



Maqasid al-Shariah in Islamic Finance: Harmonizing Theory and Reality

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ABSTRACT - This paper aims to clarify how *maqasid al-Shariah* (objective of Shariah law) plays its role in Islamic finance, particularly in creating a harmony between Shariah rulings in theory and their application in current circumstances. Based on library research, this study applies inductive approach and descriptive method in analysing various literatures. The finding reveals that the roles of *maqasid al-Shariah* are identified as the following: harmonizing between the text of revelation and the actual situation; considering unusual circumstances and overcoming current issues. All of them reflect how *maqasid al-Shariah* could pragmatically adapt Shariah rulings into the real operation of Islamic finance. Since this paper comes up with two cases: replicating conventional products to be Islamic ones and implementing floating rate in Islamic prices, it provides a practical discussion on this topic.

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INTRODUCTION

The year 1963 has witnessed a remarkable achievement in modern Islamic history, after two Islamic financial institutions were successfully established. Mit Ghamr Bank in Egypt and *Tabung Haji* (Pilgrims Fund) in Malaysia have been widely considered as pioneers in Islamic finance (ISRA, 2010). A few decades later, Islamic finance industry has moved a step forward, transforming its institutions from socio-economic entities into a form of commercial institutions, which enables them to offer a variety of services to various background of their customers. These include banking services, investment instruments and *Takaful* products. Currently, it is reported that Islamic finance assets have nearly reached US\$ 2.19 trillion including the volume of *sukuk* (Islamic debt securities), Islamic fund assets and *Takaful* (IFSB, 2019).

As financial intermediaries, Islamic institutions are actively engaging with business transactions and economy activities including resource allocation, investment, and financing (Iqbal & Mirakhor, 2007). Nevertheless, they must ensure that their activities are compliant with Shariah rulings and principles. In other words, all financial activities must be free from *riba* (interest), *gharar* (uncertainty), and *maisir* (gambling), in which they are strictly prohibited in Islam. Alternatively, there are various Shariah compliant contracts that can be adopted as financial products (ISRA, 2010). Among them are *bay'* (sale), *wakalah* (agency), *ijarah* (lease), and *musharakah* (partnership).

Nonetheless, the modern financial system is argued not too conducive for the development of Islamic finance industry (ISRA, 2010). While this industry has been widely recognized by many countries as an alternative finance, various challenges affect their operations. Also, Islamic financial institutions must ensure an appropriate risk management measure in their operation to avoid a serious conflict with Shariah principles as well as to cope with the pressure of globalization (Mat Nor et al., 2017). As a result, several Islamic practices might need some modifications so as Islamic finance can be applicable and relevant with the current situation. Thus, to adapt Islamic finance particularly its rulings into modern financial system, the ‘harmonizing between theory and reality’ is crucial. In this regard, *maqasid al-Shariah* is considered as the best tool for this purpose because it emphasizes on realizing a holistic meaning of Islam, instead of focusing on technical aspects of its rulings.

While *maqasid al-Shariah* promotes flexibility in financial activities, some of its applications are argued to justify so-called controversial practices in the name of *maslahah*. Such practices are *bay' al-'Inah* (sale and buyback), *tawarruq* (monetization) and *ta'widh* (late charge penalty). This has triggered a debate about the role of *maqasid al-Shariah* in this area. Therefore, this study intends to clarify the role of *maqasid al-Shariah* in Islamic finance in terms of harmonizing between its theory and the reality. To make the discussion more practical, two cases are selected: replicating conventional financial instruments into Islamic products and implementing variable rate within *ibra'* concept in Islamic financing prices.

MAQASID AL-SHARIAH IN ISLAMIC FINANCE

Technically, *maqasid al-Shariah* is understood as the wisdoms that were emphasized by God through his rulings (Al-Yūbī, 1998). In other words, Shariah rulings are purposive, which mean they are revealed for a particular reason (Duderija, 2014). As God declares Himself as *al-Hakim* (the all wise), His rulings should reflect His omniscience. Therefore, to glorify the character of al-Hakim, it should be promoted that Islamic rulings are revealed for humankind with full of wisdom (Hamīdān, 2004).

Maqasid al-Shariah is interrelated with another term: *maslahah*. In more details, *maqasid al-Shariah* aims to realize the element of *maslahah* through the implementation of Shariah rulings. This term was first defined by al-Ghazali as it protects five essential elements in life, including *din* (religion), *nafs* (soul), *aql* (intellect), *nasab* (progeny) and *maal* (property) (Al-Ghazālī, 1992). Later, al-Shatibi explained *maslahah* reflects the core of humans life in achieving their livelihood and gaining the quality of emotion and intellect which require them to be in absolute sense (Al-Shātībī, 2004). Ibnu Ashur, a contemporary scholar describes *maslahah* as an attribute of an action that realizes goodness; in which it is always or usually benefiting the public or individuals. In contrast, *mafsadah* is an attribute of an action in which it is always or usually leading to corruption or harm towards the public or individual (Al-Ashūr, 2001).

Based on the Qur'an and the Hadith, achieving *maqasid al-Shariah* or realizing *maslahah* is considered as the main objective in implementing Shariah rulings. For example, bringing mercy (Qur'an: 21:107) and avoiding difficulties (Qur'an: 6:5). Meanwhile, some verses mention specific *maslahah* in specific rulings such as the protection of life by imposing *qisos* (law of equality) (Qur'an: 179:2) and the equal wealth distribution by implementing *fai'* (spoil of war) (Qur'an: 59:7). Furthermore, examples of considering *maslahah* can be learned from the Prophetic practices like the case when the Prophet did not agree to publicly punish *munafiqin* (a hypocritical group), since he was worried its negative consequences (Muslim, 2000). Subsequently, all the Rightly Guided Caliphs are argued to establish their policies and rulings based on *maslahah*. Among them are the compilation of the Qur'an to be a single book carried out by Caliph Abu Bakar. Meanwhile, Caliph Umar has banned interfaith marriage between Muslim and *Kitabiyyah* (Jewish and Christian women) as well as he considered three times divorce at once to be three times. As for Caliph Uthman, he has ordered any lost camel to be sold to avoid the camel from being stolen by bad people, while

Caliph Ali has implemented a special fine for craftsmen if they damaged their customers' item (Al-Khādāmī, 2010).

Even though considering *maqasid al-Shariah* began at the early generation of Islam, its theory was only systematically presented by Muslim scholars from the 15th to 18th C.E. (Auda, 2007). In this regard, Al-Juwaini, al-Ghazali and Izz 'Abd al-Salam have been widely recognized as pioneers in *maqasid al-Shariah*. However, their discussion was merely focussing on the idea of *maslahah* and its priority (Al-Yūbī, 1998). Later, Ibnu Taimiyyah, Ibnu Qayyim, and al-Qarafi have explained *maslahah* in more detail, including its role in engaging with clashes between *maslahah* as well as a special discussion to which extend an action can be banned because of *mafsadah* or how far it can be tolerated in the name of *maslahah*. Also, the issue of *hiyal* (trick) in which it is misused to legalize prohibited actions are among important discussions highlighted by classical scholars (Al-Raisūnī, 1995).

Eventually, the subject of *maqasid al-Shariah* has been reformed through a unique approach introduced by al-Shatibi in presenting this subject (Hamīdān, 2004). As he has been widely recognized as the father of *maqasid al-Shariah*, al-Shatibi has provided a comprehensive concept of *maqasid al-Shariah*, along with systematic principles so as it can be practically applied in Islamic jurisprudence (Al-'Abaidī 1992). In regard with contemporary discussion, some Shariah scholars have re-manifested *maqasid al-Shariah* to be an independent subject, representing this subject as the holistic meaning of Islam, instead of being a ruling-oriented. As a result, many values are deducted from Islamic sources as the element of *maqasid al-Shariah* such as promoting reform; upholding freedom and justice; protecting dignity and civilization (Al-Ashūr, 2001; Duderija, 2014).

Through literatures, it can be understood that *maqasid al-Shariah* aims to promote the total well-being of humanity and the environment that should be based on the values of Shariah (Shinkafi & Ali, 2017). Therefore, it is vital to avoid Shariah from being amended because of the reality, also to prevent from understanding Shariah rulings literally; ignoring their spirit (Al-Qarḍāwī, 2006). In this regard, *maqasid al-Shariah* is considered as the best tool in harmonizing between revelation and reality, particularly in applying Shariah rulings into modern financial practices (Ishak & Asni, 2020). In more details, *maqasid al-Shariah* provides a special guideline to deal with the current circumstance, the change of human needs and the evolution of their customs; as well as to consider the social, cultural, political and economic background, before applying any Islamic ruling (Zahraa, 2003).

Over the period, many studies regarding *maqasid al-Shariah* in Islamic finance have been carried out in various aspects. In terms of Corporate Social responsibility (CSR), Dusuki and Abdullah (2007) found that *maqasid al-Shariah* provides an ethical guidance in managing financial activities, so as Islamic financial institutions should not totally be profit-oriented. Rather, they must promote social welfare as well as to fulfil the needs of the society. Meanwhile, Laldin and Furqani (2013) came up with a special framework of *maqasid al-Shariah* in Islamic finance, based on wealth circulation; fair and transparency; and justice at both micro and macro-levels. In terms of Islamic products, Ahmed (2011) has proposed a special assessment based on *maqasid al-Shariah* so as Islamic products must not only comply with Shariah rulings, but to satisfy the needs of all society members, particularly poor people as well as small/micro entrepreneurs.

By considering *maqasid al-Shariah*, instead of emphasizing on legal aspects of a product, Islamic finance must reflect the spirit of Shariah through its practices. In this regard, Hassan has come up with the idea of value-oriented practices by promoting equity-based financing as well as protecting the interest of the customers. To achieve such reforms, Shariah governance is believed to play a special role in this area (Hasan, 2016). Meanwhile, Shaharuddin (2020) in his study has emphasized on the need of a well-defined *maslahah* to deal with issues in Islamic finance. This is vital since scholars can either be too rigid by over-focusing on technical aspects, or too liberal by considering all benefits as some of them are not fully complying with the concept of *maslahah* (Shaharuddin, 2010). To ensure the practicality of *maqasid al-Shariah* in Islamic finance, Zakariyah (2015) views that the element of morality should be legislated in practice. In this regard, a product

that can cause harm should be banned, regardless its original Shariah status. Nevertheless, due to many constraints in the stage of implementation, this concept should begin with education and awareness among all parties in this industry.

THE ROLE OF MAQASID AL-SHARIAH IN HARMONIZING BETWEEN THEORY AND PRACTICE IN ISLAMIC FINANCE

Even though *fiqh muamalat* (Islamic commercial jurisprudence) is not a new subject among classical scholars, contemporary issues in finance seem to be complicated. In other words, Shariah principles and its rulings could not simply be applied in the real practice. Although Islamic finance industry has emerged almost 60 years ago, its operation is still claimed under the shadow of conventional system (ISRA, 2010). Restrictive civil law, lack of awareness, insufficient human capital, limited facilities and fierce competition with conventional finance are among challenges experienced by Islamic financial institutions. As a result, Islamic finance could not be fully applied as its theoretical concept, instead it needs to be harmonized with the current circumstances.

In this regard, *maqasid al-Shariah* plays its vital roles in Islamic finance as the following:

Harmonizing the Text of Revelation with the Actual Situation

It is learned that a ruling mentioned in the Qur'an and the Sunnah must be understood based on its background. This is important to ensure the accurate meaning of the verse as well as to understand the issue behind the ruling (Al-Shātībī, 2004). At the same time, current circumstances should be considered, particularly in understanding people needs, their customs, their cultural and social background, as well as the political and economic contexts (Zahraa, 2003). Mastering both the meaning of verse and the actual situation are essential to ensure Shariah ruling can be implemented based on its appropriate context. As Shariah scholars must carefully understand the Qur'an and the Sunnah, they have to carefully deal with the current reality. Otherwise, implementing a ruling might lead to different consequences from its purpose (Al-Raisūnī, 1995). In this regard, applying a ruling into its intended situation, harmonizing between the meaning of verse and the current situation will eventually realize the element of *maslahah* in human lives (Ibn al-Qayyīm, 2006).

With regard to Islamic finance, it is learned that the current financial system is very complex as nobody can declare himself as an expert on every aspect in this field. Therefore, all discussions and decisions in this field require openness, tolerance and negotiation among Shariah scholars (Shaharuddin, 2015). Also, since financial practices are always changing and renewing, it is highly encouraged to form a so-called collective *ijtihad* (deductive process in Islamic jurisprudence). This process must involve Shariah scholars and all related professionals in this area (Hasan, 2003). In fact, measuring and determining *maslahah* in particular fields or industries could not be achieved accurately without a consultation with the respective professionals (Al-Sharfī, 1997). In dealing with financial issues, Shariah scholars essentially need to discuss with economists, lawyers, and accountants. In other words, considering civil laws, government policies, banking regulations, financial instruments, market circumstances, corporate governance, and social impacts are essential before issuing any Shariah resolution.

In fact, financial practices in modern time have extremely evolved. Therefore, views from classical scholars based on their understanding towards the Qur'an or the Sunnah and their situation, sometimes need re-consideration in order to harmonize with the current situation. For example, it is widely argued by classical scholars that two sales in one contract is forbidden based on the Hadith: "Whoever makes two sales in one sale, then for him is the lesser value or it is usury" (Abu Dawoud). Applying this view literally may negatively affect the current practice of Islamic finance since almost all of its products are based on hybrid contracts, so as they can be viable alternatives to their conventional counterparts (Ishak, 2018). In fact, this prohibition refers to a combined contract which contains the element of *gharar* (Shībīr, 2007). Nevertheless, such *gharar* is unlikely to occur in the modern practice in comparison with previous times when verbal

expressions were widely practiced. In contrast, financial agreements nowadays between contracting parties are carried out in well-defined documents and they are strictly regulated by the authority (Abd Razak, 2016).

However, it should be noted that some practices are only new in terms of their name, but their substance is still similar with the past (Shibīr, 2007). For instance, the current practice of interest or dividend or profit might confuse some Shariah scholars when they are claimed as the return of investment. In fact, the element of *riba* can be traced when the capital or the loan is guaranteed with an additional return, regardless the amount of the return, or whether the return is fixed or based on certain percentage of the capital. Also, it is part of *riba* when the additional return is paid in advance or upon maturity, whether it is named as a gift or in the form of service, as long as the financial agreement guarantees an additional return, it is considered as *riba* (Chapra, 2006). Unfortunately, some Shariah scholars may overlook this element due to the lack of information, as they allow a financial product which guaranteeing the additional return, by justifying this practice is a saving or an investment (Al-Qardāwī, 2010).

Also, some practices may outwardly comply with Shariah, but their real practices are implicitly against Shariah principles. For example, Islamic financial institutions may offer deposit services based on *wadi'ah* (safekeeping) with the return of *hibah* (gift) to their depositors based on their discretion. In fact, there is no Shariah issue in this case as far as the *hibah* is not being bound between two parties. Nevertheless, in practice, it is argued that giving *hibah* has become habitual and even worst this practice is justified as *maslahah* in respect of the progressiveness of Islamic financial institutions. As a result, it could make *wadi'ah* to be similar with a conventional saving when this practice becomes an *urf* (custom) among Islamic financial institutions (Lahsana, 2014).

Considering Unusual Circumstances

In fact, Shariah ruling aims for a total well-being of humankind. Therefore, applying the ruling must be carried out carefully because some circumstances could significantly affect the applicability of the ruling. In the case where the ruling is unable to achieve its objective, an exception needs to be applied (Al-Shātibī, 2004). Therefore, Shariah scholars should not restrict their role to address a Shariah ruling from theoretical perspective. Rather, they need to study how the ruling should be applied in life. In this regard, they must consider the consequences of the ruling, particularly when it is applied in certain situations (Al-Raisūnī, 1995).

In this regard, two unusual situations are recognized in Islam namely *daruriyyah* (necessities) and *hajiyyah* (crucial needs). Both must be considered before applying any Islamic ruling (Al-Kailānī, 2008). In fact, it may not be possible to apply some Shariah rulings as they were originally conceived in the situation of *daruriyyah*, when their implementation negatively affects human soul. Therefore, a prohibited action in that situation should be allowed to preserve human soul (Al-Shātibī, 2004). Meanwhile, in the situation of *hajiyyah*, even though a ruling does not severely affect the soul, but it may bring hardship for people. In this regard, some actions which are initially permissible but are prohibited because they are associated with prohibited elements, should be tolerated in the situation of *hajiyyah* in order to avoid such difficulty (Al-Raisūnī, 2009).

In regard to modern financial activities, it is argued that many Shariah rulings can, in general be implemented. However, as a new industry which is struggling to survive in the modern environment, some rulings might need to be tolerated for the sake of sustainability. For example, the concept *daruriyyah* can be illustrated when Islamic financial institutions are threatened with liquidity shortage (Khair, 2010). It was reported that the Ihlas Finance House, an Islamic bank in Turkey was shut down in 2001 because of liquidity issues and financial distress (ISRA, 2010). Thus, it is allowed for Islamic financial institutions to borrow from conventional ones, if there is no Shariah compliant sources of fund are available, with the condition that the amount borrowed should only cover the deficit (Laldin et al., 2013).

Nevertheless, considering certain situations as the main reason that cause *mafsadah* in applying any Shariah ruling needs to be strongly proven. In other words, arguing *maslahah* must not be based on imaginary circumstances or assumptions (Laldin, 2010). This aims to ensure the consistency of Shariah rulings from not being easily compromised because of weak justification of *maslahah* or *mafsadah*. In regards with Islamic finance, the genuine *maslahah* represents all matters that are supporting the viability of Islamic financial institutions as well as their customer welfare in terms of receiving fair and transparent treatment from their financiers (Ishak, 2019a).

Overcoming Current Issues

In fact, considering *maqasid al-Shariah* aims to ensure Shariah rulings as a way to better human life as the latter is merely a mean to the former (Al-Kailānī, 2000). Therefore, *maqasid al-Shariah* is applied to identify a pragmatic solution for any issue, instead of judging the issue with *halal* or *haram*. The case when a Bedouin urinated in the mosque at time of the Prophet could illustrate this point. At that time, as the immediate response to the Bedouin's action, companions tried to stop him, but the Prophet let him finish first (Al-Bukhārī, 2002). Even though polluting the mosque is a sin and immoral, stopping the Bedouin immediately might disperse the urine widely, as well as harm his health. Then, the Prophet advised him about the manners and showed his companions the way to clean a sacred place which is already polluted (Al-'Asqalānī, 2000).

In regards with Islamic finance, some approaches need to be considered in terms of their consequences. Sometimes, an action may bring positive outcomes for the long run, but it needs a toleration at the beginning. In this regard, *maqasid al-Shariah* intends to facilitate human life and to remove hardship which affect adversely either the sustenance or dignified survival of human is to be countered (Gwadabe & Ab Rahman, 2020). For example, dealing with the issue of working at conventional financial institutions. It is argued that in 1980s, the majority of Shariah scholars demanded Muslim workers in conventional banks to immediately leave their job and seek alternative works to avoid the element of *riba* in their incomes. Nevertheless, it was not an easy choice at that time because Islamic financial institutions were extremely rare. Realizing this situation, other scholars view that Muslims could stay at conventional banks with an intention to improve their knowledge, skill and expertise in which all of them are importantly needed to run Islamic financial institutions later (Laldin et al., 2013).

Also, to overcome Shariah issues, sometimes it is crucial for scholars to differentiate between what is considered as a mean and an objective. In fact, achieving the objective in Shariah rulings which reflects *maqasid al-Shariah* should be considered as the main priority instead of over-emphasizing on technical aspects of the rulings (Al-Raisūnī, 1999). Based on the Quran and the Hadith, it is found that most actions are declared as prohibitions because they are associated with forbidden elements despite their original permissible status (Al-Qarḍāwī, 1980). In order to overcome an issue related to Shariah, it is essential to distinguish between the real prohibited action and the one that is forbidden because of other factors. The latter can still be tolerated (Al-Raisūnī, 2009).

Also, technical problems regarding financial practices should be wisely overcome without the need to ban them. Shariah issues on organized *tawarruq* (monetisation) can be an example to illustrate this point. It is argued by some scholars that this product has many issues such as its trading is utilizing a spoiled item with no real possession on the item, as well as the issue of agency between banks and their customer. As a result, *tawarruq* is claimed to legalize *riba* in a tricky way (IIFA, 2006). However, instead of banning *tawarruq*, each issue related to this product should be dealt separately in order to seek solution. For example, Bursa Malaysia has established a special exchange for *tawarruq*, called *Bursa Suq al-Sila* (BSAS). Over the period, BSAS is claimed to tackle various issues on *tawarruq* such as providing valuable commodities like palm oil as a tradeable item between involving parties. Also, the electronic certificate is provided with the delivery of the item

to prove the real ownership. To avoid the element of *bay' al-'Inah*, selling activities are carried out randomly (Dusuki, 2010).

Similarly, banning totally the late payment penalty in Islamic financial institutions could significantly threaten their operation (Yaakub et al., 2014). In fact, delaying payment by customers would significantly bring negative impacts towards financiers including Islamic financial institutions, in terms of incurring additional expenditures. Such expenditures are legal fees and issuing related notices and letters (Bank Negara Malaysia, 2010). Thus, a special mechanism is needed to deter customers from deliberately delaying their repayment as well as to cover actual lost, resulting from the delay. This is essential for the sake of the viability of Islamic financial institutions. However, this penalty must also be of a different nature to late penalty imposed by conventional banking institutions, in which Islamic financial institutions must not aim for the profit. Also, they must consider the situation of customer as well as any additional amount must be channelled into charity. On top of that, both types of penalty must not be compounded like conventional financial practice (Ishak, 2019b)

CASE STUDIES

To ensure a practical discussion, this study presents two cases as follows:

Case Study I: Replication of Conventional Banking Products

Among the operational approaches carried out by Islamic financial institutions in developing their products: to replicate a conventional product to be a new Islamic product. This process involves some technical modifications so as the new product is compliant with *Shariah* principles. For example, *Bay' Bithaman Ajil* (deferred payment sale) replaces conventional home loan, and *al-Ijarah thumma al-Bay'* (hire than buy) is an alternative to conventional hire-purchase (Ariff, 2014). Through replication, even though technical aspects or terms are changed, such as loans into sales, and interest into profit, the substance of both products outwardly appears similar.

Thus, not surprisingly, this approach is criticized as a *hijal* by some scholars, allowing unlawful things to be lawful (Syed & Omar, 2017). Furthermore, it is argued that this replication might worsen public perception towards Islamic financial institutions. In other words, it seems that as though they have exploited the name of Islam to attract Muslim customers. Moreover, it is claimed that this approach depreciates the genuine value of Islamic financial instruments (Ishak, 2018).

On the other hand, it is claimed that the replication brings *maslahah* for Islamic financial institutions. Since conventional products have been already established in the market, replicating them could facilitate Islamic financial institutions in their operation (Abd Razak, 2014). In contrast, prohibiting replication drastically might limit Islamic products. As a result, conventional products are more attractive as well as they are available to fulfil people needs including Muslims. Moreover, some replicated products can overcome the liquidity shortage of Islamic financial institutions, which can endanger their survival (Syed & Omar, 2017).

From *maqasid al-Shariah* point of view, *hijal* should be banned if its outcomes are against *Shariah* (Al-Shātibī, 2004). However, if practicing *hijal* supports *maqasid al-Shariah* in terms of realizing *maslahah* in *Shariah* rulings, then it should be allowed. In this regard, some scholars justify allowing *hijal* based on the case of exchange between Khaibar and Medina dates in which both have a different quality. To solve the problem, the Prophet asked them to sell the inferior first, then to buy the superior (Harasani, 2013). This alternative is in line with *maqasid al-Shariah* because it becomes a solution to avoid *riba* and to remove difficulty between the two parties (Hashim et al., 2015). Moreover, adopting something from outside *Shariah* is not totally prohibited because the Prophet has recognized many pre-Islamic financial practices such as *mudharabah* (partnership) and *salam* (future sale) as far as they bring *maslahah* for people (ISRA, 2010). Also, the Prophet amended some aspects of unlawful practices to make them permissible, even though the final result seems to be similar like in the case of the exchange between dates. Thus, this replication should not be banned merely because of *hijal*.

As long as the Islamic products comply with Shariah rulings they should be acceptable, regardless of their innovation process. While most of the conventional products are replicated as Islamic debt-based products, in which they are argued not in line with the spirit of Islam, some conventional products are in a form of equity (Shaharuddin, 2020). For instance, the innovation of *musharakah mutanaqisah* (diminishing partnership) as an Islamic home financing is argued to be a replication of a conventional financial instrument (Garner, 2013). Thus, in this case, the main issue should not be focussed on the way a product is developed, but on the outcome of the product whether it complies with Islamic rulings or not. As mentioned before, the technical issues should not be exaggerated because the replication is only a means to provide alternative products to conventional ones.

In fact, the issue of replication should be focussed on the manner of imposing charges and fees, and not the product development. Currently, it is argued that several charges including the charge of coin fee, the charge for unutilised amounts in an overdraft, early withdrawal fee, lock-in penalty charge, the commitment fee and the cancellation fee, should not be replicated in Islamic banking practices because of the element of *riba* (Abdul Khir, 2014).

Case Study II: Floating Rate and Ibra'.

In general, financing prices in Islam must be structured with a fixed-rate to avoid the element of *gharar*. This element can be traced when a financial contract is unclear which leads to unknown results (Saleem, 2013). However, in modern banking practices, it is argued that fixed-rate financing prices could bring negative consequences for Islamic financial institutions. In more detail, if the interest-rate is climbing, customers would prefer the fixed-rate Islamic financing, but if the rate goes down, some of them might choose conventional banking because of a better payment (Adawiah, 2006). As a result, the fixed-rate financing price would make Islamic products vulnerable to market volatility.

To harmonize between the Shariah ruling on *gharar* and the competitiveness of products, it is suggested for Islamic financial institutions to implement two different prices in their financing products: the fixed selling price and the floating rate based on special benchmark (Lahsasna, 2014). In this regard, *ibra'* is applied between two prices. In more details, *ibra'* is a withdrawal of the right by lenders to claim the debt from their borrowers (Mohamad & Trakic, 2013). In modern banking practice, even though the agreement mentions the selling price is based on a profit rate of 8 percent, Islamic financial institutions charge only 4 percent of the profit, following the current financing rate. The 4 percent unclaimed rate is deemed as *ibra'*. In other words, Islamic financial institutions deserve to claim from their customers the selling price, but they voluntarily give up their rights under the concept of *ibra'* (Ishak & Asni, 2020).

In this regard, it is undeniable that *ibra'* plays a significant role in adopting a floating rate in Islamic products. Also, it is crucial in the case of early settlement, if customers are required to pay the whole selling price without *ibra'*, the payment is significantly high. Thus, *ibra'* acts as a protection toward customers. Nevertheless, because *ibra'* is understood as voluntary, Islamic financial institutions consider *ibra'* should be based on their discretion. In other words, it depends on them whether to grant it or not, regardless of their customer's situation (Mohamad & Trakic, 2013a). As a result, this practice has created a conflict between customers and Islamic financial institutions particularly when they are required to settle the full amount of selling price in the case of default. The price could be significantly higher in comparison to their conventional institutions (Dusuki, et al., 2010).

As a result, Bank Negara Malaysia (BNM) has issued a special regulation to tackle this issue by requiring Islamic financial institutions to clearly include a clause of *ibra'* as well as its calculation in their agreement. However, this approach against the original practice of *ibra'* in which it should be applied based on the lender's discretion. Moreover, other bodies including the International Fiqh Academy has issued a similar resolution for the case of *da' wa ta' jil* (reducing the amount for speeding up payment), in which *ibra'* can be allowed as far as it is not agreed upon in advance (IIFA, 1992). Nevertheless, the different regulation imposed by BNM aims to protect *maslahah* for

both customers and Islamic financial institutions. As for the former, *ibra'* is argued to protect their rights, particularly in the case of early settlement from being charged with an unreasonable claim: to pay the whole selling price. As for Islamic financial institutions, this approach could improve their image since many disputes between them and their customers happened because of unclear implementation of *ibra'* (Ishak, 2019a).

In respect of the issues of floating price and stipulating an *ibra'* clause, both need to be harmonized between theory and practice, based on *maqasid al-Shariah*. As for the former, it is understood that *gharar* is prohibited because of its uncertainty that can lead to dispute between contracting parties. However, as far as two prices are clearly mentioned, then it should be allowed particularly to support Islamic finance operations. As for *ibra'*, *maqasid al-Shariah* is applied to protect the more important *maslahah* which is to ensure transparency between contracting parties. Since one of the roles of *maqasid al-Shariah* to overcome the current issue, it is important to minimize the negative elements that are already involved in this case.

CONCLUSION

This paper attempts to clarify the role of *maqasid al-Shariah* in Islamic finance, particularly to harmonize between theory and reality. The finding reveals that *maqasid al-Shariah* harmonizes between the context of verse and the actual situation, considers unusual circumstances and overcomes current issues. Through the concept of *maqasid al-Shariah*, it is vital for scholars to analyse issues in Islamic finance by considering both Islamic sources and the current circumstances. Also, it should be understood that *maqasid al-Shariah* is applied not only to justify something or to ban it because of the current situation. Instead, this approach should provide a pragmatic solution to ensure Shariah rulings in financial activities can be gradually implemented, fulfilling the need of revelation and considering the reality.

To be the discussion of this topic more practical, two cases are provided. The first case is the replication of conventional products to be Islamic ones. While this approach is argued as a part of *hiyal* to justify a prohibited practice, it should not be the sole justification to ban the practice. As far as a product complies with Islamic rulings, then it can be accepted. Moreover, the replication is still needed to support Islamic finance industry which is struggling to adapt its operations in the modern financial system. As for the second issue, floating rate should be allowed for Islamic financing prices to protect Islamic financial institutions from market volatility. To avoid the issue of *gharar*, two prices are imposed, with *ibra'* is applied to fill the gap between the prices. However, the concept of *ibra'* needs a modification, since its original practice might lead to uncertainty and dispute. Considering *maslahah* for all parties, the Central Bank of Malaysia has required all Islamic financial institutions to disclose an *ibra'* clause and its formula in their contractual agreements. This aims to ensure transparency between contracting parties as well as customer protection.

REFERENCES

- `Attia, J. al-D. (2003). *Nabwa taf'il maqāṣid al-sharī'ah*. Dār al-Fikr.
- Abd Razak, S. A. (2014). "Islamic" or "islamizing" banking product? Reconsidering product development's approaches in the Malaysian Islamic banking industry. Universität Erfurt.
- Abd Razak, S. A. (2016). Combination of contracts in Islamic finance. *ISRA International Journal of Islamic Finance*, 8(2), 51–
- Al-Shātībī, I. (2004) *Al-Muwāfaqāt fī Usūl al-Sharī'ah*. Edited by 'Abdullah Al-Darraz. Beirut: Dār al-Kutub al-'Ilmiyah.
- Al-Sijistani, S. bin al-A. (2010). *Sunan Abi Dāwūd*. Edited by R. Abi Alqamah. Riyadh: Dār al-Hadarah.
- Al-Yūbī, M. (1998). *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'alāqatuhā bi al-Adillah al-Sharī'yyah*. Riyadh: Dār al-Ḥijrah.

- Al-‘Abaidī, Ḥammadī (1992). *Al-Shāṭibī wa Maqāṣid al-Sharī‘ah*. Beirut: Dār al-Qutaibah.
- Al-‘Asqalānī, A. (2000). *Fath al-Bārī Sharh Ṣabīh al-Bukhārī*. Edited by A. al-‘Aziz Bin Bāz. Riyad: Maktabah Dār al-Salām.
- 77.
- Abdul Khir, M. F. (2014). Actual costs in fees and charges in Islamic banking, *ISRA International Journal of Islamic Finance*, 6(2), 149–156.
- Adawiah, E. R. (2006). *Applied Shariah in financial transactions*. INCEIF.
- Ahmed, H. (2011). Maqasid al-shariah and Islamic financial products: A framework for assessment. *ISRA International Journal of Islamic Finance*, 3(1), 149–160.
- Al-Ashūr, M. (2001). *Maqāṣid al-Sharī‘ah al-Īslāmiyyah*. Edited by M. Al-Misāw. Dār al-Nafāis.
- Al-Bukhārī, M. B. I. (2002). *Ṣabīh al-bukhārī*. Dār Ibn Kathir.
- Al-Ghazālī, M. (1992). *Al-Mustaṣfa min ‘ilm al-Ūṣūl*. Edited by H. Hāfiẓ. Syarikah al-Madinah al-Munawwar lil ṭiba‘ah.
- Al-Kailānī, A. A. R. (2000). *Qawā‘id al-maqāṣid ‘inda al-imām al-shāṭibī*. al-Ma‘had al-‘Alāmī lil fikr al-Īslāmī.
- Al-Kailānī, ‘A. A. Rahman. (2008). Al-taṭbīq al-maqāṣidī li al-ahkām al-shar‘iyyah. *Al-Majallah al-Urduniyyah fi al-Dirasah al-Islamiyyah*, 3(4).
- Al-Khādimī, N. al-D. M. (2010). *Al-ijtihād al-maqāṣidī*. Dār Ibn Hazm.
- Al-Qarḍāwī, Y. (1980). *Al-halāl wa al-harām fi al-Islam*. Al-Maktabah al-Īslāmī.
- Al-Qarḍāwī, Y. (2006). *Dirasat fi fiqh maqasid al-syariah baina al-maqasid a;kulliyah wa al-nusus al-juẓ’iyyah*. Dār al-Shuruq.
- Al-Qarḍāwī, Y. (2010). *Al-fatāwa al-shāḥab*. Dār al-Shuruq.
- Al-Raisūnī, A. (1995). *Naẓoriyyat al-maqāṣid ‘inda al-imām al-shāṭibī*. al-Ma‘had al-‘Alāmī lil fikr al-Īslāmī.
- Al-Raisūnī, A. (1999). *Al-fikr al-maqāṣidī, qawā‘iduhu wa fawā‘iduhu*. Dār al-Baida’.
- Al-Raisūnī, Q. (2009). Qā‘edah: Mā hurrima saddā lil zarī‘ah abīhu lil maṣlaḥah rājihah’, *Majallah jāmi‘ah al-Shāri‘ah lil ‘ulūm al-Shar‘iyyah wa al-Qānūniyyah*, 1(21).
- Al-Sharfī, A. al-M. (1997). *Al-ijtihād al-jamā‘i fi al-tashrī‘ al-islāmī*. Wizārah al-Awqāf wa al-Syuūn al-Īslāmī.
- Al-Shāṭibī, I. (2004) *Al-Muwāfaqāt fī Usūl al-Sharī‘ah*. Edited by ‘Abdullah Al-Darraz. Dār al-Kutub al-‘Ilmiyah.
- Al-Sijistani, S. bin al-A. (2010). *Sunan Abi Dāwūd*. Edited by R. Abi Alqamah. Dār al-Hadarah.
- Al-Yūbī, M. (1998). *Maqāṣid al-Sharī‘ah al-Īslāmiyyah wa ‘alāqatubā bi al-Adillah al-Shar‘iyyah*. Dār al-Hijrah.
- Al-‘Abaidī, Ḥammadī (1992). *Al-Shāṭibī wa Maqāṣid al-Sharī‘ah*. Beirut: Dār al-Qutaibah.
- Al-‘Asqalānī, A. (2000). *Fath al-Bārī Sharh Ṣabīh al-Bukhārī*. Edited by A. al-‘Aziz Bin Bāz. Maktabah Dār al-Salām.
- Ariff, M. (2014). Whither Islamic banking?. *The World Economy*, 37(6), 733-746. <https://doi.org/10.1111/twec.12171>
- Auda, J. (2007). *Maqasid al-shari‘ah as philosophy of Islamic law: A systems approach*. The International Institute of Islamic Thought.
- Bank Negara Malaysia. (2010). *Shariah resolution in Islamic finance*. Bank Negara Malaysia.
- Chapra, M. U. (2006). The nature of riba in Islam. *Journal of Islamic Economics and Finance (Bangladesh)*, 2(1), 7-25.
- Duderija, A. (2014). *Maqasid al-shari‘ah and contemporary reformist Muslim thought*. Palgrave Macmillan.
- Dusuki, A. W. (2010). *Can bursa Malaysia’s suq al-sila (commodity murabahah house) resolve the controversy over tawarruq?* (ISRA Research Paper No. 10). ISRA.
- Dusuki, A. W., & Abdullah, N. I. (2007). Maqasid al-shari‘ah, maslahah, and corporate social

- responsibility. *The American Journal of Islamic Social Sciences*, 24(1), 25–44.
- Dusuki, A. W., Khir, M. F. A., & Muhammad, M. (2010). *Implementasi ibra' dalam produk berasaskan barga tanggung dalam sistem perbankan Islam : Analisis dari perspektif operasi perbankan dan maqasid syari'ah* (ISRA Research Paper No. 16). ISRA.
- Garner, J. J. (2013). A critical perspective on the principles of Islamic finance focusing on Sharia compliance and arbitrage introduction. *Leeds Journal of Law & Criminology*, 1(1), 69–90.
- Gwadabe, N. A., & Ab Rahman, A. (2020). The role of Islamic finance in mitigating the economic impact of COVID-19 towards the attainment of maqasid al shariah: A case study of waqf institutions in Kano State, Nigeria. *The Journal of Muamalat and Islamic Finance Research*, 17(Special issue 1/2020), 59–70. <https://doi.org/10.33102/jmifr.v17i3.284>
- Hamīdān, Z. M. (2004). *Maqāṣid al-shari'ah al-Islāmiyyah*. Muassasāh al-Risālah al-Nashīrun.
- Harasani, H. (2013). Analysing the Islamic prohibition on riba: A prohibition on substance or form? *Arab Law Quarterly*, 27(3), 289–296.
- Hasan, A. (2003). An introduction to collective ijthad (ijthad jama'i): Concept and applications. *American Journal of Islamic Social Sciences*, 20(2), 26–49.
- Hasan, Z. (2016). From legalism to value-oriented Islamic finance practices. *Humanomics*, 32(4), 437–458. <https://doi.org/10.1108/H-07-2016-0051>
- Hashim, A. M., Khir, M. F. A., Muhammad, M., Bouheraoua, S., Hussain, L., & Iqbal, I. (2015). *The parameters of hiyal in Islamic finance* (ISRA Research Paper No. 80). ISRA.
- Ibn al-Qayyim, M. (2006). *Ilām al-Muwāqī' in 'an Rabbi al-'Ālamīn*. Dār al-Hadīth.
- IFSB (2019). *Islamic Finance and global financial stability*, Islamic financial services board. IFSB.
- IIFA (1992). *Qarār bishani a-bay' bi al-taqṣit*. <http://www.iifa-aifi.org/1849.html>
- IIFA (2006). *Qarār bishani al-muwā'dah wa al-muwāṭoh fi al-'uqūd*. <http://www.iifa-aifi.org/2214.html>
- Iqbal, Z., & Mirakhor, A. (2007). *An introduction to Islamic finance, theory and practice*. John Wiley & Sons (Asia) Pte Ltd.
- Ishak, M. S. I. (2018). *The principle of ma'alāt as a response to maslahah in Islamic banking: A theoretical and empirical study*. University of Aberdeen.
- Ishak, M. S. I. (2019a). Malaysian banking: Is the current practice of ibra' (rebate) reflecting its true meaning?. *Qualitative Research in Financial Markets*, 11(1), 22–30.
- Ishak, M. S. I. (2019b). Shariah issues on ta'widh in Malaysia. *International Journal of Islamic and Middle Eastern Finance and Management*, 12(4), 523–531. <https://doi.org/10.1108/IMEFM-03-2018-0117>
- Ishak, M. S. I., & Asni, F. (2020). The role of maqasid al-shari'ah in applying fiqh muamalat into modern Islamic banking in Malaysia. *Journal of Islamic Accounting and Business Research*, 11(9), 2137–2154.
- ISRA. (2010). *Islamic financial system: Principles & operations*. ISRA.
- Khir, M. F. A. (2010). Shariah parameters of hiyal in Islamic finance. *ISRA International Journal of Islamic Finance*, 2(2), 161–164.
- Lahsasna, A. (2014). *Shariah issues and resolutions on contemporary Islamic banking and finance*. IBFIM.
- Laldin, M. A. (2010). Understanding the concept of maslahah and its parameters when used in financial transactions. *ISRA International Journal of Islamic Finance*, 2(1), 61–84. <https://doi.org/10.55188.ijif.v2i.91>
- Laldin, M. A. (2013). *Islamic legal maxims & their application in Islamic finance*. ISRA.
- Laldin, M. A., & Furqani, H. (2013). Developing Islamic finance in the framework of maqasid al-shari'ah. *International Journal of Islamic and Middle Eastern Finance and Management*, 6(4), 278–289. <https://doi.org/10.1108/IMEFM-05-2013-0057>
- Mat Nor, F., Shaharuddin, A., Nawai, N., & Wan Abdullah, W. Z. (2017). Risk management of full-fledged Islamic banks versus Islamic subsidiaries of conventional banks in Malaysia: The sustainable growth within restricted minimum requirements. *The Journal of Muamalat and Islamic Finance Research*, 14(2), 1–37.
- Mohamad, A. H., & Trakic, A. (2013). Application and development of Ibra' in Islamic banking in

- Malaysia. *The Law Review*, 26, 26–51.
- Mohamad, A. H., & Trakic, A. (2013a). Granting of Ibra' by Islamic banks in Malaysia : A matter of discretion or obligation? *Journal of International Banking Law and Regulation*, 28(9), 356-362.
- Muslim, M. H. (2000). *Sabih Muslim*. Darussalam.
- Saleem, M. Y. (2013). *Islamic commercial law*. John Wiley & Sons Pte Ltd.
- Shaharuddin, A. (2010). Maslahah-mafsadah approach in assessing the shariah compliance of Islamic banking products. *International Journal of Business and Social Science*, 1(1), 129–137.
- Shaharuddin, A. (2015). Harmonizing shariah rulings in Islamic finance: Startegies and challenges. *The Journal of Muamalat and Islamic Finance Research*, 12(1), 1–12.
- Shaharuddin, A. (2020). Do Islamic banks act 'Islamic' during COVID-19 pandemic? *The Journal of Muamalat and Islamic Finance Research*, 17(3), 3-12. <https://doi.org/10.33102/jmifrv17i3.279>
- Shibīr, M. (2007). *Al-mu'āmalāt al-mālīyah al-mu'aşiroh fī al-fiqh al-islāmī*. Dār al-Nafāis.
- Shinkafi, A. A., & Ali, N. A. (2017). Contemporary Islamic economic studies on maqasid shari'ah : A systematic literature review. *Humanomics*, 33(3), 315–334.
- Syed, E. A., & Omar, M. (2017). Hiyal in Islamic finance: A recognition of genuine economic need or circumvention of riba? *Qualitative Research in Financial Markets*, 9(4), 382–390.
- Yaakub, E., Adil, M. A. M., Husin, A., Muhamad, M. D., Khalid, M. M., & Shahrudin, M. S. (2014). A revisit to the practice of late payment charges by Islamic banks in Malaysia. *Jurnal Pengurusan*, 42, 185–190.
- Zahraa, M. (2003). Unique Islamic law methodology and the validity of modern legal and social science research methods for Islamic research. *Arab Law Quarterly*, 18(3), 215–249.
- Zakariyah, L. (2015). Harmonising legality with morality in Islamic banking and finance : A quest for maqāsid al- shari'ah paradigm. *Intellectual Discourse*, 23(Special Issue), 355–376.