

JUSTICE (*AL MASHLAHAH*) FOR THE ECONOMIC DIMENSION**Andi Fariana, Sufiarina**

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Abstract: The sharia (Islamic) activity has seen a rapid development, not only in its impact on growth in the international community, but also in the history and development of Islamic Law, which is part of *The Living Law*. Therefore, prompt actions are needed to oversee the growth using the concept, theory, laws and regulations, which are part of the Islamic Economic Law and being part of the National Legal System. One of the legal system principles is the concept of justice that constitutes the supreme goal of the Law, and the Quran promotes fairness and forbids partiality in any transactions.

This paper emphasizes the importance of justice which is the goal of law and in the Qur'an, justice matters are mentioned in various dimensions. Meanwhile, the concept of justice in the economy is defined as social justice or *al mashlahah*. Defining Al Mashlahah as social justice in economic dimensions justifies that God's purposes to reveal various rules including rules implementing economic activities is to achieve justice for all parties. Islam puts *Mashlahah* as the central idea of *maqashid ash shari'a* as the justice philosophy in the Islamic perspective is a universal and comprehensive justice. If the ultimate goal in establishing various economic policies is to maintain consciousness of justice then the decision makers should always institute justice for all as the basic policy in implementing *al mashlahah* in economic activities especially in Indonesia.

Keywords: *Al mashlahah, economy*

A. Introduction

Rapid growth of the sharia economy in Indonesia has rendered Sharia Economy Law as essential to oversee the growth. The important aspect in the Law is the issue of justice referred to as the crown of the Law.

Justice in Islam is indeed an important major theme. In the Qur'an, the command to exercise fairness is always paired with the prohibition against being

partial in all kinds of transactions.¹ Amiur Nuruddin said that the meaning of justice hints the presence of balance, equality or non-discrimination in any form, and the materialisation of legal rights to anyone who is entitled or putting things in the right place.² In the Qur'an, the word *al adl* is found 30 times, the word *qist* is stated 23 times and the word *al wazn* 23 times. Considering justice is alluded to or mentioned in the Qur'an it seems that the justice issue encompasses a very large dimension, which among other things include, exercising fairness when dividing the inheritance, in dealing with marriage issues, or testifying even against the enemy. This indicates how Islam highly regards the issues of justice. Even one name of Allah is *Al Adl* (Most Just). This is in line with what is stated by Majid Khudduri that justice is divided into political justice, legal justice, theological justice, philosophical justice, ethical justice, and social justice.³

Justice must be inherent in all dimensions of life i.e. justice in the Legal, Economic, Social, Political and cultural areas. It is frequently said that if monotheism is the essence of *aqidah* (faith), then justice is the essence of *sharia*. In one Hadith the Prophet Rasulullah SAW stated that: Truthfully God has destroyed those before you because if an influential person among them committed theft then he would be spared but if the theft was committed by one among the weak, he would be punished. And indeed by Allah, if Fatima bint Muhammad committed theft I would undoubtedly cut her hands off.⁴ This Hadith hints about *equality before the law* because the real Islam is *Rahmatan lil Alamin* (mercy to the entire universe) and this is the universal value of justice in Islam as referred to in Surah Al Maidah: 8.

One of the most interesting dimensions of justice is economic justice, and the concept of economic justice in Islam is certainly different from the concept of justice other than Islam. That is why this article is written descriptively by doing a historical research as well as the proposition approach that is clearly stated in the Qur'an and the Hadist as well as the critical analysis from the *salafus sholeh*.

B. Discussion

Justice comes from the word *just*. Etymologically, *just* or *fair* or *al adl* (in Arabic) means not biased, impartial, or equates one with the other (*al musawah*).

1 M. Dawam Rahardjo, *Encyclopedia of the Quran in social commentary based on key concepts*, (Jakarta, Paramadina, 1996), p. 326.

2 Amiur Nuruddin, *The Concept of Justice in the Quran and its implications On Moral Responsibility*, (Dissertation on Post-Graduate Program (Yogyakarta, IAIN Sunan Kalijaga, 1994), p. 63.

3 Jemil Firdaus Cairo, *Introduction to sosical justice study in Islam*, 30 January 2014, <http://kompasiana.com>, accessed on September 6

4 Muslim, *Shahih Muslim*, (without year, juz V, Dar Al Fikr, Beirut), p. 114.

Other terms of *al adl* are *al qist*, and *al mish*, while on a terminology basis, to be just or fair means to equate something with others, both in terms of value and size, so that something becomes not biased and is not different from each other.⁵ The Arabic dictionary defines justice as something that exists in the mind and in an honest state. Thus, according to Islam, everything known as legal, and pursuant to the law of God is fair. ‘Justice is more emphasized on the definition of “putting things in place” (*wa ‘ash-syai’ fi maqamih*). Ibn Qudaamah (jurisprudent of Hambali Sect) said that justice was something hidden; the motivation was solely out of fear of Allah SWT.

Justice must be implemented in human actions. Islamic scholars agree that human actions, both in deeds and words, in worship and in terms of *muamalat*, in the scope of criminal and civil in Islamic law are all included in the jurisdiction and some of the laws are described by the Quran and Sunnah, while others are not.⁷ The Islamic scholars also agree that besides the Quran and Sunnah, the Islamic law is also derived from *Al ijma’*, *Al Qiyas*, *istihsan*, *mashlahah mursalah*, *urf*, and *istishab*.⁸ However, all of these are based on verses pertaining to *muamalat* issues in the Quran and Sunnah.

Quran is undoubtedly the word of God and is a guidance for mankind. The verses in the Qur’an concerning the *muamalat* are divided into those regarding the family law, economic activities, testimony, justice, oath, judicial, economic and individual rights, the revenue and expenditure of the State and others, all of which amount to approximately 370 verses and 70 of them pertain to commerce and trade.⁹

Like the Qur’an, the Sunnah (from authentic hadith) also constitutes the rules or guidance for Muslims. The law prescribed in the Sunnah is in line with the law decreed in the Quran, and it becomes a Law that must be observed. The approximately 1350 doctrines of Islamic economics in the Sunnah relate inter alia to ownership, sustenance (*rezki*), searching, market mechanisms, money and State finance, economic development, and many more.¹⁰

Encyclopedia of Islamic Law, (Jakarta, PT Ichtiar New Van Hoeve, 1996), p. 25 ◊

6 Agus Santoso, *Legal, Moral and Justice*, (Jakarta, Kencana Prenada Media Group, 2012), p. 86.

7 Abdul Wahhab Khalaf, *Science of Islamic Jurists, Islamic Legal Rules*, (Jakarta, Seventh Edition, Pustaka Amani, 1977)

8 *Ibid.*

9 Ika Yunia Fauziah and Abdul Kadir Riyadi, *Basic Principles of Islamic Economy*, (Jakarta, Prenadamedia Group, 2014), p. 18.

10 Ika Yunia Fauziah, *op.cit.* p. 19

Justice Philosophy in Islamic perspective is a universal and comprehensive justice (*kemashlahatan*). Being universal means that Islam is addressed to all human beings on earth and is relevant in every time and age, while comprehensiveness indicates completeness and perfection in Islamic rules. Islam considers justice as a fundamental concept, as cited in several verses of the Quran. Although the Quran has provided guidance in the aspect of justice, the development of thought in the Islamic world gives birth to two large groups of thought in the philosophy of Islamic law including Mu'tazilah and Asharites sects. The Mu'tazila put forward sense or reason as an indicator of good and evil actions. While the Ash'ariah believe that good and evil are absolute decree of God.¹¹ Meanwhile, the values of good and evil are an indicator of justice.

Justice as disclosed above, has very large dimensions, one of which is the dimension of justice in the social and economic realms. Embodied within social justice is the meaning of similarity in social relationship; living in peace despite differences in ethnicity and social classes as hinted in the Quran surah An-Nisa verse 1. In this regard, Fazlur Rahman said that the essence of the Quran doctrines is to give emphasis on justice as indicated in terms of social and economic justice.¹²

Social justice means justice prevailing in the society for all aspects of life both materially and spiritually which is concerning fairness in the legal, economic, political, social and cultural areas. Therefore, as the human life encompasses both the physical and spiritual aspects, then justice also includes justice in the fulfillment of the essential needs for the physical and spiritual life, as well.¹³ In Islam, law and justice are inseparable.

For comparison, according to *Adam Smith*, justice holds only a meaning; commutative justice pertaining to equality, balance, harmony of relationship between a person and the other. Another reason, justice is always concerned with one's rights; people's rights should not be compromised, or everyone should be positively treated in accordance with their rights. In commutative justice, there are three fundamental principles, those are:¹⁴ the principle of not harming others, and particularly not harming the rights and interests of others (*No Harm*), the principles of not intervening in order for the sake of the guarantee and respect of the rights

11 Mumtaz Ahmad (ed), *Issues in Islamic Political Theory*, (Bandung, Mizan, 1994), pp. 154-156

12 Fazlur Rahman, *Islam and Modernity, Transformation of Intellectual Tradition*, (Chicago, The University of Chicago Press, 1982), p 21

13 Agus Santoso, *op cit*, p. 87

14 As quoted from Renny S. Bachro, *Introduction to Sharia Banking in Indonesia*, (Bandung, Books Terrace & Library, 2015), pp. 14-15. See also in: A Sonny Keraf, 1998, *Business Ethics, Demands and its Relevance*, (Jogyakarta, Kanisius,), pp. 148-151

and interests of each person (*Non-Intervention*), and the principle of fairness in social exchanges or the principle of fair trade exchanges.

John Rawls is known as one of the philosophers who strongly criticizes the theory of justice as adopted by *Adam Smith*. *John Rawls* puts “liberty” as the first principle of justice, which is one of the most important human rights. When applied to *John Rawls*’s theory of distributive justice in sharia financing using profit-sharing system, the main way out to solve the inequity of distribution is by setting up the profit-sharing pursuant to each portion of parties entered into an agreement. Of course, with the proviso that this system continues to provide a priority on equal freedom for all parties. This view, according to Yusuf Qaradawi,¹⁵ is one of the aspects in distributive justice of sharia financing known as *profit* or advantage to the parties conducting business or trading through the profit-sharing system both *mudharabah*, or *musharakah*.

In the social sector, it is crucial to discuss justice in order to understand the concept of *maqasid al shari’ah*. The essence of *maqashid al syari’ah* concept is the goal of realizing a goodness and to avoid the evils or to take the benefit and to reject the harm.¹⁶ The concept of *maqashid al syari’ah* asserts that Islamic law is hinted to achieve and maintain the justice (*mashlahat*) of mankind. On a terminology basis,¹⁷ some definitions of *maqashid al syariah* are “Safeguarding of the sharia purposes and objectives is a fundamental effort to survive, restrain factors of damage, and encourage the generation of well-being (Al Imam Al Ghazali).”

Maqashid is divided into two; first, relating to the purpose of God as the Creator of sharia, and second relating to the intent mukallaf. For God intends for His servants justice in the world and the hereafter, and for the mukallaf is when servants are encouraged to live in justice then this means to avoid damages (*mafsadah*) and to secure justice for all people (Al Imam Al Syatibi). The general objective when God establishes His laws is to realize justice for human beings with the fulfillment of *dharuriyah*, *hajiyyah*, and *tahsiniyah* needs (Abdul Wahab Khallaf).

Based on some definitions above, it can be said that *maqashid al syari’ah* is the purpose of God as the Creator of sharia to grant justice to the human beings through the fulfillment of *dlaruriyah*, *hajiyyah* and *tahsiniyah* needs so that people can live in goodness and can be a good servant of God. The Islamic scholars of the Salaf agree that every law of sharia will of course, have their reasons (*illah*) and the

15 Renny S. Bachro, *Loccit*. See also in: Yusuf Qardhawi, 1995, *Daur al-Qiyam wa al-akhhlak fi al Iqtishadi al-Islami*, Maktabah Wahbah, Kairo, Also in: Zainal Arifin Lc – Dahlia Husin (translator), 2000, *Islamic Economic Rules and Ethics*, (Jakarta, Gema Insani Press, Third Edition), p. 318

16 Ahmad Zaenal Fanani, *A Justice theory and a perspective of Law and Islamic philosophy*, article, p. 11

17 Ika Yunia Fauziah, *op.cit.* p. 19 41-43

goal/purpose (*maqashid*). The goal and the reason are to build and maintain justice for human beings. Thus, the central idea of *maqashid al sharia* is justice (*mashlahah*), so most Muslims believe that God will not command anything except for the justice of His servants.¹⁸

Furthermore, according to Masdar F.Masudi, the *Mashlahah Theory* is identical with the theory of social justice in terms of the philosophy of law.¹⁹ Meanwhile, according to Islamic scholars of Islamic jurists (*ushul fiqh*) as explained above *al mashlahah* is one of the sources of law. Imam Abd al-Malik al-Haramain al-Juawaini²⁰ who was renowned for his book *al Muwatha*²¹, under his full name Abu Abdullah Malik ibn Anas al-asbahi al-Madini²², can be regarded as the first Islamic scholar who emphasizes the importance of understanding the *maqashid al syari'ah* in stipulating Islamic law. He explicitly says that a person cannot be said to be capable of stipulating laws in Islam, before he/she understands properly the purpose of God issuing His commands and prohibitions.²³ Thus, *maqashid al syariah* is the purpose of law since the age of the Prophet Muhammad SAW where Islamic Law was the applicable law. *Maqashid al syariah* has become a major consideration in the application of the law. Likewise, during the time of the companions, that is, after the Prophet Muhammad died.

Imam Malik is the Muslim scholar who was famous as the founder of the Maliki sect. His legal theory known as *Al-mashlahah al-mursalah* has been translated for the public benefit²⁴. According to Imam Malik:

Public interest or justice has three conditions, those are:

1. Public interest or justice does not include issues pertaining to worship.
2. Public interest or justice must be in harmony with the spirit of sharia and must not conflict with one of the sharia sources itself.
3. Public interest or justice should be essential matters (necessary) and not luxury things.

18 Ika Yunia Fauziah, *op.cit.* p. 44

19 Masdar F.Mas'udi, *Putting back Justice as Sharia Reference*, (Journal of Ulumul Quran Science and Culture No. 3, Vol.VI, 1995), p. 97

20 Imam Malik or Malik bin Anas bin Abi Amir was the grandson of a companion of the Prophet Rasulullah, Abu Amir. He was born in Makkah in 93 H. The Islamic scholars agree that he is the Imam (Muslim leader) in Hadith

21 Syekh Muhammad Khudhory Bek, *Taariikh At Tasyrii Al Islamy*, translated by Dennis Pakih Sati, (Bandung, Nuansa Aulia, 2009), p. 246

22 Imam Malik ibn Anas, *Al -Muwatta of Imam Malik Ibn Anas, The First Formulation of Islamic Law*, (First Edition, Madinah Press, 1992), p. V.

23 Masdar F. Mas'udi, *op cit*, p. 11

24 Muhammad Tahir Azhary, *State of Law*, (Jakarta, Kencana prenada media group, 2010) p. 9

Things required or needed with regard to the five objectives of Islamic law as formulated by al-Syatibi in order to protect religion, life, intellect, descent and property.

Meanwhile, Ibnu Thaimiyah²⁵ divides justice into two - the world and the hereafter. The safeguarding of the hereafter relates to spiritual setting, ethical and moral improvement. While safeguarding of the world includes the preservation of blood, properties, genitals (*farj*), intellect, and religion.²⁶

In the thinking of the Islamic jurists, to deal with the challenges of social change with human justice approach, the most appropriate approach is the *maqashid al Sharia* approach. The study of *maqashid al Sharia* was extended and developed by Abu Ishaq Asy- Syatibi (730-790 H).²⁷ According to Ash Syatibi, *Maqashid Al Syariah* departed from the assumption that all sharia revealed by Allah always contains justice for His servants now (in this world) and the future (in the hereafter). None of God's law serves no purpose because the law devoid of purpose is identical with *taklif ma la yuthaq* (imposition of law that cannot be implemented).²⁸ Islamic Sharia was revealed for the justice of mankind. The justice is divided into three, *dharuriyah* (which is very important and urgent. This includes justice in life, property, descent, and religion), *hajiyyah* (which is of secondary importance such as the need to own a car and communication devices), and *tahsiniyyah* (which is of tertiary and complementary importance, such as recreational needs). Apart from the above, Asy Satibi also cites the form of other *maqashid al syariah*, that the law of Islamic sharia is revealed for the understanding of mankind, then the law of Islamic sharia is also revealed in accordance with the limits of human capabilities (there is no obligation/ *taklif* exceeding the human capacity), and finally, the Islamic sharia is also revealed with the aim to release mankind from the shackles of lust.

Based on the research of Islamic jurists, those five basic elements should be maintained and realized. A *mukallaf* will obtain the justice if he/she can maintain

25 Ibnu Thaimiyah died 728 H, at present is Al Imam. In his book entitled *Majmu Al Fatawa*, Ibnu Thaimiyah discussed more about *maqashid Al Sharia*. Ibnu Thaimiyah stipulates that sharia actually came to generate the justice and stopped / minimized any damage.

26 Ika Yunia Fauziah, *op.cit.* p. 86

27 Abi Ishaq Ibrahim bin Musa bin Muahammad Al Lahmi Al Gamati, popular known as Ash Syatibi, an attribution of the Syatibah city, residence of his parents and ancestors. Grandfather born in the year 730 AH was a figure of Ushuliyyin from Maliki Sect. Known as an expert of *maqashid al Sharia* and the spearhead of the Maliki sect in confirming the position of *mashlahat* and reformulate the concept of *mashlahat mursalah* and *maqashid al sharia*, which rested on Imam Malik *Rahimahullah* (quoted from footnote of Badri Khaeruman, *Islamic Law in Social Perspective*)

28 Al Syatibi, *Al Muwafaqat fi Ushul Al Syariah*, (Beirut: Dar Al Kutub Al Ilmiyyah, 1991), J.II, p. 4. In Badri Khaeruman, 2010, *Islamic Law in Social Change*, Pustaka Setia, Bandung, p. 50

those five basic elements and conversely, he/she will experience *mafsadat* if he/she fails to maintain those five basic elements.²⁹

Maqashid al syariah is the *mashlahat* explained by Satibi, in fact, earlier it has been raised by the Islamic jurists. Studies on *mashlahat* become very lengthy in the history of the Islamic law. When observing more extensively it turns out that Al Juwaini (known as Imam Al Haramain-w. 478 H) is the first Islamic jurist emphasizing the importance of understanding the *Maqashid al syari'ah* in stipulating the Islamic law. According to him, without understanding the objectives contained in the commands and prohibitions of Allah, one cannot be said to be capable of stipulating the Islamic law. According to Satibi, *Maqashid al syari'ah* can be viewed from two perspectives: first from the point of view of the sharia creator (*maqashid asy syariah*, the purpose of God and His Apostle) and the second from the view point of mukallaf (*maqashid mukallaf*—the purpose of the mukallaf). Satibi also explains that *mashlahah* must be absolute and universal, meaning that *mashlahah* should not be relative nor subjective.³⁰

Al Mashlahah has an important position in determining the general principles of the constitution and is particularly important in the application of the Islamic economic system. The main principles in the Islamic economic formulation and formulation of fatwas (*Islamic construction based on Law of Islam*) and financial products are since the placement of *mashlahah* is the most important thing in the sharia after *tauhid* (monotheism-Oneness of God). Islamic doctrines regarding muamalat in general are global; hence a room for *ijtihad* (efforts using common sense and careful consideration) to move more comprehensive and Islamic economics constitute one of muamalat areas.³¹ *Al mashlahah* is derived from the Arabic language, which means benefits, usefulness, goodness, or helpfulness. In the view of Al Buti, *mashlahah* is the benefit as defined by the Creator for His servants and it includes maintenance of the religion, self, intellect, descent and properties in accordance with a particular order.³²

According to Al Syatibi, the *mashlahah* theory can be applied only if several conditions are met, for example, the justice is universal if it is based on the proposition

29 Renny Supriyatni, *Introduction to Islamic Law: Basics and Actualization in Positive Law*, (Bandung, Widya Padjadjaran, 2011), p 27.

30 Boedi Abdullah, *The Culture of Islamic Economics Thought*, (Bandung, Pustaka Setia, 2010), pp. 279-281

31 Agustianto, *Urgency of Mashlahah in an ijtihad of Islamic Economics*, article (April 2011)

32 Syamsul, *The Concept of Mashlahah in Law of Islam*, <http://syamsuljosh.blogspot.com>

and others,³³ while Al Ghazali asserts that none of the Islamic Sharia Law is contrary to the *mashlahah*.³⁴

The principle of justice for the majority of people (*Maslahah al-ammanah*) if considered, can be developed in the economic dimension corresponding to sharia economic features and characteristics. One of the examples in banking transactions is to change interest-based transactions into a profit-sharing system, or unlawful transactions to more extensive sharia transactions. That is, usury is not limited to bank interest, but including all forms of transactions containing fraud, deception, speculation, and monopoly leading to exploitation and hardship for others. Profit-sharing system with mechanisms for profit and loss sharing mechanism contains the justice and equality dimensions, which is the relationship of participatory-emancipatory business partnership,³⁵ not relationship of *discriminatory* subordination.

Based on the above, the concept of *mashlahat* which is the essence of *maqashid al syariah* according to the majority (*jumhur*) of Islamic scholars from *al Juwaimi jumhur* until Ash Syatibi seems to have a similar vision and facet to the source of legitimacy, composition and stratification although different in how it is formulated, but it becomes one of the postulates (*hujjah*) in the Law of Islam. This is of course, in line with basic human needs in carrying out the economy based on various needs and levels.³⁶

C. Conclusions and recommendation

Economy and the law cannot be separated and economic problems can be seen from various perspectives that the real goal is to improve the people's welfare as well as the quality of human life. However, it should be made clear that the purpose of God revealing a multitude of rules including those for carrying out economic activities is to accomplish justice for all parties, which in this regard is known as social justice or *mashlahah*. If the goal is imparting consciousness then the decision makers in setting various economic policies should always rely on and make the basic policy thereof justice for all parties; this should form the basis for implementing al *mashlahah* in the economic activities.

33 Hamka Haq, *Al Syathibi Theological Aspects: The Concept of Mashlahah in the Book Al Muwafaqat*, (Jakarta, Erlangga, 2007), p. 250-251

34 Djazimah Muquoddas, *Controversy of Woman Judge In Islamic Justice in Muslim Countries*, (Jogyakarta, LKIS, 2011) p. 38

35 Euis Amalia, *Distributive Justice in Islamic Economics: Reinforcement of the role of MFIs and SMEs in Indonesia*, (Jakarta, PT. Raja Grafindo Persada, 2009), p. 388.

36 Boedi Abdullah, *opcit.* p. 283.

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