MAQASHID AL-SYARI'AH AS A SCIENCE DISCIPLINE: *Philosophical Review of the Concept of Thahir ibn 'Asyur*

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Abstract

This paper examines the concept of maqashid al-syari'ah as a separate science according to Ibn 'Asyur. The researcher examines this concept using a philosophy of science perspective. It is done by researchers to find out whether Ibn 'Asyur's idea has met the criteria as a science or not. This paper is a library research and uses content analysis techniques. The primary sources are the book Maqasid al-Syari'ah al-Islamiyah by Thahir Ibn 'Asyur published by Dar al-Nafais (al-Thahir ibn 'Asyur, 2001) and the publication of Dar al-Kitab al-Libani(al-Thahir ibn 'Asyur, 2011). The result of this study is that the concept of maqashid al-syari'ah Ibn 'Asyur has met all the criteria of a science, namely the basic assumptions, ontology, epistemology, and axiology.

Keywords: Thahir Ibn 'Asyur, Maqashid al-syari'ah, Philosophy of Science

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Introduction

Shari'ah refers to all religious law that governs the rules of human life, including their interactions with God, their fellow humans, and nature. When it is associated with Islam (Islamic shari'ah), then the meaning is all the laws revealed by Allah through Jibril and the Prophet Muhammad to regulate human life in these three relationships. Then, Allah, as the Most Wise, sent down the shari'ah not without purpose. According to the scholars, the purpose of sending down the shari'ah is none other than for the benefit of mankind itself, both in this world and in the hereafter. However, in the current reality, there are numerous instances of Shari'ah application resulting in human harm. That is, it runs counter to the goal of weakening Shariah. This is clearly not because Shari'ah is incorrect, but because its interpretation or application is flawed. To avoid these errors, the scholars felt it was necessary to develop a concept that would later be known as *maqasid al-shari'ah*.

Although not yet known as *Maqasid al-shari'ah*, the purpose or wisdom of Shari'ah law has been a topic of discussion since the time of the Companions, and even before the Prophet. During the Prophet's time, one example of maqasid al-shari'ah debate was when the Prophet ordered Muslims to pray at the Bani Quraidzah. When the Companions heard this order, they divided into two groups: those who understood the text outwardly and prayed when they arrived at Bani Quraidzah even though the prayer time was over, and those who chose to pray before arriving because they understood the purpose of the order, which was to rush to Bani Quraidzah. Following that, the debate over *maqasid al-shari'ah* grew, particularly during the time and by the Companions of Umar ibn Khattab (Purwanto, 2015).

In the 2nd century of Hijriyah, there were Imams of Madzhab such as Imam Hanafi, Maliki, Syafi'i, and Auza'i who had implied *maqashid al-shari'ah* in their works. At this time the term *maqashid* had not appeared. This term only appeared in the 3rd century H, to be precise in his work Hakim *at-Tirmidhi al-Shalat wa Maqaashiduha*. Two centuries later, 5 H, *maqasid al-shari'ah* underwent extraordinary developments, namely the basic theories of maqasid al-shari'ah were scientifically born. Among the characters are al-Juwaini and al-Ghazali. After these two figures, the study of *maqashid al-syari'ah* stagnated until it was revived by Imam as-Satibi in the 8th century H. Through his monumental work, *al-Muwafaqat fi Usul al-Syari'ah* (Jasser 'Audah. (t.t.), n.d.)ter the emergence of Imam Syatibi, the study of *maqashid al-shari'ah* slowed until it was revived in the nineteenth century AD. One of them was the events of 1884 AD in Tunisia. At the time, *al-Muwafaqat* as-work Syatibi's was widely reprinted and distributed. As a result of this initiative, many *maqashid al-shari'ah* figures emerged in Tunisia, including Muhammad Thahir Ibn 'Asyur, who earned the nikcname *al-mu'allim al-tsani* (Al-Rasyuni, 2005).

Thahir Ibn 'Asyur not only reconstructs but also develops the ideas of previous *maqashid al-shari'ah* scholars. One of the most notable developments is the effort to establish *maqasid al-shari'ah* as a separate scientific discipline. This is unlike its predecessors in that, in addition to making *maqasid al-shari'ah* a part of the study of *ushul fiqh,* they also made *maqasid al-shari'ah* a study that is not dominant in it. *Maqashid al-shari'ah* is typically given little attention in their studies or covered in a chapter of their ushul fiqh works. Ibn 'Asyur is regarded as the father of modern *maqashid al-shari'ah* due to his development efforts (Thohari, 2017).

Maqashid al-shari'ah is created as a stand-alone science, as initiated by Ibn 'Asyur above; it must meet the criteria of science itself. That is, if all of the criteria for a science are met, then *maqasid al-shari'ah* is a science; otherwise, it is not a science. According to Jujun Suriasumantri, a science is one that meets three criteria: the object being studied, the method for obtaining it, the measure of its truth, and the value of its application. The first is known as the ontology side, the second as epistemology, and the third as axiology..(Jujun S. Suriasumantri, 2006). This statement is similar and agreed by (Tafsir, 2007), (J. Sudarminta, 2002) and (Putra, 2016)

Based on the foregoing, this paper seeks to examine Ibn 'Asyur's concept of *maqashid al-shari'ah* as a separate scientific discipline from the standpoint of science philosophy. It examines the scientific design of maqashid al-shari'ah Ibn 'Asyur using scientific criteria, namely ontology, basic assumptions, epistemology, and axiology. The author chose this focus because there are no works that examine it from this perspective, particularly in Indonesian. Indeed, many works have been written that examine the concept of maqashid al-shari'ah Ibn 'Asyur, but most of them only focus on describing the concept, comparing it to concepts from other figures, or applying the concept of maqashid al-shari'ah Ibn 'Asyur. The first, such as study of (Indra, 2016), (Mth, 2005), (Sholikah, 2019), (Aziz, 2019), and (Yaqin, 2017); then the second such as the study conducted by (Thohari, 2017), (Anshari, 2018), and (Wahyudi, 2018), Then thelas, such as the study conducted by (Munir, 2019) and (Sunarto, 2019). The ultimate goal of this paper is to continue previous research while also demonstrating the philosophical foundation for Ibn 'Asyur's concept of maqashid al-shari'ah as a science.

This research is library research. That is, a study whose object of study is literature. The primary source of this research is the book Maqasid al-Syari'ah al-Islamiyah by Thahir Ibn 'Asyur, published by (al-Thahir ibn 'Asyur, 2001) and published by (al-Thahir ibn 'Asyur, 2011). While the secondary sources are books and scientific journals related to the focus of study, especially those related to the concept of Maqasid al-Syari'ah Ibn 'Asyur and the Philosophy of Science, The analysis technique used in this research is content analysis. The practice is: 1) researchers formulate questions related to the focus of the problem; 2) the researcher makes categories based on the building of a scientific discipline, namely: ontology of science, basic assumptions of science, epistemology of science, and axiology of science; 3)

they include the opinions of Ibn 'Asyur, which are spread in the book Maqasid al-Syari'ah al-Islamiyah, according to the categories that have been determined by the researcher; 4) they perform interpretation and then draw conclusions.

THAHIR IBN 'ASYUR: Biography and The Social Political Situation

Thahir Ibn 'Asyur's full name is Muhammad at-Thahir bin Muhammad bin Muhammad at-Thahir bin Muhammad Asy-Syadziliy bin 'Abdul Qadir bin Muhammad bin 'Asyur. He was born in La Marsa, a district in the north of Tunisia, in 1879 AD to a family of scholars and nobles. The blood of the clergy flows from the father's line, while royal blood comes from the mother's line. His father, Muhammad bin Muhammad, was a well-known scholar who mastered many disciplines,(Husain, 2005a) and his paternal grandfather, Muhammad at-Thahir, was a Supreme Court Justice and a faqih equal to al-Allamah Isma'il at-Tamimiy in his expertise in combining usul and furu. Meanwhile, Muhammad al-'Aziz ibn Bu'atur, his maternal grandfather, was a descendant of Usman bin' Affan, the first Grand Vizier for secretarial affairs in the French colonial era. Thahir Ibn 'Asyur lived with his parents in the extended family of his maternal grandfather. Thus, it can be said that Thahir Ibn 'Asyur lived in a family of scholars and aristocrats and was economically well-off.(Al-Galiy, 1996)

Thahir ibn Asyur's education began with the upbringing of his father and maternal grandfather. At the age of seven, he began his primary education at Kuttab. During this period of basic education, he memorized the Qur'an and several *matan*s (e.g., *Matan al-Jurumiyah and Matan Ibn 'Asyir)*. In addition, he also studied Arabic, Persian, and various other branches of scholarship, especially the Maliki school of jurisprudence. This is all done in preparation for entering a higher level at Az-Zaitunah College. He entered a prestigious university in Tunisia, which gave birth to the famous Muslim philosopher Ibn Khaldun, when he was only 14 years old, and graduated in 1899.(Al-Galiy, 1996)

Thahir ibn Asyur's career can be grouped into two: as an educator and as a judge. His career as an educator began after Ibn 'Asyur graduated from Az-Zaituna in 1899 AD. In that year, he was appointed as a novice teacher at his alma mater. Four years later he was promoted to second grade teacher (1903), two years later to first grade teacher (1905), and a year later to senior teacher (1906). Ibn 'Asyur was known as a skilled educator, therefore he was also asked to become a teacher at the as-Siddiqiyyah School, and he began to join and teach in 1904 at Az Zaitunah and all the filials.

However, due to a lot of pressure from the sheikhs who did not agree with his reform ideas, he resigned after a year in office. Then, after a conducive situation, the position was held again by Ibn 'Asyur in 1945 AD until he was appointed Rector of Az-Zaitunah in 1956 AD. Once again, he only held this prestigious position for a short time, namely a year. This

was because he refused a request by the pro-French president of Tunisia, Habib Borguiba, to issue a fatwa on workers not having to fast during Ramadan in order to increase their productivity.

His career in law began with Ibn 'Asyur in 1911 AD. At that time, he was appointed a member of the Agrarian Court. After two years at the helm, he was appointed chief justice of the same court. In 1923 AD, he was appointed Mufti of the Maliki School, then in 1924 AD, he was promoted to Grand Mufti of the Maliki School, and in 1932 AD, he was appointed Chair of the Maliki Madzhab Highest Sharia Council with the honorary title of Syaikhul Islam of the Maliki School (Al-Galiy, 1996)

Besides Ibn 'Asyur's career in the two fields above, he also has other careers or activities, including: with Khudri Husain founded the Popular Islamic magazine Sa'adah al-Uzma, as one of the contributors to the compilation of the book *al-Mausu'ah al- Fiqhiyah* which is managed by the Ministry of Waqf and Islamic Affairs of Kuwait, as a member of the Arabic Language Institute in Egypt, and as a member of the Islamic Scientific Institute in Damascus(Buwaihid, 1983).

His career and activities in teaching, developing, and spreading his knowledge and ideas continued until his death. One of the leading figures of modern Tunisia was called by God on Sunday, August 12, 1973 AD, at the age of 94 years. He was buried in the public cemetery in Az-Zalaj, Tunisia(Husain, 2005b)

According to the explanations of his friends and colleagues, Ibn 'Asyur was someone who had excessive intelligence, had a tenacious leadership spirit, had noble morals and a refined temperament, had high aspirations, was critical and sensitive, spoke fluently, and had broad insight, especially in the field of law. language and literature(Buwaihid, 1983). Balqasim al-Ghazali, in explaining his biography, also commented that Ibn 'Assyria was the second Ibn Khaldun.

This is based on the level of education, the scientific field studied, and the tendency to study social issues(Al-Galiy, 1996). According to scholars which concern with him, Ibn 'Asyur is also known as the father of modern Maqashid al-Shari'ah, (Sholikah, 2019) and there are also those who call it *al-Mu'allim at-Tsani fi Maqashid al-syari'ah* after Imam as-Satibi as *al-Mu'allim al-Awwal.*

Ibn 'Asyhur became a scholar and a great figure, which, of course, could not be separated from the contributions of the teachers, and also, because as an educator, he also owned or influenced his students. Muhammad al-Khiyariy (teacher who memorizes the Koran); Ahmad Bin Badr al-Kafiy (teacher of Arabic grammar); Umar bin Syekh (teacher of the book Mawaqif al-Ijiy, the brainchild of Muhammad Abduh); Salim Buhajib (teacher of Sunnah and Hadith Books); and Salih Asy-Sharif (teacher of Tafsir) were among his teachers(Al-Galiy,

1996).

Later, among his prominent students were: Muhammad al-Fadil (son of Ibn 'Assyria and a poet, Tunisian reformer, judge, mufti and teacher at az-Zaitunah); Abdul Malik (son of Ibn 'Assyria and writer and codifier of his father's writings); Muhammad al-Habib bin al-Khaujah (a mufti and professor at az-Zaitunah); and 'Abdul Hamid bin Badis (an Algerian reformer, great Maliki scholar, and founder of *Jam'iyah al-Ulama al-Muslimin al-Jaza'iriyyi*n) (Al-Galiy, 1996).

Ibn 'Asyhur was classified as a scholar who was productive in writing. His works are numerous, both in the fields of interpretation, ushul, language, literature and history. He is also active in writing articles in journals or bulletins. Among his works are: *Tafsir at-Tahrir wa at-Tanwir, Fatawa wa Rasa'il Fiqhiyah, Mujiz al-Balaghah, Syarh Diwan Ibn al-Hashas, Tarikh al-'Arab, and Maqasid al-Syari'ah al-Islamiyah* (Al-Hasani, 1995)

According to Isma'il al-Hasani, Ibn 'Asyur lived in two phases of his life, namely: first, the phase in which the power of the Ottoman Empire weakened, including in Tunisia, which made Tunisia and the surrounding countries fall under French rule. In this situation, the Tunisian people, who are more than 90 percent Muslim, are struggling to gain independence. This upheaval was motivated by at least three things, namely: the influence of the idea of renewal initiated by Muhammad 'Abduh through *Urwatul Wutsqa*, especially after 'Abduh made a visit to Tunisia in 1903 AD; the emergence of Khairuddin al-Tunisi, who stimulated thought by printing and massively distributing inspirational classic books, including *al-Muwafaqat* Imam as-Satibi; and the rise of the education system reform movement in Tunisia.

In this situation, Ibn 'Assyria actively followed existing intellectual movements. He really idolized the reform of Islam initiated by Muhammad 'Abduh, took part in reconstructing and studying classical sciences that aroused thought, including those related to maqasid al-shari'ah, and took part in criticizing the education system that existed at that time through a work entitled *Alaisa al-Subh bi Qarib*(Al-Hasani, 1995).

Second, the phase of life where Tunisia was independent and in the form of a republican government. Unfortunately, those who were appointed as President and state stakeholders were native French educated and agents. Because the independence of Tunisia is the independence given by France, it is not surprising that France still has the power to determine and direct Tunisia. The French-appointed President of Tunisia is Habib Bourguiba. He is a secular and pro-Western thinker.

The regime at that time was totalitarian and repressive of political opponents while being gentle or permissive of the West, including America. In this phase, Ibn 'Asyur was active as a teacher at az-Zaitunah and al-Siddiqiyah, as a university official, as a judge and mufti, and as a writer, both in the form of books and articles in various magazines and bulletins.

It seems that Ibn 'Assyria did not really care about what the state had done, but he also did not want to be forced by the state. This last point is evidenced by his refusal of President Habib Bourguiba's order to give a fatwa on workers not having to fast during Ramadan by relinquishing the position of Chancellor, which he has held for only a year(Al-Hasani, 1995)

THE FRAMEWORK STUDY OF *MAQASHID AL-SYARI'AH* IBN 'ASYUR

Basis of Ontology: from Definition to Objects of Maqashid al-syari'ah Study

4Thahir Ibn 'Asyur does not mention the definition of *maqashid al-syari'ah* in a sharia way in one place in his book, *Maqashid al-syari'ah al-Islamiyah*. Nevertheless, the definition of *Maqashid al-syari'ah* can be known from Ibn 'Asyur's definition of *Maqashid al-syari'ah 'Ammah* and *Maqashid al-syari'ah al-Khashshah*. The discussion on the two parts of the *maqasid syari'ah* will be discussed in the researcher's own sub-chapter. On this occasion, the researcher will only quote the second definition in order to find out the definition of *maqashid al-shari'ah* according to Ibn 'Asyur. Regarding general *maqasid al-shari'ah*, Ibn 'Asyur defines it as follows:

مقاصد التشريع العامة هي المعانى والحكم الملحوظة للشارع فى جميع أحوال التشريع أو معظمها, بحيث لا تختص ملاحظتها بالكون فى نوع خاص من أحكام الشريعة

maqashid al-shari'ah 'ammah are the meanings or wisdom that Allah wills (Syari') in the whole or most of the shari'ah which are not limited to certain types of shari'ah law (al-Thahir ibn 'Asyur, 2011)

Then, Ibn 'Asyur defines *maqashid al-shari'ah khashas* (special) as follows::

المقاصد الشرعية الخاصة...هي الكيفيات المقصودة للشارع لتحقيق مقاصد الناس النافعة, أو لحفظ مصالحهم العامة فى تصرفاتهم الخاصة

maqasid al-syari'ah khashas are ways determined by Allah (Syari') to realize beneficial human desires, or to maintain the general benefit of humans in their special practice (al-Thahir ibn 'Asyur, 2011)

The meaning of maqashid al-shari'ah can be understood from the sentence in the first definition quote. (المعانى والحكم ... أو معظمها), which refers to Allah's desired principles and values in all or most of Shari'ah. In terms of the following sentence, (بحيث لا تختص ...الخ) is the explanation of the word *'ammah* or a point of distinction from that *khashshah*. That is, by looking at the first definition, we can know what the second definition means without looking at it. If *'ammah* using word بحيث لا تختص, meanwhile the *khashshah* by deleting letter

la (بحيث تختص). Meanwhile, the second definition, about the *Maqashid Al Shariah khashah*, in my opinion is intended to show the function rather than the definition of maqashid al-syariah. This was based on words لخفظ مصالحهم and الكيفيات, لتحقيق مقاصد . However, if an understanding is drawn from the entire series of sentences in this second definition, it is possible to conclude that what Ibn 'Asyur means by the sentence is that God's purpose is to protect human welfare.

Based on the two definitions above, it can be understood that the definition of maqashid al-shari'ah according to Ibn 'Asyur is the basic principles and values that underlie shari'ah in order to realize and protect the common good of humanity. This definition could be debated, how about Ibn 'Asyur Statement about فى جميع أحوال التشريع أو معظمها..., doesn't this imply that some Shari'ahs do not have maqashid? or with Ibn 'Assyria's Shari'ah definition, as follows?

فمصطلاحي اذا أطلقت لفظ التشريع أني أريد به ما هو قانون للأمة, ولا أريد به مطلق الشئ المشروع

In terms of the terminology I use when I say *"lafadz tasyri,"* what I really want are the community's rules *(qanun)*, not everything prescribed by the law. (al-Thahir ibn 'Asyur, 2011)

These two objections can be addressed by a single response: Ibn 'Asyur believes that maqashid exist in all Shari'ah, even if not all of them are known to humans. Nonetheless, humans must believe that all Syari'at have *maqasid*, and that *maqasid* is for their benefit, according to him. Ibn 'Asyur made the following statements in this regard:

أن المقصد الأعظام من الشريعة هو جلب الصلاح ودرء الفساد

In fact, Shari'ah's primary goal is to attract good and repel bad. (al-Thahir ibn 'Asyur, 2011)

In addition to the responses given above, the response to the first rebuttal is a statement أو معظمها , he intended to show that the human mind cannot comprehend certain *maqashid*. This is known as *ta'abbudi maqashid,* and it is commonly found in *ubudiyah* issues. It can also be seen here that in *maqashid al-shari'ah*, there are those who are *ta'abbudi* and those who are *ta'aqquli*, according to Ibn 'Asyur. Then, in response to the second objection, that Ibn 'Asyur's shari'a is only limited to the general *qonun,* it can be explained that Ibn 'Asyur's statement is located in *muqaddimah* volume 2 of the book *Maqashid al-syari'ah al-Islamiyah,* which is intended to explain the various special *maqashid al-shari'ah*. Thus, in the researcher's opinion, the definition of *maqasid al-shari'ah* according to Ibn 'Asyur remains as follows: the basic principles and values that underpin *shari'ah* in order to realize and implement it. This formulation of the definition also rejects Ibn 'Asyur's definition of *maqashid al-syari'ah*,

which was formulated by Indra in his thesis. He formulates it in terms of "basic values and principles" that underpin Shariah laws governing human-to-human relations.(Indra, 2016).

After understanding Thahir Ibn 'Asyur's definition of *maqasid al-shari'ah*, what is the object of study in his science of *maqasid al-shari'ah*? An exact science has an object of study, which is divided into two categories: material objects and formal objects. The formal object is the point of view aimed at the research material or the point of view from which the material object is highlighted, whereas the material object is the object of an investigation, thought, or research. This formal object is what differentiates one science from another(Ibda, 2018).

Looking at Ibn 'Asyur's definition of *maqasid al-shari'ah* as well as the above understanding of material and formal objects, it is clear that the material object of Ibn 'Asyur's *maqasid al-shari'ah* science is Islamic shari'ah. This is demonstrated by a portion of Ibn 'Asyur's definition of *maqasid al-shari'ah*   فى جميع أحوال التشريع أو معظمها. While the formal object is the meaning or wisdom contained in the Shari'ah. It is shown by the definition المعانى والحكم الملحوظة للشارع   and also the definition of *maqasid al-syari'ah al-khashshah*.

Maqashid 'Ammah dan Khashshah: As Assumptions and Basic Scientific Framework

As previously mentioned, Ibn 'Asyur divided the maqashid shari'ah into two: *maqashid al-syari'ah al-'ammah* and *maqashid al-syari'ah al-khashshah*.

1. *Maqashid al-syari'ah al-'Ammah*

The definition of the maqashid has been stated before. It is the meanings or wisdom that Allah (Syari') wills in the whole or most of the Shari'ah, which is not limited to certain types of Shari'ah law. As for what is included in the *maqashid al'Ammah* category, they are the characteristics of Islamic Shari'ah, the general objectives of Islamic Shari'ah, and the basic principles of Islamic Shari'ah(al-Thahir ibn 'Asyur, 2011). Each of these sections has another branch of values, all of which total 10 values, namely: *fitrah, samahah* (tolerance), and universality as a branch of the distinctive nature of Islamic shari'; *maslahah* (benefit), *sadd az-zari'ah* (rejecting damage), and social stability as a branch of the general goal of Islamic law; and *musawah* (equality), legal substance, *hurriyah* (independence), and the rule of law as a branch of the basic principles of Islamic shari'ah.

According to Ibn 'Asyur's explanation, Islam came to 1) keep human beings in their straight, noble and clean nature;(al-Thahir ibn 'Asyur, 2011) 2) is tolerant or not extreme, both extreme right and left or burdens exceeding human capabilities;(al-Thahir ibn 'Asyur, 2011) 3) is universal, meaning that shalih likulli masa wa eat and does not discriminate, therefore Islam must be seen from its essence except for things that are *qath'i*;(al-Thahir ibn 'Asyur, 2011) 4) aims for human benefits;(al-Thahir ibn 'Asyur, 2011) 5) Stop the destruction;(al-

Thahir ibn 'Asyur, 2011) 6) maintain social stability and resilience for the benefit of both individuals and colleagues;(al-Thahir ibn 'Asyur, 2011) 7) uphold equality of rights and obligations in accordance with nature;(al-Thahir ibn 'Asyur, 2011) 8) always consider the substance of the law;(al-Thahir ibn 'Asyur, 2011) 9) liberating and non-coercive;(al-Thahir ibn 'Asyur, 2011) and 10) maintain the rule of law in order to reap the benefits (al-Thahir ibn 'Asyur, 2011)

The author believes that it is critical to provide a broader explanation of *maslahah* according to Ibn 'Asyur. He defines *"maslahah"* as "actions that produce good or benefit for both the public and individuals.".(al-Thahir ibn 'Asyur, 2011). Ibn 'Asyur divides *maslahah* based on its urgency into three, namely: 1) *Dharuriya*t, a basic human need whose absence can cause damage and destruction. According to him, what includes this type of *maslahah* is protecting religion, life, mind, property, and lineage (al-Thahir ibn 'Asyur, 2011) 2) *Hajiyat,* a need for good order of life, its absence only makes it heavy, not to the point of damage or destruction. 3) *Tahsiniyat*, a complementary need, the absence of which does not cause distress or even damage and destruction.(al-Thahir ibn 'Asyur, 2011).

Ibn 'Asyur then divides maslahah into two categories based on its scope: *kulliyah* and *juz'iyah. Maslahah kulliyah* is a *maslahah* that represents all Muslims or all Muslims in a specific area. Meanwhile, *maslahah juz'iyah* is *maslahah* that only protects the interests of a single person or a small group of people.(al-Thahir ibn 'Asyur, 2011).

Furthermore, Ibn 'Asyur divides *maslahah* based on its accuracy, namely: *1) qath'iy, maslahah* that appears clearly from the text and cannot be interpreted in any other way; 2*) dhanniy, maslahat* that is not recommended by the text but in common sense must exist and not contradict the general arguments of the texts; and 3) *wahmiyah,* something that is thought to be beneficial but after careful examination reveals otherwise(al-Thahir ibn 'Asyur, 2011).

2.   Maqashid al-syari'ah al-Khashshah

The definition of *maqashid al-shari'ah al-khashshah* is the means by which Allah *(Syari')* intends to realize beneficial human desires or maintain the general benefit of humans in their special practice.(al-Thahir ibn 'Asyur, 2011). The meaning refers to the ways in which God intends to protect human welfare through the six *muammalah* laws, which are family law, commerce, employment, *tabarru'at,* justice and testimony, and criminal law.

According to Ibn 'Asyur, the maqashid alkhasshas exist in 1) strengthening marriage ties, bloodline relations, mahrom/family, and procedures for terminating these relationships; 2) in commerce, a good commerce is spread or not monopolized, transparency, property protection, legal force, and justice; 3) in manpower, it is the intensification of *muamalah,*

rukhsah for *gharar* which is difficult to avoid, does not burden tenants, is binding, can submit additional conditions, expedites payment, technical flexibility in settlement, and avoids elements of slavery; 4) in donations which is voluntary, flexible, protection of the rights of related parties; 5) in the judiciary, which is an institution that upholds the truth, immediately submits the object of dispute to the rightful party, testimony based on facts, and documentation of testimony; and 6) in criminal sanctions is to give a deterrent effect to the perpetrator, to give satisfaction to the victim, to give the effect of fear to others (al-Thahir ibn 'Asyur, 2011).

Maqasid al-shari'ah al-ammah and *al-khashshah* were included in the category of basic scientific assumptions or tools of *maqasid al-shari'ah* science. The basic assumption of science is the axiomatic values that are used as a foundation or direction of movement of a science. This set of basic assumptions is often called the scientific paradigm.(Donny Gahral Adian dan Akhyar Yusuf Lubis, 2011). In Ibn 'Asyur's concept of *maqasid al-syari'ah, al-ammah,* and *al-khashshah* are the most basic axiomatic values and must be the starting point for scientific work. A person performing legal istinbath must stand or pay attention to the two categories of *maqasid al-shari'ah*(al-Thahir ibn 'Asyur, 2011). For this reason, the researcher includes maqasid *al-shari'ah al-ammah* and al-khashshah in the category of basic scientific assumptions of *maqasid al-shari'ah* Ibn 'Asyur.

Epistemological Basis: Maqashid Manhaj Determination and Truth Measures

Maqashid al-shari'ah, as a science, must have an epistemological foundation. That is, it must have a certain amount of truth, a method for obtaining it, and the results it produces.

According to Ibn 'Asyur, *maqashid al-shari'ah* has two levels of validity or truth: *qath'iy* and *dzanniy. Maqashid al-shari'ah qath'iy* is *maqashid* derived from unambiguous interpretation and guaranteed pronunciation accuracy. If one of these two conditions is not met, the *maqasid al-shari'ah* becomes *dzanniy.* The first is correct and can be used as a guide, whereas the second is not. Nonetheless, there is *maqashid al-syari'ah dzanny*, which is close to *qath'iy*, according to Ibn 'Asyur, which can still be used as a guideline and whose validity is acknowledged. Other arguments support the latter, which is *maqashid al-shari'ah dzanny*(al-Thahir ibn 'Asyur, 2011).

An example of *maqashid al-shari'ah qath'iy* is *maqashid* about *taisir* (lightning). Because there are many texts that clearly explain it, for example, QS. Al-Baqarah verses 185, 187, and 286; QS. Al-Hajj verse 78; and QS. An-Nisa'ayat verse 28. All of these verses clearly explain that the purpose of Islamic law is not to burden people but, on the contrary, to lighten them. while the example of *maqashid al-shari'ah dzanniy* which is close to *qath'iy*, is maqashid prohibiting doing harm.

That based on the hadith لاضرر ولا ضرار . This hadith clearly shows the prohibition of doing harm in its meaning, but the authenticity of the lafadz of this hadith is still debatable (*dzanniy)*, because this hadith is not *mutawatir.*

In addition to explaining the validity of *maqashid al-shari'ah*, Ibn 'Asyur stated that *maqashid al-shari'ah* can be found or determined through three methods: examining how the syari'at works from texts of the Qur'an al-dilalah, and using mutawatir sunnah.

First, examine how the syari'at works. According to Ibn 'Asyur this can be done with two approaches, namely 1) examining the laws whose *illat* is known, and if the *illat* of these laws lead to certain principles then that is the *maqashid al-shari'ah;* and 2) examine the arguments in order to find the same reason from different laws(al-Thahir ibn 'Asyur, 2011). Second, through the texts of the Qur'an whose meaning is clear and unlikely to have other meanings. And thirdly, through the valid *sunnah* and narrated by many people in each of their *thabaqat*, which in their common sense, it is impossible for them to agree to lie (mutawatir). In the study of *mutawatir hadith,* there is a division *of lafdzi mutawatir* and *mutawatir maknawi.* Both are recognized as valid and may be used as a legal reference or *maqashid.* In addition to these two *mutawatir* categories, Ibn 'Asyur added one more category and has the same position in being accepted as a basis for determination, namely *mutawatir amali.* The purpose of this last category of *mutawatir* is a hadith in the form of an individual understanding of a friend who continuously witnessed the various activities of the Prophet and discovered his essence(al-Thahir ibn 'Asyur, 2011).

Ibn 'Asyur stated that the final result or form of maqashid al-shari'ah must be in the form of *ma'aniy haqiqiyah* or *ma'aniy 'urfiyah. Maqashid al-shari'ah* may not take the form of *ma'aniy wahmiyah.* That is to say, the last form of *maqasid al-shari'ah* cannot be accepted as its value. The term *"ma'aniy haqiqiyah"* refers to ethically axiomatic values. An axiomatic statement, according to the KBBI, is one that can be accepted as true without proof and cannot be refuted(Departemen Pendidikan Nasional, 1988).

Thus, an axiomatic ethical value is one whose truth has been widely acknowledged and is unarguable. For instance, justice and honesty The meaning of *ma'aniy 'urfiyah* is thus a value derived from the empirical experience of the vast majority of humanity. Punishment, for example, can have a deterrent effect on offenders. Meanwhile, the definition of *"ma'aniy wahmiyah"* is a value based on imagination rather than actual experience(al-Thahir ibn 'Asyur, 2001).

Axiological Basis: The Position of Maqashid al-Shari'ah in Istinbat al Hukm

When we discuss axiology, we will discuss the worth, or at the very least the advantages, of something. The advantages of *maqashid al-Shari'ah* knowledge are highlighted in this

context. To answer this question, we must first explain the explanation of Ibn 'Asyur regarding the matters of a person who performs legal *istinbath*.

A person who conducts legal digging from texts, according to Ibn 'Asyur, always does the following five things: draws conclusions from texts, examines whether there are contradictions in the arguments used, performs *qiyas*, formulates new laws without *qiyas* references, and accepts the law as it is without knowing the lesson. These five mechanisms, Ibn 'Asyur continued, are inextricably linked to *maqashid al-shari'ah*. If it is divorced from it, the legal outcomes will almost certainly be contrary to what Syar'i would like(al-Thahir ibn 'Asyur, 2001).

For more details, see the following: First, simply relying on semantic analysis in the style of ushul fiqh to draw conclusions from texts is insufficient. This is because it is inadequate and can lead to erroneous interpretations. According to Ibn 'Asyur, this is caused by three things: 1) the majority of the wording is ambiguous; 2) differences in the ability of the speaker in terms of delivery method and style; and 3) differences in the recipient's ability to receive and digest what is conveyed. Therefore, the mujtahid must pay attention to other things besides language, which include maqasid al-shari'ah (al-Thahir ibn 'Asyur, 2001).

Second, regarding the examination of contradictory arguments: This is a particular challenge for a *mujtahid*. In this mechanism, *maqashid al-shari'ah* serves as a barometer or direction to locate the point of the contradiction's theme. Third, operate *qiyas*. In this mechanism, *maqasid al-shari'ah* serves to aid in the discovery of the *illat hukm*. Fourth, look for a law that does not include a *qiyas* argument. In this position, *maqasid al-shari'ah* is required as a legal foundation. The previous madzhab scholars' maqashid al-shari'ah in this case, according to Ibn 'Asyur, manifested in the methods of *istishab, maslahah mursalah, istishab*, and so on. Fifth, the mechanism of accepting the law as it is without knowing the silver lining. In this mechanism, according to Ibn 'Asyur, *maqashid al-shari'ah* is still needed. Because, it is impossible for Allah to do something without a purpose or wisdom, even though the purpose and wisdom cannot be found rationally. *Maqashid al-shari'ah* of this type is called *maqashid ta'abbudi*(al-Thahir ibn 'Asyur, 2001).

Based on the explanation above, it is clear that maqasid al-shari'ah is knowledge that is required and must be mastered by anyone who wishes to study law. For them, maqasid al-shari'ah serves as a barometer and auxiliary tool for producing legal products that are similar to or close to what Allah SWT intentions.

Conclusion

From the discussions above, it can be concluded that the idea of maqashid al-shari'ah Ibn 'Asyur can be said to have fulfilled the criteria of a separate scientific discipline. This

is because Maqashid al-shari'ah Ibn 'Asyur has all the criteria of knowledge, namely basic assumptions, ontology, epistemology, and axiology.

The axiomatic values set forth in *maqashid al-shari'ah al-'Ammah* and *maqashid al-shari'ah al-khashshah* are the fundamental assumption of Ibn 'Asyur's knowledge of *maqashid al-shari'ah*. Then there's the epistemological side of things: the precision of truth is measured by the accuracy of its pronunciation and unambiguous meaning. As a result, what is considered valid is *maqashid al-shari'ah qath'iy*, or that which approaches *qath'iy*.

Untuk mencapai dan menetapkan *maqashid al-syari'ah* bisa dilakukan dengan tiga metode, yaitu: meneliti cara kerja syri'at, melalui *nash* al-Qur'an yang lafadznya *wadlih al-dilalah*, dan melalui sunnah yang *mutawatir*. Hasil akhir *maqashid al-syari'ah* harus berupa nilai etik aksiomatik (*ma'aniy al-haqiqiyah*) atau pengalaman empiris mayoritas manusia (*ma'aniy al-'urfiyah*). Adapun sisi aksiologisnya adalah *maqashid al-syari'ah* berfungsi sebagai barometer dan alat bantu seorang *mujtahid* dalam menggali hukum.

To achieve and establish *maqashid al-shari'ah,* three methods can be used: researching how *syari'at* works, reading Qur'anic texts (whose pronunciation is *wadlih al-dilalah)*, and following *mutawatir sunnahs*. Maqasid al-shari'ah must produce axiomatic ethical values *(ma'aniy al-haqiqiyah)* or empirical experience of the majority of humans *(ma'aniy al-'urfiyah).* The axiological aspect of *maqashid al-shari'ah* is that it functions as a barometer and a tool for a *mujtahid* (islamic scholar) when researching the law.

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