



Maqasid Al-Shariah (The Higher Objectives of Islamic Law) of the Judiciary: Exploring the Malaysian Syariah Legal Perspective

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ABSTRACT

The objectives of Islamic law are important in decision-making because they promote mature and analyse ijtihad. Whoever grasps the essential principle and gains skill in it has substantial knowledge. Understanding Islamic law's objectives also helped judges and lawyers properly examine Islamic legal documents and draw correct findings. The goal of this qualitative study was to find instances of Maqasid Syariah in Islamic law relating to the judiciary in general, as well as Syariah law in Malaysia. This study also sought to address the question, "What are the higher purposes of Islamic judicial law?" This research used Glenn A. Bowen's document analysis approach. The findings of this study revealed that Islamic judicial law has distinct objectives. This study identified six key aims in Islamic judicial law by referring to 150 primary and secondary sources. Each of the indicated higher purposes, according to the researchers' findings, is obtained from authority acquired from the Qur'an, hadith, or athar in regard to the Islamic judicial system. The researchers discovered that all six of these higher objectives are interconnected and complimentary. In truth, there are numerous more higher objectives in Islamic judicial law that have been acknowledged and analyzed by earlier and contemporary scholars, but which were not disclosed and explored in this study. Researchers would want to provide some opportunity for other researchers to further their inquiries into this area. It is sufficient for researchers to publish this work as part of an academic contribution on the issue of higher goals of Islamic law, especially those related to Islamic judicial law. The study of higher purposes in Islamic law, particularly Islamic judicial law, is expected to grow in the future.



Introduction

The majority of earlier jurists from the Maliki (al-Qarāfi, 1994; Ibnu Farhūn, 2016; Ibnu Rāshid al-Qafṣī, 2007), Syafi'i (al-Minhājī al-Asyūfī, 2011; al-Nawawī, 1991; Ibnu Abi al-Dam, 1982; Ibnu al-Qāṣ, 1989; Jalāluddin al-Suyūfī, 2020), and Hanbali schools (Abu Ya'ālā al-Farrā', 2000; Ibnu al-Simnānī, 1984), as well as few from the Hanafi school (al-Marghinānī, 1996; Ibnu al-Humām, 2003), insisted on judges being competent of ijtihad. Many modern intellectuals concur with this assertion and have written about it extensively (Daud, 2011; Ibnu 'Ashūr, 2016; Ismail, 2013; Muhammad al-Zuhaylī, 2002; M. R. Othman, 1994; Wahbah al-Zuhaylī, 2017; Zaydān, 2011). In fact, al-Khaṭīb al-Shirbīnī maintains that a judge's competence to use ijtihad in certain circumstances satisfies the adequate criteria of ijtihad. As he explained in *Mughnī al-Muḥtājī ilā Ma'rifati Ma'ānī Alfāzi al-Minhājī*:

يجوز أن يتبع الاجتهاد بأن يكون العالم مجتهداً في باب دون باب، فيكفيه علم ما يتعلق
بالباب الذي يجتهد فيه .

Translation: A person who is knowledgeable only about one issue is permitted to conduct ijtihad on that particular issue, even though he is ignorant of other issues. (al-Khaṭīb al-Shirbīnī, 2000, p. 265)

This demonstrates that judges are regarded as mujtahids (Jalāluddin al-Suyūfī, 2020). As a mujtahid, the judge must comprehend the objectives of Islamic law to understand the meaning of the law better and issue appropriate decisions (al-Bakri, 2014; al-Qaraḍāwī, 2008; al-Raysūnī, 2009, 2010, 2014, 2016; Khunain, 2010; Nuruddin al-Khādimī, 2000, 2002, 2005; Wahbah al-Zuhaylī, 2013).

The objectives of Islamic law are significant in the formulation and decision-making process, as they serve as a tool for the maturation and assessment of ijtihad. Whoever grasps the fundamental concept and develops expertise in it would be considered among individuals with solid knowledge. Afterwards, he will have no difficulty obtaining the judgements and determining them with total clarity.

At this juncture, Shaykh al-Islam Taqiyyuddin al-Subkī (d. 756AH/1355CE) provided the following remarks:

واعلم أن كمال رتبة الاجتهاد تتوقف على ثلاثة أشياء... الثالث: أن يكون له من الممارسة
والتتبع لمقاصد الشريعة ما يُكسبه قوةً يفهم منها مراد الشرع من ذلك

Translation: And bear in mind that the complete stature of ijtihad is based on three factors: ... Thirdly: That he should be practising and adhering to the objectives of Islamic law, as this would provide him the strength he needs to grasp what is the intention of the legislature by legislating such provision. (Taqiyyuddin al-Subkī & Tājuddīn al-Subkī, 2004, pp. 17-18)



Furthermore, al-Shāṭibī had a similar perspective when he made the following input, reminding us of the importance of learning about, practising, and adhering to the objectives of Islamic law:

فإذا بلغ الإنسان مبلغاً، فهم عن الشارع فيه قصده في كل مسألة من مسائل الشريعة، وفي كل باب من أبوابها فقد حصل له وصف هو السبب في تنزله منزلة الخليفة للنبي صلى الله عليه وسلم في التعليم والفتيا والحكم بما أراه الله.

Translation: A person knows the Lawgiver's intent in every topic and chapter of Islamic law when he reaches a particular degree. When he reached this point, it became clear to him that he had the qualifications to be the Prophet's successor in terms of teaching, issuing Syariah rulings, and adjudicating between people, as guided by Allah. (al-Shāṭibī, 2017a, p. 46)

The one who judges individuals seems to wander and make countless mistakes without acknowledging, standing on, or considering Islamic law's objectives. Khunain (2010) further asserts that such an individual would take bits of Islamic law while destroying the rest, until all that actually counts is what appears to him. He exploits it in his legal judgement without knowing what it means or what it signifies. According to al-Shāṭibī (2017a), this is owing to a poor understanding of the objectives of Islamic law, as well as a burning desire to perform ijtihad as quickly as possible.

Also noteworthy is that Abū al-Ma'ālī al-Juwaynī (d. 478H/1085CE) has emphasised the importance of Islamic law's objectives in grasping Islamic legal texts, which he believes is a critical component of understanding Islamic law. He said the following:

ومن لم يتفطن لوقوع المقاصد في الأوامر والنواهي فليس على بصيرة في وضع الشريعة

Translation: Whoever is unaware of the objectives inherent in Syariah commandments and prohibitions lacks a clear and accurate prospect of Islamic law. (Abū al-Ma'ālī al-Juwaynī, 1997, p. 101)

As an additional point of reference, Shah Waliyullah al-Dehlawī (d. 1176AH/1762CE) reaffirmed the same argument by saying the following:

وأولى العلوم الشرعية عن آخرها – فيما أرى – وأعلاها منزلة، وأعظمها مقدارا، هو علم أسرار الدين الباحث عن حكم الأحكام وملياتها، وأسرار خواص الأعمال ونكاتها. فهو – والله – أحق العلم بأن يصرف فيه من أطاقه نفائس الأوقات، ويتخذة عدة لمعاده، بعدما فرض عليه من الطاعات؛ إذ: به يصير الإنسان على بصيرة فيما جاء به الشرع.

Translation: The preeminent among the Islamic legal sciences, and, in my opinion, the paramount in ranking and values, is knowledge of the inner meanings of religion, which enquires into the wise principles that underpin the rulings, their reasoning, and the secrets of the attributes and fine points of acts.



This, I swear to Allah, is the most deserving of the branches of knowledge in which the qualified individual may invest his precious moments. He may regard it as a provision for his resurrection following the performance of the prescribed acts of worship, because this knowledge enables the human being to gain insight into what the divine law has commanded. (Shah Waliyullah al-Dehlawi, 2012b, pp. 36-37)

It is clear from the above-mentioned excerpts that grasping Islamic law's objectives is essential for judges and lawyers to appropriately evaluate Islamic legal materials and make accurate conclusions from them.

Literature Review

Only a small number of research-related studies have been published in academia that could be found and used for review. This demonstrates a paucity of studies on Maqasid Syariah in relation to Syariah law in the Malaysian judiciary. Additionally, a similar finding emerged in research undertaken by Aziz (2016), who discovered that no publication relating the Malaysian Federal Constitution and Maqasid Syariah had ever been produced. Moreover, the outcomes of research done by Abdullah (2020) support this deduction. His research notes a dearth of literature on Maqasid Syariah within the setting of Syariah law in Malaysia; by contrast, the topic is more concentrated within the context of the Islamic financial system in Malaysia. Furthermore, he said that to improve the quality and credibility of Islamic legal institutions, the factors that lead to this need to be examined and addressed properly.

The existence of various publications on Malaysian Shariah law is undeniable. Among them are the following: Some of the studies that have been identified include the study conducted by Sulaiman and Buang (2021) on the application of Practice Directions that correspond with Maqasid Syariah, the study conducted by Ahmad, Ismail, and Mokhtar (2021) on the Maqasid Syariah perspective in preserving family institution, and the study conducted by Dahalan, Junaidi, Rahman, Dahlan, and Yahya (2021) on disciplinary proceedings for Syariah lawyers at the Syariah Courts, the study conducted by Nasri (2018), Halim, Zainal, and Abidin (2018), as well as Majid (2015) on the application of Maqasid Syariah in the Act 355 amendment proposal, the study conducted by Yaakob et al. (2020) on the administration of estates in Malaysia from both a legal and Maqasid Syariah perspective, the study conducted by Hassim and Sholehuddin (2019) on the role of religious officers within the framework of Maqasid. However, none of these studies particularly address the Maqasid Syariah in the judiciary, even though these subject warrants attention.

Fuziah Salleh, a former Deputy Minister in the Prime Minister's Department, stated on 22 October 2019 that Syariah Court judges must ensure that every consideration of the case they handle takes into account aspects of the higher objectives of Islamic law (Anwar, 2019); so that the judgment made can achieve justice and give rights to those who are entitled. Syarie judges, she believes, must use caution while passing verdicts. Both parties' submissions are taken into account, but the Maqāṣidic mindset as defined by Islamic law must also be met. A thorough comprehension of the higher objectives of Islamic law is required for the administration of Syariah judicial and legal institutions, judgments, and legislation (Anwar, 2019). This is because the higher objectives



of Islamic law are not only susceptible to judgment in the Syariah Court but may also be used as a fundamental value in shaping each ministry's policy.

Research Methodology

This qualitative research aimed to identify instances of Maqasid Syariah in Islamic law related to the judiciary from a general perspective, as well as in Syariah law in Malaysia. In addition, this study was conducted to answer the following research question: "What are the higher objectives of Islamic judicial law?" This study employed the document analysis approach developed by Glenn A. Bowen to achieve its objective. According to the most recent citation figures, a total of 2,264 scientific publications were published in Scopus-indexed journals. In contrast, 10,225 were published in Google Scholar-indexed journals, all of which cited and employed the document analysis approach developed by Bowen (2009). This fact demonstrates that Bowen's document analysis methodology has been recognized and applied by a large number of scholars worldwide.

According to Glaser and Strauss (2006), Badruddin al-Ghazzī (2009), Merriam (2009), Bryman (2012), Ibnu Jamā'ah al-Kinānī (2012), Patton (2014), Bryman and Bell (2015), al-Shāṭibī (2017c), and Azungah (2018), documents have always been viewed as important sources of information for qualitative research. They contain words and pictures captured without the assistance of a researcher or a team of researchers (Azungah, 2018; Bowen, 2009). Documents are also the *raison d'être* of document analysis (Bowen, 2009; Chinedu & Mohamed, 2017; Lawson, 2018; Prior, 2008; Viswambharan & Priya, 2016). This approach is a methodological approach to assessing and evaluating documents—both printed and electronic—in a methodical manner (Bowen, 2009; Merriam, 2009). It may be employed as a stand-alone methodology or in tandem with other established research methods (Ahmed, 2010; Bowen, 2009; Chinedu & Mohamed, 2017), and for the purposes of this study, it is utilized as a stand-alone method with reference to a variety of primary and secondary documents of various categories.

Documents may be primary or secondary, depending on the source (Merriam, 2009; Walsh, 2014). A primary document is original in character or has been gathered for the first time. If someone else gathers the document and statistically or analytically processes it, it is a secondary document. This study has gathered data from both sorts of documents. The Quranic scriptures, Prophetic traditions, statutory legislation, prominent Islamic law textbooks, and Syariah case reports were employed as main sources. The secondary sources included textbooks and journal articles on Islamic judicial law and Malaysian Syariah law. With regard to the Islamic law textbooks, this study applied the recommended textbooks as suggested by the following prominent contemporary scholars and researchers:

- Ali Jum'ah (2017), in his *al-Kutubu al-Mukawwinatu lil-Fikri al-Islāmiyyi as-Sunniyyi*, provided a list of the important references in Islamic studies encapsulate various disciplines.
- Muhammad al-Zuhaylī (2010), in his *Marji' al-'Ulūmu al-Islāmiyyatu*, provided a list of essential references in Islamic studies that include a wide range of disciplines.
- Muhammad al-Zuhaylī (2002), has provided 58 essential classical and modern sources in Islamic judiciary in his *al-Tanzīmu al-Qadā'i fi al-Fihi al-Islāmī*.
- Humaysh (2007), in his *Qadāyā Fiqhiyyatu Mu'aşirati*, provided 112 important references from classical to modern books which can address the emergent issues.



- Khunain (2010), in his *al-Madkhal ilā Fiqhi al-Murāfa'āti*, listed 31 essential and relevant classical references in Islamic judiciary from four main schools of Islamic jurisprudence.
- al-Hamad (2005), in his journal article entitled *al-Kutubu al-Mu'allafatu fī al-Qaḍā'i wat-Tawsīqi wan-Nawāzil*, enumerated 207 notable references from classical and modern documents within the corpus of Islamic judiciary.

Based on the proposals mentioned above, the researcher identified documents that are highly relevant to the subject under study. The researcher acquired and combined primary and secondary source materials. The researcher chose primary textbooks from traditional Islamic writings that are highly related to the study issue. In contrast, supplementary textbooks comprise classical and current Islamic writings that enhance the facts in the primary document. When examining current or emerging issues in Islamic law, Islamic jurists promote the use of primary and secondary sources. Professors Yusuf Qaradawi and Ali Jum'ah are two current Islamic jurists who support this approach (al-Qaraḍāwī, 2013a, 2013b; Ali Jum'ah, 1996, 2009). Since the primary document discusses principles and theories but not current context and reality (al-Qaraḍāwī, 1998, 2013a; al-Shāṭibī, 2017c; Ali Jum'ah, 2009), the secondary document is needed to apply principles and theories to current reality (Khunain, 2003, 2018).

As Bowen (2009) demonstrated, document analysis entails skimming, reading, and interpretation. This iterative technique combines content and thematic analysis components. Content analysis is the process of categorizing data in relation to the research's central questions (Elo & Kyngäs, 2008; Erlingsson & Brysiewicz, 2017; Krippendorff, 2004). It comprises a first-pass evaluation of documents in which significant and relevant portions of text or other data are identified (Bengtsson, 2016; Elo et al., 2014; Erlingsson & Brysiewicz, 2017; Vaismoradi, Turunen, & Bondas, 2013). Meanwhile, thematic analysis is a technique for identifying patterns within data, with emergent themes serving as the categories for study (Bowen, 2009; Joffe & Yardley, 2004; Vaismoradi et al., 2013). Thematic analysis entails a more thorough, concentrated re-reading and examination of the data (Castleberry & Nolen, 2018; Nowell, Norris, White, & Moules, 2017; Vaismoradi et al., 2013).

Findings and Discussion

This research demonstrates that Islamic judicial law has distinct goals. This research identified six fundamental objectives in Islamic judicial law by reviewing 150 documents, including both primary and secondary sources. As aforementioned, the successfully identified objectives include adjudicating on all dispute matters based on evidence and truth, upholding justice, expediting the trial process, ending hatred and hostility by resolving the dispute, facilitating and mitigating difficulties, and avoiding suspicion against the judges. This finding fulfilled the research objective of "identifying instances of Maqasid Syariah incorporated in Islamic law relating to the judiciary from a general standpoint, as well as Syariah law in Malaysia". Furthermore, this finding answers the research question, "What are the higher objectives of Islamic judicial law?"



The following Figure 1 summarises the study's findings:

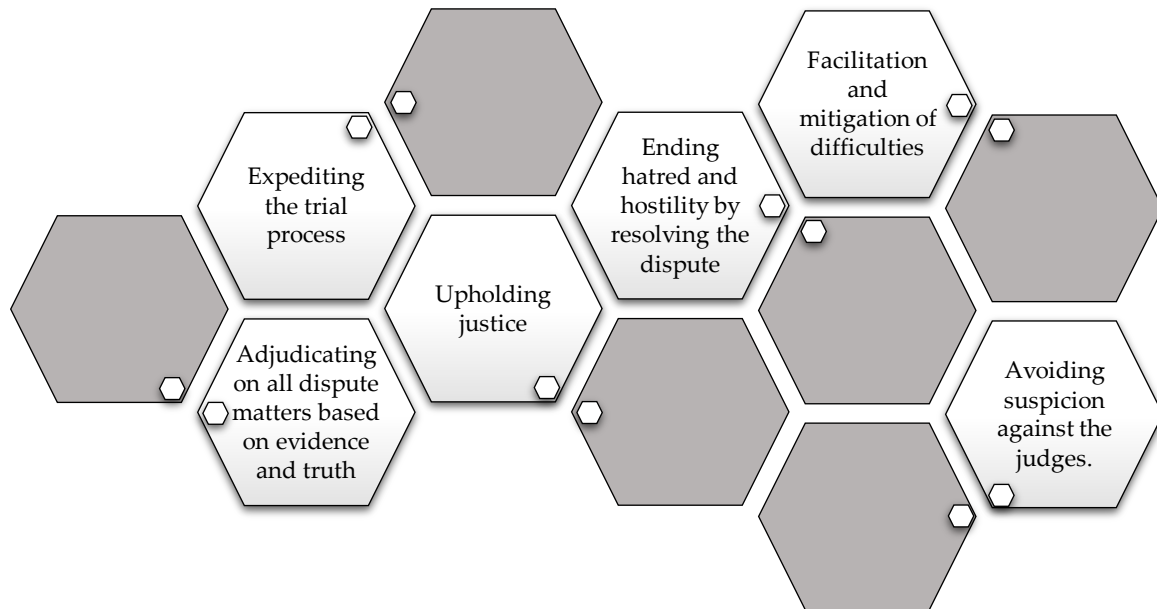


Figure 1: The higher objectives in Islamic judicial law

Perspectives of Eminent Islamic Jurists on The Higher Objectives of Islamic Judicial Law

In their publications, classical and contemporary scholars have articulated some of the fundamental wisdom inherent in Islamic judicial law. Some extracts from their remarks were included below to provide a preliminary impression of the objective of Islamic law in the establishment of a judicial system.

In his *Qawā'idu al-Ahkāmi fi Iṣlāhi al-Anāmi*, al-'Izz Ibni Abdissalam has made the following remarks in relation to the wisdom inherent in Islamic judicial law:

الغرض من نصب القضاة إنصاف المظلومين من الظالمين، وتوفير الحقوق على المستحقين، والنظر لمن يتعذر نظره لنفسه، كالصبيان والمجانين والمبذرين والغائبين، فلذلك كان سلوك أقرب الطرق في القضاء واجبا على الفور، لما فيه من إيصال الحقوق إلى المستحقين، ودفع المفساد عن الظالمين والمبطلين. وقد تقدم أن الأمر بالمعروف والنهي عن المنكر واجبان على الفور، وأحد الخصمين ههنا ظالم أو مبطل، وتجب إزالة الظلم والباطل على الفور، وإن لم يكن آثما بجهله، لأن الغرض إنما هو دفع المفساد، سواء كان مرتكبا آثما أو غير آثم.



Translation: The appointment of judges is intended to deliver justice to those who have been oppressed by their oppressors, to pass over rights to those who deserve them, and to care for those who are unable to care for themselves, such as children, insane persons, excessive spenders, and missing individuals. As a result, it is immediately obligatory to follow the shortest path of justice because it entails securing rights for those who deserve them while also preventing harm from oppressors and a nullifier. So, even if the nullifier does not get sin due to his ignorance, it is immediately obligatory to remove his oppression or falsehood. The purpose is to prevent the harm regardless of whether the doer gets sin or not. (al-‘Izz Ibni Abdissalam, 2020, p. 77)

In the meantime, Ibnu Farḥūn (d. 799AH/1397CE) in *Tabṣiratu al-Ḥukkāmi*, al-Tarābulusi (d. 844AH/1440CE) in *Mu‘īnu al-Ḥukkāmi*, and Abdul Karim Zaydān in *Nizām al-Qaḍā’* have pointed out the following remarks:

وأما حكمته: فرفع التهاجر ورد النوائب وقمع الظالم ونصر المظلوم وقطع الخصومات والأمر بالمعروف والنهي عن المنكر.

Translation: As for the underlying wisdom of the judiciary: it lifts frivolity, repels disasters, subdues the oppressor, aids the downtrodden, puts an end to conflicts, and encourages good as well as prohibits evil. (al-Tarābulusi, 2018, p. 113; Ibnu Farḥūn, 2016, p. 117; Zaydān, 2011, pp. 18-19)

The above statement seems to be similar to the statement given by Ibnu Qudāmah (d. 620AH/1223CE) in *al-Mughnī*, where he once stated as follows:

ولأن فيه أمرًا بالمعروف، ونصرة المظلوم، وأداء الحق إلى مستحقه، وردًا للظالم عن ظلمه، وإصلاحًا بين الناس، وتخليصًا لبعضهم من بعض

Translation: Because in judiciary, it encourages good, aids the downtrodden, restores the rights to their rightful owners, refutes the oppressor from his wrongdoing, reconciles people, and liberates them from one another. (Ibnu Qudāmah, 1997, p. 5)

Ibnu Taimiyyah has also elucidated the purpose of judiciary in his *Majmū‘ al-Fatāwā* as follows:

المقصود من القضاء وصول الحقوق إلى أهلها وقطع المخاصمة. فوصول الحقوق هو المصلحة وقطع المخاصمة إزالة المفسدة. فالمقصود هو جلب تلك المصلحة وإزالة هذه المفسدة.

Translation: The judiciary’s goal is to return rights to their rightful owners and put an end to disputes. Giving the right serves the interest, and ending disputes removes the harm. The objective is to generate interest while removing the harm.” (Ibnu Taimiyyah, 1995, p. 355)



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According to Ibnu Daqīq al-ʿId (d. 702AH/1302CE), one of the prominent *mujtahids* during his time, in his *Iḥkām al-Aḥkāmī*:

والمقصود الأكبر في القضاء: إيصال الحق إلى مستحقه.

Translation: The primary purpose of the judiciary is to deliver the right to the party who deserves it. (Ibnu Daqīq al-ʿId, 1987, p. 209)

Meanwhile, Shah Waliyullah al-Dehlawī described the underlying wisdom of the judiciary in his *Hujjatullahi al-Bālighah* as follows:

اعلم أن من الحاجات التي يكثر وقوعها، وتشتد مفسدتها المناقشات في الناس، فانها تكون باعثة على العداوة والبغضاء، وفساد ذات البين، وتهيج الشح على غمط الحق، وألا ينقاد للدليل، فوجب أن يبعث في كل ناحية من يفصل قضاياهم بالحق، ويقهرهم على العمل به، أشاؤوا أم أبوا؛ ولذلك كان النبي صلى الله عليه وسلم يعنى ببعث قضاة اعتناء شديدا، ثم لم يزل المسلمون على ذلك.

Translation: Human disputes result in a range of negative consequences, including hatred, harm to good relationships, greed, rejection of the truth, and denial of evidence. Thus, each district requires a judge capable of reaching an accurate decision. Rasulullah SAW ensured this by appointing judges in each state. This is the strategy used by subsequent Muslims. (Shah Waliyullah al-Dehlawī, 2012a, p. 505)

Analysing the above-mentioned excerpt, it is actually having similar concern with what have been elucidated by al-Damīrī (d. 808AH/1405CE) in *al-Najmu al-Wahhāj*, Ibnu Hajar al-Haitamī (d. 974AH/1567CE) in *Tuhfatu al-Muhtāji*, al-Khaṭīb al-Shirbīnī (d. 977AH/1570CE) in *Mughnī al-Muhtāji*, and Syamsuddin al-Ramlī (d. 1004AH/1596CE) in *Nihāyatu al-Muhtāji* when they were explaining the wording of al-Nawawī (d. 676AH/1277CE) in *Minhāju aṭ-Ṭālibīn*, they said:

ولأن طباع البشر مجبولة على التظالم ومنع الحقوق وقل من ينصف من نفسه، ولا يقدر الإمام على فصل الخصومات بنفسه فدعت الحاجة إلى تولية القضاء.

Translation: Human beings are by their own nature inclined to oppress and deny rights, and it is quite unusual for a person to be able to awaken them. At the same time, the Ruler is unable to settle the dispute on his own. As a result, he is in desperate need of someone willing to devote his time to settling disputes. For this reason, the judges were appointed. (al-Damīrī, 2004, p. 137; al-Khaṭīb al-Shirbīnī, 2000, p. 258; Ibnu Hajar al-Haitamī, 2016, p. 412; Syamsuddin al-Ramlī, 2003, p. 236)



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As for Ibnu 'Ashūr (d. 1393AH/1973CE), he provided the following remarks with regard to the objectives of Islamic law for the whole judiciary:

ومقصد الشريعة من نظام هيئة القضاء كلاً على الجملة أن يشتمل على ما فيه إعانة على إظهار الحقوق وقمع الباطل الظاهر والخفي.

Translation: To put it another way, the goals of Islamic law for the whole judiciary are that it should contain everything that contributes to the discovery of truth and the elimination of falsehood, whether it is visible or concealed. (Ibnu 'Ashūr, 2016, p. 520)

Additionally, Abu Bakar al-Ḥadād (d. 800AH/1397CE) in *al-Jawhar an-Nayyirah* as well as Abdul Ghani al-Midānī (d. 1298AH/1881CE) in his seminal book *al-Lubābu fī Sharḥi al-Kitāb*, have explicated the judiciary's objectives as follows:

القضاء أمر من أمور الدين، ومصلحة من مصالح المسلمين، تجب العناية به؛ لأن بالناس إليه حاجة عظيمة

Translation: The judiciary is a religious affair that is concerned with the well-being of Muslim citizens. As a result, it requires attention since human beings are in desperate need of it. (al-Ḥadād, 2006, p. 546; al-Midānī, 2014, p. 168)

Meanwhile, Wahbah al-Zuhaylī and Muhammad al-Zuhaylī, both prominent contemporary scholars, have noted the judiciary's underlying purpose in their works. Wahbah Zuhayli has given his remark in *al-Fiqhu al-Islāmiyyu wa-Adillatuhu* as follows:

وحكمة تشريعه: حاجة الناس إليه لفض منازعاتهم، وتوفير مصالحهم، ورعاية حقوقهم، ومنع الظلم والتظالم، ومحاربة الأهواء.

Translation: And the judiciary's underlying wisdom: Something that is absolutely important for human beings to settle their numerous conflicts and disagreements, to ensure their welfare, to safeguard their rights, to avoid tyranny and acts of mutual oppression, and to combat their lust. (Wahbah al-Zuhaylī, 2017, p. 645)

As for Muhammad al-Zuhaylī, he mentioned in his *Tārīkhu al-Qaḍā'i fī al-Islāmi* as follows:

ويهدف القضاء إلى إقامة العدل، وتحقيق القسط، وحفظ الحقوق والأموال والأنفس والأعراض، وحماية الحقوق العامة، وتطبيق أحكام الشرع وآدابه، وقيم حدود الله تعالى، ويصون القيم والأخلاق، ويمنع العدوان والظلم والبغي بمختلف أشكاله وصنوفه.



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Translation: The judiciary seeks to establish justice, achieve equity, protect rights, wealth, souls, and dignity, protect public rights, apply Islamic law and etiquette, stay within Allah's predetermined boundaries, preserve values and morals, and prevent aggression, injustice, and oppression in all of its forms and manifestations. (Muhammad al-Zuhaylī, 2016, pp. 13-14)

In *al-Tanzīmu al-Qadā'ī fī al-Fiqhī al-Islāmī*, another of his prominent works, Muhammad al-Zuhaylī wrote the following opinion:

إن الهدف الذين وجد من أجله القضاء في الإسلام، والمقصد الذي يسعى إليه، هو تحقيق العدل، وإقامة القسط، وحفظ الحقوق، واستتباب الأمن، والمحافظة على الأنفس والأموال، ومنع الظلم والطغيان، وإقامة الحدود والأحكام، والأخذ على يد الجناة ومعاقبتهم على ما جنت أيديهم، بهدف منعهم من العودة إلى مثل هذا العمل الممنوع المحرم، وزجر غيرهم من الإقدام على مثل ذلك، فالعاقل من اتعظ بغيره.

Translation: The purpose for which justice was legislated in Islam, and the objective for which it seeks, is to achieve justice, establish equity, preserve rights, maintain security, safeguard lives and property, prevent oppression and tyranny, enforce Allah's boundaries and Islamic rulings, and arrest and punish the perpetrators for their criminal actions, with the intention of preventing them from relapsing into such forbidden work and reprimanding others from doing the same. (Muhammad al-Zuhaylī, 2002, p. 25)

The assertions made above represent some of the perspectives of eminent jurists, both classical and contemporary, on the higher objectives of Islamic judicial law.

The higher objectives of Islamic judicial law and their implementation in Malaysian Syariah law

This part will go through in depth each of the six higher objectives of Islamic judicial law that were identified in the previous section.

i. Adjudicating on all dispute matters based on the evidence and truth

One of the higher objectives of Islamic judicial law is to reach a decision based on the truth (al-‘Izz Ibnī Abdissalam, 2020; al-Ṭarābulusī, 2018; Ibnu ‘Ashūr, 2016; Ibnu Farḥūn, 2016; Ibnu Qudāmāh, 1997; Ibnu Taimiyyah, 1995). This higher objective, according to Ibnu ‘Ashūr (2016), has been understood from the following Prophetic tradition that has been agreed upon by al-Bukhārī (d. 256AH/870CE) and Muslim (d. 261AH/875CE):



عَنْ أُمِّ سَلَمَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - : إِنْ كُنْتُمْ تَخْتَصِمُونَ إِلَيَّ، وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ الْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ، فَأَقْضِي لَهُ عَلَى نَحْوِ مِمَّا أَسْمَعُ، مِنْهُ فَمَنْ قَطَعْتُ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئًا، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ

Translation: On the authority of Umm Salamah (May Allah be pleased with her), she said: Allah's Messenger (May the peace of Allah and His blessings be upon him) said: "Indeed, you bring your disputers to me, and perhaps some of you are more eloquent in their plea than others, so that I give judgement on their behalf according to what I hear from them. Therefore, whatever I rule for anyone who by right belongs to his brother, I am only granting him a portion of Hell-fire." (Reported by: Malik (2013), no. 1470; al-Shāfi'ī (2004b) no. 1470; no. 1689 & 1690; al-Bukhārī (2018), no. 7169; Muslim (2016), no. 1713; Abu Dāud (2013), no. 3583; Ibnu Majah (2009), no. 2317; al-Tirmidhī (2011), no. 1339; and al-Nasā'ī (2014), no. 5401)

Based on his understanding, Ibn Ashur highlighted that this tradition illustrates numerous critical issues, including that there are several approaches to arriving at the truth. It also shows that the ideal approach for a judge is one that allows him to find the truth, which he can determine based on the evidence available to him at the time of trial. Finally, this tradition demonstrates unequivocally that disputing parties must give evidence of their rights and that deceit is a sin that will result in perdition and Hellfire.

Apart from that, Islam has also made it a duty for judges to examine all evidence that points to the truth as thoroughly as they can. At this juncture, Ibnu 'Ashūr (2016) has explained the following:

فيجب على الحاكم أن يستقصي وجوه الحجج المبيّنة للحق بقدر ما يستطيع ولو بالوصول إلى حفظ بعض الحقوق دون بعض، فإنّ حفظ البعض خير من ضياع الكل.

Translation: As such, it is the judge's responsibility to investigate as thoroughly as possible all of the pieces of evidence that point to the truth, even if doing so results in the protection of only certain rights at the expense of others; after all, safeguarding some rights is preferable to losing them all altogether. (Ibnu 'Ashūr, 2016, p. 521)

This is based on a true narrative from the time of the Prophet David and Solomon. This narrative was recounted by the Messenger of Allah (May the peace of Allah and His blessings be upon him) in a hadith narrated from Abu Hurairah (May Allah be pleased with him) that was agreed upon by al-Bukhārī and Muslim:

عن أبي هريرة - رضي الله عنه: أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: كَانَتْ امْرَأَتَانِ مَعَهُمَا ابْنَاهُمَا، جَاءَ الذِّئْبُ فَذَهَبَ بِأَبْنٍ إِحْدَاهُمَا. فَقَالَتْ لِصَاحِبَتِهَا: إِنَّمَا ذَهَبَ بِابْنِكَ،



وقالت الأخرى: إِنَّمَا ذَهَبَ بِإِثْنِكِ، فَتَحَاكَمَا إِلَى دَاوُدَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَضَى بِهِ
لِلْكُبْرَى، فَخَرَجَتَا عَلَى سُلَيْمَانَ بْنِ دَاوُدَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَتَاهُ. فَقَالَ: ائْتُونِي
بِالسِّكِّينِ أَشُقُّهُ بَيْنَهُمَا. فَقَالَتِ الصُّغْرَى: لَا تَفْعَلْ! رَحِمَكَ اللَّهُ، هُوَ ابْنُهَا. فَقَضَى بِهِ لِلصُّغْرَى

Translation: On the authority of Abu Hurairah (May Allah be pleased with him): The Messenger of Allah (May the peace of Allah and His blessings be upon him) said: "There were two women; each had her child with her. A wolf came and took away the child of one of them. One woman said to her companion: 'The wolf has taken your son.' The other said: 'It has taken your son.' So both of them took the dispute to Prophet David (May the peace of Allah and His blessings be upon him), who judged that the boy should be given to the older lady. Then they went to Prophet Solomon (May the peace of Allah and His blessings be upon him), son of David, and put the case before him. Prophet Sulaiman said: 'Give me a knife so that I may cut the child in two and give one half to each of you.' The younger woman said: 'Do not do so; may Allah bless you! He is her child.' On that, Prophet Sulaiman decided the case in favour of the younger woman. (Reported by: al-Bukhārī (2018), no. 3427 and Muslim (2016), no. 1720)

Only via the evidence of the conflicting parties can truthful judgement be achievable. This demonstrates the importance of evidence in every court proceeding (Abu Ya' lā al-Farrā', 2000; al-Māwardī, 2006; al-Qarāfi, 1994; Mayanja, 2017; Muhammad, 2001; Nasohah, 2006; Nurullah, 2019; M. S. A. Othman, 1996; Saifuddin, Shariff, Said, & Yahya, 2021; Tajuddin & Rahman, 2021). Even Syarie judges emphasised the value of evidence in court trials in cases such as *Juliah Abdullah v. Omar Charles Abdullah* [2011] 1 CLJ (Sya) 307, *Ahmad @ Ahmad Zukni bin Johari lwn. Rosnah binti Esahak* [2009] 28(2) JH 163, and *Faridah bt Ahmad v. Hairunajib bin Mohd Mansor* [2017] 4 ShLR 27.

As a result, jurists have reached a consensus that every prosecution or claim made by the parties must be substantiated by evidence (al-Baghawī, 1983; Ibnu al-Mundhir, 1999; Ibnu al-Qās, 1989; Ibnu al-Qayyim al-Jawziyyah, 2019a; Ibnu Hubairah, 2002; Ibnu Rushd al-Hafid, 1994). This is based on the Prophet's hadith:

عن ابن عَبَّاسٍ - رضي الله عنهما - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: لَوْ يُعْطَى
النَّاسُ بِدَعْوَاهُمْ، لَادَّعَى رِجَالٌ أَمْوَالَ قَوْمٍ وَدِمَاءَهُمْ، لَكِنِ الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ
أَنكَرَ.

Translation: On the authority of Ibn Abbas (may Allah be pleased with him), that the Messenger of Allah (peace and blessings of Allah be upon him) said: "Were people to be given everything that they claimed, men would [unjustly] claim the wealth and lives of [other] people. But the onus of proof is upon the claimant, and the taking of an oath is upon him who denies".

(Reported by: al-Baihaqī (1991), hadith no. 20248, 20251 & 20253)



Similarly, Rasulullah taught Ali this when he wished to send him to Yemen (al-Nubāhī, 1995; Muhammad al-Zuhaylī, 2016; Waki', 1947). He told Ali to listen to and consider about all the evidence and arguments that both parties had to offer before making a decision:

عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِذَا تَقَاضَى إِلَيْكَ رَجُلَانِ فَلَا تَقْضِ لِلأَوَّلِ حَتَّى تَسْمَعَ كَلَامَ الْآخَرِ، فَسَوْفَ تَدْرِي كَيْفَ تَقْضِي؛ قَالَ عَلِيٌّ: فَمَا زِلْتُ قَاضِيًا بِعَدْلٍ.

Translation: Narrated Ali (May Allah be pleased with him) said: Allah's Messenger (May the peace of Allah and His blessings be upon him) said: "When two men bring a case before you, do not decide in favor of the first till you hear what the other has to say, then you will know how to judge." Ali (May Allah be pleased with him) said: "Since then, I have continued to judge in accordance with that".

(Reported by: Ahmad (2001c), hadith no. 690; Abu Dāud (2013), hadith no. 3582; and al-Tirmidhī (2011), hadith no. 1331)

Because of this, any prosecution or allegation that is not supported by evidence will be rejected without further consideration (Abu al-Walid al-Bājī, 1914; al-Nawawī, 2010b; al-Zurqānī, 2015; Ibnu Abd al-Bar, 2000; Ibnu al-Qayyim al-Jawziyyah, 2019b; Ibnu al-Turkumānī, 1935). Without evidence, the judge will be unable to make a fair judgement, and even if he does, his ruling would be flawed.

In the case of *Ahmad Zukni Johari v. Rosnah Esahak* [2010] 1 CLJ (Sya) 1, in paragraphs 20 to 24 of his judgment, the Syariah appellate court judge stated:

"[20] Kami amat bersetuju bahawa pembuktian di Mahkamah Syariah adalah sesuatu yang patut dilaksanakan oleh semua pihak. Isu ini tidak harus dipertikaikan kerana Islam telah secara jelas menerangkan kepentingan pembuktian di Mahkamah Syariah. Tanpa pembuktian maka kes itu akan pincang dan boleh menyebabkan tohmah terhadap pihak-pihak yang tidak berusaha untuk cuba mencari pembuktian mahupun memberi peluang kepada pihak-pihak untuk membuktikan sesuatu hak.

[21] Namun dalam kes ini, mahkamah perlu meneliti adakah benar dakwaan pemohon bahawa telah berlaku pengabaian dari segi aspek pembuktian oleh hakim Mahkamah Tinggi Syariah. Jika benar berlaku sebagaimana yang didakwa maka memang benarlah juga ianya boleh menimbulkan tohmahan dan seterusnya menimbulkan persoalan mengenai kepentingan awam.

[22] Merujuk kepada Buku Risalah Ahkam oleh Datuk Haji Mohd Saleh Haji Ahmad ms. 47-48 telah diperjelaskan mengenai konsep pembuktian di dalam Islam iaitu:



Hakim tidak boleh mengetahui sesuatu peristiwa atau kes yang bakal dihakiminya dengan meyakinkan kecuali dengan salah satu daripada dua cara ini: Pertama: Melihat sendiri kejadian tersebut, Kedua: Diberitahu kepadanya oleh sekumpulan orang yang tidak mungkin berlaku permuafakatan untuk berbohong (khabar mutawatir)

[23] Beliau turut menambah bahawa sekiranya hakim membataskan sumber pengetahuannya itu kepada dua cara itu sahaja, sudah pasti akan merugikan kepentingan ummah. Oleh itu hakim mempunyai dua pendekatan sebagaimana dinyatakan pada Kitab Wasa'il al-Ithbat al-Syari'ah al-Islamiyyah karangan Muhammad Mustafaal-Zuhayli hlm. 621-622 iaitu:

Pertama: Membataskan maklumatnya kepada dalil qat'i dalam dua keadaan tersebut bagi menegak keadilan mutlaq, tetapi ia membawa kepada pengabaian mendengar bukti yang lain dari kedua-dua cara itu. Ini boleh menyebabkan hilang hak-hak manusia, kucar-kacir dan memporak-perandakan kehidupan bermasyarakat.

Kedua: Memadai dengan bukti zhanni yang rajih, tidak perlu disyaratkan ilmu atau pengetahuan yang qat'i. Namun begitu, ini boleh membawa kepada tersalah ketika melaksanakan hukuman dan keputusan ke atas kes-kes yang didengarinya. Oleh itu, hakim perlu berhati-hati dan cermat dalam memastikan kesahihan bukti yang dikemukakan.

[24] Dari dua pendekatan di atas, Syariat Islam memilih cara yang kedua kerana ia yang terbaik dan boleh mencapai Maqasid Syar'iyyah dan memelihara kepentingan manusia dari hilang begitu sahaja serta boleh mengelak dari kesulitan, kesusahan dan masyaqqah. Justeru itu, syariat Islam mengharuskan penghakiman berdasarkan kesaksian dua orang lelaki yang adil, pengakuan yang dituduh dan sumpahnya, walaupun kemungkinan boleh berlaku pendustaan para saksi, penyelewengan fakta si pengaku dan sumpah palsu, tetapi umumnya aspek kebenaran mengatasi pendustaan."

It is obvious from the aforesaid ruling that all parties should present evidence before the Syariah court. A case without proof is weak and might raise doubt among the litigants. Evidence can help attain Maqasid Syariah by safeguarding human interests and preventing difficulties, hardships, and harm.

In the context of Malaysian Syariah law, this maqasid has been integrated into legislation and several Syariah court rulings. The maqasid's applicability is implicitly reflected in several Arahan Amalan issued by the Department of Syariah Judiciary Malaysia (JKSM), including Arahan Amalan No. 1 of 2001 concerning the code of ethics for Syarie judges and Arahan Amalan No. 4 of 2002 concerning the code of ethics for Syarie lawyers (Department of Syariah Judiciary Malaysia, 2001a, 2002b).

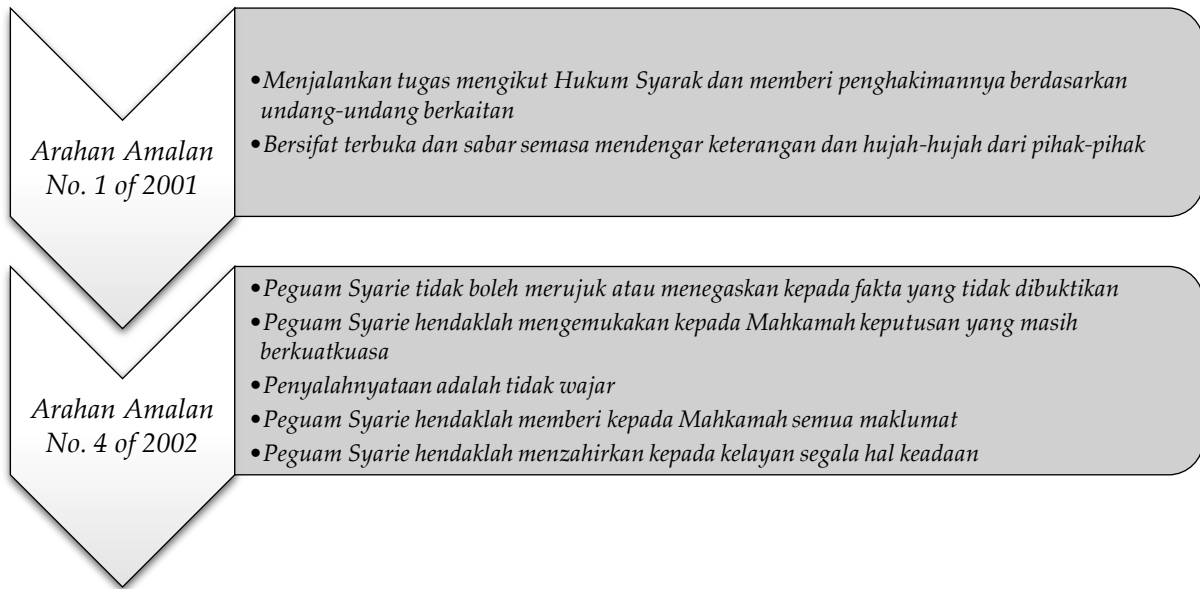


Figure 2: Statutory provisions in Arahan Amalan No. 1 of 2001 and No. 2 of 2002 related to maqasid

Figure 2 above shows two statutory provisions relevant to the maqasid being discussed: making judgements based on truth and making decisions based on evidence. From these two sections of the law, it is clear that both Syarie judges and lawyers are tasked with adjudicating the truth. Both are engaged and play critical roles in ensuring that justice is upheld throughout a conflict.

Then, in the case of *Pendakwa Syarie Pahang v. V V Aboo* [2004] 1 CLJ (Sya) 518, the judge held on pages 521-d to 522-c of his judgment:

Sukacita saya menyatakan di sini bahawa kehadiran peguambela di Mahkamah Syariah ini dibenarkan oleh s. 236 Enakmen Pentadbiran Ugama Islam dan Adat Resam Melayu Pahang No. 8/58. Dari segi kehakiman Islam juga membenarkan kehadiran mereka. Kehadiran mereka (peguam) membawa dua tugas atau tanggungjawab, iaitu:

- i. Membantu perjalanan mahkamah supaya tidak terpesong dari jalan yang benar;*
- ii. Membantu mahkamah dalam usaha menegakkan kebenaran dan keadilan kerana Allah.*

Kebenaran dan keadilan yang dikehendaki oleh Islam ialah yang berasaskan undang-undang Islam. Begitu juga bidang tugas dan tanggungjawab saksi-saksi dalam memberi keterangan; peranan memberikan keterangan bagi menegakkan kebenaran kerana Allah. Jadi tugas kita semua ini adalah termasuk di dalam kandungan Firman Allah sebagaimana yang terdapat dalam Surah An-Nisa Ayat 58 yang bermaksud:- “Sesungguhnya Allah memerintahkan kamu menunaikan amanah kepada yang berhak dan Ia perintahkan apabila kamu menghukum di antara manusia hendaklah



menghukum dengan adil. Sesungguhnya Allah menasihati kamu dengan sebaik-baik perkara kerana Allah Maha Mendengar lagi Maha Melihat”.

Allah juga berfirman dalam Ayat 135 surah yang sama yang bermaksud:- “Wahai orang-orang yang beriman. Jadilah kamu orang yang menegakkan keadilan yang menjadi saksi kerana Allah walaupun terkena atas diri kamu atau kedua ibubapa kamu dan keluarga kamu yang hampir sama ada ia kaya ataupun miskin atau fakir. Maka Allah lebih hampir kepada mereka berdua. Kerana itu janganlah kamu turutkan hatwa nafsu sebab dikhuatiri kamu berpaling dari kebenaran kerana itu kamu putar kesaksian atau kamu berpaling maka sesungguhnya Allah itu Maha Mengetahui apa yang kamu kerjakan”.

Inilah tugas Mahkamah Syariah dan inilah tugas peguam dan inilah tugas saksi-saksi dan inilah tugas kita semua. Kita semua diamanahkan untuk menegakkan kebenaran dan keadilan dan menjadi saksi kerana Allah.”

The Syarie judge in the above-mentioned case emphasized that upholding justice and truth is the major responsibility of the Syariah court, and it is an issue that is already well-known. Additionally, this duty and responsibility is shared not only by the judge but by everyone involved in the trial, including Syarie lawyers. As a result, Syarie lawyers are also accountable for assisting judges in making judgments that are based on the truth.

There is a clear tie and connection between the objective of deciding on the basis of truth and evidence and the subsequent objective of achieving access to justice. This is because only by evaluating the evidence presented by the parties can a truthful decision be reached. As a result, the judge may make a ruling that is both fair and accurate.

ii. Upholding justice

In Islamic law, justice has a prominent position, and Allah Almighty has mandated its execution and development. In Surah An-Nahl, verse 90, Allah Almighty states:

إِنَّ اللَّهَ يُأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُم لَعَلَّكُمْ تَذَكَّرُونَ

Translation: God commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition.

(Surah An-Nahl (16): 90)

It has become evident that one of the higher objectives of Islamic judicial law is to ensure that genuinely entitled individuals get their rights (al-‘Izz Ibn Abdissalam, 2020; Ibnu ‘Ashūr, 2016; Ibnu Qudāmah, 1997; Ibnu Taimiyyah, 1995; Shah Waliyullah al-Dehlawī, 2012a). This is dependent on a lot of factors, one of which is righteousness (Ibnu ‘Ashūr, 2016). Righteousness is



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the vigilance that keeps the judge from making unfair decisions or from neglecting to properly consider the arguments of the parties (Ibnu 'Ashūr, 2016; Khunain, 2010; Qaṭanānī, 2021). This is due to the fact that dispensing justice is a position of trust, which Allah has indicated in connection with the rights to be restored to their rightful owners:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

Translation: Allah doth command you to render back your trusts to those to whom they are due; and when ye judge between man and man that ye judge with justice: verily how excellent is the teaching which He giveth you! for God is He who heareth and seeth all things.

(Surah an-Nisa' (4): 58)

Furthermore, the warning applies to any carelessness in administering justice, even if done with kindness and tenderness (Khunain, 2010). In Surah an-Nisa, verse 135 of the Quran, Allah Almighty says:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أُولَىٰ بِمَا فِيهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا وَإِنْ تَلْوُوا أَوْ تُعْرِضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

Translation: O ye who believe! Stand out firmly for justice as witnesses to God, even as against yourselves or your parents or your kin, and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts) lest ye swerve and if ye distort (justice) or decline to do justice verily God is well-acquainted with all that ye do.

(Surah an-Nisa (4): 135)

As a result, our jurists believed that fairness is a prerequisite for authenticating a judge's appointment (al-Māwardī, 1971; al-Ṣadru al-Syahīd, 1977; al-Ṭarābulusi, 2018; Ibnu Abi al-Dam, 1982; Ibnu al-Simnānī, 1984; Ibnu Farḥūn, 2016). In the words of al-Sarkhasī (d. 483AH/1090CE):

اعلم بأن القضاء بالحق من أقوى الفرائض بعد الإيمان بالله تعالى وهو من أشرف العبادات ... وهذا لأن في القضاء بالحق إظهار العدل وبالعدل قامت السموات والأرض ورفع الظلم وهو ما يدعو إليه عقل كل عاقل، وإنصاف المظلوم من الظالم واتصال الحق إلى المستحق وأمر بالمعروف ونهي عن المنكر.



Translation: Know that judging by truth is one of the most important obligations, second only to believing in Allah Almighty, and it is one of the most sublime acts of devotion. It's because, when justice is manifested, the heavens and the earth were established, and oppression was lifted, which is exactly what the mind of every sane person calls for: fairness to the oppressed from the oppressor, the delivery of the right to the deserving, and a commanding of what is right and a forbidding of what is wrong. (al-Sarkhasī, 1993, pp. 59-60)

Therefore, when making judgments, interpreting legal provisions, and putting legal provisions and decisions into effect, this higher objective must be kept in mind. A part from that, this subject is prominently addressed in the framework of Syariah law in Malaysia, both from a legal standpoint and in terms of the judgments rendered by Syariah judges themselves.

According to Arahan Amalan No. 1 of 2001, paragraphs 4 (a), (g), and (l), judges are required to demonstrate fairness and impartiality while hearing a dispute. The following Figure 5 below quoted the cited provisions:

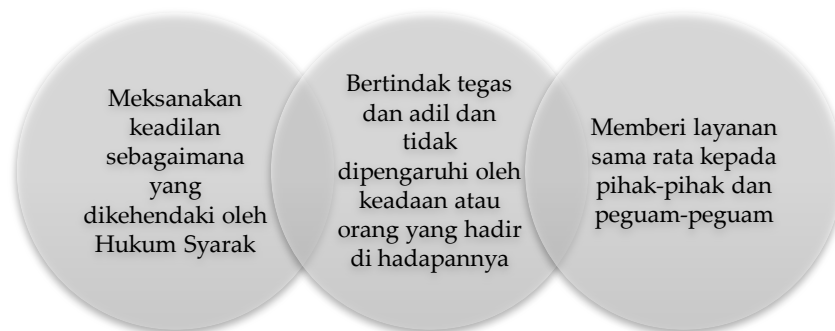


Figure 3: Statutory provisions in Arahan Amalan No. 1 of 2001 related to 102eputus

Additionally, in *A v KZ* [2018] 4 ShLR 10, at paragraphs 14 and 15 of the judgment, the Syariah court of appeal held as follow:

"[14] Secara umumnya matlamat institusi kehakiman syariah ialah untuk menegakkan keadilan. Ianya jelas sebagaimana firman Allah SWT dalam surah An-Nisa' ayat 58: "Sesungguhnya Allah menyuruh kamu supaya menyerahkan Segala jenis 102eputu kepada ahlinya (yang berhak menerimanya), dan apabila kamu menjalankan hukum di antara manusia, (Allah menyuruh) kamu menghukum Dengan adil".

Matlamat ini juga dapat dilihat berdasarkan Firman Allah SWT dalam surah al-Shaad ayat 26: "Maksudnya: Wahai Daud, sesungguhnya kami telah menjadikanmu khalifah dibumi, maka hukumlah di antara manusia dengan (hukum syariat) yang benar (yang telah diwahyukan kepadamu); dan janganlah kamu menurut hawa nafsu, kerana yang demikian itu akan menyesatkanmu dari jalan Allah. Sesungguhnya orang-orang yang sesat dari jalan Allah, akan beroleh azab yang berat pada hari hitungan amal, disebabkan mereka melupakan (jalan Allah itu)".



[15] Dalam melaksanakan keadilan dan membuat 103 keputusan Rasulullah SWT telah memberi panduan agar seseorang hakim dalam melaksanakan perbicaraan, sebelum membuat 103 keputusan hendaklah mempunyai pengetahuan yang cukup tentang keterangan kedua-dua belah pihak yang bertikai. Hal ini dapat dilihat dalam hadis Nabi SAW yang diriwayatkan daripada 'Ali bin Abi Talib (Rujuk syarahan hadis dalam kitab Atuhfatul Ahwadzi Ala Al-Jami' At- Turmudzi, Karangan Al-Hafidh Muhammad Abdurrohman bin Abdurrohman Al- Mubarakfuri, versi kedua, Terbitan Baitul Afkar Ad-Dauliyah, hlm 1286: "Maksudnya: Saidina Ali ra telah berkata: Sabda Rasulullah SAW (apabila dua orang yang bertikai meminta supaya diputuskan pertikaian antara mereka, maka jangan kamu memutuskannya sehingga kamu mendengar jawapan pihak yang satu lagi, kelak nanti engkau akan mengetahui cara memutuskan pertikaian) Saidina Ali kemudian berkata: selepas itu, aku tidak tergelincir dari landasan sebagai qadhi".

The objective of the Syariah judicial institution, as mentioned in the preceding ruling, is to uphold justice. Furthermore, in *Juliah Abdullah v. Omar Charles Abdullah* [2011] 1 CLJ (Sya) 307, as well as *Kerajaan Negeri Terengganu lwn. Yam Tengku Ibrahim Sultan Ismail Nasaruddin Shah* [2008] 1 CLJ (Sya) 172, the Syariah appellate court in both cases have emphasised the similar principle of upholding justice. Furthermore, this Maqasid has a connection with other Maqasid, such as judgement based on the truth that has been discussed, as well as some other Maqasids that will be addressed later.

iii. Expedite the trial process

Restoring rights to their respective owners as early as feasible is another critical higher objective of Islamic judicial law (al-Umar, 2008; Ibnu 'Ashūr, 2016; Khunain, 2010). Delaying them unnecessarily beyond the time needed has several negative implications (Ibnu 'Ashūr, 2016; Khunain, 2010). Ibnu 'Ashūr (2016) illustrates this point by citing four instances of harmful consequences of extending the trial process. First and foremost, individuals are being denied the opportunity to profit from their legal rights, which is tremendously detrimental. Second, allowing the ineligible claimant to profit from someone else's property is a grave injustice done to the qualified claimant, and it should be prohibited. The Qur'an makes reference to these incidents in Surah Baqarah verse 188: "And do not eat up your property among yourselves for vanities nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property". Third, there is a protracted dispute between the eligible and ineligible persons, which ends in dissension and chaos in society. If there is ambiguity regarding the litigants' claims to a disputed right and it is hard to determine between them, the outcome is a very unpleasant state of indecision and hesitancy to provide a verdict. This opens the door to a never-ending legal battle between the parties, in which they will continue to broadcast their bogus allegations. As a result, the tremendous evil of eroding Islamic brotherhood among society's members will occur. Last, but certainly not least, a delay in the judiciary will lead judges to be viewed suspiciously. Their tardiness in rendering judgement will be seen as an intentional effort to wear down the eligible party to the point where he relinquishes pursuit of his right, so ceding it to the ineligible party,



who will wrongfully use it. Similarly, people's respect for the courts would erode, resulting in grave consequences for society.

Furthermore, there is substantial evidence to this effect that can be derived from the Prophet's and his Companions' actions and behaviours. Many authentic traditions indicated that the Prophet used to adjudicate between litigants at the same hearing and would not delay them needlessly to subsequent sessions. For example, the Prophet adjudicated a dispute between al-Zubayr bin al-Awwam and one of the Ansar about streamlets in the *al-ḥarrah*¹ which both of them used for irrigating the date-palms.² He also heard a dispute between Ka'ab ibn Malik and Abdullah ibn Abi Hadrād about a debt owed by the latter to the former, and he ordered Ka'ab to deduct half of the amount.³ Additionally, he resolved the matter between the Bedouin and the father of his employee by nullifying their reconciliation because they were reconciled on an illegal basis.⁴ He also remarked to Unais Aslami: "O Unais! Go to this man's wife, and if she admits to having illicit sexual relations, stone her to death."⁵ She confessed, and Unais stoned her; nevertheless, Unais was not directed to bring her before the Prophet.

Moreover, the Prophet dispatched Abu Musa al-Ash'arī to Yemen as governor and judge, followed by Mu'adh ibn Jabal. When Mu'adh arrived and saw a shackled man with Abu Musa, he inquired about the man's particular condition. He was informed that the individual was wanted for committing a crime. As a result, Mu'adh refused to sit until the guy received the sentence imposed by Allah and His Apostle.⁶ Similarly, Umar ibn al-Khattab is reported to have sent the following in a special note to Abu Musa, the judge of Basrah: "*adjudicate when you understand and execute when you have adjudicated*".⁷ By using the apodosis clause, which indicates its occurrence as a consequence of the fulfilment of its conditional clause, he made adjudication contingent upon

¹ According to al-Nawawī (2010a), '*al-ḥarrah*' in the hadith is referring to the area that is full of black or burnt rocks.

² This case was reported by Aḥmad (2001f), hadith number 1419; al-Bukhārī (2018), hadith number 2262; and also by Muslim (2016), hadith number 2357, all of them were narrated from Urwah bin al-Zubayr.

³ This case was reported by Aḥmad (2001d), hadith number 15791; al-Bukhārī (2018), hadith number 457, 471, 2418, 2424, 2706, 2710; Muslim (2016), hadith number 1558; and also by Abu Dāūd (2013), hadith number 3595, all of them were narrated from Abdullah bin Ka'ab.

⁴ This case was reported by Malik (2013), hadith number 1591; al-Shāfi'ī (2004a), hadith number 1574; Aḥmad (2001a), hadith number 17042; al-Bukhārī (2018), hadith number 2695; Muslim (2016), hadith number 1697; and also by Abu Dāūd (2013), hadith number 4445; al-Tirmidhī (2011), hadith number 1433; and also al-Nasā'ī (2014), hadith number 5410 & 5411, all of them were narrated from Abu Hurairah and Zaid bin Khalid al-Juhani.

⁵ This is a continuation of the previous hadith stated on footnote number four.

⁶ This case was reported by Aḥmad (2001b), hadith number 19666; al-Bukhārī (2018), hadith number 6923; Muslim (2016), hadith number 1733; and also by Abu Dāūd (2013), hadith number 4354; al-Tirmidhī (2011), hadith number 1433; and also al-Nasā'ī (2014), hadith number 4066, all of them were narrated from Abu Musa al-Ash'arī.

⁷ This case was reported by al-Dāruquṭnī (2004), tradition number 4472, narrated from Sa'id bin Abu Burdah; and al-Baihaqī (2003), tradition number 20537, narrated from Abu al-Awwam al-Basri. Both lines of narration for this tradition is authentic (al-Albānī, 1985).



comprehension without any delay. Additionally, he directed him to carry out his punishment at its completion. All of this is intended to expedite the transfer of rights to legitimate applicants.

Adjourning a matter from one date to another is an authorized and permitted conduct under Malaysian Syariah law. For instance, Section 192 of the Syariah Courts Civil Procedure (Federal Territories) Act 1998 specifies that in some situations, postponing a case to a later date is very helpful and may bring justice to the parties involved in the proceedings. Among these is the gathering of evidence from the parties or their witnesses, as well as the issuance of a judgement order. Furthermore, Section 100 of the same Act allows the court to orally examine every piece of evidence presented by the parties and their witnesses. This procedure is typically lengthy, and a delay in this circumstance is unavoidable. Furthermore, this kind of delay is permitted in Islam on the basis of finding the truth. In this matter, Ibnu 'Ashūr (2016) said as follows:

ولا شك أن في كثير مما أحدثه العلماء تطويلاً في سير النوازل. ولكن طوله أقصر من التطويل الذي يحصل من مراوغات الخصوم، وتحيلاتهم على إبقاء المتنازع فيه بأيديهم.

Translation: It is true that many of the procedures introduced by the scholars are responsible for the prolonged handling of judicial cases. However, this is necessary to put an end to the delay caused by the quibbles and tricks used by the litigants to keep the matter in dispute wrongfully in their hands. (Ibnu 'Ashūr, 2016, p. 539)

However, there is no doubting that the delay of a case, particularly one involving a family, may affect the interests of the people involved and have a detrimental effect on them. It's much worse when actual justice can't be served. As a result, the JKSM has worked on a variety of continuing efforts to address this issue. JKSM has taken many settlement steps, including enforcing the settlement of several cases in the Syariah Court via reconciliations (*sulh*). The goal of bringing the reconciliations into effect is to expedite the Syariah Court's justice process, particularly in terms of preventing outstanding cases from being thrown out. The application of reconciliation is simplified further in Arahan Amalan No. 3 of 2002, which states that once a case is filed within a period of not more than 21 days, it is sent to the Chairman of the Reconciliation Council for a session of reconciliation or amicable settlement (Department of Syariah Judiciary Malaysia, 2002a). Any agreement achieved is documented and recited in the presence of the disputing parties, and it is then extended to the court to be recorded as a Mutual Consent Order.

Additionally, JKSM has begun producing Practice Instructions for use administratively in Syariah Courts nationwide. Numerous Arahan Amalan on case registration, administration, and handling have been released, some of them were listed in Table 1 below, in response to the problem of delayed cases in Syariah Courts.



Arahan Amalan	Description
Arahan Amalan No. 4 of 2001	Any postponement of a case is permissible only on justifiable reasons and must be scheduled for the next hearing. This implies that the court must evaluate any delay grounds to ensure that they do not result in unfairness to the disputing parties.
Arahan Amalan No. 5 of 2001	The programme runs from 9 a.m. to 11 a.m., takes a 15-minute break, and then resumes at 12:30 p.m. The court will reconvene in the afternoon from 2.15p.m. to 4 p.m. The time frame established to provide enough opportunity for the court to hear and determine the matter.
Arahan Amalan No. 2 of 2013	Mention of a case must occur within 21 days after its filing, and the case resolution deadline is 180 days, provided that all of the case's prerequisites are met and the case processes progress smoothly.
Arahan Amalan No. 14 of 2003	Hearing and resolving appeals in divorce cases that must be heard and handled within six months following the Registry's completion of the records.
Arahan Amalan No. 12 of 2007	Online case registration is permitted and recognised by the court when all fundamental registration processes, including court-imposed costs, are followed.
Arahan Amalan No. 3 of 2004	No case is adjourned arbitrarily on the basis of sickness. Submission of a sick leave certificate is not a mandatory need for filing an application for delay of the case. Acceptance of a sick leave certificate is at the court's discretion.

Table 1: Arahan Amalan in response to the problem of delayed cases in Syariah Courts

Meanwhile, some cases were discovered that condemned the mentality of parties that purposefully postpone the judicial procedure. For instance, in *Shahnaz A Majid v. Dato' Hj Zainul Rijal Abu Bakar* [2013] 1 CLJ (Sya) 423, the court criticized Syarie lawyers for attempting to delay the case in a variety of ways. In paragraph 29 of the judgement, the Syariah High Court judge condemned as follows:

"Responden gagal mematuhi arahan yang diberikan oleh mahkamah berdasarkan persetujuan di antara peguam-peguam syarie pihak-pihak iaitu kelewatan responden memfailkan affidavit jawapan dan juga penghujahan bertulis, dalam masa yang ditetapkan oleh mahkamah. Responden hanya memfailkan affidavit jawapan pada 14 Disember 2011 iaitu lewat selama 70 hari dan memfailkan hujahan bertulis pada 6 Januari 2012 iaitu lewat 77 hari. Kegagalan responden ini adalah suatu yang sepatutnya tidak berlaku dan perbuatan ini patut dicela kerana seorang peguam syarie sepatutnya membantu mahkamah ini bagi mempercepatkan kes bukan mencari jalan dengan pelbagai cara melambat-lambatkan kes. Oleh itu, saya berpuas hati isu ini juga tidak memudaratkan keadilan dalam kes yang dibicarakan ini dan cuma melibatkan kredibiliti peguam syarie."



Furthermore, owing to the long duration of the trial, courts have expedited the procedure in certain situations. A Syariah High Court judge did this in the matter of *Juliah Abdullah v. Omar Charles Abdullah* [2011] 1 CLJ (Sy) 307. In paragraph 6 of the judgement, it was stated as follows:

“Semasa perbicaraan, memandangkan kes ini telah berlarutan selama hampir tiga tahun, maka mahkamah telah memerintahkan kedua-dua pihak untuk memfailkan afidavit keterangan masing-masing untuk membantu mahkamah dan mempercepatkan prosiding kes.”

As a result, it is obvious that Syariah law in Malaysia is preoccupied with the issue of expediting judicial procedures. Several Practice Instructions have been designed to assist and expedite the process of a case trial. Similarly, the Syariah court is serious in its attempts to expedite the trial process so that genuine justice can be enforced and Syariah's higher objective may be accomplished.

iv. Ending the hatred and hostility by resolving the dispute

What is indicated by this is the dissolution of the relationship between the two opposing parties, as well as the cessation of the long-standing animosity between them (Khunain, 2010). This is one of the higher objectives in the Syariah judicial law (al-Ṭarābulusi, 2018; Ibnu Farḥūn, 2016; Ibnu Taimiyyah, 1995; Shah Waliyullah al-Dehlawī, 2012a; Zaydān, 2011), since it will put an end to misunderstanding and prevent people from fighting one another. Everyone asserts his or her legal rights and obtains the relief that is due them via the legal processes established, and they are content with the results they have obtained in this manner.

Furthermore, the reality is that humanity has never been able to avoid committing tyranny and is often embroiled in legal battles for human rights (al-Damīrī, 2004; al-Khaṭīb al-Shirbīnī, 2000; Ibnu Hajar al-Haitamī, 2016, p. 412; Syamsuddin al-Ramlī, 2003). That is why the Islamic legal system was established in order to resolve disputes and bring people back together (al-Shirwānī & al-ʿAbbādī, 1983; Shah Waliyullah al-Dehlawī, 2012a).

This section's maqasid is actually associated to the preceding section's maqasid discussion, which was about expediting judicial processes. Expedited decision between litigants cannot thus be applauded in and of itself if the judgement does not resolve the dispute and the litigants are not satisfied of its sound and fair character (Ibnu 'Ashūr, 2016). That is why Umar instructed Abu Musa, “Adjudicate only when you have comprehended”.

Apart from the court's role in resolving parties' disputes, Shah Waliyullah al-Dehlawī (2012a) remarked that human beings are urged to avoid conflict among them, regardless of whether the dispute is right or wrong. He based his point of view on the following hadith:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِنَّ أْبَعْضَ الرِّجَالِ إِلَى اللَّهِ الْأَكْدُ الْحَصِمُ

Translation: Aisyah (May Allah be pleased with her) reported Allah's Messenger (May the peace of Allah and His blessings be upon him) said: “The



man who is most hateful to Allah is the one who quarrels and disputes most.” (Reported by: al-Bukhārī (2018), hadith no. 2457; and Muslim (2016), hadith no. 2668)

On the other hand, they are more encouraged to be tolerant, according to Shah Waliyullah al-Dehlawī (2012a), since while disputing, not much truth emerges because a person typically considers himself to be the only one who is truthful. Therefore, he should be prepared to withdraw from the dispute.

There are various Syariah Court judgements in Malaysia that address the subject of settling conflicts between parties. In the case of *Siti Nurhayati bt Mohd Daud v Dato’ Mohd Zaidi bin Zain* [2009] 1 ShLR 69, for example, the Syariah High Court judge remarked in paragraphs 18 to 21:

“[18] Oleh itu dalam hal ini saya berpendapat bahawa apabila timbul pertikaian mengenai kelayakan seseorang peguam syarie maka tugas mahkamahlah yang akan memutuskannya dan bukannya majlis. Oleh itu mahkamah adalah merupakan institusi yang berperanan untuk mengadili pertikaian yang berlaku di antara pihak-pihak dan bidang kuasa ini telah diperuntukkan dalam sub-s 59(1) iaitu: “... menjadi Peguam Syarie untuk mewakili pihak-pihak dalam apa-apa prosiding di hadapan mana-mana Mahkamah Syariah.”

[19] Justeru itu peruntukan ini menepati dengan syarat kedua iaitu perkara-perkara lain yang berkenaan dengannya bidang kuasa diberikan oleh mana-mana undang-undang bertulis.

[20] Menyelesaikan sebarang pertikaian sememangnya merupakan tugas utama mahkamah. Dalam kitab Mughni Muhtaj, Juz 4, ms 372 mentakrifkan Al-Quda’ dari segi syaraknya iaitu: “Menyelesaikan pertikaian di antara dua pihak ataupun ramai dengan hukum Allah Taala”

[21] Tugas seorang kadi atau hakim dalam mengetuai institusi mahkamah untuk menyelesaikan pertikaian di antara dua pihak telah diperjelaskan oleh Rasulullah SAW dalam hadis yang dipetik dalam Sunnah Abu Daud, Jil IV, ms 154–155 yang bermaksud: “Dari riwayat Abu Daud yang katanya, Saidina Ali berkata : Rasulullah SAW telah mengutus aku ke Yaman untuk menjadi Qadi. Aku pun berkata kepada Rasulullah: Ya Rasulullah, Tuan mengutus aku sedangkan aku masih muda dan tidak mengetahui tentang kehakiman. Rasulullah SAW menjawab: Sesungguhnya Allah SWT akan memberi hidayatnya kepada hati engkau dan menetapkan lidahmu. Jika datang dua orang bertikai duduk di hadapanmu maka janganlah engkau menjatuhkan hukuman sehingga engkau mendengar (hujah dan keterangan) pihak kedua seperti engkau mendengar pihak pertama, kerana itulah yang lebih layak dilakukan agar jelas bagimu untuk menjatuhkan hukuman. Saiddina Ali ra lalu berkata: Sejak itu aku tidak berasa sangsi dalam menjatuhkan hukuman”.



Similarly, in *Amanah Raya Bhd v Muhamad Suhaimi bin Abdul Aziz* [2009] 2 ShLR 68, the Syariah High Court judge held in paragraph 28 as follows:

"[28] Berdasarkan satu kaedah prinsip iaitu 'bidang kuasa asal mahkamah' (court inherent jurisdiction). Mana-mana mahkamah Syariah adalah berbidang kuasa mendengar sesuatu tuntutan atau prosiding selagi mana ia tidak menafikan keadilan pihak-pihak kerana asal kewujudan sesuatu mahkamah adalah bagi menyelesaikan pertikaian pihak-pihak serta bagi menegakkan keadilan dengan tidak menafikan hak pihak-pihak yang berhak terhadap sesuatu tuntutan atau permohonan."

As a result, one of the goals of Islamic judicial law is to halt and resolve conflicts between disputing parties as well as preventing quarrels and filibustering.

v. Facilitation and mitigation of difficulties

In Islamic judicial law, one of the higher objectives is to make difficulties easier to deal with or perhaps disappear altogether, since difficulties can be harmful when they exist. As prescribed by Islam, such difficulties and harms must be removed from the community. In Surah al-Baqarah, verse 185, Allah Almighty says:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

Translation: God intends every facility for you; He does not want to put you to difficulties.

(Surah al-Baqarah (2): 185)

In the same vein, Allah specifically says in Surah al-Hajj, verse 78, that:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

Translation: and has imposed no difficulties on you in religion;

(Surah al-Hajj (22): 78)

The following provision is also mentioned in the hadith, which is agreed upon by Bukhari and Muslim and reported from Aishah:

عن عائشة رضي الله عنها، قالت: مَا حُزِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ أَمْرَيْنِ قَطُّ إِلَّا أَخَذَ أَيْسَرَهُمَا، مَا لَمْ يَكُنْ إِثْمًا، فَإِنْ كَانَ إِثْمًا، كَانَ أَبْعَدَ النَّاسِ مِنْهُ. وَمَا انْتَقَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِنَفْسِهِ فِي شَيْءٍ قَطُّ، إِلَّا أَنْ تُنْتَهَكَ حُرْمَةُ اللَّهِ، فَيَنْتَقِمَ اللَّهُ تَعَالَى

Translation: Aishah (May Allah be pleased with her) reported: Whenever the Prophet (May the peace of Allah and His blessings be upon him) was given a



choice between two matters, he would (always) choose the easier as long as it was not sinful to do so. Still, if it was sinful, he was most strict in avoiding it. He never took revenge upon anybody for his own sake; but when Allah's legal bindings were outraged, he would take revenge for Allah's sake.

(Reported by: Ahmad (2001e), hadith no. 24830; al-Bukhārī (2018), hadith no. 3560; and Muslim (2016), hadith no. 2327)

The eradication of hardship is the elimination of difficulty that extends beyond the ordinary limitations. There is no objection to the ordinary hardship that is often necessary to determine the decision, regulate the litigation processes, and improve them (al-Zarqā, 2014; Khunain, 2010). It is inextricably linked to the mandate since no responsibility is without its difficulties (al-Shātibī, 2017b; al-Zarqā, 2014; Ibnu 'Ashūr, 2016).

The principle of easing and removing suffering is also implemented in the Syariah legal system in Malaysia. Several case reports may be used as instances, for example, in *Rosliah Abu Kassim lwn. Abdul Rahman Ibrahim* [2004] 1 CLJ (Sya) 270, the Syariah appellate court judges determined that the continuation of the marriage would result in injury, difficulty, suffering, quarrels and quarrels between the appellant and the respondent, and as a result, the court ordered that their separation be accomplished by divorce (*ṭalāq*) or the separation of in return for a payment (*khulu*). On page 278 of the judgement, in paragraph d, the court held the following:

"Jika sesuatu perkahwinan itu ternyata telah gagal dan tujuan dan matlamat perkahwinan tidak tercapai, malah ia menimbulkan mudarat, kesusahan, penderitaan, pertengkaran dan perkelahian, maka ada baiknya berpisah dengan cara yang baik dan ma'ruf, sebagai jalan penyelesaian, semoga dengan itu kenangan manis berumah tangga akan kekal di dalam ingatan."

In a similar vein, in the case of *Azijah Othman v. Draman Dollah* [2012] 1 CLJ (Sya) 348, which concerned a cancellation of marriage (*faskh*), the Syariah High Court judge ruled in paragraph 15 of the judgement:

"Mengikut tujuan-tujuan perkahwinan dalam Islam, tidak ada sesiapa pun wajar untuk dipaksa hidup menderita atau dianiaya di dalam ikatan perkahwinan yang diannya tidak suka. Penganiayaan dalam apa bentuk sekali pun hendaklah dielakkan. Jika sesuatu perkahwinan itu ternyata telah gagal dan tujuan suci dan matlamat murninya tidak tercapai, sebaliknya ia menimbulkan mudarat, kesusahan, penderitaan, berbahasa kasar, dan suami lebih rasakan kemesraan, bahagia dan ghairah dengan perempuan lain, maka adalah lebih baik akad nikah itu dibubarkan sama ada melalui talaq termasuk ta'liq talaq, fasakh atau khulu'. Oleh yang demikian atas alasan-alasan yang dikemukakan oleh plaintif, saya memberi kebenaran plaintif, Azijah binti Othman, KP: 601201-11-5140 memfasakhkan akad nikah perkahwinan yang telah diadakan pada jam pukul 9 malam 7 Muharram 1405, bersamaan 2 Oktober 1984, bertempat di Kem Gong Badak, Kuala Terengganu, yang berwalikan bapa kepada plaintif bernama Othman bin Muda



dan dengan maskahwin sebanyak RM2,000 dan didaftarkan dengan Bilangan 133/1984
Seberang Takir, Kuala Terengganu dengan defendan, Draman bin Dollah, KP: 580705-
03-5961.”

In light of these judgments, it is clear that the Syariah Courts in Malaysia have recognised and applied this Maqasid in the cases heard and adjudicated. A decision will be rendered after taking into consideration the principle of providing relief and alleviating the hardships that either party has encountered.

vi. Avoiding suspicion against the judges

What is intended here is to avoid any suspicion as well as the imposition of such suspicion on the judge, to preserve his condition, to liberate him from any weakness, and to keep him from reversing the truth. Freeing one from this suspicion is the higher objective in Islamic judicial law (al-‘Izz Ibn Abdissalam, 2020; al-Tusūlī, 1998; Khunain, 2010; Wahbah al-Zuhaylī, 2017).

In fact, one of the points that Umar underlined in his letter to Abu Musa was the need to avoid suspicion. Umar said in his letter that:

أَسِ بَيْنَ النَّاسِ فِي مَجْلِسِكَ وَوَجْهِكَ وَعَدْلِكَ حَتَّى لَا يَطْمَعُ شَرِيفٌ فِي حَيْفِكَ وَلَا يَخَافُ
ضَعِيفٌ جَوْرَكَ

Translation: Maintain impartiality toward the disputants in your council, in your opinions, and in your judgements, so that those in positions of influence do not anticipate your malfeasance and the underprivileged do not despair of obtaining justice.

(Reported by al-Dāruqutnī (2004), tradition number 4472, narrated from Sa’id bin Abu Burdah; and al-Baihaqī (2003), tradition number 20537, narrated from Abu al-Awwam al-Basri)

It’s evident that Umar’s message is a confirmation to the court that it should always be fair to the conflicting parties, regardless of their social, political and educational level (Khunain, 2010; Wahbah al-Zuhaylī, 2017). If the courts fail to preserve this concept, doubts and suspicions about judges and judicial institutions would inevitably emerge. Such doubts and suspicions would very likely disqualify him from serving as a judge to adjudicate the parties, and his decision would be null and void, and should be reversed by a higher court of appeals (al-‘Izz Ibn Abdissalam, 2020).

The Shariah appellate court once emphasised the need to avoid suspicion in the case of *Zarina Mahamad Budi lwn. Ketua Pendakwa Syarie Pulau Pinang* [2007] 1 CLJ (Sya) 313. As stated in paragraphs 17 and 20 of the judgment, the court held that:

“[17] Selain dari itu, pada ms. 16 para 4 alasan yang dikemukakan oleh pendakwa syarie terlalu umum yang menyatakan bahawa perayu pernah ditahan dan tidak dinyatakan samada OKT (perayu) telah disabitkan dan dihukum di atas kesalahannya. Dalam kes



ini, saya berpendapat YA Hakim Bicara telah khilaf kerana menerima alasan-alasan pendakwa syarie untuk memberatkan hukuman ke atas OKT sedangkan maklumat yang diberikan oleh pendakwa syarie adalah tidak menepati kehendak undang-undang keterangan. Justeru kenyataan hanya secara umum dan terdedah kepada tohmahan. Kenyataan pendakwa syarie sewajarnya dinyatakan dengan lengkap seperti tentang kes sabitan dan hukuman dan dikemukakan dokumen/rekod yang relevan. Pada peringkat memberi peluang kepada OKT untuk merayu meringankan hukuman setelah kesalahan disabitkan apabila pendakwa syarie ingin mengemukakan alasan pemberatan hukuman adalah menjadi kewajipan ke atasnya bagi menyakinkan mahkamah tentang dakwaannya. Ia tidak memadai dengan hanya kenyataan umum. Adalah menjadi satu kekhilafan yang tidak wajar berlaku, hakim bicara memberatkan hukuman atas dakwaan semata-mata yang tidak sampai ke tahap meyakinkan atau terbukti sebagai satu fakta. Peraturan undang-undang berhubung 'pengambilan maklumat' ini dapat dilihat dalam s. 54 dan s. 56 Enakmen Acara Jenayah (Negeri Pulau Pinang) 1996 yang merujuk 'maklumat' perlu melalui prosedur yang teliti agar dapat mencapai tahap yang meyakinkan dan ditentukan oleh mahkamah tanpa prejudis.

[20] Adalah ditegaskan bahawa dalam menerima keterangan, seseorang hakim hendaklah berhati-hati dalam menerima apa-apa pendakwaan dan mesti dibuktikan dengan apa-apa dokumen yang berkaitan dan menepati kehendak s. 54 dan s. 56 Enakmen Acara Jenayah (Negeri Pulau Pinang) 1996. Ini kerana jika seorang hakim menerima permohonan mitigasi pendakwa syarie untuk memberatkan sesuatu hukuman tanpa sebarang bukti yang sepatutnya dikemukakan oleh pendakwa syarie dalam kes ini akan menjadikan hukuman yang akan diputuskan tidak tepat dan menimbulkan tohmah. Sewajarnya seorang hakim hendaklah berhati-hati dalam membuat keputusan atau hukuman daripada sebarang tohmah dan penerimaan dakwaan tanpa sebarang bukti semata-mata, kerana hal itu bertentangan dengan kehendak hadis yang menyatakan bahawa bayyinah ke atas orang mendakwa dan sumpah ke atas yang didakwa."

Furthermore, in the case of *Ahmad Zukni Johari v. Rosnah Esahak* [2010] 1 CLJ (Sya) 1, the same principle was reiterated by the Syariah appeal court judges in paragraphs 20, 21, 37, and 38 of the judgement, who asserted:

[20] Kami amat bersetuju bahawa pembuktian di Mahkamah Syariah adalah sesuatu yang patut dilaksanakan oleh semua pihak. Isu ini tidak harus dipertikaikan kerana Islam telah secara jelas menerangkan kepentingan pembuktian di Mahkamah Syariah. Tanpa pembuktian maka kes itu akan pincang dan boleh menyebabkan tohmah terhadap pihak-pihak yang tidak berusaha untuk cuba mencari pembuktian mahupun memberi peluang kepada pihak-pihak untuk membuktikan sesuatu hak.

[21] Namun dalam kes ini, mahkamah perlu meneliti adakah benar dakwaan pemohon bahawa telah berlaku pengabaian dari segi aspek pembuktian oleh hakim Mahkamah Tinggi Syariah. Jika benar berlaku sebagaimana yang didakwa maka memang benarlah



juga ianya boleh menimbulkan tohmahan dan seterusnya menimbulkan persoalan mengenai kepentingan awam.

[37] Malah pada ayat tersebut, Allah turut berpesan kepada golongan suami supaya tidak mencari jalan bagi menyusahkan golongan isteri. Oleh itu adalah tidak salah untuk YA hakim Mahkamah Tinggi Syariah memberi nasihat dan panduan kepada pemohon bagi memberi bimbingan yang sewajarnya kepada responden terhadap apa yang telah berlaku. Kami menitik beratkan perkara ini kerana jika kami berpendapat bahawa pembuktian secara ikrar itu sudah memadai untuk pensabitan nusyuz ke atas responden maka adalah juga tidak adil dan boleh menjadi tohmahan awam sekiranya mahkamah juga tidak menilai langkah yang telah diambil oleh pihak suami sebelum pensabitan dibuat.

[38] Adalah menjadi satu isu kepentingan awam untuk memberi keadilan kepada kedua-dua pihak dan kami berpendapat Mahkamah Rendah Syariah dan Mahkamah Tinggi Syariah telah mengambil kira aspek ini sebelum menolak pensabitan nusyuz ini.

It is evident from the preceding decisions that the judges should use caution before admitting any prosecution. Furthermore, the prosecution must be supported by any relevant evidence and records, as well as fulfill Malaysia's legislative standards for Syariah court evidence. Non-compliance this standard results in an erroneous judgment and strikes suspicion on both the individual and the judiciary.

In addition, there are cases that demonstrate the need of Syarie judges adhering to ethical principles, failing which the judge's competence to adjudicate the case is contested. This was considered in *Terengganu State Government v. Tengku Ibrahim Sultan Ismail Nasiruddin Shah* [2005] 1 CLJ (Sy) 294. Specifically quoted below are the important rulings issued by the Syariah court of appeal:

"Islam menghendaki setiap orang hakim berpegang teguh dan menghayati prinsip etika ataupun adab kadi yang telah ditetapkan oleh syarak semasa menjalankan perbicaraan. Tujuannya ialah untuk memastikan keadilan dapat ditegakkan dan kewibawaan hakim dan mahkamah dapat dipertahankan serta ditingkatkan. Oleh itu setiap perkara yang boleh mendatangkan tohmah dan kesangsian terhadap perjalanan mahkamah dan perbicaraan hendaklah dielakkan. Ini untuk menentukan keadilan hakiki dapat dilaksanakan. Oleh itu Islam menekankan bahawa keadilan hendaklah mengatasi segala-segalanya sama ada musuhnya, orang bukan seagamanya, orang yang menyakiti dirinya sendiri, orang yang meragui ataupun membencinya. Firman Allah s.w.t di dalam surah al Maidah ayat 8:- Maksudnya:- 'Dan janganlah sekali-kali kebencian kamu terhadap sesuatu kaum itu mendorong kamu kepada tidak melakukan keadilan, hendaklah kamu berlaku adil (kepada sesiapa jua) kerana sikap adil itu lebih hampir kepada taqwa'." (pp. 300-h – 301-c)



“Perayu telah merujuk kepada Kod Etika Hakim Syarie, kod 3(g) dimana menyatakan seseorang hakim syarie tidak boleh memberikan pendapat mengenai sesuatu perkara atau keadaan yang ianya sedang dibicarakan atau berkemungkinan akan menjadi satu isu dalam mana-mana perbicaraan dihadapannya, kerana pendapatnya itu boleh kemudiannya digunakan oleh sesuatu pihak untuk menyokong hujahnya. Persoalannya jika ada kemungkinan sahaja pendapat yang telah diberikan akan digunakan untuk menyokong hujahnya maka ia telah menimbulkan tohmahan kepada hakim yang berkenaan. Bias ini bukan sahaja akan diukur sendiri oleh hakim bicara tetapi jua oleh orang awam, lebih-lebih lagi pihak-pihak yang terlibat. Fakta-fakta yang akan membuat seseorang yang berfikiran waras berfikir bahawa terdapat kemungkinan sebenar tindakan berat sebelah atau yang mungkin boleh memberi asas munasabah bagi orang itu mengesyaki tindakan berat sebelah hakim itu berlaku dan mengganggu dari tugas dan kewajipan hakim.” (pp. 301-f – 302-a)

“Kami berpendapat bahawa dalam kes ini Y.A. hakim bukan sahaja telah mendapat maklumat mengenai sebahagian persoalan faraid tersebut tetapi telah membuat suatu keputusan ataupun ketetapan yang berkait dengan ahli-ahli waris dan bahagian-bahagian pusaka tersebut yang akan menjadi satu isu dalam perbicaraan yang akan dilaksanakan dan pendapat tersebut akan digunakan untuk menyokong hujah pihak yang berkepentingan dan menjadi satu tohmahan pada hakim. Kami berpendapat pertimbangan yang patut diukur pada hukum syarak sama ada seseorang hakim itu telah memberikan pendapatnya (fatwa) dalam sesuatu perkara yang akan menjadi suatu kes yang akan dihadapkan kepadanya atau tidak. Jika jawapannya “ya”, hakim yang berkenaan patut mengelakkan dirinya dari mendengar kes tersebut. Oleh itu seseorang hakim adalah dilarang memberikan apa-apa pendapat jika ada kemungkinan kes itu akan dihadapkan semula kepadanya. Ini adalah untuk menolak segala kemunasabahan berlakunya tohmahan kepada seseorang hakim.

Muhammad bin Khalaf bin Hayyan (Waki’) di dalam kitab al Akhbar al Qudhat, ‘Alam al Kutub Beirut, Juzuk Kedua m.s. 168 ada menyebut mengenai larangan hakim daripada memberikan pendapat atau fatwa.” (pp. 303-e – 304-c)

In this case, the appellant alleged that the trial judge, in issuing the Certificate of Faraid, had not only determined that Cap Zuriat Sungai Mengkuang was a portion of His Majesty's estate, but had also violated Code 3g of the Syarie Judges Code of Ethic 2001 by expressing an opinion on a subject matter that would be an issue in a case before him. While allowing the appellant's appeal, the court ruled that judges must follow the Islamic law's ethical principles and code of conduct while conducting trials. This is to guarantee that justice is served and that both the parties' and the courts' dignity are preserved. In addition, a judge cannot express an opinion on a matter that may be presented to him later. As a result, in the instance cases, the test to be used under Islamic law is whether the trial judge has issued an opinion or fatwa on a subject matter that is an issue to be adjudicated before him. If the answer is “yes”, he should recuse himself from the case. Additionally, the Syariah appeal court found that the trial judge not only collected information about some facts of the case, but also made judgments about the beneficiaries and their claims to



the estate, wherefore all these would be contested matters during the trial to be presided over by the trial judge. Furthermore, the trial judge's credibility would be jeopardised if interested parties manipulated his judgments to favour their own positions.

Furthermore, the cases mentioned above demonstrate that there is a relationship between the Maqasid avoiding suspicion and other maqasids that have been discussed, such as adjudicating on the basis of evidence and truth and ensuring access to justice. This is because if a judge is proven to have violated established ethical standards, justice will be thwarted and the court's decision will not be based on the truth. As a consequence, the credentials and capacities of judges and judiciary will be viewed with suspicion and doubt by the disputing parties as well as the general public.

Conclusion

As a result, it may be argued that Islamic judicial law has its own higher objectives, as explored by previous and modern jurists as well as academicians. In the framework of Islamic judiciary, persons who work in this profession must be familiar with, comprehend, and grasp the understanding of the higher objective of Islamic law (Maqasid Syariah). This is due to the fact that proficiency in this subject will allow people to better appreciate the purpose, wisdom, and intention underlying the laws of both Divine and man-made law. The trial processes will also go more easily, and the decision will be more accurate, fair, and nearer to the truth because of the improvements in procedural efficiency.

This study has identified six higher objectives related to Islamic judicial legislation. The identification of all these higher objectives is the result of research on the primary and secondary documents that have been collected. According to the observations of the researchers, each of the stated higher objectives is derived from authority either from the Qur'an, hadith, or the practices of the Companions in relation to the Islamic judicial system. Furthermore, the researchers also found that all six of these higher objectives are interrelated and complementary to each other.

Additionally, the researchers reviewed Syariah legislation as well as judgments issued by the Syariah courts in order to have a better understanding of the higher objectives in Islamic judicial law from the viewpoint of Malaysian law. As a result, Malaysian Syariah law seems to have a similar stance with Islamic scholars about the higher objectives in Islamic judicial law.

As a matter of fact, there are several other higher objectives in Islamic judicial law that have been acknowledged and studied in detail by previous and contemporary scholars, but which were not revealed and discussed in this study. Researchers would want to give some opportunities for other researchers to pursue their inquiries into this subject. It is sufficient for researchers to publish this study as part of an academic contribution in the topic of higher objectives of Islamic law, particularly connected to Islamic judicial law. It is envisaged that the study of higher objectives in Islamic law, especially in the area of Islamic judicial law, would be expanded in the future.



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