



**ADDIN**

<https://journal.iainkudus.ac.id/index.php/Addin>

ISSN: 0854-0594; E-ISSN: 2476-9479

Volume 17, Number 1, June 2023: 1-24

DOI: <http://dx.doi.org/10.21043/addin.v17i1.17114>

## **‘Allāl al-Fāsī and Sahal Mahfudh: *Maqāṣid asy-Sharī’a* as the Meeting Point of the Different Inclinations Rooted in Sunni Tradition**

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### **Abstract**

This article aims to highlight the position of ‘Allāl and Sahal in the development of *Maqāṣid asy-Syari’a* theory and its application to political, social, and economic problems. The approach is carried out by examining their intellectual career background, examining the theory of the development of *Maqāṣid asy-Syari’a* theory and how they implement it. As a result, ‘Allāl and Sahal took different positions about *Maqāṣid asy-Syari’a*, although in the and they produced similar or almost the same legal opinions. They both propose a democratic government, an economy that prioritizes the interests of the community, and social conditions that prioritize the interests of women. The dominant difference lies in the characteristics of the choice of sources that indicate affiliation. ‘Allāl more often refers to the Qur’an and Sunnah as recommended by the Salafis. While Sahal more often refers to the fiqh tradition advocated by traditional schools, by accommodating modern theories, such as philosophy and social sciences. At this point, the author argues that the concept of *Maqāṣid asy-Syari’a* is a meeting point for various tendencies rooted in the Sunni intellectual tradition, including the different tendencies espoused by ‘Allāl and Sahal.

**Keyword:** *‘Allāl al-Fāsī, Maqāṣid asy-Syari’a, Sahal Mahfudz.*

## A. Introduction

In 1968, Clifford Geertz (d.2006) wrote *Islam Observed* which compares the characteristics of Islam in Morocco and Indonesia through the symbols represented by legends of Sunan Kalijaga and Sidi Lahsen Lyusi who lived in the sixteenth century. He also observed on how the transformation of Muslim communities in both regions dealt with the challenges of scripturalism, colonialism and modernity in the nineteenth to twentieth centuries through the symbols of Soekarno (d. 1970) and Muhammed V (d. 1961). Geertz concludes that however a religion maintains its classical forms, it will certainly continue to change.<sup>1</sup> This article will continue the observation by comparing 'Allāl al-Fāsī (d. 1974) and Sahal Mahfudh (d. 2014). Repeatedly 'Allāl called as pioneer of scripturalism who promoting nationalism in Morocco. However, Geertz did not clearly explain what and how his ideas proposed. Lauzière has observed 'Allāl's position on his involvement in a unique pattern of Salafism developed in the Middle East or Arab world.<sup>2</sup> While Cohen<sup>3</sup> and Mogilsk<sup>4</sup> isolated 'Allāl's ideas in the frame of local nationalism in Morocco.

Sahal Mahfudh's name certainly does not appear in Geertz's work, because he is three decades younger than 'Allāl. Furthermore, Sahal's efforts to negotiate Islamic teachings with social problems begins popular after 1990's. Feener, Al Qurtuby and other scholars have discussed Sahal's roles in the new traditionalist Muslim circle to contextualize the fiqh tradition in Indonesia.<sup>5</sup> Arrq Recently, the Fiqh Social Institute also published two books to explain Sahal's

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<sup>1</sup>Daniel L Pas, *Seven Theories of Religion* (New York: Oxford University Press, 1996).

<sup>2</sup>Henri Lauzière, *The Making of Salafism: Islamic Reform in the Twentieth Century* (New York: Columbia University Press, 2015).

<sup>3</sup>Amnon Cohen, "Allāl al-Fāsī: His Ideas and His Contribution Towards Morocco's Independence," *Asian and African Studies* (1967), 121-27.

<sup>4</sup>Sara Mogilski, "French Influence on a 20th Century Ālim: 'Allāl al-Fāsī and His Ideas Toward Legal Reform in Morocco" (Canada: McGill University, 2006).

<sup>5</sup>R. Michael Feener, *Muslim Legal Thought in Modern Indonesia* (Cambridge: Cambridge University Press, 2007). See also Sumanto Al-Qurtuby, *K.H. M.A. Sahal Mahfudh: Era Baru Fiqh Indonesia* (Yogyakarta: Cermin, 1999).

ideas more clearly.<sup>6</sup> However, like 'Allāl, Sahal ideas are placed within the locality of Indonesia or Southeast Asia. As this article will show, both are intersect in ideas and arguments even though they are separated by distance and even by different ideologies. Both use Islamic jurisprudence, especially *Maqāṣid asy-Sharī'a*, as a tool for struggling with dynamics of society.

Scholars have observed that rapid social, economical dan political changes forces Islamic jurisprudence in the Muslim world always be able to provide solutions in line with modernity, but also in accordance with Sharī'a.<sup>7</sup> The concept of *maṣlaḥa* and *Maqāṣid asy-Sharī'a* play an important role in answering these problems. Generally speaking, the theory developed to negotiate unlimited human interests by exploring the objectives of the *Sharī'a* through the limited texts. A number of modern scholars, such as Adis Duderija<sup>8</sup> and Jasser Auda,<sup>9</sup> are still trying to develop this theory. Felicitas Opwis has observed that there are changes proposed by modern intellectuals in interpreting the concepts of *maṣlaḥa* and *Maqāṣid asy-Sharī'a* in the pre-modern period. Opwis compared almost all intellectuals who played important roles in the modern Middle East.<sup>10</sup> However, she has not compared it with the ideas proposed by scholars from Southeast Asia.

One of the thinkers is 'Allal al-Fasi, which Karume Fatimah has studied in her article entitled "Maqāṣid Huquq al-Insan 'inda al-Imāmmain Muhammad Tāhir bin 'Asyūr wa 'Allāl al-Fāsī" examines

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<sup>6</sup>Munawwir Aziz (ed.), *Epistemologi Fiqh Sosial: Konsep Hukum Islam dan Pemberdayaan Masyarakat* (Pati: Fiqh Sosial Institute, 2014). Tutik Nurul Jannah (ed.), *Metodologi Fiqh Sosial: dari Qouli Menuju Manhaji* (Pati: Fiqh Sosial Institute, 2015).

<sup>7</sup>Wael B Hallaq, "Maqāṣid and the Challenges of Modernity," *Al-Jami'ah* 49, no. 1 (2011).

<sup>8</sup>Adis Durdeja, *Maqasid Al Shari'a and Contemporary Reformist Muslim Thought: An Examination* (New York: Palgrave MacMillan, 2014).

<sup>9</sup>Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach* (Washington: IIT, 2007).

<sup>10</sup>Felicitas Opwis, "Maṣlaḥa in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12, no. 2 (2005). Felicitas Opwis, "Tren Baru Teori Hukum Islam: Maqāṣid al-Syarī'a Sebagai Sumber Hukum Baru?," *Die Welt Des Islam* 57 (2017).

the thinking of *Maqāshid asy-Syari'ah* two prominent scholars namely Muhammad al-Ṭāhir bin 'Asyūr and 'Allāl al-Fāsī, through their books *Maqāshid asy-Syari'ah al-Islamiyah* and *Maqāshid asy-Syari'ah al-Islāmiyyah wa Makārimuha*.<sup>11</sup>

Abdul Hafidz in his article entitled "The Concept of Maqāshid Syari'ah Perspective of 'Allāl al-Fāsy" emphasized that the 'Allāl al-Fāsī's *Maqāshid asy-Syari'ah* concept is a direct continuation of *Maqāshid asy-Syari'ah* asy-Syatibi after Ibn Asyur.<sup>12</sup>

Meanwhile, M. Nailul Author seeks to implement the theory of 'Alal al-Fasi's *Maqashid* theory in the context of land compensation by the government for residents affected by the construction of the Bener Dam who are struggling to defend the rights of citizens as whole human beings. 'Allal al-Fasi on land compensation by the government for a national strategic project (a case study of the Bener Dam construction project in Bener sub-district, Purworejo Regency).<sup>13</sup>

A study of the thoughts of Sahal Mahfudz has also been carried out, among others, by Qurrotul Ainiyah with his article entitled "Implementation of *Maqāshid Syari'ah* through Social Fiqh (Assessing the Idea of Social Fiqh K.H. M.A. Sahal Mahfudh)". Elaboration on Sahal Mahfudz's thoughts can also be found in Taufik Fauzi's writings entitled "Problems of Ijbar Rights of Marriage Guardians from the Perspective of Social Jurisprudence K.H. M.A. Sahal Mahfudz", and Arief Aulia's entitled "Methodology of Social Fiqh K.H. M.A. Sahal Mahfudh".<sup>14</sup>

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<sup>11</sup> Karume Fatimah, "Maqāshid Huqūq al-Insān 'Inda al-Imām Muhammad aṭ-Ṭāhir bin 'Āsyur wa 'Allāl al-Fāsī," *al-Hiwar al-Fikr* 12, no. 14 (2017): 89-111.

<sup>12</sup> Abdul Hafidz, "Konsep Maqāshid Syari'ah Perspektif 'Allāl al-Fāsī," *CENDEKIA: Jurnal Studi Keislaman* 6, no. 1 (2020).

<sup>13</sup> M. Nailul Author, "Tinjauan Maqashid asy-Syari'ah 'Allal Fasi terhadap Ganti Rugi Tanah oleh Pemerintah untuk Proyek Strategis Nasional: Studi Kasus Proyek Pembangunan Bendungan Bener di Kecamatan Bener Kabupaten Purworejo," (Universitas Islam Indonesia, 2023).

<sup>14</sup> Arief Aulia, "Metodologi Fiqh Sosial M.A. Sahal Mahfudh," *el-Mashlah* 7, no. 2 (2017).

This article will highlight the position of 'Allāl and Sahal in the development of *Maqāṣid asy-Sharī'a* theory and its application in their political, social and economic problems. Unlike Geertz who observes and interprets religion as a system of symbols, this article highlights the concept of *Maqāṣid asy-Sharī'a* formed in different ideological and social tendencies. To get a complete picture, the background of the twentieth-century in Morocco and Indonesia that shaped their thinking will be explained first.

## **B. Discussion**

### **1. Indonesian and Morocco Experiences**

This section will describe the making of their intellectual career. At the end, similarities and differences in their intellectual roots will also be presented. 'Allāl al-Fāsī was born in 1907 in Fes, Morocco. He came from a distinguished family, where his father was an official in al-Qarawiyīn University. Before beginning his career as an activist who campaigned for Moroccan independence from the French colonialism (1912-1956), he studied religion in Islamic traditional institutions, especially in Mālik b. Anas (d.179/795) fiqh tradition which affiliated with Sunni Islam. Buskens points out that his reform ideas are firmly rooted in Mālikī characters.<sup>15</sup> Lauzière also noted that 'Allāl is an adherent of Ash'arī theology.<sup>16</sup> While through Geertz's observation we know that Sufism has developed in Morocco, although the challenges of scripturalism then emerged in the nineteenth century.<sup>17</sup> Here, we can see that despite calling himself a Salafist, 'Allāl was born in the background of Sunni Islam.

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<sup>15</sup> Leon Buskens, "Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in Emerging Public Sphere," *Islamic Law and Society* 10, no. 1 (2003).

<sup>16</sup> Lauzière, *The Making of Salafism: Islamic Reform in the Twentieth Century*.

<sup>17</sup> Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia* (Chicago: The University of Chicago Press, 1971).

'Allāl's awareness of modernity and nationalism emerged along with his activities in the campus sphere. In 1937 he founded the party (*al-ḥizb al-qawmī li-taḥqīq al-maṭālib al-maghribiyya*) which led him to be exiled to France in 1933. Again, in 1937-1946 he was imprisoned in Gabon. After Morocco's independence, he still launched political maneuvers from Egypt in 1947-1956. He briefly taught at al-Qarawiyīn University (1933) until finally dismissed by the policy of the French authorities through the support from Sufi orders.<sup>18</sup> Perhaps, that is the reason why he has resistant attitude to almost all of Sufi groups in Morocco. He even proclaimed himself as a Salafist who tried to purify the Islamic teachings, because the revival of Moroccan Muslim society at the time was hindered by deviant practices of Sufism.<sup>19</sup>

It is important to note that he wrote no less than thirty titles of books, especially regarding Islamic reform and nationalism in accordance with the spirit of the environment he lived. Three important works are *al-Ḥarakāt al-Istiqlāliyyat fī al-Maghrib al-'Arabī* (1948), *an-Naqd adh-Dhātī* (1952), and *Maqāṣid asy-Sharī'a al-Islāmiyyat wa Makārimuhā* (1963). In these works we can find the influences of al-Afghānī (d. 1897) and Muḥammad 'Abduh (d. 1905) who campaigned for modernism in the Islamic world. It was at this point Lauzière argued that 'Allāl was more inclined to the modernist Salafi tendencies rather than purist one.<sup>20</sup>

Thirty years younger than 'Allāl, Muhammad Ahmad Sahal Mahfudh was born in Pati, Indonesia in 1937. He comes from "Kiai" circle that maintains the traditional inclination of Sunni Islam. Sahal did not deal with colonialism directly like 'Allāl, although his father was imprisoned by Dutch. The early phase of his life were spent on studying classical Islamic knowledge in several pesantren in Java,

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<sup>18</sup>Cohen, "Allāl al-Fāsī: His Ideas and His Contribution Towards Morocco's Independence."

<sup>19</sup> Mogilski, "French Influence on a 20th Century 'Ālim: 'Allāl al-Fāsī and His Ideas Toward Legal Reform in Morocco."

<sup>20</sup>Lauzière, *The Making of Salafism: Islamic Reform in the Twentieth Century*.

especially on Shāfi'ī (d. 204/820) fiqh tradition. Consequently, his area of expertise is on fiqh and jurisprudence. Almost all the books he wrote refer to this discipline.<sup>21</sup>

It should be noted here that in the early phase of his intellectual career, he has rigid attitude to classical fiqh. In 1962 he was involved in the debate about the use of eye glass in commercial transactions. He maintains persistently that it is forbidden. In that period he was firmly defending the literatures and jurisprudence of Shāfi'ī madhhab, although sometimes not in line with changes in society. He rejects any legal analogy used to interpret classical fiqh textbooks, such as ar-Ramlī (w. 1596), ash-Sharqāwī (w. 1812), and at-Tarmasī (w. 1920), which states the prohibition of using eye glass. His quotations from *Ghāyat al-Wuṣūl Sharḥ Lubḥ al-Uṣūl* by Zakariyyā al-Anṣārī (w. 1520) or *al-Fawā'id al-Makkiyyah* by 'Alawī as-Saqqāf (w. 1917) in *Intifākh al-Wadajayn* indicate the influence of literatures he studied at the pesantren.<sup>22</sup> Both works were adapted in his *Tarīqat al-Ḥuṣūl 'alā Ghāyat al-Wuṣūl* and *Ta'liqāt 'alā al-Thamarāt al-Ḥājayniyyat fī Iṣṭilāḥāt al-Fiqhiyyah*.

In 1968 he made a pilgrimage to Mecca as well as to deepen his expertise by studying with Shaykh Yāsīn al-Fadanī (d. 1990). Upon his return to Indonesia, especially since 1970's, besides teaching in pesantren, Sahal was actively involved in various discussions (*ḥalaqah*), NGO's (LP3ES) and organizations (NU and MUI) made him widely known as initiator of Social Fiqh. The

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<sup>21</sup> His works on fiqh and uṣūl al-fiqh written in the 1960's are: *Tarīqat al-Ḥuṣūl 'alā Ghāyat al-Wuṣūl li Zakariyyā al-Anṣārī* (1961); *Ta'liqāt 'alā al-Thamarāt al-Ḥājayniyyat fī Iṣṭilāḥāt al-Fiqhiyyah* (1961); *al-Bayān al-Mulamma' 'an Alfāz al-Luma' li Abī Ishāq ash-Shirāzī* (1961); *Intifākh al-Wadajayn 'inda Munāzarat 'Ulamā' Ḥājayn fī Ru'yat al-Mabī' bi Zujāj al-'Aynayn* (1962); and *Fayḍ al-Ḥajā' 'alā Manzūmat Safinat an-Najā li Sālim b. Sumayr* (1963). Since the 1980's Sahal preferred to write fiqh problematics in mass media with bahasa Indonesia. The columns were later published in book version are *Nuansa Fiqh Sosial* (1994); *Pesantren Mencari Makna* (1999); and *Dialog Problematika Ummat* (2003, 2011).

<sup>22</sup> Sahal Mahfudz, *Intifākh al-Wadajayn 'inda Munāzarat "Ulamā" Ḥājayn fī Ru'yat al-Mabī' bi Zujāj al-'Aynayn* (Pati: Mabadi Sejahtera, 2012).

main idea is to contextualize classical fiqh tradition based on contemporary of social reality.<sup>23</sup> Through Abdurrahman Wahid, he became acquainted with progressive scholars, such as Dawam Rahardjo (d. 2018) or Nurcholish Madjid (d. 2005). They come from Muhammadiyah and represented modernist characters propagated by 'Abduh or Fazlur Rahman (d. 1988). Consequently, since 1980's, especially after the Munas NU in Lampung (1992), the shift in Sahal's thinking was seen when he proposed developments on fiqh in Indonesia. In this phase Sahal's ideas are more contextual than before.

It is important to note that although he never recorded affiliated with certain Sufi orders, he does not reject Sufism like 'Allāl. In *Lum'at al-Himmah ilā al-Musalsalāt al-Muhimmah*, we can find a transmission (*sanad*) (*Manāqib 'Abd al-Qādir al-Jaylānī* or *al-Mawlid Ja'far al-Barzanjī*) which show the tradition of Sufism which he followed.<sup>24</sup>

As reflection, we have to state that 'Allāl and Sahal live in the roots of Sunni Islam tradition. Both also familiar with Sufism, although only 'Allāl showed his resistance and involved in Salafi movement. This was apparently caused by his disappointment with Sufi groups in Morocco who are allied with colonialism. On the other hand, even though Sahal lives in classical fiqh tradition, we can find that there is a transformation in his ideas. At least we suspect that he was influenced by the spirit of reform. And here we have a rational background that even though 'Allāl and Sahal are affiliated to different ideologies, both respond challenges faced by the community. Interestingly, as we will discuss in the next section, 'Allāl and Sahal use *Maqāṣid asy-Sharī'a*. However, we need to identify whether they stand on the same framework?

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<sup>23</sup>Feener, *Muslim Legal Thought in Modern Indonesia*.

<sup>24</sup>Sahal Mahfudz, *Lum'at al-Himmah ilā al-Musalsalāt al-Muhimmah* (Pati: Maktabah Maslak al-Huda, 1968).



## 2. The History of *Maqāṣid al-Sharī'a*

To find out the position of 'Allāl and Sahal, this section will describe the development of *Maqāṣid asy-Sharī'a* from historical point of view. Hashim Kamali stated that the theory developed in the fourth century after hijrah. In the first three centuries of Islamic history Muslim scholars more interested to develop jurisprudence theories based on the textuality of evidences, although in the Qur'an and Sunnah we can find principles that support the benefit or protection of humans in a more contextual manner.<sup>25</sup> The purpose of protection is not only emphasized in worship matters, but also in social contexts. Taking *wuḍū* for instance, it is not only a requirement to establish prayer but also has a goal of maintaining cleanliness. *Jihād* does not only mean fighting other people, because there is goal to eliminate injustice. Likewise *zakāt* to overcome economic disparities.

The concept of *maṣlaḥa* first appeared in the writings of Abū 'Abdullāh at-Tirmidhī al-Ḥakīm (d. 932) that followed by al-Juwaynī (d. 1085). Al-Juwaynī said that, although not explicitly mentioned in the Qur'an or Sunnah, Sharī'a has three levels of purpose, namely those which are essential, complementary and desirable (*ḍarūrī, ḥajjī, taḥsinī*). Al-Ghazālī (d. 505/111), al-Juwaynī's student, complements his teacher's opinion by including five essential categories: protection of faith, intellect, lineage, and property. As a Shāfi'ī (d. 204/820) follower, he offered restrictions that every benefit should be in line with the Qur'an or Sunnah or ratio legis obtained from those texts.<sup>26</sup>

Besides integrating *maṣlaḥa* with ratio legis in a legal analogy like al-Ghazālī, al-Qarāfi (d. 1285) from Maliki tradition also uses legal percepts (*qawā'id*) to negotiates any new cases not mentioned in scriptural sources. Legal percepts are snappy

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<sup>25</sup> Mohammad Hashim Kamali, "Maqāṣid al-Sharī'ah: The Objectives of Islamic Law," *Islamic Studies* 38, no. 2 (1999).

<sup>26</sup> Kamali.

statements abstracted from the rulings that have been formulated in the existing fiqh corpuses. These statements reflect an effort to avoid damage and achieve *maṣlaḥa* intended by Lawgiver. The development of this genre in Islamic jurisprudence has existed since the 9th century and increased in the 11th century which was marked by the emergence of works entitled *Kitāb al-Ashbāh wa an-Nazāir* (“Book of Resemblances and Similitudes”). The concept of legal precepts is useful for evaluating the rulings in the past that are not in accordance with the actual conditions of the community. Furthermore, it is also useful to preponderance (*tarjih*) contradicting rulings in the past.

There is also ash-Shāṭibī (d. 1388) from Mālikī tradition like al-Qarāfī, who makes induction of the text as a mechanism for identifying *maṣlaḥa* as Sharī’a purposes without being bound by specific orders or restrictions. He succeeded in placing *Maqāṣid asy-Sharī’a* as values that can be observed dynamically through the help of human reasoning and experience. However, despite giving more priority to reason and experience, he still maintains the authority of the text. He made a clear distinction between the intent of the legislator (*Shāri’*) and the purpose of the legal objects (*mukallaḥ*).

And the last, we can find a more controversial idea in the proposal of at-Ṭūfī (d. 1316) from Ḥanbalī tradition. He said that in the social contract the benefit must take precedence over the textuality of the Qur’an and Sunnah. The reason is that human thought can know which is useful and which is damaging (*istiqlāl al-‘uqūl bi idrāk al-maṣāliḥ wa al-mafāsīd*), even without the support of the text (*mustaqill ‘an an-nuṣūṣ*).<sup>27</sup>

The Four *maṣlaḥa* developed by al-Ghazālī, al-Qarāfī, ash-Shāṭibī, dan at-Ṭūfī above, according to Opwis, represents the concepts of *maṣlaḥa* and *Maqāṣid asy-Sharī’a* in the pre-modern

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<sup>27</sup> Kamali.

period. At the end of the 19<sup>th</sup> century, along with the challenges of modernity which largely caused by colonialism, religious reform movement sought to revive Islamic civilization by reinterpreting Islamic scriptural sources emerging in the Middle East. This had an impact on the Islamic jurisprudence areas, where reformist Muslims criticized the classical jurisprudence products and suggested *ijtihād*. In this framework, the discussions on *maṣlaḥa* reappeared. Some intellectuals, like Rashīd Riḍā (d. 1935) and Jamāl ad-Dīn al-Qāsimī (d. 1914), refer to the at-Ṭūfī's model of *maṣlaḥa* based on its compatibility with their spirit of reform. While others, such as Maḥmaṣānī (d. 1986), are closer to the ash-Shāṭibī's model of *maṣlaḥa* based on the desire to maintain traditional structure of Islamic jurisprudence as much as possible without losing their effort to accommodate modernity.<sup>28</sup>

Opwis's observations also indicate that in the modern period reformist intellectuals showed different tendencies. If in the pre-modern period *maṣlaḥa* was used to justify the conformity of certain rulings with *Maqāṣid asy-Sharī'a*, reformist intellectuals in the modern period focused on *Maqāṣid asy-Sharī'a* first and then sought to achieve these universal goals by considering *maṣlaḥa*. As a result, they criticized Ghazālī's five essential categories which were not sufficiently used to accommodate the challenges of modernity. They sought to add universal values in *Maqāṣid asy-Sharī'a* by including new values such as protection of human honor (*'ird*) that had not been agreed in the pre-modern period.<sup>29</sup> They also looked for historical arguments in Ibn Taymiyya's works which added fulfillment of contracts, preservation of the ties of kinship, honoring the rights of neighbor, sincerity, trustworthiness, moral purity and so forth. He even opened additional categories of benefit to unlimited possibilities.

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<sup>28</sup> Opwis, "Maṣlaḥa in Contemporary Islamic Legal Theory."

<sup>29</sup> Opwis.

The traces of Ibn Taymiyya were followed by modern intellectuals. Al-Qaraḍāwī (b. 1926) added social welfare, freedom and human dignity. Ibn ‘Āshūr (d. 1907) proposes orderliness, equality, freedom, facilitation, and the preservation of pure natural disposition.<sup>30</sup> There were also Aḥmad al-Khamlīshī and Jamāl ad-Dīn Aṭīyya with various more liberal another proposal. As a result, these reformist intellectuals contributed to changes to the four sources of classical jurisprudence where *maṣlaḥa* sometimes replaced consensus (*ijmā’*) or legal analogy (*qiyās*).<sup>31</sup> However, here I have to argue that the concepts of *maṣlaḥa* and *Maqāṣid asy-Sharī’a* still rooted in the tradition of Sunni Islam.

### 3. Different Position of *Maqāṣid asy-Sharī’a*

Based on the discussion of the history of the development of *maslaḥa* and *Maqāṣid asy-Sharī’a* above it is easier for us to look where the position of ‘Allāl al-Fāsī and Sahal Mahfudh are. I found that al-Fāsī’s thought is centered on the concept of *maṣlaḥa*. He even states that *maṣlaḥa* is the main purpose of the *Sharī’a*. This is shown when he discusses the classical debates about the conformity of *maṣlaḥa* with the *Sharī’a*. He explained that al-Ghazālī’s reason in prohibiting the use of *maṣlaḥa mursala* is to restrict wild *ijtihād* which are feared incompatible with the *Sharī’a*. In this case, he is not careful enough as suggested by al-Ghazālī. He discusses the opinions of at-Ṭūfī and Riḍā which indicate that in worldly affairs (*‘ādāt* and *mu’āmalāt*) the *maṣlaḥa* does not need the support from the special text (*naṣṣ*) and consensus (*ijmā’*).<sup>32</sup>

What dominant from almost of ‘Allāl’s writings are about social justice. He even states that justice or social justice is the

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<sup>30</sup> Auda, *Maqāṣid al-Shariah as Philosophy of Islamic Law: A System Approach*.

<sup>31</sup> Opwis, “Maṣlaḥa in Contemporary Islamic Legal Theory.”

<sup>32</sup> ‘Allāl al-Fāsī, *Maqāṣid al-Sharī’a al-Islāmiyyat wa Makārimuhā* (Beirut: Dār al-Gharb al-Islāmī, 1993).

ultimate purpose of the *Sharī'a*.<sup>33</sup> In one chapter in his *Maqāṣid asy-Sharī'a*, he discusses methods for realizing *maṣlaḥa* in accordance with the purpose of the *Sharī'a* (*qawā'id taqyīd al-maṣlaḥa bi al-maqāṣid*). He describes three methods:

- a. Prefer the public *maṣlaḥa* before the individual *maṣlaḥa*;
- b. Prefer avoidance of damage before *maṣlaḥa*; and
- c. Accommodate *ḥukm* differences based on *maṣlaḥa* considerations.<sup>34</sup>

The concept of *maṣlaḥa* is also clearly shown in Sahal's writings. What dominant is the idea of happiness in the world and in the hereafter. Interestingly, we can see that he was keen to maintain classical fiqh texts as long as they were considered relevant. When receiving doctor honoris causa in 2003, he proposed five characteristics of social fiqh:

- a. Interpretation of classical fiqh texts contextually;
- b. Changing the textual *madhhab* pattern (*qawli*) to a methodological (*manhajī*) pattern;
- c. Verify the fundamental teachings (*uṣūl*) and its branches (*furū'*);
- d. Placing fiqh as a social ethic, not as a positive law; and
- e. Introducing philosophical thinking, especially on social and cultural issues.<sup>35</sup>

At the first point, Sahal explained the idea of contextualizing fiqh products. He argues that the mastery of modern knowledge (social and natural sciences) and methods of jurisprudence (*uṣūl wa qawā'id al-fiqhī*) can be used to contextualize fiqh texts, since most of the texts are still relevant in the modern context. On other hand, especially on the second point, Sahal suggest the development of

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<sup>33</sup> Al-Fāsī.

<sup>34</sup> Al-Fāsī.

<sup>35</sup> Sahal Mahfudz, *Fiqh Sosial: Upaya Pengembangan Madzhab Qauli dan Manhaji* (Jakarta: UIN Syarif Hidayatullah, 2003).

fiqh methodologically (*manhajī*) by integrating the *ḥikma* and the 'illat of ḥukm. In other words, Sahal tend to integrate *qiyās* with *Maqāṣid asy-Sharī'a*, as maintained by al-Ghazālī. However, based on the interview conducted by Nadirsyah Hosen, Mahfudh never applied the latter method.

Here we should concluded that 'Allāl and Sahal took a different position. Like at-Ṭūfī, for 'Allāl, social justice is certainly classified as worldly affairs that do not need to consult with the text. In contrast to 'Allāl, in dealing with social problems, Sahal tried to maintain fiqh literature as long as feasible to apply or at least to contextualized. That means, he is not in a hurry to find solutions in the Qur'an or Sunnah or even ignored them like 'Allāl. He also adopted al-Ghazālī's version of *Maqāṣid* which is more rigid than at-Ṭūfī's version. However, it cannot be denied that like 'Allāl, Sahal also accommodates modern theories, such as philosophy and social sciences.

At this point, I argue that the concept of *Maqāṣid asy-Sharī'a* is a meeting point for various tendencies rooted in Sunni intellectual traditions, including differences in inclination held by 'Allāl and Sahal. We can see the traces of this argument in Ibn Taymiyya's position (d. 1382) who contributed to the development of the *Maqāṣid asy-Sharī'a* theory. Even though he is known as a pioneer of Salafism which does not recognize Sunni theology and legal schools, actually he adopts Aḥmad b. Ḥanbal's ideas. 'Allāl uses at-Ṭūfī's pattern of *Maqāṣid*, although he is affiliated with Salafism. Similar to Sahal who accomodates modern values, even though he is a Shāfi'ī follower. The question then is whether the differences in their *Maqāṣid* version have impact when applied?

#### **4. Applications of *Maqāṣid***

To observe how 'Allāl and Sahal applied *Maqāṣid asy-Sharī'a* theory, their suggestions for political, economic and social problems

would be compared. The proposals outlined in this section certainly do not represent all ideas scattered in dozens of their works, but at least clear enough to characterize their ideas.

#### **a. Islam and Politics or Nation-State**

In the relation of Islam and politics or nation-state, 'Allāl said that success in religion also means success in society. This must be supported by the rapid development of science and technology of Western civilization. Therefore, he proposes a legislation (*al-Qānūn al-Islāmī al-Maghribī*) based on a combination of fiqh (*ijtihād*) and European jurisprudence. He relied on the principle of freedom to determine the political system as shown in Islamic history. In addition, the principles of democracy developed in the West, such as benefit or justice for the whole community, are the principles recognized in the Qur'an and Sunnah.<sup>36</sup>

On the other hand, Sahal said that maintaining religion also meant regulating worldly matters. The goal is the benefit gained by the community and avoid them from damage, including protection in maintaining religion, reason, property and so forth. Shortly, Sahal argues that Islam is not separate from the State. However, it does not mean the State should apply Islam as a symbol. He does not consider a need to adopt Western model as proposed by 'Allāl. According to him, as long as a State is able to bring justice and prosperity to the community, the country is in line with the principles that are advocated by Islam, even though the State is not an Islamic State. Besides relying on fiqh literature on politics, such as *al-Aḥkām as-Ṣulthāniyya* by al-Māwardī, Sahal adopted a well-known legal maxim to conclude that the State

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<sup>36</sup> 'Allāl al-Fāsī, *an-Naqd adh-Dhātī* (Mesir: al-Maṭba'a al-'Ālamiyya, 1952).

should adopt the policies that favor public welfare (*taṣarruf al-imām manūṭ bi al-maṣlaḥah*).<sup>37</sup>

## **b. Economic**

In the economic field, 'Allāl proposed a management of zakat and waqf governed by the State through an economic system that promotes equality and social justice. 'Allāl said that Islam made every wealth as a temptations for human being. That means wealth is an intermediary to tempt how someone treats it for the public interest. He underlined that Islam not only determines the types of property that are *ḥalāl* or *ḥarām* but also the principles of the economy that uphold justice and benefit. Based on this principle, 'Allāl looks at the greater potential of zakat and waqf if it is managed by the State. According to 'Allāl, such modern management is in line with the Qur'anic principle that prohibit the circulation of wealth in a small community.<sup>38</sup>

Similar to 'Allāl, Sahal argued that Islam rejects any individualistic economic system that ignores social dimensions. Unfortunately, zakat has not been properly managed and distributed in such a framework. In bridging the problem, he argues that many zakat provisions in fiqh literature are still worthy to use, although there are those that need to be contextualized. He suggested the management of zakat in a modern way by positioning the government as a manager (*'āmil*) who transforms zakat as working capital for society. According to him, it did not leave provisions in Shāfi'ī madhhab. He also retains the view that salaries are not subject to zakat obligations, since that is not sufficient for the requirements. However, zakat is not the only way to support

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<sup>37</sup>Sahal Mahfudz, *Nuansa Fiqh Sosial* (Yogyakarta: LKiS, 2012).

<sup>38</sup>Al-Fāsī, *an-Naqd adh-Dhātī*.



the welfare of society, since *infaq* and *ṣadaqah* can managed professionally for the purposes. On other hand, he also uses the opinion of Ḥanbalī school to open the the acceptance of zakat in the category of *sabīlillāh* that can be used to build mosque, schools, bridge and other public facilities.<sup>39</sup>

### c. Women

Regarding women's issues, 'Allāl proposes the right equality for women. Islam, according to him, came to repair the condition of women in society. They are expected to have the same rights as men to engage in economic, social and political spheres. Unfortunately, in the shadow of *Sharī'a*, later they did not have full access to inheritance. All of their activities are also limited by the husband's permission, based on the assumption that they are part of the husband's responsibility. In fact, according to him, one of the reasons of the backwardness of society in Morocco is the lack of women involvement in public spheres. He relied on 'Umar b. al-Khaṭṭāb's statement that Islam will be destroyed if one does not know the basic principles that are struggled by Islam in the time of ignorance. He also showed historical evidence that the Prophet had a dialogue with women in public spheres. Therefore, 'Allāl suggested that women can get a decent education, freedom in work or participate in politics as obtained by men.<sup>40</sup>

Although Sahal does not propose the involvement of women in economic, social and political activities like 'Allāl, his writings show that he supports equality between men and women. He stated that discrimination faced by women was shaped by processes and social dynamics for centuries.

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<sup>39</sup> Mahfudz, *Nuansa Fiqh Sosial*.

<sup>40</sup> Al-Fāsī, *an-Naqd adh-Dhātī*.

That means that the bias faced by women is not caused by gender problems or even religious teachings. Unfortunately, the cultural process shows that it is as if Islam legitimizes the position of men higher than women. In fact, history shows that Islam comes with respect for women, so they have the freedom to get education and actualize their needs.<sup>41</sup>

#### d. Social

Still related to women, 'Allāl proposed to increase the birth rate. He observed the imbalance of wide area and growth population in Morocco. Most of them are farmers who can use large areas of land. This should have an impact on the economy and people's welfare. While in reality the majority of the people are below the poverty line. Child mortality before reaching adulthood is also high due to their lack of concern for health. For the reasons, 'Allāl argued that an increase in birth rates accompanied by an increase in economy, education and health rates was a best solution.<sup>42</sup>

Contrary to 'Allāl, Sahal supports family planning programs (Keluarga Berencana, KB) aimed at limiting birth rates. Different with the lack of population in Morocco, Sahal saw that the high rate of population in Indonesia was not matched by the quality of education and economy obtained. Consequently, he argues that birth rates should be accompanied by adequate educational and economic quality. Therefore, according to him, KB can be a solution to manage the quality of population. In this case he relied on the opinion of Ibrāhīm al-Bayjūrī (1267/1851) who said that the use of condoms was not recommended (*makrūh*), although

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<sup>41</sup>Sahal Mahfudz, Preface on Husein Muhammad, *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender* (Yogyakarta: LKIS, 2012).

<sup>42</sup>Al-Fāsī, *an-Naqd adh-Dhātī*.

breaking the lineage was *ḥarām*.<sup>43</sup> Another his controversial opinion is about prostitution. According to him, the deviation of sexuality will always exist in the human history. Therefore, localizing prostitution in a particular place can avoid a wider negative impact. In this case Sahal applied the principle: “seeking the smallest damage” (*idhā ta'āraḍa mafsadatān ru'ya a'zāmuḥā ḍarara bi irtikāb akhaffihimā*).<sup>44</sup>

This in table of implementation of *Maqāshid asy-Sharī'a* 'by Allāl al-Fāsī and Sahal Mahfudh.

| No. | <i>Maqāshid asy-Sharī'a</i>        | 'Allāl al-Fāsī   | Sahal Mahfudh  |
|-----|------------------------------------|--|--|
| 1   | Islam and Politics or Nation-State | Success in religion also means success in society, a legislation ( <i>al-Qānūn al-Islāmī al-Maghribī</i> ) based on a combination of fiqh ( <i>ijtihād</i> ) and European jurisprudence. | Islam is not separate from the State. However, it does not mean the State should apply Islam as a symbol.  |
| 2   | Economic                           | Proposed a management of zakat and waqf governed by the State through an economic system that promotes equality and social justice.  | Islam rejects any individualistic economic system that ignores social dimensions, the management of zakat in a modern way by positioning the government as a manager ( <i>'āmil</i> ) who transforms zakat as working capital for society. |

<sup>43</sup>Wakhrodi, “Maqashid Syariah dalam Pemikiran Fiqh K.H. Sahal Mahfudh,” in *Epistemologi*, n.d.

<sup>44</sup>Al-Qurtuby, K.H. M.A. *Sahal Mahfudh: Era Baru Fiqh Indonesia*; Wakhrodi, “Maqashid Syariah dalam Pemikiran Fiqh K.H. Sahal Mahfudh.”

|   |        |  |   |
|---|--------|--|---|
| 3 | Woman  | The right equality for women, the same rights as men to engage in economic, social and political spheres.          | Equality between men and women, history shows that Islam comes with respect for women, so they have the freedom to get education and actualize their needs. |
| 4 | Social | An increase in birth rates accompanied by an increase in economy, education, and health rates was a best solution. | Family planning programs (Keluarga Berencana, KB) aimed at limiting birth rates, KB can be a solution to manage the quality of population.                  |

Finally, even though ‘Allāl and Sahal took their position on *Maqāṣid asy-Sharī’a* differently, apparently they produced similar or almost the same legal opinions. They propose a democratic government, an economy puts the interest of society, and social conditions that favored women interest. The dominant differences are in the characteristics of the choice of sources that show their affiliation. ‘Allāl more often refers to the verses of the Qur’an and Sunnah as recommended by the Salafists. While Sahal is more often referring to fiqh tradition which is recommended by traditional schools. This point amplifies my argument that *Maqāṣid asy-Sharī’a* is a melting pot for various tendencies which have intellectual roots in the Sunni tradition.

### C. Conclusion

We should close this article by concluding that ‘Allāl and Sahal are well-known figures who are affiliated with different religious ideologies. Interestingly, political, social and economic opinions based on religious teachings they propose are similar and intersect. Our observation of the history of Islamic jurisprudence shows that they are involved in the development of the *Maqāṣid asy-Sharī’a*

theory, though with slightly different characters. Like Geertz's observations of figures representing the Muslim community in Morocco and Indonesia in the early twentieth century, the article observing two figures at the end of the twentieth century also got a complex picture. We find the roots of Sunnism along with transformations caused by the challenges of modernity. They respond in their own ways, either by changing or maintaining their ideology. However, this does not mean that the ideological character is single and constant, because there are dynamics of intersections that are motivated by similar cultural and intellectual roots.

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