# Utilizing the Assets Acquired from Illegal Conducts A Study of Fiqh *Maqâshid* of Yûsuf al-Qaradlâwî

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**Abstract:**
An asset is the basic need of every human being, but in Islam, it should be acquired through proper ways according to the rules. Yûsuf al-Qaradlâwî argued that if someone has already acquired an asset through immoral acts, then he is forbidden to utilize the asset for himself. On the contrary, the assets could still be utilized for the public benefit. This legal concept is based on the contradiction between the concept of prohibiting the use of illegal assets in *dlarûriyah* state and the concept of prohibiting the misuse of assets which is also in the *dlarûriyah* state. With the approach of *fiqh maqâshid*, al-Qaradlâwî concluded that the conflict between the two dlarûriyah states regarding the utilization of the asset should prioritize less on the *mafsadah* and more on the *mashlahah*. Thus, the illegal assets are forbidden to be exploited by immoral act offenders because it generates more *mafsadah* for him and there are only a few *mashlahah* he could get. On the contrary, the assets are allowed to be utilized for public benefit since the assets will be protected from *mafsadah* and will result in *mashlahah*.

**Keywords:**
*Mashlahah, Mafsadah, Dlarûriyah, Fiqh Maqâshid*

**Abstrak:**
Harta merupakan kebutuhan setiap orang yang di dalam Islam mesti didapatkan sesuai dengan aturan-aturan yang benar. Menurut Yûsuf al-Qaradlâwî apabila seseorang sudah terlanjur mendapatkan harta dengan cara maksiat, maka yang bersangkutan tidak boleh memanfaatkan harta itu untuk dirinya, sebaliknya harta itu boleh dipergunakan untuk kepentingan umum. Pemikiran hukum ini beranjak dari adanya pertentangan antara konsep larangan memanfaatkan harta haram secara *dlarûriyah* dan konsep larangan menyia-nyiakan harta yang juga berada dalam tingkat *dlarûriyah*. Dengan


DOI 10.19105/al-ihkam.v13i2.1670

pendekatan fiqh *maqâshid* al-Qaradlâwî menyimpulkan bahwa pertentangan antara dua dlarûriyah yang berhubungan dengan pemanfaatan harta harus diprioritaskan kepada *mafsadah* yang lebih kecil dan maslahah yang lebih besar. Sehingga dengan demikian harta hasil maksiat tidak boleh dimanfaatkan oleh si pelaku maksiat karena menimbulkan mafsadah yang lebih besar pada dirinya dan tidak ada celah maslahah yang didapatkannya. Sebaliknya harta itu boleh dimanfaatkan untuk kepentingan umum, karena terhindar dari *mafsadah* dan menghasilkan maslahah.

**Kata Kunci:**
*Maslahah, Mafsadah, Dlarûriyah, Fiqh Maqâshid*

## Introduction

Yûsuf al-Qaradlâwî is one of the Islamic scholars who is highly concerned about the Islamic law in the perspective of *mâqâshid al-syarî'ah.* According to al-Qaradlâwî, the method of *maqâshid al-syarî'ah* is divided into three levels: *dlarûriyyah*, *hâjiyyah*, and *tahsîniyyah*, which is then manifested into the *kulliyyah al-khams*, a rational division necessary for the Islamic jurists in determining a legal status.[1] This opinion shows that in general al-Qaradlâwî is not different from the previous scholars whose concerns are related to the perspective on the concept of *maqâshid al-syarî'ah*.

One of the al-Qaradlâwî's *fatwa*s in Islamic law on the *maqâshid al-syarî'ah* is related to the permitting of utilizing money acquired from criminal acts (illegal actions). As viewed from the perspective of assets concept in Islam, this *fatwa* does not fulfill the element of benefit since the asset that will be used by the public is not an asset which is completely owned by the offender, and that this asset does not automatically belong to the public. In the provisions on assets in Islam, assets that are eligible to be used for any form of transactions are only those that are categorized as *al-mâl al-mutaqawwim*, or assets

[1]Yûsuf al-Qaradlâwî, *Dirâsah fi Fiqh Mâqâshid al-Syarî'ah Bayn al-Maqâshid al-Kulliyyah wa al-Nushûs al-Juz`iyyah,* (Kairo: Dâr al-Syurûq, 2008), 13-29. See, Busyro, "Bom Bunuh Diri Dalam Fatwa Kontemporer Yusuf al-Qaradlâwî dan Relevansinya Dengan Maqashid al-Syari'ah", *Ijtihad,* IAIN Salatiga, Vol. 16, No. 1 (Juni, 2016), 86

that have its rights as the object of possession.[2] Another term for this is called *milk al-'ayn*, which is an asset that if it is owned by a person, then he also possesses the ownership of the benefits it produces.[3]

On the other hand, when these assets that are acquired from immoral acts are left unused, it results in negligence (*al-tabdzîr*). To answer this polemic, al-Qaradlâwî performed an *ijtihâd* based on the principles of *maqâshid al-syarî'ah.* This paper discusses the ownership position of illegal assets and its solution through the concept of fiqh *mâqashid* of al-Qaradlâwî.

**Methods**

This is a literature study and the reading used as the primary source in this study is the book written by al-Qaradlâwî himself, titled *Min Hady al-Islâm Fatâwâ al-Mu'âshirah*. The secondary sources are his other works, such as *Dirâsah fi Fiqh Mâqâshid al-Syarî'ah Bayn al-Maqâshid al-Kulliyyah wa al-Nushûsh al-Juz`iyyah,* and also other authors' writings on al-Qaradlâwî. The data were obtained from the two types of sources and were then collected according to the discussion materials to be further analyzed using a qualitative approach. Data analysis was also performed by explaining his thoughts and relating them to other theories. The final data analysis drew conclusions to answer the research questions as stated previously.

**Brief Overview of Yusuf al-Qaradlâwî**

Yûsuf al-Qaradlâwî was born in the city of Thanta, Egypt on September 9th, 1926.[4] When he was ten years old, he already

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[2] Jamal Abdul Aziz, "Dekonstruksi Paragdimatik Pengembangan Zakat: Analisis Kritis Pemikiran Yusuf al-Qaradawi", *Ijtihad Jurnal Wacana Hukum Islam dan Kemanusiaan,* Vol. 17, No. 2 (Desember 2017), 196; juga Mohd Asyadi Radzuan & Mohd Zaki Razaly, "Mal Mutaqawwim Menurut Perundangan Islam dan Implikasinya di Dalam Kehidupan Manusia", *International Conference on Islamic Economics and Business,* 29 June-1 July 2012, 435; also

[3] Eka Nuraini Rachmawati, et al, "Akad Jual Beli Dalam Perspektif Fikih dan Praktiknya di Pasar Modal Indonesia", *Jurnal Al-'Adalah,* Vol. XII No. 4 (Desember, 2015), 787; see Moh. Ah. Subhan ZA., "Konsep Harta Perspektif Ekonomi Islam", *Akademika,* Vol. 10, No. 2 (December 2016), 266

[4] Muhammad al-Majdzûb, '*Ulamâ` wa Mutafakkirûn,* (Beirut: Dâr al-Nafâ`is, 1977), 439; Sulaimân ibn Shâlih al-Khurasyi, *al-Qaradlâwî fi al-Mîzân,* (Saudi Arabia, Dâr al-

memorized the Quran and was trusted to become an imam for the congregation prayer.[5] According to Saepuloh as quoted from the book of *ibn al-Qaryah wa al-Kuttâb Malâmih Sîrah wa Masîrah*, al-Qaradlâwî came from an immigrant family. His ancestors originally came from a region called al-Qaradlah, and that is the reason his name was added with al-Qaradlâwî.[6]

After completing his basic education in the city of Thanta, he continued his study at the Department of Hadith Interpretation, Faculty of Ushuluddin, al-Azhar University and he completed his study as a graduate with honor in 1952-1953. After that, he continued to study Arabic at the same university and became the best graduate.[7] In 1957, al-Qaradlâwî continued his study in Arabic Language Education and Research, and at the same year he also took courses for Master Degree in the Department of Quran Interpretation and Hadith until 1960, and he graduated with distinction. He continued his study by taking a doctoral degree with a dissertation titled *al-Zakâh fî al-Islâm*. His education has once been postponed due to the political turmoil in Egypt, and he unexpectedly had to move to Qatar. However, in 1973, he succeeded in completing his doctoral program.[8] He acquired his leadership career from the organization of *Ikhwanul Muslimin* (Muslim Brotherhood). He became a well-known Islamic figure, both in the Islamic movements and the academic field, especially in the subject of Islamic law.

## Assets and Its Management as One Form of Dlarûriyah

### Definition of Assets

In Arabic, assets are known as *al-mâl*, which is a *mufrad* form of the word *al-amwâl*. *Al-mâl* etymologically means everything that is

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Jawâb, 1999), 8; see Musthafa Malaikah, *Manhaj Dakwah Yûsuf al-Qarâdhâwi, Harmoni Antara Kelembutan dan Ketegasan,* (Jakarta: Pustaka Al-Kautsar, 2001), xi

[5] 'Ishâm Talîmah, *Manhaj Fiqh Yûsuf al-Qaradlâwî,* oiginal title, *al-Qaradawi Faqihan,* transl. Samson Rahman, (Jakarta: Pustaka Al-Kautsar, 2001), 3

[6] Saepuloh, *Fiqh Perempuan dalam Perspektif al-Qaradlâwî,* (Jakarta: Perpustakaan UIN Syahid, 2001), 20; Yûsuf al-Qaradlâwî, *Ibn al-Qaryah wa al-Kuttâb,* (Kairo: Dâr al-Syurûq, 2002), 101

[7] al-Majdzûb, '*Ulamâ`...*, 440

[8] Busyro, "Bom Bunuh Diri...", 88-89

owned (*mâ malaktah min jamî' al-asy-yâ`*).[9] An asset also means anything that can be collected, stored and owned by humans, both in the form of materials/objects and in the form of benefits. Examples for the first category include gold, silver, livestock, land, houses, etc., while examples for the second category include any forms of rent-able goods, both in the form of houses, land, vehicles, and others.[10] Other things that are not possessed by humans literally cannot be called as assets, for example, fish in the sea, birds in the air, trees in the forest, water in the sea or rivers.

In Bahasa Indonesia, the assets are also called property which has a broad meaning in the Civil Act, which is translated as any possessions that are active, including movable and immovable objects and also any passive assets.[11] Based on the above definition, it is concluded that any objects that can be owned can be called as assets.

According to the terminology of Islamic law, there are differences on the definition of assets between the Hanafiyah scholars and the *Jumhur* scholars (Syafi'iyah and others). The scholars of Hanafiyah school argued that assets include things that are naturally desired/liked by humans and are able to be deposited (*iddikhâr*) until the time comes for it to be used.[12] With the existence of the word *iddikhâr* (able to be deposited), then the benefits are not included in the meaning. This is because the benefits belong to something that cannot be classified as assets. The distinction occurs due to the legal consequences of the owned assets that are different from the consequences if it is just in the form of property.

Possession (*al-milk*) is a relationship that is set by the religion between a person and his assets as a special owner, and this gives him the right to act lawfully against the assets as long as there are no complications, such as the owner being underage, insane, and so on.[13] On the other hand, assets are things that can be kept and utilized

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[9] Abu Luis al-Ma'lûfi, *al-Munjid fi al-Lughah,* (Beirut: Dâr al-Masyriq, 1986), 780

[10] Wahbah al-Zuhaylî, *al-Fiqh al-Islâmi wa Adilllatuhu,* Jilid 4, (Beirut: Dar al-Fikr, [t.th]), 40

[11] Hasan Shadily, *.et al., Ensiklopedi Indonesia,* (Jakarta: Ikhtiar Baru Van Hoeve, 1982), 1263

[12] Ibn 'Âbidîn, *Hasyiyah Radd al-Mukhtâr,* Jilid 5, (Kairo: Mushthafa al-Bâbi al-Halabi wa Aulâduhu, [t.th]), 50-51

[13] al-Zuhaylî, *al-Fiqh al-Islâmi...,* 56-57

when needed. Therefore, the scholars of Hanafiyah determined the assets as things that should be in the form of tangible goods (*al-a'yân al-mâdiyah*), whereas the benefits could not be classified into assets because they are intangible (abstract), such as the knowledge, the pride, and the intelligence of a person or something that is shared together, such as sunlight, water, and fish in the sea. Anything that is forbidden by the Shari'a also cannot be classified into assets that can be owned, such as forbidden food (pork and carcass). Anything that is not usually owned by a person, such as a drop of water and a handful of soil, also is not categorized as assets in the Hanafi school. According to the custom, "something" is called an asset if it can be used continuously and be used under normal circumstances. When the thing could only be used at certain times (for emergency measures), such as carcass and pork, it cannot be categorized as an asset because it is an exception.

The group of the *jumhûr* scholar defines an asset as something that is valuable, which if it is damaged then the person who damaged it is obligated to replace it.[14] Al-Syafi'i (d. 204 H) stated that not only it is valuable, but the asset should also be eligible for trade and humans do not want to neglect it, such as money, gold, silver, and so on.[15] Unlike the Hanafiyah scholars, the *jumhûr* scholars do not limit assets to only tangible things but also includes the intangible things such as benefits and rights.

Based on the above explanation, there is a different opinion between the *jumhûr* scholars and Hanafiyah scholars about whether to include the benefits as assets. The *jumhûr* scholars include the intangibles as assets because it could be owned since the benefits itself are also the God's creature that He creates for humans. These benefits can be possessed by owning the objects that cause these benefits because objects can be classified as an asset if it has benefits. On the contrary, if the object does not have benefits, then the *jumhûr* scholars do not categorize it as an asset because the benefits are actually the

[14] *Ibid.*

[15] Jalâl al-Dîn al-Suyûthi, *al-Asybah wa al-Nazhâ`ir,* (Beirut: Dâr al-Kutub al-'Ilmiyah, 1983), 327

purpose of assets. Therefore, the assets cannot be separated from its benefits.[16]

On the other hand, the Hanafiyah scholars, in accordance with the definition they proposed, argued that the benefits could not be conserved, owned and stored until the time it was needed. Furthermore, they stated that the benefits do not exist before the objects occur, and something that does not exist (abstract) could not be called as an asset. Nevertheless, the Hanafiyah scholars provided a compromise for it, since they believed that essentially the benefits are not assets but it could become assets if a leasing contract is performed since there is a *dalîl* that allows it and it is also compatible with the local customs (*al-'urf*).[17]

In the case of leasing, Hanafiyah said that the lease contract ends (even when the contract period is not yet over) with the death of the landlord or the death of the lessee. However, the *jumhûr* scholars argued that the lease could still continue until the time specified in the contract expires, because the benefits are assets so it could be passed down to the heirs.

**Assets Classification**

The scholars of *fiqh* divided the assets into several groups, namely: assets in terms of whether it is (1) permissible or impermissible to be used, (2) fixed and non-permanent, (3) whether it exists or has equal comparison, (4) has time limitation of using, (5) is personal or shared assets, and (6) is possible to be divided or not. However, the classifications in the discussion focus on the assets in terms of whether it is permissible or impermissible to be utilized.

In terms of whether it is the permissible or impermissible to be utilized, the assets are divided into *al-mâl mutaqawwim* and *al-mâl ghair al-mutaqawwim*. *Al-mâl mutaqawwim* are assets owned by someone and may be used in compliance with the Islamic provisions, such as home, vehicle, land, and so on.[18] Therefore, birds in the air, water in the sea, trees in the forest, which do not constitute ownership rights, cannot be

[16] Abd al-Karîm Zaidân, *al-Madkhal li Dirâsah al-Syarî'ah al-Islâmiyah,* (Iskandariyah: Dâr Umar bin al-Khatâb, [t.th]), 218

[17] *Ibid.*

[18] Zaidân, *al-Madkhal...,* 220

categorized as *al-mâl mutaqawwim*. Likewise, the things that could be owned but forbidden to use by the Shari'a, such as liquor, pigs, carcass, wild animals and beasts, could not be categorized as *al-mâl mutaqawwim*. Even for non-Muslims, according to the Hanafiyah scholars, the objects are also classified as *al-mâl mutaqawwim*.[19] As a logical consequence of this provision, if a Muslim damages the non-Muslim assets as mentioned above, he must replace it. On the contrary, the *jumhûr* scholars disagreed on whether to include these goods/objects as the *al-mâl mutaqawwim* for non-Muslims living in an Islamic country, because their rights and obligations are the same as those who are Muslim.

*Mal ghayr al-mutaqawwim* is assets that have not been owned or assets that should not be used according to the Shari'a, except in emergency [20] cases or in a certain way. For example, the fish in the ocean are shared assets and could become private assets if they are captured and stored. At this time, the status changes into *al-mâl mutaqawwim*. That is also applicable to pork, liquor, and carcass which are included in *mal ghair al-mutaqawwim* for Muslims, even though the Hanafiyah scholars see these objects as *al-mâl mutaqawwim* for non-Muslims. The uses of illegal goods are permitted in emergency situations, namely a situation that threatens the existence of religion, soul, mind, assets, and dignity.

Classifying the assets into *al-mâl mutaqawwim* dan *al-mâl ghayr al-mutaqawwim* is very important:[21] firstly, it is necessary to know whether or not a Muslim could perform a contract on the assets. In this case, *al-mâl mutaqawwim* is the kind of asset that can be used as a contract object, such as contract of the *bay'* (trading), *ijârah* (rent), *qardl* (loan), *rahn* (mortgage), *mudlârabah*, *musyârakah*, *musâqah*, *waqf*, testament and so on. The assets in the category of *mâl ghayr al-mutaqawwim* are objects that cannot be used as the objects of contract. Therefore, a Muslim is not allowed to trade pigs, carcass, and liquor, and to perform other legal actions towards these objects, such as renting them and so on. A Muslim is also forbidden to make fish in

[19] al-Zuhaylî, *al-Fiqh al-Islâmî...,* 44
[20] *Ibid.*
[21] *Ibid.,* 44-45

the sea (river), birds in the air, trees in the forests as the objects of contract because they are not yet privately owned.

Secondly, it is important to classify in order to find out whether it is necessary to replace the goods if there is damage or loss. If a Muslim damages or loses *al-mâl mutaqawwim* of another Muslim, the offender is obligated to compensate it. However, if a Muslim kills a pig belonging to another Muslim, or spills the liquor of another Muslim, or loses the deposit that is obtained from a theft, then the offender is not required to replace it. However, Abu Hanifah stated that a Muslim is still obliged to make a replacement for the pig of a non-Muslim he killed, or replace the liquor belonging to a non-Muslim that he spilled because these objects belong to *the al-mâl mutaqawwim* category for them.

Moreover, such disagreement is not much different in its operational order. The *jumhûr* scholars do not forbid if a judge orders a Muslim to compensate the damage towards the non-Muslim assets because the non-Muslim rights are confirmed in the Islamic country.[22]

**Assets Protection in the Study of *Maqâshid***

An asset assists the human to live in this world, and it is also an instrument to acquire the happiness in the hereafter. In its core, all of the assets belong to God which He mandates to the human. Humans are only playing the role of the representatives of these assets.[23] As a representative, humans do not have the rights except to conduct the wishes of Allah as the one who provides the mandate and to fulfill His requests.[24]

Islam appreciates the individual rights on assets because the owner could generate happiness in life. On the other hand, if a person does not have enough assets, it is difficult for him to fulfill his needs. Life could even become difficult and he would often bother other people because of his hardships. In relation to worship, it will also

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[22] *Ibid*.

[23] Mohammad Rusfi, "Filsafat Harta: Prinsip Hukum Islam Terhadap Hak Kepemilikan Harta", *Jurnal Al-'Adalah,* Vol. XIII No. 2 (Desember, 2016), 240; juga Ridwan, "Hak Milik Atas Tanah Dalam Perspektif Hukum Islam dan Hukum Pertanahan Indonesia", *Al-Manahij Jurnal Kajian Hukum Islam,* Vol. 7, No. 2 (July 2013), 262

[24]*Ibid*., 241

become difficult to fulfill the worshiping which requires assets,[25] such as *zakah* and *hajj*. Therefore, Allah commanded human to properly earn his assets. Based on the *mu`âmalah* principle, one form of the systems in transferring assets to assets rights should be based on the *'an tarâdlin* (mutual willingness). This is to avoid some parties from coercing others.[26] Therefore, if the ownership transfer is obtained by force (through evil deeds), then it becomes illegal to obtain the asset.

The study of *al-dlarûriyah al-mâl*, which is the assets preservation from the point of view of the level of importance, is grouped into the following three ranks.[27] *First,* the assets preservation in the level of the *al-dlarûriyah*, such as shari'a guidance on how to own assets through trading, to acquire *halâl* earnings, to become trustworthy of other people's assets, and to distribute assets based on the legacy law. Islam also requires the obligation of *zakat* if the assets have reached the *nisâb* and the *hawl*. On the contrary, Islamic law does not justify (*al-nahy*) obtaining or transferring the assets of other peoples illegally, for example through stealing, robbery, usury, fraud, utilizing the assets of orphans through immoral ways, conducting bribery (*risywah*), utilizing forbidden assets, and neglecting the assets (*idlâ'ah al-mâl*).

*Second,* the assets preservation at the level of *al-hâjiyah*, for example, the shari'a guidance on the *salaam* transaction (sell by orders), leasing, debt, *mudlârabah, musâqah,* and so on. It is forbidden to conduct monopoly or hoarding (*ihtikâr*), to purchase the goods before it enters the market, and to conduct trade transactions during the Jum'ah prayers. If this provision is ignored, it will not only cancel the rights for assets ownership but also make one's life far from the blessing of God.

*Third*, the assets preservation in the *al-tahsîniyah* level, such as the provision of *syuf'ah* in transactions of assets, and encouraging someone to donate to charity, even when his assets have not reached the *nisab* and the *haul* yet. The *al-tahsîniyah* level focuses more on the ethical conduct in the relationship and it will not harm the existence

[25] Toha Andiko, "Konsep Harta dan Pengelolaannya Dalam AlQuran", *Al-Intaj,* Vol. 2, No. 1 (December 2016), 64-66
[26] Rusfi.,*Filsafat Harta…,* 256
[27] Busyro, *Maqashid al-Syari'ah…*, (Ponorogo: Wadegrup, 2017), 137-139

of assets' ownership or cause inconvenience. On the contrary, it is forbidden to commit inefficient/careless actions or parsimony toward one's assets, because life with a careless and penny-pinching attitude will ruin someone's glory.

**Definition of *Fiqh Maqâshid***

The word *fiqh* literally means deep understanding, so it requires the mobilization of the potential of the mind. This can be seen from the editorial of the word *yafqahû* in Q.S Thaha (20): 27-28, which is translated as: "*And let go of the inflexibility of my tongue so that they could understand my words*". This lexical definition of *fiqh* can also be found in Q.S al-Nisa (4): 78 which is translated into: "*Say:*" *All (come) from the side of Allah* ", *then why do those (hypocrites) hardly understand the conversation at all?* ", and in Q.S Hud (11): 91: "*They said:*" *O Shu'aib, we do not really understand what you say, and indeed we really see you as a weak among us; if not because your family would have been stoning you, you were not an authoritative person on our side.* "

Al-Banânî defines the term *fiqh* as science (knowledge) on the shari'a laws, which is `*amaliyah* (practical) in nature, and it is obtained from the understanding based on detailed (clear) arguments.[28] From the definition proposed by al-Banânî, it is concluded that *fiqh* is a knowledge obtained from reasoning or the use of a clear mind to obtain the practical laws (`*amaliyah*). These practical laws are obtained by exploring the sources, namely the Quran and the Sunnah. Thus, the meaning of *fiqh* in this terminology means the definition of shari'a in a specific/restricted use.

In this context, fostering the Islamic law -as part of the Shari'a in a particular interpretation- is a process of obligating the shari'a law itself. A more precise definition is that it includes the process of determining and formatting the law. Since the legal formation had started during the period of the Prophet *shallallahu 'alayhi*, then the study of fiqh also began from the period of the Prophet, and was sustained during the period of Prophet's companion, the *tabi'in*, and continues until today's modern age. The study of the history of *fiqh* not only foresees the legal formation process, but as Muhammad Ali

[28] al-Banânî, *Hasyiyah al-Banâni 'ala Syarh al-Mahalli 'ala Matan Jam' al-Jawâmi'*, Vol. 1, (Beirut: Dâr al-Fikr, 1992), 25

al-Sayis said,[29] the characteristics of the jurists (*fuqâhâ`*), mujtahid, and the distinctive features of Islamic law are also integrated into the study of this science.

The second word, *maqâshid*, is the plural form of the word *maqshad*, which is the *mashdar mîmi* from the word *qasada-yaqshudu-qashdan-maqshadan*. According to Ibn al-Manzhûr (d. 711 H), this word can mean *istiqâmah al-thâriq*, (being persistence toward one way) and *al-i'timâd* (something that becomes the foundation).[30] In addition, this word also means *al-'adl* (justice)[31] and *al-tawassuth 'adam al-ifrâth wa al-tafrîth*[32] (taking the moderate path, not too loose and not too tight), like someone's statement, that "you must apply *qasd* (fairness) in each of your affairs, both in doing and speaking", meaning that one must take the middle way (*al-wasath*) when facing two different situations. Apart from the above meanings, ibn al-Manzhûr (d. 711 H) added the meaning of *al-kasr fî ayy wajhin kâna*[33] (solving problems in any way), for example, when someone says "*qashadtu al-'ûd qashdan kasartuhu"* (I have solved a problem; meaning that I have solved the problem thoroughly).

Based on the above definitions, it is concluded that the word *al-qashd* (*maqâshid*) is used for searching for a straight path and the necessity to hold on to that path. The word *al-qashd* is also applied to determine that a legal provision, as stated by Maulidi, must be conducted using a scale of justice;[34] taking the moderate path and not exaggerate in doing so.

Thus, *maqâshid* is something that is done with consideration and is intended to achieve something that can lead someone into the right path (truth), and the truth obtained must be believed and carried out persistently. Furthermore, by doing this, it is expected that one has the ability to solve the problems under any conditions.

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[29]Muhammad Ali al-Sâyis, *Nasy`ah al-Fiqh al-Ijtihâdi wa Athwâruh*, (Tp. Majma' al-Buhûts al-Islâmiyyah, 1970), 8; also Sya'bân Muhammad Ismâ'îl, *al-Tasyrî' al-Islâmi Mashâdiruh wa Athwâruh*, (Mesir: Maktabah al-Nahdlah al-Mishriyyah, 1985), 7

[30] Ibn al-Manzhûr, *Lisân al-'Arab,* Jilid 3, 353

[31]*Ibid.*

[32]*Ibid.,* 355

[33]*Ibid.*

[34] Maulidi, "Paradigma Progresif dan Maqashid Syariah: Manhaj Baru Menemukan Hukum Responsif", *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum,* Vol. 49, No. 2 (December 2015), 262

*Fiqh maqâshid* is a new term that emerged in the contemporary era, and this term was popularized by al-Qaradlâwî in his book, *Dirâsah fi Fiqh Maqâshid al-Syarî'ah*. Al-Qaradlâwî did not provide a clear definition on this term, but it is understandable that the purpose of this *Fiqh Maqâshid* is to take serious effort in every *ijtihad* and *fatwa* that should be guided by *maqâshid al-syarî'ah*.

*Maqâshid al-syarî'ah* is a theory in discovering the purposes of Allah and His Messenger in determining the law. The purposes are summed up in the rules of *daf'u al-mafâsid wa jalb al-mashâlih*, which means that every legal provision that has been determined by Allah Ta'ala aims to prevent humans from damage, danger and other negative things and then to create advantages and benefits for humans. The benefits will be realized, not only while one lives in this world, but also in the hereafter.[35] Abad Badruzaman argued that this does not only applicable to the "basic laws (the core) (read: the *nash*), but also to the branch (read: the *furu'*) provisions which come out afterward through the method of *qiyâs* or others.[36]

The term *fiqh maqâshid* arises allegedly due to the many *ijtihad* and *fatwa*s by the scholars who disregard the objectives of the shari'a, especially in the cases where the *ijtihad* and *fatwas* contain no explicit theoretical texts from the *nash* (the Qur'an and Sunnah). In addition, even with several provisions in the Qur'an, Sunnah, and opinions of Islamic jurists in various books, a *mufti* must pay attention to the accomplishment of *maqâshid al-syarî'ah*. This is also confirmed by Mu'adil Faizin, as quoted from al-Qaradlâwî, that fiqh *maqâshid* is the foundation of all *fiqh*, which means expanding the meaning and the riddle and the wisdom behind a provision, not just by fully depending on the existing textual provisions.[37]

Jasser Auda, as quoted by Abbas Arfan, supported Ibn 'Âsyûr, who criticized the knowledge establishment of the *ushûl fiqh* and

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[35] Busyro, "Menyoal Hukum Nikah Misyar Dalam Potensinya Mewujudkan Maqashid al-Ashliyah dan Tab'iyah Dalam Perkawinan Umat Islam", *Al-Manahij Jurnal Kajian Hukum Islam,* Vol. 11, No. 2 (December 2017), 217

[36] Abad Badruzaman, "Dari 'Illah ke Maqasid Formula Dinamisasi Hukum Islam di Era Kekinian Melalui Pengembangan Konsep Maqasid", *Ijtihad Jurnal Wacana Hukum Islam dan Kemanusiaan,* Vol. 14 No. 1 (June, 2014), 69

[37] Mu'adil Faizin, "Hak Asasi Manusia Dalam Pemikiran Yusuf Qaradhawi", *Jurnal al-Mazâhib,* Vol. 5 No. 1 (June, 2017), 3

promoted the use of *maqâshid al-syarî'ah* as an independent science (*mustaqil*) in addition to the *ushûl fiqh* which is used to study only the sequence of the theoretical argument of *fiqh*.[38] In another occasion, Auda stated that holistic thinking is very necessary for the environment of *ushûl fiqh* conception because it plays a role in dealing with contemporary problems so that it can be used as a permanent principle in the issue of Islamic law.[39] This shows that some contemporary Islamic theorists really aspired for the *maqâshid al-syarî'ah* to become the main aspect in determining the law in Islam. Moreover, Auda concluded that among the terminologies used by the scholars, such as the one by al-Juwayni and al-Syathibi, the terms *maqâshid al-syarî'ah* and *maslahah* are interchangeable.[40]

To reaffirm this *fiqh maqâshid*, al-Qaradlâwî classified three tendencies of the scholars in comprehending the Islamic law, namely: First, the school of thought that emphasizes the *juz`iyah* texts (partial), and comprehend a text (read: *nash*) based on its literal meaning so that their understanding is far from the goals of the shari'a. This group is called *Zhâhiriyah al-Judûd* (new model of *Zhâhiriyah*). Their school of thought in Islamic law rejects the *ta'lîl al-ahkâm* (seeking for legal reasons) and refuses to associate the law with the wisdom and the objectives that are to be realized by the law. They basically inherited the tradition of the previous *Zhâhiriyah* group but they did not inherit the knowledge scope, especially in regard to the *hadeeth* and companion's *athar*.

Second, the school of thought that is excessively reliant on the *mâqâshid al-syarî'ah*, so that they tends to adhere to the spirit of the *Shari'a* and religion, and consequently ignores the textual provisions of the *nash* (the Qur'an and the Sunnah). They claimed that what they had done was also practiced by Umar ibn al-Khatab since some verses of the Qur'an and the Sunnah are not applied when it is contrary to the benefits of the ummah. According to al-Qaradlâwî, this is a false

[38] Abbas Arfan, "Maqashid al-Syari'ah Sebagai Sumber Hukum Islam Analisis Terhadap Pemikiran Jasser Auda", *al-Manahij Jurnal Kajian Hukum Islam,* Vol. 7 No. 2 (July, 2013), 186

[39] Muhammad Luthfi Hakim, "Pergeseran Paradigma Maqashid al-Syari'ah Dari Klasik Sampai Kontemporer", *al-Manahij Jurnal Kajian Hukum Islam,* Vol. X No. 1 (June, 2016), 7

[40] Abbas Arfan, "Maqashid al-Syari'ah..., 186

claim because Umar ibn al-Khatab has made a legal provision in accordance with the provisions of the *nash* (the Qur'an and the Sunnah). This group is classified as the al- *al-mu'aththilah al-judûd* (liberal).

Third, the school of thought that is moderate in their actions (*madrasah al-washathiyah*), as they do not ignore the particularity of the text (the *juz`iyah*) written in the Qur'an and Sunnah, but at the same time also practice the general objectives of the determination of this shari'a. Particular texts are comprehended according to these general objectives.

Al-Qaradlâwî classified himself as being included in the third group of the schools of thought on the Islamic law, which is the moderate thought (taking the intermediate ground) between the *Zhâhiriyah al-judûd* and the *al-mu'aththilah al-judûd*. It means that he is not extremely textual in understanding a text that he would deliberately ignore the general objectives that Islamic law intends to realize, and he is not extremely unrestricted in applying *mâqâshid al-syarî'ah* that often rejects the specific provisions in both sources of Islamic law when it is contradictory or not according to the benefits they have thought. This rejects the opinion of Charles Kurzman in his writing where he classified al-Qaradlâwî as one of the Islamic liberal figures,[41] and at the same time, al-Qaradlâwî is also different from the progressive Islam promoted by Abdullah Saeed; though in the theory progressive Islam also prioritizes the *mâqâshid al-syarî'ah*.[42]

Theoretically, Maulidi proposed four principles of thinking of *maqâshid* proposed by al-Qaradlâwî, namely; 1) understanding the Qur'an and Sunnah not literally, but substantively, because arguments that are *lafzhiyah* are not enough to understand the meaning of shari'a; 2) *mâqâshid al-syarî'ah* becomes an approach in *tarjih* and *istinbath* of the law; 3) *da'wah* and *fatwa* will have legal certainty; and 4) revitalization of *fiqh* that synchronizes with the

[41] Muhammad Harfin Zuhdi, "Karakteristik Pemikiran Hukum Islam", *Ahkam,* Vol. 14, No. 2 (Juni 2014), 181

[42] Fathurrosyid, "Islam Progresif Versi Abdullah Saeed (Ikhtiar Menghadapi Problem Keagamaan Kontemporer)", *al-Ihkam,* Vol. 10, No. 2 (Desember 2015), 301-303

Qur'an and the Sunnah.[43]

Thus, if the *fiqh* is interpreted as a deep understanding when analyzing a matter, and that the *maqâshid al-syarîah* are the goals for implementing the law, then *fiqh maqâshid* means exerting maximum ability to understand a legal event to determine a legal status based on the *ijtihad* to achieve the *maqâshid al-syarî'ah*. Therefore, practicing rational legal arguments such as *qiyâs, istihsân, maslahah mursalah, sadd ak-dzarî'ah,* and *'urf*, should consider the fulfillment and achievement of the benefit purpose as the will of Allah and His Messenger, Muhammad.

**The Solution for the Utilization of Assets Acquired from Illegal Conducts Based on *Maqâshid al-Qaradlâwî* Theory**

In this context, al-Qaradlâwî stated that illegal assets are allowed to use for the public interest. This *fatwa* is based on the question of someone who has savings in a bank with considerable interest. He did not want to use the interest because he believed it was prohibited, and he asked whether the interest should be used for his needs or it should be donated to other people who need it or to just ignore it.

In his *fatwa*, al-Qaradlâwî stated that it was not permissible to use the assets because it is equal to consuming illegal assets of money laundering. In this case, al-Qaradlâwî answered that actually this problem is not only related to the interest of the bank but also includes any assets acquired through illegal ways.[44] It should be emphasized that the *fatwa* of al-Qaradlâwî is not related to or different from a money laundering case. Utilization of illegal money as referred in this *fatwa* is when the offender has realized his mistake and does not want to use the illegal assets, whereas money laundering is a crime committed to accumulating illicit assets by manipulating others as if the assets were not his.

Furthermore, al-Qaradlâwî stated that in principle, the utilization of assets that are obtained illegally is not allowed. On the other hand, we also must not allow the assets to be taken for granted

[43] Maulidi, "Metodologi Ijtihad Fikih Kontemporer Telaah Atas Pemikiran Hukum Yusuf al-Qaradawi", *al-Manahij Jurnal Kajian Hukum Islam,* Vol. VIII No. 1 (Januari, 2014), 20

[44] Yûsuf al-Qaradlâwî, *Fatâwa Mu'âshirah…,2nd* Edition, 409-410

for a better purpose. In this case, al-Qaradlâwî gave an example of funds from bank interest that should not be neglected in the bank. Leaving it to stay in the bank will strengthen the position of the *ribawî* institution and it is included in the category of helping an illicit act. The negligence is equal to helping others to conduct sinful acts and this action is also unlawful.[45]

In order to solve this problem, al-Qaradlâwî stated that the bank interest and other illegal assets obtained through illicit actions have to be used for goodwill. For example, by donating it to the poor, orphans, *ibn sabîl, jihâd fî sabîlillah,* donating it for the purpose of Islamic *da'wah*, building mosques and Islamic centers, funding the preacher's activity, publishing Islamic books, and other various forms of charity.[46]

Regarding assets obtained in an illicit way, al-Qaradlâwî offered a solution of donating it to the people who need help or by using it to build religious facilities needed by the Muslims. Some scholars disagree with this provision because it means donating illicit funds to others. However, al- Qaradlâwî explained that the assets were illicit when it was attributed to the offender of the sin. When it is donated for the good of others (people), the utilization of the illicit assets is deemed as acceptable. Thus, the asset is forbidden for the offender but become lawful in the purpose of kindness.[47]

Al-Qaradlâwî explained that donating the illicit assets to other parties does not have the status of alms, but the offender only plays a part as an intermediary to convey the assets for goodwill. Although it is not categorized as alms, the offender will be rewarded by Allah for two reasons: first, because he protects himself from consuming illicit assets; and second, because he has become an intermediary to utilize the assets for goodwill.[48] Another reason is that the assets could be one of the *mâl-mustafâd* that is mandatory or recommended to be distributed for the public interests aside from *zakat*, as stated by Ibn Hazm and other scholars.[49]

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[45]*Ibid.,* 410
[46]*Ibid.,* 410-411
[47] *Ibid.*
[48] *Ibid.*
[49] Syufa'at, "Fikih Jaminan Sosial Dalam Perspektif Ibn Hazm (994-1064M)", *Al-Manahij Jurnal Kajian Hukum Islam,* Vol. 9, No. 1 (June 2015), 119

There are several reasons proposed by al-Qaradlâwî on permitting people to donate these illicit assets to others. Among them is a narration that reported that the Prophet Muhammad was reluctant to eat the goat meat that was served to him because he was told that the meat was obtained through an illicit way. However, the Messenger of Allāh ordered to give the meat to the prisoners.[50] Likewise, another narration also reported that Abu Bakr won a bet related to the Roman victory over Persia. When the yield of the bet was reported to the Messenger of Allah, The Prophet said that the fund is forbidden, and then Abu Bakr donated it to someone else. This bet was made by Abu Bakr before the prohibition on gambling in Islam was determined.[51]

In addition to the above reasons, al-Qaradlâwî, who quoted this from al-Ghazali (d.505 H), also have arguments based on the *athar* of the companions. Among the *athar* is the story of Ibn Mas'ud (d.32 H) who once bought a female slave. When he wanted to pay for the slave, he could not find the slave owner even though he had searched for him. He finally donated the payment money to charity which he intended as alms entitled to the slave owner.[52]

Another underlying reason for the fatwa is the *qiyâs*. The proposed argument is that the state of such assets is questionable; will they be useless or used for kindness? Neglecting it certainly will be contradictory to the concept of the assets preservation which forbids wasting assets. If the asset is donated to the underprivileged, the asset will help them.[53]

Based on this fatwa, it is concluded that al-Qaradlâwî's opinion is supported by one of the *al-dlarûriyyât* that should be preserved in Islam, namely *hifzh al-mâl* (assets preservation). From the arguments that he proposed, both in the form of the *khabar* or the companions' *athar*, it is understood that the assets should not be neglected. This *fatwa*, according to the author, is useful for a person

[50]*Ibid*., 412

[51] Mahmûd Muhammad Khalîl (reviewer), *al-Musnad al-Jâmi',* Vol. 15, (Beirut: Dâr al-Jail, 1993), 620; also Muhammad ibn Muhammad ibn Sulaimân ibn al-Fâsiy ibn Thâhir, *Jam'u al-Fawâ`id min Jâmi' al-Ushûl wa Mujma' al-Rawâ`id,* Part 3, (Kuweit: Maktabah ibn Katsîr, 1998), 182

[52] Al-Qaradlâwî, *Fatâwa Mu'âshirah…,* 412

[53]*Ibid*., 413

who has made a mistake in earning an asset, so he could minimize his mistake. On one hand, he could not use the asset because it is totally not his; on the other hand, he has to deal with not wasting the assets. Thus, the author thought that al-Qaradlâwî fatwa's interpretation is in accordance with the provisions of *maqâshid al-syarî'ah* in the assets preservation and the law status is set in accordance with the *will of al-Syâri'*.

The general concept in Islam (*qiyâs*) explained that a person is forbidden to waste assets. This must be distinguished from government actions that destroy illicit goods that could be valued into billions of rupiah. At a glance, the government's action is seen as assets waste *(tabdzîr)*, but if this quick action is not taken, the illicit goods could fall into the hands of evil parties. Government actions like this are accepted and in accordance with the rules of *fiqh*, namely "*tasharruf al-imâm 'ala râ'iyyatihi manûth bi al-maslahah*" (the leader's actions in managing his people must be linked to its benefits).

This is similar to the actions of the Prophet who told his companions to discharge the liquor that was in front of him, even though the Prophet could have just sold it to Jews and used it for the benefit of Muslims. In fact, the Prophet did not do this because he wanted to achieve a greater goal, namely that Muslims should truly stay away from liquor.

**Conclusion**

It is concluded that assets obtained from illegal acts cannot be categorized as *al-mâl al-mutaqawwim* because there is no transfer of ownership rights from one person to the immoral offender. Therefore, in Islamic law, the offender is not entitled to use the assets for his own benefit.

The solution offered by al-Qaradlâwî is by allowing the use of illicit assets for the public interest, with the aim of assets preservation at the *dlarûriyah* level and avoiding the immoral action's offender to use the assets, which is also at the *dlarûriyah* level. The conflict between the two *dlarûriyah* is resolved by choosing the assets' *dlarûriyah* way which is more productive in terms of benefits.

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