

# **MASHLAHAH MURSALAH APPROACH IN ISLAMIC ECONOMIC BALANCE : A CONCEPTUAL FRAMEWORK**

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## **ABSTRACT**

*Mashlahah mursalah* is often the basis for the formation of a law. *Mashlahah* is one of the methods of Islamic law which in Islamic literature is called *al-adillah al-mukhtalaf fiha*, which is a proposition whose existence has not been agreed upon by fiqh experts. Even so, many laws are built on the basis of *mashlahah mursalah*. From the other side, *mashlahah mursalah* becomes a material for consideration of changes to an existing law, either by customs, place, situation, or when two urgent things meet (*dharurat*). In such circumstances, the lowest possible harm may be done on the basis of *mashlahah mursalah* considerations. This study was conducted using library study methods and descriptive analysis. This study is expected to form a conceptual framework on the fiqh rule that states that when two harms meet, then the greatest mudharatnya seen, and can do the least harm. The difference in the level of whipping punishment for drinkers arak (khomr) between the time of the Messenger of Allah and friends became the basis of consideration *mashlahah mursalah*, namely the extent to which the punishment can cause a deterrent effect for the perpetrator.

**Keywords:** *Balance, Mashlahah al-Mursalah.*

## 1. INTRODUCTION

The essence of *mashlahah mursalah* demands the introduction of the general concept of concerns in Islamic law. *Mashlahah* is safeguarding the objectives of the Shari'a from the five cases; namely maintaining religion, honor, reason, descent and property. Everything that is included in this precaution is called *mashlahah*, and everything outside this rule is called damage (*mafsadah*).<sup>1</sup>

Ushul fiqh scholars divide *al-mashlahah* into several sections and levels. In terms of its legal strength, *mashlahah* is divided into 3 (three); namely *mashlahah dharuriyah* (primary needs), *hajiyyah* (secondary needs), and *tahsiniyah* (additional needs). As for its generality, *mashlahah* is something that is related to human needs in general, namely the needs needed by all humans related to the life needs of certain people in certain situations.<sup>2</sup>

In fact *mashlahah mursalah* describes part of the general conception contained in benefits Islamic fiqh based on recognition. A witness who cannot provide evidence is considered to bring harm seen from the meaning of *mashlahah* itself, namely those that are acknowledged and those that are rejected. The question arises from the example, "can this be used as benefit which is recognized as the origin of the construction of a law taking?".

The scholars of fiqh and ulama of ushul fiqh have different opinions between being absolutely or absolutely prohibited, or being allowed conditionally. Each of these opinions has

arguments (*hujjah*) which can be used as arguments.

## 2. RESEARCH METHOD

### Sharia Law Between Constant and Evolution

There are many accusations against Islamic history in the modern era which say that Islamic Sharia is a stagnant system that has not evolved, its laws are not elastic to deal with developments that occur in every side of human life. Therefore, it is better to leave this form of system, or at least to be regarded as a system that regulates moral goodness that has nothing to do with the conditions of human life.

The accusations that are often raised through several writings include being called "*the bearer of goodness in modern times*" with the influence of the western perception that religion plays a role in regulating life, which stands on the basis of separation between religion and state. Therefore, some parties from non-Muslims make what they accuse to stay away from Islamic Sharia from a different side of life and adopt the western life order, because they think that the western order is more modern, in line with the development of life. The Islamic system in their view is irrelevant unless it is only limited to providing temporary solutions. Islamic Shari'a in the view of non-Muslims is only in line with the life of the Arabs who descended on them and did not bring goodness except for them.<sup>3</sup>

This propaganda still continues in the writings of some modern intellectuals, especially for the da'wah movement which invites the practice of

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<sup>1</sup> Abu Hamid al-Ghazali, *al-Mustashfa*, Tahqiq Muhammad Abu al-Ala. Kaherah: Maktabah al-Jundi. p. 151.

<sup>2</sup> Al-Ghazali, *Syifa' u al-Ghalil*, Tahqiq: Hamdi al-Kibsiy. Baghdad: Matba'ah al-Irsyad, 1971 M., pp. 210-211.

<sup>3</sup> Muhammad an-Nuwaihiy, *Nahwa Tsaurah fi al-Fikri ad-Diniy*. Beirut: Dar al-Adab, at-Thoba'ah al-Ula, 1983 M, p. 151.

Islamic Sharia. This is considered important to be discussed and refuted even though it is in writing. The point of error of this propaganda is that it lies in a misconception of religion and life, or in the influence of western understanding that dominates human thought in modern times. Based on this fact, it has become an obligation for Muslims to carry out discussions based on the arguments used as propaganda, namely the issue of evolution and constant in human life and in Sharia law.<sup>4</sup>

From the point of view of constant life, especially in matters related to nature, humans are considered to need unity and prosperity, tend to religion (rules), and to what is ridden by human nature, namely from a nature that will not change its laws with changes in time and place. As for the changing law, which includes material progress, science and the development of the means of production, and includes the type of society, whether they are shepherds, farmers or industrial entrepreneurs, or include the type of economy that has a relationship between owner and non-owner, human life can be constant and change (undergo evolution). Both sides are very important for survival and are not something that is made up. This is the basis for a scientific assessment which says that life changes in totality, and that life is deemed unnecessary to a system or law that relies on a constant source of law, because the essence of the problem is that the change has occurred, and has a major impact on some sides, however not on the other. Therefore, it must be able to distinguish between fundamental changes and changes in form.

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<sup>4</sup> Fu'ad Zakariah, *Al-Haqiqoh wa al-wahami fi al-Harakah al-Islamiyah al-Mu'ashirah*, p. 10.

<sup>5</sup> Muhammad Biltaji, *Nahwa Wajah Islamiyah* in Adwa' as-Shariah wa Hiwarat Haula as-Syariah Magazine, Matba'ah Ahmad Judha, pp. 159-162.

However, the real important problem is that we can distinguish between constant and evolutionary systems in sharia law to serve as a reference, and be used as evolution for the space of ijihad. Moreover, many of the results of ijihad from fiqh experts at different times are connected with certain conditions, especially with modern law. Therefore, it is the duty of a Muslim to distinguish between constant laws based on texts (arguments) and definite meanings. And something that is determined on the basis of ijihad fiqh is related to the conditions issued by the scholars of fiqh.<sup>5</sup>

There is no difference between constant and evolution in sharia law, because the presence of current conditions has been discussed by fiqh scholars before this, we even take the opinion that the thought of fiqh has been discussed with the problem since the time of the emergence of sharia law and after it, along with events that take place continuously.

### **Decree of Ushul Ulama Related yo Mashlahah Mursalah in Building Islamic Fiqh**

Al-Mawardi determined that the goal of establishing the conditions of leadership (*imamah*) was to safeguard what was at that time. Fathi ad-Darini also argues that Sharia law has the intention of understanding Islamic laws, rules, objectives, in terms of conditions and situations that can be applied, that when there is no text (argument), the government may take policies that are in accordance with existing conditions, but on the other hand sharia law is not abandoned.<sup>6</sup>

<sup>6</sup> Ali bin Muhammad al-Mawardi, *al-Ahkam as-Sulthoniyah*. Kaherah: Al-Baby al-Halaby, at-Thoba'ah as-Tsalisah, 1397 H., p. 7. Also look Fathiy ad-Darainiy, *Khosois at-Tasyri' al-Islamiy*. Massasa ar-Risalah, at-Thoba'ah at-Tsaniyah, 1987 M, p. 489.

Al-Imam al-Qurafi states that political law does not contradict sharia law and even supports the following principles of sharia law:

**First;** the damage is increasing and developing in contrast to the first phase, the consequence is that the law is different, but does not go out of the sharia in general, said the Prophet Muhammad; "*no harm and condemnation occurs*". Abandoning this rule has an impact on harm, and all the texts that exist are aimed at strengthening and eliminating difficulties.

**Second;** that *al-Mashalih al-Mursalah* is benefit which is recognized by the shari'a, not the sharia which is rejected, and is strengthened by the actions of the companions of the Prophet. They have done a lot of things absolutely because of the element of benefit, not because of the progress of the recognized Shari'a, such as compiling the mushaf (al-Quran), not because of the progress of problems nor because of comparisons. Likewise with the granting of the administrative area of Abu Bakr to Umar bin al Khattab, leaving annual deliberations, compiling books, building bridges for the benefit of the Muslims, burning mushaf and compiling them into one mashaf and other examples as was done by the caliph Umar bin al-Khattab. ra and also the caliph Uthman bin Affan was solely because of the mashlahat element.

**Third;** Shari'a emphasizes witnesses more strongly than emphasizing history to doubt the enemy, so it requires the number and expansion of contracts due to dharurat, such as loans, irrigation of rice fields and many exempt contracts. When the witnesses are narrowed down in a case of adultery,

witnesses will not be accepted unless there are just four people.<sup>7</sup>

Ibn al-Qayyim said about ibn Uqail from among the jurists' al-Hambali that politics is an act to regulate human life that is closer to *mashlahat*, and away from damage, if it is not done by the Prophet there will be no revelation to him. People say: there is no politics unless the Islamic Sharia has regulated it.

Ibn al-Qayyim gave two conclusions: *first*; Just politics does not contradict what is brought by the Shari'a, in fact politics is in line with it and politics is part of the Shari'a, many people call it politics that brings benefit, the justice of Allah and His Messenger which is clearly visible by its signs. *Second*; politics differs according to different times. Therefore, it is not considered that the Shari'a is totally unchanging with the changing times, but politics juz'iyah follows kemashlahatan, which is bound by time and place.<sup>8</sup>

Al-Shatibi narrated that when Umar bin al-Khattab r.a. came to the land of Sham, he found Mu'awiyah bin Abi Sufyan, had made a hijab and big and long clothes, and was passed by kings. He asked about it, "*actually we live on earth and need it*". He said, "*no I ordered you and no I forbid you*". Then he accompanied by the meaning of the words, "*you know more about your condition, do you need him*". This incident shows that the condition of the people and leaders is different with different regions, times and situations. Thus, it is necessary to renew the sense of classical art and politics, perhaps obligatory in all situations.<sup>9</sup>

In summary of what was disclosed earlier, it is clear that *Mashlahah Mursalah* has an important

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<sup>7</sup> Muhammad Qosim, *Taghiyur at-Zhuruf wa Atsaruhu fi Ikhtilaf al-Ahkam*. Kaherah: Dar as-Salam, 2010 M., pp. 13-18.

<sup>8</sup> Muhammad Qothob, *at-Tathowur Watsubat fi Hayatil al-Basyariah*. Kaherah: Dar as-Syuruq, 1397 H., 1/176-178.

<sup>9</sup> Shatibi, Abu Ishaq, al-, *Al-Iqtishom*. Kaherah: Dar at-Tahrir li at-Taba' wa an-Nasyar, 1970 M. 1/119.

role in the development of Islamic fiqh. Many Shari'a related to something that developed in Islamic society, are found in it relying on the *Mashlahah Mursalah*. This is because the *Mashlahah Mursalah* is a system used by the science of fiqh to harmonize the Sharia law and its provisions according to the situation of the time and place, either when the law gets into trouble with the texts, or it is difficult to find it according to the *qiyas* way.

### 3. RESULT AND DISCUSS

This research takes the form of literature studies with the aim of describing the problems studied. Data collection techniques with literature studies come from various sources such as books, internet and research journals that have topics similar to those discussed in this study.

#### **Analysis and Discussion: Mashlahah Mursalah Approach In The Islamic Economic Balance**

The essence of the application of the *Mashlahah Mursalah* is the stipulation of law in accordance with the circumstances and situations that occur with changing conditions, as well as environmental differences that have no law at all in the texts or *ijma* 'of the scholars who come to him.

Thus, *Mashlahah Mursalah* relies on the constant principal (*ushul*) of Sharia law, and stands on a balance between the dimensions of benefit and harm. If the benefit dimension fails, then the *mashlahah* becomes Sharia, and if the mudharat dimension fails, then the *mashlahah* does not become Sharia. However, there must be attention to *Mashlahah Mursalah* in this regard, that the validity of the balance sheet at the

individual level is different from the community level.

After understanding the essence of the *Mashlahah Mursalah*, it is clear that *Mashlahah Mursalah's* relationship with changing situations becomes a cause for holding on to *mashlahah* as a method (*manhaj*) of *ijtihad*, where fiqh science deals with it in all forms of change, which arise from mere development and levels of human life, or weak relationships. humans with the power of Sharia law, or changes in the condition of with changes in times, places and situations, or other causes. As examples that can be seen in this sector:

#### **a. Sanctions for Khamr Drinkers**

It is well known that Islam strictly prohibits drinking liquor (*khamr*) as a strict prohibition. The prohibition comes from the Quran, al-Sunnah and *Ijma* 'ulama. Not only is it prohibited to drink it, but Islam provides and imposes sanctions for drinking it. If these sanctions are not regulated by the Quran, they are regulated in al-Sunnah, in which the Prophet Muhammad once punished drinking *khamr* with different sanctions.

Based on the above facts, the scholars of the mazhab agree that the sanction for drinking *khamr* is given an appropriate punishment, but of different levels. The scholars of the Hanafiyah, Malikiyah and Hanabilah mazhab argued that the punishment for drinking *khamr* was lashed 80 times, while Syafi'iyah and Zhahiriyah argued only 40 times.<sup>10</sup> The emergence of these differences is due to differences that existed in the days of *shahaba*.

At the time of Abu Bakr r.a. he had lashed the drinker of *khamr* 40 times, and it lasted until the time of Umar bin al-Khattab r.a. at the beginning of his leadership, so that he saw many people drinking *khamr* and ignoring legal

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<sup>10</sup> Kasaniy al-Hanafi, al-, *Matba'ah al-Jamaliyah; Bada'i as-Shana'i*, , Misr: at-Thaba'ah al-Ula, 1910 M, and Abu al-Walid Muhammad Ahmad bin Rasyid al-Qurtuby.

*Bidayah al-Mujtahid*, al-Babi al-Halabi, at-Thaba'ah al-Khomisah, 1401 H./1981 M, 2/444.

sanctions, so the friends gathered and had a discussion, said Ali; "Who is drunk then I see ...". It is reported that the initiator of the meeting and deliberation was Uthman ra.<sup>11</sup>

If you review the sanctions set for khamr drinkers, it is known that the form of sanction aims at not repeating the prohibited acts again, and giving a deterrent effect on the individual community, therefore this form of sanction can change according to individual and social conditions and situations.<sup>12</sup>

The form of sanctions for drinkers imposed at the time of the Prophet. is flogging, with no limit in the number of strokes. For certain conditions, the number of strokes can be increased or decreased according to changing conditions, and that's an order from Uli al-Amry. Therefore, when you saw that many people ignored the legal limit that had been set initially 40 times, they agreed to increase the number to 80 times.

#### **b. Industrial Business Guarantee**

It was also stated that friends made industrial guarantees. Said Ali r.a .; "*It is not good for humans except that*", and in terms of mashlahah in law as mentioned by al Shatibi that humans need industry, they are free from clothing items in certain habits, namely industrial goods and not supervising, even though there is no legal guarantee. along with the very important need to use it goes back to two things: Sometimes leaving the industry completely, and that is difficult to do, sometimes they also work but are not guaranteed with the consequences of decline and loss. As a result, lost property and lack of supervision, and betrayal

occurs. Therefore, mashlahah (guarantee) as meant in the words of Ali r.a .; "*No good human except that one*".<sup>13</sup>

The legal basis for the friends is to remove the harm that has been mentioned in the hadith, namely; (( لا ضرر ولا ضرار)), in fact, when there is no guarantee for the industry, then the harm is changed to the mashlahah of humans, this is because it eliminates the mandatory legal harm, such as applying the original law and strengthening the general mashlahah over special issues.

In connection with this, said al-Shatibi; in the hadith: (( لا ضرر ولا ضرار)) that the basis for seeing it in terms of sentences. Prophet Muhammad PBUH prohibited selling *بييع حاضر لباد*, and said: (let humans, Allah provide sustenance for each of them). And the Holy Prophet. said: (do not meet *الركبان* with sales until the goods are sold in the market). This is in terms of strengthening the general mashlahah over the special mashlahah, therefore the industry guarantees from this direction.<sup>14</sup>

#### **c. Collection of Taxes on the Rich (Al-Aghniya')**

It is a condition which obliges to take certain rights from the excess money owned by rich people who have exceeded the threshold of *nishab*, such as *infaq* money, *zakat* money and the like. If an Islamic state experiences a certain situation, which demands a lot of wealth, to eliminate some of the emergencies related to state affairs, it is permissible to collect taxes. If this is not done, the state budget is not sufficient, therefore it is permissible for the leader to employ people to collect taxes on the rich who are deemed able to eliminate harm.

<sup>11</sup> Shatibi, Abu Ishaq, al-, *Al-Iqtishom*, 2/69.

<sup>12</sup> Muhammad Salim al-Awa, *Ushul an-Nizhom al-Jina'i*, , Dar al-Ma'arif, at-Thaba'ah as-Tsaniyah, 1983 H, p. 146.

<sup>13</sup> Shatibi, Abu Ishaq, al-, *Al-Iqtishom*, 2/69-70, and the words of Imam

Ali, mentioned in the Sunan al-Baihaqi al-Kubra, 7/122.

<sup>14</sup> Hadith narrated al-Bukhari, *kitab al-Buyu'*, Chapters are forbidden to carry merchandise on the street.

*Al-mashlahah* in that position is in line with the type of syar'i action, and returns to general *mashlahah* and *dharuriyat*, as it relies on the original law based on the sentence of the text, that is, if it contradicts two bad things or two *kemudharatan*, Syar'i's goal of eliminating the greater the harm and the greater the bad.<sup>15</sup>

Seeing the prevailing regulations made it possible for some law enforcers to cheat the law, by committing fraud. Therefore, the *fuqaha* 'gave several conditions as mentioned in the book الملكية الفردية including; *First*; carry out every budget that goes into the Baitul Mal and everything in it, which remains only for the needs. *Second*; If while waiting, the income is used to remove the *mudharat* for the *baitul mal*, the judge must think about borrowing money until the budget comes, it is not justified for him in this situation to do so, and that is what *al-Shatibi* understands. *Third*; let the leader work on the basis of justice and punish all affairs, to ensure his actions and results. *Fourth*; *Dharurat* is measured by its level of emergency. Do not let the judge exceed the limit of what has been determined. *Fifth*; to pay attention to legal principles in justice, and to oblige employees to take human property without exception, not to allow people who have closeness or improper reasons. In fact, he distributes to humans on the basis of conformity with the just *shari'a* law that fellow humans are obliged to have on it, and what is entitled for it. *Sixth*; judges in transcribing finance must be in accordance with *sharia* law, not using it except for good interests, such as the needs of orphans, not to be eaten at all, but must be issued for their needs with mandate, no doubt this condition is suitable as the basis for every officer assigned to collect human property for various purposes, both in conditions of peace and war.<sup>16</sup>

#### 4. CONCLUSION

In fact *al-Mashlahah al-Mursalah* is not a separate source of law from the *sharia* texts, but it is a *manhaj* (method) of doing *ijtihad* to study Syar'i law according to conditions or situations that do not occur with the law itself or the *qiyas* law on it. Therefore, conditions and situations rely on *al-Mashlahah al-Mursalah*, namely *al-mashlahah juz'i* as the basis for *kulli*, or fall under the model (type) of sentences in the texts. This means that it is a derivative of the text itself, not from the *sharia* texts globally. If so, then *mashlahah* is categorized as one type with the text of the *Shari'a*. As for the *mashlahah* for which there is no evidence from the text of the *Shari'a*, it is actually the *mashlahah* that is rejected, because at that time it was only a tool to destroy the *Shari'a*.

The law that applies to the sanction of drinking *khamr* is 80 lashes, which is proven by the law of origin related to the law of people who accuse good people of adultery (*qodzaf*). This also applies to drinkers of *khamr*, the law of drinking *khamr* stands in place of the law of *qodzap*. As for the industrial guarantee law, it is proven by the law of origin of *shari'ah* globally, namely eliminating harm, and the law of enforcing money from the rich - in certain situations - as evidenced by the origin of global law (*kulli*) such as overseeing the objectives of *shari'ah* by prioritizing religion rather than property, like rejecting the greater ugliness of choosing the lighter. In essence, the law that relies on *al-Mashlahah al-Mursalah*, does not contradict the texts of the Syar'i, and does not mutually eliminate the arguments from existing arguments, and this is included in the *mashlahah* model (type) recognized by the *Shari'a*.

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<sup>15</sup> Abu Hamid al-Ghazali, *Al-Mustashfa*, p. 256.

<sup>16</sup> Muhammad Biltaji, *Milkiyah al-Fardiyah*. Kaherah Maktabah al-Shabab, 1982 M, pp. 300-301.

The difference between the person who says al-Mashlahah al-Mursalah and the person who contradicts him is the difference in pronunciation. Therefore, many circles tend to make qiyas limited to the texts that come with it himself, while al-Mashlahah al-Mursalah is a mashlahah which is proven for its model from the texts or the origin of the whole law in the Shari'a, therefore it is the evidence of the shari'a (*hujjah syar'iyah*).



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