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FRAMING THE PARAMETERS OF MASLAHAH: A COMPLEMENTARY
AND COMPARATIVE ANALYSIS ON AL-GHAZALI'S WORK IN AL-
MUSTASFA

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ABSTRACT

Maslahah is a source of law for the theoreticians and jurists to adduce hukm (legal ruling). Even though it is put under secondary source of law, but it becomes an underlying foundation for the primary sources of law because it is the general purpose of the divine revelation. The jurists have put maslahah as the main paramount consideration in their ijtihad (juristic finding). However, some of them are criticized for being unduly over-reliant in applying maslahah while some others are faulted for the lack of reliance on maslahah which may lead to rigidity. Therefore, it is pertinent for the jurists to observe rules in applying maslahah to avoid criticism. The rules may be considered as parameter that can be a guidance to apply maslahah or to justify maslahah based-finding. This parameter also can avoid the misuse in the application of maslahah. One of the earliest works in framing the parameter of maslahah is al-Ghazali's work namely al-Mustasfa. Al-Ghazali has discussed in detail about the characteristics and conditions for maslahah. However, there is also gap in al-Ghazali's discussion which can be filled by others. Therefore, this present research will try to look at other jurist's works, classical and contemporary, to compare and complement what was found by al-Ghazali in providing a comprehensive and reliable parameter for the application of maslahah and subsequently it can be a guidance to avoid misuse of maslahah in addressing the social change and accommodating the societal needs.

INTRODUCTION TO AL-MUSTASFA AND ITS SIGNIFICANCE

Usul al-Fiqh (Foundations of Islamic Jurisprudence) is one of the branches of Islamic sciences. Usul al-Fiqh, as a matter of practice has been applied since the Prophet Muhammad period but was only put in writing in subsequent centuries. In the historical account, al-Risalah, which was written by al-Shafi'i, is considered as the first work in the field of usul al-fiqh. This fact was agreed upon by the consensus of the scholars. Al-Razi said human beings have unequivocally agreed that the first man who wrote the book in the field of usul al-fiqh is al-Shafi'i where he wrote it in several chapters accordingly (Al-Razi 1986). Ibnu Khaldun, in the same wavelength, said the first person to write the book on usul al-fiqh is al-Shafi'i and he talked about the instructions, prohibitions, explanation, information, abrogation, and rule of ratiocination in the basis of analogical reasoning (al-qiyas) (Khaldun 2004). This book was known as al-Risalah which means 'a letter' because the book originally was al-Shafi'i's letter that was sent to one of his disciples, Abdul Rahman al-Mahdi (Al-Isnawi 1981). Later, this letter became widespread and accepted as a leading work in usul al-fiqh.

After al-Risalah appeared, the usuli (theoretician) started to write and produce more writings on usul al-fiqh. They produced them either in the form of commentary on al-Risalah or in the form of an independent book. From this academic activity, two mazhabs (schools of thought) of usul al-fiqh were incidentally formed namely al-mutakallimun and al-fuqaha' or al-hanafii. The former was called as such because they were influenced by kalam sciences and this happened because many mutakallimun were believed to be involved in the field of usul al-fiqh. Meanwhile the latter was named as fuqaha' (jurists) because the scholars in this school were mostly Hanafite jurists who paid their attention on the specific legal rules (hukm) that were adduced by the founder of mazhab and they will then outline certain principles that they believe became a basis of the said adduced rules. The former's method focused on framing the theories based on nass (legal scripture) and language principles while the latter focused on the rules (hukm) adduced by the earlier jurists and formed the legal theories and principles based on those rules. Many books were then written in accordance to the methods of both schools of thought.

In mutakallimun school of thought, all the books which were written will have their root in the following earlier three books, that are:

1. Al-Mu'tamad fi Usul al-Fiqh by Abu al-Husein al-Basri.
2. Al-Burhan fi Usul al-Fiqh by Imam al-Haramain al-Juwayni.
3. Al-Mustasfa by Imam al-Ghazali.

It is submitted that there are many works produced by the theoreticians after al-Risalah but the most referred books were these three books because of their comprehensiveness, structure of discussion and perpetual suitability. Mustafa al-Khin, one of the contemporary theoreticians, elucidates that these three books are the mother of all books circulated among scholars and students and when we mentioned about books written by mutaqaddimun (earlier theoreticians) then those three books will be crossing the minds as reference in usul al-fiqh study

(Al-Khin 2000). As a relevant point to the present discussion, al-Mustasfa was placed among those three. It shows how significant al-Mustasfa is in playing the role to shape *usul al-fiqh* science.

In addition, Ibnu Khladun has put al-Mustasfa as one of the best books, other than al-Burhan by al-Juwayni, written under the methodology of Mutakallimun (Khalidun 2004). Al-Mustasfa then inspired the two leading theoreticians after al-Ghazali namely al-Amidi and al-Razi to produce their magnum opus that are al-Ihkam fi Usul al-Ahkam and al-Mahsul respectively. Both books became the guiding works for the production of al-Minhaj written by al-Baidhowi. Nowadays, Al-Minhaj is used as a compulsory reading in syllabus of big and great Muslim seminaries around the world such as al-Azhar. This fact indicates the influence of al-Mustasfa is not only restricted to the classical period but also to this modern day.

The writing of al-Mustasfa was ignited by the request of al-Ghazali's students. They suggested al-Ghazali to write a book on *usul al-fiqh* but not to emulate his book, *tahzib al-usul* (because of its length) and al-Mankhul (because of its oversimplification). He was also requested to write a more structured, understandable and comprehensive book. Therefore al-Ghazali decided to write al-Mustasfa to accommodate and fulfil the request and suggestion. So the purpose of al-Mustasfa is, as mentioned by al-Ghazali in the prolegomena of al-Mustasfa, to write an *usul al-fiqh* book which can facilitate readers to easily memorize and comprehend it. Al-Mustasfa was now more organized compared to other books in that age. Though, Al-Mustasfa also provided the lengthy detailed explanation for certain jurisprudential principles together with plethora of *fiqh* examples for better understanding. The said prolegomena shows us briefly the al-Ghazali's purpose in writing this book is providing the complete and comprehensive book without compromising its comprehensibility and memorability.

Besides, when discussing al-Ghazali's methodology in al-Mustasfa, it is pertinent to note that al-Ghazali has also paid his attention on elaborating the technical meaning of certain wordings which are not related directly to *usul al-fiqh* but important to shape the *fikrah usuliah* (theoretical mind). This indicates how al-Ghazali tried to supply holistic and clear information and comprehension. Before he started his discussion on the substance of *usul al-fiqh*, al-Ghazali has discussed several terminologies and concepts of logic science. He put this discussion as an introduction of al-Mustasfa. He admitted that this is not specifically *usul al-fiqh* related discussion, but it is important not only to be an introductory part of *usul al-fiqh* science but also in other sciences because it will guide a person to the right way of thinking and prevent him from making mistake in his thinking. According to al-Ghazali, someone who does not possess understanding on this logic science is considered not qualified and authorized in any science (Abu Hamid al-Ghazali n.d.).

Furthermore, al-Mustasfa has also revealed that al-Ghazali is neither a fanatic to his Shafi'i school of thought nor rigid to the *mutakallimun mazhab*. For instance, in the issue of whether the prohibition indicates the devil, the majority of theoretician's opinion, including al-Shafi'i, has addressed it in affirmative

but al-Ghazali has chosen otherwise. He opined that the prohibition does not necessarily contain devil. He dared to depart from the conventional view in preference to his personal findings. Al-Ghazali's character was noticed and notified by Hamzah Zuhair when he was giving introductory remark on al-Mustasfa (Abu Hamid al-Ghazali n.d.).

Maslahah In Islamic Legal Theory: An Overview

The word *maslahah* in a literal understanding means benefit or interest. According to Ibnu Manzur, *maslahah* has identical meaning with *solah* (صلاح) which means opposite of evil. (Muhammad Ibnu Manzur n.d.) It also implies an action which leads to benefits or goodness. Therefore we can realize here that *maslahah* in a literal way brings two types of meaning firstly it itself means benefit and secondly it means a beneficial action. (Al-Madani 2014). Technically *maslahah* is regarded as an attribution of the act that provides goodness which is a consistent and persistent benefit. (Muhammad Thohir Ibnu A'shur 2001) *Maslahah* is also defined as benefit envisioned by the god for its servants in protecting their religion, life, intellect, lineage, property and the protection of each is placed accordingly when it comes to real life application. In a conclusive sense, *maslahah* is something that facilitates, accommodates and suits the purposes of *shara'*. (Al-Buty n.d.) This is also the opinion of al-Ghazali which will be touched in the next discussion. Meanwhile, *maslahah mursalah* (unrestricted *maslahah*) means *maslahah* which is not found or mentioned by any divine injunctions, in forms of approval or rejection, but it is still harmonious with the *shara'*'s principles. (Khallaf n.d.) It is called *mursalah* or *mutlaqah* (unrestricted) because there is no divine proof that restricts its application. (Al-Zuhayli 2003) It is unequivocal among the jurist that *maslahah* is not considerable and applicable as a source of law relating to *i'badah* (act of worship) because *i'badah* is *amrun ta'abbudiyyun* (worshipping matters) where no space for human personal thinking is allowed. (Al-'Ain n.d.) For other than *i'badah*, *maslahah* is applicable to be a source of legal ruling according to the majority of scholars whereas some others are still reluctant to admit it as a legal proof. (Khallaf n.d.) Those who supports *maslahah* has argued that the human's life is always exposed to the change of the place and age. Therefore *maslahah* is needed to address, facilitate and accommodate the change or otherwise the people's life will be in difficulties. They further argued that *shari'ah* upholds *rahmah* (mercy) principles and this principle is manifested through application of *maslahah*. In the verse 108 of Surah al-Anbiya', it is clearly stated that the Prophet Muhammad was not sent down except for the purpose of revealing the mercy to the whole universe. Besides, the practice of the companion of the Prophet Muhammad has also become their ground of argument. For instance, Umar al-Khattab has halted the imposition of *hudud* (Islamic penal code) punishment in the famine time to preserve the general *maslahah* since there was lack of food and the people is in desperate situation. In other example, Umar has also maintained the status quo of the conquered land to the local people to protect their *maslahah*. If there is no such action by Umar, then the local people will become landless or homeless and this will invite dissatisfaction from them and the circumstance will continuously be unrest. (Al-Zuhayli 2003) On the other hand, the minority jurists who opposes *maslahah* opines that every legal ruling must be based on divine injunction. Mere reliance on *maslahah* means

sidelining shara's position as a sole legal source. However, their argument was cogently refuted by the majority of scholars by saying that there is no issue of sidelining shara's position since maslahah is also applied based on the general principle of shara' in situation if there is no specific dalil (proof). Besides, the minority of jurists also argued that considering maslahah will open the door of making the rule base on human's desire and wish per se and this is unacceptable since the human's desire can not be independent but must be guided by shara'. This is also rebutted conclusively by the majority by saying that maslahah has a strict condition in its application. Therefore, there is no room for maslahah to be misused to suit unceremonious human's desire. (Al-'Ain n.d.) In conclusion, maslahah has been accepted as one of the main secondary sources of Islamic law by the majority of scholars especially the contemporary jurists. If it is not to be referred directly as a distinctive source, yet it is still felt of its presence since it is already embedded in al-Quran and al-Sunnah because both are not revealed unless for the maslahah of the people. Moreover its function as a solution for the many emerging contemporary issue is undeniable because many modern issue is not directly addressed by al-Quran or al-Sunnah and therefore maslahah as a main purpose of al-Quran's revelation may come to the picture to offer the solution.

The Parameters Of Maslahah In Al-Mustasfa: A Theoretical Framework

In al-Mustasfa, Al-Ghazali has divided sources of shar'a into two categories. The first category is the yaqin sources which consist of al-Quran, hadith, ijma' (consensus of the jurists), logical mind and status quo (al-a'ql wa al-istishab) and ijma' (consensus of the scholars). The second one is zann (doubtful and not definite) sources which feature the law of the previous generation (shar'u man qablana), the opinion of companion, al-istihsan and al-istislah. Thus istislah, according to al-Ghazali is a zann source or only secondary and not primary. He opined that unrestricted istislah (masalih mursalah) is something which is not agreed upon by the scholars to be the source of law. This is his early statement before entering the very discussion of istislah.

Al-Maslahah, in al-Ghazali's perspective, means gaining the benefit and removing the evil. However, he went further saying that this is not what was intended by him in the discussion on maslahah because gaining the benefit and removing the evil are the aims of every human being and they are supposed to aim for it in their life. What is meant by maslahah in the eye of al-Ghazali is preservation of maqasid al-shariah (purposes of shar'a) and the purposes of Shara' are preservation of religion, soul, mind, lineage and property. Everything that preserves these matters is considered as maslahah. (Abu Hamid al-Ghazali n.d.) Otherwise, they are considered mafsadah (evil). This is also what was intended of its meaning if it is related to proper attribution (al-wasf al-munasib) in the discussion of analogical reasoning (qiyas). The preservation of those five matters are named by al-Ghazali as al-usul al-khamsah (the five principles). Al-Ghazali seemed to take unconventional approach by associating maslahah with maqasid al-shari'ah in its conceptual meaning.

Besides, the preservation of the said five things fall under what is called as *dhoruriyyah* (essential). Literally *dhoruriyyah* means something which is required to be done and it forces the related person to do it. Al-Shatibi said *dhoruriyyah* is an inevitable matter that should be done in preserving the interest of the religious and material thing or otherwise will lead to evil and chaos (Al-Shatibi 1997). *Dhoruriyyah* is seen as a requirement for the survival of human life in terms of religion, soul, mind, lineage and property. Without such *dhoruriyyah* matters, the situation would be in chaotic and cause the demise of normal order in society (Mohammad Hashim Kamali 2009). Al-Ghazali, however, did not define *dhoruriyyah* but put it as the highest and the most important level to be preserved and protected. For instance, firstly, to preserve the religion, it is allowed for the ruler to execute the non-Muslim who preaches the muslim and the muslim who did *bid'ah* (illegal innovation) and enjoin others to do *bid'ah*. Secondly, to protect the soul, the *shar'a* has imposed *qisas*. Thirdly, to protect the intellect, then *shar'a* has introduced whipping of 80 slashes on drunkards. Fourthly, *shar'a* has imposed 80 lashes for adultery and stoning to death for the married who are involved in fornication to protect the dignity and lineage. Finally, *shar'a* has also imposed the hand cutting as a punishment under *hudud* to protect properties.

Other than *dhoruriyyah*, *shar'a* also appreciates what is called as *al-maslahah al-hajiyah*. Al-Ghazali placed *hajiyah* in the second rank to *dhoruriyyah*. As well as *dhoruriyyah*, he has also not paid his attention to define *hajiyah*. Al-Shatibi elaborates *hajiah* as something which is needed to pave the way for flexibility and removing the hardship. Though, without it, there is still no substantial *mafsadah* could be inflicted to general *maslahah* (*maslahah 'ammah*) (Al-Shatibi 1997). In a more explicit statement, *hajiya* means benefits that seek to eliminate hardship in which the hardship is not something to the extent of capable to destroy the life or other *usul al-khamsah* (Mohammad Hashim Kamali 2009). In spite of not bringing the clear definition, al-Ghazali has forwarded an example of how *hajiah* is exercised. According to him, the authority that is given by *shar'a* to fathers to determine the marriage of their minor daughter is one of the examples of *hajiah*. Without this authority, it will perhaps not throw the daughter in to a catastrophic life but by having the authority at the hand of the father, it can provide him the opportunity to protect *maslahah* of his daughter. (Abu Hamid al-Ghazali n.d.)

Lastly, al-Ghazali also mentioned the third rank of *maslahah* after *dhoruriyyah* and *hajiah* that is *tahsiniyyah* or *tazyinah*. Like *dhoruriyyah* and *hajiah*, *tahsiniyyah* was also not defined by al-Ghazali. *Tahsiniyyah* means something which can beautify culturally the action. Rules which come out from *tahsiniyyah* seek to attain refinement and perfection in the life of the people (Mohammad Hashim Kamali 2009). *Tahsiniyyah* matters can be seen in all recommendable (*mandubah*) rules such as using perfume in prayer and wearing a proper attire.

After discussing the meaning and categories of *maslahah*, al-Ghazali started to discuss on the parameters of *maslahah*. Outlining the parameters of *maslahah* is very important since it can be a guideline for the *usuliyyun* (theoricians) and *fuqaha'* (jurist) to apply *maslahah*. This parameter also functions to avoid illegal

over-reliance on *maslahah*. It also can avoid rigidity that risks *maslahah* from being neglected. In the former case, the parameters will work to avoid misuse and abuse of *maslahah* in deducing the rules and for the latter, they will encourage jurists to apply *maslahah* without being afraid to be accused as compromising *nass* and other *shar'ā* sources because they are already guarded by strict discipline in the form of the said parameter.

Al-Ghazali enunciated that *maslahah* is not confined to act merely as one of the forms of *al-wasf al-munasib* (proper attribution) in *qiyas*. That is to say *maslahah* is not only applied in *qiyas* but it can stand as a distinctive source of *shar'ā* provided that it complies three conditions: it must be essential (*dhoruriyyah*), definitive (*Qati'iyah*) and inclusive (*kulliyyah*). This is the parameter that was put forward by al-Ghazali. Firstly, *dhoruriyyah* here means inevitable matter which no other way that can be resorted to unless by inflicting larger evil. Al-Ghazali did not define it literally or juristically but he brought the example of when *maslahah* is not applicable because this *dhoruriyyah* is not fulfilled. He said that if the non-Muslims, in war, have made some Muslims to be human shield to attack and conquer Muslim's territory, then it is not allowed to fire or kill that human shield if there is alternative way to protect the territory like building the second layer of the fortress.

Secondly, *qat'iyah* (definitive) means *maslahah* must be ascertained and confirmed and not based on speculative presumption. This means that the rules to be adduced must ensure *maslahah* can be uphold and *mafsadah* (evil) can be removed. If *mafsadah* is highly perceivable and the situation will get worse after doing thing considered *maslahah*, then the *maslahah* cannot be considered and exercised. Al-Ghazali has exemplified it by stating the case where it is not allowed to cut off one of the organs if someone is in the state of excessive hunger where no food is available for him. It is disallowed because the action of cutting off the organ does not guaranty benefit for him, but it can even lead to a worse situation. The *maslahah* cannot be secured or guaranteed in this case. However, al-Ghazali also notified that for the 'definitive', it is not absolute. A speculation which almost reaches the definitive level (*zann qarib minal qat'i*) is also acceptable.

Thirdly, the last condition is *kulliyyah*. If *maslahah* is to be invoked, it must reflect the *maslahah* of the majority section of a society, not a small number of people or an individual. Al-Ghazali has demonstrated a situation where a group of people has to choose one of them to be thrown out of the ship in order to avoid the ship from sinking. Making such choice, according al-Ghazali, is prohibited because the *maslahah* of a few crew members does not represent the whole section of society. Their *maslahah* cannot be regarded as *kulliyyah*. Thus, *maslahah* in this case is not considerable. Al-Ghazali also brought an illustration of a group which was facing a state of excessive hunger when they have to choose one to be sacrificed. Al-Ghazali reiterated that they are also not allowed to do so as their *maslahah* is not *maslahah kulliyyah* because it only represents a small group of people.

Even though al-Ghazali has specifically spelled out the said parameters in one specific part of the discussion, other parameters were also set out by him and

can be found in a scattered discussion throughout his book. They were mentioned by al-Ghazali either expressly or impliedly. For instance, in the definition of *maslahah* as addressed by al-Ghazali, *maslahah* was associated with *maqasid al-shari'ah*. This means that the definition seems to say that *maslahah* must be commensurate and concurrent with *maqasid al-shari'ah* in order to be valid in the eye of *shar'a*. It cannot be a blanket *maslahah* even though it is logical. Thus, it is a general parameter that was set out impliedly by al-Ghazali, yet very substantial. Al-Ghazali even said that it is compulsory, and there is no way to contradict or to uphold *maslahah* which preserves *maqasid al-shari'ah* because it is a valid argument in the *shar'a*'s view. In addition, if there is conflicting *maslahah*, *mujtahid* are urged to do *ijtihad* to find which *maslahah* is stronger but the *ijtihad* is still obligated to uphold the public and general interests rather than individual and specific interests (Abu Hamid al-Ghazali n.d.). This is among the *maslahah* framework put forward by al-Ghazali in the form of applicable parameter.

In essence, al-Ghazali has discussed comprehensively the parameters of *maslahah* in *al-Mustasfa*. Al-Ghazali has framed the parameters either expressively or impliedly in *al-Mustasfa*. He has come up with many specific instances illustrating his ideas when discussing the parameters and conditions of *maslahah*. His arguments and counter-arguments are very cogent and substantiated. All the framework, parameters and conditions which are discussed by al-Ghazali are certainly can be the underlying foundation for *maslahah* application in any field.

A Complementary And Comparative Analysis On Al-Mustasfa's Parameters Of Maslahah

Al-Shatibi in his phenomenal book has also outlined several conditions to be observed before *maslahah* can be taken into account. First and foremost, al-Shatibi is in the same wavelength with al-Ghazali when he reiterated that *maslahah* must be harmonious (*mula'amah*) with *maqasid al-shari'ah*. He elaborated this principle by saying that *maslahah* can be perceived as not being harmonious with *maqasid al-shari'ah* when it contradicts the sources of *shariah*. Secondly, al-Shatibi said *maslahah* must be rational and suitable generally. It means that it must be reasonable or can be rationalized. However, this condition is not applicable in the field of *'ibadah* such as ablution, prayer, fasting and pilgrimage. Lastly, al-Shatibi opined that *maslahah* must address preserving *dhoruri* (essential) matters or removing the hardship. According to him, preservation of *dhoruri* matters is one of the ways (*wasilah*) of preservation of *maqasid al-shari'ah*. He added the removing of hardship must be in the scope of providing an easier way, not the rigidity (Ibrahim Al-Shatibi, n.d.). What is pertinent to be noted here in complementing al-Mustasfa's parameter is al-Shatibi has stressed on the rationality to be a compass for the application of *maslahah* as mentioned in his second parameter.

Meanwhile, Ibnu 'Ashur has enlisted five things to be observed in validating the application of *maslahah*. Firstly, according to him, *maslahah* must be confirmed and inclusive. It means *maslahah* must be real and felt. This is quite similar with al-Mustasfa's condition where it required *maslahah* to be *qat'i*. Secondly, he

stressed *maslahah* must be usual and clear in the sense that the mind of the human being can accept it if they observe it deeply. This point is seen as quite similar to al-Shatibi's second condition. Thirdly, there must be no alternative to the intended act that can be considered in preserving *maslahah* and removing harm. This condition is seen as an extended explanation to the al-Mustafa's requirement of *dhoruriyyah* to be as one of the parameters of *maslahah*. (Muhammad Thohir Ibnu A'shur 2001)

Fourthly, if *maslahah* and *mafsadah* are in the same weight, *maslahah* must be outweighed by the same shared principle. For example, to compensate those who are destroyed of their property by requiring the destroyer to pay the compensation is actually a harm to the destroyer but the *maslahah* to the victim on the principle of justice and fairness has outweighed the harm to the destroyer. Al-Mustafa actually has addressed this condition impliedly by bringing several situations as example in its discussion but there is no expressed articulation. Therefore, this condition can complement expressly on what was provided impliedly by al-Mustafa. Lastly, *maslahah* must be definite and certain while harm must be otherwise if both are contradicting (Muhammad Thohir Ibnu A'shur, 2001). This condition can be viewed as an explanation to the second parameter of al-Mustafa: *maslahah* must be *qat'i*.

Besides, if we are to examine contemporary approach on parameter of *maslahah*, then it is inevitable to refer to the work of one of the leading contemporary theoreticians that is Muhammad Said Ramadhan al-Buty. He has written a book specifically discussing the parameters of *maslahah* under the title "Dhawabit al-Maslahah fi al-Shari'ah al-Islamiyyah". This book is actually his doctorate thesis submitted to Al-Azhar University in 1965 but then converted to be a book and printed worldwide. In this book, he has enlisted the following parameters:

- 1) *Maslahah* must conform with *maqasid al-shari'ah*. This is what was stressed by al-Ghazali as discussed before. Al-Buty even copied what was found by al-Ghazali in terms of *usul al-khamsah* discussion.
- 2) *Maslahah* must not contradict Al-Quran.
- 3) *Maslahah* must not contradict *sunnah*.
- 4) *Maslahah* must not contradict *qiyas* (analogical reasoning)
- 5) It does not prevail that *maslahah* is superior to it nor *maslahah* is of equal degree.

What was discussed by al-Buty seems to be a general overview compared to al-Ghazali who directly specified micro issues. (Al-Buty n.d.)

Furthermore, the parameters of *maslahah* were not only discussed by the individual scholar but also collectively addressed and framed by the modern *fatwa* body. This can be considered as a collective juristic *ijtihad*. For instance, International Islamic Fiqh Academy has also outlined its parameters of *maslahah* (Laldin 2013). According to them, *maslahah* must be genuine and not imaginary. It must be real and not hypothetical as explicated by Ibnu A'shur. Secondly, *maslahah* should be comprehensive and not partial. Thirdly, *maslahah* must be public and not individual or special. Fourthly, *maslahah* must not set aside superior *maslahah* or *maslahah* which is in same level and finally,

maslahah must not contradict maqasid al-shari'ah. The last point seems to concur al-Shatibi's and al-Buty's point. It is understood that the Academy's finding is found to be concurrent clearly with al-Ghazali in al-Mustasfa except it has made a more specific point on its fourth parameter.

In conclusion, the scholars after al-Ghazali have made several approaches in complementing what was found by him in al-Mustasfa. One of them is the converging approach where they rearticulate and reiterate what was noted by al-Ghazali. This displays how al-Ghazali's finding is indispensable and becomes a concrete foundation to the discussion. Another one is specifying approach where the scholars after al-Ghazali have made specification on what was found and highlighted by al-Ghazali. In this approach they put their effort to narrow down the general principle that was put forward in al-Mustasfa. The last one is expanding approach where they added other parameters to fill in the lacunae left by al-Ghazali in al-Mustasfa.

CONCLUSION

Al-Mustasfa is a phenomenal work which represents school of mutakallimun. It has discovered many principles of Islamic legal theories to be as a guiding principle in deducing jurisprudential rule. Al-Ghazali, through this work, has put a very concrete foundation for the application of maslahah in terms of framing its parameters. However, there are still lacunas or loopholes that can be filled by the theoreticians after him. Al-Shatibi has come to raise the role of rationality as a part of the parameters. Then Ibnu 'Ashur rearticulate the same point while adding other detailed parameters in complementing al-Mustasfa's finding. Last but not least, al-Buty's discussion was brought forward to represent contemporary approach where he actually complements al-Mustasfa by providing the macro framework. The collective ijtihad by modern fatwa body like Fiqh Academy has also taken part in completing the missing puzzle of the said parameters. All of these parameters from the plethora of scholars finally can complement and converge each other to provide a conclusive guideline for the application of maslahah in this day and age. By complying to this parameter, it can protect jurist from applying maslahah in inconsistent manners. This parameter can provide consistency. It also can protect maslahah from being unduly over-relied. The jurist can use this parameter to justify their ground of judgment which is based on maslahah.

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