

# PANCASILA AND TRANSNATIONAL IDEOLOGY IN THE *MAQĀSID AL-SHARĪ'AH* PERSPECTIVE

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**Abstract:** This article seeks to explore the importance of *maqāsid al-sharī'ah* as a theory to address the development of Islamic law in the contemporary world. Following the need to respond to modern challenges in Muslim society, the theory of *maqāsid al-sharī'ah* needs to be worked out optimally so that the results of legal provisions do not shift from the primary objectives of the state and government formation. The fundamental goal is to create benefits for the nation and state. The trend of the emergence of nation-states with multi-ethnic, multi-racial, multi-cultural, even multi-religious populations demands the need for tools for sophisticated religious analysis such as the theory of *maqāsid al-sharī'ah*. In the context of a nation-state like Indonesia, *maqāsid al-sharī'ah* can be used as a theoretical perspective to determine the legal standing of the debate about Pancasila and transnational ideology, which has recently been widely discussed in the community. Pancasila is an agreement of the Indonesian founding fathers to maintain the unity and integrity of the nation amidst the diversities. This article describes the role of *maqāsid al-sharī'ah* in the study of the Islamic constitutional law, the dynamics of Islamic law, and the Pancasila as ideology of the state.

**Keywords:** *Maqāsid al-sharī'ah*; Pancasila; transnational ideology.

## Introduction

The purpose of *sharī'ah* is to give benefits to humans and to free society from damage.<sup>1</sup> The theory of *maqāṣid al-sharī'ah* then comes to explain the Allah's purpose as *Shārī'* in establishing the *sharī'ah*,<sup>2</sup> both in the *juṣṣ'i* and *kullī* laws.<sup>3</sup> In this context, the study of *maqāṣid al-sharī'ah* is pivotal to knowing the target of *sharī'ah*.<sup>4</sup>

*Maqāṣid al-sharī'ah* is not a secondary source of inspiration or complements in a series of legal formation processes but is the core of the law itself. Thus, it cannot be separated from the *ijtibād* or *istinbāt al-aḥkām*, and is the final foundation of the whole series of the legal formation process. *Maqāṣid al-sharī'ah* can be positioned as the spirit or substance of Islamic law. The discourse of Islamic law without concern to the study of *maqāṣid al-sharī'ah*, therefore, will cause a legal prescription to be uprooted from its orbital point.

At the implementation aspect, the theory of *maqāṣid al-sharī'ah* finds its momentum in this era. Today, the study of *maqāṣid al-sharī'ah* is very important to respond to the various legal events that have never happened in the past. Moreover, in responding to the constitutional law that is so developed, the theory of *maqāṣid al-sharī'ah* needs to be used as a legal perspective to examine the contextual issues in the contemporary world.

In this era of democracy and openness, the perspective of *maqāṣid al-sharī'ah* needs to be used optimally so that the results of every legal provision do not shift from the primary goals of the state and government, like sharing benefits amid religious life, nation and state. The trend of the emergence of multi-ethnic, multi-racial, multi-cultural, and even multi-religious nation-states necessitates sophisticated religious analysis tools. If not, it will

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<sup>1</sup> 'Abd al-Salām al-Rif'i, *Fiqh al-Maqāṣid wa Atharuhū fi al-Fikr al-Nawāzili* (Al-Maghrib: Afriqiya al-Sharq, 2010), 20.

<sup>2</sup> Moh. Toriquddin, "Teori Maqashid Syari'ah Perspektif al-Syathibi," *de Jure: Jurnal Syariah dan Hukum*, Vol. 6, No. 1 (2014), 34; Hijriyan Angga Prihantoro, "Konstruksi Nalar dan Pola Pembangunan Maqashid al-Shari'ah dalam Filsafat Hukum Islam Ibn Taymiyah," *ISLAMICA: Jurnal Studi Keislaman*, Vol. 13, No. 1 (2018), 68-69.

<sup>3</sup> Al-Rif'i, *Fiqh al-Maqāṣid*, 20.

<sup>4</sup> Ibid; Ahmad Sainul, "Maqashid al-Shari'ah Tinjauan Filsafat Hukum Islam," *Jurnal Al-Maqasid: Jurnal Ilmu-ilmu Kesyariahan dan Keperdataan*, Vol. 6, No. 1 (2020), 59.

cause chaos that can threaten the unity and the integrity of the nation.<sup>5</sup>

As for constitutional law, Musolin explained the importance of using the theory of *maqāṣid al-sharī'ah* in the study of state ideologies, such as Pancasila. According to him, Islam and Pancasila are not mutually exclusive. Pancasila implements the values of *maqāṣid al-sharī'ah*, which is the core of Islamic teachings. By implementing Pancasila, one can be considered practising religious teachings. Furthermore, Musolin disagrees with the idea of transnational Muslims that tries to clash Pancasila with Islam. This is because, in addition to threatening the ideology of Pancasila as a unifying nation, it is also contrary to the principle of *maqāṣid al-sharī'ah* in Islam.<sup>6</sup>

This paper wants to clarify the role of the theory of *maqāṣid al-sharī'ah* in the study of constitutional law in Muslim societies, especially regarding the discourse of Pancasila and transnational ideology in the modern Islamic constitutional system. By appreciating *maqāṣid al-sharī'ah* as a legal theory perspective, the expressions of Islam is “*rahmah li al-‘ālamīn*” (Islam as a mercy to the universe), “applies to all human beings,” and “compatible with every development of time and place,” are not just a mere jargon, but can be implemented in real life, especially in the context of the nation and state today.

### **The Role of *Maqāṣid al-Sharī'ah* in the Study of Islamic Constitutional Law**

The position of *maqāṣid al-sharī'ah* is very strategic for religious research and valuable (as a theoretical perspective and analytical tool) to bring up findings under development context. In other words, religious research based on *maqāṣid al-sharī'ah* has recently become a trend for the study of Islamic law under the principles of legal objectives, namely the creation of justice and benefit in the life of society, nation, and state.

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<sup>5</sup> Abd Mu'īd Aris Shofa, “Memaknai Kembali Multikulturalisme Indonesia dalam Bingkai Pancasila,” *Jurnal Pancasila dan Kewarganegaraan*, Vol. 1, No. 1 (2016), 38.

<sup>6</sup> Muhlil Musolin, “The Virtues of Maqasid al-Syari'ah in Pancasila as the State Philosophical Basis of the Indonesian Republic,” *Jurnal Dialog*, Vol. 43, No. 1 (2020), 71.

According to Nūr al-Dīn al-Khādīmī, an expert on *maqāṣid al-sharī'ah* from Tunisia, the research that based on *maqāṣid al-sharī'ah* is formulated in two keywords; *al-istiqrā' al-maqāṣidī* (induction based on *maqāṣid al-sharī'ah*) and *al-maqāṣid al-istiqrā'īyah* (*maqāṣid al-sharī'ah* which is based on the results of inductive studies).<sup>7</sup>

*Al-istiqrā' al-maqāṣidī* applies the results of legal studies in the community, and then the conclusions are drawn based on the general principles of the *maqāṣid al-sharī'ah*. In other words, *al-istiqrā' al-maqāṣidī* establishes the *kullī* law based on the *maqāṣid al-sharī'ah* by researching and tracing its branch laws (*juḥūḍ*). Meanwhile, the *maqāṣid al-istiqrā'īyah* is a collection of *maqāṣid al-sharī'ah*, which has been determined by default, based on research results and is induced from various branch legal events that occur in the community. As the example is the general principles of the Islamic law that are identical to the principles of *maqāṣid al-sharī'ah*, such as the concept of *maṣlaḥah* and *mafsadah* that becomes the guideline for producing the law in Islam.<sup>8</sup>

Inducing *juḥūḍ* laws towards the principles of *maqāṣid al-sharī'ah* is vital for applying every event and occurrence that requires legal provisions. It is important to observe such reciprocal relationships because the law does not work subjectively for its own sake, but the Islamic law was born to spread benefit and apply the principles of justice amid the life of society, nation and state.<sup>9</sup> In addition, to inducing *juḥūḍ* arguments, another option in *maqāṣid al-sharī'ah*-based religious research is to deduce the *kullī* laws. In contrast to the *juḥūḍ* argument that leads to a certain law, the *kullī* argument has a broad legal reach and is not bound by one particular law. The postulate of revelation that regulates issues globally in the terminology of Islamic jurisprudence is called the *kullī* argument. Meanwhile, Qur'ānic texts that reveal issues in detail and lead to certain laws are called *juḥūḍ* arguments.<sup>10</sup>

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<sup>7</sup> Al-Khādīmī, *Fuṣūl fī al-Ijtihād wa al-Maqāṣid* (Cairo: Dār al-Salām, 2010), 99.

<sup>8</sup> Ibid., 100-102.

<sup>9</sup> Nabila Zatadini, "Konsep Maqashid Syariah Menurut Al-Syatibi Dan Kontribusinya Dalam Kebijakan Fiskal," *Al Falah: Journal of Islamic Economics*, Vol. 3, No. 2 (2018), 115.

<sup>10</sup> Wawan Juandi and Abu Yasid, "Discourse of Islamic Jurisprudence in Indonesian Ma'had Aly between Taqlidy and Manhajy," *Journal of Indonesian*

With such a wide range of laws, the *kullī* argument is nothing but a general set of arguments in the form of indicators that cover the many legal dictums.<sup>11</sup> This model of text does not refer to legal provisions on certain events, but include many legal events. As the example is al-A‘rāf [7]: 56, which contains the prohibition of doing destruction on earth. Another example is the Ḥadīth which forbids harming others.<sup>12</sup> The *kullī* argument has an umbrella function and deduces the operational laws that are laid down to respond to any events that arise in society.

Expressing problems globally, the *kullī* argument can also be *fiqh* and *uṣūl al-fiqh* developed by Islamic juries. These rules are extracted from various revelation texts, which then crystallize into a general rule. With this deduction pattern, there is a reasonably strong relationship between the *kullī* proposition and the *juḥū‘ī* proposition in the practice of *istinbāṭ al-aḥkām* (excavation) carried out by the *mujtahids*.

In fact, the content of the Qur’ān and Ḥadīth is more in the form of *kullī* arguments than *juḥū‘ī* arguments. This fact is not unintentional by *Shārī‘* (the maker of sharī‘ah), so that the *kullī* arguments can cover many of the legal provisions needed by converts. God deliberately designed his sharī‘ah by expressing many problems in a *kullī* way. Because, from this type of revelation text, many legal derivatives can be deduced that are compatible with the changes and developments in each period of time. Thus, the large percentage of *kullī* texts shows the ability of the sharī‘ah to survive in the face of various challenges throughout history. This is where the important role of *maqāṣid al-sharī‘ah* is to provide a legal perspective to uphold the principles of peace and prosperity in society.

The more dominant *kullī* arguments than *juḥū‘ī* in the Qur’ān and Ḥadīth can be understood as a form of *i‘jāz tashrī‘ī* in Islamic thought, that is, such a design can be captured as a form of the miracle of the Qur’ān in terms of its sharī‘ah content which can

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*Islam*, Vol. 10, No. 01 (2016), 145; Abu Yasid, *Logika Ushul Fiqh: Interelasi Nalar, Wahyu dan Maqasyid asy-Syarī‘ah* (Yogyakarta: Ircisod, 2019), 102.

<sup>11</sup> Ibid.

<sup>12</sup> The text of the Ḥadīth is *lā ḍarar wa lā ḍirār* (not allowed to do harm and repay harm with other harm), narrated by Mālik and Ibn Mājah.

continue to be updated throughout history. *I'jāz tashrī'i* here implies that God designed His word in such a way so that it continues to be compatible with the times and can adapt to various necessary changes. The large number of *kuḥūlī* revelation texts reflect the true universality of Islam.

This is where religious study based on *maqāṣid al-sharī'ah* has a strategic role. The religious research is expected to update legal dictums according to the level of development. We cannot take a verse and apply it literally without an *ijtihādī* research process in the midst of global life today. Such a textual approach is indeed relevant to be applied in the realm of sacred *'ubudīyah* law. However, at the level of *fiqh al-mu'āmalah*, which has a profane character, this approach reduces the values of *i'jāz tashrī'i* which are very contextual in anticipating various developments and changes. In essence, the *maqāṣid al-sharī'ah* approach is a very rational choice in religious research so that the resulting legal prescriptions can reflect the universality of Islam in its true sense.

The shift in the form of government from the caliphate system in the early days of Islam to a royal one in a long period of time, and then to a democratic system in the era of nation-states as is happening now, is a strong indication of the importance of building state and government institutions that are in accordance with the development of context. The rapid progress of science, including constitutional science, has become a necessity. Therefore, it needs to develop theories and sophisticated analytical tools in formulating the concept of state administration that is based on justice. The *maqāṣid al-sharī'ah* then has its relevance as a theoretical perspective in responding to various developments and changes. The role of *maqāṣid al-sharī'ah* in formulating instruments of constitutional law today is crucial. The various legal provisions therefore do not shift from their orbital point, namely to spread benefit and prevent damage on earth.

The occurrence of the dynamics of the government system as described above is actually necessary, because the system of government in Islam is included in the category of *wasīlah* (means), not *ghāyah* (goals). Meanwhile, what is included in the *ghāyah* category is establishing the principles of justice and benefit among the people, so that they can live in prosperity and peace according to the principles of *maqāṣid al-sharī'ah*. Organizing the state and

moving the wheels of government is *wājib* to manage the people's daily lives. According to the principle of *maqāṣid al-shari'ah*, this problem is included in the level of *maṣlahah 'āmmah* (public benefit) and *maṣlahah ḍarūrīyah* (basic benefit), which has implications for the necessity of protecting the lives of religious people, body and soul, mind, lineage and property.

Meanwhile, the state and government cannot run effectively without state instruments and administration systems under the development context. In the Qur'ān or Ḥadīth, the ideal form of state and government system is not explicitly stated in detail. On the other hand, the texts of the Qur'ān or Ḥadīth in this matter is verbalized in outline and universally, so that people can create a government system according to the challenges where they stay today.

The explicit concepts about the intricacies of politics and government systems are not found in the revelation text sheets. The formulation of state administration instruments becomes the responsibility of Islamic juries by referring to universal arguments in the Qur'ānic texts. Ethical and moral principles in religious teachings can be a reference for jurists in formulating a state administration system according to development of the problems. Islam conceptually does not recognize the separation between religion and the state. With a holistic character attached to it, Islam considers that the administration of the state is essentially an integral part or expansion of Islam itself.

The illustration above does not illustrate that the practice of administrating the state does not have religious arguments or even has no evidence in the pages of the Qur'ān. The Qur'ān and Ḥadīth as primary sources of teachings are believed to be perfect and contain a variety of problems. But the two teaching sources never talk in detail (*juṣ'ī/tafsīlī*) regarding the ideal format of the state and the system of government. On the other hand, the revelation texts reveal a lot about the state's problems and the global system of government (*ijmālī*) and outlines (*kullī*). *Kullī*'s arguments that only provide global rules can be reflected, for example, in moral messages about the importance of upholding justice and human rights, the principle of equality before the law, democratization, and others.

With these various moral appeals, the point is how the spirit of Islamic law, namely *maqāṣid al-shari'ah*, continues to be a “living organism” in the wheels of government to ensure the implementation of benefit and peace. The choice of instrument then becomes important so that every state administration does not shift from the universality values of Islam to protect one’s religious rights and others. The protection of the rights of each individual in *maqāṣid al-shari'ah* is called *maṣlahah ḍarūrīyah*, namely the essential benefit that must be upheld by state administrators for the good of the people. The religious argument regarding this issue is contained in a *fiqh* rule: *taṣarruf al-imām ‘alā al-rā’iyah manūṭ bi al-maṣlahah*, ‘all orders of the ruler to his people must be related to the benefit.’<sup>13</sup>

The lack of explicit and detailed explanations of the arguments in the Qur’ān and Ḥadīth regarding statehood implies the arrival of grace as well as *tashrīḥiyah* miracles from God. With the composition of the Qur’ānic dan Ḥadīth text, the jurists can develop a new constitutional system that is oriented to the benefit. On that way, the religious teachings are truly flexible and adaptive and not easily out of date. People who live in the digital era today can update the provisions of constitutional law according to the level of development by referring to the outlines of teachings according to the principles of *maqāṣid al-shari'ah*.

### The Dynamics of *Fiqh al-Mu‘āmalah*

The debate on the state ideology of Pancasila and the transnational Islamic movement is also as the themes of debates in the realm of Islamic constitutional law. In *fiqh*, constitutional issues with various dimensions are included in the realm of *fiqh al-mu‘āmalah* or in the contemporary discourse called *fiqh al-siyāsah* (political *fiqh*), not the immutable realm of *fiqh al-‘ibādah* (worship).<sup>14</sup> If the *fiqh* of worship format cannot develop and change

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<sup>13</sup> Ibrāhīm al-Ḥarīrī, *al-Madkhal ilā al-Qawā'id al-Fiqhīyah al-Kullīyah* (Ammān: Dār Ammār, 1998), 164; ‘Abd al-Raḥmān Jalāl al-Dīn al-Suyūṭī, *al-Asbāb wa al-Naṣā’ir*, retrieved from <[https://islamweb.net/ar/library/index.php?page=bookcontents&idfrom=90&idto=90&bk\\_no=36&ID=72](https://islamweb.net/ar/library/index.php?page=bookcontents&idfrom=90&idto=90&bk_no=36&ID=72)>.

<sup>14</sup> Yasid, “The Islamic Perspective of Changes in Government Administration and Law with Special Reference to the Development of Legal Political System in



according to the rhythm of dynamism because of its sacred character, then this is not the case with *fiqh al-mu'āmalah*. The original law of the *fiqh* of worship is forbidden to do (unless there are arguments that encourage it). In the rules of *fiqh*, which are quite popular among Islamic boarding schools, it is said: “*al-aṣl fī al-‘ibādāh al-tahrim*” (the original law of *fiqh* of worship is *tahrim* or forbidden), unless there is evidence that allows it.<sup>15</sup> The opposite rule says: “*al-aṣl fī al-mu'āmalāh al-ibāḥah*” (the original law of *fiqh al-mu'āmalah* is *mubāḥ* or permissible), unless there is evidence that prohibits it.<sup>16</sup>

By referring to the rules of *fiqh al-mu'āmalah* above, the provisions regarding the type of government and the state administration system can adapt to the context of the dynamics society as long as they are not faced with explicit prohibitions. In this context, the provisions for the type of the government do not require explicit and detailed arguments from the religious texts, because the texts of the Qur'ān and Ḥadīth relating to *fiqh al-mu'āmalah* generally reveal the problem in the general terms. The basis for forming a government system, including the basic problems of the Pancasila as the Indonesian state ideology and the transnational ideology in it, is benefits as described in the perspective of *maqāṣid al-sharī'ah*. The indicators of the benefit in the administration of the state and government have been outlined straightforwardly and universally by the text of revelation in the form of moral messages such as the recommendation to apply justice (*al-‘adālah*), deliberation (*al-shūrā*), equality (*al-musāwāh*), freedom (*al-ḥurrīyah*), responsibility (*mas'ūliyah*) and others.

Appreciating these moral messages is by applying the principles of *maqāṣid al-sharī'ah* in the Islamic jurisprudence. The Qur'ān and Ḥadīth themselves as the main sources of Islamic law never explicitly mention the form of state and system of the government that Muslims must enforce. Because the *qat'ī* (constant) arguments that reveal political issues and the govern-

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Post-Reformasi Indonesia,” *Journal of Indonesian Islam*, Vol. 06, No. 01, (2012), 77.

<sup>15</sup> Al-Maktabah al-Shāmīlah al-Ḥadīthah, *Arshif Muntadā al-Ulūkah*, available at form <<https://al-maktaba.org/book/31869/17938>>.

<sup>16</sup> Nayif b. Jam‘ān al-Jarīdān, “al-Moslim,” available at <<https://almoslim.net/node/188914>>.

ment system are not found in the Qur'ān and Ḥadīth, then return to the original law which can be developed according to the challenges of the times. Technically, it depends on Islamic juries while still referring to the universal arguments and the ethical values according to the principles of *maqāṣid al-shari'ah* in the science of *uṣūl al-fiqh*.

In fact, the text of the Qur'ān and Ḥadīth, which contains all religious teachings, is already final and perfect, as indicated by al-Mā'idah [5]: 3<sup>17</sup> and al-An'ām [6]: 38.<sup>18</sup> However, the perfection of the Qur'ān and Ḥadīth is presented in the disclosure of legal issues in general. So, the administrative matters, such as the form of the state, the principles of the state, and the government systems are given to the Islamic juries because there is no *qat'ī* (constant) argument as a legal basis.

In this digitalization era, when the community development goes rapidly, constitutional law is increasingly being discussed by many groups of Muslims, especially regarding the pattern of relations between religion and the state. From the point of view of substance, this theme is quite important and strategic in accordance to formulate an Islamic constitutional system. As the basis and ideology of the state, Pancasila is an important part of the discussion frame today.

A set of relevant ethical and moral principles on regulating the state and government mechanisms can actually be used as a theological-philosophical foundation in the political and state matter. In essence, the theological-philosophical foundation becomes a belief in the holistic nature of Islam, which presents complete teachings regarding to all aspects of life. The principles of national ethics and peaceful coexistence have been exemplified by the Prophet Muḥammad in a *sunnah fi'l-ḥayāh*. When he settled in Medina, the Prophet began to regulate relations among plural people in Medina. In the relationship between Medina's national and state governments, the Prophet agreed to an agreement as

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<sup>17</sup> The text of the verse is *al-yawm akmaltu lakum dinakum wa atmamtu 'alaykum ni'mati wa raḍitu lakum al-Islām dīna*, 'today I have perfected for you your religion, and I have perfected for you my favour, and I am willing for you Islam as a religion.'

<sup>18</sup> The text of the verse is *mā farratnā fi al-kitāb min shay'*, 'I have not neglected in this Qur'ān the slightest problem.'

outlined in a *ṣaḥīfah* or book, which was later known as *wathīqah* or the Medina Charter.<sup>19</sup>

This charter contains an agreement between Muslims and Jews to live in a harmony, prevent injustice without discrimination, and work together to defend themselves from enemy attacks. The contents of the agreement may remain in the habit of helping each other in paying *diyyat* among themselves and paying the ransom of prisoners in a good and fair manner among Muslims. Other agreements were also made between various ethnic groups and Muslim communities, such as the Muhājirīn, Banī Sa‘īdah, Banī ‘Awf, Banī al-Ḥārith, Banī Jusham, Banī Najjār, Banī ‘Amr b. ‘Awf, Banī al-Nābit and al-‘Aws.<sup>20</sup>

Another example of what the Prophet did in building the harmony of the nation’s life and the state is a peace agreement with the non-Muslim community, which is then commonly referred to *al-ṣulḥ al-ḥudaybīyah* (*ḥudaybīyah* peace). When the Prophet with the Muslim congregation went to the city of Mecca to perform the ‘Umrah worship suddenly the Quraysh of Mecca restrained the Prophet and his entourage. The incident took place in Ḥudaybīyah, about 22 km to the west from Mecca to Jeddah. The Prophet then made a peaceful way to avoid bloodshed. The Muslims finally agreed to the steps of the Prophet showing that diplomacy is better than war.<sup>21</sup>

The spirit of the two agreements that have been made by the Prophet is that peace and harmony in the nation’s life are far more prioritized than the occurrence of friction and violence in the name of religion. Facts like this were then induced by the ulama and Islamic jurisprudence into fiqh rules, which have been widely studied and referred to by the Muslims of this country. This is like the fiqh rule: *dar’u al-mafāsīd muqaddam ‘alā jalb al-maṣāliḥ*, ‘preventing damage must take precedence over bringing benefit.’<sup>22</sup> In

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<sup>19</sup> Media Islam Salafiyah Ahlussunnah wal Jama’ah, “Piagam Madinah,” available at <<https://almanhaj.or.id/2639-piagam-madinah.html>>.

<sup>20</sup> Ibid.

<sup>21</sup> Al-Būṭī, *Fiqh al-Sirah al-Nabawīyah* (Damascus: Dār al-Fikr, 1991), 232; Islam Web, *Ṣulḥ al-Ḥudaybīyah wa Shurūṭuh*, available at <<http://articles.islamweb.net/media/index.php?page=article&lang=A&id=17232>>.

<sup>22</sup> A-Ḥarīrī, *al-Madkhal*, 97; Sa‘īd b. ‘Abd Allāh al-Ḥamīd, *al-Ulūkah al-Shar‘īyah*, available at <<https://www.alukah.net/sharia/0/143329/>>.

another *fiqh* rule it is also said: *Idhā ta'arad mafsadatān rū'iya a'ḡamubumā ḡararan bi irtikāb akhaffihimā*, 'if there is a contradiction between the two damage (which must be avoided), then the more dangerous damage must be avoided by doing less damage.'<sup>23</sup> It is important to choose the lesser danger when there is a contradiction between the two dangers. It is popular with the phrase simplification of the rules, namely "*akhaff al-ḡararayn*" (taking the lighter between the two harms).

What is given by the Prophet as an example is important to be appreciated in building the state instruments. This is in accordance with the religious spirit to create justice and prevent the danger of damage. In this context, the agreement of Muslims to continue to guard the Negara Kesatuan Republik Indonesia (Unitary State of the Republic of Indonesia) with Pancasila as the basis and ideology of the state can be understood. The harmonious relationship between the state and religion continues to be relevant for discourse throughout the history of humanity with the consideration of upholding the principle of *maqāṣid al-shari'ah*.

The philosophical foundations of the relationship between the state and religion were discussed in quite elaborate manner ten centuries ago by al-Ghazālī (d. 505 H). This thinker stated that religion and the state are like two twin brothers in the intellectual release. Religion in this context is likened to the foundation, while the state is the guardian or manager. Of course, a building will collapse without a foundation, and the foundation without supporting facilities will be in vain.<sup>24</sup> With the same substance and slightly different intensity levels, Caliph 'Uthmān b. 'Affān has also illustrated that God delegates the state to things that the Qur'ān cannot directly and explicitly cover.<sup>25</sup>

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<sup>23</sup> Al-Ḥarīrī, *al-Madkhal*, 95; al-Ḥamīd, *al-Ulūkab*, at <<https://www.alukah.net/sharia/0/88230/>>.

<sup>24</sup> Al-Ghazālī's expression is: "Religion and ruler (state) are twin brothers. Religion is the foundation, while the state is the guardian. Something that has no foundation will fall while that has no guardian will be lost in vain." Abū Ḥamid al-Ghazālī, *al-Iqtisād fi al-I'tiqād*, available at <<http://www.alwarraq.com>>.

<sup>25</sup> The expression of 'Uthmān b. 'Affān is: "God channelled through the rulers something that could not be (directly) channelled through the Koran." See Jamāl al-Dīn 'Aṭīyyah, *Naḥw Taf'īl Maqāṣid al-Shari'ah* (Damascus: Dār al-Fikr, 2001), 50.

Generally, there can be no legal provisions that the Qur'ān and Ḥadīth do not cover, but technically there are still many Qur'ānic verses and Ḥadīth texts that are *mujmal*, *ẓanni*, and reveal the problem in general terms. Caliph 'Uthmān meant this part. The presence of the state is needed to mediate the content of the revealed text on the one hand and the reality of people's lives that continue to move dynamically on the other. The government system, including the Pancasila state principle, is included in the *mujmal* and *ẓanni* nature, so that it is possible at the operational level to occur in different forms from time to time according to the level of change. Most importantly, whatever form of state is chosen and how the basis of any agreed state is built must refer to the principles of justice and benefit described in the science of *maqāsid al-sharī'ah*.

Al-Māwardī, an expert in Islamic constitutional law based on the Shāfi'īyah school, also revealed the importance of state instruments to bring about benefits in the life of the nation and state. In his work, *al-Aḥkām al-Sulṭānīyah*, he even considers the state's leadership as the inheritor of prophetic institutions to preserve religious teachings for the sake of upholding justice and benefit in society. Therefore, according to al-Māwardī, establishing a government with capable leadership is obligatory for Muslims.<sup>26</sup>

From the views of the sharī'ah experts above, it can be explained that the existence of the Pancasila principle as the basis of the state ideology can be justified by *fiqh* and *uṣūl al-fiqh*. This is because the determination of the Pancasila principle is part of the effort to uphold the pillars of the country for the sake of upholding harmony, justice, and benefit in the midst of people's lives. State issues, including the formulation of the basis and ideology of the state, fall into the category of *fiqh al-mu'amalah* in Islam. The legal evidence is not in the form of texts (reveal texts) that are *qat'ī* but the disclosure of revelation in general in the form of moral messages about justice, deliberation, the principle of equality, and others. *Maqāsid al-sharī'ah* then becomes a theoretical perspective to uphold the values of benefit in determining the legal

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<sup>26</sup> Al-Māwardī, *al-Aḥkām al-Sulṭānīyah* (Kuwait: Maktabat Dār Ibn Qutaybah, 1989), 3.

basis of Pancasila as the ideology of the state and unifying the nation.

### **Pancasila vs Transnational Ideology on the *Maqāsid al-Shari'ah* Perspective**

The penetration of transnational ideological discourse in the last few years into Indonesia has led to speculation that this ideology can replace the existence of Pancasila. Of course, there is a very principle difference between the Pancasila and the transnational ideology widely used by several countries in the Middle East. The following explains the substance of Pancasila ideology which is rooted in local wisdom of the archipelago and transnational ideology which has been widely discussed lately.

Pancasila was originally explored based on the noble values of Indonesian culture.<sup>27</sup> Pancasila then became the basis and ideology of the state by which the Founders of this republic contributed to maintaining the integrity and unity of the nation in the future.<sup>28</sup> It is undeniable that there are sometimes tensions and differences in interpretation of the substance of Pancasila during the journey of this republic. But this does not lead to a split that can undermine the the Republic of Indonesia.

In the past, the single interpretation of Pancasila in the history of the Old Order and the New Order often sparked tension. In contrast, Pancasila as an open ideology was agreed to be the basis of the state to protect all components of the nation from division. However, Pancasila is extracted from the nation's culture and the traditional roots of the people of this country. However, the existence of a social contract and agreement among many groups to formulate Pancasila is undeniable. An agreement, of course, is based on previous debates. Therefore, we need to maintain the results of this agreement to continue to knit the unity and integrity of the nation in this republic.

In Islam, there is an agreement that known as *al-wafā' bi al-'abd*, namely fulfilling promises that every Muslim must carry out. In *al-Isrā'* [17]: 34, Allah said that the fulfilment of the promise or

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<sup>27</sup> Ambiro Puji Asmaroini, "Menjaga Eksistensi Pancasila dan Penerapannya bagi Masyarakat di Era Globalisasi," *Jurnal Pancasila dan Kewarganegaraan*, Vol. 1, No. 2 (2017), 50-51.

<sup>28</sup> Musolin, "The Virtues of Maqasid," 60-61.

agreement must be done because it must be accounted for. In a Ḥadīth text narrated by al-Bukhārī, it is also stated that the attitude of Muslims depends on the agreement unless the agreement is to make lawful what is unlawful, or forbid what is lawful.<sup>29</sup>

In Islamic tradition, there are many uses of propositional formula that have been very well-established. In the tradition of thought that developed in Islamic boarding schools (*Pesantren*), for example, several legal theories or principles of *fiqh* and *uṣūl al-fiqh* can be used as analysis tools for state issues, including the issue of the principle of Pancasila. The Muslims of this country accept the principle of Pancasila not only because of a compromise step but also of *shar'ī* arguments in the form of *fiqh* arguments which are usually used as the basis. Various legal theories are built to analyze every issue that arises using the *maqāṣid al-sharī'ah* perspective. The purpose of the *sharī'ah* being revealed is to spread benefits and prevent damage.

Meanwhile, the idea of transnational Islam can be interpreted as a movement limited to certain national areas with a certain mainstream of religious thought. For example, if Nahdlatul Ulama and Muhammadiyah can represent the mainstream of religious thought in Indonesia, then the transnational movement goes beyond this mainstream.<sup>30</sup> In the context of the state, transnational ideology can be understood as a thought movement that has been used in many countries and is trying to be applied in certain countries that already have an established ideology.

Recently, in the diversity of religious movements in the contemporary era, global or transnational Islamic movements have coloured various social activities and *da'wah* in the development of Islam in the country. This movement generally has ideological characteristics that are no longer based on the concept of the nation-state. Instead, it tends to focus on the concept of *ummah* ideology based on strictly religious texts. This movement is

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<sup>29</sup> The text narrated by al-Bukhārī is *al-muslimūn 'alā shurūṭihim illā shar'ī ahalla ḥaram wa ḥaram ḥalāl*, 'Muslims depend on the conditions between them, except for conditions that make something haram or things lawful forbidden.'

<sup>30</sup> Peter Mandaville cited by Abdul Qohar and Kiki Muhamad Hakiki, "Eksistensi Gerakan Ideologi Transnasional HTI Sebelum dan Sesudah Pembubaran," *Jurnal Kalam*, Vo. 11, No. 2 (2017), 366.

dominated by normative, scripturalist, fundamentalist thinking styles that partially adapt modern ideas and instruments.<sup>31</sup>

So far, several transnational Islamic movements in Indonesia include the Ikhwān al-Muslimīn (Muslim Brotherhood) from Egypt, Hizb al-Tahrīr from Lebanon, Wahhābī (Wahabism) from Saudi Arabia, Jamā'ah Islāmīyah from Pakistan, the Salafī-Jihadist Movement from Iraq and Afghanistan, and the Shi'ah (Shi'ites) based in Iran. The transnational Islamic movement has brought a fairly strong influence in Indonesia to date. The spectrum of this organisation's movement is to prioritize the formalization of the shari'ah and uphold the caliphate in the Islamic world with different scopes of movement and methods of struggle. The Islamic movement represents a new Islamic movement in Indonesia that has a global network and cross-country members.<sup>32</sup>

The religious character of the transnational movements is the absolutism of religious understanding, which is then transmitted to the realm of practical politics. In practice, friction often occurs because there is no compromise in every interaction with the local culture. In the context of the Indonesian state, such ideologies tried to be applied without looking at the values of local wisdom that have been institutionalized. Pancasila as the basis of the state was opposed because it was considered not following the purity of the religious teachings they understood. These movements hold that one truth is considered sufficient to overcome all problems with various dimensions. Such ideology is closed because it considers other truths wrong and must even be hostile to it. The space for dialogue was then deemed unnecessary because the possibility of other truths had been closed from the start.<sup>33</sup>

From the above explanation about Pancasila and transnational ideology, it becomes clear that there are different approaches to understanding religious teachings, especially in Islamic constitutional law. Transnational ideology uses a religious literacy approach

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<sup>31</sup> Aksa, "Gerakan Islam Transnasional: Sebuah Nomenklatur, Sejarah dan Pengaruhnya di Indonesia," *Yupa: Historical Studies Journal*, Vol. 1, No. 1 (2017), 2.

<sup>32</sup> Ibid.

<sup>33</sup> Pradipto Bhagaskoro et al., "Pancasila dalam Interaksi Kearifan Lokal dan Ideologi Transnasional," *Jurnal Inovasi Ilmu Sosial dan Politik (JISoP)*, Vol. 1, No. 2 (2019), 124.



without diversifying the problem into many classifications. They feel there is no need to process and classify religious arguments between *juḥūḍ* and *kullī*. The argument of *juḥūḍ* is a revelation text that shows the legal provisions in a rigid and detailed manner. Meanwhile, the *kullī* one has a broad and global scope of the law and is not bound by one particular law.

Transnational ideologies generalize every religious issue into an understanding that they believe is correct. Whereas in the study of Islamic jurisprudence (*uṣūl al-fiqh*), it is known that there is a fundamental difference between the characteristics of the *fiqh* of worship (*ʿibādah*) and the *fiqh al-muʿāmalah*. If the *fiqh* of worship is constant and immutable, then the *fiqh al-muʿāmalah* is the opposite. Therefore, this ideology tends to be textual-formalistic, and its adherents feel there is no need to verify religious arguments between worship and *muʿāmalah*.

Given that the government system with various variants is included in the realm of *fiqh al-muʿāmalah*, it is natural to be the subject of discussion among jurists. In fact, the area of the government system is included in the *wasīlah* (means) category, not the goal. The goal is how the benefit of humankind can be enforced and how various kinds of damage can be avoided together. With this principle, people can live in harmony side by side in the midst of ethnic, cultural, and religious diversity. Such diversities in Indonesia come into a consideration for the scholars and founders of the country to formulate the ideology of Pancasila.

This kind of diversity existed when the Prophet founded the Medina community, whose population consisted of various ethnicities and religions. In this context, the Prophet cared to maintain harmony among tribes and religious adherents so that they do not interfere with each other in carrying out the teachings of their respective religions. The Prophet then formed a legal umbrella as a state foothold for the people of Medina. This legal umbrella became known as the Medina Charter, which obliges all elements of society to live side by side and work for hand in hand to face various threats and attacks from outsiders.

## Conclusion

The principle of Pancasila as the basis and ideology of the state has been proven to unite the nation and create harmony in the midst of the diversity and plurality. This is in accordance with the Medina Charter, which the Prophet made when establishing the state of Medina, whose society is plural, multi-ethnic, and multi-religious. The transnational ideology with a single and textual understanding of religion is not appropriate for Indonesia, which has a multi-ethnic, multi-cultural, and multi-religious population. By using the perspective of the *maqāṣid al-shari'ah*, the principles of Pancasila are in accordance with the context of *fiqh al-mu'āmalah* which has a dynamic nature, especially those related to state administration and constitutional area. This is by referring to Islamic law principles to spread benefit and reject the occurrence of damage in the life of the nation and state.

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