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Identifying ‘*Illat* through *Munasabah* in Islamic Law: A Perspective of Imam Al-Ghazali

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Abstract: This study discusses the way in determining ‘*illat* through the *munasabah* method proposed by Imam al-Ghazali in the perspective of Islamic law. The study focuses on two main problems: the identification of ‘*illat* through *munasabah* and the legal formulation to utilize *hikmat* to obtain ‘*illat* according to al-Ghazali. This normative legal research used a legal history approach as an analytical tool to examine the Islamic scholars’ thoughts on concepts, theories and ways of doing *istinbath*. The study concluded that according to al-Ghazali there are three kinds of *munasabah* in determining ‘*illat*, consisting of *munasib mu’atstsir*, *munasab mula’im*, and *munasib gharib*. In *munasib mu’atstsir*, there is no issue found in seeking ‘*illat* because the ‘*illat* is understood directly from the *nash* or *ijma*’. Therefore, *munasabah* is no longer needed in the determining ‘*illat*. Here, the *munasabah* method focuses on *munasib mula’im* and *munasib gharib* in identifying ‘*illat*. *Munasib mula’im* seeks for the *genus* ‘*illat*, an ‘*illat* drawn from every event that has been predetermined by the *nash*, by examining the same *hikmah* in each of the events. Such *hikmah* is then used as the *genus* ‘*illat* which will later be applied as *qiyas* for other events that have been legally stipulated by the *nash*. On the other hand, *munasib gharib* seeks for the *species* ‘*illat*, an ‘*illat* obtained from an event that has been predetermined by the *nash*, with no comparison found in other events. ‘*Illat* determined from *munasib gharib* is also *hikmah*, having no concrete nature. In the perspective of legal history, this method of seeking

6

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'illat is inseparable from *kalam* and philosophy as was the development of the Islamic sciences at the time. As such, this had also affected al-Ghazali's mastery in Islamic law as well as in other Islamic disciplines.

Keywords: 'Illat, Munasabah, Ushul Fiqh

Abstrak: Kajian membahas tentang cara menentukan illat hukum melalui metode munasabah menurut Imam al-Ghazali dalam perspektif hukum Islam. Permasalahan utama yang dibahas ada dua, yaitu cara mengidentifikasi 'illat hukum melalui metode munasabah dan rumusan hukum menjadikan hikmah sebagai 'illat hukum menurut al-Ghazali. Pembahasan ini merupakan studi hukum normatif dengan pendekatan sejarah hukum sebagai alat analisisnya yang digunakan untuk menelaah pemikiran ulama tentang konsep, teori dan cara melakukan istinbath hukum. Kajian tersebut menyimpulkan bahwa menurut al-Ghazali; Pertama bahwa munasabah sebagai metode dalam menentukan 'illat hukum terdapat tiga macam yaitu munasib mu`atstsir, munasib mula`im dan munasib gharib. Pada munasib mu`atstsir tidak ada permasalahan dalam penentuan 'illat hukum, karena 'illat itu telah diketahui langsung dari nash atau ijma', sehingga konsep munasabah dalam rangka penentuan 'illat tidak diperlukan lagi. Jadi titik fokus metode munasabah dalam penentuan 'illat hukum adalah pada munasib mula`im dan munasib gharib. Kedua, pada munasib mula`im, yang dicari adalah genus illat. Genus illat ini ditarik dari setiap peristiwa yang telah ditetapkan hukumnya oleh nash dengan mencari apa hikmah yang sama pada setiap peristiwa tersebut. Hikmah itulah yang dijadikan sebagai genus illat yang akan di-qiyas-kan pada peristiwa lain yang telah ada ketetapan hukumnya secara zhahir oleh nash. Sedangkan pada munasib gharib, yang dicari adalah species illat. 'Illat itu ditarik dari suatu peristiwa yang telah ditetapkan hukumnya oleh nash, tetapi tidak dapat ditemukan bandingannya dalam peristiwa lain yang telah ditentukan nash, sehingga 'illat-nya bersifat species illat. 'Illat yang ditarik dari munasib gharib juga merupakan hikmah, bukan sifat yang kongkrit. Jika ditelaah dari sisi sejarah hukum maka metode 'illat tersebut tidak dapat terlepas dari perkembangan ilmu keislaman saat itu, di samping hukum Islam juga berkembang ilmu kalam dan filsafat, karena itu al-Ghazali juga tidak dapat dipisahkan dari situasi keilmuan pada zamannya.

Kata Kunci: 'Illat Hukum, Munasabah dan Ushul Fikih.

Introduction

The use of 'illat (legal reason) in determining a law is an important aspect in the development of Islamic law. Islamic law has its methodology known as *ushul fiqh* (principles of Islamic jurisprudence), compiled systematically by Muhammad Idris al-Shafi'i (767-820 AD) who succeeded in combining the reasoning patterns of *hadith* scholars and *ra'yu* (logical

reasoning) experts.¹ Al-Sarakhsi states that the majority of *ulemas* (Islamic scholars) are of the view that seeking 'illat or legal reasons in any legal text is valid and permissible. However, Ibn Hazm al-Andalusi (994-1064 AD) disagrees with this opinion as he believes that a command must be carried out with the principle of unquestioned obedience.² Nevertheless, exploring law or *ijtihad* through the search for 'illat leads the Islamic law to be more advanced in terms of methodology so that the law can help answer new problems that arise in society.

Ijtihad (legal reasoning) which will lead to *fiqh* (Islamic jurisprudence) is applied in legal search to answer problems that arise in society. In principle, there are two arguments used as the basis (source of law) of *fiqh*, the Qur'an and *hadith*. Other legal arguments known in the books of *ushul fiqh*, including *ijma'* (legal consensus of scholar), *qiyas* (analogy), *istihsan* (juristic discretion) *mashlahah mursalah*, *istishab* (continuity), *'urf* (tradition), *mazhab shahabi*, and *sadduzzr'i*, are not arguments in the sense of being a source of law, but rather the forms of *istinbath* (patterns of legal reasoning).

The *ushuliyun ulemas* (*ushul fiqh* scholars) distinguish the patterns of reasoning or *ijtihad* or *istinbath* into three kinds. According to al-Dawalibi, the *ijtihad* method is divided into three: (1) *al-ijtihad al-bayani*, (2) *al-ijtihad al-qiyasi*, and (3) *al-ijtihad al-istishlahi*.³ However, Al Yasa' Abubakar uses the term *istinbath* to replace the term *ijtihad* for convenience purposes and also divides the *ijtihad* method into three types. In addition, Al Yasa' also comments on the categorization proposed by al-Dawalibi to which he argues that it may cause a dual category of *istihsan* since *istihsan* can be categorized into *al-ijtihad al-qiyasi* and *al-ijtihad al-istishlahi*. To avoid this duality, Al Yasa' uses the term "al-ta'lili" for *al-ijtihad al-qiyasi*, thus covering all forms of *istihsan*.⁴

¹ Abdul Wahab Abu Sulayman, *Manhajiyah al-Imam Muhammad ibn Idris al-Syafi'i di al-Fiqh wa Ushullih*, Lubnan: Dar Ibn Hazm, 1991. Asep Opik Akbar, "Kontruksi Epistemologis Penalaran Hukum Imam Syafi'i", *Jurnal Ahkam: Jurnal Ilmu Syariah* 14, No. 2 (2014), p. 185-192.

² Muhammad Abu Bakar Al-Sarakhsi, *Ushul al-Sarakhsi*, Cairo: Dar al-Kitab al-Arabi, 1372 H, p. 5-7. Ibnu Hazm, *al-Muhalla*, Cairo: Dar al-Fikir, n.d. p. 601-608.

³ Al-Dawalibi, *al-Madkhal ila 'Ilm Ushul al-Fiqh*, Beirut, Dar al-Kitab al-Jadid, Cet. V, 1965, p. 389.

⁴ *Istihsan* is leaving *qiyas jali* (real) to practice *qiyas khafi* (vague), or leaving the law of *kulli* (general) to practice *istisna'i* law (exceptions) because there are arguments that logically justify it. *Ushul* scholars divide *istihsan* into two types, namely: (1) *Istihsan qiyas (qiyas khafi)*, namely *tarjih- qiyas* that are not real (vague or *khafi*) on real *qiyas (jali)*, based on the proposition. For example, the law of *waqf*, there is no text that concretely explains the law, making it difficult to implement it. In terms of relinquishing ownership rights, *waqf* is the same as buying and selling (*qiyas jali*), but the recipient of the *waqf* may not take any legal action against *waqf* objects other than what the *waqif* has pledged. So the *waqf* law can only be used for its benefits, it cannot be fully owned by the *waqf* recipient, even though there has been a release of ownership rights by the *waqif*. Viewed from this side, the law of *waqf* is the same as leasing

The three categories of *ijtihad*, which he calls *istinbath*, include (1) *istinbath al-bayani*, (2) *istinbath al-ta'lili*, and (3) *istinbath al-istishlahi*.⁵

Syamsul Anwar also comments on the category of the *ijtihad* method introduced by al-Dawalibi. He argues that the *ijtihad al-qiyasi* and *al-istishlahi* methods can be blended into one category, called the causation method, and further adds another method, namely the synchronization method. In his view, the *ijtihad* method can also be divided into three types: *al-bayani* (linguistic interpretation), *al-ta'lili* (causation method), and *al-tawfiqi* (alignment or synchronization). Syamsul Anwar interprets the term "*istinbath*" as "the method of discovering Islamic law", "*al-bayani*" as "the linguistic interpretation method", and "*al-ta'lili*" as "the causation method". However, he does not use the *istishlahi* method as it is already included in the category of "the causation method"; yet, he develops another category, called the alignment method (*al-tawfiqi*).⁶

One of the three methods of *ijtihad* or *istinbath*, which is the focus of this study is the *al-ta'lili* (causation) method. This *al-ta'lili* method is a pattern of legal reasoning that views the reasons for determining the law (*legis ratio*) of a legal determination. To determine or identify the attributes⁷ of what becomes the 'illat of a law, the *ushuliyyun* generally define three methods called *masalik 'illah* (a method of determining 'illat), as follows: (1) through the texts of *nash* (Qur'an and *hadith*), (2) through *ijma'*, and (3) through *ijtihad*.⁸

(*qiyas khafi*). In this case the scholars are of the opinion that the law of *waqf* is more appropriate if it is equated to leasing, not to buying and selling. Equating the law of *waqf* to leasing means switching from *qiyas jali* (selling and buying) to *qiyas khafi* (leasing). (2) *Istihsan darurah*, excluding *juziyah* law from *kulliyah* law with a proposition. For example, the principle of shari'a law prohibits the sale and purchase of an item that does not yet have the goods at the time the contract occurs, this is called the law of *kulli*. But in reality, someone will have difficulty if this *kulli* law is applied, because someone needs something that is not necessarily available at the time of the sale and purchase, so he must order in advance by paying in advance, and the goods will be sent later, this is called selling. buy *salam*, or order in advance to make the goods according to their wishes by paying in advance and the goods will be delivered after they are made, this is called buying and selling *istishna'* (indent). The two forms of buying and selling, namely greetings and *istishna'* are allowed according to *istihsan*, because there are disadvantages, so that the law of *rukhsah* (convenience) is given. Abd al-Wahab Khallaf, '*Ilm Ushul al-Fiqh*', t.p.: Dar al-Qalam, 1978, p. 97-98, dan Mukhtar Yahya dan Fatchurrahman, *Dasar-Dasar Pembinaan Hukum Fiqh Islami*, Bandung: Al-Ma'arif, 1986, p. 100-103.

⁵Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Hazairin dan Penalaran Fikih Mazhab*, Jakarta: INIS, 1998, p. 7.

⁶Syamsul Anwar, *Teori Konformitas dalam Metode Penemuan Hukum Islam* al-Ghazzali, dalam M. Amin Abdullah, *Antologi Studi Islam: Teori dan Metodologi*, Yogyakarta: Sunan Kalijaga Press, 2002, p. 275.

⁷Syamsul Anwar, *Teori Konformitas...*, p. 276.

⁸Muhammad Abu Zahrah, *Ushul al-Fiqh*, t. P: Dar al-Fikr al-'Arabi, p. 244-245. 'Abd al-Wahab Khallaf, '*Ilm Ushul...*', p. 75-77.

3 According to Al-Ghazali, the identification of 'illat through *ijtihad* is completed in two ways: *al-sabr wa al-taqṣīm* and *munasabah* (conformity). The identification of 'illat through *al-sabr wa al-taqṣīm* is carried out in the forms of classification and elimination of several possible attributes that can be used as 'illat. Afterward, one attribute that is considered highly in line with a law is determined as its 'illat. Further, the identification of 'illat in *munasabah* is done by looking for the suitability between a law and its 'illat, in which the suitability is seen from the aspect of benefit.

The *ulemas* argue that 'illat can be recognized through the main texts (*nash*), *ijma'* (consensus of Islamic scholars), and *al-sabr wa al-taqṣīm*, all of which is known as *masalik al-illah*. 'Illat of a law is sometimes clearly stated in the texts (*nash*) or explicit rational reasons (*al-'illat al-mansūṣah*). However, there is also 'illat which is not stated clearly in the *nash*, but rather with signs that indicate there is a rational reason.⁹

In light with the above discussions, the main focus of this study is to examine the way to identify 'illat through *munasabah* and the formulation of a law to categorize *hikmah* (wisdom) as 'illat of a law from the perspective of al-Ghazali. To answer the research question, it is necessary to examine the opinions of al-Ghazali and other *ushuliyyun* scholars mentioned in the books of *ushul fiqh*. By doing so, the study aims to provide a detailed description or explanation of Al-Ghazali's thoughts about the *munasabah* method as a way of seeking 'illat.

This normative legal research, which refers to texts and literature, used a legal history approach, namely investigation and identification of the stages of legal developments at certain periods.¹⁰ The legal history approach in examining the thoughts of *fiqh* scholars is crucial to be carried out to explain the concepts, theories, or *istinbath ahkam*,¹¹ and at the same time to pay attention to the genealogy of thoughts, intellectual traditions, and social conditions that developed at that time.

Al-Ghazali's Contribution to the Development of Islamic Law

Abu Hamid Muhammad ibn Muhammad al-Thusi al-Ghazali, or generally known simply as al-Ghazali, was born in Tabaran, part of the city of Tus of the Khurasan region, which is currently part of the Mashhad region of Iraq. He was born in 450 H/1058 AD and died in the same city in 505 H/1111

⁹Muchlis Bahar, Metode Penemuan Alasan Rasional dalam Hukum Islam (*Masalik al-'illat*), *Jurnal Fitrāh 1*, No. 1 (2015): 177-188.

¹⁰Peter Mahmud Marzuki, *Metodologi Penelitian Hukum*, Jakarta: Kencana, 2014, p. 166. Zainuddin Ali, *Penelitian Hukum*, Jakarta: Sinar Grafika, 2014, p. 22-44.

¹¹Cik Hasan Basri, *Model Penelitian Fiqh*, Jilid I, Bogor: Kencana, 2003, p. 191.

AD.¹² Al-Ghazali was a disciple of Imam ar-Razkhani al-Thusi. He also became a student of Abu Nasr al-Isma'il in Jurjan with whom he learned *fiqh*. Afterward, he visited Nishapur to study under Imam al-Haramain al-Juwaini (1028-1085 AD), an *ulema* who taught at the Nizamiyyah Madrasa, to deepen the knowledge of *fiqh* and *kalam* (Islamic theology).¹³ After al-Juwaini died, al-Ghazali took over his position to teach at the Nizamiyyah Madrasa. Al-Juwaini was one of the most influential figures in al-Ghazali's life so that al-Ghazali followed the Shafi'i school of thought in terms of *fiqh* whilst in terms of *aqidah* (creed) he followed Imam Ash'ari (873-936 AD).

Al-Ghazali had written many books on *fiqh* and *ushul fiqh*, unlike on the *kalam* and *tasawuf* (Sufism). Some of his books are *al-Basit*, *al-Wasit*, *al-Mankhul*, *Syifa al-Ghalil*, *Tahsin*, *Tahzib al-Ushul*, and *al-Mustashfa*. However, *al-Mustashfa* is the most popular and widely used book because this book describes al-Ghazali's complete and original thoughts.¹⁴

It is undeniable that al-Ghazali is a scholar possessing universal and general mastery of knowledge as he studied almost all Islamic disciplines such as *tafsir* (interpretation), *fiqh*, *ushul fiqh*, *kalam*, and *tasawuf*. Therefore, one can find his monumental works in the said disciplines which are still used as references to this day. This position later earned him the title of *hujjatul Islam*, and his teacher al-Juwaini even depicted him as "a plenteous ocean to be drowned".¹⁵

Al-Ghazali is widely known to propose *maslahat* (benefit) as a *hujjah* (proof) in the method of extracting Islamic law. In his point of view, there are three types of *maslahat*: the first is *maslahat dharuriyat* (necessity or primary) that are needed by humans as the objectives of Islamic law, including religion, soul, mind, lineage, and property; the second is *maslahat hajiyyah* (secondary) that are human needs not considered urgent necessities (*dharuriyah*), but can provide convenience for people, such as *rukhsah* (leniency or concession) for sick people who are exempted from fasting; and the third is *maslahat tahsiniyat* (tertiary) which is any human need not at the *hajiyyah* level and only a factor of perfection and beauty.¹⁶ The *maslahat* in establishing the law must be in line with the *sharia* while those that are not in line must be rejected. Al-Ghazali perceived that if the *maslahat* has no evidence, it is essentially non-

¹²Muhyar Fannani, *Ilmu Ushul Fiqh di Mata Filsafat Ilmu*, Semarang: Wali Songo Press, 2009, p. 36. Zumratul Wahidah, Metodologi Hukum Islam Perspektif al-Ghazali, *Jurnal Media Keadilan* 11, No. 2 (2020), p. 208.

¹³Muhyar Fannani, *Ilmu Ushul Fiqh*, p. 37. Solikhul Hadi, Analisis Kitab al-Mustashfa Karya al-Ghazali, *Jurnal Yudisia* 9, No. 1 (2018), p. 88.

¹⁴Muhyar Fannani, *Ilmu Ushul Fiqh*, p. 42-43.

¹⁵Abu Abdillah Syamsuddin Al-Dzahabi, *Siyaru A'lam al-Nubala*, Beirut: al-Risalah, 1996, p. 336.

¹⁶Mursyid Djawas, Amrullah, dan Fawwas bin Adenan, "Fasak Nikah dalam Teori Maslahah Imam al-Ghazali", *Jurnal El-Usrah* 2, No. 1 (2019), p. 97-122.

existent. In addition, *maslahat al-daruriyah* and *hajiyah* are set as *daruriyah*, but they cannot be used as *hujjah* unless there is evidence that specifically supports them, and in this position the law can be determined through *qiyas*, instead of *maslahah*.¹⁷

Although Imam al-Ghazali was not the first figure who initiated the concept of *maslahat* in Islamic law, he gave highly significant contribution in improving this concept. The concept of *maqashid ash-shar'iyah* (objectives of Islamic law) and *adh-dharurat al-khamsah* (basic needs) that he proposed has even become one of the essential references in Islamic law. This concept later continues to be referred to and developed by *ulemas* in almost every generation to this day.¹⁸ Likewise, al-Ghazali's method in identifying 'illat of a law through *munasabah* is also of highly importance. Exploring 'illat in the study of Islamic law is quite important because it will ease *mujtahids* (people qualified to exercise *ijtihad*) to carry out *istinbath ahkam* from legal sources.

Therefore, one of the contributions of al-Ghazali's thoughts in Islamic law through his writings is his ideas of applying logic (*mantiq*) in the *ushul fiqh* as he believed logic to be the correct way of thinking. Previously, *ushul fiqh* as a discipline merely discusses *fiqh*, *kalam*, and grammar.¹⁹ In this context, al-Ghazali became a qualified and independent expert in Islamic law because he further developed the knowledge obtained from his teachers.

To this end, it is not surprising that Azyumardi Azra and Alwi Shihab also emphasized that the typology of Islam adopted by al-Ghazali could enter and be embraced by the majority of Indonesian people and even in Southeast Asia, and is still influential to this day. In addition to *Ihya Ulumuddin* (in Sufism), Al-Ghazali's works in Islamic law widely used in Indonesia are known as "*kitab kuning*" (literally means yellow books), or classic books, such as *Bidayah al-Hidayah*, the book which later influenced Abdul Samad al-Palimbani to compose the book called *Sayr al-Salikin*.²⁰ *Sayr al-Salikin* is a book written in Malay that is highly influenced by the Shafi'i school. Al-Ghazali thus deserves to be called a generalist scholar because he had mastered all disciplines of Islamic sciences. He had bequeathed the methodology in understanding Islamic knowledge, not only in Sufism, *kalam*, and *fiqh*, but also in *ushul fiqh* or the methodology of Islamic law.

¹⁷ Zainal Azwar, "Pemikiran Ushul Fikih al-Ghazali tentang a-Maslahat al-Mursalat (Studi Eksplorasi terhadap Kitab al-Mustahfa min 'Ilmi al-Ushul Karya al-Ghazali)", *Jurnal Fitrah* 1, No. 1 (2015), p. 47-70.

¹⁸ M. Zaki, "Formulasi Standar Masalah dalam hukum Islam (Studi atas Pemikiran al-Ghazali dalam Kitab al-Mustashfa)", *Jurnal al-Risalah* 13, No. 1 (2013), p. 27-46.

¹⁹ Muhyar Fannani, *Ilmu Ushul Fiqh...*, p. 41-42.

²⁰ Azyumardi Azra, *Jaringan Ulama Timur Tengah dan Kepulauan Nusantara Abad XVII dan XVIII*, Jakarta: Kencana, 2004. Alwi Shihab, *Islam Sufistik: Islam Pertama dan Pengaruhnya Hingga Kini di Indonesia*, Bandung: Mizan, 2001.

A Theoretical Study of 'Illat in Islamic Law

'Abd al-Wahab Khallaf defines 'illat as a trait of the basis for establishing law, and with which the law on *furu'* (branches) can be obtained.²¹ However, the definition of 'illat by 'Abd al-Wahab Khallaf seems to be very restricted in the context of 'illat *qiyas* only. 'Illat is not only in the form of 'illat *al-qiyasi* (analogy), but also in the forms of 'illat *al-tasyri'i* (permanence) and 'illat *al-istihsani* (discretion). In the same vein, Alyasa Abubakar, borrowing the term from Syalabi, distinguishes 'illat into three categories, namely 'illat *al-tasyri'i*, 'illat *al-qiyasi*, and 'illat *al-istihsani*.²² 'Illat *al-tasyri'i* is the 'illat that has been determined by the *nash* itself and is used to decide whether the law understood from the text must be permanent or can be changed. When someone can provide a more appropriate definition of the concerned 'illat *al-tasyri'i*, then the existing law will be altered. This 'illat *al-tasyri'i* serves to find out the reason for the sharia (lawmakers) to establish a law without questioning whether or not there is *qiyas*. However, when the particular 'illat is applied to other problems (*furu'*), its function changes to be 'illat *al-qiyasi*.²³

'Illat *al-qiyasi* is the 'illat applied to the *furu'* problems which has no *zahir* (apparent) rules in the *nash*. In this *qiyas* process, the similarity of 'illat of the two events being compared is used as the legal point. Of these two events, one has a predetermined law by the *nash* while the other has no *zahir* legal determination within the *nash*.²⁴

Further, 'illat *al-istihsani* is the exception 'illat. In other words, this 'illat occurs because both 'illat *al-tasyri'i* and 'illat *al-qiyasi* cannot be applied due to special considerations.²⁵ For example, the leftover water of wild birds is considered pure. In *qiyas*, however, the water is not pure since it is equated with the leftover water of wild animals such as tigers. Both situations are considered to have a similar 'illat, which is the meat of wild animals is forbidden to consume. Yet, this context is an exception because even though it is not permitted to consume the meat of wild birds, the saliva that comes out of their mouths will not mix with the water they drink. The birds drink with a beak, a type of pure bone, whereas other wild animals drink with their mouth, a kind of flesh, thus causing their saliva easily mixes with the water they drink.²⁶

The conditions of 'illat can be divided into three main points, as follows:

²¹'Abd al-Wahab Khallaf, *'Ilm Ushul al-Fiqh*, ..., p. 63.

²²Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah...*, p. 8.

²³Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah...*, p. 8-9.

²⁴Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah...*, p. 9.

²⁵Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah...*, p. 9.

²⁶Mukhtar Yahya dan Fatchurrahman, *Dasar-Dasar Pembinaan Hukum Fiqh Islami*, Bandung: Alma'arif, 1986, p. 102.

1. *Zahir* (positive, not abstract), which can be seen with the five senses, as one of the purposes of 'illat is to recognize the law that will be applied to *furu'*.
2. *Munasib* (relevant), which is in accordance with the wisdom of the law. This means that 'illat is relevant to its legal wisdom, which is presenting benefit and avoiding harm.
3. *Mundhabith* (measurable), which means that 'illat must have certainty and real quality that makes it possible to enforce the law on *furu'*.²⁷

From the descriptions above, it can be concluded that 'illat is used as the basis or the legal reason for determining the law. Attributes that can be used as 'illat consist of three requirements, *zahir*, *munasib* and *mundhabith*.

This study is in line with the above points regarding the use of 'illat in legal determination in the Islamic law perspective. There are studies conducted on 'illat, but they only focused on *masalik al-'illat* or how to determine 'illat. There are also some studies on al-Ghazali concerning *maslahat al-mursalat*. Among these studies, Milenia et al. (2020) examines the analysis of *hikmah* and 'illat in the formation of Islamic law. In this present study, the focus is also on the discussion of 'illat in relation to the process of discovering it and its difference to *hikmah* and *sabab*.²⁸ Nashirudin (2015) asserts that the use of 'illat in seeking the law is fundamental, as mentioned in *ushul fiqh*, in the Islamic law reform.²⁹ *Ushul fiqh* as a methodology of Islamic law can be reformed through *ta'lil ahkam*, which is utilizing *hikmah* and *maslahat* as the determinants of the existence and absence of law on an issue.

Sabri (2015) states that 'illat is one method of determining Islamic law known as *al-qiyasi*, which has four pillars as follows: *al-ashal*, *al-far'u*, *al-ashal* law, and *al-illat*. Yet, this method leads to the question of how to find 'illat itself.³⁰ Bahar (2015) explains that 'illat is a way of understanding the text in-depth and comprehensively to find rational reasons that underlie legal provisions in Islamic law terminology.³¹

Halimang (2014) discusses the importance of the 'illat approach in *fiqh* reasoning as the substance of *ijtihad*. It is even mandatory to do analogy or *qiyas* if obtaining a law depends on an explicit 'illat based on concrete *nash*,

²⁷Al Yasa' Abubakar, "Ke Arah Ushul Fiqih Kontemporer; Sistematika Alternatif Untuk Penalaran", *Media Kajian Keislaman*, No. 68, (1990), p. 17, 'Abd al-Wahab Khallaf, *Ilm Ushul al-Fiqh*, p. 68-70, Mukhtar Yahya and Fatchurrahman, *Dasar-Dasar Pembinaan....*, p. 86-88, and Muhammad Abu Zahrah, *Ushul al-Fiqh....*, p. 238-240.

²⁸R. Milenia, (et.al.), Analisis Hikmah dan 'Illat Dalam Pembentukan Hukum Islam, *Jurnal At-Tawasuth* 2, No. 1 (2020), p 17-29.

²⁹M. Nashirudin, "Ta'lil al-Ahkam dan Pembaruan Ushul Fikih", *Jurnal Ahkam: Jurnal Ilmu Syariah*, 15, No. 1 (2015), p. 21-26.

³⁰Fahrudin Ali Sabri, "Penetapan 'Illat al-Hukum Melalui al-Manath dalam Qiyas", *Jurnal Al-Ihkam* 10, No. 1 (2015), p. 24-40:

³¹Muchlis Bahar, *Metode Penemuan....*, p. 177-188.

or in other cases, no concrete texts.³² Romli (2014) says that 'illat plays a crucial role in Islamic law because with 'illat legal position of a problem can be determined. 'Illat has also become an urgent medium because it cannot be separated from legal change and legal development. Concerning legal development, *ijtihad* is used to determine the basis of a legal provision, and then its application is extended to other problems that arise in society.³³

The above studies concerning 'illat have shown that the discussion of 'illat in establishing the law is an important issue. It is strong evidence to show that 'illat has its own position in the development of Islamic law. In the future, the process of *istinbath al-hukum* will be largely determined by how a *mujtahid* is able to determine the law through the 'illat method.

'Illat as a Method of Determining Islamic Law

Ushul fiqh ulemas have formulated three forms of Islamic law discovery methods, as stated by Al Yasa 'Abubakar, which comprise the *istinbath al-bayani*, *istinbath al-ta'lili* and *istinbath al-istishlahi* methods. *Istinbath al-bayani*, also known as the *istinbath lughawi* method (linguistic interpretation method), is a method of establishing law by interpreting Islamic legal texts, namely the texts of the Qur'an and *hadith*. This method is applied when dealing with cases of predetermined legal texts (*nash* evidence), and yet, the legal texts are still vague or unclear. Investigation of various legal statements in this method produces a taxonomy that classifies legal statements in legal texts (*nash*) in four aspects, including: (1) In terms of the level of clarity of the *nash* texts (*wadhiih* and *mubham*), the texts are classified into two (a) clear texts, covering four levels, namely *zahir*, *nash*, *mufassar*, and *muhkam*, and (b) unclear texts, consisting of four levels, namely *khafi*, *mushkil*, *mujmal* (general), and *mutasyabih* (specific); (2) In terms of the meaning (*al-dalalah*) shown, there are four forms of this aspect, namely direct appointment (*dalalah al-'ibarah*), implicit appointment (*dalalah al-isyyarah*), analog appointment (*dalalah al-dalalah* or also called *dalalah al-nash*), and insertion designation (*dalalah al-iqtidla'*); (3) In terms of the breadth and narrowness of the meaning, there are several forms of *lafazh*, such as 'am (general, universal), *kash* (special, particular), *mushtarak* (ambiguity, double meaning), *hakiki* (true meaning), *majazi* (metaphorical statement), and so forth; and (4) In terms of the form of *taklif* (imposition) formula, two categories are found, namely *amar* (command) and *nahyu* (prohibition). In addition, this method also examines the relationship between words and words or between sentences and sentences, such as the provisions on which *nash* texts need to be explained and

³² St. Halimang, "Pendekatan 'Illat Hukum dalam Penalaran Fikih", *Jurnal al-'Adl* 7, No. 1 (2014), p. 88-98

³³ Romli, "Illat dan Pengembangan Hukum Islam", *Jurnal Intizar* 20, No. 2 (2014), p. 221-246.

which are not necessary, and which texts explain or to be explained (*takhshish*, *taqyid*, and *tabyin*), as well as the ways of interpreting an arrangement or series of sentences.³⁴

The *istinbath al-ta'lili* method (causation method) is a method of legal reasoning which examines the attributes behind a textual provision (al-Qur'an and *hadith*). In this method, the investigation is directed to find the reasons for determining the law or logical ratio ('*illat*) of a legal statement, either in the form of '*illat al-tasyri'i*', '*illat al-qiyasi*', or '*illat al-istihsani*'. In this case, *ushuliyyun ulemas* argue that all legal provisions must have an '*illat* because it is not appropriate for the sharia (lawmakers) to make a regulation without any purpose.³⁵ Therefore, knowing the purpose of the sharia of a law is the key to determining the upcoming rule. In other words, the '*illat* found can be used as a legal point for other cases for which there is no *nash* or to determine whether the law understood from the *nash* must be maintained or changed to another law (in the case of '*illah al-tasyri'i*').

The *istinbath al-istishlahi* method is a pattern of legal reasoning that seeks to explore the "general principles" contained in the verses of the Qur'an or *hadith*. These general principles are in the form of benefit values which are then used as "general concepts" to resolve various cases which arise without any supporting *nash* to explain the law. This method works by relating Qur'anic verses and *hadith* to be compromised with each other, resulting in a conclusion. This conclusion becomes a "general principle", later formulated as a "general concept" and then it is deduced to the cases to be resolved (to establish the law).³⁶

In addition to the aforementioned three forms of legal reasoning patterns (*istinbath* method), Syamsul Anwar introduces another method that has not been proposed by the *ushuliyyun*, namely the *al-tawfiqi* method (alignment, synchronization).³⁷ This method seeks to harmonize various legal arguments that physically appear (*zahir*) to contradict each other. This method is essentially a way of resolving legal arguments that are considered contradictory, a term called *ta'arudl al-adillah* in *ushul fiqh*. This alignment method has three stages: (1) *al-jam'u wa al-tawfiq* (compromising), which is to collect contradicting verses or *hadith*, and then compromise them by determining a specific meaning of the general *nash* (*takhshish*) and limiting of the meaning of the absolute *nash* (*taqyid*), among others; (2) *nasakh* (abolition), which refers to abolishing the law from the first *nash* text and then adhering to the law with the *nash* text that comes afterward. Here, a *fuqaha* examines the history of the

³⁴Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah...*, p. 7-8, and Syamsul Anwar, *Teori Konformitas...*, p. 275.

³⁵Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah...*, p. 8.

³⁶Al Yasa' Abubakar, *Ahli Waris Sepertalian Darah...*, p. 9-10.

³⁷Syamsul Anwar, *Teori Konformitas...*, p. 275-276.

revelation of *nash* (*asbab al-nuzul* of a verse of the Qur'an or *asbab al-wurud* of the *hadith*) that appeared to be *ta'arudl* to determine that the one revealed later as a *nasikh* (eraser) against those revealed beforehand; and (3) *tarjih*, which refers to comparing the arguments that seem contradictory to find out which one is stronger than the others,³⁸ and the stronger argument becomes the reference.

***Munasabah* Method in Identifying 'Illat from the Perspective of al-Ghazali**

The *munasabah* (conformity) method is a method developed by al-Ghazali to find 'illat. The *ushuliyun* have previously determined three ways to identify the attributes that constitute the 'illat of law: (1) through the statement of the *nash* texts of the Qur'an and *hadith*, (2) through *ijma'*, and (3) through *ijtihad*.³⁹

The discovery of 'illat through *nash* is when the Qur'an and *hadith* have shown a trait as an attribute or legal reason, then that trait becomes the 'illat.⁴⁰ In at-Taubah 9:60, it reads:

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ.

Translation: "The alms are only for the poor and the needy, and for those employed in connection therewith, and for those whose hearts are to be reconciled, and for the *freeing* of slaves, and for those in debt, and for the cause of Allah, and for the wayfarer – an ordinance from Allah. And Allah is All-Knowing, Wise"

The letter *jar* (*lam*) in the sentence "لِلْفُقَرَاءِ" provides *ta'lil* ('illat) of anyone who belongs to *asnaf* of *zakat* (people who are entitled to receive *zakat*). At-Taubah verse 60 states that there are eight categories of a person entitled to receive *zakat*, namely the indigent, the poor, *amil* *zakat*, converts, slaves who are promised to be freed with a ransom, debtors who are unable to pay, *fi sabilillah*, and people who run out of supplies on travel. The eight *asnaf* of *zakat* is a legal 'illat that a person may receive *zakat*, as is determined by the *nash*.

The determination of 'illat through *ijma'* is when the *mujtahids* at one time agree that certain characteristics are used as the reason for the sharia law of an event, then the characteristics are 'illat received from the event based on agreement (*ijma'*), e.g., *ulemas'* agreement on the guardianship of a father over his son's property who is still underage. In this context, what becomes the 'illat (legal reason) is the need for guardianship of the management of the

³⁸Ali Hasballah, *Ushul al-Tasyri' al-Islami*, Dar al-Ma'arif, Mesir, 1970, p. 236, and Muhammad ibn 'Ali ibn Muhammad al-Syaukani, *Irsyadu al-Fuhul ila Tahqiq al-Haqq min 'Ilm al-Ushul*, Beirut: Dar al-Fikr, n.d., p. 273.

³⁹Al-Ghazali, *al-Mustashfa min 'Ilm al-Ushul*, t. tp.: Dar al-Fikr, n.d., p. 288-306.

⁴⁰Mukhtar Yahya dan Fatchurrahman, *Dasar-Dasar Pembinaan...*, p. 89.

property of a minor as the owner's property is not yet an adult, and so he is unable to manage his property.⁴¹

According to Al-Ghazali, there are two ways to identify 'illat through *ijtihad*: the first is *al-sabru wa al-taqsim*, which refers to conducting research by testing all the attributes that are assumed to be possible 'illat, so that one attribute most likely to be 'illat is selected;⁴² and the second is *munasabah*, which seeks the conformity among attributes used as 'illat.⁴³ *Munasabah* is the one called the conformity method by Syamsul Anwar.⁴⁴

The *munasabah* method developed by al-Ghazali is a method for finding the conformity between the law and its 'illat. The attributes that are in accordance with the law are used as 'illat. Al-Ghazali in his book *Syifa' al-Ghalil fi Bayan al-Syabah wa al-Mukhil wa Masalik al-Ta'lil*, as quoted by Syamsul Anwar, explains that the meaning of conformity is that the 'illat referred to, from the point of view of the benefit, indeed requires the establishment of the law concerned.⁴⁵ This description is also emphasized in his book *al-Mustashfa* that *munasib* (conformity) means a method of seeking benefit.⁴⁶

Al-Ghazali distinguishes *munasib* into three types: (1) *munasib mu'atstsir* (effective), (2) *munasib mula'im* (harmonious), and (3) *munasib gharib* (odd).⁴⁷ *Munasib mu'atstsir* refers to the 'illat that becomes the legal point and is discovered from the sharia rules (*nash* texts) or *ijma'*.⁴⁸ Some examples include the representatives of minors (*al-sighar*) and the prohibition of consuming alcohol due to being intoxicant. In these two examples, the 'illat is based on the *nash* and *ijma'*. From the *munasib* point of view, the 'illat of being the representative of minors is due to the child being incapable of taking care of all his interests. Likewise, the 'illat of the prohibition of alcohol is to maintain a healthy mind as alcohol is an intoxicant, and thus one will not cause harm to oneself and can help maintain public order. In the case of *munasib mu'atstsir*, the attributes used as 'illat have been confirmed by *nash* or *ijma'*. Therefore, according to al-Ghazali, there is no need to carry out *munasabah* since the purpose of *munasabah* is to find out 'illat, while in this case the 'illat is already known.⁴⁹

⁴¹Mukhtar Yahya and Fatchurrahman, *Dasar-Dasar Pembinaan...*, p. 96.

⁴²Al-Ghazali, *al-Mustashfa...*, p. 295-296.

⁴³Al-Ghazali, *al-Mustashfa...*, p. 296-306.

⁴⁴Syamsul Anwar, *Teori Konformitas...*, p. 277.

⁴⁵Syamsul Anwar, *Teori Konformitas...*, p. 278.

⁴⁶Al-Ghazali, *al-Mustashfa...*, p. 297.

⁴⁷Al-Ghazali, *al-Mustashfa...*, p. 297.

⁴⁸Muhammah Abu Zahrah, *Ushul al-Fiqh...*, p. 241. 'Abd al-Wahab Khallaf, *'Ilm Ushul al-Fiqh*, p. 68-70.

⁴⁹Al-Ghazali, *al-Mustashfa...*, p. 297.

On the other hand, in terms of *munasib mula'im*, the 'illat which becomes a legal point is discovered not from *nash* or *ijma'*, but from two aspects. The first aspect is its conformity with the law, meaning that the attributes that are used as 'illat according to logic require the establishment of the law for the realization of benefit. The second aspect is it is in accordance with the provisions of the sharia elsewhere. For example, the 'illat of prohibiting alcohol even if only a small amount is because it will eventually be a large quantity. Therefore, other intoxicating drinks are also *haram* (prohibited), even in small quantities, by making *qiyas* to *khamr* (alcoholic drinks).⁵⁰ This is in line with sharia actions in other circumstances, such as the prohibition of approaching adultery, e.g., a man and a woman who are not *mahram* (persons with whom marriage is prohibited) being alone as it can lead to something bigger, i.e, adultery. Another example put forward by al-Ghazali is that women in the state of menstruation are not required to perform *qadha* (make-up) *shalat*, and the 'illat for this situation is the difficulty of replacing so many prayers.⁵¹ Similarly, this conforms with the other sharia actions, such as it is permissible to do *qashr* (shorten) and *jama'* (combine) prayers for travelers to avoid difficulties.

The third type, *munasib gharib*, is *munasib* in which there is no effectiveness and harmony with the act of establishing law, or there is no comparable example elsewhere.⁵² For instance, al-Ghazali argues that murderers do not inherit. Here, the *hadith* which becomes the legal basis for the revocation of inheritance of murderers does not explain what the 'illat is.⁵³ However, Syamsul Anwar describes that legal experts concluded the 'illat based on the *munasab*, which indicates that the 'illat is to allow the murderer to get the opposite intention. A murderer conducts killing, against the law, with the intention to inherit quickly, and thus, as a sanction he is treated with the opposite of his intent, that is by revoking his inheritance rights. This 'illat is odd because there is no example in the genus of comparable acts of the sharia legislators anywhere else.⁵⁴ According to al-Ghazali, however, *munasib gharib* can be used as the basis for legal causation as in the example above. *Qiyas* of this case can be correlated to a divorce case committed by a husband against his wife who is dying with the intention that the wife will not inherit. In

⁵⁰Al-Ghazali, *al-Mustashfa*..., p. 298.

⁵¹Al-Ghazali, *al-Mustashfa*..., p. 297.

⁵²Al-Ghazali, *al-Mustashfa*..., p. 298.

⁵³According to the author, the murderer (القاتل) is an 'illat ('illat al-tasyri'i), so what is not known is not the 'illat, but the wisdom, i.e., what is the wisdom of revoking inheritance rights for murderers?

⁵⁴Syamsul Anwar, *Teori Konformitas*..., p. 284.

this case, the husband is sanctioned by being treated the opposite, that is his wife is still given an inheritance.⁵⁵

The conclusion that can be drawn from the *munasib* method developed by al-Ghazali is that he used *hikmah* as the genus 'illat⁵⁶ in establishing law. This can be seen in the determination of 'illat through *munasib mula'im*. Likewise in *munasib gharib*, al-Ghazali also used *hikmah* as 'illat in the form of *species 'illat*⁵⁷ since there is no previous example elsewhere. This means that al-Ghazali tried to see in the two *munasib* what attributes containing benefits and eliminating difficulties can be used as 'illat because the main purpose of the shariah law is in the context of presenting benefit and eliminating harm. However, it is still questionable whether *hikmah* can be used as 'illat of law.

The majority of *ushuliyun ulemas* perceive *hikmah* as something that brings benefit or improvement and/or rejects harm. For example, the *qasr* prayer is prescribed to avoid difficulties (*masyaqqah*) for travellers. On the other hand, other *ushuliyun* argue that *hikmah* is a relevant matter (*munasabah*). For example, sharia prescribes *qasr* in travelling, in which the *hikmah* of it is difficulty (*masyaqqah*).⁵⁸ This second opinion makes *masyaqqah* itself a *hikmah*, in contrast to *jumhur* that makes *hikmah* something that can attract benefit and eliminate harm (difficulties), or in other words, something that can reject the *masyaqqah*. The argument by the *jumhur* is in accordance with what Wahbah al-Zuhaili describes: *hikmah* can bring upon *mashlahat* and avoid *mafsadah*. For example, trade is permissible because it contains benefits for both parties in the contract, adultery is forbidden and *hadd* (fixed punishment) is imposed on the perpetrators to maintain legal offspring, and alcohol is forbidden to consume to maintain a healthy mind.⁵⁹

Responding to the position of *hikmah* as 'illat, Muhammad Abu Zahrah, an *ushuliyun*, divides 'illat into two, 'illat with *zahir, mundhabit*, and *munasib* attributes, and 'illat of a *munasib* attribute, but not yet *mundhabit*, both of which are the *hikmah* of the legislation of the *nash*.⁶⁰ Further, Wahbah al-Zuhaili, quoting the book "*Raudlah al-Nazhir wa Syarahuha li Ibni Badrani and al-Madkhal ila Madzhab Ahmad*", argues that 'illat includes two aspects, *hikmah* and *zahir, mundhabit*, and *munasib* attributes. For example, he states

⁵⁵Al-Ghazali, *al-Mustashfa...*, p. 298.

⁵⁶*Genus 'illat* is the term used by Syamsul Anwar for 'illat which is generalized after conformity of the two cases which have been determined by the texts. Syamsul Anwar, *Teori Konformitas...*, p. 280-281.

⁵⁷*Species 'illat* is also a term used by Syamsul Anwar for 'illat from a case that has not been confirmed with another case. Syamsul Anwar, *Teori Konformitas...*, p. 280-281.

⁵⁸Abd al-Hakim 'Abd al-Rahman As'ad al-Sha'adi, *Mabahis al-'Illah fi al-Qiyas 'ind al-Ushuliyin*, Beirut: Dar al-Basyair al-Islamiyah, Cet. I, 1986, p. 106.

⁵⁹Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*, Jld. I, Beirut: Dar al-Fikr al-Ma'ashir, 1986, p. 647.

⁶⁰Muhammad Abu Zahrah, *Ushul al-Fiqh*, p. 238.

that the obligatory 'illat of whipping for adulterers is to maintain offspring, or to prevent adultery itself.⁶¹ From this example, what becomes the 'illat in the perspective of *hikmah* is to preserve the offspring, whereas the 'illat in terms of *zahir*, *mundhabit*, and *munasib* is the adultery itself.

From the argument of Wahbah al-Zuhaili, it can be understood that a law stipulated must be based on *hikmah* in the form of gaining benefit or avoiding harm, and at the same time be based on the attributes of *zahir*, *mundhabit*, and *munasib*. In his view, *hikmah* and attributes are called 'illat. To add, 'Abd al-Wahab Khallaf explains that if all laws contain certain and real *hikmah*, then the *hikmah* is the 'illat of law. Such *hikmah* is what motivates the formation of law.⁶²

However, *jumhur ushuliyun* agree that what can be used as 'illat is a real and definite trait, such as killing as the 'illat for *qishash* (retaliation) and stealing as the 'illat of cutting off hands. *Hikmah*, however, cannot be used as 'illat because it has an abstract concept, e.g., it is permissible to exempt from fasting and to perform *qasr* prayer for travelers in order to avoid difficulties. Here, having a difficulty is not the 'illat to exempt from fasting and to carry out *qasr* prayer. As hardships vary from one person to another, it is difficult to ascertain that all people who travel will experience such a hardship.⁶³

The debate among the *ushuliyun ulemas* in enacting *hikmah* as 'illat can be divided into three groups: those who absolutely reject, those who absolutely agree, and those who conditionally agree.⁶⁴ The *ulemas* who refuse argue that it is not permissible to determine 'illat by using *hikmah*, whether it is tangible or hidden, clear or unclear.⁶⁵ They point out that *hikmah* does not have the *zahir*, *mundhabit*, and *munasib* nature as a whole, making it difficult to serve as a standard measure for the basis of law.

The *ulemas* who accept *hikmah* as 'illat, such as Imam al-Ghazali, Baidlawi, and al-Razi, argue that it is permissible to decide 'illat with *hikmah*, and those who think that it is not permissible to do so is due to their lack understanding of 'illat. They reason that what is not allowed is to discover 'illat with characteristics that do not meet the requirements of 'illat. If something fulfills the requirements of 'illat, this means that it has presented benefit and avoided harm. Thus, it is possible to use 'illat with such characteristics.⁶⁶ This suggests that every attribute used as 'illat must contain *hikmah* by way of presenting benefit and eliminating harm. To this end, they argue that *hikmah* can be used as 'illat. For example, *safar* (travelling) is

⁶¹Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*,..., p. 647-649.

⁶²'Abd al-Wahab Khallaf, *Ilm Ushul al-Fiqh*,..., p. 69.

⁶³Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*,..., p. 649-650.

⁶⁴Al-Sha'adi, *Mabahis al-'Illah*..., p. 106-107.

⁶⁵Al-Sha'adi, *Mabahis al-'Illah*..., p. 107.

⁶⁶Al-Sha'adi, *Mabahis al-'Illah*..., p. 112-113.

the 'illat to permit someone to do *qasr* prayers because it contains difficulty (*masyaqqah*), and not because of the *safar* itself. Therefore, in principle, strong assumptions about the determination of benefit or harm are an adequate measure to be used as 'illat. However, if it turns out that the outcome of the assumption of the existing main law (*ashal*) is determined based on a certain benefit, and the benefit is found in *furu'*, then there is no doubt that the law of *furu'* is the same as that of *ashal*. Practising legal action based on the result of assumptions (*zhan*) is obligatory.⁶⁷

Further, the *ulemas* who agree conditionally believe that it is allowed to have 'illat with *hikmah* if the *hikmah* is clear and manifest itself. On the contrary, when the *hikmah* is difficult to ascertain or hidden, then it is not permissible to do so. The proponents of this argument include Ibn al-Hajib and al-Shafi al-Hindi and most of the Hanabilah. They reason that the nature referred to here is the real and obvious characteristics. Such characteristics are also a way to achieve the *hikmah* intended by sharia, and as it occupies the place of *hikmah*, having 'illat with wisdom is thus permissible.⁶⁸

From the different opinions discussed above, it can be concluded that *jumhur ushuliyun* explicitly refuse to utilize *hikmah* as 'illat because *hikmah* has no real and *dhabit* traits even though it is *munasib*. Their idea is in contrast to al-Ghazali's opinion who completely accepts *hikmah* as 'illat. He argues that an attribute used as 'illat must also contain the *hikmah* in terms of providing benefit or avoiding harm. In other words, the said attribute used as 'illat must be the one that contains *hikmah*. If an attribute cannot be ascertained to contain such *hikmah*, then the attribute cannot be determined as 'illat.

Therefore, it can be deduced that the *munasabah* method developed by al-Ghazali can be accepted as a method of obtaining 'illat if the existence of *hikmah* can become 'illat. However, those who reject *hikmah* as 'illat will not accept this method as a way to determine 'illat.

Legal Implications for the Acceptance of *Munasabah* as a Method of Determining 'Illat

As previously stated, *munasabah* is a way to discover 'illat based on *hikmah*, and the attribute used as 'illat has no *zahir*, *mundhabit*, and *munasib* characteristics. The majority of *ushuliyun ulemas*, however, state that *hikmah* is something that propose benefit and eliminate harm, and therefore, *hikmah* is abstract, not concrete. As such, *jumhur ushuliyun* do not accept *hikmah* as 'illat because it cannot be measured with certainty.

⁶⁷Al-Baidlawi, *Minhaj al-Ushul fi 'Ilm al-Ushul, Syarh al-Bakhasyi wa ma'al Syarh al-Isnawi*, Mesir, Muhammad 'Ali Shabhi wa Auladiah, Juz. III, n.d., p. 106-107.

⁶⁸Al-Sha'adi, *Mabahis al-'Illah...*, p. 113-114.

Presuming that *hikmah* is used as 'illat, one will face difficulty when he tries to apply the same 'illat in other cases. This may occur because *hikmah* from one case to another will differ according to the benefit arising from each of the cases. Such situations contradict the concept that an 'illat must be applicable in all cases because it is a genus (general). In addition, the 'illat determined based on *hikmah* will be more subjective because it is evaluated based on a personal assessment of a case considered to have a benefit under certain conditions. Yet, there is a possibility that the benefit will not appear in other situations, or other people may even think it has no benefit altogether. In this case, it is difficult for someone to measure objectively that one condition must contain a benefit that can be accepted by everyone. Therefore, if *hikmah* is used as 'illat, then it is very likely that there will be very distinct differences among the *fuqaha* in establishing law against a case. The differences may occur due to their different views in assessing a case, whether it contains a benefit or not. One might think that there is a benefit in a case while another may argue that there is no benefit in that case at all. Therefore, it is difficult to determine whose opinion is accurate because the benefit is not concrete, which can be assessed by a certain measurement.

The above statements suggest that the identification of 'illat through *munasabah* will generate uncertainty in law. In other words, the value of legal certainty is highly dependent on certain subjectivity in perceiving something; whether or not it contains a benefit. Therefore, *hikmah* that may bring upon benefit or prevent harm cannot be used as an 'illat because it is abstract and cannot be measured concretely.

Ushuliyun ulemas distinguish between *sabab*, 'illat and *hikmah* in establishing a sharia law. *Sabab* (cause) and 'illat have a similar role as a trait or attribute that is used as the basis for establishing law and a determinant of the presence or absence of law. *Hikmah* is a condition that can present certain benefit or avoid harm to humans.⁶⁹

In determining the sharia law, *ushuliyun ulemas* state that *sabab* and 'illat have the same purpose as the basis for law determination (legal standard). The difference between *sabab* and 'illat lies on the attribute used as the basis for determining the law. If the attribute can be accepted logically, then it is called 'illat and *sabab*. Yet, if the said attribute cannot be logicalized, then it is called *sabab*.⁷⁰ For example, *safar* is a characteristic used as the basis for determining the permissibility of performing *jama'* and *qasr* prayers. *Safar* is one condition that can be logically explained because it is something that can be sensed (*zahir*), measured (*mundabith*), and relevant (*munasib*) with the *hikmah* of the law. Thus, *safar* is the 'illat and *sabab* for the *rukhsah* of

⁶⁹ Mukhatar Yahya and Fatchurrahman, *Dasar-Dasar Pembinaan...*, p. 83-86.

⁷⁰ Mukhatar Yahya and Fatchurrahman, *Dasar-Dasar Pembinaan...*, p. 86.

having *jama'* and *qasr* prayers. On the other hand, the slipping (inclination) of the sun to the West as a sign of the time for *dhuhur* prayer is a condition that cannot be logically related to the obligation of *dhuhur* prayer, and this condition is called *sabab*, not 'illat.

Nevertheless, *hikmah* is different from *sabab* and 'illat. *Sabab* and 'illat are definite and concrete attributes and they can properly be used as the basis for determining sharia law. In contrast, *hikmah* is an abstract matter of presenting benefit or eliminating harm. Its existence cannot be ascertained, however, in an action. Therefore, *hikmah* should not be used as the basis for determining sharia law.⁷¹ For example, *safar* becomes the basis for determining the permissibility of doing *jama'* (combining) and *qasar* (shortening) prayers as it is assumed to cause difficulties along the journey. Assumptions that there is harm can not be ascertained to occur since some travelers may experience troubles on their trip whilst others may not face the same troubles. Thus, the standard rule used as the basis for determining the permissibility of performing *jama'* and *qasr* prayers does not lie on the *hikmah* of eliminating any harm in the journey, but rather the *safar* itself because *safar* is a definite and concrete condition. To this end, the *hikmah* of allowing *jama'* and *qasr* prayers due to harm involved is subjective by nature and it may not necessarily happen to everyone. Therefore, the *hikmah* related to presenting benefit or avoiding harm should not be used as the basis for determining sharia law.

Conclusion

Munasabah is a method of determining 'illat introduced by al-Ghazali which is categorized into three, *munasib mu'atstsir*, *munasab mula'im*, and *munasib gharib*. 'Illat in *munasib mu'atstsir* is certain as the 'illat is known directly from the *nash* or *ijma'*, and therefore *munasabah* in determining 'illat is no longer needed here. *Munasabah* only concerns with *munasib mula'im* and *munasib gharib* in determining 'illat. *Munasib mula'im* seeks for the *genus* 'illat, an 'illat drawn from every event that has been predetermined by the *nash* by examining the same *hikmah* in each of the events. Such *hikmah* is then used as the *genus* 'illat which will later be applied as *qiyas* for other events that have been legally stipulated by the *nash*. On the other hand, *munasib gharib* seeks for the *species* 'illat, an 'illat obtained from an event that has been predetermined by the *nash*, with no comparison found in other events. 'Illat determined from *munasib gharib* is also *hikmah*, having no concrete nature. In the perspective of legal history, this method of discovering 'illat is inseparable from *kalam* and philosophy as was the development of the

⁷¹Mukhtar Yahya dan Fatchurrahman, *Dasar-Dasar Pembinaan...*, p. 83-84.

Islamic sciences at the time. As such, this had also affected al-Ghazali's mastery in Islamic law as well as in other Islamic disciplines.

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PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9

PAGE 10

PAGE 11

PAGE 12

PAGE 13

PAGE 14

PAGE 15

PAGE 16

PAGE 17

PAGE 18

PAGE 19

PAGE 20

PAGE 21
