

ENVIRONMENTAL PROTECTION AND MANAGEMENT IN LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION OF MASLAHAH PERSPECTIVE

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Abstract: The main problem in this research is how to protect and manage the environment in Law no. 11 of 2020 concerning the Creation of Problem Perspectives. This study uses library research that collects materials from previous research. Based on its nature, this research is qualitative. The approaches in this research are the theological, statute, and conceptual approaches. The materials used are the quo laws and books or research results related to the discussion. Data processing techniques describe the object under study, make comparisons, evaluate, and make arguments for the research. The research shows that, first, several provisions for changes in the Job Creation Law on the amendments to Article 18 paragraph (2) and Article 19 paragraph (1) of Law no. 41 of 1999. Both articles were weakened by the Job Creation Law, namely, weakening environmental permits and impacting environmental management, which is not worth maslahah. Second, the abolition of Article 36 and amendments to Article 39 paragraph (2) of Law no. 32 of 2009 weakened the role of the community in protecting their environment. Third, there is an amendment to Article 88 of Law no. 32 of 2009 by the Job Creation Act.

Keyword: Environmental Management, Job Creation, Maslahah

INTRODUCTION

The environment is everything Allah gives to all His creatures, as a place to live or a place to live for every living creature. Especially the living environment is a place that becomes a space for all living things and objects to adapt, which can affect human survival,¹ because every living thing is highly dependent on the

¹Otto Soemarwoto, *Indonesia dala Kancah Isu Lingkungan Global* (Gramedia Pustaka Utama, 1972), p. 1-2.

environment in which it lives. However, many disasters happen because of the damage to the environment. Some damages occurred starting from the ecosystem of the ocean and land. Therefore Allah described it in the QS ar-Rum / 30: 41.

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ

The Translation:

Evil (sins and disobedience of Allah) has appeared on land and sea because of what the hands of men have earned (by oppression and evil deeds), that He (Allah) may make them taste a part of that which they have done, in order that they may return (by repenting to Allah, and begging His Pardon)²

This verse is Allah's sign about the environmental damage that occurs on land and in the sea due to the actions of human hands.³ Therefore, humans must be aware to immediately stop all activities that cause these damages, along with innovations that can be useful for protecting the environment.

The process of protecting the environment is a human task reflected in the content of Allah's dialogue with the angels. However, the angels predict that humans will only cause damage on land and in the sea, meaning that they do not benefit the universe, but Allah wants to inform about humans' creation as caliph in the world. "Indeed I will create a caliph (*Khalifah*) in the world"⁴ is a guarantee of Allah that there will be some of His servants who will be able to give *maslahah* to the survival of humankind. That is what Allah SWT said. What has conveying is a follow-up process of the universe creation, as a place to occupy humans as well as possible,⁵ and at the same time serving as God's representative on earth in taking care of the earth and everything contained in it and carrying out all the rules. Which He has set.

The term caliph (*Khalifah*) in this verse means the position of a servant Allah has sent as the representative of Allah in enforcing His laws and implementing them. This verse shows that the caliphate's task is the authority Allah SWT gave to Adam's children and grandchildren, the vast expanse of the earth as a place to carry out what assigning to him. That shows that the duty of the caliphate is the responsibility of every servant to carry out the duties of Allah SWT. Doing

²Kementrian Agama RI, *al-Qur'an dan Tafsirnya (Edisi yang Disempurnakan)* Jilid 7(Jakarta: PT. SinergiPustaka Indonesia, 2012), p. 513.

³Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, vol. 10(Jakarta: Lentera Hati, 2002), p 237.

⁴Kementrian Agama RI, *al-Qur'an dan Tafsirnya (Edisi yang Disempurnakan,)* Jilid 1(Jakarta: PT. SinergiPustaka Indonesia, 2012), p. 74.

⁵Lihat, M.Quraish M. Qurai Shihab, *Tafsir al-Misbah Pesan dan Kesan Keserasian al-Qur'an*, vol; I (Jakarta Lentera Hati, 2002), p. 171.

something that Allah does not determine is a denial of the duty of the caliphate.⁶ In another interpretation, the Qur'an also confirms that a creature called a human is a homo theophany or a creature with the concept of divinity whose attitudes and actions are manifestations of God's will.⁷

M. Quraish Shihab detailed the term caliphate in 3 (three) interrelated elements: First, humans, in this case, are called Khalifah. Second, the universe is the earth – furthermore, third, human relations with the universe and everything contained in it, including humans. Moreover, the relationship between humans and nature is a symbiotic mutualism, meaning that they are mutually dependent on each other, humans are the custodians, and nature is the provider of all tools to be cared for and utilized by themselves. Provide care and prosperity.⁸ People who fear Allah and make improvements are promising to rule the world, as has been proven by the Prophet and his Companions and the later Islamic leaders. They could lead the world with strength by carrying out Allah's commands.

All living things, including humans, live in a regional order called the environment with various devices, as a vast place that covers almost everything.⁹ Therefore, God gives humans a particular task as *Khalifah* on earth should maintain behavior and the environment because humans and the environment have a reciprocal relationship. Both are mutually dependent on each other.

Allah SWT delegates humans to the earth to prosper by maintaining the universe's harmony. His role as *Khalifah*, as explained earlier, is a form of initial effort to preserve the environment. Therefore, as God's creature that is given special responsibility as a *Khalifah* on earth, we must be able to bring balance to the world and the hereafter.

Maintaining and caring efforts for the environment, the Qur'an and hadith, as well as statutory regulations, can be used as the basis. In this case, the government, which has proper authority to protect the environment, must be guided by these legal sources. However, the problem is the existence of statutory regulations that are not under the legal principles established by Allah and His Messenger, so that in the concept of the law, it is considered not worth *maslahah* for human life. Especially in several new articles and provisions in Law Number 11 of 2020 concerning Job Creation, especially those that discuss the environment. The law made several new environmental protection and management changes and

⁶M. Quraish M. Qurai Shihab, *Tafsir al-Misbah Pesan dan Kesan KescerAsian al-Qur'an* vol; I. h. 142.

⁷Lajnah Pentashihan Mushaf al-Qur'an, Badan Litban dan Diklat, Kementerian Agama RI, *Tafsir al-Qur'an Tematik* (Cet. Petama; Jakarta: Kamil Pustaka, 2014), p. 4.

⁸M. Quraai Shihab, *Membumikan al-Qur'an* (Bandung Mizan, 2013), p. 460-461.

⁹Kadek Sarna, Dkk, *Hukum Lingkungan, Teori Legislasi dan Studi Kasus* (Catatan Editor, Menyelamatkan "Ibu Kehidupan" Laode M. Syarif & Andri G. Wibisana). The source of this note is from the environmental law book, which is the result of collaborative writings of several law faculty lecturers in Indonesia, citing the initial part, which is the point of the editor's note using Roman numerals.

canceled the old provisions in Law Number 32 of 2009 concerning Environmental Management and Protection.

The substance contained in the Environmental Law, especially in Law Number 11 of 2020 concerning Job Creation, has become a polemic in the community, so there is a large wave of masses rejecting the formation of the law. Among the problems that the public has criticized is the weakening of environmental permits by the Job Creation Act as seen in the amendments to several articles in Law Number 41 of 1999 concerning Forestry, including Article 18 paragraph 2, Article 19 paragraph 1, then the weakening of community involvement, as seen from the abolition of Article 36 and amendments to Article 39 paragraph 2 of Law Number 32 of 2009 concerning Environmental Protection and Management. Finally, the author finds the problem in the Job Creation Act is the weakening of law enforcement, which shows in the amendment to Article 88 of Law Number 32 of 2009, which discusses absolute responsibility for perpetrators of environmental destruction. With some of the provisions of these changes, this law does not benefit the community. Therefore the concept of environmental management based on *maslahah* values can be an alternative in terms of environmental empowerment.

Based on the description above, the authors are interested in analyzing the amendments to Law Number 32 of 2009 concerning Environmental Management and Protection. Law Number 41 of 1999 concerning Forestry in Law Number 11 of 2020 concerning Job Creation explicitly regulates the management of natural resources and the environment linked to the perspective of *maslahah*. Therefore, this research proposal is entitled "Environmental Protection and Management in Law Number 11 of 2020 concerning Creation of *Maslahah* Perspectives".

MASLAHAH

Maslahah in Arabic is in the form of *masdar* from the pronunciation *صالحا - يصلح - صالح*, which means good or positive.¹⁰ *Maslahah* also refers to the meaning of the benefits or benefits of an activity that contains a benefit. Meanwhile, in terms of terminology, *Maslahah* can be interpreted as taking advantage of and avoiding things that can endanger life, as a form of implementing the purpose of Islamic law, namely preserving life,¹¹ including maintaining religion, soul, mind, lineage, and property. Therefore, all human activities, in essence, must maintain these various aspects as part of the task of human creation to maintain life and reject harm; this is called *Maslahah*.

The benefit (*kemaslahatan*), according to Imam al-Gazali, must be in line with the goals of *syara'*. Even if it is not in line with human desires and goals, the benefit of humans is not always under the will of *syara'* but done with the aim of his lust.

¹⁰Ahmad Wron Munawwair, *Kamus al-Munawwir* (Surabaya: Pustaka Progresif, 1997), p. 788.

¹¹Harun, Pemikir Najamudin at-Thufi Tentang Konsep *Maslahah* Sebagai Teori *Istinbath* Hukum Islam, *Jurnal Digital Ishraqi* vol. 5 no. I (2009), p. 24.

Therefore, the guideline in determining the benefit is following what is desired in Islamic law, not necessarily carrying out the desires and goals of humans.¹²

As for some terms, *Maslahah*, according to the scholars, is as follows:

- 1) *Maslahah*, according to *Najamudin al-Thufin*, namely: The understanding of *al-Maslahah* according to *urf*^f (understanding that applies in society) is a cause that brings goodness or benefits, such as trade that produces or brings profit. As for according to *syara'*: causes that can deliver or bring goals rather than the intent of *shari'a*,¹ either in the form of the law of worship or *'adah* or *muamalah*, then *maslahah* is divided, among others, *al-mashlahah* desired by *shari'a*¹ as the prerogative rights of *shari'a*,¹ such as worship. And *mashlahah*, which aims for the benefit of living things that inhabit the universe, in this case including the environment and customs.¹³
- 2) *Maslahah*, according to *Ramadhan al-Buthi*, is proper and intended by a wise *shari'ah*, for the good of His servants, in the form of maintaining their religion, soul, mind, lineage, and property, in a precise order inside it.¹⁴
- 3) *Maslahah*, according to al-Khwarizmi, maintains the purpose of Islamic law by rejecting disasters or damage to things that are harmful from the actions of human hands and other living creatures.¹⁵

From the above understandings, in conclusion, *maslahah* is the benefit bestowed by Allah as the maker of rules for humankind to become the basis for maintaining the universe's balance, in which all kinds of living things are occupied, including humans with everything that supports their survival. Such as reason, lineage, and wealth that can avoid all harm, both in this world and in the hereafter.

The Types of *Mashlahah*

Abu Ishaq al-Syatibi argues that formulating *maslahah* from several types according to the interests that cover them, including::

Maslahah, in terms of its scope, is divided into three, namely:

- 1) *Maslahah*, related to all people or legal subjects, such as specific punishments for perpetrators of killing fellow human beings. Things like this apply to all people or legal subjects who murder because such actions can result in harm to everyone;

¹²Abu Hamid al-Ghazali, *al-Mustashfa min 'Ilmi al-Ushul* (Beirut: Dār al-Kutub al-'Ilmiyah', 1998), p. 286.

¹³Najamuddin at-Thufi, *Kitab al-Ta'yin Fisyarhi al-Arba'in* (Beirut Libanon: Mu'assasah al-Rayyan al-Maktabah al-Malikiyyah, 1998),

¹⁴Sa'id Ramadhan al-Buthi, *Dhawabit al-Mashlahah Fi al-Syari'ah al-Islamiyah* (Beirut: Mu'assasah al-Risalah, 1992), p. 239.

¹⁵Wahbah Zuhaili, *Ushul al-Figh al-Islamy*, Jus II, (Beirut: Dār al-Fikr, 1996), p. 757.

- 2) *Maslahah* related to certain people, such as a person working with raw materials that he destroys. Such an attitude carries if the reality shows that are generally receiving orders are always careless and never careful in completing their work;
- 3) *Maslahah* relates to certain people, such as the benefit of a wife, so that law enforcement, in this case, a judge must decide because her husband is declared missing,¹⁶ so that there is certainty in the wife's survival in the future.

If the three *maslahah* contradict each other, then the opinion of the majority of scholars, which takes precedence is the public benefit which must prioritize over the specific benefit or its level as follows:

Maslahah in terms of quality or importance can be divided into several things including:

- 1) *Maslahah al-Dharuriyyah*, this problem is related to the basic needs of humans in the world and the hereafter because it is related to the maintenance of religion, the maintenance of the soul, and mind, maintaining offspring, and maintaining property. These five benefits are called *al-Mashalih al-Khamsah*. This *maslahah* is the most crucial benefit for human life, so it must exist because there is guarding on religion or creed for worldly and *ukhrawi* peace;
- 2) *Maslahah al-Hajiyah*, this benefit is needed to perfect or maximize the main benefit previously discussed, called (*al-Mashalih al-Khamsah*), which is in the form of relief to maintain and maintain basic human needs. This benefit is a material need or the immediate human need. If this benefit eliminated, it will be able to cause difficulties for human life, although it does not result in human extinction;
- 3) *Maslahah al-Tahsiniiyyah*, benefits only as a complement to complement or beautify the previous concept of benefit. If this benefit does not exist, then human life is less beautiful and complete, although it does not cause harm to human life.

Maslahah in terms of its existence, namely:

- 1) *Maslahah Mu'tabarah*, benefits supported by *syara'* either directly or indirectly. This means that there are specific arguments that form the basis for the types and forms of benefit;

¹⁶Husain Hamid Hasan, *Nadzzriyyah al-Maslahah fi al-Fiqh al-Islamy* (Kairo: Dār al-Nahdhah al-Arabiyyah, 1971), p. 33.

- 2) *Maslahah Mulghah*, this is a benefit that does not accept by syara' because it is not under the provisions in syara' or is only considered suitable by the human mind, such as a noble or a person who has property who violates the law a lot, namely intercourse. His wife during the day in the month of Ramadan. The legal sanction, according to Syari' is to free enslaved people; for this type of person, the best sanction is fasting for two months in a row. In this way, it can provide a deterrent effect so as not to make mistakes over and over again;
- 3) *Maslahah Mursalah*, benefits whose existence is not supported by syara' and is not cancelled or rejected by syara' through detailed arguments but is supported by several meanings of texts in the Qur'an and hadith.

Maslahah Mursalah is divided into two, namely *Maslahah gharibah* and *Maslahah Mursalah*. *Maslahah Gharib* is a strange benefit or is not supported by syara', precisely and in general. Meanwhile, *maslahah mursalah* is a benefit not supported by syara' arguments or detailed texts but by a set of text meanings.¹⁷

The problems in terms of flexibility include:

- 1) *Maslahah* that changes according to changes in time or environmental conditions and the people who live it, such as things that are *muamalah*;
- 2) *Maslahah* does not change until the end of time. Even though the time, its natural conditions or environment, and the people who live it have changed, it will remain as its nature. Examples such as the problem of Worship.¹⁸

RESEARCH METHODOLOGY

This type of research is descriptive, which is more related to a qualitative approach, namely research intended to understand phenomena or events regarding the traditions carried out. In this study, the data were analyzed using the *Meleong* flow model, which consists of three stages: Data reduction stage, identifying data, and checking the validity of the data.

RESULT AND DISCUSSION

Maslahah Analysis of the Environmental Management Concept

Seeing the consequences related to changes in several provisions in the Forestry Law and Law No. 32 of 2009 concerning Environmental Management and Protection, related to provisions for weakening permits, community involvement, and weakening law enforcement, when viewed in Islamic law concerning the concept of *maslahah* as the goal then this article. This analysis is examined based on the views of Imam Ghazali. As for Imam Ghazali, there are

¹⁷Abu Ishak al-Syathibi, *al-Muwafaqat fi Ushul al-Syari'ah* (Beirut: Dār al-Ma'rifah, 1973), h. 8-12.

¹⁸Abu Hamid al-Ghazali, *al-Mustashfa min 'Ilmi al-Ushul*, h. 139.

various kinds of *maslahah* in terms of what is justified and not allowed by the *syara'* argument, which is divided into 3 (three) types, including:

- 1) *Maslahah* is justified by *syara'*, or *maslahah mu'tabarah*, which can be used as evidence and conclusions to *qiyas*, namely taking the law from the texts and *ijma*. For example: punishing that every intoxicating food or drink is forbidden to be given to *khamr* or *maslahah* contained in the law of *qhisas*, which is explained in the Qur'an letter Al-Baqarah verses 178-179: "It is obligatory on you *qhisash* regarding people who the one who kills, and in that *qhisas*, there is (guaranteed survival) life for you. In the verse context, the law of *qhisash* wisdom to the perpetrators of murder guarantees survival like humans,¹⁹ even though it is contrary to the sense of justice of punished humans;
- 2) *Maslahah*, which is cancelled by *syara'*, or is called *maslahah mulghah*, is considered *maslahah* by the mind but is considered fake because the fact is contrary to the provisions of the *shari'ah*. *Maslahah* is not considered and is not justified by *syara'*. For example, the distribution of inheritance between men and women is equal—likewise, several environmental management activities, from the example of the case of the tribal indigenous peoples. Dayak, previously mentioned, could be fulfilled in the Amdal according to the Environmental Management Plan (RKL) document. However, the impact on social and cultural impact is not good. That means that in terms of economic analysis and the condition of the environmental carrying capacity is good. However, it is contrary to the customs (culture) of the local community, contrary to the law and the constitutional rights of indigenous peoples;
- 3) *Maslahah* that is not justified and not canceled by *syara'*, or called *maslahah mursalah*.²⁰ Regarding the validity of the *maslahah*, Imam al-Gazali from the *Shafi'iyah* circles rejected the validity of the *maslahah*. However, the *Malikiyah* and *Hambaliyah* scholars accepted this *maslahah* as *hijjah* with the following conditions;²¹ First, the benefit is rational and definite, not just an estimate, so the law established through *maslahah mursalah* produces benefits and avoids or rejects harm. If it is drawn on the issue of the Job Creation Act or the Omnibus Law, the omnibus method in the concept of

¹⁹Lihat, Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, vol. 1 (Jakarta: Lentera Hati, 2002), h. 474-475.

²⁰Muhammad al-Ghazali, *al-Mustasfa min Ilmi Ushul*, Tahqiq Muhammad Sulaiman al-Asyqar (Beirut/Libanon: al-Risalah, 1997), p. 414-416.

²¹Muksana Pasaribu, *Maslahah dan Perkembangannya Sebagai Dasar Penetapan Hukum Islam*, *Jurnal Justitia* vol. 1, no. 4 (2014), p. 357.

the law means tidying up scattered rules or in the logic of job creation. In naming this law, it aims to facilitate investment and increase employment. However, as has been explained, the Job Creation Law violates many other regulations that are more valuable in *maslahah*, so it cannot be used as evidence in environmental management because it does not provide benefits and brings harm. Second, the benefits that concern the people's interests are not personal interests. If viewed from the context of the Job Creation Act, this law cannot be proved because it only benefits investors or corporations by exploiting the environment for their interests.

From Imam Ghazali's statement, if it is related to the impact of the enactment of the Job Creation Act, several provisions in the law are considered appropriate by the government to be applied in terms of environmental management. That is what is called *maslahah*, which is *walmiah* in nature, namely: *Maslahah* whose goodness is imagined can be achieved, even though if people think about it, it will appear harm and *mafsadat*. As in the meaning and analysis described previously, the enactment of the Job Creation Act, whose purpose is to bring about *maslahah* is only the government's imagination and wishful thinking, but this law can damage the environment and harm the community. It is contrary to the purpose of the creation law. humans as *rahmatan lil 'alamin*, as Allah says in QS al-Anbiyah/21:107.

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ ١٠٧

The Translation:

*And We have not sent you, but as a mercy to the worlds.*²²

The verse as a norm that the purpose of sending the Messenger of Allah, which is a representation of a complete legal system, including the purpose of human creation in general, is to bring benefit to the universe (environment), in which there are all kinds of plants, and other living things including man,²³ In this case, we are protecting the environment and performing conservation functions. Then in another verse, as contained in QS al-Ma'idah/5: 32

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ ٣٢

The Translation:

²²Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, vol. 8(Jakarta: Lentera Hati, 2002), p 132.

²³Lihat, Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, h. 133-135.

Whoever kills one soul, not for the sake of another soul or for causing mischief on the earth, it is as if he has killed all humankind. Furthermore, whoever preserves a human being is as if he has preserved the life of all humankind. Moreover, our messengers have come to them with clear statements; indeed, many of them transgressed the earth's boundaries.²⁴

The verse explains that all regulations, whether set by humans or by Allah, are essential for the benefit of human society as a whole.²⁵ From the verses description, it can be understood that the existence of the Copyright Law, which regulates the environmental sector, is contrary to the will of syara'. Then guard against legal principles as state responsibility, including:

- 1) The state guarantees the utilization of natural resources, providing the maximum benefit for the welfare and quality of life of the people, both present and future generations;
- 2) The state guarantees the rights of citizens to a good and healthy environment;
- 3) The state prevents the use of natural resources that cause pollution and damage to the environment.²⁶

The government in the Job Creation Law has made provisions for managing the environment. However, it is not based on the approach of the purpose of the derivation of syara' law (*maqasid al-syari'ah*), which is to protect the universe (*hifdz al'alam*), which is the primary support in protecting religion. Soul, mind, lineage, and protect property. No benefit will be achieved in the five provisions of the syara' if the environment is not protected from all damage caused by human hands, in this case, entrepreneurs and corporations who violate environmental law.

To be more specific in formulating the objectives of maqasid shari'ah concerning safeguarding the environment, in addition to five emergency matters, concerning safeguarding religion, life, family, mind, and property, according to H.A Abd Qassing, one part of the objectives of maqasid shari'ah , namely protecting the soul, is to have harmony with hifz al-bi'ah (protecting the environment). In addition, Ali Yafie proposed that the concept of hifz al-bi'ah be part of maqasid

²⁴Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, vol. 3(Jakarta: Lentera Hati, 2002), p 99.

²⁵See, Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, vol. 1, p. 476. The explanation of this verse is a continuation of the explanation of the interpretation of Surah al-Baqarah verse 179.

²⁶Syahrul Machmud, *Penegakan Hukum Lingkungan Indonesia* (Yogyakarta: Graha Ilmu, 2012), p. 61.

shari'ah (maintaining the environment).²⁷ Mustafa Abu Sway, for example, also uses the concept of *maslahah* as a point to protect the environment. He uses this concept in the frame of *al-maqasid al-shari'ah*. He argues that environmental preservation is the highest goal of *sharia*.²⁸ The three statements further emphasize that protecting the environment is the same as maintaining and caring for *maslahah al-dharuriyah*. *Maslahah* is the highest benefit for human life.

Then to further support this analysis, citing the requirements of *maslahah* put forward by Abdul Wahab Khalaf:²⁹ First, *maslahah* must create *maslahah*, not based on making up law. That means that in the formation of a rule or changing it, the value of its benefits must be considered, not based on events that cause harm as well as the impact of changes to several articles in the previous Environmental Law. If the problem is based on suspicion or the law is determined without consideration, this will cause future problems. Conflicts arise in the community, environmental damage, and other social problems. Second, the problem is general, not individual. The point is that if it is related to the changes made by the Copyright Act in the provisions of the Environmental Law, the provisions of the changes are not only for the benefit of entrepreneurs or corporations but must be guided by the public benefit and interests of all parties include the people who directly feel the impact of environmental exploration.

Reaffirming, based on changes and the impact of damage caused by the existence of Law Number 11 of 2020 concerning Job Creation, this law must be immediately canceled ultimately, without the need for a conditional cancellation. Let alone wanting to revive it violates the public interest and causes chaos in society. After the government passed the draft law, there was a massive wave of mass from the workers and significant criticism from environmentalists. That is enough to become the basis that the Job Creation Law is considered to be of no value *maslahah* in the life of the Indonesian people and must be immediately wholly canceled.

We are looking at the broad impact of environmental crimes as the final formulation of the analysis of the *maslahah* concept in the Job Creation Act so as not to stop at the reference to the *maslahah* concept as the basis for environmental management. It is necessary to classify environmental crimes into extraordinary crimes (extraordinary crimes). That departs from the provisions in handling criminal acts of terrorism and corruption. Both crimes are considered extraordinary crimes because the resulting impact threatens many people's lives and causes poverty in the nation. If it is drawn to the impact of environmental

²⁷See, H. A. Qadir Gassing HT., MS, *Fiqh Lingkungan "Telaah Kritis Tentang Penerapan Hukum Taklif Dalam Pengelolaan Lingkungan Hidup"*, h. 145. Lihat juga, Suryani, Pengarusutamaan Hifdh al-Alam sebagai Bagian *Maqāsid al-Syari'ah, al-Tahrir*, vol. 17 no. 2, 2 November, (2017). p. 139

²⁸See, Mary Evelyn Tucker dan John A. Grim, *Worldviews and Ecology: Religion, Philosophy, and the Environment* (New York: Orbis Book, 1994), p. 125.

²⁹Abdul Wahab Khalaf, *Ilmu Usul Fiqh*, Alih Bahasa Masdar Helmi (Cet. II; Bandung: Gema Risalah Press, 1997), p. 145.

damage, it will be more devastating to threaten the life and poverty of the nation. So, to present problems to the environment, there needs to be special handling, even the procurement of particular institutions to resolve cases of environmental damage.

Maslahah: Methodological Framework of the Environmental Jurisprudence Paradigm (Fiqh Bi'ah)

One of the sources in the development of Islamic law is the *maslahah* methodology, *maslahah* can be used as a guide in developing the environmental *fiqh* paradigm. Scholars often use the concept of *maslahah* as the basis by scholars to formulate the concept of *maqasid al-syari'ah*, which will be the basis for establishing Islamic law. In contrast to the linguistic approach with sources of Islamic law which focuses on deepening the content of linguistic rules to find a specific meaning from sacred texts, in the approach through *maqasid al-shari'ah* the study focuses more on efforts to see values in the form of human benefit in every *taklif* revealed by Allah.³⁰

The concept of *maqasid al-syari'ah* is defined as the intent, purpose, or principle of the law in Islam because it becomes the preliminary discussion on the issue of wisdom and *'illat al-hukm*. This concept departs from the assumption that obligations or *taklif* are created to realize the benefit of humans,³¹ and every *taklif* carried out by humans cannot be separated from the aspect of benefit. In one view, al-Shatibi stated that a law that does not have a beneficial purpose would cause the law to be not recognized in the community, which violates God's law,³² every law revealed to His prophets is always oriented for the benefit of the benefit.

Based on al-Syatibi's interpretation of the verses in the Qur'an, he concludes that *maqasid al-syari'ah* in the sense of benefit can be found in legal aspects as a whole,³³ including in the formation of Indonesia legislation in terms of the law. The law on the environment should be formed for the benefit of humankind means that if there is a legal problem whose dimensions of benefit are not precise. It can be analyzed through *maqasid al-syari'ah*, derived from the spirit of *sharia* and the general purpose of the revelation of Islam. According to al-Syatibi, the essence of the initial purpose of the implementation of the *Shari'a* is to realize and maintain the five main elements; religion (*al-din*), soul (*al-nafs*), and family (*al-nasl*), reason (*al-aql*), and property (*al-mal*).³⁴

³⁰See, Imam Syathibi: Mr. *Maqasid al-Shari'ah* First, <http://islamlib.com>. Retrieved (11 may 2022).

³¹Abu Iaaq al-Shatibi, *al-Muwafaqat* (Beirut Dar al-Ma'rifah, t.t.) Juz II, p. 195.

³²See, Wael B. Hallaq, "The Primacy of The Qur'an in Shatibi Legal Theori" (Leiden: Ej-Brill, 1991), p. 89.

³³Abu Iaaq al-Shatibi, *al-Muwafaqat* (Beirut Dar al-Ma'rifah, t.t.) Juz II, p. 6-7.

³⁴Muhammad Thahir bin 'Assyria, *Maqasid al-Shari'ah al-Islamiyyah*, Jus II (Beirut: Muassasah Fuad, 2004), p. 297.

Maslahah, according to Sa'id Ramdhan al-Buthi, can be defined as benefits intended by Allah the Wisest as a gift for His servants to be used as well as possible, both to maintain their religion, and soul, mind, offspring, and property. They are under the order contained in the maintenance section covered by *maslahah*.³⁵

From this description, it can be concluded that *maslahah* has a significant relationship with *shari'ah* in several descriptions. First, *shari'ah* is made based on the benefit considerations to avoid damage in this world and the hereafter. Allah gives rules in the form of commands and prohibitions by considering the benefits aspects of his servant. Second, *shari'ah* is always related to benefit. Therefore, the Messenger of Allah encourages his people to stay away from harm and do good. Third, *shari'ah* and benefit are no contradiction; Fourth, *sharia* is always oriented to benefit, and Allah has ensured that the concept of benefit value in *sharia* will not cause damage.³⁶ That shows that the legal provisions from God have considered all benefit aspects for the universe, including protecting the environment. Thus, in the case of the formation of laws and regulations, including the law on the environment, it should provide significant benefits for environmental sustainability.

Thus, it can be formulated that benefit is a legal attitude that contains benefits for humankind as a universal benchmark for understanding Islamic law so that *maslahah* will open more expansive space for Islamic legal thought in responding to environmental issues. Therefore, the value of this benefit must touch the process of forming regulations regarding the environment in Indonesia so that in its application, environmental law can provide broad benefits for environmental management.

After the era of al-Shathibi, among his Islamic thinkers who tried further to develop the concept of *maqasid al-syari'ah* of them was Fazlur Rahman. If previously a-Shathibi formulated *maslahah* on five primary elements, then Fazlur Rahman determined two elements: monotheism (monotheism) and social justice. He said that the central values of Islamic teachings lie in the value of monotheism. *Tawhid* means the centrality and urgency of God for human life. The existence of God is a basic human need, as a creator, supporter, guide, and judge. Then the concept of social justice, basically this concept has been discussed in the *Qur'an* because among the *asbabs* of the revelation of the *Qur'an*, it is a response to social problems that occurred during the prophet's time, talking about justice, morals, spirituality, social, and justice. Especially polytheism and the terrible socioeconomic inequalities that prevailed in the prosperous Meccan merchant

³⁵Muhammad Sa'id Ramadhan al-Buthi, *Dawābit Maslahah fi Syarī'ah al-Islāmiyyah* (Beirut: Muassasah al-Risālah, 1990), p. 27.

³⁶Muhammada bin Abu Babakar bin al-Qayyim al-Jauziyah Abu Abdullah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamīn*, Juz III (Beirut: Dār al-Jail, tt), p. 3.

community.³⁷ One of the principles of social justice contained in the Qur'an Surah al-Hasyr verse 7, namely: "Wealth should not circulate only among the rich."³⁸ The content of the Qur'an, in this case, as the embodiment of this principle, the Qur'an stipulates zakat.

However, al-Shatibi and Fazlur Rahman did not mention *hifdz al-bi'ah* or *hifdz al-'alam* (maintaining the environment) as part of *maqasid al-syari'ah*. Shari'ah does not directly discuss issues regarding environmental management and protection. However, the moral spirit of the Qur'an, as conveyed by Fazlur Rahman in the concept of monotheism, and social justice, will reproach the *fuqaha* for formulating legal concepts. Maintenance of the environment, or theories related to the concept of environmental *fiqh* (*fiqh al-bi'ah*).

Thus, maintaining the universe, known as *hifdz al-'alam*, is a universal moral message Allah has conveyed to His servants that is preserving the environment. An obligation for humankind, especially those who claim to believe in Allah and His book. Even as described in the literature review, denial of the environment is called (*kufur al-bi'ah*) or similarly being infidel, denying God's stipulation regarding protecting the environment and everything in it. Therefore, although the Maliki school of thought is not explicitly stated in the text, maintaining the environment is recommended and even mandatory because there are rules for protecting the environment.:

مالا يتم الواجب الا به فهو واجب

The Translation:

Something that can determine the perfection of the implementation of an obligation will also become mandatory.

حكم المقاصد للوسائل

The Translation:

The means have the same legal status as the act that is the goal.

The two rules make it clear that it is appropriate based on the assumption that environmental care is complementary from the point of view of the *fiqh* of worship. On the other hand, if environmental care becomes an important issue, its legal status is no longer a compliment. In addition, that becomes a goal with a clear reference basis in the text's provisions as other worships that have been legally stipulated are mandatory.³⁹ Whereas the introductory provisions in

³⁷Fazlur Rahman, *Islam and Modernity: Transformation of an Tradisional*, (Chicago: Chicago University Press, 1980), p. 5.

³⁸See, Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan dan Keserasian Al-Qur'an*, vol. 10(Jakarta: Lentera Hati, 2002), p. 530.

³⁹Wrdani, "Memformulasikan *Fiqh al-Bi'ah*: Prinsip-prinsip Dasar Membangun *Fiqh Ramah Lingkungan*", *Jurnal al-Mustawa* vol. 1 no. 1, (2009), DPPAI, UII

safeguarding religion, life, family, intellect, and property are obligatory, safeguarding and protecting nature is also obligatory. That is because there will be no benefit to religion, life, family, mind, and property if the supporting factors to achieve this are not guarded. In this case, the environment is a support for all aspects of life.

CONCLUSION

Environmental management in Law Number 11 of 2020 concerning Job Creation with a *maslahah* perspective is that environmental management in the law contains provisions that can damage the environment and do not provide problems for the environment or everything contained in it. Among the problematic provisions regarding the weakening of environmental permits related to the determination of forest area is not limited in the Job Creation Act, which means that it can impact excessive forest exploitation. *Amdal* is no longer a mandatory provision for environmental permits. That can broadly impact forest destruction and is not based on *maslahah*. Furthermore, the Job Creation Law provisions weaken community involvement and law enforcement, relating to justice and legal certainty for the community, which is limited to protecting the environment. With several provisions in the Employment Copyright Act that have an impact on environmental damage, this violates the principle of *maslahah* on protecting the environment. The perspective of the *maslahah* is that protecting the environment is the same as caring for *maqasid al-syari'ah*, namely the realization of protection for religion, soul, mind, family, and property, all of which will not be realized if the primary means to achieve the benefit of life (environment) is not adequately protected.

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