

Human Rights in *Maqāṣid al-Sharī'ah al-Āmmah*: A Perspective of Ibn 'Āshūr

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Abstract

Sharī'ah is aimed for the goodness of mankind. By extrapolating the evidence from Qur'an and Sunnah. Islamic *sharī'ah* is believed to be the rules and objectives for the general interest of society and individuals. This paper focuses on the study of the concept of the nature of human rights in the view of Ibn 'Āshūr in terms of the *maqāṣid al-sharī'ah al-āmmah* theory. The study is a kind of library research where the researcher collected the library data by reading books or magazines and other sources to collect data from various literatures. He used a qualitative approach by revealing the meaning of information or empirical data obtained from books, scientific or official research reports and from other literatures. This study, finally, found two results. First, there were found all characteristics of the law, the general purpose, and the meaning of *sharī'ah* as a whole. Second, it was found the meaning of law combined with four epistemological frameworks, namely: *al-fīṭrah* (religious instinct), *al-samāhah* (tolerance), *al-musāwah* (egalitarian), and *al-hurriyah* (freedom of action). In the legality of *al-maqāṣid* law, this research contributes to the human rights of Ibn 'Āshūr's *ijtihād* which becomes the principle of humanity.

Keywords: Ibn 'Āshūr; human rights; human nature, *maqāṣid al-sharī'ah al-āmmah*



Syariah ditujukan untuk kebaikan umat manusia. Dengan mengekstrapolasi dalil-dalil dari Al-Qur'an dan Sunnah, syariat Islam diyakini sebagai aturan dan tujuan untuk kepentingan umum masyarakat dan individu. Tulisan ini berfokus pada kajian tentang konsep hak asasi manusia dalam pandangan Ibn 'Āshūr ditinjau dari teori *maqāṣid al-sharī'ah al-Āmmah*. Penelitian ini merupakan jenis penelitian kepustakaan dimana peneliti mengumpulkan data kepustakaan dengan membaca buku atau majalah dan sumber lain untuk mengumpulkan data dari berbagai literatur. Ia menggunakan pendekatan kualitatif dengan mengungkapkan makna informasi atau data empiris yang diperoleh dari buku-buku, laporan penelitian ilmiah atau resmi dan dari literatur lain. Penelitian ini akhirnya menemukan dua hasil. Pertama, ditemukan semua ciri hukum, tujuan umum, dan makna syari'at secara keseluruhan. Kedua, ditemukan pemaknaan hukum yang dipadukan dengan empat kerangka epistemologis, yaitu: *al-fīṭrah* (naluri agama), *al-samāhah* (toleransi), *al-musāwah* (egaliter), dan *al-hurriyah* (kebebasan bertindak). Penelitian ini memberikan kontribusi bahwa ijtihad Ibn 'Āshūr dapat menjadi prinsip utama hak asasi manusia.

Kata Kunci: Ibn 'Āshūr; hak asasi manusia; tabiat manusia; *maqāṣid al-sharī'ah al-āmmah*

Introduction

As known that the beginning of globalization in the eighties has risen many problems of economy, politics, science, technology, education, socio-culture and law. It is known that the previous concept of human rights tended to be theological, philosophical, ideological, or moralistic.¹ However, it tends to be juridical and political along with the progress of the nation and state. Finally, the instruments of human rights have been developed as a comprehensive part of international law, both written and unwritten, such as declarations, conventions, resolutions, and general comments. These instruments have differentiated the obligations of each member of the United Nations. Some of those are legally binding, while some others are morally obligatory. However, the concept of human rights has not been universal.² For example, the issue of Vanuatu's criticism upon Papuan human rights at the United Nations General Assembly (UN).³ This fact has proven that the concept of Human Rights must be adapted to the culture of each country.⁴ The system just viewed the world in terms of relationships and integrations. Some criticisms have been denied, even in the United States itself, as represented by the Critical Legal Studies Movement, which did not support rationalization or atomization, but unity and holism. This situation has certainly affected the acceptance of human rights in various parts of the world.⁵

¹ Eva Iryani, "Hukum Islam, Demokrasi dan Hak Asasi Manusia," *Jurnal Ilmiah Universitas Batanghari Jambi* 17, no. 2 (2017): 24–31; Tim ICCE UIN Jakarta, *Demokrasi, Hak Asasi Manusia, dan Masyarakat Madani* (Jakarta: Prenadamedia Group, 2003); A. Ubaedillah and Abdul Rozak, *Pancasila, Demokrasi, HAM, Dan Masyarakat Madani* (Jakarta: ICCE UIN Syarif Hidayatullah and Prenadamedia Group, 2003).

² Muladi, *Hak Asasi Manusia Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*, Cet. 1 (Bandung: PT Refika Aditama, 2009).

³ Rahmad Hidayatullah Permana, "Bukan Pertama Kali Vanuatu Rutin Serang Indonesia Soal Papua di PBB," *DetikNews*, September 27, 2020, <https://news.detik.com/internasional/d-5190210/bukan-pertama-kali-vanuatu-rutin-serang-indonesia-soal-papua-di-pbb>.

⁴ Fritjof Capra, *The Turning Point Science, Society, and the Rising Culture* (New York: Bantam, 1984), 266.

⁵ Muladi, *Hak Asasi Manusia Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*.

One of the fundamental concepts in Islam is the concept of *maqāṣid al-sharī'ah* in order to realize and to maintain the benefit of mankind.⁶ The spirit of *maqāṣid al-sharī'ah* and rejecting harm is to realize goodness and taking advantage while avoiding evil and rejecting harm. It is known as *dar' al-mafāsīd wa jalb al-maṣālih*.⁷ Ibn ‘Āshūr was the first figure to define the term *maqāṣid al-sharī'ah*. He has a tremendous influence in every discussion forum of international commentators because of his personality and scientific work in the study of *maqāṣid al-sharī'ah* theory and interpretation of the Qur'an. He gives space for human freedom according to their nature. According to him, Islam has a democratic system of government based on justice.⁸

This study is a kind of library research, where the researchers collected the library data by reading books, magazines and other sources to collect data from various literatures.⁹ This research used a qualitative approach because the data sources and research results were presented descriptively.¹⁰ Qualitative methods were used to obtain in-depth and meaningful data.¹¹ The research explored the meaningful information and the empirical data from books, scientific research reports and other literatures. This paper, therefore, explains Ibn ‘Āshūr's view on human rights and its reflection to *maqāṣid al-sharī'ah*. Two questions are raised in this study: 1) What is the relevance of *maqāṣid al-sharī'ah* and human rights according to Ibn ‘Āshūr's view? 2) What is Ibn ‘Āshūr's view

⁶ Ainol Yaqin, "Yūsuf Al-Qarḍāwī's Istinbāt Method and Its Implementation in the Moderation of Islamic Law," *Al-Ahkam* 31, no. 1 (April 29, 2021): 109–40, <https://doi.org/10.21580/AHKAM.2021.31.1.7075>; Maskur Rosyid and M. Nurul Irfan, "Reading Fatwas of MUI a Perspective of Maslahah Concept," *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 1 (June 2, 2019): 91–117; Amin Farih, "Reinterpretasi Maslahah sebagai Metode Istinbāt Hukum Islam: Studi Pemikiran Hukum Islam Abū Ishāq Ibrāhīm Al-Shāṭibī," *Al-Ahkam* 25, no. 1 (April 25, 2015): 43, <https://doi.org/10.21580/ahkam.2015.1.25.193>.

⁷ Musolli, "Maqasid Syariah: Kajian Teoritis dan Aplikatif pada Isu-Isu Kontemporer," *Al-Turas: Jurnal Studi Keislaman* 5, no. 1 (2018): 60–81, <https://doi.org/10.33650/at-turas.v5i1.324>; Amir Tajrid, "Tracing the Genealogy of Maqāṣid Al-Sharī'ah Concept: A Historical Approach," *Al-Ahkam* 31, no. 1 (2021): 69–90, <https://doi.org/10.21580/ahkam.2021.31.1.6696>.

⁸ Lutfiyatun Nikmah, "Penafsiran Tāhīr Ibn ‘Āshūr Tafsir Ayat tentang Demokrasi: Kajian Tafsir al-Tahrīr wa al-Tanwīr," *Journal of Islamic Studies and Humanities* 2, no. 1 (2017), <https://doi.org/DOI: 10.21580/jish.21.2517>.

⁹ Mahmud, *Metode Penelitian Pendidikan* (Bandung: Pustaka Setia, 2011), 3.

¹⁰ Lexy J. Moleong, *Metodologi Kualitatif* (Bandung: Remaja Rosdakarya, 2009), 8–10.

¹¹ Sugiyono, *Metode Penelitian Pendidikan* (Bandung: Alfabeta, 2012), 15.

on *maṣlahah* and *mafsadah* in human rights? Before explanation, a brief biography about Ibn 'Āshūr and his works are revealed.

Brief Biography of Ibn 'Āshūr

Muḥammad Ibn 'Āshūr was one of the Ibn 'Āshūr clan who was born in Sale, the west coast of Morocco. His full name is Ibn 'Āshūr Muḥammad Al-Ṭāhir Ibn Muḥammad Ibn Muḥammad Al-Ṭāhir Ibn Muḥammad al-Shādhilī Ibn 'Abd al-Qādir Ibn Muḥammad Ibn 'Āshūr. He, who was from the Andalusian *Ashrāf* circle, fled there when the expulsion and inquisition of Muslims took place. His father was Muḥammad Ibn Muḥammad al-Ṭāhir Ibn 'Ashria, a scholar who mastered many disciplines. His father's family came from Andalusia, then they moved to Sala City, Morocco (Magrib) and then settled in Tunisia.¹² His mother was Muḥammad Ibn Muḥammad Bū'atūr's daughter, continued until 'Abd al-Kāfi Bū'atūr, one of the descendants of Uthmān Ibn 'Affān. Muḥammad al-'Azīz was a scholar who was appointed the first Grand Vizier during the French colonial period. He had a pious grandfather named Muḥammad Al-Ṭāhir Ibn 'Āshūr called (Ibn 'Āshūr I). His grandfather had been a *qāḍī*, a *muftī*, a teacher, a *waqf* supervisor, a *bayt al-māl* researcher, and a member of the Shūrā Council.¹³ Thus, Muḥammad al-Ṭāhir Ibn 'Āshūr had clerical blood from his father and noble blood from his mother.

Ibn 'Āshūr was an expert in *al-maqāṣid* orientation thought of *al-Tāhīr wa al-Tanwīr*. He reveals the *maqāṣid qur'ānī* and explains that the Qur'an is the first guide to improve and to reforms the system.¹⁴ Ibn 'Āshūr passed away on Sunday, 13 Rajab 1393 H, coinciding with August 12, 1973 AD, at the age of 98 years in the Hijri calendar or 94 years according to the Gregorian calendar. His body was buried in the al-Zalāj public cemetery.¹⁵

Ibn 'Āshūr was a scholar and the most prolific writer who produced quality works close to the realities of society. His writings cover the fields of Islamic

¹² Muḥammad al-Ṭāhir Ibn 'Āshūr, *Kashf al-Mughattā min al-Ma'ānī wa al-Alfāz al-Wāqī'ah fī al-Muwattā'* (Cairo: Dār al-Salām, 2006), 7.

¹³ Al-Gālī, *Shaykh al-Jāmi' al-A'zam Muḥammad al-Ṭāhir Ibn 'Āshur: Hayātuh wa Āthāruh* (Beirut: Dār Ibn Ḥazm, 1996), 35.

¹⁴ Tim Penulis UII, *Pribumisasi Hukum Islam: Pembacaan Kontemporer Hukum Islam di Indonesia* (Yogyakarta: PPs FIAI UII, 2012), 148.

¹⁵ Al-Gālī, *Shaykh al-Jāmi' al-A'zam Muḥammad al-Ṭāhir Ibn 'Āshur: Hayātuh wa Āthāruh*.

scholarship, Arabic, Literature, History, and even medicine. In addition, he raised several works of previous great scholars.

Maqāṣid al-Sharī'ah According to Ibn ‘Āshūr

Ibn ‘Āshūr used a similar methodology with al-Shāṭibī in understanding *maqāṣid al-sharī'ah*, called *istiqrā* method. It is a kind of research method concerning the workings of time, place, and conditions, because something learned is *'illat* (reason) that leads to certain wisdom. If there is legal difference but *'illat* is same, so the *'illat* is called *maqāṣid*. This *'illat* in *maqāṣid al-sharī'ah* belongs to Ibn ‘Āshūr. It becomes the *maqāṣid* parameter in the sustainable law concerned.¹⁶

Ibn ‘Āshūr has divided the *maqāṣid* into two parts;

- a) *Maqāṣid al-sharī'ah al-āmmah*. It is a legal explanation of the meaning and the law in all legal issues. It discusses the characteristics of *sharī'ah*, its general purpose, the correlated meaning with *sharī'ah*, and others.
- b) *Maqāṣid al-sharī'ah al-khāṣṣah*. It is a procedure intended by the *sharī'ah* to realize human *maqāṣid*, which has the value of human benefit and their activities.¹⁷

Ibn ‘Āshūr has different views from his predecessors regarding *maqāṣid al-sharī'ah*, namely: first, it is importance to realize the independence of *maqāṣid al-sharī'ah* as a separate discipline and the renewal of *uṣūl al-fiqh* (*tajdīd uṣūl al-fiqh*). However, the improvement begins from maintaining the absolute (*qat'ī*) arguments and relative (*zannī*) arguments. It is also important to classify the agreed arguments and the arguments of different understanding among scholars. In other words, Ibn ‘Āshūr assesses the need for *maqāṣid al-sharī'ah* to be seen as a separate scientific discipline. But he views that the science of *uṣūl* remains to become the process of extracting law which is the realm of the object of *uṣūl al-fiqh* study.¹⁸

¹⁶ Mohammad Fauzan Ni'ami Bustamin, "Maqāṣid al-Syarī'ah dalam Tinjauan Pemikiran Ibnu Asyur dan Jaser Auda," *Jurnal Ilmiah Syari'ah*, Volume 20, Nomor 1, (Januari-Juni), 2021.

¹⁷ Ismā'īl Al-Hasanī, *Nazariyyah al-Maqāshid 'ind al-Imām Muḥammad al-Ṭāhir Ibn ‘Āshur* (Cairo: IIIT, 1995), 113–18.

¹⁸ Siti Muhtamiroh, "Muhammad Thahir Bin 'Asyur dan Pemikirannya tentang Maqashid al-Syarī'ah," *At-Taqaddum* 5, no. 2 (2013): 253–72, <https://doi.org/10.21580/at.v5i2.698>.

According to Ibn 'Āshūr, *uṣūl al-fiqh* should be abandoned because it only leads to a debate over the issue of *furū' (fiqh)*.¹⁹ His views received various responses of the pros and the cons. So, the scholars of *maqāṣid al-sharī'ah* studies were divided into three groups.

- 1) The first group agrees that *maqāṣid al-sharī'ah* should be independent as a separate scientific discipline from *uṣūl al-fiqh*.
- 2) The second group applies *maqāṣid al-sharī'ah* as a middle study between *fiqh* and *uṣūl al-fiqh*.
- 3) The third group makes *maqāṣid al-sharī'ah* as a result of developing study of *uṣūl al-fiqh*.²⁰

Second, there is a correlation between *al-fiṭrah* (religious instinct), *al-samāḥah* (tolerance), *al-musāwah* (egalitarian), and *al-ḥurriyah* (freedom) in the context of *maqāṣid al-sharī'ah*. Ibn 'Āshūr's views that the true natures of humans are actually in accordance with *maqāṣid al-sharī'ah*.²¹ He proposed *maqāṣid* as a means to maintain order, equality, freedom, convenience, and *fiṭrah*. Freedom in the context of *al-'itq* is a freedom from slavery, different from the meaning of freedom in the contemporary context.²²

Strengthening Factors of Ibn 'Āshūr's View on *Maqāṣid al-Sharī'ah*

1. The Essence of *Al-Fiṭrah* (religious instinct)

Ibn 'Āshūr explained that Allah sent down Islamic teachings for the benefit of humans. According to him, *al-fiṭrah* is a human nature (*al-khilqah*). It is a certain system (*al-niẓām*) created by Allah, both visibly and invisibly. He based this view on instinct to build intentions. He saw that building the law should be based on the wider description of shari'ah, namely the instinct. It maintains things that have never been done before. So, instinct is جملة الدين بعقائده وشرائع that means the totality of religion with its beliefs and laws.²³ He mentions the word *al-fiṭrah* in *Sūrah Al-Rūm* (30): 30

¹⁹ Muḥammad al-Ṭāhir Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Jordan: Dār al-Nafā'is, 2001), 166.

²⁰ Jammāl al-Dīn Muḥammad 'Aṭiyyah, *Naḥwa Tafīl Maqāṣid al-Sharī'ah* (Damaskus: Dār al-Fikr, 2003), 237.

²¹ Muhtamiroh, "Muhammad Thahir Bin 'Asyur dan Pemikirannya tentang Maqashid al-Syari'ah."

²² Syahrul Sidiq, "Maqasid Syari'ah & Tantangan Modernitas: Sebuah Telaah Pemikiran Jasser Auda," *Jurnal Agama dan Hak Azazi Manusia*, Vol. 7, No. 1. November, 2017, 21.

²³ 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, 2001.

Ibn 'Āshūr divides *al-fiṭrah* into two kinds; *al-fiṭrah al-'aqliyyah* (clearing the mind) and *al-fiṭrah al-naḥsiyyah*. With the first nature, humans can feel the existence of substances that should be believed and realized its urgency or sharia to regulate human life.²⁴ While the second nature is the instincts and desires created by God for humans to fulfill their desires in a good and directed way, for example getting married, interacting with other people, and so on.²⁵ In this case, Ibn 'Āshūr tries to explain the meaning of instinct in general. It is the rules that Allah created for every creature. Human is created physically and spiritually. Furthermore, if Islam is described as an instinct, then it is a mental instinct because Islam is a belief and a law. Everything is rational or current according to what the mind feels and witnesses. Ibn 'Āshūr concludes that:

أن الفطرة النفسية للإنسان هي الحالة التي خلق الله عليها عقل النوع الإنساني سالماً من الاختلاط والرعونات والعادات الفاسدة.

"Human psychological instinct is a state in which God created the human mind, free from confusion, pride, and bad habits."²⁶

Ibn 'Āshūr saw that the instinct (*al-fiṭrah*) of the laws and regulations is actually development of the times, fostering instinct and caution against violations. It could be that the causes of major violations are considered *ḥaram* and prohibited in sharia. Whereas the maintenance of its integrity is considered obligatory. For example, suicide is the biggest sin after polytheism, intimidation is prohibited, and castration is one of the greatest crimes. It is not permissible for persons to take advantage of detrimental benefits.²⁷

2. *Al-Samāḥah* (tolerance)

Al-samāḥah can be interpreted as an attitude of tolerance. It lies between exaggerated behavior (*al-ifrāt*) and oversimplification of a problem. This attitude becomes a binder for establishing the meaning of *al-fiṭrah*. Moreover, it is a fundamental characteristic of Muhammad's people. This is an important thing of the noble qualities because it contains other qualities, such as justice and proportional behavior. This is explained in *Sūrah al-Baqarah* (2): 143. Ibn 'Āshūr points out that *أن حكمة السماحة في الشريعة* means the wisdom of tolerance in the *sharī'ah*. It is based on the fact that *sharī'ah* is innate, has the soul nature, is easily

²⁴ 'Āshūr.

²⁵ 'Āshūr.

²⁶ 'Āshūr.

²⁷ Muhammad al-Tāhir Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Tunisia: Dār al-Salām, 1972), 65.

accepted, and is a distinct instinct for help and distress. This is easy to do because it is more suitable for the human soul and the human nature wants convenience, as stated in *Sūrah Al-Baqarah* (2): 185. According to Fakhr al-Dīn al-Rāzī, the word convenience or *taysīr* is defined as something at the level of human ability. It is easy and not emergency.²⁸

3. The essence of *Al-Musāwah* (egalitarian)

Islam views that all humans are treated equally before sharia law. The essence of Islamic *tashrī'* is *jalb al-maṣāliḥ* and *dar' al-mafāsīd*. This concept is intended to maintain the world order and to regulate human behavior in order to avoid destructive behaviors.²⁹ For Ibn 'Āshūr, it is very important to apply *al-musāwah*, especially to the five basic principles of the goals of Islamic law (*al-darūriyyāt al-khamsah*).

First, *ḥifẓ al-dīn* means keeping religious norms from polluted things relating to creed and charity theoretically and practically. Indeed, it needs to ensure the integrity of religion by taking preventive action against any potential interference of the principles of the *qaṭ'ī* religion. Second, *ḥifẓ al-nafs* means guarding the soul. It does not only protect the individual and society right to live but also to preserve them from everything that can threaten life, such as eradicating infectious diseases and punishment for murderers. Third, *ḥifẓ al-'aql* means guarding the mind to prevent intellectual defects that can disrupt thinking power and creativity. Mind is very urgent to develop the spirit of exploring religious values. So, it must be protected from destructive things, such as liquor, narcotics, alcohol, additives, and others. Fourth, *ḥifẓ al-nasl* means maintaining offspring, maintaining the continuity of generations by facilitating the marriage process and avoiding policies that can cut survival, such as vasectomy, tubectomy, etc. Fifth, *ḥifẓ al-māl* means guarding property by developing people's economic resources, guaranteeing private property rights, and maintaining the security of these assets.³⁰

²⁸ Fakhr al-Dīn al-Rāzī, *Al-Tafsīr al-Kabīr*, vol. 1 (Beirut: Dar al-Kutub al-'Ilmiyyah, 1990), 65.

²⁹ Abdurrahman Kasdi, "Maqashid Syari'ah dan Hak Asasi Manusia: Implementasi HAM dalam Pemikiran Islam," *Jurnal Penelitian* 8, no. 2 (2014): 247-68.

³⁰ Al-Ḥasanī, *Naẓariyyah al-Maqāshid 'ind al-Imām Muḥammad al-Ṭāhir Ibn 'Āshur*.

4. The Nature of *Al-Ḥurriyah* (Freedom)

According to Ibn ‘Āshūr, when a person is legally treated equally in all forms of his actions, what so-called *al-ḥurriyah* (independence) is found.³¹ In Arabic, *al-ḥurriyah* has two meanings. First, it is the opposite of slavery. Second, it means that someone does something based on his willingness, even though freedom in Islam is not as absolute as happens in the west.³²

The Relevance of Human Rights to the General Purpose of Shari'a

Before discussing the relevance of the principles of *maqāṣid al-sharī'ah al-āmmah* belongs to Ibn ‘Āshūr in human rights, it is important to know the meaning of *maqāṣid al-sharī'ah al-āmmah* itself, namely:

الْمَعَانِي وَالْحِكْمَ الْمَلْحُوظَةَ لِلشَّارِعِ فِي جَمِيعِ أَحْوَالِ التَّشْرِيعِ أَوْ مُعْظَمِهَا مَجِيئُهَا لَا تَخْتَصُّ نَوْعَ خَاصٍّ مِنْ أَحْكَامِ الشَّرِيعَةِ: فَيَدْخُلُ فِي هَذَا أَوْصَافُ الشَّرِيعَةِ وَغَايَتُهَا الْعَامَّةُ وَالْمَعَانِي الَّتِي لَا يَخْلُو التَّشْرِيعُ مِنْ مُلَاحَظَتِهَا، وَيَدْخُلُ فِي هَذَا أَيْضًا مَعَانٍ مِنَ الْحِكْمِ لَيْسَتْ مَلْحُوظَةً فِي سَائِرِ أَنْوَاعِ الْأَحْكَامِ، وَلَكِنَّهَا مَلْحُوظَةٌ فِي أَنْوَاعٍ كَثِيرَةٍ مِنْهَا.³³

"It is the meaning and wisdom considered and maintained by *sharī'ah* in every form of making law. This concept does not only apply to certain types of law, but also includes all characteristics, general objectives, and the meaning of whole *shari'ah* while being preserved in various forms of law."

Hence, it can be concluded that the *maqāṣid al-sharī'ah* is the meaning and purpose behind the *sharī'ah* determination. This goal includes all aspects of the Shari'a, that lead to the goodness of humanity, both in the world and the hereafter.³⁴ Some emphasis of *maqāṣid al-sharī'ah al-āmmah* are the nature, the general goal, the meaning of *sharī'ah* and law.

a) Ibn ‘Āshūr explains the general purpose of *sharī'ah* in the book of *Maqāṣid al-Sharī'ah al-Islāmiyah*, namely:

المقاصد الشرعية نوعان: معانٍ حقيقية، ومعانٍ عرفية عامة. ويشترط في جميعها أن يكون ثابتاً ظاهراً منضبطاً مطرداً.³⁵

³¹ ‘Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, 2001.

³² ‘Āshūr.

³³ Hammādī ‘Ubaydī, *Al-Shāḥibī wa Maqāṣid al-Sharī'ah* (Beirut: Dār Qutaybah, 1992).

³⁴ Abd. Kholiq Hasan, *Belajar Mudah Maqasid al-Syariah* (Jombang: Laibafa Press, 2020).

³⁵ ‘Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, 1972.

“There are two purposes of shari’ah, namely: the real meaning and the customary meaning in general. Everything has to be consistent, real, and disciplined.”

The essence of meaning is those who have self-awareness. Healthy mind recognizes conformity to interest or conflict, to the benefit or detriment of the public. Our independent perceptions depend on knowledge of customs or laws, such as the realization that justice is beneficial, aggression against the soul is harmful, and fighting the oppressor is beneficial.³⁶

Meanwhile, according to Ibn ‘Ashūr, the meaning of *adat* in general is close to the soul and is accepted with approval from experiences related to the general benefit. In addition, it is as an awareness that the perpetrator's punishment is carried out to prevent radicalism from crimes similar to his crimes. Moreover, it prevents others from committing crimes against them.³⁷ So that this law is related to *العادة محكمة ما لم تخلف الشرع* which means that tradition becomes the legal standard as long as it does not contradict with the *shari’ah*.³⁸ The explanatory rule is derived from the sixth *fiqihiyah* rule, it is *العادة محكمة*.³⁹ The general purpose of law has similarities with Islamic law. Ibn ‘Ashūr also discussed it in his book *Maqāṣid al-Shari’ah al-Islāmiyah* which reads:

إذا نحن استقرينا مواردَ الشريعة الإسلامية الدالة على مقاصدها من التشريع استبان من كليات دلائلها ومن جزئياتها المستقرة أنّ المقصد العامّ من التشريع فيما هو حفظُ نظامِ الأمة واستدامَةُ صلاحه بصالح المهيمن عليه وهو نوعُ الإنسان. و يشملُ صلاحه عقله، وصلاح عمله، وصلاح ما بين يديه من موجودات العالم الذي يعيش فيه.⁴⁰

This quote calls for invitation to examine the purpose of the sources of Islamic law. From the evidence and the verses, it is clear for us that the general purpose of the law is not only to preserve the state system, but also to maintain its dominant goodness, namely human beings, including their

³⁶ ‘Ashūr.

³⁷ ‘Ashūr.

³⁸ Fadlolan Musyaffa’, “Kajian Tafsir al-Jalalain Surat An-Nisa Ayat 84-87,” September 2021.

³⁹ Jalāl al-Dīn Al-Suyūṭī, *Al-Ashbāh wa al-Naẓā’ir* (Cairo: Dār al-Ghād al-Jadīd, 2017), 127.

⁴⁰ ‘Ashūr, *Maqāṣid al-Shari’ah al-Islāmiyah*, 1972.

mind, their deeds, and the goodness of what is in his hands from the treasures of the world he lives in.

b) Characteristics of the *sharī'ah* according to Muḥammad 'Alī Al-Sāyis⁴¹

It is said that there are three most prominent things in the characteristics of *sharī'ah* according to Muḥammad 'Alī Al-Sāyis. First, it avoids difficulties in its implementation. Second, it protects the benefit of mankind. Third, it always carries out justice in its implementation. These characteristics are in accordance with the last principles of the *Sūrah* al-A'rāf (7): 157, which are not complicated, a little burdensome, gradual, lenient, and prioritizing the general benefit, because *sharī'ah* comes with التغيير و التقرر namely change and determination. As known that the characteristics of *sharī'ah* are perfect (*ta'ammul*), harmonious (*wasatīyah*), and dynamic (*ḥarakah*). This concept is explained in the words of Ibn 'Āshūr:

فهي يقص بها تغيير أحوال الناس إلى ما هو أفضل، وإقرار ما هو حلقي و متفق مع العطرة من العادات الصالحة والأعمال النفعية، وهي التي تسمر في الشريعة <المعروف>.

It says that the concept is meant to change the human condition for the better life. Moreover, it builds good moral, good habits and wholesome actions, that are in accordance with the *sharī'ah*.⁴²

c) The Legal Meaning

Ibn 'Āshūr's book discusses the purpose of *sharī'ah* in the nation's system which tends to be intensive, frightening, and reassuring. The most crucial purpose of the law is national order, peace and corruption eradication. The general condition of Islam towards laws that should not be forgotten is the chapter on permits. Legal experts just enforce licenses and represent them in certain individual cases. In addition, they do not take into account the fact that entire countries can experience social difficulties that require licensure.⁴³ The explanation above shows that there is a relation between human rights and the general purpose of *sharī'ah* which focuses on the principle of protecting human beings.

⁴¹ 'Ubaydī, *Al-Shāṭibī wa Maqāṣid al-Sharī'ah*.

⁴² Abū Ishāq al-Shāṭibī, *Al-Muwāfaqāt* (Beirut: Dār al-Ma'rifah, 1975), 78–80.

⁴³ 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, 1972.

***Maqāṣid al-Sharī'ah al-Āmmah* in Human Rights Perspective**

The universality of human rights and cultural relativism becomes debatable issue in the discussion of human rights. *Sharī'ah* as a legal product mentioned in the Qur'an is not manifested in the form of *ḥalāl* and *ḥarm*, but a prohibition in the *sharī'ah*. In addition, the legal concept also covers what is recommended (*mandūb*), is allowed (*mubāḥ*), and is disliked (*makrūh*).⁴⁴ Moreover, *ummat wasaṭ* is the answer to the concept of national harmony. *Wasaṭiyah* is considered as moderate because modern Islam emphasizes that the Prophet had taught peace and tolerant religion. The Qur'an teaches its adherents to respect and uphold beliefs accompanied by respect for the personal rights of others who have different views, as has been taught in *Sūrah Al-Shūrā* (42): 15.⁴⁵

If there are so many legal institutions when the demands are increasing, the problems do not actually lie in institutions, products, substances, or laws. The legal issues are demands for law enforcement. The writer agrees with Lunsted that the law will only be meaningful after having enforced. Without law enforcement, it is nothing. Law enforcement officers and the community are those who give meaning to the law. It can be produced without legal substance because judges must create laws. The quality of a good apparatus includes moral integrity and intellectual professionalism. Intellectual qualities without integrity and professionalism might deviate from legal route.

It is shown that Ibn 'Āshūr regulates human rights. He argues that what the people recently has gotten in various agreements was built on the human justice and dignity. However, human right developed as a moral system, not a religion. It tends to become the basis and norm of international law, then becomes a normative system based on general consensus.⁴⁶

Here, it can be understood that human rights have experienced developments and changes since its appearance till now. The first generation covers civil and cultural rights. Whereas the last or the third generation contains several collective rights, such as the right for development, a clean environment, natural wealth, and cultural heritage. It should be realized and remembered that not all nations and societies have cosmology and view of the world as happened

⁴⁴ Robby Kurniawan, "Maqasid Syariah dan Pembangunan Hak Asasi Manusia," *Al-Mazahib: Jurnal Perbandingan Hukum* 6, no. 2 (2018): 227–51.

⁴⁵ Umi Kulsum, "Konstelasi Islam Wasatiyah dan Pancasila serta Urgensinya dalam Bernegara Perspektif," *Journal of Islamic Civilization* Volume 2, (2020).

⁴⁶ Al-Shāṭibī, *Al-Muwāfaqāt*.

in the western society. Talking about human right implies that it has social structure. It might become the social capital for every nation to get into the issues of human rights, to capture and to implement it. As the world is confronted to various cultural communities with different characters, we also deal with different social and cultural standards. Ibn ‘Āshūr's view shows that international human rights conference might only be a place for exchanging experiences and learning forum. there is no place for coercion and domination of one particular concept of human rights over another, especially since the emergence of counter-rational and counter-individual schools of thought.

When compared to *maqāṣid al-sharī'ah*, human rights have a significant relationship because *maqāṣid* seeks to maintain human benefit. Herein lies the relationship between human rights and *maqāṣid al-sharī'ah*. When humans face problems, in forced and in challenging circumstances, *maqāṣid* provides an alternative solution to get out from these difficulties, so that their rights are protected. The success of *sharī'ah al-taklīf* will be obtained by maintaining its principles and anticipating all possibilities that can hinder it.⁴⁷

Analysis of the Essence of Human Rights in *Maṣlaḥah*

In *Maqāṣid al-Sharī'ah al-Islāmiyah*, Ibn ‘Āshūr quoted *maṣlaḥah* from Ibn Hajib's book entitled *Sharḥ Mukhtaṣar*. In this book, *maṣlaḥah* is ملاءمة الطبع that means good behavior. Furthermore, Al-Shāṭibī defines it in several of his books obtained after being completed, namely what affects the benefit for humans. The generality, specificity and relevance of a soul in the resurrection of life is the closest definition of *maṣlaḥah*.⁴⁸ On the other hand, *mafsadah* (damage) is the opposite of *maṣlaḥah* (maintaining). For example, corruption often harm groups or individuals. From this explanation, there are two kinds of interests, namely:

First, *maṣlaḥah ‘ammah* (public interest) is the interest of the whole nation or society. Therefore, it does not pay attention to individual conditions except in the sense that they are part of the whole nation, for example: protecting the rich and protecting women from burning and dumping because there are benefits and interests in survival. This is a large part of the law in the Qur'an which

⁴⁷ Yūsūf Hāmid and Al-Āmīn, *Al-Maqāṣid al-‘Āmmah li al-Sharī'ah al-Islāmiyyah* (Cairo: IIIT, 1994), 226-37.

⁴⁸ ‘Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, 1972.

includes obligations such as seeking religious knowledge, jihad, and seeking knowledge which are reasons for gaining strength for the nation.⁴⁹

Second, *maṣlaḥah khāṣṣah* (specified interest) is the beneficial matter for individual, paying attention to it since the beginning for the benefit of individual and community. Some actions are taken to improve the welfare of a complex community, for example, guarding treasures of honor by stoning fools during their stupidity. According to Ibn 'Āshūr, most of these specified interests pay attention to the general interests of the nation and society or the world system. For example, paying *diyyat* or blood money for murder, because it is obligatory for human kinship, and there is no problem for those who pay it.⁵⁰

Muslims has agreed about the generality of *sharī'ah* for all people with all ages. Although it is general in nature, the law applies to people at all times and places. Ibn 'Āshūr divides the generality of Islamic law into two ways. First, the *sharī'ah*, with its principles and universality, applies to different situations so the provisions meet to different conditions. The proof was found from the scholars' views of the ummah, it is many legal arguments in different situations. Furthermore, every imam of the *sharī'ah* has its basis, for example, the prohibition of leasing land. According to Mālik and *Jumhūr*, it is forbidden to distribute and to entertain some Muslims without renting land. Indeed, the prohibition of cutting interest-free loans is a benefit.⁵¹

The second way is being different. The condition of times and the nation can be shaped by using Islamic rules without being shy and difficult. It is possible to change the Islam condition to be different from Arab, Persian, Coptic, Berber, Roman, Tartar, Indian, Chinese and Turkish. They abandon their old wrong conditions without having to abandon their customs. This means that the laws and regulations apply to humans because they are forced to follow the conditions of a certain nation, like the condition of the Arabs where the prairie has its own benefits for those who are different from other nations. This situation is also likened to the meaning of the validity of Islamic law for every era. The law must be universal. Moreover, its meaning and interests must apply because the law with a unified purpose can be branched. Therefore, the

⁴⁹ 'Āshūr.

⁵⁰ 'Āshūr.

⁵¹ 'Āshūr.

principles of Islamic law avoid consequences and specifications, as stated in *Sūrah Al-Nisā'* (4): 16, *Sūrah Al-Mā'idah* (5): 101 and 102.⁵²

There are general laws and regulations among the types of legislation method. Some of those are derived as decrees on the resolved problems and becomes analogies for understanding the universe.⁵³ One of those arises from the generality of *sharī'ah* and its consideration are based on the concept of generality relations. Ibn 'Āshūr explains how the nation can be equal in dealing with *sharī'ah*. The concept of *al-musāwah* (equality (egalitarian)) is described in *Sūrah Al-Hujarāt* (49): 10 which reads: **إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ** So, the meaning of brotherhood includes general equality by making Muslims be equal in the rights given without differences between Muslims based on the character and religious unity.⁵⁴

Ibn 'Āshūr responds to *maqāṣid al-sharī'ah* as related to human rights based on the original principle of Islam, namely **الفطرة** (religion of instinct). Everything witnessed by instinct is equality among Muslims, and the law demands equality among them. Human nature has witnessed their differences on the laws without imposing the same rules on them. it is entrusted to the system of society which is concerned with Islamic policy, not the law. The first is the words of Allah in *Sūrah 4*: 135. This verse explains God's command to uphold justice, to be fair to the rights and obligations as a servant and a social human being, to be a faithful witness, and to always hold fast to the faith. The second is the words of Allah in *Sūrah Al-Hadid*: 10 which explains the command to argue.⁵⁵

Equality in legislation for nations is regarded to seeing their equality in creation. Humans are equal in humanity. "*You are all from Adam*" (**كُلُّكُمْ مِنْ آدَمَ**). You have rights to live in this world based on instinct, and there is no consequence of differences in skin color, lineage, and citizen. There is no crime. This equality appears in the origins of laws and regulations, such as the right to live, to express oneself and to preserve lineage. Moreover, in economic preservation, people have the right to make decisions on the land they are raised or born in, such as, a tribal citizen, and the reason for staying in favorable circumstances to keep the mind and honor. Thus, it appears that human beings are equal in legal and essential matters, such as depriving a slave ability to spend

⁵² 'Āshūr.

⁵³ 'Āshūr.

⁵⁴ 'Āshūr.

⁵⁵ 'Āshūr.

money except with the master's permission. Ibn 'Āshūr did not find any differences in need. On the other hand, differences arise when there are significant barriers that impede judgment.⁵⁶ In addition, there are three obstacles of hindering equality in some rules: legal, social, and political. Everything might be permanent or temporary. In politics, it is related to maintain Islamic governance from weaknesses.⁵⁷ Permanent barriers include: preventing a woman from being equal to a man in her shortcomings, such as the leadership of the army and the caliph according to all scholars, and the judiciary according to the majority of Islamic scholars.⁵⁸

- 1) Legal obstacles come up as the consequences of the correct statutory regulations. It is based on significant wisdom and reasons. *Shari'ah* is a role model in defining legal barriers. It also determines what emerges from observing legislative principles whose actions are more likely than equality. These assets are known as bases, such as the principle of preserving lineage in preventing women from being equal to men in allowing polygamy.
- 2) Social barriers are mostly based on the interests of society. For example: 1) preventing ignorant people from being equal with the world in dealing with considerations of the nation's interests, 2) rejecting the slaves as equal as the free people in accepting martyrdom. Hence, most of the social barriers are become fields of *ijtihad*, and we rarely find legal boundaries in them.
- 3) Political obstacles are conditions that affect the nation's politics, the rules of equality between groups or people in special circumstances. All of this is in the interest of the State. This type of obstacle takes a lot of time into account. For example: the words of the Prophet Muhammad on the day that required the extension of the conquest: (مَنْ دَخَلَ دَارَ أَبِي سَفْيَانَ فَهُوَ آمِنٌ) "Whoever enters the house of Abu Sufyan is safe".⁵⁹

Ibn 'Āshūr describes that *sharī'ah* does not destroy the tolerance. It is a certainty and does not destroy the nation. One of the characteristics of Islamic Sharia is practical for those who seeks to achieve its general goal of individuality.

⁵⁶ 'Āshūr.

⁵⁷ 'Āshūr.

⁵⁸ 'Āshūr.

⁵⁹ 'Āshūr.

Therefore, the most important thing is to achieve his goal. Ibn 'Āshūr argues that there is no opposition to these laws. Islam is gentle, flexible and easy. If the law restricts or revokes from being permitted to become prohibited, it must protect the nation interests and bring it to the path of Islam. In other words, it should be reformed with goodness. For example, Islam has prohibited alcohol since the beginning of *da'wah*, while it was allowed to remain for a while until it was still lawful, then was prohibited at prayer time. This was the beginning of its absolute prohibition.⁶⁰

According to Ibn 'Āshūr *maqāṣid al-sharī'ah* is change and determination. Before examining the act of legislation, many scholars may complain about the belief that Sharia came not only to change the condition of people, but also to verify that the law has two places. The first place is to changes the damaged condition and announces the damage. For example, the waiting period of a woman whose husband died has been changed from waiting for 1 year to 4 months and 10 days because it does not show any benefit for the deceased or for the woman, except to protect the lineage of the deceased if pregnancy occurs. The second place is invitation to do goodnes, as Allah says in *Sūrah Al-A'raf* (7): 157, which commands to be kind, such as: freeing the afflicted, driving out beggars, guarding tribes and cities, providing for children and inheriting. All these good deeds are not the same as spreading between nations and tribes. Therefore, the general *sharī'ah* does not need to touch any of these. Seeing the differences between nations and tribes in a circumstance is one of the most important things meant by the general *sharī'ah*.⁶¹

Ibn 'Āshūr followed Muḥammad Ḥassan's thought whose full name is Abū Muḥammad 'Izz al-Dīn 'Abd al-Salām Ibn Abī al-Qāsim Ibn al-Ḥasan al-Sulamī al-Dimashqī. He warded off evil by prioritizing the most important interests and rejecting the most harmful one. Furthermore, he indulges evil by being pampered. He prioritized the most important interests but rejected the most harmful evils. He argues that most of the pros and cons happened due to differences on equality and excellences.⁶²

In human rights, we should realize that it becomes a part of the individuals in a society. We should use the human instinct or nature to build *maqāṣid al-sharī'ah*. In this regard, Abū 'Alī Ibn Sīnā explains the reality of instincts in the

⁶⁰ 'Āshūr.

⁶¹ 'Āshūr.

⁶² 'Āshūr.

book *Al-Najāh li Ibn Sīnā: Qism al-Mantiq*. He said that a person's instincts deceive himself in this world at once when he is sane. Whereas he does not hear opinions, does not believe in sects, does not associate with any nation and does not know politics. Instead, he thinks and takes a case from them, then puts something in his mind and doubt it. If he feels doubt, the instinct bears no witness to him, but if he feels confident, the instinct is needed.⁶³

Conclusion

In conclusion, as suggested by Ibn 'Āshūr, we need to include the status of humanity in human rights to defend the ideals of *sharī'ah* and make science apart from its basics as linguistic rules and methods. From a human point of view, the concept of value is related to human rights because humans are governed by law. Furthermore, the writer believes that Islamic moral theory can be built on two major foundations, namely: 1) The principle of instinct (*al-fitrah*) and human dignity which are manifested in the Qur'an. 2) The principle within the *sharia*, which contain prioritizing the people interests and avoiding harm and crime from destructive parties and values that are not based solely on the reason and five basic principles of the goals of Islamic law (*al-darūriyyāt al-khamsah*). So, human right includes: 1) *ḥifẓ al-dīn* (preserving religion) by maintaining religious rights, religious purity, ideological rights, and rights to be free from slavery of material things. 2) *ḥifẓ al-nafs* (guarding soul) by maintaining the right to live, to engage in politics, and to protect the soul from persecution. 3) *ḥifẓ al-'aql* (keeping mind) by defending the right to get education, to think, to argue, and to press freedom. 4) *ḥifẓ al-nasl* (maintaining offspring) by maintaining reproductive right, family right, mother right, children's right, civil right, administrative right, assembly right, social rights, inheritance right, and testament rights. 5) *ḥifẓ al-māl* (safeguarding property) by maintaining economic right, property right, work right, and workers' rights. All of these include general objectives of Islamic law, and for that reason, the Shari'a has been established. Indeed, the hope for justice can be realized based on moral values in the social and individual life. So, we must try to fill this void by cooperation with every human being who needs for security, freedom, and truth.[a]

⁶³ 'Āshūr.

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