

Dharurah and the Realization of Maqashid Sharia: Analysis of the Implementation of Islamic Legal Maxims on Emergency

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Abstrack: *Contemporary issues and phenomenon that occur in society experience development from time to time. References and arguments in the Qur'an and sunnah sometimes do not explain the law on the issue specifically. Excavation of the law by using qawa'id fiqhiyyah which has been formulated by the scholars is important. Especially in conditions of emergency and compulsion that require in-depth studies to establish laws on issues that provide a certain level of difficulty for humans. This study aims to review the concept of emergency in the perspective of fiqh by examining its correlation to the achievement of maqashid syariah by focusing on the application of qawa'id fiqhiyyah related to emergency. This research is a qualitative research using a literature study approach by doing literature review on Islamic legal maxim, maqashid sharia, and dharurah. The results of this study indicate that dharurah is a condition that positions humans in a condition of being forced to do something that is forbidden or to leave something that is obligatory. Islamic law provides rukhshah for the difficulties experienced by humans as a guarantee to realize maqashid syariah. Legal determination of the waivers granted is carried out by referring to the arguments of the Qur'an, sunnah and ijma' as well as by applying qawa'id fiqhiyyah related to emergencies.*

Introduction

Contemporary issues in many aspects of people activities faced by society will continue to develop along with the times. In overcoming and answering existing problems, Islam comes with sharia that facilitates humans in maintaining their glory, maintaining their interests, and overcoming various problems faced by humans (Hamzah, 2020). Islamic law provides signs and limits for humans to achieve the benefit of themselves and

those around them. *Maslahat* is the main goal of Islamic law. Every teaching, value, and norm in sharia is linearly aimed at achieving and realizing benefits (Ahmed, 2011).

Imam Ash-Syatibi formulates the objectives of sharia (maqashid sharia) in five elements, which include the protection of religion (*hifz ad-din*), protection of the soul (*hifz an-nafs*), safeguarding of reason (*hifz al-'aql*), protection of offspring (*hifz an-nasl*), and property protection (*hifz al-mal*) (Asy-Syatibi, n.d., p. 31). Based on the maqashid sharia, every legal excavation (*istinbath*) carried out by the scholars refers to the excavation of the objectives (*maqashid*) of each phenomenon and legal problem that exists in society.

Under certain conditions, social problems and problems that arise in society place a Muslim in a dilemmatic situation. These conditions gave him two difficult and contradictory choices. The choice to choose between running the Shari'a, but faced with certain difficulties or threats of danger and safety, or choosing to violate the provisions of the sharia. This condition is a condition where humans do not want to be in it. This happened by the will and decree of Allah swt.

No exception, difficult conditions between options and choices can also occur in the wider community. This condition threatens to destroy the social order in society. When in these conditions, efforts to find solutions to problems become the main thing. This condition is described as a critical condition that threatens the integrity of the social order of society. In the context of the study of fiqh, the critical condition as described is called an emergency (*dharurah*) (Nurhakim, 2020). In the life of the state, emergency conditions that occur in society require the Government to establish policies as an anticipatory step so that it does not become a complex problem and endanger the community (Rizal, 2020).

Allah SWT. emphasizes that He does not at all burden His servants beyond the limits of their ability. All the provisions and rules of the Shari'a that have been established in the teachings of Islam lead to the benefit and goodness of each individual Muslim. Therefore, the existing provisions of the sharia will not exceed the limits of human capacity. This is also a testament to Allah's gentle nature. and His love for all His servants (Katsir, 2008, p. Vol. 1, 511). This is as stated in the Al-Qur'an, chapter Al-Baqarah: 286.

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا ۗ لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ ۗ ...

Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned. ...

In overcoming the difficult conditions and the dharurah faced, Islamic law requires efforts to prevent difficulties and avoid harm. With the limitations that humans have, Allah swt. does not impose the law on humans beyond the limits of their ability. In addition, the existence of difficulties for humans will have an impact on the implementation of the sharia which is not optimal. This condition is the basis of Islamic law to provide relief (*rukhsah*) and exceptions to several provisions in order to alleviate the difficulties faced by humans. This is also proof that Islamic law always prioritizes aspects of

benefit for humans (Nurhakim, 2020).

In today's contemporary era, there are many new things that people need to be able to live a good and decent life. This need is something that must be fulfilled to make humans able to reach the benefits in their lives. The need, which in fiqh terms is called *hajah*, becomes something without which humans can live, but without fulfilling these needs, they will experience difficulties. While *dharurah* is at a level above it. This means that when the *dharurah* is not fulfilled, then the safety of the soul will be threatened or threaten the safety of the limbs (Ghani, 2016). Wahbah Al-Zuhaily in Ghani (2016) explains that the need that includes the interests of the wider community (*al-hajah al-'ammah*) is a *dharurah* thing that needs to be fulfilled. Therefore, the condition of *dharurah* is the basis for the existence of *rukhsah* so that the benefit for humans can be realized. The scholars also use *dharurah* as the basis for argumentation in *istinbath* related to contemporary problems that occur in society related to emergency conditions, such as contemporary surgery, medicine, and even contemporary economic transactions.

Departing from the concept of emergency, the scholars have formulated various islamic legal maxims related to emergency conditions. Islamic legal maxim plays a very important role, especially in doing *istinbath* related to problems in society for which there is no text that explains the law specifically. However, the fiqh scholars formulate these various islamic legal maxims by referring to the sources of Islamic law, namely the Qur'an, sunnah, and ijtihad (Habiburrahman, 2015). Islamic legal maxim is a guideline and basis for determining general and universal laws that are applied to various events and problems that arise in the daily life in society (Sugianto, 2020). The presence of Islamic legal maxim is very important in dealing with various phenomena and dynamics of community activities that continue to develop (Hendrianto & Bisri, 2021). If it is associated with the objectives of the sharia, then the maqashid sharia theory is a combination of the science of *ushul al-fiqh* and islamic legal maxim (Muhamamd Ridhwan Abdul Aziz & Mohd Shahid Mohd Noh, 2014).

Dharurah conditions can occur with patterns and dynamics that continue to develop along with the times. The scholars and authorities play an important role in determining emergency conditions that occur in society. However, it is undeniable that the Qur'an and the sunnah have not been added. However, the problems in society are increasing day by day. Therefore, an in-depth analysis is needed regarding the application of islamic legal maxim in doing *istinbath* related to emergency conditions that occur in the community.

Various studies regarding the application of islamic legal maxim related to *dharurah* have been carried out by many researchers. Ibrahim et al. (2018) has studied the urgency of determining *hajah* and *dharurah* in issuing fatwas related to meeting basic needs. The study found the importance of fatwas with reference to emergency conditions is essential to avoid difficulties in society (Ibrahim, Yusuf, & Khairi, 2018). Furthermore, a study in Malaysia was conducted on the implementation of the *ad-daruratu tuqaddaru biqadariha* rule (adverseness is measured by its level). The study

concluded that the rule was applied by looking at the level of emergency conditions that occurred. Like a homeless person who is given *rukhsah* to take food that is doubtful of halal. However, the *rukhsah* is given only to the extent of eliminating the emergency condition (Idris & Ramli, 2018).

In another study conducted by Mustofa (2018), it is explained that Islamic legal maxim has an important role in understanding Islamic law. Among the rules used are *al-hajah qad tunazzalu manzilah ad-dharurah 'ammah kanat awkhashah* (*hajah* occupies the position of *dharurah* either in general or specifically). This rule is applied to fatwas related to products and services of Islamic Financial Institutions which are very much needed by the community. This study also concludes that the application of these rules to the fatwa is considered appropriate in answering the problems of sharia economic law in Indonesia (Mustofa, 2018).

Referring to several previous studies, studies on the concept of emergency in Islam and the implementation of Islamic legal maxims which focus on global emergency conditions have not been widely carried out. This article will analyze the concept of *dharurah* from a fiqh perspective, which is elaborated on the aspect of its relationship with the realization of maqashid sharia. Furthermore, the discussion will be contextualized in the application of Islamic legal maxim that is relevant to the condition of *dharurah*. This study is expected to provide scientific contributions to policy makers and stakeholders related to fatwas and stipulations of *dharurah* conditions so that they can determine policies and fatwas that are relevant to efforts to achieve benefits for the community in every aspect of their lives.

Research Methods

This article is a qualitative research using a literature study approach by referring to various relevant fiqh literature and journals related to the topic of study. The systematic review begins with a discussion of the concept of *dharurah* in the perspective of fiqh which is associated with maqashid sharia. Furthermore, this study analyzes several Islamic legal maxims related to *dharurah* conditions which are applied to several examples of conditions that are relevant to the rules. The literature review is conducted to analyze the concept of *dharurah* as well as the Islamic legal maxims on *dharurah*. The content analysis is also conducted to analyze the application of Islamic legal maxims on *dharurah* in some emergency conditions for realizing the maqashid sharia.

Results and Discussion

Dharurah in Fiqh Perspective

The word *darurat* (emergency) comes from the Arabic term *dharurah* which comes from *darra yadurru darran* which means to damage or give harm. It is also interpreted as a very compelling situation, a very urgent need, and very dangerous if not fulfilled. In another sense, *dharurah* in Arabic is also a *masdar* from the word *idhthirar*, which means the need for something and is very forced. While *darrun* which is the origin of the word *dharurah* is the opposite of usefulness. In other meanings, *dharurah* is also interpreted as a need. *Dharuriy* is defined as something that is very urgent

and needed that must be fulfilled. The meaning of *dharurah* as something that is needed that cannot be abandoned, is agreed upon by the scholars of sharia, interpretation, *ushul al-fiqh*, fiqh, and language (Sulaiman, n.d.).

In terms of the scholars have given various definitions of *dharurah*. Among them *dharurah* is interpreted as a person's position at a certain limit which if he does not do the prohibited act will result in death or near death. In addition, Abu Bakr Al-Jashshash defines *dharurah* as a person's fear of danger that threatens his life or part of his body if he does not eat. On the other hand, *dharurah* is also interpreted as a condition of being forced to do something forbidden. If this is not done, it will result in harm to him in the form of damage to his limbs or loss of life (Nurhakim, 2020).

The definition of *dharurah* is also expressed by various school of thought scholars. Sheikh Ali bin Muhammad Al-Jurjani who is a Hanafiyah scholar, defines *dharurah* as a word taken from the Arabic *dharar*, which means something happens and there is nothing that can reject it. Meanwhile, Ali Haidar interprets *dharurah* as a condition that comes and makes the cause of something that is prohibited by sharia. Meanwhile, Imam Ahmad Al-Dardiri who is a Malikiyyah scholar interprets *dharurah* as fear and worry about damage to the soul, whether confidently or not (Sulaiman, n.d.).

In a similar view, Jalaluddin As-Suyuti who is a Syafi'iyah scholar defines *dharurah* as a condition that if you do not do something that is prohibited in that condition, you will perish or approach destruction. Meanwhile, Mauqifuddin Qudamah, a Hanbali cleric, said that the *dharurah* that allows something that is prohibited is a condition that causes concern or fear of perishing if you don't eat something that is forbidden (Sulaiman, n.d.).

Referring to the various understandings expressed by the scholars, it can be seen that in general, *dharurah* is a condition that positions humans in a forced condition and requires them to do something that is prohibited or leave something that is obligatory. This must be done to ensure the safety of his soul or the safety of his limbs. Al-Zuhaily also views the concept of coercion by categorizing public needs and interests as having the same position as forced conditions. This is based on the argument that if the needs and interests of the public are not met, it will have a direct impact on the condition of each individual in it. When that happens, a massive emergency will occur (Ghani, 2016).

The conditions of *dharurah* and compulsion have also been described in the Qur'an. There are at least six verses in the Qur'an that explicitly mention conditions of *dharurah* and compulsion (Sulaiman, n.d.). First, is an explicit statement about the prohibition of carrion, blood, pork, and animals slaughtered without mentioning the name of Allah swt. This is as stated in the Qur'an chapter Al-Baqarah: 173.

أَمَّا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخَنزِيرِ وَمَا أُهِلَّ بِهِ لِغَيْرِ اللَّهِ ۖ فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ ۗ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.

The verse above explains the condition of being forced to be the cause (*'illah*) of a person's permissibility to do something forbidden, namely eating carrion, blood, pork, or slaughtered animals without mentioning the name of Allah swt. The forced condition described in the verse is a *dharurah* condition with reference to the explanation mentioned, namely 'not because of desire' and 'not exceeding the limit'. This means that the forced condition occurs not because of the wishes and desires of the person.

Second, Allah swt. also explains the prohibition of consuming carrion or slaughtered animals with names other than Allah swt. There are exceptions for those who are forced and don't want to, and exceed the limits just to survive or avoid the level of danger that threatens. This is mentioned in the Qur'an chapter Al-An'am: 145.

قُلْ لَا آجِدُ فِي مَا أُوْحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ مَيْتَةً أَوْ دَمًا مَسْفُوحًا أَوْ لَحْمَ خِنزِيرٍ فَإِنَّهُ رَجْسٌ أَوْ فَسَقًا أَهْلٌ لِيْغَيْرِ اللَّهِ بِهِ ۚ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَّحِيمٌ

Say, "I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal or blood spilled out or the flesh of swine - for indeed, it is impure - or it be [that slaughtered in] disobedience, dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], then indeed, your Lord is Forgiving and Merciful."

Third, there is another verse that also confirms the prohibition of consuming things that have been mentioned in the previous two verses. This is seen explicitly as stated in Qur'an chapter An-Nahl: 115.

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنزِيرِ وَمَا أِهْلٌ لِيْغَيْرِ اللَّهِ بِهِ ۚ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ

He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit] - then indeed, Allah is Forgiving and Merciful.

Fourth, in another verse, Allah swt. describes the conditions of *dharurah* specifically which are mentioned with severe hunger (*makhmashah*), as mentioned in Qur'an chapter Al-Maidah: 3.

...فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرٍ مُّتَجَانِفٍ لِإِثْمٍ ۚ فَإِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ

But whoever is forced by severe hunger with no inclination to sin - then indeed, Allah is Forgiving and Merciful.

Fifth, the same concept is also mentioned in other verses, namely as stated in Qur'an chapter Al-An'am: 119.

وَمَا لَكُمْ أَلَّا تَأْكُلُوا مِمَّا ذُكِرَ اسْمُ اللَّهِ عَلَيْهِ وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُررْتُمْ إِلَيْهِ

... ۞

And why should you not eat of that upon which the name of Allah has been mentioned while He has explained in detail to you what He has forbidden you, excepting that to which you are compelled. ...

Referring to the five verses, the emergency conditions described in it specifically indicate the conditions for the prohibition of consuming carrion, blood, pork, and animals slaughtered in names other than Allah swt. in any condition. Then the various verses provide an exception for one condition, namely a forced condition, or a *dharuriy* (principal) matter that requires it.

Sulaiman (1433) emphasized a question regarding whether the forced conditions as mentioned in the Qur'an are only limited to the existence of a relationship with hunger conditions, so that it appears that there is an exception to the law on the consumption of something that is forbidden for those who are in a forced condition, namely hunger. which is very. Does mention of hunger negate the emergency in other ways? Or is the mention of the hungry condition only an analogy of the picture given for various other emergency conditions? This is clearly answered through the word of Allah swt. in Qur'an chapter An-Nisa verse 95 which states that the *dharurah* condition in question includes all emergency conditions. (Sulaiman, n.d.)

لَا يَسْتَوِي الْقَاعِدُونَ مِنَ الْمُؤْمِنِينَ غَيْرُ أُولَى الضَّرَرِ وَالْمُجَاهِدُونَ فِي سَبِيلِ اللَّهِ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ ...

Not equal are those believers remaining [at home] - other than the disabled - and the mujahideen, [who strive and fight] in the cause of Allah with their wealth and their lives. ...

Referring to several verses regarding emergency conditions, the scholars of interpretation at least limit the condition of *dharurah* to two conditions. First, extreme hunger, when a Muslim does not find halal food nearby to overcome his hunger, so he is in a condition forced to eat things that are forbidden according to Islamic law. Second, when a Muslim is forced to do something that is forbidden by Allah swt. in addition to starvation, so that he is allowed to do forbidden things in order to avoid himself from the threat of danger and to maintain the safety of his soul.

The condition of *dharurah* makes a Muslim in a forced condition, so that for him an exception applies. Exceptions from the original condition which are forbidden to be permissible or permissible. Abu Bakr Al-Jashshash explained that the permissibility of something that is prohibited applies if there is an emergency, without certain conditions or conditions. So as long as an indication of an emergency is found, then the law of permissibility of something that is forbidden applies (Sulaiman, n.d.).

Al-Jizani in Nuhakim (2020) explains that the concept of *dharurah* includes at least two elements. First, *dharurah* is a need for protection that cannot be denied. In addition, *dharurah* is also an age accepted by the sharia (Nurhakim, 2020). These two elements are the key to the validity of the *dharurah* conditions which are used as the basis for determining *rukhsah*.

The conditions of compulsion described in several verses of the

Qur'an are indicative of an emergency. In that condition, Allah swt. give relief for His servant to do things that are forbidden, to be able to avoid himself from destruction. In addition, the waivers provided are a strong sign and indicator that Islamic teachings are flexible and do not want difficulties. This is as stated in several verses in the Qur'an. As stated in the Qur'an chapter Al-Hajj: 78.

... وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ ۗ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ ۗ

And strive for Allah with the striving due to Him. He has chosen you and has not placed upon you in the religion any difficulty.

In its implementation, the determination of emergency conditions is determined based on the conditions and types of emergencies that occur. Meanwhile, if the emergency condition is related to a case for the wider community, the determination of the emergency condition is the responsibility of the authorities. Meanwhile, if the emergency condition is only related to individual conditions, then the emergency determination refers to the implementation of Islamic teachings that he believes in and by questioning his conscience (Sulaiman, n.d.).

The scholars explained the criteria and limitations related to the conditions of *dharurah*. By referring to the texts of the Qur'an and Sunnah, at least there are some limitations that serve as guidelines in determining an emergency condition. Wahbah Al-Zuhaily in Hamzah (2020) explains some of the criteria for *dharurah* as follows: (Hamzah, 2020)

1. Emergency conditions should be something that exists and is real, and not something that is anticipated or imaginative.
2. There is only one way to avoid damage; do forbidden things.
3. Fulfilled the age that allows to do something that is forbidden.
4. Does not violate Islamic principles.
5. The leniency is taken to do something that is forbidden just to fulfill the need to just survive
6. Asking experts who are just and trustworthy in religion and science, if forced to take treatment for which there is no lawful medicine, except those that are forbidden in religion.

Dharurah and Rukhsah in Achieving Maqashid sharia

Islamic teachings require the realization of benefit for humans. Islamic law also encourages steps and efforts to prevent things that lead to danger and destruction. This is a manifestation of the manifestation of maqashid sharia which is oriented towards the realization of *maslahat* (Najidah, 2016). *Maslahat* is an effort to maintain sharia goals by rejecting damage (Nurhakim, 2020). *Maslahat* is implemented by fulfilling maqashid sharia both from the elements of *dharuriyyat*, *hajiyyat*, and *tahsiniyyat* (Rikza & Djazimah, 2017). *Dharuriyyat* is the main thing that is the goal of the sharia which is applied by maintaining five things, namely guarding religion, guarding the soul, guarding reason, protecting offspring, and guarding property.

Dharurah is something that cannot be abandoned which if it is abandoned it will threaten the safety of life or damage to human organs. As

for if something is left behind, it will threaten the trouble of man, and not for the salvation of his soul, then it is *hajah*. Without the *hajah*, humans can still live, but he will be in difficult conditions because of the absence of the *hajah*. This is what distinguishes between the concepts of *dharurah* and *hajah* (Ghani, 2016).

Dharurah is identical with the condition of compulsion. A person who is in a state of *dharurah* tends to be in a forced condition. In that condition he has no choice, or the only option available is something that is prohibited by Islamic law. The state of *dharurah* tends to make people do things that are prohibited by Islamic law. The prohibited things are things that are contrary to religious norms or also include social norms. However, this can happen in order to maintain the safety of someone's life or property. Efforts and steps to save life or property are part of maqashid sharia which is the main thing and must be fulfilled (Ghani, 2016).

Humans are creatures who have limitations in carrying out Islamic law. As a religion that is *rahmatan li al-'alamin*, Islam has guaranteed that the fulfillment of maqashid sharia is the main thing. So with the limitations that humans have in carrying out sharia, Islam is very concerned about conditions and laws related to emergencies. Within the limitations they have, at one time humans were at their weakest point. Thus Allah swt. stipulates the existence of *rukhsah* to ease the difficulties faced by humans. These difficulties are caused by a person's weak condition, illness, travel, forgetfulness, stupidity and ignorance, as well as conditions that are difficult to avoid. The existence of this *rukhsah* is an effort of Islamic law in maintaining human benefit (Nurhakim, 2020). This also shows that the origin of every provision of Islamic law is convenience. (Al-Utsaimin, n.d., p. 21).

The benefit that is the main concern of Islamic law is actually focused on the benefit of the individual. However, it is undeniable that the benefit of each individual will lead to a condition of general benefit. So that the benefits realized by Islamic law are also oriented to the formation of the benefit of the state and a safe, prosperous, fair, and stable state administration system. As did the caliph Abu Bakr who fought those who were reluctant to pay zakat. This is done in order to maintain the benefit of the wider community. Because if they do not pay zakat then there will be slander against Islam. This is also a manifestation of efforts to maintain maqashid sharia, namely to protect life and property (Nurhakim, 2020).

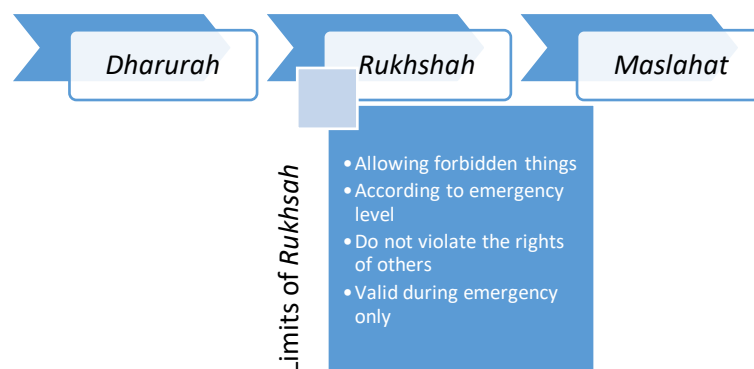
The *dharurah* conditions faced by a Muslim can be used as evidence in determining and *istinbath*. *Istinbath* is meant to be done by allowing something that is prohibited by the sharia or by being allowed to leave something that is obligatory (Nurhakim, 2020). Emergencies require the existence of *rukhsah* in carrying out the sharia. The relief includes the permissibility of doing things that are prohibited by the sharia. However, the relief is given by the sharia when it meets the conditions set by the sharia which is an exception condition. That way, the exception only applies to people who are in the specified conditions, and does not apply in general.

Sulaiman explained that there are at least some conditions for the enactment of a *rukhsah* on sharia obligations (Sulaiman, n.d.).

1. The existence of a real emergency is not based on assumptions and estimates. This is because an emergency determined based on suspicion and prejudice is not the cause of *rukhsah*.
2. *Rukhsah* given should further alleviate the danger that threatens. If the *rukhsah* given has an impact commensurate with the emergency at hand, and does not reduce the level of danger, or is even more dangerous than the previous dangerous condition, then *rukhsah* does not apply and the prohibition remains attached.
3. Do not exceed the limit required to eliminate the hazard. When someone is in a forced condition and has reached a safe limit to avoid danger, then it is sufficient for him to do forbidden things which become *rukhsah* for him.

In its implementation, *dharurah* makes humans who are in a forced condition given *rukhsah*. This is the realization of Islamic law to ensure the achievement of benefits for every Muslim. Figure 1. shows the conditions of *dharurah* will that give *rukhsah* by paying attention to some limitations related to the implementation of *rukhsah*. The existence of waivers given by Islamic law in conditions of coercion is a guarantee in Islam that every Muslim has the right to achieve benefits in his life.

Figure 1. The relationship between *Dharurah* and *Rukhsah* for the Maslahat



Source: Author, 2021

Islamic Legal Maxims regarding Emergency Conditions and Their Application

There are several islamic legal maxims related to emergency conditions. These rules are a representation of the ease given by Allah swt. for His servants who are faced with the condition of *dharurah* so that they find it difficult to carry out the things that are prescribed. This is confirmed by Allah swt. in the Qur'an chapter Al-Baqarah: 185.

...يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ ۗ...

...Allah intends for you ease and does not intend for you hardship ...

The verse explains that Allah swt. wants ease for his servant and

avoids trouble. This verse is also emphasized by the hadith of the Prophet Muhammad saw. narrated by Abu Hurairah.

إِنَّ اللَّهَ تَعَالَى وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنَّسْيَانَ وَمَا اسْتَكْرَهُوا عَلَيْهِ
(أَخْرَجَهُ ابْنُ مَاجَه)

Verily Allah swt. forgive the mistakes of my ummah due to mistakes and forgetfulness, and compulsion (HR Ibn Majah)

Referring to the text, the scholars formulated several rules related to conditions of compulsion and emergency that occur and are experienced by a Muslim. Some of the Islamic legal maxims include:

1. الْأَمْرُ إِذَا ضَاقَ اتَّسَعَ

If a case becomes narrow, the law becomes broad.

This rule shows the condition when someone is faced with a very urgent case, where the original law of the case has its own difficulties. Difficulties and urgent conditions which are a narrow condition faced by a Muslim make the existence of *rukhsah* (Az-Zarqa, 1989, p. 163). The given *rukhsah* makes the narrow conditions that are felt to be wider and easier to do for him. However, the relief and convenience provided by the sharia will return to the original law if the emergency condition has ended. This means that the *rukhsah* given is temporary and does not continue onwards (Al-Zuhaily, 2006, p. 272).

This rule is one of the main rules that there are several derived rules below it. Therefore, this rule includes various examples of application which also apply to the derived rules. Among examples of the application of this rule is the ability to take *ujrah* or fees (with an *ijarah* scheme) for worship activities and obedience to Allah swt., such as teaching the Qur'an and also calling the call to prayer. This ability is based on concerns over the loss of these religious symbols. However, when it is found that people are doing it with the *tabarru* pattern (without compensation), the wage receipt scheme is not allowed (Al-Zuhaily, 2006, p. 274).

In addition, in another example, this rule also applies to the permissibility of consuming other people's property in vanity, if it is done because of *dharurah* conditions and compulsion and does not bring other harm. Or even allowed to eat something that is forbidden to eat, such as the carcass of an animal that is forbidden to eat. This is determined in order to maintain the continuity of life as part of maqashid sharia.

This rule also applies to someone who is in debt. When a debtor experiences a narrow condition and it is difficult to pay off his debt on time, an extension of the deadline is given to make it easier for him. Or if he is constrained to pay off the debt in full, then he is given the freedom to pay the debt in installments. On the other hand, if a person has difficulty avoiding himself from light *najasah*, then the law of being exposed to *najasah* which is difficult to avoid is forgiven, and it is permissible to carry out worship activities.

2. الضَّرُورَاتُ تُبِيحُ الْمَحْظُورَاتِ

Emergencies can allow something that is prohibited.

This rule is also a derivative of the rule *الْمَشَقَّةُ تَجْلِبُ التَّيْسِيرَ* and the rule *إِذَا ضَاقَ الْأَمْرُ اتَّسَعَ*. *Dharurah* is a condition that is in the forbidden limit, but if it is not fulfilled or the forbidden thing is done, it will cause damage to the person who is in that condition, or at least close to damage. The damage is like damage to one of the body's limbs or senses to the biggest loss is the loss of life. These damages must be avoided because it is a *syar'i* emergency (Al-Zuhaily, 2006, p. 276).

The thing that is a provision of this rule is that the permissibility of forbidden things applies if the forbidden thing has a positive impact on emergency conditions, namely it can reduce the level of emergency (Az-Zarqa, 1989, p. 185). Like people who are in conditions of extreme hunger. and there is no halal food. So consuming forbidden foods can reduce the level of the person's emergency, namely hunger. As for if the forbidden thing does not reduce the emergency, then the law is still not allowed.

Among the forms of application of this rule are the ability of a doctor to reveal the private parts of his patient. This permission applies if it is necessary for the patient's treatment needs. Similar to the example from the previous rule, permissibility also applies to someone who is in a state of hunger and does not find halal food around him. So it is permissible for him to eat something that is forbidden in order to avoid damage from a fatal health side or loss of life (Al-Zuhaily, 2006, p. 277).

A study on the application of this rule concluded that the rule can also be implemented in orthogenetic surgery, namely surgery to correct abnormalities in the position of the jaw and teeth. In principle, changing the appearance of the face is a forbidden thing. However, when facial disharmony causes difficulties, surgery becomes necessary. However, this provision still refers to several limitations determined by the sharia (Tarmidhi, Ismail, Ramli, Halib, & Ghaffar, 2019). In the context of other emergency conditions, consuming medicines made from non-halal ingredients is also allowed if not found that there are drugs made from halal raw materials (Mustaqim, Zarif, Hamid, Murad, & Fahmimdyusof, 2013). However, this permit is also limited to several provisions and limitations according to the sharia (Abdul et al., 2016). This is in line with studies related to the use of vaccines. If the material is extracted from halal ingredients, the vaccine is accepted. However, if the vaccine material is contaminated with illegal ingredients, the vaccine is rejected. However, all vaccines can be accepted in urgent situations based on the determination of emergency conditions and general needs (Muslimin, Iskandar, & Fatma, 2021). In addition, when viewed from medical ethics, aspects of patient's belief and religion are the main things that need to be considered in giving each procedure health services (Rahadian, Hakim, Kurniawan, Putri, & Adienda, 2019).

3. **الضَّرُورَاتُ تُقَدَّرُ بِقَدَرِهَا***Emergencies are measured and graded by grade.*

Emergencies allow a person to do certain things that were originally forbidden. However, even though it is permissible, the forbidden things which later become permissible are only allowed within the limits to avoid harm and painful things. So it is not justified to do more than that limit (Al-Zuhaily, 2006, p. 281).

This rule is a provision that regulates the previous rule, namely **الضَّرُورَاتُ تُبَيِّحُ الْمَحْظُورَاتِ**. This indicates that every forbidden thing that is allowed because of the *dharurah*, then the waiver applies only to cover the emergency. So it is not justified for someone to do forbidden things more than the limit required for the emergency. Because the ability is only limited to an effort to avoid danger. If the danger has disappeared, then the law on forbidden things returns to the prohibition. This is as stated by Imam Shafi'i, 'Everything that is lawful from the forbidden, then it is not lawful except under specific conditions. If the condition in question has disappeared, then the law returns to haram. Like a carcass which was originally forbidden, and allowed for people who are in a state of necessity and emergency. If the emergency condition has disappeared, then the law of the carcass will again become haram' (Al-Zuhaily, 2006, p. 282).

Some examples of the application of this rule are like the treatment process which requires a doctor to reveal the aurat of his patient. This is allowed only within the limits of the medical needs of the patient's genitals. It is not allowed to reveal the patient's entire genitalia. In other cases, if the patient is a woman, then the priority is for the treatment to be carried out by a female doctor. This is because opening the genitals by the same sex (female doctors for female patients) has a lighter rate (Al-Zuhaily, 2006, p. 282).

Another example is someone who is forced to eat carrion meat. This is done only in limit to eliminate hunger, nothing more. Unless he is on a very long journey, which requires more energy so he must consume more (Az-Zarqa, 1989, p. 188).

4. **الْإِضْطِرَارُ لَا يُبْطِلُ حَقَّ الْغَيْرِ***Emergency does not invalidate the protection of the rights of others*

This rule is a rule that is directly related to the rule of **الضَّرُورَاتُ** and also the rules **الضَّرُورَةُ تُقَدَّرُ بِقَدَرِهَا** and **الْمَحْظُورَاتُ تُبَيِّحُ**. Emergency conditions allow someone who is forced to do things that the original law is forbidden. However, this rule explains that the *dharurah* condition experienced by a person does not invalidate the protection of the rights of others. Even though the person gets *rukhsah* for doing forbidden things because of forced conditions, he is still not allowed to damage the rights

of others. If the right is in the goods, and has been used by him, then he is responsible for replacing it (Al-Zuhaily, 2006, p. 286).

This prohibition against destroying the rights of others is emphasized in Islamic teachings, as emphasized in Qur'an chapter An-Nisa: 29.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۗ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۗ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.

In its application this rule is applied to emergency conditions faced by a person. Like people who are in a state of starvation that there is no halal food that can be consumed. In that case he is not allowed to use or take food owned by others. If this is done then he is responsible for replacing it (Al-Zuhaily, 2006, p. 286).

In another example, such as the condition of a ship that almost sank. When a ship's crew disposes of passenger goods to reduce the ship's load, the crew is responsible for these goods (Al-Zuhaily, 2006, p. 287).

5. الْحَاجَةُ تُنَزِّلُ مَنْزِلَةَ الضَّرُورَةِ، عَامَّةً كَانَتْ أَوْ خَاصَّةً

The need to occupy the position of dharurah, both general and special needs

Dharurah is an unavoidable condition. For humans, the level of *dharurah* is higher, above the level of need. So if the *dharurah* is avoided it will cause damage. The need is something that can provide convenience to achieve a goal. The general needs described in this rule mean that the needs cover the whole community. The purpose of special needs is a need that only covers part or a certain group.

There is a significant difference between *dharurah* and necessity. First, that *dharurah* can allow the law on forbidden things, whether it is compulsion to occur for individuals or society. While needs do not allow things that are forbidden unless the condition of compulsion occurs in the community. So that the needs that cover society in general are the same as *dharurah*. Second, the permanent law imposed on the condition of *dharurah* will end with the end of the forced condition. It is different from needs, because the law on needs lasts permanently, and applies both to those who need it or others (Al-Zuhaily, 2006, p. 289).

Among examples of the application of this rule are several contracts in *muamalah* transactions. The first is the *ju'alah* contract, in which there is *jahalah*. The contract is allowed because the community in general requires the existence of the contract in *muamalah*. Likewise with the *salam* contract which is a sale and purchase of goods that are not yet available (*ma'dum*). The contract is allowed because there is a need for many people for the contract for transactions (Al-Zuhaily, 2006, p. 291).

6. كُلُّ رُخْصَةٍ أُبِيحَتْ لِلضَّرُورَةِ وَالْحَاجَةِ لَمْ تَسْتَبِيحْ قَبْلَ وُجُودِهَا

Every rukhshah that is allowed because of dharurah and needs is not allowed before there is a condition of dharurah or need.

The conditions of *dharurah* and needs that allow forbidden things are a form of *rukhsah* given to people who are in a forced condition. So before there is a forced condition, from an emergency or necessity, the law is still not allowed.

Rules are applied, for example, to people who are allowed to consume carrion. The reason for this is because of the condition of hunger and the unavailability of halal food. So before there is hunger and the condition of the unavailability of halal food, then the law is still haram. Another form of applying this rule is like *tayammum* which is allowed due to *syar'i* age, which is done when it is time for prayer. As for before entering the prayer time, the *tayammum* is not allowed (Al-Zuhaily, 2006, p. 296).

Application of Islamic Legal Maxims on Emergency in *Istinbath* and Fatwa

Al-Nadwi in Novia (2016) explains that islamic legal maxims have a very important function in the development of Islamic law. Islamic legal maxim is a way to provide convenience in an effort to explore the law in the text, either in the form of verses of the Qur'an or sunnah. In this case, islamic legal maxim has played an important role in helping fiqh scholars, muftis, and judges in solving legal problems that exist in society. This is because islamic legal maxim has a close relationship with maqashid sharia (Novia, 2016). It is not surprising that islamic legal maxim is also used as the basis and footing in determining fatwas on problems faced by society. In this case, islamic legal maxim becomes formal evidence considering the provisions in it refer to the Qur'an and sunnah (Habiburrahman, 2015).

A fatwa is an answer to a question or it is a result of *ijtihad* related to problems that arise in society for which no specific evidence is found explaining the law (Maksum, 2015). In addition, a fatwa is also an explanation of the existing arguments, both from Al-Qur'an and Sunnah. Abu Zahra in Maksum (2015) explains that there is a significant difference between *ijtihad* and fatwa. *Ijtihad* arises because it is based on a question or not, so it is more general. While the fatwa is more specific, because the fatwa arises because it is based on the questions asked. In addition, fatwas are also dynamic, where fatwas can differ from one time to another, or from one region to another.

Novia (2016) found that islamic legal maxim has been used as a separate argument in the fatwa issued by the MUI DSN. This can be seen from the use of islamic legal maxim which is included after the reference to the arguments of the verses of the Qur'an, hadith, and *ijma'*. The use of islamic legal maxim in the fatwa is also based on the fact that various islamic legal maxims are general provisions of the point of similarity in *fiqh* matters. In this way, the general provisions contained in islamic legal maxims can be

used as the basis for legal determination for various new legal cases that arise in society. In addition, islamic legal maxim is also an integral part of the fatwa issued by the MUI DSN.

In terms of fatwas and *istinbath*, islamic legal maxim is important to study. The urgency of islamic legal maxim is needed to answer various contemporary problems that have emerged recently, and there is no specific argument that explains the law. The existence of limitations related to specific legal stipulations in the Al-Qur'an and Sunnah requires a foothold for mujtahids to perform *istinbath* (Hendrianto & Bisri, 2021). Especially in the context of an emergency, where *dharurah* conditions develop dynamically, and it is possible for conditions to emerge.

One form of emergency study is a study conducted by the Malaysian Fatwa Council on goods, food and beverages. The fatwa assembly stated that the biotechnological method of processing pig DNA was prohibited and against the sharia. The fatwa concludes that the use of biotechnology in the process of goods, food and beverages has not yet reached an emergency level. Thus, these conditions cannot apply islamic legal maxims related to emergencies (Abdul et al., 2016). From this study, it can be seen that islamic legal maxim is an important stepping element in establishing laws related to problems in society related to emergency conditions.

Conclusion

Based on the description that has been conveyed, it can be concluded that *dharurah* is a condition that positions humans in a forced condition. From these conditions, humans are given *rukhsah* to be able to avoid themselves from destruction and damage. This is also a foothold to be able to achieve benefit as maqashid sharia. In an effort to achieve and realize maqashid sharia, the scholars have formulated Islamic legal maxim, including those related to emergency conditions. The general principles in Islamic legal maxim, especially those related to emergency conditions, are important to be used as the basis for establishing laws related to contemporary problems faced by society. This is part of the guarantee for the realization of maqashid sharia. This study recommends to policy makers, academics, and researchers in the fields of fiqh and sharia to explore studies related to the application of Islamic legal maxims to various problems that exist in society. This is expected to be a scientific treasure in the field of sharia, especially related to the *istinbath* methodology for contemporary problems that occur.

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