Abstract: Al-Hâjat As The Basis Of Contemporary Ijtihâd. This article discusses the use of the concept of hâjat (necessity) in the application of sharia law when there are difficulties in applying the original provisions. The hâjat (necessity) makes it possible for people and individuals not to apply the original law when they experience difficulties in applying it. However, the use of hâjat must fulfill several conditions, including (1) it should be mu’tabarah, not contradicting the prevailing principles of syara’, (2) it should be found in cases that seriously threaten religious interests, life/soul, mind, descent, and property. (3) If the hâjat is general for a group of people or the wider community or individuals, then this position of hâjat occupies an emergency position and takes place permanently for the community but temporarily for individuals. This study found the fact that some contemporary scholars no longer adhere to the principle of hâjat which is mu’tabarah or following the maqâsid sharî’ah with all its requirements but has mixed it with pseudo-ad-dharûrah (emergency). Through this approach, some contemporary cases that were initially considered haram (forbidden), such as forex (Foreign Exchange) are considered lawful because they are needed. In other words, even though it is not a real hâjat because forex is ribâ nasi’ah, it can be done in an emergency, as is the case with bonds that have fixed interest.

Keywords: al-Hâjat, Contemporary Ijtihâd

Abstrak: al-Hâjat Sebagai Dasar Ijtihâd Kontemporer. Artikel ini mengulas tentang penggunaan konsep hâjat (kebutuhan yang sangat mendesak) dalam penerapan hukum syari’at tatkala ada kesulitan dalam menerapkan ketentuan yang asli. Hâjat ini memberikan kemudahan kepada masyarakat dan individu untuk tidak menerapkan hukum yang asli manakala mengalami kesulitan/kesempitan untuk menerapkannya. Namun demikian, penggunaan konsep hajat haruslah memenuhi beberapa syarat antara lain: (1) hâjat tersebut hendaklah mu’tabarah, tidak bertentangan dengan dasar-dasar syara’ yang berlaku, (2) hendaklah hâjat, didapatkan dalam perkara yang betul-betul mengancam kepentingan agama, kehidupan/jiwa, akal, keturunan, dan harta benda. (3) Apabila hâjat itu bersifat umum bagi sekelompok orang atau masyarakat luas atau individu maka posisi hajat ini menempati posisi darurat dan berlangsung secara permanen bagi masyarakat namun temporer bagi individu. Penelitian ini menemukan fakta bahwa sebagian ulama kontemporer tidak lagi berpegang kepada prinsip hâjat yang mu’tabarah atau yang sesuai dengan maqâsid sharî’ah dengan segala persyaratannya akan tetapi telah bercampur dengan pseudo ad-dharûrah. Melalui pendekatan ini, beberapa kasus kontemporer yang semula dipandang ribâ seperti, forex (Foreign Exchange)

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merupakan hal yang halal karena ia dibutuhkan. Dengan kata lain, meski bukanlah hajat yang sebenarnya, karena forex adalah ribâ nasî'ah, tapi ia dapat dilakukan dalam keadaan darurat, sebagaimana halnya dengan obligasi yang mempunyai bunga tetap.

Kata Kunci: al-Hâjat, Ijtihâd kontemperor

Introduction

The general rule explains that the convenience and leniency provided by syara ‘are not only limited to very compelling emergencies or exceptions. In certain cases, syara ‘also provides convenience, concessions, or exceptions. especially when it comes to people’s needs. In the development of contemporary ijtihâd, many cases that were originally prohibited have become permissible due to an urge (urgent need) so that they fall into the category of dharûrat (emergency). This is in line with the sound of a rule which says الحاجة تنزل منزلة الضرورة (an urgent need to occupy an emergency position) This qâidah (rule), both in general and specific, is an important fiqh rule and is a manifestation of the elasticity of Islamic law. For those who reject this rule, it means that they have narrowed the life of themselves and society; and it contradicts the elastic nature of Islamic law. But for those who accept it, without knowing the rules and conditions, it also has the potential to justify what is forbidden (harâm), which means violating the provisions of Islamic law.

Many people do not understand that hâjat (necessity) is actually not absolute. It has certain conditions and requirements that must be met before making it a basis for establishing law. The terms and conditions by a number of previous jurists have provided a number of criteria that can be used to distinguish which ones are dharûrî (emergency) in nature and which are only necessities. This difference needs to be known by a mujtahid (jurist) so that he does not confuse the status of hâjat (necessity) with the status of emergency. The mixing of these two cases is a big mistake that has been made by some contemporary scholars. For this reason, before using the proposition of al-hâjat, we should first examine the position and the conditions of it so that it can be applied rightly.
This article explores in detail the concept of *al-hâjat* along with its terms and conditions. The goal is to operationalize it in responding to legal problems that arise in the present and the future. By understanding the essence of the concept of hajat with all its terms and conditions, one can not only use it appropriately but also can judge which *Ijtihâd* is valid and which is not.

### Hâjat (Necessity) and Its Details

#### Definition of Hâjat

*Hâjat* literally means needs, a necessity that connotes emergency.¹ Imam Haramain al-Juwaini was the first to discuss the issue of *hâjat*. In his book entitled *al-Burhan*. Al-Juwaini said “الحاجة العامة تنزل منزلة الضرورة الخاصة ف حق أحد الأشخاص” (The public need is given the status of a private necessity in the right of anyone).² Al-Juwaini’s statement was later quoted by many scholars who came after him such as as-Sam’ani, al-Ghazali, Ibn Arabi, and Izzudin bin Abdi as-Salam.³

#### Types of Hâjat

There are two kinds of *hâjat*, namely: general *hâjat* and special *hâjat*. Al-Syatibi defines the general *hâjat* as something that is really needed so that if it is not there, the life of a person or society will be narrow or difficult.⁴ This general *hâjat* is often discussed by Ushul Fiqh experts such as al-Juwaini and al-Ghazali. The positions of general and special *hâjat* require a detailed explanation because they both have the same legal consequences, in one sense, but different in another. This distinction is needed because many contemporary scholars refer to *hâjat* without distinguishing whether it is general or specific.

General *hâjat* can be distinguished from special *hâjat* by the following criteria:

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⁴ As-Syatibi, *Al-Muwafaqat Fi Ushul as-Syar‘i’ah*, p. 10.
1. The general hājat provide a wider range of facilities that the special hājat does not have;
2. The general hājat can be enforced before an event occurs, while the special hājat requires the existence of a real event in the field or is believed to occur;
3. The general hājat is not limited by the period or the temporary capacity of the special event;
4. The general hājat may be applied immediately, although there is no provision while the special hājat is not.

The second form of hājat is special hājat. This hājat is needed to eliminate the hardships and difficulties of the life of the mukallaf even though this is out of the corridors of Syara ‘rules.5 A special hājat is independent of general hājat, emergency, rukhsah (lightening using the argument), or the ability to leave something ordered because of illness or because of compulsion, or in certain situations such as being on a trip, or because of forgetting/not knowing the law. Unlike the general hājat, where a person does not have to meet certain conditions or situations in order to be able to practice it, the special hājat requires the fulfillment of certain conditions or circumstances, before he can use the reason to override the law.

**Position of Hājat**

It is not always necessary for the hājat (necessity) of having to occupy an emergency position or have the same legal status as emergency law. Only in a few cases does it have the same status as an emergency. Imam Haramain emphasized that حاجة الجنس (أي حاجة الجماعة) قد تبلغ مبلغ ضرورة (الشخص الواحد) (general needs occupy emergency needs for individuals). Therefore, only a few forms of this hājat can occupy an emergency position or as legal as an exception. In line with this opinion, Ibn Wakil in his book says "الحاجة العامة تنزل منزلة الضرورة الخاصة في صور (community needs occupy an emergency position for individuals in several forms).6

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Similarities and Differences between \textit{Dharûrat} (Emergency) and \textit{Hâjat} (Necessity)

\textit{Dharûrat} (emergency), etymologically and terminologically, can be defined as the need for something in a situation of compulsion.\textsuperscript{7} \textit{Dharûrat} and \textit{hâjat} both need something and have almost the same effect in changing the application of the original law. There are two perspectives on \textit{dharûrat}, namely the perspective of fiqh and the perspective of \textit{Ushul Fiqh}. In the perspective of fiqh, there are two kinds of emergency in a special meaning and emergency in a general sense. Emergency in a special meaning is a condition within the maximum limit that allows something that is prohibited as an exception. Al-Sayuthi emphasized that “emergency is a situation in which, if a person does not eat something that is forbidden and is leftover then he will die. Therefore he is allowed to eat it.”\textsuperscript{8} Meanwhile, \textit{dharûrat} in a general sense is an emergency that is of a lower degree and is equal to \textit{hâjat}. Some jurists use the term emergency in the same sense as \textit{hâjat} in several circumstances.\textsuperscript{9}

\textit{Djarûriyyah} in the perspective of \textit{Ushûl al-Fiqh} is a condition which is part of the needs that are emerging, and which must be realized for the continuity of religion and the world; In other words, \textit{djarûriyyah} is a primary need in human life both in this world and in the hereafter, which, if not realized, will destroy the life of the world and the lives of mankind. Because of that, efforts to bring about needs in the world and the hereafter are the very principal goals of \textit{maqâshid al-syarî'ah} (the purposes of religion). The benefit of \textit{djarûriyyah} in the perspective of \textit{ushûl al-fiqh} is broader than the concept of \textit{al-djarûrah} in \textit{qawâ'id fiqhiyyah} (fiqh rules). In \textit{ushûl al-fiqh}, the needs of \textit{djarûriyyah} include the maintenance of religion, soul, mind, descent, and property (\textit{hifzh al-dîn}, \textit{hifzh al-nafs}, \textit{hifzh al-'aql}, \textit{hifzh al-nasl}, \textit{hifzh al-mâl}). \textit{Djarûriyyah} in ushul fiqh is defined as a situation in which if it is not done, one of the five components of life (soul, body, property, and honor) will be

\begin{itemize}
\item \textsuperscript{7} Muhammad Amin Al-Fairuz Abadi, \textit{Al-Kamus al-Muhith} (Damaskus: Muhammad Amin al-Fairuz Abadi, 1995).
\item \textsuperscript{8} As-Suyuthi, \textit{Al-Asybah Wa an-Nazair} (Kairo: Dar al-Hadits, 1988), 1, p. 61; al-Jashas, \textit{Ahkam Al-Qur’an} (Kairo: Dar al-Ma'rifah, ), p. 195.
\item \textsuperscript{9} Ibn Najar al-Futuhi, \textit{Kaukab Al-Munir} (Kairo: Dar al-Hadits, 1979), 1, p. 133.
\end{itemize}
threatened. In these conditions the provisions regarding *rukhsah* (relief/exception) given by syara‘ apply because if the original law is still applied then the *mukallaf* will perish. So, the safety of the soul is not the only measure.\(^{10}\) For example, A person is forced to eat a carcass because only a carcass is there and if not eaten his life will be threatened. For *Ushul al-Fiqh* experts, emergency in *qawâ'id fiqhiyyah* emphasizes the aspect of maintaining the soul (*hifzh al-nafs*) and falls into the special category of *hâjat*. Meanwhile, the activities of buying and selling, getting married, and enforcing the law are manifestations of emergencies that fall into the category of public interest.

The differences between *Dlarûriyyah* and *Hâjat* include the following:

1. *Hâjat* is often associated with general needs or the *عامة* and is more general in nature than *Dlarûriyyah*.
2. The level of need for *hâjat* is lower than that of *dlarûriyyah* (emergency).
3. *Hâjat* is needed by humans when it is narrow and urgent and occurs more often, while *Dlarûriyyah* (emergencies) are rare situations and can make humans perish.\(^{11}\)
4. *Dlarûriyyah* (emergency) is only valid temporarily, which is lost with the disappearance of the cause. For example, someone who is forced to eat a carcass or food that is forbidden by syara‘. If the person who came afterward got the carcass, then the law was different from the person who came before. Because the first person to get it is hungry and forced, while the second is not necessarily the same as the first.
5. *Dlarûriyyah* law or also known as special *hâjat* only applies to individuals. Whereas, the general *hâjat* law will continue to apply to everyone. For example the contract of *Salam* (ordering goods).\(^{12}\)

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\(^{11}\) Ahmad bin Abdurrahman ar-Rasyid, *Al-Hâjah Wa Atsaruha Fi al-Ahkâm* (Riyadh: Dar ar-Kunuz Isybilia, 1429).

\(^{12}\) Etymologically, *Salam* is *al-i'bah* (الإعطاء) and *al-taslif* (التسليف). Both mean giving. The expression *aslama ats tsawa' il al-khayyath* means: he has handed over the clothes to the tailor. Whereas in sharia terms, the *Salam* contract is generally defined by the fuqaha as: بيع وصوف (البيع موصوف).
The contract of *Salam* may be made by everyone, not only for those who need it. Although basically, a contract of *Salam* is a sale and purchase that has nothing in it, so it is basically prohibited by Islam, but it is allowed because it involves the interests of the community.

6. The effect of *Dlarûriyyah* in changing the legal consequences is stronger than that of the *hâjat*. *Dlarûriyyah* (emergency) allows certain types of acts that are forbidden but *hâjat* is different. As-Shafi’iy emphasized that the *hâjat* cannot allow the *harâm* unless it has reached an emergency. Therefore *al-Hâjat* cannot be used as a justification for taking someone’s property.

**Terms and Conditions of the Use of *Hâjat* (Necessity)**

This discussion does not discuss *hâjat* which has specific arguments only but includes the two types of *hâjat* that make a *mukallaf* does something that is prohibited solely because of the *hâjat* itself without any other reason, or without any specific text that allows the act. This discussion will cover the scope of *syara* ‘support for it and the extent to which the results of the interpretation of *syar’i* texts can support this practice in real life.

Suyuthi puts general and special *hâjat* in the same position, namely being able and possible to occupy an emergency position in carrying out prohibited acts. However, on other issues, Suyuthi mentioned the...
difference as what the scholars have quoted even though it is only a gesture by mentioning the provisions that must be followed in Ijtihād regarding the problems related to the hājat to occupy this emergency position.

Hājat (necessity) does not automatically allow someone to do something forbidden (harām) or leave what is obligatory. Ibn Qudamah said “it is not permissible for a scholar to directly determine the law just because of hājat (necessity) or just because it contains maslahat tahnīyāh. The determination of hājat is not based on an urgent need or will. As cloning is not allowed in humans for couples who do not have/need children. Because cloning will create chaos in lineages and hifz an-nasal which is part of ad-Dharūriat al-Khamsah in maqāshid al-shari‘ah, rejecting harm and bring benefits that must be maintained.

Imam Haramain al-Juwaini mentions certain conditions to be able to use the hājat (necessity) as evidence in establishing law:15

1. Let that hājat be mu’tabar (well-known) according to the shari‘ah
2. In line with the maqāshid shari‘ah and its basics.
3. Let the hājat has reached the maximum limit which is uncommon in causing difficulties for mukallaf. Difficulties that mukallaf can still tolerate cannot be used as justification for actions that come out of the general provisions of syara‘. Therefore, all difficulties in worship, mu‘amalah, and all forms of actions that are ordered and prohibited in syara‘ cannot be used as a hājat (necessity) as long as it can be borne by the mukallaf who carry it out.
4. Let the hājat not violate the law.16 This provision is in accordance with the opinion of as-Syatibi.17 However, some scholars say that the conformity of hujrat with zahir texts is not required because the hājat permits what is prohibited. According to them, there is ar-rukhsah (relief/exception) which contradicts the zāhir nash, therefore, it is possible to stipulate that the hājat must be in accordance with the

15 As-Syatibi, Al-I’tishām, 2nd edn (Beirut: Dar al-Ma‘rifah, 1900), p. 129.
16 Ahmad bin Abdurrahman ar-Rasyid, Al-Hājat Wa Atsaruha Fi al-Ahkam.
17 As-Syatibi, Al-I’tishām, p. 129.
argument. This difference in view can actually be reconciled because basically there are two types of Nash (legal basis), namely a). Nash relating to the law of origin which applies in normal conditions b). Nash deals with special circumstances and exceptions, which are enforced under compulsion due to urgent reasons. The legal consequences caused by the hâjat are not in accordance with the shari‘ah under normal conditions but are in line with conditions of emergency and compulsion. Therefore, following the consequences of hâjat (necessity) is valid according to syara’ and following the arguments that have been recognized by syara’ as the law of origin and the law of exclusion are both legitimized by syara’. Furthermore, basically, under normal circumstances, the law of origin remains in effect until there is a cause which changes the consequence of the original law to the opposite with the understanding that a person cannot fulfill an urgent need except by going outside the corridors of the law and the provisions of syara Thus, the provisions of the law which are established employing hâjat (necessity) are the law of exemption, just to alleviate mukallaf.

5. Let this hâjat be believed to cause difficulties with strong prejudice because strong prejudice is the same as belief. Ibn Hajar al-Haithami said, “it is enough to consider something to be desire with clear predictions.” Like a sick person who feels unable to fast, he is allowed to break the fast. As for hâjat which is based solely on prejudice, it cannot influence legal leniency or change legal provisions. As the rule says:

"لا عبرة للتوهم لان الرخص لاتناط بالشك"

(Prejudice cannot be used as a legal basis, because ar-rukshah (relief) law should not be based on prejudice).

19 Syaikh Ahmad Farid, Bahir Ar-Ra’iq (Kairo: Dar an-Nahdah, 1987), iii, p. 80.
Examples of the Application of Ḥājat

Basically, harām (forbidden) acts should not be done intentionally or accidentally. The provisions, in this case, apply to the qat’iy prohibition (absolute prohibition) or ta’abbudy,\(^\text{21}\) which is prohibited because of the substance of an act or object.\(^\text{22}\) Like committing adultery, drinking, and eating carcass/pork. Adultery is not permitted in any form because the prohibition is absolute. Meanwhile, drinking and eating carcass/ pork, although it is prohibited by syara ‘, but when in an emergency it becomes an exception. The exception here is given because what is prohibited is the result of the action following the rule which states that the level of the prohibition of maqāshid (purpose) is not the same as al-wasāil (medium of conduct).

One of the clearest examples of the general ḥājat application is in the case of buying and selling in which some practices are not following the syara’; For example, in buying and selling debt with debt. This kind of transaction falls under the category of debt transfer (hiwālah).\(^\text{23}\) Even though it violates qiyās (reasoning), it is permissible because the public interest requires it. Other examples that are similar to this are buying and selling transactions of Salam (ordering goods), buying and selling of goods that are difficult to determine the amount of and services. Transactions of this kind are not allowed in Islam because the object cannot be seen concretely, there are no restrictions on doing them, the specifications are not clear and there is no requirement for any wants or needs to arise. However, the transaction can be allowed as long as it concerns public needs. As among the examples of the application of special ḥājat, one of them is the permission to wear clothes that are sewn while doing ihram (lesser pilgrimage).\(^\text{24}\) When the weather is very cold or hot. People who are on ihram are not allowed to wear clothes


\(^{22}\) Ibn Qayim said ‘sometimes it is forbidden because of saddu zar’āb If what is forbidden is the purpose of the action, so everything that will bring it is also forbidden, see Ibn Qayyim al-Jauzi, \textit{Al-I’tam Muwag‘īn} (Beirut: Dar al-Ilmi, 1977), p. 179.

\(^{23}\) As-Suyuthi, t. p. 164.

with stitches. The prohibition, however, can be waived when certain conditions cause the need for sewing clothes.

The application of Hajat among contemporary scholars’

1. The case of Ribâ (Usury)

According to some contemporary scholars, including Muhammad as-Syahat al-Jundi, Mahmud Syaltut, Tantowi, Muhammad Yusuf Musa, usury in savings and loan agreements is permissible but only in certain cases, for example in terms of investment certificates.²⁵ As al-Jundi stated, this kind of investment is not a problem as long as it is to fulfill the needs of the people and develop their assets; because the ḥājat allows something that is forbidden for others.²⁶ This is in line with the opinion of Mahmud Syaltut who allows loans with usury between the farmers and the state in an emergency and very urgent. Similarly, Tantowi (former chancellor of al-Azhar) allows the state to issue investment certificates because the state needs funds from donors to finance development and to encourage public awareness to invest and save.²⁷ Muhammad Yusuf Musa. said that usury is needed in an emergency. Yusuf Musa even argued that the state could use bonds with interest to finance large projects that would benefit Muslims. He added that the prohibited riba is usury in which the profit is only for the owner of the capital. But if the profit is for the people then it is considered not usury. So even though it is clear that usury is forbidden, but in an emergency, there is still an exception to do so.²⁸

Some other scholars’ argue the opposite. According to them, essentially, usury itself is not needed, let alone considered as an emergency to be utilized.²⁹ The use of ḥājat, in this case, is an apparent need, not

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²⁷ As-Salus, Al-Iqtiṣād al-Islāmi (Kairo: Dar as-Syuruq, 1987), 1, p. 387.
concrete, and cannot be accepted by the logic of Islamic law. Because such hâjat, if left out, will not bring about narrowness, while riba itself will create narrowness for the practitioners of the practice. Apart from that, the harm caused by usury can be seen and felt clearly by anyone, especially economists.\(^{30}\) The financial crisis arising recently is real proof of the impact of the usury practices. If the syara text ‘does not actually prohibit usury, then Ijtihâd can easily prove its prohibition because usury brings harm and difficulty, and is contrary to benefit. Allah SWT knows more about the harm that will come from usury, therefore riba is forbidden. Allah says in Surah al-Baqarah [2: 276]

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طبّق الله الربا و يريد الصدقات ولله لا يحب كل كفرٍ آثم.
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*Meaning:* Allah destroys usury and fertilizes alms and Allah does not like anyone who remains in disbelief, and always sins.

The verse above clearly states that Allah will reduce and eliminate the entire riba property from its owner (يمحق الله الربا) or remove his blessings so that they are useless and even be punished in the hereafter.\(^{31}\) On the contrary, Allah will increase, develop, multiply, or multiply the rewards of alms (ويربى الصدقات). Whoever does business that leads to usury acts has forgotten the principle of desire recognized by syara’. Not everything that is thought or felt is a need can be used as an excuse to do something prohibited by syara’. Everything related to hâjat should be legal in a syara’, not an artificial one. If this is not heeded, then there will be permission to steal, gamble, cheat, bribe, and others for reasons of hâjat and to achieve benefit.

The usury actor only hopes for profit without taking the risk of loss; They just sit at their house and wait for the results to multiply. Big capital owners put their capital in foreign banks which have weakened and even exploited Muslim countries. The farmers’ needs and benefits will not be realized solely through state projects, foreign loans, deposit bonds, or


\(^{31}\) Muhammad Ali ash; Shabuni, *‘At Tibyân fi Ulum al Qur‘ân’/Muhammad Ali ash Shabuni* (Beirut: Alam al Kitab, 1985), p. 383,
investment certificates. Other solutions that do not carry any element of usury will be more effective in improving the welfare of the community. Assets will grow and develop from halāl transactions over transactions made with the element of usury. Such as the salam contract, mudāraba, musyārakah, qardhul Hasan, murābahah, and much other compensation offered by majma ‘fiqh al-Islāmi and Islamic economic experts. It is not denied that economic growth and infrastructure development on a large scale will benefit the ummah. However, to achieve this we should use methods, and media that are legal and recognized by syara’. If the goal to achieve the benefit is legal then the media used to achieve the goal must also be legal.

2. Buying a house with usury money

The fatwa of the Council of Ulama in Europe allows savings and loans with usury for Muslims who are there to buy residential houses. The Council has put forward a variety of reasons derived from the existing arguments and texts such as the emergency allows what is prohibited (الضرورة تبيح المحذورات) and hājat takes the place of emergency (الاجة تنزل منزلة الضرورة). They say that housing is part of the need for basic needs, so it is allowed for Muslims who live in Europe to buy it with an interest loan because the emergency allows things that are prohibited. This opinion is in line with the opinion of Abu Hanifah who allowed loans with usury at Dār al-Harbi.

This opinion was denied by many scholars because usury is substantively forbidden (harām). The al-hājah in such a situation cannot be used as a basis for committing mu’āmalah with usury. The Council’s opinion can be tolerated if it is in a state of emergency that it is necessary to achieve a wasilah (medium) that is considered harām (forbidden). However, it is required that the hājat itself has met the conditions of using wasilah which can be justified. Because the rule says:

what prohibited must not be allowed based on needs. The question now is whether the requirements in question have complete requirements to serve as arguments and evidence so that they can be used as a basis for fatwas?

Requirements relating to homeownership that a person borrows with usury from a bank or another party, cannot be used as a legal basis for the act of usury or an approach as an emergency to allow something that is prohibited. Al-Hâjâh in that case is personal and does not apply continuously; as it is not general hâjat it cannot be used as a basis for justifying borrowing with usury. If someone does not have enough money, he can rent a house to be used as a temporary residence without making a loan that contains an element of usury. If a Muslim borrows with usury then there will be an injustice against him which is done by non-Muslims or even by Muslims themselves. Allah says:

وَلَهُمْ جَاهِلُونَۚ وَلَهُمْ عُقُوبَةُ الدُّنْيَاۚ وَالَّذِينَ يَتَوَارَى عَلَيْهِمْ ٱلنَّارُ وَلَهُمْ عَذَابَۢ الْآخِرَةِ

Meaning: And Allah made your houses as dwelling places for you and He made for you houses (tents) from the skins of the cattle that you felt light (carrying them) when you walked and when you lived and (made them too) from sheep's hair, camel hair and goat hair for household items and jewelry (which you wear) up to a certain time. (Qur’an Surah al-Nahl 16: 80)

The Prophet Muhammad stated that a good place to live is one of the three or four happiness namely: a Muslim woman, a good place to live, and a good vehicle. In contrast, bad luck for Bani Adam starts from an evil woman, a bad place to live, a bad vehicle, and, added by ibn Hibban, a bad neighbor.\(^{33}\) In addition, the fuqaha do not oblige zakat for the dwelling which is occupied by the owner. This is because the conditions of zakat are assets that are more than necessities, while

\(^{33}\) Ahmad bin Hanbal, Musnad Ahmad (Kairo: Dar al-Hadits, 1988), v, p. 219.
housing has excess assets. Even if a person owns a house he is still entitled to zakat and he is not yet obliged to perform Hajj.³⁴

3. Putting investment in companies that commit usury

Some modern scholars allow investing and shares in companies that practice usury. This was done because of al-hâjat to develop the country’s economy. They say that people are not yet able to invest with their capital so al-hâjat here has occupied a position of dharîrat that allows mu‘âmalah with usury.³⁵ They also reason that this is following the rule that says ‘it is allowed as a follower but not allowed to be free or stand-alone. This means that if the main goal is not something that is harâm, but if in the middle of the process there is something that is haram then it is allowed to do something that is haram. Riba in a company is not an objective but is related to several transactions carried out by the company. Ribâ or tabi ‘is not the original purpose of the establishment of the company. Even though what is done in the process of growing wealth, is not completely harâm, but at least it is mixed with something that is forbidden. The mixing of mu‘amalah which is haram while the percentage is small compared to the lawful ones, so it does not become harâm. In this way, it is permissible to invest in a company that meets these criteria because it is not engaged in savings and loans that use the usury system. This opinion is widely applied in Europe by Muslim immigrants.

In contrast, according to other scholars, the specification of hâjat in the case cannot be accepted because not only did the hâjat of his investment, have not left the at-Tahsiniyat case but it also did not form al-hâjah al-‘âmah which could be valid for a long time. The hâjat in this case only applies to a handful of people or few business actors. What shortcomings will befall these business people if they do not invest in a company that is compatible with this usury? Meanwhile, many other business areas are still available so that their lives are still in a roomy

³⁴ Ibnu Abidn, Ḥâsyiah Ibnu Abidin (Kairo: Maktabah ar-Risalah, 2001), 11, p. 284.
condition and have not yet reached a difficult condition which makes their capital diminish. Even if al-hâjat has complete terms and conditions, it still cannot justify what is harâm in substance, unless it has reached an emergency state or the same position as an emergency. Ribâ (usury), whether much or a little, is not allowed.

Ribâ (usury) is not the same as the prohibition of buying and selling gharar which is vulnerable to fraud. Gharar is allowed if the possibility of fraud or if the fraudulent practice is small so that the sale and purchase contract is still considered valid. This is different from usury because it is still considered harâm even in the slightest form. With the existence of Islamic banks, the ability to make amends with conventional banks or companies related to usury is unreasonable. Because Muslims have a new option to distance themselves from usury even though the space for this Islamic bank is still limited.

4. Medication with alcohol

There are two types of alcohol: First, alcohol in the form of drinks as favored by Western society. This type of alcohol is forbidden; Second, alcohols serve as solvents in pharmaceuticals, which contain fatty, alkaline. This second type of alcohol, according to Dr. Nazih Hammad, is allowed to use because of al-hâjat or emergency considerations. The main problem in this matter, said Dr. Hammad, lies in the determination of the ‘illat law (ratio legis) of alcohol prohibition; whether the prohibition is because alcohol is unclean, or because of its intoxicating nature. If the legal ‘illat is intoxicating then drugs containing very little alcohol are still allowed.

For other scholars, the use of alcoholic drugs cannot be classified as an emergency that occupies an emergency position. This is not only because there are other options but also because the Messenger of Allah once said:

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37 Athiyah Adlan Athiyah, Masu'ah Qawâ'id Fiqhiyah al-Munazhama Lil Mu'amalat al-Mâliyyah al-ISlâmiyah Wa Ta'ujjah an-Nâzim al-Mu'âsharah, p. 117.
Drinks that are drunk in large quantities can make you drunk so it is also forbidden to drink even a little. Another consideration is that it turns out that the negative impacts caused by alcoholic drugs outweigh the benefits. The Ministry of Health of the Middle East has appealed to stop the use of alcohol as a solvent. Similarly, the United States Government has ordered not to mix alcohol with drugs for consumption by children. This is because most drugs, such as cough medicines and respiratory injections or other drugs that are very popular among the public, contain alcohol ranging from 25 to 95%. Alcohol in cough medicine has no significant effect on reducing the cough frequency of the child or in the cough healing process. If alcohol, even in small amounts, gets into the body, there will be several effects arise. First, alcohol is addictive so that it can make the child addicted. Second, alcohol has the potential to kill young cells that have just grown. Third, “alcohol after entering the body will stay in the blood for hours and will not metabolize in the blood. If alcohol is continually drunk, the percentage in the blood will continue to increase; If the blood alcohol level reaches 0.15-0.2 percent, it will affect the center of vomiting and it is a drunken process. Fourth, alcohol is harmful to the liver For children who are suffering from hepatitis A, the entry of alcohol into the body can lead to hepatitis cirrhosis (hardening of the liver). His cough was healed, but other illnesses got worse...”. This fact shows that the use of alcohol in drugs, even though the percentage is small, is still harâm.

5. Medicines containing elements of pork

Abdul Fattah Idris allows the use of a new type of heparin drug derived from the intestines of pigs to treat heart infections, angina

pectoris, and others. His opinion is based on conditions of emergency or ḥâjat which occupy an emergency position as the fiqhīyah rules reads الحاجة تنزل منزلة الضرورة. According to Dr. Idris, heparin also has features from other drugs, such as being more effective and much cheaper. Dr. Idris also relies his opinion on the fatwas of scholars such as ar-Ramli, which allows treatment with the haram substances if it is more effective. For some other scholars, medicines containing pork elements are clearly haram; especially if heparin can be replaced so that the use of heparin cannot be considered as ḥâjat.

Halalization in this case is more difficult than in the case of consuming alcohol. In contrast to the case of alcohol, where the scholars still have different opinions about the unclean status of alcohol and whether or not alcohol is not derived from wine, in the case of pork, there is no longer a debate about its uncleanness and prohibition. In other words, the law of medicines containing pork is definitely haram.\(^{40}\)

6. Tender through the sale of debt by debt

Rafiq al-Misri allows bidding and bidding contracts. This practice is to sell debt with debt. In other words, they conduct debt-based tenders to other companies. A fair sale and purchase are that there is money for goods, but what happens here is a sale to the buyer who pays to the seller but the goods are not there. This is the same as buying and selling indents, or like buying and selling shares that have not yet in hands are sold to another party.

Modern scholars disagree on this matter because it is the sale and purchase of debt with debt. However, because this has occurred in various places and is difficult to avoid, while there is no alternative trade transaction that is better than it, the bidding contract with the contracted goods is an istisnā’ (exception) contract and has become a special necessity occupying an emergency position.\(^{41}\) This is in line with the statement of Jaridah al-Ahram Januari 2016, Kamis Oktober 12 Muharram 1439 H, 2017 edition. See also Mansur bin Yunus bin Salahuddin, Kasf Al-Qina’ (Kairo: Dar al-Hadits, 2016); Nihayah Al-Muhtaj (Kairo: Dar al-Hadits, 2008).


\(^{41}\) Istisnā’ contract is a contract between the customer as the first party and a producer

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with Abu Hanifah’s opinion which does not require advance payment. If he pays in full before the goods are finished assembling or produced, no problem. But if he gives half payment it is a sale and purchase of Salam (ordering goods).  

8. Buying and selling futura currency

One of the practices of economic globalization is trading transactions in the currency/currency market where payments are made directly for the exchange of currencies submitted at a future time based on the value of the currency when the transaction is made. The submission is sometimes one month to six months. After that the currency exchange took place.

This kind of futura transaction has spread all over the world and has become an irresistible fact so that contemporary scholars are looking for a legal basis. Musa Adam Isa allows currency exchange that has a time frame for delivery of the currency, taking into account the needs of the exporter and importer and the two currencies exchanged. He adheres to several legal principles, one of which is the special hâjat of occupying an emergency position. Musa Adam Isa explained that this futura transaction permit is an exception, or applies specifically to groups who really need it. The problem, however, to distinguish which groups really need or just speculate for the purpose to enlarge/develop capital is not an easy matter. Even though playing on the sidelines of changes in currency values when calculations and payments occur. obviously very detrimental to the economy.

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42 Istishna’ is a form of salam contract, thus this contract may be carried out if it meets the various requirements of the salam contract. And if it does not meet the requirements, then it is not justified. This is the opinion held in the Maliki & Syafi’i school of thought. (Mawahibul Jalil by Al Hatthab 4/297, Raudhatut Thâlibin by An Nawawi 4/26.)

43 Sayid Isa, Aswâq Wa As’âr Sharf an-Naqd al-Ajnabi (Kairo: Dar as-Syuruq, 2016), p. 28.

44 Musa Adam Isa, As-Sharf Wa Bai’ Az-Zahab Wa al-Fidhab (Kairo: Dar al-Qalam, 2007), pp. 51–53.
9. Foreign exchange (Forex) trade

The scholars forbid the game of exchanging money which is forwarded (Forex) because the transaction is included in the category of ribâ nasi’ah which is clearly prohibited by the Al-Qur’an.\textsuperscript{45} It is forbidden by the prohibition of both maqâshid and hâjat so that it cannot occupy an emergency position. This prohibition applies whether the aim is to meet the export-import needs of the currency and to maintain future changes in value or simply to seek profit from changes in currency values, all of which are included in the harâm category. This is because it is very similar to gambling, to the act of eating other people’s property in vanity, and is detrimental to the world economy. Therefore, Majma ‘Fiqh in Jeda forbids this kind of mu’âmalah completely.\textsuperscript{46}

10. Zakat for Da’wah Bodies

Contemporary scholars allow the giving of zakat to da’wah bodies in Western countries that propagate Islam. They consider it to be included in the category of infak in the way of Allah and is al-hâjah because it will support the needs of an institution. This is the opinion of majma’ fiqh in Makkah.\textsuperscript{47}

Actually, majma’ fiqh does not need to use the argument of al-hâjah, because في سبيل الله fi sabilillah covers all matters that are closer to Allah and not only devoted to fighting in the way of Allah. After all, the use of al-hâjah is to justify an act that goes outside the law of origin syara

\textsuperscript{45} The initial purpose of this money exchange was for foreign payments (especially for export and import). However, at one time there was a difference in supply and demand, causing the value of one currency to fluctuate in comparison to the other. For example: initially, the rupiah exchange rate against the US dollar was 1 USD = Rp 10,000. Due to differences in demand and availability of dollars, the exchange rate fluctuates, it could be 1 USD = IDR 9,000 or even 1 USD = IDR 13,000. The difference between these differences in exchange rates is then seen as an opportunity that can be used to take advantage of if we hold / hoard one currency. Since there is such an understanding, currencies are finally traded in a market called the forex market. Forex trading is Julâ’s activity to buy and buy currencies continuously and consistently to get profit. It can also be interpreted that forex trading is the activity of exchanging currencies with one another online to get profit from the exchange rate difference.

\textsuperscript{46} Mubarak Sulaiman, Ahkâm Ta’amul Fi Aswâq al-Mâliyah Mu’asharah (Kairo: Kunuz, 2007), III, p. 966.

\textsuperscript{47} Mahmud Syaltut, Al-Islâm Aqidah Wa as-Syari’ah (Kairo: Dar as-Syuruq, 1988), p. 124.
whereas, in zakat, nothing deviates from legal provisions, it is required by Islam. This means that the meaning of *fi sabillah* may be expanded to the widest possible extent as long as it is within the scope of the act of drawing closer to Allah. In short, in *maqâshid shari‘ah*, the giving of zakat to Da’wah institutions abroad can be justified, as long as the rights of other groups (the poor, ibn sabil, debtors, and others) must remain and be prioritized; they cannot be left all to *fi sabillah*.

11. Insurance

Shaykh Abdurrahman Isa allows insurance because of the people’s *hâjat* for safety and guarantees for natural disasters. This is done to reduce losses because it will be covered by the insurance company. Shaykh Abdurrahman even considers insurance to be a necessity for modern society. However, the argument used here is not *al-hâjah*, because the conventional insurance system uses elements of high speculation, usury, and gambling, while there is another option, namely using the *ta`awun* (cooperation) insurance system which avoids these things.

12. DNA testing

Dr. Ali al-Ka’bi argues that DNA can be used as proof of lineage in special cases. Because DNA has scientific power that is not built on mere prejudice and hypothesis. Evidence through DNA is very much needed, especially if two people are quarreling over their children who are switched at the hospital. DNA determines who the biological father is so that it can rule out disputes. DNA has a stronger position to be used as evidence than *qiya’ah*. because the proof through DNA has the position of *qiya’s awlā*. Although *Qiya’ah* and DNA have similarities, proving through DNA is more accurate. Because the use

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49 *Qiya’ah* is a term used for *qâ’if* deeds, while the *qâ’if* is a person who has special expertise in seeing, connecting, and determining one’s lineage with other people based on signs and similarities. According to the Shafi’i school, *qâ’if* services in determining one’s lineage can be accepted as a legal provision. Genetics is a branch of biology that studies hereditary traits and variations that may arise in them. The practice of *qiya’ah* and genetics are both aimed at examining the traits of heredity, its relevance to the science of genetics developed in this modern century.
of DNA is placed as Qiyās Awwāl, the use of the proposition of hājat here is not necessary.

Conclusion

The use of the concept of al-hājat (necessity) in the application of shari’ah law occurs when individuals or communities experience difficulties in applying the original legal provisions. Although the hājat provides original services for not applying that law, its use must meet certain terms and conditions. The use of the hājat as a legal argument has been carried out by many contemporary scholars. However, there is a tendency among them to no longer adhere to the principle of hājat mu’tabarāh (common necessity) or following the maqāsid sharī’ah with all its requirements but has mixed with pseudo al-dharrūrah. In other words, although the requirements for the use of hājat have not been fulfilled, contemporary scholars often use the principle as an argument to allow a case that was originally forbidden on the grounds of Sadd al-zari’ah or because of an emergency. As not all conditions can be viewed as a hājat, either specific or general, a fiqh expert must be careful in issuing fatwas.

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