PROTECTING THE RELIGION (MAQSAD HIFZ AL-DĪN) IN MALAYSIAN POLITICAL ISLAM: A PRELIMINARY ANALYSIS

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Abstract: After inheriting a multicultural yet segmented society from its colonial legacy, identity politics has heavily influenced political Islam in Malaysia. Since then, identity politics has significantly shaped Malaysia's political dynamics, including in the bureaucratic and legal spheres. The Islamism espoused by the Malay Muslim majority is often intertwined with exclusivist ethno-religious considerations vis-à-vis the non-Muslim minorities (the Chinese and Indians). One of the most frequent manifestations of this political platform is the slogan 'protecting Islam' or 'protecting religion'. This notion often finds itself at the centre of the Islamist discourse, especially in high-profile religious cases involving Muslims and non-Muslims.

This paper intends to provide a descriptive analysis of 'protecting Islam' in the Malaysian context while also identifying key elementss in its inner-workings. It will then proceed with a discussion of maqsad hifz al-dīn (the objective to preserve religion), a sub-topic in the overarching field of maqāsid al-sharī ah. This discussion will examine how this notion is understood within the Malaysian context, while also asking what the Shari ah says about it, and what the gaps are between the two positions. Finally, the article will propose a theoretical framework for achieving an optimal Shari ah-based policy response to the issues discussed. Possible real world applications in the Malaysian experience will also be explored.

Keywords: Malaysian political Islam, maqāsid al-sharī ah, maqsad hifz al-dīn, Malay politics, protecting religion, Malaysian politics

Introduction

'Protecting religion' or *hifz al-dīn* (*mempertahankan Islam* in Malay) has been a recurrent theme in Malaysian politics. The narrative of 'protecting Islam' from "increasing danger and threat from multiple angles and sides," and especially from non-Muslims, permeates many high-profile cases, like the conversion of Lina Joy, the Kalimah Allah controversy, interfaith child custody debacles, the Bible raid, burial raids and so forth. To properly understand the notion of 'protecting Islam' in the context of Malaysia, however, we must recognise that

several forces/factors are at work. First among them is the identity politics² inherited from the colonial period. Second is the expansive role of Islamic governmental institutions since the 1990s policy of bureaucratisation³ and third is the competition among the legal interpretations of the role of Islam in the state.⁴ Among these factors, identity politics—here defined as putting ethnoreligious considerations as the primary basis of political activity—remains the ultimate determinant shaping Malaysian politics. Arguably, the other two forces/factors are extensions of identity politics.

Cognisant of the above dynamics, the first objective of this paper is to provide a context-sensitive analysis of 'protecting Islam' within the Malaysian political framework. It will then proceed to the relevant discussion of *maqṣad hifz al-dīn* (trans.: 'the divine intention to preserve religion') from the perspective of *maqāsid al-sharī ʿah*. The discussion will draw on the discourse of both traditional and contemporary scholars in regards to the following central questions: (1) how is 'religion' prioritised in relation to other essentials? and (2) what does the Islamic tradition have to say about the policy and legal applications of protecting religion? The article concludes that matters might not be as straightforward as blanket prioritising anything related to religion (i.e. Islam) above all else, in a fixed and rigid manner. To the contrary, evidence points towards a methodology that is dynamic, multi-dimensional and rooted in specific circumstances. Of particular importance is how the notion of 'religion' is interpreted and how the core and peripheral aspects of it are distinguished.

Finally, this paper will elaborate on how an understanding of *maqṣad hifz al-dīn* can be translated into policy-making. Deliberations on the prioritisation of 'religion' in relation to other essentials will be utilised to formulate a general framework for policy-making. This framework accords different levels of policy austerity based on the calculated impact it has on different layers of society. Aside from outlining optimal policy responses, the proposed framework will also offer new parameters to analyse 'extremism' in Malaysian political Islam by mapping out two opposite tendencies—exclusivist sectarianism and extreme laxity. Practical applications of this framework will draw upon examples from Malaysian politics.

Political Islam: The Malaysian Context

From a wider perspective, this paper intends to elucidate the Islamic underpinnings of political Islam, beyond approaches that tend towards reductionism and overgeneralisation, such as the vague 'clash of civilisations' thesis,⁵ the security-obsessed and terrorism approach,⁶ as well as the perception of Islamism as an essentially conservative, totalitarian and anti-democratic ideology.⁷ Viewing

political Islam from a specific pre-determined lens (such as the 'security-minded' approach, which equates political Islam with violent groups like al-Qaeda or ISIS) would only reduce the complexity and dynamic nature of the modern Islamist phenomenon.⁸ Current studies in political Islam require an emphasis on contextualisation and a meaningful conceptual framework, as opposed to generalising political Islam as a whole based on specific actors. Certainly, political Islam in Malaysia has its own unique domestic elements.

After inheriting a pluralistic society and an ethnic-based political culture from British colonialism in the late 19th and early 20th centuries, Malaysia is still searching for its own national identity nearly sixty years after independence. Decades of British control affected the population in three ways: 1) a surge in Chinese and Indian workers challenged the demographic *status quo*, which had previously favoured the indigenous Malays; 2) it reinforced racially-based politics as a form of political expediency; and 3) it built the base for a strong but authoritarian bureaucratic government. Consequently, this colonial legacy paved the way for an intricate Malaysian society in which the role of ethnicity and religion (especially Islam) became the driving force behind political discourse.

Judith Nagata,¹⁰ in her introduction to *The Reflowering of Malaysian Islam*, mentions that one of the urgent issues in Malaysian politics "has been the definition of various 'races' as [a] basis for rights and obligations, and hence their relationships with one another." In other words, identity politics is a strong feature in Malaysian politics, in which determining one's rights is heavily dependent on one's ethnic background.

In the case of the Malays, ethnicity is not their only identity marker. Religion also plays a central role, with Islam having become an inseparable part of defining 'Malayness'. This is legally encapsulated in Article 160 of the Malaysian Federal Constitution, which defines a Malay as "a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom" and is of Malaysian/Singaporean origin.

The status quo of Malay political dominance across the Malay Peninsula (formerly Tanah Melayu) went through several stages across history:

- 1. The political dominance of the Malay-Muslim Sultanates from the fifteenth century.¹¹
- 2. During the colonial period (ending in the mid-20th century), Malay elites were exclusively recruited to high-ranking administration offices and civil posts.¹²
- 3. The short-lived Japanese occupation (1941-1945) maintained the British policy of Malay political primacy, but further deepened the inter-ethnic

- divide by pitting Malays against the Chinese in a bloody and violent campaign.¹³
- 4. Post-Independence, the Malays (represented by the Malay elites) retained control of the Parliament via the nationalist-oriented UMNO, a political party that continues to dominate the Barisan Nasional coalition today.

In addition to their long history of political dominance, Malay Muslims are the largest ethnic group in Malaysia—and Muslims (including non-Malays) constitute the largest religious group.¹⁴ As such, Malay politics, and now Islamic politics, often sets the tone in the Malaysian political discourse as a whole.

Hussin Mutalib, a Singapore-based scholar specialising in Islam and Malay politics, proposed an important theory for Malay-Muslim politics. He posited that understanding the Malay-Islam dialectic is key to deciphering Malaysian politics. He describes this Malay-Islam dialectic as being an:

...inherent ambiguity, if not tension, between Malays as an ethnic community separate from all non-Malays, and Malays as Muslims belonging to a universal brotherhood or umma, although the distinction between the two has not been something of which Malays are generally conscious.¹⁵

The dialectical Malay-Islam relationship is an ongoing discussion subject to further discussion and exploration. It suggests that finding the ideal balance between 'Malayness' and 'Islam' is an ongoing process. Without measures of moderation, this process could result in extremism. Over privileging 'Malayness', for example, could result in an extreme form of nationalism which purely champions Malay interests at the expense of other ethno-religious groups. On the other side, however, an extreme appeal to the universalistic traits of Islam could become out-of-touch with reality—namely, with the socio-historical context of Malaysia and all its political dynamics. In both extremes, policy-making decisions would produce sub-optimal results for the multicultural fabric of Malaysian society. The following list summarises this Malay-Islam tension: 16

- 1. Adat (e.g. Animistic and Hindu elements) vs. Shari'ah.
- 2. Communal identity (ethnic nationalism) vs. universalism.
- 3. Special *bumiputra* rights and privileges vs. protection and justice for all.
- 4. Strong feudal element in leader-led relationships (e.g. Sultanate) vs. leader is "khalif"; a vicegerent of God, and leader within Islamic law and tradition.
- 5. Malay territorial individual state boundaries vs. *Umma*, an ideological community transcending political and geographical boundaries.

- Emphasis on "Malay Muslim" (as opposed to non-Malay Muslim) vs. Non-racist creed.
- 7. "Malay(si)a belongs to the Malays" (an early PAS slogan) vs. "Malay(si) a belongs to all citizens", irrespective of racial and religious affiliation.
- 8. "Politics and religion should be separate" (statement by Tunku) vs. Islam as 'al-Din', encompassing politics and other pursuits of life.
- 9. "Masuk Melayu" (non-Malay converts) vs. "Masuk Islam" (joining a universal 'umma')
- 10. "Hidup Melayu" (UMNO slogan) vs. "Hiduplah keadilan".
- 11. "Malaysia's national culture must be based on Malay culture" (Mahathir's statement) vs. all cultures allowed to flourish side by side with Islamic culture.
- 12. Malay Sultans cannot be persecuted in courts vs. nobody is above law.
- 13. Malay extremist, chauvinistic, communal tendencies vs. moderation, and fairness to all, irrespective of race, religion, or creed.

What is more, this dual-gravitational force seems destined to endure. Certainly, policies in favour of Malay interests are often conflated with Islamic interests. Certain interest groups and political actors often champion themselves as 'Islamists' despite evidently focusing much of their attention on Malay-centric interests. Some have observed that this form of exclusivist Islamism is becoming a worrisome force that is slowly encroaching on the rights of minority ethnoreligious communities. An observer noted that one of the disquieting trends in Malaysia is the "disempowerment of non-Muslims in seeking judicial redress," especially when a case involves another religion against Islam, and as can be seen in several high-profile cases involving issues like burial claims, child custody, and raids by religious officers.¹⁷

These identity-centric or exclusivistic tendencies can be seen manifesting themselves in the form of political narratives adopting Islamic terminologies. For instance, in response to an interfaith custody battle between a Muslim parent and a non-Muslim parent, a coalition of Muslim NGOs invoked the phrase 'protecting the *aqīdah* (creed)' in support of the Muslim parent.¹⁸ Likewise, a press statement made by the president of the Malaysian Muslim Lawyers Association (PPMM) cited "*hifz ad-dīn*" as obligatory on Muslim parents, thus defending the legal right to unilaterally convert a child to Islam in a Syariah court,¹⁹ despite the inability of non-Muslim parents to gain legal recourse to the same court. Nevertheless, despite using such 'Islamic' vocabularies, real-life political positions often end up appealing to mere identity-politics, without fully exploring Shari'ah-based solutions.

Although Mutalib's concept of the Malay-Islam gravitational pull proved to be an unprecedented and highly useful descriptive tool for understanding the inner-workings of Malay politics, it did not provide a framework for achieving a balance between 'Malay' and 'Islamic' tendencies. Beyond providing a detailed descriptive account, it did not touch on how a 'balanced' position can be achieved. The advent of *maqāṣid al-sharī ah* as a philosophy of Islamic law, however, has provided this much-needed framework for Islamists. Its 'middle' approach strikes at important ground, between flexibility and substance-orientation on one side and remaining faithful and grounded to tradition on the other. By focusing on the 'purpose' and 'goals' of Shari'ah, decision making becomes more dynamic. Having a clear 'end goal' forces decision-making processes to re-evaluate levels of priority and re-analyse traditional legal sources. This article argues that delving deeper into the concept of '*maqṣad hifz al-dīn*' can offer new insight into the Malay-Islam tension, specifically in searching for the 'golden mean' between the two.

Maqāṣid al-sharīcah and hifz ad-dīn

Since the 1980s and the Islamisation policies enacted under the administration of Mahathir Mohamad, each Malaysian premier has had their own national 'Islamic' program. Mahathir's 'developmentalist' approach focused on the institutionalisation and bureaucratisation of Islam. Subsequently, Abdullah Badawi introduced Islam Hadhari, which emphasised the civilisational aspects of Islam. Fast forward to Najib Razak's leadership, and maqāṣid al-sharī 'ah quickly gained the limelight. For example, under Najib the Malaysian government introduced the highly-publicised Shari 'ah Index, 20 designed to measure the 'Islamic acceptability' of governmental policies. In this index, Najib explicitly mentioned maqāṣid al-sharī 'ah as a primary benchmark of the evaluation process. Moreover, Malaysia's opposition parties have also recently begun to appeal to maqāṣid al-sharī 'ah. Selangor state, PKR, DAP and AMANAH, for example, have all organised regular maqāṣid al-sharī 'ah conferences.21

There are several characteristics of *maqāṣid al-sharīʿah* that appeal to contemporary Muslims. *Maqāṣid al-sharīʿah* provides a more centrist and sustainable approach to Islamic law, which is especially needed in an ethnically and religiously diverse nation like Malaysia. Certainly, by focusing on substance rather than form, and holism rather than atomisation, *maqāṣid al-sharīʿah* as a methodology has received praise from many Islamic scholars. Mohammad Hashim Kamali, for example, a Malaysia-based scholar, advocates *maqāṣid al-sharīʿah* as a "promising prospect and methodology" to provide "valid Shari'ah-based responses" to contemporary issues, as well as a prime source for civilisational renewal.²² Kamali links the study of *maqāṣid al-sharīʿah* with the Qur'anic term '*al-ḥikmah*'²³ (wisdom). According to Kamali, the occurrence of

'hikmah' in many parts of the Qur'an hints towards a methodology that focuses on abstract and substantive considerations that transcend mere form.²⁴ Contrary to popular opinion, which commonly defines 'hikmah' as literal precedents of the Prophet (hadiths) and the companions,²⁵ this interpretation enables one to view the classical texts (i.e. Qur'an and hadith) as part of a bigger system of complex thought-processes that both the Prophet and his companions utilised when interacting with the primary sources. Certainly, it is telling that the Prophet and his companions did not always apply the texts literally, but often considered specific circumstances before making their judgements.²⁶

Another contemporary *maqāṣid* scholar, Jasser Auda, proposes that *maqāṣid al-sharī ʿah* possesses a resemblance to systems thinking philosophy. Auda posits that the 'systemic' and holistic element inherent in *maqāṣid al-sharī ʿah* warrants its classification as the foundation of Islamic law.²⁷ He claims that the positioning of *maqāṣid al-sharī ʿah* as the central philosophy of Islamic law could remedy the "current applications (or rather, mis-applications) of Islamic law [which] are reductionist rather than holistic, literal rather than moral, one-dimensional rather than multi-dimensional, binary rather than multi-valued, deconstructionist rather than reconstructionist, and causal rather than teleological."²⁸ Auda quotes Ibn al-Qayyim on the purposes of the Shari 'ah:

Shari'ah is based on wisdom and achieving people's welfare in this life and the afterlife. Shari'ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Shari'ah, even if it is claimed to be so according to some interpretations.²⁹

From a legal perspective, Andrew F. March denotes *maqāṣid al-sharīʿah* as a form of 'Complex Purposivism' that is currently at the cutting edge of Islamic philosophy, enabling the Shari'ah to remain relevant and sustainable in the modern era while remaining rooted in the Islamic intellectual tradition. In his own words, March describes *maqāṣid al-sharīʿah* as the:

...panacea for modern reformers and pragmatists who want to establish Islamic legitimacy for new substantive moral, legal and political commitments in new socio-political conditions, because it allows Muslims to ask not whether a given norm has been expressly endorsed within the text, but whether it is compatible with the deeper goods and interests which God wants to protect through the Law.³⁰

The Position of Hifz al- $D\bar{\imath}n$ in Relation to the Other Essentials ($Dar\bar{\imath}uriyy\bar{\imath}at$)

The wealth of scholarship on the *maqāṣid al-sharī ʿah* reveals *maqṣad hifẓ al-dīn* to be a complex term. A very illustrative discussion on the relationship between *maqṣad hifẓ al-dīn* and the other *maqāṣid* can be seen in Gemal Eldin Attia's work, *Towards Realization of the Higher Intents of Islamic Law: Maqasid al-Shariah: A Functional Approach*. Attia's analysis shows that the dynamics between 'religion' and other essentials drastically shifts depending on how 'religion' is being defined and which aspects of the religion are being addressed. A closer examination of this topic would be highly instructive and beneficial to policy decision makers since it demonstrates that prioritising 'religion' above other concerns is not merely a matter of binary 'yes' or 'no'.³¹

The traditional grading of the *maqāṣid al-sharī ʿah*—religion, human life, the faculty of reason, progeny and material wealth—was established by Imam Abu Hamid al-Ghazali and places *hifṭ al-dīn* at the top. However, not all subsequent scholars have adopted this specific arrangement. Imam al-Shatibi, for example, did not adhere to any specific ordering, despite declaring religion as the most important essential.³² The same goes for the eminent scholars, al-Razi and al-ʿIzz Ibn ʿAbd al-Salam, who also did not follow any particular sequence when arranging the five *darūriyyāts*.³³ Other variations include placing *hifṭ ad-dīn* as the second or third essential. Al-Qarafi, for example, placed religion second after human life, but before progeny, human reason, and material wealth. Ibn Taymiyah, on the other hand, placed religion last, but without explaining why.³⁴

It is important to note, however, that order does not necessarily indicate priority when it comes to application. Despite al-Ghazali putting religion first in his list of essentials, he stated that cases of duress and life-threatening situations render it:

...permissible for [the Muslim] to utter a word [of] apostasy, partake of alcohol beverages, consume others' wealth unjustly, or neglect fasting and prayer, since the proscription against the shedding of blood is more serious than any of these things.³⁵

Yet under the same circumstances, al-Ghazali did not view it as permissible to commit adultery. He argued that "one should guard against it [adultery] just as one must guard against [engaging in] the act of compulsion itself."³⁶ Therefore, it seems that al-Ghazali's framework of *maqāṣid al-sharī'ah* accords a higher position to honour and progeny that the other essentials, including the preservation of life. Al-'Izz ibn 'Abd Salam also supported this position, with the addition of homosexual acts and murder on the same level as adultery.³⁷

On the other hand, al-Shatibi, and despite having no specific ordering and declaring religion to be the most important 'essential', nonetheless prioritised the preservation of human life in cases of duress, putting all else as of secondary importance. Based on this reasoning, one group of scholars concluded that committing adultery was permissible under the threat of losing one's life. Likewise, a woman could sacrifice her chastity if she feared for her life and/or had no other means of feeding herself.³⁸

Nevertheless, one could wonder how religion, which originates with the Divine, is prioritised lower than more 'worldly' essentials (i.e. life, intellect, progeny, wealth). In discussing this matter, al-Amidi provides an interesting argument; while at times certain other interests may appear to be prioritised above religion, in actuality the supreme position of religion is always maintained since the system of prioritisation itself originates with God's rulings. Al-Amidi elaborates further that:

...we give higher priority to human life than to the interests of the religion, since we alleviate hardship for those who are on a journey by allowing them to shorten their prayers to two raka ahs, we exempt travelers from having to fast, and we allow someone who is ill to pray while sitting or prostrate and to forego fasting. Similarly, we gave higher priority to the preservation of human life than we do to prayer by allowing someone who is praying to interrupt his prayer in order to rescue someone who is drowning.

Even more serious is the fact that we give higher priority to preserving material wealth than we do to the interests of the religion by making it permissible to leave the Friday communal prayer out of consideration for the need to preserve the slightest amount of material wealth. Similarly, we give higher priority to protecting the *dhimmis* living among the Muslims than we do to the interests of the religion, as evidenced by the fact that their presence among Muslims entails the presence of overt unbelief.

In response to these objections we say: As for [the preservation of] human life, just as it is based on human beings' rights with respect to certain legal rulings, it is based on God's rights with respect to other rulings...Thus, it would not be impossible to give [both] God's right and humans' right precedence based on that which is solely to a divine right.³⁹

Al-Amidi concludes his statements on this topic by saying that none of the above concessions, when carefully inspected, undermines religion. Rather, they ultimately serve the interest of religion: for example, shortening prayers during travelling enables worship in an already difficult situation and allowing and protecting a community of unbelievers (*dhimmis*) will be an effective *da'wah* instrument.⁴⁰

Al-Amidi's treatment of this matter of prioritisation demonstrates that the 'content' or 'aspects' of religion require further examination, that different aspects of religion should be prioritised differently. Darraz, in his commentary on *al-Muwafaqāt*, followed this line of thinking. He made an important distinction between preserving the 'root' and fundamentals of religion and preserving its subsidiary branches. Ali Jumah, the former al-Azhar grand mufti, in viewing the five essentials, viewed religion as personal piety. He therefore drew a "distinction between preserving the religion as a religion, and the piety of individuals who follow the religion." In other words, he essentially differentiated between personal piety and the religious interests of wider society. From an individual perspective, piety is dependent on the preservation of human life and the upholding of reason, thereby justifying the ranking of religion as third, behind life and reason. However, Jumah did not clarify the scale of priorities when the interests of the wider society are at stake. Answering this question would be highly useful and instructive in the sphere of policy and law making.

Returning to the work of Auda, he approached this matter of prioritisation from another angle. Based on a three-tier structure of necessities (<code>darūriyyāt</code>), exigencies (<code>hājiyāt</code>) and enhancement (<code>tahsiniyāt</code>), Auda proposed that if there is conflict between two essentials (<code>maqāṣid</code>) from different layers, priority should be given to those with the highest level of immediacy or necessity. ⁴⁴ To illustrate, Auda described a situation in which foreign aid volunteers travelled to Africa and circulated copies of the Quran to a destitute and starving population. Although in other circumstances, receiving a new <code>mushaf</code> would be part of 'religion', in this situation it is not a necessity and would therefore come under the category of enhancement or luxury (<code>taḥsiniyāt</code>). Auda proclaimed that the more pressing needs of the population—to eat and preserve their lives—warrants a higher priority.

For Auda, it seems that priority follows the traditional arrangement (i.e. religion, life, intellect, progeny, wealth), but while also giving due consideration to the three layers of urgency (necessities, needs, luxuries). At the same level of necessity, he argues, priority should follow the traditional arrangement, while at different levels of necessity priority goes to that which is more urgent. Auda does not, however, elaborate on the basis of this hierarchy, nor on the actual parameters or guidelines by which the three layers of necessities can be separated.

This brings us to Attia's important contribution. In his quest to provide a functional and practical application of the *maqāṣid al-sharīʿah*, he proposed that the *maqāṣid* be prioritised across four different realms: 1) the realm of the individual, 2) the realm of the family, 3) the realm of the Ummah, and 4) the realm of wider humanity.⁴⁵ In these four realms, Attia expanded the five essentials to twenty-four. The interesting aspect of his arrangement, however, is that for each realm the essentials are prioritised differently. Thus, while defining religion differently across the four realms (i.e. as 'personal piety' in the both the realms of the individual and family, 'religion and morals' in the realm of the community, and 'the Islamic message' in the realm of humanity), he then ranks them differently across each realm:⁴⁶

- 1. In the realm of the individual, personal piety is ranked third, behind personal safety and freedom of thought.
- 2. In the realm of the family, personal piety is ranked fifth, behind "ordering relations between the sexes," "preservation of progeny or the species," "achieving harmony, affection and compassion," and "preservation of family lineage."
- 3. In the realm of the community, 'religion and morals' is ranked fourth, behind "institutional organisation of the *ummah*," "maintenance of security," and "the establishment of justice."
- 4. In the realm of wider humanity, 'the dissemination of the Islamic message' is ranked fifth, behind "mutual understanding, cooperation and integration," "realising human vicegerency on Earth," and "achieving world peace based on justice."

The key takeaway from Attia's prioritisation is that, across different levels of society, religion takes a different form and should, therefore, be prioritised differently. This article takes inspiration from Attia's framework to evolve its own proposal.

Proposed Policy Guidelines Pertaining to 'Protecting Religion' and Its Application

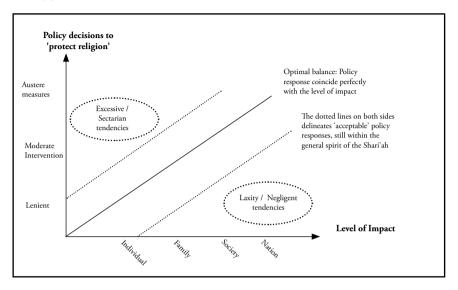


Figure 1: Proposed Policy Guidelines Pertaining to 'Protecting Religion'

This article proposes a general framework for policy-making decisions concerning 'protecting Islam', and as shown in *Figure 1*. Taking inspiration from Attia's re-positioning of essentials into four realms, this article similarly has four divisions, but while replacing '*ummah*' with 'society' and 'humanity' with 'nation' in order to limit its scope to one country. Readers should also note that this proposed framework focuses specifically on 'protecting the religion', without comparing it with other essentials. The framework is thus only concerned with religion and the response its protection might warrant.

Ultimately, applying the concept of *maqṣad hifz al-dīn* is about seeking to understand the intentions of the Lawgiver in matters relating to religion, including the ways in which He intends humanity to benefit from religion. This matter holds true even when it requires us to relegate certain aspects of religion (such as the peripheral or outward) to a secondary position behind other pressing needs, even though the latter are more 'worldly' matters. Despite the tendency to prioritise *hifz al-dīn* above all other essentials, eminent Islamic scholars have demonstrated that in many cases religion should take a lower priority than other 'worldly' concerns, such as preservation of life, intellect, progeny, and wealth. Certainly, Attia demonstrates that there is a systematic gradation of religion dependent upon societal level. This would

necessitate a different level of prioritisation and, in turn, varying degrees of policy responses.

In *Figure 1*, the 45-degree line represents the optimal policy response, or the state of equilibrium between the x-axis (level of societal impact) and the y-axis (level of 'austerity' of policy responses). In essence, there is a direct relationship between the x-axis and y-axis. Thus, the larger the impact on society, the more austere the policy. High levels of austerity include 'harsh' measures, such as capital punishment, detention, and restriction of freedom and rights. In the context of Malaysia, this 'austerity' could be in the form of intrusive religious raids and exclusivistic ethno-religious-based preferential policies. Lower levels of austerity (or leniency), on the other hand, would be represented by more freedom, less intrusive actions, or milder forms of surveillance and enforcement than would have less of a social impact.

The figure also provides a range of 'acceptable' departures from the optimal standard, demarcated by the dotted lines. This is to accommodate situational contexts and policy flexibility.

The figure above also differentiates between two extreme positions. The upper left circle represents extreme 'exclusivist tendencies' capable of promoting excessive sectarian policies. This position is characterised by its preference for using excessive measures to resolve private matters of little concern to wider society. The other extreme, represented by the lower right circle, signifies 'overleniency', where little is done to resolve a matter, even though it might have high societal impact.

There are many classical precedents which arguably support the framework outlined here. For example, in one hadith⁴⁷ Ma'iz ibn Malik came to the Prophet to confess adultery. The Prophet, however, refused to hear his confession four times, insisting that he be given the benefit of the doubt. However, Ma'iz was persistent until, and after the fourth confession, the Prophet finally ordered the stoning. Based on *figure 1*, this incident is a personal incident. In that context, the Prophet showed Ma'iz leniency up until the moment when he could no longer refuse to issue a punishment without causing *fitnah* in society. This infers, however, that the austere Shari'ah laws regarding adultery were designed more to deter widespread adultery in society than with regulating the private acts of individuals. Hence, the Prophet showed leniency towards a hidden and isolated case.

This framework also adds a new perspective to the controversial topic of apostasy. S. A. Rahman, in his lengthy exposition on the Islamic punishment for apostasy, concluded that the death penalty for apostates in early Islamic times was not due to conversion out of Islam per se, but rather to the fact that the apostates "invariably joined the enemy ranks and became violent antagonists of

Muslims."⁴⁸ From this standpoint, the issue was a community, not an individual, one and thereby necessitated a harsher penalty. Indeed, it is conspicuous that there are no injunctions in the Quran prescribing a punishment for apostasy (aside from punishments in the Hereafter). Such a glaring absence in the Qur'an could be read as a proscription of worldly punishment for apostates, which would be in line with the spirit of religious freedom envisaged in the divine injunction "There is no compulsion in religion." In practice, however, when it involves security and social stability, a harsher policy response becomes warranted (such as during the turmoil under Caliph Abu Bakr).

In the context of Malaysia, possible applications of *figure 1* are as follows:

1. Kalimah Allah issue:

This case involved use of the word 'Allah' by a local Catholic Christian bi-weekly newspaper, *The Herald*. The case resulted in a ban in 2009 which, and after several court decisions, was upheld by the Federal Court in 2015. The primary argument in support of the ban was a desire to avoid threats to 'national security', while the opposing side invoked 'freedom of religion' as their primary response.

Applying the above framework to this case requires us to first determine its likely level of societal impact. Would, for example, Christian usage the word 'Allah' negatively affect wider Muslim society? Evidence shows that Malayspeaking Christians in Malaysia (especially in Sabah and Sarawak) have been using the word Allah for centuries, so far without any visible impact on Muslim society. However, the 1988 Selangor state anti-propagation enactment did prohibit non-Muslims from using 'Allah' (and along with other Islamic terms, such as *Ilahi*, *Rasul*, *Fatwa*, *Syariah*, *Ibadah* and *Kaabah*) for the purpose of proselytisation. Substantively, and as one constitutional expert, Shad Faruqi, commented, "such restrictions are meant to protect Muslims against organised international missionary activities and to preserve social harmony, rather than prioritising any particular religion." Thus, such prohibitions are historically situated; they reflect a period of influence by foreign missionaries, at a time when the socio-economic position of Malay-Muslims was weak.

Nevertheless, a proper analysis, devoid of excessive speculation, should be made regarding the possible consequence of the usage of 'Allah' by non-Muslims. If it can be shown that the socio-economic and educational standards of the Muslim community is low enough to enable the widespread use of Islamic terms by non-Muslims to open the door to disproportionate advantage for missionaries, it is permissible for 'austere' measures to be undertaken that would restrict freedom of expression. However, if there are no compelling reasons to believe that such usage would cause undue influence, the default position is that non-Muslims are free to use whatever terms they would prefer.

Conclusion:

Ideally, policy-making decisions in this case should concern themselves more with 'undue and disproportionate influence' at the societal level than with the supremacy of one identity over another.

2. Indira Gandhi interfaith child custody battle:

This case involved Indira Gandhi, a Hindu mother of three children whose husband unilaterally changed the religious status of their children from Hinduism to Islam.

In this case, the level of impact is familial and, based on *figure 1*, the appropriate policy response would be low to medium austerity. Following the example of a hadith recorded in Sunan Abu Dawud,⁵⁰ in which the Prophet gave a non-Muslim parent an equal and fair hearing when deciding the custody of their child, this could translate into providing both parents with an equal opportunity to gain custody – and despite the perception that the religion (*aqīdah*) of the children could be at stake.⁵¹ In this context, 'medium to low' levels of austerity could also manifest themselves in the form of laws prohibiting the child from consuming non-halal food or making regular trips to non-Muslim houses of worship (or at least equal trips to both houses of worship). This would ensure fair exposure to both religions, without one or the other holding an unfair advantage.

Conclusion:

Indira should have obtained an equal opportunity to gain child custody, even though doing so would have run the risk of her subsequently bringing her children up outside the fold of Islam. Curbing justice in this respect would not only contradict the core principles of Islam, but would ultimately incur further damage to Islam from a long-term perspective. As per *figure 1*, leniency with some medium level of restrictions would be recommendable.

3. Burial raids:

There have been several instances of burial raids in Malaysia. For example, in 1998 the late Maniam Moorthy was paralysed and forced to retire from the armed services. Seven years later, in 2005, he fell and died from a head injury. While he was still in a coma, however, the Federal Territory Islamic Religious Council (MAIWP) told his wife, Sinnasamy Kaliammal, that Moorthy had secretly converted to Islam. His wife claimed otherwise and provided evidence that Moorthy had continued to consume pork and attend Hindu religious rites right up until his accident. Nevertheless, MAIWP obtained a unilateral application from the Shariah High Court upholding Moorthy's conversion and ordering that he be buried according to Islamic rites.

Viewing this case from the perspective of *figure 1*, it is either a familial matter or merely an individual one (i.e. of concern only to Moorthy's wife). Based on the framework presented here, MAIWP should therefore have taken a more lenient course of action in terms of both policy and enforcement. This is justifiable from the Islamic perspective because outward and 'worldly' funeral rites will not impair God's judgement and therefore not affect the deceased's fate in the Hereafter. Furthermore, such 'aggressive' and/or seemingly 'oppressive' maneuvers on the part of the religious authorities can only negatively affect its credibility and social perception in the eyes of others.

Conclusion:

In matters relating to the individual and/or family, leniency is warranted. While offering Islamic funeral rites to a fellow believer is a collective religious responsibility, family ties and socio-cultural concerns must also be considered. This is especially true when faced with uncertainty and vague evidences.

Conclusion

Many Islamists claim to follow 'Islamic' agendas. Shouldering this responsibility results in the promoting and defending of religion. This article has focused on the latter aspect—protecting the religion. It concludes that a more sophisticated understanding on what constitutes 'protecting' religion should be adopted. Protecting the religion does not simply mean pandering to the short-term interests of Muslims (such as identity politics), but should always adhere to the principles and guidelines of the Shari'ah.

In depth discussion of the *maqṣad hifz al-dīn* reveals that not all aspects of the religion need to be 'protected' or 'preserved' in the same manner or with the same intensity. This variance has legal precedents going back to the time of the Prophet himself, as previously illustrated by several instances from the *sīrah*. Indeed, although it sometimes seems that certain aspects of the religion are at risk, closer inspection usually informs us that there are guidelines in place that we can follow in order to achieve balance/*waṣaṭiyyah* between short-term gains versus long-term sustainability. In the case of Malaysia, having an informed understanding of *maqṣad hifz al-dīn* during policy-making can lead to a more balanced judgment between the two gravitational forces that Hussin Mutalib described: exclusivistic Malay/Muslim interests and the ideal universalistic values espoused by Islam.

It is also interesting to note that while this article focused on the interpretation of 'religion' from the standpoint of Shari'ah and its theoretical policy applications, a similar discussion also occurs in the Malaysian legal sphere. In this context, competing interpretations rigorously contest the legal definition of Islam as the

"religion of the federation" in Article 3(1) of the federal constitution. These interpretations stem from cases such as the following:

- 1. (1988) Che Omar bin Che Soh v. Public Prosecutor,⁵²
- 2. (2006) Meor Atiqulrahman bin Ishak & Others v. Fatimah & Others, 53
- 3. (2008) Sulaiman Takrib v. Kerajaan Negeri Terengganu, Kerajaan Malaysia (Intervener) & Other Cases,⁵⁴
- 4. (2009) Fathul Bari Mat Jahya & Another v. Majlis Agama Islam Negeri Sembilan & Others.⁵⁵

Each of these cases offers pertinent examples of the importance of defining 'Islam' and distinguishing between its integral and peripheral aspects. For instance, in *Che Omar Che Soh v. PP*, the legal interpretation of "Islam as the religion of the federation" was the decisive factor in determining the constitutionality of the death penalty for firearms and drug-related crimes. In *Meor Atiqulrahman bin Ishak & Ors v. Fatimah Sihi & Ors.*, on the other hand, the primary subject matter was whether wearing a turban is an "integral" part of Islam, and thus whether there is an inalienable religious right to wear one in schools (i.e. in a public space). In these matters, the theoretical framework offered by this article can be a substantial tool to assist court decisions.

As a final remark, this article could have explored many additional topics in the current context, including: the relationship between the proposed framework and justice as a general principle;⁵⁶ how the topic of private versus public in Islam can enrich the discussion; and the matter of short-term versus long-term public policy. However, we hope that this preliminary treatment of the subject at hand will nonetheless spark more discussion on the practical applications of the *maqāṣid al-sharīʿah*, both in politics and policy-making. The article ends with several policy recommendations:

- The Malaysian government should base policies on a systematic understanding of *maqṣad hifz al-dīn*. This concept alone offers clarity when dealing with religious-related issues, most notably the differences between 'personal piety' and 'the overall religious condition of society'.
- It is imperative that policy-making decisions consider the substantive purposes of the law (as espoused by *maqāṣid al-sharīʿah*) and not just prescribed forms or legal 'formalities'. This will equip policymakers with a more holistic perspective on the short-term and long-term consequences of policies.
- Application of the policy-making framework represented by figure 1 could also help us analyse the rivalries between different Islamist parties. It could

- therefore constitute a beneficial tool in the evaluation of the competing narratives and ideologies that currently vie to 'protect religion'.
- Legal decision-making, specifically in the matter of distinguishing the core and the peripheral aspects of Islam in the Malaysian constitution, could substantially benefit from the theoretical discussions of *maqṣad hifz al-dīn*.

Notes

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- 1. A tagline quoted from the official website/blog of PEMBELA, a Muslim NGO focusing on defending Islam in Malaysia. https://membelaislam.wordpress.com/
- 2. For example, works by: Funston, N. J. (1980). *Malay politics in Malaysia:* a study of the United Malays National Organisation and Party Islam. Kuala Lumpur: Heinemann Educational Books; Hussin Mutalib. (1990). Islam and ethnicity in Malay politics. Singapore: Oxford University Press. Ting, H. (2009). Malaysian history textbooks and the discourse of ketuanan Melayu. Race and Multiculturalism in Malaysia and Singapore, 8, pp. 36–52.
- 3. For example, works by: Liow, J. C. (2009). *Piety and Politics: Islamism in Contemporary Malaysia*. Oxford University Press; Ting, H. (2009). The Politics of National Identity in West Malaysia: Continued Mutation or Critical Transition? *Tonan Ajia Kenkyu (Southeast Asian Studies)*, 47(1), pp. 31–51.
- 4. For a historical analysis of the secular intent of the framers: Fernando, J. M. (2006). The Position of Islam in the Constitution of Malaysia. *Journal of Southeast Asian Studies*, 37(02), pp. 249–266.
- 5. Made popular by the works of Samuel P. Huntington such as: Huntington, S. P. (1997). *The Clash of Civilizations and the Remaking of World Order*. Penguin Books India.
- 6. Volpi, F. (2011). *Introduction: Critically Studying Political Islam. In Political Islam a Critical Reader* (First). New York: Routledge, pp. 1-8.
- 7. Ibid.
- 8. Ibid.
- 9. Means, G. P. (1976). *Malaysian Politics* (2nd ed). London: Hodder & Stoughton.
- 10. Nagata, J. A. (1984). *The Reflowering of Malaysian Islam: Modern Religious Radicals and Their Roots*. Vancouver: University of British Columbia Press.
- 11. Milner, A. (2011). *Malaysia's Dominant Societal Paradigm: Invented, Embedded, Contested*. Bangi: National University Malaysia.
- 12. Ratnam K. J. (1965). *Communalism and the Political Process in Malaya*. Singapore: University of Malaya Press.
- 13. Ting, H. (2009). The Politics of National Identity in West Malaysia: Continued Mutation or Critical Transition? *Tonan Ajia Kenkyu (Southeast Asian Studies)*, 47(1), pp. 31–51.

- 14. Malays constitutes 50.4% of population, while Muslims overall constitutes 61.3%. Source: https://www.cia.gov/library/publications/the-world-factbook/geos/my.html#People
- 15. Hussin Mutalib. (1990). *Islam and ethnicity in Malay Politics*. Singapore: Oxford University Press, p. 2.
- 16. Hussin Mutalib, *Ibid*, p. 159
- 17. Ting, H., The Politics of National Identity, p. 46.
- 18. http://arkib.harakahdaily.net/arkibharakah/index.php/arkib/berita/lama/2014/6/60141/23-ngo-pertahan-akidah-anak-riduan-abdullah.html
- 19. https://www.facebook.com/ZainulRijal/posts/10202334818195464
- 20. Launched on March 28, 2016. For a brief discussion on its contents, refer an article in IAIS Bulletin No. 31 March-April 2016, entitled: "The Dawn of Shariah-based Indices: A Brief Comparison between the Malaysian Shariah Index and the Syariah Index Project".
- 21. For instance: 'National Seminar of *Maqasid Shari'ah*' organized by Darul Ehsan Institute on May 28, 2016; and 'Maqasid Shari'ah and Freedom of the Press' organized by Penang institute on May 3, 2016.
- 22. Kamali, M. H. (2011). "Maqāsid Al-Sharī'ah and Ijtihād As Instruments Of Civilisational Renewal: A Methodological Perspective". *Islam and Civilizational Renewal*, 2(2), pp. 245–271. Page 268.
- 23. *Ibid*. In his article, Kamali relates *Maqasid* with three terminologies, *hikmah*, *illah*, and *masalih*.
- 24. For example, Quran 2:231: And remember the favor of Allah upon you and what has been revealed to you of the Book and *wisdom* by which He instructs you. And in Quran 5:110, which addresses Jesus (pbuh): and [remember] when I taught you writing and *wisdom* and the Torah and the Gospel;
- 25. The term 'al-hikmah' is defined as the Sunnah of the prophet, especially in Quran 62:2: It is He who has sent among the unlettered a Messenger [Prophet Muhammad] from themselves reciting to them His verses and purifying them and teaching them the Book and wisdom although they were before in clear error.
- 26. For example, the famous judgement by Umar Al-Khattab as the caliph to suspend the *hadd* punishment for theft during times of famine and hardship.
- 27. Jasser Auda. (2010). Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach. Selangor, Malaysia: Islamic Book Trust and IIIT.
- 28. Jasser Auda, *Ibid*, p. xxv.
- 29. Jasser Auda, *Ibid*, p. xxi-xxii.
- 30. F March, A. (2011). The Maqsad of Hifz Al-Din: Is Liberal Religious Freedom Sufficient for the Shari'ah? *Islam and Civilizational Renewal*, 2(2), pp. 358–378.
- 31. http://www.almaany.com/en/dict/ar-en/%D8%AD%D9%81%D8%B8/
- 32. Attia, Gamal Eldin. (2007). *Towards Realization of the Higher Intents of Islamic Law: Maqasid al-Shariah: A Functional Approach*. London & Washington: The International Institute of Islamic Thought, p. 19.
- 33. Attia, Gamal Eldin. *Ibid*.
- 34. Attia, Gamal Eldin. *Ibid*, p. 18.
- 35. Attia, Gamal Eldin. *Ibid*, p. 21.
- 36. Attia, Gamal Eldin. Ibid, p. 16.

- 37. Attia, Gamal Eldin. Ibid, p. 32.
- 38. Attia, Gamal Eldin. Ibid, p. 33.
- 39. Attia, Gamal Eldin. *Ibid*, p. 23.
- 40. Attia, Gamal Eldin. *Ibid*, p. 24.
- 41. Attia, Gamal Eldin. Ibid, p. 25.
- 42. Attia, Gamal Eldin. *Ibid*, p. 26.
- 43. Attia, Gamal Eldin. *Ibid*, p. 26.
- 44. Jasser Auda in a workshop held at IAIS, Saturday, 31 May, 2014. "Workshop on *Maqasid Al-Shari'ah*: Youth and Civil Society Issues and Challenges". His further elaborations on the level of necessity can be found in his book, chapter one.
- 45. Attia, Gamal Eldin. *Ibid*, p. 116.
- 46. Attia, Gamal Eldin. *Ibid*, p. 116-149.
- 47. For instance, a hadith by Sunan Abi Dawud 4426, Book 40, Hadith 76, retrieved from: http://sunnah.com/abudawud/40/76. And Sunan Ibn Majah, Book 20, Hadith 2651, retrieved from: http://sunnah.com/urn/1268710.
- 48. Rahman, S. A. (2006). *Punishment of Apostasy in Islam*. Petaling Jaya: The Other Press, p. 135.
- 49. Shah, D. A. H., & Sani, M. A. M. (2010). Freedom of Religion in Malaysia: A Tangled Web of Legal, Political, and Social Issues. *NCJ Int'l L. & Com. Reg.*, *36*, p. 663.
- 50. Abu Dawud Sulaiman bin Ash'ath, edited & referenced by Abu Tahir Zubair Ali Za'I, translated by Nasiruddin Al-Khattab, final review by Abu Khalyl. (2008). Sunan Abu Dawud: English Translation of Sunan Abu Dawud. Riyadh: Darussalam. Hadith #2244.
- 51. Wan Naim WM (2016). The Indira Gandhi Case and the Advocacy of Justice. *Islam and Civilisational Renewal (ICR)*, 7(1).
- 52. [1988] 2 MLJ 55
- 53. [2006] 4 CLJ 1
- 54. [2009] 2 CLJ 54
- 55. [2012] CLJ JT (2)
- 56. A comment made by Prof Kamali following a presentation on the topic, in an internal IAIS Research Fellow Seminar dated June 16th, 2016.