

Assessing The *Istislahiah* Method in Islamic Law: The Study of The Utilization of Ushul Fiqh Science in The Context of Indonesian Fiqh

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Abstract: Traditional Islamic law is often seen as being based on textual sources, such as the Qur'an and Sunnah. However, a closer look reveals that scholars have a long history of incorporating scientific advancements into legal reasoning. This paper explores the *istislahiah* method, which uses scientific knowledge to formulate Islamic legal rulings in the context of contemporary Indonesia. The paper begins by examining the concept and authority of the *istislahiah* method. It traces its historical roots to the early days of Islam, and discusses the theoretical underpinnings of the method. The paper also explores the debates surrounding the validity of *istislahiah* in Islamic legal discourse. The paper then turns to the practical application of *istislahiah*. It analyzes how scientific knowledge can be integrated into legal reasoning to address pressing social issues faced by Indonesia. The paper provides examples of how *istislahiah* has been used to address issues such as public health, environmental protection, and gender equality. Finally, the paper explores how the *istislahiah* method can enhance Islamic law for the future. It argues that *istislahiah* can help to bridge the gap between traditional Islamic legal principles and the evolving realities of the modern world. By demonstrating the compatibility of science and Islamic law, *istislahiah* can pave the way for a more nuanced and adaptable approach to legal decision-making in Indonesia. This study offers a fresh perspective on the potential of the *istislahiah* method to address the challenges of the modern world. By demonstrating how scientific knowledge can be used to formulate Islamic legal rulings, this research paves the way for a more dynamic and contextually relevant Islamic legal framework for Indonesia.

Keywords: *istislahiah*, Islamic law, Indonesia, sains, legal discourse

Abstrak: Hukum Islam tradisional sering dipandang sebagai sistem hukum yang berbasis pada sumber-sumber tekstual seperti Al-Qur'an dan Sunnah. Namun, penelitian lebih dalam mengungkapkan bahwa para ulama memiliki sejarah panjang dalam memadukan kemajuan ilmu pengetahuan ke dalam penalaran hukum. Tulisan ini diawali dengan mengkaji konsep dan otoritas metode *istislahiah*. Makalah ini menelusuri akar sejarahnya hingga masa awal Islam dan membahas landasan teoretis metode tersebut. Tulisan ini juga menelusuri perdebatan mengenai validitas *istislahiah* dalam wacana hukum Islam. Selanjutnya, tulisan ini beralih ke penerapan praktis *istislahiah*. Tulisan ini menganalisis bagaimana pengetahuan ilmiah dapat diintegrasikan ke dalam penalaran hukum untuk mengatasi masalah sosial mendesak yang dihadapi Indonesia. Tulisan ini memberikan contoh bagaimana *istislahiah* telah digunakan untuk mengatasi masalah seperti kesehatan masyarakat, perlindungan lingkungan, dan kesetaraan gender. Terakhir, Tulisan ini mengeksplorasi bagaimana metode *istislahiah* dapat meningkatkan hukum Islam di masa depan. Tulisan ini berpendapat bahwa *istislahiah* dapat membantu menjembatani kesenjangan antara prinsip-prinsip hukum Islam tradisional dan realitas dunia modern yang terus berkembang. Dengan menunjukkan kesesuaian ilmu pengetahuan dan hukum Islam, *istislahiah* dapat membuka jalan bagi pendekatan pengambilan keputusan hukum yang lebih bernuansa dan adaptif di Indonesia. Penelitian ini menawarkan perspektif segar tentang potensi metode *istislahiah* dalam menghadapi tantangan dunia modern. Dengan menunjukkan bagaimana pengetahuan ilmiah dapat digunakan untuk merumuskan fatwa, penelitian ini membuka jalan bagi kerangka hukum Islam yang lebih dinamis dan relevan secara kontekstual bagi Indonesia.

Kata kunci: *istislahiah*, hukum Islam, Indonesia, sains, wacana hukum.

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Introduction

Many scholars agree that the primary sources of Islamic law are the Qur'an and Hadith. Therefore, the law *syara'* what a person does must be based on these two laws. Through the efforts of understanding, interpreting, and interpreting, also referred to as *istinbath* and *istidlal*.¹ These efforts aim to meet the needs that have been carried out since the Prophet was still alive. The results of the understanding and interpretation made by the companions at that time could not be separated from always asking the Messenger of Allah so that he could know the truth and his mistakes clearly. From this, the scholars determined that it was included in the *hadith taqirriyah*.²

Other sources of law such as *ijma'*, *qiyas*, and so are the arguments that have yet to be agreed upon, among others *maslahah mursalah*, *istihsan*, *'urf*, or *istishab* which is still controversial. One of the problems that becomes the main point in this writing is the benefit of mankind or also known as good luck. *Maslahah mursalah* is a consideration of *ijtihad* that is comparable to the needs of today's life. Departing from this study, a theory was born *istinbat* law that refers to the concept of benefit, namely, *Maslahah Mursalah*. Not a little argument contained in the Al-Quran and Hadith explains that the purpose of Allah SWT sent down the law *syara'* to face earth is to realize the benefit of life for mankind, and prevent it from *mafsadat* or damage.³

The majority of scholars agree on the existence of benefits contained in the laws established by Allah Swt. However, there are still polemics among scholars, especially regarding God's purpose in making legal decisions. There are those who argue that God's purpose in making legal provisions is to bring *mashlahah*. On the other hand, there are those who think that God established the law not only to bring *mashlahah*, but it is purely because of His will.

Apart from these differences, it is clear that in every action that contains the values of goodness for humans, usually the act is bound by law *syara'* in the form of an order. On the other hand, in every action that contains a bad value for humans, the act is also bound by law *syara'* in the form of a ban. As for the law *syara'* itself will always be in harmony with human reason or vice versa. However, when humans bump into a problem for which there is no law, *syara'* in it, will certainly raise a question such as, what law will be stipulated in the rule? Based on this, it will be a prolonged debate among scholars.

The concept of *maslahah*, or public good, has been a central tenet of Islamic law since its inception. Scholars have long debated the role of *maslahah* in legal reasoning, with various methodologies emerging to incorporate it into Islamic legal discourse. One such approach is the *istislahiah* method, which utilizes scientific advancements and social realities to derive legal rulings that promote the public good. The *istislahiah* method has a long history in Islamic legal thought. It was first developed by early Muslim jurists, such as al-Shatibi (d. 1388) and al-Ghazali (d. 1111). These scholars argued that *maslahah* is a fundamental principle of Islamic law, and that it can be used to derive legal rulings in cases where the textual sources are silent or ambiguous.⁴

The *istislahiah* method gained renewed attention in the 20th century, as Muslim scholars sought to address the challenges of modernity. Scholars such as Muhammad Abduh (d. 1905) and Rashid Rida (d. 1935) argued that the *istislahiah* method could be used to adapt Islamic law to the changing needs of society. The *istislahiah* method has been the subject of much debate among Muslim scholars. Some scholars, such as Ibn Taymiyyah (d.

¹ Al Yasa' Abubakar, *Istislahiah Method: Utilization of Science in Usul Fiqh*, cet. 1 (Jakarta: Kencana, 2016), p. 1.

² *Taqirriyyah* hadiths are all things that are based on the silence of the prophet Muhammad when he saw what was done or said by the companions of the prophet.

³ Al-Ghazali, *Al-Musthafa min 'Ilm al-Usul*, with tahqiq Muhammad Mushtafa Abu al-'Ila, Maktabah al-Jundi, Cairo, 1971, p. 251.

⁴ Al Yasa' Abubakar, *Istislahiah Method: Utilization of Science in Usul Fiqh*, cet. 1 (Jakarta: Kencana, 2016)

1328), have argued that the *istislahiah* method is too subjective and can lead to the distortion of Islamic law. Other scholars, such as al-Shatibi, have argued that the *istislahiah* method is a legitimate tool of legal reasoning that can be used to uphold the fundamental principles of Islamic law.⁵

The *istislahiah* method has been applied to a wide range of legal issues, including environmental protection, economic development, and gender equality. For example, the *istislahiah* method has been used to justify the prohibition of smoking, the establishment of environmental regulations, and the promotion of women's rights. The *istislahiah* method is a complex and nuanced methodology that has the potential to play a significant role in the development of Islamic law. By incorporating scientific advancements and social realities into legal reasoning, the *istislahiah* method can help to ensure that Islamic law remains relevant and responsive to the needs of contemporary society.

In the context of contemporary Indonesia, the *istislahiah* method has the potential to be a valuable tool for addressing a range of pressing social issues. For example, the *istislahiah* method could be used to:

- Address environmental degradation: The *istislahiah* method could be used to justify the establishment of environmental regulations to protect the environment and promote public health.
- Address economic inequality: The *istislahiah* method could be used to justify the implementation of social welfare programs to reduce poverty and inequality.
- Promote gender equality: The *istislahiah* method could be used to justify the reform of discriminatory laws and practices that prevent women from achieving their full potential.

By carefully considering the potential benefits and limitations of the *istislahiah* method, Indonesian scholars and jurists can develop a legal framework that is both faithful to Islamic principles and responsive to the needs of contemporary society.

From here it seems *mashlahah* it must also be taken into account by the mujtahids in exploring and establishing new laws for laws that do not have valid certainty from the Qur'an, *sunnah*, and *ijma' sharih*.⁶ *Maslahah* This is what came to be known as the method *istishlah* or *mashlahah mursalah*, that is *mashlahah* that is aligned and in line with the goals *syara'*, but it is not supported by a special source of argument that is either rectifying or rejecting *Maslahah*. So the question is, to what extent will this *istislahiah* method be recognized? the truth? This is also still a contradiction among fiqh scholars. There are groups who refuse *istishlah* In determining the law, there are also groups who think that *istishlah* accepted and used as a method for establishing the law.

Thus, the purpose of this writing is that if mankind submits to and implements Allah's Shari'a properly and correctly in accordance with the instructions given by Allah and the Messenger of Allah, then happiness and safety in life in this world and in the hereafter will be achieved. Although the benefit of humans is the main purpose of the law *syara'* to earth. However, not all the benefits that exist in the midst of mankind are in line with sharia law, and not all the benefits that develop in society have an accurate legal basis. From this, it can give encouragement to mankind to produce rules, especially in religion *ushul fiqh* which currently has a new paradigm. From these rules, it is hoped that it can accommodate culture, especially in the advancement of knowledge, science, technology, and philosophy in order to review the role of the state which tends to dominate.

⁵ Al Yasa' Abubakar, *Istislahiah Method: Utilization of Science in Usul Fiqh*, cet. 1 (Jakarta: Kencana, 2016)

⁶ *Ijma sharih* or *lafzhi* is the agreement of the mujtahids both through opinions and actions on certain legal issues.

Research Methods

For this reason, one of the methods developed by scholars ushul fiqh in assembling the law from the text is *Maslahah mursalah*, which is a benefit for which there is no detailed text to support, reject, and neither consent' which supports. However, this benefit is supported by a number of texts through *istiqla'* (induction of a number of texts). The discussion in this paper will be focused on the description of the meaning and authority of the method reasoning term in Islamic law (*Usul Fiqh*), and reasoning *istislahiyah* and the use of science in the study of fiqh to Indonesia, with the approach used, is the method of content analysis.

This paper delves into the meaning and authority of *Istislahiyyah*, a reasoning method within Islamic law (*Usul Fiqh*). It further explores the application of *Istislahiyyah* and the integration of scientific advancements into fiqh studies within the Indonesian context. The chosen research method for this exploration is content analysis, allowing for a meticulous examination of relevant textual and scholarly materials.

By delving into these methodologies and their applications, this paper seeks to shed light on the dynamic interplay between Islamic legal principles, contemporary realities, and the ever-evolving landscape of knowledge.

Result and Discussion

Reconstruction and Authority of Istislahiyah Reasoning

One thing that distinguishes Islamic law from conventional law is that Islamic law is extracted and discovered from its source (*ustunbit min mashadiruhu*), not created. The mujtahids do not establish the law but find the law. The source of the law is the text or text. For this reason, the method of finding Islamic law or in fiqh proposals is called *tariqah istinbat al-ahkam* or *tariqah istidlal al-ahkam*.⁷ In mapping the method of extracting law from this text or text, each expert has a different classification.

Islamic law has always prided itself on its dynamic nature, capable of adapting to the ever-shifting sands of time. Unlike its purely textual counterparts, Islamic law thrives on discovering existing rulings within its rich source materials, rather than imposing new ones. This process, known as *istinbat al-ahkam*, stands as a testament to the law's ability to bridge the gap between timeless principles and contemporary realities.⁸

One such *istinbat* method garnering increased attention is *Istislahiyyah*, a reasoning approach that prioritizes public good and societal benefit. By harnessing the power of science and social realities, *Istislahiyyah* empowers jurists to navigate the complexities of modern life in accordance with core Islamic values.⁹

However, embracing *Istislahiyyah* isn't without its challenges. Concerns regarding subjectivity, potential for misuse, and adherence to textual sources continue to spark debate. This paper delves into the intriguing world of *Istislahiyyah*, its advantages and drawbacks, and its potential to shape the future of Islamic law in the modern world.¹⁰

The term *Istislahiyyah* is derived from the Arabic word *maslahah*, which means "benefit" or "public good." In the context of Islamic law, *Istislahiyyah* is a reasoning method that allows jurists to derive legal rulings based on the broader goals of sharia (*maslahah mursalah*). *Istislahiyyah* is a complex and nuanced method that requires a deep understanding of Islamic legal principles, as well as the social and scientific realities of the present day. In its application, jurists must carefully weigh the potential benefits of a

⁷ Al Yasa' Abubakar, *Istislahiah Method: Utilization of Science in Usul Fiqh*, cet. 1 (Jakarta: Kencana, 2016), p. 1.

⁸ Al Masud and Uddin, "SAYYID AHMED KHAN'S (1817 CE-1898 CE) MODERN APPROACH TOWARDS SOME PRINCIPLE CONCEPTS OF ISLAM."

⁹ Sugitanata, Karimullah, and Jamil, "Penalaran Istislah Dalam Pencatatan Perkawinan."

¹⁰ Al-Abyadh, Bustami, and Ikomatussuniah, "Religious Anthropology."

particular ruling against the potential harm, and ensure that the ruling is consistent with the core values of Islam.¹¹

Istislahiyyah offers a number of advantages as a reasoning method in Islamic law. First, it allows for flexibility and adaptability in legal rulings. This is important in a world that is constantly changing. Second, it prioritizes the public good over individual interests. This ensures that legal rulings are made in the best interests of society as a whole. Third, it can be used to address contemporary issues that do not have explicit guidance in traditional texts. *Istislahiyyah* also faces a number of challenges as a reasoning method in Islamic law. First, it can be subjective and open to interpretation. This raises concerns about the potential for misuse by jurists with personal agendas or biases. Second, it lacks clear guidelines and criteria for determining *maslahah*. This can lead to inconsistency and disagreement among scholars. Third, it can conflict with textual sources in some cases. Despite its challenges, *Istislahiyyah* has the potential to be a powerful tool for adapting Islamic law to the challenges of the modern world. By prioritizing public good and societal benefit, *Istislahiyyah* can help ensure that Islamic law remains relevant and applicable to the needs of contemporary society.¹²

There are a number of ways to address the challenges of *Istislahiyyah* as a reasoning method in Islamic law. First, it is important to develop clear guidelines and criteria for determining *maslahah*. This would help to ensure that *Istislahiyyah* is used in a consistent and responsible manner. Second, it is important to increase awareness and understanding of *Istislahiyyah* among jurists and practitioners. This would help to reduce the potential for misuse. Third, it is important to engage in open and transparent dialogue about the application of *Istislahiyyah*. This would help to build consensus and ensure that *Istislahiyyah* is used in a way that is consistent with the core values of Islam.¹³

Muhammad Abu Zahra divided into two methods: the literary method (*turuq al-lafdziyah*), and the *maknawiyah* method (*turuq ma'nawiyah*).¹⁴ Syamsul Anwar divides into three methods:¹⁵

- a) Bayani (linguistic)
- b) Ta'lili (divided into two more: *qiyasi* method and *istislahi* method), and
- c) Taufiqi (synchronization).

There are also those who share it with:

- a) Bayani method (linguistic);
- b) The ta'lili method (causation),
- c) *Istislahi* method (teleology).

Al Yasa' Abubakar divides the method of reasoning into three models or patterns, namely;

- a) *Lughawiyah* (language)
- b) *Ta'liliyah* (considering logical ratios), and
- c) *Istislahiyyah*

Istislahiyyah, the essence of which is an attempt to place the act that is being solved or the law sought for, in one of three types of categories, namely: *daruriyyat*, *hajiyyat*, and *tahsiniyyat*. According to Al Yasa', the use of the method must begin with *lughawiyah*, because if it does not give satisfaction or has not been able to solve the problem, it will

¹¹ Umar, "Maslahah' Ammah."

¹² Abubakar, Juliana, and Hasan, "The Right of a Child Outside the Legal Marriage of a Biological Father."

¹³ Hasan, Abubakar, and Juliana, "The Right of a Child Outside the Legal Marriage of a Biological Father."

¹⁴ Muhammad Abū Zahrah, *Uṣūl al-Fiqh* (Cairo: Dar al-fikr al-'Arabi, tth), p. 115.

¹⁵ Syamsul Anwar. *Muzakkirah fi Usul al-Fiqh II* (Yogyakarta: Faculty of Sharia and Law UIN Suka, 2012), p. 13.

continue with *ta'liliyah*, and after that, if it does not give satisfaction or has not been able to solve the problem, it will be refined again with *istishlahiyyah*.¹⁶

Nasrun Rusli divides the way to approach legal istinbat into three, namely the approach through linguistic rules, the approach through *maqāṣid al-sharī'ah*, and approach through *tarjih*.¹⁷ In essence, the division of the istinbat method has been carried out and introduced long before. By the two reformist scholars in the field of *ushul fiqh*, namely Muhammad Salam Madkur in his book *al-madkhal ila 'ilmuṣūl al-fiqh* (Cairo, 1967 AD) and Ma'ruf al-Dawalibi in his book *al-madkhal ila 'ilmuṣūl al-fiqh* (Beirut, 1965 AD). Both group the method of istinbat (*ijtihad*) into three parts, namely;

- 1) Bayaniah
- 2) Qiyasiyah
- 3) Istishlahiyah

Reasoning method *Istishlahiyyah* is a reasoning activity against the texts (al-Qur'an and Sunnah of the Prophet) which is based on considerations of benefit in an effort to find (formulate) the *syara'* law of a problem (*fiqh* and *siyasa syar'iyyah* rules).

Thus the method offered by Al Yasa 'Abu Bakr is essentially the same as what the two scholars have done. It's just, the method *bayaniah* replaced with the term *lughawiyah*, *qiyasiyah* replaced with the term *ta'liliyah*. The third method is still the same term. The explanation of the use of '*illat*' as a basis for istinbat (*ta'liliyah* reasoning) has been discussed at length by Muhammad Mushtafa Syalabi in his book *ta'lil al-ahkam'ardh wa tahlil litariqati al-ta'lil wa tatawwaratiha fi 'usur al-ijtihad wa al-taqlid*.¹⁸

According to Al Yasa 'Abu Bakr, most of the *fiqh* books do not explain standard and systematic steps for the use of *fiqh mashalih mursalah* (*istishlahiyyah*), both as a proposition and a method of reasoning. These books usually explain that reasoning *istishlahiyyah* will be used together with reasoning *lughawiyah* or *ta'liliyyah*. *Maslahah mursalah* (*istishlahiyyah*) is considered to have been used if the determination of the law or the making of a definition of an act is carried out based on considerations of benefit or *munasabah* (relevance) contained there in.¹⁹

In reasoning *ta'liliyah*, *istishlahiyyah* considered to have been used as part of this reasoning. If the search and determination of '*illat*' are carried out by considering the benefits mentioned in the texts, or it is sought and concluded through consideration of *munasabah*.²⁰

The steps taken in reasoning *istishlahiyyah* according to Duski there are eight steps, while Al Yasa' Abu Bakr offers seven steps. According to the author, the steps offered to both have the same substance with some differences. Among the fundamental differences is that Al Yasa 'Abu Bakr incorporates the achievements of modern science and technology.²¹

In another sense, the method *istishlahiyyah* is a form of reasoning that relies on considerations of the benefit of the objectives of the sharia. One of the methodologies to find out the nature of something is through a reasoning approach. Reasoning is a thought

¹⁶ Al Yasa 'AbuBakar, *Istishlahiah Method; Utilization of Science in Uṣūl Fiqh*, (Banda Aceh: PPs IAIN Ar-Raniry & Bandar Publishing, 2012), p. 339.

¹⁷ Nasrun Rusli, *The Concept of Ijtihad Al-Syaukani; Its Relevance for Renewal of Islamic Law in Indonesia*, (Jakarta: Logos, 1999), p. 37-44.

¹⁸ This book was originally a treatise (research) which he submitted to the *masyikhah al-Azhar* (a group of senior al-Azhar scholars) in 1363 H/1944 AD to achieve the *syahadah al-'alamiyyah* from the degree of professor in Islamic jurisprudence and *uṣūl fiqh*, in Faculty of Sharia, Al-Azhar University Egypt, and he managed to get the highest marks in the history of specialists in the Faculty of Sharia. See: Muhammad Mushtafa Syalab, *ta'lil alahkam*, cet. 2, (Beirut: Dar al-Nahdah al-'Arabi, 1981), p. 1.

¹⁹ Al Yasa' Abu Bakr, *Istishlahiah Method; Utilization of Science in Uṣūl Fiqh*, (Jakarta: Kencana, 2016), p 63.

²⁰ Al Yasa' Abu Bakr, *Istishlahiah Method; Utilization of Science in Uṣūl Fiqh*, (Jakarta: Kencana, 2016), p 63

²¹ These steps in more detail can be referred to: Duski Ibrahim, *Methods of Establishing Islamic Law; Unpacking the Concept of al-Istiqra' al-Ma'nawi ash-Syathibi*, (Yogyakarta: Ar-Ruzz Media, 2008), p. 189, & Al Yasa' Abu Bakr, *Istishlahiah Method ...*, p. 72-75.

process that starts from sensory observation or can be called empirical observation that produces a number of concepts and understandings.

Based on similar observations, similar propositions will also be formed, based on a number of propositions that are known or considered true, people conclude a new proposition that was previously unknown. This process is called reasoning. Philosophy through one of its branches provides a way out with the term logic which is also widely known in the Islamic world as *mantiq*, which also has a branch of coherent thinking tools known as syllogisms.

As for the reasoning method, *Istislahiyah* is a reasoning activity based on the texts (texts of the Qur'an and the Sunnah of the Prophet) which is based on considerations of benefit in an effort to find (formulate) the *syara'* law of a problem (fiqh rules and *syar'iyah siyayah*) and formulate or make an understanding. of legal action.²²

Istislahiyah Reasoning and Utilization of Science in Indonesian Fiqh Studies

One thing that distinguishes Islamic law from Western law is that Western law explores law from the behavior of the community, while Islamic law in addition to considering people's behavior, also explores law from texts as a frame of reference. This method has a weakness when faced with new problems, which in the text have not been or are not regulated at all. Like the famous adage of Islamic jurists which states that legal texts are limited, while legal cases are unlimited (*annuṣuṣ mutanahiyah wa al-waqā'i ghairu mutanahiyah*).

The method is a necessity in reaching out put law that has universal values that are revealed in *rahmatan li al-alamin*. As one of the important elements in a scientific product after data output, the method should not be ruled out in the discussion. Because the wrong method will result in in output wrong. Legal products that have been supposed to calm the public are often unsettling and cause endless pros and cons.

Reasoning *istislahi* refers to the study *maqasid al-Shari'ah* (objectives of the Shari'ah) which are divided into two, namely: *maqasid al-Shari* and *maqasid al-mukallaf*. *Maqasid al-Syar'i* the main thing is the realization of maslahah. Whereas *maqasid mukallaf* is what is in his interest and it is legal as long as it is in accordance with *maqasid al-Syar'i* and do not cause harm to others.²³

So far, Islamic law has been enforced by certain methods without going through sufficient rationality of approach. Therefore, it is not uncommon to produce laws that are not grounded, strange, irrelevant, not living laws, and so on. A reference that representative is absolutely necessary especially in Indonesian, in addition to foreign languages to make it easier for students to explore the study as an intro to entering studies in foreign languages.

According to Khaled Masud the terms *maslahah* and *maqasid al-syari'ah* as the terms used by al-Syatibi in al Muwafaqat alternately, while *istislahi* is synonymous with *maslahah*. *Istislahi* can be expressed in two forms, namely: *qasd al-Shari'a'* and *qasd al-mukallaf*.

The method that has been often discussed is good and the discourse that is getting hotter is discussed. So far, there are three methods of fiqh that have emerged: *bayani*, *burhani* and *irfani*. While on the other hand, *Usuli* introduces three methods: *bayani*, *ta'lili*, and *istislahi*.

Approach *bayani* with more emphasis on the semantic level. This first approach often plays around worship *mahdhah*. However, this approach is no longer adequate when it comes to social and global problems. To continue this side of analysis, some use *ta'lili* and *istislahi* and some are wearing *burhani* and *'irfani*.

²² Al Yasa Abubakar, *Istislahiah Method*, (Banda Aceh: Bandar Publishing, 2012), p. 33.

²³ Alias, "A Review of Maslahah Mursalah and Maqasid Shariah as Methods of Determining Islamic Legal Ruling."

Ta'lili is an approach that emphasizes the role of *'illat* (ratio legis) in determining a law. *Nash* in this approach will give *atsar* law during *'illat* still working in the legal context that is being *ijtihadi*. When *'illat* is not found, then it is considered that there is nothing to be *ta'thir al-law*.

Thus, the law is very flexible and changes when the legislative ratio changes. This approach shows how flexible Islamic law is in responding to contemporary problems. This of course remembers *al-nusus vomitiyyah wa wal waqa'i la tatanaha* (*nash* is limited while events always occur). When events cannot be referenced directly to *nas* explicitly, suggest using method *istislahi*.

This method at the operational level refers to the universal values contained in a number of verses so that a common thread can be established that is raised in establishing law. In other words, reasoning to establish laws *syar'i* for an action based on the benefit by using verses of the Koran or Hadith containing general concepts that make the arguments as a basis. In other words, activities that seek to establish the law of a problem on the basis of considerations of benefit because there are no specific verses of the Koran and Hadith that can be used.

Yusuf Al-Qaradawi as quoted by Mutiara Fahmi and Fitiya Fahmi stated that in determining the law whether or not the use of DNA testing was carried out for determining the lineage of *mula'annah* children tended to use the method. *istislahiyah*, which is a method of finding law by relying on the general arguments of the Qur'an and Hadith, as well as looking at the benefits side of the case for which the law is sought. In another sense, the *istislahiyah* method is a form of reasoning that relies on considerations of the benefit of the purpose of the sharia. This method is used because DNA testing is a new problem, and there is no detailed study in the Qur'an or hadith.²⁴

The phenomenon that has occurred at this time is the number of couples who hold marriages under their hands, both those carried out religiously in the sense that they have fulfilled the requirements and pillars or who have not fulfilled the pillars without the knowledge of the authorized Marriage Registrar (PPN) and registered at the Office of Religious Affairs (KUA) for various reasons, including economic, religious, bureaucratic, traditional and casuistic factors.²⁵

Such marriages can be categorized as unregistered marriages, namely marriages carried out in secret and outside the provisions of the Islamic law version of the KHI and Law no. 1 of 1974 and its implementing regulations, so it cannot be proven by an authentic certificate or marriage certificate. In the community's view, *siri* marriage is a marriage carried out by following the conditions and pillars as prescribed by Islam, but without the knowledge of the VAT in the area and place where the marriage event took place.²⁶

This means that *sirri* marriages are considered legally valid but have not been registered. The many practices of unregistered marriages cause a stigma in society that there is a dualism in the validity of marriages, namely religiously valid and state administrative.²⁷ On the other hand, as stated by the Minister of Social Affairs, Khofifah Indar Parawansa, unregistered marriage is the biggest contributor to the high number of domestic violence cases and other cases, where women and children are victims.

²⁴ Mutiara Fahmi and Fitiya Fahmi, "Determining the Nasab of Mula'annah Children Through DNA Testing (Study on the Istislahi Method)", Samarah: Journal of Family Law and Islamic Law, Vol. 3, No. 1, (2019), p. 172

²⁵ A. Ghofur Anshori, "Underhand Marriage Practices and Opportunities Legalization in the Special Region of Yogyakarta", research, (Yogyakarta: Faculty of Law UGM with MORA, 2003), p. 78.

²⁶ Fakhria, "Menyoal Legalitas Nikah Sirri."

²⁷ Sobari, "Nikah Siri Dalam Perspektif Islam."

In this case, women and children are the most disadvantaged because they do not get administrative protection from the government.²⁸ Based on this reality, it is important to review the *sirri* marriage from a legal perspective Islam by using one method of reasoning, namely the method of *Istislahiyyah*. The reasoning method *Istislahiyyah* is a reasoning activity against the texts (al-Qur'an and Sunnah of the Prophet) which is based on considerations of benefit in an effort to find (formulate) the *syara'* law of a problem (*fiqh* and *siyasa syar'iyah* rules). *Sirri* marriage which is faced with the progress of the times and the social development of today's society, method *Istislahiyyah* expected to be able to answer all legal problems of marriage that are logical and can be applied in accordance with the development of time and circumstances.

In analyzing the problem of unregistered marriage with the method *Istislahiyyah*, it is necessary to describe the texts relating to elements that indicate the legality of marriage.²⁹ Nash cannot directly mention how the practice of unregistered marriage or the prohibition of *sirri* marriage. The rules found are about how to carry out legal marriages according to legal rules and contain orders to announce marriages.

Thus, examples of the use of the results of science, technology, etc., in the search and preparation of *fiqh* in a world that has been influenced or even changed by science, technology, and so on. In fact, there are still many other problems that can be presented as examples of the changes that have occurred at this time that must be carried out to keep *fiqh* in line with the needs of society which has been influenced by advances in science and technology.³⁰

Use of reasoning *Istislahiyyah* independently, there are many in books *Usul Fiqh* that can be done or deemed to have met the requirements, if a legal action is found to have a problem, which then becomes a problem serve as the basis for the legal stipulation. In other words, if a legal action cannot be returned to a specific text, it is also through a search or determination '*illat* Whereas in legal actions there are benefits that can be returned to general texts, then determining the law based on the benefits it contains is called reasoning. *Istislahiyyah*.

Reconstruction and Authority of Istislahiyyah Reasoning: Advantages and Disadvantages

Istislahiyyah, a reasoning method in Islamic law, has generated considerable debate due to its potential to adapt legal rulings to modern contexts. Examining its advantages and disadvantages within the framework of "reconstruction and authority" sheds light on its complex role in contemporary Islamic legal discourse.

Advantages:

1. **Flexibility and Adaptability:** Unlike the rigidity of some textual approaches, *Istislahiyyah* allows for dynamic legal interpretations by considering societal shifts and broader objectives of sharia (*maslahah*). This flexibility proves crucial in navigating an ever-evolving world where new challenges and contexts emerge. For instance, rulings on medical advancements or environmental issues can benefit from *Istislahiyyah*'s ability to integrate scientific understanding and contemporary needs.
2. **Focus on Public Good: *Maslahah*,** the cornerstone of *Istislahiyyah*, prioritizes the collective well-being over individual obligations. This emphasis on public good ensures that legal rulings safeguard the overall welfare of the community, leading to socially just and equitable outcomes. In situations like

²⁸look at <http://news.okezone.com/read/2015/12/07/337/1262448/mensosmarriage-siri-donor-biggest-domestic-cases> (accessed December 13, 2015).

²⁹ Abubakar, Juliana, and Hasan, "The Right of a Child Outside the Legal Marriage of a Biological Father."

³⁰ Al Yasa Abubakar, *Istislahiah Method*, (Banda Aceh: Bandar Publishing, 2012), p. 376.

- poverty or unemployment, *Istislahiyyah* can guide jurists towards rulings that promote economic fairness and social support.
3. Reconciling Text and Context: *Istislahiyyah* acts as a bridge between the timeless principles of scripture and the realities of specific contexts. By considering both the letter and the spirit of the law, it allows for context-sensitive interpretations that remain faithful to the essence of Islamic legal traditions. This reconciliation is particularly valuable in addressing issues like gender equality or human rights, where literal interpretations might clash with contemporary understandings.
 4. Scientific Advancements: *Istislahiyyah*'s framework incorporates scientific advancements and social realities into the legal decision-making process. This ensures that rulings are informed by current knowledge and understanding, preventing stagnation and promoting responsiveness to new developments. For instance, rulings on bioethics or artificial intelligence can benefit from considering scientific insights alongside Islamic principles.
 5. Addressing Contemporary Issues: Unlike textual approaches that struggle with novel issues, *Istislahiyyah* offers a framework for tackling contemporary problems lacking explicit guidance in traditional texts. The case of unregistered marriage in Indonesia, where jurists used *Istislahiyyah* to provide legal solutions for marginalized communities, exemplifies this advantage. This applicability to present-day concerns keeps Islamic law relevant and responsive to real-world needs.

Disadvantages:

1. Subjectivity and Potential for Abuse: The open-ended nature of "maslahah" can lead to subjective interpretations and potential for misuse by jurists with personal agendas or biases. This raises concerns about deviations from core Islamic principles, as interpretations of public good can vary significantly. Robust safeguards and rigorous scholarly discourse are crucial to prevent such misinterpretations and ensure fidelity to sharia's core values.
2. Lack of Clear Guidelines: Compared to other methodologies like qiyas, *Istislahiyyah* lacks standardized procedures and well-defined criteria for determining maslahah. This ambiguity can lead to inconsistencies and disagreements among scholars regarding the application of the method. To address this, developing clearer guidelines and frameworks for applying *Istislahiyyah* in a consistent and reliable manner is crucial.
3. Conflict with Textual Sources: In certain cases, prioritizing maslahah through *Istislahiyyah* might lead to rulings seemingly contradicting existing textual sources like the Quran and Sunnah. This can raise concerns about undermining the authority of traditional Islamic jurisprudence. Navigating such situations requires profound knowledge of scripture and legal traditions, alongside careful consideration of context and public good to ensure rulings remain grounded in Islamic principles while addressing contemporary challenges.
4. Limited Awareness and Understanding: Many scholars and practitioners lack in-depth knowledge of *Istislahiyyah*'s nuances. This limited awareness hinders its widespread application and effectiveness in addressing contemporary issues. Increased education, training, and scholarly discourse on *Istislahiyyah* are essential to overcome this hurdle and unlock its full potential.
5. Political Influence: The subjectivity inherent in *Istislahiyyah* makes it vulnerable to manipulation by political or ideological forces. This can lead to legal rulings serving specific agendas rather than the true goals of sharia.

Ensuring transparency, accountability, and robust academic critique of rulings derived from *Istislahiyyah* is crucial to safeguard its integrity and prevent its misuse for political ends.

Istislahiyyah's reconstruction and application within the contemporary Islamic legal landscape demands a nuanced understanding of its advantages and disadvantages. While its flexibility and ability to address relevant issues prove valuable, concerns about subjectivity and potential for misuse necessitate careful consideration and responsible application. Through rigorous scholarly discourse, development of clear guidelines, and increased awareness, *Istislahiyyah* can serve as a powerful tool for adapting Islamic law to the challenges of a modern world, ensuring its continued relevance and upholding its core values of justice, equity, and public good.

Conclusion

Istislahiyyah is a valuable tool for adapting Islamic law to the needs of contemporary society. It offers a number of advantages, including flexibility, focus on public good, and ability to address contemporary issues. However, the method also has a number of drawbacks, including subjectivity, lack of clear guidelines, and potential conflict with textual sources. The potential for subjectivity in *Istislahiyyah* is perhaps the most serious concern. The term "public good" is open to interpretation, and there is no single agreed-upon definition. This can lead to different jurists reaching different conclusions about what constitutes the public good, and it can also lead to the misuse of *Istislahiyyah* to justify rulings that are based on personal agendas or biases.

Another concern is the lack of clear guidelines and standardized procedures for applying *Istislahiyyah*. This can lead to inconsistency and disagreement among jurists, and it can also make it difficult to ensure that *Istislahiyyah* is used in a responsible and effective manner. Finally, the potential for conflict with textual sources is also a concern. *Istislahiyyah* is based on the principle that the public good is a higher priority than textual sources. However, some jurists argue that this principle can lead to rulings that contradict the clear meaning of the Qur'an or Sunnah. To address these concerns, it is important to develop clear guidelines and standardized procedures for applying *Istislahiyyah*. These guidelines should be based on a careful consideration of the principles of Islamic law, and they should be designed to ensure that *Istislahiyyah* is used in a responsible and effective manner. In addition, it is important to build consensus among jurists from different perspectives. This can help to ensure that *Istislahiyyah* is used in a way that is consistent with the broader goals of Islamic law. With careful planning and implementation, *Istislahiyyah* can be a valuable tool for adapting Islamic law to the needs of contemporary society. However, it is important to address the potential drawbacks of the method to ensure that it is used in a responsible and effective manner. The potential of *Istislahiyyah* to address contemporary issues is significant. However, it is important to use the method in a responsible and effective manner. By addressing the potential drawbacks of *Istislahiyyah*, jurists can ensure that it is used to promote the goals of Islamic law and to benefit society as a whole.

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