

THE REVIEW OF MASLAHAH MURSALAH ON THE E-COURT SYSTEM AT RELIGIOUS COURT

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ABSTRAK

As a result of the industrial revolution, technological developments in the world are increasingly massive. Almost all systems of human life are assisted by sophisticated technologies and are connected to the internet. This aims to facilitate human work and activities, including government services which currently have many collaborated with sophisticated technology in maximizing public services. This step is seen as the right step, considering the sophistication of existing technology that is considered more effective and efficient in carrying out public services. As for Islam, the technological progress that enters almost all aspects of human life is seen as a form of masalah mursalah, which is something that is permissible by syara' as long as it is good according to the reason and can provide good also avoid bad things for humans. One of the government institutions that uses technology in providing services to the public is the religious court, as a legal instrument where the community can seek justice according to the culprit it handles, a religious court of course must provide maximum service to the community. Through Supreme Court Regulation No. 1 of 2019, the government provides a new innovation by implementing an electronic court system (E-Court) which aims to make it easier for people to litigate. The obstacles that were previously encountered when people were in litigation such as distance, time, and expensive costs were expected to be overcome by the existence of an E-Court which aims to realize fast and cost-effective administration in order to achieve the ideals of an efficient and effective court. For this reason, this research is deemed necessary to see whether these goals have been achieved or not and whether they are in accordance with the mursalah masalah. This research is a qualitative research with in-depth interview approach and literature study.

Keywords: *Maslahah Mursalah, E-Court, System*

INTRODUCTION

After the death of Rasulullah SAW, humanity developed over time. Since the time of the Companions until now, these developments have occurred in various aspects, both in terms of science, technology, economy, and other matters. With these developments, the problems that occur in mankind are also increasingly complex. As was the case during *Khulafa Al Rasyidin* many new problems occurred during the leadership period after the Prophet Muhammad where these problems never occurred during the time of the apostles and were not found in the texts. Shahabah are faced with a problem that requires them to make *ijtihad* by identifying it through the text of the Qur'an, if it is not found then the next step is to look for the hadiths or sunnah of the Prophet. If the problem has not been resolved to that stage, deliberations are taken to carry out *ijtihad* with *ra'yu* (Hendri & Mashudi, 2018). It is the stage that *maslahah mursalah* is applied because the essence of *maslahah* is to identify the law of a human action that does not have information from religious texts which is still in line with reason and can bring goodness to humans and prevent harm.

These problems continue to develop with the times, new things are emerging, society is getting more modern and sophisticated. As is the case now, where we are in the era of the fourth revolution. According to Swahab in his book "The Fourth Industrial Revolution" which states that the world has experienced four stages of revolution, namely: 1). Industrial Revolution 1.0 in the 18th century with the invention of the steam engine 2). Industrial Revolution 2.0 in the 19-20 centuries with the use of electricity 3). Industrial Revolution 3.0 around 1970 with computerization 4). The Industrial Revolution 4.0 that occurred in 2010 was marked by intelligence engineering and the Internet of things as the backbone of human and machine movement and connectivity (Swahab, 2016). The progress of intelligence and the Internet of things or better known as technology today is developing so rapidly, its existence cannot be separated from human life, almost every aspect of human life is currently assisted by technology. So it cannot be denied that these technological advances have had a major impact on human thinking, work patterns, communication, social life, and other things. In 1995, technology information was defined as computer software and hardware solutions that provide management, operations, and strategist support within an organization (Choo & Shahryar, 2013). Another definition comes from



research by La Shun L. Carroll which stated that in the last century and a half the use of the word technology and incarnations of its meaning to describe various concepts became widespread (La Shun & Carrol, 2017). From these definitions, it can be concluded that technology is a development that can help humans or an organization in completing its work.

As the understanding implies that technology exists as a tool to facilitate human work, therefore technology enters into all aspects of human life, including government services. This is in line with Renald Kasali's statement, according to him, today's society has entered the uber society model, which is characterized by changes in civilization from time series to real-time, individualistic attitudes change to collaboration/networking, speed, multitasking, and the existence of invisible competitors (Renald, 20117). So in line with this, technology is currently not just entering but has become a demand for government public services in order to provide effective and efficient public services. One of the applications of these technological advances is found in government services in the field of law because according to Van Apeldoorn law is society itself (Van Apheldorn, 1986).

In this case, the Supreme Court as the highest authority in the field of law through PERMA No. 1 of 2019 enforces E-Court as a service for the community to be able to litigate electronically so that it makes easier for the community in terms of distance, time and cost so that the ideals of the judiciary are achieved realizing an effective and efficient judiciary. E-Court itself is an instrument in court as a form of service system to the community in terms of online case registration, online payments, online summons, and online trials (Mumtaza, et.al, 2020).

In general, the system is defined as a collection of elements that are interconnected with each other that form a unit in an effort to achieve a goal (Miyarso, n.d). Miller conveyed a similar understanding, according to him "a system is a set of interacting units with relationships among them" (Miller, 1995). If we associate these notions with E-Court, then the E-Court system is a collaboration of various components that are put together in an application to achieve a goal, namely an effective and efficient judiciary.

RESEARCH METHODS

This research is qualitative field research with a literature study approach, where the author will go directly to the field to make observations and interviews so that accurate results can be obtained. The data sources used in this research are premier data sources and secondary data sources. Premiere data sources were obtained from observations and direct interviews with related parties. The secondary data sources are obtained from the analysis of documents related to the research title. After all the data has been collected, a qualitative analysis is carried out to draw conclusions from the research carried out.

RESULTS AND DISCUSSION

A. Masalah Mursalah

1. Definition of *Maslahah Mursalah*

Maslahah Musrsalah consists of two words, that are *maslahah* and *mursalah*. The word *maslahah* etymologically has the meaning of "benefit" or "goodness", while *mursalah* means the same as *mutlaqah*, which is detached. The words detached and free when associated with the word *maslahah* mean that they are detached or free from information that indicates what is permissible or not permissible. In another sense, *maslahah* can also be interpreted as work that contains benefits (Majma', 1972). As for terminology, the notion of *maslahah* has been put forward by many fiqh scholars, that are:

1) Al Ghazali

"*Maslahah al-Mursalah* is what there is no evidence for it from *shara'* in the form of certain texts that cancel it and no one pays attention to it."

Imam Al Ghazali is a fiqh scholar who mostly discusses about *maslahah mursalah*, he defines *maslahah* as a good that is not in the text, but that goodness must be based on *syara'*. So, according to Al Ghazali, it is said to be *maslahah* if something contains benefits according to *syara'*, not according to humans. In his book entitled *Al Mankhul*, Al Ghazali said that *maslahah* that can be used as evidence is *maslahah* that does not conflict with the Qur'an, *Sunnah*, or *Ijma'* (Syarif, 2018).

2) Abdul Wahab Khalaf



“This *masalahah mursalah* is a *masalahah* for which there is no *syara'* argument to admit or reject it”

3) Jalaludin Abdurrahman

“Maslahat ialah memelihara maksud hukum syara' terhadap berbagai kebaikan yang telah digariskan dan ditetapkan batas-batasnya, bukan berdasarkan keinginan dan hawa nafsu manusia belakala”

2. Kinds of *Maslahah Mursalah*

Some *ushul fiqh* scholars divide *masalahah mursalah* into 3 in terms of the quality and importance of the *masalahah* itself, including:

a) *Maslahah Al Dharuriyyah*

Maslahah Al Dharuriyyah is a *masalahah* related to basic human needs, that are: a). Maintaining Religion b). Maintaining the soul c). Maintaining Intellect d). Maintaining Offspring e). Maintain property. These five things are the main human needs that must be maintained because they contain a lot of goodness for mankind. *Maslahah dharuriyat*, namely everything that must exist for the sake of upholding human life, whether it is *diniyyah* or *dunyawiyah*, in the sense that if *daruriyyah* does not stand then human life in this world will be ruined (Hendri & Mashudi, 2018).

b) *Maslahah Al Hajiyyah*

Maslahah Al Hajiyyah is the *masalahah* needed to perfect the main *masalahah*. As in the field of worship, the existence of *rukhsah* is intended to make it easier to perfect worship for people who are sick, are on a trip, etc. As for *muamalah*, *masalahah al hajiyyah* is exemplified by the permissibility of transactions to meet needs, social services, accounts payable, community institutions, etc.

c) *Maslahah Tahsiniyah*

Maslahah tahsiniyah is interpreted as a complementary benefit in the form of flexibility that can complement the previous benefit. *Maslahah tasnisiyah* is intended as the maintenance of benefits related to beauty, perfection and decency or honor and dignity. If *masalahah tasnisiyah* does not exist then it will not eliminate the elements of *dharuriyat* or *hajiyyah*, but human life will become rigid according to human reason.

B. E-Court System



E-Court is an electronic administration and trial as an innovation within the Supreme Court of the Republic of Indonesia (Kurniati, 2019). Based on Supreme Court Regulation Number 1 of 2019 Article 1 paragraph (6), E-Court is defined as a case and trial administration process using an electronic system that starts from receiving a lawsuit/request/objection/objection/resistance/intervention, receiving payment, submitting summons/notifications, answers, replicas, duplicates, conclusions, acceptance of legal remedies and submission of case documents electronically. The E-Court service is meant to make it easier for people to get litigation, so that people can get litigation easily, quickly, and inexpensively. In the implementation of the E-court system, automatically moves services that were originally manual to online, from the segmentation of registration, payment, and delivery of complete documents, both replicas, duplicates, conclusions, answers, and summons, all of which have changed to online. So, problems are related to long distances with the courts and the dense number of civil lawsuits with documents piling up slowly will be resolved with this system.

There are four stages in e-court litigation:

1. E-Filing

This e-filing stage is an online case registration stage that can only be carried out by people who are already registered as active users. The data required by the registrant when registering in the e-filing application are: Name, Address, Telephone number, Email (from the plaintiff and the defendant, as well as the attorney of the defendant and the plaintiff (if any)), Complete documents from the attorney in the form of Card membership certificate, Minutes of Pledge, KTP, Registration Documents (Power of Attorney, Lawsuit, and Preliminary Evidence of Divorce Lawsuit).

2. E-Payment

E-payment is an online payment stage. Payments will be uploaded on the ecourt.mahkamahagung.go.id website by displaying received data, Online Registration Number, Payment Number, *Penjar* Case, Payment Status, Payment Date, Payment Hours and also SKUM which can be seen on the website.

3. E-Summons



This e-summons stage is a process of summoning parties that is carried out online. The summons process in ordinary cases is subject to an additional fee, while in e-court there is no fee, the cost comparison between e-court and ordinary cases is 1 to 5, if an ordinary case is charged 1 million, then an e-court case is only charged 200 thousand.

4. E-Litigation

It is at this stage that the core of all processes is the online trial stage. The purpose of e-litigation itself is to create a trial process that is simpler, cheaper, and faster.

a) E-Court in Wonosari Religious Court

Based on the results of one month's direct observation and interviews with administrative staff at the Wonosari Religious Court, the author received information that the e-court at the Wonosari Religious Court has been widely used in litigation processes. Especially if the litigants use the services of attorneys or lawyers, they tend to choose e-court as a means of litigation, this is because litigation with e-court is easier, faster, and cheaper.

Even in the settlement process, e-court makes it easier for judges because it doesn't take long and there is no backlog of files in court. The obstacle in applying e-court at the Wonosari Religious Court is due to the location of the court which is in a small area with the progress and understanding of society regarding technology which is not as fast as in big cities, this is the reason why people are still unfamiliar with using e-court applications. The Wonosari religious court has tried to overcome this by holding socialization by radio and the YouTube channel.

b) E-Court in Kediri Religious Court

From the results of a literature study from several studies, the researchers concluded that the application of E-Court at the Kediri Religious Court had been running quite effectively. From the results of research conducted by Safira & Endrik in 2021, the application of e-court in the Kediri religious court has so far made it easier for legal and registered attorneys because the process is not complicated. In addition to attorneys, e-courts also make it easier for judges to innovate due to the speed at which cases are handled by e-courts and delays that don't take long. However, the obstacle in the application of e-court in the Kediri Religious Court is that there are still parties who deviate from the

provisions of the court calendar, judges are unable to dig up information because data from parties is sent through limited accounts, and there are still inadequate electronic devices.

So, from the results of this study it can be concluded that the application of e-court in the Kediri Religious Court has been running effectively and can achieve its main goal of creating a simple, fast and inexpensive trial. As for the obstacles that still occur, I hope they can be overcome together.

c) E-Court at Tangerang Religious Court

Reporting from a study conducted in 2020, that the e-court case registration system has received quite high satisfaction from justice seekers regarding the efficiency of payments and services such as: A system that is felt to save time and costs, Payment of cases in the system can be done in multi-channel and documents are not scattered because they are automatically archived in the system.

The use of the e-court system in the religious courts in the Tangerang Raya area, from the several contexts mentioned above aims to create a more efficient court administration system. Judges often use a word processing application to produce a dossier document, which includes a trial calendar and a simple spreadsheet.

C. The Review of *Maslahah Mursalah* Towards E-court System

In the Islamic constitutional system, the existence of a judicial institution has existed since the time of Rasulullah known as *qada'* which is divided into three categories, that are *qada' khushumat* (dispute justice), *qada' hisbah* (trial of *syara'* violations), *qada' madzalim* (trial of disputes the people with the state). Likewise in the era of the *khulafa ar-rasyidin*, the Companions agreed to uphold justice among humans (Djamila, 2010). If viewed from the perspective of *maslahah mursalah* itself, the existence of a judiciary is very necessary to protect basic human needs (*maslahah al Dharuriyyah*), protect religion, protect reason, protect soul, protect property, and protect offspring, which of these five things can be resolved in court if a crime occurs something or dispute.

The e-court application itself aims to improve the court's performance in handling cases and providing services to the public. If referring to the concept of *maslahah mursalah*, then e-court is categorized into *maslahah al hajiyyat*. This is based on the

definition of *maslahah al hajiyyat*, namely all actions for the sake of bringing smoothness, convenience, and success for humans as a whole and thoroughly. Where this definition is in line with the objectives of e-court to achieve effective and efficient justice with a simple, fast and inexpensive justice system.

With the implementation of the e-court system, it is hoped that it will make it easier for the public to conduct cases in accordance with Islamic teachings. Because Islam is actually never rejecting progress or modernization in any form, as long as it brings goodness to humans and does not depart from the principles of Islamic teachings.

CONCLUSION

Maslahah is something that is not contained in the Qur'an or sunnah, but this is good according to the Shari'ah. Like many new things that are encountered along with the development of the times and are not in the texts, if this is good according to the Shari'ah then it is considered *maslahah mursalah* and is permissible in the Shari'ah. As with technological progress, this is a new phenomenon that is not in the Shari'ah. However, because technological advances provide benefits to humans and good if viewed according to the Shari'ah, then this is permissible.

Advances in technology are currently entering all aspects of human life, including in the realm of law. Currently, the judiciary in Indonesia has implemented the E-Court system based on PERMA No. 1 2019. This is to facilitate the community in litigation process. As for its application 1) E-court at the Wonosari religious court is more in demand in litigation, this is because e-court provides convenience for both litigants and judges, the drawback is that there are still many people who do not understand about e-court. 2) E-court at the Kediri Religious Court so far makes it easier for attorneys and registered attorneys because the process is not complicated. In addition to attorneys, e-courts also make it easier for judges to innovate due to the speed at which cases are handled. 3) The e-court at the Tangerang religious court has received high satisfaction from the public, because it provides services that are faster, cheaper and payment of cases in the system can be made in multi-channel, and documents are not scattered because they are automatically archived in the system. If viewed from the *maslahah mursalah*, the e-court system is categorized

into *masalah al hajiyyah*, namely e-court as a complementary *masalah* to the main (judicial) *masalah*.

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