

**THE EXISTENCE OF ISLAMIC LEGAL SOURCES:
A CONTRASTIVE STUDY ON THE LEGALITY OF MASLAHAH MURSALAH
FROM THE PERSPECTIVES OF IMAM AL-GHAZALI AND NAJM AD-DIN
THUFI**

Achmad Muzammil Alfian Nasrullah

Institute of Islamic Religion State of Madura, Indonesia
alfannasrul74@gmail.com

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Abstract

This research aims to understand the general concept related to maslahah mursalah and its legalization as a source of Islamic law according to Imam al-Ghazali and al-Thusi. The approach used in this research is descriptive qualitative with a literature review (library research) type, utilizing two sources: primary sources in the form of manuscript books by Imam al-Ghazali and al-Thusi, and secondary sources consisting of scholarly literature such as books, national and international journal articles. Data collection techniques involve gathering theories and concepts related to the topic under discussion, and the data analysis method used is Analytical Contrastive Analysis. The results of this research indicate that the general concept of maslahah mursalah is recognized as one of the sources of Islamic law agreed upon by scholars to address cases that lack detailed evidence from Sharia and are not explicitly rejected. The legalization of the concept of maslahah mursalah according to Imam al-Ghazali and al-Thusi is justified as one of the sources of Islamic law. Despite the different views of these two Muslim figures regarding the conditions, criteria, and credibility position within the hierarchy of Islamic legal sources.

Keywords: *Existence, Islamic Law, Maslahah Mursalah*

INTRODUCTION

The Islamic law, by its existence, constitutes rules intended for the entire Muslim community that has been declared accountable (mukallaf) for religious obligations. The nature of this law possesses binding legitimacy beyond legal sources whose credibility is collectively recognized, namely the Qur'an and the Sunnah (Abu Azam Al-Hadil, 2020).

The scholars agree that the formulation of Islamic law, based on both foundations (the Qur'an and the Sunnah), does not require additional sources. Both sources are recognized and believed to be true. The Qur'an is considered an absolute and universal source of law, applicable to all of humanity, as is the Sunnah (Handika, 2020).

When viewed from the aspect of quality, both the Qur'an and the Sunnah hold the highest status compared to other legal sources such as ijma' (consensus) and qiyas (analogical reasoning). This is because they are centered on the divine revelation sent to the Prophet Muhammad SAW (Putri, 2020).

It means that as long as the Qur'an and the Sunnah explain a law that is definitive (Qut'i), its validity cannot be reinterpreted. In contrast, for a non-definitive (Non-Qut'i) law where the judgment is not explicitly stated in both sources, the formulation of the law can be done using secondary legal sources.

Secondary legal sources have been maintained by scholars because it is acknowledged that the phenomena and needs of humans will continue to evolve alongside the progress of society. It must be recognized that in the modern era, human activities are constantly evolving with the changing times and locations. Many cases today were not explicitly addressed during the prophetic era, making the need for legal certainty regarding such issues essential (Asrowi, 2018).

The general understanding indicates that the Quran and the Sunnah establish general principles and fundamental rules that can serve as tools for Mujtahids to develop and address new issues through Ijtihad. One of the general principles and fundamental rules set by Islam is that the primary objective of legislating Islamic law is to One of the secondary legal sources that serves as a reference in deducing Islamic law is the method of *maslahah mursalah*. This method has been widely employed by various experts in the field of Usul al-Fiqh, leading to numerous previous studies attempting to judge new issues from the perspective of *maslahah mursalah*.

However, previous scholars and researchers have not clearly examined how the method of *maslahah mursalah* can effectively be used as a source for deducing secondary legal rulings, alongside ijma' and qiyas. Two scholars of Usul al-Fiqh who have actively contributed to the discussion on the correct and legal use of the *maslahah mursalah* method, similar to ijma' and qiyas, are Imam al-Ghazali and al-Thufi.

Imam al-Ghazali, whose full name is Abu Hamid Muhammad ibn Muhammad ibn Muhammad al-Ghazali al-Thusi, was born in the year 450 H (1058 CE) and passed away on Monday, December 18, 1111 CE (14 Jumadil Akhir 505 H) in his homeland. As a prominent Islamic scholar, Imam al-Ghazali had a significant influence on the thought of modern Islam. The theories presented in his works continue to guide Al-Thufi, whose full name is Sulaiman bin Abdul Qawiyy bin Abdul Karim bin Sa'ad al-Thufy al-Baghdady al-Hambaly, was born in the year 657 H in the city of Thuf, Baghdad, and passed away in the year 716 H. Al-Thufi was a scholar and Muslim intellectual whose thoughts are often referenced, especially in the field of Usul al-Fiqh (Usman, 2020).

Both al-Ghazali and al-Thufi grant significant latitude to mujtahids in determining laws through the method of *maslahah mursalah*. They position *maslahah mursalah* as a part of deducing Islamic law, alongside *ijma'* and *qiyas*. Nevertheless, the scale of legality and the usage of this method remain subjects of debate. Al-Ghazali and al-Thufi have differing perceptions on this matter. Imam al-Ghazali views *maslahah* as only a secondary evidence, dependent on more primary sources such as the Qur'an, Sunnah, and *Ijma'*. If *maslahah* contradicts the texts (*nash*) from these sources, al-Ghazali argues that *maslahah* should be rejected. On the other hand, al-Thufi emphasizes the urgency of the welfare of humanity and holds it in high regard. If there is a legal text in the primary sources of Islam (Qur'an and Sunnah) that does not align with the welfare of humanity, al-Thufi suggests that such a text does not need to be taken or adopted as a legal basis. According to al-Thufi, the purpose of Sharia is the welfare of humanity, not as a tool to preserve Sharia itself. Thus, these differing perspectives reflect the ongoing debate within the Islamic intellectual tradition regarding the role of *maslahah mursalah* in the formation of Islamic law (Salma, 2016).

Your summary accurately captures the key points. It emphasizes the distinctions in opinion and perception between al-Ghazali and al-Thufi, particularly regarding the conceptual aspects of *maslahah mursalah* as a legal source and the conditions for its legalization in crafting specific laws. The researcher is keen on delving into this contrasting study, focusing on the perspectives of al-Ghazali and al-Thufi regarding the concept of *maslahah mursalah*. Additionally, the researcher aims to comprehend the position of *maslahah mursalah* in Islamic law from the viewpoints of both al-Ghazali and al-Thufi.

METHOD

This research adopts a qualitative approach, which essentially is a research method that produces narrative data without utilizing statistical or quantitative analyses (Fadli, 2021). This means that the researcher employs a comparative, narrative-based thinking process drawing from both primary and secondary data sources. The research design falls under the category of literature review (library research), where data collection involves the examination of various credible written materials (Darmalaksana, 2020). The literature review process includes standard stages such as tool preparation, literature material preparation, time The data collection technique employed is literature review, involving various credible sources such as scholarly journals, supporting books, and primary texts from the selected themes of al-Ghazali and al-Thufi. Some of the main sources include the Qur'an, Hadith, the legal books of Jurists (*Fuqaha'*) by Imam al-Ghazali and Najm ad-Din at-Thufi. Several works by al-Ghazali have been identified by the author, such as "al-Mankhul

min Ta'liqat alUshul," "Asas al-Qiyas," "Syifa' al-Ghalil fi Bayan asy-Syabah wa alMukhil wa Masalik at-Ta'lil," and "al-Mustashfa min 'Ilm alUshul." As for al-Thufi's works, the reference materials are "Mukhtashar ar-Raudhah al-Qudamiyah" and "Syarh Mukhtashar arRaudhah al-Qudamiyah." Additional data sources include books on Usul al-Fiqh and several other supporting books contributing to the resolution of the research issues.

The data analysis method employed is comparative descriptive analysis, which involves comparing several opinions that form the main discussion and then analyzing them descriptively. In this context (Fiantika, et al., 2022), the researcher will conduct a comparative analysis between the opinions of Imam al-Ghazali and Najm ad-Din Thufi regarding the concept and position of *maslahah mursalah*. Furthermore, the analysis will describe how *maslahah mursalah* plays a role in addressing contemporary issues.

RESULTS AND DISCUSSION

Findings

The General Concept of *Maslahah Mursalah* in the Study of Islamic Jurists

Quoting Miswanto, linguistically, the term *maslahah mursalah* is rooted in the Arabic words *soluha-yaslahu-salhan-maslahan*, which means goodness, suitability, harmony, and utility. Meanwhile (Miswanto, 2019). In terms of terminology, the understanding of *maslahah mursalah* refers to a source of Islamic law used for deducing legal rulings. In this context, scholars unanimously agree that there is harmony between individual desires and religious principles toward a common good to be achieved. Although this concept is sometimes positioned by individuals based on subjective desires and human wishes, scholars set limits to ensure compliance with Sharia to avoid such practices.

This rule is an agreement among scholars of Usul al-Fiqh, such as Imam al-Ghazali, who explains the general concept related to *maslahah mursalah*, as stated in the following narration:

"Maslahah, fundamentally, is to attract benefit or repel harm. However, this is not what we intend, as what leads to the attainment of benefit and the repelling of harm is the objective of creatures. The goodness and welfare of creatures lie in the achievement of their objectives. However, what we mean by maslahah is to preserve or uphold the objectives of Sharia. As for the Sharia objectives for creatures, they are five."

From the explanation, it is understood that *maslahah mursalah* is not only about obtaining benefits in the form of utility and preventing harm. Rather, this rule should be applied more broadly, meaning it must align with the objectives of Sharia through the preservation of the five Sharia objectives: safeguarding religion, human life, intellect, lineage, and property. These five

Sharia objectives must be preserved through the concept of *maslahah mursalah*, which, in other words, is not solely focused on benefits and harms.

Islamic jurists of *Usul al-Fiqh* provide details related to the theory of *maslahah* (goodness or benefit) itself. Quoting from *As-Shinqithi*, the overarching concept of *maslahah* in religion is divided into three parts, namely (Alhizbi, 2019).

Firstly, *mu'tabarah maslahah* is a *maslahah* that is explicitly legalized by Sharia and is explicitly stated in religious texts, namely the Quran and Hadith, clearly and explicitly. Through this classification, scholars provide certainty about its authenticity and quality. Such guidance is explicitly or implicitly mentioned, as seen in common practices such as analogy (*qiyas*).

Secondly, *mulghah maslahah* is a concept of *maslahah* that is not explained by Sharia or is even rejected by it, but is considered good according to reason and rationality. In other words, Sharia determines a law that differs from the goodness proposed by the *maslahah* itself. In this classification, scholars unanimously agree to reject it because it does not align with the main principle of preserving the objectives of Sharia, as seen in the concept of equality between women and men in inheritance rights, which is considered good according to reason but religion provides different laws.

Thirdly, *maslahah mursalah* is a *maslahah* that lies between the two. This means that this concept is not explicitly supported by Sharia, nor is it explicitly annulled by it through detailed evidence, but it is supported by a collection of textual meanings.

Furthermore, *maslahah mursalah* itself is further divided into two main categories: *maslahah gharibah* and *maslahah mursalah*. If a *maslahah* is completely unsupported by evidence in Sharia, it is called *maslahah gharibah*. However, if a *maslahah* is supported by Sharia through a collection of textual meanings, it is referred to as *maslahah mursalah*. Thus, both models mentioned above can be encountered in various cases in daily life.

Rejection of the concept of *maslahah mursalah* has been done by some scholars. However, fundamentally, this rejection is mainly at the level of terminological differences. Some argue that the process of benefit derivation is referred to as *maslahah mursalah*, while others call it *hujjah syar'iyah*.

When classified, there are three groups of scholars in responding to the phenomenon of benefits that have been discussed so far, namely:

First: Scholars who are conservative or adhere to the apparent meaning (*Dhahiriyah*) are a group of scholars who oppose the concept of benefit unless it is explicitly stated in the Quran and do not seek other evidence beyond the actual textual meaning. In other words, this group does not dare to unveil the benefits that may be hidden behind a text.

Second: Scholars who are open to the concept of *maslahah* but it must still be based on textual evidence through the search for the purpose of *illat* (reasoning behind a legal ruling). They then make analogies between a new case containing *maslahah* and a previous case that has already been formulated through the determination of textual evidence. However, the opinion of this group has an exception where *maslahah* does not stand independently but must be supported by evidence from textual evidence. Therefore, the search for benefits will not be mixed between the urge of desires and the actual *maslahah*.

Third: Scholars who apply *maqasid al-khamsah* (the five objectives) in formulating benefits. The view of this group is that benefits do not have to be supported by Sharia evidence as long as they aim to achieve the Sharia objectives, namely preserving religion, life, human dignity, intellect, and property.

However, in general, scholars agree that the concept of *maslahah* is acceptable in Islamic jurisprudence, with the note that the formulation of laws is not based on personal desires and whims and does not contradict the textual evidence and the objectives of Sharia. This consensus among scholars is based on the evolving needs of humanity over time. Just as in the principle of *maslahah* itself, which is essentially desired by Sharia or religion, because the main purpose of Allah's laws is for the benefit of the community, both in this world and the hereafter (Rosyadi, 2012).

Thus, the general concept of *maslahah mursalah* is a source of Islamic law that derives legal reasoning from benefits not explicitly mentioned in Sharia. These benefits are in a position between not supported by evidence and rejected by it. This process is accepted by the majority of scholars with the condition that it does not contradict the textual evidence and its determination is not based on personal desires.

The legality of *Maslahah Mursalah* in Islamic Law: Perspectives of al-Ghazali and al-Thufi.

There are differences in perspectives on the position of *Maslahah Mursalah* as a source of Islamic law between Imam al-Ghazali and al-Thufi. These differing views are based on their respective paradigms regarding the legality of *Maslahah Mursalah* within the hierarchy of Islamic legal sources.

A. Imam al-Ghazali's perspective

Quoting from Mukri, who states that Imam al-Ghazali views the concept of *Maslahah* as needing to be in harmony with the goal of preserving the objectives of Sharia (*al-maqashid al-syar'iyah*). In other words, in safeguarding these objectives, there should be no

contradiction with the rules and provisions of legal evidence that have been formulated previously, whether in the Qur'an, hadith, Ijma', or Qiyas.

From all of this, it is understood that the laws determined by primary sources such as the Qur'an and hadith, as well as secondary sources like ijma' and qiyas, cannot be questioned in terms of their benefit, even if reason is unable to rationalize these laws. Imam Ghazali also provides several provisions regarding Maslahah that can be used as legal evidence, namely:

Firstly, the encountered Maslahah must have a strong foundation in consideration. This means that a mujtahid must have concluded that the issue in question is genuinely a Maslahah that does not contradict the type of legal action according to Sharia law.

Secondly, that Maslahah should no longer be in conflict with the text (Nash) and the consensus (Ijma') of the scholars (Suratmaputra, 2019).

In a different formulation, it is also mentioned that the legality of Maslahah in the study of the principles of Islamic jurisprudence must be based on the following criteria:

Firstly, the Maslahah must be certain, not merely a speculation or assumption that it does indeed bring about a benefit or prevent harm.

Secondly, the Maslahah is not just for personal interests or a small segment of society but is of a general nature.

Thirdly, the outcome of reasoning about Maslahah should not lead to the neglect of a principle established by the legal texts of Sharia (MS, 2017).

B. The perspective of Imam al-Thufi

According to al-Thufi's perspective, Maslahah Mursalah must always be preserved because this concept can protect humans from harm. This view is based on the idea that Islamic law is born only to realize universal benefits in accordance with al-maqashid al-syar'iyah.

However, even so, in the realm of Islamic law, there is a domain that cannot be assessed for its benefits. Thus, Al-Thufi divides the law into two parts, namely:

First: The category of worship in which the purpose and benefits have been determined by Sharia, and the intellect is unable to detail them comprehensively.

Second: The category of transactions (muamalah) in which the meaning and benefits, as well as the harm contained therein, can be comprehended by one's intellect so that they can grasp the aspects of Maslahah and Mudharat. Therefore, in this second category, the concept of Maslahah can be applied.

Furthermore, Al-Thufi in formulating a Maslahah is based on the principle of independence (istiqlal), which according to Zuhri is divided into four principles as follows:

First, the independence of the intellect in understanding benefits and harms (istiqlâl al'uqûl bi idrâk al-masâlih wa al-mafâsid).

Second, Maslahah is an independent legal evidence apart from textual sources (al-maslahah dalîlun syar'iyyun mustaqillun 'an al-nusush).

Third, the domain of applying Maslahah is in dealings and customs, not in worship and estimations (majâl al'amal bi al-maslahah humâ al-muâmalat wa al-'âdat dûna alibâdat wa al-muqaddarah).

Fourth, Maslahah is the strongest evidence of Islamic law (al-maslahah aqwâ adillat al-syar'i) (Suratmaputra, 2019).

Specifically for the last principle, al-Thufi has several arguments, fundamentally stating that the protection of human welfare is stronger than the text. In other words, the protection of human welfare is real and cannot be compromised. Some of the arguments in question are as follows:

First: The validity of consensus (ijma') often leads to disputes, while the validity of maslahah has been agreed upon by scholars (Islami et al., 2023). Therefore, prioritizing what is more agreed upon is the best course of action.

Second, textual evidence (nash) can give rise to disagreements due to differences in interpretation, while preserving welfare is a fundamental substance.

Third, historical facts demonstrate that there are some textual evidence (nash) rejected by certain companions due to consideration of welfare. For example, Umar bin Khattab prohibited the dissemination of the hadith "Whoever says, 'There is no god but Allah,' will enter paradise" because it was feared that it might lead to laziness in worship as paradise was already guaranteed (Wahyuni, 2022).

C. Similarities and Differences in the Views between al-Ghazali and al-Thufi.

From the exposition of views regarding the existence of maslahah mursalah as a source of Islamic law between al-Ghazali and al-Thufi, there are several aspects that bring together the thoughts of these two scholars and also some aspects that differentiate them. These aspects are outlined as follows:

1. The Legitimacy of Maslahah Mursalah.

Maslahah mursalah, as one of the sources of Islamic law, is generally agreed upon by scholars, including Imam al-Ghazali and al-Thufi. Both of them allow for the consideration of welfare to achieve benefits and avoid harm. However, for al-Ghazali, maslahah mursalah can only be a source of law to preserve the Sharia, and it is not permissible for maslahah to contradict established textual evidence (nash). On the other

hand, al-Thufi views *maslahah* as the primary purpose of the Sharia, and its existence should take precedence over consensus (*ijma'*) and even over textual evidence (*nash*).

2. Criteria for *Maslahah*.

Al-Ghazali and al-Thufi both open the door to seeking welfare, but al-Ghazali provides several criteria for legitimizing it as a source of Islamic law that are not mentioned by al-Thufi. These criteria include that legal rulings based on welfare should not be arbitrary or driven by personal desires, they should not contradict textual evidence (*nash*), the formulation of legal rulings based on welfare should be grounded in clear tracking and research rather than speculation, and the welfare in question should not have been judged by previous textual evidence. On the other hand, al-Thufi does not endorse such criteria. According to him, all cases can be evaluated for their welfare without relying on the mentioned criteria because they can still be rationalized. However, al-Thufi makes an exception for welfare based on worship, as he believes that the laws of worship established by textual evidence cannot be comprehended by reason.

3. Hierarchical Position.

Al-Ghazali places the search for welfare after ensuring that it is not rejected by Islamic law, so its position in the sources of Islamic law should come after the Quran, *hadith*, and the consensus (*ijma'*) of scholars. However, for al-Thufi, the search for welfare should take precedence because it is the primary purpose of the Sharia.

CONCLUSION

Maslahah mursalah, conceptually, is one of the sources of Islamic law aimed at seeking benefit from cases that are not clearly and specifically determined by Sharia and are also not rejected. In determining this benefit, it is not permissible for it to contradict the evidence of Sharia, and it should not be based on subjective motivations such as reason and desires. Both al-Ghazali and al-Thufi agree that *maslahah mursalah* has a level of legality within the sources of Islamic law. However, they differ on several aspects such as the conditions for the legality of *maslahah*, the criteria for determining *maslahah*, and the position of *maslahah*.

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