

Istihsan Concept and its Application in Determining the Legal Status of Halal Tourism

Prima Ariyo Widodo^{1*}

¹ Faculty of Islamic Studies, Universitas Muhammadiyah Surakarta, Surakarta, Indonesia

Abstract

Linguistically speaking, Istihsan is the masdar version of the word Istahsan - Yastahsin - Istihšana, which denotes thinking about, pondering the existence of, or seeking for something better to follow. The definition of "shara" according to Abdul Wahhab Khallaf, Istihsan, is "Transferring a mujtahid from the law kulli (generic) to the law of exceptions due to the evidence supporting it, or from qiyas prison (clear) to qiyas khafi (vague). The author of this study restricts it to the use of the concept of Istihsan in determining the legal status of halal tourism. In Islamic law, the idea of istihsan is an ijtiḥad technique that permits a mujtahid, or Islamic jurist, to base the law on morality or fairness. Istihsan can be used to evaluate the moral and just components of tourism-related activities in order to establish the legal status of halal travel. By guaranteeing that tourist operations adhere to sharia principles and must be founded on maslahah mursalah for each user or customer, this notion can serve as the foundation for establishing the legal status of halal tourism. The legal status of halal tourism can thus be ascertained by using the notion of istihsan and the tenets of sharia economic law, taking into account elements of fairness, morality, and compliance with sharia principles.

Keywords: Istihsan Concept, Islamic Law, Halal Tourism, Sharia Principles, Maslahah Mursalah

Introduction

Istihsan is covered in the courses on Maqashid Shari'ah and Ushul Fiqh. One of the scientific subfields that explores the origins of fiqh law is Ushul Fiqh. Fiqh problems encompass not only classical problems but also newly emerging issues that call for scholars to provide their ijtiḥad solutions. Therefore, the scholars developed the guidelines (methodology) to facilitate Muslims' application of the law in ijtiḥad cases.

Every mujtahid has a different source of law in the shara's arguments. The arguments of shara' stated by Imam Abu Hanifah were the following: the Qur'an, the Sunnah, the ijma' companions, qiyas, istihsan, and 'urf. Maliki Mazhab follows the sunnah, ijma' ahlul Madinah, fatwa companions, muru'at khilaf al mujtahidin, istishab and syar'man qablana, khabar ahad and qiyas, istihsan, istislah, and sad al-zara'i. While Alqan, sunnah, ijma', qiyas, istislah, and istishab are the shara' arguments advanced by Ushul Fiqh and Maqhasiyid Shari'ah. According to Iskandar Usman (1994: 5), Ahmad bin Hanbal follows the Quran, the sunnah, the companions' fatwas, and qiyas. It is clear from this statement that not every mujtahid imam accepted istihsan as the final source of law. Because it is believed that a mujtahid has taken something that he thinks is good, rather than based on arguments obtained directly according to the editorial text (nash) of the Al-Quran and sunnah or based on the consensus of the apostle Muhammad Abu Zahrah, translated by Abdul Syukur, 2005: 479, Imam Syafi'i has rejected the use of istihsan as a source of law. Using istihsan as istinbath law with lust and seeking only good, according to Imam Syafi'i, is even more extreme.

In addition, in relation to the discussion of istihsan and how it applies to determining the legal status of halal travel, istihsan can be applied by taking into account the fundamental Islamic values of justice, the public good, and the preservation of morality and religion. When determining the legal status of halal tourism, istihsan can be applied in the following ways:

1. Generally beneficial: Ensuring that tourism-related activities do not contravene shariah principles and benefit society in ways that do not compromise religious values, such as economic development, education, and cultural promotion.
2. Justice is ensuring that tourism-related activities do not cause harm to other people and that all parties involved in the tourism industry are treated fairly when rules are applied.

* Corresponding author: primaaryo93@gmail.com

3. Protection of Religion and Morality: Determine whether the tourism-related activity adheres to Islamic moral principles or transgresses these values, for example, by looking at whether it encourages certain behaviours.
4. General Sharia Law Provisions: Making comparisons between current Islamic law and the principles outlined in Islamic law to determine whether tourism is allowed or prohibited.

In the context of halal tourism, istihsan can be used to evaluate all elements while upholding sharia principles, including food, lodging, and activities and promotions. Istihsan is not a perfect approach, but it can be used to make sure that tourism practises adhere to Islamic religious principles and benefit society while upholding religious values in the context of halal travel. Sharia principles must be based on the Guidelines for the Implementation of Tourism, as stipulated by DSN MUI fatwa No. 108/DSN-MUI/X/2016. This fatwa addresses a number of topics, such as safe and comfortable travel for tourists, halal tourism services, and criteria for halal tourism.

Method

The author in writing this article uses quantitative data using descriptive analysis methods based on statistical data and literature reviews from journals, books, and other relevant sources.

Result and Discussion

Istihsan Definition and Types

Among the contested sources of Islamic law (Muhktalaf) is Istihsan. The Arabic word istihsan, which means "good". The word حسن, which eventually became استحسِن, means "to consider something good" according to its etymology. This interpretation thus renders istihsan as "to declare and recognise the goodness of something". When it comes to terminology, academics disagree on how to define Istihsan;

1. As per the ushul scholars, istihsan signifies "leaving the law that has been established based on an event or incident that is established based on shara' evidence, towards another law from that event as well, because there is a shara' evidence that requires leaving it."
2. "The turning away of a mujtahid from a ruling on a comparable issue to another ruling, because there is a more important consideration that requires turning away," is how the Hanafis define istihsan. Not just rejecting the meaning without providing any supporting data."
3. Istihsan is defined as "the determination of the law that is different from the general rule, so in this case istihsan stronger than kias (al-qiyas)" by Muhammad Abu Zahrah.
4. The Malikiy Madzab claims that istihsan is "adhering to a special benefit in the face of general evidence".
5. Istihsan, according to the Hambali Madzab, is "deviating from the provisions of a special issue".
6. Istihsan, according to the al-Shafi'iy Madzab, is a method of interpreting the law lustfully and pleasurably.

Abdul Wahhab Khalaf defines the term "shara" as "moving a mujtahid from qiyas jali (clear) to qiyas khafi (vague) or from the law kulli (general) to the law of exceptions because of the evidence that justifies it." There are various istihsan that are associated with the idea of halal tourism. One of the ijihad techniques used in Islamic law to ascertain laws that are absent from the nash is istihsan (Islamic legal text).

Table 1. Types of istihsan related to the concept of halal tourism

No.	Types of Istihsan	Application
1	Istihsan in the Sharia Economic Context	This approach makes it possible to adapt Islamic law to the requirements of a developing economy, including halal travel.
2	Istihsan in Halal Product and Tourism Studies Research studies on the tourism sector and halal lifestyles	That respects culture can also include istihsan in creating legislation pertinent to the halal tourism environment.
3	Istihsan in the Development of Halal Tourism Regarding the advancement of halal travel	In order to prevent Muslim tourists from solely engaging in non-halal travel, istihsan can be utilised to modify Islamic law to meet their needs.

The Istihsan Terms

Scholars have proposed several requirements for Istihsan to serve as the foundation of Islamic law, such as:

1. It must not conflict with the Shari'a, including the khulli and juz'i arguments that are qath'i wurud and dalalah, derived from the texts of the Qur'an and the Sunnah.
2. The benefit must be logical in nature, which calls for analysis and research to support the belief that the issue will either prevent harm or produce benefits rather than just be assumed to have positive effects.
3. Everyone must gain from it.
4. Using it doesn't result in unusual hardship.

The validity of Istihsan

In order to establish Istihsan as one of the arguments in establishing Shari'a law, there are differences among the scholars of ushul fiqh ; there are those who accept to be used as evidence among them : Imam Hanafi, Imam Maliki, and Imam Hambali are mentioned in this group. The Qur'an and the Prophetic Hadith serve as their foundation. According to Surah Az-Zummar :18 and Surah Az-Zummar :55 of the Qur'an

الَّذِينَ يَسْتَمِعُونَ الْقَوْلَ فَيَتَّبِعُونَ أَحْسَنَهُ أُولَئِكَ الَّذِينَ هَدَاهُمُ اللَّهُ وَأُولَئِكَ هُمْ أُولُو الْأَلْبَابِ

"Those who listen to words and follow what is best among them. They are those whom Allah has guided and they are those who have reason." (Az Zumar: 18)

وَاتَّبِعُوا أَحْسَنَ مَا أُنزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ

"And follow that which is best which your Lord has revealed to you." (Az Zumar: 55)
And also like the Prophetic Hadith narrated by Ahmad

مَا رَأَى الْمُسْلِمُونَ حَسَنًا فَهُوَ عِنْدَ اللَّهِ حَسَنٌ (رواه أحمد)

"What the Muslims consider good is good in the sight of Allah SWT." (H. R. Ahmad).

The above hadith strengthens the validity of istihsan. According to the proponents of istihsan, the above hadith recommends following what is considered good by Muslims because it is also something that is considered good in the sight of Allah SWT.

Definition of halal tourism

Tourism is known in Arabic terms with the word "al-Siyahah, al-Rihlah, and al-Safar" or in English with the term "tourism", by definition means an activity or travel activities carried out by humans both individually and in groups within the territory of their own country or other countries by using the convenience of services and other supporting factors held by the government and the community in order to meet the desires of tourists (visitors) with a specific purpose. In the Qur'an and Sunnah of the Prophet Muhammad SAW, the word tourism is not found literally, but explicitly the meaning of tourism can be associated with several verses of the Qur'an including:

1. Q.S. Al Mulk (67)/15 Translation: "It is He who has made the earth easy for you, so walk in all its paths and eat of His sustenance, and to Him alone you shall return after being raised up".
2. Q.S. Nuh (71)/19-20 Translation: "(19) And Allah has made the earth for you a plain, (20) that you may walk in its broad ways".
3. Q.S. Ar Ruum (30)/9: Translation: "And have they not travelled the earth, and seen what has befallen those who were before them, who were stronger than themselves, and had tilled the earth and prospered it more than they had prospered, and had come to them with their Messengers, bearing clear proofs? So Allah has not wronged them, but they have wronged themselves."
4. Q.S. Al Ankabut (29)/20 Translated; "Say: "Walk the earth, and see how Allah created it from its beginning, and then He made it again. Verily, Allah is over all things."
5. Q.S. Al Jumu'ah (62)/10: Translation: "When you have offered your prayers, then spread out upon the earth, and seek the bounty of Allah, and remember Allah much, that you may be fortunate".

According to Tohir Bawasir in his book entitled "Practical Guide to Sharia Tourism" suggests that Sharia Tourism is a tourist trip where all the processes are in line with Islamic sharia values. Whether starting from the intention, during the trip

Memandang Potensi Wisata Halal Indonesia

◀◀◀ Destinasi wisata halal terbaik dunia versi Global Muslim Travel Index (GMTI) 2019 ▶▶▶

Indonesia Malaysia Turki Arab Saudi Uni Emirat Arab

Top 5 destinasi wisata halal di Indonesia

▶ Lombok ▶ Aceh ▶ Riau ▶ Jakarta ▶ Sumatera Barat

"Kita ingin Bali, ambil potensi pariwisata halal yang kabarnya di atas Rp 3.000 triliun potensinya"
Sandiaga Uno,
 Cawapres no urut 02

"Itu saya yang ngomong, dia ikut-ikutan, terima kasih. Wisata halal, saya sudah dari 20-30 tahun lalu"
Ma'ruf Amin,
 Cawapres nomor urut 01

Sumber: CNBC Indonesia, Detik, Tribunnews - K12
 pinterpolitik.com | pinterpolitikdotcom | pinterpolitik | pinterpolitik

Mengenal Pariwisata Halal Indonesia

Sejarah

2015 Indonesia pertama kali mengikuti Halal Tourism Award.

2016 Pariwisata Halal Booming di Indonesia. Borong 12 Award dari 16 kategori

2017 Pariwisata Halal Indonesia menduduki Top 3

2018 Pariwisata Halal Indonesia menduduki Peringkat 1 bersama Malaysia

Konsep Pengembangan

- Makanan Minuman halal
- Fasilitas Ibadah Berkualitas
- Toilet Bersih Air Memadai
- Bebas dari Islamophobia
- Memberi Nilai Manfaat Sosial
- Makanan Minuman halal
- Program Ramadhan
- Pengalaman Unik Wisatawan Muslim
- Bebas dari Aktivitas Non-halal
- Penyediaan Area Rekreasi dengan Privasi

Polemik Wisata Halal

PRM sering disangkutnkan agama, padahal ini hanya gaya hidup seperti vegetarian

PRM sering disangkutnkan agama, padahal ini hanya gaya hidup seperti vegetarian

Istilah "Halal" yang mengutamakan wisatawan muslim diperhalus menjadi Pariwisata Ramah Muslim [PRM]

PERINGKAT INDONESIA MUSLIM TRAVEL INDEX (IMTI) 2019

TOP 5 DESTINASI PARIWISATA HALAL TERBAIK IMTI

1. Lombok, NTB
2. Aceh
3. Riau dan Kepulauan Riau
4. DKI Jakarta
5. Sumatera Barat

DESTINASI PARIWISATA HALAL UNGGULAN

6. Jawa Barat
7. DIY
8. Jawa Tengah
9. Malang Raya
10. Sulawesi Selatan

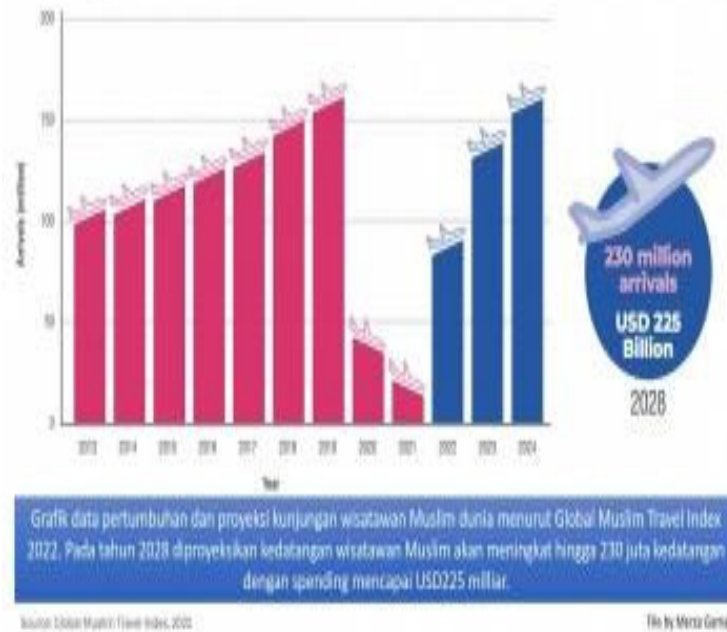
Sumber : CrescentRating-Mastercard



www.kemepar.go.id | Kementerian Pariwisata | @Kemenpar_RI | @kemenpar | Kementerian Pariwisata



Proyeksi Pertumbuhan Pasar Pariwisata Halal



Conclusions

In addition, in relation to the discussion of istihsan and how it applies to determining the legal status of halal travel, istihsan can be applied by taking into account the fundamental Islamic values of justice, the public good, and the preservation of morality and religion. When determining the legal status of halal tourism, istihsan can be applied in the following ways:

1. Generally beneficial: Ensuring that tourism-related activities do not contravene shariah principles and benefit society in ways that do not compromise religious values, such as economic development, education, and cultural promotion.
2. Justice is ensuring that tourism-related activities do not cause harm to other people and that all parties involved in the tourism industry are treated fairly when rules are applied.
3. Protection of Religion and Morality: Determine whether the tourism-related activity adheres to Islamic moral principles or transgresses these values, for example, by looking at whether it encourages certain behaviours.
4. General Sharia Law Provisions: Making comparisons between current Islamic law and the principles outlined in Islamic law to determine whether tourism is allowed or prohibited.

Table 2. Types of istihsan related to the concept of halal tourism

No.	Types of Istihsan	Application
1	Istihsan in the Sharia Economic Context	This approach makes it possible to adapt Islamic law to the requirements of a developing economy, including halal travel.
2	Istihsan in Halal Product and Tourism Studies Research studies on the tourism sector and halal lifestyles	That respects culture can also include istihsan in creating legislation pertinent to the halal tourism environment.
3	Istihsan in the Development of Halal Tourism Regarding the advancement of halal travel	In order to prevent Muslim tourists from solely engaging in non-halal travel, istihsan can be utilised to modify Islamic law to meet their needs.

According to statistics provided by the Ministry of Tourism and Creative Economy, Indonesia has made significant achievements in the development of halal tourism. Based on the Global Muslim Travel Index (GMTI), Indonesia has achieved the first rank as the best halal tourism destination in the world in 2019. In 2022, Indonesia ranked second out of 138 countries in GMTI; In 2023, Indonesia again ranked first as the best halal tourist destination in the world, beating 140 other countries. In

the 2019 GMTI ranking, Indonesia's halal tourism market growth reached 18% with the number of foreign Muslim tourists visiting Indonesia's priority halal tourism destinations reaching 2.8 million with foreign exchange reaching more than Rp 40 trillion.

With great potential for the development of halal tourism in Indonesia, Vice President Ma'ruf Amin asked the Ministry of Tourism and Creative Economy to develop the potential of halal tourism in Indonesia. Thus, Indonesia has shown its potential as the world's best halal tourism destination and continues to strive to develop the halal tourism sector to attract more Muslim tourists from around the world.

Acknowledgements

I would like to thank Dr. Isman, S. HI, S.H, M.H as the academic supervisor and all teaching lecturers in the sharia economic law master study programme and for the support of fellow students, so that I can complete this article well. I realise that this article still needs a lot of improvement. Hopefully the article I wrote can be useful for all audiences.

References

- Abdullah, R. (2013). Istihsan in the Perspective of Imam Madzab. Retrieved from <https://jurnal.uinbanten.ac.id/index.php/ahkm/article/download/2861/2084/7620>
- Al-Arifah. (2022). Chapter 2: Theoretical basis of Al Istihsan. Retrieved from http://etheses.iainkediri.ac.id/5329/2/931202218_bab2.pdf
- Astuti, M. (2021). Maqashid Syariah in Halal Tourism Concept of Maslahah Dharury Imam Syatibi. Retrieved from <https://mail.jurnalhamfara.ac.id/index.php/yie/article/download/141/74>
- Azhari, F. (2019). Ushul Fiqh Economics and Islamic Finance. Depok: Raja Grafindo Persada.
- Hayy, A. (2014). Introduction to Ushul Fikih. Jakarta: Al-Kautsar Library.
- Huda, B. (2022). The Concept of Halal Tourism and Travellers' Rights in Fiqh Perspective. Retrieved from <https://jurnalfebi.uinsby.ac.id/index.php/elqist/article/view/818>
- Putri, N. A. (2023). Formalisation of Halal Tourism Regulation in Indonesia. Retrieved from <http://openjournal.unpam.ac.id/index.php/Senan/article/download/31466/14871>
- Shidiq, S. (2011). Ushul Fiqh. Jakarta: Kencana Prenada Media Group.
- Syufa'at, Z. A. (2022). Islamic Tourism Potential and Strategy for Sharia Tourism Development. Yogyakarta: Science Library. Retrieved from https://repository.uinsaizu.ac.id/16667/1/Islamic%20tourism%20%281%29_reduced.pdf
- Tysara, L. (2023, October 14). Understanding Istihsan is an effort to determine the law, this is the opinion of the Ulama and its types. Liputan6. Retrieved from <https://www.liputan6.com/hot/read/4857160/pengertian-istihsan-adalah-upaya-menetapkan-hukum-ini-pendapat-ulama-dan-macamnya>
- Wajdi, F. (2023). Halal Tourism in the View of Maslahah Mursalah. Retrieved from <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/12088/0>