The Influence of the Shafie School on Fatwa Methodologies in Malaysia: Toward the Unity of *Ummah's* Objective

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Abstract

Maqāṣid al-shariah, which refers to the aim or goal intended by Islamic law to benefit humankind, is closely related to the issuance of fatwas. This condition raises the question of whether *maqāṣid al-shariah* is fully considered in the fatwa issuance process in Malaysia. The methodology used in issuing fatwas in Malaysia is unique as the Shafie school is the primary reference, and the methodology aims to create a systematic fatwa management system in preserving unity. However, the approach does not generally embrace *maqāṣid al-shariah*, such as freedom, and favors an easier option *(al-taysīr)* to examine diverse views outside the Shafie school. This condition raises questions about the capability of the sectarian methodology practiced in the current issuance of fatwas and whether the fatwa methodology tied to the Shafie school can manifest *maqāṣid al-shariah* in every law. This paper aims to examine the achievement of *maqāṣid al-shariah* in the fatwa methodology that contains the strong tradition and influence of the Shafie school. Through inductive, deductive, and comparative document research, this study revealed three main findings. First, *maqāṣid al-shariah* in the fatwa methodology in Malaysia is applied through shariah arguments parallel with the *uṣul al-fiqh* framework. Second, the Malaysian fatwa methodology that references the final view of the Shafie school is intended to achieve uniformity and unity among the Muslim-majority community in Malaysia, which coincides with maqṣad *wihdatul ummah*. Third, when maṣlahah is not achieved in certain circumstances, views of schools other than the Shafie school can be consulted.

Keywords: *Maqāṣid al-shariah,* Fatwa, Methodology, *Wihdatul Ummah* (the unity of *ummah*), Malaysia

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Introduction

Several past and present scholars have discussed the meaning of *maqāṣid al-shariah* for years. Although there are views from previous scholars stating that the definition of this term is not inclusive and exclusive (*jami'* and *mani')*, it cannot be denied that they are the pioneers of the discourse in this field. With this all situation, there is a need to emphasize that there should be a clear understanding of the twin terms of *qaṣd* and *Sharia* so that the term *maqāṣid al-shariah* can be defined clearly. Among the scholars who introduced the definition of *maqāṣid al-shariah* in the current context are Ibn 'Ashur, al-Raysuni, and Ibn Bayyah.

According to Ibn 'Ashur, *maqasid al-shariah* is:

المعاني والحكم الملحوظة للشارع فى جميع أحوال التشريع أو معظمها، بحيث لا تختص ملاحظتها بالكون فى نوع خاص من أحكام الشريعة...[2]

Translation: The preserved meanings and wisdom conducted by sharia maker in all or most of the circumstances of shariah, which is the preservation is not specifically in any shariah law.

Meanwhile, al-Raysuni provides a simpler definition, that is:

الغايات التي وضعت الشريعة لأجل تحقيقها لمصلحة العباد[3]

Translation: Maqāṣid al-shariah is some goals intended by shariah for the realization of the benefits to humankind.

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[2] Muhammad al-Tahir Ibn 'Ashur, *Maqasid al-Shari'ah al-Islamiyyah,* 2nd ed., Muhammad al-Tahir al-Misawi, Ed., (Jordan: Dar al-Nufais, 2001), 55.

[3] Ahmad al-Raysuni, *Nazariyyah Maqasid 'Inda al-Imam al-Shatibi,* (Herndon: al-Ma'had al-'Alami li al-Fikr al-Islami, 1995), 20.

Ibn Bayyah defined a lengthier and more comprehensive definition of maqāṣid al-shariah. He stated:

المعاني الجزئية أو الكلية المفهومة من خطاب الشارع ابتداءً،

أصلية أو تابعة، وكذلك المرامي والمرامز والحكم والغايات المستنبطة

من الخطاب، وما في معناه من سكوت بمختلف دلالاته مدركةً

للعقول البشرية متضمنة لمصالح العباد معلومة بالتفصيل أو في

الجملة.[4]

Translation: Maqāṣid al-shariah is The particular (juz'i) or universal (kulli) meanings that are understood from God's command of a believer, whether at the beginning, initially, or subsidiary, as well as the meaning, wisdom, and purposes that are derived from the commands, and what it means with its various reasons that are understood by human minds and include the public interest (maṣlahah), known in detail or in a sentence.

From these scholars' definitions, the terms and definitions used to explain *maqāṣid al-shariah* are in various forms. However, upon examination, there are some close similarities in the definition. Thus it can be formulated that *maqāṣid al-shariah* is a discourse on:

- *Maṣlahah* of the *mukallaf* (legally responsible individuals) in the world that guarantees his well-being in the hereafter,

- *Maṣlahah* either by creating advantages or eliminating damage and

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[4] Ibn Bayyah, *Mashahid min Maqasid,* 3rd ed., (Riyad: Dar al-Tajdid, 2012), 32-33.

- *Maṣlahah* brings out *maqāṣid al-shariah,* which has been prescribed in the commands (*khitab shāri').*[5]

The discourse among scholars around the year 2005 marked the beginning of *maqāṣid al-shariah* in Malaysia. According to a literature review by Ahmad Syukran et al. (2021), it was found that the discourse of *maqāṣid al-shariah* in Malaysia has been around in Malaysia for about 15 years. Nevertheless, since 2010, this field has been increasingly gaining attention and proliferating discussion.[6] The development of discourse in this field is gaining ground through the establishment of several institutions that organize seminars, workshops, and research in the field of *maqāṣid al-shariah* in Malaysia. Among the specifically involved institutions are the Darul Ehsan Institute and Maqasid Institute Malaysia.

The influence of *maqāṣid al-shariah* discourse developed in Malaysia later received attention from the Malaysian government. This influence can be observed in the introduction of the Malaysian Shariah Institue, which was established during the era of the 6th Prime Minister of Malaysia, Dato' Sri Haji Mohammad Najib bin Tun Haji Abdul Razak.[7] Following that, during the era of Tun Dr. Mahathir Mohamad as the 7th Prime Minister, *maqāṣid al-shariah* was highlighted in religious

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[5] Muhammad Safwan Harun, "Pemikiran Maqasid Al-Shari'ah Yusuf Al-Qaradawi Dan Muhammad Sa'id Ramadan Al-Buti: Satu Kajian Perbandingan" (tesis kedoktoran, Universiti Malaya, Kuala Lumpur, 2019), 45.

[6] Ahmad Syukran Baharuddin, Aiman Abdull Rahim, Wan Abdul Fattah Wan Ismail, Lukman Abdul Mutalib, Siti Robiatun Addawiyah Roslan and Aminuddin Ruskam, "Perkembangan dan Pola Literatur Maqasid Syariah di Malaysia: Analisis Sistematik", *International Journal of Maqasid Studies and Advanced Islamic Research,* 2(1), (2021), 50.

[7] Ahmad Syukran Baharuddin, 38.

administration through the idea of *Rahmatan Lil Alamin* by the Minister in the Prime Minister's Department (Religious Affairs), Datuk Seri Dr. Mujahid Yusof.[8] One of the cores of the idea was to apply *maqāṣid al-shariah* in the administration of Islam by emphasizing the care of five main subjects: religion, life, intellect, lineage, and wealth. The core was then applied in Islamic governance in Malaysia through the establishment of I~MaqSD by the Malaysian Islamic Development Department (JAKIM) on 15 August 2020.[9]

Following the development of *maqāṣid al-shariah* in Malaysia, fatwa is one area directly affected. The origin of the discourse of *maqāṣid al-shariah* is from the principles of fiqh, which is the science and means for exercising *ijtihād, isṭinbat,* and fatwa. However, looking into the methodology of fatwa practised by the states, it is revealed that *maqāṣid al-shariah* is not considered a proposition in the issuance of fatwas. On the other hand, the approach that has become a tradition in issuing fatwas by most states is to uphold the views of the Shafie School of Thought. Perak, as one of the states that share the same views, stated in the Administration of the Religion of Islam Enactment 1992, in part III – Mufti and Sharia Committee. Under Section 39, Nas which will be acknowledged, insisted:

(1) In issuing a fatwa under Section 34 or 36 or in giving or certifying any opinion under Section 38, the Mufti shall ordinarily follow the accepted views (*qawl muktamad*) of the Shafie School.

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[8] Ahmad Syukran Baharuddin.
[9] JAKIM, MyMaqasid. *Jabatan Kemajuan Islam Malaysia*. Retrieved on 5 June 2022 from
https://www.islam.gov.my/ms/mymaqasid/i-maqsd

The same matter can be observed in the enactments of the other states. From one aspect, the influence of the Shafie School of Thought in the discipline of fatwa in Malaysia is the result of an influence that has existed since old times. The influence can be observed in legal practices, education, and laws. Among the proofs is the content of the Terengganu Inscription Stone that stated the ten "Dharmas", which were the rules that Terengganu government tried to implement at that time.[10] Among the rules stipulated in this regulation is about the law of stoning or flogging for fornication, refusal to pay debts, and other rules based on the views of the Shafie School of Thought.[11]

However, the influence of the Shafie School in the fatwa methodology currently raises questions since the methodology does not seem to apply general *maqāṣid al-shariah,* such as freedom and favoring easier options *(al-taysīr)* in examining diverse views other than the Shafie school. In practice, the fatwa methodology is often emphasized, favoring the easier option *(al-taysīr),* which considers jurisprudence views across schools.[12] In certain circumstances, there are fatwas such as salary zakat fatwas, *Amanah Saham Berhad (ASB)* fund investments, and determining illegitimate child lineage that conflicts between states in Malaysia even though

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[10] Mahmood Zuhdi, "Mazhab Syafi'i di Malaysia: Sejarah, Realiti dan Prospek Masa Depan," *Jurnal Fiqh,* 4(11), (2007), 1-38.

[11] Rahimin Affandi Abdul Rahim, Paizah Ismail, Mohd Kamil Abd Majid and Nor Hayati Md. Dahlal, "Batu Bersurat Terengganu: Satu Tafsiran Terhadap Pelaksanaan Syariah Islam," *Jurnal Fiqh,* 7(16), (2010), 107-148.

[12] Muhammad Safwan Harun, Mohd Farhan Md. Ariffin and Muhammad Ikhlas Rosele, "Social Change in the Time of Covid-19: A Phenomenal Study in Malaysia from the Perspective of Maqasid Al-Sharī'ah", *Journal of Islamic Thought and Civilization* 11 (2), (2021), 196-199.

these fatwas are said to have gone through considerations of *maṣlahah.* The reality that happens is contrary to the premise asserted by Ibn 'Ashur, which states that the application of *maqāṣid al-shariah* in Islamic law should be able to avoid disputes.[13] As such, this raises questions about the authority of *maqāṣid al-shariah* that continually follows schools of thought traditions in its fatwa methodology. The question regarding this issue is whether the fatwa methodology, which is bound to the Shafie school, can uphold the *maqāṣid al-shariah* behind the rulings. Therefore, research on the authority of *maqāṣid al-shariah* through the fatwa methodology that incorporates strong traditions and influences of the Shafie school should be conducted properly.

The Influence of the Shafie School in Malaysia
Local

Since Islam's arrival, the Shafie sect has been the main school of thought in Malaya's Islamic education and law.[14] Starting with the Islamic kingdoms of Pasai and Terengganu, then followed by the Islamic Kingdom of Melaka, the Shafie sect has become the basis and reference for law and jurisprudence in all aspects.[15] During the 15th century AD, the Malay Empire of Malacca became the leading centre of Malay Islamic culture in the world. It became the centre for spreading Islam throughout South East Asia[16] by adopting the

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[13] Ibn 'Ashur, "*Maqasid al-Shari'ah,* 3-4.
[14] Inarah Ahmad Farid and Saadan Man, "Keterbukaan Bermazhab Dalam Realiti Di Malaysia: Keperluan Atau Kecelaruan?" *Jurnal Syariah,* 20(3), (2012), 289-308.
[15] Mahmood, "Mazhab Syafi'i di Malaysia, Sejarah, 1-38.
[16] Mohd Zahirwan Halim Zainal Abidin, Muhammad Yusri Yusof @ Salleh, Paiz Hassan, Hamdi Rahman Mohd Yaacob, Shahril Nizam

Shafie school as the primary reference in matters of fiqh.[17] During the Malacca Malay Sultanate, the scholars used many books from the Shafie school as their teaching materials in the palace, which then became the study centre for the royal family and dignitaries.[18]

Efforts in establishing educational institutions and Islamic traditional study centres such as *pondok* and *madrasahs* have intensified intellectual development among the Malay community.[19] The culture of knowledge became commonplace when the Malay community began to prioritise aspects of education and knowledge by establishing these institutions.

In teaching jurisprudence to the Malay community through formal or informal education, books, references, and opinions from the Shafie School were used as the main basis of learning in government schools in this country and continues up to the present, whether at the primary or secondary level.[20]

Zulkipli and Ab. Munir Md. Noh, "Pengaruh Islam Dalam Perkembangan Intelektual di Alam Melayu," *Jurnal Pengajian Melayu (JOMAS),* 25(1), (2014), 102-116.

[17] Wan Zulkifli, Hasnan, Zulkifli Mohamad, M. Sabri, Nazri Muslim and Azizi Umar, "The Culturalization of The Sect of Shafi'i in Forming Harmony In The Malay Society in Malaysia," *Journal of Applied Sciences Research,* 8(5), (2012), 2531-2542.

[18] Muhammad Ikhlas Rosele, Mohd Anuar Ramli, Mohd Farhan Md. Ariffin and Syamsul Azizul Marinsah, Legasi Mazhab Syafi'i Di Malaysia: Antara Kekangan Tradisionalisme Dan Tuntutan Liberalisme, (paper presented at the 1st International Islamic Heritage Conference, Melaka, 11-12 November 2015).

[19] Kamaruzzaman Bustamam Ahmad, "Educational practice: lessons to be learned from madrasah and religious schools in contemporary Southeast Asia," *Indonesian Journal of Islam and Muslim Societies,* 5(1), (2015), 29-48.

[20] Syed Salim Syed Shamsuddin, Muhammad Farid Wajdi Ab. Rahim, Abdul Karim Pardon and Mohd Faisal Mohamed, Kitab Turath Fiqh Syafie Jawi Sebagai Medium Penyampaian Ilmu Fardu Ain di Malaysia: Analisis Metodologi Penulisan Kitab Hidayat Al-Sibyan Fi

In general, most fiqh books written by scholars in the Malay Archipelago, such as those from Thailand, Indonesia, Borneo, and Malaysia, use the Shafie School as their reference. The proof is that the books written by scholars in the Archipelago referred to most of the work by Shafi'iyyah as the source of reference.[21]

The writing of fiqh books in the Malay language began at the beginning of the 17th century. The Book *Sirat al-Mustaqim* written by Syeikh Nuruddin al-Raniri is the oldest and earliest shariah work ever found in Pahang, Malaysia. Although from a foreign country, he was recognised as a well-known Malay scholar. He was also the first scholar to pioneer great writings on jurisprudence in Malay history.[22]

Non-Formal Education

Since immemorial, the Shafie school has been considered the main basis and reference in traditional Islamic education in Malaysia. Studies in Islamic traditional study centres of *pondok*, madrasahs, mosques, *surau,* and religious schools still use fiqh work by the Shafie school as the main text during the teaching and learning process.[23] Fiqh was considered one of the

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[21] Wan Zulkifli Wan Hassan, Nazri Muslim, Rozmel Abdul Latiff and Nani Rahayu Sallihudin, "Practice in Certain School and Fanatic Inclination to One School: A Study Among Malaysian Shafi'i Mazhab Within Islamic Civilization Context," *Journal of Engineering and Applied Sciences,* 15(2), (2020), 586-595.

[22] Wan Zulkifli, Nazri Muslim, Rozmel Abdul and Nani Rahayu, "Practice in Certain School and Fanatic Inclination, 586-595.

[23] Idris Awang and Tengku Sarina Aini Tengku Kasim, "Pembudayaan Mazhab Syafie Dalam Masyarakat Islam di Malaysia," *Jurnal Fiqh,* 4, (2007), 157-172.

most important subjects taught in these institutions.[24] The textbooks used were entirely from the Shafie school, whether the books were in Classic Malay written in Jawi or Arabic.[25]

Among the books written in Classical Malay are *Kitāb Hidāyat al-Muta'alim wa 'Umdat al-Mu'allim, Munat al-Musalli,* and *Kitāb Furū' al-Masā'il wa Uṣul al-Wasā'il* written by Sheikh Daud bin Abdullah al-Fatani, *Kitab al-Bahr al-Wāfi wa al-Nahr al-Sāfi,* and *Matla' al-Badrain wa Majma' al-Bahrain* by Sheikh Muhammad bin Ismail Daudi al-Fatani, *Kitab Sabīl al-Muhtadin Li Al -Tafaquh fi Amr al-Din* by Sheikh Muhammad Arshad al-Banjari and others.[26]

In addition, fiqh books in the Shafie School, written in Arabic, were also used as textbooks and in teaching and were followed by many communities in the Archipelago. Among them are *matan al-Ghāyah wa al-Taqrīb* written by al-Qadhi Abu Syuja' al-Asfahani, *Minhaj al-Tālibin* written by Imam Nawawi, *Fath al-Mu'in* written by Sheikh Zainuddin al-Malibari, *Hāsyiah Qalyubi wa 'Umairah 'ala Syarh al-Mahalli* by Syeikh Syihabuddin Ahmad al-Qalyubi and Syeikh

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[24] Zulkifly Muda, Mazhab Syafie: Wadah Penyatuan Ummah di Malaysia, (paper presented at the Konvensyen Pendidikan Islam & Ilmuan Muslim, Ipoh, 8 April 2019). http://mufti.perak.gov.my/rakyat/koleksi-umum/himpunan-kertas-kertas-kerja#kertas-kerja-konvensyen-pendidikan-islam-dan-ilmuan-muslim-2019.

[25] Mohd Yusri Ibrahim "Mazhab Syafie: Its Influence And Progression In The Archipelago," *International Journal of Humanities, Philosophy and Language,* 2(8), (2019), 51-62.

[26] Zulkifly Muda, Mazhab Syafie: Wadah Penyatuan Ummah di Malaysia, (paper presented at the Konvensyen Pendidikan Islam & Ilmuan Muslim, Ipoh, 8 April 2019). http://mufti.perak.gov.my/rakyat/koleksi-umum/himpunan-kertas-kertas-kerja#kertas-kerja-konvensyen-pendidikan-islam-dan-ilmuan-muslim-2019.

Syihabuddin Ahmad al-Burullusi, *Hasyiah I'ānat al-Talibin* by Sayyid Abu Bakr Muhammad Syata al-Dimyati.[27] The texts *al-Muhazzab* by Imam al-Shirazi and *Fath al-Wahhāb,* by Sheikh al-Islam Zakariya al-Ansari, which were written in Arabic, were also used as the main reference source.[28]

In delivering lessons or lectures in the mosques and *surau*, the references were based on books from the Shafie School.[29] These prove the extent of the Shafie School's influence on Malaysian society, whether among the public, socialites, or clerics. When each of these groups was exposed to only one school of thought, an attachment to a particular school would be formed[30] in addition to the context of the knowledge discussed was easy to understand and to apply the knowledge into daily life practices.

Formal education

The Education Act 1961 (which is based on the Razak Report 1956 and the Rahman Taib Report 1960) has brought major changes in the national education system by making Islamic Education a subject in the government school curriculum.[31] In 1988, the Malaysian

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[27] Mohd Yusri Ibrahim "Mazhab Syafie: Its Influence And Progression, 51-62.

[28] Mahmood, "Mazhab Syafi'i di Malaysia, Sejarah, 1-38.

[29] Idris Awang and Tengku Sarina Aini, "Pembudayaan Mazhab Syafie, 157-172.

[30] Zulkifly Muda, Mazhab Syafie: Wadah Penyatuan Ummah di Malaysia, (paper presented at the Konvensyen Pendidikan Islam & Ilmuan Muslim, Ipoh, 8 April 2019). http://mufti.perak.gov.my/rakyat/koleksi-umum/himpunan-kertas-kertas-kerja#kertas-kerja-konvensyen-pendidikan-islam-dan-ilmuan-muslim-2019.

[31] Asmawati Suhid, Abd. Muhsin Ahmad, Syaza Mohd Sabri and Azreen Effendy Mohamad, "Pendidikan untuk Semua: Amalannya

Ministry of Education implemented the Integrated Secondary School Curriculum (KBSM) and comprehensively applied it in 1989.[32] The New Primary School Curriculum (KBSR) was fully implemented in 1983 to replace the Old Primary School Curriculum (KLSR), which was no longer relevant in the national education system.[33] Later, this system was further streamlined, and the Integrated Primary School Curriculum (KBSR) was introduced in 1993.[34] Since the beginning of its implementation, the subject of Islamic Education in both systems adopted the Shafie school as the basis of learning and teaching Islamic education in Malaysian government schools whether in the secondary or the primary school levels until the present time.[35]

Laws and Fatwas

Historical records show that Islam became the basis for the Islamic government of Malacca in determining policies, including matters related to laws, educations, societies, and politics. The Islamic government of Malacca was the first state in Malaya to

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dalam Sistem Pendidikan Islam di Malaysia," *International Journal of Education and Training (InjET), 1*(2), (2015), 1-7.

[32] Mohd Roslan Mohd Nor and Wan Mohd Tarmizi Wan Othman, "Sejarah dan Perkembangan Pendidikan Islam di Malaysia," *Jurnal At-Ta'dib,* 6(1), (2011), 59-78.

[33] Sufean Hussin, *Pendidikan di Malaysia: Sejarah, Sistem dan Falsafah* (Selangor: Dewan Bahasa dan Pustaka, 1993), 220-223.

[34] Anuar Ahmad and Nur Atiqah Tang Abdullah, "Sejarah dan Dasar Pendidikan Asas di Malaysia: Implementasi Kurikulum 3R", in Ong Puay Liu and Roovasini (Eds.), *Education For Intercultural Understanding: 3R+1*, (Selangor: Penerbit Universiti Kebangsaan Malaysia, 2010), 56-76.

[35] Idris Awang and Tengku Sarina Aini, "Pembudayaan Mazhab Syafie, 157-172.

introduce an organised, structured, and complete written law.[36]

This causes the Shafie School to significantly influence the administrative and legal system of the state of Malacca as the Sultan and governors of the state were Muslims and learned religious knowledge from scholars of the Shafie School, such as Sayyid Abdul Aziz, who was related to Sheikh Ismail al-Siddiq.[37]

Currently, each state has its Mufti and Fatwa council, which has the authority to issue fatwas.[38] The Shafie School has thus become a culture of the Malay Muslim community in Malaysia. The Shafie School is also significant in determining the law and shaping the daily practices of the Muslim community in this country in every aspect of life that is fiqh-related .[39]

The position of the Shafie School has been strengthened and applied officially and widely through the procedure of issuing fatwas at the state and national levels as well as the enactment of the religious administration of states which use the Shafie School widely.[40] Every matter that has been issued with a fatwa

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[36] Wan Zulkifli, Nazri Muslim, Rozmel Abdul and Nani Rahayu, "Practice in Certain School and Fanatic Inclination, 586-595.

[37] Wan Zulkifli, Hasnan, Zulkifli Mohamad, M. Sabri, Nazri Muslim and Azizi Umar, "The Culturalization of The Sect of Shafi'i in Forming Harmony In The Malay Society in Malaysia," *Journal of Applied Sciences Research,* 8(5) (2012), 2531-2542.

[38] M. Zainul Hasani Syarif, "Kedudukan Fatwa di Negara Muslim: Indonesia, Berunai Darussalam, Malaysia, Mesir," *Journal of Islamic Studies,* 16(2) (2020), 185-202.

[39] Idris Awang and Tengku Sarina Aini, "Pembudayaan Mazhab Syafie, 157-172.

[40] Syed Salim Syed Shamsuddin, Muhammad Farid Wajdi Ab. Rahim, Abdul Karim Pardon and Mohd Faisal Mohamed, Kitab Turath Fiqh Syafie Jawi Sebagai Medium Penyampaian Ilmu Fardu Ain di Malaysia: Analisis Metodologi Penulisan Kitab Hidayat Al-Sibyan Fi

must be based on the final opinion of the Shafie school.[41] The opinions of other schools will only be considered when there is no opinion of the Shafie school in the matter being discussed or there is an existing opinion that is not in favour of the public interest.[42]

Fatwa Methodology in Malaysia

In Malaysia, every state plays an important role in the administration of Islamic affairs. This means the states have jurisdiction in issuing a fatwa; some fatwa are gazetted, and others are not.[43] This provision is based on the 9th Schedule of the Federal Constitution relating to the power of the state to manage the governance of Islamic religious affairs in accordance with the function of His Majesty the Sultan as the head of the religion of Islam except for the states of Penang, Melaka, Sabah, Sarawak and the Federal Territories of which the head of religion is the Yang Di-Pertuan Agong.[44] Therefore, the fatwa issued by the State Fatwa Committee is considered to be the government's official view on said legal issues. The Fatwa Committee has been officially established under the provisions of acts,

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[41] Mohd Hapiz Mahaiyadin and Sumayyah Abdul Aziz, "Taklid Mazhab Syafi'i di Malaysia: Satu Tinjauan dalam Konteks Maslahah Perpaduan Ummah," *Journal of Contemporary Islamic Studies,* 6(1) (2020), 151-170.

[42] Anisah Ab. Ghani, "Kedudukan Mazhab Syafi'i Dalam Ibadat di Malaysia," *Jurnal Fiqh,* 4, (2007), 185-196.

[43] Nora`inan Bahari, Pemakaian Elemen Maqasid Shariah Dalam Institusi Fatwa Di Malaysia (paper presented at the E-Prosiding Persidangan Antarabangsa Sains Sosial dan Kemanusiaan, 24-25 November 2020).

[44] (Perkara 42(10) Perlembagaan Persekutuan).

enactments, and ordinances of the State Administration of Islamic Law.[45]

Even though religious matters are entirely placed under the state's authority, there is a body known as the National Fatwa Committee Muzakarah (MJFK), which acts as a coordinator at the central level to coordinate the issuance of fatwas on certain issues. Therefore, there are two influential fatwa bodies in Malaysia, namely the National Fatwa Committee Muzakarah (MJFK) and the State Fatwa Committee (JFN) in addition to the Bank Negara Malaysia Shariah Advisory Council (Islamic Banking and Takaful) and the Securities Commission Shariah Advisory Council (Islamic Capital Market) that are indirectly involved in the issuance of fatwas.[46] However, it must be emphasised that the field of fatwa in Malaysia is entirely under the jurisdiction of the states. In terms of membership, MJFK consists of the Muftis of each state in Malaysia and is chaired by the Department of Islamic Development Malaysia (JAKIM). Meanwhile, the State Fatwa Committee is chaired by the Mufti in each of the 14 states who have been appointed with authority by the Head of The Religion of Islam, His Royal Highness Tuanku al-Sultan.[47]

The mufti and fatwa institution is a religious institution with roles and responsibilities to resolve issues related to Shariah law and clarify any ambiguity

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[45] Muzakarah Jawatankuasa Fatwa, *Garis Panduan Pengeluaran Fatwa di Malaysia* (Putrajaya: JAKIM, 2017), 4.

[46] Nora`inan Bahari, Pemakaian Elemen Maqasid Shariah Dalam Institusi Fatwa Di Malaysia (paper presented at the E-Prosiding Persidangan Antarabangsa Sains Sosial dan Kemanusiaan, 24-25 November 2020).

[47] Muhammad Fathullah Al Haq Muhamad Asni and Jasni Sulong, "Penyelarasan Fatwa Antara Negeri-Negeri: Analisis Amalan dan Kaedah Penyeragamnnya di Malaysia," *Journal of Fatwa Management and Research,* 9(1), (2017), 86-109.

and confusion on new matters (*ahkam al-nawāzil al-fiqhiyah al-muāsarah*). This institution is given the authority and responsibility under the Federal Constitution and State laws to advise the Yang di-Pertuan Agong and the Sultan or King as the Head of the Religion of Islam for each of the States on matters related to the religion of Islam and Sharia law, particularly issues that have not been resolved or which have caused disputes. This is in line with the position of Islam, which was proclaimed the religion of the Federation during the formation of Malaysia.[48]

The administration of fatwas in the Malaysian context is quite different from fatwas from the Sharia point of view. As has been stated, matters related to religion are subject to the jurisdiction of the states. The head of religion for the states is under the responsibility of the Sultan. As for states that do not have a sultan, the head of religion is the Yang di-Pertuan Agong. Due to this, differences in legal views occur between one state and another despite being in the same country. Appointing a Mufti for each state also falls under this jurisdiction. Section 44 (1), Administration of the Religion of Islam (State of Selangor) Enactment 2003,[49] as an example, has provided;

(1) His Royal Highness the Sultan shall appoint any fit and proper person to be the Mufti and Deputy Mufti for the State of Selangor.

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[48] Ghazali Haji Abdul Rahman, Proses Penyediaan Fatwa di Malaysia: Peraturan dan Amalan, (paper presented at the Muzakarah Pakar: Garis Panduan dan Piawaian Pengeluaran Fatwa Peringkat Kebangsaan, Universiti Sains Islam Malaysia, 24 Oktober 2012).

[49] Enakmen Pentadbiran Agama Islam (Selangor), 2003, Bahagian III (Pelantikan Mufti, Kuasa Dalam Hal Ehwal Agama, Jawatankuasa Fatwa Dan Fatwa Yang Berhubungan Dengan Kepentingan Nasional), Seksyen 44(1)

From the aspect of issuing fatwas, the majority of state fatwa bodies in Malaysia perform *ijtihad* through two main sources, of which the first source comprises the al-Quran, al-Sunnah, Ijmak, Qiyas, and the second source, *al-Istiḥsān* (الاستحسان), *al-Maṣāliḥ al- Mursalah* (المرسلة المصالح), *al-'Urf* (العرف), *sadd al-dzara'i* (الذرئع سد), *al-Istiṣḥāb* (الاستصحاب), *shar'u man qablanā* (قبلنا من شرع), *qawl al-ṣaḥābī* (الصحابي قول), *'amal ahl al-madīnah* (المدينة اهل عمل) and other proofs. This means that most Malaysian states divide their fatwas into two sources: agreed-upon propositions, which comprise all four primary arguments, and non-agreed propositions, which belong to other propositions.

In addition, Malaysia has a specific methodology for the issuance of fatwas. In this case, the majority of states usually issue laws or fatwas based on reliable opinion *(qawl muktamad),* according to the Shafie School of Thought. The selection of the Shafie School of Thought as the basis for issuing fatwas is stipulated in the Administration of The Islamic Law (State of Pahang) Enactment 1991 (Section 41), the Administration of The religion of Islam (State of Perak) Enactment 1992 (Section 39), Administration of The religion of Islam (State of Selangor) Enactment 2003 (Section 54), Administration of The religion of Islam (State of Melaka) Enactment 2002 (Section 42), Administration of The religion of Islam (State of Negeri Sembilan) Enactment 2003 (Section 54) and Majlis Islam Sarawak Ordinance 2001 (Section 39). However, suppose the final *qawl* of the Shafie school is against the public interest, in that case any final *qawl* of the Hanafi, Maliki, and Hanbali schools or any other school with a similar jurisprudence method can be referred to. In fact, in certain circumstances, if it is found that the final *qawl* is seen

to conflict with the public interest, then the Fatwa Committee can use its *ijtihad* (MJF, 2017).[50] This condition shows the flexibility of fatwas in Malaysia in embracing the welfare of society. In other words, the approach is to generate benefits from Islamic law through the decided fatwas.

In this regard, public interest surrounds the well-being and advantage of the community of which the Mufti or the Fatwa Committee certifiably guarantees its validity to achieve the *maqāṣid al-shariah* which includes the preservation of the five main imperatives (*al-ḍaruriyyat al-khams)* which are to protect religion, life, offspring, intellect, and property.[51] It does not work the other way around, which is determined by the instincts and logic of the public.

Therefore, there are several important criteria in the transition of the final *qawl* to other criteria to preserve the public interest, namely:[52]

- Real conflicts, problems, or dominant presumptions (*ghalabat al-zann*), and not merely imaginary.

- Conforms to the customs and practices of the local community and conforms to sharia.

- The conflict involves many parties (*al-umūm*) or most of the people (*al-ghalabah*).

Maqāṣid al-Shariah in the Fatwa Framework of States in Malaysia

The position of *maqāṣid al-shariah* on *fatwa* in Malaysia should be thoroughly explained due to two main factors: first, *maqāṣid al-shariah* is not a

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[50] Muzakarah Jawatankuasa Fatwa, *Garis Panduan Pengeluaran Fatwa di Malaysia* (Putrajaya: JAKIM, 2017), 4.

[51] Ibid, 22.

[52] Ibid, 22.

proposition or basis for any fatwa. According to some scholars, *maqāṣid al-shariah* is an independent legal argument. This means the approach taken by the states in Malaysia in not utilising *maqāṣid al-shariah* as a legal basis raises questions about its authority in the fatwas that have been decided. Second, the main reference to the fatwa in the majority of states in Malaysia is the Shafie School of Thought. The stronghold on the views of the Shafie School as a methodology by the majority of states in Malaysia raises questions since the contemporary approach in fatwa emphasises freedom in the choice of the School of Thought that appreciates favouring easier option *(al-taysīr),* which is the general objective of shariah.[53]
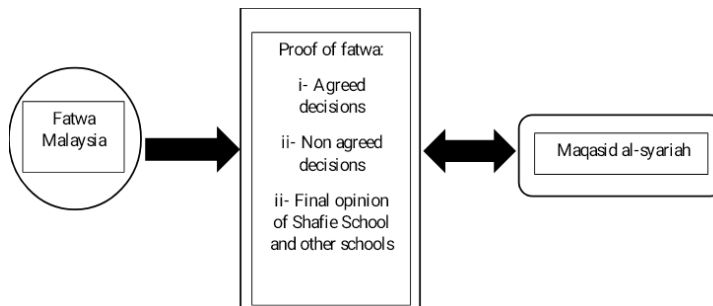

Diagram 1.0: The relationship between *maqasid al-shariah* in the methodology of fatwa in Malaysia

Based on Diagram 1.0, *maqāṣid al-shariah* in the chapter of fatwa in Malaysia does not stand as a direct basis of the fatwa. However, this does not imply that *maqāṣid al-shariah* is disregarded. The fact is that it regulates any fatwa decision in warranting that the advantages be preserved by shariah. This is proven in

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[53] Yusuf al-Qaradawi, *Fatawa Mu'asirah,* (Kaherah: Dar al-Shuruq, 2015), 108; Mohd Rumaizuddin Ghazali, "Kepentingan Maqasid Syariah dalam Berfatwa di Malaysia," *Jurnal Pengurusan dan Penyelidikan Fatwa,* 4(1), (2014), 29.

the study by Ahmad Syukran Baharuddin et al. (2021) about the preservation of *maqāṣid al-shariah* in fatwas decided in Malaysia. In fact, form *(sighah) fatwa* is presented in some *fatwas* that clearly show the application of *maqāṣid al-shariah*, for example:

1. In expanding the definition of *al-Riqāb*

We also believe that expanding the meaning of *al-riqāb* by referring to all forms of hindrances and restraints is more *waqi'iy* and corresponds with *maqāṣid al-shariah*.[54]

2. Lathi Challenge

We would like to advise the public to stop sharing this video on social media accounts and to not engage in any actions that contain elements of worship and rituals like this to preserve our faith.[55]

In terms of its form, *maqāṣid al-shariah*, which is carried out in fatwas in Malaysia, is within the framework of unjustified consultation *(taqlidi)*. This can be examined from two points: First,, limiting *maqāṣid al-shariah* to *al-ḍaruriyyat al-khams* and second, maintaining the discourse structure of *maqāṣid al-shariah* in *usul fiqh* practised by the previous scholars. In this regard, the matter of preserving *maqāṣid al-shariah* in *fatwas* in Malaysia has contained in *sharia*

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54 Wan Ahmad Naqiuddin, "Irsyad Al-Fatwa Siri Ke #392: Adakah Masih Wujud Asnaf Al-Riqab Pada Zaman Sekarang?" *Pejabat Mufti Wilayah Persekutuan.* Retrieved on 12 June 2022 from https://muftiwp.gov.my/artikel/irsyad-fatwa/irsyad-fatwa-umum/4089-irsyad-al-fatwa-siri-ke-392-adakah-masih-wujud-asnaf-al-riqab-pada-zaman-sekarang

55 Wan Ahmad Naqiuddin, "Irsyad Al-Fatwa Series 521: The Ruling of 'Lathi Challenge'." *Pejabat Mufti Wilayah Persekutuan.* Retrieved on 12 June 2022 from https://www.muftiwp.gov.my/en/artikel/irsyad-fatwa/irsyad-fatwa-umum-cat/4543-irsyad-al-fatwa-series-521-the-ruling-of-lathi-challenge

proofs as well as the authoritative view of the Schools of Thought as a result of inference of presumptive indicators of the law *(isṭinbāt adillah zanniyyah)* in various issues. *Maqāṣid al-shariah* is derived from the understanding of *usul fiqh.* However, in the current context, *usul fiqh* is set apart from the discourse of *maqāṣid al-shariah.* By scrutinizing the relationship between *usul fiqh* and *maqāṣid al-shariah* in the current context, three methods exist to explain the discourse relationship between these two fields. First, *maqāṣid al-shariah* constitutes part of the debate on *usul fiqh.* Second, the construction of usul fiqh can be restored by mastering the debates of *maqāṣid al-shariah* and making it a constituent of the structure of *usul fiqh.* Third, a new branch of knowledge that is specifically related to *maqāṣid al-shariah* but separate from the knowledge of *usul fiqh* is established.[56] Therefore, the issuance of *fatwas* in Malaysia is similar to the first and second approaches. This means that even if *maqāṣid al-shariah* is not used directly as an argument in the *fatwa,* its authority is guaranteed through the decision of the *fatwa,* which is decided based on justice in *usul fiqh.*

Preservation of *Maqsad Wihdatul Ummah* through Fatwa Methodology of the Shafie School of Thought

The use of the Shafie School of Thought in the practice of *fatwas* in Malaysia can be regarded as a system to preserve the inherent nature of religion, which is unity and strengthening ties among Muslims in this country. The goal of unity of the *ummah (Maqsad Wihadatul Ummah)* can be observed through several proofs in the verses of the Al-Qur'an, for example:

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[56] Nu'man Jughaym, "Al-'Alaqah bayn Maqasid al-Shari'ah wa Usul al-Fiqh," *Majalah Al-Islam fi Asia,* 4(2), (Disember 2007), 56.

وَاعْتَصِمُواْ بِحَبْلِ اللهِ جَمِيعًا وَلاَ تَفَرَّقُواْ

Translation: Hold firmly to the means of access to Allâh all together, and do not be disunited…(al-Imran:103)

وَلاَ تَنَازَعُواْ فَتَفْشَلُواْ وَتَذْهَبَ رِيحُكُمْ وَٱصْبِرُواْ

Translation: and do not quarrel with each other, lest you should lose courage, and your prowess should evaporate; and be patient.(al-Anfal:46)

إِنَّ الَّذِينَ فَرَّقُواْ دِينَهُمْ وَكَانُواْ شِيَعًا لَّسْتَ مِنْهُمْ فِي شَيْءٍ

Translation: As for those who divide their religion and break up into sects, thou hast no part in them in the least: their affair is with Allah: He will, in the end, tell them the truth of all that they did. (al-An'am:159)

وَأَصْلِحُواْ ذَاتَ بَيْنِكُمْ

Translation: They ask thee concerning (things taken as) spoils of war. (al-Anfal:1)

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَن يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاء فِي الْخَمْرِ وَالْمَيْسِرِ

Translation: The devil only seeks to instil hatred and enmity between you with wine and gambling. (al-Maidah:91)

Based on the verses mentioned above, the uniformity and togetherness of the *ummah* are important

objectives of syarak in the context of nationhood.[57] *Maqsad Wihadatul Ummah* can be better understood through the mission purpose of the Messengers and Prophets, which is to convey the truth to humankind in order to resolve disagreements between them.

<div dir="rtl">

كَانَ النَّاسُ أُمَّةً وَاحِدَةً فَبَعَثَ اللّهُ النَّبِيِّينَ مُبَشِّرِينَ وَمُنذِرِينَ وَأَنزَلَ
مَعَهُمُ الْكِتَابَ بِالْحَقِّ لِيَحْكُمَ بَيْنَ النَّاسِ فِيمَا اخْتَلَفُواْ فِيهِ وَمَا
اخْتَلَفَ فِيهِ إِلاَّ الَّذِينَ أُوتُوهُ مِن بَعْدِ مَا جَاءَتْهُمُ الْبَيِّنَاتُ بَغْياً بَيْنَهُمْ
فَهَدَى اللّهُ الَّذِينَ آمَنُواْ لِمَا اخْتَلَفُواْ فِيهِ مِنَ الْحَقِّ بِإِذْنِهِ وَاللّهُ يَهْدِي
مَن يَشَاءُ إِلَى صِرَاطٍ مُّسْتَقِيمٍ

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Translation: Mankind was one community, and Allah sent Prophets with glad tidings and warnings, and with them, He sent down the Scripture in truth to judge between people in matters wherein they differed. And only those to whom (the Scripture) was given differed concerning it after clear proofs had come unto them, through hatred, one to another. (al-Baqarah: 213)

However, the question that emerges is about the genuine meaning of the term *Ummah*. In this regard, the term ummah has a variety of connotations depending on the context of the dispute. However, if it is studied from a religious perspective, the phrase explicitly refers to Muslims or the Muslim population inside a country. The idea could be refined using various Quranic texts.

<div dir="rtl">

وَكَذَلِكَ جَعَلْنَاكُمْ أُمَّةً وَسَطًا لِتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ وَيَكُونَ
الرَّسُولُ عَلَيْكُمْ شَهِيدًا

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57 Mohamad Zaidi Abdul Rahman, "Aplikasi Maqasid al-Syari'ah dalam Pentadbiran Negara: Satu Tinjauan Sejarah Islam," *Jurnal Fiqh,* 12, (2015), 29-56.

Translation: And thus we have made you a just community that you will be witnesses over the people, and the Messenger will be a witness over you. (al-Baqarah: 143)

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ

Translation: You are the best nation produced [as an example] for humankind. You enjoin what is right, forbid what is wrong, and believe in Allah. (al-'Imran: 110)

إِنَّ هٰذِهِ أُمَّتُكُمْ أُمَّةً وَاحِدَةً وَأَنَا رَبُّكُمْ فَاعْبُدُونِ

Translation: Truly! This, your Ummah [Sharia or religion (Islamic Monotheism)] is one religion, and I am your Lord, therefore worship Me (Alone). (al-Anbiya': 92)

Based on the verses, the term "*ummah*" obviously refers to Muslims as a group that has a certain role in their beliefs. Thus, *maqṣad wihdatul ummah* is a common sharia objective that Muslims must uphold to bring religious glory to a society other than Islam.[58] According to Ibn 'Atiyyah, a *maqāṣid al-shariah* is specific to *ummah*. The *maqṣad* involves the formation of an *ummah* union. In this regard, Sharia does not construct an individual narrative. This means that the emphasis of Sharia is on the formation of the *ummah*. It is possible to achieve this by uniting faith, Sharia, and language while remaining mindful of the diversity and

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58 Muhammad Ahmad al-Qiyati Muhammad, "Maqsad Wihdah al-Ummah fi al-Shari'ah al-Islamiyyah," *Journal Alasmarya University* 18, (June 2013), 156-157.

plurality of other communities.[59] Thus, in the context of Malaysia, the term ummah can be specifically referred to the Muslim community.

In achieving the *maqṣad*, the School of Thought can be considered as a *wasilah* that is necessary (*hājiy*). Nevertheless, it should be clear that the dependence on the Shafie School of Thought usually occurs in problems that scholars have discussed, especially in matters of worship. This means for issues that have not occurred yet and those without a legal answer, *ijtihad* will be performed by referring to authoritative arguments while simultaneously considering the aspects of *maṣlahah* and *mafsadah*.[60] This usually occurs in rapidly growing fields such as Islamic banking and science.[61] Thus, even though the issuance of the *fatwa* based on the Shafie School of Thought seems not to apply the principle of favouring easier option *(al-taysīr),* which is one of the main components of *maqāṣid al-shariah,* the reality behind this approach is that it can preserve a more important aspect of *maqāṣid al-shariah* that concerns the uniformity and togetherness of Muslims in this country. In other words, the purpose of standardizing fatwa affairs through the reference of the Shafie School of Thought is religious management at the national level to avoid confusion or disputes among the Muslim community.

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[59] Jamal al-Din 'Atiyyah, *Nahwa Taf'il Maqasid al-Shari'ah* (Dimaqh: Dar al-Fikr: 2001), 155.

[60] Abdul Halim Ibrahim and Muhammad Safwan Harun, "Applying the Concepts of Beneft and Harm in Malaysian Bioethical Discourse: Analysis of Malaysian Fatwa," *Journal Bioethical Inquiry*, (2024).

[61] Alias Azhar, Muhammad Azam Hussain, Mohd Zakhiri Md. Nor And Mohamad Khairi Othman, "Penyelidikan Fatwa Dalam Kerangka Maqasid Al-Syariah: Satu Tinjauan," *Ulum Islamiyyah,* 20, (April 2017), 61.

This is in line with Khulafā' al-Rāshidin's practise of ruling a country towards the strengthening of Muslims. For example, during the reign of Saidina Umar RA, he directed that the tarawikh prayer be conducted in assembly to emphasise the unity of devotion. To achieve the same goal of ummah unity, Saidina Uthman RA invented political ijtihad to unite the way of reading the Quran into a convention known as Resam Uthmani.[62] The two examples are part of the government's efforts to promote unity among Muslims during the Khulafā' al-Rāshidin era, which is an essential *maqṣad* in the administration of a country. Therefore, the attempt to create unity of the ummah needs to be implemented with various approaches that suit the reality of a particular time and place by leaders (*ulil amri).*

As explained earlier, the influence of Schools of Thought in Fatwa in Malaysia has been established for a long time. The influence of the Shafie School gained a dominant position among the Muslim community in Malaysia without any conflict or opposition between the 13th century and the 19th century. However, after the introduction of the *Salafiyyah* movement in this country beginning in the 19th century through the discourse of *al-Imam* magazine, which later became the official communique of the reformist movement and served as the main mode for disseminating any criticism of the traditionalist movement,[63] it led to the seeds of conflict among the Muslim community in Malaysia.[64] Malaysia

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[62] Mohamad Zaidi, "Aplikasi Maqasid al-Syari'ah dalam Pentadbiran Negara, 29-56.

[63] Inarah and Saadan, "Keterbukaan Bermazhab, 289-308.

[64] Saadan Man and Abdul Karim Ali, "Ikhtilaf Fiqhi di Kalangan Aliran Syafi'iyyah dan Salafiyyah di Malaysia: Analisis Retrospektif Terhadap Faktor Pencetus," *Jurnal Fiqh,* 2, (2005), 73-96; Razali Musa, "Perselisihan Antara Gerakan Al-Asya'irah dan Salafiyyah:

began to be influenced by the *tajdīd* movement of Salafiyyah with the emergence of *islāh* figures who opposed the practice of superstition and innovation that had no roots in the religion.[65] Generally, the group that takes the *Salafi* approach or reformism in Malaya is known as *Kaum Muda,* which emphasised the concept of *islāh* and *tajdīd.*[66] Among the principles held by this group was that they did not want to be tied to a specific School of Thought but instead to freely choose views from the existing Schools using certain methodologies.[67] The group that adheres to the al-Asya'irah approach is known as the Old People *(Kaum Tua)*; they embrace traditionalism and the Shafi'iyyah School of Thought.[68]

Beyond that, the fact that needs to be acknowledged is the influence of the Shafie School in Malaysia has grown through formal and informal education in Islamic traditional study centres, schools, and *tahfiz* centres, as stated earlier. Although not comprehensive, it is dominant and coupled with the support of political factors, power, and local scholarly

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Analisis Pendekatan Ulama Ahl Sunnah Wa Al-Jamaah," *Jurnal Peradaban Islam,* 1(1), (Ogos 2020), 82-110.

[65] Nor Hafizi Yusof, Ahmad Fauzi Hassan, Mohd A'Tarahim Mohd Razali, Abdillah Hisham Abd Wahab, Tasnim Abd Rahman and Fatimah Zaharah Ismail, The Spread of Salafi Wahabi Influence: A Study in Terengganu, Malaysia (paper presented at the International Conference on Empowering Islamic Civilization in the 21st Century, Terengganu, 6-7 September 2015).

[66] Zulkarnain Haron and Nordin Hussin, "Islam di Malaysia: Penilaian semula fahaman salafi jihadi dan intepretasi jihad oleh Al Jama'ah Al Islamiyah," *Malaysian Journal of Society and Space,* 9(1), (2013), 126-137.

[67] Ibrahim Adham Mohd Rokhibi, Mohd Farhan Md Ariffin and Syed Mohd Jeffri Syed Jaafar, "Cabaran Pseudo-Salafi Terhadap Amalan Masyarakat Islam," *Jurnal Al-Ummah,* 2, (2020), 31-48.

[68] Inarah and Saadan, "Keterbukaan Bermazhab, 289-308.

figures.[69] This means that the influence of the Shafie School is not a matter of the past, as it still maintains its influence in the current context. Due to this, Malaysia interfering with opposing views of this School of Thought on conflicting issues is inappropriate. For example, the attempt to debut the *I Want to Touch A Dog* programme in 2014 was contradictory to the norms, culture, and beliefs of the Schools of Thought, which has a strong hold among Muslims in this country.[70]

Although the sectarian approach is considered rigid from one aspect, the objective of unity in strengthening the ties of Islam among the majority can be achieved through this approach. This shows that using *maqāṣid al-shariah* through the fatwa methodology in Malaysia considers the comprehensive aspect of *maṣlahah 'ummah*. Despite the absoluteness of the *fatwa* in the states, the National Fatwa Committee still has to convene to reach a consensus for a consistent legal view on particular issues.

In addition, the guidelines stipulate that reference to other Schools is a more appropriate approach for certain issues. This provision shows the flexibility and openness of the fatwa issuance methodology in Malaysia to ensure no hardship *(haraj)* in the fatwa decided. Among the examples of *fatwas* that were ultimately decided not based on the Shafie School is *rukhsah* in ablution, which is not invalidated when physical contact

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[69] Mohd Hapiz Mahaiyadin, "Wacana Keiltizaman Dengan Mazhab Syafi'I Dalam Konteks *Maqasid* Syariah Di Malaysia," (paper proceedings in Seminar Asas Maqasid al-Shari'ah, UNISZA, 2017), 12.

[70] Zulkifli Mohamad al-Bakri, Program *I Want to Touch A Dog. Bayan Linnas Siri 2, Pejabat Mufti Wilayah Persekutuan.* Retrieved on 10 June 2022 from https://muftiwp.gov.my/artikel/bayan-linnas/1873-bayan-linnas-siri-1-10

with a non-mahram occurs during the Hajj season, payment of zakat through cash payments and several other *fatwas*. If such *fatwas* are reviewed, it can ensure that Islamic laws can be implemented within the capabilities of *mukallaf*. In other words, views other than the Shafie School in the relevant cases allow the implementation of Islamic law without *mashaqqah* and *haraj,* which is preserved in the general *maqāṣid al-shariah*.

In another opinion, the favouring easier option (*al-taysīr)* approach in the fatwa that is inclined towards the openness of the schools of thought needs to be studied more deeply through the evaluation of local reality *(wāqi').* In a broader context involving Muslim-minority countries, for example, adherence to a particular School of Thought may result in a heavy legal obligation. Therefore, the sect's openness to explore more straightforward views is necessitated. This point was emphasised by Muḥammad al-Ghazālī, who insisted that scholars must explain the simplest law in European countries without being tied to any particular School of Thought.[71] The same assertion can be seen in al-Buti's view, where the maintenance of *al-kulliyāt al-'āmmah* must be used as a basis for implementing shariah by following the order of priority of *al-masālih al-ḍarūriyyat, al-hājiyyat,* and *al-tahsīniyyāt* in the context of the Muslim minority. The spread of Islamic shariah in the West must not lean towards any inclination for certain Schools of Thought, races, and thinking. For the mission's success, al-Buti suggested that preachers guide the community to unite on the path of shariah by

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[71] Muhammad al-Ghazali, *al-Sunnah al-Nabawiyyah Bayn Ahl al-Fiqh wa Ahl al-Hadith* (6th ed.), (Kaherah: Dar al-Shuruq, 1989), 59-60.

emphasising the need to preserve *al-kulliyāt al-khamsah.* This pattern will negate any sectarian school influence to create the unity of Muslims in practising the true Shariah in the West.[72]

This is in contrast to the context of a Muslim-majority country such as Malaysia, which already influences a certain school. In this case, the preservation of *maqāṣid al-shariah* in Islamic law leads to the unity of Muslims. This is also an important argument in the debate on *maqāṣid al-shariah* from the perspective of Ibn 'Ashur.[73] Hence, the *manhaj al-taysīr* approach, which considers the simpler views between schools, is very suitable for practise in Muslim-minority countries. On the other hand, in the context of the Muslim-majority community, there is a reinforcement of certain schools of thought, upholding existing beliefs that contain the value of favouring easier option *(al-taysīr)* to facilitate the practice and community acceptance of religion, thus guaranteeing the unity of the ummah. This formulation

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[72] Muhammad Sa'id Ramadan al-Buti, *al-Islam wa al-Gharb* (Dimashq: Dar al-Fikr, 2007), 117-120. In fact, he considered that ijtihad fiqh which is formed from the mujtahid of the Shia (school of law) is also accepted to be practiced provided that the ijtihad reaches through a good sanad and sahih hadiths. Please refer, Muhammad Sa'id Ramadan al-Buti, *Ma'a al-Nas: Mashurat wa al-Fatawa* (Dimashq: Dar al-Fikr, 2011), 221-222.

[73] The work of Ibn 'Ashur was produced to close the gap between the khilaf of Islamic law through the dimension of maqasid al-syariah. This is because, the rulings of fiqh issued through the methods of usul fiqh are exposed to the growing khilafīah. According to Ibn 'Ashur, this is because the formation of usul fiqh itself is built from the discussion of the rulings of fiqh which have been lost between the imams. As a result, unity of mind remains unattainable through usul fiqh. Furthermore, istinbat through usul fiqh is said not to look at the dimensions of maslahah and maqasid as it is limited to the role of syarak language and pronouncements such as general, special, absolute, zahir, fact, majaz, takwil, takhsis, tarjih and so on which involves language. Please refer, Ibn 'Ashur, *Maqasid al-Shari'ah,* 3-4.

is also based on the fiqh method of doing good deeds despite *khilāf* or disagreements, including:

الاجتهاد لا ينقض بالاجتهاد

Translation: An ijtihad is not invalidated by another ijtihad.

لا إنكار في مسائل الاجتهاد

Translation: Not to disobey in the matter of ijtihad

Based on the jurisprudence method mentioned, the various jurisprudence views result from the jurists' ijtihad against the probable arguments or *dilālah (zanni)*.[74] Due to that, the position between the existing jurisprudential views is equivalent, which is *zanniyat* as a result of the jurisprudential ijtihad. This fact needs to be explained to dispel certain views that say the simpler opinion is closer to *maqāṣid al-shariah.* However, that is not the reality. Every view is equal, that is, *zanniyat,* and needs to be adapted to the local situation or *waqi'* to preserve the more significant benefits.

Conclusion

In the context of fatwas in Malaysia, *maqāṣid al-shariah* has a significant role in explaining the justification of the decided fatwas. In this case, even though *maqāṣid al-shariah* does not act as a source of fatwa, it plays an indirect role in ensuring the fairness of the law through *adillah syariah,* which is authoritative. In addition, the usual practice in deciding fatwas in Malaysia is to preserve the common good, enveloping community unity and unification in religious practices. Although from one aspect, it seems that the methodology

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[74] Abd al-Ilah bin Husayn al-'Arfaj, *al-Manahij al-Fiqhiyyah al-Mu'asarah: 'Ard wa al-Tahlil,* (Kuwait: Afaq, 2015), 266.

of fatwas in Malaysia does not uphold the principle of favouring the easier option *(al-taysīr)* when compared to *aqwāl al-madzahib*, there is a greater achievement of *maqsad* involving the unification and unity of Muslims to uphold the sovereignty of religion in the context of the Muslim majority.

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