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DEVELOPING ISLAMIC LEGAL PHILOSOPHY-BASED ASSURANCE OF JUSTICE

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Abstract: Justice is the essence of law enforcement. Justice is important in the legal system at various countries, The absence of justice was problem because if legal system lack of justice there would be made public believe ruined and legal system would collapse. In the Islamic legal thought, justice was the essence. However, it cannot be denied that the development of Islamic legal thought cannot be separated from the conception of justice. Justice in the explanation is included in the category of substantive law. Justice is defined from a theological point of view, God's relationship with humans is vertical. Allah as the Most Just and Most Right knows the truth and ultimate justice. Humans must always find justice and truth given by God through the process of ijtihad. The principle of justice requires the use of ratios to make comparisons between one case that is not explained by the Word of God or the words of the Prophet with another case that has legal legitimacy. In that way, Islamic law develops and reaches a wider range of legal cases based on the principle of equality

Keywords: justice, law, principle, Islamic, philosophy.

Introduction

Justice is the essence of law enforcement. While the meaning of justice itself varies depending on the perspective. The problem of upholding justice is an important issue that arises throughout the world, especially in the realm of law. The concept of justice that has been established in one country is not necessarily suitable when applied to other countries. However, the possibility of mutual influence and integration between thoughts related to the meaning of justice, especially those that have a universal nature, has led

to the discourse of the emergence of new theories about the meaning of justice.

At the philosophical level, of course, each country has its own roots of thought depending on the basic norms of the country and the socio-cultural life of its nation. The problem of inequality of justice occurs everywhere. In Indonesia, this is a very complicated problem to solve. This creates anxiety for scientists and universities.

Discussions and studies related to this issue of justice are often held, even though they involve various disciplines, but they have not produced a

solution that is reassuring. After a thorough investigation from a global perspective, this problem has spread to almost all countries, even in developed countries such as the United States, experiencing multidimensional problems. This is in line with what Fritjof Capra stated, namely that at the beginning of the twentieth century there will be a serious global crisis, as a complex and multidimensional case whose aspects touch every aspect of life. This crisis is a crisis in intellectual, moral and spiritual dimensions; a situation unprecedented in recorded human history.

Legal crisis and the public lost confidence to law and its apparatus, according to the legal science, this is because there is a system that is wrong. The biggest problem of the existing legal system, was none of the values of justice applied in the court and the whole legal system. For example, the crisis in the United States, one of which is related to the consequences of not implementing the values of justice and morality in solving problems in the Middle East and several African countries (government funds are spent only for war, even the concept of war is far from the principles of equity, humanity and ethics).

From here the author feels the need to examine, re-examine, and reconstruct how to build certainty of justice based on Islamic legal philosophy (*ushul fiqh*) from values of *al-maqasid ash-shariah* as an epistemological basis.

The problems of this research are: (1) What is the meaning of prophetic justice and ethical justice? (2) What are the values of *Maqasid As-Shariah*? (3) What is the concept of *Usul fiqh* in building justice based on these values?

Methods

The data in this paper were obtained using library research methods. This method is done by examining library materials or secondary data, which consists of (Ridwan, 2021):

- a. Primary materials, consisting of books, journals, etc.
- b. Secondary materials, namely materials that provide an explanation of primary materials in the form of articles on research results, or the opinions of other legal experts.

To obtain data that is relevant to the problems in this paper, the collection of reference materials is carried out in order to obtain secondary data.

The first step is to take an inventory of the sources as a reference, then write them down systematically.

In this paper, the analysis is done descriptively-qualitatively, while the data processing is done by systematizing the materials or books. Systematization means classifying existing materials to facilitate analysis and formulate constructs or concepts.

Results and Discussion Understanding of Justice and Prophetic Ethical Justice

One of the problems that have become the discourse of many legal observers is the issue of justice in relation to the law itself. This is due to the emergence of different views on the principle of justice in the form of laws and regulations that have been applied and accepted. A view that considers the law to be fair and another view that considers the law to be unfair.

In the Big Indonesian Dictionary, fair means an attitude that favors the right. Justice is a demand for a balanced attitude and nature between rights and obligations. One of the principles in law that reflects justice is the principle of equality before the law, namely the principle which states that all people are equal under the law.

The word justice has in common with the word equity, namely justice, which can be interpreted as follows (Fuady, 2010):

- a. Justice (justice), impartial (impartial), giving everyone their rights (his due).
- b. Everything is fair (fair), or fair (equitable).
- c. General principles of fairness and justice in terms of applicable law.

Seeing the meaning above, justice can be understood as a value that is used to create a balanced relationship between humans by giving what one's rights are with procedures and if there is a violation related to justice, one needs to be punished. Justice is the fulfillment of individual desires in a certain level. The greatest justice is the fulfillment of the wishes of as many people as possible. Fulfillment of justice so that a situation deserves to be called fair is something that is difficult. It cannot be answered based on rational knowledge. The answer to that question is a value justification (Asshiddiqie, 2006).

Justice can only be understood if it is posi-

oned as a condition to be realized by law. Efforts to realize justice in the law is a dynamic process that takes a lot of time. This effort is often also dominated by forces that fight within the general framework of the political order to actualize it (Friedrich, 2004).

People can think of justice as an instinctive desire that is expected to be useful for him. The reality of absolute justice is assumed as a universal problem that applies to all humans, nature, and the environment, there should be no monopoly carried out by a handful of people or a group of people. Or people perceive justice as the view of individuals who uphold the maximum benefit for themselves.

Justice can only arise based on positive legal provisions in the form of laws that are determined objectively. This rule of law is positive law. This is what can be the object of science, not a metaphysical law. This is called the pure of law which presents the law as it is without defending it by calling it fair, or rejecting it by calling it unfair. This seeks real and real laws, not true laws (Asshiddiqie, 2006).

Aristotle's Philosophy of Justice

Aristotle argued that justice cannot be separated from virtue. He also divided the philosophy of justice into 3 (three), namely:

a. General and Special Justice

General justice is justice that appears in human relations. Special justice is part of general justice which specializes in establishing relationships with fellow human beings to avoid harming each other.

b. Distributive and corrective justice

Distributive justice is justice determined by legislators, the distribution of which includes services, money, rights, and goodness for community members according to the principle of proportional equality.

Corrective justice is justice that guarantees, monitors and maintains this distribution against illegal attacks (Panggabean, 2014).

The corrective function of justice is, in principle, regulated by the judge and stabilizes the status quo by returning the property of the victim concerned or by compensating for his lost property.

c. Political Justice

Political Justice focuses more on the constitution and the rule of justice. The concept of political justice is formulated as "government under just law". The way to achieve government under just law is through constitutional arrangements that separate the legislative function from the executive function.

John Rawls's Philosophy of Justice

Several concepts of justice were put forward by the American philosopher at the end of the 20th century, John Rawls, such as A philosophy of justice, Political Liberalism, and The Law of Peoples, which gave a considerable influence on the discourse of justice values (Faiz, 2009).

John Rawls who is seen as a "liberal-egalitarian of social justice" perspective, argues that justice is the main virtue of the presence of social institutions. However, virtue for the whole community cannot override or challenge the sense of justice of everyone who has obtained a sense of justice. Especially the weak people seeking justice (Faiz, 2009).

Specifically, John Rawls developed the idea of the principles of justice by fully using the concepts of his creation known as the "original position" and "veil of ignorance".

Rawls's view positions the existence of an equal and equal situation between each individual in society. There is no distinction of status, position or having a higher position between one another, so that one party with another can make a balanced agreement, that is Rawls's view as an "original position" which rests on the notion of reflective equilibrium based on the characteristics of rationality.

While the concept of "veil of ignorance" is translated by John Rawls that everyone is faced with the closure of all facts and circumstances about himself, including certain social positions and doctrines, thus blinding the concept or knowledge of developing justice. With this concept, Rawls (1973) leads the community to obtain the principle of fair equality with his philosophy referred to as "Justice as fairness".

In John Rawls's view of the concept of "original position" there are the main principles of justice, including the principle of equality, namely that everyone is equal to freedom that is universal, essential and compatible and the inequa-

lity of social and economic needs in each individual.

The first principle is stated as the equal liberty principle, such as freedom of religion, political liberty, freedom of opinion and expression, while the second principle is stated as the difference principle, which hypothesizes on the equal opportunity principle.

Furthermore, John Rawls emphasized his view on justice that the program of justice enforcement with a populist dimension must pay attention to two principles of justice, namely, first, to provide equal rights and opportunities for the broadest basic freedom as broad as equal freedom for everyone. Second, being able to reorganize the socio-economic gaps that occur so that they can provide reciprocal benefits.

Thus, the principle of difference demands that the basic structure of society be arranged in such a way that the gap in prospects of obtaining the main things of welfare, income, authority is for the benefit of the most disadvantaged people. This means that social justice must be fought for two things: First, to correct and improve the conditions of inequality experienced by the weak by presenting empowering social, economic and political institutions. Second, every rule must position itself as a guide to develop policies to correct unjust treatments experienced by the weak.

Hans Kelsen

Hans Kelsen (2011) stated that law as a social order can be declared fair if it can regulate human actions in a satisfactory way so that they can find happiness in it.

Hans Kelsen's view is a positivist view, the values of individual justice can be known by legal rules that accommodate general values, but still fulfill a sense of justice and happiness for each individual.

Furthermore, Hans Kelsen argues that justice is a subjective value consideration. Although a just order which assumes that an order is not the happiness of every individual, but the greatest happiness for as many individuals as possible in the sense of a group, namely the fulfillment of certain needs, which are considered by rulers or lawmakers as needs that must be met, such as the need for clothing, food and shelter. But which

human needs should be prioritized? This can be answered by using rational knowledge, which is a value judgment, determined by emotional factors and therefore subjective.

As a positivist school, Hans Kelsen also admits that absolute justice comes from nature, that is, it is born from the nature of an object or human nature, from human reasoning or God's will. The thought is essenced as a doctrine called natural law.

The doctrine of natural law assumes that there is an order of human relations that is different from positive law, which is higher and completely valid and just, because it comes from nature, from human reasoning or God's will.

Thinking about the concept of justice, Hans Kelsen who adheres to the flow of positivism, also recognizes the truth of natural law. So that his thinking on the concept of justice creates a dualism between positive law and natural law.

According to Hans Kelsen (2011): "The dualism between positive law and natural law makes the characteristics of natural law similar to the metaphysical dualism of the world of reality and the world of Plato's ideas. At the heart of Plato's philosophy is his doctrine of the world of ideas. Which contains profound characteristics. The world is divided into two distinct areas: the first is the visible world that can be perceived through the senses called reality; the second is the invisible world of ideas" (p. 326).

There are two more concepts of justice proposed by Hans Kelsen: the first is about justice and peace. Justice that comes from irrational ideals. Justice is rationalized through knowledge that can take the form of interests which ultimately lead to a conflict of interest. Resolution of the conflict of interest can be achieved through an arrangement that satisfies one interest at the expense of the other's interests or by trying to reach a compromise towards a peace for all interests.

Second, the concept of justice and legality. To uphold on a solid basis of a certain social order, according to Hans Kelsen the notion of "justice" means legality. A general rule is "fair" if it is actually applied, while a general rule is "unfair" if it is applied to one case and is not applied to other similar cases. This concept of justice and legality is applied in the national law of the Indonesian nation, which means that national legal regulations can be used as a legal protection for

other national legal regulations according to their level and degree and these legal regulations have binding power to the materials covered. Contained in the legal regulations.

Meanwhile, justice that comes from law is justice that is abstract and impersonal created by the law itself, and the goal of achieving it does not lead to a certain thing such as the distribution of wealth. For example, criminal law regulates actions that are against the law, such as murder, stealing, and others that cause harm to people as victims and property.

a. Legal Justice

Justice in the legal perspective is justice according to the law. This legal justice has (two) branches, namely:

1. Substantive justice

It is a command that must be obeyed by the individual and is obligatory for him. Substantive justice is related to civil law, criminal law, and the rights granted by law. Substantive justice is divided into two branches:

- a. The individual's obligation to comply with all applicable regulations or laws and
- b. The obligation of courts and other law enforcers to implement applicable regulations.

2. Procedural Justice

Procedural justice is divided into two branches, namely procedural in court (procedural law) and material procedural (substantive). Procedural justice in court is more focused on resolving disputes in court.

b. Measures of Justice

1. The measure of natural law or positivism (Kelsen, 2011).

Measures of justice in natural law and positive law are different, even contradictory. The measure of justice in natural law is that justice is seen as higher by the human mind, but still views justice based on common sense. Meanwhile, the measure of justice in positive law is fairness based on applicable regulations.

2. Absolute or relative size

An absolute measure of justice must apply everywhere and at any time. Meanwhile, justice in a relative measure means that justice always varies according to place and time.

3. Common or concrete size

Justice in a general measure is the same as justice in an absolute measure, in contrast to justice in a concrete measure, it depends on the legal case.

4. Metaphysical or empirical measures

A justice in a metaphysical measure is the exercise of rights and obligations based on a deductively developed human ratio. Meanwhile, justice in an empirical measure is based on social facts in reality.

5. Internal or external size

Justice in an external measure is justice as a high ideal and from which justice originates or is formed, or justice in social facts. Meanwhile, justice in internal measure is justice within the limits of the space for justice itself.

What is meant by the perspective of prophetic ethics is the norm of life coveted by everyone in the order of their social life that relies on justice to the values taught by the prophet.

There are two sources of justice, namely positive justice which is a human product concept, and reveal justice that comes from God which is also called divine justice, as the mission carried out by the prophets. Many Quranic verses talk about justice, this shows that Allah (God) is the source of justice and commands His messengers and all humans to enforce it in this world. Therefore, believers who uphold justice can be categorized as people who have tried to improve the quality of their piety. Justice in Islam means equality, balance, giving rights to the owner and divine justice. (Rosyadi and Rizka, 2021)

The word *prophethood* implies "all matters relating to someone who has obtained prophetic potential". The Prophet is a servant of Allah who has given him wisdom, books, the ability to communicate and integrate with Him and His Angels and the ability to implement the book and wisdom both to himself and to mankind and the environment (Adz-Dzakley, 2007).

In the Qur'an chapter al-An'am: 89 Allah says:

وَمَا عَلَى الَّذِينَ يَتَّقُونَ مِنْ حِسَابِهِمْ مِنْ شَيْءٍ وَلَكِنْ ذُكِّرُوا
لَعَلَّهُمْ يَتَّقُونَ

And there is no accountability whatsoever for those who fear their sins; but (their obligation is) to remind them to be pious.

Muqowim argues that the verse above explains that the prophet has 3 characteristics:

1. Receive revelations which are then compiled in a book.
2. Bringing the law or the Sharia as a way of life, therefore the example of the prophets and apostles is a source of law.
3. Ability to predict things in the future.

According to Mutahhari there are two main missions for a prophet:

1. Inviting people towards acknowledging God and drawing closer to Him as in the Qur'an chapter al-Ahzab verses 45-46:

O Prophet, indeed We have sent you to be a witness, and a bearer of glad tidings and a warner, and to be a caller to Allah's Religion by His permission and to be a shining light.

2. Upholding justice and equality in human society. As in the Qur'an Surah al-Hadid verse 25:

Indeed, We have sent Our messengers with clear evidences and We have sent down with them the Book and the balance (justice) so that people may do justice.

According to al-Tabataba'i in Surah al-Hadid verse 25, it is stated that the purpose of Allah sending an apostle and sending down the Book and Mizan is to uphold justice for fellow human beings or to establish a just society. The sending of an apostle is accompanied by evidence in the form of a book and *mizan* (balance) by which they can establish justice among mankind. This means that the apostles came to convey the teachings of monotheism. Thus, the mission of an apostle has two dimensions, namely the horizontal dimension and the vertical dimension (Muqowim, 2001).

Justice is an ideal value that is always inherent in the making and implementation of law, justice is often presented in an abstract concept so that it is often understood without clear boundaries. However, it cannot be denied that the development of Islamic legal thought cannot be separated from the conception of justice.

Discourse on justice can be traced to sources of Islamic law, such as the Qur'an and hadith. The Qur'an in several parts instructs Muslims to do justice. Surah an-Nisa verse 58 states that in judging two disputants, it must be done fairly. Surah al-Maidah verse 6 commands believers to do justice because justice is closer to piety.

From the quote above, it can be understood that justice is a value that is highly upheld in Islamic teachings. Even though it is not denied in the level of understanding of Islamic thinkers, the meaning of justice is a separate issue. Some of them define justice within the framework of Aristotelian philosophy where justice is often seen as the highest manifestation of virtue. Justice is a virtue that exists in the human soul after other main qualities, namely wisdom, self-purity,

honor, and courage are fulfilled (Maskawaih, 1911).

The formulation of justice in the legal framework is urgent because justice in law is often understood as terms with interests. People who lose in court will think that the judge's decision is wrong, doubtful, or biased. While the winning party will view that the judge's decision is very fair. The trap of interest often obscures the meaning of justice. Like a person who is in trouble he will think that God is unfair to him, but when he gets new help, he thinks that God is really just. Therefore, the meaning of justice is very vulnerable from personal interests. It is natural that some legal experts argue that it is the law that is just, and not justice itself that should be taken into account because the conception of justice can only be defined in a legal framework. Such an opinion is quite realistic, despite the fact that many rules are seen as unfair, so that a sense of justice actually corrects the law.

Knowing the Legal Theory of Ushul Fiqh as a Methodology of Law Determination

Allah sent a prophet or messenger and sent down the book is to establish justice for all humans or to establish a just society. As for carrying out or continuing prophetic tasks, humans must have the ability to be able to read and capture divine messages, in the form of His verses both contained in the holy book and those that lie in the universe as well as words and deeds, as well as the provisions of the prophet (hadith).

This ability as described in the Qur'an can only be done by people who have reason (*ulul al baab*), namely people who can combine dhikr (*qalb*) and thought (ratio/brain). This gives an understanding that to be able to read and catch divine messages properly cannot be based on human abilities as mere humans. So that it can be shrouded in interests and passions but can bring the reader to the essence of truth and belief.

In Islam, law is understood as a decree of Allah with regard to the deeds of *mukallaf*, either in the form of an order to perform an act or to leave it, or to choose between doing and not doing it. so that according to some experts in the science of *ushul fiqh*, the word of God in the above definition is the eternal word of *nafsi*, which is a

word or word of God itself which is eternal in nature. The word of Allah has two clues which are called *dalalah*. The first is *dalalah lafdziyyah*, namely instructions in the form of verses in the form of the Koran; The second is *dalalah ma'naviyyah*, namely instructions in the form of meanings that take the form of sunnah, *al-ijma* (the agreement of Islamic jurists regarding the legal position of a legal event at a certain time), *qiyas* or analogies and all that are considered or used as arguments or indications (*qarinah*) (Prajna, 2015).

The codified basics and guidelines in the realm of *istinbath al-ahkam* are called science of *ushul fiqh*. The science of *ushul fiqh* cannot be separated from the *ijtihad* (independent reasoning) process that has been going on since the beginning of Islam until the companions of the Prophet Muhammad. *Ushul fiqh* consists of two words: *Ushl*, which means the main points and *Al-fiqh* etymologically means knowledge or understanding. Thus, according to Prajna, *al-fiqh* is terminologically the science of sharia laws. The science of Fiqh is a set of knowledge to determine the legal position of the actions of every *mukallaf*. Based on these two terms, *ushul fiqh* means rules and legislation as a guide for anyone who will perform Islamic law *istinbath* from the arguments in detail. The science of *ushul fiqh* is knowledge of the rules of *ushul* that can help mujtahids (people who do *ijtihad*) in performing valid legal *istinbat* from sources and legal arguments (Prajna, 2015).

Abdul Malik Ibn Abdillah Ibn Yusuf Al-Juwayni in his book, *al-Burhan fi Ushul al-Fiqh*, gives the key words for *al-fiqh as al-ilm bi ahkam al-taklif*, a set of knowledge about the laws of imposition (*taklif*). While criticizing some opinions which state that the biggest content of sharia problems are assumptions (*dhanûn*), al-Juwayni states that assumptions (*dhanûn*) are not based on understanding (*fiqh*). Thus, *al-fiqh* is *al-ilm bi wujûb al-'amal 'inda qiyâm al-dhannûn* (fiqh or understanding is a set of knowledge in the realm of praxis when assumptions arise). Thus, *ushul fiqh* is the arguments *fiqh* argument itself (Al-Juwayni, 1997).

Abu Zahrah stated that what is etymologically called *fiqh* is a deep understanding by which the intent and purpose of the words and actions can be known. Meanwhile, in terms of terminology, *fiqh* is a set of knowledge about the laws of the

Sharia with the arguments in detail. Thus, *Ushul fiqh* in this sense is anything that is built on it about *fiqh (mâ yubnâ 'alayhi al-fiqh)*. Strictly speaking, it is knowledge of the rules that describe the manhajs or various methodologies in legal *istinbat*.

A more operational affirmation of the notion of *ushul al-fiqh* was put forward by Dr. Wahbah Zuhayli in *al-Wajiz fi Usul al-Fiqh*. For this professor of Islamic Jurisprudence and *Madzhab* of Damascus University, he stated that *Ushul fiqh* means just *al-Fiqhi*. Strictly speaking, it is the rules that lead a mujtahid to the practical interpretation of the sharia laws from their detailed arguments (Al-Zuhayli, 1999). The key word from the notion of *ushul fiqh al-Zuhayli* is *al-Qawaid* or rules. Thus, based on this understanding, *ushul fiqh* must contain the arguments or rules for a mujtahid in order to decide a legal case.

History shows that the process of forming *fiqh* and sharia stems from two things:

1. *Ushul fiqh* which is based on legal principles (*qawaid al-ahkam*) which is formulated based on Arabic lafaz and what may arise from it in the form of: *al-naskh* (abolition of law by other laws), and *al-tarjih* (taking laws with stronger arguments).
2. The universal principles of *fiqh (qawaid kulliyah fiqhiyyah)* in a very large number of rules are summarized, for example in the book of *al-Asybah wa al-Nadhair* by Imam al-Suyuthi.

Based on these two things, the Sharia laws are formulated which are commonly called *al-ahkam al-khomsah* (five laws) which include: obligatory (*al-ijab*), sunnat (*al-nadb*), haram (*al-tahrim*), makruh (*al-karahah*), mubah (*al-Ibahah*).

Values of *Al-Maqasid As-Syari'ah*

Maqashid is the plural form of *maqshad* which means goal. While *Maqasid As-Shari'ah* is defined by *ushul fiqh* scholars as the goals that Islamic law wants to realize as the reason it was revealed for the benefit of mankind.

Etymologically, *mashlahah* can be interpreted as benefit, while the plural form is *mashalih*. While in the terminology of scholars, it is interpreted as taking advantage and rejecting harm

(danger/damage). Meanwhile, Imam Ghazali explained that *mashlahal* is maintaining the pur-

pose (objective) of the sharia.

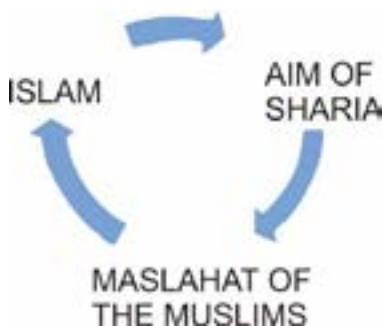


Figure 1. Categorization of *Mashlahat* Based on Its Universally Beneficial Values.

Islamic Scholar divide *mashlahah* into three groups, namely *Mashlahah Mu'tabarah*, *Mashlahah Mulghah*, and *Mashlahah Mursalah*. Each of which is described below.

1. *Mashlahah Mu'tabarah*

That is the benefit that is recognized by the sharia by establishing legal details that clearly aim to make it happen. For example:

RULE	Practice in Islam	Value
Keeping Religion	Prohibition of apostasy, sharia jihad, practicing the pillars of Islam and the pillars of faith.	Prohibition of cursing other people's religion, the obligation to be fair to anyone, there is no compulsion in religion.
Nurturing the Soul	The prohibition of killing without cause, prohibition of doing wrongdoing, prohibition of excessive religion.	Guaranteeing the rights of human life in its entirety, the prohibition of doing damage, equality before the law, the right to a healthy life, the prohibition of terrorism.
Keeping the mind	The obligation to seek knowledge, the prohibition of all intoxicants.	Equal rights to education.
Caring for offspring	Prohibition of adultery, children are a mandate	Prohibition of acts of prostitution, trafficking, prohibition of deviant sexual behavior
Keeping property	The prohibition of stealing, consuming usury, the prohibition of piling up wealth, obligation of zakat, recommendation of alms, transaction laws	Prohibition of theft, money laundering, corruption prevention, market and economic regulation.

2. *Mashlahah Mulgha*

That is something that is considered beneficial by some humans but the sharia firmly rejects it through the establishment of laws that do not consider it a benefit. For example: Making fake hadith for any reason, exaggeration in religion, determination of fasting for 2 consecutive months for rich people who do sexual intercourse during Ramadan, usury transactions, equalization of inheritance between sons &

daughters, telling lies or showing nakedness with the excuse of entertaining.

3. *Mashlahah Mursalah*

That is the benefit that is not denied by the sharia nor is it explicitly recognized (silenced). For example: the collection of verses of the Qur'an in the manuscripts of the time of Abu Bakr, the appointment of Umar by Abu Bakr as his successor, prisons during Umar's time, the unification of the Muslims with one manuscript

by Uthman.

Types of Benefits Based on Priorities

If viewed based on the priority, the benefit is divided into three types, namely *Dharuriyat*, *Hajiyat*, and *Tahsiniyat*.

1. *Dharuriyat*

That is the benefit that really determines the continuity of religion and human life in the world and in the hereafter, which if this benefit is lost, it will result in the misery of the world, and the loss of favors and the coming of punishment in the hereafter. According to the scholars, there are 5 *dharuriyat* benefits: Preserving the religion, soul, mind, lineage, and property.

2. *Hajiyat*

That is the benefit that humans need to eliminate their difficulties or narrowness. If this benefit is not realized, it will not result in the destruction of life, but humans fall into difficulties. For example, allowing greetings.

3. *Tahsiniyat*

That is the benefit that makes humans in noble manners and straight morals, and if it does not materialize, human life will be contrary to the values of decency, morality, and healthy nature. For example, dressing well in prayer, prohibition of excessive spending on wealth, prohibition of buying goods that are being offered by others, etiquette of eating & drinking, prohibition of mutilating corpses out of revenge or in war, etc.

Some Rules:

1. *Maslahat Dharuriyat* is the foundation for *Hajiyat* and *Tahsiniyat*
2. The loss of *Dharuriyat* automatically results in the loss of others
3. The loss of *Hajiyat* and *Tahsiniyat* does not always result in the loss of *Dharuriyat*
4. The loss of *Hajiyat* and *Tahsiniyat* can disturb *Dharuriyat* in certain aspects
5. Efforts must be made to protect the *Hajiyat* and *Tahsiniyat* for the benefit of the *Dharuriyat*.

Construction of Islamic Reason about Law and Justice

The construction of Islamic reasoning about law and justice can be found in the Qur'an and had-

ith. The Qur'an contains several terms that are close to the term justice, namely *al-qisth*, *al-adl*, and *mizan*. The word *adl* refers to justice in the sense of equal retribution or retribution. For example, if someone does not fast, then he must make up for it on another day. Meanwhile, the word *qist* refers to equality in the sense of applying the rules to people who are not citizens. The definition of justice in the word *qist* contains a conflict of interest, while *adl* contains a balance between interests between groups. Regarding the word *mizan* in the Koran refers to the notion of balance (balance) (Shihab, 1996).

Azary describes the notion of justice in the Koran in the political realm. His explanation of the verses of justice in the Qur'an is based on the framework that justice is the third principle in nomocracy. Justice in Islam according to Azhary is identical with truth. Truth in the context of Islamic teachings is associated with Allah as the source of truth, which in the Qur'an is called *al-haqq*. According to Azhary, the word *adl* in the Koran means the same language. The word *adl* denotes balance or middle position (Shihab, 1996).

Quraish Shihab mapped out the notion of justice understood by scholars with four meanings. First, justice which means the same which is based on the letter an-Nisa verse 4. The word fair in justice in the first sense relates to the attitude of the judge in the decision-making process. Second, justice means balance, which is identical to proportional in all respects. Third, fair also means paying attention to individual rights and giving rights to their owners. Justice in the third sense is related to the social context. Justice in the fourth sense is attributed to God. Justice in the fourth sense means maintaining fairness and continuity of existence (Shihab, 1996).

Justice in Islamic law is always associated with the divine aspect, namely in the relationship between humans and God and between humans and humans in the perspective of revelation. Islamic jurisprudence produces a large concept of law that provides an umbrella and provides an understanding of the working pattern of Islamic law. The concept is Al-Maslahah. The term *maslahah* in the study of Islamic law is used in two senses, namely *maslahah mursalah* and *maslahah as maqasid shari'ah*. *Maslahah* according to the first understanding (*maslahah mursalah*) is an effort to explore the law based on

considerations of the general good. *Maslahah mursalah* as a method of extracting law was initially associated with the Maliki school, but in its development the *maslahah* method was widely used to solve problems for which there were no explicit instructions from the Qur'an and hadith.

The definition of *maslahah* as *maqasid shari'ah* was developed by al-Juwayni (Masud, 1997). Which was then elaborated further by al-Ghazali and reached its peak in the thought of as-Syathibi. *Maslahah* in the sense of *maqasid shari'ah* emphasizes the essential goals to be achieved by Islamic law. The essential objectives of sharia are classified into three, namely maintaining human interests which are primary (*dharuriy*), secondary (*hajjiy*) and supplementary (*tahsiniy*) (Masud, 1997).

The relationship between *maslahah* and justice is indeed not easy to understand if it is not linked through the theological aspects that build the paradigm of Islamic law. The general good is the core teaching of Islamic law, which contained the values of justice and *maslahah* at the same time. However, even though it is recognized as something contained in Islamic law, justice as a legal discussion will be difficult to find in *ushul fiqh* books. *Ushul fiqh* (Islamic jurisprudence) provides guidance on God's relationship with humans, God's position as lawgiver and various methods that describe how God's will in the Qur'an and the Prophet's explanations are understood.

Justice in the explanation is included in the category of substantive law. Justice is defined from a theological point of view, God's relationship with humans is vertical. Allah as the Most Just and Most Right knows the truth and ultimate justice. Humans must always find justice and truth given by God through the process of *ijtihad*. The principle of justice requires the use of ratios to make comparisons between one case that is not explained by the Word of God or the words of the Prophet with another case that has legal legitimacy. In that way, Islamic law develops and reaches a wider range of legal cases based on the principle of equality.

Islamic legal theories do not clearly distinguish between positive law and morality (Ahmad, 1986). The construction of Islamic reasoning about law and justice represents a view that links justice with truth. To act justly is to act rightly. Seeking justice is the same as seeking

truth. Truth is a representation of God's will to humans which is described through *al-ahkam al-khamsah*, namely obligatory, sunnah, permissible, *makruh*, and haram. Substantive justice in Islamic law is always associated with the will of the maker of sharia (Allah) towards humans, whether that will be understood through logical deduction (*kaedah lughawiyyah*), analogical deduction (*qiyas*), or deduction from general sharia principles (*maqasid shari'ah*) (Khallaf, 1978).

In the end, justice refers to the judge's efforts to find the truth and give the law if there is a violation for which there is no formally stated rule. This is a form of procedural justice. Procedural justice is an external aspect of law, where substantive justice is realized. Without procedural justice, substantive justice will only become theories that do not touch the reality of society. However, in addition to justice, the value of legal certainty and usefulness is also important to consider in law enforcement (Huijbers, 1993).

Conclusion

Justice is an abstract concept that has great power in shaping perspectives. Justice has a wide range of meanings and enters various fields: economics, politics, law, and theology. Islam is also very concerned with the issue of justice. The concept of justice will continue to develop in line with social developments. The meaning of justice becomes part of the current of culture and social dynamics, so that the meaning will always be new without leaving the achievements that have been produced by previous generations. The construction of law and justice in Islam cannot be separated from morality and transcendental belief, because these aspects are interrelated. Justice in the explanation is included in the category of substantive law. Justice is defined from a theological point of view, God's relationship with humans is vertical. Allah as the Most Just and Most Right knows the truth and ultimate justice. Justice is an ideal value that is always inherent in the making and implementation of law, justice is often presented in an abstract concept so that it is often understood without clear boundaries. However, it cannot be denied that the development of Islamic legal thought cannot be separated from the conception of justice.

References

- Adz-Dzakley, H. B. (2007). *Prophetic psychology: psikologi kenabian, menghidupkan potensi dan kepribadian kenabian dalam diri* (Prophetic psychology: Prophetic psychology, turning on the potential and prophetic personality in yourself, in Indonesian). Yogyakarta: Pustaka al-Furqon.
- Ahmad, M. (1986). *Morality and Law*. Karachi: Asia Publishers.
- Al-Juwayni, A. M. (1997). *Al-Burhan fi Ushul al-Fiqh*. Beirut: Darul Kutub al-Ilmiyah.
- Al-Zuhayli, W. (1999). *Al-Wajiz fi Ushul al-Fiqh*. Lebanon: Darul Fikr al-Mu'ashir.
- Asshiddiqie, J. (2006). *Filsafat Hans Kelsen tentang Hukum* (Hans Kelsen's philosophy Law, in Indonesian). Jakarta: Sekretariat Jenderal Mahkamah Konstitusi.
- Faiz, P. M. (2009). *Keadilan John Rawls* (John Rawls' of justice, in Indonesian). *Jurnal Konstitusi*, 6(1), 135-149. <http://dx.doi.org/10.2139/ssrn.2847573>
- Friedrich, C. J. (2004). *Filsafat hukum perspektif historis* (Philosophy of law from historical perspective, in Indonesian). Bandung: Nuansa dan Nusamedia.
- Fuady, M. (2010). *Dinamika Filsafat hukum* (Dynamics of legal philosophy, in Indonesian). Bogor: Ghalia Indonesia.
- Huijbers, T. (1993). *Filsafat hukum dalam lintasan sejarah* (Philosophy of law in historical trajectory, in Indonesian). Yogyakarta: Kanisius.
- Kelsen, H. (2011). *Law and the State*. Bandung: Nusa Media.
- Khallaf, A. W. (1978). *Ushul fiqh* (Principles of Islamic jurisprudence, in Latin Arabic). Beirut: Dar al-Qalam.
- Maskawaih, I. (1911). *Tahdhib al-akhlaq wa tathhir al-araq* (Education of Behaviour and Moderate and the Character Purity, In Latin Arabic). Cairo: Maktabah Husayniyyah.
- Masud, M. K. (1997). *Shatibi's philosophy of Islamic law*. Delhi: Adam Publisher.
- Muqowim. (2001). *Kenabian dalam Al-Qur'an* (Prophethood in the Qur'an, in Indonesian). *Jurnal Dakwah*, 3(2), 322-341.
- Panggabean, H. P. (2014). *Penerapan hukum dalam sistem peradilan Indonesia* (Application of Law in the Indonesian judicial system, in Indonesian). Jakarta: PT Alumni.
- Praja, J. S. (2015). *Filsafat hukum antar madzhab-madzhab barat dan Islam* (Philosophy of law between western and Islamic schools, in Indonesian). Tasikmalaya: IAILM.
- Rawls, J. (1973). *A justice*. London: Oxford University Press.
- Ridwan, R. (2021). *The Law Of Transcendence Liberation*. *Journal Law and Justice UMS*, 11(2), 156-159. <https://doi.org/10.23917/jurisprudence.v11i2.14047>
- Shihab, Q. (1996). *Wawasan Alquran, tafsir Maudhui atas berbagai persoalan umat* (Insights of the Qur'an, Maudhui's interpretation of various issues of the ummah, in Indonesian). Bandung: Mizan.