

Yūsuf Al-Qarḍāwī's *Istinbāt* Method and Its Implementation in the Moderation of Islamic Law

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Abstract

This paper described the formulation of Yūsuf al-Qarḍāwī's *istinbāt* method towards moderate *fiqh*. The choice of this theme was based on the existence of two demeanors in religion, between permissive and inclusive. Two main questions in this research were, first, how did Yūsuf al-Qarḍāwī formulate the *istinbāt* method for moderate *fiqh*? Second, how is the implementation of this method in formulating Islamic law? This paper concluded two things through a literature study with the descriptive-analytic method. First, there were six formulations of the *istinbāt* method for the moderation of Islamic law. a. Examining the *maqāsid* contained in the text before determining Islamic law, b. Linking texts and Islamic law with texts and other Islamic laws. c. Understanding texts in the frame of *asbāb* (*al-nuzūl* or *al-wurūd*), both micro and macro. d. Distinguishing between constant *maqāsid*s and changing instruments. e. Adjusting between *al-thawābit* and *al-mutaḡhayyirāt*. f. Observing the difference between worship and *mu'āmalah* in terms of wisdom, *'illah* and *maqāsid*. Second, this method of *istinbāt* could produce *fiqh* with a flexible, elastic, dynamic, adaptive, and easy-to-practice.

Keyword: moderation; *istinbāt* method; Yūsuf al-Qarḍāwī; *maqāsid*



Tulisan ini mendeskripsikan formulasi metode *istinbāt* Yūsuf al-Qarḍāwī ke arah fikih moderat. Pemilihan tema ini didasarkan atas adanya dua kecenderungan sikap dalam beragama, antara permisif dan inklusif. Dua pertanyaan pokok dalam penelitian ini yaitu, pertama, bagaimana Yūsuf al-Qarḍāwī memformulasikan metode *istinbāt* pada fikih moderat? Kedua, bagaimana implementasi metode tersebut dalam merumuskan hukum Islam? Melalui studi pustaka dengan metode deskriptif analitik, tulisan ini menyimpulkan dua hal. Pertama, terdapat enam formulasi metode *istinbāt* bagi moderasi hukum Islam. a. Menelaah *maqāsid* yang terkandung di dalam nas sebelum menentukan hukum Islam, b. Mengaitkan nash dan hukum Islam dengan nash dan hukum Islam lainnya. c. Memahami nash dalam bingkai *asbāb* (*al-nuzūl* atau *al-wurūd*), baik mikro maupun makro. d. Membedakan antara *maqāsid* yang konstan dan instrumen yang berubah. e. Menyesuaikan antara *al-thawābit* dan *al-mutaḡhayyirāt*. f. Mencermati perbedaan antara ibadah dan muamalah dari segi hikmah, *'illah* dan *maqāsid*. Kedua, metode *istinbāt* ini dapat menghasilkan fikih yang berwajah fleksibel, elastis, dinamis, adaptif, dan mudah diamalkan.

Kata Kunci: moderasi; metode *istinbāt*; Yūsuf al-Qarḍāwī; *maqāsid*

Introduction

Some Muslims are rigid, stiff and strict in implementing Islamic teachings and intolerant to other groups and religions. They are exclusive, narrow-minded, *ghuluw* (crossing the line) and try to achieve their goals through violence. Such religious manner and models arise because they comprehend the religious texts (*nuṣūṣ al-sharī'ah*) literally. They ignore the context (*asbāb al-nuzūl* and *asbāb al-wurūd*) and reject the contextual understanding because they think it can reduce the purity of *nuṣūṣ al-sharī'ah*. Moreover, they tend to monopolize the truth on the understanding and interpretation of *nuṣūṣ al-sharī'ah*. As a result, they consider their understanding, opinions, and interpretations correct, while the opinions and understandings of other groups are wrong. So, they accuse groups outside their group of being wrong, heretical, and even infidels. They are also not good at distinguishing between religion (*al-dīn*) and religious thought (*al-afkār al-dīniyah*). The diversity of understandings, interpretations, and opinions based on the reasoning of *nuṣūṣ al-sharī'ah* is a necessity.¹

At the same time, some other Muslims are very permissive. They are easy to justify something under the pretext of freedom and benefit. They prioritize reasoning in the hierarchy of Islamic legal arguments, then only use the Koran, al-Sunnah and *al-ijmā'*. Understanding and interpreting *nuṣūṣ al-sharī'ah* tends to be non-literal, substantial, and contextual. This group examines the universal values contained in the text rather than sticking to the literal meaning. As a result, they deify the freedom of thought, assert the absolute freedom of religion, uphold equal rights and obligations between men and women regarding the separation of religion and state accede to the desacralization of Islamic *turāth*, etc.² Whereas for them, the benefits and enthusiasm of *al-sharī'ah* can invalidate *nuṣūṣ al-qaṭ'ī* (clear and definite text).³

¹ Yūsuf Al-Qardāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah* (Kairo: Dār al-Shurūq, 2008), 53-58; Ṣalāh Al-Ṣawī, *Al-Tatarruf al-Dīnī* (Al-Āfaq al-Dawliyah li 'l'ām, n.d.), 11-13; Yūsuf Al-Qardāwī, *Zāhirah al-Ghuluww fī al-Takfīr* (Kairo: Maktabah Wahbah, 1990), 22-23.

² 'Abd al-Raḥīm ibn Ṣamāyal Al-Salamī, *Ḥaqqiqah al-Libarāliyah wa Mawqif al-Islām Minhā* (Jeddah: Markaz al-Ta'ṣīl li Dirāsāt wa al-Buhūth, 2009), 123,153,490.

³ Ṣāliḥ Muḥammad Al-Damijī, *Mawqif al-Libarāliyah fī al-Bilād al-'Arabiyah min Muḥkamāt al-Dīn* (Riyad: Maktabah al-Mulk, 1433), 589, 832.

Meanwhile, according to the author, the mind cannot be used as the primary basis in the hierarchy of Islamic legal arguments. This rejection is based on several arguments. First, the mind has potential and limitations that sometimes lead to harm. Humans have lust that can deceive common sense so that what is considered excellent and beneficial by the mind is sometimes driven by lust. Therefore, the mind needs text instructions to show you the right and valuable way. Second, the mind is sometimes deceived by the atmosphere, situation, and environmental conditions. As a result, a situation that has mushroomed and has been running for a long time can be considered excellent and beneficial by reason, even though it conflicts with the values of the *sharī'ah*.

Two extreme religious patterns above are contrary to Islamic teachings. Therefore, the *istinbāt* pattern for moderate jurisprudence is needed to produce Islamic law that is flexible, dynamic, easy to practice, far from rigidity and intolerance so that harmonious relations can be established in the lives of religious communities. This *istinbāt* pattern is in line with the rational *manhaj* of the *ṣaḥābah*, *tābi'īn* and *madhhab* priests.

This article uses a critical analytical method to examine the moderate *fiqh* methodology proposed by Yūsuf al-Qarḍāwī. The author applies an interdisciplinary approach to data analysis, which is utilizing the science of *uṣūl al-fiqh*, philosophy, '*ulūm al-Qur'ān*', '*ulūm al-ḥadīth*', and '*maqāṣid al-sharī'ah*' as analysis tools. This article aims to determine the moderate *fiqh istinbāt* method formulated by al-Qarḍāwī and its application in formulating Islamic law. In addition, it is also to know the epistemology of al-Qarḍāwī's moderate *fiqh istinbāt*, to understand his position in the map of contemporary Islamic thinkers, and to know the development of *uṣūl al-fiqh*.

Understanding Moderate Jurisprudence

Moderate *fiqh* is formed from two words that both have their meaning; *fiqh* and moderate. Etymologically, Jurisprudence is the understanding, knowledge,⁴

⁴ 'Abū Bakr Muḥammad ibn al-Ṭayyib Al-Bāqillānī, *Al-Taqrīb wa al-Irshād* (Beirut: Mu'assasah al-Risālah, 1998), vol. I; 171; Muḥammad ibn al-Husayn al-Farrā' Al-Baghdādī, *Al-'Uddah fī Uṣūl al-Fiqh*, ed. Aḥmad ibn 'Alī (Riyād: al-Mamlakah al-'Arabiyah al-Su'ūdiyyah, 1993), vol. I; 67; Muḥammad ibn 'Abd al-Hamīd Al-Asmandī, *Badhl al-Nazar fī al-Uṣūl* (Kairo: Maktabah Dār al-Turāth, 1992), 6; 'Abdullāh ibn Aḥmad ibn Muḥammad ibn Qudāmah, *Rawḍah al-Nāzir wa Jannah al-Manāzir fī Uṣūl al-Fiqh* (Riyad: Maktabah al-Rush, 1993), vol. I: 58; 'Alī ibn 'Abd al-Kāfī al-Subkī Al-Subkī and 'Abd al-Wahhāb ibn 'Alī, *Al-Ibhāj fī Sharḥ al-Minhāj* (Kairo: Maktabah al-Kulliyat al-'Azhariyah, 1981), 28.

or understanding of what the speaker is saying.⁵ Meanwhile, in terms of terminology, *fiqh* is knowledge of *shara'* 'amaliyah (deeds) laws resulting from *tafsīlī* arguments.⁶ Meanwhile, the author tries to explain moderate etymologically as the middle between the two ends⁷ and the balance of everything.⁸ In Arabic, it is called *al-wasatīyah* (الوسطية), a *maṣdar ṣinā'ī* form of the word *al-wasaṭa*. The word that corresponds to *al-wasatīyah* in Koran is found in three forms; *isim*, *fi'il*, and *ṣifat*. The word is embodied in al-Baqarah 143, 238; al-Qalam 28; al-'Ādiyāt 5; and al-Mā'idah 89. The word *wasat* can mean fair or choice and mean being in the middle between two ends. At the same time, *al-awsat* is closer to the moderate meaning and far from the extreme meaning and can mean more critical, while *al-wuṣṭā* means a phenomenon between two things.⁹

In terms of terminology, al-Qarḍāwī defines it as the equilibrium between two opposing or opposing sides. One side cannot be influenced by exposing the other side; one side does not take more rights, not transcend and marginalize the other side. The examples of two opposing sides are divinity (*rabbāniyah*) and humanity (*insāniyah*), spiritual (*rūhaniyah*) and materialistic (*mādiyah*), *ukhrawiyah* and *dunyawiyah*, revelation and reason, regarding the past (*māḍiyah*) and regarding the future (*mustaqbaliyah*), individual (*fardiyah*) and collective (*jamā'iyah*), realistic (*wāqi'iyah*) and idealistic (*mithāliyah*), rights (*ḥuqūq*) and obligations (*wājibāt*), constant (*thabāt*) and transformation (*taghayyur*), *naṣṣ* and *ijtihād*, literalist (*zāhiriyyah*) and substantive (*maqāṣidiyyah*), 'āthar and logic (*ra'y*), and so on.¹⁰

⁵ Muḥammad ibn 'Umar ibn al-Ḥusayn Al-Rāzī, *Al-Maḥṣūl fī Uṣūl al-Fiqh*, ed. Tahā Jābir Al-'Alwānī (Beirut: Mu'assasah al-Risālah, n.d.), vol. I; 78.

⁶ 'Abdullāh ibn 'Umar Al-Bayḍāwī, *Minhāj al-Wuṣūl 'ilā 'Ilm al-'Uṣūl* (Beirut: Dār ibn Hazm, 2008), 51.

⁷ Muḥammad ibn Ya'qūb Al-Fayrūzabādī, *Al-Qāmūs al-Muḥīṭ* (Beirut: Mu'assasah al-Risālah, 2005), 692; Shawqī Dayf, *Al-Mu'jam al-Wasīṭ* (Mesir: Maktabah al-Shurūq al-Dawliyyah, 2004), 1031; Maḥmūd ibn Aḥmad Al-'Aynī, *'Umdah al-Qārī' Sharḥ Ṣaḥīḥ al-Bukhārī'* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2001), vols XXII; 405.

⁸ Ibrāhīm Madkūr, *Mu'jam al-Wajīz* (Mesir: Wazārah al-Tarbiyyah wa al-Ta'līm, 1994), 668; Dayf, *Al-Mu'jam al-Wasīṭ*, 1031.

⁹ Yūsuf Al-Qarḍāwī, *Fiqh al-Wasatīyah al-Islāmiyyah wa al-Tajdīd; Ma'ālim wa Manārāt* (Markaz al-Qarḍāwī, 2009), 18–19; Wahbah Al-Zuhaylī, *Qaḍāyā al-Fiqh wa al-Fikr al-Mu'āṣir* (Damaskus: Dār al-Fikr, 2007), vols II; 549; Dayf, *Al-Mu'jam al-Wasīṭ*, 1031; Madkūr, *Mu'jam al-Wajīz*, 668.

¹⁰ Yūsuf Al-Qarḍāwī, *Kalimāt fī al-Wasatīyah al-Islāmiyyah wa Ma'ālimihā* (Kairo: Dār al-Shurūq, 2011), 13; Yūsuf Al-Qarḍāwī, *Al-Khaṣā'is al-'Āmmah li al-*

'Abdullāh bin Bayyah defines moderate as a combination between universal (*kullī*) and partial (*juz'ī*), the balance between *maqāṣid* and *furū'*, the ever-changing integration of text and *al-maṣlaḥah*, in setting fatwas.¹¹ Wahbah al-Zuhaylī describes the moderate as the middle in terms of faith, stance, behavior, systems, interactions, and morals from the universal paradigm.¹² Muḥammad Abū al-Faṭḥ defines moderate as an effort to achieve perfect harmony and asymmetry between separate components or integral components in a unified whole.¹³ While Muṣṭafā La'azūzī defines moderate as a state of speech and behavior that shuns excessive and ignorant attitudes. It is praiseworthy and necessary for warding off radicalism and keeping away from tendencies to extremes and neglect.¹⁴ Based on some of the above definitions, it can be concluded that moderate *fiqh* is a knowledge of the laws of *shara'* '*amaliyah*' resulting from a study of *nuṣūṣ al-juz'iyah*, arguments of *shara'*, and *maqāṣid al-sharī'ah* by combining and integrating each other.

Yūsuf al-Qarḍāwī's Version of the *Istinbāt* Methods of the Moderate *Fiqh*

Moderate jurisprudence is drawn from the *istinbāt* method with a moderate pattern. Yūsuf al-Qarḍāwī, as a moderate thinker, formulated several methods of moderate *fiqh istinbāt* as follows.

1. Examining the *maqāṣid* contained in *nuṣūṣ al-sharī'ah* before establishing Islamic law

The first method of moderate *fiqh istinbāt* is to study and contemplate the *maqāṣid* contained in the texts before formulating Islamic law.¹⁵ Every Islamic

Islām (Beirut: Mu'assasah al-Risālah, 1983), 127; 'Iyād Kāmil Ibrāhīm al-Zibārī, *Siyāsah al-Tadarruj fī al-Aḥkām al-Sharīyah* (Beirut: Dār al-Kutub al-'Ilmiyah, 2017), 65; Thā'ir Ibrāhīm Khuḍīr al-Shamrī, *Al-Wasaṭiyah fī al-'Aqīdah al-Islāmiyah* (Beirut: Dār al-Kutub al-'Ilmiyah, 2005), 20; Al-Qarḍāwī, *Fiqh al-Wasaṭiyah al-Islāmiyah wa al-Tajdīd; Ma'ālīm wa Manārāt*, 23.

¹¹ 'Abdullāh ibn Bayyah, 'Ma'āyir al-Wasaṭiyah fī al-Fatwā', n.d.; 'Abdullah ibn Bayyah, *Al-Irhāb: Al-Tashkhīṣ wa al-Ḥulūl* (Riyad: Maktabah al-'Ubaykān, 2007), 100.

¹² Al-Zuhaylī, *Qaḍāyā al-Fiqh wa al-Fikr al-Mu'āṣir*, vols I; 578.

¹³ Muḥammad Abū al-Faṭḥ al-Bayānūnī, *Al-Wasaṭiyah Khaṣīṣah al-Ummah al-Islāmiyah* (Kairo: Dār Iqra', 2014), 11.

¹⁴ Muṣṭafā La'azūzī, *Fiṭrah Allāh Tawāzun wa Wasaṭiyah, I'tidāl wa Hanīfiyah* (Beirut: Dār al-Kutub al-'Ilmiyah, 2006), 10.

¹⁵ There are at least four *maqāṣid*-based *ijtihād* methods, a) understanding the texts and Islamic law based on *maqāṣid*, b) combining universal *maqāṣid* and partial propositions, c) take *maṣāliḥ* and reject *mafāsīd*, d) consider the

law prescribed to human is intended to realize *maqāṣid al-sharī'ah*. It is based on research on a number of the arguments of the Koran and Sunnah.¹⁶ Understanding *maqāṣid al-sharī'ah* comprehensively and establishing Islamic law based on *maqāṣid* considerations is very important in the logic of *ijtihād*.¹⁷ *Maqāṣid al-sharī'ah* is not merely theoretical but is researched and applied in applying Islamic law,¹⁸ and it can be used as a source.¹⁹ Any Islamic law that contradicts *maqāṣid* is invalid.²⁰ Therefore, *faqīh*, *mujtahid*, and *mustanbiṭ* must always think about *maqāṣid* in every stipulating Islamic law.²¹ An opinion regarding Islamic law can be taken, followed, and applied if it emerges from a

consequences of Islamic law. Muḥammad 'Abd al-'Āṭī Muḥammad 'Alī, *Al-Maqāṣid al-Sharī'iyah wa Atharuhā fī al-Fiqh al-Islāmī* (Kairo: Dār al-Hadīth, 2007), 267; Aḥmad al-Raysūnī, *Nazariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī* (Riyad: Al-Dār al-'Alamiyah li al-Kitāb al-Islāmī wa al-Ma'hād al-'Alamī al-Fikr al-Islāmī, 1995), 363; Al-Qardāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 155.

¹⁶ Muḥammad al-Tāhir ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyah* (Yordania: Dār al-Nafā'is, 2001), 179; 'Abdullāh Ibn Bayyah, *Alāqah Maqāṣid al-Sharī'ah bi Uṣūl al-Fiqh* (London: Mu'assasah al-Furqān, 2006), 37–38; Haza' ibn 'Abdullāh ibn Ṣāliḥ al-Ghāmidī, *Muḥāwalāt al-Tajdīd fī Uṣūl al-Fiqh wa Da'awātuh Dirāsah wa Taqwīm* (Riyad: Wazārah al-Ta'līm al-'Ālī, 2008), vols II; 348; 'Alī, *Al-Maqāṣid al-Sharī'iyah wa Atharuhā fī al-Fiqh al-Islāmī*, 19–20; Aḥmad al-Raysūnī, *Nazariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī* (Herndon: al-Ma'hād al-'Ālamī lilfikr al-Islāmī, 1995), 145.

¹⁷ 'Abdullāh ibn Bayyah, *Mashāhid min al-Maqāṣid* (Riyad: Dār Wujūh, 2012), 151; Aḥmad al-Raysūnī, *Al-Tajdīd al-Uṣūlī Nahw Siyāghah Tajdīdīyah li 'Ilm Uṣūl al-Fiqh* (Beirut: Dār al-Kalimah, 2015), 725; Bayyah, *Alāqah Maqāṣid al-Sharī'ah bi Uṣūl al-Fiqh*, 95; al-Raysūnī, *Nazariyah al-Maqāṣid 'inda al-Imām al-Shāṭibī*, 353; Aḥmad al-Raysūnī, *Muḥādarāh fī Maqāṣid al-Sharī'ah* (Kairo: Dār al-Kalimah, 2010), 287; Ibrāhīm ibn Mūsā ibn Muḥammad al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Saudi: Wazārah al-Shu'ūn al-Islāmiyah, n.d.), vols IV; 76; Nūr al-Dīn ibn Mukhtār al-Khādīmī, *Al-Ijtihād al-Maqāṣidī* (Qatar: Dār al-Kutub al-Qatariyah, 1998); 'Alal al-Fāsī, *Maqāṣid al-Sharī'ah al-Islāmiyyah wa Makārimuhā*, 5th ed. (Rabat: Dār al-Gharb al-Islāmī, 1993), 165–66; Samīḥ 'Abd al-Wahhāb al-Jundī, *Ahammiyah al-Maqāṣid fī al-Sharī'ah al-Islāmiyah* (Beirut: Mu'assasah al-Risālah, 2008), 69; al-Ghāmidī, *Muḥāwalāt Aa-Tajdīd fī Uṣūl al-Fiqh wa Da'awātuh Dirāsah wa Taqwīm*, 405–6; Aḥmad al-Raysūnī, *Maqāṣid al-Maqāṣid* (Beirut: al-Shubkah al-'Arabiyyah, 2013), 42.

¹⁸ 'Abd al-Wahhāb ibn 'Alī ibn 'Abd al-Kāfi al-Subkī, *Al-Ibhāj fī Sharḥ al-Minhāj* (Kairo: Maktabah al-Kulliyat al-Azhariyah, 1981), vols III; 8–9; al-Jundī, *Ahammiyah al-Maqāṣid fī al-Sharī'ah al-Islāmiyah*, 71.

¹⁹ Al-Raysūnī, *Al-Tajdīd al-Uṣūlī Nahw Siyāghah Tajdīdīyah li 'Ilm Uṣūl al-Fiqh*, 725.

²⁰ Hammādī 'Ubaydī, *Al-Shāṭibī wa Maqāṣid al-Sharī'ah* (Beirut: Dār Qutaybah, 1992), 150; al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, vols IV; 252.

²¹ Al-Raysūnī, *Maqāṣid al-Maqāṣid*, 43; al-Raysūnī, *Al-Tajdīd al-Uṣūlī Nahw Siyāghah Tajdīdīyah li 'Ilm Uṣūl al-Fiqh*, 725.

mujtahid who knows *maqāṣid al-sharī'ah* extensively and deeply.²² A person who does not understand and pay attention to *maqāṣid* in every commandment (*al-'amr*) and prohibition (*al-nahy*) he does not have the intelligence to stipulate Islamic law,²³ because *maqāṣid* is the essence, wisdom of *al-sharī'ah*²⁴ and the foundation for *mujtahids*.²⁵

Knowing the benefit of humans is an essential part of formulating Islamic law.²⁶ Suppose Islamic law cannot realize benefit due to time, place, and condition. It cannot be implemented at that time, and its implementation is postponed until it can manifest the benefits.²⁷ Analyzing reality and thinking about the application of *maqāṣid* are very important in doing *ijtihād*.²⁸ In this case, the significance observes the reality comprehensively in terms of time, place, local customs, and legal objects (person or public).²⁹ In addition, because the texts are not likely to increase while the problems continue to develop, doing

²² Al-Subkī, *Al-Ibhāj fī Sharḥ al-Minhāj*, vols III; 206.

²³ 'Abd al-Mulk ibn 'Abdullāh al-Juwaynī, *Al-Burhān fī Uṣūl al-Fiqh* (Kairo: Dār al-Aṣar, n.d.), vols I; 295; Muḥammad Sa'd ibn Aḥmad ibn Mas'ūd al-Yūbī, *Maqāṣid al-Sharī'ah wa 'Alāqatuhā bi al-Adillah al-Sharīyah* (Riyad: Dār al-Hijrah, 1998), 50–51; 'Abd al-'Azīz ibn 'Abd al-Raḥmān ibn Rabī'ah, *Ilm Maqāṣid al-Sharī'* (Riyad: Maktabah al-Mulk, 2002), 59; 'Abd al-Qādir Harazullāh, *Dawābit I'tibār al-Maqāṣid fī Majāl al-Ijtihād wa Atharuhā al-Fiqhī* (Riyad: Maktabah al-Rush, 2007), 173; Al-Raysūnī, *Naẓariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī*, 48.

²⁴ Aḥmad al-Raysūnī, 'Al-Maqāṣid al-Sharī'ah wa Dawruhā fī Istinbāt al-Aḥkām', *Al-Muslim al-Mu'āṣir* 32, no. 128 (2008): 8; Bayyah, 'Alāqah Maqāṣid al-Sharī'ah bi Uṣūl al-Fiqh, 133.

²⁵ Abū Ḥāmid Muḥammad Al-Ghazzālī, *Haqīqah Al-Qawlaynī* (Riyad: Majallah al-Jam'iyah al-Fiqhiyah al-Su'ūdiyyah, n.d.), 312; 'Abd al-Raḥmān ibn Abū Bakr Al-Suyūṭī, *Al-Radd 'Alā Man Akhḥad 'ilā al-Arḍ wa Jahila anna al-Ijtihād fī Kull 'Aṣr Farḍ* (Kairo: Maktabah al-Thaqāfah al-Dīniyah, n.d.), 91; Aḥmad al-Raysūnī, *Al-Fikr al-Maqāṣidī Qawā'iduh wa Fawā'iduh* (Riyad: al-Dār al-Bayḍa', 1999), 91; al-Jundī, *Aḥammīyah al-Maqāṣid fī al-Sharī'ah al-Islāmiyah*, 105.

²⁶ Muḥammad Abū Zahrah, *Uṣūl al-Fiqh* (Beirut: Dār al-Fikr al-'Arabī, n.d.), 386.

²⁷ 'Abd al-Majīd al-Najjār, *Maqāṣid al-Sharī'ah bi 'Ab'āb Jadīdah* (Beirut: Dār al-Gharab al-Islāmī, 2008), 20; Al-Ghāmidī, *Muḥāwalāt al-Tajdīd fī Uṣūl al-Fiqh wa Da'awātuh Dirāsah wa Taqwīm*, vols II; 779.

²⁸ Aḥmad al-Raysūnī, *Min A'lām al-Fikr al-Maqāṣidī* (Beirut: Dār al-Hādi, 2003), 84; Al-Ghāmidī, *Muḥāwalāt al-Tajdīd fī Uṣūl al-Fiqh wa Da'awātuh Dirāsah wa Taqwīm*, vols II; 780.

²⁹ Aḥmad al-Raysūnī, *Al-Taysīr al-Fiqhī* (Beirut: Dār Ibn Ḥazm, 2007), 116; 'Ādil al-Shuwaykh, *Ta'līl al-Aḥkām fī al-Sharī'ah al-Islāmiyah* (Ṭanta: Dār al-Bashīr, 2000), 220; Ismā'īl Kawkasāl, *Taghayyur al-Aḥkām fī al-Sharī'ah al-Islāmiyah* (Beirut: Mu'assasah al-Risālah, 2000), 76.

ijtihād based on *maqāsid* is necessary.³⁰ Islamic law is applied with due observance of *maqāsid* by the conditions of the local community.³¹ To deny *maqāsid* is the same as eliminating the spirit in *fiqh*.³²

An example related to this method is the beard problem. It is described in three *ṣaḥīḥ* traditions. It is essential to know the meaning of *al-'amr* in the editorial of the *ḥadīth*. Is it an obligation, or is it just a sunnah?

Ibn 'Umar narrates the first *ḥadīth*. The Holy Prophet said:³³

خَالِفُوا الْمُشْرِكِينَ وَفِرُّوا اللَّيِّ وَأَحْفُوا الشَّوَارِبَ

"Be different from the idolaters, lengthen the beard and cut the moustache."

In another narration from ibn 'Umar, he mentioned the Magi to the Messenger of Allah; then he said:³⁴

أَنَّهُمْ يُوقُونَ سِبَالَهُمْ وَيَحْلِفُونَ لِحَاهُمْ فَخَالِفُوهُمْ

"They grow mustaches and shave beards, different from them."

The second *ḥadīth* narrated by Abū Hurayrah. The Holy Prophet said:³⁵

جُرُّوا الشَّوَارِبَ وَأَرْخُوا اللَّيِّ خَالِفُوا الْمَجُوسَ

"Cut the mustache, lengthen the beard and be different from the Magi."

The third *ḥadīth* narrated by Abū Umāmah al-Bāhilī.³⁶

خَرَجَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى مَشِيخَةٍ مِنَ الْأَنْصَارِ بِيضَ لِحَاهُمْ فَقَالَ يَا مَعْشَرَ الْأَنْصَارِ حَمِّرُوا وَصَفِّرُوا وَخَالِفُوا أَهْلَ الْكِتَابِ قَالَ فَقُلْتُ يَا رَسُولَ اللَّهِ إِنَّ أَهْلَ الْكِتَابِ يَتَسَوَّرُونَ وَلَا يَأْتِرُونَ

³⁰ Al-Khādīmī, *Al-Ijtihād al-Maqāsidī*, vols II; 114; Al-Jundī, *Ahammiyah al-Maqāsid fī al-Sharī'ah al-Islāmiyah*, 63.

³¹ Aḥmad al-Raysūnī, *Naẓariyyāt al-Maqāsid 'ind al-Imām al-Shāṭibī*, 149; Nūr al-Dīn ibn Mukhtār al-Khādīmī, *ʿIlm al-Maqāsid al-Sharʿiyyah* (Riyad: Maktabah al-'Ubaykān, 2001), 137; Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, vols II; 53.

³² Aḥmad al-Raysūnī, *Al-Madkhal 'ilā Maqāsid al-Sharī'ah* (Kairo: Dār al-Kalimah, 2009), 16.

³³ 'Alī ibn Khalf ibn 'Abd al-Mālik, *Sharḥ Ṣaḥīḥ al-Bukhārī li Ibn Baṭṭāl* (Riyad: Maktabah al-Rushd, n.d.), vols IX; 146; Muḥy al-Dīn ibn Sharf al-Nawawī, *Al-Minhāj Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj* (Kairo: al-Maṭba'ah al-Misriyah, 1929), 247; Al-'Aynī, *'Umdah Al-Qārī' Sharḥ Ṣaḥīḥ Al-Bukhārī'*, vols XXII; 71.

³⁴ 'Alī ibn Balbān al-Fārisī, *Ṣaḥīḥ Ibn Hibbān bi Tartīb Ibn Balbān* (Beirut: Mu'assasah al-Risālah, 1993), vols XXII; 290.

³⁵ 'Abd al-Raḥmān ibn Abū Bakr al-Suyūṭī, *Al-Dībāj 'alā Ṣaḥīḥ Muslim Ibn al-Ḥajjāj* (Riyad: Dār ibn 'Affān, 1996), vols V; 38; Mūsā Shāhin Lāshin, *Fath al-Mun'im Sharḥ Ṣaḥīḥ Muslim* (Kairo: Dār al-Shurūq, 2002), vols II; 176–178; Al-Nawawī, *Al-Minhāj Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj*, vols III; 247.

³⁶ Aḥmad ibn Muḥammad ibn Ḥanbal, *Al-Musnad* (Kairo: Dār al-Hadīth, 1995), vols XVI; 257–258.

فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَسْرَوْلُوا وَأَنْتَرُوا وَخَالِفُوا أَهْلَ الْكِتَابِ قَالَ قُلْتُ يَا رَسُولَ اللَّهِ إِنَّ أَهْلَ الْكِتَابِ يَتَخَفَّمُونَ وَلَا يَنْتَعِلُونَ قَالَ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَتَخَفَّمُوا وَأَنْتَعِلُوا وَخَالِفُوا أَهْلَ الْكِتَابِ قَالَ فَقُلْنَا يَا رَسُولَ اللَّهِ إِنَّ أَهْلَ الْكِتَابِ يَتَّخِذُونَ عَتَانِيهِمْ وَيُوقِرُونَ سِبَالَهُمْ قَالَ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَصُوا سِبَالَكُمْ وَوَقِرُوا عَتَانِيَكُمْ وَخَالِفُوا أَهْلَ الْكِتَابِ

"Rasulullah came to the old man of Ansar who had bleached his beard, he said: "O people of Ansar, red and yellow and be different from the Ahl al-Kitāb." I asked, "O Messenger of Allah, actually the Ahl al-Kitāb wears pants but does not have a sarong." He replied, "gloat and be different from the Ahl al-Kitāb". I asked, "O Messenger of Allah, actually Ahl al-Kitāb wears shoes but does not wear sandals", he replied, "Wear shoes and sandals and be different from Ahl al-Kitāb." We asked, "O Messenger of Allah, actually Ahl al-Kitāb cut beard and grow a mustache.", he said, "Cut your mustache and leave your beard and be different from the Ahl al-Kitāb."

If we observe the three *ḥadīths* above, we find a common thread that the *maqāṣid* in the command to lengthen beard has a reason (*'illah*), which is not resembling the shape and appearance of non-Muslims. It is crucial to do, especially during the early days of the formation of Islam. Muslims must have an independent character that differentiates them from other people. Thus, if the beard problem is related to *'illah*, then the rule of presence and absence of law, related to *'illah* applies,³⁷ namely *المخالفة لغير المسلمين* (different from non-Muslims).³⁸ Moreover, *المخالفة لغير المسلمين* when viewed from the priority scale; *ḍarūriyah* (immediate needs), *ḥājīyah* (secondary needs), and *taḥsīniyah* (tertiary needs)). It is more in line with *taḥsīniyah*, not *ḥājīyah*, let alone *ḍarūriyah*. Therefore, it is not obligatory to synchronize with the Sunnah. This provision is in line with the wisdom of the promulgation of the law.³⁹

As a Muslim-majority country, such as Indonesia, Pakistan, Bangladesh, Egypt, Malaysia, Nigeria, Turkey, Algeria, and Morocco, it is better to leave different symbols. So that inter-religious people can live in harmony, interact and communicate well. Thus, Islam rahmah li al-ālamīn can be realized through good words and deeds, warding off danger, and together creating unity and integrity and building national civilization.

³⁷ Ibn Qayyim al-Jawziyah, *l'ām Al-Muwaqqi'in 'an Rabb al-Ālamīn* (Riyad: Dār ibn al-Jawzī, 1423), vols V; 528; Muḥammad Ṣidqī ibn Aḥmad al-Būrnū, *Mawsū'ah al-Qawā'id al-Fiqhiyah* (Beirut: Dār ibn Ḥazm, 2000), 195; Khālid ibn Ḥusayn ibn 'Abd al-Raḥmān, *Jalīṣuk fī Ramaḍān* (Riyad: Dār Ṭawīq, 2002), 246.

³⁸ Al-Qarḍāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 157–58.

³⁹ Al-Qarḍāwī, 158.

2. Linking texts and Islamic law with texts and other Islamic laws

The second method is to combine one text with another and observe Islamic law extensively and comprehensively.⁴⁰ The reading of texts systematically and comprehensively can combine *al-kulliyāt al-'āmmah* and *al-adillah al-khāṣṣah*⁴¹ so that *maqāṣid al-sharī'ah* can be known.⁴² Paying attention to particularities within a universal frame becomes necessary in applying particular arguments.⁴³ Therefore, reading partial arguments when doing *ijtihād* must be accompanied by thinking about the universality of *sharī'ah*, *al-maqāṣid al-'āmmah*, and comprehensive *fiqh* rules.⁴⁴ Underestimating one of the results a mistake in understanding texts and determining Islamic law. This kind of recitation can only be done by knowing the *maqāṣid* and mastering universal propositions.⁴⁵ Suppose there is a contradiction between universal rules and particular texts. In that case, one should combine them by compiling texts on one theme and contemplating the universal rules of *sharī'ah*⁴⁶ because the particular ones are only established by preserving the universal. It became clear after exposing the *maqāṣid al-sharī'ah*.⁴⁷ Thus, the correct and perfect *ijtihād* is to study partial

⁴⁰ Yūsuf al-Qardāwī, *Al-Marja'iyah al-'Ulyā fī al-Islām li al-Qur'ān wa al-Sunnah* (Kairo: Maktabah Wahbah, 2012), 174; Al-Qardāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 149.

⁴¹ Al-Raysūnī, *Nazariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī*, 369–70; 'Alī, *Al-Maqāṣid al-Sharī'ah wa Atharuhā fī al-Fiqh al-Islāmī*, 268–69.

⁴² Abū Hāmid Muḥammad al-Ghazzālī, *Al-Mustasfā min 'Ilm al-Uṣūl* (Beirut: Dār al-Kutub al-'Ilmiyah, 1413), vols I; 32; Nāṣir ibn 'Abdullāh ibn 'Alī al-Qarāfī, *Kitāb al-Furūq Anwār al-Burūq fī Anwā' al-Furūq* (Kairo: Dār al-Salām, 2001), vols II; 670.

⁴³ 'Abd al-Hamīd al-'Alamī, *Manhaj al-Dars al-Dalālī 'ind al-Imām al-Shāṭibī* (Maroko: Wazārah al-Awqāf wa al-Shu'ūn al-Islāmiyah, 2001), 125; Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, vols III; 5; 'Alī, *Al-Maqāṣid al-Sharī'ah wa Atharuhā fī al-Fiqh al-Islāmī*, 269–70; Al-Raysūnī, *Nazariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī*, 371; Rabī'ah, *'Ilm Maqāṣid al-Shāri'*, 281.

⁴⁴ Al-Raysūnī, *Nazariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī*, 370; 'Alī, *Al-Maqāṣid al-Sharī'ah wa Atharuhā fī al-Fiqh al-Islāmī*, 269; Al-Qardāwī, *Al-Marja'iyah al-'Ulyā fī al-Islām li al-Qur'ān wa al-Sunnah*, 226.

⁴⁵ Al-Raysūnī, *Nazariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī*, 360.

⁴⁶ Al-Raysūnī, *Muhādarāh fī Maqāṣid al-Sharī'ah*, 240.

⁴⁷ 'Abd al-Majīd Turkī, *Munāzarāt fī Uṣūl al-Sharī'ah al-Islāmiyah bayn Ibn Ḥazm wa al-Bāji* (Beirut: Dār al-Gharab al-Islāmī, 1986), 490; Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, vols III; 6–7; 'Alī, *Al-Maqāṣid al-Sharī'ah wa Atharuhā fī al-Fiqh al-Islāmī*, III; 6–7; Al-'Alamī, *Manhaj al-Dars al-Dalālī 'ind al-Imām al-Shāṭibī*, 126.

propositions, universal propositions, and *al-maqāṣid al-'āmmah* in responding to every problem of Islamic law.⁴⁸

Integrating chapters of fiqh such as jurisprudence, *mu'āmalah*, *munākahah*, *jināyah*, sanctions, lawsuits, indictments, Islamic politics, *jihād*, and international relations is needed in doing jihad because all *fiqh* matters are interrelated.⁴⁹ This kind of method can provide solutions to various problems faced by Muslims in the era of globalization and disruption.

Combining verses with verses and *ḥadīths* is necessary to understand the text. It is because they are related and explained to each other. Other verses detail global verses, and other verses limit verses that are vague by other verses, verses that are *muṭṭlaq*, and so on.⁵⁰ Likewise, *ḥadīth*, when it is global, *muṭṭlaq*, and vague, is detailed, limited, and clarified by other *ḥadīths*.⁵¹ Thus, integrating texts into a must to produce a complete understanding can reveal the text's purpose.

An example of this second method is *isbāl*. Some *Ḥadīth* called it *muṭṭlaq* editorial, and other *ḥadīths* use *taqyīd* (limitation). Muslim narrated the *ḥadīth*, which is *muṭṭlaq* in nature from Abū Dhar. The Holy Prophet said:⁵²

ثَلَاثَةٌ لَا يُكَلِّمُهُمُ اللَّهُ يَوْمَ الْقِيَامَةِ ، الْمَنَّانُ الَّذِي لَا يُعْطَى شَيْئًا إِلَّا مَنَّهُ ، وَالْمُنْفِقُ سَلَعْتَهُ بِالْحَلْفِ الْفَاجِرِ ،
وَالْمُسْبِلُ إِزَارَهُ

"Three groups of people who will not be spoken to by Allah SWT on the Day of Judgment. 1. *al-mannān*, namely people who do not give anything except to be brought up. 2. *sellers* who try to sell their goods under false oath. 3. the person holding out the sheath until it is below the ankles."

The sentence *الْمُسْبِلُ إِزَارَهُ* is *muṭṭlaq*. Every argument that is *muṭṭlaq* (absolute) is also enforced absolutely until other arguments limit it.⁵³ In connection with

⁴⁸ Al-Raysūnī, *Nazariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī*, 371; Rabī'ah, *'Ilm Maqāṣid al-Shāri'*, 281.

⁴⁹ Al-Qarḍāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 149.

⁵⁰ Yūsuf al-Qarḍāwī, *Kayf Nata'mal ma'a al-Qur'ān al-'Azīm* (Kairo: Dār al-Shurūq, 2000), 220.

⁵¹ Al-Qarḍāwī, 123.

⁵² Iyād ibn Mūsā ibn 'Iyād al-Yaḥṣabī, *Ikmāl Muslim bi Fawā'id Muslim* (Beirut: Dār al-Wafā', 1998), vol I; 114.

⁵³ Muḥammad ibn 'Alī ibn Muḥammad al-Shawkānī, *Irshād al-Fuḥul 'ilā Taḥqīq al-Haq min 'Ilm al-Uṣūl* (Riyad: Dār al-Faḍīlah, 2000), 711; 'Alī ibn Muḥammad al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām* (Dār al-Ṣama'ī, 2003), vols III; 6; Muḥammad ibn 'Abdullāh al-Zarkashī, *Al-Baḥr al-Muḥit fī Uṣūl al-Fiqh* (Kairo: Dār al-Ṣafwah, 1992), vols III; 416; Muḥammad ibn Nizām al-Dīn al-Sahālawī, *Fawātif*

the above *ḥadīth*, there are several *ḥadīths* with the same theme that limit their absoluteness, namely the *ḥadīths* narrated by al-Bukhārī from 'Abdullāh ibn 'Umar. The Holy Prophet said:⁵⁴

مَنْ جَرَّ ثَوْبَهُ خِيَلَاءَ لَمْ يَنْظُرُ اللَّهُ إِلَيْهِ يَوْمَ الْقِيَامَةِ

"On the Day of Resurrection, Allah will not see anyone pulling his clothes out of pride."

Muslim narrated another *ḥadīth* with the same theme from Abū Hurayrah and Ibn 'Umar. The Holy Prophet said:⁵⁵

لَا يَنْظُرُ اللَّهُ يَوْمَ الْقِيَامَةِ إِلَى مَنْ جَرَّ إِزَارَهُ بَطْرًا

"On the Day of Resurrection, Allah will not look at anyone who sticks out a scabbard out of arrogance."

A *ḥadīth* narrated by Muslim from ibn 'Umar, he heard Rasūlullāh said:⁵⁶

مَنْ جَرَّ إِزَارَهُ لَا يُرِيدُ بِذَلِكَ إِلَّا الْمَخِيلَةَ فَإِنَّ اللَّهَ لَا يَنْظُرُ إِلَيْهِ يَوْمَ الْقِيَامَةِ

"Whoever extends the scabbard with the intention of boasting, Allah will not see it on the Day of Resurrection."

After combining some of these traditions, the first *ḥadīth*, which is *mutlaq*, is limited (*taqyīd*) by the following three traditions. Al-Nawawī and Ibn Ḥajr assert that the absoluteness of the prohibition of lengthening clothes is limited by arrogance.⁵⁷ More than that, Ibn Ḥajr explained that the sin of increasing clothes is due to pride. So that in terms of prohibition, *isbāl* is simply due to arrogance.⁵⁸

al-Raḥamūt (Beirut: Dār al-Kutub al-'Ilmiyah, 2002), vols I; 370; Al-Juwaynī, *Al-Burhān fī Uṣūl al-Fiqh*, vols I; 431.

⁵⁴ 'Abd al-Raḥmān ibn Abū Bakr al-Suyūṭī, *Al-Tawshīh Sharḥ al-Jāmi' al-Ṣaḥīḥ* (Riyad: Maktabah al-Rush, 1998), vols VIII; 3563; Al-Yaḥṣabī, *Ikmāl Muslim bi Fawā'id Muslim*, vols I; 381.

⁵⁵ Al-Mālik, *Sharḥ Ṣaḥīḥ al-Bukhārī li Ibn Baṭṭāl*, vols IX; 81.

⁵⁶ Ṣafī al-Raḥmān al-Mubārakfūrī, *Minnah al-Mun'im bi Sharḥ Ṣaḥīḥ Muslim* (Riyad: Dār al-Salām, 1999), vols III; 398; Al-Nawawī, *Al-Minhāj Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj*, vols XIV; 61; Al-Suyūṭī, *Al-Dībāj 'alā Ṣaḥīḥ Muslim Ibn al-Ḥajjāj*, vols V; 133; Al-Yaḥṣabī, *Ikmāl Muslim bi Fawā'id Muslim*, vols VI; 598–601.

⁵⁷ Aḥmad ibn Muḥammad al-Khaṭīb al-Qaṣṭalānī, *Irshād al-Sārī 'ilā Sharḥ Ṣaḥīḥ al-Bukhārī* (al-Maṭba'ah al-Kubrā al-Amīriyah, 1323), vols VIII; 418; Aḥmad ibn 'Alī ibn Ḥajar al-'Asqalānī, *Faṭḥ al-Bārī* (Riyad: Maktabah al-Mulk, 2001), vols X; 270.

⁵⁸ Al-'Asqalānī, *Faṭḥ al-Bārī*, vols X; 270; Al-Qaṣṭalānī, *Irshād al-Sārī 'ilā Sharḥ Ṣaḥīḥ al-Bukhārī*, vols VIII; 418.

3. Understanding text in the *asbāb al-nuzūl* and *asbāb al-wurūd* frame

Text can be understood correctly by studying the causes, environment, and conditions. The context behind the decline of the texts is known as *asbāb al-nuzūl al-Qur'ān*⁵⁹ and *asbāb al-wurūd al-ḥadīth*⁶⁰, both micro and macro. Micro *asbāb* is a specific cause behind a revealed verse or *ḥadīth* said. Meanwhile, the macro *asbāb* is a generic cause that surrounds the Koran when revealed and the *ḥadīth* when it is said, which includes socio-political, socio-economic, and socio-cultural aspects.⁶¹ Knowing *asbāb* is the entrance to understand the wisdom of the promulgation of the law, *maqāṣid al-sharī'ah*, and the accuracy of understanding texts.⁶²

Ibn Daqīq al-ʿĪd explained that the deciphering of *asbāb al-nuzūl* is the best method in understanding the meanings of the Koran.⁶³ In line with him, al-Wāḥidī explained that the interpretation of a verse could not be known without first understanding the description of the *asbāb al-nuzūl*.⁶⁴ Ibn Taymiyah also

⁵⁹ 'Abd al-Raḥmān ibn Abū Bakr al-Suyūṭī, *Al-Itqān fī 'Ulūm al-Qur'ān* (Beirut: Mu'assasah al-Risālah, 2008], 71; Mannā' Khalīl al-Qaṭṭān, *Mabāhith fī 'Ulūm al-Qur'ān* (Kairo: Maktabah Wahbah, n.d.), 74.

⁶⁰ Ibrāhīm ibn Muḥammad ibn Kamāl al-Dīn, *Al-Bayān wa al-Ta'rīf fī Asbāb Wurūd al-Ḥadīth al-Sharīf* (Dār al-Ḥukūmah, 1329), 3.

⁶¹ Rumadi, ed., *Hasil-Hasil Mukhtamar ke-33 NU* (Jakarta: Lembaga Ta'rif wan Nasyr PBNNU, 2016), 154; Muḥammad 'Abd al-'Azīm al-Zarqānī, *Manāhil al-'Irfān fī 'Ulūm al-Qur'ān* (Maṭba'ah 'Īsā al-Bābī al-Halabī wa Sharakāh, n.d.), vols I; 108; Salmān ibn 'Umar al-Sanīdī, *Tadabbur al-Qur'ān* (Riyad: Maktabah al-Mulk, 2002), 100-101.

⁶² 'Abd al-Karīm ibn Šāliḥ ibn 'Abdullāh al-Zahrānī, 'Al-Maṣābiḥ fī Tafsīr al-Qur'ān al-'Azīm' (Jāmi'ah Ummu al-Qurā, 2000); Al-Suyūṭī, *Al-Itqān fī 'Ulūm al-Qur'ān*; Tāriq As'ad Ḥilmi al-As'ad, *ʿIlm Asbāb Wurūd al-Ḥadīth* (Beirut: Dār Ibn Ḥazm, 2001); Muḥammad Ra'fat Sa'īd, *Asbāb Wurūd al-Ḥadīth Taḥlīl wa Ta'sīs* (Qatar: Kitāb al-Ummah, n.d.); Abdullah Saeed, *Interpreting the Qur'an: Toward a Contemporary Approach* (New York: Routledge, 2006); Muṣṭafā Al-Bughā and Muḥy al-Dīn Mustawī, *Al-Wāḍiḥ fī 'Ulūm al-Qur'ān* (Damaskus: Dār al-Kalim al-Ṭayyib, 1998); 'Abd al-Sattār Jabr Ghāyab al-Ḥumūdī, *ʿIlm Asbāb Nuzūl al-Qur'ān* (Baghdad: Dīwān al-Waqf, 2014); 'Abdu al-Raḥmān ibn Nāṣir al-Sa'dī, *Taysīr al-Karīm al-Raḥmān fī Tafsīr Kalām al-Mannān* (Riyad: Dār al-Salām, 2002); Al-Qaṭṭān, *Mabāhith fī 'Ulūm al-Qur'ān*; Al-Qarḍāwī, *Al-Marja'iyah al-'Ulyā fī al-Islām li al-Qur'ān wa al-Sunnah*.

⁶³ Muḥammad ibn 'Alī ibn Daqīq al-ʿĪd, *Iḥkām al-Aḥkām Sharḥ 'Umdah al-Aḥkām* (Kairo: 'Ālam al-Kutub, 1987), 259.

⁶⁴ 'Alī ibn Aḥmad al-Wāḥidī, *Asbāb Nuzūl al-Qur'ān* (Beirut: Dār al-Kutub al-'Ilmiyah, 1991), 10; Muḥammad ibn 'Abdullāh al-Zarkashī, *Al-Burhān fī 'Ulūm al-Qur'ān* (Beirut: Dār al-Ma'rīfah, 1990), vols I; 117; Muḥammad Abū Shuhbah, *Al-Madkhal li Dirāsah al-Qur'ān al-Karīm* (Riyad: Dār al-Liwā', 1987), 136; Abū 'Abd al-Raḥmān al-Suyūṭī, *Lubāb al-Nuqūl fī Asbāb al-Nuzūl* (Beirut: Mu'assasah al-Kutub al-Thaqāfiyah, n.d.), 7; Al-Suyūṭī, *Al-Itqān fī 'Ulūm al-Qur'ān*, 71; Al-Bughā

explained that knowing *asbāb al-nuzūl* can help in understanding a verse.⁶⁵ Knowing *asbāb al-nuzūl* is a necessity in exploring the meaning of the Koran. It is for two reasons. First, *maqāṣid al-qur'ān* can only be known by understanding the circumstances surrounding them because one word may have many meanings according to the indication (*qarīnah*) and the demands of the situation. Knowing *asbāb al-nuzūl* can clarify the ambiguity of the meaning that is in the Koran. Second, the lack of knowledge about *asbāb al-nuzūl* can confuse and result in a clear text becoming blurry, so that it often results in disagreements and differences in understanding.⁶⁶ Ignoring the *asbāb al-nuzūl* results in a failure to understand the texts and find *maqāṣid*.

There are three ways to understand the texts; first, to think about the early days of Islam - the social, economic, political and cultural climates at that time -. This kind of contemplation can examine the meaning of a text. The error in interpreting texts is due to being trapped in the conditions of social reality in which they live, not referring to the conditions of social existence when the Koran was revealed. Second, to think about mental and social situations when the Koran was revealed. Third, to contemplate the time and place when the Koran was revealed. These three ways, when used, can lead to the correct meaning of the text because the illustrative language style is spoken according to the context.⁶⁷

If only after studying the *asbāb al-nuzūl* is the most appropriate way to understand the Koran, then understanding the *asbāb al-wurūd* is the right way to grasp the meaning of the *ḥadīth*. The characteristics of the Koran describe universal principles, while *ḥadīths* often respond to problems that are casuistic,

and Mustawī, *Al-Wāḍiḥ fī 'Ulūm al-Qur'ān*, 60; Al-Qattān, *Mabāhith fī 'Ulūm al-Qur'ān*, 76; Al-Humūdī, *Ilm Asbāb Nuzūl al-Qur'ān*, 51; Al-Zarqānī, *Manāhil al-'Irfān fī 'Ulūm al-Qur'ān*, vols I; 109.

⁶⁵ Ahmad ibn 'Abd al-Ḥalīm ibn Taymiyah, *Muqaddimah fī Uṣūl al-Tafsīr*, 1972, 47; Musā'id ibn Sulaymān ibn Nāṣir al-Ṭayyār, *Sharḥ Muqaddimah fī 'Uṣūl al-Tafsīr* (Riyād: Dār ibn al-Jawzī, 1428), 67.

⁶⁶ Muḥammad Jamāl al-Dīn al-Qāsimī, *Maḥāsin al-Ta'wīl* (Dār Ihyā' al-Kutub al-'Arabiyah, 1957), vols I; 28-29; Khālīd 'Abd al-Raḥmān al-'Ak, *Uṣūl al-Tafsīr wa Qawā'iduh* (Beirut: Dār al-Nafā'is, 1986), 102; Muḥammad al-Khudārī Bek, *Uṣūl al-Fiqh* (Mesir: Maktabah al-Tijāriyah al-Kubrā, 1969), 210-11; Al-Sanīdī, *Tadabbur al-Qur'ān*, 101-2.

⁶⁷ 'Abd al-Raḥmān Ḥasan Ḥanbakah al-Mīdānī, *Qawā'id al-Tadabbur al-Amthāl li Kitābillāh 'Azz wa Jall* (Beirut: Dār al-Qalam, 1980), 23-25; Māhir Ḥusayn Haswah, *Fiqh al-Wāqī' wa Atharuh fī al-Ijtihād* (Yordania: al-Ma'had al-'Ālamī lilfikr al-Islāmī, 2009), 150.

partial, and temporal. It also explained specific and complicated things that are not found in the Koran. Therefore, it is necessary to distinguish between particular and global, temporal and eternal, partial and universal. Placing each section according to its provisions then paying attention to the context, conditions, and *asbāb al-wurūd* can help correct understanding.⁶⁸ In-depth research on a *ḥadīth* can open the view that sometimes *ḥadīths* are said for specific reasons, related to certain 'illah, or answer a particular case that happened at that time.

The example for this method is the *ḥadīth* regarding appointing a leader from the Quraish tribe. In a *ḥadīth* narrated by Anas ibn Mālik, the Holy Prophet said:⁶⁹

الأئمة من قريش

"The leaders were from the tribe of Quraish."

The above *ḥadīth* requires a leader from the Quraish tribe. However, when scrutinized, the *ḥadīth* speaks of *siyāsah* (politics), which is 'illah and whose purpose is reasonable (*ma'qūl al-ma'nā*). Therefore, the provisions in the *ḥadīth* do not apply absolutely but are casuistic, partial, and temporal to bring benefit and prevent damage at that time. In this connection, the rule of "law relating to the presence and absence of an 'illah" applies. In addition, the context of the *ḥadīth* illustrates that the Quraysh tribe controlled the strength and ethnicity at that time. Based on this case, ibn Khaldūn stated that the caliphate and empire were built on stability and race. According to him, the requisite requirement of the Quraysh is to reject strife and contention because they have ethnicity and power. *Al-Shāri'* does not specify law on one time and one people but is related to *al-kifāyah* (capability). Therefore, the 'illah contained in the Quraysh is not purely tribal. Thus, the requirement for a leader is to come from a people who have the most influence and power in his time so that he is followed by his people and is in one good command and protection.⁷⁰

The *ḥadīth* thus explains the reality that happened at that time, and the essence of the leader's requirement is capability, not ethnicity. In modern times,

⁶⁸ Al-Qarḍāwī, *Kayf Nata'mal ma'a al-Qur'ān al-'Azīm*, 146; Ḥaswah, *Fiqh al-Wāqī' wa Atharuh fī al-Ijtihād*, 149; 127.

⁶⁹ Aḥmad ibn 'Alī ibn Mathanna al-Tamīmī, *Musnad Abī Ya'lā al-Mawṣalī* (Beirut: Dār al-Thaqāfah al-'Arabiyah, 1992), 321.

⁷⁰ 'Abd al-Raḥmān ibn Khaldūn, *Muqaddimah Ibn Khaldūn* (Beirut: Dār al-Fikr, 2001), vols I; 371.

countries that apply a democratic system, for example, the people's voice, determine a leader's election. The existence of majority vote support in general elections proves whether a leader is capable or not.

4. Distinguishing between constant *maqāṣid* and changing instruments

Every text that affirms the commands, prohibitions, and laws of Islam must be a purpose from *al-Shāri'*. As for the means as a means to an end is not specified in detail, because they can change according to changes in time, place, tradition, social, economic and political conditions. This fact allows people to engage in *ijtihād* in choosing, innovating,⁷¹ and developing it in line with the situation, local conditions, benefits, and is not fixated on certain instruments.⁷² Al-Qarāfi explained that the source of Islamic law has two parts; first, *al-maqāṣid* are goals that contain *maṣlahah* and *mafsadah*. Second, *al-wasā'il* are the means used to achieve the goal.⁷³ Ibn 'Āshur defined *maqāṣid* as actions intended to be accomplished in various ways and pursued earnestly with complete obedience. While *al-wasā'il* are the means implied to obtain the law ideally, a goal is sometimes not achieved without means.⁷⁴ The instrument law follows the *maqāṣid* law, as explained by al-Jawziyah and al-Qarāfi that because *maqāṣid* (goals) cannot be performed without the instrument, the law accompanies the *maqāṣid* law.⁷⁵ Therefore, the means that lead to the prohibition, damage, and

⁷¹ Muḥammad al-Ghazzālī, *al-Sunnah al-Nabawiyah bayn Ahl al-Sunnah wa Ahl al-Hadīth* (Kairo: Dār al-Kitāb al-Miṣrī, 2012), 160.

⁷² Al-Qardāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 174.

⁷³ Ahmad ibn Idrīs al-Qarāfi, *Sharḥ Tanqīh al-Fuṣūl* (Beirut: Dār al-Fikr, 2004), 353; Ahmad ibn al-Qarāfi, *Al-Zahīrah* (Beirut: Dār al-Gharab al-Islāmī, 1994), vols I; 153; Muḥammad Abū Zahrah, *Ibn Ḥanbal Ḥayātuh wa 'Aṣruḥ Ārā'uh wa Fiqhuh* (Kairo: Dār al-Fikr al-'Arabī, n.d.), 365; Muḥammad Abū Zahrah, *Mālik Ḥayātuh wa 'Aṣruḥ Ārā'uh wa Fiqhuh* (Kairo: Dār al-Fikr al-'Arabī, n.d.), 432; 'Abd al-Majīd Jum'ah al-Jazā'irī, *Al-Qawā'id al-Fiqhiyyah al-Mustakhrāj min Kitāb I'lām al-Muwaqqi'in* (Dār ibn al-Qayyim, n.d.), 500; Am Nā'il al-Burkānī, *Fiqh al-Wasā'il fī al-Sharī'ah al-Islāmiyah* (Qatar: Wizārah al-Awqāf wa Shu'un al-Islāmiyah, 2007), 26; Al-Qarāfi, *Kitāb al-Furūq Anwār al-Burūq fī Anwā' al-Furūq*, vols II; 451.

⁷⁴ Muḥammad al-Wakīlī, *Fiqh al-Awwaliyāt Dirāsah fī al-Dawābiṭ* (Herndon: Ma'had al-'Ālamī lilfikir al-Islāmī, 1997), 237; 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyah*, 415, 417; Al-Burkānī, *Fiqh al-Wasā'il fī al-Sharī'ah al-Islāmiyah*, 30.

⁷⁵ 'Abd al-Rahmān Nāṣir al-Sa'dī, *Al-Qawā'id wa al-Uṣūl al-Jāmi'ah* (Kairo: Maṭba'ah al-Madanī, 1956), 10; 'Abd al-'Azīz ibn 'Abd al-Salām al-Sulamī, *Al-Fawā'id fī Ikhtishār al-Maqāṣid* (Beirut: Dār al-Fikr al-Mu'āṣir, 1996), 53; 'Abd al-Nūr Bazā, *Maṣāliḥ al-Insān Muqārabah Maqāṣidiyah* (Herndon: al-Ma'had al-'Ālamī lilfikir al-Islāmī, 2008), 384.

immorality of the law are prohibited (forbidden or impregnated). Meanwhile, the intermediaries who lead to obedience and benefit are ordered (obliged or punished).⁷⁶

The majority of the texts of the Koran, which regulate *mu'āmalah*, were revealed globally. It contains general rules and basic principles. Thus, the role of reason in this field serves to find Islamic law by the goodness of humans and nature.⁷⁷ In addition, most of the texts of *al-sharī'ah* only define *al-mabādi'* (principles) and *al-maqāsid* (goals) without specifying the mediums. This situation makes it easier for humans to fill by their problems. He can use the methods of *qiyās*, *istiḥsān*, *maṣlaḥah mursalah*, '*urf*, *istiḥāb* and so on. However, *al-Shāri'* sometimes mentions specific instruments according to the place and time. Still, it is not intended as *al-wasīlah*, which applies universally and eternally in every place and time.⁷⁸

There are two kinds of *wasā'il* (means), first, *al-wasā'il al-thābitah* (constant means). It is interpreted as specific means that have been established by *al-Shāri'* to reach *maqāsid*. If the standards are not practiced or changed, it can cause the *maqāsid* to become corrupt and change.⁷⁹ Second, *al-wasā'il al-mutaghayyirah* (means that are not fixed). It is defined as means that change according to changing situations and conditions. *Maqāsid*, in this case, is discovered through the process of *ijtihād*.⁸⁰ Determining some of the means that are temporal and situational can lead to misinterpretation and slip in understanding *nusūṣ al-sharī'ah*. According to al-Qarḍāwī, the study of *nusūṣ* should be carried out until its substance, namely the established and eternal goal. Meanwhile, facilities can change and adapt according to changing times, places, conditions, environment, culture, human needs, science and technology, and other influences.⁸¹

⁷⁶ Al-Raysūnī, *Al-Fikr al-Maqāsidī Qawā'iduh wa Fawā'iduh*, 81; Al-Wakīlī, *Fiqh al-Awwaliyāt Dirāsah fī al-Ḍawābiṭ*, 237–38; Zahrah, *Ibn Ḥanbal Ḥayātuh wa 'Aṣruḥ Ārā'uh wa Fiqhuh*, 365.

⁷⁷ Wahbah al-Zuhaylī, *Al-Wajīz fī Uṣūl al-Fiqh* (Beirut: Dār al-Fikr, 1999), 33.

⁷⁸ Sa'īd Ismā'il 'Alī, *Al-Sunnah al-Nabawiyah Ru'yah Tarbawiyah* (Kairo: Dār al-Fikr al-'Arabī, 2002), 478; Al-Qarḍāwī, *Dirāsah fī Fiqh Maqāsid al-Sharī'ah bayn al-Maqāsid al-Kulliyah wa al-Nusūṣ al-Juz'iyah*, 176.

⁷⁹ Al-Khādīmī, *Al-Ijtihād al-Maqāsidī*, vols I; 65–67.

⁸⁰ Al-Khādīmī, vols I; 67–68; Al-Burkānī, *Fiqh al-Wasā'il fī al-Sharī'ah al-Islāmīyah*, 73.

⁸¹ Mu'taz al-Khaṭīb, 'Manhajiyah al-Maqāsid wa al-Wasā'il fī al-Ijtihād al-Fiqhī', *Majallah al-Fikr al-Islāmī al-Mu'āṣir* 18, no. 71 (2013): 69, 72; Al-Qarḍāwī, *Dirāsah fī Fiqh Maqāsid al-Sharī'ah bayn al-Maqāsid al-Kulliyah wa al-Nusūṣ al-*

Instrument transformation is a necessity. It can metamorphose from one time to another and from one place to another. Therefore, if the text mentions a specific means, it explains a phenomenon at that time. So that these means cannot limit the universality of the text, it gives room for reason to think of other means that are more suitable, modern, and up-to-date in line with the progress of human civilization.⁸² The standards mentioned in the text may be updated with other, more relevant means.⁸³ Even if you carry out the means that the text has noted, it can waste the more essential means in achieving the goal. Al-Shāṭibī stated that every argument in the Koran is absolute-without limitations, there are no specific provisions and standards-then the target text must be sought using the ability of reason. The majority of *mu'āmalah* and customary issues are related to this part, such as being fair, doing good, forgiving, patient, grateful, and other noble deeds.⁸⁴ These noble qualities are *maqāṣid*, which contain benefits. Meanwhile, the means not mentioned by *al-Shāri'* are intended so that people can freely develop them through the advancement of science and technology.

An example relevant to this method is the principle of deliberation, especially in political matters. Surah al-Shūrā Verse 38 explains this principle.

وَأْمُرْهُمْ شُورَىٰ بَيْنَهُمْ

"And they gather amongst each other to conduct their affairs by mutual consultation."

Surah Ali 'Imrān Verse 159 also mentions this principle.

وَشَاوِرْهُمْ فِي الْأَمْرِ

"and take counsel with them in the affair."

The two verses above explicitly explain the principle of deliberation in political affairs, state administration, and other civil matters. However, he did not specify

Juz'iyah, 176; Al-Qarḍāwī, *Kayf Nata'mal ma'a al-Qur'ān al-'Azīm*, 159; Al-Raysūnī, *Al-Fikr al-Maqāṣidī Qawā'iduh wa Fawā'iduh*, 82–83, 88.

⁸² Al-Qarḍāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 176–77; Al-Qarḍāwī, *Kayf Nata'mal ma'a al-Qur'ān al-'Azīm*, 160; Al-Burkānī, *Fiqh al-Wasā'il fī al-Sharī'ah al-Islāmiyah*, 76.

⁸³ Al-Jawziyah, *I'lām al-Muwaqqi'in 'an Rabb al-'Ālamīn*, vols IV; 355–356; Al-Raysūnī, *Nazariyah al-Maqāṣid 'ind al-Imām al-Shāṭibī*, 364.

⁸⁴ Muḥammad 'Imārah, *Ma'rakah al-Islām wa Uṣūl al-Ḥukm* (Kairo: Dār al-Shurūq, 1997), 346; Sa'd al-Dīn al-'Uthmānī, *Al-Dīn wa al-Siyāsah Tamyiz lā Faṣl* (Kairo: Dār al-Kalimah, 2015), 89; Khālīd ibn 'Uthmān al-Sabt, *Qawā'id al-Tafsīr Jam'ān wa Dirāsah* (Dār ibn 'Affān, 1421), vols II; 773.

the form of deliberation, the participants, the method of consideration, and choosing a leader.

The text did not specify specific instruments in deliberation. The aim is to solve problems in Muslims' lives, especially political, social and economic problems. *Al-Shāri'* gives breadth to Muslims in choosing and developing these instruments according to the times.⁸⁵ Based on these principles, Indonesia, a democratic country, involves its people in electing executive and legislative institutions. The goal is that those elected can represent them to discuss the problems of the people, nation, and state for social justice for all Indonesian people. The representation of people's aspirations through these institutions is one of the many instruments in the principle of deliberation governed by the texts.

5. Adjusting between *al-thawābit* and *al-mutaghayyirāt*

On the one hand, Islamic law has an *al-thabāt* (constant) dimension, and the other has an *al-taghayyur* or *al-murūnah* (flexible) dimension. The moderate *fiqh ijtihād* method adapts and pays attention to both. The harmony of *al-thabāt* and *al-murūnah* emanates from the Koran, which presents universal principles and global propositions. It is rare to find a detailed and partial description of the verses of *al-aḥkām*. In addition, the majority of verses *juz'iyāt* (partial) in their designation to the law are in the form of *ẓannī al-dalālah* (multi-interpretation), and only a few are in the form of *qat'ī al-dalālah* (firm and definite).⁸⁶ *Al-nuṣūṣ al-ẓanniyāt* opens the space for the emergence of various understandings and interpretations so that Islamic law as a product of *ijtihād* becomes a never-ending treasure trove of Islamic intellectual property. He is always fresh, adaptive, and dynamic at the fast pace of human civilization.

Al-thawābit (constant provision) includes six things; a. the six pillars of faith. b. the five pillars of Islam.⁸⁷ c. noble morals, such as justice, kindness, help, honesty, trustworthiness, avoiding prohibitions, compassion, patience, gratitude, and shame. d. *qat'ī ḥaram*, such as murder, adultery, sexual perversion, drinking alcohol, gambling, theft, seizure, witchcraft, usury, eating

⁸⁵ Al-Qarḏāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 175; Al-Ghazzālī, *Al-Sunnah al-Nabawiyah bayn Ahl al-Sunnah wa Ahl al-Ḥadīth*, 163; 'Imārah, *Ma'rakah al-Islām wa Uṣūl al-Ḥukm*, 346.

⁸⁶ Zahrah, *Uṣūl al-Fiqh*, 92.

⁸⁷ Khalīl Maḥmūd Na'rānī, *Āthār al-Ḍarf fī Taghyīr al-Aḥkam al-Shar'iyah* (Kairo: Dār ibn al-Jawzī, 2006), 132.

orphan property, accusing adultery without evidence, fleeing war, false witnesses, disobedience to parents, breaking up a friendship, slander, lying, and abusing human honour.⁸⁸ e. The hidden haram things, such as pride, trickery, jealousy, hatred, showing off, being proud, following lust, and being greedy. f. the fundamental law of *shara'* which is *qat'i*, such as eating, drinking, dressing, buying and selling, financial transactions, marriage, divorce, testament, inheritance, and sanctions such as *hudud* and *qisas*.⁸⁹ These laws are constant and *qat'i*, both *al-thubut* and *al-dalalah*. *Ijtihad* is forbidden on this kind of *qat'i*.

While *al-mutaghayyirat* is related to the law of *furū'* (*fiqh*), which is produced from the text *ẓannī al-thubūt*, *ẓannī al-dalalah*,⁹⁰ or both, rules resulting from *ijtihad* can change due to changes in place, time, and human morals.⁹¹ *Ijtihad* activity in this *ẓannī* case is necessary for understanding the text and determining Islamic law. As a result of *ijtihad*, differences of opinion are commonplace; all contain the possibility of being right or wrong. Therefore, reforms and changes resulting from *ijtihad* must occur in line with these changes.⁹² The reform of Islamic law is intended to achieve *al-Shāri'*s goals, namely providing benefits and avoiding damage.⁹³

There are two kinds of Islamic law. First, it comes from a clear text and *ijmā'*. This first type of Islamic law has not changed. Second, Islamic law that results from *ijtihad* with the method of *maṣlaḥah*, *qiyās*, or *'urf* (customs). This second type changes. Everything that changes is a legal instrument and not a law itself. In general, *al-Shāri'* does not limit specific means in reaching the *maqāṣid al-*

⁸⁸ Muḥammad ibn Abū Bakr, *Ighāthah al-Lahfān min Maṣāyid al-Shayṭān* (Beirut: Dār al-Ma'rifah, 1975), vols I; 330–331; Muṣṭafā Aḥmad al-Zarqā, *Al-Madkhal al-Fiqhī al-'Am* (Damaskus: Dār al-Qalam, 2004), vols II; 942.

⁸⁹ Fathī al-Duraynī, *Al-Manāhij al-Uṣūliyah* (Beirut: Mu'assasah al-Risālah, 2013), 138–39; Al-Qarḍāwī, *Dirāsah fī Fiqh Maqāṣid al-Sharī'ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 197–98; Al-Qarḍāwī, *Al-Khaṣā'is al-'Ammah li al-Islām*, 220–21.

⁹⁰ 'Abd al-Karīm ibn 'Alī ibn Muḥammad al-Namlah, *Ithāf Dhabī al-Bashā'ir bi Sharḥ Rawḍah al-Nāzir fī Uṣūl al-Fiqh* (Riyad: Dār al-'Āṣimah, 1996), vols VIII; 12.

⁹¹ Al-Zarqā, *Al-Madkhal al-Fiqhī al-'Am*, vols II; 941.

⁹² 'Alī Ḥaydar, *Durar al-Ḥukkām Sharḥ Majallah al-Aḥkām* (Riyad: Dār 'Ālam al-Kutub, 2003), vols I; 47.

⁹³ Wahbah al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī* (Damaskus: Dār al-Fikr, 2009), vols II; 1116.

sharī'ah but frees it so that humans can choose and develop better standards according to the situation at hand.⁹⁴

Among the examples related to this method is the law of marriage registration. Registration of marriage in the past is unnecessary because the situation and conditions of society do not require it. However, it is different from the states, behavior, and morals in contemporary society, thus demanding changes in Islamic law. Another aspect, the development of administrative science, science, and technology, also affects changes in Islamic law. The status of marriage registration is thus obligatory. The law is based on *al-maṣlaḥah al-‘āmmah* -maintaining the family order- and *sadd al-dharī'ah* -preventive measures to prevent harm to the wife and children-. In reality, unregistered marriage causes many problems. It harms women and children, such as domestic violence, sexual abuse, and neglect of wives and children.

6. Examining the difference between worship and *mu‘āmalah* from the aspect of wisdom, *‘illah*, and *maqāṣid*

Among the *istinbāt* methods for moderate *fiqh* is the distinction between worship and *mu‘āmalah*. The difference is in terms of wisdom, *‘illah*, and *maqāṣid* which are behind them.⁹⁵ The basis of worship is worship and worship only to Allah regardless of the meaning, *‘illah* and *maqāṣid*. Al-Shāṭibī based this rule on several arguments: first, research some Islamic laws regarding worship. In this first case, the *ta‘abbudī* element is the primary key. In many ways, the rules and conditions do not make sense. For example, the obligation to bathe after a husband and wife have intercourse, prayer movements, provisions regarding menstruation and childbirth - aborting prayers (not required to be replaced) but not aborting fasting (must be replaced). Al-Shāṭibī emphasized;⁹⁶

وإنما فهمنا من حكمة التعبد العامة الانقياد لأوامر الله تعالى ، وإفراده بالخضوع ، والتعظيم لجلاله والتوجه إليه ، وهذا المقدار لا يعطي علة خاصة يفهم منها حكم خاص

⁹⁴ Muḥammad ‘Uthmān Shubayr, *Al-Qawā‘id al-Kulliyah wa al-Ḍawābiṭ al-Fiqhiyah fī al-Sharī‘ah al-Islāmiyah* (Yordania: Dār al-Nafā‘is, 2007), 263–65; Al-Zarqā, *Al-Madkhal al-Fiqhī al-‘Ām*, vols II; 942.

⁹⁵ ‘Abd al-Nūr Bazā, *Nazariyah al-Ta‘līl fī al-Fikrayn al-Kalāmī wa al-Uṣūlī* (Yordania: Ma‘had al-‘Ālamī lifikr al-Islāmī, 2011), 108; Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*, vols II; 228.

⁹⁶ Yūsuf Aḥmad Muḥammad al-Badawī, *Maqāṣid al-Sharī‘ah ‘ind Ibn Taymiyah* (Yordania: Dār al-Nafā‘is, 1999), 168; Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*, vols II; 229.

"The wisdom of worship in general is obeying Allah's commandments, obeying, exalting and facing only Him. It does not have a special 'illah which can be understood by special laws from it."

Second, logical reasoning argument. *Al-Shāri'* does not explain a proposition that shows breadth in worship. In contrast to *mu'āmalah*, which is looser. In fact, in terms of worship, the arguments are detailed. It shows that the provisions of worship stop at this limit. Likewise, *al-munāsib* - a trait seen as a legal motivation- is limited by something that has no equivalent in worship. Such as a problematic situation - due to traveling - allows *qasr*, *iftār*, and *jama'* prayers. Meanwhile, difficulties other than travel cannot be a legal consideration.

Third, the worship services at the time of *fatrah* - the times when no Prophet was sent - could not be known by the scholars as they knew the meaning of '*illah* and *maqāsid* in adat and *mu'āmalah*. According to al-Shāṭibī, generally they were lost and deviated from the right path in terms of worship. They changed the previous *sharī'ah* according to their wishes.⁹⁷ This situation shows that reason cannot know the meaning and provisions of worship, but requires guidance from the text. Therefore, in terms of worship, it must be returned to the provisions of *al-Shāri'*, namely the element of *ta'abbudī* (merely worshipping Allah).⁹⁸

Meanwhile, the basis in the field of *mu'āmalah* and custom is to pay attention to the meaning, '*illah*, and *maqāsid*.⁹⁹ Al-Shāṭibī based this rule on several arguments, namely: first, research (*istiqrā'*). Every law that regulates custom and *mu'āmalah* aims for the benefit of humankind. On the other hand, all customary rules and *mu'āmalah*, which do not contain benefit or even cause harm, are prohibited. For example, the ability to buy and sell online, insurance, buy and sell credit systems, *halal bi halal*, subsets, alms earth, and *tembang macapat*. Second, reason can know '*illah*, wisdom, and *maqāsid* in customs and *mu'āmalah* through reasoning on the texts. Intellect can capture the benefits contained in these conditions. Third, the scholars can know '*illah*, wisdom, and *maqāsid* in custom and *mu'āmalah* globally, even though during the *fatrah* period. They do that search so that it brings benefit. *Al-sharī'ah* then came to

⁹⁷ Al-Badawī, *Maqāsid al-Sharī'ah 'ind Ibn Taymiyah*, 168.

⁹⁸ Al-Shāṭibī, *Al-Muwāfaqāt fi Uṣūl al-Sharī'ah*, vols II; 231.

⁹⁹ Al-Shāṭibī, vols II; 232; Al-Qarḍāwī, *Dirāsah fi Fiqh Maqāsid al-Sharī'ah bayn al-Maqāsid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyah*, 202; Al-Yūbī, *Maqāsid al-Sharī'ah wa 'Alāqatuhā bi al-Adillah al-Sharī'iyah*, 412; Al-Badawī, *Maqāsid al-Sharī'ah 'ind Ibn Taymiyah*, 168.

perfect it. Therefore, *al-Shāri'* confirmed several laws that were already in effect in the era of ignorance, such as *diyat*, *qasāmah*, gathering on Friday to listen to the sermon, *qirāḍ*, *kiswah* (Kabah clothes), and all the deeds, transactions, and customs that good that makes sense.¹⁰⁰

An example of this method is regarding the law of productive waqf. Based on the purpose of waqf, which is to provide for the welfare of the poor, the waqf objects may be managed productively. Utilizing waqf property so that it brings many benefits to people's lives is justified by *sharī'ah*. Management and distribution of waqf are only for the benefit. Therefore, the *nāzir* is required to see the development of the era, place, and benefit. The results of productive waqf can be distributed to community guidance and development programs, such as; the social sector in the form of building bridges, public restrooms, mosques; education sector in the form of scholarships for low-income families, establishing schools, libraries, skills training; health sector in the form of medical assistance for the poor and training in making herbal medicines; economic sector in the form of capital assistance and development, agricultural business development, livestock breeding; da'wah in the form of preaching, teacher salaries and wages for imams and mosque administrators.

Conclusion

Based on the description above, this paper concludes that, first, the *istinbāt* method for moderate *fiqh* is indispensable to produce Islamic law that is flexible, elastic, adaptive, easy to practice and to spread benefit. The *istinbāt* method takes into account the relationship between texts, *maqāṣid*, reality, and the present context. With it, jurisprudence can avoid extremities and tendencies towards conservatives and liberals. This method integrates naql and reason, text, context, and *maqāṣid al-sharī'ah*, *maqāṣid al-sharī'ah* and *furū'* (*fiqh* matters), *kullī* (universal) and *juz'ī* (partial), as well as the universality of texts and the specificity of the situation. Second, the *istinbāt* method for moderate *fiqh* by Yūsuf al-Qarḍāwī as follows. a. Examining the *maqāṣid* contained in the texts before determining Islamic law. b. Linking texts and Islamic law with texts and other Islamic laws. c. Understanding texts in the frame of *asbāb al-nuzūl* or *al-wurūd*, both micro and macro. d. Distinguishing between constant *maqāṣid* and

¹⁰⁰ Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, vols II; 232–233.

changing instruments. e. Adjusting between *al-thawābit* and *al-mutaḡhayyirāt*.
f. Observing the differences between the fields of worship and *mu'āmalah* in
terms of wisdom, *'illah* and *maqāṣid*. [a]

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