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## The State Administrative Decision-Making in the Adoption of *Maslahah Mursallah* Principle in Indonesia

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Article	Abstract
<p><b>Keywords:</b> <b>Administrative Decree, AUPB; <i>Maslahah Mursallah</i>.</b></p> <p><b>Article History</b> Received: Feb 24, 2021; Reviewed: Jun 13, 2023; Accepted: Jul 17, 2023; Published: Jul 31, 2023.</p> <p><b>DOI:</b> 10.28946/slrev.Vol7.Iss2.1080.pp244-261</p>	<p>The development of State Administration Law is a prerequisite for constitutional development in realising good governance. From the perspective of national administration, administrative reform is a revision of several legal policies related to structure, process, and management in finance, supervision, staffing, accountability and transparency, and the political decision-making process and implementation. It also covers state administration law reform. Within this particular framework, the application of the principle of <i>maslahah mursallah</i> in Islamic jurisprudence can be employed to facilitate advantageous outcomes for all individuals. Therefore, this article aims to determine the adoption of the principle of <i>maslahah mursallah</i> to State Administrative Decisions. The method used is normative legal research by using deductive analysis. The results of this research will provide an overview of the role of the <i>maslahah mursallah</i> principle in efforts to realise State Administrative Decisions based on good virtue, as well as providing justice and prioritising benefits for all people, thus avoiding delinquency.</p>

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### INTRODUCTION

A state is an organisation with a particular mission. According to the fourth paragraph of the Preamble of the 1945 Constitution, Indonesia's purpose as a state is "...to establish an Indonesian State Government that protects the entire Indonesian nation and to advance the general welfare, educate the nation's life, and participate in implementing a world order based on independence, peace, and social justice..."<sup>1</sup>. The purpose of the state, as stated in the preamble of the

<sup>1</sup> Fitriana and Mia Kusuma, "Peranan Politik Hukum Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia Sebagai Sarana Mewujudkan Tujuan Negara (Laws And Regulations In Indonesia As The Means Of Realizing The Country'S Goal)," *Jurnal Legislasi Indonesia* 12, no. 2 (2018). Rosana and Ellya, "Negara Demokrasi Dan Hak Asasi Manusia," *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 12, no. 1 (2016): 37–53.

constitution, is to protect all Indonesian citizens and communities.<sup>2</sup> The government implements its protection efforts through various policies and legal certainty.<sup>3</sup> Meanwhile, in order to promote the general welfare state is responsible is to be able to reduce poverty and disadvantaged communities.<sup>4</sup>

The aim of educating the life of the Indonesian people can be achieved through education and training so that Indonesians can avoid illiteracy and scientific and technological backwardness. The government of the state is obligated and responsible for providing this education. Implementing world order is the final objective of the Indonesian government, which is achieved through actual contributions, active participation in world peace activities, and membership in international organisations.<sup>5</sup>

Efforts to achieve the nation's ideals and objectives are fundamentally contingent upon a competent and effective state administration and the ability to carry out its functions and responsibilities with seriousness and accountability.<sup>6</sup> All components of the state's implementation play a significant and decisive role. The principal actors in achieving state objectives are state officials who conduct executive, legislative, judicial, and other functions and responsibilities related to applicable laws and regulations.<sup>7</sup> The government's function as a state organiser is crucial because it is charged with enhancing the welfare of the populace. Consequently, the government is granted the authority to intervene in all aspects of social life.

In carrying out its duties and responsibilities, the government engages in various legal actions, including creating laws and regulations, decisions, policy regulations, licencing requirements, and other legal instruments.<sup>8</sup> A government official's decision as a legal action, commonly referred to as a State Administrative Decision [hereinafter KTUN], is one of the most frequently employed instruments.

KTUN, under Article 1 point 9 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Judiciary [State Administrative Judiciary Law], determines that a State Administrative Decree is a written determination issued by a state administrative body or official that contains state administrative, legal actions based on applicable laws and regulations, which are concrete, individual, and final, and have legal consequences. Article 1 point 7 of the Government Administration Law defines a KTUN as a written decree issued by a Government Agency or Official in government administration. Consequently, two laws and regulations govern the KTUN.

<sup>2</sup> Yusuf and Muslim Andi, "Kepastian Hukum Hak Masyarakat Hukum Adat Atas Tanah Dan Sumberdaya Alam," *Prosiding* 2, no. 1 (2016).

<sup>3</sup> Rosidin and Utang, "Agama Dan Ideologi Negara Sebagai Pedoman Memajukan Kesejahteraan Umum," *Jurnal Majelis Media Aspirasi Konstitusi* 01 (2021).

<sup>4</sup> Wibowo and Arif, "Distribusi Zakat Dalam Bentuk Penyertaan Modal Bergulir Sebagai Accelerator Kesetaraan Kesejahteraan," *Jurnal Ilmu Manajemen* 12, no. 2 (2015): 28–43.

<sup>5</sup> Riniwati and Harsuko, "Manajemen Sumberdaya Manusia: Aktivitas Utama Dan Pengembangan SDM," *Universitas Brawijaya Press*, 2016.

<sup>6</sup> Usman and Atang Hermawan, "Kesadaran Hukum Masyarakat Dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum Di Indonesia," *Jurnal Wawasan Yuridika* 30, no. 2 (2015): 26–53.

<sup>7</sup> Widjiastuti and Agustin, "Peran AAUPB Dalam Mewujudkan Penyelenggaraan Pemerintahan Yang Bersih Dan Bebas Dari KKN," *Perspektif* 22, no. 2 (2017), <https://doi.org/https://doi.org/10.30742/perspektif.v22i2.614>.

<sup>8</sup> Ansori and Lutfil, "Diskresi Dan Pertanggungjawaban Pemerintah Dalam Penyelenggaraan Pemerintahan," *Jurnal Yuridis* 2, no. 1 (2017): 135–50. Srilaksmi and Ni Ketut Tri, "Fungsi Kebijakan Dalam Negara Hukum," *PARIKSA: Jurnal Hukum Agama Hindu* 4, no. 1 (2020): 30–38.

The stipulation of a KTUN is a method of carrying out the state's duties, functions, and obligations in providing community services. The KTUN can be interpreted as a method of concretising abstract laws and regulations. In practice, however, numerous KTUNs are challenged in the court of first instance. According to data from the Supreme Court, 1,883 cases were filed with the Administrative Court. The court with the most registered cases, 357, was the Jakarta Administrative Court; the remaining cases were distributed throughout Indonesia.<sup>9</sup> The high number of cases brought before the Administrative Court indicates that numerous administrative regulations still need to be more effective and beneficial to some individuals.

As the perfect religion, Islam also governs government administration. Since the Prophet Muhammad PBUH, government administration activities in Islam have been regulated by himself, including financial administration, treasury, documents, penning revelations, and civil affairs, then it was carried on by the companions and expanded during the reigns of Caliphs Abu Bakar Siddiq, Umar bin Khattab, Uthman bin Affan, and Ali bin Abi Tholib.

The Quran is the primary source used in Islamic government administration. This is because the Quran contains diverse teachings. Some scholars divide the Qur'an's content into three main categories: *Aqidah*, *Khuluqiyah*, and *Amaliyah*.<sup>10</sup> *Aqidah* relates to the fundamentals of faith.<sup>11</sup> *Khuluqiyah* relates to morality and ethics.<sup>12</sup> *Amaliyah* pertains to the legal ramifications of *Aqwal* (expressions) and *af'al* (human actions).<sup>13</sup> The Koran is the guide and foundation for Muslims in conducting all activities involving the family, society, or state. In Islam, government administration decisions on public and communal interests must prioritise the people's welfare. Leaders and state officials must always make decisions that reflect justice and benefit. In Islam, this value and advantage are referred to as *maslahah mursallah*, which refers to beneficial action.

Therefore, this article aims to analyze and evaluate the importance of incorporating Islamic values, the *maslahah mursallah* principle, in decision-making processes within government administration. The objective of the KTUN, as implemented by Indonesian government officials, is to generate societal advantages and mitigate the frequency of litigation cases brought before state administrative tribunals.

## RESEARCH METHODS

This study employs normative legal research with a statutory approach as its methodology.<sup>14</sup> This study's data sources are derived from secondary sources, which utilize primary, secondary, and tertiary legal materials. Primary legal materials consist of laws and regulations on state administrative decisions, such as Law Number 30 of 2014 Concerning Government Administration and

<sup>9</sup> "No Title," n.d., [https://putusan3.mahkamahagung.go.id/search.html?q=&cat=6ccf9ad6c4d6e9ab8fbc1f8b252cec81&t\\_reg=2022&tp=0](https://putusan3.mahkamahagung.go.id/search.html?q=&cat=6ccf9ad6c4d6e9ab8fbc1f8b252cec81&t_reg=2022&tp=0).

<sup>10</sup> Suyitno and Suyitno, "Suyitno and Suyitno, "Maqashid As-Syariah Dan Qishas: Pemikiran As-Syatibi Dalam Kitab Al-Muwafaqat," *Jurnal Muaddib* 5, no. 1 (2015).

<sup>11</sup> Asep Saepul Hamdi, *Dasar-Dasar Agama Islam* (Yogyakarta: Deepublish, 2016).

<sup>12</sup> Krismoniansyah et al., "Nilai-Nilai Pendidikan Islam Dalam Tradisi Suroan: Studi Di Desa IV Suku Menanti, Sindang Dataran Kabupaten Rejang Lebong," *At-Ta'dib: Jurnal Ilmiah Prodi Pendidikan Agama Islam*, 2020, 1–14.

<sup>13</sup> Muzlifah and Eva, "Maqashid Syariah Sebagai Paradigma Dasar Ekonomi Islam," *Economic: Jurnal Ekonomi Dan Hukum Islam* 3, no. 2 (2013): 73–94.

<sup>14</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2014).

Law Number 9 of 2004 Concerning Amendments to Law Number 5 of 1986 Concerning State Administrative Judiciary Law. While the analysis employs a descriptive-analytic approach, the author describes or explains the research subject and object. After secondary and primary data completed acquired, it will be analysed using qualitative methods.

## ANALYSIS AND DISCUSSION

### Indonesian Regulation Regarding Ideal State Administrative Decisions

According to Article 1 point 9 of the Law on State Administrative Justice, KTUN is defined as:<sup>15</sup>

“A State Administrative Decree is a written decision issued by a state administrative body or official that contains a state administrative, legal action based on the applicable laws and regulations, which is concrete, individual, and final, and has legal consequences for a person or civil legal entity.”

The article explains that a KTUN is a written stipulation issued by a state agency or official regarding a legal action based on the provisions of laws and regulations with concrete or real provisions. This can be interpreted that the KTUN must be based on currently valid legal provisions, not future ones; not imagined or abstract legal provisions, but existing, tangible, certain, real, and determinable ones. Furthermore, the term individual indicates that the decision is made for a natural person or subject-specific provision, not a general or universal provision, so sanction from superior agencies or other agencies is not required. The decision must be definitive, meaning it is finally binding and has a permanent legal effect. Consequently, there is no legal remedy that can invalidate the decision. Additionally, the decision affects both private individuals and civil legal entities.

On the contrary, Article 1 point 7 of the Government Administration Law defines KTUN as follows:<sup>16</sup>

“Government Administration Decisions, also known as State Administrative Decisions or State Administration Decisions, are written provisions issued by Government Agencies and/or Officials in the administration of the government.”

This article provides a concise explanation of KTUN, a written decree issued by a government entity or official in the performance and execution of government duties and responsibilities.<sup>17</sup> This decree must be interpreted as a written decree encompassing factual actions, whereas the State Administrative Justice Law defines it as a concrete decree. This provision on the KTUN is clarified in Article 87 of the same law, which explains that the KTUN is a concrete decree: (1) written stipulations include factual actions, (2) Decisions of State Administrative Bodies and/or Officials within the executive, legislative, judiciary, and other state administrators, (3) based on legal provisions and general principle of good governance (hereinafter AUPB), (4) final in a broader sense, (5) Decisions that have the potential to cause legal consequences, and/or (6) Decisions that apply to citizens.

This definition is an expanded definition set out in the provisions of the State Administrative Court Law.<sup>18</sup> It can be seen from the elements of the provisions on KTUN in the State

<sup>15</sup> Riza and Dola, “Hakikat KTUN Menurut Undang-Undang Peradilan Tata Usaha Negara Vs Undang-Undang Administrasi Pemerintahan,” *Soumatara Law Review* 2, no. 2 (2019): 207–20.

<sup>16</sup> Riza and Dola.

<sup>17</sup> Pudyatmoko and Y. Sri, *Perizinan: Problem Dan Upaya Pembenahan* (Grasindo, 2009).

<sup>18</sup> Ridwan et al., “Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Undang-Undang Administrasi Pemerintahan,” *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (2018): 339–58.

Administrative Court Law, namely: (1) The decision shall be in the written form, (2) A state administrative body or official issues the decision, (3) The decision made must contain a legal action of the State Administration, (4) The KTUN must be based on the applicable laws and regulations, (5) The KTUN must be concrete, individual and final, and (6) The KTUN must have legal consequences for a person or civil legal entity.

Meanwhile, according to the Government Administration Law, the types or forms of KTUN are as specified in Article 87, which comprise the following: (1) The decision issued by the State Administrative Official is a written determination that also includes factual actions. A factual action is defined as a real legal action carried out by the State Administrative Official, as long as the action affects the community, (2) Decisions of State Administrative Bodies or Officials in the Executive, Legislative, Judicial, and Other State Administrators encompasses all decisions issued by state bodies or officials in the executive, legislative, or judicial spheres that affect society or individuals, (3) Decisions made based on statutory provisions and AUPB, thus decisions made both procedurally or formal provisions of the decision are made following the flow of statutory provisions, as well as the content or substance of the decision under statutory provisions and following the General Principles of Good Governance,<sup>19</sup> (4) According to the explanation in the Government Administration Law, the final Administrative Decree, in a broader sense, covers decisions that superior authorised officials take over,<sup>20</sup> (5) A decision that has the potential to cause legal consequences; thus, this decision will still have legal consequences for the community.<sup>21</sup> However, the word potentially has an uncertain meaning, so when something happens, or there is a decision, it will be difficult to determine the indicators of this potential harm, so it will be difficult to determine the basis for this implementation (6) Decisions that apply to citizens,<sup>22</sup> in other words, decisions issued by these officials or bodies are intended for the public and/or civil legal entities.

The various definitions of KTUN in the State Administrative Court Law and the Government Administration Law broaden the concept of KTUN. If KTUN previously only referred to written decrees, it is now expanded to include actions. It means that KTUN's scope includes the actions of state administrative bodies and officials. The expansion of the definition has a positive effect on the general public because it provides comprehensive protection. In carrying out its duties and obligations, the government must give close attention to how it serves the community.

Government Administration Law's definition of KTUN also ties it to the general principles of good governance (AUPB). By adding this requirement, the government will face a significant restriction when making decisions, and the public will receive additional protection. The explanation is that when issuing a KTUN, state administrative entities or officials must refer not only to written laws and regulations but also to unwritten principles applicable to implementing good

<sup>19</sup> Yulikhshan and Eri, *Keputusan Diskresi Dalam Dinamika Pemerintahan (Aplikasi Dalam PTUN)*, (Deepublish, 2016).

<sup>20</sup> Aji, Fellista Ersyta, and Laga Sugiarto, "Pemaknaan Perluasan Objek Sengketa Tata Usaha Negara Yang Meliputi Tindakan Faktual," *Jurnal Justiciabelen* 1, no. 1 (2018): 46–71.

<sup>21</sup> Harjiyatni, Fransisca Romana, and Sunarya Raharja, "Fungsi Peradilan Tata Usaha Negara Dalam Menyelesaikan Sengketa Lingkungan (Studi Gugatan Organisasi Lingkungan Hidup)," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 26, no. 2 (2014): 260–74.

<sup>22</sup> Jaelani and Abdul Kadir, "Implementasi Daluarsa Gugatan Dalam Putusan Peradilan Tata Usaha Negara Di Indonesia," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 18, no. 2 (2020).

government. Therefore, the author contends that the definition of KTUN stipulated in the Government Administration Law provides the public with greater benefits and protection.

### **The inclusion of *Maslahah Mursallah* in administrative decisions of the state**

Etymologically, the word *al-maslahat* is the plural form of *al-maslahah*, which means something good or beneficial and the opposite of ugliness or damage.<sup>23</sup> *Maslahat* is sometimes called "*as-taslahah*," which means seeking the good. While the definition of *masalahat*, according to *Shara*,<sup>24</sup> there are different definitions among Islamic legal scholars even though they depart from the same perspective.<sup>24</sup> Jalaluddin Abdurrahman, for example, defines *maslahat* as maintaining *Shara's* law on various benefits that have been outlined and set limits, not based on mere human desires and lusts.<sup>25</sup> Meanwhile, Imam Al-Ghazali defines *maslahat* as an effort to achieve and realise benefits or reject misfortunes. As quoted by Imam Abu Zahrah, Ibn Taymiyyah said that *maslahat* is the mujtahid's view of actions that contain clear goodness and not actions that are contrary to *shara*.<sup>26</sup>

Tracing the meaning of *maslahah mursallah* must start with tracking the word's etymological meaning (*lugatan*). *Maslahah mursallah* consists of two words, namely the words *maslahah* and *mursallah*.<sup>27</sup> Etymologically, the word *Maslahah* is an adverb form derived from *saluha*. Judging from its form, in addition to the word *maslahah* being an adverb form, it is also a single noun form from the word *masâlih*. In the Indonesian Dictionary, a distinction is made between *maslahat* and *kemaslahatan*.<sup>28</sup> *Maslahat* is defined as something that brings goodness, benefit and use. In comparison, the word benefit means usefulness, goodness and importance. From here, it is clear that the Big Indonesian Dictionary sees that the word *maslahat* is included as a root word, while the word *kemaslahatan* is included as an artificial noun derived from the word *maslahat*, which gets the prefix "ke" and the suffix "an."

Etymologically, the word *maslahah* means *manfa'ah*, benefit, good, kindness, or usefulness.<sup>29</sup> According to Yûsuf Hâmid al-Âlim, *maslahah* has two meanings, namely the meaning of *majâzî* and *haqîqî*. The first meaning is an action (*al-fi'l*) that consists of goodness (*saluha*) or benefit. An example of the meaning of *majâzî*, is seeking knowledge. When someone works hard to learn, formally or informal, it will gain benefits. Another example is farming and trade, which will obtain benefits in the form of property ownership. The meaning of *maslahah* like this is the opposite of *mafsadah* because the two cannot possibly meet in an action.<sup>30</sup>

<sup>23</sup> Pasaribu and Muksana, "Maslahat Dan Perkembangannya Sebagai Dasar Penetapan Hukum Islam," *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 1, no. 04 (2016).

<sup>24</sup> Mahir Amin, "Maslahat Dan Perkembangannya Sebagai Dasar Penetapan Hukum Islam," *Al Daulah* 4, no. 2 (2014): 322–43.

<sup>25</sup> Pasaribu and Muksana, "Maslahat Dan Perkembangannya Sebagai Dasar Penetapan Hukum Islam."

<sup>26</sup> Nur'aini, Arif, and Muhammad Ngizzul Muttaqin, "Maslahah Sebagai Upaya Membangun Ekonomi Berdasarkan Etika," *Jurnal Eksyar (Juebnal Ekonomi Syariah)* 06, no. 02 (2019): 162–77.

<sup>27</sup> Pratama and PhD diss Yunan, Rizky, "Pelaksanaan Persidangan Secara Elektronik (E-Litigasi) Pada Perkara Perceraian Di Pengadilan Agama Lubuk Pakam Perspektif AlMaslahah Al-Mursalah" (Universitas Islam Negeri Sumatera Utara, 2021).

<sup>28</sup> Hermanto and Agus, "Konsep Maslahat Dalam Menyikapi Masalah Kontemporer," *Al-Adalah* 14, no. 02 (2014): 433–460.

<sup>29</sup> Rosyadi and Imron, "Maslahah Mursalah Sebagai Dalil Hukum," *UMS (Universitas Muhammadiyah Surakarta)* 24, no. 01 (2012), <http://hdl.handle.net/11617/2910>.

<sup>30</sup> Rosyadi and Imron, "Pemikiran Asy-Syatibi Tentang Maslahah Mursalah," *Jurnal Studi Islam* 14, no. 1 (2013)..

Further, *maslahah haqîqî* with *lafaz* has the meaning of *al-manfa'ah*. Based on this meaning, al-Âlim gave an example; the pen has a benefit for writing. Therefore, *al-maslahah*, in the sense of *majâzî*, is the certainty of humans taking advantage of what is done. While *al-maslahah* in the sense of *haqîqî* is in the act itself contains benefits. Here al-Âlim does not explain how to get the benefits as what and how. Taufîq Yûsuf al-Wâî, states that everything in which there is a benefit, whether obtained by seeking benefits or pleasures or by avoiding or withdrawing from damage, all of that can be categorised as *maslahah*.<sup>31</sup> Based on this search, linguistically, *maslahah* means every good (*al-khair*) and benefit (*almanfa'ah*). Husain Hamîd Hassan argues that *maslahah*, in terms of *lafaz* and meaning, is identical to the word benefit or a job in which it contains or brings benefits. Ahmad ar Raisûnî clarifies this benefit from the expression expediency. According to him, *maslahah* means to bring benefit or avoid harm.<sup>32</sup> What is meant by benefit here is an expression of pleasure or any path leading to pleasure.

*Al-maslahah mursalah* means absolute or general. This means that according to the *ushul* scholars, it is a benefit for which the *shar'i* has made no law to realise it. There is also no *shar'i* evidence indicating whether or not this benefit exists. It is called absolute because it is not limited by evidence of being considered or being wasted and not restricted by any evidence of its being assumed or wasted. For example, the Companions introduced prisons, printing money, making the agricultural land conquered, paying taxes or any other benefit that is a matter of necessity or for the sake of good for which no law has been enacted and for which there is no *Shar'i* sanction for assuming or wasting it.

This means that the application of a ruling is to implement the benefit of humankind, namely attracting a benefit, rejecting harm, or eliminating the difficulties of humankind. Furthermore, the benefit is not limited in parts and is not restricted to individuals; rather, it advances with the progress of civilisation and evolves according to the development of the environment. Applying a ruling may be beneficial at one time and harmful at another. The law may benefit one neighborhood but harm another at a certain time.

As for the benefit used as a reference by the *shar'i* in applying the law and being the reason for its application, according to the *ushul* scholars, it is called the benefit that the *shar'i* considers. For example, the *Shari'ah* prescribes *qishash* for intentional killing to protect human life. In order to safeguard human property, the *Shari'ah* prescribes punishment for male and female thieves. In terms of protecting human dignity, *Shari'ah* prescribes lashes for those who accuse adultery, male and female adulterers. Intentional killing, theft and adultery are punishments that align with the *Shari'ah's* objective to serve the people's benefits.

The purpose of the legislation is to uphold and maintain the benefit and reject the bad. This is in accordance with sending the Prophet Muhammad PBUH to this world, which is to bring mercy to all nature, as Allah says in Q.S Al Anbiya (21): 107<sup>33</sup>, which means "and we did not send you but a mercy for all nature" So that when the imposition of law on the community does

<sup>31</sup> Ulfiana and Lis, "Pemilihan Keluarga Sakinah Teladan (PKST) Tahun 2015 Kabupaten Wonosobo Dalam Perspektif Hukum Islam," *Syariati Jurnal Studi Al-Qur'an Dan Hukum* 03, no. 01 (2017), 10.32699/syariati.v3i01.1143.

<sup>32</sup> Qorib, A Ahmad, and nd Isnaini Harahap, "Penerapan Maslahah Mursalah Dalam Ekonomi Islam," *Journal Analytica Islamica* 5, no. 1 (2016): 55–80.

<sup>33</sup> Nur and Muhammad Tahmid, *Menggapai Hukum Pidana Ideal Kemaslahatan Pidana Islam Dan Pembaruan Hukum Pidana Nasional* (Deepublish, 2018).

not bring benefit or benefit to the community, then the law will cause harm or badness to the community, and this is contrary to the concept of benefit which aims to eliminate badness.

**The urgency of adopting *masalah mursalah* in state administrative decisions in Indonesia** KTUN, as regulated in the Government Administration Law and the State Administrative Justice Law, basically regulates decisions made and formed by state officials.<sup>34</sup> The decision is formed based on carrying out government duties and providing legal certainty for the community. The decision must be based on the provisions of laws and regulations and AUPB in both laws.

The term AUPB is taken from the translation of '*Algemene Beginselen van Behoorlijk Bestuur*' (ABBB), a Dutch term. In the UK, this principle is better known as 'The Principal of Natural Justice' or 'The General Principles of Good Administration,' In France, this principle is known as 'Les Principaux Generaux du Droit Coutumier Publique.' As for an overview, according to L.P. Suetens, ABBB is defined as the General Principles of Good Governance (AUPB) based on public law rules that the court must follow in applying positive law.<sup>35</sup> Meanwhile, according to Ridwan HR in State Administration Law, the general principles of good governance form the basis of good governance and practices to realise decent, fair, dignified and free from arbitrariness, violations, abuse of power and arbitrary actions.<sup>36</sup> This principle is a special category of general legal principles and serves as a formal source of law in administrative law, although it usually involves unwritten law.

The provisions of the AUPB scope are elaborated in laws and regulations, such as the Government Administration Law, Administrative Court Law, Anti-Corruption Law, Public Service Law, Ombudsman Law, Local Government Law and State Civil Apparatus Law.

The Law on Government Administration<sup>37</sup> explains the scope of this AUPB into 8 (eight) principles, namely the Principle of Legal Certainty, the Principle of Public Interest, the Principle of Openness, the Principle of Benefit, the Principle of Impartiality, the Principle of Accuracy, the Principle of Not Abusing Authority, and the Principle of Good Service. Meanwhile, in the State Administrative Court Law<sup>38</sup> the scope of AUPB includes the Principles of Legal Certainty, the Principles of Openness, the Principles of Orderly State Administration, the Principles of Accountability, the Principles of Proportionality, and the Principles of Professionalism.

Then in the Anti-Corruption Law<sup>39</sup> the scope of this AUPB includes seven principles, namely the Principle of Legal Certainty, the Principle of Public Interest, the Principle of Openness, the Principle of Orderly State Administration, the Principle of Accountability, the Principle of Proportionality, and the Principle of Professionalism. Then in the Regional Government Law<sup>40</sup>

<sup>34</sup> Tata and Majelis Pengawas Notaris Sebagai Pejabat, *Usaha Negara* (Bandung: Refika Aditama, 2011).

<sup>35</sup> Jurdi and Fajlurrahman, *Hukum Tata Negara Indonesia* (Kencana, 2019). Setiawan and Robert, "Maladministrasi Surat Keputusan Bupati Nomor 820/40/BKPSDM/III/2019 Tentang Pengangkatan Bupati Tana Toraja Sebagai PLT Kepala Dinas Kesehatan Tana Toraja= Maladministration of Regent Decree Number 820/40/BKPSDM/II/2019 about the Appointment of the Regent" (Universitas Hasanuddin, 2022).

<sup>36</sup> Ridwan HR, *Hukum Administrasi Negara* (Jakarta: Rajawali Press, 2011).

<sup>37</sup> Law No. 30 of 2014 concerning Government Administration, the scope of AUPB, is explicitly mentioned in Article 10.

<sup>38</sup> Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning PTUN in Article 53.

<sup>39</sup> Law No. 28 of 1999 concerning the Maintenance of a Clean and KKN-Free State The scope of AUPB consists of 7 (seven) principles explicitly regulated in Article 3.

<sup>40</sup> Law Nomor 23 of 2014 concerning Regional Government AUPB is recognised as the principle of local government administration, and its scope includes 10 (ten) principles in Articles 57 and 58.



it is explained that the scope of this AUPB includes ten principles, namely the Principle of Legal Certainty, the Principle of Public Interest, the Principle of Openness, the Principle of Orderly State Administration, the Principle of Accountability, the Principle of Proportionality, the Principle of Professionalism, the Principle of Efficiency, the Principle of Effectiveness, and the Principle of Justice.

Furthermore, the scope of AUPB, according to the Public Service law<sup>41</sup>, the principle of legal certainty, the principle of public interest, the principle of openness, the principle of expediency, the principle of accountability, the principle of professionalism, the principle of timeliness, the principle of balance of rights and obligations, the principle of participation, the principle of facilities and special treatment for vulnerable groups, the principle of equal rights, and the principle of speed, convenience and affordability. Meanwhile, in the State Civil Apparatus Law,<sup>42</sup> the scope of the AUPB principle includes 12 (twelve) principles, namely the principle of legal certainty, the principle of accountability, the principle of proportionality, the principle of professionalism, the principle of efficiency, the principle of effectiveness, the principle of justice, the principle of integration, the principle of delegation, the principle of neutrality, the principle of unity and integrity, and the principle of welfare. Then according to the Ombudsman Law,<sup>43</sup> the scope of this AUPB includes the principle of openness, the principle of expediency, the principle of accountability, the principle of justice, the principle of balance of rights and obligations, the principle of propriety, and the principle of confidentiality.

Judges often use thirteen principles in court in deciding state administrative disputes based on the AUPB provisions scattered in Indonesia's prevailing laws and regulations. The 13 principles are as follows: (a) The principle of legal certainty, (b) The principle of public interest, (c) The principle of openness, (d) The principle of expediency, (e) The principle of impartiality, (f) The principle of accuracy, (g) The principle of not abusing authority, (h) The principle of good service, (i) The principle of orderly state administration, (j) The principle of accountability, (k) The principle of proportionality, (l) The principle of professionalism, (m). The principle of fairness.

These thirteen principles are all stipulated in Indonesia's positive law, so judges in disputes use these principles. The relation to state administrative decisions with the application of the AUPB principle is that the decisions issued must, of course, be based on all the AUPB principles and not contradict the provisions of these principles.<sup>44</sup> Meanwhile, the connection in the application of the principle of *Maslahah mursallah* is as the provisions of Islamic Law contained in the Quran Surah Al Imran verse 159, which explains that in determining a provision or rule must fulfil the following criteria: (a) Following and not contrary to the provisions of Islamic law, (b) Placing human equality before the law and before the government, (c) Not burdening the people who will implement the decision issued by the State Administrative Officer, (d) Create a sense of justice in society, and (e) Creating benefit and rejecting harm.

<sup>41</sup> Law No. 25 of 2009 against AUPB Public Service is recognised as a principle in the administration of public services. The scope of the AUPB explicitly includes 12 (twelve) principles in Article 4.

<sup>42</sup> Law No. 5 of 2014 concerning the State Civil Apparatus of AUPB is explicitly mentioned in Article 2.

<sup>43</sup> Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia AUPB is mentioned in Article 3.

<sup>44</sup> Simamora et al., "Analisis Faktor Pengaruh Asas-Asas Umum Pemerintahan Yang Baik Dalam Perkara Reklamasi Teluk Jakarta," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 11 (2023): 762–74.

Thus, decisions issued by state administrative officials must comply with the provisions of the AUPB and the provisions of Islamic law, one of which is *Maslahah mursallah*, which prioritises benefit and avoids harm to be able to provide a sense of comfort and tranquillity for the people who implement the decision. The state administrative decision must prioritise equality before the law for the people who will carry out the decision. So that people who will carry out the decision feel fair and without any sense of discrimination. Another aspect of issuing a decision by a state administrative official is that the decision does not burden the people who will implement the decision.<sup>45</sup> The decision must provide convenience and benefits to the people who will implement the decision.

In addition to the objective requirements for making state administrative decisions, in this case, the provisions of laws and regulations and AUPB, it must also meet the subjective requirements that the official who makes the administrative decision is authorised and has good knowledge related to the decision content. In the context of Islam, the concept of *maslahah* is recognized as a guiding principle that emphasizes the pursuit of benefits and the avoidance of damage. This approach ensures that actions align with the greater good, taking precedence over individual interests or any contradictions with *Shari'ah*.

The importance of adopting the principle of *maslahah mursalah* has significant urgency and benefits based on the following points: (1) The main urgency of this adoption is to ensure that every decision issued by the government is in favour of the benefit and welfare of the people. This principle requires the government to prioritise the public interest over the interests of groups or individuals. It is expected that state administrative decision-making will be more responsive and orientated towards quality services, (2) Fairness and balance in policy formation, it is expected that the government, in making a policy or decision, must reflect fairness and balance between various interests, besides that it is expected to be able to accommodate the needs of various groups of society without sacrificing one group for another.<sup>46</sup> (3) Realising the goal of sustainable development, by adopting this principle, it is hoped that the government in forming decisions is consistent with sustainable development, which includes economic, social, and environmental aspects so that decisions that focus on the public good will help realise inclusive and sustainable development for all levels of society.

Overall, the urgency of adopting this principle in forming state administrative decisions is very important in achieving good and responsible governance. In addition, this principle can be a strong moral foundation for making policies that favour the community, encourage public participation, and achieve sustainable development goals. By integrating Islamic values into the decision-making process, Indonesia is expected to develop a more transparent, fair, and effective state administration in serving the interests of society as a whole.

## CONCLUSION

KTUN, as regulated in the Law on Government Administration and the Law on State Administrative Courts, basically regulates decisions made and formed by state officials. These decisions are formed based on carrying out government duties and providing legal certainty for the

<sup>45</sup> Santosa and Fajar, "Penerapan Konsep Batal Demi Hukum Di Peradilan Pidana, Perdata Dan Tata Usaha Negara," *MAKSIGAMA* 18, no. 1 (2015).

<sup>46</sup> Hendrawati Hamid, *Manajemen Pemberdayaan Masyarakat* (Makassar: De La Macca, 2018).

community. The definition of KTUN in the Government Administration Law reflects more legal certainty and expediency because it requires AUPB. Islam prescribes legal provisions to uphold and maintain the benefits and reject the evils. This is in accordance with sending the Prophet PBUH to this world to bring mercy to all nature. When implemented into the KTUN, the government must certainly consider the *mudarat* and *maslahat* aspects of the decision to be taken by applying the precautionary principle. The application of *maslahah mursallah* in the KTUN must be reflected in the content that does not conflict with the provisions of Islamic law, does not burden the people who will carry out the decision, and creates benefits and avoid harm.

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