

THE NEED TO OCCUPY IN THE POSITION OF DHARURAT IN THE EFFECTIVENESS OF MAQASID SHARI'AH

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ABSTRACT

The need for manusia as a makhluk of life is something that cannot be separated from human life. In this matter, of course, the needs that are in an emergency position become something that needs to be studied whether or not it can be done in the study of Islamic law. As for the purpose of this analysis, to find out whether a need to occupy an emergency position is allowed or not, then to know the Maqasid Shari'ah in assessing emergencies in human needs. The method used is the normative juridical method by analyzing emergency methods in the Maqasid Shari'ah. As for the results of the analysis, the emergency position can be carried out as long as it is in accordance with the points that have been determined by the scholars. Later in the Maqasid Shari'ahhal this is in line with the Maqasid Shari'ah itself.

1. INTRODUCTION

Needs are something that exists in every person, according to Abraham Maslow states that every human being has five basic needs, namely first, physiological needs, secondly security, thirdly love, fourthly self-esteem, and self-actualizationism. Basically, humans have basic needs that are *heterogeneous* in nature. Everyone has the same needs, but because of the culture, circumstances or conditions, these needs are also different. In meeting human needs, adjusting to existing priorities to fulfill human life itself.¹

Based on the types of needs can be distinguished as follows, that is, it can be seen in the difference between primary needs or primary needs, for example the need for air, eating and drinking, sex needs

and everything related to primary needs. Then secondary needs such as the need for recognition, achievement, power, and honor. All of which are needs rather than the primary needs above. Therefore, it distinguishes between open needs, for example in *motor* behavior, and closed needs, for example in the world of fantasy or dreams or delusions or Needs that are concentrated and needs that spread.²

In addressing the problem of human needs. Islamic law exists to study as a reference to meet the needs of human life. In essence, it is intended to preserve the glory of man and maintain his interests, because all of this must be maintained by the rules that are Islamic law itself both special and general. Islamic sharia that determines there are five needs that contain:

¹ Ns. Kasiati, Ni Wayan Rosmalawati, Basic Human Needs I. (Jakarta: Ministry of Health of the Republic of Indonesia, 2016), p.4

² Calvin and Lindzey, Theory of Holistic Theory (Organismic Phenomenological). (Yogyakarta: Kanisius, 1993), p. 33-39

protecting human life by forbidding to kill him, guarding his honor, guarding his intellect, guarding his property, and guarding his religion, then rules are needed as a general benchmark for reviewers of the Qur'an.³

Regarding human needs above, of course, there are problems in human life, including those related to the problem of emergency needs or those that are lower than that, for example, human life itself. So in the study of emergency needs is the position of a person at a limit if he does not want to violate something that is prohibited then he can die or almost die. This kind of position allows him to violate something that is forbidden

Therefore man living on the face of this earth is merely living what Allah Almighty decreed. Man cannot escape from all the *statutes (destiny)* of Allah Swt, by which fate man lives in a process, an event, a stage of existence, and a stage of opportunity that God gives man to strive to always maintain his life and life.⁴

Because naturally human beings have been given the same basic rights by Allah Swt. These basic rights are often referred to as human rights (HAM) which are inherent in humans and are eternally related to human dignity and dignity. However, regarding these rights, it is certainly inseparable in terms of urgent needs that have considerations if they are done or not done.⁵

If studied, Shari'a has a clear purpose in enforcing legal provisions to mukalaf people is in an effort to realize good for their lives, through the provisions of *daruriy*, *hajj* and *tahsiniy*. As Syatibi is of the view that the main purpose of sharia is to maintain and fight for three categories of law. The purpose of these three categories is to ensure that the benefit of muslims, both in the world and in the hereafter is realized in the best way because God is doing for the good of His servant.⁶

So from the above concerns about the emergency and the purpose of Islamic law itself has a method that is considered in giving birth to a law. The rule *الضرر يزال* (of) of emergency must be eliminated), returning to the purpose of realizing maqasid al shari'ah by rejecting the mafsadah, by means of eliminating the emergency or at least alleviating it. Therefore, to facilitate the activities of interpreting or understanding the messages of the Holy Book of the Qur'an, rules are needed as a general benchmark for reviewers of the Qur'an. Thus, a reviewer of the Qur'an must know the rules needed in the activities of interpreting the Qur'an, so as not to be mistaken in its interpretation. In this paper, it will be explained about: the nature of the emergency, the arguments that allow something illegitimate in an emergency, the limitations and wisdom of the emergency, and the rules related to the emergency.

There are five basic rights are, namely first the Protection of soul and body

³ Nur Asia Hamzah, *Emergency Allowing the Prohibited*, JURNAL PILAR Volume 11, No. 2, Year 2020 ISSN: 1978-5119

⁴ 1 Sahal Mahfudh, *Nuances of Social Jurisprudence* (Yogyakarta: LKis, 2008), 1

⁵ Naimatul Atqiya, "Ham In Islamic Perspective" *Islamuna* Vol. 1 No. 2 December 2014, p. 2014. 170

⁶
<http://repository.uinbanten.ac.id/7793/5/BAB%20II%20I.pdf>

(ḥifẓu an-nafs) secondly Protection of reason (ḥifẓu al-'aql) third Protection of religion or belief (ḥifẓu ad-din) fourth Protection of property (ḥifẓu al-māl) and fifth Protection of honor and offspring (ḥifẓu al-ird wa al-nasl). So from the studies above, the author is interested in studying "**The Need to Occupy an Emergency Position in the Effectiveness of Maqasid Shari'ah**".

2. RESEARCH METHODS

In this study using normative juridical types of research. It is said to be normative juridical because there are legal norm problems that need to be studied for the problem of needs in human life. Then with *the case aproch* approach or the case approach. It is said that this approach is because it examines the methods in the study of ushul fiqh regarding emergencies and Maqasid Shari'ah.

Then the source of legal material used in this study is the source of primary data legal material consisting of the methods contained in the ushul fiqh and the norms of the Maqasid Shari'ah.

⁷ Masdar Farid Mas'udi, Syarah Constitution of the 1945 Constitution in an Islamic Perspective, (Jakarta: Pustaka Alvabet, 2011), p. 144

3. RESULT AND DISCUSS

Emergency Concept

How can it be known that the emergency in al-Zuhaili's definition is

*"a condition afflicting a person, in which it is suspected to result in harm to the soul or limb or honor or reason or property. Under that condition one is allowed to do things that are actually illegitimate or leave things that are actually mandatory"*⁸.

Shaykh Abdullah ibn Abdurrahman Al-Bassam rahimahullah defined the meaning of emergency as the *uzur* that causes the forbidden to do something. When viewed from the definition of the scholars above, of course, emergency is basically a condition that can cause something both to oneself and other necessities of life.⁹

Meanwhile, *mahzhurat* are things that are forbidden or forbidden by Islamic law. *Mahzhurat* includes all forbidden things that come from a person, whether in the form of forbidden utterances such as *gibah*, *sheep fighting*, and the like, or in the form of heart practices such as *spite*, *hasad*, and the like, or also in the form of birthful acts such as *stealing*, *adultery*, *drinking khamr*, and so on. Therefore related to the Postulate about Emergency can be calcified as follows:¹⁰

1. QS al Baqarah/2: 173
2. QS al An'am/6: 145:
3. QS al 'An'am/6: 119:

4. QS al Maidah/5: 3:
5. QS al Nahl/16: 115:

In general, the verses above are some of the arguments that talk about emergencies. The above argument is as a basic law in terms of emergency problems.

While according to Wahbah al Zuhaili, the conditions or limitations of the emergency, are, firstly, should the emergency exist/be real not one that is anticipated, speculative, and imaginative, secondly there is no other way (which is allowed *shari'a*) to resist danger except to use something forbidden, thirdly Fulfilled '*uzur* who allows doing something that is forbidden. The fourth does not violate Islamic principles. Thus it is not permissible to commit adultery, kill, infidels, and take forcibly (honor or property) whatever the situation, the five Waivers do something that is forbidden only to the ability to survive Ask a just, trusted expert of religion, and knowledge if forced to do treatment for which no lawful medicine is found except that which is forbidden in religion.¹¹

Understanding Kedah

As to the rules of the Scholars, there is an opinion as to where this rule should be placed. Some scholars such as As-Suyuthi include this rule as a branch of the "*adh-dharar yuzalu*" rule which means that everything that harms it must be eliminated. But what is more correct in this case as mentioned above, is that this rule is a branch of the rule "*al-masyaqqah tajlibu at-*

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http://digilib.uinsgd.ac.id/7860/4/4_bab1.pdf

⁹ Al-Bassam, Abdullah bin Abdurrahman. 1416 H. *Taudhih al-Ahkam fi Bulugh al-Maram*. Dar al-Qiblah li ats-Tsaqafah al-Islamiyah: Jeddah – KSA. 1st printing. Volume 1. Page 80

¹⁰ As-Sadlan, Shalih bin Ghanim. 1418 H. *Al-Qawaid al-Fiqhiyyah al-Kubra wa Ma Tafarra'a 'Anha*. Dar Balnasyah: Riyadh – KSA. 1st printing. Page 256

¹¹ Al Zuhaili, Wahbah. *Al Fiqh al Islami wa Adillatuh*. Cet. XII; Dimasq: Dar al Fikr, t.th

taisir" because the rule of *adh-dharar yuzalu* is wider in scope and general to include all kinds such as treasures, souls, and so on.¹²

Among the applications of this rule in everyday life are the following:¹³

1. A doctor may reveal some of his patient's aurat if indeed treatment cannot be done except with him.
2. A person may eat carcasses or pork if he does not find food to eat in times of extreme hunger.
3. It is okay for someone to eat someone else's property in a forced state.
4. It is okay to treat something unclean if there is no other medicine.
5. It is permissible to kill a robber if only in that way can he save himself, his family, and his property.
6. It is permissible for a person to take the property of a person who owes it from him without permission if he always delays payment while he is in a state of ability.

Distinguish Emergency and Hajat

Al muharram mentioned in the above method is something that is prohibited by shari'a. Meanwhile, what is meant by "dhoruroh" or emergency is a matter that if a person leaves him, then he will be stricken with danger and no one can replace it. This is what is meant by emergency in the right opinion. While there is also the term "hajat", what is meant is

something that if left behind, it can bring danger, but can still be replaced with something else.

Example of dhoruroh, If a person is forced to eat and there is no food other than carrion. Had he not eaten carrion, he could have been exposed to danger and there was no substitute for that time. Example of hajat: It is explained in a history that the Prophet sallallahu 'alaihi wa sallam once added a vessel (container) with silver. Even though it could be that the container is patched with iron or brass and others. He did it that way because of the celebration. Thus, the prevailing method is "an emergency allows something forbidden", whereas a state of emergency is not so unless there is a proposition.¹⁴

The conditions of dharurat and hajat are fundamentally different. The person who is in a dharurat state, he can be wretched and even fall to death. And in order to save himself, he may do the illegitimate thing. Meanwhile, people who are in this condition, do not have the potential to die or be disabled, for example, but they will fall into severe difficulties. The condition of the celebration in general does not make him allowed to do anything illegitimate.

But under certain conditions, the hajat can occupy the position of dharurat, in the sense that he can make things that should be prohibited become permissible. The jurists stated, "الحاجة تنزل منزلة الضرورة", "عامّة كانت أو خاصة", the condition of hajat can

¹² umber: <https://muslim.or.id/19369-dalam-kondisi-darurat-hal-yang-terlarang-dibolehkan.html>

¹³ Dr. Muhammad Shidqi bin Ahmad. 1416 H. *Al-Wajiz fi Idhahi Qawa'id Al-Fiqh Al-Kuliyyah*. Muassasah Ar-Treatise: Beirut – Lebanon. 4th printing. Page 233

¹⁴Sources of <https://rumaysho.com/3024-kaedah-fikih-7-menerjang-yang-haram-di-saat-darurat.html>

occupy the position of dharurat, whether the celebration is of a general or special nature. General in the sense that it is indeed required by all people in the world or their majority. And specifically in the sense that it is required by the inhabitants of a particular land or by people in certain professions, and the like. Especially here, it does not mean that the celebration is only needed by certain individuals, because the individual *hajat* cannot occupy the position of dharurat.

Hajat and dharurat, although under certain conditions both allow things that should be prohibited, but the two have differences, namely:¹⁵

1. Dharurat allows for illegitimate things, whether the condition of the dharurat occurs in crowds or only in certain individuals. Whereas *hajat* only allows for things that should be forbidden, if it hits the crowd.
2. The law established in the dharurat condition, the enactment is only temporary to the dharurat condition, if the condition ends, then the ability also ends. Whereas the law is established because of *hajat*, it applies forever and to everyone, whether that person has a blessing on that law or not..
3. Dharurat allows for things that are forbidden by *nash*, such as eating carrion, drinking *khamr*, and the like.

Meanwhile, no. It only allows something that should be forbidden, if we use general rules or *qiyas*. So, *hajat* allows

something that is forbidden by general rules and *qiyas*. Example:

1. The ability of the *ijarah* contract (renting of goods and services), because it is needed by the crowd, 'ala *khilafil qiyas*. If he follows *qiyas*, he should not be allowed, because he is a *mu'awadhah* contract for benefits that do not yet exist at the time of the transaction.
2. The ability of greeting contracts (buying and selling orders), also because it is needed by many people. In fact, the goods traded do not yet exist at the time of the contract.
3. The ability of *ji'alah* (competition), even though he is contracted for something that is not yet clear, whether it can be obtained or not, but he is allowed because there is a celebration against him.
4. It is the ability of *hawalah* (transfer of debt), even though he buys and sells debt with debt, which based on his legal *qiyas* cannot.
5. Patching furniture with silver patches, to repair damage to the furniture. Based on *qiyas*, it should be *haram*, because it includes using silver for furniture, which *Shari'a* prohibits. But because there was a celebration, he was allowed.
6. The ability to wear silk clothes for men, for the treatment of itchy diseases of the skin. In fact, the law of origin is illegitimate.

In *ushûl al-fiqh*, the benefit of *dlarûriyyah* includes the maintenance of religion, soul, reason, heredity, and treasure

¹⁵ <https://abufurqan.id/hajat-bisa-menempati-posisi-dharurat/>

(hifdh al-dîn, hifdh al-nafs, hifdh al-'aql, hifdh al-nasl, hifdh al-mâl), while in qawâ'id fiqhiyyah is more emphasized on the aspect of soul nourishment (hifdh al-nafs). The state of emergency in qawâ'id fiqhiyyah is formulated as something that if not done, one could die from. The salvation of the soul is the measure. This is why there is a waiver or removal of the legal burden as long as the emergency has not disappeared.¹⁶

4. CONCLUSION

Shaykh Abdullah bin Abdurrahman Al-Bassam rahimahullah defines the meaning of emergency as the uzur that causes it to be permissible to do a forbidden thing, If you look at the depenition of the scholars above, of course, emergency is basically a condition that can cause something both to oneself and other necessities of life. Example of dhoruroh, If a person is forced to eat and there is no food other than carrion. Had he not eaten carrion, he could have been exposed to danger and there was no substitute for that time. Example of hajat: It is explained in a history that the Prophet sallallahu 'alaihi wa sallam once added a vessel (container) with silver. Even though it could be that the container is patched with iron or brass and others.

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hereafter is realized in the best way because God is doing for the good of His servant.

¹⁶<https://swararahima.com/2018/11/18/konse-darurat-dalam-fikih-us/#:~:text=Ulama%20>

[agreed%2C%20in%20decorred,lying%20to%20protection%20orange%20](#)

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