Yuṣuf Al-Qarḍāwī’s Istinbāṭ Method and Its Implementation in the Moderation of Islamic Law

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Abstract

This paper described the formulation of Yuṣuf al-Qarḍāwī’s istinbāṭ method towards moderate fiqh. The choice of this theme was based on the existence of two demeanors in religion, between permissive and inclusive. Two main questions in this research were, first, how did Yuṣuf al-Qarḍāwī formulate the istinbāṭ method for moderate fiqh? Second, how is the implementation of this method in formulating Islamic law? This paper concluded two things through a literature study with the descriptive-analytic method. First, there were six formulations of the istinbāṭ method for the moderation of Islamic law.

1. Examining the maqāṣid contained in the text before determining Islamic law.
2. Linking texts and Islamic law with texts and other Islamic laws.
3. Understanding texts in the frame of asbāb (al-nuzūl or al-wurūd), both micro and macro.
4. Distinguishing between constant maqāṣid and changing instruments.
5. Adjusting between al-thawābit and al-mutaghayyirat.
6. Observing the difference between worship and mu‘amalah in terms of wisdom, ‘illah and maqāṣid.

Second, this method of istinbāṭ could produce fiqh with a flexible, elastic, dynamic, adaptive, and easy-to-practice.

Keyword: moderation; istinbāṭ method; Yuṣuf al-Qarḍāwī; maqāṣid

Tulisan ini mendeskripsikan formulasi metode istinbāṭ Yuṣuf al-Qarḍāwī ke arah fiqh moderat. Pemilihan tema ini didasarkan atas adanya dua kecenderungan sikap dalam beragama, antara permissive dan inklusif. Dua pertanyaan pokok dalam penelitian ini yaitu, pertama, bagaimana Yuṣuf al-Qarḍāwī memformulasikan metode istinbāṭ pada fiqh moderat? Kedua, bagaimana implementasi metode tersebut dalam merumuskan hukum Islam? Melalui studi pustaka dengan metode deskriptif analitik, tulisan ini menyimpulkan dua hal. Pertama, terdapat enam formulasi metode istinbāṭ bagi moderasi hukum Islam.

1. Menelaah maqāṣid yang terkandung di dalam nas sebelum menentukan hukum Islam.
2. Mengaitkan nas dan hukum Islam dengan nas dan hukum lainnya.
3. Memahami nas dalam bingkai asbāb (al-nuzūl atau al-wurūd), baik mikro maupun makro.
4. Menyesuaikan antara maqāṣid yang konstan dan instrumen yang berubah.

Kata Kunci: moderasi; metode istinbāṭ; Yuṣuf al-Qarḍāwī; maqāṣid

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Introduction

Some Muslims are rigid, stiff and strict in implementing Islamic teachings and intolerant to other groups and religions. They are exclusive, narrow-minded, ghuluw (crossing the line) and try to achieve their goals through violence. Such religious manner and models arise because they comprehend the religious texts (\textit{nuṣūṣ al-sharī'ah}) literally. They ignore the context (\textit{asbāb al-nuzūl} and \textit{asbāb al-wurūd}) and reject the contextual understanding because they think it can reduce the purity of \textit{nuṣūṣ al-sharī'ah}. Moreover, they tend to monopolize the truth on the understanding and interpretation of \textit{nuṣūṣ al-sharī'ah}. As a result, they consider their understanding, opinions, and interpretations correct, while the opinions and understandings of other groups are wrong. So, they accuse groups outside their group of being wrong, heretical, and even infidels. They are also not good at distinguishing between religion (\textit{al-dīn}) and religious thought (\textit{al-afkār al-dīniyah}). The diversity of understandings, interpretations, and opinions based on the reasoning of \textit{nuṣūṣ al-sharī'ah} is a necessity.\(^1\)

At the same time, some other Muslims are very permissive. They are easy to justify something under the pretext of freedom and benefit. They prioritize reasoning in the hierarchy of Islamic legal arguments, then only use the Koran, al-Sunnah and \textit{al-ijmā'}. Understanding and interpreting \textit{nuṣūṣ al-sharī'ah} tends to be non-literal, substantial, and contextual. This group examines the universal values contained in the text rather than sticking to the literal meaning. As a result, they deify the freedom of thought, assert the absolute freedom of religion, uphold equal rights and obligations between men and women regarding the separation of religion and state accede to the desacralization of Islamic \textit{turāth}, etc.\(^2\) Whereas for them, the benefits and enthusiasm of \textit{al-sharī'ah} can invalidate \textit{nuṣūṣ al-qat'ī} (clear and definite text).\(^3\)

\(^1\) Yūsuf Al-Qarḍāwī, \textit{Dirāsah fī Fiqh Maqāṣid al-Shari’ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz’iyah} (Kairo: Dār al-Shurūq, 2008), 53–58; Ṣalāḥ Al-Sāwī, \textit{Al-Tatārruf al-Dīnī} (Al-Āfaq al-Dawliyah li l’lām, n.d.), 11–13; Yūsuf Al-Qardāwī, \textit{Ẓāhirah fī al-Ghuluww fi al-Takfīr} (Kairo: Maktabah Wahbah, 1990), 22–23.

\(^2\) ‘Abd al-Rahīm ibn Şamāyal Al-Salami, \textit{Ḥaqīqah al-Lībarāliyah wa Mawqīf al-Islām Minhā} (Jeddah: Markaz al-Ta’ṣīl li Dirāsāt wa al-Buhūth, 2009), 123,153,490.

\(^3\) Şāliḥ Muḥammad Al-Damījī, \textit{Mawqīf al-Lībarāliyah fī al-Bilād al-‘Arabiyyah min Muḥkamāt al-Dīn} (Riyad: Maktabah al-Mulk, 1433), 589, 832.
Meanwhile, according to the author, the mind cannot be used as the primary basis in the hierarchy of Islamic legal arguments. This rejection is based on several arguments. First, the mind has potential and limitations that sometimes lead to harm. Humans have lust that can deceive common sense so that what is considered excellent and beneficial by the mind is sometimes driven by lust. Therefore, the mind needs text instructions to show you the right and valuable way. Second, the mind is sometimes deceived by the atmosphere, situation, and environmental conditions. As a result, a situation that has mushroomed and has been running for a long time can be considered excellent and beneficial by reason, even though it conflicts with the values of the sharī'ah.

Two extreme religious patterns above are contrary to Islamic teachings. Therefore, the istinbāṭ pattern for moderate jurisprudence is needed to produce Islamic law that is flexible, dynamic, easy to practice, far from rigidity and intolerance so that harmonious relations can be established in the lives of religious communities. This istinbāṭ pattern is in line with the rational manhaj of the sahābahs, tābi'īn and madhhab priests.

This article uses a critical analytical method to examine the moderate fiqh methodology proposed by Yūsuf al-Qardāwī. The author applies an interdisciplinary approach to data analysis, which is utilizing the science of usūl al-fiqh, philosophy, 'ulūm al-Qur'ān, 'ulūm al-ḥadīth, and maqāṣid al-sharī'ah as analysis tools. This article aims to determine the moderate fiqh istinbāṭ method formulated by al-Qardāwī and its application in formulating Islamic law. In addition, it is also to know the epistemology of al-Qardāwī's moderate fiqh istinbāṭ, to understand his position in the map of contemporary Islamic thinkers, and to know the development of usūl al-fiqh.

**Understanding Moderate Jurisprudence**

Moderate fiqh is formed from two words that both have their meaning; fiqh and moderate. Etymologically, Jurisprudence is the understanding, knowledge,⁴

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⁴ 'Abū Bakr Muḥammad ibn al-Ṭayyib Al-Bāqillānī, *Al-Taqrīb wa al-Irshād* (Beirut: Mu‘assasah al-Risālah, 1998), vol. I; 171; Muḥammad ibn al-Husayn al-Farrā’ Al-Baghdādī, *Al-'Uddah fi Uṣūl al-Fiqh*, ed. Ahmad ibn ‘Alī (Riyāḍ: al-Mamlakah al-‘Arabiyah al-Su‘ūdiyyah, 1993), vol. I; 67; Muḥammad ibn ‘Abd al-Hamid Al-Asmandī, *Badhl al-Nazar fi al-Uṣūl* (Kairo: Maktabah Dār al-Turāth, 1992), 6; ‘Abdullāh ibn Ahmad ibn Muḥammad ibn Qudāmah, *Rauḍah al-Nāẓir wa Jannah al-Manāẓir fi Uṣūl al-Fiqh* (Riyad: Maktabah al-Rush, 1993), vol. I; 58; ‘Alī ibn ‘Abd al-Kāfī al-Subkī Al-Subkī and ‘Abd al-Wāḥhāb ibn ‘Alī, *Al-Iḥbāj fi Sharḥ al-Minḥāj* (Kairo: Maktabah al-Kulliyat al-‘Azhariyyah, 1981), 28.
or understanding of what the speaker is saying. Meanwhile, in terms of terminology, fiqh is knowledge of shara‘amaliyah (deeds) laws resulting from taṣfi‘ī arguments. Meanwhile, the author tries to explain moderate etymologically as the middle between the two ends and the balance of everything. In Arabic, it is called al-wasātiyyah (الوسطية), a maṣdar ṣinā‘ī form of the word al-wasāṭa. The word that corresponds to al-wasātiyyah in Koran is found in three forms; isim, ǧīl, and ʃifat. The word is embodied in al-Baqarah 143, 238; al-Qalam 28; al-‘Adiyāt 5; and al-Mā‘īdah 89. The word wasāt can mean fair or choice and mean being in the middle between two ends. At the same time, al-awsāt is closer to the moderate meaning and far from the extreme meaning and can mean more critical, while al-wuṣṭā means a phenomenon between two things.

In terms of terminology, al-Qardāwī defines it as the equilibrium between two opposing or opposing sides. One side cannot be influenced by exposing the other side; one side does not take more rights, not transcend and marginalize the other side. The examples of two opposing sides are divinity (rabbāniyyah) and humanity (insāniyyah), spiritual (rūḥaniyyah) and materialistic (mādiyyah), ukhrawiyah and dunyawiyyah, revelation and reason, regarding the past (mādiyyah) and regarding the future (mustaqbaliyyah), individual (jardiyah) and collective (jamā‘iyah), realistic (wāqi‘iyah) and idealistic (mithāliyyah), rights (huqūq) and obligations (wājibāt), constant (thabāt) and transformation (taghayyur), nāṣṣ and ǧitḥād, literalist (zāhiriyah) and substantive (maqāṣidiyyah), āthar and logic (ra‘y), and so on.

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5 Muḥammad ibn ‘Umar ibn al-Ḥusayn Al-Rāzī, Al-Maḥṣūl fī Usūl al-Fiqh, ed. Ṣāḥib Ǧābir Al-‘Alwānī (Beirut: Mu‘assasah al-Risālah, n.d.), vol. I, p. 78.
6 Abdullāh ibn ‘Umar Al-Baydāwī, Minhāj al-Usūl ‘Ilā ’Ilim al-’Uṣūl (Beirut: Dar ibn Hazm, 2008), p. 51.
7 Muḥammad ibn Ya‘qūb Al-Fayrūzabādī, Al-Qāmūs al-Muḥīṭ (Beirut: Mu‘assasah al-Risālah, 2005), p. 692; Shawqī Dayf, Al-Mu‘āṣir al-Wasīṭ (Beirut: Markaz al-Shurūq al-Dawliyah, 2004), p. 1031; Maḥmūd ibn Ahmad Al-‘Aynī, ‘Umdah al-Qārī‘ Sharḥ Ṣaḥīḥ al-Bukhārī’ (Beirut: Dār al-Kutub al-‘Ilmiyah, 2001), vol. XII, p. 405.
8 Ibrāhīm Madkūr, Mu‘jam al-Wajīz (Mesir: Wazārah al-Tarbiyā, 1994), p. 668; Dayf, Al-Mu‘āṣir al-Wasīṭ, p. 1031.
9 Yūṣuf Al-Qardāwī, Fiqh al-Wasāṭiyyah al-Islāmiyyah wa al-Tajdid; Ma‘ālim wa Ma’nārāt (Markaz al-Qardāwī, 2009), p. 18–19; Wahbah Al-Zayyāt, Qaḍāyā al-Fiqh wa al-Fikr al-Mu‘āṣir (Damaskus: Dār al-Fikr, 2007), vol. II, p. 549; Dayf, Al-Mu‘āṣir al-Wasīṭ, p. 1031; Madkūr, Mu‘jam al-Wajīz, p. 668.
10 Yūṣuf Al-Qardāwī, Kalimat fī al-Wasāṭiyyah al-Islāmiyyah wa Ma‘ālimihā (Kairo: Dār al-Shurūq, 2011), p. 13; Yūsuf Al-Qardāwī, Al-Khaṣā‘īs al-‘Amnāh li al-
'Abdullāh bin Bayyah defines moderate as a combination between universal (kullī) and partial (juzʿī), the balance between maqāṣid and furūʿ, the ever-changing integration of text and al-maṣlaḥah, in setting fatwas. Wahbah al-Zuhaỳlî describes the moderate as the middle in terms of faith, stance, behavior, systems, interactions, and morals from the universal paradigm. Muḥammad Ābû al-Faṭḥ defines moderate as an effort to achieve perfect harmony and asymmetry between separate components or integral components in a unified whole. While Muṣṭafā Laʾazūzī defines moderate as a state of speech and behavior that shuns excessive and ignorant attitudes. It is praiseworthy and necessary for warding off radicalism and keeping away from tendencies to extremes and neglect.

Based on some of the above definitions, it can be concluded that moderate fiqh is a knowledge of the laws of sharāʿī al-ṣamālīyah resulting from a study of nuṣūṣ al-juzʿiyah, arguments of sharāʿ, and maqāṣid al-sharīʿah by combining and integrating each other.

**Yūsuf al-Qarḍāwī’s Version of the Istinbāṭ Methods of the Moderate Fiqh**

Moderate jurisprudence is drawn from the istinbāṭ method with a moderate pattern. Yūsuf al-Qarḍāwī, as a moderate thinker, formulated several methods of moderate fiqh istinbāṭ as follows.

1. **Examining the maqāṣid contained in nuṣūṣ al-sharīʿah before establishing Islamic law**

   The first method of moderate fiqh istinbāṭ is to study and contemplate the maqāṣid contained in the texts before formulating Islamic law. Every Islamic

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*Islām* (Beirūt: Muʿassasah al-Risālah, 1983), 127; ‘Iyād Kāmil Ibrāhīm al-Zībārī, *Siyyāsah al-Tadarruj fi al-Ahkām al-Sharʿiyah* (Beirut: Dār al-Kutub al-ʿIlmiyah, 2017), 65; Thāir Ibrāhīm Khuḍīr al-Shamrī, *Al-Wasaṭiyah al-ʿIlmiyah* (Beirut: Dār al-Kutub al-ʿIlmiyah, 2005), 20; Al-Qarḍāwī, *Fiqh al-Wasaṭiyah al-Islāmiyah wa al-Tajdid; Maʿālim wa Manārāt*, 23.

11. ’Abdullāh ibn Bayyah, ‘Maʿayīr al-Wasaṭiyah fi al-Fatwā’, n.d.; ’Abdullah ibn Bayyah, *Al-Irḥāb: Al-Tashkhiṣ wa al-Ḥulāl* (Riyad: Maktabah al-ʿUbaykān, 2007), 100.

12. Al-Zuhaỳlî, *Qadāyā al-Fiqh wa al-Fikr al-Muʾāṣir*, vol s I; 578.

13. Muhammad Ābû al-Faṭḥ al-Bayānūnī, *Al-Wasaṭiyah Khaṣīṣah al-Ummah al-Islāmiyah* (Kairo: Dār Iqra’, 2014), 11.

14. Muṣṭafā Laʾazūzī, *Fitrah Allāh Tawāzun wa Wasaṭiyah, Iʿtidāl wa Hanīfiyah* (Beirut: Dār al-Kutub al-ʿIlmiyah, 2006), 10.

15. There are at least four maqāṣid-based *ijtihād* methods, a) understanding the texts and Islamic law based on maqāṣid, b) combining universal maqāṣid and partial propositions, c) take maṣālah and reject mafāsid, d) consider the
law prescribed to human is intended to realize maqāṣid al-sharī‘ah. It is based on research on a number of the arguments of the Koran and Sunnah.16 Understanding maqāṣid al-sharī‘ah comprehensively and establishing Islamic law based on maqāṣid considerations is very important in the logic of ijtihād.17 Maqāṣid al-sharī‘ah is not merely theoretical but is researched and applied in applying Islamic law,18 and it can be used as a source.19 Any Islamic law that contradicts maqāṣid is invalid.20 Therefore, faqīh, mujtahid, and mustanbīṭ must always think about maqāṣid in every stipulating Islamic law.21 An opinion regarding Islamic law can be taken, followed, and applied if it emerges from a

consequences of Islamic law. Muhammad ‘Abd al-‘Āti Muhammad ‘Alī, Al-Maqāṣid al-Shar‘iyyah wa Atharuhā fi al-Fiqh al-Islāmi (Kairo: Dār al-Hadīth, 2007), 267; Ahmad al-Raysūnī, Nazariyah al-Maqāṣid ‘ind al-Imām al-Shāṭībī (Riyad: Al-Dār al-‘Alamiyah li al-Kutub al-Islāmi wa al-Ma‘had al-‘Alami al-Fikr al-Islāmi, 1995), 363; Al-Qardāwī, Dirāsah fi Fiqh Maqāṣid al-Sharī‘ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz‘iyyah, 155.

16 Muhammad al-Tahir ibn ‘Āshūr, Maqāṣid al-Shari‘ah al-Islāmiyyah (Yordania: Dār al-Nafā‘is, 2001), 179; ‘Abdullah ibn Bayyāh, ‘Alaqah Maqāṣid al-Shari‘ah bi Usūl al-Fiqh (London: Mu’assasah al-Furuqān, 2006), 37–38; Haza‘ ibn ‘Abdullāh ibn Šāliḥ al-Ghāmīdī, Muḥāwalāt al-Tajdid fi Usūl al-Fiqh wa Da‘wātuh Dirāsah wa Taqwim (Riyad: Wazārah al-Ta‘lim al-‘Alī, 2008), vols I; 348; ‘Alī, Al-Maqāṣid al-Shari‘yah wa Atharuhā fi al-Fiqh al-Islāmi, 19–20; Ahmad al-Raysūnī, Nazariyah al-Maqāṣid ‘ind al-Imām al-Shāṭībī (Herndon: al-Ma‘had al-‘Alami lil-Fikr al-Islāmi, 1995), 145.

17 ‘Abdullāh ibn Bayyāh, Mashāḥid min al-Maqāṣid (Riyad: Dār Wujuh, 2012), 151; Ahmad al-Raysūnī, Al-Tajdid al-‘Uṣūli Nahw Siyāghah Tajdidiyah li ‘Ilm Usūl al-Fiqh (Beirut: Dār al-Kalimah, 2015), 725; Bayyāh, ‘Alaqah Maqāṣid al-Shari‘ah bi Usūl al-Fiqh, 95; al-Raysūnī, Nazariyah al-Maqāṣid ‘inda al-Imām al-Shāṭībī, 353; Ahmad al-Raysūnī, Muḥādalār fi Maqāṣid al-Shari‘ah (Kairo: Dār al-Kalimah, 2010), 287; Ibrāhīm ibn Mūsā ibn Muhammad al-Shāṭībī, Al-Muwafaqāt fi Usūl al-Shari‘ah (Saudi: Wazārah al-Shu‘ūn al-Islāmiyyah, n.d.), vols IV, 76; Nūr al-Dīn ibn Mukhtar al-Khādīmī, Al-Ijtihād al-Maqāṣidī (Qatar: Dār al-Kutub al-Qatariyyah, 1998); ‘Ālāl al-Fāsī, Maqāṣid al-Shari‘ah al-Islāmiyyah wa Makārimuḥā, 5th ed. (Rabat: Dār al-Gharb al-Islāmi, 1993), 165–66; Sāmīḥ ‘Abd al-Wahdāb al-Jundī, Aḥhamiyyah al-Maqāṣid fi al-Shari‘ah al-Islāmiyyah (Beirut: Mu’assasah al-Risālah, 2008), 69; al-Ghāmīdī, Muḥāwalāt Aa-Tajdid fi Usūl al-Fiqh wa Da‘wātuh Dirāsah wa Taqwim, 405–6; Ahmad al-Raysūnī, Maqāṣid al-Maqāṣid (Beirut: al-Shubkah al-‘Arabiyah, 2013), 42.

18 ‘Abd al-Wahdāb ibn ‘Alī ibn ‘Abd al-‘Āti al-Subkī, Al-Iḥbā‘ fi Sharh al-Minhāj (Kairo: Maktabah al-Kulliyah al-Azharīyah, 1981), vols II, 8–9; al-Jundī, Aḥhamiyyah al-Maqāṣid fi al-Shari‘ah al-Islāmiyyah, 71.

19 Al-Raysūnī, Al-Tajdid al-‘Uṣūli Nahw Siyāghah Tajdidiyah li ‘Ilm Usūl al-Fiqh, 725.

20 Hāmmādī ‘Ubaydī, Al-Shāṭībī wa Maqāṣid al-Shari‘ah (Beirut: Dār Qutaybah, 1992), 150; al-Shāṭībī, Al-Muwafaqāt fi Usūl al-Shari‘ah, vols IV, 252.

21 Al-Raysūnī, Maqāṣid al-Maqāṣid, 43; al-Raysūnī, Al-Tajdid al-‘Uṣūli Nahw Siyāghah Tajdidiyah li ‘Ilm Usūl al-Fiqh, 725.
mujtahid who knows *maqāsid al-shari’ah* extensively and deeply. A person who does not understand and pay attention to *maqāsid* in every commandment (*al-amr*) and prohibition (*al-nahy*) he does not have the intelligence to stipulate Islamic law, because *maqāsid* is the essence, wisdom of *al-shari’ah* and the foundation for mujtahids.

Knowing the benefit of humans is an essential part of formulating Islamic law. Suppose Islamic law cannot realize benefit due to time, place, and condition. It cannot be implemented at that time, and its implementation is postponed until it can manifest the benefits. Analyzing reality and thinking about the application of *maqāsid* are very important in doing *ijtiḥād*. In this case, the significance observes the reality comprehensively in terms of time, place, local customs, and legal objects (person or public). In addition, because the texts are not likely to increase while the problems continue to develop, doing
ijtihād based on maqāṣid is necessary.30 Islamic law is applied with due observance of maqāṣid by the conditions of the local community.31 To deny maqāṣid is the same as eliminating the spirit in fiqh.32

An example related to this method is the beard problem. It is described in three ṣaḥīḥ traditions. It is essential to know the meaning of al-‘amr in the editorial of the ḥadīth. Is it an obligation, or is it just a sunnah?

Ibn ‘Umar narrates the first ḥadīth. The Holy Prophet said:33

خَالِفُوا الْمُشمرِكِينَ وَفِرُوا اللِّحَى وَأَحمفُوا الشَّوَارِبَ

"Be different from the idolaters, lengthen the beard and cut the moustache”

In another narration from ibn ‘Umar, he mentioned the Magi to the Messenger of Allah; then he said:34

اَنَّهُمم يُوَفُّومنَ سِبَالَهُمم وَيَحملِقُومنَ لِحَاهُمم فَخَالِفُومهُمم

"They grow mustaches and shave beards, different from them.”

The second ḥadīth narrated by Abū Hurayrah. The Holy Prophet said:35

جُزُوْا الشَّوَارِبَ وَأَرمخُوا اللِّحَى خَالِفُوا الْمَجُوسَ

"Cut the mustache, lengthen the beard and be different from the Magi.”

The third ḥadīth narrated by Abū Umāmah al-Bāhili.36

خَرَجَ رَسُولُ اللََّّ صَلَّى اللََُّّ عَلَيمهِ وَسَلَّمَ عَلَى مَشميَخَةٍ مِنم الْمَنمصَارٍ بِيضٌ لِحَاهُمم فَقَالَ يَا مَعمشَ رَ الْمَنمصَارِ حَمِ رُوا وَصَفِ رُوا وَخَالِفُوا أَهملَ المكِتَابِ قَالَ فَقُلمتُ يَا رَسُولَ اللََّّ إِنَّ أَهملَ المكِتَابِ يَتَسَرموَلَونَ وَلََ يَأمتَزِرُونَ

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30 Al-Khādimī, Al-Intīḥād al-Maqāṣīdī, vols II; 114; Al-Jundī, Ahammiyah al-Maqāṣidī fī al-Sharī‘ah al-Islāmiyah, 63.
31 Ahmad al-Raysūnī, Naẓariyyāt al-Maqāṣīd ‘ind al-Imām al-Shāṭibī, 149; Nūr al-Dīn ibn Mukhtār al-Khādimī, ‘Īlm al-Maqāṣīd al-Shar‘īyyah (Riyad: Maktabah al-‘Ubaykān, 2001), 137; Al-Shāṭibī, Al-Muwāfaqāt fī Uṣūl al-Shar‘iyah, vols II; 53.
32 Ahmad al-Raysūnī, Al-Makhdhal ‘ilā Maqāṣīd al-Shar‘īyah (Kairo: Dār al-Kalimah, 2009), 16.
33 ‘Ālī ibn Khalf ibn ‘Abd al-Mālik, Sharḥ Ṣaḥīḥ al-Bukhārī li Ibn Battāl (Riyad: Maktabah al-Rushd, n.d.), vols IX; 146; Muḥy al-Dīn ibn Sharf al-Nawawī, Al-Minhāj Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj (Kairo: al-Maṭba‘ah al-Misriyah, 1929), 247; ‘Al-‘Aynī, ‘Umdah Al-Qāri‘ Sharḥ Ṣaḥīḥ al-Bukhārī, vols XXII; 71.
34 ‘Alī ibn Balbān al-Fārisī, Ṣaḥīḥ Ibn Hibbān bi Tartib Ibn Balbān (Beirut: Mu‘assasah al-Risālah, 1993), vols XXII; 290.
35 ‘Abd al-Rahmān ibn Abū Bakr al-Suyūṭī, Al-Dībāj ‘alā Ṣaḥīḥ Muslim Ibn al-Ḥajjāj (Riyad: Dār ibn ‘Affān, 1996), vols V; 38; Muṣā Shāḥīn Lāshīn, Fath al-Mun‘im Sharḥ Ṣaḥīḥ Muslim (Kairo: Dār al-Shurūq, 2002), vols II; 176–178; Al-Nawawī, Al-Minhāj Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj, vols III; 247.
36 Ahmad ibn Muḥammad ibn Ḥanbal, Al-Musnad (Kairo: Dār al-Hadīth, 1995), vols XVI; 257–258.
If we observe the three ḥadiths above, we find a common thread that the maqāṣid in the command to lengthen beard has a reason (‘illah), which is not resembling the shape and appearance of non-Muslims. It is crucial to do, especially during the early days of the formation of Islam. Muslims must have an independent character that differentiates them from other people. Thus, if the beard problem is related to ‘illah, then the rule of presence and absence of law, related to ‘illah applies, namely the الخلافة لغير المسلمين (different from non-Muslims). Moreover, the الخلافة لغير المسلمين when viewed from the priority scale; الدارعيyah (immediate needs), الحائجyah (secondary needs), and التحسينیyah (tertiary needs)). It is more in line with التحسينیyah, not الحائجyah, let alone الدارعيyah. Therefore, it is not obligatory to synchronize with the Sunnah. This provision is in line with the wisdom of the promulgation of the law.

As a Muslim-majority country, such as Indonesia, Pakistan, Bangladesh, Egypt, Malaysia, Nigeria, Turkey, Algeria, and Morocco, it is better to leave different symbols. So that inter-religious people can live in harmony, interact and communicate well. Thus, Islam rahmah li al-ālamīn can be realized through good words and deeds, warding off danger, and together creating unity and integrity and building national civilization.

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37 Ibn Qayyim al-Jawziyah, ʿIṭām Al-Muwaaqiʿīn ʿan Rabb al-ʿĀlamīn (Riyad: Dār ibn al-Jawzī, 1423), vols V; 528; Muḥammad Ṣidqī ibn Aḥmad al-Būrnū, Mawsāʿah al-Qawāʿid al-Fiḥiyah (Beirūt: Dār ibn Ḥazm, 2000), 195; Khālid ibn Ḥusayn ibn ʿAbd al-Raḥmān, Jalīsuk fī Ramaḏān (Riyad: Dār ʿṬawīq, 2002), 246.

38 Al-Qarḍāwī, Dirāsah fī Fiqh Maqāṣid al-Shariʿah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣṣ al-Faṣḥiyah, 157–58.

39 Al-Qarḍāwī, 158.
2. Linking texts and Islamic law with texts and other Islamic laws

The second method is to combine one text with another and observe Islamic law extensively and comprehensively. The reading of texts systematically and comprehensively can combine al-kulliyāt al-ʿāmmah and al-adillah al-khāṣṣah so that maqāṣid al-sharīʿah can be known. Paying attention to particularities within a universal frame becomes necessary in applying particular arguments. Therefore, reading partial arguments when doing īṭihād must be accompanied by thinking about the universality of sharīʿah, al-maqāṣid al-ʿāmmah, and comprehensive fiqh rules. Underestimating one of the results a mistake in understanding texts and determining Islamic law. This kind of recitation can only be done by knowing the maqāṣid and mastering universal propositions. Suppose there is a contradiction between universal rules and particular texts. In that case, one should combine them by compiling texts on one theme and contemplating the universal rules of sharīʿah because the particular ones are only established by preserving the universal. It became clear after exposing the maqāṣid al-sharīʿah. Thus, the correct and perfect īṭihād is to study partial

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40 Yūsuf al-Qarḍāwī, Al-Marjaʾīyah al-ʿUlyā fī al-Islām li al-Qurʿān wa al-Sunnah (Kairo: Maktabah Wahbah, 2012), 174; Al-Qarḍāwī, Dirāsah fī Fiqh Maqāṣid al-Sharīʿah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juzʾiyah, 149.
41 Al-Raysūnī, Naẓariyah al-Maqāṣidʿīnd al-Imām al-Shāṭibī, 369–70; ‘Alī, Al-Maqāṣid al-Sharʿiyah wa Atharuhā fī al-Fiqh al-Islāmi, 268–69.
42 Abū Ḥāmid Muḥammad al-Ghazzālī, Al-Mustaṣfā min ʾIlm al-Uṣūl (Beirut: Dār al-Kutub al-ʿIlmiyah, 1413), vols I; 32; Naṣir ibn ʿAbdullāh ibn ʿAḥl al-Qarāfī, Kitāb al-Furūq Anwār al-Burūq fī Anwāʾal-Furūq (Kairo: Dār al-Salām, 2001), vols II; 670.
43 ‘Abd al-Ḥāmid al-ʿAlāmī, Manhaj al-Dārs al-Dalālīʾʿīnd al-Imām al-Shāṭibī (Maroko: Wazārah al-Awqāf wa al-Shuʿūn al-Islāmiyyah, 2001), 125; Al-Shāṭibī, Al-Muwāfaqāt fī Uṣūl al-Sharīʿah, vols III; 5; ‘Alī, Al-Maqāṣid al-Sharʿiyah wa Atharuhā fī al-Fiqh al-Islāmi, 269–70; Al-Raysūnī, Naẓariyah al-Maqāṣidʿīnd al-Imām al-Shāṭibī, 371; Rabīʿah, ‘Ilm Maqāṣid al-Shārīʿah, 281.
44 Al-Raysūnī, Naẓariyah al-Maqāṣidʿīnd al-Imām al-Shāṭibī, 370; ʿAlī, Al-Maqāṣid al-Sharʿiyah wa Atharuhā fī al-Fiqh al-Islāmi, 269; Al-Qarḍāwī, Al-Marjaʾīyah al-ʿUlyā fī al-Islām li al-Qurʿān wa al-Sunnah, 226.
45 Al-Raysūnī, Naẓariyah al-Maqāṣidʿīnd al-Imām al-Shāṭibī, 360.
46 Al-Raysūnī, Muhādarāt fī Maqāṣid al-Sharīʿah, 240.
47 ‘Abd al-Majīd Turāk, Munāzarahāt fī Uṣūl al-Sharīʿah al-Islāmiyyah bayn Ibn Ḥāzim wa al-Bāṭī (Beirut: Dār al-Gharāb al-Islāmī, 1986), 490; Al-Shāṭibī, Al-Muwāfaqāt fī Uṣūl al-Sharīʿah, vols III; 6–7; ʿAlī, Al-Maqāṣid al-Sharʿiyah wa Atharuhā fī al-Fiqh al-Islāmi, III; 6–7; Al-ʿAlāmī, Manhaj al-Dārs al-Dalālīʾʿīnd al-Imām al-Shāṭibī, 126.
propositions, universal propositions, and *al-maqāsid al-‘āmmah* in responding to every problem of Islamic law.⁴⁸

Integrating chapters of *fiqh* such as jurisprudence, *mu’āmalah*, *munākahah*, *jināyah*, sanctions, lawsuits, indictments, Islamic politics, *jihād*, and international relations is needed in doing *jihād* because all *fiqh* matters are interrelated.⁴⁹ This kind of method can provide solutions to various problems faced by Muslims in the era of globalization and disruption.

Combining verses with verses and *ḥadīths* is necessary to understand the text. It is because they are related and explained to each other. Other verses detail global verses, and other verses limit verses that are vague by other verses, verses that are *mutlaq*, and so on.⁵⁰ Likewise, *ḥadīth*, when it is global, *mutlaq*, and vague, is detailed, limited, and clarified by other *ḥadīths*.⁵¹ Thus, integrating texts into a must to produce a complete understanding can reveal the text’s purpose.

An example of this second method is *ʾisbāl*. Some *Ḥadīth* called it *mutlaq* editorial, and other *ḥadīths* use *taqyīd* (limitation). Muslim narrated the *ḥadīth*, which is *mutlaq* in nature from Abū Dhar. The Holy Prophet said:⁵²

"Three groups of people who will not be spoken to by Allah SWT on the Day of Judgment. 1. al-*mannān*, namely people who do not give anything except to be brought up. 2. sellers who try to sell their goods under false oath. 3. the person holding out the sheath until it is below the ankles."

The sentence *ʾisbāl* is *mutlaq*. Every argument that is *mutlaq* (absolute) is also enforced absolutely until other arguments limit it.⁵³ In connection with

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⁴⁸ Al-Raysūnī, *Naẓariyah al-Maqāsid ‘ind al-Imām al-Shāṭibī*, 371; Rabī’ah, *’Ilm Maqāṣid al-Shāri‘*, 281.
⁴⁹ Al-Qardāwī, *Dirāsah fī Fiqh Maqāṣid al-Shari‘ah bayn al-Maqāṣid al-Kulliyah wa al-Nusūṣ al-Juz‘i‘yah*, 149.
⁵⁰ Yūsuf al-Qardāwī, *Kayf Nata’mal maa al-Qur’ān al-‘Aẓîm* (Kairo: Dār al-Shurūq, 2000), 220.
⁵¹ Al-Qardāwī, 123.
⁵² Iyāḍ ibn Mūsā ibn ‘Iyāḍ al-Yaḥṣabī, *Irshād ilā Taḥqīq ilā Tāḥqīq al-Ḥaq min Ilm al-Uṣūl* (Riyad: Dār al-Wafā’, 1998), vol I; 114.
⁵³ Muhammad ibn ‘Alī ibn Muḥammad al-Shawkānī, *Irshād al-Fuhul ilā Tahqīq al-Ḥaq min Ilm al-Uṣūl* (Riyad: Dār al-Faḍilah, 2000), 711; ‘Alī ibn Muhammad al-ʿAmidī, *Al-Iḥkām fī Uṣūl al-Ahkām* (Dār al-Ṣama‘ī, 2003), vols III; 6; Muhammad ibn Abdullah al-Zarkashi, *Al-Bahr al-Muḥīt fī Uṣūl al-Fiqh* (Kairo: Dār al-Ṣafwah, 1992), vols III; 416; Muḥammad ibn Niẓām al-Dīn al-Sahālawī, *Fawātīf...
the above ḥadīth, there are several ḥadīths with the same theme that limit their absoluteness, namely the ḥadīths narrated by al-Bukhārī from 'Abdullāh ibn 'Umar. The Holy Prophet said:\(^{54}\)

> "On the Day of Resurrection, Allah will not see anyone pulling his clothes out of pride."

Muslim narrated another ḥadīth with the same theme from Abū Hurayrah and Ibn 'Umar. The Holy Prophet said:\(^{55}\)

> "On the Day of Resurrection, Allah will not look at anyone who sticks out a scabbard out of arrogance."

A ḥadīth narrated by Muslim from ibn 'Umar, he heard Rasūlullāh said:\(^{56}\)

> "Whoever extends the scabbard with the intention of boasting, Allah will not see it on the Day of Resurrection."

After combining some of these traditions, the first ḥadīth, which is muṭlaq, is limited (taqyīd) by the following three traditions. Al-Nawawi and Ibn Ḥajr assert that the absoluteness of the prohibition of lengthening clothes is limited by arrogance.\(^{57}\) More than that, Ibn Ḥajr explained that the sin of increasing clothes is due to pride. So that in terms of prohibition, isbāl is simply due to arrogance.\(^{58}\)

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\(^{54}\) Abd al-Rahmān ibn Abū Bakr al-Suyūṭī, Al-Tawshīḥ Sharḥ al-Ṣāḥīḥ (Riyad: Maktabah al-Rush, 1998), vols VIII; 3563; Al-Yaḥṣabī, Ikmāl Muslim bi Fawā'īd Muslim, vols I; 381.

\(^{55}\) Al-Ḥajjāj, Al-Minhāj Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj, vols XIV; 61; Al-Suyūṭī, Al-Dībāj 'alā Ṣaḥīḥ Muslim Ibn al-Ḥajjāj, vols V; 133; Al-Yaḥṣabī, Ikmāl Muslim bi Fawā'īd Muslim, vols VI; 598–601.

\(^{56}\) Ahmad ibn Muhammad al-Khaṭīb al-Qaṣṭalānī, Irshād al-Sārī ‘ilā Sharḥ Ṣaḥīḥ al-Bukhārī (al-Maṭbā‘ah al-Kubrā al-Amiriyyah, 1323), vols VIII; 418; Ahmad ibn ‘Ali ibn Ḥajar al-‘Aṣqalusī, Faṭḥ al-Bārī (Riyad: Maktabah al-Mulk, 2001), vols X; 270.

\(^{57}\) Al-‘Aṣqalusī, Faṭḥ al-Bārī, vols X; 270; Al-Qaṣṭalānī, Irshād al-Sārī ‘ilā Sharḥ Ṣaḥīḥ al-Bukhārī, vols VIII; 418.
3. Understanding text in the \textit{asbāb al-nuzūl} and \textit{asbāb al-wurūd} frame

Text can be understood correctly by studying the causes, environment, and conditions. The context behind the decline of the texts is known as \textit{asbāb al-nuzūl al-Qur'ān} and \textit{asbāb al-wurūd al-ḥadīth}, both micro and macro. Micro \textit{asbāb} is a specific cause behind a revealed verse or \textit{ḥadīth} said. Meanwhile, the macro \textit{asbāb} is a generic cause that surrounds the Koran when revealed and the \textit{ḥadīth} when it is said, which includes socio-political, socio-economic, and sociocultural aspects. Knowing \textit{asbāb} is the entrance to understand the wisdom of the promulgation of the law, \textit{maqāṣid al-shari'ah}, and the accuracy of understanding texts.

Ibn Daqiq al-İd explained that the deciphering of \textit{asbāb al-nuzūl} is the best method in understanding the meanings of the Koran. In line with him, al-Wāḥidī explained that the interpretation of a verse could not be known without first understanding the description of the \textit{asbāb al-nuzūl}. Ibn Taymiyah also

\begin{itemize}
  \item[59] ‘Abd al-Rahmān ibn Abū Bakr al-Suyūṭī, \textit{Ilṭqān fi ʿUlūm al-Qurʿān} (Beirut: Muʿassasah al-Risālah, 2008), 71; Manāʿ Khalīl al-Qaṭṭān, \textit{Mabāḥith fi ʿUlūm al-Qurʿān} (Kairo: Maktābah Wābah, n.d.), 74.
  \item[60] Ibrāhīm ibn Muḥammad ibn Kamāl al-Dīn, \textit{Al-Bayān wa al-Taʿrīf fi Asbāb Wurūd al-Ḥadīth al-Sharīf} (Dār al-Ḥukūmah, 1329), 3.
  \item[61] Rumādī, ed., \textit{Ḥasīl-Ḥisāl Muktamar ke-33 Nū} (Jakarta: Lembaga Taʿlīf wan Nasyr PBN, 2016), 154; Muḥammad ‘Abd al-ʿAzīz al-Zarqānī, \textit{Maḥānīl al-ʿIrjān fi ʿUlūm al-Qurʿān} (Maṭbaʿah ʿĪsā al-Bābī al-Halabī wa Sharākāh, n.d.), vols I; 108; Salmān ibn ʿUmar al-Sanīdī, \textit{Tadbūbur al-Qurʿān} (Riyad: Maktābah al-Mulk, 2002), 100–101.
  \item[62] ‘Abd al-Karīm ibn Şāliḥ ibn ʿAbdullāh al-Zahrānī, ‘Al-Maṣāḥīḥ fi Taṣfīr al-Qurʿān al-ʿAzīm’ (Jāmiʿah Ummu al-Qurā, 2000); Al-Suyūṭī, \textit{Ilṭqān fi ʿUlūm al-Qurʿān}; Tāriq Asʿad Hilmi al-Asʿad, \textit{ʿIlm Asbāb Wurūd al-Ḥadīth} (Beirūt: Dār Ibn Hazm, 2001); Muḥammad Raʿfī ʿSaʿīd, Asbāb Wurūd al-Ḥadīth Tahālīl wa Taṣsīs (Qatar: Kitāb al-Ummah, n.d.); Abdullah Saeed, \textit{Interpreting the Qurʾān: Toward a Contemporary Approach} (New York: Routledge, 2006); Muṣṭafā Al-Bughā and Muḥy al-Dīn Mustāwī, \textit{Al-Wādīḥ fi ʿUlūm al-Qurʿān} (Dammaskus: Dār al-Kālim al-Tayyib, 1998); ‘Abd al-Sattār Jabr Ghāyab al-Humūdī, \textit{ʿIlm Asbāb Nuzūl al-Qurʾān} (Baghdad: Diwān al-Waqf, 2014); ‘Abdūr-Rahmān ibn Nāṣir al-Saʿdī, Taysīr al-Karīm al-Rahmān fi Taṣfīr Kālām al-Mannān (Riyad: Dār al-Salām, 2002); Al-Qaṭṭān, Mabāḥith fi ʿUlūm al-Qurʿān; Al-Qardāwī, Al-Marjaʿiyyah al-ʿUlyā fi al-Islām li al-Qurʿān wa al-Sunnah.
  \item[63] Muḥammad ibn ‘Alī ibn Daqiq al-İd, \textit{Iḥkām al-AḥkāmSharḥ Umdah al-Aḥkām} (Kairo: ʿĀlam al-Kutub, 1987), 259.
  \item[64] ‘Alī ibn ʿAḥmad al-Wāḥidī, Asbāb Nuzūl al-Qurʿān (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1991), 10; Muḥammad ibn ‘Abdullāh al-Zarkashī, Al-Burḥān fi ʿUlūm al-Qurʿān (Beirut: Dār al-Maʿrifah, 1990), vols I; 117; Muḥammad Abū Shuhbah, Al-Madkhali li Dirāsah al-Qurʿān al-Karīm (Riyad: Dār al-Liwaʿ, 1987), 136; Abū ‘Abd al-Rahmān al-Suyūṭī, Lubāb al-Nuqāl fi Asbāb al-Nuzūl (Beirūt: Muʿassasah al-Kutub al-Thaqāfīyah, n.d.), 7; Al-Suyūṭī, Ilṭqān fi ʿUlūm al-Qurʿān, 71; Al-Bughā
explained that knowing *asbāb al-nuzūl* can help in understanding a verse.\(^{65}\)

Knowing *asbāb al-nuzūl* is a necessity in exploring the meaning of the Koran. It is for two reasons. First, *maqāṣid al-qur'ān* can only be known by understanding the circumstances surrounding them because one word may have many meanings according to the indication (*qarīnah*) and the demands of the situation. Knowing *asbāb al-nuzūl* can clarify the ambiguity of the meaning that is in the Koran. Second, the lack of knowledge about *asbāb al-nuzūl* can confuse and result in a clear text becoming blurry, so that it often results in disagreements and differences in understanding.\(^{66}\) Ignoring the *asbāb al-nuzūl* results in a failure to understand the texts and find *maqāṣid*.

There are three ways to understand the texts; first, to think about the early days of Islam - the social, economic, political and cultural climates at that time -. This kind of contemplation can examine the meaning of a text. The error in interpreting texts is due to being trapped in the conditions of social reality in which they live, not referring to the conditions of social existence when the Koran was revealed. Second, to think about mental and social situations when the Koran was revealed. Third, to contemplate the time and place when the Koran was revealed. These three ways, when used, can lead to the correct meaning of the text because the illustrative language style is spoken according to the context.\(^{67}\)

If only after studying the *asbāb al-nuzūl* is the most appropriate way to understand the Koran, then understanding the *asbāb al-wurūd* is the right way to grasp the meaning of the *ḥadīth.* The characteristics of the Koran describe universal principles, while *ḥadīths* often respond to problems that are casuistic,
partial, and temporal. It also explained specific and complicated things that are not found in the Koran. Therefore, it is necessary to distinguish between particular and global, temporal and eternal, partial and universal. Placing each section according to its provisions then paying attention to the context, conditions, and asbāb al-wurūd can help correct understanding. In-depth research on a ḥadīth can open the view that sometimes hadīths are said for specific reasons, related to certain 'illah, or answer a particular case that happened at that time.

The example for this method is the ḥadīth regarding appointing a leader from the Quraish tribe. In a ḥadīth narrated by Anas ibn Mālik, the Holy Prophet said:

"The leaders were from the tribe of Quraish."

The above ḥadīth requires a leader from the Quraish tribe. However, when scrutinized, the ḥadīth speaks of siyāsah (politics), which is 'illah and whose purpose is reasonable (ma’qūl al-ma’nā). Therefore, the provisions in the hadīth do not apply absolutely but are casuistic, partial, and temporal to bring benefit and prevent damage at that time. In this connection, the rule of "law relating to the presence and absence of an 'illah" applies. In addition, the context of the ḥadīth illustrates that the Quraysh tribe controlled the strength and ethnicity at that time. Based on this case, ibn Khaldūn stated that the caliphate and empire were built on stability and race. According to him, the requisite requirement of the Quraysh is to reject strife and contention because they have ethnicity and power. Al-Shāri‘i does not specify law on one time and one people but is related to al-kifāyah (capability). Therefore, the ‘illah contained in the Quraysh is not purely tribal. Thus, the requirement for a leader is to come from a people who have the most influence and power in his time so that he is followed by his people and is in one good command and protection.

The ḥadīth thus explains the reality that happened at that time, and the essence of the leader’s requirement is capability, not ethnicity. In modern times,

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68 Al-Qardāwī, Kayf Nata’mal ma’a al-Qur’ān al-‘Āzīm, 146; Ḥaswah, Fiqh al-Wāqi‘ wa Atharuh fī al-Ijtihād, 149; 127.
69 Ahmad ibn ‘Ali ibn Mathanna al-Tamīmī, Musnad Abī Ya’lā al-Mawṣalī (Beirut: Dār al-Thaqāfah al-‘Arabiyyah, 1992), 321.
70 ‘Abd al-Raḥmān ibn Khaldūn, Muqaddimah Ibn Khaldūn (Beirut: Dār al-Fikr, 2001), vols I; 371.
countries that apply a democratic system, for example, the people's voice, determine a leader's election. The existence of majority vote support in general elections proves whether a leader is capable or not.

4. **Distinguishing between constant maqāṣid and changing instruments**

Every text that affirms the commands, prohibitions, and laws of Islam must be a purpose from *al-Shāri‘*. As for the means as a means to an end is not specified in detail, because they can change according to changes in time, place, tradition, social, economic and political conditions. This fact allows people to engage in *ijtiḥād* in choosing, innovating,\(^1\) and developing it in line with the situation, local conditions, benefits, and is not fixated on certain instruments.\(^2\) Al-Qarāfī explained that the source of Islamic law has two parts; first, *al-maqāṣid* are goals that contain *mašlahah* and *mafsadah*. Second, *al-wasā’il* are the means used to achieve the goal.\(^3\) Ibn ʿĀshur defined *maqāṣid* as actions intended to be accomplished in various ways and pursued earnestly with complete obedience. While *al-wasā’il* are the means implied to obtain the law ideally, a goal is sometimes not achieved without means.\(^4\) The instrument law follows the *maqāṣid* law, as explained by al-Jawzīyah and al-Qarāfī that because *maqāṣid* (goals) cannot be performed without the instrument, the law accompanies the *maqāṣid* law.\(^5\) Therefore, the means that lead to the prohibition, damage, and

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\(^1\) Muḥammad al-Ghazzālī, *al-Sunnah al-Nabawiyyah bayn Ahl al-Sunnah wa Ahl al-Ḥadīth* (Kairo: Dār al-Kitāb al-Miṣrī, 2012), 160.

\(^2\) Al-Qardāwī, *Dirāsah fī Fiqh Maqāṣid al-Shari‘ah bayn al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Fuz‘iyah*, 174.

\(^3\) Ahmad ibn Idrīs al-Qarāfī, *Sharḥ Tanqīh al-Fiqh* (Beirūt: Dār al-Fikr, 2004), 353; Ahmad ibn al-Qarāfī, *Al-Zahirah* (Beirūt: Dār al-Gharab al-Islāmī, 1994), vols I; 153; Muḥammad Abū Zahrah, *Ibn Ḥanbal Hayātuh wa ʿĀrūṣ Ará‘uh wa Fiqhu* (Kairo: Dār al-Fikr al-ʿArabī, n.d.), 365; Muḥammad Abū Zahrah, *Mālik Ḥayātuh wa ʿĀrūṣ Ará‘uh wa Fiqhu* (Kairo: Dār al-Fikr al-ʿArabī, n.d.), 432; ‘Abd al-Majīd Jum‘āh al-Jazā‘īrī, *Al-Qawā‘id al-Fiqhiyyah al-Mustakhraj min Kitāb I‘lām al-Muwaqqī‘īn* (Dār ibn al-Qayyim, n.d.), 500; Am Nā‘īl al-Burkānī, *Fiqh al-Wasā’il fī al-Shari‘ah al-Islāmiyah* (Qatar: Wizārah al-Awqāf wa Shu‘ūn al-Islāmiyah, 2007), 26; Al-Qarāfī, *Kitāb al-Furūq Anwār al-Burūq fī Anwā‘ al-Furūq*, vols II; 451.

\(^4\) Muḥammad al-Wakīlī, *Fiqh al-Awwaliyyāt Dirāsah fī al-Ḍawābiṭ* (Herndon: Ma‘had al-ʻĀlamī lil-fikr al-Islāmī, 1997), 237; ‘Āshūr, *Maqāṣid al-Shari‘ah al-Islāmiyah*, 415, 417; Al-Burkānī, *Fiqh al-Wasā’il fī al-Shari‘ah al-Islāmiyah*, 30.

\(^5\) ‘Abd al-Raḥmān Nāṣīr al-Sa‘dī, *Al-Qawā‘id wa al-Uṣūl al-Jāmi‘ah* (Kairo: Maṭba‘ah al-Madani, 1956), 10; ‘Abd al-ʻĀzīz ibn ʿAbd al-Salām al-Sulāmī, *Al-Fawā’id fī Ikhtisār al-Maqāṣid* (Beirūt: Dār al-Fikr al-Mu‘āṣir, 1996), 53; ‘Abd al-Nūr Bāzā, *Mašāli‘ al-Insān Muqārarabah Maqāṣidīyah* (Herndon: al-Ma‘had al-ʻĀlamī lil-fikr al-Islāmī, 2008), 384.
immorality of the law are prohibited (forbidden or impregnated). Meanwhile, the intermediaries who lead to obedience and benefit are ordered (obliged or punished).76

The majority of the texts of the Koran, which regulate mu‘āmalah, were revealed globally. It contains general rules and basic principles. Thus, the role of reason in this field serves to find Islamic law by the goodness of humans and nature.77 In addition, most of the texts of al-shari‘ah only define al-mabādi’ (principles) and al-maqāsid (goals) without specifying the mediums. This situation makes it easier for humans to fill by their problems. He can use the methods of qiyās, istiḥsān, maṣlaḥah mursalah, ‘urf, istiṣḥāb and so on. However, al-Shāri‘ sometimes mentions specific instruments according to the place and time. Still, it is not intended as al-wasīlah, which applies universally and eternally in every place and time.78

There are two kinds of wasā'il (means), first, al-wasā’il al-thābitah (constant means). It is interpreted as specific means that have been established by al-Shāri‘ to reach maqāsid. If the standards are not practiced or changed, it can cause the maqāsid to become corrupt and change.79 Second, al-wasā’il al-mutaghamayyirah (means that are not fixed) is defined as means that change according to changing situations and conditions. Maqāsid, in this case, is discovered through the process of ijtihād.80 Determining some of the means that are temporal and situational can lead to misinterpretation and slip in understanding nusūṣ al-shari‘ah. According to al-Qarḍāwī, the study of nusūṣ should be carried out until its substance, namely the established and eternal goal. Meanwhile, facilities can change and adapt according to changing times, places, conditions, environment, culture, human needs, science and technology, and other influences.81

76 Al-Raysūnī, Al-Fikr al-Maqāṣidī Qawā’iduh wa Fawā’iduh, 81; Al-Wakīlī, Fiqh al-Awwaliyyāt Dirāsah fī al-Dawābi‘, 237–38; Zahrah, Ibn Ḥanbal Ḥayātuh wa ‘Aṣruh Ṭirāzuh wa Fiqhuh, 365.

77 Wahbah al-Zuhaylī, Al-Wajiz fī Uṣūl al-Fiqh (Beirut: Dār al-Fikr, 1999), 33.

78 Sa‘íd Ismā‘īl ‘Ali, Al-Sunnah al-Nabawiyah Ru‘yāh Tarbawiyah (Kairo: Dār al-Fikr al-‘Arabī, 2002), 478; Al-Qardawī, Dirāsah fi Fiqh Maqāsid al-Shari‘ah bayn al-Maqāsid al-Kulliyah wa al-Nusūṣ al-Juz‘iyah, 176.

79 Al-Khādimī, Al-Ijtihād al-Maqāṣidī, vols I; 65–67.

80 Al-Khādimī, vols I; 67–68; Al-Burkānī, Fiqh al-Wasā’il fī al-Shari‘ah al-Islāmiyyah, 73.

81 Mu‘taz al-Khaṭīb, ‘Manhajiyah al-Maqāṣid wa al-Wasā’il fī al-Ijtihād al-Fiqhi’, Majallah al-Fikr al-Islāmi al-Mu‘āṣir 18, no. 71 (2013): 69, 72; Al-Qardāwī, Dirāsah fi Fiqh Maqāsid al-Shari‘ah bayn al-Maqāsid al-Kulliyah wa al-Nusūṣ al-
Instrument transformation is a necessity. It can metamorphose from one time to another and from one place to another. Therefore, if the text mentions a specific means, it explains a phenomenon at that time. So that these means cannot limit the universality of the text, it gives room for reason to think of other means that are more suitable, modern, and up-to-date in line with the progress of human civilization. The standards mentioned in the text may be updated with other, more relevant means. Even if you carry out the means that the text has noted, it can waste the more essential means in achieving the goal. Al-Shāṭibī stated that every argument in the Koran is absolute without limitations, there are no specific provisions and standards—the target text must be sought using the ability of reason. The majority of mu’âmalah and customary issues are related to this part, such as being fair, doing good, forgiving, patient, grateful, and other noble deeds. These noble qualities are maqāṣid, which contain benefits. Meanwhile, the means not mentioned by al-Shāri’ are intended so that people can freely develop them through the advancement of science and technology.

An example relevant to this method is the principle of deliberation, especially in political matters. Surah al-Shūrā Verse 38 explains this principle.

وَأَمَرُوهُم بِشُورَىٰ بَيْنَهُمْ

"And they gather amongst each other to conduct their affairs by mutual consultation."

Surah Ali 'Imrān Verse 159 also mentions this principle.

وَشَاوِرْهُمْ فِي الْمَمُرِ

"and take counsel with them in the affair."

The two verses above explicitly explain the principle of deliberation in political affairs, state administration, and other civil matters. However, he did not specify

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Juz‘iyah, 176; Al-Qardāwī, Kayf Nata’mal ma’a al-Qur‘ān al-‘Azīm, 159; Al-Rayṣūnī, Al-Fikr al-Maqāṣīdi Qawā’iduh wa Fawā’iduh, 82–83, 88.

82 Al-Qardāwī, Dirāsah fī Fiqh Maqāṣid al-Shari‘ah bayn al-Maqāṣid al-Kulliyah wa al-Nūsūs al-Juz‘iyah, 176–77; Al-Qardāwī, Kayf Nata’mal ma’a al-Qur‘ān al-‘Azīm, 160; Al-Burkānī, Fiqh al-Wasā’il fī al-Shari‘ah al-Islāmiyah, 76.

83 Al-Jawziyāh, Ilām al-Muwaqqi‘īn an Rabb al-‘Ālamīn, vols IV; 355–356; Al-Rayṣūnī, Nāzariyah al-Maqāṣīd ‘ind al-Imām al-Shāṭibī, 364.

84 Muḥammad ‘Imārah, Ma‘rakah al-Islām wa Uṣūl al-Ḥukm (Kairo: Dār al-Shurūq, 1997), 346; Sa’d al-Dīn al-Uthmānī, Al-Dīn wa al-Siyāsah Tamyiz lā Faṣl (Kairo: Dār al-Kalimah, 2015), 89; Khālid ibn ‘Uthmān al-Sabt, Qawā’id al-Tafṣīr Jam‘ān wa Dirāsah (Dār ibn ‘Affān, 1421), vols II; 773.
the form of deliberation, the participants, the method of consideration, and choosing a leader.

The text did not specify specific instruments in deliberation. The aim is to solve problems in Muslims' lives, especially political, social and economic problems. Al-Shāri'ī gives breadth to Muslims in choosing and developing these instruments according to the times. Based on these principles, Indonesia, a democratic country, involves its people in electing executive and legislative institutions. The goal is that those elected can represent them to discuss the problems of the people, nation, and state for social justice for all Indonesian people. The representation of people's aspirations through these institutions is one of the many instruments in the principle of deliberation governed by the texts.

5. Adjusting between al-thawābit and al-mutaghayyirāt

On the one hand, Islamic law has an al-thabāt (constant) dimension, and the other has an al-taghayyur or al-murūnah (flexible) dimension. The moderate fiqh ijtihād method adapts and pays attention to both. The harmony of al-thabāt and al-murūnah emanates from the Koran, which presents universal principles and global propositions. It is rare to find a detailed and partial description of the verses of al-ḥākām. In addition, the majority of verses juzʿiyāt (partial) in their designation to the law are in the form of zannī al-dalālah (multi-interpretation), and only a few are in the form of qaṭʿī al-dalālah (firm and definite). Al-nuṣūs al-zanniyyāt opens the space for the emergence of various understandings and interpretations so that Islamic law as a product of ijtihād becomes a never-ending treasure trove of Islamic intellectual property. He is always fresh, adaptive, and dynamic at the fast pace of human civilization.

Al-thawābit (constant provision) includes six things; a. the six pillars of faith. b. the five pillars of Islam. c. noble morals, such as justice, kindness, help, honesty, trustworthiness, avoiding prohibitions, compassion, patience, gratitude, and shame. d. qaṭʿī ḥaram, such as murder, adultery, sexual perversion, drinking alcohol, gambling, theft, seizure, witchcraft, usury, eating

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85 Al-Qardāwī, Dirāsah fi Fiqh Maqāsid al-Shari’ah bayn al-Maqāsid al-Kulliyah wa al-Nuṣūṣ al-Juzʿiyah, 175; Al-Ghazzālī, Al-Sunnah al-Nabawiyah bayn Ahl al-Sunnah wa Ahl al-Ḥadīth, 163; ‘Imārah, Ma’rakah al-Islām wa Usūl al-Ḥukm, 346.
86 Zahrah, Usūl al-Fiqh, 92.
87 Khalīl Maḥmūd Naʾrānī, Āthār al-Ḍarf fī Taghyīr al-Ḥakam al-Sharʿiyah (Kairo: Dār ibn al-Jawzī, 2006), 132.
orphan property, accusing adultery without evidence, fleeing war, false witnesses, disobedience to parents, breaking up a friendship, slander, slander, lying, and abusing human honour.\textsuperscript{88} e. The hidden haram things, such as pride, trickery, jealousy, hatred, showing off, being proud, following lust, and being greedy. f. the fundamental law of 
shara’ which is \textit{qat’î}, such as eating, drinking, dressing, buying and selling, financial transactions, marriage, divorce, testament, inheritance, and sanctions such as \textit{ḥudūd} and \textit{qiṣāṣ}.\textsuperscript{89} These laws are constant and \textit{qat’î}, both \textit{al-thubūt} and \textit{al-dalālah}. Ijtihād is forbidden on this kind of \textit{qat’î}.

While \textit{al-mutaqaddhimāt} is related to the law of \textit{furū’} (fiqh), which is produced from the text \textit{ẓannī al-thubūt, ẓannī al-dalālah}, or both, rules resulting from \textit{iṭtihād} can change due to changes in place, time, and human morals.\textsuperscript{90} \textit{Ijtihād} activity in this \textit{ẓannī} case is necessary for understanding the text and determining Islamic law. As a result of \textit{iṭtihād}, differences of opinion are commonplace; all contain the possibility of being right or wrong. Therefore, reforms and changes resulting from \textit{iṭtihād} must occur in line with these changes.\textsuperscript{91} The reform of Islamic law is intended to achieve \textit{al-Shāri’i}’s goals, namely providing benefits and avoiding damage.\textsuperscript{92}

There are two kinds of Islamic law. First, it comes from a clear text and \textit{ijmā’}. This first type of Islamic law has not changed. Second, Islamic law that results from \textit{iṭtihād} with the method of \textit{maṣlaḥah}, \textit{qiyās}, or \textit{‘urf} (customs). This second type changes. Everything that changes is a legal instrument and not a law itself. In general, \textit{al-Shāri’} does not limit specific means in reaching the \textit{maqāṣid al-}

\textsuperscript{88} Muḥammad ibn Abū Bakr, \textit{Ighāthah al-Lahfān min Maṣāyīd al-Shayṭān} (Beirut: Dār al-Ma’rifah, 1975), vols I; 330–331; Muṣṭafā Aḥmad al-Zarqā, \textit{Al-Madkhal al-Fiqhī al-‘Ām} (Damaskus: Dār al-Qalam, 2004), vols II; 942.

\textsuperscript{89} Fatḥī al-Duraynī, \textit{Al-Manāhij al-Uṣūliyah} (Beirut: Mu’assasah al-Risālah, 2013), 138–39; Al-Qardāwī, \textit{Dirāsah fī Fiqh Maqāṣid al-Shari’ah bayn al-Maqāṣid al-Kulliyāt wa al-Nuṣūṣ al-Juz’iyyah}, 197–98; Al-Qardāwī, \textit{Al-Khaṣā’iṣ al-‘Āmmah li al-Islām}, 220–21.

\textsuperscript{90} ‘Abd al-Karīm ibn ‘Alī ibn Muhammad al-Namlah, \textit{Iṭḥāf Dhabī al-Bashā’ir bi Sharḥ Rawdah al-Nāẓir fī Uṣūl al-Fiqh} (Riyad: Dār al-‘Ᾱṣimah, 1996), vols VIII; 12.

\textsuperscript{91} Al-Zarqā, \textit{Al-Madkhal al-Fiqhī al-‘Ām}, vols II; 941.

\textsuperscript{92} ‘Alī Haydar, \textit{Durar al-Hukkām Sharḥ Majallah al-Aḥkām} (Riyad: Dār ‘Ālam al-Kutub, 2003), vols I; 47.

\textsuperscript{93} Wahbah al-Zuhaylī, \textit{‘Uṣūl al-Fiqh al-Islāmī} (Damaskus: Dār al-Fikr, 2009), vols II; 1116.
shari‘ah but frees it so that humans can choose and develop better standards according to the situation at hand.\(^{94}\)

Among the examples related to this method is the law of marriage registration. Registration of marriage in the past is unnecessary because the situation and conditions of society do not require it. However, it is different from the states, behavior, and morals in contemporary society, thus demanding changes in Islamic law. Another aspect, the development of administrative science, science, and technology, also affects changes in Islamic law. The status of marriage registration is thus obligatory. The law is based on al-mašlaḥah al-‘āmmah - maintaining the family order - and sadd al-dhāri‘ah - preventive measures to prevent harm to the wife and children -. In reality, unregistered marriage causes many problems. It harms women and children, such as domestic violence, sexual abuse, and neglect of wives and children.

6. **Examining the difference between worship and mu‘āmalah from the aspect of wisdom, ‘illah, and maqāṣid**

Among the istinbāṭ methods for moderate fiqh is the distinction between worship and mu‘āmalah. The difference is in terms of wisdom, ‘illah, and maqāṣid which are behind them.\(^{95}\) The basis of worship is worship and worship only to Allah regardless of the meaning, ‘illah and maqāṣid. Al-Shāṭibī based this rule on several arguments: first, research some Islamic laws regarding worship. In this first case, the ta‘abbudi element is the primary key. In many ways, the rules and conditions do not make sense. For example, the obligation to bathe after a husband and wife have intercourse, prayer movements, provisions regarding menstruation and childbirth - aborting prayers (not required to be replaced) but not aborting fasting (must be replaced). Al-Shāṭibī emphasized;\(^{96}\)

94 Muhammad ʿUthmān Shubayr, *Al-Qawāʾid al-Kulliyah wa al-Dawābit al-Fiqhiyyah fi al-Shariʿah al-Islāmiyyah* (Yordania: Dār al-Nafāʿīs, 2007), 263–65; Al-Zarqā, *Al-Madkhal al-Fiqhi al-ʿĀm*, vols II; 942.

95 ‘Abd al-Nūr Bazā, *Nazarīyah al-Taʿlīl fī al-Fikrayn al-Kalāmī wa al-Uṣūlī* (Yordania: Maʿhad al-ʿĀlamī lifikr al-Islāmī, 2011), 108; Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Shariʿah*, vols II; 228.

96 Yusuf Aḥmad Muhammad al-Badawī, *Maqāṣid al-Shariʿah ‘ind Ibn Taymiyyah* (Yordania: Dār al-Nafāʿīs, 1999), 168; Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Shariʿah*, vols II; 229.
"The wisdom of worship in general is obeying Allah’s commandments, obeying, exalting and facing only Him. It does not have a special ‘illah which can be understood by special laws from it."

Second, logical reasoning argument. Al-Shârî’ does not explain a proposition that shows breadth in worship. In contrast to mu’âmalah, which is looser. In fact, in terms of worship, the arguments are detailed. It shows that the provisions of worship stop at this limit. Likewise, al-munâphis -a trait seen as a legal motivation- is limited by something that has no equivalent in worship. Such as a problematic situation - due to traveling - allows qasr, iftâr, and jama’ prayers. Meanwhile, difficulties other than travel cannot be a legal consideration.

Third, the worship services at the time of fatrah - the times when no Prophet was sent - could not be known by the scholars as they knew the meaning of ‘illah and maqāṣid in adat and mu’âmalah. According to al-Shâṭibî, generally they were lost and deviated from the right path in terms of worship. They changed the previous sharī’ah according to their wishes.97 This situation shows that reason cannot know the meaning and provisions of worship, but requires guidance from the text. Therefore, in terms of worship, it must be returned to the provisions of al-Shârî’, namely the element of ta’abbudī (merely worshipping Allah).98

Meanwhile, the basis in the field of mu’âmalah and custom is to pay attention to the meaning, ‘illah, and maqāṣid.99 Al-Shâṭibî based this rule on several arguments, namely: first, research (istiqrā’). Every law that regulates custom and mu’âmalah aims for the benefit of humankind. On the other hand, all customary rules and mu’âmalah, which do not contain benefit or even cause harm, are prohibited. For example, the ability to buy and sell online, insurance, buy and sell credit systems, halal bi halal, subsets, alms earth, and tembang macapat. Second, reason can know ‘illah, wisdom, and maqāṣid in customs and mu’âmalah through reasoning on the texts. Intellect can capture the benefits contained in these conditions. Third, the scholars can know ‘illah, wisdom, and maqāṣid in custom and mu’âmalah globally, even though during the fatrah period. They do that search so that it brings benefit. Al-sharī’ah then came to

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97 Al-Badawī, Maqāṣid al-Shari’ah ‘ind Ibn Taymiyah, 168.
98 Al-Shâṭibî, Al-Muwâfaqāt fī Uṣūl al-Shari’ah, vols II; 231.
99 Al-Shâṭibî, vols II; 232; Al-Qardâwî, Dirāsah fī Fiqh Maqāṣid al-Shari’ah bayn al-Maqāṣid al-Kulliyah wa al-Nusṣ al-Juz’iyah, 202; Al-Yūbî, Maqāṣid al-Shari’ah wa ‘Alâqatuhā bi al-Adillah al-Shar’iyah, 412; Al-Badawî, Maqāṣid al-Shari’ah ‘ind Ibn Taymiyah, 168.
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perfect it. Therefore, al-Shārī’ confirmed several laws that were already in effect in the era of ignorance, such as diyat, qasāmah, gathering on Friday to listen to the sermon, qirād, kiswa (Kabah clothes), and all the deeds, transactions, and customs that good that makes sense.100

An example of this method is regarding the law of productive waqf. Based on the purpose of waqf, which is to provide for the welfare of the poor, the waqf objects may be managed productively. Utilizing waqf property so that it brings many benefits to people’s lives is justified by sharī’ah. Management and distribution of waqf are only for the benefit. Therefore, the nāẓir is required to see the development of the era, place, and benefit. The results of productive waqf can be distributed to community guidance and development programs, such as; the social sector in the form of building bridges, public restrooms, mosques; education sector in the form of scholarships for low-income families, establishing schools, libraries, skills training; health sector in the form of medical assistance for the poor and training in making herbal medicines; economic sector in the form of capital assistance and development, agricultural business development, livestock breeding; da’wah in the form of preaching, teacher salaries and wages for imams and mosque administrators.

Conclusion

Based on the description above, this paper concludes that, first, the istīnbat method for moderate fiqh is indispensable to produce Islamic law that is flexible, elastic, adaptive, easy to practice and to spread benefit. The istīnbat method takes into account the relationship between texts, maqāṣid, reality, and the present context. With it, jurisprudence can avoid extremities and tendencies towards conservatives and liberals. This method integrates naql and reason, text, context, and maqāṣid al-sharī’ah, maqāṣid al-sharī’ah and furū’ (fiqh matters), kullī (universal) and juz’ī (partial), as well as the universality of texts and the specificity of the situation. Second, the istīnbat method for moderate fiqh by Yūsuf al-Qardāwī as follows. a. Examining the maqāṣid contained in the texts before determining Islamic law. b. Linking texts and Islamic law with texts and other Islamic laws. c. Understanding texts in the frame of asbāb al-nuzūl or al-wurūd, both micro and macro. d. Distinguishing between constant maqāṣid and

100 Al-Shāṭībī, Al-Muwāfaqāt fī Uṣūl al-Sharī’ah, vols II; 232–233.
changing instruments. e. Adjusting between al-thawābit and al-mutaghayyirāt. f. Observing the differences between the fields of worship and muʿāmalah in terms of wisdom, ʿillah and maqāṣid.[a]  

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