

Commodity Futures: A Maqasid Al-Shariah Based Analysis

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ABSTRACT

This paper aims to analyse Malaysian Crude Palm Oil futures (FCPO) in light of the *maqasid al-Shariah*. The Shariah Advisory Council of the Malaysian Securities Commission (SAC) resolves that FCPO is permissible as it is in accordance with Shariah principles. The *maqasid al-Shariah* is the objectives and wisdom (*hikmah*) as prescribed by the Shariah in all its rulings to preserve the benefits of, and prevent harm to, human wellbeing. It can be categorized into three broad categories, namely *daruriyyah* (necessity), *hajiyyah* (requirement) and *tahsiniyyah* (embellishments). The approaches used in this study are document analysis and interviews. This study found that FCPO does not fulfil the categories of *daruriyyah* (necessity) and *hajiyyah* in the *maqasid al-Shariah*. Thus, it is suggested that FCPO should promote *maqasid al-Shariah* in its holistic direction. The legality of a financial contract is judged from the contract (*aqd*) aspect and equally important is on its economic and social impacts to the society.

Keywords: Crude palm oil, futures, Islamic hedging, *maqasid al-Shariah*, derivatives.

INTRODUCTION

Market risk is the possibility of a company experiencing losses arising from movements in market prices. Market risk comprises equity price risk, interest rate risk, currency risk and commodity price risk (Amine, 2008). Islamic financial institutions, like their conventional counterparts, are exposed to a wide array of risks, which may broadly be classified into credit risk, liquidity risk, market risk and operational risk (Khan & Ahmed 2001). One area where

Islamic financial product development is delayed is in risk management, which involves derivative instruments used for hedging various types of risks. Thus, one of the best-known risk management mechanisms is the futures contract (Ghoul, 2008). Futures contracts are the most widely used tool to manage commodity risk. While these risks cannot be completely removed by diversification, it can be reduced by hedging. It is clear that market risks are real risks which cannot be overlooked, so it is compulsory for Islamic finance to effectively tackle these two types of risk. The importance of the futures contract has been increasing since the instrument has been used to hedge against price movements. Although Shariah scholars agree that derivative contracts are permissible as part of risk management, the tools are to be used purely for hedging purposes. Hence, Islamic financial institutions must ensure that all of their transactions are Shariah-compliant, not only in their forms and legal technicalities, but also in their economic substance which should be premised on the objectives outlined by the Shariah (Asyraf Wajdi & Bouheraoua 2011).

Contemporary practice of Islamic finance has been criticised for not achieving the *maqasid*. The debate surrounding the practice of Islamic finance has led to the division between Shariah-compliant and Shariah-based Islamic products. Thus, contracts used by Islamic financial institutions should fulfil the form and substance of the Shariah. Contracts that have illegal outcomes in substance or violate legal maxims are contrary to the spirit of Shariah principles. Many Islamic products are controversial as these use several contracts which may be separately legal but when taken together produce outcomes that are in substance similar to prohibited transactions. As such, some Shariah scholars reject the products that focus on the form and ignore the substance (Ahmed, 2011).

Despite the fact that risk management is permissible in Islam, the presence of gambling and speculation in hedging instruments is forbidden. Therefore, when the Shariah Advisory Council of the Malaysian Securities Commission (SAC) (1997) resolved that the crude palm oil futures contract (FCPO) is permissible as it is in accordance with Shariah principles, thus, the issue arises as to what extent the Malaysian FCPO as a hedging tool can fulfill the *maqasid al-shariah*? In developing Islamic finance, what is important is legal compliance, ethical commitment and the systemic goal of establishing an Islamic financial system. The meaning of Shariah compliance should not be reduced to it being only a means of complying with the legal-contractual arrangement. Instead, it should also mean complying with the Islamic ethical system and pursuing the objective of Shariah. Thus, this paper examines these challenges through a concept of the *daruriyyah*, the *hajiyyah* and the *tahsiniyyah* in the *maqasid al-shariah*. This paper will begin with a brief discussion on the concept of the *maqasid al-shariah*. Then, the FCPO will be analysed based on their fulfillment to the level of *daruriyyah*, the *hajiyyah* or the *tahsiniyyah* based on the established framework. A brief conclusion is offered in the final section.

METHODOLOGY

The qualitative research design selected involves literature research. Data for this study was collected from various sources, namely classical books, contemporary books and journals. The interview was carried out to understand the real *modus operandi* of the Malaysian FCPO. A sample of the study is Malaysian FCPO. The key persons that were interviewed are an expert in the Islamic jurisprudence, a Shariah advisor and practitioners in Islamic Finance in Malaysia. Data analysis method used in this study is by the approach of inductive and descriptive method.

CONCEPT OF THE *MAQASID AL-SHARIAH*

Shariah principles can best be understood from the angle of what they are destined for, namely its purposes and the *maqasid al-Shariah* (Saiful Azhar, 2006; Rahmatina & Ahmed, 2015). *Maqasid al-shariah* is the key to better understanding the Shariah in its true sense. The study of *maqasid* is extremely important in Islamic Law as the main purpose of the revelation is to accomplish benefits (*maslahah*) and uphold justice for mankind (Aznan, 2011). Al-Ghazali (1937) defines *maqasid al-shariah* as the “promotion of the well-being of the people, which lays in preservation their faith (*din*), their self (*nafs*), their intellect (*'aql*), their lineage (*nasl*) and their wealth (*mal*)”. *Maqasid al-shariah* is normally classified according to levels of *maslahah*, beginning with the essentials (*daruriyyah*), the needs (*hajiyyah*), and the embellishments (*tahsiniyyah*). The essential interests can be defined as things which are vital to human survival and wellbeing such that their ‘destruction’ will threaten the normal order of life in society.

According to Al-Ghazali (1937), *daruriyyah* (necessity) are the objectives which are a must and are basic for the establishment of welfare in this world and the world hereafter in the sense that if they are ignored, then coherence and order cannot be established, *fasad* (chaos and disorder) will prevail in this world, and there will be obvious losses in the world hereafter. *Daruriyyah* relates to five things: protection of faith (*din*), protection of life (*nafs*), protection of posterity (*nasl*), protection of property (*mal*), and protection of reason (*'aql*). Shatibi (1975) opines that these five protections are *daruriyyah* for the establishment of welfare in this world as well as in the world hereafter. *Solah*, *zakah*, fasting and hajj are the elements that are vital for the maintenance of the very existence of faith (*din*).

The needs or complementary interests (*hajiyyah*) can be seen as benefits which are strived for to remove severity and hardship that do not lead to serious threats to the survival of normal life. All such provisions of Shariah which aim at facilitating life and removing hardship are said to fulfill *hajiyyah* (requirements). Examples of Shariah provisions that aim at facilitating life or removing hardships in life in this world are the approval of *qirad* (profit sharing through borrowing) and *musaqat* (sharecropping). Meanwhile, embellishment (*tahsiniyyah*) can be viewed as things that seek to achieve refinement and perfection in the conduct of people at all levels of achievement. *Tahsiniyyah* is meant to certify better utilization, beautification, and the simplification of *daruriyyah* and *hajiyyah* (Shatibi, 1975).

Therefore, innovation in Islamic finance and all activities to test the legality of a new product must readily comply with the purpose of the Shariah, whether it meets the level of *daruriyyah*,

hajiyyah or *tahsiniyyah*. Islamic financial institutions can match their products and commercial viability more accurately to the demands of Islamic ethics and morality and hence justice (*'adl*). Discussions on the *maqasid* indicate that any risk to property must be resolved or efficiently curbed. If it is likely to bring about a major loss, it should be suggested that the contract is cancelled. This is demonstrated in the realisation of *maslahah* (public interest), which the Islamic scholars have commonly considered to be the all-pervasive value and objective of the Shariah (Asyraf Wajdi & Bouheraoua 2011).

FINDINGS AND DISCUSSIONS

The Shariah Advisory Council of the Malaysian Securities Commission (SAC) resolved that FCPO is permissible as their trading regulations have overcome Shariah prohibitions, namely gambling, *gharar* (uncertainty), buying something that does not exist (*bay' ma'dum*), speculation, and there being no exchange of goods (*'iwadh*). The SAC thus resolved that FCPO is in accordance with the Shariah so long as it is free from the elements of *riba* and gambling. FCPO is a crude palm oil futures contract traded on Bursa Malaysia Derivatives. FCPO provides market participants with a global price benchmark for the Crude Palm Oil Market since October 1980 in the Commodity Futures Exchange and has become the reference point for market players in the edible oils and fats industry (Bursa Malaysia 2014). Any contract must go through a comprehensive analysis process to determine the benefits and risk or harm contained in it before it is executed. It can be understood from the *maqasid* perspective, which begins with *daruriyyah*, *hajiyyah* and *tahsiniyyah*. In light of the above discussion on *maqasid*, the FCPO has not achieved the level of *daruriyyah* and *tahsiniyyah*. Without FCPO, it will not lead to the chaos and collapse of the normal order of society. In fact, there are alternative contracts in risk management which are not disputed by scholars. Thus, FCPO is analysed to the second level of the *maqasid*, known as *hajiyyah*. FCPO will not be analysed to the level of *tahsiniyyah*. According to al-Ghazali (1937), *tahsiniyyah* is not entitled to be an argument or consideration for Shariah rulings unless there is specific evidence that points to it.

The Shariah validates certain contracts because of the people's need for them, such as *bay salam* (advance purchase), *hawalah* (transfer of debt), *istisna* (advance purchase of goods or buildings) and *ijarah* (lease). Islamic law looks at *hajah* or public need as one of the measurements in determining the legality of sale and purchase contracts. Without *hajah*, man will face hardship, although his life will not perish. For example, *hawalah* is permissible although it is against the *qiyas* (the original *hukm*) because there is a *hajah* towards it (Al-Suyuti, 1994; Haydar, 1991). Even so, there are contracts which contain the elements of *gharar* which are permissible due to the *hajah* for it, namely the *bay' salam*, *bay' istisna'*, *ijarah*, *bay' wafa'* (sale and buy-back), *khiyar al-syarat* (option that constitutes a condition stipulated in the contract), and *khiyar al-ta'yin* (option of determination) (Zarqa' 1994). Although the scholars acknowledge the ruling of *hajah* in the sense of it being one of the reasons that will lighten the law, the *hajah* is still subject to specific parameters (*dawabit*) so that the *hajah* will fulfill the dispensation granted by the *shara'*. There are six parameters formed by Lokmanulhakim (2015)

to be parameters of *hajah*. If the FCPO meets these parameters, then the contract is considered as accepted or vice versa. The following is the analysis based on the parameters below:

1. The Hajah Should Conform to the Maqasid al-Shariah.

According to Shatibi (1975) and al-Salam (1994), *hajah* must be suitable and conform to the *maslahah* desired to be formed by the *shara'* because the *Shariah* is built for the benefit of the *ummah* and rejecting harm. Protecting an asset is essential in the *maqasid al-Shariah*. For instance, *ijarah* is permitted because there is *hajah* towards the contract. However, *ijarah* is not allowed for benefits that are against the *shara'*. The *maqasid al-Shariah* will likewise guarantee that a Shariah compliant contract will give benefit and repulse harm (*madarra*). In the event that the harm is still obvious in the new Islamic financing item, it must be eliminated or else the contract will not mirror the genuine standards of Islam (Saiful Azhar, 2006). There is a need for producing companies, manufacturers, packagers and manufacturers of palm oil based products to hedge from the price risks of crude palm oil. Efforts in managing and reducing risks are permissible by the Shariah and are in line with the objectives of Shariah which specifically place one of its objectives as protecting wealth from any harmful exposure.

Futures contracts are a reality in the global financial markets today. On the positive side, futures contracts are tools for managing and distributing risk, but, on the negative side, they can be used for speculation, which is a form of gambling that compounds risk instead of reducing it (Jobst, 2013). Current practices of FCPO such as mark to market and close out give more chances for speculators to make profits. It has somewhat deviated from the historical and original purpose of this contract. According to al-Suwailem (2006), to fulfil the requirement of the *maqasid al-Shariah*, hedging activities through futures contract is only for the purpose of managing risk. Obaidullah (2005), maintains that even though hedging activities is permissible in Islam and brings benefits to the society, the presence of gambling and speculation in a hedging instrument is forbidden. Thus, the issue is the underlying aspect of the instrument as a means used to achieve the goal. Even though the purpose is permitted by Shariah, if the tool involves betting and gambling then it is forbidden as the means do not justify the end (Azlin Alisa & Mustafa Afifi 2014). According to Noor Suhaida (2013), even though the SAC argues that speculation is different from gambling, in reality, however, futures speculation is different from speculation involved in a typical commercial sale and purchase transactions. Futures speculation does not involve the intention or act of taking or making a delivery, nor any connection with the production or use of the commodity. What is being gained is the differential payment, taken from the account of the loser and given to the account of the winner. Even though a commodity is not involved, the speculators make a profit if they bet on the future movement of the commodity price.

In addition to this, the purpose of a contract in Islam is for the purpose of ownership. However, physical delivery of FCPO is less than 3%. This is contrary to the purpose of the contract (*muqtada*) which is done to receive and deliver the goods (Ahmad Suhaimi 2011; Aznan 2011b). It shows that the contract does not result in real transactions where ownership of the

commodity is transferred from one party to the contract to another. Effectively what happens is that money changes hands at the end of the contract (Ghoul 2008). Thus, FCPO does not meet the parameters of this *hajah* and cannot be applied as an exemption in leniency of *hajah*.

1. Determination of *hajah* must be based on *al-Quran, Sunnah, or ijtihad*.

Futures are a new contract in Islam, yet *fiqh* literature on contracts does not quite provide a Shariah-approved contract on which derivatives can be modelled. There are disagreements among Shariah scholars on the permissibility of futures contracts. Therefore, Shariah scholars vary on the permissibility of futures contracts. Islamic Fiqh Academy Jeddah (1992) resolved that, even if the commodity futures contract engenders benefits, viewed as public interest, its contract is accompanied by transactions forbidden in the Shari'ah. Contrary to the above resolution, the Shariah Advisory Council of the Malaysian Securities Commission (SAC) (1997) resolved that the crude palm oil futures contract was in accordance with Shariah principles. Similar to the Jeddah-based Fiqh Academy, the European Council for Fatwa and Research (2003) resolved that the commodity futures contract traded in the regulated market was not permissible. The Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) (2010) issued a similar ruling. Despite the Fiqh Academy, SAC, European Council for Fatwa and Research and AAOIFI endorsed their resolution base on their *ijtihad*, it can be concluded that majority of scholars reject the futures contract. Thus, it follows that by their resolutions, the futures contract is not Shariah-compliant. Despite the fact that their resolutions were on commodity futures contracts and not precisely on crude palm oil futures contract, their resolutions are still applicable as crude palm oil futures fall squarely within the remit of commodity futures. Thus, it can be concluded that the FCPO does not fulfill this parameter of *hajah*.

2. The *Hajah* Should Conform to the *Maqasid al-Shariah*.

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3. *Hajah should refer to the removal of a hardship or situation affecting most people which is difficult to avoid.*

Abd al-Salam (1994), explained that the difficulties could provide for stronger legal relief. Meanwhile, medium difficulty has different stages. If it approaches a strong level of difficulty, then it is given legal waivers. The purpose of such an excuse is to facilitate the carrying out of daily activities. Without such an allowance, the interests of the public will be affected, especially when it involves the control of property and trade as well as social stability. As discussed above, the FCPO is an alternative to the cash market. Based on these parameters, *hajah* towards the FCPO is not up to the situation of affecting most people as it only involves players in the crude palm oil industry. In the industry of crude palm oil, the fluctuation of price in the future can help the producers to plan the production of crude palm oil due to price uncertainty in the cash market. Compared to selling the crude palm oil in the cash market, the palm oil producers and manufacturers will face difficulty if there is no demand for the palm oil during that time. Producers of palm oil will be exposed to the price drop in the future and the possibility of there being no demand. The manufacturers will be exposed to the price rise and the possibility of source scarcity. Futures contracts help both parties in hedging and planning business activities. Hence, futures contract offers an alternative for managing risks and hedging for parties involved in the industry of the palm oil commodity.

Besides that, *hajah* towards FCPO is not difficult to avoid. This is also due to the availability of alternative contracts, such as the forward contract. FCPO evolved as a result of problems with the forward contract. Standardization of contract size, maturity, product quality and place of delivery in the futures contract allows trading on an organized exchange and overcomes the problem of the double coincidence of wants and pricing mechanism biases in the forward contract (Bacha, 2007). However, the player in the industry can choose a forward contract if they want a more customised contract. The validity of the FCPO is one of the exemptions which has a restriction, which is when there is no other better or equal alternative compared to this contract. When there is another alternative, this contract is not difficult to avoid. This is because leniency due to *hajah* is given when there is no other option for hedging other than to practice the futures contract.

4. *Leniency based on hajah can be applied to prohibited things which are based on wasilah (means) and not prohibited things which are based on maqasid.*

A contract that was banned which is based on *wasilah* (means) is allowed if there is a strong benefit (Ibn al-Qayyim, 1993). For example, interest based contracts are prohibited on the grounds of *maqasid*. Meanwhile, a prohibition based on *wasilah* (means) is transacting at the time of the call of the adhaan for the Jumu'ah prayer. Wilson (1991), observes that futures are viewed as potentially corrupting by modern specialists in Islamic finance. Such transactions may

be prompted by the desire to hedge or gain from arbitrage which is, admittedly, quite different from speculation. The problem, however, is that it is the speculators who provide liquidity in the market for such activities. Those who participate in hedging or arbitrage are therefore indirectly benefiting from and, to some extent, encouraging speculation. One of the most important arguments against derivatives is that they promote speculative activities in the market. It has been observed from different financial markets throughout the world that hardly one or two per cent of traded derivative instruments are settled by actual delivery of the underlying assets (Jobst 2013).

Therefore, speculation has become the primary purpose of the existence, evolution and growth of futures. Sometimes these speculative trading practices by professionals as well as amateurs adversely affect genuine producers and traders. Some financial experts and economists believe that speculation causes the better allocation of resources, reduces fluctuations in prices, restores equilibrium between demand and supply, removes periodic gluts and shortages and thus brings efficiency to the market. Obaidullah (2000), opines that hedging is quite in conformity with Islamic rationality but hedging with derivatives is fraught with grave dangers since large-scale speculation is now made possible with derivatives.

Speculation in the derivatives market is done because of profit and not to assist trading or real business activity, and the real delivery of the underlying asset rarely occurs. The danger of excessive speculation has been well known, such as in relation to currency and financial crises and recently with the oil price hike (Mohamad & Tatabaei 2008). Based on *maqasid*, anything that can cause a bad implication is prohibited. Therefore, FCPO could lead to speculative activities that are prohibited and are included in the prohibited contract which are based on *maqasid*.

5. Leniency based on *hajah* has its limitation and is allowed only according to its degree.

The condition of urgency is determined by its degree (Ibn Nujaym, 1969). This condition is permitted only to its degree, without exaggeration. According to Shibir (2001), the position to the degree of application of *hajah* is similar to the position of *darurah*. This parameter refers to permissible leniency only for the purpose of hedging and this is carried out just in the primary market. The main purpose of a futures contract is to hedge against price movement in crude palm oil in the market. For instance, crude palm oil producers manage the risk of price movements by the activity of hedging. The price of crude palm oil will fluctuate in the future. Hence, a futures contract can act as insurance that assists a company in dealing with price changes in the future.

The original purpose and history of this contract is for the purpose of hedging. However, it is also accompanied by speculators and arbitrage in order to make a profit (Kunhibava 2010). It reveals the participation of market speculators entering the market solely to profit from the price difference but with the number of trades in derivative contracts exceeding the actual value contained in the cash market (Danila & Jeffers 2009). Futures contracts allow close out activities, which are when contracting parties close the contract by changing the position from

long to short and vice versa. Therefore, this contract is not limited to transactions on the primary market only, but it is also traded on the secondary market. If the contracting parties do not close the contract before maturity and are willing to give the crude palm oil or the palm oil is received, then the transaction is just the primary market. However, according to the prevailing customs, the physical delivery applies to only less than 3% in Bursa Malaysia. Therefore, transactions in the primary market are less than 3% (Mazlan, 2012). It shows the events that occur in the secondary market are dominated by transactions in futures contracts. Thus, the futures contract is then considered as not fulfilling the parameter of *hajah* if done to gain profit per se without intention to deliver the commodity. The permissibility is only for the primary market and not for secondary markets (Zaharuddin, 2011).

6. Application of *hajah* does not lead to the elimination of the rights of others.

The application of *hajah* does not give the right to take the property of others (Shafie 2001). In the event of taking the property of another in such circumstances, the rights of others have to be returned. Futures contract are zero-sum games by design, which means that one person's gain is another's loss. According to Chapra (1988), Khan (2008), Obaidullah (2001) and Usmani (1999), futures is a zero-sum game when both parties are only interested in price changes when closing the contract before maturity (close out) and the calculation of margin based on market prices (mark to market). In this process of mark to market, the contract price will be matched with the current price to calculate a margin account status of either profit or loss (Durbin 2006). This calculation will make the contracting parties make a profit or loss based on the current market price of crude palm oil. So, the reality of the contract is that the commodities are just a means for gambling and gaining profit. Although there are no Shariah restrictions to profit being the same as interest rate, it leads to other *mafasid* which do not comply with the *maqsad* (objective) of eliminating injustice, inequality and poverty, which were primary goals behind the elimination of *riba*.

Speculation in the derivatives market is not to facilitate trading or a real business activity as the actual delivery of the underlying asset seldom occurs. This kind of speculation can be highly weakening and may distort the demand and supply conditions of the real economy. Islam has pointed out several elements which need consideration for a more stable and efficient financial system. They will fall into hardship, asperity and hazardous situations that could result in bankruptcy and losses. Speculative activities have been alleged to improve liquidity in the financial markets; however, this benefit is insignificant considering the high degree of risk involved. Thus, futures do not add much value to society and are prohibited in Islam (Hammad 2007). Noor Suhaida (2013), also opines that the distortion of FCPO affects the social well-being of society. Excessive speculation distorts the useful function of the futures contract and the real supply and demand of commodities. It contributes to the unnecessary and substantial increase in the price of food commodities. This leads to an increase in the number of poor, undernourished, people and hence food insecurity in the world.

In fact, Shariah scholars additionally indicate the highly leveraged derivatives market and the trading volume of derivatives to be much larger than the underlying asset size, demonstrating the highly speculative nature of the market. It includes the sale of debt and promises and it will lead to the creation of many layers of leverage activities which expose investors to very high risks. The findings are consistent with Aznan (2011b) and Ahmad Suhaimi's (2011) view that FCPO contracts could lead to harm, compared to the benefits that can be derived from it. Therefore, FCPO leads to the elimination of the rights and invites harm and injustice to others.

CONCLUSIONS

On the scale of *maqasid al-Shariah*, Malaysian FCPO does not fulfil all the parameters or standards set by the *maqasid*. Hence, it creates a *mafsadah* and prevents the upholding of the *maqasid* as is required. Even though the SAC has approved the contract, when the issue is examined from the contract (*'aqd*) perspective alone, it is found to overlook the purpose of the Shariah and is hence unable to repel the harm it is initially intended to do. If the contract is found to be valid (*sahih*) from the contract perspective but has been shown to be harmful to the society, it should be reviewed in juristic terms. If it can be proven that futures contracts are free from harm, then it should be permissible in Islamic finance. When the contract has failed to prevent harm, it defeats the very purpose of the Shariah.

Apparently, the most important aspect which differentiates hedging instruments in the Islamic financial system compared to the conventional system is the need for these tools and operations to comply with all the principles of the Shariah. Although the implications and economic effects of these products introduced in the Islamic financial system seem to be very similar to those of conventional products, what is more important is that the substance of the structure must be in line with the principles and objectives of *maqasid al-Shariah*. Hence, the SAC needs to review its resolution on FCPO and should not focus only on the structure or validity of a contract but also focus on conforming to the principles of *Maqasid al-Shariah*. This is to avoid any deviation or abusive use of this instrument for a purpose that is not allowed in Shariah, such as for speculative reason.

Therefore, based on this discussion, it can be concluded that the objection and criticism of the Malaysian FCPO is mainly due to the potential abuse of speculation and the violation of the Islamic tenets of distributive justice and equal risk sharing. Apart from the purpose of hedging, a futures contract can also be used for speculating on price movements that can generate unearned income. When used for speculative purposes, futures contracts involve intentional risk-taking, the risk of loss is usually significant, and it can be avoided. Thus, speculation violates the requirements of tolerable risks. The purpose of Shariah and the judgments of contracts should not clash with each other. If it does, the *maqasid* shall stand above the rulings of contracts. This is because the former is based on the Divine Law while the latter is founded on human understanding (*fiqh*). While consolidating the theories that Malaysian FCPO does not fulfil all the standards set by the *maqasid*, this study has several limitations. Future studies should explore into a wider geographical area of FCPO would have been preferable for

generalizing the results. Sampling should include FCPO in other parts of world. Thus, more convincing conclusions could be made.

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REFERENCES

- 'Ab al-Salam, 'I. D. (1994). *Qawa'id al-Ahkam fi Masalih al-Anam*. Dimashq: Dar al-Qalam.
- Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). (2010). *Al-Ma'yir al-Syar'iyyah 1431H-2010*. Bahrain: AAOIFI.
- Ahmad Suhaimi, Yahya. Head of Shariah Department, Kuwait Finance House (Malaysia) Berhad. Interview on 11 Ogos 2011.
- Ahmed, H. (2011). Maqasid al-shari'ah and Islamic financial products: a framework for assessment. *ISRA International Journal of Islamic Finance*, vol. 3, 1, pp. 149-160.
- Al-Amine, M. B. M. (2008). *Risk Management in Islamic Finance: an Analysis of Derivatives Instruments in Commodity Markets*. Leiden: Brill's Arab & Islamic Law Series.
- Asyraf Wajdi, D. & Bouheraoua, S. (2011). Framework of maqasid al-shari'ah and implication for Islamic finance. *Islam and Civilisational Renewal*, vol. 2, 2, pp. 316-336.
- Azlin Alisa, A. and Mustafa Afifi A. H. (2014). The concept of hedging in Islamic financial transactions. *Asian Social Sciences Journal*, vol. 10, 8, pp. 42-29.
- Aznan, H. (2011a). *Fundamentals of Shariah in Islamic Finance*, Kuala Lumpur: IBFIM
- Aznan, H. (2011b). Advisor of Malaysian Exchange, Bursa Malaysia. Interview on 26th October.
- Roslan, A. (1998). A study on the use of crude palm oil futures as an effective hedging tool for the Malaysian palm oil producers and refiners. *Asian Academy of Management Journal*, vol. 3, 2, pp. 33-44.
- Bacha, O. I. (2007). *Financial Derivatives: Markets and Applications in Malaysia*. Kuala Lumpur: MacGraw Hill Education.
- Bacha, O. I. (1999). Derivative instruments and Islamic finance: some thoughts for a reconsiderations. *International Journal of Islamic Financial Service*, vol. 1, 1, pp. 1-34.
- Bursa Malaysia Berhad. Crude Palm Oil (FCPO) Futures. (2014). Kuala Lumpur: Bursa Malaysia Berhad.
- Chapra, M. U. (1988). Towards an Islamic financial system. *Journal of Islamic Economics*, vol. 1, 2, pp. 1-30.
- Danila, N. & Jeffers E. A. (2009). Derivatives: an Islamic perspective. *Journal of International Finance and Economics*, vol. 9, 3, pp. 83-90.
- Durbin, M. (2006). *All About Derivatives: The Easy Way to Get Started*. New York: McGraw-Hill.
- European Council for Fatwa and Research, Final statement of the twelfth Ordinary 6-10 Zulqaidah 1423 H (2003), Retrieved from <http://www.e-cfr.org>, 5 Ogos 2010.
- Al-Ghazali, A. H. (1937). *al-Mustasfā min Ilm al-Usul*. Cairo: al Maktabah al- Tijariyyah al-Kubra.

- Ghoul, W. (2008). Risk Management and Islamic Finance: Never The Twain Shall Meet?. *Journal of Investing*, vol. 17, 3, pp. 96-106.
- Hammad, N. (2007). Compensation for an obligation to sell currency in the future (hedging). *Chicago Journal of International Law*, vol. 7, 2, pp. 521-536.
- Haydar, 'A. (1991). *Dur al-Hukkam Sharh Majallah al-Ahkam*. Beirut: Dar al-Kutub al-'Ilmiyyah.
- Lokmanulhakim, H. (2015). Prinsip Hājah yang Diberikan Kedudukan Ḍarūrah dan Aplikasi in Kewangan Islam Muzakarah Cendekiawan Syariah Nusantara Ke-9 "Inovasi Produk Kewangan Islam Kontemporari Ke Arah Pembangunan Sosio-Ekonomi Ummah" 10-11 Jun 2015, Hotel Millennium, Jakarta, Indonesia
- Ibn Nujaym, Z. I. (1969). *Al-Ashbah wa al-Naza'ir*. Kaherah: Mua'ssasih al-Halabi.
- Ibn Qayyim al-Jawziyyah, M. A. (1993). *I'lam al-Muwaqī'in 'An Rabb al-'Alamin*. Beirut: Dār al-Kutub al-'Ilmiyyah.
- Jobst, A. A. (2013). Derivatives in Islamic finance: there is no right way to do the wrong thing—opportunities for investors. *The Journal of Investing*, vol. 22, 1, pp. 7-21.
- Noor Suhaida, K. (2013). *Maysir in the Crude Palm Oil Futures Contract: A Critical Analysis of the Resolution of the Malaysian Securities Commission Shariah Advisory Council*. Kuala Lumpur: ISRA.
- Khan, M. A. (2008). Commodity exchange and stock exchange in an Islamic economy, in Sheikh Ghazali Sheikh Abod *et.al* (eds.), *An Introduction to Islamic Economics & Finance*. Kuala Lumpur: Cert Publications Sdn. Bhd. 391-394.
- Khan, T. & Ahmed, H. (2001). *Risk Management: An Analysis of Issues in Islamic Financial Industry*. Jeddah: Islamic Development Bank-Islamic Research and Training Institute, Occasional Paper (no. 5).
- Sherin, K. & Balachandran, S. (2010). Shariah and conventional law objections to derivatives: a comparison. *Arab Law Quarterly*, vol. 24, 4, pp. 319-360.
- Majma' al-Fiqh al-Islami. (1992). *Majallat Majma' al-Fiqh al-Islami*. Jeddah: Majma' al-Fiqh al-Islami.
- Mazlan, Yahya. Head of Operasion & Risk Management, Bursa Malaysia. Interview on 26 April 2012.
- Mohamad, S. & Tatabaei, A. (2008). Derivatives in Islamic financial markets: hedging or gambling?. Islamic Law and Law of the Muslim World Paper No. 08-47. 21st Australian Finance and Banking Conference. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1260110.
- Obaidullah, M. (2000). Islamic risk management: towards greater ethics and efficiency. *International Journal of Islamic Financial Services*, vol. 3, 4.
- Rahmatina, K. and Ahmed, H. (2015). Assessing Socio-Economic Development based on Maqāsid al-Sharī'ah Principles: Normative Frameworks, Methods and Implementation in Indonesia. *Islamic Economic Studies*, vol. 23, 1, pp. 73-100.
- Saiful Azhar, R. (2010). Shariah parameters reconsidered. *International Journal of Islamic and Middle Eastern Finance and Management*, vol. 3, 2, pp. 132 – 146.
- Securities Commission. (2006). *Resolutions of the Securities Commission Shariah Advisory Council*. Kuala Lumpur: Securities Commission

- Shaf'i, A. M. (2001). *Al-Umm*. Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Shatibi, I. (1975). *Al-Muwafaqat fi usul al-Shariah*. Cairo: Al- Maktabah al-Tawfiqiyah.
- Shibir, M. U. (2001). *Al-Mu'amalat al-Maliyah al-Mu'asirah fi al-Fiqh al-Islami*. Urdun: Dar al-Nafa'is.
- Suwailem, S. (2006). *Hedging in Islamic finance*. Jeddah: Islamic Development Bank, Occasional Paper (no.10).
- Suyuti, J. 'A. (1994). *Al-Ashbah wa al-Naza'ir*. Beirut: Dar al-Kutub al-Ilmiyyah.
- Usmani, M. T. (1999). What shariah experts say. *International Journal of Islamic Financial Services*, vol. 1, 1, pp. 1-3.
- Wilson, R. (1991). Islamic Financial Instruments. *Arab Law Quarterly*, vol. 6, 2, pp. 205-214.
- Zaharuddin, A. R. Lecturer of Economics and Management Science Faculty, International Islamic University of Malaysia. Interview on 24th June 2011.
- Zarqa', M. A. (1994). *Nizam al-Ta'min: Haqiqatuuh, wa al-Ra'yu al-Syar'i fihi*. Beirut: Mu'assasah al-Risalah.