

# THESIS

THE RECEPTION OF *AL-MASHLAHAT AL-MURSALAH*  
WITHIN LOCAL REGULATION OF PROBOLINGGO CITY NUM. 2 YEAR 2009  
ABOUT OLD AGE PROSPERITY

By:  
Abdur Rofik  
05110162

A thesis submitted  
in partial fulfillment of requirements for S-1 degree of Islamic Law



AL-AHWAL AL-SYAKHSHIYYAH DEPARTMENT  
SYARI'AH FACULTY  
STATE ISLAMIC UNIVERSITY OF MAULANA MALIK IBRAHIM MALANG

2010

## CERTIFICATE OF AUTHORSHIP

In the name of Allah,

With full consciousness and responsibility, I state that the thesis entitled:

THE RECEPTION OF *AL-MASHLAHAT AL-MURSALAH*  
WITHIN LOCAL REGULATION OF PROBOLINGGO CITY NUM. 2 YEAR 2009  
ABOUT OLD AGE PROSPERITY

Is my original work except the quotations whose sources are already mentioned. Any shortcomings in this present work are my own responsibility.

Malang, June 2<sup>nd</sup>, 2010  
Writer,

Abdur Rofik  
NIM. 05110162

## APPROVAL SHEET

As thesis advisor of Abdur Rofik, NIM 05110162 student of Al-Ahwal Al-Syakhshiyah Department Syari'ah Faculty State Islamic University (UIN) of Maulana Malik Ibrahim Malang, after reading, observing again each data therein and correcting, then the thesis of student concerned by the title:

THE RECEPTION OF *AL-MASHLAHAT AL-MURSALAH*

WITHIN LOCAL REGULATION OF PROBOLINGGO CITY NUM. 2 YEAR 2009

ABOUT OLD AGE PROSPERITY

Has deemed fulfilled scientific qualifications and is eligible to be agreed and submitted to examiner board.

Malang, June 2<sup>nd</sup>, 2010

Thesis Advisor,

Sudirman, M.A

NIP.19770822 200501 1 003

## LEGITIMATION SHEET

The examiner board for Thesis of Abdur Rofik, NIM 05110162, student of Al-Ahwal Al-Syakhshiyah Department Syari'ah Faculty State Islamic University (UIN) of Maulana Malik Ibrahim Malang entitled:

### THE RECEPTION OF *AL-MASHLAHAT AL-MURSALAH*

WITHIN LOCAL REGULATION OF PROBOLINGGO CITY NUM. 2 YEAR 2009

### ABOUT OLD AGE PROSPERITY

Was eligible to have passed examination with grade A (Outstanding)

#### **Examiner boards:**

Dra. Jundiani, SH, M. Hum  
NIP. 19650904 199903 2 001

(.....)  
(Chief)

Zaenul Mahmudi, MA  
NIP. 19730603 199903 1 001

(.....)  
(Chairperson)

Dr. Dra. Hj. Tutik Hamidah, M. Ag  
NIP. 19590423 198603 2 003

(.....)  
(Main Examiner)

Malang, July 14<sup>th</sup>, 2010

Approved by  
Dean of Syari'ah Faculty

**Dr. Dra. Hj. Tutik Hamidah, M. Ag**  
NIP. 19590423 198603 2 003

## MOTTO

وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوًا ۚ وَادْكُرُوا نِعْمَتَ اللَّهِ عَلَيْكُمْ وَمَا أَنْزَلَ عَلَيْكُم مِّنَ الْكِتَابِ وَالْحِكْمَةِ  
يَعِظُكُمْ بِهِ ۚ وَاتَّقُوا اللَّهَ وَأَعْلَمُوا أَنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٣١﴾

Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things. (QS; 2:231)

## DEDICATION

I dedicate my final work for those whom I owe them my life, those who assisted and encouraged me with continuous love, carefulness and sacrifice. Without those people I cannot be me, standing on podium, heard my name mentioned, and received graduation letter.

To my mother Alm. Hj. Siti Aisyah and father Alm. H. Muhammad Zahri thank you for raising me. I know that I cannot pay this debt ever. And it is the reason why you both are taking the first place in this dedication letter at least it is what I can do to express my gratitude and to show how important you are for me.

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To my uncle Alm. Abdussalam Amrullah you took position replacing my parent's role when nobody would, to continue schooling me and my brothers. Whatever thanks regard I say would never replace your good turn, thank you uncle.

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7. And every party who are involved in this thesis compilation you all have my thanks which I cannot mention each one.

The writer realized that this writing work is not perfect. Therefore any mistakes in this thesis compilation is fully become author's responsibility. Thank you.

Malang, June 2<sup>nd</sup>, 2010

Writer



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## ABSTRACT

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Islamic law formalization at its developing period in Indonesia was preceded by the publication of Staatblad 1882 Num. 152 in the era of Governor Van Den Berg or quite popular with the theory of *receptio in complexu* term. Such fact has brought this nation over consciousness that religion and state are things cannot be separated apart in term of legal reformation. The emergence of Code Num. 1 Year 1974 followed with KHI, Code Num. 7 Year 1989 about Religious Court, and recently published KHES Year 2009 were consequence of this nation's legal requirement since the independent day of Indonesia. Therefore, according to European continental's civil law system concept, the law will prevail and self-stood if was codified through legislative institution.

In the Islamic law study, *al-mashlahat al-mursalah* is one of new law making's principles which cannot be found its detail explanation in either Koran or Hadith. Or also can be said that the new law making here possesses a shared vision and mission with the Koran and Hadith. By assuming on such, the new law making referred to civil law concept which is passing through legislation process in Indonesia is at certain point possessing the same purpose or *maqashid*, that is, the legal enactment in particular, would indeed be bringing the *mashlahah* and shutting *mudhorot*. Therefore, this thesis uses a local legal product namely the Local Regulation of Probolinggo City Num. 2 Year 2009 about Old Age Prosperity as primary source of law to be questioned about, of how is the prosperity concept within *al-mashlahat al-mursalah* received into legislative drafting phases of Local Regulation about Old Age Prosperity? And How is the prosperity values of Islamic law translated into a valid linguistic statutory of Local Regulation about Old Age Prosperity?

The integrated comprehension toward legal product such as Local Regulation requires any of approaches which relevancy between regulation and other regulation can be read thoroughly and intact. By making use of statute approach the legal comprehension will focus upon hierarchy of regulation where gradually containing rules to be regulated further starting from central going down to local level. This legal comprehension cannot complete if it is not correlative with legal drafting phases or Local Legislation Program according to Code Num. 10 year 2004 term. By making use of deductive legal reasoning method, therefore, this research tries to find the reception pattern of *al-mashlahat al-mursalah* within Local Regulation of Probolinggo City Num. 2 Year 2009 about Old Age Prosperity.

This research's result shows that *al-mashlahat al-mursalah*, defined as harmonious legal vision and mission within new law making with the Koran's vision and mission, has placed the *mashlahah* concept through boundaries or particles ought to exist. Then, by following such direction the process of *mashlahat mursalah* has indirectly happened yet also indicated to the reception of Islamic law.