

## ORIGINAL ARTICLE

### Application of The Principles of *Maqasid Shari'ah* in Administration of The Islamic Countries

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#### ABSTRACT

*Maqasid shari'ah* or objectives of Islamic law constitute an extremely important element of determining law. Despite, its significance and importance, it is often ignored in the policymaking, in the process of legislation related to the public interest. Perhaps this is due to the lack of knowledge of the policy makers of the importance of objective of the law, or their tendency of not consulting the experts when formulating a policy. Therefore, this study attempts to highlight the importance as well as the implementation of principles of *maqasid shari'ah* in the country's administration. The study use library research method, hence the data collected from relevant literatures such as journals, books and other related materials are analyzed and conclusion are made. This study concludes that an effective and efficient administration of an Islamic state heavily depends on the application of dynamic principles provided by *shari'ah*. Some of these principles are *qawa'id maqasidyah, jalb al-masalih wa dar' al-mafasid and fiqh al-awlawiyyat*.

#### **Key words:**

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#### **Introductions**

*Maqasid shari'ah* or objectives of Islamic law play an important role in the process of determination of law. For, they constitute the main purpose that the Islamic law tends to achieve through the process of legislation of the rules and regulations related to all sphere of human activities and conducts. According to Muhammad al-Tahir Ibn 'Ashur, objectives of *shari'ah* is the underlying wisdom of Islamic law in all cases or some of them. Therefore, all actions performed by the *mukallaf* (subject of the law) or a competent person who is in full possession of his faculties must not undermine the objectives of the Islamic law that has been determined.

*Maqasid shari'ah* is closely related to the administration of a country. This is because the administration of a country revolves around the public interest. Any policy or regulation introduced by the authority concerning the administration of a country must not be in conflict with the Islamic law, for it always safeguards the interests of Muslims. Since, Islamic texts related to the administrative affairs of an Islamic state is limited, resort has to be made to *ijtihad* (exertion). The principles of *al-masalih al-mursalah, al-'urf, al-istihsan and sadd al-dhara'i'* can be utilized for the purpose to avoid any conflict with Islamic law. This is to make sure that the principles of *shari'ah* always achieve their objectives in every area of the administration.

Utilization of *fiqh al-awlawiyyat* also provides a strong base for the application of *maqasid shari'ah's* principles. Yusuf al-Qaradawi (2001: XI) is of the view that the currently available literature on the *fiqh al-awlawiyyat* (jurisprudence of priorities) is of extreme importance. This is clear from his statement: "The study that has been displayed in front of you today (related to *fiqh al-awlawiyyat*) is an important topic. The reason is that it provides an exit from the problems resulted in due to the absence of certain consideration, in the worldview of Islam, in the evaluation of issues related to thoughts and actions. Giving priority to certain thing over other or what is to be considered first and what is to come last in the list of priorities. This is very important as element of prioritization of goals by Muslim community is a missing dimension of the contemporary Muslims thought." In the application of *fiqh al-awlawiyyat*, we must take the principles of *maqasid shari'ah* as

the basis for the settlement. *Maslahah* or considerations of public interest according to Islamic Law, are the benefits that required by God to humankind in the form of religious observance, self, mind, descendent and their property (Hassan Hj. Ahmad 2001:63).

#### *The Importance Of Maqasid (Principles):*

*Maqasid shari'ah* is the underlying purposes and the wisdoms of Islamic law contained in most or majority of the cases for which realization the law is legislated (Ibn 'Assyrian 1996: 50). On the other hand, al-Rusayni defines the *maqasid shari'ah* as the objectives that are determined by the Islamic law and need to be achieved for the benefit of humankind. According to Faizah (2004: 68) the same definition provided by al-Zuhayli, the Caliph Abu Bakr al-Hasan and al-Yubi. It is very important for it provides the ground on the bases of which the interpretation of law whether in the Quran, Sunnah or any other resources can be justified (Faizah 2004: 71). In fact, al-Shatibi states that the general objective of *shari'ah* is very important in defining the specific evidence. This is because it is impossible to exclude the general principles contained in the general objectives of Islamic law in the determination of the specific evidence. Therefore, those who take the specific texts without referring to the general principles of *shari'ah* are clearly wrong. However, determining the law based on general objectives of *shari'ah* only and without referring to the specific evidence is a wrongdoing as well (Faizah, 2004: 71). In other words, *maqasid al-shari'ah* on its own does not constitute a source of law in the science of principles of jurisprudence (*usul fiqh*). Nevertheless, it constitutes the basis for the interpretation of the sources of law.

The general objective of Islamic law was established as *jalb al-masalih wa dar' al-mafasid*. In fact, al-Shatibi (al-Raysuni: 1991:326) states that one of the required conditions for *mujtahid* (the person who determine the law) is that he must fully understanding *shari'ah* principles. The same conditions have been placed by al-Qaradawi (1994: 10) and Yusuf Hamid al-'Alim (1997: 106) regarding the needs and requirement of *mujtahid*, as they all stress on the ability of understanding *shari'ah's* principles. Mahmood Zuhdi (2000: 49) when outlining the conditions for a person intending the determination of law or the structuring of science of the principles of Islamic jurisprudence in Malaysian context includes the understanding and mastering of the principle of *shari'ah* as the basis for the determination and assessment of the accuracy of the law. Faizah's study (2004) had explained the importance of *maqasid shari'ah* and it is indisputable role in understanding and implementation of the Islamic law, as well as in the prioritization of the individual action, society and nation. One of Ibn 'Ashur (2001: 166) criticism regarding *ijtihad* based on *usul al-fiqh* only is that: "Most of the issues in principles of jurisprudence are confined to the derivation of verdicts from the words of the Law-Giver rather than being used to serve the purpose or objectives of the shari'ah." The unfortunate result of this is that "many of the *al-'ulum al-diniyyah* (religious sciences) including *usul al-fiqh* (principles of jurisprudence) has lost the true spirit they enjoyed previously during early period of the development of Islamic law. The revival of this spirit is of crucial importance to the renaissance of religious sciences (Abu al-Fadl 'Abd al-Salam 2004: 576-577; M. Umer Chapra 2008: 40).

#### *The Importance Of The Islamic Country:*

Country is an important entity for the implementation of Islamic educations. Without having a country, Islamic education can never be spread and taught or can be implemented as a whole. Indeed, the first thing that needed by the message of Islam in this era is the establishment of the Islamic state or *Dawlat al-Islam* which propagates the message of Islam as a faith, a system of worship, morality, life and civilization. This requires both *maddiyah* (material) and *adabiyah* (manners and the culture) development throughout life and the opening of door for every believer who is suppressed and subjected to atrocities to migrate to it and form an integrated well organized society. This in fact constitute the urgent need of the present state of the Muslim communities all over the world. Umer Chapra (2008:35) rightly observes this:

Faith alone cannot, however help to realize human well-being. It is unrealistic to assume that all individuals will become morally conscious in human societies, because of belief in God and accountability before Him in the Hereafter. Moreover, even if a person is morally conscious, it is possible that she/he will be simply unaware of the social priorities in resource use. This makes it incumbent upon the state to play a complimentary role. The prophet PBUH, therefore, clearly stated, "God restrains through the sovereign more than what he restrains through the Qur'an."

The Quran can only give values; it does not enforce them. It is the job of the state to do so. It is the moral and legal responsibility of the state to ensure justice and well-being of the people. The prophet PBUH said: "Anyone who has been given the charge of a people but does not live up to it with sincerity will not taste even the fragrance of paradise."

This is also, reflected in the writings of a number of classical as well as modern writers. For example, Imam Hasan al-Banna stresses that governments are the heart of socio-economic reform; if they become corrupt, they may corrupt everything and if they are reformed, they may be able to reform everything.

Indeed, al-Mawdudi (1985: 5) when interpreting chapter 17 verse 80 states:

That is either grant me power on earth or make any ruling authority, any state, my supporter, so that I may, with the force of the coercive powers of the state, establish virtue, eradicate evil, pay an end to the surging tide of corruption, vulgarity and sin, set at right the disruption which has engulfed life and administer justice according to Your revealed law.

Actually, Hasan al-Basri, Qatadah, Ibn Jarir and Ibn Kathir provide this interpretation, which has the support of many hadiths where it is, stated: "God, through the power of country remove something that is not eliminated by the Qur'an." That means the reformation of Islam cannot be implemented through preaching only, but the political power is also important to achieve those goals (al-Mawdudi 1986: 5).

#### *Application of Maqasid Shari'ah in the Administration of the Islamic Country:*

Principles of *shari'ah* cannot be separated from the system and administration of Islamic country. Ibn 'Ashur, elucidates that the essence of the Islamic law is to protect the Islamic ruling system and to maintain its benefits through the leaders that are good, whether in terms of thought, action and management of the facilities or the power that they are entrusted with. (Syukeri 2009: 65). Ibn Farhun also stress on country's political stability and security of the people by operating the law called as *hudud*, *qisas* and *ta'zir* (Syukeri 2009: 65). According to Syukeri (2009: 65-66) the principles that supports the stability of the system of government and the integrity of a country's leadership is justice, equality, and solidarity. These are all important elements of the Islamic general principle of *jalb al-masalih wa dar' al-mafasid*.

According to 'Abd al-Wahhab Khallaf (1987: 7) there are three principle goals in political implementation of Islamic Jurisprudence:

1. To drive the administration in a direction that is consistent with the requirements of Islam.
2. To ensure the interests of the people at all times and places.
3. To make Islam as a system that is relevant to the administration of a country.

#### *Main Principles in Shari'ah:*

The administration of country is one of the most extensive and complex fields. In fact, it always encounter with new problems and issues that require rules and regulation. Hence, to ensure a high level of efficiency in the administration of the country hence, achieving its goals, the following principles should be considered in the process of administration:

1. *Jalb al-masalih wa dar' al-mafasid* as the basis for the administration of a country. This is also consistent with another legal maxim dealing with the jurisdiction of the ruler and its required conditions. "*Tasarruf al-imam 'ala al-ra'iyah manut bi al-maslahah*", which means, "the authority of the ruler over the ruled ones is made conditional on the enhancement of public welfare". Scholars have discussed this principle extensively in terms of *maslahah* (benefit) and *mafsadah* (corruption/evil). They have provided a concrete criterion for the acceptance of the concept in such capacity. The criterion for the acceptance and consideration of the *maslahah* is that it should not in contradict the *Qur'an*, *Sunnah*, *Ijma'*, *Qiyas* and that it should not leave out another *maslahah* of greater significance.

2. *Maslahah* or interests must be related to the category of *daruriyah*, *hajiyyah* and *tahsiniyyah*. Therefore, *qawa'id maqasidiyyah* of such a nature should be taken into account (Tuan Mohd Sapuan Tuan Ismail 2009: 139).

In case of conflict between two different *maslahah*, it is imperative to apply the principle of *awlawiyyat* (priority). al-Qaradawi (1996: 26-31, 39) has outlined the determination of the application of *mafsadah* and *maslahah* in general and Ridwan Ahmad make it in details (2008: 109 -133) as follows:

##### *a. Standard Specification for Maslahah (benefit):*

- i. *Maslahah mutayaqqanah* or *qat'iyah* (definite *maslahah*) should be preferred over *maslahah mawhumah* (speculative *maslahah*).
- ii. Priority should be given to the *maslahah* that is basic in nature or fundamental rather than *maslahah* of technical nature (*shakliyyah*) or apparent.
- iii. Priority should be given to the *maslahah* that is permanent rather than the *maslahah* that is temporary.
- iv. Priority should be given to the general *maslahah* ('*ammah*) rather than the specific *maslahah* (*khassah*).

- v. Larger *maslahah* (*kubra*) should be given preference over smaller (*sughra*).
- vi. Priority should be given to the *maslahah* which negligence results in negative effects rather than the *maslahah* which negligence does not lead to such effect.
- vii. Priority should be given to the *maslahah* which constitute specific concern of the Islamic law rather than that of less concern to it.
- viii. Priority should be given to the *maslahah* that is close in terms of self-interest and kinship relations rather than the *maslahah* that is of distant relation.
- ix. Priority should be given to the *maslahah* that the Prophet PBUH often observed or performed rather than that he observed sometime.
- x. Priority should be given to the *maslahah* agreed upon by scholars rather than the *maslahah* that is debatable.

b. *Standard Specification for Mafsadah (corruption/ evil):*

- i. No priority can be given to the rejection of any of the two contending *mafsadah* of the same level.
- ii. Priority should be given to the rejection of the *mafsadah* which is clear (*rajihah*) over that which is not clear (*marjuhah*).
  - Preference should be given to the rejection of outweighing *mafsadah* over the outweighed one.
  - Preference should be given to the rejection of the general *mafsadah* (*'ammah*) over that of specific (*khassah*) one.
    - Preference should be given to the rejection of *mafsadah qat'iyah* over that of *mafsadah mawhumah*.
    - Preference should be given to the rejection of the *mafsadah* that has been agreed by scholars over that which is still debated.
    - Preference should be given to the rejection of the *mafsadah* that led to the demise of Islamic Law over that involving human life.

c. *The Methodology of Measuring Preference Between Maslahah and Mafsadah*

- i. Preference based on dominant and dominated positions (*al-ghalib wa al-maghlub*)
- ii. Preference based on *daruriyyat al-khams* or *daruriyyat al-sitt*. Hence, giving priority to the necessities (*daruriyyat*) over that of complementary (*hajiyyat*) and the complementary (*hajiyyat*) over that of embellishments (*tahsiniiyyat*) ones.
- iii. Preference based on the level and the nature of obligation (*taklif*).
  - a. Conflict between *maslahah* and *mafsadah* at the point of command and prohibition.
  - b. Conflict between obligatory (*wajib*) and reprehensible (*makruh*).
  - c. Conflict between voluntary (*sunnah*) and reprehensible (*makruh*).
  - d. Conflict between compulsory (*wajib*), recommended (*sunnah*), forbidden (*haram*), reprehensible (*makruh*) and permissible (*mubah*).
- iv. Preference based on the scope of application (general and specific). Thus giving priority to the *maslahah* or *mafsadah 'ammah* over that of *maslahah* or *mafsadah khassah* (specific).
- v. Preference based on the recognition of law, hence, giving priority to *maslahah* or *mafsadah qat'iyah* over that of *maslahah* or *mafsadah zanniyah* or *wahmiyyah*.
- vi. Preference based on agreement of the scholars.
- vii. Preference based on the real risk.

d. *The Methodology of Measuring Preference Between Maslahah and Mafsadah of the Same Value or Weight.*

In the context of national interest, according to Syukeri (2009: 67), there are several principles that should be taken into consideration, especially in Malaysian context:

1. *Tasarruf al-imam 'ala al-ra'iyah manut bi al-maslahah* (the authority and jurisdiction of the leader over the people is made conditional on the enhancement of public welfare).
2. Applying the principles of *maslahah* and *sadd al-dhara'i'*.
3. Applying the principles of justice and equality.
4. Appreciating the principles of unity in a pluralistic society.
5. *Tahaluf siyasi* (political partnership).

Based on Mohd Saiba Bin Yaacob (2007: 100), principles of *maslahah* in politics and Islamic law that need to be applied consists of:

1. Taking into consideration the principal of ease and no difficulty.
2. Taking into consideration the principal of the reality (*waqi'*) on the ground.
3. Taking into consideration the human nature.
4. Taking into consideration the tradition of the community.
5. The realization of the principle of justice.

#### Conclusion:

From the preceding discussion it become clear that the principles of *shari'ah* especially *maqasid al-shari'ah* play an extremely significant role in matters related to the temporal administration of a country. This is particularly true in the sphere of the administration and running of the political affairs of a country, due to the complex nature of administrative procedures and the ever-growing number of the issues that have strong bearing on the state of the social and political affairs of a country. Furthermore, other relevant principles of *shari'ah* such as *maslahah* and *mafsadah* can provide guidance to the policy makers and government in formulating policies and decision-making. This is necessary to protect and promote the common interest of the people and repel any harm that might jeopardize peace and stability of the country.

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