

ESTABLISHING *MAQĀṢID AL-SHARĪ'AH* THROUGH JURISTIC METHODOLOGY: LESSON FROM TRADITIONAL JURISTIC REFERENCES

Mohd Shahid Mohd Noh*

ABSTRACT

Maqāṣid al-Sharī'ah is defined as objectives or purposes aimed by the Syariah rules derived from the explicit and implicit understanding of the textual Al-Quran and prophetic traditions. This article seeks to clarify the methods of establishing *Maqāṣid al-Sharī'ah* as mentioned and guided by the jurists through reviewing primary and trusted sources from *Uṣūl al-Fiqh* references with the deployment of thematic analysis. The study sheds light that the particular terms used in Al-Quran play pivotal roles in guiding jurists to demonstrate their independent opinion (*Ijtihād*) in determining *Maqāṣid al-Sharī'ah* of particular ruling in Syariah law. It also proves that Syariah law always aims at promoting benefit and interest together with avoiding harm and difficulty.

Keywords: *Maqāṣid al-Sharī'ah*, *Uṣūl al-Fiqh*, *Ijtihād*, *Maṣlahah*, *Mafsadah*

* Senior Lecturer, Department of Syariah and Economics, Academy of Islamic Studies, University of Malaya (UM), 50603, Kuala Lumpur, Malaysia. shahid82@um.edu.my.

INTRODUCTION

Each rule in *Sharī'ah* has a deeper purpose and wisdom behind it, whether general or specific.¹ *Sharī'ah* judgements address a wide spectrum of human matters, including worship, transactions, and family law.² Scholars emphasize the importance of jurists mastering *Maqāṣid al-Sharī'ah* knowledge in order to execute *Ijtihād*.³

The well-being of humanity is at the heart of *Maqāṣid al-Sharī'ah* while economic wealth, lineage, intellectual, life and religion preservations are highly valued in the *Sharī'ah*, and there are five fundamental goals that contribute to societal well-being.⁴ This paper will discuss how jurists from various school of thought deriving the wisdom and inner aspects of *Sharī'ah* through the text of Al-Quran and prophetic traditions.

THE METHODS IN ESTABLISHING *MAQĀṢID AL-SHARĪ'AH*

First Method: Thematic inferences (*al-Istiqrā'*)

The first method in establishing *Maqāṣid al-Sharī'ah* which is the most crucial process, consisted of the thematic inferences (*al-Istiqrā'*) of *Maqāṣid al-Sharī'ah* that lie behind its various dispositions and measures (*Taṣarrufāt*).⁵

¹ Auda, Jasser, *Maqasid al-Shariah as philosophy of Islamic law: a systems approach* (London; Washington [D.C.]: International Institute of Islamic Thought (IIIT), 2008.

² Farooq, Mohammad Omar, and Nedal El-Ghattis. "In Search of the Sharī'ah." *Arab Law Quarterly* 32, no. 4 (2018): 315-354.

³ Saifuddeen, Shaikh Mohd, Noor Naemah Abdul Rahman, Noor Munirah Isa, and Azizan Baharuddin. "Maqasid al-Shariah as a complementary framework to conventional bioethics." *Science and engineering ethics* 20, no. 2 (2014): 317-327.

⁴ Ibn 'Ashur, *Treatise on Maqāṣid al-Sharī'ah*. (trans.) Mohamed El-Tahir El-Mesawi (London: The International Institute of Islāmic Thought, 2006), 10.

⁵ *Ibid*, 13.

Al-Istiqrā’ is divided into two divisions:

- i. The comprehensive thematic inferences (*Istiqrā’ Tām*):

Observing every norm and branch of *Sharī‘ah* law in specific, except the disagreement point among scholars. This is the definitive evidence (*Dalīl Qaṭ‘ī*) for majority of scholars in judging in the event of disputing in a particular issue.

- ii. The deficient thematic inference (*Istiqrā’ Nāqīṣ*):

Observing majority aspects of the law and it is known among jurist with “categorizing one issue to the group of majority” (*Ilhāq al-Fard bi al-Aghlāb*). The judgment derived from this method is speculative evidence (*Dalīl Zannī*).⁶

Al-Shatibi (d.1380) proposed the way to apply *al-Istiqrā’* is through collective thematic reading of a variety of textual proclamation in Al-Quran and the authentic prophetic traditions to derive conclusions about the purposes of the *Sharī‘ah*.⁷

Ibn ‘Ashur (d.1973) elucidated that the method of *al-Istiqrā’* is executed by two ways:

- i. Conducts an exhaustive examination of the provisions and commands which their *‘Illah* (effective cause) is known. This type will result in an inductive inference of the rationales affirmed by the methods of identification and confirmation of *‘Illah*. For instance, in the sale, we know the unlawfulness of deceit (*Ghubn*) and realize that the rationale is to banish cheating among the seller and buyer in the market, it clearly stated in the

⁶ Al-Yubi, Muḥammad Sa‘ad Aḥmad, *Maqāṣid al-Sharī‘ah al-Islāmiyah wa ‘Alāqatuha bi Adillati as-Syar‘īyyah* (Riyādh: Dār al-Hijrah for Publication and Distribution, 1998), 125.

⁷ Landin, Mohamad Akram, and Hafas Furqani, *The Objective of the Shari‘ah in Islamic Finance: Identifying the Ends (Maqasid) and the Means (Wasail)*, ISRA Research Paper No. 32/2012 (Kuala Lumpur: International Shari‘ah Research Academy, 2012), 6.

prophetic tradition in which he told the man who told him that he was always being cheated in sales:

إِذَا بَايَعْتَ فَقُلْ لَا خِلَافَةَ

The meaning: “When you enter a transaction say: No trickery.”⁸

When we know all the causes, we could then infer from the list of evidences one simple goal which is the abolition of ambiguity (*Gharar*) and substantial risk in transactions. There remains, therefore, no disagreement that any exchange entails risk or ambiguity in the price, the commodity or the time of the transaction is void.

- ii. The second type consists of examining the numerous textual proofs of *Sharī‘ah* commands and rules that have the similar *‘Illah* which represents an objective that is intended by the Lawgiver. For example, the Prophet prohibits hoarding foodstuff in his *Hadīth*: ‘He who hoards is a sinner’.⁹ From the statement of the Prophet, we may see the *‘Illah* of prohibition is the prevention of the shortage of foodstuffs in the market. Thus, we may infer that the circulation and availability of foodstuff and the facilitation of access to it is one of *Maqāṣid al-Sharī‘ah*.¹⁰

The validity of *al-Istiqrā* methodology had been supported by many prominent scholars in *Uṣūl al-Fiqh*. Al-Baidhowi (d.1292) said: ‘From *al-Istiqrā*, it shows that Allah regulates His law to us for the human well-being’.¹¹ Ibn al-Qayyim (d.1349) commented on the need of

⁸ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, ed. Muḥammad Zuhayr Nāṣir al-Nāṣir (t.tp.: Dār Tūq al-Najāh, 1422), Kitāb al-Buyū‘, Bab Mā Yukrahu min al-Khidā‘ fī al-Bay‘, no. Hadīth 2117, 3: 65.

⁹ Al-Naisāburī, Muslim Ibn Ḥajjāj, A.H, *Saḥīḥ Muslim* (Beirut: Dār al-Ihyā al-Turāth al-Arābi, 2006), Kitāb al-Musaqah wa al-Muzarā‘ah. Bab Tahrīm al-Ihtikār fī al-Aqwat. No. 1605. Volume 3: p. 1227.

¹⁰ Ibn ‘Ashur, *Treatise on Maqāṣid al-Shri‘ah*. (trans.) Mohamed El-Tahir El-Mesawi, 14-15.

¹¹ Al-Isnawī, Jamāl al-Dīn ‘Abd al-Raḥīm Ibn al-Ḥasan, *Nihāyat al-Sūl fī Sharḥ Minhāj al-Wuṣūl ila ‘Ilmi Al-Uṣūl* (Beirut: Dār Ibn Ḥazm, 1999), 1: 130.

thematic inference in understanding law in every aspect and section by saying:

When we have confirmed that *al-Istiqrā* effectively guides scholars in producing principles in judgment and brings the knowledge benefit, we also confirm that this methodology in establishing judgment is continuously applied to every aspects in *Sharī‘ah* law, from this methodology too, the role and functions of *Qiyās* and the means to practice *Ijtihād* might be understood, thus, we apply it according to its requirements, for further discussion pertinent to the judgment whether is *Wājib* or not is submitted to the understanding and knowledge of the jurist.¹²

A-‘Izz Ibn ‘Abd al-Salam (d.1262) agreed with the role *al-Istiqrā*’ when he says: “If we do extensive reading and observation to the objective in Al-Quran and *Hadīth*, verily, we should be able to be convinced that Allah commands all good deeds in major or minor part, and Allah prohibits us from committing all bad deeds whether in major or minor part, thus, the good deed commanded by Allah suitable to be imagined as enjoining benefit and avoiding harmful whilst the bad deed is in other way around by enjoining harmful and avoiding benefit.¹³

Second Method: Understanding the ‘*Illah* of the commandments and prohibitions.

Despite this method is related to the previous method in general, this method actually specifies the way to understand the effective cause behind Allah’s command and prohibition or the mean to know the ‘*Illah* indeed. This method is known among jurist as “the ways to ensure the

¹² Ibn al-Qayyim, Muḥammad Ibn Abī Bakr, *‘Ilām al-Muwaqqi‘īn ‘an Rab al-‘Ālamīn* (Riyādh: Dār Ibn al-Jauzī, 1999), 4: 58.

¹³ ‘Abd al-‘Azīz Ibn ‘Abd al-Salam, *Qawā‘id Al-Ahkām fī Islāh Al-Anām* (Beirut: Dār Ibn Ḥazm, 2003), 13.

validity and reliability of ‘*Illah*’ or *Masālik al-‘Illah*¹⁴ in a particular issue.

Masālik al-‘Illah is divided into eight different courses as tools for jurist to verify the qualification of certain attribute in the cause projected to be valid as ‘*Illah*’.

- i. The Consensus (*al-Ijmā’*) among jurists in any particular time¹⁵ that the cause is the most effective and accurate cause that makes the thing or practice commanded or prohibited by Allah,¹⁶ whether it is definite decision or speculative decision.¹⁷

For instance, in Islamic inheritance, priority will be given to the sibling from the same father and mother than sibling for the same father only due the ‘*Illah*’ that the combination between same father and mother is closer than relationship connected through one party only.¹⁸

- ii. The Text (*al-Naṣ*) from the valid sources means the ‘*Illah*’ has been mentioned by *al-Naṣ* in definitive or explicit, with a high possibility to be the ‘*Illah*’.¹⁹ This course of *Masālik al-‘Illah* is divided into two types:

- a) Explicit and definitive text (*Naṣ al-Ṣorīh al-Qaṭ’ī*):

The ‘*Illah*’ easily could be derived from the text without the deep analysis. If the text mentions ‘this is the wisdom’ or ‘this is the reason’, so it can be classified as explicit and definitive text that mentions the

¹⁴ *Masālik al-‘Illah* is the ways used by jurist to confirm accuracy of ‘*Illah*’ through its attributes in particular issue or the ways used to verify the ‘*Illah*’. Source: Al-Zuhailī, Wahbah Muṣṭafa, *Uṣūl al-Fiḥ al-Islāmiyy* (Damascus: Dār al-Fikr, 1986), 661.

¹⁵ Al-Khadari, Muḥammad Bik, *Uṣūl Al-Fiḥ* (Kaherah: Maktabah al-Tijāriyyah al-Kubra, 1969), 325.

¹⁶ Al-Zuhailī, Wahbah Muṣṭafa, *Uṣūl al-Fiḥ al-Islāmiyy*, 670.

¹⁷ Amir ‘Abd al-‘Azīz, *Uṣūl al-Fiḥ al-Islāmiyy* (Kaherah: Dār al-Salām, 2000), 1: 395.

¹⁸ Al-Baidhowi, ‘Abdullah Ibn Umar, *Nihāyat al-Sūl fī Sharḥ Minhāj al-Wuṣūl fī Ilmi al-Uṣūl* (Beirut: Dār Ibn Ḥazm, 1999), 2: 851.

¹⁹ Al-Zuhailī, Wahbah Muṣṭafa, *Uṣūl al-Fiḥ al-Islāmiyy*, 663; Al-Āmidī, ‘Alī Ibn Abī ‘Alī, *al-Iḥkām fī Uṣūl al-Aḥkām* (Riyādh: Dār as-Suma’i li an-Nashr wa al-Tauzī’, 2003), 3: 317.

*‘Illah.*²⁰ For instance, using the alphabet *Min Ajli* (من أجل) that means
“as for that reason” *Li Ajli* (لأجل) in the verse of Al-Quran:

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ
أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا
أَحْيَا النَّاسَ جَمِيعًا ۗ وَلَقَدْ جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ
بَعَدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ

The meaning: “Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors.”²¹

According to the famous opinion in interpreting this verse, Allah commands to the children of Israel (refers to mankind that time) the legal retribution (*Qīṣaṣ*) with the reason that have been mentioned in the previous verse pertinent to the fighting between two prophet Adam’s sons which has resulted the murder of Habil. Thus, it means the legal retribution legislated by Allah to mankind is to secure the peace of human life in this world. That is also as *‘Illah* of that blessed punishment system to other generation and various society.²²

²¹ Surah *al-Mā'idah*, 5: 32.

²² Al-Zarkashi, Muḥammad Ibn Bahadir, *Al-Baḥru al-Muḥīṭ fī Uṣūl al-Fiqh* (Kuwait: Al-Wizārah al-Awqāf wa As-Shuūn al-Islāmīyyah, 1992), 5: 188.

b) Implicit and non-definitive text (*Naṣ al- zohir*):

The second method derived from the textual sources is named *al- Īmā* (الإيماء), some of scholars add to another term as *al-Tanbīh* (التنبيه).²³ *Al- Īmā* means “the association between the attribute and judgment, if the attribute or its counterpart doesn’t be the cause for that injunction, hence the pronouncement of that attribute is merely aimless, so it is supposed to denote reasoning role, either it could be classified as the effective cause (*‘Illah*), or part of it, or as the condition of the commands.²⁴

This method differs from the first method of *Naṣ al-Qaṭ’ī* where the pronouncement in the text is conceived to consists of *‘Illah* predominantly and have possibility to be interpreted to other meaning while *Naṣ al-Qaṭ’ī* is couldn’t be assumed to other meaning except as *‘Illah*.²⁵

There are five types of *al-Īmā*’ in understanding *‘Illah* from the text as follows:

- a) The judgment follows the attribute mentioned in the text using the letter of *Fa* (ف) that means ‘so that’, either the letter of *Fa* with the attribute or judgement, or with the word of the Lawgiver or the narrator.²⁶

The example of this type could be understood precisely from the verse:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ
اللَّهِ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

²³ Al-Zarkashi, Muḥammad Ibn Bahadir, *al-Baḥru al-Muḥīṭ fī Uṣūl al-Fiqh*, 5: 197.

²⁴ Al-Shawkānī, Muḥammad Ibn ‘Alī , *Irsyād al-Fuhūl ila Taḥqīq al-Ḥaq min ‘Ilmi al-Uṣūl* (Riyādh: Dār al-Fadhīlah, 2000), 2: 887.

²⁵ *Ibid*, 5: 2037.

²⁶ Al-Kamiliyah, Muḥammad Ibn Muḥammad Ibn Imām, *Taisīr al-Wuṣūl ila Minhāj al-Uṣūl min al-Manqūl wa al-Ma’qūl* (Kaherah: Al-Fārūq al-Hadīthah li al-nashr wa al-Tauzī’, 2009), 5: 253.

The meaning: “[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise.”²⁷

And the prophetic tradition:

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ

The meaning: “Whoever changes their religions (become apostate), So kill him as the punishment.”²⁸

From the verse and *Hadīth* above, the attribute as the thief and apostate are *‘Illah* to their judgments or consequences, cutting off their hands and killing.²⁹

- b) Mentioning the attribute that gives an impact, if not the attribute is aimless to be mentioned there. For instance:

إِنَّهَا لَيْسَتْ بِنَجْسٍ، هِيَ مِنَ الطَّوَافِينِ، أَوِ الطَّوَافَاتِ

The meaning: “It is (refers to the cat) not an excrement (*najs*). Verily they are the animal which always strolls around you.”³⁰

The explanation behind the *Hadīth*, is the companions of the Prophet were confused by the act of Prophet Muhammad (SAW) that refused to enter any tribe, village or community when there are any dogs living together in that tribe. They perceived that Prophet Muhammad (SAW) will treat cats in a similar way he did to dogs. However, their perceptions were proven deviated after Prophet Muhammad (SAW) entered the

²⁷ Surah *al-Mā'idah*, 5: 38.

²⁸ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, ed. Muḥammad Zuhayr Nāṣir al-Nāṣir, Kitāb al-Jihād wa al-Siyar, Bab Lā Yu'adhhab bi 'Adhāb Allāh, no. Hadīth 3017, 4: 61.

²⁹ Al-Namlah, 'Abdul Karīm Ibn Alī, *Al-Muhazzab fī 'Ilmi Uṣūl al-Fiqh al-Muqāran* (Riyādh: Maktabah al-Rushd, 1999), 5: 2038.

³⁰ Ibn Mājah, *Sunan Ibn Mājah*, ed. Muḥammad Fu'ād 'Abd al-Bāqī (t.tp.: Dār Iḥyā' al-Kutūb al-'Arabīyyah, t.t.), Kitāb al-Ṭahārah wa Sunanuhā, Bab al-Wuḍū' bi Su'ri al-Ḥurrah wa al-Rukhshah fī zalik, no. Hadīth 367, 1: 131.

community who were living together with cats. The Prophet explained that the judgment is different where cat was not considered as the excrement (*Najs*) to human especially Muslim and the reason is cat as the animal which always keep on strolling around us in our home and it entails difficulties for human to avoid the animal as to live separately from them. If the cat's attribute of strolling around human that was mentioned in the *Hadīth* after the judgment did not bring any meaning of reasoning, thus, so it was pronounced aimlessly³¹.

- c) The Lawgiver – Al-Quran or *Hadīth* – elucidates a judgment immediately as the answer for the question asked. It was probably mentioned for a reasoning function to that particular judgment.³²

The example is regarding to the atonement (*Kaffarah*) for having sexual intercourse during day of Ramadhan. The detail of the prophetic tradition as below:

أَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَجُلٌ فَقَالَ: هَلَكْتُ، قَالَ: وَمَا أَهْلَكَ؟ قَالَ: وَقَعْتُ عَلَى امْرَأَتِي فِي رَمَضَانَ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَعْتِقْ رَقَبَةً

The meaning: “When one *Badwi* (arabian nomad) asked the Prophet: ‘I have ruined my fasting by having sexual intercourse during Ramadhan’. The Prophet replied immediately: ‘go and release a slave’.”³³

Al-Īma' to the *Illah* that derived from this prophetic tradition could be understood logically whereby having sexual intercourse intentionally during Ramadan is the cause to the slave freeing as atonement obligated by the Lawgiver to us.

³¹ Al-Namlah, ‘Abdul Karīm Ibn Alī, *Al-Muhazzab fī ‘Ilmi Uṣūl al-Fiḥ al-Muqāran*, 5: 2048.

³² *Ibid*, 5: 2044.

³³ Ibn Mājah, *Sunan Ibn Mājah*, ed. Muḥammad Fu’ād ‘Abd al-Bāqī, Kitāb al-Ṣiyām, Bab Mā Jā’a fī Kafārah Man Aftara Yauman min Ramaḍān, no. Hadīth 1671, 1: 534.

In the other part of view, when the Prophet answered that question immediately, the answer rationally could be assumed like, ‘If you had broken your fasting by having sexual intercourse in normal condition, you are obligated to redeem the fault by freeing slave’.³⁴

- d) The text distinguishes between two things by mentioning special criteria for one of them. For instance, the *Hadīth* pertinent to the hindrance in Islamic inheritance:

الْقَاتِلُ لَا يَرِثُ

The meaning: “The murderer (who murdered his beneficiaries of inheritance) will not inherit the murdered person’s wealth.”³⁵

This text obviously mentions that murder will hinder him as beneficiary from inheriting any portions of the victim’s wealth. Hence, murder is the effective cause (*‘Illah*) that leads to the inheritance hindrance.³⁶

- e) The prohibition of one action that can be the obstacle to the other action which is obligated on us before. Allah says in Surah *al-Jumu‘ah*:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَى
ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ۗ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

The meaning: “O you who have believed, when [the adhan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade. That is better for you, if you only knew.”³⁷

³⁴ Al-Namlah, ‘Abdul Karīm Ibn Alī, *Al-Muhazzab fī ‘Ilmi Uṣūl al-Fiqh al-Muqāran*, 5: 2045.

³⁵ Ibn Mājah, *Sunan Ibn Mājah*, ed. Muḥammad Fu‘ād ‘Abd al-Bāqī, Kitāb al-Diyāh al-Kāfir, Bab al-Qātil Lā Yarīth, no. Hadīth 2645, 2: 883.

³⁶ Al-Kamiliyah, Muḥammad Ibn Muḥammad Ibn Imām, *Taisīr al-Wuṣūl ila Minhāj al-Uṣūl min al-Manqūl wa al-Ma‘qūl*, 5: 273.

³⁷ Surah *al-Jumu‘ah*, 62: 9.

From the verse that prohibits us from continuing trade activity after the call for *Jumu'at* prayer, logically we can infer that trade activity definitely will disturb our ways to perform *Jumu'at* prayer in a good manner or in the other word, the effective cause is an obligation that has been ignored.³⁸

Then, the second method used in justifying 'Illah from *al-nas* is through *al-Hurūf al-Ta'līl* or reasoning letters such *Li* (ل) means for, *Kai* (كي) means so that, *Min* (من) means from, *Inna* (إن) means verily, *Bi* (ب) means with.³⁹

Another example using the letters *Kai* (كي) which brings a meaning 'so that' in the verse:

كَيِّ لَا يَكُونُ دَوْلَةٌ بَيْنَ الْأَعْيَاءِ مِنْكُمْ

The meaning: "So that it will not be a perpetual distribution among the rich from among you."⁴⁰

Allah explains the distribution system of *al-Fai*⁴¹ by sharing the portion between the Prophet Muhammad and his near relatives and orphans and the traveller so that the wealth is not only benefits the rich people but also all people who are in the need of wealth for the maintenance of their life.⁴²

³⁸ Al-Isnawī, *Jamāl al-Dīn 'Abd al-Raḥīm Ibn al-Ḥasan, Nihāyat al-Sūl fī Sharḥ Minhāj al-Wuṣūl ila 'Ilmi*, 2: 851.

³⁹ *Ibid*, 2: 851.

⁴⁰ Surah *al-Hashr*, 59: 7.

⁴¹ The definition of *Al-Fai* is the non-Muslim's wealth or property that completely gained by Muslim without war or collision whether it is tangible or intangible asset. Source: Mustofa Al-Khin, Mustofa Al-Bugho and Ali Al-Sharbiji. *Fiqh al-Manhajī 'ala Mazhab Al-Imām Al-Syafi'e* (Damascus: Dār al-Qalam, n.d), 3: 496.

⁴² Al-Zarkashi, Muḥammad Ibn Bahadır, *al-Baḥru al-Muḥīṭ fī Uṣūl al-Fiqh*, 5: 197.

The example of definitive and explicit text using *Lām* (اللام) as guidance in deriving the effective cause, which means ‘for’, could be found in this verse:

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ

The meaning: “And I did not create the jinn and mankind except to worship Me.”⁴³

The letter of *Lam* indicates explicitly to the reasoning purposes known as *Lām at-Ta’līl* (لام التعليل).⁴⁴

For the example of text using *Inna* (إن):

إِنَّهَا مِنَ الطَّوَّافِينَ عَلَيْكُمْ أَوِ الطَّوَّافَاتِ

The meaning: Verily They (refers to the cat) are the animal which always strolling around you.

Then, the example of text using *bi* (بِ) means ‘that is’:

ذَلِكَ بِأَنَّهُمْ شَاقُّوا اللَّهَ وَرَسُولَهُ

The meaning: That is because they opposed Allah and His Messenger.⁴⁵

Referring to the previous verse, in the event of Jews from Nadhir tribe, Allah says ‘they destroyed their houses by their (own) hands and the hands of the believers’. Not all the non-believer that opposes Allah and his messenger will be punished by destroying his house, it means the opposition attribute is not necessary causes to that particular punishment, house destroying, but it actually the effective cause to receive the hard

⁴³ Surah *al-Dzāriyāt*, 51: 56.

⁴⁴ Amir ‘Abd al-‘Azīz, *Uṣūl al-Fiqh al-Islāmiyy*, 2: 392.

⁴⁵ Surah *al-Hashr*, 59: 4.

punishment from Allah. Thus, we infer that the disaster or catastrophe on human is mainly caused by the human opposition to Allah.⁴⁶

Imam Al-Syafi'e (d.820) said: 'When we found in the text of the Lawgiver that indicates straightly and clearly as a reason to the evidence or sign of evidence, we may rely firmly on it, that is the upmost course to be relied in finding *'Illah'*.

Ibn Faurak (d.1015) expressed his agreement with Imam Al-Syafi'e' by saying 'Depending on the cause mentioned explicitly in the text is not analogical deduction (*'Illah*), but it is ultimate reliance on the meaning of pronouncement of the Lawgiver'.⁴⁷

Courses in Determining *'Illah*

- i. The definition of *al-Munāsabah* refers to 'mentioning an attribute with the judgment related to that attribute appropriately'. In other word, the judgment is being made for bringing benefit for human well being and it meets with the need of human in particular activity or event such the need to legalize trading activity in creating easiness for human. From this method, it is understood that every judgment in this law contains wisdom and benefit, when we observe on one judgment which is legislated by the Lawgiver in order to protect our well-being as well as brings benefit to us logically, that shows to us how the Lawgiver intentionally formulates us the judgment for the purpose of upholding the benefit, and the connection between judgment and that attribute (benefit) is named *al-Munāsabah* as the one of courses in *Masālik al-'Illah*.⁴⁸

Ibn Hajib (d.1249) said: '*al-Munāsabah* is attribute, visible and apparent (*zohir*), that conceivable and appropriate to

⁴⁶ Al-Āmidī, 'Alī Ibn Abī 'Alī, *al-Iḥkām fī Uṣūl al-Aḥkām*, 3: 319.

⁴⁷ Al-Shawkānī, Muḥammad Ibn 'Alī, *Irsyād al-Fuhūl ila Tahqīq al-Ḥaq min 'Ilmi al-Uṣūl*, 2: 882.

⁴⁸ Al-Namlah, 'Abdul Karīm Ibn Alī, *Al-Muhazzab fī 'Ilmi Uṣūl al-Fiqh al-Muqāran*, 7: 221.

be the cause of the judgment and aims to the general principle of *Sharī‘ah* as to enjoin benefit and avoid harmful.’⁴⁹

This method is being applied in establishing the objectives, in particular benefit, of legislated law by Allah, whether the objectives are derived confidently or assumedly, as examples, the objective of trading activity for human is to get their needs rightfully, the objective of *Qīṣaṣ* is to protect soul, the punishment to drunken for intellect protection, and the objective of achieving the benefit is similar to the harmful avoidance.⁵⁰ From the Hereafter view, the objective of Islamic law for human being is ultimately for them to gain reward from Allah and purify themselves from any punishment there.⁵¹

The validity of *al-Munāsabah* in establishing the cause in defining the objective of any particular judgment is supported by the texts and logical evidences below:

Allah regulates his law with wisdoms and purposes behind it. The purposes supposedly aim for the benefit either Him or us. However, creating something for His benefit and interest is unacceptable intellectually for the sanity people, whereas He as the Lawgiver who is believed by Muslim with the attribute of the Most Rich God (*Al-Ghaniyy and Al-Mughniyy*) and He the Most Almighty God in creating benefit to others not to Him. Other that, one of his ninety-nine noble names is *Al-Hakim* means ‘the Most Wise’ does not create or regulates some law aimlessly and harmfully. If we assume, He creates the law that purposeless which can be considered as

⁴⁹ Al-Isnawī, *Jamāl al-Dīn ‘Abd al-Raḥīm Ibn al-Ḥasan, Nihāyat al-Sūl fi Sharḥ Minhāj al-Wuṣūl ila ‘Ilmi*, 2: 852.

⁵⁰ Al-Shawkānī, Muḥammad Ibn ‘Alī, *Irsyād al-Fuhūl ila Taḥqīq al-Ḥaq min ‘Ilmi al-Uṣūl*, 2: 899.

⁵¹ Al-Āmidī, ‘Alī Ibn Abī ‘Alī, *al-Iḥkām fī Uṣūl al-Aḥkām*, 3: 340.

‘uselessly’ where Allah says accordingly in purifying Himself from acting erratically:

أَفَحَسِبْتُمْ أَنَّمَا خَلَقْنَاكُمْ عَبَثًا وَأَنَّكُمْ إِلَيْنَا لَا تُرْجَعُونَ

The meaning: “Then did you think that We created you uselessly and that to Us you would not be returned?”⁵²

Jurists unanimously in agreement that Allah does not create something aimlessly. He is the God that most highness from any negative character. Logically, the attribute of doing something aimlessly is sign of weakness, and we believe highly that Allah as the Almighty God is far above from any sign of weakness moreover the weakness itself and He whom be ascribed with all perfection and majesty.

Allah created human being as the vital creation also His vicegerent in this world, and entrusted them to manage this universe according to His guidance. Allah says:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ

The meaning: “And We have certainly honoured the children of Adam.”⁵³

When Allah honours human as his servant and vicegerent, He obligates us to be his human agent (*al-Mukallaf*) by ordering us adherence to his law, and He doesn’t reveals the law except for the benefit of his honoured creation.⁵⁴

Al-Zarkashi (d.1392) divided *al-Munāsabah* to three levels of priority similar to the classification in *Maqāṣid* and

⁵² Surah *al-Mū’minūn*, 23: 115.

⁵³ Surah *al-Isrā’*, 17: 70.

⁵⁴ Amir ‘Abd al-‘Azīz, *Uṣūl al-Fiqh al-Islāmiyy*, 409-410.

Maṣlahah, *Dorūriyyah*, *al-Hajiyyah* and *al-Tahsīniyyah*. For the compulsory in *al-Munāsabah* is consisted of the preservation of five major elements religion, soul, lineage, intellect and wealth. In specific, the *Sharī‘ah* law imposes total liability as guarantor to the trustee if occur any defect in the subject matter of trusteeship due to the negligence of him to protect the owner’s wealth. For the second level of priority in *al-Munāsabah* as the necessary such leasing contract, where the need of people on it isn’t universal and human well- being doesn’t be ruined by the absence of leasing service in the community unlike sale contract. For the embellishment level, cleaning pollutant from the body which is considered as a noble deed to fortress human pride from being tarnished by others and avoiding pollutant is the normal human’s instinct in sanity circumstance.⁵⁵

- ii. *Al-Thard* is the new thing innovated by the later generation of scholars. Al-Baidhowi (d.1292) defined it as:

‘The decision in a case that caused by an attribute which apparently does not fit with the judgment under of *al-Munāsabah* method or also is not viewed similar to *‘Illah* which that ruling has resulted or the necessary part of *al-Munāsabah* in every form or condition’. Some scholars like al-Āmidī (d.1233) and Ibn Hajib (d.1249) refused to accept this method as *Masālik al-‘Illah* unlike Al-Ghazālī (d.1111) and Al-Razi (d.1209) who opined it as a valid course in detecting *‘Illah*.⁵⁶ In other words, it is not relevant neither to be *‘Illah* for a particular judgment nor to be conceived as it.⁵⁷

⁵⁵ Al-Zarkashi, Muḥammad Ibn Bahadir, *al-Baḥru al-Muḥīṭ fī Uṣūl al-Fiqh*, 5: 209 – 212.

⁵⁶ Al-Isnawī, Jamāl al-Dīn ‘Abd al-Raḥīm Ibn al-Ḥasan, *Nihāyat al-Sūl fī Sharḥ Minhāj al-Wuṣūl ila ‘Ilmi*, 2: 873.

⁵⁷ Al-Zarkashi, Muḥammad Ibn Bahadir, *al-Baḥru al-Muḥīṭ fī Uṣūl al-Fiqh*, 5: 248.

Through the thematic inference of *Sharī'ah* law, we found the unusual follows the majority in its law decision, when we observe the existence of attribute that could be a reason for the judgment in every form of issue, excepts in the disputable forms, always comes along with the law decision, then we found the similar attribute in another new case, it is compulsory for us to take the attribute as our guide in deriving the judgment. Thus, this method is known as categorizing one new case to the group consisted of issues connected to each other by the identical attribute for seeking the decision which is apparently to have the same judgement due to the same characteristics with the original case.⁵⁸

It might be described with this analogy: In the case of *Nabīz*⁵⁹ prohibition with *'Illah* of intoxication similar to the reason in *khamr* prohibition. So, by the existence of intoxication character makes *Nabīz* becomes prohibited, vice versa, by disappearance of that characteristic, when it transformed to *sider* naturally, shall alter the law decision from prohibition to permissible.⁶⁰

- iii. It is known as *al- Sabr wa al-Taqsīm* (the testing and segregating course). The steps in applying this course is not accurate with the name that starting with 'the testing', in fact the testing stage comes after segerating the potential attribute to choose *'Illah* or reason for one specific case. It is due to the reason, between these two steps, the former is more important that the latter where it plays a crucial role in ascertaining the actual cause while the latter constitutes as the first step in attribute selection among

⁵⁸ Al-Razi, Muḥammad Ibn Umar, *Al-Maḥṣūl fī Ilmu Uṣūl al-Fiqh* (Beirut: Muassasah Al-Resalah, 1997), 5: 221.

⁵⁹ *Nabīz* is defined as the drinking juice extracted from date, raisin , honey ,barley and others. Source: Mahmūd 'Abdul Raḥman 'Abdul Mun'īm, *Mu'jām al-Muṣṭalahāt wa al-Alfāz al- Fiqhiyyah* (Kaherah: Dār al-Fadhīlah, 2003), 3: 392.

⁶⁰ Amir 'Abd al- 'Azīz, *Uṣūl al-Fiqh al-Islāmiyy*, 417.

potential multiple choices. Thus, the isolation stage is the mean for the testing in this course.⁶¹

The definition of *al-Sabr wa al-Taqsīm* is selecting attributes that could be assumed as *‘Illah* and nullifying the list one by one by testing the validity of those attributes until finding the best attribute for that purpose.⁶²

Sometimes, the procedure is only testing the attribute in case there is no other suitable attribute to be categorized as *‘Illah*, and it is enough for the authorized jurist to summarize his effort by saying: ‘I have tried to find another suitable attribute, but I couldn’t, hence, the suitable *‘Illah* is only one and not the other’.⁶³

The illustration of the example on this method is like: In finding *‘Illah* for deducting analogically (*Qiyās*) between corn (new case) and wheat (original case), the authorized jurist concluded that the suitable sharing attributes for *‘Illah* in that issue are food or staple food or measurement method (*Kail*). After conducting analysis, food and staple food attributes are not fixed to be the *‘Illah*, the rest is only measurement method and it should be the true *‘Illah* after deleting others.⁶⁴

The jurists from school of thought Al-Muktazilah, Al-Syafie’, Al-Maliki and others agreed in consensus with regard to the function of *al- Sabr wa al-Taqsīm* in producing the *‘Illah* for the law decision.

⁶¹ Amir ‘Abd al-‘Azīz, *Uṣūl al-Fiqh al-Islāmiyy*, 423.

⁶² Al-Sam’ani, Mansur Ibn Muḥammad, *Qawāti’ al-Adillah fi Uṣūl al-Fiqh* (Riyādh: Maktabah al-Taubah, 1998), 4: 23.

⁶³ Al’Attar, Hasan, *Hasyiyah al-‘Attar ‘ala Jamu’ al-Jawami’* (Beirut: Dār al-Kutūb al-‘Ilmīyyah, n.d.), 2: 314.

⁶⁴ Al-Iji, ‘Abdul Raḥman Ibn Aḥmad, *Sharḥ Mukhtaṣar al-Muntahā al-Uṣūli* (Beirut: Dār al-Kutūb al-‘Ilmīyyah, 2004), 3: 405.

Then, the verse in Surah *al-Anbiyā'*, Allah says:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

The meaning: “And We have not sent you, (O Muhammad), except as a mercy to the worlds.”⁶⁵

Literally, the verse expresses general and universal mercy brought by Prophet Muhammad (SAW) to all creations, it also could be understood by protecting human well-being through its law. If we assume, the law is only containing the commands without benefit and meaning for us, so that, the Prophet was sent to us without mercy and all commands is aimless, together contravenes with the meaning of the verse. In contrast, when we accept the principle that the law came along with objectives and purposes, as well as to protect human well-being, it indicates the wisdom of the All-Wise God in creating human and sending his messengers, logically, it is an acceptable reason which has resulted the validity of this course to be on the listing of *Masālik al-‘Illah*.⁶⁶

- iv. The definition of *Tanqīh al-Manāṭ* is a connection between the new case and original case by eliminating the different which doesn't bring impact on the law decision, when jurist says: There are no different between the original and new cases except this particular element that does not affect the judgment of *Sharī‘ah*. So, the new case will share the similar law decision with the original case due to the joining effective cause in those cases.⁶⁷ This method is known among Hanafī's jurist as *al-Istidlāl*

⁶⁵ Surah *al-Anbiyā'*, 21: 107.

⁶⁶ Al-Maliki, Uthman Ibn Al-Hajib, *Sharḥ Mukhtaṣar Al-Uṣūlī* (Beirut: Dār al-Kutūb al-‘Alamīyyah, 2004), 3: 411.

⁶⁷ Al-Shawkānī, Muḥammad Ibn ‘Alī, *Irsyād al-Fuhūl ila Tahqīq al-Ḥaq min ‘Ilmi al-Uṣūl*, 2: 919; Al-Kamilīyah, Muḥammad Ibn Muḥammad Ibn Imām, *Taisīr al-Wuṣūl ila Minhāj al-Uṣūl min al-Manqūl wa al-Ma‘qūl*, 5: 340.

(reasoning) in order to differentiate it from the analogical deduction.⁶⁸

For instance, there is no significant difference between the murder caused by sharp weapon or heavy thing, that may affect on the type of punishment. In fact, the *'Illah* is murder, without considering the means of murder, murderer in these two scenarios will be punished by *Qīṣaṣ*.⁶⁹

This course could be assumed by two ways:

- a) The particular judgment should have its own effector, and the effector whether it sharing element between the new and original cases or it only specialized for the original case. The second assumption is null and void because the differences between the two cases have been eliminated, suitable to its definition above. Thus, the sharing element is the *'Illah* itself, when the element is found in the new case, it may result the same judgment as in the original case by the bridge of similar effective cause.
- b) Every judgment is based on its origin and locality and it could not be special attribute only for that judgment because the locality of judgment is sharing point between original and new case. Identical locality leads to the similar judgment.⁷⁰ For instance, the punishment of *Kaffarah* to the badwi – like was mentioned in prophetic tradition – due to his fault in breaking Ramadhan fasting by having sexual intercourse with his wife, so that, we impose the same judgment or *Kaffarah* to other badwi, as the Prophet Muhammad (SAW) says:

⁶⁸ Al-Qarafi, Ahmad Ibn Idrīs, *Sharḥ Tanqīh al-Fuṣūl fī Ikhtisar al-Maḥsūl fī Ilmi Al-Uṣūl* (Beirut: Dār al-Fikr, 2004), 298.

⁶⁹ Al-Kamiliyah, Muḥammad Ibn Muḥammad Ibn Imām, *Taisīr al-Wuṣūl ila Minhāj al-Uṣūl min al-Manqūl wa al-Ma'qūl*, 5: 340.

⁷⁰ Al-Razi, Muḥammad Ibn Umar, *Al-Maḥṣūl fī Ilmu Uṣūl al-Fiqh*, 5: 231.

My judgment to one of you, is constitutes the same judgment to everybody of you.⁷¹

Hence, the human agent (*al-Taklīf*) is generalized to all mankind and every law decision depends on *al-Taklīf*, and in that case, Prophet Muhammad punished the badwi because he committed sin in sanity disregard that he is badwi. Therefore, the punishment is established for everybody irrespective of his race, place and time and he also have done an action that cursed the nobility of the fasting month, Ramadhan and the judgment also remains the same for the following Ramadhan.⁷²

Al-Ghazālī (d.1111) says *Tanqīh al-Manāṭ* is agreed course between jurists excluding the group who initially rejects the function of analogical deduction in deriving judgments as the forth sources in Islamic legislative law'.⁷³

- v. *Al-Daurān* (circulation) is defined as 'build the judgment when the particular character exists and the judgment is denied by the absence of that attribute' ⁷⁴. This methodology is expected strongly could help jurists in forming an *Illah* by schools of thought of Al-Hanbali, Al-Syafie', Al-Maliki and some Al-Hanafī jurist.⁷⁵ Ibn Hajib (d.1249) and al-Āmidī (d.1233) named this method as *al-Thard* (الطرد) and *al-Aks* (العكس).⁷⁶

⁷¹ Al- 'Iraqī said that the *Hadīth* is not founded from the true sources. However, Al-Tarmizi and Al-Nasa'i agreed that the *Hadīth* was derived from the words of Prophet: My ruling for a woman is similar to another hundred women.

⁷² Al-Ghazālī, Muhammad Ibn Muḥammad, *al-Muṣtasfā fī Ilmu al-Uṣūl* (Beirut: Dār al-Kutūb al- 'Ilmīyah, 1992), 1: 282.

⁷³ Al-Shawkānī, Muḥammad Ibn 'Alī, *Irsyād al-Fuhūl ila Tahqīq al-Ḥaq min 'Ilmi al-Uṣūl*, 2: 919.

⁷⁴ Al-Razi, Muḥammad Ibn Umar, *Al-Maḥṣūl fī Ilmu Uṣūl al-Fiqh*, 5: 207.

⁷⁵ Al-Mardawī, Ali Ibn Sulaiman Ibn Ahmad Al-Hanbali, *Al-Tahbīr Sharḥ al-Tahrīr fī Uṣūl al-Fiqh* (Riyādh: Maktabah al-Rusyd, 2000), 7: 3437.

⁷⁶ Al-Kamiliyah, Muḥammad Ibn Muḥammad Ibn Imām, *Taisīr al-Wuṣūl ila Minhāj al-Uṣūl min al-Manqūl wa al-Ma'qūl*, 5: 320.

The example for this course easily can be elucidated from the case of intoxicated juice prohibition. The drink is strictly prohibited for the ‘*Illah* of intoxication, by eliminating the ‘*Illah*, the prohibition also would be changed to permissible. By having the cause factor, the prohibition is still remained on it, by eliminating the cause, the prohibition also will be dissolved. This phenomenon indicates obviously the role of ‘*Illah* –intoxication– in deciding the judgment.⁷⁷

Despite the jurists are not in consensus with regard to the validity of this course, but the majority of them agree with it as a valid *Masālik al-‘Illah* whilst the opponents of this method like Al-Hanafī jurists, some of al-‘Asya’irah, al-Ghazālī, al-Āmidī and Ibn al-Hajib.⁷⁸

Al-Razi (d.1209) defended the relevant of this course in denying the argument from the opponents, he said ‘The circulation (*al-Daurān*) brings a mean pre-assumption of ‘*Illah* provided there is no other evidence that defames this relevant. So, when we conclude their arguments based on these words, those arguments would not be taken into consideration in nullifying *al-Daurān*.⁷⁹

- vi. The last course is *al-Shabah* (the quasi-attributes to the effective cause/ inappropriate ‘*Illah*). According to Abu Bakr Al-Baqillani (d.1013):

‘*Al-Shabah* is the attribute that accompanies particular judgment, if it totally consisted of the element that upholds benefit and avoids difficulty, for instance, the attribute of intoxication is suitable with forbidden, and self-

⁷⁷ Al-Shawkānī, Muḥammad Ibn ‘Alī , *Irsyād al-Fuhūl ila Tahqīq al-Ḥaq min ‘Ilmi al-Uṣūl*, 2: 91.

⁷⁸ Amir ‘Abd al-‘Azīz, *Uṣūl al-Fiqh al-Islāmiyy*, 421.

⁷⁹ Al-Razi, Muḥammad Ibn Umar, *Al-Maḥṣūl fī Ilmu Uṣūl al-Fiqh*, 5: 215.

consciousness lost too fits with prohibition, and it is forbidden from taking it. So, it is the relevant and acceptable attribute through this analogy’.

Another one is the attribute that suits to the judgment by requirement (*al-Istilzām*), for instance, *al-Thahārah* is a relevant platform in stipulating requirement to an intention (*al-Niyyah*) in conducting analogical deduction between ablution (*al-Wudū’*) and *al-Tayammum*.⁸⁰ *Al-Thahārah* does not suitable to be a cause to stipulate an intention for *al-Tayammum*. If we agree with *al-Thahārah* as a reason in it, so every *al-Thahārah* procedure also needs an intention such cleaning pollutant. However, the most suitable platform to be used as a cause in it is ablution and *al-tayammum* is worship practice, definitely, every worship action needs an intention to perform it. Thus, we infer the joining pillar between ablution and *al-Tayammum* is intention by the linkage of worship practice. By assuming this platform, it creates suitability in sharing particular judgment, and the method namely *al-Shabah*.⁸¹

The dispute and disagreement in considering this method as *Masālik al-’Illah* are inevitable. Al-Mardawi (d.1058) concluded after addressing the types of *al-Shabah* by saying:

‘*Al-Shabah* is between two possibilities, either it consists of relevant attribute where the Lawgiver mentions and approves it explicitly or tacitly, or,

⁸⁰ It refers to the alternative method of cleaning way instead of *wudu’* due to the some hurdles or difficulties by two ablution bodies, face and hands, with clear soil accompanying with the intention to allow particular worship like praying or reciting Al-Quran. Source: Mustofa Al-Khin, Mustofa Al-Bugho and Ali Al-Sharbiji, *Fiqh al-Manhaji ‘ala Mazhab Al-Imām Al-Syafi’e*, 1: 92-93.

⁸¹ Al-Kamiliyah, Muḥammad Ibn Muḥammad Ibn Imām, *Taisīr al-Wuṣūl ila Minhāj al-Uṣūl min al-Manqūl wa al-Ma’qūl*, 5: 309.

contains irrelevant attribute to assists jurists in
assuming suitable one as the cause or reason.’⁸²

The only sole evidence that encourages jurists to hold *al-Shabah*
as the course in generating the idea of ‘*Illah* is the Al-Quran
verse:

فَاعْتَبِرُوا يَا أُولِيَ الْأَبْصَارِ

The meaning: “Then take admonition, O you
with eyes (to see).”⁸³

The verse guides us to depend on the methodologies based on
structured thinking and preferred assumption (*Zann*) and it also
derived from the statement answered by Mu’az Ibn Jabal when
Prophet Muhammad asking him about his stand with regard to
new thing that unexplained by explicit evidences, he says:

أَجْتَهِدُ رَأْيِي

The meaning: “I will perform an effort to
produce my own independent opinion.”⁸⁴

These are the courses in establishing objective or purpose of
Islamic legislative law based on the methodology of *Masālik al-‘Illah*
that have been formulated by jurists from various school of
thought, even al-Muktazilah,⁸⁵ and been debated by them through

⁸² Al-Mardawi, Ali Ibn Sulaiman Ibn Ahmad Al-Hanbali, *Al-Tahbir Sharḥ al-Tahrīr fī Uṣūl al-Fiqh*, 7: 3422.

⁸³ Surah *al-Hasr*, 59: 2.

⁸⁴ Al-Sijistānī, Sulaymān Ibn Ash’ath, A.D. *Sunan Abī Dāwūd* (Beirut: Dār Ibn Ḥazm, 1997), Kitāb al-Aqdiyah. Bab al-Sulh. Volume 4: p. 16. No. 3592.

⁸⁵ Al-Muktazilah (المعتزلة) is an Islamic school of theology based on reason and rational thought that was founded initially at the end of Umayyad empire and flourished in the cities of Basra and Baghdad during the Abbasid empire, specifically in the 8th–10th centuries. The methodology used by this sect in deriving the faith principles with regard to Allah’s attributes and Al-Quran is different with the Sunni’s methodology who puts the reason and rational as strengthen factor to the evidences from Al-Quran

ages and generations. The validity and reliability of *Masālik al-ʿIllah* is unquestionable among jurists and scholars despite there are small number of disagreements between them in minor discussion area which not effect to the changing of the fundamental part.

AL-ḤIKMAH AND AL-ʿILLAH ON THE VIEW OF MAQĀSID AL-SHARĪʿAH

The divine law of Allah as derived from the main two sources of revelation, Al-Quran and *Hadīth* are divided into two divisions -from the perspective of human intellect-. First, the law or ruling that could be understood as the wisdom behind the legislation, while the second is the wisdom of the law might not be comprehended or derived any reasons of the commandment.⁸⁶ The *Uṣūl al-Fiqh* jurists in general accepted the principles of the ruling rationalization (*Taʿlīl Āḥkām al-Sharīʿah*).⁸⁷

Majority of scholars from various *Madhhab* accept the concept of *Ḥikmah*, *Maṣlahah* and motives that contain in *Sharīʿah* law by the main reason that Allah might not regulate any law aimlessly –as mentioned before- unless with the objectives for the human’s benefit.⁸⁸

Majority of *al-Salaf* (predecessors) and *al-Khalaf* (successors) were in consensus that the legislation of *Sharīʿah* has their own justifications and objectives that could be comprehended in totality or in

as well as prophetic traditions. There relied on the rational and intellect strongly in understanding Islamic faith pertaining to Allah’s attributes and Al-Quran whom influenced by the doctrine of ancient philosophies. They also known as al-Qadariyah , Ahlu al-ʿAdl wa al-Tauhid, Al-Muqtasidah and al-Waʿidiyah. Source: Mani’ Ibn Muḥammad al-Juhani, *al-Mausūʿah al-Muyassarah fī al-Adyān wa al-Mazāhib al-Muʿāṣirah* (Riyādh: Dār al-Nadwah al-ʿAlamiyyah, 2003), 1: 64.

⁸⁶ Ibn al-ʿArabi, Muḥammad Ibn Abdullah, *Al-Maḥṣūl fī Uṣūl al-Fiqh* (Amman: Dār al-Bayariq, 1999), 1: 132.

⁸⁷ Al-Ghazālī, Muḥammad Ibn Muḥammad, *al-Muṣtasfā fī Ilmu al-Uṣūl*, 336.

⁸⁸ Ahmad, Ridzwan. "Permasalahan Taʿlīl Al-Ahkam Sebagai Asas Penerimaan Maqasid Al-Shari'ah Menurut Ulama Usul." *Jurnal fiqh* 5 (2008): 169-195.

particular in any aspects except in *'Ibādat* matter that could not be revealed (unintelligible) by human intellect.⁸⁹

Originally, *al-'Illah* also refers similar to the definition of *al-Ḥikmah*, but it is gradually known and used in *Uṣūl al-Fiqh* as 'the physical attribute that accepted as reason for *al-Ḥukm*'.⁹⁰ Muḥammad al-Qayati, Nukman Jughaim and others opine the similarity between *al-Ḥikmah* and *al-Maqṣad* as mentioned by al-Syarbini (d.1569) in determining *Ḥikmah* and *Maqṣad* of any *Ḥukm* as 'the appropriate meaning in regulating the law'.⁹¹

Ta'līl Āḥkām al-Sharī'ah is crucial to be applied in order to assist jurists in making analogical reasoning when there is an unprecedented event or case that needs a special law treatment, otherwise they may not find any *Makhrāj* or 'way out' in that situation.⁹² *Ta'līl Āḥkām* might expand the horizon of jurists in creating new ruling in an unprecedented case –especially in Islamic finance- by incorporating *'Illah* with *Ḥikmah*.⁹³

The relationship between *Maqāṣid al-Sharī'ah* and *Ta'līl al-ahkam* is very significant where the latter is the main cause of the existence of the former. A jurist may utilize *Ta'līl Āḥkām* theory in judging any *Fiqhi* case related to human life that incorporated with *Maqāṣid al-Sharī'ah*.⁹⁴

⁸⁹ Yusof Al-Qaradawi, *Introduction to The Study of Islamic Law*. Translated by: Azman Ismail, Md. Habibur Rahman and Ahmad Auzaie Mohd Arshad (Kuala Lumpur: IBFIM Publications, 2013), 33.

⁹⁰ Al-Qayati, Muhammad Aḥmad, *Maqāṣid al-Sharī'ah inda al-Imām Malik* (Kaherah: Dār al-Salām, 2009), 80.

⁹¹ Nukmah Jughaim, *Turuq al-Kashf 'an Maqāṣid al-Sharī'* (Amman: Dār al-Nafais, 2002), 35-36.

⁹² Ibn 'Ashur, *Treatise on Maqāṣid al-Sharī'ah*. (trans.) Mohamed El-Tahir El-Mesawi, 2: 51.

⁹³ Ahmad, Ridzwan, "Permasalahan Ta'lil Al-Ahkam Sebagai Asas Penerimaan Maqasid Al-Shari'ah Menurut Ulama Usul," 176-177.

⁹⁴ *Ibid.*

The meanings of *maqāṣid* and *'Illah* have the similarity, whereby sometimes *maqāṣid* is representing the *'Illah*, that identical to the meaning of *Hikmah*.⁹⁵

The extensive reading verses of *Al-Quran* and *Hadīth* textual might reveal to us the shared wisdom or reason between cases and scenarios that indicates the validity of that reason or *'Illah* to be the objective or *Maqāṣid*.

The derivation process of *Maqāṣid* is likely to be done through the reflection and pondering on the reasons and causes or *Hikmah* of any particular ruling or judgment. *Maqāṣid Juz'iyah* might be embedded under *Maqāṣid Kulliyah* in many conditions and stances.⁹⁶

The process is through the understanding on *'Illah* of allowed and prohibited acts and explicit *Maṣlahah* and *Mafsadah* elements mentioned in the text.⁹⁷

Istiqrā is one of the ways to understand the wisdoms of *Sharī'ah* by uncovering the recurring themes, the eternal values, ascertaining the standard universal principles and preserving the general values. The themes or the principles founded through the process in any particular event or case, might be potentially repeated within a wide spectrum of cases, by having a similarity that shares the same principles or themes with the previous event that seemed relevant.⁹⁸

Muḥammad Abu Hurayra suggests the scholars to acquire special expertise in understanding *Maqāṣid al-Sharī'ah* behind the *Fiqhi*

⁹⁵ Nukmah Jughaim, *Turuq al-Kashf 'an Maqāṣid al-Shāri'*, 143.

⁹⁶ Al-Khodimi, Nuruddin Mukhtar, *al-Ijtihād al-Maqāṣidi Hujjiyatuhu wa Dowābituhu wa Majālatuhu* (Doha: Ministry of Waqaf and Islamic Affairs of Qatar, 1998), 45.

⁹⁷ Masfar Ibn Ali Al-Qahtani, *Al-istidlāl bi Maqāṣid al-Sharī'ah fi al-Nawāzīl al-Mustajaddah*. Paper presented in The Conference of *Maqāṣid al-Sharī'ah* and Its Applications in the modern age organized by Yarmouk University, Jordan 22-23 December 2013.

⁹⁸ Hallaq, Wael B., *The Primacy of the Qur'an in Al-Shatibi's Legal Theory* (Leiden: Brill, 1991), 69-90.

verdicts in an aspirational sense. It could be done through the application of *maṣlahah* based on *Ta'līl* where it might be seemed applicable and practicable in today's economy surroundings.⁹⁹

CONCLUSION

Through discussion above, we may conclude that the significance of *Maqāṣid al-Sharī'ah* in Islamic legislative law provides clear information pertaining to the inner aspects of the law or *Hikmah* beautified with the values of promoting benefit, avoiding harmful, difficulty elimination and simplification. These four values are defended by the fortress of blocking any means which can upset it simultaneously fortifies the vigorous of *Sharī'ah* law's framework that aims precisely to uphold the human well-being in this word life and the Hereafter. The classification of *Maqāṣid al-Sharī'ah* into certain divisions and classes crystallizes to us the perfectness of this divine law in arranging the whole system based on its precedency for human interest and preference.

REFERENCES

- 'Abd al- 'Azīz Ibn 'Abd al-Salam, *Qawā'id Al-Ahkām fi Islāh Al-Anām*. Beirut: Dār Ibn Ḥazm, 2003.
- Ahmad, Ridzwan. "Permasalahan Ta'lil Al-Ahkam Sebagai Asas Penerimaan Maqasid Al-Shari'ah Menurut Ulama Usul." *Jurnal fiqh* 5 (2008): 169-195.
- Al'Attar, Hasan, *Hashīyah al-'Attar 'alā Jamu 'al-Jawāmi'*. Beirut: Dār al-Kutūb al- 'Ilmīyyah, n.d.
- Al-Āmidī, 'Alī bin Ibn 'Alī, *al-Ihkām fi Uṣūl al-Ahkām*. Riyādh: Dār as-Suma'ī li an-Nashr wa al-Tauzī', 2003.
- Al-Baidhowi, 'Abdullah Ibn Umar, *Nihāyat al-Sūl fi Sharḥ Minhāj al-Wuṣūl fi Ilmi al-Uṣūl*. Beirut: Dār Ibn Ḥazm, 1999.
- Al-Ghazālī, Muḥammad Ibn Muḥammad, *al-Muṣtasfā fi Ilmu al-Uṣūl*. Beirut: Dār al- Kutūb al- 'Ilmīyyah, 1992.

⁹⁹ Hurayra, Mohammad Abu. "Achievement of Maqasid-al-Shariah in islamic banking: An evaluation of Islami bank Bangladesh limited." *Global Journal of Computer Science and Technology* Volume 15. Issue 1. (2015): 8-16.

- Al-Iji, 'Abdul Raḥman Ibn Aḥmad, *Sharḥ Mukhtaṣar al-Muntahā al-Uṣūli*. Beirut: Dār al-Kutūb al- 'Ilmīyyah, 2004.
- Al-Isnawī, Jamāl al-Dīn 'Abd al-Raḥīm Ibn al-Ḥasan, *Nihāyat al-Sūl fī Sharḥ Minhāj al-Wuṣūl ila 'Ilmi Al-Uṣūl*. Beirut: Dār Ibn Ḥazm, 1999.
- Al-Kamiliyah, Muḥammad Ibn Muḥammad Ibn Imām, *Taisīr al-Wuṣūl ila Minhāj al-Uṣūl min al-Manqūl wa al-Ma'qūl*. Kaherah: Al-Fārūq al-Hadīthah Li al-nashr wa al-Tauzī', 2009.
- Al-Khadari, Muḥammad Bik, *Uṣūl Al-Fiqh*. Kaherah: Maktabah al-Tijārīyyah al-Kubra, 1969.
- Al-Khodimi, Nuruddin Mukhtar, *al-Ijtihād al-Maqāsidi Hujjiyatuhu wa Dowābituhu wa Majālatuhu*. Doha: Ministry of Waqaf and Islamic Affairs of Qatar, 1998.
- Al-Maliki, Uthman Ibn al-Hajib, *Sharḥ Mukhtaṣar Al-Uṣūlī*. Beirut: Dār al-Kutūb al- 'Alamiyyah, 2004.
- Al-Mardawi, Ali Ibn Sulaiman Ibn Aḥmad Al-Hanbali, *Al-Tahbir Sharḥ al-Tahrīr fī Uṣūl al-Fiqh*. Riyādh: Maktabah al-Rusyd, 2000.
- Al-Naisāburī, Muslim Ibn Ḥajjāj, A.H, Sahīh Muslim. Beirut: Dār al-Ihyā al-Turāth al-Arābi, 2006.
- Al-Namlah, 'Abdul Karīm Ibn Alī, *Al-Muhazzab fī 'Ilmi Uṣūl al-Fiqh al-Muqāran*. Riyādh: Maktabah al-Rushd, 1999.
- Al-Qarafī, Aḥmad Ibn Idrīs, *Sharḥ Tanqīh al-Fuṣūl fī Iktisar al-Mahsūl fī Ilmi Al-Uṣūl*. Beirut: Dār al-Fikr, 2004.
- Al-Qayati, Muḥammad Aḥmad, *Maqāṣid al-Sharī'ah Inda al-Imām Malik*. Kaherah: Dār al-Salām, 2009.
- Al-Razi, Muḥammad Ibn Umar, *Al-Mahṣūl fī Ilmu Uṣūl al-Fiqh*. Beirut: Muassasah Al-Resalah, 1997.
- Al-Sam'ani, Mansur Ibn Muḥammad, *Qawāti' al-Adillah fī Uṣūl al-Fiqh*. Riyādh: Maktabah al-Taubah, 1998.
- Al-Shawkānī, Muḥammad Ibn 'Alī, *Irsyād al-Fuhūl ila Tahqīq al-Ḥaq min 'Ilmi al-Uṣūl*. Riyādh: Dār al-Fadhīlah, 2000.
- Al-Sijjistānī, Sulaymān Ibn Ash'ath, A.D. *Sunan Abī Dāwūd*. Beirut: Dār Ibn Ḥazm, 1997.
- Al-Yubi, Muḥammad Sa'ad Aḥmad, *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'Alāqatuha bi Adillati as-Syar'īyyah*. Riyādh: Dār al-Hijrah for Publication and Distribution, 1998.

- Al-Zarkashi, Muḥammad Ibn Bahadir, *Al-Baḥru al-Muḥīṭ fī Uṣūl al-Fiqh*. Kuwait: Al-Wizārah al-Awqāq wa As-Shuūn al-Islāmīyyah, 1992.
- Al-Zuhailī, Wahbah Muṣṭafa, *Uṣūl al-Fiqh al-Islāmiyy*. Damascus: Dār al-Fikr, 1986.
- Amir 'Abd al-'Azīz, *Uṣūl al-Fiqh al-Islāmiyy*. Kaherah: Dār al-Salām, 2000.
- Auda, Jasser, *Maqasid al-Shariah as philosophy of Islamic law: a systems approach* (London; Washington [D.C.]: International Institute of Islamic Thought (IIIT), 2008.
- Farooq, Mohammad Omar, and Nedal El-Ghattis. "In Search of the Sharī'ah." *Arab Law Quarterly* 32, no. 4 (2018): 315-354.
- Hallaq, Wael B., *The Primacy of the Qur'an in Al-Shatibi's Legal Theory*. Leiden: Brill, 1991.
- Hurayra, Mohammad Abu. "Achievement of Maqasid-al-Shariah in islamic banking: An evaluation of Islami bank Bangladesh limited." *Global Journal of Computer Science and Technology* Volume 15. Issue 1. (2015): 8-16.
- Ibn 'Ashur, *Treatise on Maqāṣid al-Sharī'ah*. (trans.) Mohamed El-Tahir El-Mesawi. London: The International Institute of Islāmīc Thought, 2006.
- Ibn al-'Arabi, Muḥammad Ibn 'Abdullah, *Al-Maḥṣūl fī Uṣūl al-Fiqh*. Amman: Dār al-Bayariq, 1999.
- Ibn al-Qayyim, Muḥammad Ibn Abī Bakr, *Ilām al-Muwaqqi 'in 'an Rab al-Ālamīn*. Riyādh: Dār Ibn al-Jauzī, 1999.
- Landin, Mohamad Akram, and Hafas Furqani, *The Objective of the Shari'ah in Islamic Finance: Identifying the Ends (Maqasid) and the Means (Wasail)*, ISRA Research Paper No. 32/2012. Kuala Lumpur: International Shari'ah Research Academy, 2012.
- Mahmūd 'Abdul Raḥman 'Abdul Mun'im, *Mu'jām al-Muṣṭalahāt wa al-Alfāz al-Fiqhīyyah*. Kaherah: Dār al-Fadhīlah, 2003.
- Mani' Ibn Muḥammad al-Juhani, *al-Mausū'ah al-Muyassarah fī al-Adyān wa al-Mazāhib al-Mu'āṣirah*. Riyādh: Dār al-Nadwah al-'Alamiyyah, 2003.
- Masfar Ibn Ali Al-Qahtani, *Al-istidlal bi Maqāṣid al-Sharī'ah fī al-Nawāzīl al-Mustajaddah*. Paper presented in The Conference of Maqāṣid al-Sharī'ah and Its Applications in the modern age organized by Yarmouk University, Jordan 22-23 December 2013.

- Mustofa Al-Khin, Mustofa Al-Bugho and Ali Al-Sharbiji. *Fiqh al-Manhaji 'ala Mazhab Al-Imām Al-Syafi'e*. Damascus: Dār al-Qalam, n.d.
- Nukmah Jughaim, *Turuq al-Kashf 'an Maqāsid al-Shāri'*. Amman: Dār al-Nafais, 2002.
- Saifuddeen, Shaikh Mohd, Noor Naemah Abdul Rahman, Noor Munirah Isa, and Azizan Baharuddin. "Maqasid al-Shariah as a complementary framework to conventional bioethics." *Science and engineering ethics* 20, no. 2 (2014): 317-327.
- Yusof Al-Qaradawi, *Introduction to The Study of Islamic Law*. Translated by: Azman Ismail, Md. Habibur Rahman and Ahmad Auzaie Mohd Arshad. Kuala Lumpur: IBFIM Publications, 2013.