

# THE PATTERN OF ABSORPTION OF ISLAMIC LAW INTO NATIONAL LAW: Study of The Halal Product Guarantee Law in The Perspective of Maqashid Shari'ah

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## *Abstract*

*The transformation of Islamic Law into the Halal Product Guarantee or Jaminan Produk Halal (JPH) Law is unique. Muslim minorities in Indonesia worry that the JPH Law is no longer voluntary but mandatory. The state acts as a regulator and an operator at the same time. This is because the JPH Law is derived from Islamic law but is intended for both Muslim and non-Muslim producers, in national and international context. This research aims to analyze the pattern of absorption of Islamic law in the jurisprudence provisions of halal products into the JPH Law and to review it from the perspective of maqashid shari'ah. This is a normative juridical research with a qualitative approach. The results indicate that 1) there are two patterns of absorption. On one hand, its existence reflects the pattern of Islamization of national law. On the other hand, it reflects the pattern of nationalization of Islamic law; 2) in the perspective of maqashid shari'ah a) the pattern of Islamization of JPH into National law is an expression of preserving religion (hifdz al-din) and the realization of hifdz al-aql; b) the pattern of nationalization of Islamic law in the JPH Law is deemed appropriate, if it is related to the philosophical values contained in the pattern of absorption of Islamic law. This is because the nationalization of Islamic law is a pattern that emphasizes the absorption of Islamic legal values that are compatible with Indonesian culture.*

*Transformasi Hukum Islam ke dalam Undang-Undang Jaminan Produk Halal memiliki keunikan tersendiri. Ada kekhawatiran bagi minoritas muslim di Indonesia jika aturan tersebut diberlakukan secara mandatory, tidak lagi voluntary. Negara bukan hanya berposisi sebagai regulator akan tetapi pada waktu yang bersamaan Negara juga berperan sebagai operator. Hal ini karena UU JPH yang bersumber dari hukum Islam namun diperuntukkan untuk semua produsen baik muslim maupun non muslim, baik dalam konteks nasional maupun internasional. Artikel ini bertujuan untuk menganalisis pola penyerapan hukum Islam yang ada dalam ketentuan fikih produk halal ke dalam UU JPH, serta meninjaunya dalam perspektif maqashid syari'ah. Metode penelitian adalah yuridis normatif dengan pendekatan kualitatif. Hasil penelitian menunjukkan bahwa pola penyerapan hukum Islam ke dalam UU JPH memiliki dua pola, yaitu pola islamisasi hukum nasional dan juga mencerminkan pola nasionalisasi hukum Islam. Kajian dalam perspektif maqashid syari'ah, pola Islamisasi Jaminan Produk Halal ke dalam hukum Nasional merupakan ekspresi untuk menjaga kelestarian agama (hifdz al-din) dan terwujudnya hifdzu al-'aql. Pola nasionalisasi hukum Islam dalam UU JPH dirasa tepat, jika dikaitkan dengan nilai-nilai filosofis dalam pola penyerapan hukum Islam yang menekankan pada penyerapan nilai-nilai hukum Islam yang kompatibel dengan kultur keindonesiaan.*

**Keywords:** *fiqh of halal product, halal product guarantee law, maqashid shari'ah*

## Introduction

In the post-reform era, transforming religious values into national law has wider opportunity than in the previous era.<sup>1</sup> However, the patterns and models of coercion do not seem easy to implement. It includes the development of national law.<sup>2</sup> As a consequence, the development of national law will include

- 1 Qodri Azizy, *Hukum Nasional: Eklektisme Hukum Islam Dan Hukum Umum* (Jakarta: Teraju, 2004), 172.
- 2 The development of national law in the 1973 State Policy Guidelines (GBHN) upto the reform era in 1998, since Indonesia is a developing country, always try to carry out the development of national law, which in practice is full of nuances and political influence of the rulers. As a consequence of political change, entering the reform era, the political climate will significantly change. After the reform era, the direction and the policy of national law that are also the politics of national law be based on the 1999 GBHN, that is a product of the reform era. In other words, talking about the direction of national law policy, it should be initiated and based on the will of Indonesian people in the reform era as stated in the 1999 GBHN: *Organizing a comprehensive and integrated national legal system by recognizing and respecting religious and customary laws and updating discriminatory colonial heritage legislation and national law, including gender injustice and inconsistencies with reform demands through the legislation program.* The policy direction of the GBHN can be understood that the development of national law is largely based on (a) Customary Law, (b) Religious Law (in this case Islamic law), and (c) law from outside, especially from the Western countries. Indeed, the discussion of these three sources has actually been recognized during the New Order era but was carried out "shyly" or even pretended and filled with worry/fear of power, because the rulers at that time were very afraid or hostile to Islamic law. This happened because during the reign of the New Order government was dominated by the doctrine of "Islamic phobia" (anti-Islam),

three elements of legal sources that have equal and balanced position i.e. Customary law, former Western law, and Islamic law.<sup>3</sup>

The reform of Islamic law in democracy has a significant effect on the development of Islamic law transformation in Indonesia, both through legislative and non-legislative channels. During its development, the cultural route dominates the existence of Islamic law in Indonesia, rather than the structural path through legislation. This is caused by various problems in the legislative process. However, the efforts in transforming Islamic law through legislation must still be carried out. It is because Islamic law legislation is an objective and urgent demand. After all, it will definitely support the implementation of Islamic law and have formal juridical power in Indonesia, as the case in the legislation on the Halal Product Guarantees (known as *Jaminan Produk Halal*-shorten as JPH) that has recently become the most interesting issue in terms of accommodating the state to Islamic values.

In fact, configurative wise, the transformation of Islamic law into national law began since the formation of the Republic of Indonesia Law Number 1 of 1974 about marriage until the formation of Law Number 33 of 2014 on the JPH Law. The period of 46 years from 1974 to 2020 with 19 products of Islamic law is a measure of the successful transformation of Islamic law into national law.<sup>4</sup> De facto and de jure wise, the reform effort was able to deconstruct Snouck Hourgronje's receptive theory which had been a hegemony of national legal cognition.<sup>5</sup>

An-Naim<sup>6</sup> argues that the ideal pattern in the process of transforming Islamic law into national law is by the nationalization pattern of Islamic law, not the pattern of Islamization which tends to be orthodox. According to him,

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as a continuation of the "Political Islam" of the Dutch government when colonizing Indonesia. Although it must also be admitted that the New Order authorities gradually approached Islam, but it was already a helpless condition, which ended with the overthrow of New Order power in the early 1998, as a result of the reform wave. However, during the New Order era, Islamic law was not clearly given a place in the national legal system. Mochtar Kusuma Atmaja, *Konsep-Konsep Hukum Dalam Pembangunan Hukum Nasional* (Bandung: Alumnii, 2006), 1.

3 Rahmat Rasyadi, Rahmat Rosyadi and M. Rais Ahmad, *Formalisasi Syariat Islam Dalam Perspektif Tata Hukum Indonesia* (Jakarta: Ghalia Indonesia, 2006), 9.

4 Jazuni, *Legislasi hukum Islam di Indonesia* (Bandung: Citra Aditya, 2005), 7.

5 Read Rasyadi, Rahmat, *Formalisasi Syariat Islam Dalam Perspektif Tata Hukum Indonesia* (Bogor: PT Ghalia Indonesia, 2006), 5.

6 Abdullah Ahmad An-Na'im, *Dekonstruksi Syariat: Wacana Kebebasan Sipil, Hak Asasi Manusia dan Hubungan Internasional dalam Islam (Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law)*, diterjemahkan oleh Ahmad Suaedi dan Amirudin Arrani (Yogyakarta: Lkis, 1994). 17

the pattern of nationalizing Islamic law is an effort to harmonize Islamic law with national law in a transformative-contextual way. Which does not prioritize Islamic symbols in its products of legislation, but the substance is adopted from Islamic law but uses national symbols. Furthermore, the second pattern is the Islamization pattern of national law, which is an attempt to incorporate normative Islamic law into national law, which prioritizes the exclusive Islamic sectoral ego and ignores the plurality of heterogeneous in Indonesian society.<sup>7</sup>

The consequence of this pattern of Islamization of national law will result in formalistic Islamic law.<sup>8</sup> Surely, if this pattern is linked to a legal context, it will set a bad precedent for the Indonesian nation, that society is very heterogeneous. Even Khalid Aboul Fadl saw this effort as a form of legal authoritarianism which in the operationalization and implementation of the law was always repressive.<sup>9</sup> Ironically, according to Aboul Fadl's notes, the legal authoritarianism attempt is in the name of God as a means of legitimacy. In fact, it must be admitted that Indonesia is not a theocratic, but democratic country.

There are concerns for Muslim minorities in Indonesia if the Law on JPH is no longer voluntary, but mandatory. The state's role is not only as a regulator, but also as an operator. It means, the mandatory enforcement of halal certification will be a bad record of legal authoritarianism as happened in the New Order era. However, the state must also guarantee the constitutional rights of the Muslim majority in Indonesia to have certainty of information on halal products in the market. That is as regulated in Law Number 8 of 1999 concerning Consumer Protection which is one of the juridical considerations for the JPH Law.

The two patterns offered by An-Naim, in the Indonesian context of Law Number 33 of 2014 concerning Halal Product Guarantee, are ideal products that deserve to be used as role models because of their unique and distinctive transformation process. It is unlike the transformation of zakat, hajj, and waqf in the form of law, which is from Islamic law and also intended for the Muslim community in a national context. This is also different from the process of law on the halal guarantee which is from Islamic law but intended for all producers

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7 Muhyar Fanani, *Membumikan Hukum Islam: nasionalisasi Hukum Islam dan Islamisasi Hukum Nasional Pasca Reformasi* (Yogyakarta: Tiara wacana, 2009), 178.

8 Muhyar Fanani, *Membumikan Hukum Islam....*, 178.

9 Read Khaled M Abou El Fadl, *Atas Nama Tuhan: Dari Fikih Otoriter ke Fikih Otoritatif* (Jakarta: Serambi, 2004), 81.

in both national and international contexts. The legislation of JPH is must be considered by the government to provide legal certainty to consumers who are Muslim in majority.

From a juridical perspective, the law on JPH can be interpreted as a representation of the state's responsibility to protect its citizens.<sup>10</sup> This is because the state must protect people's rights to express their religious beliefs and teachings without obstacles and disturbances, as regulated in the 1945 Constitution Articles 28 E paragraph (1) and Article 29 paragraph (1) and (2).<sup>11</sup> Citizens' rights include the right to practice religious beliefs, get legal protection, equal position in law, as well as the right to obtain a decent life. Those are guaranteed by the constitution of the Republic of Indonesia. Indonesian Muslims who are part of Indonesian citizens certainly have the constitutional right to obtain legal protection in practicing their beliefs.

Three things become references in law enforcement. The first is the effective strength of the juridical field—it means that the formal requirements in law have been fulfilled. According to Hans Kelsen, a legal norm can apply if the stipulate is based on a higher level norm. It means that in a rule there is a basis according to the applied hierarchy of law. The second one is the effective strength in sociology—based on the reality in society. The law will gain strength through society's recognition. The last one is philosophically law enforcement, it means that rules can be applied by following the legal ideas as the highest value because without legal ideas, the law becomes meaningless.

The halal certification arrangement in the JPH Law is regulated through many doors. It is no longer managed by LPPOM MUI only. The registration can be done at several registered halal auditor institutions. It makes the supervision of businessmen easier. Because of this regulation, the community also can oversee the businessmen who have not registered their products.<sup>12</sup>

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10 Dharu Triasih, B. Rini Heryanti, and Doddy Kridasaksana, "Kajian Tentang Perlindungan Hukum Bagi Konsumen Terhadap Produk Makanan Bersertifikat Halal," *Jurnal Dinamika Sosial Budaya* 18, no. 2 (August 9, 2017): 214, <https://doi.org/10.26623/jdsb.v18i2.571>.

11 The article says, "Each person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return". Article 29 paragraph (1), "The state is based on the belief in the One and Only God" paragraph (2) : "The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief"

12 Iffaty Nasyi'ah, "Pelanggaran Kewajiban Pendaftaran Sertifikat Halal: Dapatkah Dibuat Sanksi?," *Jurisdictie* Vol.9, No. 1: (2018), 84. <https://doi.org/10.18860/j.v9i1.5137>.

One of the basic beliefs of Muslims is the obligation to pay attention to what they consume.<sup>13</sup> For Muslims, consumption is not only seen as fulfilling individual needs, but also an act of worship and devotion to God. Therefore, the problem of consumption is tied to the legal rules set by God. In Islam, the issue of food consumption and its process are regulated in the mechanisms of *halal* and *haram* laws.<sup>14</sup> Muslims are also explicitly demanded to consume only *halal* products.<sup>15</sup>

Along with technological advances, various food products are now mixed with many ingredients and are processed in various ways. Thus, in the process, the food products may contain additional substances which ultimately led to the unclear status in Islamic law perspective. The ambiguity is even greater in the current globalization era. Various food products are imported without the clear *halal* and *haram* status. Therefore, the guarantee and certainty of the products' *halal* status consumed by Muslim is a must.

Halal product guarantee in Islamic law can be categorized as mandatory.<sup>16</sup> This is based on the concept of *maqashid shari'ah*<sup>17</sup> (sharia purposes) studied in *usul fiqh*; those are protecting religion (*hifdz ad-din*), guarding the soul (*hifdz an-aafs*), guarding intellect (*hifdz al-aql*) protecting property (*hifdz al-aml*), and protecting the descendants (*hifdz an-nasb*). The five purposes of sharia are also called *al-kulliyat alkhamsah* (five main points).<sup>18</sup> Because consuming *halal* products is an obligation of every Muslim, it becomes part of worship to maintain religion

13 *Let people then consider their food* (Q.S. `Abasa[80]: 24)

14 Say: "Have you seen that which Allah has sent down for you as a provision, of which you have made some lawful and some unlawful?" Say: "Has Allah given you authorization, or are you fabricating lies against Allah?" Q.S. Yunus/10:59.

15 Some verses of the Quran with the phrase amar (command) expressly indicate the obligation to consume halal products. "Eat of the good, lawful things provided to you by Allah. And be mindful of Allah in Whom you believe. Q.S. Al Maidah/5:88. "O believers! Eat from the good things We have provided for you. And give thanks to Allah if you 'truly' worship Him 'alone'". Q.S. Al Baqoroh/2:172. "O humanity! Eat from what is lawful and good on the earth and do not follow Satan's footsteps. He is truly your sworn enemy." Q.S. Al Baqoroh/2:168.

16 Zulham, Justifikasi Intervensi Negara Atas Kelembagaan Sertifikasi Halal Terhadap Massive And Credential Products, *Journal of Sharia* November 3, 2015 edition: (2015), 93-95.

17 *Maqosid syariah* is the purpose of stipulating Allah's law for His servants. The essence of *Maqashid shari'ah* is to realize goodness as well as avoid badness, or to take advantage and reject *mudharat*. See : Amir Muallim dan Yusdani, *Konfigurasi Pemikiran Hukum Islam* (Yogyakarta, UII Press, 1999), 92.

18 *Maqosid syariah* was first presented by Imam Juwayniy, which was later developed by Al-Ghozali dan asy-Syatibi. See: Ahmad Al-Mursi Husain Jauhar, *maqashid syariah*, translated by khikmawati (Jakarta: Sinar Grafika Offset, 2010), 17.

(*hifdz ad-din*). Consuming *halal* products is an effort to protect the soul (*hifdz an-nafs*). Furthermore, to maintain healthy mind (*hifdz al-aql*), we need to avoid harmful things, such as not to consume food or drinks that endanger health<sup>19</sup> and potentially intoxicating.<sup>20</sup>

A *halal* guarantee (also known as *halal* certification and labeling) is mandatory because it is an intermediary (*wasilah*) for the implementation of an obligation to consume *halal* products. This obligation will be difficult without the *halal* product guarantee. Thus, by referring to the rule of fiqh “*Ma la yatimmu al wajibu illa bihi fa huwa wajibun*” which means “a thing that if an obligation is imperfect without its presence then it is obliged”, then a *halal* guarantee has the same status as consuming *halal* product, which is mandatory.

There are many previous studies on Halal certification policies in Indonesia, but there are still very few researchers studying it from the perspective of *maqashid shari’ah*. One of the studies that examines the Halal Certification policy in Indonesia using the *maqashid shari’ah* perspective is done by Agus Waluyo.<sup>21</sup> However, this article does not analyze the *halal* certification policy from the *maqashid shari’ah* perspective but studies the absorption pattern of Islamic law in the JPH Law then analyzes it in the perspective of *maqashid shari’ah*. This research fills the academic and theoretical gaps that have not been studied by many previous researchers by identifying the pattern of absorption of Islamic law in the provisions of the jurisprudence of *halal* products into the JPH Law, and reviewing it from the perspective of *maqashid shari’ah*.

## Research Methods

This research is a normative juridical research. The research was conducted by examining and analyzing the pattern of absorption of Islamic law in the fiqh provisions for *halal* products in Law No. 33 of 2014 concerning the Halal Product Guarantee (known as *Jaminan Produk Halal*). Furthermore, the analysis results will be reviewed in the perspective of *maqashid shari’ah*.

The research approach used in this research is a qualitative approach based on a prescriptive analysis of legal materials. This research used normative

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19 M Hamdan Rasyid, Peranan Undang-Undang Jaminan Produk Halal Dalam Menjamin Kehalalan Makanan Dan Minuman, 16.

20 M Hamdan Rasyid, Peranan Undang-Undang Jaminan Produk Halal Dalam Menjamin Kehalalan Makanan Dan Minuman, 20.

21 Agus Waluyo, “The Developmental Policy of Halal Product Guarantee in the Paradigm of Maqashid Shari’ah in Indonesia,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, No. 1: (2020), 121.

juridical material or known as legal material<sup>22</sup>, which consists of primary, secondary, and tertiary legal materials. Primary legal material is the binding one and in this research, it is Law Number 33 of 2014 concerning the Halal Product Guarantee.

Secondary legal materials are those supporting and providing explanations regarding primary legal materials. In this case, it includes all literature related to the *fiqh* of *halal* products as well as studies that discuss *maqashid shari'ah* both in classical and contemporary perspectives. These materials are collected using the literature study, taken from laws and regulations, books, documents, scientific articles, and the internet sources (cyber media). Meanwhile, the tertiary legal materials are those providing instructions and explanations for primary and secondary legal materials, such as law dictionaries and encyclopedias, including the Law Dictionary by Subekti and R. Tjitrosoedibio, *Kamus Besar Bahasa Indonesia*, and so forth.

### **The Urgency of Absorption of Islamic Law into National Law**

If we look closely, the Indonesian Islamic groups-especially the figures-who are involved in discussions about Islamic law, are at least two groups i.e. one group emphasizing on a normative or formalism approach and another group on cultural approach. This approach describes the political life of each group. It is also an answer to how to apply Islamic law in the development of national law. There are two approaches i.e. formal and cultural.

Based on the first approach, Islamic law must be applied to those who have said the two *shahadah* sentences or have converted to Islam. The term “politicization of Islamic law” will not be popular, unless it means that those who are Muslim must immediately implement or be forced to accept Islamic law in their everyday life. Therefore, the process of political life, including political parties, is in the framework of implementing Islamic law in a normative and formal manner.

As a result, the implementation of the Jakarta Charter is a big and serious problem that must always be fought for. The reason is because it is the only way to formally apply Islamic law-if it really needs to be imposed- in Indonesia.<sup>23</sup> Extremities wise, this approach becomes scriptural and textual which usually lack in considering contextual and sociological environment. Basically, a normative approach is not always bad, because it will act as a controller. However, if it is

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22 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010), 93.

23 Peter Mahmud Marzuki, *Penelitian Hukum*, 70.

excessive, it will be scripturalism and coercion. To this extent, positivism is not the answer, because of its tendency to formally impose ideology. If this approach is applied, the problem that might arise is which Islamic law we refer to. This is very serious, especially when we can find differences of opinion (*ikhtilaf al-fukaha*) about Islamic law itself. Things like this often occur as an excess of Islamization efforts in several countries, such as in the Middle East, which is rarely complete.

The second one is the cultural approach. It states that the most important thing is not the formalism of Islamic law or the ideological normative approach, but the absorption of Islamic law values into society. This was once said by KH. M. A. Sahal Mahfudh, the Former General Chairman of the Indonesian Ulama Council (MUI) and the Former *Rois Amm* PBNU. According to him, “the creation of an ideal law in civil society. Thus, it must also begin with the absorption of universal law values mentioned above in a proportional social framework”. The universal law values referred to include justice, honesty, freedom, equality before the law, legal protection for people of different religions and upholding the supremacy of God’s law. It means that “the value must be attempted and implemented in all elements of civil society, starting from the institutional system and the elements of society that support it”. With the term absorption of value, it means that the process is cultural, not normative coercion. By the cultural approach, KH Sahal believes “It will minimize the obstacles that exist at the implementation stage”. Therefore, according to KH Sahal, “Labeling which often creates antipathy and suspicion from the community should also be minimized”.

In Indonesia, the period of legislation (*taqnin*) is marked by the inclusion of Islamic law into several laws and regulations, both directly mentioning and using Islamic legal terms and apply specifically to Muslims, such as the Zakat Law, Hajj Law, as well as generally applied by including the substance such as Law Number 33 of 2014 on Halal Product Guarantee. From the point of view of nationality, Islamic law legislation that applies specifically to Muslims raises problems related to legal unification. On one side, the legislation is carried out to fulfill the wishes and legal needs of Muslims.

Apart from the two approaches mentioned above, when talking about the theory of the absorption of Islamic law into national law, it is incomplete if we do not examine the thoughts of Abdullah Ahmad an Na’im. According to him, there are two typologies of the absorption of Islamic law into National law. Those are the pattern of Nationalization of Islamic Law and the pattern

of Islamization of National Law. Nationalizing Islamic law is an effort to harmonize Islamic law with national law in a transformative-contextual way which does not prioritize Islamic symbols in its products of legislation. The substance is adopted from Islamic law but uses national symbols.<sup>24</sup>

Meanwhile, the second pattern is i.e. the Islamization pattern of national law is an attempt to incorporate normative Islamic law into national law, which prioritizes the exclusive Islamic sectoral ego and ignores the plurality of heterogeneous Indonesian society.<sup>25</sup> The consequence of this pattern will trigger a symbolic Islam that is not environmentally friendly in the Indonesian context. Even Kholid Aboul Fadl also presented a similar concept, that the coercion of textual fiqh products will result in an authoritarian Islamic law which in the operationalization and implementation of the law is always repressive.<sup>26</sup>

On the other hand, legal products that apply specifically to certain people (adherents of religion) tend to contradict the desire to create a legal unification that aims to avoid the dichotomous dualism of law. Meanwhile, legal unification is necessary for the national interest. Based on the importance of the absorption of Islamic law in Law Number 33 of 2014 concerning the Halal Products Guarantee, it is expected that the process of absorbing Islamic law can be a theoretical basis for the emergence of the absorption pattern of Islamic law into positive law in other fields of law. So, the source of Islamic law which has become the tendency of Indonesian citizens which majority is Muslim can be manifested in the formation of national law. Therefore, the idea of the importance of the absorption of Islamic law into Indonesian National law as in Law Number 1 of 1974 concerning Marriage is perhaps an alternative way to bridge the two ideas above.

### Understanding *Maqashid Shari'ah* as a Perspective and Approach

To interpret *maqashid shari'ah*, it can be seen from two sides of meaning, etymology and terminology. Etymologically, *maqashid syariah* consists of two words, *maqashid* and *syariah*. *Maqashid* is a plural form of *maqshud*, *qashd*, *maqshid*, or *qushd* which is a derivation of the verb *qashada yaqshudu* which means going

24 Siti Rohmah, "Rekonstruksi Teoritis Penyerapan Hukum Islam ke Dalam Hukum Nasional di Indonesia," *Ijtihad : Jurnal Hukum dan Ekonomi Islam* 12, No. 1: (June 11, 2018), 85, <https://doi.org/10.21111/ijtihad.v12i1.2548>.

25 Muhyar Fanani, *Membumikan hukum Islam: nasionalisasi hukum Islam dan Islamisasi hukum nasional Pasca Reformasi* (Yogyakarta: Tiara wacana, 2009), 178.

26 Read Khaled M Abou El Fadl, *Atas Nama Tuhan: Dari Fikih Otoriter ke Fikih Otoritatif* (Jakarta: Serambi, 2004), 92.

to a direction, purpose, middle, fair and do not cross the line, a straight path, in the middle between exaggeration and deficiency.<sup>27</sup> Meanwhile the word *Syariah* literally means the road to the spring, often referred to as *al nusūs al muqaddasah* (holy texts) from the Quran and sunnah *mutawatir* which have not been interfered by human thought, so that the content of *syariah* includes *aqidah*, *amaliyyah*, and *kebuluqiyah*.<sup>28</sup>

Thus, terminologically, *maqashid syariah* can be interpreted as values and meanings used as a purpose realized by *syari'* (lawmakers) behind the making of sharia and law obtained through *mujtahid* research on sharia texts.<sup>29</sup> *Maqashid shari'ah* can also mean the study of the objectives and secrets of the "burden" of sharia, and regulate the human *maslahah* in life in this world and the hereafter according to these objectives.<sup>30</sup> To simplify, the term *maqashid syariah* can be interpreted as the purpose of ordering the law in Islam. Therefore, the main theme in the discussion is about *hikmah* and *ilat* (cause/reason) for the stipulation of a law.<sup>31</sup>

As the purpose behind the stipulation of law, the *maqashid syariah* has a strong foundation from both the Quran and the Prophetic hadith whose *nash* always emphasizes the values, purposes, *illat*, and *hikmah* within it. There are several verses that become evidence of the purpose behind the stipulation of law, for example, one of the verses in surah al Baqarah emphasizes that the obligation to fast is to be piety.<sup>32</sup>

Likewise, the hadith records the Prophet's command not to pray *asr* (in another narration, *zühr* prayer) except in a village, the Banu Quraidhah. Some of the companions prayed even though they had not yet arrived at a village mentioned by the Prophet because they were worried that the prayer time was over. They argued that the Prophet's order was intended for them to hurry on their way so that they would still find prayer time at the Banu Quraidhah. While some others, postponed their prayers before arriving at the Banu Quraidah, even though the prayer time had passed due to carrying out the orders of the

27 Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Aqalliyat dan Evolusi Maqashid al Syariah dari Konsep ke Pendekatan* (Yogyakarta: LKiS, 2010), 179.

28 Asafri Jaya Bakri, *Konsep Maqashid Syariah Menurut Al Syathibi* (Jakarta: Raja Grafindo Persada, 1996), 61.

29 Jasser Auda, *Fiqh al Maqashid Inathat al Abkam bi Maqasidiba* (Herndon: IIIT, 2007), 15.

30 Izzudin Ibn Zughaybah, *al Maqashid al 'Amah li al al Syari'ah al Islamiyah* (Kairo: Dar al Safwah, 1996), 45.

31 Hasbi Umar, *Nalar Fiqih Kontemporer* (Jakarta: Gaung Persada Press, 2007), 120.

32 O believers! Fasting is prescribed for you — as it was for those before you — so perhaps you will become mindful 'of Allah' (Q.S. al Baqarah: 183).

Prophet.<sup>33</sup> It confirms that the origin of *maqashid* thought has existed since the beginning of Islamic law development. Even though the majority of *maqashidiyyun* scholars say that the disclosure of the values, *hikmah*, *illat*, and purposes of the sharia into a big theme called *maqashid* has not been found at that time.<sup>34</sup>

If traced, when the scholars started to mention the *maqashid* issue in their work, then we can see that Imam Imam Malik (d. 179 AH) in his *Muwattha'* had written a narration which pointed to the case of *maqashid* used during the companions' era.<sup>35</sup> Then, it is followed by Imam Syafi'i (d. 204 AH) in his work, *Al Risalah*, which mentions the discussion of *ta'lim al ahkam* (the search for reasons in a law), some *maqashid kulliyah* such as *hifzhu al nafs* and *hifzhu al mal* which are the forerunners of *maqashid* themes. After Imam Syafi'i, Turmudzi al Hakim (d. 320 AH) published books *Al Shalatu wa Maqashiduha* and *al Haj wa Maqashiduha*; which were later followed by Abu Bakr al Qaffal al Shashi, known as al Qaffal al Kabir (d. 365 AH) in his book *Mahasin Al Syaria'i fi Furu'i asy Syafi'iyah Kitab fi Maqashid al Syariah*.<sup>36</sup>

The next development was the presence of Abul Hasan al Amiri (d. 381) in the study of *maqashid syaria*. He contributed several thoughts on five main things to build individual life and social life, that are *mazjaratu qatlin nafs* (legal sanctions for murder), *mazjaratu akhd al mal* (legal sanctions against the appropriation of property) *mazjaratu hatk al satri* (legal sanctions against opening disgrace), *mazjaratu thalb al 'irdh* (legal sanctions against the desecration of honor), and *mazjaratu khal'u al baydhab* (legal sanctions for the release of honor and sincerity). Afterward, Imam al Haramayni Abdul Malik al Juwaini succeeded in explaining the basics of *maqashid syariah* by dividing *maslaha* into three hierarchical levels, that are *Dharuriyat*, *Hajiyat* dan *Tabsiniyat*.<sup>37</sup> Then the *Dharuriyat*

33 Syaraf al Din al Nawawi, *Shahib Muslim bi Syar al Nawawi, Vol. 6* (Kairo: Darul Fajri li al Turats, 1999), p. 315. The narration came from Ibn Umar ra. He said: *On the day of Al-Abzab (i.e. Clans) the Prophet Muhammad SAW said: "None of you (Muslims) should offer the `Asr prayer but at Banu Quraizah's place." The `Asr prayer became due for some of them on the way. Some of those said: "We will not offer it till we reach it, the place of Banu Quraizah," while some others said, "No, we will pray at this spot, for the Prophet Muhammad SAW did not mean that for us." Later on It was mentioned to the Prophet Muhammad SAW and he did not berate any of the two groups.*

34 Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Aqalliyat dan Evolusi Maqashid al Syariah dari Konsep ke Pendekatan*, 190.

35 Sandi Rizki Febriadi, *Aplikasi Maqashid Shari'ah Dalam Perbankan Syari'ah*, *Jurnal Ekonomi Dan Keuangan Syari'ah* 1, No. 2: (July 2017), 238.

36 Sandi Rizki Febriandi, *Aplikasi Maqashid Shari'ah Dalam Perbankan Syari'ah*, 238.

37 Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Aqalliyat dan Evolusi Maqashid al Syariah dari Konsep ke Pendekatan*, 191-192.

concept was described in detail by Imam al Ghazali. Maintenance of *al umur al dharuriyah* in human life means maintaining things that are the foundation of human existence. The category of *al umur al dharuriyah* is maintaining religion, soul, mind, honor or descent, and property.<sup>38</sup>

Other names recorded as the generation of *maqashid* thinkers are Ibnu Rusyd, Abu Bakar ibn ‘Arabi, Fakhrudin al Razi, Syaifudin al ‘Amidi, Izzudin ibn Abdil Salam, Shihabudin al Qarafi, Najmudin al Thufi, Ibnu Taymiyah, and Ibnu Qayyim al Jauziyah. However, it should be noted, in this era, *Maqashid Syariah* has not become a big theme and an independent study but an integral part of *ushul fiqh*. In addition, the word *maqashid syariah* is not a part of the titles of their books. It underwent a complete metamorphosis process with the presence of Imam al Syathibi who was also confirmed as the “father” of the *maqashid*.<sup>39</sup> After that, it was continued by Ibn ‘Asyur with his work *Maqashid Syariah Islamiyah* whose presence seemed to bring back the studies that had long been stopped since the Shathibi era.

After Ibn ‘Asyur, various works in the field of *maqashid syariah* were born. They are Ahmad Raisuni with his work *Nadhariyyatul Maqashid ‘Inda al Imam al Syathibi*; Hammadi al Ubaidhi, *al Syathibi wa Maqashid al Syari’ah*; Abdurrahman Zaid al Kailani, *Qawaid al Maqashid ‘Inda al Imam al Syathibi*; Abdul Munin Idris, *Fikru al Maqashid ‘Inda al Syathibi min Khilal Kitab al Muwafaqat*; Abd Majid Najar, *Masalik al Kasyf ‘an Maqashid al Syari’ah Baina al Syathibi wa Ibn ‘Asyur*; Jailani al Marini, *al Qawaid al Ushuliyah ‘Inda al Syathibi*; and Basyir Mahdi al Kabisi, *al Syathibi wa Manhajatuhu fi Maqashid al Syari’ah* and Habib Iyad in *Maqashid al Syari’ah fi Kitab al Muwafaqat li al Syathibi*, and Jasser Auda with his *Maqashid Syariah as Philosophy of Islamic Law: System Approach*.

Ibn al-Qayyim in his study of the *maqashid shari’ah* once stated that the basic sharia and foundation of law is *hikmah* and the realization of human *maslahah* both in the world and the hereafter. According to him, the *maslahah* in this case is justice, mercy, as well as *maslahah* and *hikmah* as a whole. Any problems that deviate from justice to tyranny, from mercy to enmity, from *maslahah* to destruction, and from *hikmah* to futility are not considered sharia, even with any interpretation.<sup>3</sup> This opinion is very much in accordance with the study object of *maqashid shari’ah*.

38 Hasbi Umar, *Nalar Fiqh Kontemporer*, 123.

39 Ahmad Imam Mawardi, *Fiqh Minoritas: Fiqh Aqalliyat dan Evolusi Maqashid al Syariah dari Konsep ke Pendekatan* 193.

Alyubi specifically discussed this issue in his book *Maqashid al-Syari'ah al-Islamiyyah wa 'Alaqatuba bi al-Adillati al-Syari'ati*. He stated that based on the *maslahah* contained in sharia law, it can be divided into four kinds: *dharuriyyat*, *hajjiat*, *tabsiniyat*, and *mukammilat*. Meanwhile, Al-Syatibi divided the levels of benefit into three levels of *maqashid shari'ah*. First, *maqashid al-dharuriyyat* (primary purpose) intends to maintain the five basic elements of human life. Second, *maqashid hajjiyat* (secondary purpose) is to eliminate difficulties or make the maintenance of the five main elements better. Third, *maqashid al-tabsiniyat* (tertiary purpose) is used so that humans can do their best to improve the maintenance of the five main elements.<sup>40</sup>

To make it easier to understand the concept of *maqashid shari'ah* and the level of needs, the following will explain the five points of *maslahah* with their respective ranks:<sup>41</sup> Maintaining religion. Based on its importance, it can be divided into three ranks: a) *dharuriyyat*; maintaining and carrying out primary religious obligations, such as praying 5 times a day. If prayer is neglected, the existence of religion is threatened; b) *hajjiyat*; implementing religious provisions to avoid difficulties, for example, the existence of *rukhsah* (a kind of remission) sharia for travelers - they are allowed to do *qasr* (shorten the number of prayers), and many other examples; c) *tabsiniyat* which means following religious orders to uphold human dignity, while at the same time completing the implementation of obligations towards God, such as keeping the body, clothes, and house clean. The grouping above does not mean that what is included in *tabsiniyyat* is considered unimportant because this will strengthen the *hajjiyat* and *dharuriyyat* groups.

For instance, keeping the body, clothes, and places clean from dirt and *najis* during prayers can affect the validity of prayers. 1) maintaining soul. It is divided into three ranks; 2) *dharuriyyat*; meeting basic needs in the form of food to maintain life. If this basic need is neglected, it will endanger human existence. For example, in a state of hunger and there is no other food other than forbidden food such as pork, then someone may eat it. However, it is limited to maintain life; 3) *hajjiyat*; it is allowed to kill a *halal* animal to get the pleasure of delicious and *halal* food. If this action was not carried out then it does not threaten human existence, it just can make humans difficult because looking for delicious food is limited; 4) *tabsiniyyat*; activities related to politeness

40 Al-Syatibi, *Al-Muwafaqat Fi Usul al-Syari'a* (Kairo: Mustafa Muammad, n.d.), 190.

41 Renny Supriyanti, "Pengantar Hukum Islam Dasar-Dasar Dan Aktualisasinya Dalam Hukum Positif" (Bandung: Widya Padjadjaran, 2011), 23.

or ethics that make eating become a worship value. If these activities are not carried out, they will not threaten human existence or make life difficult.

Maintaining mind. There are also 3 (three) ranks; 1) *dharuriyyat*; for example, the prohibition of consuming alcohol. If this provision is not obeyed, it will threaten the existence of the human mind; 2) *hajiyyat*; for example, the duty of acquiring knowledge. If the duty is ignored, it will not damage the human mind but will complicate human life. Because humans always need knowledge so that they can live perfectly and not be crushed by the current development and with knowledge, humans can get guidance on truth and salvation; 3) *tahsiniiyyat*, for example, avoiding fantasies or watching and listening to something useless. It is closely related to etiquette and does not threaten the mind directly.

Maintaining descendants. Based on its importance, it can be divided into three ranks: a) *dharuriyyat*; for example, the prohibition of committing adultery and the order to do marriage. If marriage is neglected and adultery is done, it will definitely threaten the existence of the descendant; b) *hajiyyat*; for example, the prohibition of being alone in a quiet place with the opposite sex who is not his/her *mahram* (blood/marriage related). Another example is allowing divorce as the last way for married couples if household harmony can no longer be maintained; c) *tahsiniiyyat*; for example, the suggestion to avoid pornography.

Maintaining property also can be divided into three ranks; a) *aharuriyyat*; for example, permitting buying and selling as a procedure for legal ownership of property, as well as the prohibition of *riba* in transactions and prohibition of taking other people's property illegally, such as stealing, appropriating, corruption, and others. If these provisions are violated, it will threaten the existence of the property; b) *hajiyyat*; for example, if the buying and selling of *salam* (ordering/booking) are not carried out, the activity of buying and selling *salam* will not threaten the existence of the property. But, if it is not done, it will likely make it difficult for people who need capital or have limited capital in trading; c) *tahsiniiyyat*; such as the provision or obligation to be honest in transactions. It is related to business ethics and affects the validity of the transaction.

The order above starts from *dharuriyyat*, *hajiyyat*, and *tahsiniiyyat* based on its level of need and priority scale. This order will show the level of urgency when *maslahah* in each ranking conflict with one another. In this case, the *dharuriyyat* ranks first, followed by the *hajiyyat*, then the last one is the *tahsiniiyyat*. Maintaining the needs of *dharuriyyat* is a form of preserving essential needs for human life which according to As-Syatibi there are five main things as explained above. If the *dharuriyyat* needs are not met, it will threaten the existence of the

five main points above. Unlike the *dharuriyat*, the *hajiyyat* needs do not include essential needs but rather those that can prevent people from difficulties in life. If *hajiyyat* needs are not met, it will not threaten the existence of the five main points, but it can complicate humans in their lives. While the *tahsiniiyyat* needs are the complement to the needs of *dharuriyat* and *hajiyyat*, so that if the needs for *tahsiniiyyat* are not met, it will not threaten the existence of the five main things or even make it difficult for humans. Tertiary needs are only related to ethics, but the *tahsiniiyyat* needs are sometimes to be a requirement and affect the validity of fulfilling the needs of *dharuriyyat* and *hajiyyat*.

According to Syatibi, the determination of the five main objectives above is based on the proof in the Quran and hadith. The verses of the Quran which are used as the basis in general are the *makkiyah* verses which are not performed *nasakh* and the *madaniyah* verses which strengthen the *makkiyah* verses. For example verses about the commandment of prayer, the prohibition of killing, the prohibition of drinking, the prohibition of adultery, and the prohibition of eating other people's property in a way that is not justified (*batal*).<sup>42</sup>

### **The Pattern of Absorption of Islamic Law into Law Number 33 of 2014 on Halal Product Guarantee**

Before talking about the pattern of absorption of *fiqh* of halal products into Law Number 33 of 2014 concerning the Halal Products Guarantee, researchers try to address this issue through the pattern of absorption of Islamic law into national law in Indonesia. History wise, the pattern of absorption of Islamic law into national law has experienced ups and downs. From the perspective of Lodwijk Willem C. Van Den Berg, an anthropologist who is concerned with Islamic law and lived in Indonesia from 1870-1887, before the arrival of the Dutch colonial, Islamic law was fully applicable to Muslims. It is because they have embraced their religion even though there are deviations in their practice. Islamic law has changed the mindset and perceptions of the Indonesian people so that they make Islamic law as customary law and daily behavior. Van Den Berg's theory is known as the *receptie in complexu* theory.

During its development, the theory was opposed by Christian Snouck Hurgronje, who at that time worked as an advisor to the Dutch East Indies government (1898) with his *receptie* theory. Through his theory, Hurgronje stated that for Indonesians, customary law basically applies; Islamic law will apply if the norms of Islamic law are accepted by the community as customary

42 Al-Syatibi, *Al-Muwafaqat Fi Usul al-Syari'a*, 201.

law. His theory was later strengthened and developed by Van Vollenhoven and Ter Haar Barn.

According to Alfian,<sup>43</sup> *reception* theory is based on the assumption and the idea that if indigenous people have the same culture or are close to European culture, then the colonization of Indonesia will work well and there will be no shocks to the power of the Dutch East Indies government. Therefore, the Dutch government had to approach groups that would revive customary law and give encouragement to them, to bring the customary law group closer to the government. On the basis of this theory, Snouck has succeeded in minimizing Islamic law from Indonesian society. Islamic law is suppressed to be a subordinate people's law.

Indonesian legal experts really pay close attention to the reception theory which causes Indonesian society to stay away from Islamic law. One of those who oppose it is Hazairin in his book *Tujuh Serangkai Tentang Hukum Islam*. He argued that after Indonesia proclaimed independence on August 17, 1945, through Article 2 of the Transitional Rules of the 1945 Constitution which stated that the Dutch colonial inheritance law based on the Receptie Theory was deemed invalid because its spirit was against the 1945 Constitution. *Receptie* must be evaded because it contradicts the Quran and Sunnah. Hazairin called the *Receptie* Theory as the 'Devil' Theory.<sup>44</sup>

Based on his thoughts and opposition to the *Receptie* theory, Hazairin concluded that the theory is considered invalid and must be excluded from Indonesian constitutional law since 1945. Following the 1945 Constitution Article 29 paragraph 1, Indonesia is obliged to form a national law of which one of the sources is religious law. Apart from Islam, other religions for adherents of their respective religions have also become sources of national law, both in the fields of civil law and criminal law as national law<sup>45</sup>.

Hazairin's thought above is very important to serve as a guide in restoring the purification of Islamic law which is in line with the teachings of the legal arrangement. It strengthens the theory of Legal Authority Arrangement and also sharpens the theory of *receptie in complexu* presented by Dutch experts regarding its policies towards Islamic law.

Furthermore, Sayuti Thalib presented a similar opinion with Hazairin through his theory known as *reception a contrario* theory. It is called *reception a contrario* because the theory contains the opposite (contra) of the *receptie* theory.

43 Alfian (editor), *Segi-Segi Sosial Masyarakat Aceh*, (Jakarta: LP3S, 1997), 207-209.

44 H. Ichtijanto S.A., *Pengembangan Teori Berlakunya Hukum Islam*, 127.

45 H. Ichtijanto S.A., *Pengembangan Teori Berlakunya Hukum Islam*, 131.

This theory emerged based on the results of research on the law on marriage and inheritance at that time. His points of thought are the following:<sup>46</sup> For Muslims, Islamic law applies : 1) it is in accordance with the beliefs and ideals of law, spiritual and moral ideals; 2) customary law applies to Muslims if it does not conflict with Islam and Islamic law.

Sayuti Thalib argued that in Indonesia with Pancasila and the 1945 Constitution as the legal framework, religious people should obey their religious laws, in accordance with the precepts of “Belief in the one and only God.” Regarding other rules, for example customary law, these rules can be applied to Muslims if they do not conflict with Islamic law.

Ichtijanto,<sup>47</sup> a lecturer in special topics on Islamic Law and History of Islamic Law at the Postgraduate Faculty at the University of Indonesia (UI) also contributed to the constellation of thoughts on the application of Islamic Law in Indonesia. He presented a theory related to Islamic law known as the theory of existence. This theory explains the existence of Islamic law in national law. This theory reveals the form of the existence of Islamic law as a source of national law, the contents of this theory are as follows: a) Islamic law is an integral part of Indonesian national law; b) Its existence, independence, strength, and authority are recognized by national law and given the status as national law; c) The norms of Islamic law (religion) serve as a filter for the materials of Indonesian national law; d) It is the main material and the main element of Indonesian national law.

The existence as described above is the socio-juridical facts of the Islamic law in Indonesia if we review the historical records of the Indonesia development. Starting from the formulation of the Jakarta Charter with *belief in God with the obligation to practice the sharia for its adherents*, which was later changed to a broader meaning for the sake of national interests on August 18, 1945, replaced by the editorial of “Belief in the one and only God”. It became the opening of the 1945 Constitution along with article 29 paragraph 1 and 2, GBHN which always expects religion not only to be located in the personal area but also to be included in the communal area and the results of legal research that indicate a desire to refer to Islamic law.<sup>48</sup>

The formation of Islamic law into national law is marked by the inclusion of several aspects of Islamic law into legislation, either directly mentioning

46 Read more, Sayuti Thalib, 1980, *Reception a Contrario: Hubungan Hukum Adat Dengan Hukum Islam*, (Bina Aksara), 15-70

47 H. Ichtijanto S.A., *Pengembangan Teori Berlakunya Hukum Islam*, 137.

48 H. Ichtijanto S.A., H. Ichtijanto S.A., *Pengembangan Teori Berlakunya Hukum Islam*, 80-81.

it in the term Islamic law or not. The purpose of this inclusion is to find the compatibility between Islamic and national laws. With that being said, the tensions of Muslims towards their homeland can be minimized. It is absolutely necessary to make efforts to form Islamic law in Indonesia because in statistical records it is the majority group. However, the heterogeneity of the nation must also be considered. According to Ali Yafie, efforts to include Islamic law into national law in the sense of positive law being used to meet the needs of the Indonesian people need to be rethought.<sup>49</sup> Moreover, recently, since the opening of the democracy era after the reformation efforts to create *darut taqwin*, that is the period of Islamic law which requires that the law has a greater share in the national interest. This is accompanied by the need to process *fiqh* so that it can be integrated into regulations of law. The formation of Islamic law into national law is limited to laws whose implementation requires the assistance of state power and is correlated with public order, such as judicial power, marriage, sharia banking, *balal* certification, and so forth.

However, the effort to absorb Islamic law into national law should not only be done textually and prioritize majority authoritarianism. The effort must be balanced with the perspective of *maqashid shari'ah*, by including Islamic law which has universal values to achieve *maslahah*. The effort is in line with the pattern of absorption of Islamic law offered by an-Na'im.

An-Naim<sup>50</sup> argued that the ideal pattern in the process of transforming Islamic law into national law is by the nationalization pattern of Islamic law, not the pattern of Islamization of national law which tends to be orthodox. According to An-Na'im the pattern of nationalizing Islamic law is an effort to harmonize Islamic law with national law in a transformative-contextual way. It does not prioritize Islamic symbols in its products of legislation, but the substance is adopted from Islamic law but still uses national symbols. Meanwhile, according to An-Naim, the second pattern is the Islamization pattern of national law, which is an attempt to incorporate normative Islamic law into national law, which prioritizes the exclusive Islamic sectoral ego and ignores the plurality of heterogeneous Indonesian society.<sup>51</sup>

49 Jazuni, *Legislasi Hukum Islam di Indonesia* (Bandung: Citra Aditya Bakti, 2005), 348-349

50 Abdullah Ahmad An-Na'im, *Dekonstruksi Syariah: Wacana Kebebasan Sipil, Hak Asasi Manusia dan Hubungan Internasional dalam Islam (Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law)*, translated by Ahmad Suaedi and Amirudin Arrani (Yogyakarta: Lkis, 1994), 17.

51 Muhyar Fanani, *Membumikan Hukum Islam: Nasionalisasi Hukum Islam dan Islamisasi Hukum Nasional Pasca Reformasi* (Yogyakarta: Tiara wacana, 2009), 178.

This second pattern will result in a symbolic Islam that is not environmentally friendly in the Indonesian context.<sup>52</sup> Even Khalid Aboul Fadl also presented a similar concept, that the coercion of textual *fiqh* products will cause an authoritarian Islamic law which in the operationalization and implementation of the law is always repressive.<sup>53</sup>

The two patterns offered by An-Naim, in the context of Indonesian Law No. 33 of 2014 concerning Halal Product Guarantee, is an ideal product that deserves to be a role model because of its unique and distinctive transformation process. It is unlike the transformation of *zakat*, *hajj*, and *waqf* in the form of a law which are from Islamic law and are also intended for the Muslim community in a national context. This is different from the process of forming law on the *halal* guarantee which is from Islamic law but intended for all producers in both national and international contexts. So, the legislation of *halal* products guarantee is a condition *sine quanon* that must be considered by the government to provide legal certainty to consumers who are Muslim in majority.

From a juridical perspective, the law on *halal* products guarantee can be interpreted as a representation of the state's responsibility in an effort to protect its citizens. Because the state constitutionally must protect the rights of its people to express their religious beliefs and teachings without any obstacles and disturbances, as stipulated in the 1945 Constitution articles 28 E paragraph (1) : “Each person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return”, and Article 29 paragraph (1): “The state is based on the belief in the One and Only God” paragraph (2) : “The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief”

The right to practice religious beliefs and teachings as well as human rights, the right to get legal protection and equal rights and position in the law, as well as the right to obtain a decent life; those are the rights of every citizen of the Republic of Indonesia, which is guaranteed by the constitution. Indonesian Muslims as part of Indonesian citizens certainly also have the constitutional right to obtain legal protection in expressing their beliefs.

The *fiqh* legislation of *halal* products in laws or *qanuns* has never been discussed in the classical *fiqh* discourse. It may be because the condition at that

52 Muhayar Fanani, *Membumikan Hukum Islam: Nasionalisasi Hukum Islam dan Islamisasi Hukum Nasional Pasca Reformasi*, 178

53 Khaled M Abou El Fadl, *Atas Nama Tuhan: Dari Fikih Otoriter ke Fikih Otoritatif* (Jakarta: Serambi, 2004), 45.

time did not require enacting a law on the *fiqh* of *halal* products. At that time, food, drug, and cosmetics in circulation were not as extensive and complex as they are today. However, today's modern conditions are very different from the complexity of society's problems, including knowing the *halal* status of a product. Food, drinks, drugs, cosmetics, and so on are circulating in the wider community.

This landscape makes the JPH Law a distinctive legislative product. On the one hand, its existence reflects the pattern of Islamization of national law because it must be admitted that the existence of this law is a form of constitutional response from the majority of Indonesian Muslims. On the other hand, its existence also reflects the pattern of nationalization of Islamic law because the substance contained in the JPH Law adopts Islamic law values that are enforced nationally.

### **The Pattern of Absorption of Fiqh of Halal Product into Law Number 33 of 2014 on Halal Product Guarantee in the Perspective of *Maqashid Shari'ah***

After understanding the pattern of absorption of Islamic law into the JPH Law as described above, then we will discuss the *maqashid shari'ah* review of the absorption pattern of Islamic law into the JPH Law. *Maqashid shariah* can be understood as the purpose of law in Islam. *Maqashid shari'ah* is the main study in the philosophy of Islamic law. The theory of *maqasid syari'ah* is built on the very convincing premise that all sharia laws are set for one purpose. Sharia is applied not for itself but serving for another important thing called human *maslahah*. The most basic and universal human *maslahah*, which is the main objective of the stipulation of sharia, is religious freedom, safety of soul, safety of mind, family honor, and security of property. The human *maslahah* will always develop according to the times. Likewise, with *maqashid shari'ah*, the concept will also develop along with the human *maslahah*. From this description, it is clear that Islamic Law in its formation must have considered *maqasid shari'ah*, because *maqasid shari'ah* is behind the motive of the stipulation of a law.

The main objective of the absorption of Islamic law into the JPH Law is to protect religion (*hifdz al-din*). According to Ghazali, the state has a vital role in maintaining religion, while at the same time, religion has a significant role in providing a spiritual spirit for the establishment of a country. When viewed from these two functions, the effort of legalization of *fiqh* of *halal* products into the JPH Law is the practical implementation of what Ghazali has stated. Even from the perspective of *maqashid shari'ah*, the role of the state in maintaining

religion, in this case, the legislation of JPH Law is something that is *dlaruri*. If the state does not provide constitutional guarantees to the needs of the majority of Muslims in Indonesia to obtain information on halal food, drugs, and cosmetics, the state is considered to have lost its *hirasah* function.

In the perspective of Al-Syatibi, *maqashid shari'ah* is interpreted as the primary purpose behind the legal texts stated in Islamic law. The purpose of the law known as *kulliyatul kbamsab*, that are *Hifdzul al-din*, *hifdzul al-nafs*, *hifdzul al-'aql*, *hifdzul al-nasl*, and *hifdzul al-mal*. All of the five main objectives of Islamic law are oriented as an effort to create *maslahah* and prevent damage and *mudarat*. If it is related to the pattern of Islamization of Halal Product Guarantee into national law, this effort is an expression of maintaining religion in the form of providing *halal* products circulating in Indonesia, where the majority of the population is Muslim. The pattern of Islamization of Halal Product Guarantee into National Law can also be interpreted as an effort to prevent the circulation of *haram* products without being marked with a clear *haram* label and status. If not, the damage effect arising from the circulation of products whose *halal* status is not clear will destroy *hifdzul al-din* as the top of the *maqashid shari'ah* hierarchical configured in the *kulliyatul kbamsab* above.

Apart from *hifdzul al-din*, there is also *hifdzul al-'aql* whose maintenance existence is threatened if the state does not take over the distribution management of the distribution of food products, beverages, drugs, cosmetics, etc. The existence of clear regulations related to distribution management accompanied by the *halal* status of a product will help protect Muslims from consuming *haram* products and possibly threaten the maintenance of *hifdzul al-'aql*.

In the perspective of classical scholars, the illustration of *hifdzul al-'aql* is often associated with *kbamr* (liquor), and illegal drugs that can destroy the potential of mind as a human navigator to determine what is *haq* and *bathil*. When the consumption of illegal drugs and alcohol is not regulated, the Indonesian people will lose the distinctive filter of both. It definitely can endanger the future of human civilization. At this moment, the pattern of absorption of Islamic law into national law through the Islamization of *halal* product guarantees into national law is considered compatible with the *maqashid shari'ah* spirit initiated by classical scholars.

At the same time, in a contemporary perspective, *maqashid shari'ah* is not only known as the maintenance of *kulliyatul kbamsab*. However, there is a transformation from a maintenance narrative to a development narrative. Such as the narrative of developing religion, soul, mind, descent, and property.

The form of transformation from maintenance narrative to development in the concept of contemporary *maqashid shari'ah* is expressed through the development of Islamic law values into legislation products on a regional, national and international scale.

Islam as a religion of *rahmatan lil 'alamin* with its universality values must be able to prove that its existence is *shalih li kuli zaman wa makan* (compatible in every space and time). *Maqashid shari'ah* is an appropriate perspective to serve as a conceptual foundation in proving that Islamic law is compatible in every space and time. In this context, Nuruddin Al-Khadimy offered *ijtihad maqashidi* in addition to *ijtihad ushuly* and *ijtihad furn'iy* which were developed by classical scholars. *Ijtihad maqashidi* is intended as a serious effort by a *mujtabid* to be able to reveal and explore the philosophical meaning of ordering Islamic law. Al-Khadimy also added that a *maqashidi mujtabid* must reveal *syari'* messages which are universal such as human values, justice, equality, kindness, etc.<sup>54</sup> Therefore, as a consequence *ijtihad maqashidi* must not conflict with universal philosophical values, global values and norms, and national law norms.<sup>55</sup>

At this moment, the *maqashid shari'ah* from Jasser Auda's perspective which is based on philosophy and system is also interesting to be used as an optic to see the pattern of absorption of Islamic law into the JPH Law. The pattern of nationalizing Islamic law in the JPH Law is deemed appropriate if it is related to the philosophical values contained in the pattern of absorption of Islamic law. It is because the pattern of nationalization of Islamic law is a pattern that emphasizes the absorption of Islamic law values that are compatible with Indonesian culture. In An-Na'im's perspective, the pattern of nationalization is different from the pattern of Islamization. If the Islamization pattern emphasizes the absorption of Islamic law textually, the nationalization pattern is an attempt to absorb Islamic law substantially and philosophically. In the context of the nationalization of Islamic law into the JPH Law, it can be seen that the law is not intended for the importance of majoritarianism on behalf of the *an-sich* Muslim, but there are values of justice for all Indonesians. That is because the parties who benefit from the JPH Law are not only Muslims, most of whom are consumers, but also the large producers, most of whom are in fact non-Muslims, for example Indofood, Garuda food, Siantar food, Wings food, Sido Muncul, and others.

54 Nuruddin Al-Khadimy, *Al-Ijtihad Al-Maqashidi* (Qatar, 1998), 65.

55 Nuruddin Al-Khadimy, *Al-Ijtihad Al-Maqashidi* (Qatar, 1998), 65.

This landscape is an expression of the development of *kulliyatul khamsab* which focuses on aspects of religious and property development. In the modern context, maintaining religion is not enough, it must be developed in the form of legislation. The JPH Law is a form of developing religion into a national regulation that was originally only contained in classical book narratives. At the same time, the birth of the JPH Law was a form of property development effort. Indonesia as a Muslim majority country is very unfortunate for its potential because it is only able to rank 10th in terms of *halal* food production even though, with Indonesia's position as a Muslim majority country, Indonesia should be able to occupy the top rank in producing halal food. The birth of the JPH Law is one of the government's constitutional efforts to increase the productivity of the *halal* industry in Indonesia, which has recently been in demand.

In a global context, many researchers affirm that both Muslim and non-Muslim producers benefit greatly from the *halal* labeling.<sup>56</sup> Therefore, the *halal* industry is increasing from year to year. Their sales turnover has increased dramatically than before they gave the label. Like in Malaysia, many entrepreneurs register their products to get a *halal* certificate even though the certification regulations are voluntary. It is more due to the potential market for *halal* products in Malaysia which reaches 2.3 million USD.<sup>57</sup> Even Thailand, a Muslim minority country, is able to become the 10 (ten) largest exporting countries of non-pork and non-alcoholic food to developed countries. In Thailand, the demand for *halal* certification is very high and is increasing by 20% per year. In 2011, they received 2,188 applications for *halal* certificates, 90% for food and 10% for consumer goods such as cosmetics, toothpaste, and drugs. Until 2014, there were 120,000 products that were *halal* certified and 10% of them were products for export.<sup>58</sup> It shows that even for producers, the *halal* labeling provides its own profit.

56 Warto and Zainal Arif, "Halal Product Business Between Opportunities and Challenges, Problematics and Their Solutions," *Jurnal Al-Ulum* 20, no. 1 (June 2020); Warto and Syamsuri, "Sertifikasi Halal Dan Implikasinya Bagi Bisnis Produk Halal Di Indonesia," *Jurnal Al-Maal* 2 (July 2020); Heru Susetyo et al., "Regulating Halal Product in Indonesia: Between Religious Needs and Socio-Economic Challenges," *Mazabib* 18, no. 1 (June 2019): 18; Muhammad Syukur and Suthep Nimsai, "Factors Influencing the Purchase Intention of Halal Packaged Food in Thailand," *International Journal of Supply Chain Management* 7, no. 4 (August 2018).

57 Heru Susetyo, Farida Prihartini, Iffah Karimah, and Ahmad Khozi, "Regulating Halal Product in Indonesia: Between Religious Needs and Socio-Economic Challenges," *Mazabib*, Vol 18 No. 1, June 2019, 18.

58 Heru Susetyo et al., "Regulating Halal Product in Indonesia: Between Religious Needs and Socio-Economic Challenges," *Mazabib* 18, no. 1 (June 2019): 23-24; Muhammad Syukur and Suthep Nimsai, "Factors Influencing the Purchase Intention of Halal Packaged Food in Thailand," *International Journal of Supply Chain Management* 7, no. 4 (August 2018).

## Conclusion

Based on the typology presented by An-Naim regarding the absorption of Islamic law into national law, the JPH Law is a unique absorption pattern. Because it includes two patterns of absorption of Islamic law into it at once. Those are the pattern of Islamization of national law and the pattern of nationalization of Islamic law on the other side. Besides, the indicator that the JPH Law is classified as a pattern of the Islamization of national law is because it contains a lot of material that is absorbed from *fiqh* of *halal* products and its presence is a form of constitutional response to the legal needs of the majority of Indonesian Muslims to obtain information regarding whether a product is *halal* or not. Meanwhile, the indicator that the JPH Law is classified as a nationalization pattern of Islamic law is because the substance contained in the JPH Law adopts Islamic legal values that are applied nationally. The two absorption patterns, when reviewed from the perspective of *maqashid shari'ah*, then the Islamization Pattern of Halal Product Guarantee into National law is an attempt by the state to maintain religion (*hifdz al-din*) in the form of providing *halal* products for its people that are Muslim in majority. At the same time, the pattern of absorption of Islamic law can also be interpreted as an effort to prevent the circulation of *haram* products without having a clear label and status of *haram*. Because if it is not done, the *mudharat* effects arising from the circulation of products with unclear *halal* status will damage *hifdz hu al-din*. Besides aiming to strengthen *hifdz al-din* the Islamization pattern of the JPH Law, it is also to protect Muslims from consuming *haram* products and possibly threaten the maintenance of *hifdz al-'aql*. The pattern of nationalization of Islamic law in the JPH Law is deemed appropriate, if it is related to the philosophical values contained in the pattern of absorption of Islamic law. It is because the pattern of nationalization of Islamic law is a pattern that emphasizes the absorption of Islamic law values that are compatible with Indonesian culture. In the context of the nationalization of Islamic law into the JPH Law, it can be seen that the law is not intended for the importance of majoritarianism on behalf of the *an-sich* Muslim, but there are values of justice for all Indonesian people. It is because the parties who benefit from the existence of the JPH Law are not only Muslims as consumers, but also the large producers that are in fact non-Muslims.

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