



ISLAMIC FINANCE IN THE CONTEXT OF MAQASID'SHARIAH UNDER: ISLAMIC JURISPRUDENCES

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ABSTRACT

This research base on the Shariah- acquiescent article and services thorough understanding of the Islamic jurisprudence in the light of Maqasid al shariah, regarding problems based on financial Islamic article and services. it is found to contradict Maqasid al Shariah. This study explores and identifies the concepts of Maslaha and Maqasid al-Shariah in Islamic financing operations with a holistic understanding. This article develops a framework to assess Islamic financial operations, this approach can help overcome the methodological deficiencies in measuring performance in Islamic finance by focusing on the process of decision-making that leads to the outcomes of legality of contracts. The framework outlines the conditions under which an activity that is considered legal and permissible contractually could lead to some suggestions are provided on ways to improve and develop the Shariah Supervisory Board to be more resilient and competitive through the understanding of Maqasid al-Shariah for the well-being of the society. This study is grounded in the principles of Shariah compliance and aims to provide a comprehensive grasp of Islamic jurisprudence about Maqasid al Shariah. It specifically addresses issues related to financial articles and services within an Islamic framework. This research delves into the examination and elucidation of the notions of Maslaha and Maqasid al-Shariah within the context of Islamic financial operations, aiming to provide a comprehensive comprehension. The concept of Maqasid al-Shariah, which refers to the objectives and goals of Islamic jurisprudence, is a fundamental aspect of Islamic finance. It serves as a guiding principle for developing and implementing various financial products and services under Shariah. The study also includes a comprehensive examination of the use of these methodologies within the framework of systematic jurisprudence. This methodology has the potential to address the methodological limitations associated with performance measurement in the field of Islamic finance. It does this by emphasizing the decision-making process determining the legitimacy of contracts. The framework delineates the circumstances in which an activity that is deemed lawful and contractually permissible may result in specific recommendations being offered on how to enhance and advance the Shariah Supervisory Board (SSB), which plays a crucial role in overseeing the operations of Islamic banking and ensuring adherence to Islamic principles, in order to become more robust and competitive by comprehending Maqasid al-Shariah for the betterment of society.

KEYWORDS: Maqasid' Shariah, Product of Islamic Finance, Islamic Jurisprudences, Shariah Supervisory Board (SSB), Islamic Banking

1. INTRODUCTION

The main goal of Islamic law is to promote humanity's welfare and to avoid damage. Ma'laah is attained, according by encouraging necessities/essentials, complementing needs, and beautifications or embellishments. The *maqasid' shariah* (objective of Shariah) is to defend the essentials, which are the fundamental ingredients of a happy existence. The *maqasid*, according to Al-Ghazali, protects religion, life, progeny, intellect and property. As a result, one or more of the maqasid would be protected and enhanced under Islamic business law. This is supported by some who claim that under Islam, contractual and economic transactions are sanctified and promoted since they protect, improve, and sustain property and offspring.

Islamic finance is an integral element of an Islamic economic framework with a strong social dimension. The system's primary objective is to achieve the *maqasid al-Shariah*, which should manifest in the economy by promoting progress and justice. This means that an Islamic financial system should meet a society's social demands in addition to meeting legal criteria. As a result, there is widespread agreement that *maqasid' shariah* should be a part of Islamic financial institutions' operations and offerings. Investigate the impact of *maqasid' shariah* on business operations and the *maslahah* pyramid (of fundamentals, complementarities, and embellishments) on corporate social responsibility. There has, however, been no explicit investigation into how *maqasid' shariah* may be applied at the level of financial goods. A characterization of *maqasid' shariah* about goods is offered in this note (Ali, 2023).

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Contemporary Islamic finance has been chastised for failing to follow the maqasid' shariah. The difference between Sharah-compliant and Sharah-based Islamic goods has emerged due to the discussion around Islamic finance. However, no precise definitions of what these phrases imply exist. While some academics claim that Shariah-compliant and Shariah-based goods are interchangeable, there is a need to differentiate between distinct aspects of Islamic finance regarding legal and social Shariah standards. An objective approach to defining types of Islamic financial goods is proposed in this research note (note). Islamic financial products are classified as Sharah-based, Sharah-compliant, or pseudo-Islamic based on the legal and social Sharah standards suggested in the maqasid' shariah. The memo also defines the roles of various stakeholders in product selection. (Prasojo, P., et al.2023).

2. MAQASID-AL-SHARIAH REQUIREMENTS

In Islamic financial transactions, fulfilling two essential requirements is necessary to adhere to the principles of *maqasid al-Shariah*. The first Shariah principles concerns matters related to the legality of transactions. According to the user, the concept of maqasid is implemented at the transaction level by successfully attaining the fundamental trade objectives outlined in Islamic law. These include safeguarding property rights, maintaining alignment between entitlements and ownership rights, establishing a connection between transactions and tangible activities, facilitating the transfer of property rights via sales, and prohibiting the sale of debts, among other provisions. Furthermore, legal maxims, also known as al-qawaid al-fiqhiyyah, encapsulate the fundamental principles of Islamic law, establishing a potential connection to the broader objectives of the maqasid (Hendriarto, P. 2021).

Adhering to suitable legal principles while formulating financial product regulations may be associated with achieving the maqasid at the transactional level. The social need constitutes the second component of the maqasid framework. As an integral component of the Islamic economy, Islamic banking is expected to contribute to the realisation of *Maqasid al-Shariah*. An Islamic financial system that is integrated and adheres to Shariah's principles and purposes (maqasid) would include a sector that actively promotes social benevolence via its engagement in activities that contribute to advancing societal objectives (Ishak, M. S. I., & Asni, F. 2020). Shariah's legal and social standards pertaining to products coming from maqasid are as follows.

3. LEGAL REQUIREMENTS

3.1. ACCOMPLISHED CONTRACTUAL OBLIGATION

Fulfilling legal requirements means meeting contractual obligations and adhering to Islamic legal principles in all essential paperwork, procedures, and activities. As previously stated, meeting the legal requirement of *maqasid' shariah* entails meeting trade aims and adhering to the appropriate legal maxims. The guiding principle for constructing financial products employing contracts is the legal adage focusing on the aims and purpose rather than the language and form. Consequently, contracts under Islamic banking must conform to the principles of Shariah in terms of their structure and substance. The significance of the form and substance in Islamic contractual agreements includes the completion of the transaction. Products that combine many valid Islamic contracts and result in unlawful outcomes or violate legal principles would be considered contrary to the principles of Shariah in essence. Many Islamic banking products are contentious because they include numerous contracts that may be acceptable on their own but yield results that are, in essence, comparable to banned transactions when used together. As a result, certain Shariah scholars and organisations oppose items that emphasise appearance over content. Even if the form is Shariah-compliant, the complete return swap is unacceptable. Similarly, the Islamic Fiqh Academy has determined that the Islamic banking industry's organised tapware is prohibited since it involves aspects of riba (Ali, N., et al. 2022).

Utilising deceptive tactics or legal manoeuvres to achieve inherently unlawful outcomes or manipulate legal principles would contravene the principles of *maqasid al-Shariah*. On the other hand, the principle 'hardship produces the imparting of facility' leads to the maxim of necessity, which states that 'necessities render prohibited things canonically harmless. The concept postulates that during periods of hardship, the practice of concession may be used as a limited deviation from established legal norms to mitigate their impact. Consequently, deceptive tactics may be allowed when Shariah-compliant solutions are absent from the viable options (Ishak, M. S. I., et al. 2021).

Nevertheless, it is essential to remember that any exemptions granted due to a specific hardship become void and illegal once the challenging circumstances have been resolved. This is derived from the concept that "what was legal because of an excuse becomes illegal when the justification is no longer valid." As a result, needs are appraised based on their severity and permission is granted appropriately. When the justification for the concession is no longer valid, the concession based on need becomes illegal (Ibrahim, W. H. W., et al. 2020).

3.2. FINANCIAL REQUIREMENTS

Examine financial institutions might include an analysis of their involvement in socially responsible activities. Similarly, the social function of goods can be determined by assessing the market groups they cater to and the specific criteria they meet. Following that, an objective method for defining and measuring social objectives based on these two product aspects is presented (Ishak, M. S. I., et al.2020).

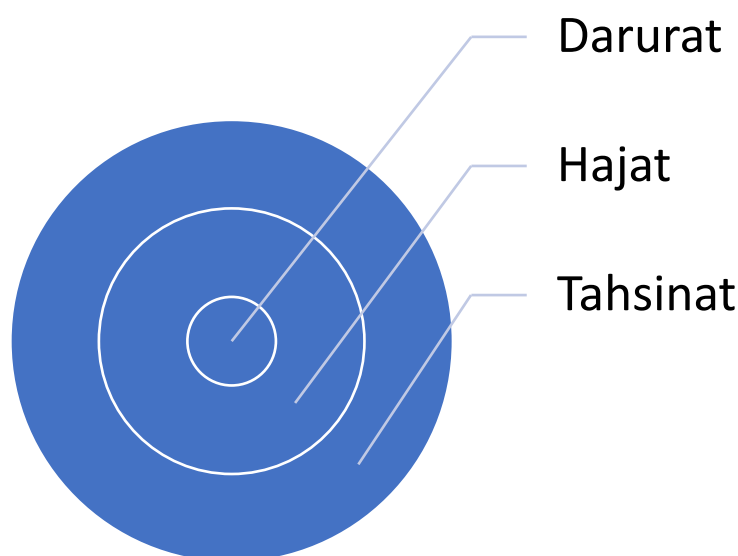
3.2.1. MARKET SECTOR

An Islamic bank's social orientation is determined by the market segment it serves. Customer type and class may be used to categorise the segments. The home and commercial sectors are the two categories of customers that may be identified. Each sector may be divided into three types of classifications. Market segments, in the household sector, and segmented based on income levels. As a result, the wealthy, middle-class, and impoverished may be distinguished. In Islamic finance, the first step involves the meticulous screening of commercial organisations, with a particular focus on excluding prohibited entities like casinos and breweries. The business sector may be categorised into three distinct market sectors, namely big, medium, and micro enterprises, depending on their respective sizes. In order to fulfil the social objectives of Shariah, it is essential to cater to the financial needs of various market sectors, including small/micro enterprises and individuals belonging to the lower and medium socioeconomic classes (Qoyum, A. (2018).

3.2.2. FINANCIAL DEMANDS

A product must meet the financial needs of the target audience, which is closely related to the market group. The hierarchy of financial demands shows the function of various items. Financial requirements may be classified in a variety of ways. The distinction is made between lower-level wants and higher-level requirements, wherein individuals prioritize the pursuit of higher-level needs only if their lower-level needs have been satisfied.

The five tiers of financial needs include essential items, emergency cash reserves, risk management, growth strategies to counterbalance inflation, and risk mitigation and tax protection measures. Three degrees of requirements are also present: survival, security, and development. As financial rises, so does the desire for security and other growth-related requirements. As previously stated, the Islamic hierarchy of necessities may be analyzed regarding distinct degrees of ma'âl. Promote the needs (Darurat), the supplemental requirements (Hajat), and the beautifications or embellishments (Tahsinat) to improve welfare. By the classification the traditional categorization of demands may be translated into three categories of financial goods and services (Harahap, B., et al. 2023).



The first set of essentials would be survival items that meet fundamental requirements. This category encompasses several types of deposits, such as checking and savings accounts and, mortgages and financing for significant activities or products, among other notable examples. Furthermore, including security measures or complementary goods would cater to needs that are not necessarily essential. Insurance, pension plans, endowments, and time deposits are financial instruments that may effectively fulfil the cash reserve and risk management requirements. Ultimately, things that can be improved to mitigate inflation and provide protection against risk and taxes will effectively meet the requirements for growth or higher-level needs. This category encompasses various assets such as stocks, mutual funds, tax-protected bonds, speculative real estate investments, overseas leisure trips, extravagant spending, and similar items. Acknowledging that the specific criteria being fulfilled are contingent upon the targeted market group is essential. Finishing an additional automobile for an affluent individual might be categorized as an item of expansion or luxury. Conversely, providing financial support for a vehicle to a financially disadvantaged family may produce revenue via taxi services, therefore falling under the realm of survival or need (Abedifar, P. (2021).

Similarly, an Islamic bank's social function may be bolstered if the impoverished and micro-enterprise market sectors are serviced alongside middle-class and wealthy customers. It is essential to acknowledge, however, that assessing the social function in relation to the need segments matrix is subjective and may differ across different societies. In some nations, addressing the financial requirements of impoverished individuals and micro and small enterprises may be fulfilling social objectives. Conversely, in other contexts, attending to the needs of middle-class and medium-sized firms may also be regarded as accomplishing social aims. Islamic financial goods may

be defined based on the legal and social Shariah standards. As mentioned earlier, there may be ongoing discussions on the legal obligations of the product's form and substance. Additionally, the social aspects of the product may be seen via the bank's role within the specific market sector it serves, as well as the purposes and demands it aims to fulfil. Consequently, three distinct categories of products may be delineated (Zunnurxon o'g'li, S. J. (2022).

3.2.3. PSEUDO-ISLAMIC ARTICLES

Articles/product labelled as Islamic but does not adhere to the principles of Shariah or fulfil social expectations may be referred to as a pseudo-Islamic product. While it may conform to legal requirements in terms of its form, it needs to improve in terms of its adherence to the substance of Shariah and its ability to fulfil society's expectations. The scenario above pertains to deceptive tactics, often called ruses (hilah), to construct objects that adhere to the legal framework of contractual agreements while simultaneously embodying illicit transactions in substance. In certain circumstances, where no Shariah-compliant options are available to meet a compelling need, the maxim of necessity may be used. The restrictions might be waived in such cases to meet the pressing necessity. However, if the need is no longer present or other options are available, the valid decision based on need is nullified. Using hilah when no pressing reasons and other Shariah-compliant modalities are available would result in pseudo-Islamic items. When alternative Shariah-compliant alternatives are not accessible, using a product based on *tawarruq* may be deemed justifiable. When Shariah-compliant alternatives are accessible, tapware transforms into a commodity seen as having Islamic characteristics but not consistent with Islamic principles (Biplob, H., & Abdullah, M. F. (2021).

Determining what constitutes grave necessities is a significant issue that arises when the maxim of necessity is used. Examining the options to determine severe requirements might be an impartial method to settle the problem. A restricted perspective, for example, would see all market sectors' survival requirements as urgent. The security requirements might be interpreted as severe needs under a more liberal interpretation. Using the maxim of necessity may become irrelevant in the presence of Shariah-compliant alternatives within a feasible range of products or when the urgency of a particular need diminishes. In such situations, using deceptive tactics to create pseudo-Islamic alternatives will not meet the legal criteria for Shariah compliance (Alziyadat, N., & Ahmed, H. (2019).

A pseudo-Islamic Articles/product refers to a product that adheres to the legal framework but fails to fulfil Shariah's substantive requirements or social expectations. The scenario above arises when deceptive tactics, often called ruses (hilah), are used to construct objects that adhere to the legal framework of contracts while embodying illicit transactions in substance. In certain circumstances, where no Shariah-compliant options are available to meet a compelling need, the maxim of necessity may be used. The restrictions might be waived in such cases to meet the pressing necessity. However, if the need is no longer present and other options are available, the valid decision based on need is nullified. Using hilah when no pressing reasons and other Shariah-compliant modalities are available would result in pseudo-Islamic items. When alternative Shariah-compliant alternatives are not accessible, using a product based on *tawarruq* may be deemed justifiable. When Shariah-compliant alternatives are accessible, tapware transforms into a commodity seen as being pseudo-Islamic. Determining what constitutes grave necessities is a significant issue that arises when the maxim of necessity is used (Malik, A., et al. 2019).

A restricted perspective, for example, would see all market sectors' survival requirements as urgent. The security requirements might be interpreted as severe needs under a more liberal interpretation. The maxim of need may be rendered inapplicable when Shariah-compliant alternatives are included in a feasible assortment of products or when an urgent need ceases to exist. The use of deceptive tactics to devise pseudo-Islamic alternatives would fail to meet the requisite legal standards of Shariah under these particular circumstances (Qoyum, A. (2018).

3.2.4. SHARIAH- ACQUIESCENT ARTICLES

Shariah- acquiescent Articles adhere to the principles and guidelines outlined in Islamic law while potentially deviating from the broader objectives of society. A Shariah- acquiescent financial articles may not adequately cater to the financial survival and security needs of impoverished individuals and micro enterprises. Only enforcing high minimum investment conditions for mutual funds targeting the rich while adhering to Shariah principles could be more conducive to achieving social objectives since it effectively excludes individuals from the middle class and poorer parts of the population (Ahmad, A. A. 2020).

3.2.5. SHARIAH- BASED ARTICLES

Articles that adhere to the principles of Shariah and satisfies the authentic needs of various market segments is often known as a Shariah-compliant articles. A product that adheres to Shariah principles not only satisfies the legal requirements of Islamic law in terms of its structure and substance but also addresses the needs for sustainability and security across many societal groups, including those who are economically disadvantaged and micro enterprises. Consequently, a Shariah-based Articles is a product that adheres to the principles of Shariah law and effectively fulfils social objectives. A housing financing product based on Shariah principles would aim to cater to many population segments, including those economically disadvantaged (Ali, 2022).

4. SHARIAH REQUIREMENTS

4.1. THE PROCESS OF DECISION-MAKING AND CHOICE

Many elements will influence the individual goods generated from a credible product set. An in-depth analysis of several sectors of control and decision-making, with due consideration for Shariah norms, offers a comprehensive

approach to comprehending the intricate mechanisms underlying decision-making processes regarding social and legal requirements. Due to the intricate nature of product creation inside a banking institution, which involves several stakeholders and divisions, it is plausible that divergent viewpoints may arise throughout the deliberation process over the optimal financing alternative. Tensions may emerge when conflicts between economic considerations and adherence to Shariah principles lead to trade-offs. The methods by which an Islamic bank's legal and social Shariah standards may be defined are outlined below (Hendriarto, P. 2021).

4.2. SHARIAH SUPERVISORY BOARD, ENSURE SHARIAH COMPLIANCE

Various bank departments provide input at various phases of the product development cycle in a product development process. The Shariah department and the Shariah Supervisory Board (SSB) are critical in meeting legal obligations. Before a product is released into the market, the SSB has a direct duty to ensure that it adheres to the Shariah's principles and values. The optimal mode of operation will be determined by the institutional and organisational restrictions that financial institutions face and the availability of alternatives in the available product set (Mukminin, K. 2019).

Financial institutions, particularly Islamic banks, are entrusted with the responsibility of formulating products that exhibit optimal efficiency and have the potential to provide substantial predicted returns. When considering the aspects of development and delivery, the concept of product efficiency refers to the reduction of both risks and expenditures. Nevertheless, there are instances when the reconciliation of economic factors may prove to be incongruous with the principles of Shariah. Under these conditions, the bank must give precedence over the anticipated return on investment and associated risks while still adhering to Shariah principles. Excessive focus on economic considerations may result in the adoption of inferior funding alternatives. If the Shariah Supervisory Board (SSB) demonstrates leniency by accepting pseudo-Islamic alternatives, notwithstanding the availability of Shariah-compliant options within the feasible set, such a situation might arise (Hendriarto, P. 2021).

The SSB plays a crucial role in mitigating the use of pseudo-Islamic products. However, the conflict between Shariah principles and economic objectives may be significantly reduced by practical guidance from top management about aligning Shariah-related considerations with profitability. The former should win out in an ideal world where there is a trade-off between Shariah principles and economic concerns. However, if senior management focuses less on profitability and economic concerns, it would generate incentives to weaken the legal Shariah standards (Ishak, M. S. I., & Asni, F. 2020).

4.3. BANK'S SOCIAL PERFORMANCE

As previously said, the social performance of a bank may be assessed by examining the market segments and needs that its products serve. The determination of market and product options occurs within the strategic domain, necessitating that the bank's social responsibility and its consequences at the product level be established at the highest decision-making echelons. Banks must ascertain if their products will adhere to Shariah principles, either by being Shariah-based or Shariah-compliant, at the strategic level of their overall objectives and vision. Economic incentives may lead banks to shift toward Shariah-compliant or pseudo-Islamic items since manufacturing Shariah-based products may be costly and risky. The bank's comprehensive strategy formulation, including market and product dimensions, is defined by the board of directors (BOD) and senior management. The senior management formulates the product development strategy and execution plans after determining the organization's social orientation by the Board of Directors, which involves the selection of market and product objectives within the broader strategic goals. The potential options available to Islamic banks to achieve these objectives are governed by the feasible range for each product category (Biplob, H., & Abdullah, M. F. (2021).

Identifying preferences in the Shariah goals-profitability realm is a connected choice the board of directors (BOD) must make. In certain circumstances, there may be a trade-off between economic and Shariah aims since Shariah-based goods are produced and sold at a cost. In the pursuit of maximizing profits, banks may exhibit a willingness to compromise on certain social Shariah norms. Offering financial aid to impoverished people is often seen as ethically acceptable. However, its economic feasibility may need to be revised. The bank's decision to refrain from financing this particular market sector may be attributed to the economic considerations associated with financing. However, a Shariah-compliant approach would include developing appropriate products that mitigate the associated risks while ensuring a satisfactory return rate for the bank. By adopting this strategic approach and directing resources towards producing items that adhere to Shariah principles, the Board of Directors must effectively communicate its inclination towards such products (Prasojo, P., et al. 2023).

5. FINDING AND CONCLUSION

This study lays down a methodology for evaluating how well the overarching objectives of Islamic law (*maqasid al shariah*) have been implemented at the level of goods. The *maqasid al shariah* indicates two sets of Shariah regulations, one about the law and the other about social norms. The first is acknowledged by the adherence to both the formal and substantive aspects of Islamic law in the context of a contractual agreement, whilst the latter is acknowledged through the market segments and the specific purposes or demands that a product caters to. Given the diverse interpretations of Shariah rules, it is possible to identify three classifications of Islamic financial instruments. A product is said to be based on Shariah principles when it meets legal and social norms requirements. A product that adheres to the principles of Shariah would primarily focus on meeting the legal obligations rather

than including the broader societal considerations. Finally, a product is deemed pseudo-Islamic when it conforms to the outward manifestations of Islamic law but fails to adhere to its underlying principles.

Many people think that the Sharia Supervisory Board (SSB) should oversee the application of *maqasid al shariah* in Islamic financial institutions. On the other hand, this remark demonstrates that *maqasid* may be thought of in two different ways about items. The SSBs are responsible for ensuring that the *maqasid al shariah* is accomplished on the level of the contract by adhering to both the letter and the spirit of Islamic law. This would include, among other things, approving items that are consistent with the Shariah and avoiding those that are pseudo-Islamic. The obligation to oversee the broader social aspects of banking operations, including the offerings of products and market features, does not lie with the SSB. Instead, this responsibility rests with the Board of Directors (BOD) and senior management. In other words, although the responsibility of evaluating the adherence of things to Shariah principles lies with the Board of Directors (BOD), it is the obligation of the Sharia Supervisory Board (SSB) to ensure that products do not conform to a misguided understanding of Islamic teachings.

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