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The Maqāṣid al-Sharī'ah Approach of Sa'īd Ramaḍān al-Būṭī in Contemporary Fatwas

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ABSTRACT

This article examines the Maqāṣid al-Sharī'ah (objectives of Islamic law) approach employed by Sa'īd Ramaḍān al-Būṭī in formulating contemporary fatwas. Maqāṣid al-Sharī'ah is central to understanding the purposes of Islamic rulings and ensuring that the law serves the welfare of humanity. Al-Būṭī's method involves a nuanced understanding of maṣlaḥah within the framework of the Quran, Sunnah, Ijma' (consensus), and Qiyas (analogical reasoning). Through this lens, al-Būṭī addresses complex modern issues, such as cosmetic surgery, organ donation, political revolution, and the implementation of Hudud punishments. The article delves into al-Būṭī's principles, illustrating how his approach aligns with classical jurisprudence while adapting to contemporary challenges. The findings highlight the balance al-Būṭī strikes between adherence to traditional sources and the consideration of the current context, making his fatwas relevant and influential. The methodology of this study is based on a qualitative approach, combining text analysis and literature review. Primary sources, including al-Būṭī's own works and relevant fatwas, are analyzed to understand his application of Maqāṣid al-Sharī'ah. The study also employs contextual analysis to explore how al-Būṭī adapts classical principles to contemporary issues. Comparative analysis is used to assess his approach against other classical and modern juristic perspectives, emphasizing the relevance of his fatwas in today's world. This methodological framework allows for a comprehensive examination of al-Būṭī's contribution to contemporary Islamic jurisprudence.

Keywords: Maqāṣid al-Sharī'ah; Sa'īd Ramaḍān al-Būṭī; Maṣlaḥah; Contemporary Fatwas; Islamic Jurisprudence

Introduction

Islamic jurisprudence, or *fiqh*, is a dynamic discipline that addresses the changing circumstances of society while remaining anchored in divine revelation. Central to *fiqh* is the concept of

Maqāṣid al-Sharī'ah, which refers to the objectives or higher purposes of Islamic law. The theory of Maqāṣid has been developed and refined by numerous scholars throughout Islamic history, with one of the most notable contributions coming from Sa'īd Ramaḍān al-Būṭī in the 20th century. Al-Būṭī's approach to fatwas demonstrates distinctive characteristics that may differ from other scholars, particularly in his application of Maqāṣid al-Sharī'ah. His methodology emphasizes strict adherence to textual evidence or *naṣ*, rather than relying on Maqāṣid or *maṣlaḥah* independently. Nonetheless, his approach remains consistent with the overarching objectives of Maqāṣid al-Sharī'ah¹ and particularly relevant in the context of contemporary fatwas, as it seeks to balance the preservation of Islamic values with the necessity of addressing modern challenges. His method of considering *maṣlaḥah* within the boundaries set by the Quran, Sunnah, *Ijma'*, and *Qiyas* reflects a deep commitment to both the letter and spirit of Islamic law. This article explores Sa'īd Ramaḍān al-Būṭī's application of Maqāṣid al-Sharī'ah in his fatwas, focusing on key issues such as cosmetic surgery, organ donation, political revolutions, and the implementation of Hudud punishments. Through this exploration, the article aims to illustrate how al-Būṭī's methodology serves as a bridge between classical Islamic jurisprudence and the needs of contemporary society.

Methodology

This study adopts a qualitative approach, primarily relying on the analysis of Sa'īd Ramaḍān al-Būṭī's writings and fatwas such as *Istiftā'āt al-Nās*,² *Qadhāyā Fiqhiyyah Mu'āṣirah* volume 1,³ 2,⁴ and 3,⁵ as well as *Ensiklopedi Fatwa Alternatif*⁶ which is a translation from the book *Ma'a al-Nās: Mashyūrāt wa Fatāwā* and several other books. We also refer to his fatwas related to the field of study through social media such as websites *Nasem al-Shām* and al-Imām al-Syahīd al-Būṭī's telegram as well as a collection of his talks and lectures on Youtube especially on al-Imām al-Syahīd Al-Būṭī's channel. The research involves an in-depth examination of al-Būṭī's works as stated above in order to understand his application of Maqāṣid al-Sharī'ah. The study also references classical Islamic jurisprudence texts and contemporary scholarly works that discuss Maqāṣid al-Sharī'ah and its application in modern contexts.

The analysis takes three qualitative methodological orientations: deductive, inductive, and comparative in order to analyse al-Būṭī's application of Maqāṣid al-Sharī'ah to

¹ Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *Ḍawābiṭ al-Maṣlaḥah fī al-Sharī'ah al-Islāmiyyah* (Dimasyq: Dar al-Fikr, 2005), 141.

² "Istiftā'āt al-Nās" diakses 29 September 2019, <https://www.naseemalsham.com/subjects/view/54779>.

³ Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *Qadhāyā Fiqhiyyah Mu'āṣirah* (Dimasyq: Maktabah al-Farabi, 1991).

⁴ Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *Qadhāyā Fiqhiyyah Mu'āṣirah al-Qism al-Thānī* (Dimasyq: Maktabah al-Farabi, 1999).

⁵ Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *Qadhāyā Fiqhiyyah Mu'āṣirah al-Qism al-Thālīth* (Dimasyq: Dāral-Farabi lil Ma'arif, 2008).

⁶ Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *Ensiklopedi Fatwa Alternatif*, terj. Achmad Sunarto (Semarang: Pustaka Nuun, 2009).

contemporary fatwas. The deductive method (*istinbāṭ*⁷) explores theoretical frameworks imported from classical and modern Islamic scholarship and formulates general principles formulating maqasid-oriented fatwa. The inductive approach (*istiqrā'*⁸) involves the analysis of al-Būṭī's particular fatwas, highlighting the recurring features which illustrate his pragmatic implementations of Maqāṣid al-Sharī'ah. This comparative methodology thus connects these two theoretical and practical dimensions, assessing the effectiveness and coherency of established frameworks with al-Būṭī's jurisprudential practices. Combining these methodologies enables the study to deliver a comprehensive evaluation of al-Būṭī's contributions, underlining their relevance for reconciling Islamic legal rulings with the evolving realities of this contemporary society.

Findings and Discussion

The Concept of Maqāṣid al-Sharī'ah and Maṣlaḥah

In the Quran and Hadith, numerous texts indicate that Allah SWT ordained the Sharī'ah to protect human interests in both this world and the hereafter. As al-Shāṭibī states :

وَهِيَ أَنْ وَضَعَ الشَّرَائِعَ إِنَّمَا هُوَ لِمَصَالِحِ الْعِبَادِ فِي الْعَاجِلِ وَالْآجِلِ مَعًا

Translation : The establishment of Sharī'ah is essentially for the benefit of the servants in both the immediate and the future.⁹ This principle is evident in various Quranic verses, including Surah al-Nisā' (4:165), Surah al-Anbiyā' (21:107), Surah Hūd (11:7), Surah al-Dhāriyāt (51:56), and Surah al-Mulk (67:2), among others.

The term *maṣlaḥah* originates from the Arabic word meaning interest, benefit, or welfare. Al-Ghazālī defines *maṣlaḥah* as :

أَمَّا الْمَصْلَحَةُ فَهِيَ عِبَارَةٌ فِي الْأَصْلِ عَنِ جَلْبِ مَنُفَعَةٍ أَوْ دَفْعِ مَضَرَّةٍ. وَلَسْنَا نَعْنِي بِهِ ذَلِكَ، فَإِنَّ جَلْبَ الْمَنُفَعَةِ وَدَفْعَ الْمَضَرَّةِ مَقَاصِدُ الْخَلْقِ وَصَلَاحُ الْخَلْقِ فِي تَحْصِيلِ مَقَاصِدِهِمْ. لَكِنَّا نَعْنِي بِالْمَصْلَحَةِ الْمُحَافَظَةَ عَلَى مَقْصُودِ الشَّرْعِ وَمَقْصُودِ الشَّرْعِ مِنَ الْخَلْقِ خَمْسَةٌ: وَهُوَ أَنْ يَحْفَظَ عَلَيْهِمْ دِينَهُمْ وَنَفْسَهُمْ وَعَقْلَهُمْ وَنَسْلَهُمْ وَمَالَهُمْ، فَكُلُّ مَا يَتَّصَمَنُ حِفْظَ هَذِهِ الْأُصُولِ الْخَمْسَةِ فَهُوَ مَصْلَحَةٌ، وَكُلُّ مَا يُقَوِّتُ هَذِهِ الْأُصُولَ فَهُوَ مَفْسَدَةٌ وَدَفْعُهَا مَصْلَحَةٌ.

Translation : *Maṣlaḥah* fundamentally, refers to the endeavor to bring about benefit and prevent *mafsadah* (harm). However, the statement that *maṣlaḥah* is bringing about benefit and repelling *mafsadah* does not imply merely fulfilling the interests and needs of human beings. Rather, it refers to

⁷ Idris Awang, *Penyelidikan Ilmiah, Amalan Dalam Pengajian Islam* (Kuala Lumpur: Kamil & Shakir, 2009), 48.

⁸ Idris, *Penyelidikan Ilmiah*, 48.

⁹ Al-Shāṭibī, Abū Ishāq Ibrāhīm bin Mūsā, *al-Muwāfaqāt* (Al-Khubar: Dār Ibn 'Affān li al-Nashr wa al-Tawzī', 1997), 2:9.

safeguarding the objectives of Shari'ah that have been prescribed for humanity, namely the preservation of religion, life, intellect, lineage, and wealth. Therefore, anything that contributes to preserving these five fundamental principles is considered *maṣlahah*, and anything that compromises them is deemed *mafsadah*, and repelling it is itself a form of *maṣlahah*.¹⁰

This definition is echoed by al-Būṭī, who emphasizes that *maṣlahah* must align with the Quran, Sunnah, Ijma', and Qiyas, and must not contradict any greater *maṣlahah*.¹¹

Al-Būṭī's Five Key Principles in Applying Maṣlahah

Al-Būṭī's application of *maṣlahah* is guided by five key principles:

1. Preservation of the Five Essentials: Al-Būṭī asserts that any *maṣlahah* applied must protect the five essentials of Maqāṣid al-Shari'ah: religion, life, intellect, lineage, and property. For example, in his fatwa on cosmetic surgery, al-Būṭī permits the procedure if it addresses a defect or health issue that significantly impacts the individual's quality of life. This decision is based on the principle of preserving life and dignity, both of which are central to Maqāṣid al-Shari'ah.¹²
2. Consistency with Quranic and Prophetic Texts: Al-Būṭī insists that any application of *maṣlahah* must not contradict explicit texts from the Quran or Hadith.¹³ For instance, in his discussion on organ donation, al-Būṭī permits the procedure provided it does not endanger the donor's life. This ruling is consistent with the Quranic injunction to preserve life and avoid harm (Surah al-Baqarah, 2:195).
3. Alignment with Ijmā': Al-Būṭī holds that *maṣlahah* must be in harmony with the consensus of Islamic scholars. This is evident in his stance on political revolutions, where he argues against overthrowing a ruler through violence, citing the potential for widespread chaos and harm, which goes against the consensus on the importance of maintaining social stability.
4. Consistency with al-Qiyas (Analogical Reasoning) : Al-Būṭī emphasizes that *maṣlahah* must align with the principles derived through Qiyas.¹⁴ For example, in his fatwa on delaying the implementation of Hudud punishments during times of hardship, al-Būṭī draws on the precedent set by Umar ibn al-Khaṭṭāb, who suspended the punishment for theft during a famine. This application of Qiyas reflects the priority of *maṣlahah* in preserving human life and welfare (al-Būṭī, *Masirat al-Īmān wa al-Islām*).

¹⁰ Al-Ghazālī, Abū Ḥāmid Muḥammad bin Muḥammad, *al-Mustaṣfā min 'Ilm al-Uṣūl* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), 174.

¹¹ Muḥammad Solikhuddin, "Pemikiran Muḥammad Sa'id Ramadan Al-Būṭī Tentang Maslahah Dan Batasan-Batasannya", *Mahakim Journal of Islamic Family Law* 3 (2019), 19.

¹² Al-Būṭī, *Ḍawābiṭ al-Maṣlahah*, 131-140.

¹³ *Ibid.*, 141-175 and 176-228.

¹⁴ *Ibid.*, 229-259.

5. Avoidance of Greater Harm: Al-Būṭī underscores that any *maṣlaḥah* applied must not lead to a greater harm or negate another significant *maṣlaḥah*.¹⁵ This is particularly evident in his fatwa on organ donation, where he prohibits the procedure if it poses a serious risk to the donor, even if the donation could save another life. This ruling highlights the balance al-Būṭī seeks to maintain between conflicting *maṣāliḥ*.

Application of Al-Būṭī's Approach in Contemporary Issues

i- Cosmetic Surgery

In the context of cosmetic surgery, al-Būṭī allows the procedure if it serves a genuine need, such as correcting a physical defect that causes significant psychological or physical distress. He argues that this aligns with the preservation of life and dignity, which are core objectives of Maqāṣid al-Sharī'ah. However, he strictly prohibits cosmetic surgery performed solely for enhancing beauty without any underlying medical necessity, as this would not constitute a valid *maṣlaḥah* under Sharī'ah.

The modern era has witnessed an unprecedented obsession with physical appearance, leading to a significant increase in cosmetic surgery worldwide.¹⁶ According to the International Society of Aesthetic Plastic Surgery (ISAPS), in 2021, approximately 12.8 million cosmetic surgical procedures were performed globally, with liposuction, breast augmentation, and eyelid surgery being the most common.¹⁷ In 2022, these numbers increased by 16.7%, reaching nearly 15 million procedures.¹⁸ These statistics highlight a global trend where beauty is often prioritized over natural health and wellness.

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However, al-Būṭī strongly opposes surgeries conducted purely for aesthetic enhancement, viewing them as a transgression of the limits set by Allah.²⁰ This view is supported

¹⁵ *Ibid.*, 260-286.

¹⁶ "Beauty obsession? People spend 4 hours a day trying to enhance their appearance" accessed 15 November 2023, <https://studyfinds.org/beauty-people-4-hours-appearance/>.

¹⁷ "ISAPS International Survey On Aesthetic/Cosmetic Procedures 2021" accessed on 14 November 2023, https://www.isaps.org/media/vdpdanke/isaps-global-survey_2021.pdf, 7 & 9.

¹⁸ "ISAPS International Survey On Aesthetic/Cosmetic Procedures 2022" accessed on 14 November 2023, https://www.isaps.org/media/a0qfm4h3/isaps-global-survey_2022.pdf, 7 & 9.

¹⁹ Al-Būṭī, Muḥammad Said Ramadan, *Ensiklopedi Fatwa Alternatif*, terj. Achmad Sunarto (Semarang: Pustaka Nuun, 2009), 29.

²⁰ Istifta'at al-Nas" accessed on 29 September 2019, <https://www.naseemalsham.com/subjects/view/54779>, 173.

by Quranic teachings, particularly the verse in which Satan vows to lead humanity astray by encouraging them to alter Allah's creation:

وَأُضِلَّتْهُمْ وَلَا مَنِيَّتَهُمْ وَلَا مَرْنَهُمْ فَلْيَبْتِكُنَّ ءَادَانَ الْأَنْعَمِ وَلَا مَرْنَهُمْ فَلْيَعَيِّرَنَّ خَلْقَ
اللَّهِ وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِّنْ دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرَانًا مُّبِينًا

Translation: And indeed, I (Satan) will mislead them, and indeed, I will fill them with false hopes; and indeed, I will command them to slit the ears of cattle, and indeed, I will command them to alter Allah's creation. And whoever takes Satan as an ally instead of Allah has certainly suffered a clear loss.²¹

Scholars like al-Qurṭubī and Ibn Mas'ūd interpret this verse as a prohibition against unnecessary physical alterations, including cosmetic surgery for vanity.²² Al-Būṭī also emphasizes the importance of consulting medical experts before undergoing any surgical procedure. He asserts that only qualified doctors can determine whether a surgery is a medical necessity or merely a desire for cosmetic improvement. This cautious approach ensures that the surgery aligns with the principles of Sharī'ah and does not lead to unnecessary harm.

ii- Organ Donation

Organ donation is a significant issue in contemporary Islamic jurisprudence, and Sa'īd Ramaḍān al-Būṭī's perspective on this matter reflects a nuanced understanding of Maqāṣid al-Sharī'ah. Al-Būṭī views organ donation as a contemporary fiqh issue that requires new ijtihad (independent reasoning) based on Islamic sources and principles, alongside similar issues discussed by previous scholars.²³ He asserts that the default ruling on organ donation is permissibility because there is no explicit textual evidence prohibiting it.²⁴ Instead, it aligns with the principle of performing good deeds, as stated in the Quran:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى

Translation: And cooperate in righteousness and piety.²⁵

Additionally, al-Būṭī references the hadith of 'Arfajah,²⁶ who had his nose cut off and replaced it with a silver one that subsequently rotted. The Prophet Muḥammad SAW then instructed him to replace it with a gold one.²⁷ Al-Būṭī cites earlier scholarly interpretations of this

²¹ Surah al-Nisā' ayat 119.

²² Al-Qurṭubī, Muḥammad bin Aḥmad, *al-Jāmi' li Aḥkām al-Qur'ān* (Kaheerah: Dar al-Kutub Al-Misriyyah, 1963), 5 : 894.

²³ Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *Qadhāyā Fiqhiyyah Mu'āṣirah* (Dimasyq: Maktabah al-Farabi, 1991), 108.

²⁴ Al-Būṭī, *Ensiklopedi Fatwa Alternatif*, 153.

²⁵ Surah al-Maidah ayat 2.

²⁶ Al-Būṭī, *Qadhāyā Fiqhiyyah Mu'āṣirah*, 111.

²⁷ Abū Dāwūd, Sulaymān bin al-As'ath, *Sunan Abī Dāwūd* (Beirut: Dār Ibn Ḥazm, 2010), 638 (Kitāb al-Khatām, Bāb Mā Jā'a fī Rabṭi al-Asnān bi al-Zahabī, no. hadith 4232).

hadith, such as those found in Mughni al-Muhtaj by al-Syirbinī,²⁸ which permit the use of gold for replacing body parts like noses or teeth, although the Shafi'i school ultimately prohibits using gold for replacing limbs due to functionality concerns.²⁹

Al-Būṭī further supports his view by *takhrīj* on classical fiqh issues discussed by earlier scholars. For instance, they permitted the surgical removal of a stolen gem from a deceased's stomach if the owner insisted on recovering it. Similarly, the majority of scholars agree that a deceased pregnant woman's abdomen should be surgically opened if the fetus is still alive, prioritizing the preservation of the fetus's life over the sanctity of the deceased's body. These precedents demonstrate that, from an Islamic perspective, the preservation of individual rights and societal welfare takes precedence over the honor of the deceased.³⁰ Al-Būṭī extends this reasoning to justify the permissible dissection of bodies for organ donation or autopsies when done for the benefit of the community or state.³¹ A critical question arises: since all bodies and organs ultimately belong to Allah Ta'ala, is it permissible to donate something that is not truly ours? Al-Būṭī acknowledges that everything, including our lives and bodies, is owned by Allah. However, Allah has granted humans the right of *al-Tasārruf* (disposal) to use their body parts in accordance with divine law. He introduces an important principle in this context:

كُلُّ مَا تَبَتَ لِلْإِنْسَانِ حَقُّ التَّصَرُّفِ فِيهِ، كَانَ لَهُ حَقُّ الْإِثَارِ بِهِ

Translation: Everything for which a person has a right of disposal, they also have the right of preference (al-Ithār) over it.³²

This principle indicates that when Allah grants humans the right to use their body parts, it also includes the right to use these parts for the benefit of others. Although al-Būṭī permits organ donation, he outlines specific conditions to ensure that the act remains within the bounds of Islamic law:

Consent and Eligibility: Organ donation must be done with the donor's consent, and the donor must be legally competent. If the donor is a minor or mentally incapacitated, a guardian cannot consent on their behalf as guardians must safeguard the donor's welfare. If the donor has passed away, consent must be obtained from their heirs, even if the donor had made a will, as the will is considered invalid in this context. If the deceased has no heirs, permission must be obtained from the government.³³ This requirement is based on the principle:

كُلُّ مَا كَانَ حَقًّا لِلْعَبْدِ يُورَثُ بِالْمَوْتِ

²⁸ Al-Syirbinī, Muḥammad bin Muḥammad, *Mughni al-Muhtāj ilā Ma'rifah Ma'anī Alfāz al-Minhāj* (Beirut: Dar al-Kutub al-'Ilmiyah, 1994), 2 : 96, 97.

²⁹ Al-Būṭī, *Qadhāyā Fiqhiyyah Mu'āṣirah*, 111.

³⁰ Al-Būṭī, *Qadhāyā Fiqhiyyah Mu'āṣirah*, 132.

³¹ Al-Būṭī, *Ensiklopedi Fatwa Alternatif*, 149.

³² Al-Būṭī, *Qadhāyā Fiqhiyyah Mu'āṣirah*, 122.

³³ Al-Būṭī, *Ensiklopedi Fatwa Alternatif*, 152 and Al-Būṭī, *Qadhāyā Fiqhiyyah Mu'āṣirah*, 133.

Translation: Everything that is a right of a servant is inherited after their death.

This principle is also applicable in cases like *qazaf* (false accusation),³⁴ where the right to continue prosecution is inherited by the deceased's heirs.

Medical Verification: Organ donation must be verified by qualified medical professionals to ensure it does not harm the donor.³⁵ According to al-Būṭī, confirmation should come from at least two doctors who assert that the donation will not endanger the donor's life.³⁶ Donations that are likely to cause death or significant harm are unequivocally prohibited.³⁷

Necessity: Only the necessary organs should be removed based on the principle:

الضَّرُورَاتُ تُقَدَّرُ بِقَدَرِهَا

Translation: Necessities are determined by their extent.

For example, if an animal's carcass is sufficient for a procedure, human dissection is not permitted. Similarly, if only a small part of a human body is needed to address a situation, only that part should be used.

Donation Process: Organ donation should be conducted as a donation or gift, not through commercial transactions.³⁸ Al-Būṭī argues that selling organs opens doors to corruption and is thus prohibited under the principle of *sadd al-zara'i*.³⁹ However, if a recipient gives money as a token of appreciation, not as a purchase, it is permissible, provided it is done voluntarily and not as a condition.⁴⁰

Confirmation of Death: If the donation occurs after the donor's death, the death must be confirmed according to Islamic law.⁴¹ By adhering to these conditions, al-Būṭī ensures that organ donation aligns with Islamic ethical standards and serves the greater good while respecting the principles of *Maqāṣid al-Sharī'ah*. This also reflects his commitment to upholding the principles of *Maqāṣid al-Sharī'ah* while considering modern medical advancements.

iii- Political Revolutions

³⁴ *Qazaf* refers to the act of accusing someone of adultery in the form of an insult, such as when one person says to another: "O adulterer." See al-Syirbinī, Muḥammad Bin Muḥammad, *al-Iqnā' fī Ḥallī Alfāz Abī Syujā'* (Cairo: Syarikah al-Quds, 2013), 2: 414.

³⁵ Al-Būṭī, *Ensiklopedi Fatwa Alternatif*, 149.

³⁶ According to Al-Būṭī, in cases that do not involve other individuals, the confirmation of a single doctor is sufficient. However, in cases that do involve other individuals, the confirmation of two doctors is required. This matter is explained by al-Suyūṭī in his book *al-Asybah wa al-Nazā'ir*. See Al-Būṭī, *Qadhāyā Fiqhiyyah Mu'āṣirah*, 119; Al-Būṭī, *Ensiklopedi Fatwa Alternatif*, 152.

³⁷ Al-Būṭī, *Qadhāyā Fiqhiyyah Mu'āṣirah*, 121.

³⁸ Al-Būṭī, *Ensiklopedi Fatwa Alternatif*, 151.

³⁹ "Nadwah al-Tabarru' Bi al-A'dhok, al-Istintisakh, al-Imam Al-Būṭī" accessed on 25 November 2023, <https://www.youtube.com/watch?v=85Zl22KhgEQ>.

⁴⁰ Al-Būṭī, *Ensiklopedi Fatwa Alternatif*, 151.

⁴¹ Al-Būṭī, *Qadhāyā Fiqhiyyah Mu'āṣirah*, 126.

In discussing the issue of overthrowing a government⁴² through revolution, Sa'īd Ramaḍān al-Būṭī offers a comprehensive and detailed analysis, particularly through his works *al-Ta'āruf 'alā al-Zāt* and *al-Jihād fī al-Islām*, which he authored long before the Arab Spring. His views are also elaborated in several television programs, including *Hādhā Huwa al-Jihād* and *Faṭazkurūnā Mā Aqūl Lakum*. Al-Būṭī clarifies that the Islamic prohibition on toppling a Muslim ruler is contingent upon four specific conditions:

Kufr Bawah (Clear Kufr): The ruler must be unequivocally engaged in kufr (disbelief) either through clear statements or actions, such as outright denial of any pillar of Islam or a fundamental aspect of Sharī'ah that is known with certainty. This includes actions like prostrating to idols or wearing religious attire that clearly contradicts Islamic teachings.

Health Impairments: The ruler must be suffering from health issues that impair their ability to govern, such as blindness or deafness. Minor health issues that do not affect their governance do not warrant removal.

Inability to Govern: If the ruler is unable to manage the government due to interference from aides or external forces that threaten the integrity of the administration, removal may be justified.

Voluntary Resignation: If the ruler resigns, they may be removed, provided there is a competent successor ready to take over.⁴³

If none of these conditions are met, it becomes obligatory for Muslims to remain loyal to their ruler and it is forbidden to seek their removal.⁴⁴ Al-Būṭī emphasizes that kufr in this context refers to clear, unambiguous disbelief that cannot be interpreted differently. This includes explicit rejection of core Islamic tenets or performing actions clearly against Islam.⁴⁵

iv-Addressing the Issue of a Fāsiq (Sinful) Ruler

A significant question arises regarding a ruler who is *fāsiq* (sinful)⁴⁶. Al-Būṭī asserts that a *fāsiq* ruler cannot be removed solely due to their sins, as long as they do not exhibit kufr as described. This view is in line with the consensus among Ahl al-Sunnah scholars. Al-Būṭī cites al-Nawawī's opinion to support this stance:

إِجْمَاعُ أَهْلِ السُّنَّةِ عَلَى أَنَّ الْإِمَامَ لَا يُنْعَزَلُ بِالْفِسْقِ. ذَلِكَ لِأَنَّ صَرَرَ الْفِتْنَةِ الَّتِي قَدْ
تَنَشَأُ بِعَزْلِهِ يَفُوقُ فِي الْعَالِبِ صَرَرَ بَقَائِهِ مُتَلَبِّسًا بِالْفِسْقِ

⁴² The ruler referred to by Al-Būṭī is the king or head of state who holds political power. See Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *al-Jihād fī al-Islām : Kaifa Nafhamuhu wa Kaifa Numarisuhu* (Dimasyq: Dar al-Fikr, 1993) 148 and Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *al-Ta'āruf 'alā al-Zāt* (Dimasyq: Dar al-Fikr, 2017), 49.

⁴³ Al-Būṭī, *al-Ta'āruf 'alā al-Zāt*, 78, 79, 80, and 81.

⁴⁴ Al-Būṭī, *al-Ta'āruf 'alā al-Zāt*, 81.

⁴⁵ Al-Būṭī, Muḥammad Sa'īd Ramaḍān, *al-Jihād fī al-Islām: Kaifa Nafhamuhu wa Kaifa Numarisuhu* (Dimasyq: Dar al-Fikr, 1993) 153.

⁴⁶ A person is considered *fāsiq* if they commit a major sin even once or a minor sin three times. See Al-Harrani, Ahmad Bin Hamdan, *Sifat al-Mufti wa al-Mustafti* (Riyadh: Dar al-Somi'i, 2015), 149.

Translation: The consensus of Ahl al-Sunnah is that a ruler cannot be removed for being *fāsiq*. This is because the harm that may arise from removing him is generally greater than the harm of keeping him in his state of sin.⁴⁷

Al-Būṭī also references various scholars including al-Nawawī in al-Minhāj and others like al-Nasafī, Ibn Najīm, al-Taftazānī, al-Bājūrī, and al-Iz Bin Abdissalam, all of whom agree that removing a *fāsiq* ruler is prohibited.⁴⁸ He cites hadiths to support this view:

In one narration from Muslim, when the companions inquired about rulers who act contrary to the Prophet's guidance, including those who oppress and seize property, the Prophet SAW replied:

فَاسْمَعُ وَأَطِع

Translation: Listen and obey.

In another narration, when asked if such rulers should be fought, the Prophet SAW said :

لَا، مَا أَقَامُوا فِيكُمْ الصَّلَاةَ، وَإِذَا رَأَيْتُمْ مِنْ وُلَاتِكُمْ شَيْئًا تَكْرَهُونَهُ فَانْكُرُوهُ عَمَلُهُ، وَلَا تَتَزَعُوا يَدًا مِنْ طَاعَةٍ

Translation: No, as long as they establish prayer among you. If you see something you dislike from your rulers, then dislike their actions, but do not withdraw your obedience.

Al-Laqqānī's verse reflects the same sentiment:

وَوَاجِبٌ نَصَبُ إِمَامٍ عَدْلٍ بِالشَّرْعِ فَاعْلَمْ لَا بِحُكْمِ الْعَقْلِ

Translation: It is obligatory to appoint a just leader according to Sharī'ah, not by reason. Appointing a leader is not a pillars of faith (*rukun iman*) in religion,⁴⁹ so do not deviate from their clear command except in cases of clear disbelief.

Al-Bājūrī explains that obedience to the ruler is obligatory even in matters that are not strictly religious, except in cases of explicit prohibition or dislike. Removing a ruler solely due to their sins is deemed unlawful.⁵⁰ Al-Nawawī's commentary, cited by al-Būṭī, elaborates that the prohibition against removing a *fāsiq* ruler through revolution is intended to prevent greater harm. Al-Būṭī also introduces a key fiqh principle:

⁴⁷ Al-Būṭī, *al-Ta'āruḥ 'alā al-Zāt*, 79.

⁴⁸ Al-Būṭī, *al-Jihād fī al-Islām*, 149 and 150.

⁴⁹ The appointment of a ruler is not considered one of the pillars of faith (*rukun iman*). However, it is mentioned in the books of theology to clarify that it is not part of the fundamentals of creed, and to highlight the difference between Ahlus Sunnah and certain groups that consider governance as a pillar of faith and a fundamental of creed. See Lajnah I'dad Wa Tatwir al-Manahij Bi al-Azhar al-Syarif, Taisir Jauharah al-Tauhid Li al-Syeikh al-Baijuri (Kajang: Aras Mega Sdn Bhd, 2019) 87.

⁵⁰ Al-Bājūrī, Ibrāhīm bin Muḥammad, *Tuhfat al-Murīd 'alā Jawharat al-Tawḥīd* (Kaherah: Dar Salam, 2012), 327.

أَنَّ الْفِسْقَ يَمْنَعُ انْعِقَادَ الْإِمَامَةِ لَهُ ابْتِدَاءً، وَلَكِنَّهُ لَا يَقْوَى عَلَى انْتِهَاءِ إِمَامَتِهِ دَوَامًا
وَاسْتِمْرَارًا

Translation: *Fāsiq* prevents the initial appointment of a ruler, but it does not justify the ongoing removal of a ruler who becomes *fāsiq*.

This principle clarifies that while justice is a prerequisite for appointing a ruler, the removal of a ruler who later becomes *fāsiq* is prohibited to avoid instability and chaos. This aligns with the *fiqh* principle cited by al-Suyūṭī:

الضَّرْرُ لَا يُزَالُ بِالضَّرْرِ

Translation: Harm cannot be removed by another harm.⁵¹

Al-Būṭī's approach underscores the importance of maintaining stability and avoiding greater harm, even when dealing with a ruler who may be morally flawed.

v- Implementation of Hudud Punishments

The discussion surrounding the implementation of hudud (Islamic criminal laws) often incites endless debates and controversies, especially among politicians.⁵² The public, with its diverse backgrounds, also reacts variably to these laws.⁵³ Even among past and contemporary scholars, there is significant disagreement about whether the implementation of hudud should be considered a defining characteristic of an Islamic state.⁵⁴ This disagreement stems from the lack of clear textual evidence in the Quran or Hadith that explicitly defines the concept of an Islamic state.⁵⁵

Al-Būṭī addresses this issue by noting that the enemies of Islam often use hudud as a target for attacks and criticism, largely due to their misunderstanding of these laws and their implementation. These critics portray hudud as forms of brutality and cruelty, forgetting that these punishments are only applied to individuals convicted of serious crimes under stringent evidence requirements. Al-Būṭī emphasizes that the perception of hudud as harsh is relative to

⁵¹ Al-Suyūṭī, Abdul Raḥmān bin Abī Bakr, *al-Asybah wa al-Nazā'ir fī Qawā'id wa Furū' Fiqh al-Shāfi'iyyah* (Beirut: Dar Ibn Hazm, 2005), 106.

⁵² Refer, "Hukum Hudud: Hak Allah Yang Diperjuangkan PAS" accessed on 14 Januari 2024, <https://berita.pas.org.my/hukum-hudud-hak-allah-yang-diperjuangkan-pas/>, "Hudud: DAP tegur berhemah, tak burukkan Islam" accessed on 14 Januari 2024, <https://dapmalaysia.org/hudud-dap-tegur-berhemah-tak-burukkan-islam/>, and "Pertarungan sebenar isu hudud bermula" accessed on 14 Januari 2024, <https://www.bharian.com.my/kolumnis/2015/03/42118/pertarungan-sebenar-isu-hudud-bermula>.

⁵³ Ahmad Iqbal Bin Azman, Nurhayati Binti Mohd Zan, Elavarasi Manokaran, & Zulaikha Solehah Binti Ismail, "Penerimaan dan Penolakan Masyarakat Bukan Islam di Malaysia terhadap Hukum Jenayah Islam: Perbincangan dari Sudut Budaya Malaysia", *Current Legal Issues* 3 (2021), 50-67.

⁵⁴ Mohd Izhar Ariff Bin Mohd Kashim, Ezad Azraai Jamsari, Mohamad Zulfazdlee Abul Hassan Ashari, Mohd al-Adib Samuri, & Salmy Edawati Yaacob, "Penentuan Ciri Negara Islam Menurut Pemikiran Empat Mazhab Fiqah", *Jurnal Hadhari* 4.2 (2012), 89-106.

⁵⁵ Siti Zubaidah Ismail, "Hudud Dan Undang-undang Jenayah Syariah Dalam Kerangka Perlembagaan Dan Sistem Perundangan Dualisme : Komitmen Pelaksanaan Ke Arah Membendung Jenayah Di Malaysia", *Jurnal Syariah* 22.2 (2014), 193-212.

the severity and impact of the crimes committed.⁵⁶ Such stringent measures are not unique to Islamic law but are also seen in various legal systems worldwide, where severe penalties are imposed for grave offenses.⁵⁷

Al-Būṭī further asserts that as Muslims, it is our duty to accept and adhere to all aspects of Sharī'ah, including hudud, due to our obligations as servants of Allah and as subjects under Islamic governance. However, he notes that Sharī'ah prioritizes the establishment of a just and prosperous society and a solid social system before enforcing Islamic criminal laws.⁵⁸ This principle is illustrated by the example of Sayyidina Umar al-Khaṭṭāb, who temporarily suspended the implementation of hudud for theft during a period of famine and social instability. Al-Būṭī clarifies that this suspension was not an attempt to alter Allah's laws but was in accordance with the directives of Allah and the Prophet Muḥammad (SAW), as reflected in the Hadith:

ادْرءُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ، فَخَلُّوا سَبِيلَهُ. فَإِنَّ
الْإِمَامَ أَنْ يُخْطِئَ فِي الْعَفْوِ، خَيْرٌ مِنْ أَنْ يُخْطِئَ فِي الْعُقُوبَةِ

Translation: Suspend the implementation of hudud on Muslims as much as you can. If there is a way out for them, then let them be. It is better for a ruler to err in forgiveness than to err in punishment.⁵⁹

Al-Būṭī emphasizes that hudud cannot be implemented arbitrarily; it is bound by strict conditions outlined by Sharī'ah. Thus, before enforcing any form of punishment, especially hudud, the government must ensure social balance, promote prosperity, and enhance social security among the people. He also highlights that Sharī'ah encompasses all aspects of life, not just the laws of hudud. It covers everything from purification, worship, and commercial transactions to family matters and governance, as outlined in the Quran and Hadith.⁶⁰ In summary, Al-Būṭī's perspective underscores that the application of hudud must be contextualized within a framework that prioritizes societal stability and justice. The complexity and sensitivity of implementing such laws require a balanced approach that aligns with broader Sharī'ah objectives and considers the overall well-being of the community.

Broader Implications of Al-Būṭī's Approach

Al-Būṭī's application of Maqāṣid al-Sharī'ah extends beyond the specific issues discussed above and offers a framework for addressing a wide range of contemporary challenges. His emphasis on the preservation of the five essentials of Maqāṣid al-Sharī'ah provides a robust foundation for

⁵⁶ Al-Būṭī, *al-Ta'āruf 'alā al-Zāt*, 107.

⁵⁷ *Ibid.*, 194.

⁵⁸ "Ana Awwalu Man Yu'ārid Ṭatbīq Qānūn al-'Uqūbāt al-Islāmiyyah al-Yawm - Ta'lam Thumma Takallam," laman sesawang Youtube, accessed on 11 November 2023, <https://www.youtube.com/watch?v=gpX7N5pjKR0>.

⁵⁹ Al-Tirmidhī, Muḥammad bin 'Isā, *al-Jāmi' al-Kabīr al-Ma'rūf bi Sunan al-Tirmidhī* (Beirut: Dar al-Gharab al-Islami, 1996), 3 : 94, no. Hadith 1424.

⁶⁰ "Ana Awwalu Man Yu'ārid Ṭatbīq Qānūn al-'Uqūbāt al-Islāmiyyah al-Yawm - Ta'lam Thumma Takallam," laman sesawang Youtube, accessed on 11 November 2023, <https://www.youtube.com/watch?v=gpX7N5pjKR0>.

Islamic jurisprudence in the modern world. This approach allows for flexibility and adaptability while maintaining a strong connection to traditional sources of Islamic law.

Furthermore, al-Būṭī's insistence on aligning *maṣlaḥah* with the Quran, Sunnah, Ijma', and Qiyas ensures that contemporary fatwas remain grounded in the core principles of Islam. This balance between tradition and modernity is crucial for addressing the evolving needs of Muslim communities worldwide.

Conclusion

Sa'īd Ramaḍān al-Būṭī's approach to Maqāṣid al-Sharī'ah represents a significant contribution to contemporary Islamic jurisprudence. By carefully balancing the principles of *maṣlaḥah* with the traditional sources of Islamic law, al-Būṭī provides a framework for issuing fatwas that are both relevant and rooted in the timeless values of Islam. His application of Maqāṣid al-Sharī'ah in issues such as cosmetic surgery, organ donation, political revolutions, and the implementation of Hudud punishments demonstrates the versatility and depth of his method. Al-Būṭī's work highlights the importance of understanding the objectives of Islamic law in order to apply it effectively in the modern context. His principles offer valuable insights for scholars and practitioners of Islamic law, helping to ensure that the Sharī'ah continues to serve the welfare of humanity in an ever-changing world.

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