

THE APPLICATION OF *MAŞLAĤAH* IN THE
FORMULATION OF FATWA IN MALAYSIA

BY

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degree of Doctor of Philosophy in Law

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

The image features a highly stylized and decorative calligraphic composition. The central text is the Basmala, "Bismillah" (In the name of Allah, the Most Gracious, the Most Merciful), written in a bold, black, cursive script. The letters are thick and interconnected, with some characters like 'Lam' and 'Ra' being particularly large and prominent. The text is surrounded by various decorative elements: a large, sweeping 'L' shape on the left, a large '3' shape on the right, and several small, solid black squares and dots scattered throughout the composition. The overall style is modern and artistic, typical of contemporary Islamic calligraphy.

ABSTRACT

Islam, as a religion of truth, instantiates the code of life as designed by its Creator. It is characterised as flexible to facilitate the rapid changes and development of time and places. Additionally, this distinctive feature is vital not only to demonstrate Islam's suitability and superiority but also to support the progression of the legal structures to bring the benefit for the ummah. In this regard, fatwa is one of the legal tools in providing a solution to new circumstances. This study deals with fatwa as the mechanism for the elucidation of rulings. Generally, the formulation of fatwa is closely related to the principle of *maṣlaḥah* as the end result of the ruling. In this instance, Islamic law under Muslim juristic purview has laid down certain parameters of fatwa and *maṣlaḥah* before a new ruling is established. This study aims to investigate the fatwa derivation in Malaysia with regard to whether the application of *maṣlaḥah* conform with a proper guideline due to the minimal evidence provided that renders the fatwa as ambiguous. The examination extends to the concept and application of *maṣlaḥah* in Islamic jurisprudence to see whether the derivation of fatwa in Malaysia conforms to certain uniformed parameters as outlined under Islamic law or not. The study also analysed selected fatwas issued by the MKI's Muzakarah Committee and by several States in Malaysia to examine whether they are based upon certain standards and procedures as well as to determine the extent of the application of *maṣlaḥah* in the formulation of fatwa. The research adopts qualitative research involving doctrinal and conceptual analysis where the doctrine and concept of fatwa and *maṣlaḥah* are examined and appraised. The findings of the research reveal that the ambiguity in the fatwa was due to the inadequacy of the provision of *ṣīghah* of fatwa in the State Enactments. Furthermore, the fatwa also lacks the details with regard to the justification and ratiocination of the ruling in the *ṣīghah*. It is suggested that the provision with regard to the *ṣīghah* of fatwa should be provided in the State Enactments which includes the explanation and evidence should the necessity arises since a comprehensive explanation, basis and reasoning contribute to a better understanding of the ruling. Furthermore, the parameters of fatwa and *maṣlaḥah* should be strictly adhered to, and the application of *maṣlaḥah* in the formulation of fatwa should be coordinated and uniformed in all Sates in Malaysia, specifically the matters related to national interest. It is hoped that the results and findings of this research will be useful for reference and future research particularly in relation to the execution of fatwa based on national interest.

خلاصة البحث

إن الإسلام، باعتباره دين الحق، يشكل رمز الحياة كما رسمها خالقه، يتميز بالمرونة لتسهيل التغيرات السريعة وتطور الزمان والأماكن، بالإضافة إلى ذلك، تعتبر هذه الميزة حيوية ليس لإثبات ملاءمة الإسلام وتفوقه فحسب بل لدعم تقدم الهياكل القانونية لجلب مصلحة الأمة، وفي هذا الصدد، تعتبر الفتوى من الأدوات القانونية في إيجاد حل لظروف جديدة. وتتناول هذه الدراسة الفتوى كآلية لتوضيح الأحكام، فإن صياغة الفتوى ترتبط ارتباطاً وثيقاً بمبدأ النتيجة النهائية للحكم بشكل عام، في هذه الحالة، وقد حددت الشريعة الإسلامية في إطار الاختصاص القانوني الإسلامي معايير معينة للفتاوى والملاحظات قبل صدور حكم جديد. وتهدف هذه الدراسة إلى التحقق من استنباط الفتوى في ماليزيا فيما يتعلق بما إذا كان تطبيق المصلحة يتوافق مع التوجيه المناسب بسبب الحد الأدنى من الأدلة المقدمة التي تجعل الفتوى غامضة، وتمتد هذه الدراسة إلى مفهوم المصلحة وتطبيقها في الفقه الإسلامي لمعرفة ما إذا كانت طريقة استنباط الفتوى في ماليزيا تتوافق مع بعض المعايير النظامية على النحو المحدد في إطار الشريعة الإسلامية أم لا. كما حللت الدراسة فتاوى مختارة صادرة عن لجنة مذاكرة أم كي أي (Muzakarah MKI) والعديد من الولايات في ماليزيا لبحث ما إذا كانت تستند إلى معايير وإجراءات معينة وكذلك لتحديد مدى تطبيق المذهب في صياغة الفتوى. ويعتمد البحث على البحث النوعي الذي يشمل المنهج التحليلي المكتبي القانوني والنظري حيث تتم دراسة وتقييم مبادئ ومفاهيم الفتوى والمصلحة. وأوضحت نتائج البحث أن سبب الغموض في الفتوى يرجع إلى عدم كفاية توفير الفتوى في تشريعات الدولة، علاوة على ذلك، تفتقر الفتوى أيضاً إلى التفاصيل فيما يتعلق بتبرير وصدور الحكم من الصيغة. ويقترح البحث توفير نصوص الفتوى في تشريعات الدولة التي تتضمن التوضيح والأدلة إذا دعت الضرورة لأن التوضيح الشامل والأساس والتعليل يسهم في تحسين فهم الأحكام. وعلاوة على ذلك، يجب الالتزام بدقة بمعايير الفتوى والمصلحة، كما يجب تنسيق وتطبيق المصلحة في صياغة الفتوى في جميع الولايات في ماليزيا، وخاصة في المسائل المتعلقة بالمصلحة الوطنية. ومن المؤمل أن تكون نتائج هذا البحث مفيدة للمراجع والبحوث المستقبلية خاصة فيما يتعلق بتنفيذ الفتوى على أساس المصلحة الوطنية.

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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بِسْمِ اللَّهِ وَالْحَمْدُ لِلَّهِ وَالصَّلَاةُ وَالسَّلَامُ عَلَى رَسُولِ اللَّهِ وَعَلَى آلِهِ وَصَحْبِهِ وَمَنْ وَالَاه

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May Allah bless us all.

LIST OF ABBREVIATIONS

AILFTA	Administration of Islamic Law (Federal Territories) Act 1993
BAHEIS	Bahagian Hal Ehwal Islam
ESQ	Emotional Spiritual Quotient
JAKIM	Jabatan Kemajuan Islam Malaysia
MAIS	Majlis Agama Islam Selangor
MKI	Majlis Kebangsaan Hal Ehwal Agama Islam Malaysia
MKI Muzakarah	Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan bagi Hal Ehwal Agama Islam Malaysia
MMC	MKI's Muzakarah Committee
MMKN	Majlis Mesyuarat Kerajaan Negeri
PBUH	Peace Be Upon Him
TYT	Tuan Yang Terutama
YDPA	Yang di-Pertuan Agong

TRANSLITERATIONS

ء	'
ب	b
ت	t
ث	th
ج	j
ح	ḥ
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	ṣ

ض	ḍ
ط	ṭ
ظ	ẓ
ع	'
غ	gh
ف	f
ق	q
ك	k
ل	l
م	m
ن	n
ه	h
و	w
ي	y

Short Vowels	
َ	a
ِ	i
ُ	u

Long Vowels	
ا + َ	ā
ي + ِ	ī
و + ُ	ū

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Sharie Prosecutor v. Fahyu Hanim et al [2000] 8(1) JH 137
Victoria Jayaseele Martin v Majlis Agama Islam Wilayah Persekutuan & Anor [2011] 9 MLJ 194
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LIST OF STATUTES

Administration of Islamic Law (Federal Territories) Act 1993
Administration of Islamic Religious Affairs (Terengganu) Enactment 2001.
Administration of The Religion of Islam (State of Selangor) Enactment 2003
Evidence Act 1950
Syariah Criminal Act (Federal Territories) Act 1997
Syariah Criminal Offences (Selangor) Enactment 1995

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF STUDY

One of the outstanding features of Islamic law is the ability to respond to changes and development without altering its structure and nature. This is due to the constant, flexible, and tolerant qualities of its theories and principles. Additionally, the process of the ruling's derivation requires the consideration of certain criteria, namely the adherence to necessity (*darūrah*) or needs (*hajāt*); the adherence to *maṣlahah* (benefit) principle; the adherence to the custom and habits, etc.¹ Neglecting one or more of these will turn the society from the ruling, where they will purposely or mistakenly get caught in unlawful deeds or *munkar*. These criteria are particularly imperative for Malaysia, where multiple ethnicities and cultures create diversity in social conditions.

Generally, the fatwa institutions in Malaysia are under the jurisdiction of the States' Islamic Religious Council. Accordingly, there are fourteen (14) Muftis representing 13 states and one federal territory of Malaysia, where the diverse opinion with regard to a similar issue is inevitable. This has raised the need and necessity for a body at the national level to streamline the development and advancement of Islamic Religious Affairs. As a result, the National Council of Islamic Religious Affairs or *Majlis Kebangsaan Hal Ehwal Agama Islam Malaysia (MKI)* has been established at the behest of the Conference of Rulers on July 1st, 1969.² Under this establishment, the Conference of National Fatwa Council for Islamic Religious Affairs (*Muzakarah*

¹ Wahbah al-Zuhaylī, *Subul Al-Istifādah min al-Nawāzil wa al-Fatāwā wa al-'Amal al-Fiqhī fī al-Tatbiqāt al-Mu'ṣsirah*, (Dimashq: Dār al-Maktabī, 2001), 31, 44, 48.

² Farid Sufian Shuaib, "Strengthening Administrative Institutions of Islamic Law in Malaysia: An Overview", *Jurnal Syariah*, vol. 16, (2008): 443-464.

Jawatankuasa Fatwa Majlis Kebangsaan bagi Hal Ehwal Agama Islam Malaysia) is responsible for issuing fatwa at the national level as an attempt to streamline the fatwa at the national level.

The necessity of this institution is particularly significant throughout the emergence of the unprecedented contemporary legal issue at the national level that needs to be dealt with effectively. This is because the fatwa must adhere to the principle of *maṣlaḥah* that covers the public interest and does not confine to certain individuals or parties. Therefore, a study pertaining to the fatwa issued by this council is significant to provide a better understanding for the people regarding the principles underlying these fatwas. Moreover, the fatwa that is issued based on the framework of fatwa derivation will assure the most accurate ruling by way of *ijtihād*. Thus, the concept of *maṣlaḥah* will be investigated, specifically whether its parameters are being adhered to with regard to its application in the formulation of fatwa.

1.2 SUMMARY OF THE RESEARCH

This study will analyse the *maṣlaḥah* as the end result of the ruling in the fatwa issued by the National Fatwa Council and by the State Fatwa Council. The study begins by discussing the theoretical view of fatwa under Islamic law, where the conditions, the scope and purview of fatwa, its parameters, and role in contemporary Muslim society will be studied. This is followed by the discussion on the administration of fatwa institution in Malaysia. At the heart of this study, the principle of *maṣlaḥah* in Islamic jurisprudence will be examined. As *maṣlaḥah* is the result of the ruling, the discussion will include the determination of an appropriate attribute (*waṣf*) as the basis for ratiocination of the ruling (*ta'wīl*), as well as the parameters of *maṣlaḥah* that must be adhered to in order to achieve the *maṣlaḥah*. This will be followed by an analytical

review of selected fatwa issued by the National and State Fatwa Council with regard to the application of the above-mentioned principle. Finally, this study will provide suggestions and recommendations for the improvement of fatwa institution in Malaysia.

1.3 STATEMENT OF PROBLEM

The requirement for a ruling to meet certain parameters and procedures at its initiation is a prevalent practice to ensure that it is based on proper reasoning and ratiocination. Subsequently, the guideline for the application of *maṣlaḥah* in the formulation of fatwa is essential for the *maṣlaḥah* to be produced upon issuance. Consequently, the guidelines for fatwa derivation by the MKI's Muzakarah Committee (MMC) provides a comprehensive solution with regard to the parameters of fatwa issuance. However, the issuance of fatwa in Malaysia nowadays does not seem to demonstrate a proper parameter and guidelines that are based upon whenever a fatwa is issued and published in the gazette. Irrefutably, a proper explanation and reasoning is necessary when *maṣlaḥah* is not applied in the application of fatwa. Nevertheless, it is no exaggeration to say that the fatwa issued in Malaysia seems to be published without ratiocination and reasoning.

Therefore, this study is undertaken based on the premise that the formulation of fatwa seems not to be based on proper parameters and guidelines when applying the *maṣlaḥah*. At the same time, there is insufficient evidence on all the fatwa. As a result, this leads to ambiguity and inadequacy of fatwa in Malaysia.

1.4 OBJECTIVES OF THE STUDY

The study aimed to achieve the following objectives:

- a. To investigate the conceptual framework for *maṣlaḥah*.

- b. To examine the theoretical framework for fatwa derivation.
- c. To analyse selected fatwa based on *maṣlahah* in Malaysia i.e., whether they are based upon certain standard procedures or parameters as defined in Malaysia and Islamic Law.
- d. To provide suggestions and recommendations to improve fatwa institution in Malaysia to improve the administration of fatwa and its institution.

1.5 SIGNIFICANCE OF THE STUDY

This study advances our understanding with regard the methodology on the formulation of fatwa. It will provide the guidelines and parameters for the fatwa committee to be referred to for the issuance of fatwa. It will also be a significant reference for the fatwa committee, researcher, academician, *Shari'ah* court judges, and legal practitioners.

1.6 HYPOTHESIS

The research is based on the hypothesis that the greater number of fatwas in Malaysia has no reasoning included in its publication. If the evidence is an integral part of the fatwa, it will bring *maṣlahah* to the public as the explanation is unambiguous and apprehensible.

1.7 LITERATURE REVIEW

Recognising the vital role of fatwa in Islamic law, the subject related to fatwa has been studied and analysed frequently, particularly in its substantive relation to the context in which the fatwa has been constituted.

As this study concentrates on the application of *maṣlahah*, the discussion of this theory amongst the *Usulis* has embarked upon its affiliation with the objective of the

Sharī‘ah (maqāṣid al-sharī‘ah). It was invoked in detail by the famous classical jurist ‘Izz al-Dīn ibn ‘Abd al-Salām (d. 660H) in his book entitled ‘Rules of Derivation of Laws for Reforming the People’ (*Qawā‘id al-Aḥkām fī Iṣlāḥ al-Anām*). He wrote the book purposely to illustrate the benefit (*maṣālih*) of worship, transactions; to explain the permissible things, and to illustrate the prevalence of *maṣlaḥah* and the precedence of prevention of *mafsadah*. He confined his discussion within the acquisition of *maṣlaḥah* and the repulsion of harm (*mafsadah*) simultaneously; the concept and the relation of both principles; as well as its classifications. The author has based his book upon illustrating the legal maxims related to *maṣlaḥah* and *mafsadah*. From these various examples, he devises general rules as a regulation that governs those examples. For example, he set up a section with regard to the *maṣlaḥah* that does not entail any *mafsadah*.³

A number of contemporary scholars have adopted various approaches. Some authors work directly in discussing the concept of *maṣlaḥah*. The work, such as *Ḍawābiṭ al-Maṣlaḥah fī al-Sharī‘ah al-Islāmiyyah* by Dr. Muḥammad Sa‘īd Ramaḍān al-Būṭī; *al-Maṣlaḥah fī al-Tashrī‘ al-Islāmī* by Muṣṭafā Zayd, and *Nazariyyah al-Maṣlaḥah fī al-Fiqh al-Islāmī* by Dr. Ḥusayn Ḥāmid Ḥassān, attempt to view the status of *maṣlaḥah* as a basis for a new ruling.

Al-Būṭī’s work takes the view of *maṣlaḥah* in the most restrictive way. According to him, only the *maṣlaḥah* that has the support of legal proof such as analogy (*Qiyās*) is eligible to be a basis in legal reasoning. This has been emphasized by al-Būṭī’s purpose of work is setting down the rules for the utilization of *maṣlaḥah* in legal

³ ‘Izz al-Dīn ‘Abd al-‘Azīz ibn ‘Abd al-Salām, *Rules of the Derivation of Laws for Reforming the People*, translated from Arabic by Muḥammad Anas Al-Muhsin *et al* (Kuala Lumpur: IBFIM, 2010).

reasoning.⁴ Ḥassān's work, on the other hand, is the most thorough investigation of *maṣlaḥah* that can be found in classical legal theory's (*Uṣūl al-Fiqh*) works. He concludes that all the *Usulis* agree that as long as *maṣlaḥah* is generally supported by the *Sharī'ah* evidence, it is eligible as a basis for new rulings. Even though his analysis concentrates on the Malikis and the Shafiis Schools of law, the other two are analysed as well. He found out that all the four major Schools of thought are in agreement with regard to *maṣlaḥah*.⁵

Contrary to the two previous works, Zayd expounds a different view. In his work, he takes the position that even the *maṣlaḥah* has not been supported by any *Sharī'ah* evidence, it is nonetheless eligible as a basis for new rulings. His inference is based on some of the Companion's legal opinions and other classical jurists particularly Imām Mālik.⁶

Other contemporary works on this subject deal directly with *al-Maṣlaḥah al-Mursalah* in various approaches. The works, such as *al-Maṣālih al-Mursalah wa Makānatuhā fī al-Tashrī'* by Prof. Dr. Jalāluddīn 'Abdul-Rahmān Jalāl, and *al-Maṣlaḥah al-Mursalah Ḥaqīqatuha wa Ḍawābiṭuhā* by Dr. Nuruddīn al-Khādimī, offer a generic discussion of the subject, comprising the concept, the classification, and the conditions as well as its legal status. These works are general manuals and therefore, it does not delve into details with regard to the aspects covered.

Jalāl's (1983) work demonstrates a practical view for the utilization of *maṣlaḥah* as a basis of new ruling as *maṣlaḥah* is affiliated with the objective of *Sharī'ah*. He concluded that the *mujtahid* is unable to turn a blind eye on this principle due to the

⁴ Muḥammad Sa'īd Ramaḍān al-Būtī, *Ḍawābiṭ al-Maṣlaḥah fī al-Sharī'ah al-Islāmiyyah*, (Bayrūt: Mu'assasah al-Risālah, n.d.).

⁵ Ḥusayn Ḥāmid Ḥassān, *Naẓariyyah al-Maṣlaḥah fī al-Fiqh al-Islāmī*, (Al-Qāhirah: Maktabah al-Mutanabbī, 1981).

⁶ Muṣṭafā Zayd, *al-Maṣlaḥah fī al-Tashrī' al-Islāmī*, (n.p., 2nd edn., 1964).

reason that applying rational proofs will make *Sharī'ah* vulnerable. However, an *ijtihād* by a pious person who possess *Sharī'ah* knowledge and *Uṣūl al-Fiqh* will be beneficial for the entire Muslim nation.⁷

Al-Khādimī (2000), on the other hand, presented his work in a comprehensive approach. He concluded that the value of the principle is related to the existence of human beings by virtue of Islamic law as it brings the benefit or repels the harm in the entire daily activities, i.e., in conducts, works, ideas, thoughts, and so on. However, it cannot be simply applied by any person who is not qualified for the derivation of rulings.⁸

The principle of *maṣlaḥah* is also applicable to various fields and is possible to be utilized in management and administration as well. 'Abdul 'Azīz 'Alī Sa'ūd (2005) attempts to identify the standard, the principle, and the method in evaluating the public interest that has been taken into account by the *Sharī'ah*. He also embarks upon the method of utilizing this principle as a mechanism in decision-making. He provides an explanation regarding the principle of *maṣlaḥah* specifically for executives and administrators' personnel considering their lack of knowledge with regard to Islamic law. In his discussion, he provides the elements that has to be taken into account in relation to decision making under Islamic law. Finally, he provides an overview of *maṣlaḥah*, which includes the *maṣlaḥah al-mursalah*.⁹

The outstanding importance of *maṣlaḥah* and its affiliation with the objective of the *Sharī'ah* is the subject of Jalil's endeavour (2006). In his study, he examined the impact and significances of the concept of *maṣlaḥah* and the doctrine of *Maqāṣid al-*

⁷ Jalāluddīn 'Abdul-Rahmān Jalāl, *al-Maṣāliḥ al-Mursalah wa Makānatuha fī al-Tashrī'*, (n.p.; 1983).

⁸ Nuruddīn al-Khādimī, *al-Maṣlaḥah al-Mursalah Ḥaqīqatuha wa Ḍawābiḥuhā*, (Bayrūt: Dār ibn Ḥazm, 2000).

⁹ 'Abdul-'Azīz ibn Saṭṭām ibn 'Abdul-'Azīz 'Alī Sa'ūd, *Ittikhād al-Qarār bi al-Maṣlaḥah*, (Riyadh: Jāmi'ah al-Imām Muḥammad ibn Sa'ūd al-Islāmiyyah, 1426H).

Shari'ah on the project evaluation procedure in an Islamic framework. He adopted the descriptive method to discuss the definition and classification of *maṣlaḥah* in the Islamic jurisprudence.

He also applied both the inductive and deductive methods as well as the analytical method to examine and analyse the literature of the Muslim scholars related to the topic. He found that the concept of *maṣlaḥah* establishes a more detailed order of priorities amongst competing projects rationalises choices under the light of the *Shari'ah* and ensures the coherence of the selected project with the *Shari'ah* objectives and the Islamic system.¹⁰

Taking eligibility of *maṣlaḥah* into consideration as the basis for ruling, Laldin has examined the parameters for this utilization in 2010. He commences his study by presenting the concept of *maṣlaḥah* and its relationship with the objective of the *Shari'ah*, as well as the juristic view of the *maṣlaḥah* based on the Qur'an and the Sunnah. This is followed by discussing the parameters of *maṣlaḥah* and its contemporary applications in financial transactions. The research concluded that *maṣlaḥah* is relevant to be focused on in modern Islamic finance as it has been addressed by scholars through Islamic legislation for the benefits of the Ummah and to remove the hardships resulting from a strict law. However, in issuing a resolution based on *maṣlaḥah*, the parameters that governed the application of *maṣlaḥah* must be taken into account in order to issue a sound and accurate resolutions on Islamic financial matters.¹¹

As *maṣlaḥah* is one of the principles for the derivation of rulings, the instance that the *maṣlaḥah* is in conflict with the *Shari'ah* evidence is inevitable, especially in

¹⁰ Abdullaah Jalil, "The Significances of *Maṣlaḥah* Concept and Doctrine of Maqasid (Objectives) Al-Shari'ah in Project Evaluation", *The Journal of Muamalat and Islamic Finance Research (JMIFR)*, vol. 3, no. 1 (2006): 171-202.

¹¹ Mohamad Akram Laldin, "Understanding the Concept of *Maṣlaḥah* and its Parameters When Used in Financial Transactions", *ISRA International Journal of Islamic Finance*, vol. 2, no. 1, (2010): 61-84.

new circumstances. Mohd Naim (2003) explores the issue of *maṣlaḥah* and *naṣṣ*. His main discussion is centred on the application of *maṣlaḥah* in the *ijtihād* and the possible instances where *maṣlaḥah* may take precedence over *naṣṣ*. He presents the two arguments by Najm al-Dīn al-Ṭūfī and the majority of legal theorists in determining the ruling based on the principle of *maṣlaḥah*. He concluded his study with the rules to be observed in issuing a ruling so as to ensure that *maṣlaḥah* would not nullify the Lawgiver's ruling.¹²

In relation to this, Sulaiman (2005) discusses the concept of *maṣlaḥah wa al-naṣṣ* (*maṣlaḥah* and the legal text) as an approach in analysing the Prophet's hadith, and as Islamic legal evidence that has rational and reasonable sense. This can be achieved through the process of ratiocination (*ta'līl al-aḥkām*) as its design is to highlight the dynamic of Islamic law in term of protection and flexibility for the contemporary Muslim society. The objective is to ensure that every new ruling derived is accurate for the benefit of the Muslim in this world and the hereafter.¹³

This field of research is also fortunate to have contributions at the level of doctoral dissertation. In one thesis, Ihsan Abdul-Wajid Bagby (1986) attempts to present the basic views of the legal theorists (*Usulis*) on *maṣlaḥah*, comprises of proponents and opponents of *maṣlaḥah*. Upon analysing the advocate of each view, he found out that the theory of *maṣlaḥah* is based on positivistic nature, which resulted in limiting the role of *maṣlaḥah*, as it is too mechanical when it faced with hard cases and new circumstances. However, for the supporters of *maṣlaḥah*, by providing classical legal theory with a criterion and framework by which the law could attempt to tackle

¹² Asmadi Mohamed Naim, "Maslahah dan Nas - Suatu Wacana Semasa", *Jurnal Syariah*, vol. 11, no. 2 (2003): 15-26.

¹³ Ishak Hj Sulaiman, "The Juristic Concept of al-Maslahah wa al-Naṣṣ: An Approach to Analyse the Aḥādīth Nabawī SAW", *al-Bayan Journal al-Qur'an & al-Hadith*, vol. 3, (May 2005): 145-161.