

THE UNIVERSALITY OF *MAQASID ALSHARIAH* PRINCIPLES IN THE TREATMENT OF INDIVIDUALS WITH MENTAL ILLNESS.

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Abstract

The COVID-19 pandemic, the ensuing isolation and loss of income stemming from social distancing policies and coupled with restriction of mobility has taken a heavy toll on public mental health. Because this upsurge in mental health issues has not been effectively tackled by existing legal framework, i.e. the Persons with Disabilities Act 2008 and the Mental Health Act 2001, the research seeks to remedy the legal gaps by proposing a framework based on *maqasid al-shariah* principles. Using Quranic injunctions and *hadiths*, the research intends to examine the scope of protection of '*aqal*', '*nasl*' and '*din*' within the framework of *Maqasid al Shariah*. In so doing, this paper intends to formulate an overall direction of mental health law and policy by defining the vision, values, principles, and objectives for such protection. *Fiqhi* rulings and Muslim scholars' views relevant to the discussion of mentally unhealthy individuals would also provide some direction on the basic objectives underlying the protection of mental health under the *Shariah*. It is expected that the *maqasid*-based framework for mental health legal policy will inform policy makers towards a better legislative framework that focusses on the well-being of the person whilst at the same time reducing risk/harm to the society. This paper also positions *maqasid* approach to international instruments that provides basic rights to all person suffering from mental illness as articulated in the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991) (MI principles).

Keywords: *Maqasid Shari'ah*, mental health issues

1.0 Introduction

وَاللَّهُ أَخْرَجَكُمْ مِنْ بُطُونِ أُمَّهَاتِكُمْ لَا تَعْلَمُونَ شَيْئًا وَجَعَلَ لَكُمُ السَّمْعَ وَالْأَبْصَارَ وَالْأَفْئِدَةَ لَعَلَّكُمْ تَشْكُرُونَ

And Allah has extracted you from the wombs of your mothers not knowing a thing, and He made for you hearing and vision and hearts [i.e., intellect] that perhaps you would be grateful.¹

¹ An-Nahl 16:78

From this verse, we understood that every man is born in the state of *fitrah* (nature) where he is ignorant and have no knowledge of anything.² With this weakness attached to every human, they will be unable to perceive and comprehend what is good (*husn*) and what is evil/bad (*qubh*) for them unless they are guided by Allah. The verse further explains that Allah bestowed upon man the abilities that allow them to know everything that has never been known before through the learning process which included three primary components: hearing, sight, heart/mind.³ Man will be able to grasp everything through his sense of hearing, which will be magnified by sight and finally stored in the heart as knowledge (*ilm*). These sensory faculties allow the man to advance to the point where he can rule over everything on the earth in line with their responsibilities as caliphs of Allah. Throughout the learning process, the *Quran* and *sunnah* of the Prophet are the main guidelines and must be referred to and implemented in order to gain knowledge so that man can discern good from evil and benefit from harmful items using his thoughts.⁴

Humans need assistance in order to find the right path in understanding themselves, their surroundings, the ecosystem, and the whole galaxy. Therefore, the Prophet was appointed to guide humans on how to live their lives on this earth in an orderly and systematic manner. He is responsible for conveying the *shariah* (law/ruling/injunction), which Allah provided as guidance for mankind so that they have the ability to progress from their initial state of ignorance to one of knowledge. The basis of *shariah* is to promote good and to reject evil which guides man to understand and be able to distinguish between both.⁵ The revelation of the *shariah* to the prophet is a sign of Allah's mercy and love for mankind. Allah mentioned,

² Abdullah bin Muhammad, *Tafsir Ibnu Kathir*, (Bogor: Pustaka Imam Asy-Syafi'i, Jilid 5 edn., 2003).

³ Ibid.

⁴ Tafsir Al-Munir by Dr Wahbah al-Zuhaili

⁵ Mohamad Akram Laldin, *Introduction to Shariah & Islamic Jurisprudence*, (Kuala Lumpur: CERT, 3rd edn., 2011).

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

“And We have sent you (Muhammad) not but as a mercy for the *alamin* (mankind, *jinn*s and all that exists)”.⁶

يَأْتِيهَا النَّاسُ قَدْ جَاءَتْكُمْ مَوْعِظَةٌ مِّن رَّبِّكُمْ وَشِفَاءٌ لِّمَا فِي الصُّدُورِ وَهُدًى وَرَحْمَةٌ لِّلْمُؤْمِنِينَ

“O mankind, a direction has come to you from your Lord; it is a healing for spiritual ailments in your hearts and it is guidance and mercy for the believers”.⁷

In both verses, the word ‘*Rahmatan*’ (رَحْمَةً) indicates compassion, kindness, goodwill, and beneficence.⁸ It encompasses all those benefits humans, prevents harm, and is in tune with human needs. The concept of ‘*rahmah*’ has been explained in several verses of the Quran, implying that Allah did not intend to burden humans with the various injunctions revealed to them. For instance,

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ وَلِتُكْمِلُوا الْعِدَّةَ وَلِتُكَبِّرُوا اللَّهَ عَلَىٰ مَا هَدَاكُمْ وَلَعَلَّكُمْ تَشْكُرُونَ

Allah intends ease for you, not hardship, so that you may complete the prescribed period and proclaim the greatness of Allah for guiding you, and perhaps you will be grateful.⁹

This paper starts with an exposition of Shari’ah, its meaning, concept and objectives before moving into *maqasid alshari’ah* and its application into the treatment of mentally health individuals. The paper then proceeds with positioning maqasid approach to international instruments that provides basic rights to all person suffering from mental illness as articulated

⁶ Al-anbiya’ 21:107

⁷ Yunus 10:57

⁸ Mohamad Akram Laldin, Introduction to Shariah & Islamic Jurisprudence.

⁹ Al-Baqarah 2:185

in the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991) (MI principles).

2.0 *Shari'ah* – Meaning and concept

Literally, the word *shariah* is derived from the root of *shin ra 'ayn* which means the road to the watering place or the straight path to be followed.¹⁰ It is a path to seek felicity and salvation¹¹ which was ordained by Allah through his messenger, as a guide for mankind to live life on earth as His vicegerent.¹² The word was used by Arabs to refer to *mashra'at al-ma'a* which means a path that leads to a location where water is stored for the use of the locals as well as their cattle.¹³

ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ

Then We put you, [O Muḥammad], on an ordained way concerning the matter [of religion]; so, follow it and do not follow the inclinations of those who do not know.¹⁴

It is to be clear that the word *shariah* as enumerated in the above verse was used in the sense of the right path, not in the sense of law as we perceive it today.¹⁵ As Allah created man, He has the authority to lead His creation in the right direction so that they can live in peace and

¹⁰ Mohamad Akram Laldin, Introduction to Shariah & Islamic Jurisprudence.

¹¹ Mohammad Hashim Kamali, *An Introduction to Shariah*, (Kuala Lumpur: Ilmiah Publishers, 2006).

¹² Abdur Rahman I. Doi, *Shariah: The Islamic Law*, (Kuala Lumpur: A.S. Noordeen, 2015).

¹³ Muneer Kuttiyani Muhammed and Muhammad Mumtaz Ali, "The Shariah and Law: An Analysis", *International Journal of Law, Government and Communication*, vol. 2, no. 5 (2017): 48–64.

¹⁴ Al-Jathiah 45:18

¹⁵ Muhammed and Ali, *The Shariah and Law: An Analysis*.

security. As a result, man, as the subject, is obligated to follow the route laid out by their creator. This guidance for life is known as the *shariah*.

Technically, *shariah* refers to all the different commandments (*hukum*) of Allah to regulate man's actions.¹⁶ It is also called *al-nushush al-muqaddasah* (holy texts) of the Qur'an and the *Sunnah* which were transmitted in *mutawatir*¹⁷ that have not been mixed at all by human intellect.¹⁸ The commandments which Allah prescribed to humans are comprehensive enough can be classified into three components namely sanctions relating to belief (*al-ahkam i'tiqadiyyah*), sanctions relating to morals and ethics (*al-ahkam al-akhlaqiyyah*), and sanctions relating to saying and doing of the individuals and his relations with others (*al-ahkam al-amaliyyah*).¹⁹ This classification demonstrates that *shariah* applies to every aspect of human life, implying that Islam is a complete way of life that encompasses religion, ethics, and the legal system all in one. Islam offers its teaching covering all aspects and dimensions, from religiosity to both humanistic and scientific knowledge to ethical foundations to laws and ruling to humanity. *Shariah* can be referred to as a doctrine of duties or a code of obligations²⁰ where Muslims are obliged to strive for its implementation as it is the path that liberates man from servitude to other than Allah.²¹

3.0 Objectives of Shari'ah

Every injunction or commandment revealed by Allah aims to serve its own purpose. In other words, there is an objective intended to be achieved through the implementation of Islamic rulings (*syariat*). This is known as the objective of *shari'ah* or *maqasid shari'ah*. The

¹⁶ Mohamad Akram Laldin, Introduction to Shariah & Islamic Jurisprudence.

¹⁷ recorded by a vast number of people at different times that their agreement on an untruth is unimaginable, therefore being considered as unquestionable in its veracity

¹⁸ Moh Toriquddin, "Teori Maqasid Syariah Perspektif Al-Syatibi", *Jurnal Syariah dan Hukum*, vol. 6, no. 1 (2014): 33–47.

¹⁹ Mohamad Akram Laldin, Introduction to Shariah & Islamic Jurisprudence.

²⁰ Ibid.

²¹ Abdur Rahman I. Doi, *Shariah: The Islamic Law*.

term *maqasid shari'ah* is composed of two words: *maqasid* and *shari'ah*. *Maqasid* (المقاصد) is the plural form of *maqsad* and *maqsid*, which means purpose, objective, principle, intent, goal, and end.²² It is derived from the Arabic word *qasada* (قصد), which signifies heading in a certain direction.²³ *Maqasid shariah* addresses all the 'why' concerns on multiple levels. It answers questions like, "Why do Muslims have to pray five times every day?" Why are Muslims required to fast during Ramadhan? and many more.²⁴

The main objective of the *shari'ah* is the realization or fulfillment of benefit or interest (*maslahah*) to the people concerning their affairs both in this world and the hereafter.²⁵ *Maslahah* is described by *Al-Ghazali* as a consideration that secures a benefit or prevents harm while being consistent with the *shari'ah's* goal.²⁶ Allah is the creator where He can never be harmed or affected by the disobedience of his creation. All the injunctions and obligations are prescribed to humans with the purpose of securing their benefit, in both world and hereafter. Hence, the *shari'ah's* main concern is to secure the human benefit, where this is a sign of Allah's mercy toward us.²⁷ The majority of scholars have reached a consensus that Allah does not establish laws except for the benefit of the people.²⁸ According to *Ibnu Qayyim al-Jawziyyah*, any injunction that is not aimed at bringing benefit, such as a ruling that replaces justice with injustices, is a ruling that does not belong to *shariah*, where its implementation will eventually lead to a disastrous to all mankind.²⁹ Furthermore, scholars are of the opinion

²² Jasser Auda, *Maqasid al-Shariah An Introductory Guide*, (IIIT, 2008).

²³ <https://muftiwp.gov.my/en/artikel/irsyad-usul-fiqh/3099-irsyad-usul-al-fiqh-33-introduction-to-maqasid-al-syariah>

²⁴ Auda, *Maqasid al-Shariah An Introductory Guide*.

²⁵ Kamali, *An Introduction to Shariah*.

²⁶ Mohamad Akram Laldin, *Introduction to Shariah & Islamic Jurisprudence*.

²⁷ Hashim kamali, *maqasid of shariah*

²⁸ Khairul Munzir Ibrahim, Muhammad Faiz Abdul Mutalib, and Mohd Shairawi Mohd Noor, "Fiqh Al-Muwazanah dalam Politik Islam Menurut Al-Juwaini" in *Persidangan Antarabangsa Pengajian Islamiyyat Kali ke 3*, (2017), 784–791.

²⁹ Ibn Qayyim Al-Jawziyyah, *I'lam al-Muwaqqi'in*, (Beirut: Dar al-Kutub al-Ilmiyyah, 1996).

that deducing rulings in order to avert harm is mandatory.³⁰ This is because *shari'ah* is concerned with justice, mercy, and wisdom as it aims to protect man's interests and welfare while also averting harm in this world and the next.³¹ Through the concept of “*amar maruf nahi mungkar*” Islam advocates doing what is morally acceptable and beneficial and avoiding doing what is morally objectionable.³² To put it another way, *shari'ah* is concerned with people's well-being and is more than just a legal system for Muslims as it is also a system of justice, welfare, kindness, and goodness that benefits everyone.³³

The *usul* scholars have stipulated that understanding *maqasid shari'ah* is a key prerequisite in *ijtihad*.³⁴ *Ijtihad* which literally means striving or exertion³⁵ is an exercise of human reason performed by a jurist to arrive at a logical conclusion on a legal matter in order to derive the effectiveness of a legal principle in Islam.³⁶ It was asserted by *Dr. Ahmad ar-Raysouni* that understanding the objective behind the *syari'at* is a must for all *faqih* (jurists).³⁷ As a result, mastering *maqasid shari'ah* is critical, as the values of *maqasid*, which include the protection of interests and the avoidance of harm, must be reflected in every *ijtihad*.³⁸

Promoting *maslahah* in order to protect the interest and averting harm to people is a universal concept under *maqasid shari'ah*. Since the time of the Prophet, the importance of *maslahah* in the implementation of the law has been emphasized, and it continues to be so today. The concept of *maslahah* can be illustrated when, *Abd al-Rahman* reported that 'Ali, while delivering the address said: O people, impose the prescribed punishment upon your

³⁰ Mohd Yusri bin Ibrahim, "Maqasid Al-Shariah: Sejarah Perkembangan Serta Sumbangan Para Ulama Usul Al-Fiqh Awal dan Muta'akhirin", *International Research Journal of Shariah, Muamalat and Islam*, vol. 1, no. 2 (2019): 18–30.

³¹ Al-Jawziyyah, *l'lam al-Muwaqqi'in*.

³² Mohamad Akram Laldin, *Introduction to Shariah & Islamic Jurisprudence*.

³³ Muhammed and Ali, *The Shariah and Law: An Analysis*.

³⁴ Ibrahim, M.Y. bin, *Maqasid Al-Shariah: Sejarah Perkembangan Serta Sumbangan Para Ulama Usul Al-Fiqh Awal dan Muta'akhirin*.

³⁵ Kamali, *An Introduction to Shariah*.

³⁶ Abdur Rahman I. Doi, *Shariah: The Islamic Law*.bv

³⁷ *Muhadharat fi Maqasid as-Syari'ah*

³⁸ Ibrahim, M.Y. bin, *Maqasid Al-Shariah: Sejarah Perkembangan Serta Sumbangan Para Ulama Usul Al-Fiqh Awal dan Muta'akhirin*.

slaves, those who are married and those not married, for a slave-woman belonging to Allah's Messenger (may peace be upon him) had committed adultery, and he committed me to flog her. But she had recently given birth to a child and I was afraid that if I flogged her, I might kill her. So, I mentioned that to Allah's Apostle (may peace be upon him) and he said: You have done well.³⁹ It can be deduced from this hadith that the execution of hudud punishment can be postponed if the continuation of the punishment would cause harm to the offender.

The companions also emphasize *maslahah* in deducing any rulings. For example, when Madinah was facing a drought season and there was a food shortage, Caliph Umar temporarily suspended the *hadd* penalty for theft cases as it was found out that, at that time people were stealing food out of desperation for survival.⁴⁰ Although the Quran specifically mentions cutting the thief's hand as a punishment for theft,⁴¹ Caliph Umar exercised his *ijtihad* and decided that those who stole out of desperation for survival did not deserve to be punished with *hadd*, as the punishment can only be carried out if the crime was committed under normal circumstances. Caliph Umar was of the view that the situation falls under the ruling of *darurah* (necessity) that permits the forbidden action to be committed. Another application of *maslahah* in *ijtihad* can be seen when caliph Umar holds three divorces in one pronouncement as three.⁴² This ruling was enacted in order to discipline society and raise public awareness about the seriousness of the situation, as there was a trend among men at the time to simply divorce their wives.⁴³ The examples show that the text either from the Quran or *sunnah* should not be taken literally as the aspect of *maslahah* shall be given priority before the implementation of the law. However, this does not indicate that one can undertake *ijtihad* at will as the prophet said,

³⁹ https://www.iium.edu.my/deed/hadith/muslim/017_smt.html#007_b17

⁴⁰ Mohamad Akram Laldin, Introduction to Shariah & Islamic Jurisprudence.

⁴¹ Al-Maidah 5:38

⁴² Bashir Sale, "Appraising Al-Maslahah Al-Mursalah as a Source of Islamic Law in Judicial Proceedings Under the Maliki Law", (Ahmad Bello University Zaria, 2018).

⁴³ Mohamad Akram Laldin, Introduction to Shariah & Islamic Jurisprudence.

حَدَّثَنَا مُحَمَّدُ بْنُ حَسَّانَ السَّمْنِيُّ، حَدَّثَنَا خَلْفُ بْنُ خَلِيفَةَ، عَنْ أَبِي هَاشِمٍ، عَنْ ابْنِ بُرَيْدَةَ، عَنْ أَبِيهِ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " الْفُضَاءُ ثَلَاثَةٌ وَاحِدٌ فِي الْجَنَّةِ وَاثْنَانِ فِي النَّارِ فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضَى بِهِ وَرَجُلٌ عَرَفَ الْحَقَّ فَجَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ " .

Narrated Buraydah ibn al-Hasib: The Prophet (ﷺ) said: Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly, but a man who knows what is right and acts tyrannically in his judgment will go to Hell, and a man who gives judgment for people when he is ignorant will go to Hell.⁴⁴

In order to achieve the *maslahah*, a thorough examination of the *dalil* either from the Quran or hadith as well as the current situation is very much needed. Hence, the change of ruling that occurs based on the change of time and situation is meant to ensure the welfare of the people. A good example can be illustrated by the hadith reported by *Anas bin Malik* concerning the soaring price of goods during the time Prophet. The companions then said to the Apostle, "O *Rasulullah*, set the price for us." *Rasulullah* answer:

إِنَّ اللَّهَ هُوَ الْمُسَعِّرُ الْقَابِضُ الْبَاسِطُ الرَّزَّاقُ وَإِنِّي لَأَرُ جُؤَانُ أَلْقَى اللَّهَ وَ لَيْسَ أَحَدٌ يَطُلُّ

Verily Allah is the One who sets the price, who holds back, who makes it easy, and the one who grants sustenance. Really, I wish I could meet God without anyone claiming me for the tyranny I did in blood matters and not in matters of wealth.⁴⁵

In this hadith, the Prophet refuses to fix the price of goods because he concerns it will be unfair to the seller, taking into account the seller's situation, the condition of the goods, and the form

⁴⁴ Sunan Abi Dawud 3573, Retrieved from <https://sunnah.com/abudawud:3573>

⁴⁵ <https://sunnah.com/abudawud:3451>

of trade at the time.⁴⁶ However, in light of the current scenario, it is possible that buyers will be the victim if a price control mechanism is not developed. Thus, scholars allow the authorities to set the price of goods when there is a change in circumstances and situations. It is necessary, according to *Ibn al-Arabi al-Maliki*, to determine and control the price of commodities in order to avoid causing injustice to either the vendor or the buyer. He goes on to say that the prophet's unwillingness to determine the price of goods during his time was a wise option for those who adhere to their religion. Meanwhile, *Ibn Taimiyyah* emphasizes that the new ruling does not invalidate the prophet's hadith. According to him, the text should not be taken literally as the current situation must be examined through the lens of Islamic law, in order for the ruling to stay relevant for execution and to benefit the people. "When people's needs and necessities cannot be safeguarded without a fair price control, then a price control based on justice will be implemented for them - no more, no less" (Ibn Taimiyyah).⁴⁷

In addition, changing the rulings with the disappearance of the reason for the ruling's existence and changes in social conditions prompted Caliph Umar to stop the practice of giving *zakah* to the *Muallafatu Qulubuhum* (newly converted Muslims and those leaning towards the acceptance of Islam).⁴⁸ The Prophet used to give *zakah* to this category as there was an urgent need to canvass supporters as the number of Muslims are few compared to the non-Muslims.⁴⁹ When Islam had developed and the Muslims became strong, Caliph Umar opined that the money should be used to promote Islam and for the welfare of Muslims. This shows that the companions take seriously the issue of *maslahah*, which is a vital component of the *maqasid*

⁴⁶ Ibrahim, M.Y. bin, *Maqasid Al-Shariah: Sejarah Perkembangan Serta Sumbangan Para Ulama Usul Al-Fiqh Awal dan Muta'akhirin*.

⁴⁷ Muhammad Lawal Ahmad Bashar, "Price Control in an Islamic Economy", *Journal of King Abdul Aziz University-Islamic Economics*, vol. 9, no. 1 (1997): 29–52.

⁴⁸ Sale, *Appraising Al-Maslahah Al-Mursalah as a Source of Islamic Law in Judicial Proceedings Under the Maliki Law*.

⁴⁹ Mohamad Akram Laldin, *Introduction to Shariah & Islamic Jurisprudence*.

shariah, when performing *ijtihad* in deducing ruling for a new scenario that is not described in the Quran or *sunnah*.

4.0 Theories of Maqasid

Al-Juwainiy was the first to classify *maqasid shariah* into three main categories namely the *daruriyyah* (the essentials), *hajiyyah* (the complementary), and the *tahsiniyyah* (the embellishment).⁵⁰ It is to be understood that, the classification of *maqasid shariah* into these three categories is not explicitly mentioned in the Quran.⁵¹ The essential benefits namely life, faith, intellect, lineage, and property are defined as those on which the lives of the people depend and their collapse and neglect would lead to chaos and total disruption of the normal order in society.⁵² The *shariah* aims to protect and promote these fundamental values, and it recognizes that all steps necessary for their preservation and advancement, whether implemented by governments or individuals, must be taken. Anything that strives to preserve the five fundamental values is regarded as *maslahah* and whatever causes the elimination of those values is considered *mafsadah*.⁵³ Complementary benefits are the supplement to the five essential interests which aim to alleviate severity and hardship. Unlike essential benefits, the absence of complementary benefits will not completely disrupt daily normal living, but it will cause hardship to either the individuals or communities.⁵⁴ *Rukhsah* or concessions, such as combining and shortening the *rakaat* in prayers during travels as well as allowing the sick to skip the fast are among the examples of complementary benefits. These concessions are intended to alleviate hardship by allowing a person to reduce or lessen their responsibility as a result of a temporary inability to perform such action. The embellishment refers to interests

⁵⁰ Hashim Kamali, *Maqasid Shariah*

⁵¹ Mohamad Akram Laldin, *Introduction to Shariah & Islamic Jurisprudence*.

⁵² Kamali, *An Introduction to Shariah*.

⁵³ Ibrahim, K.M., Mutalib, and Noor, *Fiqh Al-Muwazanat dalam Politik Islam Menurut Al-Juwaini*.

⁵⁴ Kamali, *An Introduction to Shariah*.

whose realization leads to improvement and the attainment of that which is desirable.⁵⁵ It refers to matters which complete or beautify the lives of people and their existence will lead to a wholesome life. The absence of *tahsiniyyat* may not interrupt the daily function of normal life. However, its abandonment might lead to a lack of comfort in life.

Significant developments were made in the formulation of the theory of *maqasid* by *Abu Hamid al-Ghazzali* who was a student of *Imam al-Haramain*.⁵⁶ He used the phrase of *ad-Dharuriyyat al-Khamsah* to illustrate the five fundamental values namely religion (*al-din*), life (*al-nafs*), intellect (*al-aql*), lineage (*al-nasl*), and property (*al-mal*), and that these were to be protected as absolute priorities.⁵⁷ The protection of religion is placed in the highest position and is more essential than the protection of life, while the protection of life must take priority over the protection of intellect, and the protection of intellect must take precedence over the protection of lineage which then takes precedence above the protection of property.⁵⁸

Al-Ghazali defines *maslahah* as the consideration which secures a benefit or prevents harm but is in the meantime harmonious with the aim and objective of the shariah i.e. the protection of the five essential values.⁵⁹ He further elaborated on a classification of *maqasid*, which he placed entirely under what he called ‘unrestricted interests’ (*al-maslahah al-mursalah*).⁶⁰ He asserts that shariah only protects the genuine (*haqiqiyyah*) benefit as opposed to imaginary (*wahmiyyah*) benefit (for instance, to abolish the husband’s right of talaq by vesting it entirely in a court of law).⁶¹ *Al-Ghazali* concluded that any *maslahah* that does not return to protect the objectives of the Islamic law that can be understood from the Quran, *Sunnah*, and *Ijma'* is the *maslahah garibah* (is foreign). Since it is not under the act of *shariah*,

⁵⁵ Ibid.

⁵⁶ Mullareza, *Maqasid Syariah: Kajian Teoritis dan Aplikatif Pada Isu-isu Kontemporer*.

⁵⁷ *Al-Mustasfa min 'Ilm al-Usul*

⁵⁸ <https://www.mais.gov.my/maqasid-syariah/>

⁵⁹ Mohamad Akram Laldin, *Introduction to Shariah & Islamic Jurisprudence*.

⁶⁰ Auda, *Maqasid al-Shariah An Introductory Guide*.

⁶¹ Kamali, *An Introduction to Shariah*.

the *maslahah* is rejected and must be discarded. He asserts that whoever is guided by this kind of *maslahah*, has established Islamic law based on his desires.⁶² In other words, there must be a sensible probability that the benefits of legislating a rule in the pursuance of *maslahah* outweigh the harm that might be accrued from it.⁶³ Any measure which secures the fundamental values falls within the scope of genuine benefit and anything which contravenes them is *mafsadah* (evil) and preventing the latter is also *maslahah*.⁶⁴ He divided *maslahah* into three categories (as illustrated in Table 4).⁶⁵ According to him, *maqasid shariah* is an expansion and extension of the concept of *al-maslahah al-mursalah*.⁶⁶

Classification of *maslahah*

Classifications of <i>Maslahah</i>	Explanation	Example
<i>Maslahah Mu'tabarah</i> (accredited <i>maslahah</i>)	This type of <i>maslahah</i> cannot be rejected and must be upheld. <i>Maslahah</i> which has been ruled out in the Quran and Sunnah. Hence its validity shall not be questioned. Promoting this type of <i>maslahah</i> is a proper ground for legislation.	The prohibition of alcohol is aim to protect the intellect.
<i>Maslahah Mulgha</i> (invalidated <i>maslahah</i>)	<i>Maslahah</i> which has been nullified either by Quran or Sunnah. Legislation based on this <i>maslahah</i> is invalid and no judicial ruling may be enacted in its favour.	The practice of usury in transaction even though it is common among the people is invalid as the <i>maslahah</i> is clearly nullified in the Quran.
<i>Maslahah Mursalah</i>	There is no text that validate it nor any text that invalidates it. The utilization of this <i>maslahah</i> can be observed in the enactment of law that benefit people and prevent harm from them such as traffic regulations.	The codification of Quran by the companions after the demise of the Prophet

⁶² Muhammad Al-Ghazali, *Al-Mustasfa min Ilm al-Ushul*

⁶³ Mohamad Akram Laldin, *Introduction to Shariah & Islamic Jurisprudence*.

⁶⁴ *Ibid.*

⁶⁵ Tarmizi, "The Concept of *Maslahah* According to Imam Al-Ghazali", *Jurnal Al-Dustur*, vol. 3, no. 1 (2020): 22–29.

⁶⁶ <https://muftiwp.gov.my/en/artikel/irsyad-usul-fiqh/3099-irsyad-usul-al-fiqh-33-introduction-to-maqasid-al-syariah>

The care of the five interests has been agreed upon among scholars, although there are differences in terms of number and priority. For instance, *al-Amidi* also mentioned five priorities, namely to protect religion, life, lineage, intellect, and property. However, in placing the sequence, he prioritizes lineage over intellect different from *al-Ghazali* who prioritizes intellect over lineage.⁶⁷ The list of the five essential values was evidently based on a reading of the relevant parts of the Qur'an and Sunnah on the *hudud* (the prescribed penalties). The value that each of these penalties sought to vindicate and defend was consequently identified as an essential *maqsud*.⁶⁸ The sixth value, the protection of honor (*al-'ird*) was added by *Shihab al-Din al-Qarafī* (d. 684H) which was later endorsed by *Taj al-Din 'Abd al-Wahab ibn al-Subki* (d. 771H) and *Muhammad ibn Ali al-Shawkani* (d. 1250H).⁶⁹ Although scholars believe that *al-'ird* protection is covered by *al-nasl* (lineage), proponents of this addition argue that the shariah has enacted a separate *hadd* punishment for *al-qadhif* (slandorous accusation), and thus the new addition must be viewed as an essential *maqsud* (objective) in its own right.⁷⁰

According to Muhammad Abu Zahrah (1898- 1974), the *maqasid shariah* framework may be broken down into three parts namely educating the individual (*tahdhib al-fard*), establishing justice (*iqamah 'adl*), and releasing benefits or promoting public welfare (*jalb al-maslahah*) or promoting social welfare to the people.⁷¹ Educating the individual is in fact, in order of priority, it may merit being placed before justice and *maslahah*. With education, individuals who are trusted and uphold shariah will be created. As a result, other dimensions of *maqasid shariah* can be realized.⁷² Educating individuals is important so they can be the

⁶⁷ Marina Abu Bakar and Ahmad Khilmy, "Maqasid Al-Shariah Theory : A Comparative Analysis Between The Thoughts Of Al-Shatibi And ' Izz Al-Din Ibn ' Abd", *International Journal of Academic Research in Business & Social Sciences*, vol. 11, no. 8 (2021): 180–193.

⁶⁸ Hashim kamali, maqasid of shariah

⁶⁹ Hashim kamali, maqasid of shariah

⁷⁰ Hashim kamali, maqasid of shariah

⁷¹ Ibid.

⁷² Ibid.

source of goodness for their ummah. The main purpose of education in Islam is to achieve perfect character or morals.⁷³ Education is a process of instilling something into a human being. Hence, the fundamental elements that constitute education are the process, the content, and the recipient.⁷⁴ Education is to help humans in understanding and realize the purpose of their life namely to serve Allah. This is in line with Allah's commandment in Al-Hajj verse 56,

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ

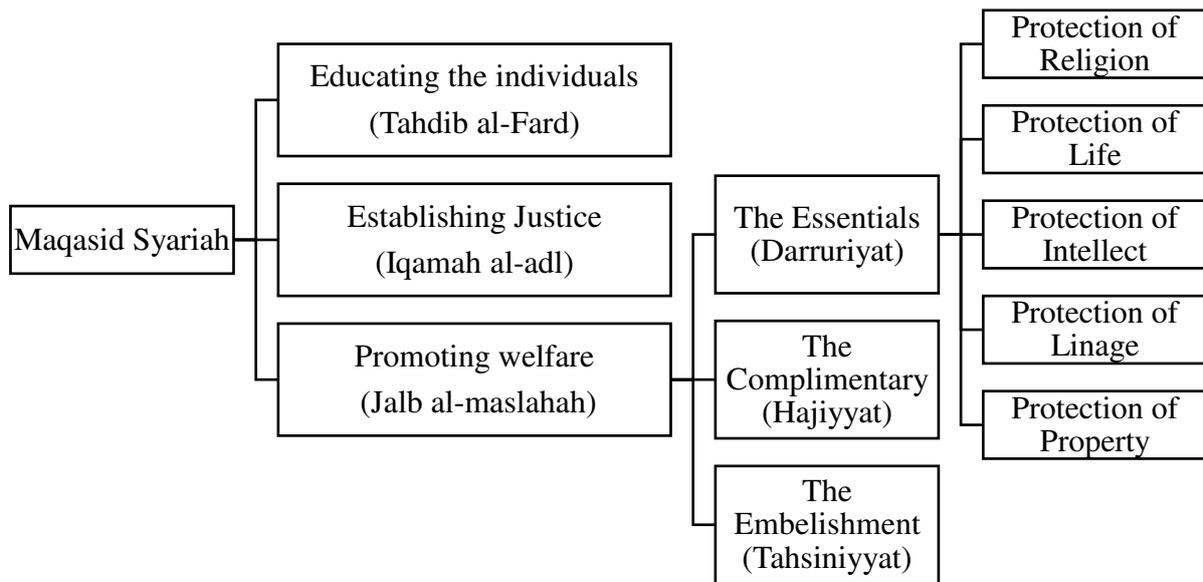
And (remember) I did not create jinn and humans except for them to worship and worship Me.

The act of worship such as prayer, fasting, zakat, and hajj train the individual in self-discipline, sacrifice, and sensitivity for the wellbeing of others. It is to educate the souls as well as to strengthen bonds in society. These acts of devotion enable a person to be a useful member of society and refrain from causing harm to others. Through prayer, the souls will be clean from the characteristic of malice such as jealousy and arrogance which reside in the human heart. It leads a believer to be gentle toward each other and not act injustice or cruelly. In addition, prayer involves both mental and physical training that leads to inner perfection. It is a means of man's proximity to his creator.

Overview of *Maqasid Shariah*

⁷³ Ibid.

⁷⁴ Syed Muhammad Naquib Al-Attas, *The Concept of education in Islam*, (1980).



5.0 Application of *Maqasid Shariah* to mental health issues

It is important to realize that *Maqasid shariah* was not crafted and designed essentially and intentionally to attend to the welfare and interest of only individuals or even a few limited groups of people. It is a set of rules and policies for the rulers and policymakers to be equipped with and to be rolled out in the community at large. *Maqasid shariah* shall be utilized in dealing with all the issues facing our community. It is the most suitable platform to manage the behaviour of the community. High and broad policies, such as that of *maqasid shariah* are normally meant for the community and for nation-building purposes, instead of merely dealing with the issues faced by a few individuals living on this planet, irrespective of whomever they are. Thus, a new dimension of *maqasid shariah* is needed so as not to confine it to the traditional view of understanding *maqasid shariah*. The expansion of the scope of *maqasid* allows them to respond to global issues and concerns, and to evolve from ‘wisdom behind the rulings’ to practical plans for reform and renewal.

According to the World Health Organization (WHO), one out of every four people will suffer from mental or neurological illnesses at some point in their lives.⁷⁵ Around 450 million

⁷⁵ World Health Organization, *The World Health Report 2001*, (2001).

individuals worldwide are affected by mental illnesses, making them one of the leading causes of disability and illness.⁷⁶ Mental health as defined by WHO refers to “a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.”⁷⁷ The definition indicates a huge improvement in terms of departing from the generally held concept of mental health as the absence of mental illness.⁷⁸ Acknowledging the negative impact brought by mental illness on an individual’s life, the United Nations (UN) included mental health as part of the Sustainable Development Goals (SDG) in September 2015.⁷⁹ The SDGs are a set of 17 goals with 169 targets that all member states have pledged to work on and prioritize over the next 15 years.⁸⁰ Goal 3 aims to promote healthy lifestyles and well-being among people of all ages.⁸¹ Premature mortality from noncommunicable diseases is targeted to be decreased by one-third by 2030, according to Target 3.4, “through prevention, treatment, and promotion of mental health and wellbeing.”⁸²

In Malaysia, statistics by the National Health and Morbidity Survey (NHMS), revealed that people of all ages, including children, adults, and the elderly, are not exempt from mental health issues. Children with mental health issues will exhibit a variety of psychological symptoms, including frequent headaches, a tendency to appear backward or slow, disrupted sleep, and a refusal to interact with other children.⁸³ These youth are at risk of delinquent behaviour, substance misuse, school failure, as well as violent and criminal conduct.⁸⁴ The

⁷⁶ Ibid.

⁷⁷ Department of Mental Health and Substance Abuse, Victorian Health Promotion Foundation, and University of Melbourne, *Promoting Mental Health*, (Geneva, *World Health Organization*, 2004).

⁷⁸ Silvana Galderisi, Andreas Heinz, Marianne Kastrup, Julian Beezhold, and Norman Sartorius, "Toward a new definition of mental health", *World Psychiatry*, vol. 14, no. 2 (2015): 231–233.

⁷⁹ N Votruba and G Thornicroft, "Sustainable development goals and mental health: learnings from the contribution of the FundaMentalSDG global initiative", *Global Mental Health*, (2016).

⁸⁰ https://www.who.int/health-topics/sustainable-development-goals#tab=tab_1

⁸¹ <https://www.un.org/sustainabledevelopment/health/>

⁸² <https://www.un.org/sustainabledevelopment/health/>

⁸³ Institute for Public Health, *National Health and Morbidty Surver 2011 Non Communicable Diseases, Vol. 2, (Ministry of Health, 2011).*

⁸⁴ Institute for Public Health, *National Health and Morbidity Survey 2012, (2012).*

NHMS 2017 reported that anxiety was found to be the most common mental health problem among adolescents, aged between 13 to 17 years old, with a prevalence of 39.7% followed by depression 18.3% and stress 9.6%.⁸⁵ According to the survey, males had a higher incidence of depression (18.9%), while females had a higher prevalence of anxiety and stress (42.3 percent and 10.3 percent, respectively).⁸⁶ In 2019, it was revealed that 424 000 children had mental health issues, with those at risk of developing mental health symptoms being between the ages of 10 and 15 and coming from lower-income families.⁸⁷

There has been a dramatic increase in the prevalence of mental disorders over the past decade in Malaysia. The prevalence of mental health problems among adults (16 to 65 years old) has risen steadily from 10.7% in 1996 to 29.2% in 2015 with females, younger adults, and those from low-income families seeing greater rates.⁸⁸ As regards to the elderly population aged 60 years and above, they were reported to show depressive symptoms with a prevalence of 11.2%, while the overall prevalence of major depression was 5.3%.⁸⁹ The prevalence of depressive symptoms was higher among the elderly from the rural area, females, single, unemployed (retiree/homemaker), and those from low-income groups.⁹⁰ The NHMS has brought attention to the magnitude of general mental health issues that currently exist in the community which reflect the unmet needs of the population. These public health issues must be addressed immediately. The survey's findings underline the pressing need to continue enhancing and upgrading mental health legislation and policies. Hence, *maqasid shariah* can be an effective platform to overcome the issues surrounding mental health.

⁸⁵ Institute for Public Health, *National Health & Morbidity Survey 2017, Adolescent Mental Health*, (Ministry of Health Malaysia, 2017).

⁸⁶ Ibid.

⁸⁷ National Institutes of Health, *National Health and Morbidity Survey (NHMS) 2019 Technical Report, Non-Communicable Diseases: Risk Factors and other Health Problems, Vol. 1*, (Ministry of Health Malaysia, 2019).

⁸⁸ Institute for Public Health, *National Health and Morbidity Survey 2015 Non Communicable Diseases, Risk Factors and Other Health Problem, Vol. 2*, (Ministry of Health Malaysia, 2015).

⁸⁹ National Institutes of Health, *National Health and Morbidity Survey 2018: Elderly Health*, Vol. 2, (Ministry of Health, Malaysia, 2018).

⁹⁰ Ibid.

Hifz al-deen

The protection and promotion of Islam stand out to be the highest and the most sacred one out of all *maqasid shariah* as it relates to the very existence of humans on the earth. However, in the 21st century where secularism and modernisation continue to ridicule religion and religiosity, it has become more challenging to talk about this theme. This is due to the fact that some people including Muslims have started to question and ridicule the importance and relevancy of religion in their modern life. Since men are now able to unlock the many mysteries of the universe, the need to believe in the unseen superpower and to be constrained by an ‘external guidance’ has been eroded. The discovery of science and technology has made the real creator of science and technology irrelevant. In turn, the superpower of the minds of men and logical thinking has overtaken the need to believe in God. Humanity and religion are always interwoven and inseparable from each other. A religion that is strongly rooted in one heart and mind will develop the instinct to be humane and compassionate to others. In preserving the religion, shariah had prescribed strict parameters or boundaries which cannot be compromised in all circumstances in order to maintain the true originality and validity of Islamic teachings. The mental health policy shall not only focus on the stakeholder (i.e., the patient, health personnel, etc.), but must also concern with how the parameters set by shariah shall not be transgressed in order to preserve the sanctity of Islamic teaching.

Hifz al-nafs

Life is equal for all humans irrespective of who they are. However, we tend to look and judge others from the artificial or external elements standpoints, such as from the perspective of religion, creed, colour, social and economic status, race, and even different tribes and house

addresses. This is the root cause of all types of discrimination and atrocities on this planet. The duty to look after life is not only imposed on each individual but on the whole society, particularly on responsible leaders. The moment we preach and write about the *maqasid* of life protection, our mind will immediately be alerted to the divine prohibition of murder and the strict and most deserving punishment prescribed by Shariah against anyone (single or collective act of murder) for crossing that line. The Quran had described that the killing of one's life is the same as killing every single person in this world.⁹¹

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا ۚ وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعَدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ

That is why We ordained for the Children of Israel that whoever takes a life—unless as a punishment for murder or mischief in the land—it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity. 'Although' Our messengers already came to them with clear proofs, many of them still transgressed afterwards through the land.⁹²

The life and soul of a person are so sacred that an attack or transgression on one's life is construed as a crime against humankind itself. Allah is the one who granted life in the first place. Thus, it would be intolerable and inexcusable for any person to take the life of others without any legitimate reason. Thus, taking someone's life has been described as a crime against the whole of mankind. However, does the protection of life as advocate in the Quran is limited only to the act or murder? The meaning of life, which needs protection and promotion under Islam should not be restricted to a meaning or a situation which is the opposite of death

⁹¹ Al-Maidah (5:32)

⁹² Al-Maidah (5:32)

as there is a wider and higher meaning to this verse. It includes all other forms and prerequisite requirements to arrive at the very quality of life.

Observing the second part of the above verse, “...while if any saves a life it is as if he saves the lives of all mankind” give us the indicator that saving life is beyond avoiding someone from killing another human being. This verse conveys a clear message that is to protect life by putting in place the necessary elements to preserve it. It could also potentially connote any effort that would contribute significantly towards the preservation of one’s life by putting the right policies and monitoring measures to preserve and protect life from deteriorations and threats. Thus, the verse clearly indicates that shariah does not allow any aspect that could neglect a good quality of life. A new interpretation of the protection of life within the ambit of *maqasid shariah* must be drafted.

To respond to the increasing prevalence of mental illness in the society, protection of life must include the availability of access to medical treatment when one needs critical treatment to save his life or the life of his family members. Although it is important to translate protection of life into the policies and rulings, limited action was taken by the government. For instance, the mental health policies and law fail to cater the need of adequate human resources in mental healthcare services. Given the immense number of patients seeking psychiatric services, there was a lack of skilled mental health experts.⁹³ With a population of 32 million people, Malaysia requires approximately 3,100 psychiatrists to combat mental health issues as well as to meet the WHO recommended ratio of one psychiatrist per 10000 population.⁹⁴ Unfortunately, as of July 2021, there is only 268 trained psychiatrist serving at government health facilities while 181 more serve at universities and the private healthcare sector.⁹⁵ The

⁹³ Neil Buhrich, "Psychiatry in Peninsular Malaysia", *Australian and New Zealand Journal of Psychiatry*, vol. 14 (1980): 299–304.

⁹⁴ <https://www.thestar.com.my/news/nation/2021/07/06/m039sia-needs-about-3-100-psychiatrists-says-health-minister>

⁹⁵ <https://www.thestar.com.my/news/nation/2021/07/06/m039sia-needs-about-3-100-psychiatrists-says-health-minister>

numbers represented only a tenth of the WHO-recommended psychiatrist-to-patient ratio. It was discovered that lower remuneration, demanding workload, and an unfair stigma about the profession are just some of the reasons Malaysia has so few psychiatrists.⁹⁶ Looking at the data given, if the mental health services and its ecosystem are not up to mark to effectively save lives, how can we preserve the lives of the people?

One of the dimensions to attain a minimum level of quality of life is security and feeling secure. For example, a company must provide a good and suitable working environment to sustain the mental health of the workers. Employer must acknowledge the huge magnitude of the parameter of 'good life' and its relation to life. Freedom to work and travel also contribute towards a good quality of life. Having the right not to be dismissed from one's job without going through the proper procedure is another example. The prevention of dismissal without cause can ensure adherence to natural justice as well as contribute towards a good quality of life. One will not be able to enjoy peace of mind and subsequently a good quality of life if he knows that he could be dismissed or made redundant at the discretion of the employer at any point of time.

In Malaysia, the Employment Act 1955 (EA 1955) which is applicable throughout Peninsular Malaysia and the Federal Territory of Labuan, is the law that governs employment in the private sector in Malaysia.⁹⁷ It appears that EA 1955 tends to side with the employer rather than the employee. It can be reflected through Section 10(2) of the EA 1955 where a clause laying forth how a contract may be terminated shall be included in the written contract of service. A contract of service is defined as "any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an

⁹⁶ <https://www.freemalaysiatoday.com/category/leisure/2021/07/15/psychiatrists-explain-why-their-numbers-are-low/>

⁹⁷ <https://chiale.com.my/basic-guide-to-employment-law-in-malaysia/>

apprenticeship contract.”⁹⁸ The employee will lose their job if the employer specified in the contract of service that the employer reserves the right to terminate services in cases where the employee is found to be suffering from any form of mental or physical illness that has the potential of limiting the performance of the employee in the workplace.⁹⁹ Thus, the law does not protect the employee from being bullied, harassed, or even fired because of mental health issues, if the employer can show that the employee's performance is curtailed by his illness. Unfortunately, it goes without saying that mental diseases will definitely have an impact on an individual's professional performance. However, before such termination can take effect, the employer must give the employee notice of the termination within the time period indicated in the employment contract, or, in the absence of such a provision, within the time frame established in Section 12(2) of the EA 1955. If the contract is terminated without notice, the employer must pay the employee an indemnity in the amount of wages that would have accrued during the notice period.¹⁰⁰

However, there are instances where the employee can be terminated from his job without receiving any prior notice. Termination without notice is allowed if the employer, after due inquiry successfully proves that the employee had conducted misconduct that prohibits him from fulfilling the express or implied conditions of his service.¹⁰¹ Thus in a situation where an employee decides not to go to work for two consecutive days because of either physical or mental illness and fails to communicate such absenteeism, then the employer has the right to dismiss the employee unless the employee has a reasonable excuse and has informed or attempted to inform his employer of the excuse prior to or at the earliest opportunity during the absence.¹⁰² The power given to the employer is based on natural law (*jus naturale*) which is a

⁹⁸ Section 2(1) of the Employment Act 1955

⁹⁹ <https://relate.com.my/what-are-your-mental-health-rights-in-malaysia/>

¹⁰⁰ Section 13(1) of the Employment Act 1955

¹⁰¹ Section 14(1)(a) of the Employment Act 1955

¹⁰² Section 15(2) of the Employment Act 1955

system of law based on fundamental ideas of right and wrong.¹⁰³ As a result, the employee seems to have little power because the employment is totally reliant on the fulfillment of the service contract.

An early treatment for mental health is one way to protect life. Patient with a mental health condition will face difficulty in thinking process and affect their ability to make decision. Early intervention by psychiatrists could help protect the intellect of patients.¹⁰⁴ Takaful is one of the industries that can help secure and promote *maqasid al-shariah* in the global economy.¹⁰⁵ It is a *fardhu kifayah* (social obligation) that requires those who are able to help those who are unable to lessen individual losses by spreading the risk across a larger society, and it works effectively within the framework of *maqasid shariah*.¹⁰⁶ As the insurance and takaful operators are hesitant to offer coverage for mental illness due to lack of data and understanding on mental health,¹⁰⁷ strong justification for its realization could be achieved by looking into the perspective of the *maqasid shariah*. Although many literatures emphasize on the importance and need to include coverage for mental health disorders in the takaful scheme, only few studies discuss and justify the need for takaful protection to be extended to mental illness from the *maqasid al-shariah* point of view. One literature attempt to justify the coverage for mental illness by looking into the concept of *maslahah (daruriyyat)* under the principle of *maqasid shariah*. It was asserted that initiating mental health takaful could help muslim in maintaining and protecting the religion as it provides an early assistance for mental health patients to seek help from the specialists. Early assistance enables the patient to recover which eventually enable them to perform good ibadah, which is one of the important aspects in the protection of religion. In term of protection of wealth, it is achievable as takaful eliminates elements such as

¹⁰³ <https://relate.com.my/what-are-your-mental-health-rights-in-malaysia/>

¹⁰⁴ Khairi, Khairil Faizal, Samat, Laili, Sabri, Basah, Haris, and Mirza, Takaful protection for mental health illness from the perspective of Maqasid Shariah.

¹⁰⁵ Abdullah, S., Risk Management via Takaful from a Perspective of Maqasid of Shariah.

¹⁰⁶ Ibid.

¹⁰⁷ AIA offers insurance benefit

interest, gambling and uncertainty.¹⁰⁸ Thus, it is crucial to ensure that the health financing industry must provide coverage for the mentally disorder person so that there will be no discrimination against them.

6.0 Universal application of Maqasid Shariah

The principle of *maqasid shariah* are interrelated with one another and cannot be understood in isolation. *Maqasid shariah* promote the universal principle that are inline with the international standard. Those principle have long been developed under the discussion of *maqasid* even before the creation of international guideline. For instance, the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991) (MI principles) is the most common document referred to in the area of human rights for the mentally ill person. It is international guidelines that provide for basic rights to all person suffering from mental illness. The MI Principles were adopted by the United Nations General Assembly on 17th December 1991 through General Assembly resolution 46/119.¹⁰⁹ The document underwent extensive drafting for 20 years beginning in the late 1970s and remains the international human rights agreement most specifically concerned with mental health. It is considered the most detailed and direct expression of human rights in the context of mental illness issued by the United Nation (UN).¹¹⁰ The MI principles served as an interpretive guide to the rights established in the UN human rights treaties and conventions.¹¹¹ The principles provide agreed but non-legally binding basic standards that mental health systems should meet and the rights that people diagnosed with disorders should have. It established minimum

¹⁰⁸ Abdullah, S., Risk Management via Takaful from a Perspective of Maqasid of Shariah.

¹⁰⁹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-protection-persons-mental-illness-and-improvement>

¹¹⁰ Gostin and Gable, The human rights of persons with mental disabilities: A global perspective on the application of human rights principles to mental health.

¹¹¹ Ibid.

standards of practice in the mental health field and has served as a model for mental health legislation in many states.

The MI Principles contain 25 principles that begin by enunciating fundamental freedoms and basic rights of all people with a mental illness. Principle 1(1) explains that fundamental freedoms and basic rights must include the right of all persons to have access to the best available mental health care. In order to ensure that everyone has access to basic mental health care, mental health services should be affordable and equitable, as well as geographically accessible.¹¹² A mentally ill person shall have the right to be treated with humanity and respect, as well as the right to be protected from exploitation, abuse and degrading treatment.¹¹³ The MI principles emphasize the duty to treat patients in the least restrictive environment and to maintain and improve their autonomy.¹¹⁴ In addition, they shall not be discriminated against on the ground of mental illness.¹¹⁵

They have the right to exercise all civil, political, economic, and cultural rights enumerated in the International Bill of Human Rights and other relevant instruments.¹¹⁶ Civil and political rights include the right to the confidentiality of information.¹¹⁷ It also includes the rights of patients in mental health facilities which include privacy, freedom of communication as well as freedom of religion or belief. Freedom of communication includes freedom to communicate with other persons in the facility, freedom to receive private visits either from counsel, personal representatives, or visitors, and freedom to access communication services such as postal, telephone, newspaper, radio, and television.¹¹⁸ It shall be noted that, the civil and political rights found in the MI principles apply to all persons with mental disabilities,

¹¹² WHO Division of Mental Health and Prevention of Substance Abuse, "Mental Health Care Law: Ten Basic Principles", (1996).

¹¹³ Principle 1(2) of the MI Principles

¹¹⁴ Principle 9(1) of the MI Principles

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Principle 6 of MI

¹¹⁸ Principle 13(1) of the MI

regardless of whether they reside in a mental facility.¹¹⁹ The economic, social, and cultural rights shall only be applied to patients in mental health facilities.¹²⁰ As for the economic, social and cultural rights, the MI Principles emphasize that the mental patient shall be able to receive the health and social care appropriate to his health needs.¹²¹ He shall be entitled to receive the same standard of care and treatment as other ill persons. The patient must be protected from receiving unjustified medication. He also must be protected from any abuse from other patients or staff which can cause him to experience mental distress or physical discomfort.¹²²

¹¹⁹ Gostin and Gable, The human rights of persons with mental disabilities: A global perspective on the application of human rights principles to mental health.

¹²⁰ Ibid.

¹²¹ Principle 8(1) of the MI

¹²² Principle 8(1) of the MI

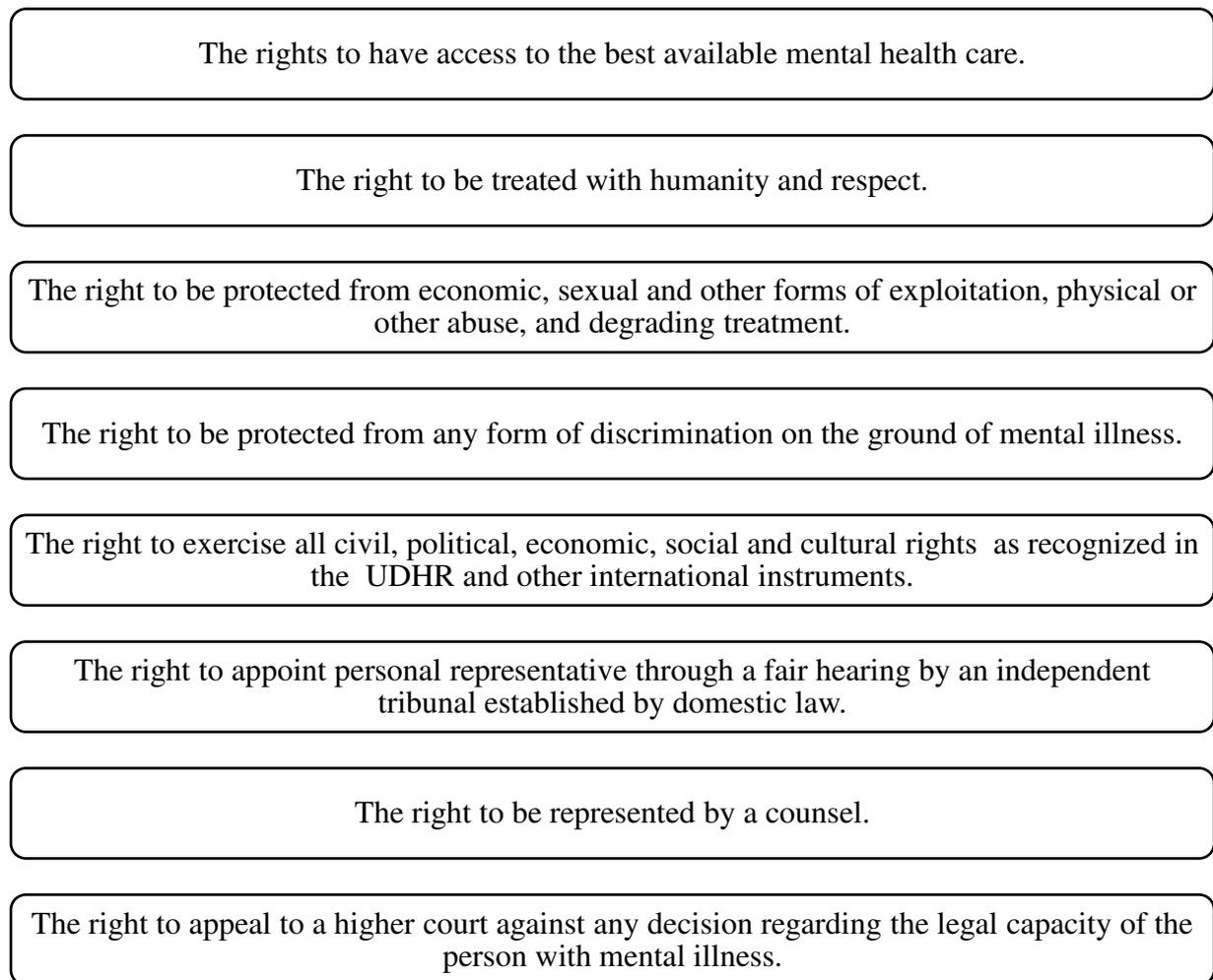


Figure 1 Fundamental freedom and basic rights of people with mental illness

There are similarities in term of objective and principles between the MI Principles and *Maqasid Shariah*. First is the principle of equality between all human beings. Both the MI Principles and *Maqasid Syariah* agreed that in terms of the right to equality, any form of discrimination or preferential by reason of birth, race, ethnicity, religion, skin color, and gender is not permitted. All individuals are equal before the law and are to be treated without any distinction or discrimination. In the MI Principles the principle of equality is provided under principle 1 where the person suffering from mental illness have the right to be protected from any form of discrimination on the ground of mental illness. Regardless of their social standard, they have the right to be treated with humanity and respect. Equality rights are guaranteed by

Islam. There are many verses in the Quran and Hadith that specifically retain the right to equality. In *Al-Hujurat* verse 13, Allah has mentioned,

O humanity! Indeed, We created you from a male and a female, and made you into peoples and tribes so that you may 'get to' know one another. Surely the most noble of you in the sight of Allah is the most righteous among you. Allah is truly All-Knowing, All-Aware.¹

Prophet also stressed the principle of equality when he mentioned, "No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man have any superiority over the white man. You are all the children of Adam, and Adam was created from clay" In this manner, Islam established equality for the entire human race and struck at the very root of all distinctions based on colour, race, language, or nationality. According to Islam, God has given man this right of equality as a birthright. Therefore, no man should be discriminated against on the ground of the colour of his skin, his place of birth, his race, or the nation in which he was born. In addition, both the MI Principles and *maqasid syariah* assures the right of the right to seek justice. MI Principle stressed that everyone have the right to appoint personal representative through a fair hearing by an independent tribunal established by domestic law, the right to be represented by a counsel as well as the right to appeal to a higher court against any decision regarding the legal capacity of the person with mental illness.

CONCLUSION

Maqasid syariah is all about creating the right policies and measures before something bad happens. It is crucial to properly define *daruriyyat*, *hajiyyat* and *tahsiniyyat* respectively so that we can determine the priority in drafting the policy for mental health. This must be done based

on concrete data and not just promulgating broad policy in order to ensure its effectiveness. If *maqasid syariah* has been set up as a formal goal in the mental health system, a wider benefit will be created for the community. Several recommendations are listed below to encourage the implementation of mental health policies based on *maqasid syariah*.

1. In drafting the mental health policy, *maslahah* of the mentally ill must be the priority, as the objective of law must be realization of benefit towards the target group.
2. Placing mental health education as an important aspect to educate the society. Educated human beings will have a good character so that they will have the awareness to behave fairly. In other words, when human have good character because of education process, they will uphold fairness and promote benefits and goodness to the society.¹²³ Thus, stigma and injustice towards the mentally ill can be reduced. Educating the individuals is the main key to establish the pillars of fairness and public welfare.
3. *Maqasid syariah* reflects the high values and intents in Islam. A wrong high and overarching policy arising from poorly constructed *maqasid syariah* would be detrimental to the society. Thus, the policy makers must really understand the concept brought by *maqasid syariah*.

¹²³ Antonio, Laela, and Jazil, Abu Zahrah's Maqasid Sharia Model as a Performance Measurement System.