# The Urgency of Islamic Education In Improving Understanding The Tarjih Maslahah For Mafsadah In The Istinbat Of Islamic Law (Method Analysis Imam 'Izzuddin Bin Abdussalam)

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## ABSTRACT

This research focuses on looking at the urgency of Islamic education in expanding understanding of maqashid sharia in the concept of ushul fiqh, Islamic education is important for expanding understanding of maslahah and mafsadah in legal istinbath methodology, and describes the methods proposed by Izzudin to resolve the contradiction between maslahah and sorry. This research includes qualitative research which is descriptive analysis with a logical and historical philosophical approach. The data collection technique used is library research. The primary source for this research refers to the book Qawaid al-Ahkam fi Masalih al-Anam and the book Syajarat al-Ma'arif wa al-Ahwal wa Salih al-Aqwal wa al-A'mal. These findings explain that the concepts of maslahah and mafsadah in Islamic law will become more optimal if their understanding is strengthened and disseminated through Islamic education, especially those closely related to maqashid sharia. Maslahah supports the objectives of sharia in kulliyah khamsah, while mafsadah contradicts it. Proposals to reconstruct maqashid sharia independently of kulliyah khamsah were rejected because they usually only combined or complemented existing principles. Maslahah and mafsadah are important elements in Islamic legal istinbath, and must be managed within the framework of sharia dhawabith to avoid subjectivity and legal instability. Izzudin offers four methods to resolve the contradiction between maslahah and mafsadah, namely jam'u (merging), tarjih (weighing), takhyir (selection), or tawaqquf (termination). He emphasized that the contradiction between these two concepts is often only relative and depends on perspective, suggesting to assess the dominance of one aspect over the other in a given situation. This will of course be more optimal if it is conveyed and emphasized through the participation of Islamic education, so that discussions related to tarjih maslahah on mafsadah, especially in the study of Islamic law will become more interesting and developed.

**Keywords: Islamic Education, Tarjih, Maslahah, Mafsadah, Istinbat Islamic Law**

## A. INTRODUCTION

Islamic law, which is packaged under the name fiqh, is part of the entity of life, so that every development of fiqh should refer to the continuity of life and dynamic changes in various social institutions. Fiqh relates to every aspect of human behavior within the scope of taklif, of course it has measurable and logical procedures, these procedures then become the realm of discussion to classify every new phenomenon. This phenomenon illustrates that historical reality records that there has been a continuous development of Islamic legal theory in accordance with the times. This is because Islamic law has a double standard, namely as a tool for measuring social reality with the ideals of the Shari'ah which leads to halal or haram laws, and at the same time it becomes a tool for social engineering. The development of legal theory undoubtedly occurs in line with the development of law in general, in accordance with the context of space and time. Therefore, reform is a characteristic and characteristic of Islamic law. One of the important and fundamental concepts that is the subject of Islamic law is the concept of public interest or social order.

As a unified whole, all individual behavior in an Islamic perspective must always reflect a triangular bond: a vertical bond with God (hablun min Allah) and a horizontal bond between individuals (hablun min al-nas) (Hazairin, 1963). Even though it appears to be merely dogmatic, in essence this relationship is closely related to the provisions of the legal formulation (fiqh) of the meaning of revelation which touches directly on human actions. In contrast, if you think that law is just a social relationship, such as Cicero's idea that where there is society, there is law, so that when a person is in a place that is not regulated by the community, he strays into the open sea, for example, because it does not fall under the jurisdiction of a particular country. then the person who is lost may do as he pleases, for example disturbing biological resources. It is different if you use Islamic legal thinking (in accordance with the two bonds above, namely hablun min Allah and hablun min al-nas), then even the high seas certainly have an owner (Allah) (Alim, 2010).

However, viewing fiqh only as something sacred also represents an unwise action. This method is a form of denial of historical reality, the fact that at the beginning of its development there was al-'Iraq fiqh and al-Madinah fiqh and even Qaul al-Qadim and Qaul al-Jadid which were born from Imam Syafii, proves that the socio-cultural aspect is in addition to the capacity aspect. The knowledge of each mujtahid has quite strong consequences for the growth of jurisprudence (Sahal Mahfudh, 2011). Thus, theological and ethical factors must be the basis for consideration and become an inseparable part in developing jurisprudence, besides of course the factors of change in society itself.

In the analysis of Islamic law, the sources that can be used as a guide in determining the law of a case basically consist of 2 types, namely nas and ra`yu (ratio). Included in the nas type are the Al-Qur'an and hadith, while those categorized in the ra'yu type are other than both (Abdul Mun'im Saleh, 2001). Meanwhile, if viewed from its strength, these sources can be classified into legal sources that are agreed upon and legal sources that are not agreed upon by the ulama. One source of law that is included in the ra`yu category and is not agreed upon by ulama is maslahah murlah. Maslahah murrasa is a legal determination based on public interest regarding an issue for which there is no legal provision in the sharia, either generally or specifically. The purpose of taking maslahah is to realize benefits, reject harm and eliminate

human distress (Umar Syihab, 1995). On the other hand, all of Allah SWT's prohibitions contain problems behind them, humans are prohibited from carrying out His prohibitions in order to avoid damage or destruction. One example is the prohibition on drinking alcoholic beverages (khamar) which aims to prevent a person from things that damage the body, soul and common sense.

The context of maslahah is often used as an argument when the legality of authority is to be put forward in implementing regulations, for example. In this case maslahah is reduced in such a way that it appears that maslahah is very closely related to constitutional law and government systems, whether presidential, democratic or parliamentary, therefore, the rules regarding maslahah are placed in first place as the rules of siyasah fiqh by A. Djazuli. According to him, siyasah fiqh is Islamic law whose object of discussion is power, which includes constitutional law, state administration, international law and economic law. Siyasah fiqh also talks about the relationship between the people and their leaders as concrete rulers within the scope of one country or between countries or in economic policies both nationally and internationally (Djazuli, 2006). Imam 'Izzuddin ibn Abdu Salam is a scholar who formulated all the concepts of al-maqasid al-syar'iyyah in one term known as maslahah. According to him, the concept of maslahah and mafsadah places more emphasis on the distinction between haqiqi and majazi, each of which is divided into the world and the hereafter and everything that becomes an intermediary to arrive at maslahah and mafsadah both in this world and in the afterlife. Maslahah according to Imam 'Izzuddin consists of lazat and afkrah and everything that is an intermediary between the two. Maslahah is further divided into maslahah haqiqi and maslahah majazi (Izzuddin Ibn Abdu al-Salam, 2010).

The theoretical framework built by him was able to touch and describe the position of maslahah and mafsadah in every religious issue. This theory was later considered as a basis that could be used as a postulate in establishing law. The analysis of maslahah that he built is not only in the theoretical aspect, but is also explored in the form of application where sometimes maslahah is given more priority and sometimes mafsadah is given more importance for legal determination. The context of prioritizing maslahah over mafsadah is at least a manifestation of the legality of lying which is found in the problem of reconciling disputing parties and reassuring the wife or avoiding conflict in the future (Muhammad Yasin, 1996).

As for discussing tarjih mafsadah regarding maslahah, Izzuddin only mentions two examples (Izzuddin, 2003). The same thing is also stated in Izzuddin's other work, Syajarat al-Ma'arif wa al-Ahwal wa Salih al-Aqwal wa al-A'mal, where Izzuddin presents 27 examples of cases where things that were basically haram became halal because of maslahah. it is considered superior for tarjih than mafsadah. In fact, in conditions where the maslahah is very high, the law may change to become permissible, or circumcision even obligatory. After explaining in detail 27 examples of cases of tarjih maslahah on mafsadah, 'Izzuddin closed the discussion by saying:

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وهذه الأمثال مرشدة على ما سواه

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Meaning: These examples can provide clues to understanding various other problems.

Moving on from the presentation of the problems and urgency of the tarjih maslahah method, as well as the absence of research that focuses on examining the legality of tarjih maslahah on mafsadah, especially from the method of Imam 'Izzuddin bin Abdussalam, the

author views the need for a deeper, systematic and structured study with 3 The objectives of the research are: First, expanding understanding of maqashid sharia in the concept of ushul fiqh. Second, considering the important position of maslahah and mafsadah in the legal istinbath methodology, as well as the importance of maintaining this method within the framework of sharia dhawabith so that it does not become subjective and arbitrary. Third, describe the methods proposed by Izzudin to resolve the contradiction between maslahah and mafsadah.

## B. METHOD

This research includes qualitative research which is descriptive analysis with a logical and historical philosophical approach. Philosophical, logical and historical approaches are perspectives or paradigms that aim to explain the essence, nature or wisdom of something that lies behind its formal object (Muhaimin, 2007). The data collection technique used was library research (Moeleong, 2007). The primary source for this research refers to the book Qawaid al-Ahkam fi Masalih al-Anam and the book Syajarat al-Ma'arif wa al-Ahwal wa Salih al-Aqwal wa al-A'mal. The sources of secondary data are documents, books, books and other data related to the research title, for example the book al-Muwafaqat by al-Syatibi, the book al-Maqasid al-Syari'ah al-Islamiyah essay by Ibn 'Assyria and various other references. This research data analysis follows Sugiono's analysis pattern (Sugiono, 2009), which takes place simultaneously and is carried out along with the flow of stages, namely data reduction, data display, conclusion or verification (conclusion drawing and verifying).

## C. RESULTS AND DISCUSSION

### The urgency of Islamic education in discussing maslahah and mafsadah in Islamic law

Regarding the urgency of education, Hamka expressed his thoughts about the importance of humans seeking knowledge, because it is not only to help humans obtain a decent living, but more than that, with knowledge humans will be able to know their God, refine their morals, and always strive to seek Allah's pleasure (Hamka, 1972). Only With this form of education, humans will gain peace (wisdom) in their lives (Hakim & Arief, 2009). Maslahah is another word for getting benefits and rejecting harm (Abu Hamid, 1993), while Mafsadah is the nature of actions that can produce continuous or habitual damage or harm, for the majority of humans and individuals (Muhammad Tahir, 2020). Allah SWT has stated clearly in the Qur'an the benefits of sending the Messenger, the bearer of the Shari'ah, namely that humans act justly and that is one of the greatest problems of Islamic Shari'a as He says:

لَقَدْ أَرْسَلْنا رُسُلَنا بِالْبَيِّناتِ وَأَنْزَلْنا مَعَهُمُ الْكِتابَ وَالْمِيزانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ

Meaning: Indeed, We have sent Our messengers with clear proofs and We have sent down with them the book and the balance (of justice) so that humans can act justly. (Al-Hadid [57] : 25)

Then the words of Rasulullah SAW لا ضرر ولا ضرار which means it is not permissible to bring harm to oneself and it is not permissible to bring harm to others, indicating that the Shari'ah maintains maslahah in is|bat and nafi and mafsadah nafi because darar is mafsadah. So when the Shari'ah denies mafsadah what arises is a benefit which is none other than maslahah, because both are two naqid which have no intermediary. These three things are not

wanting to have daughters for fear of poverty, forbidding certain foods that are very suitable for consumption as happened to some previous jahiliyyah people, sometimes this is just because of trivial things such as not liking to see the condition they are in when swallowing food and not working until they are neglected. himself and his family. For the first case, as Allah SWT warns in the Koran:

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ ۖ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ ۚ إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا

Meaning: And do not kill your children for fear of poverty. We are the ones who will provide
          sustenance to them and also to you. Indeed, killing them is a great sin. (QS. Al-
          Isra [17]: 31).

The verse above alludes to the habit of jahiliyyah people who are afraid of having daughters for fear of disgrace and poverty. Religion certainly sees this as not having the slightest problem. It will even lead to the emergence of mafsadah, namely the breaking of the hereditary cord because women are the place to produce offspring and the destruction of the faith, namely not being sure of the sustenance that Allah SWT has provided for. The warning for the second case is contained in the following verse:

قُلْ مَنْ حَرَّمَ زِينَةَ ٱللَّهِ ٱلَّتِىٓ أَخْرَجَ لِعِبَادِهِۦ وَٱلطَّيِّبَٰتِ مِنَ ٱلرِّزْقِ

Meaning: Say: "Who has forbidden the ornaments from Allah that He has issued for His
          servants and (who has forbidden) good sustenance?. (QS. Al-A'raf [7]: 32)

Then for the third problem, namely not trying and only busying himself with worship so that the family is neglected (Al-Baihaqi, 2003). In this case, Ibn 'Asyur criticized through the hadith of Rasulullah SAW:

أَلَمْ أُخْبِرْ أَنَّكَ تَقُومُ اللَّيْلَ وَتَصُومُ النَّهَارَ. ﴿قُلْتُ : إِنِّي أَفْعَلُ ذَلِكَ.فَقَالَ﴾ : إِنَّكَ إِنْ فَعَلْتَ ذَلِكَ هَجَمَتْ
عَيْنَاكَ وَنَفِهَتْ نَفْسُكَ, إِنَّ لِعَيْنِكَ حَقًّا وَلِأَهْلِكَ حَقًّا وَلِنَفْسِكَ حَقًّا, فَقُمْ وَنَمْ وَصُمْ وَأَفْطِرْ

Meaning: I was told that you observe the night and fast during the day?, I answered: "That's
          right, I do that," the Messenger of Allah said: verily, if you do that you will hurt your
          eyes and your body will be weak. That indeed, to your eyes there is a right, and to
          your family there is also a right and to your soul there is also a right, so make up your
          night and sleep, fast and break your fast.

The emphasis, as explained more or less at the beginning, is that the Shari'a according to 'Izzu al-Din bin 'Abd al-Salam was built to bring about all forms of benefit and avoid all things that cause harm. Anyone who understands the Shari'a properly, is used to understanding the purpose of the Al-Qur'an and the Hadith, will very easily understand that every form of command has the intention of realizing benefit. On the contrary, every prohibition is to prevent damage even though human reason is limited in understanding everything (Sulihkhodin, 2021).

In fact and in reality, if religion does not review jalb al-masalih and dar'u al-mafsadah, it is possible and even certain that this will lead to social inequality and damage. For example, religion only tells people to sit in the mosque without paying attention to family and state issues, which will certainly create social inequality between families or countries.

1. Contradiction between Maslahah and Mafsadah.

Imam Izzuddin said that world life is filled with maslahah and mafsadah (Izzuddin, 1995). In fact, there are more mafsadah than mashlahah. Izzuddin said;

إن الدنيا مشحونة بالمصالح وأسبابها والمفايد بأسبابها، وشرها أكثر من خيرها، ومضارها أكثر من نفعها، وقبائحها أكثر من محاسنها، ومعظم مقاصد الخلق في جلب اللذات والأفراح، وانتفاء الغموم والآلام.

Meaning: Indeed, the world is filled with maslahah and its causes, as well as mafsadah and its causes. The world's ugliness is greater than its goodness, its harms are greater than its benefits, its ugliness is greater than its beauty. The most dominant goal of humans is to seek pleasure and pleasure and avoid anxiety and pain.

In the book Qawaid al-Ahkam fi Mashalih al-Anam, Izzuddin emphasizes that there are very few cases found in this world that are truly pure mashlahah without the slightest mafsadah. Izzuddin said;

واعلم أن المصالح الخالصة عزيزة الوجود، فإن المآكل والمشارب والملابس والمناكح والمراكب والمساكن لا تحصل إلا بنصب مقترن بها، أو سابق، أو لاحق، وأن السعي في تحصيل هذه الأشياء كلها شاق على معظم الخلق لا ينال إلا بكد وتعب، فإذا حصلت اقترن بها من الآفات ما ينكدها وينغصها

Meaning: In fact, pure maslahah is very rare. Food, drink, clothing, marriage, vehicles and shelter, these are not obtained except with the effort that accompanies them, before and after. The effort to produce all these things is something burdensome for most beings, which is not attainable except by earnestness and exhaustion. When it is achieved, it will accompany it with negative factors that are annoying and troublesome."

Al-Qarafi stated that the effort of istiqra' shows that there is no benefit unless there is mafsadah even if it is very, very little, and there is no mafsadah unless there is mafsadah even in a very small amount (Al-Qarafi, 1973). This was also reinforced by al-Syathibi in a number of chapters in his book al-Muwafaqat (Ibrahim, 1997). It is possible to find a middle ground for this difference in views by saying that if what is meant by pure maslahah is the existence of things which are in themselves pure maslahah which are not mixed with the slightest mafsadah, then there is no doubt about their existence. However, if what is meant is a maslahah that is not accompanied by masyaqqah (tiredness), there is no pain either on the path and the process of reaching it or in itself, then this does not exist from this review, because all mashlahah, goodness, delicacy and perfection, everything is not achieved except through some effort (Thahir, 2020).

Ibnu Asyur said;

إياك أن تتوهممن كلامهما (أي كلام العز والشاطبي) اليأس من وجود النفع الخالص، فإن التعاون الواقع بين الشخصين هو مصلحة لهما، وليس فيه أدنى ضر، وأن إحراق مال أحد إضرار خالص

It means; Beware of assumptions that consider Izzuddin and al-Syathibi's statements to be despair from the form of pure benefit, because in fact the mutual help that occurs between two people is a blessing for both of them that does not have the slightest harm. Meanwhile, burning one's property is pure harm.

Imam Izzuddin explained that all actions that have many aspects of benefit and mafsadah, such as praying on land that has been stolen, are rewarded for the benefit aspect and have the right to be tortured for the mafsadah aspect. Ibn Qudamah said, "It is impossible for there to be one thing that is both obligatory and haram, obedient and immoral from the same aspect." In another place he said; Sometimes something has two aspects, one of which is intended while the other is not liked (Izzuddin, 2003). In general, the contradiction between maslahah and mafsadah is divided into three forms, namely; the contradiction between maslahah rajihah and mafsadah which is marjuhah, the contradiction between maslahah

marjuhah and mafsadah which is rajihah, and the contradiction between maslahah and equal mafsadah. Some examples of contradictions in this form are as follows (Abu Hamid, 2005);

1) Cutting off the hand that is physically weak (which is gradually becoming brittle) in order to save life, if traditionally this brings safety. It is permissible to cut off the hand even if it gets mafsadah for the hand, because this action brings superior benefits, namely saving life. The aim is not to cause pain due to cutting, but the aim is to save lives.

2) Protecting some of the assets by causing them to have disgrace (defects), such as destroying some of the assets of orphans, crazy people, stupid people, and public assets that are managed if there is fear of robbery. In fact, guarding their property by making it disgraceful is similar to losing part of their wealth for the costs of the guard and storage costs.

3) Saying al-kufr (words that cause you to become an infidel) is forbidden. However, this is permissible when telling other people's statements or in a situation of coercion if the heart of the person being forced still remains above faith, because preserving the soul and life is a more perfect mashlahah than mafsadah of saying words that one's heart does not believe. If the person who is forced to patiently accept the consequences of the coercion, then it is truly more important, because in this attitude there is respect for religion and glorification of God, the owner of the universe. Harming souls in the context of elevating religion is something that is permissible.

4) Using musyammas water is mafsadah which is makruh. If you cannot find other water, you must use it, because trying to fulfill the obligatory maslahah is more important than preventing makruh mafsadah, and because bearing the mafsadah makruh is more important than accepting the mafsadah of neglecting your obligations.

5) Slaughtering game animals on haram land or slaughtering game animals while in ihram is a forbidden mafsadah. However, this is permitted in emergency situations, because it prioritizes human honor above animal honor. This is included in the chapter on prioritizing servants' rights above God's rights.

6) Endangering lives and members or causing both of them to have the potential to neglect safety is prohibited, except in the context of jihad, fighting the experts of the bughah, amar ma'ruf nahi munkar, and defending oneself from attacks.

7) Killing innocent Muslims is something that is forbidden, unless they are used as shields by infidels. Al-Ghazali gave the reason that fighting infidels and elevating Islam was the true intention. Something that is juz'i will become lower when faced with something that is kulliy.

8) Validating the territory of the Fasiq is mafsadah because it will have the consequence of dominant betrayal. However, religion determines the validity of a decision taken by a leader or judge who is fasiq, because canceling their decision will have the consequence of neglecting the public benefit.

9) Lying is a forbidden act. However, sometimes lying becomes a way to achieve benefit or reject mafsadah, so that the law sometimes becomes permissible, sometimes even obligatory.

10) Jihad is something in which there is a risk to the safety of life and property, but it is obligatory because the maslahah of jihad is greater than the mafsadah of the risk. The

dangers of abandoning jihad are greater than the dangers of carrying it out. This is because if jihad is abandoned, then the enemy will justify their negative actions against the soul, genitals, honor, property and children, as well as the benefit of bringing fear to the enemy, elevating religion, securing Muslims, and things that will be lost will be lost. obtained through jihad such as the treasures of al-fai', al-ghanimah, al-'usyur, jizyah and kharraj.

**Methods for resolving maslahah and mafsadah contradictions**

There are several resolution methods and stages that need to be carried out in addressing the contradiction between maslahah and mafsadah. This settlement method was mentioned by Imam Izzuddin in his discussion of the meeting between maslahah and mafsadah as per the text below;

إذا اجتمعت مصالح ومفاسد فإن أمكن تحصيل المصالح ودرء المفاسد فعلنا ذلك،...،وإن تعذر الدرء والتحصيل فإن كانت المفسدة أعظم من المصلحة درأنا المفسدة ولا نبالي بفوات المصلحة،...، وإن كانت المصلحة أعظم من المفسدة حصلنا المصلحة مع التزام المفسدة، وإن استوت المصالح والمفاسد فقد يتخير بينهما وقد يتوقف فيهما

Meaning: If maslahah and mafsadah come together, if it is possible to obtain maslahah and prevent mafsadah from happening then we will do it. If it is not possible to reject mafsadah while simultaneously achieving maslahah, if mafsadah is greater than maslahah, then we reject mafsadah, not caring about missing maslahah. Meanwhile, if the maslahah is greater than the mafsadah, we strive to realize the maslahah, even though we have to bear the mafsadah. If there is an equal balance between problems and mafsadah, sometimes one of the two is chosen and sometimes tawaquf (restraint) is required.

From Imam Izzuddin's explanation above, it can be understood that there are 4 methods adopted in responding to the meeting of maslahah and mafsadah. Following are the details of the four methods;

a. *Jam'u*

Imam Izzuddin places the al-jam'u method as the first option in dealing with the conflict between maslahah and mafsadah. According to Izzuddin, this is based on the word of Allah in the Koran:

فَاتَّقُوا اللَّهَ مَا اسْتَطَعْتُمْ

It means; Have faith in Allah as much as you can. (QS. Al-Taghabun [64] 16)

In discussing the meeting of maslahah and mafsadah, Izzuddin did not provide examples of cases where there was a compromise between achieving maslahah and rejecting mafsadah. In essence, normatively, if it is possible to compromise between achieving maslahah and eliminating mafsadah, then the contradiction disappears and there is no need to pursue the tarjih option. For example, in the case of a conflict between the maslahah of performing prayer and the mafsadah of drowning if a Muslim soul chooses to pray, then this may be compromised by saving someone who is in danger of drowning first, then performing the prayer before going out of time.

b. *Tarjih*

In addressing the contradiction between maslahah and mafsadah, the reference used by Izzuddin in tarjih is in terms of which side is more dominant between maslahah and mafsadah. In this case, Izzuddin said;

وإن تعذر الدرء والتحصيل فإن كانت المفسدة أعظم من المصلحة درأنا المفسدة ولا نبالي بفوات المصلحة،...، وإن كانت المصلحة أعظم من المفسدة حصلنا المصلحة مع التزام المفسدة

Meaning: If it is not possible to reject mafsadah while simultaneously achieving maslahah, if mafsadah is greater than maslahah, then we reject mafsadah, regardless of whether maslahah is missed. Meanwhile, if the maslahah is greater than the mafsadah, we strive to realize the maslahah, even though we have to bear the mafsadah.

Based on Izzuddin's explanation, it can be understood that the concept of tarjih may only be implemented when the difference in dominance between maslahah and mafsadah is known. If mafsadah is more dominant than mashlahah, then what is considered is avoiding mafsadah even though maslahah is neglected at the same time. This refers to the proposition of the Koran:

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِن نَّفْعِهِمَا

Meaning: They asked you (Prophet Muhammad) about wine and gambling. Say, "In both there is great sin and some benefit for humans. (However,) the sins of both are greater than their benefits." (QS. Al-Baqarah [2]; 219).

Weak mafsadah is not considered when it conflicts with maslahah marjuhah because it is not wise to abandon good things just because something has a little badness (Ibn Nizhamuddin, 1983).

**The concept of tarjih maslahah on mafsadah and its application to contemporary problems.**

**1) The concept of Tarjih Maslahah on Mafsadah**

Based on the description in the previous chapter, it can be concluded that there are 4 methods used by Izzuddin in dealing with the contradiction between maslahah and mafsadah, namely; jam'u, tarjih, takhyir and tawaqquf. Tarjih is carried out when it is not possible to compromise between jalb al-mashalih (achieving benefit) and dar'u al-mafasid (eliminating mafsadah), where between the two there is one who dominates. In the book Qawaid al-Ahkam fi Mashalih al-Anam, Izzuddin describes at length examples of cases of tarjih maslahah on mafsadah up to 63 examples, where in some of the 63 examples there are more specific details of case examples in more than one form. To be clearer, the following table 1 will explain the picture of the contradiction between maslahah and mafsadah:

Table 1 Explanation of the contradiction between maslahah and mafsadah

| No | Sample case | Maslahah | Mafsadah | Reason Tarjih Maslahah |
|----|-------------|----------|----------|------------------------|
| 1 | Using Mushammasi water to purify when there is no other alternative | To fulfill obligations when there is no other alternative water for purification | The law on its use is makruh because it poses a risk to health | Striving for the realization of mafsadah which is obligatory in nature is more prioritized than considering mafsadah which is makruh in nature. This is also because bearing the risk of doing makruh is lighter than the risk of mafsadah |

| | | | | leaving obligatory action |
|---|---|---|---|---|
| 2 | Praying in a state of hadas when it is impossible to perform ablution and tayamum | Fulfilling prayer obligations that must not be neglected | The inclusion of hadas in prayer is mafasadah | The maslahah obtained from the substance (maqashid) of prayer is more important than the mafsadah obtained from the presence of hadas at the same time as the prayer. |
| 3 | Dig the grave of the corpse to face it towards the Qibla | Facing the corpse towards the Qibla | Basically, digging a grave is a forbidden act because it destroys the honor of the corpse. | Maslahah bathing him and facing him towards the Qibla is more worthy of priority than honoring him by not digging. However, if the corpse has rotted or pus has flowed from the body, the corpse must not be exhumed again because it would be too serious to humiliate it by exhuming it. |
| 4 | Drink wine with the threat of being killed if you don't | Saving lives is an obligation | Basically it is a mafsadah which is haram because it destroys the mind | The maslahah of keeping life and limb safe is more worthy of priority than the problem of temporary loss of mind. Dead souls or lost body parts cannot be returned and remain in rest (forever). Meanwhile, loss of mind due to drunkenness will end with soberness in the near future. |
| 5 | Giving recognition to marriages performed in infidel conditions when embracing Islam | Passionate about Islam | Recognition of fake marriage. | This is because if we cancel their marriage, they will be reluctant to convert to Islam, because they are worried that their marriage will be |

annulled. They then moved away from Islam. Encouraging them to embrace Islam by confirming their marriage is a problem that is worthy of being put forward even though it has the consequence of creating something that is basically a mafsadah. This is also because there is no mafsadah that is more important than the mafsadah of making infidels stay away and run away from Islam.

**2) Application of Tarjih Maslahah on Mafsadah in Contemporary Maslahah.**

In the author's view, the concept of tarjih maslahah is very necessary, especially as a basis for seeking legal answers to several contemporary problems, including the following;

a) Artificial Intelligence (AI)

Maslahah Side: AI has great potential to increase efficiency and productivity in various economic sectors. The use of AI in data analysis, decision making, and automation of repetitive tasks can reduce operational costs and increase innovation. Mafsadah Side: The negative impacts of using AI include the potential for structural unemployment due to job automation, as well as data privacy and security issues arising from the collection and processing of large data. Apart from the problem being more dominant, the problem of AI can be overcome and its impact minimized. To overcome the problem of structural unemployment and data privacy and security issues, strict regulations on the use of AI are needed. This could include creating policies to provide training and new skills for workers impacted by automation, as well as regulations governing the collection, use and protection of personal data.

b) Internet of Things (IoT)

Problem side: IoT enables better integration between physical devices and the digital world, unlocking the potential to improve efficiency, productivity and quality of life. The use of IoT in smart cities, smart homes and industry can provide significant benefits. Mafsadah side: Vulnerability to cyber attacks and privacy violations are significant negative impacts of IoT deployment. Continuously connected devices increase the attack surface for attackers, which can compromise critical infrastructure and sensitive data. In this case, consideration of the problem is more worthy of priority. To overcome mafsadah, strong cyber security is needed in IoT implementation, by strengthening data encryption and ensuring compliance with security standards. Apart

from that, educating the public about cyber security risks and best practices in using IoT is also important to minimize risks.

c) Digital Health Technology

Problem side: Digital health technology can improve access and quality of health services, enabling real-time monitoring of health conditions, faster diagnosis, and more targeted treatment. The mafsadah side: Violations of medical data privacy, concerns regarding the accuracy of AI-based diagnoses, and gaps in access for populations who cannot afford or do not have access to technology are challenges that must be overcome. To overcome mafsadah, strict regulations are needed in the use and management of medical data to protect patient privacy. In addition, investments need to be made in infrastructure and training to ensure equal access for all levels of society.

d) Autonomous Vehicles

The maslahah side: Autonomous vehicles have the potential to reduce the number of traffic accidents and increase transportation efficiency. They can also provide mobility for populations who cannot drive, such as the elderly or disabled. Mafsadah side: Legal, ethical, and security issues related to autonomous vehicles include liability in case of accidents, system security against cyberattacks, and challenges in integrating autonomous vehicles with existing infrastructure. In overcoming mafsadah, it is considered important to develop clear regulations and safety standards to address legal, ethical and security issues related to autonomous vehicles. The government also needs to work together with industry and related institutions to identify and address potential risks.

e) Renewable Energy

Problem side: Renewable energy can help reduce dependence on fossil fuels, reduce greenhouse gas emissions, and provide a more sustainable energy source for the future. Mafsadah side: Infrastructure challenges, high implementation costs, and unforeseen environmental impacts, such as the impact of battery waste, need to be taken into account in widely adopting renewable energy technologies. To overcome mafsadah, investment in research and development of technology is needed that can overcome infrastructure challenges and high implementation costs. Apart from that, it is necessary to carry out effective management of battery waste to minimize negative environmental impacts.

f) Animal Protection Regulations

In terms of preventing the extinction of wild animals, we must not ignore aspects of human safety. In the concept initiated by Izzuddin, human honor is much higher than the honor of other animals. Therefore, if wild animals have disturbed the environment, destroyed people's land, and threatened the safety of human lives, then killing wild animals is something that can ideally be justified, in order to safeguard the welfare of human lives or property which is more important to consider than the meaning of animal extinction. So, if there are laws related to animal protection that do not consider aspects of human safety as something that should be prioritized, laws like this need to be reviewed and revised.

g) Lockdown policy during a pandemic

In pandemic conditions, the government can implement a lockdown policy or limit

crowds in order to safeguard the safety of lives from exposure to a deadly epidemic. Policies taken to bring about the sacred and urgent benefit of life safety are more considered than the consequences of hampered economic growth or constraints on the teaching and learning process in schools. Moreover, in this case it is possible to take the jam'u alternative, where some of the mafsadah arising from the implementation of the lockdown can be overcome by carrying out the teaching and learning process online and encouraging the transaction process to be carried out online.

h) The obligation to pray during operations

In an emergency, a doctor or medical personnel in charge of carrying out surgery must carry out the operation before sunset, for example. From the estimated time, the operation would only be completed at sunset. So in this condition, if it is not possible to pray during the time and it is feared that it will risk losing the life of the patient undergoing surgery, in this condition it is mandatory to prioritize the operation and pray after the operation is finished even though it is outside the time. This is because the mafsadah of persisting in carrying out surgery in order to try to save a life for which there is no substitute is greater and deserves more priority than the mafsadah of postponing prayers beyond the time that can be made up for. However, if it is possible to compromise, such as performing prayers in the operating room or taking turns on duty, then it is mandatory to compromise, because the tarjih between maslahah and mafsadah is only carried out when it is impossible to compromise one with the other.

i) Syraiah Regional Regulations and Investment

Challenges the implementation of Sharia Regional Regulations should not be canceled because of concerns about investors withdrawing, because the problem of upholding Islamic Sharia and its height is much higher which is absolutely not worth ignoring because of concerns about reduced investment. In the concept of tarjih maslahah initiated by Izzuddin, this is included in the form of tarjih something related to aspects of hifzu al-Din's considerations. Apart from that, the mafsadah of concerns about investor withdrawal due to the implementation of Sharia regulations is included in the mafsadah mauhumah (weak assumption) which is not worthy of priority to the point of abandoning muhaqqaqah (certain) maslahah because of such assumptions. Why is it said to be a weak assumption, because we see that several countries that implement Islamic law, such as Saudi Arabia, for example, have very high levels of investment. From this it can be understood that the cause of investors' withdrawal may not be a sharia issue, but there are other issues such as legal uncertainty, for example, which makes investors reluctant and reluctant to invest their capital in the area. Thus, referring to the concept of tarjih maslahah initiated by Izzuddin, the implementation of Sharia regulations which constitute muhaqqaqah must be prioritized rather than considering the mafsadah of concerns about low investment which is just an assumption (mawhumah).

## D. CONCLUSION

The concept of maslahah essentially also includes the rejection of mafsadah, where something that supports the existence of maqashid sharia contained in kulliyah khamsah is called mashlahah, while something that is contrary to maqashid sharia is called mafsadah. Therefore, the reconstruction of kulliyah khamsah if it is intended as an independent maqashid of sharia cannot be accepted, because the additions that are discussed as maqash id sharia are sometimes essentially a combination of kulliyatul khamsah or intermediary (wasilah) and perfection (mukammil). However, separating certain themes to be studied specifically without considering them to be outside kulliyatul khamsah can be justified. Maqashid al-syar'iyyah cannot be separated from ushul fiqh, and the separation of its discussion in a special book aims to provide a proportional and comprehensive discussion space for proper understanding. The position of maslahah and mafsadah in Islamic legal istinbath is that it is an inseparable part of the istinbath arguments, whether the arguments are agreed upon or not. Regardless of these differences, the use of the istishlahi method must be within the framework of dhawabith sharia. Without it, the use of the istishlahi method will become wild and have the potential to give rise to subjective laws. Responding to the contradiction between maslahah and mafsadah, Izzudin offers 4 resolution methods, namely jam'u, tarjih, takhyir, or tawaqquf. Izzuddin does not agree with the rule which absolutely favors rejecting mafsadah when encountering equal maslahah, however, it is seen which side is more dominant. However, empirically, the contradiction between the two actually only exists artificially, whereas essentially, both are relative and relative matters that depend on the point of view.

**REFERENCES.**

Al-Ghazali, Abu Hamid Muhammad bin Muhammad. Al-Mustashfa fi 'Ilm al-Usul. Cet. I. Beirut: Dar al-Kutub al-Ilmiyah, 1993.

Al-Ghazali, Abu Hamid. Ihya Ulum al-Din, Jld. IV. Kairo: Maktabah Al-Tajariyyah al-Kubra, n.d.

Alim, Muhammad. Asas-asas Negara Hukum Modern dalam Islam. Yogyakarta: LKiS, 2010.

Al-Qarafi. Syarah Tanqih Fushul fi Ikhtishar al-Mahshul fi al-Ushul. Cet. I. Beirut: Dar al-Fikri, 1973.

Djazuli, A. Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah yang Praktis. Jakarta: Kencana, 2006.

Hakim, L & Arief, Armai. (2009). Reformulasi Pendidikan Islam. Jakarta: CRSD Press

Hamka. (1972). Lembaga Hidup. Jakarta: Djajamurni

Hazairin. Hukum Islam dan Masyarakat. Jakarta: Bulan Bintang, 1963.

Ibn al-Qayyim al-Jawziyyah. Miftah Dar al-Sa'adah, Jld. II. n.d.

Ibn Nizhamuddin al-Anshari. Fawatih al-Rahmawat dalam Ibnu Abd al-Syakur, Syarh Muslim al-Tsubut, Jld II, Cet I. Mesir: Al-Amiriyyah, 1324H.

Ibn Qudamah, Abdullah. Raudhah al-Nazhir wa Jannah al-Manadhir dalam Syarh Nazhrah al-Khathir, Jld I. Beirut: Dar al-Kutub al-Ilmiyyah, n.d.

Izzuddin bin Abdussalam. Bayan ahwal al-Nas Yaum al-Qiyamah. Tahqiq; Iyad Khalid, Cet I. Beirut: Dar al-Fikri, 1995.

Izzuddin Ibn Abdu al-Salam. Qawa`id al-Ahkam li Mashalih al-Anam. Beirut: Dar al-Kutub al-Ilmiyah, 2010.

Mahfudh, Sahal. Nuansa Fiqh Sosial. Cet. VII. Yogyakarta: LKiS, 2011.

Moelong, Lexy J. Metode Penelitian Kualitatif. Bandung: Remaja Rosdakarya, 2007.

Muhaimin. Kawasan dan Wawasan Studi Islam. Jakarta: Kencana, 2007.

Muhammad bin Abdullah Ibn al-'Arabi. Ahkam Al-Quran, Jld III, Tahqiq; Ali Muhammad al-Bajawi. Beirut: Dar al-Ma'rifah, n.d.

Mun'im Saleh, Abdul. Madzhab Syafi'i Kajian Konsep. Yogyakarta: Ittaqa Press, 2001.

Sugiyono. Metode Penelitian Kuantitatif dan Kualitatif Dan R & D. Bandung: Alfabeta, 2009.

Sulihkhodin, Moh. Alfin. "Maqasid Al-Syar'iyyah Perspektif 'Izzu al-Din bin 'Abd al-Salam." El-Faqih (Jurnal Pemikiran Dan Hukum Islam), Vol. 7, Nomor. 1 Tahun 2021. https://ejournal.iaifa.ac.id/index.php/faqih/article/view/197.

Syihab, Umar. Hukum Islam dan Transformasi Pemikiran. Semarang: Dina utama Semarang, 1995.

Thahir bin Asyur, Muhammad. Maqashid al-Syari'ah al-Islamiyyah. Kairo: Dar al-Salam, 2020.

Yasin al-Fadani, Muhammad. Al-Fawaid al-Janiyyah, Jld. I. Beirut: Dar al-Basyair al-Islamiyah, 1996.