ISLAMIC LAW METHODOLOGY IN AL-TUFI'S PERSPECTIVE

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Abstract: *The idea maslahah al-Thufi will be more significant if the associated global demands on human rights and global ethics. The idea of al-Thufi a bridge to dialectics turats and tajdid in addressing the global challenges posed by modernization and globalization. Muslim intellectuals have long been trying to find a formula that can accommodate growth contemporary while having anchor to the treasures of Islam (turats), especially the Qur'an and Hadith. Formulas generated by the intelligentsia are sometimes too biased to turats, which gave rise to Islamic fundamentalism. There are times when the formula is too heavy to change that to sacrifice the sanctity of the Qur'an. The idea maslahah al-Thufi can be viewed as a middle ground. First, the concentration of al-Thufi ideas outweigh the territory muamalah provide a clear demarcation where massive changes can be made. Secondly, the position of the Islamic texts clearly defined so that changes based on the public interest does not sacrifice the Qur'an and Hadith. Two things are possible maslahah ideas can be developed and gained widespread recognition, especially al-Thufi originally from the schools that are recognized by Sunni Islamic orthodoxy.*

Keywords: *Maslahah, al-Thufi*

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[1] . Sekolah Tinggi Agama Islam Taruna Surabaya

A. Introduction

Islam *salih li kull zaman wa makan,* That's roughly the right phrase to describe Islamic law. Along with the development of societal thought and culture, a multitude of life's problems have emerged, ranging from the problems of the lower classes to those of technocrats and feudal lords. These range from personal, family, economic, to socio-political issues. All of these require relevant answers.

Islam, as a religion that upholds human dignity and its primary mission of "rahmatan lil 'alamin," is challenged to address all of these problems. But is Islam truly a blessing for all humanity, while some of its laws, as recorded in several classical texts, seem so burdensome? This doubt is well-founded, but can it be justified? Or is it simply baseless doubt stemming from a lack of understanding of Islamic legal principles?

In the study of ushul fiqh (Islamic jurisprudence), there is one method widely used by Islamic legal experts to produce laws that meet the needs of society: the maslahah method. In principle, all scholars of the madhhab (Islamic school) accept maslahah as one of the reasons for establishing sharia law, even though they differ on terminology, determining conditions, application, and placement.

This maslahah is what led Hadrat Abu Bakr (ra) to collect scattered pages of the Quran, thus forming a single Mushaf. This codification had never been done by the Prophet Muhammad (peace be upon him). It was on the basis of maslahah that Hadrat Umar (ra) established administrative cities, built prisons, and so on.

One scholar who strongly emphasized the importance of maslahah in every legal product was Imam Najm al-Din al-Thufi, with his book, "Sharh

Mukhtasar al-Rawdah." He viewed the core teachings of Islam, embodied in the texts, as the benefit for humanity. Therefore, all forms of maslahah are prescribed by law. Maslahah does not need to be supported by the texts, either literal or implied. According to him, maslahah is a strong argument that can independently be used as a reason for determining sharia law.

B. Biography of al-Thufi

Al-Thufi (657-716 H) was a generation of Hambali intellectuals at the transition from the period of decline to the period of ijtihad. Al-Thufi was a contemporary of Ibn Taymiyyah (d. 728) and once attended Ibn Taymiyyah's forum. He also lived at the same time as Ibn Qayyim al-Jauziyyah (d. 751 H). He is known as one of the Hambali ushul fiqh experts thanks to his book Syarh Mukhtashar al-Rawdlah, which is a sharah for his book al-Mukhtashar, a summary of the book of ushul fiqh by Ibn Qudamah Rawdlah al-Nadhir wa Jannah al-Manadzir.

Al-Thufy's thoughts are interesting to study because he is known as a liberal figure among the Hanabilah, apart from Ibn Aqil al-Hambali. His concept of maslahah (principle of maslahah), which can interpret the evidence of the Quran and hadith, has attracted much attention and is considered a bold and promising concept for the reform of Islamic law. This paper will specifically examine al-Thufi and his legal thinking in the book "Sharh Mukhtashar al-Rawdlah" (The Law of the Provisions of the Law) and a glimpse of al-Thufi's opinions in the book "Al-Ta'yin fi Sharh al-Arbain."

Al-Thufi's full name is Najm al-Din Abu al-Rabi' Sulaiman ibn Abd al-Qawi ibn Abd al-Karim ibn Said al-Thufi al-Baghdadi. The name Thufi is the name of his hometown, Thufa. Thufa is located in the

Sharshar region and is served by the Hajj route, approximately 8 kilometers from Baghdad. Sharshar itself is a fertile region around Baghdad. Al-Thufi is also known as Ibn Abbas.

The year of al-Thufi's birth is still debated among scholars. Ibn Hajar mentions 657 AH (1259 CE) as the year of al-Tufi's birth. Meanwhile, Ibn Imad mentions 673-679 AH as the year of al-Tufi's birth. Al-Tufi's birth (1259 CE) coincided with the fall of Baghdad due to a Tatar invasion, which ended the Abbasid dynasty's rule in Baghdad (656/1258 CE).

C. Al-Thufi's Educational and Career History

Al-Thufi's education began in his own village, Thufa. He memorized Ibn Jinny's Mukhtashar al-Khiraqy and al-Luma'. He received his further education from the city of Sharshar, through shuttling between Sharshar and Thufa. In Sharshar he studied with Zayn al-Din Ibnu al-Buqy al-Hanbal, a nahwu expert.

His educational career was then carried out by visiting big cities, such as Baghdad, Damscus and Egypt. His education in Baghdad began in 791. He memorized the al-Muharrar fiqh book and studied it with Taqi al-Din Abu Bakar Abdillah al-Zarirany (d. 729). He learned Arabic and tashrif (Arabic morphology) from Shams al-Din Abu Abdillah Muhammad bin Husayn al-Mawshily (d. 735 H). He deepened his knowledge of ushul with Nashr al-Faruqy. He obtained hadith from Rashid Abu al-Qasim (d. 707 AH), Imad al-Din Ismail ibn al-Thabbal (d. 708 AH), Mufid al-Din Abu Muhammad Abd al-Rahman al-Harrany (d. early 8th century), Jamal al-Din Abu Bakr al-Qalanisy (d. 704), and others.

In 704, al-Thufi began studying hadith in Damascus. He studied hadith with Taqi al-Din Abu al-Fadhl Sulayman al-Maqdisy (d. 715). Al-Thufi also had the opportunity to meet with prominent figures in the Hanbali school of thought, such as Majd al-Din Abu Wafa Ismail al-Harrany (d. 729) and Ibn Taymiyyah (d. 728), as well as a prominent Shafi'i hadith scholar, al-Mizzy (d. 742). He also deepened his knowledge of Arabic grammar (nahwu) with the Hanbali scholar Abu al-Fath al-Ba'ly (d. 709 AH), a student of Ibn Malik.

In 705, al-Thufi traveled to Egypt. He studied hadith with Sharf al-Din al-Dimyaty (d. 705 AH), a Shafi'i hadith scholar, and with Qadli Sa'd al-Din al-Harith (d. 711 AH), the scribe of the Hanbali school in Egypt. He also studied the mukhtashar of the Sibawayh book from Ali Abi Hayyan al-Nahwy (d. 745).[2]

In Egypt, he developed a close relationship with Sa'd al-Harith. Al-Harith initially loved and respected al-Thufi. Unfortunately, this relationship ended tragically when al-Thufi had a difference of opinion with al-Harith in a discussion at a scholarly meeting. He was then accused of being a rafidlah (Shia Ithna Asyariyyah) and thrown into prison for several days. Because of this, several scholars, including Ibn Rajab al-Hanbali, were very harsh towards al-Thufi. Although he heard that al-Thufi had repented, he considered his repentance merely a form of taqiyyah..[3] Ibn Rajab, although he also follows the Hanbali school of thought, believes that al-Thufi was influenced by Shia ideology (tasyayyu'). The basis for this accusation, as expressed by Ibn Rajab, is

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[2]This biography of al-Thufi is taken from the introduction to the book Syarh Mukhtashar al-Rawdlah written by Abdullah bin Abd al-Muhsin al-Turky (pentahqiq). h. 21-24.

[3]*Taqiyyah* is one of the Shia traditions, namely hiding one's true beliefs from people who are deemed unable to understand one's beliefs..

that al-Thufi frequently criticized his companions, Abu Bakr, Aisha, and several other companions..[4]

Several scholars, such as Ahmad Haj Muhammad Ustman, acknowledged the accusation of tasyayyu'. Ustman believed that the numerous accounts of al-Thufi's tasyayyu', particularly from the renowned writer al-Dzahabi, proved the accusation to be true. However, Ustman believed that al-Thufi later repented..[5]

W.P. Heinrich questioned the veracity of this accusation. Heinrich objected to the accusation of tasyayyu' against al-Thufi on three grounds. First, Shiites who practice Sunni law usually choose the Shafi'i school of thought. Second, al-Thufi is not included in the Shi'i biographical literature, except by al-Khwansari (d. 1313/1895), who took the information from al-Suyuti. Al-Khwansari (d. 1313/1895) personally doubted al-Thufi's Shi'i identity. Third, the Shi'i evidence attributed to al-Thufi is misplaced..[6]

The Shia stigma seems to be a stigma sometimes applied haphazardly to those who hold independent views and are able to understand the differences of opinion that arise among Muslims. This stigma actually stems from a tradition of suspicion towards anyone whose thoughts are perceived as going against the grain. This stigma was used because Shia politically competed with Sunni influence since

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[4]Pengantar kitab *Syarh Mukhtashar al-Rawdlah* yang ditulis oleh Abdullah bin Abd al-Muhsin al-Turky (pentahqiq). h. 33.

[5]Lihat Ahmad Haj Muhammad Utsman. Pengantar *muhaqqiq* terhadap karya al-Thufi. *Kitab al-Ta'yin fi Syarh al-Arbain*. Beirut: Muassasah al-Risalah. 1998. h. 14. Pembahasan secara luas mengenai isu tersebut dapat dilihat juga dalam Musthafa Zayd. *Al-Mashlahah fi Tsyri' al-Islamy wa Najm al-Din al-Thufi*. Ttp: Dar al-Kutub al-Araby. 1954.

[6]W.P. Heinrich. Item mengenai al-Thufi dalam Bearman. Bianquis, C.E. Bosworth, E. Van Donzel, dan W.P. Heinrich (Eds.) *The Encyclopaedia of Islam.* Vol. X. Leiden: E.J. Brill. 2000. h. 588.

the Abbasid era, and even since the end of the Caliphate of the Righteous Caliphs.

The Hanbali school itself is a legal school that also functioned as a theological school from the beginning. Ahmad ibn Hanbal's opposition to the Mu'tazilah was the momentum that made him a pioneer in the revival of Sunni theology. Therefore, although the Hanbali school's influence gradually declined until the rise of Wahhabism in Saudi Arabia, it remained within the fold of Sunni orthodoxy.

It is understandable that this independent thinking, which blurred the Sunni-Shi'i demarcation, caused problems for al-Thufi among Hanbali followers, even though this phenomenon is common among the Hanbali school. Abul Wafa' Ibnu Aqil, for example, also showed symptoms of relatively free thinking with Mu'tazilah and Asy'ariyyah influences. The Hanabilah community itself is not always the same in responding to such free thinkers. Ibn Qayyim al-Jauziyyah, for example, always tried to take a moderate position in responding to liberal thinking among the Hambali.[7]

After his release from prison, al-Thufi encountered obstacles in his travels from Cairo to Damascus. He therefore went to the city of Damietta, then to the city of Qus, in upper Egypt. Qus was a strong Christian city at the time. He read most of the books available in the local library and also wrote most of his works there. The opportunity to

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[7]Dalam persoalan *siyasah Syar'iyyah*, misalnya, Ibnu Qayyim berusaha menjembatani perbedaan pendapat antara Di satu sisi al-Syafi'i berpendapat bahwa *siyasah* hanya dapat diterima apabila sesuai dengan *shari'ah*. Sementara itu, Ibnu 'Aqil berpandangan bahwa *siyasah* adalah perbuatan-perbuatan yang membawa kemaslahatan orang banyak dan menjauhkan dari kerusakan meskipun tidak diletakkan aturannya oleh Rasulullah maupun ketetapan wahyu, sejauh tidak menyalahi ketetapan *shari'ah*. Ibnu Qayyim al-Jawziyyah. *al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*. Kairo: Muassasah al-'Arabiyyah li al-Taba'ah wa al-Nasr Imran Sulayman. 1961. h. 15.

study Christian works, especially the Old and New Testaments, led him to write works on Christology, including Ta'aliq 'ala al-Anajil al-Arba'a (Commentary on the Four Gospels). Like other Islamic Christologists, such as Ibn Hazm, al-Shahrastani, Ibn Taymiyyah, and al-Ghazali, he also studied Christology to prove the errors of Christian teachings and their contradictions. He held a strange view of Jesus, whom he believed to be an angel.. [8]

Al-Thufi performed the Hajj to Mecca at the end of 714/March 1315. He lived in Mecca and Medina for a year and performed the Hajj twice. Then he went to Syria and Palestine. He died in the Palestinian city of Hebron in 716 at the age of 59 Hijriyyah years or 57 years AD.

D. Al-Tufi's Thought Style in Syarh Mukhtashar al-Rawdlah

The publication and use of the Syarah Mukhtashar al-Rawdlah as a source for this paper is due to Abdullah bin Abdul Muhsin al-Turki, director of Muhammad bin Saud al-Islamiyyah University. Al-Turki conducted tahqiq (philological review) on six manuscripts of the Syarah Mukhtashar and then published them in three large volumes. Al-Turki tarjih (correcting) several editorial differences in the existing manuscripts, which he also points out in footnotes.

Unfortunately, the background and motivation for writing the Syarah Mukhtashar al-Rawdlah and its syarah are unknown. In general, after the fall of Baghdad, Islamic scholarship migrated to Egypt. Many scholars emigrated to Egypt, which became a center of Islamic scholarship after the fall of Baghdad. The scholarly trend at that time was one that sought to inventory the riches of Islamic intellectual

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[8]Lihat W.P. Heinrich. "al-Thufi…"h. 588.

wealth. The emergence of the works of the mukhtashar, or matan (literary works), was an effort to record various knowledge and make it easier to study.[9] It is not surprising that the field of history experienced rapid progress. The traditions of syarh and ikhtishar became common practices at that time.

The content of the Syarh Mukhtasar is actually not much different from its parent book, Raudhal al-Nadzir wa Junnah al-Munadzir. Of course, here and there, al-Thufi provides additional information and explanations according to his own linguistic preferences, as he felt uncomfortable with Ibn Qudamah's language in some places. Syarh Mukhtasar outlines the Hanbali ushul fiqh, which itself is not significantly different from ushul fiqh in general, especially from the Shafi'i ushul fiqh. The subtle differences are within reasonable limits, as are the differences among Shafi'i scholars.

Although Syarh al-Mukhtasar is a commentary on al-Thufi's summary of al-Rawdlah, al-Thufi did not completely follow all of al-Rawdlah's ideas and systematics. The issue of systematics was a particular concern for al-Thufi. In volume I of Syarah al-Mukhtashar, al-Thufi compares several systematics made by ushul fiqh scholars, namely Ibn Qudamah, al-Ghazali, Fakhruddin al-Razi, al-Amidi, Ibnu Shayqal, Abu Ishaq al-Syirazi, and Qadli Abu Ya'la. These seven figures were later widely quoted by al-Thufi in his Syarah Mukhtashar.

In al-Thufi's study regarding the systematics of writing Ushul Fiqh, there are three tendencies in the systematic writing of Ushul Fiqh. The first tendency is to structure the discussion starting from an explanation of law, four sources of law, disputed legal sources, legal language, qiyas,

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[9]Abd al-'Al 'Athwah, pengantar *Syarh Mukhtashar …*h. 13.

ijtihad, taklid, and tarjih. The second tendency prefers to prioritize discussion of language issues in law. The third trend begins its study with a discussion of logic or the theory of kalam regarding knowledge, then legal issues, the four sources of law, legal language, and so on. Some discussions receive attention from some ushuliyyin, while others do not. .[10]

Al-Mukhtashar's systematics was al-Thufi's personal choice. Even though Syarh al-Mukhtashar is a syarah from a summary of the book al-Rawdlah that he made himself, he chose not to follow al-Rawdlah's systematics in its entirety. Al-Thufi himself said that although the book al-Rawdlah was close to his heart, he did not like its systematics. The systematics of al-Rawdlah are as follows:

- The essence of al-hukm and its division

- Details regarding the sources (postulates) of the four laws, including the texts contained therein.

- Explanation of the disputed sources, namely syar'u man qablana, qawl al-shahaby, istihsan, and istishlah or maslahah murlah.

- Distribution of isms

- Amr and Nahi, General, Istitsna', and Conditions

- Qiyas

- Mujtahid law

- Orderly arguments and knowing tarjih.[11]

Al-Thufi's discussion of maslahah in the book Syarh Mukhtashar still does not show the leap of thought, as is now attributed to him. The discussion of maslahah in the book Syarh al-Mukhtashar is divided into

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[10]Wael B. Hallaq. *A History of Islamic Legal Theories, an Introduction to Sunni Ushul Fiqh*. Cambridge: Cambridge University Press. 1997. h. 129.
[11]Ibnu Qudamah. *Rawdlah al-Nadzir wa Jannah al-Munadzir*. Beirut: Dar al-Kutub al-Ilmiyyah. Cet. IV. 1994.

three contexts: the context of tahsin and taqbih, the context of istislah, as a source of mukhtalaf law, and the context of illat in qiyas.

The discussion of maslahah in the context of tahsin and taqbih is a theological discussion. Al-Thufi discussed the differences in views between the Ahl al-Sunnah and the Mu'tazilah regarding the independence of reason to know the good and bad of human actions before the arrival of revelation. He criticized the fukaha for not properly understanding the discussion of tahsin and taqbih, thereby accusing the Mu'tazilah of forbidding and requiring things based on reason.

He describes the understanding of good and bad actions into three categories[12] and demonstrates the differences of opinion between the Mu'tazilah and Ahl al-Sunnah. Al-Thufi himself sees the possibility of reconciling these differences of opinion, but he does not elaborate on how to reconcile the two.

The discussion of maslahah in the context of tahsin and taqbih aligns with the differences of opinion between the Mu'tazilah and Ahl al-Sunnah regarding tahsin and taqbih. The Mu'tazilah argue that Allah is obligated to maintain maslahah, based on intellectual understanding. If Allah did not maintain maslahah and mafsadah, the determination that certain actions must be carried out while others are not, would have no basis. Meanwhile, Ahl al-Sunnah argue that Allah is not obligated to

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[12]Kategori *pertama* adalah sesuatu yang sesuai dengan tabiat manusia, seperti menolong orang tenggelam dan mencela Tuhan. *Kedua* adalah sesuai yang terkait dengan sifat kesempurnaan dan kekurangan, seperti pengetahuan adalah kebaikan dan kebodohan adalah keburukan. Kategori *ketiga* adalah hal-hal yang membawa konsekuensi pahala dan dosa. Untuk dua kategori pertama, semua sepakat dapat diketahui dengan akal secara mandiri. Adapun kategori *ketiga* menjadi perbedaan pendapat: Mu'tazilah memandang akal dapat mengetahuinya, sementara Ahl al-Sunnah memandang pengetahuan harus didasarkan *syara'*. Mu'tazilah berpendapat bahwa *syara'* adalah pembenar bagi hukum akal, sedangkan Ahl al-Sunnah berpendapat bahwa syariat adalah pembuat hukum. Lihat *Ibid*. Jilid I. h. 404-405.

maintain maslahah. Maslahah is known by the mind through jawaz (optional). Al-Thufi does not elaborate on this debate[13] but rather provides a portion of the discussion of the next problem in the study of istishlah and illat.

The discussion of istishlah is placed in the discussion of the sources (al-Thufi calls it ushul) of mukhtalaf law. Of the 17 ushul (adillah) syar'i that he identified, only seven he studied in Syarh Mukhtashar, namely the Koran, sunnah, ijma', syar' man qablana, qawl shahaby, istihsan, and istislah. This division is similar to al-Ghazali's division. Al-Ghazali divided legal propositions into four ushul, namely al-Kitab, sunnah, ijma', and the propositions of aql and istishab. Ushul al-mawhumah (sources of law which are seen as illusory sources of law, but are not actually) there are four topics: syar' man qablana, qawl shahaby, istihsan, and istishlah.[14] A minor difference between al-Thufi and al-Ghazali is that al-Thufi's discussion of qiyas (religious action) follows or is a continuation of the discussion on istishlah (lawful thinking), while al-Ghazali's discussion of qiyas is placed within the discussion on how to deduce rulings from pronunciation.

Al-Thufi defines istishlah as "following the maslahah of the mursalah." Maslahah is defined by al-Thufi as "jalb al-naf' aw dar' al-dlurr." This definition has become common among ushuliyyin. Once again, al-Thufi's discussion of istishlah follows al-Ghazali, namely, dividing maslahah into three: 1) those that are considered i'tibar by sharia, 2) those that are deemed invalid by sharia, and 3) those that are neither deemed invalid nor i'tibar by sharia.[15]

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[13]*Ibid*. Jilid I. h. 409-410.
[14]Lihat al-Ghazali. *Al-Musthasfa…*h. 80, 159-165
[15]*Ibid*. Jilid I. 205-206. Bandingkan dengan al-Ghazali. *Al-Musthasfa…*h. 173.

Like al-Ghazali, al-Thufi divides maslahah into three: dlaruriy, hajj, and tahsini. These three are maqashid sharia. Meanwhile, maintaining the objectives of sharia is divided into five: preserving religion, protecting life, offspring, intellect, and property. Al-Ghazali included these as forms of maintaining maqashid sharia and part of maslahah dlaruri. Maintaining these five things is what, according to al-Ghazali, is meant by munasabah in qiyas.[16] Al-Ghazali stated that all of this was obtained through istiqra'.

Al-Thufi in principle accepted al-Ghazali's division. In discussing this istishlah, al-Thufi seems to be directly referring to al-Ghazali by bypassing Ibn Qudamah because Ibnu Qudamah belongs to a group that rejects the problem of murlah as proof. Al-Thufi accepts the validity of the maslahah murrasa and believes that the maslahah murrasa is a strong argument without any flaws (قلت: هذا دليل قوي لا يتجه القدح فيه بوجه), obtained through ijtihad (ijtihady).[17] What he does in Syarh al-Mukhtashar is explain it in examples, compare the opinions of ushul experts, especially Ibn Qudamah, Malik, and al-Qarafi, and explain his arguments based on his own thoughts.

At this level, al-Thufi's maslahah thinking in Syarh al-Mukhtashar has not moved away from al-Ghazali's maslahah idea. Al-Thufi's new leap in thought occurred in his book al-Ta'yin fi Syarh al-Arbain (al-Nawawiyyah). From a comparison of the flow of thought regarding maslahah, it appears that Syarh al-Mukhtashar was written before the book al-Ta'yin.

Al-Thufi's idea of maslahah is not static, but has developed in line with al-Thufi's intellectual development. Initially, al-Thufi showed a

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[16]al-Ghazali. *Al-Musthasfa…*h. 174.
[17]Al-Thufi. *Syarh al-Mukhtashar…*. Jilid I. h. 210-212

strong influence of al-Ghazali's ideas. This can be understood because Syarh Mukhtashar al-Rawdlah is based on the book Rawdlah al-Nadhir wa Junnah al-Munadhir by Ibn Qudamah which transformed the ushul fiqh mutakallimin into the denial of the Hanbali school of thought. However, in its development, al-Thufi seemed dissatisfied with focusing solely on al-Ghazali's idea of maslahah. He further developed the idea of maslahah in the book al-Ta'yin fi Syarh al-Arbain.

It was the discussion of maslahah in the book al-Ta'yin that made al-Thufi's name skyrocket as a figure in the field of maslahah. Abdullah Saeed even called al-Thufi a "Hanbali jurist who surpassed all jurists and stated that maslahah should determine what according to Islam is acceptable and what is unacceptable."[18]

The discussion of maslahah in the book al-Arbain is a sharah for the 32nd hadith which reads:

<div dir="rtl">

لا ضرر ولا ضرار

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" *Don't do anything dangerous or harm other people.*"

Al-Thufi devoted his expertise to explaining the hadith, extending to 47 pages.

Al-Thufi mentions 17 sources of law, both mujuttafaq and mukhtalaf. Of these, the most sound (qathi') are the text, ijma', and the ri'ayah maslahah. The text and ijma' sometimes agree with the maintenance of maslahah (ri'ayah maslahah), and sometimes they contradict each other. If both agree with maslahah, it is best. However, if

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[18]Pernyataan asli Abdullah Saeed tersebut adalah sebagai berikut: The Hanbali jurist Najm al-Din al-Tufi (w. 716/1316) went beyond all jurist and declared that, first and foremost, the public interest (*maslahah*) should determine what is islamically acceptable and what is not. Contrary to to generally accepted view, he argued that public interest can override even a clear text of the Qur'an and Sunna in cases other than worship. Lihat Abdullah Saeed. *Islamic Thought, an Introduction*. London and New York: Routledge. 2006. h. 53.

they contradict each other, the ri'ayah maslahah takes precedence over the text, through takhsis and bayan, just as the hadith interprets and explains the Quran. (و ان خالفاها وجب تقديم رعاية المصلحة عليهما بطريق التخصيص و (البيان لهما).[19]

Against the objection that states that the hadith لا ضرر ولا ضرار is not as strong as ijma' because ijma' is definite evidence (qathi') while hadith is not qathi'. Al-Thufi stated that maintaining mashlahah is stronger than ijma'. Mashlahah is the strongest sharia evidence. (Remember that in Syarh al-Mukhtashar al-Thufi places ijma' as stronger than the Qur'an and Sunnah).

Al-Thufi's reasoning for prioritizing mashlahah over ijma' and texts is based on several arguments. First, al-Thufi disagrees that ijma' is based on something qathi'. His reasoning is that advocates of ijma' allow ijma' to be reached based on amarat (legal signs), namely qiyas and khabar ahad, even without any support from evidence. Second, there are times when the text is mutawatir and sometimes it is ahad, there are times when it is syarih al-hukm (qath'i dilalah) and there are times when it is muhtamil/contains the possibility of double understanding (dzanni dilalah). Even mutawatir hadith can contain the possibility of dzanni dilalah..[20]

Al-Thufi's conclusion regarding the position of ijma' and the texts is as follows: first, even those who oppose ijma' agree on the preservation of mashlahah, so the preservation of mashlahah is agreed upon. Meanwhile, ijma' remains disputed. Second, the texts contradict each other and become the cause of differences of opinion that are

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[19]Al-Thufi. *Kitab al-Ta'yin…*h. 238
[20]*Ibid*. h. 251-252.

condemned by the Shari'a. Meanwhile, the preservation of mashlahah is a genuine issue and is not disputed..[21]

So what is the basis of maslahah as a strong argument? Al-Thufi refers to the division between custom/muamalah and worship. The issue of worship is a right of Allah whose procedures are only known through texts and ijma'. Maslahah in the issue of muamalah is seen by al-Thufi as the highest goal of syara'. Al-Thufi refers to the discussion of tahsin and taqbih in which he agrees with the opinion of ahl al-Sunnah that maintaining maslahah is something that is necessary (wajibah) from God based on grace (tafadldlul), not on obligations borne by God.

The strength of maslahah is obtained from the foundation of the Koran, Sunnah and ijma. The verses of the Koran which are the arguments for maintaining maslahah include: و لكم في القصاص حياة (البقرة 179)

و السارق و السارقة فاقطعوا أيديهما (المائدة 38)

الزانية و الزاني فاجلدوا كل واحد منهما مائة جلدة (النور 2)

Each verse contains benefits and as a whole contains legitimacy for maslahah. In this way, al-Thufi reiterated the method of istiqra' (induction) proposed by al-Ghazali in finding maslahah. The same applies to the sunnah because the sunnah is the bayan (explanation) of the Al-Qur'an.

The basis of ijma', according to al-Thufi, departs from the agreement of ulama, except for the hardline Dzahiri school (jamidiy dzahiriyyah), regarding ta'lil al-ahkam bi al-maslahah wa dar' al-mafasid (seeking legal reasons through maslahah and rejecting damage).

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[21]Al-Thufi kemudian menyebutkan beberapa pertikaian antara para pengikut madzhab hukum. *Ibid*. 259-260.

All fiqh discussions related to the rights of servants are based on maslahah reasons.[22]

E. Closing

Al-Thufi's maslahah (Islamic principles) becomes even more significant when linked to global demands for human rights and global ethics. Al-Thufi's ideas bridge the dialectic of tradition and renewal in addressing the global challenges arising from modernization and globalization. Islamic intellectuals have long sought a formula that accommodates contemporary developments while remaining anchored in the Islamic heritage (turats), particularly the Quran and Hadith. These intellectuals' formulas have sometimes been too biased toward tradition, giving rise to Islamic fundamentalism. At times, they have been too biased toward change, sacrificing the sanctity of the Quran.

Al-Thufi's maslahah concept can be seen as a compromise. First, Al-Thufi's maslahah focus on the realm of muamalah (transactions) provides a clear demarcation within which massive change can be implemented. Second, the status of the sources of Islamic law is clearly defined so that changes based on the public interest do not compromise the Quran and Hadith. These two things allow the idea of maslahah to be developed and gain widespread recognition, especially since al-Thufi comes from a madzhab tradition that is recognized by Sunni Islamic orthodoxy.

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[22]*Ibid*. h. 243-244. Guna kajian lebih lanjut mengenai *maslahah* al-Thufi, baca Yusdani. *Peranan Kepentingan Umum dalam Reaktualisasi Hukum: Kajian Konsep Hukum Islam Najm al-Din al-Thufi*. Yogyakarta: UII Press. 2000. Lihat juga Abd. Rahman. *Konsep Maslahah menurut Najm al-Din al-Thufy*. Disertasi Program Pascasarjana IAIN Syarif Hidayatullah Jakarta. 1998.

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