen that there is a basic difference: whilst Athiyyah's theories are more focused on the partition of *maqashid* objects into distinct regions of human life, Jasser Auda's ideas are more focused on incorporating multidimensional science into legal development and legal study.

Although sharia has been bureaucratized, the content of sharia law has been evolved, adapted, and chosen from the broad principles of classical *fiqh*. Understanding the logic of *maqashid shariah* in the formation of law in Indonesia is crucial. The development of positive law in Indonesia must take into account juridical, sociological and philosophical factors.⁷⁸ In this context, *maqashid sharia* can be used as a standard to determine whether the draft law that has been established is in conformity with the goals of Islamic law, taking into account *maqashid shariah* in the numerous dimensions that have been presented, in creating assurance and fairness for all Muslims through legal positivization.⁷⁹

The bureaucratization or positivization of law has two effects in the context of Islam. First, popular interpretations of Islamic doctrine have been modified (but not yet secularized). Second, based on formal legal texts, legal matters relating to Islamic doctrines have been formalized and regulated. Islam in Indonesia is becoming more bureaucratized in an effort to uphold citizens' rights and fulfill their religious obligations within the framework of the Pancasila. The Islamic legal system may

⁷⁷ Mohammad Fauzan Ni'ami and Bustamin Bustamin, "Maqāshid Al-Syarī'Ah Dalam Tinjauan Pemikiran Ibnu 'Āsyūr Dan Jasser Auda," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 1 (2021): 91, <https://doi.org/10.31958/juris.v20i1.3257>.

⁷⁸ Sri Wahyuni Laia and Sodialman Daliwu, "Urgensi Landasan Filosofis, Sosiologis, Dan Yuridis Dalam Pembentukan Undang-Undang Yang Bersifat Demokratis Di Indonesia," *Jurnal Education and Development* 10, no. 1 (2022): 546–52.

⁷⁹ Jahar, "Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law", 233.

become more conservative if the practice of Islam is not blended into the bureaucratic style of state government.⁸⁰

Particularly when Munawir and Busthanul were in the office as the KHI drafting committee's chairman and minister of religion, respectively, the concepts of Indonesian fiqh that Hasbi and Hazairin had pioneered were codified. Following that, a growing number of legislative items with Islamic law as a source appeared. This is understandable, in Qodri's opinion, because Islamic law has been acknowledged as one of the factors that has influenced Indonesian national law. In fact, according to Yudian, as long as the legal content complies with *maqashid syariah*, legislative items that initially did not derive from Islamic law can also be regarded as Indonesian *fiqh*.⁸¹

Developing Islamic law structures in accordance with the fundamental tenets of Islamic law enforcement requires a paradigm that views *maqashid syariah* as both an instrument and an orientation for the development of Islamic law. In order to determine Allah's objective in implementing a legal provision, it is possible to understand the motivation behind Islamic law through *maqashid syariah*. Even *maqashid syariah* can be viewed as a theoretical method for constructing Islamic rules whose provisions are not unambiguously found in the Qur'an or Hadith.⁸²

In the end, the *maqashid* base was developed not only in terms of the growth of Islamic law but also in the area of Qur'anic interpretation in the shape of *maqashidi* interpretation⁸³. In order to discover Allah's aim in the Qur'an, this interpretation method essentially integrates three approaches. This is because

⁸⁰ Jahar, 235.

⁸¹ Agus Moh Najib, “Reestablishing Indonesia Madhhab ‘Urf and the Contribution of Intellectualism,” *Al-Jami’ah: Journal of Islamic Studies* 58, no. 1 (2020): 171–208, <https://doi.org/10.14421/ajis.2020.581.171-208>.

⁸² Ahmad Ropei, “Maqashid Syari’ah Dalam Pengaturan Batas Usia Pernikahan Di Indonesia,” *Asy-Syari’ah* 23, no. 1 (2021), 11.

⁸³ Aksiin Wijaya and Shofiyullah Muzammil, “MAQĀSIDI TAFSIR Uncovering and Presenting Maqāid Ilāhī-Qur’ānī into Contemporary Context,” *Al-Jami’ah* 59, no. 2 (2021): 449–78, <https://doi.org/10.14421/ajis.2021.592.449-478>.

Allah's goal is not only textual and moral-ideal, but also spiritual-contextual and applicable to many time and place situations. It is possible to approach Allah's intention, which takes the form of a moral ideal, by using the *nuzuli* interpretation theory and objective hermeneutics. On the other hand, philosophical hermeneutics can be used to approach Allah's intention, which is spiritual-contextual. Along with the textual and moral-ideal meanings of the Qur'an, new levels of spiritual meaning that can be placed in the context of modern reality will also be revealed when the three interact.⁸⁴

CONCLUSION

Generally, Jamaluddin Athiyyah's concept of *maqashid sharia* has a strong human spirit. Athiyyah explains that there are important distinctions between the intent behind the creation of humanity and the intent behind *maqashid sharia* (*maqashid al-khalqi*). This justification later evolved into Athiyyah's rationality, which led to the expansion of the *sharia maqashid* from five (*maqashid al-khams*) to twenty-four, which were categorized into four different dimensions: the personal/individual dimension, the family/private dimension, the ummah/public dimension, and the human dimension. Students, researchers, and specialists in Islamic law now find it simpler to employ *sharia maqashid* as a method for studying a law thanks to the development of *maqashid sharia* in substance, scope, and dimensions. both when conducting legal research and in the context of legal discussions. The *maqashid sharia* notion put forward by Athiyyah has the benefit of being more practical and useful. In order to determine whether a draft law has been developed in accordance with the goals of Islamic law, Jamaluddin Athiyyah's version of the *maqashid sharia* paradigm can be used as a philosophical basis (ideal norms). With the categorization of *maqashid* into personal, family/private, public, and humanitarian, the philosophical value of a law can be studied more specifically, objectively, and functionally.

⁸⁴ Aksin Wijaya and Shofiyullah Muzammil

The theoretical implication of the study is the necessity for a more systematic and applied examination of Jamaluddin Athiyyah's maqashid sharia in order to enhance the proposition of an objective and forward-looking Islamic legal paradigm. It is advised that researchers and experts in Islamic law use this paradigm to conduct empirical research, as well as to gain a deeper understanding of maqashid sharia and to evaluate the efficacy and objectivity of Jamaluddin Athiyyah's sharia maqshid theory in the context of legal studies in Indonesia.

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