PANCASILA
A Contemporary Application of *Maqāṣid al-Sharīʿah*?

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Abstract: This paper proposes that the traditional principle of *maqāṣid al-Sharīʿah,* or the higher intentions and objectives of Islamic law, can go beyond the realm of theoretical Islamic jurisprudence and is made manifest in practical politics. I argue that the most robust example of this phenomenon occurs in Indonesia. I therefore examine whether or not the concept of Indonesia's 'secular' and nationalistic doctrine of Pancasila, the Five Principles, can be construed as a contemporary application of *maqāṣid al-Sharīʿah*. This study strives to link the classical jurisprudential tool of *maqāṣid al-Sharīʿah*, as discussed by al-Ghazālī (d. 1111), al-Shātibī (d. 1388) and more recently by Muhammad al-Tahir Ibn ʿĀshūr (d. 1973), with the contemporary model of Pancasila.

Keywords: *Shariʿah*, Pancasila, *maqāṣid al-Sharīʿah*, fiqh.

Introduction

The question of how to implement *Shariʿah* law in the present day milieu, which comprises nation-state sovereignty, capitalistic corruption, and rapid pace technological advancements, is a highly contentious line of inquiry grappled by Muslims and non-Muslims scholars alike. This paper is rooted on the premise that neither *Shariʿah* nor Islam as a religious tradition are monolithic entities. Rather, the historical realities concerning how *Shariʿah* has been interpreted and applied within Islamic communities confirm that Islamic law is substantially multidimensional, transformative and flexible. In general, this malleability occurs because of the wide range of jurisprudential sources, tools and principles developed by Muslim scholars since the

inception of the religion as a means of striving to best understand divine will to shape a more just and dignified human community. As such, this paper focuses on the pragmatic value of the principle of *maqāṣid al-Sharī'ah*, which delineates the higher intentions and objectives of *Sharī'ah* and allows the process of lawmaking to be goal-oriented, adaptable and accommodating to new and ever-changing political, economic and social conditions.

This paper proposes that the traditional principle of *maqāṣid al-Sharī'ah* can go beyond the realm of theoretical Islamic jurisprudence and is made manifest in practical politics. I argue that the most robust example of this phenomenon occurs in Indonesia, a country which boasts the largest Muslim population on earth and has been linked to Islam since the 15th century.[1] Since its independence from colonial rule in 1945, the Indonesian constitution has been molded and bound by Pancasila, or 'the Five Principles'. This Indonesian ideology was originally articulated and implemented by Sukarno, the first President of the Indonesian Republic who served from 1945 to 1967. Under Sukarno, Pancasila functioned largely as an effort to resolve post-colonial fragmentation and unify a country comprised of multifarious political, cultural and religious communities. Despite the subsequent use of Pancasila as a means of enforcing political ideologies, especially during Suharto's New Order, it should not be dismissed that the earliest concept of Pancasila sought to transcend micro-ideological disparities and concentrate on a set of shared principles that aim for proper governance within the context of a Muslim-majority modern nation state. Pancasila arguably remains a driving force behind efforts to maintain justice and unity throughout the state by upholding the five (*sila*) principles of: 1) the belief in the One and Only God, 2) a just and civilized humanity, 3) Indonesian unity, 4) democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, 5) and achieving social justice for all the people of Indonesia. [2]

The objective of this study is to determine how and to what extent the fundamental Indonesian articulations of Pancasila embodies a modern-day application of *maqāṣid al-Sharī'ah* in a semi-secular

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[1] Robert W. Hefner, *Shari'a Politics Islamic Law and Society in the Modern World* (Bloomington, IN: Indiana University Press, 2011), p. 284.

[2] Preamble to the Indonesian Constitution, 1945, http://www.embassyofindonesia-.org/about/pdf/IndonesianConstitution.pdf.

democratic nation-state. The analysis is presented in three parts. The first provides a thematic overview of the historical development of *maqāṣid al-Sharī'ah*. It discusses key contributions of Abū Hāmid Muḥammad ibn al-Ghazālī (d. 1111), Abū Isḥāq al-Shātibī (d. 1388) and Muḥammad al-Tāhir Ibn 'Ashūr (d. 1973) and illustrates how over time, the scope of *maqāṣid* has expanded to accommodate changing conditions. The second section considers the political context in which Sukarno's idea of Pancasila emerged. The third section deliberates on how Pancasila actually embodies *maqāṣid al-Sharī'ah* by presenting an evaluation of each of the five principles in juxtaposition with legal commentary on *maqāṣid al-Sharī'ah*. In conclusion, I shall consider the political and religious implications of utilizing a *maqāṣid* framework to form a 'semi-secular' state, that is, non-theocratic, yet religious state as reflected by the will of a populace to adhere to divine law.

Maqāṣid al-Sharī'ah

According to Moḥammed Hāshim Kamālī, the principle of *maqāṣid al-Sharī'ah* was not a primary concern of jurists during the early development of Islamic jurisprudence.[3] Instead, scholars of legal thought sought to establish institutions, rules, regulations and procedures that would aid in interpreting, applying and preserving law. In effect, the development of *madhāhib* (legal schools of thought) and their respective forms of *uṣūl al-fiqh* (methodological legal theory) took precedence during the first few centuries after the death of the Prophet Muhammad (d. 632). On the whole, substantial development of *maqāṣid al-Sharī'ah* began after *madhāhib* were established and disputes over the proper form of *uṣūl al-fiqh* began to yield legal limitations. Moreover, the establishment of numerous *madhāhib* indicated the geopolitical growth of Muslim empires as well as ethnic and cultural diversity.

Although there are many Muslim legal scholars who contributed to the discourse of *maqāṣid,* this thematic overview will concentrate on three major developments in *maqāṣid* theory. The first stage occurs around the time of al-Ghazālī (d. 1111). This is the period of initial formulation of *maqāṣid* as a relevant principle of jurisprudence. The second period is summarized by the writings of al-Shātibī (d. 1388) and

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[3] Mohammad Hashim Kamali, *Shari'ah law: An Introduction* (Oxford, England: Oneworld, 2008), p. 124.

complements the first by proffering an expanded system of classification. Finally, the third stage is characterized by efforts for the adaptation of *maqāṣid* theory to the modern world. I argue that the work of Ibn 'Ashūr (d. 1973) aptly exhibits this period of legal thought. Hence, the following will elucidate on how these three periods of *maqāṣid* theory, formulation, classification, and adaptation, demonstrate a natural expansion and flexibility of *Sharī'ah* law.

Nascent formulation of *maqāṣid al-Sharī'ah* is often attributed to al-Ghazālī's seminal work *al-Mustasfā min 'Ilm al-Uṣūl* (The Essentials of Islamic Legal Theory). However, al-Ghazālī was not the first to mention the importance of *maqāṣid*. It goes beyond the scope of this paper to provide an exhaustive account of the historical origins of *maqāṣid* theory, primarily because the history is so multivocal and lends itself to a longer explanation. Nevertheless, the important point to be noted is that al-Ghazālī was influenced by his teacher, Imām al-Ḥaramayn al-Juwaynī (d. 1085), who was possibly the first to begin categorizing elements of *maqāṣid* theory. al-Ghazālī's key contribution to the formulation of *maqāṣid al-Sharī'ah* is his identification of five particular objectives of *Sharī'ah*. Responding to the issue of *maṣlahah* (common good/benefit), he writes

> In its essential significance, (*al-maṣlahah*) is a term that means seeking something useful (*manfa'ah*) or warding off something harmful (*madarrah*). But this is not what we mean, because seeking what is useful and preventing harm are objectives (*maqāṣid*) sought by creation, and the good (*ṣalah*) in the creation of mankind consists in achieving those *maqāṣid*. What we mean by *maṣlahah* is preserving the objective (*maqṣūd*) of the Law (*shar'*) that consists in five ordered things: preserving religion (*dīn*), life (*nafs*), reason (*'aql*), progeny (*nasl*), and property (*amwāl*). What ensures the preservation of these principles (*uṣūl*) is *maṣlahah;* what goes against their preservation is *mafsadah*, and preventing it is *maṣlahah*[4]

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[4] Translation by Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), p. 62. Original Arabic found in Abū Hāmid Muḥammad ibn al-Ghazālī, *al-Mustasfā min 'Ilm al-Uṣūl,* v.1 (Baghdad: Muthanna, 1970), pp. 286-287.

Thus, based on al-Ghazālī's articulation of objectives of the Law, the principles of *maqāṣid al-Sharī'ah* and *maṣlahah* can often be conflated since they are conceptually tightly knit and are not mutually exclusive from one another. Thereafter, al-Ghazālī's five objectives came to be recognized as part of a larger classification system of *maqāṣid* theory. They represent the *ḍarūrriyāt* (essentials) which is central of three preliminary categories of *maqāṣid* theory. The remaining two are *ḥājiyyāt* (complementary benefits/secondary objectives) and *taḥsīniyyāt* (embellishments/tertiary objectives).[5] These categories represent the initial formulation of *maqāṣid* theory and will be discussed shortly.

al-Shātibī's contribution in *al-Muwāfaqāt fi Uṣūl al-Sharī'ah* significantly expands on the theories formulated from the era of al-Juwaynī and al-Ghazālī. By advocating al-Ghazālī's five essentials, he develops a systematic means of identifying *maqāṣid* by classifying them into types. His theory is expounded in full detail within part three of *al-Muwāfaqāt* entitled "*Kitāb al- maqāṣid*" (The Book of Higher Objectives). In general, al-Shātibī divides *maqāṣid al-Sharī'ah* into two major classifications: 1) *maqāṣid al-Shari'* (objectives of the Lawgiver), and 2) *maqāṣid al-mukallaf* (objectives of accountable human beings). He provides subdivisions of the first and leaves the second to case study descriptions. [6] Aḥmad Raysūnī translates these subdivisions as four "types" of objectives. The following four types of objectives of the Lawgiver exemplify al-Shātibī's momentous contribution to the expansion of *maqāṣid* theory:

Type 1 : The Lawgiver's higher objectives in establishing the Law
Type 2 : The Lawgiver's higher objectives in establishing the Law for people's understanding
Type 3 : The Lawgiver's higher objectives in establishing the Law as a standard of conduct
Type 4 : The Lawgiver's higher objectives in bringing human beings under the Law's jurisdiction[7]

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[5] Moḥammad Hāshim Kamālī, ed. Shiraz Khan. *Maqāṣid al-Sharī'ah Made Simple* (London: International Institute of Islamic Thought, 2008), p. 4.

[6] Aḥmad Raysūnī, *Imām al-Shātibī's Theory of the Higher Objectives and Intents of Islamic Law* (London: International Institute of Islamic Thought, 2005), p. 127.

[7] Ibid.

It is within Type 1 that we see a clear connection between previous scholars' work and al-Shātibī's categorizations. al-Shātibī considers this type to be the most important and a natural segue into the remaining three types, which largely provide further elucidation on the first. Furthermore, it is significant because it comprises al-Ghazālī's *ḍarūrriyāt*.

In relation to that, Raysūnī notes that al-Shātibī's explanation and commentary expand on al-Juwaynī and al-Ghazālī's formulation. Hence, al-Shātibī regards *ḍarūrriyāt* as "things which are essential for the achievement of human beings' spiritual and material well-being," which are the same as al-Ghazālī's five (religion, life, reason, progeny and property). Moreover, *ḥājiyyāt* is classified as "needs-related interests…which when fulfilled contribute to relieving hardship and difficulty and creating ease in the lives of those accountable before the Law," and *taḥsīniyyāt* as "interests which are less important than [the first two]; however, they function to enhance and complete their fulfillment…such as commendable habits and customs, the observance of rules of etiquette and a high moral standard."[8]

To summarize the first two stages of the development of *maqāṣid* theory, we see the initial formulation period took root after the establishment of legal schools (*madhāhib*) which gradually espoused rather rigid inductive rules of *uṣūl al-fiqh* (methodology of interpreting *Sharī'ah* sources). Tariq Ramadan explains that this rigidity led several scholars of law to "ste[p] back from the piecemeal examination of the effective causes (*'ilal*) or the explicit and implicit intents of individual rulings (*al-adillah al-tafsīliyyah*) to try to pinpoint the objectives motivating the bulk of the corpus of rulings (*al-aḥkām al-tashrī'iyyat*) found in scriptural sources."[9] Hence, what scholars like al-Ghazālī and al-Shātibī have done is devise a more general and holistic approach to *uṣūl al-fiqh*. The five essentials articulated by al-Ghazālī set the stage for further expansion on the idea of objective-based law, which was a task in which al-Shātibī significantly excelled at over two centuries later. In effect, al-Shātibī's work on *maqāṣid* theory provided jurists theoretical groundwork that transcended traditional *uṣūl al-fiqh* of legal schools. This could, in turn, allow for flexibility in legal rulings while remaining within the circumscriptions of divine will.

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[8] Ibid., p. 128.

[9] Ramadan, *Radical Reform: Islamic Ethics and Liberation*, p. 60.

The current stage of *maqāṣid* theory is what I would characterize as a period of adaptation. In particular, it involves Muslim scholars who strive to reform and rearticulate traditional Islamic legal principles with consideration to a modern milieu which, by and large, impinges on the jurisdiction of religious authorities through vehicles such as post-colonialism, secularism and the primacy of nation-state building. Ibn ʿAshūr's pivotal work, *maqāṣid al-Sharīʿah al-Islāmiyyah* (Higher Objectives of Islamic Law), is a pioneering study of *maqāṣid* in the modern age. Inspired by the reformist ideology of Muḥammad ʿAbduh in Egypt, Ibn ʿAshūr published the book in 1946 in Tunis as "the outcome of a deep and serious study of the possible ways and means of revitalizing Islamic jurisprudence" in a milieu wrought by colonialism and widespread European legal influence.[10] Within the preface, Ibn ʿAshūr explicitly states two primary aims of writing such a book:

1) assisting Muslims with a healing legislation for their contingent interests when new cases (*nawāzil*) emerge and matters become complicated, and

2) providing [Muslims] with a decisive opinion in the face of conflicting arguments by different juristic schools (*madhāhib*) and the competing views of their respective scholars[11]

These underlying goals point to Ibn ʿAshūr's desire to address two major obstacles to the preservation and maintenance of *Sharīʿah*, namely, circumstantial change and internal disagreement. As such, he adds that "the objective of these discourses is that those seeking to study and understand the religion of Islam will take them as a guide and frame of reference when faced with differences of opinion and change in time."[12] It becomes clear throughout his writing that Ibn ʿAshūr's revival of *maqāṣid al-Sharīʿah* is a response to the subsiding legal tradition in the modern age. In regards to al-Shātibī, Ibn ʿAshūr commends his contribution yet constructively critiques his methodological precepts, contending that "[al-Shātibī] fell into the trap

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[10] Muḥammad al-Tahir Ibn ʿĀshūr, trans. Moḥamad el-Tahir el-Mesawi. *Treatise on Maqāṣid al-Sharīʿah* (Herndon, VA.: International Institute of Islamic Thought, 2006), p. xv.

[11] Ibid., p. xvi.

[12] Ibid.

of longwinded and confused analysis [and] omitted some crucial aspects of the *Sharī'ah's* higher objectives and thus failed to reach the target that he had set himself."[13] In response, Ibn 'Āshūr stresses a more simplified approach, whereby "the general objectives of Islamic legislation consists of the deeper meanings (*ma'āni*) and inner aspects of wisdom (*ḥikam*) considered by the Lawgiver (*Shārī*) in all or most of the areas and circumstances of legislation (*aḥwāl al-tashrī*)."[14] Therefore, Ibn'Ashūr's contribution not only functions as a culmination of his predecessors, but he also seeks to offer a more lucid and comprehensible guidebook for the modern era of jurists. For these reasons, the remainder of this paper will predominantly rely on Ibn'Ashūr's commentary on *maqāṣid al-Sharī'ah*.

To reiterate, the point of this section is to trace the historical development of *maqāṣid* theory by identifying three broad thematic eras (formulation, classification and adaptation) and cursorily highlight key contributions of representative Muslim scholars in each period. By doing so, I hope to be able to give illustarion on how Muslim legalists sought to reconcile the rigid *madhāhib* formulas of *uṣūl al-fiqh* with the complementary principle of *maqāṣid al-Sharī'ah*. In other words, rather than solely relying on analogical legal theory, scholars like al-Ghazālī, al-Shātibī and Ibn'Ashūr proposed a shift toward goal-oriented lawmaking, which in turn allows for more flexibility and adaptation in a dynamic and ever-changing world.

To continue the discussion of the paper, the following sections will attempt to build a conceptual bridge from legal theory to the politics of constitution-building by measuring the principles comprising Pancasila against *maqāṣid* theory and determine whether or not the idea of Pancasila as a modern embodiment of *maqāṣid al-Sharī'ah* holds true.

Pancasila

Before we examine how Pancasila correlates with the principle of *maqāṣid al-Sharī'ah*, let us acknowledge key factors that lead to its creation. These factors include the need for unity, justice and preservation of tradition. On August 15, 1945, the Japanese formally surrendered the Indonesian archipelago to the Allies. Two days later,

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[13] Ibid., p. xxiii.

[14] Ibid., p. 71.

Sukarno, the rebel interim leader declared Indonesian independence with himself as president and Mohammed Hatta as vice president. However, seeing as the Dutch held an imperial monopoly throughout the Indonesian islands since the 17th century, the next four years would render Indonesia "a battlefield in a power struggle over who would lead what kind of government for all areas formally rules by the Netherlands."[15] Effendi notes that the brief Japanese occupation during the war ended the strict secularization policy enforced by Dutch rule. Thus, Islam, along with other religious traditions surfaced into the political forum of debate.[16] Inevitably, the question of how to modify the ideological and constitutional foundation of the new Indonesian republic came to the fore.

In the months preceding formal independence, the Investigating Committee for Preparatory Work for Indonesian Independence (BPUPKI) was assembled and Sukarno's collaborative plan of Pancasila was introduced as means of unifying and reconciling secularist and Islamist aspirations. Sukarno delivered his famous "Birth of Pancasila" speech (Lahirnya Pancasila) on June 1, 1945 and his new ideology was slightly reformulated and adopted into the Jakarta Charter on June 22 and later into the preamble of the Indonesian Constitution on August 18. The subsequent analysis seeks to provide contextual rhetoric behind the five general principles—the belief in one God, humanitarianism, national unity, consultative democracy and social justice—by drawing attention to Sukarno's intended meanings and envisaged outlook on Pancasila as a religiously inclusive Indonesian political ideology. Furthermore, I shall juxtapose Sukarno's rhetoric with Ibn'Ashūr's commentary on *maqāṣid* that correlates with each respective principle (*sila*) to demonstrate how the concept of *maqāṣid al-Sharī'ah* can indeed step beyond the bounds of Islamic jurisprudence and manifest itself in substantive politics.

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[15] Gordon P. Means, *Political Islam in Southeast Asia* (Boulder, Colo.: Lynne Rienner Publishers, 2009), p. 62.

[16] Bahtiar Effendy, *Islam and the State in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003), p. 28.

Pancasila: A Contemporary *Maqāṣid al-Sharī'ah*

Monotheism [*Ketuhanan Yang Maha Esa*]

Indonesia's national motto "Unity in Diversity" (Bhinneka Tunggal Ika) most suitably describes a nation-state comprising 17,508 islands (6,000 inhabited)[17] on which resides a population of nearly 246 million people representing over three hundred different ethnic groups (including immigrants of Chinese, Arab and Indian descent) and nearly 250 distinct languages.[18] In terms of religious diversity, nearly 86.1% of the population identifies themselves as Muslim; about 5.7% as Protestant, 3 % as Roman Catholic, 1.8% as Hindu and the remaining 3.4% are unspecified and/or categorized as Other. Despite such heterogeneity, the modern geopolitical norm of constituting sovereign nation-states dictates that there exists a mechanism of unification. Sukarno's ideological blueprint of Pancasila tendered a compelling solution to the challenge of ethnic and religious diversity.

In its initial presentation during the June 1st speech, the principle that Indonesians should believe in God was enumerated as the fifth *sila* (principle). Sukarno was determined to create a unified postwar nation and appealed to a multi-religious polity by claiming:

> The principle of Belief in God! Not only should the people of Indonesia have belief in God, but every Indonesian should believe in his own particular God. The Christian should worship God according to the teachings of Jesus Christ; Moslems according to the teachings of the Prophet Mohammad, Buddhists should discharge their religious rites according to their own books. But let us all have belief in God. The Indonesian state shall be a state where every person can worship God in freedom…. Let us observe, let us practice religion, whether Islam or Christianity, in a civilized way. What is that civilized way? It is the way of mutual respect. The Prophet Mohammad gave sufficient proofs of tolerance, and of respect for other religions. Jesus Christ also showed that tolerance.[19]

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[17] CIA Factbook, July 2011.

[18] Benyamin Fleming Intan, *"Public Religion" and the Pancasila-Based State of Indonesia: An Ethical and Sociological Analysis* (Berlin: Peter Lang Publishing, 2006), p. 31.

[19] Sukarno, "The Birth of Pancasila," English transl. in Damodar R. SarDesai, *Southeast Asian History: Essential Readings* (Boulder: Westview Press, 2006), p. 158.

Weeks later, disgruntled Muslim nationalists felt that this principle was too vague and comprised secular undertones. Muslim leaders therefore proposed two changes: first, to reorder Pancasila and place this principle first, and second, to add the clause "(the belief in God) with the obligation to carry out the Islamic law (*Sharīʿah*) for its adherents." [20] These suggestions were incorporated into the Jakarta Charter and it seemed as though a compromise between secular and Muslim nationalists had been brokered. However, the addendum phrase was quickly redacted to appease Christian unease by the use of *Sharīʿah* and preclude the marginalization of other religious groups.[21] On August 18, 1945, vice president Hatta oversaw an agreement among Muslim and non-Muslim leaders to replace the controversial clause with "Yang Maha Esa" which alludes to the Oneness of God. At that time, this formulation resonated well with all representatives and "The belief in the One and Only God" remains today as the first principle of Pancasila in the preamble to the Indonesian constitution. Nevertheless, in decades to follow, the struggle for an explicit *Sharīʿah*-based Pancasila continued among Islamist leaders to different extents. However, this paper concentrates solely on the initial formulation of Pancasila ideology. It also strives to show how the phrasing of Pancasila principles do, in fact, embody the higher objectives and intentions of *Sharīʿah* without explicitly verbalizing *Sharīʿah.that is?*

In sum, Sukarno yearned for a unified state. Although the majority of the populace of Indonesia follows Islamic tradition, he recognized that the explicit imposition and application of *Sharīʿah* could risk the alienation and marginalization of minority religious groups. Seeing as the common denominator among most of the religions was a fundamental belief in a divine entity, Sukarno's political strategy was to appear as inclusive as possible without clashing with the tenets of the Muslim majority. I reason that by viewing the Indonesian experience through the lens of *maqāṣid al-Sharīʿah* rather than just the stark formula of official *Sharīʿah* enforcement, a synergy amongst multi-religious legal and political ideals is attainable by recognizing common objectives.

Here, Ibn ʿĀshūr would certainly agree that the principle of monotheism qualifies as not only an objective of Sharīʿah but a prerequisite to abiding by *Sharīʿah* law. In fact, he claims that, "nobody

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[20] Ibid., p. 41.

[21] Ibid.

would contest that the provisions and ordinances of any divine law (*Sharī'ah*) instituted for humankind aim at certain objectives intended by God, the Wise Lawgiver."[22] It is a priori that one must believe in God, the Lawgiver, in order to even acknowledge *Sharī'ah* and the objectives of the law. However, the issue of possible contention lies in Sukarno's acceptance of other religions and the entreaty for "mutual respect" amongst religions. According to Ibn 'Āshūr's reading of *maqāṣid al-Sharī'ah,* Sukarno's religious tolerance would be wholly acceptable within Ibn 'Āshūr's characterization of merciful and understanding intentions of divine law. He asserts, "one important aspect of the mercy of the Shari'ah is that it has left the different nations to their inherited customs and ways as long as they do not result in evil."[23] Moreover, he reasons that there is goodness in other customs "because humankind has never lacked good practices that are the result of divine laws or good advice or sound minds… The whole of humankind had inherited much ancient good laws, such as those of the Egyptians, the Greeks and the Romans, and were following many good practices and values emanating from sound human nature (*fiṭra salīmah*), such as killing of the human soul a crime." [24] Although Ibn 'Āshūr maintains that Islam and its *Sharī'ah* represent the "best and most exalted of all guidance,"[25] by considering the higher objective of avoiding evil, he is able to express a certain respect and tolerance for other traditions.

Humanitarianism [Kemanusiaan Yang Adil dan Beradab]

In the preamble, the second *sila* is described as a principle that upholds "a just and civilized humanity." This phrasing stemmed from Sukarno's initial proposal for "internationalism." It is a philosophy that attempts to go beyond a state ideology of nationalism and broaden the objective to sustain justice and civility to all of humanity. One must remember that this speech was given months before the Japanese surrendered, so instability and destruction was rampant. Thus, Sukarno warns against the chauvinistic dangers of extreme nationalism by asserting, "our homeland Indonesia is only a small part of the world.

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[22] Ibn 'Āshūr, *Treatise on Maqāṣid al-Sharī'ah*, p.3.

[23] Ibid., p. 170.

[24] Ibid., pp. 169-170.

[25] Ibid., p. 4.

Remember this. Gandhi said, "I am a nationalist, but my nationalism is humanity."[26] He continues to emphasize the concept of a just and civilized humanity by advising, "do not let us say that the Indonesian nation is the noblest and most perfect, whilst belittling other people. We should aim at the unity and brotherhood of the whole world. [27] He urges Indonesians to recognize that, "nationalism cannot flower if it does not grow within the garden of internationalism.[28]

In general, Sukarno's exhortations call for a more universal approach to politics by identifying the common denominator of all nations as their shared humanity. In this regard, Ibn 'Āshūr's treatise on *maqāṣid al-Sharī'ah* also makes frequent allusions to the concept of humanitarianism by professing the universality of *Sharī'ah* on the basis of human *fiṭrah* (natural disposition). He states that, "since God willed by His fathomless wisdom that Islam be the last religion revealed to mankind, it was necessary that it should be grounded in a universal attribute shared by all humans beings, which is rooted in the psyche, and with which their sound minds are familiar, namely, the attribute of *fiṭrah*.[29] He adds that *Sharī'ah* works to "confirm and enhance" *fiṭrah* of human beings, in such that *fiṭrah* "constitute[s] part of the good manners deeply rooted in human life and emanating from good purposes free from harmful effects." [30]

It is important to note on how Ibn 'Āshūr considers Sharī'ah to be applicable to all humans because of their common disposition and, at the same time also recognizes the good in other nations and customs. So, the question is how might a *maqāṣid* based interpretation reconcile the supremacy of *Sharī'ah* with a diverse humanity? Ibn 'Āshūr invokes another higher intention of Sharī'ah, reasoning that "it has been a major objective of the Shari'ah to specify the different kinds of rights according to the categories of people entitled to them…it has followed a just and natural (fiṭrī) course in which no human being feels any alienation or injustice." [31] This suggests that although *Sharī'ah* is a

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[26] Sukarno, "The Birth of Pancasila," p. 155.

[27] Ibid., p. 156.

[28] Ibid.

[29] Ibn 'Āshūr, *Treatise on Maqāṣid al-Shari'ah*, p. 134.

[30] Ibid., p. 83.

[31] Ibid., p. 239.

universal law, it is not meant to impose burden or suffering, but rather the Law is intended to promote justice and goodness inherent in human nature. In keeping with his discussion on an inclusive humanity, Ibn ʿĀshūr accentuates the crux of *maqāṣid al-Sharīʿah,* an "all-purpose principle," which shall remain relevant throughout the remaining study*:*

> From a comprehensive thematic analysis of the textual sources of the Shariʿah pertaining to the objectives of legislation, we can draw the following conclusions. Both its general rules and specific proofs indicate that the all-purpose principle (*maqṣad ʿāmm*) of Islamic legislation is to preserve the social order of the community and endure its healthy progress by promoting the well-being and righteousness (*ṣalāḥ*) of that which prevails in it, namely, the human species. [32]

To summarize, the *Sharīʿah* pertains to the entire human species in order to maintain social order and regulation of communities. Sukarno's insistence on "internationalism" which led to the current Pancasila principle of "a just a civilized humanity" implicitly signifies the same higher objectives of *Sharīʿah*, namely, promoting social order by delineating peoples' rights while avoiding causing alienation or injustice for others. Hence, this second *sila* of international humanitarianism directly correlates with the third *sila*, which supports and sees value in robust national unity.

Unity [Persatuan Indonesia]

Sukarno originally presented this *sila* as first in sequence, which naturally segued into his argument for internationalism. Therefore, this principle needs little explanation. As previously discussed, Sukarno certainly desired for national unity especially in the midst of world war; however, he shrewdly affirms that "internationalism cannot flower if it is not rooted in the soil of nationalism. Nationalism cannot flower if it does not grow within the garden of internationalism. Thus, these two… are dovetailed together. [33] As such, Sukarno further explains the importance of national unity:

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[32] Ibid., p. 91.

[33] Sukarno, "The Birth of Pancasila," p. 156.

the people of Indonesia, the Indonesian Nation is not only a group of individuals who, having "the will to unite," live in a small area like Minangkabau or Madura or Jogja or Pasundan or Makassar, but the Indonesian people are all the human beings who, according to geopolitics ordained by God Almighty, live throughout the entity of the entire archipelago of Indonesia from the northern tip of Sumatra to Irian! All, throughout the islands! The Indonesian nation, the people of Indonesia, the Indonesian human beings numbering seventy million persons, but seventy million who have already become one, one, once again one![34]

It may be construed by Sukarno's rhetoric that his emphasis on Indonesian unity over religious unity is a clear manifestation of secularism and a lack of adherence to *Sharī'ah* law. On the contrary, a *maqāṣid* -based assessment would rule national unity as perfectly in line with *maqāṣid al-Sharī'ah*, and more particularly with the above "all-purpose principle" (*maqṣad 'āmm*). Ibn 'Āshūr settles the issue succinctly by asserting "that the main objective of the Sharī'ah is to establish a strong community with a stable social system and promote the orderly functioning of its affairs by achieving its welfare and preventing evil is so obvious that not the slightest doubt about it should arise in any thinking person."[35] Therefore, a certain extent of national unity is required to achieve these *Sharī'ah* goals.

Consultative Democracy [Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan ?]

The fourth principle of Pancasila clearly embodies the Islamic traditions of *shūra* (consultation) and *ijma'* (consensus). Sukarno refrained from using these terms explicitly, but rather, he explained this *sila* as "the principle of consent, the principle of representative government, the principle of consultation. [36] The later version in the preamble states this *sila* to be a "democratic life led by wisdom of thoughts in deliberation amongst representatives of the people."[37] Evidently, this *sila* along with the others are intentionally broad and

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[34] Ibid., p. 158.

[35] Ibn 'Āshūr, *Treatise on Maqāṣid al-Sharī'ah*, p.221.

[36] Sukarno, "The Birth of Pancasila," p. 156.

[37] Preamble to the Indonesian Constitution, 1945.

obscure in order to accommodate all Indonesians and not exclusively Muslim demands. However, Sukarno strove to appeal to Muslims on this point, speaking as a fellow Muslim. He argued:

> For Islam, this is the best condition for the promotion of religion. We are Moslems, myself included—a thousand pardons my Islamism is far from perfect—but if you open up your breast, and look at my heart, you will find it none other than Islamic. And this Islamic heart of Bung Karno hopes to defend Islam by agreement, through discussion! By means of agreement, we shall improve all matters, we shall promote the interest of religion, that is, by means of talks or discussions in the House of Representatives [38]

Although Ibn 'Āshūr's work on *maqāṣid al-Sharī'ah* does not delve into the relation between Islam and politics or the concept of an Islamic state, per se, the advice he presents to jurists in regards to *shūra* and *ijma'* is highly germane to the Pancasila notion of consultative democracy. He dwells on the Sharī'ah objective of *maṣlaḥah mursalah* (textually unspecified benefits) and puts forth a compelling argument that stems from the founding fathers of Islamic law. In short, Ibn 'Āshūr argues that first, *ijma'* was indeed a utilized instrument of law, and second, complex cases were predominantly based on the *maqṣūd* (objective) of *maṣlaḥah*. He finds that, "the cases of unanimous agreement (*ijma'*) by the community's Predecessors from the time of the Companions and the Successors were, except for matters of necessary religions matters mostly based on the principle of *maṣlaḥah mursalah,* whether it was universal and certain or simply prevalent."[39] Hence, it follows that consultative democracy would be considered a valid Islamic method of reaching sound and unanimous consensus amongst knowledgeable and skilled representatives of the community.

Social Justice [Keadilan Sosial bagi seluruh Rakyat Indonesia]

Continuing with the discussion of *maṣlaḥah,* let us briefly recall how al-Ghazālī first formulated its relation to *maqāṣid al-Sharī'ah*. He clarifies, "what we mean by *maṣlaḥah* is preserving the objective (*maqsūd*) of the Law (*shar'*) that consists in five ordered things: preserving religion (*dīn*), life (*nafs*), reason ('*aql*), progeny (*nasl*), and

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[38] Sukarno, "The Birth of Pancasila," p. 156.

[39] Ibn 'Āshūr, *Treatise on Maqāṣid al-Shari'ah*, p. 128.

property (*amwāl*)." [40] In effect, *maṣlaḥah* is the totality of goodness and the state of preserving the common good amongst all of humanity. Thus, all scholars of *maqāṣid al-Sharī'ah* agree that striving for *maṣlaḥah* (common good/benefit) and preventing *mafsadah* (harm) is an absolute imperative of *Shari'ah* law, especially, as Ibn 'Āshūr underscores, "when faced with unprecedented problems and pressing adversity." [41]

Sukarno addresses the *sila* of "achieving social justice for all people of Indonesia" [42] in a framework similar to that of seeking *maṣlaḥah* and avoiding *mafsadah*. He describes this *sila* as "the principle of prosperity. The principle: there shall be no poverty in Free Indonesia." [43] Moreover, he poses the question, "do we want a free Indonesia whose capitalists do as they wish, or where the entire people prosper, where every man has enough to eat, enough to wear, lives in prosperity, feels cherished by the homeland that gives him sufficient keep?" [44] With global pressures of political and economic development looming overhead, Sukarno proposes that a unified Indonesia must work in together to achieve social justice and in effect, preserve the *ḍarūrriyāt* (essentials) of religion, life, reason, progeny and property, while simultaneously working to limit the corruption and greed that stems from a capitalistic society. Furthermore, the preservation of these essentials can be achieved by beholding a holistic view of Pancasila, as illustrated at the end of Sukarno's speech:

> If I compress what was five to get three, and what was three to get one, then I have a genuine Indonesian term, the term gotong rojong (mutual cooperation). The State of Indonesia, which we are to establish, should be a state of mutual cooperation. How fine that is! A Gotong Rojong state! (Loud applause on all sides.) The principle of Gotong Rojong between the rich and the poor, between the Moslem and the Christian, between those not originating from Indonesia and their children who become Indonesians.[45]

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[40] See above, citation 4.

[41] Ibn 'Āshūr, *Treatise on Maqāṣid al-Shari'ah*, p. 127.

[42] Preamble to the Indonesian Constitution, 1945.

[43] Sukarno, "The Birth of Pancasila," p. 157.

[44] Ibid.

[45] Ibid., p. 158.

Within Sukarno's scheme of Gotong Rojong (mutual cooperation), ideally, the principles of monotheism, humanitarianism, unity, consultative democracy and social justice are to be achieved collectively and result in a state which promotes *maṣlaḥah,* or the preservation of *maqāṣid al-Sharī'ah*. Hence, if the *maqāṣid al-Sharī'ah* are attained within a community without necessarily implementing traditional *Sharī'ah* or at least explicitly doing so*,* would not the people of this community essentially adhere to *Sharī'ah,* that is, what is humanly understood to be God's divine will?

Conclusion

By utilizing *maqāṣid al-Sharī'ah* in modern politics, one can recognize immense room for flexibility and adaptation when discerning *Sharī'ah* as it applies to new legal and socio-political milieus. This paper has attempted to illustrate the Indonesian ideology of Pancasila as a contemporary embodiment of *maqāṣid al-Sharī'ah*. First, by tracing the formulation, classification and adaptation of *maqāṣid* theory by highlighting contributions made by al-Ghazālī (d. 1111), al-Shāṭibī (d. 1388) and Ibn 'Ashūr (d.1973), we see how scholars recognized limitations of *usūl al-fiqh* when striving to methodologically interpret *Sharī'ah* in an ever-changing world. Thus, they turned to *maqāṣid al-Sharī'ah* as a complementing principle of *usūl al-fiqh* to aid in the process of lawmaking and ascribing legal rulings. Next, by utilizing Ibn 'Ashūr's modern treatise of *maqāṣid al-Sharī'ah,* which was published in Tunis in 1946, I compared his understanding of *maqāṣid* to Sukarno's initial presentation of Pancasila in a speech given on June 1, 1945, just months before Indonesia declared independence from centuries of colonial rule.

It is not the goal of this paper to advocate or endorse Sukarno's ideology of Pancasila. It is beyond the scope of this study to discuss the tremendous flaws in both the articulation and application of Pancasila from its outset to its maintenance and manipulation under Suharto's New Order politics and onward. It is, however, my goal to underscore the significance of the foundational principles and underlying rhetoric that subscribes to a Pancasila-based solution to religious, ethnic, cultural and political diversity within the geopolitical borders of a modern nation-state. In relation to the perennial contemporary challenge of how can Muslims live under jurisdiction of *Sharī'ah* when secular politics and its outwardly secular laws seem to

obstruct Islamic traditions, this paper seeks to rearticulate the principles of Pancasila, namely, the preservation of monotheism, humanitarianism, unity, consultative democracy and social justice, as contemporary manifestations of *maqāṣid al-Sharī'ah*, the higher objectives and intentions of divine law. In doing so, it is hoped that Muslims and non-Muslims alike may assent to goal-oriented lawmaking and politics rather than merely supporting or rejecting traditional *Sharī'ah*-based approach. Moreover, this *maqāṣid*-based approach allows for reform within Islamic jurisprudence as well. The primacy of *maqāṣid* does not imply the dismissal of *usūl al-fiqh*, but rather, it helps guide the *usūl* to adapt to new conditions. Kamālī adds that, "the effort now to give great significance to *maqāṣid* should enable us to discard a ruling, say, of *qiyās* or of *fatwā* and *ijtihād*, if it is in disharmony with the overriding goals of Sharī 'ah, even if it appears to be technically sound and in conformity with prescribed legal procedures."[46]

In other words, the heart of the matter in the debate on whether or not a community or nation-state should apply *Sharī'ah* law misses the point of *Sharī'ah* entirely. By stepping back from intricacies of traditional *usūl al-fiqh* and viewing Islamic law in the context of the bigger picture, that is, its intents and objectives, then it should follow that laws and policies in accordance with the *maqāṣid* do, in fact, abide by *Sharī'ah* law itself. The Indonesian Pancasila provides us a practical framework for conforming to *maqāṣid al-Sharī'ah* in a modern socio-political context. It represents a blueprint for interreligious cohabitation without resorting to either explicit secularization or Islamization. Rather, it reflects the reality of a diverse nation with shared goals for prosperity in the present and in the hereafter. In other words, a *maqāṣid*-based nation-state, such as Indonesia, exhibits an alternative to theocracy and secular democracy. It is a religious state – one that functions in accordance with trans-religious ideals. []

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[46] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd rev. and enl. ed. (Cambridge, UK: Islamic Texts Society, 2003), p. 517.

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