Confusion Concerning the Use of *Maqasid Al-Shari'ah* in some Social Issues in Malaysia

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Abstract

Social issues relating to the Muslim ummah's permissibility of polygamy for males and obligatory veiling (hijab) for females have become polemic in Malaysia. This polemic is dealt with by using the argument of maqasid al-shari'ah (purposefulness of shariah). However, there is much confusion in presenting the argument of maqasid al-shari'ah whereby the role of reason is given priority over considerations of explicit meaning of the text or evidence in shariah when a social issue is submitted. Hence, this paper explains the confusion in order that any form of resolution to social issues is in accordance with the spirit of al-Quran and Hadith. The method used in this study is document analysis. Among the documents used is, The Relationship Between Islamic Human Rights And The Maqasidic Approach, Muslim Women's Quest for Equality: Between Islamic Law and Feminism, Feminist Movement, Gender Equality and Religious Understanding and Dawabit al-Maslahah fi al-Sharicah al-Islamiyyah (The Guidelines for Public Interest in Islamic Shariah). Research results find that the dawabit (parameters) control the application of maqasid al-shari'ah (the ultimate objectives or goals of Shariah). This is because dawabit plays a role in balancing between proof of Shariah text or evidence in partial (juz'iyy) form and maqasid al-shari'ah in general or universal (kulliyy) form. These dawabit (guidelines) are compiled to ensure that the application of maqasid al-shari'ah fulfils the true discipline of jurisprudence in the context of textual interpretation of al-Quran and al-Sunnah when issuing rulings extracted from these sources.

Keywords : Social, Maqasid al-Shari'ah, al-Quran, Hadith

1. Introduction

Malaysia has several social issues that have become polemic among the Muslims here. For example, the Joint Action Group for Gender Equality (JAG) (2014) cannot accept it that women would have to cover their hair from the sight of a 'non-*Mahram*' (marriageable individual). According to JAG, this is against the principles of universal justice; what more if it is associated with Islam, which is formed based on justice. In other words, JAG is of the view that in order to achieve *maqasid al-shari'ah* (the ultimate objectives or goals of Shariah), freedom should be given to women to abstain from wearing the *hijab* so that there is fairness between man and woman on the issue of clothing. However, the religious authorities in Malaysia have an opposite view, whereby to wear the hijab is *maqasid al-shari'ah* and not vice versa. Feminist movements in other places shared the same view held by JAG. For example, Iran and Malaysia were accused of misinterpreting the al-Quran on this issue (Sanam Vakil, 2004), which had caused the failure to achieve *maqasid al-shari'ah*.

Besides that, the issue on polygamy is also fiercely debated. From one aspect, the Sisters in Islam (SIS) are steadfast that Islam only allows a Muslim man to marry one woman at any one time (1993). Marrying more than one woman is considered as deviating from the teachings of Islam (Abdullah et. al, 2015). SIS is of the view that achieving *maqasid al-shari'ah* in a fair and harmonious marriage is not to practice polygamy. From another aspect, the majority of Muslims, especially the religious authorities, do not forbid the permission for any qualified individual to practice polygamy. This group argues that achieving *maqasid al-shari'ah* is to practice polygamy with the intention of helping women experience the essence of marriage, especially when the ratio of unmarried women far outweighs men.

Both these issues could be used as examples of polemic in Malaysia that is based on *maqasid al-shari'ah*. Hence, a guideline on the use of arguments about *maqasid* (objectives or goals) recognised by *syarak* should be set up. The guidelines or *dawabit* for the *maqasid* is necessary in order to identify the Islamic law according to the al-Quran and

Hadith. Thus, the study on *dawabit maqasid al-shari'ah* has not received much attention from researchers in the field of *maqasid*, although researchers have laid emphasis on the application of *maqasid al-shari'ah*. For example, Husni, A. B. M., et al., (2015) emphasised the important role of *maqasid al-shari'ah* in solving problems related to working wives. Omar, A. F., et. Al (2012) and Mohd Nor, A. H., et. Al (2012) applied *maqasid al-shari'ah* in the formation of national policies. Laluddin, H., et. Al (2012) also applied it to research on human rights. Other researches include its application in the financial and banking sector (Mansour, W, et. Al, 2015, Mansour, W., 2014, Belabes, A. S., 2014, Mohammad, M. O., & Shahwan, S., 2013) and many more.

Hence, by looking at the early history of *maqasid al-shari'ah*, al-Shatibiyy, as among the figures that pioneered the debate on *maqasid al-shari'ah*, had not elaborated further about *dawabit*, although it is necessary when ensuring that the rulings (*hukum*) based on *maqasid al-shari'ah* do not contradict the al-Quran and Hadith. This is because the *maqasid al-shari'ah* is only *ma'na kulliyy* (complete induction), which is the summary of a collection of rulings (*hukum*) in the form of *juz'iyy* (partial rulings) that is based on *tafsiliyy* (in detail or comprehensive form). Therefore, *maqasid* must be monitored to ensure a balance between the objective that is based on *kulliyy* and the religious references for the rulings (*dalil hukum*) that are based on *tafsiliyy*. When the balance has been achieved between the *kulliyy* and *tafsiliyy*, the contradicting issues between *maqasid al-shari'ah* and the other religious references (*dalil*) from the *syarak* would not arise. This is because the *dawabit* acts by exposing the meaning of *kulliyy* and at the same time becomes a binding force for the religious references (*dalil*) related to the rulings that are in the form of *tafsiliyy*.

2. Dawabit Al-Maslahah in the Context of Discussing Maqasid Al-Shari'ah

The relationship between *al-maslahah* and *maqasid al-shari'ah* is clearly seen in the definitions of both these terms. The definition for *maqasid al-shari'ah* is "an objective determined by Islamic *syariat* and achieved in the interest of human beings" (al-Raisuniyy, t.th). The objective covers several elements such as *daruriyyah*, *hajiyah* and *tahsiniyyah* (al-Shatibiyy, t.th), which contains five basic elements such as religion, the soul, the mind, family lineage and property (al-Butiyy, 2010). Whereas, the definition of *al-maslahah* according to scholars on *fiqh* is summarised[1] as "benefits referred to by Allah SWT, The Most Wise, for his subjects who preserve and nurture their faith, soul, mind, family lineage and property" (al-Butiyy, 2010).[2]

Based on both the definitions above the common factor between both the definitions is the preservation and nurturing of faith, soul, mind, family lineage and property, which is found in three segments such as *al-daruriyyat, al-hajiyyat* and *al-tahsiniyyat*. Therefore, *maqasid al-shari'ah* and *maslahah* are actually two faces of the same coin. Hence, indirectly *dawabit* for *maslahah* is similar to *dawabit* for *maqasid al-shari'ah*. Thus, elaborations about *dawabit al-maslahah* are important, especially when discussing *maqasid al-shari'ah* as an instrument for formulating rules (*hukum*) on *syarak* based on references from the Al-Quran and Hadith.

3. Dawabit Al-Maslahah Al-Shar'iyyah

Dawabit is the plural for *dabit*, which means "to protect or preserve (al-Raziyy, 1992) something from mixing with something else" (al-Butiyy, 2010). *Maslahah* needs to be protected by *dawabit* because *maslahah* is not a religious reference by itself, such as the al-Quran, al-Sunnah, *ijmak* or *qiyas* but it is only *ma^cna kulliyy*. This means that *maslahah* is formed based on the conclusions made after compiling the rulings (*hukum*) in the form of juz'iyy, which relies on religious references that are *tafsiliyy* (al-Butiyy, 2010)[3]. Hence, *maslahah* (*benefits*) must be nurtured and controlled so that there is a balance between its meaning according to *kulliyy* and the rulings (*hukum*) based on the religious references (*dalil atau nas*)that are *tafsiliyy.* In other words, the benefits (*kemaslahatan*) accrued via cognizance and observation of the rulings (*hukum*) in the *syarak* in the form of *juz'iyy* is congruent and does not contradict the religious references (*nas*) in the *syarak*

Therefore, when considering the benefits (*maslahah*) according to Islamic legislation, from one aspect, it must be subjected to guidelines (*dawabit*) that act to restrict its meaning according to *kulliyy* and from another aspect; it must be reconciled with religious references on *tafsiliyy* pertaining to rulings on *syarak* until there is compatibility between *kulliyy* and *juz'iyy*.

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[1] *This is because there are numerous definitions given although the topic of discussion is the same.*
[2] *This is the result of the conclusion made by al-Butiyy based on the definitions by al-Ghazali and al-Razi.*
[3] *After istiqra' is initiated towards all the religious references in the syarak, either the al-Quran or Hadith, thus it was found that it was intended to safeguard the maslahah and reject the mafsadah.*

Hence, there would be a contradiction between the *maslahah* (*maqasid al-shari'ah*) and other religious references from the *syarak* because the existence of guidelines (*dawabit*) act as an introduction to a meaning that is *kulliyy* and at the same time become a binding force to the religious references (*dalil*) used in the rulings (*hukum*) in the *tafsiliyy* form. Thus, if there exist some contradiction between *maslahah* and the religious references in the *tafsiliyy* form, then the contradiction could be either between a false *maslahah* or between a *maslahah* that relies on religious references in the *juz'iyy*, which could be reconciled according to methods found in the principles of Islamic jurisprudence (*Usul al-Fiqh*). The guidelines (*dawabit*) are divided into five sections, namely *maslahah*, which is a part of *maqasid al-Shariᶜ*, *maslahah* that does not contradict the al-Quran, *maslahah* that does not contradict the Hadith, *maslahah* that does not contradict the *qiyas* or neglect a *maslahah* that is as important as or more important than it is.

3.1 Maslahah that is a part of maqasid al-Shari'[4]

Maqasid al-Shari' is intended to safeguard the benefits (*kemaslahatan*) and global human well-being. It is divided into five elements such as religion, the soul, the mind, family lineage and property. These five elements are further grouped into three groups according to their significance, such as *al-daruriyyat*, *al-hajiyat* and *al-tahsiniyyat*. The core matter among the five *maqasid* above is the platform for realising one objective only, which is all Muslims who are *mukallaf* (come of age) are subjects of Allah SWT. Therefore, actions of the *mukallaf* that contradict the meanings of the *syarak* are presumed irrelevant to the *maslahah* that are accepted by *syarak* (al-Butiyy, 2010).

3.2 Maslahah that does not contradict the al-Quran

The second guideline (*dabit*) states that the *maslahah* should not contradict the rulings extracted from the religious references (*nas*) quoted from the al-Quran. One such religious reference is the exhortation by Allah SWT meaning,

> "And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away - then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient." (Al-Maidah, 5:49)

This verse clearly indicates that Allah SWT commanded that every verse delivered by HIM should become the main reference. References that do not rely on Allah SWT in reality do no refer to religious references but follow human impulses. Hence, the ruling (*hukum*) for solving any discord that arises is to refer to religious references (*nas*) from the al-Quran or Hadith.

Hence, if there are contradictions between *maslahah* and the al-Quran, then what could occur is an encounter between *maslahah mawhumah*[5] and religious references from the al-Quran, either in the form of *qat'iyy*, *zahir*, *jaliyyy* or *ghayr jaliyy*. Conversely, if *maslahah* is a branch of the original religious reference that is coalesced with 'illah qiyasiyyah; hence, this contradiction in reality is a contradiction between two religious references that occur as *juz'iyy*, such as *al-khas* and *al-'am* or *al-mutlaq* and *al-muqayyad*. At that instance, *ijtihad* (independent reasoning) is permitted, either to perform *takwil* (exegesis) or *tarjih* (elimination by comparison) in order to determine the position of being benevolent (*amal*) with the *masalah* and religious references (al-Butiyy, 2010).

3.3 Maslahah that does not contradict the Hadith

Besides the al-Quran, *maslahah* cannot contradict religious references in the Hadith that clarify a ruling (*hukum*). The verse in Surah al-Maʼidah mentioned above is enough to prove the third *dabit*. In addition, Allah SWT had exhorted:

يَاأَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

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[4] *There could be some confusion about the first dabit, considering the maslahah itself could be maqasid al-Shariᶜ and at the same time, it is monitored by maqasid. However, this confusion is settled easily because maqasid acts as an introduction to the meaning of kulliyy for maslahah. In other words, a particular matter could be maslahah if it intends to adress five basic issues, namely religion, the soul, the mind, family lineage and property, which happens to be maqasid al-Shariᶜ or al-shariᶜah. Whereas, the remainding four dawabit al-maslahah act to bind the maslahah and the religious references (dalil) for the ruling (hukum) that are in the form of tafsili.*
[5] *Maslahah that does not rely on religious references from the al-Quran or al-Sunnah.*

"O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result." (Al-Nisa, 4:59)

The religious references above clearly show that any discord must be referred to the al-Quran or Hadith. Hence, each ruling (*hukum*) that refers to the *maslahah* cannot contradict the Prophet's SAW Hadith. If there is a contradiction, possibly the *mashalah* is only a presumption or the contradiction is in the form of *juz'iyy*, which could be resolved using methods found in the principles of *Fiqh*, as stated in the second *dabit*.

3.4 Maslahah that does not contradict the al-qiyas

The fourth *dabit* is *maqasid al-shari'ah* or *maslahah* that does not contradict the *al-qiyas*. This is because *al-qiyas* functions to safeguard *maslahah* so that it remains at the same branch (*furuk*) or category as *maslahah mutlaqah* or *maslahah mursalah*. Thus, the ratio between *al-qiyas* and *maslahah mutlaqah* is general and specific because *al-qiyas* addresses *maslahah*, in fact with an addition, namely the ᶜ*illah* in the *al-qiyas*. The situation is different when solely addressing the *maslahah* because it is more general in nature due to *maslahah mursalah*. Hence, *maslahah* must be monitored by *al-qiyas* because every *al-qiyas* would surely address the *maslahah* but not vice-versa (al-Butiyy, 2010).

Besides that, it would be difficult for the *maslahah* to contradict the *al-qiyas* because of the ᶜ*illah*, which is one of the rulings (*hukum*) in *al-qiyas*. This is because the strength of the suitable character (*wasf al-munasib*) that causes the existence of this ruling (*hukum*) differs, such as[6] *mu'aththir*, *mula'im*, *gharib* and *mursal* (al-Taftazaniyy, 1317H). This differentiation is an important guide for setting the decorum and order pertaining to the position of the characteristics that should be considered if there is a contradiction (*ta'arud*) during efforts to identify and substantiate the rulings (*hukum*) from *syarak* (al-Butiyy, 2010).

3.5 Maslahah that does not neglect a more important maslahah or one of similar importance

The final *dabit* involves a *maslahah* that does not neglect a *maslahah* that is more important or of similar importance. This is because the *maslahah*'s order of priority, although not consistent, differs in importance. This is viewed from three aspects, namely from the essence of the *maslahah*, its scope or assurance of the desired outcome. The first aspect is divided into three levels according to the decorum that must be given priority if there are any contradictions, namely *maslahah daruriyyah*, *maslahah hajiyyah* and *maslahah tahsiniyyah*. If the contradiction occurs at the same level, then it would be evaluated according to its scope whether the maslahah is '*ammah* (general) or *khassah* (specific), with the *maslahah 'ammah* given priority compared to *maslahah khassah*. The most important and basic aspect is the presumption that the *maslahah* would materialise (*rujhan al-wuqu'*) in reality and is evaluated to determine whether it belongs to the category of *daruriyyah*, *hajiyyah*, '*ammah* (al-Butiyy, 2010).

4. Conclusion

After elaborating on *dawabit* or the guideline for *maqasid al-shari'ah*i; hence, the polemic of the two issues raised earlier in the study, which is the issue of the need for women to cover their *aurat* and the issue of polygamy, could be resolved easily. This is because both these issues have religious references (*nas*) found in the al-Quran and Hadith. Among the religious references (*nas*) from the al-Quran related to the covering of the *aurat* is found in verse 59 Surah Al-Ahzab.

يَا أَيُّهَا النَّبِيُّ قُلْ لِأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَلِكَ أَدْنَى أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

"O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested. And Allah is Oft-Forgiving, Most Merciful"

The religious reference above shows that Allah SWT had commanded pious women to cover their *aurat*. Thus, *maqasid al-shari'ah* in this issue is that the *aurat* should be covered and not exposed because *maqasid al-shari'ah* cannot contradict the religious references found in the al-Quran. Meanwhile, a religious reference (*nas*) from the Hadith mentioned:

المرأة عورة

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[6] *According to a decending order (from the strongest to the weakest).*

Meaning: Women (in themselves) are the *aurat*.

The religious reference from the Hadith narrated by al-Tirmizi clearly shows that the woman's body is the *aurat*. Hence, it must be covered. Based on the second *dabit*, the *maqasid al-shari'ah* cannot contradict the religious reference (*nas*) from the Hadith.

This is similar to the issue of polygamy, in which a verse from the al-Quran explicitly allows men to practice polygamy. Allah SWT exhorted (al-Quran, 4:3)

> *"If ye fear that ye shall not be able to deal justly with the orphans, Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice"*

<div dir="rtl">

فَانكِحُواْ مَا طَابَ لَكُم مِّنَ النِّسَاء مَثْنَى وَثُلَاثَ وَرُبَاعَ

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The religious reference above binds the *maqasid al-shari'ah* by stating that men are permitted, according to certain conditions, to practice polygamy, and not the opposite.

Hence, the debate on guidelines (*dawabit*) for *maqasid al-shari'ah* is important because it is related to identifying rulings (*hukum*) based on the *syarak*. This understanding can be confusing especially if it is intentionally staged by enemies of Islam who wish to attack the perceptions held by Muslims. The attacks are usually through the mode of *ijtihad* and *al-ra'y* (views) by using false *maslahah*. Pertaining to this matter, Dr. Muhammad Said Ramadan al-Butiyy (2010) said:

> *"This is a new round started by the enemies of Islam in their efforts to wage war with Islam. Thus, with a responsibility shouldered by Muslims today to arrest this attack and create awareness about it, I have been thinking for some time now to initiate a study on Dawabit al-Maslahah fi al-Shar'ʿah al-Islamiyyah."*

The above statement clearly shows that the original intention to formulate the *dawabit maslahah* was to safeguard the method of deducing religious references based on the *syarak* from being disrupted by irresponsible parties who wish to destroy Islam. This is concrete proof that jihadist scholars of Ahl al-Sunnah wa al-Jama'ah are steadfast in ensuring the use of the original principles of Fiqh in the context of interpreting religious references from the al-Qur'an and al-Sunnah. *Ijtihad*, or more specifically *ijtihad al-maqasidi*, should be approached with caution and care since it is subject to methods and disciplines mentioned in the al-Qur'an and al-Sunnah that should be adhered to in order to avoid being misled. Dr. al-Butiyy (2010) again explained:

> *"Every time I read or hear a call for ijtihad at the present time by considering the maslahah as a benchmark for understanding the syariah, I feel the over-compelling question within me that asks, "what is the dawabit al-maslahah that is frequently talked about?" If to ijtihad is considered compulsory for the ulama, even once, is it compulsory for them a thousand times over to endeavour tirelessly to understand the reality of maslahah shar'iyyah, its limitations, its dawabit or even its foundations?"*

Pertaining to the truth of this *ijtihad*, al-Shaykh Dr. 'Abd. al-Halim Mahmud *rahimahuLlah* stated:[7]

> *"The actual meaning of ijtihad is to effortlessly and continuously try to obey and adhere to every action and deed carried out by the Prophet SAW and to subject all new problems to the ancient methods summarised from the exhortation of the Prophet SAW and the al-Quran. Ijtihad has no other meaning other than this" ('Abd al-Halim Mahmud, t.th).*

The statement above shows that the practice of depicting rulings (*hukum*) from the *syarak* is subject to *manhaj* (methodology of receiving, analyzing and applying knowledge) that existed then, ever since Prophet Muhammad SAW[8] delivered it. *Manhaj* is a guide for understanding and interpreting the religious references (*nas*) found in the al-Quran and

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[7] He (rahimahullah) was the former Shaykh al-Azhar (the highest position in al-Azhar al-Sharif). He was born in Egypt, in a village called al-Salam, located in the Sharqiyyah area on 10 Mei 1910. He had attended innumerable conferences on Islam in and outside the country. He was a visiting professor at several universities in Tunis, Libya and the Philippines. His literary work covered various fields such as tasawwuf, philosophy, fiqh etc. consisting of more than 64 books. The titles of his works were al-Islam wa al-Iman, al-ʿIbadat, al-Taʿrif al-Falsafi fi al-Islam and al-Islam wa al-ʿAql. He died on 17 October 1978.

[8] Manhaj, pertaining to either the principles or the practice of Islamic academic knowledge, have existed from the times of the Prophet SAW and HIS companions but the study, research and writings as well as the editorial work on manhaj only emerged halfway through the salaf al-salih.

al-Sunnah when summarising the rulings (*hukum*) of the *syarak* and guiding the thinking process or *ijtihad*. This *manhaj*[9] has become a principle held by the entire generation of Muslims since the existence of Islam in their efforts to understand the al-Quran and al-Sunnah. Therefore, Muslims who are committed to the al-Quran and al-Sunnah possess a permanent measure for interpreting religious references. At the same time, *manhaj* acts to guide, bind and ensure that the actual and authentic views or *ijtihad* adhere to the potent religious references.

5. Acknowlegdement

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[9] *Manhaj here does not mean a technique or a system of studying academic knowledge but a path (al-tariqah) that would lead a researcher towards the truth, either in the form of news that should be authenticated or an issue whose evidence that needs to be authenticated and verified.*