

CONTEXTUALISATION OF *AL-MAQASID AL-KULLIYAT* ACCORDING TO THE OBJECTIVES OF THE INDIVIDUAL, FAMILY, SOCIETY AND HUMANITY: AN ANALYSIS ON JAMALUDDIN ‘ATHIYAH’S PERSPECTIVES

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ABSTRACT

Knowledge constantly evolves to address increasingly complex questions posed by society. Similarly, *maqasid al-syariah*, a theory continuously developed by experts, seeks to meet these challenges. One such expert is Jamaluddin ‘Athiyah, a scholar who has contributed to the advancement of *maqasid* built upon the foundation of classical and early contemporary ideas. This qualitative study employs a literary approach by utilising content analysis to analyse the collected data. The findings reveal that Jamaluddin ‘Athiyah’s conceptualisation of *maqasid* differs from previous perspectives. Noteworthy discussions in his theory include the role of human cognition and the position of *illah* in the process of determining *maqasid al-syariah*. Ultimately, he introduces a framework referred to as the "wobble room" or "area of analysis", which expands the initial four *maqasid* into 24 distinct objectives. This study's contribution to international scholars in the field lies in its comprehensive analysis of Jamaluddin ‘Athiyah’s *maqasid* framework and its divergence from traditional interpretations. By shedding light on these novel perspectives, it enriches the existing scholarly discourse on *maqasid al-syariah* and opens up new avenues for further research and exploration. The findings of this study provide valuable insights for researchers, academics, and practitioners seeking a deeper understanding of *maqasid al-syariah* and its practical applications in contemporary contexts. This study offers the following recommendations that It is crucial to thoroughly understand Jamaluddin Athiyah's clarifications on identifying the main purposes (*maqasid*) within the theory. The specification of the five *maqasid* is an exceptional achievement that demonstrates foresight and meticulous thinking. However, further analysis is needed to address any potential overlapping theories and ensure the completeness of this classification.

Keywords: *Maqasid, individual, family, society, humanity*

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Introduction

Muslim scholars must engage in contextualisation of the *maqasid* theory as a necessary step towards progress. This evitable approach enables the examination of contemporary issues through the lens of *maqasid*. Social challenges like democracy, polygamy, and labour demand careful consideration from a religious perspective. Due to the limited guidance provided by textual sources (*nusus*), these societal applications cannot be applied indiscriminately. Hence, contextualisation is essential to ensure alignment with the current era.

By considering the contextualisation of textual sources (*nusus*), the scope of shariah can extend beyond its literal reading, effectively addressing a wider range of societal issues. Contextualising *nusus* enables a deeper understanding of the divine purpose behind the religious obligation (*taklif*), aligning it with the unique characteristics of the present time. This approach also safeguards against a rigid adherence to blinded interpretations (Bilal Philips, 2003). For instance, it allows for a critical examination of concerns related to democracy, the equitable treatment of labourers, and baseless accusations of disbelievers (*kafir*) between different groups of people.

The *maqasid* theory serves as a valuable analytical framework for addressing social problems and reconciling social realities that may appear incongruent with the textual sources (*nusus*). According to Yusuf al-Qaradawi's work *Dirasah fi Fiqh Maqasid al-Shariah*, certain laws are purposefully explained, providing individuals with the autonomy to pursue these objectives (al-Qaradawi, 2007). In this context, individuals are empowered to make choices that align with their own well-being and the welfare of others.

Jamaluddin 'Athiyah, a Muslim scholar, has made noteworthy contributions to the theory of *maqasid al-syariah*, addressing various aspects such as individuals, families, Muslims, and humanity as a whole. This article aims to analyse the practical application of Jamaluddin 'Athiyah's *maqasid al-shariah*, starting with the role of human cognition and the concept of *illah* in determining the objectives. It also explores the evolution of the concept of *maqasid al-khamsu* (the five higher objectives of shariah), originally introduced by al-Syatibi, leading to the development of the idea of "wiggle room" or "area of analysis" within the *maqasid al-syariah* framework. The main reference for this analysis was Jamaluddin Atiyah's significant work in the field of *maqasid al shariah*, namely *Nahwa Taf'il Maqasid al-Shariah*, as his thoughts have not been extensively documented in books or other scientific journals.

Biography

The biography of Jamaluddin 'Atiyah has received limited scholarly attention, resulting in scarce information about his work outside of his own writings. Jamaluddin 'Athiyah was born in Kumun Nur, a region in Dakhaliyah, Egypt in 1346 H / 1928 M. At the age of two months, he relocated to Cairo. He pursued studies in law at the Faculty of Law at Al-Fuad al-Awwal University (Cairo University) and obtained his degree in 1948. His specialisation was in Islamic law, and he obtained a Shariah Diploma Degree from the law faculty in 1950. In 1960, he pursued his doctoral studies at the University of Geneva in Switzerland. Subsequently, he returned to Kuwait, where he practiced law. Alongside his colleagues, he established a company and engaged in banking activities, with ventures in Cairo and Luxembourg. He remained in Luxembourg for 11 years (Atiyah, 2001).

Following his time in Luxembourg, Jamaluddin 'Athiyah returned to Cairo and served as a supervisor at al Ma'had al 'Alami li al Fikr al Islami for approximately four years (1988-1992). During this period, he actively participated in cultural and scientific activities while simultaneously working on writing a book. He then joined the Faculty of Shariah, Law, and Islamic Studies at Qatar University, where he held the position of chief of the law study department. During his tenure, he established a specialisation in Islamic Law, a role he fulfilled until 1998.

In addition to his academic responsibilities, he assumed the role of advisor in Shariah Economic Law and served as an academic advisor at al Ma'had al-'Alami li al-Fikr al-Islami. Furthermore, in Kuwait, he held the position of general secretary of *al-mausu'ah al-fiqhiyyah* in the endowment ministry of Kuwait.

Methodology

This research adopts a qualitative methodology, specifically, library research. It involves analysing relevant references pertaining to the main research problems (Corbin, 1996). The primary reference for this study is Jamaluddin Athiyah's monumental work entitled *Nahwa Taf'il Maqasid al Shariah*. The collected data was analysed using content analysis, which focused on objectivity, systematisation, and generalisation. This analysis involves a thorough examination of the text using summarisation techniques and scientifically extracting relevant information (Neuendorf, 2001).

Determination Method of Jamaluddin 'Athiyah's *maqasid*

Jamaluddin 'Athiyah is considered among the Muslim scholars who greatly admire Muhammad al Thahir Ibnu Ashur in the realm of *maqasid*, including the understanding of *nas shara'* (textual meaning of Islamic law), *ta'arrud al-adilla* (conflict of evidence), *qiyas* (analogical reasoning), and *maslaha mursala* (considerations of public interest) (Ibnu Ashur, 2006). In his book *Nahwa Taf'il Maqasid al Shariah*, there is a significant discussion devoted to Ibnu Ashur's ideas. This is evident in the manner in which the determination of Islamic law is approached using *mashid al-syariah*, a method influenced by Ibnu Ashur. However, it is important to note that Ibnu Ashur's concept of *maqasid* in *maqasid al-syariah* cannot be applied contextually, as he also engages with other opinions such as those of Abu Ishaq al Shathibi (1388H), Yusuf Hamid al Alim (1977), Ubaid al Hammadi (1900) and Ahmad al-Raisuni (1925).

Based on the comparative analysis of previous scholars, Jamaluddin 'Athiyah reached the following conclusions regarding the determination method of *maqasid al-syariah* ('Athiyah, 2001):

1. *Nas* with a clear *ratio legis* in the Qur'an or Sunnah
2. *Istiqra'* (analysis) of the Shariah's attitude or behaviour in determining the law. This method encompasses two approaches: first, researching a law where the *ratio legis* is evident despite the absence of clear textual evidence (*nas*). Second, examining legal arguments that align the *ratio legis* and motives with existing laws.
3. Utilise the understanding of the *tabiin* (successor generation) in comprehending the Quran and Sunnah.

These methods differ from what Ibn Ashur proposes as a scholar who distinguishes between *maqasid* determination based on *nas* from the Quran and Sunnah. *Maqasid* determination through the Sunnah involves the guidance of the *tabi'in*, based on the concepts of *mutawatir ma'nawi* (meaning-based) and *mutawatir 'amali* (action-based) transmissions (Ibnu Ashur, 2009). *Mutawatir ma'nawi* refers to the Prophet's repeated behaviours recognised by a number of *Tabi'in*. For instance, the concept of *waqf* (endowment) was considered as charity (*sadaqah jariyah*). *Mutawatir 'amali* refers to traditions frequently observed by the Prophet, witnessed by select *tabi'in*, and used to deduce the *maqasids* that serve as the purpose for determining Shariah law. An example provided by a *tabi'in*. *Tabi'in* involves a situation where someone performs prayer while holding the horse's reins, while another *tabi'in* takes hold of the reins first and then proceeds to pray. In this case, the *maqasid* related to facilitation and ease can be derived, as the horse running away from its owner would require the owner to walk the entire long journey on foot, thus justifying the permissibility of taking hold of the horse first and then praying (al-Zahabi, 1982).

Jamaluddin 'Athiyah adopts the method of *maqasid* determination based on the independent guidance of the Tabi'in, encompassing not only the Prophet's behaviour but also all the *nusus* from the Quran and Sunnah. Although there is a slight difference regarding the focus on the determination of the Tabi'in's guidance, the essence of Ibnu Ashur's method aligns with the arguments put forth by Jamaluddin 'Athiyah. This means that the method proposed by Jamaluddin 'Athiyah is not entirely distinct from what Ibnu Ashur had previously proposed.

The Mind's Contribution to the *Maqasid* Determination

Contemporary Muslim scholars commonly employ human reasoning as a tool in the process of determining *maqasid al-syariah*. This tool enables them to explore and uncover the underlying *ratio legis* and motives behind the determination of Shariah law. It is particularly useful when the *ratio legis* and motives are not explicitly stated in the textual sources of the Quran and Sunnah.

In the process of utilising human reasoning as a tool to derive the *ratio legis* and motives for the determination of Shariah law, Jamaluddin 'Athiyah extensively examines the perspectives of various Muslim scholars, both classical and contemporary, providing thorough arguments. He draws upon concepts such as *al-fitrah*, quoted from Ibnu Ashur through Ibnu Sina, Imam al Syafi'i's *istidlal* method, Izzuddin bin Abdissalam's *al-tajribah*, *al-fitrah* and *al-aql*, Imam al Syatibi's *istiqlal al-ma'nawinya*, Ibnu Taimiyah's *al-fitrah* and al-Hasani's concept of the mind's "wobble room" or "area of analysis" in accompanying textual sources (*nusus*). These perspectives serve as additional premises alongside the textual sources (*nusus*) (Jamaluddin 'Athiyah, 2001).

The human mind, according to Jamaluddin 'Athiyah, cannot solely rely in *ta'lil* (rationale) and requires a designated area of analysis. Therefore, he incorporates the theory of Ahmad al-Raysuni (1925) on the mind's wobble room or area of analysis when examining the concept of *maslahah* (public interest) (Ahmad al-Raisuni, 2010). In this context, al-Raysuni classifies the human mind's wobble room into three categories:

Firstly, interpretation of *nusus* (textual sources) in light of the values of *maslahah* due to the nature of *nusus* generally possessing broad and unlimited contextual meaning. For instance, the injunction to establish justice and engage in righteous deeds, as well as the prohibition of causing harm on Earth. The application of these principles is universal and thus requires *tafsir* (interpretation) based on the concept of *maslahah*.

Secondly, the assessment of goodness in human beings may vary depending on the changing circumstances of place and time. This conjunction also applies to situations where the measurement of goodness appears to contradict the *nas*. In such cases, the mind plays a crucial role in the process of selection through *tarjih* (preference).

Thirdly, the measurement of goodness can be determined through the method known as *al-masalih al-mursalah* (consideration of public interest not explicitly addressed by the *nas*).

Jamaluddin 'Athiyah discusses the requirements for the human mind to contribute in legal decision-making by referencing various experts, including Ibnu Sina, al Juwaini, Izzuddin bin Abdissalam, Ibnu Taimiyah, al Syatibi, al Fasi, Ibnu Ashur, and al Raisuni. While it is not explicitly mentioned which specific opinion 'Athiyah follows, given his admiration for Ibnu Ashur, it can be inferred that the statements he presents align with the requirements put forth by Ibnu Ashur.

When the human mind engages in *ratio legis* thinking without a specific *nas*, Jamaluddin 'Athiyah outlines several requirements to establish clear boundaries for the area of analysis. These requirements include:

Firstly, the absence of *nas qat'i* (definitive textual sources) pertaining to the intended *maqasid*. Secondly, the *maqasid* being considered should not contradict any *nas qat'i* or be in conflict with them. Thirdly, in case of contradiction between different *nas qat'i*, the *tarjih* (preference) rule should be used to resolve the conflict. Fourthly, *maqasid* resulting from the analytical process of the human mind should possess characteristics of *thubut* (constancy), *zhahir* (clarity), *mundhabit* (non-contradiction) and *itthirad* (generality) (Jamaluddin 'Athiyah, 2001). Dealing with these terms, Ibnu Ashur explains that *tsubut* is a constant and firm purpose, *zhuhur* ensures a clear and consistent meaning among scholars, *indhibath* provides a defined and unambiguous understanding, *itthirad* applies universally, maintaining a consistent meaning across different places and times.

The *Illah* Position on the Concept of *Maqasid al-Syariah* and *Qiyas*

In the theory of establishing *maqasid al-syariah*, Jamaluddin 'Athiyah incorporates the concept of *illah* as a key element. However, the use of *illah* in this context is not clearly defined, leading to ambiguity, as the term has previously been employed in the concept of *qiyas*. Here, Jamaluddin 'Athiyah stated that the concept of *illah* in *maqasid al-syariah* differs from its application in *qiyas*. Further clarification is required, as *illah* is a systemic term that originates from the concept of *qiyas*.

According to *Usul al Nazhar fi Maqasid al Tashri' al Islami wa Bayan 'Alaqah al Qawaid al Fiqhiyah Biha* (Namr Ahmad al Sayyid Mustafa, 2013), there is a distinction between the concept of *illah* in the theory of *maqasid al-syariah* and its usage in *qiyas*. In *qiyas*, the *illah* must meet certain requirements such as being *dzahir* (clear), *mundhabit* (specific) and oriented towards *qiyas* itself. For instance, in the case of *riba* the factors of staple food, scale of balance and measurement are used as *illah* to determine the legal ruling. However, the prohibition of *riba* according to *maqasid al-shariah*, the focus is on upholding justice and preserving wealth, which emphasises the purpose behind the established laws rather than the specific formation of the law itself.

The main distinctions between the concept of *illah* in the *maqasid al-syariah* and *qiyas* are as follows: Firstly, *maqasid al-syariah* focuses more on the legal impact, emphasising the values and meanings that are not explicitly stated in the law or the clarity of the *illah's* meaning itself. On the other hand, in *qiyas*, the *illah* is used to compare and analogise partial aspects to establish a law. For instance, in forbidding *riba*, *maqasid al-syariah* seeks to identify the underlying values and purposes of the *riba*-related laws, such as preserving wealth and promoting fairness. The *illah* used in this context relates to factors that deprive others of their rights, prioritise individual profit, and are driven by greed. In the theory of *qiyas*, the concept of *illah* is limited to specific elements related to *riba*, such as food, staple food, and measurement systems.

Secondly, in the theory of *maqasid*, *illah* is used to consider the overall (*ijmali*) application of the law while disregarding specific and diverse elements. This point of view allows the *illah* in the theory of *maqasid* to capture aspects that may not be addressed by *illah* in *qiyas*. For example, when examining the concept of worship in its general sense (*ijmali*), it seems that all the requirements are oriented towards the betterment of human beings. However, the *illah* in *maqasid* does not delve into the minute details of the Shariah, such as the reasons for starting the fast at dawn and ending at sunset.

***Al-kulliyat al-Khams*: Placing Position**

The scholars have engaged in ongoing debates regarding the prioritisation of the five overarching objectives (*al-kulliyat al-khamsah*) for the realisation of human well-beings. Jamaluddin 'Athiyah contributed to the discussion by stating some opinions of the experts on *maqasid*. These opinions pertain to the placement and order of the five overarching objectives which include:

Table 1: Five Overarching Objectives (*Al-Kulliyat Al-Khamsah*) for The Realisation of Human Well-Beings according to Scholars

Scholars	<i>Al-Kulliyat Al-Khamsah</i>				
Al-Ghazali	<i>Al-din</i>	<i>Al-nafs</i>	<i>al-aql</i>	<i>Al-nasl</i>	<i>Al-mal</i>
Al-Razi	<i>Al-nafs</i>	<i>Al-mal</i>	<i>Al-nasb</i>	<i>Al-din</i>	<i>Al-‘aql</i>
	<i>Al-nufus</i>	<i>Al-‘uqul</i>	<i>Al-adyan</i>	<i>Al-amwal</i>	<i>Al-ansab</i>
Al-Amidi	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-aql</i>	<i>Al-nasl</i>	<i>Al-mal</i>
	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-nasl</i>	<i>Al-aql</i>	<i>Al-mal</i>
Ibnu Hajib	Followed al-Amidi				
Izzuddin Ibn Abdissalam	Stated no fixed rule				
Al-Qarafi	<i>Al-nufus</i>	<i>Al-adyan</i>	<i>Al-ansab</i>	<i>Al-‘uqul</i>	<i>Al-amwal</i>
	Some experts stated that he added <i>al-a’radh</i>				
Al-Baidhawi	<i>Al-nafs</i>	<i>Al-din</i>	<i>Al-aql</i>	<i>Al-mal</i>	<i>Al-nasb</i>
Ibnu Taimiyah	<i>Al-nufus</i>	<i>Al-amwal</i>	<i>Al-a’radh</i>	<i>Al-‘uqul</i>	<i>Al-adyan</i>
Al-Asnawi	Referred to the Book of al-Baidhawi and followed the order.				
	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-aql</i>	<i>Al-mal</i>	<i>Al-nasb</i>
	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-nasb</i>	<i>Al-aql</i>	<i>Al-mal</i>
Tajuddin Ibn al-Subki	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-aql</i>	<i>Al-mal</i>	<i>Al-irdh</i>
	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-nasl</i>	<i>Al-mal</i>	<i>Al-aql</i>
Al-Syatibi	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-aql</i>	<i>Al-nasl</i>	<i>Al-mal</i>
	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-nasl</i>	<i>Al-aql</i>	<i>Al-mal</i>
Al-Zarkasyi	<i>Al-nafs</i>	<i>Al-mal</i>	<i>Al-nasl</i>	<i>Al-din</i>	<i>Al-aql</i>
	Stated the additional idea of <i>muta’akhirin</i> by <i>al-a’radh</i>				
Ibnu Farhun	<i>Al-din</i>	<i>Al-ansab</i>	<i>Al-a’radh</i>	<i>Al-amwal</i>	<i>Al-‘aql</i>
	Added <i>al-din</i> after <i>baqa’ al insan wa wujuduhu</i>				
Al-Badakhysi	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-nasb</i>	<i>Al-aql</i>	<i>Al-mal</i>
Ibnu Ashur	<i>Al-din</i>	<i>Al-nufus</i>	<i>Al-‘uqul</i>	<i>Al-amwal</i>	<i>Al-ansab</i>
Wahbah al-Zuhaili	Adapted the condition of <i>dharurah</i> (necessity)				
Al-Raisuni	<i>Al-din</i>	<i>Al-nafs</i>	<i>Al-nasl</i>	<i>Al-aql</i>	<i>Al-mal</i>

Based on the above experts’ opinions, Jamaluddin ‘Athiyah concluded that there is no consensus among scholars regarding the order of *al-kulliyat al-khamsah* (the five overarching objectives). Different scholars prioritise the five objectives differently based on specific conditions. However, Jamaluddin ‘Athiyah tended to follow the order that was proposed by al-Ghazali in normal conditions. Besides that, al-Ghazali’s opinion becomes the reference of most of the *usul* scholars (Al-Ghazali, 2001).

Nevertheless, Jamaluddin ‘Athiyah emphasises the interconnectedness of the objectives and believes that each objective is related to and influences the others. For example, the preservation of religion (*hifdz al-din*) is interconnected with all other *maqasids*.

Four Wiggle Rooms of *al-Maqasid al-Kulliyah*

Similar to other *maqasid al-syariah*’s experts, Jamaluddin ‘Athiyah presents his own unique theory. The theory began from the discussion of whether *maqasid al-shariah* is limited to the five overarching objectives or it can be developed further. He expands the concept of *maqasid al-syariah* beyond the five to include 24 specific objectives, which he refers to as "*majal*" (wiggle room or areas). These areas encompass various aspects such as the individual, family, Muslim community, and humanity as a whole. The detailed breakdown of these objectives is as follows:

Maqasid al-Syariah in Individual Matters

a. Hifdz al-nafs (Preservation of life)

The aspect of self-preservation involves two dimensions: preserving oneself as a whole, which includes avoiding death, and preserving oneself from harm or injury, such as protecting the body from damage. The application of *hifdz al-nafs* in the individual context can be approached in two ways. First, it entails ensuring personal safety and refraining from hostility or aggression towards oneself and others. The imposition of capital punishment for intentional killing and the payment of *diyat* (blood money) for unintentional killing serve as deterrents against such acts. Second, it involves fulfilling the basic needs of the body, such as food, drink (taking *rukhsah* or concession is permissible under necessity), clothing, shelter, preventing infectious diseases, and safeguarding oneself from dangers like fire and drowning. These measures are necessary for maintaining one's life at the level of necessity (*dharurah*).

b. Hifdz al-aql (Preservation of the intellect)

The term "intellect" here refers not to a specific body part, but rather to the responsibility or duty associated with it. In the context of the body, it encompasses the brain and all the senses to perceive information through hearing, sight, taste, smell, and touch. According to Jamaluddin 'Athiyah, preserving the intellect involves safeguarding the well-being of the brain, taste buds, and the integrity of the nervous system. It also entails avoiding anything that can harm them, such as intoxication or loss of consciousness. Preserving the intellect also involves utilising the brain for its intended purpose, which includes contemplating various aspects of life to prevent its misuse or abuse.

c. Hifdz al-tadayyun (Preservation of diversity) extends beyond the concept of mere diversity and encompasses the preservation of obedience as well.

Preserving individual diversity primarily focuses on personal aspects rather than the origin of religion. This preservation falls under the broader realm of preserving religion within the context of people and humanity and leaves an area of analysis or wiggle room to be explored further. The benefits of preserving diversity include safeguarding the correct belief system (*aqidah*), avoiding actions that may undermine one's belief, refraining from major sins, fulfilling obligatory worship, adopting an Islamic attitude, and fulfilling mandatory obligations.

d. Hifdz al-'irdh (Preservation of self-dignity)

Jamaluddin 'Athiyah chose *hifdz al-'irdh* because it encompasses a broader meaning. It not only pertains to sexuality but also encompasses the preservation of one's honour and dignity. While scholars like al Shihab al-Din al Qarafi, Najm al-Din al-Tufi, Taqi al-Din al-Subki, and Muhammad al-Syaukani categorised it as a matter of necessity (*dharuriyah*), Jamaluddin 'Athiyah aligned with Ibnu Ashur's view, placing *hifdz al-'irdh* at the level of need (*hajiyyah*) within the individual context.

e. Hifdz al-mal (Preservation of wealth)

In Islam, wealth is considered to belong to Allah, while human beings are merely entrusted with it. Therefore, individuals are obligated to engage in righteous actions in this world since their ownership is not absolute (*wadzifah ijtima'iyah*). Consequently, Islamic law (the Shariah) provides guidance on acquiring wealth through lawful means such as work, transactions, and inheritance, among others. Conversely, stealing and robbery are strictly prohibited as means of acquiring wealth.

Maqasid al-Syariah in the Family Aspect

Family is a vital component which becomes the core of social life. Jamaluddin 'Athiyah aligns with the view of Ibnu Ashur regarding the subsidiary laws of *maqasid* concerning aspects of family relationships they are marriage, progeny, kinship and family ties (Ibnu Ashur, 2001).

a. *Tanzim al-'alaqah bain al-jinsain (managing relationship between two individuals)*

The Syariah and other *samawi* (revealed) religion and legal systems acknowledge that marriage serves as a framework to establish boundaries in relationships between unrelated men and women. Recognising this, it is imperative to establish regulations that define the rights and responsibilities arising from marriage.

b. *Hifdz al-nasl (Preservation of progeny)*

In the context of marriage, one of the legal consequences is the permission to engage in sexual intercourse, which can lead to pregnancy and childbirth. The first *maqasid* acts as a *wasilah* (intermediaries) for the second *maqasid*, hence the second *maqasid* is aimed at preserving the progeny of human population on earth. According to Jamaluddin 'Athiyah, if the establishment of a marital relationship is considered a *maqasid al-shariah*, its effects also fall within the scope of the wiggle room or area of analysis. This includes prohibitions on homosexual relationships, lesbianism, and abortion, as they hinder the preservation of the human population. Additionally, there are prohibitions aimed at safeguarding the reproductive organs and preventing harm to them.

c. *Tahqiq al-sakina wa al-mawadda wa al-rahma (Realising peacefulness, calmness and feeling of affection)*

According to Jamaluddin 'Athiyah, the relationship within a family encompasses more than just sexual intimacy. It plays a crucial role in achieving peacefulness, calmness, and fostering feelings of affection among family members. In terms of priority, *al-sakina* (peacefulness) is considered a vital necessity (*dharuri*), *al-mawadda* (affection) is considered a recommended act (*haji*), and *al-rahma* (compassion) is regarded as an act of embellishment (*tahsini*).

d. *Hifdz al-nasab (Preservation of lineage)*

According to Jamaluddin 'Athiyah preserving *nasab* (lineage) is distinct from preserving *nasl* (progeny). This differentiation challenges the opinion of *usul al-fiqh* scholars who consider them as similar concepts. His intention behind this distinction of the two *maqasid* is to facilitate the categorisation of these objectives within the context of family *maqasid* (objectives).

To achieve this *maqasid* true, the Shariah established various legal provisions. These include the prohibition of fornication (*zina*), regulations regarding adoption, provisions regarding waiting period (*iddah*), guidelines for disclosing pregnancy, determination of paternity, and other related matters. In this context, Ibnu Ashur (Ibnu Ashur, 2009) asserts the importance of maintaining a clear *nasab* to establish genuine lineage. Scholars differ in their classification of *hifdz al-nasab* as either *dharuriyah* (necessity) or *hajiyyah* (complementary). The majority of the scholars classify it under *dharuriyah* due to the prescribed punishment of *had* (plural: *hudud*) for *zina*, while others categorise it as *hajiyyah* based on the permissibility of secret marriages not registered with the government authorities (Zainuddin, 2020), and the disagreement regarding the validity of marriage without parental or guardian consent. However, Jamaluddin 'Athiyah subscribes to the *dharuriyah* category, emphasising the preservation of family ties with *vitae* characteristics.

e. *Hifdz al-tadayyun fi al-usrah (Preservation of the diversity of the family)*

Hifdz al-tadayyun fi al-usrah (Preservation of the diversity of the family) is an essential aspect of Islamic teachings that emphasises the importance of engaging in *da'wah* within the family unit, including spouses and children. This principle is repeatedly mentioned in the Qur'an. Al-Tirmidhi has also recorded the saying, "The best among you are those who are best to their families, and I am the best among you to my family" (al-Tirmidhi, 2014). This highlights the significance of prioritising *da'wah* within one's own family.

f. *Tanzim al-janib al-muassasi li al-usrah (Managing the organisational aspect in a family)*

The establishment of organisational aspects in a family has a permanent nature and is characterised by rules regarding the rights and responsibilities of family members. These rules apply to both small families (husband and wife) and large families that include extended relatives and in-laws.

g. *Tanzim al-janib al-mali li al-usrah (Managing the wealth aspect in a family)*

Managing a family encompasses not only social and emotional aspects but also financial management, aligning with the principles of the Shariah. This includes adhering to regulations such as providing *mahar* (dowry), fulfilling *nafaqah* (financial support), taking care of children, preserving lineage, managing inheritance, and other related matters.

Maqasid al-syariah in the aspect of Muslim individuals

Ibn Ashur was the first scholar to categorise the aspect of Muslims' well-being as a part of *maqasid al-shariah*, specifically as *hajiyyah* (complimentary) rather than *dharuriyah* (essential). This statement is mentioned by Jasser Auda in the introduction of the book *Treatise on Maqasid al-Shariah*. This categorisation can also be found in Ibn Ashur's book "*Maqasid al-Shariah al-Islamiyah*." Based on this understanding, Jamaluddin 'Athiyah elaborates on the scope of this aspect within the *maqasid* framework:

a. *Al-tanzim al-muassasi li al-ummah (Managing the organisational aspects for Muslims)*

The organisational aspect for Muslims, known as *al-tanzim al-muassasi li al-ummah*, plays a crucial role in addressing the complex issues faced by Muslims and promoting the values espoused by Shariah. This aspect emphasises the establishment of institutions such as Baitul Mal (public treasury), mosques, and *waqf* (endowment) institutions, which contribute to the fulfilment of societal needs and the preservation of Islamic principles.

b. *Hifdz al-amn (Preservation of safety)*

The *maqasid* related to safety encompass both internal and external dimensions. Internally, it involves protecting life, dignity, and property through regulations such as *qisas* (retribution), prescribed punishment for theft, and collective protection during times of war and *murtad* (apostasy). In the context of peace and security, safeguarding against external threats necessitates enhancing defence capabilities and promoting the call for jihad as a means to minimise the harmful consequences of warfare, such as post-war poverty and other societal disruptions.

c. *Iqamah al-'adl (Upholding justice)*

Iqamah al-'adl (Upholding justice) encompasses various aspects, including justice towards God, oneself, and the family. It involves practicing justice in one's conduct towards others, as well as ensuring fairness in legal rulings and decision-making. Jamaluddin 'Athiyah references several verses that emphasise the importance of upholding justice.

d. *Hifdz al-din wa al-akhlaq (Preservation of religion and morality)*

There are three fundamental pillars in Islam: *aqidah* (belief), *shariah* (law), and *akhlaq* (morality). Jamaluddin 'Athiyah (2001) emphasises the inseparability of religion and morality, highlighting their strong correlation. Islam addresses the welfare of individuals through practices such as congregational prayers, Friday prayers, Eid prayers, the obligation of Hajj pilgrimage, and enjoining good and forbidding evil, which aim to uphold social rights. While scholars like Ibn Ashur consider ethics as a form of human excellence falling under the category of *tahsini*, Jamaluddin 'Athiyah views ethics as a foundational aspect (*dharuri*) that promotes human unity, encompassing qualities such as honesty and trustworthiness (*amanah*). However, certain ethical practices, such as observing modesty (*awrah*) in attire and growing a beard, fall under the category of *tahsini*.

e. Al-ta'awun wa al-tadhamun wa al-takaful (helping each other, having solidarity and mutual support)

The *maqasid* of *al-ta'awun* (cooperation), *al-tadhamun* (solidarity), and *al-takaful* (support) encompass various dimensions including culture, social and economic aspects. While these values may not hold direct legal significance, they carry great importance from a theological perspective, particularly in fostering human brotherhood (*ukhwah insaniyah*) and strengthening faith (*ukhwah imaniyah*). Allah, in His guidance, encourages believers to engage in cooperative and helpful endeavours for the greater good.

f. Nashr al-'ilm wa hifdh 'aql al-ummah (Spreading knowledge and preserving the intellect of the ummah)

In line with this *maqasid*, Jamaluddin 'Athiyah aligned with Ibn Ashur's view that preserving the collective social mind of human beings is more significant than preserving the individual mind. This *maqasid* finds applications in prohibiting the dissemination of substances like drugs that can harm the human mind. Additionally, it addresses the impact of various factors on the human mind, such as brainwashing, propaganda, and spreading falsehoods. As a result, prohibitions can be observed in both tangible aspects, such as the consumption of alcohol, and intangible aspects, such as creating public confusion.

f. 'Imarah al-ard wa hifdh tharwah al-ummah (building up world and preserving the people's welfare)

'*Imarah al-ard wa hifdh tharwah al-ummah* (building up the world and preserving the welfare of the Muslim community) is a *maqasid* that pertains to both the human and Muslim aspects. It emphasises the responsibility of individuals to contribute to the development of their own communities. The concept of welfare stems from the understanding that all wealth ultimately belongs to Allah, and humans are entrusted with its proper management and distribution. This implies that individuals do not possess the absolute right of ownership over their wealth, but rather a duty to utilise it responsibly by sharing it with others.

Maqasid Al-Syariah in the Humanity Aspect

a. Al-ta'aruf wa al-ta'awun wa al-takamul (knowing, helping, mutual cooperation)

In the Qur'an, it is emphasised that human beings are created to know, assist, and cooperate with one another. Islam rejects social stratification and community-based fanaticism, recognising that all Muslims are part of a unified human family. Islam strictly prohibits any form of discrimination based on community, gender, or any other factor that undermines the principles of humanity.

b. Tahqiq al-khilafah al-'ammah li al-insan fi al-ardl (Realising the concept of general leadership on earth)

Becoming a leader on earth is a profound responsibility entrusted to human beings, requiring humans to embody virtuous conduct and prioritise the welfare of society. The *maqasid* in striving to realise general leadership on earth is rooted in promoting the well-being of individuals, reflecting the essence of Islam.

c. Tahqiq al-salam al-'alami al-qaim 'al-adl (Realising peacefulness on earth based on justice)

Misconceptions and negative assumptions surrounding Islam often portray it as a religion associated with conflict and animosity. Some political propaganda is cunningly pinned to Islam distorting its true essence. However, a careful examination of the *maqasid* reveals Islam's inherent principle of "*rahmah li al-'alamin*" (compassion to all creation) and its fundamental pursuit of establishing peace through social justice. Islam, contrary to popular misconceptions, is the first religion to strictly prohibit warfare unless it is in self-defence (Quran, Al-Anfal: 61). Moreover, Islam advocates for peaceful resolutions and promotes peaceful agreements between nations to ensure universal security. The essence of peace lies in the realisation of justice.

d. *Al-himayah al-daulyah li huquq al-insan (State protection of human rights)*

The liberation of human beings from all forms of slavery is a fundamental principle of Islamic belief of *aqidah islamiyah*. Islam places great importance on assisting the weak and vulnerable in all aspects of life, safeguarding their rights and preserving their independence. This principle is exemplified by the freedom of thought and the freedom to choose one's religion in Islam.

This *maqсад* prohibits any intervention of one country to another in policy applications in the spirit of recognising the importance of protecting human rights. This includes opposition to colonialism in regions with weaker populations, aiming to establish global peace based on righteous actions and justice.

e. *Nasyr da'wah al-Islam (Spreading the Islamic da'wah)*

Jamaluddin 'Athiyah intentionally ends his concept of *maqasid* with this *maqсад* because of its significant importance in the human aspect of *maqasid al-shariah*. It encompasses the obligatory duty of propagating and conveying the concepts of Islam, including the existence of Allah, the imperative nature of worship, obedience to God's commands without reservation, and the avoidance of prohibitions, which are the general responsibilities of Muslims. In the past, fulfilling this *maqсад* involved direct interaction through the practice of *da'wah*. However, in the present context, the dissemination of Islamic *da'wah* can be accomplished through various means and media, such as television, printed materials, and various social media platforms.

The implementation of *maqasid al-shariah* through the four aspects of life, as outlined by Jamaluddin 'Athiyah, is a remarkable concept. It provides detailed *wasail* (intermediaries) and examples for establishing the objectives of the law. Furthermore, he lays a solid foundation through *nas* (textual evidence), which serves as a basis for understanding the evidence, concepts, and practical applications of *maqasid*. His thought process, presented in the form of a comparative analysis, synthesises the ideas of previous scholars of *maqasid*, resulting in a more practical and specific theory.

Jamaluddin 'Athiyah deserves significant recognition as a contemporary expert in *maqasid*. His successful analysis and division of *maqasid* into four aspects or categories, as discussed earlier, are highly appreciated. However, there are certain weaknesses in the categorisation of *maqasid* into individual, family, Muslim community, and humanity aspects. One notable weakness is the potential overlap and duplication of *maqasid*, which has been subject to criticism in this study. Examples of such criticism include:

1. The overlap between *hifdz al-nasb* (preserving lineage) and *hifdz al-nasl* (preserving progeny) within the family aspect. According to Athiyah, *hifdz al-nasl* focuses on the sexual intercourse between male and female, while *hifdz al-nasb* focuses on the result of that relationship. However, separating these two *maqasid* seems impractical, as the consequence of sexual intercourse is precisely the pregnancy and the birth of a baby, establishing a causal relationship between the two. It is suggested to consolidate these two *maqasid* into a single concept and explore the means to achieve the main purpose through intermediaries (*wasilah*).
2. *Tandzim al-'alaqah bain al-jinsain* (managing relationships between genders) is also another *maqasid* which overlaps with other *maqasid* as previously discussed. Although not explicitly stated, it can be considered as part of *hifdz al-nasl* (preserving progeny) or *hifdz al-nasb* in a general sense. The *maqasid* of *tandzim al-'alaqah bain al-jinsain* is actually a *wasilah* accompanying *hifdz al-nasl* according to the theory of *sadd al-dzariah* (blocking the means) (Wahbah al-Zuhaili, 1998). This *maqasid* serves as a means or intermediary that adopts the same ruling as the intended action. For example, seclusion (*khalwat*) can be categorized as adultery (*zina*), so it becomes prohibited (*haram*). Similarly, tools used for criminal activities are also considered prohibited because they become a means for engaging in wrongdoing. In Jamaluddin 'Athiyah's *maqasid* framework, *tandzim al-'alaqah bain al-jinsain* can be seen as a

means to fulfil the objectives of *hifdz al-nasl* or *hifdz al-nasb* and thus, there is no need to consider it as a separate aspect within the family domain.

3. The *maqasid* of *tanzim al-janib al-mali li al-usrah* (managing the financial aspect of the family) is seen as a repetition of *hifdz al-mal* (preserving wealth) specifically within the context of the family. Since there is no detailed explanation provided on how to manage the family's wealth, every individual is generally encouraged to do *tasharruf* (use their own resources) for the betterment of themselves, their families, and others. In other words, the inclusion of this *maqasid* is not particularly significant, as it is already encompassed within another *maqasid*, albeit in a different aspect or domain of analysis.
4. The *maqasid* of *hifdz al-amn* (preserving security) should also be included in the family aspect, as it contributes to the overall safety and well-being, rather than being limited to one aspect alone. While Jamaluddin 'Athiyah provides explanations on maintaining internal and external safety, it may seem inconsistent to separate the *maqasid* related to the preservation of wealth and lineage into different aspects within this *maqasid* framework.
5. The *maqasid* of *hifdz al-'adl* (upholding justice) within the Muslim aspect already encompasses the concept of justice as the purpose of establishing laws. However, Jamaluddin 'Athiyah restated on the humanity aspect about *tahqiq al-salam al-'alami al-qaim 'ala adl* (forming peacefulness on earth based on the justice). Similarly, the concept of justice itself can be considered as part of another *maqasid*, namely *al-himayah al-dauliyah li huquq al-insan* (protecting human rights in general). In essence, when humans uphold and promote justice, they inherently safeguard human rights, and vice versa.

The classification of *maqasid* initiated by Jamaluddin 'Athiyah may have some weaknesses in terms of specificity across all aspects of life. However, it is important to recognise that this classification greatly benefits the users of *maqasid al-shariah*. The provided explanations are highly specific and supported by textual evidence from the Quran and Sunnah. Classifying *maqasid* is a complex task that requires thoroughness and careful study, involving the comprehensive examination of *maqasid* from classical to contemporary scholars. Therefore, this ingenious idea should be further developed in the future to satisfy the growing thirst for knowledge in the field of *maqasid al-shariah*.

Recommendations

Based on the aforementioned findings regarding Jamaluddin Athiyah's remarkable contribution to the theory of *maqasid al-shariah* by specifying *al-kulliyat al-khams* (Five overarching objectives) into 24 aspects, the study offers the following recommendations:

1. It is crucial to thoroughly understand Jamaluddin Athiyah's clarifications on identifying the main purposes (*maqasid*) within the theory.
2. The specification of the five *maqasid* is an exceptional achievement that demonstrates foresight and meticulous thinking. However, further analysis is needed to address any potential overlapping theories and ensure the completeness of this classification.

Conclusion

In conclusion, Jamaluddin 'Athiyah's theory of *maqasid al-syariah* is a comprehensive compilation of previous scholars' ideas, which he thoroughly analyses by providing examples and referencing verses from the Quran and Sunnah. While he draws heavily from the teachings of his predecessor, Ibn Ashur, there are notable differences, particularly in the establishment of *maqasid* based on the guidance of the *Tabi'in*. Jamaluddin 'Athiyah's expertise in *maqasid*, as a contemporary scholar, is evident in his successful formulation of the contextualisation of *al-kulliyat al-khams* into four aspects of analysis encompassing a total of 24 *maqasid*.

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