

cognitive, wholeness, openness, hierarchy, multi-dimensionality, and the purposefulness. This kind of the research is going to be viewed through the *contextual and phenomenological approach*.

Key words: *maṣlahah*, *'illah*, *asrār*, universal values, and social changes.

Introduction

Critique of the contemporary Muslim scholars about the development of the epistemological paradigm of science of jurisprudence is that it is frequently framed within the exclusive and normative aspect for many centuries.⁶⁰⁹ Consequently, the flexibility and elasticity of Islamic law are considered to be incapable to hold a dialogue with the sophisticated changes.⁶¹⁰ Some Muslim thinkers in the 20th and 21st century such as Fazlur Rahman, Mohammed Arkoun, Hassan Hanafi, Mohammad Shahrur, Abdullahi Ahmed al-Na'im, Riffat Hasan, Jasser Auda, Abdullah Saeed, and some other figures dramatically highlight the scientific paradigm of Islamic studies particularly paradigm of fiqh. For them, jurisprudence and its implication, including its legal philosophy of social institution, are considered too stiff making it less responsive to the challenges and demands of the modern times, especially in relation to issues of ḥudūd, human rights, public law, gender and others. It means that the understanding of the classical fiqh should be interconnected with social sciences, social changes, and values of modernity.⁶¹¹

Back to the paradigm of jurisprudence that has paradigmatic and epistemological stagnancy. This phenomenon can be seen from the use of patterned

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⁶⁰⁹ M. Amin Abdullah, *Islamic Studies di Perguruan Tinggi* (Yogyakarta: Pustaka Pelajar, 2010), vi-vii.

⁶¹⁰ Jaseer Auda is trying to parse the coagulation by asking the simple and fundamental things such as "whatness" (what), "howness" (how), and "whyness" (why). As a simple example, why a Muslim should run the pillars of Islam?, What advantages performing such pillars of Islam?, And how to interpret and apply the pillars of Islam?. These are the basic questions in *maqāṣid al-sharī'ah* as the first step in the effort to internalizing and externalizing the universal moral values. Auda defines *maqāṣid al-sharī'ah* as "*maqāṣid of the Islamic law are the objectives, purposes, intents, ends, principles behind the Islamic rulings*". In principle, Auda tries to develop a new meaning to some predecessors' concepts namely Imam al-Juwayny, al-Ghazali, al-'Izz ibnu Abd Salam, Ibnu al-Qayyim, and al-Shatibi. However, he elaborates those of predecessors with several new approaches such as social, historical criticism, anthropology in the frame of social sciences. See M. Amin Abdullah, *Islamic Studies di Perguruan Tinggi*, 103. See also Jasser Auda, *Maqāṣid al-Sharī'ah as philosophy of Islamic Law, A Systems Approach* (London: Washington: IIIT, 2008), xxiii

⁶¹¹ The term of modern, modernism, modernity are derived from the tradition of Western's progress. In this context, modernity is understood as mind, school, movement, and attempt to change ideology, custom, old institution with a framework and a new mindset based on science and values of modernity, including the discourse of Islamic law in the perspective of modern Muslim scholars. Achievement of Western modernity is really materialized and marked by the Renaissance movement and Enlightenment (the age of reason) that makes rationality as the key to everything and departs off its religion and transcendental theology. See Harun Nasution, *Pembaharuan dalam Islam: Sejarah Pemikiran dan Gerakan* (Jakarta: Bulan Bintang, 1992), 11.

to make Islamic law being relevant in the modern world. Therefore, the operational pattern of maqāṣid al-sharī'ah must be viewed in the perspective of modernity. Weil B. Hallaq names this group with the liberalism school or muta'ammiqīn fī al-qiyās because they tend to stand on the contextual paradigm and are completely independent from the classical paradigm.⁶⁸³

Conclusion

Some important issues that require solution appropriately and wisely in contemporary era are gender inequality, discrimination against minorities either religious or ethnic minorities, human rights, lack of freedom to speak, to believe, and to practice their own religion, authoritarian government, globalization and social changes. Muslims, as an important part of world citizenship, are no longer limited to local residents or local citizenship. On the other hand, the flexibility and elasticity of Islamic law are considered to be incapable to dialogue with the modernity since they are often trapped on exclusivity and normativity. Therefore, it takes a creative and innovative thinking to restore the spirit of Islamic law ṣāliḥ likulli zamān wa makān and raḥmatan li al-'ālamīn. This spirit is captured by some Muslim Scholars in the past and present time by offering the theory of maqāṣid al-sharī'ah/maṣlaḥah.

Etymologically, maqāṣid al-sharī'ah consists of two words: maqāṣid and sharī'ah. Maqāṣid is the goal and sharī'ah means the laws that God prescribed for His slaves either the provisions of al-Qur'ān or al-Sunnah. Meanwhile, terminologically, maqāṣid al-sharī'ah has a variety of equivalent terms like maqāṣid al-sharī'ah, al-maqāṣid al-shar'iyyah fī al-sharī'ah, and maqāṣid min shar'iy al-ḥukm. So, maqāṣid al-sharī'ah is purposes of Islamic law to realize the benefit of people in the world and in the hereafter, the final goal to be achieved by the sharī'ah, and the secrets behind the sharī'ah. In this case, al-Shatibi constrains al-maqāṣid to be achieved by the Islamic law are namely: (1) ḍarūriyyāt, (2) ḥājīyyāt, and (3) taḥsīniyyāt.

In the realm of ijtihād, maqāṣid al-sharī'ah is derived from the fundamental spirit of maṣlaḥah al-'āmmah, 'illah, and wisdom that can be extracted through four sources, namely al-Qur'ān, al-Sunnah, istiqrā' or scientific inquiry, and rationality. This is the importance of laying the foundation of universal values of Islamic law to respond the needs of modern society supported by new methodologies excavation, a harmonious relationship between traditional Islamic thought and modern Western education, reflecting the Islamic law in the area of intellectual, moral, legal, social, economics, politics, and technology.

⁶⁸³ Ibid. See also Amin Abdullah, "Paradigma Alternatif Pengembangan Ushul Fiqh dan Dampaknya pada Fiqh Kontemporer", within *Mazhab Jogja: Menggagas Paradigma Ushul Fiqh Kontemporer* (Yogyakarta: Ar-Ruz, 2002), 118-123.

