

APPLICATION OF MASLAHAT MURSALAH RULES IN BUSINESS TRANSACTIONS IN ISLAMIC BANKING

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ABSTRACT

The progress and development of technology brings various problems, first in the field of economics, especially in the field of banking. Various kinds of transactions that occur today have no arrangements when the Prophet Muhammad was still alive. The problem must be sought legal status, otherwise human life becomes difficult, which is why Islamic jurists are trying to find answers to the problem, one of the fundamental concepts that become Islamic teachings is the welfare of the ummah (maslahah). Maslahah mursalah is one of the very popular themes in the study of Islamic law, because maslahah mursalah is the purpose of syara' of the establishment of Islamic law. But the use of maslahah mursalah as a source of Islamic law raises debate among Islamic jurists who in principle split into two groups that support and reject. This research raises two main issues, namely first, how the debate/opinion of Islamic jurists on the use of maslahah mursalah as a source of Islamic law, and second, how to apply maslahah mursalah in business transactions in Islamic banking. The type of research conducted is normative legal research that examines primary and secondary legal materials using a statutory approach, conceptual approach and analytical approach. The results showed that there is a difference of opinion of Islamic jurists on the use of maslahah mursalah as a source of Islamic law, this is because there is no specific proposition that determines the acceptance of maslahah mursalah by syara' either directly or indirectly. But most Islamic jurists accept maslahah mursalah as the source of Islamic law. Maslahah mursalah has been applied or implemented in business transactions in Islamic banking and has been covered by the Fatwa of the Indonesian Ulama Council of the National Sharia Council Number:7/DSN-MUI/IV/2000 on mudharabah financing (Qiradh).

Keywords: Maslahat Mursalah, Business Transactions, Islamic Banking

INTRODUCTION

After the death of the Prophet (w. 11 H/633 AD), many problems arose that explicitly did not exist in the time of the Prophet (peace be upon him). The companions are faced with a problem that requires them to preach by identifying the problem by looking at the text of the Qur'an, if it is not found then the next step is to look in the hadiths of the Prophet (peace be upon him). If the problem has not been resolved until that stage then deliberation is taken to conduct ijihad with ra'yu, namely with those who do not have information from religious texts (Asriaty, 2015).

The period after the death of the Prophet (peace be upon him) was the beginning of problems in the development of Islamic law. Legal issues raised by changing times and technological developments and social changes continue to emerge as the dynamics of human life in the world throughout time. Qur'anic verses and prophetic hadiths need more in-depth reasoning and study to solve the problem of the ummah. The solution in the form of *ijtihad* is a way of *qiyas* and *maslahah* whose essence is to identify the law of a human act the process of rational thinking optimally in establishing Islamic law while still referring to both legal sources, namely the Qur'an and hadith, in order to find answers to various problems that arise in the midst of the ummah (Asriaty, 2015).

On this basis, the experts of *fiqh* and *ushul fiqh* have consensus that *maslahat* or benefit is the core purpose of the *pensyari'* or Islamic law: so that comes the very popular expression among them "where there is *maslahat*, there is the law of Allah". Recognizing that not all of these problems of life are found in the Qur'an and *sunnahs*, Islam lays down general principles and basic rules that can be used by *ahl az-Zikri* (*mujtahids*) to develop Islamic law and solve new problems through *ijtihad*. One of the general principles and basic rules laid down by Islam is that the main purpose of the purpose of the *pensyar'i* or Islamic law is to create good (*jalb al-masalah*) (Suratmaputra, 2018).

The texts of the Qur'an have been completed and so the texts of the *Sunnah* or hadith of the Prophet have ceased will not appear new again. Meanwhile, the life of mankind continues to grow so rapidly. All sorts of life problems have sprung up. New cases in ancient times have never happened now come in turn, and the challenges of life are becoming more and more. All of this requires a solution and must be stated how its legal status in Islam (Suratmaputra, 2018). Al-Ghazali uses *istislah* as a method of *istinbat* Islamic law and makes *maslahah mursalah* as a positive indication of consideration of the establishment of Islamic law, is a modern figure (*alum*), not rigid as those who reject it altogether, not so often as the Maliki, nor so bold as at-Tufi, this is very interesting (Suratmaputra, 2018).

Therefore, in the framework of the renewal of Islamic law, al-Ghazali's view of *maslahah mursalah* is what many can solve the problems of Islamic law that will face the community. Because in the condition of many new problems that arise that need to be resolved immediately, people will have a lot of difficulty if they follow a view that does not justify *maslahah mursalah* as a proposition to take consideration in establishing Islamic law. If this view is followed, there will be many new problems that cannot be placed in the legal status throughout the study of Islamic law. In this way it is clear that Islam will be outdated (Suratmaputra, 2018).

Likewise, if you follow an overly advanced view as represented by at-Tufi, or in determining *maslahat* or benefit it is too free, not related to the rules that control it. This kind of thing can have a negative effect, even endanger and threaten the existence of Islamic law. For such an opinion will flourish the reformers who under the pretext of renewal and in the name of the benefit dare to change the definite laws of Islam that are impossible to change again. Or under the pretext of renewal and bold progress violate the *nass qat'i* that *sarih* (the legal text in the Qur'an or as-*Sunnah* and hadith whose understanding is firm and clear) (Suratmaputra, 2018).

Various product developments and innovations in sharia economy require a strong legal foundation so that it remains in line with the principles of *shari'ah*. Therefore, the understanding of the methods of legal determination of various transactions and financial innovations becomes an inevitability. *Maslahah mursalah* is one of the many methods that can be used for the

establishment of the law. This is mainly because all the laws contained in the Qur'an and hadith contain *maslahah* so it is not excessive if it is then said that in every rule and determination of the law is contained *maslahah*. It is in this state that *maslahah mursalah* as the basic framework of the idea of reforming Islamic economic law is very interesting to discuss. Through the *mursalah maslahah* approach, various forms of Islamic financial transactions and innovations not only have a legal foundation as the basis for their application, but can also be examined in more depth about their benefits holistically, comprehensively and thoroughly (Harahap & Harahap, 2016).

RESEARCH METHODS

The type of research carried out is normative legal research. This study examined both primary and secondary legal materials. Primary legal material is sourced from legislation while secondary legal materials are sourced from textbooks, journals, dictionaries and encyclopedia and other sources related to the issues studied. The approaches used in this research are the statutory approach, the conceptual approach and the analytical approach.

THEORETICAL STUDIES

Maslahah Concept

Maslahah is derived from Arabic which means *manfa'at*, *fâidah*, good, useful or useful. The word *maslahah* is taken from the verb *shalaha-yasluhu* to *sulhan-maslahatan*. who follow the *wazan* (pattern) *fa'ala-yaf'ulu*. While in the dictionary Indonesian, the word *maslahah* means something that brings good (benefit and so on), benefits, use. While good means usefulness, goodness, benefits or interests (Sucipto & Khotib, 2020).

In the Arabic structure, the word *maslahah* is a singular form (*mufrad*) of the word *al-masalih*. According to *ibn Mandzur* as quoted by *Mohammad Hadi Sucipto*, *al-maslahah* has two meanings: The first is equal to the meaning of *al-shalah*. Second, it is in accordance with the word *al-masalih* (plural). Everything means the existence of benefits both originally and through the process, such as generating pleasure and benefits, or prevention and prevention, such as staying away from harm and disease. All of that can be said *maslahah* (Sucipto & Khotib, 2020).

Munssabah, which compares with the problem of *nas al-Qur'an*. Sometimes *maslahah* is called *al-Halat*, because it is also possible that humans suspect the usefulness behind a law. *Maslahah* is called *ri'ayah al-maqâsid*, because by realizing good means realizing and maintaining the purpose of *shara'*, which is general benefit. More clearly he argues that *maslahah* is something that needs to be preserved and in line with the human desire to attract *manfaat* and reject danger (Sucipto & Khotib, 2020).

The last understanding of *maslahah* according to *Wahbah al-Zuhaili* as in the *kitab* by *Mohammad Hadi Sucipto* he offered a definition that is considered accommodative and can explain the nature of *maslahah*, he said that *maslahah* is a character that has harmony with the regulation of *shâri'ah* determination and its goals, but there is no proposition specifically expressing or rejecting it, by realizing the projection of benefit and eliminating *mafsadah* (damage) (Sucipto & Khotib, 2020). *Maslahat tahsiniyyah* is a *maslahat* that does not include *maslahat daruriyyat* and *maslahat hajjiyyat* but only eligibility and perfection, if not fulfilled it has an impact on non-moral *karimah* (Sucipto & Khotib, 2020).

Mashlahah Mursala's Woes

Human life develops and human needs evolve according to their time. So if mashlahah mursalah is not taken in every case that clearly contains mashlahah assyar'iyah, then the people of mukallaf will experience difficulties and narrowness (Shamroni, 2017). In the next description will be outlined the opinions of Islamic jurists about the law of mashlahah mursala as a source of law.

Imam Hanafi and Ulama Hanafiyah: Imam Hanafi never devised a tree rule for use in berijtihad. He only died, from this fatwa the leaders of this school formulated the istimbath rule for use in ijtihaad. According to Sa'id Ramadhan al-Buthiy in Syakroni, (2017), Imam Abu Hanifah never mentioned Mashlahah mursalah in his ushul rule.

Imam Malik and Ulama Malikiyah: Imam Malik did not draft a ushul (rule) which he would use himself for jihad and would be used by people to formulate the law of fiqh to be used into his school, and to the fatwa that was narrated from him. Human life develops and human needs evolve according to their time. So if mashlahah mursalah is not taken in every case that clearly contains mashlahah as-syar'iyah, then the mukallaf people will have difficulty and narrowness.

Imam Syafi'i and Syafi'iyah: Imam Shafi'i is a school imam who takes the middle way between the path taken by Imam Abu Hanifah as the expert imam of ra'yu and Imam Malih as the imam of hadith. He understood things that are not mentioned in the Nash Qur'an and sunnah, Imam Shafi'i incorporated them into the Qiyas. For example, he gave a penalty for hard drinkers to people who accuse of adultery, namely dera as many as 80 times, because drunk people will be delirious and in his cigarettes are allegedly violently accused others of adultery. However, according to Wahbah Zuhaili, Imam Shafi'i and Shafi'i scholars basically use mashlahah mursalah in the smallest portion when compared to the other three imams.

Imam Ahmad bin Hanbal and Ulama Hanabilah: Ahmad ibn Hanbal is known as an Imam of the Hanbali school. He is also known as the hadith imam. He prefers to practice hadith, even though the hadith is mursal. He said that the hadith of dha'if is more important than a person's mind (ra'yu). But according to Abdul Halim al-Jundiy, quoted by M. Syakroni, if he did not find nash, he berijtihad and berfatwa like the companions of the prophet, tabi'in and their followers berijtihad and berfatwa. Because the companions of the prophet, tabi'in and atba'ut tabi'in many berijtihad use the consideration of mashlahah mursalah although this term was not yet known at that time Imam Ahmad followed their way in berijtihad. He does charity with mashlahah as they do charity.

Najm al- Din al- Thufi: The teachings of Islam contained in nash are mashlahah mursalah (benefit) for mankind. Therefore, all forms of benefit are hinted at and the benefit does not need to be supported by nash, either by certain nash or by the meaning contained in a number of nash. Mashllahah according to him is the most powerful proposition that can independently be used as an excuse in determining the law of syara'. However, al-Thufi in applying his opinion first avoided forms of mahdlah worship as material ijtihaad. Al-Thifi used mashlahah mursalah in the field of mu'amalah and all other laws outside of muqaddarah worship (Syakroni, 2017). There are four principles adopted by al-Thufi in applying his opinion first avoiding forms of mahdah worship as ijtihaad material. Al-Thufi uses mashlahah mursalah which causes his views to be different from jumhur ulama, namely: Reason is free to determine the welfare and efficacy

(kemudharatan), especially in the field of mu'amalah and adat. To determine something including about the welfare or efficacy is enough with reason. Mashlahah is the reason for establishing the law. Therefore, for the publicity of mashlahah there is no need for supporting arguments, because mashlahah is based on the opinion of reason alone. Mashlahah is the most powerful proposition. Therefore he also said when nash or ijma' contrary to mashlahah mursalah (Syakroni, 2017).

According to Muhammad Abu Zahrah as quoted by Quthni, (2019) that *"in every taking of a law, the determination of a condition becomes something that is inevitable so that in the taking of a law can be in accordance with the expected spirit. In the matter of Maslahah mursalah is how the output produced does not contradict nash in the Qur'an and sunnah"* (Quthni, 2019). To make Maslahah mursalah as a proposition for the establishment of law, scholars according to Hanafiyah as in the kutif by Quthni, (2019) set the requirements, namely: 1. The benefit is in accordance with the will of the syara' and included in the benefits supported by Nash in general. 2. The good is rational and definite, not just an approximation so that the law established through Maslahah mursalah really provides benefits and avoids harm 3. The benefit concerns the people, not the interests of the pribadi or a particular small group (Quthni, 2019).

Islamic law is a rule (Shari'ah) that is revealed by Allah SWT for the benefit of mankind in order to live quietly, peacefully, peacefully and happily both in the world and in the world. Allah (SWT) does not leave man in darkness. He sent His Apostles in various nations and all the time to explain and show the people the path of ma'ruf and the way that is wrong, right and wrong (Hadi & Peristiwo, 2019). When we reopen the page of history, since the beginning of Islamic law has been faced with the process of developing human thought in order to find new methods to improve the welfare of life. Changes to development in the direction of progress, will cause many new problems in various fields, especially the fields of economics, social, culture, science and technology, which were once not thought by mujtahids, now began to emerge (Hadi & Peristiwo, 2019).

Mashlahah Mursalah

According to al-Ghazali in Misran, (2016) (450-505 H), Mashlahah is not indicated by a particular proposition of syara' which cancels or justifies. Al-Ghazali divided mashlahat into three. First, mashlahat which is permitted by syara'; the second mashlahat that was cancelled (not permitted by syara'); and third, mashlahat that there is no particular proposition that justifies or cancels it. The first can be used as an argument and its implementation goes back to qiyas. The second cannot be used as an argument. The third is disputed. This third is called mashlahah mursalah. To affirm mashlahat in the third category mashlahat mursalah al-Ghazali states: Every mashlahat that returns to preserve the purpose of syara' known from the Qur'an, sunnah, and ijma', the mashlahat does not come out of these propositions. It is not called qiyas, but it is called mashlahah mursalah. Because qiyas there is a certain proposition. The existence of the mashlahat desired by syara' is known not only from one proposition, but based on a fairly innumerable proposition, both from the Qur'an, sunnah, conditions and situations, and other signs, which are therefore called mashlahah mursalah. From the above description it can be understood that mashlahah mursalah according to al-Ghazali is mashlahah in line with the act of syara' which is

intended to maintain the purpose of *syara'* (Islamic law), there is no particular proposition that shows it, and the benefit is not contrary to the Qur'an, *sunnah*, or *ijma'*.

According to al-Syathibi in Misran, (2016), *Mashlahat* is in line with the act of *syara'*. This means that in the *mashlahat* there is a type that is justified by *syara'* in other cases without a certain proposition. That is *istidlal mursal* called *mashalih mursalah*. Al-Syatibhi divided *mashlahat* into three. First, the *mashlahat* shown by the *syara'* proposition to be accepted. Second, *mashlahat* shown by the *syara'* proposition to be rejected. And third, *mashlahat* that is not indicated by a specific proposition to be accepted or rejected. The third is then divided into two. First, *mashlahat* is not indicated by a specific proposition that justifies or cancels, but there is a *nash* that goes along with the *mashlahat*. Second, *mashlahat* which is not indicated by a particular proposition that cancels or justifies and *mashlahat* is in line with the act of *syara'*. This is known as *mashalah mursalah*.

What al-Syatibhi says above its core is the same as that stated by Al-Ghazali. The difference only occurs in the distribution of *mashlahat*. *Mashlahat* which is not indicated by any particular proposition that al-Syatibhi justifies or cancels is divided into two. Al-Ghazali did not share it anymore. Because the example of doubling given by al-Syatibhi is considered non-existent by al-Ghazali. For that, there is no need for such a division. Here al-Ghazali's view seems more realistic and easy to understand (Misran, 2016).

Shariah Objectives (Maqashid as-Shari'ah)

In language, *maqashid as-shari'ah* consists of two words, namely *maqashid* and *al-shari'ah*. *Maqashid* means intentionality or purpose, while *al-sharia* means road to the source of water, it can also be said to be a way towards the main source of life (Adinugraha & Mashudi, 2018). The concept of *maslahah* as the core of *maqashid as-shari'ah* is the best alternative to the development of the *ijtihad* methods, where the Qur'an and *Sunnah* must be understood through the methods of *ijtihad* by placing emphasis on the dimensions of *maslahah*. *Maqashid Sharia* is the meanings, wisdom desired by the *shari'ah* (Allah) in its laws in order to realize the benefit of the servant in the world and the hereafter (Fordebi & Adesy, 2016).

According to Mingka as quoted by Edi Susila *Maqashid sharia* is the heart in *ushul fiqh* science, therefore *sharia maqashid* occupies a very important position in formulating *sharia* economy. *Shariah maqashid* is not only necessary to formulate macroeconomic policies (monetary, fiscal, public finance), but also to create Islamic banking and finance products and other microeconomic theories. *Shariah maqashid* is also indispensable in making regulation of Islamic banking and financial institutions. Without *sharia maqashid*, all regulations, fatwas, financial and banking products, fiscal and monetary policies, would lose their *sharia* substance. Without *sharia maqashid*, *fiqh muamalah* developed and banking and financial regulations to be formulated will be rigid and static, as a result of which Islamic banking and financial institutions will be difficult and slow to develop (Susilo, 2018).

The demands of human needs are multilevel, according to Al-Syatibi there are three categories of needs, namely: *dharuriyat* (primary needs), *hajjiyat* (secondary needs), and *tahsiniah* (high needs) (Adinugraha & Mashudi, 2018).

Maslahah dharuriyat: *Maslahah dharuriyat* is everything that must exist for the sake of the establishment of human life, whether it is *diniyyah* or *dunyawiyah*, in the sense that if the

daruriyyah does not stand then human life is broken in this world. Dharuriyat also referred to as the 'primary' level requirement is something that must exist for the existence of man or in other words imperfect human life without having to be fulfilled by man as a characteristic or completeness of human life, namely in rank: religion, soul, reason, treasure, and descendants (Adinugraha & Mashudi, 2018).

Maslahah Hajjiyyah: Maslahah hajjiyyah is any form of action that is not related to other policies (which are in maslahah daruriyyah) that is needed by the community but also realized and can avoid difficulties and narrowness. It's like maintaining personal and religious freedom. With this freedom, the movement of human life is wide.

Maslahah Tahsiniyyah: Maslahah tahsiniyyah or al-kamaliyyat is the care of benefits related to beauty (aesthetics), perfection, and propriety or honor (muni'ah) and dignity. Accommodation of noble traditions and akhlaq or ethics and etiquette is a demand in the framework of the care of the benefit of tahsiniyyah. If this level of tahsiniyyah does not exist, it will not eliminate the rules of life, as in daruriyyut, or difficulty (haraj), as in daruriyyut, or difficulty (haraj), as in the case of hajjiyyat, but how life becomes so rigid and bad according to the measure of ordinary human reason.

Mashlahah Mursalah Requirements

To be able to make mashlahah mursalah as a proposition in establishing the law, Malikiyah and Hanabilah scholars require three conditions, namely:

1. The benefit is in line with the will of the syara' and belongs to the type of benefit supported by Nash in general,
2. The benefit is rational and definite, not just an approximation, so that the law established through mashlahah actually produces benefits and avoids or rejects the expectations and
3. The benefit concerns the interests of the people, not the interests of a particular person or small group (Syakroni, 2017).

According to al-Ghazali in Syakroni, (2017) there are several conditions that must be met against the benefits that can be made law, namely the mashlahah is in line with the type of action of syara' and the mashlahah does not leave or contradict nash syara'. Meanwhile, according to Abdul Wahab Khallaf in Syakroni, (2017), mashlahah mursalah can be used as islamic legal legislation if it meets the requirements which include the actual mashlahah (haqiqi) is not a mashlahah that is conjecture, but which is based on research, prudence and in-depth discussion and really attracts manfa'at and rejects damage, in the form of mashlahah which is general, not for the benefit of individuals, but for the crowd and not contrary to the law that has been established by nash (Qur'an and al-Hadith) and ijma' ulama.

DISCUSSION

Debate of Islamic Jurists (Ulama) Against the Use of Maslahat Mursalah as a Source of Law.

Islamic scholars agree that the main sources of Islamic law are the Qur'an and hadith. Other sources (propositions) such as ijma', qiyas, istihsan, mashlahah mursalah are still disputed, both its existence and its intensity as a legal proposition, to become mashlahah mursalah as a source of Islamic law so that there is no problem then there needs to be such restrictions as follows (Misran, 2016):

Maslahat is Part of Maqashid Sharia

The maslahat in question must be one part of the 5 (five) elements in sharia maqashid or the purpose that Allah SWT wants in His creatures, namely as follows:

1. Fulfilling his religion
2. Fill his soul.
3. Fulfilling his mind
4. Meet his descendants and
5. Fulfilling his treasure

Not contrary to the Qur'an and Sunnah

Not contrary to the Qur'an: Every maslahat must be part of the 5 (five) Maqashids of Sharia is not enough, but it must be ensured not to contradict the Nash of the Qur'an. If a maslahat is contrary to the Qur'an then it cannot be categorized as maslahat.

Not contrary to the Sunnah: All scholars both scholars of the time of companions, tabi'in and Imam of the school have consensus (ijma) that maslahat that does not have the back of qiyas, if contrary to the Sunnah which is qot'I, or zhanni then the maslahat has no legal force.

Not Contrary to the Greater Maslahat

Maslahat becomes the force of the law, if not contrary to the greater maslahat. If there is a greater maslahat, then the smaller maslahat becomes void. The application of sharia maqashid is the description of the great maqashid (purpose) of hifdzul mal (maintaining and fulfilling hajat and maslahat of property) (Sahroni & Karim, 2015).

According to al-Ghazali as quoted by Muhammad Hadi Sucipto and Khotib who became a clerical debate' is a maslahat that there is no recognition of shara', either accepted or rejected (Sucipto & Khotib, 2020).

The next discussion, the author will discuss the attitude of the scholars rejecting and supporting the existence of al-Mashlahah al-Mursalah as one of the propositions of the law, where they are divided into four groups: *First*; Absolutely, al-Mashlahah al-Mursalah cannot be used as a foundation in the excavation of Islamic law. This opinion is held by the majority of scholars. Imam Al-Amudi said: The scholars of fiqh among Shafi'iyah, Hanafiyah and other madhhabs agreed to reject the existence of al-Mashlahah al-Mursalah as one of the legal

propositions that serve as the basis of the law in the establishment of Islamic law (Muhajirin & Dedu, 2021). *Second*; It can make al-Mashlahah al-Mursalah as one of the legal propositions in the absolute determination of the law. Mashur's history mentions that, this is the opinion of imam Malik (Muhajirin & Dedu, 2021). *Third*; Mashlahah which can be used as a foothold for legal determination is a matter of al-Mula'im (in harmony with the propositions that are universal). The purpose of this is if in a legal case there is no specific nash found. It's just that in such cases there is a real benefit and in accordance with the application of the law in other cases that have the legal basis of nash or Ijma'. Imam Ibn Burhan rested the above opinion is one of the opinions of Imam al-Shafi'I (Muhajirin & Dedu, 2021). *Fourth*; al-Mashlahah al-Mursalah can be used as a method or proposition of shura which is the source of legal determination if it meets three things, namely including the category of dharurat, ensured occurrence and universal. The provision was put forward by Imam Al-Ghazali and supported by Imam Al-Baidhawi and other scholars (Muhajirin & Dedu, 2021).

In the next discussion discussed arguments submitted by groups that reject and support the existence of the Mashlahah Mursalah method as one of the legal propositions that can be used as a foothold in legal istimbat.

The first group, the group that rejects the legelitas of al-Maslahah al-Mursalah can be used as one of the legal propositions in Islamic law, which proposes three arguments as follows: First, the application of al-Maslahah al-Mursalah has the potential to reduce the sacredness of sharia law formulation, because the law born from the method al-Maslahah al-Mursalah is loaded with conflicts of personal interest of its originator, while Syara only recommends legal formulations that contain universal merit. Sheikh Wahbah al-Zuhaili refutes the opinion that the application of al-Maslahah al-Mursalah is a form of obedience of lust, because in its application there are several conditions that must be met, such as the harmony or harmony (mula'amah) between the form of benefit and the purpose of sharia. But it must also be understood that the denial of al-Maslahah al-Mursalah results in closing the door of Allah SWT's mercy on His creatures, as well as in the determination of the law born darai al-Maslahah al-Mursalah method needed a mujtahid or a person able to dig the law with the capacity of adequate legal ability. Second, al-Maslahah al-Mursalah is in a middle position between the rejection of sharia in some mashlahah and the confirmation of sharia in others. If the application of al-Maslahah al-Mursalah is a necessity only because of the point of similarity with al-Maslahah al-Mu'tabarah (the blessing of the affirmed syara) from the mere side for the benefit of the syara, then the abandonment of al-Maslahah al-Mursalah is a necessity, because it has similarities with al-Maslahah al-Mulghah (the welfare that the syara rejects') in terms of the absence of syara confirmation'. These two phoktors are what cause it is not allowed to adopt the method of al-Maslahah al-Mursalah, so this method does not have argumentative legality in the realm of Islamic law. Third, the establishment of al-Maslahah al-Mursalah will undermine the unity (utinitas) and universality of Islamic law (Muhajirin & Dedu, 2021).

The second group, namely the group that supports the legelitas al-Maslahah al-Mursalah can be used as one of the legal propositions in Islamic law to submit three arguments as well as the following explanations:

First, the survey proves that the value contained in Islamic sharia is al-Mashlahah. This kind of assumption will give rise to a strong suspicion that the legality of al-Mashlahah as one of the legal propositions is a necessity. Because following strong expectations is also a must. This

kind of *stetmen* is based on the word of Allah SWT surah Al-Ambiya [21] verse 107: "We have not sent you (whai Muhammad) except as a mercy to the universe". Shaykh Wahbah outlines the argumentative side of the verse, finally showing generality, so it is understood that in the understanding of law, Islamic sharia accommodates the benefit of man, because if it is not so then the sending of the apostle is also not as a mercy for the universe but because *taklif* (sacrifice) without *faidah*. Because it violates the generality of the verse. The determination of *Illat* or the motive of the enactment of the law is the dominant thing in the determination of sharia law. This applies because the rationality of a cause and belief about the ultimate purpose of benefit will lead to stronger adherence rather than just dogmatic a teaching because *ta'lil* (determination of *illat* in the enactment of the law) serves to convey the purpose of enactment of the law. The arguments put forward by the supporters of *al-Maslahah al-Mursalah* are refuted by rejecters of the use of *al-Maslahah al-Mursalah*. They argue that although *al-Mashlahah* is the character of Islamic sharia, it cannot be generalized that every *mashlahah* is part of Islamic sharia, because what is accepted is *al-Mashlahah al-Mu'tabarah* not *al-Mashlahah al-Mulghah*. The repellent group *al-Maslahah al-Mursalah* also argued that the verses and hadiths were used as their handles explicitly as well. *Emplisit* has not explained *al-Mashlahah* or the purpose of Islamic Shari'ah is the realization of good in the world and the hereafter even further synthesis which concludes that all things that contain *mashlahah* are sharia (Muhajirin & Dedu, 2021).

Second, along with the rapid development of the age of life fulfillment paradigm has shifted, giving rise to various methods of achievement of needs. This is considered necessary to be addressed with the right method of legal determination in order to be an alternative solution in meeting their needs. On the other hand, textually the verses of the Qur'an and hadith of the Prophet are limited and have stopped with the death of the Prophet Muhammad (peace be upon him) while legal problems develop in accordance with the times. If *al-Maslahah al-Mursalah* cannot be considered as one of the methods of legal *istimbat* or *berijtihad*, then how much human benefit is neglected, the existence of *ijtihad* will stagnate and even give the impression that Islamic sharia is not relevant to the times. Based on these arguments, it is necessary to formulate a method of establishing laws that are able to accommodate human benefits, because the existence of Islamic sharia as a mercy for the universe (Muhajirin & Dedu, 2021).

Application of Maslahat Mursalah in Transactions in Islamic Banking

The scope of the application of *maslahah mursalah* according to the scholars who use it sets the limits of its use area, which is only for problems outside the area of worship, such as *muamalah* and *adat*. In the matter of worship (in a special sense) absolutely *maslahah* cannot be used as a whole. The reason is because it is based on the consideration of reason about the bad of a problem, while reason cannot do that for the problem of worship (Hadi & Peristiwo, 2019). One of the characteristics of the era of globalization that is very prominent is its very competitive, cosmopolitan nature and very precise change. To anticipate such conditions, one of the efforts taken by humans both individuals and groups and institutions is to hold cooperation or partnership (*musyarakah*) in various areas of life, including in running a company.

Islam considers that a good or service has useful value, if and only if it contains benefits, thus a Muslim is motivated to produce every good or service that has such a *maslahah*. Likewise, the meaning of a brand (*brand*) for a product of goods or services has now become very

dominant and has become a guideline for the community in consuming goods or services. In addition to the promised quality assurance, people's very strong perception of a particular brand becomes a person's foothold in economic behavior. Therefore, it is not easy for new products to be able to enter the competition, without having advantages or uniqueness compared to existing products. This means that the concept of *maslahah* is an objective concept of producer behavior because it is determined by the purpose (*maqashid*) of sharia, which is to maintain the benefit of humans in the world and in the hereafter (Hadi & Peristiwo, 2019).

Furthermore, we can see the legal products of the current scholars if viewed from an economic point of view, it will be obtained that these legal products are based on many considerations of *mursalah maslahah*, such as fatwas of the Indonesian Ulema Council, for example, fatwas on the necessity of "halal certificates" for products of an economic nature (business industry) such as food, beverages and cosmetics. The Indonesian Ulema Council (MUI) through the Institute for the Assessment of Food Medicines and Cosmetics (LPPOM) seeks to conduct research on food products, beverages, medicines and cosmetics produced by manufacturers to be marketed.

This is never a *nash* text that offends it directly, but when viewed from the spirit of sharia is very good and this is a positive step in protecting humanity (especially Muslims) from food, drinks, drugs and cosmetics that are not halal to consume, and many other things. Similarly, other economic perspectives such as in the banking industry in terms of bank interest, there is no mention of the law in the Qur'an and Al-Hadith. The majority of scholars determine that bank interest is haram to convert to *riba* because according to them the additional elements that become the *illat* of *riba haram* are also found in bank interest. In modern life as in the era of the Industrial Revolution 4.0 today, banks are already a thing that is needed by society. Banks with all their consequences have become a part of modern society that is impossible to separate anymore. Banking practices that exist today can be a means of helping fellow human beings because almost all modern society today has an interest in the bank. In other words, it can be concluded, that banking practices such as those that exist today do not contain *zhulum*. In addition, the habit of saving in the bank can educate people to live frugally and saving habits can support the smooth development of the nation and the country. Banning banking practices can cause difficulties for society and disrupt the joints of the economy. Whereas sharia prioritizes the maintenance of the wealth of the *ummah* as one of the 5 (five) basic things that are highly maintained by sharia. Under such conditions, *fuqaha* abandons the law produced by *qiyas* and establishes other laws using the *maslahah mursalah* method. Banking practices that do not contain *zhulum*, become a means to help each other and this is very in accordance with the *maqashid* of sharia *amah*. One of the application of *maslahah mursalah* proposition in Islamic banking is the establishment of guarantees on financing products. The guarantee can be used as a complement to financing products provided by Islamic banks (Hadi & Peristiwo, 2019).

This is intended so that financing customers do not take actions that violate the rules (moral hazard). The use of this guarantee is supported by the MUI's decision on the Fatwa of the National Shari'ah Council Number 92/DSN-MUI/IV/2014 on Financing Accompanied by *Rahn*. In this case, *maslahah mursalah* is very effective in addressing and answering new problems and developments in the world of economics and business caused by the advancement of modern science and technology in the era of the industrial revolution 4.0, both in setting laws on new problems and those that have no legal provisions, and or establishing new laws to replace the

provisions of the old law that are no longer in accordance with the circumstances, the situation, conditions and benefits of today's people (Hadi & Peristiwo, 2019).

Maslahah mursalah is one of the methods of legal istinbath that is used as an argument. And from the example of the problems set by the law with the mursalah maslahah, it appears that the law established by that method is more economical and better able to realize the objectives of sharia, and this is also where the effectiveness of the mursalah maslahah in the determination of the law of syara. The method of establishing the law with maslahah mursalah and its relation to the renewal of Islamic law, has a close and very effective relationship to use, where the renewal of Islamic law aims to realize and maintain the benefit of mankind as much as possible which is the maqashid of sharia. By looking at so many advantages that are owned in a system such as economic and business systems, it can be concluded that the system has so many benefits (Hadi & Peristiwo, 2019). The Mudharabah system (profit sharing) offers an alternative solution where business practices certainly experience what is called profit and loss, so it is illogical to adopt an economic system that only adheres to one system that is profit, when in fact in business it inevitably hinders two circumstances, namely profit or loss (Hadi & Peristiwo, 2019).

Islamic banking in Indonesia in serving the needs of the people who want banking services with the principle of shari'ah based on law in Law No. 21 of 2008 on Islamic Banking, so that shari'a banks in providing financing facilities following government rules are in accordance with Article 23 of Law No. 21 of 2008, that the provision requires additional collateral in every high-risk financing such as youth financing (Hadi & Peristiwo, 2019).

The orientation of Law No. 21 of 2008 is the development of an economic system based on Islamic values, namely justice, expediency, balance, and universality (rahmat lil al-amin), so that the people of Indonesia's future experience an increase in economic welfare on the basis of sharia principles. This orientation is illustrated from the material content of the Law, one of which is in terms of the purpose of the Law, which is to support the implementation of national development in the enforcement of justice, foster togetherness, and create equitable welfare of the people (Atang, 2011).

The placement of maslahah as the main principle in the economic development of shari'ah is important, because maslahah is the most important concept in sharia to realize the ideal idea of maqashid al-shari'ah (Gofur, 2020). Thus, to develop the Islamic economy, the Muslim economy is enough to hold on to maslahah. Because maslahat is the essence of Sharia. The scholars mentioned that "where there is maslahah, then there is The Shari'ah of Allah". That is, all that contains good, so that is the Shari'ah of Allah. Thus, according to the frugal author in the field of muamalah (Sharia economics and business) the concept of sharia maqashid and maslahat has a very central position in Islamic shari'ah as a handle and knife analysis in the current islamic economic and business studies (Muhammad, 2019).

CONCLUSION

From the description of the above discussion it can be concluded that:

1. The contemplation of maslahah mursalah as a source of Islamic law islamic jurists there are differences of opinion that there are supportive opinions and opinions that reject. Opinions that support the argument that maslahah mursalah is an implementation of maqashid sharia while those who refuse to argue that maslahah mursalah there is no clear provision that governs both the Qur'an and hadith.

2. The application of masalahah mursalah in business transactions in Islamic banking such as the use of guarantees in mudharabah financing as stipulated in the Fatwa of the Indonesian Ulema Council of the National Sharia Council Number:7/DSN-MUI/IV/2000 on mudharabah financing (Qiradh).

REFERENCES

- Adinugraha, H. H., & Mashudi, M. (2018). Al-Maslahah Al-Mursalah in the determination of islamic law. *Jurnal Ilmiah Ekonomi Islam*, 4(01), 63-79
- Asriaty. (2015). Application of mashlahah mursalah in contemporary issues. *MADIANA: Jurnal Kajian Keislaman*, 19(1), 119–128.
- Atang, A. (2011). *Judge, islamic banking fiqh transforming muamalah fiqh into legislation*. Rafika Aditam.
- Fordebi, & Adesy. (2016). *Islamic economics and business series concepts and applications of islamic economics and business*. Retrieved from <http://www.rajagrafindo.co.id/produk/ekonomi-dan-bisnis-islam-seri-konsep-dan-aplikasi-ekonomi-dan-bisnis-islam/>
- Gofur, A. (2020). *Sharia economic philosophy*. Rajawali Grafindo Persada.
- Hadi, A., & Peristiwo, H. (2019). The concept of al masalahah al mursalah in an economic perspective in the era of the industrial revolution 4.0. *Al-Ahkam*, 15(2), 59-69.
- Harahap, Q. A., & Harahap, I. (2016). Application of masalahah mursalah in Islamic economics. *Journal Analytica Islamica*, 5(1), 55–80.
- Misran. (2016). An Alternative Methodology in Resolving Contemporary Legal Problems. *Jurnal Justisia*, 1(1), 1–25.
- Muhajirin, & Dedu, M. (2021). Masalahah mursalah and its implementation in muamalah contracts. *Al-Mashalah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 9(1), 172–200.
- Muhammad. (2019). *Engineering innovation and development of islamic financial instruments*. UII Press.
- Quthni, A. Y. A. (2019). Implementation of masalahah mursalah as an alternative to islamic law and a solution to people's problems. *Asy-Syari'ah*, 5(1), 1–19.
- Sahroni, O., & Karim, A. A. (2015). *Maqashid business and synthetic finance of jurisprudence and economics*. Raja Grafindo Persada.
- Sucipto, M. H., & Khotib. (2020). The masalahah mursalah debate in the books of Al-Imam Al-Ghazali. *El-Faqih : Jurnal Pemikiran Dan Hukum Islam*, 6(1), 1–17.
- Suratmaputra, A. M. (2018). Reorientation of Al-Ghazali's thoughts about masalahah mursalah with islamic law reform. *Misykat*, 3(2), 29–64.
- Susilo, E. (2018). *Sharia supervision in sharia financial institutions*. UPP STIM YK PN.
- Syakroni, M. (2017). Mashlahah Mursalah and Istishlah methods (Study on the determination of islamic economic law). *Al-Intaj*, 3(1), 187–201.