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## ABU ISHAQ AL-SYATHIBI AND HIS PERSPECTIVE ON MASLAHAT

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**Abstract:** *This study aims to find out: (i) the position of Abu Ishaq al-Syathibi as a fiqh scholar al-maqāṣid; and (ii) the concept of maslahat in the perspective of Abu Ishaq al-Syathibi. This research is qualitative descriptive research with library research techniques through historical and sociological approach. The results found that al-Syathibi's ability as a reformer in the realm of uṣūl al-fiqh was very clear in his role in performing new formulations of the theory of al-maqāṣid and managed to open the views of the scholars afterwards to further examine this issue. Al-Syathibi's view of maslahat cannot be separated from his view of al-maqāṣid, especially when he divides the al-maqāṣid into two major parts: those relating to maqāṣid al-syari'ah and those relating to maqāṣid al-mukallaḥīn.*

**Keywords:** Al-Syathibi, Maslahat, Maqāṣid, Uṣūl Al-Fiqh, Syari'ah

## INTRODUCTION

It is familiar among scholars in the field of Islamic jurisprudence (*ushul al-fiqh*) regarding the theory of *maqāsid al-syari'ah* systematized and developed by al-Syathibi.<sup>1</sup> Even according to Mustafa Said al-Khin, previously there were only two schools, namely *mutakallimin* and *fuqaha* or *Syafi'iyyah* and *Hanafiyah*, then al-Khin divided them into five parts, namely *Mutakallimin*, *Hanafiyah*, *al-Jam'i*, *Takebrij al-Furu'* 'Alal Usul and *Syathibiyyah*.<sup>2</sup> Thus, this division has placed al-Syathibi's thought in *al-muwafaqat* into one part of a separate style of flow from the Islamic school of thought on *ushul al-fiqh*. This is because in its style, al-Syathibi tries to combine theories of *ushul al-fiqh* with the concept of *maqāsid al-syari'ah*, so that the resulting legal products are more lively and more contextual.<sup>3,4</sup>

According to Darusmanwiati, there are two important values when al-Syathibi model is developed by current scholars in exploring the law. First, it can bridge between the "right flow (sect)" and "left flow". The "right sect" in question is those who stick to the concepts of *ushul al-fiqh*, while "left" are those who are vocal with the idea of *tajdīd usl al-fiqh* in the sense that there is a need for deconstruction of *uṣūl al-fiqh* to produce more capable *fiqh* products. Second, the model of al-Syathibi will produce more legal products called as *al fiqh al-hayy* (living fiqh) in Ibn al-Qayyim's terminology.<sup>5</sup>

The significance of *maqāsid al-syari'ah* is able to give a freedom for scholars on the concept of *fiqh* in term of text and contextual consideration. In addition, it can also dismiss the temporary assumption that Islamic law is a dead law, ambiguous, and less humane. Therefore, the theory of *ushul al-fiqh* and *maqāsid al-syari'ah* should collaborate to overcome it.

Furthermore, by al-Syathibi's methodology in his *al-muwafaqat* that tries to combine theories of *ushul al-fiqh* and *maqāsid al-syari'ah* will be the

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<sup>1</sup> Usman Betawi. "Maqashid Al-Syariah Sebagai Dasar Hukum Islam Dalam Pandangan Al-Syatibi Dan Jasser Audha." *Jurnal Hukum Responsif* 6, no. 6 (2019): 32-43.

<sup>2</sup> Muhammad Ghoffar, *Teori Maqasid al-Syari'ah*, <http://ghoffar.staff.umy.ac.id/?p=46>. (22 Oktober 2010)

<sup>3</sup> Kurniawan, Agung, dan Hamsah Hudafi. "Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat." *Al-Mabsut: Jurnal Studi Islam dan Sosial* 15, no. 1 (2021): 29-38.

<sup>4</sup> Abidin, Mukhlis. "Metodologi Pemahaman Syari'ah (Analisis Muqaddimah Kitab al-Muwafaqat Karya Asy-Syatibi)." *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam* 8, no. 2 (2018): 299-314.

<sup>5</sup> Aep Saepulloh Darusmanwiati, *Imam Syathibi Bapak Maqasid al-Syari'ah Pertama*, <http://islamlib.com/id/artikel/bapak-maqasid-al-syariah-pertama>. (22 October 2010).

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link, the new pattern<sup>6</sup>, and at the same time a bridge to compromise the two tendencies. Separating the *maqāsid al-syarī'ah* from the theories of *ushul al-fiqh* is a false, because not all problems can only be solved with *maqāsid al-syarī'ah*.

Actually, *maqāsid al-syarī'ah* had been developed by the *mujtahids* before al-Syathibi. By not belittling the importance of *maqāsid al-syarī'ah* and the role of the Islamic leaders before al-Syathibi, we consider that al-Syathibi's systematic thinking is considered representative of using *maqāsid al-syarī'ah*. Thus, *maqāsid al-syarī'ah* is merely a complement to enrich the theory he develops.

Related to the concept of *maslahat*, the relationship between *maslahat* and *maqāsid al-syarī'ah* is relatively clear. Even the discussion of *maslahat* cannot be separated from the study of *maqāsid al-syarī'ah*. Therefore, it becomes highly relevant when the discussion of the concept of *maslahat* in the perspective of al-Syathibi is explored from a study of his views on *maqāsid al-syarī'ah*.

In this study, we purposed to identify the benefit in the perspective of Abu Ishaq al-Syathibi. To get a deep and systematic discussion, we focused on (i) the position of Abu Ishaq al-Syathibi as a scholar proposing *maqāsid al-syarī'ah*; and (ii) the concept of *maslahat* in the perspective of Abu Isha al-Syathibi.

## RESEARCH METHOD

This study was a qualitative descriptive study with library research techniques.<sup>7,8</sup> This study used a multidisciplinary approach,<sup>9</sup> namely: (i) historical approach as a study and source containing information about the past and carried out systematically as well as to know, understand and discuss in depth about matters related to the topic being studied related to the teachings, history and practices of their real implementation in everyday life throughout their history;<sup>10,11</sup> and (ii) a sociological approach as a study

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<sup>6</sup> Rohman, Fathur. "Maqasid Al-Syari 'ah dalam Perspektif Al-Syatibi." *Istidal: Jurnal Studi Hukum Islam* 4, no. 2 (2017): 163-175.

<sup>7</sup> Azwar Iskandar, dan Khaerul Aqbar. "Kedudukan Ilmu Ekonomi Islam di Antara Ilmu Ekonomi dan Fikih Muamalah: Analisis Problematika Epistemologis." *NUKHBATUL'ULUM: Jurnal Bidang Kajian Islam* 5, no. 2 (2019): 88-105.

<sup>8</sup> John W. Creswell, *Research Design: Pendekatan Kualitatif, Kuantitatif, dan Mixed*. Penj. Achmad Fawaid. Edisi Ketiga (Yogyakarta: Pustaka Pelajar, 2010).

<sup>9</sup> Ratu Vina Rohmatika, "Pendekatan Interdisipliner dan Multidisipliner Dalam Studi Islam," *Al-Adyan: Jurnal Studi Lintas Agama* 14, no. 1 (2019):115-132.

<sup>10</sup> Sri Haryanto, "Pendekatan Historis Dalam Studi Islam," *Jurnal Ilmiah Studi Islam* 17, no.1 (2017): 127-135.

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that makes society an object of study viewed from the relationship between humans and the processes that arise from human relations in society.<sup>12,13</sup> The type of data used in this study was qualitative data collected from literature search that included books/papers related to the thoughts of Abu Ishaq al-Syathibi in the discussion of *maslahat*, books/papers related to *al-Muwafaqat*, *al- I'tisham* and al-Syathibi *wa maqāsid al-syarī'ah*, and other related studies.

## RESULTS AND DISCUSSION

### ABU ISHAQ AL-SYATHIBI; BIOGRAPHY AND SCIENTIFIC POSITION

Al-Syathibi (Abu Ishak Ibrahim bin Musa bin Muhammad Allakhami al-Gharnathi) was born in Granada in 730 H and died on Tuesday the 8<sup>th</sup> of Sha'ban in 790 H or 1388 AD.<sup>14</sup> The name Syathibi was a relative of his father's birthplace in Sativa (*Syathibah* = Arabic), an area in Eastern Andalusia. In 1247 AD, al-Syathibi family fled to Granada after Sativa, where it came from and fell into the hands of the Spanish king Uraqun after they had fought for approximately 9 years since 1239 AD. Al-Syahibi was a *hafidz* of the Qur'an, *mujtahid*, scholars of *uṣūliyyah*, interpretation, *fiqh*, *hadith*, and language.<sup>15</sup>

When al-Syathibi was alive, Granada was ruled by Bani Ahmar. Bani Ahmar was the name of the descendants and family of Sa'ad bin Ubadah; one of friends of the *Ansar*, while Ahmar's call name was addressed to one of his kings named Abu Sa'id Muhammad al-Sadis (761-763 H), because he had a reddish skin color. The Spanish called Abu Sa'id al-Barmekho where in Spanish language called as reddish orange color.<sup>16</sup>

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<sup>11</sup>Syandri, Syandri, dan Azwar Iskandar. "Pemikiran Dakwah KH Fathul Mu'in Dg. Maggading: Gerakan Muhammadiyah Cabang Makassar 1960-1970." *KOMUNIKA: Jurnal Dakwah dan Komunikasi* 14, no. 2 (2020): 223-240.

<sup>12</sup> Adibah, Ida Zahara. "Pendekatan Sosiologis Dalam Studi Islam." *INSPIRASI: Jurnal Kajian dan Penelitian Pendidikan Islam* 1, no. 1 (2017): 1-20.

<sup>13</sup>Moh. Rifa'i, "Kajian Masyarakat Beragama Perspektif Pendekatan Sosiologis," *Al-Tadzim: Jurnal Manajemen Pendidikan Islam* 2, no. 1 (2018): 23-35.

<sup>14</sup> Hammady al-Ubaidy, *al-Syathibi wa Maqashid al-Syari'ah*, (t.d.), p. 11.

<sup>15</sup> Zatadini, Nabila, dan Syamsuri Syamsuri. "Konsep Maqashid Syariah Menurut Al-Syathibi Dan Kontribusinya Dalam Kebijakan Fiskal." *AL-FALAH: Journal of Islamic Economics*, 3, no. 2 (2018): 1-16.

<sup>16</sup> Khatib, Suansar. "Konsep Maqashid Al-Syariah: Perbandingan Antara Pemikiran Al-Ghazali Dan Al-Syathibi." *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan* 5, no. 1 (2018): 47-62.

When Bani Ahmar was leading, people's lives were far from Islam. They were even filled with superstition and heresy. Almost all the scholars who lived at that time were people who did not have sufficient background in religious knowledge and it was not uncommon for those who did not know anything about religious matters to be appointed by the king as a *fatwa* council (council for preaching). Therefore, it is not surprising that the *fatwas* produced were far from the truth. Al-Syathibi rose up against the clerics of Granada at that time. He tried to straighten and return heresy to the *sunnah* and bring people from error to the truth.

The fierce feud between al-Syathibi and the clerics of Granada at that time was inevitable. Whenever al-Syathibi issued a lawful *fatwa*, they gave an unlawful *fatwa* without looking at the texts. For this reason, Imam Syathibi was then harassed, reviled, ostracized and considered to have left the true religion.

Another thing that was highlighted by al-Syathibi was the deviant practice of Sufism by the scholars at that time. Al-Syathibi rose to forbid the practice, because it was considered to have deviated from the true teachings. According to Imam Syathibi, every approach taken is not as practiced by the Prophet Muhammad.<sup>17</sup> Al-Syathibi also highlighted *ta'assub* exaggeration practiced by the scholars of Granada and the people of Andalusia at that time against the Maliki school. They view everyone who is not a Maliki school of thought as a heretic. In addition, the people of Andalus have firmly held this Maliki school of thought since their king Hisham al-Awwal bin Abdurrahman al-Dakhil who ruled from 173-180 H made this school the official state school. Because of their excessive *ta'asub*, they no longer know and even tend to be hostile to other schools, especially the Hanafi school, so that Muhammad Fadhil bin Assyria described them, "They no longer know anything other than the Qur'an and al-Muwatha' Imam Malik."<sup>18</sup>

Even though al-Syathibi was a Maliki cleric -even Muhammad Makhluuf made him a Maliki scholar at the 16<sup>th</sup> level of the Andalus branch,<sup>19</sup> but he still respects the scholars of other schools, including the Hanafi school. In fact, on various occasions, he often praised Abu Hanifa and other

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<sup>17</sup> Abu Ishaq al-Syathibi, *al-I'tisham*, jilid 1 (Dammam: Dar al-Ma'rifah, 1982), p. 264.

<sup>18</sup> *Ibid.*, hal. 77

<sup>19</sup> Muhammad Makhluuf, *Syajarah an-Nur al-Zakiyyah* (Beirut: Dar al-Kutub al-Araby, 1349 H.), p. 231.

scholars. The book *al-Muwafaqat* was deliberately compiled by Imam Syathibi to bridge the tension that existed at that time between the Maliki and Hanafi schools. Meanwhile, as a response to the heresy and superstition that developed at that time, Imam Syathibi composed another monumental work, namely *al-I'tisam*.

Al-Syathibi's works all refer to two fields of knowledge which according to Hammadi al-Ubaidy's terms, *ulūm al-wasīlah* and *ulūm al-maqāsid*. *Ulum al-wasīlah* is an Arabic science to understand the science of *maqāsid*. The works of al-Syathibi include the *al-Muwafaqat*, *al-I'tisam*, *al-Majālis*, *Syarah al-Khulashah*, and *Fatawa al-Syathibi*.

## THE CONCEPT OF MASLAHAT IN THE PERSPECTIVE OF AL-SYATHIBI

The role of al-Syathibi is highly real in the realm of *al-maqāsid* when he carried out a new and re-formulation of the elements of this science.<sup>20</sup> According to al-Badawy<sup>21</sup>, one of the roles of al-Syathibi in this realm is seen in his division of *al-maqāsid* into two important parts, namely the meaning of *syar'i* (*qasdu al-syari'*) and the meaning of the preamble (*Qasdu al-mukallaḥ*). The meaning of *syar'i* is divided into four parts, namely:

### Qaṣḍu al-Syari' fi Wadh'i al-syari'ah

In this section, there are 13 issues raised. According to Imam Syathibi, Allah the Almighty sent down the *Shari'a* (rules of law) to benefit and avoid harm (*jalbul masālih wa dar'ul mafāsīd*). With easier language, the legal rules that Allah the Almighty has determined are only for the benefit of humans themselves. Syathibi then divided this benefit into three important parts, namely *dharuriyyat* (primary), *hajiyyat* (secondary) and *tahsinat* (tertiary, lux).

*Maqāsid* or *maslahat dharuriyyat* is something that must exist for the realization of the benefit of religion and the world. If it does not exist, it will cause a damage and even loss of life.<sup>22</sup> There are five kinds in *maqāsid*

<sup>20</sup> Nijal, Lasri, and Putri Apria Ningsih. "Implementasi Metode Maqashid Syariah Imam Al Syathibi pada Praktik Perbankan Syariah di Indonesia." *COSTING: Journal of Economic, Business and Accounting* 2, no. 2 (2019): 185-194.

<sup>21</sup> Yusuf bin Ahmad al-Badawy, *Maqasid al-Syari'an 'Inda Ibn Taimiyah* ('Amman: Dar al-Nafa'is, 1420 H), p. 96.

<sup>22</sup> Abu Ishaq al-Syathibi, *al-Muwafaqat*, *op.cit.*, jilid 2, p. 7.

*dharuriyyat*, namely religion (*al-din*), soul (*al-nafs*), offspring (*al-nasl*), property (*al-mal*) and reason (*al-aql*).<sup>23</sup>

Some ways to maintain previous five kinds can be reached in two ways, namely:

- 1) In terms of existence (*min nabhiyyati al-wujūd*) that is by maintaining things that can perpetuate its existence;
- 2) In terms of non-existence (*min nabhiyyati al-'adam*) that is by preventing the things that cause its absence.

For more details, see the following examples:

- 1) Keeping religion in terms of *al-wujūd*, such as prayer and *zakat*;
- 2) Protecting religion from the point of view of *al-'adam*, such as *jihad* and punishment for apostates;
- 3) Keeping the soul in terms of *al-wujūd*, such as eating and drinking;
- 4) Keeping the soul in terms of *al-'adam*, such as the punishment of *qisās* and *diyyat*;
- 5) Keeping the mind in terms of *al-wujūd*, such as eating and seeking knowledge;
- 6) Maintaining *aql* in terms of *al-'adam*, such as drinking *ksamr*;
- 7) Keeping *an-nasl* in terms of *al-wujūd*, such as marriage;
- 8) Keeping *an-nasl* in terms of *al-'adam*, such as adulterers and *muqdzif*;
- 9) Maintaining *al-mal* in terms of *al-wujūd*, such as buying and selling, and seeking sustenance; and
- 10) Keeping *al-mal* in terms of *al-'adam*, such as usury, and cutting off the hand of a thief.

The fifth order of *dharuriyyat* is *ijtihad*; not *naqly*. It means that it is compiled based on the understanding of the scholars of the texts taken by *istiqrā*. In assembling these five *dharuriyyat*, Imam Syathibi sometimes puts *aql* above *nasl*. However, one point that should be noted is that in any arrangement, Imam Syathibi always begins with the *din* and the *nafs*. The difference in the order above shows that all of them are valid because of their nature *ijtihadi*.

The other *ushul* scholars have never agreed on this point of view. For al-Zarkasyi, the order is: *an-nafs*, *al-mal*, *an-nasab*, *ad-din* and *al-'aql*.<sup>24</sup>

<sup>23</sup> *Ibid.*, p. 8.

Meanwhile, according to al-Amidi: *ad-din, an-nafs, an-nasl, al-aql* and *al-mal*.<sup>25</sup> For al-Qarafi: *an-nufus, al-adyan, al-ansab, al-'uqul, al-ammwal* or *al-a'radh*.<sup>26</sup> Meanwhile, according to al-Ghazali: *ad-din, an-nafs, al-'aql, an-nasl* and *al-mal*.<sup>27</sup> However, the order by al-Ghazali is the order that is most widely held by *fiqh* and Islamic scholars of *ushul al-fiqh*.<sup>28</sup>

The workings of previously five *dharuriyyat* is that each of them must run according to the sequence. Guarding *ad-din* should take precedence over guarding others; Keeping *al-nafs* must take precedence over *al-aql* and *nasl*, and so on. However, if it is intended for the sake of jihad and Islam, it is permissible, because protecting religion must take precedence over protecting the soul. Therefore, most of the scholars allow the *istishad* of the Palestinian combatant with above legal considerations.

However, how is the case of a patient due to medical need can see his nakedness; or a traveler who is allowed to pray *qashar*? Does it mean that *al-nafs* takes precedence over *ad-din*? According to 'Abdullah Darraz, religion should take precedence over others, because it involves *ushul al-din*, while in certain cases, life and property sometimes take precedence over religion (*mustatsnayyat*), so that the foresight of a *mujtahid* is needed.

*Maqāsid* or *maslahah hajjiyyat* is something that should be in a place, so that it is free to carry out to avoid difficulties. If this thing does not exist, it will not cause a damage or death; it will only result in *masyaqqah* and narrowness.<sup>29</sup> For example, in the matter of worship, there is *ruqshah; jama'* and *qashar* prayers for travelers.

*Maqāsid* or *maslahah tahsinat* is something that should be in accordance with the necessity of good morals. If it does not exist, it will not cause a damage, but *masyaqqah*. For example, *tabarah*, covering the genitals and the loss of excrement.

## Qaṣḍu al-Syari' fi Wadh'i al-syari'ah lil Ifham

In determining the shari'a, *syari'i* aims to make *muqalaf* understand. There are two important points discussed in this section. First, this shari'a

<sup>24</sup> Muhammad bin Bahadur bin 'Abdillah al-Zarkasyi, *al-Bahr al-Muhith*, jilid 4 (Kuwait: Wizarat al-Auqaf wa al-syu'un al-Islamiyyah, 1993), p. 612.

<sup>25</sup> 'Ali bin Muhammad al-Amidi, *al-Ahkam fi Ushul al-Ahkam*, jilid 4 (Muassasah al-Halaby, 1991), p. 252.

<sup>26</sup> Ahmad bin Idris al-Qarafi, *Syarh Tanqih al-Fushul*, (Maktabah al-Kulliyyah al-Azhariyyah, t.th.), p. 391.

<sup>27</sup> Al-Ghazali, *al-Mustashfa*, Beirut: dar al-Fikr, 1997, Juz I, p. 258.

<sup>28</sup> Komentar Abdullah Darraz dalam *al-Muwafaqat*, Juz II, p. 153.

<sup>29</sup> Imam Syathibi, *op.cit.*, p. 9



was revealed in Arabic as His word in Surah Yusuf verse 2; and al-Syu'ara verse 195. Therefore, to understand it, everyone must first understand the *ins* and *outs* of Arabic language. In this case, Imam Syathibi said, "*Whoever wants to understand it, then he should understand it from the side of the Arabic tongue firstly, because without this; it is impossible to understand it steadily. This is the point of discussion of this issue.*"<sup>30</sup>

Second, this Shari'a concept is *ummiyyah*. To understand it, it does not require the help of natural sciences, such as reckoning, chemistry, physics and others. This is intended in order that Shari'a is easily understood by all people. There are at least two major obstacles that humans will face in general, namely obstacles in understanding and in its implementation. Shari'a is easily understood by anyone and from any field of science, because it stems from the concept of *maslahah* (*fahwva ajraa 'ala i'tibari al-maslahah*).<sup>31</sup>

Among the grounds that this Shari'a is *ummiyyah* is because the bearer of the Shari'a himself (Rasulullah PBUH) is an *ummi* person as confirmed in his words in al-Jum'ah verse 2, al-Araf verse 158, al-Ankabut 48 and others.

There is an excessive tendency of some scholars who are not in accordance with the nature of the *ummiyyah* sharia, namely the Qur'an covers all fields of science, both old and modern science. It is true that the Qur'an alludes to and is in accordance with various disciplines. It does not mean that the Qur'an covers all of them; it is only a sign and not as a legitimacy of all disciplines.

The verses that are often used as evidence are an-Nahl 89 which reads, "*And (bethink you of) the day when We raise in every nation a witness against them of their own folk, and We bring thee (Muhammad) as a witness against these. And We reveal the Scripture unto thee as an exposition of all things, and a guidance and a mercy and good tidings for those who have surrendered (to Allah),*" and al-An'am verse 3, "*He is Allah in the heavens and in the earth. He knoweth both your secret and your utterance, and He knoweth what ye earn.*" According to Syathibi, the two verses above have a certain meaning. The first verse is meant about *taklif* and worship, while the meaning of the bible in the second verse is *allaub al-mahjud*.<sup>32</sup>

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<sup>30</sup> *Ibid.*, p. 50

<sup>31</sup> *Ibid.*, p. 54

<sup>32</sup> *Ibid.*, p. 61.

### Qaşdu al-Syari' fi Wadh'I al-syari'ah li al-Taklif bi Muqtadaha

There are 12 problems discussed in this section, but all of them refer to two main problems. *First*, *taklif* beyond human capacity (*at-taklif bima laa yuthaq*). This discussion will not be discussed further, because it is not considered as *taklif*. In this case Imam Syathibi said: "Any *taklif* that is beyond the limits of human ability, then according to Shari'a *taklif* is not valid even though reason allows it"<sup>33</sup>.

*Second*, *taklif* in which there is *masyaqqah*, difficulties (*al-taklif bima fihi masyaqqah*). This issue was then discussed in detail by Imam Syathibi. According to Imam Syathibi, by *taklif*, Shari' does not intend to cause *masyaqqah* for the perpetrators (*mukalaf*). Contrary, there is a distinct benefit beyond it.<sup>34</sup> If it is analogous to everyday life, the bitter medicine that a doctor gives to the patient does not mean giving new difficulties to the patient, but it remains for the health of the patient himself in the future.

In matters of religion, when there is an obligation to *jihad*, it is not really meant to throw oneself into destruction, but for the benefit of humans themselves, namely as *wasilah amar ma'ruf nabyil munkar*. Likewise, the law of cutting off hands for thieves is not intended to damage the limbs, but for the preservation of other people's property.

In this *taklif*, there is *kulfah*; something that cannot be separated from human activities. For example, people who carry goods or work in ad day and night to earn a living are not seen as *masyaqqah*, but as one of the necessities of life. and the habit of making a life. According to Imam Syathibi, the previous event is called *masyaqqah mu'tadah*, because it can be accepted and implemented by members of the body, so that *syara'* is not seen as *masyaqqah*.<sup>35</sup>

Furthermore, what is seen as *masyaqqah* is what Imam Syathibi calls *masyaqqah ghair mu'tadah* or *ghair 'adiyyah*, namely *masyaqqah* that is unusual and cannot be implemented; when it is implemented, it will cause difficulties and limitations. For example, the obligation to fast for the sick and the elderly. All of these situations are *masyaqqah ghair mu'tadah* which Islam condemns. To overcome this *masyaqqah*, Islam provides a way out through *rukhsah* or relief.

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<sup>33</sup> *Ibid.*, p. 74

<sup>34</sup> *Ibid.*, p. 75

<sup>35</sup> *Ibid.*, p. 93

### Qaṣḍu al-Syari' fi Dukhul al-Mukalaf Tahta Ahkam al-syari'ah

In this case, we refer to a question "why do converts implement Shari'a law?" The answer is to remove *mukalaf* from the demands and desires of his lust, so that he becomes a servant called as a servant of Allah the Almighty who is *ikhtiyaran*; not *idthiraran*.<sup>36</sup> For this evidence, every action that follows the lust, then it is null and it does not get any benefit. On the other hand, every action must always follow the instructions of the Shari'ah and not follow the lust.

Thus, the previous description certainly does not provide a comprehensive understanding of *maqāsid al-syari'ah*, but addressing that al-Syathibi's formulation is more systematic and complete than the formulations of the previous *ushul* scholars.

If examined further, the concept of *al-maqāsid* is a closed relationship between his views on benefits. In al-Syathibi's view, the benefit is divided into three types:

- a) *Maslahah* recognized by syara' (*maslahah syahida al-syar'u li'tibariba*). This acknowledgment is evidenced by the existence of a text that recognizes the model or type of benefit as something that is permissible, such as requiring a thief to replace the value of his stolen goods even though his hand has been cut off. This is considered as a *mu'tabarab* benefit, because the syara' has also done the same thing to the perpetrators of *ghasab*. This type of benefit is included in the discussion of *qiyas*.
- b) The benefits that are not recognized by syara' (*maslahah syahida al-syar'u bi butlanibi*). The indication is: when there is a text that punishes certain cases and it is different from what is indicated by the benefit. Like the case of a cleric's *fatwa* against a king who had sexual relations during Ramadan. The cleric decreed that the king could only fast for two consecutive months as *kaffarat*, and had no other choice.

The syara' benefit does not give an acknowledgment of approval or cancellation of it. This is what is commonly known as *al-maslahah al-mursalab*.<sup>37</sup>

<sup>36</sup> *Ibid.*, p. 97.

<sup>37</sup> Mustafa Zaid, *Nazariyat al-Maslahah fi l-Fiqh al-Islami*, (t.d), p. 17-18

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## CLOSING

We could conclude that al-Syathibi's capability as a reformer in the field of *ushul al-fiqh* seems relatively clear in its role in carrying out new formulations of the discussions of *maqāsid al-syarī'ah* which has previously been discussed by scholars. Al-Syathibi contributed greatly in bringing up the urgent role of *maqāsid al-syarī'ah* discussion, even played a role in opening the views of later scholars to further examine this issue.

Furthermore, al-Syathibi's view of *maslahat* cannot be separated from his view of *maqāsid al-syarī'ah*, especially when he divides *al-maqāsid* into two major parts, namely the meaning of syar'i (*Qasdu al-syarī'*) and the meaning of the preamble (*Qasdu al-mukallaf*). The meaning of syar'i is then divided into four parts, namely *qasdu al-syarī' fi wadh'i al-syarī'ah*, *qasdu al-syarī' fi wadh'i al-sharī'a lil ifham*, *qasdu al-syarī' fi wadh'i al-sharī'a li al-taklif bi muqtadhaba*, and *qasdu al-syarī' fi dukhul al-mukalaf throne ahkam al-syarī'ah*.

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