

A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text

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Abstract

The Islamic Sharia that primarily originates from the *Qur'an* and *Hadith*, has the concept *Maqashid Sharia* to realize benefits and prevent *mafsadat*. Every text of the *Qur'an* and *Hadith* have implication for the purpose of realizing benefits and preventing *mafsadat*. Najmuddin Al-Thufy attempts to contrast the holy text with the concept of *maslahat*. He attempts to separate the concept of *maslahat* from the *Qur'an* and *Hadith*. In this study, the researchers intend to criticize Al-Thufy's thoughts about the contradiction of the *Maslahat* and the *Qur'an* as the holy text.

Keywords: *Maslahat, the Holy text, maqashid syariah*

Abstract

Syariah Islam yang merujuk pada teks suci al-Quran dan Hadist memiliki konsep Maqashid Syariah untuk mewujudkan maslahat dan mencegah mafsadat. Aetiap teks al-Quran dan Hadist berimplikasi pada tujuan mewujudkan maslahat dan mencegah mafsadat. Najmuddin Al-Thufy mencoba mempertentangkan teks suci dengan konsep maslahat. Ia mencoba memisahkan konsep maslahat dari teks suci al-Quran dan Hadist. Studi ini mengkritisi pemikiran Al-Thufy tentang kontradiksi antara maslahat dan Teks suci.

Kata kunci: *Maslahat, Teks suci, maqashid syariah*

INTRODUCTION

Islam is a divine religion handed down by Allah the Almighty through His Messenger to uphold the problem. In this case, Islam is a religion called "rahmatan Lil-'alamin" which means that its coming is a blessing and a gift to humanity. Ideally, the starting point and objective of Islam have been a kind of mercy, not only for Muslims but also for humanity. Besides, every command and teaching of Islam is also presented in the values of Maqashid Sharia. By this fundamental principle, the legal formulation by the mujtahid (intellectuals and experts of fiqh) refers to the broader community's interests (mashlahah al-ummah).

Defining mashlahah, it seems that the matter of definition is not a principle. The term mashlahah is the conception of Imam al-Ghazali, which means to the fulfillment or preservation of the community member's interests regarding to the "five basic principles" (al-kulliyat al-khamsah). It includes hifdzu al-din (enforcement of religion), hifdzu al-nafs

(protecting one-self), hifdzu al-Aql (preserving thought), hifdzu al-nasl (preserving descendants), and hifdzu al-mal (protecting property).¹

The principle of Maslahah is related to the context of time and place. Equally contradicting with the principle of maslahat, but different between the benefits understood by Muslims in the 7th century (AD)/the 3rd century (Hijri) and Muslims in the 21st century (AD)/the 15th century (Hijri). It includes five basic principles that differ from Muslims in Saudi Arabia and other Middle Eastern countries.

Therefore, maslahah has a variety of perceptions. Al-Buthy attempts to provide a limit on the reasoning of maslahah in his "dhawabitu al-Maslahah fi al-Syariah al-Islamiyah." When the benefits differ according to context, is it contradictive between the holy text and the benefits? How to deal with the contradiction? In this case, the researchers attempt to examine the thoughts of Najmuddin al-Thufy in addressing the contradiction between maslahah and the holy texts.

LITERATURE REVIEW

The definition of maslahat and the holy text

In terms of language, *maslahat* comes from Arabic word "يصلح - صلح" which means kindness (opposed to badness),² so that *maslahat* can be interpreted as kindness, benefit, and welfare.³ According to Islam, some Ulama define the term maslahat with different perspectives and understanding but remains the same substance of meaning. Imam al-Ghazali defines maslahat by safeguarding Islamic Sharia's objectives, which are summarized in five basic principles (in Kulliyatu al-Khamsah). It includes hifdzu al-din (religious enforcement), hifdzu al-nafs (protecting the soul), hifdzu al-Aql (protecting the thought), hifdzu al-nasl (preserving the offspring), and hifdzu al-mal (protecting property).⁴

Besides, Imam al-Syatiby defines that maslahat is everything that supports creating a perfect life and realizes it by the wishes and reasons.⁵

In defining maslahat, al-Thufy has two different definitions. *First*, it is seen from 'urf. In this view, *maslahat* is all factors that affect welfare and goodness, such as business transactions for profitable income. *Second*, it is viewed from the Shari'a perspective. In this view, *maslahat* is all factors that support the realization of the objectives of the Shari'a, both in worship and tradition.⁶

These understandings remain two conclusions, namely: *first*, *maslahat* is not based on lust, certain personal or group interests, political interests, and other interests that conflict

¹ Al-Ghazaly, *al-Mustashfa min 'Ilmi al-Ushul*, (Beirut; Dar al-Kutub al-Ilmiyah, 1st Printed, 1993-1413 H) p. 174.

² Ibnu Faris, *Maqayis al-Lughah*, (Ittihad al-Kitab al-Arab, tc. 1423 H/ 2002 AD), Juz 3, p. 303.

³ Ibrahim Mushtafa, Ahmad al-Ziyat, Hamid Abdul Qadir, Muhammad al-Najjar, *Al-Mu'jam al-Wasith*, (Majma' al-Lughah al-Arabiyah, tc, tt,) part 1, p 520.

⁴ Al-Ghazaly, *al-Mustashfa min 'Ilmi al-Ushul*, (Beirut; Dar al-Kutub al-Ilmiyah, cet. I, 1993-1413 H), p. 174.

⁵ Ibnu Asyur, *Maqashid al-Syariah al-Islamiyah*, (Yordania; Dar al-Nafais, 2nd printed 1421 H/ 2001 AD), p. 71.

⁶ Al-Thufy, *al-Ta'yiin fi Syarhi al-Arbain*, (Beirut; Muassasah al-Rayyan dan Mekkah; al-Maktabah al-Makkiyah, vol. I, 1319 H/ 1998 AD), p 239.

with Islamic law; and *second*, every benefit has a legal basis from the Shari'a. The benefits always have a correlation with *kulliyatu al-khomsah*.

The text for this study is a *nash* in the literature of *ushul fiqh*; which terminologically means that the text within the Qur'an and the Hadith has a clear and certain reference reasoning (*istidlal*).⁷ Therefore, the text (in this context of study) is not related to the text belongs to the scholars, but the *Qur'an* and the *Hadith Nabawi*.

The short biography of Al-Thufi

He was Sheikh Najmuddin Sulaiman al-Thufy; popularly called as Al-Thufy. He was involved in the village of Thufa in Baghdad, Iraq. He was born in 656 H. He was a follower of the Imam Ahmad ibn Hambal school of thought, but he did not follow the theory of fiqh and ushul fiqh in the Hambali school of thought. According to Ibn Hajar, he was more potent in memorizing than understanding.⁸

Initially, he was a follower of *Ablussunah wal Jama'ah*. However, he was not consistent with his teachings and even tended to the teachings of the *Syiah*.⁹ In fact, according to Ibn 'Amad, he tended to the *Shia Rafidah*. He declared that he was "*Ay'ariyun Hambaliyun Dhabiriyun Rafidiyun*"¹⁰. He was reported to the Court of Qadhi Hanabilah Sa'duddin al-Haristy; sentenced and died in 716 H.¹¹

DISCUSSION

The contradiction of maslahat and the holy text: Al-Thufy's perspective

According to al-Thufy, when there is a contradiction between the benefit of the text, he prefers the holy text's benefit. The following excerpt from al-Thufi's statement:

*"The most powerful is the holy text of the Qur'an and the Hadith, and ijma' 'ulama. If the arguments are in line with the benefits, then there is no such problem. However, if these arguments contradict the maslahat, one should prioritize maslahat with the methodology of takhsish and bayan to the holy text: the Qur'an and the ijma' 'ulama."*¹²

However, al-Thufy did not make it absolute in prioritizing the benefits. He prioritized maslahat as if an existing contradiction with the text and ijma' was merely about the chapter of mu'amalat (transaction), custom, and alike as he stated in his book:

*"We prioritize the benefits of the holy text of the Qur'an and the Hadith in the chapter of mu'amalat, custom and alike. It focuses on the benefits as the main axis on the objectives of sharia. Unlike the case of worship as the essence of sharia, its procedure can be identified from the holy text of the Qur'an, Hadith, or ijma' 'ulama'."*¹³

⁷ Dr. Amjad Rasyid, *Dhawabith al-Fikr al-Ijtihadi*, (Demasyqus, Dar al-Qalam, vol. II, 1409 H/ 1989 AD), p. 46.

⁸ Ibnu Hajar, *al-Durar al-Kaminah*, (India, Majlis Dairah al-Ma'arif al-Ustmaniyah, 1392 H/ 1972 AD) part 2, p. 154.

⁹ Ibnu Rajab, *Dzail Thabaqat al-Hanabilah*, (al-Sunniah, tc. tt.) part 2, pp. 366-377.

¹⁰ Followers of Imam Asy'ari, Imam Ahmad Imam ibn Hambal, Imam al-Dhahiri, and Syiah Rafidah Madzhab.

¹¹ Ibnu Ammad, *Syadzaratul al-Dzahab*, (Demasyqus, vol. I, 1406 H/ 1986 AD), part 6, p. 39.

¹² Al-Thufy, *al-Ta'yin fi Syarhi al-Arbain*, (Beirut; Muassasah al-Rayyan dan Mekkah; al-Maktabah al-Makkiyah, vol. I, 1319 H/ 1998 AD), p. 238.

¹³ Al-Thufy, *al-Ta'yin fi Syarhi al-Arbain*, (Beirut; Muassasah al-Rayyan dan Mekkah; al-Maktabah al-Makkiyah, vol. I, 1319 H/ 1998 AD), p. 241.

The Theorem of Al-Thufy on the Contradiction of Maslahat and the Holy Text

To support his statement in prioritizing the benefits of the holy text of the Qur'an, al-Thufy has three propositions as follows:¹⁴ First, paying attention to the maslahat is the proposition agreed upon by the ulama', and maintaining the agreement is more important than maintaining the debated arguments among scholars. Because the scholars disavow the ijma', he argues in favor of benefits, so that ijma' is still being debated among them, while focusing on maslahat is still an argument agreed upon by scholars.

Second, conflicting holy texts cause differences in Islamic law, whereas focusing on maslahat is an intrinsic matter, where differences among ulama' are not the core matters. Focusing on the benefits of maslahat is the proposition agreed upon by the ulama', and it is the key to gain a consensus.

The third is about the presence of maslahat contradiction to the holy text Qur'an faced by the companions in the period of the Messenger. It is as in the evidence that Allah the Almighty's Messenger ordered His companion to conduct mid-afternoon prayer except in Bani Quraidhah. However, some of the companions were praying before they reached Banu Quraidhah to get the benefits of prayer. In this case, they prioritized the benefits of the Hadith (the Prophet's command not to conduct mid-afternoon prayer except in Bani Quraidhah). Based on these propositions, al-Thufy maintains his argument that focusing on maslahat is more important than the holy text of the Qur'an and ijma'.

A Critique against Al-Thufy in His Response in the Contradiction of Maslahat and the Holy Text

Al-Thufy's controversial statement in advancing maslahat from the holy text of the Qur'an, Hadith, and ijma' has provoked criticism from many scholars. In this case, the researchers involve the criticism of five scholarly against al-Thufi.

The first is Sheikh Ibn Hajar. He argues that the contradiction between maslahat and the holy text of the Qur'an and Hadith, then the specific evidence specifies (takhsish) available evidence as to the theory of ushul fiqh. Therefore, focusing and prioritizing the benefits cannot be performed because the Sharia has the values of maslahat, including worship, mu'amalat (transaction), and 'adat (custom).¹⁵

The second is Dr. Muhammad Said Ramadhan al-Buthy. He criticizes al-Thufi in his doctoral dissertation entitled "Dhawabitu al-Maslahah fi al-Syariah al-Islamiyah". He even places the criticism of al-Thufi in a particular chapter "al-Thufy was khurujuhu 'ala al-Ijma' (Al-Thufi and his departure from Ijma)". Some criticisms he presents, namely: First, the contradiction of maslahat and the holy text of the Qur'an, Hadith, and ijma' is an impossible problem because maslahat is appropriate and in line with the holy text of the Qur'an, Hadith, and ijma'. Second, *Maslahat* is not a *mustaqil* (stand-alone) proposition, while the holy text of the *Qur'an*, *Hadith*, and *ijma'* are a set of *mustaqil* proof so that it

¹⁴ Al-Thufy, *al-Ta'yin fi Syarhi al-Arbain*, (Beirut; Muassasah al-Rayyan dan Makkah; al-Maktabah al-Makkiyah, vol. I, 1319 H/ 1998 AD), pp. 259-269.

¹⁵ Ibnu Hajar, *al-Fathu al-Mubin li syarhi al-Arbain*, (Mesir; al-Amirah al-Syarafiyah, tc., 1320 H), p. 212.

cannot be ruled out by a reason to focus on *maslahat*. Third, the opinion of al-Thufy against the scholars who disbelieve in *ijma'* is more precedence of *maslahat*, so that *ijma'* is still debated among scholars while focusing on *maslahat* proposition that has been agreed by scholars. This statement is significantly wrong, because it is not necessarily the scholars' agreement on the benefits. The scholars prioritize the benefits from the holy text of the *Qur'an*, *Hadith*, and *ijma'*. Fourth, Al-Thufy states that the contradictory holy text is the cause of the existing Islamic law difference while focusing on *maslahat* is an essential matter that does not occur to scholars' differences. It is a great mistake because the holy text of the *Qur'an* is not possible to contradict due to its holiness and its status/position as *kalamullah*. Similarly, it is also the Prophet's words because the essence of the words of the Prophet is a revelation of Allah the Almighty. Meanwhile, the difference of scholars on Islamic law is in understanding the text, not in the contradiction of the holy texts *Qur'an* and *Hadith*.¹⁶

The third is Muhammad Abu Zahrah. He also criticizes al-Thufy as in his statement:

*"Therefore, we conclude that al-Thufy's theory is far from the theories of the mujtahid from the Hambaly school of thought. Al-Thufy's theory is a theory that deviates from the majority of scholars in general, and scholars of Hambaly school of thought in particular."*¹⁷

The fourth is Shaykh Muhammad Zahir al-Kaustary. He criticizes al-Thufy as his statement:

" ... He argues that focusing on *maslahat* is more important than on the holy text and *ijma'* amid a contradiction, and this opinion has never been expressed by any of the Muslims before."

The fifth is Dr. Ahmad Al-Raisuny. He criticizes that the theory presented by al-Thufy is merely a theory of mere assumptions (*nadzariyah iftiradiyah*), because the contradiction between *maslahat* and the holy text is impossible, even that al-Thufy (in his book) never gives a clear example of the contradiction between the problem and the holy text.¹⁸

CONCLUSION

According to al-Thufy, when there is a contradiction of *maslahat* against the holy text, he prioritizes *maslahat* over the holy text itself. However, al-Thufy does not rule out prioritizing the benefits. For him, prioritizing *maslahat* amid the contradiction with the text and *ijma'* is merely about the chapter of *mu'amalat* (transaction), custom, and alike. To support his statement in prioritizing *maslahat* from the holy text of the *Qur'an*, al-Thufy has three propositions, namely: first, considering the *maslahat* as a proposition that has been agreed upon by several scholars; second, the contradictory holy text is the cause of the difference in Islamic law, while focusing on *maslahat* is an essential matter that does not occur and not become the problematic issue of differences for scholars; and third, the

¹⁶ Dr. Muhammad Said Ramadhan al-Buthy, *Dhawabitu al-Maslahah fi al-Syariah al-Islamiyah*, (Demasyksus, Dar al-Fikr, vol. VIII, 1431 H/ 2010 AD) p. 222-226.

¹⁷ Muhammad Abu Zahrah, *Ibn Hambal Hayatuhu wa 'ashruhu ara'ahu wa fiqhuhu*, (Dar al-Fikr al-Araby, tc., tt.), p. 361.

¹⁸ Al-Raysuny, *Nadzariyatu al-Maqashid 'inda al-Imam al-Syathibi*, (Virginiya, al-Ma'had al-Ali li al-Fikr al-Islamy, vol. IV, 1416 H/ 1995 AD) p. 286-287. Al-Raysuny, *al-Ijtihad al-Nash al-Waqi' al-Maslahah*, (Beirut; Al-Syabakah al-Arabiyah li al-abhas wa al-Nasyr, vol. II, p. 2013 AD) p. 35-36.

contradiction of maslahat and the holy text of Qur'an and the Hadith within some problems faced by the companions in the period of Rasulullah PBUH. Besides, al-Thufy's controversial statement in advancing the maslahat from the holy text of the Qur'an, the Hadith, and ijma' has provoked criticism from several scholars, such as Sheikh Ibn Hajar, Dr. Muhammad Said Ramadhan al-Buthy, Muhammad Abu Zahrah, Shaykh Muhammad Zahir al-Kaustary, and Dr. Ahmad Al-Raisuny. Sheikh Ibn Hajar argues that the contradiction between maslahat and the holy text of the Qur'an and Hadith, then the specific evidence specifies (takhsish) available evidence as the theory of ushul fiqh. Therefore, focusing and prioritizing the benefits cannot be performed because the Sharia has the values of maslahat, including worship, mu'amalat (transaction), and 'adat (custom). Also, Dr. Muhammad Said Ramadhan al-Buthy criticized al-Thufi in his doctoral dissertation entitled "Dhawabitu al-Maslahah fi al-Syariah al-Islamiyah". He even placed the criticism of al-Thufi in a particular chapter as "al-Thufy was khurujuhu 'ala al-Ijma' (Al-Thufi and his departure from Ijma)". Alike Shaykh Ibn Hajar, Muhammad Abu Zahrah also criticized al-Thufy as his statement, "Therefore, we conclude that al-Thufy's theory is far from the theories of the mujtahid from Hambaly school of thought. Al-Thufy's theory is a theory that deviates from the majority of scholars in general, and scholars of Madzhab Hambaly in particular". Furthermore, Shaykh Muhammad Zahir al-Kaustary said "... and the first time that contradicts the holy text with maslahat is Najmuddin Sulaiman Al-Thufy. He argues that focusing on maslahat is more important than on the holy text and ijma' amid a contradiction. This opinion has never been expressed by any of the Muslims before" Lastly, Dr. Ahmad Al-Raisuny also criticized that the theory presented by al-Thufy is merely a theory of mere assumptions (nadzariyah iftiradiyah), because the contradiction between maslahat and the holy text is impossible. He even al-Thufy (in his book) never gives a clear example of the contradiction between the problem and the holy text.

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