



MASLAHAH 'AMMAH: (A Comparative Study of The Concept Maslahah 'Ammah According To Nahdlatul Ulama And Ulama Mazdhahib Al-Arba'ah)

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Abstract. The second similarity in terms of principles includes, a) paying attention to the realization of general welfare and benefit (maslahah 'âmmah) the welfare of national development in the life of the nation and state, b) rejecting damage and taking virtue (benevolence). As for the difference, it is stated that "maslahah 'âmmah may not sacrifice other public interests that are equal let alone bigger ones". In the view of al-madzahâhib al-Arbâ'ah did not mention in detail as in the view of NU. However, globally the Hanafiyah school of thought uses this concept of equality (qiyâs), that something that is the same is considered the same, let alone something more than that: it must be considered. Then there can be legal consequences more than commensurate (qiyâs awlawiyah). As for some of the three scholars (Mâlikiyah, Syafi'iyah, Hanâbilah) use istihsân, maslahah mursalah, sadz ad-Dari'ah and maslahah mulâ'im in bringing up maslahah 'âmmah and it is very clear that they do not mention anything in the same way - the same that can be taken as an equation (qiyâs) in realizing maslahah 'âmmah. The implications of the difference in the concept of maslahah 'âmmah are; a) will increase the breadth of the concept or make it easier to limit and seek decisions in the public interest (maslahah 'âmmah), in accordance with the development of the times



which are increasingly rotating in the midst of life. Because in essence all of this boils down to one goal, namely the realization of *maslahah 'âmmah* (universal goodness), b) *ijtihad* produced by *Nahdlatul Ulama*, in realizing *maslahah 'ammah* and rejecting danger, is elastic in accordance with the times and conditions. Because the two concepts of NU and *madzhâhib al-Arbâ'ah* can complement or strengthen each other, c) the decisions made by NU are stronger. Because NU in formulating *maslahah 'âmmah* only adds or complements it. For example, the decision must be based on the provisions of *syura* (the voice of the government and the people).

Key Word: *Maslahah 'Âmmah*, *Khittah NU*, *Maqâsid Asy-Syari'ah*, Islamic Law

INTRODUCTION

Islamic Sharia is very concerned about the realization of public welfare and benefit. Therefore, this principle must become a reference for national development in the life of the nation and state. The embodiment of public welfare and benefit accommodates the interests of all parties regardless of belief, ethnicity, skin color and does not conflict with the teachings of Islamic law (Qur'an, hadith, *ijma'* and *qiyas*). *Maslahah 'âmmah* is benefit that leads to the principles of justice, independence and human justice before the law.

Public interest (*maslahah 'âmmah*) in the social context is a very significant legal standard. Because the source of the purpose of establishing law in the midst of human life is the creation and upholding of the *maslahah* flag which is mutually beneficial and prospers for the people. Therefore, the public interest which is in favor of the will of the people in general must be fought for and standardized with certainty. Otherwise, the public interest will be unclear.¹

¹ Muksana Pasaribu, "Maslahat dan Perkembangannya Sebagai Dasar Penetapan Hukum Islam," *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 1, no. 04 (2016).



Maslahah 'âmmah (public interest) for example in the Qur'an to realize the security and welfare (benefit) of mankind in this world and the hereafter. As in the word of God:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ (الأنبياء : 107)

Dan Tiadalah Kami mengutus kamu, melainkan untuk (menjadi) rahmat bagi semesta alam (QS. Al-Anbiya': 107).²

وَإِنَّهُ هُدًى لِّلْمُؤْمِنِينَ (النحل : 77)

Sungguh al-Qur'an itu benar-benar sebagai pemberi petunjuk dan rahmat bagi orang-orang mukmin (QS. al-Nahl: 77).³

Therefore, in order for the security and welfare (benefit) of mankind in this world and the hereafter to be realized, all efforts made by mankind on earth must always be in line with the guidance of the Shari'a. With many considerations, to meet demands and human interests and respond to various dynamics of life, every decision making must meet the criteria of public interest (maslahah 'ammah) which is justified by syara'.

Maslahah 'âmmah needs benchmarks in order to avoid the possibility of using maslahah 'âmmah inappropriately, such as following lust, arbitrariness and following personal or certain group interests by using pretexts for the public interest. It should be realized that the purpose of development is essentially to create the welfare of the wider community and to do as much as possible to provide facilities and amenities for the public interest, whether it is acknowledged or not, it turns out that in the implementation of development, the boundaries for the public interest are often unclear and not in accordance with the real meaning.⁴

The common interest eventually develops in multiple perspectives; there is the public interest according to the decision-making version (umara), or the public interest according to the "taste" of a small part of society, and the public interest which is perceived by the community. This

² Kementerian Agama RaI, *Al Qur'an dan Terjemahannya* (Semarang: As-Syifa, 2010).

³ Kementerian Agama RI.

⁴ Muhammad Ali Rusdi, "Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam," *DIKTUM: Jurnal Syariah dan Hukum* 15, no. 2 (2017): 151-68.



fact brings negative consequences and impacts in development. The use of reasons "for the public interest" without being guided by *maslahah 'ammah* which is justified by *syara'* will give birth to forms of deviation from sharia law and arbitrary actions against weak groups of people by strong groups of people.⁵ Allah says in the Qur'an:

فَأَحْكُمَ بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَى فَيُضِلَّكَ عَنْ سَبِيلِ اللَّهِ

*Maka berilah keputusan (perkara) di antara manusia dengan adil dan janganlah kamu mengikuti hawa nafsu, karena ia akan menyesatkan kamu dari jalan Allah (QS. Shad: 26).*⁶

فَأَمَّا مَنْ طَغَى وَآثَرَ الْحَيَاةَ الدُّنْيَا فَإِنَّ الْجَحِيمَ هِيَ الْمَأْوَى

*Adapun orang yang melampaui batas, maka sesungguhnya nerakalah tempat tinggalnya. dan lebih mengutamakan kehidupan dunia (QS. al-Nazi'at: 37-39).*⁷

وَلَوْ اتَّبَعَ الْحَقُّ أَهْوَاءَهُمْ لَفَسَدَتِ السَّمَوَاتُ وَالْأَرْضُ وَمَنْ فِيهِنَّ

*Andaikan kebenaran mengikuti keinginan mereka, niscaya langit bumi dan segala isinya akan binasa, rusak dan hancur (QS. al-Mukminun: 71).*⁸

The source of the problem which is quite crucial regarding *maslahah 'ammah* is the position of *maslahah 'ammah* as a consideration for taking virtue, it needs to be actualized as a basis for addressing social problems that develop in society. The use of *maslahah 'ammah* is felt to have become a necessity to enrich and complete the basis for decision-making and policy from various social cases related to the pretext of public

⁵ Imam Syafi'i dan Tutik Hamidah, "Maslahah Controvers As Sources, Methods And Objectives (Comparative Analysis Study Of The Four Madhab)," *Al-Adalah: Jurnal Syariah dan Hukum Islam* 7, no. 1 (2022): 19–38.

⁶ Kementerian Agama RI, *Al Qur'an dan Terjemahannya*.

⁷ Kementerian Agama RI.

⁸ Kementerian Agama RI.



interest-especially in the implementation of development which has often occurred so far.

In order to avoid harm and the negative impact of development, it is important that *maslahah 'ammah* be used as a reference to equate a single perception of the form and meaning of the public interest in the context of development. With *maslahah 'ammah*, it means that society has realized the objectives of the Shari'ah (*maqasid al-Syariah*).⁹

From the review of the problem of public interest above, NU as an Islamic autonomous institution must also participate in serving and solving community problems properly without any further disputes, especially regarding the true meaning of public interest (*maslahah 'ammah*). How does NU respond to this problem in a fair manner and does not rule out other interests, let alone a separate truth claim that has no clear legal basis in the Shari'a. Of course here NU must have an attitude regarding the law of public interest (*maslahah 'ammah*) which is certain (patent) in accordance with applicable law.¹⁰

RESEARCH METHODS

Based on the problems studied, researchers used qualitative methods including approaches and types of research, types of data and data sources, data collection techniques, data analysis techniques, and checking the validity of the data. While the meaning of qualitative research itself is a research method used to examine the conditions of natural objects, (as opposed to experiments) where the researcher is a key instrument, data collection techniques are carried out in a triangulation (combined) manner, data analysis is inductive, and the results of qualitative research emphasize meaning rather than generalization. However, because the analysis technique chosen by the researcher is deductive-comparative in nature, this qualitative research also draws a general picture to a specific

⁹ Retna Gumanti, "Maqasid Al-Syariah Menurut Jasser Auda (Pendekatan Sistem dalam Hukum Islam)," *Jurnal Al Himayah* 2, no. 1 (2018): 97–118.

¹⁰ Moh Romzi, "Ulama dalam Perspektif Nahdlatul Ulama," *Religió: Jurnal Studi Agama-agama* 2, no. 1 (2012).



picture as well as looks at the similarities and differences with the Al-Mazdhâhib al-Arba'ah scholars.

RESULTS AND DISCUSSION

A. Definition and Scope

In realizing the benefit of the people, NU has formulated the following:

- a. Maslahah 'ammah is something that contains beneficial values assessed from the interests of mankind and the absence of madharat (danger) values contained in them, both resulting from jalbul manfa'ah activities (getting benefits) and daf'ul mafsadah activities (avoiding damage).
- b. Maslahah 'ammah must be aligned with the objectives of the Shari'a, namely the maintenance of the five basic human rights and guarantees (al-ushûl al-khamsah), which include: safety of religious beliefs, safety of the soul (and honor), safety of the mind, safety of family and offspring, and safety right of ownership.

أَمَّا الْمَصْلَحَةُ فَهِيَ عِبَارَةٌ فِي الْأَصْلِ عَنِ جَلْبِ مَنفَعَةٍ أَوْ دَفْعِ مَضَرَّةٍ ، وَلَسْنَا نَعْنِي بِهِ ذَلِكَ ، فَإِنَّ جَلْبَ الْمَنفَعَةِ وَدَفْعَ الْمَضَرَّةِ مَقَاصِدُ الْخَلْقِ وَصَلَاحُ الْخَلْقِ فِي تَحْصِيلِ مَقَاصِدِهِمْ ، لَكِنَّا نَعْنِي بِالْمَصْلَحَةِ الْمُحَافَظَةَ عَلَى مَقْصُودِ الشَّرْعِ وَمَقْصُودِ الشَّرْعِ مِنَ الْخَلْقِ حَمْسَةٌ : وَهُوَ أَنْ يَحْفَظَ عَلَيْهِمْ دِينَهُمْ وَنَفْسَهُمْ وَعَقْلَهُمْ وَنَسْلَهُمْ وَمَالَهُمْ ، فَكُلُّ مَا يَتَضَمَّنُ حِفْظَ هَذِهِ الْأُصُولِ الْخَمْسَةِ فَهُوَ مَصْلَحَةٌ ، وَكُلُّ مَا يُفَوِّتُ هَذِهِ الْأُصُولَ فَهُوَ مَفْسَدَةٌ وَدَفْعُهَا مَصْلَحَةٌ (المستصفي - ج 1 / ص 438).

Maslahah pada intinya adalah ungkapan tentang penarikan manfaat dan penolakan bahaya. Yang kami maksud dalam statemen ini, bukan penarikan manfaat dan penolakan bahaya yang menjadi tujuan dan kebaikan manusia dalam mealeisir tujuan mereka, tetapi yang kami maksud dengan "maslahah" adalah proteksi (perlindungan) terhadap



tujuan hukum (syara') ". Tujuan hukum bagi manusia itu ada lima yaitu: agar hukum memproteksi jiwa, akal, keturunan, dan harta mereka. Segala tindakan yang menjamin terlindunginya lima prinsip tujuan hukum di atas itu disebut "masalahah". Sedangkan semua tindakan yang mengabaikan lima prinsip tujuan tersebut itu disebut kerusakan (mafsadah) dan menolak kerusakan itu juga masalahah".

- c. Masalahah 'âmmah must really be for the public interest, not for special (individual) interests. As for what brings benefits and eliminates harm (harm) only benefits or for the benefit of certain parties, it is not considered masalahah 'âmmah.
- d. Masalahah 'âmmah may not sacrifice other public interests that are equal or even bigger.
- e. Masalahah 'âmmah must be haqiqiyah (real) and not wahmiyah (hypothetical). Therefore, to determine masalahah 'âmmah must be done through careful study or research, deliberation and determined jointly.
- f. Masalahah 'âmmah may not conflict with the Qur'ân, Hadith, Ijmâ' and Qiyas. Therefore, any policy that is taken under the pretext of being in the public interest but contrary to the basis mentioned above must be rejected.¹¹

Seeing some of the dictums above, especially point (f), then the standard of benefit is text and text. This is because the benchmarks (mi'yâr) of benefit and harm, in the view of NU which usually support the opinion of al-Ghazali, cannot be returned to the judgment of humans who are vulnerable to the influence of their insâniyah desires. Because maslahat can be used as a veil for the fulfillment and satisfaction of one's desires. With this benefit must be based on religious texts. That is, it is the text that is the basis for measuring all matters relating to the benefit or not of a legal decision.

The emergence of many groups which are currently very widespread, let alone claiming that one's group is correct, in our opinion, needs to be reviewed again. Because the benefit in the nashsh cannot have

¹¹ Ahkam Al-Fuqaha' Solusi, *Problematika Aktual Hukum Islam Keputusan Mukhtamar, Munas, dan Konbes Nahdlatul Ulama*, n.d.



a double meaning or tend to be towards certain groups. Islamic law is intended for all its followers. If indeed the reality of truth claims based on benefit is diverse (there are), it is clear that the intervention (defense) of the group itself. By issuing strong arguments in defense of one's own group or another.

Religious studies with a tendency towards textualism (*nash'ah nashshiyah*), do not seem to bring about significant developments and solutions in line with the escalation and acceleration of changes that are taking place in society. Therefore, it is necessary to develop a new approach to teaching. Namely, by looking at and calculating the benefits and harms (*i'tibbar al-mashâlih wa al-mafâsid*) that will be caused by a legal decision. Because, no matter how sophisticated a thought is from a theoretical-doctrinal point of view, if it does not bring benefits to human life, then it is not of much use.¹²

The NU group often combines the opinions of Imam al-Ghazâli and al-Thûfi. For example, al-Thufi has an interesting perspective in identifying the position of *maslahat* in Islamic teachings. If al-Ghazâli as is generally the case with other shari'ah experts recognizes the existence of *maslahah* within the limits of the *nushûs* circle, al-Thûfi is more likely to base the constellation of benefits on the superiority of the human mind. For al-Thûfi, the vision of reason is more objective in positioning benefits than the antagonism of *nashsh* (teaching texts) between one another. Therefore, the validity of the proof of benefit must be prioritized over other arguments, including the texts of *syar'i*. If there is a conflict between the sound of the teachings and the ideals of universal benefit, then put forward the argument for the benefit, said al-Thûfi he emphasized.¹³

In fact, if we only want to be consistent with the basic objectives of the foundations of Islamic Shari'ah - as stated earlier, then in fact any theoretical building and no matter what, whether supported by texts or not, which becomes the realization of universal human benefit, is valid,

¹² Muhammad Rafii, *Islam Nusantara Perspektif Abdurrahman Wahid* (Malang: Literasi Nusantara Abadi, 2019).

¹³ Muhichth Muzadi, *NU dalam Perspektif Sejarah dan Ajaran* (Surabaya: Khalista, 2007).



and Muslims obliged to maintain and implement it. Because, in essence, the purpose of the establishment of Islamic law is the realization of benefit for all mankind. Preferably, any theoretical construct, however, which blatantly does not support the harboring of a benefit, especially one that opens the possibility of harm occurring, is flawed (*fasīd*), and Muslims must strive to continue to prevent it.

With an approach model that places more emphasis on this benefit dimension, it does not mean that the formal and textual aspects from a legal perspective must be ignored. Legitimate legal-formal-textual provisions must still be a reference for human behavior in social life. However, at the same time, it must be well understood that legal-formal and textual standards are only one way, once again bound by space and time, so that these benefits can be realized in real life.

If this line of thought is approved, then in Masdar Farid Mas'udi's analysis, fundamentally we also need to reinterpret and repackage the concept of *qath'iy-dzanniy* in *ushûl al-Fiqh*. In contrast to the understanding of *qath'iy-dhanniy* among orthodoxy *fiqh ala Shafi'i* which refers more to its literal meaning, the meaning of *qath'iy-dhanniy* here refers more to its meaningful meaning. If in orthodoxy *fiqh* circles a teaching is called *qath'iy* if it is expressed in "*sharīh*" language, then for this new interpretation something is called *qath'iy* if in substance the truth is a priori, say truism which does not require proof of steps outside itself. With this reasoning, it is correct to say that *ijtihād* cannot enter *qath'iyyah* residential areas; *la majāla li al-ijtihād fiy mā lahû nashsh qath'iy*.¹⁴

In another sense, *qath'iy* is *nushus* which talks about "*ghayah*" (ethical-moral values that are the goal of an action, for example the teachings of benefit, justice, equality, humanity, protection of the soul, freedom of religion, protection of property rights, freedom opinion, etc.). No So it's a matter of, whether it was revealed through the *Makīyah* or

¹⁴ Waluyo Sudarmaji, "Zakat dan Pajak Dalam Pemikiran Yusuf Qardhawi dan Masdar Farid Mas' udi," *Madinah: Jurnal Studi Islam* 6, no. 2 (2019): 219–29.



Madaniyah revelation texts,¹⁵ it also doesn't matter whether it was stated in a sharīh (clear) language text or not. On the other hand, dhanniy means when nushûs talks about wasīlah (procedures; about instrumental technical rules that are meant to be universal which form the basis of shari'at objectives.¹⁶

As an implication, provisions such as cutting hands, inheritance formulas, women's leadership, hudûd for apostates or bughât and so on, which according to Shafi'i's methodology fall into the category of qath'iy, for this new definition is dhanniy, thus it is relative, flexible, and can be modified in accordance with the fundamental principles of the teachings (qath'iyât). Because, in essence, everything is not a goal (ghayah) but a medium (wasīlah), the truth of which is determined by how far it can implement the basic values (qath'iy) which are its objective standards. Therefore, if the dhanniyyat verse is no longer objective as a wasīlah, then it can be replaced with another wasilah formulation. An adage says, al-Islâm murûnatun fiy al-Wasâil Wa tsabât fiy al-Ghâyât (Islam is elastic in its wasilah plane, and is constant in its ghayah or purpose).

The question then is who is most authoritative to modify operational technical teachings (dhanniy) so that they are closer to the fundamental principles of the teachings which are called the benefit of the universe? In this case, the authority giving the judgment is definitely the crowd through the shura mechanism to reach consensus (ijma'). This means that the general benefit (public interest/ maslahah 'âmmah) must be formulated in a jama'i (collectively) manner by competent parties. And something that has become the consensus of the process of defining maslahah 'âmmah through deliberation is the highest law that binds us.¹⁷

¹⁵ Abdul Halim, "Perkembangan Teori Makki dan Madani Dalam Pandangan Ulama Klasik dan Kontemporer," *SYAHADAH: Jurnal Ilmu al-Qur'an dan Keislaman* 3, no. 1 (2015).

¹⁶ Desri Nengsih dan Ridhoul Wahidi, "MAKKI DAN MADANI SEBAGAI CABANG ULUM AL-QUR'AN," *SYAHADAH: Jurnal Ilmu al-Qur'an dan Keislaman* 8, no. 1 (2020): 33–54.

¹⁷ M.Imdadun Rahmat, ed., *Kritik Nalar Fiqih NU: Transformasi Paradigma Bahtsul Masail*, (Jakarta: LAKPESDAM NU, 2002).



B. COMPARATION OF NU'S MASLAHAH CONCEPT WITH NU'S ULAMA AL-MAZDHÂHIB AL-ARBA'AH

The findings of this study can be viewed in terms of similarities, consisting of two segments; its definition, scope, and principles. First; definition segment - the scope of which is *maslahah 'âmmah* is containing benefits and no harm, in harmony with the objectives of the *Shari'a*, truly for the public interest - not for special interests, is *haqiqiyah* (real) and not *wahmiyah* (hypothetical), may not contradict al -Qur'ân, Hadīts, *Ijmâ'* and *Qiyâs*. Second, the principles, first; Islamic *Shari'at* is very concerned about the realization of general welfare and benefit (*maslahah 'âmmah*), and strives not to cause harm to others.

The Similarity of the *Maslahah 'Âmmah* Concept in NU's View with the Ulama al-Madzhâhib al-Arba'ah

The concept of realizing *maslahah 'âmmah*, the scholars reached an agreement, namely *jalbul manfa'ah* (realizing benefits) and *daf'ul mafsadah* (rejecting damage). Although each of the Imam al-Madzhah is different in the use of terms. However, all of this boils down to the *ghayah* (peak) of the same law, namely realizing *maslahah* and rejecting harm or danger. From this also, it can be drawn the similarity of understanding and scope of *maslahah 'âmmah* from NU's point of view with *al-Madzhâhib al-Arba'ah* as follows:

- a. *Maslahah 'âmmah* is something that contains beneficial values assessed from the interests of mankind and there is no *madharat* (danger) value contained in it, both resulting from *jalbul manfa'ah* activities (realizing benefits) and *daf'ul mafsadah* activities (rejecting damage).

The definition above has similarities with the meaning of *maslahah 'âmmah* which is defined by *al-Madzhâhib al-Arba'ah*. They emphasized that *maslahah 'âmmah* is a legal *syari'at* in photographing an event, really contains a benefit for all the majority of people, and rejects the harm (danger) of mankind. Of course here it does not lead to personal or individual benefit (private interest), because the law is



not built for that, namely human benefit in general (universal). While the Prophet Muhammad SAW was sent to this earth, it is only a mercy for the whole world, including all of them, not just certain individuals or groups.

So, the essence of a *maslahah 'ammah* stems from being general (universal *ummah*), contains benefits, and rejects harm (danger) for all the interests of mankind. It is these three aspects, with *Jam'iyah Nahdlatul Ulama*, that are used as guidelines in every policy on legal issues that arise. If, there are groups who prioritize unilaterally or only certain groups that must be defended, then *maslahah 'ammah* is not what is meant as described above. Thus, the *maslahah* which emphasizes this individual, the *ulama* and NU reach an agreement is rejected.

- b. *Maslahah 'ammah* must be aligned with the objectives of the *Shari'a*, namely the maintenance of the five basic human rights and guarantees (*al-ushûl al-khamsah*), which include: safety of religious beliefs, safety of the soul (and honor), safety of the mind, safety of family and offspring, and safety right of ownership. As explained in the book *al-Mustasfa* which reads:

أَمَّا الْمَصْلَحَةُ فَهِيَ عِبَارَةٌ فِي الْأَصْلِ عَنِ جَلْبِ مَنْفَعَةٍ أَوْ دَفْعِ مَضَرَّةٍ ، وَلَسْنَا نَعْنِي بِهِ ذَلِكَ ، فَإِنَّ جَلْبَ الْمَنْفَعَةِ وَدَفْعَ الْمَضَرَّةِ مَقَاصِدُ الْخَلْقِ وَصَلَاحُ الْخَلْقِ فِي تَحْصِيلِ مَقَاصِدِهِمْ ، لَكِنَّا نَعْنِي بِالْمَصْلَحَةِ الْمُحَافَظَةَ عَلَى مَقْصُودِ الشَّرْعِ وَمَقْصُودِ الشَّرْعِ مِنَ الْخَلْقِ خَمْسَةٌ : وَهُوَ أَنْ يَحْفَظَ عَلَيْهِمْ دِينَهُمْ وَنَفْسَهُمْ وَعَقْلَهُمْ وَنَسْلَهُمْ وَمَاهَهُمْ ، فَكُلُّ مَا يَتَضَمَّنُ حِفْظَ هَذِهِ الْأُصُولِ الْخَمْسَةِ فَهُوَ مَصْلَحَةٌ ، وَكُلُّ مَا يُفَوِّتُ هَذِهِ الْأُصُولَ فَهُوَ مَفْسَدَةٌ وَدَفْعُهَا مَصْلَحَةٌ (المستصفي - ج 1 / ص 438).

Maslahah pada intinya adalah ungkapan tentang penarikan manfaat dan penolakan bahaya. Yang kami maksud dalam statemen ini, bukan



penarikan manfaat dan penolakan bahaya yang menjadi tujuan dan kebaikan manusia dalam melealisir tujuan mereka, tetapi yang kami maksud dengan “masalah” adalah proteksi (perlindungan) terhadap tujuan hukum (syara’). Tujuan hukum bagi manusia itu ada lima yaitu: agar hukum memproteksi jiwa, akal, keturunan, dan harta mereka. Segala tindakan yang menjamin terlindunginya lima prinsip tujuan hukum di atas itu disebut “masalah”. Sedangkan semua tindakan yang mengabaikan lima prinsip tujuan tersebut itu disebut kerusakan (mafsadah) dan menolak kerusakan itu juga masalah.

Meanwhile, in the Syafi'iyah school, among others, Imam Asy'âriyah and the Zhâhiriyah group are of the same opinion, that all syara' laws are prescribed for the benefit of humans. *an-Nafs*, protection of reason (*hifzh al-'Aql*), protection of offspring (*hifzh an-Nasl*), protection of property (*hifzh al-Mâl*). But Allah is not worthy to be asked about what He did.¹⁸

In relation to this, Imam al-Ghazali starts from the definition of *masalah*. He argues *masalah* is a basic expression or effort to attract a benefit (*al-benefits*) and reject harm (*al-Mudharrah*).¹⁹ That what is meant by attracting a benefit (*al-benefits*) and rejecting harm (*al-Mudharrah*) is that it leads to the goals and *masalah* of humans (creatures) in achieving their goals. However, he thinks that the *masalah* in question is maintaining the integrity of the objectives of the shari'ah (*maqasid al-Syariah*). The purpose of shari'ah (*maqasid al-Syâriah*) in relation to humans is gathered in five (5) cases; namely protection of religion (*hifzh ad-Dîn*), protection of the soul (*hifzh an-Nafs*), protection of the mind (*hifzh al-'Aql*), protection of offspring (*hifzh an-Nasl*), protection of property (*hifzh al- Mâl*).

The things that lead to these five principles are *masalah* (goodness). On the other hand, things that deny the five principles above are *mafsadah* (damage) which intersect with *masalah*.²⁰ Given the rapid development of the times, of course events that are

¹⁸ Abu Zahrah dan Muhammad, “Ushûl al-Fiqh” (Lebanon: Dar al-Fikr al-Arabi, 1985).

¹⁹ Abu Hamid Muhammad Muhammad Al-Ghazali, “Al-Mustashfa min ‘Ilmi al-Ishul” (Juz I, n.d.).

²⁰ Wahbah Zuhaily, *Ushul al-Fiqh Wa Adillatuhu* (Lebanon: Dar al-Fikr, 2001).



increasingly rolling continue to be adjusted to the benefit or meaning that leads to the core goals of the syara'at. Like the emergence of Islamic schools of thought and understanding, in formulating its goals it should not be separated from the control of syara' mode.

- c. *Maslahah 'âmmah* must really be for the public interest, not for special (individual) interests. As for what brings benefits and eliminates harm (harm) only benefits or for the benefit of certain parties, it is not considered *maslahah 'âmmah*.

Regarding this matter, the four *Madzhab*s reached an agreement regarding the characteristics of *maslahah 'âmmah* as in NU (*maslahah* for the public interest). They emphasized that *maslahah 'âmmah* is a legal syari'at in photographing an event, really contains a benefit for all the majority of people, and rejects the harm (danger) of mankind. Of course here it does not lead to personal or individual benefit (private interest), because the law is not built for that, namely the benefit of humans in general. While the Prophet Muhammad SAW was sent to this earth, it is only a mercy for the whole world, including all of them, not just certain individuals or groups.²¹

Whereas the opinion of the Malikiyah Madzhab says, *maslahah* should be directed at the general benefit (*maslahah 'ammah*/majority interest) for humanity, not *maslahah fardhiyyah* (private interest/personal interest), and the interests of certain groups, because Islamic law is presented for the benefit of mankind generally not individual. For example, shari'akan law for the benefit of state leaders, heads of state, assistants and their families. Islamic law does not aim for that.²²

From this it is very clear that interests that are defensive in nature against their own group are either completely ignored or do not receive proper legal attention. The emergence of many

²¹ Hanifah Kusumastuti, Imron Rosyadi, dan Rizka Rizka, "Implementasi Maslahah Mursalah dalam Putusan Majelis Tarjih Muhammadiyah dan Bahtsul Masail NU (Ijtihad sebagai Penetapan Hukum Islam)," *Syntax Literate; Jurnal Ilmiah Indonesia* 7, no. 3 (2022): 2375–82.

²² Zuhaily, *Ushul al-Fiqh Wa Adillatuhu*.



understandings that have sprung up lately, namely mutual claims by one's own group while other groups are misguided, is very much. Even though there is still no clarity that the group earlier violated the rules of *Shari'ah*.

- d. Maslahah 'âmmah must be haqiqiyah (real) and not wahmiyah (hypothetical). Therefore, to determine maslahah 'âmmah must be done through careful study or research, deliberation and determined jointly.

Regarding this also, the Hanafiyah group argues, that in order to avoid disputes between several groups who claim to be the most righteous, because there is a maslahah or syara' will, there are at least three conditions for maslahah criteria that have legal force for mankind in general so that between groups there were no accusations of heresy or rejection of their teachings. Among other things, these conditions are:²³

1. The *maslahah* should be haqiqiy (*maslahah haqiqiyyah*), that is, it is not a maslahah that is still conjecture or doubtful (*wahmiyyah*). Meanwhile, what is meant by maslahah haqiqiy is that the law is prescribed in a case that clearly attracts a benefit and rejects a harm in a general way. While the legal shari'ah which contains benefits without consideration attracts the side of the danger, then this shari'ah is a questionable maslahah (*wahmiyyah*).
2. *Maslahah 'âmmah* (public interest), not private maslahah (*maslahah fardiyyah*/private interest). What is meant by maslahah 'âmmah is the legal syari'at in photographing an event, really containing a benefit for all the majority of people, and rejecting the harm (danger) of mankind. However, it is not maslahah as an individual (individual) or a particular community. A law will not be built if it really fights for individual interests (*fardiyyah*), either because of the intervention of power or a King's official. Because maslahah 'âmmah only looks at the interests of the majority of humanity and what delivers maslahah (good) for

²³ Wahhab Khallaf dan Abdul, "Ilmu Ushul al-Fiqh" (Lebanon: Dar al-Fikr, 1978).



them. In this case, it should focus on *maslahah* that is beneficial to all humans on this earth.

3. *Maslahah* does not conflict with the Shari'ah, whether it is having an affair in terms of law or the principles that have been established by the *Nashsh* or *Ijmâ'* (ulama consensus). So it is not considered a law (*syara'*), regarding the equalization of the inheritance rights of a man with a woman (1: 1). Because this is a *maslahah* that is not recognized by *syara'* and is contrary to the texts of the Qur'an. In relation to this, there is a story. A mufti and faqih (expert in Islamic law) from Spain named Imam Yahya bin Yahya al-Laist al-Makky with his student Imam Malik bin Anas, they said that there was a Spanish King who did not fast intentionally because he violated (related to his wife) in day of the month of Ramadan. Imam Yahya and Imam Malik are of the opinion that it is obligatory to give *kaffarat* (fine) to the King not to free slaves but to fast for two consecutive months. Because the essence of *kaffarat* (fine) is to deter the violating party (*mudznib*) and make him aware (repentance) so that he will not repeat it again. A king will never be deterred if not by this fine (fasting for two months in a row). While freeing slaves is a very easy treatment for a king and will not discourage him.

The example above is based on *maslahah*, but contradicts the texts. Because in the texts it is very clear that the punishment for a person who deliberately does not fast (having intercourse with his wife in broad daylight in Ramadan), is that he must fast for two consecutive months; freeing slaves, if they are unable to fast two consecutive months, if they are still unable to do so, is to provide food to sixty (60) poor people. This punishment does not discriminate between status, whether the offender is a ruler (king/government) or a poor person. As for the *maslahah* above, in the view of Imam Yahya, who stipulates the punishment of a king by fasting for two consecutive months, it is a private *maslahah* (special *maslahah*/private interest) which is ignored by *syara'*.



- e. *Maslahah 'âmmah* may not conflict with the Qur'ân, *Hadith*, *Ijmâ'* and *Qiyâs*. Because of this, any legal policy taken even under the pretext of being in the public interest but contrary to the above legal sources, must be rejected.

The Hanafiyah school of thought is of the same opinion, that *maslahah* may not conflict with the Shari'a, either having an affair from a legal perspective or the principles that have been established by the *Nashsh* or *ijmâ'* (ulama consensus). So it is not seen as a law (*syara'*), as in the case of equating the inheritance rights of a man with a woman (1: 1). Because this is a *maslahah* that is not recognized by *syara'* and is contrary to the texts of the Qur'an.

In relation to this problem, there is a story. A mufti and faqih (Islamic jurist) from Spain named Imam Yahya bin Yahya al-Laist al-Makky with his student Imam Malik bin Anas, they said that there was a Spanish King who did not fast intentionally because he violated (related to his wife) in day of the month of Ramadan. Imam Yahya and Imam Malik are of the opinion that it is obligatory to give *kaffarat* (fine) to the King not to free slaves, but to fast for two consecutive months. Because the essence of *kaffarat* (fine) is to deter the violating party (*mudznib*) and make him aware (repentance) so that he will not repeat it again. A king will never be deterred if not by this fine (fasting for two months in a row). While freeing slaves is a very easy treatment for a king and will not discourage him.

Principles of *Maslahah 'Âmmah*

In the teachings of *Nahdlatul Ulama*, *maslahah 'âmmah* has principles that must be considered and used as guidelines in the lives of its followers. These principles are similar to the views of *al-Madzhâhib al-Arba'ah*, which include:

- a. Islamic Shari'at is very concerned about the realization of general welfare and benefit (*maslahah 'âmmah*). Therefore, this principle must become a reference for national development in the life of the nation and state. The embodiment of public welfare and benefit



accommodates the interests of all parties regardless of beliefs, class, skin color and is contrary to Islamic law (Qur'ân, Hadîts, Ijmâ' and Qiyâs). Maslahah 'âmmah is benefit that leads to the principles of justice, freedom and human equality before the law.

The Syafi'iyah school of thought stated that the issue of maslahah was the aim of dispensing with Islamic laws. Because according to *istiqrâ'* (empirical) and the texts of the Qur'an and al-Hadith it is known that its laws lead to human interests in general, namely *maslahah al-Nash* (human goodness), especially *maslahah* which emphasizes the good for the majority of people (*maslahah 'âmmah*), Allah says:

Artinya : Dan tiadalah Kami mengutus kamu, melainkan untuk (menjadi) rahmat bagi semesta alam (QS. Al-Anbiyâ':107).

There are three goals (*al-Maudhû'*) in Islamic law, first purification of the soul, so that every Muslim can be a source of good – not a source of evil – for the community around him. This can be achieved by various kinds of worship that are prescribed, all of which are intended to cleanse the soul and strengthen social solidarity. Second, upholding justice in Islamic society: fair both in matters relating to fellow Muslims and in dealings with other parties (non-Muslims). Third, this is the ultimate goal to be achieved, which must be contained in every Islamic law, namely *maslahah* (goodness). It is not permissible for a matter to be prescribed by Islam through the Qur'an or as-Sunnah unless there is an essential *maslahah*, even though the *maslahah* is vague for some people who are closed by their desires. The *maslahah* desired by Islam is not a *maslahah* that is in line with the desires of lust. However, the essential *maslahah* concerns the public interest, not the interests of certain (special) parties.²⁴

In this study, the researcher will first parse the origins of *maslahah*. Because in the terminology of the Ulama, *maslahah* is not one particular chapter, but must go through the initial chapter which is called *al-Maslahah al-Mursalah*, *qiyâs*, *al-Maslahah al-Mulaim*.

²⁴ Zahrah dan Muhammad, "Ushûl al-Fiqh."



- b. In realizing *maslahah 'âmmah*, efforts must be made so as not to cause harm to other people or at least minimize the losses that may arise (لا ضرر ولا ضرار), because efforts to avoid damage must take precedence over efforts to bring about equal or greater problems, as in a quote from a rule "throwing away *mafâsid* (damage), takes precedence over attracting *masâlih* (virtues)".²⁵

Al-Madzhab Malikiyah emphasizes that the use of *maslahah* must be based on the argument that it is in order to eliminate difficulties that must occur (*raf'ul haraj al-Lazim*). In a sense, if the *maslahah* that is acceptable to the mind is not taken, humans will undoubtedly take on difficulties. Allah says:

Dan dia tidak sekali-kali menjadikan untuk kamu dalam agama suatu kesempitan" (QS. al-Hajj : 78).

Differences in the Concept of *Maslahah 'Âmmah* According to NU and Ulama al-Mazdhâhib al-Arba'ah

The discovery of differences here has two segments; definition and scope, as well as its principles. First, in terms of understanding and scope; one difference was found, that *maslahah 'âmmah* should not be sacrificed to other public interests that are equal or even greater. Second, in terms of the principles; a) general benefit (*maslahah 'âmmah*) is formulated on the basis of *syura* (democracy) principles, b) is able to articulate the benefit principles outlined by religious teachings in the form of language as well as according to community arguments, c) pays attention to several requirements according to representative institutions, that is as follows: the general benefit (*maslahah 'âmmah*) is aspired to by all the people, the administrators of the representative institutions within it are in accordance with the people's choice or approval, all decisions that are deliberated are free from pressure from any party. d) every benefit policy or law must be used as a guideline by the government as an honest and consistent implementer, e) benefit must be positively supported by the people and controlled in a sustainable manner towards the people's representative

²⁵ Abu Ishaq asy-Syathibi, *al-Muwafaqat fi Ushul al-Syari'at* (Beirut: Dar al-Ma'rifah, n.d.).



institutions as the drafting board (legislative), executive board (executive), and the law enforcement board (judiciary).

a. Definition and Scope

Maslahah 'âmmah may not sacrifice other public interests that are equal or even bigger. In al-Madzhâhib al-Arbâ'ah's view, it is not as detailed as in NU's view. However, the concept of equality (qiyâs) can be taken, that something that is the same is considered the same, let alone something more than that: it must be considered. Then there can be legal consequences more than commensurate (qiyâs awlawiyah). As for some of the other three scholars, apart from al-Madzhah Hanafiyah, they use istihsân, maslahah mursalah, and maslahah mulâ'im.

NU in deciding maslahah 'âmmah must refer to the concept of qiyâs (equality), while in his view al-Madzhâhib al-Arbâ'ah is using the method of ijihad or istidlal respectively according to their inclinations. Thus, maslahah 'âmmah can be decided upon and combined with two things at once: the concept of qiyâs and several methods offered by the mujtahids at the front.

b. Principles of Maslahah 'Âmmah

Among the principles mentioned above, it can also be reviewed in terms of differences, namely:²⁶

1. In the life of society, nation and state, the role of citizens, citizens of the nation and religious institutions is very decisive in the process of formulating what is meant by the general benefit (maslahah 'âmmah). In this connection, the syura principle as emphasized in the Qur'an wa amruhum syura bainahum (their affairs are deliberated among them) becomes very strategic. This is in accordance with the commandments of the Koran, viz: *Dan (bagi) orang-orang yang menerima (mematuhi) seruan Tuhannya dan mendirikan salat, sedang urusan mereka (diputuskan) dengan musyawarah antara mereka; dan mereka menafkahkan sebagian dari rezeki yang Kami berikan kepada mereka".* (QS. al-Syûra: 38)

²⁶ Sahal Mahfudh, *Nuansa Fiqh Sosial* (Yogyakarta: LKiS, 2007), hlm.



2. In the life of the nation and state with different religious backgrounds, Muslims should be able to articulate the principles of benefit outlined by religious teachings in language as well as according to community arguments (legal agreements). In this way, religious principles which were initially (thought to be) limited in nature could become common property, belonging to society, nation and mankind.
3. If the syura process, in which the general benefit (maslahah 'âmmah) is determined, must go through a representative institution, then the following requirements must be taken seriously: a) The people sitting in it really live up to the aspirations of the public benefit (maslahah 'âmmah) from all the people it represents, especially the dhu'afâ' and mustadh'afîn (weak people); b) In order to condition the moral and political commitment of those who sit in representative institutions as mentioned above, a recruitment pattern is needed that ensures they come from the people and are appointed by the people and work or speak out for the people's interests; c) Structurally, the representative institution where joint issues are discussed and decided, is completely free from the influence or pressure of any party that can interfere with upholding the principle of benefit for the people at large.
4. Public benefit (maslahah 'âmmah) which has been set forth in the form of policies or laws by people's representative institutions (majlis istisyâri) is a reference that must be guided by the government as an honest and consistent implementer. The principle of tasyarruful imâm âla ar-Râiyah manûtun bil maslahah must be understood as the principle of the attachment of the priest at every level of government to the benefit that has been mutually agreed upon. As quoted in a rule "the actions of the ruler towards the people must be directed towards achieving benefit" and "according to Imam Syafi'i, the position of "ruler" over the people, is like the position of guardian (protector) of orphans".
5. Meanwhile the people as a whole, from whom benefits are referred to and for whom benefits must be realized, are obliged to provide



positive support and at the same time critical control on an ongoing basis to representative institutions as drafting boards (legislature), executive boards (executive), and enforcement boards law (judicative).

CONCLUSION

There are several findings with implications, among others: to enrich the concept of *istinbath ahkam*, *Ijtihad* can be adapted to the times and conditions, and the accuracy of each *mujtahid*'s decision will be stronger. In legal *istinbath*, the offer of the NU concept only strengthens and complements it. However, it does not change the existence of the meaning of *maslahah 'âmmah* which has been clearly expressed by Imam al-Madzhâhib al-Arba'ah. Thus, it will provide a lot of room for decisions in every event or case that concerns the problems of many people. From here the implications of these differences will add to the breadth of the concept or make it easier to limit and seek decisions in the public interest (*maslahah 'âmmah*) in accordance with the times that are increasingly turning. It has been proven that the *maslahah 'âmmah* of NU's view in determining policy is with an *ijmâ'* decision which is wrapped in an assembly called the people's representative institution (*majlis istisyâri*). It was different from *maslahah 'âmmah* in the view of al-Madzhâhib al-Arba'ah, at that time it was decided and *ijtihad* was done individually (*mujtahid fiqh*).

Ijtihad produced by Nahdlatul Ulama in realizing *maslahah 'ammah* and rejecting danger, in accordance with the times and conditions. This is because every decision made through a deliberative assembly or in the representative institutions of each people always raises new events concerning the public good. So that the additional concepts or legal requirements are more perfect, logical and clear according to the will of the people, by not sticking to the text, and not violating the five core objectives of the text (*maqasid al-Syari'ah*). Because the purpose of the five texts (*maqasid al-Syari'ah*), according to some scholars, is not a deviation from the text: it can be used as *hujjah asy-Syar'iyah*. As a result of this implication, the space for *ijtihad* will be wide open at any time for the sake



of the realization of benefit on earth. For mujtahids, in studying religion with a tendency to textualism (*nazh'ah nashshiyah*), so that they are not fanatical about the sound of the text as the only source of law. If this is implemented, it is unlikely that it will bring about significant developments and solutions in line with the escalation and acceleration of the ongoing changes in society. Therefore, it is necessary to develop a new approach to teaching. That is, by looking at and calculating the benefits and harms (*i'tibâr al-Mashâlih wa al-Mafâsid*) that will be caused by a legal decision. Because, no matter how sophisticated a thought is from a theoretical-doctrinal point of view, if it does not bring benefits to human life, then it is not of much use.

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