

Maqasid Sharia in Dharar Parameters During the Pandemic

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Abstract

Islam is a dynamic religion. The nature of dynamism is apparent because it maintains rigid and flexible characteristics that make Islamic sharia always relevant throughout the ages and practical for the future. Allah SWT, the All-Knowing, creates everything with its purpose. In the ruling context, this purpose is named *maqasid*. *Maqasid* becomes the guide for the Islamic jurists (*fuqaha*) to establish the ruling. Ibn 'Asyur declared, "The jurists' lack of concern for the *maqasid* of the sharia is obsolete of fiqh's cause". Therefore, the jurists need to comprehend the *maqasid* of sharia. It serves as a compass for the growth of jurisprudence to be germane throughout the ages consistently. The COVID-19 pandemic that began at the end of 2019 has demonstrated a dynamic advancement of jurisprudence. There have been times when one feels he no longer belongs to a particular sect. This situation implies a positive sign in which one is not bounded entirely by a distinct school of thought, but at the same time, it also encourages the nature of wanting to free oneself from it and even from the sharia law itself. Accordingly, this paper endeavoured to examine the need for a parameter for establishing a ruling based on *dharar*. It is often a variable in designating the ruling. This parameter is paramount for the uniformity of the ruling and for fostering comprehension in public.

Keywords: Maqasid Sharia, Objectives of Sharia Ruling, Dharar, Dharar Parameters.

Introduction

Although the terminology maqasid sharia is typical in society today, only a few people understand it accurately according to its actual context. Hence, many mistaken interpretations happen until, to an extent permitting a matter that is optional by using the

name of Islam. Hence, one must comprehend the *maqasid* definition and the conditions of practising it before the discussion pursues.

Definition of Maqasid Sharia

The terminology *maqasid sharia* consists of two words, namely *maqasid* and *sharia*. The word *maqasid*, from a terminological point of view, comes from *al-qasdu* (القصد), which denotes several meanings. Some are modest, simple, true, and fair, with strong purpose and determination (Ibn Manzur, 1992). Based on these various senses, one can conclude that the definition of *maqasid* in the context of this discussion is an objective or purpose that is true, accurate, simple, modest and fixed. This connotation corresponds to the sense of *maqasid* in the term, i.e. الغاية والهدف التي يريدها المتصرف من تصرفاته القولية والفعلية (The goal or objective that a person aspires to from every behaviour whether in the form of words or actions) (Hamidi, 2008).

Nonetheless, a precise meaning among scholars related to *maqasid* is crucial. It becomes a science isolated from other pieces of knowledge and independent. Among the earliest scholars to discuss the science of *maqasid* is Imam al-Syatiby in his book *al-Muwafaqat* (Bus'ady, 2007). Although he thoroughly examined *maqasid*, he still needed to come up with a definitive definition. The accurate and detailed definition of *maqasid* as a separate and independent science was only brought by later scholars such as Sheikh Ibn 'Ashur and Sheikh 'Alal al-Fasy and followed later by other contemporary scholars.

Ibn 'Asyur (2012) described *maqasid* as "the implicit meaning or wisdom behind all or most of the ruling of *sharia* that applies in general". Meanwhile, 'Alal al-Fasy (1993) termed it "the goal or secret made by Allah SWT behind each of His rulings". At the same time, al-Raysuni (1992) represented *maqasid* as the goal or objective of the ruling to be realised for human benefit. The three definitions above are not much different, except that the third definition is more precise and comprehensive, where *maqasid* links to human welfare. Protecting human welfare is the ground of Islamic *sharia* itself.

Maqasid Divisions

Scholars divided *maqasid* into three parts, namely *maqasid ammah*, *maqasid khassah* and *maqasid juz'iyyah* (Raysuni:1992)

Maqasid ammah is the general goal of Islamic rule. This goal is evident in every ruling imposed by Allah SWT on humans. Usually, when *maqasid al-syariah* is involved generally, it refers to *maqasid* from this category. According to imam al-Ghazali, there are five scopes of *maqasid ammah*: religion, life, intellect, lineage and property.

Additionally, *maqasid al-khassah* is the specific goal of Islamic sharia in each particular chapter of sharia law, such as *maqasid al-syari'ah* in the family, property, and justice. For instance, the *maqasid sharia* in the judicial system upholds justice among human beings and the family to obtain tranquillity and peace.

Further, *maqasid al-juz'iyyah* is the goal or purpose of sharia ruling in enforcing specific rules, such as fasting and giving zakat. It is also commonly referred to as wisdom, such as the wisdom of the ruling of fasting, *diyath*, and congregational prayer.

The Role and Function of Maqasid in The Formation of Ruling

Al-Syatiby (1997), in his book *al-Muwafaqat*, mentioned, “the *maqasid* (purpose) is the soul of all deeds and actions”. Thus, humans cannot live without a purpose. *Fiqh* without purpose is like *fiqh* without soul. All actions must have a purpose; otherwise, they are in vain. Also, if the act or command comes from Allah SWT, it must comprise wisdom following the eternal sagacity of Allah SWT.

Based on this premise, the scholars look for the objective and goal of ruling that Allah SWT prescribed. Then, it produced the *ta’lil al-ahkam* idea. The word *ta’lil*, according to scholars, implies two senses. First, the ruling of Allah SWT is for the benefit of His servants in this world and the hereafter. Thus, it validates that Allah SWT’s commands are for preserving the welfare of all creatures. Second, *ta’lil* also explains the reasons, the method of *istinbat* and the way of deciding sharia ruling (Bus’ady, 2007).

Generally, scholars split this matter into two views. Firstly, most scholars believe Allah SWT’s ruling is intended to benefit humankind. Some benefits can be seen and understood (in *muamalat*), and some are not visible (in worship). Secondly, in the *Zahiriah* sect, they view the ruling of Allah SWT without *ta’lil*.

In surah al-Hadid verse 25, Allah mentioned:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ

Translation: Indeed, We sent Our messengers with clear proofs, and with them, We sent down the Scripture and the balance of justice so that people may administer justice. And We sent down iron with its great might, benefits for humanity.

In the verse above, Allah SWT explained the broad objective or *maqasid* sent by the messengers and revealed in the book that the people should act justly. Usually, people understand the meaning of fair when it comes to judgment. However, *Adil*, in this context, implies a comprehensive sense which is to put something in its proper place. The apostles and these books guide people to interact accurately and correctly in their relationship with Allah, each other and nature. The Prophet Muhammad PBUH said:

عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: “ لَا يَمْشِي أَحَدُكُمْ فِي نَعْلٍ وَاحِدَةٍ لِيَنْعَلَهُمَا جَمِيعًا أَوْ لِيُخْلِعَهُمَا جَمِيعًا ” رَوَاهُ الْبُخَارِيُّ

Translation: From Abu Hurairah r.a. that the Prophet Muhammad PBUH said, none of you should walk with only one of the slippers. One should wear them both or takes them off. (Narrated by Bukhari)

In another instance, the Prophet Muhammad PBUH reprimanded Sa’ad for wasting water during ablution, then Sa’ad asked, “Is there an act considered as a waste in ablution, O Messenger of Allah, the Proppeht Muhammad PBUH?” Then the Prophet Muhammad PBUH answered, “Yes, even if one performs ablution in a flowing river.” These are some examples of interactions that are accurate and fair (*qist*) (Bayhaqi, 2003)

The gravity of comprehending the *maqasid* for a jurist was once explained by Ibn ‘Asyur, saying, “The jurists’ lack of concern for the *maqasid sharia* is the cause of the obsolete of *fiqh*” (Raysuni, 2010). Imam Shah Waliyullah al-Dahlawy expressed, “The most *awla* and most

dignified form of knowledge of Sharia happens when one realises the hidden secrets behind religious instructions” (Raysuni, 2010). The knowledge of *maqasid* is essential for the jurists in forming the ruling. It is also vital for the public to be eager to practice something because they understand the reasons and causes.

Relationship between *Maqasid Sharia* with *Maslahat* and *Dharar*

According to Imam al-Ghazali, the goal of Islamic ruling is to preserve human welfare per Islamic law. A *maslahat* is something that can benefit or repel harm from someone. Nonetheless, *maslahat* should not be based on lust but rather according to the balance and consideration of Islamic ruling. All the commands of Allah SWT benefit human beings but not Him. Based on this perspective, according to him, the benefit is to preserve *kulliyah al-khams* either by keeping their benefits or rejecting things that can damage them. In this regard, Imam al-Ghazali said (Al-Ghazali, 1997)

أما المصلحة فهي عبارة في الأصل عن جلب منفعة أو دفع مضرة ولسنا نعني به ذلك فإن جلب المنفعة ودفع المضرة مقاصد الخلق وصالح الخلق في تحصيل مقاصدهم لكننا نعني بالمصلحة المحافظة على مقصود الشرع ومقصود الشرع من الخلق خمسة وهو أن يحفظ عليهم دينهم ونفسهم وعقلهم ونسلهم ومالهم فكل ما يتضمن هذه الأصول الخمسة فهو مصلحة وكل ما يفوت هذه الأصول فهو مفسدة ودفعها مصلحة.

Translation: *Maslahat* is an act that benefits one and rejects harm. It does not mean that it is merely beneficial because such actions are crucial for all creatures, but *maslahat* is to maintain the purpose and objective of the ruling. Sharia ruling aims to preserve five (5) basic things (*kulliyah al-khams*): to protect religion, life, reason, dignity and property. Every element that guarantees the continuation of these five principles is *maslahat*, and every component that restricts its continuation is *mafsadah*. Rejecting *mafsadah* is a *maslahat*.

Maslahat, according to Imam al-Ghazali, is an act that preserves benefits and rejects harm to human beings. Every action based on these two attributes is called preserving *maslahat*, thus preserving *maqasid sharia*. *Maslahat* must be analysed through an Islamic perspective that rejects the notion of lust. It is clear that per Imam al-Ghazali, *maslahat* contains two key characteristics: preserving people’s benefits and leaving harm to them. Thus, in discussing the *maslahat*, it is also essential to examine the damage because it comes together.

Al-Syatibi (1991) classified human benefits into three forms namely *maslahah daruriyyat*, *maslahah Hajiyat* and *maslahah tahsiniyyat*. *Maslahah daruriyyat* suggests a vital ingredient necessary to continue living in this world and the afterlife. For instance, the need to have a fair law to maintain peace for a country or a halal source of sustenance for an individual to meet his daily living needs. In other words, if these things do not exist, then life cannot run sufficiently, or it will also impact the interests of religion.

Maslahah hajiyat proposes a matter that is a catalyst for enjoying life in this world and the hereafter. For instance, the need for a police department to enforce the law or good sources of sustenance to buy basic household needs. In other words, difficulties and hurdles will arise if these things are not present.

Meanwhile, *maslahah tahsiniyyat* presents an element that is not a basic need. For example, when one aims to beautify the environment, such as decorating buildings with delicate art carvings to symbolise the superior culture of the nation or trying to have abundant sources of sustenance so that one can buy necessities to complete life perfectly.

Preserving the three forms of *maslahat* above is the principal objective of Islamic sharia. Nevertheless, one must implement it according to a particular primacy, prioritising *maslahah daruriyyat* and ending with *maslahah tahsiniyyat*.

Dharar Parameters In Maintaining *Maqasid Sharia*

Dharar, from the aspect of language, imposes several meanings. Among them signifies something painful and not beneficial. Something painful but useful is not called *dharar*, like medicine and some forms of worship (Raysuni, 2016). Ibn Manzur (1992) noted that *Dharar* is the opposite of the word *maslahat*. It also indicates an urgent or forced need. From a terminological point of view, traditional scholars defined it in a general context that often occurs in their time. For example, imam al-Zarkasyi and imam al-Sayuty cited that *dharar* is a situation where a person will be in a dire situation if one does not take forbidden things (Zarkasyi, 1985). Meanwhile, Imam Syarbini al-Khatib (1994) wrote in his book *Mughni al-Muhtaj*:

(وَمَنْ خَافَ) مِنْ عَدَمِ الْأَكْلِ (عَلَى نَفْسِهِ مَوْتًا أَوْ مَرَضًا مَخُوفًا) أَوْ زِيَادَتَهُ، أَوْ طَوْلَ مُدَّتِهِ، أَوْ انْقِطَاعَهُ عَنْ رُقَّتِهِ، أَوْ خَوْفَ ضَعْفٍ عَنْ مَشْيٍ أَوْ رُكُوبٍ وَلَمْ يَجِدْ حَلَالًا يَأْكُلُهُ، وَيُسَمَّى هَذَا الْخَائِفُ مُضْطَرًّا (وَوَجَدَ مُحَرَّمًا) كَمَيْتَةٍ وَلَحْمِ خَنْزِيرٍ وَطَعَامِ الْغَيْرِ (لَزِمَهُ أَكْلُهُ)

Translation: Whoever is afraid that not eating something will cause him to die or become seriously ill or cause the disease to worsen or slow his recovery, or he is scared of being left out of his company (herd) or is afraid of feeling weak to continue walking or riding (traveller), and no food which is lawful for him then that person is called a person who is in a state of great need (*al-Muththarr*). If he finds haram food such as carcass or pork or food belonging to other people, he can or must eat it.

Based on the definition above, *dharar* denotes the effect of having to do something that was previously not permitted in Islam. The result or effect is not a core element of the *dharar* itself. On the contrary, it is a result that arises from the *dharar*. Therefore, modern scholars attempted to redefine it. Among them is Jamil Muhammad b. Mubarak in his book *Nazariyyat al-Dharurah al-Syar'iyah, Hududuha Wa Dhawabithuha* noted *dharar* is (Muhammad, 2003):

خوف الهلاك أو الضرر الشديد على أحد الضروريات للنفس أو الغير، يقينا أو ظنا إن لم يفعل ما يدفع به الهلاك أو الضرر الشديد.

Translation: A situation in which a person feels convinced or *zan* (suspects) that he will be in trouble or face great hardships over one of the five fundamental human interests (*al-kulliyat al-khams*), whether against himself or others if he does not do something to avoid it.

Based on the definition above, scholars maintained that *dharar* holds three essential elements. Firstly, *dharar* is a situation where there is a very urgent need to do something to avoid the harm that will befall him. Secondly, *dharar* is an excuse allowed by sharia law for someone to do something previously prohibited. Thirdly, *dharar* only applies to prohibited things (*al-manhiyyat/al-muharramat*). Based on this understanding, one can form the *dharar* parameters.

Like *maslahat*, *dharar* is also divided into three parts. Firstly, *haram* (impermissible) things must be avoided, such as blasphemy, murder, and adultery. Secondly, the acts of *hazar* are subject to disagreement among scholars. Some think it is *haram*, while others permit it. In this situation, one should avoid it. Thirdly, it is a *makruh* (disapproved) act, which is an act that is disliked but it is not *haram*. Just like *maslahat*, *dharar* is also related to five fundamental human interests (*kulliyat al-Khams*) according to the order of importance set (Raysuni, 2016).

It is a misleading thought that people think that all *dharar* permits every prohibited thing or that all sharia ruling is *maslahat*. Hence, everything that contains *maslahat* is classified as *mubah*. These people usually consist of two groups, the first is ignorant of Islamic ruling, and the second is those with bad intentions and objectives towards Islam (Muhammad, 2003). Not all *dharar* can permit prohibited things, or all *maslahat* is considered neutral (*mubah*). Hence, there is a need to have a *dhawabit* or parameter to assess whether the *dharar* is certified as a *syar'ie dharar* that can issue a new ruling. The following table is the *dharar* parameters set by the scholars (Zuhayli, 1985):

Table 1.0

The dharar parameters set by the scholars.

NO.	ITEM	Description
1.	The matter of <i>dharar</i> should be something that has already existed (fact), not something that will happen (<i>waham</i>).	In other words, the <i>dharar</i> must have existed and impacted the five fundamental human interests: religion, life, reason, lineage and wealth. In addition to its existence, it must reach the level of fear (<i>khauf</i>).
2.	No way or method is <i>halal</i> or <i>mubah</i> according to sharia ruling to avoid the <i>dharar</i> .	The only thing that exists is through means that are not permitted by Islamic ruling. As long as there are things that are <i>halal/mubah</i> , then one cannot do something that is forbidden by sharia in the name of <i>dharar</i> . For example, a person must borrow money on interest for the surgery payment as long as there is a <i>qardh al-hasan</i> loan. Nevertheless, when there is, the loan with interest is <i>haram</i> .
3.	There is an excuse to declare something as <i>halal</i> or <i>mubah</i> by sharia.	In this context, it is permissible to use or eat <i>haram</i> things even at the same time there are <i>halal</i> items. For example, a person is forced to eat pork while good and

		halal food are with him. Nevertheless, the situation must 'scare him' (khauf).
4.	A person forced is allowed to do dharar things provided they do not conflict with the basic principles of Islamic sharia, such as the principle of justice.	
5.	It should be done at a minimum frequency if it is required to commit something haram.	This is because haram things are included in the emergency category, and emergencies are subject to a minimum frequency. For instance, it is categorised under the mubah ruling when a doctor must see the patient's private parts. It applies only to the necessary extent.
6.	One should set his intention to consume the haram thing as a 'medicine' or something that needs to be done to maintain safety.	If one takes it to fulfil one's desires, then the ruling is haram, even if necessary.
7.	It is vital to get the recognition of its needs by the government.	
8.	The <i>dharar</i> performed by a person should be lighter than the existing <i>dharar</i> .	This principle is established in the fiqh method "when two dharar exists; then one should accept the bigger dharar and the way of doing the lighter dharar ". Based on this principle, if someone is forced to kill, they cannot do it even if they are killed because the dharar involved is the same.
9.	The ruling to do something prohibited is time-limited because the <i>dharar</i> is subject to as long as the <i>dharar</i> exists.	When the dharar has disappeared, the ruling to do something haram also disappears. This is subject to the jurisprudence method, "when something is allowed due to a certain situation; then the flexibility is nullified when the situation disappears".

The need for one *dhawabit dharar* is intended so that each individual does not practise the ruling of sharia according to one's desires. It also ensures that every ruling stays within the *maqasid* law in preserving the five primary interests.

Conclusion

The outbreak of COVID-19, or Novel Coronavirus, was recorded in China, with the first case confirmed on 7 January 2020, in Wuhan, Hubei, China and has spread worldwide swiftly. COVID-19 established the first case in Malaysia on 25 January 2020. From that date until now, there have been approximately 4,856,217 people infected by this epidemic, and 34,403 have died.

This epidemic is transmitted from one person to another in various ways. It includes droplets from the nose or mouth, skin contact and some even through the air. This situation causes it to spread rapidly and is tricky to contain. Therefore, various SOPs, orders and prohibitions have been introduced to curb the spread of the disease. Among the orders and prohibitions involve worship and religious practices. Some include matters of sunnah and makruh (disapproved), and some exercises are obligatory and haram.

Among the practices that involve rulings are Friday prayers, congregational prayers in surau (small praying places) or mosques, the issue of distance among each other in prayer line during congregational prayer, Eid prayers, Friday ta'addud, wearing a face covering when praying, performing ghusl for the Muslim remains, wearing PPP clothing, combined prayers for employees, online marriage issues, guardianship, Hajj activities, online zakat payment transactions, patient treatment and medication methods. All these issues need to maintain an explicit parameter to avoid confusion among the public.

In particular, this research is significant to create a dharar parameters that will be a general guide and can coordinate views between Islamic scholars. This coordination of thoughts and actions can instill the trust of the community, especially Muslims, in accepting every policy issued by the government, especially during a health emergency. It can also unite hearts and actions and avoid confusion in society. The absence of clear parameters will confuse the general public and lead to defamation, especially when some parties have the authority to speak about the ruling and present a view that contradicts the government's official stance. It certainly questions the power of the state religion. It is also an obstacle to the uniformity of action between state religious bodies in Malaysia.

For example, wearing a face mask when praying is no longer mandatory in the Federal Territory, while in Selangor, they still maintain the procedure. Even though the issue of distance among each other in prayer lines during congregational prayer has been abolished, the use of prayer mats individually when praying is still demanded, causing the rows of prayers to have a gap, opposing what is required by Islamic ruling. This non-uniformity will yield many discrepancies in addition to promoting each individual to practice and act according to what one feels is right.

The results of this research will make a great contribution to the government and the public, especially religious people. It provides a guideline of parameters to be a reference for authorities and authoritative parties in building Shariah law. It makes it easier for the authorities to make policies in matters related to worship and can avoid conflicting views from the diversity of views of religious members.

Ergo, dharar parameters are paramount to motivate the public to fathom Islamic ruling and regulate it so that there is uniformity of action between state religious bodies. It benefits all in worship matters and validates that this religion is straightforward and not exclusive to distinctive groups.

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