

HUMAN TRAFFICKING IN THE PERSPECTIVE OF MAQ ID AL-SHAR AH

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Abstract

Islam is a religion that respects and upholds human values. Trafficking in persons is a form of modern slavery that is not following the nature of humanity given by God. This paper examines how trafficking in persons is from the perspective of maq id al-shar 'ah, which aims to place humans in their human dignity. This paper employs a literature review by utilizing primary sources, whether in the form of books, research results, or journal works relevant to the study's focus. Human trafficking is an act that is not relevant to the objectives of Islamic law, namely to create a life based on equality, independence, respect for fellow human beings, and worthiness in life. Islam forbids the behavior of trafficking in persons because it respects humans. In the conception of Islam, there are five main things called al- ar riy t al-khamsah (five main things that must be maintained), including protection of religion (if al- d n), soul (if al-nafs), reason (if al-'aql), offspring (if al-nasl), property (if al-m l). These five main things, referred to as maq id al-shar 'ah are a speciality in Islamic teachings, so anything that contradicts them is considered as behavior that is not following the aims and objectives of the revelation of Islamic teachings.

Keywords: *Maq id al-shar 'ah; Human Trafficking; Human Values*

Abstrak

Islam merupakan agama yang sangat menghargai dan menjunjung tinggi nilai-nilai kemanusiaan. Perdagangan orang merupakan bentuk perbudakan modern yang tidak sesuai dengan fitrah kemanusiaan yang diberikan Allah. Tulisan ini mengkaji tentang bagaimana perdagangan orang dalam perspektif maq id al-shar 'ah yang bertujuan untuk menempatkan manusia dalam harkat dan martabat kemanusiaannya. Tulisan ini menggunakan kajian kepustakaan dengan memanfaatkan sumber-sumber primer, baik yang berupa buku, hasil penelitian atau karya jurnal yang memiliki relevansi dengan fokus kajiannya. Perdagangan manusia merupakan tindakan yang tidak relevan dengan tujuan hukum Islam, yaitu untuk

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menciptakan kehidupan yang berbasis pada kesetaraan, kemerdekaan, penghormatan atas sesama manusia dan kelayakan di dalam kehidupan. Islam mengharamkan perilaku memperdagangkan orang karena Islam sangat menghargai manusia. Di dalam konsepsi Islam, terdapat lima hal pokok yang disebut dengan al-daruriyat al-khamsah (lima hal pokok yang harus dijaga). Yaitu perlindungan terhadap agama (if al-d n), jiwa (if al-nafs), akal (if al-'aql), keturunan (if al-nasl), harta (if al-m l). Lima hal pokok ini yang disebut sebagai maq id al-shar 'ah ini merupakan keistimewaan dalam ajaran Islam, sehingga segala sesuatu yang bertentangan dengannya maka dianggap sebagai perilaku yang tidak sesuai dengan maksud dan tujuan diturunkannya ajaran Islam.

Kata kunci: Maq id al-shar 'ah; Perdagangan Manusia; Nilai Kemanusiaan.

مستخلص

تقول الباحثة أن الإسلام دين يقدر القيم الإنسانية ويدعمها. الاتجار بالبشر هو شكل من أشكال العبودية الحديثة التي لا تتفق مع طبيعة الإنسانية التي وهبها الله. تبحث هذه الدراسة في ممارسة الاتجار بالبشر من حيث مقاصد الشريعة التي تهدف إلى وضع الإنسان في كرامته الإنسانية. يستخدم هذا البحث أسلوب المكتبة من خلال الاستفادة من المصادر الأولية ، سواء في شكل كتب أو نتائج بحث أو مجالات علمية ذات صلة بموضوع الدراسة. الاتجار بالبشر هو سلوك لا علاقة له بهدف الشريعة الإسلامية ، أي استمرار الحياة على أساس المساواة والاستقلالية واحترام إخواننا من البشر وإمكانية الحياة. يحرم الإسلام المتاجرة بالناس ، لأن الإسلام يحترم حقاً كرامة الإنسان. في مفهوم الإسلام ، هناك خمسة أشياء رئيسية تسمى الضروريات الخمسة (خمسة أشياء رئيسية يجب الحفاظ عليها). وهي حماية الدين ، والنفس ، والعقل ، والنسل ، وحفظ المال. هذه النقاط الخمس الرئيسية ، تسمى مقاصد الشريعة ، هي أمور مهمة في الإسلام. حتى إذا كان كل شيء يخالف ذلك يعتبر سلوكاً لا يتفق مع مقاصد وغايات نزول تعاليم الإسلام.

الكلمات الرئيسية: مقاصد الشريعة ، الاتجار بالبشر ، القيم الإنسانية

A. INTRODUCTION

Islam is a religion that is *rahmah li al-'alam n* and has emphasized from the outset the agenda for the elimination of all forms of human trafficking. Trafficking in persons is a modern form of slavery which in the past, almost the entire world order allowed human slavery, and the Muslim community was no exception. Slavery was known in almost all ancient civilizations and societies. The slavery case first is known to have occurred in Sumerian society, in what is now Iraq, more than five thousand years ago. Slavery also occurs in Indian, African, Chinese, Middle Eastern, and American societies. Slavery developed, along with the development of trade with increasing demand for labor to produce goods for

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export. At that time slavery was a normal common condition, which could happen to anyone and at any time. Not many view slavery as evil or unfair practice.¹

Many researchers and scientists have carried out studies on human trafficking from the perspective of Islamic law. As Rusdaya Basri's article entitled *Human Trafficking and its Solutions in an Islamic Perspective*, states that trafficking is a violation of human rights and dignity and the solution to its eradication is to utilize and enable zakat as a supporter in funding programs to eradicate trafficking in persons and classify trafficking victims into *riqab*.² Another study by Fuad Mustafid with the title *Human Trafficking in the Perspective of Human Rights and the Philosophy of Islamic Law*, states that the practice of trafficking in persons is part of a crime against humanity that is contrary to human rights, Indonesian laws and regulations, and violates and is contrary to Islamic law because it castrates basic rights, human as an independent being.³ Another article by Sukirno, Sitti Aisyah Kara, and Jumadi entitled *Child Trafficking Sanctions System According to Islamic Law*, states that the sanctions system for criminal acts of child trafficking in Indonesia is regulated in Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and Law No. 23 of 2002 concerning Child Protection. Whereas in Islamic law, punishments for traffickers can include *jar mah ud d, qi*, and *ta'z r*, depending on the consequences for the victim.⁴ From the various studies above, no one has discussed human trafficking from the maq id al-shar 'ah perspective.

Maqashid al-sharia consists of two words, namely *maqashid* and *sharia*. *Al-Maqashid* is the plural form of the word *maqshid*, which means things that are desired and intended.⁵ The word *sharia*, etymologically means the road to the source of the water, that is, the path that every Muslim must follow. *Sharia* is a Muslim way of life that contains the provisions of Allah and the provisions of His Messenger, both in the form of prohibitions and orders, covering all aspects of life in human life.⁶ *Sharia* is a formal endorsement of the Qur'an and hadith. The content of *sharia* is always aimed at creating happiness and peace in human life in

¹ Henny Nuraeny, *Tindak Pidana Perdagangan Orang: Kebijakan Hukum Pidana Dan Pencegahannya* (Jakarta: Sinar Grafika, 2011), 350–51.

² Rusdaya Basri, "Human Trafficking Dan Solusinya Dalam Perspektif Hukum Islam," *Jurnal Hukum Diktum* 10, no. 1 (2012): 87–98.

³ Fuad Mustafid, "Perdagangan Orang Dalam Perspektif HAM Dan Filsafat Hukum Islam," *Jurnal Al-Ahkam* 29, no. 1 (2019): 85–108.

⁴ Sukirno, Sitti Aisyah Kara, and Jumadi, "Sistem Sanksi Perdagangan Anak Menurut Hukum Islam," *Jurnal Diskursus Islam* 6, no. 2 (2018): 302–25.

⁵ Ibnu Manzur, *Lisan Al-'Arab* (Beirut: Dar al-Sadr, n.d.), 175.

⁶ Muhammad Daud Ali, *Hukum Islam* (Jakarta: Raja Grafindo Persada, 2004), 46.

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the world and the hereafter because *sharia* is a mercy for the universe or *rahmah li al-'alamin* (Surah 21:107).⁷

Ibn Ashur stated that maqsid al-shar'ah is a value or wisdom that is of concern to *sharia* in the entire content of *sharia*, whether detailed or global.⁸ maqsid al-shar'ah is the goal that is the target of the text and particular laws to be realized in human life. Whether in the form of orders, prohibitions, and permissible or for individuals, families, congregations, and people, or also called the wisdom that is the purpose of enacting the law, whether it is required by religion or not. Because in every law that Allah has prescribed to His servants, there must be wisdom, namely the noble purpose behind a law.⁹ So maqsid al-shar'ah is the purpose or intent behind the enactment of a law.

The study of trafficking in persons from the perspective of maqsid al-shar'ah becomes more interesting because it will be known how the law is determined regarding the prohibition of trafficking in persons. All humans are God's creatures without distinguishing one from the other, they are noble creatures and should not be discriminated against, tortured, traded, and treated with dignity, respect, and honor. Trafficking in persons is not only against the principles of humanity, but also against religious doctrines. One of the principles that Islam upholds is respect for humanity and humans should not enslave other humans for any reason (Surah al-Isra' : 70).

B. DISCUSSION

1. Definition and Legal Evidence of Human Trafficking

In classical Islamic literature, the term trafficking in scholars' view may never be mentioned because trafficking is a new phenomenon of modern slavery. Therefore, the definition of trafficking is not found in classical Islamic law literature. Nahdlatul Ulama based on the decision of the Congress, National Conference, and the Grand Conference, defines trafficking as a human trafficking process whose main element is exploitation. Such as sexual exploitation, forced labor without pay, killing for organ harvesting, and others. So that it can happen to workers at home and abroad, however, all labor recruitment does not always experience the negative impact of trafficking.¹⁰

⁷ Taufik Abdullah, *Ensiklopedi Tematis Dunia Islam* (Jakarta: Ichtiar Baru Van Hoeve, 2002), 3–4.

⁸ Ibn Ashur, *Maqashid Al-Shari'ah Al-Islamiyah* (Tunisia: al-Maktabah al-Tunisiyah, 1979), 155.

⁹ Muhammad Lutfi Hakim, "Pergeseran Paradigma Maqashid Al-Syari'ah Dari Klasik Sampai Kontemporer," *Al-Manahij* 10, no. 1 (2016): 1–16.

¹⁰ The Bahtsul Masail Diniyyah Waqi'iyah Commission which was held in Jakarta on 22 Rajab 1427 H/16 August 2006, was contained in the Decision of the Congress, National Deliberation Nahdlatul Ulama,

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The book on *Fiqh Anti Trafiking: Jawaban Atas Berbagai Kasus Kejahatan Perdagangan Manusia Dalam Perspektif Hukum Islam*, only formulates the definition of "anti-trafficking legal jurisprudence (*fiqh*)". The word "anti" is an affirmation of the opposition to trafficking practices derived from the principles of Islamic teachings because trafficking is a crime against humanity contrary to Islamic teachings. Anti-trafficking legal jurisprudence (*fiqh*) is a religious understanding based on the spirit of humanity confirmed by the verses of the Qur'an and Hadith texts to foster collective awareness about the dangers and prohibitions of the crime of trafficking and the need for victim protection.¹¹

Therefore, when discussing trafficking in persons from an Islamic perspective, the definition is contained in international treaties and conventions. So the issuance of the definition that is considered the most complete includes all matters relating to trafficking in persons, namely the 2000 UN convention or also known as the Palermo Protocol. The Indonesian government itself only had such a complete definition after the issuance of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

The definition of trafficking in persons contained in Law No. 21 of 2007 is as follows: "The act of recruiting, transporting, harboring, sending, transferring or receiving a person using the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits, to obtain the consent of the person who has control over the other person, whether carried out within the state or between countries, for exploitation or causing the person to be exploited."¹²

The texts of the Qur'an and Sunnah relating to the human obligation to maintain the principles of humanity and the law of trafficking in persons are:

a) *Quran*

Surah al-Isra '(17) verse 70:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

"Ahkam Al-Fuqaha' Fi Muqarrirat Mu'tamarat Nahdhah Al-'Ulama': Solusi Problematika Aktual Hukum Islam," 2006.

¹¹Faqihuddin Abdul Kodir, *Fiqh Anti Trafiking: Jawaban Atas Berbagai Kasus Kejahatan Perdagangan Manusia Dalam Perspektif Hukum Islam* (Bandung: Fahmina institute, 2006), 12–26.

¹² Article 1, number 1 of the Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, Chapter I General provisions, Article 1 (1). Implementation of Law No. 21 of 2007 and the factors causing trafficking in persons can be read in writing: Lathifah Hanim and Adityo Putro Prakoso, "Perlindungan Hukum Terhadap Korban Kejahatan Perdagangan Orang (Studi Tentang Implementasi Undang-Undang No. 21 Tahun 2007)," *Jurnal Pembaharuan Hukum* 2, no. 2 (2015): 234–44.

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"And verily, We have honored the children and grandchildren of Adam, and We carried them on land and in the sea, and We gave them sustenance from the good, and We preferred them above many creatures that We created with perfect advantages."¹³

The verse explains that Allah SWT. has honored Adam's children and grandchildren with beautiful appearances and minds so that they can know various skills and know various languages, can think well about ways to earn a living and exploit what is on earth and subdue anything, that exist in the upper and lower realms. Allah has bestowed upon them sustenance, in the form of plant and animal food, and has exalted them over most of His creatures with victory, glory, and honor.¹⁴

Surah Ash-Shura (42): 42:

بَيِّنْ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ أَوْلَادِكَ لَهُمْ عَذَابٌ أَلِيمٌ

"Indeed, the fault is only with those who do wrong to humans and transgress the boundaries on earth without (heeding) the truth. They will have a painful torment."¹⁵

The verse explains that punishing people who defend themselves is not permissible. Punishment only applies to those who persecute others and do injustice on earth without rights, violate what has been limited to them, and do mischief on earth.¹⁶ One cannot do wrong to another person. Everyone is commanded to help one another and be kind to one another. The weak must protect and support the rich regardless of race, color, or religion.

Surah Al-Maidah (5): 32:

وَلَقَدْ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّا كَثِيرًا مِّنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ

"Therefore, We decreed (a law) for the Children of Israel, that whoever kills a person, not because that person kills another person, or not because he has done mischief on the earth, it is as if he has killed all mankind. Whoever saves the life of a human, it is as if he has saved the life of all humans. Verily, Our Messenger has come to them with clear statements. But then many of them after that transgressed on earth."¹⁷

In the view of the Qur'an, all humans, regardless of race, ancestry, and religion, are equal in terms of humanity. This, at the same time, refutes the view that claims the privilege of one race over another, either in the name of religion—as children and lovers of God—like the Jews or in the name of science and reality, such as the views of the Nazi racial groups and

¹³ Departemen Agama RI, *Al-Qur'an Dan Terjemahnya* (Surabaya: Pustaka Agung Harapan, 2006), 394.

¹⁴ Ahmad Mushtafa Al-Maraghi, *Tafsir Al-Maraghi Part V* (Beirut: Dar al-Fikr, 2001), 232.

¹⁵ Departemen Agama RI, *Al-Qur'an Dan Terjemahnya*, 69.

¹⁶ Ahmad Mushtafa Al-Maraghi, *Tafsir Al-Maraghi Part IX* (Beirut: Dar al-Fikr, 2001), 32.

¹⁷ Al-Maraghi, 149–50.

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the like. Thabathaba'i describes the similarities, among others, by stating that every human being carries the value of humanity within himself, which is a value that all humans have. A human being with other humans is an intermediary for the birth of other humans and even all humans. Humans are expected to live for the time appointed by God, among other things, to continue the life of the entire human type.¹⁸

b) Sunnah

Hadith narrated by Imam Bukhari and Imam Ahmad from the hadith of Abi Hurayrah about Allah's threat to free human businessmen with the threat of hostility on the Day of Resurrection:

عن أبي هريرة رضي الله عنه عن النبي ﷺ قال قال الله ثلاثة أنا خصمهم يوم القيامة رجل اعطى بي ثم غدر ورجل باع حرًا فأكل ثمنه ورجل استأجر أجيرًا فاستوفى منه ولم يعط أجره (رواه البخاري وابن ماجه)

"From Abi Hurayrah RA. from the Prophet, SAW. said: Allah said: "Three groups I will dispute with them on the Day of Resurrection, namely: A person who takes an oath in My name and does not keep it, a person who sells a free person and then eats the proceeds of the sale, and a person who hires a man worker then he finishes the work but does not pay his wages".¹⁹

From the hadith above, it can be seen that the practice of trafficking in persons has an impact that is not in line with the demands of the *sharia* because it must not cause harm to others or oneself. This is in line with the principles of legal jurisprudence (*fiqh*), some of which are *al- arar yuz l* (all things that harm or suffer people must be removed), *al- arar yuz l bi al- arar* (removing things that hurt people should not be done by suffering), *al- ar rah tub al- ma r t* (in an emergency, prohibited things may be done), *dar' al- m fasid muqaddam 'ala jalb al- ma ali* (rejecting harm takes precedence over attracting benefit).²⁰

Hadith narrated by Imam Muslim in a hadith qudsi Allah says:

عن ابي ذر عن النبي صلى عليه وسلم فيما روى عن الله تبارك وتعالى أنه قال يا عبادي إني حرمت الظلم على نفسي وجعلته بينكم محرما فلا تظالموا (رواه مسلم)

¹⁸ M. Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan, Dan Keserasian Al-Qur'an* (Jakarta: Lentera Hati, 2002), 101–2.

¹⁹ Imam al-Bukhari Muhammad ibn Isma'il ibn Ibrahim ibn al-Mughirah al-Bukhari (w. 256 H) in book his *Shahih: al-Jami' al-Shahih al-Musnad min Hadis Rasulullah saw wa Sunanihi wa Ayyamihi*, in chapter al-Buyu', bab itsm man ba'a hurran, hadith number 2227. See Shaleh ibn Abdul Aziz ibn Muhammad ibn Ibrahim Alu al-Syekh, *Maushu'ah Al-Hadis* (Riyadh: Dar al-Salam, 1999), 173.

²⁰ Nashr Farid Muhammad Washil and Abdul Aziz Muhammad Azzam, *Al-Madkhal Fi Al-Qawa'idh Al-Fiqhiyyah Wa Asaruha Fi Al-Ahkam Al-Syar'iyyah*, Translated by Wahyu Setiawan, *Qawa'id Fiqhiyyah* (Jakarta: Amzah, 2009), 17–21; Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah Part I* (Beirut: Dar al-Kutub al-'Ilmiyah, 2003), 8.

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"O my servants, I have forbidden injustice to myself, and I have made injustice unlawful among you. So do not oppress one another."²¹

Implicitly, Prophet Muhammad SAW. strongly condemns the crime of trafficking in persons because it is an act of tyranny and hurting others. So that it can threaten his life and honor as a human being who is free to act and will. Free humans are free creatures that someone cannot control. Humans should not be humiliated by equating them with merchandise that can be traded. Therefore, trading with humans is forbidden in Islam. Likewise, acts contain elements of injustice. Allah and His Messenger forbid the act of oppressing and exploiting other human beings because these actions can threaten the lives, offspring, and honor of humans.

In terms of Islamic criminal law, the punishment for traffickers is taking whose punishment depends on the decision of the judge or ruler. However, if the consequences are to eliminate a person's soul, then the punishment is *qi*, which is the law of killing by killing. So the punishment is very dependent on the consequences of the act of trafficking in humans.

2. History of Islamic Human Trafficking

Human slavery²² to humans has been going on for centuries. However, historians cannot determine when slavery began. Some historians argue that slavery began at the same time as human development because some humans needed the help of other humans. Because some people feel they have power, then the desire to dominate others is born. And everyone who enslaves people will be considered to have a high social status, so this is common.²³

When Islam came, slavery was an institution that had been entrenched, not only in Arabia, but also in other parts of the world.²⁴ Islam calls on enslavers to be human towards their slaves and promises great rewards to those who free their slaves. Islamic criminal law requires the perpetrators of certain criminal acts to free slaves (*ta r r raqabah*) as part of the payment of "fines". Many of the freed slaves became close friends of the Prophet. Salman al-

²¹ This hadith was narrated by Imam Muslim ibn Hajjaj Abu al-Hasan al-Naisaburi (w. 261 H), Shahih Muslim, in chapter al-Birr wa al-Shilah wa al-Adab, bab Tahrim al-Mazhalim, hadith no. 6572. See Shaleh ibn Abdul Aziz ibn Muhammad ibn Ibrahim Alu al-Syekh, *Maushu'ah Al-Hadis*, 1129.

²² Slavery comes from the word slave, which means child; childhood; and henchmen; underdog; salaried people; servant; sahaya. Slavery is a system of a group of people who are deprived of their freedom of life to work for the benefit of other human groups without getting a salary, and their status is like property that can also be traded. Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia* (Jakarta: Gramedia Pustaka Utama, 2008), 214; Abdillah F. Hasan, *Ensiklopedia Lengkap Dunia Islam* (Yogyakarta: Mutiara Media, 2011), 40.

²³ Nuraeny, *Tindak Pidana Perdagangan Orang: Kebijakan Hukum Pidana Dan Pencegahannya*, 90.

²⁴ Abdul Hakim Wahid, "Perbudakan Dalam Pandangan Islam Hadith And Sirah Nabawiyah: Textual And Contextual Studies," *Jurnal Nuansa* 8, no. 2 (2015): 142–143.

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Farisi and Bilal bin Rabah, known as the *muezzin ar-Rasul*, are two of them.²⁵ Therefore, human trafficking in Islam begins with slavery that has been going on for centuries. No nation is free from slavery and the groups that are the most victims are women and children.

The Qur'an has informed about slavery contained in several terms, namely *raqabah* (mentioned 24 times in the Qur'an), *'amah* (mentioned only once in the Qur'an in Surah al-Baqarah (2): 221), *'abd* (repeated in the Qur'an 275 times), and *maml k* (mentioned in the Qur'an 45 times). Each of these terms has a different meaning according to its substance.²⁶ More specifically, the Qur'an talks about trafficking in women in Surah Al-Nur (24) verse 33 which means: "And those who are unable to marry should keep (themselves) chaste until Allah grants them the ability by His grace. And if your slaves want a covenant (freedom), you should make a covenant with them, if you know it is good in them, and give them some of the wealth of Allah which He has bestowed upon you. And do not force your female slaves to commit prostitution, while they desire chastity, because you want to seek the benefits of worldly life. Whoever compels them, then indeed, Allah is Most Forgiving, Most Merciful (to them) after they have been forced."²⁷

The verse describes cases of exploitation of women in their status as slaves, which in many traditions is justified. Briefly from the verse above, it can be concluded several important points, namely: first, the obligation to protect the weak, especially for the sanctity of their bodies. Second, the obligation to give freedom and independence to people who are trapped in slavery. Third, the obligation to give up their economic rights. The rights of those who work for their employers must be granted. Fourth, it is forbidden to exploit humans to seek economic gain by violating the law.²⁸

In the Qur'an, it is also narrated that there has been human trafficking that happened to a Prophet, Yusuf AS (Surah Yusuf (12): 7-20). The envy of his brothers had caused little Yusuf to be deceived and it was reported to his father Jacob that Yusuf had been eaten by wolves. Yusuf was put to the bottom of the well until he was found by a group of travelers

²⁵ Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation Civil Liberties, Human Rights, and International Law*, Translated by Ahmad Suaedy & Amiruddin Arrani (Yogyakarta: LKiS, 1994), 332.

²⁶ Nurhayati, *Perbudakan Zaman Modern: Perdagangan Orang Dalam Perspektif Ulama* (Medan: Perdana Publishing, 2016), 115–122; Muhamad Tisna Nugraha, "Perbudakan Modern (Modern Slavery) (Analisis Sejarah Dan Pendidikan)," *Jurnal At-Turats* 9, no. 1 (2015): 51.

²⁷ The reason for the revelation of the above verse is that Abdullah ibn Ubay had jariah (servant of women), namely Masikah and Animah (in another narration, it is said to be Mu'adzah and Masikah), both of whom were forced into prostitution. Abdullah asked for a share of the proceeds. Both of them complained to Rasulullah, so this verse was revealed, which forbids to force the finger of prostitution. Departemen Agama RI, *Al-Qur'an Dan Terjemahnya*, 494; Shaleh, *Asbabun Nuzul: Latar Belakang Historis Turunnya Ayat-Ayat Al-Qur'an* (Bandung: Diponegoro, 2007), 384–385.

²⁸ "Trafiking Dalam Perspektif Islam," Puanamalhayati.or.id/archives/325, 2021.

and hid as merchandise. Arriving in the land of Egypt, they offered Yusuf in the slave market. They treated Yusuf like an animal, freely traded. Yusuf was bought by an Egyptian noble who served as prime minister. They sold it at a very cheap price, only a few dirhams, and their hearts were not attracted to Yusuf.²⁹

From the above review, it is known that the history of human trafficking in Islam began with slavery. Slavery had occurred in earlier nations long before Islam came. It can be said that no nation is free from slavery and women are the group that suffers the most. Islam came with the liberation movement. Humans in the view of Islam are creatures that are highly glorified by Allah. No one can enslave another human being.

3. Human trafficking in the maq id al-shar 'ah Perspective

Every law created and prescribed by Allah must have its purpose. The purpose of *sharia* law is for the happiness of human life in this world and the hereafter, by taking what is useful and preventing or rejecting the destructive. In other words, the purpose of *sharia* law is to achieve the benefit of human life, both spiritually and physically, individually and socially. Al-Syatibi³⁰ said that the laws were prescribed for the benefit of the servant (*al-a k m masyr 'ah li ma alih al-'ib d*).³¹ Talking about the purpose of *sharia* law, then this cannot be separated from the concept of *maq id al-shar 'a*.

In the context of establishing the law, al-Syatibi stated that all legal provisions pivot to five main things called *al- ar riyy t al-khamsah* (five main things that must be maintained). Namely protection of religion (*if al-d n*), protection of the soul (*if al-nafs*), protection of reason (*if al-'aql*), protection of offspring (*if al-nasl*), protection of property (*if al-m l*). Some scholars have different opinions regarding the order of *al- ar riyy t al-khamsah*, some put *if al-nafs* in the first place, after that *if al-d n*. Some fiqh experts add *if al-'ird* (protection of honor) in addition to the five *ar ri* elements.³² The essence of *maq id al-shar 'ah* is the benefit. Islam and benefit are like twins who cannot be separated.³³

Al-Sy tibi went into more detail and at the same time popularized the concept of benefit. The concept developed by al-Sy tibi has surpassed the discussion of scholars of

²⁹ Q.S. Yusuf /12: 20.

³⁰ His full name was Ibrahim ibn Musa al-Lakhami al-Gharnathi, known as Abu Ishaq al-Syatibi (d. 1388M/790H). He is an expert in ushul fiqh, mufassir, faqih, kalam expert, linguist, researcher, high priest, commentator and discussion expert. Al-Syatibi grew up in Granada coincided with Sultan Muhammad V al-Ghani Billah, a golden age for Granada. He is a scholar who is most instrumental in systematizing the philosophical foundations of Islamic law and a pioneer for Islamic law reformers. Muhyar Fanani, *Ilmu Ushul Fiqh di Mata Filsafat Ilmu* (Semarang: Walisongo Press, 2009), p. 73-75.

³¹ Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah Part I*, 54.

³² Al-Syatibi, 8; Ibn Qudamah, *Raudah An-Nazir* (Beirut: Muassasah al-Risalah, 1978), 414.

³³ Musolli, "Maqashid Syariah: Kajian Teoritis Dan Aplikatif Pada Isu-Isu Kontemporer," *Jurnal At-Turas* 5, no. 1 (2018).

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previous centuries. This concept covers all parts of the *sharia* and not just aspects that are not regulated by the *na*. By al-Ghazali's statement, al-Syafi summarizes that the purpose of Allah's revelation of the *sharia* is to realize the benefit. Every order and prohibition of verses and hadiths cannot be separated from maintaining this benefit. Even so, al-Syafi's thoughts were not as bold as the ideas of another controversial cleric, al-Tufi. Najm al-Din al-Tufi was an Ismaili jurist (but some claim he was a Shi'i). Tufi argues that the principle of benefit can limit (*takh*) the application of *ijm*, the Qur'an, and the Sunnah if the application is calculated to be difficult for humans. As might be expected, this publication elicited a strong reaction from most scholars in Egypt. Despite the reaction of conservative clerics, this concept continues to grow and seems to be growing and developing in various Muslim countries.³⁴ Three important principles that must exist in the concept of *maslahah* are freedom, security, and equality.³⁵

Freedom or independence is a concept that views that all humans are only servants of God and not servants of fellow humans. As Allah says in *Surah al-Baqarah* (2:217) which means: "To Him belongs all that is in the heavens and on earth. And to Allah, all matters shall be returned."³⁶ Humans are free to choose a religion (Q.S. al-Baqarah: 25), free to create (Q.S. al-Zumar: 39), free to live (Q.S. al-Nisa': 97), and free from slavery (Q.S. al-Balad: 13). Slavery in any form is prohibited in Islam because every human being has the right to a good name and honor during his lifetime and after death.³⁷ Every human being has the right to get a sense of security from everything that threatens the safety of himself and his family. Every human being is the same in terms of dignity and worth except for his piety. The man from the origin of his creation is the same that is from the ground, from oneself, namely Adam who was created from the ground.³⁸ Therefore there is no advantage for one individual over another. Humans are not worthy of boasting, insulting, let alone tyrannizing and harming other humans.

³⁴ Nur A. Fadhil Lubis, *Hukum Islam Dalam Kerangka Teori Fikih Dan Tata Hukum Indonesia* (Medan: Pustaka Widyasarana, 1995), 34–35; Miftaakhul Amri, "Konsep Maslahat Dalam Penetapan Hukum (Telaah Kritis Pemikiran Hukum Islam Najmuddin At-Thufi)," *Jurnal Et-Tijarie* 5, no. 2 (2018); Abdul Hamid, "Aplikasi Teori Mashlahah (Maslahat) Najm Al-Din Al-Thufi Dalam Penyelesaian Sengketa Perjanjian Bisnis Di Bank Syariah," *Jurnal Al-'Adalah* 12, no. 4 (2015).

³⁵ Khairun Nisa, "Maqashid Al-Syari'ah Perspektif Nuruddin Al-Khadimi," <https://dspace.uui.ac.id/bitstream/handle/123456789/4851/Ushul%20Fiqh%208.pdf?sequence=1&isAllowed=y..>, n.d.

³⁶ Departemen Agama, *Al-Qur'an*, n.d., 785.

³⁷ Muhammad Roy Purwanto, *Reformasi Konsep Maslahah Sebagai Dasar Dalam Ijtihad Istislahi* (Yogyakarta: Universitas Islam Indonesia, 2017), 54.

³⁸ Muhammad Husain Al-Thabathaba'i, *Al-Mizan Fi Tafsir Al-Qur'an Part IV* (Beirut: Mu'assasah al-A'lamiy li al-Mathbu'at, n.d.), 134–135.

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Humans are free creatures that cannot be controlled and cannot be humiliated by equating them with merchandise that can change hands and can be traded. Ibn Abidin states that the son of Adam is glorified according to the *sharia*, even though he is an infidel (if not a prisoner of war), then the contract of selling and equating him with objects is a humiliation of human dignity, and this is not allowed.³⁹

Trafficking in persons is closely related to the preservation of the soul, namely maintaining the right to live in honor and ensuring the survival of the soul and its welfare. Humans play a role in ensuring their role as caliphs for the fulfillment of dignity, human brotherhood, social equity, and self-respect. Every human being must be treated equally without discrimination, respect, and the need to live freely (freedom).⁴⁰ Ahmad al-Mursi Husayn far explained at length how Islam is very concerned about the protection of the five core things (*al- ar riyy t al-khamsah*) and calls on them to glorify and protect them, and forbid persecution of them, in any form. Such as explaining the protection of the soul which is closely related to the right to life. So, it is not surprising that the human soul in Islamic law is highly glorified, it must be preserved, guarded, defended, not confronted with sources of damage and destruction (Surah Al-Baqarah (2): 195).⁴¹

Therefore, trafficking in persons is a very crucial humanitarian phenomenon that is closely related to the benefit of human life related to the five *daruri* in Islam that must be maintained for the survival of mankind, not only related to maintaining the safety of the soul but also related to the safety of the other four. namely: maintaining religion, reason, lineage, and property. Everything that damages the body and endangers the soul is something that is forbidden because it is related to the guarantee of the right to life which must be maintained for the survival of mankind.

C. CONCLUSION

The problem of trafficking in persons is new in the review of *maq id al-shar 'a*. Islam strictly prohibits human trafficking because it violates human rights and dignity. In Islam, all humans are servants of God Almighty and not servants of fellow human beings. Therefore, humans must be placed in the context of their humanity, as free humans who have equal access to life.

³⁹ Muhammad Amin ibn Abidin Al-Shami, *Rad Al-Muhtar 'ala Al-Dur Al-Mukhtar Part IV* (Beirut: Dar al-Kutub, 2002), 110.

⁴⁰ M. Umer Chapra, *The Islamic Vision of Development in The Light of the Maqashid Al-Syari'ah* (Richmond, UK: The International Institute of Islamic Thought, 2008), 9.

⁴¹ Ahmad al-Mursi Husain Jauhar, *Maqashid Al-Syari'ah Fi Al-Islam, Translated by Khikmawati, Maqashid Syariah* (Jakarta: AMZAH, 2009), 21–23.

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In the perspective of *maqashid al-sharia*, humans have equality in life, so there should be no exploitation of one human being over another. Humans do not deserve to be traded, because every human being has the same rights and obligations in the eyes of God and also before the law. In the context of Islamic law, human dignity must be upheld, such as the aspect of equality or equality or equal rights, freedom without being used as a traded item, freedom to determine the way of life, and also to his honor.

Islam as a religion of humanity highly respects humans with their humanity, places humans as honorable creatures, and makes them the caliphs of Allah on earth, so that every human being must live his life under his human dignity.

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