

# THE CONTEXTUALIZATION

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## THE CONTEXTUALIZATION OF *ḤIFẒ AL-ʿIRD* ON HOAX NEWS

(A Study on Imam Tājuddīn al-Subkī's  
*Maqāṣid al-sharīʿa*)

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**Abstract:** This study examines Tājuddīn al-Subkī's concept of *ḥifẒ al-ʿird*, as an essential part of *maqāṣid al-sharīʿa*, and uses it to analyze hoax news. To limit this study, the authors focus on two crucial aspects. First, what is the concept of *ḥifẒ al-ʿird* according to Imam Tājuddīn al-Subkī? Second, how to contextualize *ḥifẒ al-ʿird* in the contemporary time to approach hoax news? This library research uses content and critical analysis to Tājuddīn al-Subkī's thoughts, which are contained in the works written by himself and those written by scholars after him. This study argues that al-Subkī initiated the concept of *ḥifẒ al-ʿird* (maintaining honor). As an essential part of *maqāṣid al-sharīʿa*, *ḥifẒ al-ʿird* must be held in addition to five other main purposes, namely maintaining the soul, religion, reason, lineage, and treasure. According to al-Subkī, defending honor can be equated with keeping the lineage because the two have a close and robust relationship, especially when discussing adultery and *qadhif*/قذف (accusing people of committing adultery). The spread of hoaxes today is like *qadhif* in Islamic law. The hoax spread must be stopped because it causes damage to the life of society, nation, and state. Preventing injury and realizing benefits are at the core of *maqāṣid al-sharīʿa*.

**Keyword:** *maqāṣid al-sharīʿa*, *ḥifẒ al-ʿird*, *maslahah*, *al-darūriyyāt*, hoax

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### Introduction

FIQH AND UŞŪL FIQH scholars have agreed that the core objective of Islamic law (*maqāṣid al-sharīʿah*) is to achieve the benefit,<sup>1</sup> so that a

<sup>1</sup> Imam al-Shāṭibī clearly stated that Allah's intention to bring down the *sharīʿah* (the rule of law) is nothing but to take advantage of and avoid damage (*jalb al-maṣalih wa dar'ul mafāsīd*). In simpler language, the legal rules that Allah

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popular expression emerged among them: “*aynamā kānat al-maṣlahatu fathammā hukmu Allāh*,”<sup>2</sup> (where there is *maṣlahat*, there is the law of Allah). *Maṣlahat*, which is in line with Islamic law principles, can be used to consider the establishment of Islamic law. The obligations in *sharī'ah* must pay attention to *maqāṣid al-sharī'ah*, which aims to protect humans' benefit.<sup>3</sup>

Furthermore, al-Ghazālī stated that the *maqāṣid al-sharī'ah* that must be maintained is in five forms, namely: maintaining religion (*ḥifz al-dīn*), guarding the soul (*ḥifz al-nafs*), maintaining reason (*ḥifz al-'aql*), claiming descent (*ḥifz al-nasl*), and safeguarding property (*ḥifz al-māl*). The five items that must be guarded or maintained are known as *al-kulliyāt al-khamsah* or *al-daruriyyāt al-khamsah*. If someone does an action to support the five aspects of the *maqāṣid al-sharī'a*, it is called *maṣlahah*. Also, the attempt to reject all wickedness related to the five elements *maqāṣid al-sharī'ah* is called *maṣlahah*.

Historically, in the seventh-century hijriyah, al-Imām Tājuddīn al-Subkī gave rise to the concept of *ḥifz al-'ird* as a vital part of *maqāṣid al-sharī'ah*. *Al-'ird* which means excellent or praiseworthy character must be maintained and guarded.<sup>4</sup> According to al-Subki, the concrete form of *ḥifz l-'ird* in the classical tradition appears in the form of sanctions for *qazf* perpetrators, namely people who accuse others of adultery. In this context, the imposition of sanctions aims to prevent a person from accusing others of committing religious prohibitions, arbitrarily, without clear and authentic evidence. Although the concept of al-Subkī has been raised for a long time and was “forgotten”, Subkī's thought

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determines are only for the benefit of mankind itself. Read in more detail; Abū Ishāq Ibrāhīm ibn Mūsā al-Gharnatī al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, Juz 2 (Beirut: Dār al-Ma'rifah, 1975), 6; see also Abu Ḥāmid Muḥammad ibn Muḥammad al-Ghazālī, *Al-Mustasfa min 'Ilm al-Uṣūl* (Beirut: Dār al-Kutub al-'Ilmiyah, n.d), 286.

<sup>2</sup> Yūsuf Al-Qaraḍāwī, *Al-Ijtihād al-Mu'āṣir* (Cairo: Dār al-Tawzī' wa al-Nashr al-Islāmiyyah, 1994), 68.

<sup>3</sup> Yudian W. Asmin, *Filsafat Hukum Islam dan Perubahan Sosial* (Surabaya: Al-Ikhlās, 1995), 229.

<sup>4</sup> Ahmad Warson Munawir, *Kamus al-Munawwir Arab-Indonesia* (Yogyakarta: Pustaka Progresif, 1984), 917.

deserves to be reincarnated", in order to revive the *maqāṣid al-sharī'a* in the world.<sup>5</sup>

One of the manifestations of *hifz al-'ird* in the contemporary context is to keep speech from spreading hoaxes. Hoaxes have spread massively in society, along with the increasing use of technology today. Hoaxes can apply in the form of text, photos, and videos. A study revealed that hoax news has an impact on the mental health of people exposed to it, such as post-traumatic stress syndrome (PTSD), anxiety, and even acts of violence.<sup>6</sup>

In religious terms, hoaxes can be equated with slander because both are conveying fake news. Islam insists that slander is crueler than murder.<sup>7</sup> Therefore, Islam prohibits slander, and the perpetrator can be punished in the form of *ḥad* or *ta'zīr*.<sup>8</sup> Lately, hoaxes have been rampant in the cultural, social, economic, political and even religious fields. Hoaxes can destroy the life of society, nation and state.

To prevent the destructive effects of hoaxes' spread, Islam through *maqāṣid al-sharī'a* prohibits hoaxes from protecting and preserving human dignity and honor. To strengthen the *maqāṣid al-sharī'a*, al-Subkī specifically came up with a brilliant idea, namely including *hifz al-'ird* (maintaining honor) as one of the essential parts of *maqāṣid al-sharī'a* that must be guarded and maintained, especially in this modern age. Even though al-Subkī's idea has

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<sup>5</sup> 'Abdurrahmān Al-Shurbaynī, *Hāshiyah al-'Allamah al-Bannānī 'alā Sharḥ al-Jalāl Shamsuddīn Muḥammad bin Aḥmad al-Maḥallī "alā Matni Jam" al-Jawāmi' li al-Imām Tajuddīn al-Subkī*, Juz 2 (Beirut: Dār al-Fikr, 1982), 280.

<sup>6</sup> Faried F Saenong et al., *Fikih Pandemi: Beribadah di Masa Wabah* (Jakarta: NUO Publishing, 2020), 87.

<sup>7</sup> *Al-fitnatu ashaddu min al-qaṭl...* (Q.s. Al-Baqarah (2): 191 and *al-fitnatu akbaru min alqaṭl...* (Q.s Al-Baqarah (2): 217).

<sup>8</sup> The punishment of "*ḥad*" has been determined in the Qur'an and hadith, as in the case of *qadhif*. *Qadhif* is accusing another person of committing adultery. If the accuser cannot present four witnesses against the person accused of cheating, he will be punished 80 times, as said by Allah SWT in Surah al-Nur verses 4, 6, and 23. *Ta'zir* is a punishment given by the government for violating the provisions that have been made by the government. In the context of this hoax, the government issued ITE Information and Electronic Transaction Law Number 19 of 2016, amending Law Number 11 of 2008 concerning Article 28 Paragraph 1.

been raised for a long time and was forgotten for a relatively long time, the author thinks it deserves to be revived.

Several researchers have studied on the thoughts of scholars such as al-Gazālī, al-Shāṭibī, 'Izzuddīn Ibn 'Abd al-Salām, Ibn 'Āshūr, Jasser Auda, in the field of Maqasid al-Shari'ah. Among these researchers are al-Raisuni,<sup>9</sup> Abdurrahman Kasdi,<sup>10</sup> Moh. Toriquddin,<sup>11</sup> and Suansar Khatib.<sup>12</sup> The results of their study show that classical scholars such as al-Gazālī and al-Shatibi constructed the maqasid sharia as guardianship of the five principles. The five principles are *ḥifẓ al-dīn* (guarding religion), *ḥifẓ al-nafs* (guarding the soul), *ḥifẓ al-'aql* (guarding reason), *ḥifẓ al-nasl* (guarding descent), and *ḥifẓ al-māl* (guarding property). Meanwhile, the results of Zul Anwar Ajim Harahap's research showed that the thought of 'Izzuddīn ibn 'Abd al-Salām can be applied to the fields of worship, social, and morals.<sup>13</sup> Other researchers such as Chamim Tohari stated that Ibn Asyur elaborated on the Maqasid Sharia with more universal contemporary themes such as fithrah, tolerance, benefit, equality, freedom.<sup>14</sup> In addition, Retna Gumanti<sup>15</sup>, and Muhammad Faishol<sup>16</sup> elaborated on Jasser Auda's thoughts on the importance of an

<sup>9</sup> Aḥmad Al-Raysūnī, *Naẓariyah al-Maqāshid 'Inda al-Imām al-Shāṭibī* (Washington, USA: al-Ma'had al-'Alami li al-Fikr al-Islāmī, 1990).

<sup>10</sup> Abdurrahman Kasdi, "Maqasid Syari'ah Perspektif Pemikiran Imam Syatibi dalam Kitab al-Muwafaqat," *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam* 5, no. 1 (2014): 46–63.

<sup>11</sup> Moh Toriquddin, "Teori Maqāshid Syari'ah Perspektif al-Syatibi," *Journal de Jure* 6, no. 1 (June 2014): 33–47.

<sup>12</sup> Suansar Khatib, "Konsep Maqashid al-Syari'ah: Perbandingan Antara Pemikiran Al-Ghazali dan al-Syathibi," *Mizani: Wacana Hukum, Ekonomi dan Keagamaan* 5, no. 1 (2018): 47–62.

<sup>13</sup> Zul Anwar Ajim Harahap, "Konsep Maqasid Al-Syariah Sebagai Dasar Penetapan dan Penerapannya dalam Hukum Islam Menurut 'Izzuddin Bin 'Abd Al-Salam (W.660 H)," *TAZKIR: Jurnal Penelitian Ilmu-ilmu Sosial dan Keislaman* 4, no. 1 (2018): 171–190.

<sup>14</sup> Chamim Tohari, "Pembaharuan Konsep Maqasid Al-Shari'ah Dalam Pemikiran Muhammad Tahir Ibn 'Ashuri," *Al-Mashlahah* 13, no. 1 (2017): 465–488.

<sup>15</sup> Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem dalam Hukum Islam)," *Jurnal Al Himayah* 2, no. 1 (March 2018): 97–118.

<sup>16</sup> Muhammad Faisol, "Pendekatan Sistem Jasser Auda Terhadap Hukum Islam: Ke Arah Fiqh Post-Postmodernisme," *KALAM* 6, no. 1 (June 2012): 39–64.

approach in studying Islamic law which includes six important components, namely cognitive nature, interrelatedness, wholeness, openness, multi-dimensionality, and meaningfulness. In addition, Hasamuddin MZ in his research attempted to include Hifzh al-'Irdh as part of dharuriyyat.<sup>17</sup>

Several previous studies on al-Subki's thoughts regarding the contextualization of *hifz al-'ird* as *maqāsid sharī'a* have not received serious attention. It cannot be denied that *hifz al-'ird* is an inseparable part of the *maqāsid sharī'a*. The concept of *hifz al-'ird* can be applied as a conceptual basis for preventing the spread of hoaxes that are rife today, as a side effect of the development of information and communication technology. This study aims to complement the shortcomings of existing studies. This study was conducted by analyzing the concept of *hifz al-'ird* according al-Subkī and how the contextualization of *hifz al-'ird* with hoax news that widely spread today.

This study assumes that al-Subkī has a distinction of thinking about *hifz al-'ird* as part of *maqāsid al-sharī'a* that can be contextualized with human behavior today. If *hifz al-'ird* is contextualized with hoaxes, *maqāsid sharī'ah*, in the perspective of al-Subkī, can be used as a conceptual basis. So, it can prevent the spread of hoax news that has the potential to damage the joints of social, national, and state life in the cultural, social, economic, political, and even religion. This preventive effort is carried out to maintain human dignity, which is the benefit values of the *maqāsid sharī'a*.

This study is a qualitative research based on library research that is carried out by relying on library data without an empirical examination. By applying a descriptive-analytical approach, the authors critically describe the substance of al-Subkī's thoughts on *maqāsid sharī'a*.<sup>18</sup> The primary data of this study were books written by al-Subkī about *maqāsid sharī'a*. Meanwhile, secondary data were books written by others related to al-Subkī's thoughts

<sup>17</sup> Husamuddin Mz, "Hifzh al-'Ird dalam Transformasi Sosial Modern (Upaya Menjadikan Hifzhu Al-'Ird Sebagai Maqāshid Al-Dharūrīy)," *At-Tasyri': Jurnal Ilmiah Prodi Muamalah* 11, no. 2 (2019): 119–132.

<sup>18</sup> Noeng Muhadjir, *Metode Penelitian Kualitatif* (Yogyakarta: Rake Sarasin, 2000).

about *maqāsid shari'a*. The author analyzes the collected data using content analysis methods. The author applied a content analysis approach to analyzing the collected data<sup>19</sup> through three stages; description, interpretation and reflection.

### A Short Biography of al-Subkī

Tājuddīn al-Subkī or known as Imam al-Subkī, has the full name Tājuddīn Abd al-Wahhāb bin Taqiy al-Dīn 'Alī bin Abd al-Kāfī al-Subkī. He is the son of Imam Taqiy al-Dīn al-Subkī (died in 756 AH / 1355 AD), who had served as a judge in Damascus. Imam al-Subkī was born in Cairo, Egypt, in 727 H / 1327 AD and passed away on Tuesday, the seventh of Dhulhijjah, in 771 H / 2 July 1371 AD in Damascus.<sup>20</sup>

Al-Subkī's journey to gain knowledge began in Egypt with a few shaykhs, including his father, a Damascus judge. From his father, al-Subkī studied *fiqh*, *uṣūl fiqh*, and Sufism. After he studied in Egypt, he continued his studies to Sham (Syria) to be precise in Damascus, where at that time, was known as the city of knowledge. He studied hadith from Imam Jamāl al-Dīn Yusuf bin Abd al-Raḥmān al-Mizzī al-Shāfi'ī. He also learned from Imam al-Dzahabī and Shaykh Shams al-Dīn bin Naqīb. Even though al-Subkī was still very young, namely eighteen years old, his capability and depth of religious knowledge were not in doubt. Therefore, Shaykh Shams al-Dīn bin Nuqayb gave *ijāza* (permission) to al-Subkī to teach and issue fatwas and was even appointed to be a judge and preacher at Umawiy Damascus Mosque. At that young age, he could carry out duties as a scholar, judge, and high priest in Damascus. Important positions that al-Subkī held showed extraordinary achievements which were quite rare at that time.

<sup>19</sup> Imam Suprayogo and Tobroni, *Metodologi Penelitian Sosial-Agama* (Bandung: Remaja Rosdakarya, 2003), 71.

<sup>20</sup> "Biografi Imam Tajuddin As-Subki (727-771 H/1327-1370 M)," Facebook, *Menapaki jejak Para Ulama Madzhab Syafe'i*, March 24, 2017, accessed January 3, 2020, [https://web.facebook.com/1957544357810315/photos/biografi-imam-tajuddin-as-subki-727-771-h1327-1370-mnama-lengkap-beliau-adalah-a/1958584834372934/?\\_rdc=1&\\_rdr](https://web.facebook.com/1957544357810315/photos/biografi-imam-tajuddin-as-subki-727-771-h1327-1370-mnama-lengkap-beliau-adalah-a/1958584834372934/?_rdc=1&_rdr).

When al-Subkī's father was ill, al-Subkī was appointed to replace his father as a judge in Damascus. al-Subkī was the most prominent judge of his time. He is also a historian and researcher. Shihāb al-Dīn bin Hajjī praised him by confessing that Imam al-Subkī was a scholar who mastered various sciences, such as *fiqh*, *uṣūlfiqh*, *hadith*, and *balāghah*. Besides, al-Subkī is also an expert in poetry. Al-Subkī composed multiple essays quickly and distributed them during his life and people distributed them after he died. Among the works of Imam al-Subkī are *ṬabaqātusShāfi'iyyah al-Kubrā*, *ṬabaqātusShāfi'iyyah al-Wuṣṭā*, *ṬabaqātusShāfi'iyyah al-Ṣuḡhrā*, *Jam' al-Jawāmi'*, *Man'u al-Mawāni' 'alā Jam'I al-Jawāmi'*, *Al-Ashbāh wa al-Nazā'ir*, *Raf'u al-Hājib min Mukhtaṣar Ibn Hājib*, *Sharh Minhāj Baiḍawī* in the field of *uṣūl fiqh* which was later named *al-Ibhāj fī Sharḥ al-Minhāj*, *Qawā'id al-Dīn wa 'Umdatal-Muwahhidīn*, *Al-Fatāwā*, and *Al-Dalālah'alā 'Umūm al-Risālah*.<sup>21</sup>

*Jam' al-Jawāmi'*, one of al-Subkī's works, is one of the famous books in *uṣūl fiqh*, which is widely studied in Pesantren in Indonesia. Besides, the book of *Jam' al-Jawāmi'* has the *sharḥ* (explanation), which many scholars have written. One of the scholar is Jalāl al-Dīn al-Maḥallī (died 884 AH), with the name of his book *Sharḥ Jam' al-Jawāmi'*. al-Zarkashī (died 794 AH), with the title of his book *Tashnīf al-Masāmi'sharḥJam'i al-Jawāmi'*, Imam 'Izzu al-Dīn Ibn Jamā'ah al-Kinānī (died 819 AH), Imam al-Ghazzī (died 822 AH), and Ibn Ruslān (died 884 AH).

While serving as judge and high priest, al-Subkī had received slander from the Damascus government, resulting in al-Subkī being imprisoned for eighty days. Ibn Kathīr related that Imam al-Subkī experienced severe trials that had never been experienced by the previous judges. However, he also served as a judge several times, which no one had previously achieved in Damascus. He was known as a judge who specialized in *balāghah* and poetry. He was also known as a generous and patient person. As well as being a judge in Damascus, al-Subkī also taught at several

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<sup>21</sup> Budi, "Riwayat Hidup Imam Tajuddin As-Subki," *LADUNI.ID* (laduniid, October 3, 2018), last modified October 3, 2018, accessed January 3, 2020, <https://www.laduni.id/post/read/46118/biografi-imam-tajuddin-as-subki.html>.



madrasah schools in Damascus, such as Madrasah al-'Azīzah, Madrasah al-'Adiliyyah al-Kubro, Madrasah al-Ghazāliyah, Madrasah al-'Udhrāwiyyah, Madrasah al-Naṣīriyyah, and Madrasah al-Amīniyyah. On the 7th of Dzulhijjah in 771 H., al-Subkī passed away. At that time, he was 44 years old. al-Subkī died because of his illness.

### Dialectic of *Hifz al-'Ird* in *Maqāṣid* Theory

Maqāṣid theory did not just appear, but it was manifested through serious efforts and efforts (*ijtihād*) of the scholars in reading "God's thoughts,"<sup>22</sup> which contained in the texts of the al-Qur'an. This effort is strengthened by the hadith, the second source of authentic Islamic law after the Holy Quran. The use of maqāṣid al-sharī'a as a spirit in establishing law has been practiced since the Prophet Muhammad's lifetime, the companions' era (*ṣahābah*), and *tabi'in*.

Al-Juwaynī was the first to classify *maqāṣid* into three levels<sup>23</sup> namely *darūriyyāt*, *hājiyyāt*, dan *taḥsīniyyāt*. Al-Juwaynī also formulated the scope of al-*darūriyyāt* which was known as *al-darūriyyāt al-khams*, namely *hifz al-din* (guarding religion), *hifz al-nafs* (guarding the soul), *hifz al-'aql* (guarding the mind), *hifz al-nasl* (guarding descent), and *hifz al-māl* (guarding wealth). The concept of al-Juwaynī was matured by his student, Abū Ḥamīd al-Ghazālī (d. 505 H).

Al-Ghazālī strengthened and developed his teacher's ideas, but it is still with his unique methodology and independent academic characteristics. Therefore, al-Ghazālī deserves to be considered in the history of jurisprudence science in general and *al-maqāṣid* in particular. The significant contribution of al-Ghazali in the field of maqāṣid is very evident in his work, *al-Mustashfā min 'Ilm al-uṣūl*. In this book, al-Ghazali discusses *ta'līl al-aḥkām al-shar'iyyah*, whose orientation is focused on *jalbu al-maṣlahah* (gain benefit) or *daf'u al-mafṣadah* (prevent damage). The focus of *ta'līl al-*

<sup>22</sup> The author uses this term as the term Paul Davies used to explain cosmic events in nature using a scientific approach. Read, Paul Davies, *The Mind of God The Scientific Basis for a Rational World* (New York: Touchstone, 1993), ix–xiv.

<sup>23</sup> Asmuni Mth, "Studi Pemikiran al-Maqashid (Upaya Menemukan Pondasi Ijtihad Akademik yang Dinamis)," *Jurnal Al-Mawarid* 14 (2005): 158.

*aḥkām* (legal justification) developed by al-Ghazālī is *ta'līl al-maṣlahī*, which includes the protection of *maqāṣid al-shārī'*. *Al-maṣlahah*, according to al-Ghazālī, is the protection and maintenance of the objectives of the *shārī'ah*. All forms of *maṣlahah* that do not aim to protect the *shārī'ah* are called *maṣlahah al-gharībah*, namely benefits that are not in line with the *shārī'ah*. Therefore, *maṣlahah al-gharībah* must be discarded. On the other hand, all *maṣlahah*s that aim to protect the meaning of *shārī'ah*, as understood from the Qur'an, Sunnah and *ijmā'* can be used as evidence.<sup>24</sup> Al-Ghazālī, following the method of his master, Imam al-Juwaynī, divided *al-maṣāliḥ* in terms of strength and clarity, namely *ḍarūriyyāt*, *ḥājīyyāt*, and *taḥsīniyyāt*. Descriptions of each level, along with examples, are unambiguous and detailed.

After al-Ghazālī, Fakhru al-Dīn al-Rāzī followed (d.606 H) with his work, *al-Maḥṣūl*. The *maqāṣid* theory that al-Rāzī offers is a reduplication of the concepts of al-Juwaynī and al-Ghazālī. However, a precious contribution from al-Rāzī is to defend the method of *ta'līl al-aḥkām* argumentatively. It has been criticized and doubted by some of the jurisprudence scholars. Al-Rāzī's concept of the *al-ḍarūriyyāt al-khams* hierarchy is different and inconsistent with the idea that has been put forward by al-Ghazālī. Al-Rāzī occasionally mentions the order of *al-ḍarūriyyāt* with single words, namely *al-naḥs*, *al-māl*, *al-nasab*, *al-dīn*, and *al-'aql*. And once upon a time using the plural form, namely *al-nuḥūs*, *al-'uqūl*, *al-adyān*, *al-amwāl*, and *al-ansāb*. Also, al-Rāzī used the term *al-nasab* instead of *al-nasl*, even though the word *al-nasl* was more precise and valid. The word *al-nasl* is at the level of *ḍarūriyyāt al-'āmmah*, while the protection of *al-nasab* is a complement to the protection of *al-nasl*.<sup>25</sup>

After al-Rāzī, al-'Amīdī (d.631 H), Ibn Hājib (d.646 H), al-Bayḍāwī (d.685 H), and al-Asnāwī (d.772 H) followed to see the term. They developed the *maqāṣid* theory with the *tarjih* (weighting) pattern, which aims to do weighting when there is a conflict between one of the existing *ḍarūriyyāt al-khamsah*. When the hierarchy of *al-ḍarūriyyāt* is mentioned, the scholars after al-

<sup>24</sup> Ibid., 159.

<sup>25</sup> Al-Raysūnī, *Naẓariyah al-Maqāṣid*, 57.

'Amīdī tend to be free, not tied to anyone's systematization. Al-Asnāwī, for example, he sometimes uses the systematization that al-Amīdī did in order; religion, spirit, ancestry, and property. On the other hand, he also uses the order that Ibn Hājib offers, namely; religion, soul, mind, descent, and property.

In the following period, Imam al-Subkī came and made some modifications in ordering *darūriyyāt al-khamsah*. Al-Subkī followed al-Ghazālī, but he replaced the term *al-nasab* with *al-nasal* similar to al-Rāzī. Apart from that, another critical thing that al-Subkī did was to include *al-'ird* as an essential part of *darūriyyāt*. So with these additions, *darūriyyāt* became six, namely: *ḥifz al-dīn*, *ḥifz al-nafs*, *ḥifz al-'aql*, *ḥifz al-nasab*, *ḥifz al-mal*, and *ḥifz al-'ird*. The inclusion of *al-'ird* as part of the *darūriyyāt* had caused polemics among *ulamā* afterward. Some of them agreed, and some objected to the inclusion of *ḥifz al-'ird* into *darūriyyāt*. Ibn 'Āshūr, for example, did not agree with these additions. According to Ibn 'Āshūr, *al-'ird* falls within the scope of *al-ḥājiyyāt*. Ibn 'Āshūr also did not accept that *ḥifz al-nasab* was included in the range of *darūriyyāt* unless it was meant to protect *al-nasl*. In contrast to Ibn 'Āshūr, al-Shawkānī supported al-Subkī's opinion that stated the addition of *al-'ird* to be part of *darūriyyāt* so that the number becomes six. Al-Shawkānī argued that most people spent all their power and effort in maintaining their honor as they guarded themselves and their property. Furthermore, al-Shawkānī concluded that based on *ḥifz al-'ird*, Allah established and enforced criminal law for actors of *qadhf* because he tarnished the dignity of someone who could be more urgent than others.<sup>26</sup> Al-Bannānī tried to mediate the difference of opinion by explaining that *al-'ird* was an addition to al-Subkī by ordering them using *waw al-'atf*. This method shows that *al-'ird* has the same level as *al-māl*. At the same time, the other sorting uses the letter *fā'*,<sup>27</sup> which indicates that each element stands alone and is at an independent level. The debate regarding *al-'ird* among the scholar is fascinating. However, al-

<sup>26</sup> Muḥammad ibn 'Alī Al-Shawkānī, *Irshād al-Fuhul ilā Taḥqīq al-Haq min 'Ilm al-Uṣūl* (Beirut: Dār al-Fikr, 1972), 216.

<sup>27</sup> Al-Bannānī describes the editorial used by al-Subkī in sorting the *dharuriyyat* problem in the book *Jam' al-Jawāmi'*, namely "*wa al-dharūri: ka ḥifz al-dīn, fa al-nafsi, fa al-'aqli, fa al-nasabi, fa al-māli, wa al-'ird,*"

Subkī's view of *al-'ird* deserves to be considered an essential part of the theory of *maqāṣid* particularly when the *maqāṣid* approach is related to the current millennial era. The idea of *ḥifz al-'ird* (maintaining honor) that is forgotten can be actualized again under the times' demands and developments.

### Tajuddin Al-Subki's Thoughts on *Ḥifz Al-'Ird*

According to Tajuddin Al-Subki, *ḥifz al-'ird* is an important part of the *maqāṣid shari'ah* theoretical framework, especially in the *al-darūriyyāt* category. Al-Subki argues that *al-darūriyyāt* is a very imperative because it directly relates to the needs of human life, both in the world and the hereafter. It is the first rank, which must be fulfilled and maintained, and is followed by the *hājiyyāt* and *taḥsīniyyāt*. The *darūriyyāt* includes, first, *ḥifz al-dīn* (protecting religion). Second, it also covers *ḥifz al-nafs* (protecting the soul) which aims to be able to enforce the *qiṣās* law for the perpetrators of the crime of murder. Third, *ḥifz al-'aql* (protecting mind) which underlies the stipulation of liquor sanctions, in the form of punishments as much as 80 times of flogging for drinkers of liquor (*khamr/wine*). Fourth, *ḥifz al-nasab* (protecting descendants) underlies the punishment for the adulterer, namely whipping 100 times for the *muḥṣan* adulterer and stoning for the *gairu muḥṣan* adulterer. Fifth, *ḥifz al-māl* (protecting property) underlies the law of amputation of hands for thieves and robbers. Sixth, *ḥifz al-'ird* (maintaining honor) underlies the establishment of *qazf* sanctions for people who accuse others of committing adultery without strong evidence.<sup>28</sup>

The prohibition of *qazf*, as part of *ḥifz al-'ird* in al-Subkī's view, can now be transformed into various forms of crime, such as slander, lying (hoax), insulting, mocking, inciting, bullying and the like. These forms of crime can disturb the honor of others, so that they have the potential to create conflict and a very large negative impact, both individually and collectively. Therefore, the position of *ḥifz al-'ird* as part of *darūriyyāt* within the theoretical framework of *maqāṣid shari'a* has a very significant role, to create and preserve peace and harmony in people's lives.

<sup>28</sup> Al-Shawkānī, *Irshād al-Fuhul*, 216.

### Contextualization of Imam al-Subkī's thought of *Hifz al-'Ird* in the Contemporary Era

In his work, *Jam' al-Jawāmi'*, al-Subkī clearly states that *hifz al-'ird* is in the sixth place, which is included in the *al-darūriyyāt* category. Al-Subkī said *wa al-darūriyyu; hifz al-dīn, fa al-nafs, fa al-'aql, fa al-nasab, fa al-māl, wa al-'ird* (which is included in the category of *al-darūriyyāt* is protecting religion, soul, mind, lineage, property, and honor). The position of *al-'ird* (honor)<sup>29</sup> in sixth place was considered new at that time. Previous scholars such as al-Juwaynī, al-Ghazālī, al-'Amīdī, al-Rāzī, and the ulamā afterward like Ibn Taymiyah, Ibn al-Qayyim, al-Shāṭibī, even the scholars who live today, stated that the category of *darūriyyāt* is five, namely *hifz al-dīn, al-nafs, al-nasl, al-'aql, and al-māl*. These five are known as *al-darūriyyāt al-khams*.

Some scholars interpret al-Subkī's idea of *hifz al-'ird*, saying that the word *al-'ird*, which is preceded by *wāwu* (*wa al-'ird*), shows that *hifz al-'ird* has the same level or position as safeguarding property. Thus, it can be understood that *al-'ird* is not included in the group of *darūriyyāt* but belongs to the level of *hājiyyāt* because *al-'ird* is complementary (*mukmilah*) of *al-darūriyyāt*. On the other hand, 'Abdurrahman al-Sharbīnī, who quoted al-Zarkashī's ideas, said that *al-'ird* was near related to maintaining descendants in general. Maintaining offspring is higher than protecting property. According to al-Sharbīnī, keeping *al-'ird* (honor) is in two conditions, namely closely related to the prohibition of adultery and prohibition of *qadhif* (قذف) so that *al-'ird* is more closely related to maintaining the *nasab*. Therefore, according to al-Sharbīnī, protecting offspring takes precedence over protecting property if someone is required to choose between guarding offspring or property.<sup>30</sup>

By looking at the opinions that have been put forward, the writer argues that the word *al-'ird* can also be read *al-'araḍ*. The

<sup>29</sup> Read, Afrizal Ahmad, "Reformulasi Konsep Maqashid Syari'ah: Memahami Kembali Tujuan Syari'at Islam dengan Pendekatan Psikologi," *Hukum Islam* 14, no. 1 (June 2014): 3.

<sup>30</sup> Al-Shurbaynī, *Hāshiyah*, 281; 'Abd al-Wahhāb bin 'Alī Tājuddīn al-Subkī, *Hāshiyah al-'Allamah al-Bannānī 'alā Matni Jam'i al-Jawāmi'*, Juz 2 (Beirut: Dār al-Fikr, 1982).

word *'aradh* means wealth (*al-matā'*). Thus, *al-'aradh* is a synonym for the word *al-māl* (treasure) as Allah says in al-Qur'an surat al-Anfāl verse 67:

*"It is not fit for a prophet that he should take captives unless he has fought and triumphed in the land; you desire the frail goods of this world, while Allah desires (for you) the hereafter; and Allah is Mighty, Wise."*

The word *al-'ird* means a praiseworthy character or honor. The two words, both the word *al-'ird* and *a'rād*, have the same plural form, namely *a'rād*. In this regard, it seems that there is a disagreement among scholars about whether *ḥifẓ al-'ird* is included in the category *ḥifẓ al-māl* or *ḥifẓ al-nasab*. These differences of opinion need not be contested. Still, it can be combined that *ḥifẓ al-'ird* does not stand alone as a component in *darūriyyāt*, but it falls into the *ḥājīyyat* category of completing the position of *ḥifẓ al-māl* or *ḥifẓ al-nasab*.

Regardless of the differences that the authors describe, the authors view that the placement of the word *al-'ird* is parallel to the five crucial points mentioned earlier. The alignment of *al-'ird*'s position shows that *al-'ird* is a part that has a substantial and high place in the *maqāṣid* stratification that must be maintained and maintained. Honor is faithfulness in living the truth, which can bring out dignity, and dignity makes everything honorable. Due to the importance of integrity, every Muslim is not only obliged to maintain his honor but also to protect the honor of others. An example of maintaining one's honor is keeping one's viewpoint from things that are forbidden to be seen. Meanwhile, an example of preserving others' recognition is not allowed to accuse other people of committing adultery (*qadhf*) without four witnesses confirming the accusation.

In addition to this point, the reason for the addition of *ḥifẓ al-'ird* by Imam al-Subkī is that the destruction of honor has significant consequences and impacts in individual and social lives. This impact must be prevented as early as possible so that life in the world can run safely, peacefully, and prosperously. Therefore, one of the wisdom of *ḥifẓ al-'ird*, according to al-Subkī, is the prohibition of *qadhf* (accusing other people of committing adultery). If a person's accusation is not proven, the accuser can be

subject to punishment in the form of had (criminal sanction). Moreover, the perpetrator of *qadhf* can be punished with as many as 80 whips, as mentioned in the Qur'an:

*"Surely those who accuse chaste believing women, unaware (of the evil), are cursed in this world and the hereafter, and they shall have a grievous chastisement."*<sup>31</sup>

*"And those who accuse free women then do not bring four witnesses, flog them, (giving) eighty stripes, and do not admit any evidence from them ever; and these it is that are the transgressors."*<sup>32</sup>

An accusation attitude is a despicable act, mostly when an accusation is made without valid evidence. In this case, accusing is equivalent to saying something that is not true or spreading fake news (hoaxes), rife in this digital era. Hoax means information that is engineered to cover up real information. A hoax is a form of cybercrime that looks simple and easy to do but has an extraordinary impact.<sup>33</sup>

There are fundamental similarities between *qadhf* and hoaxes. Both are accusations or spreading news without clear evidence by using oral as the medium. However, along with the development of technology and information, the media for spreading hoaxes also developed. The spread of false messages is not only through verbal but also through print and electronic media.

The media is a practical, transparent, and efficient communication tool that plays an essential role in reform and change. The emergence of hoaxes cannot be separated from the development of media technology. The media have changed the means of communication to be faster to form what is often called a global village. The speed of communication tools affects the growth of social media. Social media has substantially changed the way of communication between people and individuals.<sup>34</sup> However, nowadays, social media is filled with fake and

<sup>31</sup> Q.s. al-Nūr/24: 23.

<sup>32</sup> Q.s. al-Nūr/24: 4.

<sup>33</sup> Hensi Septanto, "Pengaruh Hoax dan Ujaran Kebencian Sebuah Cyber Crime dengan Teknologi Sederhana di Kehidupan Sosial Masyarakat," *Jurnal Sains dan Teknologi* 5, no. 2 (2018): 157.

<sup>34</sup> Luthfi Maulana, "Kitab Suci dan Hoax: Pandangan Alquran dalam Menyikapi Berita Bohong," *Wawasan: Jurnal Ilmiah Agama dan Sosial Budaya* 2, no. 2 (December 2017): 211.

irresponsible news to achieve specific goals in terms of politics, education, economics, and even religion.

The impact of irresponsible accusations and rampant hoax news is that many parties feel offended, hurt, and wronged. These feelings lead to fighting, even murder. All damage caused by hoax news, regardless of the medium, must be stopped and given punishment, as is the punishment for *qadhf* actors.

In Indonesia, all forms of crime in hoax spread are regulated in Law Number 19 of 2016, amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) Article 28 Paragraph 1. The contents are about criminal threats for anyone who deliberately and without the right to spread fake news and harm individuals or groups. It is stated in Article 28, Paragraph 1, as follows:

*"Every person who deliberately and without right spreads false and misleading news that results in losses, will be sentenced to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp. 1,000,000,000, - (one billion rupiah)."*<sup>35</sup>

In this article, it is implied that the prohibition of hoax news is an effort to maintain and guard against oral. The language of the media has the potential to spread the hoax news. Likewise, on the other hand, someone's demand to keep speech means the opposite. It is prohibited for anyone to lie, spread hoax, or slander. It can damage someone's honor. There are many verses of the Qur'an<sup>36</sup> which affirms the importance of good, trustworthy, and honest speech. Likewise, a few hadiths of the Prophet emphasize keeping oral as an integral part of maintaining honor.

One of the traditions that is closely related to the prohibition of hoaxes is as follows: *"Whoever is guarding (the limbs) that lies between the mustache and beard, that is, his mouth, and guards the one lying between his thighs, that person is guaranteed to enter Paradise."* The hadith was narrated by al-Ḥakim and al-Tirmīdhī from the

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<sup>35</sup> See, Law Number 19 Year 2016 Regarding Electronic Information and Transactions

<sup>36</sup> Read, Q.s. al-Aḥzāb: 32, 70, Q.s. al-Nisā': 5-9, Q.s. al-Baqarah: 235, Q.s. al-Isrā': 23.



hadith of Abū Hurayrah, with *ṣaḥīḥ* degrees collected from two ways.

Two critical things in this hadith destroy one's honor, namely the tongue (speech) and *farj* (genitals). Therefore, these two things must be maintained properly so that the goals of *sharī'ah* are maintained. According to al-Subkī, keeping oral as a medium in maintaining honor is an important way, as is the importance of preserving five other essential items. Keeping religion means keeping from apostasy, keeping the soul is the consequence of prohibiting killing without justified reasons, taking care of the offspring causes the prohibition of committing adultery, maintaining motivation leads to the banning of drinking liquor. Safeguarding property means prohibiting stealing. Keeping oral as a vital part of *ḥifz al-'ird* causes the ban of *qadhaf*,<sup>37</sup> According to al-Subkī, keeping oral as a medium in maintaining honor is an important way, as is the importance of preserving five other important items. Keeping religion means keeping from apostasy; keeping the soul is the consequence of prohibiting killing without justified reasons, taking care of the offspring causes the prohibition of committing adultery. Maintaining motivation leads to a ban on drinking liquor. Safeguarding property means prohibiting stealing and keeping oral *qadhaf* important part of *ḥifz al-'ird* causes the prohibition of *qadhaf*, gossip, ridicule, lies, slanders, etc.

In Islam, the hoax is classified as an act that is detrimental to others that can be subject to *hudud* punishment. Still, *hudud* is specifically for *qadhaf* actions or spreading false news about someone who commits adultery. According to the Islamic perspective, *ta'zīr* can be imposed on all accusations forbidden for every Muslim. Among the accusing accuses other people of theft, accusing others of drinking alcohol or making fake news against other people, individuals, and institutions, prohibiting hoax and *qadhaf*. The following sanctions given to the perpetrators show Islam's consistency and concern in maintaining the honor of both individuals and groups for humanity's welfare in the world and the hereafter.

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<sup>37</sup> al-Subkī, *Hāshiyah*, 280.

## Conclusion

In the context of *maqāṣid al-sharī'a*, one of the bright ideas that al-Subkī thought is to include the concept of *hifz al-'ird* (maintaining honor) as an inseparable part of the five main things (*al-darūriyyāt al-khams*) which must be guarded and preserved. Al-Subkī included the concept of *hifz al-'ird* in the structure of *al-darūriyyāt*. In addition to maintaining five other main things, namely protecting the soul, religion, mind, descent, and property, according to al-Subkī, maintaining *al-'ird* is the same as preserving *al-nasab*. The two have a close and robust relationship, especially when discussing *zinā* (adultery) and *qadhf* (false accusation of cheating).

In today's modern life, the case of *qadhf* can be likened to hoax news. Both are raising issues or news that are not valid. Hoax perpetrators can be given sanctions by the law. Using al-Subkī's ideas, perpetrators of *qadhf*, including the ones spread out from hoax news about somebody's rumour of having affairs, are liable for punishment in Islamic law. Along with the development of science and technology, hoaxes' spread is not only carried out through oral speech but often through print and electronic media. The media plays a big role in spreading hoax news, causing anxiety and damage in the community. Therefore, all forms of hoaxes must be stopped because that is the purpose of Islamic law or *maqāṣid al-sharī'ah*, to prevent damage and to reach *maslahat (dar'u al-mafāsīd wa jalb al-maṣāliḥ)*.

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