

The Relevance of *Mashlahat* Theory for the Development of Contemporary Islamic Law: Study of Prevention COVID-19 in Indonesia

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Abstract

Mashlahat theory has historically been widely used in developing Islamic law. The public interest is a fundamental issue that must be considered when exploring Islamic law. The main objective of the development of Islamic law is to realize the *mashlahat*. This study examines the relevance of the *mashlahat* theory in the development of Islamic law. This research is a type of library research and uses a philosophical approach. Data were analyzed through content analysis. The results of this study indicate that the purpose of Islamic law is to realize and maintain the *mashlahat*. A muslim will get *mashlahat* if he can keep the five main aspects in the *dharury* group: religion, soul, intellect, lineage and honor, and property. On the other hand, we will get mafsadat if we cannot maintain it. The theory of *mashlahat* is very much needed to form Islamic law and respond to the times. Consideration of *mashlahat* is limited to issues other than ritual worship. *Mashlahat* theory has been applied since the beginning of the growth and development of Islam during the *Khulafa al-Rasyidun* period. Until now, many products of Islamic law have been produced by adhering to the principle of *mashlahat*. With the theory of *mashlahat*, Islamic law will not stagnate. All new problems can be solved from the perspective of Islamic law. With the consideration that *mashlahat*, too, can be realized, including in the context of the MUI fatwa in preventing the spread of Covid-19.

Keywords: *Mashlahat* theory, Relevance, Islamic law, Development, Covid-19

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Introduction

Mashlahat theory is widely used in *ijtihad* activities to develop Islamic law and solve new problems, especially those concerning the public interest. The public interest is a fundamental issue that must be considered in exploring Islamic law because the main purpose of Islamic law is to realize the benefit for the people, namely to bring *mashlahat* to humans and reject harm or eliminate objections (Khalaf, 1994).

Ushul fiqh scholars have introduced several methods of legal *istinbat* after the Qur'an and Sunnah as reference sources. This method provides a more loose portion of reason. Methods such as *istihsan*, *mashlahat al-mursalah*, *qiyas*, *sad al-dzara'i*, or other methods are already quite popular among *ushuluyin*, all of which are built on considerations of *mashlahat*.

Scholars of the madzhab agree that the truth of *ijtihad* is relative (*dzanni*) as long as it does not deviate from the will of the existing sharia, the text of which is clear. The emergence of differences of opinion among scholars in the process of *ijtihad* and the determination of Islamic law (*istinbath al-ahkam*) is caused by three things. *First*, the formulation of the rules (*al-ta'asis*), namely, some adhere to the understanding of the sharia evidence (*ushlub*). *Second*, comply with the issue of branches (*furu'*). *Third* is methodology (*manhaj*), namely the formulation of legal methods carried out inductively and deductively. Various methodological terms were born which were formulated by *ushl al-fiqh* scholars such as *maqashid al-syariah*, *maqashid al-mashalih al-ammah*, and *mashlahah mursalah* which are all in the context of solving the problem of human needs both as individuals and as a society (Ahmad & Muniroh).

Mashlahat comes from the word *al-Islam*, which means peace and serenity. The word peace itself is physically oriented, while serenity is psychologically oriented. Etymologically, *mashlahat* is a derivative of the word *shaluha-yashluhu-shalih*, which means (good). Generally, *mashlahat* means welfare (Ghani, Laludin, Nor, 2011). The opposite of *mashlahat* is *mafsadat of fasada yafsudu*, meaning something destructive and not good. *Mashlahat* is sometimes called "*al-tashlahah*," which means looking for the good (Khalaf, 1994). *Mashlahat* also means benefits or a job that contains benefits (Hamzah K., 2015).

In terminology, several definitions of *mashlahat* were put forward by *ushul al-fiqh* scholars, but they all contain the same essence. According to al-Ghazali, in principle, *mashlahat* is taking advantage and rejecting harm to maintain the goals of Islamic law (*syari'ah*) (al-Ghazali, 1975). According to al-Syatibi, *mashlahat* means seeing a case by considering its advantages and disadvantages (al-Syatibi, 1975: 25). Al-Tufi explained that *mashlahat* can be viewed with the traditional approach as an addition to the Islamic law approach. In the traditional approach, *mashlahat* means the cause that brings goodness and benefits, such as trade that can bring profit (al-Tufi, 1993). Thus it can be said that *mashlahat* is a way of establishing the law based on the principle of "taking advantage" and avoiding damage (*mafsadat*) to maintain legal objectives that are independent of *syar'i* arguments, both the arguments that strengthen (*i'tibar*) and those that negate them (*ilgha'*) (Al-Jundi, 1966).

In other words, every legal provision outlined by *shar'i* aims to create benefits for humans. There is no more doubt that the benefit cannot be scrutinised and is not responded to by appropriate provisions; it is only fixated on the existence of the rules that govern it. Undoubtedly, the benefits will disappear from human life, and the growth of the law will stop (Sya'ban, 1965).

According to scholars in shul fiqh, *mashlahat* can be divided according to several points of view. In terms of quality and benefits, *mashlahat* can be divided into three types (Zakaria, Alam, Supriadi, 2019): *First*, *al-mashlahat al-dharuriyah*, namely benefits related to the primary needs of mankind in the world and the hereafter. Included in this category are maintaining religion (*hifzh ad-din*), soul (*hifzh an-nafs*), reason (*hifzh al-'aql*), descendants (*hifzh an-nasl*), and property (*hifzh al-mal*). These five main joints are called *al-mashalih al-khamsah* (Al-Zuhaili, 1986). The still relevant example is the recommendation to perform prayers at home, replacing Friday prayers with dzuhur prayers to avoid the spread of Covid-19 (Aji & Habibaty). Congregational prayers in mosques are highly recommended in normal situations, and Friday prayers are obligatory.

Second, *al-mashlahat al-hajiyah* is the benefit needed to perfect the primary benefit in relief to bear risks and maintain primary human needs. This benefit can prevent humans from various difficulties in their lives—for example, the existence of *rukhsah* in prayer. A very current example is online buying and selling. Not maintaining this benefit does not threaten the existence of the five things but will only cause difficulties, usually called secondary benefits. Simply put, this benefit is prescribed by Allah to support the basic needs of *al-maqashid al-khamsah*.

Third, the benefit of *al-tahsiniyyah*, or *al-takmilat*, concerns the best ways to fulfill tertiary human needs in *muamalat*, culture, and customs. In the form of freedom, complementary benefits can complement the previous benefits. For example, one should dress neatly and cleanly to attend a wedding reception or meeting, avoid food that smells bad and can disturb others, and so on.

The distinction of these three *mashlahat* is to determine priorities in taking a benefit. The *mashlahat* in the *dharuriyyat* level must take precedence over the *mashlahat* in and *tahsiniyyah* level, *hajiyah* level and *tahsiniyyah* level. Benefits at the *hajiyah* level should take precedence over *mashlahat* at the *tahsiniyyah* level.

The mission brought by Islam itself is for the *mashlahat* of humanity. Likewise, the legal provisions cannot be separated from considerations of *mashlahat*. However, what is called *mashlahat* from time to time is constantly changing and developing, often the dynamics that occur in society. On this basis, the author tries to examine the function and role of *mashlahat* in Islamic law by looking at changes and developments in the situation and condition of the community, of course. In this way, the opportunity for *mashlahat* will also be considered in building Islamic law in the present and the future.

Method

This type of research is library research. Literature research examines library materials or secondary data (Hamzani, Widyastuti, Khasanah, & Rusli, 2023). Library research includes this research because the secondary data is in the form of law documents.

The approach used in this study is philosophical. The philosophical approach in legal research is to study the law from an ideal perspective (Hamzani, Widyastuti, Khasanah, & Rusli, 2024). This study uses a philosophical approach because the law studied is at an ideal level: using the theory of *mashlahat* to develop Islamic law in the future. An example is the Fatwa of the Ulema Council Number 14 of 2020 concerning the Implementation of Worship in the Situation of the COVID-19 Outbreak.

Secondary data, obtained indirectly or provided by other parties, is the data source used in this study. It is used as the main reference because it is already available in written

form, such as books, scientific journals, or other written sources, which in legal research are referred to as legal materials (Hamzani, Widyastuti, Khasanah, & Rusli, 2023). Data collection techniques involve searching the Internet for digital references.

The data analysis method used is content analysis. Content analysis reveals symbolic codes concealed within research data (Hamzani, Widyastuti, Khasanah, Rusli, 2024). Scholars expose the significance encoded within the legal documents consulted as references (Roller, 2019). This research uses content analysis because of the large amount of data collected. The researcher only uses keywords in each document obtained.

Result and Discussion

The Functions and Roles of *Mashlahat* in Islamic Law

Sharia is built on universal human *mashlahat* as Islam was revealed to keep on the benefit of all mankind and society. The passing down of Islamic *syariah* to humans is aimed at maintaining the benefit of mankind and avoiding *mafsadat* both in this world and hereafter. All the rules and regulations established by God are interpreted to promote *mashlahat* (benefit) and provide protection for all mankind (Ahmad, Yaacob, Zain, 2014).

Mashlahat is none other than actualizing and maintaining the five main elements, namely religion (*al-din*), soul (*al-nafs*), reason (*al-'aql*), descent, and honor (*al-'ard*), and property (*al-mal*). This difference in view starts from differences in the intellectual ability of a person with others so that the essence of the essential *mashlahat* is not found in Islamic law or is influenced by localization or personal circumstances (Zahrah, 1958). *Mashlahat* in Islamic law is oriented towards the benefit of both worldly and *ukhrawi*, so Islamic law can be seen as a perfect law with *mashlahat*, which contains these two orientations. Izzuddin ibn Abd al-Salam stated that *mashlahat* is for the world and the hereafter. In line with that, al-Syatibi argued that *mashlahat* must be realized and the *mafsadat* must be eliminated according to *syara'* must be directed at the upholding of the life of the world and the hereafter (Al-Syatibi, 1975).

Legal provisions in the Qur'an and hadith are goal-oriented and aim to provide benefits. As mentioned in Q.S. al-An'am verse (48): And We did not send the Messengers except as bearers of good news and warnings. So, whoever believes and does good deeds will not be afraid or sad. If these benefits are not explained in detail in these two sources, then mujtahids need to explore and find the benefits of these legal provisions. As long as the results of the *ijtihad* do not conflict with the benefits stipulated in the Koran and hadith, then it is acceptable (Al-Syatibi, 1975).

The experts of *ushul al-fiqh* in seeking *mashlahat* manifested themselves in the *ijihad* method. They have used various terms to describe the method of legal discovery. The Abu Hanifah version of *istihsan*, the al-Syafi'i version of *qiyas*, al-Ghazali called it *istishlah*, and al-Syatibi introduced *maqashid al-syariah*, etc. However, all these methods led to the discovery of *mashlahat* and made it the tool to establish laws in which cases are not explicitly mentioned in the Qur'an or the al-Hadits. However, to make it easier for the *mujtahid* to get *mashlahat* and resist damage and how to take a stand about these two things requires rules (Khalaf, 1996). So, the goal is to achieve *mashlahat* and resist damage. In this regard, the reasons for the *jumhur ulama* in determining *mashlahat* can be used as evidence:

First, the purpose of promulgating the *syara'* law is to create *mashlahat* for humans and eliminate *mafsadat*. The results of the induction of verses or hadiths show that every law contains *mashlahat* for mankind. Therefore, applying *mashlahat* to other laws that

contain *mashlahat* is legal, so Islamic law is also found where there is *mashlahat* for humans.

Second, legal occurrences (*waqi'ah*) always happen and create new occurrences; the environment is always changing according to human needs that are always coming. Then, it applies and arises for people in the future something not experienced by the former people and nations. Everything changes. The *mashlahat* of mankind will always be influenced by developments in place, era, and environment. If the *mujtahid* does not look at the general *mashlahat*, then the Islamic shari'ah will be narrower from the *mashlahat* of human beings, and their desires and needs for *Islamic* law will be stopped.

Third, every *mashlahat*, based on Islamic law, has *ta'aquly* aspects (can be constricted). Because *ra'yu* can examine *the* extent to which good and bad are related to what Allah requires and what is forbidden by Him. So, the *mujtahid's* review of *madharat* and *mashlahat* can be categorized as *Islamic* law 'and *mu'tabar*.

Fourth, after The Noble Prophet Muhammad's death, the companions faced various events that never happened while the Prophet was still alive. They sought solutions through careful analysis and calculations to deal with these various incidents. Abu Bakar r.a. collected the Qur'an into one manuscript at the suggestion of Umar ibn al-Khaththab as one of the *mashlahat* or to preserve the Quran and write it down in one language at the time of Uthman ibn 'Affan to maintain no difference in the reading of the Qur'an itself. Umar Ibn Khaththab did not give his share of *zakat* to *mu'allaf* (people who had just converted to Islam) because, according to Umar, the *mashlahat* of many people demanded it (Al-Zuhaili, 1986).

So that the *mashlahat*, which is the source of Islamic law, does not lead to *Islamic* law according to human passions, the scholars make pretty strict requirements, such as *mashlahat* must not contradict the *syara* texts 'and *ijma'* because *mashlahat* based solely on ratio is still doubtful and can lead to law enforcement based on the lust. Meanwhile, the *mashlahat* defined by the text is *qath'iyah* (definitely positive) (Zakaria, Alam, Supriadi, 2017).

Mashlahat should also be general and not based on personal considerations. *Mashlahat* based on individual interests is not valid because the *Islamic* law, which is eternal, must be oriented towards the interests of a more universal society. Thus, the law cannot be implied because it only gives *mashlahat* specifically for the leadership or certain people without paying attention to the *mashlahat* of all the people. *Mashlahat* does not apply to creeds and laws of worship that cannot change due to the times. Abu Zahrah and Muhammad Adib Salih believe *mashlahat* must be logical and rational. Islamic law's goals are not related to ritual worship and not luxury needs (Shalih, 1968).

Al-Ghazali (1975) put forward several conditions for the consideration of *mashlahat* to be used as evidence. *First*, *mashlahat* is included in the category of *al-mashlahat al-dharuriyah*, which means that to determine *mashlahat*, one must pay attention to whether it will threaten the existence of the five main elements of *mashlahat* or not that limit. *Second*, the *mashlahat* is *qath'i*. This means that it is truly believed to be *mashlahat*, not based solely on conjecture (*dhan*). *Third*, *mashlahat* is *kulli*. This means that it applies in general, not individually. If the *mashlahat* is individual, it must be by *maqashid al-syar'iyah*.

Mazhab Hanabilah put forward three conditions; *first*, *mashlahat* is in line with the will of *syara'* and is included in the kind of *mashlahat* supported by the text in general. *Second*, the *mashlahat* is rational and definite, not just an estimate, so the enacted law gives the benefits and avoids *madharat*. *Third*, *mashlahat* concerns the interests of many people, not personal interests or certain small groups.

The conditions put forward by the Mazhab Malikiyah are that the *mashlahat* is reasonable (*ma'qul*) and relevant (*munasib*) to the established legal cases. *Mashlahat* should aim to maintain something *dharuri* and eliminate difficulties (*raf'u al-haraj*) by eliminating *masyaqa*t and *madharat*. It must be by *maqashid al-syar'iyah*, and not contradictory to the argument of *syara'*, which is *qath'i* (Al-Zuhaili, 1986).

The principle of *mashlahat* is outlined in the *syariat dharury* law, or the main thing in life, from the *tahsiny* law, which supports the improvement of one's dignity in society and before Allah based on the proper and best way. Qur'an and Sunnah, as the main source of Islamic teachings, are the control over *mashlahat* or public interest created by the human ratio. So that the *mashlahat* will not lead to the interests of human passions, which can result in the conversion of something that is considered *mashlahat* to become *mafsadat*; with this control, the *mashlahat* for human beings can always be maintained and can be directed not to shift to control following human passions in every change of time and differences in place and social conditions. Humans always reject *mafsadat* and want to get benefits in their lives.

The Opportunities of *Mashlahat* in Response to Contemporary Cases

As mentioned before, one of the objectives of Islamic law is to create human welfare both in the world and hereafter, so Islamic law must be elastic and look at problems comprehensively. Over time, there have been more and more fiqh problems. Consideration of *mashlahat* as an effort to explore rational law is increasingly inevitable to be played so that legal issues that have not been known in the past can be answered (Hamzah K., 2015). So, there is no longer a depiction that the past fuqaha were too conservative and orthodox. In contrast, the current *fuqaha* have a modern mind because the past jurists did not face the problems faced by Muslims in modern times.

Apart from the pros and cons of the validity of *mashlahat*, historically, in the formation of Islamic law, there have been many *mashlahat* considerations. The practice of the Prophet's Friends is proven in historical reconstruction. For example, Abu Bakr appointed Umar to replace him as caliph because he saw that this action benefited Muslims, especially in maintaining political stability and fighting apostates (*ahl al-riddat*). Likewise, Umar's initiative to make tax laws (*kharraj*), establish offices, prisons, etc. All of them are based on the principle of *mashlahat* for many people. Uthman also did not escape from considering the *mashlahat*; one of his efforts was to recode the al-Quran to homogenize the *mushaf* so that the *Mushaf Utsmani* was exposed until now. Ali was also not left behind, such as requiring guarantees for carpenters and tailors so that the goods they worked on could not just admit to being lost without any guarantee (Al-Syibli, t.th.).

Abu Hanifah and al-Syafi'i also practiced it, whether consciously or not. Moreover, Hanafi is known as the most prominent person who uses the proportion of reason in his *ijtihad*; it is challenging to say that he does not consider *mashlahat*. The principle of *istihsan* that he developed, if it is further analyzed in the development of Islamic law, is

based on *mashlahat*. Likewise al-Syafi'i, his practice of *qiyas* is often based on *mashlahat* (Al-Zuhaili, 1986).

Contemporary cases such as birth control, abortion in cases that endanger the mother's life, artificial insemination, and adoption of children can be justified by considering the public interest. Even cases such as the localization of prostitutes and gambling, which has become a social reality, can be studied by considering the public interest. However, the public interest must be rational and in accordance with the public interest, not personal needs.

The Application of *Mashlahat* Theory in the Covid-19 Pandemic Case in Indonesia

One of the current global phenomena is the Covid-19 pandemic. The virus attacks the whole world, thus becoming a public health emergency and a world concern, including the World Health Organization (WHO) (Mukharom, Aravik, 2020). To anticipate the spread of COVID-19, the government, with much feedback from various scholars, experts, and health practitioners, implemented health protocol policies such as washing hands with soap, wearing masks, implementing social distancing, staying at home, consuming nutritious foods, and containing Vitamins C, etc.

These various inputs in the context of *mashlahat* are efforts to avoid *mafsadat* while at the same time maintaining and keeping *al-mashahih al-khamsah* due to the spread of Covid-19. This is based on the famous principle *jalb al-manfa'ah wa daf 'al-mafsadah* (attracting benefits and rejecting *mudharat*). The basic concept of *mashlahat*, which is considered reasonable by the mind because it brings goodness and avoids harm or damage to humans, is in line with the objectives of Islamic law in establishing law. Therefore, *mashlahat* is one of the methods of determining Islamic law, which is used in the process of *ijtihad*, which emphasizes prioritizing the benefit and eliminating obedience in making legal decisions (Haetami, 2015).

Likewise, the Indonesian Ulema Council (MUI) issued a fatwa regarding the implementation of worship to prevent the spread of COVID-19. There are two fatwas issued by the MUI based on benefits and avoiding *mafsadat*, as in the following table:

Table 1: *Fatwa of the Indonesian Ulema Council during the Covid-19 Pandemic*

| No. | Fatwa Regarding | Orientation |
|-----|---|-------------------|
| 1 | Fatwa of the Indonesian Ulema Council Number 14 of 2020 concerning the Implementation of Worship in the Situation of the Covid-19 Outbreak | Avoiding Mafsadat |
| 2 | Fatwa of the Indonesian Ulema Council Number 31 of 2020 Concerning the Implementation of Friday and Congregational Prayers to Prevent the Spread of the Covid-19 Outbreak | Avoiding Mafsadat |

MUI views the COVID-19 pandemic as falling into the category of *al-dharuriyyat al-khams*, which must be watched out for. To maintain survival in a situation where the COVID-19 outbreak occurs, strict protection is required, one of which is not gathering or clustering as in congregational prayers, to minimize the spread of COVID-19.

Congregational prayers in mosques are highly recommended, as are Friday prayers, which are obligatory in normal situations, but to prioritize *hifz al-nafs*, they must be prioritized.

The concept of *la dharara wa la dzirara* provides general principles regarding prohibiting harmful actions. In plain view, worshipping congregational prayers is highly recommended, even if its position is significant before Allah. However, amid the COVID-19 pandemic, the benefit of being at home is far more essential to avoid danger than to pray in the congregation. As stated by al-Tûfi, the protection of human benefit is real in him and not debated (Hermanto, 2017). This MUI fatwa is included in the category of *fath al-dzari'ah*, which contains recommendations that will lead to *mashlahat* or efforts to attract benefits (*jalbu al-manafi'*), as well as "promoting benefits and avoiding harm (*jalb naf' aw daf' dharar*) for the good of mankind in this world and the hereafter.

MUI certainly uses the *mashlahat* and *mafsadah* approaches to determine a law. It does not mean lust or human interests are solely a source of law. The determination of law based on the concepts of *mashlahat* and *mafsadah* is also not solely based on worldly goals, so it is defined in Islamic law (Sarif, Ahmad, 2017). MUI strongly considers the use of the principle of prudence and balance between the meaning, sources, principles, and rules of Islamic law, as well as its legal objectives, in a balanced manner before issuing the *fatwa*. The benefit that is prioritized is not merely following the will of the text but must also consider reason and reality. *Mashlahat* and *mafsadah* are concepts that are always used as the primary basis for resolving problems of Islamic law, including finding solutions to break the spread of COVID-19.

Suppose *mashlahat* shows the evidence and is in line with *Islamic law* intentions. In that case, using that *mashlahat* means that it has fulfilled the objectives of *Islamic law* even though no specific arguments support it. Conversely, if it is not used to establish a law, it will mean neglecting the objectives referred to by *Islamic law*. At the same time, ignoring Shari's intentions is a rejected action. Therefore, using *mashlahat* does not violate the principles of Islamic law. It is in line with the principles of Islamic law (Asriaty, 2015).

The consideration of *mashlahat* in the MUI Fatwa regarding the procedures for worship during the Covid-19 pandemic is a legal policy that aims to maintain survival as an implementation of the purpose of Islamic law (*maqasid al-syariah*), namely maintaining religion (*hifzh al-din*), maintaining the soul (*hifzh al-nafs*) simultaneously, including *hifz al-din*, because the presence of the MUI Fatwa shows that Islam always provides solutions in the form of dispensation (*rukhsah*) in emergencies. At the same time, *hifz al-nafs* shows that preserving life is prioritized because it concerns human survival.

Conclusion

Based on the discussion above, the purpose of the revelation of Islamic law to humans is to maintain human benefit and avoid *mafsadat* both in this world and hereafter. The urgency of *mashlahat* is found in all aspects of Islamic law. *Mashlahat*, in Islamic law, is oriented to the benefit of the world and the hereafter. All legal cases must be based on masculinity, whether explicitly regulated in the Qur'an and al-Sunnah or produced through *ijtihad*. Islamic law must be elastic and look at the problem comprehensively. By this time, more and more problems must be solved legally. The theory of *mashlahat* as an effort to explore rational law is increasingly necessary to be applied so that legal issues

that have not been known in the past can be answered historically, mashlahat has many considerations that have been given to *mashlahat in the formation of Islamic law*. Such is the practice of the Companions as evidenced in the historical reconstruction since the time of *Khulafa al-Rasyidun*, the time of the school of thought, and after. Ideally, contemporary cases, such as birth control, abortion, marriage institutions, localization of gambling, and localization of prostitution, can be studied with the theory of *mashlahat*. However, it must be noted that *mashlahat* must be logical and follow the objectives of Islamic law and the public interest. The consideration that *mashlahat* will also show the disregard for Islamic law so that the *mashlahat* and true wisdom that Islam aspires to can be realized, including in the context of the MUI fatwa in preventing the spread of COVID-19.

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