



## THEORY OF DISCOVERY OF ISLAMIC LEGAL PHILOSOPHY (Istislahi Theory)

### TEORI PENEMUAN FILSAFAT HUKUM ISLAM (Teori Istislahi)

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#### Abstract

In the history of Islamic law, one of the main principles often used to determine the law is the benefit. This term refers to the benefits or general good desired by Islamic law (sharia) for humans. The Istislahi Theory or better known as Maslahah Mursalah, is one of the methods used in determining Islamic law which always prioritizes maslahah or goodness. Although among scholars they try to adjust sharia law to the conditions of the times and certain places for the purpose of broad benefit.

**Keywords:** Istislahi, Philosophy, Islamic Law

#### Abstrak

Dalam sejarah hukum Islam, salah satu asas utama yang sering digunakan dalam menentukan hukum adalah kemaslahatan. Istilah ini mengacu pada kemaslahatan atau kebaikan umum yang dikehendaki hukum Islam (syariah) bagi manusia. Teori Istislahi atau yang lebih dikenal dengan Maslahah Mursalah merupakan salah satu metode yang digunakan dalam menentukan hukum Islam yang selalu mengedepankan masalah atau kebaikan. Meskipun di kalangan ulama berusaha menyesuaikan hukum syariah dengan kondisi zaman dan tempat tertentu untuk kepentingan kemaslahatan luas.

**Kata Kunci:** Istislahi, Filsafat, Hukum Islam



## 1. INTRODUCTION

The philosophy of Islamic law is knowledge about the nature, secrets, and objectives of Islam, both concerning its material and the process of its establishment, or the philosophy used to radiate, strengthen, and maintain Islamic law, so that it is in accordance with the intent and purpose of Allah SWT in establishing it on earth, namely for the welfare of all mankind. With this philosophy, Islamic law will truly be "suitable for all time in the universe. Furthermore, understanding the "texts of the Qur'an and Hadith", legal experts are also able to explore and find laws that are rooted in society. This effort in Islamic legal literature is commonly called Ijtihad. The application of Islamic law must be truly based on textual and contextual so that it will not cause division and has a meaning of benefit. The application of law that provides benefit for humans will provide a positive view so that the Islamic law that is conveyed will be easier to accept and apply in life. That is why studying it is not only from one side but from various sides that do not conflict with the Qur'an and Hadith. The laws of Allah SWT are never free from benefits. We must be able to see from the commands to the prohibitions, all contain benefits for the people.

Islamic law is a law that has been established by Allah SWT. Laws that certainly have the meaning of benefits for the people, both in the form of commands or prohibitions. There is not a single command that is established without benefits. Laws that clearly contain benefits are beyond doubt. Because everything that contains commands from Allah SWT can provide a very deep meaning for both those who carry it out and those who do not. Human perfection through reason created by the Creator is a form of difference between humans and animals, so that humans can distinguish between good and bad. The meaning of this benefit is truly broad, but in essence a benefit that is felt by humans can be felt directly or afterwards. Let's review all the commands of Allah SWT, we take one example, namely Prayer. Prayer may seem very simple because doing it does not take a very long time, immediately prayer which has legal rules starting from ablution to greetings is never free from benefits. Everyone who performs prayer until finished with full sincerity will feel cool heart, there is peace of mind felt by the human being itself.

There are many benefits that can and are very clear in the Qur'an that prayer can prevent us from vile and unjust deeds. Likewise with all His prohibitions, there are benefits for all humans to be kept away from actions that lead to destruction and self-destruction. For example, it is also found in alcoholic beverages. The value of the benefits is that by not drinking or staying away from alcoholic beverages will prevent us from drunkenness which can damage the soul and mind because of losing common sense due to the alcoholic beverages that enter our bodies, that is why drunkards are prohibited from performing prayers because its benefits are very clear.

In the history of Islamic law, one of the main principles that is often used to determine the law is benefits. This term refers to the benefits or general good desired by Islamic law (sharia) for humans. The Istislahi Theory or better known as Maslahah Mursalah, is one of the methods used in determining Islamic law which always prioritizes benefits or goodness.



Although among the scholars, they try to adjust the Sharia law to the conditions of a particular time and place for the purpose of broad welfare. Although among the scholars themselves there are various differences.

A journal quoted regarding Maslahah according to Amir Syarifuddin all scholars agree on the existence of welfare in the contents of the laws established by Allah SWT. However, there is a polemic among scholars regarding the intent and purpose of Allah in making legal provisions. Some argue that the purpose of Allah in making The law is for the sake of bringing maslahah. However, on the other hand, scholars say that some consider that Allah establishes the law not only to bring maslahah but purely because of His will and power.

Regardless of the differences, it is clear that in every act that contains good values for humans, the act is usually bound by sharia law in the form of a command. Conversely, in every act that contains bad values for humans, the act is also bound by sharia law in the form of a prohibition. The sharia law itself will always be in harmony with human reason or vice versa. However, when humans are faced with a problem for which there is no definite sharia law, what law will be determined? This is what has been a prolonged debate among scholars. From here, it seems that maslahah must also be taken into account by mujtahids in exploring and determining new laws for laws that do not have certainty in sharia from the Qur'an, sunnah, or ijma sharih. This maslahah is then known as istishlah or mashlahah mursalah, namely maslahah that is in harmony and in line with the goals of sharia but is not supported by a special source of evidence that legitimizes or rejects the maslahah. However, to what extent is istishlah or mashlahah mursalah recognized as an argument? This is still a matter of controversy among Islamic jurisprudence scholars. There are groups that reject istishlah in determining the law and there are also groups that consider istishlah acceptable and can be used as one of the methods in determining the law. Starting from the explanation above, the discussion in this paper will focus on the description of the definition of istishlah, the argument and the conditions for applying istishlah with the approach used being the descriptive-analytical method.

## 2. RESEARCH METHOD

The research method used in this paper is a qualitative approach with literature studies. Data collection through analysis of library documents, including books, articles, journals and those related to the title of the paper to be discussed.

## 3. RESULTS AND DISCUSSION

### Definition of Istishlahi

The application of the istishlah method according to Abd Al-Wahhab Khallaf is a theory that is often used in determining sharia when Nash or evidence is not found. In this case, the theory of istishlah provides flexibility for the sharia to be able to adapt to human developments and maslahah and meet their needs. The meaning of Istishlah refers to an argument that uses maslahah ar mursalah, namely a benefit that has no specific evidence, either those who admit it or those who reject it. The evidence used is a general evidence that the sharia guarantees human welfare so that every sharia that is made is always intended for that, so that it is added



to eliminate danger and physical or non-physical damage. The majority of scholars view that al mashlahah can be used to determine laws, fatwas, and legal decisions. The Istislahi theory is one approach to understanding and applying the principles of Islamic law, which focuses on the welfare (maslahah) of the people. The term "istislah" comes from Arabic which means seeking goodness or maslahah. In the context of Islamic law, this theory seeks to balance the texts of the sharia (the Qur'an and Hadith) and the developing social reality. The importance of this theory lies in its ability to provide solutions to contemporary problems that may not be explicitly stated in the nash (holy text). By emphasizing the principle of benefit, the istislahi theory allows Islamic scholars and legal practitioners to conduct ijtihad (legal reasoning) that is in accordance with the needs of society.

In terms of language, istislah which is also commonly called mashlahah mursalah comes from the words mashlahah and mursalah. Mashlahah comes from the word shalahah with the addition of alif at the beginning meaning good, the opposite of mafsadah which means damaged. Or in another sense, namely al-shalah means benefit or free from damage. Mashlahah in the general sense is everything that brings benefits to humans. So everything that can bring benefits is called mashlahah. In other words, in mashlahah there are two main things, namely bringing goodness and rejecting mafsadah. Mursalah means Mursalah means free, not bound. If associated with the word mashlahah, it means free from the information that indicates whether or not it is permissible to do it.

Marsala murlah is also one of the postulates of Islamic law which is still disputed by fiqh scholars. This musr Salah argument is a proposition for establishing a new problem that has not been explicitly mentioned in the main sources, the Koran and Sunnah, whether accepted or rejected. The first originator of maslahah murrasa as a legal proposition is attributed to Imam Mâlik, a figure and founder of the Mâliki school. The problem of murrasa as an option for legal arguments begins with the death of Muhammad SAW as a prophet and apostle.

Along with the death of the prophet, the revelation of the Quran has stopped coming down, and the words of the Prophet have also stopped. Meanwhile, the problem continues to develop along with the development of society itself. From here the idea of maslahah mursalah emerged as an option for Islamic law. In its application, this maslahah mursalah relies on benefit. Looking at the main basis of this maslahah mursalah argument, knowing about the theory of benefit becomes a necessity in the use of Maslahah mursalah as an argument for Islamic law. Many scholars of usul fiqh have tried to develop the concept of maslahah mursalah. Among these scholars of usul fiqh is ash-Syatibi. there are two important things in the development and development of Islamic law. Maslahah is simply interpreted as something good and can be accepted by a healthy mind. Accepted by reason, it means that reason can clearly know the benefit. In its application, this maslahah mursalah relies on benefit. By examining the main basis of this argument of maslahah mursalah, knowing about the theory of maslahah becomes a necessity in using maslahah mursalah as an argument of Islamic law.

### Theoretical Basis of Istislahi



The main basis of the Istislahi theory is the concept of maqasid sharia, namely the objectives of sharia that revolve around five main aspects: (1) preserving religion (hifz ad-din), (2) preserving the soul (hifz an-nafs), (3) preserving reason (hifz al-aql), (4) preserving descendants (hifz an-nasl), and (5) preserving property (hifz al-mal). These five objectives are the basis of sharia which aims to maintain the continuity of human life and social order in a balanced manner. Scholars from various schools of thought have contributed to the development of this Istislahi theory. Among the most famous are Imam Al-Ghazali, Imam Asy-Syatibi, and Imam Malik. Although they agree that maslahah is important, they have different approaches in implementing it.

a) Imam Al-Ghazali

Al-Ghazali developed the concept of maslahah dharuriyyah, namely benefits that are primary or very necessary for humans to maintain their survival. According to Al-Ghazali, something can be categorized as beneficial if it meets one of the five maqasid of sharia. In Al-Ghazali's view, not all benefits can be used as a legal basis, but only benefits that are "dharuri" (primary).

b) Imam Malik

Imam Malik, the founder of the Maliki school of thought, is one of the scholars who most emphasizes the importance of welfare in determining laws. He used maslahah as a legal basis, especially when there was no clear text. Imam Malik believed that sharia law should be flexible and adaptable to the social and cultural conditions of a society, as long as its main goal is to achieve welfare.

c) Imam Ash-Syatibi

Unlike Al-Ghazali, Ash-Syatibi classified welfare into three categories: dharuriyyat (primary), hajiyyat (secondary), and tahsiniyyat (tertiary). This division is based on the level of urgency and human need for the welfare. According to Ash-Syatibi, Islamic sharia not only aims to maintain basic human needs, but also provides space for a comfortable life and the fulfillment of secondary needs. Ash-Syatibi also emphasized that welfare should not conflict with sharia. Thus, the welfare that is the basis of the law must be in line with the general principles of Islam.

According to Al-Syatibi, human welfare can be realized if the five basic elements of human life can be realized and maintained, namely religion, soul, reason, descendants, and property. In this framework, he divided maqhasid into three levels, namely dharuriyat, hajiyyat, and tahsiniyat. From the results of his deeper study, Al-Syatibi concluded the correlation between dharuriyat, hajiyyat and tahsiniyat as follows. Maqhasid dharuriyat is the basis of maqhasid hajiyyat and maqhasid tahsiniyat. Damage to maqhasid dharuriyat will also cause damage to maqhasid hajiyyat and maqhasid tahsiniyat. Conversely, damage to maqhasid hajiyyat and maqhasid tahsiniyat cannot damage maqhasid dharuriyat. Damage to maqhasid hajiyyat and maqhasid tahsiniyat which are absolute in nature can sometimes damage maqhasid dharuriyat. Maintenance of maqhasid hajiyyat and maqhasid tahsiniyat is treated for the sake of maintaining maqhasid dharuriyat properly. Thus, if analyzed further, in an effort to achieve the maintenance





of the five main elements perfectly, the three levels of maqhasid cannot be separated. It seems that for Al-Syatibi, the level of hajiyyat is the perfection of the level of daruriyyat, the level of tahsiniyyat is the perfection of the level of hajiyyat, while dharuriyyat is the main point of hajiyyat and tahsiniyyat.

The classification carried out by Al-Syatibi shows how important it is to maintain the five main elements in human life. In addition, the classification also refers to the development and dynamics of understanding the law created by Allah SWT. In order to realize human welfare. Regarding this, Mustafa Anas Zarqa explained that the intangibility of the dharuriyyat aspect can damage human life in this world and the hereafter as a whole. Neglecting the hajiyyat aspect does not damage the existence of the five main elements, but only brings difficulties for humans as mukhallaf in realizing it. Meanwhile, neglecting the tahsiniyyat aspect results in efforts to maintain the five main elements being imperfect. Furthermore, he stated that all activities or things that are tahsiniyyat must be set aside if they conflict with higher maqhasid (dharuriyyat and hajiyyat). These three interests need to be distinguished, so that a Muslim can determine the priority in taking a previous interest. For example, dharuriyyah interests must be prioritized over hajiyyah interests, and hajiyyah interests must be prioritized over tahsiniyyah interests.

In its development, the Prophet Muhammad allowed ijtiḥad in an effort to determine a law, the permissibility of which was determined when the Prophet sent Mu'az bin Jabal as a judge in Yemen. In the context of ijtiḥad using reason in Islamic law issues which are essentially philosophical thoughts, it was approved by the Messenger of Allah. Even more emphatically, Allah stated that using reason and philosophical thoughts is very necessary to understand various problems.

### Challenges and Criticisms of Istislahi Theory

Although Istislahi theory offers flexibility in determining law, it also faces a number of criticisms and challenges. One of the main criticisms is the potential subjectivity in determining maslahah. Since the definition of maslahah can vary depending on the situation and perspective, there is a risk of misusing this concept for personal or political interests. In addition, some traditional scholars reject the widespread use of Istislahi because they fear that this will reduce the authority of the text and replace it with rational considerations that are subject to change. They argue that Islamic law must remain steadfast to the sacred text and not rely too much on contextual interpretation. However, supporters of Istislahi argue that without flexibility, Islamic law will not be able to adapt to changing times. They emphasize that maqasid sharia is the main objective of sharia, and the law must always be directed towards achieving it, even if it means going beyond the literal text.

## 4. CONCLUSION

Istislahi theory or Maslahah Mursalah is one of the important methods in Islamic legal philosophy. With its focus on the public interest and maqasid sharia, this theory offers flexibility in establishing laws that are relevant to modern challenges. Despite facing some



criticism regarding potential abuse and subjectivity, Istislahi remains a vital tool in the efforts of scholars to maintain the relevance of Islamic law in an ever-evolving social context. This theory allows Islamic law to remain adaptive without sacrificing the basic principles of shariah, thus providing solutions to contemporary problems that are not explicitly mentioned in the texts. Therefore, a deep understanding of the Istislahi theory is essential for scholars and practitioners of Islamic law to ensure that shariah law continues to provide benefits and goodness for humanity in all ages.

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