

Al-Maslahat and Development of Islamic Law

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Abstract: *The Topic of this article/research is “Al-Maslahat And Development of Islamic Law”. There are three main problems which is attractive to elaborate in this article, namely; First, How are the essence and existence of al-Maslahat? Second, How is the al-Maslahat become a basic for development of Islamic law? And the third, How is the function and position of al-Maslahat for Islamic law product? Talking about Al-Maslahat is one object and very attractive in study of Islamic law theory. And it is important part that related with the Maqashid al-Syari'ah. The method that used in this writing/research is “The al-Tasyri’-methode by using “Istishlahiy approach”. Many of Muslims Scholars or the Experts of Regulation of Islamic jurisprudence—wheather at classic era or nowadays—are talking about the existence and position al-Maslahat in Islamic law regulation by using Istishlahiy approach. According to the experts of Islamic Jurisprudence, al-Maslahat can be used as the cause or ratio legis (al-'Illat) in determining Islamic law regulation. And sometimes, al-Maslahat often called by al-Istidlal, namely logic argumentation or logical reasoning. Through this article/research, we found that al-Maslahat, beside it is functioned as part of method In Islamic law theory but it is also used to develop Islamic law it self. And al-Maslahat is used very widest in determining and development of Islamic law, especially concerning with the contemporary issues. So Imam Malik ever said that where ever you get advantageous and it is not contrary with the content of al-Quran wa al--Sunnah, that is al-Syari'ah (Islamic law).*

Introduction

Talking about *al-Maslahat* is still interesting in Islamic law study. Many Muslim scholars use *al-Maslahat* as one factor and basic to develop Islamic law. In Islamic law study, *al-Maslahat* become a part of the destination of Islamic law and in Islamic law theory called by “*Maqashid al-Syari'ah*” (goals of shari'ah) (Sanu, 2000). Actually, study about *al-maslahat*, it is connected with the values of Islamic laws it self. The muslim scholars of Islamic law theory (*Uhuliyun*), like Imam al-Haramain , as quoted by Amir

Muallim and Yusdani (1999) is the first man who said that *Maqashid al-syari'ah* must be understood deeply.

Study about *Maqashid al-syari'ah* is concerning with *al-maslahat* directly. In fact, study about *al-maslahat* is not avoided from divergence among the Muslim scholars. This divergence and debate is not only seen about essence of *al-maslahat* it self, but also it related directly to its relevance with the need of human being which is running continually. And this divergence is seen clearly in discussing between *al-maslahat*, *al-nash* and *Ijma'* (Al-Kamali, 2000).

The Muslim scholars have different opinion in facing cotradiction between *al-maslahat* and *al-nash*. As Abdullah Kamali (2000) explained, generally, they told that if happened contradiction between *al-maslahat* and *al-nash* (al-Qoran and al-Sunnah) or *al-Ijma'*, so that, *al-maslahat* must be rejected, because it will implicate negative effect for human life, and we have to give priority to al-nash. Why? It may be influenced by human desire. For this, like al-Juwaini (n.d.) and al-Gazali (n.d., 1971) have determined the measure or standard of what we called that *al-maslahat*.

According to al-Gazali (n.d.), how to comprehend the existence of *al-maslahat* is very important, because we shall be able to distinguish, is it acceptable or not and adjust to the values in the al-Qoran and al-Sunnah? This question is necessary to be expressed here, because *al-maslahat* took part and play role in developing Islamic law regulation time by time.

It's realized, nowadays, what Abdullah Kamali (2000) stated that it has appeared different opinion among muslim scholars about this *al-maslahat*. Some of them said, if it has happened controversy or contradiction between *al-maslahat* and *al-nash*, so *al-maslahat* must get priority from al-nash (*taqdim al-maslahat 'ala al-nushus*). The opinion like this, it is not new thing, but it has occurred since 7th Century of Islamic Calender that has been elaborated by Najamuddin al-Thufi (Al-Kamali, 2000).

Furthermore, al-Thufi expressed that if *al-maslahat* has adjustment or suits with al-nash, so it is very comfortable, but if it does not suit with al-nash, then *al-maslahat* is becoming priority by using *takhsis*, and *bayan* (Al-Kamali, 2000). Using this way means, is how to specify the general meaning of *al-nash*. But now, it is important to be seen that *al-Maslahat* becomes social and Religion phenomena which follows evey series of each event of society development. In this writing, I would like to elaborate Several problems about *al-maslahat* as the object of research and its connection with the development of Islamic law: How is the essence of *al-maslahat* in Islamic law? How is the existence of *al-Maslahat*? How is *al-Maslahat* become a basic for development of Islamic law? How is the function and position of *al-Maslahat* for Islamic law produt?.

Method

The methods and approach which can be used in this writing/article is the *Tasyri' Method*. This method will see and describe the process of how is determination regulation of Islamic law. The data will be analyzed by using *Istishlahy* and *Istidlal* approach. The use of *Istishlahy* and *Istidlal* approach will see the side of values of problems that we face whether it contains profit (*al-maslahat*) or not (*unprofit*)? And *Istidlal* approach is a logic analysis by giving rationally reasoning, like what is the ratio legis (*al-illat*) of the regulation of Islamic law. And after this, making several conclusions in the end of this article.

Result and Discussion

The Essence of *al-Maslahat*

In this part, before we step further more, I would like to explain the essence of *al-Maslahat* first. According to Mustafa Sanu (2000), literally *al-Maslahat*—in singular form but in plural *al-Mashalih*—is advantage or profit. In terminology of Islamic law, *al-Maslahat* is meant to protect the aims of Islamic law whether it connected with all the good things or to reject the all bad things. In other word, *al-Maslahat* is also called by *Maqashid al-asyari'ah*. *Maqashid al-Syari'ah* consists of two words, that is *Maqashid* and *al-syari'ah*. The word *Maqashid* is plural which meant “purpose” or “aim”. And the word *al-Syari'ah* is derived from the verb “*syar'a*” that meant regulation or norm. That's why, *Maqashid al-syari'ah* meant what is the purpose of Islamic law determination.

Beside that, Muhammad Abu Zahrah (1958) also said that the meaning of *Maqashid al-Syari'ah* is the same meaning with *Maqashid al-ahkam*. Then, Zaky al-Din Sya'ban (1965) and Abdul Wahab Khalaf (1990) expressed and used terminology “*Maqashid al-Tasyri*” for *Maqashid al-Syari'ah*. If we explore the use of *Maqashid al-syari'ah* is coming from Abu Ishaq al-Syatibi (n.d.) and Adul Karim Zaidan (1977) that both wrote in their books : *al-Muwafaqat Fi Ushul al-Syari'ah* and *al-Wajiz Fi Ushul al-Fiqh*. And Quthub Mustafa Sanu (2000) also stated that *al-Maslahat* is the thing what is the purpose of Islamic law and its secret has it. Zaky al-Din Sya'ban (1965) described that God (Allah) does not declare all regulations except/unless for happiness of human life in this world till hereafter for ever.

Satria Effendi M. Zein (2019) also explained that *Maqashid al-syari'ah* is the destination of God (Allah) and His Apostel (prophet) to formulate Islamic regulation. This destination can be searched or explored in the verses of al-Qoran and al-Sunnah which is indicating the values of *al-Maslahat*. The essence of *Maqashid al-Syari'ah* is How to realize the benefit on one side and on other side how to reject disadvantageous which will happen in human life. And Abdul Karim Zaidan (1977) said that “*al-maslahat* is reaching or taking the advantage and avoiding the badness in all aspects of our life.

According to Abdul Karim Zaidan, *al-maslahat* must be seen in two side; **first**, we must be able to see in side of certainty of the *al-maslahat* it self (*al-ijaby*) and it called “*Ijad al-manfa'at*”, viz; that is the certainty of *al-maslahat*, and the **second**, we must also be able to see the certainty of

existence of disadvantageous (*saliby*) and this is called by “*daf’u al-mafsadat*”, namely avoiding from the bad thing that it can damage human life.

Based on this, we can understand the essence of *al-maslahat* and *mafsadat* and its connecting with *Maqashid al-Syari’ah* which must be struggled for human life in this world till hereafter next. Imam Al-Syaukani (n.d.) said in his book, *Irsyad al-Fuhul*, he truly explained that the essence of al-Maslahat is how to protect the purpose of Maqashid al-Syari’ah and defend it in this life. Husen Hamid Hasan also said that *al-maslahat* is the values of human activities which have advantageous and it needed by society. The example for this, the business activity or study is *al-maslahat* which contains advantageous and it needed by human (Al-Syaukani, n.d.).

Then, Jalaluddin Abdurrahman (n.d.) explained that *al-maslahat* is protecting the *Maqashid al-Syari’ah* which will bring the benefit and it must be based on clear principle. Imam al-Gazali (n.d.) also states the same opinion about *al-Maslahat*. According to him, *al-Maslahat* must be seen in two side; the **first** how to protect and reach the advantageous for human life and the **second** how to remove or avoid from all the things that can be damaged. Other opinion that expressed by al-Khawarizmi and quoted by Jumantoro and Samsul Munir Amir (2005) said *al-maslahat* is the thing that needed by human. Then, in this, Quthub Mustafa Sanu (2000) said so more clearly about *al-Maslahat*, like this next: *al-Maslahat* is to protect the destination of *al-Maqashid al-syari’ah* which contained how to gain the advantageous and struggle to avoid all the bad things which will fall on human. And it is also including to protect their religion, soul and body, intellect or mind, honor and properties.

After describing several opinions of Muslim scholars about *al-Maslahat* above, so it become more clear and we can understand what is the essence of *al-Maslahat*. So that, the essence of al-Maslahat is the content of *Maqashid al-Syari’ah*, namely; like al-Gazalai said in Arabic “*Jalb Manfa’at Wadaf’u Madarrat*” (Al-Gazali, n.d.; Zaidan, 1977)

The Existence of *Al-Maslahat*

Generally, Muslim scholars (Mujtahid) formulate *al-Maslahat* into three items. One of them is Abdullah yahya al-Kamali (2000). He said that, the essence of *al-Maslahat* is divided into three sorts, as bellow:

1. It is Called by “*al-Maslahat al-Mu’tabarah*”

The type of this *al-Maslahat*, it has been expressed directly by Allah and Prophet Muhammad in the al-Qoran and in al-Hadis. By other word, this *al-Maslahat* supported by reference or argumentation based on the verses of al-Qoran and al-Hadis, whether it connected with the order or prohibition, because both of it will go ahead to *al-Maslahat*. Muhammad Abu Zahrah (1958) said it is named with *al-Maslahat al-haqiqi* or pure al-Maslahat and not camouflage. Al-Gazali (n.d.) called it in Arabic text with “*Qism syahida al-syar’u Li’tibariha*”.

Abdullah al-Kamali (2000) said, this pure al-Maslahat includes five elements, namely; to protect faith or religion, soul, reproduction, properties and intellect. Faith or religion is a basic human right and it must be protected

and may be not troubled. For this, like to fight against the enemies of Islam and the person who stripped his faith or apostasy. And it is also related to advantageous of human soul. So that, in Islam Allah has decided *qishas*, as the punishment for some one who killed the person. In *Qishas* regulation, if the person murders some one, so he must be murdered. We can get this regulation in the al-Qoran (Ali, n.d.), Surah al-Baqarah, verse 174, Allah said: "O ye Believe! The law of equality, is prescribed to you in cases of murder; the free for the free, the slave for the slave and the women for the woman...".

Why Allah has determined the *Qishas* for the murderer? Yes, it becomes as the guarantee for the persistence or continuity of human life. Allah Said, "In the law of equality There is (saving of) Life to you. O ye men of understanding; that ye may restrain your selves (al-Baqarah/2 : 179). So, this verse shows us that the law of equality (*qishas*) will give the us the maintenance of human soul body. And also *al-Maslahat* for human reproduction. In this case, Islam has forbidden any sexual act outside of marriage and the actor of sexual act outside of marriage will be punished by 100 lashes. This regulation will save or protect the purity of reproduction. In this context, the legal reproduction in Islam must be done through marriage contract (*Aqd al-Nikah*) legally.

Beside this, Islam reminds human to save intellect or mind and avoid all the things that can be damage. So that, Islam forbids drinking wine and all kinds of alcoholic drinking, because both of it will endangered human healthy. Our Prophet Muhammad also reminds his followers in order to keep away from all kinds of alcoholic drinking which can be drunk. Prophet said "the drunk will be punished by 40 lashes". Many of peoples, especially, the circle of the young generation fell victim caused by alcoholic drinking and bad drugs. So that is why, Islam prohibits the wine and all kinds of alcoholic drinking. Allah Almighty said in Al-Qoran: "They ask thee Prophet Muhammad) concerning wine and gambling. Say in them is great sin and some profit for men; But the sin is greater than profit..." (al-Qoran, Surat al-Baqarah/2, verse 219).

And so for the property that has possessed must be protected by law and save it from plunderers or stealers. Allah Almighty determined regulation that who takes or steals the property that possessed by some one, who will be punished and his hand will be cut. As Allah stated in al-Qoran: "As to the thief Male or female, cut off his or her hands; A retribution for their deed exemplary punishment from Allah, and Allah is exalted in power full of Wisdom" (al-Qoran, Surat al-Maidah/5, verse 38). Through this verse we know that the protection of property regulated by Islam. All those have no purpose, but to save *al-Maslahat* for human life.

2. It is called by *al-Maslahat al-Mulghat*

What the meaning of the type this *al-Maslahat*? Muslim scholars elaborate that this *al-maslahat* is contradictory what found in the al-Qoran and al-Sunnah. With another word, the thing that is regarded as *al-Maslahat*, but it is contradiction with what we find in the al-Qoran and al-Hadis. So, the *al-Maslahat* like this must be refused and it is strictly forbidden (Al-Kamali, 2000). The example for this, like; to compare a male

and female (man and woman) in inheritance, and this is prohibited, because it is contradictory what al-Qoran said (See al-Qoran, Surah al-Nisa”, verse 11. In this verse, Allah has decided that the inheritance right for male is more than female, it means a portion for the male is equal to that of two females). Another example, like; to deny or destroy a 100 day waiting period (*iddah*) for woman that divorced by her husband. As we know that one of philosophy of a 100 day waiting periode of divorced woman is to be able to know is the divorced woman pregnant or not?

In this modern era, it is relatively very easy for the devorced woman or a wife to know is She pregnant or not? She can go to the docter or medical checkup clinic to check her self; So then, in shortly that woman will get information about herself. The problem now is, in fact, if the divorced woman is not pregnant, then is 100 day waiting periode (*iddah*) for the devorce woman will be destroyed or neglected and she may get married with another man? Certainly, this may be not done, because *al-Maslahat* like this is contradiction what Allah Almighty said in the Al-Qoran and His Messenger in al-Hadis clearly and explicitly (*qath'y*).

3. It is called *al-Maslahat al-Mursalat*

This last *al-Maslahat* is textually not expressed with words in the al-Quran or in the al-Hadis. According to Zaky al-Din Sya'ban (1965), the type of this al-Maslahat is the thing that based on great effort to realize advantageous and all at once to avoid the dameges in human life, but there is no one of argumentation or verse from al-Qoran and al-Hahadis explained clearly and explicitly a to except or reject it, however it is needed by human. All the more, nowadays, there are many new problems appear in surface which caused by development of science and technology, but for the moment we did not find in the argumentation in the al-Qoran al or al-Hadis textually to respond it.

In the circle of muslim scholars for Islamic law (*Mujtahid or Fuqaha*), the existence of *al-Maslahat al-Mursalah* or often called by *al-Istislah* is regarded as a tool or methodology in deduction for Islamic law. In this connection, Muhammad Salam Madkur (1984) explained that the meaning of al-Istislah is an effort to produce Islamic regulation of the things that based on al-Maslahat and also at the same time avoiding the badness. Mustafa Said al-Khin (n.d.) gave the comment that *al-Istislah* is another name of al-maslahat. Al-Gazali (n.d.) has the same opinion like said al-Khin about *al-Maslahat al-Mursalah*.

According to Al-Gazali, this *al-Maslahat al-Mursalat* is *al-Maslahat* which is needed by human, but there is no argumentation of al-Qoran and al-Hadis to receive or prohibit it. And, Jalaluddin Abdurrahman (n.d.) said, this *al-Maslahat* that Allah Almighty has no comment about it. Muhammad Abu Zahrah (1958) said This al-Maslahat is suitable with *Maqashid al-Syariah (al-mashalih al-mulaimah limaqashid al-syari'ah al-Islamy)*. And Abdullah al-Kamali (2000) said that this al-Maslahat can be used as a basic for building of Islamic law regulation. The example is often used for this, is The collection of al-Qoran Verses become one book at the Caliph of Usman Ibn

Affan Era. Until at this era, the verses of a-Qoran are still spreaded or scattered on the hands of prophet Muhammad Companions.

At the prophet era the verses of al-Qoran is not collected yet become one book like nowadays, and generally the companions of prophet Muhammad recited and memorized all of the verses of the al-Qoran, although many of them also wrote the verses of al-Qoran in some mediums, like at the goat bark and at the stem of date palm. More than two decades after the death of prophet Muhammad and Umar Ibn al-Khatab as the Caliph was dead, killed by Abu Lukluk, he was substituted by Usman ibn Affan as the third Caliph.

At this caliphate of Usman Ibn Affan era, the verses of al-Qoran was finished to be collected completely in one book. This collection of al-Qoran verses has been legalized officially become one book and called by "*Mushaf*". And after this Mushaf was legalized by Caliph Usman Ibn Affan, finally it is also called by "*Mushaf Usmani*". The activity of the collection of al-Qoran Verses can be categorized as *al-Maslahat Mursalah* and muslim Scholars have consensus (*Ijma*) about this until up to now, and even the next.

Furthermore, we can see the ranks of the existence of *al-Maslahat* which related with the levels of human need. According to Zaky al-Din Sya'ban (1965) and he said that many of Muslim Scholars (Mujtahid) have consensus and they devide the ranks of *al-Maslahat* into three items.

First, it is called by *al-Malahat daruriyat*, or It means this is related with Premary need and can be also said as emergency need. According to Quthub Mustafa Sanu (2000), *al-Maslahat al-Dlaruriyat* is connected with principal or primary need which its existence must be concrete and may not be unconcrete. If It can not be realized, so the life of human will be threatened and dangerous. Because of that, this *al-Mslahat al-dlaruryat* has to save in order to be able to avoid from damage. Fathurrahman Djamil (1995) said, the protection of *al-Maslahat al-Dlaruriyat* is very important in order to keep human away from something that is unprofitable. Then, Fathurrahman Djamil explained that the primary need of human is related with the protection of Religion, soul, intellect and properties.

According to Ahmad al-Mursi Husain Jauhar (2009), there are five aspects of *al-Maslahat al-dlaruriyat* which is categorized as the primary need.

- a. It's connected with the protection of religion.

In this connection, *first*: every people hase right to follow any religion that they want as long as suits with their choice. In this case, Islam has given the right of freedom for religion to every people to perform their ritual. Islam does not force the people or the followers of other religion beyond Islam to embrace Islam or become muslim, because having or embracing a religion is a choice. Islamic religion taught about "*Dakwah Amr ma'ruf Nahy Munkar*" (to urge doing the goodness and prohibite the all bad things). Al-Qoran explained: "*Let there be no compulsion in the religion, Truth stands out clear from Error...*". (Ali, n.d.).

The second, To save the good relation with non-muslim and giving appreciation one and each other as a citizen of society or country. All

- of citizens of the Country have equal privilege before the law. *Third*, And Islam also gives guarantee and save security for non-muslim which included their properties, personal or privat and social right.
- b. The protection of soul and body (*Hifz al-Nafs*)
 What the meaning of point? This point is very important to be paid attention by all people, because it is regarding with the continuity of human life. To save or protect the soul in this point is related with the continuity of human right. The example for this, like; Availability of clothing, food and housing to sustain the maintenance human life. So that, if this basic need is neglected, it will be caused troubling the soul of human (Djamil, 1995). Al-Qoran has remembered people not to torture themselves. This action is strictly prohibited in Islam. Al-Qoran said: "... *Not kill (destroy) yourselves, for verily Allah has been to you Most Merciful*". (See Surat al-Nisa'/4, verse 29) (Ali, n.d.). Based on this verse, we can understand that the action to destroy or kill our selves or other people are forbidden, it is sin and in Islam called "*haram*".
- c. The Protection of intellect (*Hifz al-'aql*).
 Why intellect is regarded as an very important for human and it is placed as a primary need in *Maqashid al-Syari'ah*. Yes, intellect is one valued tool for human and it all used at once to think many things, and it can be not realized concretely, but it is an idea in abstract. With the intellect people can distinguish between the righteousness and the wrongness. Thus, we have to protect and save our intellect from the thing that can be damage. So, Allah Almighty has decided in the al-Qoran that, "the Wine is forbidden or haram". Allah said: "*They ask thee (you) concerning wine and gambling. Say, in them is great sin and some profit for men (human). But the sin is grester than profit...*". (Al-Qoran, Surat al-Baqarah/2, verse 219). Through this verse can be understood How very danger the wine is, and also included the all alcoholic drinkings. All this, no other but is to save and protect the intellect from damage. Our Prophet Muhammad also said, "*All the alcoholic drinkings are equal with the wine and all wines are forbidden*". (Daud, n.d.)
- d. It is called *al-Hifz al-Nasl* (The Protection of Reproduction).
 Islam guaranteed the honor of human by paying attention for their privilege. This protection is clearly seen in deciding big sanction for actor of any sexual outside of marriage (*al-zina*). Fathurrahman Djamil (1995) said, the protection of human reproduction is included the rank of *al-Maslahat al-dlaruriyat* and it is important part of human life. For that, Allah Almighty decides regulation for marriage and prohibits the sexual act outside marriage. Al-Qoran explained, "*Nor come the Adultery, for it is an indecent (deed) and evil way*". (See Surah al-Isra'/17, verse 32). In Hadis, Prophet Muhammad spoke, "*Marry please good women that they will be able to give you the descent, and actually I am so very happy and proud of many of you all in the hereafter next*" (Narrated by Imam Ahmad). Thus, Islam

makes regulation about the pillars and prerequisite of marriage orderly (Al-Asqalani, 1989).

- e. It is called *al-Hifz al-Mal* (the protection of Properties).

The property or wealth is the basic need in our lives. Allah described in al-Qoran, the property is admitted as a part which can be not separated from the happiness of human life in this world. In the al-Qoran Allah told about the wealth: “*Wealth, sons and all ornaments of the life of this world, But the things that endure, good deed are best in sight of thy Lord, as rewards and best as the foundation for hopes*”. (See al-Qoran, Sura al-Kahfi/18, verse 46).

So, It is not amazing that some one has high motivation to get wealth or property for the sake of saving his existence of his life and self-respect. In this context, Ahmad al-Mursi (2009) describes that there are three requirements which must be always remembered in collecting the wealth: (1) the collection of wealth must be legal, (2) the wealth must be used for the rightful and (3) the wealth must be used to the way of Allah Almighty. So that, wealth or property must be managed by referring to values of al-Qoran and al-Sunnah. Beside this, must also be remembered that wealth or property has to protect from the thief. The wealth or property is part of Maqashid al-syari’ah and it is a kind of *al-Maslahat al-dlaruriyah*.

Second, It is called by *al-Maslahat al-Hajiyah*. This *al-maslahat* includedes the secondary rank of al-Maslahat. If it can be not able to realized, it will be not damaged human life, but it only caused the difficulty for the human life. Jalaluddin Abd. Rahman (n.d.) said that the need of human for this al-Maslahat is to lighten and to be lost the difficulties which has been being faced by the human. The example for this, is giving the dispensation (*rukhsah*) to the people in the form of lightening when they or he faced the difficulties in performing some rituals. Another example is when some one goes to travel to the far place, so he is given the lightening (*rukhsah*), namely by allowing to gathering two prayers (Shalat) in one time or shortening the prayer from four bowings down until become two.

According to Amir Syarifudin (2008), from determination of regulation, *al-Maslahat al-Hajiyat* divided into three clusters, namely: The thing that instructed by Islamic law to perform the obligation or duty. This is called with *obligated introduction (Muqaddimah wajib)*. The example for this, is to build the school to teach the sciences and to develop the quality of intellect. But, if the building of the school can not be fulfilled yet, it does not meant not to be reached to get sciences, because learning can be done beyond school; the thing that prohibited to be done. For example, like any sexual act outside of marriage is forbidden and it is included the prohibition on the rank of *al-Maslahat al-dlaruri*. And so, all the activities that will bring to adultery has to forbid: Like, solitude of two persons male-female that is not relative are forbidden; All the things that are becoming easy and giving the easiness in our life, it can categorised *rukhsah*. *Rukhsah* or dispensation is prevailing in ritual matters: example for this, the prayer for the traveler, or it is permitted in trade by “*Salam*” (buying and selling by prepayment). The

argumentation for this, as Allah Almighty said in al-Qoran: "...Allah does not wish you to place in a difficulty..." (See Al-Qoran, Surah al-Maidah/5, verse 6). So this verse explains to us that whenever we should face the some difficulties and those difficulties must be removed. About this, Allah does not want to place His servant (people) in a difficulty.

Third, It is called *al-Maslahat al-Tahsiniyat*. This al-Maslahat is concerning with the need which it is only to complete decaratively. If this al-Maslahat dose not realize yet, it will be not damage for the people lives and it depends on the situation. Satria Effendi M, Zein (2019) explained that *al-Maslahat al-Tahsiniyah* only related with the properness and beauty which is suitable with good ethics. The aim of this al-Maslahat al-Tahsiniyat not to make something becoming obligatory of order or something prohibited becoming forbidden, like aplicated at the two ranks *al-dlaruriyat* and *al-hajjat* that has described above. Amir Syarifudin told that all needs at the rank of *al-tahsiniyat* not to be obligatory but it only becomes meritorious (*al-nadb*), if it is neglected not to be sin (*al-makruh*).

***Al-Maslahat* as the Basis for Development of Islamic Law**

The fondation of *al-Maslahat* as *Maqashid al-Syari'ah* is to stand on al-Qoran, al-Sunnah and the product of great effort of Muslim scholars after the death of Prophet Muhammad. In one narration (*al-riwayat*) told that Prophet Muhammad delegated Muaz Ibn Jabl went to Yaman region to fulfill the duty there. But, before he left there, the Prophet submitted some question to Muaz: "Muaz! When you arrived in Yaman, the people there asked you about the thing connected with the regulation what did you answer? Muaz said, he will look for in the al-Qoran. Then, Prophet Said, If you didn't find in the al-Qoran? Muaz answered that he will see in al-Sunnah. And last, Prophet asked again, if you didn't find in al-Qoran or in al-Sunnah what should you do? Muaz answered that he will have great effort (*ijtihad*) and he didn't do more than his authority". (Daud, n.d.).

So, what Muslim scholars said later with the sources of Islamic law is inspired by this al-Sunnah or words and traditions of Prophet Muhammad. With other word, the formulation of sources of Islamic law based on this al-Sunnah. And *al-Maslahat* also stands on this al-Sunnah:

Al-Qoran

Al-Qoran is devine revelation of God was revealed to Prophet Muhammad, by using Arabic, conveyed by Engel Jibril. Reading and reciting al-Qoran is part of ritual and regarded infidel for the people who unbelieved whether all or part of it (Al-Biry, n.d.). Then, Other opinion said, al-Qoran is words of Allah that revealed by using Arabic and it is believed as the miracle which given to Prophet Muhammad, learned by his companions and all of his followers till up to now. Reading and reciting al-Qoran is regarded as ritual to Allah (Afandi & Ridmwan, 2008). All the verses of al-Qoran are believed by muslim umah as the final completely revelation and it has been collected in one book called "*Mushaf*". And its validity has been guaranteed and may not be debated again (An-Naim, n.d.). All the contents of al-Qoran contained the ideas, teachings and doctrines that connected with action and behavior of

society, and also honesty or trust in all activities (An-Naim, n.d.). No one of all the things that are neglected without regulation.

Al-Sunnah

Al-Sunnah or al-Hadis, in this context, means all the things that related to the prophet Muhammad, whether it is related with his saying, activity, decision or all good characters stuck on himself. The existence of al-Sunnah beside al-Quran is very important, and al-Qoran Itself agreed with its existence. This can be found in the al-Qoran and Allah said:”*O ye who Believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer to Allah and His Messenger, If you do believe in Allah and the Last Day. That best and most suitable for final determination*”. (See al-Qoran, Surah al-Nisa’/4, verse 54).

Through this verse, we know that al-Sunnah is a part of unseparated from al-Qoran, and both are like “*two in one unity*”. And the Muslim scholars often said that al-Qoran and al-Sunnah formed *al-Mashadir/al-Adillat al-Ahkam al-Manshusat*, namely “textually argumentation”, written in the Mushaf al-Qoran and books of al-Sunnah. So, where can be found texts of al-Sunnah or al-Hadis? All the texts of al-sunnah can be (found in the six of books of al-Sunnah or “*Kutub al-Sittah*” are written and collected the six experts of al-Sunnah. Those six books are; *Sahih Bukhari* written by Imam al-Bukari, *Sahih Muslim* written by Imam Muslim, Sunan Abi Daud written by Imam Abu Daud, *Sunan al-Tirmizi* written by Imam al-Tirmizi, *Sunan Ibn Majah* written by Imam Ibn Majah and *Sunan al-Nasa-iy* written by Imam al-Nasa-iy.

Al-Ijtihad

Al-Ijtihad is concerning with activity or a great effort of muslim experts in Islamic law (Mujtahid) to produce Islamic Regulation. Activity of great effort of Muslim expert is a process to determine the regulation of Islamic law by using or choosing between several medias or tools. According to Abdul Wahab Khalaf (1990), the several medias are; *Ijma’* (consensus), *al-Qiyas* (analogy), *Al-Mashalih/Istishlahy* (Profit/advantage), *al-Istihsan* (mots exactly), *al-Istishab* (Using the old Regulation before coming the new one), and *al-Urf or al-Adah al-al-Shahihah* (Using good Tradition arising and adhered in the middle of society), and *Qaul Sahabiy* (The saying of Companions of Prophet Muhammad). All these tools or medias are used when we do not find the argumentasian (*daliil*) literally in the al-Qoran and al-Sunnah. And these tools are called by *Istidlal*. What is the meaning of *Istidlal*? According to Toto Jumantoro and Samsul Munir Amin (2005) *Istidlal* is, “*Thalab al-Dalil Min thariq al-‘Aql Wa Nataijuh Au Min ‘Alim Ya’lamuh*” (Using the logic argumentation that is fulfilled by a expert in the Islamic law). One of these tools is *al-Malahat* or *al-Mashalih* and *al-Maslahat* is part of *Maqashid al-Syari’ah*. In one principle (*qa’idah*) is expressed that, “*Dar-u al-Mafasid Muqaddam ‘Ala Jalb al-Mashalih*”. This Principle is denoting to us, there are two sides in looking some thing or object that we are facing: one side some thing that has profit and other one has damage. In the condition like this, then the priority is rejecting the damage first, because if the damage

has been eradicated, so the profit will be coming by itself. Abdul Karim Zaidan (2008) gave the comment about this, if thereof is contradiction between profit and damage, so the priority is to eradicate the damage first.

According to theory, Islamic law grows and develops gradually from time to time. The growing and the developing Islamic law is always followed and faced by many challenges that caused by the change of time, condition and places. Beside that, Amir Syarifudin (1997) said that, we are able to understand and find the Islamic law by three ways:

1. By searching the texts of al-Qoran and al-Sunnah directly. All of the verses or the texts of al-Qoran and al-Hadis have high values, and from this will bring the norm or regulation that must be obeyed by human in all aspects of their lives.
2. We do not find the regulation of Islamic law literally, but by looking for the signal from the texts of al-Qoran and al-Sunnah. It is not easy how to see signal behind the texts.
3. We do not know directly from the texts and not through the signal behind the texts, but by taking the soul and spirits of the texts totally, and make conclusion that all regulations have been decided by Allah, and it is certainly have goal or destination, and this goal is *al-Maslahat*.

In this case, when we see and think about the existence and the function of *al-Maslahat* is very important to develop Islamic law from time to time. And *al-Maslahat* can be used and it has important role to develop Islamic law, especially when we face many new issues which are not found its answer textually in the al-Qoran and al-Sunnah. How can *al-Maslahat* have playing role in developing Islamic law? In this context, at least, there are two ways or two steps that we can do to overcome new issues, namely by making *al-Maslahat* having function as media or tool in answering the problems of Islamic law.

1. By using *al-Maslahat* as *the cause or ratio legis (al-'Illat)* of the Islamic law (Hasan, 1986). What is the meaning of *'Illat* (cause or ratio legis)? Imam al-Gazali (n.d.) defined *al-'Illat* or ***ratio legis*** with; "*Manath al-Hukm Aiy Ma Adlafa al-Syar'u al-hukm Ilayhi Wa Natha bih*". *The meaning of the definition is tethering of law or the thing that is connected to the rule of law by lawgiver*" (Al-Bajiqani, 1968). The same opinion with al-Gazali, the followers of Imam Malik, that expressed by Abdul Gani al-Bajiqani (1968), "*Manath al-Hukm Allaziy Adlafa al-Syari Ilayhi Bih*". The meaning of this text is, "*the Tethering of regulation that Lawgiver connected with it*". In the Islamic law theory is said that every regulation of Islamic law must be based on the cause of law (ratio legis). And even, this has been become a principle or rule, namely; "*Al-Hukm Yaduru Ma'a al-'Illat wujudan wa 'Adaman*" (An-Nadwi, 1994). The meaning of this rule is the regulation of law follows its cause, and it will be there or not depend on that cause. In this case, we take an example from "al-Qoran that Allah has forbidden drinking the wine" (See Surah al-Baqarag/2, verse 219). In this verse, Allah said: "*Yasalunaka 'An al-Khamr Wa al-Maisir Qul Fihima Ismun Kabir Wa Manafi' Lin-Nas Wa Ismuhuma Akbar Min Nafihima...*". The meaning of this verse is: "*They ask thee/you (Muhammad) concerning Wine and gambling, Say! In them is great sin and some profit for men. But*

the sin is greater than profit...". So here, what is the cause (*'illat*) about the forbidding of drinking wine? It is clear that Allah Himself said drinking wine is sin or dangerous for men, but the danger is greater than profit. So, the cause of wine is the thing that is able to damage and made the people drunk and dangerous. Further more, *al-Maslahat* can be used as the cause or *'Illat* for many cases by searching the values of it, is there profit or not? If it is profit and *al-Maslahat*, so it can be used as the cause of regulation of law.

2. By using *al-Maslahat* as the tool of developing of Islamic law. No doubt that the Islamic law develop dynamicly followed the developing of society from time to time. There are many contemporary issues or modern issues which include wide aspect of people lives. The appearance of contemporary issues have been formed the back round of developing sciences and technology in many fields. It is recognized, that the development of sciences and technology caused many new problems that face to face with the values of faith which believed by Muslims people. Said Agil Husein Al-Munawar (2004) said that Religion or Faith faces problematic Issues. The solution to overcome and solve the new issues is by using *al- Mslahat* approach. The need of people always develop widely and variously from time to time. The next, I expressed the examples which related to the contemporary issues:
 - a. About Artificial Insemination for human. Actually, the development of sciences and technology in Medical science is running quickly and ordinary jump. One of it is concerning with the *artificial insemination*. According to Suwito (n.d.) the terminology of artifial insemination for human is connected with the conception without having sexual intercourse, but by using help of medical expert. Atificial Insemination (sperm and ovum) which comes from a legal couple of husband and wife are not forbidden (Suwito, n.d.). Mahmud Syaltout (1969) also has the same opinion about this, and he said "conception by using artificial insemination which sperm and ovum come from a legal couple husband and wife are not forbidden or *halal*. What is the back round of artificial Insemination? In fact, it is one way to fulfil the human need in reproducing generations. All are based on the *al-Maslahat*.
 - b. About Family Planning Program. In Indonesia This program becomes national program and it is coordinated by the Institution of coordination for National Family Planning. This Institution, in Idonesia called by BKKBN. The family planning has the destination to manage the family and to restrain the speed of growing population. The family planning is directed to young couple of husband and wife which they must plan, manage and regulate about their reproduction. So, we can understand that the family planning program contained profit or *al-Maslahat* for human. Fathurrahman Djamil (1995) said, a couple of husband and wife follow the family planning with personally or collectively motivation, it is not only permitted (*mubah*), but it can be suggestion (*nadb*) or even it can be obligatory. Actually, many new problems or contemporary issues which its decision is based on *al-Maslahat*. But, I think so enough with these two examples, and it is so

clear that *al-Maslahat* can be used as a media or tool to solve many problems of regulation of Islamic law from time to time.

Conclusion

The essence of *al-Maslahat* is not only connected with profit that is needed by human or people in their lives and it is *part of Maqashid al-Syari'ah*, but also it can be used as basic and media in determining of Islamic law regulation. And it used widely by experts of Islamic law regulation, particularly—nowadays—in facing contemporary or modern issues which develop continuously from time to time. The existence of *al-Maslahat* must be protected while we attempt to avoid all the things that will bring to the damage. *Al-Maslahat* is very important for human, because it related with the need of human/people, whether primary need, secondary need or tertiary need.

The Muslim scholars divide *al-Maslahat* into two kinds, namely; *al-Maslahat al-Manshushah*. This *al-Maslahat* can be found or showed by al-Qoran and al-Sunnah textually. Then, *al-Maslahat ghair manshushah* is untalked *Al-Maslahah*. It is not expressed by Lawgiver (Allah) leterally in al-Qoran and al-Sunnah, but it can be found by doing great effort (ijtihad) of Muslim scholars all along the time after the death of Prophet Muhammad till now and the next time. Actually, the *al-Maslahat* like this is spreading around of our life and we are demanded to dig and find it all along the time. As for the function of *al-Maslahat* can be used as *the cause* or *ratio legis (al-Ilalat)* in determining regulation of Islamic law. Many problems or new cases are decided by using *Istishlahy* approach as the media to decide and develop Islamic regulation that connected with the *al-Maslahat*.

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