A Review of Masiyahah Mursalah and Maqasid Shariah as Methods of Determining Islamic Legal Ruling

Muhammad Nazir Alias¹, Mohd Al Adib Samuri², Ahmad Irdha Mokhtar³, Nik Abdul Rahim Nik Abdul Ghanî², * Mohd Sham Kamis⁵, Nursyahidah Alias⁶

¹,²,³,⁴Faculty of Islamic Studies, The National University of Malaysia, Malaysia
⁵Pusat GENIUS@Pintar Negara, Universiti Kebangsaan Malaysia, Malaysia
⁶Faculty of Computer and Mathematical Sciences, Universiti Teknologi MARA Cawangan Perak, Kampus Tapah, Perak Malaysia

Article History: Received: 10 November 2020; Revised: 12 January 2021; Accepted: 27 January 2021; Published online: 05 April 2021

Abstract: The position of maqasid shariah as reference for Islamic legal ruling has been a source of dissenting opinions among contemporary ulama. Some of them accept maqasid shariah as a method of determining legal principles, whereas others do not. In classical usul fiqh literature, the discourse on maqasid shariah among the ulama only appears in discussions on the position of masiyahah mursalah as a method of determining Islamic legal ruling. In light of this, the issue arises when the position of maqasid shariah, specifically as a source of law, is not mentioned by classical ulama. Therefore, a small number of scholars are of the view that maqasid Shariah is not clearly applied in the process of determining legal ruling, such as what had happened in the Shafie school of law. This article aims to review the concept of masiyahah mursalah and maqasid shariah in the context of its status as a method of determining Islamic legal ruling. The findings of the study show that masiyahah mursalah is not maqasid shariah because both of them originate from different sources. The rejection of masiyahah mursalah by some ulama does not refer to masiyahah that is in line with the higher objectives of Islamic law (maqasid shariah), but refers to masiyahah that relies solely on logic and intellect. The difference of opinion among contemporary ulama regarding the position of maqasid shariah as a method of determining legal principle stems from confusion in defining and categorising masiyahah mursalah and maqasid shariah.

Keywords: maqasid shariah, masiyahah mursalah, Islamic legal ruling, shariah law, usul fiqh, fiqh

DOI:

1. Introduction

The position of masiyahah mursalah as a method of determining Islamic legal ruling has become a lengthy polemic among the classical ulama. Some ulama, such as those from the Maliki school of law, accept the application of masiyahah mursalah as a method of determining Islamic legal ruling in fiqh literature and in issuing fatwa. In classical fiqh literature, there are several examples of how the Maliki School uses masiyahah mursalah as a method of determining Islamic legal ruling. First, masiyahah mursalah is used to enable a person accused of crime to be detained until he makes a confession to the crime committed or it is proven he is innocent. Secondly, masiyahah mursalah is used to allow the accused in a criminal case to be beaten until he confesses to the crime he committed if the person had previously had the same criminal record. Thirdly, masiyahah mursalah is used to enable government to impose taxes on citizens to meet military expenditures for guarding the country’s borders if the country’s finances are insufficient. Fourthly, masiyahah mursalah is used to enable someone who has long been in a place that has no halal food to eat food which is otherwise prohibited to him (such as pork), and he may eat more than necessary to sustain his life, but not to the extent of gluttony. This is because according to them, if one should wait for his life to be threatened before he is allowed to consume food, be it prohibited, it can cause the disruption of his everyday life (Abu Zahrah, 1997).

Whereas other ulama such as those from the Shafie school of law expressly specify their rejection of masiyahah mursalah as a method of determining Islamic legal ruling. For instance, al-Ghazali (1993), a Shafie ulama, denied its position as a method of issuing legal ruling. Al-Ghazali’s opinion became the basis of the assumption of some Shafie ulama and other schools that the Shafie sect leans more toward express textual reference in the Quran and Hadeeth in determining a legal ruling, and not by referring to the maqasid shariah that is implied by the former (Ibn Bayyah, 2018). Besides the Shafie sect, the Zahiri sect also plainly rejects masiyahah mursalah as its application is not founded on any Islamic legal evidence or principle.

Apart from masiyahah mursalah, maqasid shariah is also a method of determining Islamic legal ruling that is frequently discussed by ulama, where the two terms often exchange meaning and application. The discussion on maqasid shariah usually arises in debates among classical ulama when discussing the subject of the position of masiyahah mursalah as a method of determining Islamic legal ruling. However, in these debates, the classical ulama do not discuss maqasid shariah authority clearly, resulting in difference of opinion among contemporary
ulama on the position of maqasid shariah as a method of legal determination. In fact, it is not unreasonable to say that several contemporary ulama are mistaken in their understanding of the meaning and categories of these concepts, to the point where some of them refuse the authority of maqasid Shari'ah as a method of determining Islamic legal ruling. The source of their refusal comes from their view that the method of determining legal ruling was finalised by the classical ulama, which comprised only the Quran, hadith, ijma' and qiyas. Therefore, in their eyes, maqasid shariah is merely a guideline in determining legal ruling based on those methods (Abdul Majid, 2017; Mahaiyadin, 2017). A study by Mahmud Zuhdi (2017) shows that the determination of Islamic legal ruling based on maqasid shariah actually refers to determination of legal ruling based on maslahah mursalah. This is just but one example of confusion that will be explained and analysed in this article to show that maqasid shariah is a as a method of determining Islamic legal ruling and simultaneously prove that maqasid shariah is not the same as maslahah mursalah.

This article will therefore analyse the concept of maslahah, maslahah mursalah and maqasid Shari'ah based on the opinions of the classical and contemporary ulama, covering the aspects of definition, category and connection between the two concepts. This article will also discuss the position of maslahah mursalah and maqasid shariah as a method of legal determination. In addition, the article will unravel the misconception by scholars and ulama in categorising maqasid shariah as maslahah mursalah.

2. Maslahah: Definition, Concept and Category

Maslahah in Arabic has dual meaning. The first is goodness and benefit or interest. Literally speaking, the meaning of aslaha in Arabic is to do something that is good, beneficial, or to repair something. In colloquial Arabic, things that contain maslahah means that those things are filled with goodness (Al-Azhar, 2001; Ibn Manzur, 1993). The second meaning of the word maslahah is an action of public interest. This meaning is symbolic (majazi) to the word maslahah (Hassan, 1971). In Arabic, business contains maslahah (goodness) and seeking knowledge is a maslahah (benefit) because both things are in man’s best interest.

From the terminology aspect, several ulama have given various definitions of maslahah according to an approach of their choice. The first is that maslahah refers to the protection of the higher objectives of shari'ah. According to the definition by al-Ghazali (1993), maslahah is anything that preserves the requirements and objectives of shari'ah. The higher objective of shari'ah, according to him, is to defend religion, life, lineage, intellect, and properties. He further states that all things that can protect and preserve these five things are called maslahah. Contrarily, anything that can undermine these five things are called mafsadah and rejecting mafsadah also falling under maslahah. This definition by al-Ghazali therefore does not fit the literal definition of maslahah.

The second definition clearly shows that it is based on wisdom behind the law or its implications. According to Zayn al-Abidin al-Abd (2004), this particular definition of maslahah is garnered from a large number of usul fiqh scholars towards illah. An example of maslahah according to this definition is the process of ownership via the Islamic legal ruling of sale and hire purchase. The third definition is more literal, which is ‘goodness’. As per the definition stipulated by Izzuddin al-Salam (Sultan al-Ulama’, 1991), maslahah is divided into two parts. The first is maslahah which is tangible and real such as happiness and enjoyment from things such as delicious food, contentment, and good health. The second part is maslahah which is symbolic in nature, for example the source of happiness and enjoyment such as business and farming.

All three of these definitions have been referred to and debated by scholars, classical and contemporary ulama in their discussions on maslahah. These definitions provide insight into the implications of discourse regarding the determination of Islamic legal ruling. If the definition provided by Izzuddin al-Salam is upheld, the esteemed scholar would have no qualms in saying that maslahah mursalah can be applied a method of determining Islamic legal ruling. However, if al-Ghazali’s definition is referred to, maslahah mursalah cannot be applied for this purpose. This is because his definition falls outside the context of the debate on maslahah, where his focus is in the context of maqasid.

Based on the scholars’ examination of Islamic legal authorities, maslahah in general is divided into three categories (Al-Ghazali, 1993; Burkab, 2002), which are: maslahah with reference to legal texts, maslahah that is rejected by legal text, and maslahah which has no reference to legal text.

i) Maslahah which is acknowledged by Islamic law through specific legal text or evidence (maslahah mutabarah)
Maslahah in this category are based on reference to specific legal text or evidence in the Qur’an and Sunnah (Al-Lakhma, 1987) such as the compulsory prayers, fasting during Ramadan, zakat and the Hajj pilgrimage. In other words, all of Allah’s commands contain maslahah. Islam spreads maslahah on mankind, which is not limited to this world, but extends to the afterlife as well. In fact, scholars posit that maslahah in the afterlife is the foundation of maslahah in this world (Al-Shatibi, 2004), based on the belief that this life is temporary and the next life is eternal. Therefore, the scholars take the view that all divine law coming from Allah and bestowed upon mankind does not divide these two maslahah. The fulfillment of Allah’s commands by mankind will yield good consequences even in this world, before the afterlife begins. Similarly, the negative consequences of ignoring Allah’s commands will also be felt in this world before the eternal world.

The ulama divide this maslahah into three types, which are maslahah daruriyyah, maslahah hajjyyah, and maslahah taksiniyyah (Ibn Ashur, 2001). The most prominent type is maslahah daruriyyah, which means goodness or benefit that becomes a basic necessity in mankind’s life. If these basic necessities are not attained, man’s life will be destined for ruin (Al-Juwayni, 1997; Al-Shatibi, 2004). These necessities encompass five things, which are, religion, life, intellect, lineage and properties (Al-Ghazali, 1993; Al-Shatibi, 2004). Examples of maslahah daruriyyah are things such as food, clothing and ownership of possessions. The second type is maslahah hajjyyah, which benefits that make life easy and convenient for mankind (Al-Ghazali, 1993; Al-Shatibi, 2004). The execution of maslahah hajjyyah must be in accordance to the framework of maslahah daruriyyah (Al-Shatibi, 2004). If this type of benefits are not attained, there will be difficulty in fulfilling the five abovementioned elements of daruriyyah. Examples of this type of maslahah include the necessity to hunt, sale and purchase transactions and renting. If these things are not compelled by Islamic law, man’s life will become difficult and arduous. The third type is maslahah taksiniyyah, which are benefits that can improve man’s quality of life so he may live it in a comfortable manner (Al-Ghazali, 1993; Al-Shatibi, 2004). The status of this type of benefit is the lowest, where its absence will not cause real detriment to man’s life. For example, cleansing oneself from a state of impurity, washing away dirt before performing an act of worship, or covering the awrah during salah (prayer). This means that an individual who is confined to a space where he or she cannot take ablution or cover their awrah, is still obliged to perform salah, despite not being able to fulfill the conditional requirements of salah.

ii) Maslahah that is specifically prohibited Islamic legal text (maslahah mulghah)

Maslahah in this category is prohibited by Islamic legal text because of its dangerous nature, although some people may see these things as having good in them (Al-Ghazali, 1993; Al-Lakhma, 1987). Some examples are committing suicide, usury and consuming alcohol. Islamic law forbids these things so that mankind can protect itself from its dangers.

iii) Maslahah that does not have specific Islamic legal text that acknowledges or rejects them

There are certain benefits that have become necessities for mankind, but there are no specific legal text or evidence to recognise or reject them (Al-Ghazali, 1993). Maslahah of this type have been the subject of contention among the classical scholars as to whether they can be accepted or rejected in the process of determining Islamic legal ruling. Some scholars have categorised these as maslahah mursalah because they are not recognised or denied by Islamic law (Al-Zuhayli, 1986). Maslahah of this type are further divided into three categories:

a) Maslahah that is in line with maqasid shariah

The scholars are in consensus when stating that maslahah which corresponds to maqasid shariah is acceptable, even if there are no specific legal text to support it (Al-Shawkani, 1999; Al-Zuhayli, 1986). Some scholars have stated that maslahah which is compatible with maqasid shariah is what is meant by maslahah mursalah. Therefore, they will accept it in its entirety and without reservation (Burkab, 2002). An example of this type of maslahah is the consensus of the Companions during the rule of Caliph Abu Bakar to collect all written parchments of the Qur’an that were recorded in Prophet Muhammad’s time to be kept as a formal copy by the Caliphs. There was no instruction from Prophet ordering the companions to do such a thing. This was made clear when Abu Bakar himself initially disagreed to Umar’s proposal to collect the writings. Abu Bakar responded: “How can you wish to do something that the Prophet himself never did?” Umar replied: “By Allah! It is for good” (Al-Bukhari, 1997). It should be noted that there are no specific legal text that prohibited their action. However, after thorough analysis, their action was found to be of immense good to the Muslim community. This goodness is in proportion to the higher objective of Islamic law to ensure that continuous
preservation and protection of religion. Based on this authority, the Companions agreed to compile the written Quran parchments, despite there being no specific legal texts related to this act.

b) Maslahah that is in contradiction to maqasid shariah

Maslahah of this type is opposed by Islamic law because of its contradiction to maqasid shariah, although there is no specific legal texts rejecting it (Al-Shawkani, 1999; Burkab, 2002). An example of this type of maslahah is a fatwa by a Islamic scholar, who issues the fatwa against a ruler who has had daytime intercourse during Ramadan. The scholar instructs the king to fast for two consecutive months as expiation of his action. This sanction is aimed at teaching the ruler a lesson so he does not repeat his mistake after enduring the hardship of fasting for two months (Al-Ghazali, 1993). However, some scholars criticise the fatwa as being opposed to the higher objective of Islamic law that does not discriminate between a person’s status in affairs such as this. To them, the appropriate expiation for the ruler would have been to free a slave (Al-Bukhari, 1997). Therefore, this fatwa is rejected and unacceptable.

c) Maslahah that does not adhere to or oppose maqasid shariah

The scholar’s general opinion is that this type of maslahah cannot possibly exist, even if a specific category is created for it. According to the scholars, if such maslahah were to exist, it would be as if it denied the perfection of Sharia law as guaranteed in the Quran, 6:38, which states that all Islamic law can be determined from the principles contained in the Quran. Some scholars opine that this maslahah is what is meant by maslahah mursalah and that it needs to be rejected in its entirety (Al-Shawkani, 1999; Burkab, 2002). It is here where the source of difference of opinion among the ulama lies regarding the position of maslahah mursalah as a method of determining Islamic legal ruling. However, the ulama that hold on to this view regarding this type of maslahah are actually referring to maslahah gharibah (peculiar), which is wholly rejected by all Islamic law scholars (Al-Ghazali, 1993).

3. Maslahah Mursalah: Definition and Recognition by Mazhab

The scholars have diverse opinions vis-a-vis the definition of maslahah mursalah according to its terminology. These varying definitions have influenced their views on the applicability of maslahah mursalah as a method of determining Islamic legal ruling (Juwaylis, 2003). The first definition is maslahah that is not recognised or rejected by any legal text, either specific or general (Al-Amidi, 1982; Burkab, 2002). This definition is problematic since the majority of the scholars, regardless of their views on maslahah mursalah, wholly reject this definition. The ulama reject it because the definition contradicts verses in the Quran that state how Sharia is a legal system that is complete and perfect (al-Quran, 16:89). Therefore, in the eyes of the scholars, there is nothing in this world that does not have its corresponding legal provision in Sharia. If the texts or methods are incapable of determining the Islamic legal ruling of a given issue, it alludes to the possibility of Islam being incomplete and flawed. In light of this, Burkab (2002) argued that the definition is more suited to define maslahah gharibah, which is peculiar or outlandish maslahah, as defined by (Al-Ghazali, 1993). Other scholars have stated that their rejection of the application of maslahah mursalah as a method of determining legal ruling actually refers to maslahah mursalah based on this definition (Al-Amidi, 1982; Al-Zuhayli, 1986; Burkab, 2002).

The second definition, which is more accurate in defining maslahah mursalah, means maslahah that is compatible with the higher objectives of Sharia law and maslahah which is recognised by a general number of legal texts from divine revelation, but there is no individual or specific legal text acknowledging or rejecting it. Contemporary scholars such as (Abu Zahrah, 1997; Mokhtar, 2014; Al-Buti, 1982; Al-Zuhayli, 1986; Burkab, 2002; Ibn Bayyah, 2006; Juwaylis, 2003) argue that maslahah mursalah with this meaning will only be rejected by Zahiri ulama such as (Ibn Hazm, n.d.). All other ulama besides Zahiri accept it as a method of determining legal ruling, although the levels of application will vary. For instance, maslahah mursalah which is based on this definition is the compilation of the Quran during the rule of Caliph Abu Bakar.

According to ulama from the Maliki school of law, maslahah mursalah is a unique method of determining legal ruling (Abu Zahrah, 1997; Burkab, 2002; Juwaylis, 2003), whereby it looks at the problem within the ruling. If the matter contains maslahah and does not contradict any legal text, the matter will become permissible, even though there is no single specific evidence containing its ruling or allow for qiyas to be applied on it (Al-Abd, 2004; Ibn Ashur, 2001). This means that maslahah mursalah according to this school of law is a method of determining Islamic legal ruling on par with qiyas.
The application of maslahah mursalah by other school of laws have been found to use varying methods. For instance, the use of maslahah mursalah by the Hanafi school can be detected through the application of istisnan based on maslahah. In the Shafie and Hanbali schools, it can be traced through the application of qiyas that is based on munasib as its illah. (Abu Zahrah, 1997; Mokhtar, 2014; Al-Amidi, 1982; Al-Abd, 2004; Al-Zuhayli, 1986; Burkab, 2002; Juwaylis, 2003).

4. Maqasid Shariah

The following discussion will examine the theory of maqasid shariah, followed by an analysis of its relation to the theory of maslahah mursalah. Maqasid is the plural of the word maqasid, which is derivative of the verbs qaṣada, yuqṣiṣu, qaṣd and maqṣad. Qaṣd in Arabic has several meanings, such as (i) approaching something and pointing towards its direction, (ii) straight and not crooked, (iii) fair, central and not extreme, (iv) to break or a segment (Al-Fayyumi, n.d.; Ibn Faris, 1979). Shariah in Arabic means religion, path, way and methodology. From the terminology aspect, shariah means rules that have been imposed by Allah upon mankind through Prophet Muhammad (Al-Yubi, 1998).

There are several definitions of maqasid shariah that have been presented by contemporary scholars. Allal al-Fasi (1993) stated that maqasid shariah is the implied objective behind the issuance of legal ruling. The implied objective can only be understood via thorough analysis of the Islamic law as a whole. According to Ahmad al-Raysuni (1992, 1999), maqasid shariah are “the objectives that are determined by shariah to realise benefits for mankind.” Muhammad Saad al-Yubi (1998) on the other hand firmly states that maqasid shariah is “the meaning, wisdom, and the like which is taken into consideration by Sharia in general or specific legislating with the objective of benefitting mankind.” Al-Raysuni and al-Yubi focus their definitions on the benefits that are enjoyed by mankind, compared to al-Fasi’s interpretation. Based on the above-mentioned definitions, maqasid shariah can be concluded to be something that Sharia intends to provide goodness and benefit to mankind in this world and the next. This definition will also illustrate how it is possible for the ulama to have many interpretations in understanding the objectives of every legal ruling, depending on the respective ulama’s intellectual level and research initiatives that he carries out.

Maqasid shariah can only be determined by an analysis of Islamic law as a whole. This analysis method is called the istiqa’ method by the ulama (al-Shatibi, 2004). Istitqa’ is conducted by thoroughly analysing every individual ruling (juz’i) to identify the general objective (kulli). Istitqa’ is divided into two - istiqa’ tam and istiqa’ naqis. Istitqa’ naqis refers to the analysis of only a large number of individual ruling (juz’i) until the general objective (kulli) is more or less identified. This however results in an indefinite conclusion, or zummi (Al-Yubi, 1998).

The scholars have outlined four matters for consideration before a maqasid shariah can be extracted from Islamic law, which are (i) verses of command and prohibition in the Quranic texts and hadith, (ii) the reason or ‘illah for that particular command or prohibition, (iii) lacunae in a particular order or prohibition, even if there is a necessity for both the former and the latter, and (iv) general legal texts that illustrate the shariah objectives. First, the command and prohibition must be clearly stated from when it was first issued such as the commands to perform five daily prayers, pay zakat, the prohibition against assigning partners to Allah, and the prohibition against usury. This category does not include commands that are ‘lenient’ in nature (rukhsah) and where there are ‘exemptions’ to those commands. For example, there are legal text that permits sale and purchase in business in general (first level command) and legal text that prohibit sale and purchase transactions specifically during Friday prayer (second level command). The legal text for the first level command is the only one that can be considered to determine maqasid shariah; the second text cannot be considered because it is bound to a specific context. Furthermore, implied commands are also not taken into consideration to determine maqasid shariah (Al-Shatibi, 2004). For example, the Quran clearly prohibits a person from illegally taking or consuming the possessions or wealth of an orphan. Implicated, however, the Quran allows a person to take part of an orphan’s possessions or wealth on the condition that the orphan’s interests are taken care of. Therefore, only clear commands within the legal texts are acceptable to extract maqasid shariah, whereas implied commands are not.

Second is the reason or illah behind the commands and prohibitions in Sharia law (Al-Shatibi, 2004). All commands and prohibitions which have illah that is acknowledged must be compiled and analysed to get a clear picture of the intended objective (Ibn Ashur, 2001). Some examples are the prohibition against a Muslim from courting someone else’s fiancée, the recommendation to greet with salaam, to presume good in others, prohibition against reproach of others, prohibition against lying and so on, the objective of which is so that the sense of brotherhood in Islam is consistently strong among the Muslim community. Third is the lacunae in a given...
command or prohibition, despite there being a necessity for both of them (Al-Shatibi, 2004). This situation gives the understanding that the objective of Shariah is that no amendment or addendum can be made to existing commands or prohibitions. For example, take the command to pray five times a day, which is done with the objective, among others, to cleanse man’s soul of his sins. The obligation to pray five compulsory times a day cannot be added to, despite there being many people who have sinned greatly in their lives. Any addition to the number of compulsory prayers is considered to be an unlawful innovation (bid’ah). Fourth, the general legal texts that illustrate the objectives of shariah. An example is the verse that states how Allah does not like those who are oppressor and disobedient (fasiq), meaning that the rules of Shariah are aimed at prohibiting actions that are oppressing and disobedience (Abu Talib, 2001).

The ulama have set apart maqasid shariah based on a thorough understanding of the legal texts (Alias et al., 2018; Ibn Ashur, 2001). In general, the purpose of shariah is to provide good and benefit and prevent evil, as well as to secure the interests of mankind. Man’s best interests in shariah are divided into three types which are maqasid daruriyyat, maqasid hajjyyat and maqasid tawsitiyyat. Maqasid daruriyyat means things that are necessary to human life and form the basis of living. If these necessities are not present in their lives, they will be headed for ruin. These basic necessities are religion, life, intellect, lineage and properties. The scholars argue that these things are the higher objectives of shariah in the whole legislation of rulings (Al-Najjar, 2008; Al-Shatibi, 2004; Al-Yubi, 1998). The second is maqasid hajjyyat, which is man’s necessities that ease their lives and make it convenient for them. The absence of these things will make life difficult and chaotic for mankind. Some examples of these necessities are the recommendation to engage in business, rent, take loans and concession of worship when falling ill or travelling. These things support maqasid daruriyyat as mentioned above (Al-Shatibi, 2004). Third is the maqasid tawsitiyyat which means ancillary necessities which serve to complete and make life for man more comfortable and blissful. These necessities are on the lowest level of importance. The absence of these things does not cause detriment to people’s lives but may cause unhappiness and discomfort. Examples of these maqasid are the recommendation to wear clothes with a variety of patterns and colours, having a luxury car and using good terms to address one another (Al-Najjar, 2008; Al-Shatibi, 2004). Besides the aforementioned aspects, the scholars also divide maqasid shariah based on legal texts, which are maqasid ammah, maqasid khassah, and maqasid juz’iyyah.

Firstly, the maqasid ammah is the goal of the legal texts as a whole as to preserve religion, life, intellect, lineage and wealth. These goals are to facilitate life and not to make it difficult, the goal to keep the human system in order and organized, the goal of human beings as caliphs on this earth, and the goal of bringing good and curbing evil (Al-Najjar 2008; Yamani 2006). Secondly, maqasid khassah is the aim of shariah in certain matters such as shariah objectives in matters of crime, property and family (Al-Raysuni 1992, Yamani 2006). Each group of law has its own purpose and objective which supports maqasid ammah (Al-Najjar 2008). Thirdly, the maqasid juz’iyyah is the objective of shariah in every law relating to a particular problem such as the ban on alcohol due to its intoxicating nature, the ban on consuming carcasses as it negatively affects the health and the obligation of paying zakat to help the needy (al-Raysuni 1992; Ibn Ashur 2001).

In conclusion, the maqasid shariah is a shariah goal formulated from a deep and comprehensive understanding of Islamic law. Maqasid shariah is not a result of mere human reason but it is formed based on a comprehensive understanding of Islamic law.

5. Maqasid Shariah as a Method of Determining Islamic Legal Ruling

It is argued that the maqasid shariah may be used as a method to determine Islamic legal ruling. This is because maqasid shariah is derived from the comprehension of Islamic law as a whole. If the legal texts are the basis of the law, the maqasid and the understanding of the sharia law can also be a legal reference. In addition, the maqasid shariah are the objectives of shariah which are understood from the extensive and comprehensive research of the Islamic legal texts. It is not the result of human reasoning, but rather is based on Islamic legal texts. In other words, without the legal texts, human reason alone cannot know what the real purpose of Shariah is, in the legal context. Although the maqasid shariah contains things that are beneficial to mankind, it is known through Islamic legal texts and not mere reason. The view that maqasid shariah cannot be a direct method of determining Islamic legal ruling is based on confusion in distinguishing between maslahah mursalah and maqasid shariah. This error is probably due to the similarity between the categories of maslahah and the categories of maqasid shariah, especially from the points of daruriyyat, hajjyyat and tawsitiyyat. Whereas, the distribution of the maslahah is based on shariah and can be regarded as maqasid shariah. Maslahah can therefore be considered as maqasid shariah if it is extracted from the shariah.
Furthermore, the disapproval of Shafie scholars against *maslahah mursalah* does not mean they reject *maqasid shariah* as a method of determining Islamic legal ruling, but in fact they reject *maslahah* that is solely based on reason alone to be used as a legal source of shariah. This statement is clearly based on the actions of al-Ghazali (1993), which has placed *maslahah mursalah* under the category of unfounded evidence, but at the same time he acknowledges that *maqasid shariah* should be used as a reference in accepting or rejecting the *maslahah mursalah*. al-Ghazali (1993, 174) argues:

“But we mean the *maslahah* is to safeguard the shariah. The goals of shariah towards human beings are five things, that is to preserve their religion, life, intellect, lineage, and wealth. All things that can safeguard the five fundamentals, they are *maslahah* (goodness). And all the things that threaten these basics are *mafsadah* (evil) and eliminating them is *maslahah*... When we mean that *maslahah* is to safeguard the purpose of shariah then there is no way to dispute how it is compulsory to follow it. In fact, the question of its authority needs to be finalized.”

Therefore, *maslahah mursalah* must be ensured to be in parallel with *maqasid shariah* because it cannot be the mere basis of determining Islamic legal ruling. *Maqasid shariah* needs to be the reference for acceptance of *maslahah mursalah* because there are no legal texts can be referred for qiyas. *Maslahah mursalah* which conflicts with *maqasid shariah* should not be accepted because it is based on the determination by way of reason, which cannot match the understanding of Islamic legal texts.

**6. Conclusion**

Based on the analysis done, *maslahah mursalah* is a *maslahah* which has no direct root or background in shariah but is in line with the goals and objectives of shariah, while *maqasid shariah* is the higher objectives of shariah that has been formulated from the whole or part of the Islamic legal rulings. *Maqasid shariah* needs to be a reference for acceptance of *maslahah mursalah*. The rejection of some Islamic scholars, especially from Shafie's school against *maslahah mursalah* is referring to *maslahah* which is solely based on reason rather than referring to the *maslahah* which is understood from Islamic legal texts. Therefore, there is no problem in accepting *maqasid shariah* as a method of determining Islamic legal ruling.

**7. Acknowledgment**

The study was funded by the National University of Malaysia through the research grant DCP-2017-010/2.

**References**

A Review of Maslahah Mursalah and Maqasid Shariah as Methods of Determining Islamic Legal Ruling

International Institute of Islamic Thought.


