

Khamr in the Perspective of Maslahah Mursalah: A Balance Between Goodness and Legislation on the Prohibition of Alcoholic Beverages

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ABSTRAK

The law regarding alcoholic beverages in Indonesia is still a polemic, for example there is MUI Fatwa No. 11 of 2019 concerning Laws related to Alcohol, unfortunately it is not legally binding and only applies to Muslims in Indonesia. Laws banning alcoholic beverages must be passed in order to enforce laws that apply to everyone, given the current situation, it is important for Indonesia to introduce rules banning alcoholic beverages to ensure that the public is always aware of the dangers they pose. The dangers posed by alcoholic beverages are discussed in this qualitative literature study (*library research*) from a philosophical and historical perspective using the maqasid al-shari'ah approach. The objectives of the maqasid al-shari'ah study of the prohibition of alcohol and the prohibition of khamr are to: First, Take advantage and eliminate mudharat, Next, the pattern Second, the purpose of saad al-Dzari'ah is to uphold the principle of dar'ul mafasidi muqaddamun 'ala jalbil mashalih, which states that doing good is more important than doing harm. This is done to preserve property, fate, soul, and reason. This shows that all harmful drinks, including khamr, are prohibited and hence considered haram because they use the same legal 'illat as khamr.

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1. INTRODUCTION

Alcoholic beverages date back 500 years, and for some groups and cultures, they are a staple in everyday life. certain cultures and societies. Alcoholic beverages such as liquid brem, tuak, sager, and ciu are available in Indonesia. While each country has a distinctive brand name and look[1] Modern, conventional, or bootleg drinking patterns all have harmful

impacts on a person's physical, mental, and psychological health. physically, psychologically, and socially.

In fact, drinking alcohol is ingrained in the culture and customs of various regions in Indonesia. According to Riskesdas data, North Toraja Regency in South Sulawesi has the largest prevalence of alcohol use, with 27.5% in the past year and 22.6% in the past month. The

majority of them consume alcohol due to the influence of the social environment. Tuak is a culturally important drink that is always provided during traditional festive celebrations and has been proven to strengthen brotherhood. When Torajan people invite foreigners to traditional feasts and give them tuak drinks, the process of diffusion occurs. The invited person will drink wine to honor the guest and eventually become accustomed to it. Another tradition is juxtaposing wine with beer. At each event, those in a high socioeconomic position usually give alcohol. As a result, it can be noted that residents of North Toraja regularly consume tuak, both during the celebration of special feasts and during daily activities.[2]

On the other hand there is Tuak, a traditional alcoholic drink with an alcohol concentration of 4%, also popular in Sulawesi and North Sumatra, especially among the Batak Toba community. Water is extracted from coconut or palm stems and combined with raru to make tuak. It is very difficult to eliminate the habit of drinking tuak from the local customs in Bukit Selamat village because it is part of a tradition that has been passed down from generation to generation. As much as 55.4% of the new tuak drinks in Bukit Selamat Village, which has a weight category of 84.8%, are consumed there. 66.3% of the population has a bad opinion about their health. In Bukit Selamat Village, there is a relationship between a positive attitude and the practice of consuming tuak.

Although drinking too much alcohol can have major negative consequences for one's health, there are three side effects of alcohol consumption: first, weight gain, high blood pressure, weakened immunity, cancer, heart disease, respiratory problems, and liver disease. On the other hand, deaths from alcohol are still

common. Everyone has the right to live a prosperous life physically and mentally, to reside, and to get a good and healthy living environment and the right to health services, in accordance with the Indonesian constitution as a state of law. The efficiency of the law is demonstrated by these two seemingly incompatible things. It has not been fully used in the law regulating the management of alcoholic beverages.[3]

The following topics will be discussed in this study are how alcoholic beverages are regulated in Indonesia and how laws are enforced to implement such restrictions. Given that the current regulation of alcoholic beverages is still fragmented by industry and covered by several laws and regulations, this topic needs further research. The Alcoholic Beverage Prohibition Bill is expected to address all legal issues, from regulating alcoholic beverages to restricting their consumption. Legal action In Indonesia, the control of alcoholic beverages has not been fully implemented. This is due to several factors of legal effectiveness that have not been fully met.

2. LITERATURE REVIEW

The theory review conducted in this article is very multidisciplinary. First of all, the theory of law and justice is the main basis for discussing the need for a law regulating alcohol consumption in Indonesia. With reference to this theory, the authors consider the social and legal implications of alcohol consumption, including the impact on society and the country as a whole. In addition, a social justice approach is used to recognize that alcohol consumption can bring significant disruption to society, increase the risk of traffic accidents, and affect future generations. However, to provide a more holistic view, the maqasid al-Shari'ah approach is also used. This approach allows the author to

examine the prohibition of alcohol and khamr from a philosophical and historical point of view, focusing on the purposes and benefits of Islamic law, such as safeguarding property, nasab, soul, and reason. Furthermore, Islamic legal theory and MUI fatwas are also involved, considering Islamic views on alcohol consumption and the impact of MUI fatwas on this perspective. Thus, this theoretical study combines various scientific approaches to present strong arguments about the need for a law prohibiting alcoholic beverages in Indonesia.

3. METHODS

The research method used in this study is a qualitative method using primary data, namely by conducting and utilizing secondary data by looking at the data review descriptively and using analysis, where the process of meaning (subject perspective) is emphasized more in research based on Islamic Law, especially on the perspective of Maslahah Mursalah.

4. RESULTS AND DISCUSSION

- **Definition and Scope of Khamr in Sharia Context**

Khamr or drinks that have alcohol content are drinks that are prohibited for consumption by Muslims. This includes all types of related activities, such as the sale and purchase of alcoholic beverages. There is a discrepancy between what is said in Surah An-Nisa verse 43, Al-maidah verse 43, An-Nahl verse 67, and Al-Baqarah verse 219 between the realities that occur in the application of local government regulations. Where alcohol can be mixed into community needs including Muslims.

This is also discussed in Fatwa No. 11 of 2009 on Alcohol Law issued by the MUI (Indonesian Ulema Council), which states that alcohol may be mixed into food, beverages, drugs, and cosmetics as long as the amount does not exceed that recommended by a doctor. The law is haram because it can harm consumers or the public because excessive use of alcohol in the mixture used to make the product can cause poisoning and have negative side effects. Analysis of the level of alcohol use in the MUI Fatwa above that benefit is the main permissibility in the use of alcohol because alcohol is the only solvent found until now. Therefore, consuming products that have alcohol levels is allowed as long as there is benefit for the user. Muslims must be careful with the use of alcohol so that the goal of preserving property, religion, soul, reason, and offspring can be best achieved.[4]

Products containing alcohol, particularly beverages, are widely available on the market today. Each individual has the maximum degree of tolerance to alcohol. There will be negative effects on health if a person consumes too much. Damage to the functional system of the brain, heart problems, cancer, disorders, and even death are some of them. In addition to negatively impacting health, excessive alcohol use can lead to mental illness. . Anger can lead to offenses or criminal acts, and this mental illness will lead to behavioral changes such as acting quickly, irritably, and even committing criminal or violent acts. The problem is that unlicensed manufacturers often make alcoholic beverages with high or more alcohol content than allowed. Using MOH and BPOM, alcohol content labels are calculated.

Drinks with a high ethanol content are called liquor. An alcoholic beverage is any liquid that contains ethanol and has gone

through fermentation and distillation, or fermentation alone, which is processed from carbohydrate-containing agricultural products, regardless of whether the liquid has gone through the initial processing process, addition of additives, mixing of alcohol, or dilution of alcohol content.[5] For starters, alcoholic beverages are considered a tradition in some communities, but they also harm people and increase the number of alcohol-related deaths. On the other hand, there are many types of foods that contain alcohol in different types and concentrations.

Islamic teachings generally have three levels: *dharuriyah* (primary), *hajiyah* (secondary), and *tahsiniyah* (tertiary), and the purpose of Islamic Sharia is to address the realities of society. In linguistic studies, *Maqsid Shari'ah* is essential for understanding the language of the Qur'an and Sunnah, resolving disputes between opposing viewpoints, and establishing laws in situations where the Qur'an and Sunnah provide no guidance. Sharia law in *dharuriyah* serves to safeguard property, offspring, soul, and reason. Because the law actually requires "taking advantage and eliminating harm" (*li jalbi al-mashalih wa li daf'i al-mafasid*). Islamic law, or *shari'ah*, is built on three guiding principles: first, "*adamul haraj*" (removing obstacles), second, "*taqlilut takalif*" (lightening burdens), and third, "*at-tadarruju fittasyri*" (lightening burdens).

First, *Maslahat* is divided into three kinds based on the strength of *nash*'s support for it, or its normative validity. For example: a) *Maslahat* which can be used as *'illat* in *qiyas* and its validity is upheld by *sharia*. b) *Maslahat* that is not supported by *sharia* either in terms of its validity or in terms of its validity and invalidity. Second, in terms of the inherent strength of the benefit (functional validity). Ghazali offers

prerequisites for its application as opposed to this *maslahat*: a) the *maslahat* is primary and essential (*dharuriyah*); b) the *maslahat* is very firm and clear (*qat'iyyah*); c) the benefit is universal (*kuliyyah*); and d) the *maslahat* is supported by comprehensive evidence from the whole *qarinah* (*mu'tabarah*).[6] Such a *maslahat* is related to *takmilan* and *tatimmah*, two characteristics of perfection.[7]

In a different formulation, it is also said that there are several standards that must control the validity of the problem of *mursalah* in the study of jurisprudence, which are as follows. First, *Maslahah* must be ensured to actually realize benefits or avoid damage, not just speculative or hypothetical. Secondly, *Maslahah* is not only concerned with individuals, but also the entire society. Third, despite the arguments of *maslahah*, the principles established by the *sharia nash* should not be ignored.

In a different formulation, it is also said that there are several standards that must control the validity of the problem of *mursalah* in the study of jurisprudence, which are as follows. First, the problem must be certain that it actually realizes a benefit or avoids damage, not just speculative or hypothetical. Secondly, *Maslahah* is not only a personal matter, but also affects the whole society. Third, the reason of *maslahat* does not lead to abandonment of a principle established by the *nash* of *sharia*. The division of *maslahah* as discussed earlier does not actually exist, and since the purpose of *shari'ah* is benefit, all benefits—both those supported by *nash* and those without—must be realized without having to fall into categorical categorization of *maslahah*. [8]

In addition to damaging the nerves of the brain, the dangers of alcohol can also have

negative impacts on families and children, such as domestic violence (hifdu al-nasab or al-nasl). We have evidence that drinking alcohol is not only bad for the drinker, but also for others around him, especially children, in accordance with the I'tibar in the Quran and the provisions of the constitution. As a result, those who consume alcohol often engage in domestic violence, and children exposed to their parents' drinking habits can experience prolonged trauma. Alcohol use is often the precursor to crime. About 40% of heavy drinkers show signs of sadness, which can lead to violations of other people's civil rights or even murder.

- **Application of Maslahah Mursalah in Understanding and Overcoming Khamr Consumption**

Most of these words come from Arabic meaning "good", "useful", "appropriate", "worthy", "harmonious", and "appropriate". Al-mafsadah, meaning trouble, is contrasted with "al-maslahah." Maslahat, also known as maslahat mursalah or istishlah, is a type of gain that is not permitted by Islamic law and has no guidance as to whether it is necessary for individuals to engage in certain behaviors, despite the fact that it can result in significant harm or retaliation. An alternative term for mashlahat that is not understood by any particular postulate, whether indicating its validity or invalidity, is absolute mashlahat. Overall, the process of creating an object using mashlahat is carried out carefully to ensure human well-being, which can be seen from the provision of benefits and the removal of obstacles and buildings.

In KBBI (Big Dictionary Indonesian) interprets the word *keboardan* and *Advice* with different meanings. KBBI defines *Kessadan* as expediency, usefulness, importance, and goodness. While the word *Advice* Defined as

faidah, benefits, and goodness that come from something. This shows that the word benefit is included in KBBI in the noun group with the original form, namely the word maslahat which is affixed with the prefix to- and suffix -an but the word maslahat itself mauk into the dictionary as a root word.[9]

Since the word "maslahat" comes from the word "shalaha," which means good and is the antithesis of bad, it is used to indicate whether something is good or one becomes good. Nevertheless, the erminological concept of good and bad has some limitations. 1) Maslahat is supported by sharia, not only human reason which is very limited and easily influenced by the environment and lust, according to the work of Amir Syarifuddin. 2) Maslahat studies include ukhrawi and worldly affairs in determining good and bad. 3) Maslahat is viewed from the point of view of sharia 'not only in terms of rûhaniyah pleasure, but also in terms of physical pleasure.

According to scholars who use maslahat as one of the foundations of shari'a, the legal basis is based on:

1. As people's interests and needs change over time, so do the difficulties they face. Reality shows that many problems or issues that did not exist in the lifetime of the Prophet eventually emerged and occurred in the next era, some of which even occurred immediately after the Prophet died. If there is no evidence that can solve these problems, then human life will be limited. The postulate in question is a postulate that can judge what is beneficial to man and what is not in accordance with the basic principles of Islam. If the postulate already exists, then human benefit can be achieved under any conditions, anytime and anywhere.

2. In fact, the Companions, *tabi'in*, *tabi'it tabi'in*, and the scholars who followed them did so in order to establish laws quickly according to the needs of the Muslims of the time. The Quran has been collected by Khalifah Abû Bakr. In contrast to the time of the Prophet, Khalifah Umar said that talaq pronounced three times simultaneously falls three times. The Qur'an had to be written in one mushaf at the behest of Caliph Uthman. The disobedient Shi'a Rafidhah was also sentenced to death by Khalifah Ali, who also ordered that the clerics who came after him be burned alive.

An event or event that needs to be established by law but there is no *nash* in the Qur'an and the Sunnah that can make something basic as an object benefit. As stated by Imâm al-Qarafi al-Thûfi in his book *Masalihul Mursalah* who explains that *Masalihul Mursalah* is the basis for deciding the law in the field of *mu'malah* and the like, this principle is accepted by the majority of adherents of the jurisprudence school that exists today. Since man cannot fully understand the wisdom of worship, it is up to Allah, the Almighty, to make decisions in matters of worship. Muslims practice worship in accordance with Allah's instructions contained in the Qur'an and Hadith.

Three types of *maslahat*—*maslahat mu'tabarah*, *maslahat mulghah*, and *maslahat mursalah*—were introduced in Islamic legal theory, otherwise known as Islamic legal jurisprudence, in accordance with the limitation of the meaning of *maslahat* in general.[10] *Maslahat mu'tabarah* is a *maslahat* explicitly stated in the Qur'an and the hadith of the Prophet. On the other hand, *maslahat mulghah* is a *maslahat* that contradicts the teachings of the Qur'an and Hadith. While *maslahat*

mursalah is a problem that is not required by the Qur'an and hadith, and there is no contradiction between the two sources.

There are four things that are the goals and motivations of the *fuqahâ'*, namely: 1) Attracting *maslahat* (*Jalb mashâlih*), which are things needed by society to build human life on a solid foundation. 2) Reject *mafsadat* (*Dar'u mafâshid*), that is, the rejection of actions that harm human beings—both individually and collectively—both materially and morally. 3) Closing roads (*Shadzz dzari'ah*), i.e. closing roads that can result in futility and manipulate the order of sharia or that can result in the prohibition of sharia even if done unintentionally. 4) *Taghayyur al-azman*, or "changing times", refers to the fact that the human condition, morals, and general needs have changed from previous periods.

As the first to use the concept of *maslahat*, Imam Malik argued that a *maslahat* that can be the source of law must meet several requirements, including conformity with the objectives of sharia that have been widely accepted and do not contradict the *nash*. Al-Tûfi's perspective differed significantly from the conventional interpretation of *maslahat* advanced by thinkers such as al-Ghazali. As a result of the existence of human reason, in al-Tûfi's view, is more objective in positioning the criterion of *maslahat* than the opposition of the *nash-nash shari'i*, so it goes further and tends to base the constellation of *maslahat* on the superiority of reason if scholars other than al-Tûfi interpret the existence of *maslahat* that is still within the scope or scope of *shari'i*. Therefore, the legitimacy of the *maslahat* must take precedence over other reasons, such as *nash syar'i*. [11]

Al-Tûfi's claim is supported by the Prophet's hadith which reads, "La dharâra wa la dhirâra." Al-Tûfi considers this hadith to be the basic principle of sharia, because basically *maslahat* is to avoid the problems necessary to provide convenience to those who experience difficulties. Therefore, if there is a *nash* and *ijmâ'* that must correspond to the benefit in a particular circumstance, then it must be done; However, if *nash* and *ijmâ'* contradict the *maslahat*, then both postulates must be evaluated on the basis of the *maslahat*.

This view of al-Tûfi assumes that the *nash* (Qur'an and al-sunnah) made by al-Shari' is for the benefit of mankind and not the other way around but if there is an argument that thinks a *nash* is irrelevant, then it should be returned to its form of benefit but like al-Tûfi, they only define this problem in the field of *muamalah* and *'adat* only, because the field of worship only al-Shari' has absolutely given rules for it.

For al-Tûfi, *maslahat* takes precedence over *nash* and *ijmâ'* based on several factors:

- a. The validity of *ijmâ'* is still debated, while the validity of *maslahat* has been accepted by scholars. Therefore, it is more important to give weight to ideas that have been received rather than ideas that are still being debated.
- b. *Nash* allows many inconsistencies to cause disputes while maintaining that the benefit is something that is urgently needed, so that the prioritization of the benefit is the reason for the agreement desired by the *shara'*.
- c. In fact, the Companions have ignored some propositions because they are based on considerations of benefit. *ijmâ'* is based on the principle of *maslahat*, one of which is a hadith attributed to the Prophet which

states, "Whoever utters the phrase *la ilaha illallah* will go to heaven." Because of its potential benefits, Umar limited the dissemination of this hadith. If this hadith is widespread, then there will be a sense of laziness to worship only based on this hadith.

5. CONCLUSION

Using comparative laws, *maqasid al-Shari'ah* examines the prohibition of alcohol and the prohibition of *khamr* with the following objectives: Second, the type of *saad al-Dzari'ah* that adheres to the principle that "preventing harm takes precedence over taking benefit" by closing loopholes that can be used to carry out actions that cause more damage. *Dar'ul Mafasidi muqaddamun 'ala jalbil mashalih*, which states that avoiding evil is more important than taking benefits. This is done to preserve property, fate, soul, and reason. Therefore, all harmful drinks, including *khamr*, are banned for having the same legal reasons.

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