

## Exploring the Social Values of Terrorism in the Name of *Jihad*: How Do Judicial Theories Perceive Them?

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### Abstract

This article examines terrorism conducted in the name of Islam from the perspective of the *maqâshid al-sharî'ah* juridical theories. Following the September 11, 2001 attacks on US soil, other acts of terrorism have increasingly spread. The perpetrators of such acts use the concept of *jihad* to legitimize their actions through religious texts, thus reinforcing the negative perception that Islam actively encourages terrorism. This study, which is based on library research, seeks to demonstrate that terrorism causes much more harm (*madharat*) rather than good (*mashlahah*) by cultivating a poor image of Islam. There are three standard categories where *jihad* can possibly bring benefits: i) the *maqâshidâmmah*, which promotes justice and freedom; ii) the *maqshidkshshah*, which relates to fulfilling human rights; and iii) the *maqâshid juz'iyah*, which covers specific goals like fighting oppression, protecting people, and eliminating disbelief. Terrorism is related to Islamic belief through the application of *jihad ghairumuq tadhâ al-hâl*, which does not match the situation. Furthermore, when extremists fully understand the concept of *jihad muqtadhâ al-hâl*, namely *jihad* when it is demanded by the situation, they should refrain from pursuing acts of terrorism that they believe to be *jihad fi sabilillah* (*jihad* in the name of Allah) but which in reality bring negative attention.

**Keywords:** terrorism, *jihad*, *maslahah*, *madharat*, *maqâshid sharî'ah*

### Introduction

This article examines terrorism in the name of Islam from the viewpoint of the theoretical judicial framework that has been used over the centuries to interpret divine law (*sharia*) from the perspective of what may be regarded as the goals and objectives of this law, which is called *maqâshid sharî'ah*. After the terrorist attacks on the United States on September 11, 2001, followed by the subsequent military expansion of the US into the Middle East, terrorist acts under *jihadist* banners have become increasingly widespread. For example, Al-Qaeda has justified its terrorist actions as being in the name of *jihad*. Unsurprisingly, terrorism related to Islam has since received serious academic attention (Husaini, 2001).

The volume and regularity of terrorist acts has been on an upward trend since the US began expanding its military involvement in the Middle East as part of its war against terror. The US occupations of Afghanistan and Iraq prompted retaliation from extremists, with bombings being directed at various countries that were seen as US allies. The bombings of the Sari Club and Paddy's Club in Bali (better known as the Bali Bombing) were identified as a *jihadist* response to US military activity in Afghanistan and Iraq, which they saw as more sadistic than the attack on the World Trade Center (Samudra, 2004).

The bombers regarded their attack as part of a *jihad* to liberate Muslims who were being oppressed by the infidels, namely the US and its allies. This is evident in the following statement from one of the Bali bombers, Imam Samudra:

*In my view, jihad, in the first place, in terms of language, means "to strive assiduously." Second, jihad as a term means to constantly strive to uphold Islam. Third, in terms of sharia law, jihad is fighting against the infidels and their allies. In*

*reality, the greatest jihad today is the jihad of fighting American terrorists and their allies who are involved in the crusade against Muslims all over the world“ (Samudra, 2004, p.108).*

We may then question whether the terrorist acts of certain Muslims can be classed as *jihad fi sabilillah*? Under the alleged reasoning that their actions benefit Muslims, can extremists really justify them as a *jihad* in line with the reasoning of the *maqâshid shari'ah* framework?

### **Terrorism, Radicalism, and Fundamentalism**

Terrorism has been defined as the use of violence and intimidation, especially for political purposes (Hornyby, 1987, p.892). It intends to cause mass fear in order to achieve specific, often political, objectives (Marbun, 2002). Several Arabic terms are connected with terrorism, such as *asal-baghyu* (rebellion), *al-irhâb*, *al-hirâbah* (robbery), *al-'unf* (opposite of gentleness), and *qâthi 'ath-thâriq* (robber) (Mishrî, Juz 4, p.97). The term *al-irhâb* is the noun form of the verb *arhaba-yurhibu*, meaning to threaten or intimidate (Munawwir, n.d., p.539). This verb can also convey the idea of creating fear (*akhâfa*) or horrifying (*fazza'a*) (Mishrî, Juz 4, p.436; see also Ma'luf, n.d., p.282). The Quran uses a number of terms related to *jihad*, and concepts like war are brought up in some verses, such as Al-Maidah, 5:33; At-Taubah, 9:29, 107, 123; and Ali Imran, 3:167.

Terrorism is frequently linked with extremism, fundamentalism, and radicalism. According to Ridho (2003), the ideology of fundamentalism (*al-ushûliyah*) encourages the fight against something in a non-violent manner, whereas radicalism (*al-judzriyah*) is based on the notion that violent or drastic action may often be needed to bring about social and political reform. The latter concept therefore dismisses the aim of gradually improving economic, social, and political conditions. According to Nafi (2015), the difference between fundamentalism and radicalism lay in the areas they emphasize. More specifically, fundamentalism is generally restricted to notions of thought and ideology, while radicalism advocates action to bring about concrete changes.

The *Wahabi* movement, which was led by Muhammad bin Abdul Wahab (1703-1792 CE) and emphasized the cleansing of Islam, is an example fundamentalist movement that colored the history of Islam. This movement became divided into two factions, the *Haraki* and *Tarbawi*. The *Wahabi Haraki* movement advocated a destructive and offensive *jihad* in way to realize its ideals, while the *Wahabi Tarbawi* preferred to pursue its *jihad* through worshipping, building educational facilities and infrastructure, supplying books, and establishing activities aimed at spreading their teachings (Salenda, 2009).

In accordance with Nafi's definition, the *Wahabi* movement could therefore be regarded as both a fundamentalist and radical movement concurrently. In this context of thought, the *Tarbawi* and *Haraki* factions belong to both the fundamentalist and radical categories, because while they functioned on an ideological level, they also purposely pursued their objectives, albeit through very different means: one taking a subtle, influential approach and the other applying more violent methods. Nevertheless, based on Ridho's definition, the *Wahabi Tarbawi* and *Haraki* are clearly distinct. The *Wahabi Tarbawi* cannot be called radical because its methods were neither overtly aggressive nor systematic. Conversely, the *Wahabi Haraki* pursued violent means to implement its idealism, so it was indeed a "radical" movement.

According to Article 6 of Indonesian Law no. 15 of 2003:

*Terrorism is an act perpetrated by anyone who deliberately uses violence or the threat of violence to create an atmosphere of terror or fear among people on a wide scale or to*

*harm persons on a massive scale through the deprivation of independence or loss of life and property of another person or causing damage or destruction of strategic or environmentally vital objects or public facilities or international facilities.*

According to Azra (2002), however, not all forms of terror fall into the category of terrorism. Indeed, terror may be exploited by criminals simply for personal gain. It therefore seems that the motives behind terrorism are much more complex than typical crime with a greater communal element. The motives behind terrorism usually have a more complex and ideological nature than those driving criminal behavior, such a specuniary gain (Ridlo, 2012).

Using the term terrorism with apolitical conversation often presents many anomalies. For example, in response to the September 11, 2001 attacks, the US invaded countries in the Middle East, declaring it a “war on terror.” However, some argued that this was just a pretext to justify action based on its own military, political, and economic interests. What is more, the United States strongly condemns terrorist attacks in Western countries, but it is often perceived as turning a blind eye to Israeli aggression in Palestine.

Clearly there is some degree of bias in the definition of terrorism. If a country commits an act of terror against another country, can it be justified? For example, if a movement resists an oppressive violent government, are its actions a form of terrorism? In addition, if a country is occupied by another country, is resorting to violence to oust the occupiers also terrorism?

A clarification of the sorts of actions that can be classed as terrorism is needed. According to Salenda (2009), a terrorist act meets the following criteria:

1. Actions that involve illegal violence or threats.
2. Such actions affect a given community, physically and/or psychologically, as well as their property and public facilities, whether on a domestic or international scale.
3. These actions cause fear and panic within a group or community.
4. There is a goal, usually one aligned with political interests, which the perpetrators want to achieve.
5. The actions’ victims may often have no connection with the objectives being pursued.
6. The perpetrator can be an individual, an organized group, or even the leader of a legitimate government.

Salenda’s criteria seem to adopt a single perspective, however, namely that of a nation state, as evidence by the first point, which refers to the illegality of violence. In other words, if an act of terror is conducted illegally, Salenda believes it can be labelled as terrorism, but if the violence is committed by the state, and is therefore legal, it can be justified.

The first criterion therefore raises the notion that the state is entitled to create terror for specific purposes. When a country experiences difficulties, its government is therefore permitted to take repressive action through threats or terror under the pretext of maintaining order. According to this author’s opinion, the first criterion should be changed to: Actions that involve threats or violence that go against natural law and universal values, whether committed by a group or a state body. This means that any deliberate actions of terror by a state to serve its interests can be classed as terrorism, even if its own legal system permits them. Similarly, the act of occupying or annexing one state by another state through violence can also be regarded as terrorism.

### **The Evolution of the Meaning of *Jihad***

Linguistically, the word *jihad* relates to the words *al-juhd* and *al-jahdu*, which in turn can be understood to mean ability (*ath-thâqqah*), difficulty (*al-masyaqqah*), and effort (*al-wus'u*). Next the term *ijtihad*, which can mean an endeavor to explore the legal provisions of the Quran and As-Sunnah through the *qiyas* method, can be related to these nouns. In simpler terms, it can be regarded as fighting an enemy by exerting maximal ability and effort, whether through speech or deeds (Mishrî, Juz 3).

Romli and Sjadzili (2015) identified six meanings for the term *jihad*. Initially, during the Makkan period (610-622 AD), *jihad* was understood to be an individual Muslim's struggle in the face of difficult conditions brought about by the enemies of Islam, as well as individual and communal struggles with the Makkan polytheists in the form of psychological, material, and spiritual sacrifices before the *al-hijra* to Medina. It later came to represent fighting the infidels seeking to attack Muslims in Medina. Still later, it was used to refer to the fight against Makkah's polytheists until they embraced Islam and the subsequent conquest (*fath*) of Makkah. Shortly after, it referred to war waged against those denying Islamic religious teachings, including the *Ahl al-Kitab* and any violating the Medina Charter (*Mitsaq Madinah*). Later still, the term evolved to represent the spiritual and moral struggle against life's problems.

We see an evolution in the concepts associated with the term *jihad*, one that reflects early Islamic history and the associated trials that Muslims faced. Even in those challenging early times, though, the term was not exclusive to armed conflict. Romli and Sjadzili (2015) suggest three additional meanings of *jihad* beyond physical warfare: material (i.e., providing resources to help the faith propagate), psychological (i.e., dealing with emotional losses endured at the hand of the polytheists), and spiritual (maintaining and strengthening individual faith during the trials of life). Although *jihad* does not necessarily imply actual warfare, there are some situations in which Muslims must defend against assaults from non-believers and fight to safeguard their rights.

In the current context, where most countries ensure the rights of Muslims, *jihad* takes a more spiritual form through social and intellectual struggles to overcome the difficulties and challenges of modern life. In a country where Muslims are oppressed, however, such as in Palestine, *jihad* as a struggle based on armed resistance becomes relevant in that the Muslims of Palestine are seen as the victims of a cruel state that has illegally annexed or occupied their lands.

This agrees with Majid Khadduri's assertion that Islam allows a warfare-based *jihadî* fit aims to defend sovereignty against a foreign invasion, as well as any subsequent occupation or annexation. *Second*, it should expand Islam's reach, and *third*, it should protect against attacks from Muslims who seek to undermine the state. In fact, if Muslims are attacked by an enemy (e.g., another country), then all of society, including women and children, must protect their state's sovereignty. The law of *jihad*, which was originally *fardhu kifayah*, rose to the level of *fardhu 'ain* (Khadduri, 1955).

### **Terrorism in Islamic History and the Contemporary Period**

In the history of Islam, terrorism is equated with the *Khawârij*, the former followers of Alî bin Abî Thâlib who became disillusioned with Alî's policy of pursuing *tahkîm* (arbitration) to settle the dispute with Mu'âwiyah bin Abî Sufyan. The *Khawârij*s doubted Alî and Mu'âwiyah, as well as any who agreed with the policy, resulting in these political opponents becoming targets for assassination (Salenda, 1986). According to Azra (2002), the *Khawârij* were indeed synonymous with acts of terrorism and violence. They did not hesitate to mistreat or kill those who disagreed with them, whether in a religious or political sense.

Even so, at the time of Caliph Utmân bin Affân, before the Caliphate of Alî bin Abî Talib, waves of terrorism emerged. Various rebellions began in Islamic jurisdictions due to

frustration with the Uthmân government, which people thought was wasting the treasures of the *baitul mal* and awarding titles to just the family of Umayyad descendants. The propaganda of Abdullah bin Saba' further exacerbated this by saying that Alî bin Abî Talib should become caliph following the death of the Prophet. This inflamed Alî's supporters, as well as others who disliked Uthmân's Caliphate, ultimately leading them to attack Medina and kill Uthmân ibn Affân (Ath-Thabari, 1963).

Violent acts also took place in the Abbasid period, which was the era of three caliphs: Al-Ma'mûn (813-833 H), Al-Mu'tashim (833-842 H), and Al-Watsiq (842-847 H). The Mu'tazilite caliphs forced their conceptualization of the Quran as a being. Even scholars joined the victims, including Imam Ahmad bin Hanbal, who was imprisoned. What is more, an extremist splinter of Ismaili Shi'ah led by Hassan Ash-Shabah formed the Assassins sect. During the 11<sup>th</sup> and 13<sup>th</sup> centuries, Shabah allowed the killing of political opponents from the Bani Saljuq (Salenda, 2009). The sect also adopted the extreme Isma'ili Islami doctrine, which called for the seizure of both mountainous and urban areas. Many suffered from this group's zeal, including Nizam Al-Mulk, administrator of the Sultan of Baghdad. Their terror spread through Persia, Syria, and Palestine, with their victims being mostly Sunni Muslims (Hendropriyono, 2009).

From the early twentieth century to the modern day, terrorist groups have emerged following the establishment of the Muslim Brotherhood, which was founded in response to the British occupation of Egypt (Abegebiel, 2004). Although not directly responsible for the emergence of extremist groups, the Muslim Brotherhood could be considered as providing the "inspiration" to resist oppression and colonialism. This theory relates to a terrorist group that splintered from the Muslim Brotherhood, although it was not purely born out of the brotherhood. Salenda notes that the brotherhood's struggle can be grouped into patterns, namely its own version of *Hudaibism*, which preferred the parliamentary path for demanding systemic change, and the *Qutbism*, which took a more radical route. Later on, the *Qutbism* side of the Muslim Brotherhood inspired splits in radicals such as Tanzhim Al-Jihad, At-Takfir wa Al-Hijrah, Al-Jama'ah Al-Islamiyah, and An-Najun min An-Nar.<sup>1</sup>

In addition, Osama bin Laden formed a terrorist movement in Afghanistan called Al-Qaeda, originally with the intention of recruiting and financing mujahedeen for the fight against the Soviet Union's occupation of Afghanistan. Osama bin Laden later extended the scope of his *jihad* by associating with other radical organizations like the Taliban (Salenda, 2009). Al-Qaeda also played a major role in the formation of other terrorist groups, such as the so-called Islamic State of Iraq and Syria (ISIS), which had existed in embryonic form since 2004 despite only being "officially" established in 2013. What is more, ISIS's origins are inseparable from those of Tawheed wa Al-Jihad, a group of insurgents fighting America and its allies. Abu Mushab Al-Zarqawi of Jordan, the group's leader, later declared its allegiance (*bai'at*) to al-Qaeda. Al-Zarqawi was declared dead in 2006, though, and replaced by Abu Hamzah Al-Muhajir, who in turn was succeeded by Abu Umar Al-Baghdadi (Muhammad, 2004).

The Tawheed wa Al-Jihad allied with various tribes in Iraq in 2006, and together they formed the Islamic State in Iraq (ISI), selecting Abu Umar Al-Baghdadi as leader (Muhammad, 2004). Abu Umar al-Baghdadi was killed in 2010 after fighting US and Iraqi forces for four years and succeeded by Abu Bakr Al-Baghdadi (Zelin, 2013). The ISI announced its independence from Al-Qaeda fi Al-Iraq (AQI) on April 17, 2013 before Al-

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<sup>1</sup>The terms Hudaibism and Qutbism appear to derive from the names of Muslim Brotherhood leaders with opposing beliefs. Hasan al-Hudaibi pioneered *Hudaibism*, and after Hasan Al-Banna, he was leader of the Muslim Brotherhood members who followed a peaceful political path. Sayyid Qutb, meanwhile, drove *Qutbism* by calling for jihad and physical resistance (i.e., war) (Salenda, 2009).

Baghdadi declared the creation of the Islamic State of Iraq and the Levant/Syria (ISIL/ISIS) (Muhammad, 2004).

### **The History of *Maqâshid Sharî'ah* Study**

Etymologically, *maqâshidsharî'ah* derives from the words *maqâshid* (the plural of the word *maqshûd*, meaning purpose) (Wehr, 1984) and *sharî'ah*, meaning “the way to water” (Mishrî, Juz 8). Shaltut (1966), meanwhile, describes *sharî'ah* as rules established by God to guide humanity in ordering its relationship with God, the rest of humanity (including non-Muslims), nature, and life in general. The *maqâshidsharî'ah* can therefore be summarized as Allah and His Messenger’s purpose in creating Islamic law. This can be interpreted from verses of the Qur’an and hadith as being a rational reason for formulating laws that would benefit humanity (Zein, 2005).

When discussing *maqâshidsharî'ah*, most academics follow the thoughts of Asy-Syatibi, who popularized *maqâshidsharî'ah* when studying *ushul fiqih*. However, according to Ar-Raisuni (1995), *maqâshidsharî'ah* was actually developed by the Mujtahids before Asy-Syatibi. What is more, At-Turmudzi Al-Hakim first used the term *maqâshid* within the larger term *maqâshidsharî'ah* in his books, including *Al-Shalat wa Maqâshiduha*, *Al-Hajj wa Asraruh*, *Al-'Illah*, *'Ilal Ash-Sharî'ah*, and *'Ilal Al-'Ubudiyyah*.

However, further investigation requires that the principle of *maqâshidsharî'ah* in *istinbathal-ahkâm* must have actually already existed from the time of the *mazhab* scholars. For example, Imam Malik ibn Anas (d.164 H) wrote in the book *Al-Muwaththa'* an account of *maqâshid* being used in the days of the Companions of the Prophet. Later on, in his book *Ar-Risâlah*, Imam Asy-Shafî'i (w. 204 H) writes about *ta'lilal-ahkâm* (the search for reasons of laws) and various aspects of *maqâshidkulliyât*, such as *hifzh al-mâland hifzhan-nafsi* (Nursidin, 2012).

Next came Al-Hakim At-Turmudzi, followed by Abu Bakr Muhammad Al-Qaffal Al-Kabir (w. 365 H) with his *Mahâsin Ash-Sharî'ah*, which studied the rationale and wisdom of having laws that could be easily understood and adopted by humans. Then came Ash-Shaykh Ash-Shadiq (w. 381 H) with his book *'Ilal Asy-Syarâ'i' wa Al-Ahkâm*, which collated *ta'lilal-ahkâm* narrations from Shia scholars. This was followed by Al-'Amiri (w. 381 H) with his *Al-I'lam bi Manaqib Al-Islam*, which indicates five primary aspects of human needs—namely religion, soul, mind, descent, and possession—called *adh-dharûriyât al-khamsah* (Nursidin, 2012).

Next, Imam Al-Juwaini (d.478 H) examined three areas of human need in his work: *dharûriyât*, *hajiyyât*, and *tahsîniyât*. Imam Al-Ghazali (w. 505 H) then discussed various methods for learning *maqâshid* while presenting a means to maintain *maqâshid sharî'ah* in two ways, namely by affirming its existence (*al-wujud*) and guarding it against things that may harm it (*al-'adam*). This was followed by the Imam of Ar-Râzi (w. 606 H), Al-Amidi (w 631 H), Izzuddin Abdussalam (660 H), Al-Qarafi (684 H), Najmuddin Ath-Thufi (716 AH), Ibn Taymiyyah (728 AH), Ibn Al-Qayyim Al-Jawziyah (751 AH), and then Asy-Syatibi (Nursidin, 2012).

According to Yuslem (2005), though, Asy-Syatibi was only the third person after Imam Al-Haramain Al-Juwaini and Al-Ghazali to develop the theory of *maqâshid*. Al-Juwaini first pioneered the *maqâshid sharî'ah*, and Al-Ghazali matured and refined those ideas. Asy-Syatibi then reiterated and referred to these ideas.

### **Method for Identifying *Maqâshid Sharî'ah***

According to Khallaf (n.d.), as the primary source of Islamic law, the Quran’s content can be categorized into three broad groups: i) *aqidah*, dealing with the fundamentals of faith; ii) *khuluqiyah*, relating to moral and ethical issues; and iii) *amaliyah*, relating to human deeds

and speech. Islamic law has characteristics that differentiate it from other legal systems. Islamic scholars investigate the nature of these characteristics by following a process of identifying various laws and the determination procedures laid down by Allah, the creator of sharia (*Ash-shâri'*). Although scholars may disagree on some aspects of Islamic law, they generally share a common principle.

Kasjim Salenda (2009) indicates five characteristics of Islamic law, among others. *First*, it is universally relevant to all of humanity, regardless of time or place, including non-Muslims. Second, it is also flexible and dynamic, so it can respond to whatever issues arise. Islamic law is therefore concerned with various areas of life, such as worship, *muamalah*, morals, *jinâyah*, and *siyâsah* (politics), but the dynamic nature of Islamic law enables it to adapt according to the changing *illat* (reason) behind a case.<sup>2</sup>

Third, Islamic law is systematic and perfect, and it comprises fundamental values applicable to all facets of human life everywhere and its relationship with God, other people, and the environment. Fourth, Islamic law covers social solidarity by teaching virtues that directly affect the intent of people, both materially and immaterially. Fifth, it concerns *ta'aqquli* in the realm of worship (*mahdhah*) and *ta'abbudi* in the realm of *mu'amalah* (Salenda, 2009).

Islamic law's characteristics agree with the purpose of establishing the sharia (*maqâshidsharî'ah*), namely to benefit humanity by rejecting evil in all its forms. Auda (2007) divides *maqâshid* into three groups. First, there is *maqâshid âmmah*, the common meanings and values present in most, if not all, conditions, such as freedom, justice, and convenience. Second, the *maqâshid khâshshah* are significant values and benefits that can be realized through a special mechanism in law, such as acting as a deterrent (due to the application of *Qisas*) and eliminating *gharar* (vagueness) in *muamalah*. Third, *maqâshid juz'iyah* represent the values that should be achieved through specific legislation, such as honesty and rote learning objectives, the provision of more than one witness, and the elimination of the problem of excusing fasting for those who cannot afford it, since there is *udzurshar'i* (Auda, 2007).

According to Asy-Syatibi, *maqâshid sharî'ah* can be viewed from two perspectives. It can be seen as Allah's aim as the maker of sharia (*qashdu Ash-Shâri'*), or it can be centered on the aims of someone who is exposed to *taklîf* law (*qashdu al-mukallaf*). The former perspective comprises four aspects: Allah's original intent in creating sharia (*qashdu ash-shâri' fi wadh'i ash-sharî'ah ibtidâ'an*); the aim of defining law as something understandable (*qashdihî fi wadh'iha lil ifhâm*); the aim of sharia as something to be adhered to, depending on the context (*qashdihî fi wadh'iha li at-taklîf bi muqtadhahâ*); and Allah's aim in bringing people under the umbrella of the sharia (*qashdihî fi dukhul al-mukallaf tahta hukmiha*) (Syatibi, 2003). Scholars apply three approaches for comprehending *maqâshid sharî'ah*: i) contemplate the meaning of *zahir lafadz*; ii) reflect on the reasoning and inner meaning; and iii) combine both of the above (Syatibi, 2003). To apply these three approaches, *amujtahid* needs to consider four aspects: (i) clear directions and restrictions on *ashl*; (ii) *illat* prohibition and command; (iii) primary aims and purposes (*al-maqâshid al-ashliyah*), as well as secondary ones (*al-maqâshid at-tabi'iyah*); and (iv) the nonexistence of information or silence from Asy-Syâri' (Syatibi, 2003). In the last case, silence from the sharia's Creator (*sukut Ash-shâri'*) is divided into two groups, namely silence in the absence of motivation and silence despite the presence of motivational factors (Jumantoro & Munir, 2005).

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<sup>2</sup>One rule claims, "*Al-hukmu yadûru ma'a illatih wa sababih wujûdan wa 'adaman.*" This may be interpreted as a law that relates to the presence or absence of *illat* (reason) or an accompanying cause. God therefore associates law with cause or reason, so if a cause or reason is missing, the rule also diminishes. See Jauziyyah, Juz 4, p. 414).

Asy-Syatibi adds that several steps can be followed to identify *maqâshid shari'ah*. Firstly, the purpose of a law must be understood through the logic of the Arabic language. Secondly, *al-amr* and *an-nahy* should be comprehended in *shari'ah* texts, both textually and contextually. Thirdly, primary and secondary goals (*al-maqâshid al-ashliyah* and *al-maqâshid at-tabi'iyah*, respectively) must be understood. Fourthly, the induction method (*istiqra'*) must be applied (Mas'ud, 1989). Yusuf Al-Qardhawi (2007), meanwhile, also provides some insight into learning *maqâshid shari'ah* by (i) examining every *illat* (reason for law), whether expressed directly (*manshushah*) or implied (*ghairumanshushah*) in the Quran or Hadith and then (ii) examining and analyzing a particular law's nature to make a conclusion about its integration.

### **Maslahah as a MaqâshidShari'ah Orientation**

*Maslahah* has several meanings according to linguistics. It could, for example, mean goodness, usefulness, merit, feasibility, harmony, and propriety. *Mafsadah* is the opposite of this word, and it means damage (Al-Mishrî, n.d). However, scholars give various other definitions for the term. Al-Ghazâlî, for example, takes the view that *maslahah* means to attract benefit and deter danger (*jalb al-manfa'at wa daf'u al-madharrat*). *Maslahah* also implies an effort to realize and maintain the purpose of the five sharia (*hifzh ad-din, an-nafs, al-'aql, an-nasl, wa al-mâl*). In contrast, any actions that could diminish these five are classed as *mafsadah* (Ghazali, 1997). According to Najmuddin Ath-Thufi, however, *urf* (custom) *maslahah* is a bringer of goodness and benefit and a trade that profits a person, while from the sharia's side, *maslahah* leads people to the purposes of *Asy-Syâri'* (Allah) in terms of both worship and *muamalah* (Zaid, 1964).

Based on the existence or otherwise of an authentic *nashshari'a* justification, *maslahah* can be split into three groups: i) *maslahah* with a legal basis in *sharia* texts, so it is accepted (*maslahah mu'tabarah*); ii) *maslahah* without a legal basis in the texts, so it is rejected (*maslahahmulghah*);<sup>3</sup> and iii), *maslahah* without an *yash-sharia* justification to either accept or reject (*maslahahmursalah*) (Al-Ghazali, 1997).<sup>4</sup> According to Âsyûr (2006), *maslahah* is split into two groups: i) *maslahahâmmah*, which is something that generally benefits society and ii) *maslahah khâshshah*, which only benefits certain individuals or groups. The former is the primary aim of developing law based on the Quran and Sunnah. Djamil (1997) argues that this categorization relates to a priority system when there is a conflict between common and personal *maslahah*, so when the two oppose each other, Islam prioritizes the common *maslahah* over the personal one.

Salam (1980) proposed another classification for *maslahah* with three types: i) *maslahah* relating to issues that are allowed (*maslahah mubâhah*); ii) *maslahah* relating to affairs about the Sunnah's nature (*maslahah mandûbah*); and iii) *maslahah* that are compulsory (*maslahah wâjibah*). *Mafsadah*, meanwhile, can be split into two kinds: i) the *mafsadah* contained in things that are *makrûh* (*mafsadah makrûhah*); and ii) the *mafsadah* that is by nature *haram* (*mafsadah muharramah*). Something is considered *maslahah* when it meets two criteria (*dawâbith al-maslahah*) (Salam, 1980): i) it is absolute, meaning that it has

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<sup>3</sup>The degree of miscommunication outweighs any benefits, so this *maslahah* is rejected. For example, drinking *khamr* (wine) and gambling is prohibited in the QS. Al-Baqarah: 219. However, the verse recognizes that humans may benefit from drinking *khamr* and gambling, but the negative impacts of these activities far outweigh any positive side, so Islam forbids them.

<sup>4</sup>Muhammad Adib Salih gives an interesting definition of *maslahah mursalah*, viewing it as *maslahah* that is not mentioned explicitly in the texts but still included in the discussion and purpose of the sharia. Since no texts support or deny their existence, they are called *mursalah* (i.e., outside the scope of the sharia) (Salih, n.d.).



relative or subjective elements that can be subjected to lust; and ii) it is universal (*kulliyyah*), so it cannot be contradicted by its particular part (*juz'iyah*) (Mas'ud, 1995).

According to Kamali (2002), there are several ways to identify *maslahah*: (i) studying *sharia* texts, especially those related to commands (*al-amr*) and bans (*an-nahy*); (ii) exploring the wisdom and *illat* in *sharia* texts; and (iii) performing *istiqrâ'*. The identification of *maslahah* through studying *nushûshash-sharî'ah* has been embraced by textually inclined Islamic law theorists, such as Madzhab Zhahiri. The second method for identifying *maslahah* is based on a search for *ill at* and wisdom, and this method is employed by most scholars. The third method, *istiqrâ'*, is advocated by Abu Ishaq Asy-Syatibi (Kamali, 2002). According to Asy-Syatibi (2003), the *maslahah*, as the main objective of Islamic law, is only achieved if it satisfies three levels of human need: primary needs (*dharûriyât*), secondary needs (*hajiyât*), and complementary needs (*tahsîniyât*).

At the *dharûriyât* (primary) level, five key elements must be maintained: religion (*hifzh ad-dîn*), the soul (*hifzh an-nafs*), wealth (*hifzh al-mâl*), descendants (*hifzh an-nasl*), and reason (*hifzh al-'aql*) (Syatibi, 2003; Al-Ghazali, 1983). Al-Qarafi (1307) adds to this another element, namely self-esteem (*hifzh al-'irdh*).<sup>5</sup> Said Ramadan Al-Buthi (1997) states that to achieve the *maslahah*, five criteria must be met: i) the prioritization of *sharia*'s goals; ii) no contradiction with the Quran; iii) no conflicts with the As-Sunnah; iv) no contradiction with the principle of *qiyas*, because this is one way that *istinbath* law serves its main purpose of bringing *maslahah* to *mukallaf*; and v) the greater *maslahah* must be achieved.

To make *maslahahmursalah* the rule of law, the *Maliki* and *Hanbalîmadhhab* scholars set three conditions. First, the *maslahah* must align with the spirit of *sharia* and bring the sort of benefits that are generally promoted in the religious texts. Second, the *maslahah* must be rational and definitive, not vague, so any law can bring genuine benefits and negate the *madharat*. Third, the *maslahah* must serve the people's interests in general rather than those of a select few (Dahlan et al., 1996). With regards to this last condition, however, Al-Ghazali posits that the *maslahah* need not necessarily relate to people's interests, asserting that it is acceptable if it belongs to the *dharuriyât* (primary) category of *maslahah* even when it only concerns private *maslahah*. In addition, the *maslahahhajiyât* (secondary) category can rise to the *dharuriyât* (primary) level when it coincides with the general public's interests (Dahlan et al., 1996).

### **Terrorism from the Perspective of *Maqâshid Sharî'ah***

Terrorism is synonymous with violence, threats, and crime, all of which can be classed as *madharat* (i.e., harmful, negative things). This may be due to how acts of terrorism affect the victims, both in terms of disruption and injury, so it is unsurprising that people view terrorists as cruel criminals who are always looking to visit harm upon others. Moreover, when such acts cause the deaths of innocent people, terrorists are labelled as murderers.

The terrorists, however, see their actions as part of *jihad fisabilillah* to defend the religion of Allah, thus revealing a contradiction between their idealism and reality. In other words, a *jihad* that was supposed to bring *maslahah* will actually bring *madharat* for the community. So, what is wrong with their *jihad*? Can any restrictions be used to distinguish the *maslahah* and *madharat* of *jihadist* activities, so *maqâshid sharî'ah* can be satisfied? The author analyzes the term *jihad* from the two perspectives of *maqâshid sharî'ah* and *maslahah* to find answers to these questions. The first discussion focuses on *sharia*'s effect on *jihad* and its relationship to terrorism, while the second discussion concerns the distinction between

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<sup>5</sup>Jasser Auda, a contemporary Muslim scholar, positions these six things as the most basic elements of human life (Auda, 2007).

*jihad* that brings *maslahah* and *jihad* that results in *madharat*. The author applies the method presented by Asy-Syatibi for identifying *maqâshidshari'ahjihad*, with the steps being:

1. Understand the aim of the legislation (*illat*) for *jihad* law through the logic of the Arabic language.
2. Understand *al-amr* and *an-nahy* in sharia texts, both textually and contextually.
3. Understand the primary aims(*al-maqâshid al-ashliyah*) and secondary aims (*al-maqâshid at-tabi'iyah*) of *jihad*.
4. Implement the induction method (*istiqrâ'*).

The first step in applying this method was to collate the various texts that discuss *jihad*. *Alughawi* study was then undertaken to investigate their legislative aims. Following this, a study of commands and prohibitions, both textually and contextually, was performed to understand the primary and secondary aims of *jihad* law. Finally, the *istiqrâ'* method was applied. Verses mentioning a *jihad* theme (i.e., those that are often used incorrectly to legitimize terrorist acts) can be classified into four groups:

1. The command for patience in the early Islamic *da'wah* period: QS. Al-Baqarah, 2: 109; Al-An'am, 6: 106; Al-Hijr, 15: 85; Al-Jatsiyah, 45: 14; Qaf, 50: 39; Al-Muzammil, 73: 10; Al-Insan, 76: 24.
2. The onset of the battle command: QS. Al-Baqarah, 2: 190 and Al-Hajj, 22: 39.
3. The obligation for *jihad*: QS. Al-Baqarah, 2: 216 and 244; Al-Ma'idah, 5: 54; Al-Anfal, 8: 39 and 57; At-Taubah, 9: 5, 12, 14, 29, 36, 73, 123; and Muhammad, 47: 4.
4. The wisdom of *jihad* commands: QS. Al-Baqarah, 2: 193, 251; Al-Anfal, 8: 39; At-Taubah, 9: 12, 13, 14-15, 16, and Muhammad, 47: 4.

Of the above verses, those that indicate *jihad* as an obligation are QS. Al-Baqarah, 2:190, 193, 251; Al-Anfal, 8:39; At-Taubah, 9:5, 12, and 13; and Al-Hajj, 22:39.<sup>6</sup> In QS. Al-Baqarah, 2:190, believers are commanded to resist those who attack them. If they do not attack, this command does not apply. What is more, Muslims must also observe ethical standards in the fight, such as not killing old people, children, or women, with these restrictions preventing Muslims from crossing the line (*lâ ta'tadû*). In QS. Al-Baqarah, 2:193 and Al-Anfal, 8:39, Allah reminds us that the command for war ends with the offence (e.g., attack, hostility) of the unbelievers. The language used by the Quran is *hattâlâtakûna* (until there is no offence), so once hostility against Muslims ends, there is no longer any obligation to fight.

In QS. Al-Baqarah, 9:251, Allah SWT declares that through the battle between Talut and the army of Goliath, which ends with the death of Goliath at the hands of David, God

<sup>6</sup> The explanations for these verses are as follows:

(QS. Al-Baqarah, 2: 190) تَعْتَدُوا وَلَا يُقَاتِلُونَكُمْ الدِّينَ اللَّهُ سَبِيلَ فِي وَقَاتِلُوا

(QS. Al-Baqarah, 2: 193) الطَّالِمِينَ عَلَى إِلَّا عُذْوَانَ فَلَا انْتَهَوْا فَإِنَّ لِلَّهِ الدِّينَ وَيَكُونُ فِتْنَةً تَكُونُ لَا حَتَّى وَقَاتِلُوا هُمْ

(QS. Al-Baqarah, 2: 251)

الْأَرْضِ لَفَسَدَتِ بَعْضُهُمْ النَّاسَ اللَّهُ دَفْعَ وَلَوْ لَا يَشَاءُ مِمَّا وَعَلَّمَهُ وَالْحِكْمَةَ الْمَلِكِ اللَّهُ وَأَتَاهُ جَالُوتَ دَاوُودَ وَقَتَلَ اللَّهُ بِإِذْنِ فَهَزَمُوهُمْ

(QS. Al-Hajj, 22: 39) ظَلَمُوا بِأَنَّهُمْ يُقَاتِلُونَ لِلدِّينِ أَذِنَ

(QS. Al-Anfal, 8: 39) بَصِيرٍ يَعْمَلُونَ بِمَا اللَّهُ فَإِنَّ انْتَهَوْا فَإِنَّ لِلَّهِ كُلَّهُ الدِّينَ وَيَكُونُ فِتْنَةً تَكُونُ لَا حَتَّى وَقَاتِلُوا هُمْ

(QS. At-Taubah, 9: 5)

الرِّكَاءَ وَأَتُوا الصَّلَاةَ وَأَقَامُوا تَابُوا فَإِنْ مَرَّ صَدِّ كُلِّ لَهُمْ وَأَفْعَدُوا وَاحْصِرُوا هُمْ وَخُدُّوا هُمْ وَجِدْتُمُوهُمْ حَيْثُ الْمُشْرِكِينَ فَاقْتُلُوا الْحُرْمَ الْأَشْهُرِ أَنْسَلَخَ فَإِذَا سَبِيلُهُمْ فَخَلُّوا

(QS. At-Taubah, 9: 12-13)

وَهُمْ أَيْمَانُهُمْ نَكَلُوا قَوْمًا تَقَاتِلُونَ أَلَا (12) يَنْتَهُونَ لَعَلَّهُمْ لَهُمْ أَيْمَانٌ لَا إِنَّهُمْ الْكُفْرَ أَيْمَةً فَقَاتِلُوا دِينَكُمْ فِي وَطَعُوا عَهْدِهِمْ بَعْدَ مِنْ أَيْمَانِهِمْ نَكَلُوا وَإِنْ

(13) مُؤْمِنِينَ كُنْتُمْ إِنْ تَخْشَوْهُ أَنْ أَحَقَّ فَاللَّهُ مَرَّةً تَخْشَوْنَهُمْ أَوْلَ بَدْعُوكُمْ وَهُمْ الرَّسُولَ بِإِخْرَاجِ

rejects the wrongdoing of one group over another. If this were not so, there would be destruction on earth. This verse clarifies that one reason for war is to resist oppression and maintain peace in the world. The term used in the Quran is *lafasadat al-ardh* (undoubtedly destroyed/damaged earth).

QS. Al-Hajj, 22:39 states that Muslims are permitted to fight when they have been wronged (*bi annahum zhulimû*). This positions *jihad* (in the *qitâl* sense) not as something offensive but rather as a form of self-preservation for the elements of life. In contrast to verses about the motivation for the previous *jihad*, QS. At-Taubah, 9:5 places more emphasis on the religious side, asserting that *jihad* aims to uphold the religion of Allah. Consequently, if unbelievers are willing to accept Islam and practice its *sharia*, the *jihad* is no longer valid. Allah uses the words “*fa in tâbû wa aqâmû ash-shalât wa û az-zakât fa khallû sabîlahum,*” meaning “then if they have repented [from *kufr*] and established prayers and paid *zakat*, then give them the freedom to walk.”

The reason for At-Taubah, 9:12 advocating *jihad* is rooted in how the polytheist leaders did not keep their promises and condemned Islam. The *jihad* command was therefore required until they (the leaders of the unbelievers) believed and were willing to implement their agreements with the Muslims. Similarly, in At-Taubah, 9:13, the *jihad* command came because the unbelievers did not honor the agreement they had made with the Muslims (*nakatsû aymânahum*). What is more, they intended to expel the Messenger of Allah and make war against the believers (*hammû bi ikhrâj ar-rasûl wa humbada`ûkum awwala marrah*).

In the above verses, the motivations for *jihad* are i) to shield one self from enemy aggression; ii) to sustain peace on earth; iii) to avoid injustices and maintain life’s essential elements; iv) to establish Allah’s religion; and v) to caution the infidels against violating agreements. Based on the classification of *maqâshid* and these motivations, Jasser Auda’s *maqâshid shari’ahjihad* can be split into three groups: i) *maqâshid ammah jihad* for the sake of justice and freedom; ii) *maqâshid khashshah* to satisfy basic human rights; and iii) *maqâshid juz`iyyah* for fighting in order to protect people from external threats to salvation, warn the polytheists to follow their agreements, and eradicate disbelief.

The second discussion concerns the distinction between *jihad* that results in *maslahah* and *jihad* that brings *madharat*. Romli and Sjadili (2015) state that the meaning of *jihad* evolves up to six times. According to this author’s opinion, this evolving meaning also has implications for implementing *jihad* depending on the particular conditions (*muqtadhâ al-hâl*). If *jihad* can be classed as terrorism because it focuses on violent acts, there will have been an incorrect interpretation of *sharia* texts, because *jihad* refers not just to war but also other more elegant means. However, disproportionate *jihad* (i.e., not in accordance with *muqtadhâ al-hâl*) does not rule out the possibility of being called terrorism. In this context, the author divides *jihad* into two concepts: i) *jihad* that is *muqtadhâ al-hâl*, where its implementation takes into account the social side, the conditions, the situation, and the problems of society and ii) *jihad ghairumuqtadhâ al-hâl*, which only practices in one way, (e.g., war or physical resistance) regardless of the context or any social problems.

The former variety of *jihad* tends to be dynamic and flexible, because it adapts to humanity’s needs. For example, if people suffer from poverty, an appropriate *jihad* would be to endeavor to strengthen the economy by creating jobs, upskilling people, or starting businesses. In areas where many people are illiterate, a suitable *jihad* would seek to find ways to teach them to read and write. In an area stricken by conflict, a *jihad* could seek reconciliation. In contrast, when a country is attacked by another country, the only option for *jihad* is to defend the nation’s sovereignty. Whether the intention is *maslahah* or not, *jihad* can be said to be conditional. In contrast, though, the second form of *jihad*, tends to be static and rigid, with it being simply understood as radical resistance for the achievement of rapid

fundamental change. However, if this rigid form of *jihad* is applied in a country free from conflict, its actions will bring *madharat* to the people of that country. Consequently, deeds that were originally considered to be legitimized by *jihad* will be labelled as acts of terrorism, because they disrupt peaceful conditions in the community.

## Conclusion

Terrorist actions have become increasingly widespread following the September 11, 2001 terrorist attacks and the United States' subsequent military interventions in the Middle East. Terrorists exploit the name of *jihad* to legitimize their actions through religious references, resulting in the perception that Islam supports and promotes terrorism. There are two types of *jihad*, however, namely *muqtadhâ al-hâl* and *ghairumuqtadhâ al-hâl*. What is more, based on the above description, it may be deduced that religiously motivated violent terrorism arises from the application of *jihad ghairumuqtadhâ al-hâl* (i.e., *jihad* as simply war or physical resistance). Unfortunately, most terrorists do not look from the perspective of societal problems and possible solutions, preferring instead to use the literal meaning of *jihad*. This contrasts with the true values of Islam (*rahmatan lil alamin*), which is a religion based on love and peace.

Conversely, if the *jihadmuqtadhâ al-hâl* is applied, then the community will experience *maslahah* because the *jihad* is providing a solution that is appropriate to the situation and conditions. This is likely to be more acceptable to most people due to its flexibility in interpreting the meaning of *jihad*. It therefore follows that the *maslahah* of *jihad* are closely related to the demands of the circumstances (*maslahahal-jihad tunsabubi muqtadhâ hâlihi*). Thus, terrorism in the sense of *jihadghairumuqtadhâ al-hâl* is *haram* because it causes *madharat*, while terrorism in the sense of *jihadmuqtadhâ al-hâl* can be incorporated into the category of *dharuriyât*, *hajiyyât* or *tahsiniyât*, depending on the circumstances.

Furthermore, most jihadists who advocate *jihadghairumuqtadhâ al-hâl* use misinterpretations of verses in the Quran in an attempt to legitimize acts of terror. The sources may include verses about the command of patience in the early Islamic *da'wah* period, the start of the battle command, the obligation for *jihad*, and the wisdom of the *jihad* commands. However, *jihad* has four motivations according to the Quran: to defend against an enemy attack, to sustain peace on earth, to avoid injustice and maintain life's essential elements, and to establish Allah's religion. It is therefore safe to conclude that Islam, as represented in the Quran, does not support violence or terrorism, but rather promotes kindness, tenderness, and peace.

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