

Evidence and Methods of Excavating Islamic Economic Law: Maslahah Mursalah and Its Application in Islamic Economics

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ABSTRACT

This research aims to analyze the concept of maslahah mursalah, the views of ulama on its use, and its application in various cases in the sharia financial sector, such as financing with collateral. This research shows that maslahah murlah can be a legal basis that is relevant in a modern context, maintaining sharia principles, and meeting the needs of Muslims amidst global change. Maslahah murrasa is one of the principles in Islamic law which aims to create public benefit and prevent harm without conflicting with the postulates of sharia. This principle provides legal flexibility to respond in addressing the evolving needs of society in a sharia-compliant manner, especially in the sharia economic and financial sectors.

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1. Introduction

Islamic economics is an integral part of sharia which aims to create an economic system that is fair, prosperous, and free from harmful or destructive practices (dharar). In practice, Islamic economics not only regulates financial transactions, but also ensures that every economic activity contributes to the well-being of the ummah and is in line with Islamic values. Today, the Islamic economy faces great challenges in responding to global economic developments, technological innovation, and rapid social change. These challenges raise the need to have a flexible, responsive, and sharia-based legal framework. In this context, the principle of maslahah mursalah becomes very relevant. By using maslahah mursalah, Islamic law scholars and academics can create rules that are not only in accordance with the basic principles of sharia, but also responsive to the demands of contemporary economics. (Musnad R, 2014).

Maslahah mursalah is an important concept in the usul fiqh (principles of Islamic law) that refers to general benefits or benefits that are not explicitly mentioned in the Qur'an or Hadith, but are considered important for the well-being of the ummah. Maslahah mursalah is used when there is a need to establish law on an issue that has never existed before and does not have a specific text in the primary source of Islamic law. This concept allows Islamic law to remain

relevant and applicable in changing contexts. Although *maslahah mursalah* does not have direct evidence from the Qur'an or Hadith, its use is based on the principles of *maqasid al-shariah*, which is the main purpose of sharia which includes the protection of religion, soul, intellect, descent, and property (Satria E, Zein M, 2017).

This goal emphasizes the importance of maintaining goodness and avoiding damage in all aspects of Muslim life, including in the economic field. *Maslahah mursalah* is strengthened by the rules of Islamic law such as *dar'u al-mafasid muqaddam 'ala jalb al-masalih* (avoiding harm takes precedence over benefiting) and *al-mashaqqah tajlibu at-taysir* (hardship brings ease). These rules provide a basis for making legal decisions that consider the benefits and welfare of the community. In the development of Islamic economic law, the method of excavating the law using *maslahah mursalah* allows scholars to produce laws that are in accordance with modern conditions and challenges without having to abandon sharia principles. *Maslahah mursalah* has been applied in various fields of Islamic economics, especially in the Islamic finance industry (Muhammad I F, 2016).

By discussing the postulates and methods of legal excavation based on *maslahah mursalah*, this research contributes to enriching the Islamic legal literature and clarifying the relevance of the concept in modern Islamic economics. The use of 2 *maslahah mursalah* allows the development of rules that are in line with sharia principles and responsive to contemporary conditions. This is important to maintain the relevance and continuity of the Islamic economy in the midst of rapid global economic changes (Abdul G A, 2009).

Maslahah mursalah has become an important topic in *ushul fiqh*. Etymologically, the word "*maslahah*" means benefit, while "*mursalah*" means "released or unrestricted by specific textual evidence". In sharia terms, *maslahah mursalah* is a general benefit that is not explicitly mentioned in the Qur'an or Hadith, but is considered essential for the well-being of the *ummah*. In Islamic law, *maslahah* is defined as an effort to maintain the five primary aspects of human life: religion, soul, intellect, heredity, and property. Scholars have different views on the acceptance of this concept. The Maliki school, for example, strongly supports *maslahah mursalah* as a legal basis, as long as its benefits are in line with *maqasid al-shariah*. The Hanbali school accepts this principle on the condition that the benefits achieved must be real, public, and important, without contradicting sharia. On the other hand, the Shafi'i school is more skeptical and only accepts benefits that can be accommodated through *qiyas* or *ijma'* (Satria E, Zein M, 2017).

Maslahah Mursalah can be classified as the first based on the Importance and Quality of *Maslahah Al-Maslahah al-Dharuriyat* (Primary), very important basic needs, such as the maintenance of religion, soul, intellect, descendants, and property. Losing this benefit will cause great damage. Second, *Al-Maslahah al-Hajiyat* (Secondary), Needs that complement the primary, such as leniency in the law (e.g., *qashar* prayer for travelers). Its presence eliminates life's difficulties. Third, *Al-Maslahah al-Tahsiniyat* (Tertiary), Additional needs for perfection and beauty, such as manners and ethics. Its absence does not cause major damage, but it is still important. *Maslahah Mursalah* provides flexibility in setting laws that are relevant to human needs, as long as they are in accordance with the principles of sharia. *Maslahah mursalah* also has a hierarchy based on the importance of human needs. This classification includes *al-dharuriyat* (basic needs), *al-hajiyat* (supporting needs), and *al-tahsiniyat* (complementary needs). This principle is reinforced by legal principles such as "avoiding harm takes precedence over taking advantage." (Al Irsyad, 2021).

Imam Malik argues that *maslahah mursalah* is valid as a source of law as long as the benefits sought are in line with *maqasid al-sharia*, namely maintaining religion, soul, intellect, descent, and property. The Hanbali school allows *maslahah mursalah* as an argument if it meets certain criteria: the benefits must be public, real, and important to the community and not contrary to the principles of sharia. If the benefit is in line with *maqasid al-sharia* and there is no evidence

that is religious, then *maslahah mursalah* is acceptable. The Hanafi madhhab is more careful in using *maslahah mursalah*. They do not recognize *maslahah mursalah* as an independent source of law, but are more likely to use the *istihsan* method to enforce laws that are in line with *maslahah*. Decisions that bring benefits can be taken if they are better than the solution from *qiyas*, as long as there is no text that prohibits them (Rahmat I, 2019).

Maslahah mursalah, which refers to the public interest that is not explicitly explained in the sharia, has several important conditions. First, the *maslahah* must be in accordance with the purposes of the shari'ah (*maqasid al-shari'ah*) and not contrary to the shari'a evidence. Second, the *maslahah* must be acceptable rationally and reasonably. Third, *maslahah* that is considered valid must be real and essential, not just a conjecture that ignores the potential of *mudharat*. Fourth, the *maslahah* considered must prioritize the public interest, not personal interests. Finally, the *maslahah* should not contradict the clear provisions in the Qur'an or Sunnah (Satria E, Zein M, 2017)

2. Methods

The method in this study is qualitative analysis. Where the data used is qualitative data consisting of primary data and secondary data, among others, from theories from various literature and data from results that have been presented from an institution. The data collection techniques used in this study are literature studies and observations. The data is analyzed based on the views of scholars and their application in the Islamic finance sector. Case studies are also used to illustrate the application of *maslahah mursalah* in sharia-based financing

3. Results and Discussion

Maslahah mursalah is widely applied in the Islamic financial sector, especially in the management of financing by Islamic banks. One example is the financing of *qardh wal ijarah* (a combination of interest-free loan and rental scheme based on sharia principles) carried out by Baitul Maal wat Tamwil (BMT). In this scheme, BMT provides loans to members who need funds, both for business capital and other needs such as education and home construction. Members are required to pay loan installments as well as pay *ujroh* (rental fees), which are used to help other members. Collateral or collateral in this financing is assessed from economic and juridical aspects, ensuring that collateral has economic value and meets applicable legal requirements. In *murabahah* financing, where Islamic banks sell goods to customers with a profit margin, collateral in the form of property is often requested to reduce the risk of default. These properties, such as land or building certificates, are a form of protection for banks while ensuring that customers have access to financing according to sharia principles without being charged high interest rates as in conventional banks. (Siti R H, Iwan T, 2015).

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۚ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِن كُنْتُمْ تَعْلَمُونَ

Meaning: *And if (the debtor) is in difficulty, then give him strength until he has space. And giving away (part or all of it) is better for you, if you know.*

In *mudharabah* financing, which is based on profit-sharing cooperation, banks provide business capital to customers. To mitigate risks, collateral such as vehicles may be requested, especially on projects with high levels of risk. This guarantee will not be executed unless the customer fails to fulfill its obligations. This scheme provides protection for both parties; The

bank is protected from the risk of loss, while the customer obtains business capital without violating the principle of usury-free. (Siti R H, Iwan T, 2015).

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ
مِنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Meaning: *O you who have believed, do not eat each other's property in a wrong way, except in the way of business that is done happily among you. And thou shalt not kill thyself; Indeed, Allah is Most Merciful to you.*

Ijarah based financing, such as renting assets or goods, also involves the application of *maslahah mursalah*. In some cases, banks ask for collateral in the form of deposits or savings to protect losses in the event of a non-compliance with rent payments. This ensures the bank's stability as an Islamic financial institution while providing additional benefits for customers, such as protection from high interest rates. In the *musyarakah mutanaqisah* scheme, which is a reduced joint ownership, the bank and the customer gradually buy an asset such as a house. The house itself is used as collateral to protect the interests of both parties. This scheme allows customers to own a house with a flexible payment process without violating sharia principles (Widiati, S., & Azkia, 2023).

إِنْ تُقْرِضُوا اللَّهَ قَرْضًا حَسَنًا يُّضْعِفْهُ لَكُمْ وَيَغْفِرْ لَكُمْ ۚ وَاللَّهُ شَكُورٌ حَلِيمٌ

Meaning: *If you lend to Allah a good loan, Allah will surely repay you and forgive you. God is the Rewarding and the Sustaining.*

In addition, in *qardh* financing, which is social in nature and does not involve additional costs, collateral in the form of gold is often requested. This provides certainty for banks that risks can be minimized without burdening customers. Gold as collateral also facilitates disbursement if customers have difficulty paying off loans (Musnad R, 2014).

Overall, *maslahah mursalah* is applied in the process of analyzing the feasibility of financing by Islamic banks to ensure that the financing distributed not only benefits the bank but also provides wider benefits to the community. This approach includes an evaluation of guarantees, customer characteristics, payment ability, and business feasibility studies. Thus, *maslahah mursalah* is a basic principle that maintains the sustainability of the Islamic financial system and answers the needs of Muslims in a fair and responsible manner (Widiati, S., & Azkia, 2023).

4. Conclusion

Maslahah mursalah plays an important role in Islamic law, providing flexibility in responding to the needs of the *ummah* without neglecting the principles of sharia. In the context of Islamic economics, the application of *maslahah mursalah* can be seen in the financing of Islamic banks that use collateral to protect both parties. This implementation helps ensure the sustainability of Islamic financial institutions and encourages the benefit of the *ummah* holistically, with *maslahah mursalah*, Islamic law remains relevant and contextual, ensuring that Islamic legal development continues to support socio-economic justice and contemporary needs.

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