

The Importance of Applying *Maqashid al-Sharia* in The Islamic Financial System

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Abstract

Maqashid al-sharia is a relevant approach as the basis for developing Islamic financial systems, operations, and products. The *maqashid al-sharia* holistic order is a light for the development of the Islamic financial system, especially in answering the dynamics of questions based on benefit. The Islamic financial system is part of the prerequisites that must be developed, not only at the conceptual level but also practically. Islam has provided comprehensive textual sources in providing human-first boundaries. But that alone is not enough, if it is not balanced with social inference. *Maqashid al-sharia* theory in the study of the Islamic financial system is a step forward in developing the most ideal Islamic economic model. This is because *maqashid al-sharia* can be used as a tool to help solve Islamic economic problems, especially in establishing rules or laws.

Keywords: *Maqashid al-Sharia*, Islamic financial system.

1. INTRODUCTION

The dynamics of the Islamic economy in Indonesia to date continues to experience quite rapid development. This development can be proven by the presence of a number of sharia-based financial institutions, including both bank and non-bank financial institutions. Apart from the aspect of financial institutions, there are other broader aspects of the economy that fall into the macro and micro areas.

The presence of Islamic financial institutions, in essence, was developed as a responsive and alternative form of Islamic economic solution to the conventional economic system which has been considered incapable of dealing with economic problems that tend to increase and vary. So that in solving these problems a main goal of Islamic economics is formed, namely to achieve and realize the welfare of the people, which is not only the goal of life in this world but also in the hereafter. Based on this goal, *maqashid al-sharia* is the main support for Islamic economics, including in the implementation of the Islamic financial system.

As agreed by ushul fiqh scholars, that *maqashid al-sharia* is a major requirement in ijihad, especially in relation to answering economic problems and the financial system that continues to develop today. The existence of *maqashid al-sharia* is not only needed to

formulate macroeconomic policies (public finance, fiscal and monetary), but can also create an Islamic financial system.

Ahcene Lahsasna argues that *maqashid al-sharia* is the most important concept in strengthening the current concept of Islamic finance. This is intended so that the activities of Islamic financial institutions can implement the concept of sharia. For this reason, proper understanding is needed regarding the concepts, features, principles and categories of *maqashid al-sharia* in order to be applied (Ahcene Lahsasna, 2013). Perhaps this is similar to what Kuntowijoyo wanted with five reinterpretation programs, especially the third program, namely changing normative Islam into theoretical ones. That way, the concept of sharia is able to become a theory that can be implemented, especially in the financial sector (Kuntowijoyo, 1998).

Likewise, *maqashid al-sharia* is indispensable in terms of making regulations on the Islamic financial system. So *maqashid al-sharia* is not only the most decisive factor in producing sharia economic products but can also play a dual role as a means of social control and socio-economic engineering in order to realize the benefit. In addition, *maqashid al-sharia* can provide a philosophical and rational dimension to sharia economic law products that are born from contemporary sharia economic *ijtihad* activities. That way, *maqashid al-sharia* will ultimately create a rational, substantial and transformational mindset in viewing contracts and products of the Islamic financial system.

It is through the *maqashid al-sharia* approach that the products of the Islamic financial system, both banking and other Islamic financial institutions, can develop well, which in turn can respond to changing economic developments. Therefore, Ahcene Lahsasna in this case emphasizes that one of the general goals of *maqashid al-sharia* is to build ethical principles in every aspect of life, including in the economy and business activities. In Islamic finance, at least there are several codes of ethics that must exist, namely: truth and honesty, integrity, sincerity, responsibility and accountability (Ahcene Lahsasna, 2013).

2. LITERATURE REVIEW

Basic Concepts of *Maqashid al-Sharia*

Definitively, *maqashid al-sharia* () consists of the words *maqashid* and *al-sharia*. The word *maqashid* is the plural of the word *maqshad* which means intent and purpose. While the word *al-sharia* () means law (decrees of Allah SWT and the Prophet Muhammad SAW, as well as the results of *ijtihad* scholars (Syarifuddin, 2008). Another definition of *sharia* is all laws and rules set by Allah SWT that must be implemented or followed, in the pattern of the relationship between humans and Allah SWT, the relationship between humans and humans, and the relationship between humans and nature/environment (Fathurrahman, 2013). From these two understandings, thus, *maqashid al-sharia* means what is the intent, purpose and desire of Allah SWT in establishing the law (Syarifuddin, 2008). Another opinion defines *maqashid al-sharia* as the intent or purpose of Islamic law (Djamil, 2013).

In the context of the study of the science of Usul Fiqh, that *maqashid al-sharia* contains a similar meaning to the word *al-hikmah* (), which has the meaning of the purpose intended by Allah SWT in establishing the law. From the similarity of meanings, Ibn 'Ashur

defines *maqashid al-sharia* as the deep meaning of wisdom (*hikam*), which is considered by lawmakers in relation to all or most of the fields and circumstances in law-making (Isra, 2015). In contrast to Riyad Mansur al-Khalifi's opinion that *maqashid al-sharia* are the meanings and wisdoms desired by the makers of the *sharia*, namely Allah SWT in determining the law for the benefit of mankind (Riyad, 2004).

Jasser Auda defines *maqashid al-sharia* in 4 meanings, namely: (1) wisdom behind a law; (2) a good end goal to be achieved by law; (3) the group of divine goals and moral concepts that form the basis of the law; and (4) *Mashalih*. But according to Jasser Auda, the values and principles of humanity are the main points (Galuh Nasrullah, 2014). Meanwhile As-Syatibi in his book *Al-Muwaffaqat*, divides *maqashid* into two main things, namely the purpose of *syari*' (God and the Messenger) and the purpose of humans as taklif objects. As-Syatibi is of the view that all taklif was created to realize human benefit, because none of God's laws have no purpose. So that the emphasis of *maqashid al-sharia* generally refers to the Qur'an that God's laws contain the overall benefit (Ahmad, 1998).

In this context Al-Ghazali put *maqashid al-sharia* into *al-mashalih al-mursalah*, which is used as a method of *istinbhat* (determination) of law with the following conditions: (1) *Maslahah* is in line with the objectives of establishing Islamic law (maintaining religion, soul, mind, property and descendants); (2) *Maslahah* does not conflict with the Qur'an, Hadith and Ijma'; (3) *Maslahat* occupies the level of *dharuriyah* or *hajiyyah* which is at the level of *dharuriyah* (Mas'ud, 1977). Ar-Razi and Al-Amidy agree with Al-Ghazali which connects *mashalih* and *maqashid* with a basic rule (*ushuli*), where the *Sharia* does not accept *al-maqashid* but through authentic goals, namely getting closer to *mashlahah* and away from harm (*mafsadah*) (Auda, 2015). While *maqashid al-sharia* in the eyes of contemporary (contemporary) scholars such as Thahir Ibn Ashur, defines *maqashid al-sharia* as meaning and wisdom that Allah protects against all provisions of *sharia* law and there is no specialization in certain types of *sharia* law (Ar-Risuni, 2002) (Al-Ayyubi, 1998).

In this article, the discussion is more inclined to the definition of *maqashid al-sharia* as the intention of Allah SWT in establishing laws for the benefit of mankind in the world and the hereafter. So it can be taken a fundamental emphasis that the main purpose of *sharia* is to regulate human life and protect its interests and benefits. *Maslahah* in an Islamic perspective means what is good and useful in the eyes of *sharia* (Isra, 2015). So if it is based on the main purpose of *sharia*, then there will be thoughts about *maqashid al-sharia* that are in line with the thoughts or propositions of *syara'* and how to use it. Seeking guidance from the Qur'an from various aspects has become the habit of *mujtahids* in dealing with problems that arise. If they do not find what they are looking for, they will look for answers from the hadith of the Prophet SAW. And if both of them are not found, then they try to imitate the way Allah SWT does in determining the law, namely showing the location of the benefit which is then used as a legal stipulation (Syarifuddin, 2008).

Maslahah as the Basis of Maqashid al-Sharia

Etymologically the word *maslahah* means something good or delicious, so that it gives birth to pleasure and satisfaction that can be accepted by reason. Amir Syarifuddin in his book *Usul Fiqh* reveals that the purpose of Allah SWT establishing law is none other than to

provide benefit to mankind in their life in this world, as well as in preparation for the afterlife. In fact, he said that *maqashid al-sharia* is *maslahah* itself (Syarifuddin, 2008). Then if looking at the goals to be achieved from *maslahah* itself, including (Syarifuddin, 2008): (1) Bringing benefits to humans, both for life in this world and in the hereafter; (2) Avoiding humans from harm (danger), both in this world and the hereafter.

Then the target or scope of *maslahah* to be guarded or maintained in its legal determination is divided into five main elements (*al-kulliyat al-khamsah*), which Imam al-Ghazali calls *maqashid al-sharia*, namely (Syarifuddin, 2008):

1. Keeping or maintaining religion () (QS. Az-Zariyat : 56).
2. Keeping or preserving the soul () (QS. Al-Furqan : 68).
3. Keeping or preserving the mind () (QS. Al-Maidah : 91).
4. Keeping or maintaining property () (QS. An-Nisa' : 5).
5. Keeping or maintaining offspring () (QS. An-Nisa : 3).

As-Syatibi divides *maqashid al-sharia* into three levels, namely: *maqashid dharuriyat*, *maqashid hajiyyat*, and *maqashid tahsiniyat*. *Dharuriyat* means that it must exist for the benefit of the servant, if it does not exist, it will cause damage, for example the pillars of Islam. *Hajiyyat* means something that is needed to relieve hardship, such as *rukhsah* (relief) not fasting for sick people. *Tahsiniyat* means something that is taken for the good of life and avoids evil, such as noble character, eliminating uncleanness, and covering the genitals (Yubsir, 2013).

Al-Syatibi's explanation is more or less the same as Syarifuddin's explanation of *maslahah* which is part of the *maqashid al-sharia*, namely (Syarifuddin, 2008):

1. The primary level () is something that is very necessary to be maintained or cared for, and if neglected it results in the non-existence or meaninglessness of life.
2. The secondary level () is something that, if not maintained, does not bring destruction, but only causes difficulties or shortcomings.
3. The tertiary level () is something that should be done because of its benefits or abandoned because it avoids harm.

Muhammad Ayub in his book *Understanding Islamic Finance*, explained that the purpose of *sharia* is the happiness and well-being of humans in the world and the hereafter, and all of that guarantees welfare and fulfills human needs which includes the elements in *maqashid al-sharia*. These goals can be divided into two groups (Ayub, 2009), namely:

1. Primary Goal.

The primary objective to be achieved from *sharia* is the protection and maintenance of: religion, soul (self/life), descendants (family), treasure, intellect (intellectual), honor.

2. Secondary Goal.

From the primary objectives of *sharia*, it leads to several secondary objectives including:

- a. Enforcement of justice and equality in society.
- b. Enhancement of social security, mutual assistance and solidarity, in particular to assist the poor and needy in meeting their basic needs.
- c. Maintenance of peace and security.

- d. Increased cooperation in terms of goodness and prohibition of evil deeds and actions.
- e. The promotion of the main universal moral values and all necessary actions for the preservation and control of nature.

3. RESEARCH METHOD

The research method used is a qualitative approach with a literature review type of research. This is because the object under study is in accordance with the approach to the theme being studied. Informants were selected according to non-purposive sampling and data collection using documentation and interviews. While the data analysis used is triangulation of techniques and sources.

4. RESULT AND DISCUSSION

The Urgency of *Maqashid al-Sharia* in Islamic Finance

According to Abdul Wahab Khalaf, the existence of *maqashid al-sharia* is important because it can be used as a tool in understanding the editorials of the Qur'an and Sunnah, helping resolve conflicting arguments and what is very important is to establish a law in a case where the legal provisions are legal. not listed in the Qur'an and Sunnah when using semantic (linguistic) studies. This is where the importance of *Maqashid al-sharia* in contemporary economic and financial practice, amid the disparity of practice in the Islamic financial system in various countries (Fathurrahman, 2014).

So far, the dominance of classical fiqh as the operational basis of the Islamic financial system is very real and factual. Whereas fiqh is only the result of the creative rationalization of scholars who lived in their day. For example, the various transaction products offered by Islamic banking as the locomotive of the Islamic economic movement, almost all of which refer to the types of contract transactions in classical fiqh. On the other hand, the construction of Islamic economics has been widely adopted from conventional economic theories by making some adjustments. As a result, what is called Islamic economics is nothing more than a collection of conventional economic theories plus fiqh. For this reason, it is necessary to recontextualize fiqh, so that it can remain in line with the dynamics of the times which always give birth to many different problems, including problems related to the Islamic financial system.

In this regard, *maqashid al-sharia* is a relevant approach as the basis for developing systems, practices, and even products from the Islamic financial system in the current multidimensional era. The *maqashid al-sharia* order is considered by the majority of scholars as a clear path for the journey of the Islamic financial system in answering problems, which prioritizes benefit and welfare. Thus, of course, with *maslahah*, the concept of an Islamic financial system actually aims to realize the public interest. Because *maslahah* gives its side not only to individuals, but also to the interests of the wider community. By being oriented to *maslahah*, life can create a just and prosperous society which has far-reaching implications, not only in the material-worldly context, but also spiritual-ukhrawi (Dede Nurrohman, 2010).

Maqashid al-sharia has an important role in developing Islamic economy and finance. The importance of this role refers to the goals of sharia in finance, business transactions and the overall goals of *sharia* for wealth. As already mentioned in the *maqashid* concept, the preservation and protection of wealth is one of the goals of *sharia*, classified in the category of *dharuriyat*. The reasons why *Maqashid al-sharia* is important to use in discussing the concept of finance in Islam are:

1. *Maqashid al-sharia* can be used to determine *maslahah* and *mafsadah* parameters.
2. *Maqashid al-sharia* makes it possible to understand the various levels, objectives of *sharia*, its priorities and categories.
3. *Maqashid al-sharia* also examines the relationship between the two types of *maqashid* in which the *maqashid mukallaf* must obey the *maqashid* of the lawgiver to ensure consistency and *sharia* compliance in human activities.
4. *Maqashid al-sharia* facilitates the muamalah legal reasoning process to be applied.
5. Reasoning in *maqashid al-sharia* becomes the gateway for analogy where *sharia decisions* can be extended to other cases based on the cause.
6. *Maqashid al-sharia* plays an important role to be used as a parameter in assessing *the hadith ahad*.

Implementation of *Maqashid al-Sharia* in Islamic Financial System

Ahcene Lahsasna submitted a resolution for Islamic banking based on the *maqashid al-sharia* concept issued by the Sharia Advisory Council (SAC). He wanted to provide a strengthening of the understanding that Islam through *maqashid al-sharia* can be applied and will produce special goodness. *Maqashid al-sharia* is an important aspect in the development of Islamic law. This is at the same time an answer that Islamic law can and is even very likely to adapt to social changes that occur in society.

In addition, he takes a *maqashid al-sharia* approach by looking at the *maslahah* aspect to consider Islamic financial transactions, including:

1. *Maqashid al-sharia* in utility and work.
2. *Maqashid al-sharia* in securities contracts.
3. *Maqashid al-sharia* in a voluntary contract.
4. *Maqashid al-sharia* in supporting the transaction base.
5. *Maqashid al-sharia* in financial facilities.
6. *Maqashid al-sharia* in Islamic banking.
7. *Maqashid al-sharia* in takaful.
8. *Maqashid al-sharia* in the Islamic capital market.
9. *Maqashid al-sharia* in the Islamic stock market.
10. *Maqashid al-sharia* in financial planning.

In accordance with the principles of *maqashid al-sharia*, the Islamic system focuses on the ethical, moral, social and religious dimensions, to ensure justice, equality, and justice for the good of society as a whole. So in general, the application of *maqashid al-sharia* in the Islamic financial system aims to:

1. Maintaining economic, financial and business stability.
2. Ensuring fairness in business and finance.
3. Nurturing the Principle of Justice.
4. Building contracts/instruments in acquiring property and wealth.
5. Circulation of wealth in the financial system.
6. Preservation and protection of wealth.
7. The right to own and acquire wealth.

8. Transparency in business and finance.
9. Documentation in the field of Islamic finance.
10. Wealth development and investment.
11. Prevent harm and trouble in business and finance.

The application of *maqashid al-sharia* in the Islamic financial system can be exemplified in the review of Islamic bank products and operations:

1. The religion of the customers is preserved.

This is realized by using Islamic banks to use the Quran, hadith, and other Islamic laws as guidelines in carrying out all operational systems and products. Likewise with the Sharia Supervisory Board (DPS) and the National Sharia Council (DSN), which are guarantors for Islamic banks in their operations integrated with Islamic values and rules which in turn can increase trust for Muslims and non-Muslims alike.

2. Maintain the soul of the customers.

This is manifested in the contracts applied in every transaction in Islamic banks. Psychologically and sociologically the use of contracts between parties leads people to respect each other and maintain the mandate given. In addition, this is also realized from the stakeholders and stockholders of Islamic banks where in dealing with customers they are required to behave, dress, and communicate in a polite and Islamic manner.

3. Maintain the minds of customers and the bank.

This is manifested by the demand that the bank must always disclose in detail about its products and are prohibited from covering up any goods. Here it can be seen that customers are invited to think together when making transactions at the bank without anyone being wronged by the bank. In addition, Islamic banks participate in educating customers by providing education or knowledge about bank products.

4. Protect his property.

This is clearly manifested in every product issued by the bank where the bank seeks to maintain and allocate customer funds properly and lawfully and is allowed to take reasonable profits. In addition, it can also be seen from the implementation of the zakat system which aims to clean up customer assets transparently and together.

5. Protect his descendants.

This is realized by maintaining the four things above, so that customer funds that are guaranteed to be halal will indirectly have a positive impact on their families or descendants.

In Islam, every transaction must have a contract in it. The contract carried out has worldly and hereafter consequences because the contract made is based on Islamic law. In Islam, the agreement has responsibility until *yaumul qiyamah*.

5. CONCLUSION

The Islamic financial system is a necessity that must be developed further, not only at the conceptual level but also at the practical level, especially the practice in Islamic financial institutions, both banks and non-banks. For this reason, Islam provides adequate textual sources to limit human behavior, but it is not enough if it is not balanced with social inference. The existence of the *maqashid al-sharia* theory in the study of the Islamic financial system is a step forward in developing the most ideal Islamic economic model. This is

because *maqashid al-sharia* can be used as a tool to help complete the arguments in establishing a law in order to achieve the objectives of the law.

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