

THE USE OF *MAQĀṢID AL-SHARĪ'A* IN MARITIME AND NATIONAL RESILIENCE CONTEXT

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Abstract: This study examines the integration between the paradigm of Islamic law and maritime affairs and national resilience. The *maqāṣid al-sharī'a* play a significant role in providing mechanism and its practical strategies on how maritime affairs and national resilience are to be developed. This study aims at highlighting how Islamic law is integrated with the maritime affairs and national resilience in the way they are connected with the spiritual-religious values in their development. The maritime affairs and national resilience are used as the object of analysis in an attempt of integrating between Islam and natural and social sciences. The study comes to justify the significant role of Islamic values to be put in maritime affairs and national resilience as the foundation to protect life, assets and future generation.

Keywords: Maritime, National Resilience, *Maqāṣid Al-Sharī'a*, Islamic Law

Abstrak: Riset ini mengkaji tentang titik temu antara paradigma hukum islam, kemaritiman dan ketahanan nasional. *Maqāṣid al-sharī'a* berperan penting dalam menyediakan mekanisme dan strategi praktis tentang bagaimana kemaritiman dan ketahanan nasional dikembangkan. Hal ini bertujuan untuk melihat bagaimana hukum Islam terintegrasi dengan kemaritiman dan ketahanan nasional sehingga dalam pengembangannya terkoneksi dengan nilai-nilai spiritual-religious. Bidang kemaritiman dan ketahanan nasional digunakan sebagai objek analisis dalam upaya mengintegrasikan antara Islam, ilmu alam dan ilmu sosial. Kajian ini menjelaskan bahwa lingkup nilai-nilai keislaman dalam hal kemaritiman dan ketahanan nasional menjadi bagian dari fondasi menjaga kelestarian kehidupan (jiwa), harta dan kualitas generasi penerus bangsa (menjaga keturunan).

Kata Kunci: Kemaritiman, Ketahanan Nasional, *Maqāṣid Al-Sharī'a*, *Sharī'ah*

Introduction

Drug abuses, woman and children trafficking, illegal migrant, armed robbery, maritime piracy, arms smuggling and terrorism¹ are, among others, legal violation in the territorial waters of Indonesia that threaten the national security. Indonesia abounds with natural and human resources, ethnicities, tribes, languages and religions as its wealth. To this end, the country needs to properly manage its wealth to enforce its national resilience and to maintain its existence as a global citizen.² Islamic law plays an important role in designing the maritime law (marine affairs) and Indonesia's national security.

There have been studies on maritime laws with a variety of objects and approaches such as culture,³ resources,⁴ strategic politics,⁵ secu-

rity and religion. The study on religious perspective, however, is left undiscussed that still fill the gap in terms of philosophical as well as practical issues.⁶ This study attempts to highlight maritime and national resilience with Islamic law perspective. It tries to shed light the basic legal paradigm (*sharī'a*) in providing the conceptual foundation for maritime and national resilience in general. The study argues that the concept of *sharī'a* strongly provides the spiritual foundation for the maritime law and national resilience in Indonesia. In other words, the maritime affairs and national resilience are closely integrated with Islamic values in shaping the strategic policy.

Sharī'a in Social Context

Sharī'a is defined as a set of rules assigned by God to be used as a guideline of life. It commonly includes aspects of actions (*'amaliyāt*), belief (*i'tiqādiyāt*) and ethics (*akhlāqiyāt*).⁷ The law giver is known as *Shārī'* referring to Allah the Almighty Himself who has sent it to His Messenger and assigned the Prophet deliver it to the community. The *sharī'a*, therefore, is Allah's command and believed to become principles of life for Muslims and human life in this world. Muslim lawyers have paid various

¹ Fredy B.L. Tobing, "Peran Negara Dalam Menangani Isu Bajak Laut Yang Bersifat Transnasional di Asia Tenggara," *Indonesian Journal of International Law* (2004). 154.

² M. Bambang Pranowo, *Multidimensi Ketahanan Nasional*, 1st ed. (Jakarta: Pustaka Alvabet, 2010), p. 35.

³ The studies conducted by Ida Liana Tanjung (State University of Medan) entitled, "*Budaya Maritim Orang Pesisir (Pasisir) Di Indonesia* (Jakarta, 2019)". Agus Suwignyo (Department of History, Faculty of Cultural Studies, Gadjah Mada University) with, "*Budaya Maritim Dalam Horizon Pengetahuan* (Jakarta, 2019)". Andi Ima Kesuma (State University of Makassar) with, "*Merekat Laut; Menemukan Kekuatan Budaya Bahari Nusantara Menuju Negara Maritim Indonesia* (Jakarta, 2019)". Respectively. Their studies were presented in the *National Seminar at Naval Staff and Command College*, Jakarta, Indonesia on October 30-31, 2019.

⁴ The studies conducted by James Abrahamsz (University of Pattimura) entitled, "*Perencanaan Pembangunan Wilayah Kepulauan Berbasis Sumber Daya Maritim; Refleksi Dari Lokal Untuk Nasional* (Jakarta, 2019)". Indra Jaya (IPB University, Bogor-Indonesia) with, "*Sumber Daya Maritim: SDG, Ancaman, Pencegahan Dan Perlindungan Serta Rekomendasi Pengembangan* (Jakarta, 2019)". And The Naval College of Technology Research with, "*Konsep Pemberdayaan Potensi Sumberdaya Lokal Dalam Mendukung Keberlanjutan Pembangunan Infrastruktur Dan Konektivitas Maritim Di Indonesia* (Jakarta, 2019)". Their studies were pre-

sented in the National Seminar at Naval Staff and Command College, Jakarta, Indonesia on October 30-31, 2019.

⁵ The study conducted by Shiskha Prabawaningtyas (Paramadina University) entitled, "*Diplomasi Maritim: Posisi Tawar Dan Misi Strategis* (Jakarta, 2019)". Her study was in the National Seminar at Naval Staff and Command College, Jakarta, Indonesia on October 30-31, 2019.

⁶ Makmur Keliat, "Keamanan Maritim Dan Implikasi Kebijakannya Bagi Indonesia," *Jurnal Ilmu Sosial dan Ilmu Politik* 13 (2009). No.1. Badan Informasi Geospasial, Geomaritime Indonesia; *Kajian Histori, Sumberdaya Dan Teknologi, Menuju Indonesia Sebagai Poros Maritim Dunia*, 2018. 20.

⁷ Jasser Auda, *Maqāsid al-sharī'a as Philosophy of Islamic Law: A Systems Approach* (London: The International Institut of Islamic Thought, 2017), p. 56.

concerns with Islamic law. Abū Hilāl al-‘Askarī, for instance tried to differentiate between *sharī‘a* and religion. According to him, *sharī‘a* is a path chosen with determination to achieve a goal. In the meantime, religion is a body which includes the path. He adds every religion has its own *sharī‘a* that all adherents must follow to achieve a goal.⁸ This goal is what later called *maqāsid al-sharī‘a*.

Al-Jurjānī, moreover, defines *sharī‘a* as a path or rule which is regulated in Islam. Suffice to say, it is a set of rules written in the religion for its adherents.⁹ The concept of *sharī‘a* is generally interpreted with a general understanding as it may be found in the *Qur‘an* and *Sunnah*. It also seems be reduced to Islamic Jurisprudence as a legal corpus for practical manual.¹⁰ In a broader sense, the word *sharī‘a* has been used to not only include the substantive rules of the *Qur‘an* and the *Sunnah*, but also all the rules derived through *ijtihād* mechanism.¹¹

The objective of *sharī‘a* is to guide people to live in this world with an appropriate mechanism in order to achieve happiness and prosperity. This objective is accordingly defined within *maqāsid al-sharī‘a*. The word *maqāsid* is a plural form of *maqṣid* which means goal, objective, principle, or ends.¹² In Islamic law, *maqāsid* is the goals or objectives behind the law itself. According to Muslim jurists, the *maqāsid* is made to equip the mankind with comprehensive virtues in society (*maṣlaḥa*/public interest).

The classical Muslim scholars have classified or grouped the *maqāsid al-sharī‘a* into various perspectives. Al-Shāṭibī, for example, has classified the *maqāsid al-sharī‘a* into three categories consisting of *darūriyāt* (necessity), *ḥājiyāt* (needs), and *taḥsīniyāt* (luxuries). *Darūriyāt* as the fundamental values include *ḥifẓ al-dīn* (protection and preservation of religion), *ḥifẓ al-‘aql* (protection and preservation of intellect), *ḥifẓ al-nafs* (protection and preservation of soul), *ḥifẓ al-māl* (protection and preservation of property), *ḥifẓ al-‘ird* (protection and preservation of lineage), and *ḥifẓ al-sharf* (protection and preservation of dignity). The *ḥājiyāt*, moreover, is understood as a human need from a wider dimension by considering the minimal impact of damage and loss (*mafsada*), both in *‘ibādāt* and *mu‘āmalāt*. The *taḥsīniyāt* is understood as reaping the benefits or goodness of an action by always avoiding the bad effects of the action according to rational in general. These three categories share each other and has a close relationship one another.¹³

Al-Shāṭibī argues that the *sharī‘a* is created to serve human interests (public interest) in this world and the hereafter. The goal of *sharī‘a* can be achieved in two ways: accomplishing the benefits (*jalb al-manāfi‘*) and avoiding or preventing damage (*dar‘ al-mafāsīd*). Here, the standard or criteria for the *manāfi‘* and *mafāsīd* depends on the basic need for human life.¹⁴

In social context, the *sharī‘a* aims at providing harmony and balance (equilibrium) in all aspect of life. This means it is used to guide and lead to regularity and stability both in the context of social relations and religious practices in accordance with Allah’s commands. Such balance is expected to bring stability

⁸ Manahij Jāmi‘ah al-Madīnah al-‘Ālamiyah, al-Adyān wa al-Mazāhib, 1st ed. (Madinah: al-Madīnah International University, n.d.), p. 45.

⁹ ‘Alī ibn Muhammad ibn ‘Alī al-Zayn al-Sharīf al-Jurjānī, Kitāb al-Ta‘rīfāt (Lebanon: Dār al-Kutub al-‘Ilmiyah, 1983), pp. 127, 140.

¹⁰ Auda, Maqāsid al-sharī‘a as Philosophy of Islamic Law: A Systems Approach, p. 57.

¹¹ Naṣr Abū Zaid, Reformation of Islamic Thought: A Critical Historical Analysis, (WRR Verkenning nr. 10 Amsterdam; Amsterdam University Press 2006), pp. 14-15.

¹² Muhammad al-Tahir Al-Mesawi, Ibn Ashur, Treatise on Maqāsid al-sharī‘a (London-Washington: International Institute of Islamic Thought (IIIT), 2006), p. 2.

¹³ The initial five as the basic maqāsid are popular and approved by the majority of Muslim scholars. In turn, al-Shāṭibī adds *ḥifẓ al-sharf* (protection and preservation of dignity), see: Ibrāhīm Al-Shāṭibī, Al-Muwāfaqāt Fī Usūl Al-Sharī‘ah, 1st ed. (Beirut-Lebanon: Dār al-Kutub al-‘Ilmiyah, 2004), pp. 222-224.

¹⁴ Ghofar Shidiq, Teori Maqashid Syari‘ah Dalam Hukum Islam (Digital book, n.d.). 121.

where social institutions work in a good manner and integrate with one another. At the end, it will bring the members of society safe and secure. When disorder occurs due to conflicting or disharmony it should be avoided and search for settlement. The existence of social institutions is naturally shaped through needs and reciprocal interactions. It means, social norms and values will remain to exist in human life and continuously needed among people.¹⁵

The position of *sharī'a* together with its objectives served to promote public interest (*maṣlaḥa*) and avert evils (*mafsada*). In its process, *Shari'a* caters to reserve general traditions and adapt to innovations in accordance with necessities or needs. In other words, we may argue that *sharī'a* naturally integrate social system of human life in one circle values. In this case, the *sharī'a* is not seen exclusively beyond of and away from the boundary of social development. On the contrary, it offers basic principles capable of accepting and welcoming innovations to the extent of strengthening mutual relationships, man with God's creature and man with God affairs. It is on this juncture that dichotomy or even exclusion in Islam is not justified. *Sharī'a* values, therefore, become the whole and comprehensive formulae in making good social life.

***Sharī'a* and the National Resilience Law**

In recent years, the issue on national resilience has paid special attention of all parties as it plays crucial role for securing state and people interests in general. Indonesia is rich with its natural and human resources, ethnic groups, languages and religions. Therefore, it is challenged to continuously vigilance in protecting all assets in serving all citizens.¹⁶ Being a home for Muslim, Islamic values and ethics plays an

important role in maintaining the maritime law and Indonesia's national security.

In his speech entitled "Keharusan Pembaharuan dalam Islam dan Masalah Integrasi Umat" (The Need for Reform in Islam and the Issue on the Integration of Ummah)" presented at Taman Ismail Marzuki, Nurcholish Madjid mentioned the effort to reform understanding and thought of Islam in seeking the solution of new developments in social life in the world today. In turn, it can bring a positive impact on state administration.¹⁷ For this reason, research and study on the fundamental objectives of Islamic law or the so-called *maqāṣid al-sharī'a*¹⁸ and Islamic law products (*fiqh*) is increasingly significant in order to meet the needs of Islamic law which has now faced with the phenomena that did not happen in the previous times.

An intellectual and methodological approach is essential to reform and renew the *maqāṣid al-sharī'a* in order to adapt and strengthen its context with the changing of times in maintaining its objectives. The study of *maqāṣid al-sharī'a* has been started to establish the foundation of *Sharī'a* and making its development in securing human rights. Here, the *maqāṣid al-sharī'a* becomes the driving force in generating new ideas in Islamic law, particularly the idea of national security or resilience. In regards with *maqāṣid al-sharī'a* and *fiqh*, there are some approaches have been proposed in a way how Islamic law to relevant with and useful for Muslim life today. One of the outstanding contemporary scholars paying serious concern with this field is Jasser Auda. He basically agreed with the role of *maqāṣid al-sharī'a* which has developed by classical mus-

¹⁵ Muhammad Syukri Albani Nasution, *Filsafat Hukum Islam* (Jakarta: PT Raja Grafindo Persada, 2014), p. 36.

¹⁶ Pranowo, *Multidimensi Ketahanan Nasional*, p. 3-5.

¹⁷ Bahtiar Effendi, *Islam Dan Negara: Transformasi Pemikiran Dan Politik Islam Di Indonesia* (Jakarta: Paramadina, 1998), p. 21.

¹⁸ Maqāṣid means goal, objective, principle, or ends. Therefore, *maqāṣid al-sharī'a* is the objective behind the enactment of the Islamic law. Auda, *Maqāṣid al-sharī'a as Philosophy of Islamic Law: A Systems Approach*, p. 2.

lim jurists which includes *ḥifẓ al-dīn* (protection and preservation of religion), *ḥifẓ al-‘aql* (protection and preservation of intellect), *ḥifẓ al-nafs* (protection and preservation of soul), *ḥifẓ al-māl* (protection and preservation of property), and *ḥifẓ al-‘ird* (protection and preservation of lineage). He, however, addressed critical study on this category and saying its concept to be too general and individual and leaving aside universal values such as the principle of justice and freedom.¹⁹ He argued that this classical paradigm needs to be reexamined to adapt to changing of times and strengthening the mission of Islam as a religion of *raḥmatan li al-‘ālamīn* (a mercy for all creations).

As human and cultural development certainly brings about various aspects of life, including the philosophy of Islamic law (*uṣūl al-fiqh*) and the product of Islamic laws (*fiqh*) national resilience becomes one field of its domains. The scope and philosophical framework of *maqāṣid al-sharī‘a* are demanded to change in a sense how Islamic law can serve all human interests along with the increasing development of society. In that, the *maqāṣid al-sharī‘a* is inseparable from the socio-cultural context since its existence is served to facilitate and provide foundation for human life.

In recent years, the concept of classical *maqāṣid al-sharī‘a* received serious concern among Muslim scholars on how it stays relevant with the increasing changes and rapid developments of modern era. The classical concept of *maqāṣid* is perceived of partly irrelevant with today’s needs in providing solution for new cases. Therefore, reinterpretation of *maqāṣid* is proposed in order to rejuvenize the spirit of the *maqāṣid al-sharī‘a* in accordance with its rules and being adjustable for current socio-cultural context. One of the leading scholars, among others, is Jasser Auda who continuously proposed for reforming *maqāṣid al-*

sharī‘a as a philosophy of Islamic law from different disciplines (multidisciplinarity).²⁰

Auda argues that the classical *maqāṣid al-sharī‘a* is more individual in nature. The spirit of protection and preservation inhered in the *maqāṣid* requires reorientation covering more universal, societal and humane (human rights and freedom) *maqāṣid*.²¹ For this reason, Auda develops the new *maqāṣid al-sharī‘a* into 3 levels, namely (1) general *maqāṣid*, (2) partial *maqāṣid*, and (3) specific *maqāṣid*. The general *maqāṣid* which is addressed to the whole Islamic law consisting of *darūriyyāt* and *ḥājīyyāt*, for instance, is added with new *maqāṣid* (objectives) that is justice and facility. The second category, partial *maqāṣid* needs to be strengthening the truth. It can be found at certain decisions in finding the truth in searching for a number of witnesses in certain court cases. Lastly, the specific *maqāṣid* is aimed at certain parts of Islamic law that is making the welfare of children in the family.²²

Auda’s thought is a breakthrough in reconceptualizing *maqāṣid* is inseparable from the social context commonly occurred among Muslims today. For this reason, he firmly opines that human development is to be put as the main goal of the *maqāṣid* itself. The classical *maqāṣid* being stressing emphasis on individual dimension in nature needs to be improved into contemporary *maqāṣid* with its universal formulai. While the classical *maqāṣid* constraining its scope into preventive in nature, the contemporary proposed *maqāṣid* will cover development and protection of human rights as well as prioritizing social aspects. This is in line with the needs and issues experienced and faced by Muslims today. As quoted by Auda,

²⁰ In determining the *maqāṣid al-sharī‘a* with multidisciplinary study, Jasser Auda has studied different scientific disciplinary points of view. In this case, he applies systems philosophy. Auda, *Maqāṣid al-sharī‘a as Philosophy of Islamic Law: A Systems Approach*, p. 26.

²¹ Auda, *Maqāṣid al-sharī‘a as Philosophy of Islamic Law: A Systems Approach*, p. 248

²² Auda, *Maqāṣid al-sharī‘a as Philosophy of Islamic Law: A Systems Approach*, p. 5.

¹⁹ Ali Abdelmo‘im, *Al-Maqashid Untuk Pemula* (Yogyakarta: SUKA-Press, 2013), p. 10.

Ibn al-Qayyim claims that *sharī'a* is basically a principle based on wisdom and benefit to mankind. The wisdom and benefit must happen in the midst of their lives. Here, *sharī'a* covers all values such as justice, mercy, wisdom and benefit. Therefore, every case or matter conflicting with justice, mercy, wisdom and benefit should be neglected since it will lead to damage or danger and therefore in opposition to the *sharī'a*.²³

Making *maqāṣid* with the context of the national resilience is one aspect of this principle. National resilience is defined as maintaining the existence of the nation and thus automatically the spearhead of goal of a country. *Maqāṣid al-sharī'a* formulation attempts to give guideline that protecting human life and generation are a fundamental principle for a country. The concept of national resilience lies basically of securing ethnicity besides caring for harmony between two countries and ethnic members. To maintain this goal, Islam absolutely rejects exclusive nationalism that may threaten the existence or harmony of other countries members. To strengthen national resilience in accordance with the concept of today's *maqāṣid al-sharī'a* theory is necessary. It may even set a fundamental approach for human life and country prosperity. This is concerned with the following paradigm. First, the objective of *sharī'a* is to give benefit to mankind. Therefore, it will help provide philosophical and practical framework for human life along with its changing of times and places. In such position, the question is whether the existing *maqāṣid al-sharī'a* theory can adapt to the social changes. Second, the *maqāṣid al-sharī'a* historically has been attested for its adaptability in responding to the changing life and being a standard for human concept. Third, understanding the *maqāṣid al-sharī'a* is

the key concept for muslim jurists in seeking solution for the problems at hand.²⁴

In reforming the Islamic law in order to be always relevant, Jasser Auda in his work entitled "*Maqāṣid al-sharī'a* as Philosophy of Islamic Law: A Systems Approach" used System Approach as an analytical methodology. The term system approach as Jasser Auda's masterpiece is a new vocabulary which is rare or even not commonly used in the classical Islamic legal discourse. The system approach is a contemporary approach created in the modern world to question and revisit the Islamic law in the contemporary (*mu'āṣira*) times.²⁵

The components of the proposed system approach include the followings:

Cognitive character. In this case, *ijtihād* is not supposed to be described as the manifestation of God's commands.

Towards the realization of the overall proposed Islamic legal system. In his work, Auda explores the impact of juridical thinking based on the principle of causality which causes atomistic (partial) characteristics.

Towards the realization of openness and self-reform in the Islamic legal system. Jasser proposes legal reform by changing the world view or cognitive culture of the *faqīh* (fiqh experts) and philosophical openness. The world view of the *faqīh*, for instance, is proposed to achieve the universality of the objective of Islamic law, while the philosophical openness is intended to use the original contributions of Muslim philosophers in Islamic legal theory.

Interrelated Hierarchy. The characteristic of a system is having a hierarchical structure. A system is built from a smaller subsystem under it. The interrelationship here determines the objectives and functions to achieve. The

²³ Auda, *Maqāṣid al-sharī'a* as Philosophy of Islamic Law: A Systems Approach, p. 21.

²⁴ Shidiq, *Teori Maqashid Syari'ah Dalam Hukum Islam*, p. 122.

²⁵ Auda, *Maqāṣid al-sharī'a* as Philosophy of Islamic Law: A Systems Approach, p. 22.

attempt to divide the whole system into smaller parts is a process of sorting out the differences and similarities among many parts. The smallest part is a representation of the large part, and vice versa.

The multi-dimensionality in the Islamic legal system attempts to search for belief continuously and gradually, through a continuous spectrum of possibilities. Its combination with the *maqāsid* approach is expected to offer theoretical solutions to the dilemma of conflicting arguments.

The purposefulness of Islamic law as the most fundamental feature of systems thinking. This feature is proposed to enable the study of juridical issues to carry out at a higher philosophical level in order to transcend or exceed all historical differences within politics among the *fiqh* schools and encourage an approach of cultural conciliation and peaceful coexistence. Besides, the realization of *maqāsid* becomes the core target of all fundamental linguistic and rational *ijtihād* methodologies, regardless of differences in names and approaches. The validation of *ijtihād* is determined based on the level of success in realizing the features of *maqāsid al-sharī'a*.²⁶

The above six systems covering cognitive nature, wholeness, openness, interrelated hierarchy, multi-dimensionality, and purposefulness are interrelated and interconnected one another. This means each feature is closely tied to the other. No single feature stands alone, apart from the others. If it is separated from each other, it is not considered a system approach. However, the common thread or common link of this fundamental concept is the purposefulness (*maqāsid*). The *maqāsid* theory has become a contemporary project to develop and reform the Islamic law. This theory meets important standard of methodological bases including rationality, utility, justice and morality. This effort is expected to contribute to the development of *kalām* think-

ing, *fiqh* (Islamic Jurisprudence) and *uṣūl fiqh* (philosophy of Islamic Jurisprudence) and being able to address its inadequacies.²⁷

The multidisciplinary approach used by Jasser Auda in studying the *maqāsid al-sharī'a* is by developing the *maqāsid* as Islamic legal theory discipline and making it integrated with other disciplines or scientific concepts. If such approach is left behind, the Islamic legal theory will become outdated and lost its adaptability to the increasing changes of modernity. Consequently, any decisions referring to the Islamic law will always be out of date or obsolete.²⁸ According to Auda's concept, developing the *maqāsid al-sharī'a*, one should keep in mind, requires a multi-approach strategy by adopting various concepts and theories, such as hadith, interpretation, cognitive theory, classification theory, systems theory, philosophy, and so on, rather than to merely *fiqh* (Islamic Jurisprudence) and *uṣūl fiqh* (philosophy of Islamic Jurisprudence). This is what distinguishes him from the classical Islamic legal scholars who, in general, only associate with religious sciences when studying the Islamic law and *maqāsid al-sharī'a*. In contrast, Auda employs modern scientific disciplines as a tool and means to enrich the understanding of Islam. As long as they are considered relevant and in line with Islam values, he uses them as the basis of his analysis.²⁹

Therefore, Jasser Auda's masterpiece in Islamic law is relevant to study the national resilience. As a concept, the national resilience is inseparable from other disciplines, such as philosophy, sufism, psychology, science, economics, sociology, anthropology, geography and so forth. In relation to social development, for example, the *maqāsid al-sharī'a* needs developmental theories in developmental psychol-

²⁷ Ibid., p 60.

²⁸ Siti Mutholingah et al, *Relevansi Pemikiran Maqashid Syariah Jasser Auda Terhadap Sistem Pendidikan Islam Multidisipliner*, 3rd ed. (Digital book, n.d.). No.2, 111.

²⁹ Auda, *Maqāsid al-sharī'a as Philosophy of Islamic Law: A Systems Approach*, pp. 249-250.

²⁶ Ibid., pp. 50-51.

ogy. Regarding *'ibāda* (worship) and *mu'āmalah*, the *maqāṣid al-sharī'a* requires sociology, anthropology, and economics. Auda's contemporary thought is certainly relevant to be used in the development of national resilience theoretically and practically. In the following pages we will discuss how *maqāṣid al-sharī'a* is integrated with the concept of national resilience as well as maritime paradigm in securing the country's interests and citizen benefits. We will look how maritime law works hand in hand with *sharī'a*.

Sharī'a and the Maritime Law

Islam and the maritime affairs are nothing new in the academic studies as several studies have attempted to establish a correlation and implications between the two. The *Qur'an* itself mentions the word sea in the singular form for 31 times and the plural form twice, respectively. This indicates that even though the *Qur'an* was revealed in the Arabian Peninsula, it does not exclude or neglect the maritime potentials and significances for human life. The maritime sector has become a major concern of Islam. Uthman ibn Affan one of the *Khulafā' al-Rāshidīn* (successive caliphs) is the first to realize the significance of controlling the maritime sector as the spearhead of the socio-economic power of Islam. He realized the significance of the maritime by forming a naval fleet which was not done during the times of Prophet Muhammad. Such decision was also not taken during the times of Caliph Abu Bakr and Caliph Umar ibn al-Khattab as they only focused on spreading Islam towards some other neighboring counties in that times.³⁰

Islam has extended its attention to maritime affairs. In Islamic history, several areas were successfully conquered, such as in the

coastal areas of Morocco and Andalusia.³¹ This shows that Islam is not a religion that fundamentally negates the development of strategic issues that have developed in this modern era. In fact, Ibn Battuta is famously known a Muslim intellectual wanderer who travelled around the world with a mysterious goal and all his track records were recorded in his book entitled "*Rihlatu Ibn Baṭūtah; Tuḥfa al-Nuẓor fī Gharā'ib al-Amṣār wa 'Ajā'ib al-Asfār*" which is inquired and endorsed by Muhammad Abdul Mun'im al-'Aryān and Muṣṭafā al-Qaṣas.³² In the book, he illustrates everything he encountered and met, ranging from sharing about the big cities, his knowledge, cultures and the applicable laws.

The concept of maritime affairs is a multi-dimensional concept which includes resilience and security, economic and environmental, and socio-cultural dimensions. In addition, the scope of the law that regulates them does not only include the national law, but also the international law which has rapidly changed along with its substance of the regulation. Therefore, the legal basis in the development of maritime laws and policies must be able to go along with the rapid change of the global regulatory map and to respond to regulatory demands at the national and regional levels.

Indonesia, being composed of the larger area of sea larger than the lands, is the maritime zone and therefore becomes the spearhead of the national security. Therefore, the awareness of the urgency concerning the maritime affairs is an absolute obligation for all Indonesians. Such awareness will later be elaborated on social, religious and community structures with one goal, preserving the existence and role of the sea in the national security.

³⁰ Al-Sayyid Abdul Aziz Salām and Ahmad Mukhtar al Ibadi, *Tārīkh al-Bahriyah al-Islāmiyah fī al-Maghrib wa al-Andalus* (Lebanon: Dār al-Nahḍah al-'Arabiyah, 1969), pp. 13-20.

³¹ Ibid., p. 45.

³² Muhammad Abdul Mun'im al-'Aryān and Muṣṭafā al-Qasās, *Rihla Ibn Baṭūtah; Tuḥfa al-Nuẓor fī Gharā'ib al-Amṣār wa 'Ajā'ib al-Asfār* (Beirut: Dār Ihhyā' al-Ulm, 1987).

The concept of marine itself emphasizes the preservation of the marine environment. Unfortunately, the law enforcement on the environment itself has been undergoing a long debate to date. Among the familiar discussions is an idea written in a simple paper entitled "*Should Trees Have Standing? Toward Legal Rights for Natural Objects*" by Christopher D. Stone in 1972. In his writing, Stone offers an idea that has never been thought of before, which becomes the fundamental question today whether the marine environment has equal rights in the eyes of the law, and whether the law can provide sanctions to those who committed pollution, exploit or defile it.³³

His idea has certainly attracted a lot of controversy although it creates a paradoxical logic for those who read it. If, for example, an environmental object such as a tree is protected under a legal guarantee, the person who cuts it down will be subject to punishment. However, if the tree stands to take a role as a victim, it may raise question whether it would be subject to sanctions. Basically, the legal subject will refer to the category of one having intellect, awareness and intention. Such idea, nevertheless, has incited a lot of interest from academics in reconsidering the rationale thinking about the land and marine environment.

Referring to Stone's idea, the discussion about environment will lead to what so-called environmental ethics or ecological ethics. The understanding on the ethics in this case is necessary and normatively related to the environment. The discussion of environmental ethics no longer uses an anthropocentric approach as it has shifted to become bio-centric. As the result, the environment has its rights to be protected and to not be exploited for any reasons. Environmental researchers and activists are supposed to be more observant and conduct an in-depth study when analyzing the

variables or issues concerning environmental exploitation.

In addition, considering the relationship between religion and environment in general, the discussion about the environment in religion (Islam in particular) appears to have abundant theological nuances which mostly lead to an anthropological approach enabling and allowing human to exploit the environment as the manifestation and practice of religious worship.

In its mission, Islam stands as a religion of giving *rahmatan li al-‘ālamīn* (a mercy for all creations) is always open and welcomes a discussion about environment. Such discussion itself has been going on for a long time in the Islamic world although the religion does not specifically address the rights of the environment as nature. According to Wersal, the main source of Islam in his study about the environment is the *Qur'an* and hadith as Muslims and Muslim scholars always read them and refer to them as the main foundation integrated in the Islamic jurisprudence, especially when they make considerations regarding the environment.³⁴ He adds the difference between the West and Islam in addressing environmental issues lies in their distinctive approaches. The Western approach, for example, separates religion from science and the values that have developed in society. On the contrary, Islam claims everything that exists in this life is interrelated and connected to one another, and culminated ultimately to God as the great creator. However, in the long-run, many Muslims gradually abandon such idea and shifted towards the western methodology which consequently neglected the spiritual concept of environment and lost its inner connection with God. Environment, instead, is understood as the object materials. In turn, therefore, Muslim scholars are demanded to begin reconstructing their thoughts in order to realize the

³³ Christopher D. Stone, "*Should Trees Have Standing? Toward Legal Right for Natural Objects*" *Southern California Law Review* 45 (1972): 450-451.

³⁴ Lisa Wersal, *Islam and Environment Ethics: Tradition Responds to Contemporary Challenges*, (Zygon, 1995). Vol.3, 3.

ideals of Islam which reflect sacramental views and fight for the revival of Islamic science that is in line with their values and ideology.³⁵

For some other scholars like Arthur Saniotis came also to argue that the environment in the Islamic world is greatly influenced by ideological and social cultural aspects. The *Qur'an* and *Hadith* have basically provided a blueprint for the ecology of Muslims in their daily lives.³⁶ This is in line with Isma'il Hobson's view claiming the Islamic principles explicitly mentioned and implied in the *Qur'an* and *Hadith* and other principles can prevent environmental issues if followed and practiced. In the world society where the environmental issues have been discussed and shared extensively in today life, the application of Islamic principles can alleviate the negative impacts. However, this is not one simple way out to secure the good existence of the environmental issues, as it covers several elements of values and interests. Indeed, religion is the key foundation in regulating and managing human actions in order to be considered on the day of retribution. The first step of wisdom in protecting the environment is a sense of submission and piety to Allah as the Almighty God. In doing so, a Muslim will realize everything that exists and happens along with the God wishes His power. Human being is merely awarded his mandate to protect it, not to destroy it or even ignore it. This might in opposition to the Western concept assuming that this universe is a mere cosmic accident and all of human responsibility will only be filed and accounted according to mundane justice and human procedure.³⁷

As a way of life, Islam has presented the concept of environmental protection for more than 1400 years before the world has increasingly shown its concern about the current environmental crisis. In Islam, the environmental law refers to the concept of human duty to maintain their awareness on the impact and consequences of their actions on nature and its surroundings. They must also understand if their actions are harmful or useful, it will give impact to others but also to themselves, including the surrounding environment. The principle of *Shari'a* is not only limited to maintaining and ensuring no harm to the environment, but extends to positive actions that can create better environment. Upholding the concept of environmental protection under the Islamic law is extremely essential for today's generation. Given the fact that more than two billion people in the world are Muslims, the Islamic approach to environmental issues is based on justice and equality. The harmful behavior, for example, is restricted as multi-level and detrimental damage on many elements is strictly prohibited in Islam. Justice and goodness in Islam are not merely measured on words but also to be reflected in actions. Preserving the environment means preserving the life of the next generation. It is the responsibility and obligation of every Muslim individual in carrying out the mandate entrusted by Allah, the Almighty God.³⁸

Arthur Saniotis also mentioned that Islam provides three main ideas as the basis of ethics in preserving the environmental existence. This concept can be found in the doctrine of *tawhīd* (to believe in One God), *khilāfah* (Allah's mandate for human authority to organize the world), and *ākhirah* (belief in the life after which makes a Muslim to take responsibility

³⁵ Lisa, *Islam and Environment Ethics: Tradition Responds to Contemporary Challenges*. Vol.3, 3.

³⁶ Arthur Saniotis, *Muslim and Ecology: Fostering Islamic Environment Ethics*, (Springer Science and Business Media B.V. 2011). 6: 155-171.

³⁷ Isma'il Hobson, *Islam's Guiding Principles for A Solution to Environmental Problems*, in *Islam and Environment* (London: Ta-ha Publishers Ltd., 1998). 33-42.

³⁸ Alhaji Umar Alkali and Kamal Alhaji Daud, *An Expository Study of Islamic Environment Law*, (*Journal of Law, Policy and Globalization*. Vol. 28 2014).

for all deeds in this world life).³⁹ In light with this paradigm is also claimed by Fazlun Khalid who states that the environmental issues do not merely concern with a practical issue, but rather cover all paradigms. In this regard, Islam serves a comprehensive framework which can be used for both philosophical and practical dimension. He further emphasizes that Islam also wholly offers an Islamic ecological paradigm defined within the concept of monotheism, *fiṭrah* (the state of purity and innocence), *mīzan* (balance), or *khilāfah* (the institution of a caliphate).⁴⁰

In view of the above offered fundamental ideas, the most overarching idea is the approach paradigm initiated by Mohd Yaseen Gada. He claims Islam provides a comprehensive model of environmental ethics where humans are served as customers and beneficiaries as well as become trustees at the same time. According to him, the environmental ethics in Islam stands on the awareness that all the resources on which all living things depend on are Allah's creations and humans are entrusted or mandated to take a great care of them in their hands. The humans as the caliphs of Allah on earth only play a role as the managers of the resources, but not the owners. The Western thinkers, by contract, formulated an opposite perspective focusing merely on capitalism interests. They are trying to change its direction of environmental with emphasis on materialism that is from human-centric /anthropocentric orientation to material and non-human (eco-centric) basis. This is absolutely opposed to Islamic paradigm offers a higher approach within the concept of theocentric/God-centered approach. With this ap-

proach, human and nature become one unit, all of whom share the same rights in worldly life. Making human and nature in one unitary system creates awareness, trust and responsibility given God. This framework will strengthen strong relationship between human and nature as well as the environment in particular.⁴¹

The role of the *Sharī'a* in this regard is significant especially in securing social life. In that the *maqāṣid al-sharī'a* (*maṣlaḥa*/public interest) stands as the basis for its development. To deal with such cases as maritime and environment the concept of *maqāṣid* and *maṣlaḥa* as the *maqāṣid al-sharī'a* is served to formulate all rules and mechanism required in human life. The maritime law as mentioned above as well as environment in particular have been regulated and justified in Islamic values as to be preserved and protected for human life interests today and future generation. This is in line with the philosophical foundation developed by Yaser Audah on his the *maqāṣid al-sharī'a*, which is to maintain the welfare of the future generations from time to time.

As the main study of sharia, the social phenomena in human life focus on the relationship between God and individuals and individuals with others. This scope of life is shaped under the framework of peace and preservation of human life. Human duty in this world is to carry out religious teachings as part of God's command. In *'ibādah* (worship), God grants *rukḥṣah* (leniency or concession) for certain conditions. Such exception to minimize burdens or concession is given as a principle of protection for human interests in fulfilling God's commands. In human life affairs, especially dealing with social relations, the need to protect human interests and all benefits of securing nature are highly emphasized. This is due to the fact that the relationship between humanity along with its nature and divinity

³⁹ Saniotis, *Muslim and Ecology: Fostering Islamic Environment Ethics*. See Harafiyah Abdel Haleem, *Islam and The Environment* (London: Ta-ha Publishers Ltd., 1998). And S. Parvezmanzoor, *Environment and Values: The Islamic Perspective, in Touch of Midas; Science, Values and Environment in Islam and the West* (Mapusa Goa India: The Other India Perss, n.d.). 158

⁴⁰ Fazlun Khalid, *Islam, Ecology and the World Order, in Islam and Environment* (London: Ta-ha Publisher Ltd., 1998), pp. 16-22.

⁴¹ Mohd Yaseen Gada, "Environment Ethic in Islam: Principle and Perspectives." *World Journal of Islamic History and Civilization* 4, (2014): 130-138.

becomes one unitary system to work in harmony. Here, the Sharia plays an important role as a comprehensively encompassing basis, in which its objective is not to limit, but rather to regulate the harmony and preservation of human life in the divine civility context. Therefore, it is practically interpreted under the context of *maṣṣala* and *maqāṣid al-sharī'a*.

Contemporary Issues

The above discussion shows the unsolved problem that often arises among the Indonesian society. Islamic paradigm (*sharī'a* in this case) has provided a comprehensive framework in maintaining the good manner of securing the nation in line with the concept of national resilience. In another perspective, it also shares a fundamental thought (principal ideas) for the benefit of maritime affairs that can be used to guard the national resilience in Indonesia as a unitary and archipelagic State.

Zaenal Fanani and Adi Bandono explored the concept of national resilience into four categories: one is ideological resilience, two is political resilience, three is economic resilience, and four is socio-cultural resilience.⁴² Here, the *sharī'a* plays a role in protecting the four categories of resilience. Islam fundamentally provides comprehensive means and tools for its followers in all aspects. In the context of ideology, for example, Pancasila as Indonesia's basic ideology gives an understanding to all of its people to fulfill God's commands in all life. Similarly, the Sharia is a set of rules created by Allah as the only rule maker (*al-Shāri'*). In other words, the nation's awareness of the presence of God the Almighty is an implementation of the *sharī'a* itself. The following principles are derived from the first principle and all is inseparable from one another.

In line with the above understanding is proposed by Bambang Pranowo who states that the spirit and philosophy of Pancasila covers all aspects of national life in line with *sharī'a* principles. Social justice, people's sovereignty, human rights, and deliberative mechanism are strongly ingrained in Islam as well as held in Pancasila as the sole ideology of Indonesia. The value of first principle, belief in one God, for instance, demonstrates the main spirit of theological foundation which distinguished it from the constitutional concept of other states, even in Muslim countries. The concept of national resilience, being one kind of statehood, has a close link to the belief in God.⁴³ It means, Indonesian citizens should make the theological principles as the main reference of their life. National resilience, in this context, is one kind of state interest to protect all citizens and thus its members are also required to comply with its principles.

Being one aspect of resilience, socio-cultural resilience, for example, plays a greater role in society particularly in regards with social harmony and nurturing diversity. The *maqāṣid al-sharī'a* attempted to present the basic principles of how every member of society should properly behave in accordance with state values as well as religious teachings. A diversity of cultural traditions and backgrounds affirms the necessity of respecting others and securing the harmony as the basis of social life. For this reason, *sharī'a* has established it under the idea of *al-'ādah muḥakkamah* (custom or culture can be a legal measurement). Consistent with its multi-dimensions, the integration of *sharī'a* and Pancasila in regards with maritime and national resilience is fundamentally functional to reinvigorate the mechanism of all aspects of human life individually and collectively.

In view of the multi-layered resilience concept illustrated by Zaenal Fanani and Adi Bandono, the national resilience must be built

⁴² Zaenal Fanani and Adi Bandono, *Ketahanan Nasional, Regional Dan Global* (Universitas Muhammadiyah Malang Press, 2018), p. 19.

⁴³ Pranowo, *Multidimensi Ketahanan Nasional*, p. 4.

on the basis of all categories starting from individual resilience, family resilience, community resilience, national resilience, regional resilience to global resilience. Individual resilience, for example, becomes the foundation for developing the types of resilience which needs firstly to be strengthened. This means if the understanding of individual resilience is weak; it will affect and weaken the other types of resilience. In other words, the national resilience is to be built starting from the smallest level leading gradually to the largest one and thus, in turn, will influence the other element. Therefore, maintaining harmony, balance and continuity is essential to enable the concept to run as expected.⁴⁴

Referring to such concept, the Sharia plays a crucial role in forming Muslim individuals in order to be able to maintain harmony and balance in terms of national security. The personality aspect of a person becomes the basis for the constitutional order. In several cases, individual failure to understand the principles of religious as well as state values can be a threat to a country. The *sharī'a* in this case provides teachings that everybody is required to and being responsible for all deeds, no matter how much it is, in all aspects of life in both family affairs and society. All of these acts ultimately have closely linked to God. To this end, the theo-centred approach becomes a basic pillar in understanding the concept of maritime and national resilience in accordance with sharia principles.

The maritime concept with its trans-multi-disciplinary nature opens up a space in making the religion as the basic principles in its dynamics. The principles and values developed by the *sharī'a* in the maritime concept prioritize the environmental conservation efforts and the safety of every living thing in the marine domain. Although the religion allows its followers to take benefit of the marine natural resources, the *ḍarūrī* aspect concerning the ex-

istence of the living things is declared to be put as the main foundation to protect and preserve them. The maritime study addresses principles about the preservation of the marine environment. These principles are closely linked to the Sharia that demonstrates awareness of unitary of this world life and must remain intact and maintained without destroying and exploiting it for any reasons. To this end, the maritime rules are expected to be the spearhead of the national resilience by building awareness of the *sharī'a* principles promoting common *maṣlaḥa* (public interest) and avoiding *mafsada* (damage) in all aspects of life.

Conclusion

As discussed above, this study strongly demonstrates that the *sharī'a* plays a significant role in providing concept and principle of maritime and national resilience. In other words, *maqāsid al-sharī'a* need to be employed and integrated in all mechanism in securing citizen interests and nation states especially on the sphere of maritime and national resilience. *Sharī'a* is undoubtedly set as a universal rule served for human life and being relevant to all aspect of life with multi and trans-disciplinary concept. *Sharī'a* principles manifested in three domains: necessity (*ḍarūrī*), need (*ḥājī*), and tertiary (*taḥsīnī*) stands as the main reference of developing human life. These three principles become the basic rule of the *Sharī'a* philosophy in an open and flexible manner in the way it can support all existing developments.

In the concept of national resilience, the *sharī'a* is served to become the principle foundation in creating and building a strong awareness among people with regards to divined aspects of social life. This in turn will strengthen the wider scope of divinity consisting of family, society and nation. In the maritime context, *sharī'a* may play an important role in building human awareness to protect and preserve the existence of nature as a ma-

⁴⁴ Fanani and Bandoni, *Ketahanan Nasional, Regional Dan Global*, p. 23.

nifestation of God's presence. For this reason, uncontrolled natural exploitation certainly contradicts with the concept of *sharī'a* itself. The *sharī'a* principle-based maritime concept, for instance, is put to exercise the efforts of promoting common *maṣlaḥa* (public interest) and avoid *mafsada* (damage) in a general scope of life.

In sum, we conclude and suggest here that Islamic law particularly the concept of *maqāṣid al-sharī'a* has a close link to maritime and national resilience agenda and therefore should be integrated as the main principles among Muslim. Each member of Muslim is required to devote him themselves and show commitment to the *sharī'a* physically and spiritually, in the way that all of their behavior, actions and policies can bring positive impact on their spiritual lives.

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