The Scientific of the Fundamentals of Maqasid in Islamic Financial Products Development

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Abstract
The objectives of Shari’ah (Maqasid al-Shari’ah) theory are the key to better understand the Shari’ah in its true perspective. Hence, in order to obtain the clarity and visibility on the Maqasid al-Shari’ah, this paper will explain the basis fundamentals of the Maqasid theory, which include the Islamic Financial transactions (Fiqh al-Mu’amalat), fiqh maxims (Qawa’id al-Fiqhiyyah) and fiqh priorities (Fiqh al-Aulawiyyat) as a guideline for Shari’ah scholars to arrive at a more precise ijtihad in their assessment of Islamic financial products development. Hence, this study give recommendation the distinctive fundamentals of Maqasid theory model should have an Islamic financial transactions (fiqh al-mu’amalat), fiqh maxims (qawa’id al-fiqhiyyah) and fiqh of priorities (fiqh al-aulawiyyat), in assisting the Shari’ah scholars producing more appropriate ijtihad in Islamic banking and finance products matters.

Keywords: Ijtihad, Maqasid Al-Shari’Ah, Islamic Financial Transactions (Fiqh Al-Mu’Amalat), Fiqh Maxims (Qawa’Id Al-Fiqhiyyah, Fiqh Of Priorities (Fiqh Al-Aulawiyyat), Islamic Financial

1. Introduction
In defining Shari’ah, a few Muslim scholars have attempted to relate it to the objectives of the Shari’ah (maqasid al-Shari’ah). For example, Ibn Qayyim defined Shari’ah as a basis for wisdom and achieving people’s welfare in this world and the hereafter. Shari’ah is all about pure justice, pure mercy, pure benefit, pure wisdom.¹ This definition is quite similar by al-Shatibi’s writing in “al-muwafaqat” in which he defined Shari’ah is all about ascertain the public interest (maslahah) or welfare of mankind and preventing them from evils either at the present or in the future.² Indeed, all the provisions and ordinances of any divine laws prescribed for the seeking of benefit and repelling of harm (jalb al-manfa’ah wa daf’ al-madarrah) of human-

beings with a general and specific objectives of Shari’ah. This is because Allah (s.w.t.) does not act in vain, as manifested in the Quran: “For [thus it is:] We have not created the heavens and the earth and all that is between them in mere idle play. None of this have We created without [an inner] truth: but most of them do not understand it” and, “Did you, then, think that We created you in mere idle play, and that you would not have to return to Us?”.

For example, Shari’ah have prohibited the usury (riba) in financial transactions (mu’amalat maliyyah) true Qur’anic verse “God has permitted sale and forbidden Riba”. The wisdom behind the prohibition of riba is to achieve people’s welfare and prevent them from evils. This is because riba is the essence of evils which undermine the institutions of society. Hence, to replace the practice of usury (riba), Shari’ah has legalised the sale and purchase activities, as narrated by Imam al-Tarmidhi in which Allah (s.w.t.) forgive the man before you, who was made easy when sold, an easy when you bought, an easy when you determining.

Maqasid Shari’ah are covers all areas including faith, worship, economic, political, and social cultural aspects of human life.

2. *Fiqh al-Mu’amalat* (Islamic Financial transactions)

Fiqh mu’amalat means knowledge of Shari’ah rulings in relating to human actions and activities transaction in the light of public interest (maslahah), in order to solve people needs and settlement of dispute between them, which derived directly from detailed evidences in the texts, or extended through reasoning from general propositions of the Shari’ah.

For example, the forward sales (bay’al-salam) contract which is one of the types of unknows sales (bay’ al-gharar) in the science of fiqh al-mu’amalat, was permitted as a special concession (rukhsah) to meet people need and public interest (maslahah). Bay’ al-salam is a sale of an object which is not available at the time of the conclusion of the sale, but will deliver in a future on a fixed future date. The price is, however, to be paid immediately during the session of the contract. This permissible is based on the customarily practiced (al-’urf or al-’adat) which responded to the public needs (al-hajiyat). According to the fiqh maxims (al-qawa’id al-fiqhiyyah) "Need is treated as necessities, whether of a public or private nature." (al-hajat: tunazzalu manzilatu al-darurah, ‘ammah kanat aw khassah). Therefore, when the need was developed into society need in term of public interest (maslahah), it will become necessities (al-darurah). The permissible of bay’al-salam is related to universal purpose of the

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3 Ibid
4 The Quran, 44:38-39
5 The Quran, 23:115
6 The Quran, 2: 275
Qur’an, such as to removal of hardship (raf’ al-haraj). Allah (swt) says: “Allah never intends to impose hardship on people”.

Another example is the fiqh of al-Bai’ Bithaman Ajil (BBA) contracts. BBA is a sale contract of commodity immediately on deferred price payment basis and payable at a certain particular time in the future. It is also known as Bay’ al-Mu’ajal or Bay’ al-Taqsit. The Shafii’s, Hanafis, Malikis, Hanbalis, Zayd Ibn ‘Ali, al-Mu’ayyad Billah and the majority of Muslim jurists have unanimously ruled it valid to sell an object immediately, with deferred price. This sale is valid as long as the contract is clearly specified and contains no ignorance (jahalah), such as the subject matter (mahal al-‘Aqd) must be existing or precisely determined and clearly known when the contract occurs. The maqasid behind this ruling is to avoid any injustice, dispute and harm to the contracting parties. On the legality of BBA, it is reported in one Hadith that the Prophet (s.a.w) purchased a quantity of grain from a Jew on the basis of deferred payment and he pledged his armour by way of security. This Hadith shows that the Prophet (s.a.w) did not prohibiting the transaction of deferred payment contract, even though the deferred price greater than cash price.

Some of the Muslim jurisconsults (usuliyun) have not accept the BBA as a valid contract, among them are Zainul Abidin Ali Ibn Hussain, al-Nasir, al-Mansur Billah, Hadawiyah and Imam Yahya. From the analogy reasoning, they argue that the BBA contract is opens the back door to interest based (riba) transaction as a legal device (hilah), in order to achieve the purposes of illegal or non-Shari’ah compliant. This argument based on Hadith that narrated by Abu Daud from Abu Hurairah said, the Prophet (s.a.w) prohibited two sales in one, which is a sale contract with two different prices that is one price in spot payment with less or same with actual price (al-aukas) and the other deferred payment with higher price from the actual price (riba).

Those who allow the practice of BBA, they argue this Hadith is considering the case where the seller makes the single offer: “I sold you for 1,000 cash, or 1,300 in installment” and the buyer says: “I accept”, without specifying which of two contracts he wants. In this case, the contract is invalid for the majority of Muslim scholars because of ignorance (jahalah). Apart from that, a sale with deferred price, which paid in installments are different from riba. The different is that Allah has permitted sales and has forbidden riba. In another word, the increment of price is allowed in case of deferment of price in a sale contract. The increase of price is permissible because it is against the commodity and not against money. The BBA

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13 The Quran, 22: 78
14 Ibid
15 Ibid
16 Ibid
18 Nil Authar, Vol 5, pp. 152; Subulu al-Salam, Vol 3, pp. 16
19 Nil Authar, Vol 5, pp. 152
21 Al-Baqarah, 2: 275
contract is only considered to be amounting to *riba* where the subject matter is money on both sides. Hence, this contract is not *riba*, but it is tolerance (*al-tasamuh*) and ease (*al-taisir*)22 in sales, since the buyer receives the merchandise, and not money. Therefore, BBA is a valid contract because of necessity for the society which provides *maslahah* to them in dealing with Islamic financial transactions (*fiqh al-muamalat*).

3. **Qawa'id al-Fiqhiyyah (Fiqh Maxims)**

*Al-Qawa'id al-Fiqhiyyah* or *Fiqh* maxims are general rules of *fiqh*. These *fiqh* maxims have a great role in the formation of the objectives of *Shari'ah* (*maqasid al-Shari'ah*) because they are used as general principles to deduce many rules of *fiqh*. It can be observed that most of *fiqh* maxims (*Qawa'id al-Fiqhiyyah*) consist of a few words but provide comprehensive understanding and strengthening the objectives of *Shari'ah* (*maqasid al-Shari'ah*). For example, the legal maxim said “Matters are determined according to intention” (*Al-umur bi maqasidiha*), which means, an act of any human being is judged in the light of the intention or the purpose it seeks to have effect. The effect to be given to any particular action or transaction must be in accordance with the intent underlying such action or transaction. An example of the application of this maxim in modern Islamic financial transaction (*mu'amalat*) is the imposition of *ta'widh* in Islamic banking operations. *Ta'widh* is the compensation on the defaulting bank’s customers who intentionally or negligently refused to pay their obligations towards the bank. Thus, imposition of *ta'widh* was allowed on the basis of preservation of wealth (*muhafazah al-mal*) by preventing intentional defaults by customers.23 Therefore, the application of the *fiqh* maxims (*qawa'id al-Fiqhiyyah*) are exclusively based on the general *maqasid* for the purpose of seeking the greater benefits and repelling harms (*jalb al-masalih wa dar' al-mafasid*).

Another *fiqh* maxims stated “Custom is arbitrary” (*al-'adah muhakkamah*), which means, the practices of the people whether in their actions or sayings, regardless of whether they are the general practices of people or the practices of certain groups of people. For example, the custom that involves in the present day written documents in any transactions as writing evidence is one of the most important and effective methods of proof, such as formation of Islamic Commercial Law as a tool in developing and structuring Islamic Financial Products documentation. The the wisdom (*hikmah*) behind this ruling is to avoid of any dispute and injustice. Allah (swt) says: “O believers! When you contract a debt from one another for a fixed period, put it (its amount and period of repayment) in writing”.24

Other *fiqh* maxims noted “hardship begets facility” (*Al-mashaqqah tajlibu al-taysir*), which means, any ruling whose implementation causes hardship to a person or the action is unable to be performed by a particular person for a specific acceptable reason, then there are alternatives and way out that can be resorted to in order to overcome the difficulties and hardship. For example, if someone enters into a rental contract and later on he has to travel for

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22 *Al-Quran*, 2: 185
24 *The Quran*.(al-Baqarah) 2: 282

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certain reasons, he is allowed to cancel the rental contract. Under a normal circumstance, a person is not allowed to cancel this type of contract unless it is agreed between the contracting parties beforehand. However, forcing a person to continue paying the rental when he is not occupying the premise, will amount to hardship, therefore the wisdom (hikmah) behind the Shari’ah ruling has allowed the cancellation under specific circumstances in order to avoid hardship. This is related to universal purpose of the Qur’an, such as to removal of hardship (raf’ al-haraj). Allah (swt) says: “Allah never intends to impose hardship on people”.

4. Fiqh al-awlawiyyat (the priorities of Islamic jurisprudence)

In order to measuring between benefits (manfa’ah) and harms (mafasid), fiqh al-awlawiyyat or the priorities of Islamic jurisprudence are very relevant rules in prioritizing among conflicting benefits (manfa’ah) and harms (mafasid) in order to provide public interest (maslahah) in society. Fiqh al-awlawiyyat provides a strong base for the application of the objectives of Shari’ah (maqasid al-Shari’ah). One of the priorities of Islamic jurisprudence is “Putting precedence of permanent maslahah over the temporary maslahah”. For example, priority should be given to the endowment (waqf) rather than charity (sadaqah), although both have a benefit (manfa’ah). As for the waqf, the benefits (manafi’) will remain indefinitely as long as the property is still in existence, such as school or mosque. Hence, the endowment (waqf) is a permanent maslahah, while charity (sadaqah) that was be given to a certain individuals, only beneficial for the individual and only temporary maslahah when used.

Another fiqh al-awlawiyyat are “Putting precedence of the mafsadah which is clear (rajihah) over that which is not clear (marjuhah)”. One of the methods that can be measure this priority is “Preference based on agreement mafsadah of the Muslim Jurists (al-fuqaha’) and not on debating mafsadah. For example, the implementation of bay’ al-‘Inah contracts in the Malaysian Islamic finance and banking practice. According to the Hanafis, Malikis and Hanbalis were of the opinion that the contract is invalid, but to the Shafi’is the contract is valid and permissible. In order to avoid the riba based transaction (clear mafsadah) in which introduced by conventional banks, therefore the bay’ al-‘Inah transaction is an alternative practice to removing Muslims from usury (riba) transaction.

5. Conclusion

In fact, the basis fundamentals of Maqasid al-Shari’ah are for public interest (maslahah) in achieving people’s welfare in this world and in the hereafter, which in line with the Shari’ah principles. Therefore, in order to understand the basis fundamentals of the objectives of Shari’ah (maqasid al-Shari’ah), they have constituted of three basis fundamentals components, namely Islamic Financial transactions (fiqh al-mu’amalat), Fiqh Maxims (qawa’id al-fiqhiyyah).

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28 Bay’ al-‘Inah can be defined as a contract which involves sale with immediate repurchase transactions of an asset by the seller. In this transaction, the seller sells the asset to the buyer at a deferred price and subsequently buys back the asset on cash basis at a lower price. It may also be conducted where the seller sells an asset to the buyer on cash basis and then buys back the asset at a deferred price which is higher than the cash sale price.
and fiqh of priorities (fiqh al-aulawiyyat). In order to produce appropriate ijtihad based on maqasid al-Shari‘ah, an integrated approach have been used in order to analyzing those five preservations (the religion, life, progeny, intellect and wealth) of the objectives of Shari‘ah (maqasid al-Shari‘ah). As conclusion, the Islamic Financial transactions (fiqh al-mu‘amalat), Fiqh Maxims (qawa‘id al-fiqhiyyah) and the priorities of Islamic jurisprudence (fiqh al-aulawiyyat) are basic fundamental to strengthen the understanding of the objectives of Shari‘ah (maqasid al-Shari‘ah), especially when to measuring of maslahah and mafsada in order to provide justice and fairness into public and society life. As conclusion, the basic fundamental of the objectives of Shari‘ah (maqasid al-Shari‘ah) are as follow Figure 1:

![Diagram](https://example.com/diagram.png)

**Figure 1**

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I am so delightful deep thanks to Allah SWT for everything I have. May Allah (swt) grant His rewards on all of us for producing this journal and measure every effort put in as our good deeds in this world and the Hereafter, Insha’Allah.

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