

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 correlational 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.