Maqâsid al-Sharî'a and FKUB: Tracking Potentiality for Religious Harmony in Indonesia

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Abstract

The concept of Maqâsid al-Sharî'a (the objectives of Islamic law) has been extensively discussed within the Muslim world due to its universal normative values. It is often employed as a sharî'a-based framework to analyze contemporary religious phenomena. In the context of the Forum Kerukunan Umat Beragama (FKUB, or the Forum for Religious Harmony), issues of inter-religious harmony arising from FKUB policies remain unresolved. This creates the impression that the principle of public benefit (maslaha), a foundational aspect of maqâsid al-sharî'a, faces challenges in fostering harmony within Indonesian society, where Muslims constitute the majority. This study employs content analysis to examine the relationship between maqâsid principles and the right to religious freedom, drawing on the perspectives of two prominent Muslim scholars, Jasser Auda and Yudian Wahyudi. The analysis argues that FKUB's policies require revision to align with the concept of maslaha and address the criticisms they have received.

Keywords: *maqâsid, FKUB, laws, religious harmony*

Introduction

The study of *Maqâsid al-Sharî'a* continues to be discussed by contemporary thinkers. Although they departed from the same classical theory and agreed on the basic principles of Maqâsid established by al-Shâtibî, Muslim scholars are not in line in its developments (Johnston 2007). If examined from the words of some scholars, the most important point that must be achieved on the principles of *maqâsid* is 'benefit' (*al-maslaha*) with its various scopes. One example is what Imam al-Tabari said when interpreting sûrah al-Anbiyâ: 107, he said: *"There is no difference among scholars that the Shari'a of the prophets was revealed for the benefit of the world and the Hereafter"* (al-Tabârî 1963, II: 213). Another example, al-Shâtibi in his *Muwâfaqât* also says: *"the scholars have agreed that Allah bestows the Sharî'a on the basis of benefit"* (al-Shâtibi 2010, I: 34).

From here, it seems that benefit is the most important basic principle embodied in *sharî'a* values (W. Hallaq 2009: 12). In other words, benefit is the goal *(maqsad)* of the sharî'a itself. However, the meaning of benefit *(maslaha)* defined by scholars has many differences and scopes and there are several meanings of *maslaha* that they put forward. This paper will review this benefit term containined in the Maqâsid theory as a fundamental basis for the application of *Maqâsid* principles and will relate it to the legislation on religious freedom in the context of Indonesia's law, particularly in the case of FKUB (Forum Kerukunan Umat Beragama/The Forum of Religious Harmony) and PBM (Peraturan Bersama Mentri/Joint Ministerial Decree) in the polarization of religious harmony in Indonesia. Has FKUB succeeded in creating religious harmony in Indonesia? What is the

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Maqâsid view on this matter? This study aims to answer these questions.

Some studies related to FKUB policy regarding licensing in establishing houses of worship have been conducted by several researchers. Nany Suryawati and Martika Dini for instance (Suryawati and Syaputri 2022) conducted research on the issue of intolerance towards the construction of houses of worship which ended up in the conclusion that in the Joint Ministerial Regulation there are aspects of intolerance caused by the majority group. In addition, Rini Fidiyani with her research conducted in Central Java with the title *"Dinamika Pembangunan Rumah Ibadah Bagi Warga Minoritas di Jawa Tengah (The Dynamics of the Construction of Houses of Worship for Minority Residents in Central Java)"* resulted in the conclusion that the solution to the conflict caused by the problem of building houses of worship is to maintain local wisdom which she considers more influential than Government Law (Fidiyani 2016).

Another piece of research was conducted by Binsar A. Hutabarat with the title *"Evaluasi Terhadap Peraturan Bersama Mentri Tahun 2006 Tentang Pendirian Rumah Ibadah (Evaluation of the 2006 Joint Ministerial Regulation on the Establishment of Houses of Worship)"*. His research used a quantitative method by interviewing several church leaders in Bekasi and concluded that the formulation of the Joint Ministerial Regulation on the Establishment of Houses of Worship was not in accordance with the democratic state policy model (Hutabarat 2017).

The latest research that is quite comprehensive in this field is conducted by Ihsan Ali Fauzi (Fauzi 2020). His analysis of the 2006 PBM has significant accuracy because his research is accompanied by statistical data obtained from various FKUB offices throughout Indonesia. In his conclusion, Fauzi emphasized three important points: the performance of local governments, FKUB institutions, and the role and performance of FKUB in maintaining harmony. What Fauzi concluded and suggested was a breakthrough in evaluating the performance of FKUB as intermediaries in realizing religious harmony in Indonesia in the face of sensitive issues. However, in his conclusion, I see something that is 'absent': the involvement of religious values in the handling of crises that occur in FKUB.

Several studies that have been mentioned above produce various assumptions about the conflicts that occur in relation to religious harmony, especially in the case of the licensing of houses of worship establishment. However, from some of these studies, *maslaha* as one of the values that contains religiosity for the majority of Muslims in Indonesia has not been maximally utilized in handling this matter. Therefore, in my opinion, the review of *maslaha* from the perspective of Islamic sharî'a is important, considering that the majority who handles the licensing process mostly comes from among Muslims. As a research gap in this scope, this study discusses the *maslaha* through the perspective of contemporary *Maqâsid* which has not been touched upon in previous studies in realizing religious harmony in Indonesia through FKUB policies.

Research Method

In this study I use the content analysis method by endorsing historical analysis as the theoretical framework. More specifically, I use discourse analysis to examine the epistemology of Maqâsid and FKUB policies regarding the rights of religious freedom that become the core of the topic to be discussed. Rosalind Gill in her review of Discourse Analysis explains that there are at least four prominent themes covered in it: discourse is a topic, language is a constructive, discourse is a form of action, and discourse is rhetorically organized (Gill 2000: 31; Bryman and Bell 2019: 275). This study uses the discourse as a form of action type because the content analysis I discuss here relates to religious practices where these practices are an action that arises based on FKUB rules or *shari'a* rules that produce certain social phenomena.

I will also analyze the concepts of Maqâsid genelogically, especially in the aspect of *hif al-dîn* which is correlated with the rights of religious freedom, and then compare it with some of its epistemological developments in the modern era as advanced by two prominent

muslim thinkers, namely Jaser Auda and Yudian Wahyudi.

In addition, I chose FKUB's policies as a means of implementing the right to religious freedom for the purpose of harmony for its adherents as the context for this study. The reason is that some of the policies contained in FKUB often lead to conflicts with civil society coalition that tends to see things from a different point of view. I will also analyze some of the criticisms of FKUB policies conveyed through online media where the policies are intended as a means to achieve harmonious religious life in Indonesia.

In the classical era (600-900 A.D), the *Maqâsid al-sarî'a* discourse was considered perfect in the hands of Abû Ishâq al-Shâmibi 1388 C. E, but this does not mean that *Maqâsid* did not experience development in previous eras. The development of *Maqâsid* in the classical era can be said to be still in the formalization phase. This is different when compared to the development of its paradigms in the modern era which often reaps methodological debates among muslim scholars themselves (W. B. Hallaq 2011: 13; Johnston 2007: 22). Accordingly, the historical analysis approach used in this research is intended as an effort to look back at some of the developments of *Maqâsid*, explicitly in the point of view of both of Yudian Wahyudi and Jaser Auda. Indeed, it aims to find its correlation with the rights of religious freedom that can be used as a basis of benefit in realizing religious harmony in Indonesia.

From the above information, it can be concluded that the data used in this research are historical data related to the *Maqâsid* discourse, a certain document which is the basis of FKUB's policy, and some critics delivered through them.

Seen in al-Ghazâli's (111 A.D) point of view, he says that what is meant by *maslaha* is to keep the five goals of the *sharî'a*; safeguarding religion, soul, reason, posterity, and property (al-Ghazâli 1993: 41). By maintaining these five *maqsad* (goals), a benefit and harmony in one's life will be achieved. On the other hand, Said Ramadan al-Bûthi (2013 A.D) defines it as *"the five maqsad bestowed by Allah on His servants"* (al-Bûthi 2018: 55). From this, it can be concluded that al-Ghazâli defines *maslaha* on the basis of the cause of the five things that are the purpose of the *shari'a*, while al-Bûthi considers *maslaha* to be the essence of the five goals of sharia itself.

Unlike al-Ghazâli and al-Bûthi, Ibn Taymiyya (1328 A.D) had his own perspective. There is one important point contained in its definition related to *maslaha*. Ibn Taimiyya defined *"a* mujtahid *should know that his decision can bring greater benefit (manfa'a râjiha) as long as the sharî'a does not deny it"* (Ibn Taimiyya 2004, 11: 14). His statement *'as long as sharî'a does not deny it'* is, for me, an important point in determining the direction of *Maqâsid* in the future studies. Based on these classical understandings, I would like to simply sum it up that the concept of *maslaha* in the perspective of Islamic law can be said to be *'a benefit offered by God in matters of the world and the Hereafter as long as there is no other sharî'a law that denies it'.*

In this matter, I do not deny the existence of other definitions related to the concept of *maslaha*. In the 18th century, for instance, there was a concept of utilitarianism in the West that relied on the aspect of expediency to achieve a happy life. Jeremy Bentham (1832 A.D) and John Stuart Mill (1873 A.D) are two figures who were instrumental on this topic (Habibi 2001). Unfortunately, although utilitarian concept is closely related to the construction of the positivist laws, the concept offered by Bentham is out of the corridor of discussion in this paper oriented towards religious texts. While what Mill and several other utilitarian thinkers offer is human-centric and closely related to that laws (Riley 2009: 32). Hence, the topic of utilitarianism is out of the scope of this study.

Basically, the concept of *maslaha* contained *in maqâsid* is universal. As al-Shâtibî said, the benefit contained in this concept rests on two broad corridors; the world and the hereafter (al-Shatibi 2010, II: 12). As the consequence, if this benefit is viewed from the perspective of *hifz al-dîn* (protecting religion) as one of the fundamental elements of *Maqâsid*, then the benefit in question focuses more on the worldly side, especially in matters of benefit, harmony, and harmonization of a religion. This will be

discussed in more detail in the following sections.

Results and Discussion

Brief Overview of the Regulation of Maslaha *in the Modern* Maqâsid *Epistemology*

Historically speaking, the development of *maqâshid* theory in the classical era stopped in the era of al-Shatibi. At that time, the *maqashid* managed to become a separate term that was often studied separately from its 'mother', the *ushûl fiqh*. According to some studies, al-Shatibi's position in the context of *maqâshid* is the same as that of Imam al-Shafi'I in the context of *usûl fiqh* (Kamali 2001: 22; 1999: 18). Then, over time, around the 20th century, the maqâshid found a mature epistemological framework in the hands of Thâhir ibn Âshûr, the famous Tunisian scholar who earned the nickname *al-mu'allim al-tsânî* (Second Teacher).[1]

The study of *maqâshid* then continued to experience significant developments in the academic realm, especially in Tunisia and Morocco (Arraisoni 2005: 16). This development cannot be separated from the lively current of Islamic thought reform pioneered by Muhammad Abduh to have an impact in various Middle Eastern countries. Thus, as a contributive step, Ibn Ashur who was a student of Abduh also took a role in the lively current by reformulating the theories of *Maqâsid sharî'a*. Ibn Ashur began his steps by reforming the teaching curriculum in the Zaytûna Mosque and ended with the renewal of the *Maqâsid* point of view (Fadhel 1972: 8).

The culmination of the breadth of *Maqâsid* epistemogy that Ibn Ashur developed from his predecessors was in the general purpose of the *sharî'a* itself *(al-maqsad al-'âm)*. He argued that the general purpose of the *sharî'a* is to maintain world order and to maintain its righteous order with human truth *(Haqîqat al-insân)* which includes his thoughts, works, and rights in the world (Ibn Ashur 2013: 27). Nonetheless, Ibn Ashur explains that this general purpose is a meaning and rule that God has recorded in some cases of Islamic legal legislation, so that the meaning and rule are not just limited to a specific type of *shari'a* rule. Here, what Ibn Ashur proposes is to expand the scope of the *maqâsid* itself, from the initial five objectives to the fact that he summarized them into one general rule that could cover all five objectives of the *shari'a*; maintaining world order *(hifz nidzâm al-'âlam)*.

What Ibn Ashur formulated as one of the products of his reform of Islamic scholarship—in the case of *maqashid sharîa*—was the culmination of the integration of science between reform movements in the East and West. Nonetheless, his theory often receives special attention from *Maqâsid* researchers to read and extract the concepts and contents he has written. Thus, it is no exaggeration if he is dubbed as a *Maqâsid sharî'a* reformist in the modern era where what he formulated can be used as a foothold for the development of Maqashid in facing the challenges of even next era.

Starting from his reflection on the concept of maslaha contained in *Maqâsid*, Ibn 'Ashûr emphasized that the function of the Qur'an in general is to improve overall human affairs *(salâh amr al-nâs kâffah)*. Ibn 'Ashûr then notes three main points to realize the Qur'anic function, *salâh al-ahwâl al-fardiyya* (The goodness of individual circumstances), *salâh al-ahwâl al-jamâ'iyya* (Good collective conditions), and *salâh al-ahwâl al-umrâniyya* (Good urban conditions) (Ibn Ashur 2013: 68). These three points became the basic principles of Ibn 'Ashûr's *Maqâsid* in his reformation of the concept of *maslaha*.

In Ibn 'Ashûr's point of view, the individual benefit aspect of religion determines the communal aspect. This aspect can be used as a benchmark to realize the benefit of humanity in the world. This can be studied from Ibn 'Ashûr's concept of *salâh al-ahwâl al-fardiyya*, which is not only limited to *'ubûdiyya* (Servitude to God) (Ibn Ashur 2013: 71), but also drawn to the social realm, including respect for religious freedom. So that, this principle of freedom can create harmony in the life of a pluralistic society.

The pinnacle of Ibn Ashûr's *Maqâsid* concept is based on benefits that are measured in four important points: *fitra* (common sense), *samâha*

[1]The nickname was bestowed by some scholars who recognized ibn Âshûr's credibility in terms of the Maqâsid that he elaborated in his monumental work, "Maqâsid al-Sharî'a al-Islâmiyya". See: (Al-Shafi'i 2013: 145)

(tolerance), *musâwa* (equality), and *hurriyya* (freedom). From these four points, according to Ibn Ashûr, the aspect of benefit included in the *sharî'a* law has a wide scope. And therefore, although based on religious texts, Islamic law cannot be separated from the role of experimentation and rational analysis in processing a law on the basis of these benefits (Darawil 2007: 19; Ibn Ashur 2013: 22). From this, it can be concluded that *Maqâsid* benefits can adjust to the surrounding socio-political conditions when applied in the context of the state.

In this article, I chose two academics as representative figures of modern context; Yudian Wahyudi and Jasser Auda. They were chosen not because the concept they offer has more value than other scholars such as Abou el-Fadl, Târiq Ramadân, and Tâhâ Jâbir al-'Ulwâni (March 2010: 15). However, they were chosen because one of them is an Indonesian scholar who certainly has an adequate contextual understanding of religious issues 'occured in Indonesia. While the other is a scholar-cum-activist who successfully established a special institution for the study of *Maqâsid* theories, through which he continues to develop these theories and often relates them to the philosophical methodologies. From this, I see that they are ideal scholars to see how the Maqâsid approach can develop in the context of Indonesia, especially in the case of FKUB policies.

Yudian argues that Islamic law is divine as well as human and worldly, universal as well as local, absolute as well as relative, eternal as well as temporal, and literal as well as meaningful. According to him, *Maqâsid al-sharî'a* as part of Islamic law is appropriate to protect human *dlarûriyyât* (necessities) rights such as the right to religion, the right to life, the right to think, the right to a decent life and self-respect (Wahyudi 2007: 33). Matters classified as *hâjiyât* (secondary goals) by al-Shâtibî may change into *dlarûriyyât* (primary goals) due to the changing conditions of the surrounding community.

Yudian's concept of *Maqâsid* is more flexible and theoretically less philosophical. His *Maqâsid* views only interpret the two important points mentioned above, namely *dlarûriyyât* and *hâjiyât*. Furthermore, Yudian's interpretation of *Maqâsid* departs from the hermeneutic framework of his interpretation of the meaning of Islam. By elaborating what he termed as the verses of the *Qur'ân, kauniyya,* and *insâniyya,* Yudian emphasized that the duty of humans is to maximize the potential of *maslaha* and minimize *mafsada*. Because with the *maslahat*, the three aspects above can be well integrated with each other (Wahyudi 2006: 36).

In fact, what Yudian offers is a counter to the prevalence of hermeneutic discourse in religious texts. Accordingly, he reinterprets the ideas of *usûl fiqh* based on universal *Maqâsid* norms and wants to contextualize them in Indonesia (Sadari 2018: 14). What Yudian envisioned was a positive response to Hasbi al-Shiddiqi's Islamic law anxiety, according to which Islamic law always followed the Arab-Islamic context. With his grand project, it can be concluded that Yudian's main goal is to form an Indonesian fiqh based on *Maqâsid al-sharî'a*. According to Yudian, Islamic law has at least five basic characteristics*: first*, Islamic law is a revelation but at the same time it is also the result of human interpretation *(wadl'i)*. Second, Islamic law is an absolute law but at the same time it is also relative because it must consider the situation and conditions. *Third*, Islamic law is a universal law but at the same time it is also local. *Fourth*, Islamic law is an eternal law but at the same time it is also temporal. And lastly, Islamic law is literal but at the same time it is also multi-interpretive (Wahyudi 2007: 13). The five characteristics of Islamic law will find its relevance if elaborated with the issues of establishing houses of worship that are still failing to prevent conflicts and thus need strategic solutions.

This is different from Jasser Auda's *Maqâsid* approach. His approach departs from a contextual crisis which is then given a solution through the *Maqâsid* approach he offers. According to him, *Maqâsid sharî'a*, which is also Islamic law, needs to be open to relevant ideas from other scientific disciplines in order to create a development. Otherwise, Islamic legal theory will be left behind and remain within the

confines of its traditional literature and manuscripts.

Jasser Auda then used 'systems analysis' as a basis for developing existing *Maqâsid* features. The analysis that assumes that the entities that are the object of analysis are a system. Basically, system-based classification tends to be binary and one dimension, then Auda developed it into multidimensional classification. From here, he then diverged his *Maqâsid* epistemology from classical epistemology to more contextual epistemology by operating the concepts of each of these systems. So the result is that *Maqâsid* must be cognitive *(al-idrâkiyya)*, wholeness *(al-kulliyya)*, openness *(al-infitahiyya)*, purposeness *(al-maqasidiyya)*, interrelated hierarchy, and multi-dimensionality. So that *Maqâsid* can be developed from protection to development and correlated with human rights (Auda 2008: 44).

Auda further explains that the concept of *ijmâ'* in Islamic law is still problematic. Accordingly, it cannot be used as a parameter. By citing Ibn Taymiyya's critique of Ibn Hazm in his work *naqd marâtib al-ijmâ'* (critique of levels of consensus) related to this case, Auda stresses that he agrees with developing *ijmâ'* into a form of 'public participation in state affairs' rather than making it a source of Islamic law (Auda 2008: 128). On that account, generally speaking, the implication of what Auda has formulated is that the basic concept of *Maqâsid* which used to be 'religious preservation' *(hifz al-dîn)* developed into 'religious freedom'. 'Preservation of offspring' *(hifz al-nasl)* evolved into 'family maintenance' as well as a proposal for its future as a 'civil Islamic social system'. 'Preservation of the mind' *(hifz al-'aql)* evolved into 'traveling in pursuit of knowledge'. And lastly, 'Preservation of honor' *(hifz al- ird)* evolved into 'preservation of human dignity' and 'protection of human rights'.

Auda also has its own parameters in using basic principles of *Maqâsid sharî'a*. He formulated several new methodologies as the first steps in the development of his *Maqâsid*. These methodologies are purpose, cycles of reflection, framework, critical studies of literature and reality, and formative theories and principles (Auda 2021: 271). What is unique about Auda's thought is its emphasis on deepening the instructions of revelation through the Qur'an and al-Sunnah to worship Allah as the embodiment of the general purpose of Islamic law.

Cycles of reflection then appear as the second step after the purpose for worship is set. The search for a number of basic meanings describing the Islamic worldview takes third place as a *Maqâsid* framework. Then comes dialogue and critical study on the basis of the many dialogues contained in revelation and within communities of believers engaged with others as the fourth step in this framework. Finally, the fifth step is the emergence of the development of formative theories and principles as an interactive step in responding to the new reality facing Muslims (Auda 2021: 273).

Reviewing the Role of PBM in FKUB and Its Disability

Religious people see that religious rights are inherent by nature. And this is in line with the Constitutional Court decision Number 140/PUU-VII/2009 ("PUTUSAN MAHKAMAH KONSTITUSI REPULIK INDONESIA" 2009) which affirmed that freedom of religion is one of the most basic and fundamental human rights. Then, it is agreed as an individual right that is directly attached, must be respected, upheld and protected by the state, government, and everyone without exception for the sake of honor and protection of human dignity (Halili et al. 2018: 18). In addition, the protection of religious freedom in Indonesia has been regulated in Law Article 29 of the 1945 Constitution which states: *"The State guarantees the freedom of each citizen to profess his own religion to worship according to his religion and belief"* (Tim Penyusun 1959: 9). Thus, especially in Islamic teachings, protecting religion occupies the first position in the hierarchical arrangement of *Maqâsid sharî'a*.

According to Brice Dickson, discussing the scope of religious freedom is not limited to freedom in choosing religion, but this freedom also includes the freedom of religious people in carrying out their worship. A person cannot be

said to have freedom of religion in a situation when people cannot express the teachings of his religion freely which in this case is a matter of worship. Freedom of religious choice is termed as *forum internum*, while freedom to express and manifest religious teachings is called *forum externum* (Dickson 1995: 52). In his opinion, these two things must be interrelated with each other.

What matters is not whether believers value the beliefs and experiences of other religions nor whether they recognize alternative ways of salvation. But the most important thing lies in whether the parties can support a public doctrine of equal dignity and inalienable freedom for all human beings without depending on religious views, life, or other differences that each party is willing to understand and believe.

Some issues related to the places of worship mentioned above indicate restrictions on freedom of religious expression. Basically, in the Indonesian context, restrictions on freedom are allowed under certain conditions. It is affirmed through Article 18 paragraph (3) ("PUTUSAN MAHKAMAH KONSTITUSI REPULIK INDONESIA" 2009) that the freedom to manifest religion or belief can be limited only by law and is only necessary to protect public security, interests, health, or other fundamental rights. If concluded, then the limitations referred to by the Article are only permissible in some circumstances; restrictions for the protection of public safety, restrictions to protect public order or, restrictions on moral protection, and restrictions on protecting the fundamental rights and freedoms of others.

Hence, the regulation on permits for the establishment of houses of worship in the Indonesian context is closely related to the topic of these restrictions. This regulation, in a sense, imposes can a restriction on every religious community to freely establish their places of worship. FKUB spread across various regions in Indonesia has a very fundamental role related to the issues of licensing the place of worship. It carries out its fundamental duties based on PBM and Minister of Home Affairs Number 9 and Number 8 of 2006 (Tim Penyusun 2006: 15) concerning Guidelines for the Implementation of Regional Heads / Deputy Regional Heads in the Maintenance of Religious Harmony, Empowerment of Religious Harmony Forums and the Establishment of Houses of Worship. Based on these provisions, to build a house of worship religious believers must meet several predetermined requirements:

(1) There is a real and genuine need based on the composition of the population for the services of the religious community concerned in the kelurahan/village area (Pasal/Article 1 paragraph (1) of Ministerial Decree No. 9, 2006)
(2) The establishment of a house of worship must meet specific requirements which include:
    a. List of names and Identity Cards of at least 90 house of worship users authorized by local officials in accordance with the level of regional boundaries as referred to in article 1 paragraph (3);
    b. Local community support of at least 60 people authorized by the lurah/village head;
    c. Written recommendation of the head of the district/city religious department office; and
    d. Written recommendation of district/city FKUB.

In making certain restrictions related to licensing, a state should not prioritize one religion or belief over another, and adopt policies that are more favorable to one religion or belief. This is because the construction of houses of worship is certainly related and can clash with other human rights such as public order for instance.

However, although PBM has quite detailed regulations, the facts on the ground prove that the practice of building and maintaining places of worship often leads to conflicts for religious minorities in Indonesia, especially the Church. Based on these cases, I am not exaggerating to say that Indonesia in fact, despite having ratified and recognized religious freedom, has not been able to accommodate religious freedom well.

Recent research conducted by Ihsan Ali-Fauzi with the title "Meninjau Kembali PBM

2006 dan Peran FKUB" *(Revisiting PBM 2006 and the Role of FKUB)* at least affirms my opinion. He concluded that several FKUB which spread throughout Indonesia have not played their role optimally. Even more than that, as Ali said, the role of FKUB as a forum for realizing harmony in a pluralistic society is often hampered by their duty to issue recommendation letters for the establishment of houses of worship. As a result, instead of being famous for its role as a state agency to create harmony in society, FKUB is often identified as an institution that only gives recommendations for the establishment of houses of worship (Fauzi 2020: 19).

In this context, Fauzi sees that the role of PBM in licensing the establishment of houses of worship for minorities that is carried out through FKUB in homogeneous areas continues to be hampered because of the unbalanced proportion of the population (Fauzi 2020: 25). Thus, this has the potential for rejection of the granting of permits for the establishment of houses of worship which will result in disharmony in the society. In addition, the four main tasks of FKUBs mandated by PBM 2006 are still not implemented optimally by all FKUB throughout Indonesia. The four main tasks are: conducting dialog, accommodating the aspirations of the community, channeling community aspirations in the form of recommendations to regional heads, and socializing related regulations and policies.

The flaw in the practical realm of PBM as evidenced by several cases of denial of permits for places of worship and some of its main tasks that have not been realized to the fullest is clearly visible that PBM is not productive and its implementation has a negative impact on interfaith life, especially in several regions in Indonesia. Based on the evaluation of the PBM formulation regarding the establishment of houses of worship, it can be understood that PBM has a legal basis in the 1945 Constitution, specifically article 29 concerning the protection of freedom of religion and worship. For that reason, the guidelines for the establishment of houses of worship should protect the right to worship of Indonesian citizens, both individually and in groups. However, the formulation of PBM does not involve all stakeholders who in this case are religious communities who have the right to establish places of worship. Thus, it can be understood that the formulation of PBM does not meet the requirements of a public policy in a democratic country like Indonesia because some conservative groups interfere in the matter of permits, especially in a homogeneous society. This certainly seems to corroborate Gouda and Gutmaan's thesis that discrimination against minorities is more often caused by institutionalized rules (Gouda and Gutmann 2021: 16). This improper formulation model results in discriminatory policy formulation, because not all stakeholders are involved in the formulation of the regulation. As a consequence, the implementation of PBM does not meet the expected purpose, which is to facilitate religious people to have places of worship and maintain religious harmony.

Strengthening Maqâsid-Based Indonesian *Fiqh*

In the context of Muslim-majority Indonesia, the establishment of places of worship for non-Muslims such as churches and monasteries is one of the triggers of inter-religious conflicts. The reason is that the construction of places of worship is closely related to the issue of religious freedom in Indonesia. It can be said that the construction and maintenance of places of worship is a form of religious freedom. That is, if there are obstacles related to permits in the establishment of houses of worship in a place, it means that the implementation of religious freedom norms in that place can be considered a failure (Yousif 2000: 88).

Indonesia is a country that adheres to a democratic system, and the majority of the population is Muslim. Consequently, for conservative communities in some areas, the construction of places of worship in the midst of different religious communities can cause discomfort and friction for followers of other religions (Fox and Akbaba 2015: 7). Especially if the construction of the place of worship is carried out in a location where the majority of

the population are followers of other religions because it has the potential to disturb the sense of comfort of the surrounding community in their religious life (Finke, Martin, and Fox 2017; Akbaba and Fox 2011: 5).

The results of a research conducted by the Setara Institute team show several cases of disturbances to places of worship in several regions in Indonesia. The study stated that over a period of 12 years, from 2007 to 2018, the total disturbance to houses of worship reached 398 cases. The most disturbances were experienced by churches as many as 199 disturbances, mosques as many as 133 disturbances, 32 disturbances to religious worship places, 15 disturbances to monasteries, 18 disturbances to temples, and 1 disturbance to synagogue houses of worship (Halili et al. 2018: 14).

The data above were gathered until 2018, even after that year, there are still several related cases circulating on social media. Such as the case of the refusal to establish a Church in Cilegon, Banten in September, 2022. The rejection was signed by the Mayor and Deputy Mayor of Cilegon, the Chairman of the DPRD, Religious Leaders, and Community Leaders in the surrounding area. This decision is based on the Decree of the Head Regent of Serang Level II Region, Number 189 / Huk / SK / 1975, dated March 20, 1975 which regulates the Closure of Churches for Christianity in Serang Regency (Faqih 2021: 21). The regulation has a fairly negative impact related to the nuances of tolerance in the Cilegon city. Until 2019, official state data recorded that there were 382 mosques and 287 prayer rooms in the area without Churches, Temples, and Monasteries. In fact, the number of non-Muslims is recorded at more than seven thousand inhabitants (Wahyudin 2022: 6).

Another case that can be used as an example is the destruction of a place of worship *(musalla)* by a group of people in Griya Agape Housing, Tumaluntung, North Sulawesi in January 2020. Not long after this incident, about eight days later, conflicts related to houses of worship occurred again in Tanjung Balai, Karimun, Riau Islands. The conflict occurred because a number of people were blocking the renovation of St. Joseph's Parish Church. The action began in 2013, then continued at the groundbreaking in 2019 until 2020 (Amirullah 2020).

Based on the data above, it seems that the total number of attacks on churches exceeds the number of attacks on other places of worship. Although the government has quite detailed regulations related to religious freedom, but facts on the ground prove that minority religions often face obstacles to practicing their worship. Through these restrictive regulations, FKUB has a fairly central role related to the ratification of permits. The regulations set by the Ministry of Religious Affairs through FKUB are quite detailed although they often draw some criticism. Article 18 paragraph (3) above relates to restrictions applied with the aim of protecting public security and protecting public order in line with the general concept of modern *Maqâsid* put forward by Ibn Ashur, Yudian and Auda above. Local order and benefit are central points in modern *Maqâsid* epistemology. If it is related to contemporary *Maqâsid* epistemology, the justification related to the case can be seen more specifically through the lens of *hifz al-dîn* which has expanded its meaning to preserve religions such as what Auda formulated in his system approach with the complexity of the concept of his *maslaha*.

The solution I offer in responding to this problem is to introduce and provide education related to the development of *Maqâsid al-sharî'a* in the context of the modern and contemporary era to the lay community and conservative groups. I recommend this because the religious mindset of ordinary people in Indonesia is not easy to change except with 'something religious' as a barometer of truth in their faith (Abdelgafar 2018: 42). For this reason, I see that *Maqâsid* is an ideal solution that offers the concept of tolerance based on the fundamental principles of Islamic teachings where these principles are religious and acceptable to ordinary people. By formulating a special Indonesian fiqh that regulates FKUB policies, what Yudian aspires to can be realized. So that, all FKUB members spread across Indonesia feel they have a moral burden born of the spirit of religiosity to play their role optimally. With the new regulations

'wrapped' in the name of Indonesian fiqh, the moral pressure felt by FKUB members will be different than just a written and recorded law. Moreover, if the Indonesian fiqh receives support from Islamic institutions in Indonesia such as MUI (Indonesian Ulama Council) and other major mass organizations.

If the *Maqâsid* offered by Yudian succeeds in getting a good response from the academic world and the Indonesian government, then FKUB policies that have the potential to cause conflict and burden minority communities should be changed immediately. For example, the requirements for the establishment of houses of worship that require 90 applicants, this rule has the potential to slow down the authorization. The government's reason for setting the minimum amount is unclear. If the government really wants to facilitate and prosper religious harmony in Indonesia, then the nominal 30 to 50 people will be more *maslaha* if applied. Given that the nominal is often the object of criticism from several social research institutions, such as Paramadina and the Setara Institute (Fauzi 2020: 31; Halili et al. 2018: 12; Yosarie et al. 2023: 44). Of course, this situation will make it difficult for minorities who want to communally worship if their number is less than 90.

The nominal change should be made based on the concept of *maslaha* contained in *Maqâsid*. This regulation will become FKUB's own regulation based on the context of Indonesian society, and will be in line with the concept of fiqh offered by Yudian Wahyudi; it is both local and universal for the sake of creating a benefit. With the reconstruction of regulations like this, Indonesian fiqh will be formed with different nuances. It can continue to be applied to other rules in the context of FKUB that have the potential to cause injustice. However, I see that if Yudian's ideas get a serious response, they can be used to overcome the problems that occur in Indonesia, especially in the FKUB cases that I have mentioned above.

In this sense, the style of Indonesian fiqh that exists to date is divided into two domains; theoretical and constitutional. Theoretical Indonesian fiqh has been successfully initiated by several Indonesian figures such as Hasbi al-Siddiqî and Yudian Wahyudi mentioned above. In addition, social fiqh by Kiyai Sahal Mahfudz (Mahfudz 2003: 6) and fiqh of state administration by Kiyai Afifudin Muhajir (Muhajir 2016: 12) have also colored this theoretical Indonesian fiqh.

As for the constitutional ones, then in general this can be found in several fields of law such as marriage, inheritance, and *waqf*. For example, in the field of marriage, there are several reforms such as marriage registries, marriage age limits, consent of prospective brides, polygamy permits, and divorce (Tohari 2015: 24). The updates related to these articles are the result of the *ijtihâd* of Indonesian scholars who are concerned about the problems that arise in indonesian families. Accordingly, regulations related to FKUB policies are very likely to be revised and adjusted by considering *Maqâsid* principles so as to produce constitutional regulations with Indonesian fiqh nuances.

Unfortunately, the Indonesian *fiqh* project that Yudian wanted has not received a serious response from Indonesian academics. As a consequence, the fruits of Yudian's thoughts related to the project stalled without further execution. On the other hand, *Maqâsid* development studies continue to focus on the academic realm and has not been absorbed by the general public, particularly for FKUB members, the majority of whom are not academics. Let alone if this development is used as a reference for practicing their worship.

Conclusion

Regulations related to licensing the establishment of places of worship in the Indonesian context have been established for a long time. PBM regulations set through FKUB should produce a nuance of religious peace in Indonesia. But the facts on the ground show otherwise. Indeed, there are not only one or two factors that cause conflicts in places of worship. But I underline that there must be reconciliation between both parties; PBM provisions and religious understanding for the general public. In this case, I see the formulation of a new *fiqh* in the Indonesia context based on *Maqâsid* as one

of the best options that has never been thought of in overcoming the gap in FKUB's performance as an intermediary for creating harmony.

PBM must be open to the proposals of a number of community and religious leaders, and must even be developed as a new Indonesian-style fiqh of diversity. Because, when viewed from Auda's perspective, the conception of consensus is not a source of law, and can be reconstructed in accordance with the circumstances and situation of the surrounding community. So that, the peace of the majority community is not disturbed and minority groups still get their right to communally worship. In addition, provision related to religious insights that uphold the values of tolerance between religious communities must continue to be promoted by those who have authority; both religious leaders and the government. And as I mentioned earlier, the most appropriate way I see to promote it to the general public is to wrap it through things that depart from religious fervor, in this case by formulating Indonesian *fiqh* as the solution []

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