# Pros and Cons of Separation between *Maqāṣid* and *Uṣūl al-Fiqh* (A Study of The Periodization of *Maqāṣid* History and Responses to Its Independence)

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**Abstract**: Interests related to human needs always invite the possibility of the birth of new knowledge. However, if it differs from previous beliefs and ideologies, the findings from the embryonic new knowledge research should be addressed. Currently, the maqāṣid has become the most popular research theme in the field of Islamic legal theory and eclipsed uṣūl al-fiqh was facing such challenges. This article explores the evidence for the pros and cons of the separation between maqāṣid and uṣūl al-fiqh, explains the causes, and predicts the implications. Data was obtained from secondary sources in the form of maqāṣid and uṣūl al-fiqh works, both in the form of books, book reviews, journal articles, and dissertations, obtained from the web and libraries, and then analyzed using content analysis. This paper finds that there are indeed pros and cons of separating maqāṣid and uṣūl al-fiqh. The evidence is: first, there are differences in periodizing the development of maqāṣid; and second, there are differences in responses to efforts to make maqāṣid an independent knowledge. The pros and cons are triggered by differences of opinion regarding the theory of ratiocination, the method of istiqrā', and accusations of utilitarianism. These pros and cons can have implications: positive, because in turn, the Islamic law reform project can be handled more comprehensively, or negative, if the scholars get caught up and struggle with the debate until they forget to respond to real contemporary issues.

**Keywords:** Periodization, Independence, Ratiocination, Istiqrā', Utilitarianism

**Abstrak:** Kepentingan yang berkaitan dengan kebutuhan manusia selalu mengundang kemungkinan lahirnya ilmu-ilmu baru. Namun, jika hal ini berbeda dengan keyakinan dan ideologi sebelumnya, maka temuan dari penelitian pengetahuan baru yang masih embrionik harus ditanggapi. Saat ini, maqāṣid telah menjadi tema penelitian paling populer di bidang teori hukum Islam dan melampaui uṣūl al-fiqh yang menghadapi

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tantangan tersebut. Artikel ini mengupas tentang bukti-bukti pro dan kontra pemisahan antara maqāṣid dan uṣūl al-fiqh, menjelaskan penyebabnya, dan memperkirakan implikasinya. Data diperoleh dari sumber sekunder berupa karya maqāṣid dan uṣūl al-fiqh, baik berupa buku, resensi buku, artikel jurnal, maupun disertasi, yang diperoleh dari web dan perpustakaan, kemudian dianalisis menggunakan analisis konten. Tulisan ini menemukan bahwa memang terdapat pro dan kontra pemisahan maqāṣid dan uṣūl al-fiqh. Buktinya: pertama, terdapat perbedaan periodisasi perkembangan maqāṣid; dan kedua, terdapat perbedaan tanggapan terhadap upaya menjadikan maqāṣid sebagai ilmu yang mandiri. Pro dan kontra tersebut dipicu oleh perbedaan pendapat mengenai teori rasiosinasi, metode istiqrā', dan tuduhan utilitarianisme. Pro dan kontra ini dapat mempunyai implikasi: positif, karena pada gilirannya, proyek reformasi hukum Islam dapat ditangani secara lebih komprehensif, atau negatif, jika para ulama terjebak dan berkutat dengan perdebatan hingga lupa menyikapi persoalan-persoalan kontemporer yang nyata.

**Kata Kunci:** periodisasi, kemandirian, rasiosinasi, istiqrā', utilitarianisme

## Introduction

*Maqāṣid* is the most popular theme in Islamic legal theory studies (March, 2011). In the past, scholars have also often taken alternative approaches apart from the method that is only based on text and its literary demonstration rules (ḥujjiyyah *al-ẓawāhir*), also because other techniques do not harmonize the application of Islamic law with the variety of circumstances it faces. They offer *maqāṣid* and *awlawiyyāt* approaches, which previously did not have a proper place in *uṣūl al-fiqh,* whose discussion rules were quite restrictive (Moussavi, 2011). As is known, there are at least three sciences for producing Islamic law: *uṣūl al-fiqh, qawā'id fiqhiyyah*, and *maqāṣid.* The relationship between *uṣūl al-fiqh* and *maqāṣid* is seen when *uṣūl al-fiqh* begins a discussion *of maqāṣid* under the study of *'illah* in the chapter of *qiyās* by saying that the reason (*'illah*) also indicates its purpose (*maqāṣid)* (Kamali, 2020b). Furthermore, suppose *maqāṣid* is used to identify the truth of a legal decision as a whole. In that case, *qawā'id fiqhiyyah* represents a practical tool that provides a clear methodology that can be used to reach that legal decision. *Maqāṣid* and *qawā'id* fiqhiyyah are complementary and sequential steps (not alternative or interchangeable). *Maqāṣid* represents "why," and *qawā'id fiqhiyyah* represents "how" (Alsomali & Hussein, 2021). It has also been suggested that each *qawā'id fiqhiyyah* is better seen as a principle that applies to most cases with the possibility of a few exceptions (Thalib, 2016).

In the classical era, there were almost no studies on *maqāṣid* in the *uṣūl al-fiqh* literature*.* The survey of *maqāṣid in uṣūl al-fiqh* literature *was* only discovered in the middle, modern, and contemporary centuries. On the other hand, in *maqāṣid literature,* the study of *uṣūl al-fiqh* found in the discussion of the relationship between *maqāṣid* with methods in *uṣūl al-fiqh,* namely *qiyās, istiḥsān, istiṣlāḥ, dzarī'ah, and ta'āruḍ al-adillah.* There is almost certainly no writing about the meeting or split between *maqāṣid* and *uṣūl al-fiq*h as a complete knowledge. In the works of the 6 (six) scholars, which will be discussed later, only one or two paragraphs discuss this matter. Even that is more of an instant response and without in-depth analysis.

To complement the literature above, this article wants to describe the evidence that there are pros and cons in the issue of the separation between *maqāṣid* and *uṣūl al-fiqh,* analyze the causes, and predict the implications of the pros and cons. With this goal to be achieved, it is possible to understand the nature of the pros and cons of the scholars in the issue of the separation between *maqāṣid* and *uṣūl al-fiqh.*

This paper predicts that there will continue to be pros and cons, and there will be more new works about *maqāṣid* than about *uṣūl al-fiqh.* In turn, if research on *maqāṣid* continues to be carried out and new findings are obtained, then the reform of Islamic law can be completed, and the independence of *maqāṣid* becomes a reality.

This paper uses a content analysis approach based on *maqāṣid* and *uṣūl al-fiqh* literature. For the issue of periodization and independence, maqāṣid literature is analyzed, not *uṣūl al-fiqh* literature. Meanwhile, both pieces of literature were surveyed regarding the causes of the pros and cons. The *maqāṣid* and *uṣūl al-fiqh* literature in this paper are in the form of books, reviews of books, journal articles, and dissertations obtained online and in open access for 3 (three) months until the end of September 2023. The method of getting them is by typing the keywords "*maqāṣid*" and "*uṣūl al-fiqh*" into the search button on the websites of journals, indexing agencies, digital libraries, and search engines. All writings on *maqāṣid* and *uṣūl al-fiqh* were then examined one by one based on the critical ideas of periodization and independence and then analyzed inductively to obtain conclusions. To answer the question of causation, the analysis is causal. What is identified as causes in this paper are temporal (causes precede), systematic (causes intervene), and non-spurious (there is nothing else between reasons and the pros and cons of separating *maqāṣid* and *uṣūl al-fiqh*).

## Results and Discussion

### Differences in The Periodization of *Maqāṣid Development* in The *Uṣūl al-Fiqh Landscape*

The existence of pros and cons in the issue of separating *maqāṣid* and *uṣūl al-fiqh* is proven by at least 2 (two) things. First, there are differences in how to periodize the development of *maqāṣid* in the scientific landscape of *uṣūl al-fiqh*. Second, there are differences in responses to efforts to make *maqāṣid* an independent knowledge. The difference in periodization can be seen in the fact that scholars divide it into two periods, three periods, four periods, and even five periods. Meanwhile, the difference in response to the independence of *maqāṣid* is seen in the fact that there are pro-scholars, some are against, and some are neutral. The majority of *maqāṣid* works do not address the issue of independence.

When reading *maqāṣid* literature, one will find that some of them present a periodization of the development of *maqāṣid,* while others do not. Those who show periodization can be grouped into two: first, those who make periodization by distinguishing between *maqāṣid,* which is still one with *uṣūl al-fiqh,* and *maqāṣid* which has separated from *uṣūl al-fiqh;* second, which makes periodization in another way. The first group is represented by al-Yūbī, al-Khādimī, Aḥmīdān, Ibn Rabī'ah, Ismā'īl al-Ḥasanī, and 'Ali Jum'ah. Meanwhile, the second group was represented by Aḥmad Wafāq Ibn Mukhtār, Ḥammādī al-'Ubaidī, al-Qaraḍāwī, Hishām bin Sa'īd Azhar, al-Asmarī, Jasser Auda, and al-Raysūnī.

The characteristics of *maqāṣid* when it was still a part of *uṣūl al-fiqh* are: First, its existence was unknown. It was not used as a term (Aḥmīdān, 2008). It was still attached to the text of verses, hadiths, and the thoughts of scholars in *uṣūl al-fiqh* works. It is not known why the scholars at that time did not

know about *maqāṣid*, whether it is the *maqāṣid* that the text directly refers to or the one that must be sought through reasoning. However, according to *maqāṣid* scholars, even though the scholars at that time were still busy discussing qiyās and had not yet written works of *uṣūl al-fiqh*, their fiqh thoughts always hinted at the wisdom behind their specific *fiqh* products (al-Yūbī, 1998); second, after its existence was known, it was scattered in other chapters in *uṣūl al-fiqh* works (al-Yūbī, 1998), and; third, after it was known to be spread with other branches, it later became a separate chapter, but still in *uṣūl al-fiqh* works. Maqāṣid, which has become an individual chapter, is known first in the works of al-Juwainī (Aḥmīdān, 2008).

While the character of *maqāṣid* after its separation from *uṣūl al-fiqh* is that it became a book that discusses explicitly it, it is even considered helpful as a method of producing rules, including by state authorities, whether they still seek help from *uṣūl al-fiqh*, or not. The first known book is *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām* by 'Izz Abd al-Salām (Aḥmīdān, 2008).

Al-Yūbī, in his book, *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'Alāqatuhā bi al-Adillah al-Sharī'ah,* divides the periodization of the history of *maqāṣid* into two parts: before it separated from the works of *uṣūl al-fiqh* and after separate from the results of *uṣūl al-fiqh.* In the era before it separated from *uṣūl al-fiqh,* al-Yūbī displayed the spirit of *maqāṣid* found in the verses of the Qur'an and al-Hadith, as well as in the theme of *qiyās* in *uṣūl al-fiqh.* Meanwhile, in the era after being separated from *uṣūl al-fiqh,* al-Yūbī presented the thoughts of scholars: al-Juwainī, al-Ḡazālī, al-Rāzī, al-Amidī, Izzuddīn 'Abd al-Salām, al-Qarāfī, Ibn Taimiyah, Ibn al-Qayyim, al-Ṭūfī, and al-Shāṭibī, as well as the *maqāṣid* condition after al-Shāṭibī (al-Yūbī, 1998).

Al-Khādimī, in his book entitled '*Ilm al-Maqāṣid al-Sharī'ah,* argues that *maqāṣid* first appeared along with the first revelation. He periodized the development of *maqāṣid* into the time of the Prophet, the time of the companies, the time of the great imam (imam of the four schools of thought, al-Juwainī, etc.), the period when *maqāṣid* was explicitly written in separate works (al-Khādimī, 1421). In another book entitled *al-Maqāṣid al-Sharī'ah: Ḍawābituhā Tārikhuhā Taṭbīqātuhā,* al-Khādimī also periodizes *maqāṣid* the same as the book above, only adding the conditions of *maqāṣid* in the current era (al-Khādimī, 1427).

Aḥmīdān, in his book *Maqāṣid al-Sharī'ah al-Islāmiyyah,* periodizes *maqāṣid* into three stages: 1) when it is still integrated into other knowledge; 2) after being separated from other knowledge; 3) after it has become independent works. In the first half, he mentions the scholars of al-Ḥakīm al-Tirmīdzī and Niẓāmuddīn Abū 'Alī al-Shāshī. Meanwhile, in the second half, he mentions the scholars al-Juwainī and al-Ḡazālī, and in the third round, he says the scholars Izzuddīn 'Abd al-Salām, al-Shāṭibī, and Ibn 'Āshūr (Aḥmīdān, 2008).

Ibn Rabī'ah, in his book, '*Ilm Maqāṣid al-Shāri,'* periodizes *maqāṣid* into two stages: before being separated from *uṣūl al-fiqh* and after being separated from it. In the chapter after separating from *uṣūl al-fiqh,* he mentions the following scholars: al-Juwainī, al-Ḡazālī, al-Rāzī, al-Amidī, Izzuddīn 'Abd al-Salām, al-Qarāfī, Ibn Taimiyah, Ibn al -Qayyim, and al-Ṭūfī, al-Shāṭibī, and Ibn 'Āshūr (Rabī'ah, 2002).

Ismā'īl al-Ḥasanī, in his book, *Naẓariyyah al-Maqāṣid 'ind al-Imām Muhammad al-Ṭāhir Ibn 'Āshūr,* periodizes *maqāṣid* into two stages: the phase in which *maqāṣid* is still the thought of *uṣūl al-fiqh* and *fiqh* scholars; and the stage where *maqāṣid* has become a knowledge, which is none other than Ibn 'Āshūr's stage (al-Ḥasanī, 1995).

According to 'Ali Jum'ah, in his work, *Tartīb al-Maqāṣid al-Sharī'ah: Abḥās wa Waqā'i' al-Mu'tamar al-'Ām al-Tsānī wa al-Isyrūn, maqāṣid* has been known since the time of the Prophet, as seen when the

Prophet taught his companions *tafaqquh fi al-dīn* so that they would understand the purpose intended by Allah in the verses of the Qur'an which were still in the process of being revealed. Then, in the era of companions, they found a general rule used to decide matters that were not in the text. Then, in the codification era, some *maqāṣid* were mentioned in works on *fiqh, uṣūl al-fiqh,* and *fiqh muqārin.* So *maqāṣid* slowly became more and more part of *uṣūl al-fiqh* until the time came for *maqāṣid* jobs with a unique format that was separate from *uṣūl al-fiqh* (Jum'ah, 2010).

As is known, the era of codification in maqāṣid literature is more accurately called the period of *takhṣīṣ al-maqāṣid bi at-ta'līf*, which is the era when specialized works on *maqāṣid* began to emerge. It is unlike the common understanding of the age of writing or *'aṣr at-tadwīn* (Frolova, 2018), which is none other than the era of the Abbasid dynasty. Nor is the codification era a key feature of Ottoman legal reform in the nineteenth century from the 1840s until the empire's demise (Rubin, 2016). *Maqāṣid* scholars argue that the era of *takhṣīṣ al-maqāṣid bi at-ta'līf* began with the appearance of 'Izz Abd al-Salām's work entitled *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām.* 'Izz Abd al-Salām lived from 577H/1126M-660H/1209M (Auda, 2011)\. Therefore, it can be concluded that the era of codification for *maqāṣid* began during the time of 'Izz Abd al-Salām's work.

### Periodization of Join-Separate *Maqāṣid* Development

| NO | NAME | WORK | PERIODIZATION |
|----|------|------|---------------|
| 1 | al-Yūbī | *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'Alāqatuhā bi al-Adillah al-Sharī'ah* | join - separate |
| 2 | al-Khādimī | *'Ilm al-Maqāṣid al-Sharī'ah* | prophet –companions –great imams - separate - now |
| 3 | Aḥmīdān | *Maqāṣid al-Sharī'ah al-Islāmiyyah* | join – separate - independent |
| 4 | Ibn Rabi'ah | *'Ilm Maqāṣid al-Shāri'* | join - separate |
| 5 | Ismā'īl al-Ḥasanī | *Naẓariyyah al-Maqāṣid 'ind al-Imām Muhammad al-Ṭāhir Ibn 'Āshūr* | join – separate |
| 6 | 'Ali Jum'ah | *Tartīb al-Maqāṣid al-Sharī'ah: Abḥās wa Waqā'i' al-Mu'tamar al-'Ām al-Tsānī wa al-Isyrūn* | prophet – companions – codification – separate |

Source: processed from various literature

Meanwhile, Aḥmad Wafāq Ibn Mukhtār in his book, Maqāṣid al-Sharī'ah 'ind al-Imām al-Shāfi'ī, periodizes the maqāṣid into 2 parts: before al-Shāfi'ī and after al-Shāfi'ī. In the round after al-Shāfi'ī, he also sorted the existing scholars into two categories: those of the Shāfi'iyyah (namely: al-Juwainī, al-Ġazālī, al-Rāzī, al-Amidī, Izzuddīn 'Abd al-Salām) and scholars outside the Shāfi'iyyah (namely: al-Qarāfī, Ibn Taimiyyah, Ibn al-Qayyim, al-Ṭūfī, and al-Shāṭibī) (Mukhtār, 2014).

Ḥammādī al-'Ubaidī, in his book al-Shāṭibī wa Maqāṣid al-Sharī'ah, touches on the history of the emergence and development of maqāṣid in the early period until the time of al-Shāṭibī. He says that al-Shāṭibī was not the first person to develop maqāṣid, nor was he the first author. According to him, al-Shāṭibī's contribution was his attempt to expand the scope of maqāṣid. Many new themes were

introduced by al-Shāṭibī, which then broadened the horizon of maqāṣid (al-'Ubaidī, 1992). What is meant by the early developmental era of maqāṣid is the era in which maqāṣid was still integrated with others, including uṣūl al-fiqh. This era is divided into three phases: the unknown phase, the known phase but still scattered in other chapters of uṣūl al-fiqh, and the phase that has become a separate work of uṣūl al-fiqh (Aḥmīdān, 2008). Indeed, there is a difference of opinion about which scholars whose early results on maqāṣid are truly specialized. Ibn 'Āshūr argues that al-Shāṭibī's al-Muwāfaqāt was the first maqāṣid work separate from uṣūl al-fiqh. At the same time, the majority of others say that it is the first work that belongs to 'Izz Abd al-Salām, as mentioned earlier (Aḥmīdān, 2008).

Al-Qaraḍāwī, in his master's thesis, Naẓariyyah Maqāṣid al-Islāmiyyah bain Syaikh al-Islām Ibn Taymiyyah wa Jumhūr al-Uṣūliyyīn, says that the fifth to eighth centuries were the time when maqāṣid experienced its first maturity. However, this does not mean the ulama did not understand maqāṣid in previous centuries. Maqāṣid, as it was (which was not yet theoretical), had been studied and practiced by scholars before the fifth century, namely since the time of the Prophet, companions, and tābi'īn. Systematic definitions and theories can only be found initially in the 5th century Hijiryyah (al-Qaraḍāwī, 2000).

Hishām bin Sa'īd Azhar in his book, Maqāṣid al-Sharī'ah 'ind Imām al-Ḥaramain, says that before the emergence of al-Juwainī, maqāṣid was indeed a mere spirit and term that adorned Islamic law, except for what was done by al-Shāfi'ī who wrote the first book uṣūl al-fiqh which later gave rise to the theory of maqāṣid. Al-Juwainī has benefited dramatically from al-al-Shāfi'ī by quoting his teacher's words perfectly. Among the scholars before al-Juwainī were: al-Ḥakīm al-Tirmīdzī (d. 296 AH), author of al-Ṣalāh wa Maqāṣiduha; Abu Manṣūr al-Mātūridī (d. 333 AH), author of Ma'khadz al-Sharī'ah; Abū Bakr al-Qaffāl al-Shāshī (d. 365 AH), author of Maḥāsin al-Sharī'ah; Abū Bakr al-Abḥārī (d. 375 AH), author of Mas'alah al-Jawāb wa al-Dalā'il wa al-'Ilal; Abū al-Ḥasan al-'Āmirī (d. 381 AH), author of al-A'lām bi Manāqib al-Islām; Ibn Babawaih al-Qūmī (d. 381 AH), author of ' Ilal al-Sharā'i'; and Abū Bakar al-Baqillānī (d. 403 AH), author of al-Taqrīb wa al-Irsyād fi Tartīb Ṭuruq al-Ijtihād (Sa'īd Azhar, 2010). In addition to the scholars before al-Juwainī above, Jaser Auda in his book, Maqāṣid al- Shar ī'ah Dalīl li al-Mubtadi'īn, mentions one more figure, namely: Abū Zaid al-Balkhī (d. 322 AH), author of al -Ibānah 'an 'Ilal al-Diyānah (Auda, 2011).

In al-Fusūl al-Muntaqāh al-Majmū'ah fi Maqāṣid al-Sharī'ah, Ṣālih bin Muhammad bin Ḥasan al-Asmarī says that the development of maqāṣid went through three phases: nasya' (emergence); taḥawwul (shift); and iktimāl (refinement). The first phase was marked by the emergence of maqāṣid discussion in between uṣūl al-fiqh works. The scholars are al-Juwainī and al-Ġazālī. The emergence of the basics of maqāṣid and general rules characterized the second phase. The figure of this phase is Izzuddīn 'Abd al-Salām with the works: Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām and al-Qawā'id al-Ṣuġrā. The third phase was marked by the emergence of the figure al-Shāṭibī, who systematized all the themes of maqāṣid and established its rules. This phase is characterized by the completion of all the content of maqāṣid and the establishment of maqāṣid as an independent knowledge (Al-Asmarī, nd).

Al-Raysūnī, in his book Naẓariyyah al-Maqāṣid ' ind al-Imām al-Shāṭibī, periodizes the maqāṣid into two: before al-Shāṭibī and the time of al-Shāṭibī. In the period before al-Shāṭibī, maqāṣid was developed by uṣūl al-fiqh and fiqh scholars, especially the Mālikī school (al-Raysūnī, 1995). In the book Muḥāḍarah fi Maqāṣid al-Sharī'ah, al-Raysūnī also wrote the history of maqāṣid and presented the scholars of the maqāṣid period as a theory (al-Juwainī, al-Ġazālī, Izzuddīn 'Abd al-Salām, al-Qarāfī, Ibn Taimiyyah, Ibn al-Qayyim, and al-Shāṭibī) and even contemporary scholars (Ibn 'Āshūr, 'Allāl al-Fāsī, Ibn Bayyah, and

Aṭiyyah) (al-Raysūnī, 2014). Still, al-Raysūnī, in his book al-Dzarī'ah ilā Maqāṣid al-Sharī'ah, argues that just as al-Shāfi'ī never claimed that he was the founder of uṣūl al-fiqh, and even until his death he never knew the term uṣūl al-fiqh, so did al-Shāṭibī. Many people consider that al-Shāṭibī was the founder (mu'assis) of the maqāṣid, although he never claimed to be. The works on maqāṣid are no longer countless and always mention al-Shāṭibī. Indeed, Ibn 'Āshūr is known to be very diligent in fighting for the independence of maqāṣid from uṣūl al-fiqh, but it cannot be denied, Ibn 'Āshūr himself said (al-Raysūnī, 2015):

"والرجل الفذ الذي أفرد هذا الفن بالتدوين هو أبو إسحاق إبراهيم بن موسى الشاطبي المالكي, إذ عني بإبرازه في القسم الثاني من كتابه المسمي (عنوان التعريف بأصول التكليف في أصول الفقه) وعنون ذلك القسم بكتاب المقاصد"

*"The only person who excelled in the codification of this study was Abū Isḥāq Ibrāhīm bin Mūsā al-Shāṭibī al-Mālikī. He has shown it specifically in the second part of his work entitled 'Unwān al-Ta'rif bī Uṣūl al-Taklīf fī Uṣūl al-Fiqh. He titled the second part with the title Kitāb al-Maqāṣid."*

As is known, 'Unwān al-Ta'rif bī Uṣūl al-Taklīf fī Uṣūl al-Fiqh is another name for al-Muwāfaqāt (al-Raysunī, 2015).

### Periodization of Non-Join-Separation Maqāṣid Development

| NO | NAME | WORK | PERIODIZATION |
|----|------|------|---------------|
| 1 | Aḥmad Wafāq Ibn Mukhtār | *Maqāṣid al-Sharī'ah 'ind al-Imām al-Shāfi'ī* | before al-Shāfi'ī – after al-Shāfi'ī |
| 2 | Ḥammādī al-'Ubaidī | *al-Shāṭibī wa Maqāṣid al-Sharī'ah* | early period – the period of *al-Shāṭibī* |
| 3 | al-Qaraḍāwī | *Naẓariyyah Maqāṣid al-Islāmiyyah bain Shaykh al-Islām Ibn Taimiyyah wa Jumhūr al-Uṣūliyyīn* | prophets, companions and tābi'īn – V-VIII H. centuries |
| 4 | Hisham bin Sa'id Azhar | *Maqāṣid al-Sharī'ah 'ind Imām al-Ḥaramain* | before al-Juwainī – after al-Juwainī |
| 5 | al-Asmarī | *al-Fusūl al-Muntaqah al-Majmū'ah fī Maqāṣid al-Sharī'ah* | *nasya' - taḥawwul - iktimāl* |
| 6 | Jasser Auda | *Maqāṣid al-Sharī'ah Dalīl li al-Mubtadi'īn* | before al-Juwainī – after al-Juwainī |
| 7 | al-Raysunī | *Naẓariyyah al-Maqāṣid 'ind al-Imām al-Shāṭibī*<br><br>*Muḥāḍarah fī Maqāṣid al-Sharī'ah*<br><br>*al-Dzarī'ah ilā Maqāṣid al-Sharī'ah* | before al-Shāṭibī - the time of al-Shāṭibī |

Source: processed from various literature

Even though it is only a difference between the authors in periodizing the development of *maqāṣid* in the *uṣūl al-fiqh landscape,* this fact can be used as an initial indication of their pros and cons in the issue of separating *maqāṣid* and *uṣūl al-fiqh*.

### Differences in Response to Efforts to Make *Maqāṣid* an Independent Knowledge

More firmly than previous evidence, the pros and cons surrounding the separation between *maqāṣid* and *uṣūl al-fiqh* are proven by the differences in responses to efforts to make *maqāṣid* an independent knowledge. This article found 6 (six) scholars who gave different reactions to steps to make *maqāṣid* an independent understanding, which is grouped into 2 (two) groups: pros and cons.

#### 1. Ibn 'Āshūr (Tunisia, 1879-1973)

Ibn 'Āshūr was the first to voice the need to make *maqāṣid* an independent knowledge. Al-Shāṭibī's contribution was indeed extraordinary (making *maqāṣid* a source of law on a par with other sources), but he did not detach it from *uṣūl al-fiqh*. What al-Shāṭibī did was still within the umbrella *of uṣūl al-fiqh*. Ibn 'Āshūr welcomed al-Shāṭibī's persistence in making *maqāṣid* something *qaṭʻī* and no longer *ẓannī*.

According to Ibn 'Āshūr, for a long time, the scholars of *uṣūl al-fiqh* wanted to come up with a *qaṭʻī* source of law. However, they only managed to find two: al-Qur'an and al-Sunnah. Finally, al-Shāṭibī concluded that as long as the citations other than the Qur'an and al-Sunnah are based on the theories of *sharīʻah* (*kulliyāt al-sharīʻah*), they are *qaṭʻī*. Ibn 'Āshūr then claimed that the ideas of *sharīʻah* (as a result of the efforts of previous scholars) would later become the *'ilm al-maqāṣid*, not the *'ilm uṣūl al-fiqh* anymore (al-Ḥasanī, 1995).

In other words, there is a difference between *uṣūl al-fiqh* and *maqāṣid* scholars regarding *qaṭʻī* and *ẓannī*. The *uṣūl al-fiqh* scholars state that if a text contains only one unambiguous meaning and does not allow for other interpretations or mentions a specific number, then the text is considered *qaṭʻī*. At the same time, *maqāṣid* scholars argue that the concept of *qaṭʻī* and *zhannī* cannot be seen only from the clarity of the meaning of the text, which is *Bayani* or linguistic, but also from the essence of what the text wants, which is *maqāṣidī* (Awalia et al., 2022). Ibn 'Āshūr said:

"إذا أردنا أن ندون أصولا قطعية للتفقه في الدين حق علينا أن نعمد إلي مسائل أصول الفقه المتعارفة وأن نعيد ذوبها في بوتقة التدوين, ونعيرها بمعيار النظر والنقد فننفي أجزائها الغربية التي عاشت بها, ونضع فيها أشرف معادن مدارك الفقه والنظر, ثم نعيد صوغ ذاالك العلم ونسميه علم مقاصد الشريعة, ونترك علم أصول الفقه علي حاله تستمد منه طرق تركيب الأدلة الفقهية"

> "If we want to get definite sources for tafaqquh fi al-dīn, then we have to take the issues in the well-known uṣūl al-fiqh, melted it back in the crucible of codification, borrowed its essence critically, and purified it of foreign elements, then filled it with the most honorable minerals of the principles of fiqh and gave it the name of Ilmu Maqāṣid al-Sharīah. After that, we leave uṣūl al-fiqh in its current condition, which may still be useful for knowing the method of compiling the sources of fiqh." (al-Ḥasanī, 1995)

From his statement, it can be seen that Ibn 'Āshūr argued that *maqāṣid* should be given independent status. As is known, al-Shāṭibī, in his work, does not provide *maqāṣid* independent group, instead only treating *maqāṣid* as an extension of *uṣūl al-fiqh*. He has emphasized the importance of *maqāṣid* but did not say whether it is separate from *uṣūl al-fiqh* or not.

Ibn 'Āshūr does not explicitly state what measure of science is recognized as independent from other sciences. Therefore, the author proposes that the extent of *maqāṣid*'s independence should be if the concerns behind his efforts to make *maqāṣid* an independent science have been answered. This means that if the *qaṭʻī* sources have been able to be presented by *maqāṣid*, then it is disconnected. In addition, other things are also worth proposing as benchmarks, such as the increasingly felt contribution of

*maqāṣid* to the renewal of *uṣūl al-fiqh*, as reported by Beka (Beka, 2021) or the recognition of *maqāṣid* as an essential source of law in the process of developing Islamic law as reported by Adib (Adib, 2023).

### 2. Ibn al-Khaujah (Tunisia, 1922-2012)

Ibn al-Khaujah saw that the efforts made by Ibn 'Āshūr were like rowing two islands: the renewal of *uṣūl al-fiqh* on one side and the development of *maqāṣid* as a new knowledge on the other side. This effort will lead to an understanding called *uṣūl uṣūl al-fiqh* (source of *uṣūl al-fiqh*). Ibn 'Āshūr's efforts to make *maqāṣid* an independent experience were at least partly because he saw the many disputes that occurred among *uṣūl al-fiqh* scholars and his desire to minimize conflicts can ultimately lead to a *qaṭ'ī* source or proposition for Islamic law that can be mutually accepted.

As is well known, the course of *uṣūl al-fiqh* is shaped by a combination of historical developments, scholarly influences, and critical thinking methodologies. Scholars engage in debates and discussions to refine legal methods, challenge opinions, and propose alternative interpretations (Asim et al., 2023). In *uṣūl al-fiqh*, scholars do the same, but according to *maqāṣid* scholars, there is too much debate. The debates in *uṣūl al-fiqh* even hit the heart of the science itself. For example: 1) the categorization of arguments into those that are agreed upon and those that are disagreed upon (*adillah mukhtalaf fīhā*). Scholars such as al-Ġazālī, for example, refer to the disagreed-upon arguments as *adillah mauhūma*h (false statements); 2) the existence of works of *uṣūl al-fiqh* that were composed to defend the madzhab of their imams; 3) the case of the rejection of *istiḥsā*n by the Shāfi'ī madzhab and the response to that rejection. The Ḥanafī scholars wanted to break the enmity by redefining *istiḥsān* to make it acceptable to their opponents. This is because the legitimacy of *istiḥsān* in *uṣūl al-fiqh* depends on its definition. Al-Jaṣṣāṣ went on to say that the use of *istiḥsān* is part of the operation of *qiyās*. *Istiḥsān* is defined by being associated with *qiyās* (Aykul, 2022); 4) the criticism that neoijtihadism, Liyakat Takim's term, requires revamping traditional *uṣūl al-fiqh* theory, which has hindered and not improved the formulation of new laws (Takim, 2021); and 5) the criticism from al-'Alwānī, for example, that *uṣūl al-fiqh* is challenging to develop because it is influenced by al-Ash'arī doctrine (Koujah, 2017).

Ibn al-Khaujah said:

هذا وإن في بداية تمهيد الشيخ ابن عاشور لمقاصده إيماءً لما كان عليه علماء الأصول من الخلاف وذالك ما يدل عليه قوله: "قصدت إلي إملاء مباحث جليلة, والتمثيل لها, والإحتجاج بها لإثباتها, توصلا إلي إقلال الإختلاف بين علماء الأمصار".

*"Thus, at the beginning of Ibn 'Āshūr's introduction of his maqāṣid work, there is a hint that there has been a dispute between the uṣūl al-fiqh scholars. That is what his own words indicate: "I want to carry out large research, and demonstrate it, and use it as a basis or evidence, to reduce differences between scholars in various regions"(al-Khaujah, 2004).*

Still, according to Ibn 'Āshūr, as stated by Ibn al-Khaujah, the many disputes among *uṣūl al-fiqh* scholars indicate that the sources of Islamic law in *uṣūl al-fiqh* are merely *ẓannī* (conjecture). The *ẓannī* character of *uṣūl* al-*fiqh,* according to Ibn 'Āshūr, is caused by differences of opinion among his scholars regarding *muḥkam mutashābih, ḥadīts aḥād,* and *ijmā';* and about the rationality of God's texts (al-Khaujah, 2004).

In addition to the role of the ratio as a source of law itself being debated (Weller & Emon, 2021), as explained earlier, questions about whether there is a reason behind the text, whether reasons that are not explicitly mentioned by the text can be known by human ratios; whether the reason "why" is the same as the purpose "for what"; and whether the reason and purpose can be used as a basis for producing law in

the contemporary world, are also debated by *uṣūl al-fiqh* scholars (Aḥmīdān, 2008). All of the above debates about rationality show that uṣūl al-fiqh is ẓannī. Another example is the separation of *muḥkam* and *mutashābih*. In the case of *mutashābih*, it should be noted that it is a theological issue in *uṣūl al-fiqh* that is used to defend the Qur'an externally against other religions or internally against other sects (ÇÖKLÜ, 2022).

### 3. Aṭiyyah (Egypt, 1928-2017)

According to Aṭiyyah, what Ibn 'Āshūr voiced would be dangerous for both sides of knowledge (*uṣūl al-fiqh* and *maqāṣid*). This is because it will have implications for the stagnation of *uṣūl al-fiqh* in its current final condition and cover it from the spirit of *maqāṣid* on the one hand and will distance *maqāṣid* from its role in real life and from our efforts to develop it on the other hand. Aṭiyyah says:

أما رأي ابن عاشور في تأسيس علم مستقل لمقاصد الشريعة وترك علم أصول الفقه علي حاله, فأري أنه ضار بكلا (العلمين) إذ يجمد الأصول علي حالها ويحرمها من روح المقاصد, كما أنه يبعد المقاصد عن الدور الوظيفي الذي تقوم به حاليا والذي ينبغي أن نحرص علي تطويره

*"As for Ibn 'Āshūr's opinion about building an independent science for maqāṣid and abandoning uṣūl al-fiqh (just like that) in its (current) state, I believe that it (Ibn 'Āshūr's opinion) is dangerous for both knowledge (uṣūl al-fiqh and maqāṣid) because it will make uṣūl al-fiqh become stagnant in its (current) condition and deprive it from the maqāṣid spirit so that it will distance the maqāṣid from the circle of roles he must play and from the efforts we should make to develop it." (Aṭiyah, 2001)*

What Aṭiyyah stated indicates that he was against the efforts to independent *maqāṣid*. Besides stopping the development of *maqāṣid* itself, independence will also make *uṣūl al-fiqh* dry (only linguistic).

### 4. Hashim Kamali (Malaysia, 1944 -present)

Hashim Kamali believes that making *maqāṣid* a separate course does not indicate its independence from *uṣūl al-fiqh.* Maqāṣid is an exceptional knowledge of shari'ah that never claims to be independent.

*"In our view, teaching a separate course on maqāṣid is not proof of its independence from uṣūl al-fiqh. We believe it is a distinctive discipline of Shari'ah without claiming that it is independent." (Kamali, 2020a)*

It seems that Hashim Kamali disagrees with the independence *of maqāṣid.* He does not want *maqāṣid* to stand alone as an independent knowledge, growing and replacing *uṣūl al-fiqh. Maqāṣid* is just a distinction in the field of Islamic legal studies.

### 5. Al-Raysūnī (Morocco, 1953 -present)

Al-Raysūnī, at the end of his work, answers whether it is necessary to make *maqāṣid* an independent knowledge from uṣūl *al-fiqh* as championed by Ibn 'Āshūr. According to him, whether independent or not, the question is not too urgent if we have agreed to develop and expand the horizon of the study. This question is easy because it can be answered by the opinion of Abdullāh Darrāz, who says:

"فهو يري أن لإستنباط الأحكام ركنين: أحدهما علم لسان العرب, وثانيهما علم أسرار الشريعة ومقاصدها, ومن هذين العلمين يتكون علم أصول الفقه. فالمقاصد علم وركن في علم. والعبرة بالمسميات لا بالأسماء وبالمقاصد لا بالوسائل"

*"He argued that to discover the laws requires 2 (two) pillars: the knowledge of the Arabic language and the knowledge of the secrets and objectives of the shari'ah. From these two pillars, uṣūl al-fiqh was also formed. (Therefore) maqāṣid is knowledge and (also) a pillar in knowledge. "Recognition is for the substance, not for names, (recognition) is for the goal, not for the means." (al-Raysūnī, 1995)*

Al-Raysūnī's opinion does not seem to care much about whether *maqāṣid* is independent or not. He is more in favor of the fact that *maqāṣid* is the substance of the method of discovering Islamic law. The issue of labels, formalities, or names for specific knowledge is unimportant. *Maqāṣid* has been proven to be a method of learning Islamic law.

### 6. Ismā'īl al-Ḥasanī (Morocco, 1963-present)

Ismā'īl al-Ḥasanī argues that if *maqāṣid* is to be an independent knowledge, it should only be relative due to methodological needs. If not, the only method of legal discovery based on *maqāṣid shari'ah* is authentic. Between *maqāṣid* and the ways of discovering Islamic law in *uṣūl al-fiqh,* there is a complementary relationship (*takāmuliyyah)*, so what needs to be done is to make *uṣūl al-fiqh* as *maqāṣid* in the sense of breathing the spirit of *maqāṣid* into it, accompanied by the awareness that the independence *of maqāṣid* is only relative, both at the level of method, theme and aim.

"إذا جار الحديث في مقاصد الشريعة عن إستقلاليتها عن علم الأصول, فلتكن إستقلالية نسبية تقتضيها الضرورة المنهجية, وإلا فإن الإستدلال الفقهي الأصيل هو القائم علي مقاصد الشريعة. ويزيد الرأي وضوحا بشرح التكاملية بين المقاصد وطرق الإستنباط (موضوع علم الأصول) بجعل علم الأصول علما مقاصديا بنفخ روح المقاصد الشرعية في علم الأصول, مع التنبيه إلي الإستقلالية النسبية بين علم الأصول وبين درس مقاصد الشريعة, سواء علي مستوي المنهج, أو علي مستوي الموضوع, أو علي مستوي الهدف"

*"If indeed there is talk about the independence of maqāṣid from the science of uṣūl (uṣūl al-fiqh), then the independence should be relative (solely) in the name of methodological needs. If not, then authentic jurisprudential reasoning is actually (only) based on maqāṣid al-sharī'ah (only). He added a clearer opinion that there is a complementary relationship between maqāṣid and methods of legal discovery (as are the sources of law in uṣūl al-fiqh). (The relationship is created) by making uṣūl al-fiqh as maqāṣidī by breathing the spirit of maqāṣid into uṣūl al-fiqh, here is a reminder of the relative independence between uṣūl al-fiqh and maqāṣid studies, both at the level of method, theme, and purpose." (al-Ḥasanī, 1995)*

### Response to Efforts for Maqāṣid Independence

| NO | NAME | ORIGIN | WORK | TO INDEPENDENCE |
|---|---|---|---|---|
| 1 | Ibn 'Āshur | Tunis, 1879-1973 | Maqāṣid al-Sharī'ah al-Islāmiyyah | Pro |
| 2 | Ibn al-Khaujah | Tunis, 1922-2012 | Muhammad Ṭāhir Ibn 'Āshūr wa Kitābuh Maqāṣid al-Sharī'ah al-Islamiyyah | Pro |
| 3 | Aṭiyyah | Egypt, 1928-2017 | Nahw Taf'īl al-Maqāṣid al-Sharī'ah | Cons |
| 4 | Hashim Kamali | Malaysia, 1944 - present | Actualization (Taf'īl) of the Higher Purposes (Maqāṣid) of Sharia | Cons |

| 5 | Al-Raysūnī | Morocco, 1953 - present | Naẓariyyah al-Maqāṣid 'ind al-Imām al-Shāṭibī | Neutral |
| 6 | Ismā'īl al-Ḥasanī | Morocco, 1963 - present | Naẓariyyah al-Maqāṣid 'ind al-Imām Muhammad al-Ṭāhir Ibn 'Āshūr | Cons |

Source: processed from various literature

## Causes of the Pros and Cons of Separating between *Maqāṣid* and *Uṣūl al-Fiqh*

The pros and cons of the separation between *maqāṣid* and *uṣūl al-fiqh* were triggered by 3 (three) factors: early disagreements about *ta'līl an-nuṣūṣ* (ratiocination), disputes about *istiqrā'*, and the accusations of utilitarianism. First, there are differences of opinion regarding *ta'līl an-nuṣūṣ* (ratiocination). As is known, the theory of *ratiocination,* which in turn became *qiyās,* was allegedly a Mu'tazilah contribution to *uṣūl al-fiqh* (al-Zuḥailī, 2019). *Qiyās* itself later became the basis for building *maqāṣid.* This is because both of them depart from *ta'līl an-nuṣūṣ. Qiyās* talks about *'illah* and *maqāṣid* talks about *ḥikmah.*

On the other hand, the Asy'ariyyah and Sufis who rejected the ratiocination theory (al-Zuḥailī, 2019) were the primary builders of maqāṣid, who were none other than al-Ḥakīm al-Tirmīdzī, al-Juwainī, and al- Ġazālī (Belhaj, 2023). Indeed, there are times when the Qur'an ratiocinates its texts to convince its readers (Abdallahi et al., 2022). However, many groups of theologians and Ẓāhiriyyah argue that God's commands and prohibitions cannot be known what the reason behind them is unless the text states so. This is because it would be assumed that a figure would be perfect and could understand all the purposes of God's commands and prohibitions, and therefore, God would be flawed (Abdallahi et al., 2022). Reasoning in legal issues is suspected by some scholars who prefer to resolve legal questions, as far as possible, based only on revealed texts (Sharif El-Tobgui, 2019). This push and pull of ratiocination makes the separation between maqāṣid and uṣūl al-fiqh problematic.

The tug-of-war occurs because scholars differ on whether reason also includes purpose. Does "why" also include "for what purpose"? While most scholars agree that there is a reason and that the reason is cognizable by 'aql, this differs from their opinion about purpose. According to al-Amīdī, cited by Aḥmīdān, most uṣūl al-fiqh scholars disagree with making purpose a reason (Aḥmīdān, 2008). Objectives not explicitly mentioned in the text have become a bone of contention among scholars. Maqāṣid is built on goals inferred by human ratios. Therefore, the separation of maqāṣid from uṣūl al-fiqh is feared to make it further away from the text (Malkawi, 2020).

Second, there are differences of opinion regarding istiqrā'. Istiqrā' is an inductive examination of many facts of the text to know God's higher objectives and intents behind the texts of commands and prohibitions. Indeed, there are three tendencies in how to know God's higher goals: 1) reductionist (tafrīṭ) as used by neo-Ẓahiri who argue that God's purpose can only be known through texts that clearly state God's direct purpose in the text of specific commands or prohibitions; 2) expansionists (ifrāṭ) who go overbroad in determining how to know God's purpose and even sacrifice the text. This tendency can identify God's new purposes without the aid of explicit texts; and 3) moderate (wasaṭ) who prefers maqāṣid, which finds support from valid texts and precedents (Kamali, 2020a). An example of the third tendency is identifying "eliminating harm" (raf' al-ḍarar) as a divine goal with a broad scope of

application. There are guidelines on how harm can be appropriately measured and evaluated, and this is how moderation is ensured. Valid precedents must guide this careful approach, as well as knowledge and good judgment (al-Qaraḍāwī, 2006).

The three tendencies above also emerge when the scholars use istiqrā' as a method. All the characters agree that God's purpose can be known through the 'illah mentioned in the text. However, when 'illah is not found in the text, only some scholars use istiqrā,' while others don't. Those who use maqāṣid were Ibn 'Āshūr, Aṭiyyah, al-Yūbī, and, of course, al-Shāṭibī. al-Shatibi made istiqrā' the primary basis of his methodology (al-Raysūnī, 1995).

These three tendencies gave rise to criticism, for example, from al-Marzūqī, who argued that it is impossible to know God's purposes, which are not mentioned in the text of the commands and prohibitions. According to al-Marzūqī, the scholars did not carry out istiqrā' towards the reader. God's purpose can only be read from explicit texts; therefore, it is impossible to understand God's purpose supra textually (Belhaj, 2023).

Third, there is the accusation of utilitarianism. As is known, utilitarianism boils down to maximizing utility for the most significant number of people (Bykwist, 2010) or the greatest good for the most important number. The problem lies in what "good" or "greatest good" means and how one identifies it. "Good" is identified with utility, happiness, pleasure, satisfaction, usefulness, economic well-being, and lack of suffering. According to Jeremy Bentham (1748-1832), the measure of utility is happiness. Therefore, he famously said, "It is the greatest happiness of the greatest number that is the measure of right and wrong" (Burns, 2005).

Given the meaning of utilitarianism above, maqāṣid faces the challenge of a foreign worldview influenced by secular Western philosophy. While it is true that the five aspects of maqāṣid have a worldly dimension that a secular mindset can appreciate and, therefore, must be projected outward for them to understand the relevance of Islamic law to contemporary issues (Alnemari, 2017), it is also necessary to emphasize that the worldly aspect of maqāṣid is embedded in higher eschatological dimensions. That is why, as stated by al-Būṭī, the essential element of maqāṣid, namely dīn, is the principle of integration of all other maqāṣid, meaning that each of the lower aspects of maqāṣid (māl, nasal, 'aql, and nafs) must realize dīn and serve it. This means that, through parts of maqāṣid that are carried out correctly, it can be expected to refer to a practical mindset. However, suppose maqāṣid is only focused on worldly aspects. In that case, it is the same as allowing maqāṣid's integrative axioteleological vision to be co-opted by a narrow reductionist utilitarian ethos, and in turn, this will lead to the corruption and despiritualization of fiqh and uṣūl al-fiqh. The maqāṣid issue that is widespread today is that the transcendental ontological view or vision is obscured in the name of a reactive response to Western political, economic, intellectual, and cultural demands, thus leading to utilitarianism (Setia, 2016).

Al-Marzūqī also argues that maqāṣid scholars enjoy immoral utilitarianism because they rely on pragmatism. Therefore, scholars should not create new laws based solely on utilitarianism. This is because the authority to make laws belongs to God alone. Qiyās and maqāṣid must not be sources of law (Belhaj, 2023). This accusation of utilitarianism causes pros and cons for the separation between maqāṣid and uṣūl al-fiqh.

## Implications of Pros and Cons of the Separating between *Maqāṣid* and *Uṣūl al-Fiqh*

The pros and cons of separating between *maqāṣid* and *uṣūl al-fiqh,* on the one hand, have positive implications and, on the other hand, has negative implications. This has positive consequences because, in turn, the Islamic law reform project can be handled more comprehensively. The existence of these pros and cons indicates the seriousness of the scholars in developing knowledge and responding to situations that must be answered immediately.

It must be realized that the current spirit of reform in Islamic law can be expected from *maqāṣid,* not *uṣūl al-fiqh.* This is due to the theoretical and restrictive nature of *uṣūl al-fiqh,* which is not responsive to Islamic revivalism and reform demands. Meanwhile, *maqāṣid* is versatile and does not focus on technical details like what uṣūl al-fiqh does (Kamali, 2004). *Uṣūl al-fiqh* was formulated when the fate of Islamic law was not as much of a problem as today. Therefore, the methodology or theories are not concerned with conditions. The almost total dependence of society on favorable laws today was never imagined in the *uṣūl al-fiqh* of that time. The rich heritage of *uṣūl al-fiqh* can be utilized in new ways that pave the way for *ijtihād* and integrate Islamic law with favorable legislation in the same process. The new method in question is *maqāṣid.* It can help make Islamic law relevant to the concerns of contemporary society (Kamali, 2001).

The separation between *maqāṣid* and *uṣūl al-fiqh* is expected to equalize their positions so that an interdisciplinary collaborative relationship can be established in responding to contemporary issues. Indeed, it is said that collaboration between sciences requires negotiating hierarchies and power relations. This is because the sciences actually compete for intellectual jurisdiction and the legitimacy of certain types of expertise (Savage, 2010) (Lyle, 2017). However, it is believed that the *maqāṣid* boom will not stop *uṣūl al-fiqh* but (at least according to Kamali) help *uṣūl al-fiqh* to adapt to new conditions (Kamali, 2003). The relationship between *uṣūl al-fiqh* and *maqāṣid* can still be found because the works of *maqāṣid* almost always provide special chapters on the relationship between the two.

On the other hand, the works of *uṣūl al-fiqh* also still discuss *maqāṣid* in their jobs. Presumably, *istiḥsān* can be used as an instrument of consolidation between *uṣūl al-fiqh* and *maqāṣid* (Kamali, 2004). A multidisciplinary approach is more promising in solving contemporary problems because complex societal challenges cannot be addressed adequately by practicing one traditional science alone (Lyle, 2017).

Apart from being positive, the pros and cons of separating *maqāṣid* and *uṣūl al-fiqh* can also have negative implications. This becomes a reality if the scholars get caught up in prolonged debates and forget to respond to contemporary issues. It must be recognized that adding new constructs, developing new theories, questioning old ideas, and creating interventions that are in harmony with the needs of society and the surrounding situation are challenging tasks for an established and rigid entity (Díaz-Loving, 1999). This difficult task tired the scholars and did not immediately respond to contemporary needs.

The best criticism for scholars who immediately continue the pros and cons is pragmatism. According to pragmatism, reality cannot be sought from ideas but is produced by applying ideas. Theories are always temporary, and acting immediately is the right thing to do. Ideas are tools to achieve specific goals. The function of ideas is to help society adapt to an ever-changing and unpredictable world. The mind's role is to be creative, not reflective. The mind's task is not to understand but to transform

(Smith, 2019). In other words, the creation of a comfortable society under Islamic law cannot be sought in the idea of separating or merging *maqāṣid* and *uṣūl al-fiqh.* On the other hand, the idea of separation is just a tool. The Muslim community has eagerly awaited the creativity of scholars.

This article corroborates Ibn 'Āshūr's theory, as confirmed by Ibn Khaujah, who said that there was a lot of debate in *uṣūl al-fiqh* (al-Khaujah, 2004). However, it rejects the theory that there is a harmonious relationship between *maqāṣid* and *uṣūl al-fiqh.* Although the pros and cons in separating *maqāṣid* and *uṣūl al-fiqh* are reasonable, because if the findings from *maqāṣid* research contradict the beliefs and ideology of *uṣūl al-fiqh* scholars, there is almost certainly rejection (Ferrari & McBride, 2011), it is not true to say that the relationship between *maqāṣid* and *uṣūl al-fiqh* is harmonious. As Hasyim Kamali said, what exists is subordination and domination (Kamali, 2020b). This may be because *maqāṣid* is only connected with the methods: *qiyās, istiḥsān, istiṣlāḥ, dzarī'ah, and ta'āruḍ al-adillah,* but there is also mutual criticism between *maqāṣid* and *uṣūl al-fiqh.* As is known, if many *uṣūl al-*fiqh doctrines, such as *ijmā', qiyās,* and even *ijtihād* over time are burdened with complex conditions, *maqāṣid* is not burdened with methodological techniques and literal reading of the text. *Maqāṣid* thus integrates a level of versatility that, in many respects, meets the needs of society without the need to negotiate complex methodologies. On the other hand, the use *of maqāṣid* so far has been considered careless; therefore, it still requires further methodological accuracy. *Maqāṣid* does not have as good methodological resources as *uṣūl al-fiqh* (Kamali, 2021).

The separation between *maqāṣid* and *uṣūl al-fiqh* is rational because current developments require it, as is the case in other sciences. *Maqāṣid* has also been studied as a separate knowledge in recent decades at the universities of Morocco, Algeria, Mauritania, Pakistan, Saudi Arabia, and Egypt (Kamali, 2020a). *Maqāṣid* also received a warm welcome, as evidenced by the teaching of *maqāṣid* as a course in universities, becoming a theme in seminars, and becoming a primary issue in publishing institutions (al-Khādimī, 1427). Let this article provide an example to illustrate the relationship between one science and another. Anthropology is the science of everything that concerns humanity. The Anthropological Society *of Washington,* founded in 1879, then included several scientific subdivisions into the science of Anthropology, including Somatology, Sociology, Philology, Philosophy, Psychology, and Technology. Here, it can be seen that Sociology was made a subdivision of Anthropology, and rightly so. But this in no way invalidates the completely different classification that considers Sociology a general science, and Anthropology is seen in some ways as a part of Sociology. It turns out that a subject can be classified into more than one science. In this case, humans become the subject of Anthropology and other sciences (Ward, 1895). Therefore, even though their status will be independent, *maqāṣid* and *uṣūl al-fiqh* cannot be separated; the two must have a complementary relationship.

This paper recommends the need for courses, teaching curricula, and study programs in faculties to spearhead the development of knowledge, research, early dissemination, and publications (books, journal articles, and proceedings) on *maqāṣid* as is the reality on the ground as reported by Kamalī and al-Khādimī (Kamali, 2020a) (al-Khādimī, 1427) because historically new sciences emerge through this process (Nasution, 2020). In addition, there is also a need for a consortium that meets regularly so that *maqāṣid* becomes *mainstream* (Ferrari & McBride, 2011). Political will from authority, or at least cooperative autonomy between *maqāṣid* scholars and control, is no less important to find a way out that is more productive for developing knowledge and responding to contemporary issues.

## Conclusion

There has indeed been debate among scholars on the issue of the separation between *maqāṣid* and *uṣūl al-fiqh.* As a first clue, the scent of the discussion emerged when they differed in periodizing the development of *maqāṣid.* Further evidence of this debate can be found in the different responses to efforts to make *maqāṣid* an independent knowledge. The pros and cons are triggered by none other than differences of opinion regarding the theory of *ta'līl an-nuṣūṣ* (ratiocination), the method of *istiqrā',* and accusations of utilitarianism. These pros and cons can have positive or negative implications. Positive because, in turn, the Islamic law reform project can be handled more comprehensively. It would be harmful if the scholars got so caught up and struggled with the debate that they forgot to respond to real contemporary issues. Regardless of the discussion of the criticism of uṣūl al-fiqh that has not yet been resolved and the old debate about rationalization as the legitimization of maqāṣid that has not yet been cured, it is not yet sure whether maqāṣid is independent or not. Maqāṣid works are now separate from uṣūl al-fiqh works. Maqāṣid has also contributed a lot to the reform of Islamic law.

The opinions of the six scholars above can be considered paradigms of independence *maqāṣid.* If Ibn 'Āshūr wanted to make *maqāṣid* an independent knowledge and was supported by Ibn al-Khaujah, then four other scholars had different opinions about the two. It seems that the *mainstream* paradigm is that *uṣūl al-fiqh,* even though the maqāṣid has presented the *anomalies in it,* are still considered reliable, and have even been helped by criticism from the *maqāṣid* themselves. Therefore, it must be seen that the birth of *maqāṣid* is not to overthrow *uṣūl al-fiqh* itself; on the contrary, it continues its progress. In Kuhn's terms (Gutting, 1980), *maqāṣid* can be considered an anomaly for *uṣūl al-fiqh,* but it will not end in a revolution against *uṣūl al-fiqh.* On the contrary, ongoing *maqāṣid* research, according to Lakatos's methodology of scientific research program (Lakatos & Musgrave, 1984), will further strengthen the position *of maqāṣid* itself and, in turn, will become a partner for *uṣūl al-fiqh* in interdisciplinary collaborative studies.

The idea of separating *maqāṣid* and *uṣūl al-fiqh* is understandable in the context of the fact that the contemporary era is an era of specialization. There is a tendency to prepare separate materials for each science content (Asim et al., 2023). On the other hand, the idea of keeping *maqāṣid* and *uṣūl al-fiqh* united is also understandable. Following Ibn Bayyah, as cited by Beka, *maqāṣid* must remain in *uṣūl al-fiqh.* *Maqāṣid* is like the soul, and *uṣūl al-fiqh* is its body. *Uṣūl al-fiqh* reform must not leave and must be based on *maqāṣid*, not modern utilitarianism nor traditional literalism (Beka, 2021). On the contrary, Islamic thought, in general, is rooted in rational criticism, and some scholars often suspect the maqāṣidi approach as a devaluation of the sacred texts and a means to escape from them (Malkawi, 2020). There are two indications from which we can conclude that the relationship between *maqāṣid* and *uṣūl al-fiqh* is not harmonious. First, there is mutual criticism between *maqāṣid* and *uṣūl al-fiqh.* Second, there is no equal position between agreed and disagreed sources or between *ijtihād bayānī, ta'līlī,* and *istiṣlāḥī* in *uṣūl al-fiqh*, or between revelation as a representation of *uṣūl al-fiqh* and reason as a representation of *maqāṣid.* *Maqāṣid* is not the primary method, only a complement (Beka, 2021).

This article may not be helpful for those who are learning about what *maqāṣid is*, what *uṣūl al-fiqh is,* and how it is structured. On the contrary, this paper is more of a study *of* the progress of science; therefore, I will have to content myself on this page with pointing to some issues that require further investigation and hopefully serve as inspiration for those who love knowledge to fill in the gaps. One thing

that could be a topic for further discussion is why there is a boom in *maqāṣid* writing in the contemporary century (especially after 2010) and what exactly the actual factors that led to it.

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