

**NEW ESSENTIAL VALUES OF *DARURIYYAH*
(NECESSITIES) OF THE OBJECTIVES OF ISLAMIC
LAW (*MAQASID AL-SHARI`AH*)
(Keperluan Nilai Baharu Dalam *Maqasid Shari`ah*
(Objektif Undang-Undang Islam))**

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ABSTRACT

The main purpose of this article is to introduce two more essential values of daruriyyat (the essential/ the necessities) in accordance to objective of Islamic law namely preservation/protection of environment (Hifz al-Bi`ah) and preservation of health and protection of disease (hifz al-sihhah wa daf' al-marad). It could be hardly possible that the existent and classical categories of the objectives of Islamic law (maqasid shari`ah) namely: the essential (daruriyyat); the complimentary (al-hajjiyyat); the embellishments (al-Tahsiniyyat), could discover and formulate God's Will without tajdid al-`aql wa l-fahm (renewal of mind and understanding) to cope the challenge of modern and the globalization. In the age of globalization, Muslim jurists are being criticized for static or not dynamic understanding of the objective of Islamic law, which make them having lost contact with the changing conditions of contemporary life. In other words, they are unable to relate the objective of Islamic law (maqasid syariah) to modern situation. To response to the modern age, it is an urgently need to regard the preservation/protection of environment; the preservation/protection of health hifz al-Sihhah wa daf' al-marad (protection of disease), as an essential element of maqasid al-shari`ah.

Key words: The objectives of Islamic law, the essential, Islamic law, preservation/ protection of environment, preservation of health and protection of disease

ABSTRAK

Tujuan utama penulisan makalah ini ialah memperkenalkan dua nilai utama yang baharu sebagai tambahan kepada lima darurah (*al-darurah al-khamsa*) yang telah diperkenalkan selaras dengan *Maqasid al-Shari`ah* (*Objektif undang-undang Islam*). Dua nilai baharu ialah pemuliharaan dan perlindungan alam sekitar; pemuliharaan dan perlindungan kesihatan (*hifz al-Sihhah wa daf`al-marad*), perlu dijadikan sebagai sebahagian daripada *maqasid shari`ah*. Tidak mungkin *Maqasid al-Shari`ah* (*Objektif undang-undang Islam*) yang telah dijumpai oleh Ulama silam dapat memenuhi *Maqasid al-Shari`ah* dalam konteks masa kini yang benar-benar dikehendaki oleh Allah SWT Dalam era permodenan dan globalisasi, para fuqaha Islam telah dikritik kerana pemahaman yang statik dan tidak dinamik terhadap *Maqasid al-Shari`ah* yang sebenar dan sekaligus menyebabkan terputus *Maqasid al-Shari`ah* dengan kehidupan semasa. Dalam erti kata lain, fuqaha Islam tidak berjaya mengaitkan objektif undang-undang Islam (*maqasid syariah*) kepada situasi masa kini terutamanya dalam menghadapi gelombang pemodenan dan globalisasi.

Kata kunci: Objektif undang-undang Islam, Darurah, undang-undang Islam, pemuliharaan dan perlindungan alam sekitar, pemuliharaan kesihatan dan perlindungan penyakit

SHARI`AH (ISLAMIC LAW), OBJECTIVE OF ISLAMIC LAW AND ITS RELEVANCE TO MODERN AND GLOBAL SOCIETY

Imam Al-Shatibi (d. 790/1388) has defined most of the essential terms which he uses in his *al-Muwafaqat*, but he does not give a definition of *Shari`ah*. However, he has characterized the *Shari`ah* as blessed (*mubaraka*); Arabic; general; accessible to a common unlettered person (*ummiyya*), universal (*`amma; kulliya*), liberal (*samha*), convenient (*sahla*), protected (*ma`suma*) (Muhammad Khalid Masud 2005). As understanding from this characteristics that *Shari`ah* in a broad sense can be regarded as an importance tool to reduce if not solution to modern and global crisis. If we believe that, the Islamic law provides equally for each person's pursuit of real justice and real happiness, both in this world and the hereafter, hence, the *Shari`ah* has to give attention, not only to legal and illegal things, but also to a large number of human needs including preservation and protection of environment and protection of health. This is in line with the significant of the term *Shari`ah*, which derives from the Arabic word *shara'a*: meaning the clear path, highway or the road to a watering place. (Ibn Manzur t.th). It clearly indicates the relationship between *shari`ah* and the environmental elements notably water and a big road (highway). Since there

is no life without water. Similarly there is no life without shari`ah. In line to this, the author of *Kashshaf Istilahat al-Funun* defines *Shari'ah* as follows:

Shari'ah means the commands given by Allah to His servants, which has been brought by any of the prophets. Whether relating to the manner of action (*kayfiyyah al-'amal*) known as subsidiary and applied law (*far'iyyah wa 'amaliyyah*) of which the science of *Fiqh* was developed; or relating to the manner of belief (*kayfiyyah al-'itiqad*), known as the essentials and dogma (*asliyyah wa 'itiqadiyyah*) for which the science of *kalam* was developed (Muhammad Ali b. 'Ali b. Muhammad al-Tahanawi 1988).

If we want to find out the contribution of *shari'ah* in a globalization and modern civilization and society, we have to show and prove that the objective of Islamic law and its *maqasid shariah* dimensions is not only deals, prescribes, upholds and directs the modes of worship for the individual and gives guidance for personal morality and action, but also prescribes directives for a collective life containing various subjects, like global warming, environmental crisis, health, family relationships, socio-economic affairs, duties of citizens, decision-making structures, laws of war and peace, international relations, as well as, how to preserve and protect a healthy environment. If we view the *Shari'ah* from the perspective not limiting it to legal and illegal affairs, but rather examine it as a system of general guidance revealed by Allah (s.w.t), enunciated, interpreted by Prophet Muhammad (s.a.w), discovered, elaborated by the Jurists and authenticated and harmonized by *Ijma'*, then we will discover that the *Shari'ah* is truly a comprehensive system of faith and practice. It is a complete way of life, catering to all facets of human existence: individual and social, material, moral, economic, political, legal, cultural, national and international, as well as in protection and maintaining environment. Meanwhile, it is an established fact that the *Qur'an* provides all-embracing rules concerning the above matters. Thus, Muslim scholars should deliberate in their undertakings to discover the law, as well as, to extend the existing laws that abound in the *Qur'an* to new and unprecedented cases which are unlimited in number. It is for this reason that the Egyptian scholar, `Abd al-Wahab Khallaf (d. 1956 C.E) observed accurately that the nature of the sources of Islamic law and its adaptability and flexibility is rich and capable of responding to the interests of humanity and developing conditions to meet modern requirements. (Abd. al-Wahhab Khallaf 1955). The *Shari'ah* is not only contribute in the growth of a civilization, but also, it has its place in the "preservation of a healthy environment", to safeguard human beings from spiritual and physical afflictions. The various rules and injunctions of the *Shari'ah* concerning such affairs as ritual cleanliness, food and drinks, dietary, work habits, the organization of the environment are all ordered by Allah (s.w.t) for the purpose that humanity and society can preserve and maintain a healthy environment.

Shari`ah (Islamic law), irrespective of the variety of its sources and kinds, aims to discover and formulate God's Will. Its application leads to the real happiness, peace, prosperity, progress, glory and fraternity between all components of society. In this regard, Ibn al-Qayyim al-Jawziyyah (1993) said:

The foundation of the *Shari`ah* is wisdom and the safeguarding of people's interests in this world and the next. In its entirety it is justice, mercy and wisdom. Every rule which transcends justice to tyranny, mercy to its opposite, the good to the evil, and wisdom to triviality does not belong to the *Shari`ah* although it might have been introduced therein by implication. The *Shari`ah* is God's justice and mercy amongst His people. Life, nutrition, medicine, light, recuperation and virtue are made possible by it. Every good that exists is derived from it, and every deficiency in being results from its loss and dissipation-for the *Shari`ah*, which God entrusted His prophet to transmit, is the pillar of the world and the key to success and happiness in this world and the next.

Clearly what is referred to the above passage that real happiness, complete justice and measures to meet every type of situation in a changing society, are the fundamental aim of the *Shari`ah*. To achieve this noble aim, the *Shari`ah* constructs human life on the basis of *ma'rufat* (virtues) and to cleanse it of the *munkarat* (vices). It must have become clear that *ma'rufat* denotes all the virtues and good qualities that have always been accepted as 'good' by the human conscience. Conversely *munkarat* denotes all the sins and evils that have always been condemned by human nature as 'evil' That is the path to be pursued, the *Shari`ah*.

NEW FUNDAMENTAL VALUE OF ESSENTIALS (*DARURIYYAT*) IN THE LIGHT OF THE OBJECTIVES OF ISLAMIC LAW (*MAQASID SHARI`AH*)

In order to be able to appreciate the role and place of the higher objectives of Islamic law (*maqasid shari`ah*) in the era of modern and globalization, it is essential to find out new and relevant necessities of *maqasid shari`ah* since they are directly connected with the objective, nature and characteristics of Islamic law i.e., justice, happiness, divining origin, free from discrepancies and shortcoming, flexibility, universal, realistic, contemporary, blessed (*mubaraka*); Arabic; general; accessible to a common unlettered person (*ummiyya*), universal (*`amma*; *kulliyya*), liberal (*samha*), convenient (*sahla*) and protected (*ma`suma*). The essentials are the matters on which the religion and worldly affairs of the people depend upon, their neglect will lead to total disruption and disorder and it could lead to evil ending. Therefore besides the classical five essential values

(*al-darurah al-khamsah*) namely preservation/protection of faith; preservation/protection of life; preservation/protection of intellect; preservation/protection of property; and preservation/protection of dignity or lineage, the following necessities must be placed in a proper place in *maqasid shari'ah* under the rule of necessities:

HIFZ AL-BI'AH (PRESERVATION AND PROTECTION OF ENVIRONMENT)

Environmental crisis is one of the major problems of the contemporary world which no doubt affects the five necessities (*al-daruriyyah al-khamsa*). In reference to environmental crisis, Muslim jurists are often criticized for having lost contact with the changing conditions of contemporary life in that they have been unable to relate the resources of Islamic jurisprudence in general and *maqasid al-shariah* in particular with the environment (*Fiqh al-Bi'ah*) to modern situation especially in relation to protection and maintaining of a healthy environment. There are various challenges of the post industrial world and age of information explosion, with the crisis of global warming or climate change, yet the Islamic law scholars do not seriously understand the Islamic law when dealing with these crisis. With these concerns in mind, it is the right time, as Muslim scholars in Islamic law, to contribute positively towards the preservation of a healthy environment and play their role to reduce environmental crisis, if not the solution. Even thought, they are not scientists and environmentalists, that is not a moral excuse to escape from this responsibility as a member of the world community (Nurdeng Deuraseh 2010).

Thus, there is a serious need for a new essential *value (al-daruriyyah)* in *maqasid shariah* namely 'preservation/protection of environment', since we are currently challenged by the crisis of environment notably the challenge of climate change. The climate Change Conference in Copenhagen organized by United Nation, from 6 December to 18 December 2009 was held with delegations from 192 countries most notably scientists and expertise, unfortunately Islamic law scholars are not among them. The conference was organized with the aim to commit and establish a new global treaty on climate change which plays a vital role to reduce the carbon green house emission gases from the earth surface. The earth is globally warming by the effect of Green House Effect Gases (GHEG) known as Global Warming. We know that Global Warming is hot issue in these days, and even it is even in danger position for all living creatures, if the Carbon GHES are not reduced right now.

To achieve the objective of Islamic law, *shari'ah* scholars have to play a role in maintaining a healthy environment with special focus to global warming crisis. The Islamic law scholars have to master the knowledge of the environment since it is a pre-requisite to understand Islamic law. Accordingly,

it is impossible to implement the *Shari'ah* without proper knowledge of the environment. In other words, those who do not understand the environment cannot deal properly with the implementation of Islamic laws. For example, according to the *Shari'ah*, punishment for theft is amputation. However, the decree cannot be implemented on a thief by a judge if there is famine that occurs due to drought.

***Hifz al-Sihhah wa daf al-marad* (Preservation of health and protection of disease)**

It is agreed that the protection of five fundamental values include executing all the necessary measures in order ensure the realization of these values and at the same time ensuring that all the obstacles that will obstruct the implementation be removed, thus, these protections must be included other protections that needed by Muslim at the age of globalization.

It is true to say that protection of health as protection of *al-daruriyyat al-khamsa*. It is necessary to accept 'the protection of human health' as a fundamental value in *maqasid shariah*. As we know, health is one of God's greatest blessing bestows to mankind. It is certain that 'Ibadat cannot be achieved without good health and well-being. Abu al-Darda' r.a voiced to the Prophet saw: 'To be healthy and grateful is much more better than to be ill and endure patiently', the Prophet saw answered him by saying: "Allah loves healthy people, as you do" (Ibn al-Qayyim 1988). In order to support this, Ibn al-Qayyim (d. 750 A.H/ 1350 C.E), in his book *al-Tibb al-Nabawi*, mentions and stresses that: good health, strength, and well-being are the most prized, precious, and generous gifts. God bestows it upon His servants. Also on this subject, Ibn 'Abbas r.a narrated that an Arab came and asked God's Messenger saw: What should I ask Allah upon concluding each of the five daily prayers? God's Messenger saw replied: Pray for good health. The man further asked: Then what? God's Messenger saw reiterated: Pray for good health. The man asked again: Then what? God's Messenger saw replied again: Pray for good health and well-being in this world and in the hereafter. (Ibn al-Qayyim 1993).

Islam honors good health, strength, and well being and considered them as the most prized, precious, and generously gifts from Allah SWT. For this reason, good health is something for which we are accountable to God. It is incumbent upon the grateful servant, to safeguard this blessing and not to allow any change to overcome it through ill usage. Otherwise, according to Islamic law, he will be severely punished. Allah SWT says: "Anyone who tampers with God's grace after it has been bestowed on him will find God to be stern in punishment" (al-Baqarah 2 : 211). Interestingly, the command to preserve the good health in *Qur'anic* verse occurs side by side with reference

to propagate the knowledge (*'Ilm*), which is fundamentally important for man. In *Surah al-Baqarah* verse 247, Allah SWT says: "Allah hath chosen him above you, and hath gifted him abundantly with knowledge and bodily prowess." This verse indicates that Allah SWT demands human being not only an expansion of knowledge but also betterment of health and strength of body. Thus, the verse has been taken as evidence that *Hifz al-Sihhah* (preservation of health) should be concerned on a similar basis with expansion of knowledge. It is an obligation of a similar order.

Furthermore, al-Harith ibn Kaladah, graduate of the medical school of *Jundishabur* and a contemporary of the Prophet Muhammad saw, in reply to a question as to what was the essence of medicine, said: "prevention" (Al-Qifti 1908). This is in conformity with Arabian tradition: *dirham wiqayah khairun min qintar al-'Ilaj*: the guardian, protecting and preserving personal well being was considered better than medical treatment. In other words, a *dirham* (little amount) of preservation, prevention and precaution are far better than a *qintar* (big amount) of treatment. Therefore, as Muslim, he should take care his health and always strive to remain in healthy state. Interestingly, today, the subject on the preservation of health becomes one of hottest topics in our time as it had always been in the past. The preventive medicine is blooming in civilized countries where governments and institutions exert considerable efforts in teaching its principles to people. Aside from national and international, conferences, seminars and symposia on diseases and their treatments, there were also attempts to promote the preservation of health and preventive medicine by encouraging the population to participate in physical activities such as aerobic dancing, walking, running, swimming and other recreational activities, as well as promoting good morals and self-discipline at all levels of society.

CONCLUSION

The above discussion reveals to us that *Shari'ah* (Islamic law), irrespective of the variety of its sources and kinds, aims to discover and formulate God's Will and its application leads to the happiness, peace, prosperity, progress, glory and fraternity between components of society. To achieve these objectives and in line with the flexibility of Islamic law (*al-Shari'ah*), the role and place of *Maqasid al-Shariah* must not only protect the five essential values of faith, life, intellect, property, lineage, that introduced by many Muslim scholars notably Imam al-Shatibi in fourteen century but included other two essential values of *al-daririyyat* namely preservation/protection of environment (*Hifz al-Bi'ah*) and preservation of health and protection of disease (*hifz al-sihhah wa daf' al-marad*).

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