

THE IMPORTANCE OF UNDERSTANDING  
THE *MAQASID* OF *SHARI'AH* IN THE DEVELOPMENT  
OF ISLAMIC BANKING AND THE FINANCIAL SYSTEM

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**Abstract**

*This paper will delineate the importance of understanding the maqasid of shari'ah in the development of Islamic banking and the financial system. The objectives of Islamic economics that are in line with the objectives of the maqasid of shari'ah need to be translated into various aspects of wealth acquisition, investment and expenses. There are specific objectives of the shari'ah in relation to financial transactions, such as the establishment of justice to the contracting parties, transparency, proper circulation of wealth and security that are the basis of the prohibitions of fraud, gambling, bribery, and all kinds of prohibitions that may render the transactions to be null and void; hence the incomes generated cannot be recognized.*

**Keywords:** Islamic Banking and Finance, Islamic Financial System, *maqasid of shari'ah*

## 1.0 Introduction

The *maqasid* of *shari'ah* is one of the essential principles of Islamic jurisprudence mostly used by Muslim scholars in the process of choosing and determining the preferred opinion to be adopted (*tarjih*). The importance and objective of the *maqasid* of *shari'ah* is wider in nature in the sense that it can be benefitted as a guideline and parameter for the development of an Islamic state by ensuring that its economic, social and political policies are in line with the principles of *shari'ah*. The application of the elements of the *maqasid* of *shari'ah* in all aspects of life can promote positive values as recommended by the teachings of Islam. The rapid growth of Islamic banking and finance has indirectly stimulated a positive impact on the development of the Islamic economic system.

## 2.0 Definition of the *Maqasid* of *Shari'ah*

Muslim scholars have proposed several definitions of the *maqasid* of *shari'ah* according to the Islamic perspective. Among the definitions are as follows:

Imam al-Ghazali defines the *maqasid* of *shari'ah* as a goal to maintain five basic things in human life (*usul al-khams*), namely, preservation of religion, life, intellect, lineage and property.<sup>1</sup> In this case, according to Al-Ghazali, any act which is aimed at protecting *usul al-khams* is known as *maslahah* (good), while every act which may harm *usul al-khams* is known as *mafsadah* (damage).<sup>2</sup>

The verse that indicates *maqasid* of *shari'ah* is as follows:

مَا يُرِيدُ اللَّهُ لِيَجْعَلَ عَلَيْكُمْ مِنْ حَرَجٍ وَلَكِنْ يُرِيدُ لِيُطَهِّرَكُمْ وَيُؤْتِيَكُمْ مِنْ فَضْلِهِ لَعَلَّكُمْ تَشْكُرُونَ

The Meaning: "God does not want to impose any hardship on you, but wants to make you pure, and to bestow upon you the full measure of His blessings, so that you might have cause to be grateful" (Quran 5:6).

<sup>1</sup> M. Al-Zarqa', *al-madkhal al-fiqhi al-am*, (Dar al-Qalam: Damsyik, 1998).

<sup>2</sup> A. H. Al-Ghazali, *al-mustafa min 'ilm al-usul*, (Cairo: al-Maktabah al-Tijariyyah, 1973).

According to Al-Shatibi (2004), the *maqasid* of *shari'ah* refers to God's command that has set the main goal of His tenets in giving benefit (*maslahah*) to mankind and avoiding any damage (*mafsadah*) from occurring to them.<sup>3</sup> He concluded his discussion on the *maqasid* of *shari'ah* in the three categories: *dharuriyyat*, *hajiyyat* and *tahsiniyyat*.

Among the contemporary scholars, Ibn Ashur defines *maqasid* of *shari'ah* as a purpose and wisdom resulting from the application of most of the part or the entire scopus of Islamic law.<sup>4</sup>

According to Al-Raysuni, the *maqasid* of *shari'ah* refers to objectives and effects achieved from the imposition of Islamic rulings whether in general or in detail (for each law).<sup>5</sup>

### **3.0 Division of the *Maqasid* of *Shari'ah***

The *maqasid* of *shari'ah* is divided into several categories based on several aspects as follows:

#### **3.1 The *Maqasid* of *Shari'ah* Based on the Strength of Evidences of *Sharak***

Based on this aspect, the *maqasid* of *shari'ah* is divided into three types:

- a. *Maqasid qat'iyyah*: the objectives of Islamic law are believed to be the goals for the imposition of a certain Islamic ruling.<sup>6</sup> These types of objectives are self explanatory and can be understood from the textual evidences of the verses of the Holy Quran. The Muslim scholars unanimously agree that this kind of objective can be found in a variety of Quranic verses such as:

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<sup>3</sup> I. Al-Shatibi, *al-muwafaqat fi usul al-shari'ah*. (Beirut: Dar al-Kutub al-'Ilmiyyah, 2004).

<sup>4</sup> M. T. Ibn 'Ashur, *maqasid al-shari'ah al-islamiyyah (2nd ed.)*. (Amman: Dar al-Nafa'is, 2001).

<sup>5</sup> A. Al-Raysuni, *nazariyyah al-maqasid 'inda al-imam al-shatibi*. (The International Institute of Islamic Thought, 1995).

<sup>6</sup> M. T. Ibn 'Ashur, *maqasid al-shari'ah al-islamiyyah (2nd ed.)*. (Amman: Dar al-Nafa'is, 2001).

الَّذِينَ لَا يُرِيدُ عَلَيْكُمْ عُسْرًا وَلَا يُرِيدُ أَنْ يَتَّخِذَ مِنْكُمْ

Meaning: *Allah intends for you ease and does not intend for you hardship*<sup>7</sup>

Another verse is:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

Meaning: *He has chosen you and has not placed upon you in the religion any difficulty*<sup>8</sup>

There are also several Qur'anic verses and sayings of the Prophet (*hadith*) that indicate the importance of considering ease and conveniences and avoidance of hardships which should be the goal of lawgivers in general without being limited to a specific law.<sup>9</sup>

b. *Maqasid zanniyyah*: The objectives and purposes of Islamic law derived from a few number of texts (*dalil*) in which the level of confidence is similar to the above stage, but without a clear indication to any purpose (*maqsad*) and is still speculative in the eyes of Muslim scholars (*mujtahids*). This type of *maqasid* is mostly obtained through the observation of some Islamic rulings on certain problems until the *mujtahid* attains a high level of confidence to decide on the objectives and purposes of the imposition of Islamic rulings on the problems. One example of this type of *maqasid* is that of relationship enhancement in a marriage between a couple (husband and wife). A detailed study of the law (*hukm*) such as the need to take a look at the future wife before marriage, the need to ratify the consent of both bride and groom before the *akad* (contract) takes place, the guardian's approval and the dissemination or announcement of the marriage through the feast give confidence to the reviewer or researcher that maintaining the relationship between a husband and wife is one of the objectives and purposes of the legislation.<sup>10</sup>

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<sup>7</sup> Al-Qur'an 2:185.

<sup>8</sup> Al-Qur'an 22:78.

<sup>9</sup> A. A. Al-Najjar, *maqasid al-shari'ah bi ab'ad jadidah*, (2008), 38.

<sup>10</sup> Ibid.

- c. *Maqasid wahmiyyah*: Something that seems to be the objective and purpose of Islamic law, but in reality, it is not the objective and purpose of the legislation, like the use of alcohol to gain profit and to attain pleasure. It contradicts the objective of Islamic law.

### **3.2 The *Maqasid* of *Shari'ah* Based on Its Relationship with Islamic Law**

Under this arrangement, the *maqasid* of *shari'ah* can be divided into three types, namely:

- a) *Maqasid 'ammah*: the objectives and purposes of most of the Islamic rulings such as the objective to facilitate and avoid complication, the objective to preserve and maintain the system of human life so that it becomes more systematic, and also the position of a human being as the inheritor or ruler (*khalifah*) of the earth. Islamic laws as a whole, either directly or indirectly, aim to achieve and maintain the objectives above.
- b) *Maqasid khassah*: Islamic objectives to be achieved by a group of law, in particular such as the objectives of the Islamic law related to property, family or punishment. Each group of law has its own objectives and goals.
- c) *Maqasid juz'iyah*: objectives and goals to be achieved by each individual Islamic law such as the ban on alcohol, gambling and proposing to women who have been engaged. Each one of these laws has its own objectives and goals to be achieved. This type of *maqasid* is also known as wisdom, secret of *sharak* and '*illah*.

### **3.3 The *Maqasid* of *Shari'ah* Based on Grouping of People**

There are Islamic laws relating to specific individuals, communities and countries. Based on the groups of people, the *maqasid* of *shari'ah* is divided into two types, namely:

- a) *Maqasid 'ammah*: The objectives and purposes of Islamic legislations that provide benefits to all of mankind such as mutual assistance, justice and equality.
- b) *Maqasid khassah*: The objectives and purposes of Islamic legislation relating to certain groups of people such as the