The Application of *Maqasid al-Shariah* in Multicultural Malaysia: Developing Strong Institutions for Interethnic Unity

Abstract

Studies and writings on *maqasid al-shariah* cover a diverse array of topics from international relations to human development. Furthermore, studies on the *maqasid* approach have also focused on Muslim minorities living under non-Muslim authorities with an obvious absence of Islamic laws being part of government's priority. This study adopts an inverted look at the aforementioned situation: how can Islamic laws be understood in its universal and holistic objectives to allow non-Muslims to live peacefully and confidently under a Muslim-majority government. Malaysia has always been a cauldron of a constitutionally Islamic country with a significant non-Muslim minority witnessing rising Islamisation since the 1980s that was further boosted in the twenty-first century. Discussion on hudud laws, specifically, have created division in society. Based on *maqasid al-shariah*, societal harmony is an objective that is in line with today's understanding on human rights. Therefore, using interviews with policymakers in Malaysia, this study hopes to discover whether *maqasid al-shariah* may provide the path for Malaysians to be able to see one another without suspicion. It was found that policymakers agree in applying the *maqasid* approach in legislating in a multicultural country such as Malaysia – without specifying it as *maqasid al-shariah* for fear of upsetting non-Muslims.

Keywords: Maqasid al-Shariah, fiqh al-ta'ayusy, coexistence, multicultural, inter-ethnic, policymaker, Malaysia

Introduction

As a multicultural and multi-ethnic country, Malaysia is known to have a majority Malay population, which makes up roughly 68.8 per cent of the population which includes the Bumiputera natives of Sabah and Sarawak and the Orang Asli. While ethnic Malays are constitutionally Muslims according to Article 160 of the constitution, it is not necessarily the case with the other Bumiputera population. Furthermore, Malaysia has a significant non-Muslim population at 38.7 per cent. While a portion of the Malay-Muslim population prefers for Malaysia to be an Islamic state as evinced by support for the Islamist party, Malaysian Islamic Party (PAS), the non-Muslims would much prefer to not be ruled by a specific interpretation of religious laws that they do not believe in. There continues to be calls in the public domain by opposition leaders for the government to develop the nation for the benefit of all Malaysians, and not for a specific race or religion (Yunus, 2020). Even the recently former prime minister, Tan Sri Muhyiddin Yassin, acknowledged that the different communities in the country continue to have a tense relationship (Daim, 2020).

The management of a multicultural society by respecting the rights of non-Muslims to live peacefully and harmoniously with the majority Malays without having to fear their rights being denied arbitrarily by the government of the day has been a contentious issue. For example, there is a clear difference of opinion on the possible implementation of hudud laws with Malays agreeing, at 68 per cent, while majority of Chinese (52 per cent) and Indians (51 per cent) disagree (*Malaysia's Temperature Check*, 2020). The current government of the state of Kedah, too, has been accused of being disrespectful towards Hindus despite the group making 6.8 per cent of the state's population ('MIC leader urges PAS', 2021). It is not bleak, however, with Muhammad Faisal Abdul Aziz, the president of the Islamic organization, Angkatan Belia Islam Malaysia (ABIM), suggesting the embrace of the more inclusive, Bangsa Malaysia identity without abandoning our unique differences (Khoo, 2021).

By approaching Islamic law holistically with the objectives of spreading justice and equity, would it perhaps be possible to reduce the rising inter-ethnic tension in recent years such as the politicization of the United Examination Certificate (UEC) and the introduction of Jawi calligraphy as part of primary school's art syllabus? Is there political willpower across the ideological spectrum to approach Islamic legislation with a broader objective that benefits the people from various backgrounds over a narrow interpretation of Islamic law? Thus, the objectives of this research are twofold: 1) to discover the likelihood of using *maqasid al-shariah* as a framework in government policies to reduce the rising inter-ethnic tension in Malaysia, and 2) to determine the willingness of Malaysian political leaders across the spectrum to apply the *maqasid* approach to benefit the multicultural population of Malaysia.

There is no doubt that this research would benefit the government in its efforts to introduce policies that are more holistic. As discussed in the literature review, a proper understanding of *maqasid al-shariah* would open the possibilities of good governance even if it is explicitly Islamic in nature. In a multicultural country like Malaysia, perhaps it is preferable for the government to put into effect policies that achieve the higher objectives of shariah that is universal in nature. The government's priority in protecting the religion of Islam does not lie simply in *amar ma'ruf nahi mungkar* but it is more imperative for the government to take into consideration *maslahah* on whether a law serve's the benefit and welfare of Malaysians of all background and religious affiliation.

Among the five principles of *maqasid al-shariah, hifz al-adin*, or protection of religion, is considered the highest priority among the principles. Traditionally, *hifz al-din* is understood positively as supporting Islamic religious worship such as performing prayers (solat), the hajj and obligatory fasting, and negatively as preventing heresy and apostasy. However, contemporary scholars such as Ibn 'Ashur (2006, p. 160) have widened the scope of *hifz al-din* to also include freedom of religion and the rights of other religionists in their beliefs and

practices. There are various well-known verses in the Qur'an that support freedom of religion to non-Muslims (Al-Baqarah: 256), the necessity to respect others' houses of worship (Al-Haj: 40), and respectful interaction with non-Muslims (Al-Ma'idah: 8).

With the rise of Islamophobic sentiment and violence towards Muslims today, one of the best methods to protect the religion is to reduce aggression towards Islam and its followers. If Muslims today are viewed as being hostile or averse towards non-Muslims, this may jeopardize the image of Islam as a religion of peace. This is especially pertinent in a multi-ethnic and multi-religious nation such as Malaysia whereby harmony hinges on the relationship among the various communities. Therefore, ensuring peaceful interethnic relations is not just for the benefit of non-Muslims, but more importantly, to the Muslims in Malaysia as well.

Interestingly, it has also been argued that a united Malaysia would encourage the different ethnicities in Malaysia to come together to fight against social ills such as poverty and corruption (Khoo, 2021). In addition to *hifz al-din*, it appears that interethnic unity may also help preserve wealth or *hifz al-mal*. The objective of wealth preservation also includes punishing those who transgress the rights of others. Therefore, the *maqasid* approach may provide a holistic framework to interethnic unity in Malaysia.

Maqasid al-Shariah as a Framework

According to Bakar (2011), the Muslim world has gone into decay because the shariah, as a cornerstone of Islamic civilisation, has become too encumbered with the 'ethical-legal' question as opposed to the universal dimension that is related to *maqasid al-shariah*. Thus, to improve the livelihoods of Muslims in the twenty-first century, there is a dire need for *tajdid*, or renewal, which puts at the locus of *maqasid al-shariah* the importance of justice for it being a divine quality (Ghannouchi, 1998). As a universal value, social justice, which includes fair

distribution of opportunities, wealth, and privileges (Abdelgafar, 2018) can be easily understood by all, Muslim and non-Muslim alike, as the fundamental tenet of human dignity.

The literature on *maqasid al-shariah* is rich on the conceptualization of shariah as Islamic law, *maqasid* as the objectives, and even *tajdid* as renewal. The current nature of the nation-state system is vastly different from the religious community of the first four centuries of the Muslim ummah before the time of Imam Abu Hamid al-Ghazali himself. Therefore, there is an intense discourse on the need for a new understanding of organising Muslim life in this new reality whereby the authority and/or society may not be made up of pious Muslims or majority Muslims at all. Make no mistake, non-Islamic governments may still be legitimate according to Rachid Ghannouchi (1998), the Tunisian Islamist leader and founder of the Ennahda movement, as "the government of rationale" that protects life, equity, and justice.

Maqasid provides a suitable method that provides a middle path between strict literalism and leniency. Rather than focusing on the form of Islamic law, *maqasid* approach prioritises the substance and purpose of shariah. Winkel (2011) argues that the *maqasid* approach depends on "finding the middle of a plurality of courses, choosing the easiest alternative, and recognising when something is offensive." (p. 303) In this sense, rather than strictly abiding to a judgment, it is important to find a middle path that ensures harmony in society. As stressed by Mohammad Hashim Kemali (2009), contemporarily, people might be more familiar with the *hukm* (injunction) over the *hikmah* (wisdom) of a specific Islamic law.

The eleventh century theologian, al-Ghazali, delineated the five principles of *maqasid* to be life, religion, property, progeny, and intellect. Ibn Taymiyyah and Abu Ishaq al-Shatibi further improved and expanded the concept in the fourteenth century. While Ibn Taymiyyah objected to the limitation of having only five objectives, al-Shatibi focused on the concept of *maslahah*, or public interest, which should be under the domain of the state. This idea of focusing on the

public interest over literalism is further expounded by Ibn 'Ashur and Jasser Auda in the twentieth century. For example, Auda suggested the inclusion of human rights and freedom to be part of the theory of *maqasid*. Besides preserving our rights to worship, it is also imperative for Muslims to internalize the rule to our present conditions for our action to be based on Islamic values of mercy, equity, and justice, among others.

Ramadan (2006) reminded us that sharia is about a point of reference that directs human actions according to the will of Allah. It is not about aping models of the past, but to continuously reform the system to fit the reality of the time without abandoning the spirit of the Islamic legal corpus. He gave the example of *maslaha* being justification for new *fatawa* on *riba* (interest) and inheritance. Instead of fulfilling sharia being an end, Zaman (2006) proposes that sharia is more of a means to reach the end which is the common good. Thus, differences of legal opinion are not something to fear or hinder.

Other scholar such as Yusuf al-Qaradawi has supported the notion to include welfare, freedom, human dignity, and fraternity in the principles of *maqasid*. In an article on the relationship between Islam and the West, Rane (2011) argued that the circumstances of the nineteenth and twentieth centuries resemble the eleventh and twelfth centuries when Muslims were under assault of western colonization. Thus, there is a desire to defend and reaffirm Muslim identity through the application of shariah as the law. Since the application of shariah is controversial today with most people focusing on cutting the hands of thieves and killing of apostates, the *maqasid* approach allows for a broader implementation of Islamic laws with an objective of good governance and development. Similarly, Ra'ees (2010) made the argument that the *maqasid* approach is on the same footing as *siyar*, or foreign policy of the Islamic polity, as both are willed by Allah.

Studies on *maqasid* have tried to explain the best way for Muslim minorities to live and thrive in a non-Muslim society. In the foreword to the English translation of Gamal Eldin Attia's *Towards Realisation of the Higher Intents of Islamic Law*, Al-Shaikh-Ali (2007) wrote how knowledge of the *maqasid* "can help in the process of developing a much-needed objective-based *fiqh* for minorities". (p. ix) This research looks at the opposite: how can Muslim government apply the *maqasid* approach in a multicultural nation such as Malaysia in terms of respect for non-Muslim minority rights? A *maqasid* approach provides a framework to respond to modern conception of religious freedom between full liberalism and blind agreement to the law. The discourse is not beyond tolerating 'the other' but to live in mutual respect because it is a fact of life that we cannot escape people with different opinions and beliefs, but to empathize with them (Ramadan, 2012).

One of the higher objectives of shariah is the preservation of religion, or *hifz al-din*. March (2011) argued that this objective refers to the conception of religious freedom whereby anyone can fully practice his or her religion without fear or harm to his or her person. On the other hand, March points out that this objective can also form the justification for a rigid application of madhab rulings to protect the religion of Islam. Instead of being a deterrent to discussion on human rights, Kamali (2008) believes that the *maqasid* approach provides a framework that allows Muslims to move from conservative rulings to a more liberal application of the law that is in line with universal understanding of human rights.

Kamali's understanding of *maqasid* is in line with that of Rashid al-Ghannouchi; rather than viewing human rights to be due to human nature, he believes that humans are endowed with rights by Allah as His trustees on earth by virtue of their intellect by taking the sacred texts as guidance (Johnston, 2007). In other words, he does not view the Universal Declaration of Human Rights (1948) to be incompatible with Islam. In fact, the Universal Islamic Declaration of Human Rights (1981) and the Cairo Declaration on Human Rights in Islam (1990) have so

many similarities with the Universal Declaration of Human Rights such as rights to life, freedom, equality, and justice. In a similar vein, as a 'Muslim democrat', Ghannouchi argued that citizenship (*muwatanah*) is a right for all members of a nation due to the social contract that created the state.

Abdelgafar (2018) similarly argues that human rights are not exclusive to Muslims. In fact, belief in tawhid celebrates human diversity with Allah being the only unified whole. While being Muslim may improve access to human rights, being Muslim is not a requirement to receive human rights.

> There is absolutely no verse in the Qur'an or credible narration in the Sunnah that limits the provision of what is good and ethical to Muslims only. Indeed, freedom to believe is a fundamental tenet of Islam and is not a condition for the provision of rights. Islam obligates believers to provide full rights to others without discrimination. From the perspective of the Shariah, universality is found in the unquestioning provision of ethical goods to all creation irrespective of demand. (p. 20)

There is also work done to create a more inclusive human development policy by incorporating *maqasid al-shariah*. Oladapo and Rahman (2016) conceptualise a human development framework that goes beyond economic development that includes equitable income distribution that also requires intangible human needs such as freedom and equality. Unfortunately, the discussion on social justice and human rights needs further exploration in studies on human development.

Exploring the theory of *maqasid* is not only fruitful to the public but also to Islamist politicians as well. By taking a more conciliatory approach that prioritises objectives such as democracy, human rights, and good governance over strict implementation of Islamic law, there is a higher chance for traditionally Islamist party to gain the support of a wider population. This has been

proven by the likes of the Justice and Development Party (AKP) in Turkey. In fact, by prioritising ethics over application of laws, there is also the probability for conservative and progressive Islamists to work together. (Johnston, 2007)

Malik (2019) also argued that the *maqasidic* approach is a better alternative over *fiqhi* legal positivism when it comes to achieving good governance. For example, he wrote,

> the prevention of a certain public harm (*mafsadah*) to public interest in a certain context requires diversity of approaches and policies. In dealing with the issue of governance, *maqasid* determines the radius of policies governing the society by accumulating general benefits and avoiding harm to the whole community to enhance public interest (*maslahah ammah*). (p. 96)

Malik's research is on the application of *maqasid al-shariah* in policymaking in general. The current research, however, focuses more specifically on using *maqasid* as a framework in policymaking that could generate inter-ethnic unity and harmony among the different communities in Malaysia.

Wan Mansor (2016) proposed a framework to apply *maqsad of hifz al-din* (objective of protecting the religion) in a multicultural country, which is Malaysia. According to him, there is enough evidence in the literature to support the argument that the priority on protecting religion depends on the level or urgency whether it is a necessity, a need, or a luxury (Auda, 2010). If a legal case might have grave repercussions to society-at-large, it is possible to apply austere or harsh policy as opposed to if a case would only impact the individual or family. In other words, applying a *maqasid* approach allows for flexibility and leeway in applying a law that takes into consideration the conditions of society. Morality and worship are then the responsibility of the ummah or civil society instead of the state (Safi, 1991). On the other hand,

preservation of security in society is one of the principles of shariah and thus an important obligation to an Islamic government (Al-Qahtani, 2015).

While the literature has looked at multiple angles of the theory of *maqasid*, there is yet research done on the application of *maqasid al-shariah* to unite and harmonise a diverse population such as in Malaysia. This research would extend on the research on *maqasid al-shariah* and good governance by applying the framework to Malaysia's unique multicultural identity where Muslims make up the majority with significant ethnic and religious minorities. Moreover, policy makers across cultural and ideological backgrounds are more likely to work together in a *maqasid* framework than a legislative formula that focuses on literal implementation of laws from a thousand years ago. Islamic policies can be achieved in substantive form even if not in name if the policies achieve the objective of justice and equality.

Interethnic Relations in Malaysia

As a multi-racial country, the government is responsible for managing the inter-ethnic relationships in Malaysia to avoid spilling into unwanted racial tension and violence. Unfortunately, race is still a very conspicuous issue in Malaysia that does not seem to abate anytime soon. Based on a report by Pusat KOMAS, an NGO promoting human rights and equality in Malaysia, there has been a decrease in efforts to fight against racial discrimination in 2019, together with reduced efforts at promoting national unity. The report also states that most racial incidences can be traced to politicians. (Pusat KOMAS, 2020)

This is of course a phenomenon that has been observed by others such as Crouch (1996) in which it was argued that political struggles in Malaysia are usually equated to an ethnicity tug-of-war. Furthermore, a study on the role of the media also discovered that Malaysian media tends to emphasise the economic issues faced by their audience that usually belongs to one

ethnic group over another (Chang and Kho, 2017). This results in divergence among the communities on their views on economic issues with the possibility of entrenching inter-ethnic distrust.

However, Ishak (2002) pointed out that the concept of 'ethnicity' does not exist in perpetuity but is the result of contradiction and conflict among multiple groups in a specific socio-political environment. The problem in Malaysia is managing plurality while attempting to build a sense of national identity. While a *maqasid* framework may not be familiar to non-Muslims in Malaysia (even to Muslims), the idea of protection of human values is universal and thus may provide a good starting point for Malaysia's national identity.

As explained by Mabruk (2015), the spirit of coexistence among the different peoples today can be achieved by focusing on shared human values that would eventually lead to security, stability and prosperity which happens to be part of *maqasid al-shari'ah* based on the idea of reducing hardship and burden. This *fiqh* of co-existence is also known as *fiqh al-ta'ayusy* where *al-ta`ayusy* means living with others based on the spirit of love, mutual understanding, mutual trust, and mutual respect. In a similar vein, Mustapha (2014) explains that *al-ta'ayush* is based on Islam as a universal religion that commands justice, peace on earth, and for a positive coexistence regardless of ethnicity or creed. In Malaysia, *fiqh al-ta'ayusy* becomes very important in managing the different ethnicities in the country. Aini and Wan Ismail (2018) writes that in Malaysia's reality (*al-waqi` al-malizi*), non-Muslims are not at war with Muslims; instead, they must be treated kindly in order to portray the true beauty of Islam. This is also because non-Muslims in Malaysia are considered legal citizens or *muwatinun* (Fadzil, 2016).

Thus, the purpose of shariah is a possible source for national integration in Malaysia as integration is usually the result of coming together for a specific purpose that may include protection of the sovereign state. Snidar (1973) may disagree with this proposition because she

argued that a policy of national integration is akin to forcing the ethnic minorities to assimilate to fit the western idea of a Malaysian "nation-state". Her proposal five decades ago was to prioritise inter-ethnic understanding and respect. This bottom-up approach is of course preferable, but in the absence of trust among communities, there is a dire need for the government to take pro-active reign to reduce inter-ethnic anxiety.

Islamisation, unfortunately, has brought with it a negative connotation when it comes to inter-ethnic relations. Olivier (2020) wrote that "fewer non-Malays attending public schools and tertiary institutions…has contributed to furthering the cause of Islamisation, as teachers, in situations where almost all the pupils are Malays, often emphasise the difference between Muslims and non-Muslims in religious terms and warn of potential dangers resulting from fraternization." (p. 196-197)

Qaradawi (2001) is of the view that differences produce variety (*ikhtilaf al-tanawwu'*) and is a "treasure" because it allows for different rulings to be implemented for different societies with their own unique lived experiences. In fact, Khadduri (1959) argued that the Islamic state is the only system that is truly liberal and pluralistic as the different communities (ummahs) are allowed to integrate multiple elements without abandoning the state's Islamic nature. This idea is in line with Asad's claim that the Islamic state is not an end, but a means to create a united people that champions equality and justice for Muslims and non-Muslims (1980, pp. 32, 99). In this sense, national integration under an Islamic system that applies the principles of *maqasid al-shariah* does not necessitate the extermination of other cultures.

Methodology

This research is a qualitative study that seeks to uncover a deeper truth with the nuances that comes with understanding the behaviour of political leaders. Qualitative study, which focuses on words over numbers, is deemed appropriate to discover the thoughts and opinions of Malaysian leaders on their preparedness to apply theory of *maqasid al-shariah* in policy making. Qualitative research such as this can also inform new concepts and ideas as we are proposing to do here. Specifically, this study employed semi-structured purposive interviews with policymakers as they are involved in legislating for the entire country. Elite interviews are known to be a unique type of interview that seeks quick and straightforward objective data (Meuser and Nagel, 2009). This study is mostly interested in getting exclusive insight of the experts that is the politicians. Knowledge based on experience and practiced can be easily derived from these elites. It must be noted that it is not the elites who are the object of investigation but as informants about real events, in this case the policy-making process to strengthen inter-ethnic relations in Malaysia.

The current make-up of parliament today varies from members of the right-wing PAS party to the more left-wing Democratic Action Party (DAP). Thus, it is crucial that the opinion of leaders from various parties are considered. Both Muslims and non-Muslims were interviewed because understanding of *maqasid al-shariah* is not exclusive to Muslims. In total, we interviewed 13 politicians in Malaysia, 12 being current members of parliament, whereas one was a deputy minister of Islamic affairs. One non-Muslim was included as an interviewee and one female from East Malaysia also participated in our elite interview. In total, we believe that not only did we had a representative sample, but we also reached a saturation level after the tenth interview when the replies are not much different from others. But we continued with three more interviews to confirm our saturation level.

Maqasid al-Shariah for better Inter-Ethnic Relations in Malaysia

In Malaysia's short history, May 13, 1969, has always been viewed as a watershed moment of inter-ethnic relations with the racial riot that broke out in Kuala Lumpur following the general elections for the Third Parliament of Malaysia. Tun Razak, the second prime minister who took over from Tunku Abdul Rahman after the riot, helped the government to implement the New Economic Policy that had the aims of eradicating poverty and restructuring society to eliminate the identification of race to economic function. Since then, while there have been racial and religious issues that were brought to mainstream consciousness, there had not been a point where Malaysia's inter-ethnic relations were on a fulcrum of destruction.

Our interviews with the politicians appear to confirm this fact. Most respondents agree that inter-ethnic relations in Malaysia are under control. For example, Amin Ahmad (personal communication, 1 June 2021) mentioned that

> There was no violence. Difference of opinion will indeed always exist even if it is not resolved by violent means. Violence is like fighting, rioting, or even physical harm... I always take an example like this, if we take a restaurant, a mamak shop (a type of restaurant that is commonly patronized by all Malaysian). In the mamak shop we see Malays, Chinese, Indians, or various other races can sit together... He doesn't need to know the person next to him… So, it means there is an atmosphere that I mentioned a moment ago…without chaos and so on. This is the yardstick.

Interestingly, during the interviews, which took place in the first ten months of 2021, most of the interviewees also compare Malaysia with other countries, especially America, when making the point that inter-ethnic relations in Malaysia is manageable. We proposed that this

is due to the civil unrests in America following the death of Geroge Floyd at the knee of police officer, Derek Chauvin, in May 2020. In comparison to that, Malaysia is relatively peaceful. For example, Fahmi Fadzil opined that the situation in Malaysia is "better than in America, if you compare" (personal communication, 18 March 2021). Mahathir Mohamad, who was Malaysia's prime minister twice from 1981-2004 and 2018-2020, also mentioned that

> If you compare [Malaysia] to other multi-ethnic countries in the world, you find a lot of confusion, you find a lot of friction, you find a lot of fighting even. But in Malaysia, yes, we have differences… But the important thing is that we you solve the differences, it should not be by violence, by force and all that (personal communication, 18 May 2021).

Despite the absence of violence, several respondents also pointed out that the fragility of relationship among the various ethnicities in Malaysia can easily be exploited especially by ruthless politicians. An example given below by Salahuddin Ayub from Amanah, a component party of the Pakatan Harapan coalition, is on the 'Adib issue'. Adib was a firefighter who was killed in a riot at a temple in November 2019. It was politicised as a racial issue between Indians who were disputing the relocation of the temple, with Adib as a Malay.

> Until now, we got to very careful to handle a few issues. As I mentioned just now, there's a few what we call it time bomb issues like the Adib issue, for example. (Salahuddin Ayub, personal communication, 4 October 2021)

> The relationship has been, I would say, good, but there will always be times when certain segment of society will trigger this sentiment of race and ethnicity…to the point

of physical violence and what have you. (Amiruddin Hamzah, personal communication, 16 March 2021)

We used to have a more harmonious relation based on Muhibbah, but of late politics has ruined them; nevertheless, there's still rooms for improvement. (Maszlee Malik, personal communication, 16 March 2021)

For a lot of people, they need to play that card, that racial, religious card, the divisive language in order to survive. As I said, you know, parties are very vocal about racial/religious issues when they were in opposition... But I also think both politicians and the business community, they have to address the issue of economic inequality. Because I think that is very serious. You know, I mean, we can go back to *maqasid* itself, right? We are talking about life; we're talking about property. (Nik Nazmi, personal communication, 3 August 2021)

Similar to the point made out by the Setiawangsa MP, Nik Nazmi, others such as Mahathir Mohamad and Salahuddin Ayub also feel that the porous nature of inter-ethnic relation in Malaysia is due to the socioeconomic structure of the country and thus there is a serious need by policymakers to focus on the economy along the line of *hifz al-mal* (protection of wealth). In other words, if *maqasid* as a framework is to be used to foster better inter-ethnic relations in Malaysia, focus should also be one economic equality to reduce suspicion among the ethnicities.

The rich in Malaysia happens to be of a different race. The poor from a different race. There is already tension between different races. There is tension between the rich and

the poor. So, we faced two very big problems, when we faced these two very big problems, we have to accept that we cannot change this... So, because we cannot change race, we should reduce the disparity between rich and poor, rich Chinese and poor Malays. (Mahathir Mohamad, personal communication, 18 May 2021)

I think *maqasid* is basically to deal with the larger questions of politics, the larger objective, humans living together…I think politics shouldn't be just about following parties. But politics should be about livelihood. It's about ensuring that people live harmoniously, and actually give a meaningful and purposeful life…through job, through living conditions, through a peaceful relationship with other countries, I think those are the purpose of politics (Liew Chin Tong, personal communication, 6 April 2021)

Generally, the politicians agree that to use *maqasid* as a framework for inter-ethnic relations in Malaysia, policymakers should focus more on substance over form. It is not so much about the sloganeering of different political parties but on efforts by those in power to establish better relations among the different ethnic groups. Interestingly, the same point on focusing on substance over form was made by both members of all Malay-based parties – UMNO, PAS, and Amanah. Therefore, we argue that there is much opportunity for cross-party collaboration on instituting *maqasid al-shariah* as a framework for better inter-ethnic relations in Malaysia. *Maqasid al-shariah* is achievable in Malaysia, but not through specific labels. As mentioned by Fadhli Shaari, the current youth chief of the Islamist PAS party,

Talking about *maqasid al-shariah*, I don't think we have to highlight *maqasid al-shariah* in the name of *maqasid al-shariah*. But when that goal is achieved, in itself

maqasid al-shariah has already been achieved. Moreover, *maqasid al-shariah* is not a fundamental taught by the Prophet. It is only a discipline of knowledge compiled by the *fuqaha* (learned scholars) after the death of the Prophet to make it easier for us to understand the shariah. So that's it. If it gets to the level of people feeling sceptical of *maqasid al-shariah*, I don't think it's necessary to use it as a term (personal communication, 24 June 2021)

In explaining to us, he mentioned that unfortunately in Malaysia non-Malays have become anxious whenever Arabic terms are used because it appears to feed into the Islamization agenda of the country. Thus, to ease the anxiety of non-Muslims, he stressed the importance of the spirit of *maqasid* over its usage as a term. Moreover, Fadhli and Isnaraissah Munirah from Warisan, a party in the Borneo state of Sabah, also feel that people in East Malaysia may not be familiar with the term.

If we are in the Peninsula, Islamic terms can to some extent attract [Muslims]… If people want to look for things that are quite Islamic. But different from Sabah and Sarawak... The understanding of Islam is a little different and requires a different approach. (Fadhli Shaari, personal communication, 24 June 2021)

Politics also making this *maqasid al-shariah* sounds like 'what is this…this is Arabic.' This is Islamic propaganda. Although they don't say it like that, but definitely I can assure you if I [mention *maqasid al-shariah*] to my voters, [they will say] 'Oh my God, what are you talking. You sacred us.' (Isnaraissah Munirah, personal communication, 19 August 2021)

Due to these different levels on understanding and acceptance on an outwardly Islamic agenda, most of the interviewees agree that education is key. It is not just the division between East and West Malaysia, and Muslims and non-Muslims, but as pointed out by Fadhli Shaari, there is also a clear division between rural and urban Malays whereby he said that based on his observation, the Malays in urban areas such as Kuala Lumpur are more religious compared to those in rural Kelantan, a state in the northern part of Peninsular Malaysia, in which familial relations are prioritized. Below are some suggestions by the politicians on how to educate the masses on *maqasid al-shariah:*

> By popularizing the term *maqasid*, and also actually in the context of education, if we want to popularize the term *maqasid*, we may be able to produce 4 or 5 activities which the students have to discuss. What is the *maqasid* in these activities… We train their minds and souls to always know what issues in this life have to do with *maqasid* (Amin Ahmad, personal communication, 1 June 2021)

> If society is not sceptical, politicians can educate their followers, so that they can accept *maqasid al-shariah*, why not? We institutionalize *maqasid al-shariah* as a major thing for society to learn. Maybe we can set up an institute of understanding of *maqasid al-shariah*, for example. (Fadhli Shaari, personal communication, 24 June 2021)

> I think it is not wrong if we keep on publicize [*maqasid al-shariah*] …To promote what is actually *maqasid al-shariah*. *maqasid al-shariah* [is not] Hudud… It is good to actually use [*maqasid*] or use this term widely. Just to teach and to give information first. Not only to the non-Muslims but also to the Muslims. [*Maqasid al-shariah*] is actually the way of life, and not Hudud that is terrifying the non-Muslims. (Ismaraissah Munirah, personal communication, 19 August 2021)

Role of Policymakers

Some of the politicians interviewed have been in politics for decades while others are relatively new. Despite the difference in experience, several respondents are complimentary of the Malaysian government's role in promoting *maqasid al-shariah* in its substance. For example, Nik Nazmi, Amin Ahmad and Hasan Bahrom all agreed that the Malaysian constitution is an example of *maqasid* in action especially through its provision enshrining freedom of religion to Malaysians. As part of *hifz al-din* (protection of religion), Muslims are protected to practice Islam whereas other religionists have their freedom as accorded in the Quran (109:1-6).

> *Maqasid al-shariah* is a way to sort of reconcile, you know, the nature of our Constitution. And, you know, even in its state, in the current state, that it stands, many ideas of the sharia can be accommodated, even without a full-fledged, for example, hudud or *qisas* or *takzir* enactments in the law. So, I mean, that's how I see in the sense that it is a way to accommodate the constitution that we have now. (Nik Nazmi, personal communication, 3 August 2021)

> In our constitution it also says, yes, [*maqasid* is practised]. In the matter of Islam, it is the religion of the federation, as an example... There are many things that are translated in the implementation of *maqasid* in terms of aspects for us to maintain the religion. Similarly, from the point of view of life, for example, the safety of people's lives and so on, many enactments, laws, and regulations that have been set and implemented to guarantee human life (*hifz al-nafs*). (Hasan Bahrom, personal communication, 20 August 2021)

In terms of implementation of *maqasid al-shariah* by different governments in Malaysia, we can compare the response by Mujahid Yusof Rawa, the former de facto minister of Islamic affairs during the Pakatan Harapan government, and Asyraf Wajdi, the former deputy minister

of Islamic affairs during the Barisan Nasional government. Both are adamant that the respective administration did implement *maqasid al-shariah*, albeit with different interpretation. According to Mujahid Yusof Rawa, his framework of *Gagasan Negara Rahmah* (Blessed State Concept) includes *maqasid al-shariah* and the concept of *rahmatan lil alamin* (blessings for all) under a specific Malaysian model. Below is an example of his explanation on *rahmatan lil alamin*:

> I called for transforming the sharia law from punitive to rehabilitative. Now this is a very important policy… What does rehabilitative mean? Instead of us just punishing, canning, jailing, or fine you, I do have another alternative: to educate you. For me, to rehabilitate you or sometimes they called it reformative, to reform you. How? Through good conduct. Through community services. And you know these shariah crimes, for example, *khalwat* (close proximity between the sexes), gambling, sometimes they are first offenders. [I am] guided by the philosophy of *rahmatan lil a'lamin* (personal communication, 10 March 2021).

While Mujahid focused more on education and a bottom-up approach, Asyraf Wajdi Dusuki from UMNO on the other hand stressed UMNO's role as the main party in government for 61 years and its role in Islamizing Malaysia. As he discussed, UMNO used to be synonymous with the state, and thus, whatever decision that was made at the party would automatically become government policy. Although it is a top-down approach, a different approach compared to Mujahid's, he too believes that the UMNO administration was involved in implementing the *maqasidic* approach. He gave the example of the Maqasid Index, an index that was developed to measure how the different government ministries abide by the framework of *maqasid al-shariah*. He believes that this effort is proof that the UMNO government, together with Najib Razak as prime minister at that point, was dedicated to *maqasid al-shariah* and its institutionalization.

When I was deputy minister, I proposed the idea to the prime minister (Najib Razak). And from there, we set up a team, task force and we have commissioned this project to few universities… When it comes to implementation, how do you come up with an index, what are the variables, how you use that variable to see or to measure the performance of the various government ministries in the realization of *maqasid al-shariah*? So, for the *maqasid al-shariah* of preservation and protection of religion, prosperity, and so on, we have developed for example for Ministry of Health, what are the variables to be measured in terms of performance... It only lasts for two years because we lost the election (Asyraf Wajdi Dusuki, 23 September 2021).

With such dedication by politicians from different parties, there appears to be an opportunity for *maqasid al-shariah* to be used as a framework to develop strong institutions for better inter-ethnic relations in Malaysia. The government may implement a similar Maqasid index to ensure that all government ministries and agencies prioritize good inter-ethnic relations as expected based on *maqasidic* approach of protection of religion, and of justice and equity. This effort can be supported by an all-of-society approach by engaging with stake holders to educate the people on the concept of *maqasid al-shariah* and how it could foster positive impacts in Malaysia compared to the more contentious hudud. In this way, there would be less suspicion on Muslims by non-Muslims and this is what Malaysia needs right now.

Conclusion

This paper started of by asking the question of whether *maqasid al-shariah can be used as a framework* to foster better inter-ethnic relation in Malaysia, or at least to reduce the simmering tension. An extensive review of the literature on *maqasid al-shariah* was done in order have a better understanding of the concept. Instead of being codified laws, *maqasid al-shariah* is about

fulfilling the objectives of shariah through prioritization. In the case of Malaysia where significant percentage of non-Muslims make up the population in a so-called Islamic country, there is a need to reconcile the Islamic values of the majority population with the non-Muslims. Through *fiqh al-ta'ayusy*, or *fiqh or coexistence*, it becomes possible as Islam is a religion for all that emphasizes human values such as respect, tolerance and trust.

Next, the paper seeks to apply the concept of *maqasid al-shariah* in the policymaking process in Malaysia. Following in-depth semi-structured interviews with 13 policymakers, it was found that policymakers across parties are very receptive to *maqasid al-shariah* being a framework to develop better inter-ethnic relations. The reason for their support being that *maqasid al-shariah* is more relevant to all Malaysians compared to the discourse on hudud law, which in fact have the effect of furthering suspicion by non-Muslims. However, it was pointed out more work needs to be done, especially in education, to familiarise Malaysians not just to the concept, but to how it looks like in practice. Malaysian politicians seem to understand *fiqh al-ta'ayush* and the *maqasidic* approach in its substance, but the application of *maqasid al-shariah* as a framework for better inter-ethnic relation relies on the political realities in Malaysia where religious issues, being emotive, are used by politicians for their political mileage. If politicians continue to prioritize winning votes over security and stability, the application of *maqasid al-shariah* to improve inter-ethnic relation in Malaysia will take some time before coming to fruition.

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